1985-1986
HOUSE RESOURCES COMMITTEE
LIST OF FILES (PAGE 1) MICROFICHE #

CONFIRMATION

CONFIRMATION: BILL ROSS

CONFIRMATION: BOARD OF FISHERIES

CONFIRMATION: BOARD OF GAME

CONFIRMATION: GUIDE LICENSING AND CONTROL BRD.

CONFIRMATION: GUIDE LICENSING AND CONTROL BRD., JIM HARROWER

COMINCO RED DOG PROJECT--OVERVIEW

TIMBER

HB 7

HB 8

HB 21

HB 31

HB 33

HB 42

HB 44

HB 58

HB 73

HB 86

HB 93

HB 101

HB 103

HB 111

HB 128 (FILE 1)

HB 128 (FILE 2)

1985-1986
HOUSE RESOURCES COMMITTEE
LIST OF FILES (PAGE 2) MICROFICHE #

HB 142

HB 143

HB 165

HB 186

HB 193

HB 208

HB 219

HB 227

HB 229

HB 248

HB 256

HB 267

HB 273

HB 280

HB 281

HB 286

HB 287

HB 288 (FILE 1)

HB 288 (FILE 2)

HB 300

HB 306

HB 312

HB 316

HB 323

HB 355

1985-1986
HOUSE RESOURCES COMMITTEE
LIST OF FILES (PAGE 3) MICROFICHE #

HB 383

HB 385

HB 386

HB 395

HB 407

HB 417

HB 428

HB 440

HB 445

HB 461

HB 467

HB 470

HB 482

HB 492

HB 510

HB 512

HB 527

HB 542

HB 559

HB 561

HB 570

HB 578

HB 579

HB 605

HB 608

1985-1986
HOUSE RESOURCES COMMITTEE
LIST OF FILES (PAGE 4) MICROFICHE #

HB 627

HB 632

HB 635

HB 651

HB 672

HB 673

HB 704

HCR 8

HCR 15

HCR 18

HCR 29

HCR 43

HCR 52

HJR 8

HJR 14

HJR 24

HJR 31

HJR 36

HJR 53

HJR 65

HJR 67

HJR 68

HJR 70

HJR 71

HJR 75

1985-1986
HOUSE RESOURCES COMMITTEE
LIST OF FILES (PAGE 5) MICROFICHE #

SB 30

SB 35

SB 57

SB 83

SB 105

SB 120

SB 150

SB 152

SB 194

SB 201

SB 232

SB 269

SB 273

SB 294

SB 309

SB 324

SB 334

SB 349

SB 368

SB 418

SB 430

SB 467

SCR 18

SCR 24

SJR 3

1985-1986
HOUSE RESOURCES COMMITTEE
LIST OF FILES (PAGE 6) MICROFICHE #

SJR 14

SJR 20

SJR 48

SJR 50

HRES14

Confirmation

Alaska State Legislature

HOUSE OF REPRESENTATIVES

COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

January 30, 1985

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to your instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named:

Alaska Commercial Fisheries Entry Commission

Mr. Bruce Twomley, Juneau

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations
Richard C. Shultz	
Adelheid Herrmann	
Bette Cato	
Roger L. Jenkins	
Dave Donley	
David W. Thompson	
M.W. Miller	
F. Kay Wallis	
[illegible]	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Richard C. Shultz

Representative Dick Shultz, Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann, Co-Chair
House Committee on Resources

Alaska State Legislature

HOUSE OF REPRESENTATIVES

COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

January 30, 1985

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to your instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named:

Alaska Oil and Gas Conservation Commission

Mr. Lonnie Smith, Anchorage

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations
Dick Shultz	
Adelheid Herrmann	
Bette Cato	
Roger L. Jenkins	
[illegible]	
David W. Thompson	
M.W. Miller	
F. Kay Walling	
John Sund	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz, Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann, Co-Chair
House Committee on Resources

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

January 30, 1985

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to your instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named:

Board of Fisheries

Mr. Ernest Carter, Fairbanks

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations
Dick Shultz	Adelheid Herrmann, No Rec.
Bette Cato	F. Kay Wallis, no rec
Roger L. Jenkins	
Drue Pearce	
David W. Thompson	
M.W. Miller	
[illegible]	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz, Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann. Co-Chair
House Committee on Resources

Alaska State Legislature

HOUSE OF REPRESENTATIVES

COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

January 30, 1985

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to your instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named:

Board of Game

Mr. Victor Van Balienberghe, Fairbanks

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations
	Mike Pearce - No rec
Adelheid Herrmann	M.W. Miller - No Rec
Bette Cato	Dick Shultz No Rec
Roger L. Jenkins	
Beverly W. Hamilton	
F. Kay Walsh	
John Sund	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz, Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann, Co-Chair
House Committee on Resources

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

January 30, 1985

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to your instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named:

Guide Licensing and Control Board

Mr. Ralph Fenner, Sitka

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations
Dick Shultz	
Adelheid Herrmann	
Bette Cat	
Roger L. Jenkins	
[illegible]	
Fred W. Thompson	
M.W. Miller	
Fr Kay Walker	
[illegible]	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz, Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann, Co-Chair
House Committee on Resources

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

January 30, 1985

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to your instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named:

Guide Licensing and Control Board

Mr. Edward Shavings, Sr., Mekoryuk

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations
Dick Shultz	
Adelheid Herrmann	
Bette Cato	
Roger L. Jenkins	
[illegible]	
Paul W. Thompson	
M.W. Miller	
F. Kay Walker	
[illegible]	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz, Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann, Co-Chair
House Committee on Resources

3007 Northwood
Anchorage, Alaska 99503

January 28, 1983

The Honorable William Sheffield
Governor of the State of Alaska
Office of the Governor
Pouch A
Juneau, Alaska 99811

ATTN: Carol Derfner
Special Staff Assistant

RE: Commercial Fisheries Entry Commission (CFEC)

Dear Governor Sheffield:

I was appointed to the Commercial Fisheries Entry Commission on October 6, 1982. If you so decide, I would very much appreciate your support in seeking confirmation of my appointment by the Legislature. I would be very happy to provide you with any information helpful to you in your decision.

Briefly, as a matter of general background, I am a lawyer with ten years of experience in Alaska, largely in the area of administrative law. A substantial portion of my legal work has been conducted in bush villages of western Alaska. I came to the attention of the past administration only by virtue of having represented a large number of private individuals against various state and federal officials. When asked whether I wished to be considered for an appointment to the CFEC, because of an abiding interest in Alaska commercial fisheries, I readily said yes.

I am now deeply involved in the CFEC's adjudication caseload. As the only lawyer on the CFEC, I feel that my contribution to the CFEC is unique. I believe that my relationship to CFEC staff and the other Commissioners is very good.

I understand that the Governor's office has a file which includes my resume as well as other information pertaining to my appointment. Again, if I can provide your office with any additional information, I would be happy to do so.

Yours truly,

Bruce C. Twomley

Bruce C. Twomley
Telephone No.: 248-4617
Commercial Fisheries Entry Commission
(Anchorage): 267-2231

cc: Kevin Bruce
Special Staff Assistant

RESUME

ERNEST G. CARTER
1208 Denali Way
Fairbanks, AK 99701

HOME: 465-4313 WORK: 452-5186

1951 - Came to Alaska from Longview, WA.

Former owner/manager of a camera retail shop in Fairbanks until 1976.

1969 - Elected to Fairbanks City Council. Served until 1978.

1969-75 - Served on North Star Borough Assembly.

1977-78 - Served as Acting Mayor of Fairbanks when elected Mayor out of town.

1966-77 - Active in Fairbanks Chamber of Commerce in various capacities.

1977 - Joined Realty, Inc. as a Sales Associate.

Currently licensed real estate sales associate, Realty, Inc.

Well-known in the Fairbanks area. Partially retired, so has the time to commit to the Board.

Previously served on State Citizen's Advisory Committee to the Department of Health and Social Services during the last Egan Administration.

Currently a member of: the American Legion, Veterans' of Foreign Wars, the Elks Club, the Eagles Club, and the Moose Club.

Not currently a member of any sportsfishing, hunting, or wildlife organizations.

Does not have any fishing permits other than personal sportsfish license.

Lifetime recreational hunter and fisherman, especially interior regions and Prince William Sound areas.

Victor Van Ballenberghe
956 High Grade Way
Fairbanks, Alaska 99701

5

RECEIVED
DEC - 4 1984
GOVERNOR'S OFFICE

Governor Bill Sheffield
State of Alaska
Pouch AA
Juneau, Alaska 99811

Dear Mr. Sheffield:

This letter concerns an upcoming vacancy on the Board of Game and my desire to be considered for that appointment. I would like to outline my background, experience, training, and concerns in the field of wildlife management and indicate why I feel qualified to serve as a Game Board member.

In 1972, I received my doctorate in wildlife management from the University of Minnesota after completing Master's and PhD research projects on moose ecology and wolf ecology, respectively. My wolf work was published in several scientific journals including a Wildlife Monograph published by the Wildlife Society. Part of this work contributed importantly to a wolf management plan for the state of Minnesota that, at the time, was engaged in wolf management challenges similar to those faced by Alaska in recent years.

My first professional experience was as a faculty member at South Dakota State University where I taught upper division and graduate level wildlife management courses, advised graduate students, and conducted a wildlife extension program. The latter involved extensive media work advising landowners how to cope with animal damage control problems, how to enhance wildlife habitat, and how to participate in the various state and federal land programs dealing with wildlife management.

In 1974, I moved to Alaska to work for the Alaska Department of Fish and Game as a research biologist in Anchorage. I conducted research projects on the impact of the Trans-Alaska Pipeline on moose populations and on the effects of wolf predation on moose calf survival. The wolf work was the first intensive study of wolves using radiocollars that the Department had conducted and led to the expanded studies in the Glennallen area in the late 1970's that added considerably to our knowledge of moose/wolf/bear relationships.

In 1977, I moved to Fairbanks to work for the Department of Fish and Game as statewide furbearer biologist. This was a new position created by the legislature and involved setting up a furbearer management program for economically important species of furbearers. Our efforts in this area led to improved methods of monitoring furbearer harvests, better coordination with federal programs dealing with species of international concern such as lynx and river otters, closer coordination between trappers, their organizations, and ADF&G, and more efficient management of the state's wild fur resources.

For the past five years I have been employed at the Institute of Northern Forestry on the University of Alaska, Fairbanks campus. This is a USDA research field station and I am a research biologist working on studies dealing with moose habitat ecology. These studies have been done in Denali National Park, one of a few areas in the world where moose, their food resources, and predators occur in a naturally regulated environment free from direct intervention by man. The results of our studies there have important implications for moose management in Alaska and throughout the circumpolar regions of the world where moose occupy mountainous habitats.

In summary, I have extensive experience as a professional wildlife biologist (including 10 years of work in Alaska) dealing mostly with moose, wolves, and furbearers. This experience includes positions with universities as well as state and federal agencies. My technical publication list is lengthy; I have good academic credentials in addition to my work experience, with associate professor appointments as an affiliate at the University of Idaho as well as the University of Alaska.

Since moving to Alaska I have had an acute interest not only in the biological aspects of wildlife management but also in the politics of it. I have actively participated in and carefully observed the politics of wolf management and feel that I have as good a grasp of this topic as anyone in Alaska. I have attended Board of Game meetings dealing with this topic since 1974, carefully followed the extensive litigation surrounding this issue, and maintained an international perspective on wolf management through my contacts in other parts of North America and Europe. I feel that this background would provide valuable perspective to the Board of Game as it continues to deal with this sensitive issue in the coming years.

My personal philosophy of wildlife management combines strong elements of support for consumptive use of wildlife resources balanced with support for ample opportunities in designated areas for those who prefer nonconsumptive pursuits. As a wildlife professional I support and would demand management programs that are well grounded in scientific principles. I fully support the state's subsistence priority allocation of wildlife resources and hasten to emphasize that I was one of only a few wildlife professionals in the interior who did not support the ballot initiative to repeal this priority in 1982.

My philosophy includes the idea that the Board of Game must include individuals who can provide not only public interest input or scientific expertise, but also bring a measure of wisdom to the important business of making decisions affecting wildlife management in this state. Such wisdom must come from more than active participation in harvesting wildlife or affiliation with certain lifestyles. It must include a sense of history, a deep personal commitment to the goals of conservation, and a firm grasp of the skills necessary to balance public demand for the resource with our ability to guarantee maintenance of the resource in perpetuity. I have these prerequisites and that is why I feel I could contribute importantly as a Board of Game appointee.

Finally, I am well aware that the endorsements that I can muster to support my interest in this appointment are less than those of others with similar interests. Accordingly, I would ask you to weigh more heavily the qualifications of the candidates and your belief in their potential, rather than the sheer volume of support that any one individual can generate. I hope that you believe, as I do, that there is still room in the democratic process for those with competence, commitment, strong principles, and a good sense of what is ultimately right, and that we must afford such people the opportunity to serve whether or not they currently have broad support.

Thank you for considering me for this appointment and I will eagerly await your decision.

Sincerely,

V. Van Ballenberghe

Victor Van Ballenberghe

Ralph Fenner
Box 102
Wrangell, Alaska 99929

Age - 45

Years in Alaska - 36

Klawak	- 1948 - 1952
Cordova	- 1952 - 1956 (High School Years)
Moose Pass	- 1956 - 1958
Sitka	- 1958 - 1970
Wrangell	- 1970 - Present

Assistant Guide - 1966-1970

Class A Assistant Guide - 1970-1974 (Units 1, 2, 3, 4 & 5 - Reg. #23)

Member of Wrangell ADF & G Advisory Board - 1973 to Present

Concerns:

1) Difficulties in qualifying to take the test for a registered guide.

2) Lack of any guides in the Wrangell-Petersburg area.

3) The increasing lack of ethics that seems to be spreading among guides.



GUIDED TOURS FOR
WALRUS – MUSK-OX
SPORT FISHING
PHOTOGRAPHY ADVENTURES

Nunivak Island Guide Service

Ed J. Shavinge, Sr.
Registered Alaskan Guide

ASSISTANT GUIDES
Chuck Shavinge
Tom G. Amos

P.O. BOX 31
MEKORYUK, ALASKA 99630



MEMBER
APHA – NRA
SCI

Associates
L & S OUTFITTERS

January 4,1985

Board of Commission
State of Alaska
Pouch A
Juneau,Alaska 99811 ATTN:Karen Kahklen

Dear Karen:

Since I have been reappointed to the Guide Licensing & Control Board by the Governor Sheffield last September 1984 I am sending you my regime as requested.

I was appointed to the Guide Licensing & Control Board by Governor Hammond three years ago.

I also have been on the Board member for the Alaska Professional Hunters Association 2 terms.

I am on the alternate deligate for the Eskimo Walrus Com--mssioners representing coastal Natives.

I am Chairman for the Alcohol Awareness Program here in my village.

President and vice president of Indian Reorganization Act Council several times, today I am Vice Chairman.

Today I am also Board member for the Village Corporation.

I have been Mayor for the Village of Mekoryuk and council member in the passed.

I am Vice Chairman for the village local Church Board members.

I have served as Committee chairman for two years on Get Together Committee in this village.

Last of all I start guiding hunters on walrus in 1968 til sea mammal was closed for sport hunters to take, and I got my Registered Guide license in 1975.

I have enjoyed working with Registered and Master Guides here on my Island in the passed when hunting and learned many things from them and working with them.as guide Board member was great experiencing to me and still willing to help the guides today and in the days to come.

Sincerely yours,
Ed J. Shavinge, Sr.
Registered Guide

Top Quality Arctic Adventures

Resume of Lonnie C. Smith

Education

I graduated from Texas Tech University at Lubbock, Texas; August, 1956 with a B.S. degree in Petroleum Engineering.

Experience

Following graduation from college, I was employed by Gulf Oil Corporation, U. S. in Oklahoma and New Mexico for 13 years in various production and engineering positions where I worked as roughneck, roustabout, well tester, engineering trainee, field petroleum engineer production foreman, and senior petroleum engineer doing reservoir and unitization work.

I quit Gulf to accept a petroleum engineering position with the Alaska Division of Oil and Gas (Department of Natural Resources) in September, 1969. I was petroleum engineer until January, 1977 when I gained a temporary promotion to Chief Petroleum Engineer until June, 1977 (5 months).

From June, 1977 until August, 1978 I was senior staff petroleum engineer. In August, 1978 I was permanently promoted to Chief Petroleum Engineer; and in January, 1979 I was appointed to a six year term as one of three Commissioners to the Alaska Oil and Gas Conservation Commission, retaining the same duties and responsibilities as with the Chief's position which is supervising the Commission's engineering and field inspection staff.

I have now worked for the State for over 15 years and have a total of 28 years petroleum industry experience.

Lonnie C. Smith is a 15 year resident of Alaska. A graduate Petroleum Engineer with 28 years experience in the petroleum industry and Alaska state government. He is a long standing member of the Society of Petroleum Engineers and has served as President and Director of varicus Sections of this professional organization. Presently he is the Commissioner on the Alaska Oil and Gas Conservation Commission in charge of the petroleum engineering and field inspection staffs.

Confirmation:
Bill Ross

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

February 18, 1985

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to your instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named as:

Commissioner Department Of Environmental Conservation

Mr. William R. Ross

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Dick Shultz Do Not Confirm

Members Recommending to Confirm:	Members With Other Recommendations
[signature]	Roger L. Jenkins No Recommendation
Adelheid Herrmann	[signature] No Rec
Bette Cato	[signature] NO REC - PENDING FURTHER INQUIRY
F. [signature]	
	M.W. MILLER DO NOT CONFIRM

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz, Co-Chair
House Committee on Resources

Sincerely, ~~Dick Shultz~~

Adelheid Herrmann

Representative Adelheid Herrmann, Co-Chair
House Committee on Resources

WILLIAM R. ROSS

Present Address:
406 Cedar St. #1, N.W.
Washington, D.C. 20012
(202) 882-7999

Permanent Address:
310 Irvin Street, Apt. B
Juneau, Alaska 99801
(907) 789-0483

OBJECTIVE:

PUBLIC ADMINISTRATION/POLICY DEVELOPMENT where political acumen, management skills, and experience in negotiating/facilitating conflict resolutions will contribute to the development of sound public policy and administration of effective programs.

PROFILE:

Eight years broad-based experience in developing and implementing local, state and federal programs. Noted for ability to analyze the policy and political implications of legislative and executive branch programs/acts. Excell in working with all levels of government, community groups and private interests to resolve problems and negotiate/advance client's position. Thorough knowledge of administrative functions of program development and implementation. Strong writing, verbal and mediation skills.

PROFESSIONAL HISTORY:

STATE OF ALASKA 1976 - Present

Associate Director for Fisheries and the Environment, Washington, D.C. (6/83 - present)
Participation with State agencies in the development of policy on state/federal issues related to fisheries, environmental, oil and gas and coastal issues. Responsible for the advocacy of resultant position to the U.S. Congress and the Executive Branch of the Federal government. Examples of job responsibilities include:

- o Advocate changes to federal environmental law consistent with economic development and needed environmental protection for S.E. Alaska pulp mills.
- o Promote development of Alaskan fishing industry through joint ventures with Alaska fisherman; purchases of Alaskan produced product; elimination of foreign high seas salmon fishing; and implementation of reliable seafood inspection program.
- o Assure application of State and federal environmental law based on reliable data for the placer mining industry.
- o Maintain adequate environmental regulation of impacts to wetlands, while eliminating unnecessary administrative tasks on developers.
- o Promote oil and gas development through the federal 5 year OCS program at a pace compatible with State and local capabilities.

PROFESSIONAL HISTORY (Continued):

Policy/Program Analyst II, Washington, D.C. (6/82 - 6/83)
Chief lobbyist/political analyst for Governor on federal offshore oil and gas activities.
- o Support to Alaska Congressional delegation and House and Senate members on OCS revenue sharing legislation.
- o Technical Chairman of ad hoc Senate staff committee to develop and move legislation relating to revenue sharing.
- o Negotiator/mediator between Senate and House positions - identify and resolve potential conflicts.
- o Draft legislation proposals, analyze act from a political perspective, and disseminate/promote state's positions.

Deputy Coordinator, Office of Coastal Management, Juneau, Alaska (5/80 - 6/83)
Principal staff person directing the implementation of Alaska Coastal Management Program, with budgets exceeding $5 Million.
- o Oversaw day-to-day operations including supervision of 16 people.
- o Drafted proposals, secured federal grants, and managed all fiscal aspects of programs.
- o Promoted state management programs through extensive local testimony, appearances before community groups and educational workshops.
- o Responsible for implementation of regulatory aspects of programs.

Associate State-Federal Coordinator, Office of the Governor, Juneau, Alaska (2/78 - 5/80)
Assisted Federal-State Coordinator in implementing federal OMB's A-95 circular.
- o Developed state's coastal management consistency process for implementation of regulatory aspects of program.
- o Devised data filing and retrieval systems.
- o Developed positions for the Governor on federal issues of state-wide significance.

Associate Coordinator, Office of Drug Abuse, Juneau, Alaska (11/76 - 7/77)
Developed and implemented state drug abuse plans through grant-in-aid programs.
- o Evaluated local programs for effectiveness and monitored grant compliance.
- o Acted as federal liaison and in-state trainer for state drug abuse personnel training.
- o Liaison to state-wide advisory board.
- o Responsible for fiscal budget exceeding $1 Million.

OTHER EXPERIENCE:

PRIMDAHL PRODUCTIONS, INC., Washington, D.C. 6/28 - 7/83

Vice President.
Develop film concepts and generate capital funds for independent film and video production company.
- o Interact with funding sponsors and creative production personnel.
- o Produced 16mm photo documentary "Washington, The Capitol."

PRIVATE PRACTICE IN COUNSELING, Juneau, Alaska 11/76 - 5/82

Private practice included individual, marital and family counseling.
- o Contractural services to the Alaska Correctional Institution.
- o University instructor of various courses in psychology.
- o Community training, education and organizing.

ALCOHOLISM CENTRAL AGENCY, Juneau, Alaska 12/75 - 11/76

Drug, Alcohol and Youth Counselor.

CONSULTANT, UNIVERSITY OF WASHINGTON, Seattle, Washington 1973

Production Manager.
Supervised all financial activities, and coordinated production aspects of restoration and completion of Edward Curtis' 1914 film on Northwest Coastal Indians "In the Land of the War Canoes."
- o Received National Endowment for the Arts grant.

EDUCATION:

MASTER OF ARTS, CLINICAL PSYCHOLOGY 1975
Duquesne University, Pittsburgh, PA

BACHELOR OF ARTS, ECONOMICS 1970
Rice University, Houston, TX
- o National Merit Scholar.

Attended University of Texas for one year majoring in psychology in 1972.

COMMUNITY ACTIVITIES:

Aiding Women Against Rape Emergencies (AWARE), Founding Board Member, 1978 - 1982
City and Borough of Juneau Youth Advisory Board, 1977 - 1980
Women & Juveniles Community Detention Center Board (Chair) 1978 - 1982
Capitol Community Broadcasting Advisory Board, 1978 - 1982
- o Produced and co-hosted weekly news and analysis public radio show, 1979 - 1982

Alaska homeowner, 1978 - 1984

References Available Upon Request

(The 1st 2 copies are to Specific representatives, Pearce & Jenkins)

Dear Tally,

I would appreciate it so much if you would see that each member of the House Resources Comittee, yourself and Senators Fritz Pettyjohn & Tim Kelly received copies of this response to Representative Swan's request & Betty Cato's question and your personal request.

I would also appreciate your sending me the verbatim results of the public testimony of the 13th & todays - the 15th as I'm unable to get to town. Am very involved in the crusade as a counselor - exciting!

Talked to Tuggy tonite. Physes is giving him some problems but other

courses are A's. He gets his yellow belt in karate this week (one step up from beginner) Snow + fog so bad in Utah, several people killed on highways last two days.

He said to give you a special hello for him and congratulations for your position.

Thanks so much for helping me out, Tally -

Sue Miller

To: Hearing Chairmen
Committee Members

Subject: Testimony on Bill Ross's Confirmation as DEC

My name is Sue Miller. I am president of the Juneau/Douglas Chapter of Eagle Forum. Our organization is opposed to the appointment of Bill Ross as Director of Environmental Conservation.

We believe that a man who publicly proclaims his philosophy as "democratic socialist" would make regulatory decisions, detrimental to our state's developmental interests. It is in human nature, that when we hold views so deeply, that we will not retract them, and that when we hold them so strongly, we even host a weekly radio show to persuade others to our point of view, that it is <u>impossible</u> to separate these convictions from our decision making.

As an example, Mr. Ross's experience as Deputy Director of the Coastal Zone Management, placed him in a position to review and approve of those extremely restrictive regulations. These regulations make it impossible for either individual citizens or groups of citizens to have the money or time to pursue coastal development or to use their creative ingenuity to attempt to wade through the mass of restrictions to develop ideas that might work.

In the Coastal Zone Management Policy, under the section,"Regulation of Private Property" Mr. Ross obviously has made the decision that "The interests of the public" or the "general welfare" (whose interests and welfare are decided by a state entity) supercede private interests in property. A philosophy that embraces more and more restrictions on private property is consistent with socialistic and communistic countries, but is inconsistent with those principles fostered by capitalism: ambition, initiative, creativity, advanced technology and risk.

The Department of Environmental Conservation is another regulatory agency. Can we then expect such permitting processes and regulatory curbs on technology to protect the environment at "any cost?" With his experience in and satisfaction regarding a three-tiered groups of regulations, all in compliance, will he promote so many regulations as to hamper development in mining, fishing and other industries?

What about energy? Would he encourage low-cost nuclear based electrical development and experimentation in Alaska? Will new developments in the fission field not receive an opportunity to be explored?

At the hearings, Mr. Ross displayed an excellent verbal ability, but showed little interest in taking the initiative to redirect our state to policies that reflect the vitality of the four R's of Capitalism: Rights, Risks, Rules and Rewards. The rights of each human to be free, make decisions, hold property and exchange what one owns for something else if so desired. RISKS, whereby people have the freedom to risk their capital and win or lose, depending upon how they use their abilities. RULES: a framework of laws that informs agents in the marketplace what actions are

Re: Bill Ross's Confirmation as DEC

legal with the least possible regulations and REWARDS. Those willing to take the risks are entitled to the rewards.

Mr. Ross felt qualified to determine the mix and balance between government, not controlling or owning everything, and the people and private enterprise.

We beg to differ with his stated opinion of being a qualified arbiter, as his experience proves his stance toward government and ownership, otherwise. Give us instead, a man or woman director who understands the vitality engendered where government owns and regulates least. Give us a Director who is more than a reviewer and implementer of local, state and Federal restrictions. Give us an innovator.

Sincerely,

Sue E. Miller

Sue E. Miller
President,
Juneau/Douglas Chapter
Eagle Forum
P.O. Box 376
Douglas, Ak. 99824

To: Chairman Richard Schultz
Co-Chair Adelheid Herrmann
To: Members of House Resources Committee

Subject: Request of Respresentative Sund to identify Eagle Forum Explanation to Bette Cato of Mr. Ross's view of democratic Socialism

Enclosed is a copy of a folder for each member of your committee, which will explain some of the precepts of Eagle Forum, National, State and local groups.

Each local group is autonomous and works on those issues on which 70% of the membership agrees is an issue worthy of the efforts and sacrifices involved. Our group may or may not elect to support issues of the other chapters and national group. Each local group more closely identifies with the aims and goals of its own membership, executive board and President.

Our own chapter's main goal is educational. We promote a balanced view and feel several sides to an issue must be presented in order to secure both an informed public and legistlature.

Our state president is located in Anchorage with another chapter in Fairbanks. The Juneau/ Douglas Chapter incorporates presently, all Southeastern members.

In the case of Mr. Ross: his definition of democratic socialism is that government does not control or own everything, but has as its role the providing of the proper balance and mix of economic efficiency, social justice and the responsibilites of individual freedom.

Our role as Eagle Forum members in this instance is to point out the fallacy in his interpretation of the proper mix and balance. As you survey Alaska, who owns and controls its land, money and raw materials? Obviously, government does and we are already a socialistic state with a socialistic consitution and Federal Statehood Act.

Thus, it was not difficult for us to understand why a prepresentative of the largest industry and the largest environment group both want Mr. Ross as DEC. Both represent the interests of the status quo.

Since Alaska's socialistic policies and philosophies have already proven detrimental to the freedom, vitality and energy of individuals and small groups, and have continued to make its people dependent upon government, our group is asking our legistlator and Governor to select Directors who will take an aggressive stance in helping mold and dfine the proper role of government, consistent with the principles of a republic. This Director would help in defining that role by determining that the size and scope of goverment in his area should be reduced.

Contraryto Mr. Jim Clark's testimony, EPA is not the enemy unless the DEC allows the EPA to be that tail that wags the dog. We would expect the DEC to fight vigorously against regulations on private property, one of the cornerstones of a republic; to fight for the people to be allowed to risk, to counter such stringent regulations that require the affluent to be drinkable and to fight against such state laws as prophibit exploration and experimentation in the low cost nuclear powered electrical field. These are just a few examples drawn from the testimony of 2-13-85 to explain our point of view.

Thank you very much for your kind attention.

Sue Miller
President Eagle Forum

JOIN

Eagle Forum

By joining Eagle Forum, you will be sharing morally, patriotically and financially with like-minded Americans [illegible] there is strength.

Eagle Forum
P.O. Box 376
Douglas, AK 99824

MEMBERSHIP APPLICATION

Please enroll me as a member of Eagle Forum. I support the policies as set forth in this brochure.

Name_____

Street_____

City_____

State_____ Zip_____

Area Code_____ Phone_____

Occupation_____

_____ $10 Subscriber

_____ $15 Member

_____ $25 Sustaining Member

_____ $50 Sponsor Member

_____ $100 Promoter Member

_____ $1000 Life Member

_____ I would like to be active in a local chapter.

_____ Send 10 different reports on the Equal Rights Amendment by Phyllis Schlafly @ $3.

_____ Send 10 different reports on education, national defense, etc., by Phyllis Schlafly @ $3.

_____ Send Eagle Pin insignia @ $5.

Membership includes subscription to the PHYLLIS SCHLAFLY REPORT, a monthly newsletter.

By joining

Eagle Forum

you will join the winning movement of Eagles* who have a proven record of success in . . .

- Stopping the anti-family Equal Rights Amendment (which would give vast powers to the Federal Government to deny our right to make reasonable differences of treatment between male and female sex, and between moral and immoral sex).
- Preserving women's traditional exemption from the military draft and combat duty (and winning the U.S. Supreme Court case of *Rostker v. Goldberg* in 1981).
- Preserving the dependent wife's and widow's benefit in Social Security (against attack by the feminist activists).
- Defeating the radical attempt to make child-care a Federal function instead of a family responsibility.
- Exposing and defeating the radical anti-family goals of the Commission on International Women's Year and the White House Conference on Families.

*"*They that wait upon the Lord shall renew their strength; they shall mount up with wings as* **eagles;** they shall run, and not be weary; and they shall walk and not faint." Isaiah 40:31.

BOX 618 • ALTON, ILLINOIS 62002

PHYLLIS SCHLAFLY, *President*
TOTTIE ELLIS, *First Vice President*



Eagle Forum

leading the pro-family movement since 1972



A national organization of women and men who believe in God, Home, and Country, and are determined to defend the values that have made America the greatest nation in the world.

We Support your RIGHTS...

We support the Declaration of Independence and its fundamental doctrine that we owe our existence to a Creator who has endowed each of us with inalienable rights; and we support the United States Constitution as the instrument of securing those God-given rights.

We support the Holy Scriptures as providing the best code of moral conduct yet devised.

In addition, we support:

1. The right of citizens to have the Federal Government provide for the common defense against aggression by any other nation.

2. The right of citizens to live in a community where state and local government and judges maintain law and order by a system of justice under due process, and punishment that is swift and certain.

3. The right to equal opportunity in employment and education for all persons regardless of race, creed, sex, or national origin.

4. The right to life of all innocent persons from conception to natural death.

5. The right of a community to prevent the distribution of printed or pictorial materials that degrade women or children in a pornographic, perverted, or sadistic manner.

6. The right of a community to protect itself and its members from those who abuse their own bodies with poisonous drugs.

We Support the FAMILY...

WE SUPPORT THE FAMILY AS THE BASIC UNIT OF SOCIETY, WITH CERTAIN RIGHTS AND RESPONSIBILITIES INCLUDING:

1. The responsibility of society to have laws and taxes that encourage mothers to care for their own children and encourage fathers to provide for them, rather than laws and taxes that impose disincentives on the role of motherhood and the traditional family.

2. The responsibility of the parents (not the government) for the care of pre-school children. Parents have the right to expect schools to:
   a. teach basic educational skills such as reading and arithmetic before time and money are spent on frills.
   b. use textbooks and hire teachers that do not offend the religious and moral values of the parents.
   c. use textbooks that teach the truth about the family, monogamous marriage, motherhood, American history and Constitution, and the private enterprise system.
   d. teach the "fourth R" (right and wrong) and permit voluntary prayer.
   e. respect gender identity; and separate the sexes for sex education, gym, and other classes, if so desired.

3. The right of parents to send their children to private or religious schools free from arbitrary government regulations and control.

4. The right of all religious bodies to designate different roles among their members for men and women.

Eagle Forum

for God, Home, and Country

By joining Eagle Forum, you can be "a doer, not a hearer only." You can help—

- secure for all time the achievements listed on the last page of this brochure.
- protect wives and mothers against the discriminatory laws and taxes promoted by feminist activists.
- prevent schools from teaching children concepts offensive to the religious, moral, or cultural standards of the child or his parent.
- participate in our "Stop Textbook Censorship" project: to expose and remedy the radical censorship out of school textbooks . . . of moral values (thereby allowing Secular Humanism to fill the vacuum) . . . of traditional family concepts . . . of the truth about the risks and unhappy results of sexual promiscuity . . . of basic skills such as reading (by the phonics method) . . . of the greatness of America.
- protect private and religious schools—and parents who are home teachers—against arbitrary Federal and state controls and regulations.
- build a strong U.S. national defense so that America can fulfill its moral duty to defend freedom.
- reduce the power of the Federal courts to overturn traditional morals.
- reduce violence, immoral sex, and profanity on broadcast and cable television . . . eliminate the evil of child pornography.

Sally Miller

Juneau Empire 2/13/85

Timber, environment groups endorse Ross



ALASKA NEWS

By KIRK McALLISTER
The Juneau Empire

If politics sometimes makes for strange bedfellows, so do confirmation hearings.

That was the case this morning in the House Resources Committee during confirmation hearings for Bill Ross, Gov. Bill Sheffield's new choice for commissioner of the Department of Environmental Conservation. Timber and environmental interests made back-to-back testimony favoring the Ross appointment.

Frank Roppel, executive vice president of Alaska Pulp Co. in Sitka, gave a strong endorsement of Ross' appointment. His testimony was immediately followed by support from Scott Highleyman, executive director of the Alaska Environmental Lobby.

The irony of those two consecutive endorsements of Ross was noted by committee member Rep. John Sund, D-Ketchikan.

"I want to take note of what just happened here," Sund said. "Here we have a major player in the timber industry supporting him (Ross) followed by the environmental lobby. I don't know Bill Ross very well but I want to learn more about someone who is able to do this."

Today was the second day of confirmation hearings in the Resources Committee for Ross, who has come under fire from some quarters for his so-called "socialist" political views.

Roppel told the committee that Ross, while working in the governor's Washington D.C. office, played a major role in the state's strong position supporting Southeast pulp mills' fight against the federal Environmental Protection Agency.

"He (Ross) has an in-depth understanding of water quality issues and the ability to deal effectively with federal people, which is critical," Roppel said. "We think he'd be a very good commissioner."

Those thoughts were echoed by Jim Clark, Alaska Pulp attorney and chairman of Sheffield's timber task force

"I think he (Ross) would make an outstanding commissioner," Clark said. "He understands environmental law and knows the people in Washington so he should be extremely effective. To us, EPA is the enemy not DEC."

Support for Ross' confirmation also came from fishing groups and organized labor.

Cass Parsons, executive director of the United Fishermen of Alaska, read a resolution passed Tuesday by the UFA board of directors calling Ross "exceptionally capable" and supporting his appointment.

Larry Cotter, president of Local 200 of the International Longshoremen and Warehousemen's Union, told the committee he "strongly supports confirmation" and that Ross is "capable of dealing fairly and astutely with complex issues."

Phil Holdsworth, representing the Alaska Miners Association, told the committee that the placer mining industry in the state "would no longer exist after this year" if something isn't done to change water quality standards in the state. He requested that the committee ask Ross' philosophy on this issue.

The only opposition to Ross' appointment at today's hearing came from Sue Miller, chairwoman of the Juneau-Douglas Eagle Forum, the local chapter of a nationwide patriotic group.

Miller told the committee that her group opposed Ross getting the DEC job because his political views could effect policy and discourage development.

UNITED FISHERMEN OF ALASKA

[illegible] Seward Street, Suite #10
[illegible]au, Alaska 99801-1162
(907) 586-2820

Cass M. Parsons
Executive Director

UNITED FISHERMEN OF ALASKA

RESOLUTION 85-1

WHEREAS the United Fishermen of Alaska is an organization representing the major fishing interests in Alaska; and

WHEREAS the UFA is vitally concerned with the use, protection, and enhancement of Alaska's fisheries resources and their habitat; and

WHEREAS the Commissioner of DEC sits as a member of the fisheries mini-cabinent; and

WHEREAS the Department of Environmental Conservation (DEC) plays a significant role in protecting Alaska's fisheries habitat through a wide range of water quality management programs; and

WHEREAS the DEC also plays an important role in both the development and marketability of Alaskan fisheries by ensuring high quality, healthy, and safe working environments in the seafood processing industry; and

WHEREAS Governor Bill Sheffield has nominated Mr. Bill Ross to be the new Commissioner of DEC and has charged him with the duty of addressing these problems; and

WHEREAS the UFA and many of the UFA's memeber groups have worked with Mr. Ross on a variety of topics over the years and have found him to be exceptionally capable at addressing and solving complex issues;

NOW THERFORE BE IT RESOLVED that the United Fishermen of Alaska hereby declare their support for the nomination of Bill Ross as the Commissioner of Environmnetal Conservation and urge both the House and Senate to confirm his nomination as soon as possible.

Cass M. Parsons
UFA Executive Director

2/12/85
Date

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

February 11, 1985

The following is the verbatim testimony of Mr. William Ross, Commissioner of the Department of Environmental Conservation as presented to the House Resources Committee on Monday, February 11, 1985:

Thank you Mr. Chairman, good morning, members of the committee and representatives who are sitting in today. I do have a brief statement if I can begin with that I would. It is a pleasure and an honor to be here before you today. I believe there have been misunderstandings over the press accounts regarding my nomination and I am here to answer any questions that you all may have about those misunderstandings and also to give you a clear picture of what my personal beliefs are and how I would conduct a job if confirmed as Commissioner of Department of Environmental Conservation.

When contacted by a reporter after my nomination was made public a series of factual questions were asked of me in which I answered them honestly and with a sense of candor. The reporter then attempted to search for what he believed would be a label which might or might not accurately describe my views and the label which has become the source of some notoriety, so to speak, was one that I described that might not be considered inaccurate by some people. As my views have become known over time it also appears to be the case that label may not be considered accurate by some people and basically that is I think, the situation we find ourself into today. I think that it is important to give a senses to what it is I personally believe and I think that particularly regards to the label that has been placed upon me given that certain countries such as like France, Italy, the Netherlands and Israel are considered socialist countries that we are dealing with a label which has a wide variety of meanings to many different people as of one that does not particularly inform or give an explicit understanding. I believe this be the case in both America and in particular in Alaska. What we are talking about, so to speak, is a matter of degree. All countries have to balance three factors in my personal beliefs. The first is economic efficiency which I believe to be the creation of wealth that is available for distribution in any society. Social justice which is the fairness for all that I think needs to be afforded. The equal opportunity as well as sense of cooperation in providing for ourselves as a sense of community. And then, of course, individual freedoms which we all know are clarified in particular in our system in the bill of rights. Things like freedom of press, freedom of speech, freedom of religion, freedom of assembly, freedom from unreasonable search and seizure, freedom to bare arms. I believe that under our system in particular the bill of rights and our constitution along with checks and balances that is inscribed in our

system of government is one of the greatest innovations in government in modern times. With regards to social justice I think that America has made great progress in this area. I also think America will remain a great nation as long as it continues to have a progressive role in ascribing social justice for all people. With regards to economic efficiency I believe there is a role in government to mediate and balance between the responsibilities of individual freedom, social justice and like I said economic efficiency. It is not to say then that I am talking about the government controlling situations nor am I talking about the government owning everything. But I am saying the government has a responsibility ineffect to mediate between those balancing forces and attempt to come up with the balance of the right mix and to do so democraticly. I think that the heritage of Alaska is such, I believe that we have a strong tradition towards individual freedom, I believe that Alaska has a commitment towards social justice and I believe Alaska has a mixed economy. The Statehood Act as well as our constitution has established this as such. We, as we all know, are one of the major land owners in the state and in particular the subsurface rights we have held in common ownership make us a major player in the economic development of the state. Prudhoe Bay field is of course the most representative example of this. It is under governmental ownership. It is a joint venture with the private sector that creates much of the wealth for all Alaskans which the legislature as the constitution has decided, thus distributes to all the people. We have a dynamic private sector and vibrant public sector which includes some ownership hence I call this a mixed economy. It is my belief that the mix for Alaska is appropriate and that what caused me to say that the label might not be considered inaccurate by some people. I think there are other examples in which the legislature has deemed public ownership or intervention in the market or direct cash distribution to the people of the wealth that is derived from public ownership is indeed a good thing. And that leads to me the concept of democracy and who should decide what this mix is. It is not the government, it is not the state but the citizens operating through a democratic process. As Abraham Lincoln said, "Government of, for, and by the people". The sovereignty of our system is that it resides in the people. In Alaska this has been done generally through the constitutional arrangement which you, as elective representatives, are given the responsibility from the people to decide on how this mix should be done and how our mixed economy should be influenced and oriented towards the surface and benefit of all Alaskans. With this understanding about the role of government, my views on development are this: I believe that it is necessary that Alaska diversify its economy, develop its resources, provide the jobs for citizenry and replace the lost revenues. The window of opportunity offered by Prudhoe Bay will be opened only briefly. My (I) support, and have participated in this goal. More importantly however, the constitution mandates that our resources be developed. It also is the case that the constitution mandates that we have environmental protection along with resource development. Environmental protection of our commonly held resources be that the fish, the air, the water constitution invisions that the state needs to take care of. There has also been a body of law established not only by the legislature but by the United States Congress which has made environmental protection a much need and highly expected priority. My

job as commissioner will be one essentially of multiple use and sustain yield as described in the constitution. I have to make sure that the air and the land and the water when they are used in support of developmental activity are returned to the common pool in such a fashion that others may use it as well. Be they downstream users with regards to water quality, people next door with regards to air quality or most importantly for future generations so that we have a sense of stewardship over our resources. I believe that this requires an understanding of the needs of both the public health and also the sense of balance that I would bring to the job.

The Governor has asked me to assume this responsibility because my record and experience has demonstrated in particular three things. One is that I have an understanding and capacity to understand the complex issues associated with environmental protection through the legal structure that we have as well as the need to balance between the interest of development that we are attempting to foster here. The second is that I have established the ability to work well with the various constituents that generally surround the issues of the day. And the third, is that I have proven record of management, experience and that I can particularly inspire lead people in a problem solving service oriented attitude which I believe the department needs to have, particularly as we go into a situation of growing developmental activity, growing populations and a shrinking budget.

In summary, I believe I have been an active and productive Alaskan working for the betterment of my community, my state and my country. I believe that Alaska has the capacity to address the needs of social justice well, providing a land of opportunity for all of its citizens. Alaska can, should and will have development and I look forward to ensuring that the risk of public health and to the future generations with regards to stewardship over our air, land, and water is such that the impacts caused by that development are kept to a minimum and the contents of the balance required by the constitution.

Mr. Chairman, that's my opening statement I of course will be pleased to answer any questions that you and the committee might have at this time.

Dick —

Suggestions

1. What formal scientific or biological educational background do you have to enable you to understand the complex decisions that you may have to deal with ? I raise this question in light of the background of the outgoing commissioner who obviously was well qualified to understand the issues he has had to deal with.

2. I am sure you realize that the turbidity standards now in place on Alaska's streams are absolutely impossible for placer miners to meet. What would you as commissioner suggest we do with these standards ?

3. Based on the [redacted] unattainable drinking water quality standards for all streams that we as a state adopted, and that now the feds are making us live up to, doesn't it seem reasonable to consider reclassification of some of these water bodies where mining has long been the traditional activity ?

4. In your opinion why is it taking industry so long to get permits for resource development in Alaska, and how can that be changed ?

5. What are some of the positive changes that you envision for DEC and how will any of these changes help in the development of our resources ?

6. Please give us an idea of what your solution to the placer miners water quality problems is ?

7. Will you as commissioner advocate for our state's placer miners in their dealings with the Federal Government if it appears that enforcement of their laws based on our standards are impossible to comply with ? How ?

8. What do you feel your role as commissioner would be with the legislature ?

9. As you have made your rounds with various legislators what do you feel is their number one concern with the department ? How will you address that concern ?

10. Is there any group within the environmental community that doesn't support you ? Why ?

ROSS HEARING AGENDA

1. Call the meeting to order. (time, date.)

2. Recognize members of the committee present.

3. State the purpose of the meeting.
(to formulate a recommendation to the House of Representatives on the matter of the confirmation of Mr. Bill Ross as Commissioner of the Department of Environmental Conservation)

4. Before beginning, recognize that there are other legislators present in the room and remind them that if they have questions to ask of Mr. Ross they should submit them through a member of the committee at the table.

5. State that Mr.Ross will address the committee first, the members will then have the opportunity to ask questions, followed by public testimony, and an additional question period of Mr. Ross by the committee.

6. As a final reminder ask that all dialogue be directed through the chair.

7. Welcome Mr. Ross to the meeting and extend an invitation for him to present an opening statement to the committee.

ON THE MAKING OF A MOTION

A letter with individual recommendations can be moved from committee as follows;

1. By unanimous consent (via a motion)

2. Over objection (via a vote following debate or discussion on the motion)

** It is important to note that the transmittal of the letter, not the question of Mr. Ross and his qualifications, is the only topic in order concerning committee debate on the above motion.

WILLIAM R. ROSS

Present Address:
406 Cedar St. #1, N.W.
Washington, D.C. 20012
(202) 882-7999

Permanent Address:
310 Irvin Street, Apt. B
Juneau, Alaska 99801
(907) 789-0483

OBJECTIVE:

PUBLIC ADMINISTRATION/POLICY DEVELOPMENT where political acumen, management skills, and experience in negotiating/facilitating conflict resolutions will contribute to the development of sound public policy and administration of effective programs.

PROFILE:

Eight years broad-based experience in developing and implementing local, state and federal programs. Noted for ability to analyze the policy and political implications of legislative and executive branch programs/acts. Excell in working with all levels of government, community groups and private interests to resolve problems and negotiate/advance client's position. Thorough knowledge of administrative functions of program development and implementation. Strong writing, verbal and mediation skills.

PROFESSIONAL HISTORY:

STATE OF ALASKA 1976 - Present

Associate Director for Fisheries and the Environment, Washington, D.C. (6/83 - present)
Participation with State agencies in the development of policy on state/federal issues related to fisheries, environmental, oil and gas and coastal issues. Responsible for the advocacy of resultant position to the U.S. Congress and the Executive Branch of the Federal government. Examples of job responsibilities include:

- o Advocate changes to federal environmental law consistent with economic development and needed environmental protection for S.E. Alaska pulp mills.
- o Promote development of Alaskan fishing industry through joint ventures with Alaska fisherman; purchases of Alaskan produced product; elimination of foreign high seas salmon fishing; and implementation of reliable seafood inspection program.
- o Assure application of State and federal environmental law based on reliable data for the placer mining industry.
- o Maintain adequate environmental regulation of impacts to wetlands, while eliminating unnecessary administrative tasks on developers.
- o Promote oil and gas development through the federal 5 year OCS program at a pace compatible with State and local capabilities.

PROFESSIONAL HISTORY (Continued):

Policy/Program Analyst II, Washington, D.C. (6/82 - 6/83)
Chief lobbyist/political analyst for Governor on federal offshore oil and gas activities.
- o Support to Alaska Congressional delegation and House and Senate members on OCS revenue sharing legislation.
- o Technical Chairman of ad hoc Senate staff committee to develop and move legislation relating to revenue sharing.
- o Negotiator/mediator between Senate and House positions - identify and resolve potential conflicts.
- o Draft legislation proposals, analyze act from a political perspective, and disseminate/promote state's positions.

Deputy Coordinator, Office of Coastal Management, Juneau, Alaska (5/80 - 6/83)
Principal staff person directing the implementation of Alaska Coastal Management Program, with budgets exceeding $5 Million.
- o Oversaw day-to-day operations including supervision of 16 people.
- o Drafted proposals, secured federal grants, and managed all fiscal aspects of programs.
- o Promoted state management programs through extensive local testimony, appearances before community groups and educational workshops.
- o Responsible for implementation of regulatory aspects of programs.

Associate State-Federal Coordinator, Office of the Governor, Juneau, Alaska (2/78 - 5/80)
Assisted Federal-State Coordinator in implementing federal OMB's A-95 circular.
- o Developed state's coastal management consistency process for implementation of regulatory aspects of program.
- o Devised data filing and retrieval systems.
- o Developed positions for the Governor on federal issues of state-wide significance.

Associate Coordinator, Office of Drug Abuse, Juneau, Alaska (11/76 - 7/77)
Developed and implemented state drug abuse plans through grant-in-aid programs.
- o Evaluated local programs for effectiveness and monitored grant compliance.
- o Acted as federal liaison and in-state trainer for state drug abuse personnel training.
- o Liaison to state-wide advisory board.
- o Responsible for fiscal budget exceeding $1 Million.

OTHER EXPERIENCE:

PRIMDAHL PRODUCTIONS, INC., Washington, D.C. 6/28 - 7/83

Vice President.
Develop film concepts and generate capital funds for independent film and video production company.
- o Interact with funding sponsors and creative production personnel.
- o Produced 16mm photo documentary "Washington, The Capitol."

PRIVATE PRACTICE IN COUNSELING, Juneau, Alaska 11/76 - 5/82

Private practice included individual, marital and family counseling.
- o Contractural services to the Alaska Correctional Institution.
- o University instructor of various courses in psychology.
- o Community training, education and organizing.

ALCOHOLISM CENTRAL AGENCY, Juneau, Alaska 12/75 - 11/76

Drug, Alcohol and Youth Counselor.

CONSULTANT, UNIVERSITY OF WASHINGTON, Seattle, Washington 1973

Production Manager.
Supervised all financial activities, and coordinated production aspects of restoration and completion of Edward Curtis' 1914 film on Northwest Coastal Indians "In the Land of the War Canoes."
- o Received National Endowment for the Arts grant.

EDUCATION:

MASTER OF ARTS, CLINICAL PSYCHOLOGY 1975
Duquesne University, Pittsburgh, PA

BACHELOR OF ARTS, ECONOMICS 1970
Rice University, Houston, TX
- o National Merit Scholar.

Attended University of Texas for one year majoring in psychology in 1972.

COMMUNITY ACTIVITIES:

Aiding Women Against Rape Emergencies (AWARE), Founding Board Member, 1978 - 1982
City and Borough of Juneau Youth Advisory Board, 1977 - 1980
Women & Juveniles Community Detention Center Board (Chair) 1978 - 1982
Capitol Community Broadcasting Advisory Board, 1978 - 1982
- o Produced and co-hosted weekly news and analysis public radio show, 1979 - 1982

Alaska homeowner, 1978 - 1984

References Available Upon Request

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

2/5/85

BILL ROSS

CONFIRMATION HEARINGS

HOUSE RESOURCES

THE HOUSE RESOURCES COMMITTEE WILL BE HOLDING CONFIRMATION HEARINGS ON THE APPOINTMENT OF MR. BILL ROSS AS COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION BY GOVERNOR BILL SHEFFIELD ON FEBRUARY 11, 1985.

MR. ROSS WILL BE OFFERED THE OPPORTUNITY TO PRESENT A STATEMENT TO THE COMMITTEE AND MEMBERS WILL THEN BE ABLE TO ASK QUESTIONS OF MR. ROSS. AFTER QUESTIONS BY COMMITTEE MEMBERS,IT IS MY INTENTION TO AFFORD MEMBERS OF THE PUBLIC WHO WOULD CARE TO TESTIFY TIME TO OFFER THEIR COMMENTS TO THE COMMITTEE. AT THE CLOSE OF PUBLIC COMMENT THE COMMITTEE WILL ONCE AGAIN HAVE THE OPPORTUNITY TO DIRECT QUESTIONS TO MR. ROSS SHOULD THEY FEEL THE NEED.

AT THE CLOSE OF COMMITTEE DISCUSSION IT IS THE INTENTION OF THE CHAIRMAN TO GAIN A SENSE OF THE COMMITTEE AS TO THE NEED FOR ADDITIONAL MEETINGS UPON THE MATTER OF CONFIRMATION. TO WHATEVER EXTENT THERE CONTINUES TO EXIST CONCERNS OR UNANSWERED QUESTIONS, I FEEL THAT IT WILL BE IN THE BEST INTEREST OF THE COMMITTEE AND THE PUBLIC TO ALLOW AS MUCH TIME AS PRACTICAL.

Dick

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

TO: HOUSE RESOURCES COMMITTEE MEMBERS

FROM: REPRESENTATIVE DICK SHULTZ, CO-CHAIRMAN DS

DATE: FEBRUARY 7, 1985

RE: CONFIRMATION HEARINGS FOR MR. BILL ROSS

Due to circumstances beyond our control there will be a great deal of interest focused on the confirmation hearing taking place on Monday, February 11th for Mr. Ross. Consequently we as a committee will be dealing with a very crowded committee room and the accompanying pressures of heavy media coverage.

In fairness to Mr. Ross, the public, and the media I would ask that members arrive promptly and that any special requests that might require a change in committee procedure be made to me in advance of the meeting for consideration.

As a matter of procedure, Mr. Ross will be allowed time to deliver a statement to the committee. Members of the committee will then be allowed the opportunity to ask questions of Mr. Ross. Members of the public who wish to offer their comments will then be allowed time to do so. In the interest of time and as a courtesy to those testifying I would ask that members hold their questions until public testimony is completed. At the end of the public comment period members will have an additional opportunity to ask questions of Mr. Ross.

Thank you.

Dick

Confirmation:

Board of Fisheries

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

M E M O R A N D U M

TO: Representative Ben Grussendorf
Speaker of the House

FROM: Representative Adelheid Herrmann, Co-Chair
House Resources Committee

DATE: April 7, 1986

SUBJECT: Board of Fisheries Confirmations

The House Resources Committee has had a confirmation hearing on the Governor's appointments to the Alaska Board of Fisheries and makes the following recommendations:

Mr. Bix Bonney

CONFIRM	DO NOT CONFIRM	NO RECOMMENDATION
Adelheid Herrmann	Roger Jenkins	M.W. Miller
Kay Wallis		David W. Thompson
[illegible]		[illegible]
Bette Cato		Duke Shultz

Mr. Jesse Foster

CONFIRM	DO NOT CONFIRM	NO RECOMMENDATION
Adelheid Herrmann		M.W. Miller
Kay Uzelac		David W. Thompson
		Tom Force
Bette Cato		Roger Jenkins
		Dick Shanley

Mr. Val Angasan

CONFIRM	DO NOT CONFIRM	NO RECOMMENDATION
Adelheid Herrmann		M.W. Miller
Kay Uzelac		David W. Thompson
		Tom Force
Bette Cato		Roger Jenkins
		Dick Shanley

Resume

Val N. Angasan
Box 89
Dillingham, AK 99576
Phone: 842-5463

PERSONAL DATA

Birthdate: February 14, 1953
Marital Status: Married, 2 children

EDUCATION

University of Alaska, 1970 - 1974, full and part time, Majored in Business Administration and now has a total of 90 hours.

EMPLOYMENT HISTORY

1982 - Present	Bristol Bay Herring Marketing Corp., Manager
1981 - 1982	Building construction in winter and commercial fished in summer
1980 - 1981	IMARPIK Regional Aquaculture Corp., Assistant Manager
1975 - 1980	Economic Development, Bristol Bay Native Corp., Director - fished commercially in summer.

Miscellaneous Data:

Has subsistence hunted and fished.

November 29, 1982

Gov. Bill Sheffield
Sheffield Hotel
Plaza 201 E 3rd
Anchorage, AK 99501

Dear Bill,

I once again extend my sincere congratulations on your victory. There is no doubt in my mind that you will be one of the "Great" Governors of our State.

I would like to be kept in mind in event there is opportunity to make use of my background and expertise. I believe that I could be of significant value to you in all areas pertaining to the fisheries or subsistance problems. I, specifically, would like to sit on an Ad Hoc group involved in subsistance as related to sport users of our fish and game. I feel my longevity in our state, my interfacing with Bush groups, Commercial fishing interests and my Sport fishing and hunting advocation would be of value to your administration. The following points may be of interest in justifying any appointments.

1. 31 years resident in Alaska
   a. Ketchikan 1951-57
   b. Sitka 1958-62
   c. Kodiak 1962-75
   d. Anchorage 1975-present .
2. 12 years in Alaska Pulp Mills Technical Department ending in 1962 as Lab Superintendent Alaska Lumber & Pulp Co., Sitka
3. 12 years fish processing business President B & B Fisheries, Inc., in Kodiak
4. 7 years executive search and management consulting, President Bonney, Garland & Co., Inc. in Anchorage
5. President Anchorage East Rotary Club
6. In depth background in both sport and commercial fishing -- Co-Chairman Kenai River Sport Fishing Association (500 members) and Board of Directors Alaska Sportfishing Association (1000 members)

Sincerely,

BONNEY, GARLAND & CO., INC.

Bix Bonney
President

BB/ekb

Bonney, Garland & Co., Inc.

Calais II Bldg., 3301 C Street, Suite 202 Anchorage, Alaska 99503 Telephone: (907) 276-1451

Resume

Jesse Foster

PERSONAL DATA

Birthdate: June 26, 1941
Marital Status: Married, 4 children

EDUCATION

High School - GED

COMMITTEE/BOARD PARTICIPATION AND EMPLOYMENT HISTORY

1981 - Present	-Alaska Land Use Advisory Committee -AVCP Education Committee, Board Member
1980 - Present	-AVCP Fisheries Task Force
1980 - 1982	-Alaska Fisheries Development Foundation, Board Member
1979 - Present	-North Pacific Fishing Management Council Advisory Panel
1978 - Present	-International North Pacific Fisheries Commission Advisory Committee -Central Bering Sea Fish and Game Advisory Committee, Vice Chairman -Western Alaska Fishermen's Marketing Assn. -Quinhagak City Council, Past Mayor -Quinhagak City Council, Council Member
1977 - Present	-Bering Sea Fishermen's Assn., Past President -Bering Sea Fishermen's Assn., Board Member

SPECIAL COMMITTEE ON FISHERIES
March 13, 1986
8:30 a.m.

MEMBERS PRESENT

Representative Peter Goll, Chair
Representative Katie Hurley, Vice Chair
Representative David Thompson
Representative Roger Jenkins
Representative Andre Marrou
Representative Mike Navarre

MEMBERS ABSENT

Representative Johne Binkley

COMMITTEE CALENDAR

Confirmation hearings:

ALASKA BOARD OF FISHERIES:
Val Angasan of Dillingham
Original term began 01/23/84, reappointed 02/10/86, expires 01/31/89.

Bix Bonney of Anchorage
Original term began 07/20/83, reappointed 02/10/86, expires 01/31/89.

Jesse Foster of Quinhagak
Original term began 07/20/83, reappointed 02/10/86, expires 01/31/89.

COMMERCIAL FISHERIES ENTRY COMMISSION:
Richard Listowski of Juneau
Original term began 03/15/83, reappointed 06/24/85, expires 07/01/89.

WITNESS REGISTER

Senator Vic Fischer
Alaska State Legislature
Capitol 11
Juneau, Alaska 99811
Telephone: 465-4997
Position Statement: Supports reappointment of Bix Bonney.

Randy Berg
Box 4177
Soldotna, Alaska 99669
Telephone: 262-5727

Position Statement: Do not confirm Bix Bonney.

Greg Davis
18819 Spur Highway, #139
Kenai, Alaska 99611
Telephone: 262-7360
Position Statement: Do not confirm Bix Bonney.

C. Dickson
Box 2018
Soldotna, Alaska 99669
Telephone: 262-6020
Position Statement: Do not confirm Bix Bonney.

Dan Ingraham
Box 1033
Soldotna, Alaska 99669
Position Statement: Do not confirm Bix Bonney.

William Gavin
Box 3628
Soldotna, Alaska 99669
Telephone: 262-7746
Position Statement: Do not confirm Bix Bonney.

Nigel Guest
Box 2015
Kenai, Alaska 99611
Telephone: 262-9466
Position Statement: Do not confirm Bix Bonney.

Rodney Berg
266 Redwood Court
Soldotna, Alaska 99669
Telephone: 262-6064
Position Statement: Do not confirm Bix Bonney.

Karen Callahan
Box 2015
Kenai, Alaska 99611
Telephone: 262-9466
Position Statement: Do not confirm Bix Bonney.

Jim Johnson
Box 3774
Soldotna, Alaska 99669
Telephone: 262-5357
Position Statement: Do not confirm Bix Bonney.

Tim Hiner
Box 2122
Soldotna, Alaska 99669
Telephone: 262-5357
Position Statement: Do not confirm Bix Bonney.

Cheryl Sutton
Box 546
Soldotna, Alaska 99669
Telephone: 262-2492
Position Statement: Do not confirm Bix Bonney:

Phil McCrudden
Box 2271
Homer, Alaska 99604
Position Statement: Supports reappointment of Bix Bonney.

Larry Smith
Box 337
Homer, Alaska 99604
Position Statement: Supports reappointment of Bix Bonney.

Myron Mickey
Box 120
Anchor Point, Alaska
Position Statement: Do not confirm Bix Bonney.

Thomas G. Kolasinski
5314 Sillary
Anchorage, Alaska 99508
Telephone: 333-0886
Position Statement: Do not confirm Bix Bonney.

Scott O. Sell
7140 Linden Court
Anchorage, Alaska 99502
Telephone: 243-4529
Position Statement: Do not confirm Bix Bonney.

Joe Conners
13120 Saunders Court
Anchorage, Alaska 99516
Telephone: 345-5760
Position Statement: Do not confirm Bix Bonney.

Bix Bonney
5847 DeBarr Road
Anchorage, Alaska 99503
Telephone: 333-7406
Position Statement: "...to the best of my ability, I have done what I thought was right."

Gordon Peterson
Hoonah, Alaska
Position Statement: Supports reappointment of Bix Bonney.

Bob Blake, President
United Fishermen of Alaska
Juneau, Alaska 99801
Telephone: 586-2936

Position Statement: Supports reappointment of Bix Bonney.

Dean Paddock
Bristol Bay Driftnetters Association
Position Statement: Supports reppointment of Bix Bonney.

PREVIOUS ACTION

Not applicable to this hearing.

TAPE #32 SIDE ONE
Recording

Number 000

Chairman Goll called the meeting to order at 8:40 a.m. He announced the calendar and asked the first witness to come forward.

Number 020

Gordon Peterson, Chairman - Hoonah Advisory Committee and Chairman - Icy Straits Trollers Association, said he would like to endorse the reappointment of Bix Bonney. Bix, he said, is a good person on the board, open minded and easy to deal with. Bix has the advantage of having worked in the processing industry and is able to bring both sport fishing and processing perspective to the Board of Fish process. I would like to see him reappointed.

Number 080

Scott O. Sell testifying from Anchorage stated he is a property owner in Kenai and would not like to see Mr. Bonney reappointed to the Board of Fish. Looking at his prior experience, I feel he should not be on the board. Most of the boards are too top heavy with government agencies and I feel more individual people should be on the board.

Number 107

Bix Bonney testified from Anchorage commenting he would like to make clear that he is on two boards: Kenai River Special Management Board (consisting of 18 members) and the Alaska Board of Fisheries. He asked the participants on the network, if they had criticisms, to state which board they were referring to. Some of the actions I have taken on the Kenai River Board, he said, has alienated certain user groups and not related to the Board of Fisheries.

Number 140

Thomas G. Kolasinski testified from Anchorage stating he is opposed to the confirmation of Bix Bonney to the Board of Fisheries. My opposition is based on Mr. Bonney's activities as a Kenai River special management area board member and as the chairman of the social and recreational committee of that board. While in those positions, Mr. Bonney has demonstrated that his personal opinions and prejudices dictate how he executes the responsibilities of the positions he holds. Scientific facts, logic, and public opinion contrary to his position seems not to alter his bias. A person who allows their preconceived ideas to override evidence to the contrary cannot act in the best interest of the people or the state. Since this position is not elected by the public, the public relies on the good judgement of our legislators to confirm responsible individuals. I am confident that after your review, you will not confirm Mr. Bonney.

Number 165

Joe Conners testifying from Anchorage stated he heard Mr. Bonney's comments and said I am familiar with his behavior, both on the Kenai River Special Management Committee and Board of Fisheries. I feel it is unfortunate that one's behavior is often exemplified across the board in various activities that one serves on. Although my comments are general, they do address Mr. Bonney's personal behavior which I feel do come up on his activities on both boards. I am extremely concerned about his basic method of operation. He tends to legislate his own personal feelings and does not represent the sports activities or the sports person. I feel he has disfranchised himself with the sports fishermen. On the issue of local sport fishing activities, he does not seek or utilize scientific or factual data, but deals in his own personal suppositions and is quick to create his own personal studies.

I personally feel he has got it in for the guides. Recent legislation before the fishery board taking away two days a week for the guides in May and June. In effect, it hurts a lot of people. I am totally opposed to the confirmation of Bix Bonney.

Number 216

Representative Thompson asked the witness why he feels Bix Bonney has a responsibility to represent sport fishermen more than any other group on the board of fish.

Mr. Conners replied that Mr. Bonney is from Anchorage, there tends to be a lot sport fishing interest from Anchorage and I feel that he should be concerned about what the constituents in Anchorage are concerned about.

Number 228

Randy Berg testifying from Soldotna addressed Representative Thompson that his (Berg's) understanding was that Bix Bonney was put on the board to represent sports fishermen and not his personal interest.

Number 233

Chairman Goll clarified that many people like to think of the members on the Board of Fish as representing specific interest groups. However, the law requires that appointments to the board be made without regard to their regional or political affiliation. In this context, I think, political affiliation extends to which gear group a person seems to be identified with. The board has to sit as a group of judges on issues that cross gear group lines and regional lines.

Number 248

Randy Berg continued by referring to the two boards that Mr. Bonney sits on and said there is definitely a conflict of interest. No one should serve on two boards dealing with the same problems in an area. At the October 1985 meeting of the Kenai River special management area dealing with the 35 horsepower motor limitations on the Kenai River, approximately 90% of public comments were opposed to the restriction and Bix Bonney pushed for the committee to adopt the restriction and cited that he was standing up for the silent majority. He related that Mr. Bonney also pushed for the 7:00 a.m. - 7:00 p.m. restricted hours for the guides. He has not represented the fisheries properly, he has not represented the sports fishermen, guided anglers or the guides. Therefore, I urge you not to recommend Bix Bonney for reappointed to the Board of Fisheries. In his place, I would like you to consider R. L. Parker of Soldotna to be appointed to the Board of Fisheries. Chairman Goll stated that for the reference of future witnesses, this committee has no power to appoint only to review the governor's appointees.

Number 294

Greg Davis testified from Soldotna stating Bix Bonney does not represent most sport fishermen. He expresses too many narrow views and does not serve the sports fishermen fairly.

Number 305

Larry Smith representing Kachemak Bay Subsistence Group testified from Homer saying we are sick and tired of political manipulations by the governor and the

legislature. We think Mr. Bonney should be left in peace and the state should not get involved in the war among sports fishermen. We want the governor and the legislature to keep your hands off the boards. Responding to Representative Marrou, Mr. Smith said we have no quarrel with anyone on the boards.

Number 343

C. Dickson testifying from Soldotna urged the committee to not confirm Bix Bonney on the Board of Fisheries. The reasons being he has stated publicly that he does represent all the sports fishermen and I disagree with you when you say that he was not put on that board for that purpose. Mr. Bonney personally violates the law during the summertime fishing on the Kenai River. Mr. Bonney does not represent the State of Alaska as a whole.

Number 380

Senator Vic Fischer testified in support of Bix Bonney's reappointment to the Board of Fisheries. I have known Bix since the days he was in Kodiak and played a major role in strengthening the fisheries. I have worked with him in the context of statewide fisheries development meetings where he demonstrated broad and comprehensive concepts of the needs of the state. I have watched his work on the fisheries board for the last several years and have been impressed with his total commitment to giving people the opportunity to fish including sports fishermen. I respect Bix Bonney for his positions and he is the kind of person Alaska and, certainly, Anchorage should have representing them on the board.

Number 421

Dan Ingraham testified from Soldotna saying Bix Bonney has done a poor job representing people on the Kenai Peninsula and Anchorage. Mr. Bonney has used his position for his personal gain and I recommend not to reinstate Bix on the Board of Fisheries. I hope you take today's testimony into consideration.

Number 430

Representative Hurley asked Mr. Ingraham to clarify his statements that Bix Bonney has used his position for personal gain. The witness said the fact is that he serves on two boards and likes to fish on the river by himself.

Number 439

William Gavin testified from Soldotna saying he is totally opposed to Bix Bonney on the Board. I have been watching

Mr. Bonney's career on boards for the past few years and I am ashamed that someone can be that prejudiced against river guides and participate on all those boards. At the last Kenai River advisory board meeting, it was evident that he was prejudiced when he referred to us guides as "river rattle."

Number 454

Nigel Guest testifying from Soldotna said he is a sport fisherman on the Kenai and supports the idea of a sport fisherman on the Board of Fisheries. When Bix Bonney was first appointed to the board, among with many others, I believed it was a good decision. Over the past few years, Mr. Bonney has changed, probably due to the large demands on his time by the many committees and boards he serves on. Please think carefully in making your decision on whether or not to reappoint Mr. Bonney. Please ask if he is really representing sport fishing interests and is he the same person you appointed some years ago. I think there are many better sports fishing candidates that could be appointed to this board.

Number 484

Myron Mickey, fishing guide, testifying from Homer stated Bix Bonney sits on too many boards and is not doing his job well. He does not represent the sport fishing people any more and his response to fish and game problems is often emotional. Repeated allegations that Bix is the areas biggest fish and game hog and takes over-limits on his personal sports fishing activities, may or may not be always true (I think they are true), but such repeated allegations certainly reflects on the public image of an appointed officer who is charged with upholding rules of the fish and game board. I recommend against his confirmation to the Board of Fisheries; he should be replaced.

Number 515

Chairman Goll noted letters of support from Southeast Seine Boat Owners and Operators, Representative Al Adams and Larry Cotter of the Longshoremen's Union among others as well as a stack of public opinion messages supporting reappointment.

Number 522

Tim Hiner testified from Soldotna stating Bix Bonney is not representing the people of Alaska fairly. He strives in ways to serve his own good and means on the Kenai River. We do not want Bonney on the board and believe that he

doesn't deserve the position as a representative to all Alaskans.

Number 535

Cheryl Sutton, Alaska SetNetters Association and the Kenai Peninsula Fishermen's Cooperative, testifying from Soldotna said she was not in favor of reappointing Bix Bonney. One consistent complaint among every user group, she said, is his self-serving decision making.

Number 549

Chairman Goll asked Ms. Sutton to explain what she means by "self serving." She replied that Mr. Bonney uses the river, he is a fisherman on the river, and, from my understanding he abuses that privilege. He is self-serving in the aspect that he regulates more time for himself in the river and away from other user groups.

Number 559

Jim Johnson, President - Cook Inlet Professional Sport Fishing Association, testified from Soldotna that Bix Bonney is on too many boards. He said he agreed with previous testimony that Mr. Bonney has followed his own personal agenda on the Kenai River. The state has chosen to discriminate between guided and non-guided sports fishermen by regulation. At this time, we have no voice on the Board of Fisheries. I ask that you not confirm Bix Bonney to the Alaska Board of Fisheries.

Number 580

Rodney Berg testified from Soldotna saying he is opposed to the reappointment of Bix Bonney because he legislates his personal feelings against certain user groups based on no scientific evidence. He serves on too many committees which indicates a conflict of interest. What regulations failing one committee, he tries to push through on one of his other committees. He doesn't represent the majority of the people and user groups. He represents his own personal interest. I am opposed to Bix Bonney's reappointment to the Board of Fisheries.

Number 590

Karen Callahan testified from Soldotna saying she is opposed to the reappointment of Bix Bonney because he divides his interest and time between too many board and committee positions. I believe that Mr. Bonney is more interested in fulfilling his own self interest and not that of the southcentral fishermen. I have observed his actions on several committees and have seen him become defensive

and belligerent at ideas and suggestions opposed to his own. I feel someone other than Mr. Bonney should be appointed.

Number 600

Phil McCrudden, President - North Pacific Fishermen's Association, testified from Homer stating his concern that any member of the board should not be held hostage to any one particular user group. He asked the committee to look at the board members conduct and not at the decisions that are made. Everybody on the board makes decisions that someone will not agree with.

Number 627

Bob Blake, President - United Fishermen of Alaska, stated his support of the reappointment of Bix Bonney,

CHANGE TAPE SIDE TWO

Number 000

Bob Blake continued saying during the time he served on the Board of Fisheries he had the opportunity to observe Mr. Bonney. During that term, I felt that Bix Bonney represented sports fish first, and subsistence and commercial use second. His primary interest is sport fish, that is why he was appointed and I feel he has done a very adequate job. Nobody can sit on the board without having, at some point in time, various user groups mad at you. For a point of interest, it seems there is a lot of negative testimony from the guides on the Kenai River and that's not surprising. The year that I was on the Board of Fisheries, the big issue was limiting the commercial fishery of Kenai River king salmon and that year the commercial fishermen were against Bix and the guides supported him wholeheartedly.

Number 073

Dean Paddock, Bristol Bay Driftnetters Association, testified in support of the reappointment of the board members before the committee. I feel that the personal actions and behavior of Bix Bonney should not be the issue here. He is the governor's appointee and he should sit on the board. On a scale of 1 - 10, Bix Bonney rates very high. If anyone wants a board member removed they should go to the governor and let him weild the axe because that is where the buck stops.

Number 130

Representative Thompson addressed Bix Bonney and asked him if he was in fact appointed to represent sport fishing interests. Bix Bonney responded that he is an avid sport fisherman. It might be of interest to know, the board was sued and I was sued as being prejudiced toward sport fishermen and, at the same time, I am being accused by the guides of not representing their interests. By and large, I represent the expertise of sport fishing on the Board of Fisheries.

Number 242

Representative Jenkins addressed Mr. Bonney asking him if it was his intention to look at the problems on the lower Kenai River, below the bridge, and attempt to solve those problems. Mr. Bonney replied in the affirmative. Representative Jenkins continued by asking "what other goals did you have?" Mr. Bonney answered the board was given three primary goals: (1) to implement the establishment of a special management area, a unit of the state park service; (2) to protect and perpetuate the fish and wildlife habitat; and (3) manage the recreation and development uses. He elaborated, under the first segment regarding the implementation of a plan, we were assigned the responsibility to designate incompatible uses in the Kenai management area and, specifically, we were designated to establish guide regulations in that same area.

Number 263

Representative Jenkins asked if these goals were part of the law or the intention of state parks. Bix Bonney said this was by statute. Representative Jenkins continued a line of questioning regarding protection of the fisheries in the Kenai River area.

Number 300

Representative Jenkins asked Mr. Bonney if he had any preconceived notions regarding the 35 horsepower limit and asked him to explain. Mr. Bonney said he advocated limiting horsepower mainly because big wakes made it difficult for families and small boats to be on the river.

Number 329

Bix Bonney said, "to the best of my ability, I have done what I thought was right and I have spent a lot of time on it." "I am only on two boards, he said." "I can go along with all the things the guides have said today because I was instrumental in establishing those restrictions, but I do take offense to the testimony of Mr. Dickson."

Mr. Bonney concluded by saying "I ask for your support and I can do a good job."

Number 369

Representative Thompson explained to participants on the teleconference network the procedure of a confirmation hearing. This is the governor's appointment to make and he has made it, it is the legislature's role to confirm or reject that appointment.

Number 409

Representative Marrou related that he had received 23 messages regarding Mr. Bonney, 9 public opinion messages, 2 telephone calls and 12 from a teleconference on February 24th. Of these 23, 19 are against Mr. Bonney, 4 are in favor. Today, 15 out of 19 participants are against him and 4 are for him, all in favor are from Juneau. Representative Marrou said he took objection to a letter of support from members of the Alaska Board of Fisheries. Representatives Marrou and Jenkins stated their vote would reflect testimony heard today.

Number 469

Chairman Goll said he felt Bix Bonney had brought an expertise on sport fishing issues to the Board of Fisheries and elaborated.

In terms of advocating or perpetuating the resource and assuring that our streams are well protected and representing the interests of all fishermen in regards to assuring sustained yields, Mr. Bonney has been one of the most exemplary and outspoken advocates of sports fish that I have ever known. I would recommend him to the sports fish community as someone who has done a great deal to add to their credibility among commercial fishing groups and subsistence groups and has helped draw the fishing community together rather than divide it. I do support his confirmation, and I say that as a representative from Haines, and not as chairman of the committee.

Number 505

The meeting was adjourned at 9:59 a.m.

The House Special Committee on Fisheries has considered confirmations to the Alaska Board of Fisheries and makes the following recommendations:

Mr. Eix Bonney

CONFIRM:

Rep. Peter Goll, Chairman
Rep. Katie Hurley

DO NOT CONFIRM:

Rep. Andre Marrou
Rep. Roger Jenkins

NO RECOMMENDATION:

Rep. Dave Thompson
Rep. Mike Navarre

Mr. Jesse Foster

CONFIRM:

Rep. Peter Goll, Chairman
Rep. Katie Hurley
Rep. Mike Navarre
Rep. Johne Binkley

DO NOT CONFIRM:

(none)

NO RECOMMENDATION:

Rep. Dave Thompson
Rep. Andre Marrou
Rep. Roger Jenkins

Mr. Val Angasan

CONFIRM:

Rep. Peter Goll, Chairman
Rep. Katie Hurley
Rep. Mike Navarre
Rep. Johne Binkley

DO NOT CONFIRM:

(none)

NO RECOMMENDATION:

Rep. Dave Thompson
Rep. Andre Marrou
Rep. Roger Jenkins

Confirmation Board of Game

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

April 17, 1986

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to you instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named as:

Board of Game

Ms. Sarah Scanlan, Fairbanks

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:

Adelheid Herrmann
Betty Cato
David W. Thorsen
Kay Walli

Members With Other Recommendations:

Dick Shultz Do Not Confirm
M.W. Miller No. Rec.
Roger Jenkins No. Rec.

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz
Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann
Co-Chair
House Committee on Resources

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

April 17, 1986

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to you instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named as:

Board of Game

Mr. John "Jay" Massey, Girdwood

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations:
Dick Shultz	
Adelheid Herrmann	
Bette Cato	
David W. Thompson	
M.W. Miller	
Kay Wallis	
Roger Jeffers	
[illegible]	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz
Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann
Co-Chair
House Committee on Resources

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3719

April 17, 1986

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to you instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named as:

Board of Game

Ms. Brenda Johnson, Nome

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations:
Adelheid Herrmann	Dick Shultz Do not Confirm
Bettie Cato	M.W. Miller No REC.
David W. Thompson	Roger Jenkins No Rec.
Kay Wallis	
[illegible]	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz
Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann
Co-Chair
House Committee on Resources

Resume

Brenda H. Johnson
P.O. Box 924
Nome, Alaska 99762

(907) 443-2785 Bus
(907) 443-5743 Res

I. Personal

Date of Birth: 11-03-42

Health: Excellent

Marital Status: Married

II. Business Background

1982 to present: Co-owner of Bush UnLimited, a Fabric Shop serving Nome and villages of Bering Straights Region.

1966 - 1976 - Insurance Claims Adjuster

1968 - 1969 - Vice President of Peoria Illinois Association of Insurance Women

1960 - 1966 - Insurance Accounting

III. Community Service

1982 - 1984: Democratic Chairman of District 23, State Central Committee

1980 - Present: Serving on the Nome Senior Citizens Advisory Board at the request of the Senior (Board is composed of 9 local Elders).

1978 - 1983: Member of Nome Community Board of Directors; served as President 1980 thru 1982.

1977 - 1981: Member of Johnson-O'Malley and Indian Education IV Parent Committee. Served as Chairman of both committees 1979 thru 1981.

1974 - 1976: Served on Indian Education IV Parent Committee, Portland, Oregon (Chairman of Personnel and Evaluation Committee)

IV. Education

Attended Northwest Community College, Nome, Alaska

Graduate of Forrest, Illinois High School.

Jay Massey
P.O. Box 429
Girdwood, AK 99587 (907) 783-2129

RESUME

PROFESSIONAL EXPERIENCE/WORK HISTORY

March, 1979 to present: Freelance writer specializing in outdoor non-fiction. Assignments and projects include:

- -Outdoor editor, ANCHORAGE DAILY NEWS (March, 1979 to October, 1982) Produced and edited a weekly outdoor section, writing feature articles, taking photos, designing page layouts and writing weekly outdoor column.

- -Book author, Bowhunting Alaska's Wild Rivers and A Thousand Campfires. Currently working on two fiction novels.

- -Writer, Fisheries Safety & Survival Series, under contract from the University of Alaska Instructional Telecommunications Consortium.

- -Editor/co-publisher, ALASKA BOWMAN, a four-color outdoor publication. Wrote features, took photos, assigned/edited freelance stories and had full responsibility for designing content and layout of the publication and supervising all stages of production.

- -Freelance contributor to several national outdoor publications, including GRAY'S SPORTING JOURNAL, SPORTS AFIELD, MOTHER EARTH NEWS and others. Currently serve as Regular Contributor to BOWHUNTER Magazine.

- -Owner/operator of Moose John Outfitters, a river-floating business catering to salmon fishermen, archery hunters and wilderness enthusiast

May, 1970 to March, 1979: Public information officer for the Alaska Dept. of Fish & Game. Coordinated distribution of information from the department to the public via news media and other channels. Wrote news releases, feature stories and took photos (both 35mm and 16mm cine) of department projects for newspaper/radio/tv use. Wrote regular weekly outdoor column for the ANCHORAGE TIMES and conducted a weekly television show on KIMO-TV. Was associate editor of the department publication, ALASKA FISH & GAME.

July, 1968 to March, 1970: Account executive with Murray Alaska Advertising (now Murray/Bradley). Worked primarily with the Alaska Division of Tourism, specializing in travel promotion. Helped develop travel advertising and PR campaigns and coordinated visits to Alaska by journalists, editors and filmmakers. Participated in travel promotion shows, both inside the state and out.

ACADEMIC BACKGROUND

B.A. in Journalism, Oregon State University, 1968. Minor studies in wildlife management. Undergraduate studies at Southeastern Oklahoma University, Glendale (Calif.) College, University of Maryland (Germany) and San Francisco Art Institute.

MILITARY BACKGROUND

Three years with the U.S. Army Security Agency, 1961-64, including two years in Germany. Monitored Russian, Czechoslovakian and East German military units in East Germany. Had top secret security clearance and regularly handled confidential, secret and top-secret materials. Honorably discharged, 1964.

MEMBERSHIP IN ORGANIZATIONS

Vice-president, International Moose Federation. Member, Outdoor Writers Association of America, Professional Bowhunters Association. Former member, KIMO-TV Community Council. Former board member, Jesse Lee Home.

PERSONAL HISTORY & INTERESTS

Born and reared in eastern Oklahoma. Hobbies are archery/bowhunting, skiing (alpine & nordic), river running, wilderness travel and fiction writing.

REFERENCES

Mr. Howard Weaver, Managing Editor, Anchorage Daily News, 786-4200

Dr. Barry Willis, Director of Instructional Development, University of Alaska Instructional Telecommunications Consortium. 277-1638

Mr. Doug Borland, Vice-president, Rockford Corp. 243-5825

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811

BOARDS AND COMMISSIONS RESUMÉ

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. The initial determination of whether you qualify for the position specified will be based on this application.

Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying:

State Job Training Coordinating Council

Please list any other Board or Commission on which you serve:

Co-Chairperson - Litter Reduction/Resource Recovery Advisory Council Member

Name	Previous Name applied under
Sarah M. Scanlan	N/A
Mailing Address	**Residence Address**
308 Iditarod Ave.	308 Iditarod Ave.
City, State and Zip Code	
Fairbanks, AK 99701	
Home Telephone	**Business or Message Telephone**
456-1606	248-3030

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter before the last general election:

Are you a registered voter? ☒ YES ☐ NO

Voter Registration Number (Optional): 01395409-Registered Democrat

Social Security Number (Optional): 574-26-3682

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☒ NO

If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required authorized meetings? ☐ YES ☒ NO

If "YES", explain on a separate sheet of paper and attach to this application.

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating?

No.

CONFLICTS OF INTEREST: Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so? ☒ YES ☐ NO

Could you or any member of your family be affected financially be decisions to be made by the Board or Commission for which you have applied?
☐ YES ☒ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion or Parenthood.

RECEIVED [illegible] 1982

TRAINING & EXPERIENCE: (If résumé attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

None

B. List both formal and informal education and training experiences: (Use additional paper if necessary)

1971-Dec, 1974	University of Alaska, Fairbanks	BBA	May 1975
1970	Stanford University, Palo Alto, CA		1970
1968-1970	Lathrop High School, Fairbanks, AK - Graduated with Honors Member National Honor Society		
1966-1968	Kotzebue High School, Kotzebue, AK Breathitt High School, Jackson, Kentucky		

Have attended seminars in management-training. Was one of two Alaskans chosen to represent Alaska in a good will tour to Russia in 1970.

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensated and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions.

Board Member/Secretary - World Eskimo Indian Olympics, Fairbanks, 1970-present
Board Member/Secretary - Tundra Times, 1980 - present
Board Member/Secretary - Howard Rock Scholarship Foundation, 1981 - present
Board Member - Alaska Inter-Regional Private Industry Council, 1981 - present.

D. Employment work history: paid, unpaid or voluntary: (Use additional paper if necessary)

Sept. 1977 - Present — Shareholder Relations, promoted to Vice-President, Shareholder Development, March, 1982.

NANA Regional Corporation, 4706 Harding Dr., Anchorage, AK 99503
Work closely with corporate officials in developing job opportunities and training for shareholders of the corporation. Also responsible for maintenance of corporate stock records; responding to all shareholder inquiries; preparation of shareholder hire reports for Board of Directors; editor of quarterly newsletter; involved in personnel management; special projects as assigned.

Job requires extensive travel to region and villages, and occasional trips to the lower 48.

(continued on attached sheet)

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX
☐ Male
☒ Female

ETHNIC BACKGROUND
☐ White ☐ Black ☐ Hispanic ☒ Alaska Native ☐ Asian or Pacific Islander ☐ American Indian

Date of Birth: 1/18/52

Military Service (If applicable, give dates)

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature in Ink: Sarah Stanley

Date: February 17, 1983

January, 1976 - June, 1977

Operations Manager.
NANA Security Systems, 4706, Harding Dr., Anchorage, Alaska 99503

Responsible for carrying out provisions of security contract with Alyeska Pipeline Company for all camps north of the Yukon River during the construction phase of the Trans-Alaska Pipeline.

Reason for leaving: Contract completed, office shut down.

September, 1975 - December, 1975

Employment Assistance Counselor.
Tanana Chiefs Conference, 1st & Hall St., Fairbanks, AK 99701

Counseled members of the Doyor Region to provide guidance in job placement and/or job training.

Reason for Leaving: Took job with NANA, in which I am a shareholder.

June, 1975 - Sept., 1975

Bookkeeper.

Kotzebue Electric Association, Kotzebue, AK 99752.

Maintained collections and billings records for utility customers.

Reason for Leaving: Summer job only; returned to Fairbanks.

June, 1972 - June, 1975

Teller, Bookkeeper, Accruals Clerk.

National Bank of Alaska, 6th & Cushman, Fairbanks, AK 99701

Worked in the above capacities part-time while attending the University of Alaska, Fairbanks, and during the summer months.

Reason for Leaving: Returned to Kotzebue upon graduation from college for summer job.

January, 1971 - May, 1972

Tutor.

University of Alaska, Student Orientation Services, 5th Floor Gruening, Fairbanks, AK 99701.

Tutored rural students in Albebra and Math part-time while attending the University of Alaska, Fairbanks.

Reason for Leaving: Took summer job with bank.

Confirmation Guide Licensing & Control Board

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

April 17, 1986

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to you instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named as:

Guide Licensing and Control Board

Ms. Poldine Carlo, Fairbanks

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations:
Dick Shultz	
Adelheid Herrmann	
Bette Gate	
David W. Thompson	
M.W. Miller	
Kay Wallis	
Roger Jenkins	
[illegible]	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz
Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann
Co-Chair
House Committee on Resources

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

April 17, 1986

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to you instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named as:

Guide Licensing and Control Board

Mr. Edward J. Gamble, Sr., Angoon

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations:
Dick Shultz	
Adelheid Herrmann	
Bette Cotton	
David W. Thompson	
M.W. Miller	
Kay Wallis	
Roger Jenkins	
[illegible]	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz
Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann
Co-Chair
House Committee on Resources

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

April 17, 1986

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to you instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named as:

Guide Licensing and Control Board

Mr. James Harrower, Anchorage

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations:
Dick Shultz	
Adelheid Herrmann	
Bette Cato	
David W. Thompson	
M.W. Miller	
Ray Wallis	
Roger Jenkins	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Dick Shultz

Representative Dick Shultz
Co-Chair
House Committee on Resources

Sincerely,

Adelheid Herrmann

Representative Adelheid Herrmann
Co-Chair
House Committee on Resources

RESUME'

Poldine Carlo
2111 Southern
Fairbanks, AK 99701

PERSONAL:

Born in Nulato, Alaska; sixty-two years of age; married; eight children

MEMBERSHIPS:

Eskimo and Indian Olympics
Cemetery and Historical Sites Committee
Yukon and Tanana Historical Society
Hoada Kayekh Native Elders Organization of Fairbanks
Denakkanaaga Planning Committee
Museum Collectors Advisory Committee

PAST MEMBERSHIPS:

Fairbanks Native Association (2 terms for 2 years each)
Hillcrest Home for Boys (4 years)
Aboriginal Senior Citizens of Alaska (4 years)
Alaska Association of the Arts

Appointed by Governor Hammond to:

Alaska Heritage Writers Association
American Revolution Bicentennial Commission

COMMENTS:

Have done subsistence hunting and fishing most of life

James Harrower, 13830 Jarvi Drive, Anchorage, AK 99515 - PHONE: 354-2891

PERSONAL RESUME

1933 Born in Gillette , Wyoming.

1933-1951
Grew up in Pinedale,Wyoming following a father around who worked as a game warden, forest ranger, wilderness outfitter, and later a contractor.

1947
Gathered museum specimens for the Smithsonian Museum with Dr. Olus Murie who was already famous for his Alaskan biological work and became sold on Alaska.

1951-1954
University of Wyoming - biology pre med.

1954-1958
University of Oregon Dental School

1958
Passed Alaska Teritorial Dental Board exams.

1962
Passed Alaska Registered Guide exams.

1962-present
Active as Alaskan big game and wilderness guide. Currently a master guide as well as having a part time dental practice.

Other business envolvements include part ownerships and development of the old Kennicott Mine in the Wrangell Mountains, other property investments in Alaska and several western states. Co-founder with wife of the Rendezvous Art Gallery in Anchorage. Partnership interest in an Anchorage resturant.

CLUBS AND ORGANIZATIONS:

Member of Masonic Lodge, Anchorage Elks Club, Quite Birdman, Rancheros Visitadores, Desert Caballeros, current board member of Alaska Professional Hunters Assoc. and representative to the Foundation for North American Wild Sheep.

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Pouch A
Juneau, Alaska 99811-0101

BOARDS AND COMMISSIONS RESUME

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resume. The initial determination of whether you qualify for the position specified will be based on this application.

Please type or print legibly in ink. Forward to the above address. Be sure your answers are correct. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Position for which I am applying:
Guide licensing + Control Board

Please list any other State Board or Commission on which you serve:
none

REPORT ADDRESS AND TELEPHONE CHANGES PROMPTLY

Name	Previous Name applied under
Edward J. Gamble Sr.	none

Mailing Address	Residence Address
P.O. Box 33	503 KooKesh Court

City, State and Zip Code
Angoon Alaska 99820

Home Telephone	Business or Message Telephone
none	(907) 788 3653

AS 39.05.100 requires that a person appointed to a board or commission be a registered voter BEFORE the last general election held _____:

Are you a registered voter? ☒ YES ☐ NO

Voter Registration Number (Optional): 141691

Social Security Number (Optional): 574-10-6192

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years? ☐ YES ☒ NO
If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency, and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

A policy in the Governor's Office pertaining to boards and commissions is that a member attend at least 75% of the meetings. Are there any circumstances in either your professional or personal life which would prevent you from participating at the required meetings? ☐ YES ☒ NO
If "YES", explain on a separate sheet of paper and attach to this application.

This position may require that the member travel to either urban or rural (or both) areas. Are there any circumstances which would prevent you from participating? no.

CONFLICTS OF INTEREST: Certain Boards and Commissions require full disclosure of personal financial data under AS 39.50.010. If required for the Board or Commission for which you are applying, are you willing to do so?
☒ YES ☐ NO

Could you or any member of your family be affected financially by decisions to be made by the Board or Commission for which you have applied?
☐ YES ☒ NO If "YES", explain.

The Office of the Governor will not discriminate against an applicant for a Board or Commission based on Sex, Age, National Origin, Marital Status, Pregnancy, Handicap, Religion, or Parenthood.

01-012 (Rev. 9/84)

TRAINING & EXPERIENCE: (If resume attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

High School diploma, Paratrooper 82d airborne division successfully completed jump school in July 1955. Honorable discharge from the Army. Retired commercial fisherman and hunter.

B. List both formal and informal education and training experience (use additional paper if necessary):

three years Colledge in field of Education with the Alaska Rural Teacher Training Corp. Graduated from Mt. Edgecumbe High School 1955. Vocational training in accounting, drafting, Cabinet making. Training in land selection process for village Corporation Kootznoowoo, Inc.

C. List any community service positions, municipal government positions, state positions held, and list any awards received. These include both compensated and uncompensated positions (for example, president of a service organization or a mayor). Also include length of time served in the positions. Twelve years as board member of the Kootznoowoo, Inc., over twenty years as Council member of municipal government. Nine years as board member of REAA Chatham School board #18. Three years as mayor of City of Angoon. over twenty years as Council member of Angoon Community Association the local IRA. Council.

D. Employment work history: paid, unpaid, or voluntary (use additional paper if necessary):

Commercial fisherman until began work for Corporation as land manager, worked as Coordinator for Angoon Community Association, Ferry terminal operator, Cab driver, mayor of Angoon.

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

SEX

- ☒ Male
- ☐ Female

ETHNIC BACKGROUND

- ☐ White
- ☐ Black
- ☐ American Indian
- ☒ Alaska Native
- ☐ Hispanic
- ☐ Asian or Pacific Is[illegible]er
- ☐ Other

Date of Birth

May 4, 1935

CERTIFICATION: I swear that the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature in Ink: [signature]

Date: March 25 1986

01-012 (Rev. 8/84) Back

Confirmation Guide

Licensing & Control Board

Jim Harrower

Alaska State Legislature

HOUSE OF REPRESENTATIVES

COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

March 6, 1985

The Honorable Ben Grussendorf
Speaker of the House
House of Representatives
Juneau, AK 99811

Dear Mr. Speaker:

Pursuant to your instructions, and in accordance with AS 39.05.080, the House Committee on Resources has had under consideration the Governor's appointment named as:

Guide Licensing and Control Board

Jim Harrower, Anchorage

Members of the Resources Committee have signed below indicating their individual recommendations to the House concerning the individual's confirmation.

Members Recommending to Confirm:	Members With Other Recommendations
Adelheid Herrmann	
F. Kay Wallis	
M.W. Miller	
Roger L. Jenkins	

This report does not necessarily indicate an intention to vote for or against the individual named at the time of the joint session on confirmation.

Sincerely,

Representative Dick Shultz, Co-Chair
House Committee on Resources

Sincerely,

Representative Adelheid Herrmann, Co-Chair
House Committee on Resources

HOUSE RESOURCES COMMITTEE

FEB 25 1985

February 21, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Pursuant to applicable law, I submit the following names for legislative confirmation of appointment to the positions noted:

BOARDS AND COMMISSIONS
(with Appt/*Reappt/Term)

Board of Dental Examiners
Hugh Gellert (Anchorage) - 85/02/21 - 89/02/01
Patrick J. Gullufsen (Juneau) - 85/02/21 - 89/02/21
*Leslieann Luboff (Anchorage) - 81/01/19-85/02/21-89/02/21
*Jerry Zemlicka (Juneau) - 83/09/21-85/02/21-89/02/21

Board of Electrical Examiners
Frank Richards (Sitka) - 85/02/21 - 87/07/10

Guide Licensing and Control Board
Jim Harrower (Anchorage) - 85/02/21 - 85/06/15

Board of Nursing
Barbara Carberry, R.N. (Kodiak) - 85/02/21 - 90/03/31

Board of Pharmacy
*Sue Roberts (Anchor Point) - 81/03/05-85/02/21-89/03/31
*Margaret Soden, R.Ph. (Fairbanks) - 81/03/19 - 85/03/21 - 89/03/31

Board of Psychologists and Psychological Associate Examiners
Linda Webber, Ph.D. (Anchorage) - 85/02/21 - 88/07/01

Alaska Public Offices Commission
Burke Riley (Juneau) - 85/02/21 - 90/02/01

Railroad Labor Relations Agency
Alice Ebenol (Fairbanks) - 85/02/21

Real Estate Commission
Iola Robinson (Palmer) - 85/02/21 - 87/01/31

Resumes and autobiographies for these appointees will be submitted to the Fourteenth Alaska State Legislature through the clerks of both houses respectively.

Sincerely,

/s/ Bill Sheffield

Bill Sheffield
Governor

bcc: Senate Secretary
Chief Clerk

SAME LETTER SENT TO: The Honorable Ben Grussendorf
Speaker of the House
Alaska House of Representatives

BS:CAD:kk

CAROL

James Harrower, 13830 Jarvi Drive, Anchorage, AK 99515 - PHONE: 354-2891

PERSONAL RESUME

1933 Born in Gillette , Wyom'ng.

1933-1951
Grew up in Pinedale,Wyoming following a father around who worked as a game warden, forest ranger, wilderness outfitter, and later a contractor.

1947
Gathered museum specimens for the Smithsonian Museum with Dr. Olus Murie who was already famous for his Alaskan biological work and became sold on Alaska.

1951-1954
University of Wyoming - biology pre med.

1954-1958
University of Oregon Dental School

1958
Passed Alaska Teritorial Dental Board exams.

1962
Passed Alaska Registered Guide exams.

1962-present
Active as Alaskan big game and wilderness guide. Currently a master guide as well as having a part time dental practice.

Other business envolvements include part ownerships and development of the old Kennicott Mine in the Wrangell Mountains, other property investments in Alaska and several western states. Co-founder with wife of the Rendezvous Art Gallery in Anchorage. Partnership interest in an Anchorage resturant.

CLUBS AND ORGANIZATIONS:

Member of Masonic Lodge, Anchorage Elks Club, Quite Birdman, Rancheros Visitadores, Desert Caballeros, current board member of Alaska Professional Hunters Assoc. and representative to the Foundation for North American Wild Sheep.

Cominco Red Dog Project -- Overview

H. M. GIEGERICH

PRESIDENT AND GENERAL MANAGER

COMINCO ALASKA, INC.

HOUSE SPECIAL COMMITTEE ON LOANS & HOUSE RESOURCE COMMITTEE

FRIDAY, FEBRUARY 8, 1985

MADAM CHAIRMAN OF THE RESOURCE COMMITTEE, MADAM CHAIRMAN AND MR. CHAIRMAN OF THE FINANCE COMMITTEE, MEMBERS OF THE COMMITTEES, LADIES AND GENTLEMEN, GOOD AFTERNOON.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE YOU ABOUT OUR PENDING DEVELOPMENT, THE RED DOG MINE. MY NAME IS HANK GIEGERICH, AND I AM PRESIDENT AND GENERAL MANAGER OF COMINCO, ALASKA, INC. BASED IN ANCHORAGE. WITH ME IS BILL WILSON, PRESIDENT OF OUR PARENT COMPANY, COMINCO LTD. OF CANADA, AND BOB STONE, CHIEF FINANCIAL OFFICER FOR COMINCO.

OUR PRESENTATION TODAY WILL BE DIVIDED INTO THREE SECTIONS. FIRST, BILL WILSON WILL COMMENT ON COMINCO'S BUSINESS ACTIVITIES, AND SOME OF THE ISSUES WHICH COMINCO WILL CONSIDER BEFORE MAKING A PRODUCTION DECISION. FOLLOWING THIS, I WILL PRESENT A SLIDE SHOW WITH DETAILS ON THE PROJECT. THEN, I WOULD LIKE TO WIND UP WITH SOME OF THE KEY REASONS WHY WE BELIEVE IT IS BENEFICIAL FOR COMINCO ALASKA, AND THE STATE OF ALASKA, TO DEVELOP THE RED DOG MINE.

COMINCO AMERICAN, WHICH IS A WHOLLY OWNED SUBSIDIARY OF COMINCO LTD. OF CANADA, HAS BEEN OPERATING IN THE STATE OF ALASKA SINCE 1973. COMINCO ALASKA, A SUBSIDIARY OF COMINCO AMERICAN, WAS INCORPORATED AS AN ALASKAN COMPANY IN 1982 TO LOOK AFTER ALL OF COMINCO'S BUSINESS ACTIVITIES IN ALASKA.

IN FEBRUARY 1982, NANA AND COMINCO AMERICAN SIGNED AN AGREEMENT FOR THE EVALUATION AND DEVELOPMENT OF THE DEPOSIT. THIS AGREEMENT REQUIRED NANA TO PUT THE MINERAL DEPOSIT IN A PARTNERSHIP IN WHICH COMINCO IS THE MANAGER AND FINANCER. MR. JOHN SCHAFFER, PRESIDENT OF NANA, WILL BE DISCUSSING THIS FURTHER.

NOW I WOULD LIKE TO CALL ON BILL [illegible].

I WOULD LIKE TO ELABORATE ON WHY WE CONSIDER RED DOG SHOULD BE DEVELOPED NOW. ALASKA IS AT A POINT IN ITS HISTORY AND DEVELOPMENT WHERE IT IS DESIRABLE FOR THE STATE TO DIVERSIFY ITS ECONOMY. THIS IS NECESSARY PRIMARILY BECAUSE OF THE STATE'S VULNERABILITY TO DECLINES IN OIL REVENUES. IF ALASKA DOES NOT BEGIN TO DIVERSIFY SOON, THERE WILL BE NO WAY TO CREATE THE NEW JOBS, NEW WEALTH, AND NEW OPPORTUNITIES FOR ALASKANS WHEN THE OIL IS GONE.

BY ASSISTING IN DEVELOPING THE TRANSPORTATION INFRASTRUCTURE, ALASKA WILL SEND OUT A SIGNAL THAT THE STATE IS SERIOUS ABOUT

DIVERSIFYING ITS ECONOMY AND BECOMING COMPETITIVE IN THE WORLD MINERAL MARKETS.

ANOTHER POSITIVE ASPECT TO ASSISTING WITH THIS PROJECT IS THE MESSAGE THAT IT WILL SEND TO OTHER MINING COMPANIES OPERATING IN ALASKA, AND TO COMPANIES INTERESTED IN DOING BUSINESS IN THE STATE IN THE FUTURE. IT IS IMPORTANT FOR A MAJOR MINE TO COME INTO PRODUCTION SOON IN ALASKA, TO ENCOURAGE FURTHER INVESTMENT IN NATURAL RESOURCES. THE RED DOG MINE WILL DEMONSTRATE THAT ALASKA KNOWS HOW TO USE ITS OIL REVENUES WISELY IN DEVELOPING ITS OTHER RESOURCES. MINING HAS PLAYED AN IMPORTANT ROLE IN ALASKA'S PAST, AND CAN PLAY AN EVEN MORE IMPORTANT ROLE IN ITS FUTURE.

AS I MENTIONED, TWO CRITICAL AND RELATED FACTORS IN THE DEVELOPMENT OF THE RED DOG MINE HAVE TO DO WITH TIMING AND MARKETS. FROM THE STANDPOINT OF TIMING, RED DOG MUST BE IN PRODUCTION BY THE END OF THIS DECADE SO THAT WE CAN TAKE ADVANTAGE OF THE MARKET OPPORTUNITY WE HAVE IDENTIFIED. IF ALASKA FALTERS, THE MARKET COULD BE LOST UNTIL SOMETIME IN THE FUTURE. THIS WOULD NOT ONLY BE A MISSED OPPORTUNITY FOR COMINCO, BUT, MORE IMPORTANTLY, IT WOULD BE A GREATLY MISSED OPPORTUNITY FOR THE STATE AND PEOPLE OF ALASKA.

I WOULD LIKE TO MAKE ONE FINAL POINT. OVER THE PAST FEW MONTHS THIS PROJECT HAS BEEN CRITICIZED BECAUSE OF THE PERCEPTION THAT

IT HELPS ONE INDUSTRY, ONE REGION AND ONE REGIONAL CORPORATION. LADIES AND GENTLEMEN, WE CONSIDER THIS TO BE FAR FROM THE TRUTH. AS HAS BEEN SHOWN BY RECENT STUDIES COMPILED BY THE ALASKA OIL AND GAS ASSOCIATION, INDUSTRIAL DEVELOPMENT RESULTS IN SIGNIFICANT SPIN-OFFS TO BUSINESSES IN THE REST OF THE STATE, DUE TO THE NEW MONEY THAT IS INJECTED INTO THE ECONOMY, AND MINING IS NO DIFFERENT. IN THE CASE OF RED DOG, A MAJORITY OF THE NEW MONEY WILL PROBABLY GO TO SERVICE INDUSTRIES IN THE ANCHORAGE/ FAIRBANKS AREA.

AS WELL, THE 7(i) PROVISION IN THE NATIVE CLAIMS SETTLEMENT ACT ENSURES THAT THE INCOME AND EXPENDITURES FOR THE RED DOG MINE WILL BE DISTRIBUTED, AND FELT, ALL AROUND ALASKA. THIS PROJECT CAN DEFINITELY BE DESCRIBED AS AN ALASKAN PROJECT!

WITH YOUR APPROVAL, BEFORE TAKING ANY QUESTIONS, WE WOULD FIRST LIKE TO SHOW A SLIDE PRESENTATION WHICH PROVIDES FURTHER DETAILS ON THE PROJECT. MR. WILSON WILL THEN CLOSE OUR FORMAL PRESENTATION.

W. G. WILSON

PRESIDENT

COMINCO LTD.

HOUSE SPECIAL COMMITTEE ON LOANS & HOUSE RESOURCE COMMITTEE

FRIDAY, FEBRUARY 8, 1985

Mr. Chairman of the Special Committee on Loans, Madam Chairman and Mr. Chairman of the Resource Committee, Members of the Committees, Ladies and Gentlemen, good afternoon.

My name is Bill Wilson. I am President of Cominco Ltd. and I live in Vancouver, B.C. Accompanying me from Vancouver is Bob Stone, Vice President, Finance, of Cominco Ltd. Hank Giegerich has already described some aspects of Cominco and I would like to add a few comments.

Worldwide, Cominco employs approximately 10,500 people. In 1984 our total assets were more than $2 billion, and annual sales were about $2.1 billion. We have active operations in 9 countries and carry on exploration activities in a further 12 countries.

Our major business is mining and metals. Cominco Ltd. owns zinc and lead mines at Kimberley, at Pine Point and at Polaris, N.W.T., in Canada; Black Angel in Greenland; Rubiales in Spain;

2/...

Que River in Australia; and the Magmont mine in Missouri. Other mines owned by Cominco include a gold mine in the Northwest Territories of Canada and a gold mine in Nevada; a copper mine in British Columbia; a coal mine in British Columbia; a potash mine in Saskatchewan; and a phosphate rock mine in Montana. At Trail, British Columbia, Cominco operates the world's largest integrated smelter and refining complex, producing zinc, lead and silver plus chemical fertilizers, and high purity electronic materials. Cominco's sales of zinc and of lead amount to approximately 10% of each of the world's production.

Now I would like to talk a little about world metal markets, so that you can see where we think Red Dog will fit in. In the late 70's and early 80's, zinc concentrate markets were buoyant due to the general "boom" conditions that existed worldwide. This shifted dramatically in 1982 when the world moved into recession. Concentrate markets softened, inventories increased significantly, and prices dropped to the lowest "real" level in 50 years. For the metals industry this was the most severe recession since the 1930's.

During 1983/84 production and consumption remained in balance, and there was slow improvement in price, but not enough to put the industry back into complete health. The situation today is essentially unchanged. Zinc consumption in the Western World

3/...

has increased but so has production, so there is still some surplus capacity over-hanging the market. This was the major reason behind Cominco's recent temporary shutdowns -- to try to eliminate some of these surpluses. All of our mines are now operating again, and we will hope to see an improved inventory situation by next summer. And, if the economic recession that the experts are predicting for 1986 materializes, we may again see lower prices for a period and this may result in a shake-out in the market that will finally eliminate some of the high-cost, marginal producers.

However, by the end of this decade, we anticipate some significant changes in the world zinc market. To start with, there are going to be a number of good-sized mines going out of business due to exhaustion of ore reserves. These include our own Black Angel mine in Greenland, Nanisivik in Canada's arctic, the Meggan mine in West Germany (which has been in production for 300 years), plus other major operations in Canada and Australia. These shutdowns are going to take more than half a million tons off the market annually by the end of this decade. Exansions and new mines that have been announced will compensate for some of this, but will not take care of the new zinc production that will be required by 1990, due to the normal expansion of the world economy. So this is where Red Dog comes in, as this market gap that has been identified fits in with our proposed timing for bringing Red Dog on by the end of the decade.

4/...

Cominco is therefore taking metal prices and markets, and the future outlook, into consideration in our planning on when to bring the Red Dog mine into production. Our production decision will be based on these market considerations, plus the return on investment, and the risk. And probably the most critical factor is whether the State of Alaska can assist in the initial financing of the road and port facility. This is the single largest item in the project, and accounts for almost 40% of the total project cost. Our present studies indicate that if Cominco is required to directly finance this portion of the project, the return on the investment will not likely be adequate to justify developing this mine, with its problems of isolation, climate and short shipping season.

In return for State assistance in developing the transportation infrastructure, we have stated that Cominco will make certain guarantees to the State of Alaska covering repayment of the State financing and start-up of the mine. We have been asked what these guarantees mean, and whether the State of Alaska can count on Cominco. These guarantees are backed by the assets of Cominco Ltd., which are more than $2 billion, with two-thirds in fixed assets such as land, building, equipment and developed mineral properties. Cominco is owned by 20,000 shareholders in Canada and the U.S.A., including 54% by Canadian Pacific Ltd., the company instrumental in forming Cominco Ltd. over 80 years

5/...

ago. Canadian Pacific Ltd. is the largest company in Canada, with assets of $17.6 billion, and sales of $13.1 billion.

Another way to measure our guarantee is to look at our past performance. The proposal we are making to you is not new in the world, or to Cominco. In 1961 we reached an agreement with the Canadian Federal Government which called for the construction of a railroad and hydro-plant to assist in bringing the Pine Point mine in Northern Canada into production. We made commitments and guarantees similar to what we are proposing with the State of Alaska. One of these called for the repayment of capital costs for the railroad. As a result of increased production and higher revenues at the mine over that which we expected, we paid for the capital cost in a shorter time period than was required in the agreement. This mine is still in production and is expected to continue for another 5 to 10 years.

Thank you for the opportunity to address this hearing. I am sure that you have a lot of questions about our project and the company. We will be happy to answer any questions you might have, and look forward to meeting with you again.

Thank you.

Cominco Alaska

H M Giegerich
President & General Manager

Editor
The Anchorage Times
P.O. Box 40
Anchorage, Alaska 99510

December 17, 1984

Dear Editor:

On Monday, December 10, 1984 your paper carried a rather lengthy editorial on the proposed road and port facilities for the Red Dog mine. Unfortunately, the editorial contains numerous inaccuracies about the mine, the road and port facilities, and about Cominco Alaska.

To those who are unfamilar with the Red Dog project, it is one of the premier zinc-lead-silver deposits in the western world. The mine could start producing as early as 1988/1989 and, when at full production, will be the largest zinc mine in the western world. The project will directly provide over 600 Alaskans with year-round jobs, and indirectly will employ approximately 3,000 other Alaskans, also in year-round jobs, for at least 50 years. The mine will be in the NANA region, where almost 90% of the income today is dependent, in one form or another, on government, and where unemployment in the winter time is well over 50% in most of the villages. So these jobs are very significant.

To start with, I am going to summarize the main points, and then discuss them in some detail, so that you will get the complete background.

Your editorial briefly mentioned the positive aspects of this project. However, you failed to note that:

- Red Dog will diversify the State's economy

- Red Dog will provide Alaska with new opportunities

- Red Dog will benefit all of Alaska through jobs and cash injection into the economy

- Red Dog will open up new markets and trade to Pacific Rim countries.

The transportation system will be a multi-purpose facility, as undoubtedly there will be further development in this region of Alaska. There will also be substantial benefits to the people in the region through reduction in freight costs.

There are other key factors in regard to the transportation system.

- The State of Alaska will own the road and port facility

- Cominco Alaska will guarantee to pay the cost of operation and maintenance of the facilities

- Cominco Alaska will guarantee the toll fees which will repay the State for the industrial aspects of the system

- Cominco Alaska agrees to start production at the mine within a definite time period.

- Cominco Alaska guarantees that if it is necessary to postpone development of the mine, it will still repay to the State the money invested in the system.

As an indication of our confidence in the future viability of the Red Dog mine, Cominco Alaska will have spent, by the end of next year, over $40 million. The entire project is presently estimated to cost $400 million, of which Cominco Alaska will be responsible for financing $250 million, or 2/3 of the project, and is

proposing to repay to the State most of the $150 million cost of the transportation system.

You made reference to Cominco's shut downs of zinc-lead mines, but failed to note that this is strictly temporary. You also indicated that this should have had an immediate effect. However, considering that these short shut downs are just taking place, this seems to be a rather optimistic expectation.

In any event, the production decision for Red Dog will be based on long-term supply and demand factors, and not short-term fluctuations like we are seeing now. Our present detailed marketing studies indicate that there is a definite market opportunity for Red Dog by the end of this decade.

Now I would like to give you a few details.

Your editorial briefly mentioned the positive aspects of this project. However, you failed to note that:

- Red Dog will diversify the State's economy, providing over $100 million a year in payroll, taxes, royalty payments and the purchase of goods and supplies.

- Red Dog will provide Alaska with new opportunities. As the first major mine to begin operating in Alaska in modern times, this project will enhance Alaska's reputation in the United States and the world, and encourage further investment.

- Red Dog will benefit all of Alaska. The jobs and money provided by this project will be felt from Barrow all the way to Ketchikan.

- Red Dog will open up new markets and trade to Pacific Rim countries. The products produced at Red Dog will be sold to Pacific Rim countries which will open doors for other Alaskan resources.

Your discussion of the negative aspects of the Red Dog project contains some erroneous statements. The road and port will not be a single-purpose facility, as it is likely that there will be further development in this region of Alaska.

Recent articles, which have appeared in your paper, indicate that GCO Minerals Company is planning to use both the road and port facilities to develop the Lik deposit just north of Red Dog. This region of Alaska has been described as the "Noatak Zinc Belt", and it is anticipated that other major deposits will be discovered. While the road will initially link Red Dog with the coast it will undoubtedly be used for these other projects.

As well, the port facility will be of major benefit to the people in the NANA region, by reducing the cost of bringing in fuel and supplies, due to the backhaul capabilities which will be available with the Red Dog project.

Your editorial also missed some other key factors about the road and port. While you pointed out that these facilities will cost $150 million, there was no reference to the fact that Cominco Alaska will repay the cost of the industrial-use portion of the system, which will be most of the $150 million, to the State. Some other important points that could also have been mentioned are:

- The State of Alaska will own the road and port facility, and it will be available to other commercial users.

- Cominco Alaska will guarantee to pay the cost of operation and maintenance of the facilities, with no cost to the State.

- Cominco Alaska will guarantee to pay the toll fees for the use of the port and road, which will repay the capital invested by the State in the industrial aspects of the transportation system.

- Cominco Alaska agrees to start production at the mine within a definite time period.

- Cominco Alaska guarantees that if it is necessary to postpone development of the mine, it will still repay to the State the money invested in the system.

Some of these points have been made in previous articles which have appeared in The Anchorage Times, but were not included in your editorial.

As an indication of our confidence in the future viability of the Red Dog mine, Cominco Alaska has invested over $25 million in the project to date, and the planned expenditure next year will bring our total investment to over $40 million by the end of 1985. The cost of the entire project is presently estimated to be $400 million. Cominco Alaska will be responsible for financing $250 million, or 2/3 of the project, and as noted above, is proposing to repay to the State most of the cost of the transportation system.

Your reference to the required zinc price of $.70 per pound was unfortunately rather misleading. You missed completely the factors of timing and financing. First, the statement to which you referred was in regard to the price required when Red Dog is planned to start operations in 1988/1989, and not today's price. Second, the $.70 price was if the total project, including the road and port, was financed by Cominco Alaska. Based on our market studies and world demand for zinc, we are convinced that Red Dog will be economical when it begins producing in 1988/1989. Zinc is the fourth most widely used industrial metal, and compared with other base metals, has the greatest potential for growth in terms of world demand.

The editorial also mentioned that we have already shut down two of our Canadian operations, "....to reduce the amount of zinc in the marketplace". It is fairly understandable that the price of zinc has not yet been affected, as the shut-downs are just now taking place. Your expectation that this should have an immediate effect appears to be somewhat optimistic, as one cannot cannot anticipate that the market will react immediately to changes made in supply. It also was not noted in your editorial that the shut-downs are only temporary. I

trust that you will give us as much press when we resume operations in early January, as you have for the temporary closures.

In any event, short-term market fluctuations (which is what is behind the shut-downs) are not the basis on which we would make a decision on a long-term development such as Red Dog. This production decision will be based on long-term supply and demand factors, and our present detailed marketing studies indicate that there is a definite market opportunity for Red Dog by the end of this decade.

The last point in your editorial was that this was going to be used as a weapon by rural legislators against urban projects requiring large capital outlays. We don't consider that this is correct. However, if enough suggestion in this direction is made, it could become a self-fulfilling prophecy, and I do not believe any of us wish to create such a situation.

Urban Alaska stands to benefit as much from this project as rural Alaska. This is not a project for one region of Alaska, nor for just the mining community, as Red Dog will benefit all regions and segments of Alaska.

Cominco Alaska considers that projects requiring state financial assistance should be judged on their economic and social merits. The key factors are employment, fiscal responsibility and economic benefits to the State. We believe that Red Dog meets all of these requirements.

I would be pleased to be able to discuss this with you at your convenience.

Very truly yours,

H. M. Giegerich
President and General Manager

HMG:jaz

Cominco Alaska/5060 "B" Street/Anchorage, Alaska 99502/Tel. (907) 563-3686

For further Information: Lisa M. Parker
(907) 563-3686

Cominco Alaska

Release: Thursday, January 10, 1985

COMINCO NORTHERN GROUP MINES RESUME PRODUCTION FOLLOWING CHRISTMAS SHUTDOWNS

Yellowknife, N.W.T. - Full production of zinc and lead operations at the Polaris Mine will resume tomorrow, January 11, 1985 following a shutdown over the Christmas period. Pine Point Mines Limited resumed production on January 2, 1985.

The interruptions coincided with market oversupply and low prices for zinc and lead.

-30-

Cominco closing may rescue zinc

by Olav Svela

When Cominco Ltd. announced a month-long closure starting mid-December of the Polaris zinc-lead mine and the Black Angel mine in Greenland, it was thought its European customers' appetite for concentrates had been sated.

That is true. The European smelters and refiners of Cominco zinc concentrates are sitting with seasonally high inventories.

But the real reason for the closing of two profitable mines could be quite different than what is generally accepted, says Raymond Goldie, mining analyst with Richardson Greenshields.

At the time of the announcement, Cominco and its overseas customers, who rely on the company for nearly one-quarter of zinc metal production, were in the midst of negotiations. In the absence of new agreements, the Europeans could be sitting with near-empty warehouses by the spring of 1985.

Mr. Goldie believes Cominco is prepared to extend the shutdowns to prove a point — if the Europeans still demand discounts from the posted $US900-per-tonne price, then Cominco will not be shipping concentrates.

"Cominco's actions appear to carry an implicit threat that, if zinc prices don't improve, Cominco will extend the shutdowns," Mr. Goldie said.

There is also the possibility the company, fed up with the braying for discounts by its traditional buyers, could strike a deal with Japanese smelters.

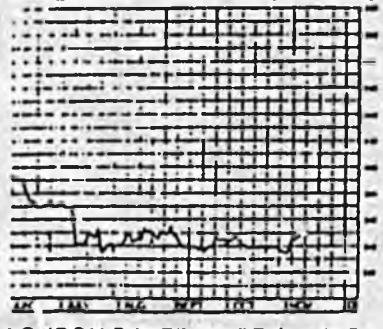
Nor does Cominco seem overly concerned about losing market share, Mr. Goldie noted. Marginal suppliers only reopened mines about a year ago when prices improved. With tags again at lower levels, these producers might be loathe to boost production until solid price gains have been made.

Besides, Mr. Goldie observed, any expansions would require six months to complete.

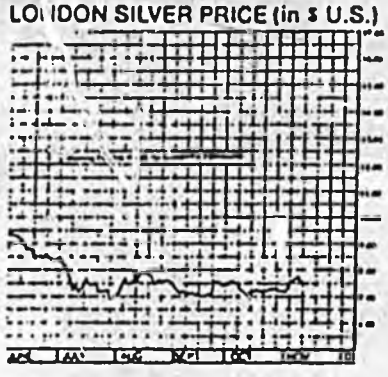
So Cominco is taking the lead in showing discipline.

"It demonstrates that at least one producer is willing to make a stand when it believes that it is not getting a fair price for its product," the analyst said.

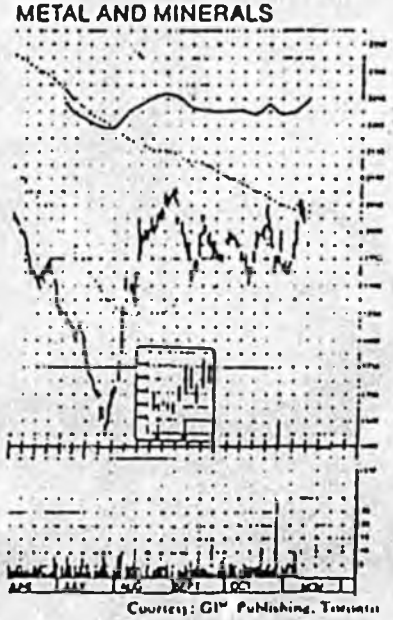
LONDON GOLD PRICE — AFTERNOON CLOSING (in $ U.S.)



LONDON SILVER PRICE (in $ U.S.)



METAL AND MINERALS



Courtesy: GIW Publishing, Toronto

The implication for the price of zinc? Obviously, less concentrates should translate into a tighter market. It hasn't happened so far with free market prices (London Metal Exchange) having slipped nearly a cent to 39.1¢ (US) since the Cominco move.

But Mr. Goldie is confident that with supply and demand in fairly close balance even before Cominco's actions, prices will respond.

Cominco itself projects world shortages.

"Cominco and the smelters both have their eyes on the long term. Cominco wants to take full advantage of a major world shortage of zinc concentrates which, it expects, will develop by the late 1980s," Mr. Goldie said.

The strength of the yellow metal, meanwhile, continues. At press-time the second London fix (Nov. 13) was $US350.45 while the key December contract on Comex was trading at $350.90.

Richardson Greenshields analyst David R. James, noting "the much more positive tone to the gold market," said he expects a "ragged, slow erosion" of the American dollar if newly-re-elected President Ronald Reagan keeps his promise to try to lower interest rates.

DEC 1984

ALASKA OIL AND GAS NEWS
DECEMBER 1984

300

Closure of Polaris mine proof of Cominco's Red Dog commitment

By BERT TARRANT

There's more than meets the eye in Cominco Ltd. of Canada's recent announcement of a month-long closure (which began Dec. 1) of its Polaris lead-zinc mine in northern Canada.

When word of the closure was announced, the fact was jumped on by the Anchorage media as if it were proof positive that any efforts by the state to help Cominco Alaska and partner, NANA Regional Corp., develop the Red Dog lead-zinc project would be throwing so much money down a rat hole.

Cominco and NANA, the Kotzebue-based Native regional corporation, are seeking help from the state to take the edge off the steep front-end infrastructure costs (road and port) the joint venture faces if it is to develop what is considered the richest lead-zinc deposit in the world.

NANA and Cominco had made notable progress in pleading their case and demonstrating the benefits of the project (especially in local hire in unemployment-plagued northwest Alaska) for state help when the Polaris closure (and one in Greenland) was announced.

Tactically, the announcement came at an inopportune time. The knee-jerk reaction from the media and some state-help opponents was that the closures indicated Red Dog wasn't all it was cracked up to be.

But mining industry analysts of international repute are taking an entirely different view of the closures.

When Cominco announced closure of the Polaris mine and the Black Angel mine in Greenland, it was thought its European customers' appetites for concentrates had been sated.

That is true, according to industry observers in Canada. The European smelters and refiners of Cominco zinc concentrates are sitting on seasonally high inventories.

But the real reason for the closure of the two profitable mines could be quite different than what is generally accepted, says Raymond Goldie, mining analyst with Richardson Greenshields.

At the time of the announcement, Cominco and its overseas customers, who rely on the company for nearly one-fourth of zinc metal production, were in the midst of negotiations. In the absence of new agreements, the Europeans could be sitting with near-empty warehouses by the spring of next year.

Goldie believes Cominco is prepared to extend the shutdowns to prove a point – if the Europeans still demand discounts from the posted $900 per ton price, then Cominco will not be shipping concentrates.

"Cominco's actions appear to carry an implicit threat that, if zinc prices don't improve, Cominco will extend the shutdowns," Goldie said.

There is also the possibility the company, fed up with the braying for discounts by its traditional buyers, could strike a deal with Japanese smelters.

Nor does Cominco seem overly concerned about losing market share, Goldie noted. Marginal suppliers only reopened mines about a year ago when

See COMINCO, Page 18

• Cominco's mine move shows spine

Continued from Page 1

prices improved. With lower prices once again, these producers might be loathe to boost production until solid price gains have been made.

Besides, Goldie said, any expansions would take six months to complete. So Cominco is taking the lead in showing discipline.

"It demonstrates that at least one producer is willing to make a stand when it believes it is not getting a fair price for its product," the analyst said.

Although it hasn't happened so far, that should translate into a tighter market and higher prices and Goldie is confident, with supply and demand in fairly close balance even before Cominco's actions, prices will respond.

Cominco itself projects world shortages. "Cominco and the smelters both have their eyes on the long term. Cominco wants to take full advantage of a world shortage of zinc concentrates which it expects will develop by the late 1980s," Goldie said.

And the late 1980s, incidentally, is when Cominco and NANA would like to bring the Red Dog project on line.

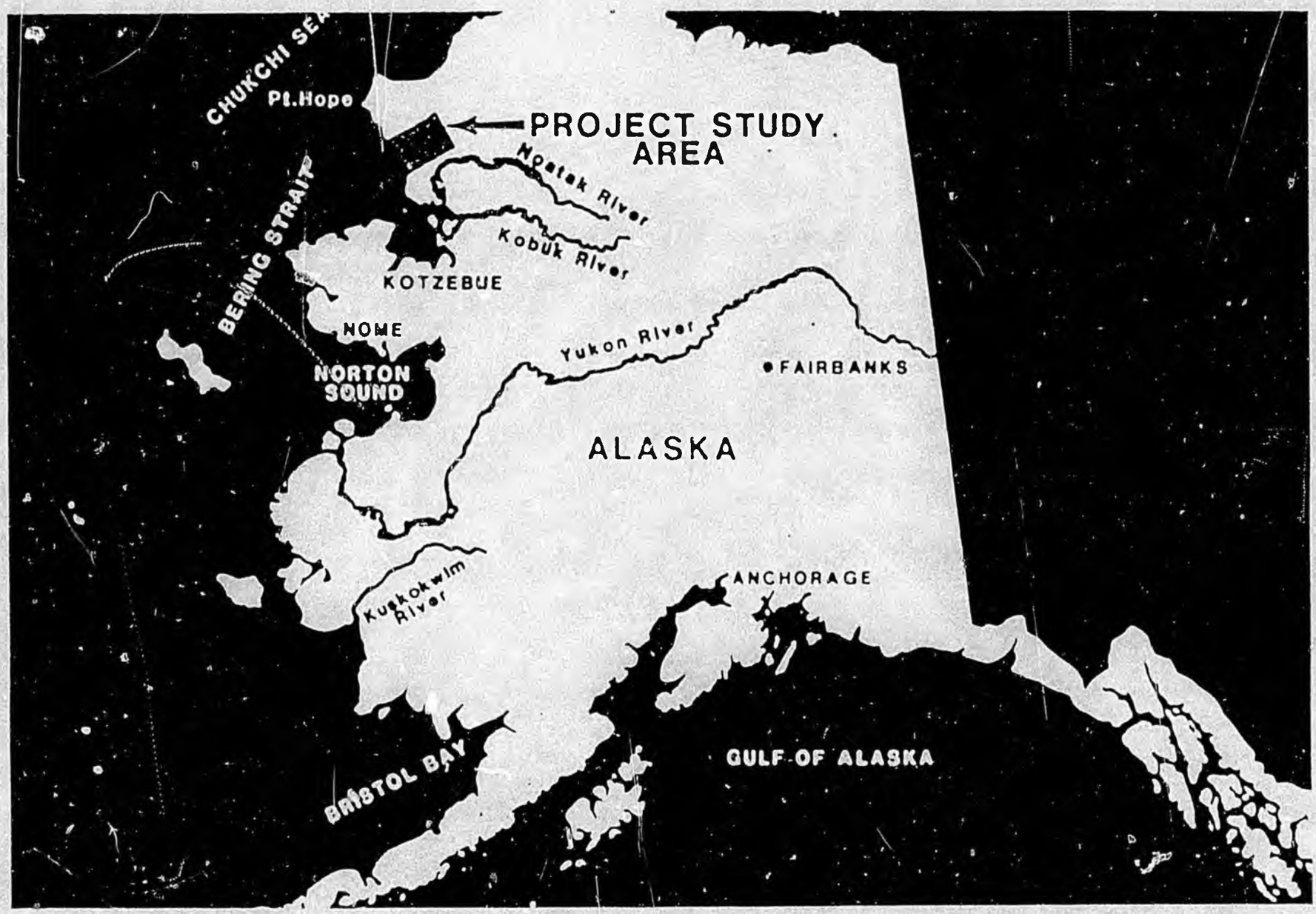
Resources
Comm.

THE

RED DOG

PROJECT

Cominco Alaska Inc.
5660 B Street
Anchorage, Alaska 99502
(907) 563-3686


CHUKCHI SEA
Pt.Hope
PROJECT STUDY AREA
Noatak River
Kobuk River
BERING STRAIT
KOTZEBUE
NOME
NORTON SOUND
Yukon River
FAIRBANKS
ALASKA
Kuskokwim River
ANCHORAGE
BRISTOL BAY
GULF OF ALASKA

THE RED DOG PROJECT

1. MINERAL DEPOSIT

RED DOG IS A LARGE BASE-METAL MINERAL DEPOSIT IN NORTHWEST ALASKA CONTAINING ZINC, LEAD AND SILVER. IT IS LOCATED 90 MILES NORTHEAST OF THE VILLAGE OF KOTZEBUE, AND IS BEING DEVELOPED BY THE NANA CORPORATION AND COMINCO ALASKA, BOTH OF WHICH ARE ALASKAN CORPORATIONS.


RED DOG PROJECT
ORE RESERVES
85,000,000 TONS
ZINC
17.1 %
(14,500,000 TONS)
LEAD
5.0 %
(4,300,000 TONS)
SILVER
2.4 OUNCES/TON
(204,000,000 OUNCES)

THE RED DOG PROJECT

1. MINERAL DEPOSIT CONTD.

THE DEPOSIT CONTAINS ALMOST 15 MILLION TONS OF ZINC, OR ENOUGH TO SUPPLY THE ENTIRE WESTERN WORLD FOR MORE THAN THREE YEARS.

IN TERMS OF SIZE, RED DOG IS THE SECOND LARGEST ZINC DEPOSIT EVER DISCOVERED IN THE WESTERN WORLD AND, AT FULL PRODUCTION, WILL BE THE LARGEST ZINC MINE IN THE WORLD.

RED DOG PROJECT
EMPLOYMENT

	Construction	Production
Construction	250	---
Mine	50	400
Service Industries	100	230
Total Employment	400	630

2. EMPLOYMENT

IN TERMS OF JOBS, DURING THE 24 TO 36 MONTHS OF CONSTRUCTION THERE WILL BE APPROXIMATELY 300 PEOPLE WORKING AT THE MINE SITE, AND MORE IN THE SERVICE INDUSTRIES. ONCE IN PRODUCTION ABOUT 400 PEOPLE WILL BE EMPLOYED AT THE MINE, AND AN ADDITIONAL 230 PEOPLE WILL BE WORKING IN THE INDUSTRIES SERVICING THE MINE.

RED DOG PROJECT

ANNUAL EXPENDITURE IN STATE

(Operating Period)

1985 DOLLARS

	$ Million
Mine Payroll and Benefits	20
Purchases	15
Transportation	20
Taxes	15
Royalties	30
Total per Year	$100 Million

Over 30 Years	$3,000,000,000
Over 50 Years	$5,000,000,000



3. ANNUAL EXPENDITURES

WHEN THE MINE IS IN FULL OPERATION, IT IS ESTIMATED THE EXPENDITURES BY RED DOG IN ALASKA WILL AMOUNT TO $100 MILLION PER YEAR. THIS INCLUDES:

- MINE PAYROLL AND BENEFITS	$20 MILLION
- PURCHASES	$15 MILLION
- TRANSPORTATION	$20 MILLION
- TAXES IN ALASKA	$15 MILLION
- ROYALTIES TO THE REGIONAL CORPORATIONS	$30 MILLION
TOTAL	$100 MILLION

RED DOG WILL BE OPERATING FOR AT LEAST 50 YEARS, SO THE MINE WILL INJECT $5 BILLION INTO THE ALASKAN ECONOMY DURING THIS PERIOD. THESE FIGURES ARE IN 1985 DOLLARS AND DO NOT INCLUDE THE EFFECTS OF INFLATION.

THE PAYROLL IS WHAT WILL BE PAID THE PEOPLE WORKING AT THE MINE. THE PURCHASES IN ALASKA INCLUDE SERVICES (SUCH AS AIR CHARTERS AND AIR FARES, MAINTENANCE SERVICES, MEDICAL FEES) PLUS MATERIALS (SPARE PARTS, FUEL, FOOD AND CONSTRUCTION SUPPLIES).

RED DOG PROJECT

ANNUAL TRANSPORTATION EXPENDITURES IN ALASKA

1985 DOLLARS

	$ Million
Toll Fees to State	10
Operating and Maintenance	5
Trucking Contractor	5
Spent in Alaska per Year	$20 Million



3. ANNUAL EXPENDITURES CONTD.

TRANSPORTATION PAYMENTS IN ALASKA, WHICH WILL BE $20 MILLION PER YEAR, INCLUDE THE TOLL FEES TO PAY BACK THE STATE INVESTMENT, USER FEES TO COVER THE OPERATING AND MAINTENANCE COST OF THE ROAD AND PORT, PLUS TRUCKING AND HANDLING THE INCOMING FREIGHT AND OUTGOING CONCENTRATES FROM RED DOG.

RED DOG PROJECT

ROYALTIES

1985 DOLLARS

	$ Million per Year
NANA Corporation	10
Alaskan Native Corporations	20
Total	$30 Million

Cominco Alaska

3. ANNUAL EXPENDITURES CONTD.

THE ROYALTY PAYMENTS WILL AVERAGE ABOUT $30 MILLION PER YEAR OVER THE LIFE OF THE PROJECT. THE NANA CORPORATION, THE OWNER OF THE MINERAL DEPOSIT AND CONOCO ALASKA'S PARTNER IN THE PROJECT, WILL KEEP ABOUT ONE-THIRD OF THIS AMOUNT, AND TWO-THIRDS WILL BE DISTRIBUTED TO THE OTHER ALASKAN NATIVE CORPORATIONS UNDER THE PROVISIONS OF SECTION 7 (i) OF ANCSA. THIS MONEY, WHICH WILL BE SPENT IN ALASKA, WILL PROVIDE ADDITIONAL JOBS AND SERVICES AROUND THE STATE, AND SHOULD SIGNIFICANTLY REDUCE THE TRANSFER PAYMENTS FROM THE STATE GOVERNMENT TO VARIOUS REGIONS OF ALASKA.

RED DOG PROJECT
STATE TAXES
1985 DOLLARS

	$ Millions		
	Per Year	Over 30 Years	Over 50 Years
Income and Mining Taxes			
RED DOG	$ 8	$ 240	$ 400
REGIONAL CORPORATION	4	120	200
TOTAL to State Government	$ 12	$ 360	$ 600
Borough Taxes			
RED DOG	3	90	150
TOTAL in State	$15	$ 450	$ 750

Cominco Alaska

3. ANNUAL EXPEDITURES CONTD.

THE TAXES THAT WILL BE PAID IN ALASKA INCLUDE THE STATE MINING LICENSE TAX AND CORPORATE INCOME TAX, WHICH WILL BE PAID BY BOTH COMINCO ALASKA AND THE REGIONAL CORPORATIONS. ALSO INCLUDED ARE BOROUGH TAXES, WHICH IT IS ESTIMATED WILL BE PAID BY COMINCO ALASKA. ALL THESE TAXES COULD AMOUNT TO ALMOST HALF A BILLION DOLLARS IN 30 YEARS.

RED DOG PROJECT
POSITIVE FACTORS

- Diversify Alaska's Economy
- New Opportunities for Alaska
- Benefit All Alaskans
- New Markets for Alaska



4. KEY FACTORS

IN SUMMARY, THIS IS WHAT RED DOG MEANS TO THE STATE OF ALASKA:

- RED DOG WILL DIVERSIFY THE STATE'S ECONOMY BY PROVIDING $100 MILLION A YEAR IN PAYROLL, TAXES, ROYALTY PAYMENTS, AND THE PURCHASE OF GOODS AND SUPPLIES.

- RED DOG WILL PROVIDE ALASKA WITH NEW OPPORTUNITIES. AS THE FIRST MAJOR MINE IN ALASKA IN MODERN TIMES, THIS PROJECT WILL ENHANCE ALASKA'S REPUTATION IN THE THE WORLD AND ENCOURAGE FURTHER INVESTMENT.

- RED DOG WILL BENEFIT ALL OF ALASKA. THE JOBS AND MONEY PROVIDED BY THIS PROJECT WILL BE FELT ALL THE WAY FROM BARROW TO KETCHIKAN.

- RED DOG WILL PROMOTE NEW MARKETS AND TRADE. THE PRODUCTS FROM RED DOG WILL BE SOLD TO PACIFIC RIM COUNTRIES, AND THIS WILL OPEN DOORS FOR OTHER ALASKAN RESOURCES.

5. PRODUCTS

THE METALS PRODUCED BY RED DOG WILL BE ZINC, LEAD AND SILVER. THE MOST IMPORTANT PRODUCT IS ZINC, AS 80% OF RED DOG'S REVENUES WILL COME FROM THIS METAL, AND AT FULL PRODUCTION, RED DOG WILL BE THE LARGEST ZINC MINE IN THE WORLD.

ZINC IS A SHINEY BLUISH-WHITE METAL THAT PROVIDES CORROSION PROTECTIVE COATINGS FOR AUTOMOBILES, CHAIN LINK FENCES, STEEL SIDING, GARBAGE CANS AND MANY OTHER STEEL ITEMS. ZINC IS THE MAIN REASON THAT CARS NOW LAST UP TO 5 YEARS OR LONGER WITHOUT RUSTING. OTHER USES FOR ZINC ARE IN DIE-CAST PARTS SUCH AS CARBURETORS ON CARS OR SNOW MACHINES, AND SMALL CASTINGS AND PULLEYS ON WASHING MACHINES AND DISHWASHERS.

LEAD, LIKE ZINC, ALSO HAS MANY INDUSTRIAL USES. SOME OF THE PRODUCTS PRODUCED FROM LEAD ARE LEAD WEIGHTS FOR FISHING, BALLAST FOR BOATS, AND UNDERWATER CABLE SHEATHING. HOWEVER, THE MAJOR USES ARE IN BATTERIES FOR CARS, TRUCKS AND BOAT ENGINES, OR ANYTHING THAT NEEDS STORED ELECTRICAL POWER. OVER HALF OF THE WORLD'S LEAD GOES INTO LEAD ACID STORAGE BATTERIES.

SILVER IS A PRODUCT THAT NEEDS LITTLE INTRODUCTION. IT IS A PRECIOUS METAL THAT IS USED FOR JEWELERY, SILVER-WARE AND TABLE-WARE. SILVER IS ALSO ONE OF THE MAJOR CONSTITUENTS IN FILM AND IS USED IN THE ELECTRICAL AND HIGH-TECH INDUSTRIES BECAUSE OF SUPERIOR ELECTRICAL PROPERTIES.

RED OG PROJECT
PRODUCTION FORECAST
TONS PER YEAR

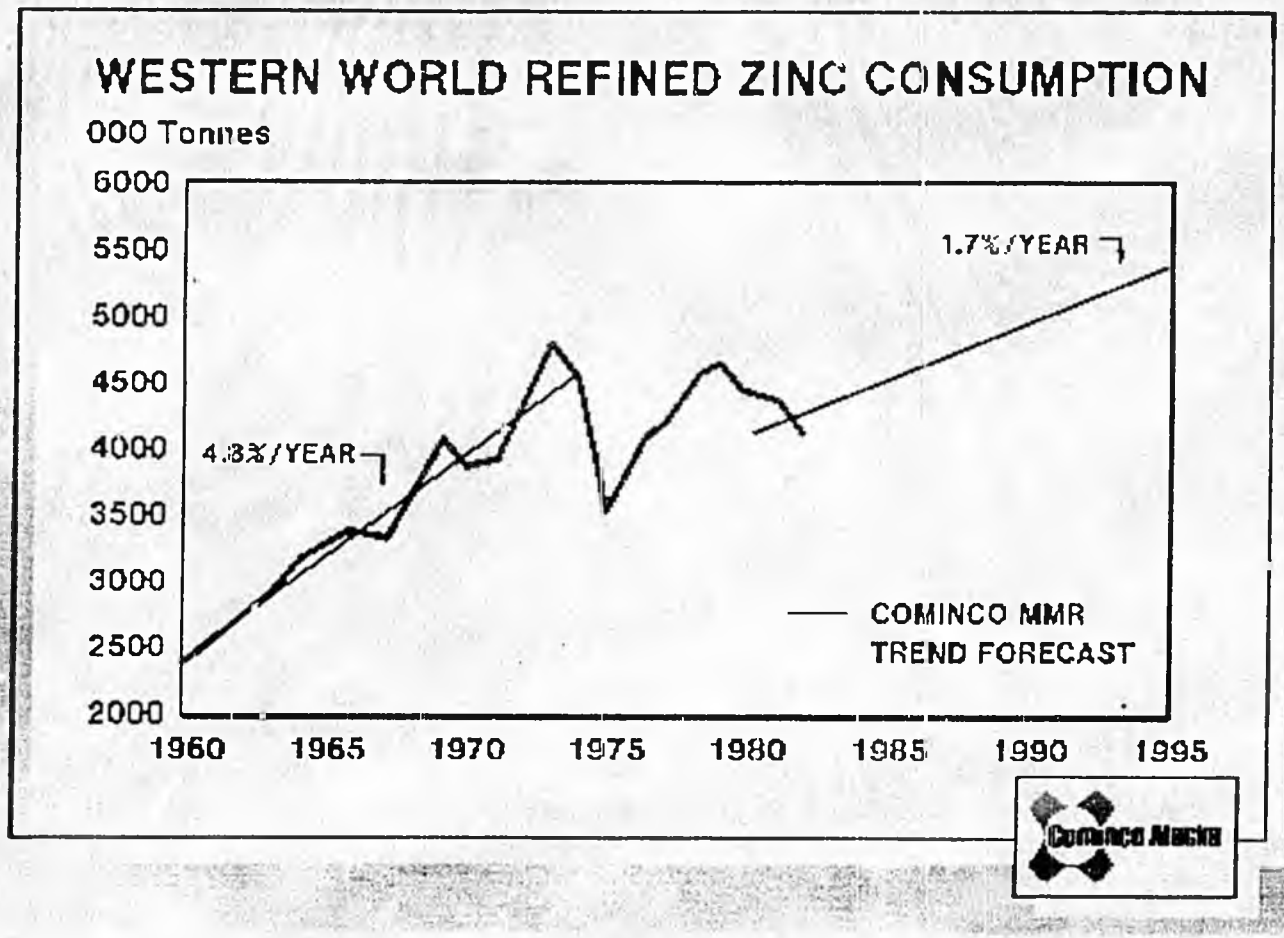
	Initial Stage	Full Production
Mined Ore	1,500,000	2,000,000
Zinc Concentrate	450,000	580,000
Lead Concentrate	90,000	120,000
Total Concentrate	530,000	700,000



6. PRODUCTION AND MARKETS

THE RED DOG MINE WILL PRODUCE ZINC AND LEAD CONCENTRATES WHICH WILL BE SOLD TO SMELTERS IN EUROPE, CANADA, AND THE FAR EAST. THUS RED DOG WILL BE A MAJOR CONTRIBUTOR TO EXPANSION OF ALASKAN TRADE IN THE PACIFIC RIM COUNTRIES.

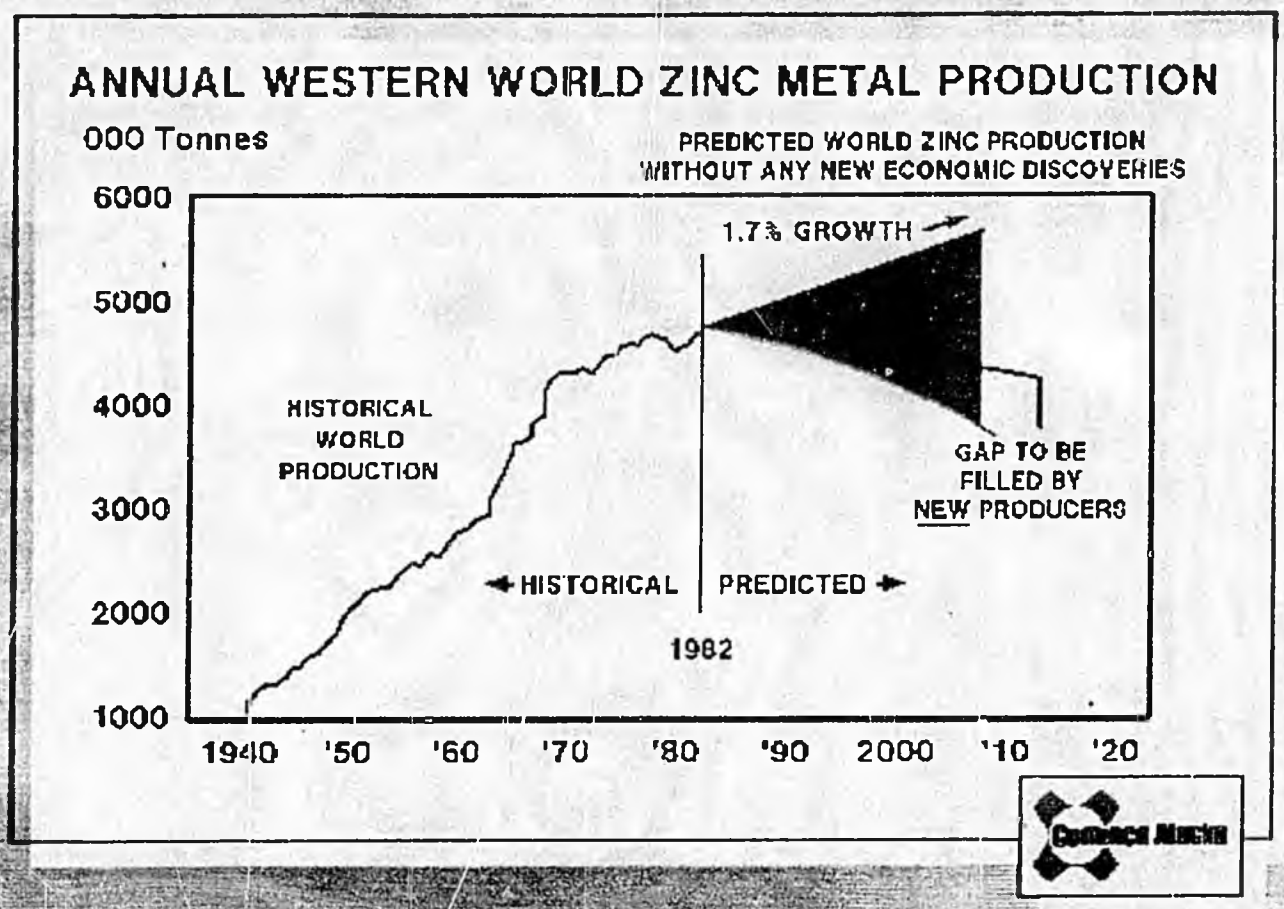
INITIALLY THE MINE WILL PRODUCE ABOUT HALF A MILLION TONS PER YEAR OF ZINC AND LEAD CONCENTRATES. WHEN AT FULL CAPACITY, RED DOG PRODUCTION WILL INCREASE TO 700,000 TONS OF CONCENTRATE ANNUALLY. ZINC IS THE KEY METAL, AND RED DOG WILL SUPPLY MORE THAN 5% OF THE WESTERN WORLD'S ZINC REQUIREMENTS.


WESTERN WORLD REFINED ZINC CONSUMPTION
000 Tonnes
6000
5500
5000
4500
4000
3500
3000
2500
2000
1960
1965
1970
1975
1980
1985
1990
1995
4.8%/YEAR
1.7%/YEAR
COMINCO MMR
TREND FORECAST
Cominco Metals

6. PRODUCTION AND MARKETS CONTD.

RECENT STUDIES ON THE FUTURE MARKETS FOR RED DOG ZINC ARE ENCOURAGING. A DEFINITE MARKET OPPORTUNITY HAS BEEN IDENTIFIED AT THE END OF THIS DECADE, BASED ON AN ANTICIPATED INCREASE IN ZINC DEMAND OF BETWEEN 1% AND 2% PER YEAR.

THIS GRAPH SHOWS, ON THE LEFT, THE HISTORICAL GROWTH RATE OF ALMOST 5% PER YEAR DURING THE 60'S AND 70'S. THE CURRENT PROJECTION OF 1.7% PER YEAR IS SHOWN ON THE RIGHT. EVEN THOUGH THIS RATE IS LOWER, THE ANNUAL INCREASE IS CLOSE TO WHAT IT HAS BEEN IN THE PAST, AS THE CONSUMPTION IS HIGHER.

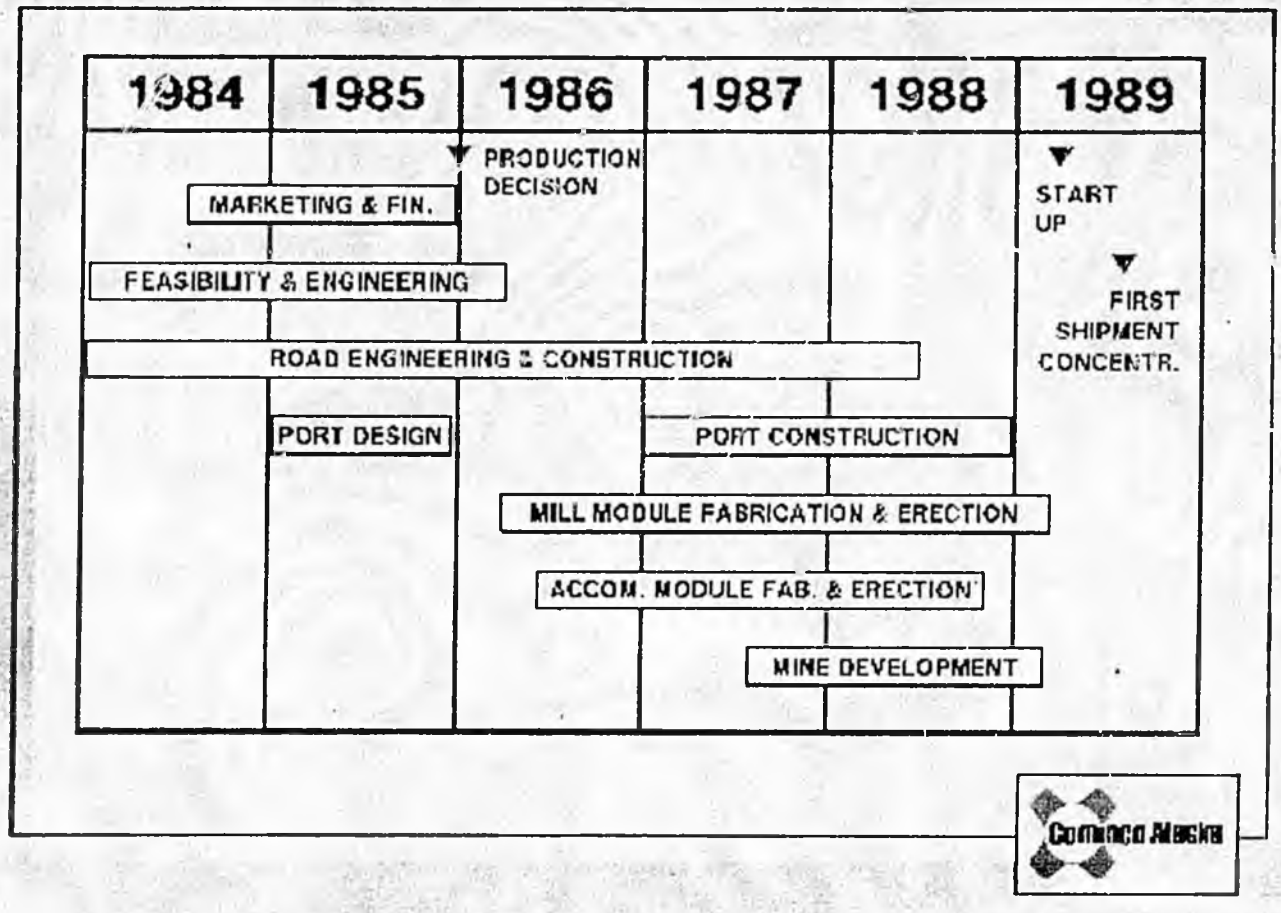

ANNUAL WESTERN WORLD ZINC METAL PRODUCTION
000 Tonnes
PREDICTED WORLD ZINC PRODUCTION
WITHOUT ANY NEW ECONOMIC DISCOVERIES
6000
5000
4000
3000
2000
1000
1.7% GROWTH
HISTORICAL
WORLD
PRODUCTION
GAP TO BE
FILLED BY
NEW PRODUCERS
HISTORICAL
PREDICTED
1982
1940
'50
'60
'70
'80
'90
2000
'10
'20

6. PRODUCTION AND MARKETS CONTD.

THE OTHER MAJOR FACTOR THAT HAS BEEN IDENTIFIED IS A DECLINE IN PRODUCTION IS DUE TO CLOSURES OF MAJOR MINES IN CANADA, GREENLAND, W. GERMANY AND AUSTRALIA. THE TRIANGLE ON THE RIGHT OF THIS GRAPH SHOWS THE GAP, BETWEEN THE INCREASE IN CONSUMPTION AND DECREASE IN PRODUCTION, THAT MUST BE FILLED. IF RED DOG IS ON-STREAM BY THE END OF THIS DECADE, IT WILL FILL ABOUT HALF OF THE GAP. THE REMAINDER WILL BE FILLED BY SOME OF THE OTHER POTENTIAL MINES THAT ARE BEING LOOKED AT NOW.

RED DOG IS THE MOST LOGICAL SOURCE TO SUPPLY THE WORLD WITH THIS ADDITIONAL ZINC, FROM THE STANDPOINT OF TIMING, LOCATION, AND PRODUCTION COSTS. WITH STATE ASSISTANCE IN FINANCING THE ROAD AND PORT FACILITIES, COMINCO ALASKA CAN BRING THE RED DOG PROJECT INTO PRODUCTION BY THE END OF THE 1980'S.

THIS TIMING IS CRITICAL. THE WORLD'S ZINC INDUSTRY IS VERY COMPETITIVE, PARTICULARLY FOR MARKETS, AND THERE ARE OTHER POTENTIAL MINES, IN AUSTRALIA, AND EVEN CLOSER TO HOME, IN WISCONSIN, LOOKING AT THE SAME SALES OPPORTUNITIES AS RED DOG, AND THERE PROBABLY ISN'T ROOM IN THE PRODUCTION GAP FOR ALL THESE POTENTIAL MINES. AT THE PRESENT TIME, RED DOG IS AHEAD OF THE COMPETITION. BUT A DELAY COULD RESULT IN LOSS OF THAT MARKET OPPORTUNITY, AND IT MIGHT BE NECESSARY TO WAIT SEVERAL YEARS BEFORE ANOTHER MARKET FOR RED DOG CONCENTRATES BECOMES AVAILABLE. THE STATE OF ALASKA CAN BE THE CATALYST THAT WILL KEEP THE PROJECT MOVING.


1984
1985
1986
1987
1988
1989
PRODUCTION DECISION
START UP
FIRST SHIPMENT CONCENTR.
MARKETING & FIN.
FEASIBILITY & ENGINEERING
ROAD ENGINEERING & CONSTRUCTION
PORT DESIGN
PORT CONSTRUCTION
MILL MODULE FABRICATION & ERECTION
ACCOM. MODULE FAB. & ERECTION
MINE DEVELOPMENT
Cominco Alaska

7. SCHEDULE

THE PRESENT PROJECT SCHEDULE REQUIRES A COMMITMENT FROM THE STATE LEGISLATURE DURING THE 1985 SESSION, FOR THE METHODS TO FINANCE THE ROAD AND PORT, SO THAT COMINCO WILL BE IN A POSITION TO MAKE THE PRODUCTION DECISION. TO ENSURE THAT THERE WILL BE NO DELAY IN THE SCHEDULE, COMINCO ALASKA IS PROCEEDING WITH THE DETAILED DESIGN AND ENGINEERING WORK IN 1985, EVEN THOUGH THE PROJECT HAS NOT BEEN APPROVED. THIS WILL PUT THE PROJECT IN A POSITION TO MOVE AHEAD WITH CONSTRUCTION IN 1986 IF THE LEGISLATURE APPROVES THE FINANCING. THE REMAINDER OF THE SCHEDULE IS AS FOLLOWS:

- 1986 - AIDA ISSUES ROAD AND PORT CONTRACTS
  - COMINCO COMMENCES MODULAR CONSTRUCTION OF MILL

- 1987 - AIDA CONTRACTOR CONSTRUCTS ROAD AND PORT FACILITIES
  - CONTINUE MODULAR CONSTRUCTION OF MILL
  - COMINCO STARTS TO DEVELOP MINE SITE

- 1988 - COMPLETE ROAD AND PORT FACILITIES
  - MODULES MOVED TO MINE SITE

- 1989 - RED DOG PRODUCTION BEGINS
  - FIRST CONCENTRATES SHIPPED TO WORLD MARKETS

RED DOG PROJECT
ESTIMATED CAPITAL INVESTMENT
1985 DOLLARS

	$ Million
Mine Preparation	60
Mill and Services	125
Power	35
Exploration and Feasibility	30
Road and Port	150
	$400 M

Cominco Alaska

8. INVESTMENT

THE CAPITAL COST OF THE RED DOG PROJECT IS ESTIMATED TO BE $400 MILLION, IN 1985 DOLLARS, OF WHICH $250 MILLION IS REQUIRED FOR MINE FACILITIES AND DEVELOPMENT, AND APPROXIMATELY $150 MILLION TO DEVELOP THE TRANSPORTATION SYSTEM. THIS IS THE PRESENT PRELIMINARY ESTIMATE, AND CONCEPTS ARE STILL BEING STUDIED TO DETERMINE IF THE COSTS CAN BE FURTHER REDUCED. COMINCO WILL FINANCE THE $250 MILLION FOR THE MINE THROUGH CONVENTIONAL MEANS, INCLUDING EQUITY AND BANK LOANS.

THE MAJOR ECONOMIC HURDLE FOR RED DOG IS THE HIGH COST OF THE TRANSPORTATION SYSTEM, WHICH AMOUNTS TO ALMOST 40% OF THE TOTAL PROJECT COST. THIS COMPARES WITH COMINCO'S RECENT ARCTIC DEVELOPMENTS IN CANADA AND GREENLAND, WHERE TRANSPORTATION WAS LESS THAN 10% OF THE TOTAL PROJECT. AND IN MORE DEVELOPED AREAS OF THE WORLD, IN MANY CASES THE COST OF TRANSPORTATION IS ALMOST NIL, AS THE INFRASTRUCTURE ALREADY EXISTS. IF RED DOG WAS IN THE SAME POSITION, STATE ASSISTANCE WOULD NOT BE REQUIRED. SO THIS IS WHERE THE STATE CAN PLAY THE KEY ROLE.

AS HAS BEEN NOTED EARLIER IN THIS REPORT, THE RED DOG PROJECT IS DEPENDENT UPON THE STATE LEGISLATURE TO ASSIST IN FINANCING THE ROAD AND PORT IN ORDER TO BRING THE MINE INTO PRODUCTION BY 1989. THE TYPE OF FINANCING BEING SUGGESTED IS UNIQUE TO ALASKA, BUT NOT TO OTHER

8. INVESTMENT CONTD.

PARTS OF THE WORLD SUCH AS CANADA OR AUSTRALIA, WHERE SUPPLY OF INFRASTRUCTURE BY THE GOVERNMENT, TO ENCOURAGE RESOURCE DEVELOPMENT, IS A COMMON OCCURRENCE. IT IS BEING PROPOSED THAT THE LEGISLATURE RATIFY AN AGREEMENT WHICH WILL PROVIDE FUNDS TO BUILD THE ROAD AND PORT ON A LONG-TERM BASIS, TO CONVERT PART OF THE COST FROM A CAPITAL TO AN OPERATING BASIS, AND THUS ALLOW COMINCO ALASKA TO FINANCE THE MINE PORTION OF THE PROJECT. THIS WILL ALSO PUT RED DOG ON AN EQUAL FOOTING WITH THE REST OF THE WORLD, BY REDUCING THE ECONOMIC PENALTY FOR RESOURCE DEVELOPMENT IN ALASKA, CAUSED BY LACK OF TRANSPORTATION.

RED DOG PROJECT

COMINCO ALASKA COMMITMENTS

- Pay Toll Costs
- Pay Operating and Maintenance Costs
- Start Mine Production
- Repay State Investment, if Significant Delay

9. COMINCO ALASKA COMMITMENTS

THIS IS NOT A ONE WAY COMMITMENT. IN RETURN FOR THIS FINANCING, COMINCO ALASKA WILL PAY BACK TO THE STATE THEIR INVESTMENT IN THE TRANSPORTATION SYSTEM. WE ARE ALSO PREPARED TO GIVE THE FOLLOWING DEFINITE GUARANTEES:

- COMINCO ALASKA WILL GUARANTEE TO PAY THE TOLL FEES WHICH WILL REPAY THE STATE INVESTMENT.

- COMINCO ALASKA WILL GUARANTEE TO PAY THE COST OF OPERATION AND MAINTENANCE OF THE FACILITIES

- COMINCO ALASKA GUARANTEES TO START PRODUCTION AT THE MINE WITHIN A DEFINITE TIME PERIOD

- COMINCO ALASKA GUARANTEES THAT IF IT IS NECESSARY TO POSTPONE DEVELOPMENT OF THE MINE, IT WILL STILL REPAY THE STATE THE MONEY IT HAS INVESTED IN THE SYSTEM

IN EFFECT, THESE GUARANTEES ELIMINATE THE ELEMENT OF RISK FOR THE STATE IN THE TRANSPORTATION INVESTMENT.

RED DOG PROJECT
TRANSPORTATION SYSTEM
MAJOR ADVANTAGES

- Owned by State of Alaska
- Multipurpose Facility
- Benefit the Region



10. MAJOR ADVANTAGES

MORE IMPORTANTLY, THE ROAD AND PORT WILL BE A MULTI-PURPOSE FACILITY OWNED BY THE STATE OF ALASKA. IT IS VERY LIKELY THERE WILL BE FURTHER DEVELOPMENT IN THIS REGION OF ALASKA. FOR EXAMPLE, GCO MINERALS COMPANY IS STUDYING THE FEASIBILITY OF THE LIK DEPOSIT JUST NORTH OF RED DOG, AND WOULD THEREFORE USE BOTH THE ROAD AND PORT FACILITIES. THIS REGION OF ALASKA HAS BEEN DESCRIBED AS THE "NOATAK ZINC BELT" AND IT IS ANTICIPATED THAT OTHER DEPOSITS WILL BE DISCOVERED. WHILE THE ROAD WILL INITIALLY LINK RED DOG WITH THE COAST, IT WILL UNDOUBTEDLY BE USED FOR THESE OTHER PROJECTS.

AS WELL, THE PORT FACILITIY WILL BE OF MAJOR BENEFIT TO THE PEOPLE IN THE WESTERN REGION. IT SHOULD REDUCE THE COST OF BRINGING IN FUEL AND SUPPLIES, DUE TO THE BACKHAUL CAPABILITIES WHICH WILL BE AVAILABLE BECAUSE OF THE RED DOG PROJECT.

RED DOG PROJECT

STATE INCOME

(Over 30 Years)

1985 DOLLARS

	$ Million Over 30 Years
Direct Taxes to State	360
Toll Fees to AIDA	260
	$620

11. STATE GOVERNMENT INCOME

THE PROPOSAL PROVIDES FOR REPAYMENT OF THE CAPITAL COSTS OVER A 30 YEAR PERIOD. BASED ON THE PRESENT COST ESTIMATES, THE PROJECTIONS SHOW THAT DURING THIS PERIOD COMINCO ALASKA WILL PAY ALASKA TOLL FEES OF ABOUT $260 MILLION, WHICH WILL RECOVER THE $150 MILLION INVESTMENT, PLUS $110 MORE. IN ADDITION, COMINCO ALASKA AND THE REGIONAL CORPORATIONS WILL PAY TAXES TO THE STATE GOVERNMENT OF $360 MILLION.

ALL OF THIS AMOUNTS TO OVER $600 MILLION, SO THE STATE WILL RECOVER THEIR INITIAL INVESTMENT MORE THAN FOUR TIMES OVER. AND THIS DOES NOT INCLUDE ALL THE SPIN-OFFS FROM THE $3 BILLION THAT RED DOG WILL INJECT INTO THE ALASKAN ECONOMY DURING THE PAYBACK PERIOD.

RED DOG PROJECT

REGIONAL BENEFITS

- Increase Income
- Reduce Transfer Payments
- Less Dependence on Government
- Reduce Unemployment
- Provide Economic Base



12. REGIONAL BENEFITS

THE PROJECT WILL PROVIDE JOBS, OPEN UP MARKETS AND TRADE TO THE PACIFIC RIM, AND GENERATE NEW BUSINESS IN ALASKA.

AND, THERE WILL BE, PARTICULARLY IN NORTHWEST ALASKA:

- INCREASED INCOME DUE TO THE NEW JOBS BEING CREATED
- A REDUCTION IN TRANSFER PAYMENTS FROM THE STATE
- LESS DEPENDENCE ON WELFARE AND GOVERNMENT EMPLOYMENT
- A DRAMATIC DECLINE IN THE UNEMPLOYMENT RATE
- A NEW ECONOMIC BASE PROVIDED FOR THE PEOPLE OF THE REGION AND FOR THE STATE OF ALASKA

THIS MAY APPEAR TO BE LESS IMPORTANT, BUT WHEN PERSONAL INCOME IN THIS REGION IS 88% DEPENDENT ON THE STATE AND FEDERAL GOVERNMENTS, IT IS INDEED SIGNIFICANT.

RED DOG PROJECT
COMINCO ALASKA EXPENDITURES

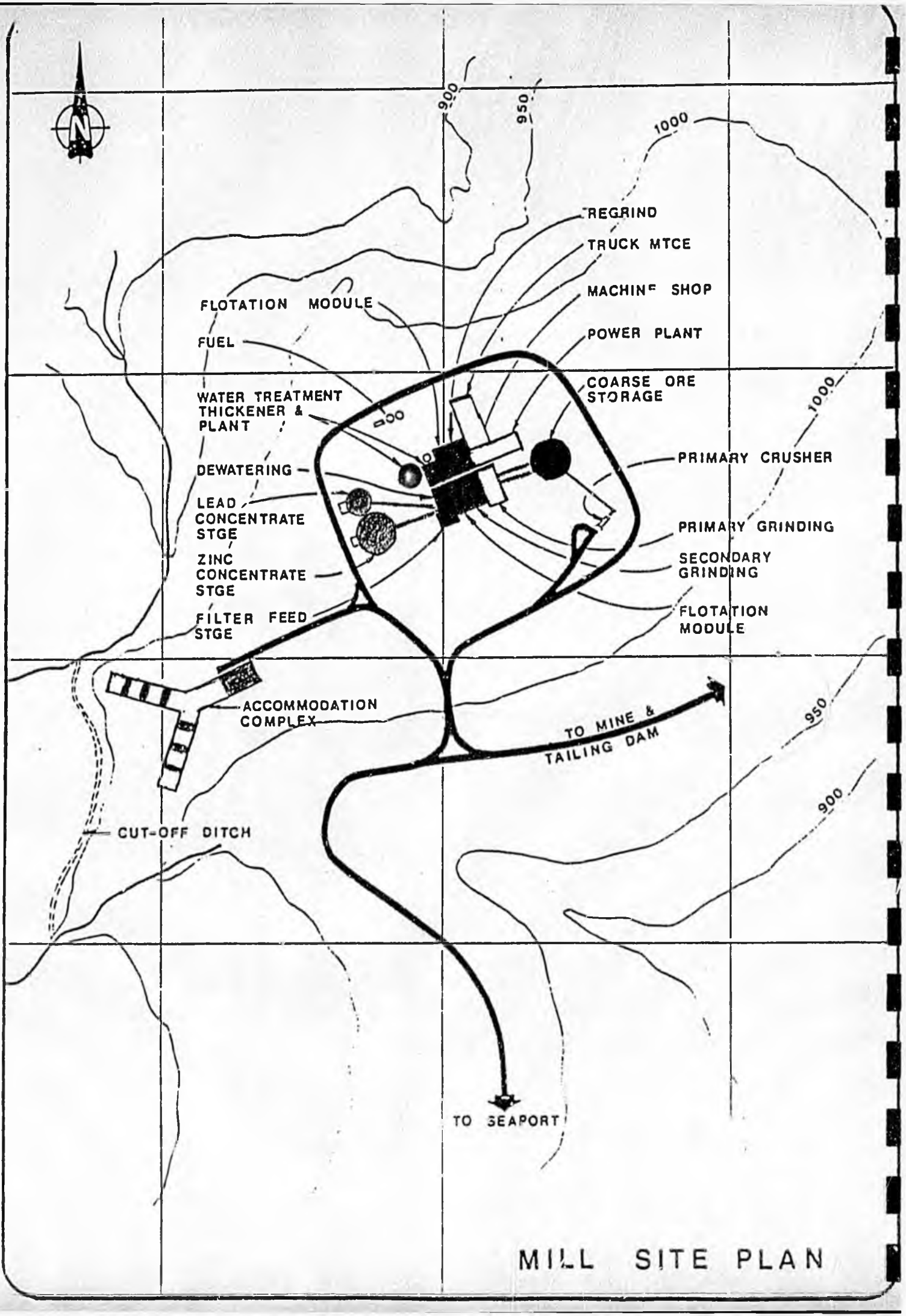
To End 1984	$25 Million
1985 Plan	15+ Million
To End 1985	$40+ Million

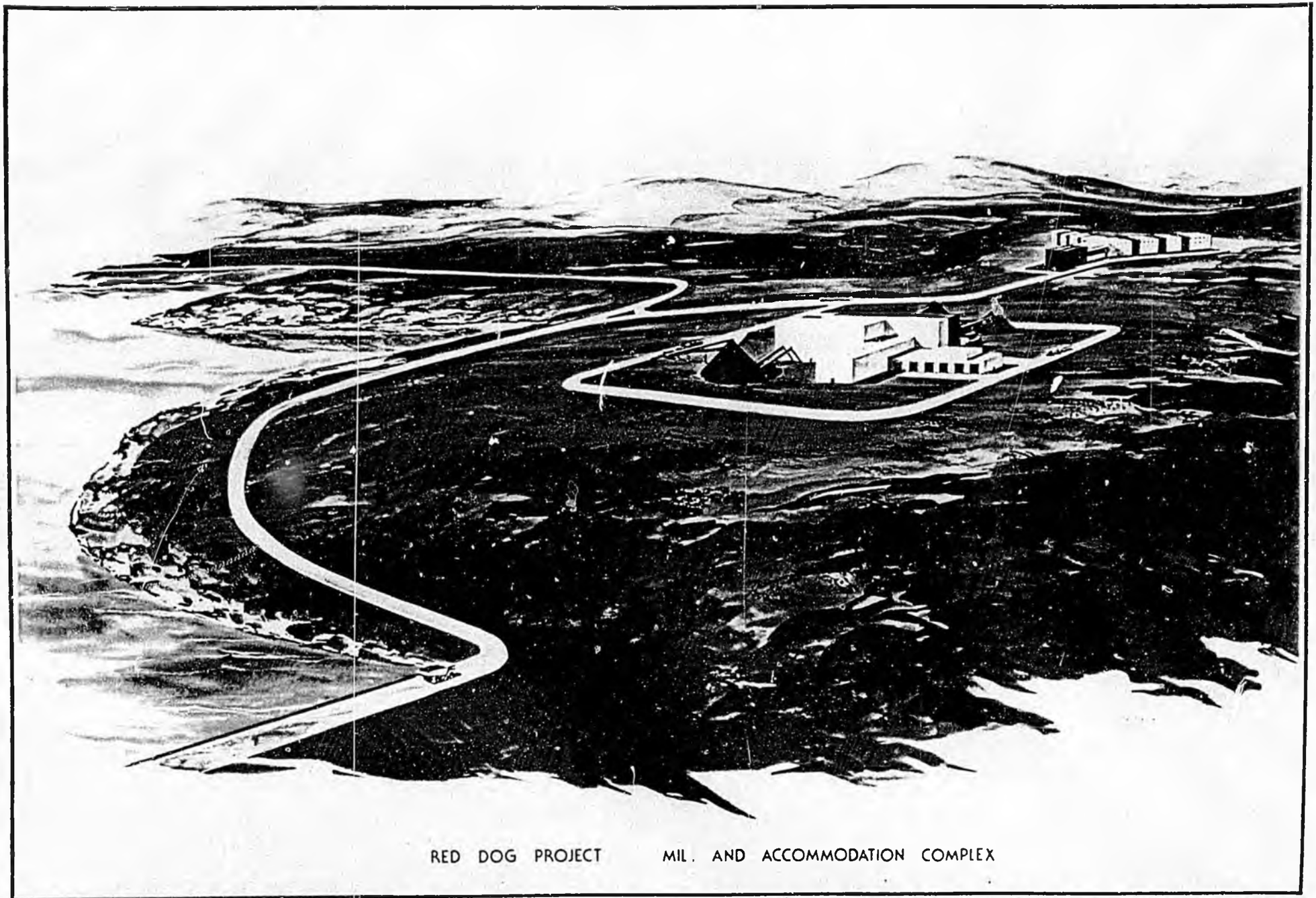


13. COMINCO ALASKA INVESTMENT

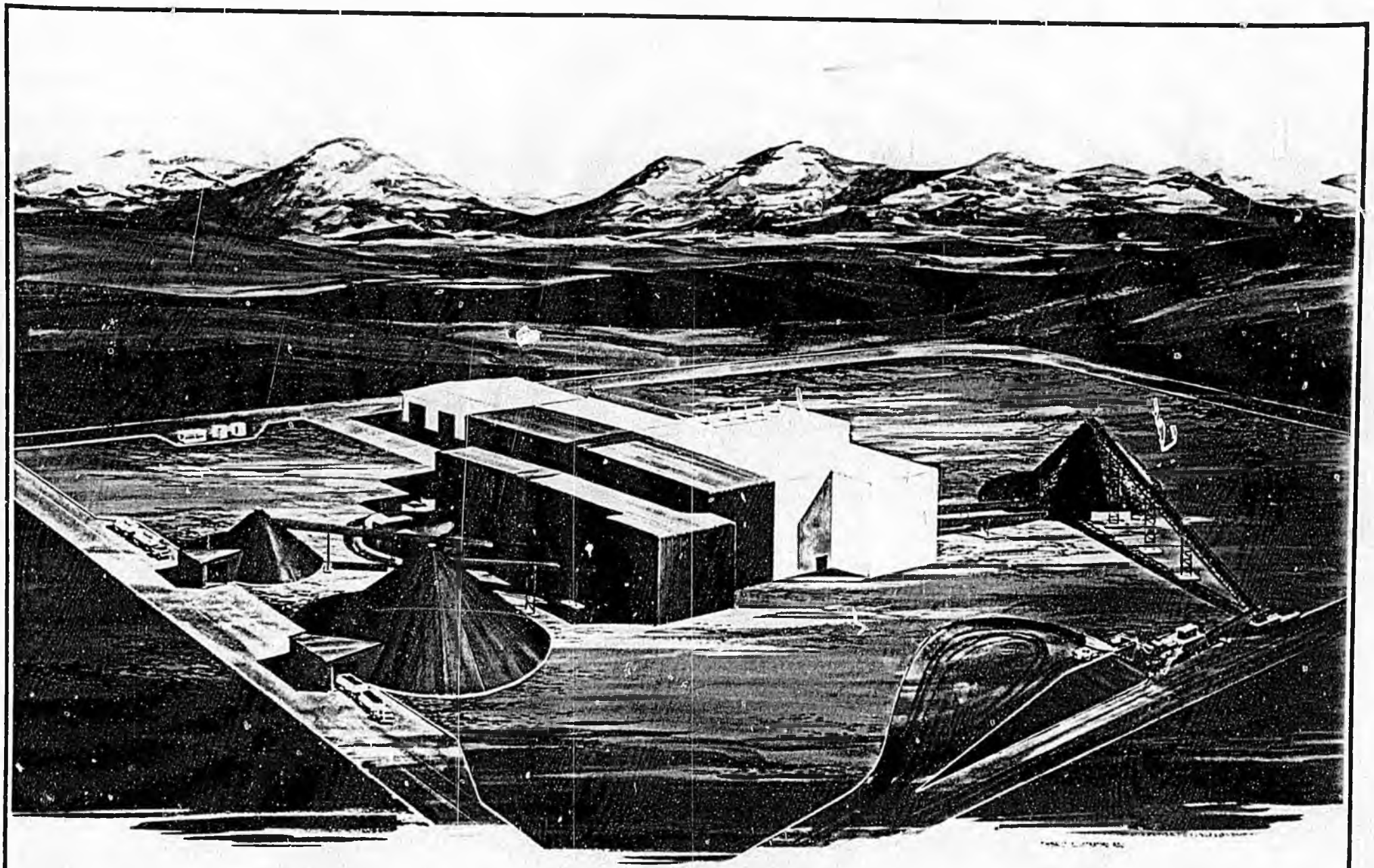
COMINCO ALASKA IS ENTHUSIASTIC ABOUT THE RED DOG PROJECT. IF THE STATE OF ALASKA CAN ASSIST THE PROJECT IN THE FINANCING OF THE ROAD AND PORT, COMINCO ALASKA IS PREPARED TO MOVE AHEAD AND BRING THE MINE INTO OPERATION BY THE END OF THIS DECADE. AS AN INDICATION OF COMINCO'S DEDICATION TO RED DOG, AND CONFIDENCE IN THE FUTURE VIABILITY OF THIS MINE, COMINCO ALASKA HAS INVESTED OVER $25 MILLION IN THE PROJECT, OVER THE LAST THREE YEARS, AND PLANNED EXPENDITURES IN 1985 WILL BRING THE TOTAL INVESTMENT TO OVER $40 MILLION BY THE END OF THE YEAR.

NANA Boundary
RED DOG
Noatak National Preserve
Kivalina
Noatak
CHUKCHI
SEA
Cape Krusenstern
Nat'l Monument
Kobuk Valley
Nat'l Park
Gates of the Arctic
Nat'l Park & Preserve
Ambler
Kiana
KOTZEBUE
KOTZEBUE
Shungnak
Kobuk
Noorvik
Selawik
Arctic
Circle
SOUND
Selawik Nat'l
Wildlife Refuge
Bering Land Bridge
Nat'l Preserve
Deering
Buckland
Candle
Koyukuk Nat'l Wildlife Refuge
0
50
100
150
200 miles

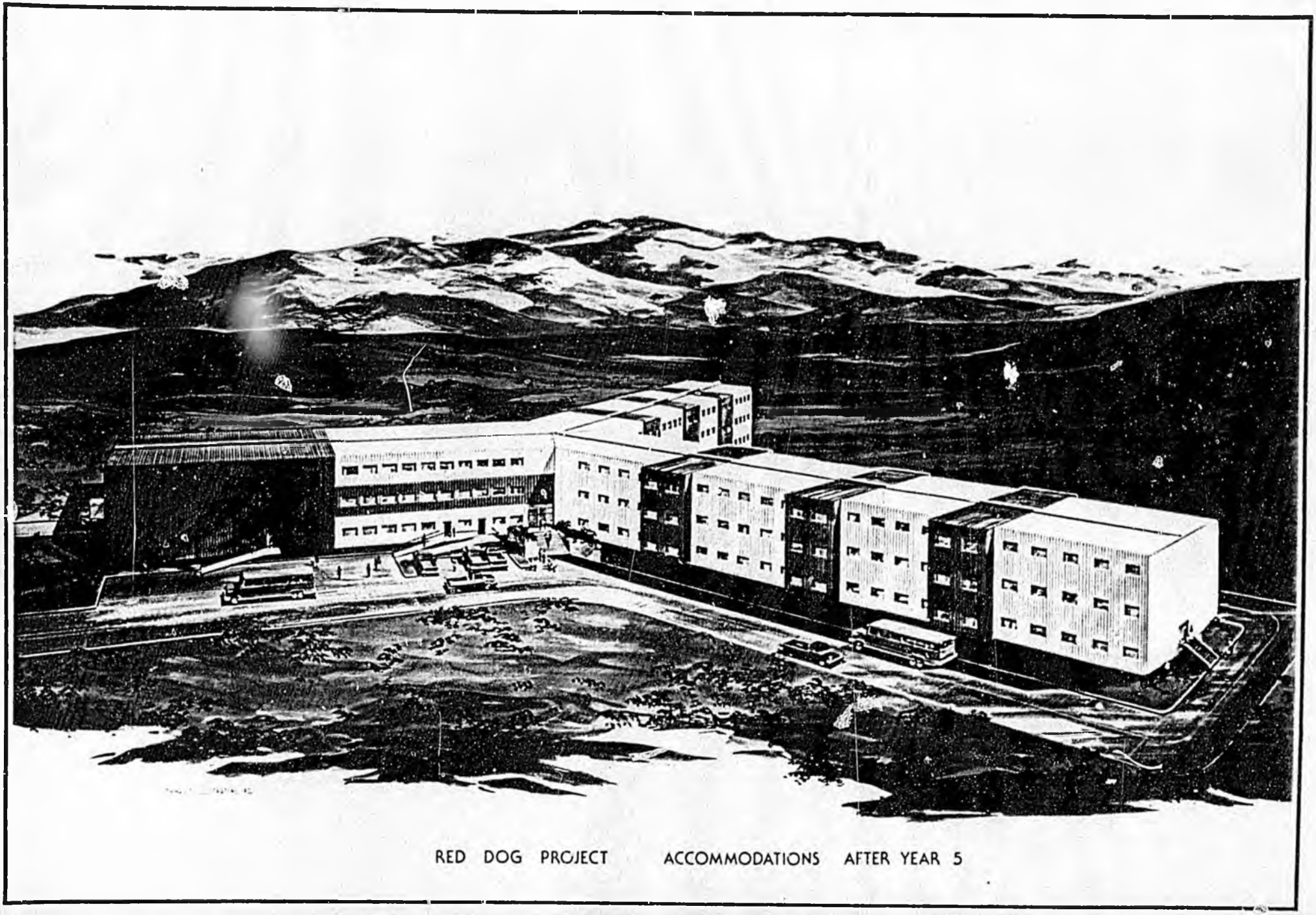

N
900
950
1000
REGRIND
TRUCK MTCE
MACHINE SHOP
POWER PLANT
FLOTATION MODULE
FUEL
COARSE ORE STORAGE
WATER TREATMENT THICKENER & PLANT
PRIMARY CRUSHER
DEWATERING
LEAD CONCENTRATE STGE
PRIMARY GRINDING
ZINC CONCENTRATE STGE
SECONDARY GRINDING
FILTER FEED STGE
FLOTATION MODULE
ACCOMMODATION COMPLEX
TO MINE & TAILING DAM
CUT-OFF DITCH
TO SEAPORT
MILL SITE PLAN



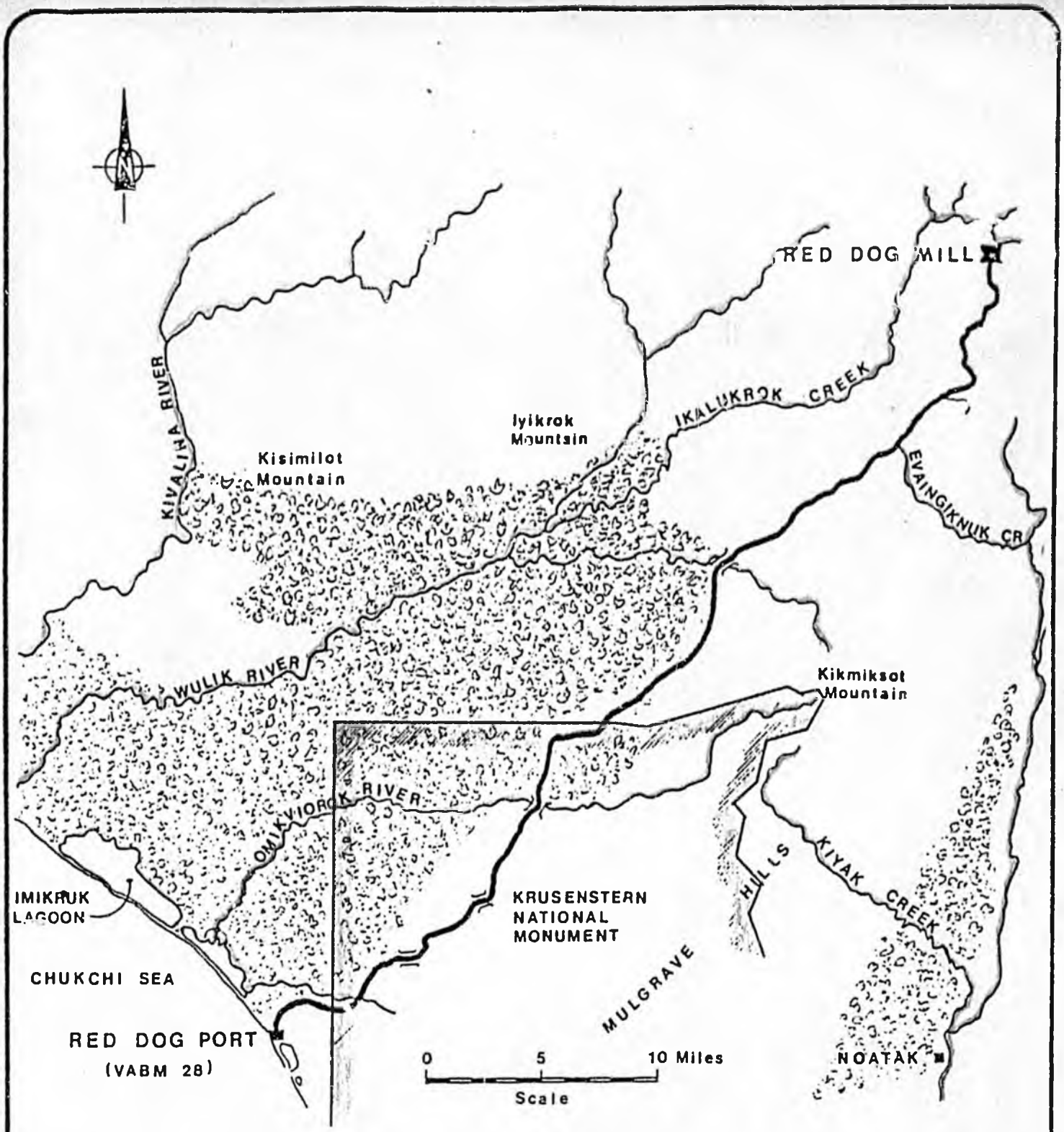
RED DOG PROJECT MIL. AND ACCOMMODATION COMPLEX

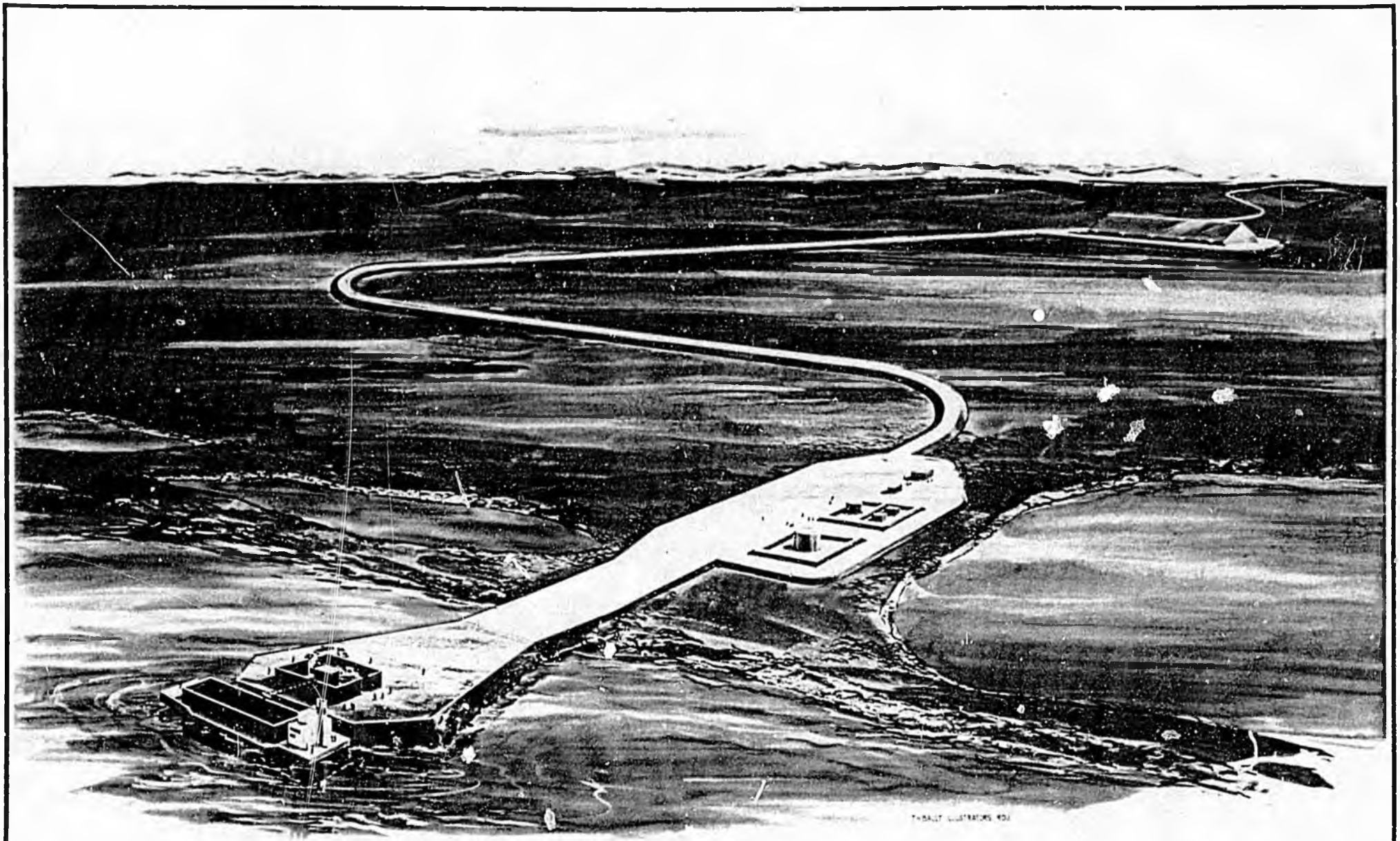


RED DOG PROJECT MILL COMPLEX

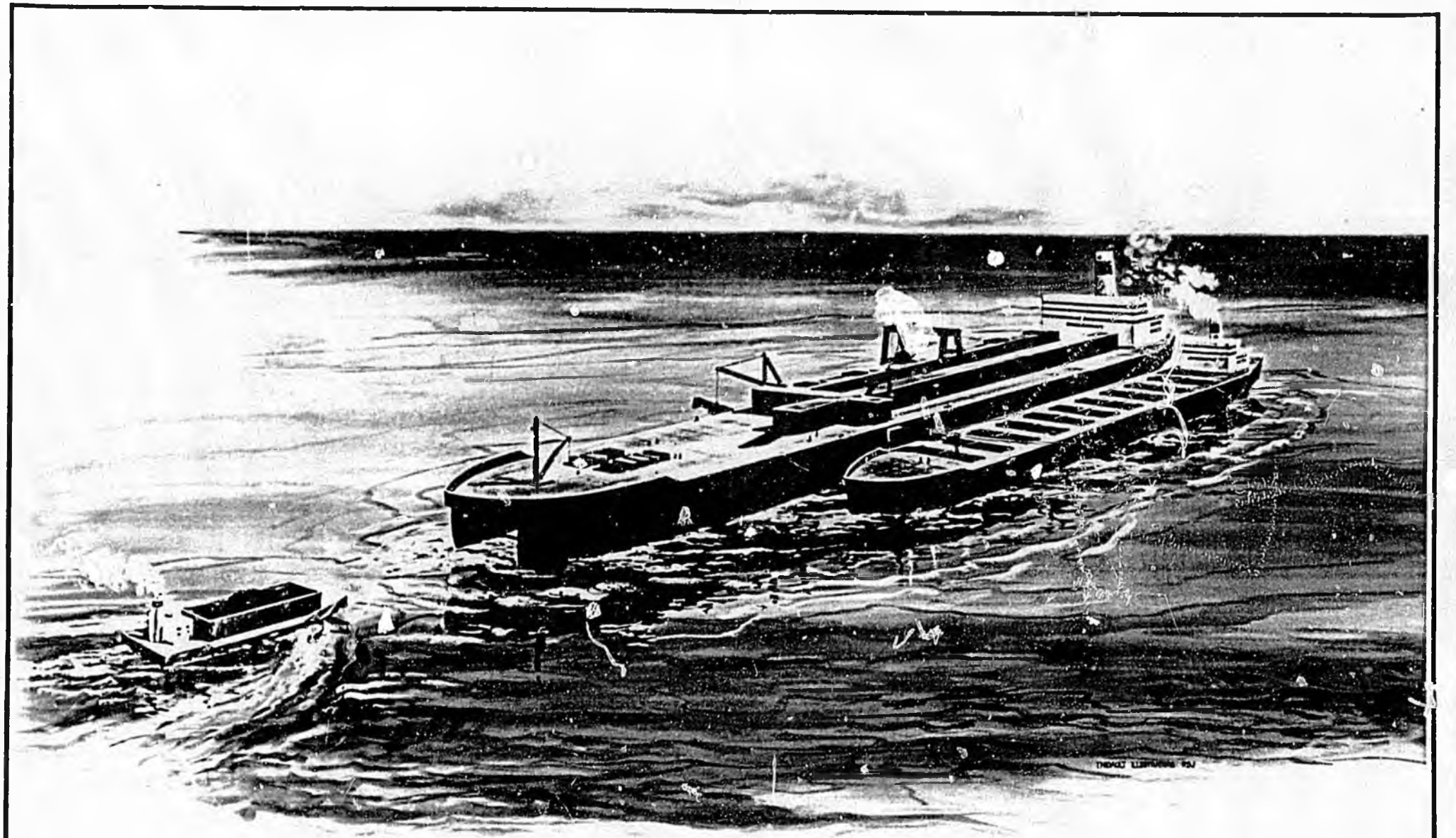


RED DOG PROJECT ACCOMMODATIONS AFTER YEAR 5

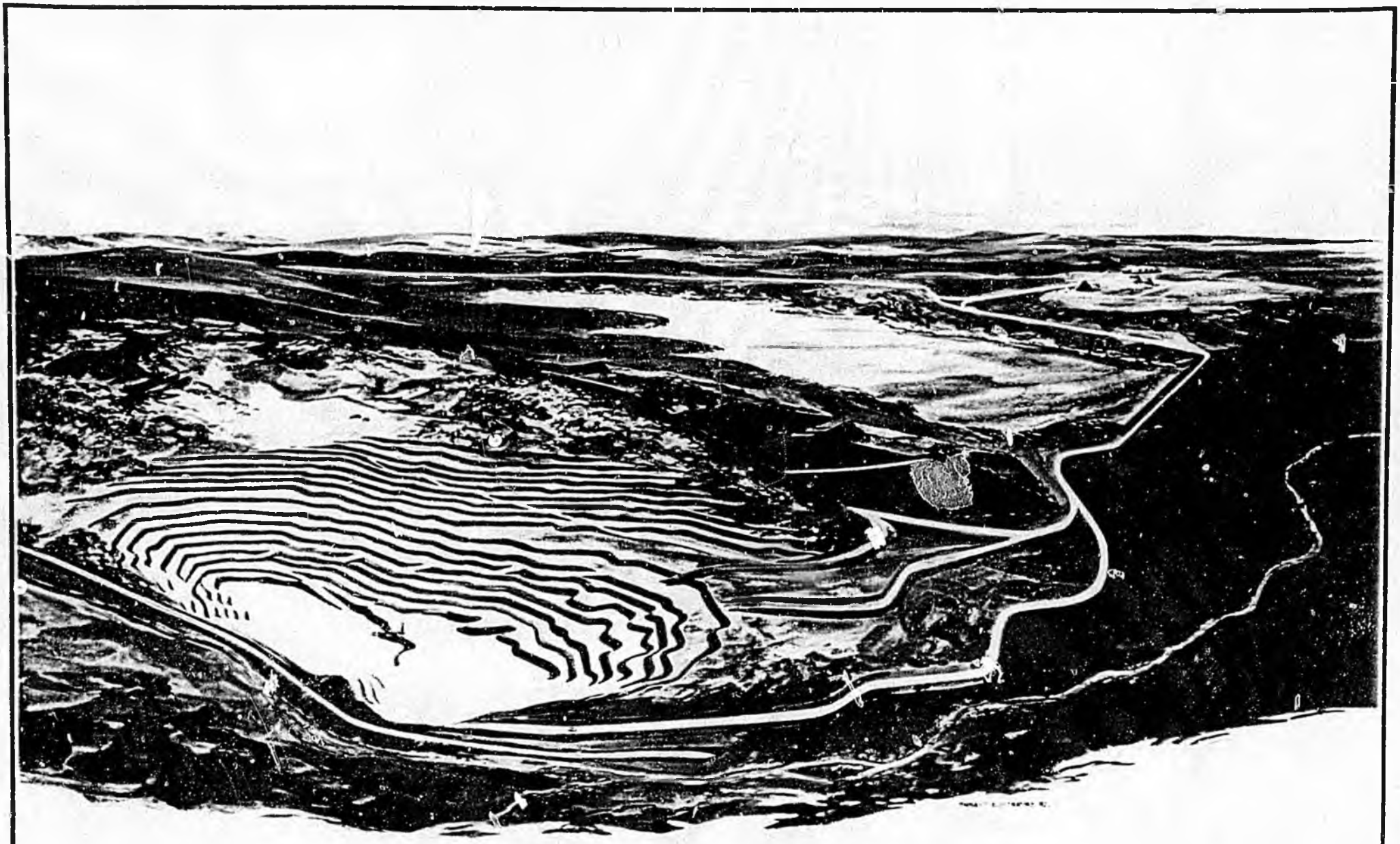

RED DOG MILL
KIVALINA RIVER
Kisimilot Mountain
Iyikrok Mountain
IKALUKROK CREEK
EVAINGIKNUIK CR
WULIK RIVER
Kikmiksot Mountain
OMIKVIOROK RIVER
IMIKRUK LAGOON
CHUKCHI SEA
KRUSENSTERN NATIONAL MONUMENT
HILLS
KIYAK CREEK
MULGRAVE
RED DOG PORT
(VABM 28)
0 5 10 Miles
Scale
NOATAK
ROAD



RED DOG PROJECT PORT SITE



RED DOG PROJECT DEEP WATER DOCK



RED DOG PROJECT MINE AREA YEAR 20

1. KEY DATA

NOTE: The following key data is based on installed plant capacities.

1.0 LOCATION

A. OREBODY/MILL COMPLEX

The orebody is located 57 miles from the Chukchi Sea, east-north-east of Kivalina at the base of Deadlock Mountain; and 90 miles north of Kotzebue.

B. SEAPORT

The proposed location of the seaport is in the vicinity of VABM 28 about 17 miles southeast of Kivalina.

2.0 CLIMATIC DATA

Date	Max. Temp (°F)	Min. Temp (°F)	Snowfall (Inches)	Max. Wind (MPH)	Hours of Sunlight
1982 Oct	+ 30	- 12	12	N @ 40	9.3
Nov	+ 30	- 20	21	SE @ 50	5.0
Dec	+ 28	- 28	7	E @ 30	0.0
1983 Jan	+ 30	- 34	1	NW @ 30-40	2.5
Feb	+ 29	- 20	1	NE @ 30	7.3
Mar	+ 33	- 10	9	NE @ 35	11.5
Apr	+ 31	- 1	3	N @ 20	15.5
May	+ 60	+ 12	--	S @ 30	20.2
Jun	+ 82	+ 22	7	S @ 30	24.0
Jul	+ 92	+ 38	--	NE @ 30	24.0
Aug	+ 59	+ 19	--	N @ 20	17.5
Sep	+ 46	+ 8	--	SW @ 30	13.5
Oct (not recorded)	--	--	--	--	9.3
Nov	+ 52	- 25	14	NE @ 50	5.0
Dec	+ 51	- 30	--	SE @ 45	0.0
1984 Jan	+ 36	- 45	10	NW @ 30	2.5
Feb	+ 5	- 48	--	NW @ 30	7.3
Mar	+ 36	- 12	1	N @ 15	11.5

3.0 ORE RESERVES

	Tons	% Pb	% Zn	oz/ton Ag
Published Data	85 x 10^6	5.0	17.1	2.4

4.0 PRODUCTION SCHEDULE

	Feed Tons		Feed Grade		Concentrate Tons/Yr			Design
Years	Day	Year	% Pb	% Zn	Pb	Zn	Total	Tons/Day
1	--	1,000,000	6	21	70,000	315,000	385,000	6,400
2 and 3	5,150	1,800,000	6	21	125,000	580,000	705,000	6,400
4 to 20	5,700	2,000,000	5	19	115,000	580,000	695,000	6,400
21 to 30	5,700	2,000,000	5	16	115,000	490,000	605,000	6,400

5.0 WORK SCHEDULES -- OPERATIONS

a) All employees:

-- 7 days per week

b) Mine:

-- 10 hours per shift, 2 shifts per day, 700 shifts/year

c) Concentrator, Power Plant:

-- 12 hours per shift, 2 shifts per day, 700 shifts/year

d) Seaport:

-- 12 hours per shift, 2 shifts per day, 240 shifts/year Summer operation.

-- 12 hours per shift, 2 shifts per day, over the Winter period.

6.0 MINE -- FACILITIES

Primary Crusher - skid mounted, 300 HP Minpro Mineral Sizer.

7.0 CONCENTRATOR

	Length feet	Width feet	Height feet	Wt. tons	Plan Area Sq. Ft.
Modular Construction					
Primary Grinding Module #1	74	63	84	900	4,662
Primary Grinding Module #2	74	63	84	620	4,662
Secondary Grinding	130	63	84	1,390	8,190
Regrind	120	63	84	1,200	7,560
Flotation Module #1	74	64	70	890	4,736
Flotation Module #2	56	64	70	720	3,584
Flotation Module #3	120	64	59	1,090	7,680
Dewatering	96	60	69	1,400	5,760
Power Plant	132	66	46	1,450	8,712
Water Treatment	120	60	59	800	7,200
Subtotal				10,460	62,746
Conventional Construction					
Mill Shop	66	63	84	--	4,158
Warehouse (utilizes space under modules)	--	--	--	--	50,600
Vehicle Repair Shop	200	80	varies	--	16,000
Subtotal					70,758

8.0 CONCENTRATE STORAGE -- MILL SITE

Dome Structure 180 ft. dia. x 70 ft. high for Zn
(adequate for 3 weeks storage)
Dome Structure 100 ft. dia. x 42 ft. high for Pb
(adequate for 3 weeks storage)

9.0 MISCELLANEOUS MILL SITE

Fuel Storage	2 x 200,000 USG
Fresh Water Storage	350,000 USG
Coarse Ore Storage	6,000 ton

10.0 THICKENER

Water Treatment	90 ft. dia.

11.0 POWER SYSTEM

Demand:	Nominal	13,900 kW ±10%
	Peak	15,300 kW

Generators:	Main	Emergency
Number of units	5	3
Cylinders/unit	6	12
BHP -- full load	5,310	
Kw -- full load/unit	3,800	500
-- total installed	19,000	1,500
RPM	600	1,800
Voltage	4,160	480

12.0 ACCOMMODATIONS

Modules	Length feet	Width feet	Height feet	Weight tons
Living (4 modules)*	144	52	50	1150 x 4
Communal	164	78	50	1400
Services	130	78	50	1100
TOTAL				7100

* Living modules will not be installed until year 5. Initial sleeping quarters will utilize the camp facilities left over from construction.

Facilities (after installation of final living modules)

- 111 single rooms
- 112 single (or 56-2 room suites), 8 two-roomed suites
- Dining capacity -- 235 people
- Gymnasium -- 90' x 78' x 24' high

12.0 ACCOMMODATIONS (continued)

AREA	SQ. FT.
Building Services	7,500
Storage	10,900
Laundry	1,100
Accommodations	59,150
Commons	39,370
Dining & Serving	3,520
Kitchen	1,600
Kitchen Storage	1,280
Administration	2,300
Infirmary	960
Gymnasium	7,000
Changerooms & Sauna	2,850
Hobby Rooms	3,800
Commissary	800
Lounges	1,970
Library	400
Radio/Communications	400
Post Office	140
Janitors' Rooms	420
TOTAL AREA	145,460

13.0 LAND TRANSPORTATION

a) Route from mine to VABM 28 through Krusenstern

Distance 57 miles
Elevation @ Mine + 1030 ft.
Elevation @ Port + 10 ft.
Maximum grade 4%
Road Width 30 ft.
No. of bridges -- 5
Passing lanes @ 2 mile intervals

b) Concentrate Haulage Trucks

6 - 700 HP tractors each with 2 side-dump or rear-dump trailers each with a 36 cu.yd. capacity.

14.0 PORT

a) Shallow Water Dock:

Sheetpile dock face in 10' water depth
Earthfill causeway 400' long

b) Deepwater Dock:

(i) Ship ballasted to seabed in 35' water depth with storage capacity for: 71,000 tons of Zn concentrate
38,000 tons of Pb concentrate
10,000,000 USG of Fuel
Deck storage for 400 - 8'x8'x20' containers

(ii) 2 - 1,000 ton self-propelled lighter barges

c) Shore Facilities:

(i) Truck dump pad and barge loading facility.

(ii) Fuel transfer tank (50,000 USG) and truck loading facility.

(iii) Accommodations for 20 - left over camp from construction.

(iv) Small 250 kW power plant.

(v) Small storage building 40' x 40'.

(vi) Powder magazine.

d) Facilities at Mile 2.5:

(i) A-frame structure 180' x 1280' x 90' high to store 480,000 tons of concentrates.

(ii) Small 250 kW plant.

15.0 WATER SYSTEM

Fresh Water Consumption

° Process	-- Avg. =	449,280	USGPD
	-- Max. =	511,200	USGPD
° Domestic	-- Avg. =	17,280	USGPD
	-- Max. =	64,800	USGPD

15.0 WATER SYSTEM (continued)

Recycled Water Consumption (from pond + dewatering) 8,534,880 USGPD

Fresh Water Supply

- Bons Creek Reservoir
- Drainage area -- 3.7 sq.mi.
- Daily usage -- 501,120 USGPD
- Dam height -- 37 ft. (30' for minimum storage)
- Dam crest length -- 280 ft.
- Total storage -- 630 ac.-ft.
- Live storage -- 246 ac.-ft.
- Dam crest elev. -- 852 ft.
- Normal water surface elev. -- 845 ft.

Fresh Water Facility Specs.

- Floating raft -- 16 ft. x 9 ft.
- Pumps: Type -- Vertical turbine
  No. -- 2 operating and 1 standby
  HP -- 75 each pump
- Pipeline: Material -- high density polyethelene (SCLAIR)
  Length -- 18,000 ft.
  Diameter -- 10 in. to main storage tank
  Heat Tracing -- 110 volt
  Insulation -- 2 inch styrofoam

Fresh Water Tank

- Elevation -- 1,030 ft.
- Dimension: Diameter -- 45 ft.
  Height -- 30 ft.
- Volume -- 350,000 USG

16.0 TAILING SYSTEM

	% Solids	Volume
Tailing -- from process to pond	18	4,208,000 USGPD

Tailing Embankment:

- Height -- 150 ft.
- Length -- 2,200 ft.
- Fill Volume -- 255,000 cu.yd. starter dam (2 million cu.yd. to Elev. 950)

Tailing Impoundments @ 950 Elev.

- Area -- 25,472,000 ft^2
- Volume -- 29,860 ac.-ft.

Tailing Facility Specs.

- Tailing line:
  - Material -- H.D.P.E.
  - Length -- 3,500 ft.
  - Diameter -- 14 inches
  - Insulation -- 2 inches styrofoam

I. BACKGROUND

To help understand the Alaska Industrial Development Authority's (AIDA) potential role in the DeLong Mountains transportation project, some history is useful. Prior to 1984, AIDA could not have participated in projects such as that contemplated for the DeLong Mountains, in that State law did not permit AIDA to own projects, except in cases of default. Rather, what AIDA could do then, and still does now, is to issue tax exempt industrial development bonds to assist private investors in the financing of a variety of projects. AIDA has been very successful in this role, having issued over $700 million worth of tax exempt revenue bonds during the past few years. However, despite this success AIDA still could only play a passive role, in that AIDA could neither initiate or own projects.

During the 1984 legislative session, both the Governor and the Legislature decided that a more active State participant was needed for certain economic development projects. Many proposed developments are likely to be of a joint public-private nature, because of resource ownership, access, and so forth, hence an active state representative is needed. This is especially true if it appears that the State will become involved financially. For instance, in many situations, new infrastructure facilities have to be constructed before development can proceed. Although these facilities are, by and large, the responsibility of developers as a group, they are not necessarily the responsibility of any single developer. And, if the cost of providing the required infrastructure facilities has to be borne by one developer, it may be that these costs, in addition to the developer's other costs, are simply too much for the proposed project to bear, so the development does not proceed. In such cases, it may be appropriate for a governmental entity to construct the necessary infrastructure facilities, and then charge fees to all users to pay for the facilities. Furthermore, if the State decides to participate financially in providing these infrastructure facilities, it is much easier to do so via a governmental entity as opposed to directly with a private developer.

Of course, State government should not get involved in a development project simply because it is difficult for the developer to pay for some costs. Rather, State involvement should be based upon the benefits of the project to all Alaskans. In light of the State's almost singular dependence upon the petroleum industry, development of new, non-petroleum based or dependent industries is of critical importance. Further, when evaluating a proposed new development, it is important to keep in mind the total impact of that project or development. Generally the project is being evaluated during its start-up phase, where costs are significant and revenues are, at best, just starting. Since the State is concerned with the future economic situation, as well as the present, the benefits to the State over the long term must be given adequate weight, rather than focusing strictly on short term return.

II. WHY IS AIDA INVOLVED

The question remains, why did the Governor and the Legislature decide AIDA should have the ability to actively become involved in infrastructure projects such as discussed above. Although there may be other reasons, at least some of the major factors were:

(1) AIDA is a known, existing entity that has an independent legal existence from the State, but is still controlled by the State.

(2) AIDA can (and does) issue debt that is separate and distinct from the State.

(3) AIDA has experience with complex projects.

(4) AIDA has extensive experience with financing and bonding, particularly tax exempt bonding.

As a result, in 1984 the Legislature passed Chapter 162, which broadened AIDA's ability to participate in economic development projects. As well as expanding AIDA's powers, Chapter 162 also established a new fund in AIDA, the Economic Development fund, that is legally and financially separate from the Authority's existing fund. It is through this new fund that AIDA can exercise its new powers to:

(1) own and operate certain types of projects;

(2) charge user fees for these projects;

(3) issue debt for these projects; and

(4) accept state loans or grants for these projects

III. AIDA AND THE DELONG MOUNTAINS TRANSPORTATION PROJECT

Because of AIDA's newly acquired abilities, the decision was made to involve the Authority in the DeLong Mountains transportation project. The transportation project itself consists of a port and a 55 mile road in the western DeLong Mountains area, near Kivalina. The cost of the port is estimated at $65 million, and the cost of the road is estimated at $85 million, for a total estimated cost of $150 million for the project, with all figures in 1985 dollars. Although this region is a heavily mineralized area, only one mine site is presently close to going into production. This is the Red Dog deposit, a zinc, lead and silver deposit being jointly developed by Cominco Alaska and the NANA Regional Corporation. Other major deposits are known, such as GCO Mineral's Lik deposit, but development of these are thought to be five years or more behind Red Dog.

What is being considered at this time is to have AIDA construct the transportation project, and then charge fees (or tolls) to all users. At first, it is expected that Cominco Alaska would be the only significant user, but eventually other users are expected.

At this time, AIDA's continued involvement and eventual completion of the project looks favorable, however, no final "go-no go" decision has yet been made. Prior to making a final decision, the Authority has to prepare a Finance Plan, as prescribed by AS 44.88.173.

The Finance Plan has to identify the operational and capital costs of the project, and identify where all revenues will come from to pay these costs. The Finance Plan will offer a variety of financing options, with at least one of the options being that approach which minimizes any cost to the State. In preparing a Finance Plan, AIDA has identified the following guidelines:

(1) attempt to minimize the total costs of the project;

(2) minimize any State General Funds required;

(3) make maximum use of tax-exempt financing;

(4) design a plan that has the optimum chance of completing the project as expeditiously as possible; and

(5) never allow the State or AIDA to be in the position of having a completed project without a user, unless the State and AIDA are reimbursed for their investments.

IV. WHAT HAS OCCURRED TO DATE

Since AIDA became involved with the transportation project in the summer of 1984, a number of activities have occurred.

(1) A Resolution of Intent has been executed between the Department of Commerce and Economic Development and Cominco Alaska (Appendix A).

(2) An RFP for the Finance Plan (required by 44.88.173) has been prepared and distributed (Appendix B). A draft report is due this session of the Legislature. The statute requires that a Finance Plan be prepared and presented to the Legislature, the Governor and the State Bond Committee before issuing bonds or otherwise incurring debt for the project. It also mandates, among other things, that if a project requires financial assistance from the State, the state financial assistance must be available before bonds are issued for the project.

(3) An RFP for civil engineering services to verify cost figures for the road and port has been prepared and distributed.

(4) The Authority has assembled a team of legal and financial experts to assist with the project.

(5) Much attention has been focused on how to finance the project. For AIDA to build the project, it will need to have $150 million to pay for construction. These funds can come from a variety of sources, with the most likely ones being tax exempt revenue bonds, state loans to AIDA, and possibly state grants. A number of differing financial scenarios have been considered, all of which have indicated the need for some initial state financial involvement, for instance loans to AIDA.

(6) Last year the Legislature appropriated $3.4 million to AIDA for the project. To date, it has been used for the following items:

(1) Finance Plan costs of between $250,000 - $300,000
(2) Engineering services of $50,000 - $100,000
(3) Miscellaneous AIDA expenses of approximately $10,000

The remainder is available for various aspects of the DeLong Mountains transportation project consistent with the appropriation and finance plan.

(7) An additional $18 million request for a state loan to AIDA has been included in the Governor's FY86 Budget Request. As noted above, all analysis to date indicates the need for state loans, and this would constitute the initial capitalization.

V. WHAT IS PLANNED FOR THE FUTURE

The goal of this project is to allow development and production of the mineral resources of the western DeLong Mountains, along with the new employment and new economic activity that would result. Since this is a new (non-petroleum dependent) industry that will provide economic benefits to Alaskan citizens and State government over a long period, AIDA is eager to proceed with the project, assuming a suitable financial arrangement can be achieved. Although, of course, no results from the Finance Plan RFP are available yet, both the Department of Commerce and Economic Development and AIDA have made some initial calculations with respect to financing and costs and revenues associated with the transportation project. At this stage, under a range of different assumptions and alternatives, it is inevitably the case that State financial assistance is required, at least initially, if the transportation project and mineral development are to occur in the near future. The details of how much assistance would be required, and under what terms, will be provided in the Finance Plan. AIDA is continuing to meet with Cominco Alaska and NANA to devise an approach that minimizes any required financial assistance from the State, but still allows the project to proceed in an expeditious manner.

In closing, one seeming inconsistency needs to be discussed. The transportation project is being acclaimed as being part of a new self-supporting economic development project that will bring jobs, tax revenues, and increased economic activity to Alaska, yet a major part of this, and other discussions on the project center on the need for State financial assistance. While it is true that the project definitely appears to need State assistance, at least initially, to fairly appraise the true impact and value of the project, one must consider both the broad geographic and duration of the project. This infrastructure project will facilitate development of not just Red Dog, but also other mineral resources in the area. Further its benefits are by no means short term, but rather should go o for decades. So although there appears to be an initial financial need, when viewed in this broader perspective, available information suggests that the State may receive its initial investment back many times over. Indeed, the State's ultimate decision regarding financial involvement should consider all of these broadly based factors, and then proceed only if, in this broad perspective, it is a "good deal" for the people of Alaska.

APPENDIX A

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

7TH FLOOR FRONTIER BLDG.
3601 C STREET, SUITE 722
ANCHORAGE, ALASKA 99503
PHONE: (907) 562-2728

RESOLUTION OF INTENT

WHEREAS, the State of Alaska encourages the diversification of the Alaska economic base through the development of mineral resources; and

WHEREAS, the State of Alaska supports economic development in Alaska and the expansion of regional job opportunities; and

WHEREAS, the State of Alaska recognizes that the lack of transportation facilities in Northwest Alaska poses an economic barrier to the attainment of economic development; and

WHEREAS, the Alaska Department of Commerce and Economic Development is the principal state department responsible for facilitating economic development in all regions of the state; and

WHEREAS, Cominco, Alaska, a division of Cominco, American is considering the development of the Red Dog mineral deposit in the DeLong Mountains area; and

WHEREAS, other mineral resources have been identified in the area near the Red Dog mineral deposits; and

WHEREAS, the Alaska Department of Commerce and Economic Development, in a report entitled Red Dog Project Analysis, identified substantial regional benefits in the event that the DeLong Mountains transportation project is developed; and

WHEREAS, the projected cost of the development of the Red Dog mineral site, excluding the cost of developing transportation facilities, is estimated to be $290 million (in 1985 dollars); and

WHEREAS, the projected cost of the transportation facilities is estimated to be $152 million (in 1985 dollars); and

WHEREAS, the lack of available transportation facilities near the mineral deposit may substantially delay private development of the Red Dog mineral deposit; and

WHEREAS, it is contrary to the best interests of the state for there to be a substantial delay in the development of the DeLong Mountains mineral resources and, in particular, in the development of the Red Dog mineral deposit; and

WHEREAS, the transportation facilities which, among other public purposes, would be used in conjunction with the development of the Red Dog mineral deposit are collectively referred to as the Delong Mountains transportation project; and

WHEREAS, the Alaska Industrial Development Authority (AIDA), a public corporation of the State of Alaska has authority under Alaska Statutes Title 44, Chapter 88, to participate, either independently or in conjunction with a private developer, in the financing and development of public transportation facilities such as the DeLong Mountains transportation project;

NOW THEREFORE BE IT RESOLVED that Cominco, Alaska and the Alaska Department of Commerce and Economic Development, on behalf of the State of Alaska, agree to the following STATEMENTS OF INTENT:

1. The State of Alaska supports ongoing efforts by the Alaska Industrial Development Authority to examine the feasibility of AIDA financing of the DeLong Mountains regional transportation project.

2. The parties recognize and support AIDA's intent to promptly execute all necessary professional services contracts, including a contract with a firm nationally recognized in the field of financial planning, to assist in the preparation of the financial plan required pursuant to AS 44.88.173.

3. If AIDA participates in the financing of the DeLong Mountain transportation project, the parties agree that AIDA and Cominco, Alaska will enter into an agreement which will provide, inter alia, for the establishment of equitable user fees payable to AIDA in an amount sufficient to enable AIDA to repay amounts loaned by the state to AIDA; and for the refunding of certain state expenditures in the event that Cominco, Alaska decides not to proceed with the development of the Red Dog mineral deposit.

4. The State of Alaska states its intent to submit appropriate funding requests to the Alaska legislature in support of the DeLong Mountain transportation project.

5. The State of Alaska and Cominco, Alaska recognize that this Resolution of Intent does not limit or otherwise affect AIDA's Board of Directors' independent judgment with respect to AIDA's participation in the DeLong Mountain transportation project, nor does this Resolution of Intent limit or otherwise affect the independent judgment of the Alaska legislature upon its consideration of funding requests.

Date: Dec 18/1984

H. M. Giegerich, President
Cominco, Alaska

Date: Dec 17, 1984

Richard A. Lyon, Commissioner
Department of Commerce and
Economic Development

APPENDIX B

REQUEST FOR PROPOSAL FOR FINANCE PLAN

The Alaska Industrial Development Authority is inviting proposals to assist in preparation of a finance plan for a proposed transportation project in the DeLong Mountains area.

This RFP does not in any way obligate the Authority to reimburse recipients of this RFP for any costs incurred in the preparation of a proposal. The Authority reserves the right to reject all proposals. The Authority may request some or all respondents to clarify or supplement their proposals through additional written submission. All respondents will be notified in writing of the acceptance or rejection of their proposal.

I. Introduction and Explanation of Project

A. Alaska Industrial Development Authority:

The Authority was created by the Alaska Legislature in 1967. The purpose of the Authority, as stated in the Act, is to promote, develop and advance the general prosperity and economic welfare of the people of the State of Alaska, and to relieve problems of unemployment. In 1982, the Authority's enabling legislation was amended to add to its purpose the promotion, development and maintenance of an adequate supply of multi-family housing projects. Under legislation enacted in 1984, the Authority may acquire, manage and operate certain types of projects which the Authority considers necessary or appropriate to serve a public purpose. Under the newly enacted statutory authority, the Authority is presently reviewing the possibility of financing and constructing a transportation project in the DeLong Mountains area.

B. The Proposed Transportation Project

The proposed transportation project (sometimes also referred to herein as "the project") consists of two components; (1) a 55 mile segment of road, commencing near the Red Dog mine site and going to tidewater, and (2) a port, including shore facilities. The intent of the transportation project is to provide the necessary infrastructure to encourage mining development and regional port in the western DeLong Mountains area, in northwest Alaska.

The entire western DeLong Mountains is believed to be heavily mineralized. One mine site in particular has been extensively explored, and it is understood that this particular mine would be the initial user of the proposed transportation project. This mine would be based upon the Red Dog zinc, lead, and silver deposit. The Red Dog deposit is one of the richest in the world, having indicated reserves of 85 million tons of ore with an average grade of 17.1% zinc, 5.0% lead, and 2.4 ounces per ton silver. The mine would be developed as a joint project involving Cominco Alaska and the NANA Regional Corporation. The mine site itself would be developed by Cominco Alaska without any state involvement.

The transportation project would be owned and operated by AIDA. Users, such as Cominco Alaska would be charged a fee for use of this transportation system.

C. The Finance Plan

Before AIDA can proceed with a project which it intends to own and operate, it must first prepare a finance plan. The requirements of the finance plan are listed in AS 44.88.173, which is reproduced below. The purpose of this RFP is to fulfill the requirements of AS 44.88.173.

Sec. 44.88.173. Finance plan.

(a) Before approving a project financed under AS 44.88.172, the authority shall prepare a finance plan. The finance plan must include an estimate of the total cost of the project, and a description of the sources of money that will be used to finance the total cost of the project. The finance plan must also include an estimate of the operational costs of the completed project, as well as a description of the source of the money that is to be used to pay the operational costs.

(b) The authority shall give preference to a project that does not require financial assistance from the state. If the authority determines that a project requires state financial assistance, and if the authority further determines that it is desirable to finance the project, the authority shall recommend a method of financing that minimizes cost to the state. A finance plan required under (a) of this section must identify the method of financing that minimizes the cost to the state.

(c) The authority shall submit a finance plan prepared under this section to the state bond committee, the governor, and the legislature before issuing bonds or otherwise incurring debt for the project. If a project requires financial assistance from the state, the state financial assistance must be available before bonds are issued for the project. (¶ 8 ch 162 SLA 1984)

II. Terms & Conditions of Performance

A. Your proposal should be submitted with the understanding that it may form a material part of any subsequent contract. Your proposal should be complete as to all terms and conditions. After the contractor is selected the Authority may negotiate a contract with conditions considered in the best interest of the Authority. All terms and conditions must remain a firm offer for a period of not less than 60 days.

The proposal is due by February 15, 1985 (see Submission of Proposal section for details). The Authority expects to select a successful contractor by February 22, 1985. A complete first draft that is available and suitable for public distribution and comment must be completed by April 15, 1985.

Please note that the contract will not take effect until approved by the Commissioner of the Department of Administration pursuant to Alaska Statutes 36.98.040 (c).

B. Preparation of the finance plan requires the use of certain cost figures. In general estimates of these cost figures should be available from Cominco Alaska via the Authority. Some of these estimates will have been verified by the State Department of Transportation and Public Facilities, and/or by an independent contractor. It is not the intention of the Authority that a contractor employed as a result of this RFP prepare totally independent estimates of germane cost figures. Rather, a contractor should verify that cost estimates provided are reasonable, or make any modifications which the contractor believes are appropriate.

III. Scope of Services

A. Costs of the Project

1. Capital Costs: The contractor should provide an estimate of the capital costs of the project, broken down by major component.

2. Operational & Maintenance Costs: The contractor should provide an estimate of the Operational & Maintenance costs of the project, including an estimate of cost sensitivity to different use factors.

3. All estimates should be provided in 1985 dollars, and relevant cost escalators should be provided so that cost figures can also be estimated in future years dollars.

B. Revenues of the Project

1. The revenues of the project will be provided by fees charged to users of the project. All user fees should be in dollars per ton of ore shipped through the project, unless otherwise stated. Since no final user fee structure has been adopted by the Authority, alternative possibilities need to be examined. These alternatives must consider, at a minimum, the cases listed below.

   Some of the alternatives will require information specific to the proposed Red Dog mine. The contractor should assume that Cominco Alaska will, through the Authority, provide estimates of the capital costs and operational costs, including transportation costs, of the proposed mine, as well as estimates of ore production and the resultant concentrate tonnage that would be transported through the proposed road and port. A contractor may use these figures, or provide alternative figures.

2. The first set of alternatives assumes that the State will provide no financial assistance for the project. Since Cominco Alaska will be the initial user, baseline revenue projections should be based on Red Dog mine ore shipments. The contractor should provide estimates of different user fees, based upon: a range of price assumptions for zinc; a range of rates of return on investment to Cominco Alaska; a range of cost of capital to AIDA; other options deemed pertinent by the contractor.

3. The second set of assumptions assumes that the State is willing to make an unspecified amount of subsidy to the project, both to encourage its early completion and to account for its regional benefits. In this case, the contractor should select what it believes to be the "minimum rate of return on investment" required to induce a mining firm such as Cominco Alaska to make a major mining investment such as the Red Dog mine. More than one value may be selected for the "minimum rate of return", if the contractor believes a range of estimates would present a more accurate picture. Given this "minimum rate of return", the contractor is to estimate the amount of subsidy (if any) on the transportation project needed to cause the investment to be made. This should be estimated under a range of alternatives based upon differing assumptions for the: price of zinc; cost of capital for AIDA; other options deemed pertinent by the contractor. For all of the various alternatives estimated above, the contractor should indicate the cash flow to the project and the implied user fee structure of this cash flow. For any given level of subsidy, the contractor should indicate how the rate of return to the mine investor is affected depending upon whether this subsidy is used to offset the construction cost of the transportation project, or is reflected in deferred imposition of user fees on the project, or some combination thereof.

4. A proposal has been made to charge a certain user fee schedule to Cominco Alaska for its use of the proposed transportation project. This proposal will be made available to the successful contractor.

   Using the proposal and using the assumptions of the earlier alternatives with respect to costs and production, the contractor is to estimate: the implied rate of return to Cominco Alaska on its mine investment, and the amount of subsidy, if any, implied in the proposal. The contractor should state specifically what assumptions are being used for key variables (e.g. price of zinc) in this analysis, and further should discuss how sensitive the results are to changes in these key variables.

5. There are potential users of the transportation project other than Cominco Alaska for the Red Dog mine. The contractor should demonstrate how the above results would change if other users were to utilize the transportation system. Estimates of the production volume attributable to other users will be available from AIDA, however an independent estimate should also be made by the contractor.

C. Financing Options

1. The intent of the Finance Plan is to develop a financial plan that will provide adequate resources to enable a project to be undertaken and completed, while at the same time minimizing the costs both to the State and to the proposed project. As such, any proposed plan that will not realistically provide for enough resources to complete the proposed project is, by definition, not a Finance Plan.

2. The contractor should examine the question of debt financing for the project. At a minimum, the following questions should be answered:

- What forms of debt financing are available, and under what conditions?

- From a financial perspective, how much of the proposed project can be debt financed, and under what conditions?

- What types of security will be required for debt financing, and what are the possible interest rates for various types of financing?

3. If State financial assistance is required, it could come in a variety of forms. The contractor should consider different types of State assistance, such as a cash grant, low or deferred interest loans, appropriation of capital reserve funds, and so forth. The attributes of different types of assistance should be discussed, included specific advantages and disadvantages to the State, or to the financial feasibility of the project.

4. The contractor should consider these various financing options for both the construction phase, and the term financing. That is, one type of financing may be more appropriate during construction, whereas a different option may be better for term financing.

D. Presentation of Alternative Finance Plans

1. The contractor is to provide a series of alternative total Finance Plans. The term total Finance Plan refers to including financing during construction as well as term financing. At a minimum, the contractor must include as alternatives: (1) The Finance Plan involving the minimum cost to the State; (2) the option proposed by Cominco Alaska; and (3) an option that utilizes the maximum possible tax exempt bonding. Other options having particularly favorable attributes should also be included, up to a maximum of eight alternative Finance Plans.

2. The advantages and disadvantages of each plan should be discussed. At a minimum, each plan should include the total costs of the project; the costs, if any, to the State; the estimated rate of return to Cominco Alaska; the proposed cash flow and user fee structure; and explicit listing of key assumptions.

3. The models used to develop these alternatives must be available at no additional costs to the Authority. If requested by the Authority, the contractor will make these available in a computer ready manner that can be loaded on the Authority's equipment (see Appendix A).

E. Presentation of Results

An integral part of this study is satisfactory presentation of findings. These presentations would include at a minimum interim reports as requested by the Authority, an initial completed draft report, and a final report. In addition, the contractor must be available to make presentations to the Governor, other members of the administration and to various legislative committees during, and after, the course of the study.

F. Fees

A contractor should provide a fixed price bid for the entire contract. Also, an hourly charge should be provided for any work done at the request of the Authority after the completion of the project described in this R.F.P. The Authority has budgeted approximately $250,000 to $300,000 for this study.

IV. Method of Evaluation

An evaluation system will be utilized to review the proposals. The factors to be considered will consist of:

(i) a work plan which addresses the scope of services set forth in Section III of this RFP

(ii) proposed staff;

(iii) experience of respondent in performing an analysis of the feasibility of comparable capital facilities; and

(iv) availability of respondent to confer with staff of the Authority and to complete the feasibility study within the contemplated time frame.

In addition, the Authority may elect to conduct oral interviews with some or all of the respondents, and if oral interviews are conducted, the interviews will be considered in the award of the contract.

V. Submission of Proposals

Proposals may be submitted by providing 6 copies of your proposal to:

Bertram L. Wagnon, Executive Director
Alaska Industrial Development Authority
1577 "C" Street, Suite 304
Anchorage, Alaska 99501

Proposals must be received at the offices of the Alaska Industrial Development Authority, 1577 "C" Street, Suite 304, Anchorage, Alaska, 99501, no later than 3:00 p.m. on February 15, 1985. The proposer is solely responsible for the delivery of their proposal and proposals received after the above date and time will be rejected.

Each proposal should be clearly marked "Proposal to the Alaska Industrial Development Authority" on its outside cover. All proposals will remain sealed and unopened until after 3:00 p.m. on February 15, 1985.

APPENDIX A

TECHNICAL SPECIFICATIONS

COMPUTERS:	WANG VS 80	with a 308K-Byte Diskette Drive (S.S.,S.D.) and a Phoenix Disk Drive (75M Fixed Disk & 15M removable pack).
	WANG PC	5 1/4 inch, 360KB Diskett Drive, 256 KB or RAM and Asynchronous Serial Communications Port.
MODEMS:	RACAL VACIC	Full Duplex, 0 to 300 BPS, Asynchronous Full Duplex, 1200 BPS, Asynchronous or Synchronous Half Duplex, 2400 BPS, Synchronous
TELECOPIER:	XEROX 295	Group three digital facsimile, 9600 BPS with automatic fall-back to 7200/4800/2400 BPS based on line quality; transmission speed of 25 seconds average.

Geoffrey G. Snow, President

Noranda Exploration, Inc.

Joint Resources and Special Committee on Loans

Briefing

Friday, February 8, 1985

Mr. Chairmen, members of the committee - Thank you for the opportunity to brief you today. Noranda Exploration, Inc. is the wholly-owned subsidary of Noranda Inc. Noranda Inc. is a major Canadian mining company and a major zinc producer. Noranda mines produce (in 1982) about 625,000 tons of zinc per year, or close to 15% of world consumption. Zinc is important to Noranda's earnings. A 10% change in the price of zinc (4¢ today) affects Noranda's earnings 30%.

I am employed because Noranda's mines are being depleted. In order to survive, a mining company must replace material mined-out. Noranda can look any were in the world, but our organization has focused on the western Brooks Range. We have just concluded an agreement with GCO Minerals that permits us to examine a large claim block in the DeLong Mountains.

Why did we select the DeLong Mountains? Figure 1 shows where zinc has been mined. Most was from the Mississippi Valley. We are not looking there because, at today's prices and costs, the 6% average grade is not attractive.

Further we think the environment labled volcanic-exhalitive has greater potential. Figure 2 shows where reserves are.

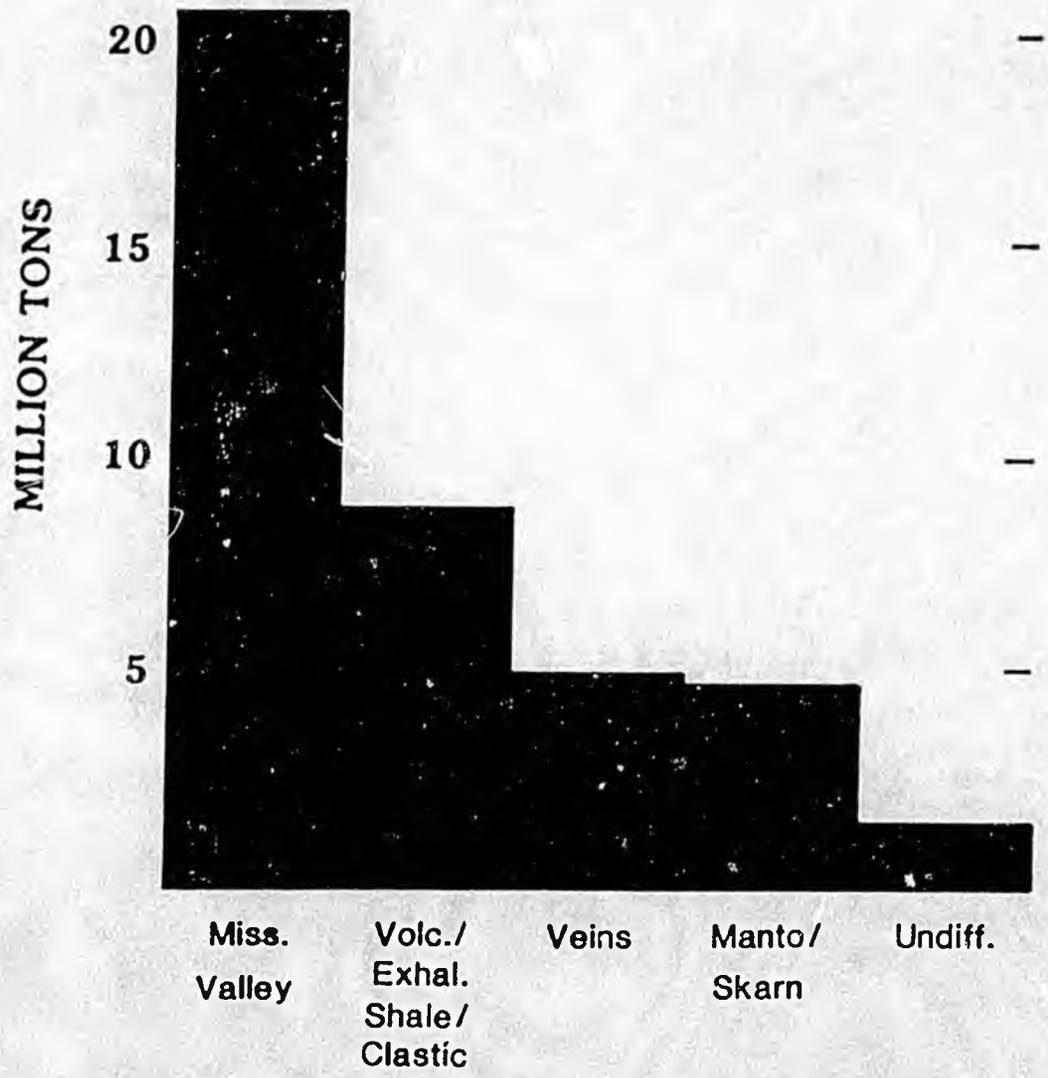
The Red Dog geologic environment is analogous to others in the world, for example the Selwyn Basin of the Yukon. There 10 deposits, ranging in size from 20 to 100 million tons, are in similar rocks over a length of 200 miles.

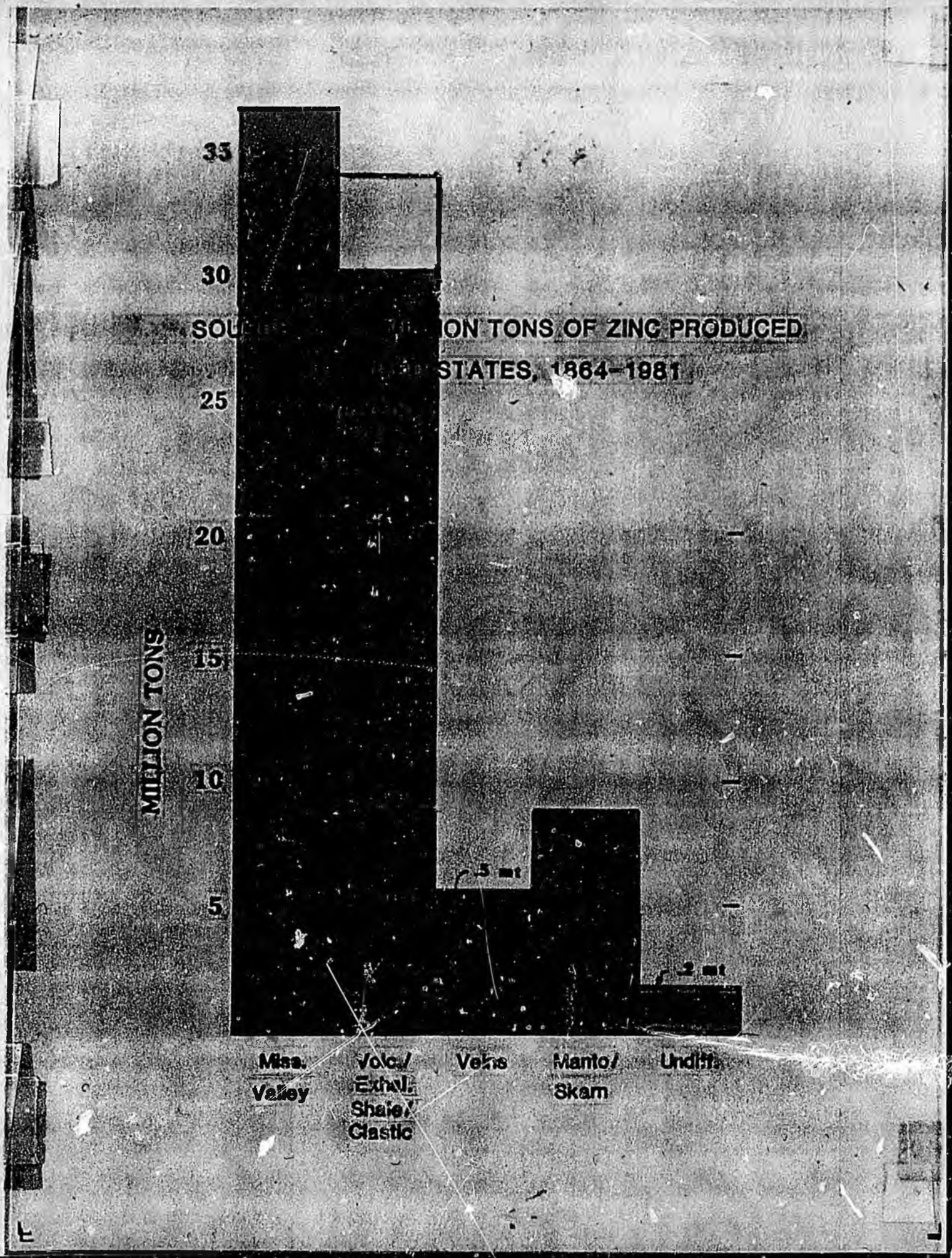
The point for me as an exploration geologist and for you as legislators is that deposits of this type occur in clusters. Noranda hopes to discover others in the Red Dog-Lik cluster.

We are not looking in the Yukon because that is too far from tide water. We are attracted to the DeLong Mountains because tide water is close. We are attracted because there is the possibility of a road to that water. We are attracted because Alaska's tax structure does not penalize those who produce.

The viability of mining operations is directly related to the capital required. A road into the DeLong Mountains will encourage exploration. Because of the clustering nature of deposits of this type, discoveries will hopefully result. Once started the DeLong Mountain zinc belt can provide long term employment, social benefit and new wealth to Alaska.

SOURCE OF 42 MILLION TONS OF ZINC PRODUCED
IN THE UNITED STATES, 1864-1981





SOU ION TONS OF ZINC PRODUCED,
STATES, 1864–1981

David S. Kennedy
Senior Geologist
GCO Mineral Company

Joint House Resources Commmittee and
House Special Committee on State Loans
Committee Hearing

Friday, February 8, 1985

Mister chairman, members of the committee:
On behalf of GCO Minerals Company, I appreciate this opportunity to testify before you in support of an important mine development in Alaska. My name is David Kennedy, and I am a Senior Geologist for GCO. First of all, let me provide a brief background of GCO Minerals Company. GCO is a wholly-owned subsidiary of International Paper Company. International Paper Company, one of the largest wood products companies in the country, provides the wood products component of the Dow Jones Index. Annual sales in 1984 were in excess of four billion dollars. Until the Native Claims Settlement Act in Alaska, IP was the largest private land owner in the country. IP is still one of the largest private owners of real estate in the world, owning approximately seven million acres of timberland in the U.S.

To help illustrate the magnitude of probable mine development in northwestern Alaska, in addition to Red Dog, I would like to

give a very brief review of GCO's DLM project and then provide some order-of-magnitude operational and financial data for the Lik deposit.

GCO has carried out exploration in Alaska since 1969 and has conducted a continuous exploration program in the DeLong Mountains region since announcement of significant lead-zinc mineralization at Red Dog on D-2 lands in 1976. To date, GCO has expended approximately twenty million dollars on this project, delineated significant zinc-lead ore reserves in the Lik deposit which is located approximately twelve miles northwest of Red Dog and maintains over 6,000 federal and state mining claims. These mining claims contain other good mineral showings which occur within ten to fifteen miles of the proposed right-of-way. An agreement between GCO and Noranda Exploration for further aggressive exploration on these mineral claims has been recently consumated.

Prior to 1984, over 100 holes totalling more than 60,000 feet were drilled on the Lik deposit. Ore reserves indicated by this drilling were approximately 25,000,000 tons containing 12% combined zinc and lead with approximately 2 oz/ton silver. Exploration drilling this past summer resulted in the discovery of an extension to the known deposit which we feel confident will double the present reserves.

Conceptual engineering design and order-of-magnitude feasibility studies have been carried out for the Lik deposit.

These studies indicate a mine operation with the following parameters:

1) A mine operating at approximately 5,000 tons per day. Initial production will come from a small open pit with an underground mining system being introduced in later years.

2) Capital costs exclusive of a road and port would be in the order of 300 million dollars.

3) Concentrate production would be in the range of 275,000 to 350,000 tons per year with higher production occurring in early years due to selective mining of higher grade reserves near the surface.

4) The Lik operation would be connected to the DeLong Mountains Transportation system by a spur road 14 to 25 miles in length.

5) Direct full-time employment generated by the Lik operation will be in the order of 300 jobs at start-up with an additional 20% added at the point of phasing-in the underground operations.

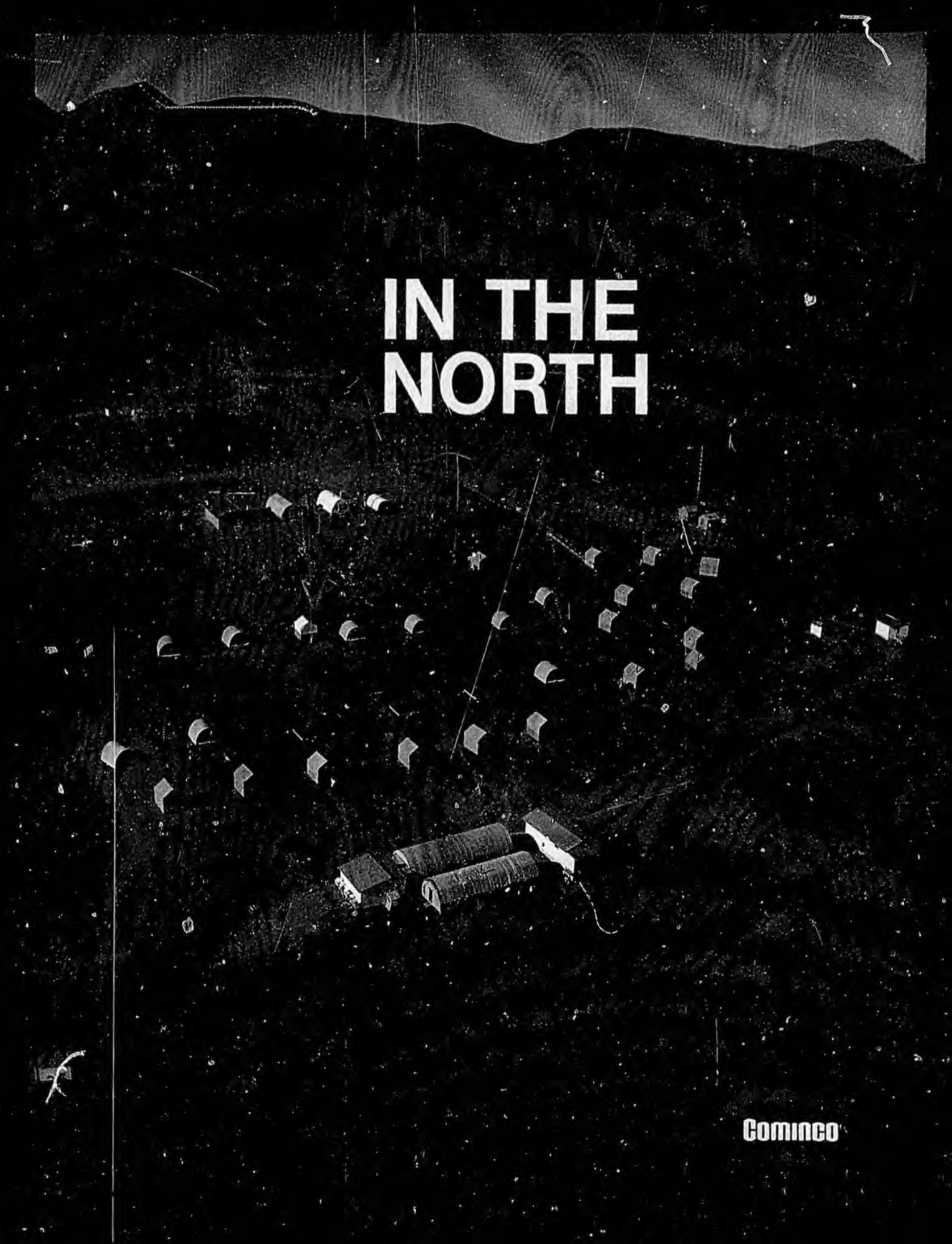
6) The importance of the 1984 exploration results is a potential increase in mine life to at least 30 years.

We have not at this point calculated a dollar value for the benefits that will accrue to the state from this additional mine development. However, implications from the Lik conceptual mine plan in addition to those previously stated for the Red Dog mine clearly show long term economic benefits for Alaska.

There is no question that state aid in financing of the road and port will speed the development of Red Dog and make possible additional mine developments such as Lik in the region. We are confident that the road and port will make the Lik deposit economically viable. The importance of the road and port project and the Red Dog mine to mine development in Alaska can be illustrated by an analogy with north slope oil development. Red Dog would be analogous to Prudhoe Bay development in the mid 1970s, and subsequent development of the Lik deposit and others would be analogous to development of the Kuparik, Milne Point and Endicott reservoirs.

In conclusion, GCO strongly endorses the Red Dog Project, as it will be the first major mine development in Alaska in over 50 years. In view of Cominco's unparalleled experience in mine development in arctic environments, the Red Dog project should set a very positive precedent for mine development in Alaska and is thus deserving of broad support from the state and the public. GCO believes that the state involvement in the development of the DeLong Mountains Transportation system will

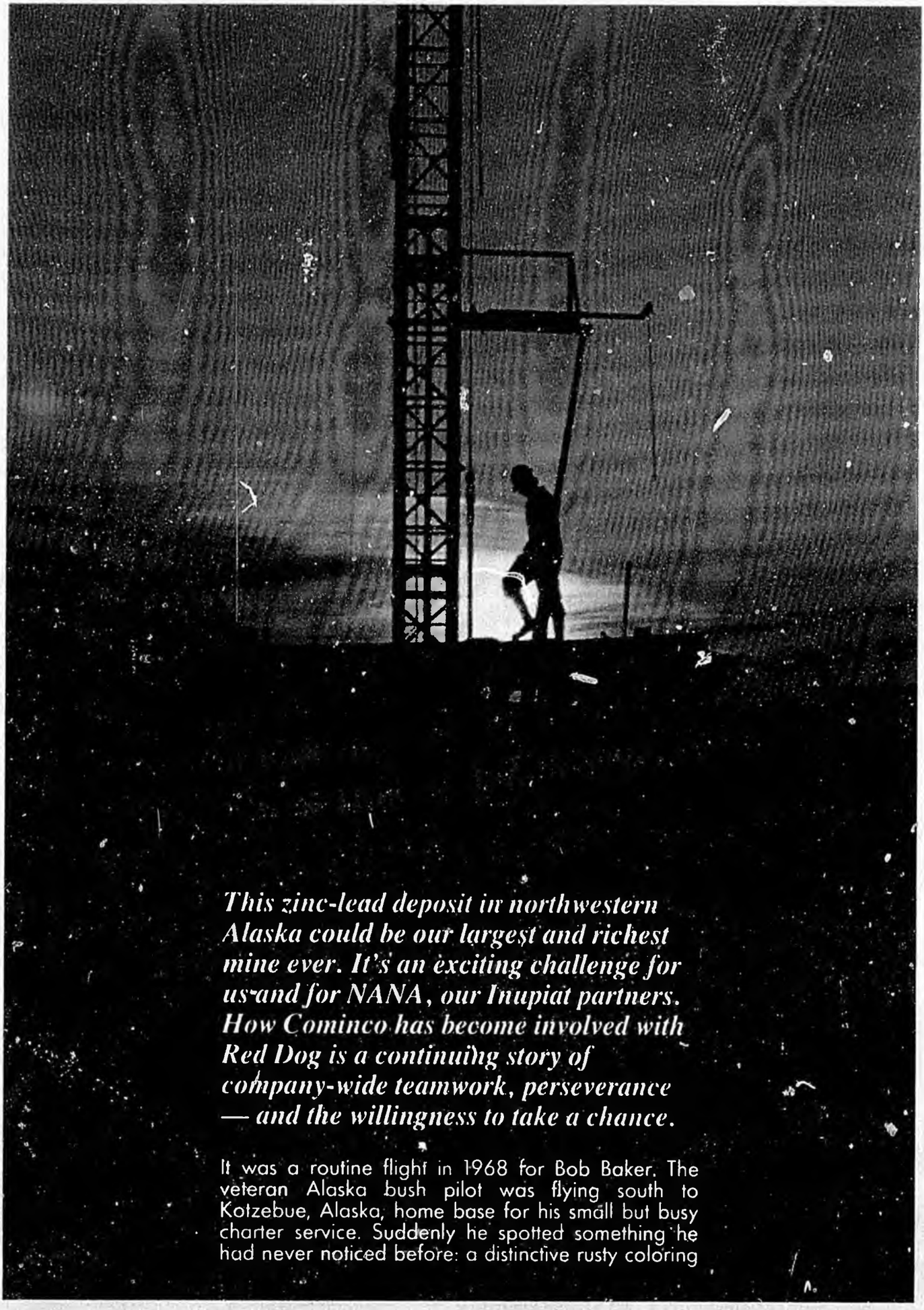
not only enhance the opportunity for development of mineral deposits in addition to Red Dog, but will be the first step in the creation of a viable mining industry in the state of Alaska.


IN THE
NORTH
Cominco



Cominco's commitment to the North spans 50 years. Our Arctic operations range from Alaska in the west to Greenland in the east.

We are proud of our northern ventures and our achievements. As Northerners, we look forward to expanding our horizons with exciting new developments here in Alaska.



This zinc-lead deposit in northwestern Alaska could be our largest and richest mine ever. It's an exciting challenge for us and for NANA, our Inupiat partners. How Cominco has become involved with Red Dog is a continuing story of company-wide teamwork, perseverance — and the willingness to take a chance.

It was a routine flight in 1968 for Bob Baker. The veteran Alaska bush pilot was flying south to Kotzebue, Alaska, home base for his small but busy charter service. Suddenly he spotted something he had never noticed before: a distinctive rusty coloring

in a creek and the surrounding hills. Bob Baker had done some prospecting in his spare time and was curious about what these colors might indicate. He mentioned his sighting to Dr. Irving Tailleur of the United States Geological Survey. Dr. Tailleur followed up, and ultimately made the first report of the mineralization that is now called Red Dog.

From this chance beginning may develop the largest and richest open-pit zinc and lead mine ever. The prospective mine, now in the early planning stage, has a potential life of 50 years with the probability of extension if new ore is discovered. Diamond drilling now indicates 77 million tonnes of ore, with grades of 17% zinc, 5% lead and 2.6 ounces per tonne of silver.

"The magnitude of Red Dog and our nearby properties will influence the world zinc and lead mining industry for decades," says Norman Anderson, Cominco's Chairman and Chief Executive Officer. "Red Dog is likely to be as important to Cominco in the next century as the Sullivan mine has been in this century."

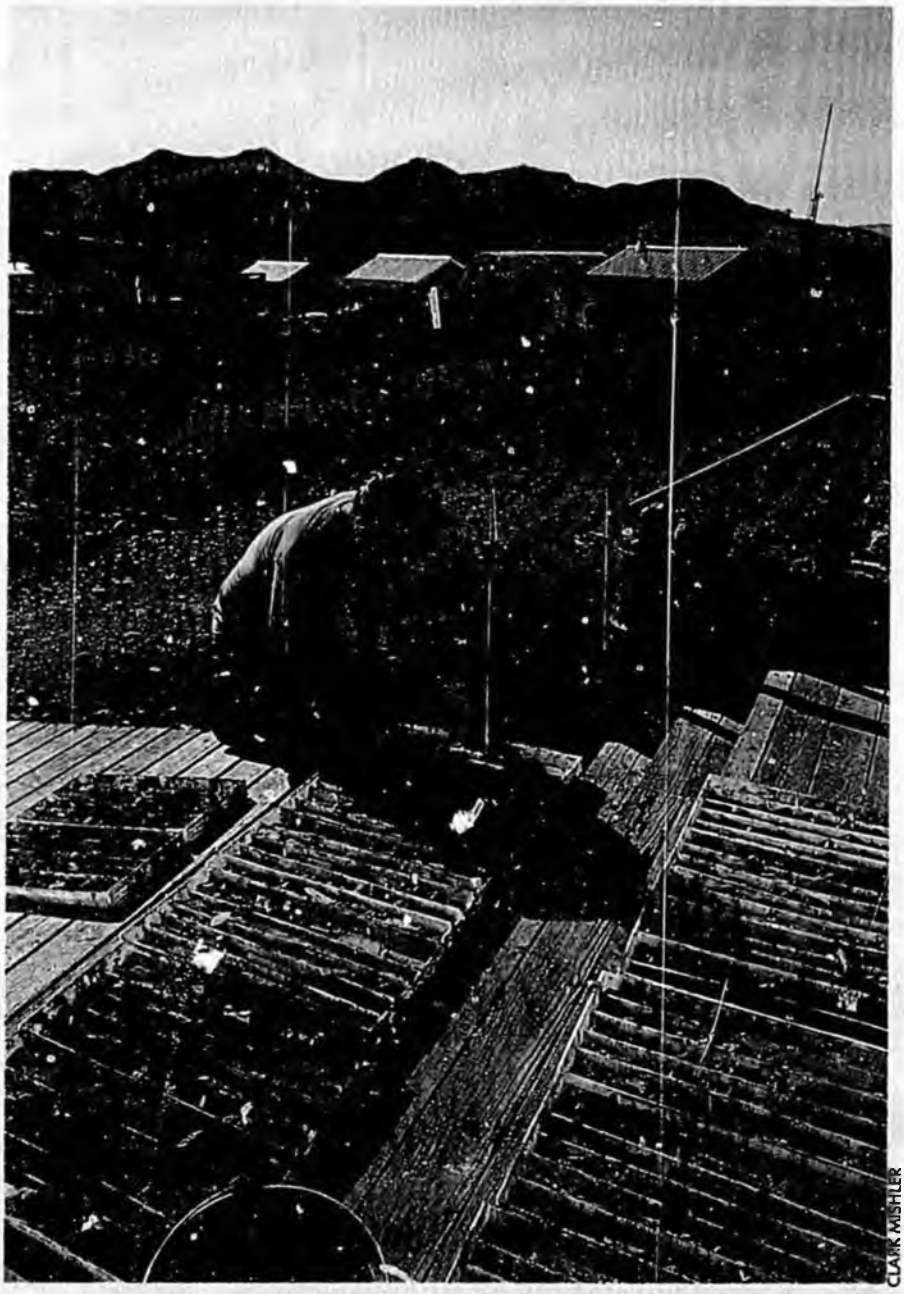
Magnificent discovery

The deposit is 145 km north of Kotzebue and 115 km east of Kivalina on the Chukchi Sea (see map). Its isolation, environmental aspects, the



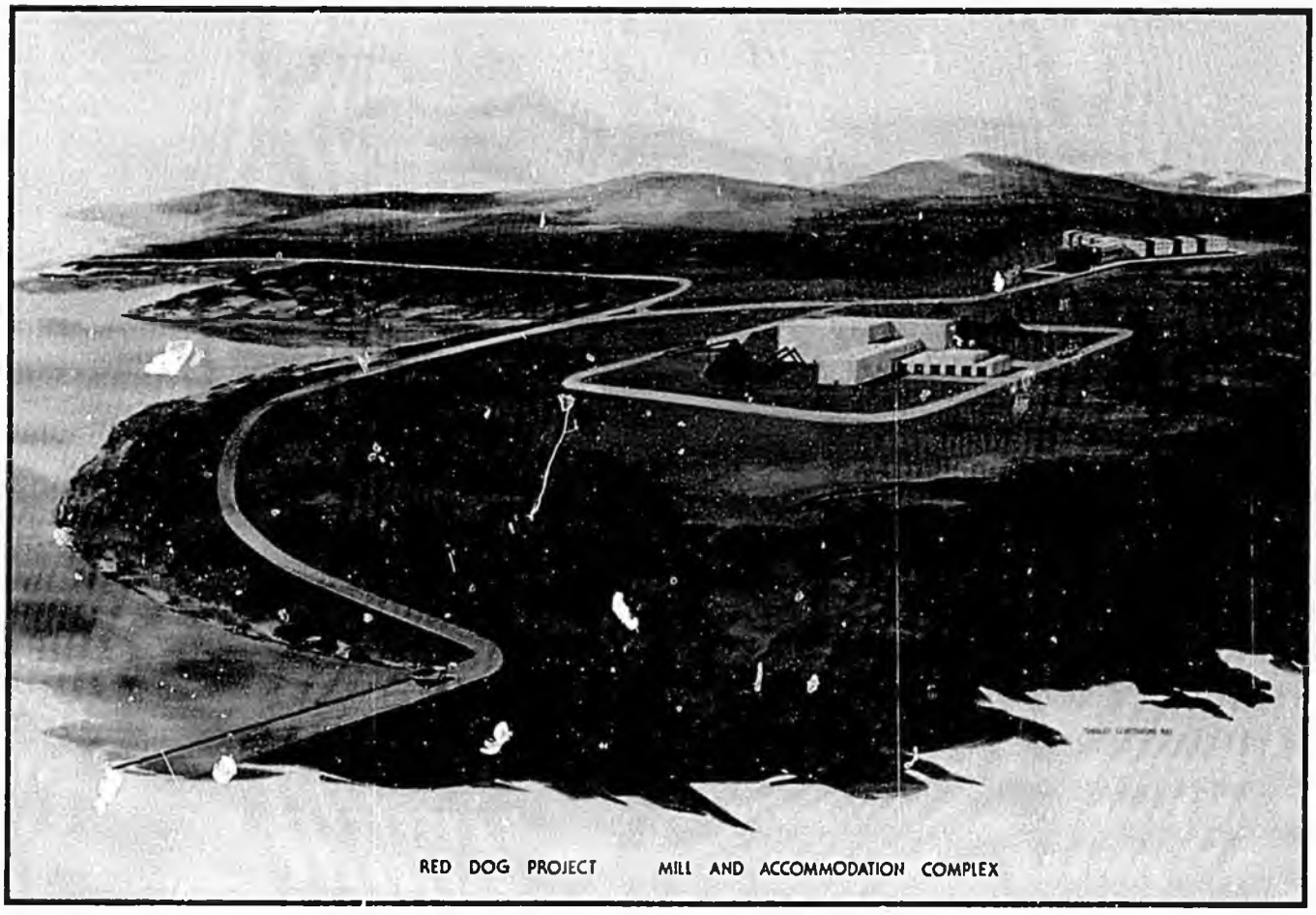
CLARK MISHLER

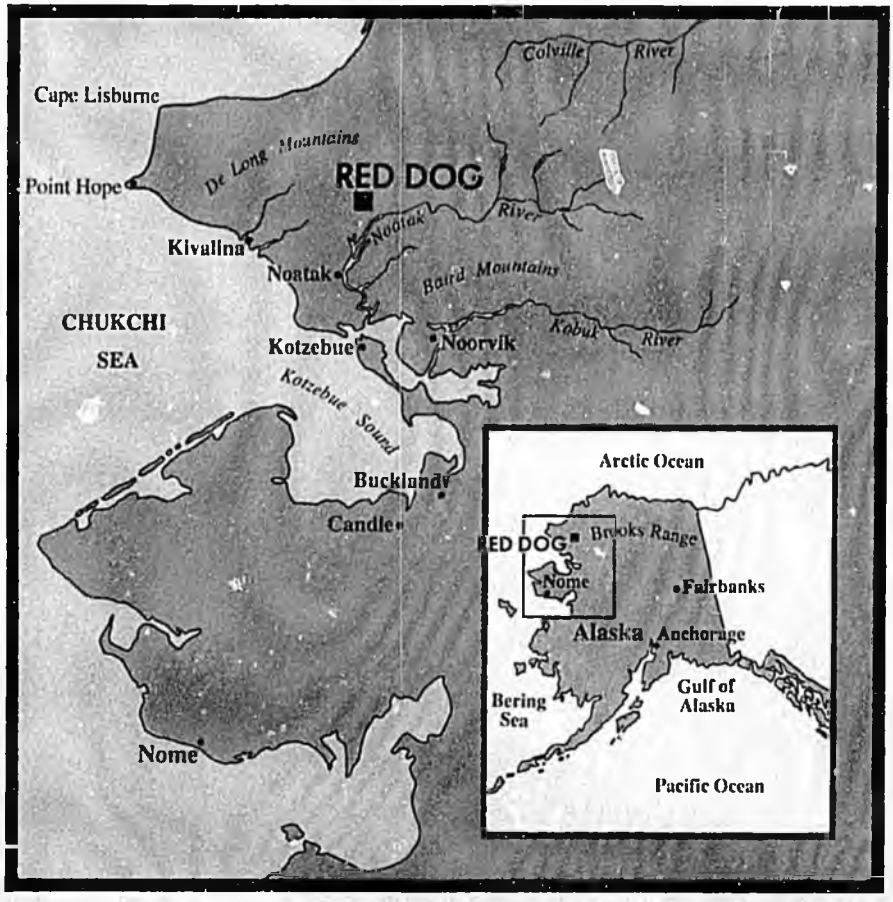




CLARK MISHLER

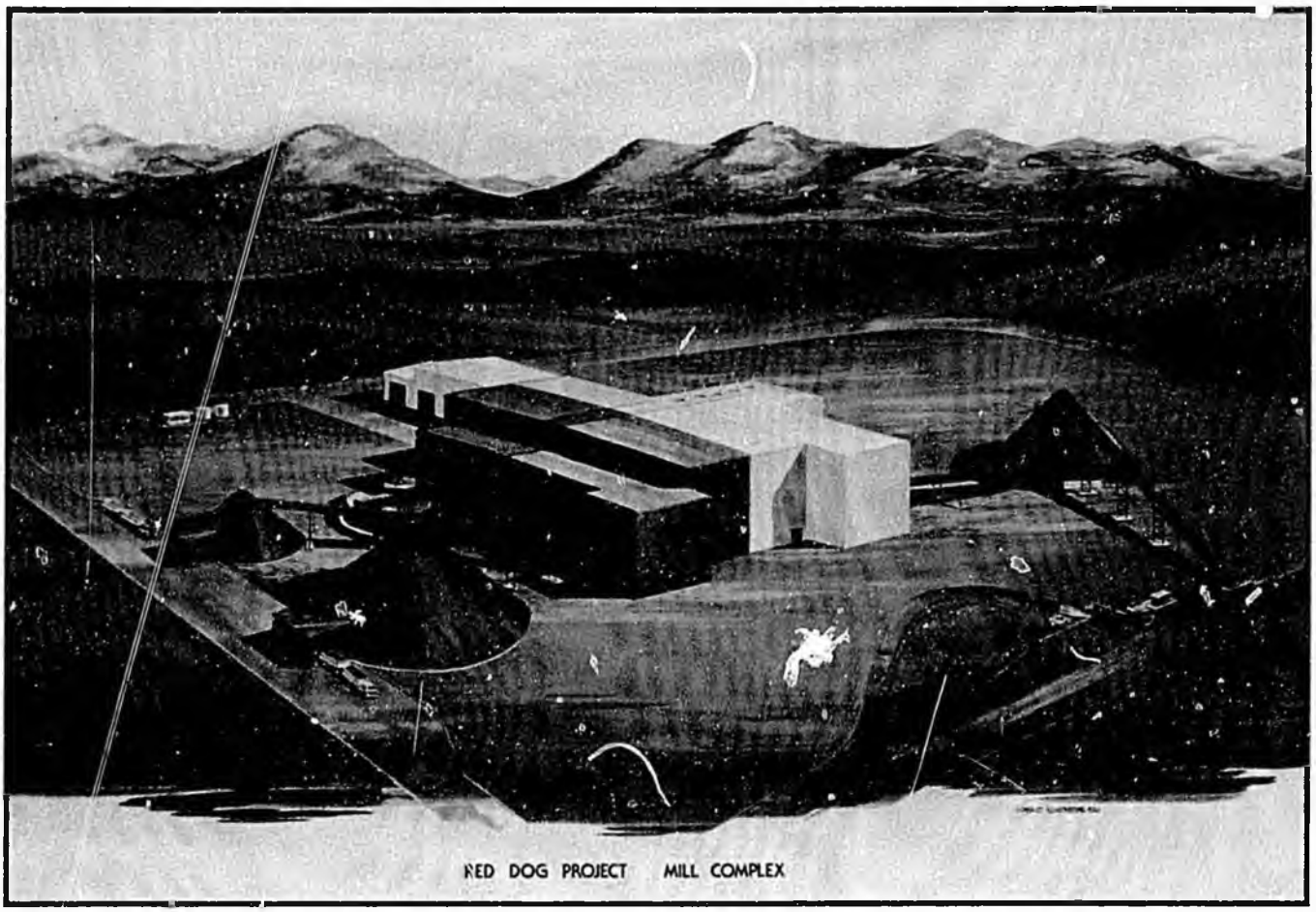
***Top right:** Diamond-drilling at Red Dog is a summer-long activity.* ***Right:** Core samples indicate very high grades of zinc and lead.* ***Above:** Rock samples arrived at Trail, B.C. for metallurgical assessment. The ore belongs to the same class of deposit as the Sullivan Mine at Kimberley, B.C.*
◀ *Drill crews work 24 hours a day during the long daylight hours of the Arctic summer.*







Top: Artist's impression of the mine site. The mill is in the foreground, concentrate storage building to the right and accommodation complex in the background. Tailings from the mill will form the pond at left. Engineering studies have identified the optimum locations for surface facilities.
Above: Surveying for drill locations and engineering studies is carried out with laser equipment.





Top: Design of the mill complex is nearly complete. The larger dome structure is for zinc concentrate, the smaller is for lead.
Above: A 1,500-metre air-strip at top right, providing the only current access to the site, was constructed at Red Dog in the summer of 1982.

large capital expenditure required to build the mine and the concentrator and the current depressed prices for zinc and lead are all factors that must be considered before Red Dog gets the go-ahead. Still, this "magnificent discovery", as the *Northern Miner* recently described it, could be a producing mine as early as 1987.

The official beginning of the Red Dog story for Cominco was February 5, 1982, when Cominco American Incorporated and the NANA Regional Corporation reached agreement to proceed with the exploration and potential development of the deposit.

But there was a lot of spadework before that event. In 1970, Dr. Tailleur of the U.S. Geological Survey filed an "open report" on the occurrence of zinc, lead and barite in the area. (An open report is a preliminary report to which the public has access.)

About this time it became unclear whether the area would ever be opened for mining. The passage of the Alaska Native Claims Settlement Act of 1971 resulted in a program of evaluation of the resource potential of lands being considered for inclusion in parks and wilderness areas. In 1973, the land containing the Red Dog deposit was withdrawn from staking.

Like the Sullivan

In September 1975, the U.S. Bureau of Mines issued a press release on its exploration program in the Red Dog area. Cominco American had exploration crews on the Seward Peninsula, 300 km to the south, and the government announcement prompted Cominco American to take a close look at Red Dog. Cominco recognized it as an occurrence with great potential. It was a sedimentary deposit just like the Sullivan, a producer for Cominco for nearly 80 years.

Although the Red Dog prospect could not be staked because it was located on withdrawn land, land close by could be staked and explored. Intensive exploration of the area began in 1976, and has continued every year since.

In 1976, the NANA Regional Corporation filed a Regional Corporation Selection Application with the Bureau of Land Management, covering the Red Dog deposit. However, it was the opinion of Cominco's lawyers that NANA's selections might be invalid.

In 1978, the 1973 withdrawal expired, and on December 18, Cominco American staked the Red Dog deposit. It was deep in the Arctic winter, with its limited daylight, severe cold and high winds.

In 1980, Cominco American moved a drill onto the claims. Eight holes were drilled, of which five showed spectacular results. However, action by the Bureau of Land Management caused Cominco to cease drilling. Cominco's claim to the deposit conflicted with that of the NANA Regional Corporation.

It was not until the passage of the Alaska National Interest Land Conservation Act, in December, 1980 during the last days of the Carter administration, that NANA's right to select was reaffirmed.

Mining beneficial

The people of the NANA region had, by 1979, come to the viewpoint that mining could be beneficial. It could provide jobs while traditional values were still protected. Cominco knew that the sensible long-term solution was to show NANA that an agreement with the company would be mutually advantageous.

To convince NANA, Cominco invited six of its leaders to observe the company's operations in the north. They went to Pine Point; to the Con gold mine in Yellowknife; to Polaris on Little Cornwallis Island, Northwest Territories; and to the Black Angel Mine in Greenland. They were able to meet privately with local Indian, Inuit and Greenlandic Inuuk leaders at these locations, to hear whatever these local people wanted to tell them about Cominco.

Cominco also shared with NANA the results of the drilling, preliminary metallurgical testing and early-stage feasibility studies. After the trip, Cominco did further drilling at Red Dog, and with these results in hand, settled down to serious negotiation, culminating with the agreement signed in Kotzebue, on February 5, 1982.

Although any go-ahead decision on Red Dog is still at least a year away, the project demonstrates once again the value of some old virtues, particularly perseverence and making the fullest use of one's resources. The project has benefited by contributions from the diverse talents of scores of Cominco people in different countries. It was and remains a great team effort.

— George Tikkanen



This distinctive red and orange coloring led to the Red Dog discovery

What does it mean?
Red Dog

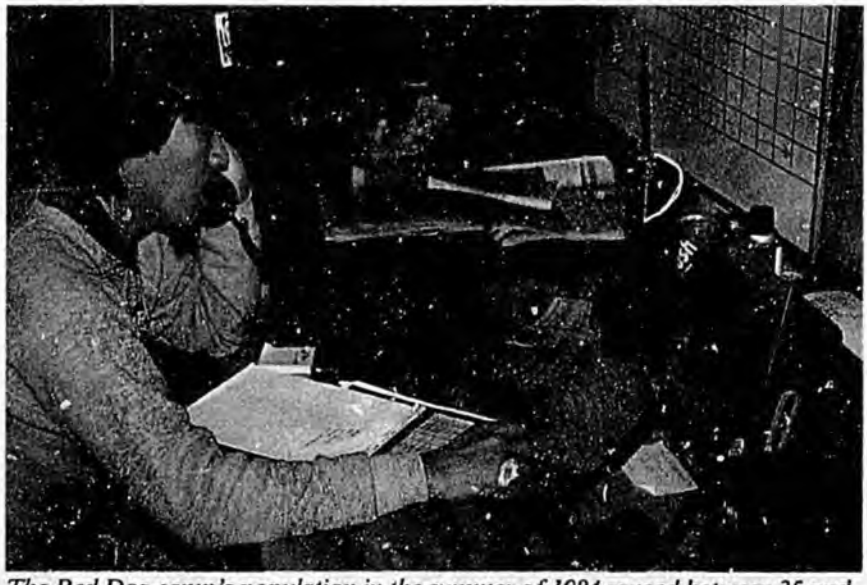
Red Dog is Cominco Alaska's rich prospect in northwestern Alaska, and we will be hearing a lot about Red Dog in the future. But isn't that a strange name for a mine?

In the late 1950s, bush pilot Bob Baker operated a charter service out of Kotzebue and in his spare time did some prospecting in the region. Baker's small prospecting company, The Red Dog Mining Co., was named in honor of Baker's pet dog O'Malley, a reddish-colored dog with a Heinz pedigree.

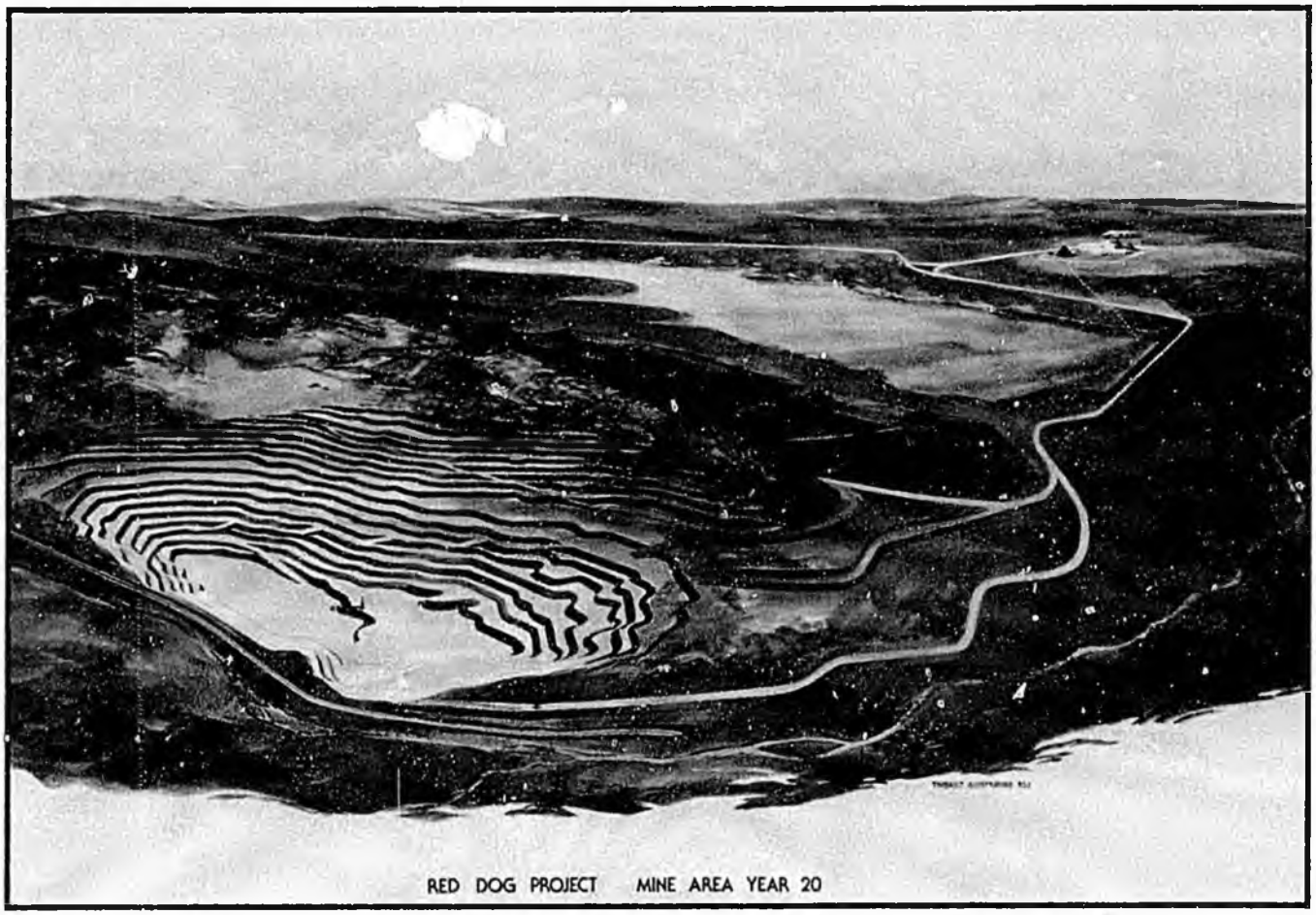
While flying over northwest Alaska, Mr. Baker noted conspicuously red and orange stained hillsides in the DeLong mountains and surmised that they indicated mineralization. Irving Tailleur of the U.S. Geological Survey, who often flew with Baker, was advised by Baker to take a closer look at the hillsides. When he did, Dr. Tailleur named the place Red Dog on his maps.

Tragically, Baker was killed flying a 1968 mercy mission and never heard the initial results of his eagle-eyed observation: he had spotted one of the biggest and richest zinc-lead deposits on earth.

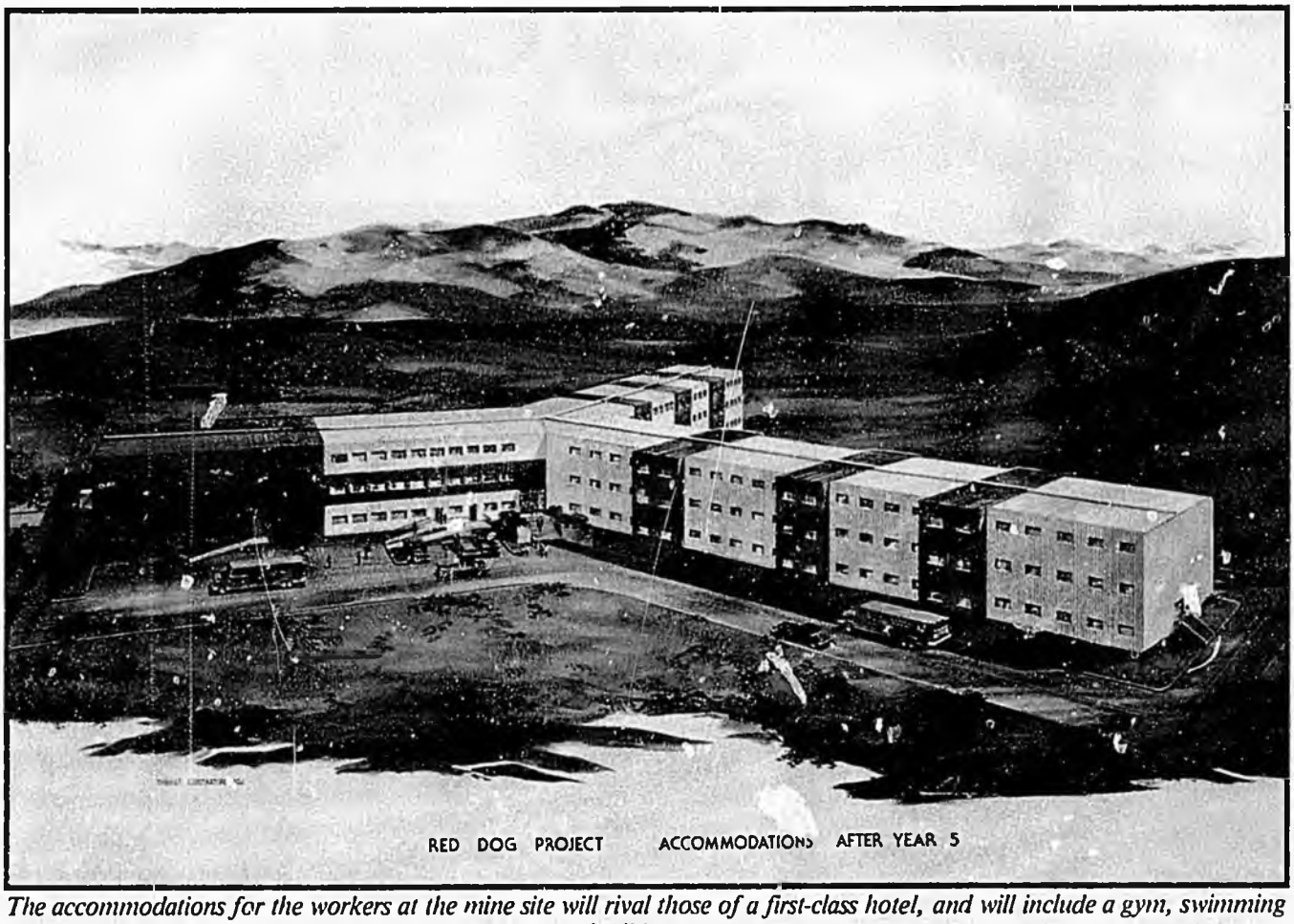
Cominco American's involvement came about through quick response to a bulletin issued by the U.S. Bureau of Mines about Red Dog in 1975.



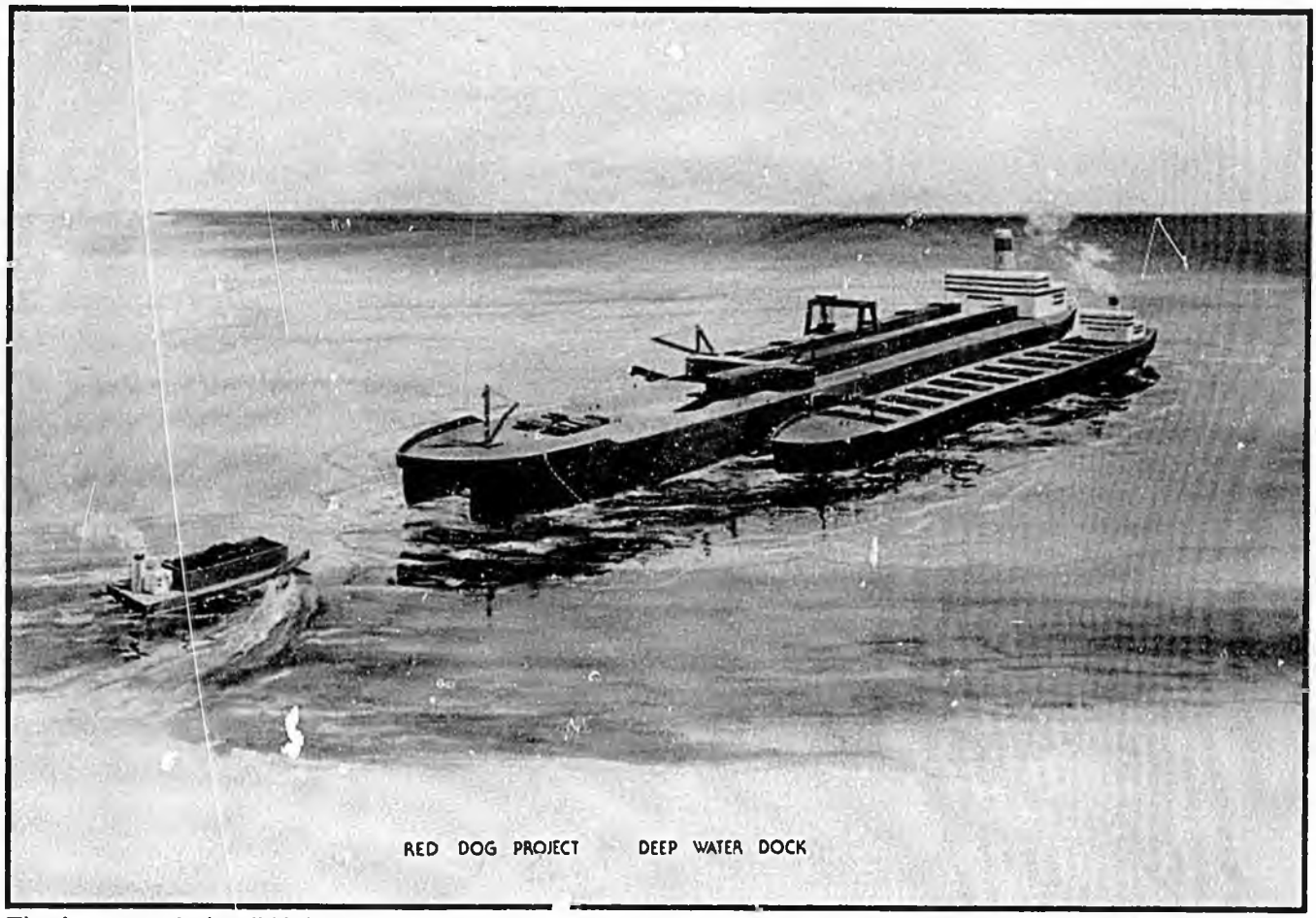
The Red Dog camp's population in the summer of 1984 ranged between 35 and 40 and many of the workers were NANA shareholders. All communication is by radio and is maintained on a round-the-clock basis.



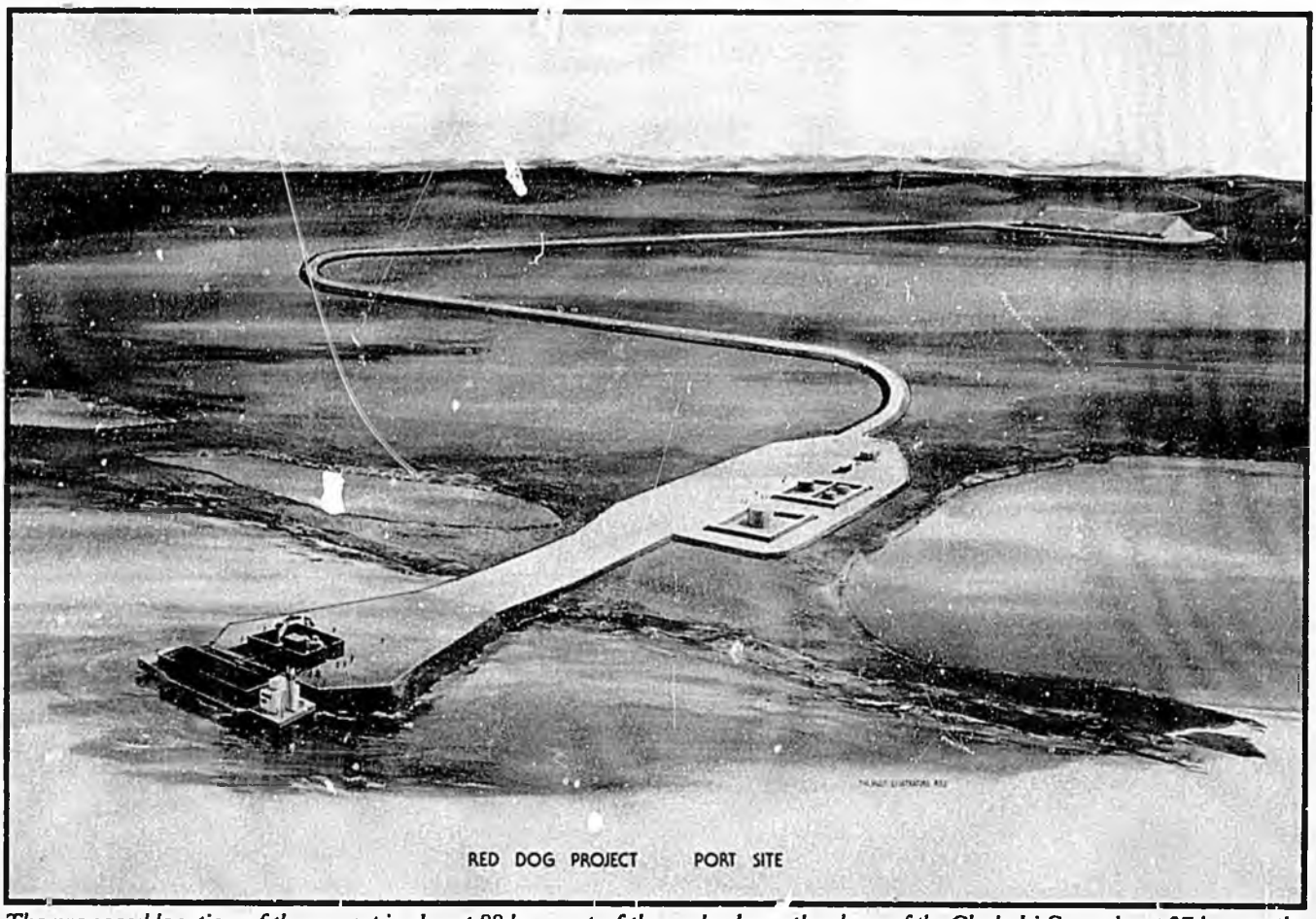
The actual open-pit mine area is quite small; the main deposit is 1,360 metres long and varying from 60 metres to 430 metres in thickness. Current reserves and mining plans give a mine life of 50 years; the sketch shows the operation at year 20.



The accommodations for the workers at the mine site will rival those of a first-class hotel, and will include a gym, swimming pool and a library as well as the mine's administration facilities.



The deepwater dock will likely be a former oil tanker ballasted 11 metres down to the seabed. Serviced by lighters, the ship could hold 65,000 tonnes of zinc concentrate, 35,000 tonnes of lead concentrate and 38 million litres of fuel oil.



The proposed location of the seaport is about 88 km west of the orebody on the shore of the Chukchi Sea, about 27 km north-east of Kivalina.



0 7 3 8 2

NANA

Our Alaskan partner



ROB STAPLETON/NANA

In Alaska, Cominco enjoys a unique partnership with 4,700 Inupiat Americans in the potential development of the Red Dog zinc-lead-silver deposit. NANA is the corporate name for one of 12 Alaskan regional corporations formed as a result of the Alaska Native Claims Settlement Act of 1971. Red Dog, and the prospective overland routes to the sea, lie within the NANA region.

The formal agreement between Cominco American Inc. and NANA Regional Corporation, Inc., whose shareholders are all Natives, calls for minimum payments by Cominco to NANA of $1 million a year.

But it's much more than a business arrangement. For the people of NANA it's another step in strengthening their economic base while continuing to

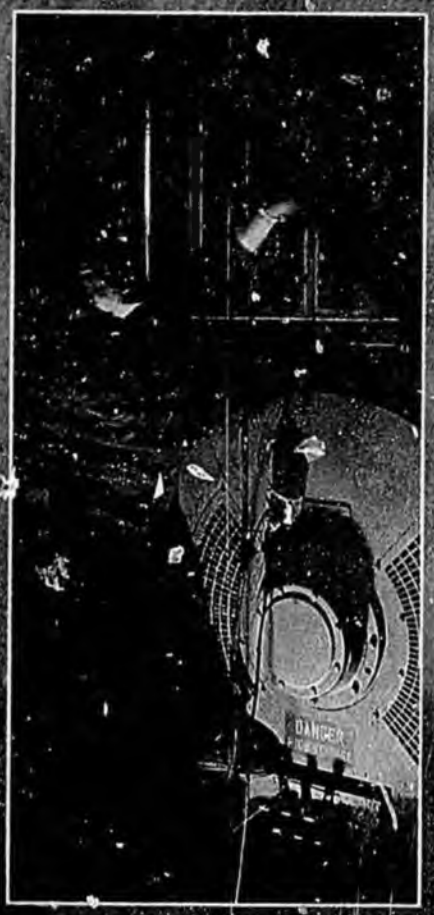
preserve their important traditions.

And for Cominco, it's also an engineering challenge and the opportunity to make further progress in our remarkable and pioneering record in working harmoniously with Native northerners, including Inuit in Canada, and Inuuk in Greenland.

NANA Regional Corporation, Inc. was created to improve and expand the assets acquired by the Inupiat in northwestern arctic Alaska under the U.S. Alaska Native Claims Settlement Act. This Act provides for the Corporation's share of US$962 million given to them from the Alaska Native Fund and a 16-million-hectare land settlement made with them and the other similarly organized Native corporations in Alaska.

NANA's symbol is an Eskimo

Opposite page: The traditional and the contemporary are important in NANA's programs. Here, children learn how to weave a wind shelter under the direction of elder Sally Sheldon. This page, right: In addition to electrical power generation (seen here), NANA is involved in oil activities in the Beaufort Sea. NANA's symbol is a stylized Eskimo hunter.









FRANK P. FLAVIN

FRANK P. FLAVIN

hunter moving aggressively toward a successful future in a vast, beautiful, and sometimes harsh world," says its 1982 Annual Report. "NANA is all of us together as one hunter successful if we are of one mind and purpose, hungry if we are split by doubts and mistrust of each other. As one hunter is small and insignificant when compared to our environment so is NANA when compared to the corporate and governmental environment in which it must hunt successfully to survive."

NANA Class A shares are held by Natives enrolled as residents of villages in the region, and Class B shares are held by Natives enrolled in the region but not registered as residents. Each shareholder is issued 100 shares of stock, and these cannot be sold or transferred until 1991.



NANA's business activities include construction, oilfield services, an electrical utility, rearing of reindeer, jade production and hotel operations. NANA believes the development of the Red Dog property will have a long-term positive impact on the economy of the area, improving the Corporation's business position in a manner consistent with NANA's social and cultural goals.

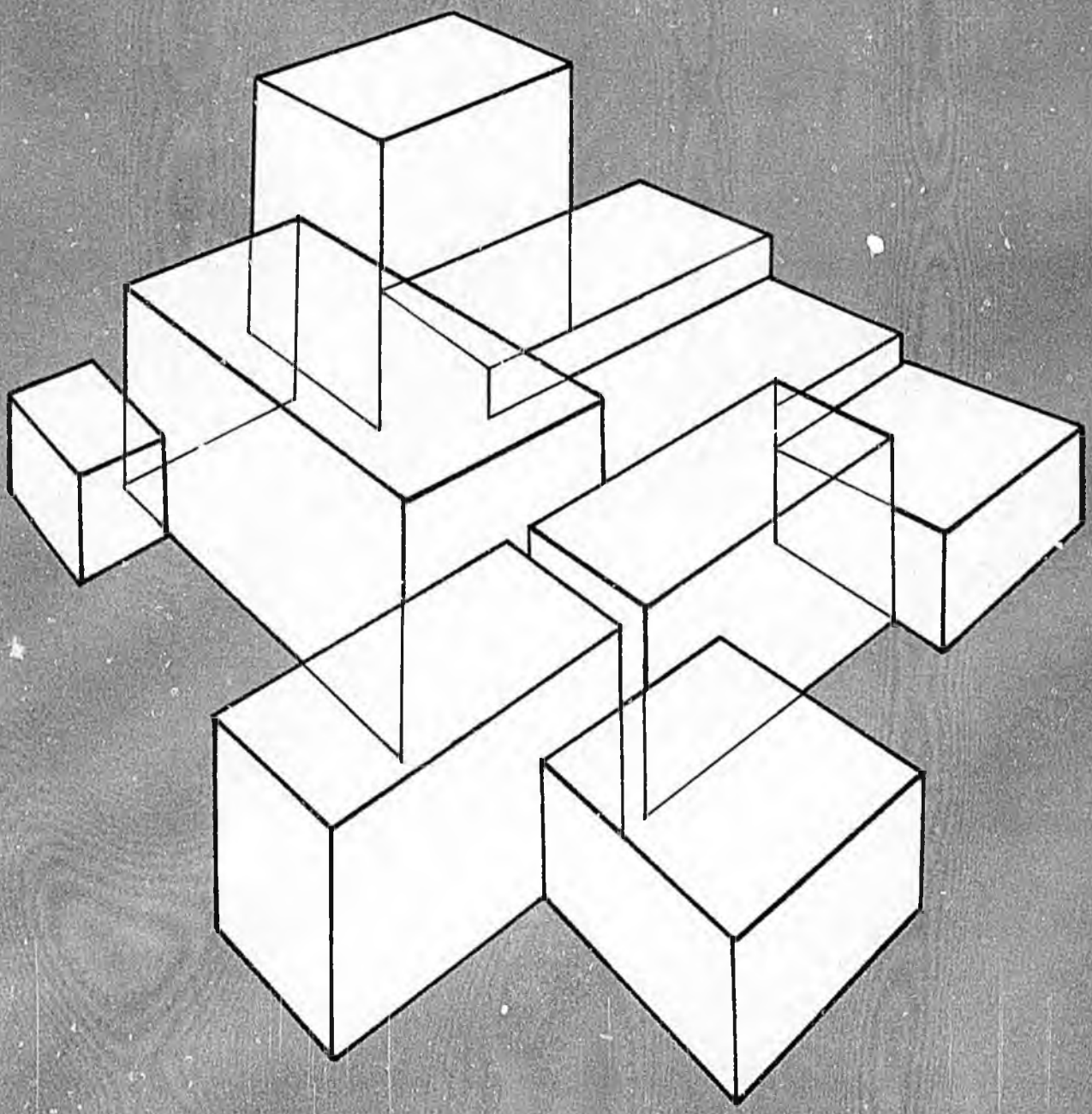
A NANA program, Inupiat Ilitqusiat, teaches traditional ways to children and adults to reawaken awareness of the Inupiat spirit. The program teaches cultural values such as honor, hard work, family ties and an understanding of ancestors. These are all important factors in preserving Inupiat identity, spirit, language and tradition. At the same time the modern present and future are not rejected.

Under Cominco American's agreement with NANA, Cominco is to be the operator and provide the funding at Red Dog. At the outset, Cominco will make minimum payments to NANA of $1 million a year. Until Cominco has recovered its investment interest, it will pay to NANA 4.5% [illegible] royalties. After that, NANA will receive 25% of net proceeds, increasing to 30% five years after Cominco recovers its investment and further increasing by 5% every five years until Cominco and NANA share the proceeds on a 50-50 basis.

In addition, Cominco has undertaken to assist in the vocational training of NANA shareholders, so that eventually they will comprise the permanent workforce at Red Dog.

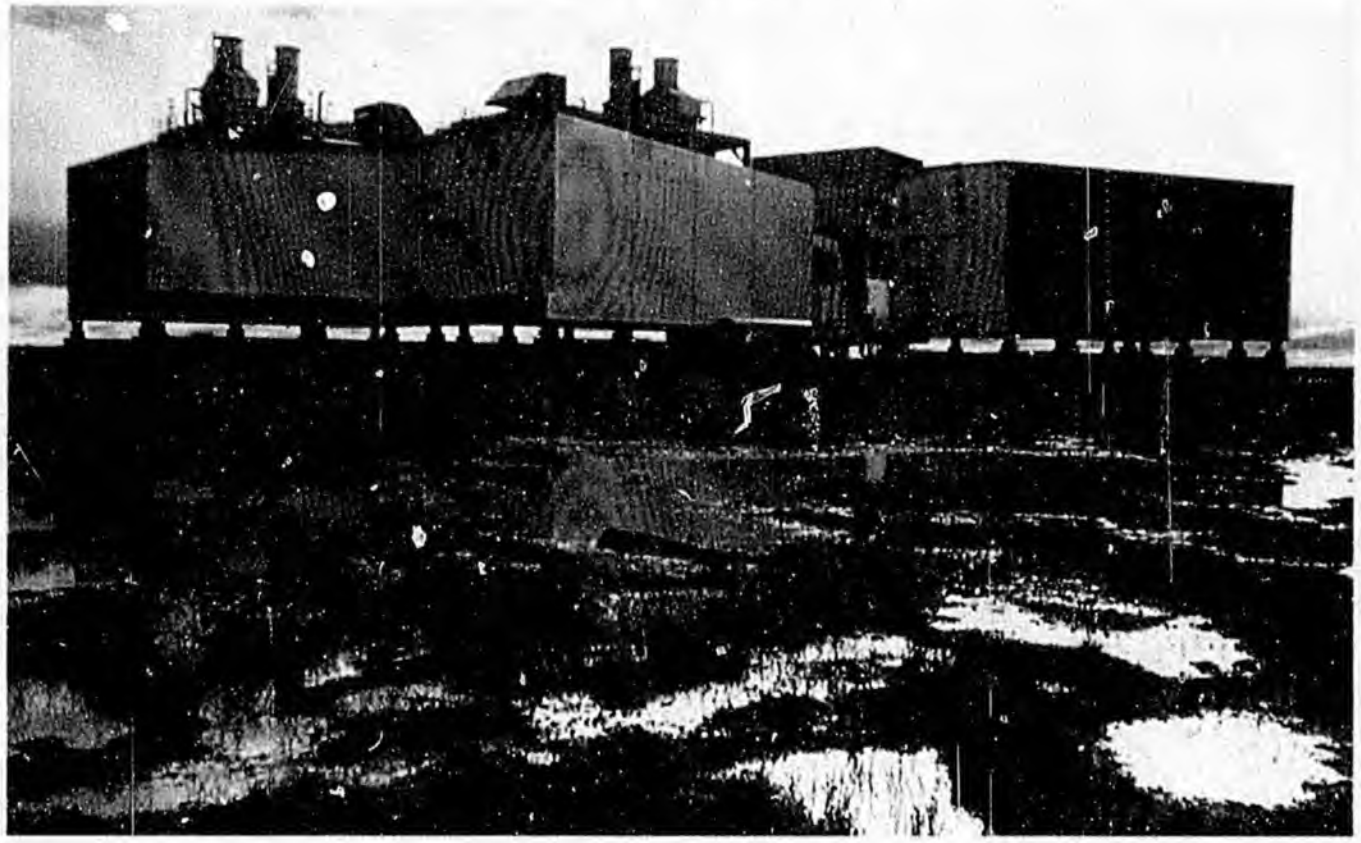
Opposite page: [illegible] business activities [illegible] and the production of [illegible] including tiles for [illegible] construction. The [illegible] employment for NANA [illegible] a major goal. Below: [illegible] values [illegible] being taught to NANA [illegible] adults.





The Red Dog Concept

The following article is reproduced from the September, 1983 issue of ORBIT, the Cominco quarterly magazine.



Modules for processing crude oil are seen at a module staging area at Prudhoe Bay on the North Slope of Alaska. They were built in Seattle.

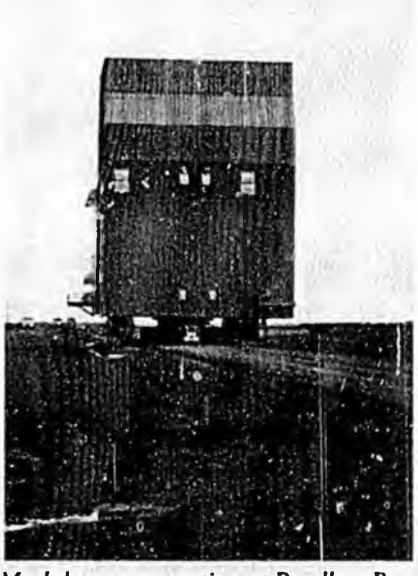
Modules: building blocks for an Arctic mine

Anchorage, Alaska — A complete mine processing plant, divided into seven separate units for transportation thousands of kilometres by sea and over land to a remote location in Alaska: That's the modular concept Cominco engineers in Trail, B.C. envision for the potential Red Dog Mine. Plants to process North Slope oil in Alaska have been transported in sections aboard barges from Seattle, but the Red Dog concept would be the first application of this modular building system for a mine concentrator.

Modular construction saves time and money. It saves project time because different stages can be developed simultaneously, and it saves money because construction manpower and supplies are found in an established industrial location.

For these same reasons, Cominco specified the world's first wholly prefabricated mine plant for the Polaris Mine on Little Cornwallis Island in the Canadian High Arctic. The entire mill complex was built on a barge the size of a city block, towed north and beached to become a shorebound facility.

Red Dog's plant will be much bigger in size, and will be located far from the ocean, so the mill built on a barge method isn't practical. However, the Polaris project did demonstrate the advantages of prefabrication in the south and points toward bigger and better applications — like modules.



Module transportation at Prudhoe Bay

Cominco Engineering Services engineers in Trail are planning seven modules for the process concentrator: one each for the grinding mill, the regrind mill, flotation cells, dewatering, dryers, power plant and a primary crusher. Each would be built in the south, lashed to the deck of a barge and towed to a staging area on the northwest coast of Alaska.

Giant crawlers would transport the modules 91 km to the mine site where they would be placed on prepared foundations and connected to each other inside and out to form a ready-made industrial plant. Most of the on-site work would be indoors and it would take about four months.

The largest and heaviest unit would be the flotation equipment, weighing in at 1,500 tonnes and measuring 45 m by 20 m and eight stories high. The lightest module would be the concentrate dryers at a hefty 450 tonnes, and the smallest the primary crusher at 19 m by 15 m and five stories high. Arvik, the Polaris plant, weighs 12,000 tonnes and measures 126 m by 30 m and is six stories high.

Six more modules for the accommodation complex would be built off-site and transported to the site. These

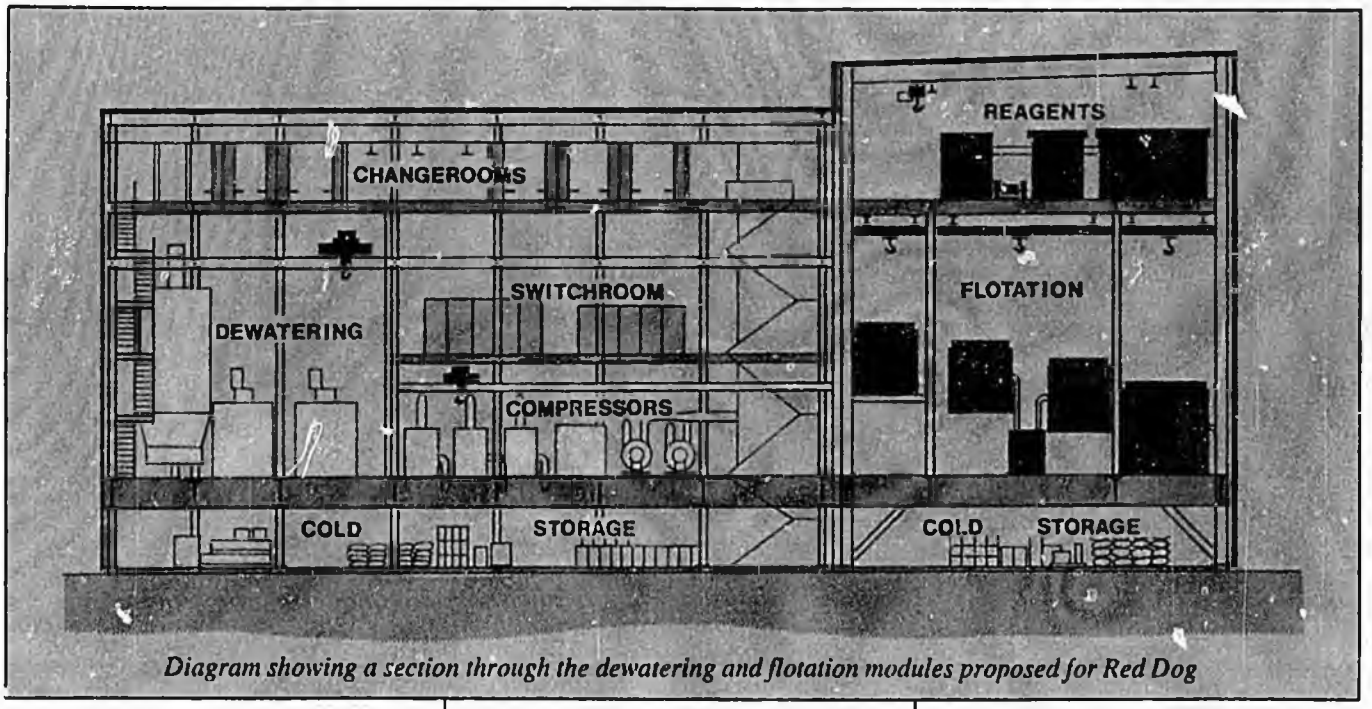


Diagram showing a section through the dewatering and flotation modules proposed for Red Dog

would arrive first and be put in place to provide living quarters for the construction crews working on the plant modules.

Because of winter sea ice and the short shipping season, scheduling is critical for success of the Red Dog project. Modules would be advantageous, because conventional on-site construction methods would require that a road be built from the ocean before any work could start. Using the modular method, plant construction in the south can go on apace while the road is being built in readiness for the arrival of the modules.

To house the workforce employed in preparing the road and port for arrival of the modules, another barge concept is being considered. A barge could be outfitted in the south as a construction camp, towed into a lagoon at the port site near Kivalina and ballasted in. Once the accommodation modules were on-site, workers would move there and the barge would be removed.

The workforce doing preparatory work for the modules at the mine site would be housed in the existing exploration camp, expanded for the purpose, until the accommodation modules are in place.

The use of a barge recalls Polaris, and the construction camp aboard the ship *C.D. Howe* at the Black Angel Mine in Greenland. There are a number of lessons learned at Polaris and Black Angel that are benefiting the Red Dog planners. For example, Polaris showed that mounting foundations on frozen rock is feasible at Red Dog, contrary to the popular wisdom in Alaska that permafrost requires piled foundations to appreciable depths.

Heavy structural demands

The Polaris barge taught lessons about the structural demands of a mine plant that puts to sea. To make the modules seaworthy and to allow them to be picked up and moved, they must be built more rigidly than a plant built on land, heavier steel must be used and designers must take into account load factors and distribution for land and sea transportation.

But not all construction at Red Dog is expected to be modular. Engineers talk of a "guts to fresh air ratio": the less there is inside a module the less cost-effective it is to modularize it. Modules that are like a box of fresh air are not economic. Structures such as those used for vehicle maintenance, concentrate storage and water treatment will be built on-site. However, once again, they will be built from units prefabricated elsewhere, just like a do-it-yourself kit.

— Terry Manning, Ian Hanks, Tony Cowell with Hugh Leggatt

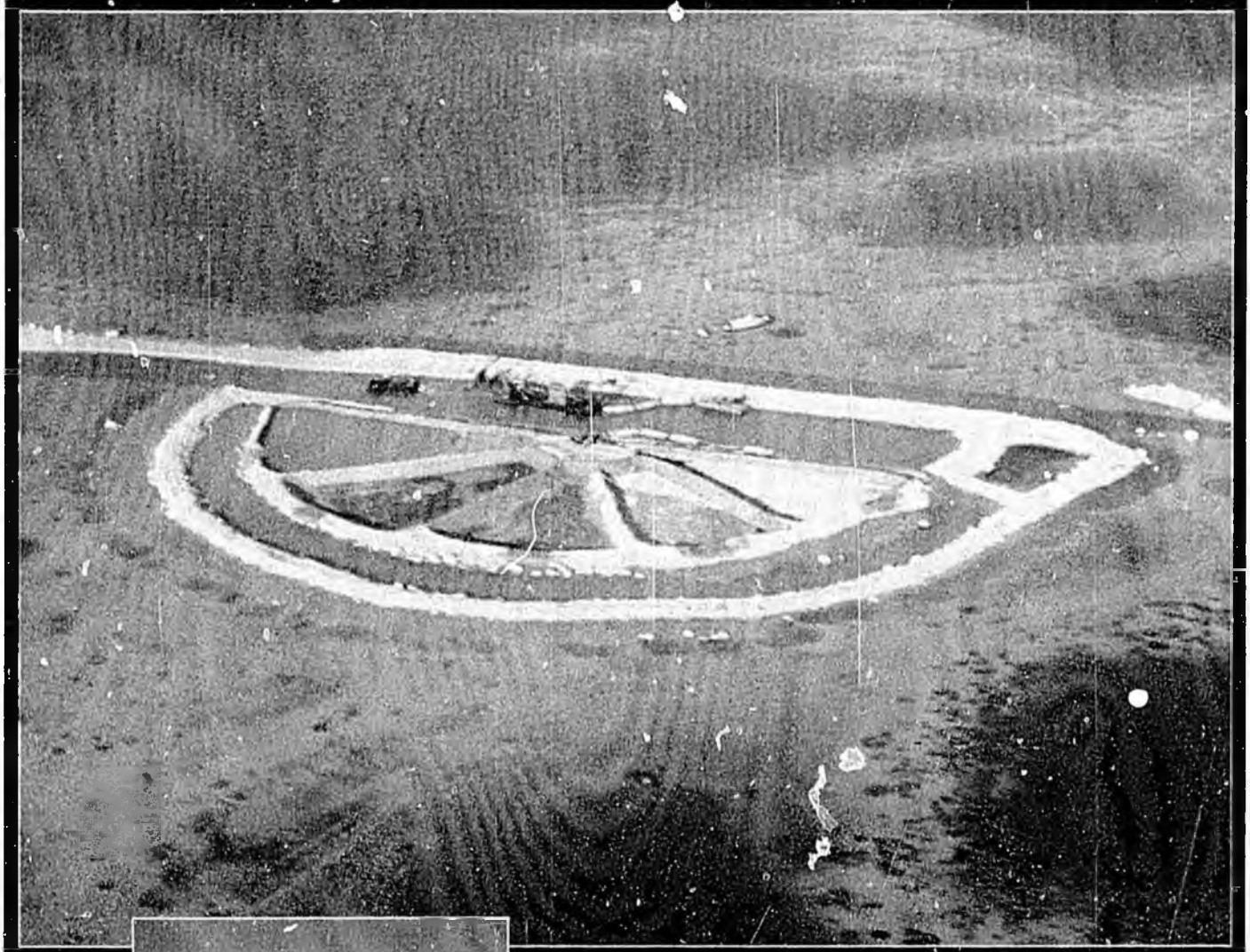


These modules, bound for Alaska, were constructed by National Shipbuilding Co[illegible] in San Francisco.

Cominco

from the air

A company portrait by aerial photography, revealing the great individuality of our operations around the world





Mataiva: Like the spokes of a wheel, dykes radiate out in this lagoon in French Polynesia, South Pacific. Papeete is the closest town to this joint-venture project, still in the feasibility-study stage. The dredge, left, pumps phosphate mineral samples into the basins formed by the dykes, part of stringent environmental measures.













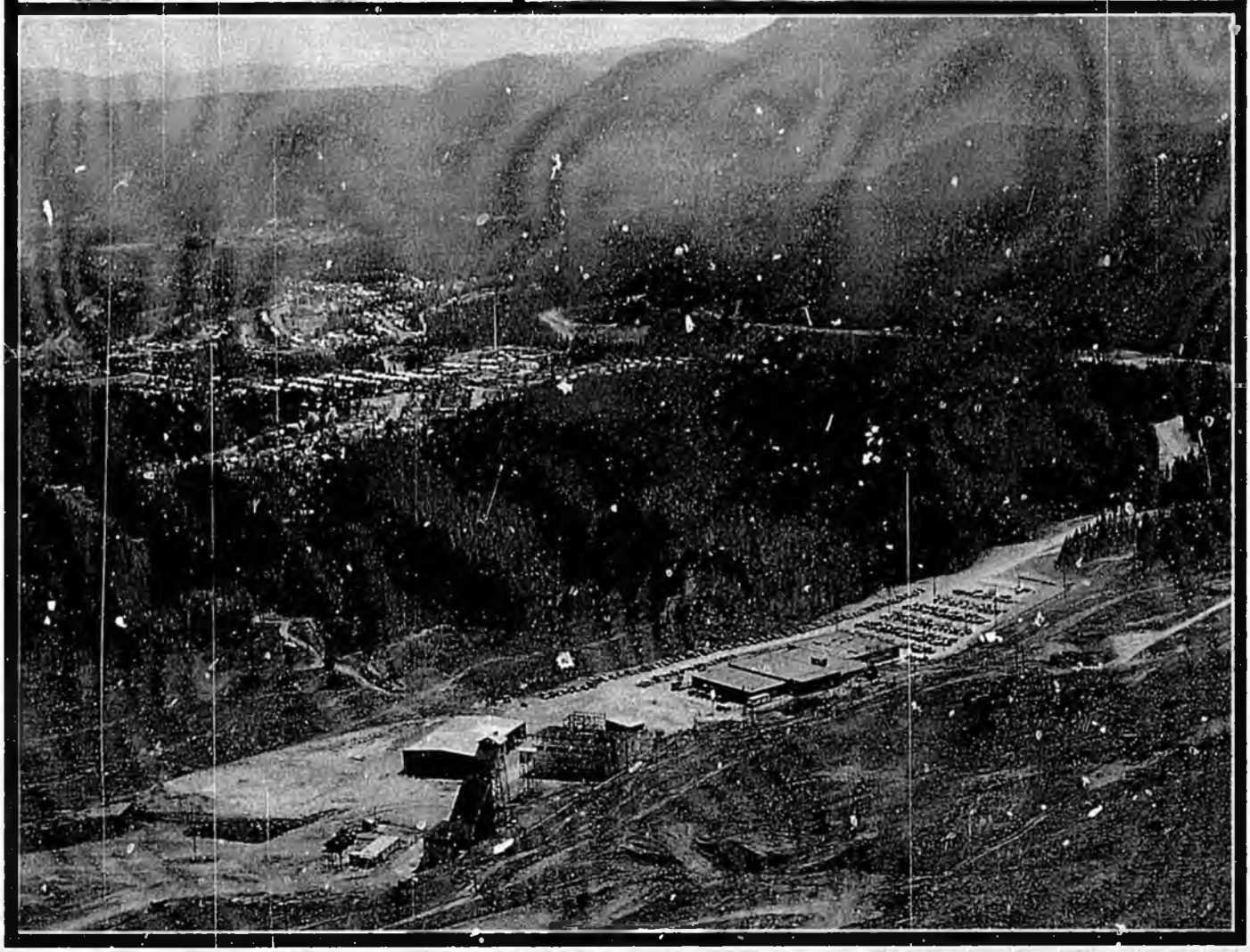
1. Con: If the Eiffel Tower is the symbol of Paris; then the 76-metre high Con headframe is the symbol of Yellowknife. Built in 1977, it is the tallest structure in the N.W.T. Con has been producing gold since 1938. 2. Polaris: The largest Maple Leaf in Canada, 40 metres high by 76 metres wide, proudly identifies the most northerly zinc-lead mine in the world, 1,440 km from the North Pole. 3. Black Angel: At Maarmorilik on Greenland's west coast, Greenex A/S operates a zinc-lead mine inside Black Angel mountain. The mine is connected to the mill by aerial tramway. 4. Pine Point: On the southern shore of Great Slave Lake, N.W.T., the zinc-lead mining and milling operations produce concentrates for Canadian and Japanese smelters. 5. Red Dog: Diamond drilling will continue this summer at Cominco Alaska's zinc-lead mine property, 145 km north of Kotzebue.



6. The Product Research Centre. At an R & D park in Mississauga, just west of Toronto, P.R.C.'s program is devoted to developing commercial uses of zinc and lead. 7. Rubiales: The Exminesa lead-zinc mine is located 450 km northwest of Madrid in the Province of Lugo, Spain. 8 Vade: Southwest of Saskatoon, Saskatchewan, potash for fertilizer is mined 1,000 metres below the surrounding wheatfields. 9. Sullivan: In southeastern British Columbia the Sullivan Mine at Kimberley has been a major zinc-lead-silver producer for Cominco for more than 75 years.

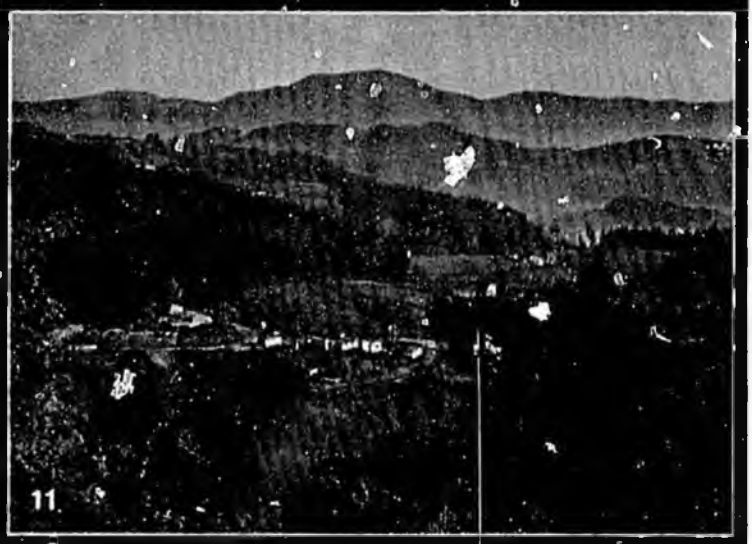






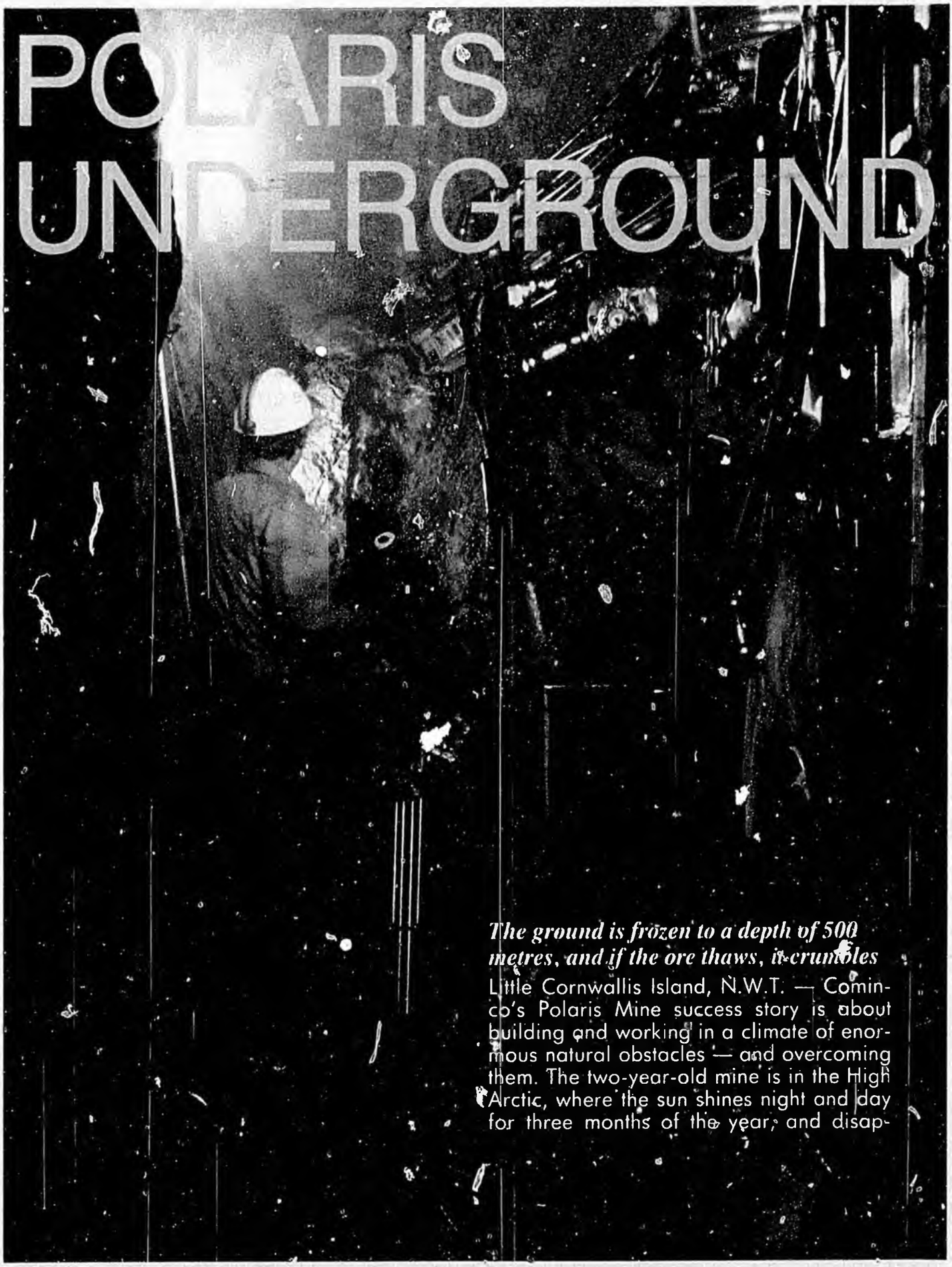


10. Owens Lake, California: A unique dyking system in the desert 360 km north of Los Angeles recovers trona, which is refined to soda ash and used in glass manufacturing. **11. Troya:** Exploration work is in progress at Troya, a potential zinc-lead mine, in the beautiful Basque countryside of northern Spain. **12. Trail:** In the foreground, the new zinc electrolytic and melting plant, the world's largest, looking southeast. A wide range of non-ferrous and precious metals, chemicals, fertilizers, electricity and electronic materials are also produced at Trail.



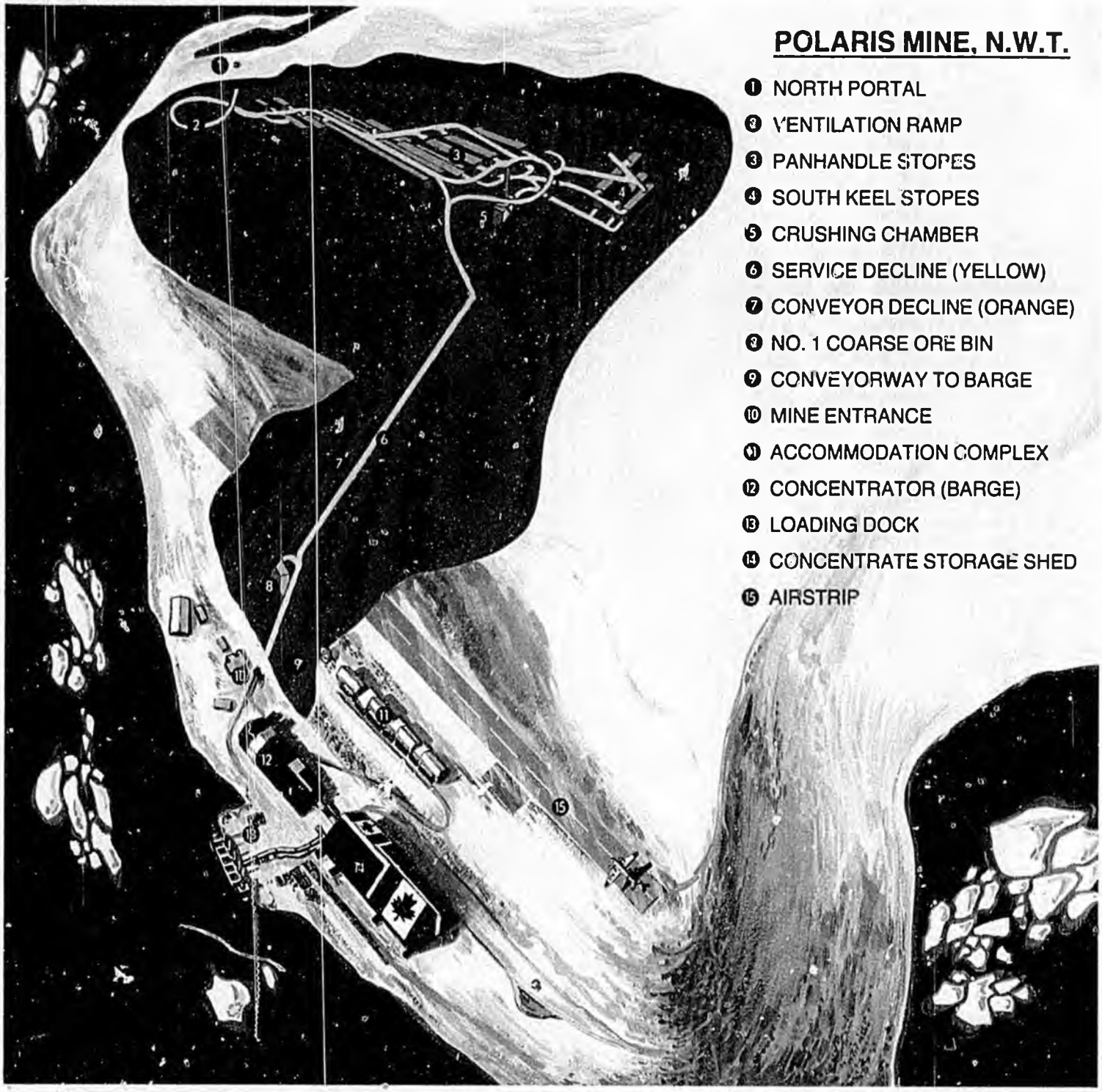


POLARIS UNDERGROUND



The ground is frozen to a depth of 500 metres, and if the ore thaws, it crumbles

Little Cornwallis Island, N.W.T. — Cominco's Polaris Mine success story is about building and working in a climate of enormous natural obstacles — and overcoming them. The two-year-old mine is in the High Arctic, where the sun shines night and day for three months of the year, and disap-



PREVIOUS PAGE: *Underground in the Polaris Mine.* ***Above:*** *A three-dimensional schematic view of the underground and surface facilities at Polaris. The orebody is not shown, but is located primarily in the Panhandle and South Keel areas.*

BILL MAYRS ILLUSTRATIONS AND DIAGRAMS

pears entirely for another three in winter. It is only 100 km from the magnetic North Pole, and only 1,600 km from the geographic North Pole. It is nearly as dry as the Sahara Desert, and the ground is frozen to a depth of 500 metres. When mineralization was first discovered there in 1960, the obstacles to recovering it seemed almost insurmountable.

All the same, Cominco began detailed investigations in 1964 and a drill program in 1971 outlined a substantial body of lead and zinc sulphides. Underground development began in 1972, and the decision to bring the Polaris Mine into production was made in October 1979.

The remote and harsh environment created a number of problems that had to be overcome in constructing facilities at Polaris. The shipping season at Polaris is only six weeks — the ice-free period. Careful planning was required because all supplies for a full construction year had to arrive at that time. Anything forgotten would have to be flown in as there are no roads or railways within 1,500 kilometres. Wages were necessarily high to attract workers to the north, and there was the additional cost of maintaining room and board on-site.

Unique concept saves money

Cominco adopted a scheme where as many as possible of the permanent

facilities would be built in southern Canada on a barge that would be towed to the mine site during the ice-free period. The barge was built in Lauzon, Quebec and outfitted in Trois-Rivières. It contains the concentrator, powerhouse, warehouse, dry, shop and offices. The galvanized steel structure, 31 m wide, 18 m high, and 122 m long, was towed 4,800 km through the St. Lawrence River, along the coast of Greenland and through Lancaster Sound to the mine site, arriving safely in August of 1981.

This unique concept of building a large portion of the project on a barge in southern Canada and simultaneously doing the necessary site work, saved about a year of time and millions of dollars.

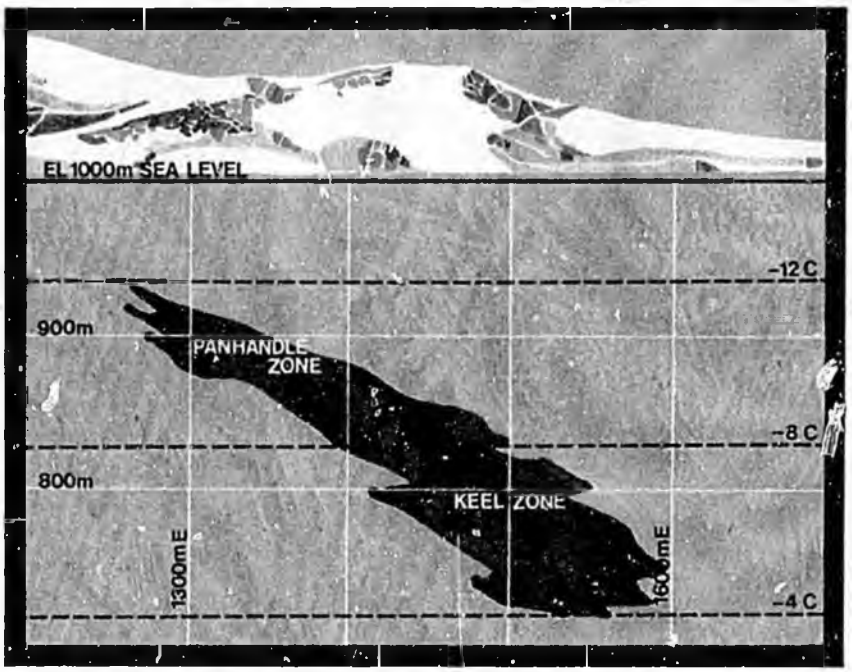
Construction on the island included a galvanized steel concentrate storage shed (with the familiar Polaris maple leaf), accommodations, an airport, fresh water and tailings disposal systems and a dock. Rather than using concrete to reinforce the dock structure, waste rock fill was frozen in place resulting in significant savings.

High grade orebody

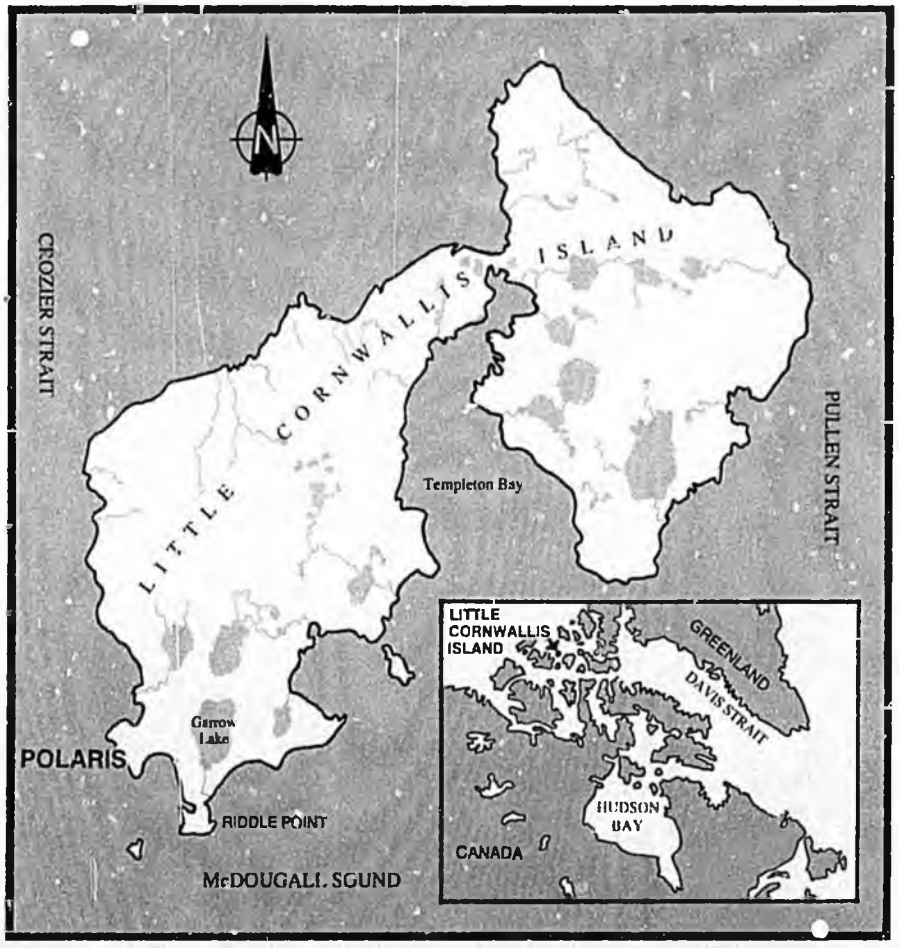
The Polaris orebody lies near the top of the Thumb Mountain Formation. Ore minerals are sphalerite and galena with the waste being predominantly dolomite with calcite and marcasite. Reserves in 1982 consisted of 11 million tonnes of indicated ore grading 4.4% lead and 15.2% zinc with a further twelve million tonnes of inferred ore at slightly lower grades.

The orebody is divided into two sections: the Panhandle Zone and the Keel Zone. The Panhandle Zone, about 25% of the reserves, is the upper portion of the orebody some 120 metres below surface. The ore thickness in this area ranges from 10 to 40 metres. The rest of the orebody, the Keel Zone, is attached to the east side of the Panhandle. This is the deeper zone with ore thickness of up to 110 metres.

The ore is porous and the voids are generally filled with ice, as the mineralized zone lies entirely within permafrost. The cross-section of the orebody shows typical rock temperatures as a function of depth. The influence of permafrost on the physical characteristics of the ore cannot be overemphasized. If allowed to thaw, much of the ore deteriorates to the extent that it crumbles. The stability of openings in the ore zone is entirely dependent on the permafrost.



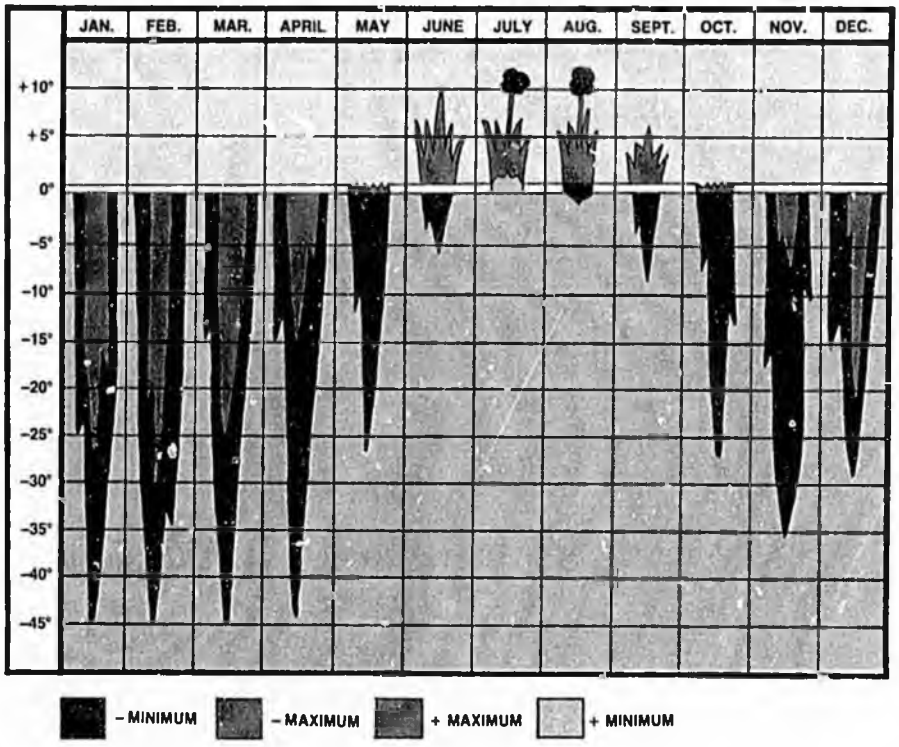
Above: The deeper you go, the warmer it gets: a cross-section of the orebody.
***Below:** Little Cornwallis Island is just off the northeast coast of Cornwallis Island in the High Arctic.*





CP PHOTO

Above: Aerial view of Polaris showing Garrow Lake in the background. Below: Only four months have above-freezing temperatures.



Underground mining methods were chosen at Polaris because the large amount of waste overburden made an open-pit method impractical. Primary stopes are mined in a series of parallel panels 10 metres wide. The cavity is then backfilled to allow recovery of the intervening pillars. Where ore thicknesses are less than 20 metres, panels are benched in five-metre vertical lifts from the top to the bottom of the ore zone. Higher ore thicknesses are extracted by blasthole mining.

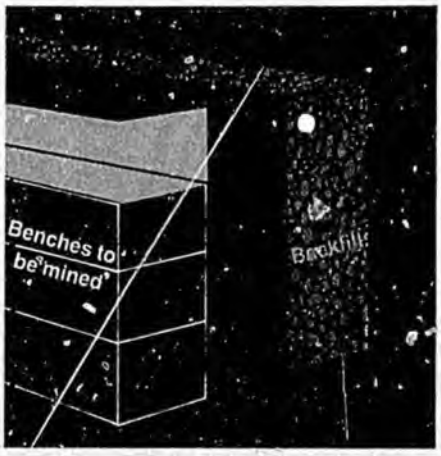
A backfill material was required that would not introduce heat to the mine and melt the permafrost. Shale rock, which is also in permafrost, is quarried on surface and delivered to the stope voids via boreholes between the surface and the mine workings. The shale is packed into the mined-out areas and a limited amount of water or snow is mixed in to form a consolidated frozen mass.

A lake in layers

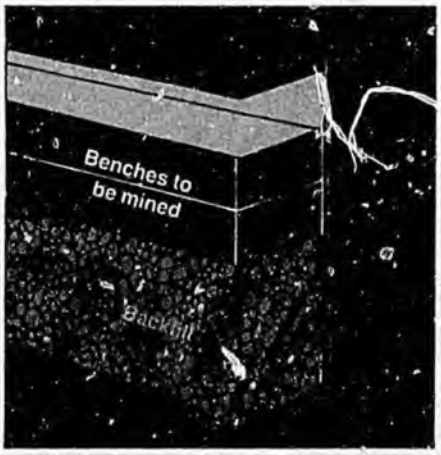
The Polaris tailings disposal concept incorporates a water recycle feature to conserve water and to recover heat in the process water. The mill tailings are pumped to a thickener overlooking Garrow Lake, 2½ km from the process barge. The thickened tailings are pumped to a depth below 20 metres in Garrow Lake and the overflow water from the thickener is returned to the concentrator.

Garrow Lake is a meromictic lake — a lake that has no vertical circulation of its water. The upper 13 metres of the lake is essentially fresh to brackish water supporting limited aquatic life forms. The transition zone (halocline) that extends from 13 to 20 metres is characterized by decreasing

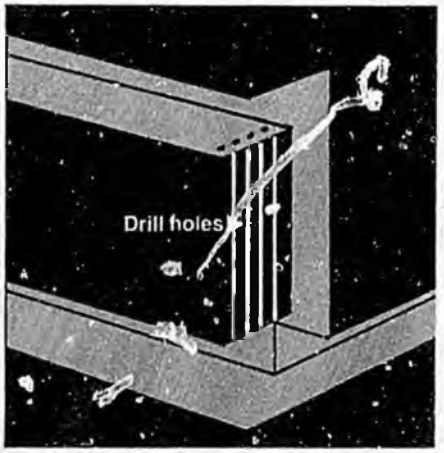
Benching (under 20 metres)



Two Stage Benching (over 20 metres)



Blasthole Stoping (over 20 metres)



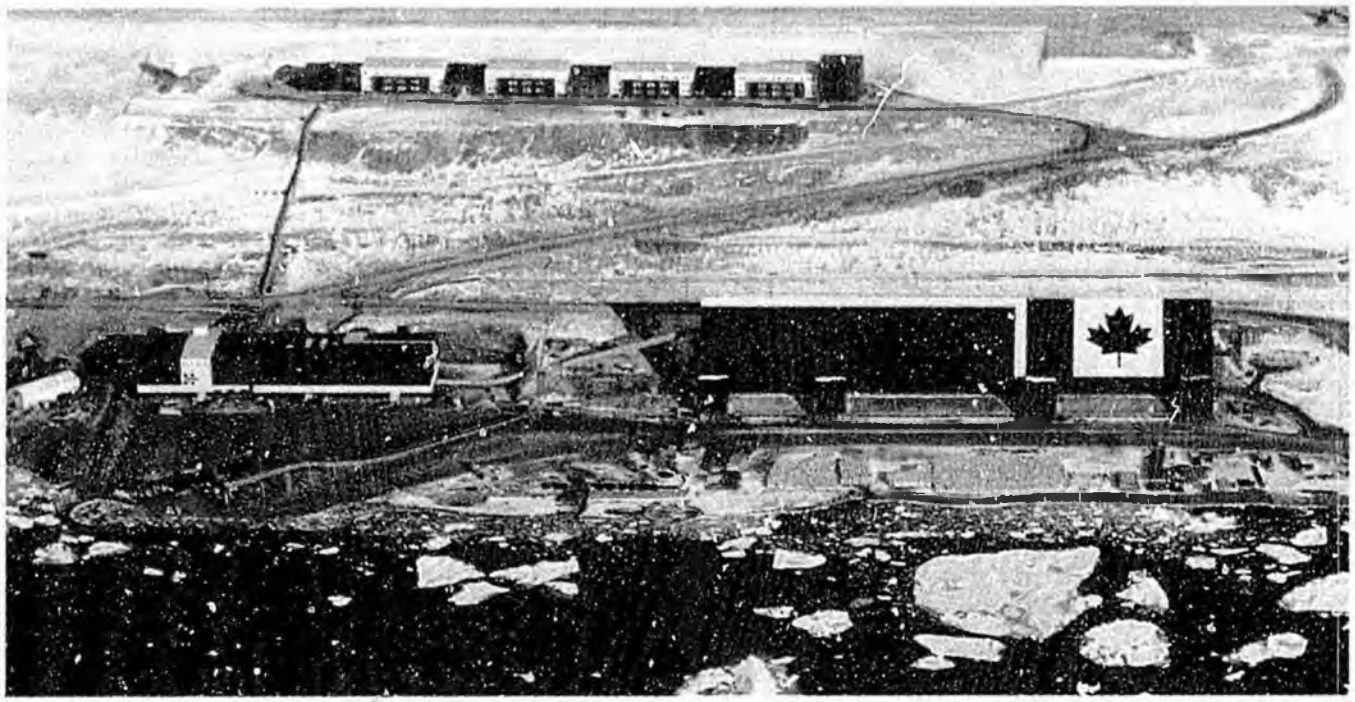
Mining methods used at Polaris include benching, two-stage benching and blasthole stoping. Blastholes of 82 mm are drilled from the top; the ore is blasted out and is then removed through an access tunnel at the bottom.





CP PHOTO

Above left: *The swimming pool at Polaris is the most northerly in the world.* ***Above right:*** *The accommodation complex is raised off the ground so that heat transfer from the buildings does not melt the permafrost.* ***Below:*** *Aerial view showing the accommodation complex at the top, the concentrator (barge) at lower left and the storage shed (with maple leaf) at lower right.*



CP PHOTO

oxygen content and increased salinity. It supports no aquatic life.

The bottom zone, below 20 metres, has abundant soluble hydrogen sulphide (H_2S) to 120 mg/L, and salinity three times that of sea water, resulting in a hostile environment to conventional aquatic life. It is a habitat for anaerobic, decay-causing bacteria that generate hydrogen sulphide.

Deposition of the mill tailings in this bottom zone, where there are no sensitive life forms, is uniquely environmentally acceptable. The presence of hydrogen sulphide prevents the release of soluble heavy metals. The thickening of the tailings prior to discharge in the lake precludes the vertical transportation of solids in the lake and reduces the volume of material deposited.

Living in the cold

The facilities and personnel policies at Polaris must take into consideration the extreme climate and isolation of the operation. The air temperature in the mine remains about 0°C in summer, and from -15° to -20°C in winter. In winter, miners wear thermal underwear, work clothes, company-provided quilted coveralls, parkas and gloves. There is an underground lunch room where miners can take a coffee break and get a hot lunch.



Air conditioning for the Arctic: ventilation fan at the mine entrance.

The accommodation complex is a carefully designed, well-built construction. It contains 208 single rooms and 16 suites within four residential modules. Recreational facilities include a billiard room, library, indoor swimming pool with sauna, gymnasium, games area and weight-lifting room. There is a common dining-room and lounge area. Some eight channels of television are available via satellite in both English and French.

The opportunity to work long hours at high rates of pay and the quality of the room and board are the main advantages attracting workers to Polaris. The standard work week is 11 or 12 hours a day, six days a week. Work schedules are on a rotation basis, and employees are flown to their homes following each work rotation. Southern employees work 10 weeks at the mine and then have two weeks off.

Northern native employees have the option of working for six weeks followed by four weeks off. This rotation is designed to allow the Inuit to continue with traditional pursuits such as hunting and fishing.

The High Arctic is a very difficult location in which to construct and operate a mine and concentrator. Cominco has had to adapt its construction approach and operating practices to suit the harsh environment and isolated site. The experience to date at Polaris demonstrates the success of our innovative approach to northern development. This northern Canadian frontier is largely unexplored and prospects for new mineral finds in the immediate area around Polaris are high. Cominco's success with the Polaris Mine project and operation may well be a model for future northern development. **— Jim Drake**



Jim Drake

Jim Drake, who is General Superintendent Polaris Operations, started with Cominco as an engineer-in-training at Kimberley in 1973. After nine months there, he worked for 2½ years at the Con Mine in Yellowknife on the Robertson Shaft project. In 1976 he went to Spain to work at Rubiales for three months — and ended up staying for five years. He has been at Polaris since 1981.



The Federal Elbe loading concentrates during Polaris' first production season in September, 1982. The 1983 sealift had a new twist.

Roundabout resupply saves dollars

Little Cornwallis Island, N.W.T. — For the Polaris Mine, resupply, like Christmas, comes but once a year — in the brief Arctic summer when sea lanes open through the ice for ships to reach Little Cornwallis Island.

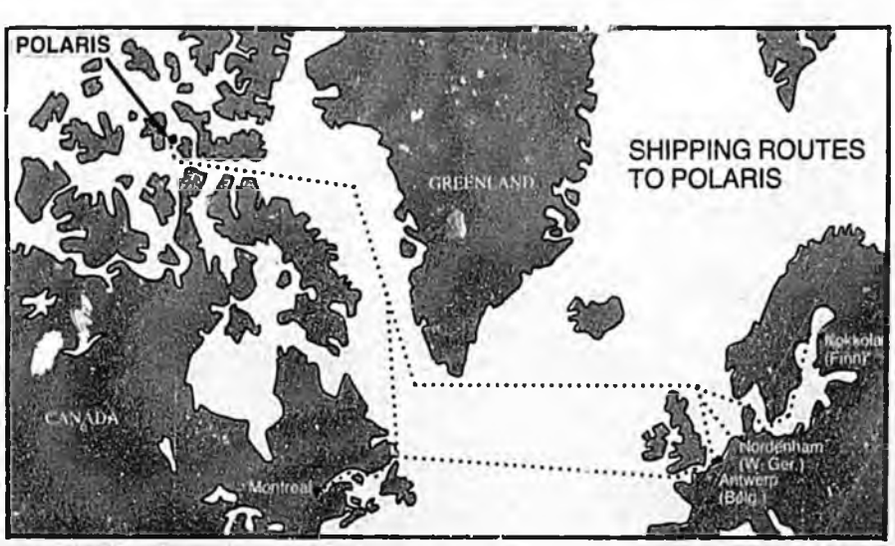
In 1983 the second annual sealift of materials to the mine was different from the first summer. Most of the goods for Polaris were shipped to Europe first. They went from Montreal across the North Atlantic to Antwerp in Belgium for transshipment into another vessel bound for the Canadian Arctic. The dogleg route is about double the 4,800 km of the conventional route from Montreal to Polaris, but resulted in savings of about $1 million.

The circuitous route (see map) was taken because Polaris has a contract for shipment of concentrates in the MV *Arctic*, a Canadian icebreaking carrier which also ships zinc-lead concentrates from the Nanisivik Mine on Baffin Island.

With the *Arctic* delivering her first shipment from Nanisivik to Antwerp in July, the Polaris purchasing group in Toronto determined that it would be cheaper to send supplies for Polaris to Europe for transfer to the MV *Arctic* than to ship direct from Montreal to Little Cornwallis Island. The *Arctic*'s northbound trip is part of the Cominco contract; why not fill her holds with cargo instead of ballast?

A total of 1,250 tonnes of supplies for Polaris were purchased in Canada and shipped in the MV *Lady Franklin* from Montreal to Antwerp. Among the supplies were containers of canned food, hardware, parts, chemicals, tires, lubricants, lumber and 11 mine vehicles.

Another 3,000 tonnes of goods were purchased in Europe and delivered to the Port of Antwerp. Both cargoes were loaded aboard the *Arctic* in July, 1983. The *Arctic* arrived at Polaris on



August 10, 1983. The supplies were unloaded and the *Arctic* departed for Antwerp on August 15 loaded with 2,271 tonnes of lead concentrate and 24,230 tonnes of zinc concentrate. The *Arctic* made two more calls at Polaris to load concentrates before the end of October.

Total concentrate shipments from Polaris in 1983 were 43,531 tonnes of lead and 196,910 tonnes of zinc. Besides the *Arctic*, five other ships called to take off the year's production of concentrates: the *Federal Hudson* on August 31 and September 21 to Nordenham, West Germany, and Antwerp; the *Finntimber* on September 1 to Kokkola, Finland; the *Federal St. Laurent* on September 11 to Antwerp; the *Federal Huron* on September 13 to Nordenham and Kokkola; and the *Columbialand* on October 10 to Antwerp.

Polaris was also supplied with 15,600,000 litres of fuel oil to satisfy the mine's energy needs for a year. The tankers *Gulf Gatineau* and *Gulf MacKenzie* called at the end of August and the end of September respectively.

Over 300 tonnes of Polaris-bound supplies, which did not go to Antwerp to connect with the MV *Arctic* in July, were shipped in the *Federal Pioneer* out of Montreal. The *Pioneer* supplied other northern settlements on its way to Polaris. Included in her cargo for Polaris were a year's supply of frozen meat and ice-cream — a case of exporting ice to the Arctic.

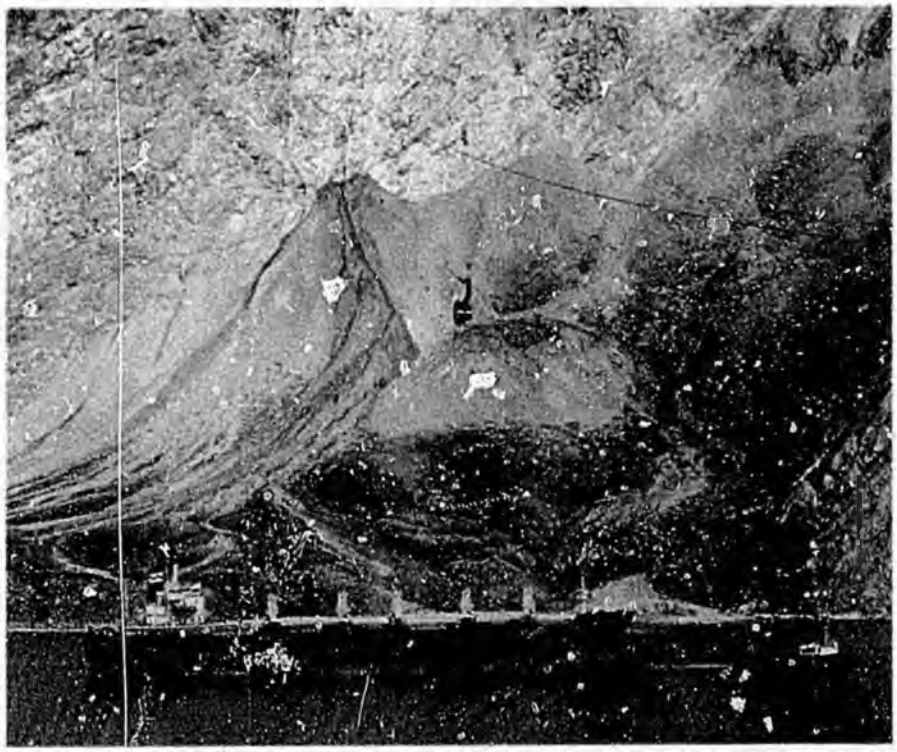
What does it mean?

Polaris

Little Cornwallis Island, N.W.T. — The northernmost metal mine in the world was named for its location beneath the pole star, Polaris, and near the magnetic north pole in Canada's High Arctic.

The pole star, or North Star, is the nearest star to the North Pole visible to the naked eye. Medieval Norse navigators learned to steer by the pole star that remained constant in the northern sky.

Over the eons, a succession of stars have passed near enough to the North Pole to serve as markers. But Polaris has been the pole star for at least 2,000 years, and will come even closer to the pole over the next hundred years. Three thousand years ago, the pole star would have been Beta Ursa Minoris; 12,000 years ago, it was Vega.



With a cablecar suspended above, a bulk carrier docks at Maarmorilik to load zinc and lead concentrates for smelters in Europe.

Black Angel: A Mine in a Mountain

Can a mine high on a mountainside in a remote part of Greenland be both a financial and a social success?

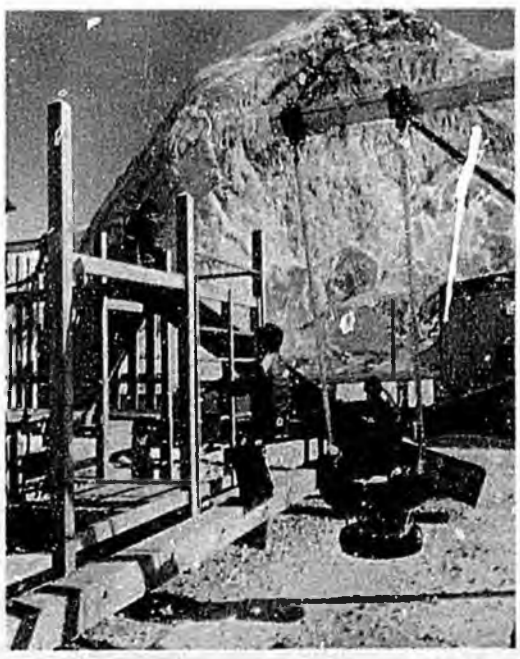
Now ten years after start-up, the Black Angel zinc-lead-silver mine has demonstrated that native Greenlanders, who comprise nearly half of the workforce of 348, have been a key factor in this remarkable operation.

The mine, located 500 km north of the Arctic Circle on the northwest coast of Maarmorilik, is Greenland's first large-scale industrial installation. The operation forms a complete community of its own, unlike the fly-in, fly-out camp system proposed for Red Dog in Alaska.

Evidence of lead and zinc minerals was found many years ago in rock debris along the shoreline of Maarmorilik fjord. In 1963 the region was examined by a prospecting party supported in part by Cominco Ltd. The first large-scale exploration work was carried out from June to September in 1966. Many difficulties were encountered, not the least of which was that the lead and zinc bearing minerals were located on nearly vertical cliffs. Mountaineers were used and exploration crews encountered storms, permanently frozen rock and other difficulties.

The mine and mill began producing in October 1973.

The operation is owned by Greenex A/S, a Danish company wholly-owned by Vestgron Mines Limited of



These children are part of the mine community at Maarmorilik.

Canada. Cominco Ltd. controls Greenex A/S through a 62 per cent interest in Vestgron. Hank Giegerich, President and General Manager of Cominco Alaska, was project engineer at Black Angel for two years from 1972.

Another engineer who would become Vice-President of Cominco's northern operation, John Willson, served at Black Angel as Project Superintendent and later Manager, Black Angel Operation, until 1974. Lars Sprunk-Jansen, Managing Director of Greenex A/S participates in the Red Dog management committee to which he brings experience of both Arctic mining and the concerns of local hunters and fishermen.

The mine's facilities include a concentration plant, townsite, concentrate storage facilities, docks and ship-loading equipment, electric power and seawater desalination plants. The mill equipment was transferred to the Greenland site from a Cominco American Incorporated mine in Montana and reassembled on site. The grinding equipment uses seawater as process water.

Although the mine is on tidewater navigation is closed from December to June due to ice conditions. Greenex has an agreement with the community board of Uummannaq concerning ice breaking in order to protect the traditional hunting and fishing life.

The mine is inside the Black Angel mountain which takes its name from the clear outline of an angel with outstretched wings darkening the side of the mountain. The mountain has an altitude of 1100m and the mine portal is located at the 600m level. The entire mountain is permanently frozen. The mine portal is reached by two cableways with a span of 1500m stretching across the fjord to the concentrator and town site on the opposite edge of the fjord.

The ore is treated in a standard concentration plant and the concentrates stored for shipping.

Since 1979 Greenland has had home rule under the kingdom on Denmark. The Danish Ministry for Greenland is still responsible for several areas but more and more are being transferred to the Greenlandic home rule government in Nuuk.

A joint committee for mineral and oil resources in Greenland was established on July 1, 1979. Five if its 10 members are appointed by the Danish government, the remaining five by Greenland Home Rule. The committee follows developments in the mineral and oil resources sector; in addition, it submits its recommendations in matters of resources on which a decision must be made jointly by the Danish government and Greenland Home Rule. Chairman of the committee is Premier Jonathan Motzfeldt. The Ministry for Greenland has an agency responsible for the central administration of mineral and oil resources. The agency also acts as secretariat for the joint committee.

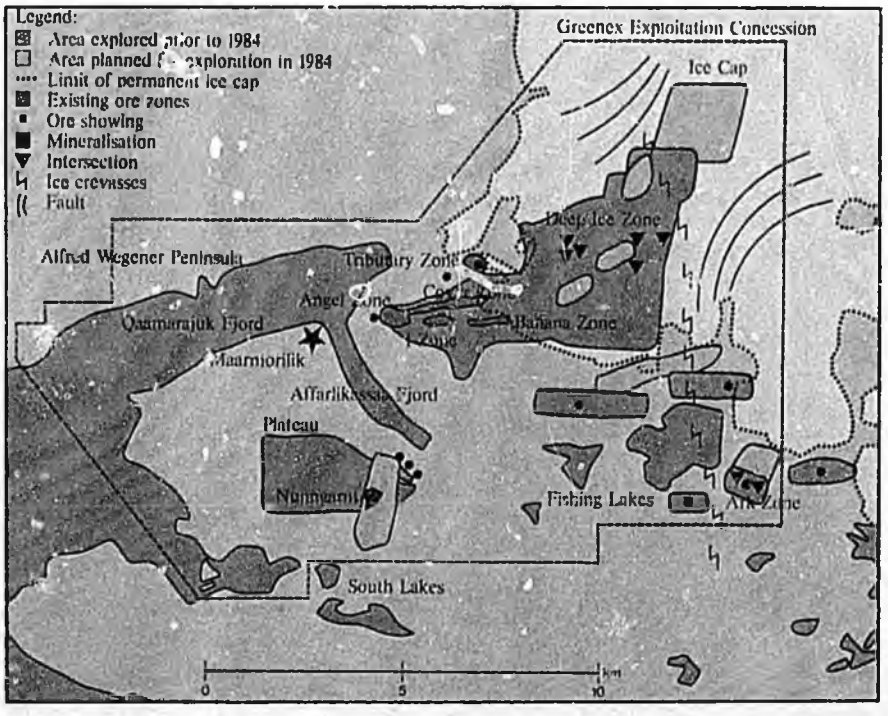
In 1971, Greenex got an exclusive concession from the Minstry for Greenland after extensive negotiations. As a consequence of the introduction of Home Rule and of the complexity of the operation, Greenex's head office moved to Maarmorilik from Copenhagen on June 1, 1984. The administrative office in Copenhagen will be transferred during 1984, leaving four or five persons in Copenhagen.

Environmental control is an important element of the agreement with the Danish Government. It requires the company to follow strict pollution control measures to safeguard the environment. Prior to the start of operations, the waters, flora and fauna near the mine were studied to assess their natural state. Tests are made periodically to ensure that metal elements and chemicals resulting from mine activity are within acceptable limits.

The townsite includes bunkhouses, apartments, townhouses, kitchen, dining and laundry units, a recreation centre and medical centre with resident doctor. Electric power is provided by three diesel units.

The mine relied on Canadian mining specialists until 1975 when Greenex replaced them with Danish and Greenlandic personnel. Greenex also draws on graduates from Scandinavian mining schools and technical universities. Employees are encouraged to take internal and external educational courses offered through the company.





Location of the Black Angel Mine, operated by Greenex A/S, on the west coast of Greenland 500 km inside the Arctic Circle. The plan of the property (above) shows ore zones and explored areas.

Cominco American Incorporated
818 West Riverside Avenue
Spokane, WA 99220
Telephone (509) 747-6111 Telex 32-6441

Cominco Alaska Incorporated
5660 "B" Street
Anchorage, AK 99502
Telephone (907) 563-3686 Telex 25-106

Cominco Ltd.
#2300 - 200 Granville Street
Vancouver, B.C. V6C 2R2
Telephone (604) 682-0611 Telex 04-507730

Litho'd in Canada
Agency Press



Cominco Ltd. Annual Report 1983

Cominco

Cominco Ltd.

Summary of Business Activities and Corporate Objectives

Cominco Ltd. is an integrated natural resource company with principal activities in mineral exploration, mining, smelting and refining. It is one of the world's largest mine producers of zinc and lead.

Cominco's Western Canada's second largest chemical fertiliser producer. Principal chemical and fertiliser products are ammonia, urea, potash, ammonium nitrate, ammonium phosphate, ammonium sulphate, sulphuric acid and sulphur dioxide.

Cominco also produces silver, gold, copper, tin, cadmium, bismuth, indium, diamonds, coal, steel products, fabricated metals, high-purity metals and compound semiconductors and components for the electronics and other high-technology industries.

Cominco's primary objective remains steady, long-term growth. To accomplish this, it seeks to strengthen its position in zinc and in lead, and to expand its activities in selected non-ferrous metals, particularly gold, and in chemicals and fertilizers. Cominco is endeavouring also to broaden its markets and geographic base.

In managing the growth of its business, Cominco continues to seek high standards of production efficiency, to provide customer satisfaction and to reward employees energy and initiative. Emphasis is placed on the health and safety of its employees and the protection of the environment.

Cover:



Cominco became a copper producer with the opening of the Valley Mine in British Columbia in 1983. The cover photograph, taken from the northwest corner of the open pit mining area, shows the former Bethlehem Copper Corporation concentrator, where ore from the mine is processed. Photo at left shows ore being hauled 4.1 miles (6.6 km) from the mine to the concentrator.



Highlights of 1983

(All dollar amounts in millions except per share figures)

		1983	1982
Financial	Loss (1982 before extraordinary item)	$ 39.3	$ 49.3
	— per common share	$ 2.60	$ 3.16
	Dividends on common shares	$ 8.2	$ 24.4
	— per common share	$ 0.40	$ 1.30
	Capital expenditures	$ 106.3	$ 230.4
Production and sales	Production of concentrates in tons *(tonnes)*		
	zinc	666,000	722,700
		(604,200)	*(655,700)*
	lead	313,600	386,800
		(284,500)	*(351,000)*
	copper	84,000	28,800
		(76,200)	*(26,200)*
	Sales of metals in tons *(tonnes)* (includes metal content of concentrates sold)		
	zinc	434,600	379,000
		(394,300)	*(343,800)*
	lead	300,000	257,100
		(272,200)	*(233,200)*
	copper	33,600	17,900
		(30,500)	*(16,200)*
	Production of chemicals and fertilizers in tons *(tonnes)*	2,804,000 *(2,544,000)*	2,497,000 *(2,265,000)*
	Sales of chemicals and fertilizers in tons *(tonnes)*	2,895,000 *(2,626,000)*	2,536,000 *(2,300,000)*

Contents

Summary of Business Activities and Corporate Objectives	Inside Front Cover
Highlights of 1983	1
Report of the Directors to the Shareholders	2
The Year in Review	4
Statement on Inflation Accounting	20
Management's Statement on Financial Reporting	21
Auditors' Report	21
Consolidated Financial Statements	21
Principal Offices, Subsidiaries and Associated Companies	30
Five-Year Financial Summary	32
Shareholder Information	32
Directors and Officers	Inside Back Cover

Terms used

In this report, all dollar amounts are Canadian unless otherwise noted. All tons are short tons, with metric tonnes appended in italics and in parentheses. A tonne is 1,000 kilograms, or 2,204.6 pounds.

Annual Meeting

The Annual and a Special General Meeting of shareholders of Cominco Ltd. will be held on Thursday, April 19, 1984, at 11:00 a.m., in the Park Ballroom, Four Seasons Hotel, Vancouver, B.C.

Report of the Directors to the Shareholders



M. N. Anderson
Chairman and
Chief Executive Officer

The economic recovery experienced by some industries in 1983 has been slow to influence demand and prices for most of Cominco's principal products.

The loss for the year was $39.3 million or $2.60 a common share on sales of $1,374.7 million. The loss in 1982, before including an extraordinary gain of $18.1 million, was $49.3 million or $3.16 a common share on sales of $1,234.7 million.

Cominco is recovering from the deep recession that proved to be especially difficult for the mining and fertilizer businesses. The rise in demand and in prices has been mainly in consumer-linked commodities and products, and as a result zinc has performed well. The other base metals Cominco produces, such as lead and copper, are in oversupply and demand and prices have not improved. As well, fertilizer markets had a poor year as a result of government programs to regulate production of crops, high interest rates, low prices and surplus supplies.

We have adapted to this harsh economic environment to ensure long-term competitiveness in our traditional base metal and fertilizer markets, and we are developing in new, fast-growth areas. We are renewing our strengths as a low-cost producer.

Our program emphasizes the efficient use of capital and technology, of our strong mineral resources and plants, and of the skills of our talented workforce.

During the year, $100 million was raised through the issuance and sale of additional common shares at a price of $45.625 a share.

Interest costs were lowered by prudent deferments of capital expenditures, and through lower inventory levels. However, energy costs continued to escalate, largely as the result of governments using energy pricing as a means of raising revenues. High natural gas costs, high water license fees for the generation of our own hydroelectric power and high property taxes have become major concerns.

Costs were rigorously controlled through the year and significant gains made in productivity. Production tonnages in general were the same as or greater than in the previous year, while the total number of employees decreased by 3 per cent. Reductions in personnel since 1982 have resulted in ongoing savings of over $50 million each year.

The six-month shutdown at Pine Point, caused by a combination of low metal prices and high operating costs, ended following temporary cost-reducing agreements reached with governments, employees and others.

The Polaris zinc-lead mine in the Canadian High Arctic concluded its first full year of operation by producing more concentrates than its rated capacity. The Valley copper mine in British Columbia was officially opened during the year, and an increase in production from the present 23,000 tons *(21,000 tonnes)* of ore a day will be considered when market conditions permit.

At the Trail metallurgical complex, the start of production in the zinc electrolytic and melting plant in 1983 marked the completion of the first major phase of the modernization and expansion program started in 1977. The result has been an increase in productivity and greatly improved working conditions.

Planning continued on the proposed Red Dog zinc-lead-silver mine in Alaska which may ultimately become a primary source of concentrates for the Company. An environmental impact statement and engineering plans for the mine site facilities were prepared. The project is a joint venture of Cominco and NANA Regional Corporation, Inc., an Alaskan native organization. During the year alternative road routes from the mine site to the coast were studied, as were plans for a deep water port at a point on the coast north of Kotzebue.

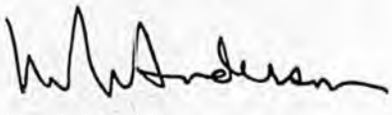
Plans to put the Buckhorn gold mine in Nevada into production were announced in September. This low-grade heap-leach project is expected to reach full production in the second quarter of 1984.

The already strong zinc market is expected to continue throughout 1984. The improved lead market at year-end may lead to higher prices. The outlook for copper is that weak prices will continue until inventories in the Western World are reduced through higher consumption. Demand for our chemical and fertilizer products is expected to improve, and at increased prices.

In the longer term, we will be challenged by a slower rate of growth in demand for our primary products, and we intend to win new markets for them. The mining industry has entered a new era, characterized by the emergence of strong competition from producers in less developed countries, particularly in copper. New opportunities exist for sales of our technical services, and for joint ventures.

Mr. John Stenason left the Board after 12 years of service as a Director, and Mr. Stuart Eagles, President, Canadian Pacific Enterprises Limited, was appointed to the Board.

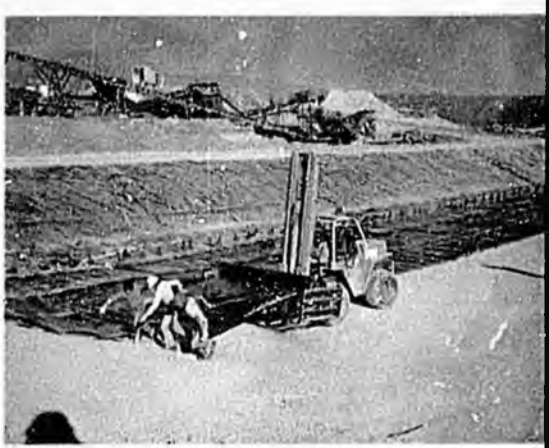
On behalf of the Directors and Officers, I wish to thank our employees who worked with enthusiasm and dedication in a most difficult year toward our goal of excellence. The best measures of their success are the reduced costs, increased productivity and improved safety performance achieved in 1983.



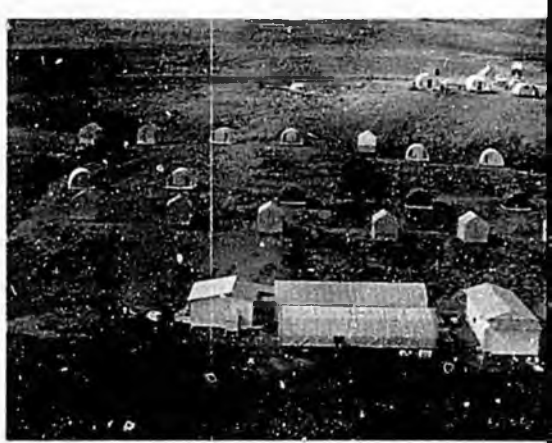
March 14, 1984



Cominco's strong mineral resources: a key part of the Company's future. △



Carlin, Nevada: heap-leaching ponds under construction at the new Buckhorn operation. △



Red Dog, Alaska: in summer, the exploration camp on the property in the NANA region of northwestern Alaska. △

◁ *Trail, B.C.: continuous-cast zinc "logs" at the new electrolytic and melting plant are sawn into one-tonne "jumbos" for shipment to customers.*

The Year in Review

Revenue and Earnings

Cominco incurred a loss of $39.3 million in 1983, an improvement of $10 million over the $49.3 million loss in 1982. Losses occurred in the first three quarters of the year, with a small profit achieved in the fourth quarter. Operating results improved, highlighted by a marked reduction in the loss from the mining and integrated metals business segment. In spite of a very difficult year in U.S. fertilizer markets, the operating profits from chemicals and fertilizers were only slightly below 1982 levels.

Revenue from sales of products and services increased to $1,374.7 million in 1983, compared with $1,234.7 million in 1982. In 1983 sales volumes increased revenues by $119.2 million, and sales prices accounted for an additional $20.8 million.

The cost of products and services in 1983 was $1,015.2 million, an increase of $82.9 million over 1982, due principally to costs attributable to increased sales volumes. Operating costs during the year were marginally lower than 1982 as a result of continuing programs to increase productivity and reduce costs.

Distribution costs of $161.8 million increased $22.2 million over 1982 levels, due mainly to the increased volume of products sold. General and administrative expenses decreased $3.9 million, principally due to the continuing programs to reduce costs. Reduced borrowings and a decline in interest rates during the year resulted in a decrease of $9.0 million in interest expense charged to earnings. Depreciation and depletion expense increased $13.8 million as a result of including charges for a full year of operation at the Polaris Mine, for the Valley Mine which started up in the year and for projects associated with the Trail modernization program, particularly the new zinc plant.

The loss for 1983 has been reduced by a credit for income taxes. Current income taxes of $5.9 million have been reduced by investment and research and development tax credits of $1.7 million. A tax credit of $32.6 million, arising from deferment of claims for capital cost and other allowances for tax purposes, will be realized in future years when the Company returns to profitability.

Equity in net earnings of associated companies decreased to $2.3 million from $5.2 million in 1982. This reduction is attributed mainly to a $3.1 million decrease in the Company's share in earnings of Fording Coal Limited. Lower earnings by that company were a result of a negotiated coal price reduction of 15 per cent and an 82-day shutdown due to a strike.

Liquidity and Capital Resources

The Consolidated Statement of Changes in Financial Position on page 25 shows 1983 sources of funds totalling $149.7 million. Funds from operations were $31.6 million, an increase of $39.6 million over 1982. Proceeds from the disposal of assets contributed $8.9 million. Additional long-term debts in the year amounted to $8.8 million. In April 1983, Cominco received $100.0 million from the issue of 2,191,780 Common Shares. The proceeds were used to reduce short-term borrowings.

Funds used during 1983 were $183.7 million compared with $304.0 million in 1982. Combined capital expenditures on facilities and mineral properties at $106.3 million represent significant savings compared with $230.4 million in 1982. Capital projects in the year were severely curtailed, with expenditures being directed mainly towards sustaining production capacity and completing projects under construction in 1982. Major projects funded during the year included $25.7 million on modernization projects at Trail, B.C., $5.5 million on the new continuous rolling mill at Western Canada Steel Limited's Vancouver plant, $9.2 million on the Buckhorn gold property in Nevada and $7.7 million on the Red Dog zinc-lead-silver deposit in Alaska.

Payments of $46.7 million were made on long-term debt during the year, an increase from 1982. Total dividend payments were $24.6 million, including $13.9 million to preferred shareholders and $2.5 million to minority shareholders of subsidiary companies. Common share dividends of $8.2 million, or $0.40 a share, were distributed in 1983, sharply down from the 1982 level of $24.4 million, or $1.30 a share. Dividends of $2.00 a share on Series A Preferred Shares, $1.98 a share on Series C Preferred Shares and $3.25 a share on Series D Preferred Shares were paid in 1983.

Working capital declined during the year to $187.0 million from $221.0 million at the end of 1982. Lines of credit available to Cominco and its consolidated subsidiaries totalled $489.8 million, of which $347.7 million remained unutilized at year-end.



W. G. Wilson, President

Cominco sold its entire 17.2 per cent interest in Tara Exploration and Development Company Limited in January 1984. Proceeds from the sale amount to approximately $22.5 million. The loss resulting from the sale had been fully provided for in Cominco's accounts as amortization of the original purchase price had reduced the carrying value to the amount received.

Early in 1984 federal legislation providing incentives for the financing of research and development was enacted. As a result, the rights to tax benefits on research and development expenditures of $5 million incurred in 1983 were sold to another company in February, 1984 as Cominco was unlikely to utilize the tax benefits in the foreseeable future. A gain of $450,000 on this sale was recorded in the 1983 accounts.

Operations

The operations of Cominco Ltd. and its subsidiaries are divided into three industry segments as follows:

***1 Mining and integrated metals**, comprising principally the mining, processing, smelting and refining of zinc, lead, copper, silver and gold;*

***2 Chemicals and fertilizers**, comprising principally the production of sulphuric acid, sulphur dioxide, potash, ammonia, urea, phosphates and nitrates;*

***3 Other operations**, comprising principally electronic materials, fabricated metal products and the generation and distribution of electric power.*

The revenues and operating profits (losses) of each segment are shown in Note 14 of the Notes to Consolidated Financial Statements. Operating profits (losses) are before providing for unallocated costs and expenses, including interest expense, general mineral exploration and income and resource taxes.

Mining and Integrated Metals

Revenues and Operating Profit (Loss)

	Revenues		Operating Profit (Loss)	
	1983	1982	1983	1982
			(millions)	
Sullivan Mine	$103	$ 79	$ 19	$ 13
Pine Point Mines	52	88	(15)	(10)
Polaris Mine	61	29	6	2
Black Angel Mine	66	65	16	14
Magmont Mine	24	24	2	3
Con Mine	36	37	8	7
Valley Mine[1]	54	25	7	(5)
Trail Metallurgical Operations	402	328	(35)	(44)
Nonproducing mines and properties	—	—	(14)	(18)
	$798	$675	$ (6)	$(38)
First Quarter			$(11)	$(18)
Second Quarter			(1)	(7)
Third Quarter			1	(14)
Fourth Quarter			5	1
			$ (6)	$(38)

[1] 1982 figures are for the Jersey Mine which was closed in June, 1982

At Trail, B.C. Cominco operates an integrated smelter and refining complex producing various refined metal products, principally zinc, lead and silver. In addition to processing concentrates from Company mines, it also purchases and refines concentrates from mines in southern British Columbia, the northwest United States and offshore.

The Sullivan Mine at Kimberley, B.C. and Pine Point Mines in the Northwest Territories are the chief sources of zinc and lead concentrates for the metallurgical operations at Trail. Other mines operated by Cominco and its subsidiaries are the Polaris Mine, N.W.T. (zinc, lead); the Black Angel Mine, Greenland (zinc, lead, silver); the Magmont Mine, Missouri (lead, zinc, copper); the Con Mine, N.W.T. (gold); the Buckhorn Mine, Nevada (gold); and the Valley Mine, B.C. (copper).

The Industry

Demand was weak for most metals at the beginning of the year due to the continuing effects of the world recession. The recovery which began slowly in the fourth quarter of 1982 was uneven and first affected North American zinc markets with improved consumer demand for automobiles, housing and durable goods. Demand for lead and copper was not affected to the same extent and Western World inventories of these commodities increased during the year. Demand for lead improved in the fourth quarter as battery manufacturers increased their lead consumption because of severe winter conditions in North America.

At year-end, total Western World zinc stocks were near the normal level of six weeks' consumption, and lead stocks amounted to seven weeks' consumption compared with the normal level of five weeks'. Copper stocks at eleven weeks' consumption at the end of the year were almost twice the normal level.

The Western World's consumption of refined zinc increased in 1983 by 7 per cent over 1982, while lead and copper consumption stayed at about 1982 levels. Exports of refined zinc and lead to China and to the U.S.S.R. were considerably higher in the year.

Mine production of zinc and lead in the Western World declined in 1983 by 0.5 per cent and 3.3 per cent respectively from the 1982 levels, but supplies of both concentrates were ample throughout the year. Mine production of copper decreased by 3 per cent in the year, and as the year progressed a shortage of concentrate began to develop. Despite the decline in Western World mine output during the year, refined production of zinc increased by 6.8 per cent to 5.09 million tons *(4.62)*, refined copper production increased 1.5 per cent to 7.97 million tons *(7.23)* and refined lead production at 4.35 million tons *(3.95)* was up one per cent from the previous year.

Quoted refined zinc prices were weak during the first half of the year but strengthened in the second half.

reflecting improved demand. North American lead prices remained weak until demand increased late in the year; however, lead prices on the London Metal Exchange were sluggish throughout the year reflecting world oversupply conditions. After strengthening during the first half of the year, copper prices weakened steadily during the second half of the year (see price charts on page 11).

Summary of Results

The revenues and operating results of Cominco's mining and integrated metals business segment improved over 1982 mainly because of higher prices for zinc, silver and gold, and increased sales volumes of copper and zinc concentrates and zinc metal. Realized silver and gold prices were substantially higher in 1983 than in 1982 but declined in the fourth quarter to prices that were below their respective 1982 year-end levels. Operating results also benefited from continuing programs to increase productivity and to reduce operating costs.

Higher prices for gold and silver and earnings from the new Valley Mine were the main contributors to improved operating results in the first and second quarters. In the third and fourth quarters, increased sales volumes of zinc and lead metals and higher prices for zinc contributed to the improved results.

The Company sold 261,600 tons *(237,300)* of zinc concentrate compared with 215,700 tons *(195,700)* 1982; and 169,600 tons *(153,900)* of lead concentrate compared with 142,200 tons *(129,000)* sold in 1982.

The sales volume of copper concentrate in 1983 was 76,300 tons *(69,200)*, containing 33,600 tons *(30,500)* of copper.

Sales of refined zinc rose 9 per cent to 279,100 tons *(253,200)* in 1983, compared with 255,900 tons *(232,100)* in 1982. Refined lead sales rose 22 per cent and totalled 179,000 tons *(162,400)*, compared with 147,200 tons *(133,500)* in 1982. At year-end, Cominco's inventories of refined zinc were normal and lead inventories were below normal.

Sales of gold were 89,700 ounces *(2,790 kilograms)*, down from 104,100 ounces *(3,238 kilograms)* sold in 1982. Sales and production were affected by an eight-week strike at the Con Mine. Cominco sold 11,316,000 ounces *(351,970 kilograms)* of silver, compared with 10,004,000 ounces *(311,159 kilograms)* in 1982. The increase in sales was a result of the higher silver content in custom concentrates and lower consumption of silver for anodes by the new zinc electrolytic and melting plant. Year-end inventories of gold and silver were minimal.

In January, 1984, Cominco (UK) Limited relinquished its ring dealing privileges on the London Metal Exchange because the financial risks involved were not warranted in view of that company's earnings level.

Sullivan Mine

The Sullivan zinc-lead-silver mine at Kimberley, B.C. celebrated its 75th year of production in 1983. This mine is a principal supplier of zinc and lead concentrates to the metallurgical plants at Trail.

Sullivan ore production in 1983 was 2,224,000 tons *(2,017,000)*, 9 per cent below the 1982 level. There was an eight-day strike which affected this total. About 38 per cent of production came from mechanized mining in 1983, resulting in an improvement in productivity.

Zinc concentrate production at 136,000 tons *(123,400)* increased above the 1982 level due to improved zinc grades, while lead concentrate production at 139,300 tons *(126,400)* fell below the 1982 level because of lower lead feed grades and reduced ore production.

		1983	1982
Ore milled	tons	2,224,000	2,446,000
	(tonnes)	*(2,017,000)*	*(2,219,000)*
Zinc			
Average grade		3.6%	3.2%
Concentrate	tons	136,000	131,000
	(tonnes)	*(123,400)*	*(118,800)*
Concentrate grade		49.3%	49.4%
Lead			
Average grade		4.6%	5.0%
Concentrate	tons	139,300	170,600
	(tonnes)	*(126,500)*	*(154,800)*
Concentrate grade		62.2%	61.4%
Silver			
Average grade	oz/ton	1.6	1.9
	(g/tonne)	*(55)*	*(65)*
No. of employees at year-end		941	959

Pine Point Mines

Cominco owns 69.1 per cent of the shares of Pine Point Mines Limited, which has zinc-lead mines and a concentrator at Pine Point, N.W.T., on the south shore of Great Slave Lake. All of the zinc concentrate produced at Pine Point is treated at Cominco's metallurgical plants at Trail. Most of the lead concentrate is sold to an associated company, Mitsubishi Cominco Smelting Company Limited (45 per cent owned), which operates a lead smelter in Japan.

Pine Point operations were shut down from January 2 to June 15 because of the severe decline in metal prices and the higher operating costs associated with the increasing strip ratio. Resumption of operations was made possible by the improved outlook for metal prices at mid-year, and by obtaining temporary cost-saving concessions from major service sectors.

Pine Point's salaried staff were the first to contribute by accepting a continued salary freeze in force since July, 1981. The unionized employees, who had continued to receive pay increases established by the two-year collective agreement negotiated in 1981, accepted a 10 per cent pay cut on May 1, 1983. This agreement provided that the reduced wages would remain in effect until metal prices increased sufficiently to allow Pine Point to break even on a cash basis. The contractual base rate was restored to its previous level in two stages in November 1983 and January 1984 as zinc prices increased; staff salaries were increased about the same time.

Financial assistance was obtained from the Federal and Territorial Governments for mine development and temporary concessions were negotiated for freight rates, smelter treatment charges and power tariffs. By early 1984 most of this assistance had been discontinued.

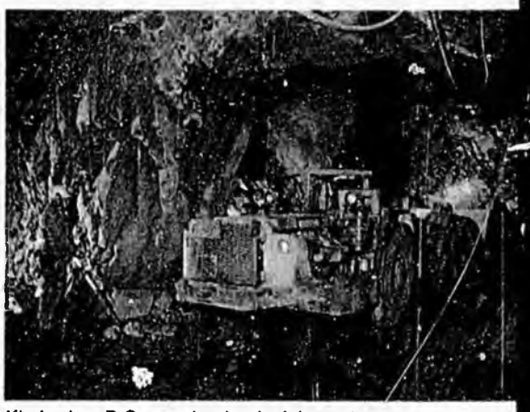
Concentrate sales were $51.7 million compared with $87.9 million in 1982. Concentrate production was 129,700 tons *(117,700)* of zinc and 32,100 tons *(29,100)* of lead.

Rising mining costs and lower metal prices necessitated the removal of uneconomic ore from reserves, including ore accessible only by underground mining methods. The 1983 exploration program located 780,000 *(708,000)* tons of ore grading 4.2 per cent zinc and 1.1 per cent lead in two current production areas. This amount was less than the tonnage milled during the year.

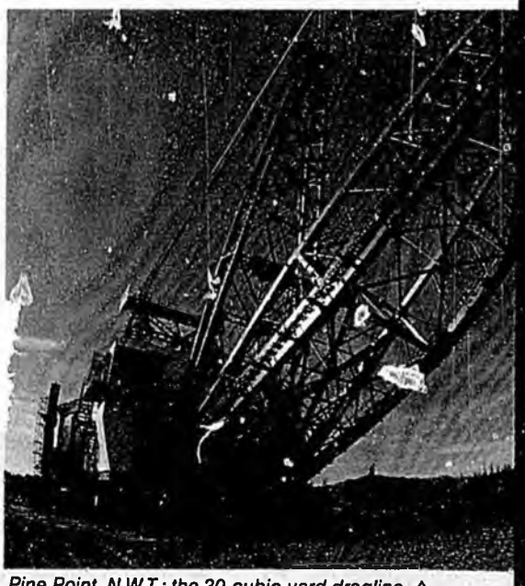
		1983	1982
Ore milled	tons	985,000	2,445,000
	(tonnes)	*(894,000)*	*(2,218,000)*
Zinc			
Average grade		8.1%	7.3%
Concentrate	tons	129,700	287,400
	(tonnes)	*(117,700)*	*(260,700)*
Concentrate grade		56.9%	57.3%
Lead			
Average grade		2.7%	3.0%
Concentrate	tons	32,100	84,500
	(tonnes)	*(29,100)*	*(76,700)*
Concentrate grade		73.8%	76.5%
No. of employees at year-end (490 at mid-year start-up)		544	583



Tadanac silver bar: production and sales of Cominco's silver increased in 1983. △



Kimberley, B.C.: mechanized mining methods at the Sullivan Mine resulted in important productivity gains. The mine has been in production since 1909. △



Pine Point, N.W.T.: the 30-cubic-yard dragline removes overburden at the largest mine in the Territories. △

◁ *Polaris, N.W.T.: ice floes in Crozier Strait in the High Arctic provide a majestic foreground to Canada's most northerly metal mine. The operation completed its first full year in 1983.*

Polaris Mine

The Polaris zinc-lead mine, the world's most northerly metal mine, on Little Cornwallis Island, N.W.T., completed its first full year of production in 1983. The entire concentrate production is shipped during the brief Arctic summer when the sea lanes are navigable.

Most of the zinc concentrate is sold to European smelters. The remainder is tolled at a custom smelter in Europe, and the resulting metal is sold by Cominco. The lead concentrate is sold to smelters in Europe.

In 1983, revenues from the sale of concentrates and metal were $61 million, yielding an operating profit of $6 million. At year-end, 63,200 tons *(57,300)* of zinc concentrate and 21,300 tons *(19,300)* of lead concentrate were held in inventory at the mine.

The mine was designed to produce 195,000 tons *(177,000)* of zinc concentrate and 45,000 tons *(41,000)* of lead concentrate annually. The actual production in 1983 was considerably greater, with both mill throughput and feed grades being higher than forecast. Production was 239,300 tons *(217,100)* of zinc concentrate, and 56,300 tons *(51,100)* of lead concentrate. The average milling rate was 2,500 tons *(2,300)* a day, well above the designed capacity of 2,300 tons *(2,100)* a day.

The shipping season from Polaris to Europe in 1983 extended from August to late October, about two weeks longer than in 1982. Nine shipments were made, aggregating 202,300 tons *(183,500)* of zinc concentrate and 45,600 tons *(41,400)* of lead concentrate. In 1983, sales equivalent to 165,100 tons *(149,800)* of zinc concentrate, including tolled metal, were taken into revenue, of which 43,900 tons *(39,800)* were from the 1982 shipping season and the remainder from 1983 shipments. Lead concentrate tonnage taken into revenue was 38,700 tons *(35,100)*, of which 9,200 tons *(8,300)* was from 1982 shipments and 29,500 tons *(26,800)* was from 1983 shipments.

As a result of the continuing diamond drilling program at the mine, 8.4 million tons *(7.6 million)* of ore were upgraded from the inferred to the measured and indicated class of reserves during the year, increasing the total of this latter class by more than one-third.

There were 43 northerners employed in a total work force of 237 at year-end. The number of Inuit employed during the year reached a high of 29 at mid-year and was 18 at year-end.

		1983	1982
Ore milled	tons	914,000	518,000
	(tonnes)	*(829,000)*	*(470,0..*
Zinc			
Average grade		16.8%	17.0%
Concentrate	tons	239,300	142,400
	(tonnes)	*(217,100)*	*(129,200)*
Concentrate grade		60.9%	57.3%
Lead			
Average grade		5.2%	7.0%
Concentrate	tons	56,300	45,900
	(tonnes)	*(51,100)*	*(41,600)*
Concentrate grade		76.2%	72.6%
No. of employees at year-end		237	244

Black Angel Mine

Cominco owns 62.5 per cent of the shares of Vestgron Mines Limited, which, through its wholly owned subsidiary Greenex A/S, owns and operates the Black Angel zinc-lead-silver mine and concentrator at Maarmorilik, Greenland. Zinc and lead concentrates are transported from the mine during the June-November shipping season. Most of the zinc concentrate produced is sold to European refineries. The remainder is tolled at a custom smelter in Europe, and the resulting metal is sold by Cominco. The lead concentrate is sold to smelters in Europe.

Revenues in 1983 were $66 million, up $1 million from 1982. Operating profit increased by $2 million to $16 million. Increased revenues from higher zinc prices were offset by reduced quantities of zinc concentrate and zinc metal sold. Sales volumes of lead concentrate were higher than in 1982, but these gains were offset by lower prices.

The implementation of a stringent efficiency program, with effective cooperation between the workforce and management, held operating costs to about the same level as in the previous year despite the thinning orebody and lower grades.

Underground exploration continued to locate ore but overall reserves declined by 200,000 tons *(181,000)*. In the primary area of interest east of the mine, 24 holes totalling 65,499 feet *(19,964 metres)* were drilled without significant mineralization being located. Surface exploration expenditures were $3.3 million compared with $2.5 million in 1982.

Greenex employed 357 workers at the beginning of 1983 and 347 at year-end. Of the employees at Maarmorilik, 153 were Greenlanders, an increase of 21 over 1982.

		1983	1982
Ore milled	tons	744,000	744,000
	(tonnes)	*(675,000)*	*(675,000)*
Zinc			
Average grade		12.3%	12.6%
Concentrate	tons	150,300	154,900
	(tonnes)	*(136,300)*	*(140,500)*
Concentrate grade		58.1%	56.9%
Lead			
Average grade		3.6%	4.5%
Concentrate	tons	33,800	41,300
	(tonnes)	*(30,700)*	*(37,500)*
Concentrate grade		70.5%	70.7%
Silver	oz/ton	0.8	1.0
	(g/tonne)	*(28)*	*(35)*
No. of employees at year-end		347	357

Con Mine

The Con gold mine is in Yellowknife, N.W.T. Ore produced at the mine is milled and refined there and the gold is sold in Canada.

The amount of ore processed in 1983 was lower than in 1982 because of a two-month strike at mid-year. The adverse cost effects of lower production were more than offset by higher gold prices, resulting in a profit of $8 million in 1983, compared with $7 million in 1982. Revenues fell to $36 million from $37 million in 1982.

A decision to deepen the Robertson Shaft by 810 feet *(247 m)* to 6,235 feet *(1,900 m)* was made late in the year. The deepened shaft will provide four more working levels and the opportunity to explore further at greater depth. The $9 million project is scheduled for completion in 1985.

Final commissioning of the new arsenic recovery plant was delayed because of difficulties in reaching process and product specifications. Engineering revisions have been made and the plant is expected to operate at design capacity in 1984.

		1983	1982
Ore milled	tons	209,200	234,200
	(tonnes)	*(189,800)*	*(212,400)*
Gold			
Average grade	oz/ton	0.36	0.36
	(g/tonne)	*(12)*	*(12)*
Production	ounces	70,500	79,500
	(kg)	*(2,193)*	*(2,471)*
No. of employees at year-end		317	309

Valley Mine

The Valley copper mine in the Highland Valley, B.C., began operations on January 17, 1983, two months ahead of schedule. Its concentrates are sold directly to smelters in Japan. The ore, processed at the former Bethlehem Copper Corporation mill, proved more

amenable both to grinding and to copper recovery than preliminary tests had indicated, resulting in production being consistently above expectations. However, copper prices were low in 1983, peaking in May at 81.8 US cents a pound on the London Metal Exchange and falling to 66.1 US cents a pound at year-end. Revenues were $54 million and the operating profit was $7 million.

The Valley Mine, if developed to its full potential, could sustain an operating level of 90,000 to 110,000 tons *(80,000 to 100,000)* of ore a day, five times the present level of operation. The mine is situated on Canada'a largest known porphyry copper deposit. The measured and indicated ore reserve is estimated to be 509 million tons *(460 million)* with an average grade of 0.475 per cent copper. Valley has additional inferred ore reserves of 272 million tons *(248 million)* at the same grade. A phased expansion program, which would include a new concentrator with a daily capacity of 50,000 tons *(45,000)*, is being examined.

		1983
Ore milled	tons	7,906,000
	(tonnes)	*(7,172,000)*
Copper		
Average grade		0.52%
Contained in concentrate	tons	36,700
	(tonnes)	*(33,300)*
Concentrate grade		44.4%
No. of employees at year-end		427

Buckhorn Mine

Located in Eureka County, Nevada, Buckhorn is a low-grade heap-leach gold operation in which Cominco American Incorporated has a 76 per cent interest. Development plans were announced in September with development and construction costs projected at US$12 million. This included the purchase of mining equipment; construction and erection of crushing, agglomerating and stacking equipment; the preparation of heap-leaching pads and ponds; and the construction of roads and processing and office facilities.

Known ore reserves of about 5 million tons *(4.5 million)* of ore will be processed over the scheduled seven-year life of the mine at a rate of 750,000 tons *(680,000)* a year. Plans call for the initial processing of 2.8 million tons *(2.5 million)* of ore grading 0.059 ounces per ton *(2.0 grams per tonne)* of gold. After this higher-than-average-grade tonnage is processed, the remaining lower-grade tonnage will be processed. The mine is expected to reach full production rates in the second quarter of 1984.

Buckhorn will employ 75 persons when in full production.

Magmont Mine

The Magmont lead-zinc-copper mine at Bixby, Missouri, operated by Cominco American Incorporated under a joint-venture arrangement with Dresser Industries Incorporated, continued to be a profitable operation during 1983 notwithstanding the effect of severely depressed lead prices.

Cominco's 50 per cent share of the revenue was $24 million, the same as in 1982. The operating profit in 1983 was $2 million compared with $3 million in 1982, a reduction brought about by lower metal prices. However, increased sales of byproduct zinc concentrate helped to offset the low lead prices. Production of lead concentrate was higher during 1983, primarily due to higher grade ore. A new drift driven 2 miles *(3 km)* from the Magmont shaft to open up the Magmont West area was completed during the year. Production at Magmont West began late in the year, and a significant amount of ore is expected to be mined in this area in 1984.

A new contract for tolling lead concentrate was negotiated with a Missouri custom smelter during the year.

		1983	1982
Ore milled[1]	tons	1,142,000	1,107,000
	(tonnes)	*(1,036,000)*	*(1,004,000)*
Lead			
Average grade		7.2%	6.5%
Concentrate	tons	52,100	44,500
	(tonnes)	*(47,300)*	*(40,400)*
Concentrate grade		77.4%	78.9%
Zinc			
Average grade		1.4%	1.0%
Concentrate	tons	10,700	7,000
	(tonnes)	*(9,800)*	*(6,400)*
Concentrate grade		60.8%	60.0%
Copper			
Average grade		0.2%	0.3%
Concentrate	tons	1,300	2,900
	(tonnes)	*(1,200)*	*(2,600)*
Contained in concentrate	tons	400	900
	(tonnes)	*(300)*	*(800)*
No. of employees at year-end		181	186

[1] This mine is a joint venture of Cominco American Incorporated and Dresser Industries Incorporated. Ore milled is reported at 100 per cent; the concentrate tonnage reported is Cominco's 50 per cent share of production.



Bixby, Missouri: the headframe of the Magmont Mine.

Trail Metallurgical Operations

Production of Refined Metals

		1983	1982
Zinc	tons	239,800	225,800
	(tonnes)	*(217,500)*	*(204,800)*
Lead	tons	132,300	126,600
	(tonnes)	*(120,000)*	*(114,900)*
Silver[1]	oz	10,235,000	9,681,000
	(kg)	*(318,300)*	*(301,100)*
Gold	oz	21,400	24,800
	(kg)	*(666)*	*(771)*

[1] In 1983, 3,717,000 ounces *(115,609 kilograms)* came from Company-owned sources, compared with 3,489,000 ounces *(108,516)* in 1982.

The integrated smelter and refining complex at Trail produces a wide range of metals, principally refined zinc, lead and silver. Annual production capacity is 300,000 tons *(272,000)* of refined zinc and 150,000 tons *(136,000)* of refined lead. In 1983, over 50 per cent of Cominco's Canadian-mined zinc and lead was upgraded to refined metal in Trail. Additional quantities of custom concentrates are purchased and refined at Trail. Other products include phosphate and sulphate fertilizers. Electric power from Cominco's two generating stations is used by Cominco and any surplus is offered to West Kootenay Power and Light Company, Limited and to other utilities.

Revenues from Trail operations, increased to $402 million from $328 million in 1982. The operating loss was reduced by $9 million to $35 million. Silver prices and quantities sold were significantly higher than in 1982. Realized prices for zinc were above 1982 levels but lead prices declined sharply. The simultaneous operation of the new and old electrolytic zinc melting plants during the new plant's commissioning period slightly increased operating costs for zinc production. These costs are expected to improve in 1984 as the new facility reaches its rated capacity and the old plant is shut down.

Refined zinc production at Trail was 239,800 tons *(217,500)* compared with 225,800 tons *(204,800)* in 1982 despite an eight-day strike, a six-month interruption in the supply of zinc concentrates from Pine Point Mines Limited, and the processing of increased quantities of custom concentrate containing a higher level of metal byproducts. Higher production resulted from the enhanced reliability of the new zinc pressure leaching plant and from the output of the new zinc electrolytic and melting plant.

Refined lead production at Trail was 132,300 tons *(120,000)* compared with 126,600 tons *(114,900)* in 1982. This high rate resulted from the plan to maximize silver production, including the purchase of concentrates with high silver content, to offset uneconomic lead prices and to increase revenues. Silver production in the year totalled 10,235,000 ounces *(318,300 kg)* compared with 9,681,000 ounces *(301,100 kg)* in 1982. Purchases of custom concentrates accounted for 6,518,000 ounces *(202,733 kg)* in 1983 compared with 6,192,000 ounces *(192,593 kg)* in 1982.

Gold production at Trail in 1983 was 21,400 ounces *(666 kg)* compared with 24,800 ounces *(771 kg)* in 1982. This decrease was mainly the result of the lower gold content in purchased custom concentrates.

The modernization and expansion program initiated at Trail in 1977 continued during 1983, but at a substantially reduced rate. Expenditures were $25.7 million compared with $68 million in 1982, and several large projects, including the lead smelting modernization project, have been deferred until market conditions and corporate earnings improve.

The new zinc electrolytic and melting plant (see page 3) officially opened in October. Earlier, a project to improve the recovery of sulphur gas from the metallurgical operations went into service (see Environmental Protection, page 19).

As a result of the plan to reduce crew sizes and to curtail construction projects, 3,659 persons were employed at Trail at year-end compared with 4,036 at the beginning of the year.

Ore Reserves

	1983				1982			
	Ore Tons x1000	%Pb	%Zn	Ag oz/ton	Ore Tons x1000	%Pb	%Zn	Ag oz/ton
OPERATING MINES								
(Measured and Indicated)								
SULLIVAN	47,000	4.4	6.2	1.0	49,000	4.4	6.1	1.0
PINE POINT	26,000	2.7	6.3	—	35,000	2.4	6.1	—
POLARIS	18,600	4.1	14.8	—	11,000	4.4	15.2	—
BLACK ANGEL	2,000	3.3	11.0	0.8	2,200	4.0	13.4	1.0
MAGMONT	6,200	8.0	1.0	0.4	5,200	9.4	1.2	0.3
QUE RIVER	2,200	7.4	12.7	6.0	2,100	7.5	13.1	5.5
RUBIALES	12,300	1.1	6.9	0.4	14,300	1.2	6.9	0.4
CON	1,900	0.44 oz Au/ton		—	2,100	0.47 oz Au/ton		—
BUCKHORN	5,100	0.04 oz Au/ton		—	—	—		
VALLEY	509,000	0.475% Cu		—	500,000	0.475% Cu		
ARDLETHAN	400	0.51% Sn			900	0.44% Sn		
CLEVELAND	900	0.80% Sn			1,300	0.73% Sn		
WARM SPRINGS	7,700	30.0% P_2O_5			7,300	30.0% P_2O_5		
VADE	153,000	25.3% K_2O equiv.			155,000	25.3% K_2O equiv.		
OWENS LAKE	33,000	sodium carbonate equiv.			33,000	sodium carbonate equiv.		
HONDEKLIP	400	0.4 carats diamonds/ton			500	0.4 carats diamonds/ton		
FORDING	237,000	clean met. coal equiv.			239,000	clean met. coal equiv.		
OPERATING MINES								
(Inferred Ore)								
POLARIS	5,900	3.0	13.1	—	13,200	3.6	11.9	—
BLACK ANGEL, PLATEAU	360	3.9	8.8	1.0	360	3.9	8.8	1.0
MAGMONT WEST	3,100	3.5	1.9	0.4	3,900	3.4	1.5	—
QUE RIVER	2,200	2.8	5.3	1.4	2,900	2.9	5.7	1.5
VALLEY	272,000	0.475% Cu		—	300,000	0.475% Cu		
POTENTIAL MINES								
(Measured, Indicated and Inferred)								
RED DOG	85,000	5.0	17.1	2.4	85,000	5.0	17.1	2.4
TROYA	5,500	1.2	10.7	0.5	5,500	1.2	10.7	0.5
PINCHI	1,200	6.4 lbs. Hg/ton			1,200	6.4 lbs. Hg/ton		
DOUGLAS	12,000	31.0% P_2O_5 equiv.			12,000	31.0% P_2O_5 equiv.		
FORDING	2,100,000	thermal coal			2,100,000	thermal coal		

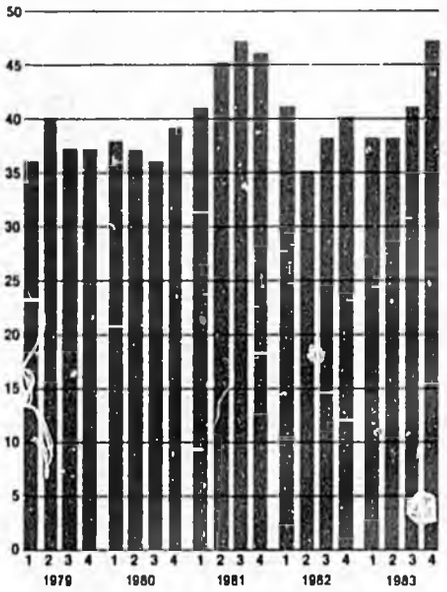
Mineral reserves of Cominco and associated companies are classified as measured, indicated and inferred.

The term *measured* is limited to those reserves at a mine which can be projected from one or more exposed faces on the basis of actual operating results. Reserves are classified as *indicated* where there is sufficient information about the deposit or a portion of it to form the basis of a mine production forecast. Reserves computed on the basis of limited drilling, geological data and through application of geological projections, which are insufficient to support a mine production forecast, are classified as *inferred*.

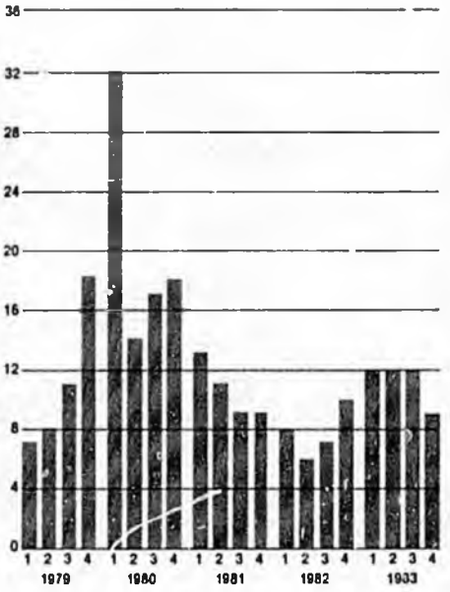
The Year in Review

Quarterly Average Metal Prices

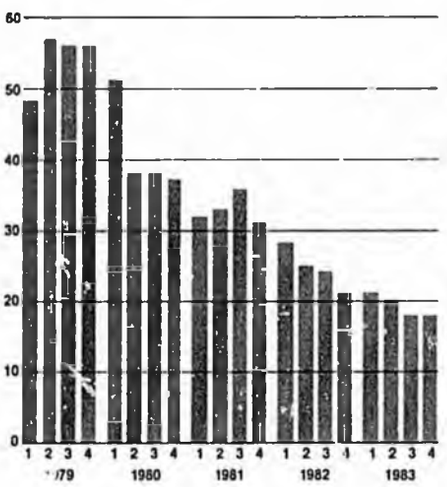
Zinc-U.S. Producer Price (U.S. cents/lb.)
(Source: Metals Week)



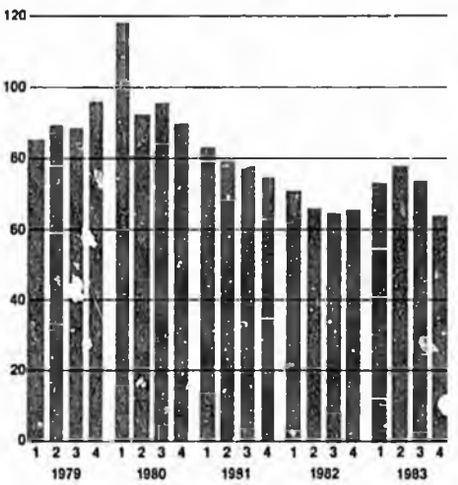
New York Silver Price (U.S. dollars/troy ounce)



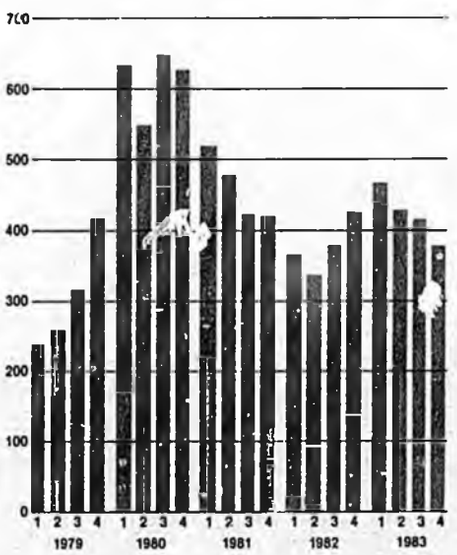
LME Lead Price (U.S. cents/lb.)



LME Copper Price (U.S. cents/lb.)



London Gold Price (U.S. dollars/troy ounce)





Vancouver, B.C.: Cominco zinc from Trail in rail cars awaits export. The Company's head office is located in the Granville Square building in the background. ▷

Chemicals and Fertilizers

Revenues and Operating Profit (Loss)

	Revenues		Operating Profit (Loss)	
	1983	1982	1983	1982
			(millions)	
Kimberley	$ 44	$ 28	$ (3)	$ (4)
Carseland	126	115	25	27
Calgary	25	33	2	4
Borger	56	65*	(5)	(5)
Beatrice	6	18*	(1)	3
Vade	88	74	11	12
Products for resale and others	101	89	5	—
	$446	$422	$ 34	$ 37

*Revenues have been restated to conform with the 1983 presentation.

First Quarter	$ —	$ 7
Second Quarter	22	32
Third Quarter	(3)	(3)
Fourth Quarter	15	1
	$ 34	$ 37

Cominco is a fully integrated plant food producer operating at eight locations in Canada and the United States — at Trail and Kimberley, B.C.; Carseland and Calgary, Alberta; Vade, Saskatchewan; Warm Springs, Montana; Beatrice, Nebraska; and Borger, Texas. The revenues from the Trail fertilizer operations are included in the mining and integrated metals segment because the operations form a part of the sulphur recovery process of the metallurgical operations.

The principal products are ammonia, ammonium nitrate, ammonium phosphate, ammonium sulphate, potash and urea. About one-half of the Company's 1983 total chemical and fertilizer products were sold in the U.S. market by Cominco American Incorporated. The remainder is marketed in Canada and other countries. Substantial quantities of potash are sold to Canpotex Ltd., a marketing corporation owned by Saskatchewan potash producers, which sells potash outside North America. About 60 per cent of Cominco's potash is sold in the United States. In addition to the chemicals produced and used in the manufacture of fertilizers, Cominco produces sulphuric acid and sulphur dioxide for sale to the forest industry, and trona, which is sold for use in the production of borax.

The Industry

Consumption and prices of fertilizers in the United States continued to fall during the spring of 1983 as a result of poor markets for U.S. farm exports and the U.S. Government's Set Aside and Payment-in-Kind (PIK) programs. These programs reduced major crop acreage by more than 50 million acres *(20 million hectares)*.

As the full impact of the U.S. programs took effect, severe drought conditions were experienced in much of the midwest, and U.S. feed grain inventories fell below normal levels. Prices for feed grains and oilseeds increased significantly. Wheat was an exception, and wheat inventories remained high throughout the year in both Canada and the United States.

Canadian fertilizer consumption increased for all major types of fertilizers, largely due to continuing strong Canadian grain exports. Nitrogen fertilizer consumption in western Canada increased by 5.7 per cent in 1983 while U.S. consumption declined by 16.3 per cent. Sales of nitrogen in western Canada by Canadian manufacturers increased by 10 per cent due to decreased imports from the United States.

Phosphate consumption increased by 5.3 per cent in western Canada in 1983, but declined by 13.5 per cent in the United States.

Canadian phosphate manufacturers increased their participation in the western Canadian phosphate market with corresponding decreases in imports from the U.S. Exports to the U.S. were down substantially.

U.S. consumption of potash in 1983 was 13.8 per cent lower than in 1982.

Prices for all fertilizers continued to soften during the first half of 1983, but stabilized during the third quarter and strengthened significantly in the fourth quarter.

To control inventories, much of the fertilizer industry in North America was shut down during part of the year. Inventories of fertilizer products in Canada were normal or below normal for most products by year-end.

Summary of Results

The increase in revenues from the chemicals and fertilizers segment was due to higher sales volumes of most products, although these were partially offset by lower prices. Operating profits were lower mainly because of lower prices received for most products. The Vade operations received lower prices for potash but benefited from higher levels of production.

During the first half of the year, operating profits continued to be depressed by the weak markets that had developed in the latter part of 1982. The strong fourth-quarter performance resulted from increased sales volumes.

Kimberley Operation

The production of ammonium phosphate fertilizer at Kimberley, B.C. rose by 18 per cent over 1982, and sulphuric acid production increased by 9 per cent, although operations were shut down for eight weeks at mid-year for annual maintenance and inventory control.

Revenues were $44 million compared with $28 million in 1982. The $3 million operating loss in 1983 compared with a $4 million loss in 1982. Sales volumes were well ahead of the previous year but at lower prices. However, losses decreased due to lower production costs.

The production of ammonium phosphate fertilizer was 151,000 tons *(137,000)* compared with 123,600 tons *(112,100)* in 1982.

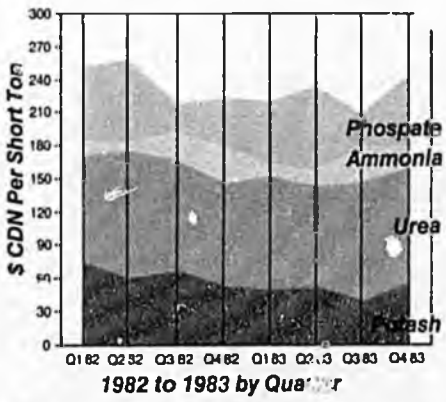
There were 152 persons employed at the Kimberley fertilizer operations at the beginning of the year, and 143 at year-end.

Warm Springs Operation

Phosphate rock is produced at Cominco American Incorporated's Warm Springs, Montana operation from an underground mine and is shipped to Kimberley for use in the manufacture of phosphate fertilizer. Production for 1983 was 188,000 tons *(171,000)* compared with 186,000 tons *(169,000)* in 1982.

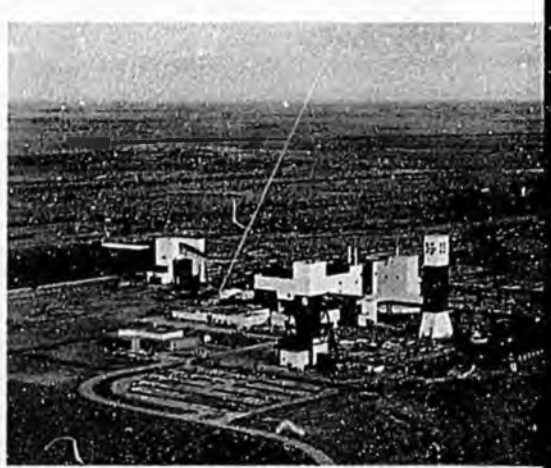
Warm Springs was shut down for a total of four weeks during the year for inventory control. The operation employed 114 persons at the beginning and the end of the year.

Fertilizer Prices





Calgary, Alberta: the Carseland fertilizer △ operation is one of Cominco's eight plant food facilities in North America.



Vanscoy, Saskatchewan: record production △ at the Vade potash mine in 1983 reflected the completion of major expansion which included the new headframe, right.

◁ *Vanscoy, Saskatchewan: wheat farmer Stan Mogenson (right) chats with Cominco employee George McVittie. They are standing 3,530 feet (1,075 metres) above the Vade potash mine. Mr. Mogenson farms 1,500 acres (600 hectares) owned by the Company.*

Carseland Operation

The Carseland fertilizer operation produces ammonia and urea. Ammonia production was slightly below the previous year's level because of increased maintenance downtime. Urea production was reduced because of the diversion of ammonia feedstock from urea to meet market demands for ammonia. In 1983, 436,700 tons *(396,200)* of ammonia and 465,900 tons *(422,700)* of urea were produced, compared with 439,800 tons *(399,000)* of ammonia and 494,200 tons *(448,300)* of urea in 1982.

Revenues increased by $11 million to $126 million in 1983 due to higher sales volumes but at lower prices. The operating profit was lower by $2 million. Distribution costs were higher and lower operating costs only partially offset the lower selling prices.

There were 140 employees at the beginning of the year, and 137 at year-end.

Calgary Operation

Lower demand and prices necessitated a 24 per cent reduction of total fertilizer production in 1983 to 158,800 tons *(144,100)* compared with 208,600 tons *(189,200)* in 1982. The urea plant was shut down for 29 weeks because of poor market conditions.

Revenues were $25 million in 1983 compared with $33 million in 1982. The operating profit was $2 million compared with $4 million in the previous year. Sales volumes of ammonia increased but prices were lower. Prices and sales volumes for urea, ammonium nitrate and urea sulphur were also below 1982 levels.

There were 141 employees at the Calgary fertilizer operation at the beginning of the year, and 121 at year-end.

Borger Operation

The production of anhydrous ammonia and urea at Borger, Texas by Cominco American Incorporated declined as the result of production curtailments to control high inventories. The 1983 ammonia production was 240,800 tons *(218,500)* compared with 285,500 tons *(259,000)* in 1982.The 1983 urea production was 51,700 tons *(46,900)* compared with 55,400 tons *(50,300)* in 1982.

The Borger operation was shut down for the month of January, and for three months in the fall for inventory control and maintenance purposes. Revenue was $56 million in 1983, $9 million lower than in 1982. The operating loss remained unchanged at $5 million.

The number of employees was 84 at the beginning of the year and 81 at year-end.

Beatrice Operation

Cominco American Incorporated's Homestead ammonium nitrate plant at Beatrice, Nebraska produced 123,600 tons *(112,100)* in 1983 compared with 113,300 tons *(102,800)* in 1982. The Homestead plant operated through the year, although because of weak demand the production rate was curtailed to control inventories. Sales tonnages were about 60 per cent of the 1982 level and prices were 4 per cent lower. Revenue was $6 million in 1983, down significantly from $18 million in 1982 and a $1 million operating loss was incurred.

The number of employees was 56 at the beginning of the year and 60 at year-end.

Vade Operation

Potash is produced at the Vade operation near Saskatoon, Saskatchewan. Demand for potash was low in all markets through the first eight months of the year, resulting in lower prices and high inventories. A marked increase in demand in the last four months reduced inventories to normal levels by year-end with some strengthening in prices. The plant was shut down for nine weeks during the year: six weeks for inventory control, and three for maintenance.

Production for the year was 1,123,000 tons *(1,018,000)* compared with 794,000 tons *(720,000)* in 1982. This established a production record, reflecting the completion of a major expansion project in 1982. Production per man-shift rose significantly.

Revenues were $88 million in 1983 compared with $74 million in 1982. The operating profit decreased from $12 million to $11 million. Sales tonnages increased by 34 per cent but selling prices were 8 per cent lower. Unit operating costs were substantially lower due to the increased production, but distribution costs were higher.

There were 442 persons employed at the beginning of the year and one less at year-end.



Owens Lake, California: a unique diking system in the lake bed recovers trona at the Lake Minerals operation.

Lake Minerals

Lake Minerals Corporation generated revenues of US $1.6 million from its Owens Lake, California trona mining operation in 1983. This compares with US $0.7 million in 1982.

The operating profit was US $0.7 million compared with US $0.2 million in 1982. Improved demand resulted in the production of 45,000 tons *(41,000)* of trona, compared with 34,000 tons *(31,000)* mined in the previous year.

Other Operations

Revenues and Operating Profit

	Revenues		Operating Profit (Loss)	
	1983	1982	1983	1982
			(millions)	
Electronic Materials	$ 47	$ 37	$ 2	$ 3
Western Canada Steel	58	76	(4)	2
West Kootenay Power	53	51	18	13
Miscellaneous	11	11	1	3
	$169	$175	$ 17	$ 21
First Quarter			$ 4	$ 7
Second Quarter			4	5
Third Quarter			4	5
Fourth Quarter			5	4
			$ 17	$ 21

This segment of Cominco's business comprises principally the operations of the Electronic Materials Division, Western Canada Steel Limited and West Kootenay Power and Light Company, Limited. Miscellaneous operations include the activities of Cominco Engineering Services Ltd. and European holding and trading companies.

Summary of Results

The fall in revenues and operating profits in this segment was mainly due to lower sales by Western Canada Steel Limited because of the reduced construction activity in its market areas, and the closure of its Vancouver plant for six and one-half months during a labour dispute.

Electronic Materials Division

The Electronic Materials Division produces high-purity materials and compound semiconductors in facilities at Trail. In addition, the production of fabrications, bonding wire and ribbon and sputtering products is conducted through the facilities of a wholly owned subsidiary of Cominco American Incorporated, Cominco Electronic Materials Incorporated, in Spokane, Washington. Seventeen elements, including aluminum, arsenic, gallium, gold, silver, indium and tellurium are refined to high purity to meet the special needs of the electronics industry. Seven compound semiconductors, including cadmium mercury telluride, gallium arsenide and indium antimonide, are in commercial production for use in infrared radiation detection devices, communication equipment and high-speed microcircuits.

Revenues from Electronic Materials were $47 million compared with $37 million in 1982 as a result of higher gold prices and higher sales volumes. The operating profit was $2 million, $1 million less than in 1982 because of increased development and administration costs.

Sales of compound semiconductor wafers increased steadily throughout the year. High-performance cadmium mercury telluride wafers produced in the Trail plant completed in 1982 are being further developed for new applications. The first stage of the gallium arsenide expansion program was completed in 1983. Cominco's gallium arsenide wafers are now recognized as the leading product in the market and, with the resulting rapid growth in demand, a further expansion of production facilities at Trail is in progress.

The marketing group was further strengthened during 1983 with the addition of staff in Canada and the conclusion of a sales agency agreement with two Japanese firms for the Asian Pacific market areas.

The total number of employees in Electronic Materials in Spokane and Trail was 221 at the beginning of the year and 248 at year-end.

Western Canada Steel

Western Canada Steel Limited (100 per cent owned) operates plants producing steel products from scrap metal in Vancouver and Calgary and at Hawaiian Western Steel Limited (51 per cent owned) on the island of Oahu, Hawaii.

Revenues of Western Canada Steel declined from $76 million in 1982 to $58 million in 1983 principally because of lower sales volumes resulting from a lock-out at the Vancouver operations which lasted six and one-half months.

The Vancouver plant production for the year was 37,500 tons *(34,000)* compared with 94,200 tons *(85,400)* in 1982. The labour dispute delayed the start-up of the tandem rolling mill by seven months to March 1984. The new $24 million continuous mill will increase the volume and size range of steel products.

The Calgary plant produced 87,000 tons *(78,900)* of steel during the year compared with the near-capacity total of 96,600 tons *(87,600)* in 1982.

The Hawaiian plant continued to operate at one-half of its capacity, with production and sales of 26,000 tons *(23,600)* of steel, the same as in 1982. This reflected the continuing low level of construction activity in Hawaii.

West Kootenay Power and Light

West Kootenay Power and Light Company, Limited, in Trail, B.C., provides electrical energy for residential and industrial customers in south central British Columbia.

Despite the slow recovery from the recession in its service area, energy sales were only slightly below 1982 levels. In anticipation of higher costs in 1984, the British Columbia Utilities Commission granted West Kootenay a 7.3 per cent interim rate increase effective January 1, 1984.

Construction began in 1983 on the extension of West Kootenay's 230 kV transmission system from Kelowna to Penticton, B.C. Work continued on the conversion of the subtransmission system in the Kelowna area from 60 kV to 138 kV. The period for making the conversion has been extended to match the slow load growth in the area. West Kootenay continued its policy of undertaking new construction of facilities only when needed for load growth or to ensure continuing reliable service.

In the first quarter of 1983, West Kootenay converted $35 million of short-term floating-rate bank debt to fixed-rate longer-term debt.

In 1982 West Kootenay purchased three power plants and concluded a long-term power purchase agreement with Cominco. A detailed analysis is in progress on the various power supply alternatives available to meet anticipated increases in power demand in the West Kootenay service area.

Cominco Engineering Services

Cominco Engineering Services Ltd., formed to sell expertise gained in the development of Cominco operations, completed its second full year of operation in 1983. The subsidiary, with offices in Vancouver and Trail, worked for Cominco, for associated companies and for other customers in Canada, Norway, Spain and the United States.

Associated Companies

Associated companies are those in which Cominco's interest is 50 per cent or less and over which it has significant influence.

Associated Companies	Percentage Ownership	Revenues		Share of Net Earnings (Loss)	
		1983	1982	1983	1982
			(millions)		
Fording Coal Limited	40	$217	$269	$ 1.6	$ 4.7
Aberfoyle Limited	47	56	62	0.4	(1.3)
Exploración Minera Internacional España S.A. (Exminesa)	48	37	54	(0.1)	1.4
Transcom Joint Venture	50	4	7	0.2	0.8
The Canada Metal Company Limited	50	56	63	(0.1)	(0.4)
Other		39	51	0.3	—
		$409	$506	$ 2.3	$ 5.2

Fording Coal

Fording Coal Limited is engaged in the mining and development of metallurgical and thermal coal reserves in southeastern B.C. and Alberta. Revenues were $217 million in 1983, compared with $269 million in 1982, and Cominco's share of net earnings for the year was $1.6 million compared with $4.7 million in 1982.

Despite depressed worldwide coal markets, an 82-day strike, and a 15 per cent price reduction to principal buyers, a modest profit was made due to continued improvements in productivity. The quantity of coal and waste moved per man-shift has almost doubled since 1981.

Fording's production and sales of metallurgical clean coal from its surface operations near Elkford, B.C. were 3,041,000 tons *(2,759,000)* and 3,250,000 tons *(2,949,000)* respectively, compared with production of 4,299,000 tons *(3,900,000)* and sales of 3,786,000 tons *(3,435,000)* in 1982.

Fording's joint venture with Edmonton Power, the city-owned utility, to establish a thermal coal mine at Genesee, Alberta has been delayed by 18 months due to surplus generating capacity in the province. The estimated total cost of the coal mine, which will fuel an electric generating station, is $100 million, with operation now planned for 1987.

Aberfoyle

Aberfoyle Limited of Australia operates a zinc-lead-silver mine in Tasmania and two tin mines, one in Tasmania and the other in New South Wales. Aberfoyle had revenues of $56 million in 1983, compared with $62 million in 1982. Net earnings of Aberfoyle for 1983 were A$2.9 million. After translation into Canadian dollars and amortization of other investment costs, Cominco's share of the earnings was $0.4 million compared with a loss of $1.3 million in 1982.

Aberfoyle's revenues were adversely affected by lower production, by low zinc and lead prices which prevailed during the year and by continuing export restrictions imposed by the International Tin Council, of which the Australian Government is a member. This restriction required the company to reduce production from its Ardlethan and Cleveland mines.

The Que River zinc-lead-silver mine in Tasmania produced 255,000 tons *(231,000)* of ore and delivered 240,200 tons *(217,900)* to a custom concentrator.

Exploration results in 1983 were encouraging. Several diamond drill intersections were made at Hellyer, a new zinc-lead-silver sulphide discovery close to Que River. Grades and thicknesses approach those at Que River and drilling is continuing to define the deposit.

The search for diamonds in the Northern Territory was encouraging during the year, and direct testing of a number of targets is expected to take place in 1984.

Exminesa

Exminesa's (Exploración Minera Internacional España SA) Rubiales Mine in the Spanish province of Lugo had revenues of $37 million in 1983

Summary of Financial Position of Associated Companies

	1983	1982
	(millions)	
Working Capital	$ 39.2	$ 52.6
Fixed Assets	350.7	347.8
Other Assets	7.6	6.4
	397.5	406.8
Less: Long-term debt	101.4	121.4
Other non-current liabilities	17.0	15.0
Income taxes not currently payable	74.6	67.5
Net assets	$204.5	$202.9
Cominco's share of net assets	$ 91.0	$ 90.2

Summary of Results of Operations of Associated Companies

	1983	1982
	(millions)	
Revenues	$408.9	$506.2
Costs and expenses	398.7	471.8
Earnings before the following	10.2	34.4
Income taxes	7.9	8.1
Exchange gain (losses) on translation of foreign companies	2.4	(1.4)
Total net earnings of associated companies	$ 4.7	$ 16.9
Cominco's share of net earnings	$ 2.3	$ 5.2
Dividends received by Cominco	$ 3.4	$ 4.8



A commitment to quality: these vacuum deposition products from the Electronic Materials Division meet the increasingly sophisticated requirements of the electronics industry. △



Spokane, Washington: Cominco Electronic Materials Incorporated's plants make fabrications, bonding wire, ribbon and sputtering targets. △



Vancouver, B.C.: the new continuous rolling mill at Western Canada Steel increases the volume and size range of steel production. △

◁ *Rubiales, Spain: The scenic countryside of Galicia surrounds the headframe of Exminesa's mine in the province of Lugo.*

compared with $54 million in 1982. After recording an exchange translation gain of $1.0 million, Cominco's share of the loss was $0.1 million. This compares with earnings of $1.4 million in 1982, after an exchange translation loss of $1.3 million. The 1983 loss resulted from low metal prices and reduced production caused by continuing ground control problems in the mine.

In 1983, the Rubiales concentrator treated 921,000 tons *(836,000)* of ore compared with 1,144,000 tons *(1,038,000)* in 1982. Zinc concentrate production was 103,900 tons *(94,300)* compared with the production of 146,800 tons *(133,200)* in 1982. Lead concentrate production was 16,400 tons *(14,800)*, compared with 19,300 tons *(17,500)* in 1982. Adjustments were made to ore reserves mainly to allow for unrecoverable pillars.

During the year, a basic engineering study was completed for the development of Exminesa's zinc-lead deposit at Troya in the province of Guipúzcoa, Spain. This property has inferred reserves of 5.5 million tons *(5.0 million)* of zinc and lead ore containing small amounts of copper and silver.

Transcom Joint Venture

Production from the small alluvial diamond mine at Hondeklip, South Africa, in which Cominco has a 50 per cent interest, was 53,100 carats in 1983 compared with 97,200 carats in 1982. Revenues were $4 million in 1983 compared with $7 million in 1982, as a result of lower production and higher costs. Cominco's share of the net earnings was $0.2 million compared with $0.8 million in 1982. The terms of employment of the 61 persons on the staff and work force of the Transcom Joint Venture conform with the Canadian Government's guidelines for Canadian companies operating in South Africa.

Canada Metal

The Canada Metal Company Limited is a major Canadian manufacturer of secondary lead and a fabricator of lead and other metal products. Carter Chem Ltée, Montreal, a subsidiary, is the principal manufacturer in Canada of lead chemicals.

Canada Metal had sales of $58 million in 1983 compared with $63 million in 1982. The decline is attributed mainly to the lower value of lead metal. Cominco's share of the net loss was $81,000 compared with a loss of $400,000 in 1982.

Cominco Binani Zinc

During the year, Cominco agreed to sell its 40 per cent interest in Cominco Binani Zinc Limited to the remaining shareholders subject to the approval of the Reserve Bank of India.

Other Investments

Investments in other companies are carried at cost in the accompanying financial statements, less amounts written off due to the uncertainty of the future value of the investments. Income is recorded only to the extent of dividends received. No dividends were received during the year.

Cominco sold its entire 17.2 per cent interest in Tara Exploration and Development Company Limited on January 20, 1984. Proceeds from the sale of 1,125,724 Tara shares, at $20 each, was approximately $22.5 million.

Panarctic Oils Ltd. (6.9 per cent owned) continues to capitalize its exploration costs as none of its properties is in production. Natural gas reserves in the Arctic Islands are 18 trillion cubic feet, insufficient to justify a pipeline under present conditions. Oil discoveries in the region indicate the possibility of substantial oil reserves.

Exploration

The objectives of Cominco's exploration program are to extend known reserves at existing mines, and to discover new deposits that could be developed into profitable mines.

Exploration expenditures in 1983 totalled $35.0 million compared with $42.0 million spent in 1982. Investigation and appraisal of identified mineral properties accounted for $14.3 million. This amount was capitalized as investments in mineral properties and is being amortized against earnings. The remaining $20.7 million was spent on general exploration and charged against 1983 earnings. In addition to these amounts, an expenditure of $7.7 million was made on the continuing evaluation of the Red Dog property in Alaska.

Exploration for new deposits was carried out in North America, Europe and Australia, and on a selected basis in South America and Africa. Projects in Canada accounted for 43 per cent of the total expenditures; 25 per cent was spent on projects in the United States; and the remaining 32 per cent on projects in 12 other countries.

While the major part of Cominco's 1983 exploration program was directed towards the search for zinc, lead and gold deposits, specific programs sought other metals, including silver, copper, phosphate, niobium, diamonds and tin.

Diamond drilling programs were carried out on over 30 properties with results in more than half of them being sufficiently encouraging to justify further exploration.

The search for zinc deposits included programs in Canada, the United States, Europe and Australia. In the central Yukon Territory of Canada, significant zinc-lead-silver values were obtained by drilling. In Australia, drilling is currently in progress on a promising new discovery only 2 miles *(3 km)* north of Que River in Tasmania. Grades in excess of 20 per cent zinc, plus lead and 6 ounces of silver a ton *(206 grams per tonne)* have been found.

In Alaska, work continued by Cominco American Incorporated in the Noatak area, where the large Red Dog high-grade zinc-lead-silver deposit is located. Engineering studies and economic assessments continued in order to select the most suitable development plan for Red Dog. Other showings of interest are held in the immediate area, and drilling on two sites in 1983 gave additional encouraging results.

The search for gold and silver deposits was intensified, with programs carried out in all geographical areas being explored by Cominco. The low-grade Buckhorn leach gold open-pit operation moved from the exploration and feasibility stages of development to plant construction. Exploration continues in Nevada for similar deposits.

In French Polynesia the Mataiva phosphate deposit is being studied for production by a four-party joint venture.

Exploration in 1983 at operating mines was successful in replacing reserves mined during the year at the Polaris, Magmont, Que River and Warm Springs mines.

Environmental Protection

Capital expenditures addressed directly to environmental improvements were $10.7 million in 1983, including $1 million spent on environmental impact and baseline data studies for the Red Dog Project in Alaska.

The mercury removal plant at the Trail operations, a part of the overall sulphur gas handling project, was commissioned in 1983 and approached full operational status at year-end. This plant will allow greater flexibility in the processing of zinc concentrates containing mercury in the integrated zinc-lead processes at Trail. A new smoke eliminator, further reducing the residual emissions from zinc operations, was also installed.

Biological monitoring of employees working in the lead smelter at Trail yielded overall blood lead levels in 1983 that were the lowest on record.

Wide-ranging environmental studies were conducted at the Red Dog project. The project is being planned so that the impact on the quality of air, land, water, wildlife and the local community will be minimal.

Research and Development

The Technical Research Centre at Trail supports Cominco's operations worldwide through its technical expertise, laboratory facilities and pilot programs.

In 1983, a pilot plant began testing new methods of zinc electrolyte purification. A new smelting technique using a top blown rotary furnace has been developed for the recovery of tin, indium and other values from lead smelter dust. A process for the recovery of germanium from the Trail operations was developed and pilot plant work was underway at year-end. Studies are continuing on the recovery of marketable commodities from difficult-to-store waste byproducts, and on the recovery of low but valuable concentrations of metals found in some process streams.

Research for the Lake Minerals operation continued towards the development of a new low-cost process based on the use of solar energy to recover soda ash from a complex salt deposit at Owens Lake, California.

The Technical Research Centre provided assistance in the commissioning and start-up phases of new plants at Trail, and work continued on developing new and improved processes and products from existing operations. The Centre had 48 employees at the beginning of the year and 44 at year-end. Its operating budget was $3.1 million.

The Product Research Centre at Sheridan Park continued to support Cominco's metal customers with technical assistance in applying the latest technologies to their processes and products. Support was concentrated on the galvanizing, die casting and battery manufacturing industries, which represent the largest users of zinc and lead. Work continued on Cominco's battery manufacturing equipment, zinc foundry alloys and electrochemical battery research. The Product Research Centre had 37 employees at the beginning of the year and 35 at year-end. The operating budget was $2.3 million.

Human Resources

Approximately 70 per cent of Cominco's employees are represented by industrial unions. During the year 16 collective agreements were concluded. Before settlements were reached, work stoppages occurred at Trail and Kimberley for eight days, at the Con Mine in Yellowknife for nine weeks and at Western Canada Steel Limited for six and one-half months. During 1984 four collective agreements will expire.

Increased productivity is a vital part of Cominco's business plan. Through improvements in planning and technology, the workforce was reduced in 1983 by 331 or three per cent, bringing the total number of employees at year-end to 10,466. This total includes employees hired for the new Valley and Buckhorn mines. Reductions were achieved through the rationalization of crew sizes and the completion of major portions of the modernization project at Trail. The number of employees on roll at year-end at Trail operations was about the same as in 1977 when the modernization program started. Reductions in staff and increases in production, the reasons for replacement of the old Trail plants, are expected to continue in 1984.

The Government of Canada had determined earlier that commencing in 1984 employer-provided assistance towards travel and housing costs received by employees in northern Canada would be regarded as taxable benefits. After concerted representations to the Government by groups which included Cominco's management and unions, the Government altered its position and continued the remission order exempting northern employees from declaring such assistance to be taxable benefits. The Government's decision averted a significant cost to Cominco employees living in established communities, such as Pine Point and Yellowknife, and helped to maintain the viability of northern mine operations.

Forty years of service was completed by 35 employees in 1983, bringing the total number of those who have reached this milestone to 1,187. There were 65 scholarships of $500 or $750 granted in Cominco's higher education award program for children of employees and pensioners.

To achieve more effective use of benefit dollars received by non-union salaried employees, Cominco has developed one of the first flexible benefit programs in Canada. The new plan, which was implemented on March 1, 1984, covers about 1,650 non-union salaried employees. It combines a base level of benefits with a variety of options available to employees to fit their different personal needs.

Safety

Safety programs throughout Cominco's operations continue to be emphasized and effective. Some of the notable achievements are:

In the United States, Cominco American Incorporated had an outstanding year. The Magmont Mine at Bixby, Missouri won an award from the American Mining Congress and the Mine Safety and Health Administration for the best safety record in the United States in the Underground Metal Mine Division.

Magmont won this award also in 1975 and 1978, and is the first mine to win three times. The Magmont mill achieved another record on its own. At year-end the mill employees had worked over 13 years without a lost-time accident.

The Homestead operation at Beatrice, Nebraska received a National Safety Council award for working since 1979 without a lost-time accident. The award is the fourth major safety award in the Homestead plant's 17-year history.

At year-end, the natural gas ammonia plant at Trail had operated for 28 years, a total of 1.2 million man-hours, with no lost-time accidents.

Production and Sales Statistics

		1983		1982	
		Sales	Production	Sales	Production
Refined Metal					
Zinc					
Trail	tons	242,000	239,800	228,100	225,800
Tolled — Black Angel	tons	13,000	13,400	24,300	21,000
— Polaris	tons	24,100	17,900	3,500	3,500
		279,100	271,100	255,900	250,300
Lead					
Trail	tons	142,800	132,300	113,600	126,600
Tolled — Magmont	tons	36,200	32,300	33,600	33,100
		179,000	164,600	147,200	159,700
Silver[1]	ounces	11,316,100	11,451,300	10,003,800	10,337,800
Gold					
Con	ounces	68,300	70,500	79,300	79,500
Trail	ounces	21,400	21,400	24,800	24,800
		89,700	91,900	104,100	104,300
Concentrates[2]					
Zinc					
Sullivan	tons	—	136,000	—	131,000
Polaris	tons	118,700	239,300	71,400	142,400
Magmont	tons	10,700	10,700	7,200	7,000
Pine Point	tons	—	129,700	9,900	287,400
Black Angel	tons	132,200	150,300	127,200	154,900
		261,600	666,000	215,700	722,700
Lead					
Sullivan	tons	32,200	139,300	3,400	170,600
Polaris	tons	38,700	56,300	27,900	45,900
Magmont	tons	1,000	52,100	1,500	44,500
Pine Point	tons	55,300	32,100	76,100	84,500
Black Angel	tons	42,400	33,800	33,300	41,300
		169,600	313,600	142,200	386,800
Copper[3]					
Valley	tons	33,000	36,700	16,800	11,000
Magmont	tons	600	400	1,100	900
		33,600	37,100	17,900	11,900
Chemicals and Fertilizers					
Nitrogen products		1,151,900	1,102,800	1,192,000	1,171,000
Phosphates		356,900	300,600	241,900	250,700
Potash		1,113,800	1,122,400	827,300	793,700
Other		272,200	278,200	274,500	281,900
		2,894,800	2,804,000	2,535,700	2,497,300

[1] Includes silver sold in concentrates and intermediate products. [2] Sales exclude concentrates processed at Trail, British Columbia and concentrates processed through other smelters, which are reported as refined metal sales. Operations at Pine Point Mines Limited were suspended for the period January 2, 1983 to June 14, 1983. [3] Tonnages are for copper contained in concentrate.

Statement on Inflation Accounting

Canada and other Western World nations have come through a period of high inflation that has eroded the purchasing power not only of individuals but also of corporations. The cumulative effect of prolonged periods of inflation diminishes the usefulness of the conventional historical cost balance sheet and statement of earnings, which do not measure the ability of a corporation to maintain its productive capacity. To overcome this deficiency, the Canadian Institute of Chartered Accountants (CICA) has recommended that major corporations disclose selected information regarding the effects of changing prices. The CICA views its recommendations as experimental and part of an ongoing process to explain the impact of changing prices.

Cominco's consolidated financial statements are prepared on an historical cost basis. Under this concept, assets are reported at the amounts originally paid and are not adjusted for subsequent changes in the purchasing power of money or for the current cost of replacing the assets.

The CICA recommended disclosure is to report the effects of changes in the replacement cost of productive capacity by adjusting certain historical cost amounts (principally fixed assets and inventory) for changes in current costs and to measure this change against the rate of general inflation.

Cominco has been monitoring this experiment closely and has for several years used some of these principles for management purposes when evaluating the replacement of production facilities and new projects. The process is complex and difficult to understand and involves the use of arbitrary assumptions concerning the replacement of production facilities which will not likely reflect economic conditions when replacement decisions are made.

Therefore, at this stage of the experiment, Cominco does not believe that the recommended disclosures contribute to a better understanding by shareholders of its economic performance. As a mining company, our most valuable assets are our mineral resources and the infrastructure and facilities to process the ore. Resource properties are unique in terms of location, ground condition and mineral potential and, when depleted, they cannot be specifically replaced. The replacement cost of a mineral asset will be influenced to a far greater extent by its location and ground condition than by the direct effect of inflation.

Cominco's management is conscious of the CICA's desire to stimulate improved reporting to account for the effects of inflation and will continue to monitor the development of this experiment.

Consolidated Financial Statements

Auditors' Report

Summary of Significant Accounting Policies

Consolidated Statement of Earnings

Year Ended December 31, 1983

	1983	1982
	(thousands)	
Revenue		
Sales of products and services	$1,374,723	$1,234,727
Income from investments	4,600	5,933
	1,379,323	1,240,660
Costs and Expenses		
Costs of products and services	1,015,195	932,301
Distribution	161,817	139,585
Selling	28,491	27,205
General and administrative	44,023	47,910
General mineral exploration	15,642	14,452
Interest (Note 8)	81,376	90,383
Depreciation, depletion and amortization	100,153	86,388
	1,446,696	1,338,224
Loss before the Following	67,373	97,564
Taxes on income including resource taxes (Note 9)		
Current	5,853	6,829
Not currently payable (reduction)	(32,591)	(49,871)
	(26,738)	(43,042)
	40,635	54,522
Minority interests in net losses of subsidiary companies	1,327	686
	39,308	53,836
Equity in net earnings of associated companies	(2,275)	(5,207)
Loss on translation of accounts of foreign subsidiaries	2,292	674
Loss before Extraordinary Item	39,325	49,303
Extraordinary gain (Note 10)	—	18,106
Net Loss	$ 39,325	$ 31,197
Per Common Share		
Loss before extraordinary item	$ 2.60	$ 3.16
Net Loss	$ 2.60	$ 2.20

Consolidated Statement of Earnings Reinvested in the Business

Year Ended December 31, 1983

	1983	1982
	(thousands)	
Amount at Beginning of Year	$554,414	$622,310
Deduct:		
Loss for the year	39,325	31,197
Costs incurred on issue of shares	2,326	1,796
Dividends paid		
Preferred — Series A $2.00 per share	3,498	3,542
— Series C $1.98 per share (1982 - $2.64)	3,968	5,275
— Series D $3.25 per share (1982 - $0.82)	6,500	1,643
Common — $0.40 per share (1982 - $1.30)	8,182	24,443
	63,799	67,896
Amount at end of Year	$490,615	$554,414

Consolidated Balance Sheet

at December 31, 1983

	1983	1982
	(thousands)	
Current Assets		
Cash and short-term investments	$ 13,858	$ 31,279
Accounts receivable	224,273	182,573
Inventories (Note 2)	324,352	352,156
Prepaid expenses	9,481	9,732
	571,964	575,740
Investments (Note 3)		
Associated companies	94,796	95,929
Other companies	30,482	31,941
	125,278	127,870
Fixed Assets		
Land, buildings and equipment	1,633,691	1,562,144
Less accumulated depreciation	581,595	518,682
	1,052,096	1,043,462
Mineral properties and development (Note 4)	416,977	417,975
Less accumulated depletion	108,846	101,645
	308,131	316,330
	1,360,227	1,359,792
Other Assets (Note 5)	25,862	28,142
	$2,083,331	$2,091,544
Current Liabilities		
Bank loans and notes payable	$ 157,672	$ 161,633
Accounts payable and accrued liabilities	166,380	146,411
Income and resource taxes	17,830	16,206
Long-term debt due within one year	43,058	30,457
	384,940	354,707
Long-Term Debt (Note 6)	649,428	687,975
Income Taxes Provided but not Currently Payable	144,498	175,520
Minority Interests	34,561	38,397
Shareholders' Equity		
Capital (Note 7)	379,289	280,531
Earnings reinvested in the business	490,615	554,414
	869,904	834,945
Commitments and Contingent Liabilities (Note 12)		
	$2,083,331	$2,091,544

Approved by the Board:

W. W. Anderson Director

W. G. Wilson Director

Consolidated Statement of Changes in Financial Position

Year Ended December 31, 1983

	1983	1982
	(thousands)	
Source of Funds		
Funds (deficit) from operations	$ 31,551	$(8,090)
Disposal of land, buildings, equipment and investments	8,949	13,983
Sale of oil and gas properties (Note 10)	—	25,728
Additional long-term debt	8,811	151,304
Issue of share capital		
— Preferred	—	50,000
— Common	100,406	95
	149,717	233,020
Application of Funds		
Land, buildings and equipment	83,529	176,900
Mineral properties and development	22,807	53,505
Reduction of long-term debt	46,670	29,612
Preferred shares purchased for cancellation	1,552	1,277
Dividends — to preferred shareholders	13,966	10,460
— to common shareholders	8,182	24,443
— to minority shareholders of subsidiary companies	2,487	6,366
Other	4,533	1,429
	183,726	303,992
Decrease in working capital	34,009	70,972
Working capital at beginning of year	221,033	292,005
Working capital at end of year	$187,024	$221,033

Notes to Consolidated Financial Statements

Year Ended December 31, 1983

1. Accounting Policies

The significant accounting policies followed by the Corporation and its subsidiary companies are summarized under the caption "Summary of Significant Accounting Policies".

2. Inventories

	1983	1982
	(thousands)	
Finished goods	$141,936	$165,992
Raw materials and partially processed materials	96,866	100,173
Stores and operating supplies	85,550	85,991
	$324,352	$352,156

3. Investments

	1983	1982
	(thousands)	
Associated companies:		
Shares at cost	$ 65,608	$ 66,788
Equity in undistributed earnings	29,188	29,141
	$ 94,796	$ 95,929
Other companies:		
Shares at cost		
Panarctic Oils Ltd. (6.9% owned)	$ 18,962	$ 19,228
Tara Exploration and Development Company Limited (17.2% owned 1983 at realized value)	22,515	26,903
Other companies	5,092	5,781
Other	519	334
	47,088	52,246
Less accumulated amortization of mineral investments	16,606	20,305
	$ 30,482	$ 31,941

On January 20, 1984 the Corporation sold its shares in Tara Exploration and Development Company Limited for $22,515,000 in cash.

4. Mineral Properties and Development

	1983	1982
	(thousands)	
Operating mineral properties	$291,367	$301,023
Less accumulated depletion	47,350	44,873
	244,017	256,150
Exploration properties, less amounts amortized	64,114	60,180
	$308,131	$316,330

5. Other Assets

	1983	1982
	(thousands)	
Debt financing costs, less amounts amortized	$ 1,886	$ 1,742
Loan to Bankeno Mines Limited	3,000	3,000
Deferred start-up costs, less amounts amortized	13,830	15,440
Other	7,146	7,960
	$ 25,862	$ 28,142

6. Long-Term Debt (excluding amounts due within one year)

	1983	1982
	(thousands)	
Cominco Ltd.		
10% Serial Notes due 1985 to 1996, U.S. $40,000,000	$ 39,380	$ 42,662
8½% Sinking Fund debentures due 1991	50,571	52,106
10⅞% Sinking Fund debentures due 1995	45,074	48,856
Export-Import Bank of the United States 8% loan due 1985 U.S. $763,000	759	2,278
Bank loans due 1985 to 1994 with interest related to prime bank rates	422,800	456,400
West Kootenay Power and Light Company, Limited		
5¾% First Mortgage bonds due 1985	5,218	5,437
Bank loan due 1985 with interest related to prime bank rates	9,300	41,100
13% secured debentures due 1988	10,000	—
14¼% secured Sinking Fund debentures due 1998	10,000	—
14¾% retractable Sinking Fund debentures due 1998	15,000	—
Cominco American Incorporated		
8½% Note payable due 1985 to 2000 U.S. $2,122,000	2,548	2,627
Other debt U.S. $478,000	568	2,029
Pine Point Mines Limited		
Bank loans due 1987 to 1991 with interest related to prime bank rates	15,000	13,700
Western Canada Steel Limited		
Bank loan due 1985 to 1993 with interest related to prime bank rates	22,500	19,900
Other debt	710	880
	$649,428	$687,975

Payments required on long-term debt, assuming the conversion of revolving bank loans into five-year term loans, are: 1984 — $43,058,000; 1985 — $55,756,000; 1986 — $45,177,000; 1987 — $68,167,000; 1988 — $77,916,000.

If translated into Canadian dollars at year-end rates of exchange, long-term debt would increase by $10,704,000 in 1983 and $11,439,000 in 1982. This is not necessarily indicative of the amounts of the exchange premium, if any, which will be payable when the obligations are retired.

7. Capital

The Corporation is incorporated under the Canada Business Corporations Act and is authorized to issue an unlimited number of Preferred and Common Shares.

	1983	1982
	(thousands)	
a) Issued and fully paid:		
Preferred —		
1,722,484 shares (1982 — 1,788,384) — $2.00 Tax Deferred Exchangeable Preferred Shares Series A — issued 1976 (Note 7(d))	$ 43,061	$ 44,709
2,000,000 shares — Floating Rate Preferred Shares Series C — issued 1978	50,000	50,000
2,000,000 shares — $3.25 Cumulative Redeemable Preferred Shares Series D — issued 1982	50,000	50,000
	143,061	144,709
Common —		
21,008,523 shares (1982 — 18,805,743) (Note 7(c))	236,228	135,822
	$379,289	$280,531

b) Preferred Shares:
The Corporation has constituted the following Preferred Shares:

- 2,000,000 shares as "$2.00 Tax Deferred Exchangeable Preferred Shares Series A"
- 2,000,000 shares as "$2.4375 Preferred Shares Series B"
- 2,000,000 shares as "Floating Rate Preferred Shares Series C"
- 2,000,000 shares as "$3.25 Cumulative Redeemable Preferred Shares Series D"

Each Series A Preferred Share is entitled to a fixed cumulative cash dividend of $2.00 per annum payable semi-annually. The Series A Preferred Shares are exchangeable into Series B Preferred Shares after June 1, 1988. Each Series C Preferred Share is entitled to a cumulative cash dividend which is related to the prime rate of interest charged by certain Canadian banks, adjusted quarterly and payable semi-annually. The holders of the Series C Preferred Shares may call for retraction on March 31, 1988. Each Series D Preferred Share is entitled to a fixed cumulative cash dividend of $3.25 per annum payable quarterly. The holders of the Series D Preferred Shares may call for retraction on March 31, 1988. The Corporation may elect on or after February 1, 1988 to designate a further series of Preferred Shares into which the Series D Preferred Shares may be converted.

c) Shares issued during the year for cash:

	1983	1982
	(thousands)	
Preferred —		
2,000,000 $3.25 Cumulative Redeemable Preferred shares	$ —	$50,000
Common —		
2,131,780 shares	$100,000	$ —
11,000 shares (1982 — 3,025 shares) (Note 7(e))	406	95
	$100,406	$ 95

d) Shares purchased for cancellation:
During 1983, the Corporation purchased for cancellation 65,900 Series A Preferred Shares with an issued value of $1,647,500 for $1,551,500 cash.

e) The Corporation has 55,800 Common Shares remaining available for issuance under stock option plans in favour of certain executives in the full-time employment of the Corporation or a subsidiary. Options are exercisable within five years of issue at 90% of the market price on the day prior to the day when granted.

Outstanding options at December 31, 1983 are as follows:

Granted	Price	Out-standing	Exercised in 1983
1978	24.41	nil	1,000
1979	32.40	7,000	3,000
1980	52.31	19,500	1,000
1981	60.98	24,250	500
1982	36.68	23,500	5,500
1983	46.01	28,050	nil
		102,300	11,000

8. Interest

Interest charges were as follows:

	1983	1982
	(thousands)	
Long-term debt interest	$ 72,091	$ 88,980
Short-term debt interest	14,028	24,365
	86,119	113,345
Less interest capitalized	4,744	22,962
Charged to earnings	$ 81,375	$ 90,383

9. Taxes on income

Taxes on income have been reduced by investment and research and development tax credits of $1,663,000 (1982: $386,000).

Accumulated investment tax credits amounting to $46,400,000 are available to reduce income taxes otherwise payable during the years 1984 to 1990.

10. Extraordinary Gain

In 1982 a subsidiary company, Cominco American Incorporated, realized a gain of $18,106,000 from the sale of its oil and gas properties. The Corporation received proceeds of $25,728,000 after income taxes of $11,915,000.

11. Pensions

The Corporation and its subsidiaries have pension plans covering substantially all employees. Pension costs for current service are charged to earnings in the year incurred. The liability for past service is being funded and charged to earnings over varying periods up to 15 years. The date of the most recent actuarial evaluation for most pension plans is December 31, 1982. At December 31, 1983, actuarial estimates of the liability for past service to be funded in future years amount to $50,000,000 (1982 — $56,000,000). The vested portion of the liability for past service to be funded in future years is $23,000,000 (1982 — $34,000,000).

Total pension expense including past service costs was $18,600,000 for 1983 and $13,300,000 for 1982.

12. Commitments and Contingent Liabilities

a) At December 31, 1983 guarantees amounted to $15,300,000, of which $6,000,000 was for bank loans of an associated company.

b) At December 31, 1983 unexpended amounts remaining on approved major capital projects were $80,000,000, of which $38,000,000 is expected to be spent in 1984.

c) At December 31, 1983 the aggregate minimum payments under operating leases were estimated at $40,295,000 with annual payments in each of the five years following 1983 of: 1984 — $11,821,000; 1985 — $9,183,000; 1986 — $7,283,000; 1987 — $5,906,000; 1988 — $4,263,000.

13. Related Party Transactions

Related parties consist of the Corporation's associated companies and Canadian Pacific Limited and its subsidiary and associated companies. Sales (all at fair market prices) to related parties amounted to $27,900,000 (1982: $29,400,000).

The Corporation has a revolving line of credit with Canadian Pacific Securities Limited in the amount of $75,000,000 which provides for loans of up to one year at interest rates related to commercial paper rates. The amount outstanding at December 31, 1983 was $75,000,000 (1982: $50,000,000).

The Corporation makes extensive use of both major Canadian railroads, one of which is a division of Canadian Pacific Limited (CP Rail), for the transportation of its raw materials and finished products. Freight charges from CP Rail are at published tariff rates. In addition, in the regular conduct of its business, the Corporation makes use of other services, facilities and products of the Canadian Pacific organization. These transactions are at rates and terms similar to those for unrelated customers.

14. Segmented Information

a) The Corporation operates in three industry segments:

Mining and Integrated Metals — Principally the mining, processing, smelting, and refining of zinc, lead, copper, silver and gold into concentrates and refined metal.

Chemicals and Fertilizers — Principally the production of sulphuric acid, potash, ammonia, urea, phosphates and nitrates.

Other Operations — Principally fabricated metal products, electronic materials and electric power distribution.

b) Sales to other segments are accounted for at prices which approximate market.

c) Investment income and certain corporate expenditures and assets relating to the overall direction and management of the Corporation's activities are not allocated to industry segments.

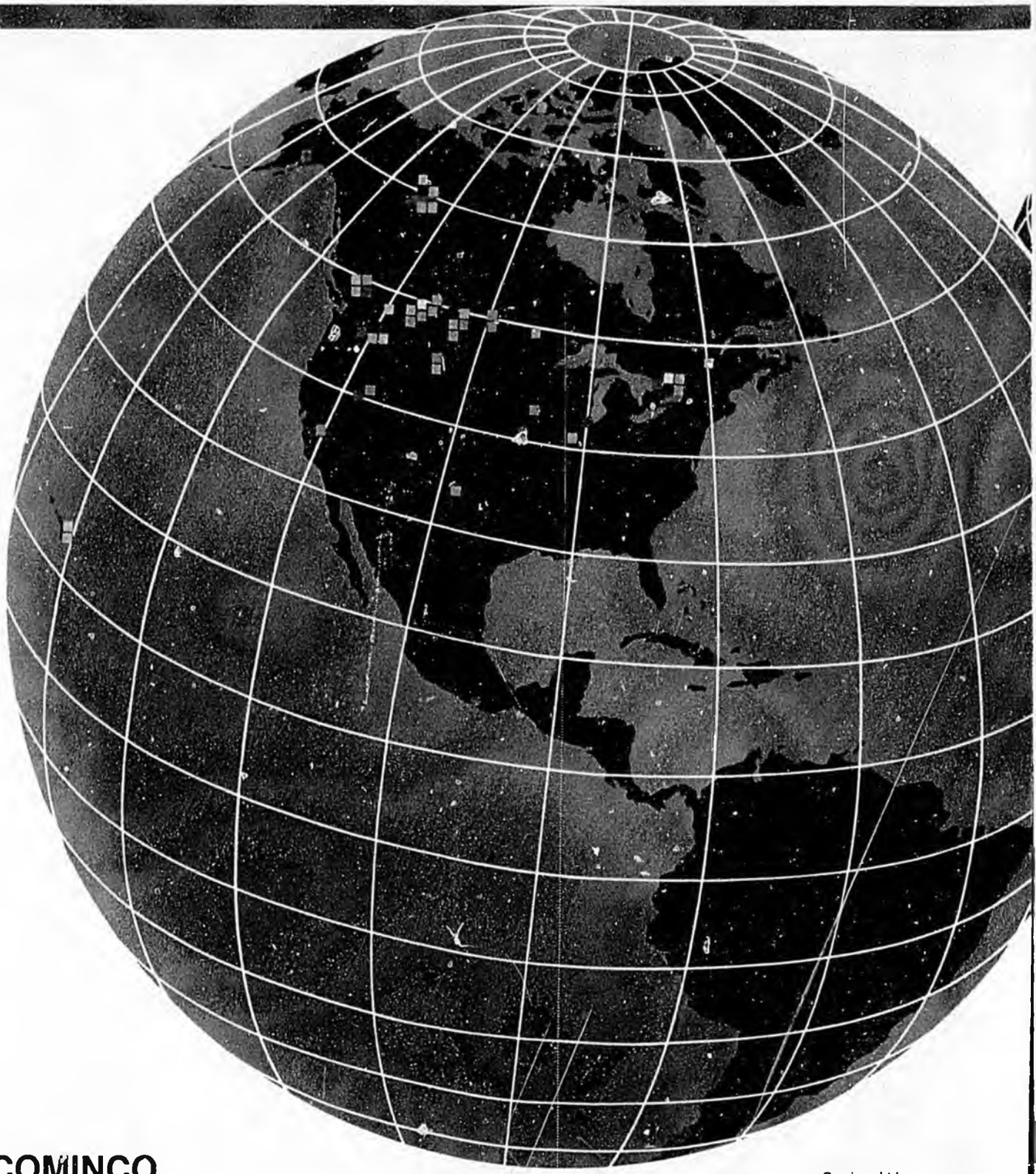
d) Canadian export sales amounted to $605,000,000 (1982: $529,000,000).

Segmented Information

Year Ended December 31, 1983
(Millions)

By Industry Segment	Mining and Integrated Metals		Chemicals and Fertilizers		Other Operations		Consolidated	
	1983	1982	1983	1982	1983	1982	1983	1982
Revenue								
Sales to external customers	$ 767	$ 641	$ 443	$ 421	$ 165	$ 173	$1,375	$1,235
Sales to other segments	31	34	3	1	4	2		
	$ 798	$ 675	$ 446	$ 422	$ 169	$ 175		
Earnings								
Operating profit (loss) before unallocated items, below	$ (6)	$ (38)	$ 34	$ 37	$ 17	$ 21	$ 45	$ 20
General mineral exploration							(16)	(15)
Interest expense							(81)	(90)
Corporate (net)							(16)	(13)
Income and resource taxes							27	43
Earnings (loss) before minority interest, gain or loss on translation, equity in earnings of associates and extraordinary item							$ (41)	$ (55)
Identifiable Assets								
Segment assets								
— Operating	$1,183	$ 793	$ 384	$ 399	$ 165	$ 159	$1,732	$1,351
— Undeveloped properties and construction in progress	137	518	1	4	33	27	171	549
	$1,320	$1,311	$ 385	$ 403	$ 198	$ 186	$1,903	$ 1,900
Corporate assets							55	63
Investment in associated and other companies							125	128
Total Assets							$2,083	$2,091
Depreciation, Depletion and Amortization	$ 71	$ 57	$ 22	$ 22	$ 7	$ 7	$ 100	$ 86
Capital Expenditures	$ 81	$ 178	$ 9	$ 21	$ 16	$ 31	$ 106	$ 230

By Geographic Region	Canada		United States		Other Countries		Consolidated	
	1983	1982	1983	1982	1983	1982	1983	1982
Revenue								
Sales to external customers	$ 980	$ 840	$ 325	$ 330	$ 70	$ 65	$1,375	$1,235
Sales to other regions	96	99	9	8	—	—		
	$1,076	$ 939	$ 334	$ 338	$ 70	$ 65		
Earnings								
Operating profit (loss) before unallocated items	$ 26	$ 6	$ 4	$ (1)	$ 15	$ 15	$ 45	$ 20
Identifiable Assets								
Regional assets								
— Operating	$1,509	$1,143	$ 150	$ 128	$ 73	$ 80	$1,732	$1,351
— Undeveloped properties and construction in progress	115	503	46	40	10	6	171	549
	$1,624	$1,646	$ 196	$ 168	$ 83	$ 86	$1,903	$1,900
Depreciation, Depletion and Amortization	$ 79	$ 63	$ 12	$ 16	$ 9	$ 7	$ 100	$ 86
Capital Expenditures	$ 75	$ 204	$ 27	$ 21	$ 4	$ 5	$ 106	$ 230



COMINCO

PRINCIPAL OFFICES, OPERATIONS, SUBSIDIARIES AND ASSOCIATED COMPANIES

■ **PRINCIPAL OFFICES**

Head Office:
2300 — 200 Granville Street
Vancouver, British Columbia
V6C 2R2

Group Offices:

B.C. Group
J. E. Fletcher,
Vice-President
Trail, British Columbia
V1R 4L8

Prairie Group
W. J. Robertson,
Vice-President
426 —10333 Southport
Road SW
Calgary, Alberta
T2W 3X6

Northern Group
J. M. Wilson, Vice-President
P.O. Box 1979
Yellowknife, N.W.T.
X1A 2P5

Australia
Cominco Australian Pty. Ltd.
N. A. Gilberthorpe,
Chairman & Chief
Executive Officer
367 Collins Street
Melbourne, Victoria 3000
Australia

Europe and Africa
Cominco Europe Limited
P. Hansen, Chairman &
Managing Director
50 Finsbury Square
London EC2A 1DD
United Kingdom

U.S.A.
Cominco American
Incorporated
J. L. Anderson, President &
Chief Executive Officer
818 West Riverside Avenue
Spokane, WA 99220 U.S.A.

Cominco Engineering
Services Ltd.
J. E. Fletcher, Chairman
& Chief Executive Officer
Trail, British Columbia
V1R 4L8

Copper Division
R. P. Taylor, President
2200 — 200 Granville Street
Vancouver, British Columbia
V6C 2R2

Electronic Materials Division
A. V. Marcolin, President
Trail, British Columbia
V1R 4L8

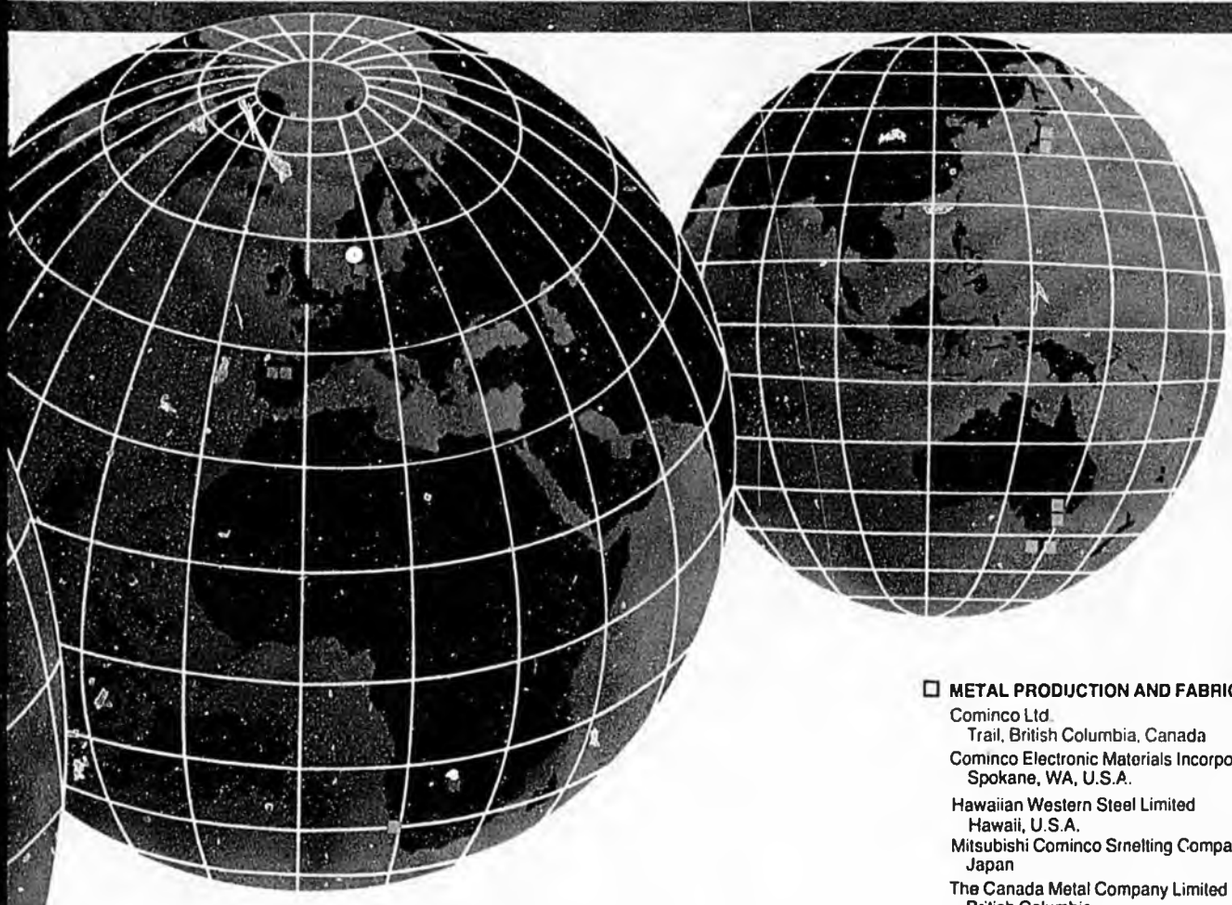
■ *Sales Offices:*
Cominco Ltd.
2300 — 200 Granville Street
Vancouver, British Columbia
V6C 2R2

Cominco Ltd.
426 —10333 Southport
Road SW
Calgary, Alberta
T2W 3X6

Cominco Ltd.
120 Adelaide Street West
Suite 1500
Toronto, Ontario
M5H 1T1

Cominco American
Incorporated
818 West Riverside Avenue
Spokane, WA 99220 U.S.A.
(also Amarillo, Texas;
Chicago, Illinois; Fargo,
North Dakota; Lincoln,
Nebraska; Minneapolis,
Minnesota)

Cominco Electronic
Materials Incorporated
East 15128 Euclid Avenue
Spokane, WA 99216 U.S.A.



Cominco (U.K.) Limited
50 Finsbury Square
London EC2A 1DD
United Kingdom

Cominco (U.K.) Limited
Crown House
550 Mauldeth Rd. W.
Chorlton-cum-Hardy
Manchester M21 2SJ
England

PRINCIPAL SUBSIDIARIES AND ASSOCIATED COMPANIES
(Cominco ownership in parentheses)

Aberfoyle Limited
Melbourne, Australia (47%)

The Canada Metal Company Limited
Toronto, Ontario (50%)

Cominco American Incorporated
Spokane, Washington, U.S.A. (100%)

Cominco Electronic Materials Incorporated
Spokane, Washington, U.S.A. (100%)

Cominco Europe Limited
London, England (100%)

Cominco Holdings (N.V.)
Amsterdam, The Netherlands (100%)

Cominco (U.K.) Limited
London, England (100%)

Exploración Minera Internacional España S.A.
Villafranca del Bierzo, León, Spain (48%)

Fording Coal Limited
Calgary, Alberta (40%)

Mitsubishi Cominco Smelting Company, Limited
Tokyo, Japan (45%)

Pine Point Mines Limited
Pine Point, N.W.T. (69%)

Vestgron Mines Limited
Yellowknife, N.W.T. (63%)

Greenex A/S
Copenhagen, Denmark (63%)

Western Canada Steel Limited
Vancouver, British Columbia (100%)

Hawaiian Western Steel Limited
Ewa, Hawaii, U.S.A. (51%)

West Kootenay Power and Light Company, Limited
Trail, British Columbia (common shares 100%) (preferred shares 30%)

OPERATING MINES

Ardlethan
New South Wales, Australia

Black Angel
Greenland

Buckhorn
Nevada, U.S.A.

Cleveland
Tasmania, Australia

Con
Northwest Territories
Canada

Fording Coal
British Columbia
Canada

Hondeklip
Cape Province
South Africa

Magmont
Missouri, U.S.A.

Pine Point
Northwest Territories
Canada

Polaris
Northwest Territories
Canada

Que River
Tasmania, Australia

Rubiales
León, Spain

Sullivan
British Columbia
Canada

Vade
Saskatchewan,
Canada

Valley
British Columbia
Canada

Warm Springs
Montana, U.S.A.

METAL PRODUCTION AND FABRICATION

Cominco Ltd.
Trail, British Columbia, Canada

Cominco Electronic Materials Incorporated
Spokane, WA, U.S.A.

Hawaiian Western Steel Limited
Hawaii, U.S.A.

Mitsubishi Cominco Smelting Company, Limited
Japan

The Canada Metal Company Limited
British Columbia
Alberta
Manitoba
Ontario
Quebec

Western Canada Steel Limited
Calgary, Alberta
Vancouver, British Columbia

CHEMICAL AND FERTILIZER PRODUCTION

Cominco Ltd.
Trail and Kimberley, British Columbia, Canada
Calgary and Carseland, Alberta, Canada
Vade, Saskatchewan
Canada

Cominco American Incorporated
Beatrice, Nebraska, U.S.A.
Borger, Texas, U.S.A.
Owens Lake, California
U.S.A.
Warm Springs, Montana
U.S.A.

RESEARCH CENTRES

Trail, British Columbia
Sheridan Park, Ontario

EXPLORATION OFFICES

Cominco Ltd.
Vancouver, British Columbia; Toronto, Ontario

Cominco American Incorporated
Spokane, Washington; Anchorage, Alaska; Reno, Nevada

Cominco Europe Limited
Guildford, England

Cominco France S.A.
Paris, France

Cominco S.A.
Brussels, Belgium

Aberfoyle Limited
Melbourne, Australia

Compañia Minera Constelación S.A. de C.V.
Guadalajara, Mexico

Eland Exploration (Pty.) Ltd.
Johannesburg, South Africa

Cominco (Perú) S.R. Ltda.
Lima, Peru

Five Year Financial Summary

(All dollar amounts in millions except per share figures)

	1983	1982	1981	1980	1979
Operations					
Sales of products and services	$1,374.7	$1,234.7	$1,416.9	$1,442.7	$1,273.9
Net earnings (loss)	(39.3)	(31.2)	70.3	171.1	204.6
—per common share	(2.60)	(2.20)	3.35	9.54	11.57
Funds (deficit) from operations	31.6	(8.1)	201.3	307.7	325.7
—per common share	0.88	(0.97)	10.52	17.54	18.69
Dividends on common shares	8.2	24.4	75.2	75.2	80.9
—per common share	0.40	1.30	4.10	4.40	4.75
Capital expenditures	106.3	230.4	333.7	280.3	150.1
Financial Position					
Assets:					
Working Capital	$ 187.0	$ 221.0	$ 292.0	$ 323.7	$ 275.2
Fixed assets (net)	1,360.2	1,359.8	1,242.4	909.9	645.5
Investments and other assets	151.2	156.0	151.4	129.6	166.0
	$1,698.4	$1,736.8	$1,685.8	$1,363.2	$1,086.7
Financed by:					
Long-term debt	$ 649.4	$ 688.0	$ 566.7	$ 329.0	$ 226.0
Income taxes not currently payable	144.5	175.5	219.2	172.9	122.4
Minority interests	34.6	38.4	45.4	90.4	54.8
Shareholders' equity	869.9	834.9	854.5	770.9	683.5
	$1,698.4	$1,736.8	$1,685.8	$1,363.2	$1,086.7
Return on assets	Nil	Nil	7.7%	16.4%	23.7%
Return on common shareholders' equity	Nil	Nil	9.3%	26.2%	37.7%
Number of employees at year-end	10,466	10,797	12,643	12,296	11,254
Total employment costs	$ 400.4	$ 421.3	$ 416.1	$ 341.8	$ 278.5
Market price per common share					
(Toronto Stock Exchange) — High	$64¾	$55¼	$72	$81	$55½
— Low	$44¾	$33¾	$43¾	$47½	$31⅝

Shareholder Information

Transfer Agents and Registrars

The Royal Trust Company
555 Burrard Street
Vancouver, B.C.
V6B 3R7

333 — 7th Avenue S.W.,
Calgary, Alberta
T2P 2Z1

*330 St. Mary Avenue
Winnipeg, Manitoba
R3C 2Z5

23rd Floor, Royal Trust Tower
Toronto Dominion Centre
P.O. Box 7500 — Station A
Toronto, Ontario
M5W 1P9

630 Dorchester Blvd. W.
Montreal, Quebec
H3B 1S6

**One King Street
St. John, N.B.
E2L 1G1

***1660 Hollis Street
Halifax, N.S.
B3J 1V7

Bank of Montreal Trust Company
**2 Wall Street
New York, N.Y.
10005

Stock Exchanges
Vancouver, Montreal,
Toronto (Canada)
**American (U.S.A.)

*Series A and D Preferred Shares Only
**Common Shares Only
***Series D Preferred Shares Only

Share Valuation

For Canadian capital gains tax purposes the Valuation Day value of Cominco Ltd. common shares on December 22, 1971, as established by the Department of National Revenue, was $22.88 per share.

Stock Holdings

The number of registered holdings of voting stock on March 5, 1984 was 20,930. The distribution of the voting rights on that date was as follows:

96.28% Canada
3.32% United States
0.40% Other Countries

Dividends

Cominco's practice is to declare dividends on its common shares quarterly payable towards the end of each calendar quarter.

Dividends are paid in Canadian dollars to all common shareholders who reside in Canada and in U.S. dollars to all other common shareholders. Common shareholders resident in Canada may elect to receive dividends in U.S. dollars and common shareholders not resident in Canada may elect to receive dividends in Canadian dollars upon forwarding a written request to any office of the Company's principal Registrar and Transfer Agent, the Royal Trust Company, listed in this Report.

Sources of Shareholder Information

The Annual Report is one of several sources of information available to Cominco shareholders. A description of other regularly published sources is given below.

Quarterly interim reports are mailed in May, August and November. These reports contain financial results and other news about the Company.

The Information Circular, Proxy and Annual Report are mailed to each registered common shareholder in March. The Information Circular describes the matters to be considered at the Annual General Meeting.

The Company has been qualified under the Prompt Offering Qualification System for securities of senior Canadian issuers. Upon written request to the Corporate Secretary, shareholders may receive a copy of the Company's current Annual Information Form that has been filed under this system.

To permit shareholders who do not hold Cominco stock in their own names to receive published information on a timely basis, the Company has established a special mailing list. Shareholders on the list will have reports mailed directly to them. To be placed on direct mailing lists, shareholders and others should write to the Corporate Secretary, Cominco Ltd., Suite 2300 — 200 Granville Street, Vancouver, B.C., Canada, V6C 2R2.

Directors and Officers

Directors

* M.N. ANDERSON
Chairman and Chief Executive Officer
Cominco Ltd., Vancouver

†H.C. BENTALL
Chairman, the Bentall Group
Vancouver

* F.S. BURBIDGE
Chairman and Chief Executive Officer
Canadian Pacific Limited, Montreal

* F.E. BURNET
Corporate Director
Spokane

* R.W. CAMPBELL
Vice-Chairman and Chief Executive Officer
Canadian Pacific Enterprises Limited
Calgary

R.G. DUTHIE
Corporate Director
Vancouver

S.E. EAGLES
President
Canadian Pacific Enterprises Limited
Calgary

* H.T. FARGEY
Executive Vice-President at Toronto
Cominco Ltd., Toronto

R. HOUGEN
Chairman of the Board,
Canadian Satellite Communications Inc., Whitehorse

D.J. KELSEY
Consultant and
Corporate Director
Vancouver

†R.A. MacKIMMIE, Q.C.
Barrister and Solicitor
MacKimmie Matthews
Calgary

†P.A. NEPVEU
Chairman of the Board
CIP Inc.
Montreal

THE HON. I.D. SINCLAIR, O.C., Q.C.
Senator
Chairman
Canadian Pacific Enterprises Limited
Toronto

* W.G. WILSON
President
Cominco Ltd., Vancouver

Officers

M.N. ANDERSON
Chairman and Chief Executive Officer

W.G. WILSON
President

H.T. FARGEY
Executive Vice-President at Toronto

R.P. DOUGLAS
Executive Vice-President, Operations

R.R. STONE
Vice-President, Finance

O.E. OWENS
Vice-President, Exploration

K.H. SPURR
Vice-President, Metal Sales

J. GIOVANETTO
Vice-President, Human Resources

W.J. ROBERTSON
Vice-President, Prairie Group

J.E. FLETCHER
Vice-President, B.C. Group

J.M. WILLSON
Vice-President, Northern Group

E.A. KOWALENKO
Vice-President, Chemical and Fertilizer Marketing

A.V. MARCOLIN
President, Electronic Materials Division

R.P. TAYLOR
President, Copper Division

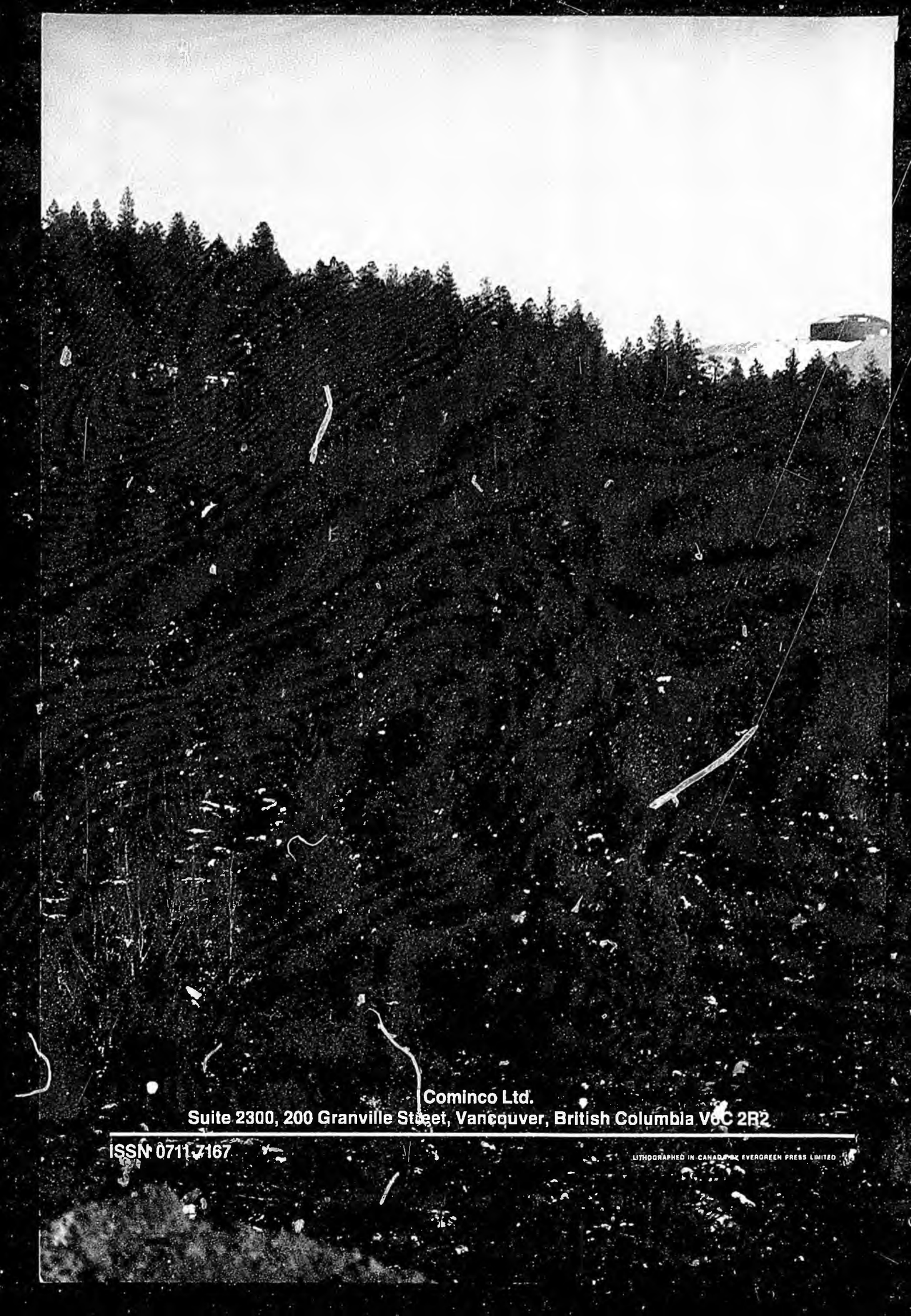
K.S. BENSON
Corporate Secretary

L.D. MARGERM
Treasurer

A.D. MILLER
Comptroller

B.J. PARTRIDGE
General Counsel

* Members of Executive Committee
† Members of Audit Committee



Cominco Ltd.
Suite 2300, 200 Granville Street, Vancouver, British Columbia V6C 2R2

ISSN 0711-7167

LITHOGRAPHED IN CANADA BY EVERGREEN PRESS LIMITED

Resources Comm.

Red Dog Project Analysis

A report to Governor
Bill Sheffield

February, 1984

Red Dog Project Analysis

February 1984

Lead Agency

Office of Mineral Development
Department of Commerce and Economic Development

Contributing Agencies

Department of Commerce and Economic Development
Department of Community and Regional Affairs
Department of Transportation and Public Facilities
Department of Natural Resources
Office of the Governor

Table of Contents

I. Introduction

II. Executive Summary
- A. Summary of Findings
- B. Recommendations

III. Report of the Office of Mineral Development
- A. Technical Description of the Project and Permitting Requirements
- B. Cominco Profile: History; Metal Mining and Processing Operations; and Arctic Mining Experience
- C. Commodity Profile of Mine Products, Marketing Considerations and Price Forecasts
- D. Zinc Resources of Alaska and Northwest Canada
- E. Potential Alaskan Mineral Projects Requiring Public Sector Infrastructure
- F. Bibliography

IV. Report of the Division of Finance and Economics: Red Dog Mine Analysis

V. Report of the Office of Management and Budget
- A. Corporate Profile of Cominco Ltd. (Canada)
- B. Corporate Profile of NANA Regional Corporation Inc.
- C. Direct and Indirect Economic Impacts Within the State of Alaska
- D. Fiscal Impacts
- E. Cominco/NANA Contractual Agreements
- F. Effects on State Bonding Capacity
- G. Synopsis

VI. Report of the Department of Community and Regional Affairs
- A. Examination of Regional Government Structure
- B. Evaluation of Regional Socio-Economic Impacts
- C. Regional Dependence on State and Federal Appropriations
- D. Comments and Recommendations
- E. Appendices

VII. Report of the Department of Transportation and Public Facilities
- A. Review of Cominco's Road Design and Cost Estimates
- B. Review of Cominco's Port Design and Cost Estimates
- C. Alaskan Extractive Resource Projects
- D. Qualification Matrix for State Transportation Projects
- E. Impact of the Jones Act
- F. Synopses of two Canadian Mining Projects with Joint Public/Private Sector Participation

Table of Contents (Cont.)

VIII. Report of the Division on Land and Water Management
- A. Summary of DLWM Involvement in Red Dog Project
- B. Outline of Topics to be Considered in a Right-of-Way Agreement
- C. Commissioner's Response to Cominco and GCO Minerals Right-of-Way Applications

IX. Appendices
- A. Appendix A: Project Description from Preliminary Draft Environmental Impact Statement
- B. Appendix B: Red Dog Fact Sheet
- C. Appendix C: Project Permitting Time-Line
- D. Appendix D: Permit Flow Chart
- E. Appendix E: Base Metal Markets (Cu, Pb, Zn): Alaskan Opportunities (Paper by Gordon H. Laurie, Cominco, Ltd.)

I. Introduction

II. Executive Summary

A. Summary of Findings

B. Recommendations

I. Introduction

The Red Dog zinc, lead and silver deposit was discovered in the mid 1970's. Located in the Noatak River drainage 55 miles from the Chukchi Sea, the deposit was included in a 1976 NANA land selection. In February 1982, the NANA Regional Corporation signed an agreement with Cominco American Ltd. to develop the deposit.

In late 1984, the Board of Directors of Cominco will decide whether or not to proceed with the project according to the present proposed schedule. If the decision is positive, construction would begin in mid 1985, with initial production starting at a rate of one million tons per year. The capacity of the mine would be expanded to 2 million tons of ore per year in 1993.

The development of the mine will require the construction of a port facility on the Chukchi Sea and a 55 mile road inland to the mine. Cominco estimates the cost of port construction to be $57 million and the cost of the road to be $75 million. Total development costs for the mine, including the port and the road are estimated to be $390 million. NANA and Cominco have jointly indicated that they will seek State funding assistance for construction of the road and the port.

This report was commissioned by the Governor to provide his office with the information necessary to formulate the State's role in the development of Red Dog. The lead agency in the preparation of the report is the Office of Mineral Development, Department of Commerce and Economic Development. Other State agencies contributing to the report are the Division of Finance and Economics, Office of Management and Budget, Department of Community and Regional Affairs, Department of Transportation and Public Facilities, the Division of Land and Water Management, and the Department of Revenue. Guidance in the handling of confidential information was provided by the Department of Law.

The following section is an executive summary which includes a summary of findings and recommendations. Following the Executive Summary, the contributions of each agency are included in their entirety. Minor inconsistencies inevitably occur in a report of this type which incorporates contributions from originating agencies.

The information used in the writing of this report represents independent research by the agencies involved as well as confidential and non-confidential information provided by NANA and Cominco.

II. Executive Summary

- This section of the report was prepared by the Office of Mineral Development. The contributing agencies have reviewed the Executive Summary for consistency.

A. Summary of Findings

Project Feasibility

- The enormous tonnage and high combined grade of zinc, lead and silver make Red Dog the worlds largest, undeveloped zinc/lead deposit.

- Development costs will be high. However, the deposit can be mined as an open pit with a very low ratio of waste material to ore. Therefore, actual mining costs will be low compared with the majority of world zinc/lead mines. This will give the Red Dog mine competitive advantage and result in reducing the possibility of temporary mine shutdowns in times of world economic recession.

- For the foreseeable future, 70%-80% of mine revenues will be from the sale of zinc concentrates. Zinc is the fourth most widely used industrial metal, and compared with the other base metals (copper and lead), zinc has the greatest potential for growth in terms of world demand and the least potential for being over-produced.

- Without State investment, an average long term zinc price of 63¢ per pound is estimated to provide Cominco a 15% return on investment. A return on investment of 15% is cited for comparison purposes only and should not be interpreted as a decision threshold for Cominco. A 2.5% change in the return on investment is estimated for each 5¢ change in the long-term average zinc price.

- In the long term, much of Red Dog's concentrate production can be refined at Cominco's smelter and refiner in Trail, British Columbia, and will replace concentrates from other depleting Cominco zinc mines. In the near and long term, concentrates from Red Dog will be attractive to Japanese and European processors because of the reliability of the supplier, the longevity of the mine, and the political stability of the United States. The development of Red Dog and other base metal deposits may eventually make the construction of an in-State smelter and refiner feasible.

Permitting and Access

- Conditions at Red Dog will allow the operators to meet the most stringent environmental regulations and environmental permitting should not pose any problems.

- Obtaining an access right-of-way from a Chukchi Sea port, across the Krusenstern National Monument to the mine site, poses the single greatest hurdle to mine development.

NANA

- The NANA Regional Corporation is solvent and is strongly oriented towards projects which offer long-term employment benefits to its shareholders, principally in the form of joint ventures within the region.

Cominco

- Cominco is a sound corporation, has good overall prospects, is backed by a large, reputable parent corporation, and appears able to provide a solid corporate base for support and development of the Red Dog mine project.

- Cominco is presently the free worlds largest producer of zinc and lead and has been successfully mining, processing and marketing zinc and lead for over 70 years.

- Cominco has developed and successfully operates four major mines in the North American arctic. Three of these are zinc/lead mines and have been developed within the last 20 years. The senior management for the Red Dog project will include many of the same personnel responsible for building and operating these arctic mines.

State Impacts

- The project will create between 350 and 400 direct, permanent jobs within the State with an annual gross payroll of between $11.2 and $12.9 million. Additionally, approximately 225 secondary and indirect jobs will be created. Construction employment will total 143 full time equivalent jobs between 1986 and 1988 with an annual gross payroll of $8.8 million during those years.

- Revenues to the State from the mine will be derived from the mining license tax and the corporate income tax. As both taxes are based on net profits, annual State revenues range from $9 to $20 million in current dollars subject to how repayment of infrastructure costs are treated. The net present value of revenues to the State over 30 years, including estimated reductions in

transfer payments, is from $200 million to $300 million based on a zinc price range between 55¢ and 65¢ per pound. Additionally, earnings derived by NANA from the mine will provide revenue to the State. At present, there is no personal income tax so no revenues from employee income can be projected.

- No estimates have been made for the potential demands on State programs from the migration of out-of-state job seekers attracted by the project. Because of the NANA/Cominco agreement requiring preferential local hire, the remoteness of the project, and the lessening of national unemployment, the problem of out-of-state job seekers may not be significant.

- Recent dramatic decreases in the total of state transfer payments to the NANA region have been tentatively linked with permanent fund distributions. This indicates that income derived from mine wages may also have a positive effect on reducing regional transfer payments by the State.

- If State ownership and future control of the transportation corridor and infrastructure facilities are not considered and assuming a 60¢ lb. zinc price an examination of project finances estimates that a direct State subsidy of $40.1 million towards project development costs would assure a 15% rate on investment. This would provide a six-fold net present return on the State's subsidy in the form of tax revenues and transfer payment reductions totaling $270 million. If the State were to completely finance construction of the road and port for an estimated cost of $135 million, the cost/benefit ratio would be reduced to 2:1.

- Industrial development bond financing of the project infrastructure would not adversely affect the State's bonding capacity.

Regional Impacts

- Red Dog will provide approximately 260 full-time jobs for regional residents at mine start-up in 1988, increasing to 400 in 1993. The total regional payroll will total approximately $7.0 million initially and will increase constantly as local employees move into professional and technical positions. Additionally, some 75 secondary jobs will be created after start-up and would mostly be filled by regional residents. At present, 88% of the regional economy is supported by Federal and State revenues, and the existing 1200 full-time equivalent jobs in the region are heavily dependent upon Federal, State and local government employment.

- If the local hire objectives are met, the net effect of the mine on increasing the regional population will not be significant. Some increase in the population of Kotzebue is expected as regional residents relocate to be closer to their jobs. Kotzebue's population increase attributable to the mine represents about 6% of the total increase in Kotzebue's population over the next 20 years. With the possible exception of the water system, existing municipal facilities should not be significantly stressed by population growth attributable to development of the mine.

- Because Red Dog is an enclaved development, no substantial additional demands will be placed upon the region's service delivery. However, an increase in regional affluence is likely to require some increased social service delivery, at least temporarily. Service delivery in Kotzebue will be impacted to some degree if mine workers commute regularly through the city. That impact will depend on the frequency and duration of transient visits.

- The NANA/Cominco agreement requires Cominco, contingent upon the availability of skilled labor, to preferentially hire regional

residents, state residents and out-of-state residents in that order. While there is no guarantee of the percentage of local hire, NANA has stated it will assume the responsibility to train regional residents for these jobs.

- The region could benefit from the use of the project's port facilities and backhaul capabilities. Savings on freight costs are estimated by Cominco to be between $1 million and $3 million annually assuming port user fees are not assessed to incoming regional freight.

- NANA is presently seeking to detach Red Dog and other mineral deposits in the area from the North Slope Borough. Successful detachment is seen as a factor in the decision to proceed with the Red Dog project (due to uncertain future taxation policies of the North Slope Borough), and in the creation of a Northwest Alaska Borough.

Infrastructure Costs

- Cominco's route selection and road design are based on sound engineering criteria and the cost estimate of $80 to $90 million for the preferred road through the Krusenstern National Monument is realistic for this stage of the evaluation.

- Cominco's estimates for port costs of $50 to $60 million, based on the proposed, ballasted-tanker design, appear reasonable.

B. Recommendations

Red Dog will become one of the premier zinc/lead mines in the world. While the mine would eventually be developed without assistance, there are several reasons why the State may want to consider participating in the funding of all or part of the costs of building a road and regional port.

- There is little risk that the project will not generate sufficient revenues to amortize infrastructure costs at a modest interest rate.

- In addition to being able to repay any State funding, the project will generate over 400 year-round, permanent jobs; provide direct tax revenues to the State and local governments; and may significantly reduce the amount of regional transfer payments.

- The port facility, tidelands, uplands and right-of-way will service the region as well as the mine, and both the road and the port may stimulate future development of additional mineral deposits in the Noatak area. The road could eventually become part of an integrated transportation system that could link other more distant mineral developments such as the Northern Alaska Coal Field.

- The development of Red Dog will signal Alaska's firm intention to become a world supplier of mineral resources. This will have the effect of establishing Alaska's credibility with international consumers and attracting investment capital for other resource development projects.

If the State is to participate in the funding of the road and port facilities, the following recommendations are suggested.

- Any major State investment in the road and port facilities which will initially service the Red Dog mine should be conditional upon

firm agreements with NANA and Cominco which will provide for State interests in the facilities and right-of-way, as well as further guarantee the use of the road and the port to other potential users. This requires that State tidelands, privately owned uplands and the right-of-way be available for expanded development and use, in a reciprocal use agreement among affected landowners and users.

- The maintenance and operating costs of the road and the port should be borne by the users.

- If State funding were to take the form of a loan or appropriation, repayment of the funds should be required and should be spread over a period of 20 years or longer to begin with mine production. Whether repayment is to be made in the form of annual installments, tied to a tonnage user fee or some combination of both, the interest rate attached to the repayment should reflect the State's willingness to share in the project risk and should recognize the total benefits the project will provide, including State interests in the road and port.

- Any agreement between the State and NANA/Cominco should include an equitable mechanism to accommodate other future users into a fee schedule which would incorporate a pro rated share of debt amortization as well as operating and maintenance costs.

III. Report of the Office of Minneral Development Department of Commerce and Economic Development

A. Technical Description of the Project and Permitting Requirements

B. Cominco Profile: History; Metal Mining and Processing Operations; and Arctic Mining Experience

C. Commodity Profile of Mine Products, Marketing Considerations and Price Forecasts

D. Zinc Resources of Alaska and Northwest Canada

E. Potential Alaskan Mineral Projects Requiring Public Sector Infrastructure

F. Bibliography

A. Technical Description of the Project and Permitting Requirements

1. Project Description

The Red Dog deposit has indicated reserves of 85 million tons of ore with an average grade of 17.1% zinc, 5.0% lead (22.1% combined) and 2.4 ounces per ton silver. Red Dog's reserves and grades compare extremely favorably on a worldwide basis with other primary zinc/lead mines. These would include the Brunswick Mining Company's (64% Noranda) No. 12 mine in Eastern Canada with reserves of 100 million tons of 13% combined zinc and lead; the Mount Isa Mine in Australia with 93 million tons of 14% combined zinc and lead; and the Tara Mine in Ireland with 59 million tons of 12.7% combined zinc and lead.

On a regional comparison, the open pit Cyprus Anvil zinc/lead mine in the neighboring Yukon Territory has reserves of about 37 million tons with a combined zinc/lead grade of only 7.8%. On a world basis, according the U. S. Bureau of Mines, the average zinc grade of primary zinc mines is between 6% and 9%, spotlighting Red Dog's 17% zinc grade.

While the Red Dog grades and reserve tonnage compare favorably with major world producers, Red Dog will also enjoy the advantage of being an open pit mine, while most major zinc mines operate underground. U. S. Bureau of Mines statistics indicate less than 20% of the world's present primary zinc producers are surface mines. The cost of mining a ton of ore from an open pit is significantly less than the cost from an underground operation. This will enhance Red Dog's ability to operate during periods of market weakness and low prices. Cominco officials believe that Red Dog's actual cost to produce a ton of zinc, excluding development costs, will be lower than production costs of the majority of world zinc mines.

The mine site is located about 55 miles inland from the Chukchi seacoast and about 100 miles north of Kotzebue. A port site is proposed south of the village of Kivalina on the Chukchi Sea. The port will include either offshore or shore-connected docking facilities to accommodate 25,000-35,000 ton ore carriers which will ship mine concentrates to smelters and backhaul mine supplies during the ice-free shipping season from early July to mid October.

A 55 mile road will be constructed between the port and the mine site for the supply of the mine and for the transport of mine concentrates to port. At the proposed initial start-up production rate, 9 to 12 truckloads of concentrate will be hauled over the road daily. The road grade will be engineered for possible modification to a railbed when the production rate doubles and the economics of rail haulage become beneficial.

The mine site facilities will include an accommodation building for housing workers on a rotational basis, a mill complex for concentrating the mine ore, and other buildings for housing a vehicle maintenance shop, a primary ore crusher, an ore storage shed and other facilities. To the greatest extent possible, these buildings will be prefabricated in modules at Pacific port sites, shipped on barges to the port, and transported overland to Red Dog for siting on bedrock foundations.

The mine and mill will require 18 MW of power and the port facilities an additional 1.5 MW. The power will probably be supplied by diesel generators. While the cost of buying and transporting coal to the mine is significantly cheaper on a per Btu basis, Cominco has indicated the capital costs of a coal-fired power plant may not be competitive. A 50 MW power requirement is reported as being the minimum that would allow for the economies of scale necessary for coal fired generation to be considered cost effective.

The mine itself will be an open pit that may eventually reach a depth of 700 feet and cover 65 acres. Associated with the pit is the waste tailing pile area and the mill tailings pond. The tailings pond is located to allow treatment of all discharge water draining from the mine area including the pit, the waste tailings and the mill complex. Water naturally draining into the tailings pond basin will be diverted to an adjacent drainage to minimize the volume of water that must be treated. Once the tailings pond and drainage ditches are in place, the water quality in Red Dog Creek will be improved and the periodic fish kills in Ikalukrok Creek (caused by natural ground water leaching metals out of the orebody) will be eliminated.

The pit will require removal of only 1.3 million tons (less than 1 million yards) of material to prepare the mine site for production. Much of the waste material will be used in the construction of the tailings pond dam and access road. A portion of this preproduction material is mineralized and will be stockpiled in the tailings pond drainage area for possible future processing. The overall ratio of waste stripping to ore production is 0.8:1, which represents an extremely favorable situation compared with most open pit mines and will contribute significantly to the long term viability of the mine. Additionally, the first five years of ore to come from the pit will grade 21% zinc and 6% lead, 5% above the average mine ore grade, enhancing revenues from the initial production.

Initial ore production will be 1.1 million tons per year on a basis of 3000 tons per day. The ore will be crushed and concentrated using selective flotation. The final products shipped to smelters will be a lead sulfide concentrate with an approximate lead content of 62%, and a zinc sulfide concentrate with an approximate zinc content of 59%.

Forecast production at the initial mining rate is 350,000 tons of zinc concentrate and 79,000 tons of lead concentrate. The silver will be equally contained by weight in the lead and zinc concentrates,

resulting in a silver grade in the lead concentrate of 4-5 times than that of the silver grade in the zinc concentrate due to the smaller tonnage of the lead concentrate.

The chemicals and technology required to treat and concentrate the raw ore is well developed and the equipment and chemicals needed are readily available. The only departure from an "average" treatment scheme is the need for finer grinding of the ore to effectively liberate the ore minerals from the waste minerals.

Under the expanded scenario beginning in the sixth year of operation, production will nearly double increasing the daily mill throughput from 3000 tons to 5,600 tons. Annual ore tonnage will be 2.0 million tons with annual zinc concentrate shipments of 585,000 tons and lead concentrate shipments of 119,000 tons.

Two Appendices are attached to this report which provide further details on the design, construction and operation of the Red Dog project. Appendix A is from the Preliminary Draft Environmental Impact Statement. Appendix B is a "Red Dog Fact Sheet" generated and distributed by Cominco.

2. Permitting Requirements

Permitting activity to date for the Red Dog project has included the initiation of applications for those permits requiring long lead times. Cominco employs a full time environmental coordinator to manage this aspect of the project. This position is staffed by Mr. Harry Noah who formerly filled a similar position with the Noranda Mining Company during which the Federal EIS for the Greens Creek project was being prepared.

Environmental baseline data collection for the Red Dog project began in the winter of 1981 and continued through the summer of 1983.

The Environmental Impact Statement (EIS) process was begun in January of 1983 and the formal Draft EIS will be distributed to the public in March 1984. The final EIS could be issued by July of 1984. Other major permits applications which have been filed to date include a National Pollution Discharge Elimination System permit, a Section 10(404) Army Corps of Engineers wetlands permit, a State of Alaska right-of-way permit, and a Title 11 right-of-way permit with the U.S. Department of Interior.

The following is an itemization of major permits needed before the construction and operation of Red Dog can begin.

Federal Permits

U. S. Environmental Protection Agency
- National Pollutant Discharge Elimination System Permit
- Review of U. S. Army Corps of Engineers Section 404 Permit for conformance with Section 404(b)(1) guidelines

U. S. Army Corps of Engineers
- Section 404 Permit (wetlands)
- Section 10 Permit (navigable waters dredge and fill)

U. S. National Park Service
- Right-of-way for transportation system

U. S. Fish and Wildlife
- Possible Section 7 Consultation (for endangered species)

National Marine Fisheries Service
- Possible Section 7 Consultation (for endangered marine mammals)

State Permits

Department of Environmental Conservation

- Air Quality Permit to Operate
- Certificate of Reasonable Assurance (Water Quality)
- Wastewater Disposal Permit
- Solid Waste Disposal Permit

Department of Fish and Game

- Title 16 Anadramous Fish Stream Permit

Department of Natural Resources

- Right-of-way Permit
- Water Rights Permit
- Tidelands Use Permit
- Tidelands Lease
- Materials Sale Contract

State Historic Preservation Office

- Archaeological Clearance

Office of Management and Budget

- Coastal Zone Management Consistency Determination

Local Permits

North Slope Borough

- Land Use Permit

Little problem is foreseen by Cominco in obtaining permits for the environmental aspects of the project. However, special interest litigation challenging procedural matters or other aspects of the issuance of federal permits may be possible as the project is large and represents the development of a remote area of Alaska.

In general the project should be able to meet the most stringent environmental standards. A water treatment plant will be installed to process the limited mine and mill discharge water. The naturally contaminated drainage from the mineral zone will also be treated. Ultimately the project will have permanently improved the quality of Red Dog Creek, even after the mine and water treatment facilities have been removed.

It is of interest to note that the present EPA regulations mandating zero-discharge of mill process water (which were developed on the basis of mill tailings ponds in the arid and evaporative climate of Southwest America) will be met at Red Dog by constructing a dam large enough to impound the cumulative volume of mill discharge water over the life of the mine. This regulation is attainable at Red Dog because the topography and the availability of stripped overburden material allow the construction of a mine tailings pond large enough to satisfy this requirement. The Quartz Hill mine, in the rainforest of Southeastern Alaska, will not have to comply with the regulation because a sole variance was granted to the project in the language of the regulations. However, this regulation has the potential to preclude the development of other Alaskan and U. S. mines which have neither a variance nor the favorable conditions found at Red Dog.

A possible major environmental permit that is not listed, but that may be in effect and needed for the permitting of Red Dog is a State Hazardous Waste permit which will be necessary if the proposed hazardous waste regulations are adopted. It is the contention of Cominco's staff that all the applicable provisions of these proposed regulations will have been addressed by the federal permitting process and that the State's permit requirements for Red Dog will be redundant. The State's proposed Hazardous Waste permitting process, however, would present an additional opportunity for project delay through litigation of permitting procedures.

At present, the most critical aspect of permitting for the project is the road access from the Chukchi coast to the mine site. Of two possible routes, a northern route across State lands and southern route through the Cape Krusenstern National Monument, the southern route has been identified in the Draft EIS as the preferred access option as it will have the least environmental impact and is the most cost-effective alternative for the project.

Use of the southern route requires either securing land from the Krusenstern National Monument or gaining a right-of-way across it. Both of these avenues are being pursued. The NANA Corporation is presently seeking a land exchange with the National Park Service for the four, corner townships in the monument through which the road would pass. Cominco has also begun a right-of-way application to the Park Service under the process outlined in Title 11 of ANILCA. The land swap is seen as the preferred method for gaining access as the alternative Title 11 right-of-way process is lengthy, complex, untried and would ultimately require approval of both the U. S. Congress and the President.

At present, government approval for access to the project is seen to be the only major permitting hurdle to the development of the mine. Appendix C contains a permit schedule time-line, and Appendix D is the basic flow chart for the Red Dog permitting process.

B. Cominco Profile: History; Metal Mining and Processing Operations; and Arctic Mining Experience

1. History

The development and operation of Red Dog will be carried out by Cominco Alaska Incorporated, a wholly owned subsidiary of Cominco Ltd. of Canada. Cominco Ltd. was originally formed in 1906 as the Consolidated Mining and Smelting Company of Canada by the Canadian Pacific Railway (CPR), which remains the majority stockholder (53%) of Cominco Ltd.

The CPR entered the smelting business indirectly in 1898 when they purchased a government-granted railroad franchise from Augustus Heinze. Heinze's railroad franchise threatened the viability of the CPR's own rail expansion plans, but as a condition of the sale, Heinze required the CPR to purchase his smelter located at Trail, British Columbia. In 1906, to secure ore concentrates for the smelter, CPR merged its smelting interests with three mining companies and a local power company to form the Consolidated Mining and Smelting Company of Canada.

In 1913, the company purchased the Sullivan Mine in Kimberly, British Columbia (150 miles from Trail) at a sheriff's auction. The ore at the mine was extremely complex for the existing technology, but shortly after acquiring the mine, the company's research division discovered a new recovery technique called selective flotation which allowed the processing of the complex sulphide ore. The actual size of the Sullivan Mine turned out to be larger than anyone had imagined. Still operating in 1983 with an additional mine life of 20 years, the Sullivan Mine is the flagship of the company.

At present, Cominco is one of the largest mining, smelting and refining enterprises in the world. It is the leading producer of zinc

and lead, accounting for 10% and 11% of the world's supply, respectively. Additionally, the company operates fertilizer plants in the U.S. and Canada and operates a potash mine in Saskatchewan and a phosphate mine in Montana. Cominco supplies 22% of Canada's fertilizer demand and 12% of the U.S. demand.

2. Metal Mining and Processing Operations

Smelters and Refineries

Trail, British Columbia - The smelting and refining complex at Trail, British Columbia has an annual production capacity of 300,000 tons of refined zinc, 150,000 tons of refined lead and 12 million ounces of silver. Other products include gold, bismuth, cadmium, antimonial lead, sulphuric acid, ammonia, and fertilizers. The operation includes two hydro-electric plants which supply Cominco's power needs and sell the surplus locally. The Trail metallurgical operations represent Cominco's largest single source of revenue. Trail processes concentrates from the Sullivan Mine (100% Cominco) in British Columbia and from the Pine Point Mine (69% Cominco) in the Northwest Territories. Additional Trail capacity is met by purchasing concentrates from other sources including South America.

In 1977 Cominco began a modernization program at Trail which included $210 million for a new zinc refinery. Of the 300,000 ton annual production capacity at the recently completed zinc facility, 70,000 tons is produced in a "state of the art" hydrometallurgical plant which uses a pressure leaching process to produce zinc. Elemental sulfur is a by-product of this process instead of sulfuric acid. An additional $200 million investment is planned to rebuild the lead smelting segment of the complex.

Mitsubishi Cominco Smelting Company - Cominco holds a 45% interest in a lead smelter located on Naoshima Island, Japan. The

smelter has a 40,000 ton annual refined lead production annual capacity and purchases lead concentrates from the Pine Point mine.

Cominco Binani Zinc Ltd. - Cominco Ltd. and Metal Distributors Ltd. in joint venture operate an electrolytic zinc plant in India with a capacity of 32,000 tons refined zinc, and by-product cadmium and sulphuric acid.

Metal Mines

Sullivan Mine, Kimberly, B.C. - In its 74th year of production, the Sullivan Mine is wholly owned by Cominco and is the principal supplier of lead and zinc concentrates to the Trail smelter. In 1982 the Sullivan Mine milled 2.4 million tons of ore grading 3.2% zinc, 5.0% lead, and 1.9 ounces per ton silver and shipped 131,000 tons of zinc concentrate and 171,000 tons of lead concentrate to Trail. The Sullivan Mine has published ore reserves of 49 million tons grading 6.1% zinc 4.4% lead, and 1.0 ounces per ton silver, giving it an indicated mine life of an additional 20 years at the present production rate.

Pine Point Mine, Pine Point, Northwest Territory - Cominco is a 69% owner of the Pine Point Mine. In 1982 Pine Point milled 2.4 million tons of ore grading of 7.3% zinc and 3.0% lead. Almost all of the 287,000 tons of zinc concentrates were shipped to the Trail, British Columbia smelter while most of the 85,000 tons of lead concentrate were shipped to the Mitsubishi Cominco lead smelter in Japan. Published reserves are 25 million tons at 6.1% zinc and 2.4% lead. Full mine production capacity is four million tons of ore per year indicating an assured mine life of 7 years.

The Pine Point Mine began production in 1964 after a joint development effort with the Canadian government which provided infrastructure to the remote location consisting of a 400 mile railroad, and a hydroelectric power plant.

Polaris Mine, Little Cornwallis Island, Northwest Territory - The recently developed Polaris Mine commenced operation in 1982 at an annual production rate of 800,000 to 900,000 tons per year. Proven reserves are 11 million tons of 15.2% zinc and 4.4% lead while an additional 13 million tons of ore are inferred, indicating a mine life of 25-30 years. The concentrate production from Polaris is shipped to European smelters.

The Polaris Mine is located on Little Cornwallis Island only 75 miles from the magnetic North Pole. The shipping season from Polaris is restricted to a few months in the summer, as will be the shipping season at Red Dog, and a year's production of concentrate is shipped during the brief ice-free season. The mine's mill complex was constructed as a module at a Quebec port site and barged to Little Cornwallis Island for installation. This is the same method that will be used for construction of facilities at Red Dog.

Black Angel Mine, Maarmorilik, Greenland - Cominco is a 63% owner of the Black Angel Mine which milled 744,000 tons of ore in 1982, grading 12.6% zinc, 4.5% lead and 1.0 ounce per ton silver. Zinc and lead concentrates are shipped from Black Angel to European smelters during the summer shipping season. Black Angel reserves are 2.2 million tons grading 13.4% zinc, 4.0% lead and 1.0 ounces per ton silver. A mine life of 3 years is indicated unless additional reserves are discovered.

Magmont Mine, Bixby, Missouri - Cominco owns 50% of the Magmont Mine which milled 1.1 million tons of ore in 1982 at grades of 1.0% zinc and 6.5% lead. Concentrates from the mine are sold to U.S. smelters. The mine has 9.1 million tons of proven and inferred reserves indicating a mine life of 8-9 years.

Con Mine, Yellowknife, Northwest Territory - The Con Mine is located on the shores of Great Slave Lake and has been in production

since 1938. In 1982, 234,000 tons of ore were milled with an average grade of 0.36 ounces per ton gold. The ore is milled and the gold refined locally in Yellowknife. The mine has reserves of 2.1 million tons grading 0.47 ounces of gold per ton for an indicated mine life of 8-10 years.

Jersey Mine and Valley Mine, Logan, B.C. - These two open pit mines have reserves of over 500 million tons of copper ore. The Valley Mine is the largest known copper deposit of its type in Canada. The Valley Mine began production in January 1983 at a rate of 23,000 tons per day.

Warm Springs Mine, Garrison, Montana - Cominco owns and operates the Warm Springs Mine, a major underground producer of phosphate which employs 114 people.

Other Metal Mining and Exploration Interests - Cominco has interests in several other metal mines worldwide including a 47% interest in Aberfoyle Ltd. which operates two tin mines, a zinc/lead mine and other properties in Australia; a 17% interest in Tara Exploration which operates an underground zinc/lead mine in Ireland; and a 47% interest in Exploracion Minera Internacional Espana S.A. which operates a zinc/lead mine in Spain. Cominco also operates wholly owned subsidiaries for exploration in America, Australia, Belgium, France, Italy and the United Kingdom.

Research - Cominco operates a Product Research Center in Ontario which works towards developing uses for lead and zinc, including developing, marketing and licensing new products and processes.

3. Arctic Mining Experience

Cominco has major and minor interests in eight zinc/lead mines in the world of which five are in North America. Of these five, three are

located in the arctic and were developed and are being operated by Cominco. The Pine Point Mine in Northern Canada is located at latitude 62°, the Black Angel in Greenland at latitude 71° and the Polaris on Little Cornwallis at latitude 77°N. The Red Dog deposit is located at latitude 68°.

The development and operation of each of these mines has presented special challenges which have been successfully met.

The Pine Point Mine located in Northern Canada required the construction of the Great Slave Lake Railway between the closest existing rail link in Alberta, to the mine site on the south shore of Great Slave Lake, 423 miles to the north. Much of the railroad was built over permafrost. Construction was financed by the Canadian Government under the northern "Roads to Resources" program and construction and operating costs were recovered from the mine through a schedule of user fees based on a guaranteed volume of 215,000 tons of concentrate shipped annually and special fees based upon the value of the concentrate as determined by smelter returns. When the agreement was negotiated, infrastructure costs were to be recovered in 10 years as there were only 10 years of proven ore reserves known at that time. Due to higher than forecast shipping tonnages, the mine ultimately repaid the railroad capital costs in about seven years.

Cominco underwrote the costs of developing a hydro-electric generating plant for use by the Pine Point mine and the developing region. Also a complete townsite was constructed which is today a chartered village with a population of 2200 and presently enjoys the second highest per capita income in the Northwest Territories. 640 residents are employed by the mine. Pine Point is an open pit, as will be Red Dog, with production coming from several pits. The ore is concentrated at the mine site and shipped to smelters at Trail, B.C. and Naoshima, Japan.

The Black Angel Mine was developed in 1972 with production beginning in 1973. The mine's entrance is located in a cliff wall of Maarmorilik Fjord on the west coast of Greenland. The mill and concentrator are located on the opposite side of the fjord and ore is transported from the mine portal, by aerial tramway, across the fjord to the mill site. The mine ships its concentrates by ocean transport to various European smelters, and as will be true at Red Dog, is limited to a shipping season determined by the winter ice pack.

The decision to develop the Polaris Mine was made by Cominco in November of 1979 and the first ore was processed in the mill on November 4, 1981, just two years later and 10 weeks ahead of schedule. Located on Little Cornwallis Island only 1,000 miles from the North Pole, the severe climactic conditions and short ice-free season required innovative development. As at Black Angel, the mine was located virtually at tide water. The mill and administrative offices were constructed as a single barge-mounted module at a port in Quebec and towed to the mine site. This is the same scenario Cominco will use to develop the Red Dog facilities. For Red Dog the modules will be constructed and shipped from Pacific ports and will then be transported overland approximately 55 miles.

Polaris is an underground mine, and mining techniques take into account the underground permafrost conditions which extend to a depth of about 1200 feet. While Red Dog will be and open pit mine and will therefore not have the mining problems as at Polaris, similar arctic conditions will be experienced at Red Dog. During the ice free season at Polaris, eight shiploads of concentrate, representing 12 months of mine and mill production, are shipped to European smelters.

The Polaris Mine maintains a personnel program targeted at maximizing regional employment of the area's Inuit natives. A training program for Northern Canadians is utilized and work schedules have

been tailored to accommodate the subsistence lifestyle of the northern residents.

The Con Mine in Yellowknife, Northwest Territories is a gold mine and as such does not handle the same large quantities of ore that a basemetal producer must mine, mill, concentrate and transport. The mine has been in operation since 1938, was one of the first of Canada's northern mines, and has given Cominco 45 years of practical experience operating in the arctic.

Cominco's success has been attributed to its strong management. Locally, the President and General Manager of Cominco Alaska is Hank Giegerich, who is responsible for Cominco's statewide activities and for the development of Red Dog.

Mr. Giegerich is a 30 year Cominco employee and was formerly Vice President of Cominco's northern operations, headquartered in Yellowknife. In that position Mr. Giegerich was responsible for the operation of the Con and Pine Point mines was responsible for the development of the Polaris Mine. Prior to that assignment he was Project Engineer for the development of the Black Angel Mine in Greenland. Mr. Giegerich recently received awards from the Canadian Institute of Mining and Metallurgy and the Alberta Chamber of Commerce for the success of the development of the Polaris Mine and is undoubtedly one of the most qualified individuals in North America (and quite probably in the world) to manage the development of the Red Dog Mine.

The project manager for the Red Dog development is James "Bud" Rae. Mr. Rae is a long time Cominco employee and participated in the construction of the Pine Point Mine and later served as the mine's production superintendent. Mr. Rae managed the rehabilitation and development of Cominco's Pinchi Lake mercury mine in Northern B.C. which operated until the mid 1970's, and has been involved in the

development of Cominco's Valley Copper Mine, the operation of the Trail smelter and the construction of hydroelectric dams in British Columbia.

More generally, as the world's largest miner, smelter, refiner and marketer of zinc and lead, Cominco's profitable history is the result of its success in assessing market demand and timing the development of carefully planned and efficiently operated mines. This record is more impressive when it is taken into consideration that four of Cominco's major mines operate in remote regions of the arctic. These mines are successful despite the high development costs of infrastructure creation, and high operating and labor costs.

C. Commodity Profile of Mine Products and Marketing Considerations

1. Introduction

The average grade of the Red Dog Mine is 17.1% zinc, 5.0% lead and 2.4 ounces per ton silver. The importance of zinc to the economics of the mine is understated as the actual zinc grades will be closer to 21% in the first five years and average 19% for the following 15 years. It is in this initial period of the mine life when capital costs are amortized and therefore the higher ore grade is important to the ultimate return on investment.

Using an average grade of 19.0% zinc, 5.0% lead and 2.4 ounces per ton silver (conservatively representing the first 20 years of operation), an appreciation can be gained for the relative contribution each commodity will make to the total mine revenues by figuring the gross value of a ton of ore and the relative percentage each metal contributes.

Commodity prices published for November 4, 1983 were 49¢ per pound for zinc, 25¢ per pound for lead and $9.00 per ounce for silver. Though the price a smelter pays for contained metals is discounted to reflect smelting charges and other considerations, applying these basic prices will give a relative comparison of the importance of each commodity.

At a grade of 19.0% zinc, one ton of ore will contain 380 pounds of zinc with a gross value of $186.20 at 49¢ per pound. At a 5% grade, one ton of ore will contain 100 pounds of lead with a gross value of $25.00 at 25¢ per pound. And at 2.4 ounces per ton silver, one ton of ore contains 2.4 ounces of silver with a gross value of $21.60 at $9.00 per ounce. The total gross value of a ton of ore at these prices is therefore $232.80. Gross value, as used here, simply states the value

of the contained metals and does not account for the costs and losses that occur during mining, milling and refining. Zinc value represents 80% of this total while lead and silver contribute 11% and 9% respectively. It is obvious that zinc is the critical commodity in the economics of the Red Dog mine.

To further highlight the importance of zinc, the same calculations can be done holding the price of zinc at its present level of 49¢ while doubling both the price of lead (to 50¢ per pound) and silver (to $18.00 per ounce.) The recalculated percentage contributions to revenues are 67% zinc, 18% lead and 15% silver. Thus Red Dog is primarily a zinc mine and unless there are extraordinary increases in lead and silver prices, the critical commodity is, and in the foreseeable future will remain, zinc.

2. Zinc

Uses and Substitutes

Zinc is the fourth most widely used industrial metal, surpassed only by iron, aluminum and copper. Its importance, however, often goes unnoticed as the metal loses its identity in most end product forms. There are four primary areas of zinc use.

1) Protective coatings. The greatest use of zinc is for coating (galvanizing) steel and iron products. This use accounted for about 44% of all zinc consumed in 1982. Zinc coating protects steel in two ways; by providing a long-lived barrier between the steel base and the corrosive environment; and by protecting the steel through galvanic action due to zinc's high electrochemical activity. Common applications for zinc coating are steel sheet, fencing, storage tanks, fasteners, wire rope, towers, industrial plants, culverts, bridges, ships and structural shapes. As a second method of protecting steel, sacrificial zinc anodes are used

to inhibit electrolytic corrosion of ship hulls, offshore drilling rigs, submerged or buried steel including tanks, pipes or other works.

2) Brass. Brass is an alloy of copper and zinc containing up to 40% zinc. Brass tubes, valves, radiators, and fittings are extensively used in vehicles, motors, refrigeration equipment, heat exchangers, communication and electronic devices. Brass accounts for about 20% of the world's zinc consumption.

3) Die casting. Zinc's low melting point allows problem-free gravity casting. Zinc used in die casting is often combined with small percentages of aluminum to impart strength and wear resistance, and copper to improve tensile strength, hardness and other properties. Zinc die cast parts, such as handles, grills, brackets, carburetors, gauges, pumps, and housings are extensively used in automobiles, machinery, business machines, appliances, scientific and electronic equipment. Die casting accounts for about 16% of the world's zinc consumption.

4) Rolled Zinc. Products manufactured from rolled zinc include engraving plate, coinage and zinc foil. These uses account for about 8% of consumption.

5) Zinc compounds. Zinc dust, zinc oxide, and other zinc compounds are used in a variety of industrial applications as corrosion inhibitors, activators in vulcanizing rubber, chemical catalysts, fluxing agents, fungicides, pharmaceuticals, TV screen phosphors, and additives in lubricants. Zinc ferrite is used in electrical motors, transformers, coils, amplifiers, timers, and in radios, television and computers.

It also should be noted that zinc is an essential element in the growth of human beings and animals. An animal with a zinc deficient

diet will require 50% more food to achieve the same weight-gain as an animal supplied with sufficient zinc. While inhalation of freshly formed zinc oxide can result in the temporary disorder known as "zinc chills" or "oxide shakes," zinc is not considered to be a toxic substance.

The primary substitutes for zinc, (and therefore its economic competition) are aluminum, plastic and magnesium.

In protective coatings there is no substitute for zinc galvanizing in large-tonnage applications and therefore, zinc's largest use has an assured base level demand. In steel sheet coating a recently marketed product, Galvalume, has made significant inroads on traditional zinc-coated steel sheet. Galvalume is comprised of 55% aluminum and 43% zinc. Because the coating is less dense and offers greater corrosive resistance, much less zinc is used than when steel sheet is hot-dipped in zinc to form conventional galvanized sheet. However, Galvalume is not easily molded, nor can it be welded, so there are presently limitations on its ability to substitute for zinc coated sheet. A competitive sheeting product, Galfan (95% zinc, 5% aluminum), has also been developed and may be competitive with Galvalume in some applications. Aluminum sheet also competes with galvanized steel sheet for such applications as roofing and siding.

Aluminum alloys, stainless steels and plastics have replaced many traditional uses of brass and will continue to compete for those applications.

In die casting, aluminum and magnesium are competitive materials where weight limitations, temperature tolerances, and surface finishes are important. Plastics have also made inroads in this field. However the recent development of thinwall zinc die casting and improved zinc alloys and finishing techniques has allowed zinc die casting to retain many of its challenged applications. It is also possible that the recent

MAJOR WORLD ZINC MINES

Mine Name*	Location	Average Grade[1] Zn	Pb	Ag	Annual[2] Capacity	Re-[2] serves	Life[3]	Ownership
#Red Dog (S)	Alaska	17.1	5.0	2.4	2.0	85	40+	NANA (100%)
Sullivan (U)	Canada	6.1	4.4	1.0	2.4	49	20	Cominco (100%)
Pine Point (S)	Canada	6.1	2.4	-	4.0	25	7	Cominco (69%)
Polaris (U)	Canada	15.2	4.4	-	0.8	24	30	Cominco (100%)
Black Angel (U)	Greenland	13.4	4.0	1.0	0.9	2	3	Cominco (63%)
Magmont (U)	Missouri	1.3	6.8	0.1	1.1	9	8	Cominco (50%)
Que River (U)	Australia	8.8	4.8	3.2	0.3	5	17	Cominco (47%)
Rubiales (U)	Spain	6.9	1.2	0.4	1.2	14	12	Cominco (48%)
Tara (U)	Ireland	9.6	2.8	-	3.0	74	25	Noranda (36%)
Nanisivik (U)	Canada	10.4	0.8	-	0.7	4	5	Mineral Res. Int'l. (53%)
Brunswick (U)	Cnanda	9.1	3.7	3.0	3.5	100	29	Noranda (64%)
Cyprus Anvil (S)	Canada	4.5	3.0	1.5	3.5	60	17	Dome Petroleum (100%)
Kidd Creek (U)	Canada	5.0	0.2	2.0	5.0	100	20	Canada Devel. Corp. (100%)
Mount Isa (U)	Australia	6.3	6.5	4.8	3.5	54	15	Mount Isa Mines (100%)
#Hilton (U)	Australia	6.6	9.6	4.8	3.5	46	13	Mount Isa Mines (100%)
Zinc Corp. (U)	Australia	9.5	8.9	2.8	1.0	13	13	Rio Tinto Zinc (61%)
New Broken Hill (U)	Australia	12.2	6.6	1.9	1.5	13	13	Rio Tinto Zinc (61%)
North Broken Hill (U)	Australia	10.0	13.0	6.5	1.1	6	5	North Broken Hill (100%)
Elura (U)	Australia	8.6	5.6	4.4	1.5	30	20	Electrolytic Zinc (100%)
#Scuddles (U)	Australia	9.0	-	2.3	1.5	29	20	Electrolytic Zinc (100%)
Cerro de Pasco (U,S)	Peru	7.9	3.3	2.7	2.5	57	23	Centromin (100%)
Prieska (U)	South Africa	3.0	-	-	3.0	9	3	U. S. Steel (46%)
#Crandon (U)	Wisconsin	5.4	5.0	0.4	3.5	84	24	Exxon (100%)

* - (S) Surface or open pit mine, (U) Underground mine
(1) - Zinc and lead grades in percentages, silver in troy ounces per ton
(2) - Million short tons
(3) - Years
\# - Indicates property is in development stage

developments in thinwall zinc die casting may find new applications, further limiting any erosion of zinc demand.

In chemical uses, aluminum and magnesium replace zinc to some extent in chemical reactions, and titanium oxide can replace zinc oxide in paints.

In general, economic and other considerations favor the continued wide use of zinc and limit inroads of substitutes. Magnesium substitution is limited by the low capacity of magnesium production facilities, and while aluminum and plastics are widely available, the price of zinc is favorable. As aluminum production is energy intensive and as plastics are petrochemical products, both are sensitive to energy price increases.

The energy requirement for producing 1 ton of aluminum from ore is 244 million Btu's while the equivalent process for zinc requires only 65 million Btu's. Additionally, where durability is a factor, plastic will never be an acceptable substitute for metals. Cominco's Product Research Center has developed a super plastic zinc (SPZ) consisting of 78% zinc and 22% aluminum with a low forming temperature which would allow use of the same low cost thermoforming technology utilized by plastics and would possibly result in zinc becoming a substitute for plastic in certain applications.

World Supply and Demand

The U.S. consumes one sixth of the world's zinc supply, but presently produces only a third of its own demand. U.S. zinc smelter capacity has decreased from self-sufficiency in 1968, to 60% dependency on foreign sources at present. In the absence of a repeal of the Jones Act, which penalizes the shipment of commodities between U. S. ports, Red Dog Mine concentrates will be processed by foreign smelters as a matter of economic reality. U.S. consumers will enjoy no inherent

domestic supply advantage despite the nationality of the mine. Therefore discussions of supply and demand for zinc and other commodities will be examined from primarily a global perspective.

World mine production in 1982 from non-socialist countries was 4.8 million tons of contained zinc. Production of refined metal was 4.3 million tons while metal consumption was 4.1 million tons. Consumption was 6% below the 1981 level and primarily reflected a 17% decline in U.S. consumption due to the general economic recession, and a lesser decline in Europe for the same reasons. Japan showed no consumption change in 1982.

The decline in world demand reflected general worldwide economic recession. As zinc consumption is tied to automobile production, residential and commercial construction and general industrial output, zinc consumption will parallel general economic trends.

A demand increase in U.S. consumption is forecast as a nationwide program to restore or replace highway structures such as bridges, guardrails and culverts will increase the need for galvanized steel. Additionally the change from a 95% copper penny to a 98% zinc penny will increase the annual U.S. base demand by about 40,000 tons per year, which represents about 1% of the 1982 world demand. Similar changes in coinage elsewhere in the world could add significantly to zinc demand.

In world automotive production, zinc may increasingly be used to coat exterior sheet metal surfaces as well as interior surfaces due to improvements in the ability of zinc coatings to accept high quality paint finishes. A survey of the four major U.S. auto makers found that zinc consumption in sheet metal materials had increased 2% per vehicle for 1983 models. This new demand may begin to offset reductions in zinc die castings used in automobiles which declined in total weight from about 45 pounds per car to 23 pounds per car between 1975 and 1982.

In general, demand for zinc has grown faster in developing industrialized countries such as Brazil, Mexico and South East Asian countries than in the older industrial nations. In 1982 increased export of zinc concentrates and record export levels of refined metal to socialist countries were recorded. Much of this tonnage was shipped to China which may represent a growing zinc consumer.

The U.S. Bureau of Mines estimates a probable annual world growth rate in zinc consumption through the year 2000 of 2.5%. This compares with an annual growth rate of 4.8% between 1960-73. Using the 1981 free world zinc consumption of 4.3 million tons as a base level for demand (this assumes the recessionary 1982 consumption level is not representative of the present base level) a growth rate of 2.5% would indicate an increase in world consumption to 5.1 million tons in 1988. Using the three year mine production high of 4.8 million tons in 1982 as representing present annual capacity, a need for an additional 0.3 million tons of production will be required in 1988. The new production from Red Dog will produce 0.2 million tons of zinc metal in 1988. In 1993 when Red Dog's zinc metal production has increased to 0.3 million tons, the free world demand forecast would be 5.8 million tons or 1.0 million tons greater than 1982 mine production levels. Several sources also suggest the socialist bloc will become a significant importer of zinc, supporting the demand growth forecast.

An important factor in forecasting the need for new mine's is the possibility of new supply coming from recycling or secondary sources. Unlike lead, in which a significant component of supply comes from recycled batteries and other products, the largest uses of zinc are sacrificial. Zinc used for coatings is dissipated and therefore recycle will never become a major supply source.

Marketing Considerations

At the initial production levels, the Red Dog Mine will produce 350,000 tons of zinc concentrate. Assuming a concentrate grade of about 59%, this represents 207,000 tons of contained metal. Cominco has indicated its intention to sell concentrates to Japanese and European smelters and to its own smelter at Trail, B.C. In 1982 Trail produced 226,000 tons of zinc, representing the zinc concentrate output of both the Sullivan and Pine Point Mines. The total zinc capacity at Trail is 300,000 tons so that the smelter has an additional unused capacity of 75,000 tons, representing about a third of Red Dog's initial production.

The reserves at the Sullivan Mine indicate it will continue to produce for about 20 years if no additional reserves are discovered, while reserves at Pine Point indicate the mine may be exhausted in about 10 years. In 1993 Red Dog is scheduled to increase its zinc production to 585,000 tons of concentrate or about 345,000 tons of contained zinc which will exceed the total present capacity of Trail, B.C. However, the new zinc smelter at Trail was designed with space available for installing an additional zinc refining capacity of 150,000 tons. Cominco could exercise the option to expand the zinc smelter prior to Red Dog expansion (or earlier) and thereby have the capability to smelt all Sullivan and Pine Point concentrates (at their present production rate), as well as over 60% of Red Dog's expanded production. When the Pine Point Mine is exhausted the expanded Trail zinc refinery could handle 100% of Red Dog's maximum production, plus all production from the Sullivan Mine.

Japanese zinc refineries at present have a a combined capacity of in excess of 800 thousand tons refined metal. In recent years Japanese refineries have had problems securing adequate supplies of zinc concentrates and may view Red Dog as a desirable long-term, stable source. European smelters, not counting communist countries, have a combined capacity of about 2.0 million tons. At present there is an over capacity

of zinc smelters in Europe. Red Dog will be attractive to both Japanese and European refineries as a long term zinc concentrate source (more than 40 years) and, with a competitive climate among smelters to secure adequate concentrate supplies, Red Dog should receive favorable rates and terms from smelters.

A final marketing consideration is the ownership of the zinc mining and processing industry. At present the zinc industry, compared with the coppe. industry, is being operated more in line with free enterprise concepts. Better balance of zinc metal stocks with demand will result in stronger and more predictable long term prices. This contrasts with metal industries in which gross overproduction for the sake of generating foreign exchange results in depressed or even below cost metal prices - very much a factor in the copper industry for example.

3. Lead

Uses and Substitutes

Lead ranks as the fifth most widely used metal behind iron, aluminum, copper and zinc. At present the two major uses of lead are for lead-acid batteries and as an anti-knock gasoline additive. Other uses include construction materials, ammunition, solders, protective coatings and paints, radiation shielding and electrical cable sheathing.

Over 50% of present lead consumption is used in lead-acid batteries, primarily vehicle starting-lighting-ignition (SLI) batteries. In transportation applications, weight is a primary consideration, and as average car size and "cranking" requirements have diminished, so has the average lead content from about 30 pounds per car in 1977 to 20 pounds per car in 1983. Severe winters shorten battery life and increase demand for replacement batteries.

Research to find alternate combinations of metals and non-metals for batteries has been extensive, and while most substitutes can match or exceed the performance of the lead-acid battery, problems include cost of components, economics of material recycling, toxicity, and operating limitations and difficulties. The U.S. Bureau of Mines indicates no large scale substitution for lead-acid batteries is forthcoming.

Domestically the use of lead additives in gasoline is gradually declining due to environmental restrictions on lead emissions. Consumption of lead in the U.S. for gasoline additives has dropped by 50% since the early 1970's. However, while the use of lead additives has declined in the U.S. and future use may be strictly limited to certain types of engines, consumption in developing countries may continue to increase.

Lead coatings are used on materials exposed to corrosive agents and lead lined containers and tanks are used for the storage of corrosive chemicals and hazardous wastes. Lead coatings are also used as shields against radiation. While demand for these applications may increase, the use of lead in paints and other chemical applications where lead is likely to enter the environmen has declined in recent years.

The large scale use of massive, stationery, lead-acid storage batteries for leveling power loads in electrical generating plants may represent a significant future use.

Supply and Demand

With only a few exceptions, primary lead is produced as a by- or co-product of zinc, copper and silver mining. Recovery of lead from batteries and other sources results in a large component of recycled metal. In 1982 free-world mine production totaled 2.6 million tons.

Refined lead production, including recycled lead, totaled 3.9 million tons while lead consumption totaled 3.8 million tons.

The forecast demand for lead varies. The U.S. Bureau of Mines forecasts a probable average annual world growth rate of 2.8%, which is larger than the agency's forecast of 2.5% growth for zinc. Other sources indicate the lead growth rate will be significantly less, possibly approaching 1.0%.

At present, 75% of lead use is in transportation. If the use of lead in gasoline declines on a world wide basis, the importance of lead-acid batteries as a percentage of total lead consumption will increase. Battery demand for vehicles is a function of the total number of vehicles in use as replacement batteries constitute some 80% of sales. Any increased long term demand for lead-acid batteries will ultimately depend upon increasing automobile use in developing countries.

Marketing Considerations

Markets for lead concentrates from Red Dog would be found either at Cominco's Trail, B.C. smelter, at the Cominco Mitsubishi Lead Smelter in Japan or at other Japanese lead smelters. Lead concentrate production from Red Dog could replace Pine Point concentrates at the Cominco Mitsubishi smelter when the mine is exhausted. Present Trail lead capacity is 150,000 tons refined metal. Actual utilized capacity in 1982 was 126,000 tons. Plans to modernize and expand the lead smelter, as was done with the zinc refinery, could assure an in-house market for lead concentrates.

At present with Pine Point lead concentrates being shipped to Japan, concentrates from Cominco's Sullivan Mine represent about 100,000 tons of the Trail's refined capacity, leaving 50,000 tons available. At Red Dog's initial production rate, mine out put in terms of refined lead would just match this capacity.

4. Silver

Uses and Substitutes

The largest use of silver is in the production of photographic materials. Despite intensive research, no substitutes have been found to replace light sensitive silver-halides used in photographic films. Other industrial uses of silver include electrical switches, silver solders and batteries. Medicinal uses include antiseptics for certain types of infections, and as an amalgam in dental fillings. Silver coinage, jewelry, tableware, and investment bars are also major uses.

No viable substitute has been found for silver in photographic uses. Gold or platinum-group metals may be substituted for silver in electrical applications but only where the more oxidation resistant qualities of these precious metals overcomes the cost disparity. Copper, nickel, zinc and aluminum in various combinations have replaced silver coinage in many countries.

Supply and Demand

About two-thirds of the world's future supply of silver is contained in copper, lead and zinc deposits. Therefore the supply of silver will be determined more by the production of these base metals than by actual silver demand. The long term growth of silver demand, as with zinc and lead, is seen to be tied to the prosperity of developing nations. Increasing industrial and photographic demands, attendant upon an increased standard of living in these countries, will contribute to a strong demand growth.

The U.S. Bureau of Mines forecasts a probable annual world growth rate of 2.5% through 2000. Complicating the supply, demand, and price structure are the large quantities of silver held by investors. Silver holdings of private investors are large compared with annual

industrial consumption and these investors can respond to price fluctuations as either a source of supply or a source of demand. Also, despite the large industrial base, the silver price, to a certain extent, is influenced by gold prices. Rarely do the prices of the two metals move in opposite directions, a factor which underlines price linkage.

5. Barite

Uses

Over 90% of the world barite demand, and over 98% of the U.S. barite demand, is for use in oil and gas well drilling fluids. Barite is finely ground and slurried with water and other agents to produce a heavy fluid which is circulated in the drill hole as it is being drilled. In 1982 an average of 47 tons were used per well.

Supply and Demand

Barite has a low per unit cost and high bulk. The reported average value of primary barite in the United States was about $40 per ton in 1982. The delivered price of drilling grade barite to Alaska's North Slope drill rigs is said to be close to $600 per ton, however this cost incorporates a wide range of services carried out at the drill site. If barite must be shipped a significant distance, the transportation costs can easily exceed the cost of the barite itself. Therefore a relatively local market for barite must be available before the commodity is saleable.

Potential markets for Red Dog barite are the North Slope oil fields, and possibly the Norton Sound and Chukchi Sea fields if oil is discovered at either of these locations. Currently restrictive trade practices would inhibit the sale of Red Dog barite to Canadian Arctic oil and gas operations in the Beaufort Sea. At present, Cominco is examining possible processes to recover barite concentrates from the zinc/lead

ore. Also, high grade zones of barite are found apart from the metal rich zones of the ore deposit and barite could be selectively mined from these zones. One possible problem with barite from either of these sources is the presence of heavy metal or silica contamination which could result in the barite being unacceptable as a drill mud. The financial analyses of the project have not included any revenues from the possible sale of barite.

6. Zinc, Lead and Silver Price Forecast

The following price projections which were estimated by the Office of Mineral Development are for a 20 year period and represent the average commodity price in 1983 U.S. dollars.

RED DOG METAL PRICES

	Zinc (¢/lb.)	Lead (¢/lb.)	Silver ($ /tr.oz.)
Base Level	55	30	10
Probable	60	35	18
High	65	40	25

The demand for all three of these metals is dependent upon the growth of the world economy. The North American and European economies may be described as maturing and major increases in the consumption of base metals is in these economies unlikely. However, expansion and growth of economies in the developing countries will increase world demand for these metals. The present prices for zinc and lead (49¢/lb. and 25¢/lb. respectively) are below what could be considered base level prices due to the low recessionary demand and present high levels of metal stocks. As the world economy recovers, base level prices will be reached.

Discussion:

Zinc

Zinc is the most important commodity to the Red Dog Mine and will contribute up to 4 times the revenue generated by lead and silver combined.

World demand for zinc will grow commensurate with the growth of the world economy and the increasing industrialization of developing nations. The U. S. Bureau of Mines forecasts a probable growth of world demand at 2.5% annually. The increase in world demand coupled with the following factors indicates a stable market characterized by real price increases is likely for primary zinc producers (mines) over the long term.

1) Zinc is the fourth most widely used industrial metal surpassed only by iron, aluminum and copper.

2) The largest use of zinc (galvanizing) results in its dissipation. Therefore recycling and secondary production will always remain a less important supply factor than is the case for other metals.

3) There are no environmental problems associated with the use of zinc.

4) While known world zinc reserves, including Red Dog, appear adequate to satisfy medium and long term demand, the market is not over-shadowed by enormous undeveloped deposits as is the case with copper.

5) Reserves at several major zinc mines will be exhausted over the medium term, and as most existing zinc mines are underground producers, actual costs will increase as mining depths increase .

6) Unlike the copper industry, the Free World's primary zinc production is largely in private sector hands, eliminating the danger that government operated mines, for the sake of generating foreign exchange, will overproduce and undermine metal prices.

7) It is possible that the socialist countries and China in particular could become significant zinc importers.

8) In addition to increased demand due to an expanding world economy, the potential exists for further increases in zinc consumption as the use of protective zinc coatings becomes more widespread, substitution of zinc for silver or copper in coinage becomes common, and new applications, such as thermoforming zinc alloys, are developed.

A base level zinc price is forecast at 55¢ per pound with probable and high levels forecast at 60¢ and 65¢ respectively.

Lead

Lead is the fifth most widely used industrial metal behind zinc. The two major uses are in automotive batteries and as a gasoline additive.

Consumption as a gasoline additive has declined in North America and Europe due to lead emission restrictions. However demand for lead additives in developing nations has not decreased at present and it is not clear whether or when such restrictions will begin to be imposed.

The trend towards smaller, lighter automobiles, and a concurrent reduction in needed "cranking" power has reduced the amount of lead in the average automobile battery from 30 pounds in the 1970's to about 20 pounds at present. Eighty percent of all automotive batteries sold are for replacement, and therefore lead battery demand is more a function of total number of vehicles in use than annual new car production.

Long term demand for lead, as with zinc, will depend upon the world economy and the economic growth of developing nations. The U.S. Bureau of Mines estimates a probable world growth of 2.8%. However other sources feel it may be as low as 1%.

The present price of 25¢ per pound is unrealistically low, possibly being lower than the cost of even secondary production. This is the result of record inventories of lead stocks. A realistic minimum base level is the price at which secondary production (recycled lead) is viable. That price is felt to be 30¢ per pound. A 35¢ price is felt to be a probable 20 year price average, with a 40¢ per pound high average.

Silver

Silver is an industrial metal used in photographic film and processing and in electronic and electrical components and solders. It is also an investment precious metal and as a "poor man's" gold, its price is influenced by gold prices. As an industrial metal there is little likelihood of significant substitution and with an expanding world economy and rising standard of living, consumption of industrial silver will increase. The U. S. Bureau of Mines estimates an annual growth of 2.5%.

A base price level of $10 is realistic, with a probable average 20 year price of $18, and a high of $25.

Summary

In general these price forecasts are conservative, in that they are predicated on a moderate growth in the world's economy. Stability of world energy prices, resolution of debt crises and general political stability could initiate a period of prosperity for developing nations and create a much higher growth rate for the demand of these metals.

D. Zinc Resources of Alaska and Northwestern Canada

Zinc mineralization is found almost ubiquitously in association with lead and silver. Throughout extensive areas of Alaska and Northwest Canada zinc-lead-silver mineralization occurs in two broad geological associations

i) as disseminated and massive sulfide in shales and other fine grained sediments;
ii) as massive sulfide in volcanic sequences which accumulated in submarine depositional environments.

1. Alaska

Red Dog, though unique in its combined attributes of size and high grade, is but one of a large number of deposits which contain zinc as the main metal or more usually as a significant co-product. Because of the extensive distribution of favorable host rocks, future exploration is certain to discover new major deposits.

Red Dog with its presently defined reserve of 85 million tons grading 22.1% combined zinc-lead and 2.4 oz. silver per ton is the largest and best known deposit of its type in an arcuate trend which could become known as the Noatak Zinc Belt. Within this belt, which extends for several tens of miles, at least 15 significant prospects are known. There is a high probability that this region could become one of the world's major supply sources of zinc, with lead and silver as major co-products.

The Lik and Su prospects appear to be segments of a contiguous deposit located some ten miles from Red Dog. GCO Minerals, owners of Lik, has released a reserve estimate of 25 million tons of 8.8% zinc 3.0% lead and 1.2 oz/ton of silver. This reserve, which is based upon 75 ore sections from 103 diamond drill holes, appears to be well defined.

The orebody itself is open along strike to the north, and southwards it extends into a Cominco owned claim block where it forms the Su deposit for which no tonnage or grade figures have been released. A developed infrastructure for Red Dog should, in time, favorably influence the development schedule for Lik and possibly other reserves in the area. Although GCO Minerals has proposed a northerly access road to the coast as a component of a possible development scenario for Lik, no firm development commitments have been made.

The regional significance of metal associations within a certain rock assemblage is emphasized by the fact that some 90 miles from the heart of the Noatak region, the Drenchwater deposit occurs in similar sedimentary units. This discovery has not been intensively prospected as it was included within the National Petroleum Reserve - Alaska (NPRA) and is off limits for mineral entry. Sampling of surface exposures returned grades of 17.4% zinc 3.0% lead and 3.3 oz/ton silver - very similar tenors to those of Red Dog. However no reserve tonnage has been estimated. Still other impressive surface showings of mineralization have been included within the Noatak National Monument and are off limits to further exploration.

Zinc and lead are significant potential co-products of the Ambler Schist Belt which extends over a trend of more than 100 miles across the south flank of the Brooks Range, north of the broad Kobuk River Valley. Exploration over a period of more than 20 years has identified a large tonnage of polymetallic ore contained in at least four major prospects and the potential for significantly more ore exists in many known but not intensively prospected occurrences. Given the large established reserve base, there is little to encourage further high-cost exploration until some progress is made towards solving access and transportation problems. Although copper appears to be the major metal found in this belt, zinc and lead grades are significant and concentrates containing both metals would be produced from all potential

operations in the area with the possible exception of the Bornite deposit which is geologically different.

Substantial production of zinc and lead concentrates from the Ambler District in the future (beyond 1995) would fall far short of the projected production of concentrates from Red Dog.

Another newly discovered base metal trend in Alaska extends across the north flank of the Alaska Range from the Bonnifield area, south of Fairbanks to Tok-Big Delta region in East Central Alaska. Exploration work has been continuous since 1978 to evaluate the potential of the extensive belt within which dozens of individual massive sulfide occurrences have been located. The company most actively involved in evaluating this potentially important belt is Resource Associates of Alaska (RAA), a company within the NERCO Group. Potential tonnage and grade figures supplied by RAA are cited below.

Name	Reserve*	%Cu	%Zn	%Pb	Oz/Ag	Oz/Au	Remarks
Delta System 1) Valley	1.0	.26	3.45	.46	0.7	0.018	Offset segments of one massive sulfide body with overall potential of +40 MT
2) DW	3.65	.93	1.74	1.15	0.72	0.012	
3) Middle	5.2	.46	3.34	1.36	1.49	0.038	
4) LP	1.2	.40	3.69	1.54	1.80	0.061	
DD South	1.60	1.09	5.66	2.27	2.03	0.061	Expectations are to double the reserve base
Dry Creek	1.2 MT	No specific grade figures released					Tenors believed to be significantly better than Delta

* Reserves in millions of tons

In Southeastern Alaska numerous mineral deposits containing zinc are known. However, with the exception of Greens Creek, no development plans for properties capable of producing zinc concentrates have been announced.

Greens Creek is expected to be the first major new metal mine into production in Alaska for many years, and it will produce silver, gold, zinc, lead and copper from an underground mining operation on Admiralty Island. The deposit has not been fully defined by exploration work to date and substantial additions to the reserve base are assured in the future. The latest published ore reserve cites 4 million tons grading 13 oz/ton silver, .1 oz/ton gold, 7.5% zinc, 2.5% lead and 0.4% copper. Once in production at a planned milling rate of +800 tons per day, the mine will ship approximately 30,000 tons of lead concentrate and 48,000 tons of zinc concentrate annually. Though significant, these volumes are small compared with the planned production from Red Dog.

2. Northwestern Canada (Yukon, Northern British Columbia and Western NWT)

Excluded from consideration here are the producing properties such as Pine Point and Sullivan in which Cominco has a major interest.

The Yukon has two mining properties which have produced and shipped zinc and lead concentrates. United Keno Hill, which first and foremost is a silver mine, maintains a relatively small proven reserve base and is unlikely, given the geologic characteristics of the deposit, to greatly expand concentrate production. Cyprus Anvil, with its operations centered near the town of Faro, is a major producer of zinc and lead concentrates from a large open pit operation. Future plans may involve underground mining on at least one of the orebodies in Anvil Range.

The Selwyn Basin is rimmed by zinc-lead prospects which occur in rocks equivalent in age to those which host the mineralization in the Anvil Range. Undeveloped reserves in the Anvil District plus other major known deposits in the Selwyn Basin will likely form the next generation of major zinc-lead base metal properties which may be developed in the Yukon Territory between now and the year 2000. The following table lists the announced reserves and grades of major properties in Northwest Canada.

An eastward extension of the Alaska Railroad into the Yukon Territory could "capture" the large volume of mineral traffic which future mines, especially in the Selwyn Basin, are likely to generate. Concentrates would be transported through Alaska to a major bulk materials handling port situated in Cook Inlet. There would be more than enough feed from Interior Alaska and Canadian mines to justify the development of smelter-refinery facilities at tidewater utilizing clean state-of-the-art technology. Two advantages Alaska has which could make this industrial development possible are 1) the abundance of energy in Southcentral Alaska, available in the form of gas, coal, and if the Susitna Dams are built, hydroelectric power; and 2) tidewater access to major Pacific Rim markets. As the value of refined metal products is much greater than the value of the equivalent metal content of ore concentrates, the economic benefits of in-state processing of Canadian and Alaskan minerals far exceeds the benefits to be derived from exporting these resources in raw form.

E. Potential Alaskan Mineral Projects Requiring Public Sector Infrastructure

Given the extraordinary potential within Alaska for the discovery of major new mineral deposits, additional calls for infrastructure support will be made in the future. However some major discoveries will be made as a consequence of the intensification of exploration efforts along arterial transportation corridors constructed to serve the new generation of mining activity between now and 2000. This is an intangible economic benefit of transportation development. However these benefits are not considered in a financial analysis when the initial end user are required to guarantee total capital debt retirement. Without an appreciation of this factor, development of transportation to serve remote areas, such as the Ambler District, will be nearly impossible and public policy will continue to focus on the ability of the initial end-user to totally repay any public sector financing.

Mining projects in Alaska can be divided into two categories in relation to their transportation infrastructure needs.

1) Stand alone projects - Those projects which involve high value, low bulk commodities such as precious metals and those which are located close to a deep water port site which can be developed for exclusive use of the proposed mining operation as are Quartz Hill and Greens Creek.

2) Contingent projects - These are projects which like Red Dog will require significant transportation development.

The following tabulation lists known projects and estimates transportation infrastructure costs and the possible timing of projects.

Lik, Su and Other Deposits. The Lik deposit is located approximately 10 miles from Red Dog and in the same mineralized terrain. The Lik claims are held by GCO Minerals in association with Tenneco. Lik has been intensively prospected and a diamond drill program has identified a reserve of 25 million tons grading approximately 12% combined lead and zinc with 1.3 oz/ton silver. The ore grade is about half of the Red Dog average and mining conditions are such that a much greater ratio of waste stripping to ore would characterize the operation at Lik. These factors notwithstanding, Lik appears to be a very good deposit when compared, in terms of tonnage and grade, with potential lead-zinc properties in northwestern Canada and elsewhere.

The announced reserve for the Lik deposit does not take into account the open-ended character of the orebody or the unannounced reserves which have been proven by diamond drilling on the extension of the Lik orebody on claims held by Cominco. In the Cominco claim block the deposit is known as the Su and a substantial reserve is known to be present.

A number of other zinc occurrences have been staked in the region and it may be reasonable to refer to this area as the "Noatak Zinc Belt." Major additional discoveries will be made as the geology and the ore controls become better understood.

Greens Creek. The Greens Creek project is a "stand alone" mining development on Admiralty Island. No public sector involvement in transportation infrastructure components is foreseen. Impacts on public sector spending which relate to the workforce and their families being housed in Juneau focus upon community service needs - schooling, police protection, emergency services, etc. A power intertie would be a highly desirable component of the project if this satisfied basic beneficial economic parameters. The anticipated workforce to be directly employed at Green Creek is 315.

Quartz Hill. Similarly this is a "stand alone" project which will proceed largely independent of public sector involvement in infrastructure. The 850 employees and their families will be permanently housed in Ketchikan where community service costs will be incurred in the public sector. A power intertie to Quartz Hill is under consideration as part of a Southern S.E. Alaska integrated electric distribution grid. A formula for capital and operational costs of such a system could provide a total user benefit throughout the region.

Bering River Coal. This is a project aimed at developing a large, high quality coal resource for export to Korea. Three years of exploration work have been completed and the feasibility and cost parameters associated with overland transportation and port site alternatives are currently under examination. The project is a joint venture of the Bering Development Company involving Chugach Natives Incorporated, a Native regional corporation, and KADCO, a consortium of Korean companies including the large Hyundai Corporation.

A possible scenario may involve the of an underground mining operation capable of producing 2 million tons per year; an overland transportation system which would link the mine development by service road to Cordova and also provide for a delivery system, probably an overhead tramway, to the coast near Katalla; and the construction of a port-loading terminal possibly on Kanak Island. Transportation infrastructure costs associated with the development of an access-service road, overhead coal transportation tram, and a port loading facility capable of handling 3 million tons per year could approximate $180 million.

The Bering River Project could create a permanent employment base of more than 500 Cordova based jobs, and annual revenues from coal shipments on a 2 million tons per annum basis may approximate $120 million.

An interesting feature of the project is the captive market represented by the involved Korean business participation at all stages of the project.

Alaska Asbestos Project. This is a joint venture project involving the Doyon Native Corporation and GCO Minerals. Progress to bring the project on line will depend largely upon market interest and the extent to which any mining and milling operation will be able to satisfy stringent regulations.

Transportation infrastructure needs center on the construction of a 40 mile haul road from the mine site to join the Taylor Highway near Chicken, Alaska. From Chicken to its junction with the Alaska Highway some 60 miles of major upgrade of the Taylor Highway would be needed. Total cost is estimated to be $100 million. At a production rate of 150,000 tons per year of processed fiber grades, the mining project will generate approximately 500 permanent year round jobs and revenues of $90 million a year.

An eastwards extension of the Alaska Railroad could favorably influence the economics of this project.

Beluga Coal Terminal. Development of coal resources located on State leases and Cook Inlet Regional Corporation (CIRI) land within the Beluga Coalfield will require the construction of a large coal export loading facility near Granite Point on Cook Inlet. Efforts to develop the leases in the near term hinge upon market interest from the Pacific Rim, especially by Japan and Korea. Recent gluts in international markets of oil, natural gas and coal have detracted from the short term development potential for this enormous resource. Diamond Alaska and Placer Amax could supply major Pacific Rim markets with the cheapest delivered energy source in the future. Advantages this resource has over other coal suppliers are the favorable location of coalfield close to tidewater and shorter ocean freight distance.

The major leaseholders at Beluga have not approached the State for infrastructure assistance and in fact, when Beluga coal development potential was brighter, the major leaseholders expressed a willingness to construct and operate a port facility without any assistance. However, as Granite Point may be the only good port site on the west side of Cook Inlet, any port development should require provision for future expansion to handle bulk resources such as coal from Yentna and Nenana and metal concentrates and industrial minerals from the Interior.

A world scale deep water port facility in Cook Inlet would also act as a catalyst for the location of other facilities which may include in-state metals smelting and refining and agricultural product export handling capability.

A major mineral export facility for Beluga Coal having an initial capacity of 15 million tons per year would cost an estimated $250 million, exclusive of any additional rail spurs which could link to the existing railroad or access the Mobil leases in the Yentna area. Full development of the Beluga coal properties could create as many as 1,000 year round jobs.

Yentna Spur Line. A 50 mile long rail spur would be needed to deliver coal from the Yentna leases of Mobil into the feeder system and on to a Beluga coal terminal. The estimated cost of this spur could amount to $75-100 million.

Matanuska Spur Line. Future production of high quality coal from the Matanuska Coalfield would require rehabilitation of the former rail bed extending beyond Palmer to Sutton. The right-of-way is still owned by the Alaska Railroad. Cost of rehabilitation and engineering improvements to the line may total $25 million based upon $750,000 per mile for ballast, ties and track.

Depending upon the scale of operations a coal mine in the Matanuska field could support as many as 250 year round jobs.

Interior Rail Extension to Canadian Border. Serious justification for this long promoted rail extension may hinge upon potential mineral traffic. The line could capture bulk mineral traffic from a variety of potential mine properties, including Alaska Asbestos (150,000 tpy), Tok-Big Delta massive sulfide base metal district (125,000 tpy), Jarvis Creek coal (up to 500,000 tpy) and perhaps most importantly the next generation of major base metal mines to be developed in Yukon's Selwyn Basin which could have a potential for 1 million tpy. This latter opportunity would make good economic sense if a metal smelting and refining complex was built at Cook Inlet, a logical export gateway to expanding Pacific Rim markets. Agricultural resources from Interior Alaska would also be served by such a route.

The total aggregate of possible annual mineral tonnage could exceed 2 million tons well above the threshold required to justify a rail extension. Capital cost of extending the railroad eastward to the Canadian border would be high. The least tangible cost of railroad construction relates to the primary grading (cuttings, embankments, bridges, etc. across difficult terrains). Such costs could lie in the $1 to $2 million per mile range to which the known cost of ballasting, ties and rail amounting to $750,000 per mile needs to be added. A ballpark figure for total rail construction cost would lie somewhere between $1.75 and $2.75 million per mile. The proposed rail extension to the Canadian border, which is approximately 300 miles, could cost anywhere between $600 and $900 million.

Ambler Mining District. For more than two decades the issue of how best to access the mineral wealth of the Kobuk Valley, represented by the Bornite deposit and those of the Ambler Schist Belt characterized by Arctic, Smucker and Sun-Picnic Creek, has challenged the resolve and ingenuity of Alaskans anxious to see the development of

this mineral rich province. The issue was successively examined by the Federal Field Committee in its 1968 report, "Transportation and Economic Development in Alaska," the North Commission in the "Alaska Corridor Study (1970-1972)" and the Corps of Engineers in a study commissioned through the University of Alaska titled, "Northwest Alaska Port Study." More recently the issue has been reexamined by the DOT/PF commissioned "Western Arctic Alaska Transportation Study-1982" (WAATS), and a proprietary 1983 report for Bear Creek Mining Company by Parker Associates, Inc. titled "An Analysis of the Transportation of Ore Concentrates from the Ambler Mining District to Ports in North America and Japan."

The potential aggregate concentrate production from Arctic, Smucker, Sun and Bornite (980,000 tons per year according to an Alaska Miners Association study 1982) exceeds the threshold level of 400,000 tons per year which would favor rail over road haulage. The combined reserve base in known deposits exceeds 100 million tons; a figure which possibly represents a fraction of the gross potential of this mineral province. Future additions to the proven reserve of known deposits and new discoveries will add greatly to the resource value of the District. However until the deadlock over access is resolved and tangible progress made towards opening up the region, there is little or no incentive to add to the proven reserve base.

Besides the question of who would pay for a transportation system serving the Ambler District, there are other concerns which focus on:

1) the most cost effective and long term utilitarian system;
2) the best interests of the regional peoples whose traditions, values and customs differ from those of metropolitan Alaskans.

A recent report prepared by Parker Associates for Bear Creek Mining identifies a railroad from Ambler to a port site near Cape

Krusenstern in Western Alaska as the best choice for a projected 1 million tons per year load. This route seems to satisfy both concerns expressed above. In the WAATS study three transportation modes rail, haulroad and slurry pipeline were compared for four basic routes:

1) Interior Alaska Railbelt link
2) Cape Krusenstern
3) Cape Nome
4) Golovnin Bay

Using cost parameters generated by the WAATS report, a haul road system could cost from a low of $214 million (link to the Dalton Highway at Prospect Creek) to $502 million for a road and related facilities at Golovnin Bay. Projected freight volumes and the preferences of area residents appear to rule out the road in favor of a rail link. Rail costs were estimated by WAATS to be in the range $1037 million for the Krusenstern route up to $1896 million for the Cape Nome scenario; both cases include port construction costs. The Nenana route linking to the existing Railbelt would cost an estimated $1117 million. WAATS revealed that for a traffic volume in excess of 1.5 million tons per year, certainly achievable within a short time of the system going into operation, the Railbelt link through Nenana would have a cost per ton advantage over the other alternatives.

In the Parker Associates 1983 study for Bear Creek, a range of four alternative road and rail routes were. Three western routes for both road and rail provided links to Cape Krusenstern, Cape Darby and Cape Nome. Two other routes were considered; a road to Fairbanks and a railroad to Nenana.

Parker considered two scenarios - one of 400,000 tons per year, the other 1,000,000 tons per year in calculating total delivered costs of concentrates to Vancouver, B.C. Both appear to fall short of the true potential freight tonnage which could move over a regional system.

Major departures between the WAATS and Parker Associates findings focus on capital costs of rail construction. These differences are highlighted in the following tabulation.

		CAPITAL ESTIMATES ($ Millions) WAATS	PARKER
ROAD	Cape Krusenstern	398.7	261.4
	Cape Darby		360.0
	Golovnin Bay	502.3	
	Cape Nome	479.0	365.4
	Interior (Prospect C Fbks)	214.0	227.2
RAIL	Cape Krusenstern	1037.3	368.0
	Cape Darby		518.0
	Golovnin Bay	1589.1	
	Cape Nome	1896.1	653.5
	Interior (Nenana)	1117.0	668.8

Major capital cost disparities are most evident in comparing the capital estimates of rail construction. The lower costs cited by Parker are based on using a single construction heading over a longer time period as opposed to using multiple construction headings of several years (essentially reverting to construction practices used in the heyday of railroad development). Under the Parker approach a rail link to C. Krusenstern or Nenana would take 5 years to complete from mobilization. Other major differences relate to contingency and engineering overheads which total 40% in the WAATS and and 15% in the Parker analysis. On a per mile basis a comparison of the C. Krusenstern and Nenana rail alternatives is as follows:

	WAATS/Mile	Parker/Mile	Parker as a Rate % of WAATS
Ambler-C. Krusenstern	$3,427 M	$1,640 M	48%
Ambler-Nenana	$3,243 M	$1,715 M	53%

Some costs such as major and minor bridging estimates are not significantly different.

Using accelerated construction schedules and considering current cost figures estimated by the ARR, a realistic capital construction cost per mile appears to lie somewhere between the two extremes represented by WAATS and PARKER. The ARR states that once basic grading costs (which are the real intangibles) have been met, the current cost of laying ballast, ties and rail is $750,000 per mile.

The basic findings of the Parker Associates study which focuses specifically on Ambler are as follows:

1) Cape Krusenstern is cheapest route irrespective of mode up to 1 million tons per year.

2) Shipment to Southcentral Alaska through the existing Railbelt is the most expensive irrespective of mode, tonnage or capital amortization schedule (but does not consider a total system volume greater than 1 million tons per year).

3) As tonnages increase so do advantages of a railroad to Cape Nome or Cape Darby.

4) Capital amortization costs for a 1 million tons per year freight volume exceed working costs by more than 100%.

5) Concentrate storage costs, imposed by limited shipping windows for three of the options, do not significantly affect rankings between the four port site alternatives.

Very little consideration is given to the following:

i) the benefits the operation of a year round port site at Cook Inlet or Seward could provide.

ii) the benefits of operating one integrated rail system rather than two unconnected rail lines.

iii) the catalytic effect an integrated transportation system could have in stimulating the creation of a value-added industry along the Railbelt or at Cook Inlet.

The major recommendation contained in the Parker Associates study urges the creation of a Transportation Authority for Northwest Alaska with the prime purposes of:

1) acquiring a right-of-way to the Ambler District and

2) arranging financing for a rail link.

In making this recommendation it is acknowledged that eminent domain has not been tested for public acquisition of reconveyed native lands.

Western NPRA Coal. This is a really long term scenario which if it ever materializes might commence at some time well into the next century. Enormous reserves of good quality coal on the North Slope may eventually be mined on a large scale to help satisfy future domestic and foreign energy needs. Practicalities may require on site processing to liquid phase products which would be moved by pipeline, however bulk transportation of coal by rail may also be viable.

Before development of NPRA coal deposits commences, several major components of a transportation system could already be in place in the form of

1) a western arctic railway to Ambler from C. Krusenstern

or

a completed rail extension from Nenana to the Ambler District;

2) a world scale minerals export facility at Cook Inlet for year round shipments;

3) a seasonal port facility in the Western Arctic for summer shipment.

If these components were already in place, the capital cost of completing an integrated rail system to haul large volumes of coal might not be too intimidating. An estimate in 1983 dollars would be $1.5 billion for completion of the additional 500 to 625 miles of track.

Economic benefits which might flow from a rail link between the existing Railbelt and Northwest Alaska would include:

i) year round servicing of the Ambler Mining District

ii) year round servicing of the Noatak Zinc Belt

iii) year round servicing of coalfields on the NPRA and adjacent lands.

iv) overland servicing for oil and gas related activities

v) intangible benefits stemming from major new mineral discoveries proximal to the arterial transportation route.

Nome Regional Port. Future expansion of the Nome port beyond the planned initial phase may be justified by hardrock mining production from the Seward Peninsula and the servicing needs of offshore oil and gas activity in Norton Sound. Two sites which appear to offer the

best potential for mineral development are the Lost River and Kougarok Mountain tin deposits. At Lost River development plans for a major mining project which received considerable prominence in the early 1970's were shelved and the project status became mired in litigation. A large tonnage of ore containing tin, tungsten, fluorite and beryllium has been outlined by drilling and underground development on the property. The Lost River deposit represents the nation's largest known proven tin reserves and therefore assumes a significant strategic importance. Kougarok Mountain, some 40 miles to the east, is a more recent discovery which reportedly has major potential for tin and related mineralization.

Besides port expansion, an estimated 80 miles of new road construction would be needed to tie these properties into the Nome port through an extension of the existing Nome-Teller Road via Brevig Mission. DOT/PF estimated the cost of constructing a road to Lost River and Tin City at $30.9 million, however this figure would increase substantially in order to access Kougarok.

DOT/PF in an analysis of other projects which may need or request infrastructure assistance from the State drew attention to several potential mine sites in addition to those already described. Brief descriptions of these follow.

Dry Creek. This is a deposit undergoing active exploration of similar type to the Greens Creek orebody in S.E. Alaska. It is a polymetallic deposit containing precious metals and zinc, lead and copper. No tonnage or actual grade estimates have been announced. A possible development scenario would include plans to widen 21 miles of existing road, and build an extension for approximately 15 miles. The current access point of is through Ferry which is on the Alaska Railroad between Nenana and Healy.

Twin Mountain. Houston Oil and Minerals has for several years conducted exploration on a tungsten-rich district northeast of Fairbanks. Access to the area would require construction of a 62 mile extension of the Chena Hot Springs Road. No development schedule has been announced by the company. The proposed road extension would serve a broad spectrum of need including access to a potentially valuable mineral deposit, recreation and tourism as well as improve access for placer mining.

Bonanza Creek. This is another tungsten property on land owned by Doyon Ltd. No details relating to grade or tonnage have been released. Construction of a 24 mile gravel road would provide adequate access to the property.

Lignite Creek-Kantishna. This is another proposed road which would serve multiple user needs while providing access into a known mineral-rich district. Of prime importance is the access that would be provided to antimony deposits in Kantishna District. This district is also important for precious metals. The proposed access is from a point on the Parks Highway at Lignite Creek and would involve the construction of 75 miles of road which would link up with the seasonally congested Wonder Lake Road which serves Denali National Park. Opposition for such a road may be expected from the National Park Service and conservation groups although it would serve a broad public need.

Chandalar Mining District. Increased activity in the Chandalar area in recent years, with focus upon hardrock as well as placer deposits, highlights the excellent potential for expansion of mining activity. Current access during the mining season is by air using a 4500 foot runway. Construction of a 65 mile road from the Dalton Highway would provide access and enhance the prospect for more mining in the district.

Point-Lay Cape Lisbourne Coal Deposits. These coal fields would be included in the discussions of transportation to the North Slope coalfields. Major development is some years away and would be contingent upon an adequate transportation system. The Arctic Slope Regional Corporation has examined the possibility of mining 100,000-200,000 tons of coal from the Cape Beaufort area to serve local needs of communities within range of barge transport. Suggestions that this could also satisfy the energy needs of mining development in the Noatak region have not enjoyed support from Cominco officials who feel the capital costs for coal-fired generating equipment for their power requirements overshadow any savings to be realized by purchasing coal rather than fuel oil.

Another scenario for exploiting coal for local Northwest Alaska needs focuses on the Chicago Creek deposits on the north side of the Seward Peninsula. This development would require a 170 mile road to link the Chicago Creek mine site to Kotzebue, however the route would cross terrain with a high mineral potential for placer gold, uranium and a range of base metals.

There is little merit in further cataloging the hundreds of known mineral occurrences in Alaska and speculating on possible access needs. In remote regions of Alaska it is not the lack of minerals that is inhibiting industry, but the lack of transportation to allow development. Any expansion of Alaska's ground transportation system to serve major, economically viable, mining centers will enhance access to other known deposits as well as stimulate exploration for undiscovered ore deposits.

The development of transportation infrastructure is the key to the creation of an Alaskan mineral industry that will strengthen and diversify Alaska's economic base.

IV. Report of the Division of Finance and Economics: Department of Commerce and Economic Development

Red Dog Economic Analysis

Red Dog Mine Analysis

Division of Finance and Economics
Department of Commerce
and Economic Development

This report will identify the direct benefits to the State of Alaska that result from subsidization of the Red Dog Mine. The report will also identify the maximum level of expenditure the State can make on the project and still retain a positive rate of return.

The following analysis is based on a 60¢ per pound price of zinc, the most important metal produced from the mine in terms of the mine's economic viability. Sixty cents (60¢) per pound, in 1984 dollars, represents the "best estimate" in terms of expected real future zinc prices. This estimate was made by the Office of Mineral Development. A low estimate of 55¢ per pound and a high estimate of 65¢ per pound were also considered.

All quantifiable benefits are given in terms of their present value for purposes of consistency and in order to protect the confidential nature of the data supplied by Cominco Corporation. All present values are based on 30 years of mine operation regardless of when mine development begins. A 15% return on investment (ROI) was assumed to be the threshhold level needed to induce mine development and production. (This implies a capital recovery period of approximately 5 years.)

At a price level of 60¢ per pound for zinc and assuming mine development beginning in 1985, the present value to the State of taxes is $205.69 million. In addition to the tax estimate, "transfer payment" reductions have a present value of $41.61 million, for a total direct benefit of $246.85 million. The corresponding values to the State for zinc prices of 55¢ per pound and 65¢ per pound can be found in Table I.

Table I

Returns* to the State from
Red Dog Mine Development
(Millions of Dollars)

	Price of Zinc		
	55¢	60¢	65¢
Taxes	157.50	205.69	262.52
Transfers	41.16	41.16	41.16
Total	198.66	246.85	303.68

* All returns are given in terms of their present value.
Only direct returns to State Government are considered.

In order to get the requisite 15% return on investment with no State involvement the price must reach a real price of 63¢ per pound.

Based on the above assumptions, to obtain a 15% return on investment at a real price of 60¢ per pound for zinc, the State would have to subsidize the capital costs of Cominco by $40.1 million. For this $40.1 million investment the State will directly benefit by $246.85 million which is a positive benefit/cost ratio to the State of 6.2:1. The ratio is high because it appears the project would not be viable without State support. Under the foregoing assumptions, the minimum level of investment the State can make in the project and have any expectation

of immediate development is estimated to be $40.1 million. Higher involvement by the State through larger amounts of subsidy will increase expected rates of return to Cominco, and increase the likelihood of immediate project development. At a price of 60¢ per pound for zinc the State could subsidize the project up to $245.0 million and still have a benefit/cost ratio greater than 1, i.e., the State investment becomes increasingly marginal as it approaches $245 million.

The relationship between the return on investment and State subsidy is shown in Chart I and the relationship between State subsidy and benefit/cost is shown in Chart II.

CHART I

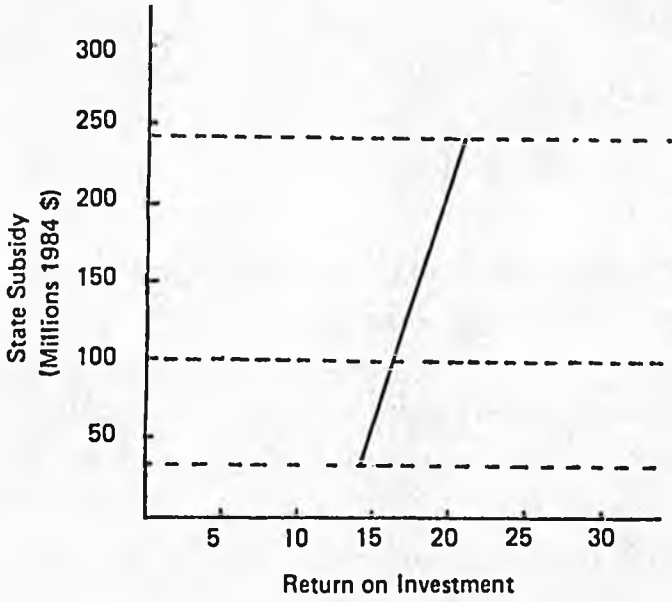
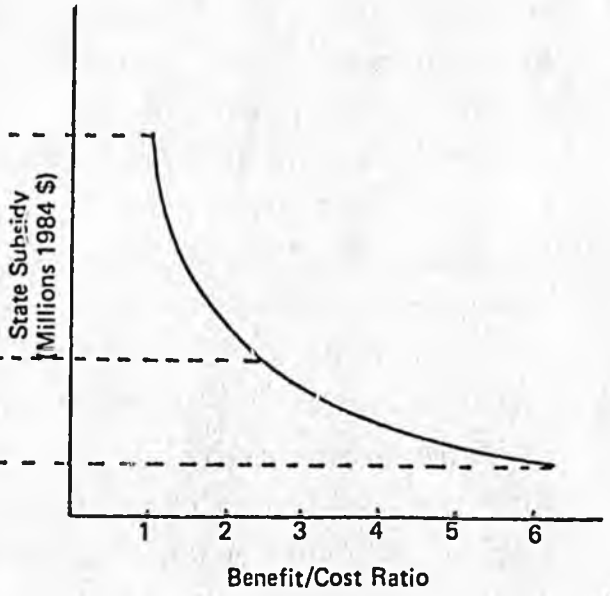


CHART II



[* Assumes a real price of zinc of 60¢ per pound.]

While the above analysis is based on what appear to be reasonable assumptions, changes in these assumptions produce different results. For example, the development of the mine is sensitive to changes in the price of zinc. If the zinc price is lowered from 60¢ to 55¢ per pound he low side of our estimated future price), the rate of return to Cominco would also fall. At the 55¢ price, to get the return to Cominco up to 15% the State might have to put a subsidy of $158.0 million in the project. Because of the lower price, the taxes are also lower; this, coupled with the higher level of subsidy, reduces the benefit cost ratio to 1.25 in comp rison to the 6.2 figure generated by a 60¢ price. On the other side, if the higher price level of 65¢ per pound of zinc is attained, the return is estimated to be in excess of the requisite 15% ROI with no State subsidy and the State benefits directly by $303.48 million even with no contribution.

In addition to direct benefits to the State in the form of tax revenues and reduced transfer payments, there are gains to the public in the form of wages, reduction in freight costs and the implicit benefits of having a road and port where previously there was none. The present value of direct wage gains, freight cost reductions, and royalties to NANA are set forth below. The present value was calculated for a period of 30 years, however, the Red Dog Mine and road is anticipated to be active for at least 50 years. The benefits for the additional years are so far in the future that their present value is not included, but should be considered from a social point of view. Implied infrastructure benefits are not quantified though the existence of a State road and port offers opportunities for future expansion at Red Dog and for other mining opportunities in the region.

Table II

Private Sector Benefits* from
Red Dog Mine Development
(Million $)

Benefit	Amount
Wages	$365.25
Freight Cost Reduction	50.96
Infrastructure Gains	Not Quantified
Royalty payments to NANA**	658.56

* Present value over 30 year period.

** These monies are subject to the revenue sharing provisions of the Alaska Native Claims Settlement Act, 7(i) Clause, and could also be taxed by the State and Federal Governments.

The wages and salaries generated are a result of average annual employment increase of 500.

V. Report of the Office of Management and Budget Office of the Governor

A. Corporate Profile of Cominco Ltd. (Canada)

B. Corporate Profile of NANA Regional Corporation Inc.

C. Direct and Indirect Economic Impacts Within the State of Alaska

D. Fiscal Impacts

E. Cominco / NANA Contractual Agreements

F. Effects on State Bonding Capacity

G. Synopsis

OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF THE GOVERNOR
STATE OF ALASKA

RED DOG PROJECT

Report Prepared for Part IV of the Interagency Task Force on
State Participation in Infrastructure Development
February 21, 1984

INTRODUCTION

The Office of Management and Budget participated in the State's interagency task force on the Red Dog Mine project during the period September-December, 1983. The purpose of the task force was to evaluate whether and how the State of Alaska might participate in the infrastructure development necessary for the Red Dog mine, which is located in the northwest region near Kotzebue. The Office of Management and Budget was responsible for completing the following six tasks:

(A) preparation of a detailed corporate profile of Cominco Ltd., with reference to its financial structure, operational spread and market participation;

(B) preparation of a similar corporate profile of NANA Regional Corporation, Inc.;

(C) evaluation of the direct and indirect economic impacts of the Red Dog Mine project within Alaska;

(D) evaluation of the taxation impacts of the Red Dog Mine project, utilizing Alaska's current taxation framework;

(E) examination of the contractual relationship between Cominco-Alaska, Inc. (the Alaska subsidiary of Cominco Ltd.), and NANA Regional Corporation, Inc.; and,

(F) assessment of the possible effects of various risk-sharing scenarios for total project development on the State of Alaska's bonding capacity.

The sections below present the Office of Management and Budget's findings and conclusions regarding these six tasks.

A. CORPORATE PROFILE OF COMINCO, LTD. (CANADA)

Cominco Ltd. of Canada is the parent company of Cominco-American, Inc., and its branch, Cominco-Alaska Inc., which has joined with NANA Development Corporation, Inc., to develop the Red Dog Mine near Kotzebue. This corporate profile describes the operations and relationships of Cominco Ltd.

1. BACKGROUND

Cominco Ltd. is an integrated natural resources company whose principal activities are in minerals exploration, mining, smelting and refining. Headquartered in Vancouver, British Columbia (Canada), the company with its subsidiaries constitutes one of the world's largest mining and metallurgical concerns. Cominco Ltd. employees numbered approximately 10,500 as of August, 1983, with union representation encompassing some 70% of the total. [1]

The Cominco enterprise was first incorporated in Canada in 1906 as Canadian Consolidated Mines Ltd., as a means of amalgamating the mining interests of the Canadian Pacific Railway. (The name was changed a month later to Consolidated Mining and Smelting Company of Canada Ltd.) The company was acquired and re-chartered in 1962 by Canadian Investments Ltd. (now Canadian Pacific Enterprises Ltd.), which is an investment holding corporation for Canadian Pacific Ltd., a private Canadian company. Under this arrangement, the company's name was changed to Cominco Ltd. in 1966. Finally, in 1970, Cominco Ltd. moved its executive offices from Montreal to Vancouver.

The range of Cominco Ltd. business operations is extensive. Its participation in mining and minerals industries includes exploration and mining operations (chiefly for zinc, lead, silver, copper and gold) in North America, South America, Europe, Asia, Africa and Australia, as well as the operation of major smelting and refining facilities in Canada, Japan and India. Worldwide, Cominco Ltd. and its subsidiaries operate some 14 major mines and 4 major smelting and refining complexes. Cominco Ltd. was the world's largest producer of zinc and lead in 1982, accounting for approximately 10% and 11% of the western world's mine production of those metals, respectively.[2]

Beyond its mining and metals operations, Cominco Ltd. also is one of Canada's largest producers of phosphates and chemical fertilizers, and is a major supplier of these commodities for the upper American Midwest. Additional Cominco Ltd. operations include the production of high purity metals, steel products, fabricated metals products, compound semiconductors and electronic components, and hardware specialties, as well as the distribution of electrical power in western Canada. Its Project Research Center at Sheridan Park, Ontario, is the world's largest research center for new and improved uses of lead and zinc.[3] The company also is a holding and investment concern with a relatively large number of corporate subsidiaries and affiliates.

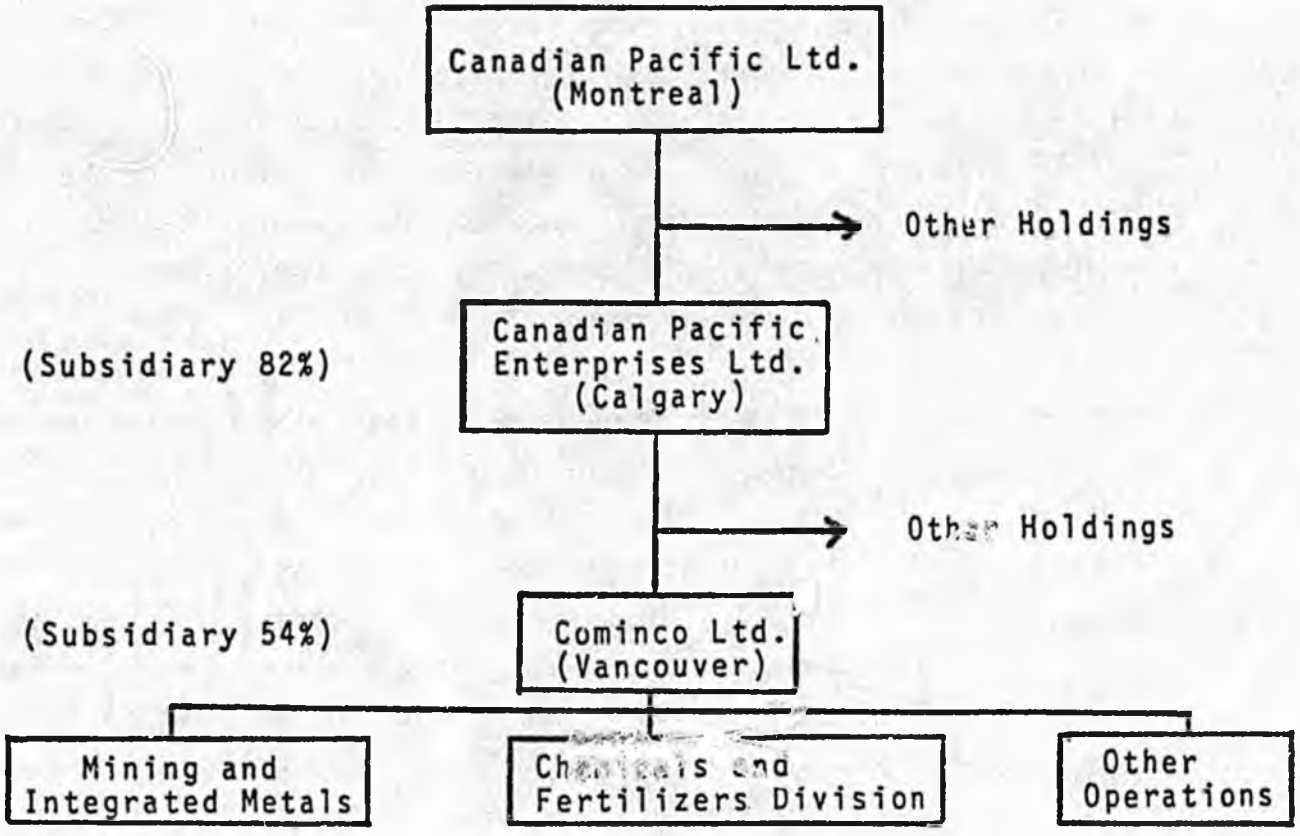
2. CORPORATE STRUCTURE AND MARKET PARTICIPATION

Diverse and large as its holdings are, Cominco Ltd. occupies a position within a yet larger corporate structure. (See Figure A-1.) Principally, it is 54% owned by Canadian Pacific Enterprises Ltd. (Calgary, Alberta), which is a large investment company with interests in oil and gas, mines and minerals, iron and steel, forest products, real estate, hotels and food services. Canadian Pacific Enterprises Ltd. is itself 82% held by Canadian Pacific Ltd. (Montreal, Quebec), a private Canadian company directly involved in various transportation services.

The corporate structure of Cominco Ltd., including its subsidiaries and affiliates, reveals a high degree of both vertical and horizontal

FIGURE A-1

COMINCO LTD. CORPORATE STRUCTURE



integration. It encompasses vertically linked operations that include exploration and reconnaissance, mining, smelting and refining, fabrication, product development and research, direct specialty hardware supply and sales. Its horizontal dimension is revealed by its many associated mining and smelting operations (including, beyond metals, the mining of coal, diamonds, potash, et al.), chemical and fertilizer production facilities, steel plants, electronics plants and network of hydroelectric power plants.

Overall, the associated companies of Cominco Ltd. participate in three broad industry segments or markets. These include mining and integrated metals, chemicals and fertilizers, and a range of "other operations" which includes the previously mentioned steel, electronics and hydroelectric plants, etc. (See Table A-1.) Among these three corporate segments, mining and integrated metals consistently has been the greatest contributor to Cominco Ltd's total revenues. It has consistently also been the greatest contributor to the company's operating profits, except during 1982, when low base metal prices and softening demand produced the company's first overall loss in fifty years. (See Table A-2.) However, it appears that mining and integrated metals operations will once again be the major contributor to its profits in the coming years, due to the potential of the Red Dog Mine, and the expected future improvement in world metal market conditions. (See Table A-3.)

3. MINING HOLDINGS AND OPERATIONS

a. Amalgamated Divisions and Operating Subsidiaries

Cominco Ltd. amalgamated (i.e., merged) in late 1982 with Bethlehem Copper Corporation and Copper Valley Mines Ltd., previously two wholly owned subsidiaries, under the name of Cominco Ltd.[4] The operations of these companies and Green Valley Mines continue as divisions of Cominco Ltd. Figure A-2 depicts the corporate linkage of these divisions and Cominco Ltd.'s operating subsidiaries, in which Cominco Ltd. ownership is greater than 50%. (See Figure A-2.)

TABLE A-1

COMINCO LTD.
SCOPE OF OPERATIONS AND MARKET PARTICIPATION

INDUSTRY SEGMENT	PRINCIPAL INVOLVEMENTS	MAJOR FACILITIES
1. Mining & Integrated Metals	Mining, processing smelting and refining of zinc, lead, copper, silver, gold, tin, et al.	*14 major mines *4 major smelting facilities
2. Chemicals & Fertilizers	Production of sulphuric acid, sulphur dioxide, potash, ammonia, urea, phosphates and nitrates	*3 mines *5 processing plants (all in Canada and USA)
3. Other Operations	Fabrication of metal products, steel, high purity metals, semiconductors and electronic components, electrical power distribution.	*3 steel plants *1 metal fabricating plant *2 electronics plants *4 hydroelectric plants (all in Canada and USA)

Source: Office of Management and Budget, State of Alaska, December, 1983.

TABLE A-2

CONTRIBUTIONS OF COMINCO LTD.
OPERATING SEGMENTS, 1978-1982

	1982 Contributions		5-Year Average Contributions	
	To Total Revenues	To Operating Profits (Losses) *	To Total Revenues	To Operating Profits (Losses)
Mining and Integrated Metals	53%	($31 million)	56%	61%
Chemicals and Fertilizers	33%	$30 million	30%	29%
Other Operations	14%	$17 million	14%	10%

* U.S. Dollars

Source: Based on data from Cominco Ltd. 1982 Annual Report and report by the Canadian investment firm Levesque, Beaubien, Inc. (July, 1983).

TABLE A-3

FORECASTED CONTRIBUTIONS OF COMINCO LTD.
OPERATING SEGMENTS, 1983-1985

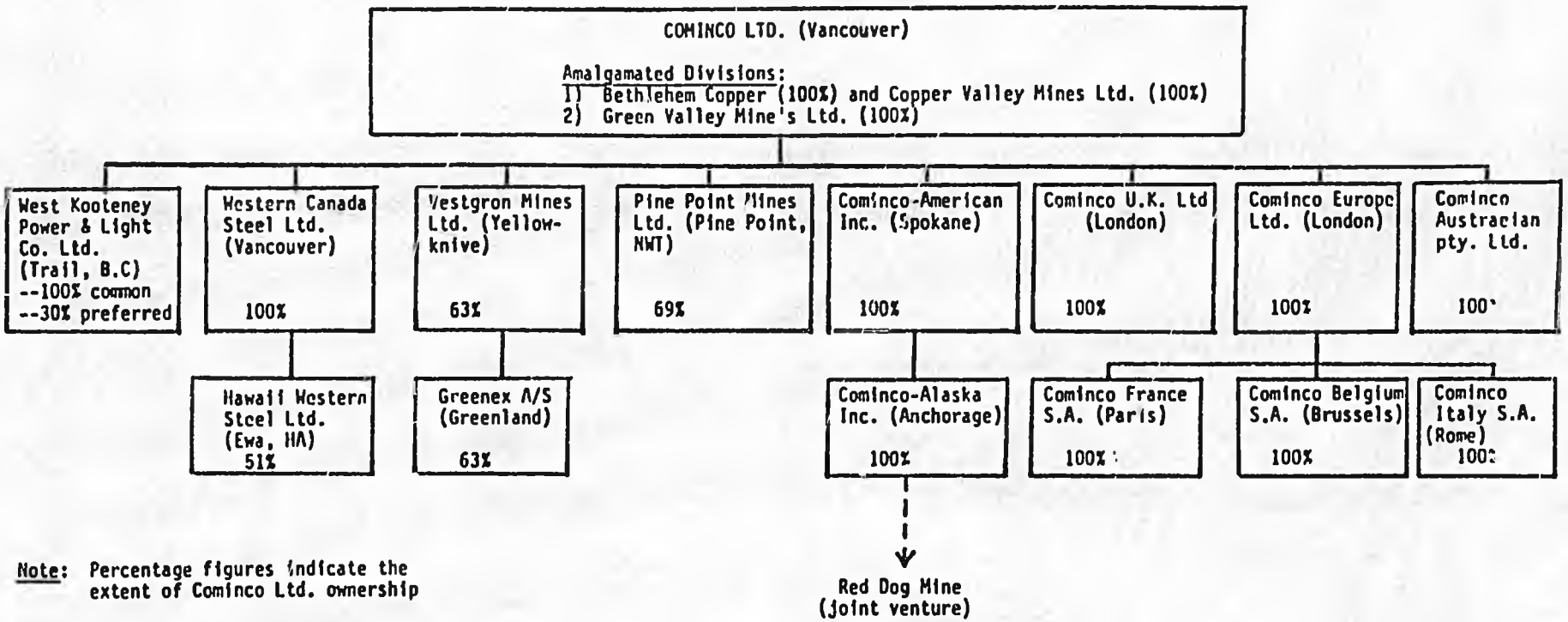
	Contributions To Total Revenues				Contributions To Operating Profits			
	1984E	1984E	1985E	(Avg.$_5$)*	(Avg.$_5$)*	1983E	1984E	1985E
Mining and Integrated Metals	57%	61%	62%	(56%)	(61%)	56%	76%	79%
Chemicals and Fertilizers	30%	27%	27%	(30%)	(29%)	19%	17%	15%
Other Operations	13%	12%	11%	(14%)	(10%)	25%	7%	6%

*Avg.$_5$= 5-year average contribution, 1978-82.

NB: Forecast assumes inclusion of Red Dog Mine costs.

Source: Based on report by Canadian investment firm Levesque, Beaubien, Inc. (July, 1983)

COMINCO LTD.
OPERATING SUBSIDIARIES AND AMALGAMATED DIVISIONS
(MINING AND INTEGRATED METALS SEGMENT)



Note: Percentage figures indicate the extent of Cominco Ltd. ownership

Source: Office of Management and Budget, State of Alaska, December, 1983

b. Affiliates

The corporate affiliates of Cominco Ltd., in which a 50% or less ownership interest is held, include the following: (percentages indicate the extent of Cominco Ltd. ownership)

* Canada Metals Co. Ltd. (50%)
  Toronto: lead refining and metals products

* Mitsubishi Cominco Smelting Co. Ltd. (45%)
  Tokyo: smelter products, refined lead, concentrates from Pine Point Mines Ltd.

* Cominco Binani Zinc Ltd. (40%)
  Calcutta: electrolytic zinc smelting and refining

* Fording Coal Ltd. (40%)
  Calgary: coal mine

* Aberfoyle Ltd. (47%)
  Melbourne: minerals exploration in Australia and Tasmania, 6 tin and lead/zinc mines, metals production

* EXMINESA S/A (48%)
  Madrid: minerals exploration, zinc/lead mine

*Panarctic Oils Ltd. (7.4%)
  Undetermined: oil and gas exploration

c. Other Holdings (Unidentified)

References to a number of additional Cominco Ltd. holdings in the mining and integrated metals area have been located, but could not be

investigated due to time constraints. These include the following: (percentage figures indicate the extent of Cominco Ltd. ownership)

* Vol Mines Ltd (66.7%)
* Baffinland Iron Mines Ltd. (4.5%)
* Stikine Copper Ltd. (5%)
* Sunloch Mines Ltd. (84%)
* Sunro Mines (77%)
* Cominco Holdings, N.V. (-?-)
* Cominco GmbH, Germany (100%)
* Mayak Ltd., U.K. (50%)
* Arvik Mines Ltd., Canada (100%)
* Abminco NL (38%)

d. Principal Mining Facilities

The principal mining facilities of Cominco Ltd. include 9 major mines in North America and Greenland, and the giant integrated smelting and refining complex at Trail, British Columbia, which also includes part of Cominco Ltd.'s fertilizer and chemical processing operations. These facilities, along with their approximate levels of employment as of December 31, 1982, are described below: (percentage figures indicate the extent of Cominco Ltd. ownership)

* Trail Complex (100%)
  Trail, B.C.: integrated smelting and refining complex for lead, zinc, silver, et al.; chemical and fertilizer plant; 4,036 employees

* Sullivan Mine (100%)
  Kimberly, B.C.: lead/zinc/silver mine; pig iron plant; chemical and fertilizer plant; 959 employees

* Valley Mine and Jersey Mine (100%)

Logan Lake, B.C.: Copper mines; 360 employees

* Polaris Mine (100%)
  Little Cornwallis Island NWT: Zinc/lead mine; 244 employees

* Con Mine (100%) and Rycon Mine (76%)
  Yellowknife, NWT: gold mines; arsenic recovery plant; 309 employees

* Pine Point Mine (69%)
  Great Slave Lake, NWT: Lead/zinc mine; 583 employees

* Black Angel Mine (63%)
  Maarmorilik, Greenland: Lead/zinc/silver mine; 324 employees

* Magmont Mine (50%)
  Bixby, Missouri: Lead/zinc mine and concentrator; 186 employees

4. FINANCIAL STRUCTURE

Unless otherwise specified, all figures presented below are based on the 1980-1983 annual reports of Cominco Ltd. All dollar amounts shown are in Canadian dollars for 1982. (For purposes of conversion or comparison, the average conversion rate during 1982 was: $1.234 CAN=$1.00 USA.)

a. Assets and Net Worth

As of year end 1982, the consolidated assets of Cominco Ltd. totalled approximately $2.1 billion. The larger portion (65%) was in fixed assets such as land, buildings, equipment and developed mineral properties, with

a total book value of some $1.36 billion. Investments in affiliated and unaffiliated companies totalled nearly $128 million, while current assets stood at more than $575 million (over 27% of total assets). Net worth for the company as of December 31, 1982, was approximately $834.9 million. This comprised some $145 million in preferred shares, $136 million in common shares and approximately $554 million in earnings reinvested in the company. (See Table A-4.)

b. Capitalization

Capitalization for Cominco Ltd. as of the end of 1982 was approximately $1.52 billion. This comprised long-term debt of some $688 million, reinvested earnings of approximately $554 million, $145 million in preferred stock, and $136 million in common stock. (Some 5.8 million shares of preferred stock and 18.8 million shares of common stock were outstanding at the end of 1982, approximately 54% of the total value of which was held by Canadian Pacific Enterprises Ltd.) If $38 million in minority interests and $175 million in deferred income taxes are included as representing long-term debt, total capitalization for the company was actually approximately $1.74 billion.

The company's financial leverage ratio (long-term debt to total long-term capital), was 0.52 at the end of 1982, and its debt-equity ratio was 1.08, down from 1.44 earlier in the year.

The capital structure underlying Cominco's $688 million in long-term debt for 1982 included $46.8 million in notes, $101 million in debentures, $533.4 million in bank loans (approximately three-quarters of which are at variable rates, with the remainder at fixed rates of 5-3/4% to 10-3/8%), $5.4 million in bonds, and $1.4 million in other debt. The company has moved recently to reduce its reliance on bank debt through the application of some $100 million raised from a 2.2 million common share offering in April of 1983. (Canadian Pacific Enterprises Ltd. purchased 1.2 million shares of this offering, to preserve its 54% interest in the company). This was in addition to an earlier issue of 2 million preferred redeemable shares, which brought proceeds of approximately $50 million in 1982. A

TABLE A-4

COMINCO LTD.
CONSOLIDATED BALANCE SHEET
1981 - 1982

	1982	1981
	(thousands)	
Current Assets		
Cash and short-term investments	$ 31,279	$ 48,887
Accounts receivable	182,573	243,624
Inventories	352,156	334,181
Prepaid expenses	9,732	7,317
	575,740	634,009
Investments		
Associated companies	95,929	95,458
Other companies	31,941	34,614
	127,870	130,072
Fixed Assets		
Land, buildings and equipment	1,562,144	1,396,081
Less accumulated depreciation	518,682	463,791
	1,043,462	932,290
Mineral properties and development	417,975	402,365
Less accumulated depreciation	101,645	92,291
	316,330	310,074
	1,359,792	1,242,364
Other Assets	28,142	21,379
TOTAL ASSETS:	$ 2,091,544	$ 2,027,824
Current Liabilities		
Bank loans and notes payable	$161,633	$ 140,007
Accounts payable and accrued liabilities	141,411	171,220
Income and resource taxes	16,206	19,268
Long ... debt due within one year	30,457	11,509
	354,707	342,004
Long-Term Debt	687,975	566,677
Income Taxes Provided, Not Current Payable	175,520	219,155
Minority Interests	38,397	45,449
Shareholder's Equity		
Capital	280,531	232,229
Earnings Reinvested in the business	554,414	622,310
	834,945	854,539
TOTAL COMMITMENTS AND LIABILITIES	$ 2,091,544	$ 2,027,824

Source: Cominco Ltd., 1982 Annual Report

TABLE A-5

COMINCO LTD. FINANCIAL POSITION
MARCH 31, 1983

	$ million	$/Share*	%
Assets:			
Working Capital (a)	161.6	8.60	
Net Fixed Assets	1,357.7	72.22	
Investments & Others	158.2	8.41	
	1,677.5	89.23	
Financed By:			
Long-term Debt (b)	667.1	35.48	39.8
Deferred Taxes	163.7	8.71	9.8
Minority Interests	36.9	1.96	2.2
Preferred Shares	144.7	7.70	8.6
Common Equity (a)	665.1	35.36	39.6
	1,677.5	89.23	100.0

* 18.8 million shares, raised to 21.0 million shares in April, 1983

(a) Increased by $100 million in April, 1983

(b) Of the $667 million in long-term debt, approximately $157 million is at fixed rates varying between 5 3/4% and 10 3/8% and the balance is at variable rates

Source: Levesque, Beaubian, Inc., Investment Research Report, July, 1983

major factor in Cominco Ltd.'s decision to issue more stock, presumably, was the 44% rise in the company's overall interest expense during 1982 to $90.4 million, up from $62.6 million at the end of 1981. (A more recent snapshot of Cominco Ltd.'s capitalization, as of March, 1983, is shown in Table A-5.)

c. Liquidity and Credit Rating

The company's current ratio (current assets to current liabilities) was 1.62 at the end of 1982. Its acid-test ratio (current assets less inventory to current liabilities) was 0.63. However, its cash ratio (cash plus short-term investments to current liabilities) was 0.09. The company had to sell off over 27,000 tons of its lead and zinc concentrate inventories in 1982 due to cash flow problems.[5]

During the first half of 1983, however, the company appears to have improved its liquidity position. Independent assessment of the company's operations in May of 1983 showed net working capital (current assets minus current liabilities) centered in accounts receivable and inventory, with satisfactory inventory turn-over, and adequate cash deposits and short-term investments for financing operations.[6] Analysis of the sources and uses of Cominco Ltd.'s funds during 1981 and 1982 also indicates that the company instituted an aggressive collections policy regarding receivables during 1982 (see subsection 5, below, "Sources and Uses of Funds"), helping to improve cash flow and liquidity.

Cominco Ltd.'s overall credit rating was very good as of mid-1983. Independent credit assessment of the company showed a high composite credit appraisal, a consolidated line of credit available without security to the high eight-figure range, excellent relations, and good conditions.[7] The same sources and uses analysis referred to above also shows that Cominco Ltd. started paying its own bills more promptly in 1982, which is undoubtedly responsible in part for the company's current good credit rating.

TABLE A-6

COMINCO LTD.
EARNINGS SUMMARY
1978-1982

	1978	1979	1980	1981	1982
				- - ($ millions)- -	
Mining & Integrated Metals					
Sales	515	789	850	732	641
Operating Costs	371	430	589	601	622
Depreciation & Amortization	34	40	44	52	57
Operating Profit	110	319	217	79	(38)
Fertilizers & Chemicals					
Sales	271	317	390	462	421
Operating Costs	213	239	273	342	362
Depreciation & Amortization	23	24	20	22	22
Operating Profit	35	54	97	98	37
Other Operations					
Sales	115	168	203	223	173
Operating Costs	100	138	163	181	145
Depreciation & Amortization	8	9	10	10	7
Operating Profit	7	21	30	32	21
Consolidated					
Sales	901	1274	1443	1417	1235
Operating Costs	684	807	1025	1124	1129
Depreciation & Amortization	65	73	74	84	86
Operating Profit	152	394	344	209	20
Exploration Expense	(7)	(10)	(13)	(20)	(15)
Interest Expense	(28)	(28)	(33)	(63)	(90)
Corporate Charges	(13)	(4)	(6)	(1)	(13)
Earnings Before Taxes	104	352	292	125	(98)
Income & Resource Taxes					
Current	(36)	(104)	(69)	(12)	(7)
Deferred	(9)	(30)	(50)	(39)	50
Total Taxes	(45)	(134)	(119)	(51)	43
Minority Interests	(6)	(23)	(14)	(10)	1
Equity Income	9	11	14	4	5
Currency Translation	8	(1)	(2)	(5)	(1)
Earnings Before Extras	66	205	171	65	(49)
Extraordinary Item	2	-	-	5	18
Earnings	68	205	171	70	(31)
Preferred Dividends	(6)	(7)	(8)	(8)	(10)
Net Income	62	198	163	62	(41)
EPS Before Extraordinary Item	3.51	11.57	9.54	3.04	(3.16)
EPS After Extraordinary Item	3.61	11.57	9.54	3.35	(2.20)
Cash Flow Per Share (a)	8.12	18.6	17.54	10.49	(0.96)
Average Shares Outstanding	17.0	17.1	17.1	18.4	18.8

(a) After preferred dividends

Source: Levesque, Beaubien, Inc., Investment Research Report, July 1983

d. Earnings

Cominco Ltd. president W.G. Wilson told stockholders in April of 1983 that 1982 was "one of the worst years in the company's history." [8] 1982 was indeed not a good year for Cominco Ltd., as the company suffered an overall net loss of approximately $31.2 million (a loss of $2.20 per share). This was a dramatic slump from net earnings of $70.3 million (a gain of $3.35 per share) in 1981, and is attributed to sagging metal markets and softening world demand over the past two years, resulting in falling metal prices. The loss of $31.2 million was on sales of products and services totalling approximately $1.24 billion, down almost 14% from 1981 sales. Earnings before interest and taxes for the company reflect the same decline, dropping to a loss of approximately $7.2 million in 1982 from earnings of over $189 million in 1981. (Actually, Cominco Ltd.'s net loss in 1982 would have been much larger than $32.1 million, but the company took some $49.9 million tax in credits during the year and its Cominco-American, Inc., subsidiary sold off its oil and gas properties for an after-tax gain of approximately $18.1 million).

The 1982 net loss was something of an exception for Cominco Ltd., however, representing the company's first overall loss in the past fifty years. It should not be taken as indicative of the company's solidity or prospects. Cominco Ltd. has extensive ore reserves, is already in 1983 nearly breaking even on its mining and integrated metals operations (with an operating loss of only $800,000 in the second quarter of 1983, down from $7.5 million in 1982), [9] and is in a position to improve its earnings performance in view of forecasts of an economic upturn. (For a summary of recent years' earnings, though with a slightly different data base than that used here, see Table A-6.)

e. Sources and Uses of Funds

A funds flow analysis was conducted for this report by examining the company's annual balance sheets. The major findings of this analysis include the following: (as of year-end 1982)

(1) the company was still relying on long-term debt, but was cutting that reliance back (i.e., increases in annual long-term debt outstanding slowed from 1980 to 1982);

(2) the company was still raising new capital through share issues, but at a slower rate than in the past (e.g., the share issues totaling $48.3 million in 1982 were only half of 1981's issues of $97.5 million);

(3) the company was still acquiring new land, buildings and equipment ($166 million in 1982), but less than in 1981 ($225 million);

(4) acquisition of mineral properties dropped dramatically during 1982 ($15.6 million) compared to the year before ($166 million);

(5) the company introduced a strong collections policy during 1982, cutting accounts receivable by $61 million as opposed to a $1 million increase during 1981 (this has been offset somewhat, however, by another new policy introduced during 1982 of paying off the company's own debts more quickly); and,

(6) the company has sharply cut back its payment of dividends to shareholders (e.g., from $83 million during both 1980 and 1981 to less than $35 million during 1982).

This pattern of retrenchment also is reflected in recent announcements by the company that : (1) capital investment spending was reduced by $710 million during 1981-82, after the company spent more than $1 billion on new projects over the preceding five years; (2) modernization of the Trail, B.C., smelting complex was being delayed; (3) completion of mechanization for the complex at Kimberly, B.C., was being delayed; (4) sustaining capital was being reduced throughout the company to low but acceptable levels; (5) exploration expenditures were being reduced; and, (6) some 2,200 company employees had been laid off during the 15 months prior to June, 1983.[10]

5. CONCLUSION

Its 1982 set-back notwithstanding, Cominco Ltd. appears to be a sound company with a firm economic footing and good overall prospects. The company is backed by a large reputable parent (Canadian Pacific Ltd.), has a strong mining and metals position worldwide, and is well diversified across several broad markets. It also reportedly has excellent managers who evidently are orienting the company towards more conservative spending policies and stronger earnings performance. In these respects, Cominco Ltd. appears able to provide a solid corporate base for development and support of the Red Dog Mine project.

FOOTNOTES

1 Standard & Poor's Corporation, Standard ASE Stock Reports, Vol. 18, No. 66, Sec. 11, August 18, 1983; p. 7541.

2 Ibid.

3 Canadian Mines Handbook, 1982-83; p. 88.

4 Dun & Bradstreet Canada Ltd., Business Information Report, May 2, 1983; p.2.

5 Cominco Ltd., ORBIT: The Cominco Quarterly, June, 1983; p.18.

6 Dun & Bradstreet, op. cit.; p. 3.

7 Ibid.; pp. 1-3.

8 Cominco Ltd., op. cit.; p. 17.

9 Dun & Bradstreet Canada Ltd., Business Information Report, August 18, 1983; p. 1.

10 Cominco Ltd., op. cit. p. 2.

B. CORPORATE PROFILE OF NANA REGIONAL CORPORATION, INC.

This corporate profile describes the operations and relationships of NANA Regional Corporation, Inc., which has joined with Cominco-American, Inc., to develop the Red Dog Mine near Kotzebue.

1. BACKGROUND

NANA Regional Corporation, Inc. (NANA), is one of twelve Alaska Native regional corporations which were formed under the Alaska Native Claims Settlement Act of 1971. (A thirteenth corporation was also formed for Alaska Natives no longer residing in the State.) Company records indicate that NANA represents some 4,800 Inupiaq shareholders, [1] of whom some 4,000 or more reside in the NANA Region.[2]

The Alaska Native Claims Settlement Act of 1971 (ANCSA) provides that the regional corporations formed under it are to share jointly a settlement comprising $962.5 million in cash and 40 million acres of land; the former is distributed through the Alaska Native Fund, and the latter through federal government land conveyances. As of June of 1983, NANA had received approximately $46.3 million as its cash settlement, and interim conveyance of 945,469 acres of surface estate and 766,816 acres of subsurface estate. NANA's total land entitlement under the terms of ANCSA is approximately 1.9 million acres of land including both surface and subsurface estates, and title to subsurface estate rights only on approximately 365,000 additional acres. [3]

ANCSA provisions also govern the division of NANA's stockholders into two groups, based on village or regional affiliation. The corporation's stockholders accordingly are divided into those enrolled as residents of one of the eleven NANA Region villages (Class A common stockholders), and those enrolled as NANA Region residents but not as residents of any particular village (Class B common stockholders). Under the Act's terms, NANA is required to issue 100 shares of the appropriate class of stock to

each Native enrolled in the Region.[4] The Corporation's stock generally cannot be sold or otherwise transferred except by death beneficiary until 1991, also under ANCSA provisions.

A final major ANCSA requirement[5] is that a part of NANA's resource earnings must be pooled with those of the other regional corporations similarly created and then redistributed among all twelve corporations serving resident shareholders. Under this requirement, 70% of the net revenues received by NANA from development of its timber resources and subsurface estate (notably, mineral resources) enter the pool. These are then distributed proportionally to the twelve corporations, including NANA, based on the number of shareholders enrolled in each corporation. Of the amount that NANA receives from this distribution, 50% is required under ANCSA to be distributed proportionally to nonvillage stockholders and the village corporations within NANA's designated boundaries.[6]

2. CORPORATE STRUCTURE AND BUSINESS OPERATIONS

The corporate activities of NANA comprise both non-profit and profit-oriented operations. Non-profit activities include a variety of Native culture, education, and vocational development programs. The profit-oriented side of NANA is centered in the company's single, wholly owned operating subsidiary, NANA Development Corporation, Inc.

NANA Development Corporation, Inc., is the focus for NANA's several joint venture projects and has six separately incorporated subsidiaries. These include NANA Oil Field Services (provides housing for oil field personnel at Prudhoe Bay), Arctic Utilities (supplies electrical power generation for Prudhoe Bay operations and camps), and Purcell Services (provides industrial security systems for Sohio at Prudhoe Bay). A fourth division, NANA Construction Company, Inc., was discontinued during 1982 due to losses.

NANA's operating divisions and joint ventures, as described in the company's financial report for the year ending June 30, 1983 (YE1983),

included the following: (percentage figures indicate extent of NANA ownership, where given)

* 2 Reindeer Breeding Companies (100%, 20%)

* Bank Holding Company (11% in YE1983, 17% in YE 1982)

* Oil drilling and lease partnership with Sohio and four other Native regional corporations, Beaufort Sea

* Jade Mining and Exploration

* Surveying and Engineering Services, with Bell Herring Associates of Anchorage

* NANA Mannings (food service and camp operations)

* NANA Coates (minerals exploration and drilling)

* Lease for oil exploration on NANA lands

* Vehicle maintenance venture

* Nul-Luk-Vik Hotel (Kotzebue)

* Construction joint venture at Prudhoe Bay, with Morrison-Knudsen, Inc. (on a job-by-job basis)

* Red Dog Mine development project

NANA's published annual reports for prior years (i.e., the years ending at June 30 for 1980-1982) provide little additional information regarding the company's holdings, investments and joint ventures. The only reasonable conclusions which can be formed on the basis of these documents are: (a) many different ventures have been undertaken in the past four years, most of which were generally similar in nature to those

listed above; and, (b) most of the ventures suggest a placement of company resources intended to achieve long-term employment benefits to NANA shareholders and other regional residents.

It is not possible to provide an accurate summary of the performance or contributions of NANA's business operations (or joint ventures) over the past few years, as the amounts shown in the company's financial statements have been reclassified in each of the two most recent years (YE1983 and YE1982). NANA's financial report for YE1983, however, does allow comparison by broad line of business for the past two corporate fiscal years. This comparison indicates that NANA's oil field and support services have by far contributed most to NANA's earnings from joint ventures (99% of all joint venture earnings in YE1983, and 73% of all joint venture earnings over the past two fiscal years). (See Table B-1) Among NANA's continuing operations, the greatest contributors to overall operating revenues both in YE1983 and over the past two fiscal years have been NANA's camp and hotels (23.7% in YE1983 and 23.3% over the past two years) and the company's contracted services operations (23.6% in YE1983 and 21.0% over the past two years).

TABLE B-1

NANA JOINT VENTURES
EARNINGS (LOSS) SUMMARY BY LINE OF BUSINESS
YEARS ENDING JUNE 30, 1983 and 1982

	YE 1983		YE 1982		
	Earnings (Loss)	%	Earnings (Loss)	%	Two-Year Contribution (%)
Oilfield & Support Services	$1,788,373	99.7%	$975,883	49.2%	73.2%
Construction	212,779	11.9	952,767	48.1	30.9
Surveying	62,126	3.5	9,183	0.5	1.9
Sales	(402,378)	(22.4)	(144,808)	(7.3)	(14.5)
Catering	133,916	7.5	189,421	9.6	8.6
Total Earnings (Loss):	$1,794,816	100.2%*	$1,982,446	100.1%*	100.1%*

*Does not total due to rounding

Source: Based on data from NANA Regional Corporation, Consolidated Financial Statements: June 30, 1983 and 1982, September 30, 1983.

3 FINANCIAL STRUCTURE

a. Assets and Net Worth

As of June 30, 1983, the consolidated assets of NANA totaled approximately $68.7 million. The greatest portion (36.9%) of these assets were investments and marketable securities, with more than two-thirds of the latter (approximately$8.0 million of a total $11.7 million) representing the purchase costs of common and preferred stocks. NANA's combined property and equipment holdings represented another 24.1% of total assets, while its current assets stood at approximately $17.4 million, or 25.2% of total assets. NANA's joint ventures had a combined asset value to the company of some $9.06 million (13.2% of total assets), representing the combined equity allocable to NANA from those ventures. (See Table B-2)

TABLE B-2

NANA REGIONAL CORPORATION, INC.
AND SUBSIDIARY

Consolidated Balance Sheets

June 30, 1983 and 1982

Assets	1983	1982
Current assets:		
Cash and temporary investments	$ 2,388,705	$ 2,748,878
Current portion of notes receivable	7,753,487	8,149,697
Receivables	5,114,907	7,106,099
Inventories	1,843,702	2,218,290
Other current assets	328,366	370,682
Total current assets	17,429,167	20,593,646
Note receivable	7,258,430	7,679,029
Investment in Beaufort Sea lease partnership	2,467,542	2,237,225
Marketable securities	11,715,201	9,359,468
Investment in bank holding company	2,103,614	2,103,614
Investment in joint ventures	9,058,137	5,947,541
Raw jade at processing plant	657,470	597,488
Property and equipment, at cost	25,808,506	25,200,941
Less accumulated depreciation	9,223,976	8,000,842
Net property and equipment	16,584,530	17,200,099
Other assets, less amortization of $110,695 in 1983 and $63,821 in 1982	1,446,972	1,886,023
	$68,721,023	$67,604,133

TABLE B-2
(Continued)

Liabilities and Stockholders' Equity	1983	1982
Current liabilities:		
Note payable	$ 11,578,000	$ 12,933,881
Current installments of long-term debt	858,263	846,314
Trade payables	2,097,748	4,270,441
Accrued payroll and other liabilities	2,032,119	2,048,068
Due to village corporation and at large stockholders	78,868	84,956
Resource revenues distributable to others	732,868	--
Total current liabilities	17,377,866	20,183,660
Long-term debt, excluding current installments	2,412,208	2,751,262
Deferred income taxes	60,000	--
Stockholders' equity: Class A common stock of $.01 par value. Authorized 2,000,000 shares; issued and outstanding 704,700 shares	7,047	7,047
Class B common stock of $.01 par value. Authorized 500,000 shares; issued and outstanding 29,400 shares	294	294
Additional paid-in capital - Alaska Native Fund distributions	43,582,871	43,582,871
Retained earnings	5,280,777	2,248,735
Unrealized loss on marketable equity securities	--	(1,169,736)
Total stockholders' equity	48,870,989	44,669,211
Commitments and contingencies		
	$68,721,063	$67,604,133

Source: NANA Regional Corporation, Inc. Consolidated Financial Statements: June 30, 1983 and 1982.

It is not currently possible to estimate NANA's actual net worth, because the company has not ascribed a value to its land rights (surface and subsurface). Also, neither its Class A common stock nor its Class B common stock can be assigned market value until at least 1991 (the earliest time when NANA's shares can be generally sold or transferred, under the terms of ANCSA). NANA's common stock is currently assigned a par value of $0.01 per share, with a total of 734,100 shares outstanding from a total of 2.5 million shares authorized. The company did report some $5.3 million in retained earnings during YE1983 (up 135% from the previous year), however, and showed a total of approximately $43.6 million in paid-in capital from Alaska Native Fund distributions.

b. Capitalization

A true statement of value of NANA's overall capitalization cannot be made, again due the fact that the company's outstanding common stock will not have a meaningful market value until at least 1991. Excluding NANA's shareholder equity and the value of NANA's overall minerals holdings, however, it can be said that NANA's reported capitalization as of YE1983 totaled approximately $7.8 million. This total comprised approximately $2.4 million in long-term debt outstanding (current portion excluded), retained earnings of approximately $5.3 million, and some $60,000 in deferred income taxes.

It would be difficult at best to say whether NANA's YE1983 debt level represents a large or small amount of debt for the company to be carrying. The current artificial value of NANA's shares, and the absence of a meaningful basis for comparing NANA with other corporate entities, combine to make any such assessment necessarily speculative at the present time.

Given NANA's current inability to raise additional share capital before 1991, it is to be expected that the company's capital structure should consist primarily of long-term notes payable. NANA's non-current long-term debt outstanding of approximately $2.4 million at YE1983, in fact, consisted entirely of such notes, carrying interest rates ranging

from 7-1/2% to 18% and payable primarily to financial institutions. Approximately 77% of NANA's total long-term debt (including the current portion) was secured by property and equipment holdings with a combined depreciated cost (sic) of approximately $6.3 million.

c. Liquidity

The company's current ratio (current assets to current liabilities) at YE1983 was 1.003, while its quick ratio (current assets less inventory to current liabilities) was 0.897. The company's YE1983 statements also show a cash ratio (cash plus short-term investments to current liabilities) of 0.137. NANA did, however, have an unused line of credit at YE1983 for approximately $4.9 million.

The financial ratios for NANA indicated above are correct as taken from NANA's financial statements. It should be noted, however, that the company is currently in the process of converting some of its short-term debt (notes payable) into longterm debt. This should improve the company's liquidity in the future, particularly over the short run.

d. Earnings

Two conclusions regarding earnings are immediately clear from NANA's consolidated earning statements. One is that the company's overall net income and earnings per share have risen steadily over the last eight corporate years (and ahead of overall revenue increases), particularly since YE1981. The second is that the most recent year, YE1983, was NANA's most profitable year ever, showing corporate net income up by 147% over the company's previous best year in YE1981. (See Table B-3.)

TABLE B-3

NANA REGIONAL CORPORATION, INC.
EARNINGS SUMMARY
YEAR ENDING AT JUNE 30, 1976-1983

	1983	1982	1981	1980	1979	1978	1977	1976
Revenues [1]	30.69 [2]	54.38	43.47	19.72	31.44	27.69	30.34	26.77
Net Income [1]	3.95	1.32	1.60	0.21	0.64	0.48	0.38	0.16
Assets [1]	68.72	67.60	64.94	66.77	59.14	61.84	58.31	26.94
Stockholders' Equity	48.87	44.67	44.75	43.97	45.20	44.93	44.57	12.08
Earnings per share	$5.38	$1.80	$2.18	$0.28	$0.87	$0.67	$0.53	$0.21
Dividends paid per share	$1.50	$1.25	$0.75	$0.75	$0.50	-	-	-

[1] Figures shown are in $ millions.

[2] Revenues from continuing operations only.

Source: Compiled from NANA Regional Corporation, Inc. published Annual Reports.

Overall net earnings for NANA during YE1983 were approximately $3.95 million, based on operating revenues totaling some $30.68 million. The company's major sources of income beyond operating revenues included approximately $2.25 million in interest income, $988 thousand in resource revenues received from other regions under ANCSA, and a $380 thousand tax benefit representing a net operating loss carry forward from the year before.

Regarding NANA's joint venture operations, the company earned a total of $1.79 million on revenues of $117 million in YE 1983. This represents NANA's total allocable share of earnings across all of its joint ventures, based on the company's combined equity investments of approximately $9.06 million.

e. Sources and Uses of Funds

Analysis of the sources and uses of NANA corporate funds over the past four years, based on the company's balance sheets for the period YE1980-YE1983, primarily shows two general trends. One, already described, is the steady expansion of NANA's overall base of operations (including assets, revenues and profits) as company activities increased. The second, which appears to indicate an emerging priority of the corporation, is the increasing proportion of corporate resources devoted to the sponsorship of joint ventures. Specifically, from YE1979 through YE1983, NANA increased its commitment to joint ventures from approximately $2.6 million to $9.06 million, representing an increase in the proportion of total corporate assets pledged to such ventures from some 4.4% in YE1979 to over 13% during YE1983. (See Table B-4)

TABLE B-4

NANA REGIONAL CORPORATION, INC.
JOINT VENTURE INVESTMENTS, 1979-1983

Year Ending June 30:	Joint Venture Investments	Total Assets	Per cent of Total Assets
1979	$2,624,354	$59,139,664	4.4%
1980	3,653,895	66,768,938	5.5
1981	4,311,939	64,939,741	6.6
1982	5,947,541	67,604,133	8.8
1983	9,058,137	68,721,063	13.2

Source: Office of Management and Budget, State of Alaska
(based on NANA Regional Corporation, Inc.,
Annual Reports, 1980-1983.)

CONCLUSION

Overall, NANA appears to be a solvent and increasingly profitable corporation. Its growing involvement in joint business ventures within the northwest Alaska area indicates a marked attempt to provide both general economic and long-term employment benefits to residents of the region. NANA's participation with Cominco-American, Inc., to develop the Red Dog Mine appears in these respects consistent with the purposes and past activities of the corporation.

FOOTNOTES

1 NANA Regional Corporation, Inc., NANA Regional Corporation Inc., and Subsidiary Consolidated Financial Statements: June 30, 1983 and 1982: September 30, 1983. (Hereafter cited as NANA Financial Statements.) Estimate of shareholders based on comparison of stockholders equity data shown in consolidated balance sheets with information given in Note (1) of consolidated statements.

2 Based on 1980 U.S. Census data and Alaska Department of Community and Regional Affairs 1983 population estimates for the NANA Region.

3 Figures for cash and land distribution and entitlements are from NANA Financial Statements, Note (1).

4 NANA Financial Statements, Note (1).

5 Public Law 92-203, Alaska Native Claims Settlement Act of 1971, Sections No. 7(i), (j).

6 NANA Financial Statements, Note (1).

7 Consolidated Statement of Earnings, NANA Financial Statements.

C. DIRECT AND INDIRECT ECONOMIC IMPACTS WITHIN THE STATE OF ALASKA

INTRODUCTION

This analysis estimates the direct and indirect economic impacts which are likely to occur within Alaska due to the development of the Red Dog Mine, located in northwest Alaska near Kotzebue.

1. PRINCIPAL ASSUMPTIONS

The principal characteristic of the Red Dog Mine project is that its scope and scale, as a whole, depend on the successful merging of the joint goals of Cominco-American, Inc. (Cominco), and the NANA Regional Corporation, Inc. (NANA). It is important to note in this regard that these parameters, the project's ultimate scope and scale, are not fixed at the present time. According to the project sponsors, these items will be fixed only after a joint agreement is reached between Cominco and NANA regarding the project's feasibility. The sponsors expect this agreement to be reached within the next several months.

Until agreement is reached, it appears that NANA will have a greater influence than Cominco in determining the ultimate size of the mining operation and its attendant work force.[1] NANA specifically sought this provision in its contractual agreement with Cominco, for two reasons.[2] One was to guarantee that the project could not become so large that its work force requirements might result in the employment of an excessive number of people from outside of the NANA region. The other reason was to allow NANA to attain its primary goal in supporting the project, which is to extend the project's employment benefits over the longest time possible by avoiding rapid depletion of the Red Dog Mine resources.[3]

In view of this arrangement, it seems reasonable to assume that the pace and scale at which Red Dog Mine development is set (in the future feasibility agreement) will be highly subject to NANA's perceptions

between now and then as to how well the project appears to be meeting NANA's expectations and long-term objectives. It is worth noting that this is quite different from a conventional business arrangement, where market and profit considerations normally are paramount. In the present case, however, the determining factors for NANA would appear to be considerations such as: (a) the extent to which vocational training efforts are likely to be successful in increasing regional residents' participation in the mine work force, both in terms of the number of NANA-region residents employed at the mine, as well as in terms of the number and type of higher-paying positions obtained; (b) the extent to which regional residents' employment at the mine appears likely to mesh acceptably with established regional subsistence patterns and lifestyles; (c) the extent to which adverse social and economic impacts deriving from the project are likely to be mitigated or avoided within the region; and, (d) the extent to which NANA's general long-term goals are likely to be accommodated by an agreement on project scope and scale which, once set, will become binding.

If NANA perceives that these concerns are likely to be met, it would seem reasonable to assume that the feasibility agreement between NANA and Cominco will set Red Dog Mine operations generally at the scale and along the timeframes projected currently by Cominco. Should there be any perception, however, that these concerns may be addressed in anything but the most successful fashion, it would seem equally reasonable to assume that development of the project may entail both a smaller scale and a more elongated timeframe than is currently projected. It is thus worth emphasizing that, at the present time, there is no firm basis for assuming that everything will go exactly as planned or hoped by NANA and Cominco--i.e., that the most successful scenario should be assumed.

In view of this, prudence would seem to require taking a somewhat conservative view of the project's scale over the long term. This analysis, consequently, assumes that Cominco's projection of total mine employment at 420 full-time equivalent (FTE) jobs is optimistic, and that a

range of 350-400 FTE jobs over the life of the mine incorporates more reasonably the uncertainties described above.

A similar prudence would also seem to require acknowledging that, because there are no employment guarantees in the sponsors' contractual agreement, no adequate basis is available at present for assuming a maximum participation rate for NANA regional residents in the project's long-term work force. On this basis, therefore, the analysis assumes that regional residents are unlikely to obtain less than 50% of the total FTE mine jobs available over the life of the mine, and are likely to obtain a reasonable maximum of approximately 75% (with an indeterminate but limited probability that their participation rate might become higher over the years.

2. EMPLOYMENT

Direct employment associated with the Red Dog project will comprise the total number of jobs at the mine site, as well as eight company jobs available at the project's accounting and data processing office in Anchorage. Additional jobs will be created through the indirect employment effects of company expenditures for services and supplies, and of mine employees' spending when off site. Secondary employment, in turn, will be created through the expenditures of the employees (and their families) who take these indirectly created new jobs, the mine jobs, and the mine office jobs in Anchorage.

a. Direct Employment (Annual)

Employment at the Red Dog Mine site is planned to occur in three phases. The construction phase (including related pre-construction activities) is scheduled for the period July 1, 1985, to December 31, 1987. The initial production phase begins at start-up of the mine's operations on or about January 1, 1988, and is planned to continue through December 31, 1992. A full production phase starting on or about January 1, 1993,

is thereafter planned as a steady-state operation continuing throughout the mine's estimated life of forty years.

In view of the preponderance of the full production phase (35 of the 40 years) in determining the economic benefits of the mine, this analysis focuses only on the Construction Phase (CP) and the Full Production Phase (FPP). (The fact that the weighted average for total employment over the forty years is within five jobs of Cominco's estimate of the full production phase total employment level confirms that this approach is reasonable.)

Cominco estimates that construction of the mine will provide 10-250 jobs at varying points within the Construction Phase. Inspection of Cominco's project charts shows that the manpower projections and timeframes underlying this range represent 143 full time equivalent (FTE) jobs for the period. Since this appears reasonable, and as no other estimates have been made, 143 jobs has been accepted as the total employment during this phase.

Three estimates have been used for the likely NANA-region resident participation rate in the Construction Phase work force: 33%, 43% and 45%.[4] Since two of them appear to be Cominco estimates, and the third an extrapolation therefrom, none is viewed as superior. Consequently, this analysis assumes that the average of the three estimates, or approximately 40%, represents the proportion of the Construction Phase jobs that will be obtained by NANA-region residents.

Cominco estimates that the mine's accounting and data processing office in Anchorage will employ eight people during the Full Production Phase of the mine's life. These include a controller, paymaster-senior accounting clerk, accountant, purchasing agent, buyer-expediter, data processing supervisor, data entry clerk, and clerk typist. This estimate of eight employees has been accepted in the analysis.

range of 350-400 FTE jobs over the life of the mine incorporates more reasonably the uncertainties described above.

A similar prudence would also seem to require acknowledging that, because there are no employment guarantees in the sponsors' contractual agreement, no adequate basis is available at present for assuming a maximum participation rate for NANA regional residents in the project's long-term work force. On this basis, therefore, the analysis assumes that regional residents are unlikely to obtain less than 50% of the total FTE mine jobs available over the life of the mine, and are likely to obtain a reasonable maximum of approximately 75% (with an indeterminate but limited probability that their participation rate might become higher over the years.

2. EMPLOYMENT

Direct employment associated with the Red Dog project will comprise the total number of jobs at the mine site, as well as eight company jobs available at the project's accounting and data processing office in Anchorage. Additional jobs will be created through the indirect employment effects of company expenditures for services and supplies, and of mine employees' spending when off site. Secondary employment, in turn, will be created through the expenditures of the employees (and their families) who take these indirectly created new jobs, the mine jobs, and the mine office jobs in Anchorage.

a. Direct Employment (Annual)

Employment at the Red Dog Mine site is planned to occur in three phases. The construction phase (including related pre-construction activities) is scheduled for the period July 1, 1985, to December 31, 1987. The initial production phase begins at start-up of the mine's operations on or about January 1, 1988, and is planned to continue through December 31, 1992. A full production phase starting on or about January 1, 1993,

is thereafter planned as a steady-state operation continuing throughout the mine's estimated life of forty years.

In view of the preponderance of the full production phase (35 of the 40 years) in determining the economic benefits of the mine, this analysis focuses only on the Construction Phase (CP) and the Full Production Phase (FPP). (The fact that the weighted average for total employment over the forty years is within five jobs of Cominco's estimate of the full production phase total employment level confirms that this approach is reasonable.)

Cominco estimates that construction of the mine will provide 10-250 jobs at varying points within the Construction Phase. Inspection of Cominco's project charts shows that the manpower projections and timeframes underlying this range represent 143 full time equivalent (FTE) jobs for the period. Since this appears reasonable, and as no other estimates have been made, 143 jobs has been accepted as the total employment during this phase.

Three estimates have been used for the likely NANA-region resident participation rate in the Construction Phase work force: 33%, 43% and 45%.[4] Since two of them appear to be Cominco estimates, and the third an extrapolation therefrom, none is viewed as superior. Consequently, this analysis assumes that the average of the three estimates, or approximately 40%, represents the proportion of the Construction Phase jobs that will be obtained by NANA-region residents.

Cominco estimates th' . the mine's accounting and data processing office in Anchorage will employ eight people during the Full Production Phase of the mine's life. These include a controller, paymaster-senior accounting clerk, accountant, purchasing agent, buyer-expediter, data processing supervisor, data entry clerk, and clerk typist. This estimate of eight employees has been accepted in the analysis.

The following assumptions govern the annual direct employment estimates made in this report:

(1) total mine employment during the Construction Phase (CP) of the project will be 143 jobs (FTE);

(2) approximately 40% of those jobs will go to NANA-region residents;

(3) total mine employment during the Full Production Phase (FPP) of the project will be between 350 and 400 jobs (FTE);

(4) approximately 50% to 75% of these jobs will go to NANA-region residents;

(5) NANA-region residents will receive mine jobs in direct proportion to their populational distribution within the region; i.e., 46% will be residents of Kotzebue and 54% will be residents of the other ten communities within the region, distributed on a pro rata basis;[5] and,

(6) during both phases of the mine operation, mine employees who are not NANA-region residents will comprise the following: 40% of them will be from the Anchorage area, 40% of them will be from other parts of Alaska, and 20% of them will be from outside Alaska. (Thus, during both phases, 10%-20% of the total mine work force will be from the Anchorage area, another 10%-20% of the total mine work force will be from other parts of Alaska, and 5%-10% of the total mine work force will be from outside of Alaska.) It is assumed that all of these out-of-state mine employees will move to the Anchorage area.

Based on these assumptions, the estimated direct annual employment from the Red Dog Mine project is shown in Table C-1, below. (See Table C-1.)

TABLE C-1

RED DOG MINE

ESTIMATED DIRECT ANNUAL EMPLOYMENT

	Participation Rate		Number of Jobs Per Phase (FTE)			
	CP%	FPP%	CP	FPP@350	FPP@400	Average of FPP Range Mid-Points
NANA Region	40%	50-75%	57	175-263	200-300	235
Anchorage**	24	10-20	35	35-70	40-80	56
Other Alaska	24	10-20	34	35-70	40-80	56
Out of State	12	5-10	17	17-35	20-40	28
TOTALS:	100%	100%	143	350	400	375

CP = Construction Phase
FPP = Full Production Phase (@ total work force level indicated)

* Kotzebue proportion of totals shown = 46%.
** Does not include personnel at financial office in Anchorage.

Source: Office of Management and Budget, State of Alaska

11/1368

Direct annual employment estimates for the Red Dog project during the Construction Phase (CP) can therefore be summarized as follows:

- total mine employment will be approximately 143 employees;
- approximately 57 NANA-region residents will be employed, 26 (46%) of whom probably will be from Kotzebue and 31 (54%) of whom probably will be village residents;
- approximately 69 residents of other locations in Alaska will be employed, 35 of whom probably will be from the Anchorage area; and,
- approximately 17 mine employees will be hired from outside of Alaska.

Direct annual employment estimates for the Red Dog project during the Full Production Phase (FPP) can therefore similarly be summarized as follows:

- total mine employment probably will range between 350-400 employees;
- approximately 235 NANA-region residents will be employed, 108 (46%) of whom probably will be from Kotzebue and 127 (54%) of whom probably will be village residents;
- approximately 112 residents of other locations in Alaska will be employed, 56 of whom probably will be from the Anchorage area;
- additionally, 8 employees will be hired at the project's financial office in Anchorage; and,
- approximately 28 mine employees will be hired from outside of Alaska.

b. Indirect and Secondary Employment (Annual)

Indirect and secondary employment will be generated in several different locations by the direct employment at the Red Dog Mine. The locations and causes of these additional jobs are summarized in Figure C-1 below. (See Figure C-1.)

Certain assumptions were used to estimate the magnitude and distribution of indirect and secondary employment from the mine. These assumptions include the following:

(1) mine employees who are not residents of the NANA Region will commute directly between the mine and Anchorage (as stipulated in the Cominco/NANA agreement), and therefore will not impact Kotzebue or the regional villages;

(2) regional-resident mine employees will be hired proportionately from locations within the NANA Region; i.e., 46% from Kotzebue, and 54% from the region's villages;

(3) 50% of the village-resident mine employees will each spend an average of $500 per month in Kotzebue for purchases and recreation;

(4) local residents will take 50% of all new jobs created locally by the mine's effects, except in NANA-Region villages where the percentage will be 75%;

(5) 50% of local residents hired for newly created local jobs will have been unemployed prior to hiring;

(6) within the NANA Region, residents hired for local jobs who were previously unemployed probably will not be replaced by unemployed in-migrants (i.e., there will be a tangible effect on local unemployment rates in the region);

FIGURE C-1

RED DOG MINE
INDIRECT AND SECONDARY EMPLOYMENT
SOURCES AND DISTRIBUTION

Location	Jobs: Indirect	Jobs: Secondary	Cause of Jobs
Kotzebue	X		spending of village-resident mine employees in Kotzebue during two weeks off from mine
		Y	spending of employees (and their families) who take new indirect jobs, above
		X	spending of Kotzebue-resident mine employees (and their families)
Villages		X	spending of village-resident mine employees and their families), adjusted for Kotzebue spending
Anchorage	X		Cominco expenditures for mine resupply
		X	spending of employees (and their families) who take new indirect jobs, above
		X	spending of 8 Cominco-office employees (and their families)
		X	spending of Anchorage-resident mine employees (and their families) including those hired from outside of Alaska who relocate to the Anchorage area
Other Alaska		X	spending of other Alaska mine employees (and their families) across the State
Out of State		X	spending of out of State employees (and their families) outside of Alaska

(7) outside the NANA Region, residents hired for local jobs who were previously unemployed probably will be replaced by unemployed in-migrants (i.e., there will be little or no effect on local unemployment rates);

(8) during both phases of the project, mine employees hired from outside of Alaska will move to the Anchorage area; only during the Full Production Phase, however, will their families accompany them.

(9) 25% of local residents' spending will go toward wages and salaries in generating new indirect jobs; for Cominco expenditures the percentage will be 50%; every $25,000 so generated will create one additional indirect job.

(10) job multipliers for the Construction Phase (CP) and the Full Production Phase (FPP) are assumed as follows:[6]

	CP	FPP
NANA Region	0.4	0.45
Anchorage	1.0	1.0
Other Alaska	0.5	0.5

(11) the statewide population multiplier is assumed to be 2.1 new residents per new employee hired.

On the basis of these assumptions, the number and distribution of jobs likely to be created by the project through indirect and secondary employment effects is estimated as shown in Table C-2, below. (See Table C-2.)

It should be noted that Table C-2 does not include any indirect or secondary employment effects resulting from Cominco annual supply

TABLE C-2

RED DOG MINE
ESTIMATED INDIRECT AND SECONDARY ANNUAL EMPLOYMENT
TOTAL NUMBER OF JOBS

	CP	FPP@350*	FPP@400*	Average of FPP Range Mid-Point
Kotzebue	12	40-60	46-69	54
Villages**	11	38-58	44-66	52
Anchorage***	52	60-113	68-128	92
Other AK.****	17	18-35	20-40	28
TOTALS:	92	156-266	178-303	226

CP = Construction Phase
FPP= Full Production Phase (@ total work force level indicated)

* Ranges shown indicate number of jobs if NANA proportion of total work force = 50% - 75%.

** Indirect and secondary job totals shown during FPP reflect a 9.4% reduction to offset spending in Kotzebue by 50% of village residents ($500 per month X 12 months X 0.5/$32,000 = 9.4%).

*** Includes 8 personnel at Cominco office in Anchorage during FPP.

**** Distributed across the State.

Source: Office of Management and Budget, State of Alaska

expenditures, as those expenditures have not been estimated by the company. (Under the NANA/Cominco agreement, long-term resupply for the mine will occur via the proposed port facility and short-term supplies will be purchased in Anchorage.) Under the assumptions made here, however, it can be estimated that every $1 million (1983 dollars) of annual Cominco expenditures made in Anchorage will create 20 indirect jobs and 20 secondary jobs, or a total of 40 new jobs in the Anchorage area.

Indirect and secondary employment effects within Alaska of the Red Dog Mine operation during the Construction Phase (CP) of the project can therefore be summarized as follows:

- total indirect and secondary employment generated in Alaska by the project will be approximately 92 jobs;
- approximately 23 (25%) of those jobs will be in the NANA Region, divided almost equally between Kotzebue and the other regional communities; and,
- approximately 69 (75%) of those jobs will be in other communities in Alaska, including 52 (57%) in the Anchorage area and 17 (18%) distributed among other Alaskan communities.

The indirect and secondary employment effects of the mine during the Full Production Phase (FPP) can therefore similarly be summarized as follows:

- total indirect and secondary employment generated in Alaska by the project will be approximately 226 jobs;
- approximately 106 (47%) of those jobs will be in the NANA Region, divided almost equally between Kotzebue and other regional communities;

- approximately 120 (53%) of those jobs will be in other communities in Alaska, including 92 (41%) in the Anchorage area and 28 (12%) distributed among other Alaskan communities; and,
- for every $1 million (in 1983 dollars) that Cominco spends in Anchorage to resupply the mine, approximately 40 additional indirect and secondary jobs will be created in the Anchorage area.

3. INCOME

Direct income will be generated by the Red Dog Mine in the form of wages and salaries paid by Cominco to the mine employees. The indirect and secondary jobs created by the project also will generate new income, in the form of wages and salaries received by the employees who take those new jobs. This section of the report estimates the magnitude and distribution of these new income gains within the State of Alaska.

a. Direct Income (Annual)

Cominco originally estimated that it would pay mine employees through annual gross payrolls of approximately $23 million in 1983 dollars during the mine's Construction Phase (CP) and $13.5 million in 1983 dollars during the Full Production Phase (FPP). Later, Cominco apparently revised its total work force estimate for the project; no revision was available, however, for the company's annual gross payroll estimate.

This analysis, consequently, estimates annual direct income on the basis of pro rata adjustments to Cominco's earlier payroll estimates, using the following assumptions:

(1) the average annual gross payroll for mine employees during the Construction Phase (CP) will be less than $23 million by an amount proportional to Cominco's revised (FTE) estimate of total

work force employment for this phase; therefore, average annual gross payroll for the phase will be approximately (143/372 X $23 million =) $8.84 million; and,

(2) the average annual gross payroll for mine employees during the Full Production Phase (FPP) will similarly be less than $13.5 million by an amount proportional to this analysis' estimate of total work force employment for this phase; therefore, average annual gross payroll for the phase will be approximately (350/420 X $13.5 million =) $11.25 million if the total work force is 350 employees, or approximately (400/420 X $13.5 million =) $12.86 million if the total work force is 400 employees.

Based on these assumptions, the direct annual income from the Red Dog Mine project (excluding the eight employees at the Company's financial office in Anchorage) is estimated as shown in Table C-3. (See Table C-3.)

Direct annual income estimates for the Red Dog project during the Construction Phase (CP) can therefore be summarized as follows:

- total annual direct income will be approximately $8.84 million in 1983 dollars;

- NANA-Region residents will receive approximately $3.54 million (40%) of this total, with approximately 46% ($1.63 million) of that going to Kotzebue residents and 54% ($1.91 million) to residents of other NANA Region communities;

- residents of other Alaskan communities will receive approximately $4.24 million (48%) of the $8.84 million, divided nearly equally between residents of the Anchorage area and residents of other communities in the State; and,

- mine employees hired from outside of Alaska will receive approximately $1.06 million (12%) of the total $8.84 million.

Direct annual income estimates for the mine's Full Production Phase (FPP) can therefore be similarly summarized as follows:

- total annual direct income will range between $11.25 million and $12.86 million in 1983 dollars (with a mid-point of $12.06 million);

  NANA-region residents will receive approximately $7.54 million (62.5%) of this total, with approximately 46% ($3.47 million) of that going to Kotzebue residents and 54% ($4.07 million) to residents of other NANA-Region communities;

- residents of other Alaskan communities will receive approximately $3.62 million (30%) of this total, divided nearly equally between residents of the Anchorage area and residents of other communities in the State;

- if the 8 employees at the mine's Anchorage office receive $35,000 per year, this would represent an additional $280,000 in direct annual income for residents of the Anchorage area; and,

- mine employees hired from outside of Alaska will receive approximately $900,000 (7.5%) of the total annual direct income generated by the mine.

TABLE C-3

RED DOG MINE
ESTIMATED DIRECT ANNUAL INCOME
(Millions--1983 Dollars)

	Participation Rate					
	CP%	FPP%	CP	FPP@350	FPP@ 400	Average of FPP Range Mid-Points
NANA Region*	40%	50-75%	$3.54	$5.63-8.44	$6.43-9.65	$ 7.54
Anchorage**	24	10-20	2.12	1.13-2.25	1.29-2.57	1.81
Other Alaska	24	10-20	2.12	1.12-2.25	1.29-2.57	1.81
Out of State ***	12	5-10	1.06	0.56-1.12	0.64-1.29	0.90
TOTALS:	100%	100%	$8.84	$ 11.25	$ 12.86	$12.06
Average Annual Earnings Per Job:			$62,000	$32,000	$32,000	$32,000

CP = Construction Phase
FFP = Full Production Phase (@ total work force level indicated)

* Kotzebue Proportion of total shown = 46%.
** Does not include personnel at financial office in Anchorage.

*** Out of state employees who relocate to the Anchorage area.

Source: Office of Management and Budget, State of Alaska

11/1368

b. Indirect and Secondary Employment Income (Annual)

There is no convenient way to estimate the different wage levels and salaries received by Alaska employees in the various service and support industries. The annual income from the indirect and secondary jobs created in Alaska by the Red Dog Project has therefore been estimated on the basis of a fixed $25,000 per year for each such job created. The magnitude and distribution of these estimated income gains is shown in Table C-4. (See table C-4.)

TABLE C-4

RED DOG MINE
ESTIMATED ANNUAL INCOME
FROM INDIRECT AND SECONDARY EMPLOYMENT
(Millions--1983 Dollars)

	Jobs* During CP	Annual Income @$25K/Job	Jobs* During FPP (Avg.)	Annual Income @$25K/Job
Kotzebue	12	$ 0.3	54	$ 1.35
Villages	11	0.275	52	1.30
Anchorage**	52	1.30	92	2.30
Other AK***	17	0.425	28	0.70
TOTALS:	92	$ 2.30	226	$5.65

CP = Construction Phase
FPP = Full Production Phase (@ total work force of 350-400 employees)

* From Table C-2.
** Includes 8 personnel at Anchorage financial office.
*** Distributed across the State.

Source: Office of Management and Budget, State of Alaska

4. UNEMPLOYMENT IMPACTS

The Red Dog Mine project is expected to have a substantial effect on unemployment within the NANA region, due to the jobs made available through employment at the mine site. While the number of jobs likely to be obtained by regional residents can be estimated, however,it is not so clear what the effects of those jobs may mean in terms of regional unemployment levels. Many unemployed regional residents may be available for work, for example, but do not appear on the State's unemployment rolls. Also, some unemployed regional residents simply do not seek conventional forms of employment, preferring instead a traditional subsistence lifestyle. Identifying an overall regional "unemployment level" which would be "reduced" by the direct employment at the mine site, consequently, is complicated by the existence of these two groups of people. For this reason, and because of the time constraints surrounding preparation of this report, no estimate has been made of the unemployment impacts likely to be caused by the project's direct employment effects, other than to acknowledge that those impacts will likely be important. Given the assumptions made earlier, however, it is possible to estimate the unemployment impacts likely to occur because of the project's indirect and secondary employment effects.

Based on the assumptions made in Section "b." of this part of the report ("Indirect and Secondary Employment"), estimates have been made of the number and distribution of net unemployment reductions caused within Alaska by the indirect and secondary employment effects of Red Dog Project hiring. These estimates, representing numbers of local residents hired who previously were unemployed, are shown in Table C-5. (See Table C-5.)

TABLE C-5

RED DOG MINE
NET UNEMPLOYMENT REDUCTIONS
THROUGH INDIRECT AND SECONDARY EMPLOYMENT

	Number of Previously Unemployed Residents Hired During:			
	CP	FPP@350	FPP@400	Average FPP Range Mid-Points
Kotzebue	5	14-21	17-25	19
Villages	7	24-35	28-41	32
Anchorage*	19	21-39	24-43	32
Other AK	7	7-13	8-14	10
TOTALS:	38	66-108	77-123	93

CP = Construction Phase
FPP = Full Production Phase (@ total work force level indicated)

* Includes 8 personnel at Anchorage Office.

Source: Office of Management and Budget, State of Alaska

11/1368

It should be noted that every $1 million spent by Cominco in Anchorage for short-term resupply of the mine is estimated to result in the hiring of an additional 14 Anchorage area residents (net) who previously were unemployed.

5. POPULATION IMPACTS

Because of the "enclave" nature of the Red Dog Mine project, population increases within the NANA region currently are expected to be limited to approximately 5%. The project sponsors also intend to emphasize the project's local hire aspect in their recruiting advertisements, which should further help to contain regional population growth. If regional population gains due to the project's direct employment effects were only 5%, however, this still would represent approximately 275 new residents in the region (5,500 population x .05), with roughly half of that growth likely to occur in Kotzebue and half in the region's other community.

Based on the assumptions made in Section "b." of this part of the report ("Indirect and Secondary Employment"), estimates have been made of the net increases in local populations caused within Alaska by the indirect and secondary employment effects of the Red Dog project. These estimates, which include net population increases due to new employees and their families, are shown in Table C-6. (See Table C-6.)

It should be noted that every $1 million spent by Cominco in Anchorage for short-term resupply of the mine is estimated to increase the Anchorage area population by an additional 55 people (net).

TABLE C-6

RED DOG MINE
NET LOCAL POPULATION INCREASES
DUE TO INDIRECT AND SECONDARY EMPLOYMENT

Net Population Gains During:

	CP	FPP@350	FPP@400	Average FPP Range Mid-Points
Kotzebue	15	55-82	61-92	72
Villages	8	29-48	38-52	42
Anchorage*	70	82-156	93-179	128
Other AK	21	23-46	25-55	36
TOTALS:	114	189-332	217-378	278

CP = Construction Phase
FPP = Full Production Phase (@ total work force level indicated)

* Includes 8 personnel at Anchorage Office.

Source: Office of Management and Budget, State of Alaska

6. REGIONAL SAVINGS IN SHIPPING COSTS

The sponsors of the Red Dog Mine project propose to use their ore-concentrate vessels to back-haul supplies of fuel and cargo to the NANA Region. These supplies would be lightered from the proposed port facility West of Noatak to Kotzebue, and then distributed to Kotzebue residents and to residents of other communities in the region. Execution of this operation would entail supplanting the shipping operation which currently provides this service to Kotzebue and regional residents, according to the project sponsors.

Cominco has estimated that this use of the port facility will save regional residents approximately $2.6 - $3.5 million a year in shipping costs, compared with the current method of shipping bulk cargo and fuel into the region. Such a level of savings would represent an annual savings of approximately $630 per regional resident, according to the estimate, or about 9% of the average regional resident's annual income.

Analysis shows this estimate to be reasonably made, although it does rest on several assumptions which are subject to change. One is that tax-exempt financing for the port facility can be obtained at 8% annual interest. A second is that no overtime expenses are incurred regarding labor costs. A third is that land for the port facility can be leased or purchased for no cost, other than an estimated $7,000 per year for land disturbance expenses. A fourth is that cycle times for the port's operations will be maximally efficient and thus minimally expensive. A fifth is that shipping costs for bulk cargo and fuel will remain constant at present levels. A sixth is that the capital costs of the port facility itself will turn out to be as currently estimated.

Of these assumptions, only two could be assessed within the report's timeframe. These were the cost of tax-exempt financing, and the overtime cost for labor. After adjusting for these factors, however, and after correcting calculation errors in the estimate, only a slight difference from

the original estimate was found. As an "outside" case, for example, the estimate was tested using the following assumptions: a 12% annual interest rate for financing, an overtime labor expense equalling 30% of payroll (for those labor categories likely to be affected), and imposition of a 5% import duty on bulk fuel delivered from Canada. Under these assumptions, the total annual savings in regional shipping costs would be approximately $2.3 million per year. This would represent an annual savings of approximately $418 per resident, or roughly 6% of the average regional resident's annual income.

Allowing for the other assumptions made in the Cominco estimate, therefore, an estimate of roughly $2 - $3 million saved annually would seem to be reasonable at this point.

7. SUMMARY OF FINDINGS

The principal findings of this analysis address the economic impacts which can be expected during the projected 40-year life of the proposed Red Dog Mine. These findings, based on the assumptions made, have resulted in the following overall estimates:

- total long-term mine employment probably will range between 350 and 400 full-time jobs;
- NANA-Region residents probably will obtain 50%-75% of those jobs, or approximately 220-250 jobs, with the total divided evenly between Kotzebue residents and residents of other communities in the region;
- the project probably will generate approximately 225 indirect and secondary jobs, of which approximately half (106 jobs) will be obtained by NANA-Region residents;

- approximately 92 of the indirect and secondary jobs generated by the project will be obtained by Anchorage area residents, with another 28 such jobs distributed among other Alaskan communities;

- for every $1 million that Cominco spends on supplies in Anchorage, approximately 40 additional new jobs will be created in the Anchorage area;

- total direct income generated by the mine probably will range between $11-$13 million per year in 1983 dollars, with NANA-Region residents obtaining between $7-$8 million of the total;

- residents of other parts of Alaska probably will receive approximately a third (30%) of the $11-$13 million in total annual income, divided approximately evenly between Anchorage area residents and those of other Alaskan communities;

- indirect and secondary employment deriving from the mine's effects probably will produce some $5.7 million in total annual income, of which approximately half ($2.65 million) will be received by NANA-Region residents;

- the project's indirect and secondary employment effects will cause a modest drop in local unemployment levels, causing approximately 50 previously unemployed persons to be hired within the NANA Region and an additional 30-60 persons across the rest of the State; and,

- local population increases due to the mine project's indirect and secondary employment effects probably also will be modest, totaling approximately 280 new residents and dependents across the State, but may have significant local consequences within the NANA Region (e.g., approximately 70 new residents in Kotzebue).

FOOTNOTES

1 Letter from Don Argetsinger, Vice President of NANA Development Corporation, to John Sims, Director of the Office of Mineral Development, State of Alaska, Dated November 11, 1983.

2 Ibid.

3 Ibid.

4 Estimates are by Cominco-American, Inc., Alaska Department of Community and Regional Affairs, and Kevin Waring and Associates, respectively.

5 Based on 1982 regional population estimates made in 1983 by the Alaska Department of Labor from U.S. Census data. Estimate agrees with 1982 estimate made by the Department of Community and Regional Affairs in November, 1983.

6 Job multipliers shown for the NANA Region are averages of estimates made by Kevin Waring and Associates and the Alaska Department of Community and Regional Affairs in 1983.

D. FISCAL IMPACTS

INTRODUCTION

This analysis estimates the major fiscal impacts which the State of Alaska may experience as a result of the proposed Red Dog Mine project. The fiscal impacts estimated include the magnitude of tax revenues likely to be received by the State from the earnings and operations of the project, and the potential State expenditures for the project's infrastructure (an access road and a port facility). Other potential impacts noted include the effects of the project on the State's programming costs, and the effects of the project on local unemployment costs.

1. TAX IMPACTS

The principal State taxes applicable to the Red Dog operation, and therefore the greatest potential source of tax revenues to the State, are the mining license tax (MLT) and the corporate income tax (CIT). A third tax applicable to the project is the State's motor fuel tax (MFT), though it is not a major source of tax revenues for this particular project.

For an operation the size of the Red Dog project, the applicable mining license tax rate is $4,000 plus 7% of the taxpayer's net income in excess of $100,000. An exemption from tax payments is permitted for the first three and one-half years of a new mine's operation, as is a specific depletion allowance, depending on the particular resource being extracted. In the case of the Red Dog mine, which is primarily a zinc and lead mine with associated silver ore, the applicable depletion allowance appears to be 15% (AS 43.650.010(e)(2)).

The applicable corporate income tax rate for the Red Dog mine operation is $4,500 plus 9.4% of the taxpayer's taxable income over $90,000. While calculation of this tax appears straightforward enough,

however, a substantial complication arises in estimating corporate income tax payments because of the prolixities and uncertainties regarding the State's unitary tax formulas. (Alaska uses the traditional three-factor approach, which apportions a multi-state or multi-national corporation's sales, property values and salaries, and levys the tax on the proportion of those elements which are directly relatable to Alaska.) This is a particularly difficult constraint in the case of the Red Dog mine analysis, as the project sponsors have provided the only available estimate of their potential tax liability in Alaska, and this estimate has not been based on the unitary approach.

The State's motor fuel tax entails a levy of 2¢ per gallon for internal-combustion equipment which is used off-highway, and a levy of 8¢ per gallon for such equipment when used on roads. Because both the mining license tax and the corporate income tax are both net profits taxes, and therefore sensitive to taxpayers' reported earnings, a certain amount of uncertainty is involved in estimating future tax payments based on these instruments. In the case of the Red Dog operation, this necessitates a significant reliance on forecasts of future metals prices. This analysis, therefore, has used a range of 20-year average price forecasts for the Red Dog mine metals which has been provided by the Office of Minerals Development, Alaska Department of Commerce and Economic Development. These price forecasts, along with recent market prices for the Red Dog metals, are shown in Table D-1. (See Table D-1.)

Based on these forecasts, Cominco-American, Inc., has estimated that its annual tax amounts due to the State from the Red Dog Mine operation will be approximately as shown in Table D-2, below. (See Table D-2.)

TABLE D-1

PRINCIPAL METALS OF RED DOG MINE
TWENTY-YEAR AVERAGE PRICE FORECASTS

	Nov. 1983 Price (Appx.)	"Low" Avg. 20-Yr. Price	"Probable" Avg. 20-Yr. Price	"High" Avg. 20-Yr. Price
Zinc	49¢/lb.	55¢/lb.	60¢/lb	65¢/lb.
Lead	25¢/lb.	30¢/lb.	35¢/lb.	40¢/lb.
Silver	$9/Tr. oz.	$10/Tr. oz.	$18/Tr. oz.	$25/Tr. oz

Source: Department of Commerce and Economic Development, State of Alaska

11/1368

TABLE D-2

RED DOG MINE
COMINCO'S ESTIMATED AVERAGE ANNUAL TAX PAYMENTS
TO THE STATE*

(Millions--1983 Dollars)

Metal Price Forecast Scenario:	MLT	CIT	MFT	Average Total Taxes to State Per Year
"Low"	$4.09	$3.63	$0.13	$7.85
"Probable"	5.25	4.83	0.13	10.21
"High"	6.65	6.22	0.13	13.00

MLT=Mining License Tax
CIP=Corporate Income Tax
MFT=Motor Fuel Tax

*Over the first 20-25 years of the mine's life, approximately.

Source: Cominco-American, Inc. (Spokane, Washington)

As can be seen from Table D-2, Cominco-American, Inc., estimates that its tax payments to the State will average approximately $8 - $13 million per year (in 1983 dollars). Analysis of this estimate shows that the company's estimation procedure is consistent with current Alaska statues and provisions therein. Several factors should be kept in mind, however, as they will ultimately determine the actual amount of State taxes paid by Cominco-American. These include: (1) the State has not yet promulgated regulations regarding implementation of the mining license tax; (2) Cominco-American's tax estimates are based on a separate accounting method, whereas the method actually used could turn out to be the unitary tax basis; and (3) Cominco's corporate income tax liability was calculated without provision for any debt or interest costs in the base that are unrelated to a possible State loan.

A similar situation arises in attempting to assess the potential tax revenues which the State may receive from NANA Development Corporation (NANA) because of the project. Based on Cominco's projections of the royalties to be paid to NANA for the project, NANA's average annual tax payments to the State are estimated as shown in Table D-3, below. (See Table D-3.)

Table D-3 indicates that NANA may have a total State tax liability of approximately $1.4 - $3.2 million per year prior to 1991 (i.e., until its projected conversion from advance royalty payments from Cominco to net proceeds payments), and approximately $4 - $7 million per year thereafter, in 1983 dollars. In fact, NANA itself will pay a considerably lower amount of annual State taxes, as NANA representatives estimate that approximately 66% of NANA's total proceeds from the mine will be distributed to the other regional Native corporations in Alaska under section 7(i) and 7(j) of the Alaska Native Claims Settlement Act. The total amount of annual taxes received by the State should remain relatively unchanged, however, as State taxes on the distributed portion of NANA's proceeds should be recouped through tax payments from the other Native corporations.

TABLE D-3
NANA AVERAGE ANNUAL STATE TAX LIABILITY
BASED ON ROYALTIES RECEIVED

(Millions of 1983 Dollars)

	Average Annual Royalties	Average Annual CIT Due* (Begins In 1988)	Average Annual Net Proceeds Royalties	Average Annual MLT Due** (Begins In Mid-1991)	CIT and MLT Combined After 1991: Average Annual Taxes Due State During 1988-91	CIT and MLT Combined After 1991: Average Annual Taxes Due State After 1991
"Low"	$15.24	$1.43	$34.97	$2.44	$1.43	$3.87
"Probable"	25.11	2.36	48.57	3.39	2.36	5.75
"High"	33.78	3.18	58.88	4.12	3.18	7.30

CIT=Corporate Income Tax
MLT=Mining License Tax

*Payable on all royalties received over the life of the mine.
**Payable on all net proceeds royalties due (in addition to CIT).

Source: Office of Management and Budget, State of Alaska

11/1368

Several factors thus make assessment of the potential Red Dog Mine tax revenues somewhat uncertain at this point. The most important among these are the profit-based orientation of the two major tax instruments involved, the current absence of mining license tax regulations, and the as yet indeterminate effects of any unitary tax applications yet to come.

2. STATE INFRASTRUCTURE EXPENDITURES

Three financing scenarios have been discussed regarding possible State participation in the infrastructure costs for the Red Dog mine. One is the case where the State simply offers a flat grant in the amount of $135 million (1983 dollars) to build both the road ($83 million) and the port facility ($52 million). A second is the case where industrial development bond financing is provided for the project infrastructure, either through the Alaska Industrial Development Authority or through a regional resource development authority. A third is the case where the State extends a $135 million no-interest loan to Cominco for construction of the road and the port.

The first two cases require little elaboration, because the costs to the State are fairly clear. In the case of a direct grant, the cost to the State would be the full $135 million. In the case of revenue bonding, assuming the project would withstand the scrutiny of investors, the costs to the State would be limited to relatively small administrative costs incurred as handling costs for the bond issue.

The implications of a $135 million no-interest loan to Cominco, however, are not so clear. On the one hand, Cominco proposes to pay off the loan, yet still leave ownership of the road and port in the hands of the State. On the other hand, however, Cominco proposes that payback occur over a 20-year period which begins after a 10-year period

of deferred payments. The potential cost implications of this scenario for the State should not be overlooked. Specifically, depending on how the State chooses to define its opportunity cost of capital (e.g., between 8% and 12%), and assuming overnight construction costs, the payback to the State from such a loan could be worth approximately $16-$30 million in present value. This would represent a direct State cost of approximately $105-$119 million dollars.

Table D-4, below, shows the present value to the State of a $135 million no-interest loan offered with varying periods of deferred payments. Also shown are the related direct State costs involved. As can be seen from Table D-4, State costs are not sensitive to varying deferment periods, as even with no deferment the direct State cost ($68 million in 1983 dollars) is still approximately half the cost of the original loan, or more. (See Table D-4.)

Table D-5, below, shows a broader range of options for State lending assistance to the Red dog project, and the associated direct costs to the State. It can be seen from the table that various combinations of shortening the $135 million loan's deferment period, and charging Cominco an interest rate commensurate with the State's own cost of capital, could significantly reduce the State's cost. Additionally, it might be possible to equate annual loan repayment amounts with the sum of the annual direct benefits received from the project. This latter approach might at least provide a basis for determining the loan level (or terms) which the State would be willing to offer to Cominco and NANA. (See Table D-5.)

3 STATEWIDE PROGRAM COSTS

Time constraints have prevented analysis of the potential increases in State program costs which might result from the effects of the Red Dog Mine project. However, it is possible to estimate broadly the likely magnitude and distribution of net local population increases due to the project's indirect and secondary employment effects. These estimated local population gains have been estimated as follows:

* approximately 70 new people will move into the Kotzebue area;

* approximately 40 new people (total) will move into the other ten NANA region villages.

* approximately 125-130 new people will move into the Anchorage area;

* Cominco supply expenditures could cause additional population gains in the Anchorage area, at the rate of approximately 55 new residents per $1 million spent locally; and

* approximately 40 new people (total) will move into other communities across the State.

4. STATEWIDE UNEMPLOYMENT COSTS

Time constraints have prevented analysis of the potential decreases in State unemployment costs which might result from the effects of the Red Dog Mine project. However, it is possible to estimate broadly the magnitude and distribution of net local unemployment reductions due to the project's indirect and secondary employment effects. These reductions have been estimated as follows:

* approximately 20 previously unemployed residents of Kotzebue will gain employment;

* approximately 30 previously unemployed residents (total) of the NANA region's other communities will gain employment;

* approximately 30 such individuals in Anchorage will gain employment;

TABLE D-4

COST TO THE STATE

OF NO-INTEREST LOAN OF $135 MILLION

WITH VARYING PAYBACK PERIODS*

(Millions--1983 Dollars)

Payback Deferment Options	Present Value to State of Payback @ OCC =			Direct State Costs (-NPV) OCC =		
	8%	10%	12%	8%	10%	12%
10 Years	$30	$22	$16	$105	$113	$119
5 Years	45	35	28	90	100	107
No Deferment	67	58	51	68	77	84

OCC = Opportunity cost of capital for the State.
-NPV = Negative net present value.

* Loan is to be paid back in equal installments over a 20-year period, with different deferment periods as shown.

NB: Estimates based on overnight construction costs, (i.e., initial loan is made at a single point in time, after which the deferment period or repayment period begins).

Source: Office of Management and Budget, State of Alaska

11/1368

TABLE D-5

REPAYMENT OPTIONS AND STATE COSTS FOR $1[illegible]5 MILLION LOAN
(1983 Dollars, In Millions)

REPAYMENT OPTIONS:

Interest Rate	Deferment	PV OF Payback	Direct Costs To State
0%	10 yr	$16-30	$105-119
	5 yr	28-45	90-107
	none	51-67	68-84
5%	10 yr	25-48	87-110
	5 yr	45-72	63-90
	none	81-107	28-54
8%	10 yr	31-61	74-104
	5 yr	57-91	44-78
	none	103-135	0-32
10%	10 yr	36-71	64-99
	5 yr	66-105	30-69
	none	0-118	0-17
12%	10 yr	41-80	55-94
	5 yr	75-120	15-60
	none	0-135	-0-

Source: Office of Management and Budget, State of Alaska

11/1368

* Cominco supply expenditures could cause additional employment of previously unemployed persons in the Anchorage area, at the rate of approximately 14 unemployed persons hired per $1 million spent locally; and,

* Approximately 10 such individuals (total) will gain employment in other Alaska communities.

E. COMINCO/NANA CONTRACTUAL AGREEMENT

The agreement appears to contain no provisions which would alter this report's assessment of the fiscal and economic impacts of the project.

F. EFFECTS ON STATE BONDING CAPACITY

Industrial development bonding, either through the Alaska Industrial Development Authority or through a yet-to-be structured regional resource development authority, is the only bonding option which has been discussed seriously to date for financing the Red Dog Mine infrastructure (the access road or the port facility). This approach, if undertaken, would essentially require the project sponsors to pledge Red Dog Project revenues toward repayment of any revenue bond financing obtained. As such, this financing method would not be "affordable" to the State only to the extent that it:

(1) increased the State's borrowing costs on other bond issues;
(2) saturated the national market for Alaska bonds; or,
(3) diluted the strength of the State's so-called "moral obligation pledge". None of these outcomes are regarded as likely.

Assuming that the Red Dog Project will be viewed as economically feasible by market investors, therefore, industrial development bonding for the project infrastructure should not in itself adversely affect the State of Alaska's overall bonding capacity.

G. SYNOPSIS

This synopsis presents the major findings of the Office of Management and Budget on the Red Dog Mine project.

Task 1 - Cominco Corporate Profile

- Cominco Ltd. is an established and sound company, with good overall prospects, and is backed by a large and reputable parent corporation.

- The company appears able to provide a solid corporate base for support and development of the Red Dog Mine project.

Task 2 - NANA Corporate Profile

- NANA Regional Corporation appears to be solvent and strongly oriented towards projects which offer long-term employment benefits to its shareholders (principally joint business ventures within northwest Alaska).

- The corporation's participation in the Red Dog Mine project appears consistent with its corporate purposes and past activities.

Task 3 - Direct and Indirect Economic Impacts

- No guarantee exists that the project sponsors' projected employment goals or local hire goals will be achieved.

- The project appears likely to create 350-400 permanent jobs at the mine site, constituting approximately $11-$13 million per year (1983 dollars) in total direct income.

- NANA region residents may obtain an estimated 220-250 (50%-75%) of the mine jobs, constituting approximately $7-$8 million per year (1983 dollars) in direct income for regional residents.

- The project may generate an estimated 225 additional jobs within the State due to indirect and secondary employment effects, constituting an estimated $5.7 million per year (1983 dollars) in additional income.

- NANA region residents may obtain an estimated 100-110 (47%) of these additional jobs, constituting approximately $2.7 million per year (1983 dollars) in additional income for regional residents.

- The project's indirect and secondary employment effects may cause approximately 50 previously unemployed persons to be hired within the NANA region, plus an additional 30-60 such persons elsewhere in the State (chiefly, in the Anchorage area).

- No basis is available at present for estimating the number of job-seeking in-migrants which the project might attract into the State, though the project sponsors will attempt to minimize such effects through advertising.

- Local population increases due to the project itself probably will be moderate, totaling an estimated 280 new residents (including dependents) across the State, exclusive of in-migration. These increases could have significant local consequences within the NANA region, however, (e.g., an estimated 70-75 new residents in Kotzebue, exclusive of in-migrants).

Task 4 - Fiscal Impacts

- The total amount of tax revenues that the State is likely to receive for the Red Dog Mine project has been estimated to be approximately $9 to $16 million per year during the years 1988 to 1991, and approximately $12 to $20 million per year after 1991 (in 1983 dollars). This estimate is reasonably made and is consistent with current Alaska tax statutes. It is necessarily speculative, however, due to the profits based nature of the taxes involved, the current absence of mining license tax regulations in Alaska and the possibility that the project sponsors' actual tax liability may be based on unitary taxation principles in the future.

- An interest-free loan to Cominco of $135 million (with a 10-year deferment of payments, to be followed by a 20-year repayment period), for construction of the mine access road and port facility, could represent a direct net cost to the State of approximately $100-$120 million (1983 dollars).

- Increases in State and local program costs due to project-caused population increases could be moderate, though not insignificant at the local level. Such costs would depend largely on the extent to which the project induced speculative in-migration into the State and into the NANA region.

Task 5 - Cominco/NANA Contractual Agreement

- The agreement appears to contain no provisions which would alter this report's assessment of the fiscal and economic impacts of the project

Task 6 - Effects on State Bonding Capacity

- Industrial development bond (revenue bond) financing of the project infrastructure, including the access road and the port facility, would not, in itself, adversely affect the State's bonding capacity.

VI. Report of the Department of Community and Regional Affairs

A. Examination of Regional Government Structure

B. Evaluation of Regional Socio-Economic Impacts

C. Regional Dependence on State and Federal Appropriations

D. Comments and Recommendations

E. Appendices

RED DOG ANALYSIS

Task Items C.1, 2, 3 and 4)

Department of Community and Regional Affairs
Municipal and Regional Assistance Division

February 21, 1984

I. TASK C-1: Examine the present and future relationship between the North Slope and project participants.

TASK C-2: Evaluate potential separation of mine properties from the North Slope Borough.

II. TASK C-3: Evaluate impact of the project on the region of influence with regard to labor, transfer payments, taxation, etc.

III. TASK C-4: Review the extent to which the economy of the region (NANA area of influence) is financed by State and federal appropriations.

IV. General Comments and Recommendations

Appendix A: list of analysis assumptions

Appendix B: results of Department of Community and Regional Affairs Developments Assessment Model (CRADAM) as applied to the Red Dog Mine and the community of Kotzebue.

Appendix C: Bibliography

I. TASK C-1 and 2: 1.) Examine the present and future relationship between the North Slope Borough and project participants (Cominco and NANA. 2.) Evaluate potential separation of mine properties from the North Slope Borough.

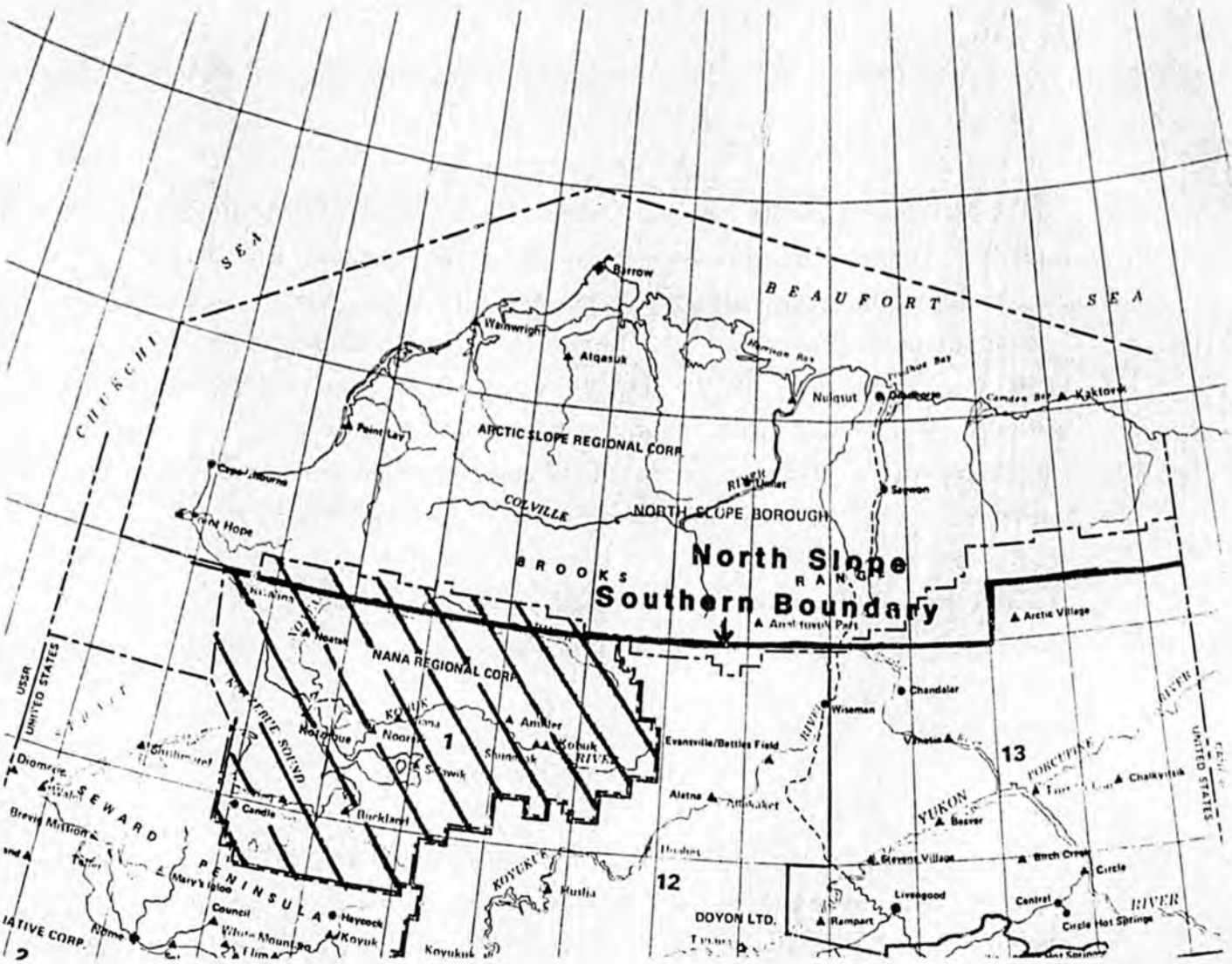
INTRODUCTION

The North Slope Borough encompasses the vast majority of the Arctic Slope Regional Corporation boundaries, and portions of the NANA and Doyon Ltd. regional corporation boundaries (see map 1). The NANA region is investigating the possibility of initiating the procedures for the incorporation of a borough coterminous with its corporation boundaries.

The section of the NANA region which is within the North Slope Borough boundaries contains a highly mineralized area. This mineralized territory includes the Red Dog Mine. It is essential to the formation of the NANA borough that it have the Red Dog Mine within its boundaries so as to provide an adequate economic base for the borough.

The Red Dog Mine and the surrounding NANA territory lying within the North Slope Borough has no population nor has it been assessed for Borough property taxes. The Borough Assessor visited the area this fall, but has not arrived at a tax assessment. This territory has not received any Borough services.

For the past year, representatives of the NANA Corporation have been discussing with the North Slope Borough the matter of detaching the portion of the NANA corporation territory remaining within the North Slope Borough. Up to this time a resolution of this issue has not been achieved between the two entities. It is the intention of the NANA Corporation to formally request that the North Slope Borough initiate detachment procedures for the territory in question at a November 30th meeting in Kotzebue.


North Slope
Southern Boundary
BEAUFORT SEA
CHUKCHI SEA
Barrow
Wainwright
Atqasuk
Nuiqsut
Kaktovik
Point Lay
ARCTIC SLOPE REGIONAL CORP.
COLVILLE
RIVER
NORTH SLOPE BOROUGH
Sagwon
Point Hope
BROOKS RANGE
Arctic Village
NANA REGIONAL CORP.
Noatak
Kotzebue
Noorvik
Kobuk
Ambler
Shungnak
Kobuk RIVER
Evansville/Battles Field
Chandalar
Wiseman
Alatna
Allakaket
Candle
Buckland
Diomede
SEWARD PENINSULA
Brevig Mission
Mary's Igloo
Council
Haycock
Koyuk
Nome
Koyukuk
Huslia
KOYUKUK
DOYON LTD.
Rampart
Livengood
Stevens Village
Beaver
YUKON
PORCUPINE
Birch Creek
Circle
Central
Circle Hot Springs
Chalkyitsik
RIVER
USSR
UNITED STATES
1
12
13

MAP 1

The following narrative has two purposes. The first section gives a historical perspective on the creation of the North Slope Borough and the formation of the Arctic Slope Corporation and NANA boundaries. The second section explains the alternative procedures for the detachment of that portion of the NANA region remaining within the North Slope Borough.

HISTORICAL PERSPECTIVE

In Inupiat people of the Arctic Slope and NANA Region have inhabited Alaska for thousands of years. Throughout this vast homeland, Inupiat language and lifestyles are remarkably similar. Flexibility and adaptability have been the keystones to the Inupiat success in this harsh region. Their social organization promoted cooperative effort and community sharing, and this, combined with mobility, adaptability regarding diet, and sophisticated techniques of travel, hunting, and survival, produced enduring cultural traits that persist in modified form to the present day. It is this sense of cooperation that has fostered the current negotiations between the NANA region and the North Slope Borough over the detachment of the Red Dog Mine area from the North Slope Borough.

North Slope Borough

A petition proposing the incorporation of a first class North Slope Borough was received by the Local Affairs Agency on April 4, 1971. On May 7, 1971, the agency notified the representative of the petitioners - the Arctic Slope Native Association - that the petition was accepted. The Commission conducted a public hearing on the petition in Barrow on December 2, 1971. The Commission approved the petition on February 25, 1972. Following the Commission's decision, an election was conducted, resulting in the incorporation of the North Slope Borough on July 1, 1972.

In arriving at the decision to approve the petition to incorporate the North Slope Borough, the Local Boundary Commission identified the

territory which would meet the standards for borough formation. The Commission found that the boundaries of the proposed organized borough conformed generally to the natural geography of the area proposed for incorporation.

The North Slope Borough petitioners proposed the incorporation of the entirety of a geographically distinct area of the State approximately bounded on the north and west by the Arctic Ocean, Beaufort and Chukchi Seas, on the south by the mountains cresting the Brooks Range. The most easterly boundary observes the State of Alaska-United States of American/Yukon Territory-Canada border.

The southerly boundary more precisely follows latitude 68°00'N from the State of Alaska Chukchi Sea boundary in an easterly direction to the point of intersection with longitude 146°00'W. At this point, the proposed boundary is extended northerly to its intersection with latitude 68°30'N from which point it follows latitude 68°30'N in an easterly direction to the State of Alaska/Canada border.

In rendering its decision, the Commission was further aware that the Congress of the United States, in the Alaska Native Claims Settlement Act of 1971 (Public Law 92-203), had required the Secretary of the Interior to form Regional Corporation in Alaska whose boundaries conformed to those of the existing Native Associations, that Congress had designated the Arctic Slope Native Association, and had characterized it as "Point Hope-Barrow," and that, in fact, the Arctic Slope Native Association did embrace the area comprehended by the petition, with the relevant provision of the Act, providing as follows:

> "For purposes of this Act, the State of Alaska shall be divided by the Secretary within one year after the date of enactment at this Act into twelve geographic region, which each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native Associations."

On July 1, 1972, the North Slope Borough became the regional government for the entire Alaska Arctic region, with an elected mayor (three year term), a seven member assembly, and a seven member school board. As home rule borough, it has assumed all legislative powers not prohibited by State law and allowed by its charter. Mandatory powers are: taxation, education; and planning, platting and zoning. The following powers were transferred to the Borough in an April 1974 election; 1) streets and sidewalks; 2) sewers and sewage treatment; 3) water course and flood control facilities; 4) health services and hospital facilities; 5) telephone systems; 6) light, power and heating utilities; 7) transportation systems; 8) water; 9) libraries; 10) garbage and solid waste collection and disposal services and facilities; 11) housing and urban renewal, rehabilitation, and development; 12) preservation, protection and maintenance of historical sites, buildings and monuments. Areawide police powers were transferred to the Borough in a July 1976 election.

Regional Corporation Boundaries

As previously noted, Sec. 7(a) of the Alaska Native Claims Settlement Act states that within one year of the date of enactment of the act, that the Secretary of the Interior would divide the State of Alaska into twelve geographic regions. Each region was to be composed of Natives having a common heritage and sharing common interests. This section of the Act continues to identify the twelve regional Native associations the geographic regions are to follow. The Arctic Slope Native Association (Barrow, Point Hope) and the Northwest Alaska Native Association (Kotzebue) regions are specifically identified.

The formation of the regional corporation's boundaries was not completed until the end of 1972. During the time that the regional boundaries were being defined, the North Slope Borough was incorporated. Consequently, the incorporation of the Borough prior to the establishing of the corporation boundaries resulted in the inclusion of the Red Dog Mine territory within the North Slope Borough boundaries.

It was not clear until the creation of the regional boundaries was completed whether the community of Point Hope and the lands in the vicinity of Point Hope would be in the NANA or Arctic Slope regions. An election conducted in Point Hope settled the issue, as residents voted to be part of the Arctic Slope Region.

DETACHMENT PROCESS

As previously stated, the northern portion of the NANA region is within the North Slope Borough. Unless this territory is detached from the Borough, it is doubtful that the NANA region will have a sufficient economic base from which to finance the management of a borough government. The following section examines the process by which the territory can be detached from the North Slope Borough.

Detachment Process

There are two alternative approaches to initiating a detachment petition. The first approach (local action) initiates a petition that would be presented, if approved by the Local Boundary Commission (Commission), for a vote by the residents of the territory proposed for detachment. A simple majority would effect the detachment. As there are no residents in the northern section of the NANA region to be detached from the North Slope Borough, the local action process is not an alternative.

The second approach (legislative review) requires the petition to be presented, if approved by the Commission, to the Alaska Legislature for its final approval. However, both types of petition have a limited number of ways in which they can be initiated. In 19 AAC 10.470, it stated that a petition may be initiated by:

1. The governing body of a municipality whose boundaries are to be changed;

2. The governing body of an organized borough in which the territory is located;

3. At least 10 percent of the registered voters residing in the territory to be annexed or detached, in the municipality to be dissolved, or in each municipality emerged or consolidated;

4. The Commissioner.

The first and second means of initiating a detachment petition are both applicable to the North Slope Borough as it is the municipality whose boundaries are to be changed. The third means of initiating a detachment petition is not applicable in the detachment of the Red Dog Mine territory as there are no residents in the territory proposed for detachment. Consequently, the detachment process must be initiated either by the North Slope Borough or the Commissioner of the Department of Community and Regional Affairs.

Legislative Review Proce..

The legislative review process has established procedures for initiating and conducting a detachment (19 AAC 10.450-.620). The following describes the process:

Department Review

In accordance with 19 AAC 10.520, the Department must review the petition and brief to determine that they are substantially in proper form and contain the factual information required. If the Department determines that the petition and brief are sufficient, the petition will be submitted to the Local Boundary Commission. In addition, the Department prepares a report to the Commission on the proposed action.

Commission Review

Upon receipt of the petition from the Department, the Commission will establish a time and place for public hearing(s) concerning the

proposed boundary change. The public hearing would be held in or near the territory proposed for detachment. In this instance, public hearings might be held in both the North Slope Borough and the NANA region. In accordance with 19 AAC 10.225-.250, the Commission will review the detachment petition through the application of the established standards for detachment of territory from organized boroughs.

Commission's Recommendation

Following the public hearing, the Commission will either deny or approve the petition. The Commission does have the authority to amend the boundaries proposed for detachment. If the Commission approves the petition, with or without amendments, it will forward its recommendation to the Legislature.

Legislative Review

The Commission's recommendation must be submitted to the Legislature within the first ten days of legislative session. After 45 days from the date of the Commission's recommendations submittal to the Legislature, the proposed boundary change becomes effective unless there is a concurrent resolution passed by both houses of the Legislature in opposition to the proposed boundary change.

Borough Incorporation

It should be noted that 19 AAC 10.170(c) and 19 AAC 10.240(b) state that the Commission will not consider a petition for incorporation of an area located partially or wholly within an organized borough until the petitioners have submitted, and the Commission has approved, a petition for detachment of the area from the borough.

If it is the intention of the NANA region to petition for the formation of a borough, which will include the area to be detached from the North Slope Borough, the timing of the sequence of events is crucial.

SUMMARY

A quick review of the sequences of events identifies why the Red Dog Mine is within the North Slope Borough. The 1972 incorporation of the North Slope Borough was completed several months prior to the establishing of regional Native corporation boundaries. The final land selections for the Arctic Slope Regional Corporation and the NANA Corporation were made during the 1975-76 period.

It is unclear at this time, if the area containing the Red Dog mining project will be detached from the North Slope Borough. However, it is obvious that the detachment will be a factor in the decision to proceed with the development of the project given the uncertain future taxation policies of the North Slope Borough.

The formation of the NANA Borough is dependent upon the detachment of this property from the North Slope Borough. Various organizations and leaders have supported the concept of borough formation in this area, given a tax base of this nature.

I. TASK C-3: Evaluate impact of the project on the region of influence with regard to labor, transfer payments, taxation, etc.

For the purposes of this analysis, the region of influence was taken to be the incorporated boundaries of the NANA Regional Native Corporation. Where relevant, the region was further divided into two major components: Kotzebue and the outlying villages (ten). Some further focus was placed on the communities of Kivalina and Noatak which are most closely located to the project.

The impacts here discussed include:

- regional employment (direct/secondary; resident/nonresident)
- population (resident/nonresident; Kotzebue/outlying villages)
- per capita (household) income
- area service needs (schools, medical, public safety, governmental, etc.)
- transfer payments (state, federal, etc.)
- cultural

EMPLOYMENT (AND UNEMPLOYMENT)

Existing employment patterns. A baseline description of existing employment patterns will first be presented, followed by an assessment of the likely affects of employment resulting from development of the Red Dog Mine.

It is important to note that the existing regional economy is, to a large degree, a reflection of the continuing subsistence relationship to

the land maintained by a large number of the region's residents. Consequently, a number of accepted measures of "employment" or "occupation" are simply not valid when applied to the activities pursued by the NANA resident population. In particular, the use of U.S. Census measures of employment, and unemployment, is limited primarily to providing some indication of the proportion of residents who participate more directly in the region's "wage earning" economy.

Another measure of unemployment, the State's unemployment roles, reflect only those numbers of individuals who are actively seeking "wage earning" employment and are subsequently picked up by the tracking system provided by the State's job service programs. A rough calculation based on the 1980 U.S. Census information available for the outlying villages in the region indicated generally that less than 3-5% of the population were employed in "full-time" wage-earning jobs. Another 5-10% held "half-time" jobs and another 25-40% found some "part-time" employment during the year.

It should be noted that a large number of the above full and half-time jobs were teaching jobs; often occupied by non-Native persons. There are about 300-500 full-time-equivalent jobs in the outlying villages and about 250 of these jobs are education/profession related (including librarians, teacher aides, etc.). The next largest providers of employment are local government and federal programs.

In Kotzebue, based on the 1980 Census, there are about 500 full-time jobs, about 150 half-time jobs, and about 400 part-time jobs. It is estimated that there are about 600-800 full-time-equivalent jobs in the Kotzebue area. Of the full-time jobs, about 250 positions are connected with the administration and provision of services (i.e., NANA; Maniilaq, State, federal and local agencies). Another 150 jobs are connected with School District operations (both administration and teaching).

Combining the above employment estimates for Kotzebue and the outlying villages indicates a regional full-time-equivalent employment of

approximately 1,200. A recent labor market study performed by Darbyshire and Associates for NANA estimated a total of 1,400 full-time-equivalent jobs in the region. That report also projected that, in the absence of the Red Dog project, there would be essentially no growth in the regional employment opportunities over the next ten years. Our review of available materials substantiates that assumption.

Estimated Red Dog Mine Employment. Figures 1 and 2 present employment estimates for the Red Dog project (onsite), including estimates of NANA resident employment. Figure 1 breaks out the employment for each of the construction and production phases, while Figure 2 combines the workers associated with these two phases to indicate the total number of jobs for a given period of time. Figure 2 includes some employment information for the early exploratory drilling activities which have already taken place (1982).

During the construction phase, it is estimated that the NANA resident workforce will rise from 35% of the total workforce at the beginning of actual construction (25 residents), to a figure of more than 50% (100 residents) during the peak of construction. Two other studies of resident employment (Darbyshire, 1982; Waring, 1983) are less optimistic and project a resident employment of 33% throughout the construction phase. The higher employment estimates proposed in this report result from a consideration of the construction phase job descriptions as provided by Cominco; the aggressive approach being taken by various training/placement agencies; the positive attitude of the residents (Berger and Associates, 1983; Cultural Dynamics, Ltd., 1983); and previous resident employment experience with the Alaskan Pipeline Project (Naylor and Gooding, 1978).

Two years before actual production begins, Cominco will begin to employ a number of managerial/technical personnel for the Red Dog Project. Many of these positions will simply transfer from other Cominco operations. At any rate, NANA residents are not likely to participate directly in this "pre-production" labor force until about a year before startup, at which time a number of entry level professions

FIGURE 1

ESTIMATED RED DOG MINE EMPLOYMENT
CONSTRUCTION AND PRODUCTION PHASES

TOTAL WORKFORCE AND NANA RESIDENT WORKFORCE
(excluding Anchorage office)

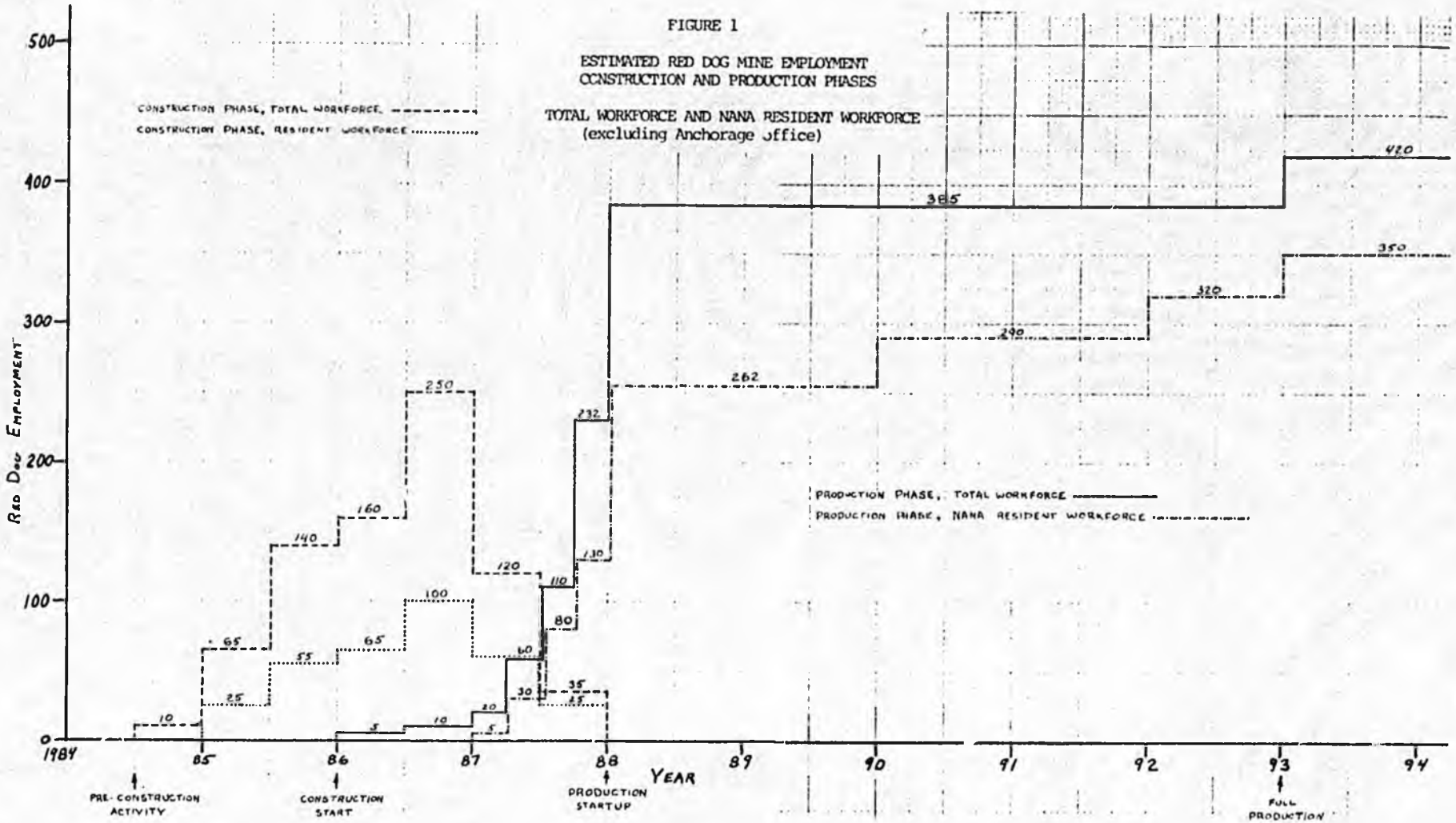
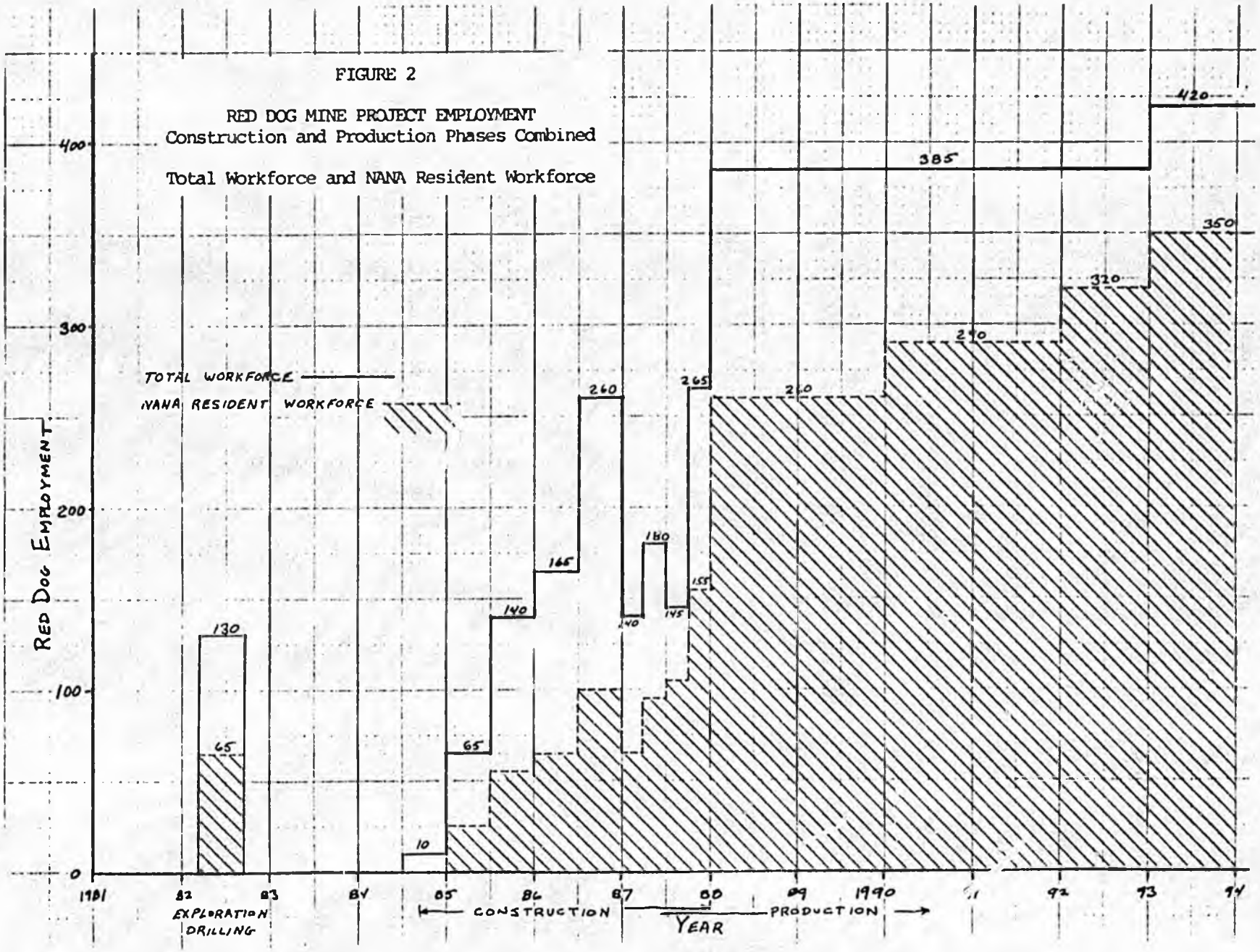


FIGURE 2

RED DOG MINE PROJECT EMPLOYMENT
Construction and Production Phases Combined

Total Workforce and NANA Resident Workforce



will be required to assist in the mobilization of the plant (assistant operators, administrative assistance, etc.). At that time, NANA residents in the slowly growing production workforce should represent about 25% (5 residents) of the total production mobilization workforce. However, that number should quickly grow over the course of the last preproduction year, reaching a value of about 66% (262 NANA residents) at the time of production startup.

This number for resident employment at startup was again derived by an inspection of the individual job descriptions provided by Cominco, considering the available labor force and assuming the successful implementation of planned vocational training programs. This estimate is higher than the value of 42% assumed in the Draft EIS for the project (Waring, 1983), which was reportedly provided by Cominco. It is most likely that actual resident employment at startup (1988) will fall somewhere between these two values.

As a rough guess, 80 of the above 262 residents in the startup workforce would come from the villages of Kivalina and Noatak (40 from each community), with the remainder of jobs evenly distributed throughout the region by population (Kotzebue, 90; outlying villages, 90).

It is assumed that the proportion of resident employment will continue to increase slowly over the course of mining operations. Notable increases in resident employment should occur at about two years into production as resident graduates from trade and vocational schools come into the labor force. Again, after four to five years from startup, another increase in local employment should take place as residents obtain advanced degrees in technical fields, assisted by Cominco scholarship funds (up to $30,000 per year). A final jump in resident employment should occur when the mine steps up to full operation in year six. Most of the new jobs at that time should be obtainable by NANA residents. At that time, NANA residents should represent over 80% of the total workforce.

Further increases in the proportion of resident hire should occur slowly over the life of the mine. It is possible that NANA could achieve its stated goal of 100% resident employment; however, no time frame is here assumed.

Secondary Employment Estimates: Because of the fully enclaved nature of the proposed project, there should be virtually no direct employment away from the site (other than in Anchorage). However, there should be a substantial number of support service jobs generated as a result of the mine operations and the generally increased affluence of the population. Most of these secondary jobs will occur in Kotzebue, although there should be some small increases in service and construction employment in the outlying villages.

As many as 150 secondary jobs should occur during the transition from project construction to project operation. This number will quickly diminish to 100 within a year or two of startup, finally stabilizing between 50 and 100 jobs as the local economy absorbs the transient activity of the new development. NANA residents should capture most of the secondary employment resulting from the mine, although there are certain to be at least a small number of nonresidents who find work in Kotzebue, particularly during the construction/early production phases.

POPULATION

The current population of the NANA region is approximately 5,200. Of these, approximately 4,500 are Native (86%). The population of Kotzebue is estimated to be 2,400, of which 1,800 (79%) are Native.

Table B.1, Appendix B, presents a projection of the population of Kotzebue as it would be expected to grow without the Red Dog development, and as it would grow as a result of developing the mine. The variance between the "base case" and the "operations" case is the estimation of the effect of the mine's presence. According to this scenario, Kotzebue's population would jump by about 125 people (5%)

during the construction phase, and increase another 125 (10% total) during initial production phases. Many of these people would be current NANA residents that will have moved into Kotzebue, perhaps as many as 75% of the total number of inmigrants. Therefore, the net effect of the mine on the population within the region as a whole should not be significant.

INCOME

According to the 1980 Census, the mean average household income in the region varies from $8,000 to $20,000 between the outlying villages, and is about $30,000 in Kotzebue.

On the basis of earlier (Summer 1983) Cominco employment estimates, annual gross payroll was initially estimated at about $23 million (372 employees) during the construction phase, $13 million during operating years one through five, and about $13.4 million dollars from year six onwards (424 employees).

Since that time, employment estimates for the construction phase have been revised considerably downwards; however, revised payroll estimates were not included with the updated information. To provide a rough estimate of direct income during the construction phase, it is assumed that actual construction payroll will be reduced in proportion to the revised reduction in construction workforce. On this basis, it is assumed that the construction phase payroll will peak at about $15.5 million (250 employees), averaging about $9 million a year for the overall construction phase (143 full-time-equivalent employees). On this same basis, the payroll during the first five project years is estimated to be about #12 million (385 employees), and would increase to about $13.4 million for years six onwards (420 employees).

It is difficult to assess what portion of these wages will go to NANA residents, who will first tend to occupy lower paying positions, particularly during the construction stage. It is here estimated that

during construction an average of approximately $4 million dollars a year will be paid in gross wages to residents.

Again, during the initial phases of production, NANA residents will largely be occupied at the lower end of the wage scale. Of the $12 million annual Cominco gross salary, it is estimated that initially about $7 million will go to about 260 NANA residents. This number would increase constantly over time as NANA residents moved into professional and technical positions with the mine.

AREA SERVICE/FACILITIES IMPACTS

Because of the stringent requirement that the Red Dog be a fully enclaved development, there are not expected to be substantial additional demands placed upon the regions service delivery.

The Department's development impact model (CRADAM, Appendix B) was applied to the Kotzebue/Red Dog development. The facility needs component is driven by the Demographic component already discussed above. In brief summary, the additional 100 jobs which will occur in Kotzebue, and accompanying overall population increase of some 10%, should not stress existing facilities (i.e., schools, public safety, fire, electrical, etc.) in the near future, and do not represent a significant planning component in comparison to the increase in population which would occur with or without the project. One possible exception is the present water system which is reported to be operating at near to full capacity.

It is likely that many mine workers from the outlying villages would wish to pass through Kotzebue while traveling between home and the mine. Depending upon the policy that NANA/Cominco develop concerning the air chartering of mine workers, this could result in a significant impact to several service delivery sectors. However, it is not possible to predict at this time the level of increased service delivery.

The outlying villages are also likely to require some increased social service delivery, at least transiently, in the wake of a degree of social disruption that will accompany the region's sudden increase in affluence (about 30% in regional income; Waring, EIS) and the introduction of an absentee-parent lifestyle that will occur in many village homes with workers at the mine. No attempt is made here to place a dollar value on the increase in social service delivery.

TRANSFER PAYMENTS

It was not possible in the time permitted for this study to link in a logical manner the potential increase in regional affluence to a possible decrease in State, federal and private transfer payments going into the region. Even before considering the possible effects of the mine's wages within the economy, there is a phenomenon presently occurring in program use which remains unexplained by the servicing agencies. Interviews with the State's Department of Health and Social Services indicated that the Department's two main transfer payment programs (i.e., AFDC, food stamps) have shown an unexplained dramatic 50% decrease in use the last two years.

The total transfer payments into the NANA region in 1980 amounted to $11,517,363, or $6,274,254 federal; $4,203,609 State; and $679,500 in private funds (Darbyshire, 1982). It was reported that the two distributions of the Permanent Fund Dividend were followed by periods of marked decrease in State program use. It is certainly likely that the continued incomes derived from mine wages in the extended family will have some positive effect on reducing transfer payments.

III. TASK C-4: Review of the extent to which the economy of the region (NANA area of influence) is financed by State and federal appropriations.

The primary source of information relevant to this task has been the documentation prepared by Darbyshire and Associates (1982) for the NANA Coastal Resource Service Area - Coastal Management Plan (CMP) in conjunction with follow-up interviews with Darbyshire staff responsible for producing these documents.

Figures presented in the CMP were cross-checked with a recent House Research Agency document (DeVries and Pomeroy, 1982) which examined the distribution of State appropriations by Election District. Since the Kotzebue Election District also includes the communities within the North Slope Borough, the Borough's annual financial reports were used to subtract out the bulk of State appropriations to the Arctic Slope Region, leaving an approximation of State appropriations going into the NANA region.

The CMP figure for State Appropriations (1980) were $31,482,815. The alternative method produced a figure of $32,500,000. This figure does not include the State's capital budget which varies radically from year to year for a given region. The capital budget appropriations for the Kotzebue Election District for FY '81 and FY '82 were respectively 20 and 50 million dollars.

Federal funds going to the NANA region in 1980 totaled about 24 million dollars - private transfer payments totaled about $700,000.

Important findings reported in the CMP documents included:

"The combined federal and State revenues are, by far, the most imports important source of demand on all three levels of the regional economy. Of the $63 million earned in the total NANA region, State and federal revenue sources support (i.e., directly

and indirectly) approximately $55.5 million (88%), while private sources support the remaining $7.8 million;"

- "State revenues to education, construction, social services and so on alone support 31.5 million (50%) of the total income earned throughout the NANA region;"

- "Mining and exploration activities are the largest private contributors to the economic base of the outlying villages (8%);" and

- "The largest single contributing source to the regional economy are the State revenues supporting schools and local government throughout the NANA region."

III. General Comments and Recommendations

With regard to the fulfillment of the NANA/Cominco agreement, there are several unstated policies, or potential policies, which could have significant effects on the distribution of the impacts of the Red Dog Mine development:

- One possible policy that may need to be clarified is the air charter transfer of residents from outlying communities (or other Northwest Alaska communities) to the mine site and back. The frequency of visit and duration of stay of these transients through the City of Kotzebue will play a determining factor in the total impact of the project upon the service delivery provided by the city, including transient housing, police and containment facilities, the recreational/entertainment economy, etc.

- Another policy, which will probably become highly sensitive, is the actual distribution of jobs among and within the communities throughout the region. NANA could develop a formula that would provide increased economic leverage for the more economically depressed villages, or a policy could be established strictly on a per capita basis, or the policy could be one of laissez faire. At any rate, existence or lack of existence of such a policy will be a determining factor in the ultimate distribution of the economic product of the Red Dog Mine in the NANA region.

- It might be advisable for some of the smaller communities to establish rotating labor pools through which all eligible residents could participate directly in the Red Dog's workforce. This would also provide increased flexibility in relation to subsistence lifestyles.

- Beyond training and placement, the various critical agencies in Kotzebue should be preparing for an extended service of counseling in support of residents who will be experiencing industrial employment for the first time.

Appendix A

Analysis Assumptions

A. The Red Dog mine construction and production schedules, as provided by Cominco in its engineering reports, will be essentially adhered to with regard to time and labor force requirements.

B. The goals of the NANA/Cominco operating agreement (N/C Agreement) of October 1982 will be aggressively pursued with regard to hiring and operating policies (goal = 100% local employment within 12 years of mine startup). That is, the several agencies and committees responsible for the training and placement of NANA residents will have a substantial effect (within several years) on the skills available in the local labor force and the placement of those skills at the minesite. Within five years of startup, resident skills will include increasing numbers of "professional occupations" as residents matriculate through the proposed scholarship program (up to $30,000 per year).

C. More specifically, regarding the phasing of local hire, it is assumed that, within two years, an additional 30-40 residents would become eligible for placement at the mine as a result of trade school/vocational training offered in Kotzebue. These people would probably move into positions vacated by residents moving up the scale of positions at the mine site, as they progress through on-the-job experience. Another 15-30 local residents would become eligible for professional range jobs (geology, lab technicians, etc.) at the completion of university level education. Finally, it is assumed that the jobs resulting from the planned increase in production at year six will be taken almost entirely by residents, that is, 30 more jobs.

D. In accordance with the N/C agreement, the Red Dog development will be as strictly isolated in its effects as possible; that is, fully enclaved.

E. NANA/Cominco will make special efforts to "broadly advertise" both the enclave and resident hire aspects of the Red Dog operation, thereby discouraging speculative inmigration into the region, and into Kotzebue in particular. However, it is assumed that a certain degree of speculative inmigration will still occur in anticipation of employment in secondary (mine support and service sector industries) and in anticipation of filling job vacancies which will occur as presently employed residents take positions with the mine. In particular, this will probably result in a temporary acceleration of intraregional migration, as people gravitate into the regional service center of Kotzebue; however, no estimate as to the degree of this movement has been assumed for the purposes of this analysis.

F. It is assumed that there will be some impact on service provision in Kotzebue as a result of resident mine employees preferring to travel through Kotzebue on the way to their home villages after their two-week stint at the mine.

G. The actual secondary employment multiplier applied to Kotzebue as a result of the Red Dog operations is assumed to be 0.5 for both the construction and production phases.

H. There will be a very small increase in secondary employment in the outlying villages as a result of the generally increasing affluence of the population. It is assumed that all such employment opportunities will be absorbed by the resident populations.

I. On the basis of several recent regional attitude surveys, and the precedent of NANA resident employment on the Alaskan pipeline project, it is assumed that there is a strong desire amongst NANA residents to get a job at the mine and keep it.

J. The residents of Kivalina and Noatak may be offered some degree of preference in hiring in compensation for the disruptive physical presence of a mine and road in their proximity. Otherwise, it is

assumed that attempts will be made to distribute employment opportunities evenly throughout the region.

K. Lacking more direct information, the anticipated annual gross payrolls during construction and production were taken from the draft Environmental Impact Statement (EIS) for the project (Socioeconomic section; Kevin Waring).

L. Levels of annual State financing of the regional and local economies were derived through a cross referencing of the NANA region draft Coastal Management Program document; a House Research Agency document of Appropriation by Election District (which includes the North Slope Borough); and the Annual Reports of the North Slope Borough.

M. The 1983 population of Kotzebue is assumed to be 2,400 which is the number arrived at after extended discussion between the City and the Census Bureau (which had placed the number at 2,054). The present City Planner has initiated a statistical survey of the community and preliminary results indicate a community population possibly as large as 2,900. The NANA region population is assumed to be approximately 5,200, reflecting the increased number in Kotzebue.

N. A number of specific baseline assumptions have been made in order to run the Department's CRADAM development assessment computer model (facilities needs component). These values, which are listed in Appendix B, were determined on the basis of information provided by the City of Kotzebue.

APPENDIX B

Community and Regional Affairs Development Assessment Model
Kotzebue/Red Dog Project

CRADAM is an interactive computer model which projects community response to specific development projects over a 20 year period. The model is community oriented and, therefore, is not directly applicable to projections for the NANA region as a whole. It has been applied in this case to the community of Kotzebue in its relationship to the prospective Cominco/Red Dog Mine development. Two components of the model have been run in this case: a demographic projection, and a facilities needs projection (which is driven by the demographic component's output). Tables B.1 and B.2 present the results of two elements of the demographic components: population and school age population. The results of the facilities needs component are extensive and are not reproduced here.

Specific assumptions for the demographic run included:

- Fully enclaved development project
- Construction start: January 1986
- Production start: February 1988
- Current annual rate of population increase: Kotzebue, 0.2%
- Construction phase, total workforce: 250
- % of these skilled labor: 62%
- Production phase, total workforce: 384 (onsite)
- % of these skilled labor: 67%
- Secondary employment multiplier: 0.5
- Average household size: 4.7
- Current population, by age cohorts: 0-4, 275; 5-9, 286; 10-14, 235; 15-19, 262; 20-24, 224; 25-29, 274; 30-34, 190; 35-39, 127; 40-44, 117; 45-49, 117; 50-54, 76; 55-59, 37; 60-64, 53; 65 and over, 123; total: 2,396
- Current effective unemployment: 50%

Specific assumptions for the facilities needs computer run include:

- Municipal acreage: 3,200
- Industrial acreage: 20
- Residential acreage: 200
- Elementary school (square feet): 50,000
- High School (square feet): 55,000
- Police department (square feet): 20,000
- Police vehicles: 6
- Fire department (square feet): 22,000
- Fire vehicles: 4
- Medical facilities (square feet): 40,000
- Residential buildings: 570
- Remaining Municipal buildings (square feet): 250,000
- Electrical demand (kwh/capita/day): 18
- Water demand (gallons/capita/day): 100
- Proposed residential density (units/acre): 8

Outputs from the computer run include:

- Total population estimates for the 20-year period (base case, development and production phases (table B.1)
- Number of school aged children for the 20-year period (table B.2)
- Number of high school students for the 20-year period
- Number of elementary students for the 20-year period

- Elementary school floor space demand
- High school floor space demand
- High school floor space surplus/deficit
- Police department floor space demand
- Police vehicle demand, surplus, deficit
- Fire department floor space demand, surplus, deficit
- Fire department vehicle demand, surplus, deficit
- Medical facility floor space demand, surplus, deficit
- Hospital beds required

- Municipal space requirement
- Average daily water demand
- Average daily electrical demand
- Residential housing demand
- Residential acreage demand

Table B.1

Demographic Projections
Kotzebue Population (base case, construction, operation)

Year	Base Case	Construction	Operations
0 (1983)	2396		
1	2429		
2	2483	2608	
3	2553	2681	
4	2637		2879
5	2646		2698
6	2751		2803
7	2808		2857
8	2997		3049
9	3138		3190
10	3293		3344
11	3460		3509
12	3226		3436
13	3840		4057
14	4454		4679
15	4285		4502
16	4534		4744
17	4804		5022
18	5096		5313
19	5410		5623

Table B.2

Demographic Projections
School Aged Children (base case, construction, operations)

Year	Base Case	Construction	Operations
0 (1983)	783		
1	794		
2	812	852	
3	834	876	
4	862		945
5	865		886
6	899		920
7	937		958
8	979		1000
9	1026		1046
10	1076		1097
11	1131		1152
12	1190		1211
13	1255		1276
14	1325		1346
15	1400		1421
16	1482		1494
17	1570		1591
18	1665		1686
19	1768		1789

APPENDIX C

Bibliography

Darbyshire and Associates, 1983, Job Availability and Labor Market Relations for the NANA Region.

Darbyshire and Associates, 1982, NANA Coastal Resource Area - Coastal Management Plan.

Waring, Kevin, 1983, Draft Environmental Impact Statement for the Red Dog Project.

Cultural Dynamics, Ltd., 1983, Chukchi Sea Sociocultural Systems Baseline Analysis.

Berger, Louis and Associates, 1983, Present State of Well-Being in Two Selected Regions of Alaska.

Maniilaq Association, 1982, NANA Regional Strategy.

DeVries, Anne and Pomeroy, Deb, 1982, Election District Breakdown of FY '81 and FY '82 Operating and Capital Budgets.

North Slope Borough, 1981-82, Annual Financial Reports, FY '81 and FY '82.

Oral Communications:

Matt Conover, November 1983, Planning Director, Maniilaq

Carol Dellahanty, November 1983, Planner, City of Kotzebue

Jake Rogers, November 1983, Assistant Administrator, Northwest Arctic School District

VII. Report of the Department of Transportation and Public Facilities

A. Review of Cominco's Road Design and Cost Estimates

B. Review of Cominco's Port Design and Cost Estimates

C. Alaskan Extractive Resource Projects

D. Qualification Matrix for State Transportation Projects

E. Impact of the Jones Act

F. Synopses of Two Canadian Mining Projects with Joint Public / Private Sector Participation

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities

TO: Robert Venusti
Deputy Director
Design and Construction

DATE: November 10, 1983

FILE NO:

TELEPHONE NO:

FROM: Ronald E. Olmstead, P.E.
Assistant Construction Chief
Aviation Design and Construction

SUBJECT: Red Dog Mine Project

A. Review of Cominco's Road Design and Cost Estimates

At your request, I have reviewed preliminary conceptual engineering data and cost estimates furnished by Cominco Alaska, Inc. for various roadway alternates from proposed port facilities north of Kotzebue to the Red Dog Mine. Data reviewed included the following:

REPORT	AUTHOR
Red Dog Mine Access Ground Transportation Study	R & M Consultants, Inc.
Preliminary Hydrology Report (Appendix 1)	R & M Consultants, Inc.
Geotechnical Report (Appendix 2)	R & M Consultants, Inc.
Preliminary EIS Red Dog Mining Site U.S.	EPA Region 10
Engineering Report on the Red Dog Project Vol 1 & Vol 2	Cominco Engineering Services
Engineering Estimate for the Red Dog Project Vol 1 and Vol 2	Cominco Engineering Services

ENGINEERING ANALYSIS

I. ROUTE SELECTION

From an engineering perspective, major items which should be considered in route selection for this region are as follows:

o Minimize alignment length

o Consider material site availability and haul

o Consideration of future maintenance, including drifting snow

o Consideration of construction problems and scheduling

- o Maintain fill section to the extend possible, avoiding problems associated with cuts in permafrost areas, especially on side hills
- o Minimize environmental disturbance
- o Minimize potential problems with drainage, ground water flow and and aufeis
- o Minimize roadway alignment on ice rich, high moisture content silts, organics, and poor route soils conditions
- o Avoid known areas of soil instabilities and/or movement
- o Efficient use of fill, especially in areas of mineral material shortage
- o Bridge siting
- o Future or proposed route expansion
- o Land ownership

Analysis of data furnished by Cominco Alaska, Inc. indicate that routes were selected and evaluated based on criteria similar to that mentioned above. The data utilized is preliminary in nature, however, with limited field verification and must be viewed as such. Alternate routes were delineated utilizing on U.S.G.S. mapping expanded to a 1" = 2000' scale for the plan portion of plan-profile sheets. Route alignments and profiles were plotted on these sheets utilizing the above mentioned criteria and engineering geometrics developed for the proposed routes.

II. Design Geometrics

Design criteria developed for the proposed roadway are as follows:

Design speed	30 mph
Road width	30 feet
Maximum grade	4%
Minimum radius	400 feet
Passing turnouts	2 mile intervals
Fill depth	6.5 feet based on thermal considerations
Alternate fill	2 feet minimum on 3 inches rigid insulation
Design vehicle	GVW 443,000 lbs
Maximum tandem axle loading	109,500 lbs

Roadway width and maximum grades are conservative due to the size of the design vehicle. Under normal usage conditions, a roadway width of 28 feet or even less may be adequate, with maximum desirable roadway grades up to 5% on rolling or 7% in mountainous terrain.

The fill depth of 6.5 feet assumes some thaw into the existing terrain, thus some settlement will result depending on soil type. This method is consistent with existing practice, with the final depth/depths selected being dependent on soil groupings or 'terrain units" and foundation conditions. The final typical sections developed for the roadway design would be a major engineering decision for the project with the governing factor being allowable thaw into the subgrade. The 6.5 foot fill depth is considered adequate for preliminary engineering purposes. In reality, it could be expected that depths would vary, with lesser depths being utilized should actual soil conditions warrant or deeper sections utilized should more protection be required in other locations. The alternate insulated fill section consisting of 2 foot of fill placed on 3 inches of rigid insulation board was utilized to a very limited extent in the preliminary analysis (approximately 1.3 miles total length in the preferred route) and appeared to be utilized primarily through vertical curve areas where it was desired to reduce the depth of fill for short stretches of roadway. This method of construction has been tested and utilized for heavy haul vehicles on the Trans Alaska Pipeline System with some success. Final design should consider carefully the exact placement and bedding methods for insulation.

III. Quantities

Fill quantities were computed utilizing the 6.5 foot of fill, or alternate section and providing for addition fill material for those sections going into and out of vertical curve locations and cross slope areas, utilizing factors developed for that purpose. Haul distance was determined by plotting material sites, selected by limited field examination and aerial photo interpretation. Drainage structures, types and sizes were developed based on drainage size and other hydraulic considerations. All data furnished by Cominco Alaska, Inc. was examined and appeared to be adequate for preliminary quantity determination.

IV. Cost

Cost figures for the proposed roadway were initially developed by R & M Consultants and provide the basis for those cost figures presented by Cominco Alaska, Inc. Base-line cost figures developed for major bid items are as follows:

Item	Estimated Cost
Embankment (c.y.)	$9.20 c.y.
Cubic Yard-mile (c.y.m.)	$1.30 c.y.m.
Drainage culverts (ea)	
24"-120" dia.	$6,400 - 61,200 ea.
Bridge (l.f.)	$1,800 - 5,760 l.f.
Insulation	$0.80 bd. ft.
Turnouts	Approx. $5000/mile

Cost estimates prepared for the state for the proposed 170 mile route from Kotzebue to Chicago Creek indicate estimated embankment costs of $10.00 c.y. with haul being estimated at $1.00 per c.y.m. after the first two miles. At a much smaller scale, embankment costs for the current Kotzebue Airport Improvements Project was bid at $6.74 c.y. Embankment costs at the new Buckland Airport was bid at $13.50 c.y., with similar type embankments running $4.00 c.y. in Fairbanks.

Culverts were estimated to be 80 l.f. in length with sizes from 24" to 120" in diameter being estimated. Estimated costs appear reasonable based on review of available bid tabs.

Bridge costs were checked with the DOT/PF bridge design section in Juneau and also appear to be reasonable estimates.

Costs not included in the original base line cost estimates by R & M consultants were additional costs for processing surfacing material, mobilization and de-mobilization costs, royalties on borrow material, engineering and contingencies. I have attached sheets summarizing the estimated costs for all the proposed routes. The preferred route estimated costs prepared by Cominco appear to be reasonable estimated roadway construction costs.

V. Comments and Conclusions

Methodology utilized for preliminary route selection and cost estimates appear to be reasonable and consistent with other state preliminary route selection efforts. The data presented by Cominco is based on very limited field efforts. It would be expected that substantial refinement would be made to the selected alignment and design assumptions after centerline drilling, material site exploration and evaluation and other design level field work is completed.

MEMORANDUM State of Alaska

TO: Robert Venusti
Deputy Director
Design and Construction

DATE: November 22, 1983

FILE NO:

TELEPHONE NO: 452-1911

FROM: Ronald E. Olmstead, P.E.
Assistant Construction Chief
Aviation Design and Construction

SUBJECT: Red Dog Mine Project

B. Review of Cominco's Port Design and Cost Estimates

At your request, I have reviewed preliminary conceptual engineering data and cost estimates furnished by Cominco Alaska, Inc. for proposed port facilities north of Kotzebue. Data reviewed included the following:

REPORT	AUTHOR
Preliminary EIS Red Dog Mining Site U.S.A.	EPA Region 10
Engineering Report on the Red Dog Project Vol. 1 & Vol. 2	Cominco Engineering Services
Engineering Estimate for the Red Dog Project Vol. 1 & Vol. 2	Cominco Engineering Services

The proposed recommended port facility for the Red Dog Mine is composed of 3 major component parts:

1. Deep Water Dock Facility (off shore)
2. Shallow Water Dock (on shore)
3. Concentrate Storage Facility at Mile 2.5 (Roadway Borrow Site)

My review consisted primarily of listing major items/quantities taken from the Cominco Alaska, Inc. reports and "backing into" the engineers estimate as independently as I could to confirm the estimated costs. My comments for each major division are as follows:

I. SITE DEVELOPMENT

Cost figures utilized for the port site development are the same as those utilized for the roadway portion of the project. Using Cominco's estimated quantities of 63,500 c.y. of fill for the pad on shore and a 7 foot fill height works out to approximately a 5.5 acre site.

02-001A(Rev. 10/79)

It was assumed by Cominco that the concentrate storage site at 2.5 mile would be graded during borrow operations from construction of the roadway.

II. BUILDINGS

Estimated costs for the concentrate storage building were taken from the 1983 Means estimating guide and projected for Anchorage, then the remote siting as shown on the attached sheets. The median unit price given was utilized. The smaller buildings were estimated at $250.00 s.f. which may be slightly high but are currently being utilized by our staff, for estimating purposes

III. SHALLOW WATER DOCK

The Means estimating guide was utilized for the sheet piling. The remaining estimated costs were judgement calls.

IV. CONCENTRATE HANDLING (SHORE BASED)

Equipment costs were obtained from N.C. Machinery, FOB the factory, with exception of the lightering barge, and loading equipment which were estimated, along with miscellaneous costs shown.

V. DEEP WATER DOCK

Per ton costs for modification of a used tanker were obtained from Todd Shipyards in Seattle. I was unable to obtain a figure for a used tanker, however a review of costs supplied for new steel modifications make the tanker costs estimated, seem not unreasonable. The remaining costs were estimated by judgement.

VI. CONCENTRATE HANDLING (DEEP WATER DOCK)

Equipment costs were obtained from N.C. Machinery, FOB the factory. The remaining costs were estimated.

VII. SUPPLIES HANDLING EQUIPMENT

Some equipment costs were obtained from N.C. Machinery, others were estimated. The fuel pipeline costs were taken from in house bid tabs from Galena. The pipeline consists of two lines, one nestled inside the other.

VIII. SERVICES

The estimated costs for generator sets were obtained from N.C. Machinery. It was estimated that the cost of the units in place and operating would be approximately twice the costs of the bare bones units at the factory.

IX. ACCOMODATIONS

It was assumed that the construction camp utilized during construction of the road would be utilized, thus some costs were allotted to refurbish it, by Cominco.

X. COMMENTS AND CONCLUSIONS

Estimated costs for the proposed scheme appear reasonable. They are somewhat less than those proposed for the proposed facility at Port Blossom. Port Blossom costs were estimated at approximately $34,861,000 for Phase I and $51,458,000 for Phase II for a total of $86,319,000. In addition, facilites on shore were estimated at $14,932,000. Concepts between the two are substantially different, with Port Blossum having a structural dock to deep water vs. an island with lightering required. Depending on the states involvement, it is recommended that thorough conceptual review be performed. Other items that may need additional consideration depending on overall use of the facility are:

1. Air Port Facilities
2. CFR Vehicles/Facilities
3. Land Requirements
4. Storage Facilities
5. Security

C. Alaskan Extractive Resource Projects

Lost River Mine: The U.S. Bureau of Mines estimates the size of the Lost River flourspar-tin deposit near the community of Lost River on the Seward Peninsula, to be in excess of 10 million tons. The current market value per ton of tin ore is $9,660. The mine has the potential of exporting 304,000 tons of tin, flourite, and tungsten annually. Transportation infrastructure required to mine development is a 60 mile extension of the Nome-Teller Road that will tie into the proposed Nome port for exporting the ore out of the region.

Slate Creek Asbestos: Asbestos reserves at Slate Creek are believed to range from 50 to 100 million tons. Doyon Corporation is actively pursuing development of this deposit and have estimated that the most likely level of production would be 150,000 tons per year. The current market value per ton of asbestos is $600. Transportation requirements for development of a mine is a 43 mile road to connect to the Taylor Highway near Chicken.

Delta Belt: Large high grade copper deposits have been located near the Robertson River, southeast of Delta Junction. Anaconda Copper, Resource Associates of Alaska and Cook Inlet Native Corporation have done exploratory drilling. Production estimates vary from 250,000 to 1,000,000 tons annually with an estimated project life of 50 years. The current market value per ton of copper is $482. A 90 mile extension of the Alaska Railroad would provide access to the copper deposits as well as providing service to the Delta Agriculture Project.

Dry Creek Deposit: Dry Creek has been identified as being a large lead deposit with lesser amounts of copper, zinc, silver and gold. Production potential is estimated to be approximately 68,000 tons of lead ore annually, which would provide an annual revenue of approximately $11 million. Widening the existing 21 mile road to 18 feet and a 15 mile extension of the road would provide adequate access to the deposit.

Lignite-Kantishna: The Kantishna antimony deposit has an estimated production potential of 33,000 tons per year. In addition, 1981 production of placer gold deposits was 3,000 oz. The estimated annual revenue resulting from development of the antimony deposits is $12.5 million. Access to the mine area would consist of a 75 mile road from the Parks Highway near Lignite. It has been proposed that this access road could also serve as an alternative route for Denali National Park visitors.

Bonanza Creek: Tungsten deposits of unknown quality and quantity at Bonanza Creek are owned by Doyon Ltd. Based on the limited information, it is assumed that yearly concentrate production could be 6,540 tons, with an estimated annual revenue of $1.3 million. Construction of a 24 mile gravel road from the Dalton Highway would provide access to the deposit.

Ambler Mining District: There are two major copper mine areas that have been identified in the Ambler Mining District. The Kennecott Area consists of two large deposits, the Arctic Mine with deposits of approximately 37 million tons and the Ruby Mine with deposits of approximately 4 million tons. The Anaconda Area consists of two deposits, the Sun Mine with deposits of approximately 25 million tons and the Smucker Mine with deposits of approximately 10 million tons. Bear Creek Mining Company has estimated that the Arctic Mine alone has the capability of producing 400-500,000 tons per year with an estimated mine life of 20 years. The best estimate of the value of the known resources in the ground is $18 billion. Long-term jobs, as a result of development, are estimated to be 1,350 by the year 2000 and 2900 in the post 2000 time frame.

In addition to the copper deposits, NANA Development Corporation currently has a jade mine in operation which has a limited production rate because of the lack of an adequate transportation system. Several alternative access routes have been examined for both rail and road. In addition to the necessary road or rail construction, a port on the

coast would be required in either the Krusenstern area or along the coast of the Seward Peninsula.

Chandalar Mining District: Extensive gold and silver deposits are present in the Chandalar Mining District; 100 placer lode claims, 2 operating mines and one ore processing mill currently exist in this area. Estimated gold production of known deposits is 3,000 oz. per year, with potential annual revenues of $1.2 million. Construction of a 65 mile road would provide access to supplement the existing 4,500 foot runway.

Chicago Creek Coal: Coal in this area is known at four locations. These include the Chicago Creek Mine, Kugruk (Wallin) Mine, Superior Mine, and an 1.5 million tons of fairly low quality coal. Coal development at site has been considered as a means of reducing heating costs in the villages of Kotzebue, Buckland, Deering, and the mining and reindeer herding activities at Candle. The cost of heating by coal would equate to a $.51 per gallon fuel oil price. The current price per gallon of fuel oil (in the NANA Region) is $2.40. Therefore, development of the resources at Chicago Creek is viewed as being economically justified. The transportation infrastructure required is a 170 mile road from Chicago Creek to Kotzebue. This road would also facilitate access to several other mineral resources that are located in close proximity to the route (uranium, placer gold, lead, zinc, silver, molybdenum).

Pt. Lay-Cape Lisburne Coal: There are several occurrences of coal deposits throughout the northwestern section of the State. On-shore sources for the Cape Beaufort area, 55 miles south of Pt. Lay, are calculated to be 35 million tons of inferred resources. Within a 50 mile radius of Pt. Lay, there are several deposits that appear to be of the best quality. Total indicated resources are 236 million tons and 2,769 million tons of inferred resources. The Corwin-Thetis mines, 80 miles from Pt. Lay, have indicated deposits of 49 million tons and 848 million tons of inferred deposits.

The Arctic Slope Regional Corporation has indicated that a mine in the Cape Beaufort Area could produce approximately 100,000 to 200,000 tons per year and be in production in 3 years. The use of coal is forecasted to reduced heating costs in Northwest Alaska by about $10 million per year. The Alaska Power Authority has determined that the quality and quantity of the coal resources make it economically feasible to barge coal as far south as Unalakleet. To facilitate development of the resources, the preferred transportation needs would be the development of a resource export and coal loading port capable of handling 500 ton coal barges. In addition, a road transportation network to link various coal deposit sites to a common corridor to the coast should be considered.

Lik Deposits: The Lik lead and zinc deposits are located 12 miles north of Red Dog and owned by GCO Minerals. If a transportation corridor was established, it would take 6 years to bring a mine into production. Estimated annual production would be 150,000 tons. Transportation infrastructure requirements are a road to the coast and a port facility to deliver the ore to market. The most likely scenario is linkage to the access developments at Red Dog.

Twin Mountain: There are significant tungsten deposits located in the Twin Mountain Area. additionally, several placer gold mines are in operation at Van Curlers Bar. Houston Oil and Minerals, Inc. has been conducting exploration work in the area and, to date, ore grades and tonnages are unavailable. The current market value per ton of tungsten is $200. Access to the Twin Mountain area would require construction of a 62 mile extension of the Chena Hot Springs road.

ALASKAN EXTRACTIVE RESOURCE PROJECTS

NAME	RESOURCE TYPE	LOCATION	POSSIBLE TIME	COST ESTIMATE
Lost River Mine Extension of the Nome-Teller Road from Teller-Wales (60 miles), via Brevig Mission, Lost River Mine and Tin City	Flourspar, Tin	Seward Peninsula	* 2000	$30.9 million
Slate Creek Asbestos Development Extension of the Taylor Highway near Chicken (43 miles)	Asbestos	Between Delta Junction and Eagle	1987	$33 million
Delta Belt Rail Extension Extension of the Alaska Railroad (90 miles)	Copper, Lead, Zinc	Southeast of Delta Junction near the Robertson River	1986	$643 million
Dry Creek Deposit 15 mile road extension	Lead, Copper, Zinc, Silver, Gold	35 miles east of Ferry (North of Healy)	2000	$9 million
Lignite-Kantishna 76 mile road construction	Antimony, Placer Gold	Adjacent to Denali Park	2000	$64 million
Bonanza Creek 24 mile road construction	Tungsten	200 miles northeast of Fairbanks	2000	$15 million

*Timeframe has not been forecasted. Year 2000 has been arbitrarily set.

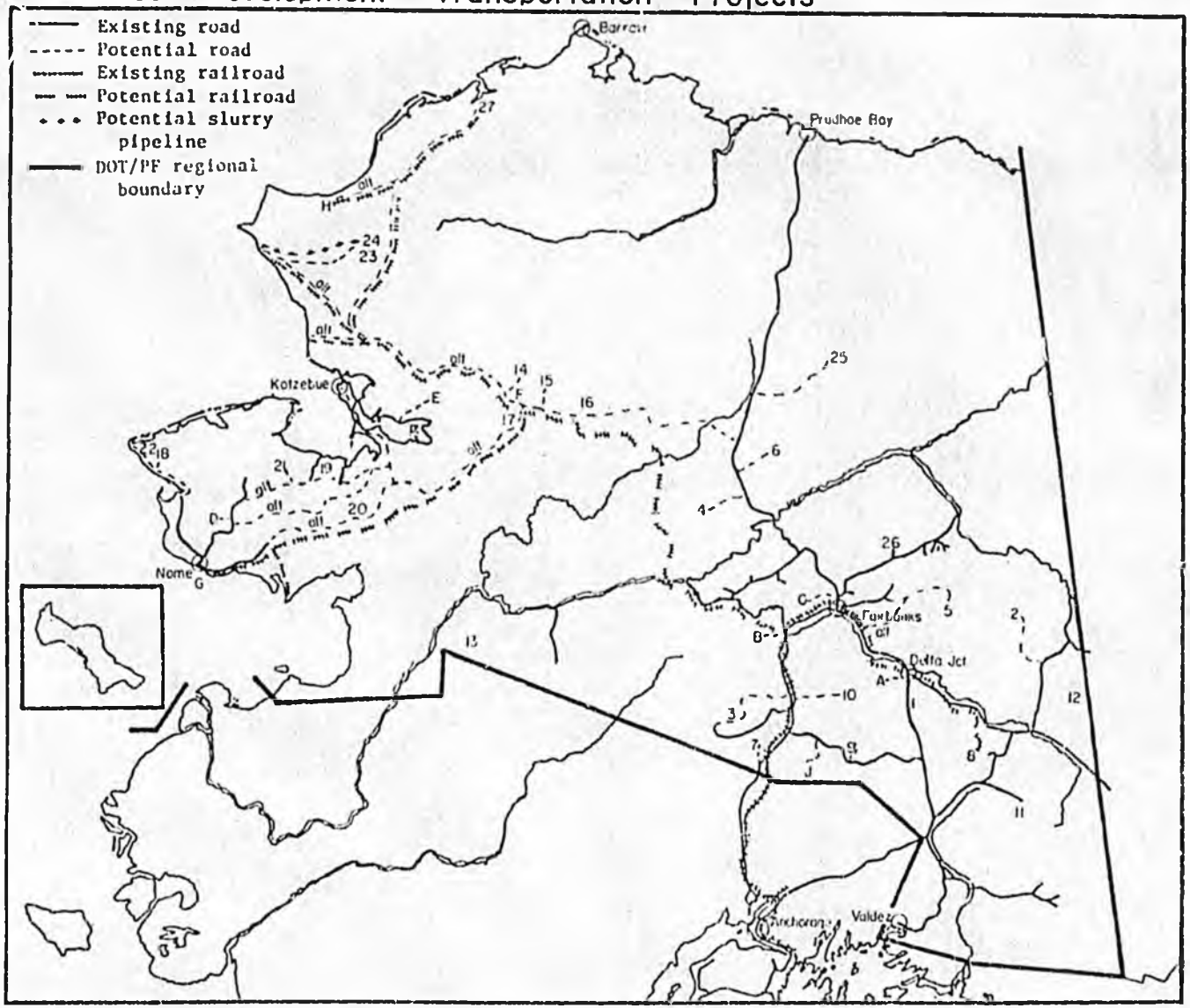
ALASKAN EXTRACTIVE RESOURCE PROJECTS

NAME	RESOURCE TYPE	LOCATION	POSSIBLE TIME	COST ESTIMATE
Ambler Mining District	Zinc, Copper, Silver, Gold, Jade, Lead	160 miles northeast of Kotzebue	2000	
I Haul Road System				
a) Ambler to Cape Krusenstern (225 miles)				Ia) $350 million
b) Ambler to Golovin Bay (322 miles)				Ib) $315 million
c) Ambler to Nome (434 miles)				Ic) $613 million
d) Ambler to Prudhoe Bay Haul Road (203 miles)				Id) $275 million
II Rail Transportation System				
a) Ambler to Nenana (390 miles)				IIa) $800 million
b) Ambler to Cape Krusenstern (225 miles)				IIb) $450 million
c) Ambler to Nome (434 miles)				IIc) $786 million
d) Ambler to Cape Darby (322 miles)				IId) $622 million
Dalton Highway to Chandalar Mining District	Gold, Siver	Coldfoot to Toblin Creek	2000	$39.7 million
65 mile road construction				

ALASKAN EXTRACTIVE RESOURCE PROJECTS

NAME	RESOURCE TYPE	LOCATION	POSSIBLE TIME	COST ESTIMATE
Kotzebue to Chicago Creek Road Construction (170 miles)	Coal	15 miles west of Candle	1990	$204.1 million
Pt. Lay-Cape Lisburne Coal Port Construction of a port to access several large deposits	Coal	Cape Beaufort area	2000	$100 million
Twin Mountain 62 mile extension of th ena Hot Springs Road	Tungsten		2000	$40 million
Sithylemenkat Road 39 mile road construction	Tin, Tungsten	170 miles northeast of Fairbanks	2000	$23 million

Resource Development Transportation Projects



POSSIBLE MINING SITES

1. Jarvis Creek
2. Slate Creek
3. Kantishna
4. Sithylemenkat
5. Twin Mountain
6. Bonanza Creek
7. Golden Zone
8. Delta Belt
9. Denali (Valdez Creek)
10. Dry Creek
11. Orange Hill
12. Tarus
13. Illinois Creek

Ambler District

14. Smucker
15. Arctic Camp
16. Picnic Creek
17. Bornite

Seward Peninsula

18. Lost River
19. Chicago Creek
20. Granite Mountain
21. Hannum Lode
22. Tin City

Noatak District

23. Red Dog
24. Lik

25. Chandalar District

Circle Mining District

26. Nome Creek Uranium

27. Pt. Lay-Cape Lisburne Area Coal

OTHER DEVELOPMENT

A. Delta Creek Ag & Forestry area
B. Nenana-Totchaket Ag & Forestry area
C. Goldstream Ag & Forestry area
D. Pilgrim Hot Springs Geothermal Development and Ag area
E. Stilivitchaq--Selawik Lake Ag & Forestry area
F. Ambler Ag area
G. Nome Port Development
H. Pt. Lay-Cape Lisburne Port Devl.
J. Susitna Hydro Access Roads

D. Qualification Matrix for State Transportation Projects

QUALIFICATION MATRIX with scoring feature
check highest category

ISSUE	HIGH ←				→ LOW
Type of major state benefit	Includes royalty payments	Includes taxes	Includes direct economic	Includes indirect economic	No benefit
State investment payback period for royalties/taxes	Less than 5 years	5 - 10 years	10 - 15 years	15 - 20 years	over 20 years
State investment payback period for economic benefits	Less than 5 years	5 - 10 years	10 - 15 years	15 - 20 years	over 20 years
Degree of state investment being considered	Less than 20% of transportation facility	20 - 40% of transportation facility	40 - 60% of transportation facility	60 - 80% of transportation facility	over 80% of transportation facility
Project viability as related to payments to third parties (royalties)	No payment to 3rd party	State requirement reduced by 0 - 30% if payment eliminated	State requirement reduced by 30 - 60% if payment eliminated	State requirement reduced by 60 - 99% if payment eliminated	No state requirement if payment to 3rd party reduced or eliminated
Transportation need other than resource development	Provides new highly needed service	Replaces existing inadequate service	Provides new convenient service	Replaces existing service with more convenient service	No effect
Area effected by facility	Provides full statewide service	Provides partial statewide service	Provides regional service	Provides local service only	Provides no service
Bonding authority to provide support (regional or municipal)	Yes, tolls/fees to be collected (revenue bonds)	Commited to create bonding authority	May create bonding authority	Not feasible to create bonding authority	Not willing to create bonding authority
Potential to support future resource development	Commitments already made	High potential	Some potential	Low potential	No potential
Facility open to public	Yes, no charge	Yes, but only for commerce	Yes, with tolls or fees	Yes, but only for commerce with tolls or fees	Not open to public
Ground work: EIS, permits, ROW	Yes, all permits etc. in hand no state work required	Commitment to obtain permits, no state work required	Asking for partial state involvement	All work must be done by state	No cooperation

RED DOG PROJECT: Relationship of the Jones Act

The Jones Act, established in 1920 as an amendment to the Shipping Act of 1916, restricts the shipment of American goods between U.S. ports to vessels built in the U.S. and operated by U.S. crewmembers.

Cominco/NANA intends to use foreign-built, owned and operated ships to transport the ore to destinations in Canada, Japan, and Europe. They have proposed using the port at Red Dog as a public port and backhauling fuel and cargo for the NANA region on their ships that have off-loaded the ore in Vancouver. However, goods destined for the NANA Region are now normally purchased in the Pacific Northwest, U.S.A. and the Jones Act would preclude routing of ships from the U.S. west coast ports to Vancouver. There are two options available to circumvent the shipping restrictions.

One alternative is for goods normally purchased in the Lower 48 for shipment out of Seattle to Northwest Alaska, to be purchased instead in Canada and shipped direct to the Red Dog port from Canadian ports. This option, therefore, creates an incentive for Alaskans to spend their money on Canadian goods rather than U.S. goods. The goods may actually be cheaper in Canada. In fact, Cominco's evaluation of the use of the Red Dog port as a regional port indicates that the transportation costs of fuel purchased and shipped from Vancouver are $30 cheaper per ton than fuel purchased and shipped from Seattle. However, there is a potential political issue regarding the expenditures of Alaskan dollars in a foreign country, for goods readily available in the U.S.

The second alternative is to make use of a provision of the Jones Act (known as the Third Proviso), which allows for intermodal transporting of American goods into foreign countries. This option would allow for rail shipments from the U.S. to Vancouver where the goods would be transferred onto the Cominco ships and backhauled to

the Red Dog port. There currently is a bill in Congress that will eliminate the Third Proviso which would, therefore, eliminate this alternative.

Another shipping aspect that relates to the Red Dog project is Senate Bill 1624, Cargo Preference Legislation. This bill is currently being discussed in Congress and is backed by Senator Stevens. SB 1624 proposed to require that 50% of all U.S. bulk exports be transported on U.S. flag carriers. The State of Alaska DOT&PF has expressed to Senator Stevens their opposition to the cargo preference requirements. DOT&PF contends that the high costs of using U.S. flag carriers would severely impact potential exports and place Alaska at a competitive disadvantage relative to other Pacific Rim exporters.

If Senate Bill 1624 is enacted into law, Cominco/NANA would be required to ship their ore on U.S. flag carriers and the transportation costs of freight for both the Red Dog Project and NANA Regional goods that are backhauled on the ships serving the Red Dog Project, are forecasted to increase.

F. Synopses of Two Canadian Mining Projects with Joint Public / Private Sector Participation

Two resource development projects that evolved through joint public/private sector participation are summarized in this report:

1. Northeast Coal Development

2. Pine Point Mines Ltd.

Three companies, Societe Quebecois d' Exploration Miniere (SOQUEM), Elf Aquitane and the Potash Company of Saskatchewan (PCS), were also looked at. However, though they represent cases of investment by the public sector in mineral developments, the nature of this investment was viewed as being far removed from the Red Dog proposal and, therefore, not applicable to the purpose of this report.

1. NORTHEAST COAL DEVELOPMENT

Located at the Peace River coal field in British Columbia. The size of the northeast coal deposit is estimated to be 8 billion tons. The center of the deposit is located approximately 78 miles southwest of Dawson Creek (the nearest highway and railway lines) and 400 miles from the Port of Vancouver.

In 1975, the Provincial Government of British Columbia, which owned substantial coal reserves, decided that development of these resources was the economic priority of the government. Approximately $15 million was spent by the government on 77 studies relating to the mine and its potential impact.

Three main parties have participated and have an interest in the development of the mine. They are the Provincial Government who owns the resources; the Federal Government which has an interest in the regional economic policy, is owner of the national railway (CN Rail), has jurisdiction over ports and their development, and has

constitutional responsibility for international trade; and private industry that has expertise in mine development.

In June 1980, the Provincial Government informed major coal producers that the Province would develop the rail and highway systems, organize a town at the site, provide power transmission facilities, and negotiate with the Federal Government for construction of a terminal facility if the producers would develop the mine. No tax or royalty concessions were offered, freight rates would be commercially negotiated with a special rate prevailing until 1989, and complex cost recovery techniques would be developed to meet a sales contract and then the necessary infrastructure would be put in place.

In January 1981, two companies, Quintette Coal Ltd. and Teck Corporation, negotiated contracts with the Japanese steel industry for an annual supply of 7.7 million tons of coal. The price was negotiated at $76.00 and $76.50 per ton, plus escalation, with deliveries commencing in December, 1983.

The development responsibilities among the three parties consisted of the following tasks:

Private Industry

1. Quintette Coal Ltd. would develop an open pit coal mine capable of producing 6.3 million tons per year.

2. Teck Corporation would reestablish operations at their Bullmoose Mine to be capable of shipping 1.7 million tons per year.

Provincial Government

1. The Highway Department would build a new 57 mile road and upgrade other area roads.

2. The Provincial railroad would build 80 miles of new track with two major tunnels (3.7 miles and 5.5 miles).

3. A new substation for electrical power would be constructed and 79 miles of new power lines installed.

4. The Province would establish a new community near the mine site to accommodate a population of 6,000 people.

Federal Government

1. The federally owned railway would upgrade 677 miles of its system.

Federal Government and Private Industry

1. A new coal terminal would be constructed, funded jointly by the Federal Government and private industry. The facility would be capable of handling 12 million tons of coal per year and berthing vessels up to 250,000 dwt.

Total capital expenditures for the project are estimated to be $3 billion. Approximately 10,000 permanent jobs have been created. The estimated present value of taxes and other government revenues resulting from this project is $1.7 billion over a 20 year project life. These revenues, which are shared by the Provincial and Federal Governments, consist of income taxes, mining taxes and coal royalties paid by the mining companies, as well as sales taxes on goods and services and the personal income taxes paid by construction and operating employees.

2. PINE POINT MINES

The Pine Point lead and ore deposit is located near the Great Slave Lake in the Mackenzie District of the Northwest Territory, Canada. Cominco Ltd. began staking the property in 1928 and in 1951 Pine Point

Mines Ltd. was formed with Cominco owning a 78% interest. In 1955, the estimate of the size of the deposit was 5 million tons or ore averaging 4% lead and 7% zinc. At that time, the company determined that it was impractical to develop a mine until adequate transportation facilities were established.

In 1955, The Deputy Minister of Northern Affairs advocated the construction of a railway, 438 miles long, from Grimshaw, Alberta, to the Great Slave Lake as a project of national interest and to serve the Pine Point Mine. In 1961 an agreement was reached between the Federal Government, Pine Point Mines Ltd., and the Canadian National Railway Company (CNRC). The agreement called for the Federal Government to construct the railway, the Northern Canada Power Commission to build a hyro plant for supplying power to the mining area, and for Pine Point Mines Ltd. to bring the mine into production. The mining company guaranteed shipments of 215,000 tons per year for 10 years to CNRC, and the cost of the hydro plant construction was underwritten by Pine Point Mines Ltd.

Mining operations began in 1963 with a planned production capacity of 5,000 tons/day. The railroad reached Pine Point in 1964 and ore shipments began in 1965. Additional mineral leases were acquired and in 1968 the company increased its concentrating capacity to 10,000 tons per day.

Following are the key points outlined in the agreement between the Federal Government, CNRC, Pine Point Mines, and Cominco:

1. CNRC agreed to complete construction of the 438 mile rail line by December 31, 1966.

2. Pine Point Mines Ltd. agreed to ship exclusively on the rail for 10 years at least 215,000 short tons per year at a rate of $7.75 per short ton (subject to any increase or decrease in rates). If more than 215,000 short tons were shipped in a

particular year, CNRC will credit the surplus to the mining company, and vice versa.

3. All rates that apply to the Point Point Mines Ltd. shall apply evenly to any new operations established along the rail route.

4. No mineral rights will be transferred to CNRC for lands leased by Cominco that are crossed by the railway.

5. All income taxes paid by Pine Point Mines Ltd. are subject to the "Income Tax Act" and all royalties paid to the government are established according to the Canada Mining Regulations.

As a result of the payment schedule established in the agreement, the capital costs for the new railroad line ($79 million) were paid off after 7 years of the mines' operation. Power costs were subject to an agreed surcharge. Public investment in the hydroelectric power plant has long since been amortized. The current production rate is 11,000 tons per day and the mine operation and production is expected to continue for at least another 10 years. There are a total of 640 employees at Pine Point Mines with Pine Point community members having the second highest per capita income rate in the Northwest Territory.

VIII. Report of the Division on Land and Water Management Department of Natural Resources

A. Summary of DLWM Involvement in Red Dog Project

B. Outline of Topics to be Considered in a Right-of-Way Agreement

C. Commissioner's Response to Cominco and GCO Minerals Right-of-Way Applications

MEMORANDUM State of Alaska

TO: John Sims, Director
Office of Mirerals Development
Department of Commerce and
Economic Development

DATE: February 23, 1984

FILE NO:

TELEPHONE NO: 465-2400

FROM: Esther C. Wunnicke
Commissioner
Department of Natural Resources

SUBJECT: Red Dog Project

I am responding to your recent request for comments from the Department of Natural Resources on the proposed Red Dog project. I am strongly supportive of the proposed development and offer the Department's resources in your review.

To encourage optimum eventual development in the area, all landowners and users must cooperate in providing for multiple industrial use of rights-of-way, development areas, and tidelands. We have proposed a reciprocal use agreement that would cover tidelands, the port and uplands, rights-of-way, material uses, and other matters of public concern. The attached memoranda to you from the Northcentral District staff of the Division of Land and Water Management indicate our concerns about the right-of-way and other development areas.

I strongly urge that affected landowners and users be brought together soon to discuss reciprocal use. The Department will be prepared for preliminary discussions within two weeks and has so informed NANA. We have been assisted by the Attorney General's Office in drafting a reciprocal use agreement.

In the executive summary I have noted a few points that I would recommend rewording. I am sending my suggestions under separate cover.

Thank you for requesting the Department's involvement. My staff and I are available if you have any further questions.

Attachments

02-001A (Rev. 10/79)

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF LAND AND WATER MANAGEMENT
NORTHCENTRAL DISTRICT - 4420 AIRPORT WAY, FAIRBANKS, ALASKA 99701

TO: John Sims
Director, Office of Minerals Dev.
Dept. of Commerce & Economic Dev.

DATE: November 18, 1983

FILE NO:

THRU: Jerry L. Brossia
District Manager

TELEPHONE NO: 479-2243

FROM: Michael E. Vediner
Natural Resource Officer
Classification & Coordination

SUBJECT: Summary of DLWM Involvement in Red Dog Project

Initial involvement of this division in the Red Dog project dates to August, 1982 with receipt of a ROW application from GCO Minerals to develop their Lik deposit. In January, 1983 Cominco applied for a different ROW to develop Red Dog.

In response to this potential for multiple facilities and in support of CZM mandates Commissioner Wunnicke issued the following general policy statements to both GCO and Cominco:

1. The State of Alaska will authorize the development of a single transportation corridor. The route will be public and available to multiple use by other future resource developments in the region. As a public route, reciprocal right-of-way agreements must be acquired wherever private or corporate ownership is encountered.

2. Tideland (and associated upland) port development will also be available to support multiple users such as oil and gas, coal exploration, or support services development.

3. Local concerns, particularly subsistence use must be accommodated to the maximum extent possible.

4. One EIS should be produced that considers all potential options. To this end, the research data collected by both companies should be available to all participating agencies.

For the project proposed by Cominco the division anticipates issuance of tideland lease(s), tideland permit(s), right-of-way permit, material sales, water appropriation certificates, dam safety permits, and possibly, instream flow reservation. To date only the right-of-way application has been received and at the request of the other state reviewing agencies further action is awaiting completion of the EIS.

We will be working closely with OMB on permit coordination regarding the CZM consistency determination. OMB has indicated that a single determination to cover all permits may be possible.

02-001A(Rev. 10/79)

Several issues have been identified by this division that through the EIS process remain unresolved, particularly with respect to your task force objectives and possible direct state involvement. These are summarized below.

1. Land ownership status was not considered in assessing the regional, multiple use perspective, during the EIS process. As a result the preferred (southern) alternative crosses a variety of land owners and terminates at tidewater on native corporate land. Since the applicant is in partnership with the native corporation they obviously have no objections.

   From the Department of Natural Resources' stated objective of one, multiple use, public road however the ownership status is of greater concern. Certainly we can insist on reciprocal rights-of-way for the primary road but upland facility land needs for possible future developments are not readily obvious. By comparison the northern (GCO) alternative crosses and terminates on public owned land. In fact the northern port site location is within the only stretch of accessible, unencumbered, public land along the northwest coast.

   If the state builds the road we may well consider a route that traverses a national monument and ends on private land as a greater barrier to public, multiple use than the number of bridge crossings, particularly since the environmental concerns of river crossings can be mitigated by appropriate construction techniques.

2. Both Cominco and GCO have investigated the preliminary engineering and costs associated with road construction. Their costs per mile vary from $1.5M to $800K, respectively, even though both roads are designed to support 222,000 pound loads. These cost differences are significant when considering state funded construction. The shorter southern route costs less to build for any given set of standards. Yet in absolute costs GCO could build their northern route for less than Cominco could build their southern route. Two questions that arise are: would state construction follow state highway standards and are the cost factors more important than land availability?

3. Design of port facilities should emphasize availability to other users. Items such as location of artifical islands and upland facilities should allow easy access to multiple users.

B. Outline of Topics to be Considered in a Right-of-Way Agreement

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF LAND AND WATER MANAGEMENT
NORTHCENTRAL DISTRICT - 4420 AIRPORT WAY, FAIRBANKS, ALASKA 99707

TO: John Sims, Director
Department of Commerce
Office of Minerals Development
Fairbanks

DATE: December 20, 1983

FILE NO: Red Dog

TELEPHONE NO: 479-2243

FROM: Jerry Brossia
District Manager

SUBJECT: Red Dog R/W

This memorandum outlines topics that should be considered in a Right-of-Way agreement for the Red Dog project. This information has not been reviewed by the Commissioner's office; therefore, these topics are considered as a draft. This information will also need to be reviewed by the Department of Law prior to meeting with NanaCominco.

We have been actively meeting with the Attorney General in Fairbanks and hope to receive further policy guidance from him and the task force in the near future.

In order to complete a Right-of-Way agreement it is necessary to determine land ownership for the entire route. There may be a variety of land owners along the proposed road (ie. National Park Service, Nana, Kivalina, Native Allotments, or mining claims). This review is currently underway and should be complete by late January 1984.

The RightofWay with Nana should include the following sections:

1. General discussion of grant
   a. Purpose
   b. Definitions
   c. Location
   d. Third parties interests.
2. Reciprocal agreements with Nana
3. Late comers' user agreements
4. Port and tideland use
5. Upland expansion for industrial purpose.
6. Availability of road use
   a. Industrial
   b. Public
   c. Subsistence

02-001A(Rev. 10/79)

7. Alignment/realignment for engineering or environmental purposes

8. Mitigative measures

   a. Environmental
   b. Maintenance

9. Liability

10. Indemnification of State

11. Bonding

12. Insurance

13. Books/Accounting record access

14. Reservations

   a. State
   b. Nana

15. Compliance with Notice to Proceed and Stop Work

16. Forfeiture/Breaches

17. Termination Plans

Other Items:

Land Exchanges

Cost Reimbursement Schedules (if State financed)

Toll Charges

Nana has been advised, on December 20, 1983, that we are willing to discuss the R/W with them. Don Argestinger will contact me to set up a time.

cc: Jim Barnette
Tom Hawkins
Esther Wunnicke

C. Commissioner's Response to Cominco and GCO Minerals Right-of-Way Applications

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: (907) 465-2400

March 9, 1983

Mr. W. H. Tonking
Executive Vice President
GCO Minerals Company
P. O. Box 4258
Houston, TX 77210

Mr. H. M. Giegerich
President and General Manager
Cominco Alaska
5660 "B" Street
Anchorage, AK 99502

Dear Mr. Tonking:

The Department of Natural Resources has now received applications and supporting documentation for rights-of-way from both Cominco Alaska and GCO Minerals Company to connect mineral deposits in the Western Delong Mountains with tidewater. We are pleased to see the significant effort that is underway to develop these mineral resources with due regard for engineering and environmental concerns. As the Department's involvement in this project gets underway, it is appropriate to provide both companies with our position on several key issues.

1. The State of Alaska will authorize the development of a single transportation corridor. The route will be public and available to multiple use by other future resource developments in the region. As a public route, reciprocal right-of-way agreements must be acquired wherever private or corporate ownership is encountered.

2. Tideland (and associated upland) port development will also be available to support multiple users such as oil and gas, coal exploration, or support services development.

0-J9 LH

3. Local concerns, particularly subsistence use must be accommodated to the maximum extent possible.

4. One EIS should be produced that considers all potential options. To this end, the research data collected by both companies should be available to all participating agencies.

In consideration of these points and as an aid to the various agencies that will participate in this project a unified industry position is desirable. Since the primary objective of both companies is to ship mineral commodities, and consolidation of support facilities in the coastal zone is required under State law, you should strive to resolve any differences you may have and mutually support a common right-of-way and port site development.

The Department will be an active review agency during the EIS process and will be prepared to provide the requested permits and/or leases within six months of EIS adoption.

I am hopeful that these points provide better direction at the outset of this project and I look forward to a successful venture. We also will be available to meet with all involved parties in Anchorage at your earliest convenience.

Sincerely,

Esther C Wunnicke

Esther C. Wunnicke
Commissioner

cc: Commissioner Dan Casey, DOT/PF
Curt McVee, BLM
Bill Riley, EPA
Harris Saxon, Ely, Guess & Rudd
Jerry Brossia, NCDO
Tom Hawkins, DLWM
Don Argetsinger, NANA

IX. Appendices

Appendix A: Project Description from Preliminary Draft Environmental Impact Statement

Appendix B: Red Dog Fact Sheet

Appendix C: Project Permitting Time-Line

Appendix D: Permit Flow Chart

Appendix E: Base Metal Markets (Cu, Pb, Zn): Alaskan Opportunities (Paper by Gordon H. Laurie, Cominco, Ltd.)

Appendix A: Project Description from Preliminary Draft Enviromnmental Impact Statement

INTRODUCTION

Development of the Red Dog mining project would involve an open pit lead/zinc mine located 131 km (82 mi) north of Kotzebue. The ore would be crushed and the metallic sulfides concentrated in a mill near the mine site, with the concentrates transported to the coast for shipment to market. While the deposit has not yet been fully defined by geologists, at least 77 million Mg (85 million tons) of ore exist. The ore contains approximately 5.6 percent lead, 17.1 percent zinc, 75 g/Mg (2.4 oz/ton) silver and measurable levels of barite. The project has a potential life of at least 40 years under expected production rates, with the possibility of extension if additional ore is found. The mine would be developed in two phases. The "initial" phase of production would extend five years and produce approximately 434,450 Mg/yr (479,000 tons/yr) of combined concentrates (Table II-1). The "expanded" phase of production would extend from the sixth year of development through the life of the project. Approximately 683,878 Mg/yr (754,000 tons/yr) of combined concentrates would be produced during this phase (Table II-1).

The mine, tailings pond, mill, power plant, worker housing and water reservoir would all be located within a 8,975 ha (22,176 ac) parcel of private land in Red Dog Valley. The port site would also be on private land if located at VABM 28, but on public land if located at Tugak Lagoon. The transportation corridor would be almost totally on public land.

PROJECT COMPONENTS AND OPTIONS

In reviewing this document, it is important that the reader understand the relationship among the terms "component", "option" and "alternative". The project has several components, each one a necessary part of an entire viable mining project (e.g., the mine, mill site, tailings pond*, transportation system, port site, etc.). For each component there may be one or more options (e.g., a northern or a southern transportation corridor option). An alternative is a combination of options (one for each component) that constitutes an entire functioning project.

Table II-1

CONCENTRATE PRODUCTION SCHEDULE

Daily Production (Average Amount/Day)	Initial Production Rate		Expanded Production Rate	
	Mg[1]	Tons	Mg[1]	Tons
Ore	2,721	3,000	5,079	5,600
Lead Concentrate	204	225	308	340
Zinc Concentrate	907	1,000	1,515	1,670
Barite Concentrate	127	140	127	140
Tailings*	1,678	1,850	2,766	3,050
Annual Production				
Ore	958,700	1,057,000	1,779,534	1,962,000
Lead Concentrate	71,650	79,000	107,933	119,000
Zinc Concentrate	317,450	350,000	530,595	585,000
Barite Concentrate	45,350	50,000	45,350	50,000
Tailings	524,250	578,000	1,095,656	1,208,000

[1] 1 Mg (megagram) = 1.102 tons
1 ton = 0.907 Mg

Source: Cominco Alaska, Inc.

* Defined in Glossary.

The EIS scoping process initially identified at least two, and often several, options for each component. The process by which this large number of options was screened to reduce the number to a manageable level, and the ultimate project alternatives were selected, is described in detail in Chapter III. The following description of each project component, therefore, addresses only those component options which were ultimately retained and are specifically addressed in at least one of the three action alternatives.

Mine

The Red Dog deposit is located on a side hill on the main fork of Red Dog Creek. The immediate topography generally consists of rolling hills with wide valleys. The zone of mining influence would impact the main stem of Red Dog Creek (Fig. II-1).

The outcropping ore body and its geological configuration dictate that a conventional underground mine would not be feasible. Open pit mining would require overburden (waste rock) removal from the surface of the ore body, followed by drilling and blasting of the ore in benches within an open pit. Overburden material not suitable for mill processing would be stockpiled near the tailings pond.

The mine pit would be developed in two stages: preproduction followed by production mining. During preproduction, overburden would be removed from the pit, and access roads, pit ramps and the initial benches would be established. Unmineralized waste would be used for road and tailings dam construction. Mineralized waste would be stockpiled in a catchment area above the tailings pond. During preproduction, it is estimated that a total of 1,242,000 Mg (1,365,000 tons) of material would be removed.

Ore production rates are an important economic factor and are normally based on the extent of services and the estimated quantities of concentrates that would be accepted in the markets. Initial production mining would involve the annual extraction of 958,700 Mg (1,057,000 tons) of ore. On an initial operating basis, an average of 2,721 Mg (3,000 tons) of ore would be

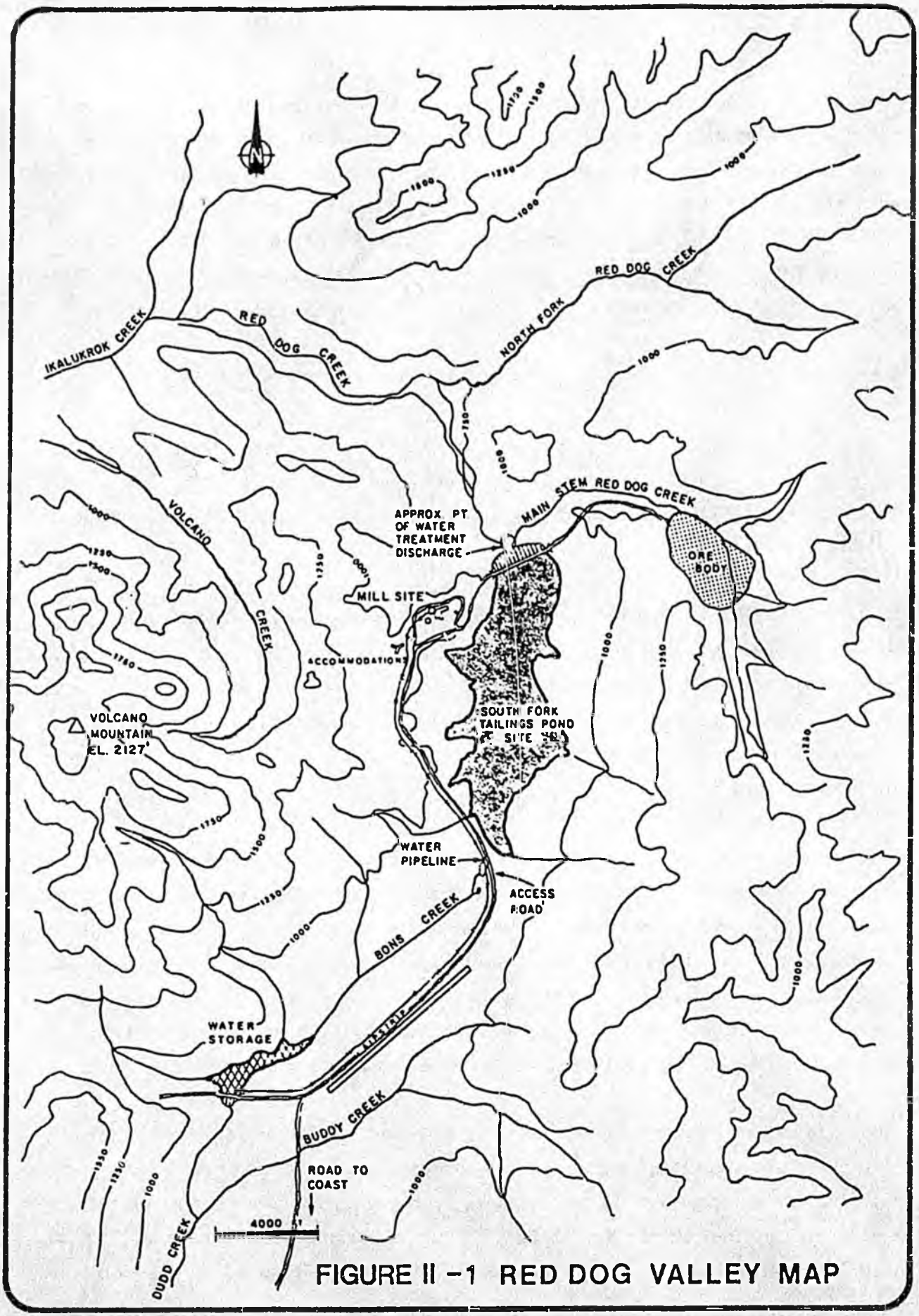


FIGURE II -1 RED DOG VALLEY MAP

sent each day to the concentrator (mill) for upgrading (Table II-1). Drilled and blasted ore would be loaded into mine type trucks using front-end loaders. The mine trucks would transport the ore to a crushing facility adjacent to the mill. The same loaders and trucks would be used to transport low grade ore and waste materials to stockpiles at the tailings pond.

The open pit would be designed to optimize ore recovery with due consideration given to protection of the Red Dog Creek watershed adjacent to the pit area (Fig. II-2). Pit slopes would be designed at 35 degrees and would be confirmed by rock mechanics design. Benches would be 7.6 m (25 ft) high and access ramps 18.3 m (60 ft) wide at an eight percent grade. The initial pit would be approximately 244 m (800 ft) in diameter and would contain seven benches down to the 297 m (975 ft) elevation. The final pit could be 853 m x 305 m (2,800 ft x 1,000 ft) in area and contain up to 28 benches to the 152 m (500 ft) elevation.

A diversion ditch would be constructed between Red Dog Creek and the open pit to collect runoff from the mine area. The ditch would initially intercept runoff from an approximate area of 0.65 km^2 (0.25 mi^2). The depth of the ditch would be sufficient to ensure that it would collect most of the ore zone runoff from the south side of the creek. If significant subsurface inflow from the creek occurred, a seepage cutoff wall would be added where necessary to block this inflow.

The drainage ditch would also collect surface erosion sediment originating from the open pit and the associated ore haul road to the mill. A pump station would route runoff from the open pit to the tailings pond. The ditch, collection sump and pump to the tailings pond would be sized for a 10-year recurrence 24-hour storm event. Adequate capacity would be allowed for winter icings and snow accumulation. The ditch would be cleaned of ice and erosion debris, if necessary, in late winter or spring to retain capacity for spring breakup and summer storm runoff.

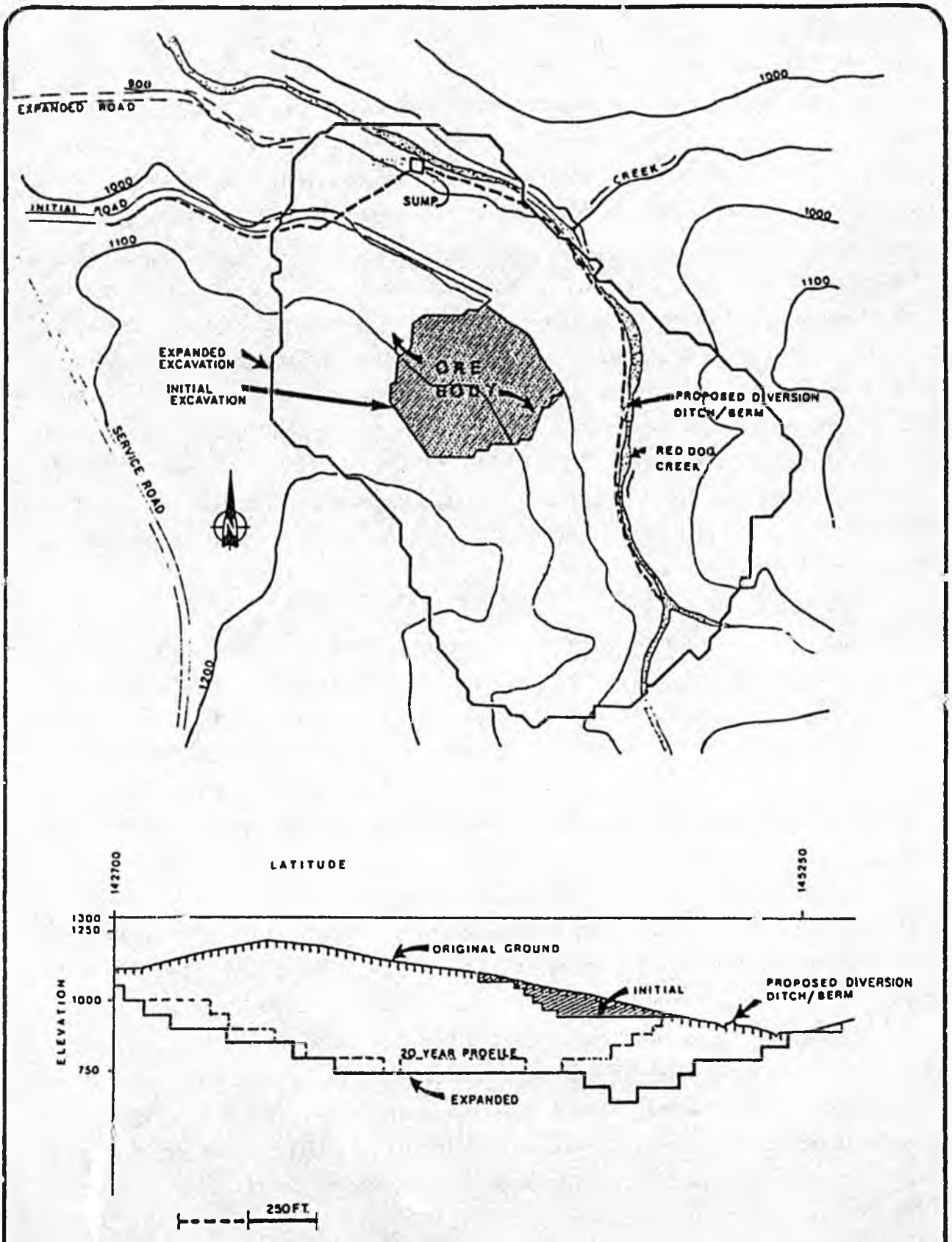


FIGURE II -2 MINE PIT LAYOUT

Tailings Pond

The location of the South Fork tailings pond in Red Dog Valley is shown on Figure II-1. A detailed diagram of the approximately 237 ha (585 ac) tailings pond facility is shown on Figure II-3. The tailings pond dam would be in the form of an impervious earth-filled structure with a spillway designed to maintain structural competency in the event of an overflow. The earth-filled dam would be constructed in stages. Prior to full production, the dam would be constructed to contain five years of production tailings. The dam would then be raised to its final elevation in stages which may take 15 years to complete. The top of the dam would be used as a road to haul ore from the pit to the mill complex.

Thickened tailings slurry from the mill concentrating process would contain about 60 percent solids by weight, with the liquid portion consisting of excess process water, dissolved minerals and residual reagents. The slurry would flow by gravity from the mill into the tailings pond. An internal process using a thickener would be used to return water directly to the mill process circuit as a step in minimizing process water loss. It is estimated that approximately 64 percent of mill process water could be recirculated directly in the mill in this way. Additional mill process water would be recycled from the tailings pond (25 percent) or from the freshwater source (11 percent). These recycle estimates are based upon water balance flowsheet data (Cominco Engineering Services, Ltd., 1983). Tailings in the form of a sand slurry would be deposited behind the dam.

Red Dog Creek tributaries with known metal content of toxic concentrations would continue to drain into the tailings pond for treatment, as would precipitation-related runoff. Diversion structures and ditches would be built to control or prevent excess surface drainage of uncontaminated water into the tailings pond. The surface water would be routed into the Bons Creek drainage, thus reducing the amount of water accumulating in the tailings pond. Chemical treatment and metals removal of tailings pond water would take place in a treatment plant prior to discharge to the presently minerals-contaminated Red Dog Creek. A seepage contingency dam would be con-

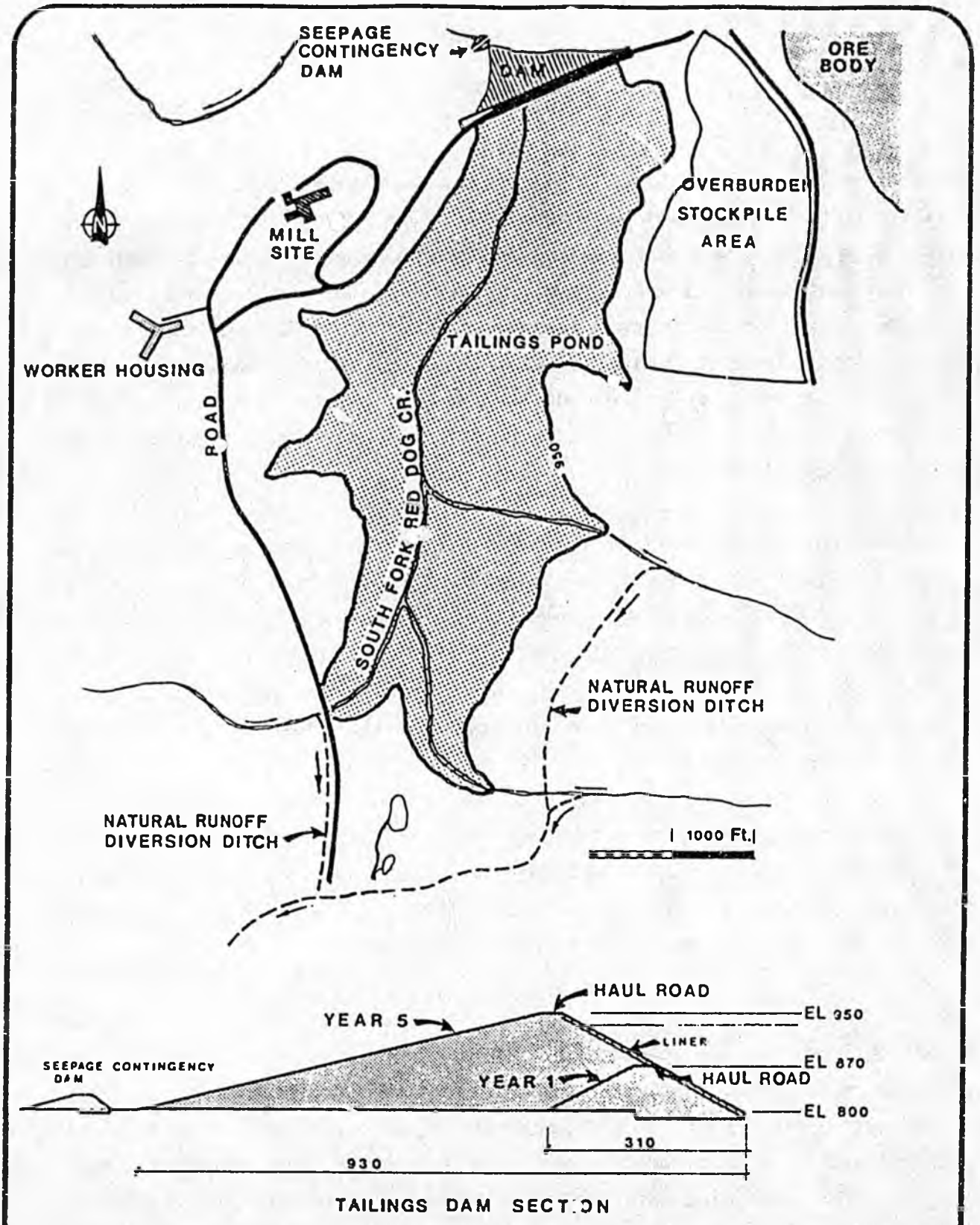


FIGURE II -3 SOUTH FORK TAILINGS POND

structed downstream of the main tailings pond dam to collect any seepage and return it to the tailings pond.

Mill

Proximity to the mine and tailings pond were determining factors in mill location. The proposed mill site would be on a small hill of bedrock outcrop located opposite the ore body on the northwest side of the South Fork tailings pond (Fig. II-1). This site would be located within the pond catchment area so that tailings slurry could flow by gravity from the concentrator complex to the tailings pond. In addition, worker housing facilities would be located within a reasonable distance of the mill site so that waste heat produced in the power generation process could be used to heat the accommodations.

The proposed mill complex is shown on Figure II-4. The approximately 14 ha (35 ac) complex would include a water treatment plant, a diesel-based power plant, fuel storage and distribution facilities, and a vehicle maintenance/warehouse structure in addition to facilities integral to the milling process.

The project would use a selective flotation milling process to concentrate valuable minerals. The flotation process would consist of three major steps: size reduction, selective mineral concentration and moisture reduction of the concentrates. During the milling process, lead, zinc and barite minerals would be separated and concentrated, while the residual tailings slurry containing waste rock would be directed to the tailings pond. Silver complexes with the lead and zinc concentrates in the milling process, and would be separated out later during smelting

After grinding, the ore would be suspended in a water slurry and transported to flotation cells (tanks) where the valuable minerals would be separated from waste materials in a froth flotation process. In this process, valuable minerals adhere to air bubbles that rise to the surface of the tanks and are removed. To make the process work efficiently, it is necessary to

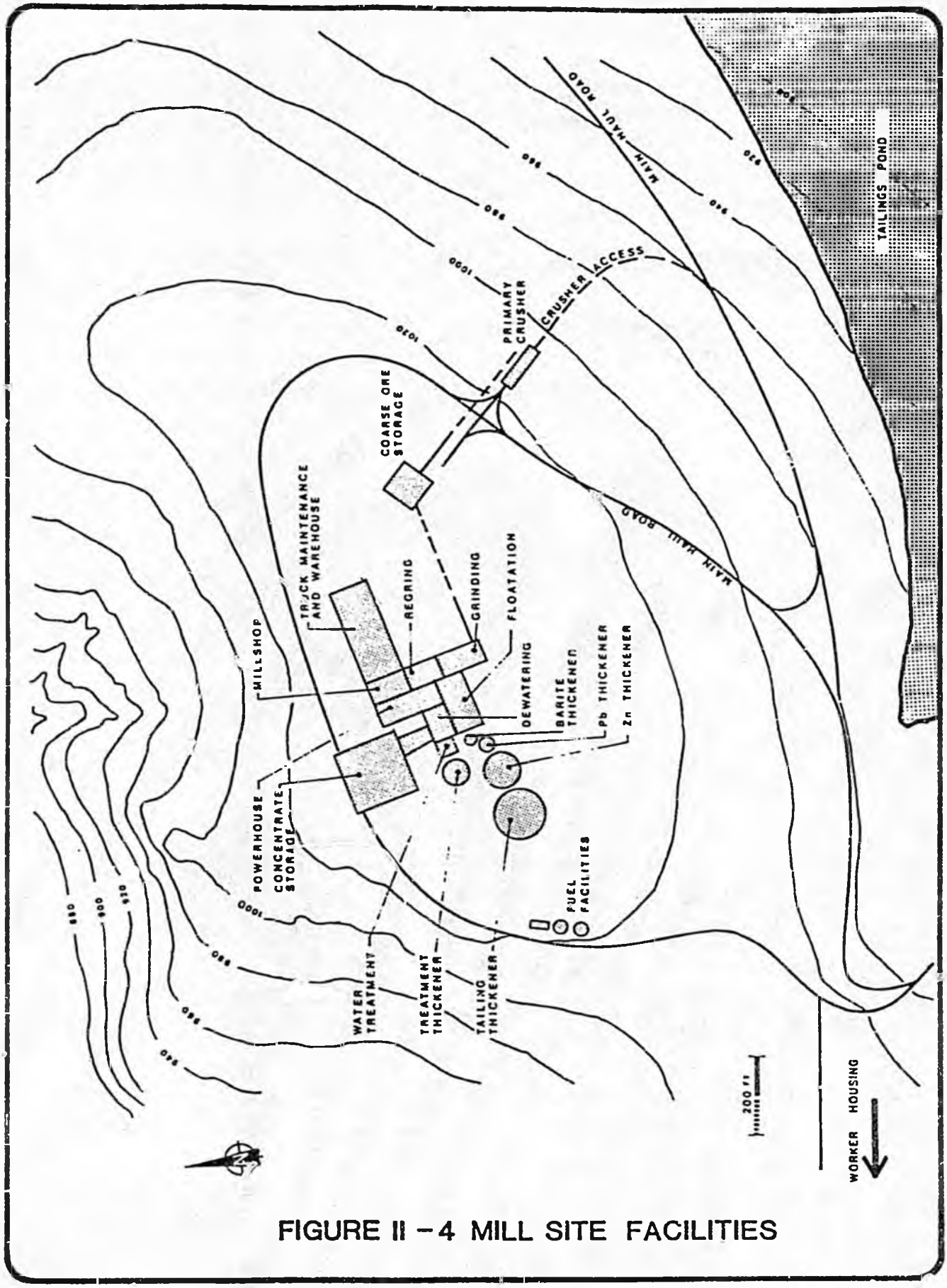


FIGURE II – 4 MILL SITE FACILITIES

add air and various reagents. The reagents either aid flotation of valuable components or suppress flotation of waste material. This allows the bubbling and frothing action to float different ore minerals selectively so that metal concentrates can be produced. The ore minerals would be separated as sulfide concentrates of lead and zinc, with barite recovered in the last stage of the process as barium sulfate. Waste would include silicate minerals and small concentrations of sulfides.

Following separation of the ore minerals from waste rock, dewatering of the concentrates would take place using lead and zinc thickeners, followed by filtration and thermal drying. Wherever possible, waste heat from the diesel-based power generation would be used for drying the concentrates.

No reduction of sulfides to base metals or other changes in the chemical composition of ore minerals would take place in the concentrator or at the project site. The upgraded lead and zinc concentrates (which would also contain silver) would be shipped to smelters outside of Alaska for processing to refined metals. Barite concentrate would be dried and bagged locally for possible use in formulating oil well drilling mud.

The mill would be a major consumer of water and, as such, recirculation of process water would be used to the fullest extent possible. In addition to concentrate thickeners, a tailings thickener would be used to recycle water, thus decreasing the volume of tailings slurry produced. This would decrease the amount of water that would have to be treated, and would reduce annual water demand by approximately 49 million ℓ (13 million gal).

Reagents are an integral part of mill operation and sufficient quantities for a year's operation would be stored at the mill site. Reagents to be used for the Red Dog project are shown in Table II-2. These materials would be supplied in annual shipments and stored in a secure area at the port site.

The zinc ($ZnSO_4$) and copper ($CuSO_4$) sulfates used as conditioners in flotation would be handled in polylined and sealed palletized cartons of approximately 0.9 Mg (1 ton) capacity. These materials could be incompatibly stored together and their toxic environmental hazards are well known.

Table II-2

RED DOG CONCENTRATOR REAGENTS

	Initial Production		Expanded Production	
	Mg/yr	tons/yr	Mg/yr	tons/yr
Zinc sulfate ($ZnSO_4$)	480	529	1,401	1,544
Copper sulfate ($CuSO_4$)	480	529	2,505	2,761
Sodium cyanide (NaCn)	96	106	299	330
Methylisobutyl carbinol (MIBC)	48	53	199	220
Sodium isopropyl xanthate	480	529	1,766	1,947
Sodium cetylsulfonate (EC-111)	72	79	148	163
Sulfuric acid (H_2SO_4)	959	1,057	3,002	3,309
Hydrated lime [$Ca(OH)_2$]*	2,396	2,642	9,018	9,941
Polyacrylamide flocculant* (Percol 730)	5	6	5	6

* Note: Part of the lime and all of the flocculant supply would be used in the wastewater treatment process.

Sodium cyanide (NaCn) is a toxic reagent and must, at all times, be stored and handled in isolation from other chemicals, particularly those which are acidic in nature, including the sulfate salts. This material would be shipped in 102 kg (225 lb) sealed drums on pallets. The reagent is essential to the metallurgical process as a depressant of iron minerals.

Methylisobutyl carbinol (MIBC) is an aliphatic liquid alcohol which has only a moderate solubility in water. It is moderately toxic to aquatic life and com-

parable in this respect to most intermediate molecular weight liquid alcohols. This chemical would be shipped in 181 kg (400 lb) steel drums and could be safely stored with the other chemicals.

Sodium isopropyl xanthate is an essential sulfide mineral collector in the flotation process, and is very toxic in the environment. It would be shipped in approximately 0.9 Mg (1 ton) sealed, palletized containers which preferably would be stored apart from acidic materials. A potential problem with xanthate is that it may deteriorate from prolonged contact with moisture and then would require disposal as it would be unusable as a reagent.

Sodium cetylsulfonate (EC-111) is a paste-like surface active agent used for barite flotation that has only a moderate solubility in water. It is essentially non-toxic and has been approved for use in food applications. This material would be shipped in 181 kg (400 lb) steel drums on pallets and would be compatible with all other reagents.

Sulfuric acid (H_2SO_4) is a hazard to aquatic life by virtue of pH reduction effects. Because of its liquid nature, spills would be difficult to contain and the chemical could have long lasting impacts on vegetation recovery unless lime were applied as a neutralizing agent. Sulfuric acid would be stored at the port in an isolated, berm-protected bulk tank and hauled to the mine in acid standard tank trailers of 24,227 ℓ (6,400 gal) capacity.

Lime would be used as a pH modifier in the mill flotation process and in the wastewater treatment plant. It is only toxic in concentrations which result in high alkalinity and would be relatively safe to manage in the hydrated form. It would be shipped and stored in heavy-wall plastic bags of about 1.8 Mg (2 tons) capacity. There would be no constraints on its storage with other reagents.

Polyacrylamide flocculant (Percol 730) is a slowly water soluble, high molecular weight, acrylamide-based polymer that would be used as a solids settling aid in the wastewater treatment plant. This material is relatively non-toxic. It would be shipped in 23 kg (50 lb) sacks on pallets and must be

protected from temperature extremes in storage or its effectiveness might deteriorate.

The mill would produce lead, zinc and barite concentrates. Lead and zinc concentrates would be shipped to the port site in covered gondola-type trailers while barite would be moved in sealed containers on flat bed units.

The mill would operate on a continuous, round-the-clock basis for an estimated 350 days per year. Initial and final mill production rates are shown in Table II-1. Concentrates would be transported from the mill site to the main storage terminal at the port site in truck/trailer units. Approximately nine to 12 daily truck trips to the seaport would be required to handle the estimated daily production rate. Six weeks' production of concentrates could be stored at the mill to allow for transportation delays during periods of bad weather, when the roads were unsafe for travel, or if transportation activities were temporarily suspended to protect subsistence activities or animal migrations.

Worker Housing

A campsite or hotel-style facility would be constructed a reasonable distance from the mill site complex. The actual location of the accommodations would be more specifically defined during the detailed design stage of the project in accordance with Mining Safety and Health Administration (MSHA) regulations that mandate specific criteria for worker safety and comfort.

Approximately 225 to 250 full-time employees would comprise the project site workforce at any given time. Workers would be scheduled on a rotation of approximately two weeks on and two weeks off so the total project workforce would be twice that figure. The projected mine/mill workforce breakdown would be as follows:

Miners/Mill Operators	50 percent
Mechanics/Electricians	15 percent
Support	15 percent
Supervisory/Management	20 percent

Water Supply

The mill would be a major consumer of water so a guaranteed year-round water source would be essential to the project. Wells would not be feasible since the permanently frozen ground prohibits free-flowing water aquifers. An approximately 25 ha (63 ac) water storage reservoir located on Bons Creek at the south end of Red Dog Valley would serve as the water supply (Fig. II-5). A rock-filled dam would be constructed on bedrock foundation near the existing airstrip, and a pipeline would follow the existing road system to the mill site. The reservoir would also serve as a domestic water supply. It would have a capacity of 1,462 dam^3 (1,185 ac-ft) of water to meet an expected total daily consumption rate of 1,136 ℓ/min (300 gal/min) for all the mine area facilities.

Power Generation

For the concentration of minerals to take place, a large amount of power would be expended in grinding to achieve a fineness which allows adequate liberation of lead sulfide, zinc sulfide and barite particles from waste particles. On an average basis, electric power at a rate of 19.3 kWh/Mg (17.5 kWh/ton) of mill feed would be required for the grinding process. In order to meet this and other support facility demands, a dedicated power plant would be necessary The Red Dog project would consume approximately 10.2 MW, and an 18 MW diesel-based power plant would be installed to allow for down time of some generators.

It was desirable to minimize both the loss of waste heat and air pollutant discharge by designing a system whereby waste heat would be used for concentrate drying, with the dryer exhaust treated in a scrubber or other type of pollutant control device. Diesel fuel storage and distribution facilities would be provided at the mill site. Fuel storage units (capacity of 4,800 bbls) would periodically be replenished from the main fuel depot at the coast by tanker trucks or by ore trucks specially fitted with tanker units.

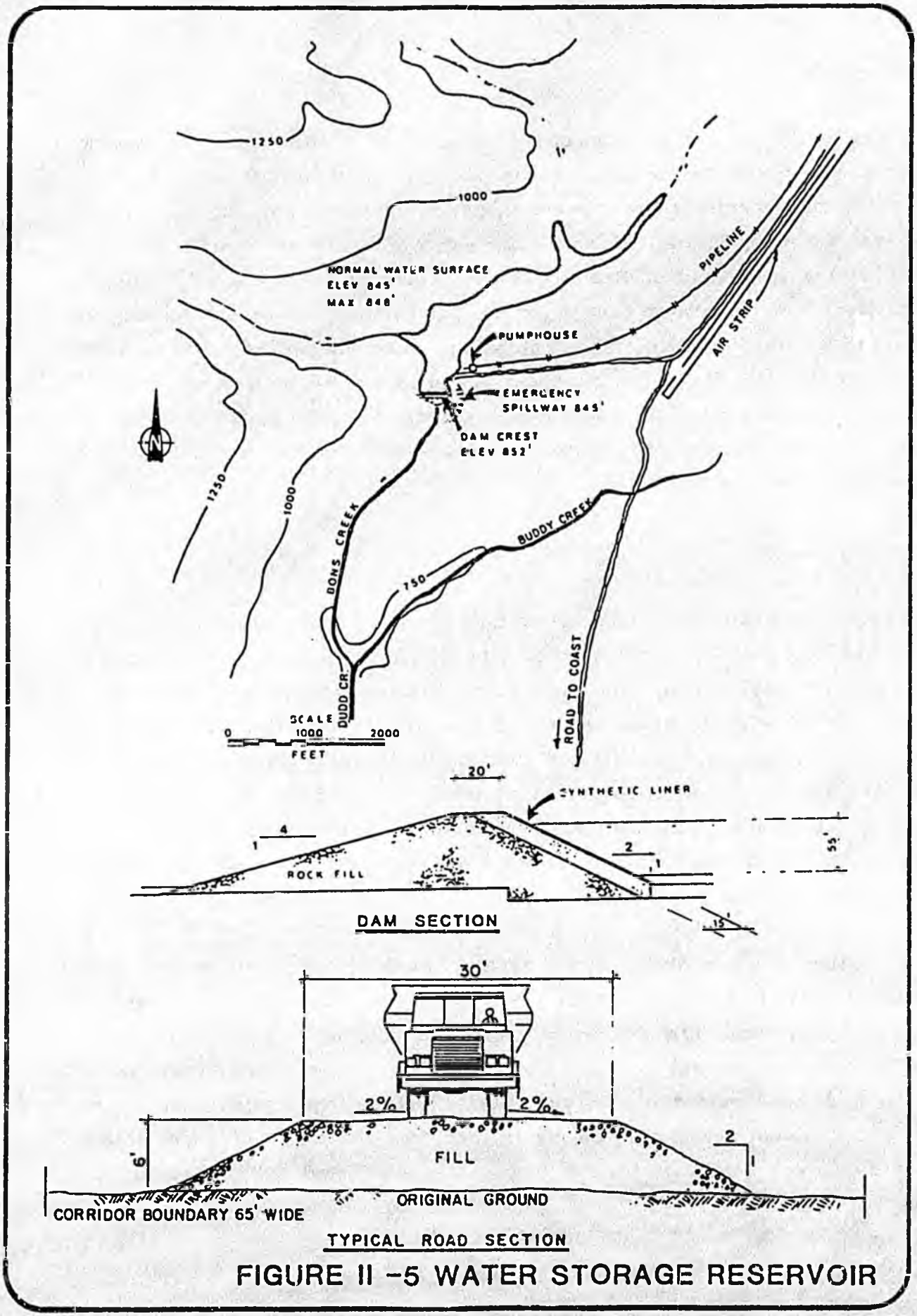


FIGURE II -5 WATER STORAGE RESERVOIR

Transportation Corridor

A transportation corridor would link the Red Dog Valley mine facilities with the Chukchi Sea coast. Two corridor options are included in the alternatives: a northern and a southern corridor (Fig. II-6). For the first 11.8 km (7.4 mi) the two corridors follow a common alignment. At a point near Dudd Creek, the northern corridor swings westward across the Wulik, Kivalina and Asikpak River drainages to a port site near Tugak Lagoon 24 km (15 mi) northwest of Kivalina. At Dudd Creek the southern corridor continues southwest along the flanks of the Mulgrave Hills to a port site near VABM 28, approximately 25.6 km (16 mi) southeast of Kivalina. The topography of both corridors would be gentle enough to handle railroad grades. Both corridors have therefore been laid out to accommodate a railroad at some future time.

Northern Corridor

The northern transportation corridor would be approximately 117.0 km (73.1 mi) long and would require the construction of six major (greater than 30.5 m [100 ft]) multiple-span bridges, seven minor bridges and approximately 300 culverts. The route would traverse the main stems of Ikalukrok Creek, and the Kivalina, Wulik and Asikpak Rivers (Fig. II-6). It would cross approximately 12 streams which contain fish.

Southern Corridor

The southern transportation corridor would be 89.9 km (56.2 mi) long and would require the construction of one major bridge, four minor bridges and approximately 182 culverts. The corridor would cross tributaries of the Wulik, Noatak and Omikviorok Rivers near their headwaters, and would generally stay at a higher elevation than the northern corridor until its terminus at the VABM 28 port site (Fig. II-6). It would cross approximately 11 streams which contain fish.

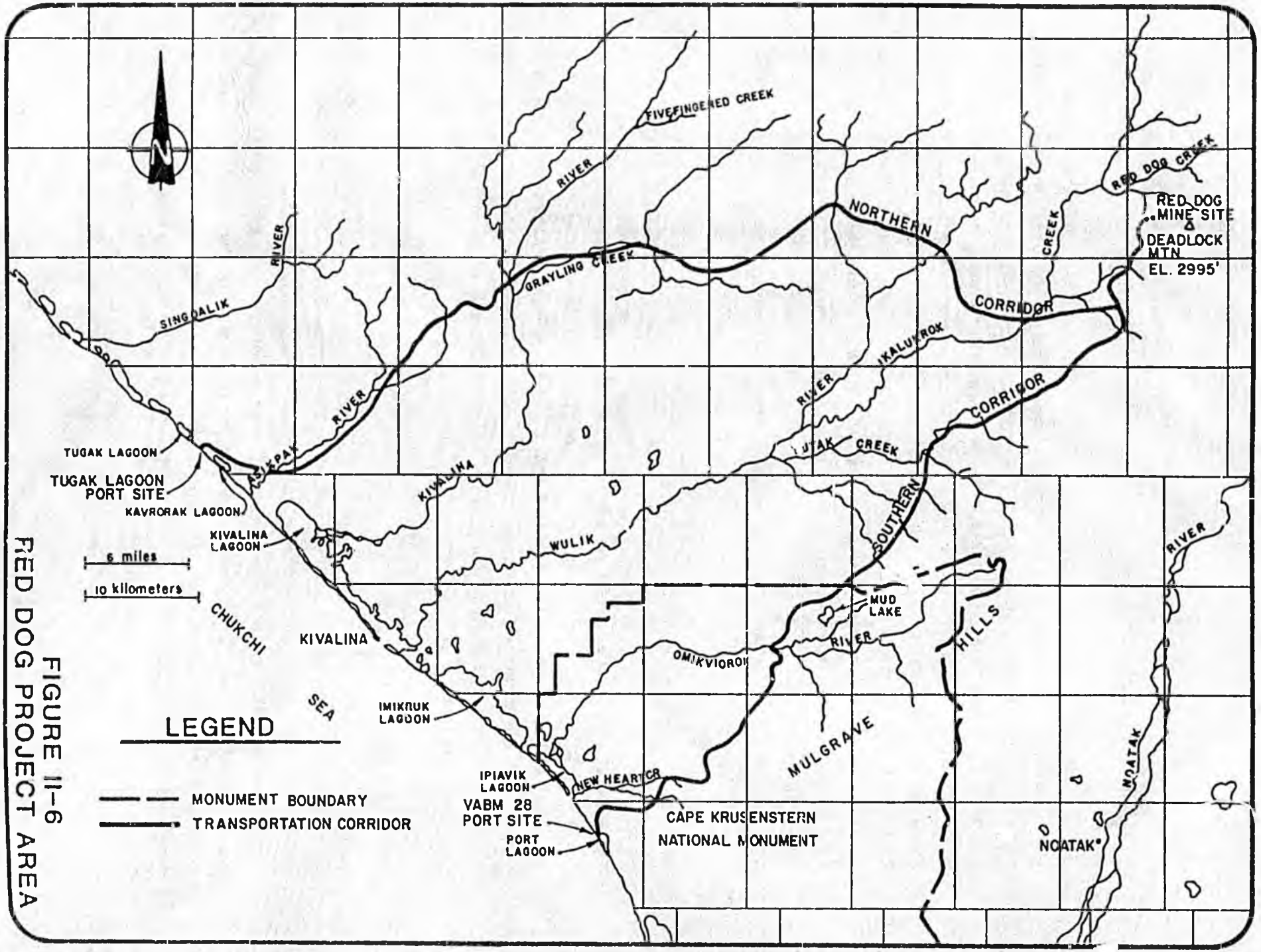


FIGURE II-6
RED DOG PROJECT AREA

Road Transportation System

The road haulage system would be comprised of a gravel surfaced road and double truck/trailer haulage units similar to normal highway vehicles, but over-sized. The roadbed or subbase would be composed of granular fill 2.0 m (6.5 ft) thick to prevent degradation of permafrost. The majority of the fill needed for construction would come from quarry sources as few gravel sources have been located along the corridors.

The top surface of the road would be 9 m (30 ft) in width as shown in Figure II-5. Turnouts and passing places would be provided along the route. Curvature and grade would generally be limited to 10 degrees and three percent, respectively, to permit eventual construction of a railroad. Bridge structures and culverts would be designed to accommodate year-round concentrate haulage by combined truck/trailer units. A truck and a trailer would weigh approximately 103 Mg (114 ton) and 90 Mg (108 ton), respectively, or 201 Mg (222 tons) for one combined truck and trailer unit. Nine to 12 daily truck/trailer round trips to carry concentrates to the port site would be required for the first five years at initial production rates. Following proposed expansion of production after five years, daily trips would average between 16 and 20.

Inbound freight would likely be containerized, though some specialized trailers such as tanker units (to haul fuel oil to the mill site) would be required. Periodic maintenance of the roadway would be necessary, thus requiring a full complement of road maintenance and repair equipment.

Port Site

Though operations at the mine would continue year-round, activity at the deep-draft port site would be limited to the receipt of supplies and fuel during the summer sealift, and the shipment of concentrates from late June until early October. Climatic constraints on shipping activities thus require that adequate storage facilities for concentrates, fuel and other supplies exist at the port site. Using an all-weather road, it is estimated that eight

and a half months of concentrate storage capacity would be required at the port site.

Schematics of the approximately 20 ha (50 ac) proposed port site facilities are shown on Figures II-7 and II-8. Depending upon the type of transfer facility (described below), fuel would be stored either onboard the "offshore island" or in tanks on land at the port site. In either case, a year's supply would be kept there to serve as the main fuel depot for the project. Fuel would be periodically hauled to the mine site as required. A short causeway/dock structure would be required to receive incoming freight and supplies, and for transfer of the concentrates for shipment.

Only emergency and temporary ship loading crews would be housed at the port site. A small accommodation complex would be provided to support activities during the summer shipping season. Domestic sewage would be collected and treated using a package treatment facility before discharge into the sea. A small diesel-based 1.5 MW power plant would be required to operate conveyor equipment and life support facilities. In addition to the facilities located immediately at the coast, the main concentrate storage building would be located approximately 4.0 km (2.5 mi) inland, adjacent to the transportation corridor. This structure would be constructed on an excavated borrow site* to minimize habitat destruction, and to take advantage of foundation materials and protection from the wind.

Transfer Facility

Two methods to transfer concentrates from the port site storage facility to ocean going vessels are included in the alternatives: a short causeway/lightering* transfer system and a short causeway/offshore island transfer system. Both systems would use a 122 m (400 ft) causeway/dock structure as an interface between the shore and the concentrate loading vessels or offshore island. The causeway/dock structure would extend to the 4.6 m (15 ft) water depth. Concentrates would be transferred by conveyor belt

* Defined in Glossary.

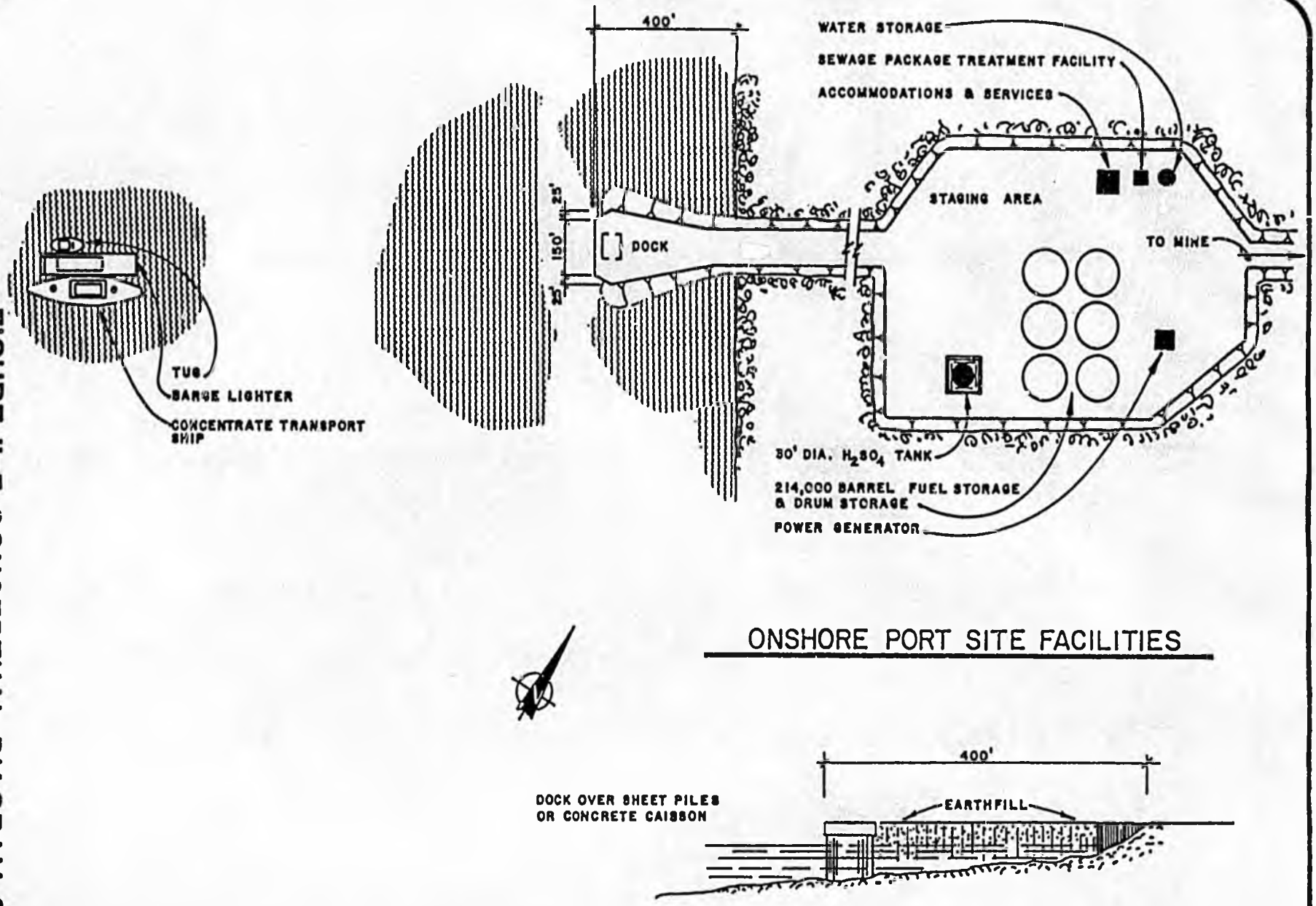
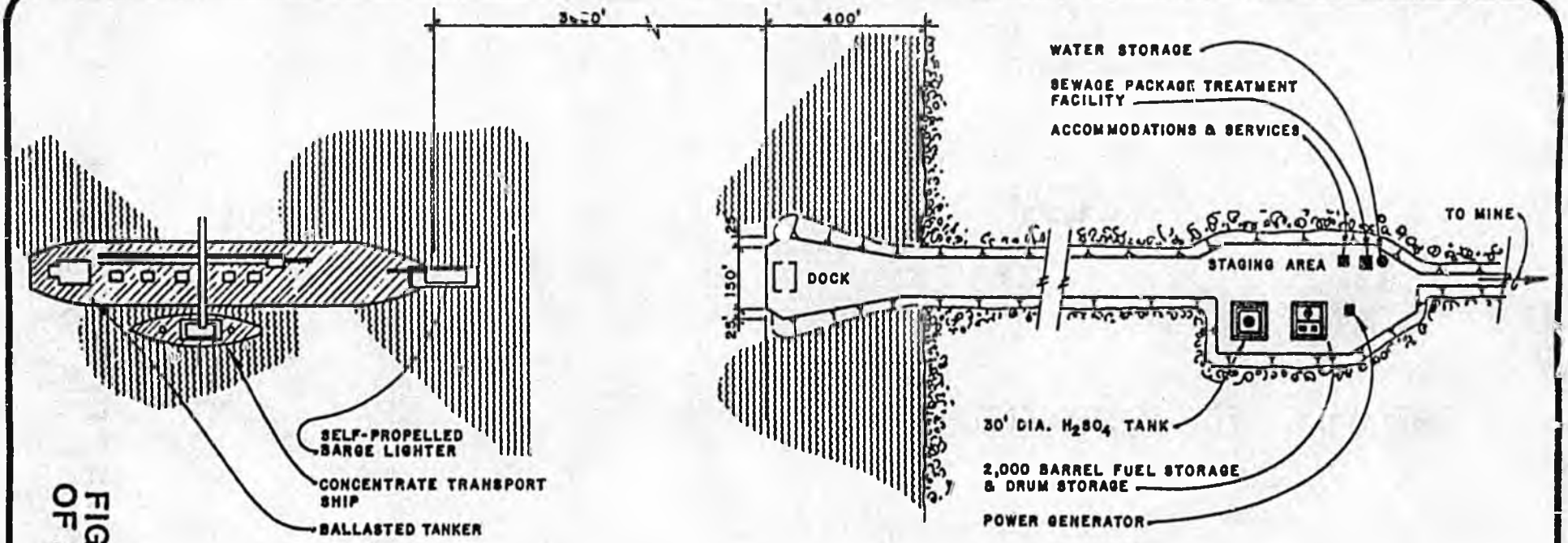
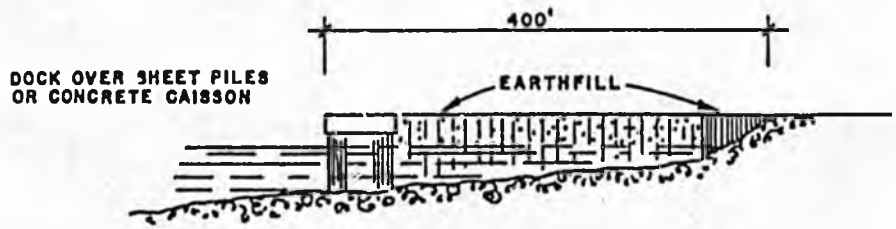


FIGURE II-7 CONCEPTUAL DIAGRAM OF A SHORT CAUSEWAY/LIGHTERING TRANSFER FACILITY



OFFSHORE ISLAND
(BALLASTED TANKER)

ONSHORE PORT SITE FACILITIES



BARGE DOCK

DRAWINGS NOT DRAWN TO SCALE

FIGURE II-8 CONCEPTUAL DIAGRAM OF A SHORT CAUSEWAY/OFFSHORE ISLAND TRANSFER FACILITY

from a storage building, along the causeway, to a barge loader structure mounted on the dock face.

The causeway structure would be constructed of sheet pilings with solid earth fill (Fig. II-7). It would be suitably capped and faced to allow lighter* barges to tie up at its seaward face. Depending on the transfer facility option selected, lighter barges ranging from 907 to 4,535 Mg (1,000 to 5,000 tons) would be used.

Short Causeway/Lightering System

This transfer method would use two 4,535 Mg (5,000 ton) lighters and two support tugs to transfer concentrates from the dock directly to the side of a moored ocean going bulk-handling ship. The ocean going vessel would load concentrates with clam shell cranes, though rough sea conditions might make this transfer method unreliable. Winter shelter for the two large-capacity lighters and their tugs would be provided in a coastal lagoon located adjacent to the port facilities.

Short Causeway/Offshore Island

This transfer method would use a 226,750 Mg (250,000 ton) surplus oil tanker with an ice-strengthened hull which would be ballasted to the bottom perpendicular to shore (Fig. II-8). The landward end of the tanker would be in approximately 7.6 to 8.5 m (25 to 28 ft) of water and the seaward end in 10.6 to 12.1 m (35 to 40 ft) of water. Depending upon the port site selected, the landward end of the tanker would be approximately 1,213 m (4,000 ft) from shore. This 305 m (1,000 ft) tanker "island" would serve as an offshore dock for the smaller, ocean going bulk carriers. The tanker would be large enough to accommodate storage of concentrates, fuel and supplies. Onboard concentrate storage capacity would be sufficient to load three to five ocean going bulk carriers.

---

* Defined in Glossary.

The bow of the ship would be modified to accommodate a 907 Mg (1,000 ton), self-unloading lighter which would discharge directly by conveyor belt into the ship (Fig. II-8). Only one self-propelled lighter would be needed to transport concentrates because of the storage capacity onboard the tanker. Shelter for the single, smaller lighter could be provided in the lee of the tanker if necessary during bad weather. Winter shelter would be provided in a coastal lagoon adjacent to the port site. If ice conditions were suitable, winter transfer of concentrates to the tanker island might be accomplished by trucks driven directly over the ice.

Transfer of concentrates from the ballasted tanker to bulk carriers would be accomplished using moveable conveyors between ships which would be loaded from storage by a clam shell bucket. Similar to the shore-based system, conveyors would be covered, and the end of the loader would be fitted with a telescoping spout or "elephant's trunk", to direct the concentrate into the receiving ship's hold below deck level. Conveyor return belts would be brushed in an enclosure to prevent losses to the sea. Sealed barite containers would be loaded by crane.

Fuel Storage

Location of the major fuel storage depot for the project would depend upon the transfer facility selected. For the short causeway/lightering option a full year's supply of fuel for the project, as well as fuel to meet the annual needs of the region's villages, would be stored in tanks on land at the port site. The fuel would be lightered to the dock from ships moored offshore. Storage capacity would be approximately 214,000 bbls with about 56 percent of that (120,000 bbls) being for the project. Fuel would be hauled to the mine area facilities by tanker truck as needed during the year. It would be distributed to the villages from the port site using the same smaller barges as used presently by local barge services to navigate the rivers.

For the offshore island option, the same amount of fuel would be transferred directly into the ballasted tanker and stored in tanks aboard the ship. It would be moved to shore year-round through a buried 10 to 15 cm (4 to

6 in) pipeline designed to withstand wave and ice forces and scour in the surf zone. The pipeline would be pressure tested for leaks prior to fuel transfers. Fuel would be stored at the port site to a capacity of approximately 2,000 bbls. It would then be transported to the mine area facilities by tanker truck as needed. Regional village fuel would be distributed by barges directly from the tankers.

DEVELOPMENT SCHEDULE

As is the case with any endeavor in the Arctic, the critical factor affecting the development schedule is the limited shipping season (generally July through September). Within these confines and assuming a project start-up date of January 1985, key periods in the development schedule are discussed below.

Construction equipment for road building activities would be landed at the port site during the summer of 1985. This equipment would be idled until freeze-up occurred prior to moving inland to the first borrow site. From January to July of 1986, a road would be built inland from the first borrow site, as well as back to the port site.

The first major construction sealift of equipment and materials would be made in the 1986 shipping season. The equipment for constructing the main road, as well as the mining equipment, would be brought in at that time. A 100-person barge-mounted camp would be located in a lagoon at the port site to support construction activity during the same sealift. A small 20-person "fly-in" construction camp would be set up at the Red Dog mine site.

In January of 1987 the main road would be comoleted from the port site to Red Dog Valley. Construction equipment to prepare the mill site, as well as mining equipment to begin development work, would then be moved to the site. Additional camp facilities (for 50 people) would also be moved over the road to the Red Dog site at that time. Mine development would continue through 1987 to the time of production mining start-up in early 1988. Suit-

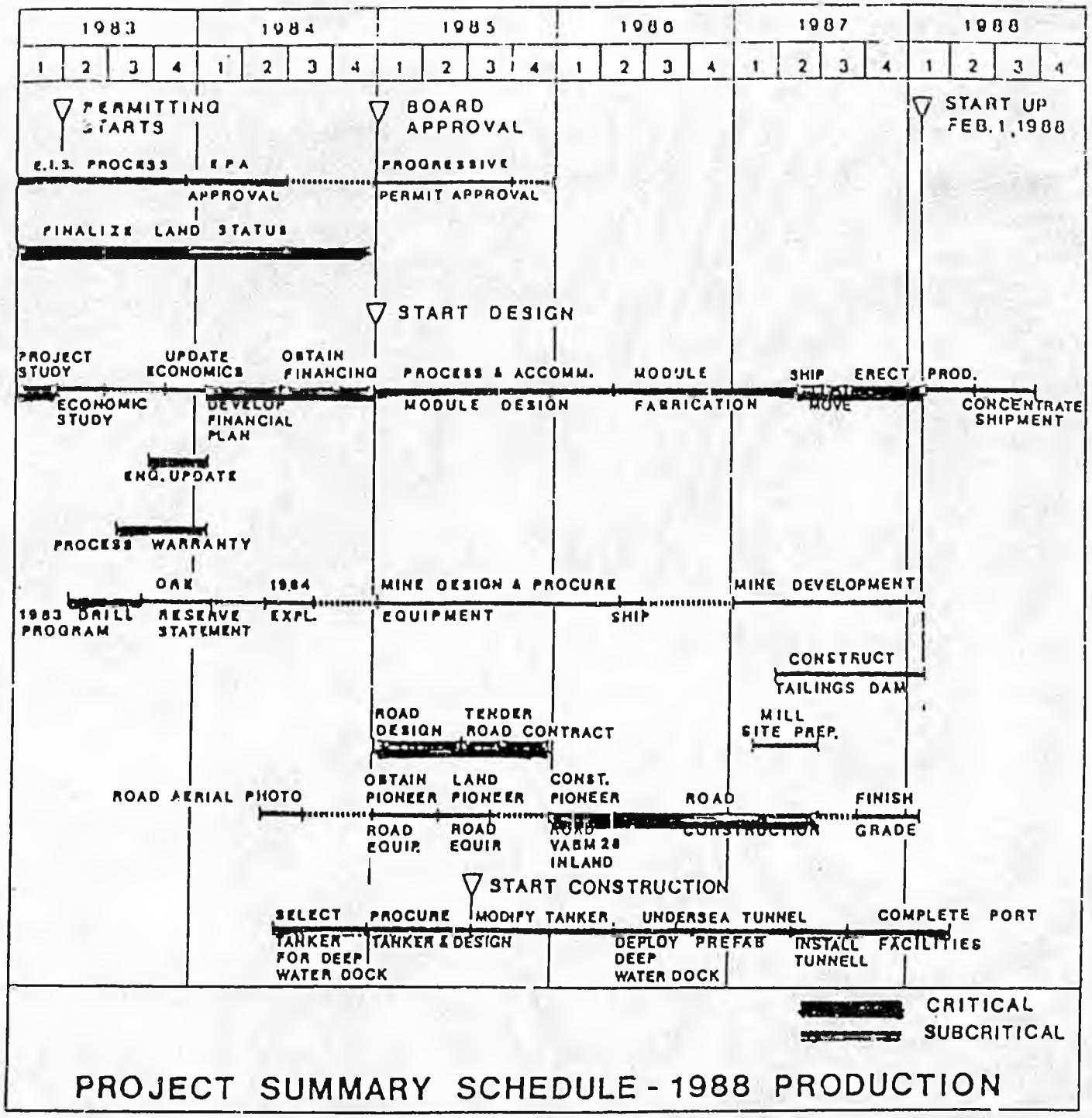
able mine waste would be used to construct the tailings pond dam during this period. To the extent that schedule constraints would allow, initial mine work would be carried out by permanent crews so that fully trained personnel would be available by the commencement of full operation.

A permanent dockface (in 3 m [10 ft] of water) and short causeway would be constructed prior to the 1987 sealift. This facility would be used to offload ore concentrator and worker housing modules, as well as other mine equipment. During the 1987 sealift the worker housing modules would be the first to be moved to the mine site. These living quarters would be commissioned as quickly as possible for use by construction crews, and later by operating personnel during the project start-up period. In this manner, the additional expense of a larger construction camp would be avoided.

During the summer and early fall of 1987, the concentrate storage building and other port site facilities would be constructed. If the offshore island transfer facility were approved, the modified tanker would be towed to the site and ballasted to the bottom during the 1987 shipping season.

During the period September to December 1987, the concentrator complex modules at the mine site would be joined and services installed. The facilities would be ready for commissioning (start-up) in December. Once commissioned, operations would commence in February 1988. Construction activities would be completed prior to the 1988 sealift. Construction surplus and equipment would be shipped out at that time.

The first movements of concentrates to market would probably be during the 1988 shipping season, though this would depend on project financing and the status of world-wide lead and zinc markets.



PROJECT SUMMARY SCHEDULE - 1988 PRODUCTION

RED DOG FACT SHEET November 1983

1.0 LOCATION

A. Orebody/Mill Complex

The orebody is located 55 miles from the Chukchi Sea, east-northeast of Kivalina at the based of Deadlock Mountain; and 90 miles north of Kotzebue. Red Dog is approximately 440 air miles northwest of Fairbanks.

B. Seaport

The proposed location of the seaport is in the vicinity of VABM-28 about 17 miles southeast of Kivalina on the Chukchi Sea.

2.0 CLIMATIC DATA

Temperature (°F):	Summer -- mean daily	maximum	65
		minimum	35
	Winter -- mean daily	maximum	3
		minimum	-21
	Extremes		75 to -60

Precipitation* -- 11 inches.

NOTE: The above information has been extracted from the Climatic Atlas for Noatak.

* Recent measurements at the site indicates precipitation in the order of 18 inches per year.

3.0 EXPLORATION HISTORY

The first report of mineralization in the Red Dog area was in a 1970 U.S. Geological Survey open file report. Further exploration done by the U.S. Bureau of Mines provided a more detailed description of mineralization significance in a press announcement in the fall of 1975. Cominco American geologists explored the area and staked claims on adjoining areas soon after the USBM announcement.

4.0 EXPLORATION CAMP

Cominco American has operated temporary camps on land adjoining the Red Dog deposit every summer since 1976 with 25-50 employees.

5.0 OWNERSHIP

At different times there have been numerous federal, state, regional, and corporate claims to land adjoining the Red Dog deposit. As of February 5, 1982, Cominco American Incorporated and the NANA Regional Corporation reached agreement for evaluation and potential development of the deposit by Cominco American, with NANA retaining a carried interest.

6.0 GEOLOGY AND ORE RESERVES

A program of core drilling in 1981 defined a deposit estimated to contain, as calculated in place without mining dilution, 85 million tons of 17.1% zinc, 5.0% lead and 2.4 ounces/ton silver. The tons and grade are inferred from 14,700 feet of drilling in 39 holes, generally located on grid spacings of 400 feet in north-south and east-west directions, and are calculated to include contiguous mineralization averaging more than 3% zinc/lead. In 1982 CAI drilled an additional 14,600 feet in 32 holes to further define the orebody on a 200 foot grid spacing. This work confirmed the 1981 results. The 1983 drill program includes additional infill drilling for metallurgical testwork as well as diamond drilling in the Hilltop deposit one-half mile to the south of the main deposit.

The deposit is nearly flat-lying and suitable for open-pit mining, with upper portions exposed at the surface. The deposit in a north-northwesterly direction is approximately 4,400 feet long, varying in width from 200 feet up to 1,400 feet and is commonly 100 feet in thickness.

Current information ranks the Red Dog zinc-lead-silver deposit among the largest deposits of its type in the world. Although the orebody has not been completely defined, current reserves and mining plans gives a mine life of 50 years.

7.0 ENVIRONMENTAL ISSUES AND PERMITTING

In anticipation of the regulatory requirements applicable to the project development, environmental baseline studies were initiated in 1981 and continued through to the end of 1982. This comprehensive program of work included an evaluation of water quality and hydrology, fresh water and marine biology with emphasis on fish resources, archaeology and cultural values, terrestrial biology, socioeconomics and subsistence uses in all areas potentially affected by project components. In addition, metereological monitoring at the mine site commenced in 1982 and will continue as the project progresses.

7.0 ENVIRONMENTAL ISSUES AND PERMITTING (continued)

The findings from these studies have played an important role in regulatory planning, the development of a the project, and the designing of facilities and operating plans which are consistent with the social and economic objectives of NANA and the communities of the region. Therefore, the project as currently envisioned satisfies engineering, economic and environmental criteria to ensure its acceptance by the regulatory agencies and the NANA people.

Since the project is classed as a "major federal action" under criteria of the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) is necessary and work on its preparation was initiated in January, 1983 under the Environmental Protection Agency (EPA). This is expected to be completed in the spring of 1984. It will contain an overall impact assessment of the project alternatives with specific endorsement of the facilities to be constructed. Simultaneous with the development of the EIS, applications will be made for key permits requiring substantial lead times to obtain. Once the EIS is complete, the way is cleared for the issuance of the various federal and state permits required for both construction and operation according to the present project schedule.

8.0 PROJECT COSTS AND SCHEDULE

Project costs through to the end of 1983 are estimated to be $19 million. Capital outlays for constructing the project are expected to be in the $300 to $500 million range.

Construction could take 2 to 2-1/2 years with operation beginning in 1988. The actual beginning of construction will depend on world economic conditions, ability to complete detailed engineering design, and the completion of the environmental permit process.

9.0 CONSTRUCTION TECHNIQUES

Early engineering studies established that the cost of conventional on-site construction of the concentrator and related facilities at Red Dog would be expensive. Current engineering studies are based on the concept of modularization wherein completed building blocks are fabricated away from the site where access to a large and relatively inexpensive work force is possible. The success of modular projects for Alaskan North Slope Oil and elsewhere in the world clearly indicate cost and schedule advantages to this construction technique. For Red Dog, portions of the process plant and accommodations would be built outside of Alaska (where the constraints of Arctic construction would not apply), be barged to the Red Dog port, transported

9.0 CONSTRUCTION TECHNIQUES (continued)

inland to the mine on specialized transporter vehicles and then placed on their respective foundations. Buildings or service facilities that are not equipment intensive, such as warehouse and repair shops, will be site erected using conventional construction techniques.

10.0 EMPLOYMENT

The operation is expected to generate approximately 400 jobs involving a cross-section of mining, milling, maintenance, managerial and administrative skills. In keeping with NANA's desire to avoid the establishment of a townsite near the mine, a hotel-type accommodation complex will be used to serve a rotational work force which will transport from the local villages or Kotzebue to the site.

11.0 MARKETS

There are zinc and lead smelters in several Pacific Rim countries where concentrates from Red Dog could be sent. Cominco Ltd.'s Trail, B.C. smelter is one consideration, while Japanese smelters present other possibilities. European smelters are also being considered.

12.0 PRODUCT USES

a) Zinc is a shiny, bluish-white metal with two major industrial uses: galvanizing and die-casting. Galvanizing is a zinc coating which is a very effective rust prevention agent for use in products such as chain-link fencing, steel siding, household products, automobile bodies, structural steel coatings, and marine hardware. In the die-casting process, molten zinc is injected or poured into a metal mold where it hardens. Products such as plumbing fixtures, power tools, carburetors, and electrical appliances are typical applications.

b) Lead is a metal with many industrial uses, the largest one being storage batteries for all types of vehicles. Other uses include an anti-knock additive to gasoline, lead shielding, and cable coverings. Lead is also mixed with other metals to make various products such as solder, munitions and for use in making fine crystal tableware and glaze for pottery.

c) Silver is used in various industries and in many products, the largest user being photographic industry where it is employed to coat film as well as in the development of film. As a precious metal, it is used for jewelry, silverware, tableware, and ornaments. It is also used in surgery and dentistry.

13.0 PRODUCTION SCHEDULE

Years	FEED TONS Day	FEED TONS Year	FEED GRADE % Pb	FEED GRADE % Zn	CONCENTRATE TONS/YR Pb	CONCENTRATE TONS/YR Zn	CONCENTRATE TONS/YR Total	DESIGN Tons/Day
1 to 5	3,000	1,057,000	6	21	79,000	360,000	429,000	3,400
6 +	5,600	1,962,000	5	19	119,000	585,000	704,000	6,300

14.0 WORK SCHEDULES -- OPERATIONS

a) All employees:

-- 7 days per week

b) Mine:

-- 10 hours per shift, 2 shifts per day, 700 shifts/year

c) Concentrator:

-- 12 hours per shift, 2 shifts per day, 700 shifts/year

d) Power Plant:

-- 12 hours per shift, 2 shifts per day, 730 shifts/year

e) Seaport:

-- 12 hours per shift, 2 shifts per day, 240 shifts/year
Summer operation.
-- 12 hours per shift, 1 shift per day, 60 shifts/year
Winter operation.

15.0 MINE FACILITIES

	Length feet	Width feet	Height feet	Wt. tons	Plan Area Sq. Ft.
Primary Crusher Module	66	32	62	600	2112

16.0 CONCENTRATOR

Modules	Length feet	Width feet	Height feet	Wt. tons	Plan Area Sq. Ft.
Grinding	132	67	73	1390	8844
Regrind	104	67	73	870	6968
Flotation(3)	150	68	83	1700	10200

16.0 CONCENTRATOR (continued)

	Length feet	Width feet	Height feet	Wt. tons	Plan Area Sq. Ft.
Dewatering	136	64	71	1220	8704
Drying	79	40	61	600	3160
Power Plant[3]	136	71	55	1600	9656
Subtotal				7280	47532
Conventional Construction					
Water Treatment Plant	78	65	56	--	5070
Workshop	109	67	47	--	6970
Warehouse (incl. space under modules)	--	--	--	--	50600
Changehouse (1)	136	64	--	--	8700
Offices (2)	--	--	--	--	10000
Vehicle Repair	200	80	--	--	16000
Subtotal					97340

NOTES: (1) Changehouse is part of dewatering module.
(2) Office space allowed for in modules.
(3) May be reduced in size at the detail design stage.

17.0 CONCENTRATE STORAGE -- MILL SITE

Dome Structure 180 ft. diameter x 70 ft. high for Zn (adequate for 6 weeks storage).
Dome Structure 100 ft. diameter x 42 ft. high for Pb (adequate for 6 weeks storage).

18.0 MISCELLANEOUS MILL SITE FACILITIES

Fuel Storage	2 x 200,000 USG
Fresh Water Storage	350,000 USG
Coarse Ore Storage	10,000 ton

19.0 THICKENERS

Pb	45 ft. dia.
Zn	110 ft. dia.
Tailing	125 ft. dia.
Water Treatment	90 ft. dia.

20.0 POWER SYSTEM

Demand:	Average	7825 kW
	Peak	9530 kW

20.0 POWER SYSTEM (continued)

Generators:	Main	Emergency
Number of units	6	3
Cylinders/unit	8	12
BHP -- full load	4225	
Kw -- full load/unit	3000	500
-- total installed	18000	1500
RPM	720	1800
Voltage	4160	480

21.0 ACCOMMODATIONS

Modules	Length feet	Width feet	Height feet	Weight tons
Living (4 modules)	144	55	50	1150 x 4
Communal	164	78	50	1400
Services	130	78	50	1100
TOTAL				7100

Facilities

- 111 single rooms
- 112 single (or 56-2 room suites), 8 two-roomed suites
- Dining capacity -- 235 people
- Gymnasium -- 90' x 78' x 24' high

AREA	SQ. FT.
Building Services	7,500
Storage	10,900
Laundry	1,100
Accommodations	59,150
Commons	39,370
Dining & Serving	3,520
Kitchen	1,600
Kitchen Storage	1,280
Administration	2,300
Infirmary	960
Gymnasium	7,000
Changerooms & Sauna	2,850
Hobby Rooms	3,800
Commissary	800
Lounges	1,970
Library	400
Radio/Communications	400
Post Office	140
Janitors' Rooms	420
TOTAL AREA	145,460

22.0 LAND TRANSPORTATON

a) Route from mine to YABM 28 through Cape Krusenstern National Monument:

Distance 57 miles
Elevation @ Mine + 1030 ft.
Elevation @ Port + 10 ft.
Maximum grade 4%
Road Width 30 ft.
No. of bridges -- 5
Passing lanes @ 2 mile intervals

b) Concentrate Haulage Trucks

Years 1 to 5 -- 4 - 700 HP tractors each with 2 side-dump or end dump
Trailers each with a 36 cu.yd. capacity.

Years 6 + -- 6 units as per above.

23.0 PORT

a) Shallow Water Dock

Sheetpile dock face in 10' water depth
Earthfill causeway 400' long

b) Deepwater Dock

(i) Ship ballasted to seabed in 35' water depth with storage capacity for: 71,000 tons of Zn concentrate
38,000 tons of Pb concentrate
9,400,000 USG of Fuel
Deck storage for 400 - 8'x8'x20' containers

(ii) 1000 ton self-propelled lighter barge -- summer operation

c) Shore Facilities

(i) Truck dump pad and barge loading facility.

(ii) Sulphuric acid storage tank (155,000 USG) and truck loading facility.

(iii) Fuel transfer tank (50,000 USG) and truck loading facility.

(iv) Accommodations for 20 - left over construction camp.

23.0 PORT (continued)

c) Shore Facilities

(v) Small 250 kW power plant.

(vi) Small storage building: 40' x 40'.

d) Facilities at Mile 2.5

(i) A-frame structure 180' x 912' x 80' high to store 55,900 tons of Pb concentrate and 247,900 tons of zinc concentrate.

(ii) Small 250 kW plant.

24.0 WATER SYSTEM

Fresh Water Consumption

* Process	-- Avg. =	328,320 USGPD
	-- Max. =	864,000 USGPD
* Domestic	-- Avg. =	34,560 USGPD
	-- Max. =	208,800 USGPD

Recycled Water Consumption = 2,645,280 USGPD

Fresh Water Supply

* Bons Creek Reservoir
* Drainage area -- 3.7 sq.mi.
* Daily usage -- 362,880 USGPD
* Dependable yield (based on 3 consecutive drought year @ 25% annual mean) -- 481,000 USGPD
* Dam height -- 37 ft. (30' for minimum storage)
* Dam crest length -- 280 ft.
* Total storage -- 630 ac.-ft.
* Live storage -- 246 ac.-ft.
* Dam crest elev. -- 852 ft.
* Normal water surface elev. -- 845 ft.

Fresh Water Facility Specs.

* Floating raft -- 16 ft. x 9 ft.
* Pumps: Type -- Vertical turbine
  No. -- 2 operating and 1 standby
  HP -- 75 each pump

24.0 WATER SYSTEM (continued)

Fresh Water Facility Specs. (continued)

- Pipeline: Material -- high density polyethelene (SCLAIR)
  Length -- 18,000 ft.
  Diameter -- 10 in. to main storage tank
  Heat Tracing -- 110 volt
  Insulation -- 2 inch styrofoam

Fresh Water Tank

- Elevation -- 1,030 ft.
- Dimension: Diameter -- 46 ft.
  Height -- 30 ft.
- Volume -- 350,000 USG

25.0 TAILING SYSTEM

	% Solids	Volume
Tailing -- from process to thickener	17	2,203,000 USGPD
-- from thickener to pond	60	298,000 USGPD
-- recycle - thickener overflow	0	1,905,000 USGPD

Tailing Embankment:

- Height -- 150 ft.
- Length -- 2,200 ft.
- Fill Volume -- 265,000 cu.yd. starter dam (2 million cu.yd. to Elev. 950)

Tailing Impoundments @ 950 Elev.

- Area -- 25,472,000 ft^2
- Volume -- 29,860 ac.-ft.

Tailing Thickener -- 125 ft. dia.

Tailing Facility Specs.

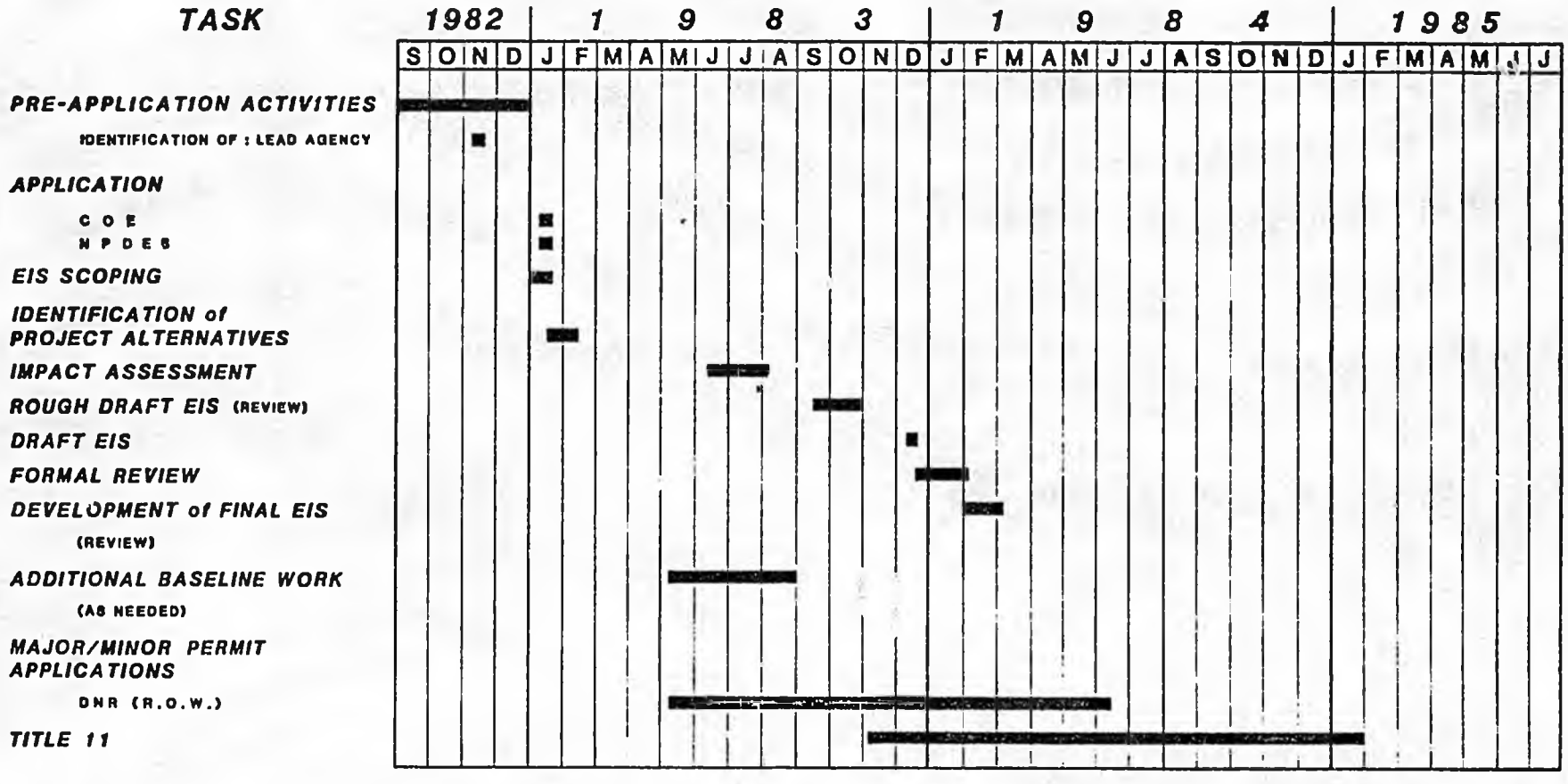
- Tailing line: Material -- H.D.P.E. (SCLAIR series 80)
  Length -- 3,500 ft.
  Diameter -- 6 inches
  Insulation -- 2 inches styrofoam
  Heat tracing -- 110 volt

RDOS/b

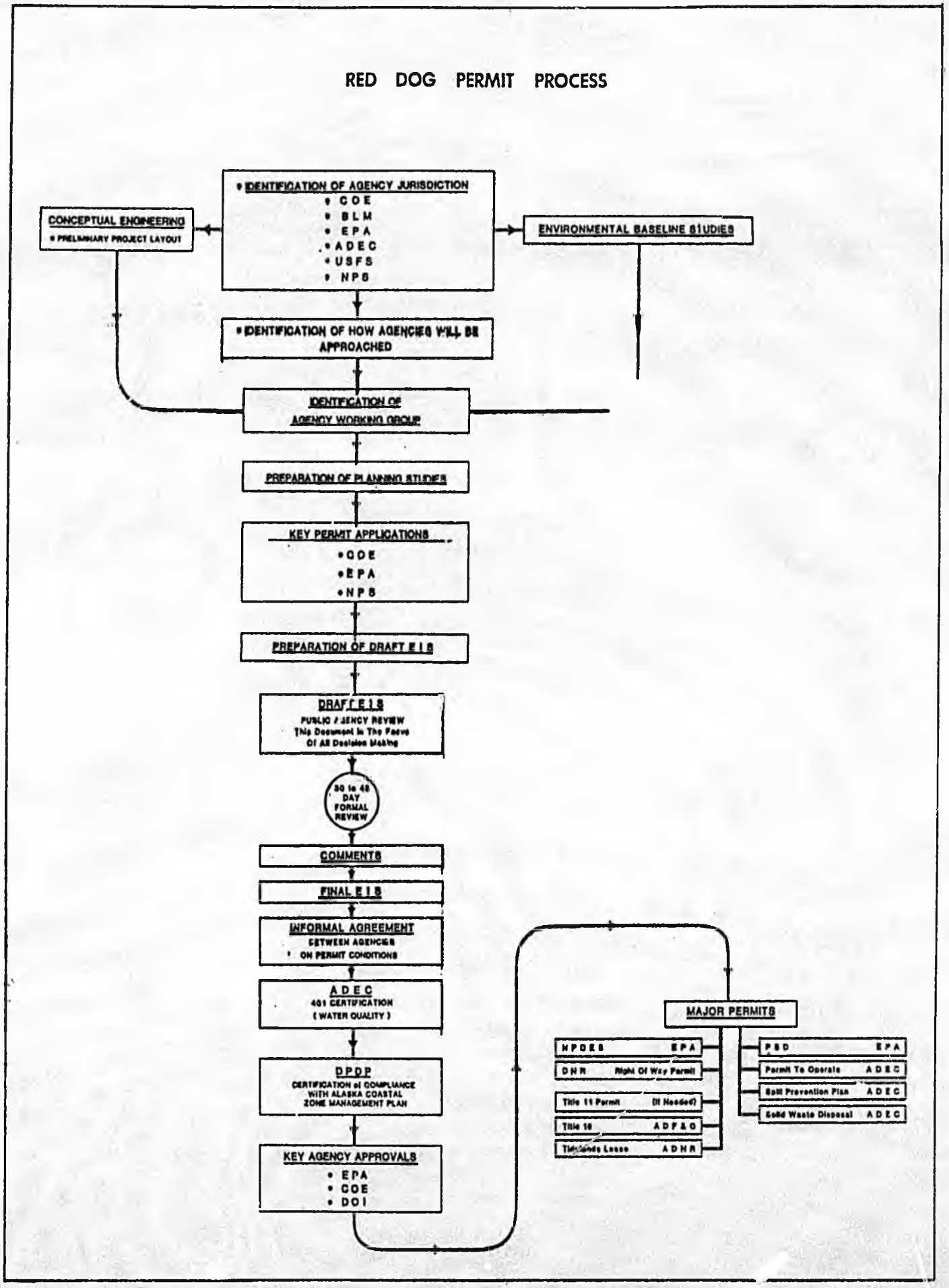
IX.C. Appendix C: Project Permitting Time-Line

RED DOG PROJECT SCHEDULE

PERMITTING EMPHASIS



Appendix D: Permit Flow Chart



Appendix E: Base Metal Markets (Cu, Pb, Zn): Alaskan Opportunities (Paper by Gordon H. Laurie, Cominco, Ltd.)

Presented at:
Alaska Miners Association
Eighth Annual Convention
"Alaskan Minerals for Pacific Rim Markets"

October 19-22, 1983
Anchorage, Alaska

Cominco Ltd./Suite 1500-120 Adelaide St. West/Toronto, Ontario M5H 1T1/Canada/Tel. (416) 869-1850

BASE METAL MARKETS (Cu, Pb, Zn),
:ALASKAN OPPORTUNITIES
(Long Abstract)



Metals Market Research

By: G.H. Laurie/Cominco Ltd.

Alaska appears to be on the verge of becoming one of the world's important mineral suppliers. In the case of base metals, Cominco's Red Dog discovery is already recognized as being a very major future zinc and lead producer. Geologists have high expectations for other discoveries of commercially viable copper, lead, and zinc mines. The question addressed in this paper is how do these Alaskan opportunities match the world's future needs for copper, lead, and zinc.

Examination of the historical demand in the Western World for these three base metals brings us to the conclusion that all are in a state of maturity with saturation of use occurring in the developed nations. Growth in consumption will more and more depend upon the increases in the living standards of the newly industrializing countries. Fortunately for the Alaskan resources, the economies in the Pacific Rim have shown substantial growth. Long-term prospects in this area of the world look promising.

Copper consumption in the Western World grew at a rate of about 4½% per year from 1960 to the energy disruption of the mid 1970's. We expect that the resumption of demand growth will be in the order of 1½% once the economies of the world recover but that this will mean the 1979 consumption peak will not be regained until the mid 1980's. After the mid 1980's, we expect increasing Western World consumption and mine exhaustion to create a demand of over 150,000 tonnes/year of new mine production. Copper prices have weakened since 1979/80 and we, along with most forecasters, have revised our long-term expectations. World-wide distribution of copper concentrates will be influenced as some of the LDC's establish smelter/refinery facilities and consume their domestic mine production.

Lead consumption in the Western World grew at about 3½% per year from 1960 to 1973 but is expected to show a resumed growth of only about 1% in the future. The peak consumption of 4.2 million tonnes in 1979 is not expected to be reached again until near the end of this decade. Mine production of lead has continued at approximately 2.5 million tonnes since 1973 whereas lead metal from secondary sources increased from near 1.0 million tonnes in 1973 to close to 1.9 million tonnes in 1979 and since then has dropped back to approximately 1.5 million tonnes during the current recession. It is difficult to predict the need for new lead mine production due to the uncertainties of secondary lead. However, it is safe to say that without the introduction of any new significant

end-uses for lead the mines which are brought into production to satisfy zinc and silver requirements will provide enough new lead as a co-or by-product to satisfy needs. In this regard, the Red Dog property, which has a zinc to lead ratio of 3½ to 1, better matches the expected new mine zinc and lead needs than higher ratio lead properties.

Zinc consumption in the Western World grew at approximately 4.8% per year from 1960 to 1973 where it peaked at about 4.8 million tonnes. With economic recovery, a growth rate of near 2% per year should see the 73 and 79 peaks in consumption re-established in the mid to late 1980's starting from the current level of near 4.2 million tonnes. Future new mine demand, to satisfy consumption growth and mine exhaustions, is estimated to be somewhat less than 150,000 tonnes per year after about 1985. Zinc prices have weakened since the 1973/74 bullish period and the 1979/80 highs but, with expected reasonable balance between demand and supply, longer term strengthening is expected. World-wide demand for concentrates should result in the need for future supplies from Alaska.

GHL:hmw
October 7, 1983

BASE METAL MARKETS (Cu, Pb, Zn)

: Alaskan Opportunity

By: G.H. Laurie/Cominco Ltd.

Market Overview

The world shall continue to need base metals and from our analysis there is an opportunity for Alaska to become an important supplier of copper, lead and zinc concentrates. Markets for these materials will depend upon the overall growth of the world's economy, the specific requirements for capital and consumer goods, and the availability of competitive concentrate supplies.

Slides

- OECD IPI
2. Growth in IP & Major Metal Consumption
3. Metal Prices & Ind. Bus. Cycle

Note: The slides marked (MMRS) are taken from "Metals Analysis and Outlook" published by Metals & Minerals Publication Ltd.

Metals consumption growth has often been related to various industrial production indexes rather than to overall GNP-type of economic growth measurements[1,2,3]. As our western world's growth has progressed an increasing proportion of the GNP has been from the service sectors with corresponding less growth from the basic industrial sectors. Therefore, as our industrial societies have matured the rate of new capital investment for plants has tended to decline. Furthermore, various measures show a declining relationship between metals consumption and overall industrial production as substitute materials are used and as end uses make more efficient use of the materials of construction. Another factor which negatively affects the need for mined metal is the increased recycling of scrap. This movement towards

more secondary metal has been supported by both the conservation and environmental priorities of the last number of years.

Offsetting the above trend to a state of maturity for the basic industries in the developed nations of the world, is the exciting prospects for the emerging developing nations[4]. Many of these are the markets that can be served by suppliers adjacent to the Pacific. I recently reviewed economic growth forecasts made by a major USA research group. Their data pointed out the following differences for the period up until year 2000.

Slide

4. • Zinc Consumption by Region

Area	GNP Growth
Western Europe	2.3%
Eastern Europe	2.3%
North America	2.8%
Latin America	4.3%
Africa	4.2%
Asia and Far East	3.9%
Total World	3.0%

Other forecasts will be different depending on the respective views of economic opportunities or problems. However, I don't know of one forecast that doesn't indicate the maturing of the current industrial countries with lower basic materials consumption growth rates and considerably higher rates for the newly developing countries - despite their balance of

payments and other economic problems.

Our company, like most in the mining business, assesses the current concentrate supply and also makes judgements on future supply requirements due to consumption growth and mine exhaustions. This expected demand on the mines will be met by some expansions and by new mines. The main interest in this meeting is obviously what new mines can be found and opened in Alaska. Cominco has one we feel will be economically viable, other companies are equally optomistic and still others are no doubt going to find suitable economic deposits.

	Demand on the Mines		
	Consumption (Growth) +	Closures =	Total
Cu	100	60	160
Pb	nil	10/15	10/15
Zn	60	70	130

A major consideration we have in assessing our opportunities is where do we believe our potential mine is on an estimated cost-curve of the Western Worlds' mines for any particular metal[5]. With the current and expected future economic growth we firmly believe any proposed operation should be in the lower half and preferably the lower third of the cost-curve. To some extent new mines which open may act in a predatory manner and hasten the death of marginal producers.

Slide

5. • Cost-curve

To rank the opportunities for future mines for copper, lead and zinc one's crystal ball must assess the consumption demand, the competitive mines (both existing and those known to be likely new entrants and those expected to be near reserve or economic exhaustion),

and the competition from secondary supplies. I personally have no difficulty in ranking the three metals based on what I know and what my crystal ball tells me. All other factors being equal I would first want to find a good zinc mine, next a quality copper mine would be attractive, and finally if I felt I had a really low cost producer I would deal with a lead mine.

The factors which lead me to my choice are:

1) Known ore bodies - I feel there are a good number of copper deposits in the world that have a good chance to be reasonably low-cost producers. There are fewer zinc ore bodies in the same category as far as I can see. Lead is rapidly becoming a by-product of zinc and will come to market as zinc requirements are met.

2) Depletions/exhaustions - It is difficult to get a definitive picture of this factor but it appears there may be more of the existing large zinc bodies coming closer to exhaustion over the next 20 years than is the case for copper - time will tell.

3) Consumption - The growth rates we predict for all three metals are very modest and we all hope we are proven to be overly conservative. However, I

believe our forecasts of zinc at 2%, copper at 1.5% and lead at 1% are in the right order. Of the above base metals, zinc is expected to continue to have the smallest part of its supply as secondary metal.

4) Ownership - The zinc industry currently is, and is expected to remain, more in the hands of free enterprisers than is the case for copper. We believe this supports a better long-term pricing structure - in particular, as metal stock levels can be kept in better balance [6].

Slide

6 Metal Stocks & Metal Prices

Despite my preferences as outlined above it goes without saying that any mine, whether a copper, lead or zinc mine, that is determined to be a low-cost producer is likely to be brought into production.

Copper Markets

The recognition that copper is a mature metal should not be taken too negatively. It can be said it is our oldest mature metal but one which continues to fulfill mans' needs with renewed bursts of consumption as new technologies such as electricity implant new life. The slides I have gathered for you today give you some idea of the consumption patterns, mined production and prices for copper.

Slides

7. • Cu Mine Production
8. • WW Copper Consumption
9. • Consumption/Prod. & Stocks
10. • Copper Prices
11 Copper Prices with Highs/Lows

Slides on Copper - here [7-11]

The events which are likely to affect the opportunities for any future copper properly in Alaska are:

- the cost influences of remote locations with or without state infrasturucture support;
- overall supply needs for United States demands;
- new smelters built by previous suppliers of concentrates; and
- the expansion of the copper industry in Chile and other known regions possessing good copper properties.

Any new domestic world-class copper operation that may be developed in Alaska would help offset the decline of the USA copper industry. The reduction of concentrate shipments from the Phillipines to Japan with the start-up of the Phillipine smelter creates an opportunity for new concentrate suppliers - especially as there seems to be a relatively over capacity of copper smelters in the world. The expansion of Chile's copper industry which some claim has a goal of nearly 2 million tonnes capacity will, on the other hand, have a negative overall effect on the copper industry and in particular if world over-capacity is the result.

The copper concentrate suppliers and the smelter customers as outlined by the World Bureau of Metal Statistics are more or less as follows:

- Africa supplies to Western Europe and Japan
- Canada supplies to Western Europe, South Korea, Taiwan, and Japan

- South America supplies to Western Europe, South Korea, Taiwan and Japan
- Australia supplies to Japan
- South East Asia supplies to Western Europe, South Korea, Taiwan and Japan
- USA supplies to Japan

Lead Markets

Lead is also a very old metal which has benefitted by easy extraction and fabrication. Again we have an example of a mature metal which regained vigour with technological break-throughs such as the lead-acid battery and the internal combustion engine and its ignition system with the use of high octane fuels. Currently this metal is in a stable stage with some uses actually in decline. The most significant changes have been the growth of the recycled lead supply and, somewhat related, the tendency for lead to have become a by-product of zinc and silver production. The slides shown of lead's historical supply, demand and prices give you some insight into leads future.

Slides

12.• Lead Production - Metal
- Mine
- 2nd

13.• WW Consumption

14.• Pb Prices

15.• Pb Prices with Highs/Lows

16.• Prices & Stocks

Slides on Lead - here[12-16]

The shipment of lead concentrates as outlined by the WMBS shows significant movements as follows:

- Africa supplies to Western Europe, North America, and Japan
- Canada supplies to Western Europe and Japan
- South America supplies to Western Europe, North America and Japan

- Australia supplies to Western Europe and Japan.

Zinc Markets

Compared to both copper and lead, zinc is a much younger metal. The significant role zinc plays in protecting steel in a sacrifical manner ensures the continuing need for a large part of the metal supply being new mined metal, as scrap recovery from this use is minimal. The market discipline of zinc suppliers coupled with somewhat better market support is emphasised by the relatively low level of metal stocks. This fact and other trends are shown in the following slides:

Slides

17.• Zinc Mine Production
18.• WW Zinc Consumption
19.• Zn Price
20.• Zn Price & Highs/Lows
21.• Prices & Stocks

Slides of Zinc - here[17-21]

The most significant fact about the zinc market has been the rapid decline of the USA zinc industry over the 1970's and since the economic downturn of 1979/80. Since it's heyday in the late 1960's/early 1970's the US zinc industry has been reduced to about 1/4 to 1/3 of its maximum. Although consumption has also declined it still remains the largest market in the Western World. Cominco Alaska's planned entry into the world's zinc markets will help reverse the domestic supply situation.

Zinc concentrate movements as reported by the WBMS are as follows:

- Africa supplies to Western Europe
- Canada supplies to Western Europe, USA and Japan
- South America supplies to Western Europe, USA and Japan
- Australia supplies to Western Europe and Japan

Prices

The presentation today is not focused on prices for metal. Cominco's long-range price forecasts are confidential and furthermore my group are currently deeply involved in our annual up-date forecast so I am without firm numbers in any case.

Of greater value I believe, are some qualitative comments about the mine returns realized for concentrates. The treatment charges negotiated for metal concentrates are quite variable as each concentrate is in fact an unique product with different advantages and disadvantages. The location of the concentrate is also a factor in its price (via differing treatment charges as well as different transportation etc. costs). I am told by our concentrate sales people that the factors that enter into the determination of treatment charges are as follows:

- Concentrate quality
  - low quality concentrate will result in higher treatment charges.
- Smelter customer location
  - if far away and without alternate near-by concentrate this will normally result in lower treatment charges (i.e. the smelters have to compete).
  - close by smelters will use their location to obtain somewhat higher treatment charges.
- Smelter capacity
  - if the world's smelter capacity is in surplus (i.e. concentrates in relative shortage) this will result in lower treatment charges.
  - if the world's smelter capacity is in shortage this will result in higher treatment charges.
- Mine location
  - for northern mines or any others that have restricted shipping seasons the extra costs involved in storage by the receiving smelter will either be reflected by higher treatment charges or the seller would tend to have to cover the financing charges directly.

Conclusions

- From what I have been told Alaska is proving to be a valuable storehouse of needed mineral resources
- Despite high infrastructure costs it appears various deposits will become economic mines. This may be positively assisted by the development of the state's transportation system.

- Being located on the Pacific Rim will be beneficial as larger growth of metal consumption is forecast for many countries bounding the Pacific.
- World-class deposits of the base metals copper, lead and zinc will become viable mines if they are able to establish low operating costs.
- It appears the opportunities to supply can be ranked zinc, first; copper, second; and lead, third.

GHL:hmw

October 18, 1983

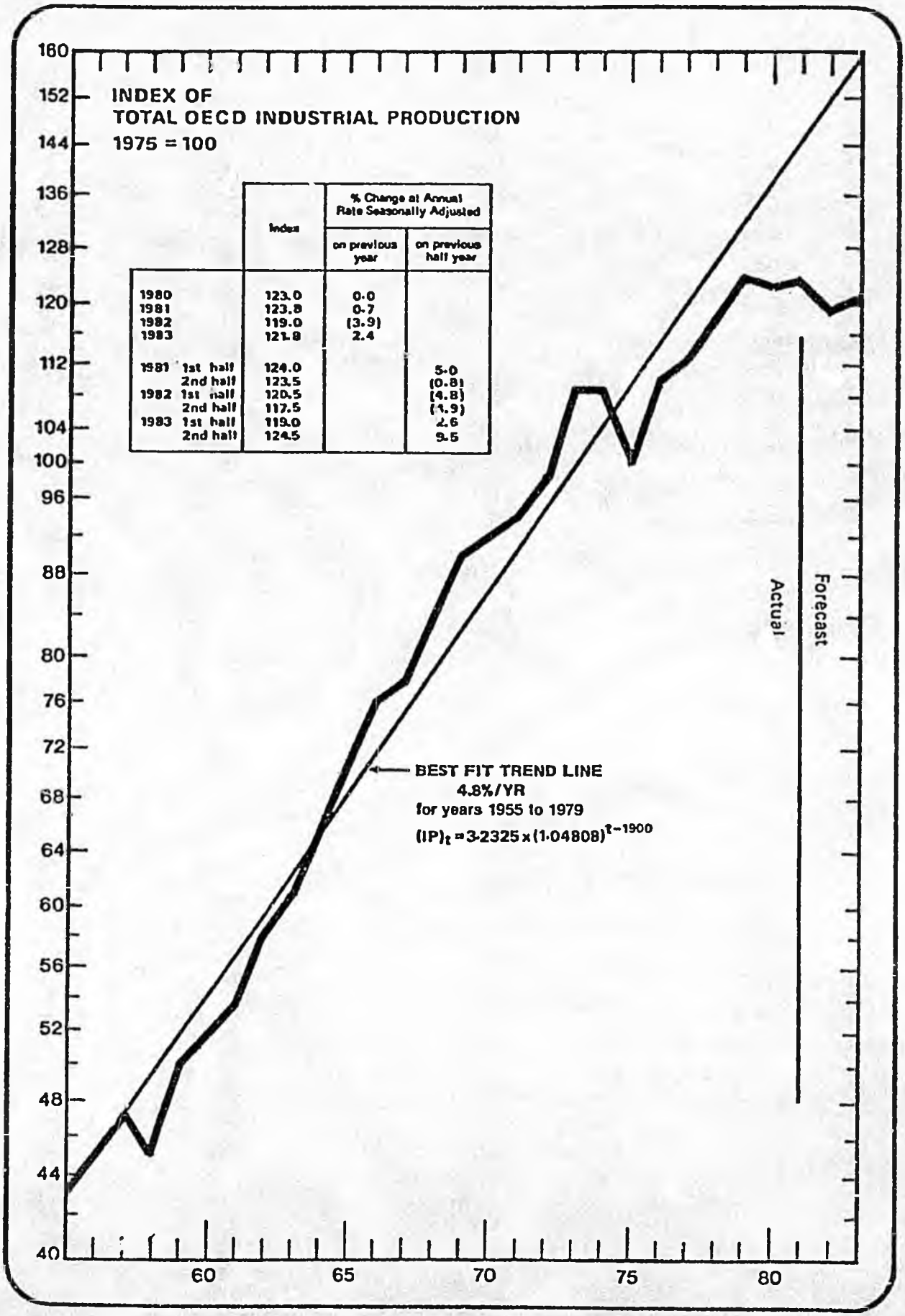
BASE METAL MARKETS (Cu, Pb, Zn)

: ALASKAN OPPORTUNITIES

By: Gordon H. Laurie
Cominco Ltd.

PRESENTATION SLIDES

1. Index of Total OECD Industrial Production
2. Growth in Industrial Production and Major Non-Ferrous Metals Consumption
3. Metal Prices and Industrial Business Cycle
4. Zinc Consumption by Region
5. Western World Zinc Mines Cumulative Production[2] VS. Costs[1]
6. Metal Stocks and Metal Prices
7. Copper Mine Production
8. Western World Copper Consumption
9. World Refined Copper Consumption less Production Commercial Stocks
10. Copper Prices - Cathode Settlement
11. LME Cash Wirebar Copper Price in 1983 US $ Per Lb*
12. Western World Lead Mine Production
13. Western World Lead Consumption
14. LME Lead Price
15. LME Cash Lead Price in 1983 US $ Per Lb
16. Lead Metal Prices + Stocks
17. Western World Zinc Mine Production
18. Western World Zinc Consumption
19. LME Cash Zinc Price
20. LME Cash Zinc Price in 1983 US $ Per Lb
21. Zinc Metal Prices + Stocks

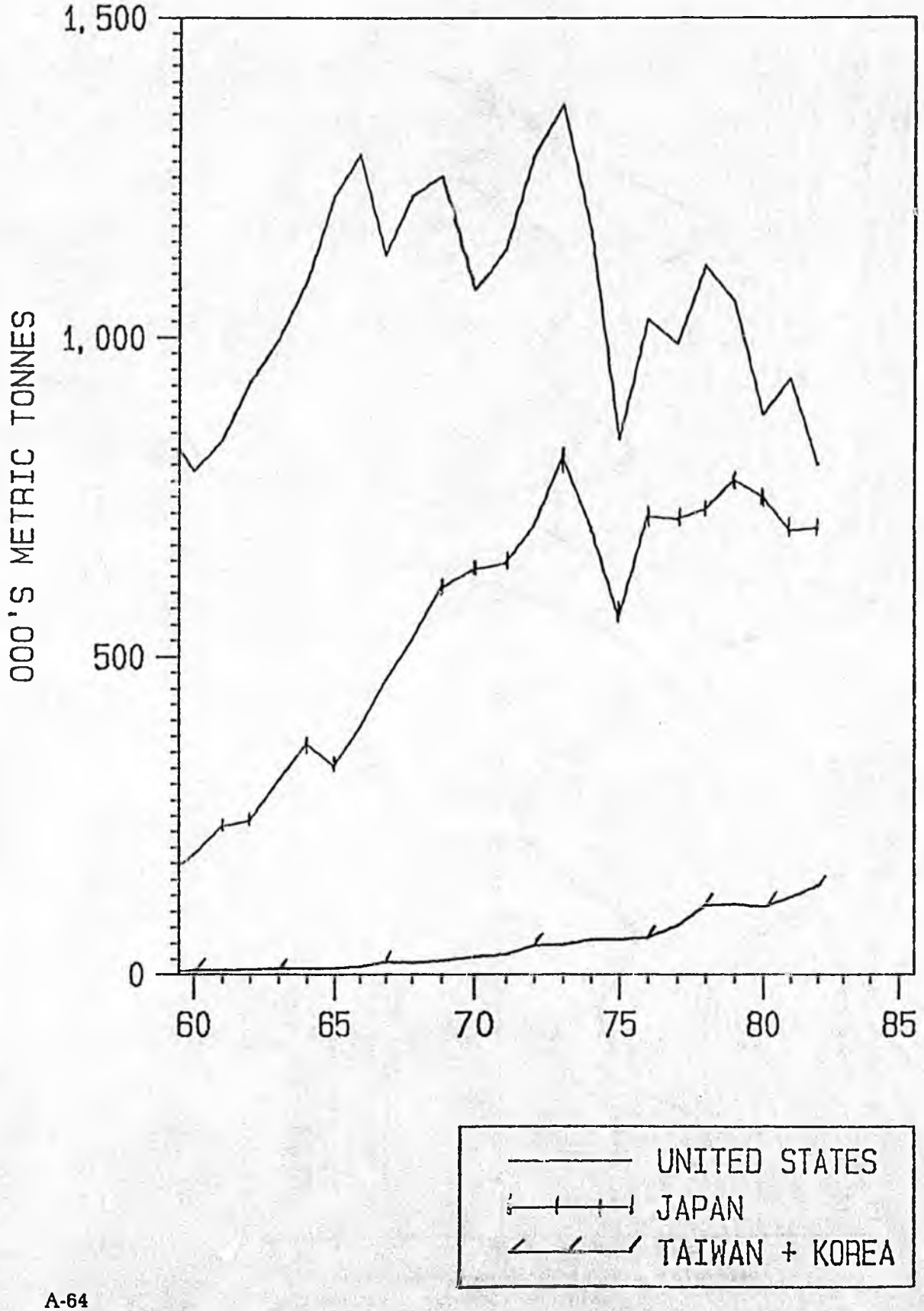

INDEX OF
TOTAL OECD INDUSTRIAL PRODUCTION
1975 = 100
Index
% Change at Annual Rate Seasonally Adjusted
on previous year
on previous half year
1980 123.0 0.0
1981 123.8 0.7
1982 119.0 (3.9)
1983 121.8 2.4
1981 1st half 124.0 5.0
2nd half 123.5 (0.8)
1982 1st half 120.5 (4.8)
2nd half 117.5 (1.9)
1983 1st half 119.0 2.6
2nd half 124.5 9.5
BEST FIT TREND LINE
4.8%/YR
for years 1955 to 1979
$(IP)_t = 3.2325 \times (1.04808)^{t-1900}$
Actual
Forecast
160
152
144
136
128
120
112
104
100
96
88
80
76
72
68
64
60
56
52
48
44
40
60
65
70
75
80

SLIDE 1
(MMRS)

METAL PRICES AND INDUSTRIAL BUSINESS CYCLE
INDUSTRIAL PRODUCTION INDEX
% change 12 months on preceding 12 months by quarter
METAL PRICE INDEX, 4 quarter moving average by quarter
BUSINESS CYCLE as measured by percentage changes in TOTAL OECD INDUSTRIAL PRODUCTION INDEX (left-hand scale)
CONSTANT MONEY U.S. DOLLAR METAL PRICES INDEX (1963 = 100), Major non-ferrous metals comprising LME prices for Cu/Pb/Sn/Zn and free market Al price expressed in U.S. dollars, Weighted by 1963 consumption, Deflated by quarterly US GNP deflator (right-hand scale)
Historical
Forecast
1966
1968
1970
1972
1974
1976
1978
1980
1982

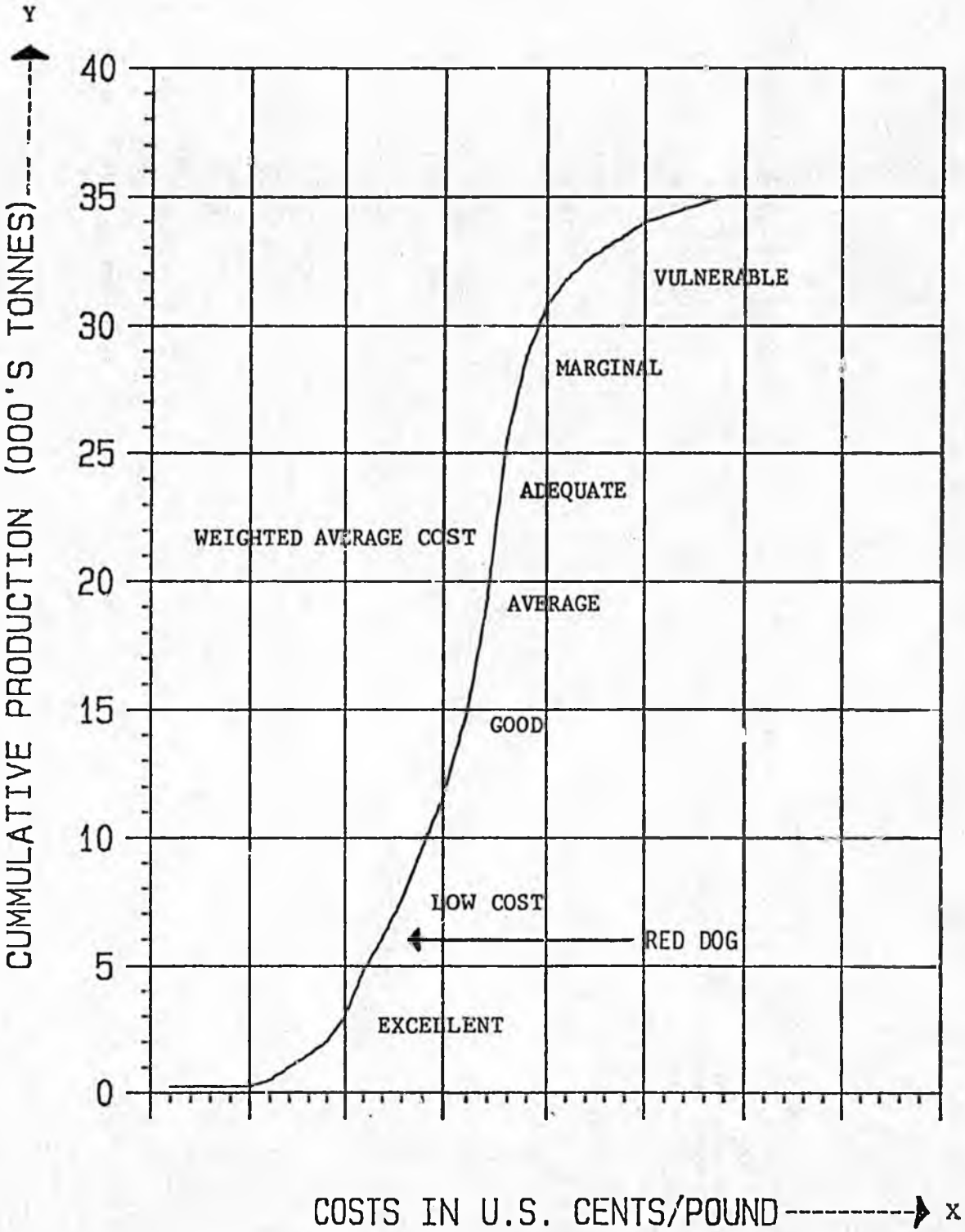
SLIDE 3
(MMRS)

ZINC CONSUMPTION BY REGION



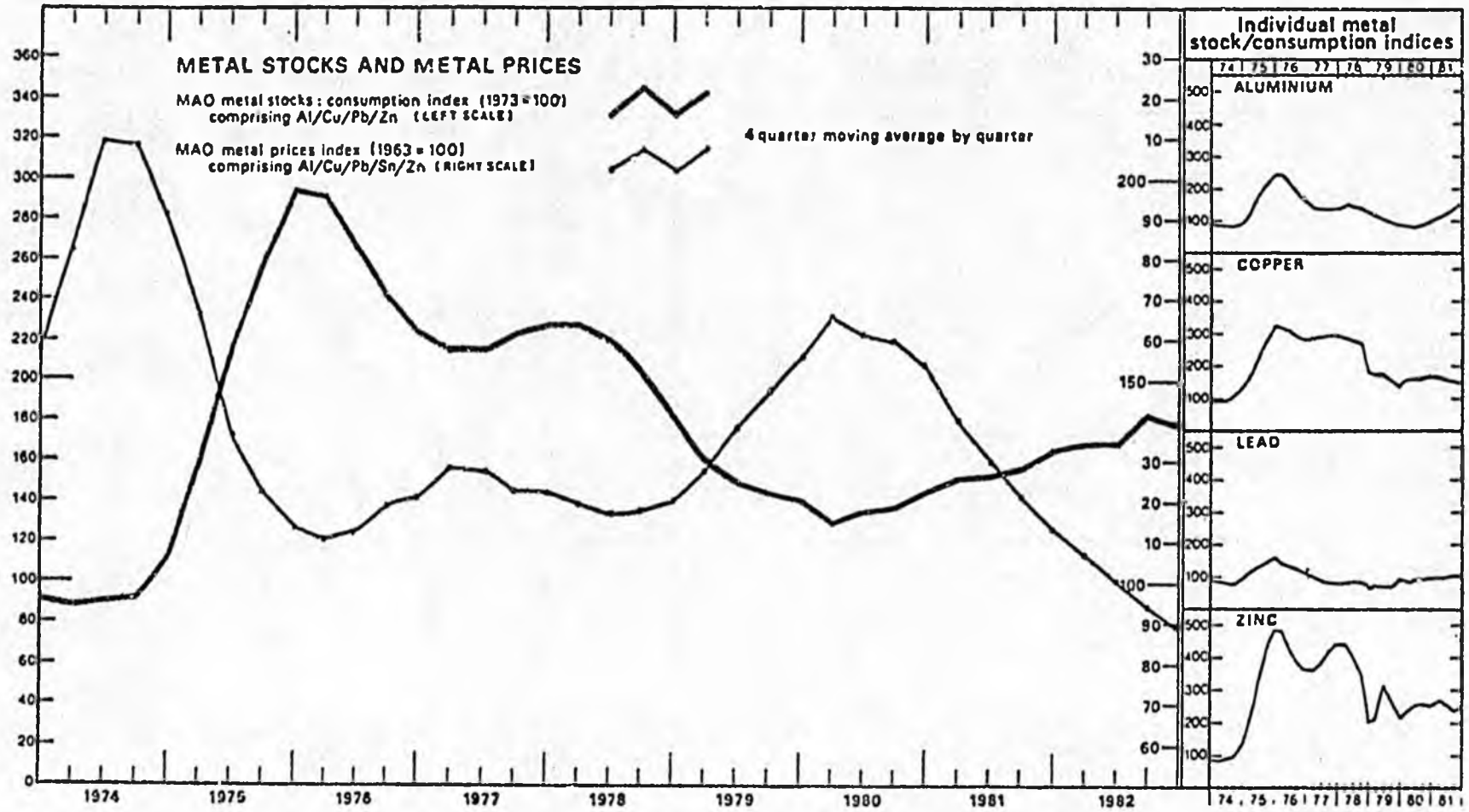
SLIDE 4

WESTERN WORLD ZINC MINES
CUMULATIVE PRODUCTION[2] VS. COSTS[1]



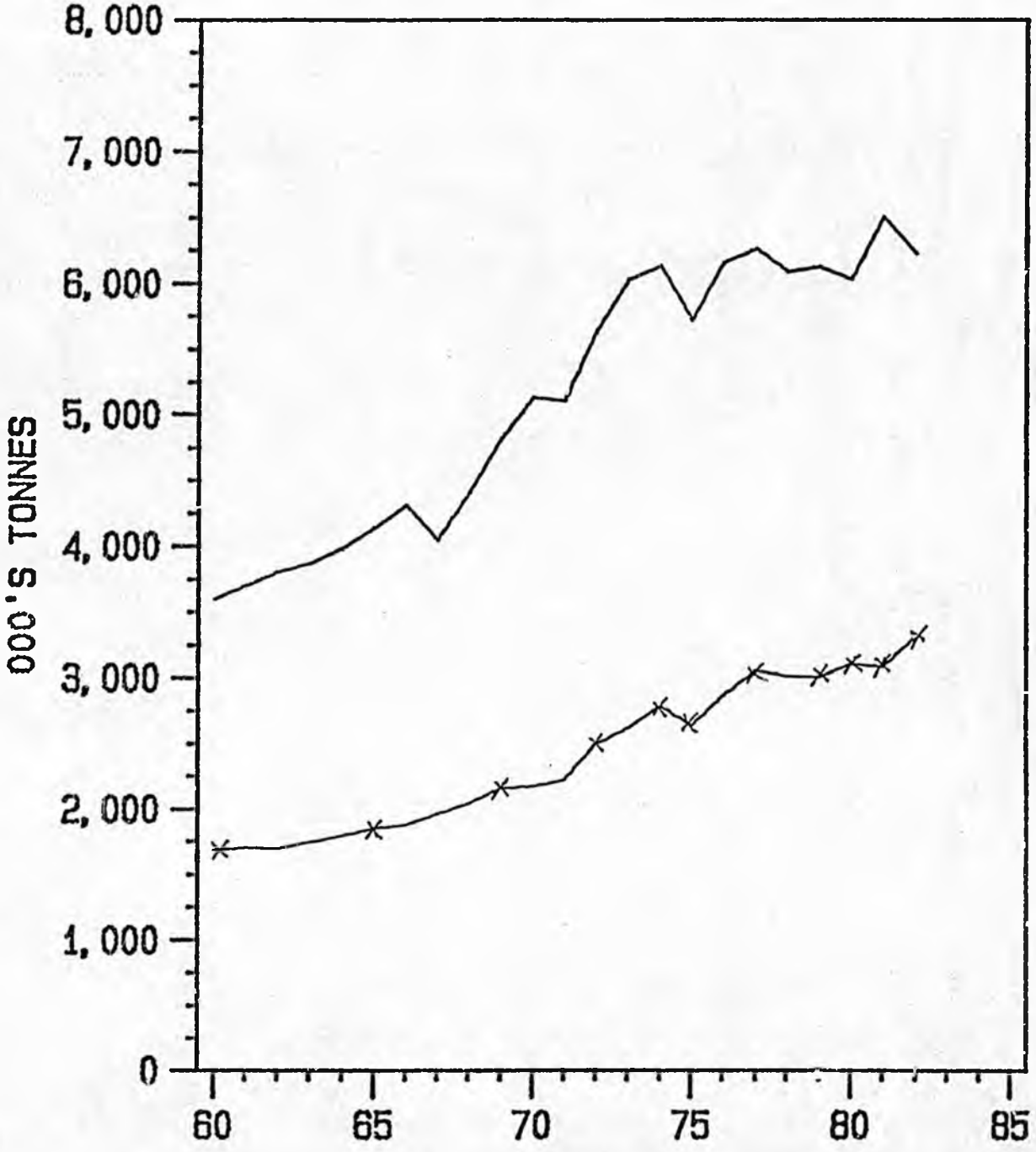
1) including depreciation and delivery to market.

2) represents X% of total Western World = Y thou. tonnes.


METAL STOCKS AND METAL PRICES
MAO metal stocks : consumption index (1973 = 100) comprising Al/Cu/Pb/Zn (LEFT SCALE)
MAO metal prices index (1963 = 100) comprising Al/Cu/Pb/Sn/Zn (RIGHT SCALE)
4 quarter moving average by quarter
Individual metal stock/consumption indices
ALUMINIUM
COPPER
LEAD
ZINC
1974
1975
1976
1977
1978
1979
1980
1981
1982

SLIDE 6 (MMRS)

COPPER MINE PRODUCTION

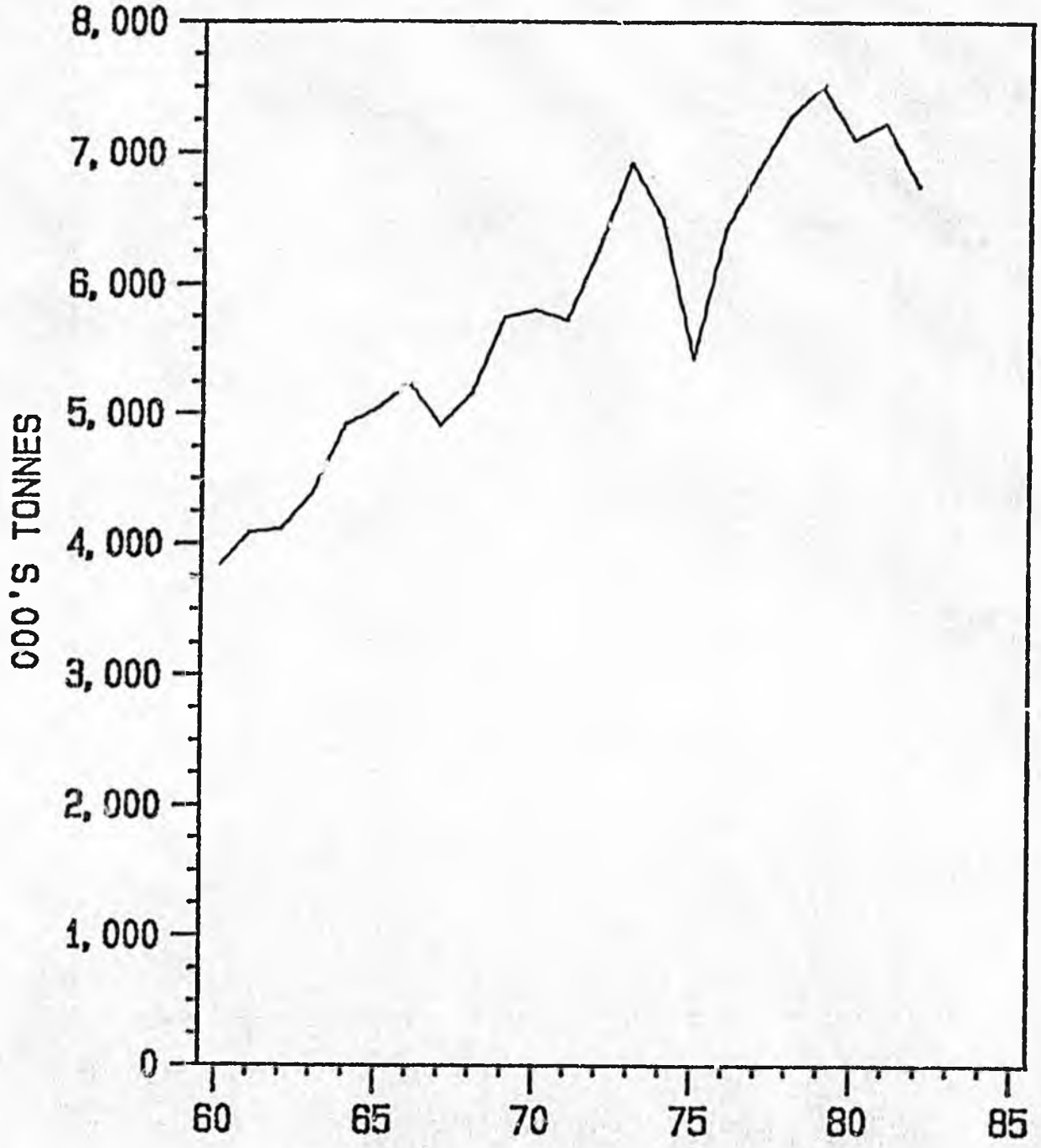


* ZAIRE, ZAMBIA, PHILIPPINES, CHILE, MEXICO, PERU, PAPUA NEW GUINEA

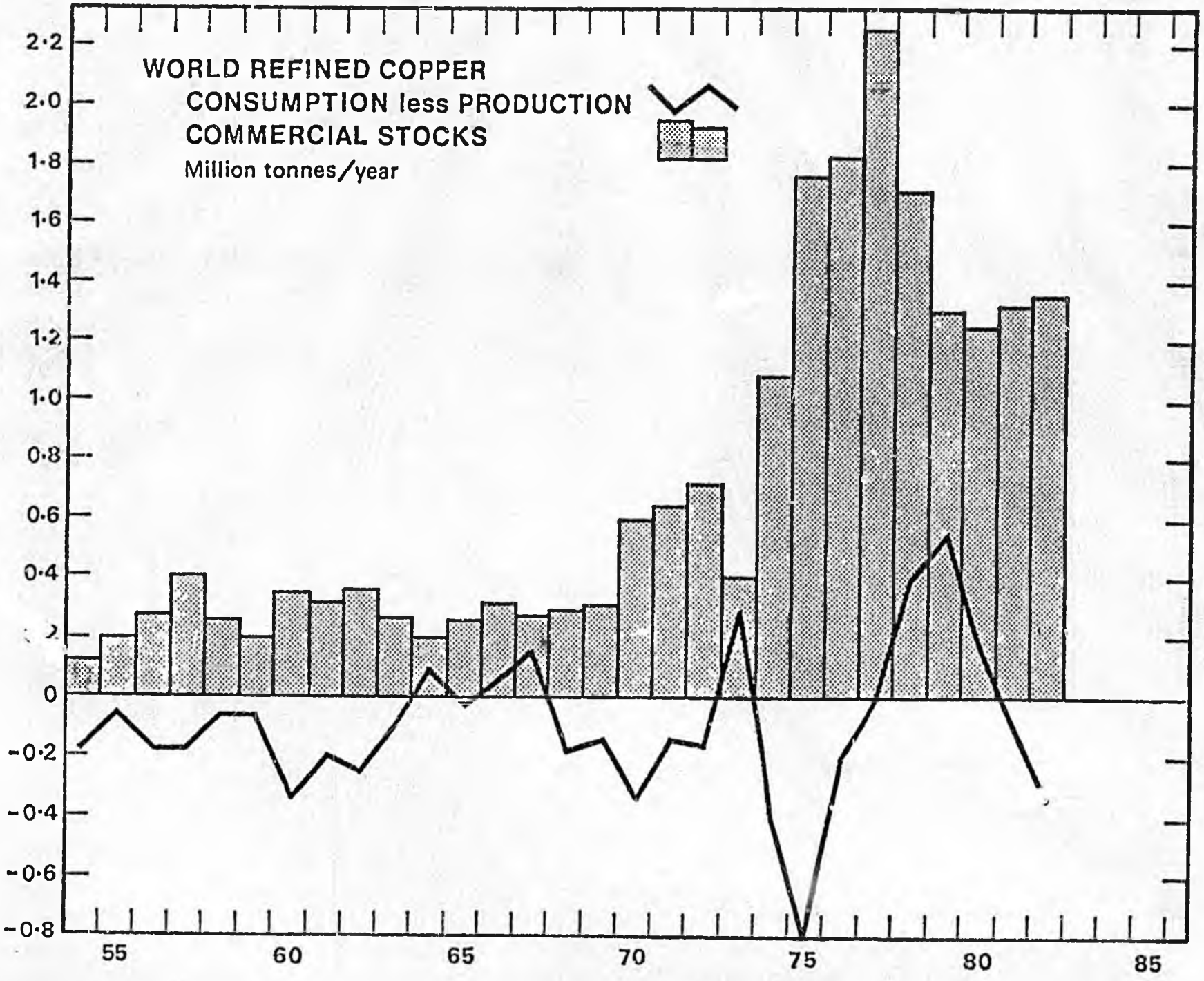
WESTERN WORLD

* SOCIAL

WESTERN WORLD COPPER CONSUMPTION

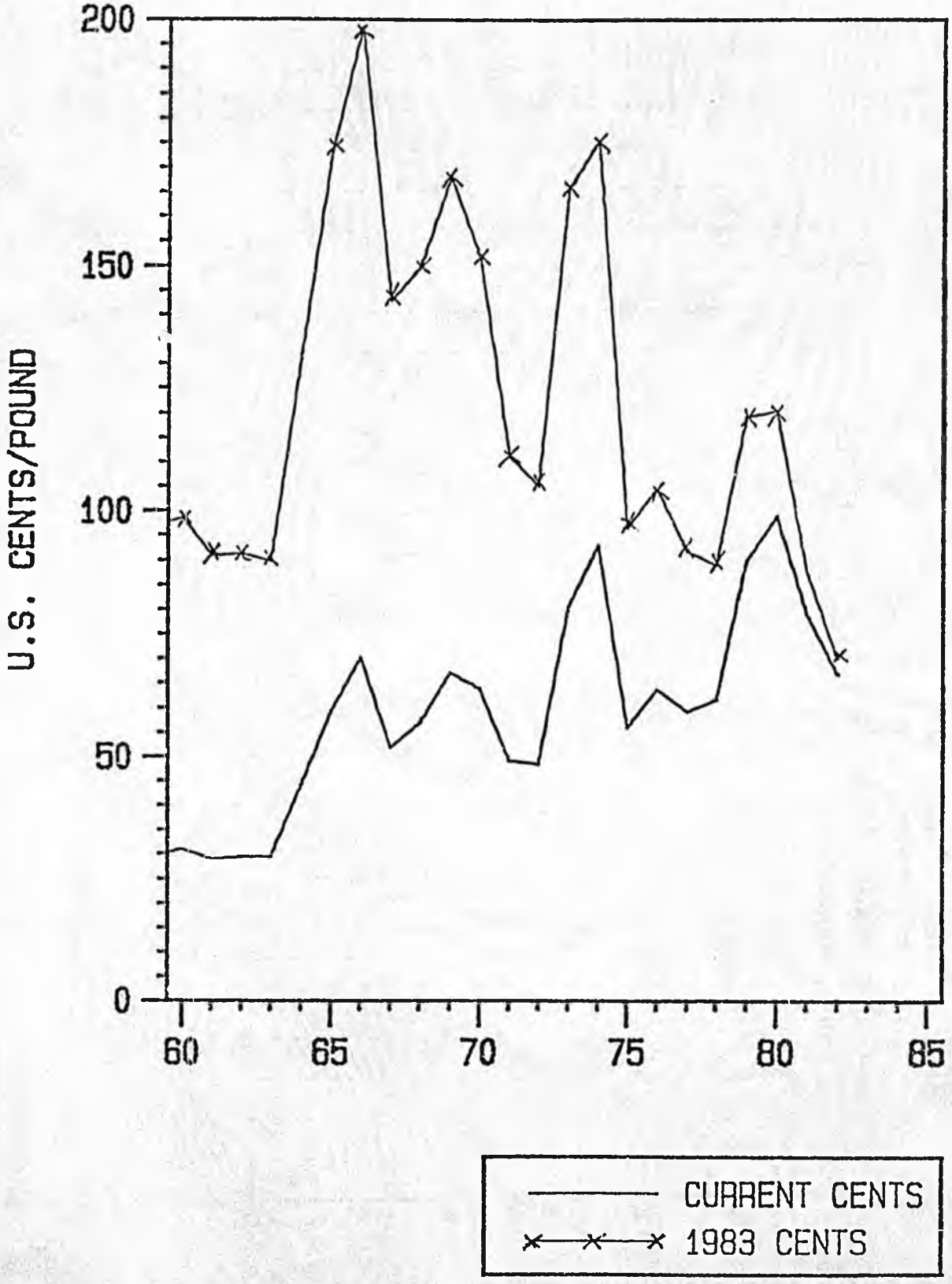


SLIDE 8

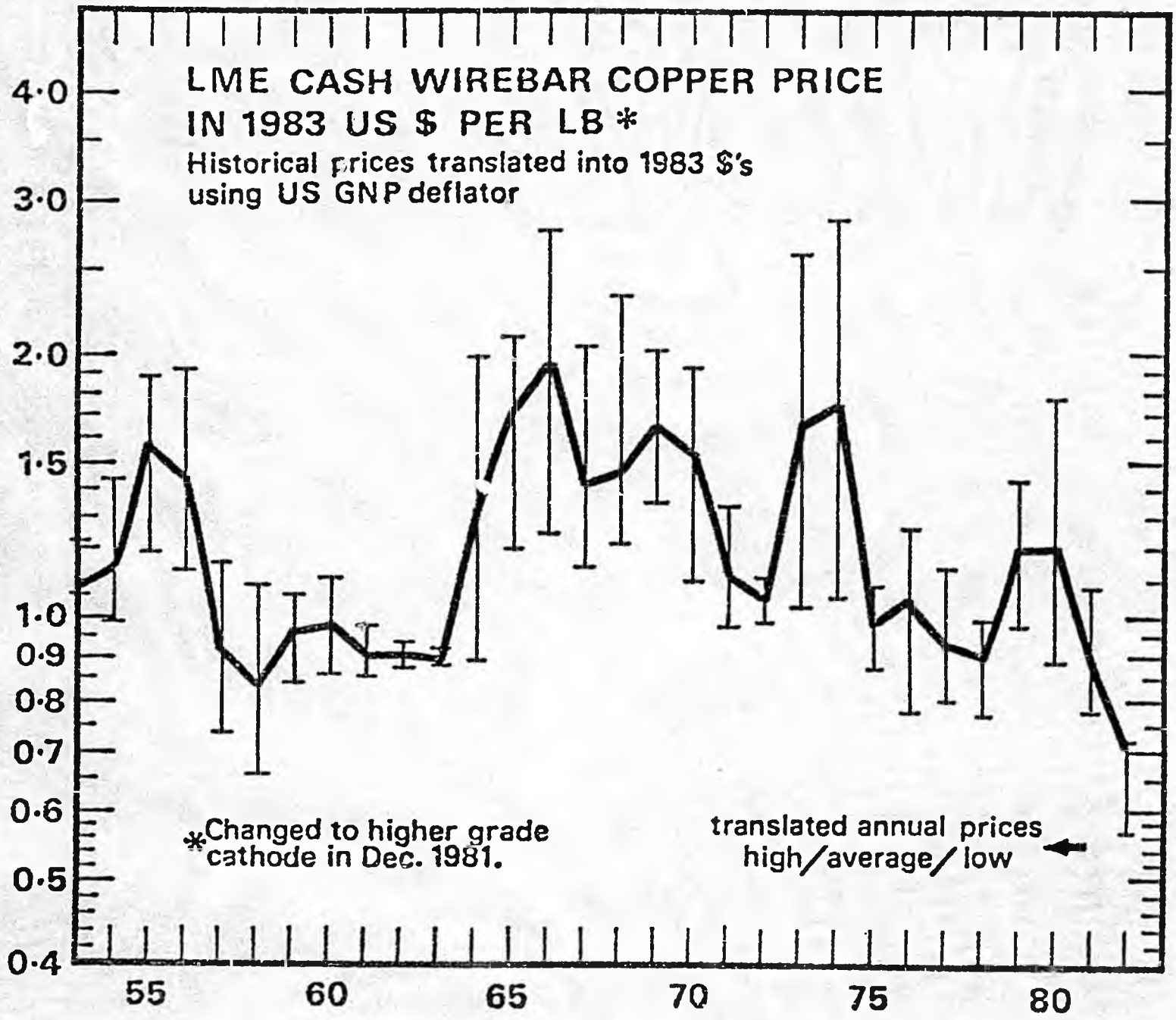


SLIDE 9 A-69
(MMRS)

COPPER PRICES - CATHODE SETTLEMENT



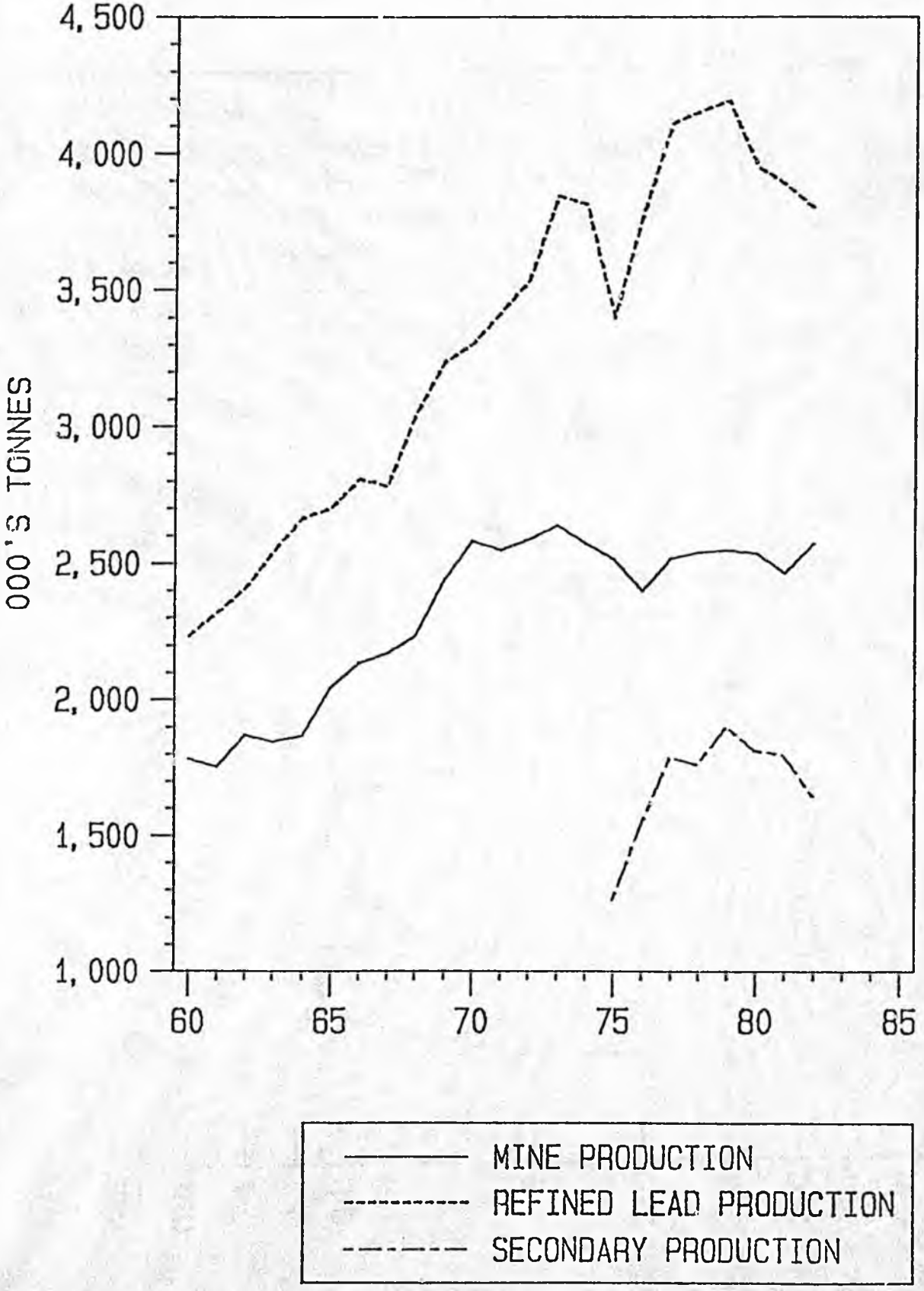
SLIDE 10



SLIDE 11
(NMRS)

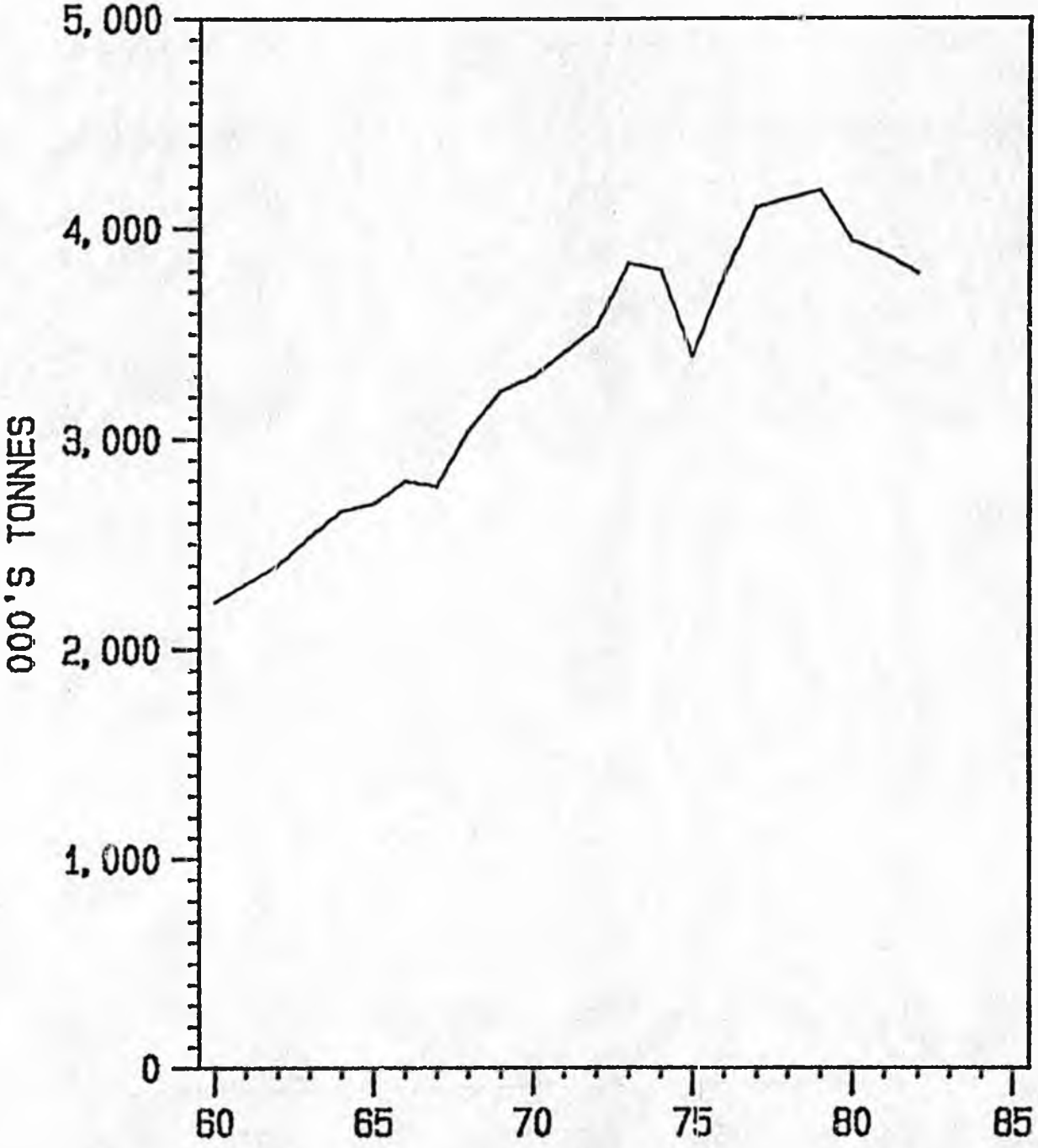
A-71

WESTERN WORLD LEAD MINE PRODUCTION



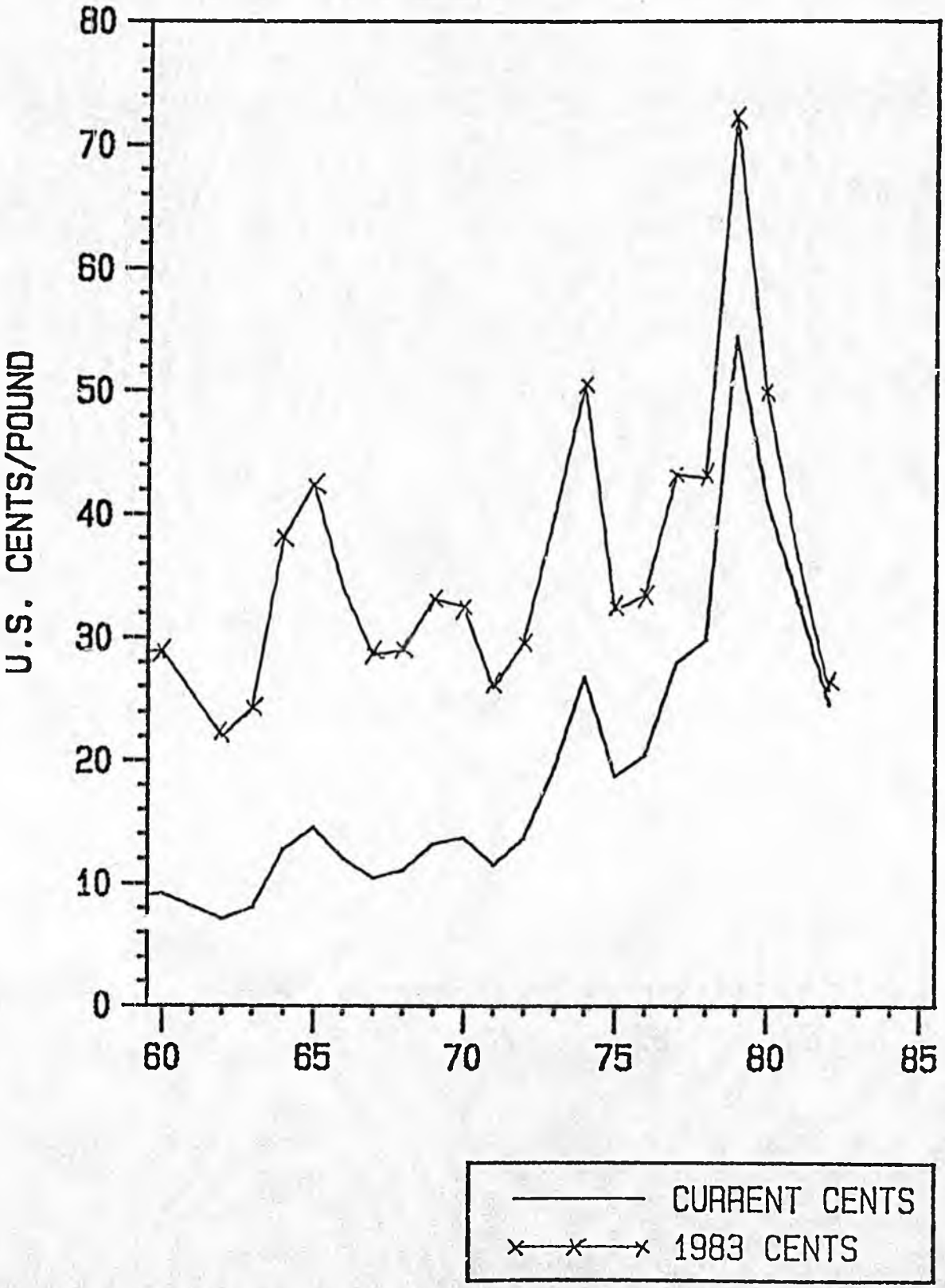
SLIDE 12

WESTERN WORLD LEAD CONSUMPTION

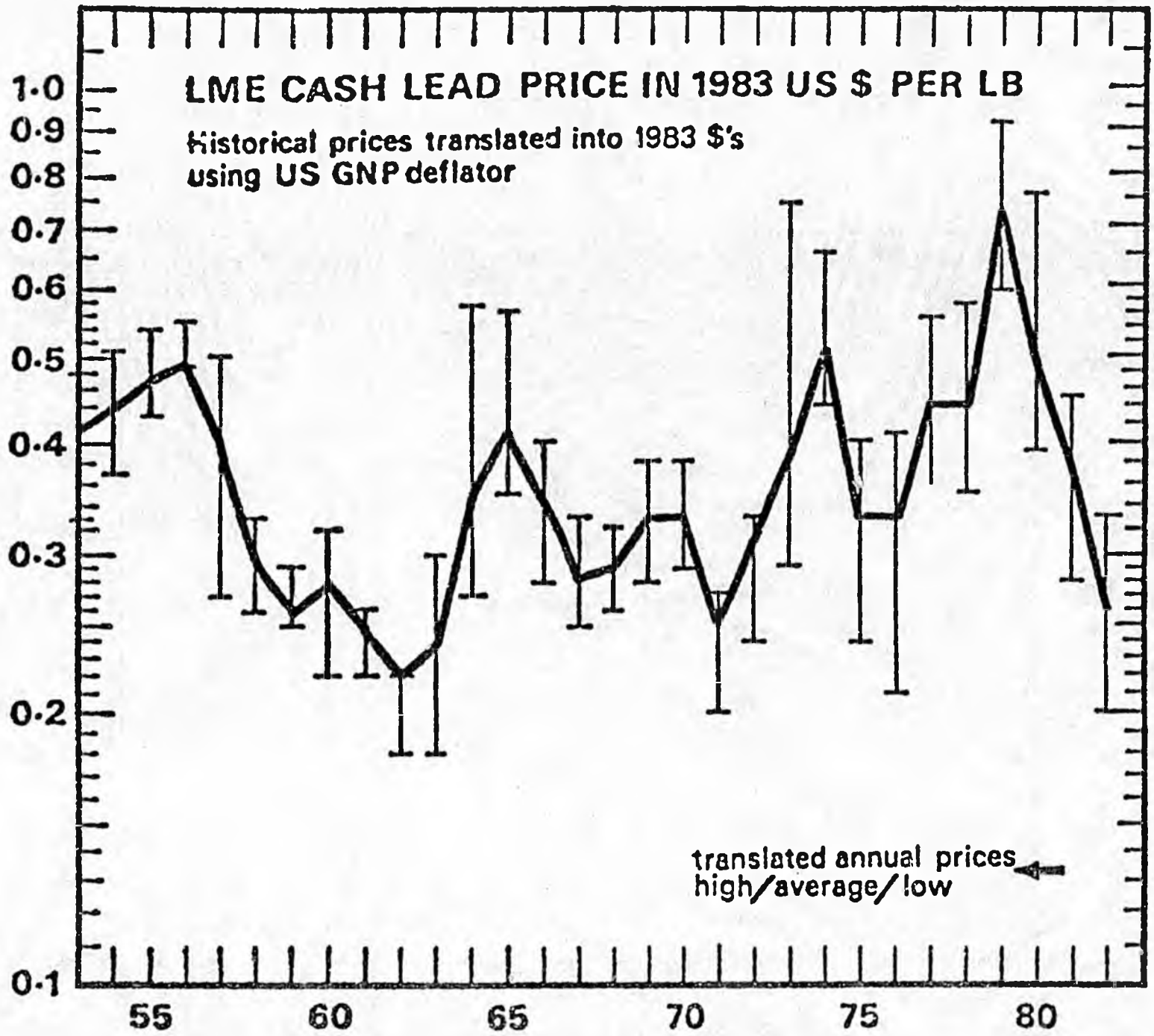


SLIDE 13

LME
LEAD PRICE

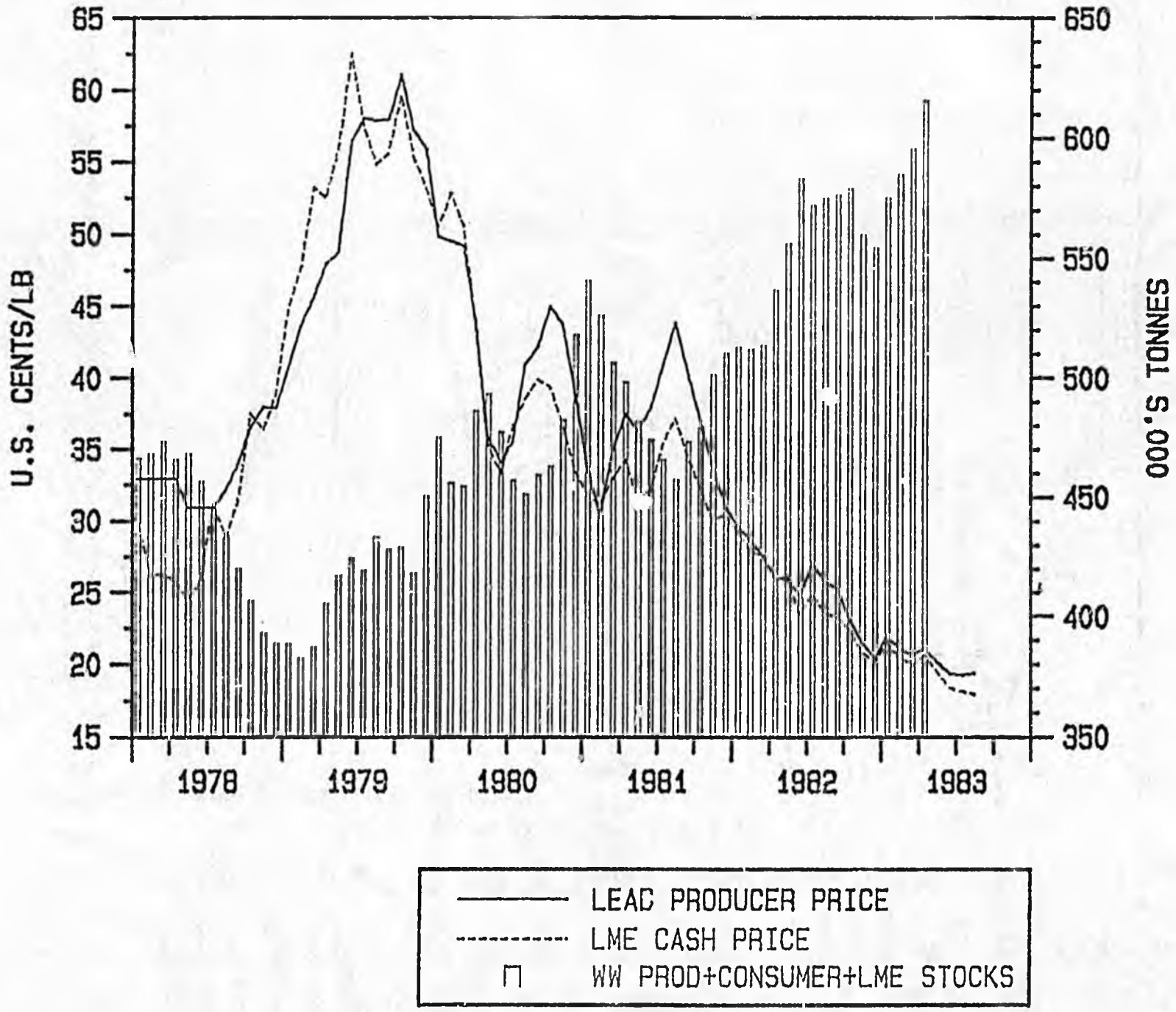


SLIDE 14

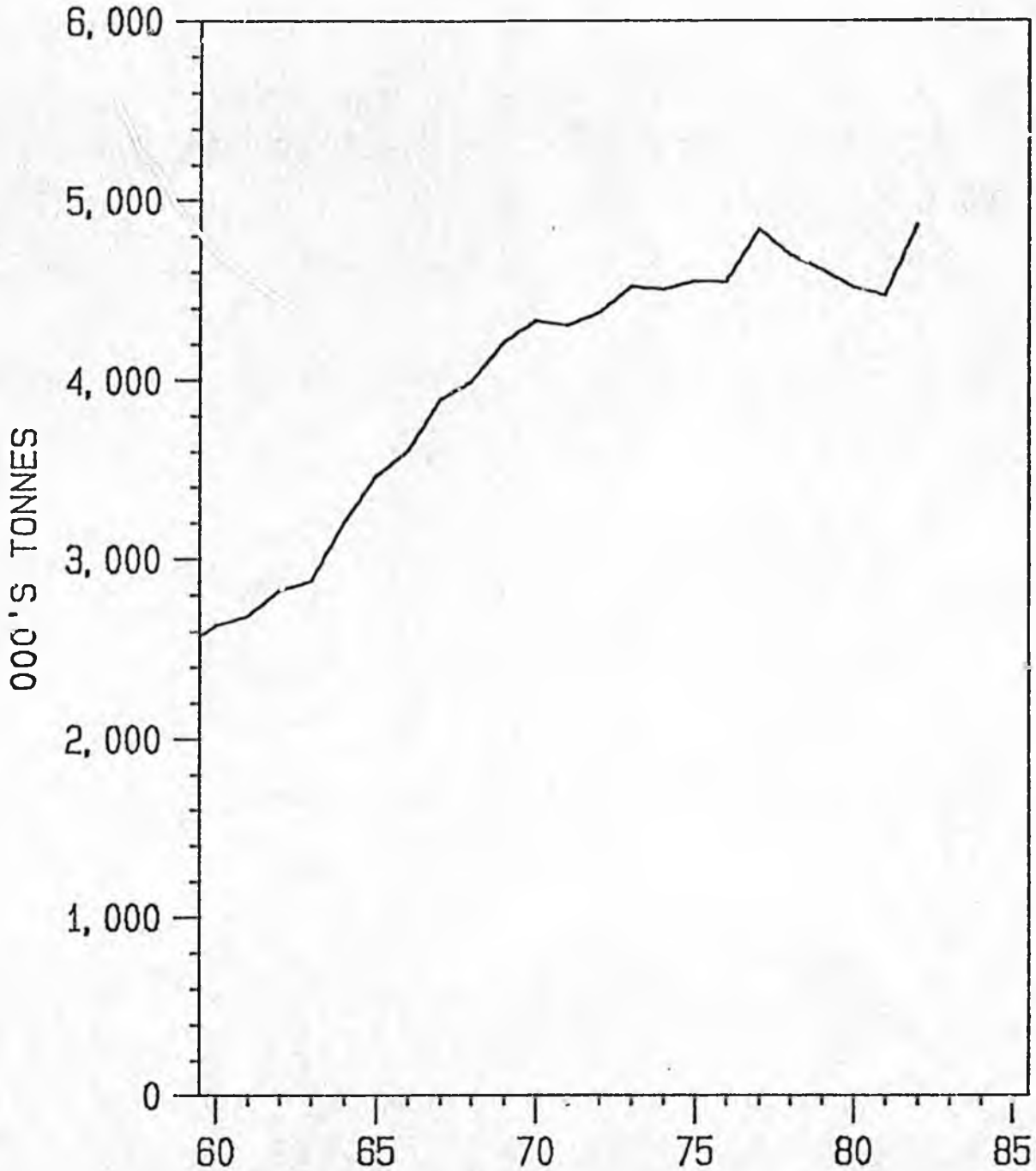


SLIDE 15
(MMRS)

LEAD METAL PRICES + STOCKS

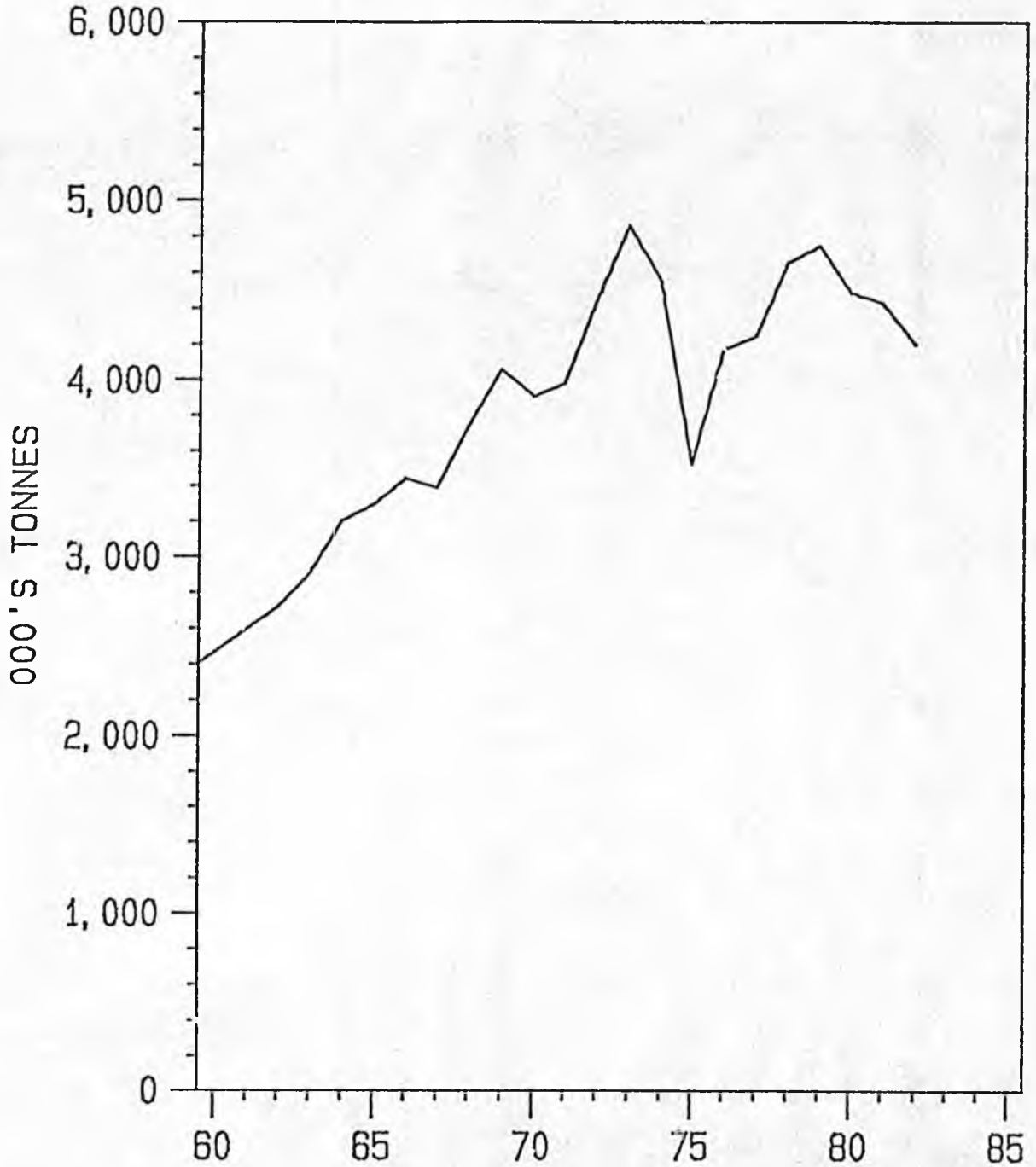


WESTERN WORLD ZINC MINE PRODUCTION



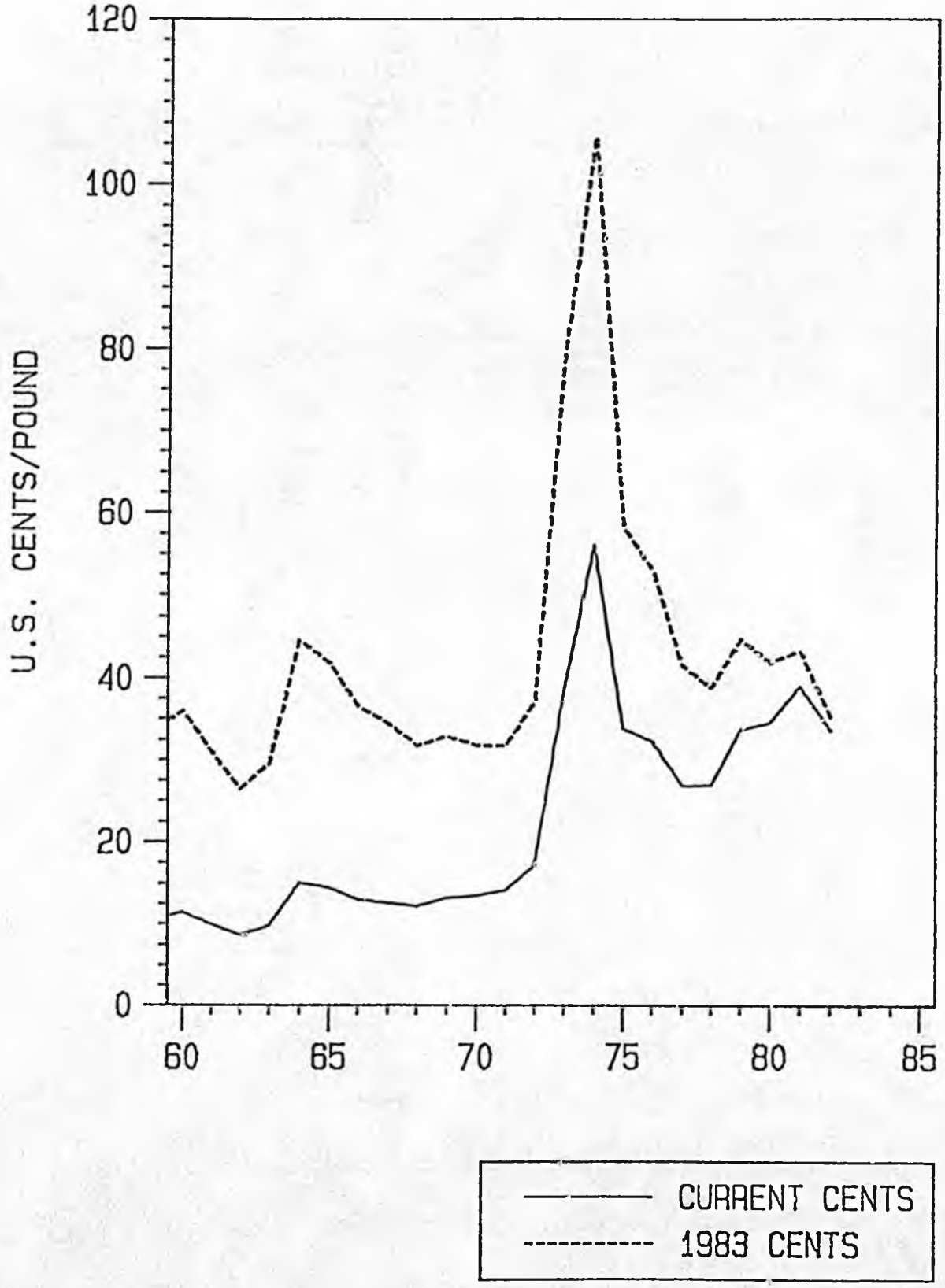
SLIDE 17

WESTERN WORLD ZINC CONSUMPTION

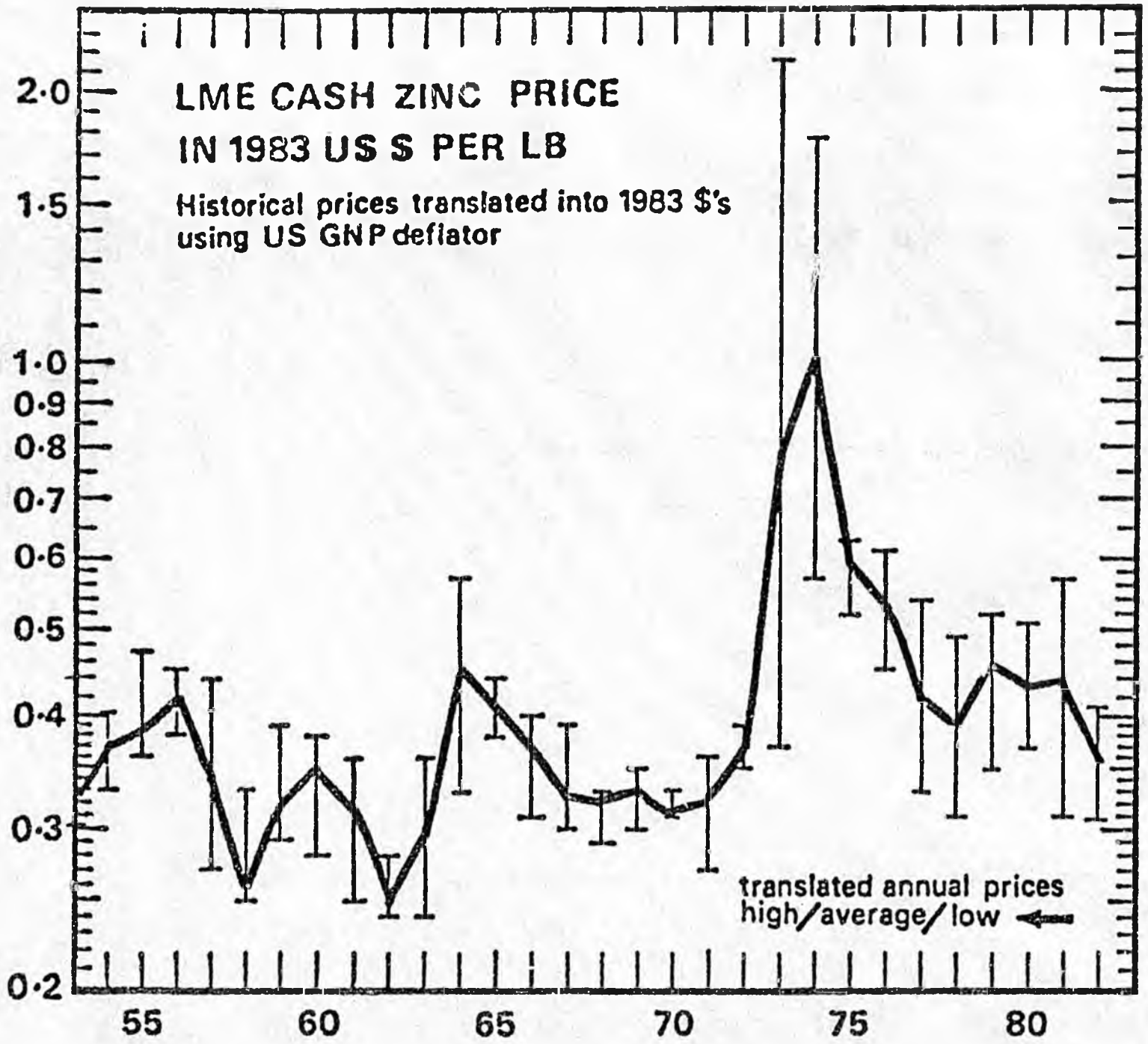


SLIDE 18

LME CASH ZINC PRICE

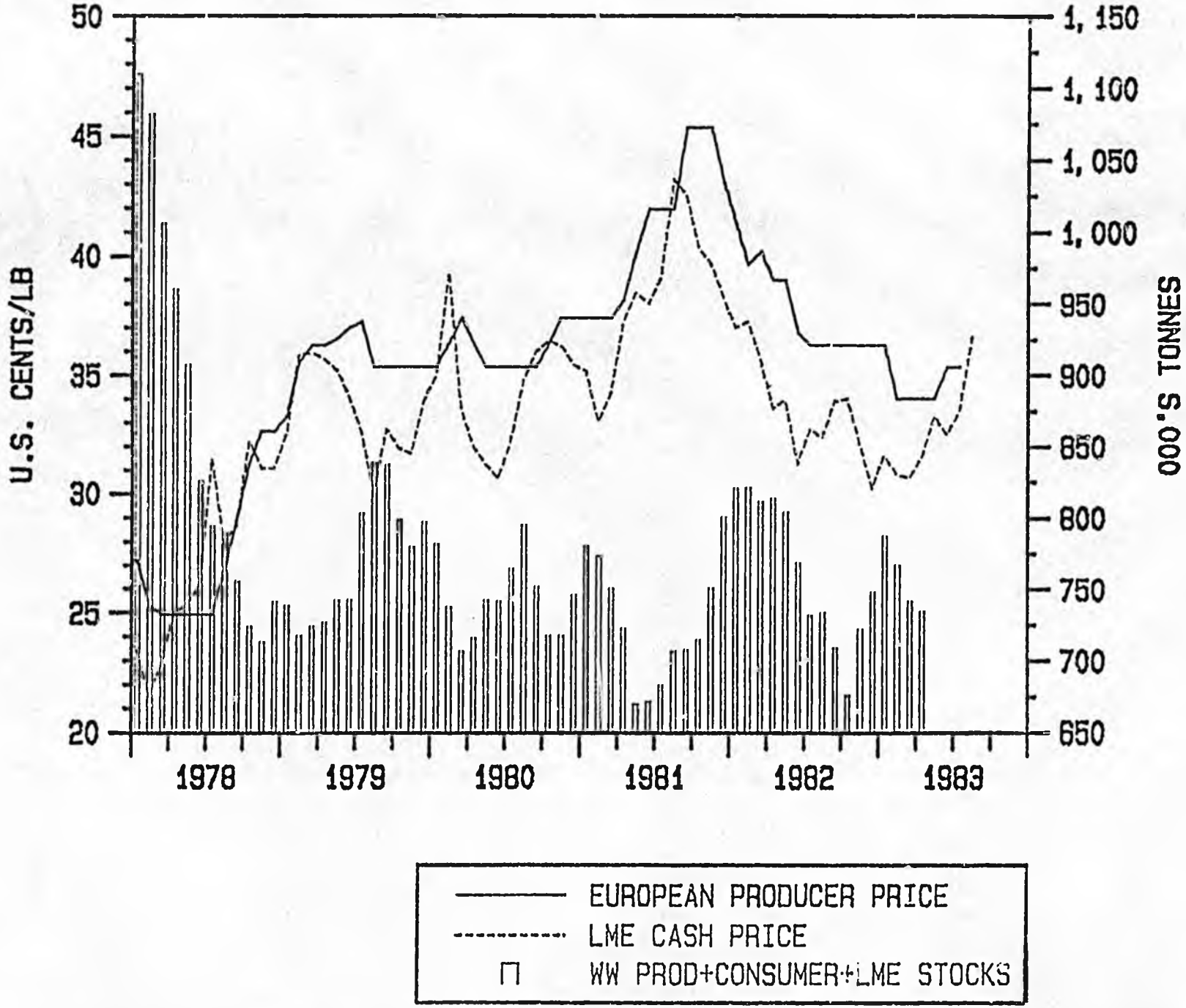


A-80



SLIDE 20 (MMRS)

ZINC METAL PRICES + STOCKS



SLIDE 21 A-81

Timber

THE TIMBER INDUSTRY IN INTERIOR ALASKA

Prices, Products, Markets and the Economics of Production

Brad Pierce
House Research Agency
Alaska State Legislature
January 1986

House Research Agency Report 86-B

TABLE OF CONTENTS

PAGE

INTRODUCTION 1

SUMMARY OF CONCLUSIONS 3

CHAPTER ONE: INTERIOR ALASKA'S FOREST RESOURCES 7

INVENTORY CONSIDERATIONS 8

DEVELOPMENT POTENTIAL 10

STATE POLICY 13

CHAPTER TWO: COMPARISON OF STUMPAGE APPRAISAL SYSTEMS: STATE OF ALASKA FOREST SERVICE AND BRITISH COLUMBIA STUMPAGE RATES 17

STUMPAGE RATES..... 18
The Transactional Evidence Appraisal System
The Residual Value Appraisal Method
The British Columbia Stumpage Appraisal System

EFFECTS ON INTERIOR TIMBER OPERATORS 29

CHAPTER THREE: INDUSTRY STRUCTURE/COMPETITIVE POSITION 31

THE STRUCTURE OF THE INTERIOR TIMBER INDUSTRY 31

INTERIOR TIMBER OPERATORS' POSITION IN PACIFIC RIM MARKETS... 32
Pacific Rim Log Trade
Alaska's Market Position
Other Suppliers
Alaska's Competitive Position

INTERIOR TIMBER OPERATORS' POSITION IN DOMESTIC MARKETS 37
Lack of Infrastructure
Lumber Production in British Columbia
Lumber Production in Interior Alaska
Market Potential

PAGE

CHAPTER FOUR: PRODUCTION COSTS, PRICES, PRODUCTS AND MARKETS 41

PACIFIC RIM MARKETS..... 41
Log Export Efforts
Export Cants

BUILDING MATERIALS FOR INTERNAL ALASKA MARKETS..... 45

PANEL PRODUCTS 48

FINISHING MATERIALS 50

PULP AND PAPER 50

WOOD CHIPS 52

OTHER ENERGY PRODUCTS 56

WOOD PELLETS 57

OTHER PRODUCTS 59

BIBLIOGRAPHY 61

TABLES

	PAGE
1: Potential Uses of Native Interior Alaska Tree Species	9
2: Net Volume of Sawtimber on Commercial Forest Land in Alaska by Species, Diameter Class and Region	11
3: Grade of Sawtimber on Commercial Forest Land in Interior Alaska	13
4: Volume and Average Stumpage Price of Commercial Timber Sales in the Tanana Valley 1980-1984	20
5: U.S. Forest Service Timber Sales for Region 6 (Westside)	23
6: Advertised Stumpage Rate, Bid Price, and Harvest in the Tongass and Chugach National Forests, 1981-1985	25
7: British Columbia Interior White Spruce Stumpage Rate and Volume Cut	27
8: Japan's Imports by Origin and Market Shares of Supplies 1984	34
9: Costs of Producing Spruce Sawlogs for Export FOB Seward	42
10: Exports of Spruce Cants from Alaska to Japan 1978-1984	44
11: Forecast Demand for Lumber/Houselogs in the Tanana Basin, North Slope and Yukon Delta	46
12: July 1985 Dimension Lumber Prices in Anchorage and Fairbanks	46
13: 1980-1984 Fairbanks Local Wood Products Price Summary	47
14: Export of All Types of Alaska Wood Pulp to All Destinations 1978-1984	51
15: Woodchip Exports from Alaska to Japan 1978-1984	54
16: Forecast Demand for Fuelwood in the Tanana Basin, North Slope and Yukon Delta	56
17: Interior Region Fuelwood Sale Statistics 1980-1984	57

INTRODUCTION

The purpose of this project is to present a coherent picture of the competitive position of Interior timber operators in current and future forest product markets. Chapter 1 discusses the Interior timber resource base in some detail with respect to other sources of supply in the coastal regions of Alaska and interior British Columbia. Stumpage rates on Alaska Division of Forestry, U.S. Forest Service and British Columbia Ministry of Forestry timber sales are compared for their effect on the price of raw materials. The stumpage appraisal methodologies used in Alaska and British Columbia are examined and the philosophical differences in the government-industry relationship between the two countries is summarized in Chapter 2.

Chapter 3 presents an analysis of the structure of the Interior timber industry in contrast to the timber industries of Southeast Alaska and British Columbia. The economics of production for Interior operators are compared with their competitors in domestic markets and the outlook for Pacific Rim forest products markets is discussed in terms of anticipated supply and demand over the next fifteen years. In Chapter 4, a detailed analysis of potential Interior timber products, prices and markets is undertaken.

We hope that the reader will gain a sense of perspective from this study and an understanding of where the Interior Alaska timber industry stands in the overall context of Pacific Rim forest products markets. State policies which affect the competitive position of Interior operators are discussed at some length and areas where further research is needed are noted.

SUMMARY OF CONCLUSIONS

Chapter 1

There are approximately 22.5 million acres of commercial forest land in Interior Alaska. The Tanana State Forest contains about one million acres of commercial forest, while Native corporations control another five million acres of commercial timber. The State controls about 80 percent of the available commercial forest in the Interior. The annual allowable cut in the Tanana State Forest at present is 4.1 million board feet (MMBF) of spruce sawtimber and 20,000 cords of hardwood for fuel (page 7).

Seven tree species occur naturally in the Interior forest. These are: tamarack or larch; white spruce; black spruce; paper birch; quaking aspen; balsam poplar; and Western black cottonwood. Most of these species grow as pole sized and small sawtimber of intermediate to low quality and value in timber markets. A comparison of the productivity and quality of Alaska's coastal and interior forests reveals that coastal softwood timber is superior. Prime quality, old growth Sitka spruce logs from the coastal regions of the state command high prices on world markets and are Alaska's most valuable timber resource (pages 8-13).

The State timber sale program in the Interior has sold virtually all the timber that has been offered, mostly from the Tanana Basin area. Bid prices for State sales have shown little correlation to generally depressed forest products markets. The annual allowable cut in the Tanana State Forest is expected to double within the next two years, which will be defined in the forest plan being prepared by the State Division of Forestry (pages 13-15).

Chapter 2

The three stumpage appraisal systems examined in this report, which are currently used by the U.S. Forest Service, British Columbia Ministry of Forests, and Alaska Division of Forestry, all yield about the same appraised price for a given stand of timber under similar market conditions if all costs are considered. The appraised stumpage price is merely a reflection of the current market value of the products to be produced from a particular timber sale (page 28).

There are major philosophical differences in forest management practices between the U.S. model which emphasizes long-term biological considerations and the Canadian system which emphasizes economic stability and growth. The government-industry relationship in British Columbia is

very different from the relationship in Alaska where multiple-use considerations play an important role in timber sale policy. These differences play a significant role in setting the price of raw materials for the respective timber industries (page 28).

The competitive bidding process used for timber sales by the Forest Service and State Division of Forestry drives up stumpage rates for Alaska operators compared to competing British Columbia operators who generally pay for their timber at appraised rates. Emergency rate redeterminations available for operators holding Forest Service timber sale contracts in the Tongass and Chugach National Forests are much lower than stumpage rates for State sales in the Interior. The British Columbia Ministry of Forests offers special, low, flat rates for stumpage sold to small-scale operators and those in remote regions of interior British Columbia in recognition of their fledgling status (page 29).

Stumpage prices comprise only a small percentage of total production costs in the mature integrated timber products industries of Southeast Alaska and Interior British Columbia. Stumpage rates make up a significantly larger portion of total production costs for Interior Alaska operators who produce mostly roughcut and unfinished products (page 29).

State timber sale policy in the Interior has been to offer small to medium volume sales of relatively short duration. Interior timber operators have complained that constraints on the available timber supply have driven up stumpage rates (page 18).

Chapter 3

The present structure of the Interior timber industry is marginal in nature, with many small operators making a living off of the resource. The profitability of products produced by Interior sawmill operators tends to decline in direct proportion to the amount of manufacturing they put into it. Thus, sawmill operators attempt to minimize their manufacturing inputs and produce mostly semi-finished or roughcut, green and air-dried products and do not compete directly with British Columbia lumber imports. Import substitution is seen by most analysts to be the most economically feasible use of the Interior forest resource at the present time (page 32).

As a marginal supplier of forest products to the Japanese market, Alaska occupies a "last in first out" position on the overall timber market cycle. Alaska's competitive position as a supplier to the Pacific Rim log trade depends on the desirability and price of the species it offers for sale. Native corporations in Southeast and Southcentral control the best quality and most accessible spruce and hemlock sawtimber and have been willing to sell timber in large volume even during declining markets. Increased roundlog sales by Native corporations do

not represent an increase in Alaska's market share, rather they represent a displacement of cant and other value added product exports. (page 36).

Interior spruce sawtimber can be classified as construction grade and competes in Pacific Rim softwood markets with: low quality hemlock and second growth fir from the West Coast; British Columbia lodgpole pine-balsam-spruce-hemlock; Soviet larch; and radiata pine from Chile and New Zealand. The Pacific Rim softwood log trade is forecast to increase substantially in the next 15 years, but Interior operators will probably remain in the position of being marginal suppliers to markets dominated by second growth timber from other West Coast producers with lower operating costs (pages 32-36).

Hardwoods from the Interior remain something of an unknown at this time. There has been very little research done on potential export markets for Alaska hardwood. We do not know what the future demand for hardwood chips and logs is likely to be among Pacific Rim buyers. There appears to be a trend among traditional hardwood log suppliers such as Malaysia and Indonesia to require primary manufacture of exports. The consequences of these political factors are unknown at present (page 36).

The competitive position of Interior operators in domestic markets is constrained by a lack of infrastructure. Lack of access to markets for Interior operators may be more important than access to the resource itself. A comparison of the marketing infrastructure enjoyed by a Northern Interior British Columbia sawmill with a typical Fairbanks operation reveals why the B.C. mill is able to sell finished lumber in Fairbanks for less than local producers (pages 37-38).

Much of the literature on the Interior Alaska timber industry is promotional in nature and ignores the question of access to markets. Expectations of how rapidly the Interior industry can grow and how much the State can do to encourage development need to be tempered by a serious economic analysis of the prospects for specific products (page 39).

Chapter 4

At current market prices, it is uneconomical to export spruce logs and cants from the Interior. Building products markets for Interior timber operators are essentially restricted to internal Alaska markets or Pacific Rim exports. The two most promising areas for Interior timber operators at the present time appear to be producing building materials and woodchips. As larger amounts of timber are offered for sale by the State, import substitution of Interior dimension lumber for British Columbia lumber is expected to increase (pages 40-43).

Interior timber operators are likely to continue to make most of their profits on roughcut lumber, timbers and houselogs because they cannot compete on an equal basis with British Columbia lumber mills. Other options for sawmill operators--such as exporting cants or baby squares--do not appear to be viable at the present time. Export markets in general for any type of Interior forest product do not appear to be much of an option in the current market situation (pages 41-44).

The University of Alaska-Fairbanks, Agricultural Experiment Station is attempting to run a pilot project for using a 10 percent mixture of woodchips for fuel in coal-fired powerplants. The University would like to let out a contract and monitor the actual cost of producing chips, but the project is being held up for lack of adequate funding (pages 52-55).

A chipping industry appears to be economically feasible and the investment in equipment for an existing logging company would be reasonable. A healthy chipping industry would open up several forestry management options such as commercial thinning and removal of undesirable species for reforestation. It would also provide a market for agricultural land clearing residue (page 55).

Another energy product which can be produced from wood waste and agricultural land clearing residue is wood pellets These can be used in special woodstoves and powerplants for electrical production. Consumer acceptance of wood pellets as an alternative to cordwood is unproven. The proposals which have been put forward for building pellet mills and a powerplant are highly speculative at the present time. A pellet mill would use massive amounts of wood and may provide an alternative market for sawmill waste and logging residue. Power and timber sales agreements need to be concluded before firm financing can be obtained. There are serious reservations among industry analysts over the ultimate economic feasibility of wood pellets (pages 57-58).

Other potential Interior forest products which have been researched but do not appear to be viable at the present time include panel products (plywood, particleboard, and waferboard), pulp, charcoal, and densified fuel logs (pages 48-59).

CHAPTER 1

INTERIOR ALASKA'S FOREST RESOURCES

There are approximately 22.5 million acres of commercial forest land in Interior Alaska containing 14.25 billion cubic feet of harvestable timber volume.[1,2] Presently, the State of Alaska controls about 80 percent of the available Interior timber supply. About one million acres of commercial forest are included in the Tanana State Forest (out of 1.8 million acres total) at present with an annual allowable cut of 3.42 million cubic feet (4.1 million board feet) of spruce sawtimber and 20,000 cords of hardwood for fuel.

The Department of Natural Resources has conceptualized plans for three more State forests in the Interior. These could add about 1.3 million acres of commercial forest land, 42 million cubic feet of annual allowable cut of spruce sawtimber and 70,000 cords of hardwood for fuel to present timber inventories within the next ten years.[3]

Thirty-two Native corporations (regional and village) control about 16 million acres of Interior land estimated to contain about five million acres of commercial forest. Because only fourteen of these corporations have completed forest inventories to date, the total Interior land base which may be dedicated to timber production and the potential annual allowable cut for the next decade will remain unknown for some time. There are certain facts we do know about the potential products and markets for the Interior timber inventory, however, and we will concentrate on these "givens" as we speculate about the future.

---

[1]Commercial forest land is officially defined by the U.S. Forest Service as being capable of producing 20 cubic feet of usable wood per acre per year. The average volume produced by Interior forests at present is about 14.4 cubic feet per year due to natural understocking. An alternative definition of commercial forest land as being composed of trees greater than 5 inches in diameter at breast height is generally used when describing Interior forest inventories.

[2]Richard C. Smith, Potential Economic Development of Forest Resources in Interior Alaska, Pacific Northwest Forest and Range Experiment Station, U.S. Forest Service, November 1980.

[3]These planned State forests are: Copper River (60,000 acres of commercial forest land and an estimated 3-5 MMBF annual allowable cut), Upper Yukon (400,000 acres and 18-27 MMBF), and Kuskokwim (800,000 acres and 29-50 MMBF).

INVENTORY CONSIDERATIONS

Only seven tree species occur naturally in the Interior forest. These are: tamarack or larch; white spruce; black spruce; paper birch; quaking aspen; balsam poplar; and Western black cottonwood.[4] Most of these trees are pole sized and small sawtimber. Table 1 lists all of the currently recognized uses (with the exception of log exports) for Interior timber species. We will attempt to assess the economic potential of several of the products listed in Table 1 in the final chapter of this report. Many of the products listed in the table have not been studied at all. We will confine our efforts to those where data exist.

[4]Edmond C. Packee, "Forest Management for Interior Alaska, Can Products Justify Costs?", Agroborealis, July 1984.

Table 1
Potential Uses of Native Interior Alaska Tree Species

USE	Species						
	Paper Birch	Quaking Aspen	Balsam Poplar	Black Cottonwood	Larch	Black Spruce	White Spruce
Building Material							
House logs					X	X	X
Const. lumber					X	X	X
Siding					X	X	X
Waferboard	X	X	X	X	X		
Particleboard	X	X	X	X	X	X	X
Finishing Materials							
Boards	X	X		X	X	X	X
Paneling	X	X	X	X	X	X	X
Flooring	X				X		
Molding	X	X					
Veneer	X	X	X	X	X	X	X
Cabinets	X	X			X		X
Furniture components	X	X					
Pulp and Paper							
Chips	X	X	X	X	X	X	X
Kraft pulp	X	X	X	X	X	X	X
Thermomechanical pulp	X	X	X	X		X	X
Newsprint	X	X	X	X		X	X
Agriculture							
Posts					X	X	X
Bedding	X	X	X	X			
Feed		X					
Energy							
Firewood	X	X	X	X	X	X	X
Hog fuel*	X	X	X	X	X	X	X
Pressed-wood logs					X	X	X
Miscellaneous							
Transmission poles					X	X	
Railroad ties					X	X	X
Export cants	X	X			X	X	X
Caskets	X						
Novelties	X						
Specialty items	X	X	X				
Christmas trees						X	X
Birch syrup	X						
Perfume/oils	X					X	X

*Hog fuel is sawmill waste not otherwise used; e.g. slabs, edgings, trimmings, defective boards and miscuts which is chipped into small roughly sized pieces for fuel.

Source: Agroborealis, July 1984, page 57.

DEVELOPMENT POTENTIAL

Some general observations about the Interior timber inventory are necessary in order to define its development potential in relation to the inventories of the coastal forests of Southeast and Southcentral Alaska and other suppliers to Pacific Rim forest products markets. White spruce is the most valuable commercial tree in the Interior and the dominant species on commercial forest land, comprising about 57 percent of total volume. Aspen (11 percent), birch (23 percent), and cottonwood (9 percent) make up the remaining commercial volume.[5], [6]

Black spruce and larch are generally regarded as noncommercial species because they are usually found in stands of small diameter trees. A major problem faced by Interior logging operators and forest managers is the disposal of logging waste and large amounts of small diameter hardwood trees which are uneconomical to handle. On a typical State timber sale, about 10 percent of the spruce logs harvested are suitable for houselogs--which are the most valuable Interior timber product--and the rest are sawn into lumber products. Most loggers find it uneconomical to handle logs of less than 8 inches in diameter, even for firewood, and would prefer to simply remove the spruce sawlogs and houselogs from a sale area and leave the other species in the woods.

The Division of Forestry attempts to encourage responsible logging practices by specifying in its timber sale contracts that all species are to be removed from a sale area. (State law requires that all material greater than 6 inches small end diameter be removed.) The cost of disposing of uneconomical species and special requirements such as ground scarification for future replanting are figured into the advertised stumpage price for a particular sale or given as credits to the operator against his stumpage fees.

Compared to Alaska's coastal forests, Interior forests are much less productive, especially in terms of large diameter, old growth sawtimber, which enjoys the greatest demand in export markets and commands the highest prices. Table 2 gives a comparison of the productivity of Alaska's coastal and Interior forests.

---

[5]Balsam poplar and black cottonwood are commonly lumped together as cottonwood since the species are very similar and have identical applications.

[6]Forest Resource Development for Interior Alaska, Reid, Collins, Inc., April 1982.

Table 2
Net Volume of Sawtimber on Commercial Forest Land in Alaska
by Species, Diameter Class and Region

Region and Species	Diameter Class (inches)				Total
	11-20	21-30	31-40	41+	
		(MMBF)			
Coastal:					
Sitka Spruce	13,709	18,723	15,174	19,942	67,548
Western Hemlock	33,179	42,020	23,182	7,859	106,240
Other Softwoods	3,929	3,507	1,495	703	9,634
Hardwoods	780	412	83	0	1,275
Total Coastal	51,597	64,662	39,934	28,504	184,697
Percent	28	35	22	15	
Interior:					
White Spruce and Other Softwoods	23,281	1,668	0	0	24,949
Paper Birch	2,422	0	0	0	2,422
Balsam Poplar	2,228	414	0	0	2,642
Quaking Aspen	804	0	0	0	804
Total Interior	28,735	2,082	0	0	30,817
Percent	93	7			
Total Alaska	80,332	66,744	39,934	28,504	215,514

Source: "Forestry in Alaska", Alaska's Agriculture and Forestry, Chapter 13, U.S. Forest Service, University of Alaska, and State of Alaska.

* * * *

As Table 2 clearly shows, there is a great disparity between the overall productivity of coastal and Interior timber stands. Large diameter, clear, close-grained, old growth Sitka spruce logs are Alaska's most

valuable forest product.[7] Native corporations in Southeast and Southcentral Alaska control the highest quality and most accessible stands of old growth Western hemlock and spruce sawtimber.

Another inventory consideration is overall log quality. In general, Alaska's coastal forests are overmature and contain about half-prime quality sawtimber and half pulp grade logs. Native corporation timber holdings in Southeast and Southcentral are of much higher than average quality, however. Most of the Interior forest can be described as understocked and mature but not overmature due to periodic forest fires which, in most areas, have not allowed the growing stock to age more than 150 - 200 years. Forest fires are virtually unknown in Alaska's coastal areas.

Log quality is judged according to small-end diameter, amount of crook or sweep in the log, frequency, distribution and size of limbs (knots) or other defects on the log faces and amount of decay estimated to be in the wood. These factors affect the proportion of log volume recoverable as lumber and the quality of the lumber itself.[8] In order to qualify as Grade 1 or 2 logs, the following specifications for white spruce have to be met:

> Grade 1 logs: At least 16 inches small-end diameter and 75 percent clear of limbs on three sides of the log.
>
> Grade 2 logs: At least 12 inches in small end diameter and 50 percent clear on three sides or 75 percent clear on two sides.
>
> Grade 3 and 4 logs are smaller in small-end diameter and have a higher incidence of knots and other defects.

The proportions of log grades making up the sawtimber volume on commercial forest land in the Interior are shown in Table 3.

---

[7]There are three species or subspecies of spruce referred to in this section as spruce sawtimber: Sitka spruce from Southeastern coastal forests; white spruce from the Interior; and a hybrid cross of Sitka and white spruce which grows in coastal regions of Southcentral Alaska. All have similar properties and are assumed to be used for the same application for similar log grades.

[8]Op. cit. Reid, Collins, Inc.

Table 3
Grade of Sawtimber on Commercial Forest Land in Interior Alaska*

Species	Percent Distribution by Log Grade				
	1	2	3	4	Total
Spruce	1.3	2.1	72.9	23.7	100.0
Birch	5.2	8.9	84.5	1.4	100.0
Cottonwood and Balsam Poplar	13.7	25.0	56.8	4.5	100.0
Aspen	35.7	17.9	46.0	0.4	100.0

*Note that the inventory data presented in the preceding tables (2 and 3) are quite dated and some of the land base may have been withdrawn to nonforestry designations, e.g., wilderness. More current inventories exist for portions of the Interior region, but updated inventory statistics for the entire region are not presently available.

Source: Hutchinson, "Alaska's Forest Resource", U.S. Forest Service, 1967.

* * * *

As the preceding tables show, most Interior spruce logs are Grade 3, i.e., they are small and have many limbs. Interior birch generally has a large number of pin-knots which reduces its value considerably under current grading rules. At least some degree of disease or decay is present in the following proportions of merchantable stems: white spruce (37 percent); birch (47 percent); cottonwood and balsam poplar (78 percent); and aspen (82 percent).[9] This decay is often the result of fire scars which mainly affect the base of the tree, which is the prime potential log.

STATE POLICY

In general, State of Alaska Division of Forestry policies are modeled after U.S. Forest Service practices. The federal timber sale philosophy emphasizes biological rather than economic standards. Since 1973, the Forest Service has been managing sales of timber according to a principle called nondeclining even flow. Under this concept, principal harvests are based on the productive capacity of the forest rather than on economic conditions. Current harvests are managed to assure that

[9]Merchantable stem is defined as any type of product which can be sold from a particular timber stand and includes sawlogs, firewood, and pulpwood.

future harvests will be no smaller. These principles are embodied in the State Forest Practices Act which created the Division of Forestry. This philosophy tends to limit the supply of timber during periods of high demand and puts upward pressure on stumpage prices.

The State timber sale program in Interior Alaska in recent years has sold virtually all the timber that has been offered, mostly from the Tanana Basin area. At the present time, the annual allowable cut (the amount of timber that can be cut per year in perpetuity) is 4 million board feet (MMBF) of spruce for sawtimber and 20,000 cords of hardwoods for fuelwood. In 1982 and 1984, 7-8 MMBF of spruce sawtimber was sold because of agricultural land disposal programs and fire salvage.

State timber sales in the Interior during the past several years have yielded bid prices for stumpage which show very little correlation to generally depressed forest products markets nationwide. Supply and demand conditions facing individual operators appear to change rapidly without regard to overall economic conditions. This is probably due to the marginal structure of the Interior sawmill sector which is characterized by many small operators, mainly sole proprietorships, partnerships, or family businesses. These operations tend to go in and out of production as orders are received and timber supplies become available.

There appears to be some ambivalence on the part of policymakers over how the State should proceed with the development of the Interior timber resource. The State of Alaska has spent considerable time and effort in recent years promoting the Interior timber resource to potential Pacific Rim buyers, while offering small to medium-sized timber sales of relatively short duration to local operators. The promotional efforts have resulted in repeated expressions of interest by Pacific Rim wood products buyers but have yet to materialize into concrete proposals. This means there is a large range of possibilities for policymakers to consider. To date, the Division of Forestry has not offered any large-volume, long-term timber sales in the Interior.

The annual allowable cut in the Tanana State Forest is expected to double in the next two years (as explained in Chapter 2). Within the next decade, the Division of Forestry expects to be approached by an industry operator or joint venture willing to make a major investment in some type of wood products facility in exchange for a long-term supply of timber at negotiated stumpage rates.

The Tanana State Forest Plan--currently being prepared by the Division of Forestry--uses several different scenarios of future Interior timber development to decide which areas should be offered for sale and where stumpage fees received from a timber sale can justify the cost of building logging roads. These scenarios vary from the status quo--where the amount of spruce which is put up for sale is limited by the available supply and hardwood limited by demand--to an unlimited demand for both spruce and hardwood sawtimber. From a public policy point of view, the underlying economics of production for the range of possible Interior timber products and world market conditions indirectly affect decisions on which areas of the region are to be logged and which will be dedicated to other uses.

CHAPTER 2

COMPARISON OF STUMPAGE APPRAISAL SYSTEMS: STATE OF ALASKA, FOREST SERVICE AND BRITISH COLUMBIA

The price charged by the State for timber operators to harvest standing timber on State land (stumpage rate) seems to be the appropriate place to start an analysis of the economics of Interior timber as the competitive status of the industry begins with the availability and price of raw materials.

During the past several years, Canadian white spruce (SPF) lumber has become the standard framing material used by Alaska contractors while Douglas fir from the Pacific Northwest has remained the standard material used for high-strength applications.[10] This trend is apparent for the rest of the U.S. as well. British Columbia SPF exports to the U.S. more than doubled from 1970-1980. American timber operators have complained bitterly that the Canadian government unfairly subsidizes their timber industry by offering timber for sale at artificially low stumpage rates.

Our discussion of the various stumpage appraisal systems begins with recommendations made by the Alaska Timber Task Force.[11] The Alaska Timber Task force was formed in October 1984 by Governor Sheffield. Members of the task force included State officials and timber industry representatives. The governor directed the task force to determine how to improve the economic outlook for the timber industry in four areas: 1) marketing; 2) rules and regulations; 3) infrastructure; and 4) finance.

In its report to the governor, the Timber Task Force identified the high stumpage fees charged by the Division of Forestry on State lands in Southcentral and the Interior as a critical factor preventing the domestic industry from competing in local markets with imported lumber products from Puget Sound and British Columbia. According to the task force report, the domestic industry believes that the current stumpage appraisal system is not reflective of the market value of the end

---

[10] Canadian framing lumber marketed in the Railbelt is generally labeled as spruce, pine, fir or SPF in lumberyards. White spruce, lodgepole pine and balsam fir are the species comprising this designation. All three species are graded identically and used for the same applications.

[11] "Report of the Alaska Timber Task Force to Governor Bill Sheffield and Regional Forester Michael Barton, Alaska Region Forest Service," December 13, 1984, p. 29.

products produced from the timber, and represents a State policy favoring revenues over incentives for development.

The task force recommended that the Division of Forestry compare its internal stumpage appraisal system to the methods used by the Forest Service and interior British Columbia with an objective of "creating a flexible system which provides an economic incentive for the industry to compete." In addition, the division was directed to examine the impact of constraints on the available supply of accessible timber on stumpage rates.

In the course of studying the stumpage rate issue, we contacted several individuals in the Alaska Department of Natural Resources Division of Forestry, the U.S. Forest Service, and Ministry of Forestry in British Columbia who are responsible for setting stumpage appraisals under the various regimes. In addition, we obtained a copy of the 1982 U.S. International Trade Commission investigation of Canadian softwood lumber exports to U.S. markets.[12]

STUMPAGE RATES

The U.S. Forest Service and British Columbia Ministry of Forests stumpage appraisal processes are extremely complex and are based on mathematical models involving several variable factors which may change according to the species to be harvested, geography of the sale tract, logging methods employed, road construction cost, and market expectations for the products to be produced. The Alaska Division of Forestry stumpage appraisal methodology is not nearly so complex.

The standard means by which forest managers determine whether the stumpage price set for a particular sale is reasonable is by the bidders response. If a proposed timber sale receives little or no attention from potential bidders, then the manager should be concerned that the appraisal price is too high for the perceived market conditions over the period of the sale contract. According to the managers we contacted, a certain amount of complaint from industry operators over the stumpage rate is standard even for very profitable (to the operator) sales.

---

[12]"Conditions Relating to the Importation of Softwood Lumber into the United States," U.S. International Trade Commission, April 1982. This investigation analyzed the Canadian and American stumpage appraisal systems to see if Canadian lumber exports were being unfairly subsidized. The trade commission report concluded that although the structure of the Canadian and U.S. industries are very different and difficult to compare, there did not appear to be any direct government subsidy of stumpage rates or forest product exports to the U.S. and thus a countervailing tariff was not warranted.

We will present a brief outline of the appraisal methods used by the State Division of Forestry, U.S. Forest Service, and the British Columbia Ministry of Forests with a discussion of how each system affects stumpage prices. Then we will attempt to place the stumpage appraisal process within the larger context of the competitive position of the Interior timber industry.

The Transactional Evidence Appraisal System

The State of Alaska Division of Forestry employs the Transactional Evidence Appraisal System to set advertised prices for State timber sales. This method is the simplest of the three appraisal systems and attempts to let market forces determine the stumpage rate through the competitive bidding process. There are three basic steps to the Transactional Evidence methodology:[13]

1. A weighted average is determined for the last five sales under similar quality and market conditions. Effects of special stipulations such as road costs or scarification requirements are backed out of these figures. These costs are reintroduced at step three as computed for the new sale.

2. The average price determined is then reduced to account for speculative bidding. This reduction is normally 25 percent but can be varied if the appraiser has cause to believe that it is inappropriate. For example, several years ago there were a number of high stumpage bids on several small diameter sales in anticipation of piling needs for the North Slope. This demand did not materialize.

3. The reduced average is then lowered to allow for specific development costs or special treatment costs. This resulting figure is set as the minimum bid price for the material.

The average length of Interior timber sales contracts is from two to three years. Bids can be taken in an open auction type format or through sealed bid. One of the major difficulties with this system as pointed out in the Timber Task Force Report, is that because the Division of Forestry controls the bulk of the available timber supply, it may drive up bid prices to artificially high levels through the volume and timing of the sales it offers. The methodology of using average bid prices from previous sales to set the minimum bid price, even though it is discounted, can have a ratchet effect on bids as long as the annual allowable cut remains at 4 MMBF.

---

[13]Les Fortune, Northern Region Forester, Alaska Department of Natural Resources, Division of Forestry.

Table 4
Volume and Average Stumpage Price of Commercial Timber Sales in the Tanana Valley 1980-1984

Species/ Product	Year	Total Volume (MBF)	Average Stumpage Price $/MBF	Ratio of Actual to Minimum Bid Price
Spruce	1980	1,856	$24.98	NA
Sawlogs	1981	4,250	39.51	1.01:1
	1982	7,858	27.91	1.33:1
	1983	4,113	46.40	1.62:1
	1984	7,019	18.91	1.04:1
		(CCF)	$/CCF	
Mixed	1980	4,185	$6.86	NA
Species	1981	6,709	9.90	1.44:1
Fuelwood	1982	8,233	11.29	1.80:1
	1983	9,001	9.61	1.16:1
	1984	5,397	4.73	1.87:1

MBF = thousand board feet
CCF = hundred cubic feet

Source: Department of Natural Resources, Division of Forestry.

* * * *

At the present time, the Division of Forestry does not have access to the multitude of data on product prices and production costs required for the Residual Value approach used by the U.S. Forest Service (explained on the next page). The Division of Forestry management plan for the Tanana State Forest will include the results of a timber inventory contracted to the U.S. Soil Conservation Service.[14]

The inventory data will be fed into the Forest Service FORPLAN computer model which will help the Division of Forestry personnel arrive at an annual allowable cut figure. This level will then serve as the basis for future timber sales in the area.

The amount of annual biological growth of white spruce in the Tanana State Forest is about 16.9 MMBF, which will yield an annual allowable cut of perhaps 8-10 MMBF after accessibility and other multiple-use

[14]This inventory is currently over a year behind schedule and is the major factor delaying increased timber sales from the Tanana State Forest. One of the recommendations of the Timber Task Force to the Division of Forestry was an accelerated forest inventory program.

constraints are taken into account through the FORPLAN modeling procedure.[15] As increasing amounts of timber from the Tanana State Forest become available, stumpage rates should begin to decline. The Division of Forestry estimates that it will take about two years before additional sales of timber can be offered over the current 4 MMBF allowable cut level.

The annual allowable cut level in the State of Alaska and U.S. Forest Service systems is the final expression of a very complex process of balancing the multiple uses of our public forest lands. A great deal of public input on alternative uses is incorporated into the final designation of logging areas which, of course, affects the ultimate economic value of the timber. This type of multiple use consideration is almost comp etely absent in the British Columbia system.

The Residual Value Appraisal Method

The U.S. Fores Service uses the Residual Value Appraisal Method to set a base rate or minimum bid price for a particular timber sale. The appraisal process measures the current market value of products which will be produced from the sale minus production costs and an allowance for profit and risk. The remaining amount or residual value is the base rate. From a forest manager's perspective, the formula is:

(selling price) - (logging cost) - (manufacturing costs) - (road cost) - (transportation cost) - (allowance for profit and risk) = base rate

The Residual Value Method is the standard appraisal system used by the Forest Service for timber sales in the Tongass and Chugach National Forests. The selling price and manufacturing cost variables are based on an annual survey of cant, lumber, and pulp producers. Logging costs are computed by applying a complex set of site-specific factors to the sale area. Road costs are computed by the Forest Service. If the operator does the roading, he is given a credit for these costs on his stumpage fee. Transport costs are also computed by the Forest Service as they apply to a particular sale. The allowance for profit and risk varies according to expected market conditions over the life of the sale contract. Generally, the allowances are about 18 percent for pulp, 12 percent for lumber, and 10 percent for round logs. The allowance for profit and risk increases as the amount of manufacturing investment increases.

---

[15] White spruce from Interior Alaska and British Columbia are identical species. Potentially, Alaska lumber could replace British Columbia products in internal markets. For purposes of this analysis, white spruce is the appropriate species for comparison.

Appraisals are based on cost and price indices computed from historical information for the participating operators' last fiscal years and are updated quarterly. The Forest Service maintains fairly accurate inventory information for each sale area. Allowances are made for undesirable stumpage which must be removed from clearcut areas at a net logging loss. Stumpage payments are made for scaled timber.

All of the variable factors listed above are based on an average operator efficiency basis. If a bidder feels he can get a higher product price or harvest and/or process for less cost, he will have an incentive to bid over the base price to maintain the same or possibly higher profit margin than that factored into the stumpage appraisal and published in the sale prospectus. In practice, competitive bidding usually erodes about half of the anticipated profit allowance. For mature, integrated pulp and lumber type operations in Southeast, stumpage amounts to between .5 and 4 percent of total cost.

From the operator's perspective, the simplified stumpage formula is:

(final selling value) - (logging cost) - (manufacturing cost) = conversion (profit and risk + stumpage)

A deficit sale occurs when the bid price is less than the minimum conversion factor (profit and risk allowance + base rate) estimated by the Forest Service with respect to current market conditions. A deficit sale does not necessarily mean that the Forest Service is losing money on the contract, it simply means the purchaser will not get the full profit and risk allowance figured into the appraised price due to market conditions. During the past several years of depressed timber markets, the Forest Service has been severely criticised for offering timber sales in spite of minimal bidder interest and for accepting deficit bids. Over the long term however, Forest Service timber sales have generated bid premiums.[16]

---

[16]A deficit sale should not be confused with a "below cost sale." A below cost sale is where the stumpage fees received from a particular timber sale are less than the investment made by the Forest Service in sale preparation and administration. Presently, the regional Forest Service timber management offices do not keep track of how much they invest in a particular timber sale, though an accounting system is being developed at the national level. The major area of controversy concerns logging roads and whether the entire investment in roading for a sale should be charged to sale preparation and administration as many environmental groups argue, or whether some of the cost of building roads should be considered as an investment in access for multiple use as the Forest Service contends. This issue is very important to discussions of the amount of federal subsidy to the timber industry in the Tongass and Chugach National Forests.

During the 1970s, inflation, a booming housing construction market, and speculation on the increasing value of timber, caused intense bidding competition on Forest Service timber sales all over the U.S. Region 6 westside advertised prices (appraised value plus road credits) increased 16 percent from 1977-1979, but then dropped 26 percent from 1979-1981 reflecting decreased end product value.[17] Bid prices (including road costs) increased 93 percent from 1977-1980 before dropping 21 percent in 1981. For the entire 1977-1981 period, the average advertised price dropped 14 percent while average bid prices increased 51 percent.

Table 5
U.S. Forest Service Timber Sales for Region 6 (Westside)*

Year	Advertised Price/MBF	Bid Price/MBF	Bid Ratio
1977	$112.78	$181.76	1.6:1
1978	120.13	214.95	1.8:1
1979	131.24	335.00	2.6:1
1980	99.42	350.46	3.5:1
1981	97.50	275.14	2.8:1

*Unweighted year averages for all species including road credits.

Source: U.S. Forest Service, Region 6.

* * * *

Many timber buyers who purchased long-term (up to 8-year) sales during this period with expectations of increasing end-product prices found themselves saddled with uneconomical harvest contracts. The 1979-1981 period was a watershed for the timber industry as inflation eased and high interest rates depressed housing construction. Deflation in end-product prices, as reflected in the decline in the advertised prices shown above, resulted in large numbers of defaults and requests for extensions on timber sales contracts.

As a result of this situation, Congress passed the Federal Timber Contract Modification Act of 1984. The act allowed timber operators to buy out their Forest Service contracts at a fraction of the agreed upon stumpage rate. In effect, timber operators were allowed to give back their timber sales contracts by paying a penalty. The Forest Service could then reoffer the sales. The act also places a cap on the amount of timber the Forest Service has out in contracts at any given time.

[17]Region 6 includes national forests in Washington, Oregon, and a saml portion of northern California.

Alaska operators were treated as a separate case under this legislation. This is because the two major wood products manufacturers in the state, Louisiana Pacific Ketchikan (LPK) and Alaska Pulp Company (APC), Sitka have 50-year, long-term harvesting agreements with the Forest Service at average stumpage rates of $2.12/MBF and $1.48/MBF, respectively. When these contracts were signed in the 1950s, they were designed to assure these two companies of a reliable source of raw materials. In return, the companies provided economic stability for the region and were an important factor in the effort to gain statehood. Because of the existence of these long-term contracts at low rates, APC and LPK had an unfair advantage over other timber operators in the region who had bid premium prices for their timber sales on the rising market. Congress directed the Forest Service to make emergency rate redeterminations for timber sales on National Forest land in Alaska bid after January 1, 1974 and before July 31, 1985. These rate redeterminations were for companies other than LPK and APC and were designed to restore competitive balance among users of National Forest timber.

The redetermined stumpage rates under this legislation are: spruce sawlogs--$3/MBF; hemlock sawlogs--$1/MBF; spruce and hemlock utility logs--$1/MBF; Alaska cedar logs--$3/MBF; and red cedar and other species logs--$1/MBF. Operators who purchased Forest Service timber sales during the appropriate period can apply for refunds of excess stumpage payments. The new rates will apply for timber cut and scaled before October 15, 1989. The State receives 25 percent of stumpage fees paid for timber harvested on National Forest land in Alaska. The Forest Service has not yet made a firm policy decision on how to handle the State's portion of stumpage receipts.

As can be seen from Table 6, these rate redeterminations with an average price about $2/MBF will substantially reduce stumpage costs for operators who purchased Forest Service timber sales during the past five years (<u>average</u> annual redetermined rates for <u>all</u> species have not been computed as of this writing).

Table 6
Advertised Stumpage Rate, Bid Price, and Harvest in the Tongass and Chugach National Forests, 1981-1985*

Year	Advertised Rate/MBF		Bid Price/MBF		Harvest (MBF)	
	Tongass	Chugach	Tongass	Chugach	Tongass	Chugach
1981	$16.65	$27.32	$91.49	$29.54	338,472	1,816
1982	27.19	72.24	18.07	72.24	304,349	679
1983	7.30	18.35	37.07	30.53	219,135	39
1984	9.60	32.06	9.12	64.25	220,359	396
1985	2.62		10.52		NA	

*Annual averages for all species. Average annual redetermined rate data for all species is unavailable at this time.

Source: U.S. Forest Service.

* * * *

All sales of greater than five years duration now have a rate redetermination clause which allows the Forest Service to adjust the stumpage price. This clause in timber sales contracts acts as a hedge for buyer and seller against the extreme cyclical fluctuations in forest product markets. Under current rules, the Forest Service is allowed to increase the bid premium portion of the stumpage rate by up to 50 percent on a rising market and to decrease stumpage to the base rate during declining markets. The purpose of periodic rate redeterminations and of offering timber sales during periods of depressed markets is to assure the timber industry of a consistent supply from public lands at an annual allowable cut level and to dampen fluctuations in the business cycle through adjustments to the price of raw materials.

Forest Service contracts now require an up-front deposit of 20 percent of the estimated total stumpage to encourage timber operators to harvest their sales as soon as possible and to discourage speculation on rising product prices.

The British Columbia Stumpage Appraisal System

The stumpage appraisal system used for interior British Columbia timber sales is ostensibly set up along the same lines as the residual value method employed by the Forest Service. Comparisons between the two systems are very difficult to make, however, since the government-industry relationship is different in each country. In the American system, the Forest Service is responsible for conducting inventories, preparing

management and operational plans, holding timber sales, constructing logging roads, reforestation, and silvicultural treatment on federal lands.

In the Canadian system, publicly owned (Crown) timber is sold under seven or eight different types of licenses which grant stumpage rights to individual companies. These licenses or tenures give a company control of a large area of forest for a specified length of time, depending on the type of license issued by the provincial government. Annual license fees are charged on a per cubic meter of annual allowable cut basis and must be paid whether timber is harvested or not. Some British Columbia timber sales involve competitive bidding, but the vast majority of the annual harvest is sold at appraised stumpage rates. This is mainly due to the fact that the productive forest land in Canada is almost entirely Provincial Crown land. The British Columbia licensing system goes back to the turn of the century and the timber industry grew around it.

In contrast, public lands in the U.S. account for only 57 percent of the total softwood timber supply while the remainder is privately owned. The structure of the American timber industry grew around substantial private ownership of the resource. Public timber lands in the U.S. are managed for multiple uses which include recreation, grazing, etc. as well as timber production. Thus, while the two countries have comparable timber inventories, there tends to be considerably more competition for publicly owned timber in the U.S. when it is offered for sale, especially during rising markets.

In addition to harvesting, manufacturing, and marketing the resource, the licensee in British Columbia is responsible for most management activities under Ministry of Forests supervision. In all, about 85 percent of management costs are born by the licensee, and although he recovers most of the expenses for approved work either through appraisal allowances or credits against stumpage, he is not always fully reimbursed.

The structure of the Canadian timber industry is more concentrated than the American timber industry and tends to greater vertical integration. Manufacturing and labor costs are very similar. On average, Canadian lumber mills have a slight edge in technology and productivity over American mills. Canadian timber companies tend to earn a larger return on their investment even though effective tax rates are somewhat higher than in the U.S.

British Columbia logging costs are generally lower than in the United States (comparing first entry costs) primarily due to larger clearcuts allowed under Canadian regulations. There is no provision for rate adjustments for undesirable species in the British Columbia system. Road construction regulations are similar. British Columbia access

roads are operator built while Forest Service roads are often constructed via public works contracts. Transportation costs are lower for rail and waterborne shipments in British Columbia.[18] Manufacturing costs and end-product prices are collected from the industry on a monthly basis. The allowance for profit and risk ranges between 10 and 30 percent.

Stumpage rates are calculated for all Crown land on an annual basis and adjusted monthly according to a three-month rolling average of final product selling prices. The trigger mechanism for stumpage rate adjustment is a $5/MBF change in the selling price of products from a particular rate zone. Special stumpage rates of $.40/cubic meter for minor volume sales to smaller operators are designed to encourage development. Operators in the relatively undeveloped and remote Cassier District have also received this special rate for the past five years, though stumpage in this area will be reappraised as of April 1, 1986 (the new Canadian fiscal year) to a higher rate.

Table 7
British Columbia Interior White Spruce Stumpage Rates and Volume Cut*

Year	Prince Rupert Interior		Prince George		Special Rate**
	US $MBF	MBF	US $MBF	MBF	US $MBF
1979 CY	$211.11	38,831.3	$218.12	297,845.6	$9.68
1980-81 FY	60.26	49,829	73.82	229,086.5	9.68
1981-82	29.99	45,202.8	34.48	225,484.4	9.45
1982-83	23.65	37,892.7	24.57	250,240	9.19
1983-84	25.60	74,372.8	27.35	297,314.5	8.75

*Conversion factors for U.S./Canadian dollars and cubic meters/thousand board feet are on file with House Research.

**Volume cut in the special rate category is included in the volume figures shown.

CY = Calendar Year
FY = Fiscal Year

Source: British Columbia Ministry of Forests.

[18]The Canadian timber industry is much more export-oriented than the U.S. industry. The national railroad, C.P. Rail, has special rates for bulk shipments of lumber across Canada and has negotiated similar rates with connecting U.S. lines. Canada does not have any Jones Act type law which artificially raises the waterborne transport cost of U.S. timber products.

The goal of the British Columbia stumpage appraisal system is to maintain stumpage rates at about three percent of the total finished product price. The consensus view of the foresters we contacted who are involved with stumpage appraisals and are familiar with all three appraisal systems is that when all factors are considered, appraised stumpage prices are quite comparable between the systems. The major difference between the British Columbia system and the two methods used in Alaska is the relative absence of a competitive bidding process which drives up stumpage rates.

Another very important factor--which is not easily quantified--is the relationship between the provincial government and their timber industry. Timber operators in remote regions and smaller scale operations are encouraged with reduced stumpage rates in recognition of their fledgling status. The timber licensing system sets aside large areas of commercially harvestable timber for exclusive use by the industry. This precludes many of the multiple use conflicts which characterize the debate over State and National Forest policy in Alaska.

There is a basic philosophical difference between the Canadian and American approaches to forest management. Canada emphasizes economic considerations while the American approach places greater emphasis on long-term biological factors. The Forest Service has been comparatively cautious in its management strategy in Alaska. This is because there is no empirical regeneration data to refer to for the old growth forests in the state. There has not been a large-scale timber industry in existence for long enough to complete a rotational cycle. There is some controversy among foresters over the long-term effects of the more aggressive industry-dominated management strategy in British Columbia and its impact on the viability of their timber industry in 10-15 years when nearly all of their accessible old growth forest will have been harvested. These considerations should be kept in mind during any comparison of the various stumpage systems and their place in the overall structure of the timber industry.

The British Columbia licensing system allows operators to be more flexible in their management expenditures with respect to market conditions, i.e., nonessential expenses can be delayed during unfavorable markets. Operators can also highgrade their timber harvest to maximize returns during market lows. The Canadian government requires primary manufacture of timber but allows companies to export logs when there is excess supply for domestic mills. These exports are closely controlled by the Provincial government and act as a financial safety valve for timber companies during depressed markets.

The British Columbia stumpage appraisal system is more responsive to market fluctuations than the Residual Value Method used by the Forest Service since data is collected from industry on a monthly, as opposed to an annual, basis. Speculation on the market value of products to be produced from a particular sale over the life of the contract is largely absent from the British Columbia system. This prevents operators from making large profits during rising markets but also protects them as markets fall.

In summary, the British Columbia stumpage appraisal system, combined with an industry structure built around a Provincial licensing or tenure system, provides flexibility with respect to market fluctuations and economic stability for the B.C. timber industry.

EFFECTS ON INTERIOR TIMBER OPERATORS

As we have shown, purchasers of State timber sales in Interior Alaska pay considerably more for their stumpage than purchasers of Forest Service or British Columbia timber (Canadian operators also enjoy a 29 percent exchange rate advantage). Thus, the Interior timber operator starts out at a competitive disadvantage because of the cost he must pay for raw material. On the other hand, the Division of Forestry has had no trouble selling all of the timber it has offered for sale in the Interior region, which gives it very little incentive to change its timber sale methodology. It is the local timber operators themselves who have bid the stumpage rates up.

Part of this problem is due to the limited amount of timber that has been offered for sale by the Division of Forestry. Stumpage rates should begin to decline in the near future as larger volumes of timber are offered for sale in the Tanana State Forest within the next two years. As we have shown, stumpage rates comprise only a small portion of total production costs for mature timber operations in Southeast Alaska and British Columbia which produce finished products.

The State Division of Forestry does not maintain the extensive database used by the Forest Service and British Columbia Ministry of Forestry to set stumpage prices. Therefore, no data exist on what proportion of total costs for Interior operators stumpage rates comprise. However, since Interior operators find it most profitable to produce unfinished products and minimize their manufacturing inputs, stumpage rates almost certainly make up a larger fraction of total production costs. As we discuss in Chapters 3 and 4, the competitive position of Interior timber operators only begins with the price they pay for stumpage. There are many other factors which affect the Interior operator's ability to compete, even in local markets.

CHAPTER 3

INDUSTRY STRUCTURE/COMPETITIVE POSITION

Much of the literature which has been written on the Interior timber industry is of the promotional variety which tends to stress the volume of the resource and potential for development. We attempt a realistic assessment of the prospects for development by combining our knowledge of the resource base, summarized in Chapter 1, with an examination of the Interior operator's position in relation to other producers and possible markets. In Chapter 4 we examine the feasibility of specific products, their production costs, and expected prices.

THE STRUCTURE OF THE INTERIOR TIMBER INDUSTRY

The State Division of Forestry estimates there are between 20 and 30 small Interior sawmills that each produce 200 MBF of lumber and houselogs per year or less. The largest Interior producer has an annual output of about 2.4 MMBF per year, with a potential capacity of about 5 MMBF per year. The total 1982 (most recently published data) estimated production volume of sawmills in the Tanana Basin was 5,245 MMBF.[19]

As we stated in Chapter 1, the Interior timber industry is somewhat marginal in nature, with many small operators making a living off of the resource. Nearly every logging and sawmill operation in the Interior uses older equipment purchased outside Alaska. In general, Interior sawmill operators attempt to minimize their manufacturing inputs and produce mostly semi-finished or roughcut, green and air-dried products. The profitability of the products they produce tends to decline in proportion to the amount of manufacturing they put into it. Houselogs are the most profitable product, followed by timbers, roughcut lumber and finished lumber.

Most Interior operators have found it difficult to compete with Canadian imports of kiln-dried, finished and graded spruce-pine-fir (SPF) dimension lumber, which is produced in enormous quantities by state-of-the-art mills in British Columbia and dominates internal Alaska markets for framing lumber. This situation is discussed in greater detail in Chapter 4. There is no research to date on the exact composition of the local market demand for lumber. Thus, there is no way of predicting just how much displacement of British Columbia lumber will occur as greater supplies of timber become available to Interior operators.

---

[19]Susan Todd, "Interior Transportation Study", Louis Berger and Associates, Alaska Transportation Consultants, Inc., 1982.

None of the Interior sawmills currently in operation produce lumber graded to nationally recognized standards. Residents have long used air-dried spruce lumber and houselogs for home construction, but standard design practices for multifamily, commercial, and public buildings preclude its use. The State statutes clearly encourage the use of locally produced lumber "wherever practicable" on State-funded construction projects, but very little has been used because of design requirements for lumber graded to Construction Specification Institute (CSI) standards.[20] Thus the potential market displacement of British Columbia lumber by Interior producers is limited by the lack of kiln-dried, planed, and graded products.

Import substitution is seen by most analysts to be the most economically feasible use of the Interior forest resource at the present time. The Cooperative Extension Service, University of Alaska-Fairbanks, Agricultural Experiment Station, the Institute of Northern Forestry and the Tanana Chiefs Conference are all working with local communities and timber operators to improve logging and sawmill efficiency. Virtually every Interior village has a sawmill or access to one. Over time, as the regional population increases and larger areas of State and private timber are brought into the forestry-dedicated land base and access to the timber improves, these small local mills can potentially develop into larger, more sophisticated operations.

INTERIOR TIMBER OPERATORS' POSITION IN PACIFIC RIM MARKETS

Pacific Rim Log Trade

As we have shown previously, Interior white spruce logs on average are graded lower than spruce logs from the coastal forests of Southeast and Southcentral Alaska. For the most part, Interior spruce logs can be classified as "construction grade" (as opposed to number 1 and 2 "structural grade) and compete in Pacific Rim softwood log markets with: Soviet lower-valued species, mainly larch; West Coast Number 3 hemlock and fir sawlogs; British Columbia lodgepole pine-balsam-spruce-hemlock if offered at tidewater as roundwood; and radiata pine from Chile and New Zealand.[21] The principal importing countries are Japan, Korea, Taiwan, and China.

---

[20]Alaska Statute 36.15.010.

[21]Donald F. Flora and Richard P. Vlosky, Potential Pacific Rim Demand for Alaska's Construction-Grade Logs, U.S. Forest Service, Pacific Northwest Forest and Range Experiment Station, April 1985.

Exports of softwood logs from the Pacific Northwest, Alaska, and British Columbia have risen steadily over the past 25 years.[22] Japan has traditionally been the primary market (95 percent of Alaska forest products are shipped to Japan), but China has become the second largest purchaser of softwood logs within the past year and has increased its imports of West Coast logs from zero in 1979 to one billion board-feet in 1984.

Presently, Japan imports almost half of the softwood construction-grade logs that move across the Pacific Ocean, though its proportional share of the market has declined recently, primarily due to China's entry. In the aggregate, Pacific Rim demand for construction grade logs is expected to increase about 40 percent through 1995 while prices are projected to increase about 12 percent in real terms (inflation adjusted).[23]

Alaska's Market Position

Alaska supplies about two percent of Japan's total wood products imports, but 68 percent of spruce imports. Table 8 portrays Alaska's position in the Japanese timber products markets.

Japanese sawmill operators generally prefer logs to roughsawn lumber (cants and waneys) because logs can be held in inventory longer (lower perishability, one year versus three to six months) and have greater potential for lumber and chip recovery. Close-grained, clear spruce is used in Japanese housing construction for exposed surfaces such as window and door frames and for making musical instruments such as pianos. Western hemlock and lower grade spruce are used for enclosed construction applications. Overall, about 35 percent of imported logs used for lumber become products such as boards, boxes, packing, furniture, cabinets, etc. which do not depend on surface appearance or stress rating for their value.

---

[22]Jay Gruenfeld and Associates, "Alaska Forest Market Report", Volume 11, June 1985.

[23]Op. cit., Flora and Vlosky, p. 10.

Table 8
Japan's Imports by Origin and Market Shares of Suppliers 1984

Origin of Import	LOGS Volume	LOGS Market Share	LUMBER Volume	LUMBER Market Share	WOODCHIPS Volume	WOODCHIPS Market Share
	Thousand Cubic Meters		Thousand Cubic Meters		Thousand Tons	
North America:						
Alaska	916	3.4%	277*	7.3%	15	0.5%
British Columbia	972	3.6%	2,173	57.0%	506	18.4%
Washington/Oregon	6,883	25.5%	610	16.0%	2,230	81.1%
Australia/New Zealand	290	1.1%	172	4.5%	NA	NA
Soviet Union	5,211	19.3%	139	3.6%	NA	NA
Other Pacific Rim**	12,683	47.1%	443	11.6%	NA	NA
Total	26,955	100.0%	3,814	100.0%	2,751	100.0%***

*Includes cants and waneys (logs that have been roughsawn on two sides to a maximum thickness of 8-3/4 inches) and baby squares (small roughsawn squared timbers with a specified thickness of 4-1/8 inches or 105 centimeters).

**Primarily hardwood species.

***North American share only.

Source: Joseph R. Mehrkens, "Timber Supply and Demand 1984," U.S. Forest Service, June 6, 1985.

* * * *

As a marginal supplier of forest products to the Japanese market, Alaska occupies a "last in first out" position on the overall timber market cycle. Japanese demand for high quality spruce logs is closely related to domestic housing starts while construction grade log demand for Alaska timber is also influenced by North American markets, i.e. when North American markets are rising, greater volumes of Alaska logs and lumber are sold in export markets. Timber demand for the Japanese housing construction market is expected to continue to decline (as it has for the past five years) into the immediate future as fewer new houses are being built, and new models contain less wood. Japan's domestic timber production is expected to increase substantially from current levels (7 MMBF) as forests which were decimated after World War II to rebuild bombed out cities become mature and are harvested. The Japanese government has placed great emphasis on becoming more self-sufficient in timber production. About 60 percent of their domestic

forests are softwoods and almost half of Japan's timber plantations are in the 16 to 35-year-old class and ready for commercial thinning.[24]

Chinese, Korean, and Taiwanese demand for logs appear to be more speculative and not closely related to any single economic variable such as housing starts.[25] Demand for logs in these countries appears to be very price sensitive and has typically focused on construction-grade logs. The late 1980s and early 1990s could hold great potential for exports of North American construction-grade logs to Pacific Rim markets due to political factors and to overall economic growth expected in the region.

Other Suppliers

During the past ten years, about 95 percent of plywood logs imported by Japan have been tropical hardwoods, mainly from Indonesia and Malaysia. As these countries have cut off their old growth forests, they have generally turned the land over to agriculture instead of reforesting. In 1980, Indonesia began to phase in a ban on log exports which became fully implemented on January 1, 1985. Malaysia has recently cut back its log exports by 85 percent.[26] There has been a definite trend over the past few years among Asian log suppliers to require primary manufacture of timber exports. Plywood manufacturers in Japan, Taiwan, and South Korea will require alternative sources of supply for domestic use and re-export of finished products.

The Soviet Union has recently completed a new railroad from Eastern Siberia which gives them further rail links to China as well as Pacific ports and should make them an even larger player in the Asian log trade. During the mid-1990s, large supplies of radiata pine from Chile and New Zealand timber plantations are expected to enter Pacific Rim log markets. Given all of the factors specified above, the Pacific Rim construction-grade log markets should be very dynamic and competitive during the next fifteen years.

---

[24]Don Flora, "Alaska's Low-End Logs: Outbound or Stumpbound?", Trade Research Pacific Northwest Research Station, U.S. Forest Service, September 1985.

[25]There is a special grade of so-called "K Sort" logs which are often exported to Korea and China when there is a surplus of pulp grade logs. These logs are of very low quality and would ordinarily be chipped or made into pulp in the United States but are sold on the export market at low prices.

[26]Op. cit. Flora and Vlosky.

Alaska's Competitive Position

Alaska's competitive position as a supplier to the Pacific Rim log trade will, of course, depend on the desirability and price of the species it can offer. Native corporations in Southeast and Southcentral Alaska control the best quality and most accessible stands of old growth spruce and Western hemlock timber. Over the past five years, exports of logs from Native corporations in Southeast and Southcentral have increased dramatically from 70.3 MMBF in 1980 to a high of 232 MMBF in 1983 (202 MMBF in 1984). This increase has occurred even as timber markets have softened and prices have declined over the same period. Note that this increase in log exports does not represent an increase in Alaska's overall market share in Pacific Rim forest products markets. Rather it is a change in the composition of exports from value-added products such as cants to more profitable log exports.

Future Native timber harvests are expected to range from 225 MMBF to 350 MMBF per year if current management practices continue.[27] Native corporations have been willing to sell high quality spruce logs even during declining markets due to cash flow considerations and pressures from shareholders for jobs.

There is not likely to be any shortage of construction-grade softwood logs from Pacific Northwest and British Columbia producers in the forseeable future. Interior operators will probably remain in the position of being marginal suppliers to markets dominated by second-growth timber from other West Coast producers with lower operating costs. The only comparative advantages for Alaska timber producers to exploit in Pacific Rim softwood markets are large volumes of premium quality old-growth sawtimber and the geographical advantage of being one day closer to the Orient for shipping costs. Interior timber operators do not enjoy either of these advantages and are unlikely to gain any significant market share of log exports at current prices (log prices are discussed further in Chapter 4).

Interior Alaska does have an abundance of hardwood timber, albeit mostly of small diameter and low quality. Pacific Rim buyers have repeatedly expressed interest in this resource but have not yet approached either the Division of Forestry or private owners with specific proposals. Very little market research has been done in this area. A realistic assessment of the export demand for hardwood logs and chips would be very useful in light of the changing political climate in additional South Pacific hardowood suppliers.

27/Mehrkens, "Timber Supply and Demand 1984."

INTERIOR TIMBER OPERATORS' POSITION IN DOMESTIC MARKETS

Lack of Infrastructure

A very important aspect of the competitive situation for Interior (and other Alaska) timber operators is the relative lack of infrastructure. Discussions of infrastructure development in the Alaska timber industry tend to focus on who should pay for the construction of logging roads and ignore other aspects of access to markets which may be even more important than access to the resource itself. If we compare the infrastructure enjoyed by a Northern Interior British Columbia mill with a typical Fairbanks operation, the comparative advantages of a mature industry and well developed infrastructure become very clear.

Lumber Production in British Columbia

The British Columbia mill is able to buy small logs that are suitable only for dimension lumber from a log producer at a price that may be less than the average price of producing logs.[28] This is because the British Columbia logger sorts his logs and sells the larger, higher grade logs to another mill that produces high value clear boards with clear cuttings (shop grade). The Canadian mill then produces lumber and other products. One thousand pounds of logs run into the mill produces approximately five to six hundred pounds of of green lumber, three hundred pounds of chips and two hundred pounds of hog fuel. If the mill has an energy co-generation facility, it burns the hog fuel to produce electricity for sale and heat to power a drying kiln; if not, it sells hog fuel for a little more than the cost of handling it.

Most British Columbia mills are so efficient at producing large quantities of lumber with a handful of employees that the return it receives for the woodchips it produces and sells to pulp mills just about covers total labor costs. During times of high chip prices, marginal side boards are mostly chipped. At other times the side boards are sorted and the upper grades sold to specialty markets such as bed frames and fencing and the lower grades are sold to a pallet maker.

Dimension lumber from the British Columbia mill is sold by grade. The economy grade is often chipped, but is sometimes sold to pallet and fencing manufacturers. The utility grade goes to various manufacturers and the cash and carry market. The standard grade and better is kiln-dried and shipped to the homebuilding industry. When log quality dictates, a stud grade is pulled. Studs are sold green or dry, depending

---

[28]Alaska Timber Task Force, Memorandum from Tom Boutin to Milt Barker, Deputy Commissioner of Revenue, December 31, 1984.

on the market. When the mill has an exceptionally good run of logs, the upper grades are pulled from the wider dimension sorts and sold to glu-lam and waterbed markets.

Very little of the British Columbia mill's product is sold directly by the mill itself. Many shipments will be traded by two or three wholesalers before reaching their ultimate destination. In addition to having a sophisticated wholesale sector in which to market his products, the British Columbia mill manager can buy and sell lumber futures on financial markets to lock in a price for future production.

Lumber Production in Interior Alaska

In contrast, the Fairbanks mill operator must pay his logger at least the average cost of producing logs in order for the logger to stay in business, since the mill is the only market (other than export). (As we discussed earlier, high stumpage rates on State timber sales raise the cost of raw material going into the mill.) The Fairbanks mill cannot reach many of the specialty markets enjoyed by the British Columbia producer, i.e., the waterbed, pulp, and pallet markets. Lumber which cannot be graded as standard and better and sold on the homebuilding market is sold at a deep discount for farm building and other miscellaneous uses.

In addition to having markets only for green or air-dried lumber, houselogs, timber and firewood, the Fairbanks producer has no support sector of wholesalers to assist in selling his products and no financial market to lock in a price. As we stated previously, the British Columbia operator currently enjoys a 29 percent exchange rate advantage. From the example given above, it is not difficult to see how a British Columbia lumber mill can make a profit selling its products in Fairbanks at a price that may be below the cost of production in Alaska. All of these disadvantages combine to increase entreprenurial risk for the Interior timber operator in a very competitive business. Indeed, there is some evidence that several British Columbia sawmills in the far North are having trouble surviving in the current market situation.[29]

---

[29]Edmond C. Packee, "Forest Products Marketing Realities for Subarctic Alaska - Challenge for the Future", Paper presented to the 1985 Convention of the Society of American Foresters, Fort Collins, Colorado, July 30,1985.

Market Potential

There is considerable room for increasing the domestic share of internal Alaska building material markets, especially in dimension lumber. Expectations of how rapidly the domestic industry can develop and how much the State can do to encourage development need to be tempered with a healthy dose of economic reality, however. As one reviewer of the Alaska Timber Task Force Report put it, "there is nothing wrong with the Interior timber industry that a couple of million people in the region wouldn't cure".[30] This statement, while facetious, neatly captures the essence of what numerous feasibility studies for various wood products ventures proposed over the years for Interior timber have concluded. Internal Alaska markets are simply too small to support most types of major wood products facilities.

One theme that occurs frequently in the "potential of Alaska's Interior timber industry" literature is that because the forest is very similar in species and volume to Michigan and Minnesota, where the forest products industry directly employs 115,000 people in primary jobs and several hundred thousand in secondary employment, the same type of development is feasible in Alaska. The implication is that if Alaska only had adequate access to its forest resource base, this type of development could occur. Again, the problem is access to markets. The Lake states mill operator has an enormous midwest market right at his doorstep.

Several analysts have stated that Interior timber products will become more economical in fifteen years or so when Native corporations in Southeast and British Columbia producers will have depleted their accessible old growth stocks. This argument ignores the fact that Interior timber does not compete directly with old-growth stock (although there can be some substitution between grades), it competes with second-growth timber from other areas. As we discussed previously, there will not be any shortage of second growth timber in the world marketplace in the forseeable future.

There are comparatively few states that are not self-sufficient in dimension lumber and pulp and paper production from their own second-growth forests. Major forest products companies are moving from the Pacific Northwest as their supplies of old-growth timber become depleted and are relocating in the Southeast states where labor and production costs are cheaper, private timber land is available for purchase (which solves the problem of having to rely on expensive government timber sales), tree rotations are shorter, and population centers are closer.

---

[30]Alaska Timber Task Force, Memorandum from Tom Boutin to Milt Barker, Deputy Commissioner of Revenue, December 31, 1984.

Canadian exports of building products tend to dominate areas of the U.S. which aren't self sufficient. Lumber mills in Southeast Alaska--with relatively cheap timber of high quality (compared to the Interior) as well as the advantage of direct access to waterborne transportation at backhaul rates--enter lower 48 markets only at the very peak of the housing construction business cycle. Building products markets for Interior timber operators are essentially restricted to internal Alaska markets or Pacific Rim exports.

CHAPTER 4

PRODUCTION COSTS, PRICES, PRODUCTS AND MARKETS

In this chapter we propose to examine costs of production, prices and markets for as many of the previously identified timber products (Table 1) which can be produced from Interior forests as the existing data allow.

Most experts on Alaska forest products markets would agree that the timber industry is currently in the trough of the business cycle although internal forest products markets in the contiguous states have picked up somewhat in the past year. As analysts, we tend to view the future in terms of the present, which may make the outlook for future Interior timber development appear to be bleaker than it really is. However, one theme runs through all of our analysis of the Interior timber industry and through all of the contacts we have had with those who study the timber industry in general: investors should be very cautious about investing in development which requires stronger markets than currently exist.

PACIFIC RIM MARKETS

Log Export Efforts

There has only been one major joint venture log export operation in the Interior to date. The Toghotthele Native Corporation in partnership with Fibrex, Inc., exported about 16 MMBF of spruce sawlogs to Japan between 1975 and 1981. This venture ended with mixed results when the log market softened and the Japanese company canceled its contract.[31]

The final contract settlement has yet to be decided in the courts. The Native corporation was left with a seriously depleted timber resource as most of their best quality and most easily accessible timber supply was taken. The logging contractor also highgraded the corporation's timber stands which seriously degrades the genetic stock for future reforestation. The Toghotthele experience has definitely soured other Interior Native corporations on the idea of exporting roundlogs. If the roundlog market improves and prices increase, there will be renewed interest. Currently the emphasis for Native corporation timber is on import substitution and producing building materials for village and local use.

---

[31]Rob Leach, Forester, Taghotthele Corporation.

Table 9 gives a breakdown of costs to export Interior spruce roundlogs via the Alaska Railroad through the port of Seward:

Table 9
Costs of Producing Spruce Sawlogs for Export FOB Seward

Interior logging costs:*			
Falling	$11.65		
Ground Skidding to Landing	$35.62		
Hauling (35 miles one way)	$38.90		
Subtotal	$86.17/MBF		
Stumpage:			
Average 1980-1984 Stumpage Price for Spruce Sawtimber	$30.17		
Subtotal	$116.34/MBF		
Freight:			
Alaska Railroad (Fairbanks to Seward)**	$121.29	Nenana to Seward	$107.10
Stevadoring (Railroad to to ship)	$ 15.86		
FOB Seward Total	$253.49/MBF		

*Assumes 1978 fuel prices. Note that these costs reflect existing operator efficiency and would be lower for an operator using new equipment and the latest logging techniques.

**Does not include any charge for lease of a staging area or sorting yard near the railroad.

Source: Computed by the House Research Agency from information supplied by Alan Richmond, University of Alaska-Fairbanks, Division of Forestry and the Alaska Railroad.

* * * *

As was discussed in Chapter 1, about 97 percent of Interior spruce sawlogs are graded as Number 3 and below. For the past year, prices for spruce logs in these grades have run $230-$270/MBF when markets could be found, which makes exporting them uneconomical at present.[32]

[32]Jay Gruenfeld, A.C.F. (Associates), "Alaska Forest Market Report", Volumes 9-12, December 1984-September 1985.

We should note that prices for individual contracts can vary widely.[33] If we compare the prices given above with those received for logs from the coastal regions of the state, the marginal nature of log exports from the Interior becomes even more apparent. The average price for log exports in 1984 sold by Sealaska Timber Company from its holdings in Southeast was $373/MBF which returned $89/MBF to the company in profit.[34] The threshold price at which Interior spruce sawlogs become economical to export appears to be about $300/MBF delivered to the ship at Seward.

Export Cants

Cants are logs that have been roughsawn on at least two sides (usually with a maximum thickness of 8-3/4 inches). In Southeast Alaska, timber taken from Forest Service land must meet primary manufacture requirements and thus a sawmill sector oriented to producing cants (which meet minimum primary manufacture requirements) has developed. Since 1978 when Native corporations began exporting significant volumes of roundlogs, there has been a major displacement of cant exports by roundlog exports. Most of the displacement has occurred in hemlock cants. While most Japanese sawmills prefer roundlogs to cants, some smaller "mom and pop" operations are not set up to deal with roundlogs and prefer spruce cants for custom sawing.[35], [36] These operators have been willing to pay premium prices for spruce cants.

---

[33]Frontier Resources, Inc., has a contract to sell up to 5 MMBF of spruce logs to a Korean buyer at a delivered price to Seward of $370/MBF. A certain amount of the smaller diameter logs are to be processed local 2.3 MMBF of spruce sawlogs but has yet to harvest.

[34]Speech by Sealaska President Byron Mallot to the 12th annual meeting of Sealaska shareholders.

[35]An additional advantage to roundlogs is that the best vertical grained clear boards from the outside wood of the log are usually ruined in the process of sawing the log into cants.

[36]"Markets for Alaskan Timber Products in Pacific Rim Countries", Development Planning and Research Associates, Inc., May 1983.

There is some evidence that this situation may be changing. The sawmill sector in Japan appears to be retooling to take advantage of large supplies of more profitable roundlogs.[37] In any case, the market for spruce cants appears to be declining. Table 10 gives a recent history of the Alaska-Japan cant trade.

Table 10
Exports of Spruce Cants from Alaska to Japan 1978-1984

	1978	1979	1980	1981	1982	1983	1984
MBF	111,207	94,527	91,245	78,868	83,966	53,814	41,181
$1,000	36,784	45,143	42,872	32,886	32,320	21,913	17,470
$/MBF	331	478	470	417	385	407	424

Source: "Alaska Forest Market Report", March 1985.

* * * *

Cant exports from the Interior would seem to be more economical than logs (depending on sawmilling costs) because a higher value product could be shipped for the same freight cost. We spoke with two Interior sawmill operators who were involved in producing cants for export during the peak market years (1979-1981) shown in the table above. These operators were unable to figure the cost of sawing cants, which in any case is liable to vary somewhat between mills, but both said it was uneconomical at today's prices. We inquired about the possibility of custom sawing baby squares for export to Japanese contractors. Neither of these operators has any access to foreign markets. Cant and log exports from the Interior to date have always been done on a contract basis through a timber broker where the local logger or mill operator does not deal directly with the foreign manufacturer or end user.

Given the facts of a structural change in Japanese sawmilling capabilities, continuing Native exports of high quality spruce logs, and idle capacity in Southeast Alaska cant mills, there doesn't appear to be much of a future for Interior cant exports. Custom sawmilling for foreign contractors does not appear to be a near-term possibility either, given the current level of marketing ability of Interior operators.

---

[37]There is no recent research in this area. We base this statement on conversations with several individuals who watch the Japanese timber market closely.

BUILDING MATERIALS FOR INTERNAL ALASKA MARKETS

A considerable amount of research has been devoted to the potential of Alaska's internal markets. Most estimates place current Railbelt lumber consumption at about 100 MMBF annually, of which about 15 MMBF is produced internally.[38,39] As we noted in Chapter 4, about one-third of the domestically produced lumber for the Railbelt region comes from the Interior.

Local markets for building material are likely to remain the mainstay of the Interior timber industry with the North Slope and Yukon Delta becoming increasingly important markets over the next fifteen years. Annual demand for lumber and houselogs in 1985 for the Tanana Basin, North Slope, and Yukon Delta as estimated by the Division of Forestry is given in Table 11.

---

[38]Craig J. Lindh, "Domestic Market for Alaska Wood Products", Department of Commerce and Economic Development (DCED), Division of Economic Enterprise, June 1979. Note that this estimate of Railbelt lumber consumption is somewhat suspect and is the sum of three sources: Waterborne Commerce statistics collected by the U.S. Army Corps of Engineers, customs checks at the United States-Canada border, and estimates of domestic per capita wood use. Waterborne Commerce statistics are actually crane operators' estimates of how much lumber was loaded on barges bound for Alaska. Estimates of United States-Canada lumber trade were compiled by Mr. Lindh from personal contacts and varied widely. Since Mr. Lindh's 1979 study, the 100 MMBF market size figure has taken on a life of its own and has been used repeatedly by other analysts in several feasibility studies. A definitive study of the size and composition of the Alaska wood products market using primary data would be very useful for State policymakers and economic analysts.

[39]John L. Sturgeon, State Forester, "Developing an Alaska Timber Market", Speech to the 1983 Alaska Logger's Convention.

Table 11
Forecast Demand for Lumber/House Logs in the Tanana Basin, North Slope and Yukon Delta*

	1985	1990	1995	2000
Lumber/Houselogs (MMBF)	30.1	34.0	38.0	42.1

*Note that these estimates were first developed by Susan Todd in the "Interior Transportation Study" and do not include the expected increase of 8,000 soldiers, civilians and dependents associated with a light infantry division which is scheduled to move to Ft. Wainwright over three years beginning in 1986. If we use her assumptions, this would add 3.2 MMBF to the forecast by 1990.

* * * *

Table 12 provides a snapshot view of Railbelt lumber prices from the results of a July 1985 survey of prices for various dimension lumber products at lumber yards in Anchorage and Fairbanks:

Table 12
July 1985 Dimension Lumber Prices in Anchorage and Fairbanks

Anchorage			Price/MBF
Hemlock-Fir (white)	Standard S4S (surfaced 4 sides) KD (kiln dried)	2"	$365-440
Alaska spruce	S1, S2E, green	1"	$335-455
	S4S, green	2"	$330-440
Fairbanks			
Spruce and hemlock mixed	Rough	2"	$320-420
		1"	$380-540
	Rough #2 and better		
	Standard planks, timbers, beams, stringers, and posts. Lengths through 20 feet.	3x12"	$600
		4x4"	$563
		10x10"	$552
Surface boards #3 and better		1"	$490-600

Source: "Alaska Forest Market Report", July 1985.

Northland Wood Products of Fairbanks (the largest Interior producer which supplied the data in the previous table) has its own grading system which does not conform to national standards. It sells surfaced and air-dried framing lumber for the same price as British Columbia lumber. In fact, both products are sold out of the same pile and customers rarely know the difference. According to the manager, they sell about 30 percent surfaced lumber, with the rest of their business in rough-cut lumber, timbers, houselogs and firewood.

Table 13 gives a recent history of average end product prices received by Interior timber operators. Lumber prices have fallen recently, probably due to price competition with British Columbia dimension lumber. There appears to be some consumer preference for finished, kiln-dried and graded lumber when it is available in appropriate sizes. Interior operators also suffer from a reputation for producing lumber of inconsistent quality.

Note that the price for houselogs, which are a specialty item, has increased in the face of a general decline in wood products prices over the past few years. The increasing price of firewood probably reflects a growing scarcity of available supplies near Fairbanks.

Table 13
1980-1984 Fairbanks Local Wood Products Price Summary

	Lumber $/MBF**	Houselogs* $/LF	Houselogs* $/MBF	Firewood $/Cord***
1980	NA	$2.55	$480	$86
1981	NA	2.55	480	85
1982	$380	2.55	480	92
1983	390	2.97	560	93
1984	340	3.20	600	104

*Northland Wood Products average of two and three-sided 8-inch houselogs.

**Northland Wood Products rough cut 2x6 inch not kiln-dried.

***Fairbanks North Star Borough, Community Research Department average of spruce and birch, seasoned, unsplit, less than two-foot lengths delivered.

Source: Alaska Division of Forestry.

PRODUCTION COSTS

In the standard framing material sizes of dimension lumber, British Columbia and Interior products are fairly close substitutes. Locally produced rough cut and green lumber sells for about 10-20 percent less than British Columbia lumber when compared on an equal basis, while surfaced and air-dried lumber sells for the same price. According to the lumber dealers with whom we spoke, prices for framing lumber are determined by the going rate for British Columbia SPF imports, while prices for other sizes of rough-cut lumber and timbers are determined by "whatever we think we can get."

In the real world of the local producer who handles the product from harvesting the log in the woods to retailing the lumber, there are too many variables to keep track of to have exact figures on production costs and returns for each product he produces and sells. He may figure very closely how much he needs to charge to cover costs and profit for a specialty item like timbers or houselogs, but prices for many of the other products he sells are determined by what other sellers charge.

None of the operators with whom we spoke felt it would be economical for them to build and operate a drying kiln as long as cheap Canadian lumber is available. They were also skeptical about the usefulness of a cooperative drying kiln (a recommendation for study by the Timber Task Force) at their present scale of production and with the wide geographical dispersion of sawmills in the region.

PANEL PRODUCTS

Production of panel products such as plywood in the Interior would be highly desirable in terms of stable employment and high value added in the manufacturing process. However, current and projected total demand in Alaska markets is insufficient to offset investment costs. Total statewide consumption of plywood and other panel products was approximately 50-60 million square feet (MMSF) in 1980.[40] A minimally viable plant size would produce 100 MMSF of 3/8-inch plywood annually. The investment necessary for a plant of minimum size would be approximately $25 million. Total costs on a per thousand square feet of production basis are given on the next page.

---

[40]Joseph R. Mehrkens, "Staff Paper: Future Forest Products Development, Interior Alaska", U.S. Forest Service, January 6, 1984.

Fixed Costs (excluding interest)	$25.00/MSF
Operation and Maintenance	$90.00/MSF
Log Procurement	$65.00/MSF
Interest	$5-10.00/MSF
Total Cost	$185-190/MSF

In addition to panel products, such a mill could produce 35-40 thousand tons of wood chips and a million board feet of lumber as by-products.

The 5-year average (1978-1983) selling price for 3/8-inch plywood in Alaska markets was $160/MSF. If we assume the mill would have to produce competitively priced products, a plywood mill would be uneconomical even if the domestic market were able to absorb the entire production. Entry into other Pacific Rim markets is highly unlikely since Alaska producers would face the same tariffs (15 percent in Japan) and other trade barriers as other North American producers. Japan, Korea, Taiwan, and Indonesia have all raised protectionist barriers around their plywood industries.

Two other feasibility studies of panel products, one of a structural particleboard plant and the other of an oriented strand (waferboard) plant in the Railbelt region have been done in recent years.[41,42] These products have done well in regions of North America where shipping costs for imported plywood are significant. Both studies come to similar conclusions--the internal Alaska market is too small to support one of these type of facilities, other North American producers can manufacture these products and sell them in Alaska cheaper than they can be produced domestically, and our Pacific Rim trading partners jealously guard their value-added industries with tariffs and trade barriers. Another difficulty for this type of product is consumer acceptance. Consumers are in the habit of using plywood for panel applications and would not switch to other products readily unless they were considerably cheaper (which would not be possible with Alaska production costs). Particleboard and waferboard have become popular in Eastern Canada, but consumer acceptance took several years.

---

[41] Leonard Guss Associates, Inc., "Feasibility of Structural Particleboard Manufacture in Alaska", March 1977.

[42] "An Investigation into Land Clearing Methods and the Utilization of Salvaged Wood Fiber from the Nenana Agricultural Project", Columbia Engineering International, Inc., April 1982.

FINISHING MATERIALS

There has been little recent research on the feasibility of domestically produced finishing materials. This could be an area of opportunity in the future. There are two small hardwood mills in the Anchorage area which produce paneling, furniture blanks, flooring and cabinets, but there is very little data available on the size of Alaska and other U.S. markets for these products. In addition, export markets remain unproven. Value-added products such as veneer, door and window frames or cabinet kits are about the only type of items which could justify the cost of shipping to markets outside the Interior region at today's prices for forest products. This is another area where some primary data collection and basic research into the potential size and composition of markets for Alaska hardwoods would be useful.

PULP AND PAPER

Quite often in the promotional literature and speeches by State officials on the potential of the Interior timber resource, there are statements like: "If the entire 11 million acres of Fairbanks area State-owned land were made available to the timber industry, it would provide enough wood to run 10 large pulp mills".[43] This statement may be true, but the establishment of even one pulp mill in the Interior in the forseeable future appears to be highly unlikely. The two existing pulp mills in Southeast Alaska with their 50-year contracts for cheap timber are barely surviving in today's markets. The last serious examination of the economics of building a pulp mill in Alaska occurred in the late 1960s when Champion International (now merged with St. Regis) explored the possibility of constructing a third mill in Southeast. After prevailing over environmentalist's lawsuits in court, the company concluded that even with a long-term Forest Service contract for cheap timber, the investment was not justified by their expected return.

Alaska's share of worldwide dissolving pulp markets declined by about 8 percent in 1984, while Japanese imports of dissolving pulp (Alaska's major market) increased by 13 percent during the same period. Worldwide, dissolving pulp markets are expected to stagnate or decline into the intermediate future.[44] There is worldwide overcapacity in production facilities for dissolving pulp which is used in the manufacture of rayon and acetate. These products face stiff price competition from synthetic petroleum-based products which are cheaper and often of superior quality. In addition, Alaska producers face rapidly changing

---

[43]Esther Wunnicke, Commissioner, Alaska Department of Natural Resources, quoted in the Anchorage Daily News, October 28, 1985.

[44]Mehrkens, "Timber Supply and Demand 1984".

technology in the industry (the two Alaska mills were built in the 1950s) and a strong dollar. Similar pulp is exported from Port Alice, British Columbia; Port Angeles, Washington; and a new large capacity mill (SAICCOR) in South Africa. The SAICCOR mill now accounts for 16 percent of worldwide production capacity as opposed to 13 percent for Alaska's mills.

Table 14 provides a recent history of Alaska's pulp trade:

Table 14
Export of All Types of Alaska Wood Pulp to All Destinations 1978-1984

Unit	1978	1979	1980	1981	1982	1983	1984
Tons	211,449	264,948	312,002	286,226	209,924	241,964	211,440
$1,000	76,750	115,128	153,248	140,493	98,470	117,783	61,950
$/Ton	363	435	491	491	469	487	193

Source: "Alaska Forest Market Report", December 1984 and September 1985.

* * * *

Other types of pulp and paper products mills require access to fairly large markets to be economical. Canadian and Pacific Northwest producers dominate domestic markets.[45] An average-sized, integrated pulp and paper mill like those in Canada or the Pacific Northwest could supply the total annual Alaska demand for newsprint and other paper products with about three week's production. Further penetration of export markets by Alaska producers of any type of pulp products is uncertain; we have already discussed protectionist trends for value-added forest products in Pacific Rim markets.

Currently, there is a large surplus of pulp grade logs in Southeast Alaska. The two pulp mills have found it cheaper to buy British Columbia pulp logs than to harvest pulpwood under their own timber contracts. Native corporations have been unable to market much of their pulpwood and have left large amounts of low-grade timber lying in the woods as they have highgraded their best quality logs for export. This practice is very detrimental to reforestation efforts.

Any new pulp production facility in Alaska would most likely be built in Southeast or Southcentral to take advantage of waterborne transportation rates and large supplies of surplus pulp logs. The economics of a thermomechanical type mill (which produces pulp for paper products)

[45] J. Alfred Hall, "Wood, Pulp and Paper, and People in the Northwest", Northwest Pulp and Paper Association.

type mills on the British Columbia coast has not been studied in any detail. Thermomechanical mills using a continuous digester (which recycles water) are relatively nonpolluting and apparently have a lower minimum economy of scale threshold for economic operation (100 tons/day or about half the size of either of the existing Alaska mills).

WOOD CHIPS

One of the most promising areas for the Interior timber industry is woodchips. The University of Alaska-Fairbanks, Agriculture Experiment Station is exploring the feasibility of using woodchips in coal-fired powerplants for electrical power generation. If it proves to be economical, this use of small diameter timber, logging residue, and wastewood from agricultural land clearing could open up new areas for intermediate forest management as well as provide additional markets for Interior timber operators.

There are four coal-fired power plants in the Fairbanks area which could burn a partial (10 percent initially) mixture of coal and woodchips. These are: Eielson Air Force Base; Fort Wainwright; Fairbanks Municipal Utility System; and the University of Alaska-Fairbanks. Allan Richmond, the research associate in charge of the woodchip study, estimates that if all four utilities burned a 10 percent mixture of woodchips nine months a year (during all but the coldest months of December, January, and February), they could use about 36,000 cords of wood annually.

Woodchips are cleaner to burn than Healy coal. They produce fewer particulate emissions and 40 percent less ash. The estimated cost of producing woodchips at $22.50/ton delivered to the utility is 19 percent cheaper than coal on a per million BTU basis.[46] Woodchips are comparable to coal from a safety standpoint (spontaneous combustion). The project is technically feasible and a test burn has already taken place. It may be possible to use a mixture of greater than 10 percent in the future.

The technology required for making woodchips involves a portable woodchipper which is transported directly to the logging site where it grinds up the material fed into it and blows the chips into vans. The $22.50/ton estimated production cost assumes a 35-45 mile, one-way haul from the logging site to the utility. Outside of Alaska where this technology is being used, the delivered price of chips to the utility is $17-$19/ton. This type of operation might be too expensive to start

[46]Healy coal delivered to Fort Wainwright costs $46.50/ton. On a per million BTU basis, the break-even price for woodchips is $28.50/green ton.

from scratch, but could be a very worthwhile investment for an existing logging operator and may allow him to realize greater cash flow and returns from each timber sale.

The minimum investment cost for an existing logging operator would be as follows:

Portable chipper 150 ton/day minimum size	$48,000 each
Self-dumping chip vans (used) 2 minimum	$16-20,000 each
Total investment for one small chipping machine and two self-dumping chip vans	$80-88,000 Total

* * * *

A 150 ton/day chipper charging $22.50/ton produces $3,375/day at a theoretical harvest cost of $19.50 to $20/ton (including labor and finance charges at 16 percent) and a $2.50-$3.00/ton profit. An efficient operation using two small chipping machines and three self-dumping vans would have an amortized payoff period of about five years.[47]

There do not appear to be alternative export market opportunities at present for an Interior woodchip producer. This situation could change in the long term, however, if prices returned to their 1980-1982 levels. If we assume the $22.50/ton harvest price for a woodchip producer is accurate, the cost to get woodchips from Fairbanks onto a ship at Seward is as follows:

---

[47]All of the figures used in this section come from Allan Richmond at the University of Alaska-Fairbanks, Agricultural Experiment Station. We questioned Mr. Richmond closely about the assumptions he used to make his calculations but the House Research Agency has no way of independently confirming these figures. These calculations assume an existing logging operation would already have a faller-buncher, grapple skidder, logging truck tractors, and bulldozer for constructing roads and landing areas. Chippers range in size from the smallest model cited above, to a 400-ton/day model that costs $250,000. The calculations cited above were made two years ago, when interest rates were higher. Current interest rates would shorten the payback period.

Stumpage	$ 3.50/ton	
Harvest Cost	$22.50/ton	green weight
Load Railcars	$ 2.50/ton	
Fairbanks to Seward R.R. Freight	$15.10/ton	
Load onto Ship	$12.50/ton	
Total	$56.10/ton	

Sources: Alaska Bioenergy Supply, Wasilla, and the Alaska Railroad.

* * * *

Table 15 below gives a recent history of export volumes and prices for woodchips from Alaska to Japan:

Table 15
Woodchip Exports from Alaska to Japan 1978-1984

Unit	1978	1979	1980	1981	1982	1983	1984
Tons	31,967	81,906	151,328	67,115	74,164	6,645	16,525
$1,000	1,195	3,971	11,436	5,209	5,106	230	769
$/Ton	37	48	76	78	69	35	47

Source: "Alaska Forest Market Report", December 1984 and September 1985.

* * * *

As the preceding table shows, at current market prices, it costs more to load, haul, and unload Interior woodchips than the product itself is worth. Other uses and possible markets for woodchips include landscaping and insulation. (The Alyeska Pipeline Company is currently having a woodchip contractor lay down a thick layer of chips over the underground sections of the TAPS line to insulate it from temperature changes and protect it from heaving.)

The forest management possibilities this technology could open up in Interior Alaska are particularly interesting. Currently, timber operators are required to remove all material over 6 inches in diameter from clearcut areas on State timber sales. Loggers can generally sell everything over 4 inches in diameter as firewood, but this still leaves large amounts of wasted slash and residue in the logged area. The machinery that the Division of Forestry uses to prepare a clearcut for reforestation does a much better job if all logging residue is removed.

Another possibility would be to hire a chipping contractor to remove large areas of black spruce which could be replanted with more desirable species such as white spruce or tamarack. The Division of Forestry estimates that it would cost about $200 per acre for them to thin stands of spruce or remove birch and other undesirable species of trees from spruce stands on State forest land. If a viable woodchip industry were developed, thinning contracts could be sold and the State would have to pay only the cost of administering the contracts. The potential benefits of thinning are great. By thinning spruce stands at the proper time, the period of a rotation cycle can be reduced from 120 to about 80 years.

While the economics of producing woodchips in the Interior seem reasonable in theory, there are several obstacles in the way of development. The first is funding for a 1,000-ton demonstration burn at Fort Wainwright. The Agricultural Experiment Station would like to let out a chipping contract and then monitor the operation to find out exactly how much it costs to produce the chips and demonstrate the feasibility of the process. The Army is willing to conduct the experiment but has already contracted its coal purchases for the year and is unwilling to come up with an additional fuel purchase of $20-25,000 just to demonstrate the feasibility of burning woodchips. The University does not have the ability to fund the experiment either. The project is currently at a standstill until adequate funding can be obtained.

If the economics of using woodchips in powerplants prove to be feasible, the next hurdle would be to acquire a large enough supply of State or Native corporation timber to justify the investment. The current allowable cut of hardwood for fuel in the Tanana State Forest is 20,000 cords.

Another consideration would be financing the purchase of chipping equipment. Firm contracts with powerplant operators would be necessary before a chipping contractor could go to the bank for financing. A long-term (3-5-year) contract for exporting chips would be required before the Alaska Railroad would be willing to acquire the necessary equipment (chip cars and unloading facilities) to ship the product from Seward. If an agreement with a foreign buyer were made, the railroad would be willing to negotiate a hauling contract at a lower rate than is quoted above.

OTHER ENERGY PRODUCTS

The demand for fuelwood in the Interior for the next 15 years is estimated in Table 16 below:

Table 16
Forecast Demand for Fuelwood in the Tanana Basin, North Slope and Yukon Delta

	1985	1990	1995	2000
Fuelwood (MCF)*	41.0	46.0	51.5	57.1

*Thousand cubic feet (11.1 cords = 1 MCF).

Source: Alaska Division of Forestry

* * * *

We have already discussed the Division of Forestry forecast of lumber consumption in the Interior. The forecast of fuelwood consumption given above is based on the same original work done by Susan Todd.[48] This forecast is also somewhat dated and does not include the expected increase in military personnel in the area beginning in 1986. If we use the same assumptions adopted by Ms. Todd in making her original forecast, we should add approximately 8 MCF of fuelwood consumption by 1990.

The Division of Forestry identifies three key factors (among others) affecting fuelwood consumption: 1) the price of alternative fuels; 2) personal income and population; and 3) the availability of fuelwood.

We do not have good data on the price of alternative fuels. The price of fuelwood at the retail level increased 21 percent during the 1980-1984 period (portrayed in Table 13). Fairbanks personal income grew by three percent during 1981-1982 (the latest years for which data are available) and population increased by seven percent in the past year.

As Table 17 shows, fuelwood consumption in the Interior leveled off during 1982-1983 and began to decline in 1984. Most of the recent decline in firewood consumption is probably due to declining fuel oil prices. Another related factor is consumer expectations that the price of fuel oil is likely to continue to decline into the immediate future. Fuel oil price declines reduce the incentive to cut or buy firewood.

---

[48]Susan Todd, "Interior Transportation Study."

Table 17
Interior Region Fuelwood Sale Statistics 1980-1984

Type/Species	1980	1981	1982	1983	1984
Commercial Mixed Species	4.2 MCF	6.7 MCF	8.2 MCF	9.0 MCF	5.4 MCF
Personal Use Fuelwood (all species)	6.3 MCF	10.8 MCF	9.0 MCF	8.8 MCF	6.7 MCF
Total	10.5 MCF	17.5 MCF	17.2 MCF	17.8 MCF	12.1 MCF

Source: Alaska Division of Forestry

* * * *

WOOD PELLETS

Hammermilled wood pellets are an alternative use of wood wastes and uneconomical timber for energy production that has received considerable attention in the press recently.[49] This product is made from woodchips which are dried and compressed into three-quarter-inch cylinders. Pellets are comparable to coal on a cost per million BTU basis. The pellets can be burned in special woodstoves for space heating or in power plants. Like woodchips, they are cleaner to burn than coal and produce less ash.

Currently, pellets are imported from other states and sell at the retail level for $200/ton, which makes them marginally cheaper than purchased firewood (one ton of pellets is roughly equivalent to two cords of birch firewood which sells for $90-$150/cord). With local production, the retail price could be reduced to $100/ton. A $2 million plant investment would allow production with an estimated manufacturing cost of $50/ton. The proposed hammermill could produce 300 tons of pellets per day, which is equivalent to about 150 MBF. This type of product is unproven in Alaska and would have to win consumer acceptance.

Consumers would have to be convinced that conversion costs to a special pellet stove (which are 10-20 percent more efficient than conventional woodstoves) would pay off in a reasonable length of time and that handling pellets is more convenient than logs. Another plan for wood pellets is to burn them in a specially designed power plant near Willo or in the coal-fired plants in the Interior.

---

[49]"Alaskans Hope Pellets Will Replace Cordwood," Anchorage Daily News, November 11, 1985.

The proposal for Willow is for a 12-MW powerplant and pellet mill. The total investment required would be about $15 million ($12 million for the plant and $3 million for the pellet mill and finance charges). A site near a power substation and the timber resource has been selected. Tom Chaussee, the entrepreneur proposing this project, is in the process of negotiating a long-term (20-year) power sales agreement with the local utility, Matanuska Electrical System (MES). He figures the plant could deliver power at a wholesale rate of 5-5-1/2 cents per kilowatt hour in 1987. Currently MES receives power from Chugach Electric at an effective wholesale rate of 4.2 cents. Some of the natural gas sales contracts that Chugach Electric has with Cook Inlet gas companies will come up for renewal within the next five years, which will likely raise the cost of wholesale power to MES. Thus, it looks as if the utility could possibly benefit from such an agreement.

Before investing in the plant, the owners must negotiate an agreement with the State or Native sources for an adequate timber supply. A 300-ton/day pellet plant like the one proposed would use massive amounts of wood fiber. Mr. Chaussee estimates he would need to sign a 15-year agreement for 5,000-6,000 acres of timber per year before he could obtain firm financing. It would be economical to haul chips within about a 70-mile radius of the mill and the plant could purchase chips from other sources for $15-$17 per green ton. (Note in the woodchip section we stated that the delivered price to a utility in other states was $17-$19.) The second pellet mill proposed by Mr. Chaussee, would be for the Fairbanks region and would sell pellets directly to the four coalfired plants in the area. He figures the plant could become economical if it displaced 25 percent of the coal presently burned by the plants. Wood pellets priced at $50/ton (8,500 BTU/lb.) are about seven percent cheaper on a per million BTU basis than Healy coal priced at $48/ton (7,600 BTU/lb.).

The Division of Forestry is attempting to accommodate the possibility of this type of development in its forest management plans. There is some concern within the division about allowing one individual or company to control such large amounts of timber land. We should note that these plans are speculative at present, although the technology has been proven in other states. If difficulties are overcome, a pellet mill could provide an alternative market for sawmill waste and chipping contractors. There is considerable skepticism on the part of industry analysts over the ultimate feasibility of taking a low-valued product, such as woodchips, through an expensive intermediate manufacturing process to produce fuel which competes with other low-valued products such as coal. There does not appear to be much room for price fluctutations in these proposals. Either of these pellet plant proposals might become more economically feasible if developed as an integrated facility or joint venture with a sawmill to produce some higher valued products from the timber supply.

OTHER PRODUCTS

Charcoal and densified fuel logs are alternative products which could be manufactured from Interior timber and have been studied in some detail recently.[50,51]

The charcoal study does not attempt to develop costs for producing charcoal in Alaska. It is assumed that Alaska operators would sell their products at or below the prices charged by existing producers. The Pacific Northwest and Japan are identified as possible markets for bagged briquette type charcoal while Korea is identified as a possible market for bulk or lump charcoal.

The densified fuel log study took four types of land clearing residue from agricultural land clearing projects in the Interior and had a fuel log manufacturer in Grants Pass, Oregon make it into presto logs. The fuel logs can be manufactured for a price that is marginally competitive with firewood. They tend to decompresss when stored in a covered but unheated place during the transition from winter and summer. An initial investment of about $750,000 would be required to establish a densified log operation. To make it a viable business, an entrepreneur would have to capture the equivalent of one-fourth to one-third of the firewood used in the Fairbanks North Star Borough annually for a market. The technical problems with the product as well as the requirement to capture such a large market share make it unlikely that this product can become economically feasible in the near future.

---

[50]Schreuder, Waggener, and Clasby, "The Export Potential for Charcoal Made From Low Grade Alaska Hardwoods and Softwoods", University of Washington, College of Forest Resources, March 1985.

[51]George Sampson and Forrest Ruppert, "Potential for Economical Recovery of Fuel From Land Clearing Residue in Interior Alaska", U.S. Forest Service, September 1983.

BIBLIOGRAPHY

Blackerby, Alva W. "Opportunities for Minor Wood Product Industries in Alaska." U.S. Forest Service. January 1, 1945.

Boutin, Tom. Memorandum to Milt Barker, Deputy Commissioner, Department of Revenue from Debt Manager regarding Recommendations of the Alaska Timber Task Force. December 31, 1984.

Brody, Susan. "State Use of Interior Alaska Lumber." House Research Agency. Research Memorandum 80-025. January 30, 1980.

Carrol, Setzer, and Mead. "Timber Resource Statistics for the Beluga Block, Susitna Basin Multiresource Inventory Unit, Alaska 1980." U.S. Forest Service. Februuary 1985.

Carrol, Setzer, and Mead. "Timber Resource Statistics for the Talkeetna Block, Susitna River Basin Multiresource Inventory Unit, Alaska 1978." U.S. Forest Service. October 1984.

Carrol, Setzer, and Mead. "Timber Resource Statistics for the Willow Block, Susitna River Basin Multiresource Inventory Unit, Alaska 1978." U.S. Forest Service. September 1984.

Carrol, Setzer, and Mead. "Timber Resource Statistics for the Upper Susitna Block, Susitna River Basin Multiresource Inventory Unit, Alaska 1980." U.S. Forest Service. February 1985.

Clapp, Verner W. "Alaska's Spruce." U.S. Forest Service. Department of Natural Resources. Department of Commerce and Economic Development. August 1971.

Darr, David R. "How Export Promotion Programs Influence Trade." Forest Products Journal. April 1983.

Engleman, Paul. "Overview of the Economics of Alaska's Interior Forests." Alaska Department of Commerce and Economic Development.

Flora, Donald F. and Vlosky, Richard P. "Potential Pacific Rim Demand for Alaska's Construction-Grade Logs." Foreign Trade Research, Pacific Northwest Forest and Range Experiment Station. April 1985

Hall, J. Alfred. "Wood, Plup and Paper, and People in the Northwest." Northwest Pulp and Paper Association.

Hallock, Hiram. "Report and Recommendations of the Alaska Hardwoods Company of Wasilla, Alaska." U.S. Forest Service, Forest Products Laboratory. March 1962.

Hallock, Hiram. "Report on Several Aspects of the Proposed Brice Lumber Company Sawmilling Enterprise at Fairbanks, Alaska." U.S. Forest Service, Forest Products Laboratory. February 1962.

Hamilton, Laura. "A Foreign Opinion on Alaska's Interior Forest." Alaska Construction and Oil. April 1978.

Hanks and Swanson. "Lumber Grade Yields from Paper Birch and Balsam Poplar Logs in the Susitna River Valley, Alaska." U.S. Forest Service. 1967.

Hegg, Karl M. "Timber Resource Statistics for the Kantishna Block, Tanana Inventory Unit, Alaska 1973." U.S. Forest Service. March 1982.

Hegg, Karl M. "Timber Resource Statistics for the Upper Tanana Inventory Block, Tanana Inventory Unit, Alaska 1974." U.S. Forest Service. February 1983.

Hegg, Karl M, and Sieverding, Harold. "Timber Resources of the Kuskokwim Flood Plain and Adjacent Upland." U.S. Forest Service. December 1979.

Hinkenson, Dr. "Economic Aspects of Establishment and Operation of Hardwood Industry in Western Alaska." Forest Products Laboratory. September 1961.

Juhasz, Julius J. "The Forest Industry in British Columbia: Tenures and Timber Appraisal." Forest Valuation Division. British Columbia Ministry of Forests. July 1980.

Kerr, Kalvin. "Alaskan Power Generation from Waste Wood Fuel. Alaska Resources Corporation.

Kilborn, Kenneth A. "Forest Products Utilization and Marketing - The Situation and Needs in Alaska."

Kilborn, Kenneth A. and Ruppert, Forrest A. "The Timber Industry in Interior Alaska." U.S. Forest Service, Alaska Region.

Lindh, Craig. "Domestic Market for Alaska Wood Products." Hohman-McDowell, Associates for Department of Commerce and Economic Development, Division of Economic Enterprise. June 1979.

Mehrkens, Joseph R. "Future Forest Products Development, Interior Alaska." Staff Paper, U.S. Forest Service. January 6, 1985.

Mehrkens, Joseph R. "Timber Supply and Demand." U.S. Forest Service. June 6, 1985.

Packee, Edmond C. "Forest Management for Interior Alaska-Can Products Justify Costs." Agroborealis. July 1984.

Packee, Edmond C. "Forest Products Marketing Realities for Subarctic Alaska - Challenge for the Future." Paper presented at the 1985 Convention of the Society of American Foresters. July 30, 1985.

Packee, Edmond C. and Gasbarro, Anthony F. Letter to Dr. Robert L. Ethington (Station Director, Pacific Northwest Forest and range Experiment Station) from Assistant Professor of Forest Management and Extension Forester, University of Alaska October 14, 1983.

Ruderman, Florence K. "Production, Prices, Employment, and Trade in Northwest Forest Industries First-Fourth Quarters 1983." U.S. Forest Service. August 1983.

Sampson, et. al. "Forestry in Alaska." Alaska's Agriculture and Forestry, Chapter 13. U.S. Forest Service. 1983

Sampson and Rupert. "Potential for Economical Recovery of Fuel from Land Clearing Residue in Interior Alaska." U.S. Forest Service. September 1983.

Schiller, Robert. "Alaska's Commercial Forest Resource.' Alaska Department of Commerce and Economic Development. March 1985.

Schreuder, Waggener and Clasby. "The Export Potential for Charcoal Made from Low Grade Alaskan Hardwoods and Softwoods." College of Forest Resources, University of Washington. March 1985.

Smith, Richard C. 'Potential Economic Development of Forest Resources in Interior Alaska." November 1980.

Stevens, Earl. "Interior Alaska's Potential for Supporting a Forest Products Industry." Alaska Department of Natural Resources. Division of Forestry.

Stuart, Thomas W. and Kent, Brian M. "Forest Planning Models in the USDA Forest Service: Where are we now? How did we get there? Where might we go freom here?" U.S. Forest Service. May 17, 1982.

Sturgeon, John L. "Developing an Alaskan Timber Market." State Forester. Speech to the 1983 Alaska Loggers Convention. October 21-22, 1983.

Van Cleve, Keith. "Forest Landscapes of Interior Alaska." Agroborealis. Vol. 17. No. 1. 1985.

van Hess, Willem W.S. "Land Ownership Patterns in the Tanana River Basin, Alaska 1984." U.S. Forest Service. March 1985.

van Hees, Willem W.S. "Timber Resource Statistics for the Tanana Inventory Unit, Alaska 1971-75." U.S. Forest Service. January 1984.

Winterberger, Kenneth C. "Timber Resource Statistics for the Wood-Salcha Block, Tanana Inventory Unit, Alaska 1975." U.S. Forest Service. October 1983.

"Alaska's Birch." Department of Natural Resources. U.S. Forest Service. August 1976.

"Alaska Forest Market Report." Jay Gruenfeld, A.C.F. (Associates). Vols. 9-11. December 1984-June 1985.

"Alaska 1983-1984 Forest Industry Directory." Alaska Department of Natural Resources and the U.S. Forest Service.

"Alternatives for Crown Timber Pricing, A White Paper for Discussion Purposes." British Columbia Ministry of Forests. July 1980.

"An Investigation Into Land Clearing Methods and the Utilization of Salvaged Wood Fiber From the Nenana Agricultural Project." Columbia Engineering International Ltd. April 1982.

"Conditions Relating to the Importation of Softwood Lumber Into the United States." U.S. International Trade Commission. April 1982.

"Feasibility of Structural Particleboard Manufacture in Alaska." Leonard Guss Associates, Inc. March 1977.

"Forest Development in the Middle Kuskokwim." Reid, Collins, Alaska, Inc. June 1981.

"FORPLAN Overiew." U.S. Forest Service. Land Management Planning. April 1981.

"Interior Transportation Study-Forestry Working Paper." Louis Berger Associates. Alaska Department of Transportation and Public Facilities. March 1982.

"Kenai Peninsula Timber Supply and Marketing Opportunities." Reid, Collins, Alaska, Inc. for Department of Natural Resources, Division of Forestry. June 1982.

"Markets for Alaska Timber Products in Pacific Rim Countries." Development Planning and Research Associates, Inc. May 1983.

"Michigan's Forest Resource Strategic Plan: A Marketing and Investment Strategy." Innovations. Council of State Governments. July 1984.

"Proposed Forest Products Component of an Economic Development Work Program." Leach and Baker Consultants. Alaska Department of Commerce and Economic Development, Division of Economic Enterprise. June 1979.

"Report of the Alaska Timber Task Force to Governor Bill Sheffield, State of Alaska and Michael Barton, Alaska Regional Forester." December 13, 1984.

"Rough Carpentry Specifications." Construction Specifications Institute.

"Southeast Alaska and British Columbia Timber Sale Conditions, Requirements, Procedures and Policies Compared." Price Differences for Logs From Southeast Alaska and British Columbia. U.S. Forest Service, Region 10. October 9, 1984.

"Tanana Basin Area Plan for State Lands." Department of Natural Resources. June 1985.

"Timber Resource Assessment." Kuskokwim Corporation. 1979.

"The Wood Products Industry in Alaska." Monthly Review of Business and Economic Conditions. University of Alaska, Institute of Business, Economic and Government Research. September 1964.

"1984 Annual Report." Alaska Department of Natural Resources. Division of Forestry.

Alaska's Commercial Forest Resource

Department of Commerce and Economic Development
State of Alaska
March 1985

Bill Sheffield, Governor, State of Alaska
Loren H. Lounsbury, Commissioner, Department of Commerce and Economic Development
William Beardsley, Director, Office of Forest Products

Prepared by Robert Schiller, Senior Economist, Economic Analysis Section

OUTLINE

		Page
I.	INTRODUCTION	1
II.	ALASKA'S FOREST RESOURCE	
	A. OVERVIEW	3
	B. MAJOR ALASKAN SPECIES	7
	C. REGIONAL CHARACTERISTICS	9
III.	OWNERSHIP OF THE FOREST RESOURCE	13
IV.	ALASKA'S FOREST PRODUCTS INDUSTRY	
	A. Historical Background	17
	B. Timber Harvests	18
	C. Timber Processing	19
	D. Timber Exports	20
V.	STAND CHARACTERISTICS OF INVENTORY UNITS	21

LIST OF EXHIBITS

1. Forests of Alaska

2. Net Volume of Growing Stock on Commercial Forest Land in Alaska, By Species, Diameter Class & Region

3. Net Volume of Sawtimber on Commercial Forest, by Diameter Class & Region

4. Pulp Mills, Sawmills, Roads, and Railroads Within Six Biological Units

5. National Forests, State Forests, and Native Corporation Boundaries

6. Land Status in Alaska

7. Timber Harvest in southeast Alaska

8. Timber Processing Capacity and Output in Alaska, 1984

9. Alaska Wood Exports by Major Product

10. Inventory Units

11. Inventory Statistics for Selected Areas in Alaska

12. Net Sawtimber Volume on Timberland in Selected Inventory Units by Species

13. Area of Commercial Forest Land by Board Foot Volume Class

14. Net Volume of Sawtimber on Timberland by Diameter Class for Selected Inventory Units in Interior Alaska

15. Net Volume of Sawtimber on Timberland by Diameter Class for Selected Inventory Units in Southeast Alaska

I. INTRODUCTION

This report provides an introduction to Alaska's forest resource and timber industry. Its purpose is to provide potential purchasers of Alaskan wood products with information on how much timber volume is available, where it is located, who owns it, and who to contact to get more information.

Alaska has 28.2 million acres (11.4 million hectares) of commercial timberland with net volume of growing stock of 50 billion cubic feet (1.4 billion cubic meters). Net volume of sawtimber (trees greater than 11 inches in diameter) is an estimated 215 billion board feet (approximately 1 billion cubic meters).

Most of Alaska's timber is old-growth. Species range from the high volume hemlock/spruce forests in the southeast to the extensive hardwood/spruce forests of the interior. Although some of the forest resource has been withdrawn from production and other areas are inaccessible, there remains a vast commercial timber resource available for sale.

The principal owners of commercial timberland in Alaska are the U.S. Forest Service, Native corporations, and the State of Alaska. The U.S. Forest Service is the dominant owner of the old-growth hemlock/spruce/cedar forests in southeast Alaska where volumes range from 20,000 board feet/acre to 100,000 board feet/acre (approximately 240-1200 cubic meters per hectare). By law, the U.S. Forest Service has a goal of making 450 MMBF (2 million cubic meters) available for sale each year.

The majority of timber made available by the Forest Service is purchased by two companies which have long-term contracts: Louisiana Pacific, headquartered in Ketchikan and Alaska Pulp Corporation, headquartered in Sitka. Both companies operate sulphite pulp mills and operate or lease sawmills. In addition to these long-term contracts, the Forest Service offers significant volumes of timber through a competitive process. Independent loggers and sawmills have built their operations around these sales.

Because the U.S. Forest Service requires primary processing, the industry was built around pulp and cant products. Purchases of cants and pulp may be made through existing owners of timber sales or directly from processing facilities. Opportunities also exist to compete for timber sales, to purchase mills, or to participate in partnerships.

Native corporations are new entities and have only been in the timber industry for 10 years. In southeast Alaska, Native corporations own prime old growth hemlock/spruce/cedar stands of timberland. Native corporations also own substantial volumes of white spruce, birch, cottonwood, and balsam poplar in interior Alaska. Although volume per acre in the interior is less than found in the southeast, vast tracts of virgin timber are available for development. Unlike the Forest Service, Native corporations are not required to process logs before export and have developed a round log export program. As with most profit making companies, Native corporations are very responsive to demand and are receptive to expressions of purchases, investments, and partnerships. Business may be carried out directly with each Native corporation.

As with Native corporations, timberland has only recently been transferred to State ownership. The State offers timber sales ranging from small, short-term sales to occasional large, long-term sales. In addition, the State is establishing State forests as a means of providing the industry with a steady, reliable supply of timber. Purchases may be made from owners of existing timber sales or by directly bidding on a sale. The State Division of Forestry will also consider special requests for a new sale although in the end such a sale must be offered on a competitive bid basis.

Other sources of timber include local governments, individual land owners, and a variety of federal land owners. In addition to direct contact with timber owners, there are an increasing number of timber marketing agents, timber associations, and government agencies available to provide assistance.

This fact book was prepared by the Office of Forest Products, State of Alaska. For further assistance, please contact:

Office of Forest Products
Department of Commerce and Economic Development
State of Alaska
Juneau, Alaska 99801
Telephone: 907-465-2094
Telex: Alaska Tourism JNU 45-331

Marketing Field Office
Department of Commerce and Economic Development
111 Stedman, Suite 204
Ketchikan, Alaska
Telephone: 907-225-4669
Telex: Alaska Tourism JNU 45-331

II. ALASKA'S FOREST RESOURCE

A. OVERVIEW

Alaska has 119 million acres (48 million hectares) of forest land. This represents 16% of the forest land in the U.S. or as much timberland as is found in the states of Montana, Washington, Oregon, and California combined. Of this, 28.2 million acres (11.4 million hectares) is considered commercial (capable of producing at least 20 cubic feet of wood per acre per year). Interior Alaska, with 22 million acres of commercial timberland, contains most of the commercial timberland. Most of the timber volume and industry, however, is located in southeast Alaska where there are approximately 6 million acres of commercial forest.

Exhibit 1 provides a map of Alaska's forest resource. Alaska has two forest types: coastal and interior. Coastal forests consist primarily of old growth (virgin) Sitka spruce, western hemlock, and western red cedar. A maritime climate characterized by heavy rainfall, relatively warm winters, and cool summers supports these species. The net volume of growing stock (gross volume less deductions for defects) on commercial coastal forests is approximately 36 billion cubic feet (1 billion cubic meters).

The climate of the interior is characterized by warm summers, cold winters, and low precipitation. The predominant species in the interior are white spruce, birch, aspen, balsam poplar, and black cottonwood. Most of the interior's 14 billion cubic feet of net volume of growing stock (.4 billion cubic meters) is found along the major rivers.

Exhibit 2 provides estimates of the net volume of growing stock on commercial forest land in coastal and interior forests. About 70% of the net growing stock is found in coastal forests and 30% in interior forests. In coastal forests, 94% of the volume is found in trees greater than 11 inches in diameter. In contrast, 58% of the interior's growing stock is found in trees 5-10.9 inches in diameter.

Exhibit 3 provides estimates of the net volume of sawtimber on commercial forest land in Alaska. While most of the timberland in Alaska is found in the interior, most of the sawtimber is in the southeast. The reason for this is that coastal forests average more than 32,000 board feet of sawtimber per acre (approximately 400 cubic meters per hectare) of timberland while in contrast, the average sawtimber stand in interior forests averages only 1370 board feet per acre (17 cubic meters per hectare). More than 37% of the sawtimber volume in coastal forests occurs in trees greater than 30 inches d.b.h. Most of the interior sawtimber, on the other hand, is between 11 and 20 inches d.b.h. It should be clarified, however, that within the vast interior, there are numerous sawtimber stands with volumes greater than 10,000 board feet per acre (125 cubic meters per hectare).



EXHIBIT 1

Forests of Alaska

- Coastal Forest
- Interior Bottomland Spruce-Poplar
- Interior Upland Spruce-Hardwood
- Interior Lowland Spruce-Hardwoods

EXHIBIT 2 NET VOLUME OF GROWING STOCK ON COMMERCIAL FOREST LAND IN ALASKA, BY SPECIES, DIAMETER CLASS & REGION

Region & Species	Diameter Class					TOTAL
	5-10	11-20	20-30	31-40	41+	
	(Million Cubic Feet))					
Coastal:						
Sitka Spruce	512	2,401	3,112	2,480	3,055	11,560
Western Hemlock	1,348	6,366	7,908	4,479	1,469	21,570
Other Softwoods	192	851	789	316	128	2,276
Hardwoods	63	163	63	11	0	300
Total coastal	2,115	9,781	11,872	7,286	4,652	35,706
%	6%	27%	34%	20%	13%	
Interior:						
White spruce	4,782	3,988	394	0	0	9,164
Paper Birch	2,318	656	0	0	0	2,974
Quaking Aspen	733	162	0	0	0	895
Balsam Poplar	425	685	106	0	0	1,216
Total Interior	8,258	5,491	500	0	0	14,249
%	57%	39%	4%			
Total Alaska	10,373	15,272	12,372	7,286	4,652	49,955
%	21%	30%	25%	15%	9%	
Volume in cubic meters	294	432	350	206	132	1,415

Source: Alaska's Forest Resource, O Keith Hutchison, U.S Forest Service 1967, PNW Bulletin 19

EXHIBIT 3 NET VOLUME OF SAWTIMBER ON COMMERCIAL FOREST LAND IN ALASKA, BY SPECIES, DIAMETER CLASS & REGION

Region & Species	Diameter Class				TOTAL
	11-20	21-30	31-40	41+	
	(MMBF)				
Coastal:					
Sitka Spruce	13,709	18,723	15,174	19,942	67,548
Western Hemlock	33,179	42,020	23,182	7,859	106,240
Other Softwoods	3,929	3,507	1,495	703	9,634
Hardwoods	780	412	83	0	1,275
Total coastal	51,597	64,662	39,934	28,504	184,697
%	28%	35%	22%	15%	
Interior:					
White spruce & other softwoods	23,281	1,668	0	0	24,949
Paper Birch	2,422	0	0	0	2,422
Balsam Poplar	2,228	414	0	0	2,642
Quaking Aspen	804	0	0	0	804
Total Interior	28,735	2,082	0	0	30,817
%	93%	7%			
Total Alaska	80,332	66,744	39,934	28,504	215,514
%	37%	31%	19%	13%	

Source: Forestry in Alaska, Chapter 13 of Alaska's Agriculture and Forestry, U.S. Forest Service, University of Alaska, and State of Alaska.

Note: These data are derived from a 1967 inventory. Some of the sawtimber may be withdrawn from timber harvests.

B. MAJOR ALASKAN SPECIES

Alaska's forests are divided into two types: coastal and interior. Coastal forests are dominated by western hemlock (60%), Sitka spruce (32%), and other softwoods (6%). Interior Alaska is vast with extensive stands dominated by white spruce (64%), birch (21%), and poplars (15%). The important characteristics of the major species found in coastal and interior forests are summarized below:

Coastal Species:

Sitka Spruce (Picea sitchensis): This tree is the largest and most valuable species in Alaska. It typically reaches a height of 160 feet (49 m.) and a diameter of three to five feet (0.9-1.5 m.). The wood is moderately light, does not shatter easily, is easy to kiln dry, straight grained, and is easy to work. Uses include high-grade pulp, airplane parts, boats, pianos, and general construction.

Western Hemlock (Tsuga heterophylla): This species ranges from two to four feet (0.6-1.2 m.) in diameter and 150 feet (46m.) in height. The wood is light and is easy to work. Its most important uses include pulpwood, construction lumber, railway ties, and boxes.

Western Red Cedar (Thuja plicata): These trees can attain heights of 70-130 feet (21-40 m.) and diameters of 2 to 4 feet (0.6-1.2 m.). The wood is light, straight grained, easy to kiln dry, highly resistant to decay, but has a poor nail holding capacity. Uses include boats, shingles, shakes, poles, and fence posts.

Yellow Cedar (Chamaecyparis nootkatensis): This is a medium sized tree typically ranging in size from 40 to 80 feet (12-24 m.) high and 1 to 2 feet (30-60 cm) in diameter. The aromatic wood is easily worked and takes a beautiful finish. It is suitable for window frames, exterior doors, boats, poles, furniture, and cabinets.

Interior Species:

White Spruce (Picea glauca): This species extends over a vast acreage in the interior. On good sites, it attains a diameter of 6 to 18 inches (15-46 cm.) and heights of 40-70 feet (12-21 m.). On the best sites, it reaches heights of 80-115 feet (24-35 m.) and diameters of 30 inches (76 cm.). The wood has an exceptionally high strength-to-weight ratio, glues easily, has excellent dimensional stability, paints well and is also suitable for high quality pulp.

Paper Birch (Betula papyrifera): This species is small to medium sized, usually ranging from 4 to 12 inches (10-30 cm.) in diameter and 20-60 feet (6-18 m.) in height. On good sites birch can attain 24 inches in diameter (60 cm.) and 80 feet (24 m.) in height. It is used for furniture, cabinets, veneer, boxes, and pulp.

Balsam Poplar (Populus balsamifera): On good sites, this species grows to heights of 100 feet (30 m.) and diameters of greater than 24 inches (60 cm.). Its primary uses are for boxes, crates, and sometimes for house logs. Although the fibers are short, balsam poplar is also suitable for pulp.

Black Cottonwood (Populus trichocarpa): This large tree grows 80-100 feet (24-30 m.) tall and 3 feet (1 m.) in diameter. This tree is very similar except bigger than balsam poplar. The wood is used for boxes and crates, pulp, veneer, and lumber.

Quaking Aspen (Populus tremuloides): This tree typically grows 20-40 feet (6-12 m.) high and 3-12 inches (7.5-30 cm.) in diameter. It often occurs in dense pure stands. This wood is light, weak, soft, and has high shrinkage. Its ability to hold a nail is low and has a tendency to crack in nailing. Aspen is suitable for pulp, boxes, and waferboard.

C. REGIONAL CHARACTERISTICS

To further describe the forest resource, it is convenient to divide Alaska into six regions (See exhibit 4). A brief description of the forest resource within each region is provided:

The Southeast Region:

The southeast Region, the principal location of Alaska's forest product industry, contains 11 million acres of forest land of which 5 million are commercial quality and two million designated for commercial management. Most of the timber is old-growth found on islands or within three miles of tideland and at elevations of less than 2,000 feet. Timber stands in this area average 35,000 board feet per acre (approximately 450 cubic meters per hectare) but range from 8 MBF to over 100 MBF. Total net sawtimber volume is estimated to be 166 billion board feet (800 million cubic meters) and consists of 61% western hemlock and 31% spruce with the balance in cedar and other species. Areas designated for commercial management contain some of the highest volumes of old-growth softwood in the world and second growth forests display excellent growth and volume characteristics.

The Southcentral Region:

Forests within the region are scattered and vary greatly in terms of timber types, volume, growth potential, access, wood quality, and economic value. Species in the region include Sitka spruce, balsam poplar, cottonwood, birch, white spruce, and western hemlock.

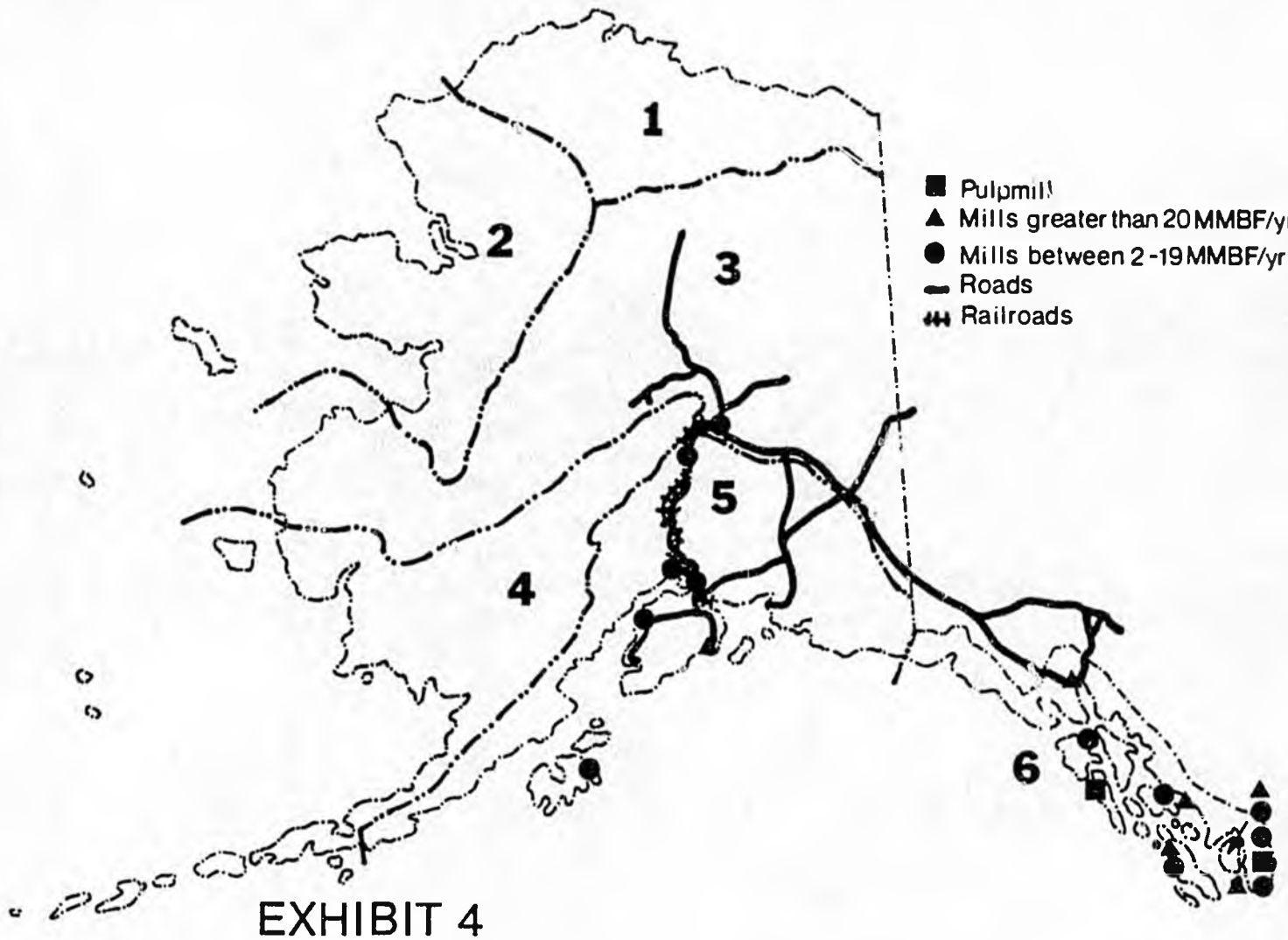


EXHIBIT 4

Pulpmills, Sawmills, Roads & Railroads within Six Biological Regions

1 NORTH SLOPE
2. NORTHWEST
3. YUKON
4. SOUTHWEST
5. SOUTHCENTRAL
6. SOUTHEAST

Reliable data on commercial forest land and sawtimber volume, while not available for the region as a whole, is available for some sub-regions: The 40,000 acres of commercial forest around Kodiak island, for example, are primarily Sitka spruce and average 11,400 board feet of sawtimber per acre; the white and Sitka spruce stands to the west of the Cook Inlet contain 534 MMBF and average nearly 12,000 board feet per acre; Afognak Island contains 5.6 billion board feet of sawtimber and averages over 25,000 board feet per acre of spruce; and the better stands of spruce-hemlock around Yakataga can support over 100 MBF per acre. In contrast, more than one-third of the commercial forest land in the Susitna valley is either without timber or occupied by rotten or poorly formed trees. Where there is timber, the most productive stands occur in well-drained flood plains and consist of black cottenwood, balsam poplar, or birch.

Accessibility in the region is varied and includes the sea, major highways, the Alaska railroad, and major river systems. More than 60% of the State's population resides within the region. There are numerous small sawmills but no major sawmills currently operating in the region and most of the wood consumed is imported from the Pacific Northwest.

The Southwest Region:

This region contains 29 million acres of total forest land and 4 million acres of commercial timberland. Sawtimber stands account for slightly more than 1 million acres of the commercial forest land. White spruce is the predominant species, followed by birch and balsam poplar. Net sawtimber volume on commercial forest land in the region is an estimated 5 billion board feet.

Most of the commercial forests are located along the river banks. Access to the forest resource is possible from the Kuskokwim and other rivers. Access is limited, however, from May to October. Logging may also restricted during the spring thaw in May and the cold winter months. Numerous small sawmills are found in the region that cut lumber and logs for homes, cabins, and other local uses.

The Yukon Region:

The Yukon region contains about 79 million acres of forest land, of which 17 million acres is classified as commercial. Total volume is estimated to be about 20 billion board feet or about 1,100 board feet per acre. Sawtimber stands in the region average about 3,300 board feet per acre. Good sites yield 15,000 board feet per acre. Most of the commercial forest is found along flood plains and low river terraces. Softwoods account for 87% of the sawtimber volume with white spruce the major commercial species. Although most of the forest in the region has never been harvested, large acreages of the forest resource are immature due to fires (on average, an estimated 1 million acres per year burned in Alaska from 1940-1969).

Access in the region includes the Yukon and Tanana rivers, the Alaska Railroad, and the road system around Fairbanks. Numerous small sawmills are scattered throughout the region. Flat terrain and large blocks of ownership provide two of the critical ingredients for large scale timber development.

The Northwest Region:

The commercial forests in the northwest region are found primarily at lower elevations in valley bottoms, along major streams, and occasionally on entire hillsides. Commercial forests occupy about 686,000 acres in this region with white spruce accounting for 87% of the commercial land area and birch about 10%. Sawtimber volume in the region is an estimated 487 million board feet. About 1% of the sawtimber volume is considered grade 1 (best, largest, and free of visible defects) and 27% grade 4 (poorest, but suitable for local use and fiber).

Although white spruce can attain diameters of 30 inches and heights of 115 feet, most of the commercial spruce in this region is less than 12 inches in diameter and less than 50 feet tall. Volume per acre ranges from 100 board feet per acre to 10,000 board feet per acre, but averages less than 2 MBF. Several small mills producing less than 1 MMBF per year exist in the region.

Most of the forest land in the northwest is accessible from the major rivers. Consequently, boat access and log removal by water is the most practical, albeit seasonal, means of transportation. Access by aircraft such as helicopters or use of all terrain vehicles over frozen surfaces is also possible. There is no extensive road or railroad access.

III. OWNERSHIP OF THE FOREST RESOURCE

When Alaska became a state in 1959, the federal government owned 99.8% of the land in Alaska. The Statehood Act, signed into law in 1959, began a dramatic shift of land ownership patterns. The act authorized the State to select 104 million acres (42 million hectares) of land (approximately 28% of Alaska's land area). As of January 1985, the State had applied for 110 million acres of land. Of this, 23 million acres has been patented and 57 million acres tentatively approved.

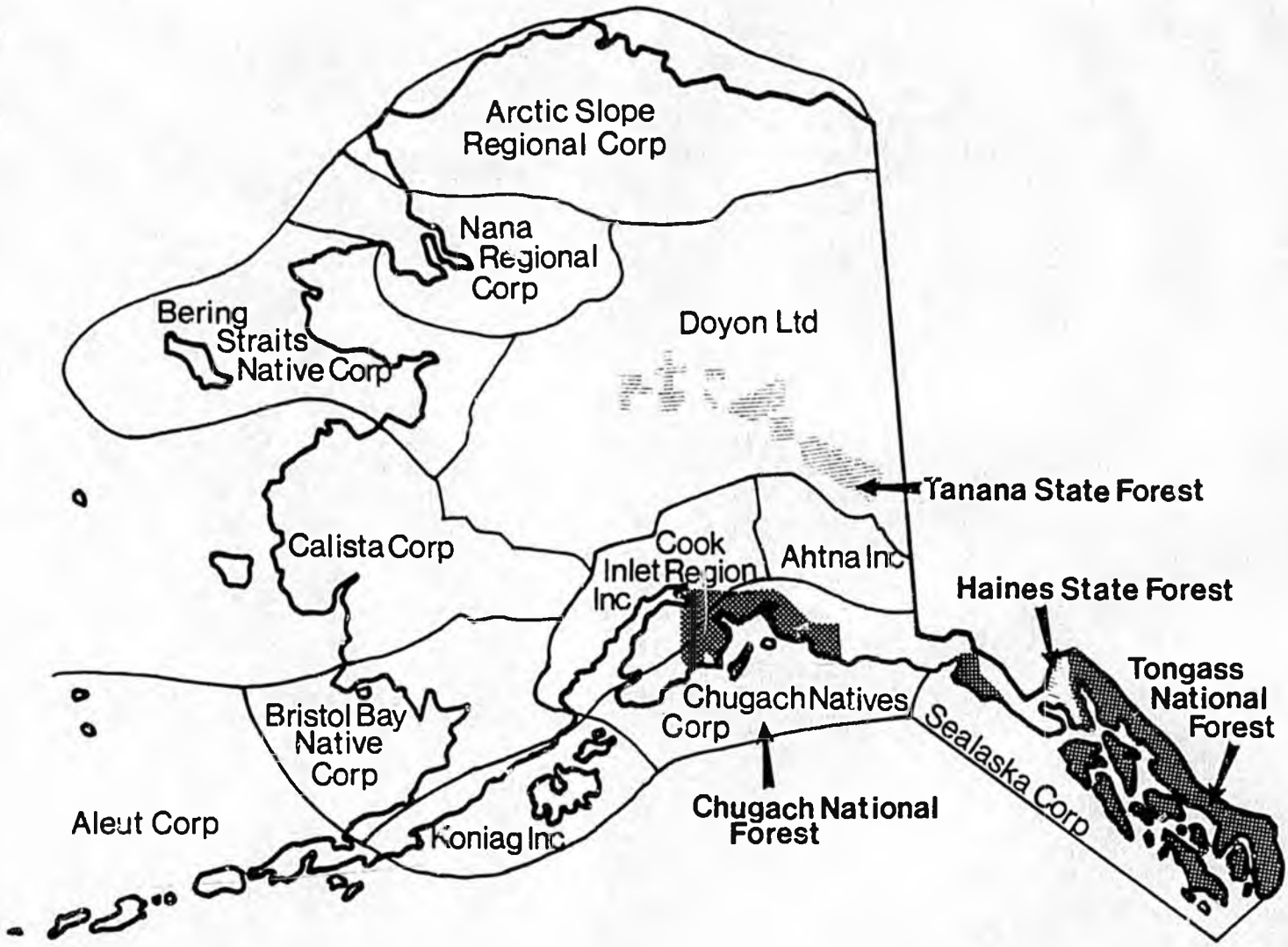
The passage of the Alaska Native Claims Settlement Act (ANSCA) in 1971 was the next legislative action to impact land ownership patterns in Alaska. This act granted thirteen Native corporations and smaller village corporations the right to receive title to approximately 44 million acres (17.8 million hectares) of land (12% of Alaska's land area). As much as eight million acres of this land may be timberland. Although the selection process is not complete (as of 1982 Native corporations had received title to approximately 20 million acres), an immediate result of the initial land transfers has been the entrance of Native corporations into the timber industry. Harvests from Native lands, for example, rose from almost nothing in 1979 to 232 MMBF in 1983. Since there is no prohibition on the export of round logs from Native lands, the importance of round logs in Alaska's timber industry has rapidly increased.

Another piece of federal legislation that is impacting the forest industry is the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. This act added 104 acres (42 million hectares) to conservation systems (national parks, preserves, monuments, refuges, etc.) in Alaska. This act identifies lands available for harvest as well as nonharvestable acres. To compensate for the loss of timberland, the Congress mandated in ANILCA that 4.5 billion board feet of timber be made available each decade from the Tongass National Forest in southeast Alaska. In addition, the act authorized the expenditure of $40 million to maintain this yield. The pulp and cant industry in southeast Alaska uses the Tongass National Forest as its land base.

The result of the Statehood Act, ANCSA, and ANILCA is a unique Native/State/Federal land ownership pattern which is still undergoing change. As a result, ownership maps and inventories are limited. Exhibit 5 shows the national and State forests as well as the boundaries of the Native corporations.

EXHIBIT 5

National Forest, State Forest, and Native Corporation Boundaries



As of 1982, the federal government owned 302 million acres (81% of Alaska), the State 52 million acres (14%), and Native corporations 20 million acres (5%). Of the federal land, over half is in conservation areas. This means that commercial harvest of timber is not allowed on approximately 79 million acres of federal land. By 1990, federal land ownership is expected to decline to 225 million acres, the State's to increase to 104 million, and Native corporation's to 44 million.

In terms of ownership of commercial forest resources, one estimate identified 29 million acres (11.7 million hectares) of which the federal government owns 10.2 million acres (35%), Native corporations own 8.6 million acres (29%), and the State owns 10.6 million acres (36%). In terms of acreage, most of the Native and State-owned commercial forest land is in the interior while the bulk of federal commercial timberland is in coastal areas. However, Native corporations in southeast Alaska have selected prime timber acreage and currently produce over 40% of Alaska's timber harvest.

In terms of existing volumes, growth rates, land ownership, and species, the underutilized interior forests display considerable development potential. Lack of access and only recent private and state acquisition of land are among the historical constraints on development. Another stumbling block to the development of forest resources in the interior has been a lack of ongoing, consistent volumes of timber made available for sale. In an attempt to create a land base dedicated to forestry, the State of Alaska recently created the 229,000 acre Haines State forest and the 1.7 million acre Tanana State forest. These forests, made possible by the State Forest Bill in 1982, dedicate land to forestry and multiple use management. Additional State forests are under consideration.

EXHIBIT 6 LAND STATUS IN ALASKA

OWNER	1982	1990
	(Million acres)	
Federal		
Conservation Units	151.8	152.4
BLM	147.6	70.0
Other	2.6	2.6
Total Federal	302.0	225.0
State (includes local govn.)	52.0	104.0
Native	20.0	44.0
Other Private	1.0	2.0
Total Alaska	375.0	375.0

Source: Alaskan Resources Development, edited by Thomas Morehouse, Westview Press, 1984

IV. ALASKA'S FOREST PRODUCTS INDUSTRY

A. Historical Background

The forest industry has been an important component of Alaska's economy for over a century. In 1889, for example, 11 sawmills were in operation in southeast Alaska. By 1910, the annual timber cut in the southeast amounted to 27 MMBF and the number of sawmills had increased to 25. In the interior, several small mills provided lumber for flumes, sluice boxes, and commercial buildings. Most of the timber cut in Alaska's interior, however, was used for firewood in the early part of the 20th century. World War II was a big boost for Alaska's forest industry. From 1943 to 1944, Alaska produced 38 MMBF of lumber for use in airplanes.

Alaska's first large pulp mill opened in 1954 in Ketchikan. A second pulp mill, owned by Japanese interests, opened in 1959 in Sitka. The U.S. Forest Service encouraged the start-up of these mills through long-term timber sale contracts. Both pulp mills produce dissolving sulphite alpha pulp which is used in the manufacture of rayon.

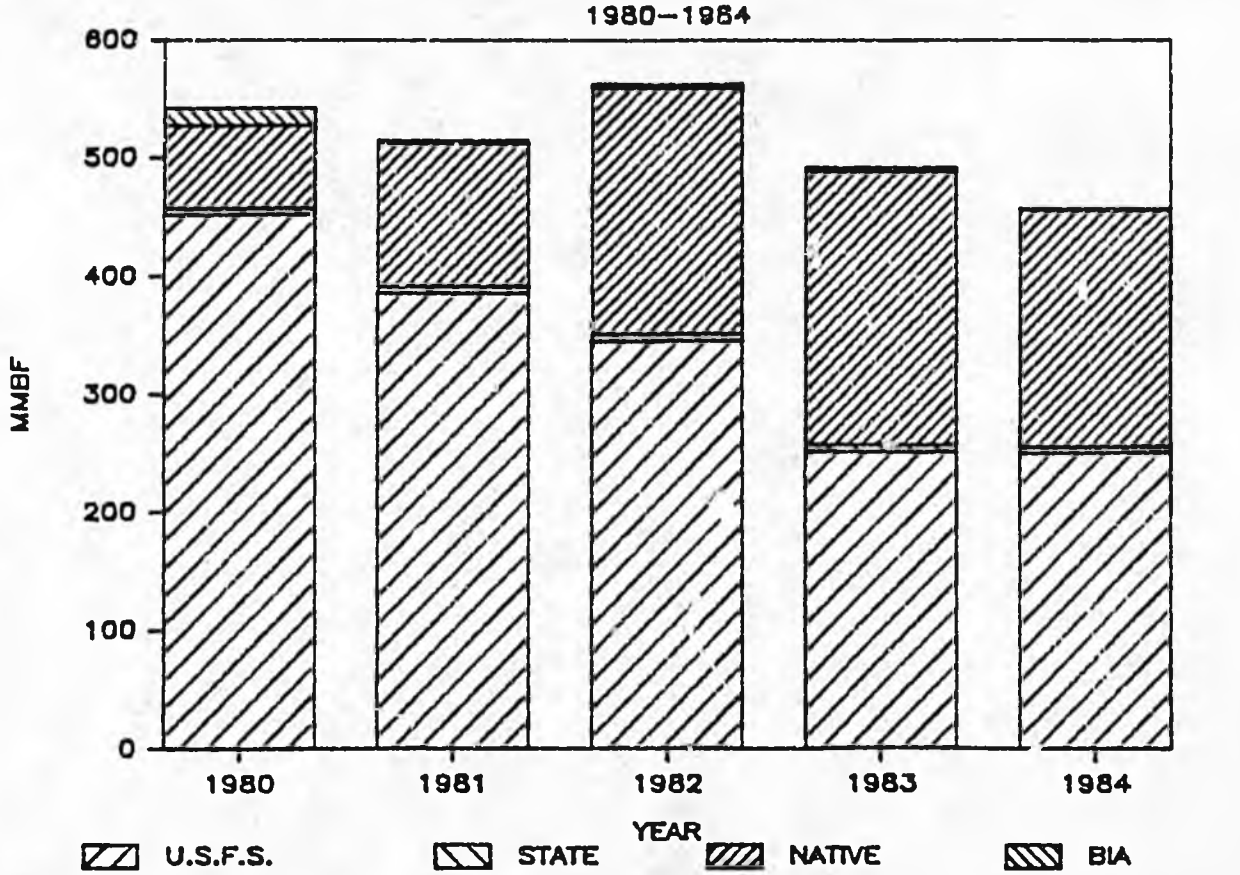
By 1969, the demand for timber from National Forests exceeded 500 MMBF. Since then, Alaska's timber industry has been primarily an export industry concentrated in southeast Alaska, although some green lumber, house logs, and fuelwood are consumed in-state. Production of wood products in Alaska peaked in 1973 when the annual harvest was about 750 MMBF. Between 1975 and 1982, the annual timber harvest in Alaska averaged 530 MMBF.

B. Timber Harvests

Timber harvests in southeast Alaska (about 90% of the statewide harvest) from 1980 through 1983 are shown in Exhibit 7. While the total timber harvest during this period was fairly stable, harvests from the U.S. Forest Service lands declined each year while harvests from Native ownerships increased. Although the State has created two state forests, harvests from state land remain insignificant.

Exhibit 7

TIMBER HARVEST IN SOUTHEAST ALASKA



Source: Joe Mehrkens, U.S.F.S.

C. Timber Processing

At present, Alaska has two pulpmills, six sawmills with a capacity of greater than 20 MMBF per year, and 15 sawmills with a capacity between 2 and 19 MBF per year (See exhibit 4). Also scattered throughout the State are about 150 small mills with a capacity of less than 1 MMBF per year. These operate part-time and produce only for local uses.

Exhibit 8 shows the approximate capacity and 1984 production for the pulpmills and the seven largest sawmills in the state. Because of depressed market conditions, strikes, and the strong dollar, some mills have been operating at reduced capacity or have even closed temporarily. Pulp production dropped slightly from 254 thousand tons in 1983 to 237 thousand tons in 1984. Production at the major sawmills also declined slightly from 131 MMBF to 127 MMBF in 1984. Most of the sawmills produce either cants for export or green lumber for in-state use. In 1984, 86,000 bone dry units of woodchips were also produced. Timber harvested from federal or State land must be processed into cants before export. No restrictions apply on timber from Native lands. Employment in the forest products industry in Alaska averaged 2,803 between 1974 and 1982.

Exhibit 8 Timber Processing Capacity and Output in Alaska, 1984

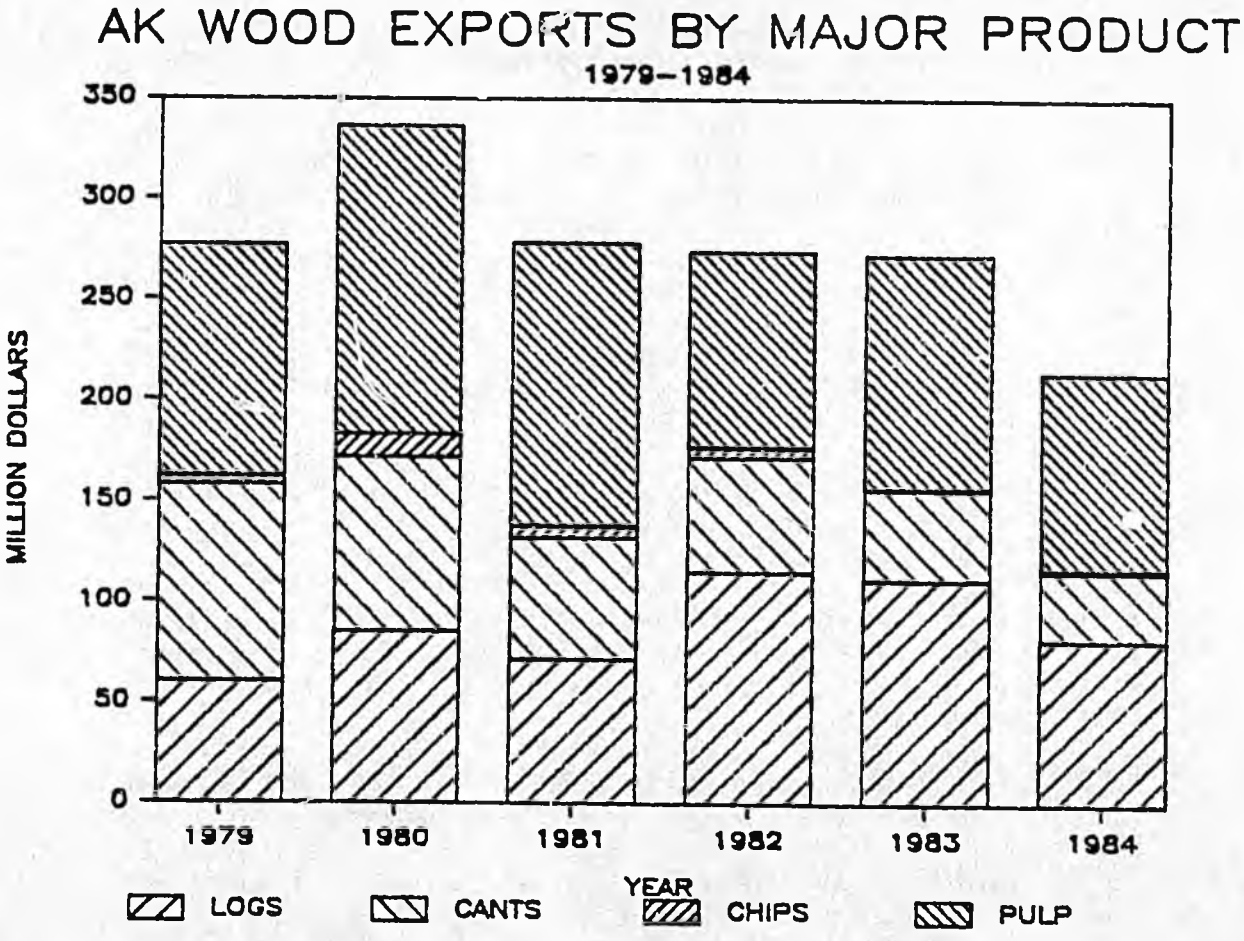
Company	Location	Capacity	1984 Output
Pulpmills:		(M tons)	
Alaska Pulp Co.	Sitka	192	152
Louisiana Pacific	Ketchikan	200	85
Sawmills:		(MMBF)	
Alaska Timber Co.	Klawock	45	6
Wrangell Forest Prod.	Wrangell	68	35
Louisiana Pacific	Annette Island	60	75
Louisiana Pacific	Ketchikan	60	0
Mitkof Lumber Co.	Petersburg	15	4
Pacific Forest Prod.	Haines	30	6
Yakutat-Kwan/Koncor	Yakutat	15	1

Source: Joe Mehrkens, U.S. Forest Service

D. Timber Exports

Although Alaska imports about 100 MMBF of lumber annually, the major portion of the timber produced in Alaska is exported, with Japan being the major customer. Exports of Alaska's forest products in 1984 were valued at $217 million, down from $272 million in 1983, and down from a high of $339 million in 1980. Native corporations, which were created in 1971, have selected prime timberland and have come to play a major role in the timber industry through their export of round logs and have largely offset the decline in the cant markets since 1980 (See Exhibit 9). In terms of species, log and cant exports consist of 51% western hemlock, 42% Sitka spruce, and 7% other species such as cedar. In terms of value, spruce logs are typically the highest value product per board foot and hemlock cants the lowest.

Exhibit 9



Source: Joe Mehrkens, U.S.F.S.; U.S. Dept. of Commerce

IV. STAND CHARACTERISTICS OF INVENTORY UNITS

The statewide and regional inventory data presented above was derived primarily from a study completed in 1967. Since then, there have been several inventories on selected areas throughout the State (See Exhibit 10). The purpose of this section is to present more detailed stand characteristic information for areas where more current inventory data exist.

Exhibit 11 provides basic stand data for 17 inventory units. These units represent over 10 million acres of commercial timber land and 181 billion board feet of sawtimber. Although twice as much land was inventoried in the interior than in southeast, 90% of the commercial sawtimber volume was found in southeast. This is due to the fact that the forests inventoried in the southeast averaged nearly 26,000 board feet per acre of sawtimber whereas forests in interior Alaska averaged only 4,300. Note, however, that these averages are over all acres of timberland. If one were to find average volumes of sawtimber in sawtimber stands, the volume per acre would be much higher. Thus, although interior forest may average less than 5,000 MBF per acre, there are substantial areas of sawtimber stands that have higher timber volumes. The sawtimber figures also understate the pulp wood potential which exists in the vast volume of growing stock in the 8-12 inch diameter range. In addition, interior forests generally occur on flatter land than in southeast and, consequently, road costs per mile may be cheaper.

Exhibit 12 provides a breakdown of sawtimber volume on the 17 inventory units by major species. Again, there is a clear distinction between forests found in the interior and in southeast. In interior Alaska, 75% of the sawtimber volume is softwoods while in southeast Alaska 99% of the volume is softwood. In interior Alaska, 49% of the volume is white spruce, 19% Sitka spruce, 12% birch, and 11% black cottonwood. In southeast Alaska, 62% of the volume is hemlock, 30% Sitka spruce, and 7% cedar.

Exhibit 13 provides a breakdown of commercial timberland by volume class. In southeast Alaska, there are over 1.7 million acres of timber land with volumes greater than 30 MBF per acre. In interior Alaska, there are 738,000 acres with volume greater than 7 MBF per acre.

Exhibits 14 and 15 compare the net volume of sawtimber in interior and southeast inventory units by diameter class. In southeast, 68% of the volume occurs in trees greater than 21 inches d.b.h. In the interior, 28% of the volume is in trees greater than 21 inches d.b.h.

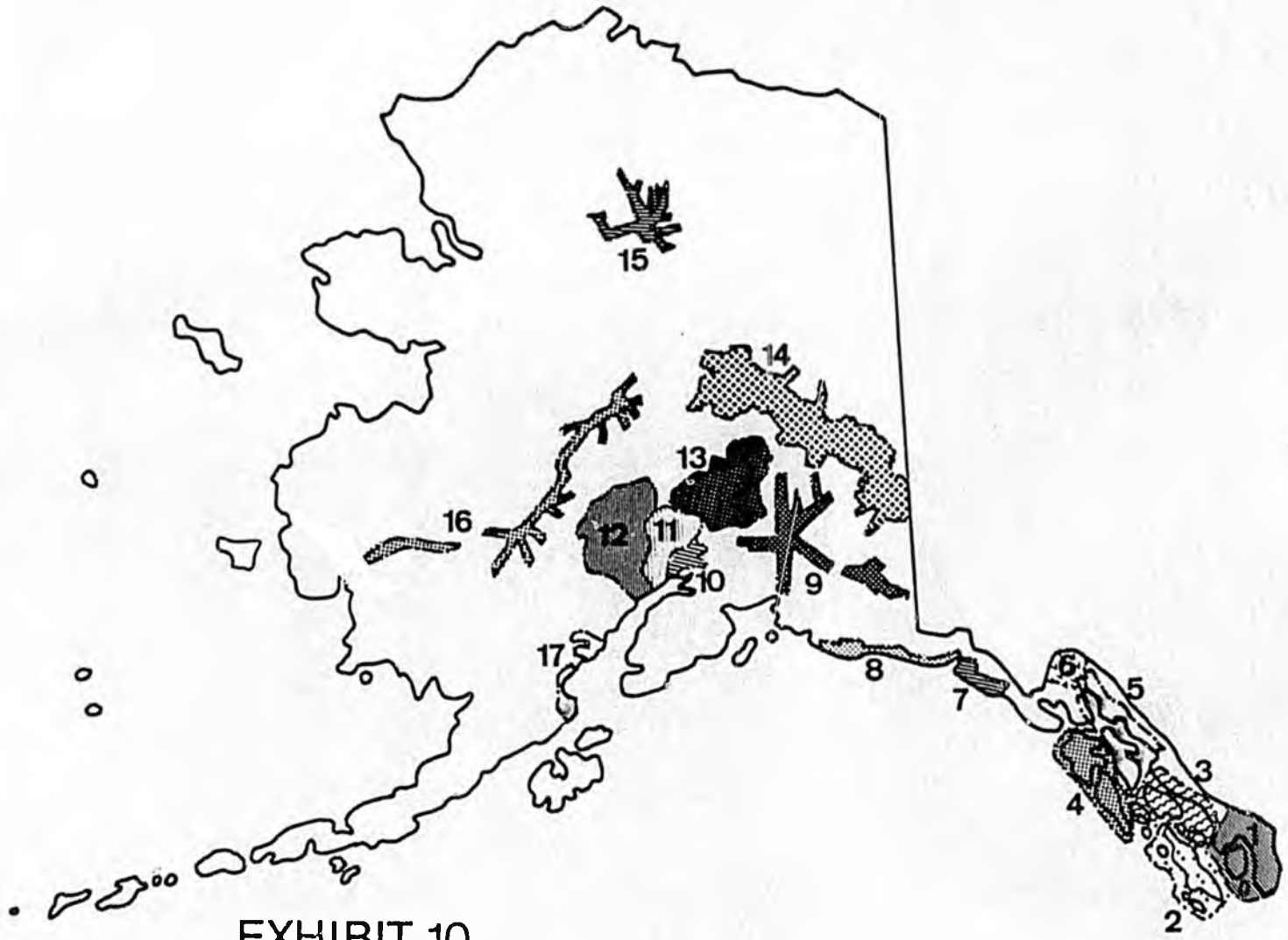


EXHIBIT 10

Inventory Units

1. Ketchikan
2. Prince of Wales
3. Petersburg/Wrangell
4. Sitka
5. Juneau
6. Haines/Skagway
7. Yakutat
8. Yakataga
9. Copper River
10. Willow
11. Talkeetna
12. Beluga
13. Upper Susitna
14. Tanana
15. Koyukuk
16. Kuskokwim
17. Cook Inlet

Exhibit 11 Inventory Statistics for Selected Areas in Alaska

Inventory Unit	Total Land Area (000ac)	Commer. Timber land (000ac)	Sawtim. Stands (000ac)	Total Net Grwng. Stk. (mil. cu.ft.)	Total Net Sawtimber Vol. on Timberland (MMBF)	Sawtimber Vol. per Acre of Timberland (BF/ac)	Avg. Net Vol. per Sawtimber Tree (BF)	Sawtimber Trees/Acre of Timber-land
Interior:								
Tuxedni Bay	180	45	42	105	534	11,841	175	68
Talkeetna	5,623	562	n/a	575	2,132	3,793	132	29
Tanana	13,648	2,195	516	2,273	5,951	2,712	102	27
Upper Koyukuk	742	35	8	38	88	3,527	79	32
Willow	978	230	n/a	232	564	2,450	88	28
Upper Susitna	5,667	112	n/a	185	1,022	9,116	369	25
Beluga	3,740	132	n/a	99	424	3,220	90	36
Copper River	2,022	288	154	304	1,160	4,029	105	38
Kuskokwim	1,231	252	159	343	1,112	4,403	100	44
Yakataga	662	209	133	917	4,568	21,824	339	64
Southeast:								
Haines - Skagway	449	111	104	538	2,887	26,019	311	84
Yakutat	750	236	187	1,057	5,263	22,274	306	73
Ketchikan	3,305	1,162	1,127	6,393	27,675	23,827	338	70
Juneau	3,209	1,322	1,292	8,265	36,796	27,841	347	80
Sitka	2,572	822	788	4,858	22,870	27,834	391	71
Petersburg/Wrangell	3,014	1,287	1,240	7,069	32,540	25,286	382	66
Prince of Wales	4,283	1,378	1,257	7,556	35,176	25,530	397	64

Source: Timber Resource Statistics for Individual Inventory Units Published by the U.S. Forest Service.

Exhibit 12 Net Sawtimber Volume on Timberland in Selected Inventory Units by Species (MMBF)

Inventory Unit	SOFTWOODS						HARDWOODS			
	White Spruce	Sitka Spruce	Hemlock	Cedar	Other	Total Softwoods	Birch	Black Cotton-wood	Other	Total Hardwoods
	(MMBF International 1/4 Inch Rule)									
Interior:										
Tuxedni Bay	488					488	3		42	45
Talkeetna	207					207	989	936		1,925
Tanana	5,452				36	5,488	257		206	463
Upper Koyukuk	86					86			2	2
Willow	9				6	15	546		3	549
Upper Susitna	24					24	139	859		998
Beluga	328					328	95			95
Copper River	1,081					1,081			79	79
Kuskokwim	987					987	28		97	125
Yakataga		3,281	1,217			4,498		69		69
TOTAL INTERIOR	8,662	3,281	1,217	0	42	13,202	2,057	1,864	429	4,350
Southeast:										
Haines-Skagway		1,358	1,234		1	2,593	8	284	2	294
Yakutat		4,091	157		740	4,988		273		273
Ketchikan		6,923	16,806	3,079	681	27,489		130	56	186
Juneau		10,813	25,043	873		36,729		54	16	70
Sitka		7,375	14,360	1,004		22,739		76	56	132
Petersburg/Wrangell		9,212	20,873	2,279	46	32,410		68	62	130
Prince of Wales		8,866	22,131	4,015	139	35,151			25	25
TOTAL SOUTHEAST	0	48,638	100,604	11,250	1,607	162,099	8	885	217	1,110
TOTAL ALASKA	8,662	51,919	101,821	11,250	1,649	175,301	2,065	2,749	646	5,460

Source: Timber Resource Statistics for Individual Inventory Units Published by the U.S. Forest Service.

Note: Totals may not add due to rounding.

Exhibit 13 Area of Commercial Forest Land by Board Foot Volume Class

Inventory Unit	STAND VOLUME PER ACRE (BD. FT./ACRE)								
	0-1499	1500-4999	5000-6999	7000-7999	8000-20000	20001-30000	30001-50000	50000+	TOTAL
	(000 Acres)								
Interior:									
Tuxedni Bay	1	6	4	35					45
Talkeetna	165	269	41	86					562
Tanana	1,266	468	122	339					2,195
Upper Koyukuk	19	11	0	4					35
Willow	104	81	34	12					230
Upper Susitna	32	47	0	33					112
Beluga	14	108	10	0					132
Copper River	115	80	28	65					288
Kuskokwim	58	107	43	44					252
Yakataga				90	27	31	33	29	209
TOTAL INTERIOR	1,774	1,177	282	708	27	31	33	29	4,061
Southeast:									
Haines-Skagway*	4	1	106						111
Yakutat				61	70	40	54	11	236
Ketchikan				35	610	263	211	42	1,161
Juneau				29	431	440	373	47	1,322
Sitka				34	235	257	268	27	822
Petersburg/Wrangell				47	554	393	244	48	1,287
Prince of Wales				121	540	350	284	83	1,378
TOTAL SOUTHEAST	4	1	106	327	2,440	1,743	1,434	258	6,313
TOTAL INVENTORY	1,778	1,178	388	1,035	2,467	1,774	1,467	287	10,374

Source: Timber Resource Statistics for Individual Inventory Units Published by the U.S. Forest Service.

Note: Totals may not add due to rounding or errors in the original data. Arrows represent acreage in that class or greater.

* 59% of the Haines-Skagway unit was in stand volume class 25,000 or greater. Because of different classes used in the Haines-Skagway inventory, it was not possible to show acreage where bd./ft./acre was greater than 5,000.

Exhibit 14 Net Volume of Sawtimber on Timberland by Diameter Class for Selected Inventory Units in Interior Alaska

Inventory Unit	D.B.H. CLASS 9.0-10.9	11.0-12.9	13.0-14.9	15.0-16.9	17.0-18.9	19.0-20.9	21.0-28.9	29+	Total
	(MMBF International 1/4 Inch Rule)								
Tuxedni Bay	41	60	69	51	62	58	153	40	534
Talkeetna	114	342	378	250	298	96	457	198	2,133
Tanana	1,571	1,757	1,261	728	363	175	93	2	5,950
Upper Koyukuk	27	27	15	10	4	2	3	0	88
Willow	66	210	125	95	35	17	15		563
Upper Susitna	26	22	61	32	-	60	234	587	1,022
Beluga	99	105	104	48	56	10	2		424
Copper River	343	281	278	106	80	36	32	2	1,158
Kuskokwim	174	303	248	182	106	55	44	0	1,112
Yakataga	n/a	232	244	376	385	317	1,229	1,784	4,567
TOTAL	2461	3339	2783	1878	1389	826	2262	2613	17551
% of Total	14%	19%	16%	11%	8%	5%	13%	15%	

Source: Timber Resource Statistics for Individual Inventory Units Published by the U.S. Forest Service.

Note: Totals may not add or may differ from other exhibits due to rounding.

Exhibit 15 Net Volume of Sawtimber on Timberland by Diameter Class for Selected Inventory Units in Southeast Alaska

	D.B.H. CLASS					
	11.0-20.9	21.0-30.9	31.0-40.9	41.0-50.9	51+	Total
Haines-Skagway	965	1,343	467	112		2,887
Yakutat	2,549	1,731	702	223	58	5,263
Ketchikan	8,296	9,924	5,875	2,369	1,211	27,675
Juneau	12,404	14,476	7,216	2,126	573	36,796
Sitka	6,827	8,579	4,764	1,630	905	22,705
Petersburg/Wrangell	10,166	11,945	6,800	2,736	892	32,540
Prince of Wales	10,474	11,611	7,600	3,355	2,136	35,176
TOTAL SOUTHEAST	5,168	59,600	33,424	12,551	5,775	163,040
% of Total	32%	37%	20%	8%	3%	

Source: Timber Resource Statistics for Individual Inventory Units Published by the U.S. Forest Service.

Note: Totals may not add due to rounding or errors in the original data.

SOURCES

1. Alaska's Forest Resource, O Keith Hutchison, U.S Forest Service 1967, PNW Bulletin 19

2. Forestry in Alaska, Chapter 13 of Alaska's Agriculture & Forestry, U.S. Forest Service, University of Alaska, & State of Alaska.

3. Resources of Alaska, the Federal-State Land Use Planning Commission, 1975

4. The Alaska Statistical Review 1980, Alaska Dept. of Commerce.

5. Alaska 1983-1984 Sawmill Directory, Alaska Department of Natural Resources

6. Timber Supply and Demand 1983, Joe Mehrke[illegible], U.S. Forest Service

7. Alaskan Resources Development, edited by Thomas Morehouse, Westview Press, 1984

8. Alaska Forest Market Report, Gruenfeld

9. Alaska Construction and Oil, September 1984

10. Alaska Trees and Shrubs, U.S Forest Service

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

M E M O R A N D U M January 7, 1986

TO: Arliss

FROM: Frank

RE: Multiple Use Defined in Alaska Statutes

You asked for a review of the statutes that refer to multiple use on state lands. The term can be found in a number of titles generally categorized as follows:

AS 16.20 - designates multiple use on several state game reserves

AS 38.04/05 - defines multiple use on state lands

AS 41.15/17 - defines multiple use on state forest lands

AS 41.21 - closes certain state parks, recreation areas and preserves to multiple use

The guiding definition of multiple use on Alaska lands can be found in AS 38.04.910(4) which is reproduced below:

> AS. 38.04.910(4) "multiple use" means the management of state land and its various resource values so that it is used in the combination that will best meet the present and future needs of the people of Alaska, making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; it includes

(A) the use of some land for less than all of the resources, and
(B) a combination of balanced and diverse resource uses that takes into account the short-term and long-term needs of present and future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historic values.

Multiple use is further defined under the AS 41.17 Forest Resources and Practices:

AS 41.17.950(8) "multiple use" means
(A) the management of all the various resources of forest land so that they are used in the combination that will best meet the needs of the citizens of Alaska, making the most judicious use of the land for some or all of these resources or related values, benefits, and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;
(B) that some land will be used for less than all of the resources; and
(C) harmonious and coordinated management of the various resources, each with the other, without significant impairment of the productivity of the land and water, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

In general, all state lands are to be managed using the principle of multiple use. AS 38.05.300 states that if more than 640 acres are to be closed to multiple use, the closure must be approved by the legislature.

The following Alaska statute references contain the term multiple use as applied to state lands and forests. The specific statutes are attached for your information.

AS 38.04.065(b)	Use in state land plans
AS 38.04.070(1)	State land classification
AS 38.04.910(4)	Definition under classification of state lands
AS 38.05.285	Multiple use on mineral lands
AS 38.05.300	Closure of more than 640 acres must be by legislature
AS 38.05.965(11)	Definition under Alaska Lands Act
AS 41.15.315(a)	Haines State Forest Management Area
AS 41.17.060(c)(1)	Management of state forests
AS 41.17.210(a)	State forest establishment
AS 41.17.950(8)	Multiple use defined under forest practices

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

M E M O R A N D U M January 7, 1986

TO: Arliss

FROM: Frank

RE: Multiple Use Defined in Alaska Statutes

You asked for a review of the statutes that refer to multiple use on state lands. The term can be found in a number of titles generally categorized as follows:

AS 16.20 - designates multiple use on several state game reserves

AS 38.04/05 - defines multiple use on state lands

AS 41.15/17 - defines multiple use on state forest lands

AS 41.21 - closes certain state parks, recreation areas and preserves to multiple use

The guiding definition of multiple use on Alaska lands can be found in AS 38.04.910(4) which is reproduced below:

> AS. 38.04.910(4) "multiple use" means the management of state land and its various resource values so that it is used in the combination that will best meet the present and future needs of the people of Alaska, making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; it includes

(A) the use of some land for less than all of the resources, and
(B) a combination of balanced and diverse resource uses that takes into account the short-term and long-term needs of present and future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historic values.

Multiple use is further defined under the AS 41.17 Forest Resources and Practices:

AS 41.17.950(8) "multiple use" means
(A) the management of all the various resources of forest land so that they are used in the combination that will best meet the needs of the citizens of Alaska, making the most judicious use of the land for some or all of these resources or related values, benefits, and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;
(B) that some land will be used for less than all of the resources; and
(C) harmonious and coordinated management of the various resources, each with the other, without significant impairment of the productivity of the land and water, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

In general, all state lands are to be managed using the principle of multiple use. AS 38.05.300 states that if more than 640 acres are to be closed to multiple use, the closure must be approved by the legislature.

The following Alaska statute references contain the term multiple use as applied to state lands and forests. The specific statutes are attached for your information.

AS 38.04.065(b)	Use in state land plans
AS 38.04.070(1)	State land classification
AS 38.04.910(4)	Definition under classification of state lands
AS 38.05.285	Multiple use on mineral lands
AS 38.05.300	Closure of more than 640 acres must be by legislature
AS 38.05.965(11)	Definition under Alaska Lands Act
AS 41.15.315(a)	Haines State Forest Management Area
AS 41.17.060(c)(1)	Management of state forests
AS 41.17.210(a)	State forest establishment
AS 41.17.950(8)	Multiple use defined under forest practices


HB
7

SECTIONAL ANALYSIS HB 7

To: House Resources Committee Files
From: Janet Fries, Committee Aide
Date: 1/23/85

Section 1 (AS 16.05.815 (a))

This section reinstates permanently in Alaska Statutes the authority of the Department of Public Safety, Di·ision of Fish and Wildlife Protection to access confidential information of the Department of Fish and Game to assist in their enforcement efforts.

The confidential records to which this bill refers are fish tickets.

Official Business

Alaska State Legislature
House Resources Committee

HB 7

SIGN-IN

JANUARY 23RD, 1985

NAME	ADDRESS	PHONE	REPRESENTING
[illegible]	[illegible]	[illegible]	[illegible]
Ken Parker	3-2000 Juneau Ak.		ADF+G
Fred Griffith	"		"

Official Business

Alaska State Legislature
House Resources Committee
SIGN-IN

January 23rd, 1985

HB 7
CONFIDENTIAL RECORDS/ REPORTS DIV. OF FISH & WILDLIFE PROTECTION

NAME	ADDRESS	PHONE	REPRESENTING
Conrad SEIBEL	2760 Sherwood Lane Juneau 99801	789-2161	Public Safety
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

JAN 21 1985

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

January 18, 1985

The Honorable Adelheid Herrmann
Co-Chair, House Resources Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Herrmann:

Under the present language in Alaska Statute 16.05.815 (a), our Department's Division of Fish & Wildlife Protection is prohibited from viewing fish tickets without first having probable cause, and then obtaining a Court order. Providing ready access by the Division of Fish & Wildlife Protection to fish tickets is vital to our agency's efforts to effectively enforce the State's limited entry laws.

Our Division of Fish & Wildlife Protection utilizes the information from the fish tickets as evidence to substantiate that a violation of the State's limited entry laws, or other commercial fishing laws or regulations, did in fact take place.

The type of information contained on fish tickets can provide our Fish & Wildlife Protection Troopers with probable cause to believe that a violation of the State's limited entry laws has occurred.

Having ready access to the fish tickets and fish ticket information is absolutely essential if the Division of Fish & Wildlife Protection is to enforce limited entry. Access to fish tickets would: (1) Allow us to determine who were permit holders; (2) allow us to determine who was purchasing fish from non-permit holders; and (3) increase the apprehension of illegal commercial fishermen substantially.

Our Department strongly believes that having ready access to fish tickets and fish ticket information, as provided for in HB 7, is critical to our agency's effective enforcement of Alaska's limited entry and commercial fishing laws.

Sincerely,

Robert J. Sundberg
Commissioner

12-L2LH

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

November 27, 1984

M E M O R A N D U M

Proposed legislation on fish tickets to be introduced this legislative session

TO: Honorable Bill Sheffield
Governor

FROM: Norman C. Gorsuch
Attorney General

RE: Attached bill providing the division of fish and wildlife protection access to confidential commercial fisheries reports and records
Our file: 377-028-85

Attached is a bill, originally requested by the Department of Fish and Game, to provide the division of fish and wildlife protection, Department of Public Safety, access to confidential reports and records of the Department of Fish and Game related to commercial fishing. 1/ A 1982 amendment accomplished this. That amendment, however, was effective only until July 1, 1984, at which time an amended provision took effect, deleting the division of fish and wildlife protection as an entity with access to the confidential reports and records. The Department of Fish and Game strongly believes that the access provided to the enforcement agency was an integral part of the management system of commercial fisheries. That access would be reinstated by this bill. This bill request was approved by your office on August 2, 1984.

A draft transmittal letter to the legislature is also attached.

NCG:LIS:djc

1/ On November 2, 1984, we received word from your office that this has been changed from a Department of Fish and Game request to a Department of Public Safety request.

cc w/enc.: Hon. Don W. Collinsworth, Commissioner
Dept. of Fish and Game

Hon. Robert Sundberg, Commissioner
Dept. of Public Safety

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which would provide the division of fish and wildlife protection, Department of Public Safety, renewed access to confidential commercial fisheries reports and records of the Department of Fish and Game.

Under AS 16.05.815(a), "records required by regulations of the [Department of Fish and Game] concerning the landings of fish, shellfish or fishery products, and annual statistical reports of buyers and processors required by regulation of the department are confidential and may not be released by the department...." The policy behind that confidentiality has been to encourage the accurate reporting by the fishing industry that is so essential if the Department of Fish and Game and the Board of Fisheries are to be able to regulate and manage the state's commercial fisheries as effectively as possible.

There are several exceptions to that confidentiality specified in the statute, under which the Department of Fish and Game may release records and reports. For example, under AS 16.05.815(a)(1) records and reports which do not identify individual fishermen or their vessels may be released to the National Marine Fisheries Service as required for preparation and implementation of the fishery

management plans of the North Pacific Fishery Management Council within the Fishery Conservation Zone. Further, under AS 16.05.815(a)(3) records or reports on the total value purchased by each buyer may be released to municipalities for tax collection purposes under certain specified conditions. The records and reports may also be released in conformity with a court order, or upon the request of the person whose fishing activity is the subject of the report. AS 16.05.815(a)(4) and (5).

Prior to June 2, 1982, the remaining exception, found in AS 16.05.815(a)(2), allowed the Department of Fish and Game to release "any of its records and reports to the Department of Revenue and to the Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities." In 1982, the legislature amended that provision, effective for a two-year period, to allow release of "any of its records and reports to the Department of Revenue, to the division of fish and wildlife protection, Department of Public Safety, and to the Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities." Chapter 72, SLA 1982. The amendment was to be in effect only until July 1, 1984, when the language would revert to its prior form.

This bill would simply reinsert the authorization to

release information to the division of fish and wildlife protection, Department of Public Safety. In view of the importance to the management of the state's commercial fisheries of effective enforcement, access to these records by the enforcement agency is an integral part of the overall management system. To prohibit access to these records and reports to the division of fish and wildlife protection hampers its efforts in assuring that the regulations of the Board of Fisheries, passed for conservation and development purposes, are being followed. The ability to manage Alaska's fisheries resources well depends, in significant part, upon the ability of the state to enforce those regulations.

I ask your prompt action on this measure.

Sincerely,

Bill Sheffield
Governor

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act providing the division of fish and wildlife protection, Department of Public Safety, access to confidential reports and records of the Department of Fish and Game related to commercial fishing; and providing for an effective date."

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

* Section 1. AS 16.05.815(a) is amended to read:

(a) Except as provided in (b) of this section, records required by regulations of the department concerning the landings of fish, shellfish or fishery products, and annual statistical reports of buyers and processors required by regulation of the department are confidential and may not be released by the department except that the department may release

(1) any of its records and reports to the National Marine Fisheries Service as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the fishery conservation zone; however, information released to the National Marine Fisheries Service under this paragraph may not disclose the identity of individual fishermen or their vessels;

(2) any of its records and reports to the Department of Revenue, to the division of fish and wildlife protection Department of Public Safety, and to the Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities;

(3) records or reports of the total value purchased by each buyer to a municipality which levies and collects a tax on fish, shellfish, or fishery products if the municipality

(A) requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable; and

(B) maintains the confidentiality of reports and records which it receives under this paragraph;

(4) such records and reports as necessary to be in conformity with a court order; or

(5) on request, the report of a person to the person whose fishing activity is the subject of the report.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

465-4322

April 24, 1984

The Honorable Jack G. Fuller
Chairman, House Rules Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Fuller:

This Department respectfully requests that House Bill 404 be amended so that Alaska State Statute 16.05.815 is added and reflects that the Department of Public Safety continues to have access to records related to the landing of fish, shellfish, or fishery products. As the law now stands, effective July 1, 1984, this Department will loose the availability to have access to the "fish tickets." That loss will have a marked effect on the capabilities of conducting investigations related to suspected violations as in many cases the "fish tickets" are the central source of material evidence to prove a violation.

I have taken the liberty of enclosing the proposed addition to AS 16.05.081, which would reflect that the Department of Public Safety will continue to have access to "records and reports." Also enclosed is a brief history of this Department's use of "fish tickets" as well as some statistical data related to "fish ticket" access.

Your affirmative and expeditious action on this request will be greatly appreciated.

Sincerely,

Robert J. Sundberg
Commissioner

Enclosures: a/s

cc: Ray Gillespie, Office of the Governor
Commissioner Collinsworth, Department of Fish & Game
Colonel Robert M. Henderson, Director, FWP
Colonel Michael C. Kolivosky, Director, AST

Sec. 16.05.815. Confidential nature of certain reports and records. (a) Except as provided in (b) of this section, records required by regulations of the department concerning the landings of fish, shellfish, or fishery products, and annual statistical reports of buyers and processors required by regulations of the department are confidential and may not be released by the department except that the department may release

(1) any of its records and reports to the National Marine Fisheries Service as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the fishery conservation zone; however, information released to the National Marine Fisheries Service under this paragraph may not disclose the identity of individual fishermen or their vessels;

(2) (EFFECTIVE JULY 1, 1984) any of its records and reports to the Department of Revenue, <u>the Department of Public Safety</u>, and to the Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities;

HISTORY

Two years ago the Legislature enacted a bill that gave Fish and Wildlife Protection the right of access to fish tickets (records of delivery of fish caught for commercial purposes). Because the Protection Division used to be part of the Department of Fish & Game, restricting access to members of that Department still allowed exchange of these tickets, where it appeared a violation has occurred, between Fish and Game biologists and law enforcement personnel.

Increasingly, in the years since the transfer of the Protection Division to Public Safety, access was restricted, based on opinions of State attorneys that Public Safety could not be allowed to have this information under the old statute. The Division was required to have sufficient probable cause to convince a court that a crime had been committed before looking at fish tickets.

In many cases, it was the fish ticket information that was the initial indication that a violation had occurred, and therefore these tickets could not be reviewed by enforcement personnel, and also could not be obtained through the Court. If a Fish and Game biologist or data clerk thought they had evidence of a violation, they would have to follow through on it themselves, at least to a point where enough probable cause was developed to allow enforcement personnel to gain access to the tickets. This interfered with their work, and was a source of concern to Fish and Game.

In some cases, because of the lack of access to fish tickets, cases could not be properly investigated, and

persons violating fishery statutes or regulations could not be prosecuted.

The Legislature enacted legislation that allowed access to fish tickets by Division personnel beginning in the summer of 1982 (AS 16.05.815) and extending for two years until July 1, 1984.

At the end of the two-year period (which has almost arrived) Fish and Wildlife Protection and the Department of Fish and Game were to present information to the Legislature to show that access to fish tickets was useful, and had not been abused.

JUSTIFICATION

The Department of Fish and Game maintained logs of fish tickets released to Fish and Wildlife Protection. The attached summary of the data in these log sheets shows that 128 requests were made during the one and one-half year period through 1983, and 785 fish tickets were released to FWP. In addition to the logs on hand, information from the Department of Fish and Game and from Fish and Wildlife Protection shows that approximately 1070 additional fish tickets were released to FWP.

FISH ..CKETS RCVD,FWP-1982,83

REL. DATE	RELEASE INIT. BY	TPR. DETACH	NO.OF TICKETS
	ADFG	D	7
820615	ADFG	I	1
820621	ADFG		8
820625	ADFG	C	8
		C	3
		C	7
		C	25
		C	3
		C	19
		C	2
		C	1
820626	ADFG	I	1
	FWP	I	1
		I	1
820706	ADFG	I	2
820709	FWP	C	3
		C	1
		C	1
		C	1
		C	1
		C	1
		C	1
		C	2
		C	2
		C	4
		C	1
		C	11
		C	1
		C	1
		C	1
		C	4
		C	1
		C	1
		C	2
		C	4
		C	2
		C	9
		C	6
		C	13
		C	1
		C	2
		C	2
		C	2
		C	1
		I	2
		I	1
		I	5
		I	2
		C	4
		C	6
		C	3

FISH ..CKETS RCVD,FWP-1982,83

REL. DATE	RELEASE INIT. BY	TPR. DETACH	NO.OF TICKETS
		C	1
820712	UNKNOWN	M	4
820713	ADFG	I	1
	FWP		5
820714	ADFG	D	4
		D	6
		D	20
		D	13
820721	FWP		3
820722	ADFG	D	14
820723	FWP	I	18
820726	ADFG	I	1
820728	ADFG	D	15
820730	FWP	M	9
820809	ADFG	D	1
820812	ADFG	D	16
		D	1
820825	ADFG	D	5
		D	7
		D	11
		D	2
		D	27
		D	5
820827	ADFG	D	23
		D	2
820907	FWP	C	2
820910	ADFG	D	5
		D	1
820915	FWP	D	1
820921	FWP	D	1
821004	FWP	C	8
821105	ADFG	D	9
821118	ADFG	D	20
830114	FWP	D	29
830201	FWP	D	1
830208	FWP	D	14
830405	FWP	D	29
830411	ADFG	D	27
		D	7
830510	ADFG	D	1
830520	ADFG	D	1
830523	FWP	C	1
		C	1
		C	1
830601	ADFG	I	3
830603	FWP	D	14

FISH ..CKETS RCVD,FWP-1982,83

REL. DATE	RELEASE INIT. BY	TPR. DETACH	NO.OF TICKETS
830607	FWP	D	3
830608	FWP	I	11
830611	ADFG		4
830618	FWP	C	1
830622	ADFG	D	6
830623	ADFG		3
830624	ADFG	D	3
830625	FWP		2
830627	FWP	D	1
830629	ADFG	I	3
830702	FWP	D	8
830705	ADFG	D	7
	FWP	D	2
830706	ADFG	C	3
		I	1
		D	4
830708	ADFG	D	2
			1
	FWP		1
830709	ADFG	D	4
		D	3
	FWP		3
830721	ADFG	C	9
830731	ADFG		4
			18
830808	ADFG		2
830819	ADFG	I	3
830912	ADFG	D	3
831021	FWP	D	26
831121	ADFG		56

AVERAGE:	6
TOTAL:	785
COUNT:	128

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

May 18, 1984

The Honorable Bettye M. Fahrenkamp
Chairman
Senate Resources Committee
Pouch V
Juneau, AK 99811

RE: CS for Sponsor
Substitute for
House Bill 404

Dear Senator Fahrenkamp:

As requested by the Fisheries Sub-Committee, attached is information regarding enforcement activities as a result of this department having access to records related to landing of fish, shellfish, or fishery products (fish tickets).

At the outset, I wish to respectfully point out that the availability of access to fish tickets by this Department's law officers acts as a deterrent to violations by fish pirates and thus sustains the resource availability for the predominantly law abiding commercial fishermen. In fact, past experience has shown that in most cases, fishermen accused of illegal activities by others are immediately cleared of any wrongdoing by simply reviewing their fish tickets.

I know it is of great concern to some members of the Committee that proliferation of access to the fish tickets encourages leakage of information contained therein that is financially harmful to the fishermen. Let me assure the Committee and the Legislature as a whole that of all those agencies that have had access to the tickets, this Department's enforcement officers have, and will continue to, treat the information gained as confidential evidentiary knowledge as is done in all investigations. Any officer who would do less would be severely disciplined.

As expressed before the Fisheries Sub-Committee, the fish tickets are an excellent tool to deter and detect violations. Without this Department's enforcement officers having such immediate availability, and if there was common

12-L2LH

knowledge to that fact, violations would be encouraged. As an example, the Norton Sound herring fishery is an exclusive registration area. If this Department does not have access to fish tickets, it will not be able to immediately determine who is fishing illegally in that exclusive area. This fact could be tempting to the some 500 boats now in Togiak as well as vessels in other locations.

To accurately address the question of the number of cases made by this Department via use of fish tickets requires a hand search of all cases in file within the five various detachments of the Division of Fish & Wildlife Protection. This is a time consuming activity. Time being of the essence in this instance, as the Fisheries Sub-Committee is graciously holding the bill awaiting this Department's input on cases made, a current list based on individual enforcement officers personal knowledge is being submitted at this time. There are other cases in file but that knowledge would not be gained in time for consideration.

I can appreciate the concerns of members of the Committee related to this Department having access to the fish tickets, but our only interest is in protection of the renewable fish resource by bringing charges against the fish pirates.

Sincerely,

Robert J. Sundberg
Commissioner

Attachments: a/s

cc: Senator Bob Mulcahy, Chairman
Fisheries Sub-Committee

Senator Richard L. Eliason
Alaska State Legislature

bcc: Col. Henderson, Director
Fish & Wildlife Protection

Legislative File

D DETACHMENT - PRINCE WILLIAM SOUND - LOWER COOK INLET

OMITTING BRISTOL BAY

1982

Includes only those with convictions. Other cases were investigated.

Case Number	Charge	Total Fine	Net Fine	
D82-3007	Closed Period	$1,000.00	$ 500.00	
3048	Closed Waters	4,000.00	2,600.00	
3053	Closed Season	4,000.00	2,000.00	
2026	Closed Waters	2,000.00	1,000.00	
2029	Closed Period	2,000.00	1,000.00	
2035	Closed Period	3,000.00	1,500.00	
2040	Closed Period	2,000.00	1,500.00	
2058	Closed Period	2,000.00	500.00	
2146	Closed Period	2,000.00	1,000.00	
2140	Fail to Register	1,500.00	500.00	
2152	Closed Water	5,000.00	2,500.00	
1084	Closed Period		5,000.00	15 days
	Closed Period (6 DEF)	5,000.00	2,000.00	
				(2 days)
1089	Closed Period		2,250.00	
1115	Closed Period	5,000.00	2,000.00	
1135	Unlawful Salmon		1,300.00	
1247	Closed Waters	1,000.00	500.00	
1248	Closed Waters	1,000.00	500.00	
0453	Closed Period		500.00	
0455	Closed Waters	1,000.00	550.00	
0458	Closed Period		5,000.00	
0501	Closed Period		3,000.00	
0539	Closed Period		2,800.00	
0548	Closed Period		500.00	
0554	Closed Waters		500.00	
0556	Closed Waters		2,000.00	
0593	Limited Entry		2,000.00	
0594	Limited Entry		2,000.00	
0595	Limited Entry		2,000.00	
0602	Closed Waters	5,000.00	2,500.00	
0604	Limited Entry	5,000.00	2,500.00	
0605	Limited Entry	5,000.00	2,500.00	
0755	Closed Period	3,000.00	1,000.00	

D DETACHMENT - PRINCE WILLIAM SOUND - LOWER COOK Inlet

INCLUDING BRISTOL BAY

1983

Number Total	Charge	Net Fine Total Net Fines
42	Closed Season or Period	$250.00 - 5,000.00
67	Closed Area	250.00 - 5,000.00 @30 days

E DETACHMENT - Kodiak & Westward

Dutch Harbor

August 1982 to Present

Initiated 132 cases involving Fish Tickets

Judgements against 67 individuals

Net Fine $67,850.00

Kodiak

August 1982 to Present

Investigator's Cases

Still pending-on appeal or filed, no judgment.

1983	1984
Case Number	Case Number
83-0238	84-0164
0722	0308
0432	0309
0520	0310
0551	0312
	0318
	0320
	0321
	0322
	0323

C DETACHMENT

Southcentral

Bethel

1982	1983
Case Number	Case Number
C82-08638	C83-61 521
11784	542
12885	563
12887	588
12890	606
12897	608
13191	621
13207	
13761	
13764	
13766	
13783	
13789	
13790	

Exact charges unknown
Almost all cases had charges filed

B DETACHMENT

Juneau

Case Number	Charges
WB82-4433	Yes
4434	Yes
7342	Yes
WB83-3939	Yes
0074	Yes
6682	No

Haines - None

Hoonah

Case Number	Charges
WB83-0633	Yes
0634	Yes
0630	Yes
0635	Yes
0636	Yes
0115	Yes

Wrangell Post - Information not available

Petersberg Post - Information not available

Yakutat

Case Number	Charges
WB83-7113	Yes
7115	Yes
7114	Yes
7128	Yes

Ketchikan

Case Number	Charges
WB82-5057	Yes
2282	Yes
4368	Yes
4355	Yes
4260	Yes
4261	Yes
4269	Yes
0148	Yes
4281	Yes
4330	Yes
4331	Yes
4332	Yes
4333	Yes
4334	Yes
4335	Yes
4328	Yes
4329	Yes
4337	Yes
4290	Yes
WB84-0147	Yes
0148	Yes
0150	Yes
0136	Yes
0135	Yes
0140	Yes
0142	Yes
0143	Yes
0144	Yes
0141	Yes
0145	Yes
0146	Yes

Craig

Case Number	Charges
WB82-0864	Yes
5930	Yes
5929	Yes
5907	Yes

Sitka

Case Number	Charges
WB83-0585	Yes
0556	Yes
0536	Yes
6696	Yes

Ketchikan

Case Number	Charges
WB82-3936	Yes
7604	Yes
7634	Yes
0612	Yes
0692	Yes
6369	Yes
0588	Yes
057?	Yes
6368	Yes
6694	Yes
0587	Yes
6693	Yes
6393	Yes
6413	Yes

I DETACHMENT - NORTHERN AREA

Case Number	Charge
I82-2369	Unlawful Geer
3298	Closed Waters
3309	Sale of Subsistence Fish
I83-7751	Comm. Fish no permit
7760	Comm. Fish Closed
7804	Fish Exclusive Area
7822	Fish Exclusive Area

No Processors involved in violations

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 7

Title: DPS ACCESS TO CONFIDENTIAL RECORDS

Sponsor: Rep. Herrmann

Requestor: House Resources

Date of Request: 1-17-85

FISCAL DETAIL

Agency Affected: PUBLIC SAFETY

Program Category Affected: FISH & WILDLIFE PROTECTION

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

NO FISCAL IMPACT

Prepared By: PAUL CONGER Phone: 465-4338

Division: ADMINISTRATIVE SERVICES Date: 12-6-84

Approved by Commissioner: [signature] Date: 12/6/84

Agency: PUBLIC SAFETY

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

(2) if the fish or game or part of fish or game is in a preserved condition whether frozen, smoked, canned, salted, pickled or otherwise preserved, or

(3) with respect to crab aboard a commercial crab fishing vessel, during the first full three days after the time when a taking is prohibited. (§ 26 art I ch 94 SLA 1959; am § 1 ch 42 SLA 1974)

Sec. 16.05.815. Confidential nature of certain reports and records. (a) Except as provided in (b) of this section, records required by regulations of the department concerning the landings of fish, shellfish or fishery products, and annual statistical reports of buyers and processors required by regulation of the department are confidential and may not be released by the department except that the department may release

(1) any of its records and reports to the National Marine Fisheries Service as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the fishery conservation zone; however, information released to the National Marine Fisheries Service under this paragraph may not disclose the identity of individual fishermen or their vessels;

(2) **[Effective July 1, 1984]** any of its records and reports to the Department of Revenue and to the Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities;

(3) records or reports of the total value purchased by each buyer to a municipality which levies and collects a tax on fish, shellfish, or fishery products if the municipality

(A) requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable; and

(B) maintains the confidentiality of reports and records which it receives under this paragraph;

(4) such records and reports as necessary to be in conformity with a court order; or

(5) on request, the report of a person to the person whose fishing activity is the subject of the report.

(b) Records or reports received by the department which do not identify individual fishermen, buyers, or processors or the specific locations where fish have been taken are public information. (§ 1 ch 117 SLA 1970; am § 1 ch 117 SLA 1974; am § 1 ch 66 SLA 1980; am §§ 1, 2 ch 72 SLA 1982)

Postponed amendment. — Until July 1, 1984, paragraph (2) of subsection (a) provides: "(2) any of its records and reports to the Department of Revenue, to the division of fish and wildlife protection, Department of Public Safety, and to the Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities;".

Cross references. — For reporting of wholesale canned salmon prices, see AS 43.80.050 — 43.80.100.

Effect of amendments. — The 1980 amendment substituted "Except as pro-

vided in (b) of this section, records" for "Reports" at the beginning of present subsection (a), substituted "may" for "shall" preceding "not be released" near the end of the introductory paragraph of present subsection (a), deleted "in the form of individual records" following "not be released" near the end of the introductory paragraph of present subsection (a), added "that the department may release" at the end of the introductory paragraph of present subsection (a), restructured the former section into present subsection (a) and paragraphs (1) — (5), added all of the provisions contained therein except for paragraphs (2) and (4); in paragraph (2) of subsection (a), added "any of its records and reports" at the beginning of the paragraph, and substituted "to assist them in carrying out their statutory responsibilities" for "or" at the end of paragraph (2); in paragraph (4) of subsection (a), added "such records and reports as necessary to be" at the beginning of the paragraph, and added "or" at the end of the paragraph.

Section 1, ch. 72, SLA 1982 inserted "to the division of fish and wildlife protection, Department of Public Safety" in paragraph (2) of subsection (a). Section 2 of ch. 72, effective July 1, 1984, deletes that language from paragraph (2).

Sec. 16.05.820. Research by the federal government. The Secretary of the Interior, the Secretary of Commerce or the Secretary of Agriculture of the United States and their authorized agents or other appropriate federal agencies may conduct fish cultural operations and scientific investigations in the state in the manner and at the times jointly considered necessary or proper by the Board of Fisheries and the secretary and their authorized agents. (§ 29 art I ch 94 SLA 1959; am § 14 ch 206 SLA 1975; am § 10 ch 208 SLA 1975)

Sec. 16.05.825. State upland game bird release program. (a) In addition to any other program for the stocking or propagation of game birds that the department has as of July 23, 1974, the department shall establish a special program for the raising, maintenance, and release of upland game birds in the state. Birds raised under this program may be released in an appropriate area of the state, at any time, but may be harvested only during regular hunting seasons, as specified by the board under AS 16.05.255(2). The board shall adopt regulations necessary to implement this section.

(b) The department shall establish an appropriate facility for the raising and maintenance of upland game birds to be located at an appropriate place, as determined by the commissioner, in interior Alaska.

(c) The department shall employ a method of tagging game birds released under this section, compile harvest statistics, and report its results and findings to the legislature annually.

(d) In this section, "upland game bird" means a game bird for which a season is established under AS 16.05.255(2) as of July 23, 1974, excluding waterfowl. (§ 1 ch 31 SLA 1974; am § 15 ch 206 SLA 1975)

Sec. 16.05.827. Sale of subsistence salmon roe. [Repealed, § 4 ch 99 SLA 1975.]

Sec. 16.05.830. Wanton waste. [Repealed, § 1 ch 73 SLA 1968.]

HISTORY OF HB 7

To: House Resources Committee Files
From: Janet Fries, Committee Aide
Date: 1/23/85

The need for a change in AS 16.05.815(a) arose when the Division of Fish and Wildlife Protection, which was formerly the enforcement arm of the Department of Fish and Game (ADF&G), was transferred to the Department of Public Safety (DPS). Prior to that time, all enforcement officers had full access to ADF&G confidential reports and records.

In 1982, the Alaska Legislature passed a Senate CS for House Bill 668, which provided the Division of Fish and Wildlife Protection with access to fish ticket information until July 1, 1984. This was done, presumably, so that it would come back to the Legislature for reconsideration.

Late in the Thirteenth Legislative Session, the Department of Public Safety approached the Senate Resources Committee with an amendment which would reinstate the Division's access to fish ticket information. The amendment was proposed for HB 404, an Administration housecleaning bill which would amend several sections of Title 16. HB 404 was then under consideration by the Committee. The bill was not amended, due primarily to concerns that fish ticket information regarding "hot fishing spots" might inadvertently leak from Division officers or clerical personnel to other fishermen in a given fishery.

The Division of Fish and Wildlife Protection officers have strict policies regarding the use of confidential information which preclude this type of "leakage". This is discussed in the attached memorandum from Lt. Seibel to Commissioner Sundberg. Because these officers are trained enforcement personnel who deal with confidential information continually, these policies are stringently enforced.

The attached background information regarding HB 7 contains a strong statement of support from Governor Bill Sheffield, who was planning to introduce a similar bill this session, had it not been introduced by a Legislator. Also included are resolutions which support the measure from the United Fishermen of Alaska, the Bering Sea Fishermen's Association, and the Naknek-Kvichak Fish and Game Advisory Committee. The Department of Fish and Game strongly supports this bill. The Bristol Bay Native Association and the Bristol Bay Borough both support the bill, as enforcement of the limited entry law and in-season fishing regulations are a serious problem affecting the livelihood of local fishermen in the Britol Bay salmon fishery, the largest in the state.

This packet also contains information provided by the Department of Public Safety which demonstrates how fish ticket information is used by the Division of Fish and Wildlife Protection and why it is necessary for their officers to access this information in order to be effective in their enforcement of fishing laws and regulations throughout the state. For those not familiar with fish tickets, samples are attached.

SERIES " A " FISH TICKET SAMPLE

DISTRIBUTION: PLACE WRAPAROUND COVER UNDER GOLDENROD COPY
WHITE - PURCHASER PINK - SELLER
YELLOW - FISH & GAME GOLDENROD - PURCHASER

PURCHASER
ALASKA DEPARTMENT OF FISH AND GAME
SALMON TICKET

DO NOT WRITE IN THIS SPACE

A85 069007

Vessel Name F/V Salmon Boat

Fishery Name Permit Number → 5 AAC 39.130.(B)(9) REQUIRES IMPRINTING OF THE CFEC PERMIT CARD HERE

TIME GEAR OPERATED IN HOURS 10

ADF&G NO. 00000

Proc. Code F 0000 0

Company ADF&G CSS

Date Fishing Began 8/12/85

Date Landed 8/13/85

Area Caught Point Retreat (SHOW NEAREST BAY OR HEADLAND) | 111-50 (STAT. CHART NO.)

SPECIES	CODE	NUMBER OF FISH	NO. OF POUNDS	PRICE	AMOUNT
KINGS	410	2	50	1.50	75.00
REDS	420				
COHOS	430	10	100	1.10	110.00
PINKS	440	4	13	.25	3.25
CHUMS	450	1	15	.35	5.25
SALMON ROE	400		10	4.00	40.00
CHAR	520				
STEELHEAD	540				
WHITEFISH	580				
Sub-Total		17	188		233.50
Less Salmon Enhancement Tax @			3%		- 7.01
TOTAL		17	188		226.49

Cash Advance 850.00

Fish Received by Mr. Salmon Buyer

NOT NEGOTIABLE *

Capt. John Doe
Fisherman or Capt. making delivery

REV. 2/84 11-16 ⓟ M

FISH DELIVERED HEREBY WERE CAUGHT IN COMPLIANCE WITH STATE LICENSING LAWS AND STATE LABOR LAWS AND REGULATIONS.

UNITED FISHERMEN OF ALASKA

Cass M. Parsons
Executive Director

219 Seward Street, Suite #10
Juneau, Alaska 99801-1188
(907) 586-2820

RESOLUTION 84-19

WHEREAS the Department of Public Safety does not have legal access to fish tickets; and

WHEREAS the Department of Public Safety has the responsibility of enforcing the regulations governing commercial fisheries operations; and

WHEREAS the Department of Public Safety needs access to fish tickets in order to enforce regulations such as the 48-hour waiting period, the use of fraudulent limited entry cards, and to name a few; and

WHEREAS without this access to fish tickets, the Department of Public Safety's effort to enforce these regulations is severely hampered.

NOW THEREFORE BE IT RESOLVED, that the United Fishermen of Alaska requests that legislation be passed which would allow the Department of Public Safety accessability to fish tickets.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to Members of the Board of Fisheries, Commissioner Don W. Collinsworth of the Department of Fish and Game, and Commissioner Robert J. Sunberg of the Department of Public Safety.

Cass M. Parsons
UFA Executive Director

Robert M. Blake
President

Date: 11-16-84

BERING SEA FISHERMEN'S ASSOCIATION
RESOLUTION NUMBER 7

WHEREAS the Bering Sea Fishermen's Association represents over 1600 commercial salmon and herring fishermen in western Alaska and,

WHEREAS the Department of Public Safety does not currently have legal access to fish tickets, and

WHEREAS the Department of Public Safety has the responsibility of enforcing the regulations governing commercial fisheries operations, and

WHEREAS the Department of Public Safety needs access to fish tickets in order to enforce regulations such as the 48-hour waiting period, the use of fraudulent limited entry cards, fishing in closed waters, and fishing in closed periods to name a few, and

WHEREAS Without this access to fish tickets, the Department of Public Safety's efforts to enforce these regulations is severely hampered.

THEREFORE BE IT RESOLVED that the Association request that legislation be passed which would allow the Department of Public Safety accessability to fish tickets and,

BE IT FURTHER RESOLVED that copies of this resolution be sent to Members of the Boards of Fisheries, Commissioner Sunberg of the Department of Public Safety, members of the Iliamna-Lake Clark Advisory Committee, members of the Lower Brtistol Bay Advisory Commitdtee, and members of the Nushagak Advisory Committee.

Motion Passed this 31 day of August, 1984 in Anchorage, Alaska.

HENRY IVANOFF
PRESIDENT - BERING SEA FISHERMEN'S ASSOCIATION

Naknek-Kvichak Fish and Game Advisory Committee

RESOLUTION 84-1

A RESOLUTION REQUESTING THE LEGISLATURE TO CONSIDER ALLOWING THE DEPARTMENT OF PUBLIC SAFETY ACCESS TO FISH TICKETS.

THE NAKNEK-KVICHAK FISH AND GAME ADVISORY COMMITTEE RESOLVES:

WHEREAS: The Department of Public Safety does not have legal access to fish tickets, and

WHEREAS: The Department of Public Safety has the responsibility of enforcing the regulations governing commercial fisheries operations, and

WHEREAS: The Department of Public Safety needs access to fish tickets in order to enforce regulations such as the 48-hour waiting period, the use of fraudulent limited entry cards, fishing in closed waters, and fishing in closed periods to name a few, and

WHEREAS: Without this access to fish tickets, the Department of Public Safety's efforts to enforce these regulations is severely hampered.

NOW THEREFORE BE IT RESOLVED, that the Naknek-Kvichak Fish and Game Advisory Committee requests that legislation be passed which would allow the Department of Public Safety accessability to fish tickets.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to Members of the Board of Fisheries, Commissioner Don W. Collinsworth of the Department of Fish and Game, Commissioner Robert J. Sunberg of the Department of Public Safety, members of the Iliamna-Lake Clark Advisory Committee, members of the Lower Bristol Bay Advisory Committee, and members of the Nushagak Advisory Committee.

Passed this 16 day of August, 1984 by the Naknek-Kvichak Advisory Committee

Chairman

Attested:

Secretary

JAN 25 1985

BRISTOL BAY NATIVE ASSOCIATION
P.O. BOX 169
DILLINGHAM, ALASKA 99576
PHONE (907) 842-5257 — 842-5258

January 25, 1985

Representative Adelheid Herrmann
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Adelheid:

The Bristol Bay Native Association Executive Committee would like to take this opportunity to support House Bill No. 7 relating to the release of confidential records and reports to the Division of Fish and Wildlife Protection.

We feel that passage of this bill would greatly assist the enforcement division of Fish and Game in performance of their duties.

This bill would make spotting fisherman who use fake permits, illegal gear, duplicate permits, fish several vessels with one permit, and those people who fish several districts without bothering to officially transfer a simple process and would allow for immediate citation of those violators.

Sincerely,

BRISTOL BAY NATIVE ASSOCIATION

Kay E. Larson
Executive Director

BRISTOL BayTimes
Vol. 4 No. 19
Dillingham, Alaska
October 1, 1984
25¢
BULK RATE POSTAGE PAID
Dillingham Alaska 99576
Permit No. 19

Criminal element in Bay evades protection officers, pilot tells panel

Illegal fishing in Bristol Bay was rampant last season, a Naknek pilot told a panel gathered to discuss fishing violations and how to improve state protection of the fishery.

George Tibbets Jr. described a 'hard core' criminal element that fishes more than the legal amount of gear outside of district boundaries, fishes several boats on one permit, ignores the 48-hour transfer period and uses spotter pilots more for keeping track of protection officers than for spotting fish.

Tibbets spoke at a teleconference hearing Sept. 27 at the Naknek Legislative Information Office called by District 26 Rep. Adelheid Herrmann.

Others speakers agreed with Tibbets' allegation that such deliberate violations do take place, but in response to a protection officer's question about why the violators were not reported, said they feared for their boats and the safety of their crews.

One Dillingham skipper said after the hearing that he had seen boats fishing outside district boundaries, specifically between Egegek and Ugashik, but that he too was reluctant to report those involved.

"That's protection's job," he said. "These guys would kill you, or sink your boat."

Illegal fishermen use spotter pilots to track the location Fish & Wildlife Protection officers' planes and warn each other when the planes are approaching.

Those fishing outside district boundaries worry less about being caught than fishermen who inadvertantly drift over district lines, since protection planes typically patrol near the boundaries, fishermen said.

Processors aid illegal fishermen by doctoring delivery ticket dates so that the 48-hour district transfer requirement can be ignored.

"If there's a district open, they fish," Tibetts said.



Bandits in the Bay

by John van Amerongen

"The thing about lawlessness is that if you don't do something about it, it just gets worse."

It may have sounded a bit like Gary Cooper trying to convince the town council to do something about cattle rustlers. But the issue wasn't cattle, it was fish, and the subject wasn't cattle rustlers, but the rapidly growing "pirate fleet" in Bristol Bay...and what to do about it.

What to do about fishermen who fish outside the law: who operate two or three boats on the same permit, who drift-fish on setnet permits, who fish over the line (way over the line), who fish during closures, who together with processors juggle fish ticket dates to get around the 48-hour transfer regulation, and who keep extra nets aboard or add extra length and depth to existing nets.

Chairing the meeting at Seattle's Fisherman's Terminal was Gary Green, twelve-year veteran of the Bay. "Just a fisherman"—a fisherman who's fed up—Green didn't really have to convince anyone present that illegal fishing was on the increase.

Sitting around the table was an informal coalition of processors and fishermen, traditional adversaries in price negotiations who had come together to discuss a common threat. Sharing concerns at the roundtable were Mitch Kink and Reidar Solberg, general manager and vice-president, respectively, of AIFMA; Ivan Fox and Jon Black, general manager and superintendent of Diamond Beauty Seafoods, Steve Smith, general manager of Kemp Pacific Fisheries; along with fishermen Swede Munson, Jon Crooks, and Tom Crawford.

"I see three groups of people up there," Green continued. "I see the honest, ethical fishermen there; then I see the dishonest fishermen, and then I see a large group of people that operate under what I call situation ethics, where we say, Well, that guy's over the line, I might as well join him.

"When somebody else does it, you have to decide, well, am I going to join him, or what am I going to do? In the past you didn't have a choice, you either joined him or got nothing. What we need is a choice to be able to say, Hey, this guy's doing something wrong, and it's hurting me and I'm going to turn him in and get something done about this."

"We're in jeopardy of having a lawless fishery real soon," predicted Green. The honor system is not working.

According to Mitch Kink, a new breed of fisherman began entering the fishery in 1977, and "it started getting out of hand after '80 and '81."

Kink presented a graphic comparison of the Egegik catch to the Naknek/Kvichak. In 1980 the total Egegik catch amounted to about 20% of the catch from the Naknek/Kvichak. At that time 177 boats fished Egegik at the peak of the season, as compared to roughly 1,000 at Naknek/Kvichak. By 1982 the Egegik catch was up to 50% of the Naknek/Kvichak catch. Only 137 boats were registered at Egigik during the height of that 1982 season.

"We're in jeopardy of having a lawless fishery real soon."

—Gary Green

"I can't sit every night looking at this goddamn chart [and figure out how it adds up], said Kink. "Egegik fishermen aren't that good. Don't get me wrong, they're good fishermen, but 50%...? What I'm saying is that that fish logged at Egegik is not caught at Egegik."

Kink's contention was that a lot of fish delivered to Egegik are caught illegally in the milling ground, the closed area near Middlebluff, where great masses of fish from many river systems mingle before heading upstream. Kink's concern is that fish caught in the milling area are likely to be logged in the wrong river's tally, Egegik's in particular, but the Naknek/Kvichak as well.

Bogus deliveries throw off the numbers used by ADF&G for managing openings and closures. Fish deliveries from illegal waters boost the catch level relative to escapement, and closures result, shutting off the legal fishermen. Legal fishermen in all areas suffer and the resource is jeopardized as well, said Kink.

"We're talking about messing with the management of the resource that we all make our livelihood on," added fisherman Jon Crooks. "It really peeves me that the pirates are interrupting our livelihood, and it's critical that it be

stopped. The fact that we're not getting accurate numbers is the critical problem."

"The biggest argument you'll get (from enforcement) is that they don't have any money to patrol this..., but I think that they patrol it the wrong way," said Kink.

"In 1981 96% of the (citations) came within less than one-quarter of a mile of each line, and you know in '81 that there was a fleet fishing Middlebluff all the time. Well heck, that's just like a farmer protecting his fence when the fox was in the henhouse.

"We're proposing that the patroling start a little different; instead of starting from the line down to Middlebluff or from Egegik up towards Middlebluff, that they start at Middlebluff and move to the lines, so that you catch the deeper violations instead of just the fringe," said Kink.

Crooks was quick to agree with Kink that the problem was not necessarily a lack of regulations. "Egegik's notorious for having a complete lack of enforcement," said Crooks who fishes Egegik himself. "Egegik has had no enforcement, except for an occasional cruiseby by the *Vigilant* for four or five years, I'm sure," he continued. He wont on to describe a scenario for hitting it big in the illegal fishery this year:

"If you'd registered in Naknek, fished Naknek when Egegik was closed, fished Egegik the rest of the time, and the Ugashik or wherever else you wanted to at whim, you'd have never gotten caught for doing anything illegal, because there simply was no enforcement anyplace else."

Complicating the enforcement effort, is the advent of airplane spotters. According to Steve Smith, some spotters are looking out for more than fish. "If they spot Fish and Game or enforcement moving," said Smith, "they shoot right back to their guys and say, 'Get back!'"

Crooks was quick to add his suspicions. "It's easy to see if you're out fishing near the line. There's generally this fleet of boats with no names on 'em that are fishing beyond the line — this is every day at Egegik —and all of a sudden they all start picking up and heading to the line. You wonder what's going on, and then an airplane will fly over and five minutes later the *Vigilant* will show up."

Kink itemized two proposals geared to regulate the spotters. One from the Naknek Advisory Council would eliminate the planes altogether, Kink said. The other, backed by AIFMA, would require pilots to have a permit and commercial license.

"I mean a fishing permit," emphasized Kink. "He's operating eleven boats without even a commercial license, without a permit or anything."

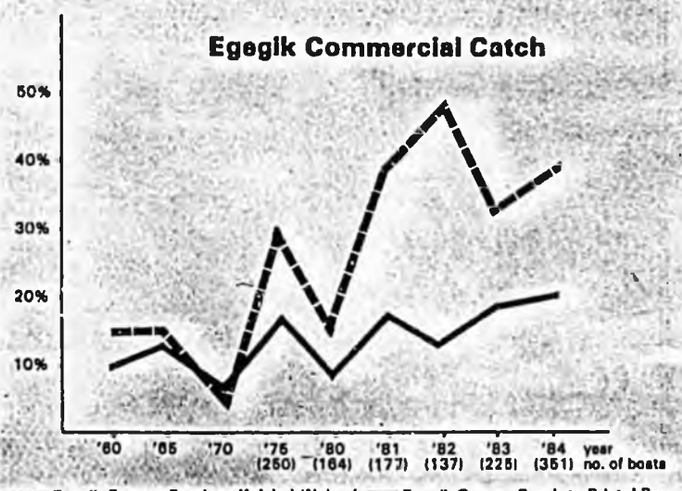
Green suggested that the *Vigilant* be replaced with a fleet of smaller vessels that resembled fishing boats themselves. One of perhaps two vessels could be assigned to each area to monitor boundary and registration violators. Officers would only need to be on the payroll for the peak season, but they could rely on honest fishermen to educate them about "smart" violators.

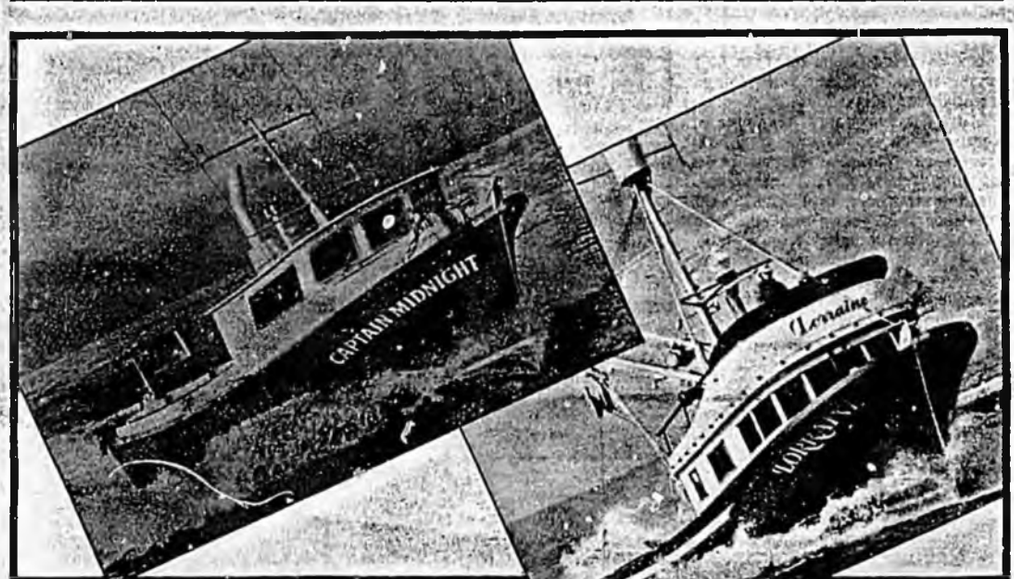
"They need fishermen to educate them about what other fishermen are going to do, where they're going to be fishing at certain times of the tide and day, what they're likely to be doing during openings and closures, and in continuous fishing situations. The education and the quality of enforcement is a lot more important than the quantity," Green said.

Ivan Fox suggested that each area issue a different colored flag to be displayed prominently aboard vessels fishing each area. Flags would be numbered, and when fishermen wanted to transfer, they would report in and exchange flags before moving to a new area. This wouldn't prevent a fisherman from starting early, but at least a patrol aircraft could spot boats that had not transferred, Fox said.

To prevent a permit holder from fishing more than one boat, Fox suggested that the state issue a bright colored sticker for each permit renewed. The design would change every year, and it would be prominently displayed so it could be spotted easily from the air. To thwart counterfeiters, the sticker would have to be picked up in Bristol Bay just prior to the opening.

Swede Munson seconded Green's suggestion of small patrol boats as





BECK BOATS
206/653-7983
3525-136th NE
Marysville, WA 98270

32' BB Gillnetter
LENGTH 32'
BEAM 12'6"
DRAFT 2'6"
SPEED 16 Knots
POWER: VOLVO TAMD 70D

NEW MODEL!
28' Cordova Bowpicker
LENGTH 28'
BEAM 10'6"
DRAFT 28"
POWER 8.2L GMC W/ Mercruiser Outdrive
30' Cordova Bowpicker also available

NEW MODEL!
48' Twin Screw Seiner
LENGTH 48'
BEAM 15'2"
DRAFT 3'
SPEED 17.5 Knots
POWER: TWIN VOLVO TAMD 70'S
from $315,000

47' Seiner
LENGTH 47'
BEAM 14'10"
DRAFT 3'2"
SPEED 10 Knots
POWER: 320 H.P. CUMMINS
Completed vessel from $249,000

Circle no. 12 on reader interest card.

well as the sticker idea, and went on to propose that all boats should be physically checked for correct numbers and permits before the start of the season.

"If you had one boat...that you could call and say, Hey, there's a boat over the line, this boat hasn't got correct numbers, we know he hasn't transferred...' It was so blatantly on the ... this year, a guy says,Well why transfer? If we can go to Naknek when they open it, we can go to Ugashik.' And they were doing it. In other words," said Munson, " you were really stupid to be law abiding."

Reacting to the small boat proposal, Fox said, "Most of your shoreplants would cooperate like hell. The fact is, we would put a guy up if he wants to leave his Boston Whaler or whatever...even give him board and room."

According to Kink, not all processors are as anxious to cooperate. Some processors, he said, conspire with the fishermen to harvest illegal fish. "You're making the fisherman responsible," said Kink, "but the fact is that processor also has to be responsible, because you're catching illegal fish, but he's buying illegal fish, and both things are against the law."

Steve Smith, general manager of Kemp Fisheries, shared how processors can be lured into juggling tickets. "We tried to get our tender costs into line," said Smith of this year's season, "and we changed our policy from a daily ... guarantee to a minumum guarantee with a poundage included. The idea was they could attain more money if they hauled more pounds."



"It proved to be very effective for us," said Smith, "but one of the things I noticed... at least eight of these guys had mentioned to me, if not once, three or four times, I can pick up fish from so-and-so if we just hold off on his ticket, sign it at a later date, or something.' My answer to all these guys was that it was an illegal move and we wouldn't want to get involved in that."

"What we want is a future in this thing," said Smith, "something to come back to and come back to, and that's definitely what our banks want too. It's based on growth, but there's got to be a resource to harvest."

"The reason that you have all the crabbers tied up here in September, when it should be the heart of the season," warned Kink, "is underlogging, and they're doing the same goddamn thing with our salmon in Bristol Bay."

"Don't you get the feeling," asked Fox, "that the Fisheries themselves don't give a damn who catches the fish or how they catch em, as long as they get their escapement?"

"You don't have to wonder;" answered fisherman Tom Crawford, "that's exactly right. That's why enforcement leaves after they get their escapement. Enforcement is not there after the 17th (of July) or whenever they throw the districts wide open."

Finally, it was Swede Munson who said, "We've hashed it enough." It was time to come up with some concrete proposals.

LUGGER

THE NEW AFTERCOOLED 225 HP, L-6414A. WHEN YOU PUT YOUR FOOT IN IT, YOU'D BETTER HANG ON!

"Sure Luggers are tough. And I'd like one in my boat. But I need speed too."

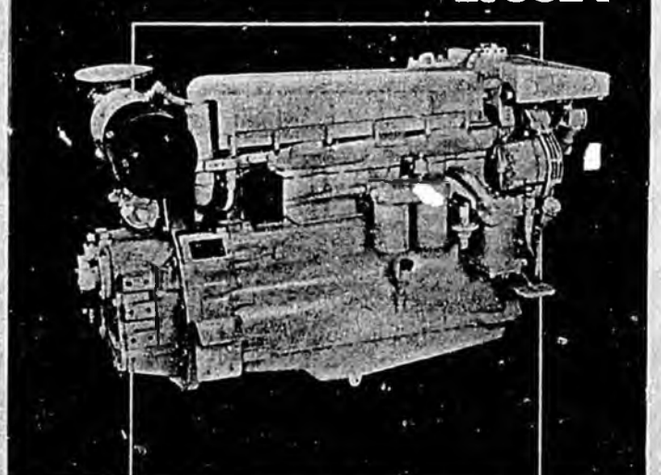
Well hang on. Because now there's a Lugger that'll blow your socks off. The new 225 HP, L-6414A.

This turbocharged, aftercooled, six combines Lugger's cast-iron toughness with high performance. A combination destined to make it the engine for fishermen who need speed.

It has high torque for lobstermen. Top-end power for lafitte skiff shrimpers. Quiet, economical operation for Alaskan gillnetters. And a capacity for punishment that would put an anvil to shame.

Need speed? Grab hold of a new L-6414A at your Lugger dealer. Or write: Lugger, P.O. Box 70543, Seattle, WA 98107, or call (206) 789-3880.

LUGGER



Circle no. 13 on reader interest card

GGGS MARINE INSURANCE

PUGET SOUND — ALASKA — OFFSHORE

- Hull coverage
- Liability
- Boats in Transit
- Hulls under construction
- Net insurance

Personal • Commercial • Industrial Insurance

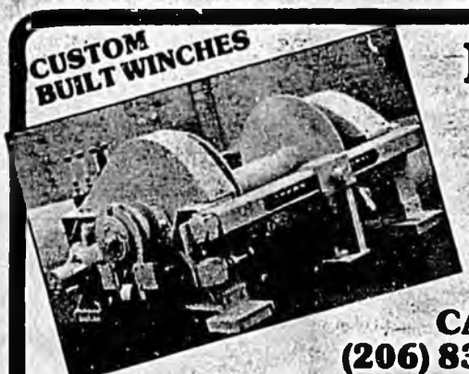
Bellingham (206) 734-0060 | Alaska Call Collect | Seattle (206) 623-9130

Griffin, Garrett, Johanson & Schacht.

110 Unity—Bellingham, WA

Circle no. 14 on reader interest card

CUSTOM BUILT WINCHES



NEW! TRAWL WINCHES

CALL (206) 838-4757

BUILT TOUGH . . for years of trouble-free work

SPECIFICATIONS

Model #	HYD(GPM)	HYD Pressure (PSI)	LP(Empty)	LP(Full)	3/4" Fathoms	Weight	Power HP Req.
FW850	62	3000	42000	11000	680	6000	120

HyLiner Marine inc.

2605 West Valley Hwy. N. Auburn, WA

- Complete Free Wheeling Mode
- Power Out Mode @ 60 RPM
- Drum independently Bearing Mounted on Shaft
- Extra Heavy Pillow Block Bearing on Shaft at Frame
- Bolt Down Frame for Easy Installation and Removal
- Double Coat of Zinc Primer for Added Rust Protection
- All Gears and Bearing Coated with "Slick 50"

Circle no. 15 on reader interest card

Munson suggested that a decal, a physical inspection, and placing numbers on the top of the boat would be a good place to start.

Kink, however, reminded the group that the deadline for proposals to the Board of Fish, September 5, had already passed. He suggested that the legislature could be petitioned to fund a decal program to be administered by the Limited Entry Commission. This opened the door to the whole problem of funding improved enforcement.

Kink suggested that the annual permit fee be raised $5.00 to pay for the the decal program.

Smith suggested that fishermen and processors might opt for a tax similar to the salmon enhancement tax in Southeast. The difficulty with that, said Fox, would be earmarking the funds for enforcement, rather than having them go into the general fund.

"The only time that it's worked," said Solberg, "was the year AIFMA did donate... for the test boat at Port Moller. Funds were given to the Department of Fish and Game for that specific purpose."

Munson suggested that money could be donated for decals and small enforcement vessels, and Fox suggested that canneries might be willing to haul them out and take care of them."

Crooks, on the other hand, wasn't so sure that "throwing more money at it" was the only way to improve the situation. He suggested that stiffer penalties might be tried first.

"The problem brings to mind all the illegal fishing that went on in the king fishery over in Nushagak," said Crooks. "All of a sudden we heard about these two guys that got caught and they took their permits away for one year. The biggest bandits that I knew wouldn't go and fish with deep nets in Nushagak, because suddenly the price was not worth it."



(Left to Right) Reidar Solberg, Mitch Kink, Ivan Fox, John Black, Steve Smith, Tom Crawford, Gary Green, Swede Munson and Jon Crooks—meeting to beat the bandits.

"If you could be assured of being checked a couple of times a year, in whatever district you were fishing in," Crooks said, fishermen would be deterred from fishing illegally, especially if it meant forfeitting their permit for a year.

"If they're put on probation for one year, they worry like hell," added Kink.

"That type of thing is going to go a lot further towards effectively bringing law abiding citizens back into the fishery than a lot of complicated rules and regulations," said Crooks.

Fox asked if that wouldn't require a massive increase in enforcement effort. Crooks repeated a contention that it would only require a redirection of effort.

"If somebody wanted to offer me a bounty, I think I could go out



It's Your Job to Blow the Whistle —Here's How to Do It

by Chris Blackburn

"Protection can be only as effective as the fishing community wants us to be," said Lt. Phil Gilson, Fish and Wildlife Protection Officer from the Kodiak office.

When the king crab stocks dropped, Kodiak fishermen became concerned enough about the resource they began actively working with protection officers.

"We had a lot of calls about violations. Some were anonymous and some fishermen identified themselves.

"I think the help we received from the fleet really made a difference... If there was a bona fide complaint with substance to it, we were able to follow up and get some kind of successful prosecution," Gilson said.

Salmon fishermen are still torn between wanting to protect their resource and being reluctant to turn in a fellow fisherman—even if he is taking fish illegally.

"We have people come in here to report a violation, and based on what they tell us, it will appear to be a very prosecutable case, but the guy reporting won't want to be involved, won't give us even the name of the boat or tell us where the violation occurred," Gilson said.

In the possible creek robbing case described by fisherman Steve Russell, the chances of a successful prosecution, based on Russell's testimony, "are not good, but still possible," Gilson said.

"We would like the opportunity in this type of case to at least talk to the people... It's possible that an individual or crewman, who doesn't agree with that type of thing, or a crewman who's decided to quit the boat, may come forward and advise us that the creek robbing did happen," Gilson explained.

"Another factor is, that if we keep getting repetitious reports about a particular vessel, we know that the odds are that person is a creek robber. Obviously, the more reports we get, the better are our odds of catching him."

While Fish and Wildlife Protection tends to deploy its limited resources in areas where the combination of a good fish build up and other conditions make it seem attractive to creek robbers, they can't cover all the streams in Western Alaska.

"The fishermen are out there 24 hours a day, seven days a week. They see a lot more than we do," Gilson said.

Ideally, a violation report would contain the following:

1. Date and time of the violation.
2. The exact location.
3. The type of violation.



"I think the help we received from the fleet really made a difference . . ."

Lt. Phil Gilson—Fish & Wildlife

4. Description of the vessel and people on it, the boat name or numbers.
5. The names of other witnesses to the violation, including your own crewmen.
6. Photos, if possible. For photographs taken under poor lighting conditions, the roll of film can be given to protection officers so it can be developed using special enhancement techniques.
7. An account of the violation written down at the time it was observed—in the ship's log or on a scrap of paper.

Even if the information is fragmentary, Fish and Wildlife Protection officers would appreciate any information they can get.

The willingness of the fleet to report suspected violations is the first major step toward protecting the resource, Gilson said. □

there and probably do pretty well," Crooks speculated.

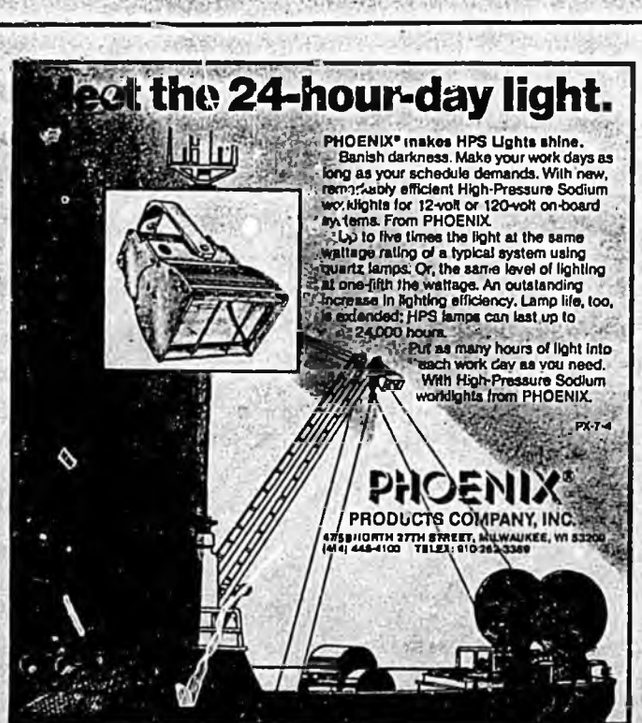
"High boat," replied Kink.

"The fishermen themselves will have to turn in violators," agreed Munson, "but you have to have somebody to turn them in to, and we don't have it. We don't have anybody to go to." Munson suggested a central radio communication station for each area where fishermen could be assured of getting through to enforcement. "If we have to buy the radio for communication, to me that's nothing."

Getting those around the table to respond to the issue was clearly not the problem. The difficulty, as expressed by Ivan Fox and others, was convincing the Alaska Legislature to recognize the severity of the problem and respond to this group of "outsiders."

Fox suggested enlisting the help of Byron Mallot and the Sealaska Corporation, and Kink announced a meeting with the Naknek Borough in late September that would address the same issues. The hope expressed generally was that both Native and resident fishermen would become increasingly willing to address the problem and provide the funding or political pressure required to move the state to action.

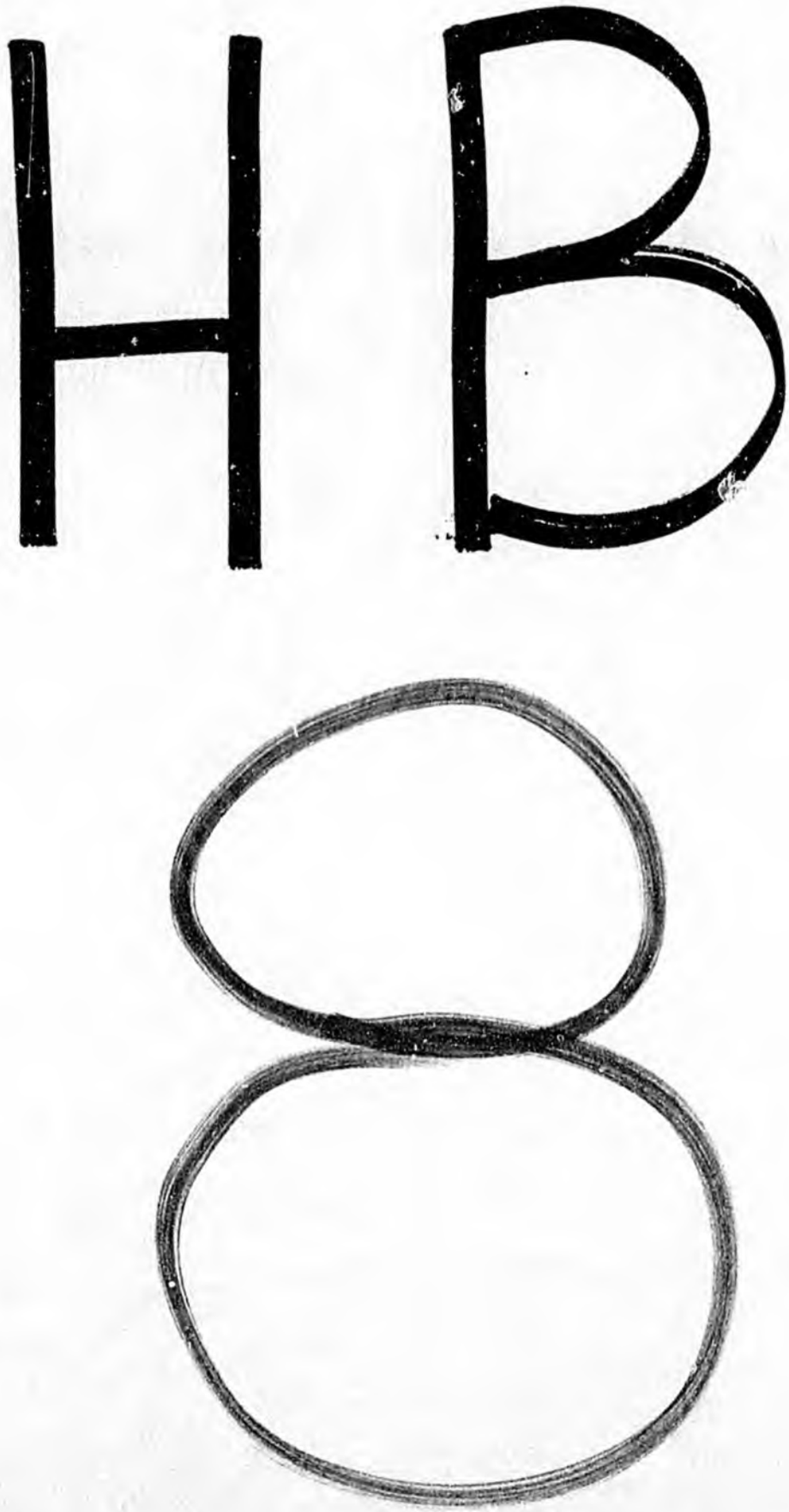
"Somehow or other," said Solberg, "we are going to have to wake up people in Juneau ..." □



Circle no. 17 on reader interest card



Circle no. 18 on reader interest card



Alaska State Legislature

House of Representatives
House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

LETTER OF INTENT

February 2, 1985

In recommending that CS for House Bill No. 8 (Judiciary) do pass, it is the intent of the House Judiciary Committee that the term "recklessly" in subsection (a) be construed in the manner set forth in AS 11.81.610(c), which deals with the construction of statutes with respect to culpability.

M. Mike Miller, Chairman
House Judiciary Committee

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 8

Title: Relating to harassment of game

Sponsor: M.M.Miller, Goll & Grussendorf

Requestor: House Judiciary

Date of Request: 1-28-85

FISCAL DETAIL

Agency Affected: Public Safety

Program Category Affected: Fish & Wildlife Protection

BRU, Program or Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Prepared By: Captain J. R. Nutgrass Phone: 269-5532

Division: Fish & Wildlife Protection Date: 1/24/85

Approved by Commissioner: Michael A Cole Date: 1-28-85

Agency: Department of Public Safety

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game		CSHB 8	M.M. Miller,Goll,Grussendorf

DEPARTMENT POSITION

Support the concept of the bill; care should be taken to ensure that the authority of the Board of Game is maintained.

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Roland Shanks	4/19/85	Don W Collinsworth	4.19.85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Fish and Wildlife Protection Board of Game	Sport hunters Subsistence hunters
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION [illegible]**
Unknown	Unknown

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Unknown

ANALYSIS OF BILL/PROGRAM EFFECTS

Existing regulation (5 AAC 81.072) currently prohibits the taking of game from any mechanical vehicle or from a motor-driven boat, where "take" by definition (AS 16.05.940(24)) includes "taking, pursuing...in any manner disturbing, or attempting to take, pursue...or in any manner capture...." Existing regulation also prohibits the use of aircraft, snowmachine, motor-driven boat or other motorized vehicle for the purpose of driving, herding or molesting game.

Limited exceptions to regulatory prohibitions against the use of motorized vehicles for the taking of game have been allowed by the Board of Game (e.g., use of motor-driven boats for hunting of caribou in Game Management Unit 23; use of motorized land vehicles to hunt moose in the Stikine River drainage; use of motor-driven boats to take coyotes and wolves).

(continued)

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

01-009 (Rev. 12/83)

(continued)

Subsection (c) should be interpreted to mean that the Board of Game retains its existing management authority and flexibility to regulate the taking of game.

ofiscal

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 8

Title: An Act relating to harassment of game

Sponsor: Miller/Goll/Grussendorf

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Fish and Game; FWP

Program Category Affected: Natural Resource Management

BRU, Program or Subprogram(s) Affected: Game

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	Ø	Ø	Ø	Ø	Ø	Ø
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Phil Koehl Phone: 465-4109

Division: Game Date: 1/28/85

Approved by Commissioner: Date: 1-30-85

Agency: Department of Fish and Game

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 8

Support

January 24, 1985

We do support House Bill 8 with recommendations for change in the present wording. This bill as presently worded, "with the intent to exhaust, frighten or harass the game" could be extremely difficult to enforce. It could also be extremely difficult to prove that the intent of a person was to exhaust, frighten or harass game.

It could well be that the true intent of a person was for reasons other than to exhaust, frighten, or harass game, such as taking pictures of game animals. We have proposed the following wording: It is a class A misdemeanor to intentionally drive, chase, herd or pursue game while using an aircraft, snowmachine, motor driven boat or motorized vehicle.

Robert J. Sundberg
Commissioner

COMMITTEE REPORT

HOUSE

(7)

1/14/85

FURTHER: Resources

Date: _____

The Committee on Judiciary has had HB 8
"An Act relating to harassment of game."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 8 [X] same title [ ] new title

and recommends Do pass

[X] AND attaches a "Letter of Intent" [ ] New Fiscal Note
[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

REFERRAL

Hein
1/28/85✓

Original sponsors: M.M.Miller, Goll,
Grussendorf and Szymanski

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 8 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to harassment of game."

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.783. HARASSMENT OF GAME. (a) It is a class A misdemeanor for a person to use an aircraft, snowmachine, motor driven boat or other motorized vehicle to drive, chase, herd, pursue, molest, or harass game.

(b) The provisions of (a) of this section do not apply to employees or agents of the department in the performance of duties of the department.


HB
221

reports. — For
977 (CSHD 2), see
663.
s. — 63 Am. Jur.
to 64.
nds, §§ 36 to 57.

blish notice of
ovided in AS
8; am § 41 ch

fees. (a) To

18;
he applicant
at the appli-
ear immedi-

a patent to

§ 2 ch 142
)

applicant
08.030 shall
homesite in
hapter. The
or its dura-

ny manner
use during
or to either
cant in the
olicant. An
mit except
ubstantial

(d) An applicant may apply for more than one available homesite. A person holding a homesite patent may not apply for a homesite entry permit, a person may not simultaneously hold more than one homesite entry permit, and a person who is a member of the homesite entry permit holder's household may not be issued a homesite entry permit while a member of the homesite entry permit holder's household. (§ 2 ch 142 SLA 1977; am § 39 ch 113 SLA 1981; am § 19 ch 67 SLA 1983; am § 50 ch 152 SLA 1984)

Effect of amendments. — The 1983 amendment repealed subsection (b). The 1984 amendment rewrote subsection (c).

Sec. 38.08.050. Revocation of entry permit. (a) The entry permit may only be revoked for failure to erect a dwelling as required under AS 38.08.060, or for other substantial breach of the terms and conditions of the homesite entry permit.

(b) Upon revocation and termination of a permit, improvements or chattels upon the homesite shall be managed, and subsequent issuance of a permit for entry on the homesite shall be conditioned, in the same manner as provided in AS 38.05.090 for removal or reversion of improvements upon termination of leases of state land. (§ 2 ch 142 SLA 1977)

Sec. 38.08.060. Issuance of patent. (a) A person who enters upon homesite entry land under a permit issued by the director shall be issued a patent to the land conveying an unencumbered title if that person

(1) occupies the land for a cumulative total of 35 months within the seven-year period following issuance of the homesite entry permit;

(2) erects a habitable, permanent, single-family dwelling on the homesite, which meets all applicable state and local regulations, within five years of the date of issuance of the homesite entry permit; for the purposes of this paragraph, mobile homes are not considered to be permanent dwellings unless they are placed on a permanent foundation;

(3) reimburses the state for the survey and platting undertaken in accordance with this chapter; the director shall provide by regulation for installment payments of this requirement.

(b) Nothing in this chapter shall be construed to prohibit a person issued a homesite entry permit from residing in a temporary habitable dwelling on the homesite until revocation of the homesite entry permit.

(c) A person may not be issued more than one patent during a lifetime, nor may any person who is a member of a patent holder's household be issued a patent while a member of the patent holder's household.

(d) If a dwelling is found to have been substantially completed under AS 38.08.100, patent shall be issued upon completion of the dwelling, notwithstanding (a) (2) of this section.

(e) A permit holder who meets each of the provisions of (a) of this section except for (a)(1) and who tenders the commissioner an amount equal to five percent of the purchase price of the land within seven years of the issuance of the permit may purchase the land under AS 38.05.065. The purchase price of the land is the fair market value of the land at the time of purchase. (§ 2 ch 142 SLA 1977; am § 11 ch 181 SLA 1978; am § 42 ch 85 SLA 1979; am § 38 ch 113 SLA 1981; am § 51 ch 152 SLA 1984)

Cross references. — For special conditions relating to entry permits issued before July 1, 1983, see sec. 87, ch. 152, SLA 1984 in the Temporary and Special Acts.

Effect of amendments. — The 1981 amendment substituted "seven-year" for "five-year" in paragraph (1) of subsection (a).

The 1984 amendment added subsection (e).

Editor's notes. — Section 47, ch. 113, SLA 1981 provides: "A person who is granted a homesite entry permit before July 1, 1981, is entitled to a patent to the land if the person satisfies the conditions imposed (1) in the homesite entry permit; or (2) by AS 38.08.060(a)."

Secs. 38.08.070 — 38.08.080. Required planning authority and zoning approval of land within municipality. [Repealed, § 45 ch 85 SLA 1979.]

Sec. 38.08.090. Disclaimer of intent to provide services. Nothing in this chapter obligates the state to provide services to land which is the subject of homesite entry and patent. (§ 2 ch 142 SLA 1977)

Sec. 38.08.100. Substantial completion of dwelling. An entry permit may not be revoked for failure to erect a dwelling in the time required under AS 38.08.060(a)(2) if the director finds that erection of the dwelling has been substantially completed and progress toward completion is being made at the expiration of the time required. (§ 2 ch 142 SLA 1977)

Sec. 38.08.110. Regulations. The commissioner shall adopt regulations in accordance with AS 44.62.180 — 44.62.290 to carry out the purposes of this chapter, including, but not limited to, regulations relating to easements and access routes. (§ 2 ch 142 SLA 1977; am § 12 ch 181 SLA 1978)

Sec. 38.08.120. Definitions. In this chapter

(1) "commissioner" means the commissioner of natural resources;

(2) "habitable dwelling" means a dwelling of a permanent nature, together with fixtures and facilities, including sanitary facilities required or customary in the vicinity of the land made available for homesite entry;

(3) "resident" means a person who is not claiming residence in another state and shows by all attending circumstances an intent to maintain a permanent residence in the state. (§ 2 ch 142 SLA 1977)

Grand Camp
Alaska Native Brotherhood

71ST, ANNUAL ANB-ANS GRAND CAMP CONVENTION
JUNEAU, ALASKA
NOVEMBER 14-19, 1983

RESOLUTION NO. 16

WHEREAS, "House Bill 433, An Act relating to homesites for veterans", and

WHEREAS, Section 1. AS 38.08 was amended by adding a new section to read:

Sec. 38.08.015. Homesites for Veterans. A veteran who qualifies for a homesite entry permit under AS 38.08.030 may not be required to reimburse the State for the costs incurred by the State in surveying and platting undertaken by the State in accordance with this chapter.

"Veteran" means a person who

(a) Performed service in the armed forces of the United States for a period of 180 days or more during one or more of the following periods unless a shorter period of service resulted from a service connected injury or disability:

(1) Between April 6, 1917 and December 1, 1918;
(11) Between September 16, 1940 and December 31, 1947;
(111) Between June 25, 1950 and January 31, 1955
(1V) Between August 4, 1964 and November 7, 1975

(b) Received an honorable discharge.

THEREFORE BE IT RESOLVED that the 71st Annual Grand Camp Convention of the Alaska Native Brotherhood and Sisterhood assembled in Juneau, Alaska support H.B. 433 and diligently pursue this bill in the 1984 legislature.

ATTEST:
I certify that this resolution was adopted by the ANB ANS Grand Camp in Convention at Juneau during the week of Nov. 14-19, 1983.

Ronald Williams 586-7600
Ronald Williams, Grand President

Albert Kookesh
Albert Kookesh, Grand Secretary

Past ANB Grand Presidents
Roy Peratrovich
Alfred Widmark
Cyrus Peck

Frank Peratrovich
Patrick J. Paul
Thomas Jackson
John Hope

Frank See
Walter Soboleff
Richard Stitt
Steven V. Hotch

Nelson D. Frank
Frank J. Williams
Herbert Hope
Robert R. Martin

Roy Peratrovich, Grand President Emeritus
Cyrus Peck Sr., Grand Secretary Emeritus

DNR AMENDMENT 1

Introduced: 1/14/85
Referred: Resources and
Finance

IN THE HOUSE BY GOLL

HOUSE BILL NO. 21

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to homesites for veterans."

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

* Section 1. AS 38.08 is amended by adding a new section to read:

Sec. 38.08.015. HOMESITES FOR VETERANS. A veteran who qualifies [and who complies with the provisions of AS 38.08.060(a-d) except (a)(3),] for a homesite entry permit under AS 38.08.030 may not be required to reimburse the state for the costs incurred by the state in surveying and platting undertaken by the state in accordance with this chapter.

* Sec. 2. AS 38.08.120 is amended by adding a new paragraph to read:

(4) "veteran" means a person who

(A) performed service in the armed forces of the United States for a period of 180 days or more during one or more of the following periods unless a shorter period of service resulted from a service connected injury or disability:

(i) between April 6, 1917 and December 1, 1918;

(ii) between September 16, 1940 and December 31, 1947;

(iii) between June 25, 1950 and January 31, 1955; or

(iv) between August 4, 1964 and November 7, 1975;

(B) received an honorable discharge.

DNR AMENDMENT #2

Definition of Veteran

The definition of veteran for purposes of this measure (§2 AS 38.08.120) is different than the existing wording in AS 38.05.940 (b) (3&4). In order to avoid confusion and difficulty in administering two qualification standards for veterans, the department recommends the following amendment to HB 21, section 2:

Sec. 2. AS 38.08.120 is amended by adding a new paragraph to read:

(4) "veteran" as used in this section shall have the same meaning as in AS 38.05.940 (b) (3&4). [MEANS A PERSON WHO

(A) PERFORMED SERVICE IN THE ARMED FORCES OF THE UNITED STATES FOR A PERIOD OF 180 DAYS OR MORE DURING ONE OR MORE OF THE FOLLOWING PERIODS UNLESS A SHORTER PERIOD OF SERVICE RESULTED FROM A SERVICE CONNECTED INJURY OR DISABILITY:

(I) BETWEEN APRIL 6, 1917 AND DECEMBER 1, 1918;

(II) BETWEEN SEPTEMBER 16, 1940 AND DECEMBER 31, 1947;

(III) BETWEEN JUNE 25, 1950 AND JANUARY 31, 1955; OR

(IV) BETWEEN AUGUST 4, 1964 AND NOVEMBER 7, 1975;

(B) RECEIVED AN HONORABLE DISCHARGE.]

REPRESENTATIVE
PETER GOLL

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

January 21, 1985

TO: Representative Dick Shultz, Co-Chairman
House Resources Committee

FROM: Representative Peter Goll

SUBJECT: HB 21

The intent of HB 21 is to provide consideration to war-time veterans seeking a homesite for purposes of establishing a permanent residence.

Other land disposal programs and many state loan programs award veterans discounts or preferences. This bill would exempt veterans from reimbursing the state for the cost of survey and platting which are required under AS 38.08.060(a)(3). The application fee, would still be required prior to the state's issuing a patent.

The definition of veteran serving during periods of conflict was developed last session, and consistent with the dates established by federal and state law.

A number of citizens will be testifying. Mr. Leo Land will be traveling from Haines, expressly to testify on this legislation. My staff has provided your office with the names of other persons and groups who are interested in the legislation. Your assistance in assuring that they receive prior notice is greatly appreciated.

A sectional analysis has also been provided to committee staff.

Thank you very much for your prompt scheduling of HB 21.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M January 18, 1985

SUBJECT: HB 21, Sectional Analysis

TO: Representative Peter Goll

FROM: Randall J. Moen
Legislative Counsel

Section 1 Allows a qualified veteran to acquire state land under a homesite entry permit without having to reimburse the state for surveying and platting costs incurred by the state on the homesite.

Section 2 Defines the word "veteran" for purposes of section 1, above, to mean a person who served in the armed forces of the U.S.A. for 180 days or more during a prescribed period of time and received an honorable discharge. The 180 day service requirement does not apply if the person received a service connected injury or disability.

RJM:csh
c2/180

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 21

Title: Homesites for Veterans

Sponsor: Goll

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected:

BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		24.5	4.4	4.4	4.4	4.4
200 TRAVEL						
300 CONTRACTUAL		0.5	0.1	0.1	0.1	0.1
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		25.0	4.5	4.5	4.5	4.5
CAPITAL						
REVENUE		(86.0)	(86.0)	(86.0)	(86.0)	(86.0)

FUNDING: (Thousands of Dollars)

GENERAL FUND		25.0	4.5	4.5	4.5	4.5
FEDERAL FUNDS						
OTHER						
TOTAL		25.0	4.5	4.5	4.5	4.5

POSITIONS:

FULL-TIME						
PART-TIME		1				
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: Michael E. Vediner Phone: 465-2400

Division: Land and Water Management Date: January 18, 1985

Approved by Commissioner: Robert D. Arnold, Deputy Date: January 18, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

FISCAL NOTE - HB 21 January 18, 1985
Attachment

ANALYSIS:

Operating expenditures will be minimal in the implementation of this bill. Of approximately 2200 homesite entry permits now issued, 20 percent are held by veterans. As much as $25,000 will be required to obtain and review necessary documentation of eligibility of these permittees. This figure covers management, clerical, typing, and postage costs. At projected rate, homesite entry permittees authorized after implementation of this bill will require an additional annual increment of $4500 to administer.

A net revenue loss will be incurred with this bill as follows. 20 percent of the total number of homesites issued is 440. At an average cost of $1450 for surveying and platting each homesite, the total forgiveness of these costs is $640,000 over the next ten years. In addition, at the current rate of 75 homesites per year, an additional 15 will be issued to veterans. This will further increase the revenue loss by $22,000 per year. Using these figures a net annual revenue loss of $86,000 will be incurred. Of course, as the program becomes more attractive the percentage of veterans in the numbers, and consequently the net annual revenue loss, will increase.

Part time position in FY 86 is for clerical staff.

Original sponsor: Goll

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 21 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to homesites for veterans."

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

* Section 1. AS 38.08 is amended by adding a new section to read:

Sec. 38.08.015. HOMESITES FOR VETERANS. A veteran who qualifies for a homesite entry permit under AS 38.03.030 and who complies with the provisions of AS 38.08.060(a)-(d), except AS 38.08.060(a)(3), may not be required to reimburse the state for the costs incurred by the state in surveying and platting undertaken by the state in accordance with this chapter.

* Sec. 2. AS 38.08.120 is amended by adding a new paragraph to read:

(4) "veteran" means a person who

(A) performed service in the armed forces of the United States for a period of 180 days or more during one or more of the following periods unless a shorter period of service resulted from a service connected injury or disability:

(i) between April 6, 1917 and December 1, 1918;

(ii) between September 16, 1940 and December 31, 1947;

(iii) between June 25, 1950 and January 31, 1955; or

(iv) between August 4, 1964 and November 7, 1975;

(B) received a discharge under honorable conditions.

HB

31

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary Committee, 4/17/85, 1:30 pm
" " " , 4/19/85, 1:15 pm

COMMITTEE REPORT

HOUSE

1/22

(9)

4/22/85

FURTHER:

Date: 1/22/86

The Committee on RESOURCES has had HB 31

"An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping."

under consideration and recommends:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same titl
[ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note
[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Shultz

Cato

Jenkins

Pearce

Miller(NP) M.G. Miller

Thompson

MEMBERS HAVING OTHER RECOMMENDATIONS:

Herrmann

Sund

Wallis

CO-CHAIRMAN Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 31
Title : "An Act relating to obstruction of lawful hunting, fishing or trapping"

Sponsor : Rep. Shultz
Requestor : H. Resources
Date of Request : 1/28/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Fish & Wildlife Protection

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

K.M. Niles
Prepared by : Kathleen M. Niles, Admin. Ass't — Phone : 465-4336
Division : Commissioner's Office — Date : 1-28-86

Approved by Commissioner : [signature] — Date : 1/28/86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 31

Title: "An Act relating to obstruction of lawful hunting, fishing or trapping."

Sponsor: Rep. Shultz

Requestor: H. Judiciary

Date of Request: ~~4/19/85~~ 1/28/86 Lt.C. Shultz

FISCAL DETAIL

Agency Affected: Public Safety

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie Phone: 465-4349

Division: Administrative Services Date: 4/19/85

Approved by Commissioner: Robert J. Stedberg Date: 4/17/85

Agency: Department of Public Safety

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 31

Title: Obstructing/hindering hunting or fishing

Sponsor: Shultz

Requestor:

Date of Request: January 28, 1986

FISCAL DETAIL

Agency Affected: Fish and Game

Program Category Affected:

CRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME		NONE				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert A. Hinman Robert A. Hinman Phone: 465-4190

Division: Game Date: 1-28-86

Approved by Commissioner: Date: 1-30-86

Agency: Fish and Game

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 31

Title: Obstructing/hindering hunting or fishing

Sponsor: Shultz

Requestor:

Date of Request: January 28, 1986

FISCAL DETAIL

Agency Affected: Fish and Game

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME		NONE				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert A. Hinman Phone: 465-4190

Division: Game Date: 1-28-86

Approved by Commissioner: Date: 1-30-86

Agency: Fish and Game

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

Overview HB 31

TO: HOUSE RESOURCES MEMBERS DATE: January 21, 1986

FROM: Representative Dick Shultz (As requested by Representative John Sund)

HB 31 is not a new bill in that the concept has been around for some three years.

The rationale of HB 31 is very simple, however the political solution is more complex. Basically it boils down to two points of view.

1. Animal protectionist groups believe they should have the legal right to harass hunters, fishermen or their quarry in the name of conservation.

2. Hunters and fishermen feel this is an infringement on their rights to conduct a legally sanctioned activity.

Other states (see packet) have opted to protect hunters and fishermen in their activities and as a result have fashioned legislation to address conflicts that may occur in the field.

HB 31 is based on the review and input from several of these states and is designed to protect both the hunter and the fisherman as well as others enjoying the out of doors from intentional harassment designed to frustrate their activities.

The penalties involved are commensurate with those established by other states and a defense is provided for those who have a right to disturb field activities or reasonably believed they had the right to create a disruption or disturbance.

If one will take the time to read the growing sources of information provided to those who wish to harass hunters the necessity of this legislation will become more obvious.

When such activity takes place in Alaska it may cost an individual many thousands of dollars and ruin the trip of a lifetime. With this type of loss the potential for violence in the field is greatly increased. It is the intention of the sponsor through the legal relief available via HB 31 to provide a better alternative when such altercations arise.

COMMITTEE REPORT

HOUSE

(7)

1/14/85

FURTHER: Resources

Date: April 18, 1985

The Committee on Judiciary has had HB 31

"An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation [ ] Zero Fiscal Note Attached

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

NO REC

do not pass

CHAIRMAN

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 31

Title: Obstruction or hindrance of hunting, fishing or trapping

Sponsor: Shultz and Marrou

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Fish and Game; FWP

Program Category Affected: Natural Resource Management

BRU, Program or Subprogram(s) Affected: Game

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	Ø	Ø	Ø	Ø	Ø	Ø
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Phil Koehl Phone: 465-4190

Division: Game Date: 4/19/85

Approved by Commissioner: Jamed K. Ayers Date: 4-22-85

Agency: Fish and Game

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 31

Title: "An Act relating to obstruction of lawful hunting, fishing or trapping."

Sponsor: Rep. Shultz

Requestor: H. Judiciary

Date of Request: 4/19/85

FISCAL DETAIL

Agency Affected: Public Safety

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie — Phone: 465-4349

Division: Administrative Services — Date: 4/19/85

Approved by Commissioner: Robert J. Stedberg — Date: 4/19/85

Agency: Department of Public Safety

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 546

Support

"HB 546 - An Act relating to harassment of persons lawfully engaged in hunting, fishing, or trapping."

The Department of Public Safety supports passage of HB 546.

This bill adequately addresses conduct that is illegally aimed at interfering with lawful hunting, fishing or trapping.

British Columbia has had severe problems between legal hunters and anti-hunting groups that have led to armed confrontations. The potential for that to occur in Alaska is evident and I think enacting a law to address this problem would be a good start toward prevention.

Robert J. Sundberg
Commissioner

NEVADA

Section 1. Chapter 503 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. It is unlawful for a group of people, acting together, intentionally to interfere with a person who is lawfully hunting or trapping. For the purpose of this subsection, hunting or trapping is "lawful" only if permitted by the owner or person in possession of the land, other than the government, in addition to any requirement of license or permit from a public authority.

2. The provisions of subsection 1 do not apply to any incidental interference arising from lawful activity by users of the public land, including without limitation ranchers, miners or persons seeking lawful recreation.

MAINE

§7541 Harassment prohibited.

1. Interference with taking. No person may willfully interfere with the lawful hunting, fishing or trapping of a wild animal, wild bird or fish.

2. Disturbing wild animals, wild birds or fish. No person may willfully disturb or attempt to disturb a wild animal, wild bird or fish with the intent to interfere with the hunting, fishing or trapping of them.

3. Violation. A violation of this section is a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

4. Property rights otherwise provided by law. This chapter shall not be construed in any way to limit the ownership use, access or control of property rights otherwise provided by law.

§7542 Injunction; damages.

1. Injunction. The District Court or Superior Court may enjoin conduct which would be in violation of section 7541 upon notification by a person affected or who reasonably may be affected by the conduct, upon a showing that the conduct is threatened or that it has occurred on particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

SOUTH DAKOTA

Section 1. No person may intentionally interfere with any person or group of persons lawfully engaged in the process of taking or attempting to take any game or fish. No person may engage in any activity specifically intended to harass or otherwise prevent the lawful taking of any game or fish. No person may engage in any activity to scare or disturb any game with specific intent to prevent their lawful taking. This section may not be construed to prohibit a landowner from revoking a prior grant of permission to hunt on his land. A violation of any provision of this section is a Class 2 misdemeanor.

Section 2. Any person who fails to obey the order of a peace officer to desist from conduct in violation of section 1 of this Act, if the officer observes such conduct, or has reasonable grounds to believe the person was engaged in such conduct that day or intends to engage in such conduct that day on a specific premises, is guilty of a Class 1 misdemeanor.

Section 3. The court may enjoin conduct which is in violation of section 1 of this Act upon petition by a person affected or who reasonably may be affected by such conduct, upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and may reasonably be expected to be repeated. The court may award damages to any person adversely affected by a violation of section 1 of this Act. Damages may include an award for punitive damages, license fees, travel or other expenses which were rendered futile by preventing the licensee from taking game or fish.

Signed March 12, 1983.

ILLINOIS

[S.H.A. ch. 61, ¶301]

Section 1. Definitions. As used in this Act:

a. "wild animal" means any wild creature the taking of which is authorized by the fish and game laws of the State.

b. "Taking", means the capture or killing of a wild animal and includes travel, camping, and other acts preparatory to taking which occur on lands or waters upon which the affected person has the right or privilege to take such wild animals.

[S.H.A. ch.61, ¶302]

Section 2. Any person who knowingly performs any of the following is guilty of a Class C misdemeanor;

(a) interferes with the lawful taking of a wild animal by another with intent to prevent the taking.

(b) disturbs or engages in an activity that will tend to disturb wild animals, with intent to prevent their lawful taking.

(c) disturbs another person who is engaged in the lawful taking of a wild animal or who is engaged in the process of taking, with intent to dissuade or otherwise prevent the taking.

(d) enters or remains upon public lands, or upon private lands without permission of the owner or his agent, with intent to violate this Section.

[S.H.A. ch. 61, ¶303]

Section 3. Any person who knowingly performs any of the following acts is guilty of a Class B misdemeanor;

(a) fails to obey the order of a peace officer to desist from conduct in violation of Section 2 of this Act if the officer observes such conduct, or has reasonable grounds to believe that the person has engaged in such conduct that day or that the person plans or intends to engage is such conduct that day on a specific premises.

[S.H.A. ch. 61 ¶304]

Section 4. (a) Any court may enjoin conduct which would be in violation of Section 2 of this Act upon petition by a person affected or who reasonably may be affected by such conduct, upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

(b) A court may award damages to any person adversely affected by a violation of Section 2, which may include an award for punitive damages. In addition to other items of special damage, the measure of damages may include expenditures of the affected person for license and permit fees, travel, guides, special equipment and supplies, to the extent that such expenditures were rendered futile by prevention of the taking of a wild animal.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

April 13, 1984

MEMORANDUM

TO: Representative M. Mike Miller

FROM: Nancy Pease Nancy Pease
Legislative Analyst

RE: HB 546 Harassment of Hunters
Research Request 84-081

You requested information on statutes prohibiting the harassment of hunters in other states. Specifically, you asked how other states define harassment of hunters, what penalties other states prescribe for the harassment of hunters, and how many people have actually been prosecuted in each state in which these laws are in place.

Statutory Definitions of Harassment

Nine states currently have statutes which prohibit persons from intentionally interfering with the lawful taking of fish and game.[1] Most of the states' statutes use fairly broad language to prohibit persons from intentionally

- harassing persons engaged in lawful hunting, trapping, and/or fishing; or
- interfering with the process of the lawful taking of fish or game; or
- disturbing fish or game in order to hinder fishermen or hunters from lawful taking.

In most of these states, the language of the statutes does not define "harassment", "interference", or "disturbance" in terms of specific activities which are disallowed. There are some instances in which states mention activities that would constitute harassment under the

---

[1]Arizona, Illinois, Louisiana, Maine, Michigan, Nevada, Pennsylvania, South Dakota and Vermont. Arkansas repealed a law prohibiting the harassment of hunters after landowners protested that the law, as written, might have legalized trespassing on private lands.

law: Pennsylvania prohibits persons from tampering with, mutilating, destroying or removing traps, and from removing animals from traps; Louisiana prohibits the disturbing of wild animals by placing any object or substance intended to alter the behavior of the animals to the detriment of hunters; Vermont, Arizona and Pennsylvania specify that the "driving" of animals with the intent to hinder hunters constitutes illegal interference with a hunt. Nevada frames illegal interference with hunters in narrow terms by prohibiting "a group of people, acting together, [from] intentionally interfering with a person who is lawfully hunting or trapping."

The statutes of several states also mention specific activities which the law does not curtail even though the activities may, in some instances, hinder hunters, fishermen or trappers. For example, the Pennsylvania statutes specify that landowners may remove traps which have been set on their private property without their permission; in Maine the law does not prevent private landowners from keeping hunters off their property; and in several states, the law "may not be construed to prohibit incidental interference arising from lawful activity by land users such as farmers and recreationists (Vermont) or ranchers and miners (Nevada).

For the most part, states have either not defined "harassment", or have set out very general circumstances under wh[illegible]ctivities of many types might be construed as "harassment" of hunters. As an example of the broad language common to these statutes, Louisiana and Illinois forbid persons from disturbing any hunter, trapper or fisherman who is "engaged in the lawful taking of a wild animal or who is engaged in the process of taking (including travel, camping or other hunt preparations) with intent to dissuade or otherwise prevent the taking." In addition, other parties may not act to "prevent such person's enjoyment of the outdoors." Also, other parties may not enter or remain on state-managed or private lands or waters with the intent to disturb game or harass hunters.

Actual Incidents of Harassment

I talked with game wardens or legal specialists in the Fish and Game Departments of fifteen states to try to compile a list of activities which might commonly be considered interference in the lawful taking of fish and game. It appears that Fish and Game personnel have differing and uncertain impressions, under the broadly written statutes, of what activities might constitute intentional harassment of hunters or interference in the taking of game. Several of the fish and game officers with whom I spoke emphasized that they would not charge a

person with interference unless his presence and activities in a hunting area were blatantly intended to disrupt a hunt. The wardens mentioned planned, publicized disruptions by anti-hunting groups as instances in which they would charge participants with interference in the lawful taking of game.

Game wardens in Maine and South Dakota mentioned incidents of disturbance to hunters where charges were considered but not filed. In Maine, game wardens issued warnings to a person who drove a deer out of a clearing, interrupting the stalk of a bow hunter; and to an elderly couple dressed in blaze-orange clothing and carrying a red umbrella who settled themselves in lawnchairs right behind a duck blind where hunters were hunting over decoys. In South Dakota, state conservation officers investigated two incidents between competing sportsmen and failed to file charges because the harassment appeared to have been mutual and of unverifiable origin. The first such incident involved two parties of fishermen throwing rocks at one another in a dispute over access to a creek on private land. The second incident occurred when a goose hunter was ordered to leave a section line by a farmer who owned the land on either side of the right-of-way and charged hunters to hunt on his property.

Only two states report that persons have been convicted under their statutes prohibiting interference with the lawful taking of fish and game.[2] These cases apparently did not involve serious challenges to the vagueness of the statutes; to date, there have been no court rulings to further define what activities and circumstances constitute intentional harassment of hunters.

Because anti-harassment statutes have resulted in few actual charges, officials in most states explained the scope and intent of the statutes by mentioning past instances of harassment of hunters in their states, or incidents that have occurred in other states. Following is a list of instances of harassment of hunters mentioned by fish and game officials as contributing to the passage of anti-harassment legislation, or as defining the application of such laws.

Arizona. According to Assistant Attorney General Joe Clifford, three incidents of harassment of hunters in Arizona led to his state's passage in 1981 of the first law prohibiting interference with the legal taking of game. The earliest incident involved Arizona's small bison

---

[2]Vermont's Chief Warden of Fish and Game reported that four complaints of interference with the taking of game in the second half of 1983 resulted in three convictions, all related to trapping. In Illinois, since the anti-harassment law took effect on January 1, 1984, one person has been convicted of tampering with traps.

herd. Approximately 10 years ago, anti-hunting groups began to protest the annual permit hunt by which the Arizona Game Department culls the bison herd to keep the herd's population stable. The protest escalated year by year until the anti-hunters were threatening to lie down between the herd and the hunters. A second protest was sparked over Arizona's desert bighorn sheep, which Mr. Clifford called "a rare animal", highly valued by both trophy hunters and wildlife conservationists. Individuals opposed to the sheep hunt attempted to protect a herd of bighorns in the Tucson area by hiking in the mountains and beating pots and pans. The final incident which contributed to passage of an anti-harassment law in Arizona involved a shootout between a hunter and a ranch owner over the locking of a gate on grazing lands owned by the state.

Because the conflicts in Arizona primarily involved organized protests, the anti-harassment law in Arizona was drafted specifically to prevent harassment of hunters by organized groups. The Arizona law becomes effective only in instances where the game commission (1) "finds that a significant interference or disruption of a hunt is likely to occur," and (2) establishes a designated hunting area where harassment is illegal. This law passed unanimously. There have been no arrests under the Arizona law.

Illinois. Jennifer Greenleve, an officer of the Illinois Department of Conservation's Law Enforcement Division, stated that anti-harassment legislation was instigated in Illinois by incidents involving duck hunters along the Mississippi River. The hunting of animals by drawing them to bait or feed is illegal in Illinois, and hunting protesters would attempt to protect waterfowl by spreading grain in popular hunting areas to make hunting illegal there.

Since the law went into effect on January 1, 1984, there has been one incident of arrest; a person was convicted of tampering with traps, and fined.

Louisiana. In 1982, Louisiana adopted a very broad law prohibiting interference with the lawful taking of game. According to Major Tommy Candize of the Louisiana Department of Wildlife and Fisheries, there have been no reported incidents of interference in Louisiana before or after the passage of the law; the law was passed as a preventive measure.

Michigan. According to Dick Elden, Assistant Chief of the Wildlife Division of Michigan, there were no incidents in his state which led to the introduction of an anti-harassment bill, and there have been no reported incidents since its enactment. The bill was inspired by hunting protests in the western states and by the CBS documentary "Guns of Autumn" which portrayed a negative image of hunters. Mr. Elden characterizes his state as having a high potential for conflicts

between hunters and anti-hunters because of Michigan's large urban population for whom hunting is not traditional, and the state's healthy wildlife resource which attracts hunters from many areas.

Maine. In Maine, the passage of a law to prohibit interference with the taking of fish and game was largely a preventive measure. According to Dave Allen, Executive Director and lobbyist for the Sportsmen's Alliance of Maine, Maine hunters were inspired to campaign for a protective law by two out-of-state events: the disruption of a trophy hunt in British Columbia by Greenpeace protesters, and the distribution in the Northeast of a tip sheet of tactics for "hunt saboteurs". Within Maine, there was debate over whether or not to hold a moose hunting season, but according to Mr. Allen, the moose hunt was challenged only by ballot referendum; and the sportsmen's fears of a protest in the woods were not confirmed.

Mr. Allen stated that the terms "willful" and "harassment" used in Maine's anti-harassment law were not discussed at any length during hearings on the bill; the terms draw on their standard legal definitions. Mr. Allen did offer his opinion that the law would not prevent landowners from keeping hunters off their private land, or prevent someone from walking in the woods with a radio unless a prosecutor could prove that the action was willful disruption of a hunt.

Nevada. The staff specialist in law enforcement with the Nevada Division of Fish and Game could recall no instances of harassment of hunters in his state before or after the passage of a law to prohibit such harassment.

Pennsylvania. John Plowman, legislative liaison with Pennsylvania Fish and Wildlife, reports that there have been no direct confrontations between hunters and hunt protesters in his state. Pennsylvania has had for many years a law protecting law-abiding trappers from interference; protection for hunters was instituted in 1983 as a preventive measure, with the backing of the Federation of Sportsmen and the Wildlife Legislative Fund of America. No charges have been filed under the new law.

South Dakota. South Dakota appears to be the only state that has prohibited interference with hunters partly because of conflicts among the hunters themselves. According to state conservation officer Bob Pract, the primary conflicts with hunters in South Dakota have involved pay-to-hunt operations run by farmers who own the wheat and corn fields on the bluffs above the wildlife refuges in the bottomlands of the Missouri River. These farmers construct duck blinds along their bluffs and charge hunters fees to hunt the ducks and geese that fly out of the bottomlands to feed in the grain fields. Hunters who choose not to pay to hunt from private lands have legal access to the bluff hunting areas only along the public right-of-way of the section lines.

The competition for ducks and geese, pitting nonpaying hunters against farmers and their client-hunters, has led to confrontations--verbal threats and physical blows. The anti-interference statute seeks to discourage harassment of hunters by competing hunters. Officer Pract added that while he knows of no anti-hunting groups in South Dakota, this law was also intended to prevent such groups from establishing themselves in the state.

Vermont. The Vermont State Constitution (written in 1777) guarantees that all citizens have the right to hunt, fish, and trap the state's wildlife. In 1981, the Vermont legislature adopted an anti-harassment law to safeguard that constitutional right by prohibiting disturbance of hunters and fishermen. (Trappers in Vermont had been protected by the statute for over 20 years.) The new statute seeks to minimize restrictions on other legitimate users of public lands by exempting from the ban "any incidental interference arising from lawful activity by land users including farmers and recreationists."

Vermont's Chief Warden Roger Whitcomb reports that the anti-harassment law is actively enforced in Vermont because trapping and hunting are activities traditional to the Vermont lifestyle. During the six-month period from July 1 to December 1, 1983, the warden's office pursued four complaints of harassment, leading to three convictions in trapping cases. The harassment problem in Vermont has been limited primarily to instances of individuals tampering with traps.

In summary, of the nine states which have adopted laws to prohibit interference with the lawful taking of fish and game,

- only two states have convicted persons of violating the law, in a total of four cases,
- a few states have used the authority of the law to issue warnings rather than to make arrests, and
- in over half of the states which have passed a law to prohibit harassment of hunters, there have never been major, reported instances of harassment of hunters, trappers or fishermen.

Comments from Advocacy Groups

In addition to talking with Fish and Game Department officials and legislative specialists, I contacted several organizations dedicated to the protection of wildlife and several organizations that promote hunting, fishing and trapping.[3] While these groups were not aware of further incidents or arrests involving interference with hunters, they did offer a few comments on the issue. Susan Russell, Director of Friends of Animals (a national animal protection agency) cautioned that the "intent" of persons who disrupt a hunt may be difficult to prove. She added that legislation to prohibit interference with a hunt may be unconstitutional in its vagueness and in its infringement upon a person's rights to use public lands. From the opposite point of view, the Wildlife Legislative Fund of America (a hunters lobby) argues that, when charges of interference arise, a non-hunter who is using a hunting area should have the burden of justifying his activities. The Wildlife Legislative Fund is sending us a copy of a "model" statute, proposed by their organization, which would make interference with hunting a felony; we will forward a copy to you.

Incidents in States Without Anti-Harassment Laws

The confrontations between hunters and hunt protesters have become most heated in the northeastern states. Fish and game officials or legislative specialists in other states commonly cited conflicts in New York, Massachusetts, Connecticut or New Jersey in explaining the intent and scope of laws passed in their own states. The major conflicts that have occurred in these states are summarized below.

New York. The New York Director of Fish and Wildlife stated that most instances of alleged harassment of hunters in his state were not well-documented. He recalled two protests involving the "peaceful, though noisy" picketing of deer hunts in state parks by the Committee Against Sports Hunting. A third incident involved the special Ripley Hunt to curtail deer damage to orchards in a deer wintering area; hunters' car tires were punctured by unidentified persons. Partly on the basis of these three incidents of potential violence between hunters and hunt protesters, the New York legislature is now considering legislation to prohibit interference with the taking of game.

---

[3]Greenpeace, USA; Fund for Animals; Friends of Animals; Animal Protection Institute of America; National Rifle Association; National Shooting Sports Foundation; Wildlife Legislative Fund of America; Game Conservation International.

Massachusetts. Fisheries and Wildlife Director Richard Cronin characterized hunting conflicts in his state as involving a core group of no more than 200 sophisticated protesters who achieve major disruption by playing to the media. Their strategies have included picketing deer check stations, playing music at duck hunting lakes, and announcing that they would place themselves in hunters' lines-of-fire in order to halt a hunt scheduled for the culling of the deer herd on a private nature preserve at Cranes Beach. Legislation has been proposed to prohibit such activities, but Mr. Cronin estimated that it has only a slim chance of passage.

New Jersey. Legislation to prohibit hunt interference is much closer to passage in New Jersey, where a bill has been introduced with 21 co-sponsors (in an 81-member House). According to the game department's legislative specialist, Bob Hitchmoney, New Jersey has experienced isolated incidents in which duck blinds have been contaminated through methods advocated by wildlife protection groups. In addition, Mr. Hitchmoney says a group of protesters from New York City annually picket the Great Swamp deer hunt, attracting considerable media attention.

Connecticut. The Director of Wildlife said that incidents of harassment were common several years ago (although legislation failed to pass at that time), but Conneciticut has experienced no major problems within the past year. Past incidents have involved the New York-based protection society Friends of Animals, whose tactics include walking in the woods with loud radios, beating on pots and pans, and sprinkling lighter fluid along deer trails. There was also an incident where anti-hunters launched a raft in Long Island Sound from which they shot flares and played martial music to alarm ducks and geese, and an incident where limbs where sawed through on a deer stand, resulting in a hunter's falling and injuring himself. Connecticut's Director of Wildlife said that, in the absence of a statute to prohibit such harassment, Connecticut conservation officers would in the future arrest hunt protesters on other applicable charges; for example, a person pouring lighter fluid along deer trails could be charged with illegal disposal of flammable substances.

Penalties

Most states classify intentional interference with the lawful taking of fish or game as a misdemeanor offense, punishable by a fine in the range of $100 to $500, or a jail term in the general range of 30 to 90 days, or both. (See attached table.) The severity of the penalty usually depends on whether or not the violator actively disrupted a hunt, refused an enforcement officer's order or a court injunction not to disturb a hunt, or was only present in the hunting area with the

intent to disrupt the hunt. In addition to civil penalties, a convicted violator may be liable for court costs, for punitive damages, and for damages incurred by the affected hunter when the interference rendered his hunting efforts and expenditures futile. (For example, the affected hunter might collect the cost of his license and permit fees, travel, guides, special equipment and supplies.)

I hope this information is helpful to you. If you have further questions, please let us know how we can be of assistance.

NP

Attachment

PENALTIES FOR

INTERFERENCE WITH THE LAWFUL TAKING OF FISH & GAME

Arizona

Actual interference is a Class 2 misdemeanor punishable by a fine not to exceed $750.00.

Presence in a hunting area with intent to disrupt a hunt is a Class 3 misdemeanor punishable by a fine not to exceed $500.00.

A hunter may claim reimbursment for expenses related to an interrupted hunt.

Illinois

Failure to obey a peace officer's orders to cease interference or to leave a hunting area is a Class B misdemeanor punishable by a fine of up to $500, or a jail term of up to 6 months, or both.

Actual interference with a hunt, or presence in a hunting area with the intent to interfere, is a Class C misdemeanor, punishable by a fine of up to $500, or 30 days in jail, or both.

A hunter may claim punitive damages and damages for expenditures that were rendered futile by the actions of the person who disrupted the hunt.

Louisiana

Actual interference with a hunt, or presence in a hunting area with intent to interfere is a Class 2 violation.

Failure to obey an enforcement officer's orders not to enjoin in disruptive activities or to cease disruptive activities is a Class 3 violation.

The first such offense is punishable by a fine of $25 to $100, or 10 to 60 days of imprisonment, or both. A subsequent offense is punishable by a fine of $100 to $300, or 30 to 90 days in jail, or both.

Maine.

Interference with the taking of fish and game in Maine is a civil violation punishable by a fine of $100 to $300.

A hunter may collect may collect damages or costs related to the interrupted hunt.

PENALTIES (continued)

Michigan	Interference with a hunt is a misdemeanor violation of game laws which may result in a fine of not more than $100 plus the costs of prosecution, or jail for up to 90 days, or both.
Nevada	The law makes no provision for penalties.
Pennsylvania	Interference with the lawful taking of game is punishable by a fine of up to $500, or jail for up to 30 days, or both.
South Dakota	Failure to heed a peace officer's warning not to engage in, or to cease, an act disruptive to hunters is a Class 1 misdemeanor. Interfering with hunters, the process of the hunt, or the hunted game is a Class 2 misdemeanor. A violation may draw a fine of not more than $500, or a jail sentence of not more than one year, or both. Damages may include an award for punitive damages as well as license fees, travel or other expenses which were rendered futile by the interference.
Vermont	Violators of minor hunting laws in Vermont are generally penalized by a fine of not more than $100.

Source: State statutes, and telephone conversations with Fish and Game enforcement officers in the respective states.

Prepared by: House Research Agency, April 1984.

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM November 20, 1984

SUBJECT: Draft bill reintroducing HB 546, An Act relating to the obstruction or hindrance of lawful hunting, fishing or trapping. (WO 14-0063)

TO: Rep. Richard Shultz

FROM: George Edwards
Legislative Counsel

The draft bill for reintroduction of HB 546 from last session has been completed with some modifications I wish to point out. The modifications are responsive to objections set out in the Governor's veto letter of June 19, 1984.

The initial objection went to language in section (a) which limited the protected group to persons holding valid Alaska licenses. The constitutional argument against this language is compelling and my reaction has been to eliminate the suspect phrase.

Thus, where the former version read:

> "(a) a person may not perform an act with the intent to obstruct or hinder hunting, fishing, or trapping engaged in lawfully by another person possessing a valid State of Alaska license or permit or exempted from license requirements under AS 16.05.044,"

the current draft reads:

> "(a) a person may not perform an act with the intent to obstruct or hinder hunting, fishing, or trapping engaged in lawfully by another person."

The Governor's other objection which can be responded to in the proposed legislation is the interpretation of section (d) which formerly read:

> "This section does not apply to obstruction or hindrance that is incidental to the lawful use of public or private land or water."

If this section was incorporated to protect commercial fishermen who may inadvertently hinder other fishermen in the ordinary course of their work, it appears to be unnecessary. The affirmative defenses cover such a situation as well as others in which legitimate rights conflict. Thus, I have simply deleted the original section (d).

The only other substantive change occurs in Sec. 16.05.927 (formerly 926) where "costs for" has been inserted before "special equipment and supplies."

If you have questions or further suggestions, please don't hesitate to contact me.

GE:mkr
Enclosure
017:M1

BILL SHEFFIELD
GOVERNOR

JAN 16 1985

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 19, 1984

The Honorable Joe L. Hayes
Speaker of the House
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: CSHB 546(Res) am S (An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping.)

Dear Representative Hayes:

Under the authority granted in art. II, sec. 15, of the Alaska Constitution, I have vetoed CSHB 546(Res) am S -- a bill that would have made it a misdemeanor for a person "to perform an act with the intent to obstruct or hinder hunting, fishing, or trapping engaged in lawfully by another person." As you may recall, I vetoed a similar bill (2d SCS CSHB 163(Jud)) last year.

I have decided to veto this legislation for the following reasons:

First, an amendment to the bill made on the House floor (the insertion of the language "possessing a valid State of Alaska license or permit" which appears on page 1, lines 13 -- 14, of the final bill) creates both a potential constitutional problem and a public policy problem.

The amendment was made to ensure that a person who obstructs the capture of orca whales in Alaskan waters by Sea World could not be prosecuted under this law. The overall result of this amendment is that if a person obstructs a hunter holding a valid state license or permit, that person can be prosecuted under this law, whereas, if a person obstructs a hunter who is lawfully hunting with only a federal permit, (this includes orca capture, as well as any other kind of hunting, fishing, or trapping requiring a federal permit only) that person is

exempt from prosecution. Such disparate treatment of similar offenders, with no apparent rational basis for the distinction, raises an equal protection question under the constitution.

On a policy basis, I question the wisdom of granting -- just because we want to specifically exempt from prosecution those who might attempt to obstruct the capture of orca whales -- blanket immunity to persons who obstruct hunters, fishermen, and trappers who are hunting, fishing, or trapping lawfully without a state license or permit. This provision should be given more thoughtful consideration.

Secondly, it may be difficult to effectively prosecute an offender under the bill. The new law would not apply to obstruction or hindrance that is "incidental" to a person's lawful use of public or private land or water. This exception was included so that hunting activities would not be given a clear priority over other lawful outdoor activities such as camping, hiking, birdwatching, etc. Although adding this provision serves a laudable purpose, especially since last year's bill included no recognition of the validity of such competing uses, this language is likely to make it more difficult to prosecute some cases. That is, it may be difficult to prove that obstructive acts were deliberate as opposed to being the incidental result of another person's lawful use of the land.

Thirdly, there have apparently been no verified reports in Alaska of the types of "sabotage" tactics that the proponents of this bill seek to prohibit. I am not convinced of the need to establish a new crime prohibiting conduct that has yet to occur in this state.

Fourthly, as I stated in last year's veto letter, existing criminal statutes provide adequate coverage for physical interference with lawful hunting and fishing. In particular, the crimes of assault, criminal mischief, and harassment provide criminal penalties similar to those imposed under this bill.

Finally, creating such a crime in the Alaska statutes gives the impression that Alaska seeks to give hunting, fishing and trapping of wildlife, (whether it be for sport, commercial purposes, or subsistence use) priority over efforts to protect and preserve wildlife. Despite the fact that I myself have participated in sport hunting and fishing, I do not believe that it is appropriate to make such a strong statement in our laws.

For these reasons, I have vetoed this bill.

Sincerely,

Bill Sheffield
Governor

HUNTING IS A DIRTY BUSINESS

Excerpts from an article by Bil Gilbert



Stories about hunters shooting cows, goats, poodles, Volkswagens and people are part of the folklore, but unfortunately they are frequently true. One fall I foolishly ventured out with three small children into our overgrown pasture. Suddenly there was the report of a gun, the zing-zing of slugs passing through the underbrush a foot or so over our heads. One satisfaction of the whole scary incident was proving that at least a bird watcher was hardy enough to run down a 17-year old hunter. I took the gun away from the boy and took him to his father, who was 'sporting' nearby. The old man mildly admonished the boy and lectured me sternly about letting "unmarked" children wander about our own posted field.

Beyond the fact that sports hunters are, as a rule, disreputable, the most obvious complaint against them is that they are destructive of wildlife. Several species —the passenger pigeon, heath hen, Eskimo curlew — were simply hunted into extinction. Many more — buffalo, antelope, grizzly bear, wolf, mountain lion, eagle, certain waterfowl — now barely survive.

Wildlife officials usually admit that without wardens, the sport gunners would probably come close to wiping out all game and a variety of other species.

The most irksome aspect of all this is that, unlike bridge players, Boy Scouts, pool hustlers or any other sporting group, hunters are more or less public wards. I, you, we are required to subsidize hunters with our taxes and set aside large chunks of our increasingly scarce wild lands and wildlife for their use. Somewhere in the neighborhood of 25,000 public wildlife "conservation" workers, state and federal, consume upwards of a half-billion dollars a year mostly to make it easier and quicker for gunners to kill animals. No other sports comes anywhere close to being so pampered and coddled.

Take, for example, the National Wildlife Refuge system operated by the Department of the Interior. Some 29 million acres of public land (2 million more than are in the National Park system) are set aside for wildlife refuges. Much of this land is managed and maintained for the primary benefit of waterfowl gunners. Hunters point out that they buy duck stamps and assert that this money pays for the refuge system. The truth is that in 1976 the annual refuge budget was about $30 million, and the annual income from duck stamps was $5 million. In other words, about 85 percent of the refuge money comes from general tax revenues. Today the situation is even worse. So far as I know, there are no state game agencies that do not need appropriations which issue from people who do not hunt at all.

Hunters attempt to justify this obvious inequity by explaining that the work of state and federal wildlife agencies benefits all wildlife. It is claimed that state and federal hunting lands also serve as a sanctuary for many nongame birds and mammals. They do sometimes, but it is largely accidental. For example, Michigan is contemplating creating about a half-million acres of new deer habitat. This will involve bulldozing the land, turning it into deer-browse scrub. Some other species will find the scrub hospitable, but the variety of wildlife that can use the land will decline. From the standpoint of the nature watcher, these acres will be about as attractive as a housing development in preconstruction stages.

An obvious solution to many of these inconsistencies and inequities is to remove the financial — and thus political-stranglehold that hunters and many public wildlife men believe they have on wildlife agencies. The crucial need is for all the operating funds for wildlife agencies to be appropriated from general revenues. Freed from the bondage of hunters' money, state and federal wildlife agencies should be required to initiate research programs which would benefit all fauna, not just those creatures that hunters shoot. There is no reason why some public refuges could not be left for the pleasure of photographers and those who simply enjoy seeing and contemplating the ways of species not classified as human.

Hunters are so firmly entrenched in our wildlife bureaucracy that only a concerted, aggressive campaign will flush them. A philosophical basis for this campaign might be the realization that despite a lot of pious, self-congratulatory propaganda, hunters are generally a destructive, dangerous lot, who have made a mess of our wildlife. ■

HUNTING SEASON IS HERE

Get Out Your Hip Boots and Make Life Difficult For the Weekend Woodsman

American hunters will be shouldering their rifles and shotguns within the next few months, marching off to their annual offensive against wildlife. This legion, which is generally better equipped than the entire German armies of the Second World War, will take a bloody toll before the season ends. They will kill deer and rabbits, ducks, dogs, cats, a few children, and even a few of themselves. How about calling a meeting of a few friends to plan for this hunting season? Here are a few ways you can strike out against the hunt:

1. Encourage neighbors with acreage to post their land. Let them know that hunters cause more damage than wild animals.
2. Many areas have hunting restricted to a specified number of hunters with permits. The permits are usually awarded by a simple lottery selection. Apply for these permits yourself; you may win one and deny a hunter his kill.
3. Get into the woods the day before hunting season. Try to drive wildlife away. Stroll about with a loud radio or a dog on a leash to make wildlife wary of humans.
4. Rotten eggs or cow dung can be rubbed into the floor and walls of hunting blinds to make hunters uncomfortable. Uncomfortable hunters are irritable, and are more likely to miss.
5. Placing deer repellent (available at many feed and hardware stores) along deer routes will encourage the deer to move away and leave the hunter with a route devoid of the species. Scoop up a bag of human hair from a local barber shop and put handfuls of it in little bags about 2 or 3 feet from the ground, along the deer track. The deer will soon get the message that there are humans in the area and will drift away.
6. If hunters use dogs in your area, try to get hold of a female dog in heat and lead her, on a leash, through an area that is heavily hunted. Male dogs in the hunter's pack will "get wind" of the female and lose their enthusiasm for chasing rabbits or other hunted animals.
7. If you have a portable tape recorder, buy a cassette recording of wolf howls. Play this in the woods a few times in the days before hunting season.
8. Buy large, old stuffed animal toys at a local thrift shop or make your own. Set these around commonly hunted areas. Hunters often don't take the time to check if an animal is real! Better to have a hole in a cotton rabbit than a real one—and the noise of the gun going off may scare away other wildlife. ■



"Okay! Now don't move, Andy! Here comes Mom!"

Excerpted from Friends of Animals "Tips for Hunt Saboteurs"

COMMITTEE TO ABOLISH SPORT HUNTING

Called **"One of the Most Dangerous and Aggressive Organizations in the U.S."** by the National Rifle Association

C.A.S.H. has

- ★ Won an epic battle to keep hunters out of 52,000 acre Harriman State Park in New York
- ★ Filed a lawsuit to stop hunting at Riley Creek State Park in Pennsylvania
- ★ Defeated the U.S. Department of Interior's ban on anti-hunting demonstrations at Great Swamp Refuge, New Jersey

Specializing only in the fight against **"sport"** hunting, C.A.S.H. can continue working for wildlife only because people like you care.

$20 provides a 1-year membership. Contributions of any size are gratefully accepted and immediately put to use. Write us:

The Committee to Abolish Sport Hunting
Box 43, White Plains, New York 10605
or call: 212/428-7523

ARE YOU REALLY THAT HUNGRY?



PETA Director, Ingrid Newkirk, with a chicken rescued from a slaughterhouse.

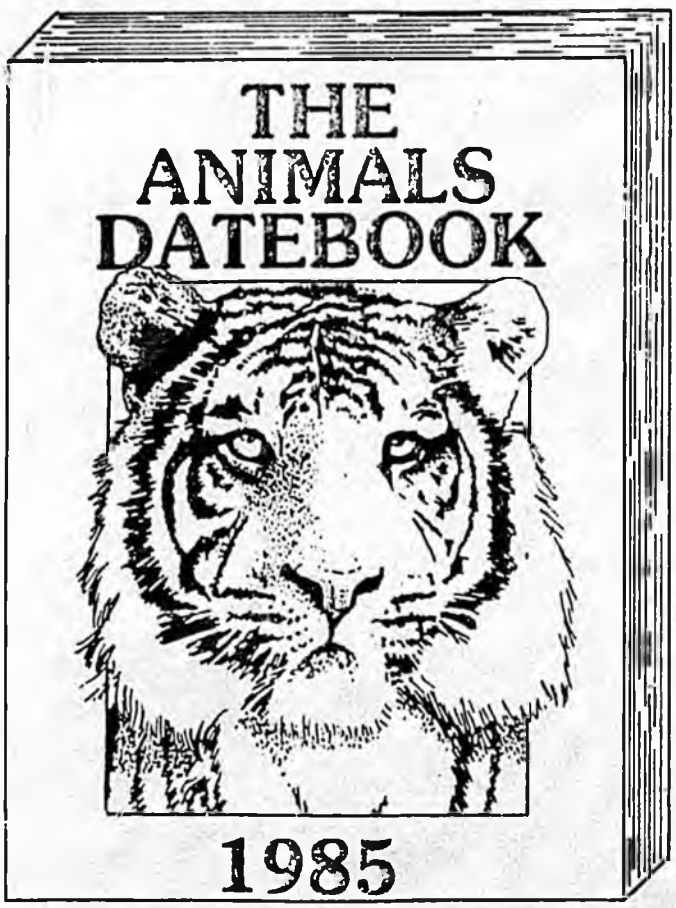
Today, chickens (and most farm animals) are raised in such cramped quarters that they cannot even turn around. Some are unable to lie down and must try to rest on the backs of other animals.

Chickens in egg production can never stretch a wing. They live indoors on slanted wire, 5 to 7 hens to a cage slightly larger than a record album cover. Layers and broilers have their beaks burnt off with a red-hot iron to prevent the cannibalism that results from overcrowding and stress.

At the meat inspection line the bodies spin by so fast there is less than 3 seconds for inspectors to check the entire carcass. Cancerous tumors are simply cut out with a handknife, if detected, and the rest of the carcass is sold at the meat counter.

Almost 100 of the drugs and pesticides used in animal feed leave residues. According to the New England Journal of Medicine, many of these chemical additives are known carcinogens or linked to birth defects, even death, in humans.

You can do something. You can vote with your consumer dollars every time you do your marketing or order a meal. Vote 'no' to cruelty and 'yes' to life—yours and the animals'. ■



EXCLUSIVE
Imported to US from England $6, Air Mail delivery included.

THE ANIMALS DATEBOOK 1985



The first Animal Rights Datebook shows animal exploitation and liberation in photos, drawings and cartoons — many produced especially for the book. Each double-page spread shows one week of the year plus an illustration, and the datebook includes a resource section with Animal First Aid, Legal Advice, and Cruelty-Free Cosmetics.

128 pages (8¼x5½") with laminated cover. Datebooks are traditional Christmas presents — give your friends something to think about all next year...

Order early; limited numbers: PETA, Box 42516, Washington, DC 20015.

Give Great Gifts that Support Animal Rights



T-SHIRTS

- **Peaceful Rabbit**
  People for the Ethical Treatment of Animals' own. Rainbow effect on a background of lilac, blue, beige, pink or yellow. $9
  Also: Sweatshirt $15
  Tote bag $8
- **Meat's No Treat for Those You Eat**
  Famous crying pig in a sandwich shirt. Blue or beige. $6
- **Animals Are Not Ours To Eat, Wear or Experiment On**
  Gray, Blue, Yellow or Red. $7
- **The Animal Liberation Front Wants You**
  "Gorilla/guerilla". Black on beige, red or blue. $6
- **Meat is Murder**
  Cow's face on a plate with knife and fork. Silver/gray, beige, or blue. $8

Specify size (S/M/L/XL) and color when ordering shirts.

POSTER

- **This is Vivisection**
  Ideal for booths, walls, and stores. $3

Please send order to: PETA, P.O. Box 42516, Washington, D.C. 20015.

NAME_____

ADDRESS_____

CITY_____ STATE_____ ZIP_____

ITEM	SIZE (S/M/L)	COLOR	PRICE	QUANTITY	TOTAL

TOTAL ENCLOSED:_____

BOOKS

- **Animal Liberation**
  By Peter Singer. This finest book on animal rights ever written. $4
- **The Cookbook for People Who Love Animals**
  Delightful and delicious animal-free recipes. A must for your home. $9
- **Animal Factories**
  A horrifying, factural account of modern intensive farming methods. $8
- **The Naked Empress**
  Learn how drug companies and others gain from animal research and how we all lose. $10
- **Slaughter of the Innocent**
  Graphic descriptions of how animals suffer in laboratories and the industry that makes it happen. $4
- **The Farm Cookbook**
  Great recipes from a peaceful community of craftspeople, artists (and cooks!). $7
- **Dr. Rat**
  By author of E.T. William Kotzwinkle. A scathing, witty novel with a hard liberationist message. $4

BUTTONS

- **Animal Liberation**
  3 for $2
- **Animal Liberation—Human Liberation**
  3 for $2
- **Meat is Murder**
  3 for $2

STICKERS

- **Liberate Laboratory Animals**
  Bumper sticker. $1.50
- **Anti-Meat Stickers for Meat Packages**
  25 for $1
- **Love Animals, Don't Eat Them**
- **Respect Animals, Don't Eat Them**
  Bumper sticker. $1
- **CANCELLED**
  The perfect sticker for events that abuse animals. $1
- **Meat is Murder**
  Window decal. $1

POSTCARDS

- **Hugging Infant Monkeys**
  4 for $1
- **Buddy Chimps**
  5 for $1

Defenders of Wildlife

1244 19th Street, N.W. • Washington, D.C. 20036

NRA/ILA
LIBRARY
DATE SEP 05 1984
2

Brace yourself.

What I have to tell you in this letter is going to shock you.

The National Rifle Association has just filed a lawsuit that could open most National Parks to hunting and trapping.

This is an absolute outrage. There's no other way I can describe it.

Dear Friend,

For over 100 years America's national parks have been an example of enlightened environmental policy to the rest of the world. And integral to our model park system is the principle that wildlife is allowed to live free and unmolested in the parks.

All this will change if the NRA wins its suit.

The National Rifle Association -- the wealthy lobbying organization for gun enthusiasts and gun manufacturers -- will have all the money it needs to pursue its insidious lawsuit.

But we can stop them if we take decisive action right now.

That's why I am writing you this urgent letter. If ever there was a pivotal case where we should stand up for wildlife, this is it.

I am asking you to send Defenders of Wildlife a gift of $20 today to help save our national parks from the hunting and killing of the NRA. Maybe you can afford $35 or $50? Whatever you can send, please do it today. We have no time to lose.

Hunting in the National Parks would not only threaten the wildlife but also endanger other visitors. Trapping could have a devastating impact on endangered species. Rare river otters, cougars, and even bald eagles have been killed in traps set for other animals.

The National Rifle Association suit cites Park Service regulations for eleven areas within the National Park System. But the suit actually takes aim at a very basic policy by which hunting is prohibited in the National Park System except in the few cases where Congress has specifically allowed it.

The National Rifle Association would turn this 100-year-old principle

upside down: if they win, only a specific act of Congress could prohibit hunting and trapping in a National Park.

It is hard to believe that a selfish few would attempt such an attack on the fundamental character of our National Parks. The National Rifle Association wants to raid our national wildlife treasures to provide trophies and pelts for a handful of hunters and trappers.

The American people don't want this outrage. Americans have steadfastly supported the hunting ban in the National Parks.

Defenders of Wildlife is committed to stopping this attack on the wildlife of our National Parks, by intervening in the suit. We have pledged our all-out participation in a coalition of five environmental groups who will cooperate in defending the parks against the NRA.

To meet the unexpected costs of defending our national parks, we need your emergency contribution of $20, $50, or $25 today.

When you support Defenders of Wildlife, you will join the distinguished company of concerned citizens from all walks of life who make up our membership.

Furthermore, membership in Defenders of Wildlife entitles you to receive Defenders magazine, bringing you a vivid and illuminating look at wildlife in America. In each issue of Defenders, you'll see the threatened, the nearly extinct ... and the species that are recovering thanks to the work of Defenders of Wildlife and allied groups. Clear, insightful articles cast new light on the complex issues of wildlife conservation.

But most important, by joining Defenders of Wildlife, you'll be giving your support to one of America's most aggressive conservation organizations, now taking the lead in defending the wildlife of our National Parks.

Do we need hunting in Zion National Park? Do we want trapping in the Assateague National Seashore? Do we want rifle-shots echoing through the Grand Canyon? Should hikers have to fear a stray bullet in Everglades National Park? The National Rifle Association lawsuit threatens all these parks and 20 more where Congress has not specifically outlawed hunting and trapping.

Please send your emergency contribution today.

Sincerely,

Allen E. Smith

Allen E. Smith
President

PS: Defenders of Wildlife doesn't have the opulent funding and high-paid legal staff of the National Rifle Association. But we do have the support of the vast majority of Americans who want to save our National Park wildlife. Can we count on your generous contribution today?

A copy of the last financial report filed with the New York Department of State may be obtained by writing to New York State. Department of State, Office of Charities Registration, Albany, N.Y. 12231 or Defenders of Wildlife.

$10 is the minimum membership contribution and entitles the member to 6 issues of *Defenders* magazine

DW-D-82

Defenders of Wildlife

NRA/ILA
LIBRARY,
DATE: 2 0 1992

Dear Friend,

A young bobcat, not more than 6 months old, searches through the snowy drifts for her evening meal. One misplaced step--- and she screams in agony--- her paw is caught in the steel jaws of a leghold trap.

Once the heavy steel jaws slam shut, her efforts to escape are futile. Every panic-stricken attempt merely tears the flesh of her leg or paw. The trap may even crush or break the bone.

For the bobcat, a slow, torturous death from loss of blood, gangrene, starvation or exposure is almost certain.

If the bobcat survives until the trapper checks his lines she will most likely be clubbed or choked to death.

Horrifying? Yes. But this is exactly how America's vanishing bobcats are being killed to supply the European "fun fur" market. And with the price of a bobcat skin up to $650 in some areas you can expect record kills this year.

The soaring demand "to be fashionable" has all but driven bobcats to the brink of extinction in many states. Already, bobcats are gone, or require full protection in 12 states.

Just imagine, it takes the fur from ten bobcats to make a single coat.

But bobcats aren't the only animals to suffer. Over 15,000,000 wild animals and many thousands of dogs and cats will be victims of the barbaric leghold trap this year alone!

Frequently, the traps intended for a particular animal often kill non-target wildlife. Countless hawks, owls, raccoons, badgers, and even rare and endangered species like bald eagles are often killed or maimed by these non-selective traps.

And as many areas of the country become more populated, many household pets are caught in leghold traps. This year

tens-of-thousands of dogs and cats will die or be severely injured by leghold traps.

Yet those who trap for fun and profit continue to slaughter innocent animals at an alarming rate.

Most people are not aware that trapping has increased drastically to supply the current "fur boom". They are also unaware that trapping is widely abused, wasteful, and inhumane.

But Defenders of Wildlife is working hard to change all this. We are making people more aware of these horrible abuses of America's last remaining wild animals. And with your help, our relentless campaign to ban the cruel and destructive use of the leghold trap will be even more effective.

As you can see, we've taken on no small task. The forces against us are powerful and determined. And that's why--- more than ever before--- we need your help and support as a member of Defenders of Wildlife.

When you join Defenders, you become an important member of a special group of caring people who are concerned about the fate of America's precious wildlife.

And you will have the personal satisfaction of knowing that your dues will be used to save wildlife, not only for ourselves, but for our children and their children who will applaud your foresight.

Frankly, we're very proud of our reputation as America's most active, effective, and hard-hitting wildlife protection group. Here in Washington, and across the country through our Field Representatives in key states, Defenders voices your concern on wildlife abuses.

Defenders of Wildlife is not bashful when the lives of wild animals are at stake. Through lawsuits in Federal court Defenders has fought to save wolves, sea turtles, bobcats, and preserve wildlife refuges.

And we have taken other legal actions to protect eagles, manatees, coyotes, foxes, kangaroos and other wild animals.

Since 1925 Defenders has fought to save and protect defenseless animals. With the strong support of members like you, we were able to stop aerial hunting of wolves in Alaska--- temporarily halt the export of bobcat pelts--- defeat Congressional attempts to weaken the Marine Mammal Protection Act--- eliminate the killing of coyote pups in their dens--- and win major reforms in the Government's Predator Control Program.

But all this is not enough if we want a safe future for our remaining wild animals. We must expand the crusade against

senseless and inhumane use of leghold traps and the other cruelties inflicted on helpless animals.

So if you care about bobcats and America's other vanishing and threatened wildlife please join Defenders of Wildlife today.

I'm counting on you to accept this invitation to become a member of Defenders of Wildlife. When you accept, I will start your subscription to Defenders--- the magazine that celebrates the wonder of wild places and wild animals.

The first thing you're sure to notice about Defenders is the truly distinctive quality of the articles and wildlife illustrations produced by our brilliant writers and contributing artists.

> And as a bonus: Each issue of Defenders brings you a handsome, full-color, wildlife poster. . . or a special educational supplement focusing on a specific animal or issue of concern to members.

Of course there are other reasons for joining Defenders of Wildlife--- like our timely Action Alerts on critical issues in your area--- special member's discounts on beautiful books and gift items--- wildlife travel opportunities--- and you will also receive a membership card and window decal to proclaim to others your commitment to save wildlife.

But the most important reason of all for joining Defenders of Wildlife is the pride and personal satisfaction you will get from knowing that your support is making a positive difference in the crusade to protect wildlife.

Please fill out and return the enclosed membership reservation card. Full membership in Defenders of Wildlife, with all it's benefits, costs you just $15 for one year. Or you can enjoy a family membership for $20.

I doubt you'll find a better value, or the chance to do so much to preserve our wild heritage. Please act now. We need you as a Defender.

Sincerely,

John W Grandy

John W. Grandy
Executive Vice President

P.S. Together, we can be the voice for these defenseless animals. So please--- while you're thinking about it--- Return the membership form in the enclosed postage-paid envelope and join Defenders today.

Thank you.

JWG:aa

What's in a Name?

Fund for Animals

BY E. B. MANN

A recent news item reminds me that of the dozens of conservation-oriented organizations begging us for support, few hunters really know which are for us and which are against us. Their names do not tell us. Friends of Animals is an appealing name, but their official statement of their aims and purposes includes these words: "Sports hunting is neither sport nor hunting. It is a base activity comparable to shooting fish in a barrel .... Destroyers of wildlife must, in turn, be destroyed—preferably by legal process." But one of the more notorious—and silly—proponents of anti-hunting disdains legal process, proposing instead a "Hunt the Hunters Club" whose members should shoot each other!

The Society for Animal Rights has changed its name to the International Society for Animal Rights; a broadening of scope, but with no change of objectives. The Society has been, in the words of the news writer, "a vocal opponent of any form of hunting. In fact, its philosophy seems to be one of forced vegetarianism for everyone." The announced strategy of the newly named Society is "to gain control of the various state fish and wildlife departments"—departments financed by hunting and fishing license fees and by the excise taxes paid for hunting and fishing equipment!

Space prevents naming and evaluating all of the groups operating in this category, but here are a few whose attitudes have been publicly stated:

Some of the names are confusing, perhaps deliberately so. The American Humane Association "opposes trophy hunting, but supports the biological necessity of population control through hunting when population and habitat conditions warrant." Not an all-out endorsement, but better than the verdict of The Humane Society of the United States, which is "...unalterably opposed to the cruelties that are an unavoidable component of most hunting as it is conducted today." Notice the similarity of each of their names, and the difference in policy.

The Wildlife Legislative Fund of America states that it "... helps sportsmen ... defend themselves against anti-hunting fanatics." They claim credit for the voting in South Dakota which legalized dove hunting in that state. The National Rifle Association says of them that "they and the Wildlife Conservation Fund of America, their companion organization, help to protect the rights of every American to hunt, fish, and trap." We can use all the help of that kind we can get!

The National Audubon Society position "... has never been opposed to hunting ... done ethically and in accordance with laws and regulations designed to prevent depletion of wildlife resources .... Our objective is wildlife and environmental conservation, not the promotion of hunting ... but this does not make us anti-hunting." Again, approval with reservations, but far from the condemnation of hunting that many people (including some of their own members) attribute to them.

The Fund for Animals minces no words in its condemnation of all hunting. "Hunting," they tell us, "is not a true sport, for the simple reason that there is nothing sporting about shooting defenseless animals with a high-powered rifle. Hunters have helped wipe out numerous species of once-abundant wildlife, including the now-extinct auk, the heath hen, the passenger pigeon, the badlands bighorn, and others." The truth is, of course, that hunting was never more than marginally involved in the depletion of any of these species, and then only before today's hunter-invoked and hunter-subsidized conservation programs and hunting regulations (bag limits, seasonal hunting, etc.) were invented. Nor does the Fund for Animals mention the revival of the wild turkey, antelope, elk, and other wildlife populations brought about and paid for by hunters.

Named for and originally principally concerned with the ecology and natural resources of the Sierra Nevadas, the Sierra Club has expanded its interests to national and even worldwide problems. In its official statement, the Sierra Club denies opposition to "sports hunting outside appropriate sanctuaries such as national parks, provided it is regulated," but clouds that denial with the belief that hunting, at best, "checks unrestricted propagation of [game] species that used to be controlled far better by natural predators which, too often, have been tragically destroyed. Wildlife policy should not revolve about hunting. Wild animals should not be valued in terms of whether they serve as targets .... Regulated sports hunting may have a place for those who choose to pursue it, but there are more pressing concerns."

In sharp contrast with the (to say the least) meager support of hunting expressed by the Sierra Club are the vigorously pro-hunting sentiments expressed by the International Association of Fish and Wildlife Agencies. "Hunting," they say, "is a major source of outdoor recreation. Participation in it is increasing annually. Not only is it a major form of recreation, but it is an absolute necessity for the proper management and future well-being of many wildlife populations. It is our aim, in connection with other state, national, international, and private agencies involved in conserving natural resources, to provide the public with an accurate portrayal of the role of the hunter and hunting in America, counteracting the anti-hunting sentiment being created by some anti-hunting groups."

Two of the best and most effective friends of hunters and hunting in America today are the National Rifle Association and the National Shooting Sports Foundation. The NRA position is clearly stated as follows: "Hunting is in complete accord with the moral tenets of man. Hunting is dominant among American traditions and has contributed substantially to our sound national character. Its future is a primary concern of the NRA."

The National Shooting Sports Foundation was created "to foster active participation in the shooting sports and to finance the conservation of both game and non-game wildlife. Over recent years, such support has amounted to some five billion dollars!

"No game species has ever been endangered to the point of extinction by sport hunting alone. On the contrary, numerous species have been returned to healthy numbers through hunter-sponsored, hunter-financed habitat management.

"The future of hunting and the future of habitat capable of sustaining abundant wildlife depend in large measure on the time, effort, and money that each of us is willing to put back into our sport.

"Dedicated hunters are the backbone of the many efforts designed to introduce young people to hunting and the shooting sports. Without volunteer service, many such programs could not exist. There is something every hunter can do to help insure the future of hunting and of quality wildlife habitat. If you are not already involved, now is a good time to start."

Many state wildlife agencies offer publications and advice as to how and with whom hunters can support the pro-hunting programs. The NRA club in your community will also welcome your inquiry and your support.

These are only a few of the many groups working for and against hunters and hunting. If your state fish and game agency or your local shooting clubs cannot give you the information you need, write the National Shooting Sports Foundation, Dept FS, 1075 Post Rd., Riverside, Conn. 06878, or the National Rifle Association, Dept. FS, 1600 Rhode Island Ave., Washington, D. C. 20036, for further information. And in this election year, ask also about the positions taken by state and federal candidates regarding hunting and gun controls. Your vote and the influence you can exert with your neighbors can be, this year, a vital factor in the election of people who will help us defend our endangered tradition.

Many groups are interested in shooting and hunting
Some would like to end both sports tomorrow.

Attachment 3D

22

friends of animals, inc. 11 West 60th Street, New York, N.Y. 10023 (212) 247-8120

NRA/ILA
LIBRARY
DATE AUG 30 1983

TIPS FOR HUNT SABOTEURS

2

Fourteen million Americans will be shouldering their rifles and shotguns within the next few months, marching off to their annual offensive against our wildlife. These legions, which are more numerous, and generally better equipped than the entire Nazi armies of the Second World War, will take a bloody toll before the season ends. They will kill deer and rabbits, ducks, dogs, cats, a few children, and even a few hunters.

It is time for friends of animals to start organizing a defense that will serve to at least temper the wanton destruction. There are many ways that a friend of animals can become a forest partisan on behalf of our wildlife, and we offer here a few suggestions that range in effort, depending upon a person's abilities and commitment:

1. Deny the hunter the land to hunt on. Much hunting is done on private lands. To protect these animals, encourage your neighbors, especially those who own large tracts such as farms and ranches, to post their land and forbid hunting. Try to convince them that hunters invariably cause more damage to agriculture than the wild animals do.

2. Many areas have hunting restricted to a specified number of hunters who have special permits. Commonly, these permits allow the hunter to use a particular blind or hunt less common species, such as bear. Apply for these permits yourself. The permits are usually awarded by a simple lottery selection. If you're lucky, you'll win a permit and deny a hunter his kill.

3. Get into the woods yourself the day before the hunting season. If you're familiar with the most commonly hunted areas, try to drive wildlife away. A stroll through the forest with a nice loud radio and a dog on a leash, will serve to make wildlife more wary of humans. This is particularly important for younger animals that have not yet had the traumatizing experience of being hunted.

4. Certain substances, such as rotten eggs, when rubbed into hunting blinds, make these enclosures even more uncomfortable for the hunters. Uncomfortable hunters are irritable, and are also poorer shots. Plastering the floor of a hunting blind with cow dung is another good idea.

5. If you're familiar with wildlife habits in your neighborhood, try to encourage them to break these habits shortly before hunting season. For instance, many hunters like to stalk along deer tracks which are pretty well defined to a good woodsman. Placing deer repellent (available at many feed and hardware stores) along these tracks will encourage the deer to move away and leave the hunter with a route devoid of the species. If you want to save money, just scoop up a bag of human hair from a local barber shop and hang handfuls of it in little bags about two or three feet from the ground, along the deer track. The deer will soon get the message that there are humans in the area and will drift away.

6. If there is much hunting with dogs in your area, try to get hold of a female dog in heat and lead her, on a leash, through an area that is heavily hunted. Male dogs in the hunter's pack will "get wind" of the female and lose their enthusiasm for chasing rabbits or deer.

7. Hunters frequently like to ambush their prey by setting out food and then hiding in blinds. Commonly, bushels of apples are set out a few days before hunting season to encourage deer to browse in this area. When hunting season comes, the hunter merely comes to the site, climbs into a blind, and waits for the deer to come to him. To disrupt this, there are two alternatives. First, remove all apple piles immediately on finding them during the days preceding hunting season. Second, if there are just too many apples to carry away, give them a good spraying with deer repellent and spread barber shop hair clippings all over the area.

8. Encourage your municipality to pass an ordinance that bans, in the interest of public safety, the use of all weapons within its limits. Rifles, shotguns, bows and arrows have been known to kill people too.

9. If you have a portable tape recorder, get a cassette recording of wolf howls. Play this in the woods a few times in the days before hunting season. It will make wildlife wary.

10. Try to develop strong anti-hunting sentiment in your community by writing letters to the editor of your local newspapers, meeting with neighbors, getting on talk shows. Creating public awareness of the problem is a vital point. Let your neighbors know that the law recognizes wildlife as belonging to all people, and they are not the exclusive property of hunters until after they have been murdered.

11. Work on a project to get your State to pass a law that would require all hunters to carry written permission from the landowners of the places they hunt. This further curbs the hunter's battlegrounds because many farmers are reluctant to sign permits that would allow people to hunt on their lands. Also, much land is owned by summer residents, corporations, etc. that are nearly impossible to get hold of.

12. Approach your Congressperson and Senators with demands that hunting and trapping be prohibited on national wildlife refuges and all public land.

13. If you have any old, stuffed animal toys, set these around commonly hunted areas. Hunters often don't take the time to check if an animal is real. Better to have a hole in a cotton rabbit than a real one - and the noise of the gun going off might serve to scare away other wildlife.

14. We will be trying to put together a better activist's guide for next hunting season, so if you have any ideas or procedures you've found effective, please let us know. Mail them in to Bill Clark, Friends of Animals, 11 West 60th Street, New York, NY 10023.

Use your imagination. There are plenty of ways to frustrate the hunt, depending on your own abilities and enthusiasm. The main point here is to do something. By your work, you will be helping animals in two ways. First, you will be protecting them from the hunters and second, you will be letting the hunters know that friends of animals are in the woods. This serves to anger them, and angry hunters do not stalk so quietly, their aim is not so precise. Emotions can play heavily in the success of a hunt, and the most effective killers are cool and methodical. Disrupt!

NRA/ILA LIBRARY
DATE NOV 16 1981

Hunting– An American Tradition



All hell finally broke loose at British Columbia's Spatsizi Wilderness Park. On August 3, 1981, after Greenpeace members harassed hunters relentlessly, a physical confrontation between hunting guides and the Greenpeace group occurred. According to outfitter Ray Collingwood, four Greenpeace members were involved in a fist fight with Collingwood and three of his guides. The environmentalists suffered severe facial injuries while the outfitter and guides emerged from the melee with sore knuckles.

Three Years Of Harassment End In Fist-Swinging Violence.

The altercation was predictable, though unfortunate. For the third year, the Greenpeace group tried to stop hunting in the provincial park by intimidating hunters and their wives, blocking horse trails by holding hands, and, in one case, by grabbing the wing strut of a bush plane with hunters inside as the craft was taxiing for takeoff.

The Greenpeace organization has long been known for its defense of whales and seals. The activist group relies on publicity and tries to appeal to the uninformed public by using polished media campaigns. Lies and innuendoes play a major role in their smear campaign.

The Greenpeace effort in Spatsizi is designed first to terminate hunting in the park, then British Columbia, and finally the rest of the world. Patrick Moore of Vancouver, B.C., is the leader of the group. Typically, Moore relies on misinformation and public ignorance to get his viewpoint across. In an interview with Wayne Cox of CKVU in Vancouver, Moore said of Spatsizi: "It (Spatsizi) was created in 1975 to preserve the Osborne caribou herd, which is B.C.'s only major caribou herd." Moore is wrong. British Columbia wildlife officials say the Osborne caribou is technically the woodland caribou and is found in large numbers from B.C. to Quebec. Moore also falsely stated that Spatsizi Park was the only northern B.C. park with caribou in it.

In the same interview, Moore said . . . "there are many moose and caribou shot up in the high alpine meadows in Spatsizi. The meat is not taken out."

Again Moore lied. Ray Collingwood said, "We've been bringing meat out ever since we've been outfitting, starting in 1969. At my own expense I've hauled meat to Iskut Indians for their winter food supply."

Cox asked Moore how he could possibly interrupt hunters in a 1.6-million-acre park. Moore answered, "Well, it's very easy to find them. It's almost all alpine meadow. There're no trees on most of it. So, they're right out in the open. They have to have a camp. You have to stay in a tent. So, it's extremely easy to find from aircraft."

Moore is dead wrong. I was in Spatsizi just a few days before the altercation. Much of the park is indeed forested. Collingwood's guides successfully outsmarted Greenpeace helicopters practically every day, and hunters were able to take the animals they had permits for. During the first few days of the British Columbia sheep season, Collingwood's hunters took three respectable Stone sheep that measured 38, 39, and 40 inches, despite so-called "successful" Greenpeace intervention. In fact, during the three-year Greenpeace campaign in the park, no hunts were stymied or thwarted, despite Moore's false statement to the contrary. He said, "they're not trophy hunting in Spatsizi because Greenpeace has occupied the park, and we're succeeding in keeping the people out of there this year, thankfully."

According to Collingwood, fewer than a dozen Greenpeace members come to the park, and they're woefully out of shape to follow hunters or even locate them. Their efforts to stop hunting and to prevent hunters from shooting at legal game have been entirely in vain.

Why did Greenpeace suddenly attack hunting, and why did they pick Spatsizi Park? One close observer said they were looking for another "cause" to raise money. Spatsizi itself has been a controversial issue since it was made a provincial park in 1975. The Order in Council spells out specific restrictions and regulations in the park, including one that states hunting and fishing will be allowed in the park on a sustained yield basis.

Spatsizi Park is entirely wilderness with no roads leading to it or through it. It is a superb big game hunting area. Many record animals have been taken there, including grizzlies, caribou, goats, sheep and moose. Collingwood is the only outfitter in the park, and most of his clients are American hunters. Only 30 or so nonresident hunters visit Spatsizi annually. Hunter harvest is minimal in the enormous 1.6-million-acre park, and many areas are not hunted at all. According to Collingwood, his hunter harvest level is about one percent of the total game population.

He guides only six nonresident sheep hunters each year.

Obviously, the Greenpeace opposition to hunting in Spatsizi appears to be based on a moral rather than biological issue. If the hardcore anti-hunting group was as concerned with game populations as they say they are, they should logically assist biological studies by contributing funds, but they haven't offered a dime. This is a typical posture of anti-hunter groups. Bob Henderson, Executive Director of the Western Guides and Outfitter's Association made up of 18[illegible] British Columbia and Yukon guides, said their organization contributed more than $40,000 to caribou migration studies. He, Collingwood and other outfitters have donated their time and bush planes to help game studies conducted by Canadian wildlife agencies.

Greenpeace tactics in Spatsizi are typical of their standard operation. Perhaps the most highly activist environmental group in the world, Greenpeace members go to the scenes of their targets and physically try to interrupt or stymie activities. The group is best known for its bold efforts at stopping whaling and seal clubbing — even to the point of risking bodily harm. This is no loosely-knit organization of drug-using hippies who have nothing better to do, but a highly professional group of shrewd activists who will stop at nothing to achieve their goals.

Jim Haney, a wildlife graduate who manages Collingwood's Spatsizi operation, had an interesting thought on the subject. "Most of us are sympathetic to the 'Save The Whale' issue engineered by Greenpeace. After all, most of us are ignorant about whales, and for all we know, they are quickly being reduced to levels of extinction. But after seeing the Greenpeace effort in Spatsizi where they cleverly use the press to their advantage and broadcast lies and untruths, you wonder how valid their whale issue is. Worse than that, how many American hunters and their families are contributing to the whale funds, not knowing that their money might be going to finance expensive anti-hunting programs?"

When Greenpeace added Spatsizi hunting to their "hit list," they entered the park in 1979. Using expensive helicopters, they harassed Gary Zechel and his wife, Jo-Carole. Zechel, an engineer with Ford Motor Company in Detroit, reported incredible provocations by Greenpeace members. The environmentalists showed up when Zechel was hunting on horseback out of a spike camp. After they jeered and taunted the hunter, they locked hands, tried to stop Zechel from riding down the trail, and grabbed the horse's reins. Then they turned their attention to Jo-Carole. They hurled insults at her, ran close to her as animals would, and seemed to be demon-possessed. Jo-Carole finally broke down, ran into her tent sobbing, and refused to leave the tent for days. Throughout the ordeal, Zechel and his guide kept their cool. Their restraint seemed to drive the Greenpeace fanatics even wilder.

It Was Inevitable That Collingwood And His Guides Used Frontier Justice.

The following year was not so tranquil for Greenpeacers in Spatsizi. This time they took on Darryl Hastings and Richard Mielke, two Michigan hunters. Members of the group walked into camp, stuck cameras in their faces — even when the hunters were in the outhouse — and screamed vulgar innuendoes about sex and guns. The harassment was incessant and continued every day. At one point, Mielke scoped a wolf near camp with an unloaded rifle, and he was physically jarred by a screaming Greenpeace fanatic. The antagonist, wearing expensive cameras, ended up in a lake. Later, several Greenpeace fanatics grabbed the wing strut of a Beaver aircraft as it taxied for takeoff. The enraged pilot, who was flying two Swedish hunters to another of Collingwood's camps, completed the flight, picked up an iron pipe to be used as an "equalizer" in a possible fight with the Greenpeacers who outnumbered him, and returned to the trouble area. He jumped out of the plane, and roughed up the individual who grabbed his plane. The Greenpeace member made no attempt to fight back as the pilot slapped him around, but kept his hands in his pockets all the time. Afterward, the pilot was urged to file a formal complaint against Greenpeace because it is a grievous offense — and highly illegal — to interfere with a moving aircraft, but the pilot figured he'd received satisfaction by scaring the wits out of the Greenpeace member.

After Mielke and Hastings left Spatsizi, (they took all the game animals they desired) and entered Vancouver Airport, they were again harassed by Greenpeace members who had alerted TV stations and reporters. The two hunters took refuge in a cocktail bar, but the demonstrators continued until the bartender finally drove them away.

So it was inevitable that Collingwood and his guides used frontier justice to deal with the Greenpeace fanatics in August of 1981. After the fight, in which the environmentalists were severely bloodied and battered by the swinging fists of Collingwood and his men, the Greenpeace effort was called off in Spatsizi. Their headquarters office said it was too dangerous for them to continue their offensive against Collingwood and hunters in the wilderness park.

"...A Greenpeace Member Fired A Flare Gun Close To A Guide's Face."

Ray Collingwood did not want to have a fight with Greenpeace. He avoided the confrontation for two years, and instructed his guides to ignore them. He politely requested Greenpeace groups to leave him and his clients alone, and he silently endured their taunting jeers. But Collingwood did not take their insults lightly. He fumed inside and tried legal means to stop the harassment. When I talked to Ray in his Smithers, B.C., office in late July, he told me he would try to get an injunction against the Greenpeace attacks. As it turned out, the anti-hunters not only harassed hunters, but also chased sheep all over the rugged mountains from aircraft. The final straw came when Greenpeace members incessantly attacked an Austrian hunter and his wife. When Collingwood heard the radio call for help, he landed his bush plane and confronted the fanatic group with three of his guides. The bloody fight began when a Greenpeace member fired a flare gun close to a guide's face.

After the battle, Collingwood filed a restraining order barring Greenpeace members from entering Spatsizi, but the legal battle is just starting. Greenpeace will no doubt enter into expensive court proceedings against Collingwood, since he is the only outfitter in Spatsizi. If they beat Collingwood and have hunting banned in Spatsizi, they'll gain a tremendous psychological advantage and continue their objective of eliminating hunting worldwide.

You can help. Write to the Hon. James Chabot, Minister of Lands, Parks, and Housing; Parliament Building; Victoria, British Columbia, Canada, V8V1X4. Mr. Chabot, who is responsible for provincial parks, has been supportive of hunting in Spatsizi. Tell him you appreciate his attitude and urge him to continue it.

The British Columbia Wildlife Federation is urging passage of a law preventing harassment of hunters. Write to Bill Otway, Executive Director of the organization and congratulate him. His address: B.C. Wildlife Federation; 5659-176th St.; Surrey, B.C., Canada, V3S4C5.

And finally, a note of appreciation to Ray Collingwood, who is about to fight in court for all of us, would be appropriate. Write him at P.O. Box 3070, Smithers, B.C., Canada, V0J2N0. ■

NRA/ILA February 1984
LIBRARY JAN 30 1984
DATE

Teaching Anti-Hunting

A year or more ago a young student in Connecticut wrote a letter to me describing how a teacher of his was using the classroom as a place to preach against hunting. We ran that letter in the magazine and you readers were incensed. Just recently I have received more such letters from young students. We ran one of these letters from Jeff Caesar of Lansing, Michigan, in the letters column of the January 1984 issue. Jeff described how a teacher held him up to ridicule in front of his fellow students and made him "look like a murderer in front of my peers."

Since that time I have received another letter from Marty Sims of Lancaster, South Carolina. Marty says, "I am sorry to say that I also have a teacher who tries to influence her students on anti-hunting, so I wanted to let you know that this is one mind she won't change. I am 17 and an avid deer hunter, and no matter what she says she can't change my mind about guns and hunting. Every person has the right to keep and bear arms, and I will work to keep it that way."

I compliment Marty on his strong statement. He has the strength of his convictions and he won't be swayed by the powerful position being misused by the teacher. But what about those students whose minds are not made up either way or who don't have the personal strength to stand up to a teacher? They are the ones whose future opinions and lives are being shaped by teachers advocating anti-hunting ideas from a position in the classroom that cannot be argued with.

Anti-hunting sentiments have no more place being taught in the classroom than do political opinions. I would like to see what would happen to a teacher who said that either the Republicans or the Democrats were all no good. The law now says that not even prayers can be said in the classroom because of the danger of stepping on someone's rights. Opinions about hunting are exactly the same. Teachers should stick to teaching the lessons and not waste precious time preaching their personal opinions.

John Kraker, a sixth-grade teacher from Osakis, Minnesota, wrote and made an important point, which is that many teachers love to hunt and fish. This is something we should all keep in mind. He says, "Most teachers are professionals and try to give unbiased education. If some people choose not to hunt that is fine but they should not deny anyone the right to hunt. Along with this I do not like being included with anti-hunters; most teachers are not anti-hunters."

What he says is true but the few teachers who use the classroom as a soapbox for their anti-hunting ideas are a serious problem. Year after year, class after class, each one pounds his or her anti-hunting theme into the heads of thousands of students. These teachers must be stopped. I fear the problem is greater than we realize and I welcome letters giving specific accounts of teachers preaching anti-hunting sentiments. I would like to measure just how big the problem is.

To those teachers whose minds are still open, I would urge them to read a column written by John C. Dunlap, a high school English teacher at the Lyndon Institute in Vermont. His article, "In Defense of Hunting," appeared in the March 7, 1983 issue of *Newsweek*. In it, Dunlap eloquently states what hunting means to him. And I would also ask teachers to read, "Four Legs Good, Two Legs Bad," written by Matt Cartmill, in the November 1983 issue of *Natural History*. Cartmill is a professor of anatomy and anthropology at Duke University. In his article Cartmill traces both the importance of hunting in the development of mankind and the history of the anti-hunting sentiment. I could quote many lines from this article, but there is a real danger in taking the author out of context.

So I will close by restating something Cartmill himself quoted in his article: "Whether we love hunting or hate it," wrote the ethologist Valerius Geist in 1975, "eulogize its blinding passion or condemn it, hunting was the force that shaped our bodies, molded our souls, and honed our minds."

Clare Conley

Editor Clare Conley

Executive Editor Vin T. Sparano

Managing Editor Lorraine P. Loughran

Senior Editors
George H. Haas, William T. McKeown

Copy Chief Marita Begley

Associate Editors
Gerald Bethge, Stephanie R. Boyle, Michael C. Toth

Assistant Editors
Lois M. Birchfield, Yvette Valpais-Reichlin

Art Director Austin Metze

Art Editors Jim Eckes, Diane Steinmetz

Editorial Assistants
Lois Derosier, Helen Duggan, Roseanna Panariello, Evangeline Tsavaris

Editors-at-Large
Erwin A. Bauer, Bruce Brady, John O. Cartier, Patrick F. McManus, Tom Opre, Richard Starnes, Lonnie Williamson, Jim Zumbo

Department Editors
Jim Carmichel *Shooting*
William T. McKeown *Boating*
Larry Mueller *Hunting Dogs*
Jerry Gibbs *Fishing*
Tom Opre *Sport Vehicles*

Field Editors
Ben East, Charles Elliott, Rich LaRocco, Jim Rearden, Frank Sargeant

Artist-at-Large
Leon Parson

(Publication number 493710)
SUBSCRIPTION SERVICES: *Subscription orders processed electronically*
New or renewal orders Send to Outdoor Life Subscription Department, Boulder, CO 80301. One year $13.94, two years $24.97, three years $34.97 in the U.S., its possessions, Canada and elsewhere, one year $17.94, two years $32.97, three years $46.97. *All Subscription Adjustments* Write to Mr. Robert Harlan, Outdoor Life, P.O. Box 2851, Boulder, CO 80322. For change of address allow six weeks, please give both old and new addresses. Notices of undelivered copies (Form 3579) to Mr. Robert Harlan, P.O. Box 2851, Boulder, CO 80322.
Microfilm editions are available from University Microfilm, Ann Arbor, Mich. 48106
Second class postage paid at Los Angeles, CA, and additional mailing offices. publication number ISSN-0030-7076
EDITORIAL OFFICES
380 Madison Ave., New York, NY 10017
Published monthly by
Times Mirror Magazines, Inc.
c/o Communication Dept., Los Angeles Times,
Times Mirror Square, Los Angeles, CA 90053
Printed in U.S.A. Copyright © 1984 by Times Mirror Magazines, Inc., all rights reserved. Contents of the magazine may not be reprinted without permission. Contributions are welcomed but we cannot insure against their loss; enclose postage for return. Write The Editor, Outdoor Life, 380 Madison Ave., New York, NY 10017.
Photocopies of Outdoor Life are available at 75¢ per page prepaid.

HB

33

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 33

Title: Agricultural rights to land

Sponsor: Representative Shultz

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: ıtural Resources

Program Category Affected:

BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Prepared By: Carol Wilson Phone: 465-2400

Division: Commissioner's Office Date: 1/18/85

Approved by Commissioner: Date: 1/18/85

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

Proposed New Patent Language

AGRICULTURAL PATENT

The State of Alaska, Grantor, pursuant to AS 38.05.321, in consideration of _____, hereby grants and conveys to _____, grantee the surface estate in fee simple subject to the convenants and conditions set forth herein, in all that real property situated in the _____ recording district, State of Alaska, described as:

[Legal Description]

Provided that grantee, by acceptance hereof and by agreement with grantor, hereby expressly covenants to use the property for agricultural purposes only and to operate in accordance with a Farm Conservation Plan approved by grantor and further agrees that these covenants shall run with the land and shall be binding upon the grantee and all other persons and parties claiming through the grantee.

PROVIDED FURTHER, as a condition subsequent to this patent, that if the property is used for purposes other than agricultural purposes then the grantor may enter the property and terminate the estate conveyed herein.

AND PROVIDED FURTHER, Grantor, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all development rights inconsistent with the agricultural use of

the property, as well as all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land,

whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

(d) The conservation plan must include a map of the homestead showing

(1) the planned location of any clearing and breaking of ground;

(2) the location of windbreaks, homestead ponds, and other improvements.

(e) A homestead conservation plan may be modified upon request of the entryperson. A modification must be approved by the director of the division of agriculture.

(f) In deciding whether to approve or modify a homestead conservation plan, the director of the division of agriculture, after consulting with the local soil and water conservation district, shall review the plan for consistency with the substantive standards contained in the United States Department of Agriculture, Soil Conservation Service's Conservation Practices, Standards and Specifications for Alaska, January 1978. (Eff. 5/31/84, Reg. 90)

Authority: AS 38.05.020 AS 38.09.020
AS 38.05.035 AS 38.09.110
AS 38.09.010

Editor's Note: A copy of the publication mentioned in 11 AAC 67.155(f) is available for inspection at the offices of the division of agriculture.

ARTICLE 7.
DISPOSAL OF AGRICULTURAL INTEREST

Section

160. Administration of 11 AAC 67.160–11 AAC 67.195
162. Title and interest conveyed
165. Actions for trespass, damages, and forfeiture
167. Agricultural preference right
170. Sale notice
172. Purchaser qualification
175. Qualifications for purchase by lottery
177. Farm conservation plan
180. Contents of farm conservation plan
182. Modification of farm conservation plan
185. Farm development plan
187. Construction of real property improvements
190. Retained interests in land
192. Sale, assignment, or sublease of agricultural interest
195. (Repealed)

11 AAC 67.160. ADMINISTRATION OF 11 AAC 67.160 – 11 AAC 67.195. The director shall carry out 11 AAC 67.160 – 11 AAC 67.195 in a manner which

(1) minimizes the diversion of agricultural land to other uses;

(2) minimizes the impairment of agricultural land for agricultural use and development; and

(3) enhances the economic operation of viable farm units. (Eff. 4/28/78, Reg. 66)

Authority: AS 38.04.900 AS 38.05.069
AS 38.05.020 AS 38.05.321
AS 38.05.050

11 AAC 67.162. TITLE AND INTEREST CONVEYED. (a) Under 11 AAC 67.160 – 11 AAC 67.195, the state will convey only that portion of the state's title which constitutes the agricultural interest in the tract conveyed. The state's sale of the agricultural interest is the conveyance of the surface estate in fee simple subject to the conditions subsequent and covenants relating to agricultural use and development set out in (b) of this section. All other interests in the property remain in the absolute ownership of the state as prescribed by AS 38.05.069 and 38.05.321, and may not be trespassed upon by the grantee. The conveyance includes the right to exclusive possession. The agricultural interest may be alienated, encumbered, and inherited and is subject to the provisions of 11 AAC 67.192. The agricultural interest may not be augmented except as provided in AS 38.05.069(c), and may not be diminished except in the case of a forfeiture under this chapter.

(b) A grantee of an agricultural interest conveyed under 11 AAC 67.160 – 11 AAC 67.195 must

(1) comply with the terms, conditions, and limitations attached to the conveyance;

(2) comply with applicable laws and regulations; and

(3) use the land only for

(A) the production of plants and animals useful to man, including, without limitation, forage and sod crops; grains and feed crops; fruits, trees, and vegetables; dairy animals and products; and livestock; all such production

must be consistent with the farm conservation plan, but without the right to construct fixed, permanent or immovable structures except as specified in (C) of this paragraph;

(B) the maintenance of the land conveyed in its existing natural or undeveloped state, unless otherwise required by a farm development plan;

(C) the construction of fixed, permanent, or immovable structures reasonably required for or related to agricultural production, including that farmstead normally required for yards, driveways, parking, barns, and other outbuildings, and similar uses, to the extent permitted by the director under sec. 187 of this chapter and authorized and depicted in the farm conservation plan;

(D) the subdivision, for agricultural purposes only, of the land under the farm conservation plan and the requirements of this chapter;

(E) the use of gravel reasonably required for agricultural production only on the parcel conveyed, as authorized and depicted in the farm conservation plan;

(F) removal and disposition of timber by sale, gift, or other means in order to bring agricultural land into production, as authorized and depicted in the farm conservation plan and in accordance with accepted principles of land management and conservation.
(Eff. 4/28/78, Reg. 66)

Authority: AS 38.04.900 AS 38.05.050
AS 38.05.020 AS 38.05.069
AS 38.05.035 AS 38.05.321

11 AAC 67.165. ACTIONS FOR TRESPASS, DAMAGES, AND FORFEITURE. (a) Any development or use of an agricultural interest conveyed under secs. 160–195 of this chapter by a grantee which is inconsistent with or contrary to sec. 162(b) of this chapter is a violation of the terms of conveyance and constitutes, together and as separate legal matters

(1) a breach of a condition subsequent;

(2) a breach of covenant; and

(3) a breach in the form of a trespass upon the remaining interest of the state.

(b) In the event of a violation described in (a) of this section, the director shall give written notice of the violation by certified mail to the record owner of the land and to the holder of any recorded security interest in the land. The record owner has no more than six months from the receipt of the notice to correct the violation. If the record owner fails or refuses to correct the violation, the holder of a recorded security interest who has received notice under this subsection may correct the violation to the extent the holder is empowered to do so, through, as appropriate, the payment of money, the performance of an act, or contracting for the performance of an act. The holder of a recorded security interest shall act within six months after notice is received under this subsection, or within an additional period as the director may allow for good cause.

(c) If the violation is not corrected to the satisfaction of the director within the period of time allowed under (b) of this section, the director may bring an action for injunction to abate the trespass upon the remaining interest of the state and an action for damages for breach of covenant against the grantee, together with any other remedy authorized by law, except that the director shall waive exercise of the right of reentry and power of termination for breach of condition subsequent unless action is also taken under (d) of this section.

(d) If the violation is not corrected to the satisfaction of the director within the period of time allowed under (b) of this section, and the violation is of such extent or gravity as to result in prolonged or permanent damage to or impairment of the usefulness or productivity of the land for agricultural purposes, the director may, in addition to the actions and remedies authorized by (c) of this section, exercise the right of reentry and the power of termination for breach of a condition subsequent after written notice of that action or of other necessary proceedings to the record owner and the holder of any recorded security interest, which results in the forfeiture of the agricultural interest to the state. Before acting under this subsection, the director shall consult with the

local soil conservation subdistrict established by AS 41.10.130. Upon forfeiture of the agricultural interest, improvements and chattels upon the land must be removed by the prior owner within 60 days thereafter. Any improvements remaining after the end of 60 days become the property of the state. (Eff. 4/28/78, Reg. 66)

Authority: AS 38.04.900 AS 38.05.069
AS 38.05.020 AS 38.05.090
AS 38.05.035 AS 38.05.321
AS 38.05.050

11 AAC 67.167. AGRICULTURAL PREFERENCE RIGHT. (a) All sales of the state's agricultural interest are subject to an agricultural preference right as provided in AS 38.05.069. In order to qualify for a preference right, an applicant must submit his application on a form supplied by the division during the period specified in the sale notice.

(b) A qualified applicant must be the owner or lessee and operator of a farm or land upon which he has been actively engaged in agricultural pursuits as defined in AS 38.05.069. In order to qualify, the applicant may be required to have not less than 50 percent of the potentially tillable land he owns or leases cleared or otherwise devoted to agricultural purposes of a nature recognized by the director as consistent with the climate and soil capabilities of the area in which the land is located. In addition, he must present with his application a development plan that demonstrates the need for additional agricultural land in order to create an economic unit.

(c) The award of an agricultural preference right will be based on the characteristics of the existing farm as an economic unit. Multiple ownership of a farm unit does not create a qualification for multiple preference rights.

(d) Only the agricultural interest as described in secs. 160–195 of this chapter will be conveyed in conjunction with a preference right award. Permission to construct real property improvements under sec. 187 of this chapter will be granted to a preference right holder whose base farm is leased land, but will be withheld from other preference right holders unless

(1) the preference right holder's base farm is separated from the parcel purchased under secs. 160–195 of this chapter by a physical barrier that necessitates duplication of farm support buildings on the purchased parcel; however, the director may require the preference right holder to convey to the state development rights on the base farm on an acre-for-acre basis; or

(2) granting permission would enhance the economic operation of a viable farm unit or result in only minimal diversion of agricultural land to other uses; however, the director may require the preference right holder to submit additional economic and land use justification for the farmstead area applied for; the director may also grant less than five acres for a farmstead, withhold the right to construct residences, and require the preference right holder to convey to the state development rights on the base farm on an acre-for-acre basis. (Eff. 4/28/78, Reg. 66; am 5/13/79, Reg. 70)

Authority: AS 38.04.900 AS 38.05.050
AS 38.05.020 AS 38.05.069
AS 38.05.035 AS 38.05.321

11 AAC 67.170. SALE NOTICE. Before offering the state's agricultural interest for disposal, the division will publish a descriptive brochure containing

(1) the date, time and place of disposal;

(2) the period during which preference right applications will be accepted;

(3) a statement of terms and conditions of disposal, including the terms of payment and length of contract, the availability of homestead credits, veteran's preference, purchaser qualifications, contract performance requirements, and any other special conditions or limitations;

(4) for each parcel

(A) size;

(B) appraised value;

(C) interests to be conveyed;

(D) farm conservation plan requirements;

(E) farm development plan requirements, if any;

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

HB 33 SECTIONAL ANALYSIS

SECTION 1. AS 38.05.059 is repealed and a new section added that establishes a fee simple conditional title for the purposes of transferring land to persons for agricultural uses.

a) Allows only one tract of ag. land to be purchased by an individual in an eight year period.

b) Provides that the use of the land classified as agricultural will be restricted. After a fee simple title is transferred, the commissioner reserves the right of re- try should the terms of the condition be breached. Also clarifies that the right of reentry does not affect the validity of a prior lien or security interest in the land.

c) These provisions apply to lessees as well as purchasers of ag. property.

d) Establishes that the commission may set as a condition of purchase or lease of agricultural land, the submission of a farm development plan that is based on economic feasibility and sound development principles.

e) Fee simple conditional title may not be conveyed to a person who has not completed a farm development plan.

f) Definition of agricultural purposes and the size of the tract that may be conveyed as fee simple conditional.

SECTION 2: AS 38. 05.321 (a) is repealed (see file for language)

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

January 23, 1985

TO: Representative Dick Shultz, Co-Chair
House Resources Committee

FROM: Dave Stancliff, Professional Assistant

SUBJECT: Brief Synopsis for HB 33

HB 33 repeals and reenacts AS 38.05.059 to establish the type of title that is transferred to a person who purchases, leases, or is otherwise entitled to receive state lands that have been classified as agricultural. The clarification is needed to address differences between the understanding of those who have purchased lands under the agricultural land disposal program and the understanding of DNR as to the nature and format of the interest or land title being conveyed. These differences have come to light as a result of the issuance by the State of a few patents in the format of one issued to Mr. John A. Baker, a copy of which is in each members' packets.

All parties appear to be in agreement that the intent of the State was to transfer the land to be used for agricultural purposes only and that the title transferred was to be restricted to insure that this would be the only use.

The problem is that the type of patent, as issued to Mr. Baker, is too restrictive. The interest transferred by that document is little more than an agricultural easement subject to forfeiture if the Director of the Division of Forest, Land and Water Management so declares. This forfeitable interest cannot be insured by a Title company, and is not sufficient to provide security for any financing into which the recipient of the patent may wish to enter.

As presently constituted HB 33 provides that the title to be transferred will be a fee simply conditional - the condition being that the land will always be used for agricultural purposes only. There is also provided a right of re-entry by the State if the condition is broken. What this means is that if the owner of the property or his or her successors start using the property for something other than agriculture, the State can require that the other use be terminated or the owner may lose the property. This type of title should solve the title insurance and financial problems. (See Bank of the North letter)

The remainder of HB 33 recognizes the existing practice of requiring that a development plan be entered into and completed, and provides a definition of the phrase "agricultural purposes".

fees, conditional fees, and fees-tail. The term is opposed to "fee-simple."

Plowman's fee. In old English law, was a species of tenure peculiar to peasants or small farmers, somewhat like gavelkind, by which the lands descended in equal shares to all the sons of the tenant.

Qualified fee. In English law, a fee having a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end; otherwise termed a "base fee." An interest which may continue forever, but is liable to be determined, without the aid of a conveyance, by some act or event, circumscribing its continuance or extent. An interest given to a man *and certain of his heirs* at the time of its limitation.

Quasi fee. An estate gained by wrong.

Feed. To lend additional support; to strengthen *ex post facto.* Similarly, a subsequent title acquired by the mortgagor is said "to feed the mortgage."

Fee-farm. A species of tenure, where land is held of another in perpetuity at a yearly rent, without fealty, homage, or other services than such as are specially comprised in the feoffment. It corresponds very nearly to the *"emphyteusis"* of the Roman law. Fealty, however, was incident to a holding in fee-farm, according to some authors.

Fee-farm is where an estate in fee is granted subject to a rent in fee of at least one-fourth of the value of the lands at the time of its reservation. Such rent appears to be called "fee-farm" because a grant of lands reserving so considerable a rent is indeed only letting lands to farm in fee-simple, instead of the usual method of life or years. Fee-farms are lands held in fee to render for them annually the true value, or more or less; so called because a farm rent is reserved upon a grant in fee. Such estates are estates of inheritance. They are classed among estates in fee-simple. No reversionary interest remains in the lessor, and they are therefore subject to the operation of the legal principles which forbid restraints upon alienation in all cases where no feudal relation exists between grantor and grantee.

Fee-farm rent. The rent reserved on granting a fee-farm. It might be one-fourth or one-third the value of the land. Fee-farm rent is a rent-charge issuing out of an estate in fee; a perpetual rent reserved on a conveyance in fee-simple.

Fee simple.

Absolute. A fee simple absolute is an estate limited absolutely to a man and his heirs and assigns forever without limitation or condition. An absolute or fee-simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate. Such estate is unlimited as to duration, disposition, and descendibility. Slayden v. Hardin, 257 Ky. 685, 79 S.W.2d 11, 12.

The estate which a man has where lands are given to him and to his heirs absolutely without any end or limit put to his estate. 2 Bl.Comm. 106. The word "fee," used alone, is a sufficient designation of this species of estate, and hence "simple" is not a necessary part of the title, but it is added as a means of clearly distinguishing this estate from a fee-tail or from any variety of conditional estates. Fee-simple signifies a pure fee; an absolute estate of inheritance clear of any condition or restriction to particular heirs, being descendible to the heirs general, whether male or female, lineal or collateral. It is the largest estate and most extensive interest that can be enjoyed in land.

Conditional. Type of transfer in which grantor conveys fee simply on condition that something be done or not done. A defeasible fee which leaves grantor with right of entry for condition broken, which right may be exercised by some action on part of grantor when condition is breached.

At common law an estate in fee simple conditional was a fee limited or restrained to some particular heirs, exclusive of others. But the statute "De donis" converted all such estates into estates tail. 2 Bl. Comm. 110.

Defeasible. Type of fee grant which may be defeated on the happening of an event. An estate which may last forever, but which may end upon the happening of a specified event, is a "fee simple defeasible". Newbern v. Barnes, 3 N.C.App. 521, 165 S.E.2d 526, 530.

Determinable. A "fee simple determinable" is created by conveyance which contains words effective to create a fee simple and, in addition, a provision for automatic expiration of estate on occurrence of stated event. Selectmen of Town of Nahant v. U. S., D.C.Mass., 293 F.Supp. 1076, 1078.

Fee simple title. See Fee simple.

Fee tail. A freehold estate in which there is a fixed line of inheritable succession limited to the issue of the body of the grantee or devisee, and in which the regular and general succession of heirs at law is cut off. Coleman v. Shoemaker, 147 Kan. 689, 78 P.2d 905, 907.

An estate tail; an estate of inheritance given to a man and the heirs of his body, or limited to certain classes of particular heirs. It corresponds to the *feudum talliatum* of the feudal law, and the idea is believed to have been borrowed from the Roman law, where, by way of *fidei commissa*, lands might be entailed upon children and freedmen and their descendants, with restrictions as to alienation. For the varieties and special characteristics of this kind of estate, see Tail, Estate In.

Fegangl /fəgǽnjay/. In old English law, a thief caught while escaping with the stolen goods in his possession.

Fehmgerichte /féymgərikt'/. The name given to certain secret tribunals which flourished in Germany from the end of the twelfth century to the middle of the sixteenth, usurping many of the functions of the governments which were too weak to maintain law and order, and inspiring dread in all who came within their jurisdiction. Such a court existed in Westphalia (though with greatly diminished powers) until finally suppressed by Jerome Bonaparte in 1811.

Feigned /féynd/. Fictitious; pretended; supposititious; simulated.

Feigned accomplice. (act with others in t crime, but only for plans and confedera them.

Feigned action. An ac pretended right, wh of action, for some action the words of *false action*, in whic false. See also Feig

Feigned diseases. Sim eases are generally —fear, shame, or th

Feigned issue. A pro parties, by consent, jury without actua **Feigned action.**

FELA. Federal Emplo

Felagus /fəléygəs/. In er by oath; a sworn decennary for the who took the place o was murdered, the r er went to the *fel* parents or lord.

Feld. A field; in com

Fele, feal. L. Fr. Faith

Fellow. A co-worker; panion; one with w another in some leg a college or corpora

Fellow-heir. A co-he tance.

Fellow servant. One the same master. S.W.2d 762, 764. mon pursuit, under who derive author same common sour general business, th or departments of i App.D.C. 21, 16 F. employed and paid duties are such as that negligence of o other in performanc the same common vants." See also E.

Fellow servant rule. generally abrogated and Federal Emplo tion for damages b injured employee t negligence of anoth responsible for the and, thus reducing

Felo de se /félow d

Felon /félən/. Perso a felony *(q.v.)*.

BANK OF THE NORTH

April 25, 1984

TO: State of Alaska
House Finance Committee

Subject: CSHB 458 (Resources) (Now HB 33)

Following are observations of a banker as they pertain to CSHB 458. I have had 27 years experience in banking including agricultural lending in California with Wells Fargo Bank.

In response to your questions regarding particulars of the proposed bill, I would like to offer:

1. Banks traditionally lend to borrowers for agriculture purposes taking a secured position involving land, equipment and crops as collateral. The only collateral with sustaining real value is land. If it is owned, title is transferred and held by the lending institution. If it is leased, the lease is assigned to the Bank. Depending on the circumstances of the particular borrowing, other collateral - equipment and crops (including proceeds of the sale of the harvest) is pledged to the bank.

   Under the conditions imposed by the present statute the title of the property (land) is conveyed and reverts to the State of Alaska if the grantee has failed to observe certain provisions or conditions of the Patent. Any financial institution, using prudent banking policies and practices, would not accept title to property as collateral with this condition for a loan.

2. The proposed change to the Act is worded sufficiently in my opinion, to protect and support a lien placed by a financial institution to perfect a security interest in land being used by the borrower as collateral for a loan for agricultural purposes. If leased by the State of Alaska to a lessor for agricultural purposes, the financial institution would insist that the lease of the land be assigned to the lender. It is presumed that the State would not oppose such assignment.

3. Your question addresses a situation that occurs frequently by lenders -financial institutions or individuals. In this case the financial institution would be faced with the problem of assuming the responsibility of the grantee of the land - to maintain the land for agricultural purposes.

   First, the lender would have to foreclose on the loan, and to the extent possible:
   1. Harvest and sell the crops, applying the net proceeds of the sale to the loan balance.
   2. Secure all equipment pledged by the borrower for the loan and sell it to obtain cash to apply to any balance remaining.

If a balance were to remain after the above actions, this amount would probably be charged off as a loss.

Your question #3 presumes the State reentered the land because the land was not being used for agricultural purposes. This situation raises other questions - for the financial institution:

1. Who is responsible for clearing away any and all improvements that are not agriculturally related?
2. Who is responsible to find and qualify another grantee for the land? Who has approval authority - the State or the financial institution?

Note: In both questions above, I have assumed that the financial institution still holds title to the land as collateral for a loan not paid in full.

If the loan were to be paid in full from the sale of crops and equipment the land would presumably revert to the State of Alaska and title released to the State, providing the grantee has no legal claim to the land.

I hope these observations and comments have been helpful.

ALASKA NATIONAL BANK OF THE NORTH

R. M. O'Neill

Robert M. O'Neill
Vice President
Branch Manager

RMO/dk

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

JOHN RINGSTAD, CO-CHAIRMAN
RICHARD SHULTZ, CO-CHAIRMAN
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

To: Bob O'Neill
Bank of the North

From: John Manly
House Resources Committee

Date: April 24, 1984

Re: CSHB 458 (Resources)

As per our earlier conversation, I have formulated several questions pertinent to the Finance Committee's consideration of the above-referenced bill which we would appreciate having your advice on.

I have also included with this memorandum several pieces of relative information, including the current version of the bill itself, the present statute, and a typical patent, as issued by DNR under the present statute.

The questions we would anticipate from members of the Finance Committee are, in general:

1) Why won't the banks loan under the present conditions?

2) How does the proposed change solve the problem of security, as far as the banks are concerned?

3) In the event the State reenters the land, who would the bank expect to make good on the financial commitment entered into by the borrower to the bank?

Patent

No. 5151

Know All Men By These Presents that the State of Alaska, in consideration of the sum of NINE THOUSAND SIX HUNDRED EIGHTY-ONE AND 00/100---------- DOLLARS lawful money of the United States, and other good and valuable considerations, now paid, the receipt whereof is hereby acknowledged, does hereby grant to JOHN A. BAKER, a single man Box 57, Talkeetna, Alaska 99676 and to his heirs and assigns, all that real property situated in the Borough of Matanuska-Susitna, State of Alaska, and described as follows:

AGRICULTURAL INTEREST ONLY

TRACT 9 OF ALASKA STATE LAND SURVEY NO. 79-109, LOCATED WITHIN THE BARTLETT HILLS ALASKA SUBDIVISION, TOWNSHIPS 25 AND 26 NORTH, RANGE 4 WEST, SEWARD MERIDIAN, CONTAINING 196.81 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT FILED IN THE TALKEETNA RECORDING DISTRICT ON MARCH 13, 1980 AS PLAT NO. 80-25.

SUBJECT TO:

PLATTED EASEMENTS.

CONDITIONS AND COVENANTS OF THE FARM CONSERVATION PLAN APPROVED BY THE DIRECTOR OF THE DIVISION OF AGRICULTURE OF THE DEPARTMENT OF NATURAL RESOURCES.

IF AT ANY TIME THE DIRECTOR OF THE DIVISION OF FOREST, LAND AND WATER MANAGEMENT OF THE DEPARTMENT OF NATURAL RESOURCES DETERMINES THAT THE GRANTEE OR HIS SUCCESSORS IN INTEREST HAS FAILED TO OBSERVE ANY PROVISION OR CONDITION OF THIS PATENT, THE DIRECTOR MAY DECLARE A FORFEITURE OF THIS CONVEYANCE AND TITLE HEREBY CONVEYED SHALL THEREUPON REVERT TO THE STATE OF ALASKA.

DNR Regs.

LATE PAYMENT PENALTY: A service charge plus annual interest (twice the interest rate charged on installment payments at the prevailing rate for real estate mortgage loans made by the Federal Land Bank for the farm credit district for Alaska) on the amount due will be charged on a past due account until payment is received by the State or until the contract termination date is reached.

SALE OF AGRICULTURAL INTEREST ONLY

The sale of State land classified as agricultural land transfers only rights for agricultural purposes, and all other interests in the land remain with the State and may not be trespassed upon by the purchaser. The State's sale of the agricultural interest is the conveyance of the surface estate in fee simple subject to the conditions subsequent and covenants relating to agricultural use and development. The development schedule will be incorporated into the sales contract and the conveyance documents as a covenant and condition and will be recorded in that form.

FARM CONSERVATION PLAN

Successful applicants are required to submit a Farm Conservation Plan for the parcel they are purchasing to the Division of Agriculture, Pouch A, Wasilla AK 99687, within 30 days of being awarded the parcel. If the Division of Agriculture does not approve the initial plan, the applicant has 30 days from the rejection of the first Conservation Plan to file an acceptable plan with the Division of Agriculture. Failure to file a plan within the alloted time, or an extension thereof, will result in the automatic termination of the applicant's interest.

The Farm Conservation Plan must include:

A map of the farm showing

1. the planned location of clearing and breaking of ground;
2. planned location and size of the farm's real property improvements, if authorized;
3. planned location of windbreaks, farm ponds, and similar conservation measures and improvements;
4. planned soil conservation measures.

This plan will be accepted or rejected by the Department of Natural Resources, Division of Agriculture, in conjunction with the local soil conservation subdistrict. The Farm Conservation Plan is a part of the sale contract and will be a permanent condition of the sale contract and title.

appraised fair market value, exclusive of value accruing from improvements or development, such as fill material, buildings or structures, by the occupant or his predecessor in interest or reflecting, equities of the occupant;

(d) "home rule cities and cities of the first class" do not include a borough. (§ 5 art III ch 169 SLA 1959; am § 6 ch 61 SLA 1960; am § 1 ch 18 SLA 1962; am §§ 1, 2 ch 81 SLA 1964; am § 1 ch 4 SLA 1966)

Editor's notes. — This section is set out above to correct an error in the main pamphlet.

NOTES TO DECISIONS

Purpose of section. — One purpose of the Alaska Land Act was to establish equitable methods of disposing of certain tidelands. Toward this end, and within the federal parameters requiring the recognition of "preference rights," this section was included in the Act. City of Homer v. State, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

Due process required. — Private parties are entitled to due process of law before property rights may be removed; therefore, the minimal protection provided by adjudicatory procedures of the Department of Natural Resources must meet that standard. City of Homer v. State, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

Municipalities are entitled to due process in the adjudication of claims to tide and submerged lands. City of Homer v. State, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

With respect to the disposition of tidelands, municipal corporations are to be afforded the same rights of due process as are private parties. City of Homer v. State, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

The language of subsection (b) is clear and unambiguous. State Dep't of Nat'l Resources v. City of Haines, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).

Scope of subsection (b) grant. — The grant in subsection (b) of this section encompasses tideland adjacent to subsequently expanded municipal boundaries. State, Dep't of Nat'l Resources v. City of Haines, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).

In effect, this section gives the authorities of a city, etc.

In accord with original. See Talbot's, Inc. v. Cessnun Enter., Inc., Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

In order for easement under subsection (b)(6) of this section to be established, it must appear that it is reasonably necessary for the enjoyment of the property, the term "necessary" meaning that there could be no other reasonable mode of enjoying the dominant tenement without the easement. An easement by implication does not arise merely because its use is convenient to the beneficial enjoyment of the dominant portion of the property. Talbot's, Inc. v. Cessnun Enter., Inc., Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

While strict or absolute necessity is not required, something more than mere convenience must be shown before an occupant of tidelands is entitled to an easement under subsection (b)(6) of this section. Talbot's, Inc. v. Cessnun Enter., Inc., Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

Sec. 38.05.321. Restriction on sale, lease or other disposal of agricultural land. (a) The sale, lease or other disposal of state land classified as agricultural land transfers only rights for agricultural purposes, and all other interests in the land remain with the state unless otherwise required by law.

NOTES TO DECISIONS

Quoted in Gilman v. Martin, Sup. Ct. Op. No. 2652 (File No. 5937), 662 P.2d 120 (1983); LeResche v. Lustig, Sup. Ct. Op. No. 2656 (File No. 6058), 663 P.2d 542 (1983); State v. Weidner, Sup. Ct. Op. No. 2788 (File Nos. 6220, 6240, 6272), P.2d (1984).

Sec. 38.05.058. Land discount program. [Repealed, § 19 ch 67 SLA 1983.]

Sec. 38.05.059. Limitation on purchases of agricultural land. A person may purchase [illegible] more than one parcel of land that is part of an agricultural development project under AS 44.33.475 during any eight-year period. (§ 3 ch 39 SLA 1982)

Sec. 38.05.060. Rejection of bids. Before the signing of the formal conveyance by the director, the commissioner may reject all bids when the best interests of the state justify this action. Land offered at public sale but not sold may be made available at private sale for not less than its appraised value. (§ 2 art IV ch 169 SLA 1959; am § 9 ch 61 SLA 1960; am § 2 ch 137 SLA 1962)

NOTES TO DECISIONS

Cited in State v. University of Alaska, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Sec. 38.05.063. Sales for pipeline purposes. [Repealed, § 31 ch 3 FSSLA 1973.]

Sec. 38.05.065. Terms of contract of sale. (a) The contract of sale for land sold at public auction under AS 38.05.055 shall require the remainder of the purchase price to be paid in monthly, quarterly or annual installments over a period of 20 years, with interest at the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed. Installment payments plus interest shall be set on the level-payment basis.

(b) The contract of sale for land sold under AS 38.05.057 and under AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of not more than 20 years. Installment payments plus interest shall be set on the level-payment basis. The interest rate to be charged on installment payments is the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed.

(c) The director shall, for contracts under (a) or (b) of this section, set out in the contract for each sale the period for the payment of install-


HB
42

February 28, 1985

The Honorable Peter Goll
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Goll:

Re HB 42 (disposal of state land within a community)

I have reviewed HB 42, which will be heard in your committee this week, and have strong reservations about the bill. In addition to my other comments and questions below, the bill brings to mind this major question: Should "public interest" as used in the Alaska Constitution, Article VIII, Sec. 1 be narrowly defined by the Legislature to mean "local interest"?

Before entering into questions and criticisms of the bill, I wish to point out that the Department of Natural Resources has in recent years adopted new land disposal procedures to encourage and accommodate full local participation in the selection and design of state land disposals. Last year I strongly supported statutory changes that require the department to hold meetings in communities affected by state land disposals (AS 38.04.005(e)), and I see these meetings as providing important guidance to the department in meeting statewide land disposal needs and in considering local interests.

Opportunities for community participation are available within the department's Land Availability Determination System (LADS). Under the LADS process a public meeting must be held early in the process to receive community comments. This is followed by two public notices pursuant to AS 38.05.945. Finally, AS 38.05.050 requires that the auction, lottery, or homesite disposal be held in the community nearest the land to be disposed.

In addition, I would point out that under our regulations and statutes regarding land disposals, we do provide notice of proposed land disposals to communities located within six miles (AS 38.04.060(a); AS 38.05.945; 11 AAC 67.030(c)). We regard these as minimal requirements and have made sincere efforts to see community involvement in our land disposal program.

For communities within municipalities there are additional safeguards. The state must comply with local subdivision ordinances, under statutory changes that I supported last year (see AS 38.04.045(b) and AS 29.33.150). AS 38.04.900(b) gives a municipality standing to appeal a decision of the commissioner with respect to classification, disposal, or management of state land outside its corporate boundaries to protect its interests.

The bill appears to react mostly to past concerns with the department's land disposal program. I understand these concerns, because past land disposals -- accomplished under a statutory land offerings quota with inadequate planning and administration -- did work a hardship on entrypersons and communities across the state. But it has been a major emphasis during my tenure as commissioner to improve our land disposal procedures and prevent the occurrence of such hardships in future years. At the same time, however, I recognize that an insufficient land offerings program could cause the resurgence of a land rush environment with quotas for land offerings and recurrent hardships. I am sure that other state policymakers share my concern that the state meet land disposal demands in Alaska so that public pressure for quotas and fire-sale disposals does not develop.

Along this same line, the department is just now completing both the Tanana Basin Area Plan and the Susitna Area Plan in which well over one hundred public meetings have helped to define our land disposal program for the next twenty years. These plans, along with others complete or nearly complete, have provided substantial opportunity for public involvement in decisions about where state land will be offered for sale in the future.

* I also see a variety of technical problems with the language in the bill. What is a community? Who speaks for the community? By what process would a community nominate land? What number (or percentage) of local persons can represent local concern? How is the exterior boundary of the community defined? How would this local concern be balanced with statewide interests in authorizing a major economic development project such as a pipeline right-of-way lease?

The bill's total prohibition on disposals not nominated by the community would be difficult to interpret. Although there is no definition of "land disposal" in statute, the applicable regulation for disposals (11 AAC 67.002) includes land sales, leases, agricultural interests, materials sales, mineral leaseholds, and even some permits (remote cabins). Thus local opposition to a major economic development project such as a pipeline right-of-way lease could halt the project.

I recognize the concern that led to this bill and want to contribute constructively to discussion and consideration of this concern. Please contact me if there is anything further I may provide.

Sincerely,

Esther C. Wunnicke
Commissioner

cc: Representative Grussendorf
Representative Shultz

Bradley
4/19/85

Original sponsors: Shultz and
Grussendorf

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 42 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the disposal of state land within a community; and providing for an effective date."

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

* Section 1. AS 38.95 is amended by adding a new section to read:

ARTICLE 1A. DISPOSAL OF STATE LAND WITHIN A COMMUNITY.

Sec. 38.95.020. DISPOSAL OF STATE LAND WITHIN A COMMUNITY. (a) Except as provided in (b) of this section, the Department of Natural Resources may not offer to dispose of state land within a community for settlement except with the approval of the community. This section applies to each disposal of state land within a community, whether or not the disposal is for the use of the community but does not apply to the leasing of tide or submerged land by an upland owner under AS 38.05.070 - 38.05.105, to transfers from the Department of Natural Resources to another state agency for the execution of a state program, or to the disposal of state land by the Department of Natural Resources for a utility or pipeline corridor when the disposal is determined by the commissioner to be in the best interests of the state.

(b) The Department of Natural Resources may dispose of the state land without the approval of the community if the department provides the type of roads and services customary in the community to and on the land proposed for disposal. The department shall amortize the costs of the roads and services required under this subsection from the revenue received from the sale of the land.

(c) For the purposes of this section,

(1) except for a municipality, the boundary of a community is described by a radius five miles in length from a central point in the community determined by the community;

(a community is

(A) a municipality of the state; or

(B) a community outside of a municipality that is eligible for revenue sharing under AS 29.89.050.

* Sec. 2. This Act takes effect July 1, 1985.

SUMMARY OF CHANGES

RESOURCES COMMITTEE SUBSTITUTE

HB 42

The Resources Committee Substitute differs from the the Community and Regional Affairs version in three basic areas.

First, there is new language that allows the Dept. of Natural Resources to overide a communities objection to the disposal of state land within its' borders. The state can do this by amoritizing the costs of providing basic services to the land disposed as a condition of the sale.

Second, boundaries of a community are established as an area within a circle having a five mile radius extending outward from a central point within the community. This central point is established by the community itself.

Third, disposals of state land for pipeline and utility corridors are exempt from the requirements in this legislation when found by the commissioner to be in the best interest of the state.

These changes address several of the concerns expressed by the Department, and compliment the intent of the legislation which is to provide a means for the unorganized community to directly participate in the growth an development of their land base.

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
February 26, 1985

The Honorable Peter Goll, Chairman
House Community and Regional
Affairs Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 42: Disposal of State Land Within a Community

Dear Representative Goll:

The League of Women Voters of Alaska supports the concept of giving local communities a good deal of say in the matter of whether and how State land disposals occur within their areas. For example, we have in the past supported legislation that would require State land disposals within municipalities to comply with all subdivision and other pertinent ordinances of those municipalities.

We think that HB 42, however, requires additional work and development before we can give it our unconditional support.

For example (speaking for a moment as an attorney), the word "community" needs a clear legal definition. Secondly, we think that it may be "overkill" to prohibit absolutely State land disposals unless the adjoining community has nominated the land in question for disposal. Instead, we think a mechanism should be established whereby DNR, as a part of its routine land disposal process, takes on the local community almost as a full partner in the designing of how and when the land disposal should occur, and what kinds of provisions should be attached to the land disposal in order to prevent undue adverse impacts and unacceptable future financial obligations on the part of the existing local community.

We shall follow with interest the evolution of the text of HB 42, as these problems are addressed by the sponsors and, hopefully, the committees which consider the bill.

Sincerely,

Elizabeth Cuadra

Elizabeth Cuadra, Board Member
(Natural Resources Portfolio)

DEC:sd
cc: Committee Members (Wallis, Koponen, Gruenberg, Phillips, Furnace, and Marrou)
Sponsors (Shirley and Grussendorf)
Commissioner Esther Wunnicke (DNR)

Introduced: 1/14/85
Referred: Community & Regional Affairs
and Resources

IN THE HOUSE BY SHULTZ AND GRUSSENDORF

HOUSE BILL NO. 42

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the disposal of state land within a community; and providing for an effective date."

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

* Section 1. AS 38.95 is amended by adding a new section to read:

ARTICLE 1A. DISPOSAL OF STATE LAND WITHIN A COMMUNITY.

Sec. 38.95.020. DISPOSAL OF STATE LAND WITHIN A COMMUNITY. The Department of Natural Resources may not offer to dispose of state land within a community except on the nomination of the land by the community. This section applies to each disposal of state land within a community, whether or not the disposal is for the use of the community but does not apply to transfers from the Department of Natural Resources to another agency of the state for the execution of a state program.

* Sec. 2. This Act takes effect July 1, 1985.

ANALYSIS

HOUSE BILL NO.42

1. Provides for a land disposal policy
2. Amends current land disposal policy by adding protective policy for communities and cities directly effected by disposal.
3. Provides for an effective date.

BACKGROUND FOR HB NO. 42

This bill is the result of requests by many constituents in District 17 and residents of other areas of the State of Alaska.

Due to land disposals by DNR, small communities have been unable to carry out their own plans for development. By having the authority to make the decision as to where and when a land disposal will be held, the residents of the community will have full influence as to where their community will grow and the type of growth that will benefit it the most. This bill will give the members of the community the right to decide their own destiny. By directing the disposal, the members of the community will be able to prevent remote land ownership and speculative purchasing of land. Speculative purchasing of land leaves land in a dormant state for as long as the speculator wishes. The present land disposal policy has a negative economic impact on the State because of requests for construction and maintenance of roads, additional school bus routes, electrical distribution lines and increased social services. None of these services are in place at the time of the disposal. By referring to the above it is evident the present disposal policy has a negative economic impact to the communities involved as well.

This bill also will protect an incorporated city from having an undesirable industry locate immediately outside it's city limits. Under our present land disposal program there is little protection for the City if the State so desires to locate an industry that would be incompatible with the city's development plans. Under present policy a city has little say in controlling the acquisition of State land outside of it's city limits by private individuals. This is an unhealthy situation for any city that has future plans for development.

The present land disposal program in and around small communities has been

detrimental for the above reasons and this bill will help correct this.

HB



STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 44

Title: Additions to Marine Parks

Sponsor: Reps. Miller, Duncan, Goll

Requestor: House Resources Committee

Date of Request: 1/25/85

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: Nat. Res. Management
Division of Parks and Outdoor Recreation

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Carol Wilson Phone: 564-2400

Division: Natural Resources /Parks and Outdoor Rec. Date: 1/28/85

Approved by Commissioner: Esther C. Wunnicke Date: 1/29/85

Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

We, the undersigned, express our desire to have by act of legislation, Lot 4, U.S. Survey 3854 (Joe Mace Island) declared a permanent public recreational park, not subject to transfer or utilization for any other purpose than public recreation.

c/o Linda Kruger

	NAME	ADDRESS
1.	Mike Mortell	Box 53 Point Baker
2.	Herbert Oyler	Box 2 Point Baker
3.	[illegible]	BOX 25 PT Baker
4.	Samuel Carlson	Box 57 PT Baker
5.	William F [illegible]	BOX 61 PT BAKER
6.	Warren F Powers	Box 150 PT BAKER
7.	Paul Church	Box 12 PT. BAKER, AK
8.	Judy Magnuson	Box 55 Pt. Baker, Ak
9.	John R. Magnuson	" " "
10.	Sue Roulston	Box 53 Pt. Baker, Ak
11.	Robert H. Oyler	Box 3, PT Baker. AK
12.	Dean a [illegible]	Box 34 Pt Baker AK
13.	Beth Oyler	P.O. Box 3 Pt. Baker, AK
14.	Alvace L. Britt	P.O. Box 33 Pt. Baker [illegible]
15.	[illegible]	Box 34 Pt. Baker 99927
16.	Robert A Larson	Box 70 [illegible] 99927
17.	Charles Hoske	Box 50 Pt. BAKER 99927
18.	[illegible] C Busker	P.O. Box 130 PT. Baker 99927
19.	Deborah Carlson	PO Box 57 Pt. Baker, AK. 99927
20.	Ray F Carlson	PO Box 110. Pt Baker, Ak. 99927
21.	Gregory [illegible]	P.O Box 25 Pt. Baker AK. 99927
22.	Darlene Larson	Box 70 Pt. Baker, AK 99927
23.	Joseph Sebastian	129 Lall PT BAKER AK
24.	Ruth L. Love	Box 89 - Pt. Baker, Ak. 99927
25.	Wm. F. Love	Box 89 Pt. Baker, Ak. 99927
26.	Willie Veitch	P.O. BOX 64 PT. BAKER, A.K, 99927

[illegible] P O BOX 153 PT BAKER, ALASKA

27. Earnest K. Watson P.O. Box 58 Pt. Baker AK.

28. Kay L. Robinson PO Box 62 Pt Baker AK. 99927

29 Ted Cox G.D. Pt Baker, AK

30 Jerry L. Dodson Box 63 Pt. Baker AK, 99927

This petition is supported by the Point Baker Community Council, also.

Dutch Carlson, secretary
Pt. Baker Community Council
Box 31
Pt. Baker, AK. 99927

JENKINS

AMENDMENT # 1 CSHB 44

Page 7, line 22 add the following new subsections;

* Sec. 2. AS 41.21.304 is amended by adding new subsections to read:

(b) Notwithstanding (a) of this section, a marine park established after January 1, 1985, shall be comprised of state land classified by the commissioner under (c) of this section.

(c) The commissioner within 2 years shall establish one or more moorages within each area described in (a) of this section. A moorage shall be established to afford protection of marine craft from inclement weather conditions and for the convenience and safety of operators of marine craft and shall consist of docking facilities or moorings installed and maintained by department. The commissioner shall identify up to 20 acres of land above the mean high tide line that is convenient to the moorage within the area described in (a) of this section and classify it as the marine park and provide a management plan. A marine park classified under this section shall be contiguious to a body of water having a salinity measurement greater than 20 parts per million.

(d) A management plan adopted or revised by the commissioner for lands classified under (c) of this section shall be submitted to the legislature for review within the first 10 days of the first regular session of the legislature to convene after its adoption or revision by the commissioner. The management plan is approved unless legislation disapproving the management plan is enacted by the legislature within the 120 days after its submission.

(e) Within two years after withdrawing the land under subsection (c), the commissioner shall survey, monument, mark th bounderies, and file a record plat as the final marine park. Upon the classification of the marine park unit, the remaining lands not classified as marine parks under this subsection are available for multiple use management.

* Sec. 3. This Act takes effect July 1, 1985.

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4433/4530

2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234



MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
HOUSE STATE AFFAIRS COMMITTEE

Representative Roger Jenkins

DISTRICT 11

MEMORANDUM

TO: House Resources Committee

FROM: Representative Roger L. Jenkins RLJ

DATE: March 10, 1985

SUBJECT: Statemen of Intent of Amendment #1 to CSHB 44

The statement of Intent of Amendment #1 to CSHB 44 is attached for your perusal. I am thanking you in advance for your consideration and encourage your support of this Amendment.

INTENT of Amendment # 1 to CSHB 44

The purpose of the Alaska state parks system is to foster the growth and development of a system of parks and recreational facilities and opportunities in the state, for the general health, welfare, education, and enjoyment of its citizens and for the attraction of visitors to the state. To fulfill these requirements we must plan for and develop a system of state parks and recreational facilities, which are established as the legislature authorizes and directs.

The primary purposes in establishing the land and water area as marine parks units of the Alaska state park system are to;

(1) maintain natural, cultural, and scenic values;
(2) maintain fish wildlife resources and lawful existing uses of these resources;
(3) promote and support recreation and tourism in the state;

It is the responsibility of the citizens of Alaska to develop a portion of our statehood land heritage as parks, and indeed for the state with the most coastline in the nation to foster and develop a specific system of marine parks. The concept that a series of marine parks would be developed, which will allow boaters to find safe harbor with appurtenance facilities along Alaska's coast. These facilities would extend to Alaska the logical progression of British Columbia's and Washington's marine parks system, which would foster tourism, while providing local recreation as well. It is to foster the development of marine parks, that I offer this amendment, and hope that the primary sponsors would consider it a friendly amendment. There are basically 4 sections to my amendment, as follows:

1. NEW MARINE PARKS ONLY refers to marine parks established after January 1, 1985.

2. DEVELOPMENT PLAN REQUIRED for any marine parks that are established. The development plan allows the commissioner to choose protective moorages for the convenience and safety of operations marine craft. The marine park uplands selections would not exceed 20 acres and be located on saline water in the close proximity of the selected moorages.

3. LEGISLATIVE OVERSIGHT The individual marine park management plan would be submitted to the legislature and would be approved unless, legislation to disapprove the management plan was enacted.

4. LAND PLATTING PROVIDED Finally if the management plan is approved the actual marine parks would be surveyed and plats filed as to their exact locations.

The enactment of this amendment would more rationally utilize our limited Southeastern Alaska upland land base. The 92,000 acres of land presently unappropriated in Southeast only contains approximately 30,000 acres that are capable of utilization. This amendment allows the necessary time to determine the highest and best use principles for our small land base, while allowing the establishment and development of marine parks for the enjoyment and safety of our visitors and resident marine users alike.

SUGGESTED AMENDMENT TO CS FOR HB 44 (RESOURCES)

DELETE: (14) Funter Bay as desribed in the Committee Substitute

ADD: (14) Funter Bay

Township 42 South, Range 64 East, Copper River Meridian

Section 2: W1/2

Section 3: S1/2SW1/4, NW1/4SW1/4

Section 4: S1/2NE1/4, E1/2SE1/4

Section 10: N1/2N1/2, S1/2NE1/4

Section 11: NW1/4, NW1/4NE1/4

Prepared by: Paula Burgess
Regional Manager
Division of Land and Water Management
Department of Natural Resources
(465-3400)

Original sponsors: M.M.Miller, Goll
and Duncan

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 44 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing additional state land as marine park units of the state park system; and providing for an effective date."

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

* Section 1. AS 41.21.304 is amended by adding new paragraphs to read:

(13) Taku Harbor

U.S. Mineral Survey No. 2192

Township 44 South, Range 70 East, Copper River Meridian

Section 5: W1/2SW1/4, W1/2E1/2SW1/4

Section 6: E1/2SE1/4

Section 7: NE1/4, NE1/4SE1/4, S1/2SE1/4

Section 8: W1/2

Section 17: W1/2W1/2

Section 18: E1/2

(14) Funter Bay

Township 42 South, Range 64 East, Copper River Meridian

Sections 1 and 12: The following described tracts, excluding U.S. Surveys Nos. 2448 and 3149:

(A) Beginning at Corner No. 4, Lone Star Lode claim, U.S. Mineral Survey No. (M.S.) 1492 proceed N. 70 degrees 00 feet E. along the north boundary of said claim a distance of 359.15 feet more or less to Corner No. 3, Otter Lode claim, M.S. 1492; thence N. 5 degrees 50 feet E. a distance of 666.60 feet more or less along the west boundary of the Otter Lode claim to Corner

No. 4 of said claim; thence N. 70 degrees 00 feet E. a distance of 1,500.00 feet more or less along the north boundary of the Otter Lode claim, M.S. 1492 to Corner No. 1 of said claim, said Corner being common to Corner No. 2, Mill Site claim, M.S. 2191; thence N. 5 degrees 27 feet W. to an intersect with the southwest boundary of ISH NIC claim, M.S. 2191; thence N. 44 degrees 00 feet W. along said boundary to Corner No. 4 of ISH NIC claim; thence N. 46 degrees 00 feet E. along the northwest boundary of ISH NIC claim a distance of 321.62 feet more or less to Corner No. 3 of Beach No. 4 claim, M.S. 2191, common with Corner No. 2 of Beach No. 1 claim, M.S. 2191; thence N. 44 degrees 00 feet W. along the southwest boundary of Beach No. 4 claim a distance of 600. 00 feet more or less to Corner No. 4 of Beach No. 4 claim; thence N. 46 degrees 00 feet E. along the northwest boundary of Beach No. 4 claim a distance of 1,099.47 feet more or less to Corner No. 1 of Beach No. 4 claim, common with Corner No. 1 of Beach No. 5 claim, M.S. 2191; thence N. 44 degrees 00 feet W. along the southwest boundaries of Beach No's. 6 and 7 claims, M.S. 2191 a distance of 1,200.00 feet more or less to Corner No. 1 of Beach No. 7 claim; thence N. 46 degrees 00 feet E. along the northwest boundary of Beach No. 7 claim a distance of 135.10 feet more or less to Corner No. 4 U.S. Survey No. (U.S.S.) 3149; thence continue N. 46 degrees 00 feet E. along the northwest boundaries of Beach No's. 7 and 8 claims, M.S. 2191 a distance of 2,864.90 feet more or less to Corner No. 2, Beach No. 8 claim; thence due west a distance of 3,300 feet more or less to an intersection of a line projected due north from Meander Corner (M.C.) No. 3, U.S.S. 2448; thence due south a distance of 1,214 feet more or less to M.C. No. 3, U.S.S. 2448; thence meander

along the mean high water line of the northeast shore of Funter Bay in a southwesterly, easterly, southeasterly, southwesterly direction a distance of 1.11 miles more or less to a point lying S. 70 degrees 00 feet W. from Corner No. 4, Lone Star Lode claim, M.S. 1492 on the mean high water line of the easterly shore of Funter Bay; thence N. 70 degrees 00 feet E. to Corner No. 4, Lone Star Lode claim; the point of beginning.

(B) That portion of Mill Site, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 1, Mill Site, on line 2-3, Beach No. 1, M.S. 2191, thence S. 5 degrees 27 feet E., 57.26 feet, to the intersection of line 1-4, ISH NIC, M.S. 2191; thence S. 46 degrees 00 feet W., 264.36 feet, along a portion of line 1-4, of ISH NIC, to Corner No. 4, ISH NIC, M.S. 2191; thence S. 44 degrees 00 feet E., 331.75 feet, along a portion of line 4-3 of ISH NIC, to the intersection of line 1-2, Mill Site; thence S. 5 degrees 27 feet E., 137.55 feet, along a portion of line 1-2 of Mill Site, to Corner No. 2, Mill Site, identical to Corner No. 1 of Otter, M.S. 1492; thence S. 70 degrees 00 feet W., 1,500.00 feet, on line 2-3, Mill Site, identical to line 1-4 of Otter, M.S. 1492, to Corner No. 3, Mill Site, M.S. 2191, identical to Corner No. 4 of Otter, M.S. 1492; thence N. 5 degrees 27 feet W., 497.70 feet, on line 3-4, along the mean-high tide line of Funter Bay, to Corner No. 4, Mill Site; thence N. 30 degrees 07 feet E., 183.08 feet, on line 4-5, along the mean-high tide line of Funter Bay, to Corner No. 5, Mill Site, identical to Corner No. 3, Beach No. 1, M.S. 2191; thence N. 70 degrees 00 feet E., 1,390.00 feet, on line 5-1, Mill Site, identical to a portion of line 3-2, Beach No. 1, to Corner No. 1, the point of beginning.

(C) That portion of Beach No. 1, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 2, Beach No. 1, identical with Corner No. 3, Beach No. 4, M.S. 2191, on line 4-1 of ISH NIC, M.S. 2191, thence S. 70 degrees 00 feet W., 1,500.00 feet on line 2-3, Beach No. 1, identical to a portion of line 1-5, Mill Site, M.S. 2191, to Corner No. 3, Beach No. 1, identical to Corner No. 5, Mill Site; thence N. 12 degrees 43 feet E., 460.00 feet, along the mean-high tide line of Funter Bay to Corner No. 4, Beach No. 1; thence N. 47 degrees 23 feet E., 157.50 feet, along the mean-high tide line of Funter Bay, to Corner No. 5, Beach No. 1; thence N. 14 degrees 02 feet E., 183.33 feet, along the mean-high tide line of Funter Bay, to Corner No. 6, Beach No. 1, identical to Corner No. 4, Beach No. 2, M.S. 2191; thence N. 70 degrees 00 feet E., 874.74 feet, on line 6-1, Beach No. 1, identical to a portion of line 4-3 of Beach No. 2, to the intersection of line 4-1, Beach No. 4, M.S. 2191; thence S. 46 degrees 00 feet W., 126.34 feet, along a portion of line 4-1 of Beach No. 4, to Corner No. 4, Beach No. 4; thence S. 44 degrees 00 feet E., 600.00 feet, on line 4-3, Beach No. 4, to Corner No. 3, Beach No. 4, identical to Corner No. 2, Beach No. 1, the point of beginning.

(D) That portion of Beach No. 2, Mineral Survey (M.S.) No. 2191, described as follows: beginning at the true point for Corner No. 1, Beach No. 2, thence N. 70 degrees 00 feet E., 1,197.45 feet, along a portion of line 1-2 of Beach No. 2, to the intersection of line 1-4 of Beach No. 6, M.S. 2191; thence S. 44 degrees 00 feet E., 223.40 feet, along a portion of line 1-4 of Beach No. 6, to Corner No. 4, Beach No. 6, identical with Corner No. 1, Beach No. 5, M.S. 2191; thence S. 46 degrees 00 feet W.,

973.13 feet, along a portion of line 1-4 of Beach No. 4, to the intersection of line 3-4 of Beach No. 2; thence S. 70 degrees 00 feet W., 874.74 feet, along a portion of line 3-4 of Beach No. 2, to Corner No. 4, Beach No. 2, identical with Corner No. 6, Beach No. 1; thence N. 14 degrees 03 feet E., 478.00 feet, along the mean-high tide line of Funter Bay, to Corner No. 5, Beach No. 2; thence N. 25 degrees 33 feet E., 291.00 feet, along the mean-high tide line of Funter Bay, to Corner No. 1, Beach No. 2, the point of beginning.

(E) That portion of Beach No. 3, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 1, Beach No. 3, thence N. 70 degrees 00 feet E., 637.07 feet, along a portion of line 1-2, to the intersection of line 1-4, Beach No. 7, M.S. 2191; thence S. 44 degrees 00 feet E., 279.27 feet, along a portion of line 1-4 of Beach No. 7, to Corner No. 4, Beach No. 7, identical to Corner No. 1, Beach No. 6, M.S. 2191, thence continue S. 44 degrees 00 feet E., 376.60 feet, along a portion of line 1-4 of Beach No. 6, to the intersection of line 3-4, Beach No. 3; thence S. 70 degrees 00 feet W., 1,139.45 feet, along a portion of line 3-4 of Beach No. 3, to Corner No. 4, Beach No. 3; thence N. 1 degree 30 feet E., 644.00 feet, along the mean-high tide line of Funter Bay, on line 4-1, to Corner No. 1, Beach No. 3, to point of beginning. Containing 12.22 acres.

(15) Pt. Higgins Beach

Township 74 South, Range 89 East, Copper River Meridian

U.S. Survey 3762 and adjacent tideland

(16) Joe Mace Island

Township 64 South, Range 75 East, Copper River Meridian

Lot 4, U.S. Survey 3854 and adjacent tideland

(17) Thoms Place

Township 65 South, Range 86 East, Copper River Meridian

Section 32: S1/2

Township 66 South, Range 86 East, Copper River Meridian

Section 4: SW1/4, S1/2NW1/4, NW1/4NW1/4, S1/2SE1/4, NW1/4SE1/4

Section 5: All except for land within ASLS 87-234

Section 8: NE1/4

Section 9: N1/2, SE1/4

(18) Beecher Pass

Township 61 South, Range 79 East, Copper River Meridian

Section 1: NE1/4SW1/4, Lots 5 - 8

Section 10: Lots 1 - 2, including all adjacent tideland

Section 11: Lots 1 - 11, including all adjacent tideland

Section 12: Lots 3 - 11, including all adjacent tideland

Section 14: Lot 2, including all adjacent tideland

Section 15: Lot 2, including all adjacent tideland

Township 61 South, Range 80 East, Copper River Meridian

Section 6: Lot 11, including all adjacent tideland

Section 7, Lots 1 - 2, including all adjacent tideland

(19) Dall Bay

Township 77 South, Range 91 East, Copper River Meridian

Section 29: W1/2SW1/4, SW1/4NW1/4

Section 30: SE1/4, E1/2SW1/4

Section 31: NE1/4, N1/2SE1/4, NE1/4SW1/4, E1/2NW1/4

subject to USS 3525 and A.T.S. 155

Section 32: NW1/4, N1/2SW1/4

(20) Security Bay

Township 58 South, Range 70 East, Copper River Meridian

Section 1: SW1/4SW1/4

Section 2: S1/2

Section 11: N1/2, SE1/4, E1/2SW1/4

Section 12: W1/2W1/2, E1/2SW1/4 subject to Forest Service Preference 103521

Section 13: All subject to Historic Place Application AA-6569, Parcel A

Section 14: NE1/4

(21) Petersburg Creek

Township 58 South, Range 79 East, Copper River Meridian

Section 18: S1/2 subject to valid existing rights to lot 5

Section 19: N1/2, SE1/4

Section 20: All

Section 29: N1/2, SW1/4, W1/2SW1/4 excluding Block 3

Section 32: N1/2, N1/2S1/2 excluding Lots 5 - 8 and U.S. Survey 2867

* Sec. 2. AS 41.21.304 is amended by adding new subsections to read:

(b) Notwithstanding (a) of this section, a marine park established after January 1, 1985, shall be comprised of state land classified by the commissioner under (c) of this section.

(c) Within five years after the effective date of this Act, the commissioner shall establish one or more moorages within each area described in (a) of this section. A moorage shall be established to afford protection of marine craft from inclement weather conditions

and for the convenience and safety of operators of marine craft and shall consist of docking facilities or moorings installed and maintained by department. The commissioner shall identify up to 75 acres of land above the mean high tide line that is convenient to the moorage within the area described in (a) of this section and classify it as the marine park and provide a management plan. A marine park classified under this section shall be contiguous to a body of water having a salinity measurement greater than 20 parts per thousand.

(d) Within five years after classifying the land under (c) of this section, the commissioner shall survey, monument, mark the boundaries, and file a record plat as the final marine park. Upon the classification of the land as a marine park unit, the remaining land not classified as a marine park under (c) of this section is available for multiple use management.

* Sec. 3. This Act takes effect July 1, 1985.

We the undersigned land owners at Funter Bay, Alaska support the location of a Marine Park, in Coot Cove, at Funter on Admiralty Island

Robert G Millard
Donna Denton
Gavin Denton
Kurt Fredericksen
Susan Millard
Brian C. Denton
Sharon C Denton
[illegible] (Lance Youngquist)

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4453/4530

2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234

MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
HOUSE STATE AFFAIRS COMMITTEE

Representative Roger Jenkins

DISTRICT 11

MEMORANDUM

TO: House Resources Committee

FROM: Representative Roger L. Jenkins RLJ

DATE: March 10, 1985

SUBJECT: Statement of Intent of Amendment #1 to CSHB 44

The statement of Intent of Amendment #1 to CSHB 44 is attached for your perusal. I am thanking you in advance for your consideration and encourage your support of this Amendment.

INTENT of Amendment # 1 to CSHB 44

The purpose of the Alaska state parks system is to foster the growth and development of a system of parks and recreational facilities and opportunities in the state, for the general health, welfare, education, and enjoyment of its citizens and for the attraction of visitors to the state. To fulfill these requirements we must plan for and develop a system of state parks and recreational facilities, which are established as the legislature authorizes and directs.

The primary purposes in establishing the land and water area as marine parks units of the Alaska state park system are to;

(1) maintain natural, cultural, and scenic values;
(2) maintain fish wildlife resources and lawful existing uses of these resources;
(3) promote and support recreation and tourism in the state;

It is the responsibility of the citizens of Alaska to develop a portion of our statehood land heritage as parks, and indeed for the state with the most coastline in the nation to foster and develop a specific system of marine parks. The concept that a series of marine parks would be developed, which will allow boaters to find safe harbor with appurtenance facilities along Alaska's coast. These facilities would extend to Alaska the logical progression of British Columbia's and Washington's marine parks system, which would foster tourism, while providing local recreation as well. It is to foster the development of marine parks, that I offer this amendment, and hope that the primary sponsors would consider it a friendly amendment. There are basically 4 sections to my amendment, as follows:

1. NEW MARINE PARKS ONLY refers to marine parks established after January 1, 1985.

2. DEVELOPMENT PLAN REQUIRED for any marine parks that are established. The development plan allows the commissioner to choose protective moorages for the convenience and safety of operations marine craft. The marine park uplands selections would not exceed 20 acres and be located on saline water in the close proximity of the selected moorages.

3. LEGISLATIVE OVERSIGHT The individual marine park management plan would be submitted to the legislature and would be approved unless, legislation to disapprove the management plan was enacted.

4. LAND PLATTING PROVIDED Finally if the management plan is approved the actual marine parks would be surveyed and plats filed as to their exact locations.

The enactment of this amendment would more rationally utilize our limited Southeastern Alaska upland land base. The 92,000 acres of land presently unappropriated in Southeast only contains approximately 30,000 acres that are capable of utilization. This amendment allows the necessary time to determine the highest and best use principles for our small land base, while allowing the establishment and development of marine parks for the enjoyment and safety of our visitors and resident marine users alike.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS & OUTDOOR RECREATION

400 WILLOUGHBY, 5th FLOOR
JUNEAU, ALASKA 99801-1381
PHONE: (907) 465-4563

STATE MARINE PARKS
SOME QUESTIONS AND ANSWERS

by
Neil C. Johannsen
Director
Alaska State Parks
Department of Natural Resources

Background

Section 6(a) of the Statehood Act allows the state to select up to 400,000 acres of National Forest land for the purposes of community expansion (essentially lands to be disposed of) and for creating recreation areas. The priority for allocating these state land selections will be community expansion (disposals) but the state did decide some years ago to utilize about ten percent of the acreage to create state marine parks. Alaska's marine parks program is copied from (and was planned in cooperation with) Washington State and the Province of British Columbia's similar systems. Washington now manages about 55 state marine parks; British Columbia has about 25 provincial marine park sites. Alaska's state park system currently manages 12 marine parks and HB 44 would add an additional 12 units to this program.

What is a Marine Park?

Marine parks can be characterized as legislatively designated units of the state park system which are protected small, scenic coves, bays, bights, beaches, where people tend to land float or amphibious aircraft or anchor their boats. These recreation sites are often spaced a day's travel distance apart for boaters and are places where the clamming, fishing, camping or picnicing is excellent. Eventual developments could include mooring bouys, a few tables and fire places on the beach, a simple pit toilet building, public rental cabins and perhaps elevated tent platforms and firewood shelters.

Proposed marine parks are normally already popular spots with the public and would not be sold or disposed of by the state; instead, their recreation and scenic values will be preserved for all citizens to use.

Development and active management may still be some years away; this bill should be viewed as a "visionary" measure, to consider the present as well as future needs of our citizens. Creation of these small, well-placed ocean recreation sites is an investment certain to acrue great interest and value in the years ahead.

What Types of Uses Would be Allowed?

The purposes and allowable uses for marine parks are outlined in Alaska Statute 41.21.300-300.6. They are created to:

(1) Maintain natural, cultural and scenic values.

(2) Maintain fish and wildlife resources and lawful existing uses of these resources.

(3) Promote and support recreation and tourism in the state.

Hunting, sport and commercial fishing and trapping are expressly allowed; the Fish and Game Department will continue to manage fish and wildlife programs. Commercial acquaculture development and access to private lands and mineral claims and leases is permitted.

These are parks with a "small p" which consume small acreages and are user oriented.

Where are These Proposed Marine Parks Located?

Juneau Area:	Taku Harbor - 700 acres
Ketchikan Area:	Point Higgins Beach (Coast Guard Beach) - 71 acres Dall Bay - 850 acres
Wrangell Area:	Thoms Place - 1,400 acres Thoms Lake - 2,500 acres
Petersburg Area:	Petersburg Creek - 1,360 acres Beecher Pass - 741 acres
Point Baker Area:	Joe Mace Island - 62 acres

Others are planned at Security Bay on Kuiu Island, Cape Bingham on the north point of Yakobi Island and the Coot Cove-Funter Bay area on the northwest coast of Admiralty Island. These are true recreational gems which provide an "international connection" to the similar efforts by our neighbors to the south. Less than 10,000 acres are involved, hardly a lock up of vast tracts of land. These are user oriented parks.

Why Are More Marine Parks Needed?

To protect popular areas for increasing numbers of local boaters.

To respond to increased tourist demand for Alaska destinations.

To provide the majority of people an opportunity to enjoy the beauties of Alaska's shorelines.

To ensure access to prime public land for shore-related experiences to future water users.

To set aside exceptional protected anchorages.

To create an overnight park system for water users.

Over half of all Alaskans participate in boating; recreation and tourism is our third largest industry, worth over half a billion dollars a year and employs almost 11,000 Alaskans. This commitment to recreation provides an important linkage to the tourism industry: boat rentals and charters, boat moorage, boat and aircraft sales, maintenance and repairs, air taxi and guide operations and other visitor service related industries.

The proposed marine park system is designed to guarantee everyone's use of the most scenic small coves, bays, bights and accessible beaches along the Southeast and Southcentral coast of Alaska. The plan has gathered bipartism support, is carefully, thought out, and clearly shows that Alaskan's desire to provide for their, as well as their children's, recreational needs.

The Alaska Department of Natural Resources asks your support for this Legislation.

March 1985

3/8/85

MEMORANDUM

TO: Resources Committee Members
FROM: Representative John Sund

Re: CS HB44

The following Marine Parks are included in this committee substitute.

1. TAKU HARBOR
2. FUNTER BAY (Rep. Miller Version)
3. PT. HIGGENS BEACH
4. JOE MACE ISLAND
5. THOMS PLACE
6. BEECHER PASS
7. DALL BAY
8. SECURITY BAY
9. PETERSBURG CREEK

DRAFT

Sund
Bradlev
3/7/85

Original sponsors: M.M.Miller, Goll and Duncan

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 44 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing additional state land as marine park units of the state park system; and providing for an effective date."

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

* Section 1. AS 41.21.304 is amended by adding new paragraphs to read:

(13) Taku Harbor

U.S. Mineral Survey No. 2192

Township 44 South, Range 70 East, Copper River Meridian

Section 5: W1/2SW1/4, W1/2E1/2SW1/4

Section 6: E1/2SE1/4

Section 7: NE1/4, NE1/4SE1/4, S1/2SE1/4

Section 8: W1/2

Section 17: W1/2W1/2

Section 18: E1/2

(14) Funter Bay

Township 42 South, Range 64 East, Copper River Meridian

Sections 1 and 12: The following described tracts, excluding U.S. Surveys Nos. 2448 and 3149:

(A) Beginning at Corner No. 4, Lone Star Lode claim, U.S. Mineral Survey No. (M.S.) 1492 proceed N. 70 degrees 00 feet E. along the north boundary of said claim a distance of 359.15 feet more or less to Corner No. 3, Otter Lode claim, M.S. 1492; thence N. 5 degrees 50 feet E. a distance of 666.60 feet more or less along the west boundary of the Otter Lode claim to Corner

No. 4 of said claim; thence N. 70 degrees 00 feet E. a distance of 1,500.00 feet more or less along the north boundary of the Otter Lode claim, M.S. 1492 to Corner No. 1 of said claim, said Corner being common to Corner No. 2, Mill Site claim, M.S. 2191; thence N. 5 degrees 27 feet W. to an intersect with the southwest boundary of ISH NIC claim, M.S. 2191; thence N. 44 degrees 00 feet W. along said boundary to Corner No. 4 of ISH NIC claim; thence N. 46 degrees 00 feet E. along the northwest boundary of ISH NIC claim a distance of 321.62 feet more or less to Corner No. 3 of Beach No. 4 claim, M.S. 2191, common with Corner No. 2 of Beach No. 1 claim, M.S. 2191; thence N. 44 degrees 00 feet W. along the southwest boundary of Beach No. 4 claim a distance of 600. 00 feet more or less to Corner No. 4 of Beach No. 4 claim; thence N. 46 degrees 00 feet E. along the northwest boundary of Beach No. 4 claim a distance of 1,099.47 feet more or less to Corner No. 1 of Beach No. 4 claim, common with Corner No. 1 of Beach No. 5 claim, M.S. 2191; thence N. 44 degrees 00 feet W. along the southwest boundaries of Beach No's. 6 and 7 claims, M.S. 2191 a distance of 1,200.00 feet more or less to Corner No. 1 of Beach No. 7 claim; thence N 46 degrees 00 feet E. along the northwest boundary of Beach No. 7 claim a distance of 135.10 feet more or less to Corner No. 4 U.S. Survey No. (U.S.S.) 3149; thence continue N. 46 degrees 00 feet E. along the northwest boundaries of Beach No's. 7 and 8 claims, M.S. 2191 a distance of 2,864.90 feet more or less to Corner No. 2, Beach No. 8 claim; thence due west a distance of 3,300 feet more or less to an intersection of a line projected due north from Meander Corner (M.C.) No. 3, U.S.S. 2448; thence due south a distance of 1,214 feet more or less to M.C. No. 3, U.S.S. 2448; thence meander

along the mean high water line of the northeast shore of Funter Bay in a southwesterly, easterly, southeasterly, southwesterly direction a distance of 1.11 miles more or less to a point lying S. 70 degrees 00 feet W. from Corner No. 4, Lone Star Lode claim, M.S. 1492 on the mean high water line of the easterly shore of Funter Bay; thence N. 70 degrees 00 feet E. to Corner No. 4, Lone Star Lode claim; the point of beginning.

(B) That portion of Mill Site, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 1, Mill Site, on line 2-3, Beach No. 1, M.S. 2191, thence S. 5 degrees 27 feet E., 57.26 feet, to the intersection of line 1-4, ISH NIC, M.S. 2191; thence S. 46 degrees 00 feet W., 264.36 feet, along a portion of line 1-4, of ISH NIC, to Corner No. 4, ISH NIC, M.S. 2191; thence S. 44 degrees 00 feet E., 331.75 feet, along a portion of line 4-3 of ISH NIC, to the intersection of line 1-2, Mill Site; thence S. 5 degrees 27 feet E., 137.55 feet, along a portion of line 1-2 of Mill Site, to Corner No. 2, Mill Site, identical to Corner No. 1 of Otter, M.S. 1492; thence S. 70 degrees 00 feet W., 1,500.00 feet, on line 2-3, Mill Site, identical to line 1-4 of Otter, M.S. 1492, to Corner No. 3, Mill Site, M.S. 2191, identical to Corner No. 4 of Otter, M.S. 1492; thence N. 5 degrees 27 feet W., 497.70 feet, on line 3-4, along the mean-high tide line of Funter Bay, to Corner No. 4, Mill Site; thence N. 30 degrees 07 feet E., 183.08 feet, on line 4-5, along the mean-high tide line of Funter Bay, to Corner No. 5, Mill Site, identical to Corner No. 3, Beach No. 1, M.S. 2191; thence N. 70 degrees 00 feet E., 1,390.00 feet, on line 5-1, Mill Site, identical to a portion of line 3-2, Beach No. 1, to Corner No. 1, the point of beginning.

(C) That portion of Beach No. 1, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 2, Beach No. 1, identical with Corner No. 3, Beach No. 4, M.S. 2191, on line 4-1 of ISH NIC, M.S. 2191, thence S. 70 degrees 00 feet W., 1,500.00 feet on line 2-3, Beach No. 1, identical to a portion of line 1-5, Mill Site, M.S. 2191, to Corner No. 3, Beach No. 1, identical to Corner No. 5, Mill Site; thence N. 12 degrees 43 feet E., 460.00 feet, along the mean-high tide line of Funter Bay to Corner No. 4, Beach No. 1; thence N. 47 degrees 23 feet E., 157.50 feet, along the mean-high tide line of Funter Bay, to Corner No. 5, Beach No. 1; thence N. 14 degrees 02 feet E., 183.33 feet, along the mean-high tide line of Funter Bay, to Corner No. 6, Beach No. 1, identical to Corner No. 4, Beach No. 2, M.S. 2191; thence N. 70 degrees 00 feet E., 874.74 feet, on line 6-1, Beach No. 1, identical to a portion of line 4-3 of Beach No. 2, to the intersection of line 4-1, Beach No. 4, M.S. 2191; thence S. 46 degrees 00 feet W., 126.34 feet, along a portion of line 4-1 of Beach No. 4, to Corner No. 4, Beach No. 4; thence S. 44 degrees 00 feet E., 600.00 feet, on line 4-3, Beach No. 4, to Corner No. 3, Beach No. 4, identical to Corner No. 2, Beach No. 1, the point of beginning.

(D) That portion of Beach No. 2, Mineral Survey (M.S.) No. 2191, described as follows: beginning at the true point for Corner No. 1, Beach No. 2, thence N. 70 degrees 00 feet E., 1,197.45 feet, along a portion of line 1-2 of Beach No. 2, to the intersection of line 1-4 of Beach No. 6, M.S. 2191; thence S. 44 degrees 00 feet E., 223.40 feet, along a portion of line 1-4 of Beach No. 6, to Corner No. 4, Beach No. 6, identical with Corner No. 1, Beach No. 5, M.S. 2191; thence S. 46 degrees 00 feet W.,

973.13 feet, along a portion of line 1-4 of Beach No. 4, to the intersection of line 3-4 of Beach No. 2; thence S. 70 degrees 00 feet W., 874.74 feet, along a portion of line 3-4 of Beach No. 2, to Corner No. 4, Beach No. 2, identical with Corner No. 6, Beach No. 1; thence N. 14 degrees 03 feet E., 478.00 feet, along the mean-high tide line of Funter Bay, to Corner No. 5, Beach No. 2; thence N. 25 degrees 33 feet E., 291.00 feet, along the mean-high tide line of Funter Bay, to Corner No. 1, Beach No. 2, the point of beginning.

(E) That portion of Beach No. 3, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 1, Beach No. 3, thence N. 70 degrees 00 feet E., 637.07 feet, along a portion of line 1-2, to the intersection of line 1-4, Beach No. 7, M.S. 2191; thence S. 44 degrees 00 feet E., 279.27 feet, along a portion of line 1-4 of Beach No. 7, to Corner No. 4, Beach No. 7, identical to Corner No. 1, Beach No. 6, M.S. 2191, thence continue S. 44 degrees 00 feet E., 376.60 feet, along a portion of line 1-4 of Beach No. 6, to the intersection of line 3-4, Beach No. 3; thence S. 70 degrees 00 feet W., 1,139.45 feet, along a portion of line 3-4 of Beach No. 3, to Corner No. 4, Beach No. 3; thence N. 1 degree 30 feet E., 644.00 feet, along the mean-high tide line of Funter Bay, on line 4-1, to Corner No. 1, Beach No. 3, to point of beginning. Containing 12.22 acres.

(15) Pt. Higgins Beach

Township 74 South, Range 89 East, Copper River Meridian

U.S. Survey 3762 and adjacent tideland

(16) Joe Mace Island

Township 64 South, Range 75 East, Copper River Meridian

Lot 4, U.S. Survey 3854 and adjacent tideland

(17) Thoms Place

Township 65 South, Range 86 East, Copper River Meridian

Section 32: S1/2

Township 66 South, Range 86 East, Copper River Meridian

Section 4: SW1/4, S1/2NW1/4, NW1/4NW1/4, S1/2SE1/4, NW1/4SE1/4

Section 5: All except for land within ASLS 81-234

Section 8: NE1/4

Section 9: N1/2, SE1/4

(18) Beecher Pass

Township 61 South, Range 79 East, Copper River Meridian

Section 1: NE1/4SW1/4, Lots 5 - 8

Section 10: Lots 1 - 2, including all adjacent tideland

Section 11: Lots 1 - 11, including all adjacent tideland

Section 12: Lots 3 - 11, including all adjacent tideland

Section 14: Lot 2, including all adjacent tideland

Section 15: Lot 2, including all adjacent tideland

Township 61 South, Range 80 East, Copper River Meridian

Section 6: Lot 11, including all adjacent tideland

Section 7, Lots 1 - 2, including all adjacent tideland

(19) Dall Bay

Township 77 South, Range 91 East, Copper River Meridian

Section 29: W1/2SW1/4, SW1/4NW1/4

Section 30: SE1/4, E1/2SW1/4

Section 31: NE1/4, N1/2SE1/4, NE1/4SW1/4, E1/2NW1/4

subject to USS 3525 and A.T.S. 155

Section 32: NW1/4, N1/2SW1/4

(20) Security Bay

Township 58 South, Range 70 East, Copper River Meridian

Section 1: SW1/4SW1/4

Section 2: S1/2

Section 11: N1/2, SE1/4, E1/2SW1/4

Section 12: W1/2W1/2, E1/2SW1/4 subject to Forest Service Preference 103521

Section 13: All subject to Historic Place Application AA-6569, Parcel A

Section 14: NE1/4

(21) Petersburg Creek

Township 58 South, Range 79 East, Copper River Meridian

Section 18: S1/2 subject to valid existing rights to lot 5

Section 19: N1/2, SE1/4

Section 20: All

Section 29: N1/2, SW1/4, W1/2SW1/4 excluding Block 3

Section 32: N1/2, N1/2S1/2 excluding Lots 5 - 8 and U.S. Survey 2867

* Sec. 2. This Act takes effect July 1, 1985.

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

Southeast Regional Office

TO: Representative Shultz, Co-Chairman
Representative Herrmann, Co-Chairman
Members of the Committee

DATE: February 28, 1985

FILE NO:

TELEPHONE NO: 465-3400

FROM: Paula T. Burgess, Regional Manager
DL&WM, SERO

SUBJECT: House Resource Committee Request

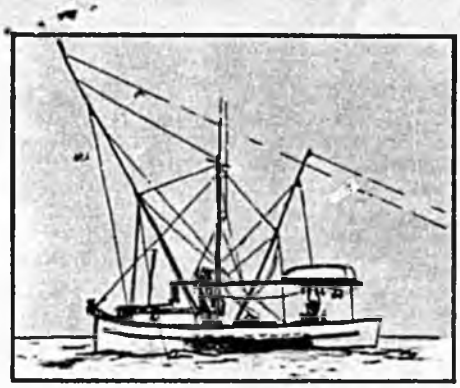
In response to the Committee's request, I have prepared an estimate of the revenue that would be lost if the 65 acre subdivision at Funter Bay were not sold.

My estimate is based on the appraisal and sale of lots at Shelter Island (roughly the same air distance from Juneau as Funter Bay) in 1982, and the purchase price of one acre lots recently sold at the south end of Funter Bay.

If the State were to sell twelve waterfront lots, 180 by 400 feet (1.6 acres), the sale might generate $400,000 in general fund revenues (calculated at $33,000 per lot). If the State were to sell an additional eight upland lots, averaging four acres, that sale might generate an additional $100,000 (calculated at $12,000 per lot).

Therefore, the sale of 20 lots in Funter Bay might produce $500,000 of revenue. With the State financing purchase of the lots over a twenty year period, the revenue generated over that period would be two and one-half times the sale price of $500,000. The actual revenue to accrue to the State would then be $1.25 million.

Expenses incurred in selling the land, including survey, are estimated to be $70,000.



Alaska Trollers Association

REPRESENTING ALASKA POWER TROLLERS

130 Seward St., No. 213
Juneau, Alaska 99801
(907) 586-9400

3/8/95

Representatives Adelheid Hermann
and Dick Schultz, Co-Chairman
House Resources Committee
Room 118 Capital Building
Juneau, Alaska 99811

Dear Representative Hermann
and Representative Schultz,

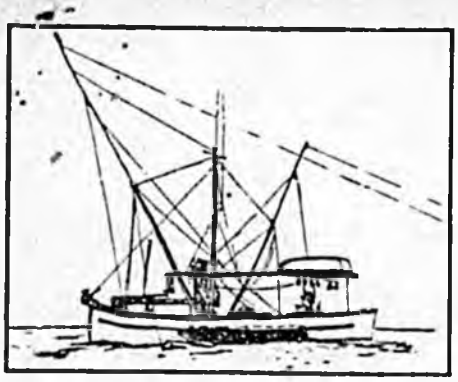
Enclosed for your consideration is a copy of our letter of this date to Representatives Goll, Miller and Duncan, co-sponsors of HB44, which is now before your Committee (copies enclosed for all members). We ask your attention to the points we have raised regarding inclusion of Cape Bingham as a marine park unit, and language to further protect traditional uses in the parks.

Sincerely,

Earl E. Krygier
Executive Director

EEK/md

Enclosures



Alaska Trollers Association

REPRESENTING ALASKA POWER TROLLERS

130 Seward St., No. 213
Juneau, Alaska 99801
(907) 586-9400

Representative Peter Goll
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

2/8/05

Dear Peter,

This letter is to express the Alaska Trollers Association's support for HB44 respecting additions to the State marine parks system. We understand that Representative Sund has suggested removal of the proposed unit at Cape Bingham from the bill due to disquiet amongst fishermen constituents. We understand this problem because we have had reservations expressed to us by some of our members, as well. As you know, many people are wary of park designations out of fear that the units will eventually become very restricted, if not closed entirely to commercial activity. The abortive, ill-conceived Federal marine sanctuary program and difficulties in Glacier Bay are vividly remembered. ATA shares this concern. However, we are also very aware of other conflicts through mining, timbering, and State land disposals, which park designation will protect against.

In the case of Cape Bingham, we are particularly concerned with land disposals. The Cape Bingham unit encompasses uplands immediately adjacent to some of the best traditional troll draws in Southeast. These draws are vital to our fishery. We do not want to see the area opened to the establishment of sportfishing lodges with resultant direct conflicts between commercial troll fishermen (who pioneered these locales and have used them for decades!), and charterboat sports fishermen. State land disposal in the Cape Bingham unit opens the door to such a probability. Consequently, ATA urges that you and your co-sponsors, Representatives Miller and Duncan, retain Cape Bingham in the bill.

We also suggest that stronger wording could be included as an amendment to the original Bill to better protect established traditional uses in these park units, thereby preventing possible unduly restrictive management in the future. Fishermen and fish buyers often anchor in bays and coves just offshore from the proposed units, and traditional summer vegetable gardening, fresh water use, beach camping, firewood collecting, etc., should be specifically protected. By strongly protecting such traditional uses you will allay many fears about the bill.

Thank you for your consideration.

Earl E. Krygier
Executive Director

EEK/ml
cc: Representative Miller
Representative Duncan
Members of House Resources Committee

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

March 1, 1985

The Honorable John Sund
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Sund:

At this week's hearing on marine parks legislation you asked that the Department of Natural Resources explain its support for the Point Higgins site, part of a mental health land selection, given the litigation over mental health lands.

In brief, our action here is consistent with the 1978 law which directed the department to manage mental health lands as general grant lands. This management includes evaluating lands for their highest and best uses and determining that some lands may be sold or leased and that other lands ought to be retained in public ownership. If we were to ignore the 1978 law owing to the litigation, it would mean suspension of actions on many projects important to the State.

If the outcome of the litigation is a State liability for actions taken, a value would be assigned to the tract at Point Higgins and that value would presumably become a part of the settlement.

Please let me know if there is additional information I might furnish you.

Sincerely,

Robert D. Arnold
Deputy Commissioner

10-J9LH

ALFRED H. GEORGE

Fairbanks, 99701
Feb. 28, 1985
512 Herning Road

House Resource Committee
Adelheid Herrmann Co-chair
Dick Shultz Co-chair
Room
Juneau, Alaska, 99811

I have just become aware of HB 44 the Marine Park bill now before your committee. My family and I own two parcels of land sold to us at state auction in the area of the proposed 5½ square mile Boecher Pass Marine Park.

We participated in seven auctions before we had the good fortune of acquiring these lands. Now I am horrified to discover that the state is proposing to change the neighborhood. This action should have been proposed and accomplished before any state disposals in the area not after We have paid for the property. Having been a resident of the state since territorial days I really feel that we have enough parks and until such time that private holdings equal acerage that park designation and added costs should be put on hold.

I further must protest that Fairbanks was not allowed to participate in the February 28 4:00 PM. Tell. conference on this bill. People from other portions of the state, especially owners of record, should be allowed a voice on items affecting use and and expenditure of state funds affecting their property.

We are again HB 44 and strongly urge that the Boecher Pass portion be stricken from the bill. I do not need another State park employee or director telling me how to enjoy S.E Alaska coastal waters.

Thank you for your time and consideration in your busy schedule to note my concerns.

Sincerely

Alfred H. George

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

Southeast Regional Office

TO: Representative Shultz, Co-Chairman
Representative Herrmann, Co-Chairman
Members of the Committee

DATE: February 28, 1985

FILE NO:

TELEPHONE NO: 465-3400

FROM: Paula T. Burgess, Regional Manager
DL&WM, SERO

SUBJECT: House Resource Committee Request

In response to the Committee's request, I have prepared an estimate of the revenue that would be lost if the 65 acre subdivision at Funter Bay were not sold.

My estimate is based on the appraisal and sale of lots at Shelter Island (roughly the same air distance from Juneau as Funter Bay) in 1982, and the purchase price of one acre lots recently sold at the south end of Funter Bay.

If the State were to sell twelve waterfront lots, 180 by 400 feet (1.6 acres), the sale might generate $400,000 in general fund revenues (calculated at $33,000 per lot). If the State were to sell an additional eight upland lots, averaging four acres, that sale might generate an additional $100,000 (calculated at $12,000 per lot).

Therefore, the sale of 20 lots in Funter Bay might produce $500,000 of revenue. With the State financing purchase of the lots over a twenty year period, the revenue generated over that period would be two and one-half times the sale price of $500,000. The actual revenue to accrue to the State would then be $1.25 million.

Expenses incurred in selling the land, including survey, are estimated to be $70,000.

3/4/85

MEMORANDUM

TO: Resources Committee Members
FROM: Representative John Sund

Re: CS HB44

The following Marine Parks are included in this committee substitute.

1. TAKU HARBOR
2. FUNTER BAY (Rep. Miller Version)
3. PT. HIGGENS BEACH
4. JOE MACE ISLAND
5. THOMS LAKE
6. THOMS PLACE
7. BEECHER PASS
8. DALL BAY
9. SECURITY BAY
10. PETERSBURG CREEK
11. CAPE BINGHAM (subject to removal)

Sund

Bradley
3/1/85

Original sponsors: M.M.Miller, Goll
and Duncan

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 44 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing additional state land as marine park units of the state park system; and providing for an effective date."

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

* Section 1. AS 41.21.304 is amended by adding new paragraphs to read:

(13) Taku Harbor

U.S. Mineral Survey No. 2192

Township 44 South, Range 70 East, Copper River Meridian

Section 5: W1/2SW1/4, W1/2E1/2SW1/4

Section 6: E1/2SE1/4

Section 7: NE1/4, NE1/4SE1/4, S1/2SE1/4

Section 8: W1/2, excluding ILMT 33289 (ATS 682)

Section 17: W1/2W1/2

Section 18: E1/2, excluding tideland permit 100597

(14) Funter Bay

Township 42 South, Range 64 East, Copper River Meridian

Sections 1 and 12: The following described tracts, excluding U.S. Surveys Nos. 2448 and 3149:

(A) Beginning at Corner No. 4, Lone Star Lode claim, U.S. Mineral Survey No. (M.S.) 1492 proceed N. 70 degrees 00 feet E. along the north boundary of said clair. a distance of 359.15 feet more or less to Corner No. 3, Otter Lode claim, M.S. 1492; thence N. 5 degrees 50 feet E. a distance of 666.60 feet more or less along the west boundary of the Otter Lode claim to Corner

No. 4 of said claim; thence N. 70 degrees 00 feet E. a distance of 1,500.00 feet more or less along the north boundary of the Otter Lode claim, M.S. 1492 to Corner No. 1 of said claim, said Corner being common to Corner No. 2, Mill Site claim, M.S. 2191; thence N. 5 degrees 27 feet W. to an intersect with the southwest boundary of ISH NIC claim, M.S. 2191; thence N. 44 degrees 00 feet W. along said boundary to Corner No. 4 of ISH NIC claim; thence N. 46 degrees 00 feet E. along the northwest boundary of ISH NIC claim a distance of 321.62 feet more or less to Corner No. 3 of Beach No. 4 claim, M.S. 2191, common with Corner No. 2 of Beach No. 1 claim, M.S. 2191; thence N. 44 degrees 00 feet W. along the southwest boundary of Beach No. 4 claim a distance of 300. 00 feet more or less to Corner No. 4 of Beach No. 4 claim; thence N. 46 degrees 00 feet E. along the northwest boundary of Beach No. 4 claim a distance of 1,099.47 feet more or less to Corner No. 1 of Beach No. 4 claim, common with Corner No. 1 of Beach No. 5 claim, M.S. 2191; thence N. 44 degrees 00 feet W. along the southwest boundaries of Beach No's. 6 and 7 claims, M.S. 2191 a distance of 1,200.00 feet more or less to Corner No. 1 of Beach No. 7 claim; thence N. 46 degrees 00 feet E. along the northwest boundary of Beach No. 7 claim a distance of 135.10 feet more or less to Corner No. 4 U.S. Survey No. (U.S.S.) 3149; thence continue N. 46 degrees 00 feet E. along the northwest boundaries of Beach No's. 7 and 8 claims, M.S. 2191 a distance of 2,864.90 feet more or less to Corner No. 2, Beach No. 8 claim; thence due west a distance of 3,300 feet more or less to an intersection of a line projected due north from Meander Corner (M.C.) No. 3, U.S.S. 2448; thence due south a distance of 1,214 feet more or less to M.C. No. 3, U.S.S. 2448; thence meander

along the mean high water line of the northeast shore of Funter Bay in a southwesterly, easterly, southeasterly, southwesterly direction a distance of 1.11 miles more or less to a point lying S. 70 degrees 00 feet W. from Corner No. 4, Lone Star Lode claim, M.S. 1492 on the mean high water line of the easterly shore of Funter Bay; thence N. 70 degrees 00 feet E. to Corner No. 4, Lone Star Lode claim; the point of beginning.

(B) That portion of Mill Site, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 1, Mill Site, on line 2-3, Beach No. 1, M.S. 2191, thence S. 5 degrees 27 feet E., 57.26 feet, to the intersection of line 1-4, ISH NIC, M.S. 2191; thence S. 46 degrees 00 feet W., 264.36 feet, along a portion of line 1-4, of ISH NIC, to Corner No. 4, ISH NIC, M.S. 2191; thence S. 44 degrees 00 feet E., 331.75 feet, along a portion of line 4-3 of ISH NIC, to the intersection of line 1-2, Mill Site; thence S. 5 degrees 27 feet E., 137.55 feet, along a portion of line 1-2 of Mill Site, to Corner No. 2, Mill Site, identical to Corner No. 1 of Otter, M.S. 1492; thence S. 70 degrees 00 feet W., 1,500.00 feet, on line 2-3, Mill Site, identical to line 1-4 of Otter, M.S. 1492, to Corner No. 3, Mill Site, M.S. 2191, identical to Corner No. 4 of Otter, M.S. 1492; thence N. 5 degrees 27 feet W., 497.70 feet, on line 3-4, along the mean-high tide line of Funter Bay, to Corner No. 4, Mill Site; thence N. 30 degrees 07 feet E., 183.08 feet, on line 4-5, along the mean-high tide line of Funter Bay, to Corner No. 5, Mill Site, identical to Corner No. 3, Beach No. 1, M.S. 2191; thence N. 70 degrees 00 feet E., 1,390.00 feet, on line 5-1, Mill Site, identical to a portion of line 3-2, Beach No. 1, to Corner No. 1, the point of beginning.

(C) That portion of Beach No. 1, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 2, Beach No. 1, identical with Corner No. 3, Beach No. 4, M.S. 2191, on line 4-1 of ISH NIC, M.S. 2191, thence S. 70 degrees 00 feet W., 1,500.00 feet on line 2-3, Beach No. 1, identical to a portion of line 1-5, Mill Site, M.S. 2191, to Corner No. 3, Beach No. 1, identical to Corner No. 5, Mill Site; thence N. 12 degrees 43 feet E., 460.00 feet, along the mean-high tide line of Funter Bay to Corner No. 4, Beach No. 1; thence N. 47 degrees 23 feet E., 157.50 feet, along the mean-high tide line of Funter Bay, to Corner No. 5, Beach No. 1; thence N. 14 degrees 02 feet E., 183.33 feet, along the mean-high tide line of Funter Bay, to Corner No. 6, Beach No. 1, identical to Corner No. 4, Beach No. 2, M.S. 2191; thence N. 70 degrees 00 feet E., 874.74 feet, on line 6-1, Beach No. 1, identical to a portion of line 4-3 of Beach No. 2, to the intersection of line 4-1, Beach No. 4, M.S. 2191; thence S. 46 degrees 00 feet W., 126.34 feet, along a portion of line 4-1 of Beach No. 4, to Corner No. 4, Beach No. 4; thence S. 44 degrees 00 feet E., 600.00 feet, on line 4-3, Beach No. 4, to Corner No. 3, Beach No. 4, identical to Corner No. 2, Beach No. 1, the point of beginning.

(D) That portion of Beach No. 2, Mineral Survey (M.S.) No. 2191, described as follows: beginning at the true point for Corner No. 1, Beach No. 2, thence N. 70 degrees 00 feet E., 1,197.45 feet, along a portion of line 1-2 of Beach No. 2, to the intersection of line 1-4 of Beach No. 6, M.S. 2191; thence S. 44 degrees 00 feet E., 223.40 feet, along a portion of line 1-4 of Beach No. 6, to Corner No. 4, Beach No. 6, identical with Corner No. 1, Beach No. 5, M.S. 2191; thence S. 46 degrees 00 feet W.,

973.13 feet, along a portion of line 1-4 of Beach No. 4, to the intersection of line 3-4 of Beach No. 2; thence S. 70 degrees 00 feet W., 874.74 feet, along a portion of line 3-4 of Beach No. 2, to Corner No. 4, Beach No. 2, identical with Corner No. 6, Beach No. 1; thence N. 14 degrees 03 feet E., 478.00 feet, along the mean-high tide line of Funter Bay, to Corner No. 5, Beach No. 2; thence N. 25 degrees 33 feet E., 291.00 feet, along the mean-high tide line of Funter Bay, to Corner No. 1, Beach No. 2, the point of beginning.

(E) That portion of Beach No. 3, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 1, Beach No. 3, thence N. 70 degrees 00 feet E., 637.07 feet, along a portion of line 1-2, to the intersection of line 1-4, Beach No. 7, M.S. 2191; thence S. 44 degrees 00 feet E., 279.27 feet, along a portion of line 1-4 of Beach No. 7, to Corner No. 4, Beach No. 7, identical to Corner No. 1, Beach No. 6, M.S. 2191, thence continue S. 44 degrees 00 feet E., 376.60 feet, along a portion of line 1-4 of Beach No. 6, to the intersection of line 3-4, Beach No. 3; thence S. 70 degrees 00 feet W., 1,139.45 feet, along a portion of line 3-4 of Beach No. 3, to Corner No. 4, Beach No. 3; thence N. 1 degree 30 feet E., 644.00 feet, along the mean-high tide line of Funter Bay, on line 4-1, to Corner No. 1, Beach No. 3, to point of beginning. Containing 12.22 acres.

(15) Pt. Higgins Beach

Township 74 South, Range 89 East, Copper River Meridian

U.S. Survey 3762 and adjacent tideland

(16) Joe Mace Island

Township 64 South, Range 75 East, Copper River Meridian

Lot 4, U.S. Survey 3854 and adjacent tideland

(17) Thoms Lake

Township 65 South, Range 85 East, Copper River Meridian

Section 9: S1/2SE1/4

Section 10: S1/2S1/2

Section 11: SW1/4SW1/4

Section 14: S1/2, S1/2NW1/4, NW1/4NW1/4, SW1/4NE1/4

Section 15: All

Section 16: E1/2

Section 21: NE1/4

Section 22: N1/2

Section 23: N1/2

(18) Thoms Place

Township 65 South, Range 86 East, Copper River Meridian

Section 32: S1/2

Township 66 South, Range 86 East, Copper River Meridian

Section 4: SW1/4, S1/2NW1/4, NW1/4NW1/4, S1/2SE1/4, NW1/4SE1/4

Section 5: All except for land within ASLS 81-234

Section 8: NE1/4

Section 9: N1/2, SE1/4

(19) Beecher Pass

Township 61 South, Range 79 East, Copper River Meridian

Section 1: NE1/4SW1/4, Lots 5 - 8

Section 10: Lots 1 - 2, including all adjacent tideland

Section 11: Lots 1 - 11, including all adjacent tideland

Section 12: Lots 3 - 11, including all adjacent

tideland

Section 14: Lot 2, including all adjacent tideland

Section 15: Lot 2, including all adjacent tideland

Township 61 South, Range 80 East, Copper River Meridian

Section 6: Lot 11, including all adjacent tideland

Section 7, Lots 1 - 2, including all adjacent tideland

(20) Dall Bay

Township 77 South, Range 91 East, Copper River Meridian

Section 29: W1/2SW1/4, SW1/4NW1/4

Section 30: SE1/4, E1/2SW1/4

Section 31: NE1/4, N1/2SE1/4, NE1/4SW1/4, E1/2NW1/4 subject to USS 3525 and A.T.S. 155

Section 32: NW1/4, N1/2SW1/4

(21) Security Bay

Township 58 South, Range 70 East, Copper River Meridian

Section 1: SW1/4SW1/4

Section 2: S1/2

Section 11: N1/2, SE1/4, E1/2SW1/4

Section 12: W1/2W1/2, E1/2SW1/4 subject to Forest Service Preference 103521

Section 13: All subject to Historic Place Application AA-6569, Parcel A

Section 14: NE1/4

(22) Petersburg Creek

Township 58 South, Range 79 East, Copper River Meridian

Section 18: S1/2 subject to valid existing rights to lot 5

Section 19: N1/2, SE1/4

Section 20: All

Section 29: N1/2, SW1/4, W1/2SW1/4 excluding Block 3

Section 32: N1/2, N1/2S1/2 excluding Lots 5 - 8 and U.S. Survey 2867

(23) Cape Bingham

Township 43 South, Range 54 East, Copper River Meridian

Section 25: S1/2

Section 35: W1/2, NE1/4, N1/2SE1/4

Section 36: N1/2, N1/2SW1/4, SE1/4

Township 43 South, Range 55 East, Copper River Meridian

Section 31: N1/2, N1/2SW1/4, E1/2SE1/4, NW1/4SE1/4

Section 32: W1/2

Township 44 South, Range 54 East, Copper River Meridian

Section 1: N1/2NE1/4

Township 44 South, Range 55 East, Copper River Meridian

Section 5: NW1/4, SE1/4, E1/2SW1/4

Section 8: E1/2NW1/4, NE1/4, N1/2SE1/4

* Sec. 2. This Act takes effect July 1, 1985.

United States Department of Agriculture
Forest Service
Region 10
P.O. Box 1628
Juneau, AK 99802

Reply to: 2300

Date: FEB 26 1985

Honorable Robin Taylor
Alaska State House of Representatives
Juneau, AK 99811

Dear Mr. Taylor:

At your request, here is some information about our marine recreation related program.

The objective of the Forest Service is to provide a wide spectrum of marine related recreation opportunities throughout Southeast and Southcentral Alaska for the use and enjoyment of people traveling by saltwater through the National Forests. There are 12 State-owned sites and 96 sites operated by the Forest Service identified on the enclosed map, with 65 sites in Southeast and 31 in Southcentral Alaska. Sites on the map include:

56 safe anchorages;
34 anchor buoys and floats;
37 cabins and shelters;
31 trails.

Fees and reservations are not required for use of any of these facilities except the cabins. Cabins may be reserved up to six months in advance.

We utilize normal construction/reconstruction funds for marine related recreation. Annual investments have varied from $200 to $300 thousand per year in recreation programs. Next to maintaining the health and safety of visitors to the National Forests, our highest priority is to develop additional marine related facilities. Decisions of what is needed at each site are made through the 5-year recreation construction schedule developed on each forest. Plans for the next three years include:

1985: Southeast Alaska--Three anchor buoys, rehabilitation of one cabin on saltwater and construction of 11.3 miles of trail.
Southcentral Alaska--One anchor buoy.

1986: Southeast Alaska--At least three anchor buoys.
Southcentral Alaska--At least one anchor buoy.

1987: Southeast Alaska--Ten anchor bucys; two floats; day use development at Portland Island.
Southcentral Alaska--One saltwater cabin and anchor buoy.

Our intention is to complement efforts by the State, local governments, or by the private sector, rather than compete with them. After all, the people using these facilities do not really care who provides and maintains them as long as these facilities are available.

Please let us know if you wish additional information. The Director of our Recreation Staff Unit, William J. Holman, can be contacted at 586-7529.

Michael A Barton

MICHAEL A. BARTON
Regional Forester

Enclosure

M.M.Miller draft

Bradley
2/26/85

Original sponsors: M.M.Miller, Goll and Duncan

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 44 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing additional state land as marine park units of the state park system; and providing for an effective date."

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

* Section 1. AS 41.21.304 is amended by adding new paragraphs to read:

(13) Taku Harbor

U.S. Mineral Survey No. 2192

Township 44 South, Range 70 East, Copper River Meridian

Section 5: W1/2SW1/4, W1/2E1/2SW1/4

Section 6: E1/2SE1/4

Section 7: NE1/4, NE1/4SE1/4, S1/2SE1/4

Section 8: W1/2, excluding ILMT 33289 (ATS 682)

Section 17: W1/2W1/2

Section 18: E1/2, excluding tideland permit 100597

(14) Funter Bay

Township 42 South, Range 64 East, Copper River Meridian

Sections 1 and 12: The following described tracts, excluding U.S. Surveys Nos. 2448 and 3149:

(A) Beginning at Corner No. 4, Lone Star Lode claim, U.S. Mineral Survey No. (M.S.) 1492 proceed N. 70 degrees 00 feet E. along the north boundary of said claim a distance of 359.15 feet more or less to Corner No. 3, Otter Lode claim, M.S. 1492; thence N. 5 degrees 50 feet E. a distance of 666.60 feet more or less along the west boundary of the Otter Lode claim to Corner

No. 4 of said claim; thence N. 70 degrees 00 feet E. a distance of 1,500.00 feet more or less along the north boundary of the Otter Lode claim, M.S. 1492 to Corner No. 1 of said claim, said Corner being common to Corner No. 2, Mill Site claim, M.S. 2191; thence N. 5 degrees 27 feet W. to an intersect with the southwest boundary of ISH NIC claim, M.S. 2191; thence N. 44 degrees 00 feet W. along said boundary to Corner No. 4 of ISH NIC claim; thence N. 46 degrees 00 feet E. along the northwest boundary of ISH NIC claim a distance of 321.62 feet more or less to Corner No. 3 of Beach No. 4 claim, M.S. 2191, common with Corner No. 2 of Beach No. 1 claim, M.S. 2191; thence N. 44 degrees 00 feet W. along the southwest boundary of Beach No. 4 claim a distance of 600. 00 feet more or less to Corner No. 4 of Beach No. 4 claim; thence N. 46 degrees 00 feet E. along the northwest boundary of Beach No. 4 claim a distance of 1,099.47 feet more or less to Corner No. 1 of Beach No. 4 claim, common with Corner No. 1 of Beach No. 5 claim, M.S. 2191; thence N. 44 degrees 00 feet W. along the southwest boundaries of Beach No's. 6 and 7 claims, M.S. 2191 a distance of 1,200.00 feet more or less to Corner No. 1 of Beach No. 7 claim; thence N. 46 degrees 00 feet E. along the northwest boundary of Beach No. 7 claim a distance of 135.10 feet more or less to Corner No. 4 U.S. Survey No. (U.S.S.) 3149; thence continue N. 46 degrees 00 feet E. along the northwest boundaries of Beach No's. 7 and 8 claims, M.S. 2191 a distance of 2,864.90 feet more or less to Corner No. 2, Beach No. 8 claim; thence due west a distance of 3,300 feet more or less to an intersection of a line projected due north from Meander Corner (M.C.) No. 3, U.S.S. 2448; thence due south a distance of 1,214 feet more or less to M.C. No. 3, U.S.S. 2448; thence meander

along the mean high water line of the northeast shore of Funter Bay in a southwesterly, easterly, southeasterly, southwesterly direction a distance of 1.11 miles more or less to a point lying S. 70 degrees 00 feet W. from Corner No. 4, Lone Star Lode claim, M.S. 1492 on the mean high water line of the easterly shore of Funter Bay; thence N. 70 degrees 00 feet E. to Corner No. 4, Lone Star Lode claim; the point of beginning.

(B) That portion of Mill Site, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 1, Mill Site, on line 2-3, Beach No. 1, M.S. 2191, thence S. 5 degrees 27 feet E., 57.26 feet, to the intersection of line 1-4, ISH NIC, M.S. 2191; thence S. 46 degrees 00 feet W., 264.36 feet, along a portion of line 1-4, of ISH NIC, to Corner No. 4, ISH NIC, M.S. 2191; thence S. 44 degrees 00 feet E., 331.75 feet, along a portion of line 4-3 of ISH NIC, to the intersection of line 1-2, Mill Site; thence S. 5 degrees 27 feet E., 137.55 feet, along a portion of line 1-2 of Mill Site, to Corner No. 2, Mill Site, identical to Corner No. 1 of Otter, M.S. 1492; thence S. 70 degrees 00 feet W., 1,500.00 feet, on line 2-3, Mill Site, identical to line 1-4 of Otter, M.S. 1492, to Corner No. 3, Mill Site, M.S. 2191, identical to Corner No. 4 of Otter, M.S. 1492; thence N. 5 degrees 27 feet W., 497.70 feet, on line 3-4, along the mean-high tide line of Funter Bay, to Corner No. 4, Mill Site; thence N. 30 degrees 07 feet E., 183.08 feet, on line 4-5, along the mean-high tide line of Funter Bay, to Corner No. 5, Mill Site, identical to Corner No. 3, Beach No. 1, M.S. 2191; thence N. 70 degrees 00 feet E., 1,390.00 feet, on line 5-1, Mill Site, identical to a portion of line 3-2, Beach No. 1, to Corner No. 1, the point of beginning.

(C) That portion of Beach No. 1, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 2, Beach No. 1, identical with Corner No. 3, Beach No. 4, M.S. 2191, on line 4-1 of ISH NIC, M.S. 2191, thence S. 70 degrees 00 feet W., 1,500.00 feet on line 2-3, Beach No. 1, identical to a portion of line 1-5, Mill Site, M.S. 2191, to Corner No. 3, Beach No. 1, identical to Corner No. 5, Mill Site; thence N. 12 degrees 43 feet E., 460.00 feet, along the mean-high tide line of Funter Bay to Corner No. 4, Beach No. 1; thence N. 47 degrees 23 feet E., 157.50 feet, along the mean-high tide line of Funter Bay, to Corner No. 5, Beach No. 1; thence N. 14 degrees 02 feet E., 183.33 feet, along the mean-high tide line of Funter Bay, to Corner No. 6, Beach No. 1, identical to Corner No. 4, Beach No. 2, M.S. 2191; thence N. 70 degrees 00 feet E., 874.74 feet, on line 6-1, Beach No. 1, identical to a portion of line 4-3 of Beach No. 2, to the intersection of line 4-1, Beach No. 4, M.S. 2191; thence S. 46 degrees 00 feet W., 126.34 feet, along a portion of line 4-1 of Beach No. 4, to Corner No. 4, Beach No. 4; thence S. 44 degrees 00 feet E., 600.00 feet, on line 4-3, Beach No. 4, to Corner No. 3, Beach No. 4, identical to Corner No. 2, Beach No. 1, the point of beginning.

(D) That portion of Beach No. 2, Mineral Survey (M.S.) No. 2191, described as follows: beginning at the true point for Corner No. 1, Beach No. 2, thence N. 70 degrees 00 feet E., 1,197.45 feet, along a portion of line 1-2 of Beach No. 2, to the intersection of line 1-4 of Beach No. 6, M.S. 2191; thence S. 44 degrees 00 feet E., 223.40 feet, along a portion of line 1-4 of Beach No. 6, to Corner No. 4, Beach No. 6, identical with Corner No. 1, Beach No. 5, M.S. 2191; thence S. 46 degrees 00 feet W.,

973.13 feet, along a portion of line 1-4 of Beach No. 4, to the intersection of line 3-4 of Beach No. 2; thence S. 70 degrees 00 feet W., 874.74 feet, along a portion of line 3-4 of Beach No. 2, to Corner No. 4, Beach No. 2, identical with Corner No. 6, Beach No. 1; thence N. 14 degrees 03 feet E., 478.00 feet, along the mean-high tide line of Funter Bay, to Corner No. 5, Beach No. 2; thence N. 25 degrees 33 feet E., 291.00 feet, along the mean-high tide line of Funter Bay, to Corner No. 1, Beach No. 2, the point of beginning.

(E) That portion of Beach No. 3, Mineral Survey (M.S.) No. 2191, described as follows: beginning at Corner No. 1, Beach No. 3, thence N. 70 degrees 00 feet E., 637.07 feet, along a portion of line 1-2, to the intersection of line 1-4, Beach No. 7, M.S. 2191; thence S. 44 degrees 00 feet E., 279.27 feet, along a portion of line 1-4 of Beach No. 7, to Corner No. 4, Beach No. 7, identical to Corner No. 1, Beach No. 6, M.S. 2191, thence continue S. 44 degrees 00 feet E., 376.60 feet, along a portion of line 1-4 of Beach No. 6, to the intersection of line 3-4, Beach No. 3; thence S. 70 degrees 00 feet W., 1,139.45 feet, along a portion of line 3-4 of Beach No. 3, to Corner No. 4, Beach No. 3; thence N. 1 degree 30 feet E., 644.00 feet, along the mean-high tide line of Funter Bay, on line 4-1, to Corner No. 1, Beach No. 3, to point of beginning. Containing 12.22 acres.

(15) Pt. Higgins Beach

Township 74 South, Range 89 East, Copper River Meridian

U.S. Survey 3762 and adjacent tideland

(16) Joe Mace Island

Township 64 South, Range 75 East, Copper River Meridian

Lot 4, U.S. Survey 3854 and adjacent tideland

(17) Thoms Place

Township 65 South, Range 86 East, Copper River Meridian

Section 32: S1/2

Township 66 South, Range 86 East, Copper River Meridian

Section 4: SW1/4, S1/2NW1/4, NW1/4NW1/4, S1/2SE1/4, NW1/4SE1/4

Section 5: All except for land within ASLS 81-234

Section 8: NE1/4

Section 9: N1/2, SE1/4

(18) Beecher Pass

Township 61 South, Range 79 East, Copper River Meridian

Section 1: NE1/4SW1/4, Lots 5 - 8

Section 10: Lots 1 - 2, including all adjacent tideland

Section 11: Lots 1 - 11, including all adjacent tideland

Section 12: Lots 3 - 11, including all adjacent tideland

Section 14: Lot 2, including all adjacent tideland

Section 15: Lot 2, including all adjacent tideland

Township 61 South, Range 80 East, Copper River Meridian

Section 6: Lot 11, including all adjacent tideland

Section 7, Lots 1 - 2, including all adjacent tideland

(19) Dall Bay

Township 77 South, Range 91 East, Copper River Meridian

Section 29: W1/2SW1/4, SW1/4NW1/4

Section 30: SE1/4, E1/2SW1/4

Section 31: NE1/4, N1/2SE1/4, NE1/4SW1/4, E1/2NW1/4

subject to USS 3525 and A.T.S. 155

Section 32: NW1/4, N1/2SW1/4

(20) Security Bay

Township 58 South, Range 70 East, Copper River Meridian

Section 1: SW1/4SW1/4

Section 2: S1/2

Section 11: N1/2, SE1/4, E1/2SW1/4

Section 12: W1/2W1/2, E1/2SW1/4 subject to Forest Service Preference 103521

Section 13: All subject to Historic Place Application AA-6569, Parcel A

Section 14: NE1/4

(21) Petersburg Creek

Township 58 South, Range 79 East, Copper River Meridian

Section 18: S1/2 subject to valid existing rights to lot 5

Section 19: N1/2, SW1/4

Section 20: All

Section 29: Tracts A and B and Blocks 1 and 2 of Petersburg Creek Subdivision

(22) Cape Bingham

Township 43 South, Range 54 East, Copper River Meridian

Section 25: S1/2

Section 35: W1/2, NE1/4, N1/2SE1/4

Section 36: N1/2, N1/2SW1/4, SE1/4

Township 43 South, Range 55 East, Copper River Meridian

Section 31: N1/2, N1/2SW1/4, E1/2SE1/4, NW1/4SE1/4

Section 32: W1/2

Township 44 South, Range 54 East, Copper River Meridian

Section 1: N1/2NE1/4

Township 44 South, Range 55 East, Copper River Meridian

Section 5: NW1/4, SE1/4, E1/2SW1/4

Section 8: E1/2NW1/4, NE1/4, N1/2SE1/4

* Sec. 2. This Act takes effect July 1, 1985.

TOTAL STATE SELECTIONS STATISTICS BY AREAS
as of September 10, 1984

Area	Acreage Applied for	Acreage Approved	Acreage Disapproved	Total Acreage Conveyed
CHATHAM	85,324.93	72,375.42	10,459.51	50,689.31*
STIKINE	43,962.36	36,825.36	3,397.00	34,747.06
KETCHIKAN	84,981.23	71,057.09	8,105.14	48,519.00
Total Tongass NF	214,268.52	180,257.87	21,961.65	133,955.37
CHUGACH NF	134,703.00	88,916.76	29,783.39	35,042.57
STATE SELECTIONS TOTAL ALL AREAS	348,971.52	269,174.63	51,745.04	168,997.94

*Error corrected in 4/30/84 report

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
CHATHAM AREA								
Bridget Cove (Berners Bay) Amended	12-19-77	6,876.79	6,876.79		06-29-78 12-30-82 06-29-83	AA-6075	5248	
Addition	02-05-81	80	80					
South Gastineau	12-19-77	788	788		08-19-80	AA-18006	788	
SW Douglas Island	12-19-77	5,516	5,516					
Douglas (Eaglecrest) Addition	12-19-77 02-05-81	3,880 400	3,880 400		09-29-82 10-20-83	AA-18003 AA-18003	3,833 40	
Elfin Cove	12-19-77	7	7					
Excursion Inlet	12-19-77	2,379.33	2,379.33		04-29-82 12-09-81 06-17-80	AA-18026 (Rescinded)	2,396	
Excursion Inlet, Upper	12-19-77	295.18	295.18		06-17-80	AA-18025	235	
Funter Bay Amended	12-19-77	162.511	162.511		06-17-80 09-08-80	AA-6474 50-80-0143	162	
Gastineau Channel	10-16-70	4,294	4,294					
Goddard Hot Springs	12-19-77	3,692.41	3,694.41		09-29-82	AA-18014	3,456	
Green Lake (Sitka)	04-24-77	5,693	5,693		07-31-78	AA-14261	5,705	
Lemon Creek Addition	3-07-84	17	17		06-10-82	AA-060997	21	NFCG-8

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Hoonah Game Point	12-19-77	1,056.32	1,056.32					
Juneau:								
Mendenhall	10-20-65	380	300		11-29-67	AA-348	400	
Fish Creek	10-20-65	980	980		11-29-67	AA-347	980	
Lemon Creek	05-23-66	1,560	1,560		06-01-67	AA-349	1,543	
Montana Creek	12-19-77	1,988	1,988		12-09-83	AA-18007	1,995	
Pelican	12-19-77	1,950.98	1,950.98		08-25-80	AA-18022	1,739.89	
Port Alexander Amended	08-18-78	393.27	393.27		05-17-84	AA-18020	531	
St. James Bay	12-19-77	3,683	3,683		11-06-81	AA-18027	3,700	
Shelter Is. South	12-19-77	488.79	488.79					
Shelter Island	12-19-77	888.74	888.74		12-17-80	AA-18002	1,405	
Sitka - Amended Tract A&C (Katlian Bay)	03-07-67	1,658	1,658		09-16-77	AA-2311	1,522.07	
USS 2385, Mendenhall Back Loop Road	12-23-81	10	10		09-29-83	AA-47428	24	
Starrigavan Valley	12-19-77	455	455					
Taku Harbor, Amended	12-19-77	624.52	624.52		10-22-80	AA-18005	701	
Taku River	12-19-77	2,610.005	2,610.005		08-22-80 02-23-82	AA-18001	1,995	
Swanson Harbor	12-19-77	1,095		1,095				

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Hobart Bay	12-19-77	95		95				
Takatz Lake	07-03-80	2,385	2,385		03-27-84	AA-40277	1,723	
Sumdum	12-19-77	440.10		440.10				
Chilkat Island	12-19-77	540	540		12-01-81	AA-18066	488	
Sullivan Island	12-19-77	639	639		03-27-84	AA-18067	600	
Kalinin Bay	12-19-77	831		831				
Kasnyku Bay	12-19-77	297		297				
Red Bluff Bay	12-19-77	1,088		1,088				
Betty Lake	12-19-77	416		416				
Deep Cove	12-19-77	495		495				
Shamrock Bay	12-19-77	515		515				
Pavlov Harbor	12-19-77	543		543				
Cape Bingham	12-19-77	1,112	1,112		02-29-84	AA-18077	1,150	
Goulding Harbor	12-19-77	862		862				
Lake Anna	12-19-77	545		545				
Gambier Bay	12-19-77	857		857				
Chaik Bay	12-19-77	388		388				

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Pleasant Bay	12-19-77	530		530				
Windfall Harbor	12-19-77	576		576				
Oliver Inlet	12-19-77	365	365		09-29-82	AA-18084	365	
Pybus Bay	12-19-77	886.41		886.41				
Tenakee Amended	08-16-77	4,369.57	4,369.57		05-29-80	AA-15077	3,985	
Yakutat	03-03-66	3,998	4,020		02-29-68 12-18-70 06-21-83 02-07-84	 AA-558 50-83-0207 50-84-0162	 3,958.35	
Yakutat Airport Addition	2-15-83	111	111					NFCG-209
William Henry Bay	2-15-83	328	328					NFCG-210
Spuhn Island	2-15-83	55	55					NFCG-211
Horse Island Amended	2-15-83 3-07-84	180	180					NFCG-212
Game Point Addition	2-15-83	15	15					NFCG-213
Kennel Creek	2-15-83	800						
Schulze Cove	2-15-83	925						
Gavanski Islands	2-15-83	230	230					NFCG-216
Chaichei Islands	2-15-83	45	45					NFCG-217
Middle Island Group	2-15-83	1,335	1,335					NFCG-218

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Starrigavan Campground	2-15-83	115						
Halibut Point Addition	2-15-83	1	1					NFCG-220
Indian k. .e	2-15-83	985	985					NFCG-221
Baranof Warm Springs	2-15-83	895	895					NFCG-222
Camp Coogan/ Aleutkina Bay	2-15-83	2,035	2,035					NFCG-223
Biorka Island	2-15-83	594						
STIKINE AREA								
Blind Slough (Petersburg)	12-17-70	190	190		08-16-71 09-05-73	AA-6150 50-74-0025	152.48	
Petersburg-Wrangell Narrows	12-19-77	4,723	4,723		05-11-81 04-28-82 07-29-82	AA-18009 AA-18009 (Modified) 50-82-0093	4,787	
Thomas Bay	12-19-77	2,280	2,280		08-11-80	AA-18024	2,215	
Thoms Place	12-19-77	2,527.23	2,527.23		01-29-81	AA-18019	2,449	
Thoms Lake	12-19-77	2,520	2,520		07-14-82	AA-18018	2,520	
McHenry Anchorage	12-19-77	805		805				
Read Island	12-19-77	705	705		09-30-82	AA-18060	670	
LeConte Bay	12-19-77	242		242				

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Security Bay	12-19-77	515	515		01-31-84	AA-18064	500	
Explorers Basin	12-19-77	2,350		2,350				
High Island	12-19-77	607	607		08-12-83	AA-18070	605	
South Mitkof Island	12-19-77	4,015	4,015		08-07-84	AA-18010	3,835	
Petersburg Rock Pit	12-19-77	160	160		08-11-80	AA-18011	160	
Frederick Point	12-19-77	2,921	2,921		08-11-80	AA-18012	2,904.26	
Coho Creek	12-19-77	3,515	3,515		06-29-83	AA-18013	3,515.32	
Olive Cove	12-19-77	514.13	514.13		11-04-81	AA-18017	524	
Eastern Passage 1, Zimovia Strait	12-19-77	10,833	10,833		04-28-82	AA-18016	9,910	
North Mitkof Addition	2-15-83	800	800					NFCG-225
Rowan Bay	2-15-83	595						
St. John Harbor	2-15-83	1,390						
Fools Inlet	2-15-83	560						
Sunny Bay/Deer Island	2-15-83	1,195						

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
KETCHIKAN AREA								
Ketchikan #1 Amended	03-11-66	4,139.26	4,017	122.26	08-21-68 04-05-68 07-28-72	50-69-0074 AA-177 50-73-0014	4,139.26	
Ketchikan #2	06-25-68	60	60		05-13-69 05-21-69	AA-3431 50-69-0194	60	
Blank Inlet	12-19-77	8,429	8,429		09-29-83	AA-18034	7,658	
Edna Bay	12-19-77	7,043	6,023.37	1,019.63	02-26-82	AA-18029	5,798	
Upper George Inlet	12-19-77	7,524	7,524		03-14-83	AA-18043	7,330	
Carroll Point	12-19-77	1,085.49	1,085.49					
Dall Head	12-19-77	850.22	850.22					
First Waterfall Creek	12-19-77	990	990					
Herring Cove	12-19-77	755	755		06-14-84	AA-18038	831	
Hyder	12-19-77	932	927.2	4.8	05-18-84	AA-18030	835	
Lake Harriet Hunt	12-19-77	400	400					
Manzanita Bay	12-19-77	384		384				
Mountain Point	07-31-78	654	654		08-04-80	AA-18039	654	
Foggy Bay	12-19-77	1,006		1,006				
Burroughs Bay	12-19-77	326		326				

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Niblack Anchorage	12-19-77	982		982				
Salmon Bay	12-19-77	192		192				
Griondell Island	12-19-77	515		515				
So. Arm Chomondeley	12-19077	568		568				
Shrimp Bay	12-19-77	860		860				
Neets Creek	12-19-77	350		350				
Alava Bay	12-19-77	631		631				
Port Stewart	12-19-77	310		310				
Settlers Cove	12-19-77	275	275		03-15-83	AA-18032	238	
Traitors Cove	12-19-77	362	347	15	08-21-80	AA-18044	335	
Vallenar Bay	12-19-77	3,801	3,801		04-08-82	AA-18033	3,541	
Whipple	12-19-77	1,641	1,641		06-01-84	AA-18035	1,460	
Whipple Creek Addition	12-19-77	5.35	5.35					
White River Loop	12-19-77	480	480					
Port Protection	12-19-77	1,260.62	1,260.62		06-17-80	AA-18045	1,240	
Waterfall	12-19-77	1,530.71	1,530.71		08-11-80	AA-18046	1,540	
Thorne Bay	12-19-77	6,789.11	6,749.66	39.45	01-27-81 08-22-80	AA-18049	6,947	

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Hollis	12-19-77	4,339.47	3,799.47	540	05-13-80	AA-18047	3,838	
Whale Passage	12-19-80	2,348	2,288	60	10-17-80	AA-18048	2,075	
Whale Pass Addition	2-15-83	790	790					NFCG-229
Coffman Cove	2-15-83	3,930	3,910	20				NFCG-230
Cape Pole	2-15-83	946	860					NFCG-231
Edna Bay Addition	2-15-83	160	160					NFCG-232
Naukati Bay	2-15-83	3,165	2,854					NFCG-234
Hyder Addition	2-15-83	290	290					NFCG-235
Vixen Harbor	2-15-83	1,314						
Control Lake	2-15-83	280						
Thorne Bay Addition Revision	2-15-83 3-7-84	4,520	4,465					NFCG-238
Klawock Airport	2-15-83	574	574					NFCG-239
South Betton Island	2-15-83	280	280					NFCG-240
Grant Island	2-15-83	135	135					NFCG-241
Harris River Road	2-15-83	320						
Hollis Addition	2-15-83	160	160					NFCG-243
Saltery Cove	2-15-83	880						

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Ward Cove	2-15-83	460	300	160				NFCG-245
Talbot Lake	2-15-83	400	400					NFCG-246
Port Refugio	2-15-83	919						
Kitkun Bay	2-15-83	2,435						
Kendrick Bay	2-15-83	585						
Kaigani Harbor	2-15-83	620						
CHUGACH NF								
Cooper Landing (Amended)	01-04-68	2,376.11	2,376.11		09-07-78 05-05-78	50-78-0103 AA-2610	2,376.11	
Cooper Landing	12-19-77 01-04-78	7,228.19 14.7	7,005.10 14.7	223.09	11-15-83 07-25-83 11-14-79	AA-17584 AA-2610	4,085 14.7	
Cooper Landing West, Additional Selection	12-19-77	160	25	135				
Cordova	12-04-64	6,519	6,020	499	07-25-72	AA-067458	5,792	
Hartney Bay	12-19-77	3,972.45	3,972.45					
Point Shepard	12-19-77	205	205					
Mt. Eccles	12-19-77	2,480	2,480					
North Airport (Cordova)	12-19-77	5,148	5,148					
South Airport (Cordova)	12-19-77	205	205					

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
NW Airport (Cordova)	12-19-77	150	150					
Carmen Lake	12-19-77	3,022		3,022				
Hawkins Island	12-19-77	1,115.5	1,115.5					
Canoe Passage	12-19-77	4,190	4,190					
Hope	04-07-65	316	316		01-26-67 07-27-72 01-10-73	50-67-9379 50-73-0009 50-73-0116	310.51	
Hope, Porcupine Creek, Amended	07-31-78	502.56	502.56					
Katalla	12-19-77	1,035	1,035					
Kenai Lake	05-05-77	4.25	4.25		05-04-83	AA-12409	3.69	
Kenai Peninsula Ingram Creek	12-19-77	440	440					
Kayak Island	12-19-77	1,437	1,437					
LaTouche	12-19-77	1,159	1,159					
Moose Pass	05-29-67	733	733		07-26-73	AA-5572	711.66	
Moose Pass	12-19-77	10,870.87	10,870.87		11-15-83	AA-5572	7,845	
Seward	12-19-77	8,251.13	8,251.13					
Whittier-Shotgun Cove Amended	12-19-77	4,818	4,818					

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Sunrise	12-19-77	2,139	2,139		05-17-84	AA-17585	1,986	
Valdez (TAPS)	11-04-69	802	802		11-04-77	50-78-0006	762.90	
V[illegible]ez-Anderson Bay	12-19-77	2,247.9	2,247.9					
-Jack Bay	12-19-77	2,687	2,687		05-29-80	AA-17590	5,782	
Windy Bay - (Cedar Bay)	12-19-77	2,520	2,520					
Point Gravina	12-19-77	2,678.15	2,678.15					
Port Etches	12-19-77	1,334	1,334					
Constantine Harbor	12-19-77	2,462.5		2,462.5				
Tonki Bay	12-19-77	4,108		4,108				
Boswell Bay	12-19-77	2,622.04	2,622.04					
Shoestring Cove	12-19-77	1,280		1,280				
Eagle Bay	12-19-77	1,231		1,231				
So. Elrington Island	12-19-77	1,137.8		1,137.8				
Outside Bay	12-19-77	825		825				
Disk Island	12-19-77	625		625				
Goat Harbor	12-19-77	255		255				
Pigot Bay	12-19-77	295	295		09-20-82	AA-17612	422	
Surprise Cove	12-19-77	1,380	1,380		10-05-82	AA-17613		
					03-21-84		1,582	

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Long Bay, Lake Shrode	12-19-77	2,220		2,220				
Siwash Bay	12-19-77	2,350		2,350				
Entry Cove	12-19-77	370	370		09-29-83	AA-17617	550	
Sawmill Bay	12-19-77	1,425	1,425					
Bettles Bay	12-19-77	450	450		05-29-80	AA-17618	444	
So. Esther Island	12-19-77	2,465	2,465		09-02-81	AA-17619	2,375	
Granite Cove	12-19-77	790		790				
Drier Bay	12-19-77	1,405		1,405				
Port Chalmers	12-19-77	1,190		1,190				
Perry Island	12-19-77	735		735				
Port Fidalgo	12-19-77	1,305		1,305				
Cannery Creek	12-19-77	600		600				
Main River	12-19-77	285		285				
Falls Lake	12-19-77	360		360				
Cascade Creek	12-19-77	495		495				
Golden Creek	12-19-77	435		435				
Marsha Bay	12-19-77	545		545				

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Princeton Creek	12-19-77	890		890				
Port Nellie Juan	12-19-77	375		375				
So. Woodrow Addition	2-15-83	530	530					NFCG-189
Resurrection River	2-15-83	1,159						
Kenai Lake/Snug Harbor Rd	2-15-83	1,040						
Carter Lake Addition	2-15-83	160						
Quartz Creek	2-15-84	440						
South Summit Lake	2-15-83	240						
Lower Summit Lake	2-15-83	1,128						
Bettles Island	2-15-83	290						
Southwest Latouche Is.	2-15-83	40						
South Fork Snow River	2-15-83	2,760						
West Snow River	2-15-83	958						
Grant Lake Addition	2-15-83	210	210					NFCG-200
Perry Island Addition	2-15-83	2,263						
Poe Bay	2-15-83	440						
Logging Camp Bay	2-15-83	325						

PROGRESS REPORT ON STATE SELECTIONS OF NATIONAL FOREST LANDS
as of September 10, 1984

Area	Date Applied	Acreage Applied for	Acreage Approved by FS	Acreage Disapproved by FS	Date Conveyed	BLM Case No. or Patent No.	Total Acreage Conveyed	Remarks
Hummer Bay/Pirate Cove	2-15-83	325						
Point Gravina Addition	2-15-83	1,700	1,700					NFCG-205
Cordova Airport	2-15-83	98	98					NFCG-206
Katalla Townsite Addition	2-15-83	490	490					NFCG-207
Cape Yakataga/ Suckling Hills Unit	2-15-83	4,435						

4405L

SUGGESTED AMENDMENT TO CS FOR HB 44 (RESOURCES)

DELETE: (14) Funter Bay as desribed in the Committee Substitute

ADD: (14) Funter Bay

Township 42 South, Range 64 East, Copper River Meridian

Section 2: W1/2

Section 3: S1/2SW1/4, NW1/4SW1/4

Section 4: S1/2NE1/4, E1/2SE1/4

Section 10: N1/2N1/2, S1/2NE1/4

Section 11: NW1/4, NW1/4NE1/4

Prepared by: Paula Burgess
Regional Manager
Division of Land and Water Management
Department of Natural Resources
(465-3400)

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

Southeast Regional Office

TO: Representative Shultz, Co-Chairman
Representative Herrmann, Co-Chairman
House Resources Committee Members

DATE: February 25, 1985

FILE NO:

TELEPHONE NO: 465-3400

FROM: Paula T. Burgess, Regional Manager
Division of Land & Water Management

SUBJECT: Funter Bay
Land Disposal

Paula Burgess

The Fiscal Year 86 land disposal in Crab Cove (Funter Bay) is midway through the three year land sale process. The local engineering firm hired to design the subdivision has not yet completed its preparation of alternative subdivision designs. At this stage the state has agreed, in order to mitigate the concerns of local residents, to design into the subdivision the following public use areas:

1. Retention (in state ownership) of a tract along the creek, on the northern boundary of the subdivision. This tract would be approximately 350 feet wide and encompass four acres. The tract would provide stream protection, access to federal uplands, and public recreational use along the shoreline.

2. Retention of a 50 foot public access easement along the shoreline (above mean high tide).

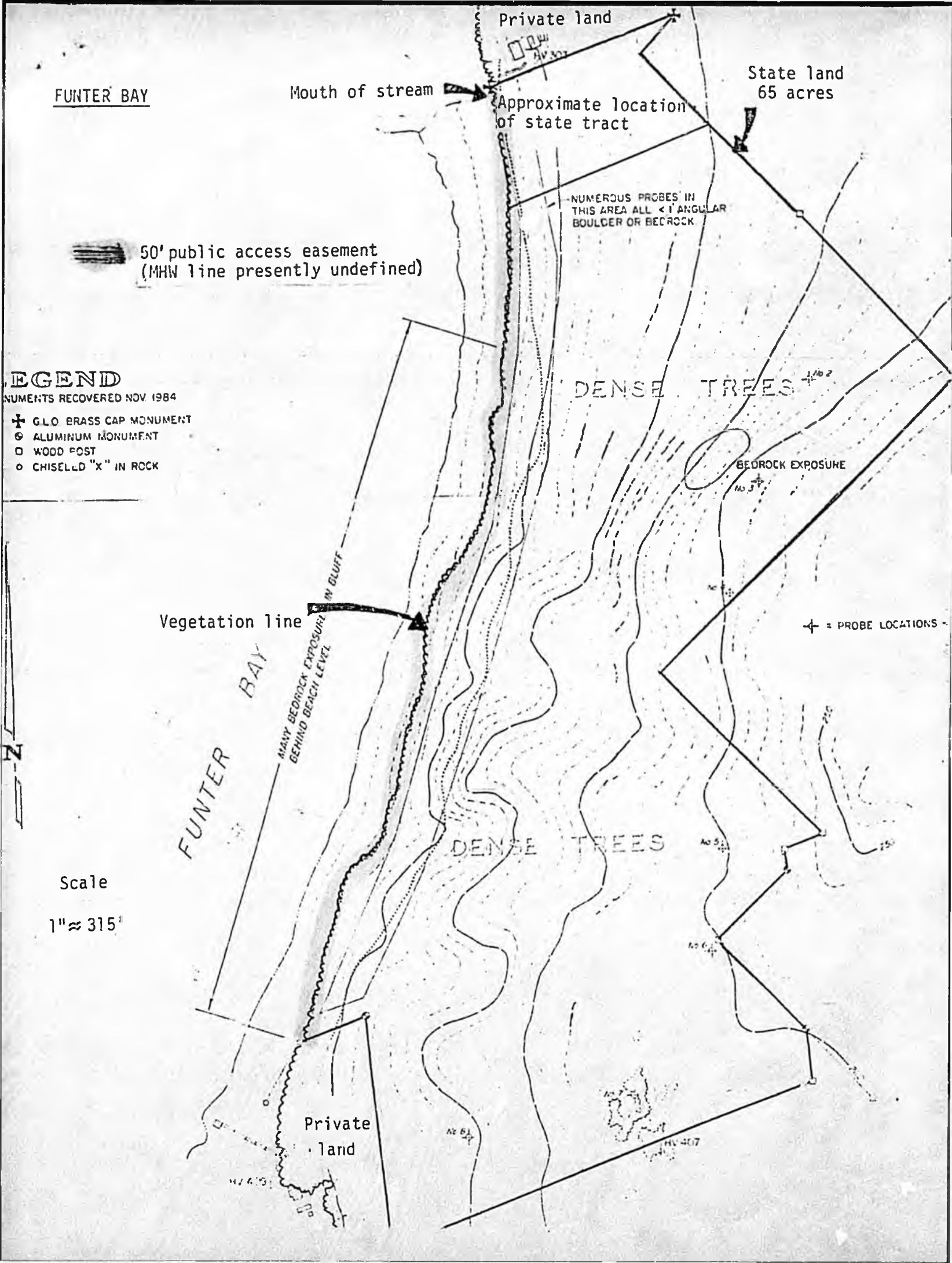
3. Establishment of a 60 foot right-of-way from the shoreline to federal land on the eastern boundary of the subdivision. This will provide additional access for deer hunters and recreational users to federal lands and access to upland lots within the subdivision.

4. Reservation in state ownership of a material site for improvement of roads or trails, if a feasible source of material is located.

The gross acreage of the subdivision is 65 acres. By excluding the stream tract, right-of-way, and material site, the estimated net lot acreage would be 50 acres. We plan to sell approximately 20 lots, ranging from two to four acres.

The attached map shows the state land under study. An approximate boundary for the stream tract and the 50 foot public access is identified. The 60 foot right-of-way and material site is undefined until further information is obtained from the contractor.

Attachment


FUNTER BAY
Private land
Mouth of stream
Approximate location of state tract
State land 65 acres
NUMEROUS PROBES IN THIS AREA ALL < 1' ANGULAR BOULDER OR BEDROCK
50' public access easement (MHW line presently undefined)
LEGEND
MONUMENTS RECOVERED NOV 1984
GLO BRASS CAP MONUMENT
ALUMINUM MONUMENT
WOOD POST
CHISELED "X" IN ROCK
DENSE TREES
BEDROCK EXPOSURE
Vegetation line
MANY BEDROCK EXPOSURES IN BLUFF BEHIND BEACH LEVEL
= PROBE LOCATIONS
FUNTER BAY
DENSE TREES
Private land
Scale
1" ≈ 315'
N

Marine boat

Marine parks proposed for Southeast Alaska

By KIRK McALLISTER
The Juneau Empire

While there may not be freeway stops a day's drive apart in the watery, mountainous world of Southeast Alaska, travelers may soon have a series sheltered anchorages a day's boat ride apart if a bill establishing 11 marine parks is signed into law.

The bill (HB 44), sponsored by Reps. Mike Miller and Jim Duncan of Juneau and Rep. Peter Goll, D-Haines, would establish 11 marine park sites from Prince of Wales Island to Pelican.

There are already 12 marine parks in the state system, seven in Prince William Sound and five in Southeast, said Linda Kruger, superintendent of the Southeast district for the state Division of Parks.

There is one proposed site on Prince of Wales of Island, three near Ketchikan, two near Petersburg, two near Wrangell, two near Juneau and one near Pelican.

Kruger said that if approved, the marine parks would be off limits for timber and mining, but would not affect commercial or sport fishing and hunting or access to private property.

"These areas would be passively managed and would require no additional funds, staff or improvements," Kruger said. "We might have a park staffer check the sites once a season but otherwise people won't recognize they're being managed at all. At this point the areas are just being reserved for public use."

Eventually, some of the sites may get mooring buoys, float docks, a cabin, picnic shelters or a barbeque pit depending on what people in the particular area want, Kruger said.

Miller, the prime sponsor of the bill, said the additional sites in Southeast are the result of a grassroots effort in areas wanting sites set aside for public use.

For example the two areas around Juneau, 688 acres in Taku Harbor and 65 acres in Funter Bay, were requested by landowners in the area, Miller said.

Continued on Page 14

Marine parks...

Continued from Page 1

"These marine parks would allow local residents and people from the Lower 48 to travel the Panhandle by boat with areas to stop about a day's cruise apart," Miller said.

The parks in Southeast could work in conjunction with similar marine parks set up in Washington and British Columbia.

Miller said local support for the bill is "substantial" and that the only conflict that has arisen is in Funter Bay where the Department of Natural Resources wants a different site for the park than the one proposed in the legislation. DNR has already subdivided the area where the proposed park would be, but since there are three private subdivisions planned nearby, Miller said the state doesn't need to make a fourth.

The bill is currently in the House Resources Committee.

Phil Emerson
#3 Crab Cove
Funter Bay, Ak.
99850

Dear Sir,

I am sorry I cannot appear in person, but due to the birth of my daughter and family situation I would like to give written testimony concerning the state land sale and marine park at Funter Bay.

I've recently heard that the Dept. of Natural Resources has proposed an alternate marine park site in Funter Bay. I believe a more favorable and public minded use would be for both locations placed under a marine park status.

The reasons for a marine park in Funter Bay are numerous, from it's central location, protected waters, and growing use, which I have watched for the last 13 years. Everyone seems to be in agreement on the need of a park, what I would like to stress is the need for room and access.

Funter Bay is used by many traveling boats, commercial fishermen, boats waiting for permits to enter Glacier Bay and mostly by the ever-growing recreational fleet in Juneau. When the marina at Auke Bay is built it will put hundreds of more boats in easy access to Funter. As fishing regulations and closed fishing areas continue the sport fisherman must go further from the Juneau area for his weekend enjoyment. There are two well used state floats in Funter Bay, both of which are adjacent to private land, and people wishing to go ashore are greeted by no trespassing signs. The state wanted to extend one of these floats last year to keep up with the growing need, but did not because of conflicts with private land. With both locations designated as a marine park the problem of trespassing would be eliminated. As a commercial fisherman and boat owner for the last 12 years I know the need for a number of anchorages or docks due to wind conditions; both the locations in Funter would take into account the changing wind patterns in the bay. The coves that are in question are small in size when it comes to handling the growing volumn and size of some boats.

Two large boats at anchor take up quite an area of water or dock space.

Another aspect is that there is already a large amount of private land in Funter Bay. If the state were to sell lots as proposed approximately two thirds or more of Funter's shore would be under private ownership. For all intensive purposes access to the more scenic and usable eastern side of the bay would be eliminated. Currently old mining claims are being subdivided in Funter and there is land for sale. The use by boaters would greatly excede and facilitate a much larger number of people than a land sale in this area.

One last comment or perhaps question concerning the proposed land sale, since I cannot keep up on the ever changing plans of the Dept. of Natural Resources, is what the exact plans are for the lots and if it is actually usable land due to the public access trail that is located where any beachfront lots might be located.

Thank you,

Phil Emerson

Phil Emerson

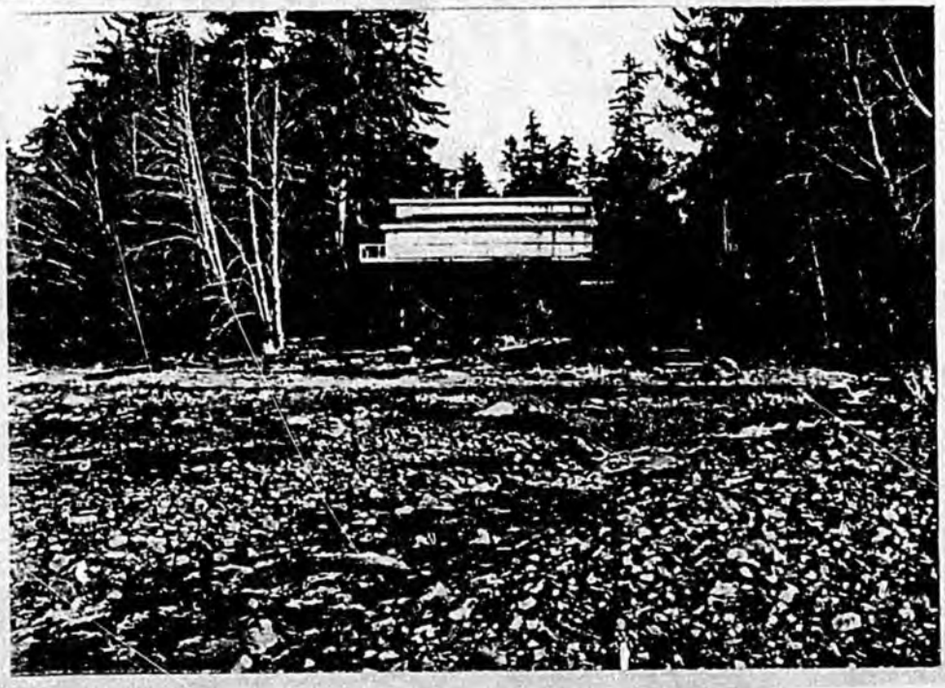
CRAB COVE



Looking into Crab Cove.
Cabins and other structures already dominate the cove. State land is to the right of existing settlement.



Standing in the proposed marine park looking toward the head of the bay.



Standing in the proposed marine park. The creek, which is very close to existing development would be the only running water in the 65 acre marine park.

Photographs taken 1-12-85





Anadramous salmon stream at the head of cove.



Old ship skeleton, with salmon stream in background. Mussels and clams on beach.



The view toward Mt. Robert Barron from the head of the cove.

Photographs taken 1-12-85

MEMORANDUM

TO: Representative Adelheid Herrmann
Co-Chairman, House Resources Committee

Representative Dick Shultz
Co-Chairman, House Resources Committee

All Members
House Resources Committee

FROM: Deborah L. Greenberg
Committee Aide

DATE: February 25, 1985

SUBJECT: Letter of Intent on the 1983 Marine Parks Bill

As you may recall, at the last meeting to address HB 44 relating to Marine Parks, Phil Holdsworth referred to the attached letter of intent. The letter of intent was reported with the Marine Parks Legislation that passed in 1983, and was reported in the May 12, 1983 Journal of the House. The language explains that facilities could be constructed within marine parks that are adjacent to areas of mineral development.

CSSB 132(SA)

was read the first time and referred to the State Affairs and Finance Committees.

REPORTS OF STANDING COMMITTEES

CSSB 128(Res)am

The Resources Committee has had COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 128 (Resources) amended (establishing certain areas as marine park units of the Alaska state park system; effective date) under consideration, recommends it be replaced with HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 128 (Resources) (same title) and reports it back as follows: Ringstad (Co-Chairman), Goll, Larson, Vezka, Liska, Cowdery and Uehling recommend do pass. Shultz (Co-Chairman) has no recommendation. A letter of intent and a zero fiscal note was attached.

CSSB 128(Res)am was referred to the Finance Committee.

The letter of intent follows:

LETTER OF INTENT

TO ACCOMPANY CSSB 128(Res)am

Although access to mineral deposits is not expected to require construction of facilities within marine parks, we acknowledge that such construction may be required in park units adjacent to mineral development which could not otherwise take place. In such cases, it is the intent of the Legislature that the access language within the Act be interpreted to allow development of docking facilities under terms prescribed by the Commissioner of Natural Resources.

Two units of the original marine park proposal - Decision Point and Entry Cove - have been removed from designation at this time, in order to allow a more vigorous analysis of other possible higher and better uses for these areas.

CSSB 128(Res)am

Such possible alternative uses could include exchange with private or corporate ownerships for State acquisition of other lands, conveyance to the local municipality, and disposal through the State programs. If an in depth study does not identify some alternative as being more suitable, these two sites may be legislatively included in the Alaska state park system at a later time.

/s/ John Kingstad
John Kingstad, Co-Chairman

/s/ Dick Shultz
Dick Shultz, Co-Chairman

SB 188

The Labor and Commerce Committee has had SENATE BILL NO. 188 (relating to bank holding companies) under consideration and reports it back as follows: Furnace (Chairman), Uehling, Cowdery and Malone recommend do pass. Wendte, Ringstad and Koponen have no recommendation.

SB 188 was referred to the Rules Committee for placement on the calendar.

HJR 42

The State Affairs Committee has had HOUSE JOINT RESOLUTION NO. 42 (relating to the establishment of a sister state relationship with Taiwan) under consideration and recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 42 (State Affairs) (same title) and reports it back as follows: Abood (Chairman), Larson, Shultz, M. M. Miller and Furnace have no recommendation. Cowdery recommends do pass.

1/25/85

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Habitat	HB 44	Mike M. Miller

DEPARTMENT POSITION

The Department of Fish and Game supports passage of this bill.

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
RICHARD REED	1/25/85	[signature]	1-28-85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Division of Parks and Outdoor Recreation	
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
probably conservation groups	none known

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The intent of this bill is to add reasonable and needed segments to the southeast portion of the Alaska Marine Park system. Most of the areas are needed anchorages.

ANALYSIS OF BILL/PROGRAM EFFECTS

There are no known adverse effects upon on-going or proposed departmental programs. The bill will help to create an expanded system of anchorages spaced throughout southeast.

AMENDMENTS PROPOSED

No amendments proposed but the legal description for Cape Bingham should be checked (especially T43S, R54E, CRM, Section 25).

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

01-009 (Rev. 12/83)

McCarty
Bartholomew
King
Steward
Cruise

Voting "No": None
Absent: Troll
4 votes required for passage
Effective Date: 1/21/85

K E T C H I K A N G A T E W A Y B O R O U G H

Resolution No. 607

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, ENDORSING ESTABLISHMENT OF A STATE PARK ON STATE LAND KNOWN AS COAST GUARD BEACH LOCATED AT POINT HIGGINS, U.S. SURVEY 3762

R E C I T A L S

A. The Ketchikan Gateway Borough Draft Comprehensive Plan, Community Goals to 1990, identifies a need to improve and expand recreation opportunities for the community through policies which would:

(1) Support the reservation and accessibility of public waterfront and beach properties for recreational enjoyment;

(2) Support State retention of State public interest land identified for public recreation until such property is transferred to the Borough for purposes of recreational development and management.

B. The Assembly supports the establishment, expansion and maintenance of State park facilities at Coast Guard Beach at Point Higgins for the citizens of the Ketchikan region as one of the area's prime waterfront recreation sites.

NOW THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, as follows:

Section 1. The Assembly endorses the establishment of a state park on State land known as Coast Guard Beach located at Point Higgins, U.S. Survey 3762

Section 2. The Borough Clerk is directed to mail a copy of this resolution to: Commissioner Wunnicke, Department of Natural Resources, Pouch M, Juneau, Alaska 99811; Representative John Sund, Representative Robin Taylor, and Senator Robert Ziegler, Pouch V, Juneau, Alaska 99811; Susan A. Dickinson, Chair, Ketchikan Area State Parks Advisory Board, P.O. Box 9493, Ketchikan, Alaska 99901.

Section 3. This resolution is effective upon adoption.

ADOPTED this 21st day of January, 1985.

BOROUGH MAYOR

ATTEST:

BOROUGH CLERK

United States Department of Agriculture
Forest Service
Region 10
P.O. Box 1628
Juneau, AK 99802

Reply to: 1510

Date: January 30, 1985

The Honorable Adelheid Herrmann
Chairman, Resources Committee
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Dear Ms. Herrmann:

I address the following remarks to House Bill 44, an act establishing additional State land as marine park units of the State Park System.

The Forest Service supports the concept of marine parks in Southeast Alaska. In fact, as indicated in the accompanying brochure, we operate 65 marine recreation sites in Southeast in cooperation with those managed by the Alaska Division of Parks and Outdoor Recreation.

In this vein, we support the designation of State Marine Parks at the following sites mentioned in House Bill 44:

15) Pt. Higgins Beach

16) Joe Mace Island

21) Security Bay

22) Petersburg Creek

23) Cape Bingham

These sites have no existing marine recreation management.

So that there is no confusion as you read the brochure and study its map, the following sites mentioned in HB 44 appear either to be close to or to be existing Forest Service managed sites:

13) Taku Harbor

14) Funter Bay

18) Thoms Place

19) Beecher Pass

20) Dall Bay

21) Traitor's Cove

Thus, we support the concept of marine recreation at these sites as well.

However, we do have some reservations about HB 44. While we support the concept of marine recreation, we are concerned about Marine Park classification for some of the sites. Frankly, on some sites this classification will have the affect of precluding access to uplands for other than recreational purposes.

Management plans for these upland areas have been developed over many years with the cooperation of state agencies, local governments, adjacent land owners, and private citizens. For example, the Southeast Alaska Tideland Planning (SEATAP) program was a joint effort among the Forest Service, Native Corporations, the Alaska Department of Transportation and Public Facilities, and the Alaska Department of Natural Resources. This program put together agencies with land management responsibilities and plans to identify transportation needs for Southeast Alaska and associated tideland occupancies. Some of these occupancies, such as mine operators, are industrial in character and would conflict with the purpose for State Marine Parks as detailed in AS 41.21.300.

Another aspect of our concern is that numbers of protected anchorages are limited. If the only sheltered anchorage adjacent to large tracts of land was designated as a Marine Park, the opportunity for full use of those lands would be severely restricted.

We believe that the designation of Alaska Marine Parks should proceed only after careful coordination and analysis of impacts on access for upland management.

Potential conflicts exist between Forest Service multiple use management plans for upland areas adjacent to certain sites:

13) Taku Harbor — The description for the proposed Marine Park appears to include lands not selected by the State and still under Forest Service management. These lands lead to tidewater in Taku Harbor. Even though surface-disturbing activities would probably be out of sight of recreationists in the Harbor, designation of a Marine Park here would preclude road building and transfer site access for potential resource development. Access to several thousand acres of land is available in a practical sense only through the Harbor.

17)	Thoms Lake	Marine Park designation of this land-locked lake would preclude the completion of a designed and surveyed forest development road. This portion of the transportation system planned for Wrangell Island was advertised for bid in 1982 but was not contracted for at that time. Although poor timber markets have reduced the immediate need to build the road to service timber contractors, in a few years the potential for increased logging costs is substantial if the road is not built. In the meantime, citizens from Wrangell are waiting for the road to provide improved access to recreation opportunities. In addition, since the road corridor selection resulted from an analysis and design which minimized potential negative environmental effects, locating the road through another off-site corridor would increase the potential unacceptable environmental impacts.
24)	Traitor's Cove	Designation of this area would have the potential of restricting access to an existing log transfer site used for more than 20 years that stands on a 15 acre administrative site at the cove. The adjacent lands are managed as a part of a long-term timber sale and the Forest Service must meet its contractual commitments to the purchaser. Two rights-of-way for timber harvest access roads are reserved through the State-selected lands mentioned in HB 44 so that logs may be brought to the site. Log transfers will continue in this area designated for timber harvest activities.

I recommend that the Committee consider amending Alaska Statute 41.21.306(d) to provide reasonable access to adjacent landowners through designated Marine Parks.

In addition, I would ask the Committee to eliminate from HB 44 the three sites that are not compatible with public use of the uplands nearby. Thorough reviews of many sites should be done to determine their compatability with State transportation system development plans and the plans of other agencies, communities, and individuals.

Thank you for the opportunity to provide information to the House Resources Committee on HB 44. I look forward to continued cooperative marine recreation management with the State and see this Act as a means to strengthen the potential for safe enjoyment of marine recreation opportunities in Southeast Alaska.

For MICHAEL A. BARTON
Regional Forester

Enclosure

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 44

Title: Additions to Marine Parks

Sponsor: Reps. Miller, Duncan, Goll

Requestor: House Resources Committee

Date of Request: 1/25/85

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: Nat. Res. Management
Division of Parks and Outdoor Recreation

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Carol Wilson

Phone: 564-2400

Division: Natural Resources /Parks and Outdoor Rec.

Date: 1/28/85

Approved by Commissioner: Esther C. Wunnicke

Date: 1/29/85

Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

December, 1977

SUMMARY AND CONTROL INDEX

NATIONAL FOREST LAND SELECTIONS

(ALASKA STATEHOOD ACT SEC. 6(a))

KEY TO PURPOSES OF SELECTION:

- A - Expansion of established community
- B - Development of established community
- C - Established community recreation
- D - Suitable for prospective community center
- E - Suitable for prospective recreational area
- F - Suitable for fish hatchery

A. Tongass National Forest

VICINITY	LOCATION	GROSS LAND AREA (ACRES)	NATIONAL FOREST LAND (ACRES)	PURPOSES OF SELECTIONS
Juneau	Southwest Douglas[1]	5610	5516.08	A,B
	Shelter Is. South	830	488.79	A,B
	Shelter Is.	898	888.74	C
	Montana Creek	2160	1988	C,E
	Douglas Is. - Eaglecrest	3880	3880	C,E
	Taku Harbor	688	624.52	C,E
	Taku River	2640	2610.005	C,E
	S. Gastineau Channel	895	78 .28	A,B
	Berners Bay[2]	7207.31	6876.79	C,D
	subtotal	24808.31	23661.20	
Petersburg	Rock Pit	160	160	B
	S. Mitkof Is.	4015	4015	D,E
	Frederick Point	2921	2921	A,B
	Wrangell Narrows	4723	4723	A,B,D,E Beecher Pass
	subtotal	11819	11819	
Prince of	Coho Creek	3515	3515	A,B

[1] Goldbelt Corp. Selection lies within this selection and takes precedence over it.
[2] Goldbelt Corp. Selection lies within this selection and takes precedence over it.

December, 1977

Sitka	Goddard Hot Springs	3731	3694.41	C,E
	Starrigavin	480	455	A,B
	subtotal	4,211	4,149.41	
Wrangell	E. Passage - Zimovia Strait	10985	10833	A,B,D
	Olive Cove	520	514.13	A,B
	Thoms Place	2531	2527.23	A,B,C
	Thoms Lake	2520	2520	C,E
	subtotal	16,556	16,394.36	
Port Alexander	Port Alexander	405	326.64	A,B
Elfin Cove	Elfin Cove	7	7	A,B
Pelican	Pelican	2038	1950.98	A,B
Funter Bay	Funter Bay[3]	172.361	162.511	A,B
Hoonah	Hoonah	1106	1056.32	A,B
Thomas Bay	Thomas Bay	2280	2280	D
Chilkat Peninsula	Upper Excursion Inlet	390	295.18	A,B
	Excursion Inlet	2530	2379.33	A,B
	St. James Bay	3683	3683	E
	Swanson Harbor	1095	1095	E - DISAPPROVED
	subtotal	7,698	7,452.51	
Kosciusko Is.	Edna Bay	7283	7043	D
Hyder	Hyder	1090	932	A,B

[3] This is a revision of NFCG 18

Ketchikan	Dall Head	917	850.22	A,B,C	
	Settlers' Cove	325	275	C	
	Blank Inlet	9747	8429	C,D	
	Manzanita Bay	384	384	E	
	Carroll Point	1102	1085.49	A,B	
	Herring Cove	770	755	A,B	
	Mountain Point	600	326	A,B	
	White River Loop	480	480	A,B,C	
	Lake Harriet Hunt	400	400	C	
	First Waterfall Cr.	1295	990	A,B	
	Whipple Cr.	1750	1641	A,B	
	Whipple Cr. Addition	5.35	5.35	A,B	
	Vallenar Bay	4632	3801	A,B	
	Upper George Inlet	2903	2903	A,B	
	Traitors Cove	362	362	A,B,C	
	subtotal	25,672.35	22,687.06		
Prince of Wales Island	Port Protection	1550	1260.62	A,B	
	Waterfall	1540	1530.71	D	
	Hollis	4910	4339.467	A,B	
	Whale Passage	2348	2348	A,B,F	
	Thorne Bay	6850	6789.11	A,B	
	Niblack Anchorage	1003	982	E,F	
	Salmon Bay	192	192	E	
	Grindell Is.	515	515	E	
	So. Arm Chomondeley	568	568	F,E	
	subtotal	19,476	18,524.91		
Revillagigedo Is.	Shrimp Bay	860	860	F,E	USFS Disapproved 1/1/79
	Neets Creek	350	350	F,E	
	Alava Bay	631	631	E	
	subtotal	1,841	1,841		
Cleveland Peninsula	Port Stewart	310	310	E	DISAPPROVED
Etolin Is.	McHenry Anchorage	805	805	E	DISAPPROVED

Dixon Entrance	Foggy Bay	1006	1006	E	DISAPPROVED
Frederick Sound	Read Island	705	705	E	
	Le Conte Bay	242	242	E	DISAPPROVED
	subtotal	947	947		
Stephens Passage	Hobart Bay	95	95	E	DISAPPROVED
	Sumdum	445	440.10	E	DISAPPROVED
	subtotal	540	535.10		
Kuiu Island	Security Bay	515	515	E	
	Explorers Basin	2350	2350	E	DISAPPROVED
	subtotal	2,865	2,865		
Lynn Canal	Chilkat Islands	540	540	E	
	Sullivan Is.	639	639	E	
	subtotal	1,179	1,179		
North Kruzof	Kalinin Bay	831	831	E	DISAPPROVED
Behm Canal	Burroughs Bay	326	326	E	DISAPPROVED
Rocky Pass	High Island	607	607	E	
Baranof Is.	Kasnyku Bay	297	297	E	
	Red Bluff Bay	1088	1088	E	
	Betty Lake	420	416	F,E	DISAPPROVED
	Deep Cove	495	495	F,E	DISAPPROVED
	Shamrock Bay	515	515	F,E	DISAPPROVED
	subtotal	2,815	2,811		

Chichagof Is.	Pavlov Harbor	543	543	E	DISAPPROVED
	Cape Bingham	1112	1112	E	—
	Goulding Harbor	862	862	E	DISAPPROVED
	Lake Anna	545	545	E	
	subtotal	3,062	3,062		
	Thimble Islands	4,369			
		7,431			
Admiralty Is.	Gambier Bay	857	857	E	
	Chaik Bay	388	388	E	
	Pleasant Bay	530	530	E	
	Windfall Harbor	576	576	E	
	Oliver Inlet	365	365	E	
	Pybus Bay	919	886.41	E	
	subtotal	3,635	3,602.41		

Total Selections from Tongass National Forest

gross 148,806.02 acres
net 142,689.41 acres —

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
February 26, 1985

The Honorable Adelheid Herrmann, Co-Chairman
The Honorable Richard Shultz, Co-Chairman
House Resources Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 44: Additions to State Marine Parks System

Dear Representatives Herrmann and Shultz:

The League of Women Voters of Alaska supports further additions in Southeast Alaska to the State marine park system, as set forth in HB 44.

In a boating oriented culture such as we have in southeastern Alaska, the dedication to public use of a series of marine parks about a day's journey apart is one of the best investments we can make toward our own future quality of life and our welcoming of boating visitors from Canada and the Pacific Northwest. In some ways, these marine parks would be analogous to the system of hikers' shelters in the Swiss Alps, located a day's hiking journey apart. In contrast, our marine parks have the advantages that they require little or no financial commitment, and almost no modification of the natural environment.

The League of Women Voters of Alaska adopted a land use position in 1975 and a land disposal position in 1980. We believe the use of Alaska's land and water resources affects most aspects of life in our communities, and that we should set aside special areas such as marine parks and State forests now, before the options are foreclosed.

Thank you for considering our views.

Sincerely,

Elizabeth Cuadra

Elizabeth Cuadra, Board Member
(Natural Resources Portfolio)

DEC:sd
cc: Committee Members (Wallis, Sund, Thompson, M. W. Miller, Cato, Pearce, and Jenkins)
Sponsors (M. M. Miller, Goll and Duncan)

STATE OF ALASKA / BILL SHEFFIELD, GOVERNOR
DEPARTMENT OF NATURAL RESOURCES

TESTIMONY TO HOUSE RESOURCE COMMITTEE
Representative Shultz, Co-Chairman
Representative Herrmann, Co-Chairman
Members of House Resources Committee
February 20, 1985

HB 44 MARINE PARKS
Paula Burgess, Regional Manager
Southeast Region, Division of Land and Water Management
Department of Natural Resources

I am Paula Burgess, Southeast Regional Manager for the Division of Land and Water Management. I am the primary individual responsible for state land sales in Southeast Alaska. One of the goals of my job is to offer a reasonable number of acres of land each year for private ownership.

I operate a land sale program in Southeast Alaska that is balanced. In identifying land and planning a sale I attempt to balance local desires with statewide interests, habitat issues with human needs, and park lands with private ownership. I believe that there is enough land in Southeast Alaska to supply all of these demands.

The state has received selection approval, tentative approval, or patent to 162,000 acres from the Tongass National Forest.[1] Of that land base, 36,000 acres are scheduled for conveyance to municipalities, and 26,000 acres are in public use (as parks, road rights-of-way, or public facilities).

Of the remaining 100,000 acres of state land, we have transferred 8,000 acres to private ownership since the disposal program began in earnest in 1979. That leaves 92,000 acres as a state land base to be retained and managed for parks and other public uses, or to be sold for private ownership. Less than one-third of this total will prove to be suitable for settlement, the remainder being too steep, too rocky, or too wet.

When I look over the state land base to identify land for sale, I look first for land that is within commuting distance of jobs in an existing

---

1. The state selected an additional 21,000 acres from the Tongass which was rejected by the Forest Service. That rejection was appealed by the state, and the issue is still in court (Alaska v. Block).

community. If none is available, I look for land near private holdings where a community and jobs may someday develop. The least desirable land sales are those that create strips of private ownership sprinkled along the coastline, where the residents have no means of making a living, and no one has the opportunity to leave development behind.

Unfortunately, this latter type of land sale, with sparse and scattered pockets of settlement along the coast, has the highest rate of success. This type succeeds where the first two types fail, because no one lives there yet. Residents and property owners in the vicinity of a land sale inevitably object. They fear that having neighbors will alter their quality of life. One question to be asked is: How much say should a few people have about the use of state land around them? How many of us would be here if the first people here weren't willing to share what they enjoyed?

The state selected 162 acres at Funter Bay from the Forest Service in 1977. We selected that land at the request of three people that had permits from the Forest Service for cabins in the bay, and wanted to purchase the land their cabins were on. The selection was make so that these people could get title to their land, and with the understanding that the state would offer additional land for private ownership. Now all seven of the property owners in Crab Cove oppose that sale, including the people that we helped get title to their land.

Funter Bay is an example of a proposed land sale that makes sense from a land management point of view. The bay has a few current residents, and additional land in private ownership that will someday be developed. The site that we propose for sale is ideal for a few additional lots, but it is not ideal for a marine park. It is already somebody's front yard. We propose to sell 60 acres (about 20 lots)[2], amidst the existing private development in the bay. The lots will probably develop as recreational cabin sites now, but may someday be part of a small community. (See the attached photographs.)

---

2. The lots in Funter Bay will be sold at fair market value, producing revenue for the state.

I recognize that Funter Bay is an ideal spot for a marine park because of its natural amenities, and its proximity to Juneau. Therefore, I would propose to select an additional 240 acres of the nicest land in the bay from the Forest Service for a marine park. That site, at Coot Cove, would include two miles of undeveloped shoreline, a salmon stream, seven small islands, and a seal rookery on the outer coast.

I understand the desire of the Funter Bay people to protect their quality of life, and I have spent hours with several of the residents in order to design the kind of disposal they would find most acceptable. The state has more than 150 acres in the bay, and we want to sell less than 60 acres. We are also willing to select an additional 240 acres for a marine park.

Because we plan to sell only 60 acres in Funter Bay, you might wonder why I have chosen to defend the sale as strongly as I have. Perhaps it is because this sale, when compared to many others, makes sense. If Funter Bay isn't the proper place to sell land in Southeast, then where can we sell it?

My office went through all of the legal descriptions in HB 44 very carefully. Our revised legal descriptions, for the most part, do not represent major changes but necessary clean-up. We removed Forest Service lands, private parcels, and existing subdivisions, and added tide and submerged lands which are essential to a marine park. DNR's revised legal descriptions resolve the Forest Service objections to Taku Harbor, Thoms Lake, and Traitor's Cove. There are only two substantive changes:

1) The alternate Funter Bay proposal; and
2) The exclusion of Traitor's Cove. (The state's tentative approval from the federal government recognizes the right of the Forest Service to carry out their long term timber sale plans.)

The sites, as we have revised them, would make excellent parks and would allow our balanced disposal program in Southeast Alaska to continue.

Attachments: Photographs
Summary and Control Index showing the original reason for most of the selections

* Approximate locations of additions to state marine parks system under bill by Representative M. M. Miller, Juneau.

(13) Taku Harbor - south of Juneau on Stephens Passage between Port Snettisham and Taku Inlet.

(14) Funter Bay - northwest side of Admiralty Island, where Icy Strait joins Chatham Strait.

(15) Pt. Higgins Beach - eight miles north of Ketchikan on the Ketchikan road system.

(16) Joe Mace Island - near Point Baker north of Laboucher Bay on northern Prince of Wales Island.

(17) Thoms Lake - south of Wrangell and northerly of Zamovia Strait.

(18) Thoms Place - same general location as (17).

(19) Beecher Pass - south of Petersburg and west of Wrangell Narrows, within four miles of entrance to Duncan Canal.

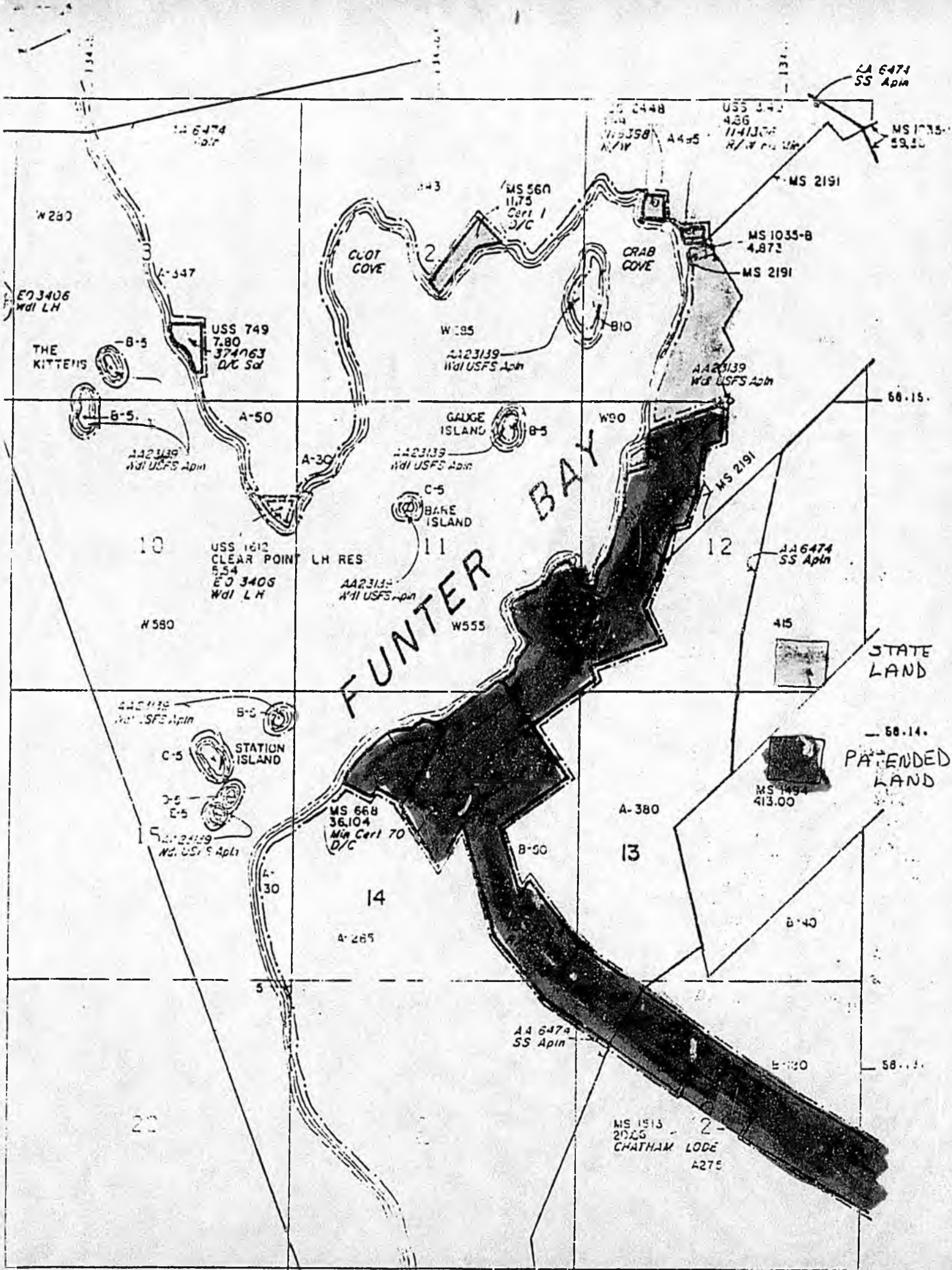
(20) Dall Bay - in the Ketchikan area on the west side of Nichols Passage on Gravina Island.

(21) Security Bay - on Kuiu Island, three and a half miles southwest of Cornwallis Point in Frederick Sound.

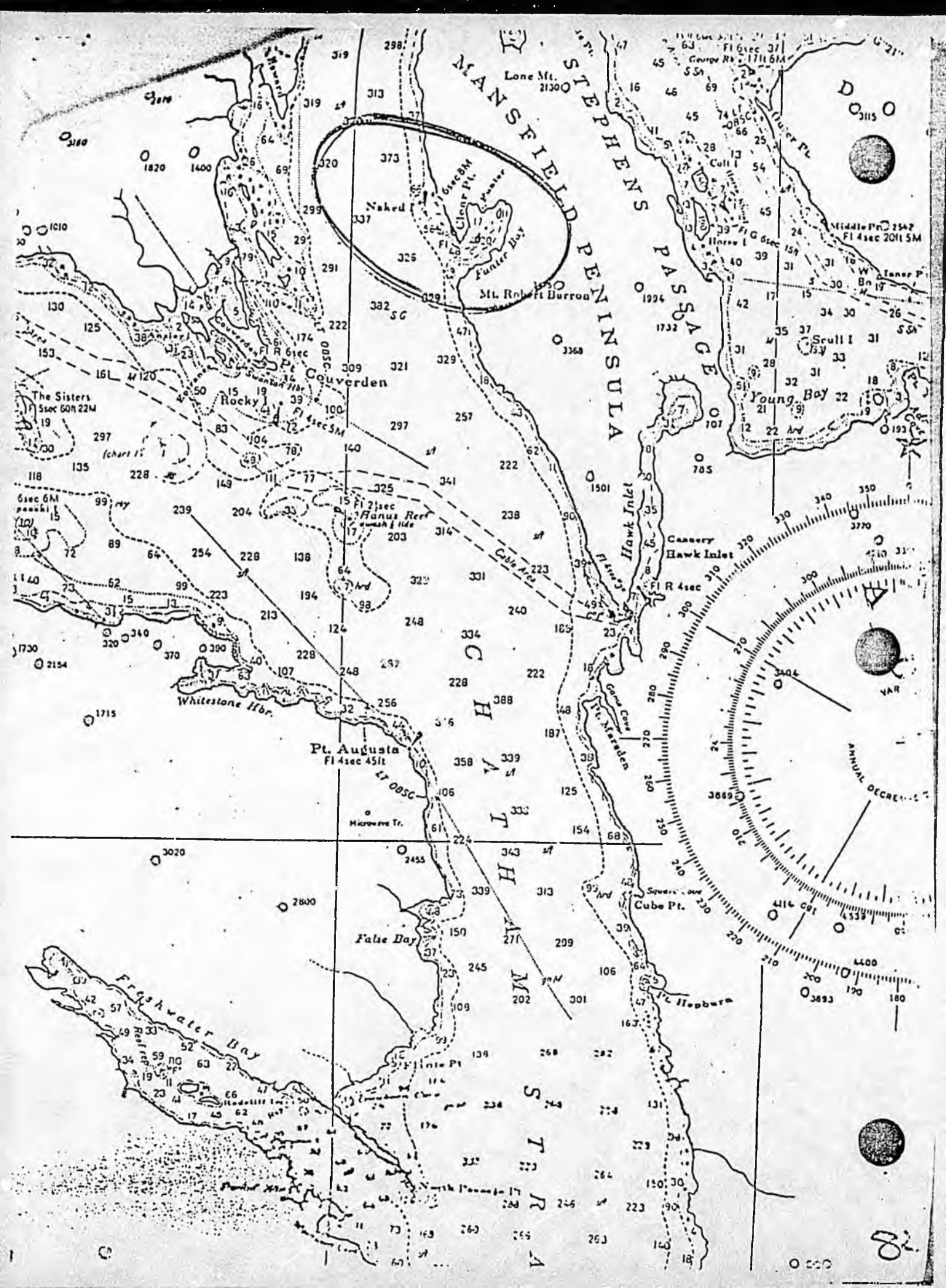
(22) Petersburg Creek - near the community of Kupreanof across Wrangell Narrows from Petersburg.

(23) Cape Bingham - on the northwest extremity of Yakobi Island at the entrance to Cross Sound.

(24) Traitor's Cove - on Revilla Island, two and a half miles into Behm Canal.



AA 6474
SS Apln
MS 2191
MS 560
11.75
Cert 1
D/C
MS 1035-B
4,873
MS 2191
COOT
COVE
CRAB
COVE
W 280
A-347
EO 3406
Wdl LH
USS 749
7.80
374063
D/C Sd
THE
KITTENS
B-5
B-5
A-50
A-30
AA23139
Wdl USFS Apln
W 285
B10
AA23139
Wdl USFS Apln
AA23139
Wdl USFS Apln
GAUGE
ISLAND
B-5
W90
AA23139
Wdl USFS Apln
C-5
BARE
ISLAND
FUNTER BAY
MS 2191
10
USS 1612
CLEAR POINT LH RES
5.54
EO 3406
Wdl LH
11
AA23139
Wdl USFS Apln
12
AA 6474
SS Apln
W 580
W555
415
STATE
LAND
B-5
C-5
STATION
ISLAND
E-5
MS 668
36,104
Min Cert 70
D/C
A-380
MS 1494
413.00
PATENDED
LAND
B-50
13
14
A-30
A-265
B-40
5
AA 6474
SS Apln
MS 1513
CHATHAM LODE
A275



MANSFIELD PENINSULA
STEPHENS PASSAGE
CHATHAM STRAIT
Lone Mt.
Naked I
Clear Pt.
Funter Bay
Mt. Robert Barron
Pt. Couverden
Rocky I
The Sisters
Hanus Reef
Whitestone Hbr.
Pt. Augusta
Fl 4sec 45ft
Microwave Tr.
False Bay
Freshwater Bay
Flinte Pt
North Passage Pt
Hawk Inlet
Cannery
Hawk Inlet
Fl R 4sec
Pt. Marsden
Cube Pt.
Pt. Hepburn
Young Bay
Scull I
Middle Pt.
Fl 4sec 20ft 5M
Outer Pt.
Colt I
Horse I
Cable Area
ANNUAL DECREASE

STATE LAND IN FUNTER BAY ALASKA

Tongass National Forest
Funter Bay (NFCG-18 revised; BLM Case No. AA6474)
U.S.G.S. Quadrangle Juneau (A-3, B-3)

December, 1977

All lands within the following metes and bounds description:

Beginning at Cor, No. 4, Lone Star Lode Claim, U.S. Mineral Survey No. 1492 proceed N.70°00'E. along the northern boundary of said claim a distance of 359.15 more or less to Cor. No. 3, Otter Lode Claim, U.S.S. No. 1492; thence N.5°50'E. a distance of 666.60 feet more or less along the western boundary of the Otter Lode Claim to Cor. No. 4 of said claim; thence N.70°00'E. a distance of 1500.00 feet more or less along the northern boundary of the Otter Lode Claim, U.S.S. Mineral Survey No. 1492 to Cor. No. 1 of said claim; said Corner being common to Cor. No. 2 of Mill Site claim, U.S. Mineral Survey No. 2191; thence N.5°27'W. to an intersect with the southwest boundary of ISH NIC claim, U.S. Mineral Survey No. 2191; thence N.44°00'W. along said boundary to Cor. No. 4 of ISH NIC claim; thence N.46°00'E. along the northwestern boundary of ISH NIC claim a distance of 321.62 feet more or less to Cor. No. 3 of Beach No. 4, common with Cor. No. 2 of Beach No. 1; thence N.44°00'W. along the southwest boundary of Beach No. 4 a distance of 600.00 feet more or less to Cor. No. 4 of Beach No. 4; thence N.46°00'E. along the northwest boundary of Beach No. 4 a distance of 1099.47 feet more or less to Cor. No. 1 of Beach No. 4, Common with Cor. No. 1 of Beach No. 5; thence N.44°00'W. along the southwest boundaries of Beach No.'s 6 and 7 claims a distance of 1200.00 feet more or less to Cor. No. 1 of Beach No. 7, U.S. Mineral Survey No. 2191; thence N.46°00'E. along the northwest boundary of Beach No. 7 claim a distance 135.10 feet more or less to Cor. No. 4, U.S. Survey No. 3149; thence continue N.46°00'E. along the northwest boundaries of Beach No.'s 7 and 8 a distance of 2864.90 feet more or less to Cor. No. 2, Beach No. 8 Claim, U.S. Mineral Survey No. 2191; thence due west a distance of 3,300 feet more or less to an intersection of a line projected due north from M.C. No. 3, U.S. Survey No. 2448; thence due south a distance of 1214 feet more or less to M.C. No. 3, U.S. Survey No. 2448; thence, meander along the mean high water line of the northeast shore of Funter Bay in a southwesterly, easterly, southeasterly, southwesterly direction a distance of 1.11 miles more or less to a point lying S.70°00'W. from Cor. No. 4, Lone Star Claim, U.S. Mineral Survey No. 1492 on the Mean high water line of the easterly shore of Funter Bay; thence N.70°00'E. to Cor. No. 4, Lone Star Lode Claim, U.S. Mineral Survey 1492; the point of beginning.

Said description containing:

74.411 ac., more or less, surveyed land
97.95 ac., more or less, unsurveyed land.
Containing a total of 172.361 ac., more or less.

And excluding USS 2448, containing 4.99 acres, more or less, and USS 3149, containing 4.86 acres, more or less, lying within Sec. 1, T42S, R64E CRM.

Said exclusions containing a total of 9.85 acres, more or less.

The National Forest land selected by the State of Alaska contained in this description totals 162.511 acres, more or less.

84

HB88 MARINE PARKS

(13)	TAKU HARBOR	688 acres
(14)	FUNTER BAY	65 acres
(15)	PT. HIGGINS BEACH	70.75 acres
(16)	JOE MACE ISLAND	61.80 acres
(17)	THOMS LAKE	2,520 acres
(18)	THOMS PLACE	1,490 acres
(19)	BEECHER PASS	640 acres
(20)	DALL BAY	917 acres
(21)	SECURITY BAY	515 acres
(22)	PETERSBURG CREEK	2,310 acres
(23)	CAPE BINGHAM	1,112 acres
(24)	TRAITOR'S COVE	362 acres

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE:

JAN 29 1985

January 28, 1985

The Honorable Adelheid Herrmann
The Honorable Richard Shultz
Co-chair, House Resources Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representatives Herrmann and Shultz:

The Department of Natural Resources supports the establishment of eleven of the twelve marine parks proposed in House Bill 44, but requests some minor boundary or other changes to add to the desirability of these eleven areas as units of the State Marine Parks system (see attached area specific recommendations).

At this time the department does not support the establishment of a Traitors Cove Marine Park because of potential conflicts between logging activities and the boating public. Margaret Bay, in the Traitors Cove area, is the site of a 15 acre U.S. Forest Service administrative site, log transfer site, standing log boom, and floating camp with a peak population of 40.

The proposed marine park sites identified in this bill fulfill the purposes outlines in AS 41.21.300:

1) maintain natural, cultural and scenic value;

2) maintain fish and wildlife resources and lawful existing uses of these resources;

3) promote and support recreation and tourism in the state.

If the proposed sites are established as marine park units, AS 41.21.302 provides for development of management plans for each unit, guarantees lawful hunting, fishing and trapping, allows development of aquaculture facilities,

10-J9 LH

permits adequate and feasible access across marine park land to and from private land and recognizes valid existing rights.

If we may provide additional information, please let me know.

Sincerely,

Esther C. Wunnicke
Commissioner

Enclosure

cc: Representative Mike M. Miller
Representative Peter Goll
Representative Jim Duncan

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 44

Title: Additions to Marine Parks

Sponsor: Reps. Miller, Duncan, Goll

Requestor: House Resources Committee

Date of Request: 1/25/85

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: Nat. Res. Management
Division of Parks and Outdoor Recreation

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Carol Wilson Phone: 564-2400

Division: Natural Resources /Parks and Outdoor Rec. Date: 1/28/85

Approved by Commissioner: Esther C Wunnicke Date: 1/29/85

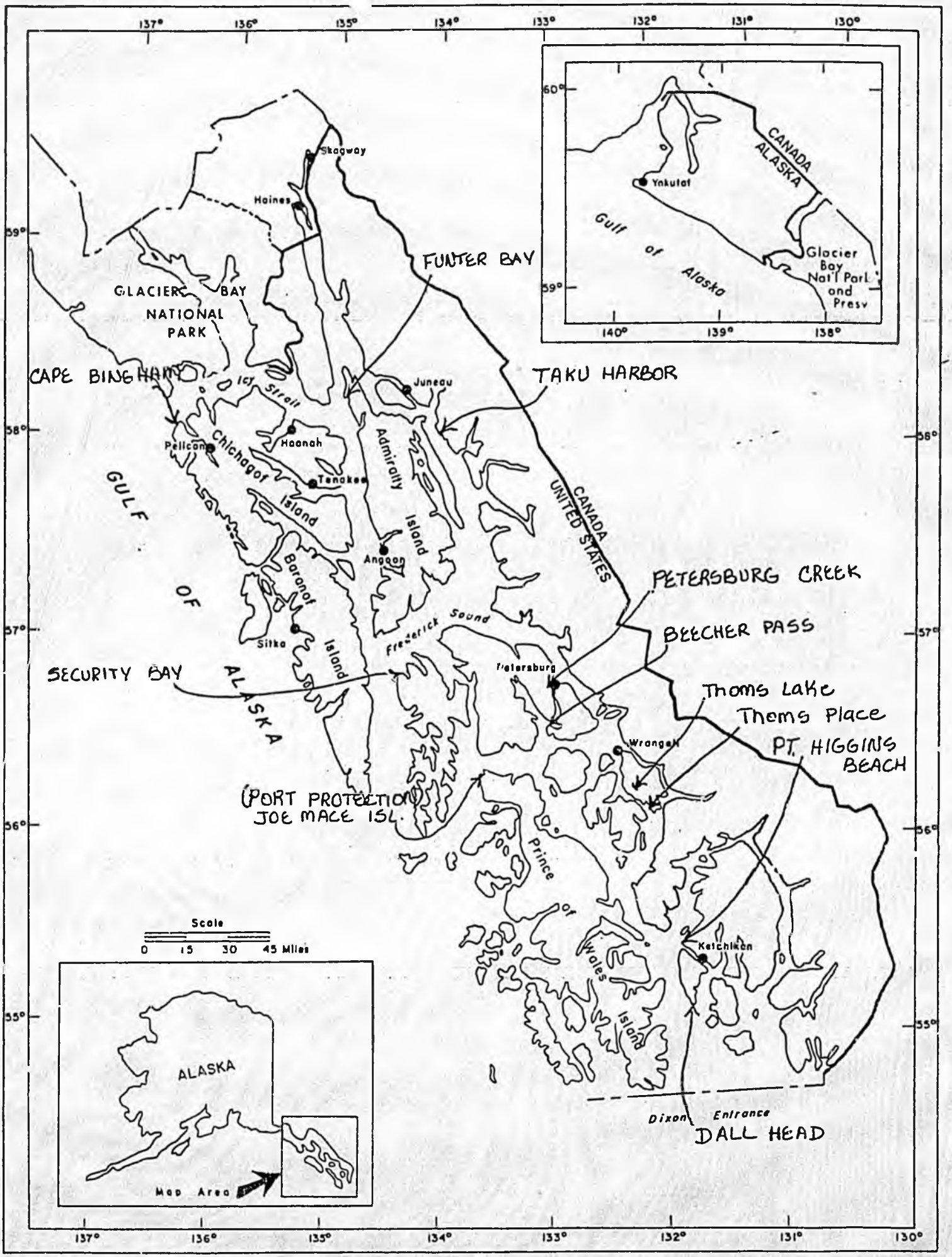
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

DNR RECOMMENDED MARINE PARKS



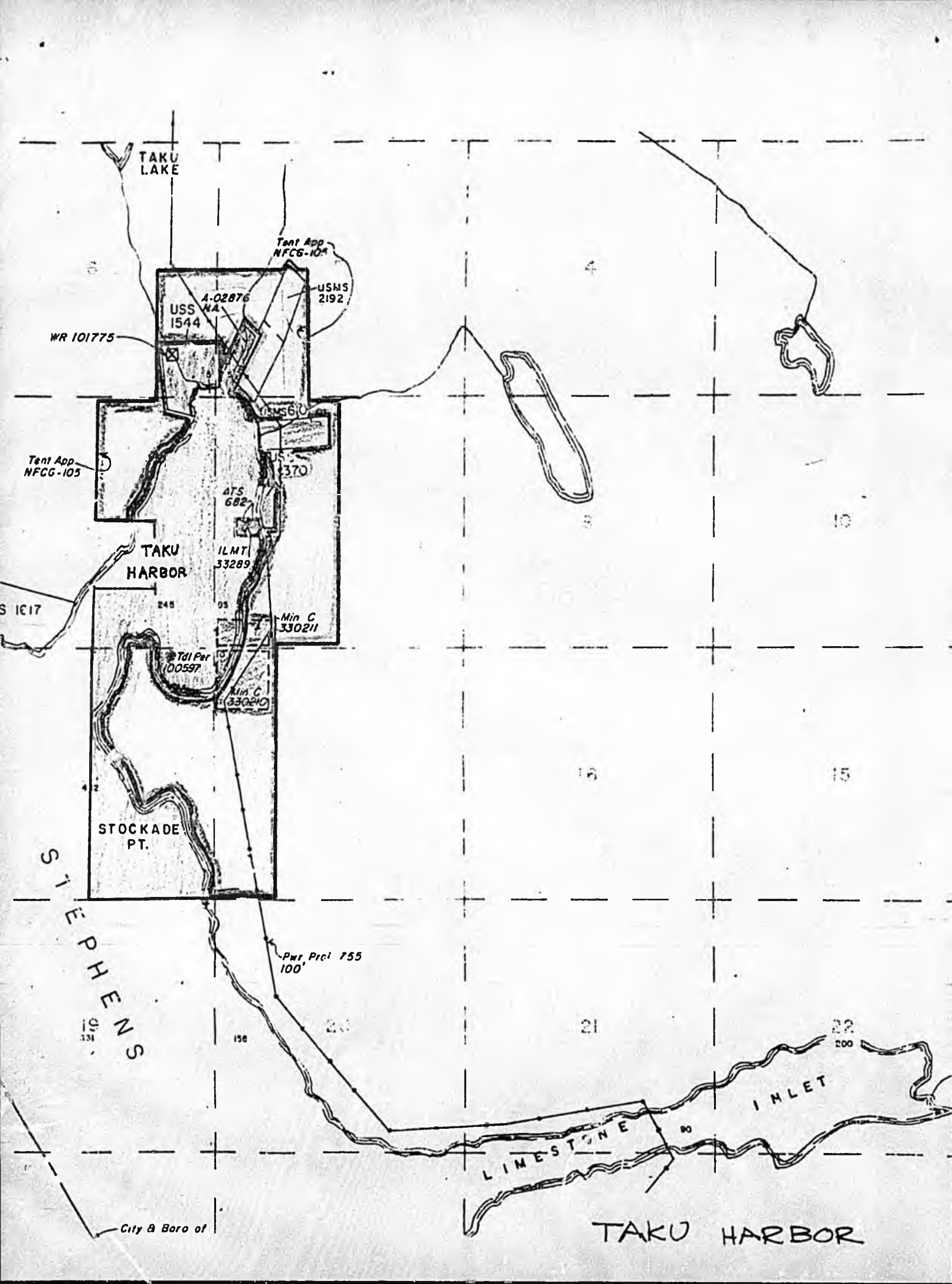
(13) Taku Harbor

U.S. Mineral Survey No. 2192 and the following unsurveyed state-owned lands and waters described below: Township 44 South, Range 70 East, Copper River Meridian

Section 5: W½SW¼, W½E½SW¼;
Section 6: E½SE¼;
Section 7: NE¼, NE¼SE¼, S½SE¼;
Section 8: W½;
Section 17: W½W½;
Section 18: E½.

Excluding U.S. Survey 1544, U.S.M.S. 610, U.S. Survey 370, and U.S. Survey 1617. Subject to all valid existing rights including:

(1) Native Allotment A-02876
(2) ILMT 33289 (ATS 682)
(3) Water right 101775
(4) Tideland permit 100597
(5) existing mining claims.


TAKU LAKE
Tent App NFCG-105
USMS 2192
A-02876 NA
USS 1544
WR 101775
USMS 610
Tent App NFCG-105
ATS 682
TAKU HARBOR
ILMT 33289
Min C 330211
Tdl Per 100597
Min C 330210
STOCKADE PT.
STEPHENS
Pwr Prcl 755 100'
LIMESTONE INLET
City & Boro of
TAKU HARBOR

Taku Harbor

1. Tidelands and Submerged lands are included so that normal Marine Park improvements such as docks and mooring buoys won't require leases and permits.

2. Area is subject to ILMT to DOT/PF in W½ of Section 8 (ADL 33289, ATS 682) and existing tideland permit 100597.

   Also subject to Mining Claims 330211 and 330210, and the tide and submerged lands in front of lands not included in the bill.

3. Proposal includes entire Tentative Approval totalling approximately 701 acres.

(14) Funter Bay

The following proposed state selected lands as described below:

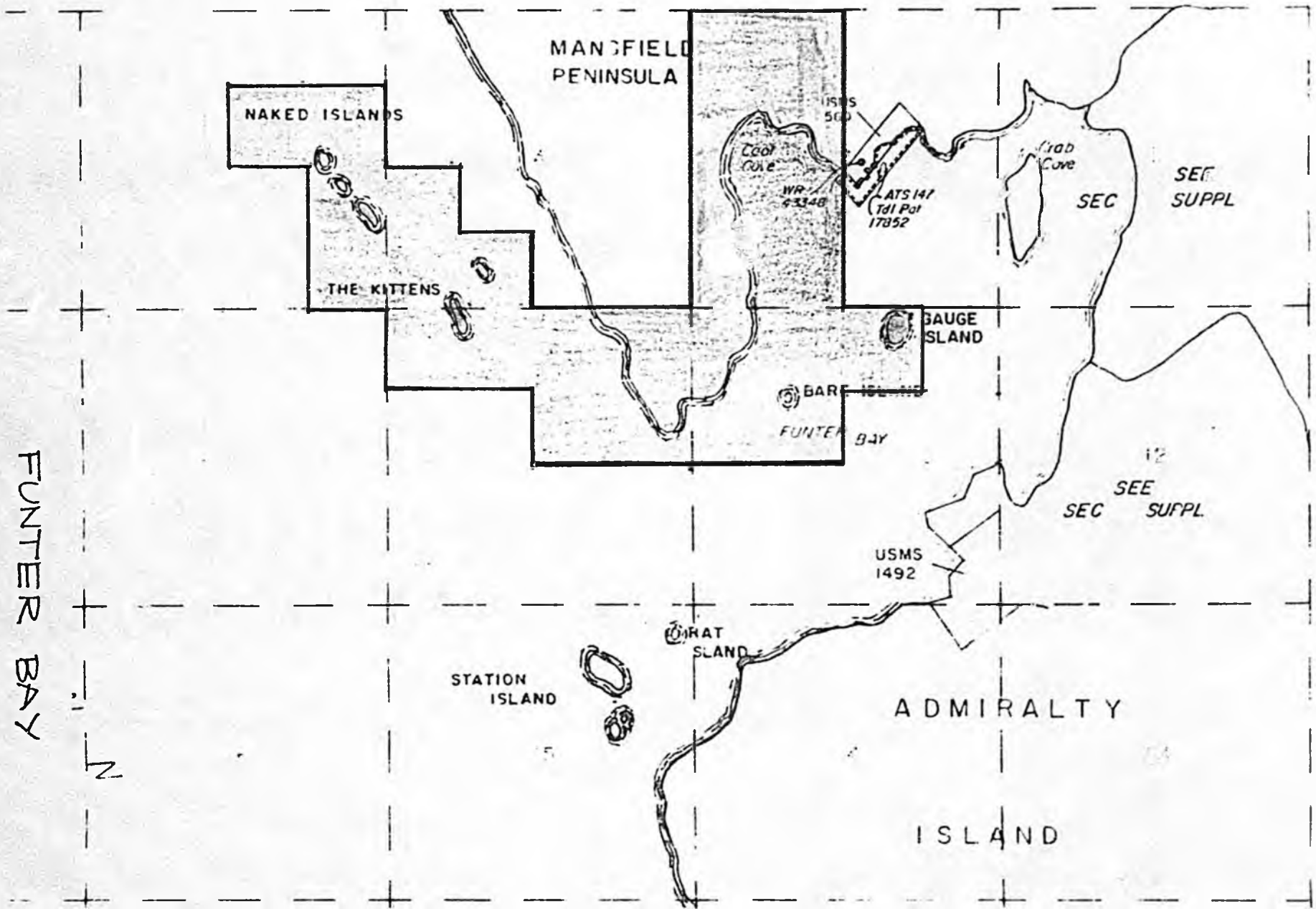
Township 42 South, Range 64 East, Copper River Meridian

Section 2: W½;
Section 3: S½SW¼, NW¼SW¼;
Section 4: S½NE¼, E½SE¼;
Section 10: N½N½, S½NE¼;
Section 11: NW¼, NW¼NE¼.

Including all tide and submerged lands described above.

Subject to prior existing rights.

NSHIP 42S RANGE 64E OF THE COPPER RIVER MER.



Funter Bay

1) DNR does not support the marine park in Funter Bay as proposed in House Bill 44 for the following reasons:

   (1) The bill proposes three non-contiguous parcels in an already develcped part of the bay.

   (2) The primary water source in the park would be a small creek that runs into the bay in front of an existing house.

   (3) As currently described, the northern parcel includes two privately owned lots with houses on them. If these privately owned lots are excluded, the northern parcel would not include any shoreline, and would have no legal access from the shoreline.

   (4) This land in Funter Bay was selected by the state for two reasons: to help several residents of the bay get title to the land their houses were on, and for additional recreational properties in the proximity of Juneau. DNR plans to sell approximately twenty lots adjacent to the existing settled area.

2) DNR does support a marine park in Funter Bay at Coot Cove. The cove has no existing development, has a salmon stream at its head, offers good anchorage, and has a good view of the bay and of Robert Barron Peak. The entire cove could be included in the park, as well as Clear Point, at the entrance to Funter Bay, and the sandy beach on the outer shore, along Lynn Canal. The Naked Islands (which have a rookery on their northern tip) and the Kitten Islands that are near the mouth of the bay could be included, as well as Guage and Bare Islands that are inside the bay.

3) DNR is in the process of selecting Coot Cove from the Forest Service. When the selection has been approved, T.A. and patent have been received, the land would have marine park status.

4) The DNR proposed marine park at Funter Bay would include approximately 240 acres.

(15) Pt. Higgins Beach

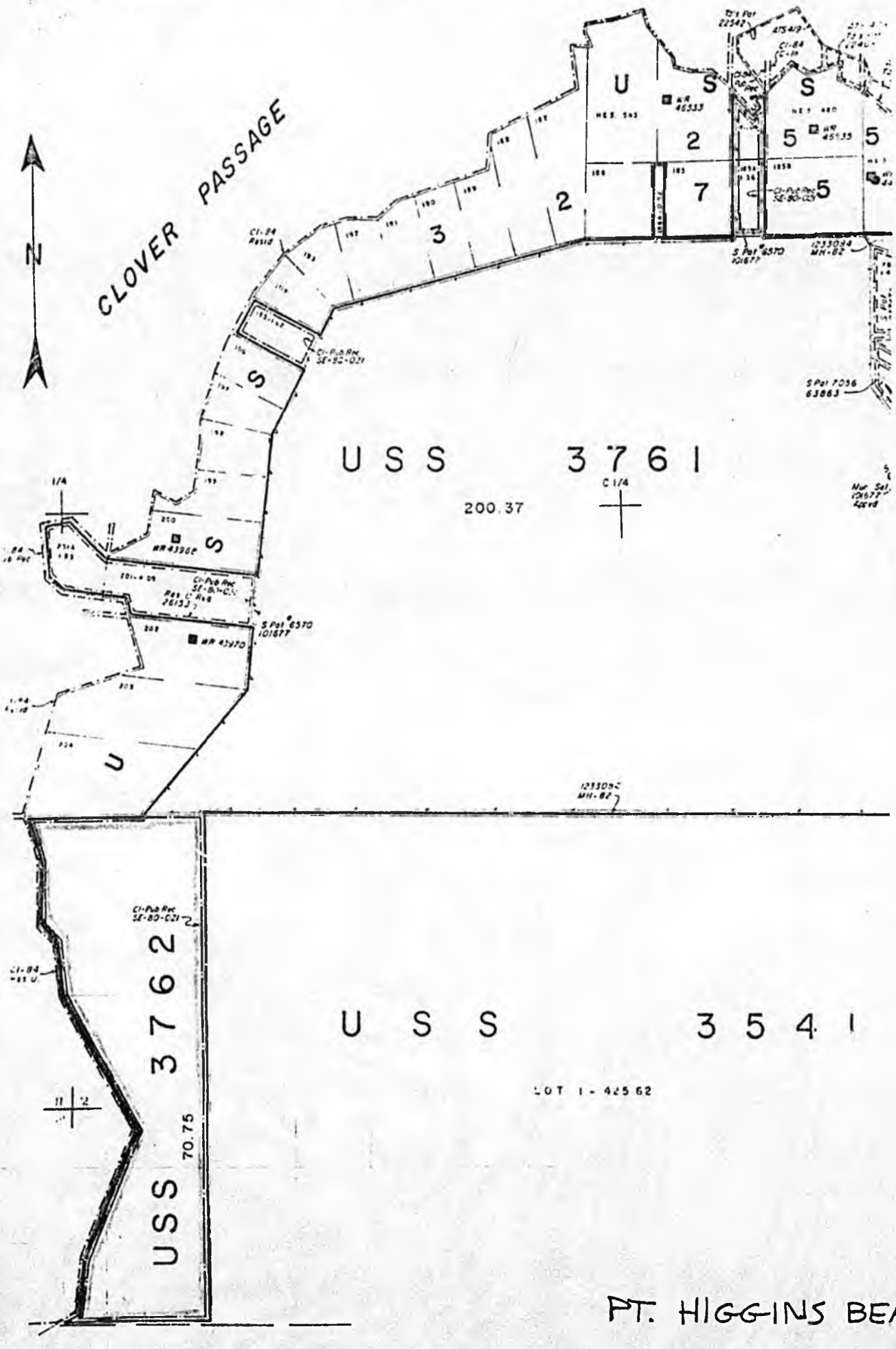
State owned land and tideland as described below:

Township 74 South, Range 89 East, Copper River Meridian

U.S. Survey 3762.

Pt. Higgins Beach

SHEET #1 T. 74 S. R. 89 E. C.R.M.



PT. HIGGINS BEACH

Point Higgins Beach

1) Access to Point Higgins Beach will be mostly by road, therefore tidelands are included, but not submerged lands. The beach is not protected from storms, but is already heavily used by local residents.

2) The proposed park would include 70.75 acres of uplands.

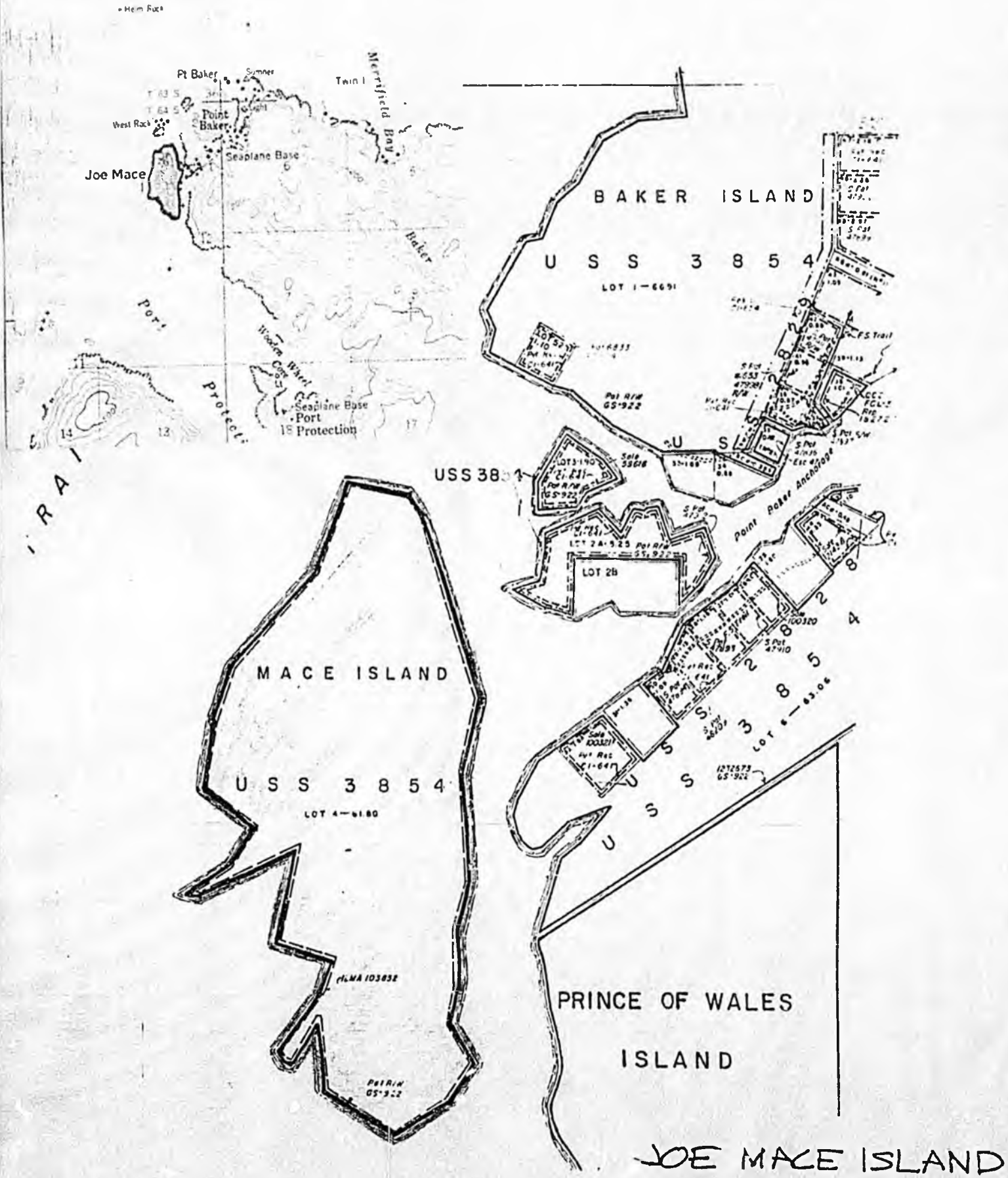
(16) Joe Mace Island

State owned land and tidelands as described below:

Township 64 South, Range 75 East, Copper River Meridian

Lot 4, U.S. Survey 3854.

Section 1
64S RANGE 75E OF THE COPPER RIVER MERIDIAN, ALASKA



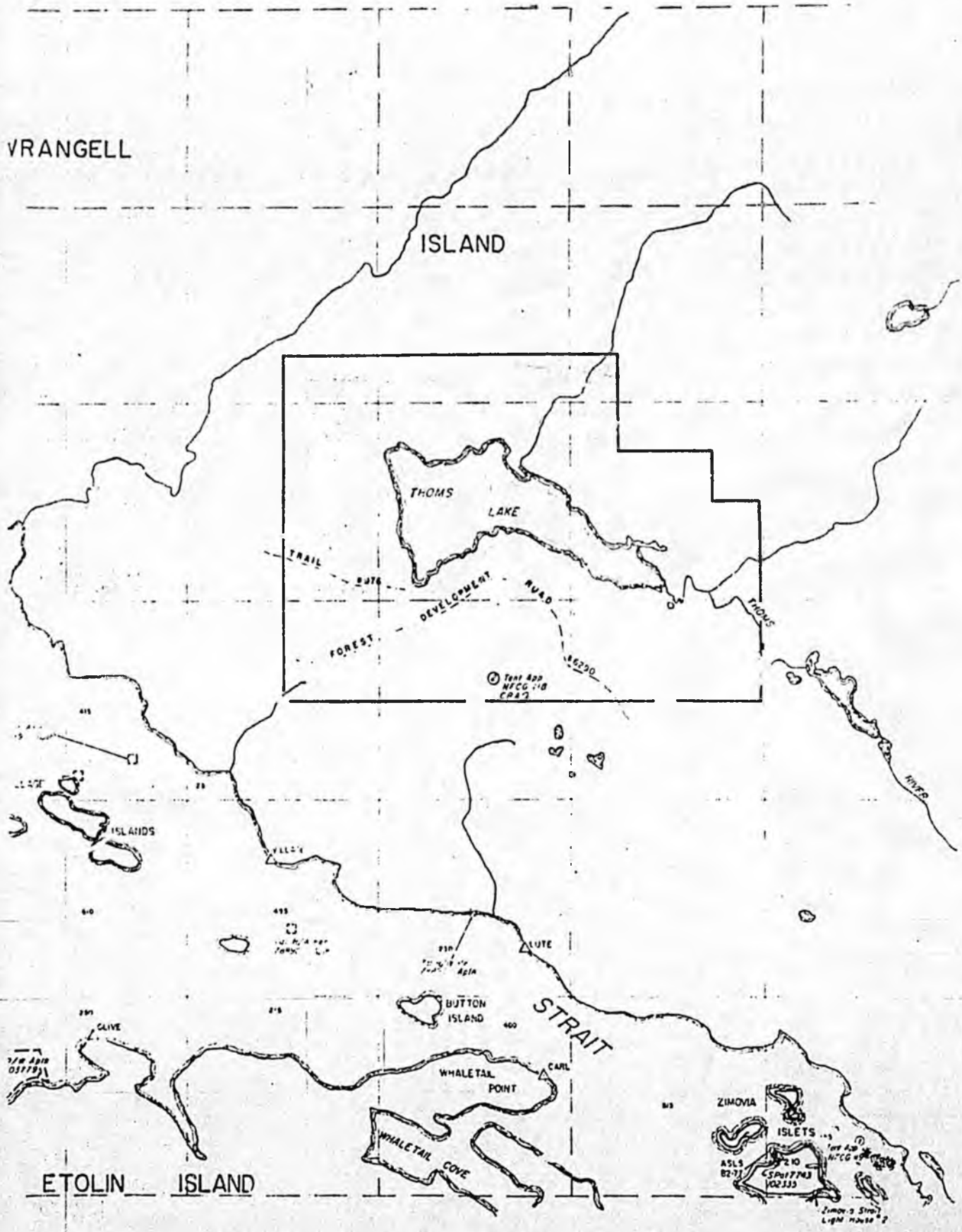
Joe Mace Island

(1) Should be subject to all valid existing rights.

(2) Parks already has management authority for this island by virtue of ILMA ADL 103852.

(3) This proposal includes 61.80 acres of land.

HIP 65S RANGE 85E OF THE COPPER RIVER MER.



THOMS LAKE

Thoms Lake

1) Thoms Lake was originally selected for community recreation, and the state has received Tentative Approval. While it is not directly on tidelands, the area is accessed from the tidelands or from Forest Development Road #6290 and Forest Trail #576 that run within the proposed park.

2) The total area is 2,520 acres.

(18) Thoms Place

Unsurveyed state owned land and waters as described below:

Township 65 South, Range 86 East, Copper River Meridian

Section 32: S½

Township 66 South, Range 86 East, Copper River Meridian

Section 4: SW¼, S½NW¼, NW¼NW¼, S½SE¼, NW¼SE¼
Section 5: All;
Section 8: NE¼;
Section 9: N½; SE¼.

Excluding all lands within ASLS 81-234.

Subject to all valid existing rights.

(17) Thoms Lake

Township 65 South, Range 85 East, Copper River Meridian

Section 9: S½SE¼;

Section 10: S½S½;

Section 11: SW¼SW¼;

Section 14: S½,S½NW¼, NW¼NW¼, SW¼NE¼;

Section 15: All;

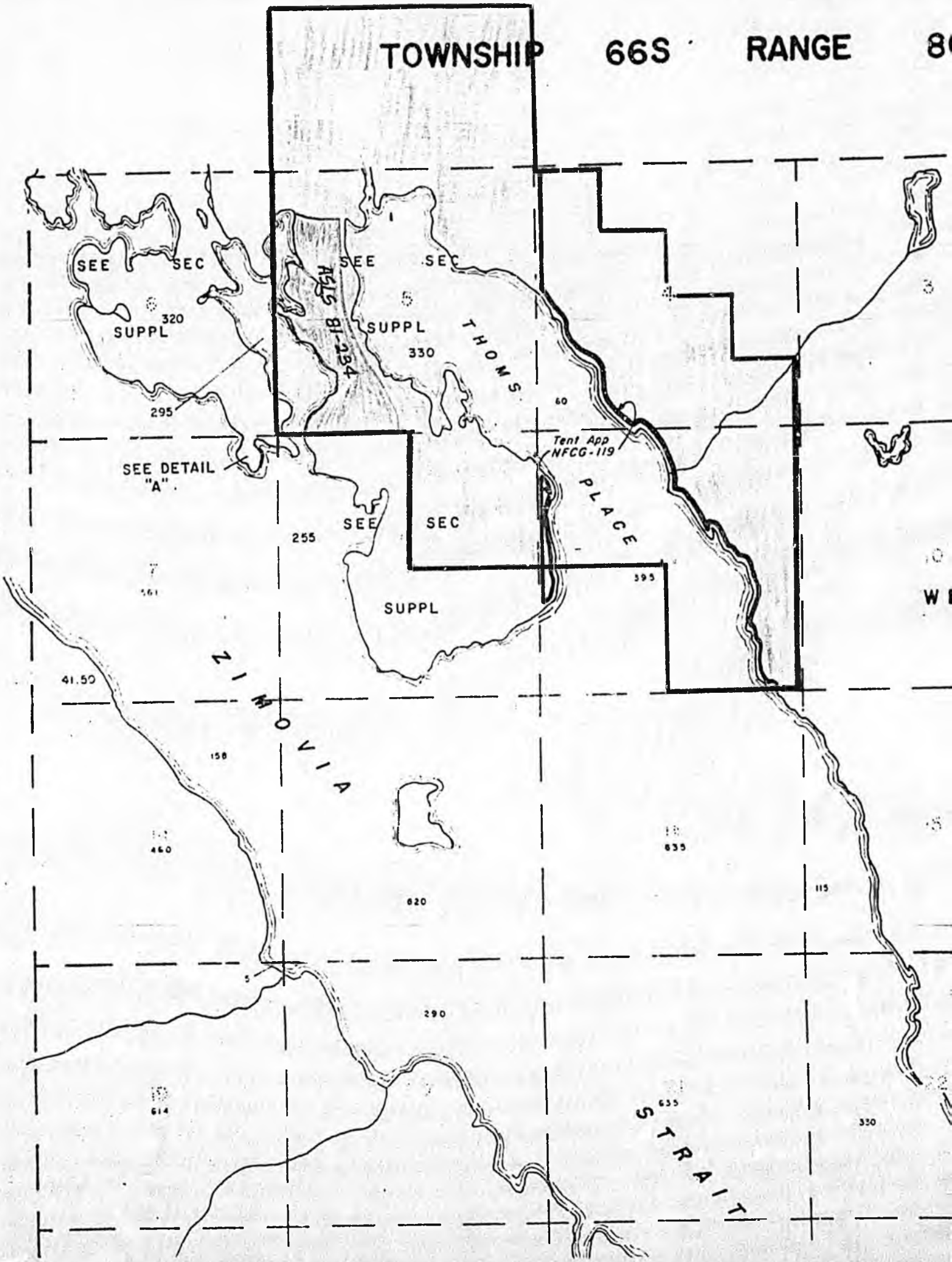
Section 16: E½;

Section 21: NE¼;

Section 22: N½;

Section 23: N½.

Subject to all valid existing rights.


TOWNSHIP 66S RANGE 8
SEE SEC
SUPPL
320
295
SEE SEC
SUPPL
330
ASLS 81-234
THOMS
60
Tent App
NFCG-119
PLACE
SEE DETAIL
"A"
SEE SEC
255
SUPPL
395
ZIMOVIA
41.50
158
460
620
635
115
290
614
635
330
STRAIT

Thoms Place

1. Area was originally selected for community development and community recreation and has been Tentatively Approved.

2. Tidelands and submerged lands are included within the inlet and tidelands along Zimovia Strait for consistant management of the Marine Park.

3. ASLS-81-234 is an existing subdivision along Zimovia Strait and is adjacent to and excluded from the proposed Marine Park.

4. Area is subject to valid existing rights.

5. Area totals approximately 1400 acres of uplands.

(19) Beecher Pass

Township 61 South, Range 79 East, Copper River Meridian

Section 1: Lots 5,6,7, and 8, NE¼SW¼

Section 10: Lots 1 and 2

Section 11: Lots 1,2,3,4,5,6,7,8,9,10, and 11.

Section 12: Lots 3,4,5,6,7,8,9,10, and 11.

Section 14: Lot 2

Section 15: Lot 2

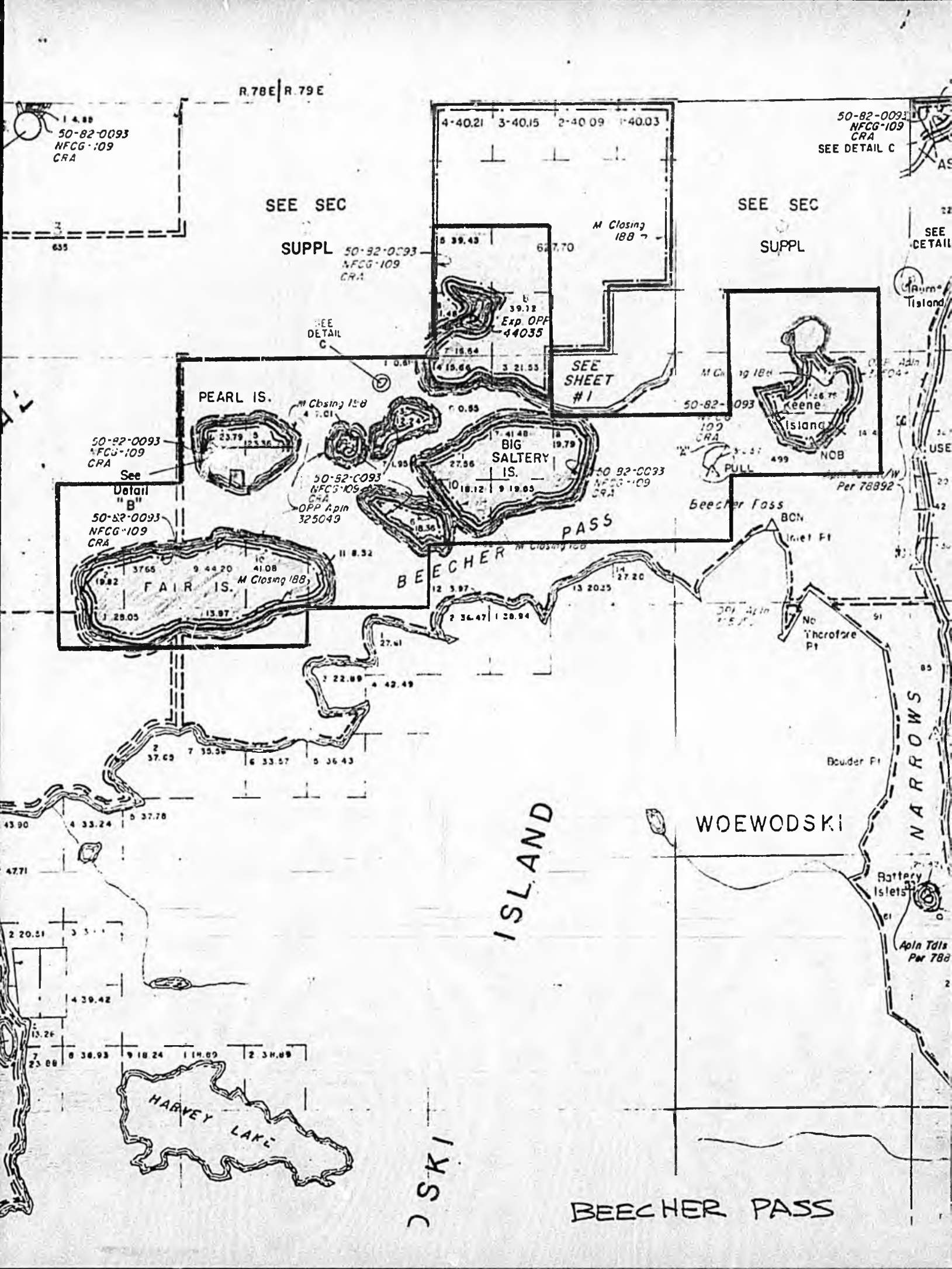
Township 61 South, Range 80 East, Copper River Meridian

Section 6: Lot 11

Section 7: Lots 1 and 2

Including all adjacent tidelands

Subject to valid existing rights and the adjudication of U.S. Forest Service Preferences as described in ADL 102336 and ADL 102843 and the reservation of those adjacent tidelands.


R.78E | R.79E
50-82-0093
NFCG-109
CRA
SEE SEC
SUPPL
SEE SEC
SUPPL
SEE DETAIL C
M Closing 188
Exp OPP 44035
SEE DETAIL C
SEE SHEET #1
PEARL IS.
M Closing 188
BIG SALTERY IS.
Keene Island
NOB
PULL
See Detail "B"
OPP Apln 325049
Beecher Pass
BCN
Inlet Pt
BEECHER PASS
FAIR IS.
M Closing 188
No Therefore Pt
Boulder Pt
NARROWS
WOEWODSKI
ISLAND
Battery Islets
Apln Tdls Per 788
HARVEY LAKE
BEECHER PASS

Beecher Pass

1. Tidelands were included for development of Marine Park facilities.

2. S½S½ of Section 2 was excluded because of existing subdivision and other Tracts within the subdivision.

3. Keene Island was added because it is a logical extension of a Marine Park and should not be used for settlement.

4. Area is subject to two preference right applications that will revert to Marine Park should the process terminate prior to issuing patent.

5. Area is subject to other valid existing rights such as easements, and offshore Prospecting Permits.

6. Land is Tentatively Approved and was selected for community development and recreation. Duncan Canal and Keene Channel Subdivision sales have taken place in the area.

7. Proposed acreage totals approximately 741.4[9] acres.

(20) Dall Bay

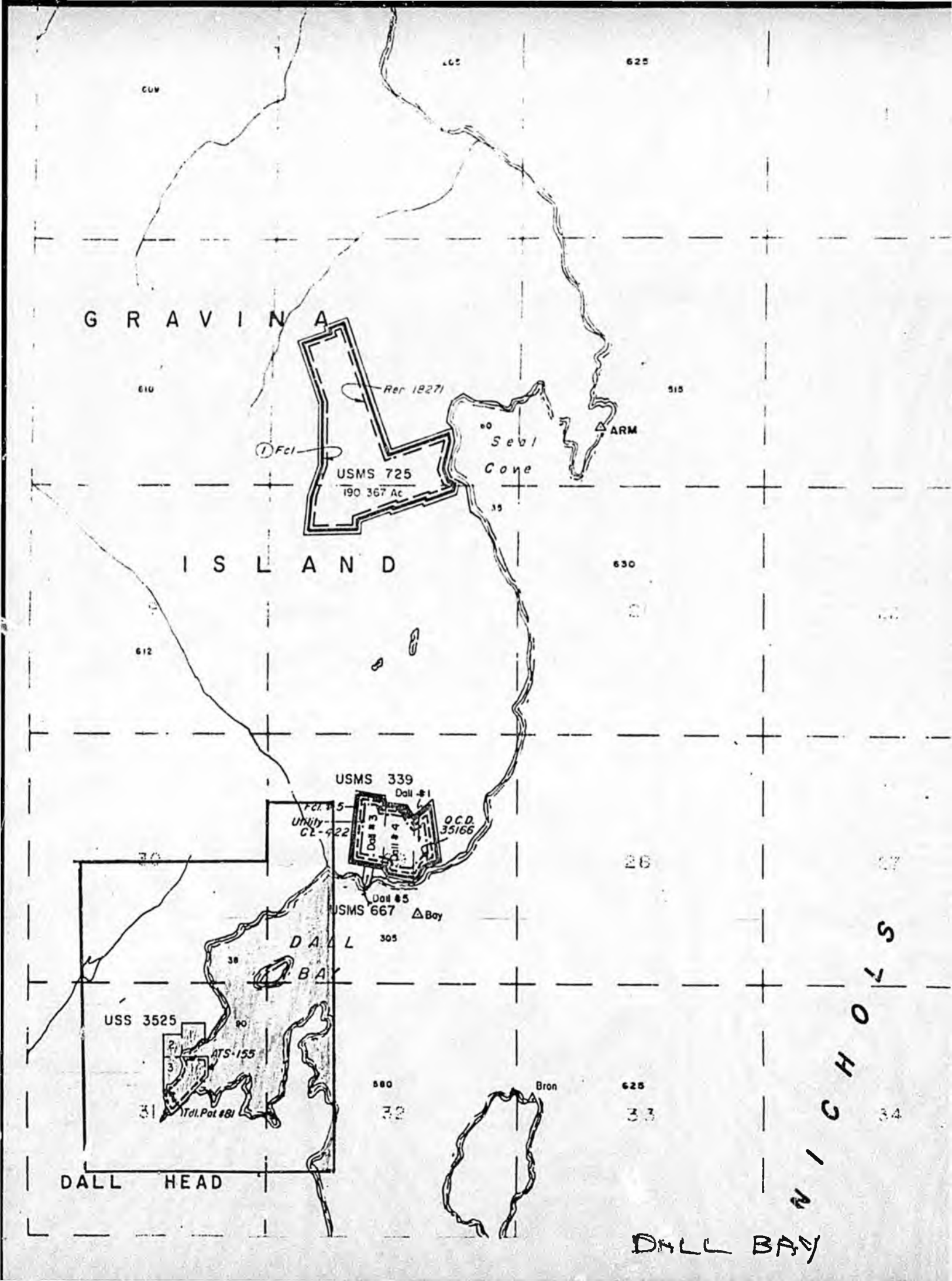
Unsurveyed State owned lands and waters as described below:

Township 77 South, Range 91 East, Copper River Meridian

Section 29: W½SW¼, SW¼NW¼;
Section 30: SE¼, E½SW¼;
Section 31: NE¼, N½SE¼, NE¼SW¼, E½NW¼;
Section 32: NW¼, N½SW¼.

Subject to valid existing rights including:

U.S.S. 3525 and A.T.S.-155.


GRAVINA
ISLAND
DALL HEAD
DALL BAY
NICHOLS
Rer 18271
Fcl
USMS 725
190 367 Ac
Seal Cove
ARM
USMS 339
Dall #1
Fcl #5
Utility
CL-922
O.C.D.
35166
Dall #5
USMS 667
Bay
USS 3525
ATS-155
Tel. Pot #81
Bron
DALL BAY

Dall Bay

(1) This state selection (NFCG-131) was nominated by Ketchikan Gateway Borough for possible future use for low density residential development. The expressed purpose of the selection was for development and expansion of an established community and for established community recreation.

(2) 4.21 acres of tide and submerged lands at the head of the bay are patented (ATS-155, appears to be an old cannery site of the New England Fish company). A cluster of patented homesites 14.17 acres in size lies adjacent to the tideland patent.

(3) Patented mining claims are located on the north shore at the entrance of the bay.

(4) The U.S. Coast Pilot cautions that Dall Bay requires local knowledge to enter.

(5) This proposal includes the entire state selection and encompasses approximately 850 acres of land.

(6) This selection has been approved by the U.S. Forest Service but has not been Tentatively Approved by BLM.

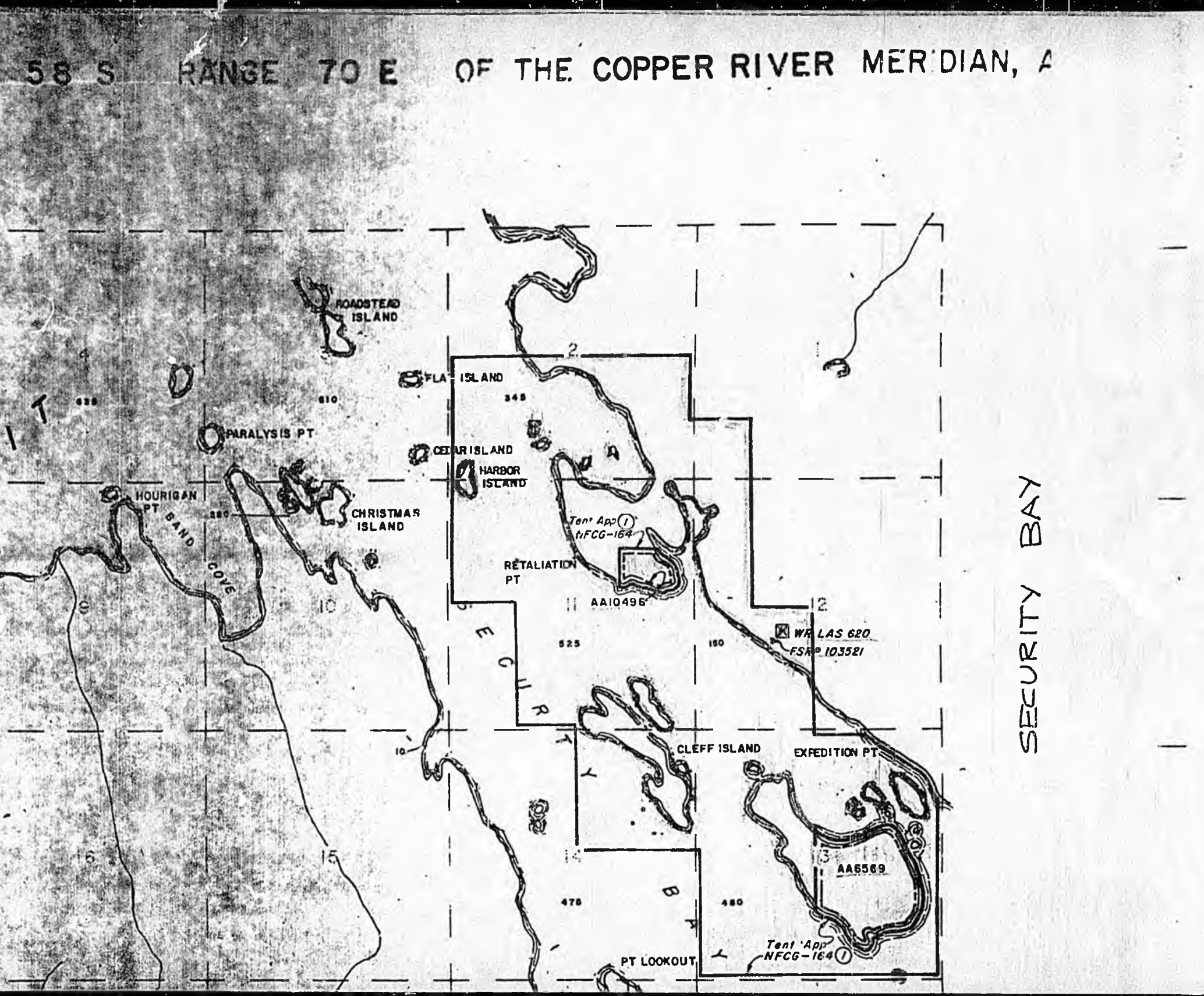
(21) Security Bay

Unsurveyed state owned lands and waters as described below:

Township 58 South, Range 70 East, Copper River Meridian

Section 1: SW¼SW¼
Section 2: S½
Section 11: N½, SE¼, E½SW¼
Section 12: W½W½, E½SW¼
Section 13: All of the unnamed islands.
Section 14: NE¼

Subject to all valid existing rights including regional Historic Place application AA-6569, Parcel A, and the right to adjudicate and grant Forest Service Preference 103521.


58 S RANGE 70 E OF THE COPPER RIVER MERIDIAN, A
ROADSTEAD ISLAND
FLA ISLAND
PARALYSIS PT
CEDAR ISLAND
HARBOR ISLAND
HOURIGAN PT
BAND COVE
CHRISTMAS ISLAND
Tent App (1) NFCG-164
RETALIATION PT
AA10496
WR LAS 620
FSA# 103521
SECURITY BAY
CLEFF ISLAND
EXPEDITION PT
AA6569
PT LOOKOUT
Tent App NFCG-164 (1)
625
610
345
220
525
150
475
480

Security Bay

(1) Proposed bill did not include E½SW¼ of Section 12. We added that part to encompass the entire Tentative Approval. Also, in Section 13 we received only "all of the unnamed islands."

(2) FSRP 103521 of Ernie Rodgers and allotment AA 6569 and Historic Site AA 10496 were reserved.

(3) Tidelands and submerged lands were included for park management purposes.

(4) Subject to valid existing rights.

(5) Selection was made for public and private recreation purposes.

(6) Selection contains approximately 500 acres.

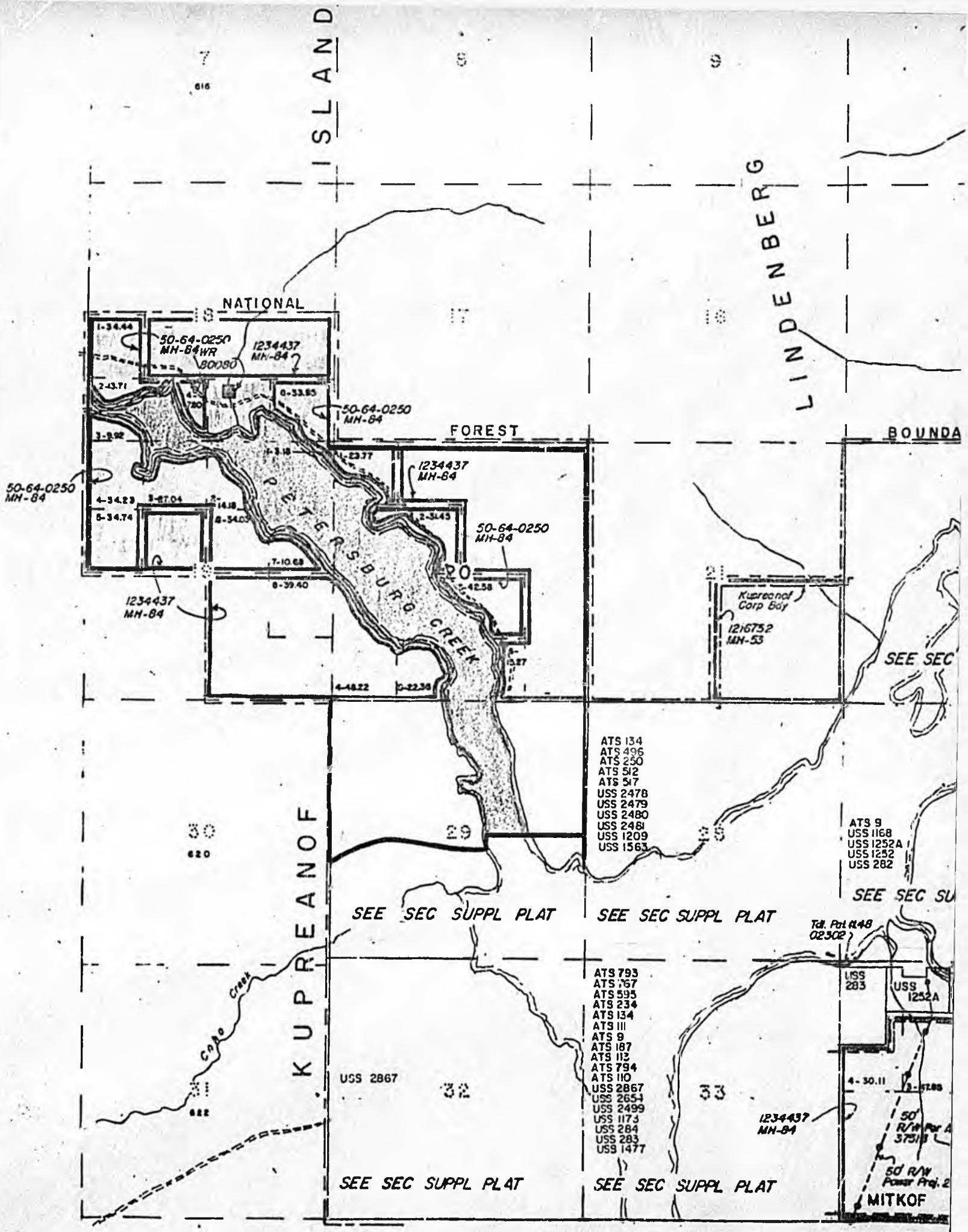
(22) Petersburg Creek

State owned lands and waters as described below:

Township 58 South, Range 79 East, Copper River Meridian

Section 18: S½;
Section 19: N½, SW¼;
Section 20: All;
Section 29: Tracts A and B and Blocks 1 and 2 of Petersburg Creek, Alaska Subdivision.

Subject to valid existing rights including Lot 5 of Section 18.


ISLAND
LINDENBERG
NATIONAL
FOREST
BOUNDA
50-64-0250 MH-84 WR 80090
1234437 MH-84
50-64-0250 MH-84
1234437 MH-84
50-64-0250 MH-84
50-64-0250 MH-84
1234437 MH-84
PETERSBURG CREEK
Kupreanof Corp Bdy
1216752 MH-53
SEE SEC
ATS 134
ATS 496
ATS 250
ATS 512
ATS 517
USS 2478
USS 2479
USS 2480
USS 2481
USS 1209
USS 1563
ATS 9
USS 1168
USS 1252A
USS 1252
USS 282
SEE SEC SU
SEE SEC SUPPL PLAT
SEE SEC SUPPL PLAT
Tdl. Pol. M48 023012
KUPREANOF
CABO CREEK
USS 2867
ATS 793
ATS 767
ATS 595
ATS 234
ATS 134
ATS 111
ATS 9
ATS 187
ATS 113
ATS 794
ATS 110
USS 2867
USS 2654
USS 2499
USS 1173
USS 284
USS 283
USS 1477
USS 283
USS 1252A
1234437 MH-84
50' R/W Power Proj. 2
MITKOF
SEE SEC SUPPL PLAT
SEE SEC SUPPL PLAT
PETERSBURG CREEK

Petersburg Creek

(1) The original purpose of the state selection was to produce revenue for support of the state mental health program. Legislation has since changed the designation to General Grant lands.

(2) The S½ of Section 29 and the N½ of Section 32 are not recommended for inclusion within the proposed park boundaries due to potential use conflicts with numerous private landowners along the shoreline and 2 privately owned tideland tracts. The state-owned lands in the S½ of Section 29 are classified Resource Management (Public Recreation Wildlife Habitat) while the N½ of Section 32 is classified Watershed. While not in park status it is unlikely that further development will take place here in the forseeable future.

(3) A land disposal was planned in Section 29 in the 1960's - the Petersburg Creek, Alaska Subdivision was surveyed for that purpose - however the disposal met with local opposition and was dropped. The area has traditionally been used for hunting, fishing and public recreation.

(4) This proposal includes approximately 1,360 acres of land.

(23) Cape Bingham

Unsurveyed state owned lands and waters as described below:

Township 43 South, Range 54 East, Copper River Meridian

Section 25: S½;
Section 35: W½, NE¼, N½SE¼;
Section 36: N½, N½SW¼, SE¼.

Township 43 South, Range 55 East, Copper River Meridian

Section 31: N½, N½SW¼, E½SE¼, NW¼SE¼;
Section 32: W½.

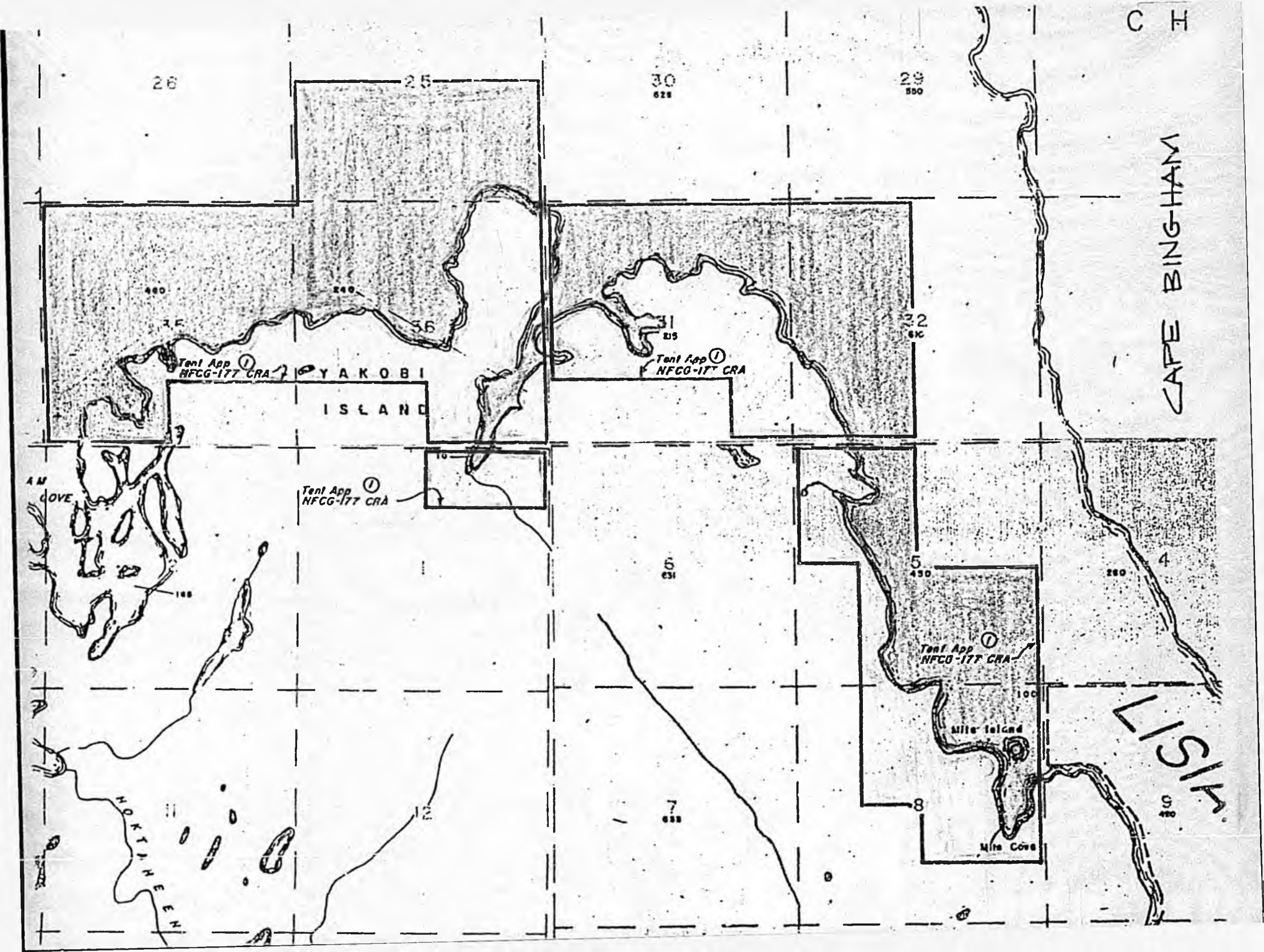
Township 44 South, Range 54 East, Copper River Meridian

Section 1: N½NE¼.

Township 44 South, Range 55 East, Copper River Meridian

Section 5: NW¼, SE¼, E½SW¼
Section 8: E½NW¼, NE¼, N½SE¼

Subject to all valid existing rights.



C H
CAPE BINGHAM
LISIA
YAKOBI
ISLAND
Tent App ① NFCG-177 CRA
Tent App ① NFCG-177 CRA
Tent App ① NFCG-177 CRA
Tent App ① NFCG-177 CRA
Mite Island
Mite Cove
HOKTAHEEN
26
25
30
29
31
32
36
6
5
4
7
8
9
11
12

Cape Bingham

(1) This state selection, on Yakobi Island, is adjacent the Chicagof-Yakobi Island Wilderness area.

(2) There is no private ownership in the selection boundaries.

(3) The purpose of the selection was: suitable for prospective recreational area.

(4) This proposal includes the entire state selection and encompasses 1,150 acres of land.

Traitors Cove (NFCG-144)

(1) The Traitors Cove state selection was made in 1977 for the purpose of remote, boat oriented private and public recreation.

(2) Margaret Bay, in the Traitors Cove selection, is the site of a 15 acre, U.S. Forest Service Administrative site, and approximately 21 acre log transfer site, standing log boom, and floating camp. The peak season population is approximately 40.

(3) Most of the state selection and surrounding area have been clearcut and he U.S.F.S. is actively logging on nearby lands. The state selection is subject to the terms and conditions of the longterm timber sale contract between L.P.K. and the U.S. Forest Service. The contract expires c June 30, 2004.

(4) The U.S. Coast Pilot cautions that Traitors Cove should be avoided by strangers as the strong tidal currents and rocks make navigation dangerous. Margaret Bay affords the only anchorage in the Cove. A public mooring buoy is located about 50 feet south of the log transfer site.

(5) This proposal includes the entire selection and encompasses approximately 347 acres of land. The legal description should be rewritten to correspond with the description in the TA document.

(6) The Southeast Region, Land & Water Management, recommends against establishing a marine park at Traitors Cove because of potential conflicts between logging activities and the boating public. Although undoubtedly the area already receives some recreational use, it does not appear to be a good idea to encourage expanded use of the area for recreation until logging activities and the Forest Service use of the area has ceased. A public mooring buoy is already available at that location.

We also question the desirability of the area as a park due to the extensive clearcuts visible from the water.

(7) To avoid potential disposal or Marine Park conflicts with the timber contract and to protect the area, the Southeast Region, Land and Water Management recommends the area be classified as Public Recreation Land until the long term timber contract expires in 2004.

(8) The Department of Natural Resources' official position recommends that Traitors Cove be deleted from the bill.

THE FOLLOWING DOCUMENT HAS NOT BEEN FILMED BUT IS AVAILABLE IN THE ORIGINAL FILE

Marine Recreation

Southeast & Southcentral Alaska



United States Department of Agriculture

PREPARED BY Forest Service

Alaska Region Leaflet Number 175



Alaska State Legislature

REPRESENTATIVE
BETTE CATO
DISTRICT 6
BOX 775
VALDEZ, ALASKA 99686
(907) 835-4569

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4858
(907) 586-2660

House of Representatives

COMMITTEES

CHAIRMAN
HOUSE TRANSPORTATION

MEMBER
HOUSE COMMUNITY AND
REGIONAL AFFAIRS

MEMORANDUM

January 16, 1985

TO: Representative Dick Shultz
Co-Chairman
House Resources Committee

FROM: Representative Bette Cato BC

SUBJECT: House Bill 58

Today I have introduced House Bill 58, "An Act relating to the fisheries business tax" which has been referred to the Resources Committee.

The purpose of this legislation is to provide an incentive to processors to upgrade the quality of their present facilities and equipment in order to enhance the quality or increase the quantity of Alaska's processed seafood. This would be done by directing the Department of Revenue to credit shore-based processors the state's portion (50%) of the fisheries business tax which must be used by the eligible processors for capital improvements.

The Department of Revenue would promulgate regulations for approving applications from the processors detailing their planned uses of the tax credit, which the Department would have 60 days to approve or disapprove. Further, the Department would prepare a report to the Legislature each regular legislative session describing what the credits were used for, and if possible, how employment and the processing capacity of the fisheries were improved.

The history of this bill is detailed in my request to the House Research Agency number 85-039. The members of the Committee would doubtless find this paper helpful in their deliberations.

The Department of Revenue has kindly made available to me mailing labels of all the processors names in the event that the Committee would like to contact them for possible testimony.

Attachments:
1.Sectional analysis of HB 58
2.Mailing labels of fisheries businesses
3.List of member organizations and the Board of the United Fishermen of Alaska

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

January 26, 1985

SECTIONAL ANALYSIS OF HB 58
"An Act relating to the fisheries business tax"

Section One: Amends existing fisheries business tax statutes to replace the word "cannery" with "fisheries business."

Section Two: Establishes a program allowing a seafood processing company to claim a credit on up to half of its fisheries business tax liability. The 50 percent cap will ensure that revenue sharing to local communities will not be affected by the tax credits. To qualify for a tax credit, a seafood processor must invest in capital expenditures related to a shore-based facility in Alaska. The credits are limited to five consecutive years, and must be initiated within the 1985-1989 tax years. Thus, the tax credit program will sunset by 1994. Credits for capital investments exceeding the 50 percent cap in a single tax year may be carried forward to a subsequent tax year within the five-year limit. Buyer's of seafood facilities for which a tax credit had been claimed will not qualify for credits on those particular capital improvements. The Department of Revenue is given authority to adopt regulations for administering the program and is directed to act on applications within 60 days of receipt.

This section also provides for an annual report to the legislature on the benefits and utilization of the tax credit program.

Section Three: Provides that the tax credits will not affect revenue sharing with local communities.

Section Four: Defines "capital expenditures."

Section Five: Repeals the tax credit program June 30, 1994.

ANALYSIS OF CS FOR HB 58 (Fisheries)

To: House Resources Committee Files
From: Janet Fries, Committee Aide
Date: (revised) 2/25/85

The differences between House Bill 58 and the Fisheries CS for HB 58 are as follows:

Page 1, Lines 25 and 26

Language has been added which more narrowly defines the scope of eligible capital expenditures under the tax credit program.

Page 2, Lines 15 and 16

Language has been added to prevent a company from receiving a tax credit for property purchased from another company with substantial common ownership. In the event a question arises as to what is "substantial" common ownership, the Department of Revenue will rule on this by regulation.

Page 3, Line 12

Language has been added which gives the Commissioner of Commerce and Economic Development the authority and responsibility of defining what capital expenditures are eligible for tax credits under the program.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 1-28-85

REQUEST
Bill/Resolution No: HB 58
Title: Fisheries Business Tax Credit

Sponsor: Cato & Grussendorf
Requestor: Special Committee on Fish.
Date of Request: January 18, 1985

FISCAL DETAIL
Agency Affected: Department of Revenue
Program Category Affected: Collection and Management
BRU, Program of Subprogram(s) Affected: Audit Division
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	2.0	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	3.0	-0-	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	5.0	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	5.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	5.0	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Please see attached.

Prepared By: Martin J. Richard
Division: Audit
Phone: 465-2320
Date: January 18, 1985

Approved by Commissioner: Bruce M. Miller
Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Analysis for HB 58

Travel $2.0 - Passage of HB 58 will require the Audit Division to draft regulations and conduct public hearings throughout the state. Our fare and per diem costs are estimated at $2,000 for travel to Ketchikan, Anchorage and Kodiak by one Audit Division employee.

Contractual Services $3.0 - Conducting public hearing requires the presence of a court reporter, and advertising in statewide newspapers. In addition, the bill will make it necessary for the Department to revise its tax forms to request additional information from processors, and prepare annual reports to the legislature. Programming and form design costs are included in this request.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: HB 58
Title: Relating to the Fisheries Business Tax
Sponsor: Cato and Grussendorf
Requestor: House Special Committee on Fisheries
Date of Request: January 18, 1985

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	-	-	-	-	-	-
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	(7000.0)	(7000.0)	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	-	-	-	-	-

POSITIONS:

	FULL-TIME	-	-	-	-	-	-
	PART-TIME	-	-	-	-	-	-
	TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page for analysis.

Prepared By: Robert W. Elliott (Robert W. Elliott)
Division: Research Section
Phone: 465-2173
Date: 1/23/85

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
__Requestor__
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE, HB 58
Attachment

Analysis for HB 58:

The above estimates are derived from the Revenue Sources January, 1985, projections for fisheries business taxes, and provide for tax credits effective in FY 86. The estimates reflect the maximum revenue loss the State would experience if all shore-based fisheries business tax returns applied for a 50 percent tax credit, and were subsequently approved by the department. It should be noted that although the fish processors would be the primary beneficiaries of the tax credit, there exists the possibility in certain cases where, if the processors are given a 50 percent credit and the remaining 50 percent is refunded to local governments per AS 43.75.130, the State could eventually not receive any revenues from those fisheries business taxes.

Estimates are duplicated for FY 87 and not shown beyond since price/catch projections are unknown.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 2-11-85

REQUEST
Bill/Resolution No: CSHB 58
Title: Fisheries Business Tax Credit

Sponsor: Cato, Grussendorf & Thompson
Requestor: Special Committee on Fish.
Date of Request: February 11, 1985

FISCAL DETAIL
Agency Affected: Department of Revenue
Program Category Affected: Collection and Management
BRU, Program of Subprogram(s) Affected:
Audit Division
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	2.0	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	3.0	-0-	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	5.0	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	5.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	5.0	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Please see attached.

Prepared By: Martin Richard
Division: Audit
Phone: 465-2320
Date: February 11, 1985

Approved by Commissioner: Bruce M Botelho
Agency:
Date: 2/22/85

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Analysis for CSHB 58

Travel $2.0 - Passage of SB 11 will require the Audit Division to draft regulations and conduct public hearings throughout the state. Our fare and per diem costs are estimated at $2,000 for travel to Ketchikan, Anchorage and Kodiak by one Audit Division employee.

Contractual Services $3.0 - Conducting public hearing requires the presence of a court reporter, and advertising in statewide newspapers. In addition, the bill will make it necessary for the Department to revise its tax forms to request additional information from processors, and prepare annual reports to the legislature. Programming and forms design costs are included in this request.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: CS for HB 58
Title: Relating to the Fisheries Business Tax
Sponsor: Cato and Grussendorf
Requestor: House Resources Committee
Date of Request: February 11, 1985

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	-	-	-	-	-	-
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	(7000.0)	(7000.0)	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	-	-	-	-	-

POSITIONS:

	FULL-TIME	-	-	-	-	-	-
	PART-TIME	-	-	-	-	-	-
	TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: David Tonkovich
Division: Research Section
Phone: 465-2173
Date: 2/19/85

Approved by Commissioner: Bruce M Botelho
Date: 2/22/85
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE, HB 58
Attachment

Analysis for HB 58:

The above estimates are derived from the Revenue Sources January, 1985, projections for fisheries business taxes, and provide for tax credits effective in FY 86. The estimates reflect the maximum revenue loss the State would experience if all shore-based fisheries business tax returns applied for a 50 percent tax credit, and were subsequently approved by the department. It should be noted that although the fish processors would be the primary beneficiaries of the tax credit, there exists the possibility in certain cases where, if the processors are given a 50 percent credit and the remaining 50 percent is refunded to local governments per AS 43.75.130, the State could eventually not receive any revenues from those fisheries business taxes.

Estimates are duplicated for FY 87 and not shown beyond since price/catch projections are unknown.

(File No. 5128), 627 P.2d 205 (1981).

The purpose of excluding "insurance businesses" from the coverage of AS 43.70.030(a) by virtue of the definition in paragraph (1) is apparently to avoid taxing these businesses twice, since insurers are subject to a premiums tax imposed by AS 21.09.210. Northern Adjusters, Inc. v. Department of Revenue, Sup. Ct. Op. No. 2332 (File No. 5128), 627 P.2d 205 (1981).

The term "insurance businesses" does not include adjusters. Northern Adjusters, Inc. v. Department of Revenue, Sup. Ct. Op. No. 2332 (File No. 5128), 627 P.2d 205 (1981).

Because adjusters are not "insurers" subject to the premiums tax, they should not be viewed as "insurance businesses" exempt from the general license tax. Northern Adjusters, Inc. v. Department of Revenue, Sup. Ct. Op. No. 2332 (File No. 5128), 627 P.2d 205 (1981).

Applied in Ketchikan Spruce Mills v. Dewey, 17 Alaska 336 (1957).

Sec. 43.70.120. Short title. This chapter may be cited as the Alaska Business License Act. (§ 1 ch 43 SLA 1949)

Chapter 75. Fisheries Taxes.

Article
1. Taxes and Licenses (§§ 43.75.010 — 43.75.055)
2. Taking of Fisheries Products Which Are Sold Outside Taxing Jurisdiction (§§ 43.75.100 — 43.75.120)
3. General Provisions (§§ 43.75.130 — 43.75.140)

Opinions of attorney general. — A native business enterprise incorporated under the Indian Reorganization Act of 1934, 48 Stat. 987, 25 U.S.C.A. § 476 et seq., whether it be a cooperative store or a cannery, doing business outside of an Indian reservation is subject to the Alaska Business License Act, AS 43.70, and this chapter, even though those businesses may be operated by Alaska Natives who have incorporated under the Indian Reorganization Act of 1934. Conversely, such native business enterprises doing business within a reservation are not subject to these state taxes. 1978 Op. Att'y Gen., No. 16.

NOTES TO DECISIONS

Cited in Northern Adjusters, Inc. v. Department of Revenue, Sup. Ct. Op. No. 2332 (File No. 5128), 627 P.2d 205 (1981).

Article 1. Taxes and Licenses.

Section
11. Fisheries business license
15. Fisheries business tax
17. Exclusion from fisheries business tax
20. Application for license
30. Filing return and payment of tax
55. Security for collection of taxes

NOTES TO DECISIONS

State license tax on salmon canneries with its revenue sharing provision is not different in kind from general gross receipts tax of Alaska Business License Act. — See Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1755 (File No. 3365), 585 P.2d 878 (1978).

There is no general prohibition against like municipal and state taxes. Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1755 (File No. 3365), 585 P.2d 878 (1978).

Collateral references. — 35 Am. Jur. 2d, Fish and Game, § 45. 71 Am. Jur. 2d, State and Local Taxation, §§ 392-401.

36A C.J.S., Fish, § 36.

Constitutional exemption from taxation as subject to legislative regulation respecting conditions of its assertion, 4 ALR2d 744.

Power of legislature to remit, release, or compromise tax claim, 28 ALR2d 1425.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 ALR2d 1350.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 ALR2d 1031.

Financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax, 65 ALR2d 550.

Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery, 80 ALR2d 1310.

What constitutes manufacturing and who is a manufacturer under tax laws, 17 ALR3d 7.

Validity and construction of state statute making successor corporation liable for taxes of predecessor, 65 ALR3d 1181.

Sec. 43.75.010. Fisheries business licenses. [Repealed, § 13 ch 79 SLA 1979. For current law, see AS 43.75.011.]

NOTES TO DECISIONS

State license tax on salmon canneries with its revenue sharing provision is not different in kind from general gross receipts tax of Alaska Business License Act. — See Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1755 (File No. 3365), 585 P.2d 878 (1978).

There is no general prohibition against like municipal and state taxes. Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1755 (File No. 3365), 585 P.2d 878 (1978).

Sec. 43.75.011. Fisheries business license. A person engaging or attempting to engage in a fisheries business shall first apply for and obtain a license as provided in AS 43.75.020. (§ 3 ch 79 SLA 1979)

Cross references. — For legislative findings and purpose relating to AS 43.75, see §§ 1 and 2, ch. 79, SLA 1979 in the Temporary and Special Acts.

Sec. 43.75.015. Fisheries business tax. (a) A person engaged in a fisheries business is liable for and shall pay the tax levied by this

section on the value of each of the following fisheries resources processed during the year at the rate set out after each:

(1) salmon canned at a shore-based cannery — four and one half per cent;

(2) salmon processed by a shore-based fisheries business, except salmon for which the tax is due under (1) of this subsection, and all other fisheries resources processed by a shore-based fisheries business — three per cent;

(3) fisheries resources processed by a floating fisheries business — five per cent.

(b) Instead of the taxes levied by (a) of this section, a person who processes a developing commercial fish species is liable for and shall pay a tax equal to

(1) one percent of the value of the developing commercial fish species processed by a shore-based fisheries business during the year; and

(2) three percent of the value of the developing commercial fish species processed by a floating fisheries business during the year.

(c) A person engaging or attempting to engage in a fisheries business who first actually and physically processes the fishery resource, or a person who purchases a fishery resource that is frozen from a person excluded by AS 43.75.017 from liability for the tax, is liable for and shall pay to the department the entire tax imposed by this section. In determining this tax liability, the person may deduct from the value of the fishery resources processed the value of fishery resources that are canned or processed for other fisheries businesses. A person taking the deduction authorized by this subsection shall report all information relating to the deduction in accordance with regulations issued by the department. (§ 3 ch 79 SLA 1979; am §§ 5, 6 ch 117 SLA 1981)

Effect of amendments. — The 1981 amendment, substituted "who processes" for "engaged in a fishery business which includes processing" preceding "a developing commercial fish" in the introductory language of subsection (b), and in subsection (c), added "or a person who purchases a fishery resource that is frozen from a person excluded by AS 43.75.017 from liability for the tax" following "processes the fishery resource" in the first sentence, deleted "not" preceding "deduct" in the second sentence and substituted the present third sentence for "but shall include that value as part of the value of the fishery resources processed."

NOTES TO DECISIONS

A tax on the business of catching and canning salmon is not a property tax. Pacific Am. Fisheries v. Territory of Alaska, 2 F.2d 9 (9th Cir. 1924), aff'd, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270 (1925).

"Canning" is activity of salmon cannery which is taxed. — Under former AS 43.75.010, the salmon cannery activity which was taxed is that of "canning," whether the raw fish were purchased or otherwise obtained. Arctic Maid v. Territory of Alaska, 277 F.2d 120 (9th Cir. 1960), rev'd on other grounds, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

No discrimination in favor of local canners against freezer ships under prior law. — See Alaska v. Arctic Maid, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

Cold storages and other fish processors. — For cases construing former la" requiring licenses for cold storages an' other fish processors, see Territory of Alaska v. Arctic Maid, 16 Alaska 126, 140 F. Supp. 190 (D. Alaska 1956), aff'd. 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961); State v. Wakefield Fisheries, Inc., Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972); State v. Reefer King Co., Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

For case discussing priority of claims for license taxes under prior law in a bankruptcy proceeding, see In re King Salmon Fisheries Co., 7 Alaska 97 (1923).

Constitutionality of former provisions taxing salmon canneries on basis of number of cases packed. — See Territory of Alaska v. Pacific Am. Fisheries, 7 Alaska 160, aff'd, 2 F.2d 9 (9th Cir. 1924), aff'd, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270 (1925).

Sec. 43.75.017. Exclusion from fisheries business tax. A person is not liable for the fisheries business tax under AS 43.75.015 when the fishery resource is frozen aboard a fishing vessel if

(1) the vessel is operated as a commercial fishing vessel under a valid commercial fishing license;

(2) the fishery resource is not processed beyond heading, gutt ng or cleaning, freezing and glazing;

(3) the fishery resource was caught by the vessel; and

(4) the fishery resource is sold by the person claiming an exclusion from the tax to a fisheries business licensed under this chapter. (§ 7 ch 117 SLA 1981)

Sec. 43.75.020. Application for license. (a) Application for a license shall be filed with the department and accompanied by an initial fee of $25. A separate initial fee is required for each plant specified in the appl.cation covered by the license. The application shall contain the name of the applicant, the line of business to be licensed, place of business, and other facts which the department prescribes. The applicant shall state that the applicant agrees to pay the license tax, and that the applicant will make a return and pay the tax at the time provided by law.

(b) Upon receipt of the application in proper form accompanied by the initial fee the department shall issue the license. (§ 2 ch 82 SLA 1949; am § 93 ch 59 SLA 1982)

Effect of amendments. — The 1982 amendment deleted "as of the date the application is filed or mailed, and the applicant may carry on the business from the date the application was actually mailed" following "the license" in subsection (b), and, made other, minor changes.

Sec. 43.75.030. Filing return and payment of tax. (a) A person subject to the tax shall file a return stating the value of fisheries resources processed during the license year, computed as required by this chapter, and such other information as the department prescribes by regulation. The return shall show the license number and shall be signed by the taxpayer or an authorized agent, under penalty of perjury. If a receiver, trustee, or assign is operating the property or busi-

ness, that person shall file the return for the person. A tax due on the basis of such a return shall be collected in the same manner as if collected from the person of whose business the receiver, trustee, or assign has custody and control.

(b) The return shall be made on the basis of the calendar year to the department at Juneau before April 1 after the close of the calendar year.

(c) The department may adopt regulations for the granting of a reasonable extension of time for filing and may grant an extension of time for filing.

(d) The tax shall be paid before April 1 after the close of the calendar year.

(e) Every person engaging or attempting to engage in a business for which a license is required under this chapter shall keep records, make statements under oath, file returns, and comply with all regulations which the commissioner of revenue may adopt.

(f) When the department considers it is necessary, it may require a person, by notice served upon the person, to file a return, make such statements under oath, or keep and display to it such records as it considers sufficient to show the tax for which the person is liable. If a person fails to file a return as prescribed by law or by regulation, or makes, wilfully or otherwise, a false or fraudulent return, the department shall make the return from the information which it can obtain. A return made by the department is prima facie good and sufficient for all legal purposes. (§ 3 ch 82 SLA 1949; am §§ 2, 3 ch 146 SLA 1962; am §§ 5, 6 ch 79 SLA 1979)

Effect of amendments. — The 1979 amendment substituted "fisheries resources" for "raw fisheries products" in the first sentence of subsection (a), deleted "AS 43.75.010 — 43.75.050 of" preceding "this chapter" in the first sentence of subsection (a) and in subsection (e), deleted "such" preceding "records," preceding "statements," and preceding "returns" in subsection (e), and substituted "all regulations which" for "such regulations as" in subsection (e).

NOTES TO DECISIONS

Applied in Schlothan v. Territory of Alaska, 276 F.2d 806 (9th Cir.), cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

Sec. 43.75.050. Violations and penalties. [Repealed, § 4 ch 94 SLA 1976; § 3 ch 166 SLA 1976; §§ 45, 46 ch 113 SLA 1980. For current law, see AS 43.05.220 and 43.05.290.]

Sec. 43.75.055. Security for collection of taxes. Each applicant for a license under this chapter shall, in or with the application, state under oath the amount of each of the products which the applicant expects to produce during the license year. The applicant shall further state the extent of lienable real property owned by the applicant in the

state against which the tax may be collected and other information with respect to description, location and value of the property which the department prescribes. If the lienable value of the property is not equal to three times the amount of the tax for which the applicant will probably be liable under this section, the department may not issue the license until the applicant files with the department a surety bond approved by the attorney general in a penal sum equal to twice the probable amount of the tax for which the applicant will be liable, conditioned upon payment of the tax in full when due, with interest if not paid before delinquency. However, if the applicant purchases salmon for export from Alaska in the round, the amount of the bond is $50,000 unless the applicant is the owner of lienable real property in the state of a value of at least $50,000, and the bond must be conditioned upon payment to the fisherman of the full purchase price for the salmon and the payment of the tax in full when due. The department may waive the bond requirement if the applicant posts other security in the form of collateral acceptable to the department or prepays the estimated tax. (§ 4 ch 84 SLA 1967; am § 8 ch 79 SLA 1979)

Effect of amendments. — The 1979 amendment added the present fourth sentence and added "or prepays the estimated tax" to the end of the present fifth sentence.

Secs. 43.75.060 — 43.75.095. Cold storage and other fish processors [Repealed, § 13 ch 79 SLA 1979.]

Article 2. Taking of Fisheries Products Which Are Sold Outside Taxing Jurisdiction.

Section
100. Tax imposed on taking of fishery resource
110. Duty of taxpayer and payment of tax

Collateral references. — 35 Am. Jur. 2d. Fish and Game. § 45; 71 Am. Jur. 2d. State and Local Taxation. §§ 392-401.

36A C.J.S., Fish. § 36.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase. 4 ALR2d 244.

Loading or unloading interstate freight in performance of obligation resting upon one other than interstate carrier as interstate commerce as regards local taxation. 10 ALR2d 651.

Property destined for removal from state as subject to taxation therein. 11 ALR2d 938.

Sec. 43.75.100. Tax imposed on taking of fishery resource. (a) A person taking, purchasing, or otherwise acquiring a fishery resource covered by this chapter which has not been subject to the tax imposed

in AS 43.75.015 is subject to the tax levied in AS 43.75.015 on the value of the fishery resource if the person

(1) transports the fishery resource to a point outside the taxing jurisdiction of the state for subsequent processing or sale outside the taxing jurisdiction of the state;

(2) sells the fishery resource outside the taxing jurisdiction of the state; or

(3) has the fishery resource processed by a fisheries business in the state.

(b) The rate of tax that shall be paid by a person whose liability for the tax is established by this section is the rate of tax that would have been due under AS 43.75.015 if the fisheries business that first actually and physically processed the fish had been liable to pay the tax. (§ 1 ch 190 SLA 1959; am § 4 ch 79 SLA 1979; am §§ 8, 9 ch 117 SLA 1981)

Effect of amendments. — The 1979 amendment rewrote this section.

The 1981 amendment deleted "sold" following "fishery resource" in the introductory language of subsection (a), deleted "to a fisheries business" in paragraphs (1) and (2) of subsection (a), deleted "or" at the end of paragraph (1) and added "or" at the end of paragraph (2) of subsection (a) and added paragraph (3) of that subsection. The amendment also rewrote subsection (b).

Sec. 43.75.110. Duty of taxpayer and payment of tax. A person subject to taxes under AS 43.75.100 shall make a return stating the value of fisheries resources taken, purchased, or otherwise acquired during the license year for sale to fisheries businesses outside of the taxing jurisdiction of the state computed as required by AS 43.75.100, and other information to carry out the provisions of AS 43.75.100 as may be prescribed by the department. The return shall contain the license number and shall be signed by the taxpayer or an authorized agent, under penalty of perjury. If a receiver, trustee, or assign is operating the property or business, that person shall make the return for the person. A tax due on the basis of such return shall be collected in the same manner as if collected from the person of whose business the receiver, trustee, or assign has custody and control. The requirements for time and place of payment of tax, and the obligation to keep records and make the records available to the commissioner of revenue are the same as those prescribed in AS 43.75.011 — 43.75.050. (§ 2 ch 190 SLA 1959; am § 9 ch 79 SLA 1979)

Effect of amendments. — The 1979 amendment substituted "fisheries resources taken, purchased, or otherwise acquired" for "raw fisheries products taken" and "fisheries businesses" for "freezer ships, floating cold storages, or floating canneries" in the first sentence and substituted "AS 43.75.011 — 43.75.050" for "the business license tax law for salmon canneries" at the end of the fifth sentence.

Sec. 43.75.120. Violations and penalties. [Repealed, § 46 ch 113 SLA 1980.]

Article 3. General Provisions.

Section
130. Refund to local governments
140. Definitions

Sec. 43.75.130. Refund to local governments. The commissioner of revenue shall pay

(1) to each municipality unified under AS 29.68.240 — 29.68.440, and to each city located in the unorganized borough, 50 percent of the amount of tax revenue collected in the municipality from taxes levied by this chapter;

(2) to each city located within a borough, 25 percent of the amount of tax revenue collected in the city from taxes levied by this chapter; and

(3) to each borough

(A) 50 percent of the amount of tax revenue collected in the area of the borough outside cities from taxes levied by this chapter; and

(B) 25 percent of the amount of tax revenue collected in cities located within the borough from taxes levied by this chapter. (§ 6 ch 155 SLA 1962; am § 75 ch 69 SLA 1970; am § 10 ch 218 SLA 1976; am § 11 ch 79 SLA 1979; am § 10 ch 117 SLA 1981)

Effect of amendments. — The 1979 amendment rewrote this section.

The 1981 amendment substituted "50 percent" for "20 percent" in paragraphs (1) and (3)(A) and substituted "25 percent" for "10 percent" in paragraphs (2) and (3)(B).

NOTES TO DECISIONS

State license tax on salmon canneries with its revenue sharing provision is not different in kind from general gross receipts tax of Alaska Business License Act. — See Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1755 (File No. 3365), 585 P.2d 878 (1978).

Sec. 43.75.135. Additional refund to boroughs and cities. [Repealed, § 13 ch 79 SLA 1979.]

Sec. 43.75.136. Appropriations to Commercial Fishing and Agriculture Bank. [Repealed, § 20 ch 117 SLA 1981.]

Sec. 43.75.140. Definitions. In this chapter

(1) "department" means the Department of Revenue;

(2) "developing commercial fish species" means those species of fish and shellfish annually designated by the commissioner of fish and game under AS 16.05.050(12);

(3) "fisheries business" means a person who engages in processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants;

(4) "fishery resource" means fin fish, shellfish and fish by-products, including but not limited to salmon, halibut, herring, flounder, crab, clam, cod, shrimp, and pollock;

(5) "floating fisheries business" means a fisheries business which is not a shore-based fisheries business; the term includes, but is not limited to, a shore-based fisheries business as defined in (6)(B) of this section when it is removed from the state;

(6) "shore-based fisheries business" means a fisheries business

(A) operated from a facility which is permanently attached to the land; or

(B) operated from a facility which remains in the same location in the state for the entire tax year;

(7) "taking" means pursuing, fishing, capturing, or harvesting a fisheries resource in any manner;

(8) "value" means the actual price paid for the fisheries resource by the fisheries business, including indirect consideration such as fuel, supplies, or gear, whether paid at the time of purchase of the fisheries resource or tendered as a deferred or delayed payment, except that "value" means the market value of the fishery resource if the taking of the fishery resource is done in company-owned or company-subsidized boats operated by employees of the fisheries business or in boats which are operated under lease or other arrangement. (§ 3 ch 70 SLA 1979; am § 46 ch 94 SLA 1980; am § 46 ch 113 SLA 1980; am §§ 11, 12 ch 117 SLA 1981)

Revisor's notes. — Reorganized in 1983 to alphabetize the defined terms.

Effect of amendments. — The first and second 1980 amendments both repealed the definition of "year".

The 1981 amendment added "the taking of" preceding "the fishery resource" and substituted "done" for "procured" preceding "in company-owned" in the definition of "value". The amendment also added the definition of "taking".

Chapter 76. Salmon Enhancement Tax.

Section

10. Three percent salmon enhancement tax
11. Two percent salmon enhancement tax
15. Election to approve or terminate salmon enhancement tax
20. Termination of salmon enhancement tax
25. Collection of tax and disposition of proceeds
28. Liability for tax on salmon shipped from state
30. Accounting of financing received as a result of the salmon enhancement tax
40. Definition

Editor's notes. — For findings and purpose of enacting legislation, see § 1, ch. 154, SLA 1980, in the Temporary and Special Acts.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 15 ,1984

MEMORANDUM

TO: Representative Bette Cato

FROM: Sharman Haley
Legislative Analyst

RE: Legislative History of the Raw Fish Tax
Research Request 85-039

The raw fish tax, AS 43.75.010-.140, dates from statehood. The law provides for a tax on raw fish purchases by canneries, cold storages, and other processors. As of 1978, the statute levied a tax of from one to four percent of the purchase price depending on the specific fishery resource and the type of processing facility. Fishermen selling to floating processors outside State jurisdiction were also subject to the tax. Twenty percent of the tax revenues were refunded to the borough and/or first class city in which the facility was located. As you requested, a five-year history of bills affecting the raw fish tax is presented in this memorandum.

1979-1980

Thirteen bills amending the raw fish tax statutes were introduced during the Eleventh Legislature. House Bill 571 and SB 448, identical bills sponsored by Representative Hayes and Senator Kelly respectively, were omnibus tax relief bills suspending the raw fish tax as well as a host of other taxes. These bills saw little legislative action. House Bill 340, introduced by Representative Gardiner, also saw little action. The bill would have tied the reporting and enforcement of regional aquaculture assessments to processor licensing under the raw fish tax statutes. House Bill 227 would have eliminated the distinction between floating and shore-based cold storages, thereby reducing the tax rate on the floating facilities from four percent to one percent. This proposal by Representative Osterback did not move from the House Resources Committee.

House Bill 306, sponsored by the Governor, was a thorough overhaul of the raw fish tax statute. The bill:

- imposed a uniform six percent tax on all processors;
- increased revenue sharing with the local government unit to 33-1/3 percent;

- required that half of the local revenue sharing be spent on docks or other fishery enhancement projects;

- directed an additional 33-1/3 percent of the revenue to the Commercial Fishing and Agriculture Bank; and

- upgraded the bond requirements for salmon exporters.

Bills introduced by Senator Kerttula (SB 132) and Representative Branson (HB 83) also addressed local revenue sharing, raising it to 50 or 60 percent, respectively. The Governor's bill was modified by the Senate Community and Regional Affairs Committee, grafted on to Senator Kerttula's bill number, and enacted into law as Chapter 79 SLA 1979. The legislation deleted all references to "raw fisheries products," replacing the phrase with "fisheries resources." Hence "raw fish tax" is now something of a misnomer; the statutory name is Fisheries Business Tax.

The stated purposes of the act were to:

1) insure that the state is able to continue its efforts toward overall fisheries-related development programs by raising additional revenue to pay for its programs;

2) make the imposition of the fisheries tax more uniform among fisheries businesses; and

3) provide funding for the development of new fisheries.

The tax rates established by Chapter 79 SLA 1979 are as shown in the table below:

	Shore-based Processor	Floating Processor
Canned Salmon	4.5%	5.0%
Developing Commercial Fish Species*	1.0%	3.0%
Other Fisheries Resources	3.0%	5.0%

*Developing commercial fish species are defined in AS 16.05.050(12) as species in a specific region for which the optimum yield harvest has not been reached, a substantial portion of the harvest has been allocated to foreign fishing, or commercial harvest of the species recently developed.

Under Chapter 79, a person who transports or sells a fisheries resource outside the jurisdiction of the State is liable for the tax which would otherwise be paid by the processor.

The legislation provided for 20 percent revenue sharing to local government, and 20 percent to the Commercial Fishing and Agriculture Bank. Second class cities were made eligible for revenue sharing as well as first class cities. The new revenue sharing formula was to begin with calendar year 1980 taxes. The legislation also increased the bonding requirements for salmon exporters to $50,000. The bond covers not only payment of the tax to the State, but also payment to the fishermen for the salmon.

Three pieces of legislation passed in 1980 made corrective amendments to the 1979 enactment. House Bill 192 (enacted as Chapter 155 SLA 1980) corrected the starting date of the new revenue sharing formula to taxes collected for calendar year 1979. The House Judiciary Committee deleted the penalty provisions from the act so as not to duplicate the criminal code. These repealers were offered in CSHB 354, and later incorporated in SB 313 and enacted as Chapter 113 SLA 1980. The House Judiciary Committee also made a corrective amendment suggested by the code revisor deleting the definition of "year". This correction was incorporated into SB 277 and enacted as Chapter 94, SLA 1980.

A bill which was a forerunner of legislation creating the Alaska Seafood Marketing Institute was passed by the legislature in 1980 but vetoed by the governor. The original version of HB 962 provided processors with a tax credit of up to 15 percent of the fisheries business tax liability for donations to a nonprofit corporation organized to improve the quality of and to develop markets for Alaska seafood. The final version, SCSCSHB 962, established a fisheries business tax grant fund financed by appropriations from the legislature. The bill authorized grants to a nonprofit seafood marketing corporation of up to 15 percent of the fisheries business tax paid by members of the corporation in the preceeding year. The governor vetoed the bill due to constitutional problems.

1981-1982

Several amendments to the fisheries business tax statutes were made by the Twelfth Legislature. Senator Eliason introduced SB 200, which would have relieved freezer boats from tax liability if the processors to which they sell were regulated by the statute. His proposal was incorporated into HB 460, which was introduced by the House Resources Committee. House Bill 460 also increased revenue sharing to local governments from 20 to 50 percent of tax revenues starting with tax year 1982. As a transitional measure, revenue sharing was pegged

at 30 percent of 1981 fisheries business taxes. After a complicated passage, SCSCSHB 460 (Fin)am S (efd am H) was enacted as Chapter 117 SLA 1981.

Other fisheries business tax legislation considered but not passed by the Twelfth Legislature included HB 422 by Representative Malone. The bill would have shifted the tax liability from fish processors to fish purchasers. Senator Mulcahy also introduced a bill, SB 523, to clarify the language defining "value" as used in calculating tax liability. Some of this clean-up was accomplished in HB 460.

Representatives Zharoff and Bettisworth proposed in HB 103 to repeal the fisheries business tax entirely. This bill saw no action.

1983-1984

Three pieces of legislation offered in the Thirteenth Legislature would have established a fisheries business tax credit program. None of these proposals were enacted. Senator Ferguson proposed (in SB 191) a rate reduction of one-half percent for businesses that also pay the seafood marketing assessment under AS 16.51.120. Senator Mulcahy proposed (in SB 379) to grant up to a 50 percent credit on tax liability for purchases of equipment used in processing a developing commercial fish species. The Senate Resources Committee Substitute for this bill restricted the credit to equipment for processing bottomfish.

Representative Zharoff also sponsored legislation granting a tax credit of up to 50 percent of the fish tax liability. Under his proposal, credits would have included expenditures for improvement of quality control and upgrading or modernization of processing facilities as well as expenditures for equipment used in processing developing commercial species. The House Special Committee on Fisheries' version of HB 518 generalized the credit to apply to any capital expenditure but restricted its application to shore-based canneries and limited the application of credits to no more than five consecutive years. The bill would have required the Department of Revenue to make an annual report to the legislature describing the expenditures for which the credit was granted and the attendant increases in employment or processing capacity. The bill was in House Rules Committee when the legislature adjourned.

* * * * *

I hope that this memorandum has provided you with the information you sought. If you would like more detailed information regarding any of the measures discussed above or if you have any further questions, please don't hesitate to call me.

SH

PLANT: 105 MARINE WAY P.O. BOX 647, KODIAK, AK (907) 486-5749
HEAD OFFICE: FISHERMEN'S TERMINAL C-3 BLDG. ROOM 131, SEATTLE, WA 98119 (206) 285-2412 TELEX: 32-1295

alaska fresh seafoods, inc.

MARCH 31, 1983

DEAR SIRS,

ENCLOSED, YOU WILL FIND OUR 1982 FISHERIES TAX RETURN AND OUR 1982 SEAFOOD MARKETING ASSESMENT RETURN, ALONG WITH OUR CHECK IN THE AMOUNT OF $174,392.89 FOR BOTH OF THE RETURNS.

LET US TAKE THIS OPPRITUNITY TO EXPLAIN OUR POSITION AS TO THE CURRENT METHOD OF TAXING THE FISHING INDUSTRY.
FIRST, WE ARE A SMALL PROCESSOR AND WE HAD TO BORROW THE MONEY FOR THESE TAXES. WE ARE SURE YOU WILL AGREE OUR $174,392.89 IS QUITE A TIDY SUM. THIS CAUSES AN EXTREME HARDSHIP ON US ESPECIALLY WITH THE STATE OF THE FISHERIES IN SUCH AN ECONOMIC DEPRESSION.
SECOND, IF THE CURRENT METHOD OF COLLECTING TAXES CONTINUES, AS IT IS, IT MAKES IT VIRTUALLY IMPOSSIBLE FOR US AS A SMALL PROCESSOR TO BE ABLE TO EXPAND INTO THE DEVELOPING FISHERIES THAT THE STATE NEEDS SO BADLY IF THE FISHING INDUSTRY IS TO SURVIVE IN ALASKA.
THIRDLY, BECAUSE OF THE BURDEN CAUSED BY THE CURRENT METHOD OF TAXING THE PROCESSORS, YOU WILL FIND FEWER PROCESSORS TO TAX EACH YEAR. THIS OF COURSE WILL LIMIT YOUR TAX BASE WHICH WILL CAUSE MORE TAXING AND FINIALLY RESULT IN THE STRANGLATION OF THE WHOLE INDUSTRY.

WE WILL OF COURSE, CONTINUE TO PAY OUR TAXES. BUT, WE WOULD LIKE TO STRONGLY RECOMMEND A RE-EVALUATION OF THE ALASKA FISHERIES BUSINESS TAX AND THE FISHERIES MARKETING ASSESMENT. HOPEFULLY, THIS WOULD BE DONE WITH THE IDEA OF LESSENING THE BURDEN ON THE FISHERIES INDUSTRY.

YOURS TRULY,

David M. Woodruff

DAVID M. WOODRUFF
VICE PRESIDENT,
ALASKA FRESH SEAFOODS, INC.

CC: GOVERNOR, WILLIAM SHEFFIELD
HONORABLE BOB MULCHY
HONORABLE FRED ZAROFF

DW:jg

Mail to:
Department of Revenue
Audit Division
Pouch SA
Juneau, Alaska 99811-0400

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALASKA FISHERIES BUSINESS RETURN
AS 43.75.011 - 140.

ONE RETURN PER PLANT OR VESSEL

Name (Person, firm or corporation)		E.I.N. or S.S. Number
ALASKA FRESH SEAFOODS, INC.		911043499
Mailing Address		Fisheries Business License No. / Tax Year
BOX 647		82-046 / 82
City, State, Zip Code	Daytime Telephone Number	Location of Operation
KODIAK, AK 99615	(907) 486-5749	KODIAK

Enter totals from Schedule A and/or Schedule B as indicated below and multiply by the appropriate percentages.

	TOTAL VALUE			TAX DUE	OFFICE USE ONLY
1. Canned Salmon - Shore-Based Business Schedule A; line 9, column (9A)	$ 0	Multiply by 4½% (.045)	1	$	
2. Other Shore-Based-Established Species Schedule A; line 9, column (9B)	$5 164 037	Multiply by 3% (.03)	2	$154,942.92	
3. Floating Business-Established Species Schedule A; line 9, column (9C)	$ 0	Multiply by 5% (.05)	3	$	
4. Shore-Based - Developing Species Schedule B; line 7, column (7A)	$760 037	Multiply by 1% (.01)	4	$ 7,600.37	
5. Floating Business-Developing Species Schedule B, line 7, column (7B)	$ 0	Multiply by 3% (.03)	5	$	
6. TOTAL TAX (Add Tax Due column, lines 1 through 5)			6	$162,543.29	
7. Enter amount of any prepayments of estimated tax ($25.00 license fee is not a prepayment)			7	$ 0	
8. Balance due or (overpayment) (Subtract line 7 from line 6)			8	$	
9. Penalty for late filing (5% per 30 day period not to exceed 25%)			9	$	
10. Interest (12% a year)			10	$	
11. TOTAL DUE WITH THIS RETURN (Add lines 8 through 10)			11	$162,543.29	

NOTICE: If the fisheries business covered by this return is a shore-based fisheries business which floats, from 04-575 Vessel Itinerary must be completed and attached to this return.

ALLOCATION OF REVENUE. Please provide the information requested below to allow for allocation of revenue to local governments. If the return is for a vessel, complete the schedule on the right, showing the amount of the taxes allocated to each location. Please see the general instructions for further information.

Vessel Location	A, B or C	% of Tax Due Allocated Line 1	Line 2	Line 3	Line 4	Line 5	Dollar Amount Allocated Per Location

Name of Cannery, Plant, Vessel or Business

Physical Location of Cannery, Plant or Business

Check only one:
A. ☐ Within incorporated city limits
B. ☐ Outside city but within organized borough
C. ☐ Outside all cities or boroughs

I declare under penalty of perjury that this return (including all accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

Signature of Taxpayer: X [signature] Date: X 3-31-83

Signature of Agent: Date:

This return must be filed with your payment on or before March 31, 1983. Make your remittance payable to the:

DEPARTMENT OF REVENUE
Audit Division
Pouch SA
Juneau, Alaska 99811-0400

Please attach as appropriate to this return, Schedules A - G and form 04-575 Vessel Itinerary.

Office Use Only

04-574 (Rev. 10/82)

Department of Revenue
Audit Division
Pouch SA
Juneau, Alaska 99811-0400

ALASKA FISHERIES BUSINESS RETURN
SCHEDULE B. DEVELOPING COMMERCIAL FISH SPECIES

Fisheries Bus. Lic. No. 82-046

Developing commercial fish species are taxed at a lower rate than established species. Use this schedule only to report fish and shellfish species that have been designated as "developing" by the Alaska Department of Fish and Game. A list of these species is printed on the back of this schedule. To report fish species that do not appear on the list of developing species, use Schedule A.

Please read the instructions and definitions on the back before completing this schedule.

DO NOT INCLUDE ESTABLISHED COMMERCIAL FISH SPECIES SEE SCHEDULE A	A. SHORE-BASED FISHERIES BUSINESS		B. FLOATING FISHERIES BUSINESS	
	Pounds	Total Value	Pounds	Total Value
1. Fisheries resources processed that were taken in company-owned or company-subsidized boats operated by employees of the fisheries business or in boats operated under lease or other arrangement. Complete a Schedule C for each column entry.		(1A) $		(1B) $
2. Fisheries resources processed that were purchased by your company from fishermen qualifying for exclusion from payment of the tax. Enter Total Pounds and Total Value from Schedule D in the appropriate column.		(2A) $		(2B) $
3. Fisheries resources processed that were purchased by your company except those resources included on line 2. Complete a Schedule C for each column entry.	261,935	(3A) $ 760,037		(3B) $
4. Fisheries resources that your company custom processed for someone other than a licensed fisheries business. List the name of the person/company owning the product which was custom processed. Attach Schedule E, Owner's Statement of Value, for each person/company you list.				
(a)		$		$
(b)				
(c)				
(d)				
(e)				
(f)				
(g)				
(h)				
(i)				
5. Fisheries resources that were custom processed for your company. List the name of the company that processed the resource. Complete a Schedule C for each column entry.				
(a)		$		$
(b)				
(c)				
(d)				
(e)				
(f)				
(g)				
(h)				
(i)				
6. Other fisheries resources transported outside the taxing jurisdiction of Alaska for subsequent processing or sale, or sold outside the taxing jurisdiction of Alaska. List the name of the person/company that purchased the product. Complete a Schedule C for each column entry.				
(a)		$		$
(b)				
(c)				
(d)				
(e)				
(f)				
7. TOTALS. Add categories 1-6. Enter (7A) on page 1 of the Return, line 4. Enter (7B) on page 1, line 5.		(7A) $ 760,037		(7B) $

04-574 B (11/81)

Department of Revenue
Audit Division
Pouch SA
Juneau, Alaska 99811-0400

ALASKA FISHERIES BUSINESS RETURN
SCHEDULE A. ESTABLISHED COMMERCIAL FISH SPECIES

Fisheries Bus. Lic. No. 82-046

IMPORTANT. Before completing this schedule, please read the list of Developing Commercial Fish Species printed on the back of Schedule B. Any fishery resource processed that is included on this list is taxed at a lower rate and must be reported on Schedule B.

CUSTOM PROCESSORS. Use Schedule A only to report those established commercial fish species which you custom processed for someone other than a licensed fisheries business. You are not liable for the tax on fisheries resources you custom processed for another licensed fisheries business. You must, however, report on Schedule F those resources that you custom processed for another licensed fisheries business.

GENERAL INSTRUCTIONS

Before completing this form, please read carefully each category as described on lines 1-7. This will help you determine which categories apply to your fisheries business.

Make your entries in column A only for salmon canned at a shore-based cannery. For fisheries resources other than canned salmon which were processed at a shore-based fisheries business, make your entries in column B. For fisheries resources processed on a floating fisheries business, make your entries in column C.

If this return is for a shore-based fisheries business which floats, form 04-575 Vessel Itinerary must be completed. Make your entries as a shore-based business only if the vessel was anchored in one spot and did not move from that anchorage for any reason during the entire calendar year.

DEFINITIONS OF VALUE - 15 AAC 75.300

VALUE means the actual price paid for the fisheries resource by the fisheries business, including indirect consideration such as fuel, supplies, or gear, whether paid at the time of purchase of the fisheries resource or tendered as a deferred, delayed, or advance payment, except that VALUE means the market value of the fisheries resource if the fisheries resource is taken in company-owned or company-subsidized boats operated by employees of the fisheries business or in boats which are operated under lease or other arrangement.

MARKET VALUE means the prevailing value paid for fisheries resources of like kind and quality by fisheries businesses in the same market area to fishermen who own their vessels.

If you CUSTOM PROCESSED a fisheries resource for someone other than a licensed fisheries business, you are liable for payment of the tax. List the VALUE of the resource as reported to you on the Owner's Statement of Value, Schedule E.

NOTE: Each entry you make in a Total Value column must be supported by a schedule C, D or E as appropriate that shows, in addition to other items, the species that are included in that entry. For lines 1, 3, 5, 6 and 7, complete a Schedule C for each entry. For line 2, attach a Schedule D for each entry. For line 4, attach a Schedule B for each entry.

DO NOT INCLUDE DEVELOPING COMMERCIAL FISH SPECIES SEE SCHEDULE B	A. SALMON CANNED AT A SHORE-BASED CANNERY		B. SHORE-BASED FISHERIES BUSINESS (DO NOT INCLUDE SALMON CANNED AT A SHORE-BASED CANNERY)		C. FLOATING FISHERIES BUSINESS	
	Pounds	Total Value	Pounds	Total Value	Pounds	Total Value
1. Fisheries resources processed that were taken in company-owned or company-subsidized boats operated by employees of the fisheries business or in boats operated under lease or other arrangement. Complete a Schedule C for each column entry.		(1A) $		(1B) $		(1C) $
2. Fisheries resources processed that were purchased by your company from fishermen qualifying for exclusion from payment of the tax. Enter Total Pounds and Total Value from Schedule D in the appropriate column(s).		(2A) $		(2B) $		(2C) $
3. Fisheries resources processed that were purchased by your company except those resources included on line 2. Complete a Schedule C for each column entry.		(3A) $	3,437,088	(3B) $5,164,764		(3C) $
SUBTOTALS. Add lines 1-3 in each column. Enter subtotals on the back of this Schedule A, line 8.		(A) $		(B) $5,164,764		(C) $

DOR 4 (1/81)

ASKA FISHERIES BUSINESS RETURN, SCHEDULE A (continued)

DO NOT INCLUDE DEVELOPING COMMERCIAL FISH SPECIES SEE SCHEDULE B	A. SALMON CANNED AT A SHORE-BASED CANNERY		B. SHORE-BASED FISHERIES BUSINESS (DO NOT INCLUDE SALMON CANNED AT A SHORE-BASED CANNERY)		C. FLOATING FISHERIES BUSINESS	
	Pounds	Total Value	Pounds	Total Value	Pounds	Total Value
Fisheries resources that your company custom processed for someone other than a licensed fisheries business. List the name of the person/company owning the product which was custom processed. Attach Schedule E, Owner's Statement of Value, for each person/company you list.						
)		$		$		$
)						
)						
)						
)						
)						
)						
)						
)						
. Fisheries resources that were custom processed for our company. List the name of the company that processed the resource. Complete a Schedule C for each column entry.						
)		$		$		$
)						
)						
)						
)						
)						
)						
)						
6. Salmon exported in the round. List the name of the person/company that purchased the salmon. Complete a Schedule C for each column entry.						
a)		$		$		$
b)						
c)						
d)						
7. Other fisheries resources transported outside the taxing jurisdiction of Alaska for subsequent processing or sale, or sold outside the taxing jurisdiction of Alaska. List the name of the person/company that purchased the resource. Complete a Schedule C for each column entry.						
(a)		$		$		$
(b)						
(c)						
(d)						
8. Enter amounts from Schedule A, Subtotals (from other side) in the appropriate columns.		(A) $		(B) $		(C) $
9. TOTALS. Add categories 4-8. Enter (9A) on page 1 of the Return, line 1. Enter (9B) on page 1, line 2. Enter (9C) on page 1, line 3.		(9A) $		(9B) $ 5,164,764		(9C) $

Department of Revenue
Audit Division
Pouch SA
Juneau, Alaska 99811-0400

ALASKA FISHERIES BUSINESS RETURN
SCHEDULE C. FISHERIES RESOURCES PROCESSED BY SPECIES

Fisheries Bus. Lic. No. 82-046

Complete as many Schedules C as necessary to support the appropriate Total Value column entries made on Schedules A and B. For Schedule A, separate Schedules C are required for lines 1, 3, 5, 6 and 7. For Schedule B, separate Schedules C are required for lines 1, 3, 5 and 6.

For example, if you canned King, Coho and Chum Salmon as a shore-based cannery, and all of the salmon were purchased fresh at the dock, you correctly made an entry on Schedule A at line 3, column A. That entry would be supported by this Schedule, showing detailed information about each of the three species of salmon you processed.

For line category entries made on Schedule A, line 5, or Schedule B, line 5, you must provide a separtate Schedule C for each person or company that custom processed for your company.

For line category entries made on Schedule A, lines 6 and 7, or Schedule B, line 6, you must provide a separate Schedule C for each person or company that purchased the resource which was transported unprocessed out of Alaska's taxing jurisdiction.

For example, if you transported unprocessed fisheries resources out of Alaska's taxing jurisdiction and sold them to companies A and B, company A's name would appear in the box requesting "Name of Person or Company" in the first schedule below. The information for the species which were purchased by company A would then appear in the corresponding spaces. The next schedule would then be completed for the resources sold to company B.

NOTE FOR SCHEDULE B ENTRIES: Herring, shrimp, and certain species of crab are considered to be developing species only in certain areas. Additionally, shrimp are "developing species" in some areas only when caught with pot gear. For these species only, you must list the area where caught. For shrimp, you must also list the type of gear used.

THIS FORM CONTAINS FIVE SCHEDULES C. USE ADDITIONAL PAGES AS NECESSARY.

First complete the boxes immediately below by transferring information directly from Schedule A or Schedule B. For each species included in the totals you enter below, provide the information requested in the boxes to the right.

This Schedule supports the entry made at: SCHEDULE	LINE	COLUMN
A	3	B

Name of Person or Company (for Schedule A, lines 5, 6 or 7 only, and Schedule B, lines 5 or 6 only)

TOTAL POUNDS (From Schedule A or B entry): 3,437,088 lbs

TOTAL VALUE (From Schedule A or B entry): $5,164,764

SPECIES OF FISHERIES RESOURCE	AREA WHERE CAUGHT AND TYPE OF GEAR AS APPLICABLE TO SCHEDULE B	TOTAL POUNDS OF THAT SPECIES	AVERAGE VALUE PER POUND	TOTAL VALUE FOR THAT SPECIES
KING CRAB		811,979	3.504	2,845,520
DUNGENESS CRAB		732,377	.749	547,791
TANNER CRAB		716,915	1.62	1,161,540
KING SALMON		476	.666	317
RED SALMON		202,492	.938	189,987
PINK SALMON		191,300	.259	49,500
CHUM SALMON		578,024	.438	253,020
COHO SALMON		195,841	.559	109,458
HALIBUT		7,684	.99	7,631

First complete the boxes immediately below by transferring information directly from Schedule A or Schedule B. For each species included in the totals you enter below, provide the information requested in the boxes to the right.

This Schedule supports the entry made at: SCHEDULE	LINE	COLUMN
B	3	A

Name of Person or Company (for Schedule A, lines 5, 6 or 7 only, and Schedule B, lines 5 or 6 only)

TOTAL POUNDS (From Schedule A or B entry): 261,935lbs

TOTAL VALUE (From Schedule A or B entry): $760,037

SPECIES OF FISHERIES RESOURCE	AREA WHERE CAUGHT AND TYPE OF GEAR AS APPLICABLE TO SCHEDULE B	TOTAL POUNDS OF THAT SPECIES	AVERAGE VALUE PER POUND	TOTAL VALUE FOR THAT SPECIES
SCALLOPS		237,922	3.147	748,741
BLACK COD		1,900	.95	1,805
PACIFIC COD		18,400	.304	5,592
CLAMS		3,713	1.05	3,899

ALASKA DEPARTMENT OF REVENUE
Audit Division
Pouch SA
Juneau, Alaska 99811

SEAFOOD MARKETING ASSESSMENT RETURN

AS 16.51.160

DUE DATE:
MARCH 31
following the
assessment ye

Name (Person, Firm or Corporation)	Assessment Year	This return is an:
ALASKA FRESH SEAFOODS, INC.	1982	
Mailing Address: BOX 647	Employer's I.D. or Social Security No.: 911043495	XX Original Return
City, State, Zip Code: KODIAK, ALASKA 99615	Daytime Telephone Number: 907) 486-5749	☐ Amended Return

Add all values entered in the TOTAL VALUE column from each Alaska Fisheries Business Return filed for the assessment year (page1, lines 1
Enter each total in column C below.

A. Fisheries Business License Number	B. Location of Operation or Vessel Name	C. Value of Seafood Products	Office Use Or
82-046	105 MARINE WAY, KODIAK, AK	$ 5,924,801	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	
		$	

1. Total value of seafood products listed in column C. (If less than $50,000, skip lines 2 - 5, sign the return and file it on or before the due date.)	1.	$ 5,924,801	
2. Multiply the value entered on line 1 by .2% (.002)	2.	$ 11,849.60	
3. Penalty for late filing (5% per 30 day period not to exceed 25%)	3.	$	
4. Interest (12% a year)	4.	$	
5. Total assessment (Add lines 2 through 4)	5.	$ 11,849.60	

I declare under penalty of perjury that this return, including any accompanying statements, has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Signature of Processor	Date
X [illegible]	X 3-31-83
Signature of Agent	Date

File this return on
before March 31, with
assessment due (line
Make your remitta
payable to the Al
Department of Reve

Thank you.

04-578 (12/82)

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION
LOCAL 200

307 SOUTH FRANKLIN STREET, JUNEAU, ALASKA 99801 • (907) 586-6642

LARRY COTTER
President

JAY BROWNE
Vice President

MIKE ELLERS
Secretary-Treasurer

January 23, 1985

The Honorable Peter Goll
Alaska House of Representatives
Pouch V
Juneau, Alaska

Re: HB 58

Dear Representative:

Following discussions with Representative Cato and members of the fishing community I have decided that I am in full support of HB 58.

In an earlier letter to you I espoused a view that Alaska would be better off with a revamped fisheries business tax based upon a graduated scale than a tax credit approach as outlined in HB 58. However, I am now of the opinion the tax credit approach is a critical ingredient in providing Alaskan seafood processing companies a means through which their facilities can be modernized. And of course, modernization will play a crucial role in the development of a domestic bottom fish industry.

At the same time, I continue to believe a graduated fisheries business tax would provide added stimulus to seafood processing companies to engage in the processing of underutilized species. And I would strongly urge legislation along these lines be implemented.

In summation, I view these two approaches -- the tax credit for investment approach and the graduated tax approach -- as a meaningful combination of positive taxation which will yield a significant benefit to all Alaskans.

I look forward to speaking further with you on this in the future.

Very truly yours,

Larry Cotter
President

cc: The Honorable Ben Grussendorf
The Honorable Betty Cato
The Honorable Fred Zharoff

Ms. Sandi Cesarini, Sea hawk Seafoods, Valdez telephoned my office and wished the following information and comments dealing with issues raised at the Special Committee on Fisheries teleconference to be given to committee members:

1. Several floating processors have expressed concerns that HB 58 only provides a tax credit for shore based processors, however floating processors presently have advantages and credits not available to shore based processors.

   a. Under the Federal Income Tax system floating processors are eligible to defer 50% of their tax liability. They must provide a plan for capital improvement expenditures to the Department of Internal Revenue to enable them to deduct this tax deferrment off their income for the year. In other words they may take the credit up front which provides them with a real capital advantage over shore based processors. This tax deferred money is also eligible for a partial investment credit.

   b. The fact that floating processors are able to move their processing plant provides them with a definite advantage over shore based processors. With fish runs varying each year the floating processors are almost assured of continual "good" catches as they are able to move to where the fish are being caught. A shore based processor on the other hand is limited to one area, if there is a poor catch in that area the shore based processor suffers.

   c. While shore based processors remain on land in one area they also contribute to the local economy through payment of property taxes, municipal rates (water & sewer), electricity and they also provide a great deal of the employement in the community.

2. In answer to the suggestion of eliminating the raw fish tax completely Ms. Cesarini feels:

   a. This would severely hurt the cities in which the shore based processors live. Ms. Cesarini states that the shore based processors do not wish to gain at the expenses of the communities in which they live.

   b. If the raw fish tax was eliminated the end result would be that the shore based processors would have this extra money. HOWEVER, this additional money would now be taxable by the federal government as income received. The tax rate for many shore based processors is high and this additional income would be taxed at this rate (estimated 42%)
   Ms. Cesarini feels that the processors would benefit more by being eligible to receive a tax credit up to 50% of their business tax liability for capital immprovement expenditures. As HB 58 allows processors to carry this tax credit forward within the five year period this would benefit shore based processors considerably more than the elimination of the fish tax.

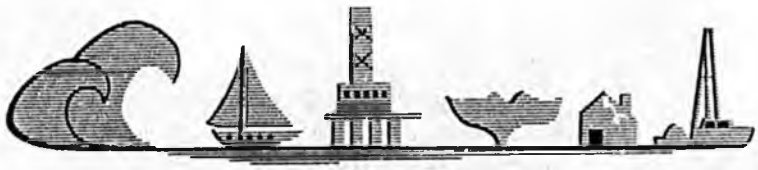
3. In answer to the suggestion of a 25% tax credit.

   Several shore based processors have expressed their feelings of this idea. They believed the intent of HB 58 was to introduce a bill that would relieve the pressure on the fish processing industry. A 25% tax credit would not be sufficient to make any measurable impacts on the already suffering industry. HB 58 proposes to offer assistance to shore based processors for the next 5 years to enable them to improve and expand their operations. Due to the pressures the industry is currently experiencing many processors cannot make the improvements necessary to upgrade their facilities which is necessary if they are to survive and the pressures on the industry are to be relieved.
   Processors feel if this was the intent and purpose of the bill, why start to put limits on it.


HB
73

Statutes and Regulations

January 1985



Compiled by: ***The Division of Governmental Coordination***
Office of Management and Budget
Pouch AW
Juneau, Alaska 99811
(907) 465-3562

Table Of Contents

Introduction 1

Alaska Coastal Management Act
Alaska Statute
Section 44.19 3

Alaska Statute
Section 46.40 8

Project Consistency with the Alaska Coastal Management Program
Alaska Administrative Code
Chapter 50 25

Standards of the Alaska Coastal Management Program
Alaska Administrative Code
Chapter 80 33

Guidelines for District Program Development
Alaska Administrative Code
Chapter 85 50

Federal Consistency with Approved Coastal Management Programs
Title 15, Code of Federal Regulations
Part 930 59

Introduction

This document contains the Alaska statutes and regulations governing the Alaska Coastal Management Program (ACMP) and the federal regulations relating to federal consistency with approved State coastal management programs.

The ACMP was established by the Alaska Legislature in 1977. The Alaska Coastal Management Act (AS 46.40) provides the legislative authority for the program. In addition, certain sections of AS 44.19 provide authority for the program.

Two sets of State regulations have been adopted for the program. The Alaska Administrative Code, 6 AAC 50, contains regulations governing how the state reviews projects for consistency with the ACMP. These regulations were adopted in 1984. Also, the Coastal Policy Council promulgated regulations governing the ACMP based on AS 46.40 as 6 AAC 80 and 6 AAC 85. These include substantive standards for coastal development and guidelines for the development of detailed coastal management programs by local coastal resource districts. These regulations were adopted in 1979 and subsequently amended several times.

One set of federal regulations, 15 CFR 930, provides direction for federal agencies conducting or supporting activities directly affecting the coastal zone, issuing permits for coastal projects and approving Outer Continental Shelf (OCS) plans. These regulations mandate consultation and concurrence by the State that a proposal is consistent with an approved State management program prior to federal action.

This document includes the pertinent sections of the Alaska Statutes, and the federal regulations relating to federal consistency. The document is presented in a format suitable for placement in a three-ring binder. Whenever State statutes or regulations are revised, corrected pages or an updated set of the statutes and regulations will be distributed. The date of each version will be shown on the title page. Earlier copies of the regulations should be replaced with the more recent copies.

The purpose of this document is to serve as a reference. Explanatory material is kept to a minimum. For further information on the Alaska Coastal Management Program please contact:

Division of Governmental Coordination
Pouch AW
Juneau, Alaska 99811
(907) 465-3562

Title 44

Chapter 19. Office of the Governor.

Article 12. Office of Management and Budget.

Section

141. Alaska office of management and budget
142. Director
143. Personnel
144. Powers and duties of the director
145. Functions and duties of the office
152. Definitions

NOTE: Only those sections of Article 12 related to the Alaska Coastal Management Program are reprinted here.

Sec. 44.19.145. Functions and duties of the office. (a) The office shall

(1) provide technical assistance to the governor and the legislature in identifying long range goals and objectives for the state and its political subdivisions;

(2) prepare and maintain a state comprehensive development plan;

(3) provide information and assistance to state agencies to aid in governmental coordination and unity in the preparation of agency plans and programs;

(4) review planning within state government as may be necessary for receipt of federal, state or other funds;

(5) participate with other countries, provinces, states or subdivisions of them in international or interstate planning, and assist Alaska's local governments, governmental conferences and councils, in planning and coordinating their activities;

(6) encourage educational and research programs that further state planning and development, and provide administrative and technical services for them;

(7) publish such statistical information or other documentary material as will further the provisions and intent of AS 44.19.141 — 44.19.152;

(8) assist the governor and the Department of Community and Regional Affairs in coordinating the activities of state agencies which have an impact on the solution of local and regional development problems;

(9) serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to federal, state or local governmental agencies in discharing their respective responsibilities or in obtaining federal or state financial or technical assistance;

(10) review all proposals for the location of capital improvements by any state agency and advise and make recommendations concerning location of these capital improvements;

Consistency Reviews

(11) render, on behalf of the state, all federal consistency determinations and certifications authorized by 16 U.S.C. 1456 (§ 307, Coastal Zone Management Act of 1972), and a conclusive state consistency determination when a project requires two or more state or federal permits, leases, or authorizations.

(b) The office shall, in carrying out its functions, consult with local, regional, state and federal officials, private groups and individuals, and with officials of other countries, provinces and states, and may hold public hearings to obtain information for the purpose of carrying out the provisions of AS 44.19.141 — 44.19.152.

(c) The governor may establish coordinating or advisory planning groups.

(d) The office shall

(1) coordinate its services and activities with those of other state departments and agencies to the fullest extent possible to avoid duplication;

(2) prepare an integrated annual report on the long-range development program of the state and submit it to the governor for incorporation into the governor's report to the legislature;

(3) cooperate with the University of Alaska and other appropriate public and private institutions in research and investigations. (§ 2 ch 103 SLA 1966; am § 2 ch 219 SLA 1970; am § 2 ch 60 SLA 1972; am §§ 8, 10 ch 200 SLA 1972; am § 5 ch 207 SLA 1975; am § 20 ch 63 SLA 1983)

Effect of amendments. — The 1983 amendment, effective July 15, 1983, substituted "office" for "division" throughout the section, made other minor word changes, and in subsection (a) revised the paragraph numbering and added paragraph (11).

Sec. 44.19.152. Definitions. In AS 44.19.141 — 44.19.152,

(1) "director" means the director of the office of management and budget;

(2) "office" means the Alaska office of management and budget. (§ 1 ch 219 SLA 1970; am § 13 ch 207 SLA 1975; am § 21 ch 63 SLA 1983)

Effect of amendments. — The 1983 amendment, effective July 15, 1983, repealed a former definition of "division," in the definition of "director" substituted "office of management and budget" for "division of policy development and planning", added the definition of "office," and ordered the definitions alphabetically.

Article 13. Alaska Coastal Policy Council.

Section	Section
155. Alaska Coastal Policy Council	161. Duties of the council
160. Powers of the council	162. Council staff

Sec. 44.19.155. Alaska Coastal Policy Council. (a) There is created in the Office of the Governor the Alaska Coastal Policy Council. The council consists of the following:

Public Members

(1) nine public members appointed by the governor from a list comprised of at least three names from each region, nominated by the municipalities of each region; the nominees shall be the mayor or member of the assembly or council of a municipality; one public member shall be appointed from each of the following general regions:

(A) northwest Alaska, including, generally, the area of the North Slope Borough and the Northwest Arctic regional educational attendance area;

(B) Bering Straits, including, generally, the area of the Bering Straits regional educational attendance area;

(C) southwest Alaska, including, generally, the area within the Lower Yukon, Lower Kuskokwim, Southwest, and Lake-Peninsula regional educational attendance areas and the Bristol Bay Borough;

(D) Kodiak-Aleutians, including the area of the Kodiak Island Borough and the Aleutian, Adak and Pribilof regional educational attendance areas;

(E) Upper Cook Inlet, including the Municipality of Anchorage and the Matanuska-Susitna Borough;

(F) Lower Cook Inlet, including, generally, the area within the Kenai Peninsula Borough;

(G) Prince William Sound, including, generally, the area east of the Kenai Peninsula Borough to 141° W. longitude;

(H) northern Southeast Alaska, including the area southeast of 141° W. longitude and north of 57° N. latitude, including the entirety of the City and Borough of Sitka; and

(I) southern Southeast Alaska, including that portion of southeastern Alaska not contained within the area described in (H) of this paragraph;

(2) each of the following:

State Members

(A) the director of the office of management and budget;

(B) the commissioner of the Department of Commerce and Economic Development;

(C) the commissioner of the Department of Community and Regional Affairs;

(D) the commissioner of the Department of Environmental Conservation;

(E) the commissioner of the Department of Fish and Game;

(F) the commissioner of the Department of Natural Resources; and

(G) the commissioner of the Department of Transportation and Public Facilities.

Term of Office

(b) Each public member appointed by the governor under (a)(1) of this section serves a term of two years and until his successor is appointed and qualified, except that the term of office of a public mem-

ber first appointed under (a)(1)(A), (a)(1)(C), (a)(1)(E) and (a)(1)(G) of this section shall be one year. A public member may be reappointed.

(c) The council shall designate co-chairmen, one of whom shall be selected from among the public members appointed under (a)(1) of this section and one from among the members designated in (a)(2) of this section.

Alternates

(d) Each member of the council shall select one person to serve as a permanent alternate at meetings of the council. If a member of the council is unable to attend, the member shall advise the alternate who may attend and act in the place of the member. The alternate for a public member appointed after July 9, 1978 under (a)(1) of this section shall, at the time of the alternate's designation and throughout the period of service as a permanent alternate, be the mayor or member of the assembly or council of a municipality within the region from which the permanent member is appointed. The alternate for the director of the office of management and budget, serving under (a)(2)(A) of this section, shall be the director's designee within that office. The alternate for a designated member serving under (a)(2)(B) — (G) of this section shall be a deputy commissioner of the department or the director of a division in the department. The names of alternates shall be filed with the council.

Quorum

(e) Four public members and three designated members of the council constitute a quorum, but one or more of the members designated by the council may hold hearings. All decisions of the council shall be by a majority vote of the members present and voting.

(f) Members of the council or their alternates are entitled to per diem and travel expenses authorized by law for members of boards and commissions.

Appointment of Unexpired Terms

(g) If an incumbent public member ceases to meet the qualifications prescribed in (a)(1) of this section for nomination to the council or if a vacancy exists among the public members for any other reason except for a vacancy due to the expiration of the term of a public member, the governor shall, within 30 days of the establishment of the vacancy by lack of qualification or other reason, make an appointment, to be immediately effective, for the unexpired portion of the term. An appointment by the governor made under this subsection to fill an unexpired term of a public member shall comply with the requirements of (a)(1) of this section; however, the governor may appoint from qualified persons without soliciting from municipalities nominations of persons to fill the unexpired portion of the term. (§ 3 ch 84 SLA 1977; am Executive Order No. 39, § 11 (1977); am §§ 4, 5 ch 129 SLA 1978; am §§ 22, 23 ch 63 SLA 1983)

Effect of amendments. — The 1977 amendment substituted "Department of Transportation and Public Facilities" for "Department of Public Works" in (a)(2)(G).

The 1983 amendment, effective July 15, 1983, in (a)(2)(A) substituted "office of management and budget" for "division of policy development and planning", and in subsection (d) added the sentence beginning "The alternate for the director" and made other minor word changes.

Sec. 44.19.160. Powers of the council. The council may

(1) apply for and accept grants, contributions, and appropriations, including application for and acceptance of federal funds which may become available for coastal planning and management;

(2) contract for necessary services;

(3) consult and cooperate with

(A) persons, organizations, and groups, public or private, interested in, affected by, or concerned with coastal area planning and management;

(B) agents and officials of the coastal resource districts of the state, and federal and state agencies concerned with or having jurisdiction over coastal planning and management;

(4) take any reasonable action necessary to carry out the provisions of AS 44.19.155 — 44.19.162. (§ 3 ch 84 SLA 1977)

Sec. 44.19.161. Duties of the council. In conformity with the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), the council shall

(1) through the public hearing process and the recording of the minutes of the hearings, develop guidelines and standards for the preparation of, and approve, in accordance with AS 46.40, the Alaska coastal management program;

(2) establish continuing coordination among state agencies to facilitate the development and implementation of the Alaska coastal management program; in carrying out its duties under this paragraph, the council shall initiate an interagency program of comprehensive coastal resource planning for each georgraphic region described in AS 44.19.155(a)(1);

(3) assure continued provision of data and information to coastal resource districts to carry out their planning and management functions under the program;

(4) submit annually to the legislature, no later than the 10th day of each regular session, the portion of the coastal management program approved or amended by the council during the preceding year. (§ 3 ch 84 SLA 1977)

Sec. 44.19.162. Council staff. The council shall use the staff of the office of coastal management within the office of management and budget in discharging its powers and duties. The coordinator of the office of coastal management, under the direction of the council co-chair who is selected from among the members designated in AS 44.19.155(a)(2), may contract with or employ personnel or consultants the coordinator considers necessary to carry out the powers and duties of the council. (§ 3 ch 84 SLA 1977; am § 24 ch 63 SLA 1983)

Effect of amendments. — The 1983 amendment, effective July 15, 1983, in the first sentence substituted "use" for "utilize" and substituted "office of management and budget" for "division of policy development and planning," and in the second sentence substituted "of coastal management . . . in AS 44.19.155(a)(2)" for ", with the concurrence of the council" and substituted "the coordinator" for "he."

Title 46

Chapter 40. The Alaska Coastal Management Program.

Article

1. Development of Alaska Coastal Management Program (§§ 46.40.010 — 46.40.100)
2. Coastal Management Programs in the Unorganized Borough (§§ 46.40.110 — 46.40.180)
3. General Provisions (§§ 46.40.190 — 46.40.210)

Opinions of attorney general. — The activities of lessees, permittees and other private persons on nonexclusive federal coastal lands remain subject to state regulatory authority — including the coastal management program — unless the particular state regulation is preempted by, irreconcilably conflicts with or frustrates the purpose of another federal law. February 3, 1978, Op. Att'y Gen.

While federal land use decisions will not be governed or controlled by the state's coastal management program, they must, to the degree that they directly affect nonfederal coastal resources, conform to the state program to the maximum extent practicable. February 3, 1978, Op. Att'y Gen.

Article 1. Development of Alaska Coastal Management Program.

Section

10. Development of Alaska coastal management program
20. Objectives
30. Development of district coastal management programs
40. Duties of the Alaska Coastal Policy Council
50. Action and submission by coastal resource districts
60. Review and approval by council
70. Standards for council review and approval
80. Effective date of Alaska coastal management program
90. Implementation of district coastal management programs
100. Compliance and enforcement

Collateral references. — 78 Am. Jur. 2d, Waters, §§ 59-116, 375-438.

65 C.J.S., Navigable Waters, §§ 10-18, 20-132; 93 C.J.S., Waters, §§ 71-85.

Sec. 46.40.010. Development of Alaska coastal management program. (a) The Alaska Coastal Policy Council established in AS 44.19.155 shall approve, in accordance with this chapter, the Alaska coastal management program.

(b) The council may approve the Alaska coastal management program for a portion or portions of the coastal area before approving the complete program under (a) of this section. Portions of the program approved under this subsection shall be incorporated into the Alaska coastal management program.

(c) The Alaska coastal management program shall be reviewed by the council and, when appropriate, revised to

(1) add newly approved district coastal management programs, or revisions and amendments to the Alaska coastal management program;

(2) integrate newly approved district coastal management programs, or revisions and amendments of district coastal management programs, with existing approved programs and with plans developed by state agencies;

(3) add new or revised state statutes, policies, regulations or other appropriate material;

(4) review the effectiveness of implementation of district coastal management programs; and

(5) consider new information acquired by the state and coastal resource districts.

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under AS 46.40.040. (§ 4 ch 84 SLA 1977)

Revisor's notes. — AS 44.19.155 was substituted for AS 44.19.891 in subsection (a) to conform to the renumbering of that section by the revisor of statutes pursuant to AS 01.05.031.

Opinions of attorney general. — The doctrine of federal preemption, derived from the supremacy clause of the United States Constitution, Article VI, clause 2, would not apply to state regulation of outer continental shelf activities in the coastal zone. May 12, 1980, Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program, would be enforceable against off-shore federal lessees. May 12, 1980, Op. Att'y Gen.

Municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal preemption may prohibit local coastal zone ordinances from affecting any measure of control. In the case of the latter, local coastal management programs which are approved by the Alaska Coastal Policy Council and thus part of the Alaska Coastal Management Program will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the Coastal Zone Management Act, 16 U.S.C. § 1451 et seq. May 12, 1980, Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980, Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program. May 12, 1980, Op. Att'y Gen.

Sec. 46.40.020. Objectives. The Alaska coastal management program shall be consistent with the following objectives:

(1) the use, management, restoration and enhancement of the overall quality of the coastal environment;

(2) the development of industrial or commercial enterprises which are consistent with the social, cultural, historic, economic and environmental interests of the people of the state;

(3) the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles;

(4) the management of coastal land and water uses in such a manner that, generally, those uses which are economically or physically dependent on a coastal location are given higher priority when compared to uses which do not economically or physically require a coastal location;

(5) the protection and management of significant historic, cultural, natural and aesthetic values and natural systems or processes within the coastal area;

(6) the prevention of damage to or degradation of land and water reserved for their natural values as a result of inconsistent land or water usages adjacent to that land;

(7) the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs; and

(8) the full and fair evaluation of all demands on the land and water in the coastal area. (§ 4 ch 84 SLA 1977)

Stated in Hammond v. North Slope Borough, Sup. Ct. Op. No. 2499 (File No. 5550, 5558), 645 P.2d 750 (1982).

Sec. 46.40.030. Development of district coastal management programs. Coastal resource districts shall develop and adopt district coastal management programs in accordance with the provisions of this chapter. The program adopted by a coastal resource district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs, policies, objectives and standards governing the use of resources within the coastal area of the district. The program shall be consistent with the guidelines and standards adopted by the council under AS 46.40.040 and shall include:

(1) a delineation within the district of the boundaries of the coastal area subject to the district coastal management program;

(2) a statement, list, or definition of the land and water uses and activities subject to the district coastal management program;

(3) a statement of policies to be applied to the land and water uses subject to the district coastal management program;

(4) regulations, as appropriate, to be applied to the land and water uses subject to the district coastal management program;

(5) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to the land and water within the coastal area;

(6) a summary or statement of the policies which will be applied and the procedures which will be used to determine whether specific proposals for land or water uses or activities shall be allowed; and

(7) a designation of, and the policies which will be applied to the use of, areas within the coastal resource district which merit special attention. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — The adoption of forest practices regulations by the Department of Natural Resources in 11 AAC 95 has completely preempted the coastal policy council's regulations, 6 AAC 80.100, in regulating timber harvest and processing in the coastal area. April 20, 1981, Op. Att'y Gen.

The allocation of responsibility for administration of the forest practices regulations in coastal management consistency determinations is sufficiently unclear that it seems appropriate for resolution by the adoption of regulations since differing policy considerations emphasized in the Forest Practices Act, the Coastal Management Act, and proposed permit reform regulations will be served to a greater or lesser extent by assigning responsibility for interpreting and applying the forest practices regulations to more than one agency and since a particular result is not compelled under the various pieces of authorizing legislation. April 20, 1981, Op. Att'y Gen.

Stated in Hammond v. North Slope Borough, Sup. Ct. Op. No. 2499 (File No. 5550, 5558), 645 P.2d 750 (1982).

Sec. 46.40.040. Duties of the Alaska Coastal Policy Council. Through the public hearing process and the recording of the minutes of the hearings, the Alaska Coastal Policy Council shall

(1) by regulation, adopt under the provisions of the Administrative Procedure Act (AS 44.62) not later than April 15, 1978, for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter; guidelines and standards for

(A) identifying the boundaries of the coastal area subject to the district coastal management program;

(B) determining the land and water uses and activities subject to the district coastal management program;

(C) developing policies applicable to the land and water uses subject to the district coastal management program;

(D) developing regulations applicable to the land and water uses subject to the district coastal management program;

(E) developing policies and procedures to determine whether specific proposals for the land and water uses or activities subject to the district coastal management program shall be allowed;

(F) designating and developing policies for the use of areas of the coast which merit special attention; and

(G) measuring the progress of a coastal resource district in meeting its responsibilities under this chapter;

(2) develop and maintain a program of technical and financial assistance to aid coastal resource districts in the development and implementation of district coastal management programs;

(3) undertake review and approval of district coastal management programs in accordance with this chapter;

(4) initiate a process for identifying and managing uses of state concern within specific areas of the coast;

(5) develop procedures or guidelines for consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the state. (§ 4 ch 84 SLA 1977; am § 1 ch 129 SLA 1978)

Effect of amendments. — The 1978 amendment substituted "not later than April 15, 1978" for "within six months of the effective date of this act" in the introductory language of paragraph (1).

Editor's notes. — The regulations referred to in this section went into effect on July 18, 1978 and may be found at 6 AAC 80 and 6 AAC 85.

Sec. 46.40.050. Action and submission by coastal resource districts. Each coastal resource district shall make substantial progress, in the opinion of the council, toward completion of an approvable district coastal management program and shall complete and submit to the council for approval its program within 30 months of June 4, 1977 or within 30 months of certification of the results of the district's organization, whichever is later. If, in the opinion of the council, after receipt of a written request for extension from the district which includes the reasons for the extension, an extension is considered proper, the council may grant an extension to a date which is not later than December 4, 1981, or to a date which is within 54 months of certification of the results of the district's organization, whichever is later. (§ 4 ch 84 SLA 1977; am § 1 ch 66 SLA 1979)

Effect of amendments. — The 1979 amendment added the second sentence.

Sec. 46.40.060. Review and approval by council. (a) If, upon submission of a district coastal management program for approval, the council finds that the program is substantially consistent with the provisions of this chapter and the guidelines and standards adopted by the council and does not arbitrarily or unreasonably restrict or exclude uses of state concern, the council may grant summary approval of the district coastal management program, or may approve portions of the district program which are consistent.

(b) If the council finds that a district coastal management program is not approvable or is approvable only in part under (a) of this section, it shall direct that deficiencies in the program submitted by the coastal resource district be mediated. In mediating the deficiencies, the council may call for one or more public hearings in the district. The council shall meet with officials of the coastal resource district in order to resolve differences.

(c) If, after mediation, the differences have not been resolved to the mutual agreement of the coastal resource district and the council, the council shall call for a public hearing and shall resolve the differences in accordance with the Administrative Procedure Act (AS 44.62). After a public hearing held under this subsection, the council shall enter findings and, by order, may require

(1) that the district coastal management program be amended to make it consistent with the provisions of this chapter or the guidelines and standards adopted by the council;

(2) that the district coastal management program be revised to accommodate a use of state concern; or

(3) any other action be taken by the coastal resource district as appropriate.

(d) The superior courts of the state have jurisdiction to enforce orders of the council entered under (c) of this section. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — The invalid provisions of AS 46.40.080 are severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44.62. The effective date of council action on district programs is governed by the council's regulations and this section. April 29, 1980, Op. Att'y Gen.

Council action on a district coastal management plan takes effect upon final council disposition of the plan under 6 AAC 85.150 or AS 44.62.520. April 29, 1980, Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980, Op. Att'y Gen.

Sec. 46.40.070. Standards for council review and approval. (a) The council shall approve a district coastal management program submitted for review and approval if the program is consistent with the provisions of this chapter and the guidelines and standards adopted by the council.

(b) Notwithstanding an inconsistency of a district coastal management program submitted for review and approval with the guidelines and standards adopted, the council shall approve the program if it finds that

(1) strict adherence to the guidelines and standards adopted would result in a violation of another state law or policy;

(2) strict adherence to the guidelines and standards adopted would cause or probably cause substantial irreparable harm to another interest or value in the coastal area of the district; or

(3) the inconsistency is of a technical nature and no substantial harm would result to the policies and objectives of this chapter or the Alaska coastal management program.

(c) In determining whether a restriction or exclusion of a use of state concern is arbitrary or unreasonable, the council shall approve the restriction or exclusion if it finds that

(1) the coastal resource district has consulted with and considered the views of appropriate federal, state or regional agencies;

(2) the district has based its restriction or exclusion on the availability of reasonable alternative sites; and

(3) the district has based its restriction or exclusion on an analysis showing that the proposed use is incompatible with the proposed site.

(d) A decision by the council under this section shall be given within 90 days. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — Reading subsection (b) as vesting local officials with complete control over policy formulation would probably render the Alaska Coastal Management Act unconstitutional under Alaska Const., art. VIII, § 2. May 12, 1980, Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program, would be enforceable against off-shore federal lessees. May 12, 1980, Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exclusion of municipal authority if that restriction or exclusion is reasonable, within the meaning of subsection (c). May 12, 1980, Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program. May 12, 1980, Op. Att'y Gen.

Sec. 46.40.080. Effective date of Alaska coastal management program. The Alaska coastal management program adopted by the council, and any additions, revisions, or amendments of the program, take effect upon adoption of a concurrent resolution by a majority of the members of each house of the legislature or by a vote of the majority of the members of each house at the time the houses are convened in joint session to confirm executive appointments submitted by the governor. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — Under the decision in State v. A.L.I.V.E. Voluntary, Sup. Ct. Op. No. 2022 (File No. 3670), 606 P.2d 769 (1980), that the use of legislative resolutions as a veto over regulations, programs or other actions or proposed actions is constitutionally impermissible except as expressly provided by the constitution, this section is invalid. March 6, 1980, Op. Att'y Gen.

The invalid provisions of section are severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44.62. The effective date of council action on district programs is governed by the council's regulations, and AS 46.40.060. April 29, 1980, Op. Att'y Gen.

Council action on a district coastal management plan takes effect upon final council disposition of the plan under 6 AAC 85.150 or AS 44.62.520. April 29, 1980, Op. Att'y Gen.

Sec. 46.40.090. Implementation of district coastal management programs. (a) A district coastal management program approved by the council and the legislature for a coastal resource district which does not have and exercise zoning or other controls on the use of resources within the coastal area shall be implemented by appropriate state agencies. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district.

(b) A coastal resource district which has and exercises zoning or other controls on the use of resources within the coastal area shall implement its district coastal management program. Implementation

shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district. (§ 4 ch 84 SLA 1977)

Sec. 46.40.100. Compliance and enforcement. (a) Municipalities and state agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council and the legislature and in effect.

Appeal to Council

(b) On petition of a coastal resource district, a citizen of the district, or a state agency, showing that a district coastal management program is not being implemented, enforced or complied with, the council shall convene a public hearing to consider the matter. A hearing called under this subsection shall be held in accordance with the Administrative Procedure Act (AS 44.62). After hearing, the council may order that the coastal resource district or state agency take any action which the council considers necessary to implement, enforce or comply with the district coastal management program.

(c) In determining whether an approved district coastal management program is being implemented, enforced or complied with by a coastal resource district which exercises zoning authority or controls on the use of resources within the coastal area, the council shall find in favor of the district if

(1) zoning or other regulations have been adopted and are being enforced;

(2) variances are being granted according to procedures and criteria which are elements of the district coastal management program, or the variance is otherwise approved by the council; and

(3) procedures and standards adopted by the coastal resource district as required by this chapter or by the guidelines and standards adopted by the council and subsequently approved by the legislature have been followed and considered.

(d) In determining whether a state agency is complying with a district coastal management program with respect to its exercise of regulation or control of the resources within the coastal area, the council shall find in favor of the agency if

(1) the use or activity for which the permit, license or approval is granted is consistent with the district coastal management program and regulations adopted under it; and

(2) the use or activity for which the permit, license or approval is granted is consistent with requirements imposed by state statute, regulation, or local ordinance applicable to the use or activity.

(e) The superior courts of the state have jurisdiction to enforce lawful orders of the council. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — As to effective date of coastal management programs, see notes under this heading following AS 46.40.080.

Article 2. Coastal Management Programs in the Unorganized Borough.

Section
110. Authority in the unorganized borough
120. Coastal resource service areas
130. Organization of coastal resource service area
140. Coastal resource service area boards
150. Elections in coastal resource service areas
160. Organization at the direction of the council
170. Preparation of district coastal management program by the Department of Community and Regional Affairs
180. Approval of programs in coastal resource service areas

Collateral references. — 78 Am. Jur. 2d, Waters, §§ 59-116, 375-438. 65 C.J.S., Navigable Waters, §§ 10-18, 20-132; 93 C.J.S., Waters, §§ 71-85.

Sec. 46.40.110. Authority in the unorganized borough. Under AS 29.03.020 and 46.40.110 — 46.40.180, the legislature authorizes organization of coastal resource service areas in the unorganized borough and grants authority to the service areas which may be organized to perform the duties required under this chapter. (§ 4 ch 84 SLA 1977)

Sec. 46.40.120. Coastal resource service areas. (a) Except as otherwise provided in this section, each regional educational attendance area established under AS 14.08.031 containing a part of the coastal area may be organized as a coastal resource service area.

Consolidation of REAA's

(b) The commissioner of the Department of Community and Regional Affairs may, after public hearings held in the area affected, consolidate two or more regional educational attendance areas as a single coastal resource service area

(1) if a substantial portion of the coastal area contains land and water area owned by the federal government over which it exercises exclusive jurisdiction or land held in trust by the federal government for Alaska Natives over which the state would not exercise control as to use; or

(2) if, after giving due consideration to the standards applicable to incorporation of borough governments and the likelihood that a borough will be incorporated within the area, the commissioner determines that the functions to be performed under this chapter could be undertaken more efficiently through the combination of two or more regional educational attendance areas as a single coastal resource service area.

(c) A determination under (b) of this section shall be made before organization of the coastal resource service area.

Division of REAA's

(d) For purposes of coastal zone management only, the commissioner of the Department of Community and Regional Affairs may, after pub-

lic hearings held in the regional educational attendance area affected, divide an existing regional educational attendance area into no more than three coastal resource service areas according to geographic, cultural, economic, environmental, or other features relevant to coastal management planning. However

(1) each coastal resource service area formed by dividing an existing regional educational attendance area must contain at least one first class city or home rule city;

(2) a city within a coastal resource service area formed by dividing an existing regional educational attendance area may not elect to exclude itself from the coastal resource service area; and

(3) a coastal resource service area formed before June 1, 1980 may not be divided for coastal management planning purposes.

(§ 4 ch 84 SLA 1977; am § 2 ch 129 SLA 1978; am §§ 1, 2 ch 48 SLA 1980)

Effect of amendments. — The 1978 amendment deleted "and no later than six months from the effective date of this act" from the end of subsection (c).

The 1980 amendment inserted "otherwise" and deleted "(b) of" following "provided in" in subsection (a), and added subsection (d).

Sec. 46.40.130. Organization of coastal resource service area. (a) Organization of a coastal resource service area may be initiated

(1) by submission to the council of a petition signed by a number of registered voters equal to 15 percent of the number of votes cast within the coastal resource service area at the last state general election;

(2) by submission to the council of a resolution approved by the city council or traditional village council of not less than 25 percent of the number of cities and villages within the coastal service area; or

(3) at the direction of a majority of the members of the council in the manner set out in AS 46.40.160.

(b) Acting at the request of the council, the lieutenant governor, not less than 60 nor more than 90 days after receipt of a proper petition under (a)(1) of this section, a proper resolution under (a)(2) of this section, or at the direction of the council under (a)(3) of this section, shall conduct an election on the question of organization of a coastal resource service area. (§ 4 ch 84 SLA 1977)

Revisor's notes. — The word "by" was added preceding "submission" in paragraphs (1) and (2) of subsection (a) and deleted following "may be initiated" in the introductory language of that subsection by the revisor of statutes under AS 01.05.031.

Sec. 46.40.140. Coastal resource service area boards. (a) Each coastal resource service area, upon organization, shall have an elected board representing the population of the service area. The board shall have the powers and duties and perform the functions prescribed for or required of coastal resource districts.

(b) A coastal resource service area board shall contain seven members. Board members shall be elected at large by the qualified voters of the coastal resource service area.

Sectional CRSA Elections

(c) The commissioner of the Department of Community and Regional Affairs, after consultation with residents of a coastal resource service area, may divide a service area into sections only for the purpose of nominating and electing board members. Division of a service area into sections for the purpose of nomination and election shall be in accordance with the provisions of AS 14.08.051(a). Division may be proposed in the petition submitted under AS 46.40.130(a)(1), in the resolution submitted under AS 46.40.130(a)(2), at the direction of the council under AS 46.40.130(a)(3) or may be proposed at any time by the members of the coastal resource service area board. If proposed by the board, the division of the service area into sections is subject to approval of a majority of the qualified voters voting on the question in the coastal resource service area at the next regular election or at a special election called for that purpose and, if approved, takes effect at the next regular election of members of the coastal resource service area board.

Term of Office

(d) The term of office of a member of a coastal resource service area board is three years, except that the terms of the members of the first board elected after organization of a coastal resource service area shall be determined by lot, with two members serving one-year terms, two members serving two-year terms, and three members serving three-year terms. Members serve until their successors are elected and have qualified. Nothing in this section prohibits the reelection of a board member.

(e) The lieutenant governor shall provide for the election of the members of coastal resource service area boards. The first election of board members shall occur not less than 60 nor more than 90 days after certification of the results of an organization election under AS 46.40.130(b) in which a majority of votes cast favors organization of the coastal resource service area.

(f) Except for the first election of members of coastal resource service area boards, elections shall be held annually on the date of election of members of regional educational attendance area boards under AS 14.08.071(b).

(g) A vacancy on a coastal resource service area board shall be filled by appointment as provided in AS 14.08.041(a) for vacancies in the membership of regional educational attendance area boards.

(h) Members of coastal resource service area boards are subject to recall on the same grounds and in the same manner as provided for recall of municipal officials in AS 29.28.130 — 29.28.250. The lieutenant governor functions in place of the assembly or council and municipal clerk for receipt and review of recall petitions and the conduct of recall elections. (§ 4 ch 84 SLA 1977)

Sec. 46.40.150. Elections in coastal resource service areas. Organization elections under AS 46.40.130 and other elections, including recall elections conducted under AS 46.40.140, shall be administered by the lieutenant governor in the general manner provided in the Alaska Election Code (AS 15). In addition, the lieutenant governor may adopt regulations necessary to the conduct of coastal resource service area board elections. The state shall pay all election costs. (§ 4 ch 84 SLA 1977)

Editor's notes. — The director of elections has succeeded to most of the administrative duties of the lieutenant governor under AS 15.10.105.

Sec. 46.40.160. Organization at the direction of the council (a) Whenever it appears that major economic development activity will occur in a coastal resource service area or in waters adjacent to a coastal resource service area which has not been organized, the council may direct the lieutenant governor to submit to the voters of the service area the question of organization. The council may require an election on the question only after holding at least one public hearing within the area proposed for organization.

(b) For purposes of this section, "major economic development activity" includes a call for nomination by the Secretary of the United States Department of the Interior for leasing of tracts within petroleum basins in waters of the outer continental shelf adjacent to the coastal resource service area or any other significant industrial or commercial activity which, in the opinion of the council, would commit the resources of the coastal area to a use of direct and significant impact upon the coastal waters of the state. (§ 4 ch 84 SLA 1977)

Sec. 46.40.170. Preparation of district coastal management program by the Department of Community and Regional Affairs. (a) If residents of a coastal resource service area reject organization of the service area at an election called for the purpose and the council finds, after public hearing, that major economic development activity has occurred or will occur within the service area, the council may direct the Department of Community and Regional Affairs to prepare and recommend for consideration by the council and for submission to the legislature a district coastal management program for the service area.

(b) At the request of the council, the Department of Community and Regional Affairs shall complete the district coastal management program in accordance with this chapter and the guidelines and standards adopted by the council for a coastal resource service area which has been organized but which has failed to make substantial progress in the preparation of an approvable district coastal management program within 18 months of certification of the results of an organization election or which has not submitted for approval to the council a pro-

gram within 30 months of certification of the results of its organization election. Preparation of the program shall be conducted in consultation with the coastal resource service area and shall, to the maximum extent consistent with this chapter, reflect the expressed concerns of the residents of the service area.

(c) Before requesting the department to complete the district coastal management program under (b) of this section, the council shall meet with the members of the coastal resource service area board to determine whether the board is able to complete a district coastal management program within the time limitations established in this section. (§ 4 ch 84 SLA 1977)

Sec. 46.40.180. Approval of programs in coastal resource service areas. (a) Before adoption by a coastal resource service area board, or by the Department of Community and Regional Affairs under AS 46.40.170, a district coastal management program shall be submitted for review to each city or village within the coastal resource service area. The council of a city or traditional village council shall consider the program submitted for review. Within 60 days of submission, the council of a city or traditional village council shall either approve the program or enter objections to all or any portion of the program.

Village Veto

(b) If a city or village within a coastal resource service area fails to approve a portion of the district coastal management program prepared and submitted for approval under (a) of this section, the governing body shall advise the coastal resource service area board or the department, as applicable, of its objections to the proposed program and suggest alternative elements or components for inclusion in the district coastal management program. New matter submitted by a city or village which is substantially consistent with the guidelines and standards adopted by the council shall be accepted and the district coastal management program modified accordingly. If a city or village fails to provide objections and suggested alternatives within the time limits established in this section, the coastal resource service area board or the department, as applicable, may adopt the district coastal management program as initially offered.

(c) Objection by a city council under (b) of this section is limited to objection to elements of the program affecting resources or the use of resources within the corporate limits of the city. Objection by a traditional village council under (b) of this section is limited to objection to elements of the program affecting resources or the use of resources within the village or within two miles of the village.

(d) For purposes of this section, "village" means an unincorporated community where at least 25 persons reside as a social unit as determined by the Department of Community and Regional Affairs. (§ 4 ch 84 SLA 1977)

Article 3. General Provisions.

Section

190. Cooperative administration
200. State agencies
210. Definitions

Collateral references. — 78 Am. Jur. 2d. Waters, §§ 59-116, 375-438.

65 C.J.S., Navigable Waters, §§ 10-18, 20-132; 93 C.J.S., Waters, §§ 71-85.

Sec. 46.40.190. Cooperative administration. (a) A city within the coastal area which is not part of a coastal resource service area shall be included for purposes of this chapter within an adjacent coastal resource service area unless its governing body, by resolution adopted by a majority of its membership, chooses to exclude the city from an adjacent coastal resource service area and a copy of the resolution is filed with the commissioner of the Department of Community and Regional Affairs.

(b) Nothing in this chapter restricts or prohibits cooperative or joint administration of functions between a municipality and a coastal resource service area organized under the provisions of this chapter upon initiation of a mutual agreement for the purpose. A city which elects to be excluded from an adjacent coastal resource service area under (a) of this section shall enter into a mutual agreement for cooperative or joint administration of functions with the coastal resource service area board from the adjacent coastal resource service area. (§ 4 ch 84 SLA 1977; am § 3 ch 43 SLA 1980)

Effect of amendments. — The 1980 amendment, substituted "a" for "an adjacent" preceding "coastal resource", "shall be included" for "may include itself", "unless" for "if", "chooses to exclude" for "consents to the inclusion of", inserted "from an adjacent coastal resource service area", all in subsection (a); and added the second sentence of subsection (b).

Sec. 46.40.200. State agencies. Upon the adoption of the Alaska coastal management program, state departments, boards and commissions shall review their statutory authority, administrative regulations, and applicable procedures pertaining to land and water uses within the coastal area for the purpose of determining whether there are any deficiencies or inconsistencies which prohibit compliance with the program adopted. State agencies shall, within six months of the effective date of the Alaska coastal management program, take whatever action is necessary to facilitate full compliance with and implementation of the program, including preparation and submission of recommendations to the council for additional or amended legislation. (§ 4 ch 84 SLA 1977)

Sec. 46.40.210. Definitions. In this chapter, unless the context otherwise requires,

(1) "area which merits special attention" means a delineated geographic area within the coastal area which is sensitive to change or alteration and which, because of plans or commitments or because a claim on the resources within the area delineated would preclude subsequent use of the resources to a conflicting or incompatible use, warrants special management attention, or which, because of its value to the general public, should be identified for current or future planning, protection, or acquisition; these areas, subject to council definition of criteria for their identification, include:

(A) areas of unique, scarce, fragile or vulnerable natural habitat, cultural value, historical significance, or scenic importance;

(B) areas of high natural productivity or essential habitat for living resources;

(C) areas of substantial recreational value or opportunity;

(D) areas where development of facilities is dependent upon the utilization of, or access to, coastal waters;

(E) areas of unique geologic or topographic significance which are susceptible to industrial or commercial development;

(F) areas of significant hazard due to storms, slides, floods, erosion or settlement; and

(G) areas needed to protect, maintain, or replenish coastal land or resources, including coastal flood plains, aquifer recharge areas, beaches and offshore sand deposits;

(2) "coastal resource district" means each of the following which contains a portion of the coastal area of the state:

(A) unified municipalities established under AS 29.68.240 — 29.68.440;

(B) organized boroughs of any class which exercise planning and zoning authority;

(C) home rule and first class cities of the unorganized borough or within boroughs which do not exercise planning and zoning authority;

(D) second class cities of the unorganized borough, or within boroughs which do not exercise planning and zoning authority, which have established a planning commission, and which, in the opinion of the commissioner of the Department of Community and Regional Affairs, have the capability of preparing and implementing a comprehensive district coastal management program under AS 46.40.030;

(E) coastal resource service areas established and organized under AS 29.03.020 and 46.40.110 — 46.40.180;

(3) "council" means the Alaska Coastal Policy Council;

(4) "department" means the Department of Community and Regional Affairs;

(5) "use of direct and significant impact" means a use, or an activity associated with the use, which proximately contributes to a material

change or alteration in the natural or social characteristics of a part of the state's coastal area and in which

(A) the use, or activity associated with it, would have a net adverse effect on the quality of the resources of the coastal area;

(B) the use, or activity associated with it, would limit the range of alternative uses of the resources of the coastal area; or

(C) the use would, of itself, constitute a tolerable change or alteration of the resources within the coastal area but which, cumulatively, would have an adverse effect;

(6) "uses of state concern" means those land and water uses which would significantly affect the long-term public interest; these uses, subject to council definition of their extent, include:

(A) uses of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon coastal locations;

(B) uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural, or economic benefits or burdens beyond a single coastal resource district;

(C) the siting of major energy facilities, activities pursuant to a state oil and gas lease, or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance;

(D) facilities serving statewide or interregional transportation and communication needs; and

(E) uses in areas established as state parks or recreational areas under AS 41.21 or as state game refuges, game sanctuaries or critical habitat areas under AS 16.20. (§ 4 ch 84 SLA 1977; am § 3 ch 129 SLA 1978)

Effect of amendments. — The 1978 amendment inserted "activities pursuant to a state oil and gas lease" in subparagraph (C) of paragraph (6).

Revisor's notes. — Internal reference in paragraph (6)(E) was revised in 1983.

PART 2B.
OFFICE OF MANAGEMENT AND BUDGET–DIVISION OF GOVERNMENTAL COORDINATION

Chapter

50. Project Consistency With the Alaska Coastal Management Program (6 AAC 50.010–6 AAC 50.190)

CHAPTER 50.
PROJECT CONSISTENCY WITH THE ALASKA COASTAL MANAGEMENT PROGRAM

Section

10. Purpose of regulations
20. Federal consistency determinations
30. State permit consistency determinations
40. Preapplication assistance
50. Expedited review by categorical approval and general concurrence determinations
60. Scope of project to be reviewed
70. Consistency review process
80. Confidential information and fees
90. Emergency expedited review
100. Public participation
110. Review period deadlines and extensions
120. Conclusive consistency determination
130. Issuance of project permits
190. Definitions

6 AAC 50.010. PURPOSE OF REGULATIONS. The regulations in this chapter are intended to implement, interpret, and make specific

(1) the responsibility of the office of management and budget (OMB) to implement the Alaska Coastal Management Program (ACMP) by rendering on behalf of the state

(A) all responses concurring in or objecting to a federal consistency certification or determination which is required or authorized by sec. 307 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1456, (CZMA), and

(B) all conclusive consistency determinations for any project requiring two or more state agency or federal permits as required by AS 44.19.145(a)(11): and

(2) the responsibility of resource agencies to implement the ACMP by making conclusive consistency determinations for projects requiring the permit of a single state agency and no federal permit, and to expedite their permit review procedures, to the extent permitted by law, by coordinating their own procedures with the consistency review of a project. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)
AS 46.40.100(a)

6 AAC 50.020. FEDERAL CONSISTENCY DETERMINATIONS. The division of governmental coordination (DGC) of the office of management and budget will coordinate a consistency review and render a response concurring in or objecting to a federal consistency certification or determination which is required or authorized by sec. 307 of the CZMA. DGC will coordinate the review in the manner provided in this chapter and will render a response in the time and manner prescribed in the CZMA or in the regulations implementing that Act. (Eff. 3/11/84, Reg. 89)

Authority: AS 44.19.145(a)(11)

6 AAC 50.030. STATE PERMIT CONSISTENCY DETERMINATIONS. (a) DGC will coordinate the review and render a determination for a project which requires the permits of two or more state agencies or a federal permit, in the manner provided in this chapter.

(b) A resource agency shall coordinate the consistency review and render a conclusive consistency determination for a project which requires only the permits of a single state agency and no federal permit. The agency shall coordinate the review and render its determination in the manner provided in this chapter.

(c) DGC will participate in a single-agency consistency review in the same manner as the other resource agencies participate. DGC will also, on request of the coordinating agency, act as a facilitator to attempt to resolve any disputed issues. If the project includes a disposal of interest in state land, DGC will either concur in the determination or require modifications necessary for its concurrence.

(d) DGC will, in its discretion, at any time, with reasonable notice, review the consistency review procedures, files, or decisions of a coordinating agency. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)
AS 46.40.100(a)

6 AAC 50.040. PREAPPLICATION ASSISTANCE. DGC will, on request, assist a potential applicant for a state permit for a project by providing and explaining the coastal project questionnaire and the consistency review process as described in 6 AAC 50.070, identifying persons to contact in other state or federal agencies, determining the scope of activities which comprise the project, and providing any other assistance or information at its disposal to facilitate review and approval of the applicant's proposed project. A resource agency shall, on request, provide similar assistance and shall also provide application forms for its own permits. DGC and all resource agencies will attempt to regularly inform each coastal resource district of proposed projects which may have significant and direct impacts on that district. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)
AS 46.40.100(a)

6 AAC 50.050. EXPEDITED REVIEW BY CATEGORICAL APPROVAL AND GENERAL CONCURRENCE DETERMINATIONS. (a) The consistency review of a project will be expedited as provided in (b) or (c) of this section if the project meets the requirements of one of those subsections.

(b) A project which requires one or more state or federal permits, each of which appears on the list published under (e) of this section listing permits which have been categorically approved by DGC as being consistent with the ACMP, is considered to have been conclusively determined by DGC to be consistent with the ACMP. A permit will be categorically approved if DGC determines that the activity authorized by the permit will have no significant impact in the coastal zone.

(c) A project which requires one or more state or federal permits not categorically approved as

provided in (b) of this section will be considered consistent without further review, if it meets the requirements of a general concurrence determination contained on the list published under (e) of this section. A "general concurrence determination" is a consistency determination for a type of project which includes only routine activities, and which can be effectively made consistent with the ACMP by imposing standard stipulations on the applicable permit. If a subsequent project of any applicant fits the description in a general concurrence determination, the project will be considered consistent with the ACMP if it complies with the stated standard stipulations.

(d) A project which requires one or more state or federal permits, and which is not within the categories described in (b) or (c) of this section, is subject to review as an individual project as provided in this chapter.

(e) DGC will publish a list of permits which have been categorically approved as being consistent with the ACMP, and a list of general concurrence determinations, and will identify on each list those permits or projects for which a coastal project questionnaire is not necessary. DGC will amend these lists as necessary on its own initiative, or on the request of a coastal resource district or a resource agency based on new information regarding the impacts of these activities, including cumulative impacts. Before publishing or amending these lists, DGC will distribute the proposed lists or amendments for comment in the manner provided in 6 AAC 50.070 for a project consistency review. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)

6 AAC 50.060. SCOPE OF PROJECT TO BE REVIEWED. The scope of activities which are to be reviewed for consistency with the ACMP as part of a project will be determined based on statements of the applicant, the information provided in the coastal project questionnaire, and any additional information which DGC or a resource agency finds necessary to request. If there is disagreement among the agencies, DGC will make the final decision. If DGC determines that a project under review by a resource agency is one requiring a federal permit, or the permits of two or more state agencies, DGC will immediately notify the applicant and the resource agency that the consistency review will be coordinated by DGC, and will commence as provided in 6 AAC 50.070 when DGC has received completed applications for all necessary permits and a completed coastal-project questionnaire. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)

6 AAC 50.070. CONSISTENCY REVIEW PROCESS. (a) Except as provided in 6 AAC 50.050(e) or in (b) of this section, DGC on request, or a resource agency which receives an application for a permit for a coastal project, shall give the applicant a project questionnaire provided by DGC. Based on the information provided by the applicant in response to the questionnaire, the agency shall identify all state resource agencies which the applicant must contact regarding the project before submitting an application for a permit.

(b) A project questionnaire is not required for placer mining activity which is authorized by an annual application known as the "tri-agency placer mining application." These applications must be submitted to the Department of Natural Resources (DNR). DNR will distribute these applications to initiate the consistency review of the projects as provided in this chapter.

(c) For a project requiring a federal permit or the permits of two or more state agencies, the applicant shall submit a packet including all necessary state permit applications, copies of all necessary federal permit applications, and the project questionnaire to DGC, except that confidential information or fees must be handled as provided in 6 AAC 50.080. The coordinating agency may require the applicant to provide additional copies of maps or other documents which may not be conveniently duplicated.

(d) For a project requiring only the permits of a single state agency, the applicant shall submit a packet including all necessary applications and the project questionnaire to the agency.

(e) Immediately upon receipt, the coordinating agency shall review the packet and shall inform the applicant if it appears to be incomplete. If the packet appears to be complete, and the project does not include a disposal of interest in state land, the coordinating agency shall immediately assign a project number, and note the date as Day 1 of the consistency review process. For a project which includes a disposal of interest in state land, the consistency review will begin at a date which DGC and DNR agree will most effectively allow for both the consistency review and DNR's own statutory responsibilities. Acceptance of the packet does not preclude an agency from requesting additional information or applications from the applicant as necessary for its consistency review or its own statutory responsibilities. On or before Day 2, the coordinating agency will distribute copies of the packet to all resource agencies, other state agencies on request, all affected coastal resource districts, and other interested parties. For a 30-day review, the distribution may be limited in the discretion of the coordinating agency but must, if requested in writing, include any affected coastal district with an approved program. Along with the packet, the coordinating agency will distribute a notice establishing a comment deadline at Day 34, or at Day 17 in a 30-day review period, or later if the review period is extended as provided in 6 AAC 50.100. The notice will also state the applicable time limit, if any, imposed by the federal law or regulation.

(f) If the coordinating agency determines that the public notice, if any, provided by the resource agencies as part of their review of a permit is not adequate to inform the public about the project and the consistency review process, the coordinating agency shall, as soon as possible, publish a public notice in a newspaper or on radio or television in the affected areas, describing the project and the consistency review process. In evaluating the need for public notice of a project, the coordinating agency shall consider the magnitude of likely impacts, including cumulative impacts on the affected area, but may not unreasonably require public notice for a project for which notice is not statutorily required. DGC will encourage the joint public notice of project reviews when a permit from more than one agency is required.

(g) The coordinating agency, on its own initiative or at the request of a resource agency or of an affected coastal district with an approved program, may request from the applicant by Day 25, or Day 15 of a 30-day review period, additional information relevant to the proposed project, which is necessary for its consistency review or its own statutory responsibilities.

(h) Comments must be received by the coordinating agency on or before the comment deadline established by the coordinating agency. Each commenter shall also send copies of its comments to the resource agencies. Verbal comments must be confirmed by written comments postmarked within five working days after the verbal comments. If the commenter recommends stipulations on the consistency determination, a brief written justification must be provided by the commenter for each stipulation. Upon request, the coordinating agency shall send copies of comments to other interested parties.

(i) The coordinating agency shall encourage and facilitate consideration of comments received and discussion among the resource agencies. The coordinating agency shall determine whether there is a consensus among the resource agencies regarding a proposed consistency determination. The coordinating agency shall notify the affected coastal resource district with an approved program and the applicant on or before Day 44, or Day 24 in a 30-day review period, of the proposed determination or the issues to be resolved.

(j) If a resource agency, an affected coastal resource district with an approved program, or the applicant does not concur with the proposed consistency determination, it may request elevation of the review by submitting a written statement which describes its concerns and includes a proposed alternative consistency determination which would meet its concerns. That party shall distribute this statement so that all resource agencies, affected coastal resource districts, the applicant, and DGC will receive a copy on or before Day 49, or Day 29 in a 30-day review period, or within five days after receiving notice of the proposed determination, whichever is later. This requirement may be satisfied by transmitting the substance of the

statement to the coordinating agency by telephone or other telecommunication device and sending written confirmation to all parties by mail or courier on or before the deadline under this subsection.

(k) The coordinating agency shall issue a conclusive consistency determination on or before Day 50, or Day 30 in a 30-day review period, if it has not received a request to elevate the review. If the coordinating agency receives a request, the agency shall elevate the review as necessary to the division directors, and then commissioners of the resource agencies, and may extend the decision deadline in accordance with 6 AAC 50.110(b)(7). If the review is elevated, the coordinating agency, or DGC on request, shall arrange meetings and shall mediate among the resource agencies, the affected coastal resource districts with approved programs, and the applicant, for the purpose of attempting to resolve any disputed issues and to formulate a mutually acceptable consistency determination. If no consensus is reached, the coordinating agency shall render a determination consistent with any policy direction given by the commissioners or the governor. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)

6 AAC 50.080. CONFIDENTIAL INFORMATION AND FEES. An application for a state permit requiring information which must by law be held in confidence, and any fee associated with a state permit, must be submitted by the applicant directly to the agency with responsibility for issuing the permit. The agency shall delete the confidential information from any copy of the application which is distributed for a consistency review under this chapter. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)

6 AAC 50.090. EMERGENCY EXPEDITED REVIEW. If, due to an emergency as described in AS 26.23 or AS 46.04.080 or other applicable law, an applicant needs an expedited agency permit or consistency review, or if the head of the coordinating agency finds that an expedited review is necessary for the preservation of the public peace, health, safety, or general welfare, the head of the coordinating agency may modify the review process established in this chapter as necessary to meet the emergency. Any modifications in the review process made under this section must be made in writing by the head of the coordinating agency, based upon clear and convincing evidence of a need for the modification. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)

6 AAC 50.100. PUBLIC PARTICIPATION. (a) Any person may comment on a proposed project by submitting written comments to the coordinating agency on or before the comment deadline. The coordinating agency shall provide a copy of the project packet to any person on request.

(b) If the coordinating agency receives a request for public hearing regarding a project by Day 34, or Day 17 of a 30-day review period, and finds that the request is based on concerns not already adequately addressed in the review, the coordinating agency shall schedule and hold a hearing in the area affected by the project.

(c) Within seven days after receiving a request under (b) of this section, the coordinating agency shall decide whether or not to hold a public hearing.

(d) At least 15 but no more than 30 days before the date of a public hearing, the coordinating agency shall give notice of the time and place of the hearing

(1) by publication in a newspaper which is circulated in the area to be affected by the project;

(2) by written notice to the governing body of an affected coastal resource district; and

(3) if the project is to be located in the unorganized borough, by radio or television announcements.

(e) If new information or issues are presented at a public hearing that have not been considered or resolved by project reviewers, the coordinating agency shall summarize those portions of the hearing testimony and distribute the

summary to other resource agencies, affected coastal resource districts, and the applicant, within five days following the hearing. Recommendations for a proposed determination based on the summary may be submitted to the coordinating agency in writing within seven days after receipt of the summary. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)

6 AAC 50.110. REVIEW PERIOD DEADLINES AND EXTENSIONS. (a) The coordinating agency shall complete a review by either Day 30 or Day 50 unless it extends the applicable decision deadline as provided in (b) or (c) of this section. Each resource agency shall, after consultation with DGC, establish standards for determining whether a 30-day or 50-day decision deadline will apply. DGC will complete a review by Day 30 only if all required permits must by statute or regulation be issued within 30 days.

(b) An associate director within OMB or a division director within the coordinating agency may grant an extension of a consistency review as long as the consistency determination is made within any time limit imposed by federal law or regulation. An extension and the reasons for it must be stated in writing and, except for an extension granted under (1) of this subsection, must be based on clear and convincing evidence of the need for the extension. The coordinating agency will notify the resource agencies, applicant, and affected coastal resource districts of the terms of an extension. The limits on extensions are

(1) for a project located in the unorganized borough, the coordinating agency may, without a request, extend both the comment and decision deadlines by 10 days;

(2) if a commenting agency requests time to perform a field review, the coordinating agency may extend the remaining deadlines by up to 10 days;

(3) if the project involves a disposal of interest in state land or resources and DGC is the coordinating agency, it will, on DNR's request, extend both the comment and decision deadlines for a period necessary to most efficiently coordinate the consistency review and the DNR disposal process;

(4) for a project which is subject to the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 Stat. 445 (1977), 30 U.S.C. § 1201 et seq., the consistency review deadlines will be extended as necessary to conform to the requirements of that Act and of the Alaska Surface Mining Control and Reclamation Act, AS 27.21;

(5) if a public hearing is held as part of the consistency review process, or as part of a resource-agency review of a necessary permit, the coordinating agency may extend both the comment and decision deadlines as necessary;

(6) if the coordinating agency requests additional information from the applicant as provided in 6 AAC 50.070, the agency may extend the remaining deadlines for a period equal to the time elapsed between the request and receipt of the information;

(7) if the coordinating agency determines that a consensus among the resource agencies, any affected coastal resource district, and the applicant cannot be reached within a 50-day review period, it shall state in writing the issues or conditions which require additional time for review, and may extend the remaining deadlines for up to 15 days for each higher level of review provided in 6 AAC 50.070(k);

(8) if the applicant requests an extension, the coordinating agency may extend the remaining deadlines as requested;

(9) if the coordinating agency determines that the project involves unusually complex issues, it may extend the deadlines as necessary; if the deadline is extended under this paragraph, the agency shall by Day 50, or Day 30 of a 30-day review period, distribute to the resource agencies, the affected coastal resource districts, and the applicant, a written statement of the issues which remain to be resolved; the coordinating agency shall notify all interested parties promptly as issues are resolved.

(c) All time periods in this chapter must be calculated using calendar days. An action

required to be taken on a Saturday, Sunday, or state or federal holiday must be taken on or before the next working day. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)

6 AAC 50.120. CONCLUSIVE CONSISTENCY DETERMINATION. (a) In rendering a conclusive consistency determination, the coordinating agency shall give careful consideration to all comments, and shall give due deference to the comments of resource agencies and affected coastal districts with approved programs. "Due deference" means that deference which is appropriate in the context of the commenter's expertise and area of responsibility, and all the evidence available to support any factual assertions. A coastal resource district whose district program has been incorporated into the ACMP is considered to have expertise in the interpretation and application of its program. If the coordinating agency rejects a stipulation or recommendation requested by a commenting resource agency or affected coastal resource district with an approved program, within its respective area of expertise, the coordinating agency shall make a written finding stating the reasons for rejecting the stipulation.

(b) The coordinating agency shall render a written conclusive consistency determination before the decision deadline under 6 AAC 50.070 or 6 AAC 50.110. The agency shall distribute its determination to the applicants and to all resource agencies, all other agencies which commented on the project, and all affected coastal resource districts. The determination must describe the scope of the project which was reviewed. If the project is determined to be consistent with the ACMP, the determination must state any conditions or stipulations and must identify the state or federal permits in which each stipulation must be included to ensure that the project is consistent with the ACMP. If a resource agency is the coordinating agency, it may include the determination in its approval or denial of each permit required for the project. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)

6 AAC 50.130. ISSUANCE OF PROJECT PERMITS. A resource agency shall issue a permit which is necessary for a project, except a lease, within five days after it issues or receives the conclusive consistency determination for that project, unless the commissioner of that agency finds that additional review is necessary to fulfill statutory responsibilities. A resource agency shall issue a lease at the time and in the manner provided by applicable law, regulation, and agency procedure, but not before it issues or receives a conclusive consistency determination for the appropriate project. For a project which is deemed consistent, by either categorical approval of all necessary permits or a general concurrence determination, an agency shall issue a required permit as soon as possible in the time and manner prescribed by applicable statutes or regulations. A project permit must contain any applicable conditions or stipulations required by the conclusive consistency determination, and may not contain any additional condition or stipulation for the sole purpose of ensuring consistency. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)

6 AAC 50.190. DEFINITIONS. In this chapter and in AS 44.19.145(a)(11)

(1) "ACMP" means the Alaska Coastal Management Program, as amended, which was developed as provided in AS 46.40, 6 AAC 80, and 6 AAC 85, and approved by the Secretary of the United States Department of Commerce under authority of sec. 305 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1454;

(2) "affected coastal resource district" means a coastal resource district as defined in AS 46.40.210(2) in which a project is proposed to be located, or which may experience a direct and significant impact from a proposed project;

(3) "approved program" means a coastal resource district program that has been approved by the Alaska Coastal Policy Council and filed by the lieutenant governor's office;

(4) "consistency" means compliance with the

standards of the ACMP, including the enforceable policies of an approved coastal resource district program;

(5) "coordinating agency" means the agency responsible for coordinating and facilitating the review and rendering the determination;

(6) "CZMA" means the federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1451 et seq.;

(7) "DGC" means division of governmental coordination within the office of management and budget in the Office of the Governor;

(8) "DNR" means the Department of Natural Resources;

(9) "determination" or "consistency determination" or "conclusive consistency determination" means

(A) a document issued by the coordinating agency containing a brief description of the project, and the findings of the consistency review together with any stipulations, conditions, or modifications to the project which must be attached to the applicable permits, and a brief justification for those necessary modifications, conditions, or stipulations, and includes

(B) a response to a consistency certification or determination required or authorized under the CZMA;

(10) "direct and significant impact" means an effect of a project which will likely contribute or lead to a significant change in or alteration of the natural, social, cultural, or economic characteristics of a coastal resource district;

(11) "disposal of interest in state land" means the sale, lease, or other disposition of state-owned or state-managed land or resources by the Department of Natural Resources;

(12) "OMB" means the office of management and budget in the Office of the Governor;

(13) "permit" means a permit, lease, authorization, license or any other determination necessary for completion of a project or a discrete phase of a project;

(14) "project" means an activity or use which will be located in or may affect the coastal zone of Alaska and which is subject to consistency review under sec. 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456), or which requires the issuance of one or more state permits; when a land or water activity is developed or authorized in discrete phases, and each phase requires agency decisions regarding permits, each phase is considered a "project";

(15) "resource agency" means the Alaska Department of Environmental Conservation, or the Alaska Department of Fish and Game, or the Alaska Department of Natural Resources;

(16) "review" or "consistency review" means the evaluation of a project against the ACMP standards. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24, Alaska Const.
AS 44.19.145(a)(11)

PART 6.
ALASKA COASTAL POLICY COUNCIL

Chapter
80. Standards of the Alaska Coastal Management Program (6 AAC 80.010–6 AAC 80.900)
85. Guidelines for District Coastal Management Programs (6 AAC 85.010–6 AAC 85.900)

CHAPTER 80.
STANDARDS OF THE ALASKA COASTAL MANAGEMENT PROGRAM

Article
1. Government Process (6 AAC 80.010–6 AAC 80.030)
2. Uses and Activities (6 AAC 80.040–6 AAC 80.120)
3. Resources and Habitats (6 AAC 80.130–6 AAC 80.150)
4. Areas Which Merit Special Attention (6 AAC 80.160)
5. General Provisions (6 AAC 80.900)

ARTICLE 1.
GOVERNMENT PROCESS

Section
10. Coverage of chapter
20. Public participation and information
30. Program management and coordination

6 AAC 80.010. COVERAGE OF CHAPTER. (a) This chapter contains standards for the use of and application by districts and state agencies in carrying out their responsibilities under the Alaska Coastal Management Act (AS 46.40, and AS 44.19.891 – 44.19.894).

(b) Nothing in this chapter or in any district program displaces or diminishes the authority of any state agency or local government with respect to resources in the coastal area. Uses and activities conducted by state agencies in the coastal area must be consistent with the applicable district program and the standards contained in this chapter. In authorizing uses or activities in the coastal area under its statutory authority, each state agency shall grant authorization if, in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use or activity is consistent with the applicable district program and the standards contained in this chapter. However, if the district program and the standards in this chapter both address the same operational subject or issue, the provisions of the district program are controlling.

(c) At a minimum, the council will review this chapter annually. (Eff. 7/18/78, Reg. 67; am 9/9/81, Reg. 79)

Authority: AS 44.19.160
AS 46.40.040
AS 46.40.100

6 AAC 80.020. PUBLIC PARTICIPATION AND INFORMATION. (a) The council will provide adequate, effective, and continuing opportunities for public participation from the beginning of the Alaska coastal management program. The council will give notice of when and where opportunities for public participation will be provided before adoption of guidelines and standards, review and approval of district programs and amendments to district programs, and amendments to the Alaska coastal management program.

(b) The council will not approve a district program or significant amendment of a district program unless evidence of significant opportunities for public participation at the district level has been provided.

(c) The council will make available to the public information and educational materials concerning coastal management, in understandable form, including

(1) a guide for the development of district programs;

(2) maps and narratives describing physical and biological characteristics to be used in establishing boundaries of coastal areas;

(3) areas recommended for council designation as areas which merit special attention;

(4) maps showing the distribution and abundance of coastal fish and wildlife species with commercial, recreational, subsistence, or general ecological importance;

(5) an identification of major data and information sources concerning coastal management;

(6) a summary of information regarding coastal regions;

(7) summaries of public hearings and workshops;

(8) films and slide programs;

(9) written material summarizing or explaining the Alaska coastal management program; and

(10) the council's annual report to the legislature.

(d) At public meetings concerning the Alaska coastal management program, the council will ensure that, when requested and reasonably necessary, translation into the appropriate Native language is provided. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 80.030. PROGRAM MANAGEMENT AND COORDINATION. (a) The Office of Coastal Management is the designated lead agency for the Alaska coastal management program. The Office of Coastal Management shall

(1) present the staff position regarding matters before the council;

(2) coordinate the activities of state agencies participating in the Alaska coastal management program; and

(3) review state and federal actions for consistency with the Alaska coastal management program, subject to council review.

(b) The council will initiate an interagency program of comprehensive resource management for each geographic region listed in AS 44.19.891(a)(1). Regional programs will

(1) assist the council and districts in identifying uses of state concern and developing management policies for these uses;

(2) provide resource, social, and economic information on a coordinated regional basis; and

(3) assist the council and districts in identifying, avoiding, or minimizing existing or potential conflicts.

(c) Plans and recommendations developed as part of the regional program described in (b) of this section must be transmitted to the district through the Office of Coastal Management. District planning efforts must demonstrate review and consideration of these plans and recommendations. If the final district program proposed does not agree with the regional program plans and recommendations, the differences will be resolved by the council.

(d) The council will prepare a manual of standards for the management of land and water uses in the coastal area to assist in the development of district and state agency programs. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.040

NOTE: The Council has Amended 6 AAC 80.030. The Amended language is reprinted on the following page. The new language went into effect in October 1984.

6 AAC 80.030 is amended to read:

6 AAC 80.030. PROGRAM MANAGEMENT AND COORDINATION.

(a) The division of governmental coordination of the Office of Management and Budget is the designated lead agency for the Alaska coastal management program. The division of governmental coordination of the Office of Management and Budget shall

(1) present the staff position regarding matters before the council;

(2) coordinate the activities of State agencies participating in the Alaska coastal management program; and

(3) review state and federal actions for consistency with the Alaska coastal management program, as provided in 6 AAC 50.

(b) The council will initiate an interagency program of comprehensive resource management for each geographic region listed in AS 44.19.155. Regional programs will

(1) assist the council and districts in identifying uses of state concern and developing management policies for these uses;

(2) provide resource, social, and economic information on a coordinated regional basis; and

(3) assist the council and districts in identifying, avoiding, or minimizing existing or potential conflicts.

(c) Plans and recommendations developed as part of the regional program described in (b) of this section must be transmitted to the district through the division of governmental coordination. District planning efforts must demonstrate review and consideration of these plans and recommendations. If the final district program proposed does not agree with the regional program plans and recommendations, the differences will be resolved by the council.

(d) The council will prepare a manual of standards for the management of land and water uses in the coastal area to assist in the development of district and state agency programs. (Eff. 7/18/79, Reg. 67; am / / , Reg.)

Authority: AS 44.19.145(a)(11)
AS 44.19.161
AS 46.40.040

ARTICLE 2.
USES AND ACTIVITIES

Section
40. Coastal development
50. Geophysical hazard areas
60. Recreation
70. Energy facilities
80. Transportation and utilities
90. Fish and seafood processing
100. Timber harvest and processing
110. Mining and mineral processing
120. Subsistence

6 AAC 80.040. COASTAL DEVELOPMENT. (a) In planning for and approving development in coastal areas, districts and state agencies shall give, in the following order, priority to:

(1) water-dependent uses and activities;

(2) water-related uses and activities; and

(3) uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.

(b) The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with the standards contained in Parts 320-323, Title 33, Code of Federal Regulations (Vol. 42 of the Federal Register, pp. 37133 – 47 (July 19, 1977)). (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 80.050. GEOPHYSICAL HAZARD AREAS. (a) Districts and state agencies shall identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur.

(b) Development in areas identified under (a) of this section may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 80.060. RECREATION. (a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are

(1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or

(2) the area has potential for high quality recreational use because of physical, biological, or cultural features.

(b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 80.070. ENERGY FACILITIES. (a) Sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with districts.

(b) The siting and approval of major energy facilities by districts and state agencies must be based, to the extent feasible and prudent, on the following standards:

(1) site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements;

(2) site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs;

(3) consolidate facilities;

(4) consider the concurrent use of facilities for public or economic reasons;

(5) cooperate with landowners, developers, and federal agencies in the development of facilities;

(6) select sites with sufficient acreage to allow for reasonable expansion of facilities;

(7) site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements;

(8) select harbors and shipping routes with least exposure to reefs, shoals, drift ice, and other obstructions;

(9) encourage the use of vessel traffic control and collision avoidance systems;

(10) select sites where development will require minimal site clearing, dredging and construction in productive habitats;

(11) site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats, including marine mammal rookeries and hauling out grounds and waterfowl nesting areas;

(12) site facilities so that design and construction of those facilities and support infrastructures in coastal areas of Alaska will allow for the free passage and movement of fish and wildlife with due consideration for historic migratory patterns and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;

(13) site facilities in areas of least biological productivity, diversity, and vulnerability and where effluents and spills can be controlled or contained;

(14) site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;

(15) select sites in areas which are designated for industrial purposes and where industrial traffic is minimized through population centers; and

(16) select sites where vessel movements will not result in overcrowded harbors or interfere with fishing operations and equipment.

(c) Districts shall consider that the uses authorized by the issuance of state and federal leases for mineral and petroleum resource extraction are uses of state concern. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 80.080 TRANSPORTATION AND UTILITIES. (a) Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with district programs.

(b) Transportation and utility routes and facilities must be sited inland from beaches and shorelines unless the route or facility is water-dependent or no feasible and prudent inland alternative exists to meet the public need for the route or facility. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 80.090. FISH AND SEAFOOD PROCESSING. Districts shall identify and may designate areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 80.100. TIMBER HARVEST AND PROCESSING. AS 41.17, Forest Resources and Practices, and the regulations and procedures adopted under that chapter with respect to the harvest and processing of timber, are incorporated into the Alaska coastal management program and constitute the components of

the coastal management program with respect to those purposes. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71; am 3/30/84, Reg. 89)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 80.110. MINING AND MINERAL PROCESSING. (a) Mining and mineral processing in the coastal area must be regulated, designed, and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, statewide and national needs, and district programs.

(b) Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for the sand or gravel. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 80.120. SUBSISTENCE. (a) Districts and state agencies shall recognize and assure opportunities for subsistence usage of coastal areas and resources.

(b) Districts shall identify areas in which subsistence is the dominant use of coastal resources.

(c) Districts may, after consultation with appropriate state agencies, Native corporations, and any other persons or groups, designate areas identified under (b) of this section as subsistence zones in which subsistence uses and activities have priority over all nonsubsistence uses and activities.

(d) Before a potentially conflicting use or activity may be authorized within areas designated under (c) of this section, a study of the possible adverse impacts of the proposed potentially conflicting use or activity upon subsistence usage must be conducted and appropriate safeguards to assure subsistence usage must be provided.

(e) Districts sharing migratory fish and game resources must submit compatible plans for habitat management. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.040

ARTICLE 3.
RESOURCES AND HABITATS

Section
130. Habitats
140. Air, land and water quality
150. Historic, prehistoric, and archaeological resources

6 AAC 80.130. HABITATS. (a) Habitats in the coastal area which are subject to the Alaska coastal management program include

(1) offshore areas;

(2) estuaries;

(3) wetlands and tideflats;

(4) rocky islands and seacliffs;

(5) barrier islands and lagoons;

(6) exposed high energy coasts;

(7) rivers, streams, and lakes; and

(8) important upland habitat.

(b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources.

(c) In addition to the standard contained in (b) of this section, the following standards apply to the management of the following habitats:

(1) offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial, and subsistence fishery;

(2) estuaries must be managed so as to assure adequate water flow, natural circulation patterns, nutrients, and oxygen levels, and avoid the discharge of toxic wastes, silt, and destruction of productive habitat;

(3) wetlands and tideflats must be managed so as to assure adequate water flow, nutrients, and oxygen levels and avoid adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances;

(4) rocky islands and seacliffs must be managed so as to avoid the harassment of wildlife, destruction of important habitat, and the introduction of competing or destructive species and predators;

(5) barrier islands and lagoons must be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, and discourage activities which would decrease the use of barrier islands by coastal species, including polar bears and nesting birds;

(6) high energy coasts must be managed by assuring the adequate mix and transport of sediments and nutrients and avoiding redirection of transport processes and wave energy; and

(7) rivers, streams, and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow.

(d) Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:

(1) there is a significant public need for the proposed use or activity;

(2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and

(3) all feasible and prudent steps to maximize conformance with the standards contained in (b) and (c) of this section will be taken.

(e) In applying this section, districts and state agencies may use appropriate expertise, including regional programs referred to in 6 AAC 80.030(b). (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 80.140. AIR, LAND, AND WATER QUALITY. Notwithstanding any other provision of this chapter, the statutes pertaining to and the regulations and procedures of the Alaska Department of Environmental Conservation with respect to the protection of air, land, and water quality are incorporated into the Alaska coastal management program and, as administered by that agency, constitute the components of the coastal management program with respect to those purposes. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 80.150. HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES. Districts and appropriate state agencies shall identify areas of the coast which are important to the study, understanding, or illustration of national, state, or local history or prehistory. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.040

ARTICLE 4.
AREAS WHICH MERIT SPECIAL ATTENTION

Section
160. Areas which merit special attention

6 AAC 80.160. AREAS WHICH MERIT SPECIAL ATTENTION. (a) Any person may recommend to a district or to the council areas to be designated as areas which merit special attention. Districts shall designate in district programs areas which merit special attention. Areas which are not in districts and which merit special attention shall be designated by the council with the concurrence of appropriate state agencies, municipalities, and villages affected by the designation. Designations must include the following information:

(1) the basis or bases for designation under AS 46.40.210(1) or (b) of this section;

(2) a map showing the geographical location, surface area and, where appropriate, bathymetry of the area;

(3) a description of the area which includes dominant physical and biological features;

(4) the existing ownership, jurisdiction, and management status of the area, including existing uses and activities;

(5) the existing ownership, jurisdiction, and management status of adjacent shoreland and sea areas, including existing uses and activities;

(6) present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and

(7) a proposed management scheme, consisting of the following:

(A) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to land and water within the area;

(B) a summary or statement of the policies which will be applied in managing the area; and

(C) an identification of the authority which will be used to implement the proposed management scheme.

(b) In addition to the categories contained in AS 46.40.210(1), areas which merit special attention may include the following:

(1) areas important for subsistence hunting, fishing, food gathering, and foraging;

(2) areas with special scientific values or opportunities, including those where ongoing research projects could be jeopardized by development or conflicting uses and activities; and

(3) potential estuarine or marine sanctuaries.

(c) Management schemes for areas which merit special attention must preserve, protect, enhance, or restore the value or values for which the area was designated.

(d) As used in this section, "areas which merit special attention" has the same meaning as in AS 46.40.210(1). (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161
AS 46.40.040

NOTE:
The Coastal Policy Council is considering the amendment of section 6 AAC 80.160 and the adoption of a new section, 6 AAC 80.161. The language that is being considered is represented as follows:

ARTICLE 4

Areas Which Merit Special Attention

Article 4, 6 AAC 80.160, is amended as follows:

6 AAC 80.160. AREAS WHICH MERIT SPECIAL ATTENTION INSIDE DISTRICTS. (a) Any person may recommend to a district areas inside the district to be nominated to the Council as areas which merit special attention. Districts shall nominate in district programs or as significant amendments to their programs areas which merit special attention. Council designation of areas which merit special attention inside districts shall be in accordance with the procedures for approval of district programs or significant amendments to district programs as described in 6 AAC 85. Nominations of areas which merit special attention must include the following information:

(1) The basis or bases for designation under 46.40.210(1) or (b) of this section;

(2) A map showing the geographical location, surface area and, where appropriate, bathymetry of the area;

(3) A description of the area which includes dominant physical and biological features;

(4) The existing ownership, jurisdiction, and management status of the area, including existing uses and activities;

(5) The existing ownership, jurisdiction, and management status of adjacent shoreland and sea areas, including existing uses and activities;

(6) Present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and

(7) A proposed management scheme, consisting of the following:

(A) A description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to land and water within the area;

(B) A statement of the specific, enforceable policies which will be applied in managing the area; and

(C) An identification of the authority which will be used to implement the proposed management scheme.

(b) In addition to the categories contained in AS 46.40.210(1), areas which merit special attention inside districts may include the following:

(1) Areas important for subsistence hunting, fishing, food gathering, and foraging;

(2) Areas with special scientific values or opportunities, including those where ongoing research projects could be jeopardized by development or conflicting uses and activities; and

(3) Potential estuarine or marine sanctuaries.

(c) Management schemes for areas which merit special attention inside districts must preserve, protect, enhance, or restore the value or values for which the area was designated.

Authority: AS 44.19.161
AS 46.40.040

Section 6 AAC 80 is amended by adding a new section, 6 AAC 80.161.

6 AAC 80.161. AREAS WHICH MERIT SPECIAL ATTENTION OUTSIDE DISTRICTS. (a) Any person may recommend to the Council an area which is within the coastal area but outside a coastal resource district to be designated as an area which merits special attention. A recommendation to the Council of an area which merits special attention outside a district must include the following information:

(1) A map showing the geographical location of the area, as well as a legal and narrative description of the boundaries and a justification of the size of the area which merits special attention.

(2) A summary of the resource values and use conflicts, if any, in the area;

(3) A statement of the purpose and objectives to be met through area which merits special attention planning;

(4) A tentative schedule outlining timeframes for completion of planning tasks and reviews;

(5) A list of affected parties, reasonably identified, in and adjacent to the area which merits special attention, and a description of how these parties would be involved in plan development; and

(6) Justification that the area which merits special attention is the preferred planning and management mechanism for meeting the objectives of the proposal and the Alaska Coastal Management Program.

(b) Upon receipt of a recommendation for an area which merits special attention outside of a district, the division of governmental coordination (DGC) of the office of management and budget shall place the recommendation on the Council's agenda for consideration at its next regularly scheduled meeting and give notice of a public hearing. Direct notice shall be given to the affected parties identified in (a)(5) of this section. The recommendation shall be made available for public inspection at the time of the notice of the public hearing. The Council shall make an initial finding detailing its reasons to either authorize additional planning for the area which merits special attention outside a district, or to reject the recommendation. The Council's determination to authorize additional planning for the area which merits special attention shall not be construed as Council approval of the merits of the final plan.

(c) If the Council decides to authorize further planning for an area which merits special attention, public notice shall be provided by conspicuous advertisement (e.g. display notice) in a news publication of general circulation in the affected area and one of general circulation in the State. DGC, with assistance from the sponsor, shall compile a mailing list of State and federal agencies, affected municipalities and villages, landowners, and other interested parties and shall notify them that planning for the area which merits special attention is going to occur.

(d) The sponsor of the nomination is responsible for developing a public review draft for the area which merits special attention outside of a district. It must include the following information:

(1) The basis or bases for designation under AS 46.40.210(1) or (o) of this section;

(2) A map showing the geographical location, surface area and, where appropriate, bathymetry of the area, as well as a legal and narrative description of the boundaries and a justification of the size of the area which merits special attention;

(3) A description of the area which includes dominant physical and biological features;

(4) An evaluation of the potential impacts of the designation on the social, cultural, environmental and economic features of the area and adjacent areas;

(5) The existing ownership, jurisdiction, and management status of the area, including existing uses and activities;

(6) The existing ownership, jurisdiction, and management status of adjacent areas, including existing uses and activities;

(7) Present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and

(8) A management plan, consisting of the following:

(A) A description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to land and water within the area, and rationale for the designation of proper and improper uses;

(B) A statement of the specific, enforceable policies that will be applied in managing the area; and

(C) An identification of the means and authority that will be used to implement the proposed management plan.

(e) Opportunities shall be provided for consultation and review of the proposal by appropriate State, federal and local governmental agencies, affected landowners, and other persons who have been identified as interested parties by the under (c) of this section. No less than two public meetings must be held during plan development to inform the public and receive comments concerning the plan.

(f) PUBLIC REVIEW DRAFT. The sponsor of the area which merits special attention will distribute a public review draft to all parties identified under (c) of this section. The public review draft must contain all elements listed in (d) of this section as well as evidence that the public participation requirements of this section have been satisfied. At least a 60-day review period must be provided. A transmittal letter that states the comment deadline and the recipient of comments must be sent with the document. Public notice will be given of the availability of the public review draft for review and comment. Advertisements shall be placed in news publications of general

circulation in the area affected by the nomination and in the State. Notice must also be posted prominently in municipalities and villages affected by the proposal.

(g) After the close of the public review and comment period, the sponsor of the area which merits special attention shall revise the public review draft as necessary to incorporate comments received. Council review of the area which merits special attention is initiated upon submission of the revised draft to the Council by the sponsor.

(h) COUNCIL REVIEW DRAFT. DGC shall distribute the Council review draft along with its preliminary findings on the plan to the mailing list compiled under (c) of this section. Any person may submit comments on the area which merits special attention nomination to the Council within 60 days of their distribution. Comments which are not received within the 60-day review period will not be considered.

(i) DGC shall prepare a summary of and a response to comments received on the Council review draft and, if necessary, revise its recommendations. DGC shall distribute these materials to all parties who commented on the draft. All comments and additional material submitted shall be placed in a record file maintained by DGC.

(j) The Council will, after public notice, hold a public hearing on the designation of the area which merits special attention.

(k) The Council's decision to designate an area which merits special attention outside of a district shall be made by a two-thirds (2/3) affirmative vote of the members present and voting.

(l) The Council will approve the designation of an area which merits special attention if it is substantially consistent with the requirements of this section; does not arbitrarily or unreasonably restrict or exclude uses of state concern, except as allowed in AS 46.40.070(c); does not violate another State law; and does not cause substantial irreparable harm to another interest or value in the coastal area. The Council's decision to designate or not designate the area which merits special attention outside of a district will contain findings and conclusions based on these requirements.

(m) DGC must provide public notice of the Council's action designating an area which merits special attention outside of a district by distributing a copy of the Council's order to all persons who testified or submitted timely written statements during public review and to all persons who have requested a copy

of the order in writing. Notice of the Council's action also must be published, at a minimum, in news publications of general circulation within the affected region and in the State.

(n) The Council's designation of an area which merits special attention outside of a district takes effect for State law purposes as part of the Alaska Coastal Management Program upon the Lieutenant Governor's filing of the Council's order approving the designation.

(o) In addition to the categories contained in AS 46.40.210(1), areas which merit special attention outside districts may include the following:

(1) Areas important for subsistence hunting, fishing, food gathering, and foraging;

(2) Areas with special scientific values or opportunities, including those where ongoing research projects could be jeopardized by development or conflicting uses and activities; and

(3) Potential estuarine or marine sanctuaries.

(p) Management schemes for areas which merit special attention outside districts must preserve, protect, enhance, or restore the value or values for which the area was designated. (Eff. / / , Reg.).

Authority: AS 44.19.161
AS 46.40.040

Section 6 AAC 80.900 is amended by adding two new paragraphs to read:

(24) "area which merits special attention" has the same meaning as in AS 46.40.210(1);

(25) "village" has the same meaning as in AS 46.40.180(d). (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71; 9/9/81, Reg. 79; am / / , Reg.).

Authority: AS 44.19.160
AS 46.40.010(c)(2)
AS 46.40.030
AS 46.40.040
AS 46.40.060
AS 46.40.070

ARTICLE 5.
GENERAL PROVISIONS

Section
900. Definitions

6 AAC 80.900. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "barrier islands and lagoons" means depositional coastal environments formed by deposits of sediment offshore or coastal remnants which form a barrier of low-lying islands and bars protecting a salt-water lagoon with free exchange of water to the sea;

(2) "coastal water" means all water bodies in the coastal area, including wetlands and the intertidal area;

(3) "council" means the Alaska Coastal Policy Council;

(4) "district" means a coastal resource district as defined in AS 46.40.210(2);

(5) "district program" means a district coastal management program;

(6) "estuary" means a semiclosed coastal body of water which has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage;

(7) "exposed high-energy coasts" means open and unprotected sections of coastline with exposure to ocean generated wave impacts and usually characterized by coarse sand, gravel, boulder beaches, and well-mixed coastal water;

(8) "facilities related to commercial fishing and seafood processing" includes hatcheries and related facilities, seafood processing plants and support facilities, marine industrial and commercial facilities, and aquaculture facilities;

(9) "geophysical hazard areas" means those areas which present a threat to life or property from geophysical or geological hazards, including flooding, tsunami run-up, storm surge run-up, landslides, snowslides, faults, ice hazards, erosion, and littoral beach process;

(10) "mining and mineral processing" means the development of mineral resources extracted in tidal rivers, coastal water, and on continental shelves of the open sea, and found in surface, subsurface, and aqueous deposits;

(11) "offshore areas" means submerged lands and waters seaward of the coastline;

(12) "rocky islands and seacliffs" means islands of volcanic or tectonic origin with rocky shores and steep faces, offshore rocks, capes, and steep rocky seafronts;

(13) "tideflats" means mostly unvegetated areas that are alternately exposed and inundated by the falling and rising of the tide;

(14) "transportation and utility routes and facilities" include power transmission lines, mineral slurry lines, oil and gas pipelines, land and marine corridors, railways, highways, roadways, air terminals, water and sewage transfer, and facilities required to operate and maintain the route or facility;

(15) "upland" means drainages, aquifers, and land, the use of which would have a direct and significant impact on coastal water;

(16) "uses of state concern" has the same meaning as in AS 46.40.210(6);

(17) "water-dependent" means a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body;

(18) "water-related" means a use or activity which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with water-dependence and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered;

(19) "wetlands" includes both freshwater and saltwater wetlands; "freshwater wetlands" means those environments characterized by rooted vegetation which is partially submerged either continuously or periodically by surface freshwater with less than .5 parts per thousand salt content and not exceeding three meters in depth; "saltwater wetlands" means those coastal

areas along sheltered shorelines characterized by halophytic hydrophytes and macroalgae extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally induced water table changes;

(20) "feasible and prudent" means consistent with sound engineering practice and not causing environmental, social, or economic problems that outweigh the public benefit to be derived from compliance with the standard which is modified by the term "feasible and prudent";

(21) "including" means including but not limited to;

(22) "major energy facility" includes marine service bases and storage depots, pipelines and rights-of-way, drilling rigs and platforms, petroleum or coal separation, treatment, or storage facilities, liquid natural gas plants and terminals, oil terminals and other port development for the transfer of energy products, petrochemical plants, refineries and associated facilities, hydroelectric projects, other electric generating plants, transmission lines, uranium enrichment or nuclear fuel processing facilities, and geothermal facilities; "major energy facility" means a development of more than local concern carried out in, or in close proximity to, the coastal area, which meets one or more of the following criteria:

(A) a facility required to support energy operations for exploration or production purposes;

(B) a facility used to produce, convert, process, or store energy resources or marketable products;

(C) a facility used to transfer, transport, import, or export energy resources or marketable products;

(D) a facility used for in-state energy use; or

(E) a facility used primarily for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in (A) – (D) of this paragraph;

(23) "significant amendment" means an amendment to an approved district program which

(A) results in a major revision, addition or deletion to the policies or implementation methods or authorities included in the district program under 6 AAC 85.090 and 6 AAC 85.100;

(B) alters the district boundaries, other than by technical adjustments;

(C) designates an area which merits special attention or alters an existing area which merits special attention designation; or

(D) restricts or excludes a use of state concern not previously restricted or excluded.

(Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71; am 9/9/81, Reg. 79)

Authority: AS 44.19.160 AS 46.40.060
AS 46.40.010(c)(2) AS 46.40.070
AS 46.40.040

CHAPTER 85.
GUIDELINES FOR DISTRICT COASTAL MANAGEMENT PROGRAMS

Article

1. Program Elements (6 AAC 85.010–6 AAC 85.110)
2. Government Process (6AAC 85.120–6 AAC 85.180)
3. General Provisions (6 AAC 85.900)

ARTICLE 1.
PROGRAM ELEMENTS

Section

10 Coverage of chapter
20. Needs, objectives, and goals
30. Organization
40. Boundaries
50. Resource inventory
60. Resource analysis
70. Subject uses
80. Proper and improper uses
90. Policies
100. Implementation
110. Public participation

6 AAC 85.010. COVERAGE OF CHAPTER. (a) This chapter contains guidelines for the use of and application by districts in carrying out their responsibilities under the Alaska Coastal Management Act (AS 46.40 and AS 44.19.891 – 44.19.894).

(b) At a minimum, the council will review this chapter annually. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.020. NEEDS, OBJECTIVES, AND GOALS. Each district program must include a statement of the district's overall coastal management needs, objectives, or goals, or the district's comprehensive land and resource use plan. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.030. ORGANIZATION. (a) Each district program must include a description of the district program organization for coastal management. Budgetary and staff needs and, where appropriate, a schedule for necessary reorganization must be included.

(b) The district program must clearly state the name and address of the individual or organization within the district that is assigned to receive from the state notice of proposed activities and authorizations affecting the district, and that is responsible for responding to the state on consistency reviews. (Eff. 7/18/78, Reg. 67 am 3/2/84, Reg. 89)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.040. BOUNDARIES. (a) Each district must include a map of the boundaries of the coastal area within the district subject to the district program. Boundaries must enclose those lands which would reasonably be included in the coastal area and subject to the district program if they were not subject to the exclusive jurisdiction of the federal government.

(b) Before council approval of the district program, initial boundaries must be based on *Biophysical Boundaries of Alaska's Coastal Zone* (published by the Office of Coastal Management and the Alaska Department of Fish and Game, 1978, a copy of which is on file with the Office of the Lieutenant Governor, and which is available from the Office of Coastal Management) and must include the zone of direct interaction and the zone of direct influence.

(c) Final boundaries of the coastal area subject to the district program may diverge from the initial boundaries if the final boundaries

(1) extend inland and seaward to the extent necessary to manage uses and activities that have or are likely to have a direct and significant impact on marine coastal water; and

(2) include all transitional and intertidal areas, salt marshes, saltwater wetlands, islands, and beaches.

(d) If the criteria in (c) of this section are met, final boundaries of the coastal area subject to the district program may be based on political jurisdiction, cultural features, planning areas, watersheds, topographic features, uniform

setbacks, or the dependency of uses and activities on water access.

(e) The boundaries of the district must be sufficiently compatible with those of adjoining areas to allow consistent administration of the Alaska coastal management program. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 85.050. RESOURCE INVENTORY. Each district program must include a resource inventory which describes, in a manner sufficient for program development and implementation

(1) habitats listed in 6 AAC 80.130 that are found within or adjacent to the district;

(2) major cultural resources that are found within or adjacent to the district;

(3) major land and water uses and activities which are conducted within or adjacent to the district;

(4) major land and resource ownership and management responsibilities within or adjacent to the district; and

(5) major historic, prehistoric, and archaeological resources which are found within or adjacent to the district. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.060. RESOURCE ANALYSIS. Each district program must include a resource analysis which describes, in a manner sufficient for program development and implementation

(1) significant anticipated changes in the matters identified under 6 AAC 85.050;

(2) an evaluation of the environmental capability and sensitivity of resources and habitats, including cultural resources, for land and water uses and activities; and

(3) an assessment of the present and anticipated needs and demands for coastal habitats and resources. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.070. SUBJECT USES. Each district program must include a description of the land and water uses and activities which are subject to the district program. The uses and activities mentioned in 6 AAC 80 are, if applicable, subject to the district program. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.080. PROPER AND IMPROPER USES. Each district program must include a description of the uses and activities, including uses of state concern, that will be considered proper, and the uses and activities, including uses of state concern, that will be considered improper within the coastal area, including land and water use designations. This description must be based on the district's statement of overall needs, objectives, or goals, or the district's comprehensive land and resource use plan, under 6 AAC 85.020, and must be consistent with the standards contained in 6 AAC 80. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.090. POLICIES. (a) Each district program must include the policies that will be applied to land and water uses and activities subject to the district program, and the process which will be used to determine whether specific land and water uses and activities will be allowed. It shall be the general policy of the district to approve specific proposals for uses and activities within areas designated for those uses and activities under 6 AAC 85.080. Districts shall use existing means appropriate for the evaluation of specific proposals to the greatest extent feasible and prudent. Policies and procedures under this section must be consistent with the standards contained in 6 AAC 80 and must meet the following criteria:

(1) comprehensiveness, so as to apply to all uses, activities, and areas in need of management;

(2) specificity, so as to allow clear understanding of who will be affected by the district program, how they will be affected, and whether specific proposals for land and water uses and activities will be allowed; and

(3) enforceability, so as to insure implementation of and adherence to the district program.

(b) All policies or enforceable rules of the district program must be clearly identified and located in a single section of the program document. The identified policies or enforceable rules will provide the basis for all determinations of consistency with the approved district program. (Eff. 7/18/78, Reg. 67; am 3/2/84, Reg. 89)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

NOTE:
The Coastal Policy Council is considering an amendment to the regulations dealing with the scope of district coastal management programs. The proposed addition to 6 AAC 85 would require that material relating to areas outside coastal districts be placed in a separate and distinct section of the plan.

6 AAC 85.100. IMPLEMENTATION. Each district program must include a description of the methods and authority which will be used to implement the district program. Methods and authority must be adequate to insure program implementation, and any additional methods or authority which are required must be specified. Methods and authority include land and water use plans, municipal ordinances and resolutions, (including shoreline, zoning, and subdivision ordinances and building codes), state and federal statutes and regulations, capital improvement programs, the purchase, sale, lease, or exchange of coastal land and water resources, cooperative agreements, tax exemptions for nondevelopment purchase of development rights, memoranda of understanding, and coordinated project or permit review procedures. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.110. PUBLIC PARTICIPATION. Each district program must include evidence of effective and significant opportunities for public participation in program development under 6 AAC 85.130. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030

ARTICLE 2.
GOVERNMENT PROCESS

Section
120. Submittals to council
130. Public involvement during program development
140. Coordination and review
145. Review of public hearing draft
150. Council review of district programs
170. Mediation
180. Effective date and local adoption

6 AAC 85.120. SUBMITTALS TO COUNCIL. (a) During program development, districts shall submit brief annual progress reports concerning program development to the council.

(b) Following adoption of the final program under 6 AAC 85.180(b), districts shall submit brief annual progress reports concerning program implementation to the council. The council will furnish copies of annual progress reports to any interested party upon request. An annual progress report must be submitted by December 31 of each year and must include

(1) a statement describing the district's progress in fulfilling any conditions stipulated at the time of the council's approval of the district program;

(2) a summary, on forms provided by the Office of Coastal Management, of significant district land and water use decisions and enforcement actions taken during the year;

(3) a description of routine program implementation during the year;

(4) additional details of the district program implementation, including the district's reponse to council recommendations made either at the time the district program was approved or as part of the council's continuing review after approval of the program; and

(5) identification of any problems encountered in implementing the district program and recommendations for solution of the problems.

(c) After conceptual approval as described in (d) of this section, a district program must be submitted to the council for approval as provided

in 6 AAC 85.150, and a significant amendment to a district program must be submitted to the council, through the Office of Coastal Management, for approval. The Office of Coastal Management will review proposed amendments to determine if council approval is required. The coastal resource district may make a recommendation on whether council approval of a proposed amendment is required when the amendment to the district program is submitted to the office. If the office determines that council approval is required, the procedures set out in 6 AAC 85.150 apply. The office's determination is subject to council review when requested by a council member or the coastal resource district. Amendments to the district program determined not to require council approval are matters of routine program implementation. Matters of routine program implementation will be considered incorporated into the district program without further council action. Timely notification of matters of routine program implementation will be made to the council and appropriate state and federal agencies by the Office of Coastal Management.

(d) Before submitting a district program or a significant amendment to a district program for approval, a district shall conceptually approve the district program or amendment by resolution of the district's governing body. However, a coastal resource service area shall conceptually approve the district program or amendment by resolution of the coastal resource service area board. (Eff. 7/18/78, Reg. 67; am 5/2/81, Reg. 78: am 9/9/81, Reg. 79: am 3/2/84, Reg. 89)

Authority: AS 44.19.160 AS 46.40.040
AS 44.19.162 AS 46.40.060
AS 46.40.010 AS 46.40.070
AS 46.40.030

6 AAC 85.130. PUBLIC INVOLVEMENT DURING PROGRAM DEVELOPMENT. (a) Districts shall provide publicly advertised opportunities for public involvement in the development of all program elements contained in 6 AAC 85.020 – 6 AAC 85.110.

(b) No less than two public meetings must be held within the district during program development to inform the public and receive comments concerning the program. A brief summary or report of the matters considered at the public meeting held under this subsection must be prepared by the district made available to the public, and retained for inclusion in the record file referred to in 6 AAC 85.150.

(c) Districts shall provide the public, in a timely manner and in understandable form, information explaining the district coastal management program, the requirements of public participation in program development, how and when the public may participate in program development, what information is available, and where that information may be obtained. (Eff. 7/18/78, Reg. 67: am 8/18/79, Reg. 71: am 3/2/84, Reg. 89)

Authority: AS 44.19.161
AS 46.40.040

6 AAC 85.140. COORDINATION AND REVIEW. District shall provide opportunities for coordination and review by federal, state, and local governmental agencies, including adjacent districts, and other persons with a significant interest in coastal resources or who are conducting or may conduct uses and activities that have or are likely to have a direct and significant impact on the district's coastal area. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.145. REVIEW OF PUBLIC HEARING DRAFT. (a) This section applies to district programs and significant amendments to district programs.

(b) A public hearing draft of the district program must be distributed to all parties identified as having a significant interest in the district program, including those parties described

in 6 AAC 85.140. The mailing list of these parties must be reviewed and approved by the Office of Coastal Management. The public hearing draft must include all elements to be included in the district program when it is conceptually approved. At least a 60-day review period must be provided. A transmittal letter that states the comment deadline and the recipient of comments must be sent with the document. One or more review meetings may be sponsored by the Office of Coastal Management, with the concurrence of the district.

(c) Public notice of the availability of the document must be given to any person who has requested it in writing, and through conspicuous advertisement in a newspaper of general circulation within the district. Notice must also be posted in villages and municipalities within the district. Comments received by the deadline must be considered by the district and, where appropriate, incorporated into the plan before conceptual approval.

(d) A public hearing on the district program must be held before conceptual approval is given and no sooner than 30 days after distribution and notice of the public hearing draft under (b) and (c) of this section. Notice specifying time and place of the hearing must be provided to all who were provided the public hearing draft, and also by conspicuous advertisement in a newspaper of general circulation within the district and by advertisement in a newspaper of general circulation within the state. Notice must be given at least 30 days before the hearing is held.

(e) At the public hearing, each person must be given the opportunity to present statements orally or in writing. Districts shall insure that translation into the appropriate native languages is provided. A written transcript or electronic recording of the public hearing must be provided to the council. Comments offered at the hearing must be considered by the district and, where appropriate, incorporated into the plan before conceptual approval.

(f) Districts must give conceptual approval to their district program before the program is submitted to the council. District programs must be adopted by resolution of the district's governing body except that coastal resource service area plans must be adopted by resolution of the board. (Eff. 3/2/84, Reg. 89)

Authority: AS 44.19.161
AS 46.40.030
AS 46.40.040

6 AAC 85.150. COUNCIL REVIEW OF DISTRICT PROGRAMS. (a) A district may prepare findings and conclusions on its program, based on AS 46.40.030, 46.40.060, 46.40.080, and the standards set out in this chapter.

(b) At least one copy of the district's conceptually approved program, including any changes made to the public hearing draft, and the district's findings and conclusions or a written statement indicating that the district has elected not to prepare findings and conclusions, must be forwarded to the Office of Coastal Management as soon as practicable after conceptual approval. The district shall also submit a recording or transcript of the public hearing held under 6 AAC 85.145(d), a list of names and addresses of those who testified, and copies of all materials on which it based its decision.

(c) Within 30 days after the district's submission to the Office of Coastal Management under (b) of this section, the office will prepare findings of fact and conclusions based on authorities cited in this section, to comprise its recommendation on the program. Any material on which the recommendation is based must be cited and placed in the district record file described in (f) of this section.

(d) Before the Office of Coastal Management will submit a program to the council review, the district must submit copies of its conceptually approved program to the office in sufficient number to allow distribution to the office's mailing list, the council, and persons who testified at the public hearing or presented written comments on the public hearing draft.

(e) The Office of Coastal Management will distribute the district program, its recommendations, and the district's recommendations, if any, to those identified in (d) of this section and to any other person who has requested this material in writing. This material will be distributed as soon as practicable after the 30-day period allowed in (c) of this section.

(f) A record file containing all material submitted by the district under this section, the Office of Coastal Management's recommendations under this section, and all material on which the recommendation was based must be maintained at the office and at a convenient location within the district.

(g) Within 45 days after the distribution of the Office of Coastal Management's recommendation, any person may submit comments on the recommendation. Comments which are not received within the 45-day period will not be considered.

(h) Within 25 days after the deadline for submitting comments to the council under (g) of this section, the Office of Coastal Management will submit its response to the comments and, if appropriate, revised findings and conclusions to the council and to all who responded to the original findings and conclusions. All comments and additional material submitted must be placed in the record files.

(i) Within a total of 45 days after the deadline in (g) of this section, the council will approve or disapprove the district program, in whole or in part. The council's decision will contain findings and conclusions based on this chapter, the standards contained in 6 AAC 80, AS 46.40.060, and 46.40.070. The council's findings and conclusions will be based on material contained in the record file. The council will, in its discretion, adopt the findings and conclusions of the Office of Coastal Management by reference.

(j) The council will serve its decision under this section on all persons who submitted timely comments on the staff recommendation under (g) of this section, to all persons who testified or submitted timely written statements at the public hearing held under 6 AAC 85.145(d), and to all persons who have requested a copy of the decision in writing. Notice of the council's action also must be published, at a minimum, in a newspaper of general circulation in the district. (Eff. 7/18/78, Reg. 67; am 1/22/81, Reg. 77; am 3/2/84, Reg. 89)

Authority: AS 44.19.160 AS 46.40.030
AS 44.19.161 AS 46.40.040
AS 46.40.010

Editor's Note: The provisions concerning mediation contained in 6 AAC 85.150 before March 2, 1984 are located at 6 AAC 85.170, effective March 2, 1984, Register 89.

6 AAC 85.170. MEDIATION. (a) If the council's decision under 6 AAC 85.150(i) disapproves, in whole or in part, the district program, the disapproved portion must be submitted to mediation as required by AS 46.40.060(b). Before the initial mediation session, the council will, in its discretion, call for one or more public hearings in the district concerned, for the purpose of discussing those portions of the program subject to mediation. Public hearings must be preceded by 30 days' notice. If public hearings are held, districts shall insure that, where reasonably requested, translation into the appropriate Native languages is provided. All public hearings must be electronically recorded. Oral or written testimony may be submitted, except that unduly repetitious testimony may be excluded. The oral testimony and written submissions constitute the hearing record, which must be transmitted to the mediator. Mediation sessions will be conducted as follows:

(1) The parties to the mediation will be the council and the district. The parties shall, within 10 days after the date of the council's decision under 6 AAC 85.150(i), agree upon the selection of a mediator. If the parties cannot agree, they shall immediately, in writing, ask the Federal Mediation and Conciliation Service to appoint a mediator. If that mediator is unacceptable to either party, that party shall request the Federal Mediation and Conciliation Service to submit to the parties the names of three qualified mediators. Upon receipt of these names, each party shall strike one name from the list and the remaining name will be the mediator. A mediator shall perform his or her duties in a manner consistent with the standards of conduct set out in the Code of Professional Conduct for Labor Mediators, referred to in and set out as an appendix to 29 C.F.R. 1.0.735-20.

(2) Mediation sessions must be held within the district. The mediator shall schedule the sessions, with due regard for the convenience of the parties, upon at least seven days' notice, except that the parties may, by mutual consent, waive the notice period. The parties shall mutually agree upon the place of the meeting.

(3) The mediator shall schedule the first mediation session to be held as soon as possible after he or she has been selected. At the initial session, the mediator shall establish reasonable rules of procedure. Mediation sessions must be conducted in a manner so that the parties will have the assurance and confidence that information disclosed to the mediator will remain confidential. The mediator shall determine the length and frequency of mediation sessions; however, if an accord is not reached within 60 days after the initial session, an impasse will be declared by the mediator. By mutual consent of the parties and the mediator, this deadline may be extended for a period not to exceed an additional 30 days.

(4) If the mediator determines that an impasse has been reached, he or she shall notify the parties in writing within 10 days after the determination is made.

(5) If the mediator determines that an accord has been reached, he or she shall direct the parties to set out in writing the terms of the agreement. This agreement, to be signed by the parties, signifies the final settlement of outstanding disputes, subject to ratification at a public meeting by the official bodies of each party. With the approval of the parties, mediation may be used to resolve any differences which may arise as the result of the public meetings. After ratification under (a)(5) of this section, the agreement may be set aside only for fraud, misconduct, or gross mistake.

(b) If the council and the district reach accord in mediation sessions held under (a) of this section, the council will, within 20 days after ratification by both parties, serve its modified decision, in the form of an order, on the district and all persons who were served with the council's decision under 6 AAC 85.150(i), and will place the modified decision in the record file. The modified decision will contain findings and conclusions, based on the record file and additional material presented during mediation necessary to demonstrate that the modified decision is consistent with this chapter, and the standards contained in 6 AAC 80, AS 46.40.060, or 46.40.070.

(c) If the council and the district do not reach an accord, the council will, within 20 days after a determination that an impasse has been reached, set the matter for an adjudicatory hearing under AS 46.40.060(c). Notice of the hearing must be served on the district and on all persons who were served with the council's decision under 6 AAC 85.150(i). Any person served with notice of the hearing under this subsection may intervene as a party to the hearing. (Eff. 3/2/84, Reg.89)

Authority: AS 44.19.160 AS 46.40.030
AS 46.19.167 AS 46.40.040
AS 46.40.010

6 AAC 85.180. EFFECTIVE DATE AND LOCAL ADOPTION. (a) A district program or significant amendment to a district program takes effect as part of the Alaska Coastal Management Program upon the lieutenant governor's filing of the council's decision approving the district program or significant amendment. A change or an amendment to the district program resulting from mediation under AS 46.40.060(b) and 6 AAC 85.170(a) and (b) or from adjudication under AS 46.40.060(c) and 6 AAC 85.170(c) takes effect upon the lieutenant governor's filing of the council's order either ratifying the results of the mediation or determining the adjudication. Filing will take place after local adoption as provided in (b) of this section.

(b) Within 90 days after the date a district program or significant amendment is approved by the council under 6 AAC 85.150, the district shall, by ordinance or resolution, whichever is required by other applicable provision of law, adopt the district program or amendment approved by the council. However, a coastal resource service area shall adopt the district program by resolution of the coastal resource service area board. In the same manner, a change in a district program resulting from mediation under AS 46.40.060(b) and 6 AAC 85.170(a) and (b) or from adjudication under AS 46.40-.060(c) and 6 AAC 85.170(c) must be adopted by the district following the council's order under 6 AAC 85.170 (b) or (c) ratifying the results of the mediation or determining the adjudication. (Eff. 3/2/84, Reg. 89)

Authority: AS 44.19.160 AS 46.40.040
AS 46.40.010 AS 46.40.060
AS 46.40.030 AS 46.40.070

ARTICLE 3.
GENERAL PROVISIONS

Section
900. Definitions

6 AAC 85.900. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "beaches" means the area affected by wave action directly from the sea;

(2) "marine coastal water" means water adjacent to shorelines which contains a measurable quantity of seawater, including sounds, bays, lagoons, bayous, ponds and estuaries, and the living resources which are dependent on these bodies of water;

(3) "council" means the Alaska Coastal Policy Council;

(4) "district" means a coastal resource district as defined in AS 46.40.210(2);

(5) "district program" means a district coastal management program;

(6) "islands" means bodies of land surrounded by water on all sides; interior portions of major islands may be excluded from the coastal area if uses of these islands do not cause direct and significant impacts on coastal waters;

(7) "saltwater wetlands" has the same meaning as that contained in 6 AAC 80.900(19);

(8) "transitional and intertidal areas" means areas subject to periodic or occasional inundation by tides, including coastal floodplains, storm surge areas, tsunami and hurricane zones, and washover channels;

(9) "feasible and prudent" has the same meaning as in 6 AAC 80.900;

(10) "including" has the same meaning as in 6 AAC 80.900; and

(11) "significant amendment" means an amendment to an approved district program which

(A) results in a major revision, addition or deletion to the policies or implementation methods or authorities included in the district program under 6 AAC 85.090 and 6 AAC 85.100;

(B) alters the district boundaries, other than by technical adjustments;

(C) designates an area which merits special attention or alters an existing area which merits special attention designation; or

(D) restricts or excludes a use of state concern not previously restricted or excluded.
(Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71; am 9/9/81, Reg. 79; am 3/2/84, Reg. 89)

Authority: AS 44.19.160 AS 46.40.040
AS 44.19.161 AS 46.40.060
AS 46.40.010(c)(2) AS 46.40.070

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

Subpart A—Objectives

Sec.
930.1 Overall objectives.

Subpart B—General Definitions

930.10 Index to definitions.
930.11 Act.
930.12 Section.
930.13 Secretary.
930.14 Executive Office of the President.
930.15 OCZM.
930.16 Assistant Administrator.
930.17 Federal agency.
930.18 State agency.
930.19 Management program.
930.20 Coastal zone.
930.21 Associated facilities.

Part 930

Subpart C—Consistency for Federal Activities

Sec.
930.30 Objectives.
930.31 Federal activity.
930.32 Consistent to the maximum extent practicable.
930.33 Identifying Federal activities directly affecting the coastal zone.
930.34 Federal agency consistency determinations.
930.35 Federal and State agency coordination.
930.36 Availability of mediation for negative determination disputes.
930.37 Consistency determinations for proposed activities.
930.38 Consistency determinations for activities initiated prior to management program approval.
930.39 Content of a consistency determination.
930.40 Multiple Federal agency participation.
930.41 State agency response.
930.42 State agency disagreement.
930.43 Availability of mediation for disputes concerning proposed activities.
930.44 Availability of mediation for previously reviewed activities.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

930.50 Objectives.
930.51 Federal license or permit.
930.52 Applicant.
930.53 Management program license and permit listing.
930.54 Unlisted Federal license and permit activities.
930.55 Availability of mediation for license or permit disputes.
930.56 State agency guidance and assistance to applicants; information requirements.
930.57 Consistency certifications.
930.58 Necessary data and information.
930.59 Multiple permit review.
930.60 Commencement of State agency review.
930.61 Public notice.
930.62 Public hearings.
930.63 State agency concurrence with a consistency certification.
930.64 State agency objection to a consistency certification.
930.65 Federal permitting agency responsibility.
930.66 Availability of mediation for previously reviewed activities.

Title 15—Commerce and Foreign Trade

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

Sec.
930.70 Objectives.
930.71 Federal license or permit activity described in detail.
930.72 Person.
930.73 OCS plan.
930.74 OCS activities subject to State agency review.
930.75 State agency assistance to persons; information requirements.
930.76 Submission of an OCS plan and consistency certification.
930.77 Necessary data and information.
930.78 Commencement of State agency review; public notice.
930.79 State agency concurrence or objection.
930.80 Effect of State agency concurrence.
930.81 Federal permitting agency responsibility.
930.82 Multiple permit review.
930.83 Amended or new OCS plans.
930.84 Review of amended or new OCS plans; public notice.
930.85 Continuing State agency objections.
930.86 Failure to comply substantially with an approved OCS plan.

Subpart F—Consistency for Federal Assistance to State and Local Governments

930.90 Objectives.
930.91 Federal assistance.
930.92 Applicant agency.
930.93 Intergovernmental review process.
930.94 State intergovernmental review process for consistency.
930.95 Guidance provided by the State agency.
930.96 Consistency review.
930.97 Federal assisting agency responsibility.
930.98 Federally assisted activities outside of the coastal zone or the described geographic area.
930.99 Availability of mediation for Federal assistance disputes.
930.100 Availability of mediation for previously reviewed activities.

Subpart G—Secretarial Mediation

930.110 Objectives.
930.111 Informal negotiations.
930.112 Request for mediation.
930.113 Public hearings.
930.114 Secretarial mediation efforts.
930.115 Termination of mediation.
930.116 Judicial review.

Subpart H—Secretarial Review Related to the Objectives or Purposes of the Act and National Security Interests

Sec.
930.120 Objectives.
930.121 Consistent with the objectives or purposes of the Act.
930.122 Necessary in the interest of national security.
930.123 Appellant.
930.124 Informal discussions.
930.125 Appeals to the Secretary.
930.126 Federal and State agency responses to appeals.
930.127 Public notice; receipt of comments.
930.128 Dismissal of appeals.
930.129 Public hearings.
930.130 Secretarial review.
930.131 Federal agency responsibility.
930.132 Review initiated by the Secretary.
930.133 Public notice; receipt of comments; public hearings.
930.134 Secretarial review; Federal agency responsibility.

Subpart I—Assistant Administrator Reporting and Continuing Review of Federal Actions Subject to the Federal Consistency Requirements

930.140 Objectives.
930.141 Notification of Federal actions believed to be inconsistent with approved management programs.
930.142 Notification of Federal actions believed to have been incorrectly determined to be inconsistent with an approved management program.
930.143 Assistant Administrator reporting.
930.144 Assistant Administrator advisory statements.
930.145 Review of the implementation of the Federal consistency provisions.

AUTHORITY: Secs. 307, 316 and 317, Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280 (16 U.S.C. 1451 et seq.), as amended by Pub. L. 94-370, 90 Stat. 1013, unless otherwise noted.

SOURCE: 44 FR 37143, June 25, 1979, unless otherwise noted.

Subpart A—Objectives

§ 930.1 Overall objectives.

The objectives of these regulations are: (a) To describe the obligations of all agencies, individuals and other parties who are required to comply with the Federal consistency provisions of the Coastal Zone Management Act;

(b) To implement the Federal consistency provisions in a manner which strikes a balance between the need to ensure consistency for Federal actions affecting the coastal zone with approved coastal management and the need to promote Federal programs;

(c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the Federal consistency provisions of the Act are satisfied;

(d) To interpret significant terms in the Federal consistency provisions so that they can be uniformly understood and adhered to by all agencies, individuals and other affected parties;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the objectives, policies, standards and other criteria set forth in, or referenced as part of, approved coastal management programs;

(f) To provide procedures which the Secretary, in cooperation with the Executive Office of the President, may use to mediate serious disagreements which arise between Federal and State agencies during the administration of approved coastal management programs;

(g) To provide procedures which permit the Secretary to review Federal license or permit activities, or Federal assistance activities, to determine whether they are consistent with the objectives or purposes of the Act, or are necessary in the interest of national security;

(h) To provide procedures which permit interested parties to notify the Assistant Administrator for Coastal Zone Management of Federal actions believed to be inconsistent with approved coastal management programs, or believed to have been incorrectly determined to be inconsistent with an approved management program; and

(i) To provide procedures for the reporting of any Federal actions found by the Assistant Administrator for Coastal Zone Management to be inconsistent with an approved coastal zone management program, and for the performance review of State implementation of the Federal consistency provisions.

Subpart B—General Definitions

§ 930.10 Index to definitions.

The following list includes all terms defined in Part 930 of this title keyed to the section or paragraph in which they are defined.

Term	Section
Act	930.11
Appellant	930.123
Applicant	930.52
Applicant agency	930.92
Assistant Administrator	930.16
Associated facilities	930.21
Coastal Zone	930.29
Consistent to the maximum extent practicable	930.32
Consistent with the objectives or purposes of the Act	930.121
Development project	930.31(b)
Executive Office of the President	930.14
Failure substantially to comply with an OCS plan	930.86(d)
Federal activity	930.31
Federal agency	930.17
Federal assistance	930.91
Federal license or permit	930.51
Federal license or permit activity described in detail	930.71
Management program	930.19
Necessary in the interest of national security	930.122
OCS plan	930.73
OCZM	930.15
OMB A-95 process	930.93
Person	930.72
Secretary	930.13
Section	930.12
State agency	930.18

§ 930.11 Act.

The term "Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.).

§ 930.12 Section.

The term "Section" means a section of the Coastal Zone Management Act of 1972, as amended.

§ 930.13 Secretary.

The term "Secretary" means the Secretary of the U.S. Department of Commerce.

§ 930.14 Executive Office of the President.

The term "Executive Office of the President" means the office, council, board, or other entity within the Executive Office of the President which shall participate with the Secretary in seeking to mediate serious disagreements which may arise between a Federal agency and a coastal State.

§ 930.15 OCZM.

The term "OCZM" means the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§ 930.16 Assistant Administrator.

The term "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§ 930.17 Federal agency.

The term "Federal agency" means any department, agency, board, commission, council, independent office or similar entity within the executive branch of the Federal government, or any wholly owned Federal government corporation.

§ 930.18 State agency.

(a) The term "State agency" means the agency of the State government designated pursuant to section 306(c)(5) of the Act to receive and administer grants for an approved coastal management program, or a single designee State agency appointed by the 306(c)(5) State agency. Any appointment by the 306(c)(5) State agency of a designee agency must be described in the State's management program. In the absence of such description, all consistency determinations, consistency certifications and Federal assistance proposals shall be sent to and reviewed by the 306(c)(5) State agency.

(b) The State agency is responsible for commenting on Federal agency consistency determinations (see Subpart C of this part), concurring with or objecting to consistency certifications for Federal licenses, permits, and Outer Continental Shelf plans (see Subparts D and E of this part), and reviewing the consistency of Federal assistance activities proposed by State or local government agencies (see Subpart F of this part). The State agency shall be responsible for securing necessary review and comment from other

State, regional, or local government agencies. Thereafter, only the State agency is authorized to comment officially on a Federal consistency determination, concur with or object to a consistency certification, or determine the consistency of a proposed Federal assistance activity.

§ 930.19 Management program.

The term "management program" has the same definition as provided in section 304(11) of the Act, except that for the purposes of this part the term is limited to those management programs adopted by a coastal State in accordance with the provisions of section 306 of the Act, and approved by the Assistant Administrator.

§ 930.20 Coastal zone.

The term "coastal zone" has the same definition as provided in section 304(1) of the Act.

§ 930.21 Associated facilities.

The term "associated facilities" describes all proposed facilities:

(a) Which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a Federal action (e.g., activity, development project, license, permit, or assistance), and

(b) Without which the Federal action, as proposed, could not be conducted.

All further requirements in this part related to the review of and consistency for Federal activities including development projects (see Subpart C of this part), Federal license and permit activities (see Subparts D and E of this part) and Federal assistance activities (see Subpart F of this part) also apply to associated facilities related to those Federal actions. Therefore, the proponent of a Federal action must consider whether the Federal action and its associated facilities affect the coastal zone and, if so, whether these interrelated activities satisfy the relevant consistency requirement of the Act.

Subpart C—Consistency for Federal Activities

§ 930.30 Objectives.

The provisions of this subpart are provided to assure that all federally conducted or supported activities including development projects directly affecting the coastal zone are undertaken in a manner consistent to the maximum extent practicable with approved State coastal management programs.

§ 930.31 Federal activity.

(a) The term "Federal activity" means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities.

(b) A Federal development project is a Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

(c) The term "Federal activity" does not include the issuance of a Federal license or permit to an applicant or person (see Subparts D and E of this part) or the granting of Federal assistance to an applicant agency (see Subpart F of this part).

§ 930.32 Consistent to the maximum extent practicable.

(a) The term "consistent to the maximum extent practicable" describes the requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the management program.

33-042 O—84——17

The duty the Act imposes upon Federal agencies is not set aside by virtue of section 307(e). The Act was intended to cause substantive changes in Federal agency decisionmaking within the context of the discretionary powers residing within such agencies. Accordingly, when read together, sections 307(c) (1) and (2) and 307(e) require Federal agencies, whenever legally permissible, to consider State-management programs as supplemental requirements to be adhered to in addition to existing agency mandates.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of some unforeseen circumstances arising after the approval of the management program which present the Federal agency with a substantial obstacle that prevents complete adherence to the approved program.

§ 930.33 Identifying Federal activities directly affecting the coastal zone.

(a) Federal agencies shall determine which of their activities directly affect the coastal zone of States with approved management programs.

(b) Federal agencies shall consider all development projects within the coastal zone to be activities directly affecting the coastal zone. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they directly affect the coastal zone.

(c) Federal activities outside of the coastal zone (e.g., on excluded Federal lands, on the Outer Continental Shelf, or landward of the coastal zone) are subject to Federal agency review to determine whether they directly affect the coastal zone.

§ 930.34 Federal agency consistency determinations.

(a) Federal agencies shall provide State agencies with consistency determinations for all Federal activities directly affecting the coastal zone. The Federal agency may provide the State agency with this information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) Federal agencies shall provide State agencies with a consistency determination at the earliest practicable time in the planning or reassessment of the activity. A consistency determination should be prepared following development of sufficient information to determine reasonably the consistency of the activity with the State's management program, but before the Federal agency reaches a significant point of decisionmaking in its review process. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

§ 930.35 Federal and State agency coordination.

(a) State agencies should list in their management programs Federal activities which, in the opinion of the State agency, are likely to directly affect the coastal zone and require a Federal agency consistency determination. Listed Federal activities must be described in terms of the specific type of activity involved (e.g., Federal reclamation projects). In the event the State agency chooses to describe Federal activities outside of the coastal zone but likely to directly affect the coastal zone, it must also describe the geographic location of such activities (e.g., reclamation projects in coastal floodplains).

(b) State agencies should monitor unlisted Federal activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review, review of National Environmental Policy Act (NEPA) environmental impact statements, etc.) and should notify Federal agencies of unlisted Federal activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State agency, directly affect the coastal zone and require a Federal agency consistency determination. State agencies must notify Federal agencies within 45 days from receipt of notice of the unlisted Federal activity, otherwise the State agency waives its right to request a consistency de-

termination. The waiver does not apply in cases where the State agency does not receive notice of the Federal activity (e.g., for those Federal activities which are not processed through Intergovernmental Review Process established pursuant to E.O. 12372, NEPA review or a similar procedure which permits State agency monitoring).

(c) The recommended listing and monitoring procedures described in paragraphs (a) and (b) of this section are neither a substitute for nor eliminate Federal agency responsibility under §§ 930.33(b) and 930.34 to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal activities which the Federal agency finds directly affect the coastal zone.

(d) If a Federal agency decides that a consistency determination is not required for a Federal activity (1) identified by a State agency on its list or through case-by-case monitoring, (2) which is the same as or similar to activities for which consistency determinations have been prepared in the past, or (3) for which the Federal agency undertook a thorough consistency assessment and developed initial findings on the effects of the activity on the coastal zone, the Federal agency shall provide the State agency with a notification, at the earliest practicable time in the planning of the activity, briefly setting forth the reasons for its negative determination. A negative determination shall be provided to the State agency at least 90 days before final approval of the activity, unless both the Federal agency and the State agency agree to an alternative notification schedule.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.36 Availability of mediation for negative determination disputes.

In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity directly affects the coastal zone, either party may seek the Secretarial mediation services provided for in Subpart G.

§ 930.37 Consistency determinations for proposed activities.

(a) Federal agencies shall review their proposed Federal activities which directly affect the coastal zone in order to develop consistency determinations which indicate whether such activities will be undertaken in a manner consistent to the maximum extent practicable with approved State management programs. Federal agencies are encouraged to consult with State agencies during their efforts to assess whether such activities will be consistent to the maximum extent practicable with such programs.

(b) In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal, etc.) which cumulatively has a direct effect upon the coastal zone, the agency may develop a general consistency determination thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A general consistency determination may only be used in situations where the incremental actions are repetitive or periodic, substantially similar in nature, and do not directly affect the coastal zone when performed separately. If a Federal agency issues a general consistency determination, it must thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(c) In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project from planning to completion, only one consistency determination will be required. However, in cases where major Feder-

al decisions related to a proposed development project will be made in phases based upon developing information, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (e.g., planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project continues to be consistent to the maximum extent practicable with the State's management program.

§ 930.38 Consistency determinations for activities initiated prior to management program approval.

(a) A consistency determination will be required for ongoing Federal activities other than development projects (e.g., waste disposal practices) initiated prior to management program approval, which are governed by statutory authority under which the Federal agency retains discretion to reassess and modify the activity. In these cases the consistency determination must be made by the Federal agency at the earliest practicable time following management program approval, and the State agency must be provided with a consistency determination no later than 120 days after management program approval for ongoing activities which the State agency lists or identifies through monitoring as subject to consistency with the management program.

(b) A consistency determination shall be required for major, phased Federal development project decisions described in § 930.37(c) which are made following management program approval and are related to development projects initiated prior to program approval. In making these new decisions, Federal agencies shall consider coastal zone effects not fully evaluated at the outset of the project. This provision shall not apply to phased Federal decisions which were specifically described, considered and approved prior to management program approval (e.g., in a final environmental impact statement issued pursuant to the National Environmental Policy Act).

§ 930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the management program. The statement must be based upon an evaluation of the relevant provisions of the management program. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal zone effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the statement evaluation, activity description and supporting information shall be commensurate with the expected effects of the activity on the coastal zone.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity (e.g., project siting and constuction), its direct effects (e.g., air, water, waste discharges, etc.), and associated facilities (e.g., proposed siting and construction of access road, connecting pipeline, support buildings, etc.) and the direct effects of the associated facilities (e.g., erosion, wetlands, beach access impacts, etc.) must all be consistent to the maximum extent practicable with the management program. Although nonassociated facilities (e.g., recreational housing which is induced by but not necessarily related to a Federal harbor dredging project—see § 930.21) must be included within the consistency determination's description of the direct effects of the activity, Federal agencies are not responsible for evaluating the consistency of such facilities.

(c) In making their consistency determinations, Federal agencies shall give appropriate weight to the various types of provisions within the management program. Federal agencies must ensure that their activities are consistent to the maximum extent practicable with the enforceable, mandatory policies of the management program. However, Federal agencies need only give adequate consideration to man-

agement program provisions which are in the nature of recommendations. Finally, Federal agencies do not have to evaluate coastal zone effects for which the management program does not contain mandatory or recommended policies because, in the absence of such provisions, there is no basis for making a consistency determination with respect to such effects.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the State's management program, the Federal agency may continue to apply its stricter standards (e.g., restrict project development or design alternatives notwithstanding permissive management program policies). In such cases the Federal agency should inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

§ 930.40 Multiple Federal agency participation.

Whenever more than one Federal agency is involved in conducting or supporting a Federal activity or its associated facilities directly affecting the coastal zone, or is involved in a group of Federal activities related to each other because of their geographic proximity, consideration should be given to the preparation of one consistency determination for all the Federal activities involved. In such cases, Federal agencies should consider joint preparation or lead agency development of the consistency determination. In either case, the consistency determination (a) must be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies, (b) must indicate whether or not each of the proposed activities is consistent to the maximum extent practicable with the management program, and (c) must include information on each proposed activity sufficient to support the consistency determination.

§ 930.41 State agency response.

(a) A State agency shall inform the Federal agency of its agreement or disagreement with the Federal agency's consistency determination at the earliest practicable time. If a final response has not been developed and issued within 45 days from receipt of the Federal agency notification, the State agency should at that time inform the Federal agency of the status of the matter and the basis for further delay. The Federal agency may presume State agency agreement if the State agency fails to provide a response within 45 days from receipt of the Federal agency notification.

(b) State agency agreement shall not be presumed in cases where the State agency, with the 45 day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, the Federal agency should consider the magnitude and complexity of the information contained in the consistency determination.

(c) Final Federal agency action may not be taken sooner than 90 days from the issuance of the consistency determination to the State agency unless both the Federal agency and the State agency agree to an alternative period (see § 930.34(b)).

§ 930.42 State agency disagreement.

(a) In the event the State agency disagrees with the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the disagreement and supporting information. The State agency response must describe (1) how the proposed activity will be inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the management program.

(b) If the State agency's disagreement is based upon a finding that the Federal agency has failed to supply sufficient information (see § 930.39(a)), the State agency's response must describe the nature of the information requested and the necessity of having such information to de-

termine the consistency of the Federal activity with the management program.

(c) State agencies shall send to the Assistant Administrator a copy of responses which describe disagreements with Federal agency consistency determinations.

§ 930.43 Availability of mediation for disputes concerning proposed activities.

(a) In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed Federal activity directly affecting the coastal zone, either party may request the Secretarial mediation services provided for in Subpart G.

§ 930.44 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent, to the maximum extent practicable, with the State's management program.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency's objection to a Federal activity which was: (1) Previously determined to be consistent to the maximum extent practicable with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent to the maximum extent practicable with the State's management program, or (2) previously determined not to be a Federal activity directly affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, the activity directly affects the coastal zone and is not consistent to the maximum extent practicable with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation services provided for in Subpart G.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§ 930.50 Objectives.

The provisions of this subpart are provided to assure that Federally licensed or permitted activities affecting the coastal zone are conducted in a manner consistent with approved management programs.

§ 930.51 Federal license or permit.

(a) The term "Federal license or permit" means any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant.

(b) The term also includes the following types of renewals and major amendments which affect the coastal zone:

(1) Renewals and major amendments of Federal license and permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which are filed after and are subject to management program amendments not in existence at the time of original State agency review; and

(3) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which will cause coastal zone effects substantially different than those originally reviewed by the State agency.

§ 930.52 Applicant.

The term "applicant" means any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any State, or any State, regional, or local government, who, following

management program approval, files an application for a Federal license or permit to conduct an activity affecting the coastal zone. The term "applicant" does not include Federal agencies applying for Federal licenses or permits. Federal agency "activities" requiring Federal licenses or permits are subject to the consistency requirements of Subpart C of this part.

§ 930.53 Management program license and permit listing.

(a) During management program development, Federal agencies should assist State agencies in identifying Federal license and permit activities which reasonably can be expected to affect the coastal zone.

(b) State agencies shall develop a list of Federal license and permit activities which are likely to affect the coastal zone and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the Federal license and permit activities shall be described in terms of the specific licenses or permits involved (e.g., Corps of Engineers 404 permits, Coast Guard bridge permits, etc.). In the event the State agency chooses to review Federal licenses and permits for activities outside of the coastal zone but likely to affect the coastal zone, it must generally describe the geographic location of such activities.

(c) If a State agency wishes to avoid repeated review of minor Federally permitted activities which, while individually inconsequential, cumulatively cause effects on the coastal zone, the State agency, after developing conditions allowing concurrence for such activities, may issue a general public notice (see § 930.61) and general concurrence allowing similar minor work in the same geographic area to proceed without prior State agency review. In such cases, the State agency must set forth in the management program license and permit list the minor Federal license and permit activities and the relevent conditions which are covered by the general concurrence. Minor Federal license or permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification requirement of this subpart. Except in cases where the State agency indicates otherwise, copies of Federal license or permit applications for activities subject to a general concurrence must be sent by the applicant to the State agency to allow the State agency to monitor adherence to the conditions required by such concurrence. Confidential and proprietary material within such applications may be deleted.

(d) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval of additions or deletions by the Assistant Administrator. The State agency shall provide copies of the list and any amendments to Federal agencies and shall make the information available to the public.

(e) No Federal license or permit described on an approved list shall be issued by a Federal agency until the requirements of this subpart have been satisfied. Federal agencies shall inform applicants for listed licenses and permits of the requirements of this subpart.

§ 930.54 Unlisted Federal license and permit activities.

(a) With the assistance of Federal agencies, State agencies should monitor unlisted Federal license and permit activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA environmental impact statements, etc.) and shall immediately notify Federal agencies and applicants of unlisted activities affecting the coastal zone which require State agency review. State agencies must inform the Federal agency and applicant within 30 days from notice of the license or permit application, otherwise the State agency waives its right to review the unlisted activity. The waiver does not apply in cases where the State agency does not receive notice of the Federal license or permit activity.

(b) The State agency must also notify the Assistant Administrator of unlisted Federal license or permit activities which the State agency be-

termine the consistency of the Federal activity with the management program.

(c) State agencies shall send to the Assistant Administrator a copy of responses which describe disagreements with Federal agency consistency determinations.

§ 930.43 Availability of mediation for disputes concerning proposed activities.

(a) In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed Federal activity directly affecting the coastal zone, either party may request the Secretarial mediation services provided for in Subpart G.

§ 930.44 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent, to the maximum extent practicable, with the State's management program.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency's objection to a Federal activity which was: (1) Previously determined to be consistent to the maximum extent practicable with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent to the maximum extent practicable with the State's management program, or (2) previously determined not to be a Federal activity directly affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, the activity directly affects the coastal zone and is not consistent to the maximum extent practicable with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation services provided for in Subpart G.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§ 930.50 Objectives.

The provisions of this subpart are provided to assure that Federally licensed or permitted activities affecting the coastal zone are conducted in a manner consistent with approved management programs.

§ 930.51 Federal license or permit.

(a) The term "Federal license or permit" means any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant.

(b) The term also includes the following types of renewals and major amendments which affect the coastal zone:

(1) Renewals and major amendments of Federal license and permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which are filed after and are subject to management program amendments not in existence at the time of original State agency review; and

(3) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which will cause coastal zone effects substantially different than those originally reviewed by the State agency.

§ 930.52 Applicant.

The term "applicant" means any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any State, or any State, regional, or local government, who, following

lieves should be subject to State agency review. Following State agency notification to the Federal agency, applicant and the Assistant Administrator, the Federal agency may not issue the license or permit until the requirements of this subpart have been satisfied, unless the Assistant Administrator disapproves the State agency decision to review the activity.

(c) The Federal agency and the applicant have 15 days from receipt of the State agency notice to provide comments to the Assistant Administrator regarding the State agency's decision to review the activity. The sole basis for the Assistant Administrator's approval or disapproval of the State agency's decision will relate to whether the proposed activity can be reasonably expected to affect the coastal zone of the State. The Assistant Administrator shall issue a decision, with supporting comments, to the State agency, Federal agency and applicant within 30 days from receipt of the State agency notice.

(d) In the event of disapproval by the Assistant Administrator, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Assistant Administrator approves the State agency's decision, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Assistant Administrator, the applicant shall amend the Federal application by including a consistency certification and shall provide the State agency with a copy of the certification along with necessary supporting data and information (see §§ 930.63 and 930.64). For the purposes of this section, concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months from the original Federal agency notice to the State agency (see paragraph (a) of this section) or within three months from receipt of the applicant's consistency certification and accompanying information, whichever period terminates last.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.55 Availability of mediation for license or permit disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a listed or unlisted Federal license or permit activity is subject to consistency review, either party may request the Secretarial mediation services provided for in Subpart G; notice shall be provided to the applicant. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding approval of a license or permit application for an activity on an approved management program list (see § 930.53) or individually approved by the Assistant Administrator (see § 930.54) pending satisfaction of the requirements of this subpart. Similarly, the existence of a serious disagreement will not prevent the Federal agency from approving a license or permit activity which has not received Assistant Administrator approval.

§ 930.56 State agency guidance and assistance to applicants; information requirements.

(a) As a preliminary matter, any applicant for a Federal license or permit selected for review by a State agency should obtain the views and assistance of that agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the State's management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document.

(b) The management program as originally approved or amended may describe requirements regarding the data and information necessary to assess the consistency of Federal license and permit activities. Required data and information may not include confidential and proprietary material.

In the case of approved amendments, State agencies shall send copies to relevant Federal agencies who shall, in turn, provide the information requirements to applicants. If a State does not choose to develop or amend its management program to include information requirements, the applicant must, at a minimum, supply the State agency with the information required by § 930.58.

§ 930.57 Consistency certifications.

(a) When satisfied that the proposed activity meets the Federal Consistency requirements of this subpart, all applicants for Federal licenses or permits subject to State agency review shall provide in the application to the Federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the State's approved management program. At the same time, the applicant shall furnish to the State agency a copy of the certification.

(b) The applicant's consistency certification shall be in the following form: "The proposed activity complies with (name of State) approved coastal management program and will be conducted in a manner consistent with such program."

§ 930.58 Necessary data and information.

(a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

(1) A detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable coastal zone effects. Maps, diagrams, technical data and other relevant material must be submitted when a written description alone will not adequately describe the proposal (a copy of the Federal application and all supporting material provided to the Federal agency should also be submitted to the State agency).

(2) Information required by the State agency pursuant to § 930.56(b).

(3) A brief assessment relating the probable coastal zone effects of the proposal and its associated facilities to the relevant elements of the management program.

(4) A brief set of findings, derived from the assessment, indicating that the proposed activity (e.g., project siting and construction), its associated facilities (e.g., access road, support buildings), and their effects (e.g., air, water, waste discharges, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the applicant shall give appropriate weight to the various types of provisions within the management program. While applicants must be consistent with the enforceable, mandatory policies of the management program, they need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal zone effects for which the management program does not contain mandatory or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by subparagraphs (a) (1) and (2) of this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by paragraphs (a) (3) and (4) of this section.

(c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposal.

§ 930.59 Multiple permit review.

(a) Applicants shall, to the extent practicable, consolidate related Federal license and permit activities affecting the coastal zone for State agency review. State agencies shall, to the extent practicable, provide applicants

with a "one-stop" multiple permit review for consolidated permits to minimize duplication of effort and to avoid unnecessary delays.

(b) A State agency objection to one or more of the license or permit activities submitted for consolidated review shall not prevent the applicant from receiving Federal agency approval for those license and permit activities found to be consistent with the management program.

§ 930.60 Commencement of State agency review.

(a) Except as provided in § 930.54(e), State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to § 930.58.

(b) A State agency request for information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

§ 930.61 Public notice.

(a) Following receipt of the material described in § 930.60 the State agency shall ensure timely public notice of the proposed activity. At a minimum the provision of public notice must be in accordance with State law. In addition, public notice must be provided in the immediate area of the coastal zone which is likely to be affected by the proposed activity. Public notice shall be expanded in proportion to the degree of likely public interest resulting from the unique geographic area involved, the substantial commitment of or impact on coastal resources, the complexity or controversy of the proposal, or for other good cause.

(b) Public notice shall facilitate public comment by providing a summary of the proposed activity, by announcing the availability for inspection of the consistency certification and accompanying public information and data, and by requesting that comments be submitted to the State agency.

(c) A number of procedural options, if permitted by State law, are available to State agencies to satisfy the public notice requirements of this subpart. They include, but are not limited to:

(1) The State agency providing the public notice;

(2) The State agency requiring the applicant to provide the public notice; or

(3) The State agency relying upon the public notice provided by the Federal agency reviewing the application for the Federal license or permit (e.g., notice of availability of NEPA environmental impact statements) if such notice satisfies the minimum requirements set forth in paragraphs (a) and (b) of this section.

(d) Federal and State agencies are encouraged to issue joint public notices whenever possible to minimize duplication of effort and to avoid unnecessary delays.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.62 Public hearings.

(a) At the discretion of the State agency, public notice may include the announcement of one or more public hearings. Public hearings shall be scheduled with a view towards (1) allowing access to the consistency certification and accompanying public information within a reasonable time prior to the hearing, (2) facilitating broad public attendance and participation at the hearing, and (3) affording the applicant expeditious consideration of the proposed activity.

(b) Federal and State agencies are encouraged to hold joint public hearings in the event both agencies determine that a hearing on the action is necessary.

§ 930.63 State agency concurrence with a consistency certification.

(a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. Concurrence by the State agency shall

be conclusively presumed in the absence of a State agency objection within six months following commencement of State agency review.

(b) State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the applicant and the Federal agency of the status of the matter and the basis for further delay.

(c) If the State agency issues a concurrence or is conclusively presumed to concur with the applicant's consistency certification, the Federal agency may approve the Federal license or permit application. Notwithstanding State agency concurrence with a consistency certification, the Federal permitting agency may deny approval of the Federal license or permit application. Federal agencies should not delay processing applications pending receipt of a State agency's concurrence. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant and the State agency.

§ 930.64 State agency objection to a consistency certification.

(a) If the State agency objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, Federal agency and Assistant Administrator of the objection.

(b) State agency objections must describe (1) how the proposed activity is inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the management program.

(c) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt to agree upon conditions, which, if met by the applicant, would permit State agency concurrence. The parties shall also consult with the Federal agency responsible for approving the Federal license or permit to ensure that proposed conditions satisfy Federal as well as State management program requirements.

(d) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 903.58. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program.

(e) A State agency objection shall include a statement informing the applicant of a right of appeal to the Secretary on the grounds described in Subpart H.

§ 930.65 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification, the Federal agency shall not issue the Federal license or permit except as provided in Subpart H of this part.

§ 930.66 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally licensed and permitted activities in order to make certain that such activities continue to conform to both Federal and State requirements.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federally licensed or permitted activity which was: (1) Previously determined to be consistent with the State's management program, but which the State agency later maintains is being conducted or is having coastal zone effects substantially different than originally proposed and, as a result, is no longer consistent with the State's management program; or (2) previous-

ly determined not to be an activity affecting the coastal zone, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally proposed and, as a result, the activity affects the coastal zone in a manner inconsistent with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action; a copy of the request must be sent to the applicant.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists with the Federal agency, either party may seek the Secretarial mediation services provided for in Subpart G of this part.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

§ 930.70 Objectives.

The provisions of this subpart are provided to assure that all Federal license and permit activities described in detail in OCS plans and which affect the coastal zone are conducted in a manner consistent with approved coastal zone management programs.

§ 930.71 Federal license or permit activity described in detail.

The term "Federal license or permit activity described in detail" means any activity requiring a Federal license or permit, as defined in § 930.51, which the Secretary of the Interior determines must be described in detail within an OCS plan.

§ 930.72 Person.

The term "person" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State, the Federal government, any State, regional, or local government, or any entity of such Federal, State, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail Federal license or permit activities.

§ 930.73 OCS plan.

(a) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), and the regulations under that Act, which is submitted to the Secretary of the Interior or designee following management program approval and which describes in detail Federal license or permit activities.

(b) The requirements of this subpart do not apply to Federal license and permit applications filed after management program approval for activities described in detail in OCS plans approved by the Secretary of the Interior or designee prior to management program approval.

§ 930.74 OCS activities subject to State agency review.

Except for States which do not anticipate coastal zone effects resulting from OCS activities, management program lists required pursuant to § 930.53 shall include a reference to OCS plans which describe in detail Federal license and permit activities affecting the coastal zone.

§ 930.75 State agency assistance to persons; information requirements.

(a) As a preliminary matter, any person intending to submit to the Secretary of the Interior and OCS plan which describes in detail Federal license or permit activities affecting the coastal zone should obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the State's management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document.

(b) In accordance with the provisions in § 930.56(b), the management program as originally approved or amended may describe requirements regarding data and information which

will be necessary for the State agency to assess the consistency of the Federal license and permit activities described in detail in OCS plans.

§ 930.76 Submission of an OCS plan and consistency certification.

Any person submitting to the Secretary of the Interior or designee any OCS plan shall:

(a) Identify all activities described in detail in the plan which are subject to State agency review;

(b) When satisfied that the proposed activities meet the Federal consistency requirements of this subpart, provide the Secretary of the Interior or designee with a consistency certification, attached to the OCS plan, and the Secretary of the Interior or designee shall furnish the State agency a copy of the OCS plan (excluding proprietary information) and consistency certification.

(c) The person's consistency certification shall be in the following form:

> The proposed activities described in detail in this plan comply with (name of State(s)) approved coastal management program(s) and will be conducted in a manner consistent with such program(s).

§ 930.77 Necessary data and information.

(a) The State agency shall use the information received pursuant to the Department of the Interior's operating regulations governing exploration, development and production operations on the OCS (see 30 CFR 250.34) and regulations pertaining to the OCS information program (see 30 CFR Part 252) to determine the consistency of proposed Federal license and permit activities described in detail in OCS plans.

(b) The person shall supplement the information provided by paragraph (a) of this section by supplying the State agency with:

(1) Information required by the State agency pursuant to § 930.75(b).

(2) A brief assessment relating the probable coastal zone effects of the activities and their associated facilities to the relevant elements of the management program, and

(3) A brief set of findings, derived from the assessment, indicating that each of the proposed activities (e.g., drilling, platform placement) and their associated facilities (e.g., onshore support structures, offshore pipelines), and their effects (e.g., air, water, waste discharge, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the person shall give appropriate weight to the various provisions within the management program in accordance with the guidance provided in § 930.58(a)(4).

(c) At the request of the person, interested parties who have access to information required by paragraphs (a) and (b)(1) of this section may provide the State agency with all or part of the material required. Furthermore, upon request by the person, the State agency shall provide assistance for developing the assessment and findings required by paragraphs (b) (2) and (3) of this section.

(d) When satisfied that adequate protection against public disclosure exists, persons should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposed activities. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposed activities.

§ 930.78 Commencement of State agency review; public notice.

(a) State agency review of the person's consistency certification begins at the time the State agency receives a copy of the OCS plan, consistency certification, and required necessary data and information. A State agency request for information and data in addition to that required by § 930.77 shall not extend the date of commencement of State agency review.

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with the directives within §§ 930.61 through 930.62.

§ 930.79 State agency concurrence or objection.

(a) At the earliest practicable time, the State agency shall notify the person, the Secretary of the Interior or designee and the Assistant Administrator of its concurrence with or objection to the consistency certification. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review it shall notify the person, the Secretary of the Interior or designee and the Assistant Administrator of the status of review and the basis for further delay in issuing a final decision. Notice shall be in written form and postmarked no later than three months following the State agency's receipt of the certification and supporting information. Concurrence by the State agency shall be conclusively presumed if the notification required by this subparagraph is not provided.

(b) Concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection to the consistency certification within six months following commencement of State agency review.

(c) If the State agency objects to one or more of the Federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with the directives within § 930.64 (b) and (d). The objection shall also include a statement informing the person of a right of appeal to the Secretary on the grounds described in Subpart H.

§ 930.80 Effect of State agency concurrence.

(a) If the State agency issues a concurrence or is conclusively presumed to concur with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time Federal applications are actually filed for the Federal licenses and permits to which such concurrence applies.

(b) Unless the State agency indicates otherwise, copies of Federal license and permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.81 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification related to Federal license or permit activities described in detail in an OCS plan, the Federal agency shall not issue any of such licenses or permits except as provided in Subpart H of this part.

§ 930.82 Multiple permit review.

(a) A person submitting a consistency certification for Federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related Federal license and permit activities affecting the coastal zone which are not required to be described in detail in OCS plans but which are subjected to State agency consistency review (e.g., Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities, etc.). In the event the person does not consolidate such OCS-related permit activities with the State agency's review of the OCS plan, such activities will remain subject to individual State agency review under the requirements of Subpart D of this part.

(b) A State agency objection to one or more of the OCS-related Federal li-

cense or permit activities submitted for consolidated review shall not prevent the person from receiving Federal agency approval (1) for those OCS-related license or permit activities found by the State agency to be consistent with the management program, and (2) for the license and permit activities described in detail in the OCS plan provided the State agency concurs with the consistency certification for such plan. Similarly, a State agency objection to the consistency certification for an OCS plan shall not prevent the person from receiving Federal agency approval for those OCS-related license or permit activities determined by the State agency to be consistent with the management program.

§ 930.83 Amended or new OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and if, pursuant to Subpart H, the Secretary does not determine that each of the objected to Federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the person shall submit an amended or new plan to the Secretary of the Interior or designee and to the State agency along with a consistency certification and data and information necessary to support the new consistency determination. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed Federal license or permit activities described in detail in the amended or new plan will be conducted in a manner consistent with the State's management program.

§ 930.84 Review of amended or new OCS plans; public notice.

(a) After receipt of a copy of the amended or new OCS plan, consistency certification, and accompanying data and information, State agency review shall begin.

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with the directives within §§ 930.61 through 930.62.

(c) The State agency shall concur with or object to the person's consistency certification in accordance with the directives within § 930.76, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

(d) If the State agency issues a concurrence or is conclusively presumed to concur with the person's new consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time Federal applications are actually filed for the Federal licenses and permits to which such concurrence applies.

(e) Unless the State agency indicates otherwise, copies of Federal license and permit applications for activities described in detail in an amended or new OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.85 Continuing State agency objections.

If the State agency objects to the consistency certification for an amended or new OCS plan, the prohibition in § 930.81 against Federal agency approval of licenses or permits for activities described in detail in such a plan applies, further Secretarial review pursuant to Subpart H may take place, and the development of an additional amended or new OCS plan and consistency certification may be required pursuant to §§ 930.83 through 930.84.

§ 930.86 Failure to comply substantially with an approved OCS plan.

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor Federally licensed and permitted activities described in detail OCS plans to make certain that such activities continue to conform to both Federal and State requirements.

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this Subpart, and such failure allegedly involves the conduct of activities affecting the coastal zone in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the U.S. Geological Survey supervisor for the area involved. Such claim shall include: (1) A description of the specific activity involved and the alleged lack of compliance with the OCS plan, and (2) a request for appropriate remedial action. A copy of the claim shall be sent to the person and the Assistant Administrator.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that the person is failing to comply substantially with the OCS plan, the governor or section 306(c)(5) State agency (see § 930.18) may file a written objection with the Secretary. If the Secretary finds that the person is failing to comply substantially with the OCS plan, the person shall submit an amended or new OCS plan along with a consistency certification and supporting information to the Secretary of the Interior or designee and to the State agency. Following such a finding by the Secretary, the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Secretary and the U.S. Geological Survey, pending approval of the amended or new OCS plan. The directives within §§ 930.83 through 930.85 shall apply to further State agency review of the consistency certification for the amended or new plan.

(d) A person shall be found to have failed substantially to comply with an approved OCS plan if the State agency claims and the Secretary finds that one or more of the activities described in detail in the OCS plan which affects the coastal zone are being conducted or are having a coastal zone effect substantially different than originally described by the person in the plan or accompanying information and, as a result, the activities are no longer being conducted in a manner consistent with the State's management program. The Secretary may make a finding that a person has failed substantially to comply with an approved OCS plan only after providing a reasonable opportunity for the person and the Secretary of the Interior to review the State agency's objection and to submit comments for the Secretary's consideration.

Subpart F—Consistency for Federal Assistance to State and Local Governments

§ 930.90 Objectives.

The provisions of this subpart are provided to assure that Federal assistance to State and local governments for activities affecting the coastal zone is granted only when such activities are consistent with approved coastal zone managements programs.

§ 930.91 Federal assistance.

The term "Federal assistance" means assistance provided under a Federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

§ 930.92 Applicant agency.

The term "applicant agency" means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for Federal assistance.

§ 930.93 Intergovernmental review process.

The term "intergovernmental review process" describes the procedures established by states pursuant to E.O. 12372, "Intergovernmental Review of Federal Programs," and implementing regulations of the review of Federal financial assistance to states and local governments.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and

Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[48 FR 29136, June 24, 1983]

§ 930.94 State intergovernmental review process for consistency.

The process by which states with approved coastal management programs may review applications from state agencies and local governments for Federal assistance should be developed by each state in accordance with Executive Order 12372 and implementing regulations. In accordance with the Executive Order and regulations, states may use this process to review such applications for consistency with their approved coastal management programs.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[48 FR 29137, June 24, 1983]

§ 930.95 Guidance provided by the State agency.

(a) State agencies should include within the management program a listing of specific types of Federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior 306(c)(5) state agency (see § 930.18) consultation with affected Federal agencies and approval by the Assistant Administrator.

(b) In the event the State agency chooses to review applications for Federal assistance activities outside of the coastal zone but likely to affect the coastal zone, the State agency must develop a Federal assistance provision within the management program generally describing the geographic area (e.g. coastal floodplains) within which Federal assistance activities will be subject to review. This provision, and any refinements, will require prior 306(c)(5) State agency consultation with affected Federal agencies and approval by the Assistant Administrator.

(c) The State agency shall provide copies of any Federal assistance list or geographic provision, and any refinements, to Federal agencies, units of State or local government empowered to undertake Federally assisted activities within the coastal zone or described geographic area.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979. Redesignated and amended at 48 FR 29136, June 24, 1983]

§ 930.96 Consistency review.

(a) If pursuant to the intergovernmental review process, the State agency does not object to the proposed activity, the Federal agency may grant the Federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing applications pending receipt of a State agency approval or objection. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(b) If pursuant to the intergovernmental review process, the State agency objects to the proposed project, the state agency shall notify the applicant agency, Federal agency and the Assistant Administrator of the objection.

(c) State agency objections must describe: (1) How the proposed project is inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant agency, would permit the proposed project to be conducted in a manner consistent with the management program.

(d) A State agency objection may be based upon a determination that the applicant agency has failed, following a written State agency request, to supply necessary information. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine

33-032 O—84——18

the consistency of the activity with the management program.

(e) State agency objections shall include a statement informing the applicant agency of a right of appeal to the Secretary on the grounds described in Subpart H of this part.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29137, June 24, 1983]

§ 930.97 Federal assisting agency responsibility.

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in Subpart H of this part.

§ 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.

(a) State agencies should monitor proposed Federal assistance activities outside of the coastal zone or the described geographic area (e.g., by use of the intergovernmental review process, review of NEPA environmental impact statements, etc.) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the state in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which can reasonably be expected to affect the coastal zone and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Assistant Administrator. State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

(b) If within the permitted time period the State agency notifies the Federal agency of its objection to a proposed Federally assisted activity, the Federal agency shall not provide assistance to the applicant agency except as provided in Subpart H, unless the Assistant Administrator disapproves the State agency's decision to review the activity. The Assistant Administrator shall be guided by the provisions in § 930.54 (c) and (d).

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29137, June 24, 1983]

§ 930.99 Availability of mediation for Federal assistance disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a Federal assistance activity is subject to consistency review, either party may request the Secretarial mediation services provided for in Subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding Federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Assistant Administrator has disapproved a State agency decision to review an activity.

§ 930.100 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally assisted activities in order to make certain that such activities continue to conform to both Federal and State requirements.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federally assisted activity which was: (1) Previously determined to be consistent with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent with the State management program, or (2) previously determined not to be a project affecting the coastal zone, but

which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result the project affects the coastal zone in a manner inconsistent with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action; a copy of the request must be sent to the applicant agency.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists with the Federal agency, either party may seek the Secretarial mediation services provided for in Subpart G of this part.

Subpart G—Secretarial Mediation

§ 930.110 Objectives.

The purpose of this subpart is to describe mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

§ 930.111 Informal negotiations.

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCZM shall be available to assist the parties in these efforts.

§ 930.112 Request for mediation.

(a) The Secretary or other head of a Federal agency, or the Governor of the section 306(c)(5) State agency (see § 930.18), may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, and to the Assistant Administrator.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

§ 930.113 Public hearings.

(a) If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

(b) At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. Unduly repetitious oral presentation may be excluded at the discretion of the hearing officer; in the event of such exclusion the party may provide the hearing officer with a written submission of the proposed oral presentation. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

§ 930.114 Secretarial mediation efforts.

(a) Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(b) Secretarial mediation efforts shall last only so long as the Federal and State agencies agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

§ 930.115 Termination of mediation.

Mediation shall terminate (a) at any time the Federal and State agencies agree to a resolution of the serious disagreement, (b) if one of the agencies withdraws from mediation, (c) in the event the agencies fail to reach a resolution of the serious disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or (d) for other good cause.

§ 930.116 Judicial review.

The availability of the mediation services provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided for in this subpart.

Subpart H—Secretarial Review Related to the Objectives or Purposes of the Act and National Security Interests

§ 930.120 Objectives.

The provisions of this subpart provide procedures by which the Secretary may find that a Federal license or permit activity, including those described in detail in an OCS plan, or a Federal assistance activity, which is inconsistent with a management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

§ 930.121 Consistent with the objectives or purposes of the Act.

The term "consistent with the objectives or purposes of the Act" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because it satisfies the following four requirements:

(a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 or 303 of the Act,

(b) When performed separately or when its cumulative effects are considered, it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,

(c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and

(d) There is no reasonable alternative available (e.g., location design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.

§ 930.122 Necessary in the interest of national security.

The term "necessary in the interest of national security" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's

management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

§ 930.123 Appellant.

The term "appellant" refers to an applicant, person or applicant agency submitting an appeal to the Secretary pursuant to the provisions of this subpart.

§ 930.124 Informal discussions.

In the event the State agency informs the applicant, person or applicant agency that it intends to object to the proposed activity, the parties should consult informally to attempt to resolve the matter in a manner which avoids the necessity of appealing the issue to the Secretary. OCZM shall be available to assist the parties in these discussions.

§ 930.125 Appeals to the Secretary.

(a) An appellant may file a notice of appeal with the Secretary with 30 days of the appellant's receipt of a State agency objection. The notice of appeal shall be accompanied by a statement in support of the appellant's position, along with supporting data and information. The appellant shall send a copy of the notice of appeal and accompanying documents to the Federal and State agencies involved.

(b) No extension of time will be permitted for the filing of a notice of appeal.

(c) The Secretary may approve a reasonable request for an extension of time to submit supporting information so long as the request is filed with the Secretary within the 30-day period. Normally, the Secretary shall limit an extension period to 15 days.

§ 930.126 Federal and State agency responses to appeals.

(a) Upon receipt of the notice of appeal and supporting information, the Federal and State agencies shall have 30 days to submit detailed comments to the Secretary. Copies of such comments shall be sent to the appellant and other agency within the same time period.

(b) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.127 Public notice; receipt of comments.

(a) The Secretary shall provide timely public notice of the appeal within 15 days of receipt of the notice. At a minimum, public notice shall be provided in the immediate area of the coastal zone which is likely to be affected by the proposed activity. At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to copies of the appellant's notice of appeal and accompanying public information, and to the public information in the agencies' detailed comments.

(b) Interested persons may submit comments to the Secretary within 30 days from the date of public notice, with copies provided to the appellant and to the Federal and State agencies within the same time period.

(c) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.128 Dismissal of appeals.

The Secretary may dismiss an appeal for good cause. Good cause shall include, but is not limited to:

(a) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(b) Failure of the appellant to submit the supporting information within the required period or approved extension period;

(c) Secretarial receipt of a detailed comment from the Federal agency stating that the agency has disapproved the Federal license, permit or assistance application;

(d) Failure of the appellant to base the appeal on grounds that the proposed activity either (1) is consistent with the objectives or purposes of the Act or (2) is necessary in the interest of national security.

§ 930.129 Public hearings.

The Secretary may order a hearing independently or in reponse to a request. If a hearing is ordered by the Secretary it shall be guided by the procedures described within § 930.113.

§ 930.130 Secretarial review.

(a) In reviewing an appeal, the Secretary shall find that a proposed Federal license or permit activity, or a Federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information submitted supports this conclusion.

(b) The Secretary shall make all reasonable efforts to complete consideration of an appeal within 90 days from the date of public notice.

(c) Following consideration of the appeal, the Secretary shall issue a decision in writing to the appellant and to the Federal and State agencies indicating whether the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security; the decision shall include the basis for such finding. The Secretary shall provide public notice of the decision.

(d) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

§ 930.131 Federal agency responsibility.

(a) If the Secretary finds that the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the Federal agency may approve the activity.

(b) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

§ 930.132 Review initiated by the Secretary.

(a) The Secretary may choose to consider whether a Federal license or permit activity, or a Federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security. Secretarial review may be initiated either before of after the completion of State agency review. The Secretary's decision to review the activity may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate review, notification shall be sent to the applicant, person or applicant agency, and to the Federal and State agencies. The notice shall include a statement describing the reasons for the review and shall contain a request for submission of detailed comments to be submitted within 30 days from receipt of the notification. Copies of comments shall be exchanged among the parties.

(b) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.133 Public notice; receipt of comments; public hearings.

(a) Upon receipt of detailed comments from the parties, the Secretary shall provide public notice and request public comments in accordance with the provisions in § 930.127.

(b) The Secretary may order a hearing in accordance with the provisions in § 930.129.

§ 930.134 Secretarial review; Federal agency responsibility.

(a) Secretarial review shall be undertaken in accordance with the provisions in § 930.130.

(b) Federal agencies are responsible for adhering to the provisions in § 930.131 when deciding to approve or deny an application for an activity objected to by a State agency and independently reviewed by the Secretary.

Subpart I—Assistant Administrator Reporting and Continuing Review of Federal Actions Subject to the Federal Consistency Requirements

§ 930.140 Objectives.

The provisions of this subpart provide procedures to permit interested parties to notify the Assistant Admin-

istrator of Federal actions (a) believed to be inconsistent with an approved management program but which are not so found by the Federal or State reviewing agency, and (b) believed to have been incorrectly determined to be inconsistent with an approved management program. This subpart also provides for the reporting of any Federal actions found by the Assistant Administrator to be inconsistent with an approved management program and for the performance review of State implementation of the Federal consistency provisions of this part.

§ 930.141 Notification of Federal actions believed to be inconsistent with approved management programs.

(a) Interested parties are invited to submit to the Assistant Administrator detailed comments related to the alleged inconsistency of Federal activities including development projects, Federal license or permit activities, including those described in detail in OCS plans, and Federal assistance activities which are subject to the requirements of this part, and which have not been found by a Federal agency or State agency to be inconsistent with an approved management program. Copies of such comments should be sent to relevant Federal and State agencies, and to the applicant, person or applicant agency as appropriate.

(b) Comments need not conform to any particular form, but should be specific, substantive and factual, and must describe how the Federal action is or would be inconsistent with an approved management program.

(c) Commentators are encouraged to recommend modifications or alternatives to the existing or proposed action which would enable it to be consistent with the management program.

(d) The Assistant Administrator shall assure that public information within such comments is made available for public inspection.

§ 930.142 Notification of Federal actions believed to have been incorrectly determined to be inconsistent with an approved management program.

(a) Interested parties are invited to submit to the Assistant Administrator detailed comments related to Federal license and permit activities, including those described in detail in OCS plans, and Federal assistance activities which are believed to have been incorrectly determined by a State agency to be inconsistent with an approved management program. Copies of such comments should be sent to the relevant Federal and State agencies, and to the applicant, person, or applicant agency as appropriate.

(b) Comments need not conform to any particular form, but should be specific, substantive, and factual, and must clearly describe the basis for the belief that the State agency has incorrectly objected to the Federal action on the grounds of its inconsistency with the management program.

(c) The Assistant Administrator shall assure that public information within such comments is made available for public inspection.

§ 930.143 Assistant Administrator reporting.

After considering the views of interested parties, the relevant Federal agency, State agency, and the applicant, person, or applicant agency, as appropriate, the Assistant Administrator shall determine whether the Federal action will be included in the annual report listing of inconsistent Federal actions.

§ 930.144 Assistant Administrator advisory statements.

Upon request, the Assistant Administrator may issue as advisory statement prior to the issuance of the annual report indicating whether a Federal action will be listed within the annual report as being inconsistent with an approved management program.

§ 930.145 Review of the implementation of Federal consistency provisions.

As part of the responsibility to conduct a continuing review of approved management programs, the Assistant Administrator shall review the performance of each State's implementation of the Federal consistency provisions in this part. The Assistant Administrator shall use information re-

ceived pursuant to this subpart to evaluate instances where a State agency is believed to have either failed to object to inconsistent Federal actions, or improperly objected to consistent Federal actions. This evaluation shall be incorporated within the Assistant Administrator's general efforts to ascertain instances where a State has not adhered to its approved management program and such lack of adherence is not justified.

Updates

If you wish to receive updates of this booklet please fill out the form below and return it to:

Division of Governmental Coordination
Office of Management and Budget
Pouch AW
Juneau, Alaska 99811

Please add my name to the mailing list to receive updates to the booklet of Statutes and Regulations on the Alaska Coastal Management Program:

Address:

_____
Name

_____
Organization

_____
Street or Box Number

_____
City State Zip

Change of Address:

If this is a change of address, please provide us with your old address below:

_____
Name

_____
Organization

_____
Street or Box Number

_____
City State Zip

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/26/85

REQUEST
Bill/Resolution No.: HB 73
Title: Processing Permits & Administration of the ACMP
Sponsor: Rep. Ringstad
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: NRMEC
BRU, Program or Subprogram(s) Affected: Land & Water

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		372	390.6	410.13	430.64	452.17
200 TRAVEL		13	13.65	14.33	15.05	15.80
300 CONTRACTUAL		50	52.5	55.13	57.88	60.78
400 SUPPLIES		20	21	22.05	23.15	24.31
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		455	477.75	501.64	526.72	553.06
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		455	477.75	501.64	526.72	553.06
FEDERAL FUNDS						
OTHER						
TOTAL		455	477.75	501.64	526.72	553.06

POSITIONS:

FULL-TIME		9	9	9	9	9
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary This bill would trarsfer responsibilities that are currently being conducted by personnel in the Division of Governmental Coordination, Office of Management and Budget. Assuming that these positions are transferred to DNR, net cost to the state would be near zero. A five per cent inflation factor has been used for FY 87-90.

Prepared By: Robert Butts RButts Phone: 465-2400
Division: Division of Oil & Gas Date: 4-26-85

Approved by Commissioner: Norman D Zonn Deputy Date: 4-26-85
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Revised: 4/26/85

FISCAL NOTE ANALYSIS

HB 73
ALASKA DEPARTMENT OF NATURAL RESOURCES

HB 73 would transfer responsibilities that are currently being coordinated by personnel in the Division of Governmental Coordination, Office of Management and Budget. If the OMB positions are transferred to the Department of Natural Resources, then the net fiscal impact to the state for coordination would be $00.00.

100 Personal Services

1.	Statewide Coordinator - Juneau		
	Coordinator	Rg. 20	$63.0
	Clerk-Typist	Rg. 8	27.0
2.	Southeast Regional Staff - Juneau		
	Regional Coordinator	Rg. 18	50.0
	Clerk-Typist	Rg. 8	27.0
3.	Southcentral Regional Staff - Anchorage		
	Regional Coordinator	Rg. 18	50.0
	Land Management Officer	Rg. 16	42.0
	Clerk-Typist	Rg. 8	27.0
4.	Northern Regional Staff - Fairbanks		
	Regional Coordinator	Rg. 18	56.0
	Clerk-Typist	Rg. 8	30.0
		TOTAL PERSONAL SERVICES	$372.0

200 Travel

1.	Coordinator	$6.0
2.	Southeast Regional Staff	2.0
3.	Southcentral Regional Staff	3.0
4.	Northern Regional Staff	2.0
	TOTAL TRAVEL	13.0

300 Contractual

1.	Telephone	40.0
2.	Space, lights, heating, etc.	10.0
	TOTAL CONTRACTUAL	50.0

400 Supplies

1.	Zerox paper, etc.	20.0
	TOTAL SUPPLIES	20.0

TOTAL $455.0

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM April 23, 1985

SUBJECT: Sectional analysis of House Bill 73

TO: Representative John Ringstad

FROM: Billy G. Berrier
Director
Division of Legal Services

Section 1 contains legislative findings setting out the rationale for legislation in this area.

Section 2 creates a new Article 8 A in the Administration Procedure Act titled permit processing consisting of sections 44.62.362-640.

Sec. 44.62.362 requires each state resource agency (defined in Sec. 44.62.640(4)) to classify each permit it issues into one of two categories. Class 1 is permits for which the agency must issue a final decision within 30 days after receipt of a complete permit application. Class II permits must be issued within 65 days after application or, if a public hearing is held within 75 days. Class II permits are permits which cannot be issued in 30 days because of a necessary public notice or interagency review period.

Sec. 44.62.633 establishes conditions for other regulatory requirements.

Under (a) of this section if the head of a resource agency determines a permit cannot be decided within the time period established by Sec. 44.63.632 the agency head may prescribe a time period for the final decision not exceeding 120 days. The findings may be appealed by the applicant to the Superior Court under the Appellate Rules of Procedure.

Under (b) of this section, if adherence to the time periods would cause an irreconcilable conflict with a federal law or regulation and if the extension is necessary to facilitate

joint processing of a permit by state and federal agencies the time prescribed in AS 44.62.633 may be extended.

Under (c) of this section if a decision is not made within the prescribed period application for the permit is approved. In an appeal of a permit so approved the record shall be considered in the light most favorable to the applicant and the permit is presumed regularly issued.

Under (d) of this section a state agency may not condition the issuance of a permit on issuance of another permit by another governmental agency.

Sec. 44.62.634 relates to obtaining additional information concerning issuance of a permit.

Under (a) if an agency receives an application for a permit that does not have sufficient information concerning a project compliance with law and regulation the agency must notify the applicant within 15 days after receipt of the application if the permit is a Class I permit or within 30 days if the permit is a Class II permit.

Under (b) that notification must specify those particular facts or issues for which additional information is necessary.

Under (c) the time periods for final decision are suspended from the date of request to the date of full compliance with the request. Subsequent requests for information which may relate only to new issues raised by response to the initial notification may be made but these subsequent requests do not extend the required time periods.

Paragraph (d) provides that this section does not grant an agency authority to request information it is not otherwise authorized by law to request.

Sec. 44.62.635 creates a lead agency that is soley responsible for issuing coastal management consistency determinations under AS 46.40.

Paragraph (a) establishes a lead agency. It provides that the lead agency is (1) the Department of Natural Resources for resource development activities on state and federal land, water and submerged land, (2) the resource agency that has principal administrative responsibility for the type

development requiring the determination even though the development requires permits from more than one agency in cases except those set out in (1) and the resource agency designated by the governor where no agency has principal responsibility. The lead agency is soley responsible for preparing and submitting state comments on federal permit activities.

Paragraph (b) requires that the lead agency consult with other resource agencies and with coastal resource districts. It shall consider comments within the area of expertise of the commenting agency or district but has the discretion to reach contrary conclusions based on the weight of the evidence received. It shall balance competing factors in reaching its final decision and no other resource agency has primary expertise in balancing competing factors.

Under (c) no state agency other than the lead agency may comment to a federal permitting agency except as required by federal law.

Under (d) the Department of Natural Resources is the lead agency for activities involving a pla of operation and a certificate under the federal Clean W ter Act.

Under (e) the Department of Natural Resources is the lead agency for activities occuring on private land if a disposal of state land or permit to use state land is required to provide access or for purposes ancillary to the activity.

Paragraph (f) provides neither this section nor AS 46.40 authorizes an agency to deny or condition a consistency determination because of activities which do not themselves require a state or federal permit or a disposal of an interest in state land.

Under (g) the lead agency or any resource agency may only consider the statewide standards and guidelines adopted by the Alaska Coastal Policy Council if the activity for which a consistency determination occurs outside the boundaries of a coastal resource district with an approved district plan.

Sec. 44.62.636 establishes comment periods for comment in connection with a permit application or plan review being processed by a resource agency.

Under (a) the period is 15 days after request for comments on a Class I permit and 30 days for comment on a Class II permit.

Under (b), if the time period for a final decision on a permit has been extended the agency may extend the comment period but comments must still be submitted not later than 30 days before the date a final decision must be issued.

Sec. 44.62.637 concerns administrative appeals of a decision denying or conditioning a permit application.

Under (a) the permit applicant must file an administrative appeal within 10 days after issuance of a final decision denying or conditioning an application. The appeal is to the head of the resource agency involved and is not subject to the administrative adjudication requirement of the Administrative Procedure Act.

Under (b) the appeal must be resolved in 30 days from the date the appeal is filed or, if a hearing is held on the appeal within 45 days.

Under (c) the head of the agency may summarily dismiss an appeal during the resolution period established in (b). The dismissal is the decision for purpose of appeal to the Superior Court.

Under (d) the head of an agency may grant the permit or remove conditions on the permit until the appeal is determined if the head of the agency determines this would serve the public interest.

Sec. 44.62.638 allows judicial review of a decision made under this article by filing a notice of appeal under the applicable Rules of Appellate Procedure. The procedural requirements of AS 44.62.560(b)-(e) and 570 governing appeals under the administrative adjudication provisions of the Administrative Procedure Act are incorporated.

Section 3 defines certain terms used in this Act by adding to the definition section of AS 44.62.640.

BGB:ojb
J14/019

THE Aftl-DITTMAN POLL

of Alaska business leaders

The Aftl Dittman Poll is a regular monthly feature of Alaska Construction & Oil *and Alaska Analysts/Dittman Research. Each month several hundred Alaska businessmen and businesswomen are contacted and asked their opinions on questions of statewide importance. The statewide totals are combined and published in the weekly business newsletter* Alaska from the Inside (Aftl) *and in* Alaska Construction & Oil. *The respondents included in the sample are representative of their fields of activity and are located throughout the state.*

QUESTION

"Overall, do you feel state government regulations and policies are most likely to encourage or discourage well-planned, responsible resource development?"

RESULTS

	Encourage	Discourage	Undecided
Construction and Timber	22%	78%	—
Petroleum and Mining	13%	85%	2%
Finance and Services	42%	56%	2%
TOTAL	24%	74%	2%

ANALYSIS

Nearly three-quarters (74%) of Alaska's business leaders interviewed in November feel state government regulations and policies *discourage* well-planned and responsible resource development.

The percentage of respondents agreeing varies widely by industry. Petroleum and Mining respondents are the most adamant, with 85% answering "discourage."

A review of the respondents' comments offered during the poll shows that the Alaska Department of Fish and Game was the most frequently mentioned example of a state agency that discourages resource development. The comments also indicated two main reasons for respondents' concern about government policies:

(1) It is difficult to justify the expense and time required to design a well-planned development and take it through the permitting process when the likelihood of success is always in doubt.
(2) The state employees who work in regulatory agencies are more likely to have regulatory ("protective") mentalities which may blind them to the benefits of resource development.

COMMENTS

"Mainly in the permit area — the Department of Fish and Game stops more projects than any agency. They are always on the side of the Sierra Club and SEACC. *No development* is their policy."

"It took 16 years to get a water-use permit for mining and I have a coal prospecting permit application that is nine years old and still pending."

"The tendency in state government is to over-regulate. There can only be one result of that tendency — operating costs are increased both by the requirements for compliance and the cost of processing paper."

"It takes too much time and effort to get permission for access. It discourages people before they even start."

"Regulations are built around a negative attitude."

"Definitely encouraged — a marked improvement noted in both words and deeds!"

"Until the Department of Fish and Game is restricted from making unilateral and arbitary decisions concerning resource development, we will be unable to encourage development no matter how well-planned and responsible!"

CALENDAR

ENERGY-SOURCES TECHNOLOGY CONFERENCE & EXHIBITION — Sponsored by the American Society of Mechanical Engineers at Loews Anatole Hotel, Dallas, TX, (214) 247-1747, Feb. 17-22.

TRAINING SESSIONS ON DRILLING AND BLASTING TECHNIQUES — Explosives Services Corp. of Issaquah, Wash., (206) 392-7112, is conducting a five-day training session on drilling and blasting techniques in Ketchikan, Feb. 18-Feb. 22; and in Anchorage, Feb. 25-March 1.

INTRODUCTION TO MICROCOMPUTERS — A short course presented by the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers, Hilton Hotel, New York, NY, (303) 973-9550, Feb. 23-24.

FINANCE FOR THE MINERALS INDUSTRY — A symposium that is part of the annual meeting events for the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers; Hilton Hotel, New York, NY, (303) 973-9550, Feb. 24-28.

STATE OIL AND GAS LEASE SALE NO. 46A — Anchorage Westward Hilton Hotel, Anchorage, Feb. 26.

AGC 66TH ANNUAL CONVENTION/CONSTRUCTOR EXPOSITION — The Associated General Contractors of America 1985 convention, San Francisco, CA, Feb. 27-March 5.

ALASKA SUPPORT INDUSTRY ALLIANCE — Conference on marginal oil field development, Captain Cook Hotel, Anchorage, March 2.

FOURTH ANNUAL ALASKA CONSTRUCTION SUPPLY AND EQUIPMENT SHOW — Exhibits and technical sessions, Sullivan Arena, Anchorage, (907) 346-2424, March 21-22.

ARCTIC '85: CIVIL ENGINEERING IN THE ARCTIC OFFSHORE — A national specialty conference of the American Society of Civil Engineers at the Sheraton Palace Hotel, San Francisco, CA, (713) 772-0876, March 25-27.

34TH ANNUAL VEHICLE MAINTENANCE/MANAGEMENT CONFERENCE — Sponsored by the University of Washington, College of Engineering, at Kane Hall, Seattle, WA, (206) 543-5539, March 25-28.

ALASKA TRANSPORTATION FORUM — University of Alaska-Fairbanks, April 15-16.

CABLE HARVEST TECHNIQUES — Holiday Inn-Downtown, Spokane, WA, (509) 838-6101, April 15-19.

United Way of King County
Thanks to you.

Status Report on Project Consistency Reviews in 1984

The new project consistency process, also known as Permit Reform, went into effect on January 1, 1984. Since that time, the Division of Governmental Coordination (DGC) has coordinated the review of projects in Alaska's coastal zone needing permits or approvals from one or more federal agencies or more than one State agency. Projects are reviewed on either a 30 or 50 day schedule, depending on the statutory or regulatory requirement for public notice.

In 1984, 715 projects were entered into review. By December 31, 1984, 529 of those projects were closed as follows:

review schedule	# of close outs which were consistent	# of close outs which were consistent with stips	# of close outs which were inconsistent	Average length of review	# of projects elevated to Directors	# of projects elevated to Commissioners
30 day	81	99	0	24 days	1	
50 day	141	204	4	43 days	2	3

Agency permits are to be issued 5 days after the DGC review is completed.

INCONSISTENT DETERMINATIONS

Of the 529 projects closed in 1984 only 4 projects were declared inconsistent:

1. Chuck River Timber Sale (U.S. Forest Service.) for impacts to water quality in an important

fish producing river. The Forest Service elevated the review to the Directors and Commissioner's who upheld the decision. The Forest Service did not appeal to the U.S. Department of Commerce, but is working to modify their proposal.

2. Resurrection River 8 (Carlson) a proposal to fill important wetlands for a pasture - in an area where uplands are available. The applicant did not elevate or appeal.

3. Kenai River (Dimick) a proposal to fill wetlands near the Kenai River for private uses. The applicant did not object to the denial.

4. Kenai Peninsula (Holoubelk) a proposal to modify the river for erosion control. The applicant needed to provide a new design and more information but chose not to do so; the applicant did not appeal.

ELEVATED REVIEWS

Aside from the Chuck River Timber Sale, 5 other projects were elevated:

To the Directors:

1. Unik-Chickamin Log Salvage - after numerous consultations between the agencies and the applicant, stipulations were developed that the applicant accepted.

2. Endicott Development (Sohio) - working with the agencies, acceptable conditions were agreed upon.

3. Cape Kruzenstern Land Exchange - An acceptable solution was reached.

To the Commissioners:

4. Tuluksak River Gold Mining (Northland Gold) while an agreement was not reached at the director's level, the applicant and agencies did work out a mutually acceptable set of permit conditions at the commissioner's level.

5. Lisburne (ARCO) dissatisfied with both regional and director level reviews, ARCO elevated to the Commissioners. New information and analysis led to a determination of consistent.

Out of the projects left in review, only those which the applicant has requested an extension for or agreed to one in order to provide more information or redesign the project, are in review beyond day 30 or 50. Agencies cannot put projects on hold.

The regional level reviews are conducted in 3 regional offices. Fairbanks has one project coordinator, while Anchorage and Juneau have two. The coordinators are responsible for circulating project documents, keeping the review on track to meet the deadlines, facilitating consensus decision making amongst applicants, coastal districts, and agencies with expertise and preparing a decision document. Elevated projects are coordinated by the appropriate analyst in the Juneau central office.

pk85042401wwe

Buried for years under the mountains of red tape and paperwork required for regulatory approval of projects, Alaska's resource development industries may be nearing the light at the end of the tunnel with recent state efforts to streamline the permitting process.

By Chuck Kleeschulte

FOR YEARS, industry in Alaska has been complaining that it's been buried in red tape. But at last, industry officials say state government has acknowledged the need for change and is taking steps to cure the malady. The only questions lingering are whether the state is going far enough and fast enough to satisfy those who want to develop Alaska's resource-dependent economy.

"We've really seen improvement in the permitting process in recent months," says Bob Swetnam, Alaska executive representative for Phillips Petroleum. "It may not be all we'd like, but we're all very appreciative of how much it has improved."

Behind industry's new partial contentment with the level of regulatory red tape is Gov. Bill Sheffield's order late in 1983 that the state's main resource agencies implement a new process for issuing many of the hundreds of permits required at the state level. The new procedures, in effect little more than a year, have cut the delays companies and individuals face when they apply for permits. Thrust of the Sheffield initiative has been to simplify the process and shorten the time it takes to get a decision on a project.

"The new regulations haven't been in effect all that long, so in a sense we're still in a wait-and-see mode," says Bill Hopkins, executive director of the Alaska Oil & Gas Association. "Still, they've streamlined the system and cut the level of concern in industry dramatically. That in itself is a major accomplishment."

The source of industry's concern has been no secret. The billion-dollar-plus annual cost of complying with regulations and confronting paperwork delays has been a major drag on business in the state. According to a 1980 report by the Alaska Legislature's Administrative Regulatory Review Committee, government regulation costs Alaskan industry in excess of $1.3 billion each year.

The direct cost of state regulatory agencies and their 400-plus employees was pegged at more than $50 million in 1980, and observers say the figure has held at that level since then.

Not surprisingly, the bulk of that expense is borne by the oil industry. Bill McConkey, who served as head of an administrative reform effort in the administration of former Gov. Jay Hammond, says intertwining state and federal regulations hike oil company costs several hundred million dollars each year in Alaska.

Nationally, the cost to industry of complying with federal regulations has been estimated at more than $100 billion annually. That expense, added to an estimated $25 billion annual pricetag for complying with additional state rules, has been a major drain on productivity and has funneled capital from new investment into the regulatory arena.

Says Kenneth Chilton, associate director for the Center for the Study of American Business at St. Louis's Washington University, "Regardless of the positive environmental goals we're trying to accomplish, we're attaining them inefficiently at a major cost." He estimates 20 percent of the nation's productivity loss during the late 1970s and the early 1980s was attributable to government regulation.

Industries largely accept the need for government regulation to protect the health and safety of residents and the environment of the "Last Frontier." But they don't like the complexity of the regulatory process or what they perceive to be a tendency on the part of some agencies to add unrealistic requirements for project approvals and to procrastinate on making decisions.

According to 1982's consolidated state permitting manual, state, federal and local agencies process applications for more than 300 major classifications of permits and licenses in Alaska. On top of those, there are dozens more lesser types of permits required. They cover everything from deepening an oil well to processing milk to filling in wetlands to operating a gas pump. They range from the complex—such as those for coastal zone consistency determinations, wetland and fill and air and water quality requirements—to the simple, like food service, burning and unemployment insurance permits and requirements.

THAT PAPERWORK TAKES time, and in business, time is money. "If you're in business, you worry about everything that entails cost, and government regulations entail a big cost," says Alaska Oil & Gas's Hopkins. "When drilling a rig in Norton Sound can cost $250,000 a day, avoiding delays is vital."

A listing compiled by Joar Hughes in the Alaska Permit Information Center of the Department of Environmental Conservation in Juneau states the petroleum industry could need as many as 97 different types of state, federal and local permits and approvals to conduct onshore or offshore production in Alaska.

Exxon USA reported two years ago it would need approval on 42 different permits before it could launch offshore oil exploration efforts in Norton Sound. Marathon Oil Co. reportedly submitted some 96 pounds of documentation to win a single permit for one of its Cook Inlet tracts. Two years ago, say industry sources, state regu-

Battle of the (Red



Photo By Mark Kelley

Tape) Bulge

lations governing oil and gas filled more than 1,550 pages.

The oil industry, however, isn't alone in the regulatory and paperwork jungle. Don Finney, project manager for U.S. Borax's Quartz Hill molybdenum mine outside Ketchikan, says his firm will need approval on 59 different types of permits before it can begin mining.

Several efforts were undertaken during the Hammond years to wipe out some of the permitting requirements. In 1977, lawmakers set up the "one-stop" permitting office in the Department of Environmental Conservation. The agency compiled information on all permits and created a "master" permit application in an effort to cut paperwork and delays stemming from processing state and federal permits sequentially instead of concurrently. While some firms have used the service as an aid in preparing large, complex projects, most have elected to sidestep the process.

During the Hammond years, attempts also were made to combine permits for fisheries and mining. They met with mixed success. Observers say industry attitudes are one of the major differences between the Hammond years and Sheffield's administration.

"For whatever reason, the old process didn't work very well," says Bob Grogan, associate director of the current Division of Government Coordination. "On a controversial permit, the reviews were set up so that it was too easy for government to go into an indefinite stall to avoid making an unpopular decision."

Under Sheffield's system, put into effect by executive order in December 1983, all firms seeking permits from more than one state or federal agency for activity in the state's coastal areas can have the Division of Government Coordination organize permit reviews.

Agencies must review projects on a 30- or 50-day schedule, and permits must be granted or rejected within five days of the deadline.

According to Wendy Wolf, manager for permitting in the division, a review of the first six months of the program showed the state processed more than 600 permits. Seven were denied, and all that were approved were issued within the specified time frame. Those figures don't reflect extensions requested by applicants.

"The applicant can stop the clock, but we can't," Wolf says. "We're all treating the time frames as very serious."

The evaluation found that on average, all state multi-agency permits took 48 days to issue during 1984. Wolf says oil-related coastal zone permits were taking an average of 70 days to process in 1979-80.

Under the new system, some permit processes that used to require individual permit approvals are being processed with general reviews instead of specific ones. Most still require some review. The review must take place within the new deadlines, but there is no formal penalty for failing to meet those deadlines.



Grogan: Eliminating delays.

DIFFERENT AGENCIES MUST get together and decide on a permit within 18 to 24 days when permits don't require public notice and within 35 to 44 days on others. Applicants then have the right to object, either to the proposed decision or to stipulations state agencies are proposing.

If the applicant disagrees with the tentative decision, it can appeal the decision to state division directors of the three resource agencies: the departments of Natural Resources, Environmental Conservation and Fish and Game. If the applicant still doesn't concur, it can appeal to agency commissioners. The governor himself is the final unofficial arbitrator.

"All we can do is act as a facilitator to get all the agencies to sit down at one table and talk over their problems," says the coordination division's permitting manager. "So far at least there hasn't been a case where agencies haven't been able to work out reasonable solutions once they sat down and talked."

Initial reaction to Sheffield's streamlining efforts have been positive.

Harold Heinze, president of ARCO Alaska, says the changes have had a "positive impact" for ARCO, which last year won approval for development of the Lisburne oilfield on the state's North Slope.

"It provided an avenue for direct access to policymakers who had the full spectrum of decisionmaking ability," Heinze says. "You used to have problems with your issue just getting lost. The new process takes the 'black hole' out of the bureaucracy."

Sohio-Alaska Petroleum Co., which wants to invest $2 billion to develop the Endicott Reservoir surrounding Prudhoe Bay, achieved state approval for the project in 83 days after the company itself requested a delay. The company cleared the final government hurdle of North Slope Borough approval early this year. One Sohio staffer says that in the past, the state review could have taken more than a year.

Since the new system went into effect, few controversial permits have been processed, and few applicants have invoked the "elevation" process enabling appeals to commissioners. One of the most controversial involved a request to set up a gold dredging operation near Tuluksak on the Kuskokwim River northeast of Bethel. The applicant, C.C. Hawley & Associates of Anchorage, ultimately got its permit, but only after a variety of stipulations were added to protect the water quality of the river for village consumption and fish spawning.

Says Chuck Hawley, president of the mining firm, "The process works . . . in a way. It does get the resource agencies together so it makes sure no one is left out in left field. It establishes a timetable. It's not perfect, but it works."

In other quarters, the verdict on the new system is still out. Owen Graham, chief control manager for Louisiana-Pacific's Ketchikan pulp mill, says the timber industry has been so depressed in recent months that it hasn't had the opportunity to apply for many permits for logging or log transfer sites. He adds the industry won't be able to evaluate the system until logging rebounds and there are additional wetland and tideland applications.



Heinze: No more 'black holes.'

OTHERS SAY THE system's dependence on personalities may be its greatest defect. Jim Jinks, executive director for the Alaska Miners Association, says that while the new system is an improvement over the previous method, he's concerned that it was enacted by government regulation and not by statute.

"The folly of the current system is that it's entirely dependent on the person who's sitting in the governor's chair," says the mining official. "If you have a governor who wants to make the permitting system work, it might (work). But if you were to change administrations, it wouldn't take much for the system to backslide. We just feel the system is too contingent on the personalities of the governor, his commissioners and the staffers in his office."

Jinks says the miners support a legislative solution. One legislative approach first proposed in 1981 failed to win approval that year and then again in 1982 and 1984. State Rep. John Ringstad, R-Fairbanks, reintroduced the bill earlier this year. Under the proposal (House Bill 73), the Department of Natural Resources would be designated the "lead agency" on all resource-related permits. While it would have to listen to comments from other state agencies, Natural Resources would have the final say on permit approvals and stipulations.

Agencies also would have mandatory time limits for acting on applications, generally 30 to 65 days. If applications weren't acted upon within the specified time frames, they automati-

50 PHOTO EXPRESS

VISA

Look What We Can Do For You.

3½x5 Custom Quality Prints

100% Larger 5x7 Prints

• Enlargements up to 11x14
• Disc Processing (2-hour service)
• Ektachrome Slide Processing (2-hour service)

Commercial Accounts (Ask about our special rates.)

Quantity Discounts

8 Convenient Locations

We Use Only the Best Kodak Paper & Chemistry

–And–

We Guarantee The Lowest Everyday Sale Price on Kodak Film

Kodacolor VR 100

We use Kodak PAPER for a Good Look

Anchorage - Fairbanks - Juneau

AMERICAN TIRE

(SERVING ALASKA SINCE 1971)

YOKOHAMA Performance Radials





PORSCHE AUDI SAAB VOLVO MERCEDES BMW COLT STARION LASER SUPRA CELICA DAYTONA GRAND AM 300SX RX7 ALFA ROMEO CORDIA IMPULSE 280 ZX CHARGER

During recent years, YOKOHAMA has aggressively participated in racing events. The invaluable experience gained through racing has enabled YOKOHAMA to develop a full range of performance radial tires to meet the most demanding requirements of today's automotive market.

276-7878 452-5145 456-5278

ANCHORAGE - FAIRBANKS - NORTH POLE

R&G
Leasing Company



- Competitive lease rates
- Quick turnaround
- Professional service
- Commercial and Municipal leases
- Business equipment and furniture

Lease It!

2600 Denali Street, Suite 102
Anchorage, Alaska 99501
276-4423

This announcement is under no circumstances to be construed as an offer to sell or as a solicitation of an offer to buy any of these units. This offer is made only by the Prospectus.

CALASKA 3
an Alaska Limited Partnership

Partnership to purchase 6.4 acres industrial land off Minnesota/O'Malley Road

Initial investment $3,000 per unit plus additional payments. Minimum purchase 2 units.

200 Units
Limited Partnership
Offer to Be Made Only to Alaska Residents

Copies of the Prospectus may be obtained from:
Dorie Clark or Mary Bettis

DORIE CLARK COMPANY
4794 Business Park Blvd.
Bldg. F Suite 8
Anchorage, Alaska 99503
562-0391

cally would be granted. The bill was tailored to avoid interagency deadlocks by making one agency ultimately responsible. Industry officials say those deadlocks traditionally have resulted in additional stipulations.

Jinks says not having a single agency responsible is another shortcoming of the current system. "My gut feeling is that the new system won't be that satisfactory over the long run since there's still no single agency ultimately responsible for saying another agency is off base in its requirements – not without elevating every complaint to the governor," he says.

Ringstad adds, however, that changes in the permitting process have lessened clamor for his proposed legislation. He concedes the bill has little chance for adoption before 1986, though he was hoping hearings on it could open during the 1985 session.

Other complaints about the new system focus on time requirements. Jim Posey, land manager for ARCO Alaska, says the system at least initially tended to extend the time required for firms to secure more routine permits. "It's great for the big projects," he says. "But we used to just walk in and get some permits. Now the agencies wait most of their 30 days before they issue them."

The Division of Government Coordination's associate director agrees agencies rigidly were following the guidelines in the early stages. "The system initially tended to overkill the routine permits," Grogan says. "We're trying to solve the problem by expanding the number of permits that can be issued automatically on the concept of general concurrence. We're aware of the problem, and we're going to eliminate it."

Mike Abbott, project coordinator for Resource Development Council for Alaska, argues that since the deadlines aren't binding or enforceable, there's no guarantee they'll be followed. "There are just too many ways to slow up permits in agencies," he says.

STATE ENVIRONMENTALISTS counter that Sheffield's reforms have gone far enough. Jay Nelson, a volunteer and former lobbyist for the Alaska Environmental Lobby, says environmentalists are "comfortable" with the regulations as they stand. "We believe they address the legitimate concern of industry about delays, and they cut horror stories," he says.

Nelson adds environmentalists strongly oppose any provision that would enable automatic approval of permits if agencies miss deadlines. "In some cases, there are good reasons for delays," he says.

Still others question whether HB 73 is even a viable alternative. While it names the Department of Natural Resources as the lead agency for permitting, it doesn't repeal existing state statutes bursting with clauses giving other agencies control over certain resource regulation. Without modification of existing statutes, the proposed law might accomplish nothing but to generate an endless string of lawsuits.

State agencies aren't the only problem. Industry complains about the lack of coordination among state and federal agencies, and several federal agencies have joined the state in attempting to cut permit delays.

U.S. Army Corps of Engineers, for example, moved in 1982 to speed its issuance of wetland permits – a key permit since more than 213 million acres of the state are classified as wetlands. In 1981, it took an average of 180 days to get a wetlands permit. But for the first quarter of fiscal 1985, the average was 57 days. The Corps of Engineers is targeting 60-day processing on all permits.

More importantly, says Corps spokeswoman Pat Richardson, the government agency meshed its public notice requirement with the state's so permit reviews run concurrently. The Corps, like the state, also is seeking to classify more types of common activities under general permits to cut down on similar reviews – drilling pad reviews for the North Slope, for example.

Whether the new system remains intact or it's replaced by a legislatively-mandated substitute, it clearly will continue to be scrutinized and revised. An inter-agency working group spent the entire fall and much of the winter ironing out bugs in the new process. Says Grogan, "It's clear that achieving accord is an ongoing process; you don't just fix a system and expect it to run like a charm. You have to make an ongoing effort to get the process to work."

The system may never work as well as industry would like. There are signs, however, that while government may not be doing much to trim its red tape, it is taking initiatives to make the red tape easier to untangle. □

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
April 24, 1985

Rep. Adelheid Herrmann, Co-Chairman
Rep. Richard Shultz, Co-Chairman
House Resources Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 73: Permit Processing and Coastal Zone Consistency Determinations

Dear Representatives Herrmann and Shultz:

The League of Women Voters of Alaska opposes HB 73. We will continue to oppose it unless we are shown convincing information to the effect that the Governor's permit reform program[1]/ (which we support) is not functioning, and that HB 73 would provide a better result. Based on the information available to us thus far, the Governor's permit reform program is functioning properly. Our main concern about HB 73 is the potential for disrupting a new system that is in place and seems to be working.

The League in Alaska has participated in the subject of permit reform for four years, and we have understood the need for improving the system. We have supported the Governor's permit reform program as a promising means of improving the system, and have energetically opposed last year's bills (HB 14 and SB 219, including the final amended versions). Last year's "finalists," CS HB 14 (Fin) and CS SB 219 (Res) [and especially the former], are the sources for most of the text in the bill before you now, HB 73. We have also supported agency operating budgets to provide adequate staffing for permit processing functions within DNR, DF&G and DEC.

1/ See Administrative Order No. 78 (12/20/83); regulations at 6 AAC 50.010-.190; and a series of OMB/OCC memoranda classifying permits and issuing general concurrences (dated 5/1/84, 10/8/84, 1/30/85 and 1/31/85).

We especially oppose legislation which (as HB 73 does) would provide for automatic issuance of a permit if a stated time limit is exceeded.[2]/ We fear this may, in some cases, inadequately allow for input from affected public, affected local government and coastal resource service areas. There is also the danger (especially if permit issuing and reviewing agencies' staffs are decimated by smaller operating budgets in future years) that an agency faced with such an immovable deadline will simply deny the permit on the last possible decision date. We also note that HB 73 is not even-handed with respect to administrative appeals; only the permit applicant (not other other interested persons, such as affected local governments) is afforded a right to appeal the permit issuing agency staff's decision to the head of the agency.

In the event it may be of any assistance to your Committee, I enclose one copy of a comparison sheet which I prepared last year and have extended to include this year's HB 73.

Thank you for considering our views. We have informed Representative Ringstad's staff that we would like to hear of any problems any sector is having with the present system, as we are always open to persuasive facts.

Sincerely,

Elizabeth Cuadra

Elizabeth Cuadra, Board Member
(Natural Resources Portfolio)

Enclosure

cc (w/out encl.): Committee Members (Wallace, Sund, Thompson, Miller, Cato, Pearce and Jenkins)

Sponsor (Ringstad)
Bob Grogan (OMB)

Paula Ziegler, LWVAK President

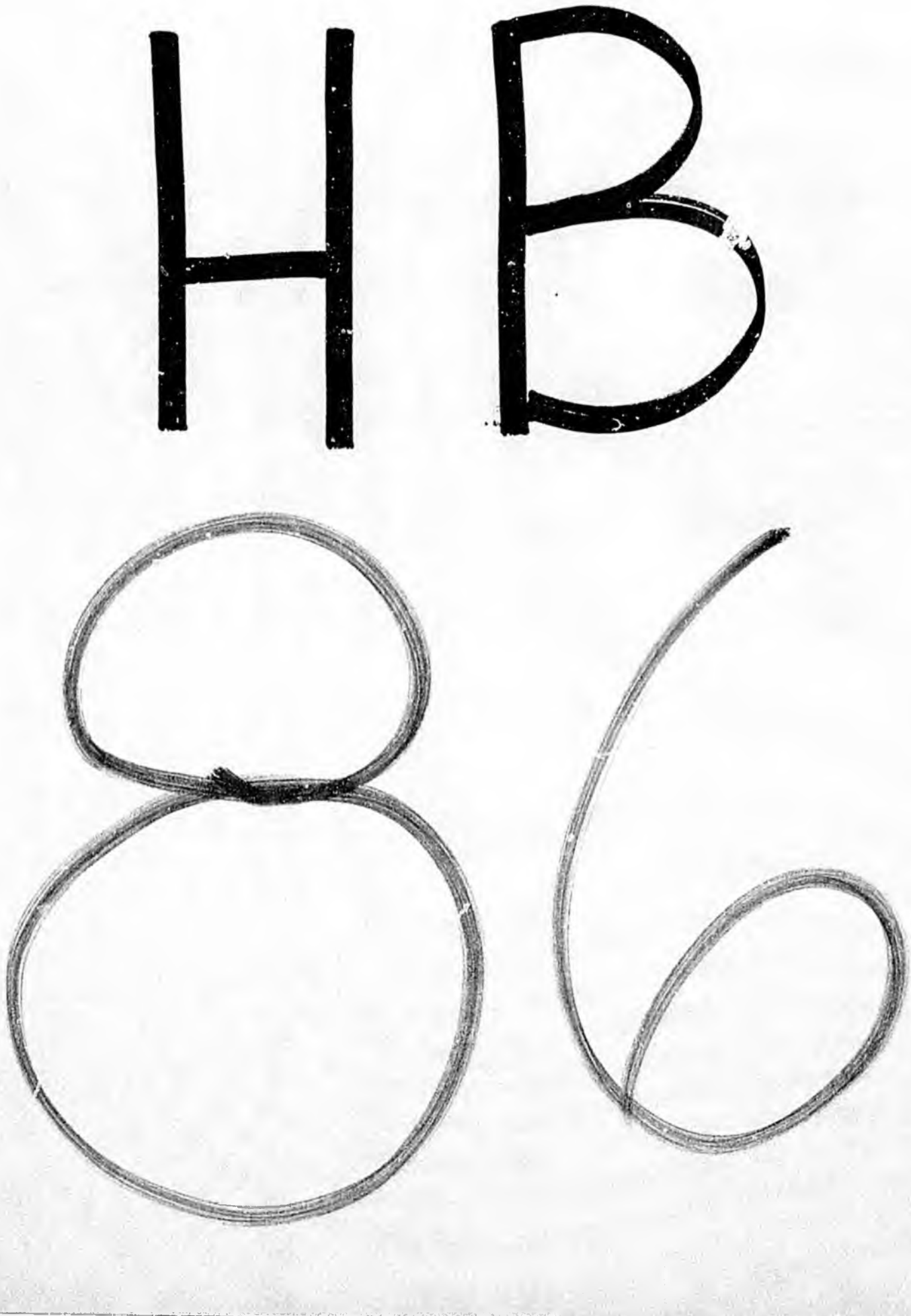
---

[2]/ The Governor's permit reform program does contain time limits, different time limits for different classifications of permits.

	Governor's (AO 78 and cons. Regs)*	SB 219 (as passed by Senate)	HB 14 (CS HB 14 (Res))	Proposed HCS (Fin.) for SB 219	CS HB 14 (Finance)	1985 Legislature HB 73 (Ringstad)
(1) "Lead Agency" Assignment	OMB where ≥ 2 state agencies' permits (or a federal permit) required on project	DNR in most cases (i.e., when project is resource devel. on state or fed'l land or waters)	<=	OMB for resource devel. activities on state or fed'l lands/waters	Like SB 219	DNR in most cases (same as SB 219)
	Permit issuing agency where only 1 state agency's permit (& no federal) required	In other cases, that resource agency with principal responsibility for that type of devel. (If none, Gov. designates, by A.O., 10/1/84)		In other cases, that resource devel. agency with principal responsibility for the type of development (If none, Gov. designates by A.O., 10/1/84)		
(2) Special Issues -		Automatic issuance of permit (or CZM consistency) if deadline missed.			Similar to SB 219	- Automatic issuance of permit if time limit exceeded - For consistency determinations for activities outside coastal resource districts w/approved plans, only the statewide CZM stds/guidelines can be considered. [also in final versions of HB 14 and SB 219]

	Governor's (AO 78 and cons. Regs)*	SB 219 (as passed by Senate)	HB 14 (CS HB 14 (Res))	Proposed HCS (Fin.) for SB 219	CS HB 14 (Finance)	1985 Legislature HB 73 (Ringstad)
(3) Time Limits -	(1) 30 da or (2) 50-60 da (limited extensions) for projects that require case-by-case review. Some projects (i.e., "categorically approved" list) require no CZM cons. det. Others require only "general concurrence determination" r CZM	Class I: 30 da Class II: 60/85 (limited extensions; e.g., unusually complex issues finding)	Cl I: 30 Cl II: 60/75 same (up to 120 da max total)	Cl I: 30 Cl II: 65/85 (limited extensions; e.g., "unusually complex issues" finding)	Same as CS HB 14 (Res.)	Cl I: 30 days Cl II: 65/75 [120 day max if "complex issues] appealable [extendable to allow joint fed-state processing if limits cause "irreconcilable conflict" w/fed. law.]
(4) Lead agency duties re DEIS & federal permit clearances (incl. CZM consistency)	OMB coordinate all agency comment collection & provide single state result to feds	Lead agency (usually DNR) "solely responsible" for preparing & submitting state comments on federal permit applic's, etc.				Same as SB 219 [and no agency except lead agency can comment to feds unless fed. law requires it]

	Governor's (AO 78 and cons. Regs)*	SB 219 (as passed by Senate)	HB 14 (CS HB 14 (Res))	Proposed HCS (Fin.) for SB 219	CS HB 14 (Finance)	1985 Legislature HB 73 (Ringstad)
(5) Appeal Process	Cabinet level review avail., + Governor, Silent as to admin. appeals, judicial review	Not specified (except: appeal of "unusually complex issues" finding to Superior Ct.)	Admin. appeals: to agency head (deadline for decision 45 da.) Judicial review: All agency decisions appealable to Super. Ct. (refs. to A.P.A.) Only the permit applicant can appeal	Same as SB 219	Same as CS HB 14 (Res)	Same as HB 14


HB
86

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 18, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to establish the Willow Creek State Recreation Area.

This bill would place approximately 4,000 acres of land along Willow Creek near the Parks Highway in state recreation area classification. About 60 percent of the land is owned by the Matanuska-Susitna Borough and the borough supports the designation and management of the area as a state recreation area.

The area would be managed in accordance with a comprehensive plan developed in consultation with the borough. Primary emphasis would be on recreational uses and associated development. The state and borough have begun work on a joint plan that includes a road to the mouth of Willow Creek. This road will alleviate conflict between use of the creek by motorized and non-motorized boats. Designation as a state recreation area will allow increased compatibility among the various recreational uses of the creek while minimizing any harm to fish and wildlife resources and habitat.

I urge your favorable action on this measure.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

HB 86

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 86

Title: Willow Creek State Recreation Area

Sponsor:

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Parks and Recreation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		28.3	48.7	77.0	77.0	77.0
200 TRAVEL		7.0	1.0	1.0	1.0	1.0
300 CONTRACTUAL		5.0	23.0	23.0	23.0	23.0
400 SUPPLIES		1.5	3.0	2.0	2.0	2.0
500 EQUIPMENT		16.2	11.2	11.2	2.0	2.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		53.0	86.9	114.2	105.2	105.2
CAPITAL		143.0	4,237.0	3,598.0		
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		196.0	4,323.9	3,712.2	105.2	105.2
FEDERAL FUNDS						
OTHER						
TOTAL		196.0	4,323.9	3,712.2	105.2	105.2

POSITIONS:

FULL-TIME						
PART-TIME		1	2	3	3	
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

ATTACHED

Prepared By: Peter Panarese Phone: 265-4517

Division: Division of Parks & Outdoor Recreation Date: 1-16-85

Approved by Commissioner: Date: 1-16-85

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget

Willow Creek State Recreation Area - Fiscal Analysis

FY 86

100	-	Park Ranger I / 8 months
200	-	Travel for training, regional coordination
300	-	Vehicle mileage, janitorial maintenance
400	-	Hand tools, commodities
500	-	Pick up truck, mobile radio, law enforcement equipment
Capital	-	Design and engineering for road/ campground/parking

FY 87

100	-	Add Natural Resource Technician I/3 mos.
300	-	Add maintenance/services contract
500	-	Additional truck radio
Capital	-	Construction of boat launch, road and parking

FY 88

100	-	Add Park Ranger I/8 mos.
500	-	Additional truck, radio
Capital	-	Continue FY 87 construction; includes car and walk-in, camping and trails and trail heads.

NOTE TO READERS, JANUARY 1985:

The appendices, which are now outdated, are not attached to this copy for distribution. The recommendations in this version of the plan embody recommendations only and actions taken in response to the plan will reflect changes made during policy discussions in December and January.

SOUTHCENTRAL RECREATION ACTION PLAN

Presented to Governor Bill Sheffield

December 1, 1984

By

Esther C. Wunnicke, Commissioner
Alaska Department of Natural Resources

Don W. Collinsworth, Commissioner
Alaska Department of Fish and Game

Contents:

I. Executive Summary 1
II. Introduction. 3
III. Background. 4
IV. Issues. 5
V. Recommended Actions 7
Legislative Designations. 8
Funding for Recreation-related Purposes 11
Land Management and Planning. 12
VI. Summary 13
VII. Appendices

I. EXECUTIVE SUMMARY

Recognizing the intense, and growing, recreational demands of southcentral Alaskans, this action plan makes a variety of recommendations for legislative designations, land acquisitions and exchanges, facilities development, habitat and fisheries enhancement, land management priorities, and future planning. Implementation could take several years.

If implemented, legislative designations (Table One) would include:

- State Recreation Rivers, 6 units, 250,000 acres
- State Forest, 1 unit, 450,000 acres
- Public Use Areas - 2 units, 1 million acres
- State Recreation Areas - 2 units, 10,000 acres
- Wildlife Refuge Addition - 1 area, 1,200 acres

The plan also p. ents funding proposals for recreation-related projects, many of whic re already proposed within departmental budget requests for FY 86. Tables Two, Three, and Four provide more budget information on these proposals. Each category of proposals is ranked by priority as decided by the interagency group and members of the public who worked on the plan, but because the lists focus only on regional recreation needs late in the budget process, they cannot displace departmental or community budget priorities already submitted to the Governor's Office. Possible land acquisitions include:

- Ninilchik River, 300.0
- Cottonwood Creek, 40.0
- Crooked Creek-Kasilof River, 200.0
- Kashwitna Landing, 500.0
- Wasilla Creek, 180.0
- Anchorage Urban - Behm Lake, 600.0
- Funny River - Kenai Confluence, 1,300.0
- Little Willow Creek, 180.0
- Clam Gulch, 65.0
- Whiskey Gulch, 200.0
- Neil Lake (Deshka River), 300.0
- Moose Creek (Deshka River), 300.0
- Bishop Creek, 200.0
- Bird Creek, 100.0
- Deep Creek, 500.0
- Nancy Lakes inholdings, 250.0

Facilities development could include the following:

1. River-related facilities:
   - Willow Creek State Recreation Area (proposed): 7,735.0
   - Little Susitna River, 00.0
   - Kenai Peninsula Recreation Units, 1,155.0
   - Ninilchik/Deep Creek Marine Launch Feasibility Study, 20.0
   - Talkeetna Boat Launch and Campground, 173.0
   - Kepler-Bradley Lakes, 500.0
   - Anchorage Fishing Pier Facilities, 1,500.0
   - Kenai River Development, 1,000.0
   - Anchor River Development, 400.0
   - Whiskey Gulch Development, 200.0
   - Sheep Creek Access Development, 200.0

2. Park and recreation facilities (non-riverine):
   - Chugach State Park Access, 1,420.0
   - Safe Water Supplies, 150.0
   - Independence Mine State Historic Park, 600.0
   - Thunderbird Falls Recreation Site, 420.0
   - Public Use Rental Cabins, 225.0
   - Park Location Signing, 155.0

Wildlife, fisheries, and enhancement could include:

- Wildlife Enhancement
  - Moose Habitat Enhancement - Anchorage Bowl, 12.0 cont
  - Kenai Refuge Habitat Enhancement, 85.0 cont
  - Moose Creek Range Habitat Enhancement, 35.0 cont
- Fish Enhancement
  - Susitna King Salmon Rehabilitation, 116.7 cont
  - Big Lake Hatchery, 85.4 cont
  - Elmendorf Hatchery, 475.5 cont
  - Fort Richardson Hatchery, 825.9 cont
  - Kenai River Juvenile King Studies, 137.3 cont
  - Kasilof Hatchery, 78.3 cont
  - Trail Lakes Hatchery, 197.8 cont
  - Fort Richardson Fish Transport, 500.0 cont
  - Elmendorf Completion, 1,520.0 cont
- Wildlife Observation - Potter Marsh, 525.0
- Wildlife Observation - Anchorage Bowl, 250.0
- Anchorage Trap and Skeet Range, 500.0

The proposed trade-out of Seldovia Native Association lands in Kachemak Bay State Park remains the state's highest land exchange priority.

This action plan represents the recommendations of the group that prepared it for possible short-term steps to improve recreation opportunities in southcentral Alaska. Other proposals were also studied and documented and could be implemented in the future. To maximize continuity in southcentral recreation management and to continue coordinated planning and management, it is recommended that you establish a steering group on southcentral recreation, composed of the agencies that developed this action plan and representatives of affected governments. No funding would be necessary for this action.

Development at South Denali should proceed within several years but hinges largely on federal appropriations. Next year (FY 87) the state should begin to budget special planning and development funds in accord with the federal schedule.

II. INTRODUCTION

In 1983, responding to the growing recreational demands of residents of southcentral Alaska, Governor Sheffield recommended the immediate legislative protection of one of the state's finest recreational resources, the Kenai River. As a result, the Legislature established the Kenai River Special Management Area, and planning and management for the Kenai River have already begun.

Protection of the Kenai River was clearly merited. Visitor use of the river grew from 122,000 recreation days in 1977 to 230,000 recreation days in 1983 -- almost doubling in five years. Today, it is estimated that 14% of all sport fishing in Alaska occurs on the Kenai River. The use is attributable to the river's accessibility by road from major population centers, including Anchorage and Kenai/Soldotna, and the availability of healthy fish resources.

In the course of managing the Kenai River and conducting area planning for the Matanuska-Susitna region, state agencies have found that the problems of recreation management on the Kenai River are not unique. Instead they are symptomatic of the burgeoning recreation demand throughout southcentral Alaska -- a demand that creates pressures on recreation users, local governments, and the state and federal governments. Careful recreation management is necessary both to meet this demand and to protect Alaska's land and natural resources.

Governor Sheffield, recognizing the need for a recreation management strategy in southcentral Alaska, asked the Departments of Natural Resources and Fish and Game to cooperate in the development of an "action plan" for southcentral Alaska. The Governor directed that the plan include recommendations for:

1) legislative proposals for designating state recreational rivers, recreation areas, habitat/recreation areas, and other multiple use areas;

2) land acquisitions and exchanges that will increase public access to recreational resources in southcentral Alaska, including the Kenai Peninsula;

3) capital budget requests for facilities development, especially those with local or federal participation or support;

4) operating budget requests for land management and planning to support the recreational program;

5) future priorities for recreation planning and development; and, in addition,

6) analysis of the costs and benefits of the proposed actions in the plan.

III. BACKGROUND

Rapidly intensifying recreational use is creating a new, major demand for opportunities for sport fishing, hunting, hiking, river running, and camping in southcentral Alaska. This growing use has been concentrated in accessible areas, so that patterns of use are uneven and damage to some resources is a possibility. There are new pressures on local services, and on the state and federal governments to provide recreation opportunities and recreation management.

The growth in southcentral recreation demand has been identified in several major planning and management efforts recently undertaken by government agencies in close consultation with the public. Planning efforts have included "Alaska State Park System: Southcentral Region Plan" (1982); the Susitna Area Plan, released in draft in July 1984 and expected to be finalized in January 1985; and sport fisheries and game studies produced by the Alaska Department of Fish and Game. Additionally, the Governor's study group on the Kenai River, headed by the Office of Management and Budget in 1983, identified the need for dispersal of recreation uses from heavily used areas on the Kenai Peninsula and better management of these areas.

The Susitna and Kenai areas feature a wide variety of recreational resources that provide exceptional opportunities for public use. The recreational potential is large and diverse: many recreational experiences are available (fishing, hunting, camping, hiking) and there are numerous accessible recreational areas, mostly along the Seward, Glenn, Parks, and Denali highways. Large population centers, with unusually high recreation use patterns, are within the southcentral area. Additionally, a number of federal conservation units within the region provide excellent opportunities for recreational use by Alaska residents and visitors to the state. Increased access and transportation development within the region will lead to new recreation demands in some areas in future years.

Meeting recreational demands is, of course, very important to potential users. But recreation also contributes significantly to Alaska's economic vitality. Recent studies in support of planning for state parks and other recreation sites have indicated that recreation use in southcentral Alaska contributes tens of millions of dollars annually to local economies. Tourism and recreation play an increasing role in economic development planning throughout Alaska.

Major recreational uses that need special consideration by the state are sport fishing, recreational vehicle camping, tent camping and hiking, picnicking, boating, kayaking/canoeing, cross-country skiing, hunting, and snowmobiling. Recreational uses can be combined with habitat protection, forest management, mineral development, and other uses in a multiple use context, but planning for recreational pressures is needed throughout the state's public lands to assure compatibility of recreation and other land management activities.

IV. ISSUES

Recreation issues include the following concerns, some of which were identified in the recreation element of the draft Susitna Area Plan and by the state Division of Parks and Outdoor Recreation and Department of Fish and Game.

Recreational Land Base

Because of southcentral Alaska's accessibility to major population centers and transportation routes, demands on recreational resources are higher and present more competition with other land uses such as urban growth, resource development, and habitat protection than they do in most other parts of Alaska. Specific problem areas include popular river corridors and lakeshores.

Although accessible sites receive more use than remote areas, they often have a lower proportion of land in public ownership. In addition, there is relatively little federal land in accessible recreation areas in southcentral Alaska: most prime recreation areas are in private, borough, or state ownership. The different landowners and managers can and should cooperate in providing recreational opportunities -- for example, in some areas the state will have to assist local communities in providing local recreation opportunities and meeting growing demands on local resources from outside the communities. The need for cooperative management is accentuated by the likelihood that state revenues will decline in the future, and funding for development and maintenance of recreation sites will tighten. However, cooperative management will require coordination of planning, management, and budget priorities.

Growth in Recreational Use

The demand for recreational use of our state land, fish, and game resources will continue to grow with the upper Cook Inlet area. Recognition of current demands and projected future growth requires that the state begin immediately to provide dispersed recreation opportunities for recreational use in the southcentral area.

The growth in recreation use new areas will necessitate intensive management for resource conservation. Remote areas, newly opened for recreational and multiple use, will be affected by large numbers of new resource users. A major concern in the public comment on the Susitna Area Plan and in other forums has been the need for more intensive state land and resource management, and the action plan is intended to address these current and future management needs.

In the course of public comment on the Susitna Area Plan, recently completed after three years and over 40 public meetings, there was evident concern that recreational use of public land has intensified without commensurate land and resource management by the state. New uses, including all-season off-road vehicle use, are giving greater accessibility into the public lands but are not being managed.

Sport Fishing

The southcentral region bears by far the greatest amount of sport fishing in the State of Alaska. Approximately 55% of Alaska sport fishing occurs in the Cook Inlet watershed, amounting to 950,000 angler days a year and about 150,000 persons sport fishing. Use has been increasing about 7.8% per year.

Today about two-thirds of this southcentral sport fishing effort is concentrated on the Kenai Peninsula. The Matanuska-Susitna and Anchorage areas support the remainder.

Two areas could accommodate substantial additional growth in recreational use: the Matanuska-Susitna Valley and marine waters along the Kenai Peninsula.

Access to waters in northern Cook Inlet is primarily limited by the lack of developed surface transportation and facilities. Even though there is acknowledged to be an adequate fishery resource to support increased sport fishing use, access is in most cases restricted to river boats and aircraft. For instance, there are no public launch facilities on the Susitna River below Talkeetna. Even rivers crossing the Parks Highway from Willow to Talkeetna, draining into the Susitna River, have limited access. Most of these rivers are bordered by private lands with little or no access. Most use occurs in the highway corridors, and results in congestion and uneven resource use.

Sport Hunting

Most of the recreational hunting by Alaskans occurs in southcentral Alaska and the greater part of projected increases in demand for hunting opportunities will occur in this region. Because the habitat base is finite and potentials for manipulating increases in productivity are limited, future demands for recreational hunting can best be met by retaining productive wildlife lands in public ownership and by assuring public access to wildlife resources. Habitat enhancement measures included in this plan can be an important tool in providing sport hunting opportunities on public lands.

Other Recreational Uses

There is a large demand in southcentral Alaska for accessible land and facilities that accommodate other types of recreation such as hiking, picnicking, snowmobiling, skiing, and camping. Often these types of uses cab be accommodated with other multiple use activities and the recreation activities listed above. These uses are likely to be enhanced by protection of lands for the recreation activities listed above.

Multiple Use Management

Proposals to provide for recreation and habitat protection generally recommend retention or acquisition of public land and management that

permits recreation, forest management, mineral development, access, and other multiple uses in balance together. In some cases, it will be the joint decision of the Departments of Fish and Game and Natural Resources in the planning process to restrict multiple use in critical areas within a legislatively designated unit. However, the action plan's premise is that coordinated multiple use management of state lands and resources can provide adequately for recreation and habitat protection together with other uses.

V. RECOMMENDED ACTIONS

To provide the foundation for a permanent system of lands and waters that offer diverse opportunites for public recreation in southcentral Alaska, this action plan makes recommendations for legislative designations, land acquisitions and exchanges, facility development, land planning and management, and priorities for future recreation development and planning. These actions will help relieve the recreational pressures faced by the public, local governments, and land and resource managers in southcentral both today and in the future.

These recommendations are designed to accommodate rapid growth in sport fishing, hunting, boating, and other recreational activities in the Matanuska and Susitna basins and on the Kenai Peninsula, and to allow for orderly development of the region's fisheries and recreational facilities.

State agency staff have met to discuss the recreation action plan proposal with representatives of affected local governments. A summary of these discussions is included in the appendix (APPENDIX ONE). The government representatives believed that the recreation action plan has significant potential for relieving recreational pressures and meeting future needs.

Local government representatives have indicated support for our integrated recreation planning and management to meet the variety of recreation demands. They regard this proposed action plan as a package to address "average" recreation demands, not a package likely to provide for wealthy recreationists. They also see the potential economic benefits of the action plan, with little or no adverse impact on other resource development. The local government representatives agreed on three commendable criteria for selecting alternatives from the action plan: a) emphasize projects that provide more benefits for fewer dollars; b) emphasize projects that the public will be aware of; and c) emphasize protection and retention of critical areas, with a later focus on development and maintenance.

Development of the Willow Creek State Recreation Area, as proposed in this plan, will have the largest single impact on recreational use of any proposed project in the Matanuska-Susitna Valley. The Willow Creek project will greatly improve boat access to the west side of the Susitna River and

road access adjacent to Willow Creek. The project is expected to accommodate an additional 40,000-60,000 recreation days annually.

Legislative Designations

The action plan proposes seven legislative designations of lands with outstanding values including public recreation. All of these proposals are high priorities in state area plans that have had thorough public review and comment. APPENDIX TWO contains drafts of legislation and fiscal notes for each proposed action. Table One summarizes each action and fiscal impact.

1. State Recreation Rivers.

Six rivers have been proposed for designation as state recreation rivers, including a total of approximately 250,000 acres of public lands:

Alexander Creek
Kroto Creek/Moose Creek (Deshka River)
Lake Creek
Little Susitna River
Talachulitna River
Talkeetna River

Common factors militating in favor of these designations include:

- Very high priority for designation as state recreation rivers in the Susitna Area Plan; Little Susitna identified for protection in Willow Subbasin Plan; closure to new mineral entry per these plans and public comment
- High multiple use and recreation values, particularly sport fishing, hunting, moose winter range, spawning grounds for Cook Inlet fishery
- Fiscal impact: $130,000 first year, dropping to $79,000 after two years

2. Susitna State Forest.

Five areas in the vicinities of Kashwitna, Kroto-Creek-Kahiltna River, Lake Creek, Mt. Susitna, and Peters Creeks are proposed for designation as the Susitna State Forest (450,000 acres).

These areas share:

- High priority for legislative designation in the Susitna Area Plan
- Prime multiple use potential for recreation, forestry, and habitat management
- Fiscal impact: $81,000 in operating costs for two years, dropping to $66,000 afterwards

3. Yentna-Susitna Public Use Area.

Approximately 54,000 acres of public domain lands along the lower Yentna and Susitna Rivers and Kroto Slough are proposed as the Yentna-Susitna Public Use Area.

Table One - Proposed Legislation and Fiscal Impacts

NOTE: The symbol * indicates a Fish and Game budget request
The symbol # indicates a Natural Resources budget request

PROPOSAL	1986 CIP	1986 OPER	1987 CIP	1987 OPER	1988 CIP	1988 OPER	1989 CIP	1989 OPER
1. State Recreation Rivers	...	277.4#	...	229.8#	...	252.7#	...	277.9#
2. Susitna State Forest	...	81.0#	...	81.0#	...	66.0#	...	66.0#
3. Yentna-Susitna Public Use Area	Fiscal impact included with Nelchina proposal, below No. 5							
4. Willow Creek State Recreation Area	7,735.0#	212.5#	...	145.0#	...	158.7#	...	174.5#
5. Nelchina Public Use Area	...	129.8# 40.0*	...	129.8# 40.0*	...	78.5# 20.0*	...	78.5# 20.0*
6. Jim-Swan Lakes State Recreation Area	500.0#	122.1#	...	93.6#	...	102.7#	...	112.9#
7. Palmer Hay Flats Refuge Additions	...	...	...	...	...	...	...	...

Draft legislation is included in Appendix Two, except for Palmer Hay Flats Additions, No. 7.

This area has:

- High priority for legislative designation in the Susitna Area Plan
- Moose winter range, large concentration of trumpeter swan nesting sites, and 25,000 acres of land with potential for commercial forestry
- Fiscal impact: included with Nelchina designation, below

4. Willow Creek State Recreation Area.

This area includes 3,440 acres of accessible, high-quality recreation lands. It was identified for protection and recreation management in the Willow Subbasin Plan and planning for the site has been conducted jointly with the Matanuska-Susitna Borough, with very strong public and agency support. A detailed master plan is available. Designation and funding will:

- contribute significantly to dispersal of sportfishing efforts in southcentral away from areas where use is now too heavy
- provide important public recreation infrastructure near areas of intense urban growth
- Fiscal impact: $7,735,000 CIP, $212,500 oper'g dropping to $145,000 after one year

5. Nelchina Public Use Area.

A core area of 1,000,000 acres of public land is proposed for designation as a multiple use area with special habitat management and planning. The designation of this area has strong public support and proposed legislation has been carefully prepared over several years by the Departments of Natural Resources and Fish and Game. Senator Kerttula has previously introduced similar legislation and has recently expressed interest in the Administration's plans for the Nelchina.

This area features:

- High priority for legislative designation in the Susitna Area Plan
- Critical calving grounds for the Nelchina caribou herd
- Significant opportunity for hunting, hiking, and other recreational activities, mining, and possibly transportation
- Proposed legislation provides for DNR management with ADF&G concurrence on the management plan
- Fiscal impact: $169,000 for two years, dropping to $98,500

NOTE: A larger area, including another 1.5 million acres, has been proposed for special designation and management in addition to the core acreage. If this is added to the proposed Nelchina Public Use Area by the Legislature we recommend acceding to the addition if management is for multiple use. Stricter habitat protections are necessary in the core area.

6. Jim-Swan Lakes State Recreation Area.

This area of public land has critical importance for habitat and already attracts intensive recreational use from Anchorage and Palmer residents (7,600 acres). It has:

- High priority for legislative designation in the Susitna Area Plan
- Valuable waterfowl and moose habitat and hunting area, with a scenic buffer along the Glenn Highway
- Fiscal impact: $122,100 first year, dropping to $93,600; 500.0 CIP

7. Palmer Hay Flats State Game Refuge Addition (bill not drafted).

The proposal is to add 1,200 acres on the Glenn Highway to the existing state game refuge. This was a high priority in the Susitna Area Plan, protecting valuable waterfowl and moose habitat and hunting area, with a scenic buffer on the Glenn Highway. There would be no fiscal impact.

Additionally, per public comment in the Susitna Area Plan, Bird Island at Lake Louise will be provided protection by Interagency Land Management Assignment from the Department of Natural Resources to the Department of Fish and Game.

This concludes our recommended package of legislative designations.

Funding for Recreation-Related Purposes

The Departments and many local governments have already presented the Governor's Office with proposed Capital Improvement Project priority lists which include statewide priorities for a variety of purposes including recreation. The following categories of recreation-related spending are proposed as the consensus of the two Departments after some discussion with local governments. Neither the Departments nor the local governments would expect this list, providing recreation funding priorities for southcentral Alaska, to displace their lists of capital spending priorities (though many of the items are the same).

1. Land Acquisitions (Table Two).

To reduce crowding conditions and accommodate increases in the number of anglers on intensively used waterways, the action plan recommends state acquisition of the lands listed in Table Two. This list is in order of priority. Detailed information on parcel identification, use, and benefits is provided in APPENDIX THREE. The list has been agreed upon by the two departments, reviewed by local governments, and discussed with interested members of the public.

2. Facilities Development (Table Three).

To provide adequate public facilities to support existing recreational use in heavily used recreation areas, the action plan proposes investment in development of the facilities listed in Table Three. Each category of proposals is ranked by priority, but no priority is assigned among the categories. These lists have been agreed upon by the departments and reviewed with local governments. Further information on the proposals is provided in APPENDIX FOUR.

3. Wildlife, Fisheries, and Enhancement (Table Four).

A list of possible wildlife and fisheries projects is provided in Table Four, with descirption of the proposed projects in APPENDIX FIVE. These projects would enhance the resource base for observation and sport hunting and fishing.

Land Management and Planning.

There should be no additional costs for planning and management beyond those presented in the fiscal notes for proposed legislation. However, this funding is important to allow land management agencies to conduct planning for these highly used areas and to prevent degradation of lands and resources and threats to public safety. A major concern in public comment on the Susitna Area Plan has been that planning should result in more intensive land management. This land management should be funded appropriately. Other recommended actions and activities include the following proposals.

Land Exchanges. The Administration has placed special emphasis on the acquisition by land exchange of Seldovia Native Association inholdings in the Kachemak Bay State Park. In fact, last year the first phase of the exchange was completed after years of deliberation. About 25,000 acres of private land remain in the Park, and the Department of Natural Resources has continued negotiating with Seldovia Native Association with the target of completing the trade-out. The state is pursuing the possibility of exchange in good faith as a high priority, and the administration hopes that the inherent difficulties of negotiating and implementing large land exchanges will not prevent the near-term trade-out of Seldovia's lands.

Although purchase of the inholdings has been proposed and considered, the state is not in a position to buy out private lands in Kachemak Bay State Park. It is estimated that such an action would cost over $20 million, which would amount to a very large portion of the shrinking capital budget.

Smaller land exchanges are being pursued by the state to increase the size and integrity of significant state park and refuge areas. The land exchange option should be pursued where landowners are willing to trade and where land acquisition needs allow time for the land exchange process. The state intends to continue using land exchanges where appropriate to protect recreational opportunities in southcentral Alaska.

South Denali Development. The state is cooperating closely with federal agencies to develop a major visitor facility on the south slope of the Alaska Range in Denali State Park. Planning funds should be made available next year to begin implementing facility development plans for the area. The state expects the development to result in a variety of recreational opportunities for Alaska residents and visitors. See APPENDIX SIX.

Future Planning. The agencies involved in preparing the action plan have also brought together proposals for future legislative designations, funding, and recreation enhancement. We recommend the establishment of a southcentral recreation steering group, composed of the agencies that have contributed to this effort, to assure that the initial coordination of recreation management embodied in this action plan is continued in future years.

SUMMARY

The proposed southcentral recreation action plan contains a variety of possible legislative and executive actions to help relieve the pressures for recreational opportunities in the region. Most of the proposals have been advanced from prior planning studies and agency budget proposals, with special attention to those action items that have had public review and comment.

Implementation of parts of this plan is sure to benefit Alaskans today and protect our lands and resources for future use. We recognize that it is an ambitious project, and one that needs considerable analysis prior to wholesale adoption. But we are relatively convinced that the priorities for legislative designation and the higher ranking capital projects deserve attention during the coming legislative session.

Table Two - Proposed Land Acquisitions

NOTE: The symbol * indicates Fish and Game budget request
The symbol # indicates Natural Resources budget request

PROJECT	FEATURES/BENEFITS	CURRENTLY REQUESTED CIP	CURRENTLY REQUESTED OPER	CURRENTLY REQUESTED YEAR	NEW REQUEST CIP	NEW REQUEST OPER	NEW REQUEST YEAR
1. Ninilchik River	King, coho, pink, steelhead 12,000 fishing days/year	300.0	...	FY 86*	...	...	...
2. Cottonwood Creek	Fishing/hunting near Wasilla 9,000 fishing days/year, significant hunting	40.0	...	FY 86*	...	...	...
3. Crooked Creek/Kasilof R.	Major king salmon fishery	200.0	...	FY 85	...	...	...
	25,000 fishing days, 5,000 kings	135.0	...	FY 86#	65.0#	...	...
4. Kashwitna Landing	Boat launch on lower Susitna R.	...	...	...	500.0*	...	...
5. Wasilla Creek	Coho fishery access, hunting	180.0	...	FY 86*	...	...	...
6. Anchorage Urban - Behm Lk.	Potential rainbow fishery	...	...	...	600.0*	...	...
7. Funny River/Kenai R.	Bank fishery, public access	...	...	...	1,300.0*	...	...
8. Little Willow Creek	Access from Parks Hwy to fishery	...	...	...	180.0*	...	...
9. Clam Gulch	Parking area near clamming flats	65.0	...	FY 86#	...	...	...
10. Whiskey Gulch	Near four major sport fisheries	200.0	...	FY 86*	...	...	...
11. Neil Lake	Floatplane access to Deshka River	...	...	...	600.0*	...	...
12. Moose Creek	Road access for river use	...	...	...	200.0*	...	...
13. Bishop Beach	Tidal spit, fishing, marine access	200.0	...	FY 86#	...	...	...
14. Bird Creek	Sport fishing, access to Chugach	...	...	...	100.0*	...	...
15. Deep Creek	Overcrowded beach fishery	...	...	...	300.0*	...	...
16. Nancy Lakes	Inholdings acquisition for trails	...	...	...	250.0+	...	...

Descriptive narrative for each proposed expenditure is included in Appendix Three.

Table Three - Proposed Facilities Development

NOTE: The symbol * indicates a Fish and Game budget request
The symbol # indicates a Natural Resources budget request

PROJECT	FEATURES/BENEFITS	CURRENTLY REQUESTED CIP	CURRENTLY REQUESTED OPER	CURRENTLY REQUESTED YEAR	NEW REQUEST CIP	NEW REQUEST OPER	NEW REQUEST YEAR
Category One: River-related facilities							
1. Willow Creek S.R.A.	Major southcentral fishing	...	...	...	7,735.0#	212.5#	86
2. Little Susitna River	50 parking units and boat launch	400.0	...	FY 86#	...	...	...
3. Kenai Peninsula Recreation	Rehabilitate existing units	1,115.0	...	FY 86#	...	10.0#	...
4. Ninilchik/Deep Creek	Boat launch feasibility study	...	...	...	20.0*	...	...
5. Talkeetna Boat Launch	Campground/access/launch	...	...	...	173.0*	...	...
6. Kepler-Bradley Lakes	Fishing/recreation/barrier-free	...	...	...	500.0#	10.0#	...
7. Anchorage Pier	Pier sportfishing/barrier-free	...	...	...	1,500.0*	...	...
8. Kenai River Development	Facilities for high-use areas	...	...	...	1,000.0#	10.0#	...
9. Anchor River	Rehabilitate beach campground	...	...	...	400.0*	...	...
10. Whiskey Gulch	Beach access, parking, facilities	...	...	...	250.0#	50.0#	...
11. Sheep Creek	Trails, fishing near Parks Hwy	...	...	...	200.0*	...	...
Category Two: Park and recreation facilities (non-riverine)							
1. Chugach State Park Access	Trailheads, trails, parking	1,420.0	...	FY 86#	...	60.0#	...
2. Safe Water	Public water in six locations	150.0	...	FY 86#	5.0#	...	...
3. Independence Mine Devel.	Enhance historic structures	600.0	...	FY 86#	...	...	...
4. Thunderbird Falls	Trails, facilities on Glenn Hwy	420.0	...	FY 86#	...	...	...
5. Park Public Cabins	Construct or rebuild 14 cabins	225.0	...	FY 86#	...	...	...
6. Park Signs	Information for visitors	135.0	...	FY 86#	...	...	...

Descriptive narrative for each proposed expenditure is included in Appendix Four.

Table Four - Wildlife, Fisheries, and Enhancement

NOTE: The symbol * indicates a Fish and Game budget request
The symbol ± indicates a Natural Resources budget request

PROJECT	CURRENTLY REQUESTED CIP	CURRENTLY REQUESTED OPER	CURRENTLY REQUESTED YEAR	NEW REQUEST CIP	NEW REQUEST OPER	NEW REQUEST YEAR
1. Fisheries Enhancement Proposals:						
- Susitna King Salmon Rehabilitation	...	116.0	Cont*	...	..	...
- Big Lake Hatchery	...	85.4	Cont*	...	...	...
- Elmendorf Hatchery	...	475.5	Cont*	...	...	...
- Fort Richardson Hatchery	...	825.9	Cont*	...	...	...
- Kenai River Juvenile King Salmon Studies	...	137.3	Cont*	...	...	...
- Kasilof Hatchery	...	78.3	Cont*	...	...	...
- Trail Lakes Hatchery	...	197.8	Cont*	...	...	...
- Fort Richardson Fish Transport	500.0	...	FY 86*	...	...	...
- Fort Richardson Backup Water	300.0	...	FY 86*	...	...	...
- Elmendorf Completion	1,520.0	...	FY 86*	...	...	...
2. Wildlife Enhancement Proposals:						
- Moose Habitat - Anchorage Bowl	...	12.0	Cont*	...	...	...
- Kenai Refuge Habitat - Moose	...	85.0	Cont*	...	...	...
- Moose Creek Range Improvement	...	35.0	Cont*	...	...	...
3. Wildlife Observation - Potter Marsh	...	...	...	520.0*	5.0*	86
4. Wildlife Observation - Anchorage Bowl	...	...	...	250.0*	10.0*	...
5. Anchorage Trap and Skeet Range	...	...	...	300.0*	100.0*	86

Descriptive narrative of most proposed expenditures is included in Appendix Five.


HB
93

SUMMARY OF CSHB 93

The broad based goal of this legislation is to protect certain rivers.

The need for this legislation is based on the premise that all types of uses of rivers and surrounding lands can not continue to increase without damage to the river's ecosystem which in turn threatens traditional recreational activities.

In limiting uses, an effort was made to preserve and protect as many traditional uses as possible with the caveat that certain multiple uses would have to be compatible with the general recreational goals and objectives set out in this legislation.

Sec. 41.23.010

(a) Establishes management structure.

(b)(1) Sets out protection of fish and wildlife populations and habitat so as to enhance sport and subsistence fishing, hunting, and trapping activities.

(b)(2) Scenic and natural integrity of the river and the continuation of traditional recreational uses of the river by the public are established.

(b)(3) Rivers are closed to future mineral entry and land disposals.

(c) Multiple uses that may be allowed for each river listed with the provision that they are found to be compatible with (b)(1) and (b)(2).

Sec. 41.23.220

(a) Rivers are designated into the special purposes section of the constitution by the legislature only.

(b) Rivers are closed to mineral entry and mining leasing.

(c) Description of the desigrated rivers.

Sec. 41.23.030

(a) DNR receives multiple use management authority.

(b) Instream flow must be reserved within two years of a river being designated by DNR.

(c)(1) Fish and Game management stays with the proper Agencies and Boards.

(c)(2) Water quality authority is maintained by DEC.

(c)(3) Municipalities retain their respective authorities under AS 44.19.145 (a) (11) and AS 46.40.100.

(d) The use of weapons is expressly permitted except in areas of high public use when the safety of the public is threatened. The exercise of sport and subsistence hunting, fishing or trapping is protected except as it should endanger the public's safety.

(e) Access is granted for specific activities unless a determination of incompatibility with (b)(1) or (b)(2) is found to exist.

(f) Competitive leasing for the construction and operation of public use facilities is allowed.

(g) Existing commercial activities are protected unless they threaten water quality or habitat.

Sec. 41.23.040

(a) A management plan must be adopted. ADF&G must be consulted in the management plan process as well as local communities located in or near a recreational river.

(b) Management plans are submitted to the legislature.

(c) ADF&G must consult with DNR before adopting regulations involving recreational rivers.

(d) DNR must adopt a management plan within 2 years of the legislature designating a recreational river.

(e) The commissioner must state in each management plan incompatible uses within a recreational river along with location and the time frame associated with each incompatibility.

Sec. 41.23.050

Municipalities which involve their lands in a recreational river management system must concur with that portion of the management plan that affects their land.

Sec. 41.23.060

(a) Additional land may be acquired by DNR by purchase, gift, lease, or exchange. If the exchange involves state land with a fair market value of over $100,000.00 the legislature must give its approval.

(b) No additional land may be obtained by eminent domain.

Sec. 41.23.070

Public land laws found in AS 38.04, 38.05, and 38.95 apply to recreational rivers except if such provisions are inconsistent with provisions of this chapter.

Sec. 41.23.080

(a) Cooperative management agreements are allowed with federal, state, or municipal governments or private land owners.

(b) The commissioner may transfer management to another agency to assist in the development of a facility or to carry out a program authorized by law.

(c) The management of a recreational river under AS 41.23.020 shall not be as a unit of a park.

Sec. 41.23.090

(a) Before recommending a recreational river the commissioner must adopt an area plan, and involve local communities.

(b) The commissioner shall:

(1) Take testimony at local communities.

(2) Prepare a summary of the testimony.

(3) Consult local fish and game advisory committees.

Sec. 41.23.900

Definitions

Sec. 2. Effective date clause.

Bradley
3/27/85

Original sponsor: Rules/Governor

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 93 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a system of special use rivers; and providing for an effective date."

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

* Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 23. MULTIPLE USE MANAGEMENT OF PUBLIC RESOURCES.

ARTICLE 1. STATE RECREATIONAL RIVERS.

Sec. 41.23.010. PURPOSES. (a) The purpose of AS 41.23.010 - 41.23.090 is to establish management guidelines for those rivers designated for recreation under AS 41.23.010 - 41.23.090 while permitting each river to be individually managed under a multiple use management plan providing for traditional uses that have occurred on the river.

(b) The goals and objectives by which a recreational river shall be managed include

(1) the protection and maintenance of the fish and wildlife populations and habitat on a sustained yield basis so as to preserve and enhance sport and subsistence fishing, hunting, and trapping activities;

(2) protection of the scenic and natural integrity of the river and continuation of the traditional recreational uses of the river by the public;

(3) the closure to future mineral entry under AS 38.05.185 - 38.05.275 and land disposals within a recreational river.

(c) The commissioner shall permit the following activities when

compatible with (b)(1) and (2) of this section:

(1) use of aircraft, powerboats, snowmachines, all terrain vehicles, and other motorized transportation;

(2) timber harvesting for personal use including firewood and house logs;

(3) commercial timber harvesting;

(4) sand and gravel extraction for public use;

(5) grazing;

(6) public use facilities; and

(7) other uses determined compatible with (b)(1) and (2) of this section by the commissioner.

Sec. 41.23.020. DESIGNATED RIVERS. (a) Subject to valid existing rights, the state-owned land and water designated as a recreational river under (c) of this section constitute a special purpose area under art. VIII, sec. 7 of the Alaska Constitution. State-owned land and water may be designated as a recreational river only by the legislature.

(b) The state-owned land and water described in this section are closed to mineral entry and mining leasing under AS 38.05.185 - 38.05.275.

(c) The land and water presently owned by the state and all land and water acquired by the state in the future, including shore and submerged land, that lies within the following described parcels are designated recreational rivers:

(1) Talachulitna State Recreational River

(A) Township 16 North, Range 10 West, S

Section 6: W1/2

Section 7: NW1/4

(B) Township 16 North, Range 11 West, Seward Meridian

Section 1: E1/2, SW1/4

Section 2: S1/2, NW1/4

Section 3

Section 11: N1/2

Section 12: N1/2

(C) Township 17 North, Range 10 West, Seward Meridian

Section 6: W1/2, W1/2SE1/4

Section 7

Sections 18 - 19

Sections 30 - 31

(D) Township 17 North, Range 11 West, Seward Meridian

Section 1: E1/2E1/2

Section 3: W1/2

Sections 4 - 5

Section 6: S1/2

Sections 7 - 8

Section 9: N1/2, SE1/4

Section 10

Section 14: W1/2

Section 15

Section 17: NW1/4

Section 18: N1/2, SW1/4

Section 19: NW1/4NW1/4

Section 22

Section 23: W1/2

Section 25: E1/2E1/2

Section 26: W1/2

Section 27

Section 34

Section 35: W1/2

(E) Township 17 North, Range 12 West, Seward Meridian

Section 7: S1/2

Section 12: S1/2

Section 13

Section 14: S1/2

Section 15: S1/2

Section 16: S1/2

Sections 17 - 18

Section 20: E1/2

Sections 21 - 23

Section 24: N1/2, N1/2S1/2

(F) Township 17 North, Range 13 West, Seward Meridian

Section 9: S1/2

Section 10: S1/2

Section 11: S1/2

Section 12: S1/2

Sections 13 - 16

Section 24: N1/2

(G) Township 18 North, Range 10 West, Seward Meridian

Section 18: SW1/4SW1/4

Section 19: NW1/4, S1/2NE1/4, E1/2SW1/4, SE1/4

Section 20: S1/2, NE1/4

Section 21

Section 22: W1/2W1/2

Section 26: W1/2SW1/4, SW1/4NW1/4

Section 27: S1/2, S1/2N1/2

Sections 28 - 29

Section 30: E1/2, E1/2W1/2

Section 31: NE1/4, S1/2NW1/4, NE1/4NW1/4, SW1/4, W1/2SE1/4

Section 33: NE1/4NE1/4

Section 34: N1/2NW1/4

(H) Township 18 North, Range 11 West, Seward Meridian

Section 6: W1/2, W1/2E1/2, E1/2SE1/4

Section 7

Section 11: E1/2SE1/4

Section 12: SW1/4SW1/4

Section 13: NW1/4, E1/2SW1/4, SE1/4

Section 16: SW1/4

Sections 17 - 18

Section 19: NE1/4

Section 20: N1/2, SE1/4

Section 21: W1/2

Section 24: E1/2NE1/4

Section 28

Section 29: E1/2

Section 32: E1/2

Section 33

(I) Township 18 North, Range 12 West, Seward Meridian

Sections 1 - 2

Section 12: N1/2, SE1/4

(J) Township 19 North, Range 12 West, Seward Meridian

Section 3: N1/2, SW1/4

Section 4: E1/2E1/2, W1/2SE1/4, SE1/4SW1/4

Section 9: E1/2, SW1/4, E1/2NW1/4, SW1/4NW1/4

Section 10: NW1/4

Section 15: W1/2SW1/4, SW1/4NW1/4

Section 16

Section 21

Section 22: W1/2W1/2, E1/2SW1/4, SW1/4SE1/4

Sections 27 - 28

Section 34

Section 35: S1/2, NW1/4

(K) Township 20 North, Range 11 West, Seward Meridian

Section 18: W1/2

Section 19: W1/2

(L) Township 20 North, Range 12 West, Seward Meridian

Section 1

Section 2: N1/2

Section 11: E1/2

Sections 12 - 13

Section 14: E1/2

Sections 23 - 24

Section 25: N1/2

Section 26

Section 27: E1/2

Section 34: S1/2, NE1/4, SE1/4NW1/4

Section 35: NW1/4

(M) Township 21 North, Range 11 West, Seward Meridian

Section 31: SW1/4

(N) Township 21 North, Range 12 West, Seward Meridian

Section 25: that portion south of the Skwentna River

Section 26: that portion south of the Skwentna River

Section 35: that portion south of the Skwentna

River

Section 36: that portion south of the Skwentna River

(2) Alexander Creek State Recreational River

(A) Township 16 North, Range 7 West, Seward Meridian

Sections 6 - 7

Sections 18 - 19

(B) Township 17 North, Range 7 West, Seward Meridian

Section 18: S1/2, W1/2NW1/4

Section 19

Sections 30 - 31

Section 32: W1/2

(C) Township 17 North, Range 8 West, Seward Meridian

Section 1

Section 2: E1/2, N1/2NW1/4

Section 3: N1/2N1/2

Section 4: N1/2, N1/2SE1/4

Section 11: NE1/4

Section 12

Section 13: E1/2, E1/2NW1/4

Section 24: NE1/4, E1/2SE1/4

(D) Township 18 North, Range 8 West, Seward Meridian

Section 4: W1/2

Section 5

Section 6: NE1/4

Section 8: N1/2, SE1/4

Section 9

Section 10: SW1/4

Section 14: W1/2SW1/4, SE1/4SW1/4

Section 15: W1/2, SE1/4, S1/2NE1/4

Section 16: N1/2, SE1/4

Section 22: N1/2, N1/2S1/2, S1/2SE1/4

Section 23: W1/2, W1/2SE1/4

Section 26: W1/2, W1/2E1/2, E1/2SE1/4

Section 27: E1/2NE1/4

Section 33: SW1/4, S1/2SE1/4

Section 34: S1/2S1/2

Section 35

Section 36: W1/2

(E) Township 19 North, Range 8 West, Seward Meridian

Section 19: W1/2, W1/2E1/2

Section 29: W1/2W1/2

Section 30

Section 31: E1/2, E1/2W1/2

Section 32

(F) Township 19 North, Range 9 West, Seward Meridian

Sections 3 - 4

Sections 9 - 10

Section 13: S1/2

Section 14: S1/2

Sections 15 - 16

Section 22: N1/2

Section 23: N1/2

Section 24

(3) Lake Creek State Recreational River

(A) Township 21 North, Range 9 West, Seward Meridian

Section 3

Section 4: Excluding Tracts A, B, C and D

Section 9: N1/2 Excluding Tracts A and B

Section 10

Section 15

(B) Township 22 North, Range 9 West, Seward Meridian

Section 4: NW1/4, S1/2

Section 5: N1/2, E1/2SE1/4

Section 9: N1/2, SE1/4, E1/2SW1/4

Section 10: W1/2SW1/4, SW1/4NW1/4

Section 15: W/12

Section 16: E1/2, E1/2W1/2

Section 21: E1/2

Section 22: W1/2

Section 27: W1/2

Section 28: E1/2

Section 34

(C) Township 23 North, Range 9 West, Seward Meridian

Section 3: W1/2W1/2

Section 4

Section 5: E1/2, E1/2SW1/4

Section 7: SE1/4, SE1/4NE1/4, E1/2SW1/4

Section 8: S1/2, NE1/4, S1/2NW1/2, NE1/4NW1/4

Section 9: N1/2NW1/4, SW1/4NW1/4, NW1/4SW1/4

Section 17: W1/2, W1/2E1/2

Section 18: E1/2

Section 19: N1/2, SE1/4, E1/2SW1/4

Section 20: W1/2, SE1/4, S1/2NE1/4, NW1/4NE1/4

Section 29

Section 30: NE1/4, E1/2NW1/4, NE1/4SW1/4, SE1/4

Section 32

Section 33: S1/2SW1/4, NW1/4SW1/4

(D) Township 24 North, Range 9 West, Seward Meridian

Section 28: S1/2SW1/4, SW1/4SE1/4

Section 29: NW1/4, S1/2

Section 30

Section 31: N1/2

Section 32: NW1/4, E1/2

Section 33

Section 34: SW1/4SW1/4

(E) Township 24 North, Range 10 West, Seward Meridian

Section 3

Section 4: E1/2

Section 10

Section 11: W1/2, W1/2SE1/4, SW1/4NE1/4

Section 13: W1/2W1/2

Section 14

Section 15: NE1/4

Section 23: N1/2, SE1/4

Section 24: W1/2, S1/2SE1/4, NW1/4SE1/4

Section 25

Section 36: NE1/4, E1/2NW1/4

(F) Township 25 North, Range 10 West, Seward Meridian

Sections 6 - 7

Section 8: S1/2, NW1/4

Section 16: W1/2

Section 17

Section 18: E1/2

Section 20: SE1/4, N1/2

Section 21

Section 22: W1/2

Section 25: SW1/4

Section 26: S1/2

Section 27

Section 28: E1/2, NW1/4

Sections 34 - 35

Section 36: W1/2

(G) Township 25 North, Range 11 West, Seward Meridian

Section 1: E1/2

(H) Township 26 North, Range 10 West, Seward Meridian

Section 31

(I) Township 26 North, Range 11 West, Seward Meridian

Sections 3 - 4

Section 9: E1/2

Section 10

Section 14: W1/2

Section 15

Section 22: E1/2, E1/2NW1/4

Section 23

Section 25: S1/2, NW1/4

Section 26

Section 27: NE1/4

Section 35: NE1/4

Section 36

(J) Township 27 North, Range 11 West, Seward Meridian

Section 6: SW1/4

Section 7

Section 8: SW1/4

Sections 17 - 18

Section 19: N1/2, SE1/4

Section 20

Section 21: SW1/4

Sections 28 - 29

Section 30: NE1/4

Section 32: E1/2

Section 33

Section 34: W1/2

(4) Kroto Creek and Moose Creek State Recreational River

(A) Township 19 North, Range 6 West, Seward Meridian

Section 2: SW1/4

Section 3

Section 10: E1/2

Section 11

Section 14

Section 15: E1/2E1/2

Section 22: E1/2E1/2

Section 23

Section 25: that portion west of the eastern-most bank of the Susitna River

Section 26

Section 27: E1/2E1/2

Section 34: NE1/4NE1/4

Section 35

Section 36: that portion west of the eastern-most bank of the Susitna River

(B) Township 20 North, Range 6 West, Seward Meridian

Section 4

Section 5: E1/2

Section 8: NE1/4, E1/2SE1/4

Section 9

Section 15: W1/2

Section 16

Section 21: E1/2, N1/2NW1/4, SE1/4NW1/4

Section 22: NW1/4, S1/2

Section 27

Section 34

(C) Township 21 North, Range 6 West, Seward Meridian

Section 3

Section 9: E1/2SE1/4, SE1/4NE1/4

Section 10

Section 15: W1/2, W1/2NE1/4

Section 16

Section 20: E1/2

Section 21

Section 28

Section 29: E1/2

Section 32: E1/2E1/2, NW1/4NE1/4

Section 33

Section 34: SW1/4

(D) Township 22 North, Range 6 West, Seward Meridian

Sections 4 - 5

Section 6: E1/2, E1/2W1/2

Sections 7 - 9

Sections 16 - 18

Sections 20 - 21

Section 27

Section 28: N1/2, SE1/4, E1/2SW1/4

Section 29: E1/2NE1/4

Section 33: N1/2NE1/4, SE1/4NE1/4

Section 34

(E) Township 23 North, Range 6 West, Seward Meridian

Section 4

Section 7: W1/2

Section 9

Section 16

Section 17: SW1/4SW1/4

Sections 18 - 19

Section 20: W1/2NW1/4

Section 21

Section 28

Sections 30 - 31

Section 32: S1/2

Section 33

(F) Township 23 North, Range 7 West, Seward Meridian

Section 1

Section 2: E1/2

Sections 12 - 13

Section 24

Section 25: N1/2, SE1/4

Section 36: N1/2NE1/4

(G) Township 24 North, Range 6 West, Seward Meridian

Section 4: W1/2

Section 5

Section 6: NE1/4, E1/2SE1/4

Section 8: N1/2, SE1/4, E1/2SW1/4

Section 9

Section 15: SW1/4, SW1/4NW1/4

Section 16

Section 17: NE1/4, N1/2SE1/4

Section 21: E1/2, SE1/4SW1/4

Section 22: NW1/4, N1/2SW1/4, SW1/4SW1/4

Section 28: E1/2W1/2, E1/2

Section 33

(H) Township 24 North, Range 7 West, Seward Meridian

Section 6: S1/2, NW1/4

Section 7

Section 8: S1/2SW1/4

Section 16: W1/2, W1/2E1/2

Section 17

Section 18: N1/2N1/2, SE1/4NW1/4, S1/2NE1/4, N1/2SE1/4, SE1/4SE1/4

Section 19: NE1/4NE1/4

Section 20: N1/2

Section 21: W1/2, SE1/4, W1/2NE1/4

Section 27

Section 28: E1/2

Section 33: NE1/4NE1/4

Section 34: E1/2, E1/2W1/2, NW1/4NW1/4

Section 35: W1/2, SE1/4, S1/2NE1/4

Section 36: SW1/4

(I) Township 24 North, Range 8 West, Seward Meridian

Section 1: E1/2

Section 12: NE1/4, E1/2SE1/4

Section 13: NE1/4NE1/4

(J) Township 25 North, Range 6 West, Seward Meridian

Section 5

Section 8

Section 17

Section 18: SE1/4

Section 19: E1/2, E1/2W1/2

Section 20: W1/2W1/2

Section 29: W1/2W1/2

Section 30: E1/2, E1/2W1/2

Section 31: E1/2

Section 32: W1/2W1/2, SE1/4SW1/4

(K) Township 25 North, Range 7 West, Seward Meridian

Section 5

Section 6: SE1/4, S1/2NE1/4

Section 7: E1/2, SW1/4, E1/2NW1/4

Section 8: NW1/4, W1/2SW1/4

Sections 18 - 19

Sections 30 - 31

(L) Township 25 North, Range 8 West, Seward Meridian

Section 13: E1/2 SE1/4

Section 24: E1/2NE1/4

(M) Township 26 North, Range 6 West, Seward Meridian

Section 5

Section 8

Section 17: N1/2, SE1/4, N1/2SW1/4, SE1/4SW1/4

Section 19: SE1/4

Section 20: E1/2, SW1/4, S1/2NW1/4, NE1/4NW1/4

Section 29: E1/2, NW1/4

Section 30: S1/2, NE1/4, SE1/4NW1/4

Section 31: E1/2NE1/4, that portion of NW1/4-

NE1/4 within retained easement (50' each side of MHWM)

Section 32: lands within 150' of MHWM

(N) Township 26 North, Range 7 West, Seward Meridian

Section 4: W1/2

Section 5: E1/2, S1/2SW1/4

Section 7: SE1/4

Section 8

Section 9: NW1/4, N1/2SW1/4

Section 17

Section 18: E1/2

Section 19

Section 20: W1/2

Section 29: S1/2, NW1/4

Section 30

Section 31: NE1/4

Section 32

(O) Township 27 North, Range 6 West, Seward Meridian

Section 4

Section 5: E1/2

Section 8: E1/2

Section 9

Section 16

Section 17: E1/2

Section 20: E1/2

Section 21

Section 28: W1/2

Section 29: E1/2

Section 32: E1/2

Section 33: W1/2

(P) Township 27 North, Range 7 West, Seward Meridian

Section 7

Section 8: S1/2, NW1/4

Section 9: W1/2

Section 16

Section 17: N1/2, SE1/4

Section 20: E1/2

Section 21

Section 28: N1/2, SW1/4

Section 29: E1/2

Section 32: E1/2

Section 33: W1/2

(Q) Township 27 North, Range 8 West, Seward Meridian

Section 12: NE1/4

(R) Township 28 North, Range 6 West, Seward Meridian

Section 32: S1/2SE1/4

Section 33: S1/2S1/2

(5) Talkeetna State Recreational River

(A) Township 26 North, Range 3 West, Seward Meridian

Section 1

Section 2

Sections 3 - 6: excluding ASLS 81-196, ASLS 80-94, ASLS 80-84

(B) Township 26 North, Range 4 West, Seward Meridian

Section 1: exclusive of ASLS 79-149

Section 2: exclusive of ASLS 79-149

Section 3: exclusive of ASLS 79-149

Section 4: E1/2, SW1/4 exclusive of ASLS 79-149

Section 7: S1/2

Section 8: S1/2 exclusive of ASLS 79-149

Section 9: E1/2, E1/2W1/2

Section 10: W1/2W1/2, NE1/4NE1/4

Section 11: N1/2N1/2

Section 15: W1/2NW1/4, NW1/4SW1/4

Section 16: N1/2, N1/2S1/2

Section 17: that portion north of the south bank of the Talkeetna River

Section 18: exclusive of DOT 200642

(C) Township 26 North, Range 5 West, Seward Meridian

Section 12: E1/2SE1/4

Section 13: E1/2, E1/2SW1/4, SW1/4SW1/4

Section 23: that portion northeast of the south bank of the Susitna River

Section 24: that portion east of the left bank of the Susitna River and west of the right bank of the main channel of the Talkeetna River (that channel of the river that runs diagonally through the NE1/4 and SW1/4 of Sec. 24)

(D) Township 27 North, Range 2 West, Seward Meridian

Section 4: S1/2

Section 5: SE1/4, E1/2SW1/4

Section 7: SE1/4

Sections 8 - 9

Section 13: N1/2

Section 14: N1/2NE1/4

Section 17

Section 18: E1/2, SW1/4

Section 19

Section 20: N1/2, SW1/4

Section 30: W1/2

(E) Township 27 North, Range 3 West, Seward Meridian

Section 24: E1/2

Section 25

Section 26: SE1/4

Section 31: S1/2

Section 32: S1/2 exclusive of ASLS 79-149

Section 33: S1/2S1/2 exclusive of ASLS 79-149

Section 34: S1/2S1/2 exclusive of ASLS 79-149 and ASLS 76-138

Sections 35 - 36

(F) Township 27 North, Range 4 West, Seward Meridian

Section 36: S1/2SE1/4 exclusive of ASLS 74-78 and ASLS 74-77

(6) Little Susitna River: the water column of the main stream of the Little Susitna River from mean high water mark to mean high water mark, from the point at which the river crosses the section line dividing Sections 23 and 26 in Township 19 North, Range 1 East, Seward Meridian downstream to the point at which the river crosses the section line between Sections 15 and 22 in Township 16 North, Range 5 West, Seward Meridian; the water column of Lake Creek from mean high water mark to mean high water mark, from the point at which the creek crosses the section line dividing Sections 10 and 11, Township 18 North, Range 4 West, Seward Meridian downstream to the confluence with the Little Susitna River; and

(A) Township 16 North, Range 5 West, Seward Meridian

Section 3

Section 4: NE1/4NE1/4

Section 10: E1/2, E1/2W1/2

Section 15: E1/2, E1/2W1/2

(B) Township 17 North, Range 4 West, Seward Meridian

Section 4

Section 6: SW1/4

Section 7: W1/2, S1/2SE1/4

Section 8: E1/2, S1/2SW1/4

Section 17: NW1/4

Section 18: N1/2, N1/2SW1/4

(C) Township 17 North, Range 5 West, Seward Meridian

Section 12

Section 13

Section 14

Section 15

Section 21: NW1/4NE1/4, N1/2NW1/4

Section 22

Section 23: N1/2N1/2, SW1/4NW1/4, W1/2SW1/4

Section 26: W1/2W1/2

Section 27

Section 34

(D) Township 18 North, Range 1 East, Seward Meridian

Section 8: NW1/4, SW1/4NE1/4, S1/2NW1/4NE1/4

(E) Township 18 North, Range 1 West, Seward Meridian

Section 15: N1/2NW1/4

Section 16: NW1/4, N1/2NE1/4, SE1/4NE1/4

(F) Township 18 North, Range 2 West, Seward Meridian

Section 15: NW1/4, N1/2NE1/4, NW1/4SW1/4

Section 16: S1/2

Section 17: S1/2

Section 19: NW1/4, W1/2NE1/4, E1/2SW1/4.

(G) Township 18 North, Range 3 West, Seward Meridian

Section 19

Section 20: SW1/4, W1/2SE1/4, SE1/4NW1/4, W1/2NW1/4

Section 28: W1/2NW1/4, NE1/4NW1/4

Section 29: NE1/4

Section 30

(H) Township 18 North, Range 4 West, Seward Meridian

Section 11: SW1/4, SW1/4SE1/4, SW1/4NW1/4

Section 13: S1/2, SW1/4NW1/4

Section 14

Section 24

Section 25: N1/2

Section 26

Section 27: S1/2

Section 33: S1/2, S1/2NE1/4

Section 34

Section 35: NW1/4, W1/2NE1/4

Sec. 41.23.030. GENERAL MANAGEMENT OF RECREATIONAL RIVER. (a) The land and water within the area designated as a recreational river under AS 41.23.020(c) is assigned to the Department of Natural Resources for multiple use management.

(b) Within two years from the effective date of the designation of a river as a recreational river under AS 41.23.020(c), the commissioner shall, after consultation with appropriate state agencies, reserve to the state under AS 46.15.145 an instream flow or level for

the water in the river described in AS 41.23.020(c) that is adequate to achieve the purposes of AS 41.23.010 - 41.23.090.

(c) The provisions of AS 41.23.010 - 41.23.090 do not affect the responsibility of

(1) the Department of Fish and Game, the Board of Fisheries, the Board of Game, or the Guide Licensing and Control Board under AS 08.54, AS 16, or AS 41.99.010;

(2) the Department of Environmental Conservation under AS 46.03; or

(3) state agencies and municipalities under AS 44.19.145-(a)(11) and AS 46.40.100.

(d) The commissioner shall permit the use of weapons within a recreational river except in sites of high public use such as picnic areas, boat ramps, camping grounds, and parking areas when the commissioner determines that the use of weapons constitutes a threat to public safety. Except as provided in this subsection, the commissioner may not restrict the exercise of sport or subsistence fishing, hunting, or trapping within a recreational river.

(e) The commissioner shall permit access for a use described in this subsection within a recreational river unless the commissioner determines that access is incompatible with AS 41.23.010(b)(1) and (2):

(1) access to mining, timber harvest and other resource use areas;

(2) access to private property;

(3) access for oil and gas and geothermal exploration and development;

(4) access for energy related development systems;

(5) access for state or municipal land settlement.

(f) The commissioner may lease land competitively within a recreational river to a person for the construction and operation of a public use facility within the recreational river.

(g) The commissioner may not restrict commercial activities existing within the boundaries of an area designated as a recreational river under AS 41.23.020(c) at the time of the designation unless the commissioner determines that the commercial activity threatens the quality of the water or an essential habitat within the recreational river.

Sec. 41.23.040. MANAGEMENT PLAN. (a) The commissioner shall adopt and may revise a comprehensive multiple use management plan for a river designated as a recreational river under AS 41.23.020(c). The commissioner shall consult with the Department of Fish and Game before the adoption or revision of a management plan governing the use of an area within a recreational river. The commissioner shall comply with the notice requirements of AS 38.05.945 and shall hold at least one public hearing in the municipalities and communities that are proximately located to the recreational river and with the local fish and game advisory board in the area in the adoption or revision of a management plan.

(b) A comprehensive management plan adopted or revised by the commissioner under (a) of this section shall be submitted to the legislature for review within the first 10 days of the first regular session of the legislature to convene after its adoption or revision by the commissioner.

(c) The Department of Fish and Game shall consult with the commissioner before it adopts or revises regulations governing fish and game management in an area designated as a recreational river.

(d) A comprehensive multiple-use management plan adopted for a

recreational river under (a) of this section shall be adopted within two years from the effective date of the designation of a river as a recreational river under AS 41.23.020(c).

(e) The commissioner shall designate in the management plan uses determined incompatible within a recreational river designated under AS 41.23.020(c). If the commissioner determines that a use is incompatible with one or more other uses in a portion of a river designated as a recreational river, the commissioner shall state in the management plan adopted or revised under (b) of this section

(1) each determination of incompatibility;

(2) the specific area where the incompatibility is determined to exist;

(3) the time within which the incompatibility is determined to exist; and

(4) the reasons for each determination of incompatibility.

Sec. 41.23.050. MANAGEMENT OF MUNICIPAL LAND. If a municipality commits land for inclusion in a recreational river designated under AS 41.23.020(c), the commissioner shall obtain the concurrence of the municipality to the management plan proposed under AS 41.23.030 as it applies to municipal land.

Sec. 41.23.060. ACQUISITION OF ADDITIONAL LAND. (a) The commissioner may acquire in the name of the state land that is adjacent to or located within the land described in AS 41.23.020(c) by purchase, lease, gift, or exchange. Notwithstanding AS 38.50, the exchange may not be completed without the approval of the legislature if the appraised fair market value of the state land proposed for the particular exchange is in excess of $100,000.

(b) The commissioner may not acquire land for inclusion in a recreational river by eminent domain.

Sec. 41.23.070. APPLICATION OF PUBLIC LAND LAWS. Except to the extent that a provision is inconsistent with a provision of this chapter, the provisions of AS 38.04, AS 38.05, AS 38.35, and AS 38.95 apply to land described in AS 41.23.020(c).

Sec. 41.23.080. COOPERATIVE MANAGEMENT AGREEMENTS. (a) The commissioner may enter into a cooperative management agreement for the management of land and water described in AS 41.23.020(c) or of other adjacent land and water with a federal agency, a municipality of the state, another agency of the state, or a private landowner.

(b) The commissioner may transfer the management of a specific site within a recreational river described in AS 41.23.020(c) to another state agency to assist in the development of a facility or to carry out a program authorized by law.

(c) The commissioner may not manage a recreational river described in AS 41.23.020 as a unit of the state park system.

Sec. 41.23.090. RECOMMENDATIONS BY COMMISSIONER. (a) Before recommending the establishment of a recreational river to the legislature, the commissioner shall adopt an area plan for the area within which the proposed recreational river will be located that complies with the requirements of (b) of this section.

(b) In the adoption of an area plan preparatory to a recommendation for the establishment of a recreational river, the commissioner shall

(1) after notice under AS 38.05.945, hold a public hearing in each community that is located proximately to or within the boundaries of an area proposed for inclusion within a recreational river;

(2) prepare a summary of the testimony offered at each public hearing held under (b)(1) of this section with regard to the establishment of the proposed recreational river for inclusion in the

area plan;

(3) consult with each fish and game advisory committee with responsibilities for an area within the boundaries of an area proposed for inclusion within a recreational river and include the recommendations of the local fish and game advisory committee in the area plan; and

(4) provide a copy of the area plan to each community in which a hearing was held under (b)(1) of this section.

ARTICLE 2. GENERAL PROVISIONS.

Sec. 41.23.900. DEFINITION. In this chapter, "commissioner" means the commissioner of natural resources.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: March 27, 1985

REQUEST

Bill/Resolution No.: CSHB 93

Title: Recreational Rivers

Sponsor: Rules/Governor

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		94.0	94.0	94.0	94.0	94.0
200 TRAVEL		3.0	3.0	3.0	3.0	3.0
300 CONTRACTUAL		10.0	15.0	30.0	30.0	30.0
400 SUPPLIES		.5	.5	.5	.5	.5
500 EQUIPMENT		16.2	12.5	2.0	2.0	2.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		123.7	125.0	129.5	129.5	129.5
CAPITAL		400.0				
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		523.7	125.0	129.5	129.5	129.5
FEDERAL FUNDS						
OTHER						
TOTAL		523.7	125.0	129.5	129.5	129.5

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Fiscal note revised to reflect 1) removal from state parks system; 2) addition of five southcentral rivers; 3) reduced revenue forecasts.

See attachment

Prepared By: Ned Farquhar Phone: 465-2400

Division: Commissioner's Office Date: March 27, 1985

Approved by Commissioner: Robert D Arnold, Deputy Date: March 27, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

CSHB 93 - Attachment

100 - 2 Natural Resource Technicians (to conduct planning through FY 87 and then to focus on management of the recreation rivers)
200 - Regional travel
300 - Printing costs for comprehensive plan through FY 87, then janitorial and maintenance costs for Little Susitna facility
400 - Hand tools and commodities
500 - Pickup truck in FY 86 and boat/trailer in FY 87

Capital - Boat launch, parking at Little Susitna River

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4453/4530

2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234

MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
HOUSE STATE AFFAIRS COMMITTEE

Representative Roger Jenkins

DISTRICT 11

MEMORANDUM

TO: Representative Richard Shultz
Representative Adelhied Hermann
Representative F. Kay Wallis
Representative Bette Cato
Representative Mike W. Miller
Representative Drue Pearce
Representative John Sund
Representative David Thompson
Representative Sam Cotton
Representative Pat Pourchot

FROM: Representative Roger L. Jenkins

DATE: April 1, 1985

SUBJECT: Statement of Intent of Amendment #1 to CSHB #93

Attached are copies of a proposed amendment to Resource CSHB #93 and appropriate portions of the Susitna Area Plan. In my review the amendment satisfies the Susitna Area Plan screening corridor objectives, while providing for adequate protection of the river without precluding other activities.

Your favorable consideration of this change is appreciated.

JUSTIFICATION

CS for House Bill No. 93 (Resources)

Amendment #1

by Jenkins

The intented purpose for CSHB 93 is to establish management guidelines for recreational rivers, while permitting each river to be individually managed under a multiple use management plan. Since statehood the legislatures have designated more land as parks, critical habitats, etc. than for land disposal. At a time of declining oil and gas revenue, the legislature should not be closing additional area to coal and mineral exploration and mining. However, on the other hand the legislature must continue to protect traditional uses of fishing, hunting, and trapping activities. All these goals can be accomplished by creating a 200 feet buffer along these recreational streams. This concept as laid out in the "Susitna Area Plan-PUBLIC REVIEW DRAFT-Summary" has gone through approximately 40 public hearings and over 1000 public comments. The Susitna Area Plan last week also received the Mat-Su Borough Assembly approval.

A M E N D M E N T # 1

Offered in Resources Committee by Jenkins

TO: HOUSE BILL 93

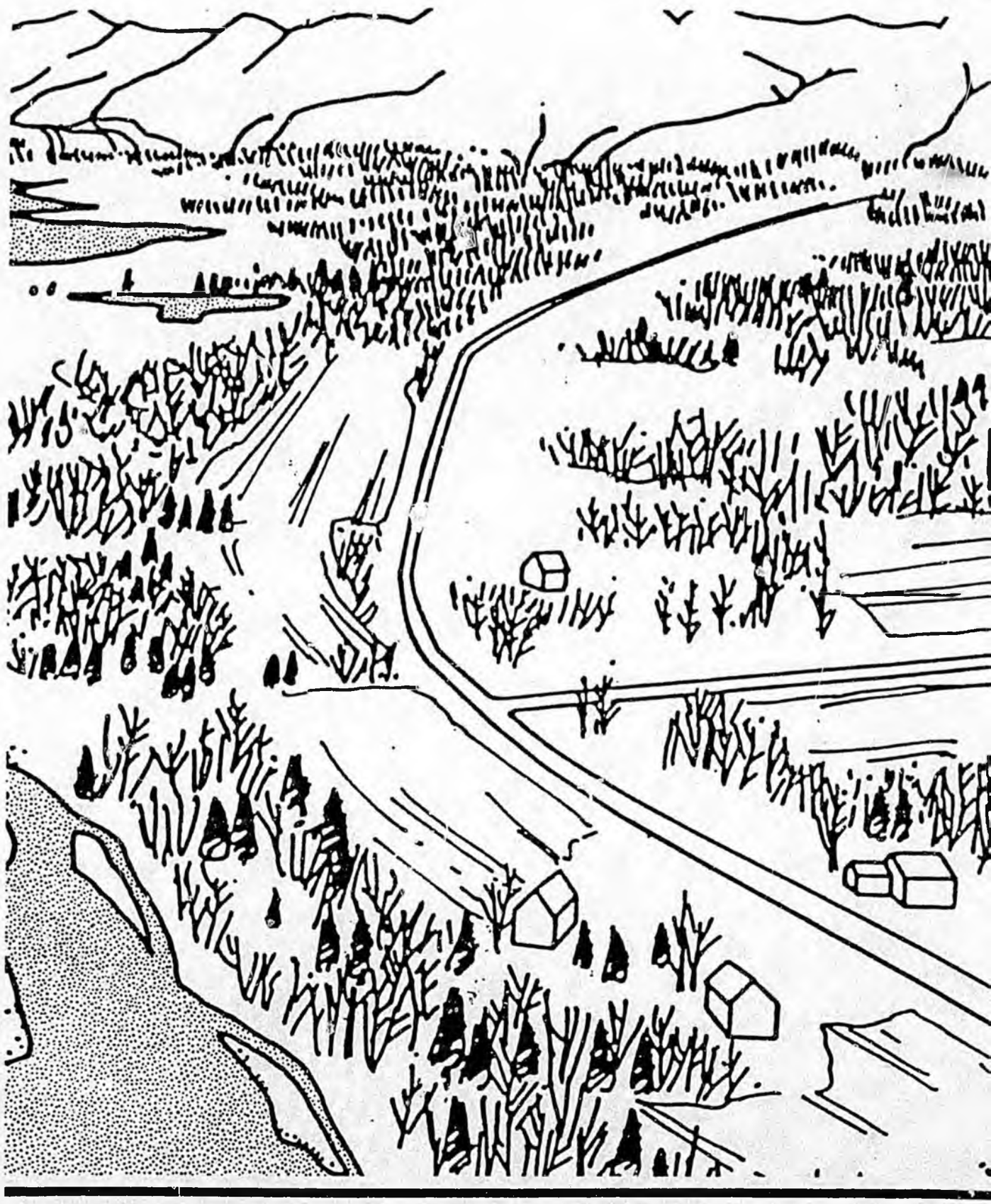
Page 1, line 28 amend to read:

"185 - 38.05.275 and land disposals within 200 feet upland from the meander of ordinary high water mark of a recreational river."

Page 2, line 20, amend to read:

38.05.275 within 200 feet upland from the meander of oridinary high water mark of a recreational river.

PUBLIC REVIEW
DRAFT-Summary



PREPARED BY:
ALASKA DEPARTMENT OF NATURAL RESOURCES
ALASKA DEPARTMENT OF FISH AND GAME
AND THE MATANUSKA-SUSITNA BOROUGH
IN COOPERATION WITH:
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
KENAI PENINSULA BOROUGH
U.S. DEPARTMENT OF AGRICULTURE
AND THE BUREAU OF LAND MANAGEMENT

JUNE 1984

Alaska Departm
NATUR
RESOURC

STREAM CORRIDORS

I. STATEWIDE GOALS

A. Recreation. Provide opportunities for a variety of recreational activities within stream corridors, including both wilderness and developed recreational activities.

B. Habitat. Protect fish and wildlife riparian habitats.

C. Private Ownership of Land. Provide opportunities for private ownership of land near streams.

D. Water Quality. Protect water quality to support domestic uses, fish and wildlife production and recreational activities.

E. Forest Products. Where consistent with the management objectives of a stream corridor, provide for the harvest of timber from riparian forests.

II. MANAGMENT GUIDELINES

A. Priority of Public Uses in Stream Corridors. "Stream Corridor" as used in these management guidelines refers to the stream itself and adjacent lands with stream-related recreational, residential, habitat, timber and hydrologic values. As a general rule, ADNR will set a higher priority on protecting public use values in stream corridors than providing opportunities for private ownership of land. However, the Department recognizes the strong demand for property along streams and will provide land for private purchase in some stream corridors. Prior to the disposal of stream corridor lands, DNR, in consultation with other affected agencies and the public, will assess existing and projected public use needs associated with the stream corridor. Disposals near streams with important recreation value will be designed to protect access to and along the stream for fishing, hiking, camping and other recreational activities.

B. Retention of Publicly Owned Buffers as a Management Tool in Stream Corridors.

1. When the management intent for land adjacent to a stream is to permit uses such as fishing, picnicking, hunting, timber harvest, building fires, camping or other similar active uses, public ownership of stream buffers should be used rather than easements to provide for these uses.

2. In state subdivisions stream buffers should, in all cases, be either retained in public ownership or conveyed to a home owners' association. If streams in subdivisions have recreation or habitat values of regional or statewide importance, or are identified as public waters, buffers should be retained in public ownership.

3. Publicly owned buffers adjacent to a stream may be retained along the full length of the stream or on the portions determined to have high current or future public use and habitat values.

C. Retention of Access Easements as a Management Tool in Stream Corridors.

1. When the primary management intent is to protect the public's right to travel along a stream bank rather than to establish a public use area, an easement should be used to protect this right. Easements along streams should also protect the right to pause briefly to observe wildlife, take photographs or rest, but

2. Easements along streams should establish, at minimum, the right to travel by foot, dogsled, horseback, snowmobile and two and three-wheeled vehicles. On a case-by-case basis the right to travel by all terrain vehicles and four wheeled vehicles may be reserved. Easements should be reserved for roads or railroads only if they are planned for construction.

3. Easements and publicly owned buffers may be used in combination on a stream to provide opportunities for private ownership near the stream while protecting public use or habitat values on other portions of the stream. Therefore, although easements should not be used where significant public use is to be encouraged, they may be used on portions of a stream with important public recreation and habitat values when most portions of the stream are retained for public use.

D. Establishing Widths of Publicly Owned Buffers, Easements and Building Setbacks in Stream Corridors.

1. Widths of publicly owned buffers along streams will vary according to management intent. In addition, the buffer width for any given stream may vary along the stream course depending on topography, vegetation and land ownership. Establishing buffer widths for particular streams should be based, at a minimum, on objectives for the following: recreational activities to be supported, habitat protection and management, noise abatement, visual quality, water quality, likelihood of erosion of the riverbank (in which case the buffer should be widened to compensate), and land disposal.

2. Although buffer and easement widths may vary among streams, a basic level of consistency is needed to avoid confusion about the width of public use and access areas along the state's many streams and because it would be prohibitively expensive to establish separately by fieldwork and site analysis buffer widths for each stream corridor. The following guidelines are intended to establish a reasonable degree of consistency in buffer and easement widths:

   a. When it is determined that a publicly owned buffer is appropriate, a standard minimum buffer width of 200 feet landward from the ordinary high water mark on each bank generally should be established. This width may be reduced to a minimum of 100 feet on each bank in individual cases consistent with the management objectives of the stream corridor.

   b. As a general standard publicly owned buffers of at least one-fourth mile landward from the ordinary high water mark on each bank should be retained on streams recommended for legislative designation as State Recreation Rivers to be managed as part of the State Park System. Exceptions to this policy may be made where land ownership, topography, or the nature of anticipated public uses in a stream corridor warrant.

   c. When it is determined that a public access easement will be reserved on land adjacent to a stream, a minimum easement of 50 feet landward from the ordinary high water mark on each bank will be reserved.

   d. In all cases where land is sold near a stream a minimum building setback of 100 feet landward from the ordinary high water mark on each bank should be established.

*The Alaska Department of Fish and Game does not endorse excluding fishing from the rights reserved for the public in stream corridor easements.

uses, transportation facilities, and pipelines will, where feasible, require setbacks between these facilities and adjacent water bodies to maintain streambank access and protect adjacent fish habitat, public water supplies, and public recreation. The width of this setback may vary depending upon the type and size of non-water dependent use, but will be adequate to maintain access and protect adjacent waters from degradation below the water quality standard established by DEC. Adjacent to designated anadromous fish spawning habitat this setback will, to the extent feasible, never be less than 100 feet landward of ordinary high water.

Where it is not feasible and prudent to maintain a setback adjacent to fish habitat, public water supplies or recreational waters, other measures will be implemented to meet the intent of this guideline.

F. Activities in Important Waterfowl Habitat. Activities requiring a permit, lease, or development plan with high levels of acoustical and visual disturbance, such as boat traffic, blasting, dredging, and seismic operations, in important waterfowl habitat will, to the extent feasible and prudent, be avoided during sensitive periods. Where it is not feasible and prudent to avoid such activities, other mitigative measures will be considered to meet the intent of this guideline.

G. Dredge and Fill in Important Waterfowl Habitat. Permits for dredging and filling in important waterfowl habitat, including permits for gravel extraction and the construction of roads and pads, will not be granted unless it is determined that the proposed activity will not cause significant adverse impacts to essential waterfowl habitat or that no feasible and prudent alternative exists.

H. Structures in Fish Habitat. To maintain migration of juvenile fish DNR will, to the extent feasible, require that structures in fish habitat be built to minimize impacts on fish migration.

I. Water Intake Structure. When issuing water appropriations in fish habitat, DNR will require that practical water intake structures be installed that do not entrain or impinge upon fish. The most simple and cost-effective technology may be used to implement this guideline.

Water intake structures will be screened, and intake velocities will be limited to prevent entrapment, entrainment, or injury to the species of fish found in the water. The structures supporting intakes should be designed to prevent fish from being lead into the intake. Other effective techniques may also be used to achieve the intent of this guideline. Screen size, water velocity, and intake design will be determined in consultation with the ADF&G.

J. Alteration of the Hydrologic System. To the extent feasible channelization, diversion, or damming that will alter the natural hydrological conditions and have a significant adverse impact on important riverine habitat will be avoided.

K. Soil Erosion. In addition to the use of publicly owned buffers and building setbacks, soil erosion will be minimized by restricting the removal of vegetation adjacent to streams and by stablizing disturbed soil as soon as possible.

L. Forest Management Practices. Personal use of timber or commercial harvest within 200 feet of a stream will be consistent with management objectives of the stream corridor.

M. Subsurface Development. See section on Subsurface Resources and Materials, this chapter.

N. Instream Flow. See section on Instream Flow, this chapter.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 26, 1985

SUBJECT: Recreational rivers and lakes (CSHB 93(Resources))

TO: Representative John Sund

FROM: Richard A. Bradley
Legislative Counsel

Howard Wayne has asked that I identify for you the areas that would need to be changed in the latest version of CSHB 93 (Res) if the bill moved from "recreational rivers" to "recreational rivers and lakes". The latest draft that I have is dated 3/22 though I expect to start a new one this afternoon.

A copy of that draft is enclosed.

The changes necessary are:

Page 1. Lines 6, 11, 13 - 14, 15, 17, 18, 25, 26, 28.

Page 2. Lines 12, 14, 16, 24.

Page 22. Lines 27, 28.

Page 23. Lines 3(?), 18, 23, 25.

Page 24. Lines 7, 8, 11, 13 - 14, 17, 20, 23.

Page 25. Lines 4, 6, 7, 8, 10, 12, 13, 22.

Page 26. Lines 5, 16, 19, 22, 24, 27.

Page 27. Lines 2, 5, 9.

If I may be of further assistance, please advise.

RAB:lmb
L4/063

Enclosure

DNR AMENDMENT ONE

CSHB 93

March 27, 1985

Cont. also

Add at p. 1, line 27 and renumber section 3 as section 4:

(3) protection and maintenance of water quality and stream flow; and

DNR AMENDMENT TWO

CSHB 93

March 27, 1985

To include Chelatna Lake (22, 500 acres), and at p. 12, line 17:

T27N R12W S.M.
Sections 1-3
Section 10 N1/2 SE1/4
Sections 11-14
Section 15 NE1/4
Section 23 NE1/4
Section 24 N 1/2

T28N R12W 8.M.
Sections 1-5
Sections 8-12
Sections 13-17
Sections 21-24
Sections 25-28
Sections 33-36

If the Committee wishes to include a smaller area of critical concern (9,800 acres), insert this description instead:

T27N R12W S.M.
Sections 1-2
Sections 3 E1/2 E1/2
Sections 11-13
Section 14 N1/2, SE1/4

T28N R12W S.M.
Section 4 SW1/4
Section 9
Section 10 W1/2, SE1/4
Section 14 SW1/4
Section 15
Section 16 N1/2, SE1/4
Section 21 NE1/4
Section 22
Section 23 W1/2
Section 26
Section 27 N1/2, SE1/4, E1/2, SW1/4
Section 34 E1/2
Section 35
Section 36 SW1/4

DNR AMENDMENT THREE

CSHB 93

March 27, 1985

To include upper portion of the Talkeetna River, add at p. 20, line 23:

T28N R1E S.M.
Section 2
Section 3 SE1/4
Section 9 SE1/4
Section 10
Section 11 NW1/4, W1/2 NE1/4, W1/2 SW1/4
Section 15 N1/2, SW1/4
Section 16 E1/2 SW1/4
Section 20 SE1/4
Section 21
Section 22 NW1/4
Section 28 N1/2, SW1/4
Section 29 E1/2, SW1/4, SE1/4 NW1/4
Section 31 SW1/4, E1/2
Section 32
Section 33 NW1/4

T28N R1W S.M.
Section 36 SE1/4 SE1/4

T27N R1E S.M.
Section 5 NW1/4
Section 6

T27N R1W S.M.
Section 1
Section 2 S1/2, NE1/4, S1/2 NW1/4
Section 3 S1/2, S1/2 N1/2
Section 4 SE1/4
Sections 7-10
Section 11 N1/2
Section 12 NW1/4
Section 15 NW1/4
Section 16 N1/2
Section 17 N1/2
Section 18 N1/2

T27N R2W S.M.
Section 2 SW1/4
Section 3 S1/2
Sections 10-12

Resource Development Council
for Alaska, Inc.

807 "G" Street, Suite 200, Anchorage, Alaska 99501-3440
Box 100510, Anchorage, Alaska 99510-0510 - 907/276-0700

EXECUTIVE DIRECTOR
Paula P. Easley

EXECUTIVE COMMITTEE
Charles R. Webber, President
K. Daniel Hinde, Vice Pres.
E. Thomas Pargeter, Vice Pres.
Dale P. Tuttle, Secretary
J. Shelby Stanley, Treasurer
Boyd J. Brownfield
Don L. Finney
Robert W. Fleming*
John Forceskie
Mano Frey
O.K. "Easy" Gilbreth
John L. Hall
Bara S. Hemphill
Joseph R. Henri
Phil R. Holdsworth
John T. Kelsey
Ethel H. "Pete" Nelson
John Renes
R. G. Rodriguez
R. D. Stock
Robert I. Swenson
Jack Werner

DIRECTORS/FOUNDERS*
John Abshire
Hameed Ahmad
Earl K. Beistline
Rex I. Bishopp
Robert T. Blakely
Robert A. Breeze
Glen E. Briggs
Milton Byrd
Larry Dinneen
James V. Drew
James G. "Bud" Dye*
Fred O. Eastaugh*
Tom Fink*
Lee E. Fisher*
Dan R. Fondell
Kelly Gay
Robert Gilliland
Howard Grey
Dave Harbour
Arthur R. Hauver
Roger R. Hasby
Hazel Heath
Dave Heatwole
Carl W. Heinmiller
Charles F. Herbert
M. A. Higgins
Joe Jackovich
Jerry E. Jean
John Choon Kim
Frank Kleit
May H. Lasley
Kay Linton*
Phillip L. Looker
Charles E. Logsdon
Dennis W. Lynes
Jeffrey B. Lowenfels
Paul J. Martin
G. R. Meeks
Michael Milhollin
Pat Mulligan
Max D. Nalley
Richard A. Peluso
William Purrington
Irene Ryan
Lin S. Sloane
Mary J. Sullliff
Dale Teel
Joe J. Thomas
Richard W. Tindall
Rudy J. Trosclair
Joe Usibelli
Lyle Von Bargen
James Wakefield
Cyril R. Wanamaker
Anita Williams
Lew M. Williams
Jed Holley, Staff Consultant

EX-OFFICIO MEMBERS
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Governor Bill Sheffield

March 29, 1985

Representative Dick Shultz
Co-Chairman House Resource Committee
Pouch V
Juneau, AK 99811

Dear Dick:

The Resource Development Council has reviewed the March 22 draft Resources Committee substitute for HB 93. We appreciate this opportunity to comment on the proposed legislation.

RDC believes this version of the recreational river is a far better proposal than that originally introduced. As far as we can see the management priorities for recreational use are protected in the draft substitute and other uses are addressed more effectively.

Our remaining problems with the draft substitute involve the following:

1) RDC still doubts the need for this legislation given the existing statutory and administrative mandates for management of these areas. Our letter of March 22 addresses this concern more completely.

2) Because we have been unable to look at a revised map addressing the draft substitute we are unable to properly comment on appropriateness of the lands proposed for inclusion. We do, however, hope that the boundaries outlined for the Little Susitna River in the original proposal are not indicative of the entire system proposed in the draft. A recreational river system does not need lands located more than a few hundred yards from the riverbank.

3) The management plan should be mandated to address acreage included in the recreational river system which is determined to be inappropriate for recreational enhancement. This will give the legislature the input necessary to remove unnecessarily withdrawn lands from the system and place them back into the public domain.

4) RDC also believes that the closure of these streams to mineral entry may not be necessary given the water quality standards in place today. Properly enforced water quality standards can alleviate the conflicts between miners and other river users.

5) The legislation should also address utility and transportation corridors through these areas. Population growth in and around these rivers may necessitate the development of utility and transportation access through these areas. We suggest that these considerations be included as a subsection of the proposed language for Sec. 41.23.010. The management plans should also address these concerns and plan for their potential development.

These issues address the primary concerns the Resource Development Council has with the draft substitute. We would, however, stress the positive nature of the changes made to this bill since its referral to your committee. We commend all who took part in the development of this substitute.

Thank you for the opportunity to review and comment on the proposed substitute to the recreational river legislation.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Paula Easley

Paula P. Easley
Executive Director

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the creation of a system of recreation rivers.

The bill is based in part on legislation enacted last session creating the Kenai River Special Management Area. The establishment of the Kenai River Special Management Area was a significant beginning in our program to improve the quality of recreation for Alaskans and to reduce the resource damage that results from overuse.

This year I will be introducing several pieces of legislation directed at expanding and diversifying recreational opportunities in southcentral Alaska. To provide for the growing recreation demands of Alaskans, who are among the most active anglers, hikers, boaters, hunters and campers in the United States, we must take action now to designate appropriate state lands and waters for special use.

Today I am introducing two recreation bills: to establish a state recreation rivers system, including the Little Susitna River, and to designate the Willow Creek State Recreation Area. Both of these areas were recommended for special designation on the Willow Subbasin Plan adopted two years ago. On March 1, after the Susitna Area Plan is adopted, I will introduce legislation to create several more special areas as recommended in the final plan.

Section 1 of this bill amends AS 41.21.022 to allow the discharge of firearms for lawful hunting in recreation river corridors except when public safety requires otherwise.

Section 2 contains the body of the bill. New AS 41.21.308 states the purposes of the new sections in AS 41.21, which

include dedication of a recreation river and adjacent state land as a unit of the state park system. New AS 41.21.310 designates the Little Susitna River corridor and adjacent state lands as a recreation river. New AS 41.21.312 delegates to the Department of Natural Resources the regulatory responsibilities for the river corridor subject to the existing powers of the Department of Fish and Game, Board of Fisheries, Board of Game, Guide Licensing and Control Board, and Department of Environmental Conservation.

Under new AS 41.21.314, the commissioner of natural resources is directed to develop and adopt a comprehensive management plan for the river corridor through a public hearing process and consultation with affected local municipalities and other interested state and local agencies. Once the plan is adopted, the commissioner is directed to adopt regulations under the Administrative Procedure Act (AS 44.62) to implement the plan. These regulations, as a minimum, must designate appropriate transportation and utility corridors for the area in cooperation with the Department of Transportation and Public Facilities; establish guidelines for the extraction of sand and gravel for public purposes and the harvest of forest products; and establish appropriate land use controls where necessary to maintain the river in its natural and free flowing state. The commissioner is also directed in new AS 41.21.314(c) to reserve an in-stream flow or level for the river adequate to insure that there is sufficient water so that the purposes of the Act can be fulfilled.

Under new AS 41.21.316, the commissioner is given authority to acquire in the name of the state an interest in other land where acquisition would effectuate the purposes of the Act. The use of the power of eminent domain, however, is expressly prohibited. The commissioner is also given authority in new AS 41.21.318 to enter into cooperative agreements with other public and private parties.

Finally, new AS 41.21.320 gives the commissioner express authority to seek an injunction to enforce regulations adopted under AS 41.21.308 -- 41.21.320. The last three new sections all parallel sections adopted in the Kenai River legislation passed last session.

In light of the increasingly intensive recreational use of the Little Susitna River and other rivers throughout the state, and their importance both to the recreational needs of Alaskans and to the tourist industry, I urge your prompt action on this measure.

Sincerely,

Bill Sheffield
Governor

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

March 21, 1985

TO: RESOURCES COMMITTEE MEMBERS

FROM: Representative Dick Shultz DS
Co-Chair, House Resources

SUBJ: HB 93: Recreation Rivers

Please find a copy of the committee substitute for HB 93.

Committee staff has spent numerous hours over the last four weeks working with the Governor's office, the Mat-Su Borough, Representatives: Larson, Cotten, and Pourchot's office to accommodate their concerns.

This bill representatives many compromises. The governor's bill in the original form was designed as a limited use park approach to managing certain rivers. This CS sets out a multiple use approach to management with recreation and habitat uses to be considered first and foremost. All other uses must be compatible with these uses if they are to be allowed.

There may remain some areas of minor disagreement surrounding this CS, however, I feel the major concerns of all parties have been addressed on a well balanced basis. I have spoken with Representatives: Larson, Cotten and Pourchot and they are satisfied that we are at a point where we can move ahead with this CS.

It is time to move this legislative on and I would appreciate your taking the time to review this draft as soon as possible in preparation for our upcoming meeting.

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB43
Title: Recreation Rivers

Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:
Parks and Outdoor Recreation; Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		56.6	60.0	60.0	60.0	60.0
200 TRAVEL		4.0	1.0	1.0	1.0	1.0
300 CONTRACTUAL		24.0	26.0	26.0	26.0	26.0
400 SUPPLIES		5.0	5.0	5.0	5.0	5.0
500 EQUIPMENT		41.0	4.0	4.0	4.0	4.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		130.6	96.0	96.0	96.0	96.0
CAPITAL		400.0				
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		530.6	96.0	96.0	96.0	96.0
FEDERAL FUNDS						
OTHER						
TOTAL		530.6	96.0	96.0	96.0	96.0

POSITIONS:

FULL-TIME						
PART-TIME		2	2	2	2	2
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Attached.

Prepared By: Peter Paharese
Division: Parks and Outdoor Recreation
Phone: 265-4517
Date: January 16, 1985

Approved by Commissioner:
Date: January 16, 1985
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

State Recreation Rivers - Fiscal Analysis

FY 86

100 - Two permanent part-time Park Ranger I/8 mos.
200 - Training and regional coordination
300 - Vehicle mileage, refuse collection, janitorial contract
400 - Hand tools, maintenance commodities
500 - Pickup trucks (2), radios, boat with trailer, zodiac raft, law enforcement equipment such as lights, siren, PA system, handguns

FY 87

Same costs except that equipment purchases would be unnecessary except for additional radio equipment.

Capital expenditures are for road/boat launch/parking at the Little Susitna Ruver.

PROPOSED AMENDMENT TO HB 93

DEPARTMENT OF NATURAL RESOURCES

Delete subsection (b) at p.2, lines 13-14 and replace with the following wording:

(b) Other resource management activities, such as timber harvest, extraction of gravel for public purposes, and provision of access, shall be allowed to occur when designed to be compatible with the purposes set out in (a) of this section.



Alaska Environmental Lobby, Inc.

~~410 6th Street Suite 328~~ 204 N. Franklin St. Suite 3 Juneau, Alaska 99801 907-586-2345

AMENDMENTS TO HB 93 " An Act establishing a system of recreation rivers"

Sec. 41.21.314 (b) (3) delete

Rationale Since (b) (1) gives the commissioner the ability to "designate incompatible uses and prohibit or restrict them (b) (3) is redundant. At some point and in some areas "extraction of sand and gravel for public purposes and the harvest of forest products" could be determined incompatible use.

STATEMENT OF ROBERT D. ARNOLD
DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES
IN SUPPORT OF HB 86
(Willow Creek State Recreation Area)
AND HB 93
(State Recreation Rivers)

HOUSE COMMITTEE ON RESOURCES
February 1, 1985

Representative Herrmann, Representative Shultz, and members of the Committee, I am Robert Arnold, Deputy Commissioner of the Department of Natural Resources. I am pleased to appear before you today to testify in support of HB 86 and HB 93, both introduced at the request of Governor Sheffield. These bills, which would establish the Willow Creek State Recreation Area and create a new state recreation rivers system with the Little Susitna River as its first component, are very important pieces of legislation that will help meet recreation demands in southcentral Alaska and reduce the potential for resource damage that could result from an absence of recreation management.

As the Governor noted when he transmitted HB 93 to the Speaker of the House, Alaskans are among the most active hunters, anglers, campers, boaters, and hikers in the United States. To meet their growing needs, the Governor last year sponsored legislation to protect the Kenai River -- legislation that was enacted and has already resulted in the inauguration of planning and management for one of Alaska's finest rivers. Recreation use of the Kenai River has doubled in the past four years, and this increased use has diminished the recreation experience for many Alaskans and has resulted in some damage along the river itself.

Both of the bills that you are considering today will help meet current recreation needs, protect valuable resources for the future, and provide for the growing recreation demands of southcentral Alaskans. And both of the legislative proposals have resulted from a public planning process for state and borough lands in southcentral Alaska.

Let me now address each of the bills in turn.

HB 93 - Recreation Rivers

In October of 1982, the Department of Natural Resources adopted the Willow Subbasin Plan with the support of the Matanuska-Susitna Borough (Resolution 82-17). The Plan affected about a million acres of high-value resource lands in the Little Susitna and Willow basins. Among its findings were the recommendations that the Little Susitna be closed to mineral entry and that the corridor be managed "to maintain and enhance the recreation/habitat resources along the Little Susitna River." This primary designation for recreation and habitat uses was paired with a secondary designation for forestry.

Since the adoption of the Willow Subbasin Plan, we have also conducted a planning process for state and borough lands in the Susitna basin. This plan should be finished a month from today, after three years of public participation -- including over 40 public meetings and incorporation of comments and suggestions from hundreds of citizens and from agency and borough staff. The Susitna Area Plan, like the Willow Subbasin Plan, will identify some rivers that should be managed primarily for their recreation and habitat values.

With this groundwork done by the public, state agencies, and the Matanuska-Susitna Borough, we have prepared legislation to establish a recreational rivers system that will first include the Little Susitna River, and later can be amended to include rivers in other areas of the state.

There are several points that I wish to make about this proposed legislation.

First, recreation rivers must be managed primarily for recreation and habitat values, but should also be available for other resource uses, including forestry, gravel extraction for public purposes, and provision of access, when these activities are compatible with recreation and habitat management.

It has been clear throughout our planning processes and from our contact with local governments and the public that recreation and habitat values are dominant in these river corridors, but that other resource values are also important. River corridors are some of the state's best lands: they are accessible and strategically located. To preserve them without opportunities for resource management and use would contradict the public intent found in our planning processes and could unreasonably prevent uses that can be compatible with recreation and habitat management.

Because the current language may be considered ambiguous in this regard, we will be recommending that the purposes section of the bill be amended to clarify that resource management activities are clearly allowed when compatible with recreation and habitat management purposes and to identify what sorts of resource management activities are envisioned. The same considerations are adequately treated later in the management planning section of the bill, but we are concerned that the purposes section be very plain. The proposed amendment has been provided to your staff for consideration in future mark-ups or workshops on the bill.

Second, because management planning for these rivers will be of concern to members of the public and other state and local agencies, I will outline for you the management planning process that the Department will conduct for these rivers.

As presented, the bill requires the commissioner to develop and adopt a comprehensive management plan for each recreation area through a public process in consultation with affected state, local, and federal agencies. In carrying out this statutory responsibility -- which includes the requirement that the plan establish long-term policies for habitat, recreation, and development management -- the commissioner will assign the Division of Parks and Outdoor Recreation to conduct the planning process.

This Division is the state's leading recreation management agency and has been conducting the public, interdisciplinary planning process for the Kenai River Special Management Area. The management plans for recreation rivers will be developed in a similar manner: the Division will conduct the planning in close coordination with an interagency planning team and broad public participation. Controversial resource management decisions will be elevated to the commissioner for decision.

It is important at this time to emphasize that the dedication of these rivers to the state parks system, on lines 28-29 of page 1, does not make them state parks dedicated for single use. The lands are "assigned to the department for control, maintenance, and development" at lines 4-5 on page 5, and we expect them to be managed generally for their various resource values, as long as the resource management is consistent with management planning and recreation and habitat management.

Third, the legislation will affect only state lands, as shown at lines 16-17 on page 2 of the bill. Borough and private lands will not be affected by the designations or by the management planning unless the Borough decides that these lands should be included. If such an agreement is possible now, this legislation could be amended to accommodate the Borough. Another possible approach would be for the State and the Borough to cooperate in recreation rivers management by a memorandum of understanding.

Fourth, this bill does not include a number of other candidate rivers that have been considered for inclusion in the recreation rivers system. Planning for these other rivers has taken place in the Tanana Basin Area Plan and the Susitna Area Plan, which are in their final draft stages. Although we have a general idea of which rivers will eventually be included in the system, we do not wish at this time to anticipate completion of the plans by submitting them in the legislation.

Several legislators have indicated interest in sponsoring amendments to include other rivers affected by these not yet adopted plans; if such amendments come before you, we will have to remain neutral on their passage. When the Susitna and Tanana plans are complete, the Governor intends to bring forward amendments that will add appropriate rivers to the new system.

The proposed legislation to create a recreation rivers system and designate the Little Susitna as Alaska's first recreation river deserves your support. The bill will provide special attention to the recreation needs of our citizens and will establish a solid foundation for management of important lands and waters.

I will now turn briefly to discussion of the other piece of legislation before you -- HB 86, establishing the Willow Creek State Recreation Area.

HB 86 - Willow Creek State Recreation Area

Since the completion of the Willow Subbasin Plan, which allowed for the eventual establishment of the Willow Creek State Recreation Area, there has been a great deal of cooperative planning by the Matanuska-Susitna Borough and the Division of Parks and Outdoor Recreation. Neil Johannsen, the Director of the Division, is here today to address this proposed designation.

The proposal is to create a state recreation area encompassing about 3,500 acres of state land. Eventually, this area should be developed to include roads and a major facility for camping, boating, hiking, and other recreation activities; the Governor's proposal has been to fund design and engineering for this facility in the coming year and to fund its construction in the following two years. At this point, knowing that revenues are declining, we are unable to recommend any more capital funding than just this portion.

Summary

In a Southcentral Recreation Action Plan presented to Governor Sheffield at his request in December, the Departments of Natural Resources and Fish and Game presented a number of proposed actions that would help meet the growing demand for recreation opportunities in southcentral Alaska. The measures before you today were included in this proposed action plan, but we consider them of statewide significance: the new recreation rivers system provides a new opportunity for special management of appropriate river corridors, and the proposed Willow Creek facility will serve all Alaskans by providing for more recreational opportunity in the southcentral area.

The fiscal impacts of these proposed measures are small, especially when considered with the benefits for Alaskans. As the State of Alaska continues to gain land from its statehood entitlement -- and our ownership has doubled to over 80 million acres in the past four years alone -- we need to give more attention to the special needs of our citizens and the special values of our lands. In this case, we have done so with a large measure of public participation, and our proposed legislation reflects much careful discussion and crafting.

On behalf of the Sheffield administration and the many Alaskans who would benefit from the passage of these pieces of legislation, I urge your support for both HB 86 and HB 93. I am available for questions if members of the Committee would like to discuss them.

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska
March 22, 1985

Representative Adelheid Herrmann (Co-Chairman)
Representative Richard Shultz (Co-Chairman)
House Resources Committee
Alaska Legislature
Room 116, Capitol Building
Juneau, Alaska 99801

Re: HB 93: Recreational Rivers System

Dear Co-Chairmen Herrmann and Shultz:

House Bill 93 would establish a system of recreational rivers in Alaska, and would begin that system with a portion of the Little Susitna River.

The League of Women Voters of Alaska supports House Bill 93, as a wise dedication to public use emphasizing all types of recreational activities (including those dependent upon wildlife) within each area designated to become part of the recreational river system.

Your committee may be subjected to pressures to weaken HB 93's protections of the recreational and wildlife related uses as they now exist in the bill's statement of purposes (proposed AS 41.21.308) and criteria for the establishment of a comprehensive management plan and regulations (proposed AS 41.21.314). We would oppose any weakening amendments that would tend to compromise the recreational use integrity of a recreational river in favor of resource extraction (e.g. timber, sand and gravel, mining). On the other hand, we would support strengthening amendments, such as any requiring concurrence of the Commissioner of Fish and Game and the Director of the Division of Parks before any specific resource extraction project is permitted within the boundaries of a designated recreational river and its protected margins.

The bill as presently worded already allows more than adequate discretion to the DNR commissioner to provide for such resource extraction activities in such few cases as may exist

where there is no feasible alternative site available, and to place conditions on such activities if and where they are allowed under the adopted management plans and regulations. The whole purpose of this legislation, after all, is to protect the recreational qualities of those river segments selected to become part of the recreational river system.

Thank you for considering our views.

Sincerely,

Elizabeth Cuadra

Elizabeth Cuadra, Board Member
(Natural Resources Portfolio)

DEC:sd
cc: Committee Members (Wallis, Sund, Thompson, M. W. Miller, Cato, Pearce, and Jenkins)
Commissioner Wunnicke (DNR)
Commissioner Collinsworth (DF&G)
Paula Ziegler (LWVAK President)


HB
1011

(File Nos. 5762, 5815), P.2d (1983).

When sale has taken place. — A sale has taken place when crab are delivered to the processor in Alaska under a previously negotiated contract. Sjong v. State, Dep't of Revenue, Sup. Ct. Op. No. 2269 (File No. 4255), 622 P.2d 967 (1981), appeal dismissed, 454 U.S. 1131, 102 S. Ct. 986, 71 L. Ed. 2d 284 (1982), decided under former AS 43.20.130.

Sec. 43.20.072. Oil and gas producers and pipelines. (a) All business income of a taxpayer engaged in the production of oil or gas from a lease or property in this state or engaged in the transportation of oil or gas by pipeline in this state shall be apportioned to this state in accordance with the Multistate Tax Compact (AS 43.19) as modified by this section.

(b) A taxpayer's business income to be apportioned under this section to the state shall be the federal taxable income of the taxpayer's consolidated business for the tax period, except that

(1) taxes based on or measured by net income that are deducted in the determination of the federal taxable income shall be added back;

(2) intangible drilling and development costs that are deducted as expenses under 26 U.S.C. 263(c) (Internal Revenue Code) in the determination of the federal taxable income shall be capitalized and depreciated as if the option to treat them as expenses under 26 U.S.C. 263(c) (Internal Revenue Code) had not been exercised;

(3) depletion deducted on the percentage depletion basis under 26 U.S.C. 613 (Internal Revenue Code) in the determination of the federal taxable income shall be recomputed and deducted on the cost depletion basis under 26 U.S.C. 612 (Internal Revenue Code) and

(4) depreciation shall be computed on the basis of 26 U.S.C. 167 (Internal Revenue Code) as that section read on June 30, 1981.

(c) A taxpayer's business income shall be apportioned to this state by multiplying the taxpayer's income determined under (b) of this section by the apportionment factor applicable to the taxpayer among the following factors:

(1) the apportionment factor of a taxpayer subject to this section but not engaged in the production of oil and gas from a lease or property in this state during the tax period is a fraction, the numerator of which is the sum of the property factor under the Multistate Tax Compact (AS 43.19) and the sales factor under (d) of this section for the taxpayer for that tax period, and the denominator of which is two;

(2) the apportionment factor of a taxpayer subject to this section but not engaged in the pipeline transportation of oil or gas in this state during the tax period is a fraction, the numerator of which is the sum of the property factor under (e) of this section and the extraction factor under (f) of this section for the taxpayer for the tax period, and the denominator of which is two;

(3) the apportionment factor of a taxpayer engaged both in the production of oil or gas from a lease or property in this state and in the pipeline transportation of oil or gas in this state during the tax period

§ 167. Depreciation

(a) General rule.—There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, or

(2) of property held for the production of income.

(b) Use of certain methods and rates.—For taxable years ending after December 31, 1953, the term "reasonable allowance" as used in subsection (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the Secretary, under any of the following methods:

(1) the straight line method,

(2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1),

(3) the sum of the years-digits method, and

(4) any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in paragraph (2).

Nothing in this subsection shall be construed to limit or reduce an allowance otherwise allowable under subsection (a).

(c) Limitations on use of certain methods and rates.—Paragraphs (2), (3) and (4) of subsection (b) shall apply only in the case of property (other than intangible property) described in subsection (a) with a useful life of 3 years or more—

(1) the construction, reconstruction, or erection of which is completed after December 31, 1953, and then only to that portion of the basis which is properly attributable to such construction, reconstruction, or erection after December 31, 1953, or

(2) acquired after December 31, 1953, if the original use of such property commences with the taxpayer and commences after such date.

(d) Agreement as to useful life on which depreciation rate is based.—Where, under regulations prescribed by the Secretary, the taxpayer and the Secretary have, after August 16, 1954, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the Secretary in the absence of

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to allowable depreciation methods for oil and gas producers and pipelines.

Section 1 of the bill repeals a statutory provision that requires corporations engaged in oil or gas production or pipeline transportation to use a depreciation method allowed under sec. 167 of the Internal Revenue Code. as that section read on June 30, 1981. (26 U.S.C. sec. 167.) Repeal of this provision will allow these corporations to use the ACRS (accelerated cost recovery system) method of depreciation, which is the method now permitted by federal law and used by most taxpayers for federal purposes.

The current provision creates problems both for taxpayers and the Department of Revenue. Strict compliance by the oil and gas companies is virtually impossible, because the law requires separate accounting for a corporation's worldwide assets. Likewise, the law is difficult for the department to administer. First, the department does not now have resources or personnel available to audit a major petroleum company's worldwide depreciation expense. Secondly, because the state depreciation deduction does not conform to federal depreciation, the department is unable to rely on sources such as the Internal Revenue Service and independent accountants to verify accuracy of deductions reported.

While repeal will benefit both the department and the companies, revenues will not be affected. The existing law renders no additional revenues to the state, other than revenues indirectly generated as a result of the accelerated collection of revenues. Under the current law, there is no difference in the total depreciation expense ultimately taken, although there may be a difference in the period of

time over which an asset is depreciated. While this timing difference may result in increased revenues in earlier years, the acceleration is offset by a corresponding decrease in revenues in subsequent years.

Section 2 of the bill makes the change in current law applicable to tax years beginning after December 31, 1984.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date 10/19/84

REQUEST

Bill/Resolution No: HB 101

Title: Allowable depreciation methods for oil & gas producers and pipelines

Sponsor: Governor

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Department of Revenue

Program Category Affected: Collection and Management

BRU, Program of Subprogram(s) Affected:

Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
	OPERATING						
100	PERSONAL SERVICES	-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-	-0-	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-	-0-	-0-	-0-	-0-	-0-
400	SUPPLIES	-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-	-0-	-0-	-0-	-0-	-0-
600	LANDS & STRUCTURES	-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS	-	-0-	-0-	-0-	-0-	-0-
800	MISCELLANEOUS	-	-0-	-0-	-0-	-0-	-0-
	TOTAL OPERATING	-	-0-	-0-	-0-	-0-	-0-
	CAPITAL	-	-0-	-0-	-0-	-0-	-0-
	REVENUE	-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-0-	-0-	-0-	-0-	-0-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FULL-TIME	-	-	-	-	-	-
	PART-TIME	-	-	-	-	-	-
	TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page for analysis.

Prepared By: Maureen O'Brien Maureen O'Brien Phone: 465-2320

Division: Audit Division Date: 10/19/84

Approved by Commissioner: Date:

Agency:

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

An Act relating to allowable depreciation methods for oil and gas producers and pipelines --

Analysis:

Currently corporations engaged in oil or gas production or pipeline transportation in Alaska are required to use a different depreciation method for Alaska income tax purposes than the method used for Federal income tax purposes. The effect of the current depreciation provision is to create a difference in the time the depreciation expense is taken on the federal return and the time the depreciation expense is taken on the Alaska return. There should be no difference in the total depreciation expense ultimately taken. For Alaska, this law is most advantageous when the timing difference results in a smaller depreciation deduction for Alaska purposes in the earlier years of an asset's useful life as the state's revenues are then accelerated. This acceleration, however, will be offset by a corresponding decrease in revenues in later years. In summary, the existing law renders no additional revenues to the state other than those indirectly generated as a result of the accelerated collection of revenues.

The proposed amendment to AS 43.20.072 would return corporations engaged in oil or gas production or pipeline transportation in Alaska to a federal basis for depreciation. It is impossible to determine the exact impact on the state's revenues as a result of this amendment. There may be a short-term decrease in revenues, however, over the long-term there should be no impact on the state's revenues.

An Act relating to allowable depreciation methods for oil and gas producers and pipelines --

Analysis:

Currently corporations engaged in oil or gas production or pipeline transportation in Alaska are required to use a different depreciation method for Alaska income tax purposes than the method used for Federal income tax purposes. The effect of the current depreciation provision is to create a difference in the time the depreciation expense is taken on the federal return and the time the depreciation expense is taken on the Alaska return. There should be no difference in the total depreciation expense ultimately taken. For Alaska, this law is most advantageous when the timing difference results in a smaller depreciation deduction for Alaska purposes in the earlier years of an asset's useful life as the state's revenues are then accelerated. This acceleration, however, will be offset by a corresponding decrease in revenues in later years. In summary, the existing law renders no additional revenues to the state other than those indirectly generated as a result of the accelerated collection of revenues.

The proposed amendment to AS 43.20.072 would return corporations engaged in oil or gas production or pipeline transportation in Alaska to a federal basis for depreciation. It is impossible to determine the exact impact on the state's revenues as a result of this amendment. There may be a short-term decrease in revenues, however, over the long-term there should be no impact on the state's revenues.

SUMMARY/EXPLANATION OF INTENT

The essential effect of the current depreciation provision in the law is to create a difference between the time when the depreciation expense is taken on the federal return and the time depreciation expense is taken on the Alaska return. There is no difference in the total depreciation expense ultimately taken although there may be a difference in the period of time over which an asset is depreciated. For Alaska, this law is most advantageous when the timing difference results in a smaller depreciation deduction for Alaska purposes in the earlier years of an asset's useful life, as the state's revenues are then accelerated. This acceleration, however, will be offset by a corresponding decrease in revenues in later years. Among the returns filed for 1982, the first year the law was in effect, there were some cases where the depreciation deduction for Alaska purposes was greater than that taken for federal purposes, resulting in a deferral of revenues. After netting this adjustment for all the oil and gas companies in 1982, this law resulted in approximately $5 million in accelerated revenues.

From the taxpayer's viewpoint, the benefits the state derives from this acceleration of revenues are not commensurate with the burdens of efforts and costs required of the taxpayers to comply specifically with the unique demands of Alaska's law. A special computer program and separate accounting for a corporation's worldwide assets would be necessary to meet the law's exact requirements. None of the oil and gas companies audited to date have fulfilled the letter of the law; instead all have substituted calculations prepared for other purposes that approximated the Alaska requirement. It has been necessary for the department to deal with the variations by regulation.

From the Audit Division's standpoint, practically speaking, the law is exceedingly difficult, if not impossible, to administer effectively and efficiently because of the difficulty in auditing the taxpayers' compliance with it. An audit of a major petroleum company's worldwide depreciation expense is far beyond the scope of the Division's audits. By divorcing Alaska's depreciation deduction from the federal depreciation, the law deprives the state of its ability to rely on third parties such as the IRS and independent CPA's to insure the accuracy of the depreciation deduction. This reliance on third party policing is especially desirable in the instance of depreciation since the Division itself does not comprehensively audit the deduction.

Further complicating the situation as it stands, is the fact that, absent some very involved and detailed recordkeeping by the taxpayers, for certain other items of income and expense affected by depreciation expense, such as the computation of gain or loss upon the deposition of an asset and the relevant Section 1245 and 1250 recapture, the amounts reported will not properly reflect the federal/state differences. It is highly unlikely that taxpayers will prepare the requisite records; hence, more erroneous reporting will result.

In summary, the existing law renders no additional revenues to the state other than those indirectly generated as a result of the accelerated collection of revenues. Furthermore, the existing law is not being faithfully complied with by the taxpayers and cannot satisfactorily be audited by the Audit Division. The effect of the amendment to the law would be to return taxpayers to a federal basis for depreciation. This change would promote conformity with the law and enhances its effective administration.

HB

1003

REMARKS

by

KAY BROWN, DIRECTOR, DIVISION OF OIL & GAS

on

CS HB 103 (Oil and Gas)

to

HOUSE RESOURCES COMMITTEE

February 25, 1985

Thank you Mr. Chairman. For the record, I'm Kay Brown, Director of the Division of Oil and Gas for the Alaska Department of Natural Resources. I appreciate the opportunity to address the committee on CS HB 103.

This bill makes two technical changes to the royalty oil and gas disposal statute.

SECTION 1 of the bill would remove royalty oil and gas disposals from the procedures that govern all disposals of interest in state land or resources under AS 38. It is unclear whether AS 38.05.035(e) applies to royalty oil and gas sales. Royalty oil and gas sales have detailed finding and notice requirements under AS 38.05.182, 183 and AS 38.06. Although we believe that .035 is not presently applicable to royalty oil and gas sales, the possibility that it does apply would cast a cloud over sales that had to be entered into because of an emergency situation. Further, elimination of the .035 requirement streamlines the procedural requirements by removing conflicting timelines for disposal.

SECTION 2 of the bill would allow continuing competitive royalty oil sales

for terms of less than one year to be conducted without legislative approval of those sales. AS 38.06.055(a) provides that the legislature will approve all royalty oil and gas sales. Subsection (b) of that section sets out several exceptions for short-term and small volume sales which do not require legislative approval. Subsection (b)(1) makes an exception for sales of one year or less to relieve storage or market conditions, and this is the section under which we held the competitive sale in December 1984. Subsection (c), which is the section being amended in CS HB 103, goes on to say that a sale made under (b)(1) may not be continued after the end of one year or renewed with the same party without the prior approval of the legislature under (a) of the statute.

The Department of Law has advised us that there is a serious question as to whether a party who gained royalty oil under one competitive sale could re-bid in a subsequent royalty oil sale if the combination of the two sales would lead to that particular buyer receiving oil for more than a one-year period.

We see no reason why a company which bids and wins in one competitive sale should not be able to bid again the next year and again win the right to receive oil if it bids the highest price.

To await legislative approval under a competitive bid situation for contracts of one year or less would defeat the entire purpose of that type of short-term competitive sale.

Although it has been the consistent position of this and previous

administrations that the requirement of legislative approval is unconstitutional, administrations have always, as a matter of comity, respected the legislature's desire to be consulted in long-term or negotiated royalty oil contracts. Further, the presence of the statute, whether constitutional or not, could cast a cloud on any subsequent competitive sale.

Mr. Chairman, while we have not yet made a firm decision on whether continuing competitive sales would be beneficial to the state, we would like to have that option available for consideration at the same time we are considering the new proposals for in-state use.

That concludes my remarks Mr. Chairman. Thank you very much for your time.

1585K

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to royalty oil. The bill would (1) clarify and streamline procedural requirements for royalty oil and gas sales by expressly providing that the best-interest finding set out in AS 38.05.035(e) does not apply to those sales; and (2) enable the Department of Natural Resources to establish a regular program of short-term competitive royalty oil sales.

It is unclear whether AS 38.05.035(e) applies to royalty oil and gas sales. Royalty oil and gas sales have detailed finding and notice requirements set out in AS 38.05.182, 38.05.183, and AS 38.06, and are expressly committed to commissioner actions. AS 38.05.035(e), on the other hand, is essentially duplicative of those other processes and concerns actions taken by the director of the division of lands. Although we believe that the provisions of AS 38.05.035(e) are not presently applicable to oil and gas sales, such confusion does cast a cloud over royalty oil sales (particularly those that are entered into because of an emergency situation). The amendment in sec. 1 of the bill resolves the issue.

The second change, in sec. 2 of the bill, would allow competitive royalty oil sales for terms of less than one year to be conducted without legislative approval of those sales. To await legislative approval under a competitive bid situation for contracts of one year or less would defeat the entire purpose of that type of short-term competitive sales. Under the present statutory scheme, however, there is a serious question as to whether a party who gained royalty oil under one competitive sale could re-bid in a subsequent royalty oil sale if the combination of the two sales would lead to that particular buyer receiving oil for more than a one year period. Although it has been the

consistent position of this and previous administrations that the requirement of legislative approval is unconstitutional, administrations have always, as a matter of comity, respected the legislature's desire to be consulted in long-term or negotiated royalty oil contracts. Further, the presence of the statute, whether or not constitutional, would cast a cloud on any sale. Thus we believe that a clarification to allow short-term competitive royalty oil sales would be in the best interests of all.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 103

Title: An Act relating to royalty

Sponsor:

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Minerals and Energy Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Kay Brown Phone: 265-4241

Division: Oil and Gas Date: December 7, 1984

Approved by Commissioner: Robert D Arnold, Deputy Date: December 10, 1984

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Possible Amendment to AS 38.05.183(d)

(d) Except for sales of one year or less to relieve storage or market conditions, oil or gas taken in-kind by the state as its royalty share may not be sold or otherwise disposed of for export from the state until the commissioner determines that the royalty in-kind oil or gas is surplus to the present and projected intrastate domestic and industrial needs. The commissioner shall make public, in writing, the specific findings and reasons on which his determination is based and shall, within 10 days of the convening of a regular session of the legislature, submit a report showing the immediate and long-range domestic and industrial needs of the state for oil and gas and an analysis of how these needs are to be met.

3210s

State of Alaska

Department of Natural Resources

Supplemental Findings

Competitive Royalty Oil Sale

(Prudhoe Bay and Kuparuk River Units)

November 28, 1984

Supplemental Findings
Competitive Royalty Oil Sale
(Prudhoe Bay and Kuparuk River Units)

AS 38.05.183(d) states that oil and gas taken in-kind as the state's royalty share of production may not be sold or otherwise disposed of for export from the state until the Commissioner of Natural Resources determines that the royalty in-kind oil or gas is surplus to the present and projected intrastate domestic and industrial needs for oil and gas. I find that the 90,000 bpd scheduled for competitive sale on December 11, 1984 is surplus to present and projected intrastate domestic and industrial needs for oil.

AS 38.05.183 also requires the Commissioner to submit an annual report to the state legislature "showing the immediate and long-term domestic and industrial needs of the state for oil and gas and an analysis of how these needs are to be met." The Department of Natural Resources, Division of Oil & Gas (the Department) complies with that requirement by preparing a document, published each January, entitled Historical and Projected Oil and Gas Consumption (also called the Supply/Demand study). The January 1984 Supply/Demand study concluded, as it had in previous years, that in-state supplies of both oil and gas far exceeded the immediate and long-term domestic and industrial needs of the state for oil and gas.

Due to the absence of any new information concerning the immediate and long-term domestic and industrial needs of the state for oil and gas, the Department again concluded, both in the Preliminary Findings and Determination to Negotiate Backup Royalty Oil Contract(s) and Conduct a Competitive Royalty Oil Sale (July 12, 1984) and the Final Findings and Determination to Conduct a Competitive Royalty Oil Sale for In-Kind Oil from the Prudhoe Bay and Kuparuk River Units (October 10, 1984), that the 90,000 bpd of state royalty oil to be sold competitively on December 11, 1984 is surplus to in-state needs. Consequently, upon the publication of the Preliminary Finding and execution of contracts with backup purchasers, the state gave a six-month notice to the North Slope producers of its intent to take 90,000 bpd of royalty oil in-kind (as provided by procedures in the Prudhoe Bay and Kuparuk River Unit Agreements).

The Department's conclusion was and is based in part on the interpretation of AS 38.05.183 stated in each Supply/Demand study since 1982. In that year, the study first gave specific definitions to certain phrases in that statute. Since 1982, the first chapter of every Supply/Demand study has contained a list of possible definitions for some of the imprecise clauses of AS 38.05.183, such as "how these needs are to be met". The Supply/Demand study definition of that phrase specifies the Department's long-standing position that the state's present and projected intrastate domestic and industrial needs for oil and gas may be met from a variety of sources, including state royalty oil. See 1984 Supply/Demand study page 1.7.

The intent of the statute should not be regarded as complete state self-sufficiency in refined products from state royalty oil. Rather, the Department believes the legislature was aiming at ensuring adequate overall oil and gas supplies for the state. The 1984 Supply/Demand study states that, "Under reasonable assumptions about recoverable reserves and Alaskan consumption, the current inventory of both oil and gas is more than sufficient to meet the presently identifiable needs of Alaskans for the next 15 years." Presently, the Department of Revenue's most recent crude oil price forecasts remain conservative due to the continued surplus in world supplies. While unfavorable from a revenue standpoint, that surplus will likely translate into dampened crude oil prices for Alaska consumers and industrial users. Only if the cost of imported products were significantly above the cost of products which could be refined in Alaska (e.g. when oil is not available to local refiners at the market price), or if Alaska users were suffering from an absolute shortfall in petroleum products, would the Department not consider the royalty oil to be sold at the competitive sale as "surplus" to present and projected in-state needs. Neither of these was found to be the case.

The Department's view of the purpose of AS 38.05.183 stems first from the atmosphere of absolute shortage, particularly in motor fuels, which prevailed at the time the statute was written. The statute was adopted in 1974, when the worldwide oil crisis and the imposition of federal oil contract controls raised the spectre of product shortages in Alaska despite North Slope crude oil production. The Department's view stems second from the apparent paradox of continued imports into regions such as Southeast Alaska, where the landed cost of such imports from Puget Sound undercuts the cost of delivered refined products to Southeast from Railbelt refiners. Under the most constrained interpretation of the statute, the Department would be obliged to promote in-state refining with royalty oil for the sake of absolute self-sufficiency, even when this resulted in higher prices for Alaskans. Clearly, this was not the intent of the statute. Intrastate needs for oil and gas are presently being met from a variety of sources, including state royalty oil. As charged, the 1984 Supply/Demand study identifies those sources and discusses how in-state needs are to be met, given the total supply of hydrocarbons within the state. In terms of total present and projected demand vs. total present and projected supply, intrastate refined product needs can be met with ease by the unprecedented production of crude oil from the North Slope, which is available to any purchaser willing to meet the market clearing price for that oil. For these reasons, the Department determined in the 1984 Supply/Demand study that the state enjoys a surplus of hydrocarbons relative to present and foreseeable demand.

Even if AS 38.05.183(d) were interpreted to require all intrastate needs to be satisfied by royalty oil before export could occur, I would find that the competitive sale amounts are surplus to present and projected intrastate domestic and on industrial needs for two reasons. First, persons who have a demand for oil as a result of current in-state processing or supply activities are granted priority rights to purchase royalty oil at the competitive sale. Second, during the term of the competitive sale contracts, royalty oil will remain in-value and will be available for disposition in-state.

The Department has provided for satisfaction of demand for royalty oil on the part of in-state refiners and in-state suppliers by giving them priority rights to purchase oil at the competitive sale. A priority will be offered to bidders which have sold an average of at least 5,000 bpd of refined petroleum products to distributors or consumers within the State of Alaska during the twelve-month period beginning June 1, 1983 and ending May 31, 1984, and which possess the ability to process crude oil into refined petroleum products at a processing facility owned by the bidder. Priority status will enable the in-state supplier to meet the highest winning bid in each of the three categories of royalty oil to be competitively sold. That right extends to the number of lots remaining in each category after the first round award of lot(s) to the highest winning bidder(s) in each category and priority bidders who have been posted as apparent high bidders. Consequently, in the first round of awards, priority bidders enjoy the possibility of receiving oil at the lowest price posted in each category. In addition, in-state suppliers are reasonably assured of receiving the desired volume of oil in the second round of awards, provided they are willing to meet the competitively established price. 11 AAC 03.250(5) states that:

> "present or projected intrastate domestic and industrial needs" means in-state domestic and industrial demand at a competitive market price for the royalty oil, gas, or gas liquids. "Competitive market price" includes, but is not limited to, a price established by competitive bid.

Thus, in-state refiners and suppliers will have the first right to royalty crude at a competitive market price so that their supply is assured.

At the present time the state leaves approximately 104,735 bpd of royalty oil in-value with the North Slope lessees. The lessees export this oil from Alaska and tender the reported netback sale proceeds to the state. During the first six months of the term of the competitive sale contracts, April 1985 to September 1985, approximately 26,013 bpd of royalty oil will remain in-value. During the following six months of the term, October 1985 to March 1986, approximately 41,013 bpd of royalty oil will remain in-value. These amounts will remain available for disposition in-state if the Department finds the disposition(s) to be in the State's best interest. (If a contract currently being negotiated with Golden Valley Electric Association is approved, future amounts available for disposition would be reduced by 5,000 bpd.)

Several parties have recently expressed an interest in purchasing royalty oil from the State. Our conclusion that the competitive sale amounts are surplus to present and projected needs was drawn with the knowledge that all in-state refiners do not have 100% of their projected capacity supplied by state royalty oil. For example, as mentioned in the Preliminary Finding, the Department has conducted negotiations for the sale of royalty oil to MAPCO Inc. to fuel a proposed refinery expansion. The successful outcome of those negotiations is not, however, regarded by the Department as prerequisite to the possible export of the state's royalty oil in the planned competitive sale. First, MAPCO representatives indicated to the Department that the proposed refinery expansion may not be built, throwing the question of MAPCO's projected needs into doubt. Second, if MAPCO had a projected demand for royalty oil at a competitive price, it could have availed itself of its

opportunity to purchase oil at the competitive sale, as a priority bidder. Since it is a current in-state refiner, MAPCO would have been entitled to all the priority rights discussed above. Third, by virtue of its proximity to the Trans Alaska Pipeline (TAPS), MAPCO has unique opportunities to supply its refinery with North Slope oil. MAPCO currently receives 35,000 bpd of royalty oil directly from the State. MAPCO also receives 5,000 bpd of royalty oil through its agreement with another state royalty oil purchaser - the Golden Valley Electric Association. In addition, about 60% of the oil run through the MAPCO refinery is, with a minor quality penalty, reinjected into TAPS to re-emerge as whole oil at Valdez. That oil, which is the property of MAPCO, may be exchanged for more oil from the North Slope and again withdrawn from TAPS at Fairbanks. One of the several advantages that MAPCO enjoys with its state royalty oil contract, relative to other in-state refiners, is this absence of any state control over the return oil. MAPCO could also purchase oil directly from the North Slope lessees to satisfy any demand not met through the purchase and exchange of royalty oil. Finally, MAPCO's location on TAPS allows it to enter into "in-transit stop" arrangements in which MAPCO "borrows" oil from other TAPS shippers. The borrowed oil is processed in MAPCO's refinery with the full amount returned to the original shipper at Valdez through a combination of return oil and quality bank payments. This in-transit stop arrangement remains feasible so long as MAPCO's current contract which does not expire until 2003, remains in effect. The Department believes that any failure by MAPCO to secure oil through these possible sources of supply indicates that MAPCO's demand may exist only so long as it believes the State is willing to supply it with oil at a price below competitive prices. As explained above, 11 AAC 03.250(5) provides that projected needs mean [illegible] demand at a competitive price.

Since the Department made its most recent finding of ample in-state hydrocarbon supplies, published in the Final Finding of October 10, 1984, several Alaskan parties in addition to MAPCO have expressed interest in purchasing royalty oil. Chevron has requested further volumes of royalty oil to meet a possible increase in "throughput" at its 18,000 bpd Nikiski Refinery. Chevron owns and exports 12,000 bpd of North Slope production in addition to the 18,000 bpd of royalty oil which it processes at Nikiski. New parties also propose to create additional new refineries in Alaska. Because these proposals were not known to the Department at the time of the most recent determination of an in-state hydrocarbon surplus, the state has decided to reduce the one-year term of those lots offered in the Kuparuk River oil category (category A) to six months. This will enable the state to have an additional 15,000 bpd of royalty oil available in the fall of 1985 for those who offer to purchase state royalty oil at terms which lead the Department to find that the disposition(s) would be in the state's best interest.

As stated, the impressive quantities of oil available within the state, which are the highest in the nation on a per-capita basis, diminish the likelihood of an actual "need" by these groups in the sense of supply availability. However, given the very recent nature of the new proposals received, the Department will further review their merits, as well as supply alternatives in addition to royalty oil. It has been the Division's experience that the term "need" is perceived differently by prospective in-state royalty oil

purchasers. Rather than the physical unavailability of oil due to world shortages or the unwillingness of North Slope producers to sell ANS crude at the market clearing price, prospective in-state royalty oil purchasers often view their feedstock needs in terms of the royalty oil price and terms they require for economic viability. While the Department recognizes that there are a host of oil-related economic activities which can be made viable should the state choose to undercut the market clearing price of Alaska North Slope oil for specific parties, this is not seen as the definition of "need" in AS 38.05.183, nor is it clearly in the State's best interest to do so.

Given the short-term nature of the proposed competitive sale, the consideration extended to in-state refiners and suppliers through the priority bidding system, the lack of demonstrated current need on the part of other potential in-state purchasers, and the amounts of oil remaining in-value available for disposition, I find pursuant to AS 38.05.183 that the royalty oil to be disposed of at the competitive sale is surplus to present and projected intrastate domestic and industrial needs.

Kay Brown

Kay Brown, Director
Division of Oil & Gas
Department of Natural Resources

11-28-84
Date

best interests determination described in 11 AAC 03.010(d). (Eff. 12/12/80, Reg. 76)

Authority: AS 38.05.020
AS 38.05.183
AS 38.06.070

11 AAC 03.070. REJECTION OF PROPOSALS. (a) If the commissioner has either (1) solicited proposals for the noncompetitive sale of royalty oil, gas, or gas liquids, (2) issued a written determination to dispose of royalty oil, gas, or gas liquids by a method other than by competitive bid, or (3) issued written procedures for the noncompetitive disposal of royalty oil, gas, or gas liquids as described in 11 AAC 03.050, and the commissioner proposes to reject any proposal or application received as a result of the solicitation, determination, or written procedures, the commissioner will notify the Alaska Royalty Oil and Gas Development Advisory Board in writing before rejecting the proposal or application.

(b) The notification required by (a) of this section will consist of a list of the names of the prospective buyers whose proposals are rejected along with their proposals and any correspondence received from the prospective buyers.

(c) The commissioner will, in his or her discretion, reject unsolicited or uninvited proposals for the noncompetitive disposal of royalty oil, gas, or gas liquids without notifying the Alaska Royalty Oil and Gas Development Advisory Board. (Eff. 12/12/80, Reg. 76; am 8/8/84, Reg. 91)

Authority: AS 38.05.020
AS 38.06.050

11 AAC 03.080. STORAGE CONDITIONS. The commissioner disposes of royalty oil, gas, or gas liquids to relieve storage conditions when

(1) the royalty oil, gas, or gas liquids have either been noticed for a taking in-kind or are being taken in-kind or are being taken in-kind by the state; and

(2) the disposition planned for the oil, gas, or gas liquids at the time of the notice to take the oil, gas, or gas liquids in-kind can no longer be effectuated for any reason, or the disposition is no longer in the best interests of the state. (Eff. 12/12/80, Reg. 76; am 8/8/84, Reg. 91)

Authority: AS 38.05.020
AS 38.05.183
AS 38.06.055

11 AAC 03.090. MARKET CONDITIONS. The commissioner disposes of royalty oil, gas, or gas liquids to relieve market conditions when

(1) in a noncompetitive disposition of royalty oil, gas, or gas liquids the price to be received under the noncompetitive disposition is higher than the amount being received by the state, either in-value or in-kind, at the time of the disposition and the commissioner estimates that the sale price will be higher than the in-value amount throughout the term of the contract for disposition;

(2) in a disposition by competitive bid the commissioner determines, at the time of issuance of the invitation to bid, that there is a substantial probability that the state will receive more than the in-value price as a result of the disposition by competitive bid;

(3) the royalty oil, gas, or gas liquids disposed of will be used to meet in-state needs for crude oil, gas, or gas liquids or petroleum products and the sale price of that royalty oil, gas, or gas liquids is at least equal to the in-value amount which would have been received by the state during the same period; or

(4) there is or will be an emergency in-state need for crude oil, gas, or gas liquids or petroleum products, which could be alleviated by the sale of the royalty oil, gas, or gas liquids. (Eff. 12/12/80, Reg. 76; am 8/8/84, Reg. 91)

Authority: AS 38.05.020
AS 38.05.183
AS 38.06.055

11 AAC 03.091. PROVISIONS APPLICABLE TO ROYALTY CONTRACTS. (a) Within 10 days after receiving written notice from a royalty purchaser of its intent to renegotiate price, as provided for by the terms of that purchaser's state royalty contract, or within 10 days after giving a royalty purchaser written notice of the state's intent to renegotiate price, as provided for by the terms of that purchaser's state royalty contract,

or before the adoption of any material amendment to a royalty contract which appreciably reduces the consideration received by the state, the commissioner will publish notice of the intent to renegotiate price or amend the contract in a newspaper of general statewide circulation. In addition, the commissioner will, in his or her discretion, publish notice by radio, television, or other electronic media. The notice will include

(1) a summary of information pertinent to the royalty contract, including quantity, current price, and termination date;

(2) a statement indicating where copies of the contract may be obtained; and

(3) a statement that any person may file written comments on the notice with the commissioner within 30 days after publication of the notice.

(b) In establishing or renegotiating the price of a royalty contract, the commissioner will obtain a price at least equal to the price that would have been received had the oil, gas, or gas liquids been taken in-value, plus field costs incurred by the royalty share, unless the commissioner determines that a lower price for the royalty gas would best serve the state's interests.

(c) The commissioner will submit to the legislature for approval any material amendment to a royalty contract which appreciably reduces the consideration received by the state.(Eff. 8/8/84, Reg. 91)

Authority: AS 38.05.020
AS 38.05.182
AS 38.05.183

11 AAC 03.100. DISPOSITION BY COMPETITIVE BID. (a) A disposition of royalty oil, gas, or gas liquids by competitive bid will, in the commissioner's discretion, be made without a written determination by the commissioner that the disposition of royalty oil, gas, or gas liquids by competitive bidding is in the best interests of the state.

(b) A disposition of royalty oil, gas or gas liquids by competitive bid will, in the commissioner's discretion, be made by the commissioner without notice to the Alaska Royalty Oil and Gas Development Advisory Board; however, the commissioner will follow the procedures set out in 11 AAC 03.210 and 11 AAC 03.240. (Eff. 12/12/80, Reg. 76; am 8/8/84, Reg. 91)

Authority: AS 38.05.020
AS 38.05.183

11 AAC 03.110. SEALED BIDS. A disposition of royalty oil, gas, or gas liquids by competitive bid will be by sealed bid. The bids must be addressed to the commissioner and must be delivered in the manner, to the place, and by the date and time specified in the invitation to bid. Bids will be opened in public at the date, time, and place specified in the invitation to bid, unless the commissioner designates a later time for opening. (Eff. 12/12/80, Reg. 76; am 8/8/84, Reg. 91)

Authority: AS 38.05.020
AS 38.05.183

11 AAC 03.120. INVITATION TO BID. A disposition of royalty oil, gas, or gas liquids by competitive bid will be initiated by the commissioner by issuance of an invitation to bid. The invitation to bid will specify the quantity of oil, gas, or gas liquids to be sold, the term of disposition, the point of delivery, and any other terms and conditions of the disposition considered necessary by the commissioner. The commissioner will, in his or her discretion, include a form contract in the invitation rather than specifying terms and conditions. The invitation will specify qualifications of bidders and, if a determination of the qualification of a bidder by the commissioner is required, an explanation of the procedure for qualification. If priorities among bidders are to be assigned, the invitation will include an explanation of the procedure for obtaining a priority designation. The invitation will specify where, when, and how bids may be submitted to the commissioner and will specify the bond or other security which must accompany the bid. The invitation will specify the date, time, and place of bid opening, and the procedures under which the royalty oil will be awarded and contracts for disposition executed. (Eff. 12/12/80, Reg. 76; am 8/8/84, Reg. 91)

Authority: AS 38.05.020
AS 38.05.183

11 AAC 03.130. SECURITY. The commissioner may require that security, which in his


HB
1111

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Transportation Committee, 2/26/85, 7:00 am
" " " 3/5/85, 7:00 am
" " " 3/14/85, 7:00 am

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game

District 5

Kenai	Sterling
Soldotna	Anchor Point
Homer	Point Graham
Seldovia	English Bay
Kachemak	Nikolaevsk
Kasilof	Halibut Cove
Ninilchik	Clam Gulch

Representative Andre Marrou

March 26, 1985

To: Richard Shultz, Co-Chairman Resources Committee
From: Andre Marrou

Subject: CSHB 111

Following is a request for two amendments to CSHB 111, "An Act relating to local service roads and trails"; which is currently in the Resources Committee.

They are:
1) Page 1, Lines 12, 15 & 18; reinsert old language "or first class".
Page 2, Line 2; reinsert old language "and first class".

Justification: This provision has been in place since 1981 to allow first class cities to apply directly to the state for these funds. If it is taken out, boroughs will incur a duplication of effort, increased bureaucracy and a diminished return under this program.

2) Page 1, Line 19; insert new language, "latest available federal, state or state certified census."

Justification: Many areas of the State have experienced a great influx of people in the last few years, so a federal census that is done only once every ten years is simply not adequate.

Your consideration of these amendments will be greatly appreciated. Please call if you have any questions.

During Session: Pouch V, Juneau, Alaska 99811, (907) 465-2719 During Interim: Box 1572, Homer, Alaska 99603, (907) 235-8200

LOCAL SERVICE ROADS AND TRAILS PROGRAM

FUNDING STATUS February 26, 1985

PROGRAM NUMBER	PROGRAM NAME	COLLOCATION CODE	UNPROGRAMMED FUNDS	UNPROGRAMMED FUNDS PER FISCAL YEAR
	CENTRAL REGION			
M11018	Ch 118/80 LSR&T (Central)	24-81-1-325	3,098	-------3,098
M11017	Ch 24/84 LSR&T Dist. 1	24-81-1-439	765,559	
M11015	Ch 24/84 LSR&T Dist. 4 South	24-81-1-440	189,616	-----985,632
M11016	CH 24/84 LSR&T Dist. 5 South	24-81-1-441	30,457	
M11012	Ch 94/83 LSR&T Dist. 1	24-81-1-560	578,576	
M11014	Ch 94/83 LSR&T Dist. 4 South	24-81-1-561	407	-----639,897
M11013	Ch 94/83 LSR&T Dist. 5 South	24-81-1-562	60,914	
	Central Region total		1,628,627	
	NORTHERN REGION			
M21003	Ch 118/80 LSR&T (Interior)	24-81-2-416	7,525	
M21004	Ch 118/80 LSR&T (Western)	24-81-2-417	49,621	------57,146
M21007	Ch 24/84 LSR&T Dist. 2	24-81-2-524	759,168	
M21008	Ch 24/84 LSR&T Dist. 4 North	24-81-2-525	443,797	---1,202,965
M21011	Ch 94/83 LSR&T Dist. 2	24-81-2-632	122,983	
M21012	Ch 94/83 LSR&T Dist. 4 North	24-81-2-633	269,593	-----392,576
M21019	LSR&T Legislative Grant to FNSB Ch 80/79	24-80-2-104	111,353	-----111,353
	Northern Region total		1,764,040	
	SOUTHEASTERN REGION			
M31001	Ch 24/84 LSR&T Dist. 3	24-81-3-372	355,082	-----355,082
	Southeastern Region total		355,082	

Fiscal Year Summary:

*FY'80	171,597
FY'83	1,032,473
FY'84	2,543,679

*includes 111,353 from special grant

GRAND TOTAL ---> 3,747,749

March 4, 1985

SECTION 1. PROPOSED CHANGE TO ALLOCATION DISTRICT BOUNDARIES

1. The present five allocation district boundaries represent the five highway district boundaries in 1971.

2. The proposed three allocation district boundaries coincide with the department's operating regions.

3. The proposed change would have the following impact on the program:

   A. Eases administration by eliminating the distribution of fractured allocation districts to the present department operating regions.

   B. Drastic changes in allocations utilizing the same distribution formula, such as:

      a) Central Region

         ° Municipality of Anchorage increases 23%

         ° Remaining nine local governments decrease by 32% to 64%.

         ° Unorganized borough increases slightly.

      b) Northern Region

         ° Fairbanks North Star Borough, cities of Fairbanks, North Pole and Nenana increase by 20% to 23%.

      c) Southeastern Region is unaffected.

ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES
Local Service Roads & Trails

DISTRIBUTION FORMULA COMPARISONS
(Not reflecting first class cities)

LOCATION	POPULATION	AREA	Present 5-District Concept 50% Pop. 50% Area AMOUNT	Proposed 3-Region Concept 50% Pop. 50% Area AMOUNT
STATE OF ALASKA	401,851	586,499	7,000,000	7,000,000
REGION 1	259,895	206,157	3,493,872	3,493,872
MUNICIPALITY OF ANCHORAGE	174,431	1,884	918,385	1,188,437
KENAI PEN BOROUGH	25,282	14,692	400,165	257,984
CITY OF KENAI	4,324	32	39,553	25,499
CITY OF SEWARD	1,843	22	16,988	10,952
KODIAK ISLAND BOROUGH	9,939	5,440	130,821	85,870
CITY OF KODIAK	4,756	2	41,186	27,034
MAT-SU BOROUGH	17,816	20,544	517,406	276,155
CITY OF PALMER	2,141	4	33,134	17,684
CITY OF CORDOVA	1,879	7	24,709	12,689
BRISTOL BAY BOROUGH	1,094	1,200	25,614	17,522
UNORGANIZED BOROUGH 1	29,454	162,390	1,345,971	1,574,043
REGION 2	88,063	339,996	2,795,967	2,795,967
FAIRBANKS NORTH STAR BOROUGH	53,983	7,500	565,453	693,691
CITY OF FAIRBANKS	22,645	30	153,235	187,986
CITY OF NORTH POLE	724	3	4,998	6,131
NORTH SLOPE BOROUGH	4,199	88,281	454,994	429,649
CITY OF NENANA	470	9	6,046	7,498
CITY OF VALDEZ	3,079	274	68,307	50,005
UNORGANIZED BOROUGH 2	26,332	243,932	1,542,934	1,421,007
REGION 3	53,893	40,346	710,161	710,161
CITY AND BOROUGH OF JUNEAU	19,528	3,100	155,945	155,945
CITY AND BOROUGH OF SITKA	7,803	2,900	76,934	76,934
HAINES BOROUGH	1,680	2,620	34,127	34,127
KETCHIKAN GATEWAY BOROUGH	11,316	1,250	58,278	58,278
CITY OF KETCHIKAN	7,198	2	27,280	27,280
CITY OF PETERSBURG	2,821	46	18,991	18,991
CITY OF WRANGELL	2,184	43	14,768	14,768
UNORGANIZED BOROUGH 3	8,561	30,387	323,838	323,838

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 111

Title: An act relating to local service roads and trails

Sponsor:

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: DOT&PF

Program Category Affected: Design and Construction

BRU, Program or Subprogram(s) Affected: Capitol Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Attached

Prepared By: Charles D. Karella Phone: 465-4070

Division: Date: 10/19/84

Approved by Commissioner: Date: 11/15/84

Agency: Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

ANALYSIS

The proposed bill is strictly a housekeeping measure and has no fiscal impact on either the operating or capital budget. No additional positions are required.

The proposed bill revises A.S. 19.30 in five areas:

1) AS 19.30.127 and AS 19.30.131(a) are reworded to make allocation district boundaries coincide with DOT&PF regional boundaries. This simplifies the allocation process of LSR&T monies.

2) AS 19.30.131(c) and AS 19.30.141 removes first class cities from district allocation. This change returns the first class cities to their former status which allows them to receive adequate funds to construct a project.

3) AS 19.30.161 is reworded to require LSR&T projects constructed on a federal-aid secondary route to be approved by the Commissioner of DOT&PF. This language change is needed to assure that federal requirements for roadway width, design standards and right-of-way are met.

4) AS 19.30.241(3) is necessary to enable any political subdivision of the State to construct and maintain a project under the provisions of this act.

5) AS 19.30.241(4) is reworded to limit LSR&T construction to low volume roads. The break between high volume roads and low volume roads is 750 vehicles per day.
Correction of an oversite of past legislation in defining specific routes of the Federal-aid highway system is necessary.

An Act relating to local service roads, trails and providing for an effective date.

These amendments to the Act are necessary in order to revise the out-of-date allocation areas, assure sufficient funding of projects under the priority system, clarify design standards for secondary federal routes, revise the local government definition to conform with other Alaska Statutes, limit LSR&T construction to low volume roads and correct an oversite of defining specific routes of the federal highway system.

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the local service roads and trails program. The bill makes minor amendments to existing statutes.

Section 1 repeals and reenacts AS 19.30.127. The current language establishes five allocation districts. The proposed language creates allocation districts by simply saying that they are identical to the Department of Transportation and Public Facilities' operating regions. When the local service roads and trails program was enacted in 1971 there were five highway districts within the Department of Highways. The allocation districts established in the statute coincided with those highway districts. Those allocation districts bear little relationship to the manner in which the state's highway program is administered today. There are currently three regional offices with headquarters in Anchorage, Fairbanks, and Juneau, respectively. This amendment will allow the program to be administered in a way that is consistent with the Department of Transportation and Public Facilities' current administrative structure. The amendment will enable the allocation districts to match any future changes in geographic organization of the department.

Additionally, sec. 1 of the bill provides a mechanism to address the problem of local governments which lie within two allocation districts. Subsection (b) of AS 19.30.127 will provide that the boundary between the allocation districts is to be adjusted to include the local government within the allocation district in which the largest portion of the local government's land is located.

Section 2 amends AS 19.30.131(a) by deleting the reference

to five allocation districts. This amendment is necessary because of the new method of establishing the allocation districts found in sec. 1 of the bill.

Section 3 amends AS 19.30.131(c) by deleting first-class cities from direct allocations.

The need for this change is to provide first-class cities with adequate funds to construct local service roads. Presently, the law treats allocation of funds to first-class cities the same as home rule cities. Present allocations for most first-class cities are not adequate to construct a local service road project. This change in the law allows funding of projects for first-class cities through their respective borough or unorganized borough on a priority basis.

Section 4 amends AS 19.30.141 by deleting first-class cities from direct allocations as explained above.

Section 5 amends AS 19.30.161 by adding language requiring the prior approval of design standards, rights-of-way, and widths for projects which are constructed on a federal-aid secondary route, even though the project will be constructed by a local government that has assumed road powers. As a general proposition under the local service roads and trails program, if a local government has assumed road powers it is responsible for the maintenance of the facility after construction. Consequently, the state has little concern over the standards. In 1981, the nature of the program changed when AS 19.30.111 was amended to allow the use of program money on the federal-aid secondary highway system. These facilities can be quite complicated and the state is required to comply with various standards to continue to receive federal aid for the route. It is therefore appropriate that the commissioner of DOT/PF have a right of prior approval of design standards, rights-of-way, and width.

Section 6 amends AS 19.30.241(3) by adding language which includes second-class cities to conform with the definition of municipality in AS 29.78.010(8). This change is necessary to enable any political subdivision of the state to construct and maintain a project under the provisions of this bill.

Section 7 amends the definition of local service road to make it more precise.

Sincerely,

Bill Sheffield
Governor

Introduced: 3/15/85
Referred: Transportation and Finance

Funding Information
General Fund $7,000,000
Other Funds -0-
$7,000,000

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

HOUSE BILL NO. 291

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities for local service roads and trails; and providing for an effective date."

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

* Section 1. The sum of $7,000,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for allocations for local service roads and trails authorized under AS 19.30.111 - 19.30.251.

* Sec. 2. The appropriation made by this Act is for allocation to capital projects and is subject to AS 37.25.020.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Ford 14-0832 F

Funding Information
General Fund $7,000,000
Other Funds -0-
$7,000,000

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities for local service roads and trails; and providing for an effective date."

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

* Section 1. The sum of $7,000,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for allocations for local service roads and trails authorized under AS 19.30.111 - 19.30.251.

* Sec. 2. The appropriation made by this Act is for allocation to capital projects and is subject to AS 37.25.020.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

14-0832
Ford
3/4/85.

Funding Information
General Fund $7,000,000
Other Funds -0-
$7,000,000

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities for local service roads and trails; and providing for an effective date."

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

* Section 1. The sum of $7 000,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for allocations for local service roads and trails authorized under AS 19.30.111 - 19.30.251.

* Sec. 2. The appropriation made by this Act is for allocation to capital projects and is subject to AS 37.25.020.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Original sponsor: Rules/Governor

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE BILL NO. 111 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to local service roads and trails; and providing for an effective date."

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

* Section 1. AS 19.30.131(c) is amended to read:

(c) The commissioner shall also further allocate portions of the sum allocated to any borough, either organized or unorganized, and to any home rule [OR FIRST CLASS] city within the borough in the following manner:

(1) one-half in the ratio which the area of each home rule [OR FIRST CLASS] city bears to the total area of the borough excluding salt water areas; and

(2) one-half in the ratio which the population of each home rule [OR FIRST CLASS] city bears to the total population of the borough as shown by the latest available federal census.

* Sec. 2. AS 19.30.141 is amended to read:

Sec. 19.30.141. ACQUISITION AND CONSTRUCTION PROGRAMS. Before October 1 of each fiscal year each local government eligible for allocation of funds under AS 19.30.131 shall submit to the commissioner for approval a five-year plan for the acquisition and construction of local service roads and trails. Before December 1 of each fiscal year the commissioner shall submit to the governor a five-year plan for the acquisition and construction of local service roads and trails, including the approved local government programs. An organized borough shall include in its five-year plan local service road

acquisition and construction programs for all cities other than home rule [AND FIRST CLASS] cities within the boundaries of the borough. The commissioner shall include in the [HIS] five-year plan local service road and trail acquisition and construction within the unorganized borough.

* Sec. 3. AS 19.30.161 is amended to read:

Sec. 19.30.161. DESIGN STANDARDS, RIGHTS-OF-WAY AND WIDTHS. Design standards, rights-of-way and widths for each local service road and trail project must [SHALL] have the prior approval of the commissioner, unless the project is under the supervision of a local government that has assumed local road powers. If the project is under the supervision of a local government that has assumed road powers, and the project is not located on a federal-aid secondary route, design standards, rights-of-way and widths shall be established by the local government. If a project under the supervision of a local government that has assumed road powers is located on a federal-aid secondary route, design standards, rights-of-way, and widths must have the prior approval of the commissioner.

* Sec. 4. AS 19.30.241(3) is amended to read:

(3) "local government" means an organized borough of any class, a unified municipality organized under AS 29.68.240 - 29.68.-440, [A HOME RULE CITY,] or a city of any [THE FIRST] class;

* Sec. 5. AS 19.30.241(4) is amended to read:

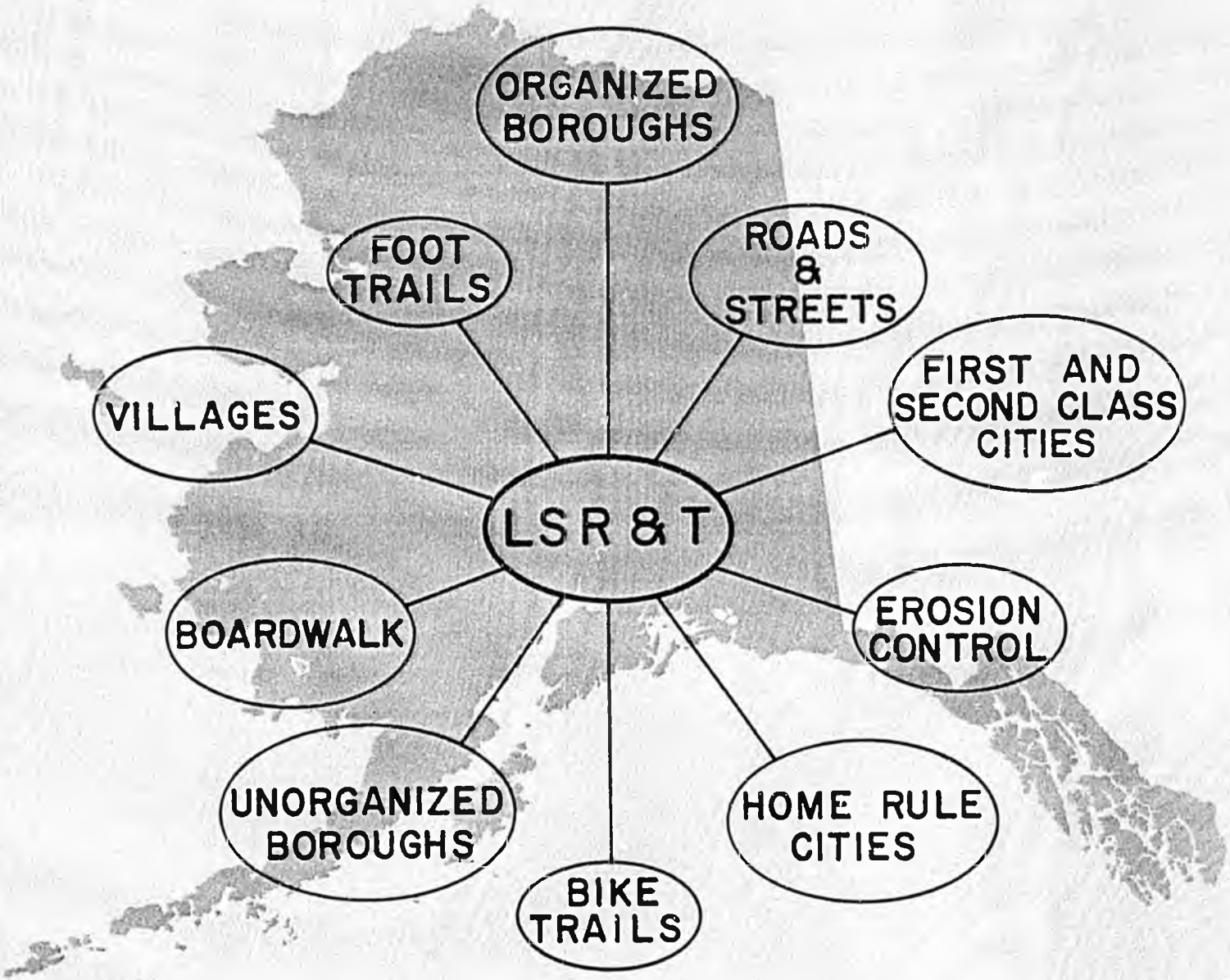
(4) "local service road" means a public road that is used by an average of fewer than 750 vehicles each day and that [WHICH] is not designated as a route on the approved primary, urban, or interstate federal-aid highway system;

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

House Resources / Master File

FIVE YEAR LOCAL SERVICE ROADS AND TRAILS PROGRAM

1985 - 1989



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 2, 1985

Fellow Alaskans:

It is my pleasure to submit for your review the Five Year Local Service Roads and Trails Program for FY85 through FY89.

This is a long-range planning document of the Department of Transportation and Public Facilities, and, as with all such plans, changing conditions may require modification of the plan in future years.

This program provides for the construction of transportation-related projects such as trails, boardwalks, roads, streets, sidewalks, and drainage facilities, requested by local governments. It serves as a much-needed supplement to the federal aid highway program.

The widespread support shown by Alaskans for the program is gratifying and indicates the commitment of the public to the program's objectives.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

NARRATIVE

LOCAL SERVICE ROADS & TRAILS PROGRAM

The Local Service Roads and Trails Program provides for construction of local roads and trails which are not included in the federal-aid primary, urban or interstate highway systems.

Under the Local Service Roads & Trails Act, funds for home rule and first class cities, municipalities and organized boroughs are allocated by strict formula. These local governments then establish their own project scheduling; therefore, this publication is merely a listing of their individual programs as submitted. Project priorities and scheduling in the unorganized boroughs are based primarily on requests and recommendations of village councils and residents. Personal contact with the communities is established by LSR&T representatives from the Department's regional offices. Community needs are thus determined first-hand, along with approximate costs. Since the cost of requested projects usually exceeds the funds available, priorities must be established based on need. Local communities often participate in project costs with their own funds.

Local labor and equipment are utilized wherever practical in the construction of these projects. Not only is this beneficial to the economy of the communities, but it normally reduces the overall cost of the project. A side benefit is the training of local residents who will, in many cases, be maintaining the completed project.

This five year LSR&T Program is based on funds from a recent allocation of $3,500,000 for fiscal year 1985 and with proposed allocations of $7,000,000 for fiscal years 1986 through 1989.

It is anticipated that the funding shown in this program will be used by the end of fiscal year 1985. Therefore, projects shown for fiscal years beyond 1985 can only proceed if additional funds are made available.

TABLE OF CONTENTS

Governor's Greeting.....i
Narrative.....ii
Table of Contents.....iii
Allocation District I Program.....1
District I Project Location Map.....6
Municipality of Anchorage Location Map.....7
Allocation District II Program.....8
District II Project Location Map.....13
Allocation District III Program.....14
District III Project Location Map.....19
Allocation District IV Program.....20
District IV Project Locations Maps.....30
Allocation District V Program.....32
District V Project Location Map.....37

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 1

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1985		
MUNICIPALITY OF ANCHORAGE	Misc. Street & Pedestrian Improvements, (Anchorage Roads & Drainage Serv. Area)	1.	209,000
	Misc. Street & Pedestrian Improvements, (Hillside--Girdwood Area)	2.	223,200
	Misc. Street & Pedestrian Improvements, (Eagle River-Chugiak Area)	3.	228,600
	Trails (Anchorage P & R Serv. Area)	4.	90,000
	Trails (Girdwood P & R Serv. Area)	5.	30,000
	Trails (Eagle River--Chugiak Serv. Area)	6.	48,000
KENAI PENINSULA BOROUGH	Greer Drive Phase II	7.	106,100
	Browns Lake	8.	532,000
MATANUSKA-SUSITNA BOROUGH	Serivce Area #27 Meadow Lakes Roads	9.	64,500
	Service Area #23 North Colony Roads	10.	64,500
	Service Area #20 Greater Willow Roads	11.	64,500
	Service Area #29 Greater Talkeetna Roads	12.	64,500
KODIAK ISLAND BOROUGH	Sargent Creek/Birch Circle Road	13.	66,000
	Sharatin/Perenosa Road	14.	66,000
	Beaver Lake Drive/Peotter Drive Road	15.	66,200
CITY OF KENAI	City Streets	16.	66,000
	Accumulating Funds		59,300
CITY OF SEWARD	Accumulation of funds for 1986		58,600
CITY OF HOMER	Utilized all Funding		
CITY OF SOLDOTNA	Accumulating Funds		31,600
CITY OF SELDOVIA	Accumulation of Funds		6,500
CITY OF KODIAK	Accumulation of Funds		66,400
CITY OF PALMER	Traffic and Parking Study	17.	17,800
	Accumulating Funds		36,700
UNORGANIZED BOROUGH I			
WHITTIER	Railroad Lease Area Paving - Construction Phase I	18.	100,000
PILE BAY	Road & Bridge	19.	58,900
	Accumulating funds for Whittier - Recreation Access Road		94,600

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 1

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1986*		
MUNICIPALITY OF ANCHORAGE	Misc. Street & Pedestrian Improvements, (Anchorage Roads & Drainage Serv. Area)	20.	418,300
	Misc. Street & Pedestrian Improvements, (Hillside--Girdwood Area)	21.	133,000
	Misc. Street & Pedestrian Improvements, (Eagle River-Chugiak Area)	22.	137,000
	Trails (Anchorage P & R Serv. Area)	23.	170,000
	Trails (Girdwood P & R Serv. Area)	24.	20,000
	Trails (Eagle River--Chugiak Serv. Area)	25.	40,000
KENAI PENINSULA BOROUGH	No Program Submitted		354,600
MATANUSKA-SUSITNA BOROUGH	Serivce Area #15 Caswell Road	26.	129,000
	Service Area #14 Fairview Road	27.	129,000
	Service Area #17 Knik Road	28.	129,000
	Service Area #21 Big Lake Road	29.	129,000
KODIAK ISLAND BOROUGH	King Crab Way/Spruce Road	30.	43,000
	Spruce Road	31.	43,000
	Peotter Drive Road Phase I	32.	44,800
CITY OF KENAI	Accumulating Funds for 1988		39,500
CITY OF SEWARD	Second Avenue Paving	33.	75,600
CITY OF HOMER	Kachemak Way Paving	34.	20,100
CITY OF SOLDOTNA	Endicott Drive, Chugach Drive and Brooks Street Drainage	35.	26,000
	Columbia Street, Lupine Street and Aspen Drive Drainage	36.	26,000
CITY OF SELDOVIA	Accumulation of Funds		4,300
CITY OF KODIAK	Accumulation of Funds		41,100
CITY OF PALMER	No Program Submitted		33,100
UNORGANIZED BOROUGH I			
NEW CHENEGA	Boardwalks	37.	60,000
WHITTIER	Railroad Lease Area Paving - Phase II	38.	266,000

*Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 1

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1987*		
MUNICIPALITY OF ANCHORAGE	Misc. Street & Pedestrian Improvements, (Anchorage Roads & Drainage Serv. Area)	39.	418,300
	Misc. Street & Pedestrian Improvements, (Hillside--Girdwood Area)	40.	133,000
	Misc. Street & Pedestrian Improvements, (Eagle River-Chugiak Area)	41.	137,000
	Trails (Anchorage P & R Serv. Area)	42.	170,000
	Trails (Girdwood P & R Serv. Area)	43.	20,000
	Trails (Eagle River--Chugiak Serv. Area)	44.	40,000
KENAI PENINSULA BOROUGH	Pipeline Road	45.	354,600
MATANUSKA-SUSITNA BOROUGH	Serivce Area #26 Greater Butte Road	46.	129,000
	Service Area #16 South Colony Road	47.	129,000
	Service Area #30 Trapper Creek Road	48.	129,000
	Service Area #28 Gold Trails Road	49.	129,000
KODIAK ISLAND BOROUGH	Peotter Drive Road Phase II		26,000
	Three Sisters Way	50.	26,000
	Stover Road	51.	26,000
	Greville/Sequel Road	52.	26,000
	S. Russian Creek Road	53.	26,800
CITY OF KENAI	Accumulating Funds for 1988		39,500
CITY OF SEWARD	Government Road Paving	54.	17,000
CITY OF HOMER	Hillside Campground Road Upgrade & Trail	55.	20,100
CITY OF SOLDOTNA	Fireweed Street, Banner Land & Crest Dr. Drainage and Edwards Court Resurfacing	56.	10,000
	Foothill Street Drainage and Upgrading of Karen Lane & Cody Court.	57.	10,000
CITY OF SELDOVIA	Accumulating Funds		4,300
CITY OF KODIAK	Accumulating Funds		41,100
CITY OF PALMER	No Program Submitted		33,100
UNORGANIZED BOROUGH I	Accumulating Funds for Whitter - Recreation Access Road		189,800

*Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 1

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1988*		
MUNICIPALITY OF ANCHORAGE	Misc. Street & Pedestrian Improvements, (Anchorage Roads & Drainage Serv. Area)	58.	418,300
	Misc. Street & Pedestrian Improvements, (Hillside--Girdwood Area)	59.	133,000
	Misc. Street & Pedestrian Improvements, (Eagle River-Chugiak Area)	60.	137,000
	Trails (Anchorage P & R Serv. Area)	61.	170,000
	Trails (Girdwood P & R Serv. Area)	62.	20,000
	Trails (Eagle River--Chugiak Serv. Area)	63.	40,000
KENAI PENINSULA BOROUGH	Taurianen Trail Road	64.	354,600
MATANUSKA-SUSITNA BOROUGH	Serivce Area #25 Bogard Road	65.	129,000
	Service Area #19 Lazy Mountain Road	66.	129,000
	Service Area #31 Alpine Road	67.	129,000
	Service Area #9 Midway Road	68.	129,000
KODIAK ISLAND BOROUGH	Vista View Drive	69.	32,000
	Beaver Lake Vista Road	70.	32,000
	Marmot Drive - Reconstruction	71.	32,000
	Woodland Drive - Reconstruction	72.	34,800
CITY OF KENAI	Standard, Richfield & Thompson Roads	73.	118,000
CITY OF SEWARD	Dimond Boulevard Paving	74.	17,000
CITY OF HOMER	Grubstake Avenue Design	75.	20,100
CITY OF SOLDOTNA	Trumpeter Avenue, Riverview & Hill Crest Lane Drainage	76.	20,000
CITY OF SELDOVIA	Accumulating Funds		4,300
CITY OF KODIAK	Accumulating Funds		41,100
CITY OF PALMER	No Program Submitted		33,100
UNORGANIZED BOROUGH I	Accumulating Funds for Whittier - Recreation Access Road		189,800

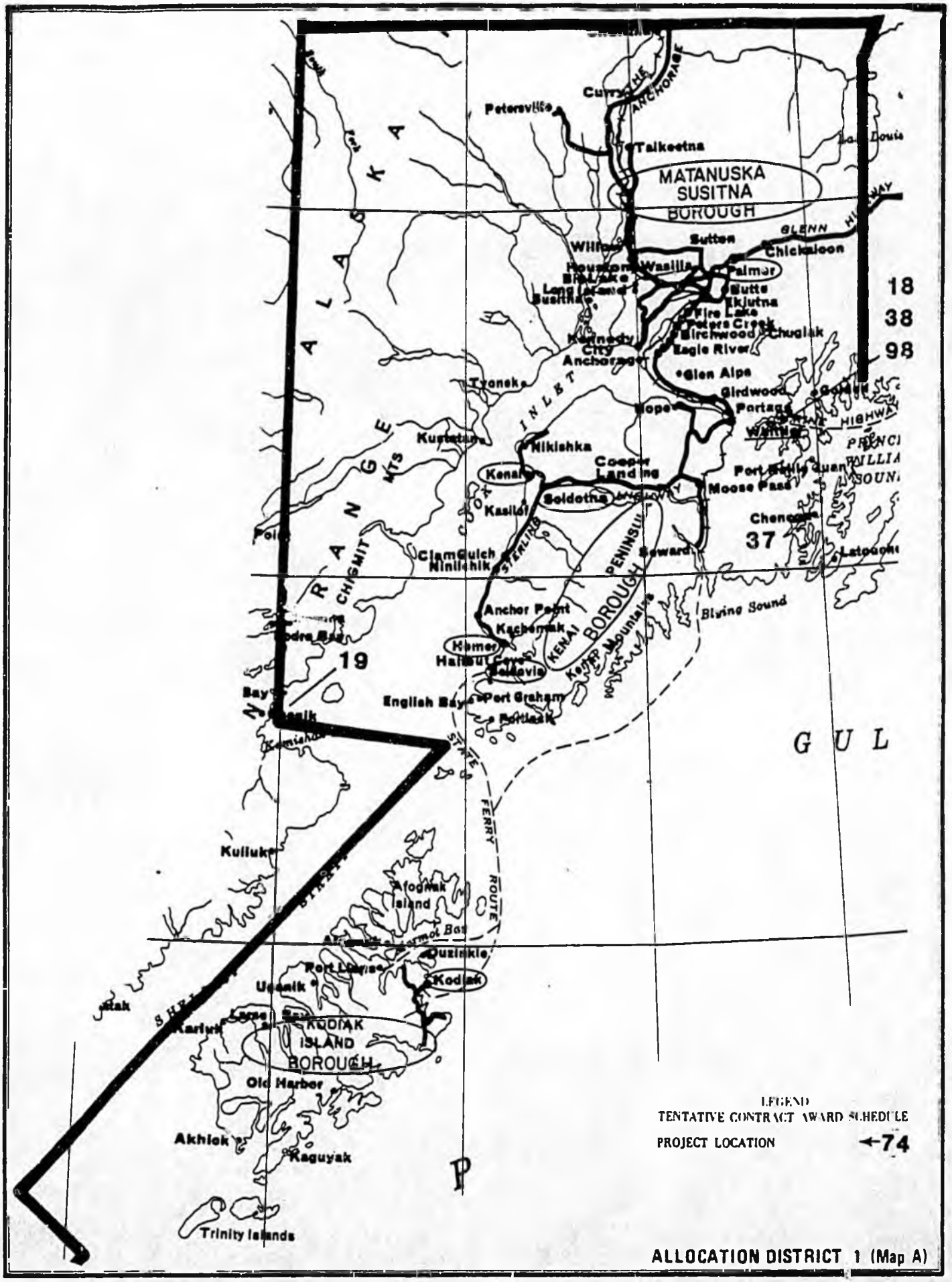
*Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

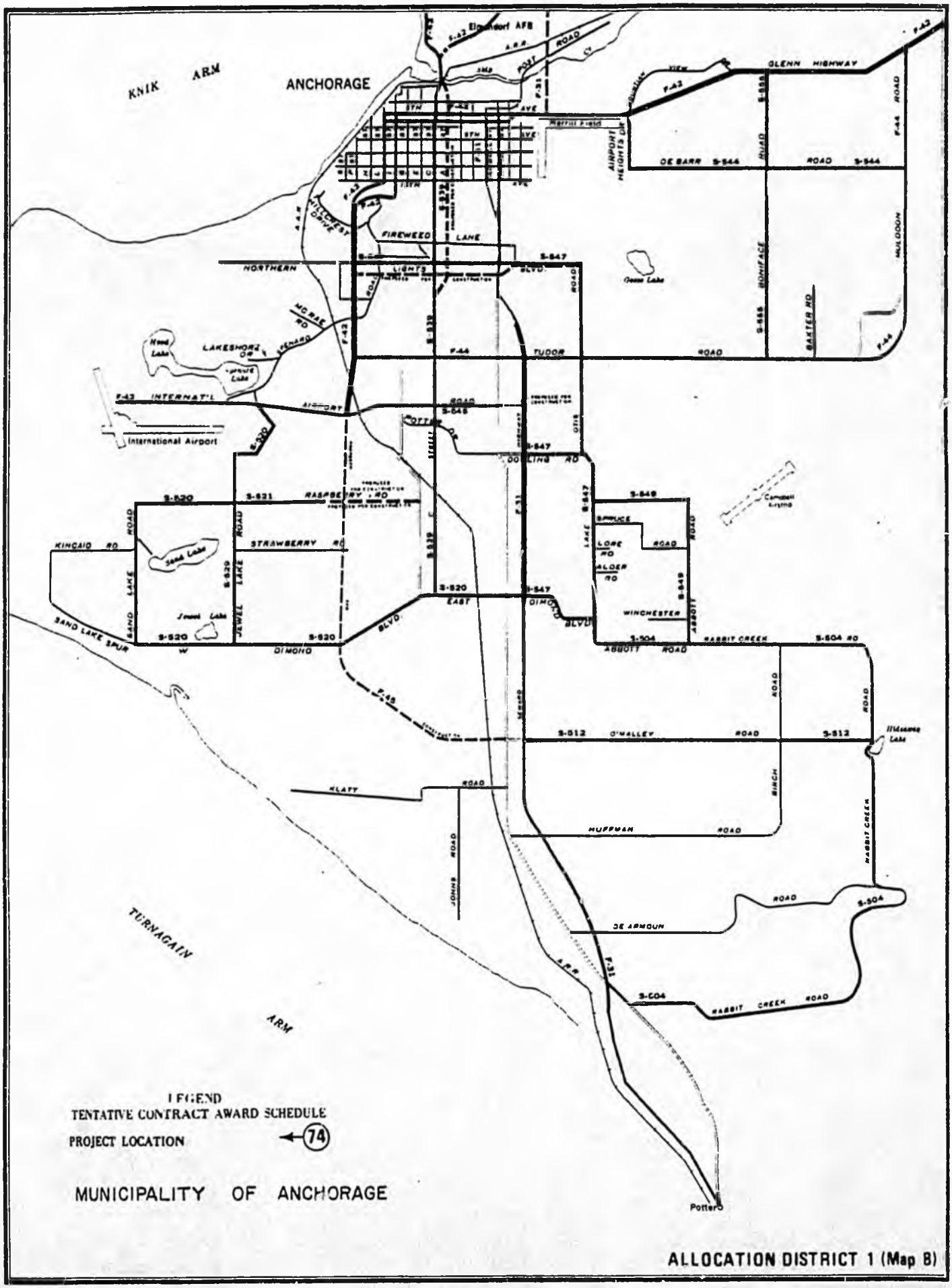
Allocation District 1

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1989*		
MUNICIPALITY OF ANCHORAGE	Misc. Street & Pedestrian Improvements, (Anchorage Roads & Drainage Serv. Area)	77.	418,300
	Misc. Street & Pedestrian Improvements, (Hillside--Girdwood Area)	78.	133,000
	Misc. Street & Pedestrian Improvements, (Eagle River-Chugiak Area)	79.	137,000
	Trails (Anchorage P & R Serv. Area)	80.	170,000
	Trails (Girdwood P & R Serv. Area)	81.	20,000
	Trails (Eagle River--Chugiak Serv. Area)	82.	40,000
KENAI PENINSULA BOROUGH	Accumulation of Funds		354,600
MATANUSKA-SUSITNA BOROUGH	Serivce Area #29 Greater Talkeetna Road	83.	129,000
	Service Area #27 Meadow Lakes Road	84.	129,000
	Service Area #23 North Colony Road	85.	129,000
	Service Area #20 Greater Willow Road	86.	129,000
KODIAK ISLAND BOROUGH	Peotter Drive - Phase III	87.	16,000
	Bells Flats Road	88.	16,000
	Middle Bay/Pauloff Circle	89.	16,000
	Woman's Bay Drive/Otter Road	90.	16,000
	Gara/Snek/Osin Road	91.	16,000
	Kodiak Avenue	92.	16,000
	Leta/Panamaroff Creek Road	93.	16,000
	Pillar/Beaver Road	94.	18,800
CITY OF KENAI	Accumulating Funds		39,500
CITY OF SEWARD	Railroad Avenue Paving	95.	17,000
CITY OF HOMER	Beluga Slough Trail	96.	20,100
CITY OF SOLDOTNA	Little Ave, Parkwood St, Leibrock St & Leibrock Circle Drainage	97.	21,000
CITY OF SELDOVIA	Accumulating Funds		4,300
CITY OF KODIAK	Accumulating Funds		41,100
CITY OF PALMER	No Program Submitted		33,100
UNORGANIZED BOROUGH I			
WHITTIER	Recreation Access Road	98.	569,300

*Unfunded with present allocations



ALLOCATION DISTRICT 1 (Map A)


KNIK ARM
ANCHORAGE
GLENN HIGHWAY
FIREWEED LANE
NORTHERN LIGHTS BLVD
INTERNATIONAL AIRPORT ROAD
International Airport
TUDOR ROAD
DIMOND BLVD
RASPBERRY ROAD
STRAWBERRY RD
KINCAID RD
SAND LAKE SPUR
ABBOTT ROAD
RABBIT CREEK ROAD
O'MALLEY ROAD
HUFFMAN ROAD
KLATT ROAD
DE ARMOUN ROAD
TURNAGAIN ARM
Potter
LEGEND
TENTATIVE CONTRACT AWARD SCHEDULE
PROJECT LOCATION
74
MUNICIPALITY OF ANCHORAGE
ALLOCATION DISTRICT 1 (Map B)

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 2

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1985		
FAIRBANKS NORTH STAR BOROUGH	Dawson Road	1.	
	Cripple Creek Road	2.	
	Rosie Creek Road	3.	
	Landfill/So. Cushman St. Ext.	4.	1,068,900
	Park Ridge Road	5.	
	Various Locations - Collection Roads and Arterials	6.	
NORTH SLOPE BOROUGH			
WAINWRIGHT	Community Roads	** 7.	187,500
CITY OF FAIRBANKS	No Program Submitted		76,600
CITY OF NORTH POLE	No Program Submitted		7,500
CITY OF NENANA	No Program Submitted		9,000
CITY OF TANANA	No Program Submitted		7,400
UNORGANIZED BOROUGH II			
HEALY-OTTO LAKE AREA	Road Construction	8.	250,000
JAN LAKE	Foot Trail	9.	150,000
VARIOUS LOCATIONS	Roads & Trails	10.	25,200

**Refer to Map A Allocation District 4

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 2

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1986*		
FAIRBANKS NORTH STAR BOROUGH	Various Locations - Collector Roads & Arterials	11.	565,400
NORTH SLOPE BOROUGH			
ATGASUK	Community Roads	** 12.	375,100
CITY OF FAIRBANKS	No Program Submitted		153,200
CITY OF NORTH POLE	No Program Submitted		5,000
CITY OF NENANA	No Program Submitted		6,000
CITY OF TANANA	No Program Submitted		5,000
UNORGANIZED BOROUGH II			
NORTHWAY	Village Streets	13.	250,000
BEAVER	Dump Site Road	14.	100,000
RAMPART	Local Roads	15.	100,000
MINTO	Village Streets	16.	100,000
VARIOUS LOCATIONS	Roads & Trails	17.	171,300

*Unfunded with present allocations

** Refer to Map A Allocation District 4

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 2

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1987*		
FAIRBANKS NORTH STAR BOROUGH	Various Locations - Collector Roads & Arterials	18.	565,400
NORTH SLOPE BOROUGH			
POINT LAY	Community Roads	** 19.	375,100
CITY OF FAIRBANKS	No Program Submitted		153,300
CITY OF NORTH POLE	No Program Submitted		5,000
CITY OF NENANA	No Program Submitted		6,000
CITY OF TANANA	No Program Submitted		5,000
UNORGANIZED BOROUGH II			
WISEMAN	Local Roads	20.	250,000
ANDERSON-NENANA	Local Roads	21.	200,000
CANTWELL-HEALY	Local Roads	22.	200,000
VARIOUS LOCATIONS	Roads & Trails	23.	71,300

* Unfunded with present allocations
** Refer to Map A Allocation District 4

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 2

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1988*		
FAIRBANKS NORTH STAR BOROUGH	Various Locations - Collector Roads & Arterials	24.	565,400
NORTH SLOPE BOROUGH			
POINT HOPE	Community Roads	** 25.	375,100
CITY OF FAIRBANKS	No Program Submitted		153,000
CITY OF NORTH POLE	No Program Submitted		5,000
CITY OF NENANA	No Program Submitted		6,000
CITY OF TANANA	No Program Submitted		5,000
UNORGANIZED BOROUGH II			
DELTA	Community Roads	26.	250,000
DOT LAKE	Community Roads	27.	150,000
TOK	Community Roads	28.	200,000
VARIOUS LOCATIONS	Roads & Trails	29.	121,300

* Unfunded with present allocations

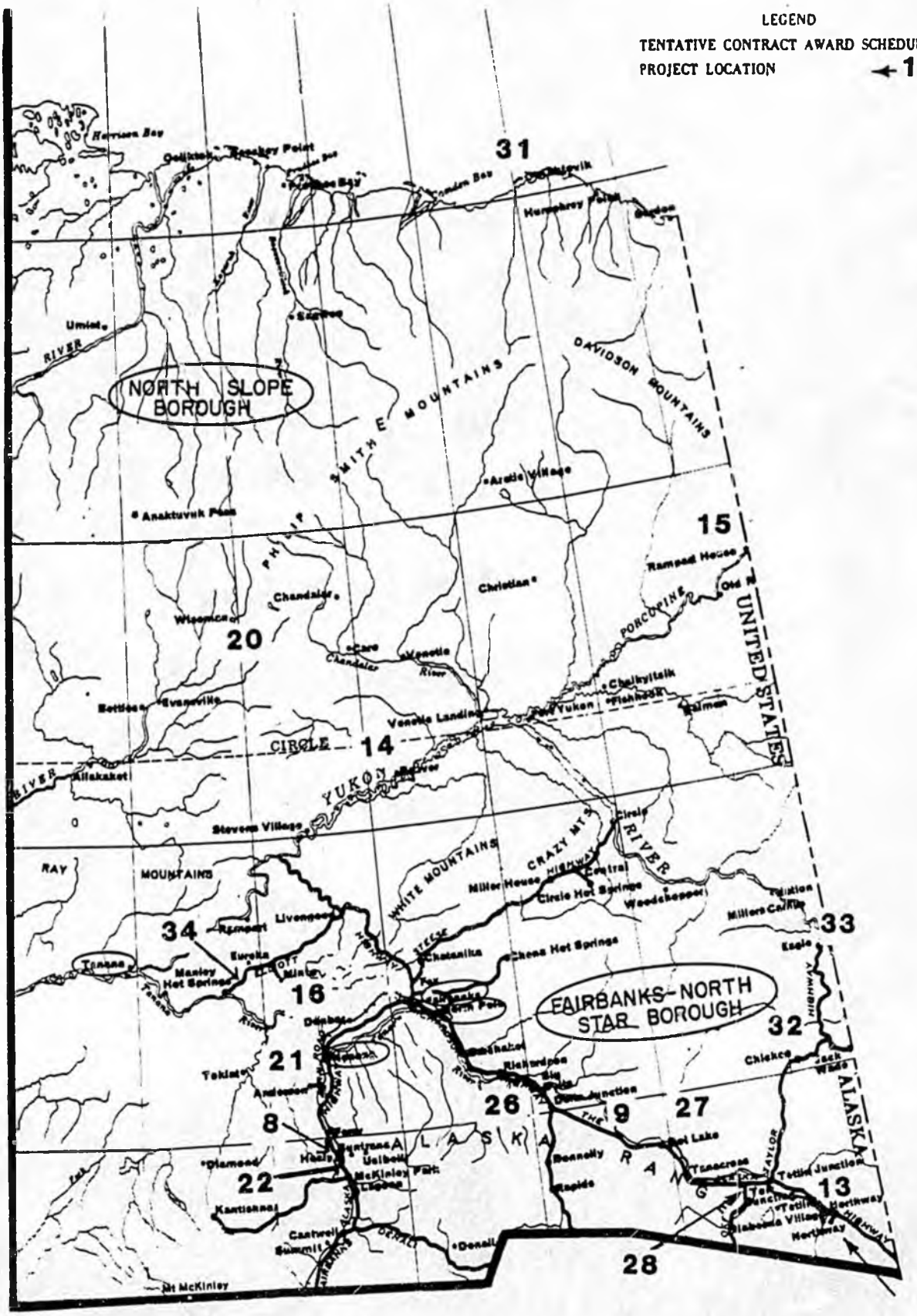
** Refer to Map A Allocation District 4

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 2

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1989*		
FAIRBANKS NORTH STAR BOROUGH	Various Locations - Collector Roads & Arterials	30.	565,400
NORTH SLOPE BOROUGH			
KAKTOVIK	Community Roads	31.	375,100
CITY OF FAIRBANKS	No Program Submitted		153,200
CITY OF NORTH POLE	No Program Submitted		5,000
CITY OF NENANA	No Program Submitted		6,000
CITY OF TANANA	No Program Submitted		5,000
UNORGANIZED BOROUGH II			
CHICKEN	Community Roads	32.	200,000
EAGLE	Community Roads	33.	200,000
TOFTY ROAD	Sullivan Creek Bridge	34.	321,300

* Unfunded with present allocations



ALLOCATION DISTRICT 2 (Map A)

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 3

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1985		
CITY & BOROUGH OF JUNEAU	Accumulating Funds for 1985		83,600
CITY & BOROUGH OF SITKA	Accumulating Funds for 1986		44,100
KETCHIKAN GATEWAY BOROUGH			
SAXMAN	Drainage Parking Area	1.	50,000
CITY OF KETCHIKAN	No Program Submitted		28,900
HAINES BOROUGH	Funds Utilized		
CITY OF HAINES	Tlingit Park Walkway	2.	5,000
CITY OF WRANGELL	Accumulating Funds		22,100
CITY OF PETERSBURG	8th Gauffin & Union Streets	3.	165,400
CITY OF PELICAN	Boardwalks	4.	1,800
CITY OF CRAIG	No Program Submitted		5,300
CITY OF SKAGWAY	Funds Utilized		
CITY OF YAKUTAT	Funds Utilized		
CITY OF KAKE	Streets	5.	5,500
CITY OF HOONAH	Accumulating Funds		6,700
CITY OF HYDABURG	No Program Submitted		2,900
CITY OF KLAWOCK	No Program Submitted		3,100
UNORGANIZED BOROUGH			
GUSTAVUS	Good River Bridge	6.	5,000
KASAAN	Trails	7.	10,000
TENAKEE	Tenakee Avenue	8.	45,000
VARIOUS LOCATIONS	Roads & Trails	9.	113,600

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 3

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1986		
CITY & BOROUGH OF JUNEAU	Accumulating Funds for 1988		156,000
CITY & BOROUGH OF SITKA	Kashevaroff Street	10.	19,000
	Guardrail - Wolff & Jamestown Drive	11.	22,000
KETCHIKAN GATEWAY BOROUGH	Pave Rotary Beach Parking	12.	22,000
CITY OF KETCHIKAN	Ketchikan Creek Trail - Phase I	13.	27,000
HAINES BOROUGH	Chilkat Lake Road	14.	24,000
CITY OF HAINES	Park Trail	15.	10,100
CITY OF WRANGELL	Church, Episcopal & Howell Streets	16.	36,000
CITY OF PETERSBURG	Accumulating Funds		19,000
CITY OF PELICAN	Boardwalk	17.	1,200
CITY OF CRAIG	Watertank road	18.	3,600
CITY OF SKAGWAY	Boardwalk & Surfacing	19.	8,900
CITY OF YAKUTAT	Roadway Topping	20.	3,000
CITY OF KAKE	Upgrade Cemetery Road	21.	3,700
CITY OF HOONAH	Accumulating Funds		4,500
CITY OF HYDABURG	No Program Submitted		2,000
CITY OF KLAWOCK	No Program Submitted		2,100
UNORGANIZED BOROUGH			
HYDER	5th Street	22.	29,000
TENAKEE	Trails & Footbridges	23.	30,000
THORNE BAY	Street Improvements	24.	32,000
KASAAN	Street Improvements	25.	50,000
ANGOON	Relay Road	26.	30,000
EDNA BAY	Boardwalk	27.	30,000
PORT PROTECTION	Boardwalk	28.	25,000
VARIOUS LOCATIONS	Roads & Trails		69,000

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 3

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1987		
CITY & BOROUGH OF JUNEAU	Accumulating Funds for 1988		156,000
CITY & BOROUGH OF SITKA	Jarvis Street	29.	55,000
KETCHIKAN GATEWAY BOROUGH	No Program Submitted		58,000
CITY OF KETCHIKAN	Ketchikan Creek Trail Phase II	30.	27,000
HAINES BOROUGH	Chilkat Lake Road	31.	24,000
CITY OF HAINES	No Program Submitted		10,100
CITY OF WRANGELL	Peninsula Street	32.	14,700
CITY OF PETERSBURG	Accumulating Funds		19,000
CITY OF PELICAN	Boardwalks	33.	1,200
CITY OF CRAIG	Spruce Street	34.	3,600
CITY OF SKAGWAY	Boardwalk & Surfacing	35.	8,900
CITY OF YAKUTAT	Road Surfacing	36.	3,000
CITY OF KAKE	Stairway	37.	3,700
CITY OF HOONAH	Accumulating Funds		4,500
CITY OF HYDABURG	No Program Submitted		2,000
CITY OF KLAWOCK	No Program Submitted		2,100
UNORGANIZED BOROUGH			
ELFIN COVE	Boardwalk	38.	30,000
PORT ALEXANDER	Boardwalk	39.	25,000
KUPREANOF	Trail - Phase II	40.	40,000
VARIOUS LOCATIONS	Roads & Trails	41.	200,000

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 3

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1988		
CITY & BOROUGH OF JUNEAU	7th Street Retaining Wall	42.	546,000
CITY & BOROUGH OF SITKA	Price Street	43.	20,000
	Beardslee Street	44.	50,000
KETCHIKAN GATEWAY BOROUGH	No Program Submitted		58,000
CITY OF KETCHIKAN	Trails	45.	27,000
HAINES BOROUGH	Chilkat Lake Road	46.	12,000
	Battery Piont Road	47.	12,000
CITY OF HAINES	No Program Submitted		10,100
CITY OF WRANGELL	Reid Street	48.	14,700
CITY OF PETERSBURG	Accumulating Funds	49.	19,000
CITY OF PELICAN	Boardwalk	50.	1,200
CITY OF CRAIG	Port Bagail Blvd.	51.	3,600
CITY OF SKAGWAY	No Program Submitted		8,900
CITY OF YAKUTAT	Monti Bay Heights	52.	3,000
CITY OF KAKE	Trails	53.	3,700
CITY OF HOONAH	Accumulating Funds		4,500
CITY OF HYDABURG	No Program Submitted		2,000
CITY OF KLAWOCK	No Program Submitted		2,100
UNORGANIZED BOROUGHS			
TENAKEE	Trails & Bridges	54.	30,000
HYDER	5th Street	55.	25,000
VARIOUS LOCATIONS	Roads & Trails	56.	240,000

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 3

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T S (DOLLARS)
	Fiscal Year 1989		
CITY & BOROUGH OF JUNEAU	Gastineau Avenue - Retaining Wall	57.	156,000
CITY & BOROUGH OF SITKA	Cascade Creek Road	58.	75,000
KETCHIKAN GATEWAY BOROUGH	No Program Submitted		58,000
CITY OF KETCHIKAN	Trails	59.	27,000
HAINES BOROUGH	Battery Point Road	60.	24,000
CITY OF HAINES	No Program Submitted		10,100
CITY OF WRANGELL	Reid Street	61.	14,700
CITY OF PETERSBURG	Accumulating Funds		19,000
CITY OF PELICAN	Boardwalk	62.	1,200
CITY OF CRAIG	Cold Storage Road	63.	3,600
CITY OF SKAGWAY	No Program Submitted		8,900
CITY OF YAKUTAT	Hemlock Street	64.	3,000
CITY OF KAKE	Trails	65.	3,700
CITY OF HOONAH	Lumbago Road	66.	24,700
CITY OF HYDABURG	No Program Submitted		2,000
CITY OF KLAWOCK	No Program Submitted		2,100
UNORGANIZED BOROUGH			
VARIOUS LOCATIONS	Roads & Trails	67.	295,000



LEGEND

TENTATIVE CONTRACT AWARD SCHEDULE

PROJECT LOCATION ←74

ALLOCATION DISTRICT 3

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 4

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1985		
	CENTRAL REGION		
BRISTOL BAY BOROUGH	Funds Expended		
CITY OF DILLINGHAM	No Program Submitted		45,000
CITY OF KING COVE	No Program Submitted		13,200
CITY OF ST. MARY'S	Accumulating Funds for 1986		11,200
CITY OF SAND POINT	Accumulating Funds for 1986		18,000
CITY OF UNALASKA	Funds Expended		
UNORGANIZED BOROUGH IV (SOUTH)			
CHIGNIK BAY	Streets and Bridge	1.	70,000
CLARKS POINT	Roads Erosion Control	2.	30,000
NONDALTON	Streets	3.	50,000

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 4

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSRAT FUNDS (DOLLARS)
	Fiscal Year 1985		
	NORTHERN REGION		
CITY OF BARROW	No Program Submitted		39,900
CITY OF NOME	No Program Submitted		87,400
CITY OF GALENA	No Program Submitted		9,700
UNORGANIZED BOROUGH IV (NORTH)			
AREA WIDE	Winter Trail Staking	4.	63,000
AREA WIDE	Reconnaissance, Administration and Construction Equipment	5.	84,700
KOYUK	Roads	6.	30,000
SAINT MICHAEL	Streets	7.	100,000

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 4

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1986*		
	CENTRAL REGION		
BRISTOL BAY BOROUGH	Accumulating Funds		25,600
CITY OF DILLINGHAM	No Program Submitted		30,000
CITY OF KING COVE	Ram Creek Boardwalk Phase I	8.	20,000
CITY OF ST. MARY'S	Reconstruct & Surface City Streets	9.	18,800
CITY OF SAND POINT	Boardwalk	10.	15,000
CITY OF UNALASKA	Accumulating Funds for 1989		25,400
UNORGANIZED BOROUGH IV (SOUTH)			
CHIGNIK LAKE	Streets	11.	400,000
CHIGNIK BAY	Streets & Bridge	12.	30,000
MANOKOTAK	Roads	13.	100,000
NONDALTON	Streets	14.	50,000
PEDRO BAY	Trail & Bridges	15.	150,000
PERRYVILLE	Safety	16.	13,000
TAKOTNA	Streets Phase I	17.	130,000

* Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 4

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1986*		
	NORTHERN REGION		
CITY OF BARROW	No Program Submitted		79,800
CITY OF NOME	No Program Submitted		58,200
CITY OF GALENA	No Program Submitted		19,400
UNORGANIZED BOROUGH IV (NORTH)			
AREA WIDE	Winter Trail Stalking	18.	110,000
AREA WIDE	Reconnaissance Administration & Construction Equipment	19.	201,200
SAINT MICHAEL	Streets	20.	200,000
STEBBINS	Roads	21.	20,000
GOLOVIN	Streets	22.	20,000

* Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 4

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1987*		
	CENTRAL REGION		
BRISTOL BAY BOROUGH	Accumulating Funds		25,600
CITY OF DILLINGHAM	No Program Submitted		30,000
CITY OF KING COVE	Ram Creek Boardwalk Phase II	23.	11,000
CITY OF ST. MARY'S	Construct City Streets	24.	2,500
CITY OF SAND POINT	Accumulating Funds		22,300
CITY OF UNALASKA	Accumulating Funds for 1989		25,400
UNORGANIZED BOROUGH IV (SOUTH)			
LEVELOCK	Streets	25.	450,000
CHIGNIK BAY	Streets & Bridge	26.	150,000
EKWOK	Streets	27.	150,000
MANOKOTAK	Roads	28.	100,000
TAKOTNA	Streets Phase II	29.	40,000

* Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 4

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1987*		
	NORTHERN REGION		
CITY OF BARROW	No Program Submitted		79,800
CITY OF NOME	No Program Submitted		58,200
CITY OF GALENA	No Program Submitted		19,400
UNORGANIZED BOROUGH IV (NORTH)			
AREA WIDE	Winter Trail Staking	30.	110,000
AREA WIDE	Reconnaissance & Administration	31.	61,200
GOLOVIN	Streets	32.	280,000
WHITE MOUNTAIN	Streets	33.	100,000

* Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 4

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1988*		
	CENTRAL REGION		
BRISTOL BAY BOROUGH	Accumulating Funds		25,600
CITY OF DILLINGHAM	No Program Submitted		30,000
CITY OF KING COVE	Accumulating Funds		8,800
CITY OF ST. MARY'S	Road to Cemetary	34.	7,500
CITY OF SAND POINT	Accumulating Funds		12,000
CITY OF UNALASKA	Accumulation of funds for 1989		25,400
UNORGANIZED BOROUGH IV (SOUTH)			
EEK	Boardwalks & Shelter Cabins	35.	150,000
EKWOK	Streets	36.	150,000
LEVELOCK	Streets	37.	230,000
MARSHALL	Streets	38.	340,000

* Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 4

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1988*		
	NORTHERN REGION		
CITY OF BARROW	No Program Submitted		79,800
CITY OF NOME	No Program Submitted		58,200
CITY OF GALENA	No Program Submitted		19,400
UNORGANIZED BOROUGH IV (NORTH)			
AREA WIDE	Winter Trail Staking	39.	110,000
AREA WIDE	Reconnaissance & Administration	40.	61,200
WHITE MOUNTAIN	Streets	41.	200,000
BUCKLAND	Streets	42.	180,000

* Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 4

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1989*		
	CENTRAL REGION		
BRISTOL BAY BOROUGH	Accumulating Funds		25,600
CITY OF DILLINGHAM	No Program Submitted		30,000
CITY OF KING COVE	Accumulating Funds		8,800
CITY OF ST. MARY'S	Construct Subdivision Road	43.	7,500
CITY OF SAND POINT	Accumulating Funds		12,000
CITY OF UNALASKA	Construction Road Agnes Beach to Town Creek Bridge	44.	65,800
	Bike Trails & Foot Paths	45.	10,400
UNORGANIZED BOROUGH IV (SOUTH)			
BETHEL	Streets	46.	200,000
BETHEL	Trail Markers	47.	60,000
EGEGIK	Streets	48.	200,000
TOKSOOK BAY	Road Construction	49.	250,000

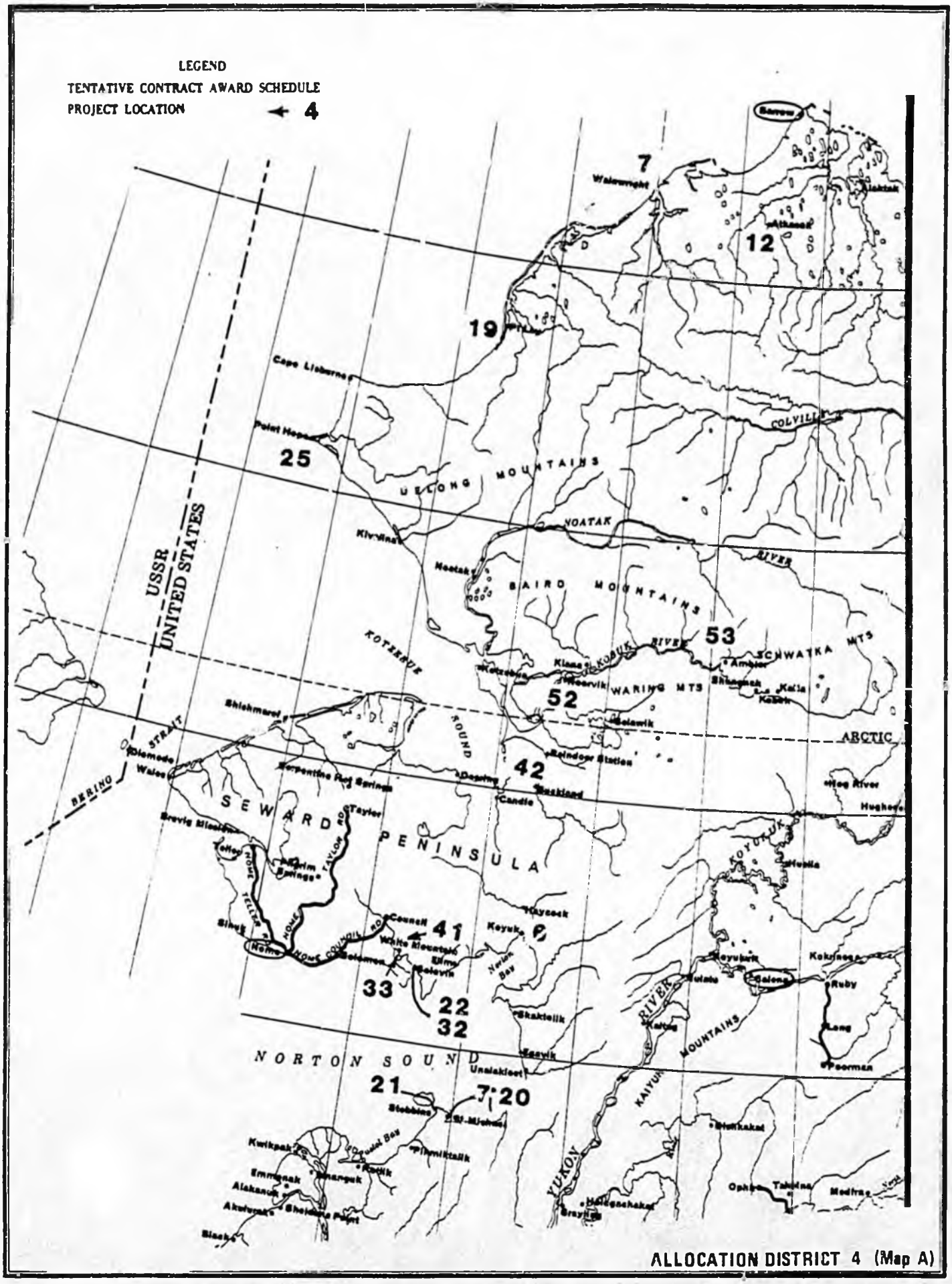
* Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

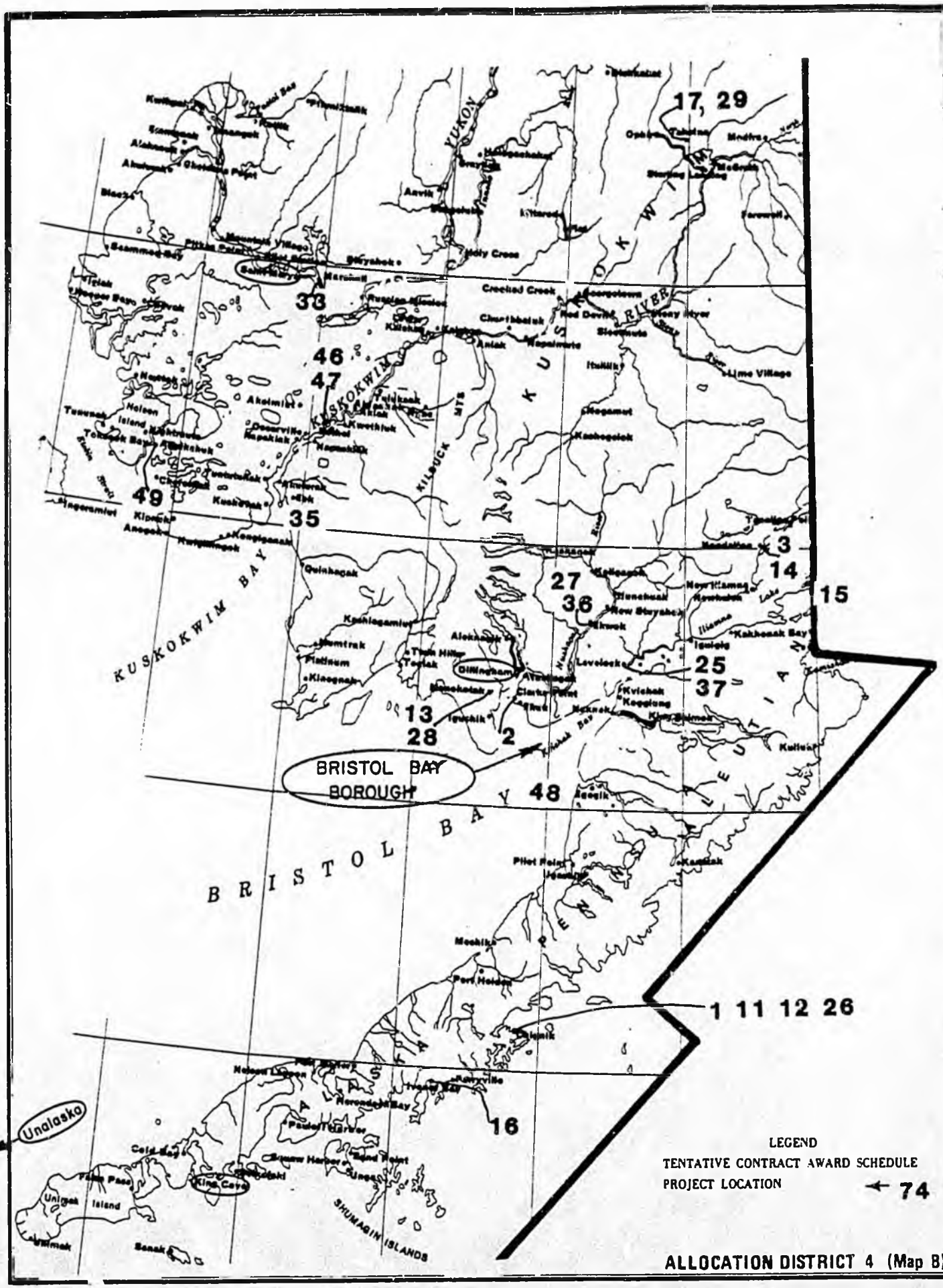
Allocation District 4

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1989*		
	NORTHERN REGION		
CITY OF BARROW	No Program Submitted		79,800
CITY OF NOME	No Program Submitted		58,200
CITY OF GALENA	No Program Submitted		19,400
UNORGANIZED BOROUGH IV (NORTH)			
AREA WIDE	Winter Trail Stalking	50.	100,000
AREA WIDE	Reconnaissance & Administration	51.	71,200
NOORVIK	Streets	52.	200,000
AMBLER	Roads	53.	180,000

*Unfunded with present allocation



ALLOCATION DISTRICT 4 (Map A)



ALLOCATION DISTRICT 4 (Map B)

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 5

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1985		
	CENTRAL REGION		
CITY OF CORDOVA	Accumulating Funds for 1989		78,600
UNORGANIZED BOROUGH V (SOUTH)	Accumulating Funds for 1989		86,700
	NORTHERN REGION		
CITY OF VALDEZ	Robe River Bike Path	1.	102,400
UNORGANIZED BOROUGH V (NORTH)			
TAZLINA	Terrace Access Road	2.	150,000
GLENNALLEN	Terrace Drive Subdivision Road	3.	91,800

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 5

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1986*		
	CENTRAL REGION		
CITY OF CORDOVA	Accumulating Funds for 1989		24,700
UNORGANIZED BOROUGH V (SOUTH)	Accumulating Funds for 1989		36,200
	NORTHERN REGION		
CITY OF VALDEZ	No Program Submitted		68,300
UNORGANIZED BOROUGH V (NORTH)			
COPPERVILLE	Streets	4.	100,000
WORTHINGTON GLACIER	Access Road	5.	87,700

* Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 5

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1987*		
	CENTRAL REGION		
CITY OF CORDOVA	Accumulating Funds for 1989		24,700
UNORGANIZED BOROUGH V (SOUTH)	Accumulating Funds for 1989		36,200
	NORTHERN REGION		
CITY OF VALDEZ	No Program Submitted		68,300
UNORGANIZED BOROUGH V (NORTH)			
TSINA LAKE	Access Road	6.	187,700

* Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 5

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1988*		
	CENTRAL REGION		
CITY OF CORDOVA	Accumulating Funds for 1989		24,700
UNORGANIZED BOROUGH V (SOUTH)	Accumulating Funds for 1989		36,200
	NORTHERN REGION		
CITY OF VALDEZ	No Program Submitted		68,300
UNORGANIZED BOROUGH V (NORTH)			
COPPER CENTER	Local Roads	7.	187,700

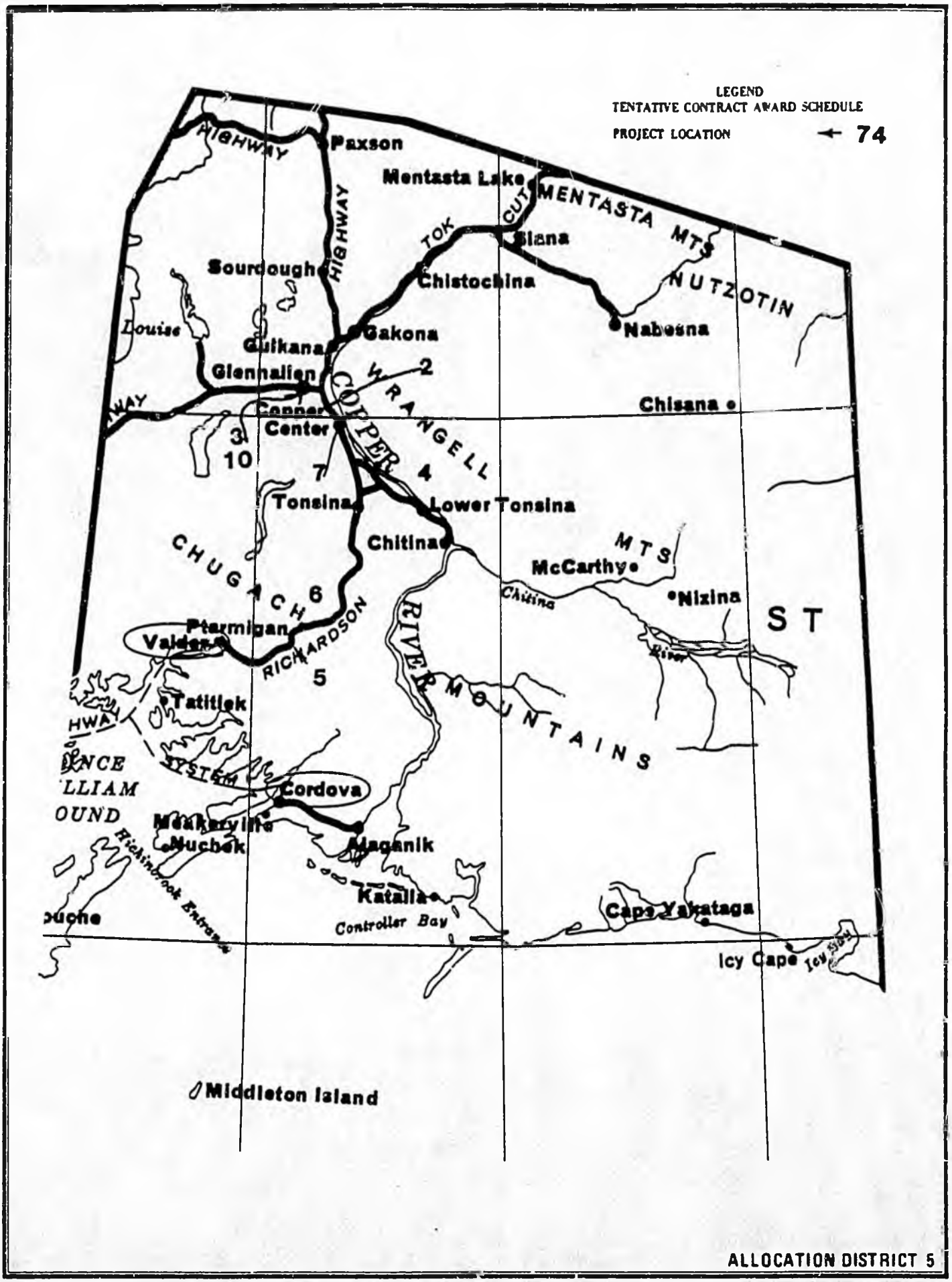
* Unfunded with present allocations

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
LOCAL SERVICE ROADS AND TRAILS

Allocation District 5

PROJECT LOCATION	PROJECT DESCRIPTION	PROJECT NUMBER	LSR&T FUNDS (DOLLARS)
	Fiscal Year 1989*		
	CENTRAL REGION		
CITY OF CORDOVA	Railroad Avenue Realignment & Paving	8.	177,400
UNORGANIZED BOROUGH V (SOUTH)			
EYAK LAKE	Access Road	9.	228,400
	NORTHERN REGION		
CITY OF VALDEZ	No Program Submitted		68,300
UNORGANIZED BOROUGH V (NORTH)			
GLENNALLEN	Local Roads	10.	187,700

* Unfunded with present allocations



ALLOCATION DISTRICT 5

HB

128

FILE #1

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☑ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 21, 1985

The Honorable Richard Shultz
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Re: HB 128 (Mental Health Trust Lands)

Dear Representative Shultz:

At the House Resources hearing yesterday on HB 128, relating to mental health trust lands, some interest was expressed by committee members in seeing the results of DNR appraisals on the lands. Last week DNR completed the preliminary appraisals, for the mental health lands in state ownership as of their redesignation as general grant lands in 1978. By May 15, DNR will have a final appraisal, including mental health lands on which third party interests were created before 1978.

The appraisal documents are court-ordered discovery requested by the plaintiffs' attorney, Stephen Cowper of Fairbanks. We are willing to release the documents to the committee, but since they are still privileged attorney/client materials not yet filed with the court, we must ask that Mr. Cowper's agreement be secured first. As soon as that agreement is received, we will be happy to deliver to the committee the appraisal summaries to date.

We regret that because of time constraints we were not able to present our position on HB 128 to the committee yesterday. We are available to discuss it with any member who wishes to hear our views.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Douglas K. Mertz
Douglas K. Mertz
Assistant Attorney General

DKM:dlm
cc: Stephen Cowper, Esq.

03-C5LH

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

March 21, 1985

TO: Representative Mike Miller
Chairman, House Judiciary

FROM: Representative Dick Shultz
Co-Chair, House Resources

SUBJ: HB 128: Mental Health Lands

The Resources Committee has had under consideration HB 128 and has reported the bill out of committee. This legislation which deals with the topic of mental health lands is fairly straight forward, however, there was one question raised by Representative Thompson that DNR has promised to try and answer. In the interest of time Resources members decided to move this bill on to your committee after DNR indicated they would provide, if possible, the total value of the mental health lands in question. Deputy Commissioner Bob Arnold from DNR stated that the Department has calculated the value, however, he was not sure that it could be released to the legislature because of the present litigation of this issue. I would encourage you as Chairman to follow through and obtain the mental health land values if at all possible. It is a question that needs to be answered before it goes to the floor and it is one that both Representative Thompson and other members of the Resources Committee feel is relevant to this difficult issue.

Rep. Dick Shultz, Co-Chair

Rep. Adelheid Herrmann, Co-Chair

Rep. May Wallace, Vice-Chair

Rep. Bette Cato

Rep. Mike Miller

Rep. David Thompson

Rep. John Sund

Rep. Roger Jenkins

Rep. Drue Pearce

TESTIMONY

Representative Marco A. Pignalberi

House Resources Committee

HB 128 Mental Health Trust

March 20, 1985

TABLE OF CONTENTS

HB 128

	PAGE #
Testimony Comments Representative Marco Pignalberi	1
Historical Perspective and Court Suit Summary	3
Letter, Commissioner Health & Social Services	6
Chronology, Mental Health Trust	8
Department of Natural Resources Mental Health Land Grant Fact Sheet	11
Position Paper, Alaska Mental Health Association	12
State Mental Health Program, 1984	18
Minutes, House Health Education and Social Services Committee Meeting, Needs Assessment 2/26/85	23
Mental Health Services in the State of Alaska Trend Analysis; Alaska Dept. of Health & Social Services	32
Excerpts of Two Decades of Unanimous State Legal Opinion Supporting Position... Mental Health Lands	49

Testimony by Representative Marco A. Pignalberi
House Resources Committee on HB 128
March 20, 1985

Mr. Chairman, members of the Committee, let me repeat the last provision of the Supreme Court ruling: the Trust is entitled to be reimbursed by the state of Alaska for the fair market value of the mental health trust lands.

WHAT DOES THIS MEAN TO THE STATE OF ALASKA?

What this means to the State is that Alaska is facing a potential liability of immense proportions. Several estimates of reimbursement have ranged upwards of five billion dollars! Unlike other states which received mental health lands from the Federal Government by each section 16 & 32 in every township, Alaska was able to select whatever million acres it wanted in whatever part of the state it wanted.

Accordingly, the state selected prime real estate in most of the major population areas of the state. No mountain tops or barren tundra was selected. Examples of lands that were selected and are now subject to fair market appraisal for reimbursement to the Trust include valuable acreage in the Swanson River oil and gas field, Beluga Coal field, Trans Alaska Gasline System project, Eklutna water project and the Kachemak Bay State Park. Additionally, other mental health lands have already been conveyed to municipalities in fulfillment of their entitlement programs. You can look at the map I've brought and see exactly where the impacted areas are located.

What this means is the state is faced with a staggering liability. If a negotiated settlement is not reached between the parties of the suit, it is possible that the court will mandate a settlement. If this occurs, the state may be required to establish a mental health trust account and deposit a specific amount of money to be maintained as a trust fund exclusively for mental health purposes. It could be the equivalent of transferring the amount in the Alaska Permanent Fund to the mental health trust account.

Is this a possibility? Yes. There are many who believe it is a distinct possibility due to the dismal performance of the state in funding mental health programs. Although there is no clear definition of just what constitutes a "mental health program", the Department of Health & Social Services budget for Alaska Psychiatric Institute, Community Mental Health Centers and all administrative services total only just over 22 million dollars.

Testimony Rep. Marco Pignalberi
March 20, 1985

According to testimony by the Commissioner of Health & Social services, Alaska is serving only a third of the people with mental health needs. A study by the U.S. Dept. of Health & Human Services, 1983 found that Alaska ranks last among the fifty states in a number of mental health service areas. Not only is our state the poorest in the nation in funding mental health programs, but we spend less than one-half as much as the next poorest state, and less than one-sixth of the national average.

Alaska has such a poor track record in funding mental health programs that if the court steps in to establish a trust fund settlement, Alaska may be required to substantially increase these program funds as well as transfer billions of dollars into a special trust account.

This bill would prevent the state from making a bad situation worse by stopping the disposition of any more trust lands.

The background files on this issue are voluminous. Attached are summary papers prepared by parties with different viewpoints. I think they are good chronological synopsis of the issues. Thank you

Rep. Marco Pignalberi
Hearing Comments

Historical perspective:

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act which transferred the fiscal and functional responsibility for activities in the field of mental health from the Federal Government to the Territory.

To ensure that the Territory had adequate financial resources to discharge the responsibilities in the mental health field, the Congress granted Alaska one million acres of federal lands. These lands are located in Interior, Southcentral and Southeastern Alaska. The enabling Act stated:

> "...all lands granted to the Territory under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income and proceeds shall be managed and utilized in such manner as the legislature of Alaska may provide..."

The state did not establish and maintain a separate account into which income or proceeds derived from mental health lands were deposited. Then in 1978, the State redesignated mental health lands as general grant lands and changed the record method of accounting for income from public lands.

Rep. Marco Pignalberi
Hearing Comments

Superior Court Class Action Suit

In 1982 a class action court suit was filed by the Alaska Mental Health Association. It filed the suit for "all persons who are residents of the State of Alaska and who will require mental health services in the future which are not available in the state.

The Superior Court entered a partial summary judgement in June 1983 which found that the state was not required to invalidate prior legislative action but was required to compensate the trust for fair market value of the lands in question. A year later, in September 1984, the Superior Court ruled in Final Summary Judgement that:

1) the Alaska Mental Health Enabling Act "established a public trust for the benefit of the mentally ill in Alaska;"
2) "the approximately one million acres of land granted to the state was dedicated for the use and benefit of the mentally ill in Alaska;"
3) Chapters 181 and 182, SLA 1978, effectively removed lands from the trust established by the federal Act;
4) invalidation of the state legislation was an improper remedy; and
5) "the trust is entitled to be reimbursed by the State of Alaska for the fair market value of the mental health trust lands."

Introduced: 1/25/85
Referred: Resources, Judiciary
and Finance

IN THE HOUSE

BY PIGNALBERI, GRUENBERG, BOUCHER, JENKINS, KOPONEN AND TAYLOR

HOUSE BILL NO. 128

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to mental health trust lands; and providing for an effective date."

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

* Section 1. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.880. DISPOSITION OF STATE MENTAL HEALTH TRUST LANDS. The state may not convey or otherwise dispose of land owned in fee by the state that was received from the federal government under sec. 202 of the Alaska Mental Health Enabling Act of 1956 (P.L. 84-830).

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE:
465-3030

March 19, 1985

The Honorable Marco Pignalberi
Alaska State House
Pouch V
Juneau, Alaska 99811

Dear Representative Pignalberi:

The Department of Health and Social Services, Division of Mental Health and Developmental Disabilities, provides core services for mentally ill persons through a grant-funded network of community mental health centers and the State-operated Alaska Psychiatric Institute (API). Alaska statutes which give authority to the Department to provide mental health services do not define these services in explicit, all inclusive language. They speak in terms of "carrying out a comprehensive mental health program" and "treatment of the mentally ill." Mental illness is defined in AS 47.30.915 and related words and processes also are defined which apply to the delivery of mental health care, but we are left uninformed about when a service, such as is delivered by a public school counselor, becomes a mental health service.

The Alaska Administrative Code 7 AAC 71.135 defines the populations which will be served by grant-funded community mental health centers, and establishes the prioritized order in which these populations are to receive service:

1) acutely disturbed persons,
2) chronically, severely disturbed persons,
3) children and adolescents,
4) other persons or agencies requiring direct mental health intervention, and
5) other persons or agencies requiring non-direct mental health intervention.

In addition to these populations the centers are, in priority, to provide evaluation services and treatment services which emphasize a brief therapy

and crisis intervention model including the following:

a) 24-hour inpatient voluntary and involuntary psychiatric treatment; and
b) outpatient care including crisis and 24-hour emergency services, individual counseling/psychotherapy, group counseling/psychotherapy, case management and supportive care for chronic patients, referral services to other agencies, and consultation and education services.

The services just cited are basic core mental health services which the State is now providing and they can be financially quantified, i.e., appropriations are made each year for these specific services. We will furnish dollar amounts for any period in which you may have an interest.

The issue of what to include in the expanded, all inclusive scope of mental health services and the calculation of the costs of these services is very complex. As an example, services to persons who are developmentally disabled were included as a mental health type service and continue to be included in some presentations, as are counseling services available to substance and alcohol abuse clients. Dollar descriptions of these services are relatively easy to capture. Another more bothersome dimension to the problem is the school counselor or social worker, public health nurse, etc., who may spend part of their time doing "mental health work" but do not record this fact in any logical format. The vocational training efforts and the special education programs sponsored by State and local school systems likewise present a similar dilemma. Is theirs a mental health service and if so, what percent of the total cost is captured as the mental health effort?

In the utilization of mental health land trust funds the statute states that the income of the fund will not be appropriated for a purpose other than the support of the State mental health program (AS 47.14.040). There is no definition of the "the State mental health program". Consequently, there is no clear legislative direction as to what should be funded if the appropriation was made from the trust income.

Please let me know if there are any specific programs for which you need cost data.

Sincerely,

John R. Pugh
Commissioner

MENTAL HEALTH ANNOTATED CHRONOLOGY

1) 1956 - Mental Health Enabling Act
[1956 Public Law 830, Title II, Sec. 202, July 28, 1956]

a. Granted 1 million acres of land, including mineral rights, to Territory of Alaska as base for a public trust.

b. Established a public trust for the mentally ill in Alaska of the above lands and any income generated by these lands. Monies left over after mental health program costs were met could be used for other public needs. (A 12/7/68 memo from Peter Froelich, Assistant AG, states that this statute "neither required a dedicated or permanent fund nor created a true trust as did the statutes when granted school land.")

2) 1958 - Alaska Statehood Act, Sec. 6 (k) [1958 Public Law 85-508], reconfirmed the grant and transferred the grant from the territory to the state.

3) 1964 - "Selection of Mental Health School and University Lands by Boroughs", 1964 Opinions of the Attorney General No. 7, (Warren C. Colver), concluded that mental health and university lands were not unappropriated and unreserved (having been appropriated and reserved to support the designated programs) and therefore could not be selected by boroughs.

4) 1967 - An informal attorney general's opinion (memorandum) was issued by Deputy Attorney General Edward Reasor on "Mental Health Lands Exchange". This memorandum concluded that the state could exchange mental health lands for general grant lands as long as the exchange was for legitimate state purpose, the integrity of the trust was preserved, and the exchange supported the mental health program (it did not deal with the severance of estate issue).

5) 1976 - According to Dr. Jerry Shrader in an article for "Coping" magazine (see #8) a Mental Health Land Board was created within DHSS, Division of Mental Health. I can find no evidence in statutes.

6) 1978 - New state legislation dealing with redesignation of mental health, school and university lands was passed. (Chapters 180, 181 and 182, Alaska Session Law 1978). Chapter 180 allowed for the municipal selection of mental health land subject to "DNR-led" land exchange. Chapters 181 and 182 redesignated mental health land as general grant land effective July 1, 1978 (the bill was signed July 18, 1978). The effect of chapters 181 and 182 was that exchanges of mental health land were no longer necessary.

An accounting of income produced from mental health land was required for possible legislation: the total was $25,110,430 from 1959 thru 1977.

DEPARTMENT OF NATURAL RESOURCES
DEC 21 1984
COMMISSIONER'S OFFICE

In order to comply with the intent of the original trust legislation, the legislature set up:

A. A Mental Health Fund,
B. A Mental Health Fund Advisory Board within the Department of Revenue (members: Director, Division of Mental Health; Chair, Mental Health Advisory Council; Commissioner, Department of Revenue), and
C. The funding source for the fund: 1.5% of total revenue derived from the management of (all) state land.

7) 1981-1979 - No money deposited in the Mental Health Fund; no meeting of the Mental Health Fund Advisory Board held. However, money was appropriated by the legislature for the purpose of mental health treatment (e.g. DHSS, Div of Mental Health).

8) 1981 - House Bills 151 and 152 were introduced to appropriate $84,000,000 to the Mental Health Fund (i.e., the amount owed to the fund from 1978-1981), and provide for oversight of the fund and income. Senate Bills 710 and 711 were also introduced to satisfy the Mental Health Fund requirements.

An article by Dr. Jerry Schrader appeared in "Coping" magazine calling for litigation if the legislation was not passed (it did not).

9) 1982 - (Feb) Laura Davis, Assistant AG, did an analysis of the Mental Health Trust Fund (166-534-81A) at the request of Hugh Malone, state legislator. This analysis points out the following:

a. That the 1.5% funding established in 1978 legislation was not based on an appraisal of mental health land, therefore, it is not possible to judge its fairness. The funding will exceed the value of the trust land at some future time (prohibited by Article IX Section 7 of the Alaska Constitution);
b. Although the legislature has not funded a mental health fund, it has made mental health appropriations;
c. Money from the fund established by the Mental Health Enabling Act were not to be used <u>exclusively</u> for mental health. Mental health funding is simply the first priority.
d. If the substitution of revenue for the trust imposed by the 1978 legislation was not equal to the fair market value of the trust lands, then the trust has been breached (the failure to appropriate may <u>also</u> be a breach).
e. There existed three alternative courses of legislative action:

1. Do nothing to fund the Mental Health Trust Fund. Litigation was likely with the course, but the state may be immune from enforcement as the MH Enabling Act didn't provide for enforcement. Also, the case can be made that past appropriations have taken care of reasonable mental health needs in Alaska.

2. Comply with the MH Enabling Act. This would entail an assessment of the fair market value of MH land as of the date of redesignation, regular legislative review of mental health needs in the state with recommended funding levels, and the transfer of money to the fund until the fund has received money equal to the fair market value of the trust land (recommends direct transfer without appropriation into the fund as it must be appropriated out).

3. Seek the repeal of the Alaska Mental Health Enabling Act by congress.

(Nov.) Lawsuit filed (Weiss v. State) claiming that the state violated the terms of the MH Enabling Act.

a. Seeks to void AS 37.14.070 claiming it was illegal to redesignate the land.
b. The State has or will realize revenue from redesignated mental health land that is not being placed in trust, wants a trust established.
c. The State violated public trust by disposing of mental health land at less than fair market value. Wants the court to direct the State to administer the land in accordance with the public trust.

The Assistant AG on the case, Tom Koester, asks DNR to provide information regarding:

a. The land obtained under the MH Enabling Act.
b. The disposition of those lands, and
c. The value of those lands.

DHSS is asked to provide documentation on state expenditures for mental health purposes.

10) 1983 - (June) Memorandum Decision (partial summary judgement) entered against the state. Requires the state to account for the value of land removed from the MH Trust. States that the remedy might be monetary rather than a invalidation of 1978 legislation.

(July) Appeal and cross appeal entered and denied.

(Aug) Cowper, the Weiss attorney, states that he will not begin negotiations until the state accounts for all MH land and its disposition.

(Sept) Meeting with DNR/AGO/DHSS reveals that DHSS thinks that all monies derived from MH land must be spent exclusively on MH. DHSS expressed an interest in setting up a DHSS land management section (similar to the university settlement).

(Dec) Court orders the state to comply with an accounting and an appraisal of MH land by March 30, 1984.

11) 1984 - (Jan) Tom Hawkins deposition ordered for Feb 2. Required information on land selected under MH Enabling Act and the disposition of that land.

(Feb) Koester drew up a judgment to be entered in the court which specifies that:

a. The 1978 legislation is constitutional, and
b. The MH public trust is entitled to be reimbursed for value of land redesignated as of July 19, 1978

(Judgment not signed).

(April) Survey of mental health land completed by DLWM.

(May) Cowper filed a motion to levy a sanction against the state (restraining the state from disposing of mental health land) for non-compliance with the discovery request. The hearing was held in Fairbanks the next day (June 1). At hearing the motion was divided into two parts: sanctions and a temporary restraining order. Frank Mielke testified about our compliance with the discovery request and Koester made a case for the state's solvency. The motions were denied.

(June) Koester drew up a stipulation re: the accounting process:

a. Value of MH land to be computed by determining fair market value as of July 19, 1978 and simple interest of 10.5% per year;
b. Appraisals shall be complete by 3/15/85;
c. Plaintiff (Cowper) has right to review RFP, contract, and list of approved appraisers. The plaintiff will receive copies of the appraisal as they are completed;
d. The state will develop value estimates of revenues and appraisals made of other 3rd party interests created in MH land prior to July 19, 1978. These estimates are to be based on estimates of revenues and appraisals made of other 3rd party interests on MH land prior to July 19, 1978. Estimates are to be based on appraisals of revenues and appraisals; and
e. In calculating final judgment the state shall receive credit for appropriations for mental health purposes prior to July 19, 1978 (stipulation not signed).

(August) Notice of Lis Pendens filed August 1, 1984 by Cowper against all land selected by the state.

Koester drew up a stipulation stating that the state will:

a. Draw up a legal description of all land selected by the state to fulfill the MH land grant;
b. Provide a listing of the current acquisition status of the MH selections;
c. Note whether the MH land had been alienated or conveyed and if so, how;
d. Estimate the fair market value of the interests conveyed or alienated based on appraisals, done at the time of conveyance and revenues derived from the conveyance;
e. Appraise the fair market value of all mental health land remaining in the MH trust on July 19, 1978; and

f. Compute the value of all mental health land converted to general grant land by adding simple interest of 10.5% per year to the appraised value (a, b, c, e and f are due by March 15, 1985; d is due May 15, 1985).

The stipulation was signed by Koester August 30, 1984; was signed and filed with the court by Cowper on September 4, 1984.

At the same time, Koester drew up a judgement that stated:

a. The mental health enabling act created a public trust for which the state is trustee.
b. The redesignation of mental land to GG land was constitutional.
c. The public trust shall recover the value of land conveyed from the trust as of the date of conveyance plus prejudgement interest (the redesignation is considered a conveyance).
d The state will receive credit for mental health expenditures when calculating the final judgement.

The judgement was filed September 14, 1984.

(September) - The state moved to have the Lis Pendens expunged. Plaintiffs filed an opposing motion. The state counter filed.

The state filed an appeal of the judgement September 18, 1984. The appeal is based on the following:

a. The mental health trust land is not for the <u>exclusive</u> benefit of mental health.
b. The redesignation of mental health land was <u>not</u> a breach of the public trust.
c. The mental health trust fund is <u>not</u> entitled to be reimbursed for the full value of all mental health land received by the state.

A cross appeal is also filed. The appeal challenges the constitutionality of the 1978 redesignation.

(October) plans finalized for completing "appraisals" of the converted land by using a "valuation panel" consisting of three senior appraisers.

The appraisals contracted for in August are complete. This group of 18[illegible] parcels (81 tracts) is valued at $14,233,800.00. Much of the information gathered in this process will be used to aid the valuation panel.

A motion to intervene (plaintiffs) is brought by the Alaska Mental Health Association, Mary C. Nanuwak and John Martin. The motion seeks to bring up other issues in the case:

a. Is the state deliberately creating barriers to the enforcement the MH trust?
b. Have third parties receiving MH land been notified of the trust status of the land?

c. Are the conveyances in b. null and void?
d. Should the 1.5% of land revenue dedicated to the MH trust by the 1978 legislation be automatically deposited?
e. Are MH expenditures inadequate or misallocated?
f. Should the state be replaced as trustee?
g. Should punitive damages be awarded?
h. Should the court appoint an independent board to oversee the land?

The prospective interveners were associated with Cowper, but apparently disagee with his tactics and strategy. An opposing motion was filed by Koester. The motion to intervene was denied October 31, 1984 because it was not timely filed.

(November) Order expunging Lis Pendens signed November 15, 1984.

(December) Opinion of Value (appraisal) Panel chosen. The panel consists of three senior designated appraisers each representing a geographic area of the state. They are tasked with evaluating 4,600 parcels of mental health land as of July 19, 1978.

The Mental Health Association announced that it will file a separate lawsuit in federal court.

Alaska Department of
NATURAL
RESOURCES

Mental Health Land Grant Fact Sheet
January, 1985

History

In July 1956, congress passed Alaska's Mental Health Enabling Act. The act established a public trust fund to be used primarily for the treatment of the mentally ill in Alaska. Any monies left over after mental health program costs were met could be spent for other public purposes at the discretion of the legislature. One million acres of federal land were granted to the Territory of Alaska to form the economic base for the trust.

Land selections were subsequently made between 1956 and 1966, primarily around centers of population (Anchorage, Fairbanks, Juneau, Kenai etc.), the railbelt and other areas believed to be valuable for subsurface resources (Beluga coal, Kenai oil, etc.). State records show that approximately 950,000 acres are now in state ownership. The lands are administered by the Department of Natural Resources along with land acquired through other land grants.

Although a formal trust fund was never established, the Alaska Legislature made appropriations for mental health programs. Total income produced from the mental health land from 1959-1977 was $25,110,430. Mental health expenditures in Alaska by the state for the same period of time were $115,364,054, with an additional $16,430,771 being spent on alcohol and drug abuse programs.

In 1978 the legislature passed a law which redesignated mental health, school, and university trust lands as general grant lands. The redesignation provided for a more compact land base which made the land easier and more cost effective to administer. The legislation also established a trust fund for mental health programs to be financed by 1.5% of the annual receipts for all state land. However, the trust fund has never been funded by the legislature.

In April 1979, the University of Alaska challenged the constitutionality of the 1978 redesignation legislation (it also affected university land). The court upheld the law, but a settlement reached in June, 1982, granted land and money to the university. Heartened by the university's success, the Alaska Mental Health Association filed a class action lawsuit in Fairbanks Superior Court on November 26, 1982 on behalf of Carl Weiss, a seven year old boy from Nenana, and Earl Hilliker, a Fairbanks resident. The suit contends that the plaintiffs were in need of mental health services which they could not receive in Alaska. It also raised questions about the constitutionality of the 1978 law; challenged the state's stewardship of mental health land; and asked that a mental health trust fund be established. A judgement was entered by Justice Warren W. Taylor in September 1984. That judgement stated that the mental health trust fund is exclusively dedicated to Alaska's mentally ill, that it had been breached by the legislative redesignation and is entitled to be reimbursed full value of the mental health land. The state has appealed that decision to the Alaska Supreme Court. Mr. Stephen Cowper of Fairbanks represents the plaintiffs, and Mr Thomas Koester, Attorney General's Office, represents the state.

//

It has been reported that Mr. Cowper and the Mental Health Association do not agree over the direction of the case. Accordingly, attorney Jim Gottstein of the association board has attempted to intervene in the case. To date the intervention has not been allowed, and Mr. Gottstein has announced that the association will file a separate suit in federal court.

State Compliance

In the spring of 1984, at the direction of the court, the state produced a report which accounted, by acre, for the mental health grant land as of the date of redesignation. The legislature then appropriated $250,000 for the department to continue the compliance with the discovery request. Stipulations for discovery were agreed to in September 1984, and the state is now in the process of complying with them. These stipulations provide:

1. The state will describe all mental health grant land selected by the state and provide current acquisition status of same by March 15, 1985: The Division of Technical Services within DNR is currently auditing all pertinent selection files. The Bureau of Land Management is auditing corresponding federal title files. Although the audit of state files will be completed by March, further adjudication by the BLM is expected to take another year to bring federal and state records into agreement.

2. By March 15, 1985 the state must estimate the fair market value of all land in state ownership as of the 1978 redesignation. Approximately 4,600 individual parcels are being evaluated by a panel consisting of three independent senior designated appraisers: Mr. Stephen J. MacSwain (representing the northcentral area), Mr. Frank King (representing the southcentral area) and Mr. Barry Thompson (representing the southeastern area). To bring the appraisals current, a simple interest of 10.5% per year will be added to the valuation figure.

3. By May 15, 1985 the state must identify and account for all mental health land alienated or conveyed prior to the 1978 redesignation. An audit and accounting will begin in February.

The remaining issues involved in this litigation are whether the mental health fund is dedicated solely to support mental health programs; whether the state breached the public trust in its management of the mental health grant land prior to 1978 and whether the state should be ordered to reimburse the public trust the full value of the mental health land. There is tremendous potential liability to the State of Alaska as a result of this lawsuit. It has been speculated that these lands may be worth over 1 billion dollars.

For further information contact Salli Slaughter, Pouch 7-005, Anchorage, Alaska 99510, (907) 265-4375.

POSITION OF THE ALASKA MENTAL HEALTH ASSOCIATION

REGARDING

ADMINISTRATION OF MENTAL HEALTH TRUST LANDS

SUMMARY

On July 28, 1956, the "Alaska Mental Health Enabling Act" (P.L. 83-830, 70 Stat. 709) was enacted providing for selection and conveyance of one million acres of public lands into state ownership to be held and dealt with as a "public trust" to permanently serve the needs of the mental health program of Alaska.

PUBLIC LAW 83-830 July 28, 1956

Sec. 202

(a) The Territory of Alaska is hereby granted and shall be entitled to select...one million acres from the public lands of the United States in Alaska...All lands duly selected by the Territory of Alaska pursuant to this section shall be patented to the Territory by the Secretary of the Interior.

(b) ... The authority to make selections shall never be alienated or bargained away, in whole or in part, by the Territory. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved...

(c) All grants made or confirmed under this section shall include mineral deposits: ...

(d) Following the selections of lands by the Territory pursuant to subsection (b) but prior to the issuance of final patent, the Territory shall be authorized to lease and make conditional sales of such selected lands.

(e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner

compatible with the conditions and requirements imposed by other provisions of this Act.

(Emphasis Added)

The grants and selections made under this Act were confirmed by the Statehood Act and the responsibility for managing the lands as a Trust was accepted by the State of Alaska.

INTENT

The Act as written and passed by the U.S. Congress clearly intended for these lands to be used to serve the needs of the mental health program of Alaska for all time. It established a permanent "Trust" whose assets were a million acres of land. This "Trust" was to be administered so that the Mental Health Lands would provide a permanent source of revenues to meet the needs of the mental health program of Alaska.

STATE MANAGEMENT OF MENTAL HEALTH LANDS

As set forth previously, subsection (e) of the Alaska Mental Health Enabling Act provides that the Mental Health Lands,

> ...proceeds and income therefrom shall be administered as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska...

and that

> ... The authority of the Legislature of Alaska under this subsection be exercised in a manner compatible with the conditions and requirements imposed by other provisions of the Act.

Even a cursory examination reveals that the state has knowingly flaunted its trust obligations regarding the administration of Mental Health Lands.1/ The Mental Health Lands have been and are being dealt with as if they are no different than any other state lands and, in fact, are sometimes given away more freely

---

1 James B. Gottstein, attorney for the Alaska Mental Health Association, has available upon request documentation of the state's knowledge of its illegal actions. Mr. Gottstein can be contacted at 564-2424, 6401 A Street, Anchorage, Alaska 99502.

than other state lands with inadequate or no compensation. The Legislature has passed laws that have transferred Mental Health Lands into non-revenue producing uses such as State Parks and Wildlife Withdrawals and finally, in 1978, purported to abolish the Mental Health Lands designation altogether with no compensation given to the Mental Health Trust. As a result the Trust has lost a great deal of its original assets and revenue-generating potential. Since 1978, the state has illegally purported to convey to third parties tremendous amounts of Mental Health Lands, again with inadequate or no compensation to the state and no compensation at all to the Mental Health Trust.

DESCRIPTION OF MENTAL HEALTH LANDS

The lands in question here are those lands selected by Alaska under the authority of the Act of 1956. They are described in 155 casefiles which are maintained by the Bureau of Land Management, part of the United States Department of the Interior. These descriptions of the selections made by Alaska in these casefiles describe lands in the following resource areas:

Kenai Peninsula	67 Casefiles
McGrath	47 Casefiles
Glennallen	7 Casefiles
Yukon	32 Casefiles
Fortymile	2 Casefiles

The numbers above describe casefiles only. In many cases, the selections were very small while other selections were for very large tracts of land.

The lands are located in 186 townships across the state. Appendix I has a complete listing of all townships statewide that have Mental Health Lands within them. The following list describes the number of townships affected in the various geographical areas:

1)	Copper River Meridian (Gulf of Alaska & Southeast)	60 Townships
2)	Northeast Seward Meridian	15 Townships
	Southeast Seward Meridian	1 Township
	Northwest Seward Meridian	56 Townships
	Southwest Seward Meridian	12 Townships
3)	Northeast Fairbanks Meridian	9 Townships
	Southeast Fairbanks Meridian	10 Townships
	Northwest Fairbanks Meridian	4 Townships
	Southwest Fairbanks Meridian	20 Townships

The following figures approximate the total conveyance from federal to state holdings of Mental Health Lands:

Patented Lands	719,703.83 Acres
Tentatively Approved Lands	219,655.92 Acres
Selected and Not Yet Conveyed	357,986.18 Acres

It is clear that the state has not yet received its full entitlement of Mental Health Lands from the federal government.

Mental Health Lands contain a great deal of resources. The Mental Health Lands grant includes both surface and subsurface title. Many of the lands lie on or near producing oil and gas fields; others lie within high potential coal and other mineral areas; and much of the others were selected for their surface value. Millions of dollars have been collected in purchases, rentals, and royalties on oil and mineral exploration leases, while untold other millions of dollars have been foregone by the state. A detailed inventory is needed to determine the extent of these resources on Mental Health Lands.

POSITION OF THE ALASKA MENTAL HEALTH ASSOCIATION

It is clear from the language of the Alaska Mental Health Enabling Act that: (a) the state is obligated to manage Mental Health Lands, and proceeds and income from those lands as a public trust; and (b) the mental health program of the state is to be the primary beneficiary of this Trust. This position is reinforced by the specific language used in testimony presented in the Congressional Record (Senate, page 9760, June 1956):

> ... This million-acre grant is in exactly the same category, and has the same legal status as the grants of public lands which have been made to all of our Western States for public schools and other public purposes. It is to be administered by the Territory of Alaska as a public trust, and the mental health program will have first call on the income and proceeds from it.

Over the years, the state has recognized its illegal management of the Mental Health Trust but has failed to correct the situation (see footnote 1, page 2).

NECESSARY ACTIONS

In order to remedy the situation created by mismanagement of the Mental Health Trust the Alaska Mental Health Association recommends that the following actions be undertaken immediately:

1) Alaska must fulfill the purpose for which the Mental Health Lands were originally granted.

2) The state must differentiate between Mental Health Lands and state public domain lands by providing separate and distinct land management to ensure the future management of Mental Health Lands in accordance with recognized trust principles and applicable law.

3) A permanent Mental Health Trust should be created. Allocated to this fund should be all funds collected from transactions involving Mental Health Lands.

4) Steps must be taken to resolve conflicts resulting from the past management of all lands granted to the state under the Alaska Mental Health Enabling Act. This must include an equal-value exchange of all lands on which irreversible encumbrances have been created which preclude the management of those lands as Mental Health Lands.

5) A method should be established to calculate the dollar amount due, with interest, to the Mental Health Trust from the state with regard to the management and disposal of Mental Health Lands, and the dollar amount due, with interest, for Mental Health Lands and resources therefrom which have been disposed of at less than then-current fair market value.

6) An independent Mental Health Lands Managing Agency must be created and staffed. This agency will be charged with the responsibility of adminstering the Mental Health Trust in accordance with law. This agency will be governed by these rules:

   a) The Mental Health Lands shall be administered as a <u>permanent</u> public trust.

   b) The purpose of the Mental Health Lands is to generate revenues to be used first to meet the necessary expenses of the mental health program of Alaska.

   The Mental Health Lands Managing Agency must have sufficient safeguards to prevent future abuses of Mental Health Lands.

7) A legitimate, impartial and <u>objective</u> method be established for determining the necessary expenses of the mental health program of Alaska must be established with sufficient safeguards to prevent future abuses.

STATE MENTAL HEALTH PROGRAM
SUMMARY FACT SHEET
Prepared December 14, 1984

ALASKA PROVIDES THE LOWEST PERCENTAGE OF STATE REVENUES TO MENTAL HEALTH PROGRAMS OF ALL 50 STATES. On average, the other 49 states provide a percentage of state revenues to mental health programs that is more than six times larger than Alaska provides (0.3%). More than half of the states provide at least five times larger percentages than does Alaska. The 49th state in the ranking provides double that of Alaska, while the first state in the ranking provides a percentage that is more than 11 times greater than Alaska provides (Reference: The Final Report - Funding Sources and Expenditures for State Mental Health Agencies, NASMHPD, 1984).

ON A PER CAPITA BASIS, ALASKANS HAVE RECEIVED ONLY 27 PERCENT OF THE LEVEL OF FEDERALLY SUPPORTED COMMUNITY MENTAL HEALTH CENTER SERVICES RECEIVED BY THE CITIZENS OF THE OTHER STATES. Based on a survey of all federally supported community mental health centers, Alaskan centers provided less than 27% of the episodes of care per 100,000 population per year than did centers in all other states (Reference: Provisional Data on Federally Funded Community Mental Health Centers, NIMH, 1981).

SERVICES FOR THE CHRONICALLY MENTALLY ILL IN ALASKA (A HIGH PRIORITY ACCORDING TO STATE REGULATIONS) SUFFER FROM INEQUITABLE DISTRIBUTION OF PROGRAM FUNDS. As one example, a State DMHDD Request for Proposal last month announced $403,000 for vocational services to developmentally disabled persons and only $30,000 for vocational services to mentally ill persons. The chronically mentally ill also suffer from a lack of other rehabilitation services, residential facilities, continuity of care, and support services available to the chronically mentally ill in other parts of the nation. Clinical staffing for aftercare services for the chronically mentally ill in Anchorage is only 37% of the median staffing level of "lower 48" mental health centers on a per capita basis (Reference: Guidebook on Numerical Indicators for Performance Evaluation of Community Mental Health Centers, Medical College of Pennsylvania, 1982).

SERVICES FOR CHILDREN AND ADOLESCENTS IN ALASKA (A HIGH PRIORITY ACCORDING TO STATE REGULATIONS) HAVE BEEN HARDEST HIT BY STATE AND LOCAL MENTAL HEALTH FUNDING REDUCTIONS. Based on the National Institute of Mental Health standards of service for community mental heath programs, children have been consistently underserved every year by the Alaska Community Mental Health Program. To make matters even worse, in 1984 a 76% cutback in staffing for children and adolescent services occurred at the Southcentral Counseling Center, which has a service area covering half of the State's population, due to public program funding cuts. These program cuts have resulted in a 42% reduction in children and adolescent caseload since November, 1983. Currently State Community Mental Health Program funds only provide for one-half of one full-time position to deliver mental health services to children and adolescents for all of Anchorage! Total clinical staffing for children and adolescent mental health center services in Anchorage is only 14% of the median staffing level of "lower 48" mental health centers on a per capita basis (Reference: Guidebook listed above). The Southcentral Counseling Center currently has a long waiting list for outpatient services.

HOUSE HEALTH, EDUCATION & SOCIAL SERVICES
STANDING COMMITTEE
February 26, 1985
4:30 p.m.

Members Present: Co-Chairman Max Gruenberg
Rep. Robin Taylor
Rep. Alyce Hanley
Rep. Fritz Pettyjohn
Rep. Katie Hurley

Members Absent: Co-Chairman Niilo Koponen
Rep. David Thompson

COMMITTEE CALENDAR

Testimony from the Mental Health Planning and Needs Assistance Committee

WITNESS REGISTER

Beth Trawick
Committee for Mental Health Planning in Fairbanks
503 7th Avenue
Fairbanks, AK
(907) 452-4148
Position Statement: Supports mental health services

Kathy Whitzell
Committee for SB 520
P.O. Box 10081
Fairbanks, AK
(907) 457-7223
Position Statement: Supports SB 520 and mental health services

Mark Mattaini
Committee for SB 520
1302 21st
Fairbanks, AK
(907) 452-2446
Position Statement: Supports SB 520 and mental health services

Glade Birch
Southcentral Counseling Center
Mental Health Dir. Assoc.
4020 Folker St.
Anchorage, AK 99508
(907) 563-1000
Position Statement: Supports mental health services

Vince VanDerHyde
Division of M.H. & D.D.

3470 Meadow Way
Juneau, AK
(907) 465-3370
Position Statement: Supports mental health services

Tom Koeset
Department of Law
Pouch K
Juneau, AK 99811
(907) 465-3600
Position Statement: To provide information on mental health lands litigation

Commissioner John Pugh
Department of Health and Social Services
Pouch H-01
Juneau, AK 99811
(907) 465-3030
Position Statement: To provide information on mental health

PREVIOUS ACTION

No previous action to record.

ACTION NARRATIVE

TAPE #32, SIDE ONE

Recording Number 000: Co-Chairman Gruenberg called the meeting to order at 4:37 p.m. to discuss mental health planning and needs. Reps. Koponen and Thompson were absent.

Number 029: Co-Chairman Gruenberg announced the arrival of Rep. Taylor.

Number 064: Beth Trawick, a private psychiatrist in Fairbanks, representing the Mental Health Committee, testified. She said when it came time to discharge a chronically ill patient from the hospital to a halfway house, there were no accommodations, thus leaving them out on the street, only to return to the hospital later.

On the subject of children, she said they didn't have facilities for intensive out-patient psycho-therapy for them and their families. If the family was wealthy or had good insurance coverage they could afford private care. She said children end up "drifting" through the system, becoming non-

functional or progressing towards chronic mental illness, which sometimes, early treatment could have prevented.

In summary, she supported more treatment facilities such as vocational rehabilitation, halfway homes, and community based facilities, which would help patients more and cost less.

Number 277

Kathy Whitzell, representing the Resource Committee for SB 520, and the Fairbanks Memorial Hospital, testified. She spoke for the mentally ill adults whose illness often begins in early adulthood: a gradual withdrawal from others, losing touch with reality and inability to function. She said lack of facilities for these adults, including "road people" who have no shelter and are often ill, resulted in an overcrowded API.

Ms. Whitzell said most evening and weekend emergencies for families are dealt with by phone with no personal interventions, although the hospitals are available. If an adult won't voluntarily commit himself, and a relative won't involuntarily commit them, they wander the street, get into trouble, and often end up in jail until evaluation. Families attempting to maintain the ill individual at home have problems within the family and the neighborhood. In summary, Ms. Whitzell supported a care facility where such adults would be receive services and function in a safe environment.

Number 450

Mark Mattaini, Director of Mental Health Programs for Tanana Chiefs Conference, and Chairman of the Children's Subcommittee for the Resource Committee for SB 520 testified. He said in developing their plan for children, they looked at the most serious cases (suicidal, severe depression, personality problems, etc.). He emphasized the need for out-patient treatment, a diagnostic and crisis unit with residential capacities, individualized foster homes, small group homes, day treatment programs, facilitie for young adults (halfway houses), and a family hostel operation for rural and bush areas.

Number 582

Glade Birch, Executive Director of the

Southcentral Counseling Center in Anchorage, and a representative of the Alaska Mental Health Program Director's Association testified. He said the turnover at centers is 170% per year. He said the suicide explosion could be predicted when they failed to give mental health care. He mentioned 7 days before he arrived in Juneau, he knew of 22 serious attempts by school kids (2 successful). He knows of a village without mental health care due to funding that average 2 attempts per month with a population of 350.

Mr. Birch said in the initiative to identify child abuse victims, there was a problem of not doing anything after this is done. He supported a community based setting which would cost far less than jail or API.

He said there would be a problem of an accredited institution such as API running into problems of overcrowding, and being able to keep their accreditation.

CHANGE TAPE TO SIDE TWO

Number 000 — Mr. Birch continues his discussion in support of community based mental health care facilities versus cost of jail or API.

Number 077 — Rep. Hanley asked Mr. Birch what is covered in API for accreditation; the physical plant, program, or methods of treatment. He said everything.

Number 091 — Rep. Taylor asked Mr. Birch if in the requested increment for treatment of children, have they included in it cost that child abuse legislation would incur. Mr. Birch said no. He said they were only funded for 3 1/2 people for their mental health needs. Rep. Taylor said he shared Mr. Birch's concerns but he was informed it was appropriate to keep the budget where it's at and spend $32 million on asbestos removal. Rep. Taylor said he had a hard time prioritizing between the risk from asbestos exposure versus risk of suicide, though he supported mental health needs.

Number 140 — Vincent VanDerHyde, Research Analyst for Division of Mental Health distributed to the committee a paper presented in May of last

year at the American Association of Sociotology meetings in Anchorage concerning suicide. He said the Division wanted to further research suicide by working with the Alaska Native Health Board who had research money to look at suicide attempts, village public safety officer logs, state trooper logs, emergency treatment logs, etc.

Number 178

Mr. VanDerHyde showed a set of 8 slides to the committee. The slides look at the trend in mental health service delivery across the state of Alaska.

Slide 1 shows the need for mental health services in Alaska by showing the population growth rate. Between 1980 and 1984 the growth rate was around 30%. In 1984, Alaska led the nation in population growth at 5-1/2%. The growth rate will then decline slightly.

Slide 2 shows the number of admissions to the community centers. From 1974 through 1984, there was a 285% increase. In 1984, there was a 15% increase. The projections based on the data, shows there will be around a 23% increase over the next 5 years.

Slide 3 shows the expansion of services. From 1975, the admissions were 42 per 10,000 population. By 1984, it increased to 120 per 10,000 population (9.4% increase).

Slide 4 shows comparisons between admissions, end-of-year caseloads and clients seen for the period 1979 through 1984, while in the past 5 years, the population has increased 30%, admissions over 100%, and case-loads 105%. He said during fiscal year 1984, a little over 8,000 clients were served (1.5% of Alaska's population).

Slide 5 shows admissions to the Alaska Psychiatric Institute. Between 1970 and 1982 admissions increased by 175%. In 1983, there was a slight decline due to changes in delivery of services. In 1984, admissions increased by another 5% due to the population growth.

Slide 6 shows a count of in-patient days (beds available,. For 1983, the API

utilized 95% of in-patient days. For 1984, they utilized 98%.

Slide 7 shows discharge data. A little over 50% of patients are released in 4 to 5 weeks. 5 or 6% are in API around 6 months.

Slide 8 shows as population pressures occur, shows over the years the populations which become re-admissions in the system, for example, FY83's admissions drop off and FY84's length of stay goes down and the re-admissions increase. He said there were two things driving the API's population: the state population as it increases and the maximum utilization of the facility driving re-admission rates up.

Number 436

Tom Koester, Attorney General's Office, Department of Law, testified regarding the mental health lands litigation. He said the mental health enabling act, a federal statute passed in 1956 by the U.S. Congress, was passed because mental health services in Alaska were unacceptable. In the 1911 Organic Act, Congress precluded the Alaska Territorial Legislature from dealing with mental health problems in Alaska and retained the sole responsibility for the federal government.

In territorial days, the federal government's program for dealing with a person believed to be insane was for the U.S. Attorney to bring an indictment against them, try them before a jury, and if found insane, would be sent to Morningside Portland hospital in Oregon. If not, they'd be released without follow-up, etc. The Congress saw as a way to economize during a budget crunch, to transfer this responsibility to Alaska. The problem was there was no means to raise revenue, which was costing $1.2 million per year. Congress came up with a phased 10-year grant program of funds to Alaska in a declining revenue set-up, plus a cash grant to build API. To provide a source of funds, Congress authorized the territory to select 1 million acres of land (from vacant and unappropriated federal lands in Alaska).

Mr. Koester said because Congress didn't know the program cost in Alaska or the worth

of Alaska-selected lands, they declined to earmark all proceeds from the lands to the mental health program. Its rationale was they didn't know the cost of the programs or how much money would be generated from the lands. They didn't want Alaska to think they had to use all the money for mental health programs.

Mr. Koester said language from the bill said proceeds and income from the land shall first be used for expenses from the mental health programs. Additional funds can be used for other purposes. In 1978, there was pressure for Alaska lands to be made available to Alaskans and municipalities. Since Alaska could select its lands, it began to build on them: U of A, Juneau, Hillside and some of the Chugach State Park, Swanson River oil fields, many intersections between the Alaska Railroad, and the highway between Anchorage and Fairbanks, etc.

Mr. Koester said the 1978 legislature converted statutorily mental health lands to general grant lands, in effect, directing the Department of Natural Resources to deal with the lands as if they were already received. The alternative was a statutory dedicated fund of 1-1/2% of general funds revenues and because the language of the statute is subject to appropriation, the legislature has never appropriated the 1-1/2%.

Number 530

Co-Chairman Gruenberg said in 1978 the legislature passed 2 bills, and 1 mandated 1-1/2% and the other made it discretionary. He said the Governor signed the discretionary bill after he signed the mandatory bill, thereby making the operative law discretionary.

Number 543

Mr. Koester said the lawsuit was brought by Alaskan citizens who needed mental health services that weren't available. The object was to regain title to equivalent land. Judge Taylor in Fairbanks ruled it was an exclusive trust. Mr. Koester said most attorneys agree with the analysis that they are not dedicated exclusively ("shall first be used"). The Attorney General's office has appealed the entire judgement made by Mr. Taylor, which was that the 1978

redesignation was a breach of the trust, which is currently pending before the Alaska Supreme Court.

Mr. Koester stated Judge Taylor ruled it was permissible for the Legislature to re-designate the lands, however, if they make the decision to treat them as general grant lands, it must compensate the trust with the fair market value. He said the cross-appeal is of Judge Taylor's determination that the legislature has the power to exchange land for money, it has not funded it, so if the case proceeds, the final judgement is Judge Taylor ruled the state will have a liability of a significant amount of money. He said they've attempted to communicate to the plaintiffs that they may be able to settle the lawsuit by coming forward with a proposal.

Mr. Kester said the proposal is on file, and in brief, the concept proposed is a way to develop a process which would satisfy the expectation of the U. S. Congress in 1956. The process is to continue with an accounting effort to identify the value of the land, converts it to an unfunded liability and then identifies proceeds from that liability (or what they would have been had it been funded) and then have the necessary expenses for the mental health needs first, and the rest for other expenses. Rep. Taylor asked Commissioner Pugh what the present mental health budget was. He said around $20 million for mental health only.

CHANGE TO TAPE #33, SIDE ONE

Number 000

Mr. Koester's testimony on the lands issue continues. Rep. Taylor asked why they couldn't take care of mental health needs the way it was intended. Mr. Koester said the problem was they are trying not to go beyond what Congress contemplated. He said the lands were not dedicated exclusively to mental health. Rep. Taylor said that the first use for mental health. Mr. Koester said the point was that Congress contemplated the territorial legislature making the mental health needs determination. When it made the determination, it would appropriate the

necessary revenues from the lands to fulfill that program. The 1956 law did not specify what the mental health program was to look like. Since then, Alaska has funded a mental health program. The problems with putting together a settlement proposal is the Attorney General's office does not feel free, given the 1978 law which governs the performance of the AG's duties and obligations, that they have the latitude to propose a settlement which would require the legislature to undo what it did in 1978. He said the position they have always held was no legislature can bind a subsequent legislature, but a previous legislature could bind the administration, and that's what happened.

Number 336

Co-Chairman Gruenberg adjourned the meeting at 6:27 p.m.

MENTAL HEALTH SERVICES IN THE STATE OF ALASKA

TREND ANALYSIS THROUGH FISCAL YEAR 1984

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

RESEARCH AND DATA SUPPORT SECTION

(FOR INCLUSION IN THE FY1984 ANNUAL REPORT)

Trend Analysis

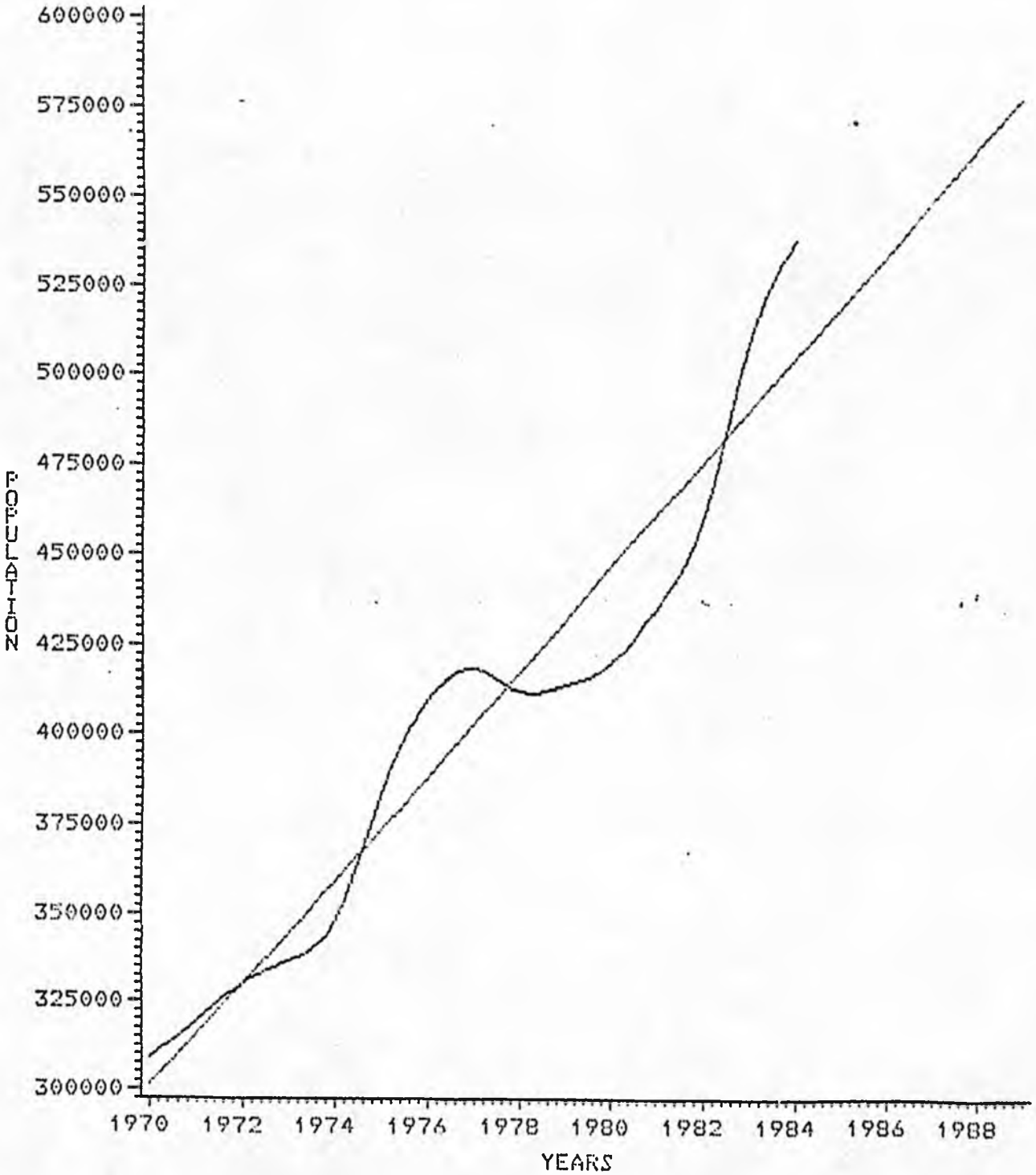
This section presents a discussion of a series of graphs based on data for the past several years showing the growth in mental health services in the state of Alaska. Taken collectively, these data reflect the publically funded portion of the state's mental health system, the impact of population growth, and the expanding need for services in both the inpatient and community mental health center systems.

Graph 1 on the following page shows Alaska state population estimates from 1970 through 1989. Actual population figures form the curved lines while projected and estimated figures are shown as a straight line.* The states' population increased rapidly during the period of oil pipeline construction and development in 1974-1976, then leveled off and declined during 1977-1979. A second increase began in 1980 and appears to be increasing, though projections indicate that the rate of growth may decrease somewhat.

Since 1980 the state population has grown by 28.2%. In 1984 alone population increased by 5.4%. This rapid increase in growth should be kept in mind while reviewing the following trend data on mental health services in Alaska.

*Population projections for the years 1985-1989 are based on the ordinary least squares regression estimates using prior years data for 1970-1984. The five years projected data is thus an estimate based on the straight line which best fits the actual population data for prior years. The population figure for 1984 is a Dept. of Labor estimate.

ALASKA STATE POPULATION

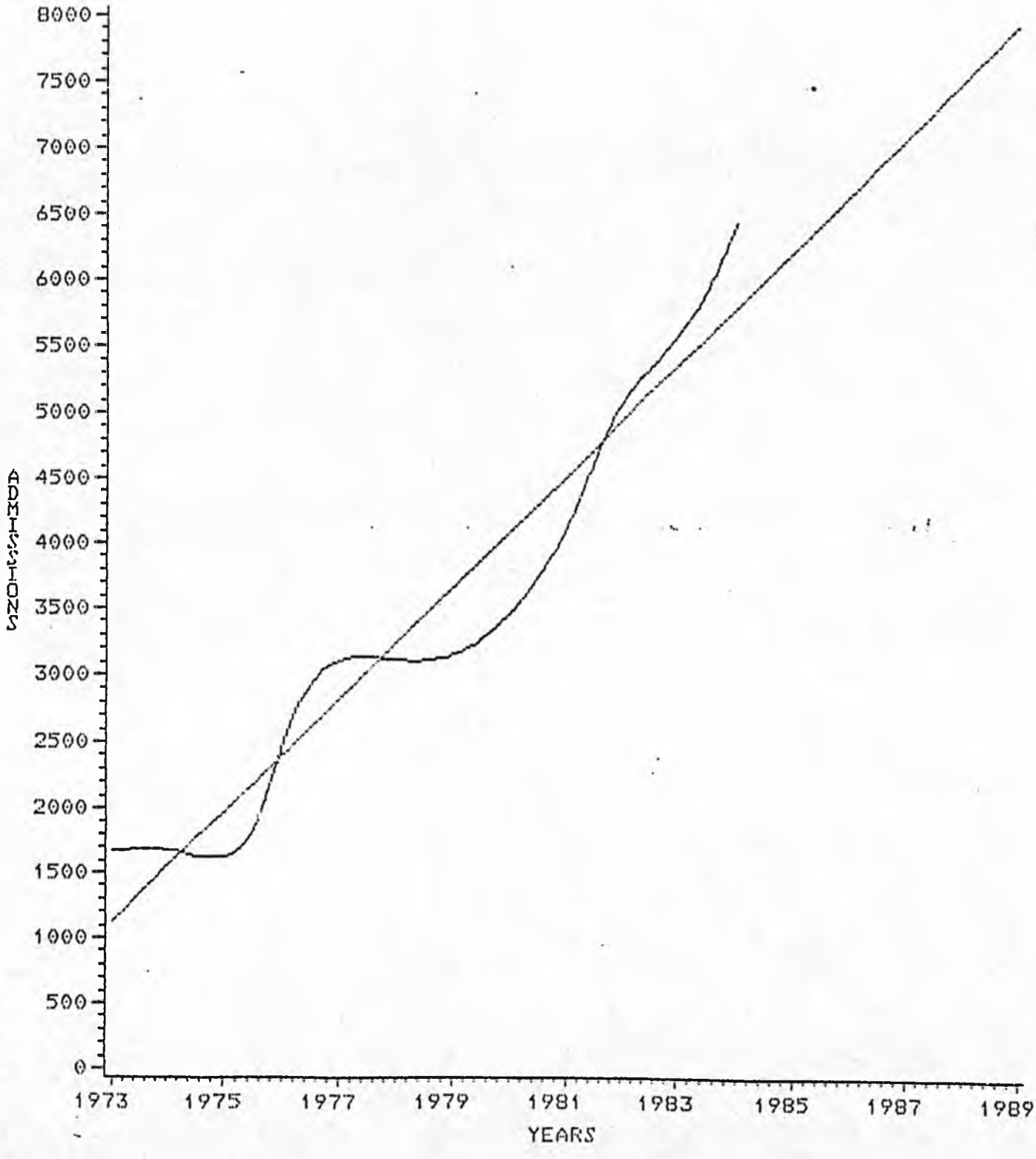


POPULATION WITH FIVE YEAR PROJECTIONS

Graph 2 presents data on the admission of new cases to the community mental health center's caseload. A total of 26 such centers are funded accross the state, located in major population areas and in a number of rural or bush communities. They provide essential mental health services in their catchment areas, and are often the only source of such services in the more rural areas. From 1974 through 1984 admissions to this system have gone from 1,678 to 6,456, a 285% increase. During fiscal year 1984 alone admissions increased 15.2%.

Comparing Graph 1 with its population data, and Graph 2 on CMHC admissions, it is evident that admissions closely followed population growth. With the continued growth of the states' population an increase of 23% in admissions is expected over the next five years due to this fact alone.

COMMUNITY MENTAL HEALTH CENTERS
ADMISSIONS

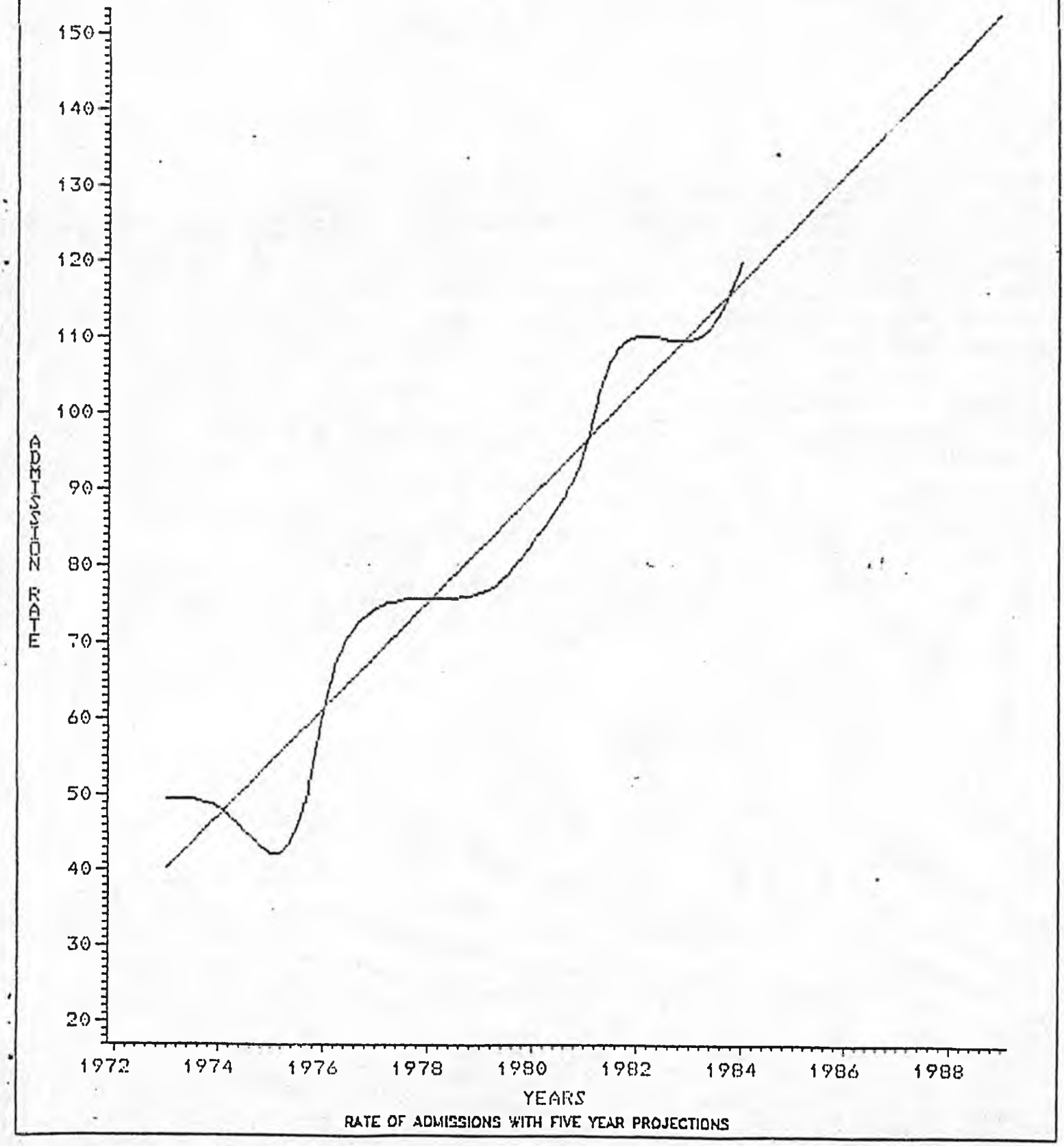


ADMISSIONS WITH FIVE YEAR PROJECTIONS

Rates of admission to the community mental health center system per 10,000 state population is one measure of the workload of those who deliver mental health services throughout the state. During the period from 1975 through 1984 this rate has increased from 42 per 10,000 population to 120 per 10,000 population, an increase of 185%. During fiscal year 1984 the admission rate increased 9.4% compared to the population growth rate of 5.4%. It is evident from this graph and the preceeding one taken together that the growth in community mental health center admissions is a function of both population growth and of their providing services to a greater proportion of the state population.

Still, there remains an unknown fraction of the state population which does not receive the minimum level of essential mental health services. To some degree this is reflected in the continuing increase in the rate of admissions to the community programs. It is expected that these programs will continue to expand their service delivery to the extent that they are able to do so based on the availability of staff and funds, and that one result of this will be a continuing increase in admission rates. This will, of course, further increase the number of admissions and the size of caseloads in the system.

COMMUNITY MENTAL HEALTH CENTERS
RATE OF ADMISSIONS PER 10,000 POPULATION

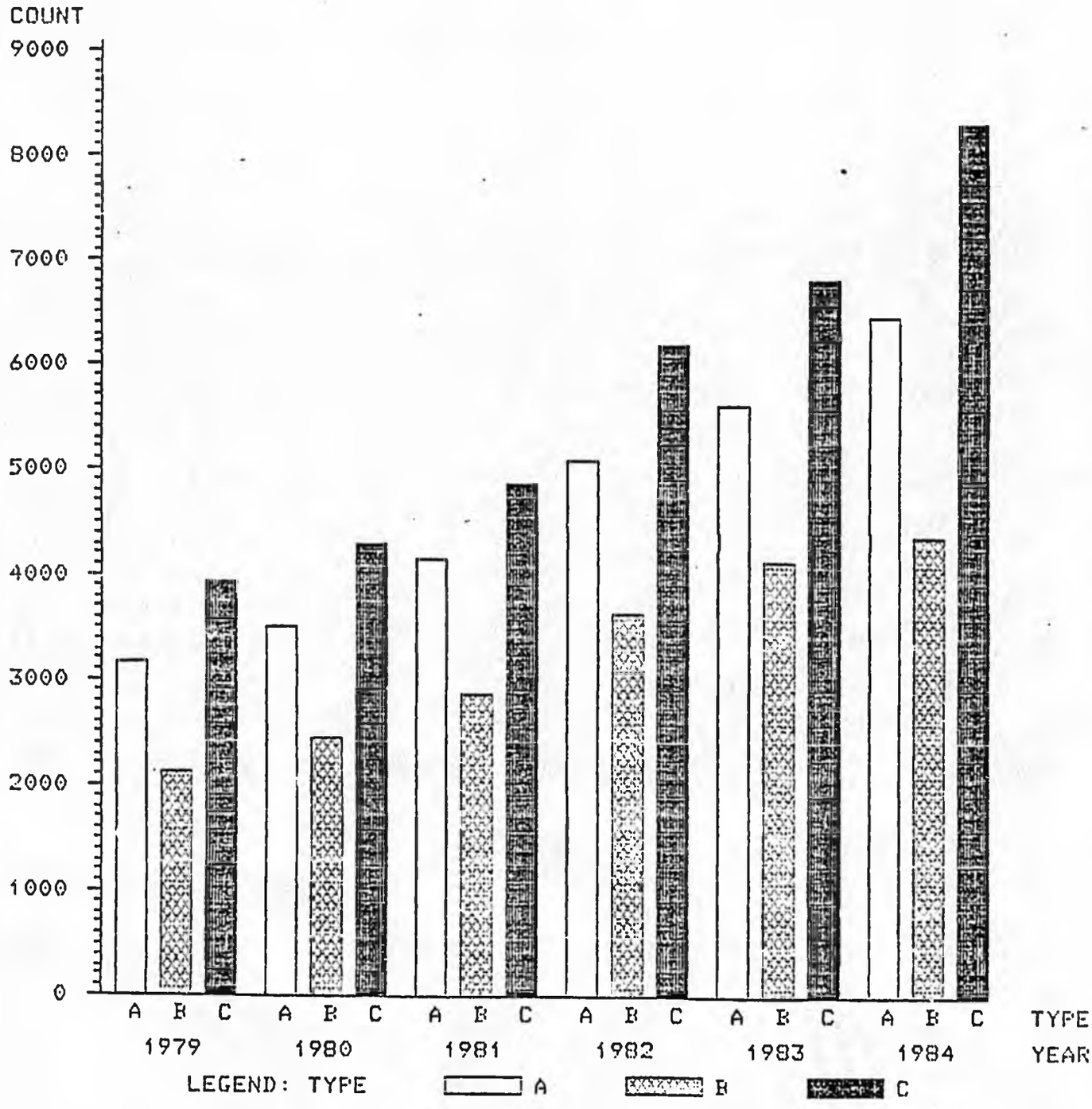


RATE OF ADMISSIONS WITH FIVE YEAR PROJECTIONS

.The graph on the following page presents three different measures of the services provided by the community mental health center system; admissions, caseloads, and the unduplicated client count. Admissions represent new clients coming into the system for treatment. The caseload represents unique individuals receiving services during the last 90 days of the fiscal year and are considered as the "open cases" in the system. The unduplicated count of clients reflects the total number of specific individuals who received service at any time during the fiscal year.

During the past five years there has been a consistent increase in growth in all three of these indicators. Admissions increased 104%, the caseload increased 105%, and the unduplicated count of cases increased 111 percent. During the same five years population increased 30%.

COMMUNITY MENTAL HEALTH CENTERS
ADMISSIONS, CASELOADS, AND CLIENTS SERVED

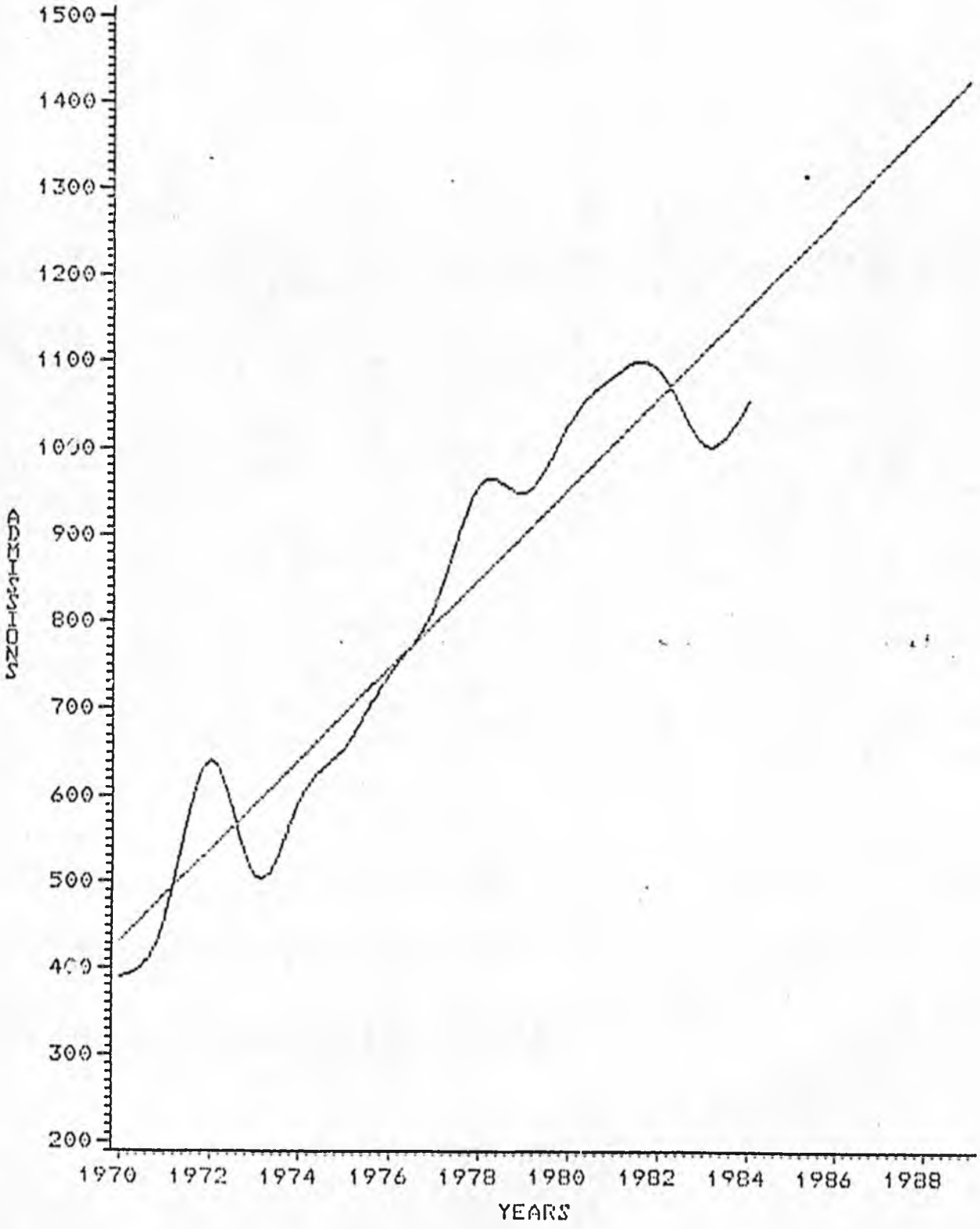


A=ADMISSIONS B=CASES C=CLIENTS
FOOTNOTE 1: OPEN CASES RECEIVING SERVICES IN LAST 90 DAYS OF FISCAL YEAR
FOOTNOTE 2: UNDUPLICATED COUNT OF OPEN CASES RECEIVING SERVICES DURING FISCAL YEAR

The Division of Mental Health and Developmental Disabilities operates the state's sole public psychiatric hospital, the Alaska Psychiatric Institute, in Anchorage. This facility receives both voluntary and involuntary admissions from accross the state and also provides forensic services to the Department of Corrections. Graph 5 shows admissions from 1970 through 1984.

During the period 1970-1982 admissions rose from just under 400 to almost 1100, and increase of 175%. The decline in admissions in fiscal year 1983 was largely due to the provision of mental health services in correctional facilities in place of the transfer of the incarcerated patient to the psychiatric hospital in an effort both to provide better services to forensic patients as well as more security during treatment and in an effort to control population growth at the hospital. Population pressures were again felt in fiscal 1984 however, as admissions kept pace with population growth by rising almost 5%. It is very likely that pressures on the Alaska Psychiatric Institute are similiar to those in the community outpatient system, a combination of population growth and the need to expand services to a greater proportion of the population.

ALASKA PSYCHIATRIC INSTITUTE
ADMISSIONS

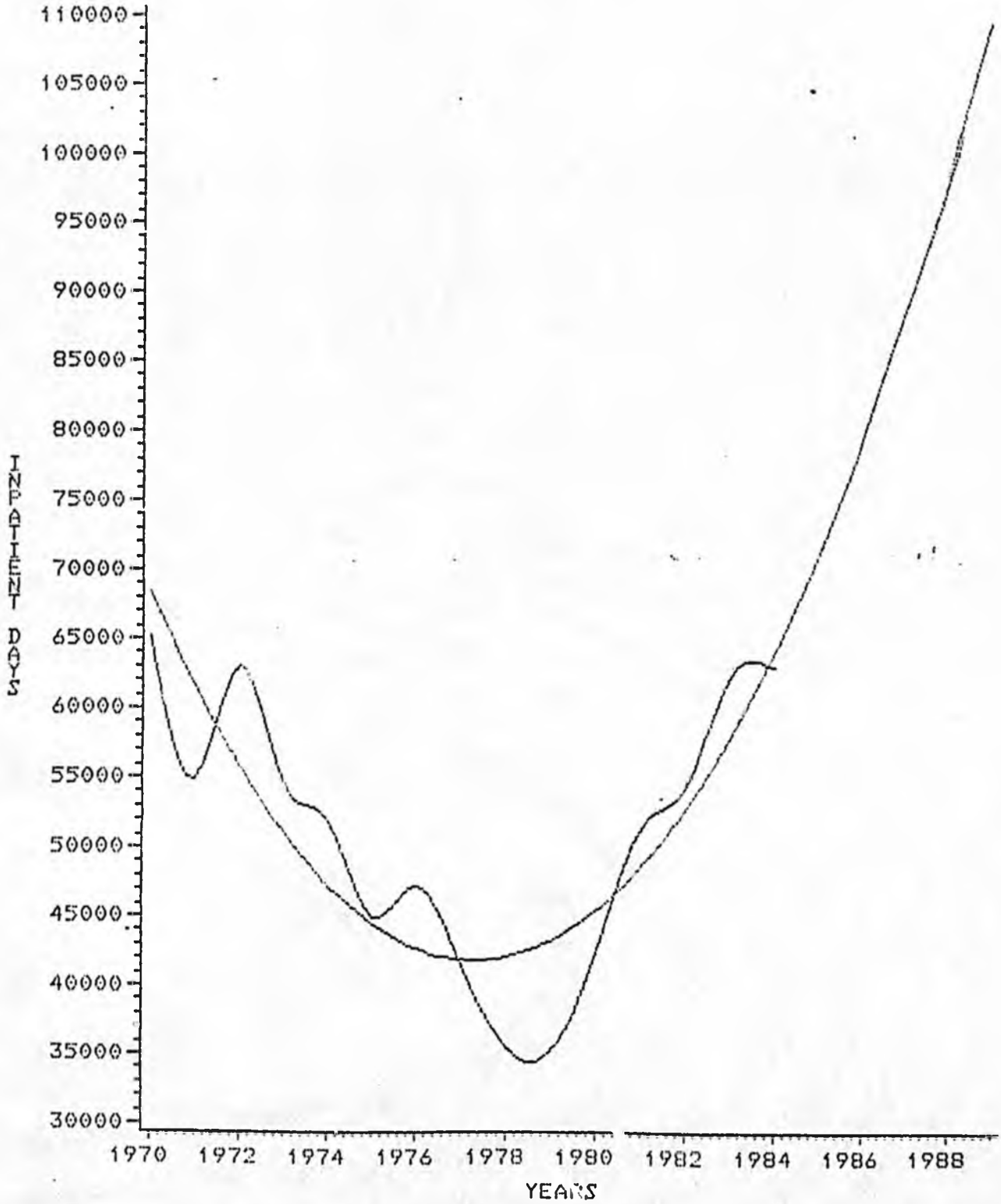


ADMISSIONS WITH FIVE YEAR PROJECTIONS

The Alaska Psychiatric Institute has one restriction that the community mental health center outpatient system does not face, and that is the limitation of the number of beds available for patients. Currently the hospital is an accredited 176 bed facility. In terms of inpatient days this means a maximum of 365 x 176 or 64,240 inpatient days are available for service delivery. In fiscal year 1984, 62,904 inpatient days were delivered, or 98% of the total available. This is an increase from the previous years 95%, and represents an ever thinner operating margin.

Given the maximum use of available bedspace that these figures represent, the ceiling on the number of beds available, and the population growth which pushes the number of potential admissions higher each year, the only systems constraint which can change is that of length-of-stay in the facility. Essentially, it becomes necessary to shorten the period of treatment at the hospital, on the average, in order to make beds available for further admissions. This is, of course, the solution of last resort, and the hospital, whenever possible, attempts to increase the efficient utilization of existing resources rather than decrease treatment time.

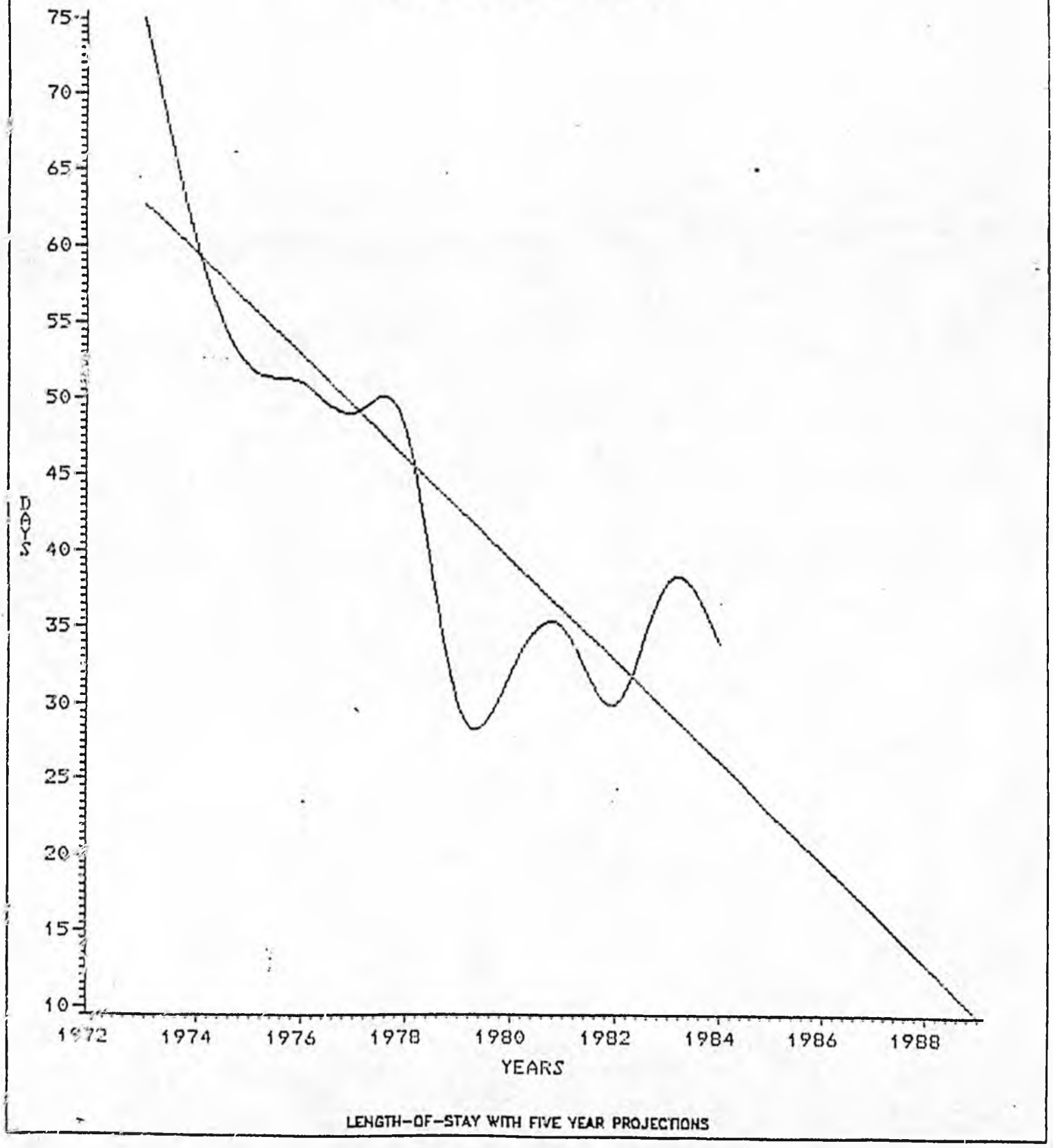
ALASKA PSYCHIATRIC INSTITUTE
INPATIENT DAYS



INPATIENT DAYS WITH FIVE YEAR PROJECTIONS

Graph 7 on the following page presents data on the length-of-stay at the Alaska Psychiatric Institute. In 1983 when admissions decreased slightly the length-of-stay increased; in 1984 when admissions increased the length-of-stay decreased. This relationship between length-of-stay and admissions is a reflection of the fact that the resources of the API, as shown by the 98% utilization of inpatient days, is at its maximum effective limit. The basic problem for the facility is to balance pressures from further admissions with the need for completion of a course of treatment for patients. If population pressures continue to mount and no alternative to admission to the hospital is found, length-of-stay is predicted to further fall as patients are released with fewer days under treatment.

ALASKA PSYCHIATRIC INSTITUTE
LENGTH-OF-STAY

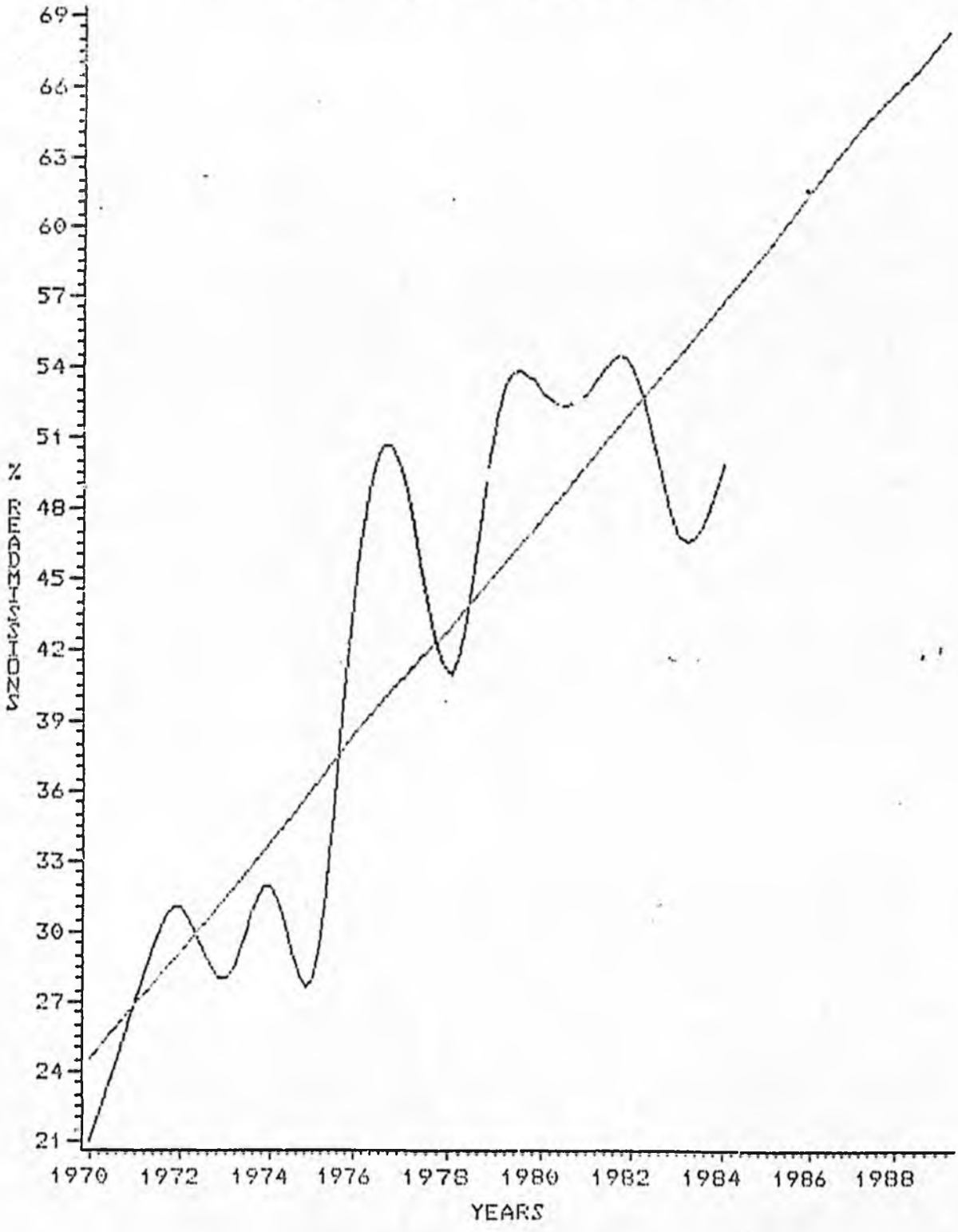


LENGTH-OF-STAY WITH FIVE YEAR PROJECTIONS

Graph 8, on the percent readmissions to the Alaska Psychiatric Institute, shows the results of decreasing length-of-stay on readmission rates. As length-of-stay decreases the readmission rate for former hospital patients tends to increase. There are thus two driving forces at work to raise the number of admissions to the hospital; the growing Alaska state population and the revolving door of readmissions.

The data represented in these graphs depicts a mental health delivery system under considerable stress and likely very near to operating at the extremes of its capacity. If the predicted trends continue over the next very few years some hard choices are going to have to be faced. Expansion of costly services, new construction, expanded community support systems, alternative hospital and community placements, the prioritization of service delivery, the designation of target populations, and the reduction in the overall availability of services are all possible outcomes.

ALASKA PSYCHIATRIC INSTITUTE
PERCENT READMISSIONS



PERCENT READMISSIONS WITH FIVE YEAR PROJECTIONS

EXCERPTS

of

TWO DECADES OF UNANIMOUS STATE LEGAL OPINION

SUPPORTING

THE POSITION OF

THE ALASKA MENTAL HEALTH ASSOCIATION

REGARDING THE ADMINISTRATION OF MENTAL HEALTH LANDS

In 1964 Opinions of the Attorney General No. 7, September 14, 1964, Re: Selection of Mental Health [,] School and University Lands by Boroughs Attorney General Warren C. Colver wrote in part:

> Mental Health lands in Alaska were established under a Federal grant which directed that the lands be administeresd as a public trust and the incomne therefrom "be applied to meet the necessary expenses of the mental Health program of Alaska." . . .
>
> The grants by the Federal Government of School and University lands and Mental Health lands were confirmed and transferred to the State of Alaska upon its admission to the Union under Section 6K of the Alaska Statehood Act (72 Stat. 339), with the express proviso that they be used for the purposes for which they were reserved. (emphasis added)
>
> Since Statehood, the State of Alaska has continued to use these lands and the proceeds derived therefrom for the special purposes for which the Federal Government originally granted these lands to the Territory of Alaska. The Director of the Division of Lands is authorized by As. 38.05.035 to select, administer and dispose of Mental Health lands for the support of the Mental Health program. As 38.05.035(a)(13) provides as follows:
>
> > "select, administer, and dispose of mental health lands for the support of the mental health program (emphasis added in Colver letter)
>
> The Legislature has clearly established a policy that the Mental Health lands continue to be dedicated for the support of the Mental Health program.
>
> In conclusion, it is our opinion that the Mental Health School and University lands of the State are not unappropriated, unreserved State lands within the meanting of As 07.10.150 and are not subject to selection by a borough under that Act.

—

However, in the actual administration of Mental Health Lands the State:

-- Transferred Mental Health Lands to various State of Alaska agencies with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

__ Transferred Mental Health Lands into State Parks or

other non-revenue producing categories with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

-- Took public rights-of-ways from Mental Health Lands with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

__ Took gravel and other valuable materials from Mental Health Lands with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

-- Purportedly sold, leased, exchanged, or otherwise purported to convey Mental Health Lands or interests therein to third parties with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

__ Otherwise violated its trust responsibilites in the management of Mental Health Lands;

all in violation of clearly established legal requirements for the administration of federal trust lands.

—

By 1975 there had been enough questions raised with regard to the administration of Mental Health Lands and other trust lands by the State of Alaska (University and School) that a paper on the subject was written by a State of Alaska, Division of Lands Summer Law Clerk, Ronald L. McGowan entitled A Report On Alaska's School, University And Mental Health Lands (The McGowan Report). See Exhibit A.

Among other things the McGowan Report states:

... Some State of Alaska agencies are currently using these lands without making any compensation. This practice appears to be in violation of law. (p.12)

...the Attorney General held that such [Mental Health] lands could be exchanged for general grant lands under certain contintions; specifically: 1. such exchange will further a legitimate state purpose; 2. the integrity of the mental health trust be preserved; and, 3. the exchange, at least in part, supports the mental health program. (p.8)

> ... In the final analysis Alaska must see to it that its school, university and mental health lands continue to be in support of the purposes for which they were granted. (p.14)
>
> ... To assure that these lands continue to support the purposes for which they were granted, any proceeds, income, or other funds derived from them must go to the support of the appropriate program. (p.15)

(Emphasis Added)

—

By 1976 there had been general recognition within the State of Alaska's Division of Lands, that the Alaska Mental Health Enabling Act was being violated by the State of Alaska in its administration of Mental Health Lands.

—

On January 28, 1976 Dale P. Tubbs, Deputy Director, Division of Lands, Department of Natural Resources, State of Alaska wrote to George E. Utermohle, Legislative Intern, Legislative Affairs Agency in response to a series of written questions in part:

> The criteria used in selecting mental health grant lands was to create money for the fund from the management and disposal of the lands and resources involved. Lands were picked adjacent to communites knowing that the expansion would involve the land and be needed for economic reasons. Also large blocks of land were picked where known resources were involved that would create revenue.
>
> . . . In many instances recommendation by any of these agencies [various State agencies] may have an adverse impact on the production of revenue.
>
> . . . It can be estimated however that not more than 5000 acres of mental health lands have been sold.
>
> . . . Also past legislation and state use has appropriated some of the lands without generating revenue.

. . . It would be recommended that any legislation that tends to appropriate mental health lands require a fiscal note determining the land value that is being taken from the mental health grant to the benefit of the legislation. To compensate the loss by putting the lands into a non-revenue producing category it could be suggested thbat the Legislature be required to put into the mental health fund account the market value of the lands appropriated.

—

On April 27, 1976 Michael C. T. Smith, Director, Division of Lands, Department of Natural Resources, State of Alaska wrote to Guy R. Martin, Commissioner, Depart t of Natural Resources on School, University, and Mental Health Grant Lands - Lack of Effective Programs in part:

> The primary purpose for the existence of these lands is to generate revenues from their lease or sale, the revenues then to be used in furthereance of the respective program.
>
> At this time there is no trust fund for the Mental Health Land revenues, although a strict accounting of revenues received from Mental Health Lands is kept as these monies enter the General Fund.
>
> . . . However, it is unfair to the university program, as well as technically flaunting the purposes for which lands were given to University, for these lands to be permanently tied up in a nonrevenue producing classification. Other examples include considerable acreages of Mental Health, School and University lands presently withgdrawn within Chyugach State Park and Palmer Hay Flats Wildlife Refuge.

—

On February 8, 1977, Assistant Attorney General Thomas E. Meacham, wrote a "Brief Synopsis of School, University and Mental Health Land Statutes" (Meacham Synopsis). Portions of the Meacham Synopsis are:

> State courts in other states have discussed the trust responsibilites of states regarding lands granted them under the terms of a particular federal act, and have generally held that the administration of the lands must

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 128

Title: Mental Health Trust Lands

Sponsor: Pignalberi, et al.

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected:

BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE		(1,500)	(1,500)	(1,500)	(1,500)	(1,500)

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Projected lost revenue is based on an average income from state land sales of $15,000,000 annually, 10 percent of which is from mental health land.

Prepared By: Michael E. Vediner Phone: 465-2400

Division: Land and Water Management Date: March 20, 1985

Approved by Commissioner: Norman D Gorsuch, Deputy Date: March 20, 1985

Agency: Dept. Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Introduced: 1/25/85
Referred: Resources,Judiciary
and Finance

IN THE HOUSE

BY PIGNALBERI,GRUENBERG,BOUCHER,
JENKINS,KOPONEN AND TAYLOR

HOUSE BILL NO. 128

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to mental health trust lands; and providing for an effective date."

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

* Section 1. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.880. DISPOSITION OF STATE MENTAL HEALTH TRUST LANDS. The state may not convey or otherwise dispose of land owned in fee by the state that was received from the federal government under sec. 202 of the Alaska Mental Health Enabling Act of 1956 (P.L. 84-830).

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

March 8, 1985

The Honorable Richard Shultz
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Shultz:

I am writing each member of the Legislature to provide current information on two issues of rising concern to Alaskans: the management of the state's mental health lands and progress in negotiations between the state and Seldovia Native Association, Inc. (SNA) regarding a possible land exchange in Kachemak Bay State Park. These two issues are largely unrelated, but they are summarized in this letter owing to the broad interest that has been exhibited in them.

Mental Health Lands Status

I am enclosing a briefing packet on the mental health lands issue, but let me also provide a summary progress report.

The current issue regarding mental health land management arises from a class action lawsuit that has reached the Alaska Supreme Court, in which plaintiffs contest 1978 legislation that redesignated mental health lands for general use and provided for a mental health trust fund to which appropriations have not been made (AS 37.14.010-.050).

The mental health lands include valuable acreage in the Swanson River oil and gas field, Beluga coal field, Trans Alaska Gasline System project, and Eklutna water project. Pursuant to the 1978 legislation, other mental health lands have been conveyed to municipalities in fulfillment of their entitlements and to individuals under land disposal programs. At the Court's direction we are conducting an audit and inventory of mental health lands that will produce preliminary results in mid-March and will be complete in mid-May. The audit will indicate more clearly what is at stake, but we are already aware that the mental health lands could be very valuable

10-J9LH

because of their location and resources. I will keep you informed as this information becomes available.

The state has expressed to the sponsors of HB 128 (providing for a moratorium on conveyances of mental health lands) its interest in discussing settlement of the litigation that is pending in the State Supreme Court or of possible litigation in federal court (as threatened by the Alaska Mental Health Association). Our attorney, Tom Koester of the Department of Law, has been designated by the administration to serve as the point of contact in these negotiations. Either Tom or members of my staff remain available to brief you further.

I believe that passage of legislation such as HB 128 could have an adverse effect on the state's management of these lands without corresponding benefits for the plaintiffs in the suit. I want to be sure that you are aware of our interest in constructive resolution of the litigation.

Kachemak Park Land Exchange

A 1978 agreement between the state and the Seldovia Native Association, Inc., (SNA) provides for a full trade-out of the corporation's land within Kachemak Bay State Park for an equal-value amount of state land outside the park. This exchange has been under way for several years, during which time the state has exchanged for about 3,500 acres of SNA land within the park. At present, there are another 23,000 acres of SNA land within the park.

To the frustration of both parties, completion of the trade has been delayed by several factors. Foremost is the difficulty of identifying a sufficient amount of state land of interest to SNA which can be made available for the trade. Our experience indicates that Seldovia is primarily interested in developable state land with road access or water frontage. Obviously, this type of state land is in short supply and in high demand from other competing interests (particularly on the Kenai Peninsula).

In an attempt to complete this trade as soon as possible in a single action (rather than in phases), I have instructed my staff to identify a large inventory of potential trade land, including land outside the Kenai Peninsula area. We will identify a pool of land well in excess of that needed to complete an equal value exchange, so as to afford Seldovia and the state the flexibility to refine the land pool as needed. Mr. Fred Elvsaas,

President of the SNA, has received a preliminary list of some available state land, and I've explained to him that our statutes require our preliminary agreement to undergo public and legislative review. The department cannot unilaterally commit state land to the trade without this review.

In recent correspondence copied to members of the Legislature, the president of SNA signalled a lack of confidence in the department's approach to the exchange. I have met with Mr. Elvsaas on numerous occasions and each time I have reiterated my interest in and commitment to the trade -- but I also have tried to clarify that land exchanges are subject to a public process and that no agreement can be considered final unless it passes through the required process. I want you also to be aware of this process and my interest in the trade.

As you will see in the enclosed briefing paper on land exchanges, an exchange of such magnitude is subject to legislative approval. AS 38.05.020(a) requires legislative approval if an exchange involves state land having an appraised or estimated fair market value of more than $5,000,000, or is for other than equal appraised fair market value. The department will continue attempts to negotiate the trade this spring and summer with SNA. Assuming we reach an agreement, I expect to hold public hearings on the trade this fall and submit the exchange for legislative review under AS 38.50.140 at the beginning of the 1986 session.

I will do my best to keep you advised as we continue to negotiate with SNA. I would be pleased to arrange a briefing on the trade for you if you are interested.

Sincerely,

Esther

Esther C. Wunnicke
Commissioner

Enclosures

cc: Governor Bill Sheffield
John Shively, Office of the Governor
Attorney General Norm Gorsuch
Tom Koester, Department of Law
Tom Hawkins, Division of Land
and Water Management
Fred Elvsaas, Seldovia Native Association, Inc.

Alaska Department of
NATURAL
RESOURCES

Mental Health Land Grant Fact Sheet
January, 1985

History

In July 1956, congress passed Alaska's Mental Health Enabling Act. The act established a public trust fund to be used primarily for the treatment of the mentally ill in Alaska. Any monies left over after mental health program costs were met could be spent for other public purposes at the discretion of the legislature. One million acres of federal land were granted to the Territory of Alaska to form the economic base for the trust.

Land selections were subsequently made between 1956 and 1966, primarily around centers of population (Anchorage, Fairbanks, Juneau, Kenai etc.), the railbelt and other areas believed to be valuable for subsurface resources (Beluga coal, Kenai oil, etc.). State records show that approximately 950,000 acres are now in state ownership. The lands are administered by the Department of Natural Resources along with land acquired through other land grants.

Although a formal trust fund was never established, the Alaska Legislature made appropriations for mental health programs. Total income produced from the mental health land from 1959-1977 was $25,110,430. Mental health expenditures in Alaska by the state for the same period of time were $115,364,054, with an additional $16,430,771 being spent on alcohol and drug abuse programs.

In 1978 the legislature passed a law which redesignated mental health, school, and university trust lands as general grant lands. The redesignation provided for a more compact land base which made the land easier and more cost effective to administer. The legislation also established a trust fund for mental health programs to be financed by 1.5% of the annual receipts for all state land. However, the trust fund has never been funded by the legislature.

In April 1979, the University of Alaska challenged the constitutionality of the 1978 redesignation legislation (it also affected university land). The court upheld the law, but a settlement reached in June, 1982, granted land and money to the university. Heartened by the university's success, the Alaska Mental Health Association filed a class action lawsuit in Fairbanks Superior Court on November 26, 1982 on behalf of Carl Weiss, a seven year old boy from Nenana, and Earl Hilliker, a Fairbanks resident. The suit contends that the plaintiffs were in need of mental health services which they could not receive in Alaska. It also raised questions about the constitutionality of the 1978 law; challenged the state's stewardship of mental health land; and asked that a mental health trust fund be established. A judgement was entered by Justice Warren W. Taylor in September 1984. That judgement stated that the mental health trust fund is exclusively dedicated to Alaska's mentally ill, that it had been breached by the legislative redesignation and is entitled to be reimbursed full value of the mental health land. The state has appealed that decision to the Alaska Supreme Court. Mr. Stephen Cowper of Fairbanks represents the plaintiffs, and Mr. Thomas Koester, Attorney General's Office, represents the state.

MENTAL HEALTH ANNOTATED CHRONOLOGY

1) 1956 - Mental Health Enabling Act
[1956 Public Law 830, Title II, Sec. 202, July 28, 1956]

   a. Granted 1 million acres of land, including mineral rights, to Territory of Alaska as base for a public trust.

   b. Established a public trust for the mentally ill in Alaska of the above lands and any income generated by these lands. Monies left over after mental health program costs were met could be used for other public needs. (A 12/7/68 memo from Peter Froelich, Assistant AG, states that this statute "neither required a dedicated or permanent fund nor created a true trust as did the statutes when granted school land.")

2) 1958 - Alaska Statehood Act, Sec. 6 (k) [1958 Public Law 85-508], reconfirmed the grant and transferred the grant from the territory to the state.

3) 1964 - "Selection of Mental Health School and University Lands by Boroughs", 1964 Opinions of the Attorney General No. 7, (Warren C. Colver), concluded that mental health and university lands were not unappropriated and unreserved (having been appropriated and reserved to support the designated programs) and therefore could not be selected by boroughs.

4) 1967 - An informal attorney general's opinion (memorandum) was issued by Deputy Attorney General Edward Reasor on "Mental Health Lands Exchange". This memorandum concluded that the state could exchange mental health lands for general grant lands as long as the exchange was for legitimate state purpose, the integrity of the trust was preserved, and the exchange supported the mental health program (it did not deal with the severance of estate issue).

5) 1976 - According to Dr. Jerry Shrader in an article for "Coping" magazine (see #8) a Mental Health Land Board was created within DHSS, Division of Mental Health. I can find no evidence in statutes.

6) 1978 - New state legislation dealing with redesignation of mental health, school and university lands was passed. (Chapters 180, 181 and 182, Alaska Session Law 1978). Chapter 180 allowed for the municipal selection of mental health land subject to "DNR-led" land exchange. Chapters 181 and 182 redesignated mental health land as general grant land effective July 1, 1978 (the bill was signed July 18, 1978). The effect of chapters 181 and 182 was that exchanges of mental health land were no longer necessary.

   An accounting of income produced from mental health land was required for possible legislation: the total was $25,110,430 from 1959 thru 1977.

DEPARTMENT OF NATURAL RESOURCES
DEC 24 1984
COMMISSIONER'S OFFICE

2. Comply with the MH Enabling Act. This would entail an assessment of the fair market value of MH land as of the date of redesignation, regular legislative review of mental health needs in the state with recommended funding levels, and the transfer of money to the fund until the fund has received money equal to the fair market value of the trust land (recommends direct transfer without appropriation into the fund as it must be appropriated out).

3. Seek the repeal of the Alaska Mental Health Enabling Act by congress.

(Nov.) Lawsuit filed (Weiss v. State) claiming that the state violated the terms of the MH Enabling Act.

a. Seeks to void AS 37.14.070 claiming it was illegal to redesignate the land.
b. The State has or will realize revenue from redesignated mental health land that is not being placed in trust, wants a trust established.
c. The State violated public trust by disposing of mental health land at less than fair market value. Wants the court to direct the State to administer the land in accordance with the public trust.

The Assistant AG on the case, Tom Koester, asks DNR to provide information regarding:

a. The land obtained under the MH Enabling Act.
b. The disposition of those lands, and
c. The value of those lands.

DHSS is asked to provide documentation on state expenditures for mental health purposes.

10) 1983 - (June) Memorandum Decision (partial summary judgement) entered against the state. Requires the state to account for the value of land removed from the MH Trust. States that the remedy might be monetary rather than a invalidation of 1978 legislation.

(July) Appeal and cross appeal entered and denied.

(Aug) Cowper, the Weiss attorney, states that he will not begin negotiations until the state accounts for all MH land and its disposition.

(Sept) Meeting with DNR/AGO/DHSS reveals that DHSS thinks that all monies derived from MH land must be spent exclusively on MH. DHSS expressed an interest in setting up a DHSS land management section (similar to the university settlement).

(Dec) Court orders the state to comply with an accounting and an appraisal of MH land by March 30, 1984.

11) 1984 - (Jan) Tom Hawkins deposition ordered for Feb 2. Required information on land selected under MH Enabling Act and the disposition of that land.

MENTAL HEALTH ANNOTATED CHRONOLOGY

1) 1956 - Mental Health Enabling Act
[1956 Public Law 830, Title II, Sec. 202, July 28, 1956]

   a. Granted 1 million acres of land, including mineral rights, to Territory of Alaska as base for a public trust.

   b. Established a public trust for the mentally ill in Alaska of the above lands and any income generated by these lands. Monies left over after mental health program costs were met could be used for other public needs. (A 12/7/68 memo from Peter Froelich, Assistant AG, states that this statute "neither required a dedicated or permanent fund nor created a true trust as did the statutes when granted school land.")

2) 1958 - Alaska Statehood Act, Sec. 6 (k) [1958 Public Law 85-508], reconfirmed the grant and transferred the grant from the territory to the state.

3) 1964 - "Selection of Mental Health School and University Lands by Boroughs", 1964 Opinions of the Attorney General No. 7, (Warren C. Colver), concluded that mental health and university lands were not unappropriated and unreserved (having been appropriated and reserved to support the designated programs) and therefore could not be selected by boroughs.

4) 1967 - An informal attorney general's opinion (memorandum) was issued by Deputy Attorney General Edward Reasor on "Mental Health Lands Exchange". This memorandum concluded that the state could exchange mental health lands for general grant lands as long as the exchange was for legitimate state purpose, the integrity of the trust was preserved, and the exchange supported the mental health program (it did not deal with the severance of estate issue).

5) 1976 - According to Dr. Jerry Shrader in an article for "Coping" magazine (see #8) a Mental Health Land Board was created within DHSS, Division of Mental Health. I can find no evidence in statutes.

6) 1978 - New state legislation dealing with redesignation of mental health, school and university lands was passed. (Chapters 180, 181 and 182, Alaska Session Law 1978). Chapter 180 allowed for the municipal selection of mental health land subject to "DNR-led" land exchange. Chapters 181 and 182 redesignated mental health land as general grant land effective July 1, 1978 (the bill was signed July 18, 1978). The effect of chapters 181 and 182 was that exchanges of mental health land were no longer necessary.

   An accounting of income produced from mental health land was required for possible legislation: the total was $25,110,430 from 1959 thru 1977.

DEPARTMENT OF
NATURAL RESOURCES

DEC 24 1984

CONSERVATION

In order to comply with the intent of the original trust legislation, the legislature set up:

A. A Mental Health Fund,
B. A Mental Health Fund Advisory Board within the Department of Revenue (members: Director, Division of Mental Health; Chair, Mental Health Advisory Council; Commissioner, Department of Revenue), and
C. The funding source for the fund: 1.5% of total revenue derived from the management of (all) state land.

7) 1981-1979 - No money deposited in the Mental Health Fund; no meeting of the Mental Health Fund Advisory Board held. However, money was appropriated by the legislature for the purpose of mental health treatment (e.g. DHSS, Div of Mental Health).

8) 1981 - House Bills 151 and 152 were introduced to appropriate $84,000,000 to the Mental Health Fund (i.e., the amount owed to the fund from 1978-1981), and provide for oversight of the fund and income. Senate Bills 710 and 711 were also introduced to satisfy the Mental Health Fund requirements.

An article by Dr. Jerry Schrader appeared in "Coping" magazine calling for litigation if the legislation was not passed (it did not).

9) 1982 - (Feb) Laura Davis, Assistant AG, did an analysis of the Mental Health Trust Fund (J66-534-81A) at the request of Hugh Malone, state legislator. This analysis points out the following:

a. That the 1.5% funding established in 1978 legislation was not based on an appraisal of mental health land, therefore, it is not possible to judge its fairness. The funding will exceed the value of the trust land at some future time (prohibited by Article IX Section 7 of the Alaska Constitution);
b. Although the legislature has not funded a mental health fund, it has made mental health appropriations;
c. Money from the fund established by the Mental Health Enabling Act were not to be used <u>exclusively</u> for mental health. Mental health funding is simply the first priority.
d. If the substitution of revenue for the trust imposed by the 1978 legislation was not equal to the fair market value of the trust lands, then the trust has been breached (the failure to appropriate may <u>also</u> be a breach).
e. There existed three alternative courses of legislative action:

1. Do nothing to fund the Mental Health Trust Fund. Litigation was likely with the course, but the state may be immune from enforcement as the MH Enabling Act didn't provide for enforcement. Also, the case can be made that past appropriations have taken care of reasonable mental health needs in Alaska.

2. Comply with the MH Enabling Act. This would entail an assessment of the fair market value of MH land as of the date of redesignation, regular legislative review of mental health needs in the state with recommended funding levels, and the transfer of money to the fund until the fund has received money equal to the fair market value of the trust land (recommends direct transfer without appropriation into the fund as it must be appropriated out).

3. Seek the repeal of the Alaska Mental Health Enabling Act by congress.

(Nov.) Lawsuit filed (Weiss v. State) claiming that the state violated the terms of the MH Enabling Act.

a. Seeks to void AS 37.14.070 claiming it was illegal to redesignate the land.
b. The State has or will realize revenue from redesignated mental health land that is not being placed in trust, wants a trust established.
c. The State violated public trust by disposing of mental health land at less than fair market value. Wants the court to direct the State to administer the land in accordance with the public trust.

The Assistant AG on the case, Tom Koester, asks DNR to provide information regarding:

a. The land obtained under the MH Enabling Act.
b. The disposition of those lands, and
c. The value of those lands.

DHSS is asked to provide documentation on state expenditures for mental health purposes.

10) 1983 - (June) Memorandum Decision (partial summary judgement) entered against the state. Requires the state to account for the value of land removed from the MH Trust. States that the remedy might be monetary rather than a invalidation of 1978 legislation.

(July) Appeal and cross appeal entered and denied.

(Aug) Cowper, the Weiss attorney, states that he will not begin negotiations until the state accounts for all MH land and its disposition.

(Sept) Meeting with DNR/AGO/DHSS reveals that DHSS thinks that all monies derived from MH land must be spent exclusively on MH. DHSS expressed an interest in setting up a DHSS land management section (similar to the university settlement).

(Dec) Court orders the state to comply with an accounting and an appraisal of MH land by March 30, 1984.

11) 1984 - (Jan) Tom Hawkins deposition ordered for Feb 2. Required information on land selected under MH Enabling Act and the disposition of that land.

(Feb) Koester drew up a judgme t to be entered in the court which specifies that:

a. The 1978 legislation is constitutional, and
b. The MH public trust is entitled to be reimbursed for value of land redesignated as of July 19, 1978

(Judgment not signed).

(April) Survey of mental health land completed by DLWM.

(May) Cowper filed a motion to levy a sanction against the state (restraining the state from disposing of mental health land) for non-compliance with the discovery request. The hearing was held in Fairbanks the next day (June 1). At hearing the motion was divided into two parts: sanctions and a temporary restraining order. Frank Mielke testified about our compliance with the discovery request and Koester made a case for the state's solvency. The motions were denied.

(June) Koester drew up a stipulation re: the accounting process:

a. Value of MH land to be computed by determining fair market value as of July 19, 1978 and simple interest of 10.5% per year;
b. Appraisals shall be complete by 3/15/85;
c. Plaintiff (Cowper) has right to review RFP, contract, and list of approved appraisers. The plaintiff will receive copies of the appraisal as they are completed;
d. The state will develop value estimates of revenues and appraisals made of other 3rd party interests created in MH land prior to July 19, 1978. These estimates are to be based on estimates of revenues and appraisals made of other 3rd party interests on MH land prior to July 19, 1978. Estimates are to be based on appraisals of revenues and appraisals; and
e. In calculating final judgment the state shall receive credit for appropriations for mental health purposes prior to July 19, 1978 (stipulation not signed).

(August) Notice of Lis Pendens filed August 1, 1984 by Cowper against all land selected by the state.

Koester drew up a stipulation stating that the state will:

a. Draw up a legal description of all land selected by the state to fulfill the MH land grant;
b. Provide a listing of the current acquisition status of the MH selections;
c. Note whether the MH land had been alienated or conveyed and if so, how;
d. Estimate the fair market value of the interests conveyed or alienated based on appraisals, done at the time of conveyance and revenues derived from the conveyance;
e. Appraise the fair market value of all mental health land remaining in the MH trust on July 19, 1978; and

f. Compute the value of all mental health land converted to general grant land by adding simple interest of 10.5% per year to the appraised value (a, b, c, e and f are due by March 15, 1985; d is due May 15, 1985).

The stipulation was signed by Koester August 30, 1984; was signed and filed with the court by Cowper on September 4, 1984.

At the same time, Koester drew up a judgement that stated:

a. The mental health enabling act created a public trust for which the state is trustee.
b. The redesignation of mental land to GG land was constitutional.
c. The public trust shall recover the value of land conveyed from the trust as of the date of conveyance plus prejudgement interest (the redesignation is considered a conveyance).
d The state will receive credit for mental health expenditures when calculating the final judgement.

The judgement was filed September 14, 1984.

(September) - The state moved to have the Lis Pendens expunged. Plaintiffs filed an opposing motion. The state counter filed.

The state filed an appeal of the judgement September 18, 1984. The appeal is based on the following:

a. The mental health trust land is not for the exclusive benefit of mental health.
b. The redesignation of mental health land was not a breach of the public trust.
c. The mental health trust fund is not entitled to be reimbursed for the full value of all mental health land received by the state.

A cross appeal is also filed. The appeal challenges the constitutionality of the 1978 redesignation.

(October) plans finalized for completing "appraisals" of the converted land by using a "valuation panel" consisting of three senior appraisers.

The appraisals contracted for in August are complete. This group of 183 parcels (81 tracts) is valued at $14.233,800.00. Much of the information gathered in this process will be used to aid the valuation panel.

A motion to intervene (plaintiffs) is brought by the Alaska Mental Health Association, Mary C. Nanuwak and John Martin. The motion seeks to bring up other issues in the case:

a. Is the state deliberately creating barriers to the enforcement the MH trust?
b. Have third parties receiving MH land been notified of the trust status of the land?

c. Are the conveyances in b. null and void?
d. Should the 1.5% of land revenue dedicated to the MH trust by the 1978 legislation be automatically deposited?
e. Are MH expenditures inadequate or misallocated?
f. Should the state be replaced as trustee?
g. Should punitive damages be awarded?
h. Should the court appoint an independent board to oversee the land?

The prospective interveners were associated with Cowper, but apparently disagee with his tactics and strategy. An opposing motion was filed by Koester. The motion to intervene was denied October 31, 1984 because it was not timely filed.

(November) Order expunging Lis Pendens signed November 15, 1984.

(December) Opinion of Value (appraisal) Panel chosen. The panel consists of three senior designated appraisers each representing a geographic area of the state. They are tasked with evaluating 4,600 parcels of mental health land as of July 19, 1978.

The Mental Health Association announced that it will file a separate lawsuit in federal court.

Alaska Department of
NATURAL
RESOURCES

LAND EXCHANGE FACT SHEET

The disposal of state land or interests in state land by exchange is governed by Alaska Statutes - Title 38.50 and Alaska Administrative Code - 11 AAC 67.200 to 11 AAC 67.280. These statutes and regulations ensure that the commissioner may exchange state land or interests only to achieve public purposes, after proper consideration of alternatives, agency coordination, public notice and public hearing(s). Unless the land or interests which the state receives in an exchange equals, or exceeds, the appraised fair market value of the land or interests exchanged by the state, the Alaska legislature must approve the exchange. Legislative review is also necessary if a exchange involves state land having an appraised or estimated fair market value of more than $5,000,000.

The land exchange process is usually detailed and time consuming. The department must adhere to the following chronological regulatory steps in order to complete a land exchange:

1. Initial pre-application discussions.
2. Application filed with department.
3. Department reviews application and responds within 60 days.
4. Land status checked.
5. Preliminary exchange agreement signed.
6. Notation of state title records to segregate land from third-party interests.
7. Fair market value appraisal report initiated.
8. Mineral closing order.
9. Land classification action.
10. Land survey completed, if necessary.
11. State agency coordination.
12. Appraisal report completed, reviewed and approved.
13. Preparation of alternative findings and exchange report.
14. Public notice.
15. Public hearing(s) and comment period.
16. Final exchange agreement signed.
17. Deed preparation and review.
18. Execution of exchange.

In addition, if the exchange requires legislative approval, the governor must transmit the proposal to the legislature within ten days of the convening of a regular legislative session. The department is authorized to conclude the exchange upon approval by the legislature of the proposed exchange agreement.

The commissioner may also revise a proposed land exchange to reflect comments or other information provided through the agency and public comment period [AS 38.50.130(b)].

Land exchange application forms may be obtained and submitted at any of the Division of Land and Water's Regional Offices located in Anchorage, Fairbanks or Juneau. If the exchange proposal involves a small tract of state land it will usually be negotiated directly by the applicable regional office. If, however, the exchange proposal involves either a large tract of state land, a federal government agency or Native corporation, or is considered by the department to be unusually complex or sensitive, the exchange will be negotiated by the division's Central Office Land Management Section.

HB

128

File #2

HOUSE

COMMITTEE REPORT

JUDICIARY

(7)

Date referred: 2/17/86

FURTHER REFERRALS: FINANCE

DATE: March 25, 1986

The RESOURCES Committee has considered SSHB 128

"An Act relating to the interim management of mental health trust land; and providing for an effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with CS for SSHB 128 (Resources) [XX] same title

[ ] new title

and recommends No recommendation

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[XX] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

[redacted] Dick Shultz

[redacted] Bette Cato

[redacted] F. Kay Wallis

SIGNING OTHER RECOMMENDATIONS:

[redacted] No Rec

[redacted] NO REC

[redacted] No Rec.

[redacted]

[redacted] Dick Shultz

THE ALASKA
ALLIANCE FOR THE MENTALLY ILL

"An affiliate of the National Alliance for the Mentally Ill"

March 11, 1986

Honorable Don Bennett
President of Alaska State Senate
Alaska State Legislature
Juneau, Alaska 99801

Dear Senator Bennett and Members of the Senate:

The Alaska Alliance for the Mentally I. believes it is essential that some legislation address the mental health lands dispute this session and appreciates the opportunity to present its position to the members of the Senate.

In addition to the proposed interim joint committee (either SCR 36 or HCR 50) the Alliance supports HB 128 as a further vehicle needed for resolution of the mental health lands dispute. Basic concepts embodied in this bill which we believe are essential to this or any other legislation are:

-The direction of the Supreme Court to reconstruct the trust must be implemented.

-A process for resolution of the mental health lands dispute must be set in motion

-Authority must be vested in an independant interim board to direct the necessary appraisals, inventories, and research; to oversee the management of the trust lands; draft proposed settlement legislation acceptable to all parties; and conduct other trust responsibilities.

-Representatives of the plaintiffs and intervenors (as well as legislators) must be part of the interim board and be funded sufficiently to responsibly review the State"s audits, appriasals, and program expenditures and participate in consensus building efforts between the mental health community and the State.

-Sufficient funding must be made available for the departments of Natural Resources and Health and Social Services to conduct the necessary appraisals, audits, research and inventories required by the court order.

-Increased funding for the Division of Mental Health to address needs through the operation budget and SB 388/HB 412 initiating programs for the chronically mentally ill to demonstrate the legislatures intent to correct past inadequacies in mental health programming.

Our overall goal in resolving the mental health lands issue is to develop a

Fairbanks Alliance
P.O. Box 2543
Fairbanks, AK 99707

Gateway Alliance
Box 787
Ward Cove, AK 99928

Juneau Alliance
Box 211247
Auk Bay, AK 99821

Kenai Peninsula
Box 301
Soldotna, AK 99669

Anchorage Alliance
P.O. Box 4-2542
Anchorage, AK 99509

trust of sufficient size to adequately fund mental health programs for future generations.

The Alliance has voted to endorse the transfer of representation for the class from William Council to David T. Walker both of Juneau. The Alliance has agreed to serve as advisory to Mr. Walker on behalf of the class and are working closely with him on this issue. If you have any questions regarding the legal issues of this legislation, please contact him at 586-3537.

This session, Pat Clasby (789-2317) and George Rogers (586-1202) are legislative liasons for the Alliance. We also have active professionals and family members statewide who are available to participate at any time. Please feel free to contact me if there are further questions.

Sincerely,

Sharron Lobaugh
Vice President, Alaska Alliance
for the Mentally Ill

cc: Representatives:
Pignalberi, Miller, Gruenberg
Office of the Governor
Commissioners HESS and DNR
Alaska Mental Health Association
David Walker
Alliance Chapters

POSITION OF THE ALASKA ALLIANCE ON MENTAL HEALTH LANDS

Before transfering care of the mentally ill to Alaska, Congress in 1956 provided $12.5 million in transition appropriations and one million acres of land to be managed as a "public trust" to carry out "plans for an integrated mental health program for the Territory, including outpatient and inpatient care and treatment." This would be the basis for determining "necessary expenses" which had a first claim on the proceeds of the trust.

Except 1977-81 Alaska operated without a plan, the program simply being budgeted annually without needs assessments or program priorities. Without a plan there is no basis for a mental health program or its "necessary expenses."

Furthermore, mental health lands were treated as general lands without separate accounting. This was formalized by 1978 legislation redesignating these lands as general grant lands. This was challenged in 1982 and on October 4, 1985 the Alaska Supreme Court ruled that the trust established by the Congress had been breached and ordered it reconstituted.

The Legislature has recognized the necessity for responding to the issues raised by the court's order and the past mismanagement of the trust lands both in protecting the welfare of mentally ill Alaskans and removing restraints on future land management. There is need, however, to make a choice among the several proposals under consideration and the Alaska Alliance for the Menally Ill and its community alliances has its recommendations.

The Legislature recognizes the complexity of problems thirty years in the making and that their resolution cannot be arrived at within one session. Accordingly each house has introduced concurent resolutions (SCR 36 and HCR 50) to create an interim joint committee to study and propose resolution of the trust litigation and recommend an adequate mental health program. These are very similar, but the Alliance has a preference for the Senate version.

The Legislature also recognizes that at present there is no statuatory authority providing for interim management of the trust lands as a trust and two proposals have been introduced to meet this need. HB 651 proposes a non-paid six member management commission within the Department of Natural Resources to manage the lands and seek to maximize the income. HB 128 proposes an interim and independent commission which in addition to these trust responsibilities would also carry out all the necessary inventory, accounting and appraisal functions necessary for settlement of the litigation. The Alliance recommends passage of HB 128 because it holds the greatest promise for a resolution in keeping with the original intent of the Congress and the Court.

The lack of an appropriate mental health program for Alaska is being addressed by the Department of Health and Social Services in a five year plan currently being drafted and in two companion bills (HB 412 and SB 388) providing for community based and locally or regionally coordinated care and treatment. This legislation is critically needed and the Alliance urges its passage this session.

George W. Rogers

March 11, 1986

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSSHB 128
Title : Interim Mental Health Land Management Commission

Sponsor : Pignalberi
Requestor House Resources
Date of Request : 3-24-86

FISCAL DETAIL

Agency Affected DNR
BRU : Land/Water Mgmt.

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		198.4	160.6			
TRAVEL		25.0	24			
CONTRACTUAL		303.9	17.8			
SUPPLIES		4.6	1.4			
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		531.9	203.8			
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		531.9	203.8			

POSITIONS :

FULL-TIME		5	4			
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attached

Prepared by : Mike Vediner
Phone : 465-2400
Division : Commissioner's Office
Date : _____

Approved by Commissioner : Mmt D Arnold
Date : 3/24/86
Agency : Department of Natural Resources

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Department of Natural Resources
3-24-86
CSSSHB 128
Fiscal Note Addendum

Analysis

Several detailed reports, audits, and appraisals would be required under this bill, and indeed are required under the Supreme Court decision in Weiss v. Alaska, as interpreted by the Attorney General's Office. No funding is included for contracting with the plaintiffs and intervenors in the case.

FY 87

1. Account for all funds or land received from conveyances and exchanges made between July 19, 1978 and October 4, 1985. Estimated costs: $40,800.

We estimate that 4,650 cases (2,370 land conveyances, 1,370 mining claims, 390 rights-of-way, 275 land leases, 25 timber or material sales, 110 oil and gas or coal leases, and 110 miscellaneous cases) will have to be audited to determine the amount received and/or appraised. Land discounts will have to be accounted for during this process. This process will take a Natural Resource Officer I approximately one year (37.8 personal services; 1.0 travel; 1.5 contractual; 0.5 commodities).

2. Identify and appraise all less than fair market value conveyances and encumbrances. Estimated costs: $304,800.

These appraisals will be performed contractually. However, the department must prepare reports and maps containing information about each parcel before the contract can be let. We also note that these appraisals cover only those mental health parcels that are no longer in trust status. The approximately 700,000 acres in trust status are not to be appraised. If section 3(b) of the bill intends that all mental health land be appraised, then the cost will be $1,206,100.

The reports and maps must take approximately 1,100 parcels into consideration. We expect this project to take a single Natural Resource Officer I three months to complete. Additionally, the project will need funding for supplies and contractual clerical services (9.5 personal services; .5 contractual; .2 commodities).

The appraisals are expected to cost $294,600. We project that approximately 820 parcels totalling 268,000 acres will need appraisals at an estimated cost of $215,000. In

addition, approximately 276 leases must be reappraised at five-year intervals (the Legislature created a first term of 25 years during which time rents cannot be raised). The approximate cost of these lease reappraisals is $79,600.

In meeting the court stipulated appraisal for mental health land values as of July 19, 1978, the department used an Opinion of Value Panel approach which has subsequently caused the plaintiffs and intervenors much concern. Using this approach here, the estimate for appraisals reduces to $28,000.

3. Provide management oversight of all transactions and account for funds received from mental health lands. Estimated costs: $142,700.

Statewide trust management oversight can be provided by a Natural Resource Manager II with support from a Natural Resource Officer I. That manager would be expected to review a large number of transactions, with research assistance from a subordinate, to ensure that the trust is not breached. It is expected that the manager will also provide the necessary coordination between the department and the plaintiffs, and will be required to travel.

Accounting functions can be broken into two parts: ongoing accounting services, and an independent audit. An accounting Technician I will be needed to receive and separately process that portion of the approximately $1.5 billion taken in by DNR annually that should be assigned to the mental health accounts.

Line items in this total are: 124.0 personal services; 6.0 travel; 11.3 contractual; and, 1.4 commodities.

4. Provide administrative support to the commission. Estimated costs: $53,600.

The department would need to provide administrative support to the commission which includes arranging meetings, preparing briefing packets, documenting meeting results, and clerical support. The Natural Resource Officer I listed in item 3 above could assist with the details of action review and a Clerk Typist III would be needed to assist with typing and organization of meetings. Contractual monies would cover duplication costs, phone charges, postage, etc. Travel and per diem funding is for meetings of the commission. Commodities money is to cover routine supplies and maps (27.1 personal services; 18.0 travel; 6.0 contractual; 2.5 commodities).

FY 88

All anticipated court ordered reports will be completed in FY 87. Therefore, FY 88 costs will be substantially reduced. Support for the commission will include 3 months of an NRO I, the clerk typist III, and similar support costs (36.6 personal services; 18.0 travel; 6.5 contractual; 2.7 commodities).

The department would continue to provide the oversight function described in item 3 for FY 87 with costs of 124.0 personal services, 6.0 travel, 11.3 contractual, and 1.4 commodities.

BACK-UP FOR CSSSHB 128

PRESENTED TO HOUSE RESOURCES COMMITTEE MARCH 24, 1986

BY REPRESENTATIVE MARCO A. PIGNALBERI

C O N T E N T S

Tab	Description
A	Proposed Committee Substitute SSHB 128
B	Sectional Summary: Proposed CSSSHB 128
C	Supreme Court of Alaska Opinion: State of Alaska v. Vern T. Weiss, et al
D	Components of Recommended Committee Bill: Submitted by the Alaska Alliance For the Mentally Ill to House Resources - 03/24/86
E	DNR Memo: Bob Arnold to Max Gruenberg: Budget for court ordered mental health land activities
F	HSS Memo: Millie D. Duxbury, Audit Manager to Karen Perdue, Assistant Commissioner HSS: Estimated cost of mental health program audit
G	Intervenor Budget estimate for Alaska Mental Health Lands Project
H	Plaintiff Budget estimate for involvement in mental health lands trust settlement

CS128PAK.MHL

A

Bradley
3/21/86

Original sponsors: Pignalberi, Gruenberg, Boucher, et al

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 128 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the interim management of mental health trust land; and providing for an effective date."

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

* Section 1. The legislature finds that

(1) the Congress granted 1,000,000 acres of land to the Territory of Alaska to be administered as a public trust for the necessary expenses of the support of mental health in the territory;

(2) the land authorized to be granted to the Territory of Alaska has been selected by the territory and since statehood by the state and most of the 1,000,000 acres has been conveyed to the state;

(3) the Alaska Supreme Court ruled in State v. Weiss, 706 P.2d 681 (Alaska 1985) that the legislation redesignating mental health trust land as general grant land had actually breached the trust established by Congress and the court ordered the trust reconstituted;

(4) there is presently no statutory authority providing for the management of the mental health trust land as trust land;

(5) the Alaska Mental Health Association as the original sponsor of the litigation regarding the management of the mental health trust land, more recently participating as intervenor in the litigation, and the plaintiffs have performed and continue to perform an important public function in their efforts to reconstitute the mental health trust land and to provide for the proper management of the trust land;

(6) there is an immediate need for funds to facilitate the reconstruction of the trust land and to conclude the litigation over the status of the mental health trust land; and

(7) there is an immediate need for the interim management of the trust land as a public trust.

* Sec. 2. INTERIM MENTAL HEALTH TRUST LAND COMMISSION ESTABLISHED. (a) The interim mental health trust land commission is established in the Department of Natural Resources.

(b) The commission established under (a) of this section consists of five members, including the commissioner of natural resources and the commissioner of health and social services, or their designees, and three members appointed by the governor as follows:

(1) a member representing the plaintiffs, appointed by the governor from a list of three names submitted to the governor by the plaintiffs in State v. Weiss, 706 P.2d 681 (Alaska 1985);

(2) a member representing the intervenors, appointed by the governor from a list of three names submitted to the governor by the intervenors in State v. Weiss, 706 P.2d 681 (Alaska 1985); and

(3) a member representing the Governor's Mental Health Advisory Council, appointed by the governor from a list of three names submitted to the governor by the Governor's Mental Health Advisory Council.

(c) The members of the commission shall elect a presiding officer. A majority of the commission constitutes a quorum. The affirmative vote of three members is required to take official action. A vacancy does not impair the power of the remaining members to exercise the powers of the commission.

(d) Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards under AS 39.20.180.

(g) The commission may contract with the plaintiffs or intervenors for the performance of functions assigned to it.

(e) The commission shall meet at least once a month.

(f) The commission may employ an executive director and staff to assist it in fulfilling its responsibilities under this Act.

* Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND THE COMMISSION. (a) The commissioner of natural resources shall inventory and catalog and appraise at fair market value the mental health trust land of the state, shall audit each land transaction involving land that has been part of the mental health trust land of the state, and determine the status of mental health trust land on the effective date of this Act under procedures and guidelines established by the commissioner of natural resources with the approval of the commission. In the exercise of the commission's responsibilities under this section, the commission may review the records of the Department of Natural Resources.

(b) The commissioner of natural resources shall, with the approval of the commission, retain an appraiser or appraisers to appraise all or a portion of land that, at any time, was part of the mental health trust land of the state. The commissioner shall provide the appraiser conducting the appraisal with written procedures and instructions that have been approved by the commission.

(c) The commissioner of natural resources is responsible for the management of the mental health land of the state as a public trust under P.L. 84-830, 70 Stat. 709, under the direction of the commission.

The commissioner of natural resources may not sell, lease, or exchange mental health trust land of the state or an interest in the mental health trust land of the state without the prior approval of the commission. The commissioner of natural resources shall sell, lease, and exchange mental health trust land of the state as directed by the commission. In managing the trust and the trust

land the commission and the commissioner shall seek to maximize the income earned and received by the trust consistent with a trustee's obligation to protect and perpetuate the trust.

(d) The proceeds from the management of the mental health trust land of the state shall be deposited in a special trust account in the general fund of the state and may be appropriated by the legislature for the support of the mental health program in the state.

* Sec. 4. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES AND THE COMMISSION. (a) The commissioner of health and social services, with the approval of the commission, shall

(1) select an independent auditor to audit the state's mental health program;

(2) establish the procedures and guidelines to guide the auditor selected under this subsection;

(3) propose the guidelines and procedures to be used in determining a range of expenditures for mental health programs necessary to comply with the state's comprehensive mental health plan.

(b) The commission may review the records of the Department of Health and Social Services that involve mental health expenditures under the state's comprehensive mental health plan.

* Sec. 5. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commission shall make an annual report to the legislature on matters of concern to it including recommendations of the commission for amendment of the laws relating the management of mental health trust, the mental health trust land, and the mental health program of the state.

* Sec. 6. DEFINITION. In secs. 2 - 5 of this Act "commission" means the interim mental health trust land commission established in sec. 2 of this Act.

* Sec. 7. Sections 1 - 6 of this Act are repealed July 1, 1988.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.070(c).

B

SECTIONAL SUMMARY PROPOSED CS SSHB 128

Section 1.: Legislative Findings

States that there is currently no statutory authority for the management of the 1,000,000 acres of mental health trust land granted by Congress to the territory of Alaska and conveyed to the state and that there is an immediate need to provide interim management during the process of reconstituting the trust.

Section 2.: Interim Mental Health Trust Land Management Commission

Establishes a five-member commission within the Department of Natural Resources consisting of the Commissioner of the Department of Natural Resources, the Commissioner of the Department of Health and Social Services, and three members appointed by the governor as follows: one member from lists of three submitted by the plaintiffs, the intervenors, and the Governor's Mental Health Advisory Board. Members of the commission are to serve without compensation, but are entitled to per diem and travel expenses.

The commission shall meet at least once a month, may employee an executive director and staff and may contract with the plaintiffs or intervenors for the performance of functions assigned to it.

Section 3.: Responsibilities of the Commissioner of Natural Resource and the Commission

Subsection (a): Assigns the Commissioner of DNR the responsibilities of inventorying and cataloging the mental health trust land of the state as well as auditing and appraising at fair market value every transaction involving the land and the current status of the land, all under the prior approval of the commission.

Subsection (b): Gives the commission prior approval in DNR's retention of appraiser or appraisers.

Subsection (c): Gives the commission power to direct the Commissioner of DNR to manage the mental health trust lands as a public trust under P.L. 84-[illegible], 70 Stat. 709. Specifies maximization of income earned and received by the trust, consistent with a trustee's obligation to protect and perpetuate the trust, as management objective.

Subsection (d): Requires that the proceeds from mental health trust land shall be deposited in a special trust account and states that such funds may be appropriated by the legislature for state mental health program support.

Section 4.: Responsibilities of the Commissioner of Health and Social Services and the Commission

Requires the Commissioner of Health and Social Services with prior approval of the commission to select and establish guidelines for an independent auditor who will audit the state's mental health program. The Commissioner, with prior approval of the commission is also instructed to propose guidelines and procedures for determining a range of expenditures for mental health programs necessary to comply with the state's comprehensive mental health plan.

Section 5.: Additional Responsibilities of the Commission

The commission shall make an annual report to the legislature of its findings.

Section 6.: Definition of "commission"

Section 7.: Provides for termination of commission July 1, 1988.

Section 8.: Immediate effective date

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, Appellant/Cross-Appellee, v. VERN T. WEISS, et al., Appellee/Cross-Appellant.	File Nos. S-653/678 O P I N I O N [No. 2987 - October 4, 1985]

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: G. Thomas Koester, Assistant Attorney General, Norman C. Gorsuch, Attorney General, Juneau, for Appellant/Cross-Appellee. Stephen C. Cowper, Fairbanks, for Appellee/Cross-Appellant. Russ Winner, McGrath & Associates, Anchorage, for Amicus Curiae Cook Inlet Region, Inc.

Before: Rabinowitz, Chief Justice, Burke, Matthews and Compton, Justices. [Moore, Justice, not participating]

COMPTON, Justice.

The State of Alaska ("state") appeals from a judgment of the superior court holding that the state breached its duty as trustee of federal mental health grant lands when the legislature redesignated the property as "general grant land." For the reasons set forth below, we

affirm the holding to this extent, but reverse the superior court's conclusion that the redesignation legislation was valid.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act (AMHEA) which, insofar as it concerns this case, granted the Territory of Alaska one million acres of federal land to be held in public trust to help effectuate the creation and operation of mental health care facilities in Alaska. Pub. L. No. 84-830, 70 Stat. 709 (1956). Section 202(e) of the Act specifically provides:

> All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide in order to obtain funds or other property to be invested, expended or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act. (emphasis added)

The state managed these lands without maintaining a separate account until 1978. The Alaska State Legislature made its practice law in 1978 when it passed the following statutory provision:

> REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND
>
> (a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.

Ch. 181, § 3(a), SLA (1978).

Alaska has provided continuous mental health care since statehood. The record indicates that between 1959 and 1982 the state spent over $222,000,000 on mental health care. Generally speaking, there has been a constant increase from 1959 to the present in mental health expenditures: slightly less than $1,200,000 was expended in 1959, and slightly more than $29,000,000 was expended in 1982. The record does not indicate how much of the trust land at issue has been disposed of, nor the total value of such disposed land. In the state's answer to the complaint, it alleges that "state expenditures for mental health purposes exceeded revenues from mental health grant lands in all years for which revenues from those lands were tabulated

separately." The record does indicate that as of 1973, total revenues from these mental health trust lands amounted to $19,555,582. The state's total expenditures to that point amounted to $66,726,176.

Weiss et al. filed a class action in 1982 alleging that the state breached the public trust by 1) failing to account for revenues realized, 2) using revenues for purposes other than mental health care and 3) passing legislation redesignating the property "general grant land." Plaintiffs sought declaratory relief invalidating the redesignation legislation; injunctive relief compelling the state to administer the trust according to the law; general relief establishing a trust account "for the receipt of funds generated from all lands selected by the State of Alaska under the aforesaid mental health land grant . . . ."

The superior court ruled that invalidation of the redesignation legislation was not an available remedy, based on State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981). However, the court did hold that the state breached its duties as trustee by removing the federal grant lands from the trust. As a remedy, the court ordered that

> [t]he public trust established by P. L. 84-830, 70 Stat. 709, shall recover from the defendant State of Alaska an amount equal to the fair market value of all lands conveyed from the trust as of the date of conveyance, plus prejudgment interest from the date of each conveyance. For the purposes of this judgment, all lands remaining in the trust as of July 19, 1978, shall be considered

as having been removed from trust status by the State of Alaska on that date . . .

The court also ordered a set-off for all monies spent by the state on mental health care.

The state appeals from the judgment, except the holding that the redesignation legislation was valid. Weiss et al. cross-appealed the trial court's failure to rule the legislation invalid.

II. DID THE STATE BREACH THE PUBLIC TRUST CREATED BY CONGRESS WHEN IT REDESIGNATED PROPERTY IN THE TRUST AS "GENERAL GRANT LAND?"

A. Nature of the Trust.

The state argues, essentially, that the redesignation is of no legal consequence because the state has always provided public mental health programs in the past and, implicitly, will provide them in the future. The state maintains that providing such programs fulfills its obligations according to AMHEA, freeing the grant lands for other public purposes. Textual support for this position comes from the portion of Section 202(e) which states that "proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska." It is suggested that this language means Congress intended that the land grant serve as a revenue base guarantee. Great emphasis is placed on the legislative history of AMHEA

which establishes that Congress did not wish to limit the use of grant lands exclusively to mental health programs.[1]

Despite these observations, we think it irrefutable that Congress intended to create a trust, to be based on a corpus of one million acres of federal land. It is a commonplace of the law that without trust property there can be no trust. Restatement (Second) of Trusts § 74 (1959).[2] When the state, through the legislature, altered the status of the property grant the trust was thereby effectively terminated. The state, as trustee, had no power to do this

---

1. The debates in the House and Senate are too lengthy to reproduce in their entirety here, but certain remarks are representative of the discussions. Senator Jackson commented that "[t]he income from sales or leases will be used to support the mental health program in Alaska. The income will be held in trust for that purpose. Any money received over and above the need for the mental health program may be used for other public purposes." He further noted that the language change was not of a fundamental nature, and thus said that, "[t]he purpose of granting 1 million acres is the same as in all other similar grants, such as the public school land-grant program." 102 Cong. Rec. 9761 (June 7, 1956).

We note that the language in the federal grant was changed from designating the proceeds of the land grant to be used as a public trust for Alaska's mental health program, to saying that the proceeds "shall first be applied to meet the necessary expenses of the mental health program" only because of worry among members of Congress that the land may actually have a value far in excess of the necessary health care expenses. The record in this case shows that income from the land grant was actually less than state expenditures for mental health programs.

2. Section 74 provides: "A trust cannot be created unless there is trust property."

and consequently breached its duty to preserve the corpus.[3] The fact that the state has provided mental health care in the past and will most likely do so in the future is no justification for termination of the trust. Whether a beneficiary can rely on the bona fides of a trustee to continue voluntarily to uphold the terms of a defunct trust is quite beside the point. We decline the opportunity to encourage the state, or any trustee for that matter, to determine unilaterally when to terminate a trust without specific authority to do so.

B. Remedy.

Having concluded that the state breached the trust, we find it necessary on the facts of this case to invalidate the redesignation statute, Ch. 181, § 3(a), SLA (1978). State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981) does not compel a different result. In that case, the federal government had granted 100,000 acres to the state "for the exclusive use and benefit" of the

---

3. Our reliance upon basic trust law principles finds ample support in the precedents of this court and the United States Supreme Court. See Lassen v. Arizona, 385 U.S. 458, 17 L.Ed.2d 515 (1967); State v. University of Alaska, 624 P.2d 807 (Alaska 1981). Both Lassen and University of Alaska involved federal grants to be used by states for school purposes. Those cases stand for the proposition "that the same private trust law principles are to apply to federal land granted to the states for school purposes." University of Alaska, 624 P.2d at 813. There is no reason to treat federal lands granted for mental health purposes differently.

University. Id. at 811. Years after the grant, the state included 5,040 acres of the trust land in a state park. This action was not in itself a breach of the trust so long as the University was paid fair market value for the land. We inferred that the legislature intended to pay the University for this disposition, stating:

> It is also logical to assume that the legislature intended to compensate the University for the loss of its land. This view gives the statute creating [the park] a reading that is in accord with the well recognized canon of statutory construction that, when possible, legislation should be construed in a way that upholds its validity.

524 P.2d at 816.

Unlike the situation in University of Alaska, the present case does not involve a disposition of a portion of trust lands for a specific use. Instead, the entire corpus of the trust is intermingled with the general grant lands of the state. No particular use of the trust lands is specified and it may be years before much of the land is used. While it was reasonable to infer a legislative intent to pay for 5,040 acres for which there was a present park land use in University of Alaska, it is not reasonable to infer that the legislature meant to pay for a quantity of trust land approaching one million acres for which in large part there is no present use. Thus, the payment remedy imposed in University of Alaska is not appropriate here. Because the state in passing the redesignation act went

beyond the power which had been granted it with respect to the trust lands by Congress, the redesignation act must be declared invalid.

It follows from our conclusion that the redesignation legislation is invalid that the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective. The case is remanded so that requisite findings can be made. We take this opportunity to provide some guidance to the trial court to simplify its task.

Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its

★ CSHB 128 Commission would be responsible for approving the state's actions in carrying out the activities directed herein.

position just prior to the conveyance effected by the redesignation legislation.[4]

AFFIRMED in part, REVERSED in part and REMANDED for further proceedings consistent with this opinion.

ORDER

Pursuant to Appellate Rules 503(e) and (f) (1), attorney fees of $ 1,000.00 are awarded to Appellee

and the Appellee shall serve and file with this court an itemized and verified cost bill by 10-14-85. Entered by direction of Justice Compton

Dated: 10-2-85 Deputy: C. Hall

4. Amicus raises questions regarding the title held by conveyancees and bona fide purchasers of mental health lands. In view of our disposition of this case, we deem it unnecessary to address those issues at the present time.

D

COMPONENTS OF RECOMMENDED COMMITTEE BILL
Submitted by the Alaska Alliance For the Mentally Ill to House Resources
03/24/86

ESTABLISH INTERIM LAND MANAGEMENT COMMISSION (Charged with these duties):

Responsible Department	Purpose	Budget
DNR	Identify, survey, appraise, mental health land inventory status, etc	1 304,000
DNR	Account for all funds or lands from 1978-1985	2 40,800
DNR	Provide management oversight on all transactions and funds received: Approve all land actions	3 142,700
DOR	Establish trust account fund	0
HSS	Oversee audit of mental health program expenditures 1978-1985	4 21,000
HSS	Oversee the department of Health and Social Services determination of the necessary expenditures for the Mental Health Program	0
HSS	Contract for Plaintiff and intervenor involvement in resolution process	5 146,000
	Estimated Sub-total:	$ 654,500

ADMINISTRATION OF COMMISSION:

Responsible Department	Purpose	Budget
DNR	The department shall provide the administrative support	
	Provide for monthly meeting	6 15,000
	(Composition: 1 representative each from a list of three nominated by the plaintiffs, intervenors, and governor's advisory on mental health and the commissioners of: Health and Social Services and Natural Resources)	

DNR	Travel and per diem for five commission members	7	18,000
DNR	Executive Director and other staff as necessary to meet responsibilities of the commission	8	150,000
		Estimated Sub-total:	$ 183,000
		Estimated Total:	$ 837,500

1-3
Budget figures taken from 10/27/86 DNR memo to Representative Gruenberg

4
Budget figure from 02/05/86 HSS Audit Department memo to Karen Perdue, p.4

5
Budget figure is sum of plaintiff and intervenor projected settlement budgets

6-8
Budget figures reflect estimated costs associated with CSSSHB 128 Interim Commission (DNR fiscal note pending)

BUDGET ITEMS 1-3

E

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

February 27, 1986

The Honorable Max Gruenberg
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Gruenberg:

During our meeting this week on the subject of mental health lands legislation, you asked that I provide you with a list of the tasks required of the department by the Supreme Court in its decision in Weiss v. Alaska, and an estimate of the funding required to accomplish these tasks. Although our budget amendment is yet to be submitted, I am pleased to provide you with our estimates.

Of the tasks identified by the Department of Law as required by the court, two will be accomplished during the current fiscal year. These are (1) to identify all mental health lands returned to the trust; and (2) to identify all existing encumbrances for mental health lands, such as interagency land management assignments, parks, and refuges.

Tasks also required by the court, for which no funding is presently available, are as follows:

BUDGET ITEM # 2

1. Account for all funds or land received from conveyances and exchanges made between July 19, 1978 and October 4, 1985. Estimated costs: $40,800.

We estimate that 4,650 cases (2,370 land conveyances, 1,370 mining claims, 390 rights-of-way, 275 land leases, 25 timber or material sales, 110 oil and gas or coal leases, and 110 miscellaneous cases) will have to be audited to determine the amount received and/or appraised. Land discounts will have to be accounted for during this process. This process will take a Natural Resource Officer I approximately one year.

10-J9 LH

2. Identify and appraise all less than fair market value convevances and encumbrances. Estimated costs: $304,800.

BUDGET ITEM # 1

These appraisals will be performed contractually. However the department must prepare reports and maps containing information about each parcel before the contract can be let.

The reports and maps must take approximately 1,100 parcels into consideration. We expect this project to take a single Natural Resource Officer I three months to complete. Additionally, the project will need funding for supplies and contractual clerical services.

The appraisals are expected to cost $294,600. We project that approximately 820 parcels totalling 268,000 acres will need appraisals at an estimated cost of $215,000. In addition, approximately 276 leases must be reappraised at five-year intervals (the Legislature created a first term of 25 years during which time rents cannot be raised). The approximate cost of these lease reappraisals is $79,600.

BUDGET ITEM #3

3. Provide management oversight of all transactions and account for funds received from mental health lands. Estimated costs: $142,700.

Statewide trust management oversight can be provided by a Natural Resource Manager II with support from a Natural Resource Officer I. That manager would be expected to review a large number of transactions, with research assistance from a subordinate, to ensure that the trust is not breached. It is expected that the manager will also provide the necessary coordination between the department and the plaintiffs, and will be required to travel.

Accounting functions can be broken into two parts: ongoing accounting services, and an independent audit. An accounting Technician I will be needed to receive and separately process that portion of the approximately $1.5 billion taken in by DNR annually that should be assigned to the mental health accounts.

Please let me know if there is additional information I might provide you.

Sincerely,

RDA

Robert D. Arnold
Deputy Commissioner

F

MEMORANDUM State of Alaska

TO Karen Perdue, Assistant Commissioner
Department of Health & Social Services

DATE February 5, 1986

FILE NO

TELEPHONE NO 465-3120

FROM Millie D. Duxbury, CPA, Audit Manager
Audit - Office of the Commissioner
Department of Health & Social Services

SUBJECT Mental Health Audit

You requested an estimate of the cost of an independent audit of State mental health expenditures from July 1, 1978 through June 30, 1986.

Based on a discussion with Tom Koester of the Attorney General's Office, it was decided that I should give you two estimates which hinge on the definition of "mental health expenditures".

Tom feels that we should request an audit of all expenditures which could conceivably be construed as having been made for mental health purposes. Such costs would include, but not be limited to, the following expenditures:

I. Department of Health and Social Services

A. Department of Mental Health and Developmental Disability - Operating and Capital expenditures for:

1. Community Mental Health Programs;
2. Developmental Disability Programs;
3. Alaska Psychiatric Institute;
4. Harborview;
5. Regional Administration (not currently funded as such); and
6. Fairbanks Mental Health Services Complex

B. Division of Family and Youth Services

1. Adult Residential Care Program;
2. Child Residential Care Programs - some portions thereof;
3. Foster Care - some portions thereof;
4. Youth Services BRU - purchase of psychological services and psychiatric services; and
5. Preventive Services - some portions

C. State Office of Alcoholism and Drug Abuse - some portions thereof

D. Division of Medical Assistance - payments to private providers under the GRM program for generic mental health services.

II. Department of Public Safety

A. Violent Crimes Compensation Board - portions of programs covered thereunder

B. Council on Domestic Violence and Sexual Assault - portions thereof

III. Department of Administration

A. Division of Pioneers' Benefits - Care of persons occupying long term care beds in Pioneer homes who are being treated for Alzheimer's Disease

B. Older Alaskan Commission - portions of programs

IV. Department of Corrections

A. Payments for psychological and psychiatric care of inmates

B. Costs associated with facility operations where persons are held as a result of mental health related problems

V. Department of Education

A. Division of Education Program Support - Special Education Programs

B. Division of Vocational Rehabilitation - some portions thereof

VI. Community and Regional Affairs

A. Revenue Sharing Programs

1. Portion thereof relating to money expended for mental health services in the health care centers which are part of the revenue sharing formula

2. Pass through money used for mental health care related services

VII. Department of Law

A. Costs of litigation related to mental health lands

VIII. Department of Natural Resources

A. Costs associated with Mental Health Lands Management

IX. Specific Designated Grants to Native Corporations used for mental health:

A. Maniilaq
B. Norton Sound Health Corporation
C. Tanana Chiefs Conference

X. Governor's Council on the Handicapped and Gifted

Costs outlined above would be separately presented by the CPA firm in order to allow the costs to be examined on their own merit as to whether or not they fall within the definition of "mental health expenditures".

I would estimate that an audit of all the above expenditures for the eight year period ended June 30, 1986 would require 1000 hours to complete and would cost $81,000 or $101,250 including Department of Law litigation costs. The estimate is broken down as follows:

Audit		
Partner's Time - 100 hours @ $125	= $	12,500
Senior's Time 600 hours @ $ 65	=	39,000
Junior's Time 300 hours @ $ 45	=	13,500
Out of pocket expenses for travel, per diem, telephone	=	16,000
Total Estimated Audit Costs		81,000
Litigation Costs by Dept. of Law- 25% of Audit		20,250
Total Amount Required		$ 101,250

The second estimate is based on the assumption that mental health is the primary presenting condition which allows an individual to fall within the doors of the State. In that instance "mental health expenditures" would be interpreted as those funds appropriated by the Legislature to the Department of Health and Social Services, Division of Mental Health and Developmental Disabilities. The scope of an audit of those expenditures would be clearly defined and would probably be completed in 200 hours.

I estimate the cost of this audit to be $16,500 or $21,000 with litigation costs by Department of Law. The estimate is broken down as follows:

Audit			
Partner's Time -	20 hours @ $125	=	$ 2,500
Senior's Time	120 hours @ $ 65	=	7,800
Junior's Time	60 hours @ $ 45	=	2,700
Out of pocket expenses for travel, per diem, telephone		=	3,500
Total Estimated Audit Costs			16,500
Litigation Costs by Dept. of Law- 27% of Audit			4,500
Total Amount Required			$ 21,000

BUDGET ITEM #4

These estimates have been discussed with Tom Koester and he feels they are reasonably accurate. Based on the quality of work I've seen done on other audits of governmental units and non-profits, I would recommend the bids for this work go out to the following CPA firms in Anchorage:

Arthur Young
Coopers Lybrand
Ernst & Whinney

Should you have further questions, please call.

HALF OF BUDGET ITEM . 5

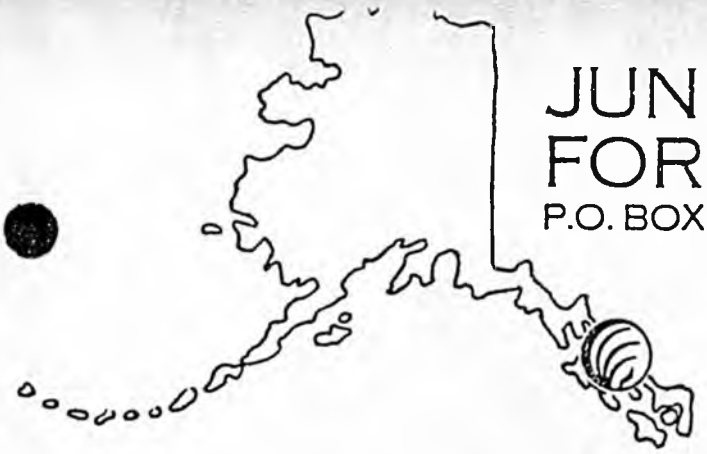
G

INTERVENOR

1986 BUDGET
for
ALASKA MENTAL HEALTH LANDS PROJECT

SALARIES/FEES:	
Land Status & Management Review/Support Staff	$50,000
OFFICE:	
Supplies and equipment	$13,000
Rent	DONATED
Utilities, including telephone	$ 3,500
Printing and copies/Records	$ 5,000
Travel	$ 3,500
TOTAL 1986 BUDGET	$75,000

PLAINTIFF H



JUNEAU ALLIANCE FOR THE MENTALLY ILL

P.O. BOX 211247, AUKE BAY, AK 99821, (907) 789-5028

HALF OF BUDGET ITEM #5

PROPOSED BUDGET FOR INVOLVEMENT IN MENTAL HEALTH

LANDS TRUST SETTLEMENT

STAFF	
Research Coordinator	$32,000.
Clerical (part-time)	12,000.
TRAVEL	
Meetings of Alliance Board (4/year)	12,000.
OFFICE	
Rental, Equipment, Supplies	12,000.
COMMUNICATIONS	
Telephone, Teleconference, Mailings	3,600.
TOTAL	$71,600.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

March 21, 1986

The Honorable Dick Shultz
The Honorable Adelheid Herrmann
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representatives Shultz and Herrmann:

I am writing to provide comments on SSHB 128, which creates an interim mental health trust land commission. The bill is scheduled for hearing in your committee on Monday, March 24, 1986.

Although we have no objection to oversight of this department's administration of mental health lands, SSHB 128 is unclear regarding the roles of the commission and the department. For example, the bill would assign the commission its responsibilities for trust land management. Indeed, one provision would allow the commission to contract with the intervenors for the performance of its duties. The same section, however, implies that management is the responsibility of the department, with the additional requirement that all actions obtain the approval of the commission and counsel for the plaintiffs and intervenors, or approval by the court. If the department retains management responsibility, the multiple approvals required would likely cause substantial delay, possibly to the detriment of the trust as well as to citizens generally.

Four responsibilities that would be assigned to the commission (inventory, catalog, audit transactions of, and determination of status of mental health land) are presently being carried out by the department and, except for the audit, will be accomplished this fiscal year; other tasks required by the Supreme Court's decision would apparently be performed by the department since they are not listed in the bill.

It should be noted that this bill would assign all proceeds to a fund for appropriations to support mental health programs, but the federal enabling legislation allows the use of such funds for other public purposes once mental health needs are funded.

10-J9LH

In a letter to Representative M. Mike Miller, a copy of which is enclosed, we commented on HB 651 which is similar to SSHB 128 in that it would create a commission for mental health land management. However, the commission established under HB 651 is established within the Department of Natural Resources and may include persons with necessary land management expertise. The commission formed under SSHB 128 however is not within the department and its membership includes the commissioners of health and social services and revenue and three members from mental health advocacy groups with no required land management experience.

Our understanding of this bill suggests there would be no fiscal impact upon the department arising from its passage.

Please let me know whether there is further information I might provide.

Sincerely,

Esther C. Wunnicke
Commissioner

Enclosure

cc: The Honorable Marco Pignalberi
The Honorable M. Mike Miller
SSHB 128 Sponsors
Tom Koester
Molly McCammon
Dana Latour
Karen Perdue
Norm Cohen
Tom Hawkins

Bradley
3/21/86

Original sponsors: Pignalberi, Gruenberg, Boucher, et al

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 128 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the interim management of mental health trust land; and providing for an effective date."

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

* Section 1. The legislature finds that

(1) the Congress granted 1,000,000 acres of land to the Territory of Alaska to be administered as a public trust for the necessary expenses of the support of mental health in the territory;

(2) the land authorized to be granted to the Territory of Alaska has been selected by the territory and since statehood by the state and most of the 1,000,000 acres has been conveyed to the state;

(3) the Alaska Supreme Court ruled in State v. Weiss, 706 P.2d 681 (Alaska 1985) that the legislation redesignating mental health trust land as general grant land had actually breached the trust established by Congress and the court ordered the trust reconstituted;

(4) there is presently no statutory authority providing for the management of the mental health trust land as trust land, Weiss et al. v. State, 4 FA 82 2208 CIV;

(5) the Alaska Mental Health Association as the original sponsor of the litigation regarding the management of the mental health trust land, more recently participating as intervenor in the litigation, and the plaintiffs have performed and continue to perform an important public function in their efforts to reconstitute the mental health trust land and to provide for the proper management of the trust land;

(6) there is an immediate need for funds to facilitate the reconstruction of the trust land and to conclude the litigation over the status of the mental health trust land; and

(7) there is an immediate need for the interim management of the trust land as a public trust.

* Sec. 2. INTERIM MENTAL HEALTH TRUST LAND COMMISSION ESTABLISHED. (a) The interim mental health trust land commission is established in the Department of Natural Resources.

(b) The commission established under (a) of this section consists of five members, including the commissioner of natural resources and the commissioner of health and social services, or their designees, and three members appointed by the governor as follows:

(1) a member representing the plaintiffs, appointed by the governor from a list of three names submitted to the governor by the plaintiffs in State v. Weiss, 706 P.2d 681 (Alaska 1985);

(2) a member representing the intervenors, appointed by the governor from a list of three names submitted to the governor by the intervenors in State v. Weiss, 706 P.2d 681 (Alaska 1985); and

(3) a member representing the Governor's Mental Health Advisory Council, appointed by the governor from a list of three names submitted to the governor by the Governor's Mental Health Advisory Council.

(c) The members of the commission shall elect a presiding officer. A majority of the commission constitutes a quorum. The affirmative vote of three members is required to take official action. A vacancy does not impair the power of the remaining members to exercise the powers of the commission.

(d) Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards under AS 39.20.180.

(e) The commission shall meet at least once a month.

(f) The commission may employ an executive director and staff to assist it in fulfilling its responsibilities under this Act.

* Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND THE COMMISSION. (a) The commissioner of natural resources inventory and catalog the mental health trust land of the state, shall audit each land transaction involving land that has been part of the mental health trust land of the state, and determine the status of mental health trust land on the effective date of this Act under procedures and guidelines established by the commissioner of natural resources with the approval of the commission. In the exercise of the commission's responsibilities under this section, the commission may review the records of the Department of Natural Resources.

(b) The commissioner of natural resources shall, with the approval of the commission, retain an appraiser to appraise all or a portion of land that, at any time, was part of the mental health trust land of the state. The commissioner shall provide the appraiser conducting the appraisal with written procedures and instructions that have been approved by the commission.

(c) The commissioner of natural resources is responsible for the management of the mental health land of the state as a public trust under P.L. 84-830, 70 Stat. 709, under the direction of the commission. The commission may contract with the plaintiffs or the intervenors for the performance of functions assigned to it. The commissioner of natural resources may not sell, lease, or exchange mental health trust land of the state or an interest in the mental health trust land of the state without the prior approval of the commission. The commissioner of natural resources shall sell, lease, and exchange mental health trust land of the state as directed by the commission. In managing the trust and the trust

land the commission and the commissioner shall seek to maximize the income earned and received by the trust consistent with a trustee's obligation to protect and perpetuate the trust.

(d) The proceeds from the management of the mental health trust land of the state shall be deposited in a special trust account in the general fund of the state and may be appropriated by the legislature for the support of the mental health program in the state.

* Sec. 4. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES AND THE COMMISSION. (a) The commissioner of health and social services, with the approval of the commission, shall

(1) select an independent auditor to audit the state's mental health program;

(2) establish the procedures and guidelines to guide the auditor selected under this subsection;

(3) propose the guidelines and procedures to be used in determining a range of expenditures for mental health programs necessary to comply with the state's comprehensive mental health plan.

(b) The commission may review the records of the Department of Health and Social Services that involve mental health expenditures under the state's comprehensive mental health plan.

* Sec. 5. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commission shall make an annual report to the legislature on matters of concern to it including recommendations of the commission for amendment of the laws relating the management of mental health trust, the mental health trust land, and the mental health program of the state.

* Sec. 6. DEFINITION. In secs. 2 - 5 of this Act "commission" means the interim mental health trust land commission established in sec. 2 of this Act.

* Sec. 7. Sections 1 - 6 of this Act are repealed July 1, 1988.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

HB

142

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
BILL SHEFFIELD, GOVERNOR

TESTIMONY TO HOUSE RESOURCE COMMITTEE
Representative Shultz, Co-Chairman
Representative Herrmann, Co-Chairman
Members of House Resources Committee
February 20, 1985

HB 44 MARINE PARKS
Paula Burgess, Regional Manager
Southeast Region, Division of Land and Water Management
Department of Natural Resources

I am Paula Burgess, Southeast Regional Manager for the Division of Land and Water Management. I am the primary individual responsible for state land sales in Southeast Alaska. One of the goals of my job is to offer a reasonable number of acres of land each year for private ownership.

I operate a land sale program in Southeast Alaska that is balanced. In identifying land and planning a sale I attempt to balance local desires with statewide interests, habitat issues with human needs, and park lands with private ownership. I believe that there is enough land in Southeast Alaska to supply all of these demands.

The state has received selection approval, tentative approval, or patent to 162,000 acres from the Tongass National Forest.[1] Of that land base, 36,000 acres are scheduled for conveyance to municipalities, and 26,000 acres are in public use (as parks, road rights-of-way, or public facilities).

Of the remaining 100,000 acres of state land, we have transferred 8,000 acres to private ownership since the disposal program began in earnest in 1979. That leaves 92,000 acres as a state land base to be retained and managed for parks and other public uses, or to be sold for private ownership. Less than one-third of this total will prove to be suitable for settlement, the remainder being too steep, too rocky, or too wet.

When I look over the state land base to identify land for sale, I look first for land that is within commuting distance of jobs in an existing

---

1. The state selected an additional 21,000 acres from the Tongass which was rejected by the Forest Service. That rejection was appealed by the state, and the issue is still in court (Alaska v. Block).

community. If none is available, I look for land near private holdings where a community and jobs may someday develop. The least desirable land sales are those that create strips of private ownership sprinkled along the coastline, where the residents have no means of making a living, and no one has the opportunity to leave development behind.

Unfortunately, this latter type of land sale, with sparse and scattered pockets of settlement along the coast, has the highest rate of success. This type succeeds where the first two types fail, because no one lives there yet. Residents and property owners in the vicinity of a land sale inevitably object. They fear that having neighbors will alter their quality of life. One question to be asked is: How much say should a few people have about the use of state land around them? How many of us would be here if the first people here weren't willing to share what they enjoyed?

The state selected 162 acres at Funter Bay from the Forest Service in 1977. We selected that land at the request of three people that had permits from the Forest Service for cabins in the bay, and wanted to purchase the land their cabins were on. The selection was make so that these people could get title to their land, and with the understanding that the state would offer additional land for private ownership. Now all seven of the property owners in Crab Cove oppose that sale, including the people that we helped get title to their land.

Funter Bay is an example of a proposed land sale that makes sense from a land management point of view. The bay has a few current residents, and additional land in private ownership that will someday be developed. The site that we propose for sale is ideal for a few additional lots, but it is not ideal for a marine park. It is already somebody's front yard. We propose to sell 60 acres (about 20 lots)[2], amidst the existing private development in the bay. The lots will probably develop as recreational cabin sites now, but may someday be part of a small community. (See the attached photographs.)

---

2. The lots in Funter Bay will be sold at fair market value, producing revenue for the state.

I recognize that Funter Bay is an ideal spot for a marine park because of its natural amenities, and its proximity to Juneau. Therefore, I would propose to select an additional 240 acres of the nicest land in the bay from the Forest Service for a marine park. That site, at Coot Cove, would include two miles of undeveloped shoreline, a salmon stream, seven small islands, and a seal rookery on the outer coast.

I understand the desire of the Funter Bay people to protect their quality of life, and I have spent hours with several of the residents in order to design the kind of disposal they would find most acceptable. The state has more than 150 acres in the bay, and we want to sell less than 60 acres. We are also willing to select an additional 240 acres for a marine park.

Because we plan to sell only 60 acres in Funter Bay, you might wonder why I have chosen to defend the sale as strongly as I have. Perhaps it is because this sale, when compared to many others, makes sense. If Funter Bay isn't the proper place to sell land in Southeast, then where can we sell it?

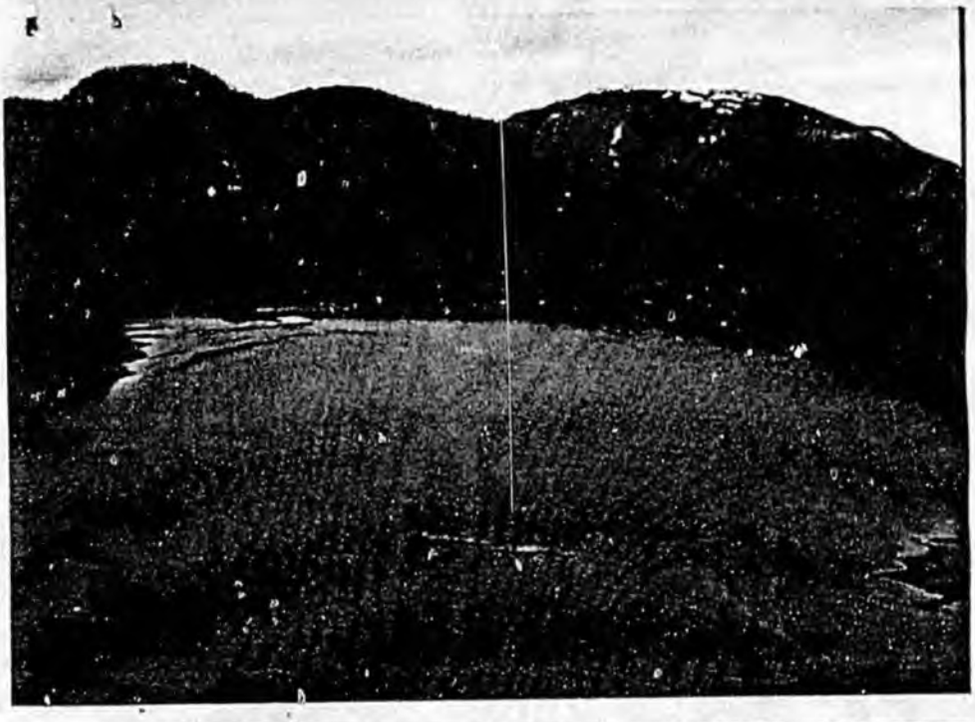
My office went through all of the legal descriptions in HB 44 very carefully. Our revised legal descriptions, for the most part, do not represent major changes but necessary clean-up. We removed Forest Service lands, private parcels, and existing subdivisions, and added tide and submerged lands which are essential to a marine park. DNR's revised legal descriptions resolve the Forest Service objections to Taku Harbor, Thoms Lake, and Traitor's Cove. There are only two substantive changes:

1) The alternate Funter Bay proposal; and
2) The exclusion of Traitor's Cove. (The state's tentative approval from the federal government recognizes the right of the Forest Service to carry out their long term timber sale plans.)

The sites, as we have revised them, would make excellent parks and would allow our balanced disposal program in Southeast Alaska to continue.

Attachments: Photographs
Summary and Control Index showing the original reason for most of the selections

CRAB COVE



Looking into Crab Cove.
Cabins and other structures already dominate the cove. State land is to the right of existing settlement.

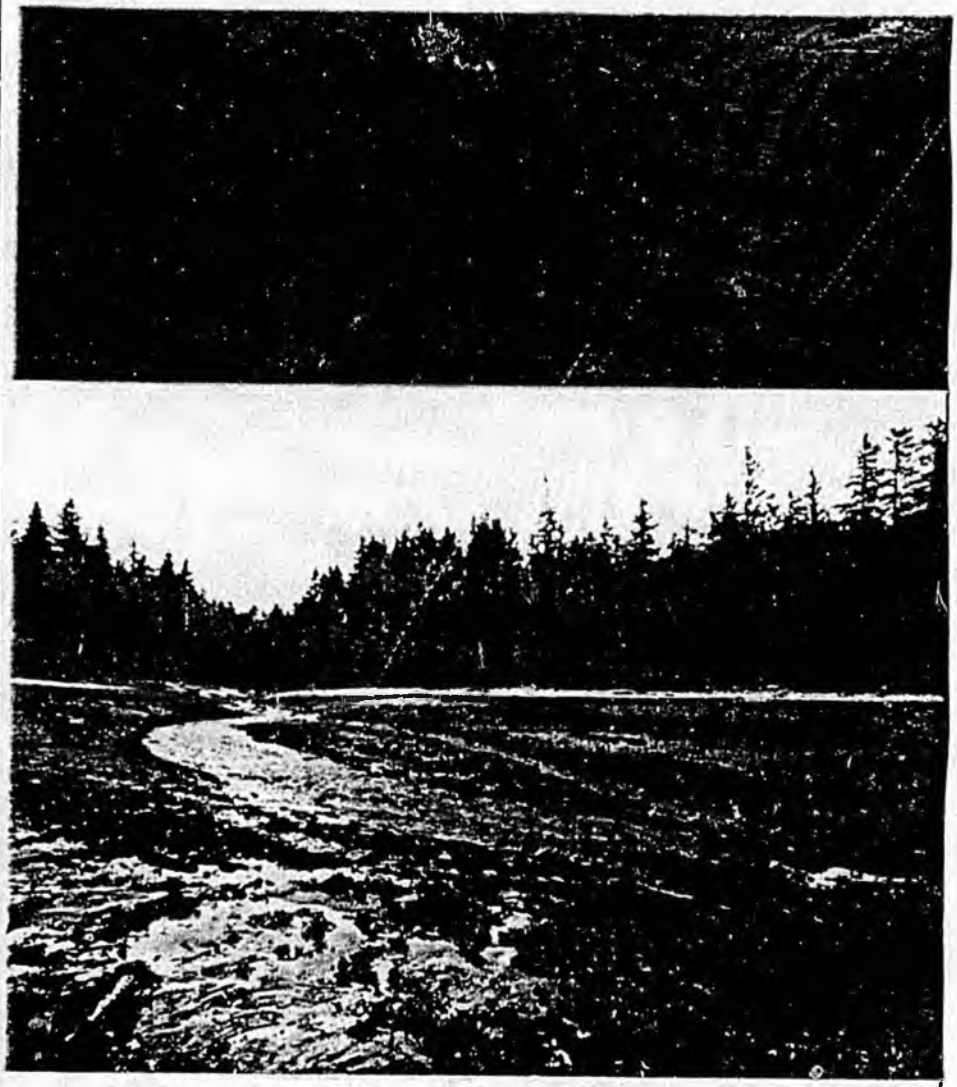


Standing in the proposed marine park looking toward the head of the bay.

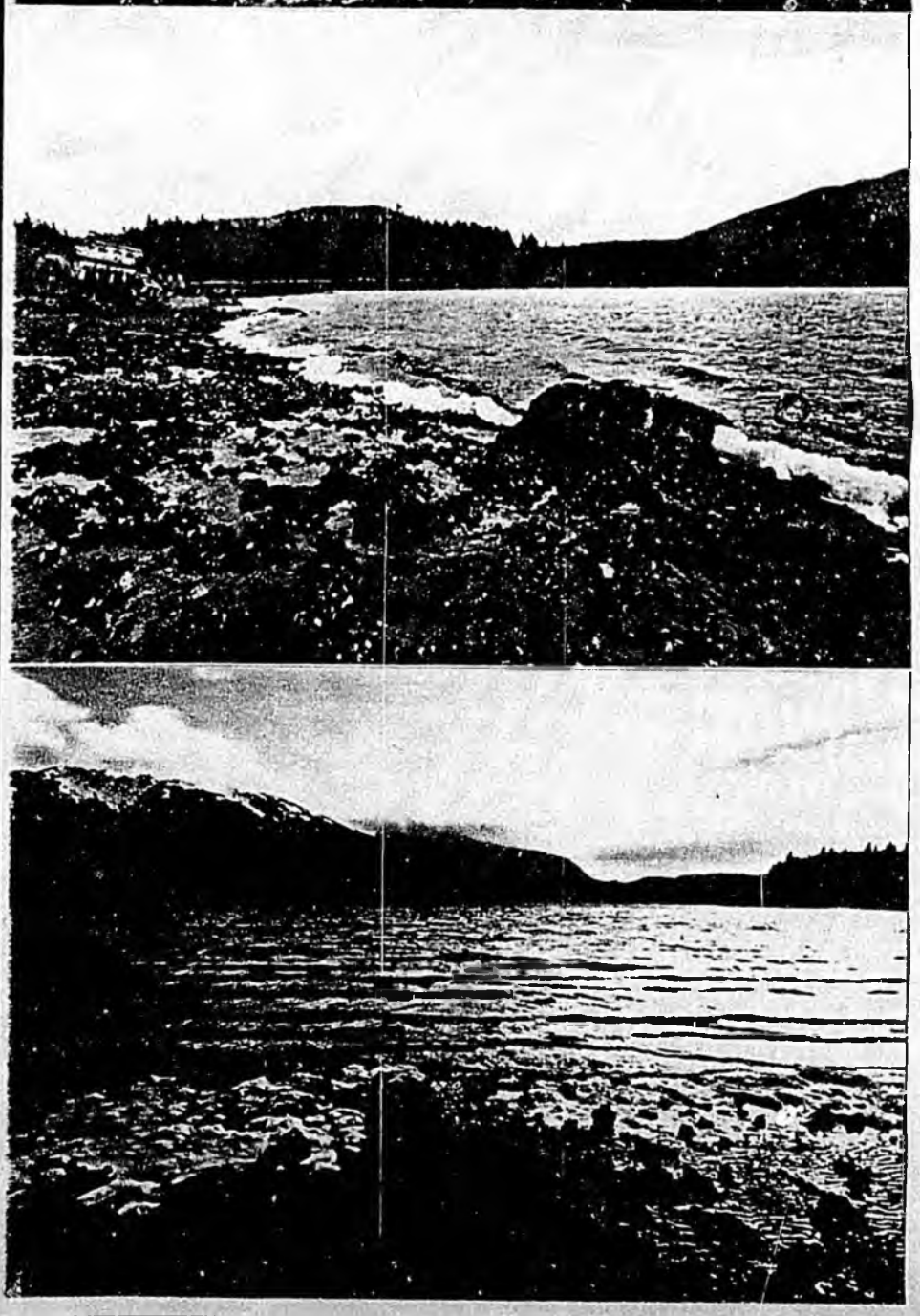


Standing in the proposed marine park. The creek, which is very close to existing development would be the only running water in the 65 acre marine park.

Photographs taken 1-12-85



Anadramous salmon stream at the head of cove.



Old ship skeleton, with salmon stream in background. Mussels and clams on beach.

The view toward Mt. Robert Barron from the head of the cove.

Photographs taken 1-12-85

December, 1977

SUMMARY AND CONTROL INDEX

NATIONAL FOREST LAND SELECTIONS

(ALASKA STATEHOOD ACT SEC. 6(a))

KEY TO PURPOSES OF SELECTION:

A - Expansion of established community
B - Development of established community
C - Established community recreation
D - Suitable for prospective community center
E - Suitable for prospective recreational area
F - Suitable for fish hatchery

A. Tongass National Forest

VICINITY	LOCATION	GROSS LAND AREA (ACRES)	NATIONAL FOREST LAND (ACRES)	PURPOSES OF SELECTIONS
Juneau	Southwest Douglas[1]	5610	5516.08	A,B
	Shelter Is. South	830	488.79	A,B
	Shelter Is.	898	888.74	C
	Montana Creek	2160	1988	C,E
	Douglas Is. - Eaglecrest	3880	3880	C,E
	Taku Harbor	688	624.52	C,E
	Taku River	2640	2610.005	C,E
	S. Gastineau Channel	895	788.28	A,B
	Berners Bay	7207.31	6676.79	C,D
	subtotal	24808.31	23661.20	
Petersburg	Rock Pit	160	160	B
	S. Mitkof Is.	4015	4015	D,E
	Frederick Point	2921	2921	A,B
	Wrangell Narrows	4723	4723	A,B,D,E Beecher Pass
	subtotal	11819	11819	
Kupreanof	Coho Creek	3515	3515	A,B

[1] Goldbelt Corp. Selection lies within this selection and takes precedence over it.
Goldbelt Corp. Selection lies within this selection and takes precedence over it.

December, 1977

Sitka	Goddard Hot Springs	3731	3694.41	C,E
	Starrigavin	480	455	A,B
	subtotal	4,211	4,149.41	
Wrangell	E. Passage -			
	Zimovia Strait	10985	10833	A,B,D
	Olive Cove	520	514.13	A,B
	Thoms Place	2531	2527.23	A,B,C
	Thoms Lake	2520	2520	C,E
	subtotal	16,556	16,394.36	
Port Alexander	Port Alexander	405	326.64	A,B
Elfin Cove	Elfin Cove	7	7	A,B
Pelican	Pelican	2038	1950.98	A,B
Funter Bay	Funter Bay[3]	172.361	162.511	A,B
Hoonah	Hoonah	1106	1056.32	A,B
Thomas Bay	Thomas Bay	2280	2280	D
Chilkat Peninsula	Upper Excursion Inlet	390	295.18	A,B
	Excursion Inlet	2530	2379.33	A,B
	St. James Bay	3683	3683	E
	Swanson Harbor	1095	1095	E - DISAPPROVED
	subtotal	7,698	7,452.51	
Kosciusko Is.	Edna Bay	7283	7043	D
Hyder	Hyder	1090	932	A,B

[3] This is a revision of NFCG 18

Ketchikan	Dall Head	917	850.22	A,B,C	
	Settlers' Cove	325	275	C	
	Blank Inlet	9747	8429	C,D	
	Manzanita Bay	384	384	E	
	Carroll Point	1102	1085.49	A,B	
	Herring Cove	770	755	A,B	
	Mountain Point	600	326	A,B	
	White River Loop	480	480	A,B,C	
	Lake Harriet Hunt	400	400	C	
	First Waterfall Cr.	1295	990	A,B	
	Whipple Cr.	1750	1641	A,B	
	Whipple Cr. Addition	5.35	5.35	A,B	
	Vallenar Bay	4632	3801	A,B	
	Upper George Inlet	2903	2903	A,B	
	Traitors Cove	362	362	A,B,C	
	subtotal	25,672.35	22,687.06		
Prince of Wales Island	Port Protection	1550	1260.62	A,B	
	Waterfall	1540	1530.71	D	
	Hollis	4910	4339.467	A,B	
	Whale Passage	2348	2348	A,B,F	
	Thorne Bay	6850	6789.11	A,B	
	Niblack Anchorage	1003	982	E,F	
	Salmon Bay	192	192	E	
	Grindell Is.	515	515	E	
	So. Arm Chomondeley	568	568	F,E	
	subtotal	19,476	18,524.91		
Revillagigedo Is.	Shrimp Bay	860	860	F,E	
	Neets Creek	350	350	F,E	
	Alava Bay	631	631	E	
	subtotal	1,841	1,841		
Cleveland Peninsula	Port Stewart	310	310	E	DISAPPROVED
Etolin Is.	McHenry Anchorage	805	805	E	DISAPPROVED

Dixon Entrance	Foggy Bay	1006	1006	E	DISAPPROVED
Frederick Sound	Read Island	705	705	E	
	Le Conte Bay	242	242	E	DISAPPROVED
	subtotal	947	947		
Stephens Passage	Hobart Bay	95	95	E	DISAPPROVED
	Sumdum	445	440.10	E	DISAPPROVED
	subtotal	540	535.10		
Kuiu Island	Security Bay	515	515	E	
	Explorers Basin	2350	2350	E	DISAPPROVED
	subtotal	2,865	2,865		
Lynn Canal	Chilkat Islands	540	540	E	
	Sullivan Is.	639	639	E	
	subtotal	1,179	1,179		
North Kruzof	Kalinin Bay	831	831	E	DISAPPROVED
Behm Canal	Burroughs Bay	326	326	E	DISAPPROVED
Rocky Pass	High Island	607	607	E	
Baranof Is.	Kasnyku Bay	297	297	E	
	Red Bluff Bay	1088	1088	E	
	Betty Lake	420	416	F,E	DISAPPROVED
	Deep Cove	495	495	F,E	DISAPPROVED
	Shamrock Bay	515	515	F,E	DISAPPROVED
	subtotal	2,815	2,811		

Chichagof Is.	Pavlov Harbor	543	543	E	DISAPPROVED
	Cape Bingham	1112	1112	E	-
	Goulding Harbor	862	862	E	DISAPPROVED
	Lake Anna	545	545	E	
	subtotal	3,062	3,062		
	TRANSFER SPECIES	4,369			
		7,431			
Admiralty Is.	Gambier Bay	857	857	E	
	Chaik Bay	388	388	E	
	Pleasant Bay	530	530	E	
	Windfall Harbor	576	576	E	
	Oliver Inlet	365	365	E	
	Pybus Bay	919	886.41	E	
	subtotal	3,635	3,602.41		

Total Selections from Tongass National Forest

gross 148,806.02 acres
net 142,689.41 acres

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMO

DATE: Feb. 7, 1985

TO: Natural Resources Committee members

FROM: Rep. Sam Cotten

RE: HB 142, Kroto-Deshka Public Use Area

HB 142 would create the Kroto-Deshka Public Use Area, to protect the habitat and recreation values of state land along Kroto Creek (also known as the Deshka River) in the southern Susitna Valley. The river is the prime king salmon sport fishery in the Matanuska and Susitna drainages, and used heavily by residents of Southcentral Alaska.

The bill would raise the level of protection of the land from administratively classified (that could be administrativly reclassified) to a legislative designation that could be changed only by the legislature.

Recently there has been some controversy over land uses within the area that have not been resolved by the existing planning effort or classification. HB 142 would require concurrence of the two principal resource agencies, the Department of Natural Resources and the Department of Fish and Game, to develop a plan to resolve these land use conflicts.

The public use area concept is basically a multiple use land principle with strong emphasis and priority on public uses, and prohibits any sale or long-term leasing of the land.

I urge consideration and passage of HB142.

HB 142 Sectional Analysis

(1) Section 41.21.876
States the purpose of the bill, which is to legislatively designate the land to be managed for the purposes of preserving and protecting habitats and public uses for land along Kroto Creek (Deshka River).

(2) Section 41.21.878
(a) States that the Department of Natural Resources is to manage the land resources and the Department of Fish and Game will manage the wildlife resources.
(b) DNR is to develop a plan, which may be a revision of an existing or proposed plan, with the concurrence of DF&G;
(c) that mineral leases may be issued by DNR when when not inconsistent with the purposes of the protection of wildlife
(d) that the area is closed to mining claims;
(e) that short-term leases may be issued;
(f) that DNR is prohibited from selling land;
(g) that the state may not condemn, but may otherwise acquire land within the area.

(3) Section 41.21.880
Establishes the area and defines the land subject to the bill (see map attached).

Introduced: 2/4/85
Referred: Resources and
Finance

IN THE HOUSE BY COTTEN

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 142

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating the Kroto-Deshka Public Use Area."

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

* Section 1. AS 41.21 is amended by adding new sections to read:

ARTICLE 7A. PUBLIC USE AREAS.

Sec. 41.21.876. PURPOSE. The purpose of AS 41.21.876 - 41.21.-880 is to establish the area described in AS 41.21.880 as the Kroto-Deshka Public Use Area. The Kroto-Deshka Public Use Area is established to

(1) protect and maintain fish and wildlife habitat and populations, waterfowl nesting areas, and other important habitats for moose, bear and other furbearers;

(2) perpetuate public uses of fish and wildlife and their habitat including fishing, hunting, trapping, viewing, photography, and general public recreation in a high quality environment;

(3) allow other public uses of the area when compatible with the purposes specified in (1) and (2) of this section.

Sec. 41.21.878. MANAGEMENT. (a) Management of the surface and subsurface estate of the Kroto-Deshka Public Use Area is the responsibility of the Department of Natural Resources. After adequate public hearings the Department of Natural Resources shall develop and adopt and may revise a management plan for the Kroto-Deshka Public Use Area with the concurrence of the Department of Fish and Game.

(b) The Department of Fish and Game is responsible for the management of fish and game resources and public use of fish and

wildlife in the Kroto-Deshka Public Use Area consistent with the purposes of AS 16.20.400.

(c) The Kroto-Deshka Public Use Area is open to mineral leasing under AS 38.05.135 - 38.05.184 if the commissioner of natural resources determines that mineral leasing is not inconsistent with the purposes specified in AS 41.21.876. Each valid existing mining lease and multiple land use permit remains valid and shall continue in full force and effect according to its terms.

(d) The Department of Natural Resources may issue surface leases under AS 38.05.070 - 38.05.105 for a term not to exceed five years within the Kroto-Deshka Public Use Area. The Department of Natural Resources may not sell land under AS 38.05.045 - 38.05.069 within the Kroto-Deshka Public Use Area and the land within the Kroto-Deshka Public Use Area is closed to mineral entry under AS 38.05.185 - 38.-05.275.

(e) The state may not acquire by eminent domain privately owned land within or abutting state-owned land described in AS 41.21.880 but may acquire privately owned land by purchase, exchange, or otherwise for inclusion in the Kroto-Deshka Public Use Area.

(f) The Department of Natural Resources may adopt regulations to implement the provisions of AS 41.21.876 - 41.21.880.

Sec. 41.21.880. KROTO-DESHKA PUBLIC USE AREA ESTABLISHED. The state-owned land and water and all that acquired in the future by the state, lying within the boundaries described in this section, are designated as the Kroto-Deshka Public Use Area, are reserved from all uses incompatible with their primary function as public use lands, and are assigned to the Department of Natural Resources for control, development, and maintenance:

Township 19 North, Range 6 West, Seward Meridian

Section 2 W1/2

Section 3

Sections 10 - 11

Section 14

Section 15 E1/2

Section 22 E1/2

Section 23

Section 26

Section 27 E1/2

Section 34 E1/2

Section 35

Township 20 North, Range 6 West, Seward Meridian

Section 4

Section 5 E1/2

Section 8 E1/2

Section 9

Section 15 W1/2

Section 16

Section 21 E1/2, N1/2NW1/4, SE1/4NW1/4

Section 22

Section 27

Section 34

Township 21 North, Range 6 West, Seward Meridian

Sections 3 - 4

Sections 8 - 10

Section 15 W1/2

Section 16

Section 20 E1/2

Section 21

Section 28

Section 29 E1/2

Section 32 E1/2

Section 33

Township 22 North, Range 6 West, Seward Meridian

Section 4 W1/2, W1/2E1/2

Section 5 W1/2

Sections 6 - 7

Section 8 W1/2

Section 9

Section 16 W1/2, W1/2E1/2

Sections 17 - 18

Sections 20 - 21

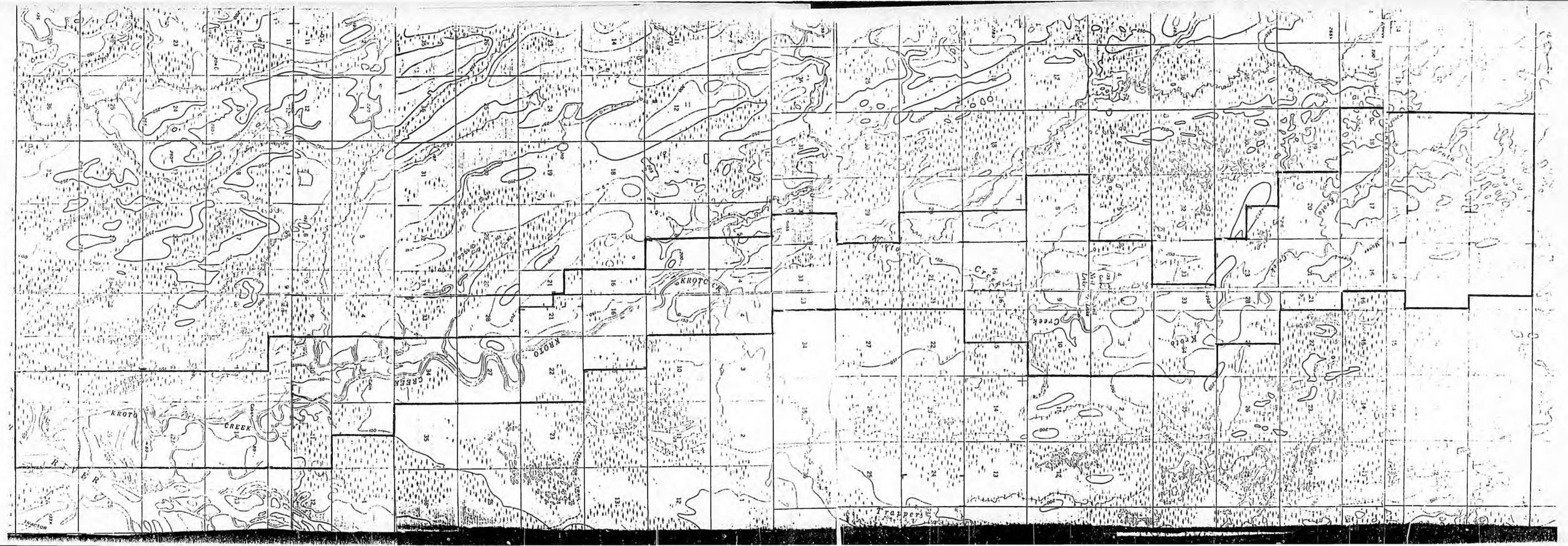
Section 27 W1/2

Section 28

Section 29 NE1/4

Section 33 E1/2

Section 34


KROTO CREEK
KROTO CREEK
KROTO CR
Kroto Creek
Kroto Creek
Trappers
RIVER

HB

1143

Moen
2/11/85

Original sponsor: House Special Committee on Oil and Gas

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 143 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to oil and gas activities along a highway right-of-way; and providing for an effective date."

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

* Section 1. AS 19.40.200 is amended by adding new subsections to read:

(b) The prohibition on disposal of state land under (a) of this section does not apply to a

(1) disposal necessary for an oil and gas lease under AS 38.05.180;

(2) a state lease or materials sale necessary for exploration, development, production, or transportation of oil and gas or reconstruction or maintenance of the highway.

(c) Before the sale of materials under (b)(2)of this section to a private entity or person or to a state agency the state shall give due consideration to the availability of materials from private sources in the area where the materials are needed.

* Sec. 2. AS 19.40.210 is amended to read:

Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road vehicles are prohibited on land within five miles of the right-of-way of the highway. However, this prohibition does not apply <u>to off-road vehicles necessary for oil and gas exploration, development, production, or transportation or</u> to a person who holds a mining claim in the vicinity of the highway and who must use land within five miles of the

* Sec. 3. This Act is retroactive to October 5, 1980.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

BACKGROUND ON SB 115
DEPARTMENT OF NATURAL RESOURCES
February 8, 1985
Senate Resources Committee

DISPOSALS UNDER AS 38 NECESSARY FOR OIL AND GAS DEVELOPMENT:

- Oil and gas leases under AS 38.05.180 convey exploratory drilling rights and production rights for any oil and gas discovered.

- Material (sand and gravel) sales are made to private entities under AS 38.05.110-120 for roads, drill pads, offshore artificial drilling islands, causeways, and other facilities. "Sales" are also made to the Department of Transportation and Public Facilities for highway reconstruction and maintenance under AS 38.05.810 (public and charitable use).

- Oil and gas pipeline right-of-way leases under AS 38.35 are the required authorization to construct an oil or gas pipeline on or across state land.

- Leases under AS 38.05.070 are held by private service companies and contractors in the Prudhoe Bay Industrial Tract Subdivision. These companies and contractors sell, rent, and repair equipment and provide services to oil and gas lessees. Alyeska Pipeline Service Co. also holds leases (for example, construction camp site).

ACTIVITIES IMMEDIATELY AFFECTED BY THE PROPOSED LEGISLATION

- Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985,and contains approximately 611,840 acres. Of that total, about 230,000 acres (52 of the 113 tracts) are within five miles of the highway and would have to be deleted from the sale without the proposed clarification of existing statute. Final notice of Sale 47 is scheduled to be given March 22, 1985.

- Seismic exploration using off-road vehicles is currently prohibited within the 10-mile corridor.

- Several existing material sales to the Department of Transportation and Public Facilities, and current pending applications for continued materials requirements of Alyeska will be in jeopardy.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☒ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☐ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 12, 1985

The Honorable Arliss Sturgulewski, Chairman
Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: CSSB 115 (Res)

Dear Senator Sturgulewski:

Kay Brown, director of the division of oil and gas, has asked us to respond to your inquiry whether there would be any negative legal implications from the retroactive application of the proposed amendments to AS 19.40.200 - 19.40.210 contained in the referenced bill. 1/ We believe that there would not.

Although retrospective laws are generally not favored, curative legislation is encouraged. Here, the legislation is in part being proposed to validate certain existing AS 38.05 disposals and off-road vehicle activities which might otherwise be void for failure to conform with the existing proscriptions of

---

1/ You will recall that the inquiry was made at your meeting of February 8, at which time Ms. Brown proposed that the provisions of CSSB 115 (Res) be made retroactive. We had earlier advised Ms. Brown that any question regarding the validity of existing uses of state land along the Dalton Highway could be resolved in the context of an attorney general's opinion. However, on February 4, it was brought to our attention that at least one existing oil and gas lease would be void unless made valid by retroactive application of the proposed amendments contained in the bill.

AS 19.40.200 - 19.40.210. These disposals and activities were authorized by state officials under the mistaken belief that the provisions of AS 19.40.200 - 19.40.210 were limited in scope to certain circumstances of primary concern to the legislature when the original Act was passed, namely, the prohibition of cabin site and other land surface disposals under AS 38.05 and of hunting with ORVs along the Haul Road corridor. The plain language of the statute, however, exceeds this narrow application, even though a broad interpretation reportedly was not the legislature's original intent.

Nevertheless, even curative legislation must comply with certain legal requirements. Among these is the requirement of AS 01.10.090 for an express statement of retroactivity. The legislative drafting manual suggests that language providing for retroactive application of a bill be set out in a separate section immediately preceding the effective date section, and that the retroactive section and the sections of the bill that are to be retroactive have immediate effective dates. Thus, CSSB 115 (Res) should contain an additional section to read:

* Sec. 3. Sections 1 - 2 of this Act are retroactive to October 5, 1980. 2/

From a constitutional standpoint, a curative Act may not impair the obligation of contracts, take property without due process of law, or interfere with purely judicial matters. We are not aware of any potential problems arising in these three areas of concern if the presently proposed amendments to AS 19.40.200 - 19.40.210 are made retroactive to the effective date of the original Act. To the contrary, retroactive application will avoid the possibility of finding invalid existing uses of state land previously authorized by state officials.

In sum, we are of the opinion that CSSB 115 (Res), which grants new rights rather than takes away existing rights,

---

2/ The present Section 3, providing for an immediate effective date, would be renumbered Section 4.

will present no negative legal implications if its provisions are applied retroactively. To the contrary, because of the uncertain validity of some existing uses of state land, we strongly encourage inclusion in the bill of a retrospective clause such as the one we have suggested.

Very truly yours,

NORMAN GORSUCH
ATTORNEY GENERAL

A. E. Prezyna

By: Ann E. Prezyna
Assistant Attorney General

AEP/ma

cc: Kay Brown, Director
Division of Oil and Gas
Department of Natural Resources

Arthur H. Peterson
Assistant Attorney General
Department of Law - Juneau

Offered: 2/11/85
Referred: Transportation

Original sponsor: Resources Committee

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 115 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to land use and disposal near a highway right-of-way; and providing for an effective date."

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

* Section 1. AS 19.40.200 is amended by adding new subsections to read:

(b) The prohibition on disposal of state land under (a) of this section does not apply to a

(1) disposal necessary for an oil and gas lease under AS 38.05.180;

(2) a state lease or materials sale necessary for exploration, development, production, or transportation of oil and gas or reconstruction or maintenance of the highway.

(c) Before the sale of materials under (b)(2)of this section to a private entity or person or to a state agency the state shall give due consideration to the availability of materials from private sources in the area where the materials are needed.

* Sec. 2. AS 19.40.210 is amended to read:

Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road vehicles are prohibited on land within five miles of the right-of-way of the highway. However, this prohibition does not apply <u>to off-road vehicles necessary for oil and gas exploration, development, production, or transportation or</u> to a person who holds a mining claim in the vicinity of the highway and who must use land within five miles of the right-of-way of the highway to gain access to <u>the</u> [HIS] mining claim.

* Sec. 3. This Act is retroactive to October 5, 1980.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 1/31/85
Referred: Resources and Transportation

IN THE SENATE BY THE RESOURCES COMMITTEE

SENATE BILL NO. 115

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to oil and gas exploration along highway rights-of-way."

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

* Section 1. AS 19.40.200 is amended to read:

Sec. 19.40.200. PROHIBITION ON DISPOSAL OF LAND WITHIN FIVE MILES OF THE HIGHWAY. The state may not dispose of state land under AS 38 which is within five miles of the right-of-way of the highway. This section does not apply to an oil and gas lease under AS 38.05.180; other state land disposals necessary for oil and gas exploration, development, production, or transportation; or other state land disposals necessary for highway maintenance and construction.

* Sec. 2. AS 19.40.210 is amended to read:

Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road vehicles are prohibited on land within five miles of the right-of-way of the highway. However, this prohibition does not apply to off-road vehicles supporting oil and gas exploration, development, production or transportation, or to a person who holds a mining claim in the vicinity of the highway and who must use land within five miles of the right-of-way of the highway to gain access to the [HIS] mining claim.


ALASKA OIL & GAS
LEASING PROGRAM
Department of Natural Resources
Division of Minerals and Energy Management
Department of the Interior
Bureau of Land Management
Minerals Mangement Service (O.C.S.)
OCEAN
BEAUFORT
SEA
DIAPIR FIELD 87, 97
YUKON
RIVER
CENTRAL YUKON
RIVER
WHITE MTN.
STEESE
VENETIE
GULF OF ALASKA
GULF OF ALASKA 88
KODIAK 99
COOK INLET
KODIAK ISLAND
PACIFIC OCEAN
BAY
KVICHAK
BOWERS BASIN
ALEUTIAN ISLANDS
ALEUTIAN ARC

By Sund

DEPARTMENT OF NATURAL RESOURCES

PROPOSED AMENDMENT TO HB 143

1. Delete Section 1 and insert:

*Section 1. AS 19.40.200 is amended to read:

Section 19.40.200. PROHIBITION ON DISPOSAL WITHIN FIVE MILES OF THE HIGHWAY. The state may not dispose of state land under AS 38 which is within five miles of the right-of-way of the highway. This section does not apply to an oil and gas lease under AS 38.05.180, or to a disposal necessary for exploration, development, production, or transportation of oil and gas ~~or for reconstruction and maintenance of existing highways~~; the north of 68° North latitude.

2. Add a new section to read:

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

3. Change title to read: "An Act relating to oil and gas activities along highway rights-of-way; and providing for an effective date."

Moen
2/5/85

Original sponsor: House Special Committee on Oil and Gas

IN THE HOUSE

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

CS FOR HOUSE BILL NO. 143 (Oil and Gas)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to oil and gas activities along highway rights-of-way."

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

* Section 1. AS 19.40.200 is amended to read:

Sec. 19.40.200. PROHIBITION ON DISPOSAL OF LAND WITHIN FIVE MILES OF THE HIGHWAY. The state may not dispose of state land under AS 38 which is within five miles of the right-of-way of the highway. This section does not apply to an oil and gas lease under AS 38.05.180.

* Sec. 2. AS 19.40.210 is amended to read:

Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road vehicles are prohibited on land within five miles of the right-of-way of the highway. However, this prohibition does not apply to off-road vehicles necessary for oil and gas exploration conducted under an oil and gas lease issued under AS 38.05.180 or to a person who holds a mining claim in the vicinity of the highway and who must use land within five miles of the right-of-way of the highway to gain access to the [HIS] mining claim.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

January 31, 1985

The Honorable Mike Davis, Chairman
House Special Committee on Oil and Gas
Pouch V
Juneau, AK 99811

Dear Representative Davis:

The Department of Natural Resources is requesting amendment of AS 19.40.200 and AS 19.40.210 to allow oil and gas exploration and development within five miles of the right-of-way of the Dalton Highway (North Slope Haul Road).

The statute presently prohibits the disposal of state land under AS 38 and use of off-road vehicles within five miles of the highway. "State land" under AS 38 includes oil and gas leases for exploration and production rights.

Although the department does not believe it was the intent of the 1980 Legislature to prohibit oil and gas activities along the highway, the statute as presently written may be interpreted to have that effect. Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985 and contains approximately 611,840 acres. Of that total, some 230,000 acres (52 of the 113 tracts) are within the five-mile corridor and will have to be deleted from the sale without clarification of the statutes cited above. Final notice of Sale 47 is scheduled to be given March 22, 1985.

I appreciate the willingness of your Committee to introduce HB 143, which would rectify the apparent oversight. Thank you in advance for your consideration and timely action on the bills.

Sincerely,

Esther C Wunnicke

Esther C. Wunnicke
Commissioner

10-J9LH

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 143

Title: Exploration and Development in Highway Rights-of-Way

Sponsor:

Requestor: Rep. Davis

Date of Request: 1/31/85

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Minerals and Energy Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar — Phone: 465-2400

Division: Commissioner's Office — Date: January 31, 1985

Approved by Commissioner: Robert D. Arnold — Date: January 31, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 115

Title: Exploration and Development in Highway Rights-of-Way

Sponsor:

Requestor: Sen. Sturgulewski

Date of Request: 1/31/85

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

ERU, Program or Subprogram(s) Affected: Minerals and Energy Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400

Division: Commissioner's Office Date: January 31, 1985

Approved by Commissioner: Date: January 31, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

DEPARTMENT OF NATURAL RESOURCES

PROPOSED AMENDMENT TO HB 143

1. Delete Section 1 and insert:

*Section 1. AS 19.40.200 is amended to read:

Section 19.40.200. PROHIBITION ON DISPOSAL WITHIN FIVE MILES OF THE HIGHWAY. The state may not dispose of state land under AS 38 which is within five miles of the right-of-way of the highway. This section does not apply to an oil and gas lease under AS 38.05.180, or to a disposal necessary for exploration, development, production, or transportation of oil and gas or for reconstruction and maintenance of existing highways.

2. Add a new section to read:

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

3. Change title to read: "An Act relating to oil and gas activities along highway rights-of-way; and providing for an effective date."

BACKGROUND ON HB 143
DEPARTMENT OF NATURAL RESOURCES
February 6, 1985
House Oil and Gas and Resources Committees

DISPOSALS UNDER AS 38 NECESSARY FOR OIL AND GAS DEVELOPMENT:

- Oil and gas leases under AS 38.05.180 convey exploratory drilling rights and production rights for any oil and gas discovered.

- Material (sand and gravel) sales under AS 38.05.110-.120 are needed for roads, drill pads, offshore artificial drilling islands, causeways, and other facilities. "Sales" are also made to the Department of Transportation and Public Facilities for highway reconstruction and maintenance.

- Oil and gas pipeline right-of-way leases under AS 38.35 are the required authorization to construct an oil or gas pipeline on or across state land.

- Leases under AS 38.05.070 are held by private service companies and contractors in the Prudhoe Bay Industrial Tract Subdivision. These companies and contractors sell, rent, and repair equipment and provide services to oil and gas lessees. Alyeska Pipeline Service Co. also holds leases (for example, construction camp site).

ACTIVITIES IMMEDIATELY AFFECTED BY THE PROPOSED LEGISLATION:

- Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985, and contains approximately 611,840 acres. Of that total, about 230,00 acres (52 of the 113 tracts) are within five miles of the highway and would have to be deleted from the sale without the proposed clarification of existing statute. Final notice of Sale 47 is scheduled to be given March 22, 1985.

- Seismic exploration using off-road vehicles is currently prohibited within the 10-mile corridor.

Guest Editorial

Stevens Village Opposes State Selections Around Yukon Crossing

By Village Council
Stevens Village

Fairbanks, Alaska — Stevens Village wishes to express its extreme concern and fear over the State of Alaska selecting lands within the haul road corridor around the Yukon Crossing near Stevens Village and to alert the general public to this happening in order to rally more public support to prevent this from happening.

These are lands that the people of Stevens Village have traditionally used, occupied, and governed. The lands are subsistence lands and as such are needed to remain in that use to maintain the subsistence economcy and the traditional lifestyle of the people of Stevens Village.

The people of Stevens Village are struggling to survive and to protect their culture and traditional lifestyle. In order to do this, they have to have a say in what goes on in their traditional lands that they use. They oppose the State selecting these lands because of the State's insensitivity in dealing with Stevens Village in the past.

For example, during pipeline days, the State rushed to build the Hickel Highway through Stevens Village's lands without the village's permission and without the construction permit being granted yet for the pipeline from the Federal government.

If the State selects these lands and then encourages settlement and/or development there, it will have a devastating effect on the people of Stevens Village. Why start a new settlement only to wipe out another one?

The haul road is for transportation purposes and for reasons of safety and efficiency it needs to remain free of settlement and/or development. This will save the State money in the long run.

We are asking the people of Alaska to support us in this by contacting the State Department of Natural Resources and our representatives in the State Legislature.

By keeping these lands in a natural state it will help to insure the survival of the Steven Village people and their culture, for without that Alaska can never be a great land.

Letters to the Editor

Dear Editor:

As 1991 looms on the horizon, with the as-yet indistinct but potentially disruptive impacts on all Alaskans, it is reasonable to note a trend among many Native Alaskans that flies in the face of long-held stereotypes held by many non-natives. This trend makes the task of preparing for the upcoming battle over corporate and land ownership between the Native corporations and potential outside owners that much more hopeful.

A good number of Native people choose not to drink, there may be social, economic and political consequences which we had not anticipated.

An example of this trend can be seen in the recently enacted policies of the Alaska Federation of Natives and the Association of Village Council Presidents (AVCP), both of which have in recent years adopted policies of no drinking during their annual meetings. AVCP even contacts local villages when any of their representatives to

HB

1655

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Game	SSHB 165	Taylor-Sund

DEPARTMENT POSITION: Neutral

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Robert Hinman	4/17/85	Carl W. Ellsworth	4/17/85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
U.S. Forest Service	Sportsmen's groups, Advisory committees, Environmental groups
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Sitka and Ketchikan sportsmen's groups Alaska loggers	Unknown

FISCAL IMPACT: ☐ NONE ☒ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Various groups, particularly the sportsmen's group from Ketchikan have supported a transplant of Roosevelt Elk to southeastern Alaska. This bill would mandate such an introduction.

ANALYSIS OF BILL/PROGRAM EFFECTS

Prior to transplanting elk or any other species, permission must be granted by the land managing agency--in this case, the U.S. Forest Service (USFS). The Forest Service has indicated that an Environmental Assessment (EA) will be necessary and possibly an Environmental Impact Statement (EIS) if the EA indicates that a more detailed evaluation is necessary. Board of Game policy is that an introduction or transplant of wildlife must be preceded by an analysis indicating that sufficient habitat exists to sustain the species, that the transplant would not adversely affect indigenous species, and that the transplant would likely serve a useful purpose. The department and the USFS have met and agreed upon proposed criteria (attached) for a feasibility study. The Commissioner has agreed with the USFS Regional Forester to work cooperatively in developing a plan for the feasibility study. Among the questions to be addressed are the potential effects on indigenous Sitka blacktail deer. Because predator-prey relationships, forage availability, and other factors may affect the (continued)

AMENDMENTS PROPOSED

Line 9: years, (COOPERATE and assist in the) Transplant(ING) to Zarembo Island or other appropriate location in southeastern Alaska (OF)

Delete last sentence, lines 15 and 16: the department already has this authority.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

success of a proposed transplant, it is desirable to evaluate more than one possible transplant location.

The department is not currently funded to conduct the necessary feasibility study. Work of this type can be conducted over a period of years in conjunction with existing research and management activities. In this way, costs could be minimized, but a substantial period of time would be necessary. To conduct the work over a shorter period would require additional funding. Assuming the study indicates that the transplant is feasible, funding to cover the actual transport of animals (and related costs) would be needed.

(attachment)

INTRODUCTION OF ELK INTO SOUTHEAST ALASKA

PROPOSED CRITERIA FOR A FEASIBILITY STUDY

The following criteria should be addressed when conducting a feasibility study on the introduction of elk onto public lands in Southeast Alaska:

1. Consider possible implications of introducing elk to Southeast Alaska.
   a. Biological implications
   b. Ecological implications
   c. Recreational implications
   d. Economical implications
      (1) Estimate of cost/benefit
2. Consider potential types of public use.
   a. Sport hunting
   b. Non-consumptive
3. Consider attitudes of people in Southeast Alaska towards introducing elk.
   a. Public sectors
   b. State and Federal agencies
4. Compliance with agency policies, direction, and regulations.
   a. State of Alaska, Department of Fish and Game
   b. USDA Forest Service, Alaska Region
5. Historical Record of Elk Introductions to Southeast Alaska.
   a. Literature review
   b. Past experience and results
6. Biological and Habitat Relationships
   a. Suitability of habitats for elk
      (1) Winter ranges-optimum/minimum acres
      (2) Summer ranges-optimum/minimum acres
      (3) Effect of timber harvest on elk habitat
   b. Forage availability (quantity, quality, forage species)
      (1) Winter range
      (2) Summer range

c. Habitat competition with other species

(1) Forage competition

(2) Space-competition

(3) Reproduction/breeding

d. Biological potential for elk in Southeast Alaska

(1) Subspecies most suitable to Southeast Alaska

(2) Availability of transplant stock

(3) Habitat adaptibility of the animal

(4) Reproduction

(5) Survival/mortality

e. Predator/Prey Relationships

(1) Effects of predation on Elk

(2) Potential problems with other species

f. Diseases and Parasites

(1) Potential problems with elk populations

(2) Potential problems with other species

g. Land Use/Habitat Relationships

(1) Effect of timber harvest on public and native lands on habitat utilization by elk

(2) Effect of State land disposal activities

7. Management of the Elk Populations in Southeast Alaska.

a. Mobility of the animals-likelihood of expansion to other areas outside the original transplant site.

b. Population Management - regulations needed to maintain population size and areas occupied to meet management objectives

c. Potentials for Animal Damage

(1) Land Use Conflicts - public and private lands

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

December 12, 1984

MEMORANDUM

TO: Representative-Elect Robin Taylor

FROM: Sharman Haley
Legislative Analyst

RE: Transplanting Elk to Southeast Alaska
Research Request 85-053

You requested information to help formulate legislation requiring the Department of Fish and Game to cooperate with sportsmen in a program to transfer elk from Afognak Island to Southeast Alaska. This memorandum provides some background on the issue, outlines the political and legal hurdles for undertaking a transplant, discusses some of the alternative methods for rounding up and transporting the elk, and draws some conclusions regarding legislation.

Background

The history of elk transplant to Southeast Alaska was summarized by the Director of Game in a letter to the Alaska Sportsmen's Council, Inc.:

> As you are doubtlessly aware, there has been considerable public interest in an elk transplant to southeast Alaska since at least Statehood. During the early 1960s, two elk transplants were attempted but failed (to Revilla and Gravina Islands). Another transplant was planned in early 1972, but the department's request for Federal Aid funding was denied by the U.S. Fish and Wildlife Service on grounds that such a transplant was not biologically sound... The Service's denial of this request was primarily based on documented competition between deer and elk in several western states with the ultimate result being depressed deer populations. This was particularly evident in areas of harsh winter weather.
>
> This federal action combined with an increasing biological awareness of resident species and habitat conditions in Alaska led the department to review proposed transplants much more critically during the 1970s and to establish firm policies governing transplants statewide. The Alaska Legislature, which had previously

endorsed long-standing but biologically unsound transplant statutes, took a firm stance on such matters in 1970 and repealed Sections 16.25.020, 16.25.030, and 16.25.040 of Title 16, Alaska Statutes.[1]

Last August, the Governor and the Commissioner of Fish and Game met with Representative Ron Wendte, Bob DeWitt, and other sportsmen's representatives on the issue of elk transplant to Southeast. Their conclusion was that if the sportsmen could get the support of the fish and game advisory committees, the Fish and Game Regional Council, and the State Boards of Fish and Game, the department would proceed with the transplant. When the issue came before the State Board of Game December 8, 1984, the board recommended that it be taken to the advisory committees.

Legal and Political Hurdles

Wild game may not be possessed or transported in the state without a permit from the Department of Fish and Game.[2] There are no specific statutory or regulatory guidelines for the department to follow in considering a permit request. The position of the department outlined in its letter to the Alaska Sportsmen's Council is as follows:

4. As a matter of policy, we will not approve of, nor participate in, transplants of nonindigenous wildlife without detailed feasibility studies and ecological investigations.

5. We are not currently funded, nor are we likely to be in the future, for elk transplant feasibility studies.

6. We would be willing to conduct or participate in elk transplant feasibility studies involving ecological investigations only if: (a) outside funding were made available; and (b) the Division of Game received additional positions for research biologists such that our existing research and management programs on resident species were not affected.

7. Until such time that detailed feasibility studies may be completed and the results closely analyzed, resource agencies in

---

[1]Letter from W. Lewis Pamplin Jr. to Ronald J. Somerville, November 3, 1983.

[2]AS 16.05.255; 5AAC 81.040; 5AAC 81.130.

> Alaska should maintain consistent opposition to transplanting nonindigenous wildlife species.[3]

The approval of federal agencies is also required to transplant game. The National Environmental Protection Act (NEPA), requires an environmental analysis prior to federal action. This analysis could take the simpler form of an Environmental Assessment, or NEPA might be interpreted to require a more detailed Environmental Impact Statement.

If federal aid funds are to be used, which would normally be the case for a wildlife transplant program, approval of the U.S. Fish and Wildlife Service is required. In 1972, the U.S. Fish and Wildlife Service evaluated and rejected the State's proposal to transplant elk to Kruzof Island. The evidence suggested that the deer population would decline as a result of the elk's competition for forage, and that the proposal was therefore "biologically unsound."

With or without federal aid funds, approval by the U.S. Forest Service is required. The Forest Service is the federal manager of most of the land and habitat in Southeast. For fish and game management, the Forest Service has a Memorandum of Understanding with the Alaska Department of Fish and Game. One of the provisions of this agreement is that the department will not sanction the introduction of any species onto National Forest land without Forest Service agreement. Further, the department is obligated to conduct the necessary research for the Forest Service's environmental analysis of the proposal. My conversation with Phil Janik, Director of Wildlife and Fisheries for the Forest Service, indicated that the Forest Service review would likely be technical, not political; if the feasibility study and environmental assessment showed the proposal to be technically sound and indicated that the only significant biological impact would be a trade off of deer for elk, the Forest Service would not necessarily reject the proposal on that basis. The decision to proceed with the transfer would likely be left to the State's political process.

One way the State makes political decisions regarding game is the process agreed to in August by the governor and sportsmen's representatives and recently affirmed by the State Board of Game: the proposal should first be considered by each of the 18 Southeast fish and game advisory committees and the Southeast Regional Council before reviewed by the State Board. The State Board will consider the recommendations of the local and regional entities and make a final decision for the State. This process would allow residents in all areas that might ultimately be affected by the decision to be heard on the issue.

---

[3]W. Lewis Pamplin Jr., op cit.

Legislation is another means of making a political decision on the elk transplant issue. A bill could be introduced directing Fish and Game to conduct the necessary studies, and subject to federal approval, transplant elk to Southeast Alaska. An appropriation would also be needed. If the legislation were passed and signed into law, action by the State Board of Game would not be required.

Operations

Once the decision is made to proceed, there are at least two methods of rounding up and transporting the elk. The most appropriate method for elk from Afognak Island would be to tranquilize the elk individually with darts and pick them up with a helicopter. The elk would then be flown to Kodiak and on to Southeast. This operation would likely require six to eight experienced people. An alternative method would be to import surplus elk from Washington or Oregon where the elk can be driven into existing corrals and loaded into trucks. Although a veterinary inspection would be required for every elk to be transported across state lines, this still might prove to be less expensive than a roundup on Afognak.

Conclusions

The first thing the Department of Fish and Game needs to participate in the proposed elk transplant to Southeast is a political mandate to do so. This could be accomplished through legislation. To facilitate the required federal cooperation, you may wish to specify in the legislation that no federal aid funds are to be used. This way only the approval of the Forest Service, and not of U.S. Fish and Wildlife Protection, would be required. You might also consider having the legislation drafted generally enough to allow the department to pursue the least expensive roundup and transportation option, and to direct them to utilize available volunteer services.

The second thing the department needs to proceed is money. If you introduce legislation, the department will be required to prepare a fiscal note estimating the costs to carry out your proposal. You and your staff (or you may request assistance from this agency) should review the fiscal note very carefully to determine whether you agree with the department's estimates. In particular, you may wish to ascertain whether the department has considered the volunteer services of interested sportsmen. You can expect that the department will request funding for additional research biologists to carry out the necessary studies. You may wish to review the department's existing research commitments to determine whether you agree that additional positions are needed, or whether you feel that existing staff should alter their

research priorites to perform the necessary elk research. If you disagree with the department's fiscal note, you may want to prepare your own version for committee consideration.

* * * * *

I hope that this memorandum has provided you with useful information. More detailed information on specific requirements in terms of personnel, equipment, time, etc. will be forthcoming in a departmental fiscal note after legislation is introduced. If you have any further questions for this agency, please don't hesitate to call.

SH

Alaska Loggers Association, Inc.

111 STEDMAN, SUITE 200
KETCHIKAN, ALASKA 99901
Phone 907-225-6114

October 29, 1984

Honorable Bill Sheffield
Govenor State of Alaska
Pouch A State Capitol Building
Juneau, Alaska 99811

Dear Governor Sheffield:

Once again Alaska Loggers Association has been invited to support the Alaska Sports and Wildlife Club in its effort to establish an elk herd in Southeast Alaska. You will wish to know, the ALA Directors support this program. We would suggest the transplant be made to an area already designated as wilderness or some other set aside which does not permit timber harvest. We would hate in years hence to have a battle with the fish and game over elk habitat with the possibility they could not exist if the old growth forest were harvested.

Why not give it a try.

Sincerely,

Don Bell

Donald A. Bell
General Manager
ALASKA LOGGERS ASSOCIATION

DAB/mjh
cc: Mike Barton
Commissioner Collinsworth
Win Green
Jim Clark
Jerry Larrabee
Bob DeWitt
Earl Mossburg

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

November 23, 1984

Mr. Donald A. Bell
General Manager
Alaska Loggers Association
111 Stedman, Suite 200
Ketchikan, AK 99901

Dear Don:

Thank you for your letter of October 29, 1984, regarding the support of the Alaska Loggers Association for an elk transplant in southeastern Alaska. Commissioner Collinsworth and his staff have been in contact with the Forest Service and various public groups in Southeastern concerning this matter. Department of Fish and Game staff will brief the Board of Game on the request at its next meeting, December 2-8, 1984. I appreciate the continuing concern of your Association for enhancement of wildlife in Alaska.

Sincerely,

Bill

Bill Sheffield
Governor

Sitka Sportsman's Association

BOX 1200 • SITKA, ALASKA • 99835

January 12, 1984

Honorable Don Collingsworth
Commissioner Dept. Fish and Game
P.O. Box 3-2000
Juneau, Alaska 99802

Dear Commissioner Collingsworth:

We agree with the Ketchikan, Alaska Sports and Wildlife Club that the multiple use management concept would work and be more beneficial to the hunter. Our association ask you to please review the facts and issue a permit to transplant Elk to the Ketchikan, Alaska Sports and Wildlife Club.

The first obstacle received from the Fish and Game Dept. was no money. The Ketchikan group have received pledges from Sitka, Wrangell, Ketchikan, and Petersburg to help finance this project. Private parties have offered the use of aircraft, helicopters, landing craft, barges, boats and other equipment for the transplant. The Forest Service said the had funds, equpment, and biologists who could be used.

The second obstacle was the need for more research. After inquiring, we found three reports of assessment to introduce elk in Southeast Alaska. One by the U.S. Fish and Wildlife Service and two by the Dept. of Fish and Game; the latest in 1970 by Alan W. Courtright and Harry R. Merrian which favored the introduction of elk to Kruzof Island.

The third and last obstacle was the elk would compete with the deer. We have found in other states where they have had a healthy herd of elk and deer in the same area for many years. From the Fish and Game reports we found Afognak Island has six herds of elk totaling around 800 animals and during the 1982 season the total harvest was 150 animals. At the same time, the deer limit was seven per year the highest limit in Alaska.

Respectfully,

Foy Nevers
President

cc: Governor Sheffield
Sitka Sentinel
Alaska Sports and Wildlife Club

KETCHIKAN FISH AND GAME ADVISORY COMMITTEE MEETING

December 4, 1984, 7:00 p.m.

MEMBERS PRESENT:

Ron Lundamo, Maurice Ingman, Bob Stanker, Larry Painter, Hal Brown, Jim Canary, John Peckham, Mike Painter.

Other: Sports and Wildlife Club, USFS, and general public.

AGENDA

1. Notification of term expiration (1984) for J. Canary, O. Haynes and B. Stanker. Nominations and vote to be conducted during the January 7th meeting.

2. Proposed elk transplant discussed to date: proposed 1982 for Revilla Island. Reproposed 1983 twice suggesting Prince of Wales Island or Zarembo Island. Apparently not a conflict of feed with existing black tailed deer population. Afognak Island has a bag limit of 5 deer and 1 elk. Last local elk transplant had 18 animals and were seen several years ago but none since. Certain groups in Wrangell are behind the Sports and Wildlife Club for an elk transplant. Suggested 100 animals minimum for the transplant and that they all be adults.

Motion made and 2nd to favor transplant of elk to Southeast

For - 7 Against - 0 Abstain - 1

3. Discussed Wolf Study: $300,000.00 for a four year study. Input from the group and audience was that it is a complete waste of money. What people want is some wolf control. How do you get ADF&G to go for it was an unanswered question.

4. Comments on the Misty Fjords, or other parts of S.E being used by private commercial use by promoters for setting Guide Camps, tent platforms and other. Question - should we favor or oppose the commercial guide camps on lakes in the National Forest. Opinion vote - advisory to the Forest Service.

Motion to recommend to the USFS to continue constructing cabins consistent with present uses that are open to the public use, and not allow commercial guide camps, because we feel the current use of cabins fully satisfies the public demand.

For - 7 Against - 1 Abstain - 0

5. Discussed proposal for a goat transplant on parts of Prince of Wales Island, north end preferred.

For - 7 No - 0 Abstain - 0

Maurice Ingman
Secretary



Shop now for the best Christmas selection

New shipment of blankets and comforters, twin to king size. Comforters in floral prints and plain colors. All washable. And towels galore! And don't forget to make those handmade gifts early. We have batting, Poly Fill and pillow forms for your handicrafts.

Willie's

KH BODY & PAINT

Your complete auto repair & paint shop

FAST FRIENDLY SERVICE

We do estimates in Wrangell

Mon.-Fri. 9-5 772-3390

Hospital Auxiliary

Christmas Bazaar

Saturday, Nov. 10
Starts at 11 am
Wrangell Alcohol Center

Raffle for Cabbage Patch Doll and Debonair Bear

Donated by Nancy Martin
Drawing at Midnight Madness

Wrangell varsity splits with Kake

By COREY JOHNSON

The defending 2A state champion Kake Thunderbirds gave the Wrangell Wolves boys teams a run for their money last Friday and Saturday by winning three out of the four games played.

Last week's action brought the season records for the Wolves varsity and the JV both to 3-3.

Friday, the Wrangell varsity lost 58-57, but the junior varisty had an easy 46-40 win.

On Saturday night, both Wrangell teams suffered losses when the Thunderbirds took advantage of the numerous Wrangell turnovers and beat the varsity 49-40 and the JV's 63-54.

Coach Bill Gablehouse's prediction that Kake would give an outstanding performance proved true when he saw a "well-balanced attack" from the Thunderbirds. Friday's varsity game was "back and forth throughout the whole game."

Gablehouse said he was pleased with his team's approximately 60 percent accuracy at the free-throw line. Although Gablehouse said he enjoyed the varsity game Saturday, he felt Wrangell had too many turnovers, with an estimated 15 that night.

"We had some bad breaks, and Kake shot well," Gablehouse said.

Gablehouse also pointed out Kake's use of various defenses in the second half, which he said led to the majority of Wrangell's turnovers.

The coach said Eddie Henry played excellently both nights for the JV's, with 25 points Friday, and 27 points Saturday. He also complimented Gus Brock, Peter Schonwandt and Vern Meissner on their fine preformance under the boards for both nights.

Gablehouse said he thinks he needs better ball control from his team, to reduce the large amount of turnovers in each game.

Gablehouse said Kake did an overall good job, saying, "Kake could compete with any 3A team".

Looking ahead to next week's game at home, in which the Wrangell Wolves will be hosting Juneau at home, Gablehouse expects a tough "man to man — all the way."

Neither of the Wrangell girls teams played last week, but they will travel this week to play Juneau.

Official favors study of elk transplant proposal

The Alaska Game Board should seriously consider a proposal to transplant elk to Southeast, a member of that group says.

Joel Bennett said during a recent visit to Wrangell that the board should consider the proposal despite opposition from the Alaska Department of Fish and Game.

"We're not going to kill the proposal just because the department is against it," he said.

The Wrangell City Council is backing a plan by the Alaska Sports and Wildlife Club to transplant elk to Southeast. In a resolution approved last month, the council urged the department and U.S. Forest Service to participate in an elk transplant.

Bennett said department officials generally oppose the plan because of competition for range with deer. In critical winter weather, he said, only a thin strip of range is available to deer along the coastline — and elk would compete for the limited forage.

When deer and elk compete, he said, the deer generally suffer.

Members of the Sports and Wildlife Club, however, point to other successful programs — and say the elk and deer can survive and prosper together.

Bennett said other attempts with elk transplants in Southeast near Ketchikan and Sitka could not be properly monitored because too many of the animals were poached before the population grew large enough for state-sanctioned hunting.

Bennett said the Board of Game will have to consider both sides of the question and determine "if we want to gamble" on the transplant's success.

He encouraged citizens with views on the transplant issue to contact him by writing 114 West Sixth St., Juneau, Alaska, 99801.

Proposals to the game board are due in mid-December.

ALCOHOL INFORMATION AND REFERRAL CENTER

More entries expected in winter salmon derby

Organizers of Wrangell's Third Annual Winter King Salmon Derby are expecting more entries and a bigger

Last year's winner, James Stough, won $1,000 in the event.

as far away as Houston, Texas, and Denver, Colo., he said.

Entrants each pay $100 and

LOGGER LETTER Vol XX No. 5 May 1983

Logging shows

Vern Eliason, Chairman of the All Alaska Logging Championship in Sitka, announced June 25 and 26 as the dates for the show. They expect a group of professionals from the lower '48 and a strong group of competitors from the Sitka area. The loggers from Larrabee Logging Company will be out to retain their camp championship.

ALA's Kirsten Held and Joe Staley of Sealaska Timber are co-chairing the 1983 July 4th Timber Carnival in Ketchikan. They have the support of an enthusiastic committee and are planning a topnotch show on July 4th at the Norman Walker Field.

Roy Martin advises Wrangell's logging show will start on July 3 and continue through the 5th. They plan on many contests including log rolling, ma pa bucking, choker setting, and log binding.

Let's hope they listen

Dick Borch, President Alaska Sports and Wildlife Club, recently wrote an excellent letter to the editor of Island News, the Prince of Wales Island weekly. It is hoped the Alaska Department of Fish and Game read it and recognize Dick's remarks are coming from more than 60 years of sports hunting in Alaska. In the early 60s, the ADF & G introduced wolves on Coronation Island to conduct a deer predator study. The wolves ate all the deer then swam to other islands. Dick reports the wolves are now gnawing their way through the deer population on Revilla Island. He suggested the introduction of Roosevelt Elk which can co-exist with deer and would have a better survival rate with the wolves.

They do it different

South Central Timber Development's 40 employees started logging the end of March at Icy Bay. Cliff Hustead, ATIE Safety Director, made a trip to camp in May and snapped these pictures showing how they do it up north.



They use large ice cubes in their martinis. Floyd Johnson, partner, and Larry Varner, Camp Manager, explain why they need such



Mosquito nets keep the bugs away from the logger's face.

CITY OF WRANGELL, ALASKA

RESOLUTION NO. 10-84-213

A RESOLUTION OF THE CITY OF WRANGELL, ALASKA, URGING THE U. S. FOREST SERVICE AND THE ALASKA DEPARTMENT OF FISH AND GAME TO PARTICIPATE IN AN ELK TRANSPLANT IN SOUTHEAST ALASKA: AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The Alaska Sports and Wildlife Club has made a proposal advocating the establishment of an elk herd in Southeast Alaska; and

WHEREAS, the Alaska Sports and Wildlife Club believes that the multiple use management concept of the Wrangell District would be more beneficial to the hunters of this area if an elk herd were made available for propogation and ultimate hunting in Southeastern Alaska; and

WHEREAS, the Club has worked with the U. S. Fish and Wildlife and the U. S. Forest Service and advocates proper managerment of Alaska's recreational lands; and

WHEREAS, Sports and Wildlife activities are an important part of Wrangell's tourism and subsistance attraction.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WRANGELL, ALASKA:

1. The Council urges the U. S. Forest Service and the Alaska Department of Fish and Game to participate in an elk transplant to Southeastern Alaska.

2. The City Clerk is hereby directed to send a copy of this resolution to Governor Bill Sheffield; Area Biologist Robert Wood, Alaska Department of Fish and Game; and Forest Supervisor Win Green, U. S. Forest Service.

APPROVED AND ADOPTED OCTOBER 23, 1984

William B. Privett, Mayor

ATTEST: Janice K. Henderson
CITY CLERK

Certified a true and correct copy of the original filed in my office.

Janice K. Henderson
City Clerk 10-24-84
City of Wrangell, Alaska

We are aware that if either-sex hunting was to be initiated, it might be necessary to use a permit system due to limited moose numbers. This, of course, increases administrative requirements and restricts opportunities for hunters. It might be possible, however, to continue the open bull season and add a limited number of cow permits.

We received reports of occasional moose sightings on Mitkof, Kupreanof, and Prince of Wales Islands, and we also found the remains of a moose on Sokolof Island during our visit there. But our impression, from talking with knowledgeable people, is that these islands are even more marginal habitat than the pockets where moose occur on the mainland. Efforts to increase the carrying capacity for moose on these islands would therefore have rather low priority but should not be entirely discounted. We feel that any means of increasing the diversity of ungulates throughout Southeast Alaska would be worth considering, especially if species can be found with diverse food habits and ecologic niche preferences. Broadening the variety of herbivores has been amply demonstrated in many parts of the world to improve the conversion of vegetation to useful animal products.

Introduction of Elk

For this same reason we believe that further efforts should be pursued to introduce Roosevelt elk to this area. Elk have demonstrated that they can survive the rigorous conditions of Afognak Island and if sufficient numbers could be planted in one area, we feel they would have a reasonable chance of becoming established. An isolated island might be selected for such a trial; Zarembo Island has been suggested as a possible site.

We are also aware of the previous attempts to introduce Roosevelt elk to southeast Alaska, (including Gravina and Revilla Islands). In spite of these failures, we consider it worthwhile to try again.

Before elk introduction is contemplated, however, it would be logical to analyze the potential demand for this species and to assess their probable biological impact on the habitat as well as the possibility of spread to other islands.

Members of the Alaska Department of Fish and Game have expressed strong reservations about the potential for competition between elk and deer and this should certainly be considered. Some background information which would aid the assessment of this aspect should be available from Oregon, Washington, and Vancouver Island where Roosevelt elk and Columbian black-tailed deer coexist.

There is some indication, however, that Roosevelt elk do not compete with deer to the extent that is often found with Rocky Mountain elk and deer. Additionally, Roosevelt elk do cause serious damage by browsing to Douglas-fir seedlings in Oregon and Washington, and it would be necessary to evaluate their preferences for the species of commercal conifers in southeast Alaska. Taber and Radeke (1980) point out that Roosevelt elk do browse on hemlock.

Retention Areas

In the planning process, particularly in the case of timber sales, areas to be retained uncut to meet wildlife needs should be designated as temporary or permanent depending upon management objectives. Beach front areas, because of their critical values for deer winter range, furbearers, and eagles, are among the best examples of sites for permanent retention. In contrast, intermediate elevation sites may or may not require the same consideration for permanency depending upon local conditions. Both temporary and permanent retention areas will lose value and ability to meet their needs if they are altered by unplanned changes in size or design. Blowdown of trees in windstorms is a good example. Ruth and Harris (1979) present a good discussion of the factors contributing to blowdown risks and ways in which risks can be reduced.

Voting "Yes": Elkins
Bartholomew
Hansen
Thomas
McCarty

Voting "No": None
Absent: King
Cruise

4 votes required for passage
Effective date: 8/20/84

K E T C H I K A N G A T E W A Y B O R O U G H

Resolution No. 590

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, URGING THE U.S. FOREST SERVICE AND THE ALASKA DEPARTMENT OF FISH AND GAME TO PARTICIPATE IN AN ELK TRANSPLANT IN SOUTHEASTERN ALASKA; AND ESTABLISHING AN EFFECTIVE DATE

R E C I T A L S

A. The Alaska Sports and Wildlife Club has made a proposal advocating the establishment of an elk herd in Southeast Alaska. The Alaska Sports and Wildlife Club believes that the multiple use management concept of the Ketchikan District would be more beneficial to the hunters of this area if an elk herd were made available for propogation and ultimate hunting in Southeastern Alaska.

B. The Alaska Sports and Wildlife Club was organized in 1947. Over the years, the Club has worked with the U.S. Fish and Wildlife and the U.S. Forest Service and advocates proper management of Alaska's recreational lands. The Club works to combat the declining deer population in Southeast Alaska, builds and maintains recreational cabins, provides skiffs on popular sportfishing lakes and supports many other sports and wildlife activities.

C. Sports and Wildlife activities are an important part of Ketchikan's tourism attraction.

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, as follows:

Section 1. The Assembly urges the U.S. Forest Service and the Alaska Department of Fish and Game to participate in an elk transplant to Southeastern Alaska.

Section 2. The Borough Clerk is hereby directed to send a copy of this resolution to Governor Bill Sheffield; Area Biologist Robert Wood, Alaska Department of Fish and Game; and Forest Supervisor Win Green, U.S. Forest Service.

Section 3. This resolution is effective upon adoption.

ADOPTED this 20th day of August, 1984.

Carroll Hadley
BOROUGH MAYOR

ATTEST:

Georgianna Booth
BOROUGH CLERK

APPROVED AS TO FORM:

Jessee W. Walker
MUNICIPAL ATTORNEY

HB

1886

Original sponsors: Szymanski and Clocksin

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 186 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating the Anchorage Coastal Wildlife Refuge."

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

* Section 1. AS 16.20 is amended by adding a new section to read:

Sec. 16.20.031. ANCHORAGE COASTAL WILDLIFE REFUGE. (a) The following described state-owned land and water is established as the Anchorage Coastal Wildlife Refuge and shall be managed as a state game refuge for the protection of waterfowl, shorebirds, salmon, and other fish and wildlife species, and their habitat and for the use and enjoyment of the people of the state:

(1) Township 13 North, Range 4 West, Seward Meridian

Section 20: SE 1/4 seaward of the 20 foot elevation contour

SE 1/4 NE 1/4 seaward of the 20 foot elevation contour

Section 29: E 1/2 seaward of the 20 foot elevation contour

SW 1/4 seaward of the 20 foot elevation contour

Section 30: SE 1/4 SE 1/4

Section 31: All seaward of the 20 foot elevation contour except NW 1/4 NW 1/4

Section 32: All seaward of the 20 foot elevation contour

(2) Township 13 North, Range 5 West, Seward Meridian

Section 36: S 1/2

S 1/2 N 1/2

(3) Township 12 North, Range 4 West, Seward Meridian

Sections 6 - 9: Seaward of the 20 foot elevation contour

Section 15: NW 1/4 seaward of the 20 foot elevation contour

SW 1/4 NE 1/4 seaward of the 20 foot elevation contour

Government Lot 5 and the remainder of the W 1/2 SE 1/4, all

SW 1/4

Section 16: Seaward of the 20 foot elevation contour

Sections 17 - 22

Section 23: Government Lot 1 and the remainder of the SW 1/4, all seaward of the 20 foot elevation contour

Government Lot 2 and the remainder of the S 1/2 NW 1/4, all seaward of the 20 foot elevation contour

Government Lots 3 and 4, and the remainder of the SE 1/4, all seaward of the 20 foot elevation contour

Section 24: Tract A, Shorecrest Subdivision (Plat No. 81-68, Anchorage Recording District)

Section 25: Government Lots 1 and 2, and the remainder of the W 1/2, all

Tract A, Johns Park Estates, and the remainder of the NE 1/4, excluding Skyway Park Estates, Addition No. 1 all seaward of the 20 foot elevation contour Government Lots 3 and 4, and the remainder of the SE 1/4, all

Sections 26 - 36

(4) Township 12 North, Range 3 West, Seward Meridian

Sections 1 - 2

Sections 11 - 14

Sections 23 - 26

Sections 35 - 36

(5) Township 12 North, Range 3 West, Seward Meridian

Section 29: That portion of the SW 1/4 southwesterly of the Alaska Railroad right-of-way and southerly of Oceanview Subdivision, Addition No. 6

Section 30: That portion of Tract A, Johns Park Estates, seaward of the 20 foot elevation contour Government Lot 2 and that portion of the SE 1/4 NW 1/4 southwesterly of Oceanview West Subdivision, Addition No. 1

Government Lots 3 and 4 and the remainder of the SW 1/4, all

That portion of the SW 1/4 NE 1/4 and the SE 1/4 southwesterly of Oceanview Subdivision, Addition No. 4 and Addition No. 6

Section 31

Section 32: All lands southwesterly of the Alaska Railroad right-of-way

Section 33: All lands westerly of the Alaska Railroad right-of-way

(6) Township 11 North, Range 3 West, Seward Meridian

Section 3: Government Lot 5

Section 4: That portion southwesterly of the Old Seward Highway right-of-way and The Landings

Subdivision which is northeasterly of the New Seward Highway right-of-way

That portion southwesterly of the Alaska Railroad right-of-way

Sections 5 - 8

Section 9: That portion southwesterly of the Alaska Railroad right-of-way

That portion northeasterly of the New Seward Highway right-of-way

Section 10: That portion westerly of the Old Seward Highway right-of-way which is northeasterly of the New Seward Highway right-of-way

That portion southwesterly of the Alaska Railroad right-of-way

(7) Township 11 North, Range 4 West, Seward Meridian

Sections 1 - 4

Sections 10 - 12

(b) Except as provided in (d) of this section, the Department of Fish and Game and the Department of Natural Resources shall exercise their respective authorities over the Anchorage Coastal Wildlife Refuge consistent with a management plan prepared by the Department of Fish and Game under AS 16.20.040 - 16.20.060.

(c) A management plan prepared under AS 16.20.040 - 16.20.060 shall assure continued surface access to Fire Island and recommend a corridor for constructed access and utilities between Fire Island and the Anchorage mainland.

(d) Land owned by the Municipality of Anchorage that lies within the boundary of the Anchorage Coastal Wildlife Refuge described in (a) of this section may be included in the Anchorage Coastal Wildlife

Refuge. An agreement between the Department of Fish and Game and the Municipality of Anchorage for the management of the land within the Anchorage Coastal Wildlife Refuge that is owned by the Municipality of Anchorage shall be approved by the Municipality of Anchorage and by the Department of Fish and Game.

(e) The state or the Municipality of Anchorage may not acquire privately owned land within the Anchorage Coastal Wildlife Refuge described in (a) of this section by eminent domain for inclusion within the Anchorage Coastal Wildlife Refuge. The Department of Fish and Game or the Municipality of Anchorage may acquire privately owned land within the Anchorage Coastal Wildlife Refuge by purchase, exchange, or otherwise except by eminent domain.

(f) The land and water areas of the Anchorage Coastal Wildlife Refuge are closed to mineral entry under AS 38.05.185 - 38.05.275.

* Sec. 2. The initial management plan prepared under AS 16.20.031(b) as enacted in sec. 1 of this Act shall be completed within one year of the effective date of this Act.

* Sec. 3. AS 16.20.030(b) is repealed.

Bradley
3/4/85

Original sponsors: Szymanski and Clocksin

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 186 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating the Anchorage Coastal Wildlife Refuge."

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

* Section 1. AS 16.20 is amended by adding a new section to read:

Sec. 16.20.031. ANCHORAGE COASTAL WILDLIFE REFUGE. (a) The following described state-owned land and water is established as the Anchorage Coastal Wildlife Refuge and shall be managed as a state game refuge for the protection of waterfowl, shorebirds, salmon, and other fish and wildlife species, and their habitat and for the use and enjoyment of the people of the state:

(1) Township 13 North, Range 4 West, Seward Meridian

Section 20: SE 1/4 seaward of the 20 foot elevation contour

SE 1/4 NE 1/4 seaward of the 20 foot elevation contour

Section 29: E 1/2 seaward of the 20 foot elevation contour

SW 1/4 seaward of the 20 foot elevation contour

Section 30: SE 1/4 SE 1/4

Section 31: All seaward of the 20 foot elevation contour except NW 1/4 NW 1/4

Section 32: All seaward of the 20 foot elevation contour

(2) Township 13 North, Range 5 West, Seward Meridian

Section 36: S 1/2

S 1/2 N 1/2

(3) Township 12 North, Range 4 West, Seward Meridian

Sections 6 - 9: Seaward of the 20 foot elevation contour

Section 15: NW 1/4 seaward of the 20 foot elevation contour

SW 1/4 NE 1/4 seaward of the 20 foot elevation contour

Government Lot 5 and the remainder of the W 1/2 SE 1/4, all

SW 1/4

Section 16: Seaward of the 20 foot elevation contour

Sections 17 - 22

Section 23: Government Lot 1 and the remainder of the SW 1/4, all seaward of the 20 foot elevation contour

Government Lot 2 and the remainder of the S 1/2 NW 1/4, all seaward of the 20 foot elevation contour

Government Lots 3 and 4, and the remainder of the SE 1/4, all seaward of the 20 foot elevation contour

Section 24: Tract A, Shorecrest Subdivision (Plat No. 81-68, Anchorage Recording District)

Section 25: Government Lots 1 and 2, and the remainder of the W 1/2, all

Tract A, Johns Park Estates, and the remainder of the NE 1/4, excluding Skyway Park Estates, Addition No. 1 all seaward of the 20 foot elevation contour Government Lots 3 and 4, and the remainder of the SE 1/4, all

Sections 26 - 36

(4) Township 12 North, Range 5 West, Seward Meridian

Sections 1 - 2

Sections 11 - 14

Sections 23 - 26

Sections 35 - 36

(5) Township 12 North, Range 3 West, Seward Meridian

Section 29: That portion of the SW 1/4 southwesterly of the Alaska Railroad right-of-way and southerly of Oceanview Subdivision, Addition No. 6

Section 30: That portion of Tract A, Johns Park Estates, seaward of the 20 foot elevation contour

Government Lot 2 and that portion of the SE 1/4 NW 1/4 southwesterly of Oceanview West Subdivision, Addition No. 1

Government Lots 3 and 4 and the remainder of the SW 1/4, all

That portion of the SW 1/4 NE 1/4 and the SE 1/4 southwesterly of Oceanview Subdivision, Addition No. 4 and Addition No. 6

Section 31

Section 32: All lands southwesterly of the Alaska Railroad right-of-way

Section 33: All lands westerly of the Alaska Railroad right-of-way

(6) Township 11 North, Range 3 West, Seward Meridian

Section 3: Government Lot 5

Section 4: That portion southwesterly of the Old Seward Highway right-of-way and The Landings

Subdivision which is northeasterly of the New Seward Highway right-of-way

That portion southwesterly of the Alaska Railroad right-of-way

Sections 5 - 8

Section 9: That portion southwesterly of the Alaska Railroad right-of-way

That portion northeasterly of the New Seward Highway right-of-way

Section 10: That portion westerly of the Old Seward Highway right-of-way which is northeasterly of the New Seward Highway right-of-way

That portion southwesterly of the Alaska Railroad right-of-way

(7) Township 11 North, Range 4 West, Seward Meridian

Sections 1 - 4

Sections 10 - 12

(b) Except as provided in (c) of this section, the Department of Fish and Game and the Department of Natural Resources shall exercise their respective authorities over the Anchorage Coastal Wildlife Refuge consistent with a management plan prepared by the Department of Fish and Game under AS 16.20.040 - 16.20.060.

New (c) A management plan prepared under AS 16.20.040 - 16.20.060 shall assure continued surface access to Fire Island and recommend a corridor for constructed access and utilities between Fire Island and the Anchorage mainland.

(d) Land owned by the Municipality of Anchorage that lies within the boundary of the Anchorage Coastal Wildlife Refuge described in (a) of this section may be included in the Anchorage Coastal Wildlife

Refuge. An agreement between the Department of Fish and Game and the Municipality of Anchorage for the management of the land within the Anchorage Coastal Wildlife Refuge that is owned by the Municipality of Anchorage shall be approved by the Municipality of Anchorage and by the Department of Fish and Game.

(e) If state law permits a use or activity on land within state game refuges that is not permitted on the land owned by the Municipality of Anchorage, the use or activity is not permitted on the land owned by the Municipality of Anchorage within the Anchorage Coastal Wildlife Refuge.

(f) The state or the Municipality of Anchorage may not acquire privately owned land within the Anchorage Coastal Wildlife Refuge described in (a) of this section by eminent domain for inclusion within the Anchorage Coastal Wildlife Refuge. The Department of Fish and Game or the Municipality of Anchorage may acquire privately owned land within the Anchorage Coastal Wildlife Refuge by purchase, exchange, or otherwise except by eminent domain.

(g) The land and water areas of the Anchorage Coastal Wildlife Refuge are closed to mineral entry under AS 38.05.185 - 38.05.275.

* Sec. 2. The initial management plan prepared under AS 16.20.031(b) as enacted in sec. 1 of this Act shall be completed within one year of the effective date of this Act.

* Sec. 3. AS 16.20.030(b) is repealed.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CS (Res) HB 186

Title: Anchorage Coastal Refuge

Sponsor: Szumanski

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMC

BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

cdr 3/6/85

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400

Division: Commissioner's Office Date: 21 February 1985

Approved by Commissioner: Ned Farquhar ✓ NF 3/6 Date: 21 February 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 186

Title: Anchorage Coastal Refuge

Sponsor: Szymanski

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NR/EC

BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400

Division: Commissioner's Office Date: 21 February 1985

Approved by Commissioner: Ned Farquhar Date: 21 February 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
February 26, 1985

The Honorable Adelheid Herrmann, Co-Chairman
The Honorable Richard Shultz, Co-Chairman
House Resources Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 186: Anchorage Coastal Wildlife Refuge

Dear Representatives Herrmann and Shultz:

The League of Women Voters of Alaska supports HB 186, creating the Anchorage Coastal Wildlife Refuge. We think the bill, as presently structured, sets aside and protects a unique area that is de facto critical habitat for a large population of water fowl and other wildlife, and which should be preserved in its natural state for the protection of the wildlife and the enjoyment of people who wish to view the wildlife.

Speaking from personal experience, when I first arrived in Alaska eight years ago, during my first week as an Anchorage resident, one the most memorable experiences for myself and my small daughter was a visit to the area of the proposed refuge, where we spent several hours enjoying the viewing of a wide variety of water fowl (including their young). The availability of such an experience is especially important in a location close to a large population center such as Anchorage, where it can be enjoyed by many people, including children. The protection and wise management of that area is an important step toward preserving the kind of experiences that attracted most of us to become Alaskans.

Thank you for considering our views.

Sincerely,

Elizabeth Cuadra

Elizabeth Cuadra, Board Member
(Natural Resources Portfolio)

DEC:sd
cc: Committee Members (Wallis, Sund, Thompson, M. W. Miller, Cato, Pearce, and Jenkins)
Sponsors (Szymanski and Clocksin)

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

Finance Committee
Oil and Gas Committee

11920 Johns Road
Anchorage, Alaska 99515
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4978/4979

February 18, 1985

To: Rep. Adelheid Herrmann, Co-Chairman
Rep. Richard Shultz, Co-Chairman
House Resources Committee

From: Rep. Mike Szymanski

Re: Background/Intent of HB 186 - Anchorage Coastal Wildlife Refuge

In 1971 the Alaska State Legislature created Potter Point State Game Refuge (AS 16.20.030 (b)) which extends southeasterly along the coastline of Anchorage from Pt. Campbell to Potter Creek. Providing easily accessible wildlife viewing opportunities, this urban refuge provides an opportunity for enjoyment by city residents and enhances the Anchorage economy through its value as a tourist attraction.

In June 1983, the Municipality of Anchorage (MOA) established the Potter Marsh Task Force to address management problems that were developing both within and around the refuge, and to subsequently make recommendations for action. This legislation is one of the task force's recommendations for improving management of the refuge, and it is fully endorsed by the MOA, Alaska Department of Fish and Game (ADF&G), Alaska Department of Natural Resources (DNR), and interested public members.

HB 186 would:

1) Rename Potter Point State Game Refuge the "Anchorage Coastal Wildlife Refuge".

Section 1, AS 16.20.031 (a) would establish the Anchorage Coastal Wildlife Refuge to be managed for the protection of waterfowl, shore birds, salmon, and other fish and wildlife species, and their habitat and for the use and enjoyment of the people of the state. Section 3 repeals AS 16.20.030 (b) which is the existing statute establishing the Potter Point State Game Refuge. This new name more accurately reflects the refuge's location and relation to the city of Anchorage.

2) Provide a precise legal description, in surveyable section lines, of the boundaries of the state-owned land and water included in the refuge.

The 1971 legislation does not define any real or measurable limit as to how far the refuge boundary extends seaward, and the inland boundary is open to wide interpretation. Many times, this has resulted in confusion for state

agencies, private development interests, and the general public. Section 1, subsections (1) through (7) detail the legal refuge boundaries.

3) Add additional tidelands and near shore upland to the existing refuge.

The MOA has asked that refuge boundaries be expanded northward from Pt. Campbell to Pt. Woronzof to add municipally owned Preservation Wetlands to the refuge for management by ADF&G. The new boundaries (described in Section 1, subsections (1) through (7)) were cooperatively drawn by the MOA, ADF&G, and DNR to protect the habitat values of the wetlands while fully accommodating previously issued offshore mining permits. While the land and water areas of the Anchorage Coastal Wildlife Refuge are closed to mineral entry under AS 38.05.185 - 38.05.275, oil and gas leasing will not be affected (Section 1 (f)).

4) Provide for management of municipal lands within the refuge by ADF&G.

At the request of the MOA, municipal lands will be managed by ADF&G as part of the refuge, with the requirement that this management be subject to approval by the MOA (Section 1, (c)). Section 1 (d) provides that any use or activity which is allowed on a state game refuge, but which is prohibited on municipal land, will also be prohibited on those MOA lands located within the Anchorage Coastal Wildlife Refuge. (Example: The discharge of firearms is prohibited on MOA land. The discharge of firearms within a state wildlife refuge may be permitted under state law, but would not be permitted on that portion of land within the refuge that is owned by the MOA.)

Section 1 (b) provides that, as in the past, both ADF&G and DNR would exercise their respective authorities over the refuge, except as provided in Section 1 (c). Management of the Anchorage Coastal Wildlife Refuge will be consistent with a management plan prepared by the ADF&G under AS 16.20.040 - 16.20.060. The plan will be completed within one year of the effective date of this Act (Section 2).

5) Restrict the state and municipality from acquiring property by eminent domain for inclusion within the refuge.

This would protect private property owners by requiring that property to be included within the Anchorage Coastal Wildlife Refuge be acquired by purchase, exchange, or otherwise (Section 1, (e)), and prohibiting acquisition by eminent domain.

Dove



ANCHORAGE Audubon Society, Inc.

ALASKA CHAPTER OF NATIONAL AUDUBON SOCIETY

Thede Tobish-President
Anchorage Audubon Society

Post Office Box 101161
Anchorage, Alaska
99510

25 February 1985

Representatives Adelaide Herrmann and Richard Shultz
Co-Chairmen--House Resources Committee
Pouch v
Juneau, Alaska 99811

Dear Representatives Herrmann and Shultz and members of the Resources Comm.;

As president of the 1410 member Anchorage Audubon Society, I would like to enter Anchorage Audubon's comments on House Bill-186 into the official reco with your committee. As you likely know, Anchorage Audubon has been quite active in the history of Potter Refuge, especially in Potter Marsh. We were instrumental in initiating the now successful Potter Marsh Task Force which has worked towards implementation of a management scheme for the marsh. The Task Force joined various agencies and public groups to affect and facilitate data gathering for an operational plan for the marsh now in preparation by A. D. F. and G.

For background to this bill it is useful to outline the importance of the refuge to the peoples of Anchorage. The interesting and valuable Potter Marsh User Survey compiled by the Habitat Division of ADF and G, documeted the heavy and consistent use of the Potter Marsh, south end of the refuge by Anchorage residents and visitors. This is predominantly an urban refuge. The Anchorage Coastal Wildlife Refuge is unique in the state's system because of its user definition and location within the center of Alaska's largest population and its related pressures. The future of this refuge area as a resource for its principal users, the Anchorage public, depends on the maintainance of the integrity of its unique tracts of undisturbed habitat. Thus the timely introduction of this bill for protection and proper management mandate.

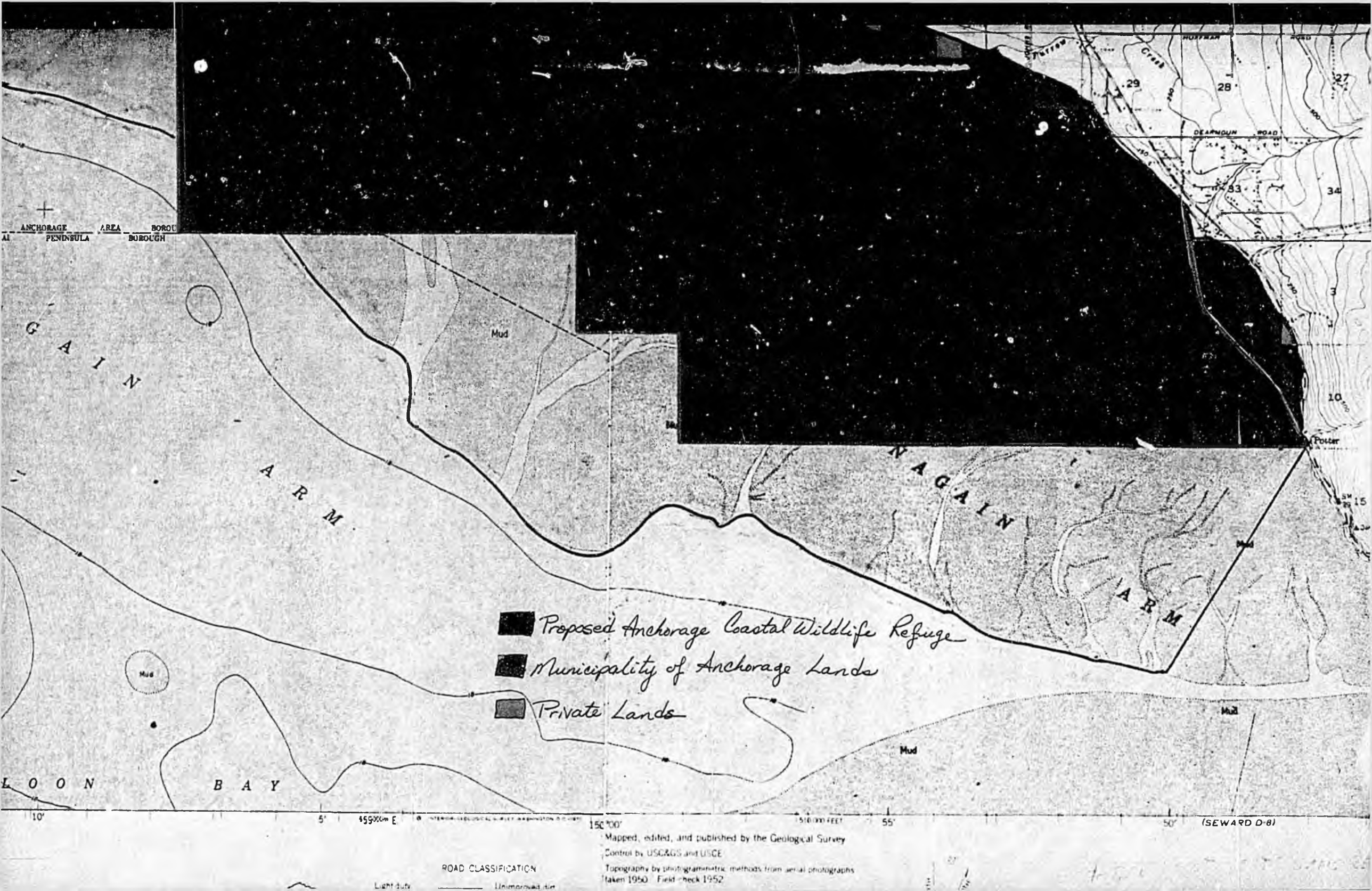
Anchorage Audubon strongly supports the wording of HB-186 as currently presented. We feel it imperative to specify that the managing agency be required to finish and commence implementation of the refuge operational/management plan within one year of passage of this legislation.

Anchorage Audubon would like to thank you for accepting our comments into the record on HB-186. We encourage adoption of this bill. This unique refuge should serve as a model for future urban refuges in Alaska.

Thank you for your support and considerations.

Sincerely, Thede Tobish

Thede Tobish



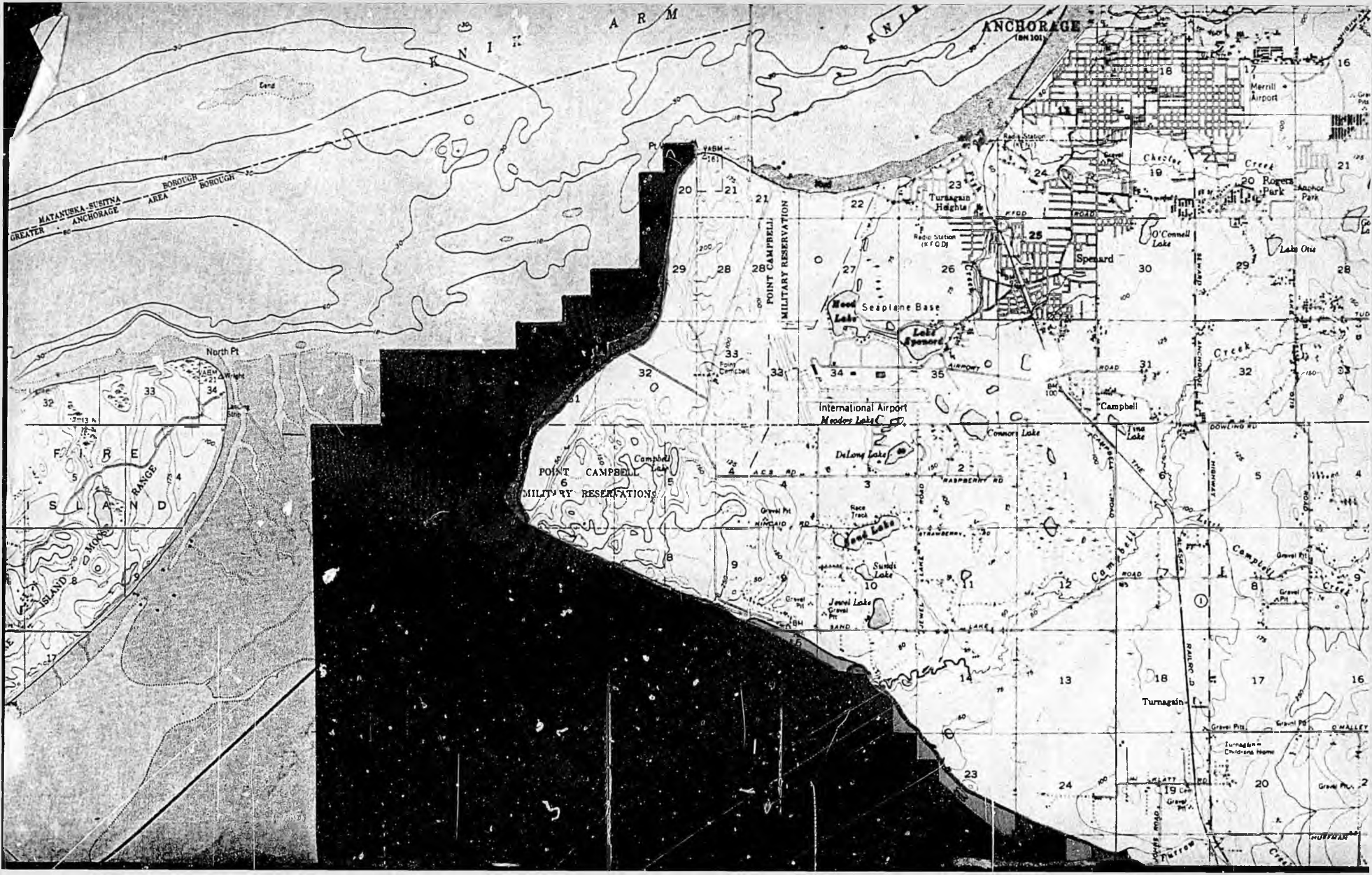
Mapped, edited, and published by the Geological Survey

Control by USC&GS and USCE

Topography by photogrammetric methods from aerial photographs taken 1950. Field check 1952

ROAD CLASSIFICATION

Light duty ——— Unimproved dirt



KNIK ARM
ANCHORAGE
(BN 101)
Merrill Airport
Chester Creek
Rogers Park
Anchor Park
Turnagain Heights
Radio Station (KFQD)
O'Connell Lake
Lake Otis
Spenard
Seaplane Base
Hood Lake
Lake Spenard
POINT CAMPBELL MILITARY RESERVATION
International Airport
Meadow Lake
Campbell
Connors Lake
Tina Lake
DeLong Lake
Campbell Lake
POINT CAMPBELL MILITARY RESERVATIONS
Race Track
Sand Lake
Sundi Lake
Jewel Lake
Gravel Pit
Campbell Creek
Little Campbell Creek
Turnagain
Turnagain Children's Home
North Pt
Wright
Landing Strip
FIRE ISLAND
MOOSE RANGE
GREATER ANCHORAGE AREA BOROUGH
MATANUSKA-SUSITNA BOROUGH

HB

1093

STATE OF ALASKA
THE LEGISLATURE

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3900

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Resources Committee 4/12/1985, 8:30 am

Analysis of CSHB 193(Resources)

This bill establishes a program that will help to alleviate the heavy debt load of Alaska's farmers and encourage them to bring their farms into full and economic production. The program allows farmers to receive credits for farm product sales that can be used to meet interest payments on state agriculture related loans. The program will assist only producing farmers that are actively engaged in selling farm products. Farmers who do not produce and sell farm products will gain nothing.

Under this program, a farmer will provide a copy of federal income tax Form F, which lists his total farm product sales income for the year, to the Division of Agriculture. The division will then provide the farmer with a letter of credit equal to ten percent of the farmer's total yearly sales. The farmer may apply the letter of credit to the interest due on an Agricultural Revolving Loan Fund loan or an agricultural land sale contract. The program will last for five years, and an individual farmer would be allowed to participate in the program every year if he continues to produce and sell farm products.

The production credit program requires no additional staff or funding for the Department of Natural Resources, but will, if it is successful, result in the state foregoing some amount of interest. Yet not instituting a program that assists producing farmers could mean the loss of millions of dollars in ag loan defaults, as well as the loss of numerous farm related jobs.

Alaska grown commodities are currently filling only a small portion of the available Alaska market, but a lack of cash prevents many farmers from increasing farm production. The production credit program would allow these farmers to put some of the cash receipts from farm product sales into expansion of their farm operations. As farms become fully producing, farming will become more economic and farmers will be able to meet their debt obligations.

We admit that there were mistakes made in developing Alaska's agricultural programs in the past, but farming can become a stable part of Alaska's economy. The Department of Natural Resources has taken a long hard look at where Alaska agriculture is today and has determined that with some assistance from the state and a lot of hard work from farmers, the farming industry in Alaska can survive and prosper.

According to legislative research, other loan programs have higher percentage of delinquency than ARLF on much higher dollar amounts

TABLE II

LOAN PROGRAMS FY 81 - FY 86
Interest Rates and Delinquency Rates *

Program / Statute		Delinquency ($ 000)	Rate Pct	Interest Rate
Econ Development:				
Agriculture Rev Loans	03.10	6,953.5	15.6	8.0
AIDA Enterprise Fund	44.88	15,270.2	4.7	varies
AIDA Eco Dev Fund	44.88	n/a	n/a	varies
Ak Resources Corp 1)	37.12	n/a	n/a	varies
Commercial Fishing	16.10	11,551.3	14.4	10.5
Fish Enhancement	16.10	.0	.0	9.5
Fish Mortage & Note 2)	16.10	n/a	n/a	n/a
Grain Reserves Loans	03.12	.0	.0	8.0
Mining Loan Fund	27.09	10,621.0	55.9	10.0
Small Business	45.95	34,198.0	48.1	9.5
Tourism Rev Loans	45.90	1,034.0	16.3	9.5
Education:				
Scholarship Loans	14.43	12,470.1	6.7	5.0
Teacher Loans	14.43	n/a	n/a	5.0
Energy:				
Alternative Tech 3)	45.88	2,408.0	22.3	5.0/15.0
Residential Energy 4)	45.89	1,039.2	19.8	5.0
Rural Electrification	44.83	.0	.0	2.0
Housing:				
C&RA Housing Asst	44.47	1,977.2	2.0	varies
AHFC Programs	18.56	113,615.0	3.0	varies
Medical & Child Care:				
Child Care Facility	44.33	103.0	15.4	7.0
Res Care Facility 2)	44.33	n/a	n/a	n/a
Med Malpractice 5)	21.88	.0	.0	6.0/7.0
Municipal Assistance:				
Bulk Fuels	45.87	148.0	.7	varies
Historical District	45.98	.0	.0	7.5

---

* Delinquency rates are from State Loan Program: Quarterly Actitvity Report, Fourth Qtr FY 84; House Research Agency, October 1984.

1). Repealed effective July 1, 1989.
2). Repealed during 1982 session.
3). Interest rate is 5.0% on the first $15,000 and 15% on the excess.
4). On loans made after 12-31/83 the interest rate is the average weekly municipal bond yield rates.
5). Interest rate is 6.0% if the borrower is unable to procure re-insurance from a private casualty insurer.

AGRICULTURAL REVOLVING LOAN FUND

December 31, 1984

Loans outstanding - $ 48,454,644.47

Borrowers - 266
Loans - 759

Average loan size - $ 60,850
Average borrower - $ 173,630

Delinquency rate is three times more in the Delta area than in the Matanuska area -

15.52%	vs	47.92%
old farmers		new farmers

The delinquency rates are divided evenly between short term, chattel and development loans.

National level - Farmers Home Administration has a 35% delinquency rate.

Total ARLF is 68.5 million.

illustration

Assumptions

1. 2500 acre farm
2. 1500 acres planted in barley
3. Production of 1 ton per acre - sells for $125 per ton
4. Chattel loan of $208,000 at 8%, first payment due in 1985
5. Farm development loan of $119,000 at 8% - first payment due in 1985
6. Land purchased for $180 per acre at 12% interest - with moratorium, first payment due in 1989
7. Land clearing loan of $300,000 at 8% interest - with moratorium, first payment due in 1989

Table 1. THE AFFECT OF PRODUCTION CREDITS ON LOAN PAYMENTS - FARMER BROWN Sales- $187,500/ year

	Total Loan Payment[3]	Interest Portion of Loans[4]	Credits Available	%	Interest Payment Following Credit Deduction	Total Loan Payment Following Credit Deduction
5	$56,571	$30,660	$18,750	10	$11,910	$37,821
6	$56,571	$28,586	$18,750	10	$9,836	$37,821
7	$56,571	$26,348	$18,750	10	$7,598	$37,821
8	$56,571	$23,929	$18,750	10	$5,179	$37,821
9-12	$129,136	$90,726	$18,750	10	$71,976	$110,386

Payments for land clearing and land purchase begin.
Chattel loan is paid-off in this year.
Does not include operating loan.
Includes annual operating loan interest of $4,500.

Total interest forgiven $93,750

Total Loans $897,000 (principal)

UNDER FARMERS' FIGURES

		Sale	Credit
1984	10%	$11,945,000	$1,194,500
1985	10%	14,320,000	1,432,000
1986	10%	12,200,000	1,220,000
1987	10%	20,640,000	2,064,000
1988	10%	24,265,000	2,426,500

5 years Total $8,882,000

Our fiscal note estimated about $12 million in foregone interest, but farmers have complained that our estimates of raising production are too high.

Probably best to estimate foregone interest over the 5-year period at from $8 to $12 million

- No Markets -

ACTUAL DELTA I FARMER

Loan Type	Total Loan	Annual Loan Payment	Principal Payment	Interest Payment
Land Purchase	$ 0	$ 0	$ 0	$ 0
Land Clearing	370,600	24,590	3,018	21,572
Chattal	300,000	57,621	45,741	11,879
Farm Development	154,000	15,685	4,578	11,106
Operating	101,000	109,080	101,000	8,080
TOTAL	$925,600	$206,976	$154,337	$52,637

ACTUAL DELTA II FARMER

Land Purchase	$324,000	$ 43,376	$ 4,496	$38,880
Land Clearing	307,000	25,745	1,612	24,132
Chattel	181,000	34,765	27,597	7,167
Farm Development	95,000	9,675	2,824	6,851
Operating	117,000	126,360	117,000	9,360
TOTAL	$1,024,000	$239,921	$153,529	$86,390

ACTUAL POINT MACKENZIE FARMER

Land Purchase	$ 62,900	$ 8,420	$ 872	$ 7,548
Land Clearing	94,200	7,899	494	7,404
Chattel	265,000	50,899	40,405	10,493
Farm Development	656,000	66,815	19,502	47,312
Operating	70,000	75,600	70,000	5,600
TOTAL	$1,148,100	$209,633	$131,273	$78,357

An average Delta I or Delta II farmer could expect a gross income (total sales) of approximately $100,000 to $125,000 per year, depending on weather conditions, market conditions and many other factors. A Point MacKenzie farmer could expect a gross income of approximately $427,500 per year.

Based on these estiamted yearly incomes and the terms of SB 40, the following amounts would be available each year for credit towards loan interest payments.

1984	20% x $100,000	=	$20,000
1985	20% x $100,000	=	$20,000
1986	20% x $100,000	=	$20,000
1987	20% x $100,000	=	$20,000
1988	20% x $100,000	=	$20,000
1989	18% x $100,000	=	$18,000
1990	16% x $100,000	=	$16,000
1991	14% x $100,000	=	$14,000
1992	12% x $100,000	=	$12,000
1993	10% x $100,000	=	$10,000

1984	20% x $427,500	=	$85,500
1985	20% x $427,500	=	$85,500
1986	20% x $427,500	=	$85,500
1987	20% x $427,500	=	$85,500
1988	20% x $427,500	=	$85,500
1989	18% x $427,500	=	$76,950
1990	16% x $427,500	=	$68,400
1991	14% x $427,500	=	$59,850
1992	12% x $427,500	=	$51,300
1993	10% x $427,500	=	$42,750

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 1-22-86

REQUEST

Bill/Resolution No. : CSHB 193
Title : Agricultural Production Credits

Sponsor : Rep. Shultz
Requestor : Senate Finance Committee
Date of Request : January 22, 1986

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Agricultural Management

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE **	(2,626.5)	(1,720.0)	(2,064.0)	(2,476.5)		

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

**The proposed program could reduce State revenues, in the amounts shown, by reducing the amount of interest paid on State agricultural loans. However, these figures are based on the assumption that the program will increase production and sales of farm products according to the attached schedule. If sales do not increase as projected, the amount of revenue lost will decrease.

Prepared by : Carol Wilson [signature] Phone : 465-2400
Division : Commissioner's Office Date : January 22, 1986

Approved by Commissioner : [signature], Deputy Date : 1/22/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

The amount of production credits that might be earned during the five years of the program, considering that not all farmers have borrowed from the state, and that agricultural land that is not currently in production is put into production, are estimated as follows:

Year	Projected Sales	Sales Available for Credits*	% Credit	Projected Credits
1984	$15,925,000	$11,945,000	10	$1,194,500
1985	19,110,000	14,320,000	10	1,432,000
1986	22,932,000	17,200,000	10	1,720,000
1987	27,518,000	20,640,000	10	2,064,000
1988	33,022,000	24,765,000	10	2,476,500
			Total	$8,887,000

* Projected sales reduced by 25% to account for non-borrowers.

The following chart gives estimated values for loan default and associated interest losses to the state if the production credit program is not established. Farmers in the Delta area have an especially heavy debt load. Approximately $12,500,00 is due on clearing loans for the Delta I and Delta II agricultural project parcels. This is an average of $337,837 of clearing loan debt per farm. Land payments for Delta II parcels average $180 per acre at 12% interest per year. The average amount of principal owed for each Delta II parcel is approximately $145,000.

Loan	Amount Outstanding	Possible Default	Collateral Value	Loss to State
ARLF	$48.5 million	$23 million	$15 million	$8 million
Clear.	17.5 million	8 million	0	8 million
Land	10 million	5 million	3 million	2 million

Interest on $18 million loss at 8% x 5 years = $7.2 million

Total estimated loss to the state = $25.2 million

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 193

Title: Agricultural Production Credits

Sponsor: Shultz

Requestor: House Resources Committee

Date of Request: April 12, 1985

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: Agricultural Management

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE **	($1,274.0)	(2,004.2)	(2,547.5)	(3,090.8)	($3,634.2)	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

**The proposed program could reduce state revenues, in the amounts shown, by reducing the amount of interest paid on state agricultural loans. However, these figures are based on the assumption that the program will increase production and sales of Alaska farm products according to the attached schedule. If sales do not increase, the amount of revenue lost to the state would decrease.

Prepared By: Bill Heim, Director of Agriculture Phone: 745-7200

Division: Division of Agriculture Date: March 25, 1985

Approved by Commissioner: Ronald D Arnold, Deputy Commissioner Date: 4/12/85

Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

The proposed production credit program could, if successful, reduce state revenues by reducing the total amount of interest paid on state agricultural loans. However, without a program of this type that provides some measure of debt relief to farmers, the state will lose millions of dollars through loan defaults.

The total amount of production credits that might be earned during the five years of the program, considering that not all farmers have borrowed from the state, and that agricultural land that is not currently in production is put into production, are estimated as follows:

Year	Projected Sales	Sales Available for Credits*	% Credit	Estimated Credits
1984	$15,925,000	$12,740,000	10	$1,274,000
1985	$25,053,000	$20,042,400	10	2,004,240
1986	$31,844,000	$25,475,200	10	2,547,520
1987	$38,635,000	$30,908,000	10	3,090,800
1988	$45,427,000	$36,341,600	10	3,634,160
			Five Year Total	$12,550,720

* Projected sales reduced by 20% to account for non-borrowers.

The following chart gives estimated values for loan default and associated interest losses to the state if the production credit program is not established. Farmers in the Delta area have an especially heavy debt load. Approximately $12,500,000 is due on clearing loans for the Delta I and Delta II agricultural project parcels. This is an average of $337,837 of clearing loan debt per farm. Land payments for Delta II parcels average $180 per acre at 12% interest per year. The average amount of principal owed for each Delta II parcel is approximately $145,000.

Loan	Amount Outstanding	Possible Default	Collateral Value	Loss to State
ARLF	$48.5 mill.	$23 mill.	$15 mill.	$8 mill.
Clearing	$17.5 mill.	$ 8 mill.	0	$8 mill.
Land	$10 mill.	$ 5 mill.	$ 3 mill.	$2 mill.

Interest on $18 million loss at 8% x 5 years = $7.2 mill.

Total estimated loss to state = $25.2 million.

Assumptions

1. 2500 acre farm
2. 1500 acres planted in barley
3. Production of 1 ton per acre - sells for $125 per ton
4. Chattel loan of $208,000 at 8%, first payment due in 1985.
5. Farm development loan of $119,000 at 8% - first payment due in 1985
6. Land purchased for $180 per acre at 12% interest - with moratorium, first payment due in 1989
7. Land clearing loan of $300,000 at 8% interest - with moratorium, first payment due in 1989

Table 1. THE AFFECT OF PRODUCTION CREDITS ON LOAN PAYMENTS - FARMER BROWN Sales- $187,500/ year

ear	Total Loan Payment[3]	Interest Portion of Loans[4]	Credits Available	%	Interest Payment Following Credit Deduction	Total Loan Payment Following Credit Deduction
085	$ 56,571	$ 30,660	$18,750	10	$ 11,910	$ 37,821
086	$ 56,571	$ 28,586	$18,750	10	$ 9,836	$ 37,821
087	$ 56,571	$ 26,348	$18,750	10	$ 7,598	$ 37,821
088	$ 56,571	$ 23,929	$18,750	10	$ 5,179	$ 37,821
0091	$ 129,136	$ 90,726	$18,750	10	$ 71,976	$ 110,386

Payments for land clearing and land purchase begin.
Chattel loan is paid-off in this year.
Does not include operating loan.
Includes annual operating loan interest of $4,500.

Total interest forgiven $ 93,750

Total Loans $897,000 (principal)

Levy
4/11/85

Original sponsor: Shultz

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 193 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act allowing agricultural production credits; and providing for an effective date."

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

* Section 1. AS 03.05 is amended by adding a new section to read:

Sec. 03.05.015. AGRICULTURAL PRODUCTION CREDITS. (a) The commissioner of natural resources shall establish a program of agricultural production credits to be applied against interest due on agricultural loans made under this title and AS 44 and interest due on the sale of agricultural land under AS 38.05. The credits shall be based on agricultural products grown or raised in the state.

(b) The annual credit for the years 1984 - 1988 is 10 percent of the total sales as documented by the farmer on Internal Revenue Service Schedule F (form 1040).

(c) A credit granted under this section may not be transferred.

* Sec. 2. AS 03.05.015 is repealed December 31, 1989.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

M E M O R A N D U M

April 12, 1985

TO: HOUSE RESOURCES COMMITTEE

FROM: Committee Staff

SUBJ: CSHB 193 (Res) "An Act allowing agricultural production credits; and providing for an effective date."

Committee Substitute for House Bill 193 (Resources) would establish a program of agricultural production credits to be applied against interest on agricultural land loans and interest on loans through the Alaska Revolving Loan Fund.

The credit applicable to the years 1984 - 1988 is 10% of the documented sales on IRS Schedule F (Form 1040).

This credit would be repealed December 31, 1989.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 193

Title: Agricultural Production Credits

Sponsor: Shultz

Requestor: House Resources Committee

Date of Request: April 12, 1985

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: Agricultural Management

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE **	($1,274.0)	(2,004.2)	(2,547.5)	(3,090.8)	($3,634.2)	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

**The proposed program could reduce state revenues, in the amounts shown, by reducing the amount of interest paid on state agricultural loans. However, these figures are based on the assumption that the program will increase production and sales of Alaska farm products according to the attached schedule. If sales do not increase, the amount of revenue lost to the state would decrease. If the program is not established, the state could lose over $.25 million from loan defaults during the next few years. (See attached analysis.)

Prepared By: Bill Heim, Director of Agriculture Phone: 745-7200

Division: Division of Agriculture Date: March 25, 1985

Approved by Commissioner: _____ Date: _____

Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Continuation of Analysis for CSHB 193

The proposed production credit program could, if successful, reduce state revenues by reducing the total amount of interest paid on state agricultural loans. However, without a program of this type that provides some measure of debt relief to farmers, the state will lose millions of dollars through loan defaults.

The total amount of production credits that might be earned during the five years of the program, considering that not all farmers have borrowed from the state, and that agricultural land that is not currently in production is put into production, are estimated as follows:

Year	Projected Sales	Sales Available for Credits*	% Credit	Estimated Credits
1984	$15,925,000	$12,740,000	10	$1,274,000
1985	$25,050,000	$20,042,400	10	2,004,240
1986	$31,844,000	$25,475,200	10	2,547,520
1987	$38,635,000	$30,908,000	10	3,090,800
1988	$45,427,000	$36,341,600	10	3,634,160
			Five Year Total	$12,550,720

* Projected sales reduced by 20% to account for non-borrowers.

The following chart gives estimated values for loan default and associated interest losses to the state if the production credit program is not established. Farmers in the Delta area have an especially heavy debt load. Approximately $12,500,000 is due on clearing loans for the Delta I and Delta II agricultural project parcels. This is an average of $337,837 of clearing loan debt per farm. Land payments for Delta II parcels average $180 per acre at 12% interest per year. The average amount of principal owed for each Delta II parcel is approximately $145,000.

Loan	Amount Outstanding	Possible Default	Collateral Value	Loss to State
ARLF	$48.5 mill.	$23 mill.	$15 mill.	$8 mill.
Clearing	$17.5 mill.	$ 8 mill.	0	$8 mill.
Land	$10 mill.	$ 5 mill.	$ 3 mill.	$2 mill.

Interest on $18 million loss at 8% x 5 years = $7.2 mill.

Total estimated loss to state = $25.2 million.

HB

2008

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

M E M O R A N D U M

February 28, 1985

TO: Members
Special Committee on Fisheries

FROM: Representative Peter Goll
Chairman

SUBJECT: HB 208 (Salmon Classics)

The purpose of this memorandum is to clear up any confusion that might exist over whether the proposed Salmon Classics will be a contest of skill or a game of chance. The following figures show how the "experts" in the Alaska Department of Fish and Game's Division of Commercial Fisheries have fared in predicting statewide salmon harvests over the past 15 years.

Year	Projected Harvest	Actual Harvest	Error
1970	95,500,000	68,500,000	+39%
1971	41,500,000	47,500,000	-13%
1972	46,700,000	32,000,000	+46%
1973	30,000,000	22,300,000	+35%
1974	15,600,000	21,900,000	-29%
1975	19,900,000	26,200,000	-24%
1976	37,100,000	44,400,000	-16%
1977	34,700,000	50,800,000	-32%
1978	62,900,000	82,300,000	-24%
1979	72,000,000	88,800,000	-19%
1980	102,600,000	110,000,000	- 7%
1981	74,500,000	113,300,000	-34%
1982	135,000,000	109,100,000	+24%
1983	94,000,000	127,200,000	-26%
1984	103,560,000	132,505,000	-22%
1985	108,241,000		

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

February 27, 1985

SECTIONAL ANALYSIS OF HB 208
"An Act authorizing salmon classics."

Section One: Amends existing statutes to allow the commissioner of revenue to issue permits to municipalities or nonprofit organizations for "salmon classics."

Section Two: Adds "salmon classics" to the list of authorized games of chance that didn't exist prior to January 1, 1959.

Section Three: Defines "salmon classics" as a game of chance where prize money is awarded for the most accurate guess of the statewide commercial salmon harvest.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: HB208
Title: An Act authorizing Salmon Classics
Sponsor: CATO
Requestor: Finance Committee
Date of Request: 2/20/85

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected: Games of Chance/Licensing
BRU, Program or Subprogram(s) Affected: Public Services BRU

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	0	0	0	0	0
CAPITAL	-	0	0	0	0	0
REVENUE	-	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	0	0	0	0	0

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Sally Smith Phone: 465-2392
Division: Public Services Date: 2/20/85

Approved by Commissioner: Date: 2/21/85
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

COMMITTEE REPORT

HOUSE

RESOURCES

(7)

FURTHER: FINANCE

2/18/85

Date: 3-5-85

Mr. Speaker:

The Committee on HOUSE SPECIAL COMMITTEE ON FISHERIES has had HB 208

"An Act authorizing salmon classics."

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[X] reports it back without recommendation

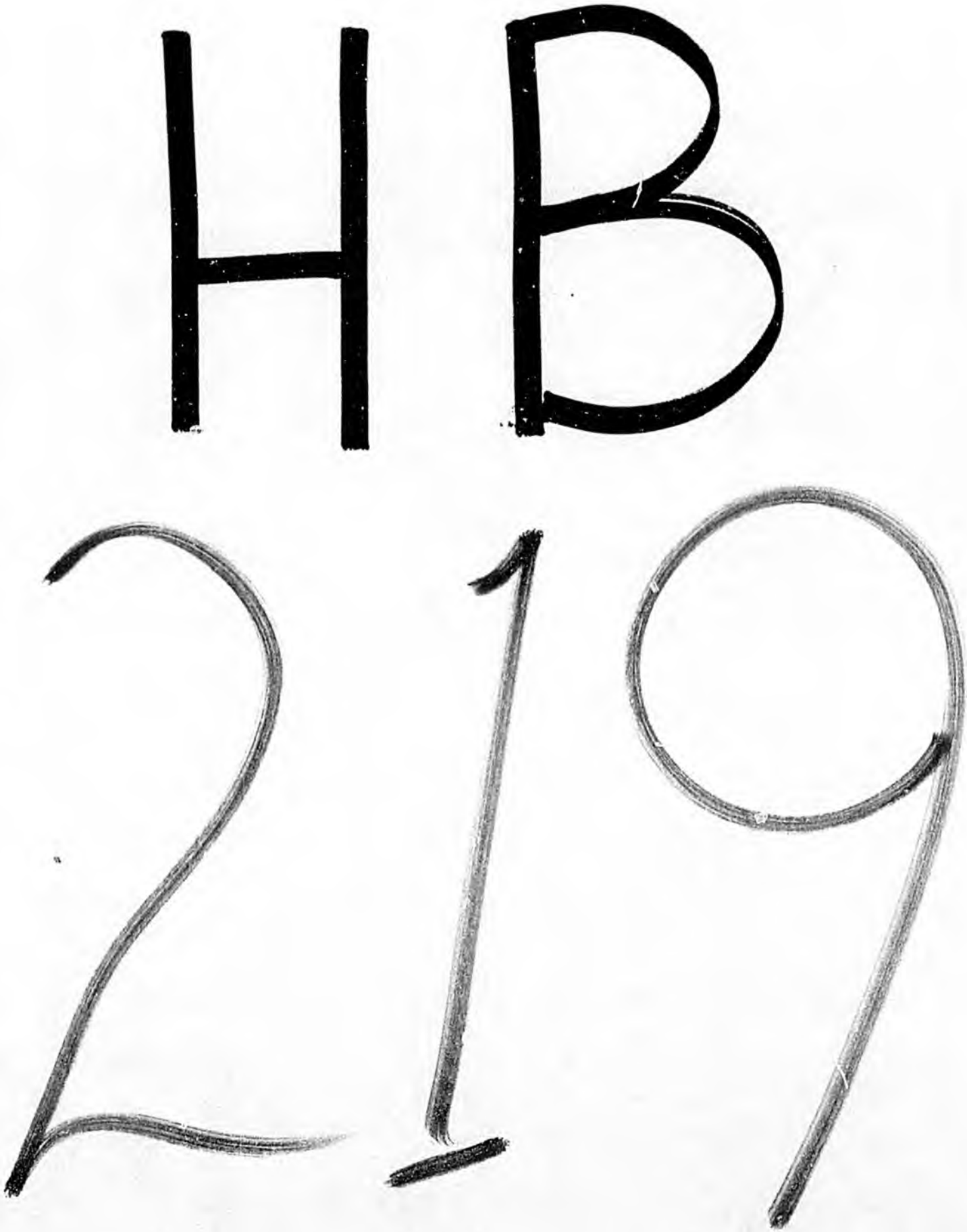
[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
David W. Thompson	[illegible] with amendment
[illegible]	
[illegible]	
[illegible]	
Peter Jacobs	

Peter Jacobs

CHAIRMAN

H 60


HB
2109

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Commerce & Economic D	Alaska Pwr. Authority	HB 219	SUND

DEPARTMENT POSITION

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
William H. Batt	3/8/85		

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Alaska Public Utilities Commission	
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: ☐ NONE ☒ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Background: Introduced to clarify previous legislation, AS 44.33.620, regarding the Four Dam Pool Department of Commerce/Alaska Power Authority Loan and to establish a regional electric authority as a qualified utility exempt from certain provisions of Title 42. AS 42.05.711(b) adds regional electric authorities as recognized utilities exempt from APUC jurisdiction. AS 44.33.620 defines terms and conditions of the Department of Commerce/Alaska Power Authority Loan and adds regional electric authorities to the definition of qualified utilities.

ANALYSIS OF BILL/PROGRAM EFFECTS

SEE ATTACHED SHEET

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

009 (Rev. 12/81)

PROGRAM EFFECTS OF BILL

Section 1: Amends AS 42.05.711(b) to include regional electric authorities established as an instrumentality of two or more public utilities owned and operated by a political subdivision of the state and exempts the regional electric authorities from provisions of Title 42 other than sections 42.05.221 - 42.05.281 which pertains to the need for Certificates of Convenience and Necessity.

Section 2: Amends AS 44.33.620(a) to include the language (a) Except as provided in (d) of this section, a [A] loan from the fund must be repaid in accordance with the terms that the department determines to be appropriate. . .

Section 3: Amends AS 44.33.620 by adding a new subsection (d) which describes the terms of the loan as follows:

- interest rate not to exceed four percent
- a term not to exceed 50 years; and
- a 40 year amortization period.

The Bill establishes the manner in which the amount of principal that interest is paid on is determined, and a ramp on debt service is included which is lower initially and increases gradually over the first five years of the loan then remains fixed at the same rate over the next 35 years.

Principal deferred on estimated unused capacity is repaid with interest in equal installments during the last 10 years . the loan.

The definition of "qualified utility" is amended to include a regional electric authority established as an instrumentality of two or more electric utilities.

HB
3/8/6.

ANALYSIS

HB 219 fiscal impact is based on the repayment schedule of debt service computed in accordance with the terms and conditions in the bill for repayment of the Department of Commerce/Alaska Power Authority loan authorized by AS 44.33.600. The approach utilizes a comparison of lost opportunity cost to the State assuming a yield of 7.5% which is based on the investment goal of the State Permanent Fund. The Permanent Fund investment goal is to earn three percent above the general rate of inflation which is currently running at approximately 4.5% resulting in a 7.5% overall rate of return. It should be recognized, however, that the Permanent Fund portfolio is currently earning considerably in excess of their investment goal.

Total payments for principal and interest by the Four Dam Pool Communities over the life of the Department of Commerce loan per terms and conditions of HB 219 is approximately $348,000,000 and equates to a negative 1.3% rate of return on the approximate $488,000,000 construction cost of the Four Dam Pool Projects.

Had the $488,000,000 been invested by the State at the rate of 7.5%, discussed above, over the life of the loan as provided for in HB 219, the principal and interest would be approximately $16,900,000,000.

Estimated earnings at 7.5%	$16,900,000,000
Principal and interest repayment under HB 219	348,000,000
Lost opportunity cost to the State	$16,552,000,000

The lost opportunity cost to the State of Alaska by using the $488,000,000 to construct the Four Dams, considering the implications of HB 219, is approximately $16.5 billion.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 219

Title: An Act relating to the applic . . . ability of the Alaska Public . . .

Sponsor: Sund

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: DCED/Alaska Power Authority; Alaska Public Utilities Commissi

Program Category Affected: Lands

Bill, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT			NOT APPLICABLE			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS			NOT APPLICABLE			
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME			NOT APPLICABLE			
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

SEE ATTACHED PAGE "ANALYSIS"

Prepared By: William H. Batt Phone: 276-0001

Division: Alaska Power Authority Date: 3/8/85

Approved by Commissioner: Date:

Agency:

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Table 6. Hydroelectric Projects Operating in Alaska

REGION	SERVICE AREA	PROJECT	INSTALLED CAPACITY (MW)	AVERAGE ANNUAL GENERATION (MWh)	DATE CONSTRUCTED
South Central	Anchorage	Cooper Lake	15.0	42,000	1961
	Anchorage	Eklutna	30.0	147,875	1955
	Kodiak	*Terror Lake	20.0	139,700	1984
	Valdez	*Solomon Gulch	12.0	55,000	1982
Southeast	Juneau	Annex Creek	3.5	27,500	1915
	Juneau	Gold Creek	1.6	6,000	1904
	Juneau	Snettisham	46.7	211,000	1973
	Juneau	Upper Salmon Creek	2.8	14,000	1914
	Ketchikan	Beaver Falls	5.4	36,200	1947
	Ketchikan	Ketchikan Lakes	4.2	16,400	1957
	Ketchikan	Silvis	2.2	11,000	1974
	Ketchikan	*Swan Lake	22.0	88,000	1984
	Metlakatla	Purple Lake	3.0	15,800	1956
	Pelican	Pelican Creek	0.5	2,500	1940
	Petersburg	Crystal Lake	1.6	11,000	1956
	Petersburg/ Wrangell	*Tyee Lake	20.0	133,000	1984
	Sitka	Blue Lake	8.0	39,800**	1961
	Sitka	Green Lake	18.5	46,500**	1982
	Skagway	Dewey Lakes	0.7	700	1909

* APA Projects.
** Firm energy rather than average annual generation.

3/4/85

MEMORANDUM

TO: Rep. John Sund, Chair
House Special Committee on Loans

FROM: J. Hartle, AA JH

RE: Electric power rates for four dam pool communities (HB 219)

	KEA	CVEA	KPU	Petersburg	Wrangell
Operations and Maintenance	2.0	2.76	2.91	4.59	4.59
Debt Service	2.68	2.68	2.68	2.68	2.68
Total APA	4.68	5.44	5.59	7.27	7.27
Retail Rate*	16.6	19.1** 15.1**	10.0	11.1	14.9

* Per KWH at 750 KWH/Month, as of 2/16/85

** 19.1 = Copper River; 15.1 = Valdez

KEA = Kodiak
CVEA = Copper Valley
KPU = Ketchikan

Table 1 (continued)
Electric Rates and Production Costs For Selected Utilities
1983

Utility	Production Cost (cents/kwh)	Retail Rate (cents/kwh)	Difference (Rate-Cost)
Naknek (NCA)	14.7	22.8	8.1
Nome (NTUB)	17.7	20.4	2.7
Petersburg (PMP&L)	10.4	13.3	2.9
Sitka (SED)†	8.0	6.8	-1.2
Wrangell (WML&P)	10.5	14.6	4.1

* Homer Electric Association, Matanuska Electric Association and the City of Seward are combined with Chugach Electric. Seward is an unregulated utility.

† According to John McCracken, Finance Director for the City and Borough of Sitka, the utility did show a paper loss of approximately $69,000 in 1983; however, this does not account for the large negative difference between the retail rate and the production cost. This difference is the result of not counting substantial income from interest on cash reserves and on overlapping financing, while apportioning the interest expense of this financing to production costs.

Source: Alaska Power Authority, Advisory Committee Report on Statewide Power Production Costs, December 15, 1984.

Table prepared by the House Research Agency, February 1985.

Table 1
Electric Rates and Production Costs For Selected Utilities
1983

Utility	Production Cost (cents/kwh)	Retail Rate (cents/kwh)	Difference (Rate-Cost)
Regulated			
Alaska Electric (AEL&P)	3.5	5.9	2.4
Alaska Power (AP&T)	12.4	16.1	3.7
Alaska Villages (AVEC)	29.6	44.8	15.2
Anchorage (AML&P)	3.6	5.5	1.9
Aniak (APC)	28.3	33.9	5.6
Barrow (BU&EC)	2.7	9.0	6.3
Bethel (BUC)	15.7	18.1	2.4
Bettles (BL&P)	25.5	49.1	23.6
Chugach Electric (CEA)*	3.0	6.5	3.5
Cold Bay (NP&E)	16.4	19.3	2.9
Copper Valley (CVEA)	8.3	13.3	5.0
Ft. Yukon (FYU)	24.5	34.3	9.8
Galena (M&DE)	30.2	38.1	7.9
Golden Valley (GVEA)	6.4	10.0	3.6
Haines (HL&P)	13.7	16.4	2.7
Kodiak (KdEA)	12.1	16.4	4.3
Kotzebue (KtEA)	18.0	23.4	5.4
McGrath (MGL&P)	24.5	32.0	7.5
Northway (NP&L)	18.9	26.5	7.6
Pelican (PUC)	8.3	10.6	2.3
Sandpoint (PUC)	15.5	17.3	1.8
Tanana (TPC)	24.6	31.8	7.2
Tlingit-Haida (THREA)	25.3	38.4	13.1
Yakutat (YPI)	13.3	18.1	4.8
Unregulated			
Cordova (CEC)	14.6	20.4	5.8
Fairbanks (FMU)	6.6	7.5	.9
Glacier Highway (GHEA)	5.2	11.1	5.9
Ketchikan (KPU)	5.9	9.0	3.1
Metlakatla (MP&L)	5.6	8.2	2.6

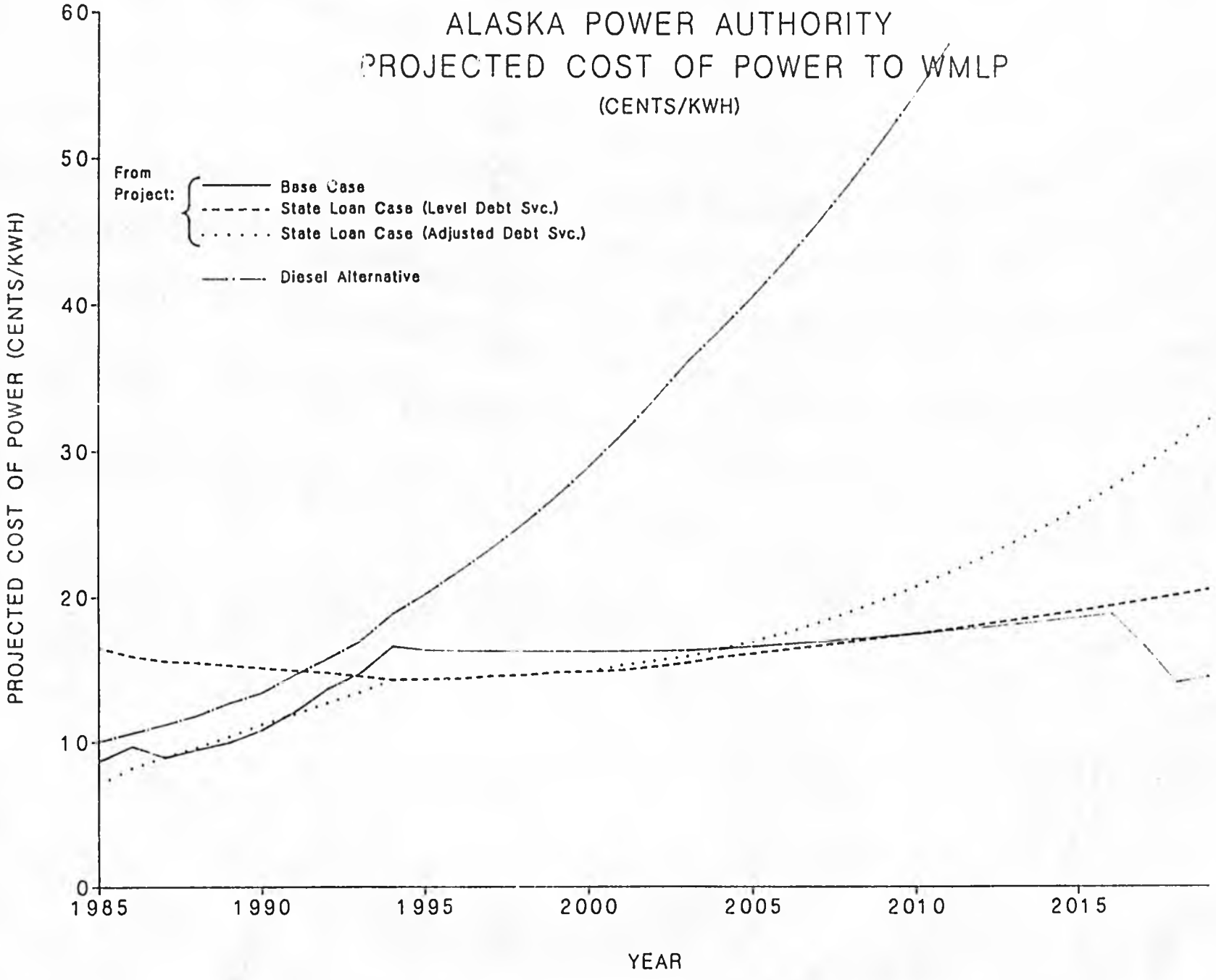

ALASKA POWER AUTHORITY
PROJECTED COST OF POWER TO WMLP
(CENTS/KWH)
From Project:
Base Case
State Loan Case (Level Debt Svc.)
State Loan Case (Adjusted Debt Svc.)
Diesel Alternative
PROJECTED COST OF POWER (CENTS/KWH)
60
50
40
30
20
10
0
1985
1990
1995
2000
2005
2010
2015
YEAR

Figure 5

SENATE FINANCE COMMITTEE
MAY 26, 1984
9:20 A.M.

CALL TO ORDER

CO-CHAIRMAN DON BENNETT CONVENED THE MEETING AT APPROXIMATELY 9:20 A.M.

PRESENT MEMBERS PRESENT: SENATORS BENNETT, FERGUSON, MULCAHY, SACKETT, AND V. FISCHER. SENATORS JOSEPHSON AND FAIKS CAME IN LATER.
OTHERS PRESENT: MIKE GREANY, DIRECTOR, LEGISLATIVE FINANCE; P.S. DHILLON, REVENUE ANALYST, LEGISLATIVE FINANCE; MILT BARKER, DEPUTY COMMISSIONER, DEPARTMENT OF REVENUE; COMMISSIONER HEATH, DEPARTMENT OF REVENUE; COMMISSIONER LYON, DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT; REPRESENTATIVE HURLBERT; SENATOR KERTTULA; RICH UNDERKOFLER, CITY MANAGER, CITY OF PETERSBURG; DON KOENIGS, MAYOR, CITY OF PETERSBURG; KURT DZINICH, SENIOR ADVISOR, SENATOR ADVISORY COUNCIL; SUSAN WHITE, EXECUTIVE ASSISTANT, ALASKA POWER AUTHORITY; MARTHA FOX, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW; TERRY ELDER, DEPUTY COMMISSIONER, DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT; AND STAFF FROM STATE OFFICES AND LEGISLATIVE OFFICES.

SUMMARY INFO

CSHB 684(FIN) AM AN ACT MAKING SPECIAL APPROPRIATIONS TO THE ALASKA POWER AUTHORITY; AND PROVIDING FOR AN EFFECTIVE DATE.
DISCUSSION AND HELD IN COMMITTEE.

SENATOR FERGUSON WALKED THE COMMITTEE THROUGH THE PROPOSED SCS FOR CS FOR HB 684(FINANCE). HE THEN ASKED MR. LARRY CRAWFORD AND BILL BATT TO COME FORWARD AND DISCUSS THE PROPOSAL WITH THE COMMITTEE.

LARRY CRAWFORD

MR. LARRY CRAWFORD, EXECUTIVE DIRECTOR OF THE ALASKA POWER AUTHORITY CAME FORWARD TO TESTIFY AND INTRODUCED MR. BILL BATT, DIRECTOR OF FINANCE. SENATOR MULCAHY ASKED WHAT THE INTENT WAS OF THE ALASKA POWER AUTHORITY WITH REGARD TO SECTION 1, THE $210,000,000 AND THE POWER CONTRACTS. MR. CRAWFORD SAID THE INTENT OF THE POWER AUTHORITY WAS TO USE THE RENEGOTIATED AGREEMENTS AS THE BASIS FOR THE LOAN AND THE COMMUNITIES WOULD HAVE RATES BASED ON THOSE RENEGOTIATED AGREEMENTS. HE SAID THE ONLY TIME THEY WOULD ENFORCE THE EXISTING AGREEMENT WOULD BE WHERE THEY DID NOT HAVE A NEW RENEGOTIATED AGREEMENT.

SENATOR MULCAHY ASKED ABOUT CLARIFICATION ON SECTION 1. HE FELT THE APPROACH BEING TAKEN WOULD DO AWAY WITH THE RATE STABILIZATION APPROPRIATION THAT HAD BEEN LOOKED AT BEFORE WHEN GOING OUT TO THE BOND MARKET. HE SAID IT WAS HIS UNDERSTANDING THAT THE RATE STABILIZATION APPROPRIATION WOULD NOT BE NEEDED BECAUSE OF THE USE OF GENERAL FUNDS AND BECAUSE THE LANGUAGE IN THE AUTHORIZING BILL IS SUCH THAT THE INTEREST RATE CAN BE "BACKED IN."

MR. CRAWFORD SAID THIS WAS CORRECT, THAT THEY ARE LOOKING AT WHAT THE DEBT SERVICE PAYMENTS WOULD HAVE BEEN UNDER THE RENEGOTIATED AGREEMENT AND THEN THEY WILL BE RETURNING THE MONEY TO THE STATE IN ACCORDANCE WITH THOSE DEBT SERVICE PAYMENTS. THE INTEREST RATE IS THE DERIVED NUMBER AND LOOKS TO BE ABOUT AN 8% YIELD TO THE STATE ON THE $210,000,000 OVER THE LIFE OF THE LOAN. HE SAID THE PAYMENTS IN THE EARLY YEARS WILL BE LESS THAN IN THE LATER YEARS AND THEY CAN DO AWAY WITH THE RATE STABILIZATION FUND.

SCS FOR CSHB 589(FINANCE)

SENATOR FERGUSON WALKED THE COMMITTEE THROUGH THIS LEGISLATION. SECTIONS 1 THROUGH 3, CREATE THE POWER DEVELOPMENT REVOLVING FUND FOR THE PURPOSE OF IMPLEMENTING THE $210,000,000 LOAN FOR THE FOUR-DAM POOL PAY OUT. SECTION 4 ALLOWS THE CREATION FOR THE FOUR-DAM POOL.

LETTER OF UNDERSTANDING

The negotiating team representing APA, Ketchikan, Copper Valley Electric Association, Kodiak Electric Association, Petersburg and Wrangell have agreed on the terms and conditions of a power sales agreement incorporating the following:

1. The written and oral understandings of the parties heretofore reached shall be placed in writing in agreed final form, and remaining comments of the parties will be mutually and expeditiously resolved and also incorporated in the agreement.

2. A rate stabilization fund shall be established as proposed in the communities' 17 point proposal funded in part by a State appropriation of $49,000,000.

3. The system increment proposal of the communities shall also be incorporated in such agreement.

We mutually recognize that certain statutory amendments are required to implement the agreements reached to date.

We expect to conclude draft O & M agreements and interconnection agreements following a mutual review of proposed contract revisions.

We will recommend to our respective boards and councils that the agreements be adopted and that we be authorized to execute them and to assist in the steps necessary to complete the financing.

DATED March 20, 1984

ALASKA POWER AUTHORITY
By: Larry D Crawford

CITY OF KETCHIKAN
By:

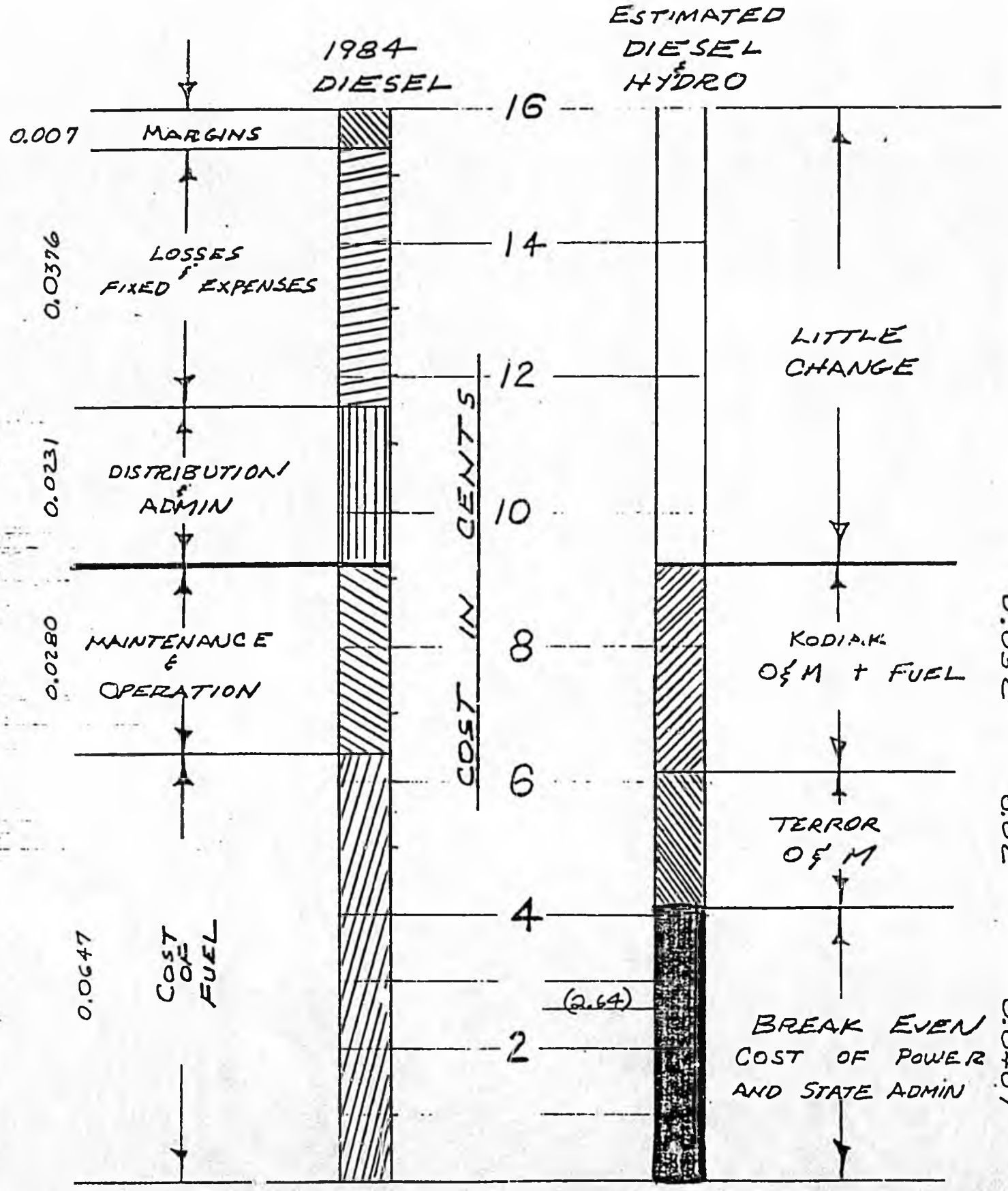
COPPER VALLEY ELECTRIC ASSOCIATION
By J. A. Fillingames

CITY OF WRANGELL
By:

KODIAK ELECTRIC ASSOCIATION
By

CITY OF PETERSBURG
By

KODIAK ELECTRIC ASSN
AVERAGE COST OF POWER
(AT CONSUMER METER)



ALASKA POWER AUTHORITY
FOUR DAM POOL
OBJECTIVES IN NEGOTIATIONS

1) Form the foundation for a statewide energy program for Alaska;

2) Establish debt service so that rate shock is not experienced by the communities;

3) Establish entry rates for the communities at no higher than their avoided cost; and

4) Establish long-term rates which benefit the communities as well as provide a return to the state.

The following exchange illustrates the point made earlier that Congress' primary concern was only that the overall revenue derived from rates be sufficient to repay the Federal investment in the power project.

"Mr. KING. There may be some provision in the bill, but I have failed to discover any--and I may say that I have had the bill which passed the House, instead of the Senate committee bill--which will provide for reimbursement to the Government of the United States of the enormous sums which are to be appropriated under the provisions of the bill. I ask the Senator whether or not it is contemplated that the Government is to be reimbursed, and what provisions are found in the bill to effectuate that purpose?

"Mr. McNARY. Mr. President, that is a very natural question. On page 12 the bill provides:

> 'Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities at Bonneville project) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment over a reasonable period of years. . . .'

"Mr. ELLENDER. While the Senator is considering section 7 of this bill will he explain the meaning of the language which appears in parenthesis on lines 18 and 19, page 12?

"Beginning at line 18, I find this language in parenthesis:

> 'Upon the basis of the application of such rate schedules to the capacity of the electric facilities of Bonneville project.'

"Mr. STEIWER. Mr. President, there is some language included in the parenthesis on page 12, line 18, to which the Senator from Louisiana directs attention, and with the permission of my colleague I will undertake to answer the question by saying that in figuring the amortization of the capital investment it is necessary, of course, to have a formula of revenue. That formula consists of the rate multiplied by the amount of energy which presumably will be offered for sale.

The rate of recovery, of course, will be dependent upon the market and the amount of energy sold." 81 Cong. Rec. 8524 (1937).

One final argument conclusively refutes the California utilities' contention that BPA's NF-2 rate must be cost-based, and that is that one of the Act's primary objectives would not have been achieved had the rates been required to have been cost-based.

The Bonneville Project Act emphasized the objective "to encourage the widest possible use of all electric power . . ." The widespread use policy appears three times in sections of the Act authorizing building of transmission lines, requiring preference for public and cooperative systems, and as guidance for setting wholesale rates (Sections 2, 4, and 6).

Widely debated during the drafting of the bill was whether a postage stamp or uniform rate would encourage widespread use more than a zone rate, which is lowest at the dam and increases with distance.

A zone rate reflects the actual power and transmission costs associated with a particular user while the uniform rate does not. It was thought at the time that if zone rates were charged, those domestic and rural consumers farthest from the dam would not be able to afford the actual cost of service, and thus the objective of widespread use would not be attained.

As explained by the following exchange in the House Hearings on H.R. 7642, Congress was concerned that rates <u>not</u> reflect the actual cost of providing service, for to do so would price out those farthest from the dam and allow big industry to locate near the dam and buy up all the available power:

KETCHIKAN PUBLIC UTILITIES

334 FRONT STREET KETCHIKAN, ALASKA 99901 TELEPHONE 907-225-3111

MUNICIPALLY OWNED
ELECTRIC WATER PHONE

November 27, 1984

ANALYSIS
FOUR DAM POOL PROPOSAL

The Four Dam Pool proposal addresses, within existing law, several problems of the energy Program as currently structured and administered. I emphasize that these problems arise largely out of the statutory framework within which the APA operates. All prior contract negotiations with the APA have attempted to deal with these statutory structures. I believe our proposal simply does so more effectively than prior proposals. The problems we encounter are as follows:

- Uncertainty Under the Energy Program, we do not know the cost of power before we buy. Because power is priced according to the amount sold, a reduction or termination anywhere in the system could raise the price of power and force us to "true up" our bill after the fact.

- Unbearable Risks Unless otherwise limited, the Program makes each Purchaser jointly and severally responsible for the entire debt of the APA. A longterm contract on these terms could lock a small community into a fifty-year, open-ended obligation to pay off billions of dollars in debt.

- Guaranteed Inflation In order to pay for projects that are too big and too expensive for the communities' current needs, the APA has had to borrow money and accept a repayment schedule that includes "negative amortization" and periodic increases in debt service. These increases are purportedly based on predicted increases in the cost of diesel fuel. Even if these predictions were accurate, which we dispute, how can we benefit from hydropower if we aim for the diesel price? In fact, while diesel prices have been dropping, the only certainty about the APA's payment obligation is that it will increase.

- Unequal Benefits The Energy Program has been based on the idea that each community would pay according to the cost of APA facilities available to serve it. This formula ignores other variables such as whether the facilities are entirely necessary to that community and

whether such costs would result in large disparities between the retail rates of that and other communities. Anomalies result. For example, one community could end up paying a "system increment" increase in order to subsidize a project in another community that already enjoys lower rates. Likewise, a community could find itself ultimately worse off by gaining the "benefits" of hydropower and thereby losing its power cost assistance entitlement.

- Out-of-Reach Prices No matter how theoretically elegant, a power cost formula fails if ratepayers cannot afford the power. In the best of circumstances, prices under the current Program are projected at or just above what the communities estimate they can afford to pay without suffering serious economic dislocation. If assumptions underlying the projections are wrong -- if loads do not materialize, for example -- the results could be disastrous.

- Uncontrollable Costs Finally the existing Program gives the purchasers of power little ability to learn about, much less to control, the debt service obligations and operations, maintenance, and administrative overhead costs incurred by the APA. Yet these costs are passed directly through to the purchasers. Such unanticipated costs can add substantially to the unpredictability discussed above. Since utilities cannot easily recover previously incurred costs from their ratepayers, the result could be extremely disruptive to a utility's ability to plan. As I have emphasized before, long-term planning is essential to the proper management of an electric utility.

The Four Dam Pool proposal is aimed at overcoming the problems described above, without the need for statutory change. The principles behind our proposal are applicable to the Energy Program state-wide, although possibly not without new legislation. Those principles are as follows:

- Certainty The creation of a Power Development Revolving Loan Fund enables the APA to borrow money upon very flexible terms from the Department of Commerce and Economic Development. We propose terms that would permit the APA to charge a fixed rate for power. Purchasers would thereby know the price of power before they buy.

- Acceptable Risks Our proposal is that debt service

on the state loan be related to project usage, with power priced as though projects were fully utilized. This would place the risks of over-capacity and reduction in sales upon the State. Such a risk allocation is appropriate, since excess electric capacity is part of the infrastucture used to promote economic development throughout the State.

- Flat Rates Except for a brief initial "ramp up" to ease the rate shock for some utilities, we propose that debt service costs be flat throughout the contract period. This would assure that the benefits of hydropower are passed on to the citizens of the State, and that utilities would achieve a measure of predictability necessary for long-term planning.

- Equity Our proposal entails equal debt service costs for each member of the Four Dam Pool. Applied statewide, this principle might mean equality per kilowatthour for debt service, wholesale power costs, or total system revenue requirements.

- Affordability The ultimate wholesale power rate proposed by the Four Dam Pool was derived from what the communities believe they can afford. In most cases, that amount results in rates to the consumer at or near what those rates are today. We believe that no community in the State should be forced beyond its means to purchase power.

- Cost Control The role of the APA should be limited to helping finance the Energy Program. The only way operations and maintenance costs can be held in check is if they are placed within the control of those who must ultimately pay them. All APA borrowing, expenditures, and administrative overhead should be subject to strict audit, and should be governed at least in part with the active participation of the power purchasers.

Very truly yours,

KETCHIKAN PUBLIC UTILITIES

Richard D. Newland
Utilities Manager

RDN:bll
030/4E

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of this chapter, other than the provisions of AS 42.05.221 — 42.05.281, unless the owner and operator elects to be subject to all provisions of this chapter.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of this chapter.

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross $50,000 annually is exempt from regulation under this chapter unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross $325,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross $100,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25 may elect to be exempt from the provisions of this chapter, other than AS 42.05.221 — 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of $200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281, unless 25 percent of the subscribers or subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under this chapter when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person.

(k) A utility which furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 unless 25 percent of the subscribers petition the commission for regulation.

(d) In this section, "record" means a report, file, book, account, paper, or application, and the facts and information contained in it. (§ 6 ch 113 SLA 1970; am § 8 ch 110 SLA 1981)

Effect of amendments. — The 1981 amendment rewrote this section.

NOTES TO DECISIONS

Narrow construction. — The privilege reflected by this section should be construed narrowly so that it does not conflict with the constitutional requirements of due process. City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc., Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

Due process controls over section. — The requirement of this section that information not be withheld if "required in the interests of the public" will normally prevent a conflict with due process requirements. If a conflict nevertheless occurs, due process must control. City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc., Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

Sec. 42.05.681. Validity of certain certificates. A certificate issued before July 29, 1968, to a public utility for the generation, transmission, or distribution of electric energy and power, or for the furnishing of telecommunications may not be considered as terminated, or voided, for the sole reason that the utility did not or would not produce an annual gross income in excess of $25,000. (§ 6 ch 113 SLA 1970)

Sec. 42.05.691. Utility classes. The commission may by regulation provide for the classification of public utilities based upon differences in annual revenue, assets, nature of ownership and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting and other regulatory requirements. (§ 6 ch 113 SLA 1970)

Article 10. General Provisions.

Section	Section
711. Exemptions	720. Definitions
712. Deregulation ballot	721. Short title

Sec. 42.05.701. [Renumbered as AS 42.05.720.]

Sec. 42.05.711. Exemptions. (a) The provisions of this chapter do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which the person has an "affiliated interest."

(*l*) A person, utility, or cooperative that is exempt from regulation under AS 42.05.711(a) or (d) — (k) is not subject to regulation by a municipality under AS 29.48.060 — 29.48.090. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7-9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982; am § 1 ch 30 SLA 1983)

Cross references. — For limitations on these exemptions, see AS 42.05.321(b) and AS 42.05.381(c).

Effect of amendments. — The first 1980 amendment added subsection (j).

The second 1980 amendment deleted "excepting the furnishing of collection and disposal service of garbage, refuse, trash or other waste material" following "none of whose utilities" near the beginning of subsection (b), deleted the former second sentence in subsection (b), which read: "Notwithstanding any other provisions of this chapter, municipalities providing collection and disposal service of garbage, refuse, trash or other waste material within their corporate boundaries are not subject to regulation by the Alaska Public Utilities Commission unless the municipality elects to be subject to the provisions of this chapter," substituted "$50,000" for "$25,000" following "does not gross" near the middle of subsection (e), substituted "under this chapter" for "hereunder" following "exempt from regulation" near the middle of subsection (e), and added subsections (f) through (i).

The 1982 amendment, effective May 28, 1982, deleted "on June 30, 1980" preceding "a utility," and inserted "annual" preceding "gross revenue" in subsection (i).

The 1983 amendment added subsections (k) and (l).

Opinions of attorney general. — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation pursuant to AS 10.20.005 et seq. June 7, 1976, Op. Att'y Gen.

NOTES TO DECISIONS

Municipally owned utilities in competition with other utilities subjected to full gamut of regulation pertaining to other utilities, with exception relating to bond covenants. — See Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Sec. 42.05.712. Deregulation ballot. (a) A utility or cooperative which may elect to be exempt from the provisions of this chapter shall poll its subscribers or members in the manner described in this section.

(b) The votes of a majority of those voting in an election in which at least 15 percent of the eligible subscribers or members return ballots are required for a utility or cooperative to elect exemption under (a) of this section.

(c) Each subscriber or member of the utility or cooperative shall receive notice of an election under this section with the subscriber's or member's regular bill for service at least 60 days before the date set for the election. The notice shall contain impartial language informing the subscribers or members that an election on the option of deregulation or regulation by the Alaska Public Utilities Commission will be held within 60 days and that a ballot to participate in that election will be mailed or delivered to each subscriber or member of the utility or cooperative with the regular bill for service. The notice shall also state

Initial Loan Principal	$196,000,000	Ramp Period (Years)	5		4-DAM POOL
Loan Interest Rate	4.20%	D. S. Entry Rate (c/kW.h)	2.20	LOAN REPAYMENT SCHEDULE	
Loan Term (Years)	40	Entry Rate Annual Escalation	6.05%		
Total Energy Capability (GW.h/yr)	378,607	D. S. Rate Ceiling (c/kW.h)	2.682840		CASE 4-A

Year	DEBT SERV COMPONENT (c/kW.h)	PAYMENT FROM ELEC REVENUE	ENERGY SALES (GW.h)	UTILIZ-ATION	CURRENT PRINCIPAL BALANCE	INTEREST DUE FROM 4-DAM POOL	ACTUAL PAY-MENT LESS INT. DUE	PRINCIPAL REPAYMENT DEFERRED	DEFERRED PRINCIPAL BALANCE
1985	2.00	3,104,120	155,206	40.99%	196,000,000	3,213,926	(109,806)	1,217,861	1,217,861
1986	2.12	3,349,550	181,496	47.94%	194,892,746	3,756,990	92,561	1,116,790	2,333,851
1987	2.25	4,306,077	191,437	50.56%	193,683,395	3,954,721	351,356	1,102,865	3,436,735
1988	2.39	4,751,347	199,181	52.61%	192,229,154	4,095,753	655,589	1,099,544	4,535,279
1989	2.53	5,212,398	206,042	54.42%	190,474,821	4,205,259	1,007,139	1,099,799	5,636,078
1990	2.68	5,714,288	212,994	56.25%	188,367,283	4,300,727	1,413,561	1,097,712	6,733,790
1991	2.68	5,877,217	219,067	57.86%	185,855,810	4,361,163	1,516,054	1,099,757	7,833,547
1992	2.68	6,087,552	226,907	59.93%	183,239,999	4,449,374	1,638,178	1,087,542	8,921,089
1993	2.68	6,336,412	236,183	62.38%	180,514,278	4,557,394	1,779,188	1,261,894	9,982,973
1994	2.68	5,596,916	245,893	64.95%	177,673,286	4,664,816	1,932,100	1,029,868	11,012,841
1995	2.68	6,853,020	255,439	67.47%	174,712,118	4,760,231	2,092,789	993,250	12,005,291
1996	2.68	6,990,569	260,566	68.82%	171,625,380	4,767,619	2,222,950	989,981	12,995,272
1997	2.68	7,133,591	265,897	70.23%	168,413,149	4,771,637	2,361,954	983,282	13,978,354
1998	2.68	7,283,428	271,482	71.71%	165,068,112	4,772,574	2,510,854	971,743	14,950,097
1999	2.68	7,440,669	277,343	73.25%	161,585,516	4,770,144	2,670,525	955,320	15,905,417
2000	2.68	7,605,529	283,488	74.88%	157,959,671	4,763,757	2,841,772	933,243	16,838,660
2001	2.68	7,732,481	288,220	76.13%	154,184,656	4,725,559	3,006,912	922,388	17,760,948
2002	2.68	7,781,390	290,043	76.61%	150,255,456	4,633,629	3,147,761	939,834	18,700,782
2003	2.68	7,831,907	291,926	77.11%	146,167,861	4,536,187	3,295,720	956,646	19,657,428
2004	2.68	7,884,572	293,889	77.62%	141,915,495	4,433,170	3,451,401	972,381	20,629,809
2005	2.68	7,939,463	295,935	78.16%	137,491,713	4,324,205	3,615,257	986,853	21,616,662
2006	2.68	7,996,661	298,067	78.73%	132,889,602	4,208,691	3,787,770	999,859	22,616,521
2007	2.68	8,056,330	300,290	79.31%	128,101,973	4,086,822	3,969,478	1,011,153	23,627,674
2008	2.68	8,118,488	302,608	79.93%	123,121,342	3,957,546	4,160,942	1,020,474	24,648,147
2009	2.68	8,182,279	305,023	80.56%	117,939,925	3,820,549	4,362,730	1,027,568	25,675,716
2010	2.68	8,250,833	307,541	81.23%	112,549,627	3,675,330	4,575,503	1,032,102	26,707,818
2011	2.68	8,321,231	310,165	81.92%	106,942,022	3,521,308	4,799,922	1,033,753	27,741,570
2012	2.68	8,394,633	312,901	82.65%	101,108,347	3,357,895	5,036,738	1,032,125	28,773,696
2013	2.68	8,471,148	315,753	83.40%	95,039,483	3,184,428	5,286,719	1,026,818	29,800,514
2014	2.68	8,550,882	318,725	84.18%	88,725,946	3,000,199	5,550,683	1,017,397	30,817,911
2015	2.68	8,634,023	321,824	85.00%	82,157,866	2,804,469	5,829,554	1,003,334	31,821,245
2016	2.68	8,720,652	325,053	85.85%	75,324,978	2,596,405	6,124,247	984,130	32,805,376
2017	2.68	8,810,983	328,420	86.74%	68,216,601	2,375,152	6,435,831	959,147	33,764,522
2018	2.68	8,905,124	331,929	87.67%	60,821,522	2,139,753	6,765,371	927,769	34,692,291
2019	2.68	9,003,262	335,587	88.64%	53,128,483	1,889,280	7,114,062	889,265	35,581,556
2020	2.68	9,105,559	339,400	89.64%	45,125,156	1,622,397	7,483,162	842,864	36,424,421
2021	2.68	9,212,202	343,375	90.69%	36,799,130	1,338,166	7,874,035	787,707	37,212,128
2022	2.68	9,323,352	347,518	91.79%	28,137,388	1,035,234	8,288,118	722,882	37,935,010
2023	2.68	9,439,197	351,836	92.93%	19,126,387	712,229	8,725,968	647,379	38,582,389
2024	2.68	9,559,978	356,338	94.12%	9,752,241	367,680	9,192,299	560,052	39,142,441
2025	1.34	4,825,870	361,030	95.36%	(310)	1,565,665	3,260,185		35,881,945
2026	1.32	4,825,870	365,921	96.65%		1,435,278	3,390,592		32,491,352
2027	1.30	4,825,870	371,019	98.00%		1,299,654	3,526,216		28,965,137
2028	1.28	4,825,870	376,334	99.40%		1,158,605	3,667,265		25,297,872
2029	1.27	4,825,870	378,607	100.00%		1,011,915	3,813,955		21,483,917
2030	1.27	4,825,870	378,607	100.00%		859,357	3,966,514		17,517,403
2031	1.27	4,825,870	378,607	100.00%		700,696	4,125,174		13,392,229
2032	1.27	4,825,870	378,607	100.00%		535,689	4,290,181		9,102,048
2033	1.27	4,825,870	378,607	100.00%		364,062	4,461,788		4,640,260
2034	1.27	4,825,870	378,607	100.00%		185,610	4,640,260		(0)
TOTALS		347,628,986	15,046,933			151,528,956	196,000,000	39,142,441	

FOUR-DAM POOL DEBT SERVICE

ALASKA POWER AUTHORITY

VERSUS

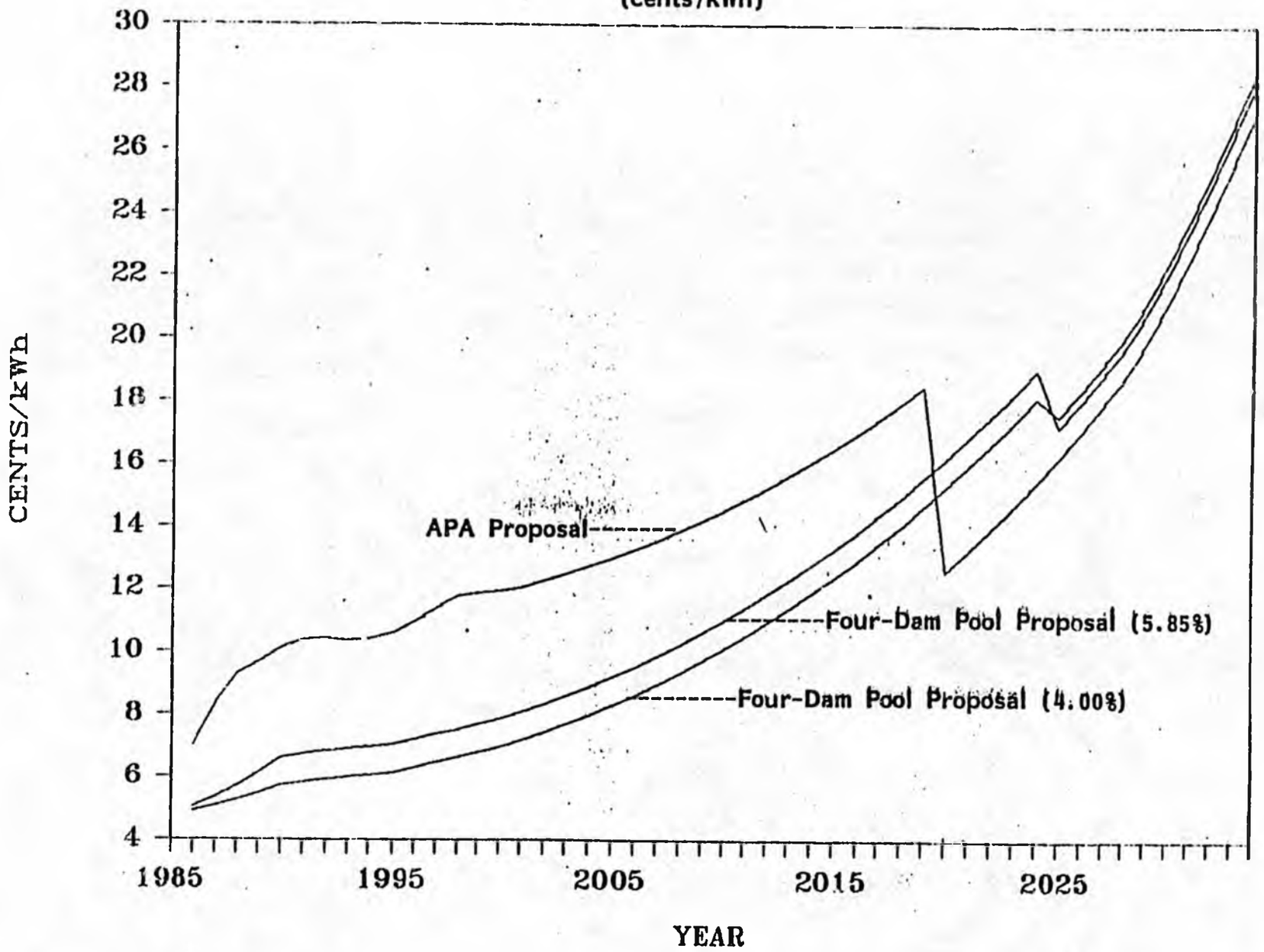
PARTICIPANTS' PROPOSAL

Comparison of Major Issues
Alaska Power Authority Proposal vs. 4-Dam Pool Proposal

Issue	Alaska Power Authority	4-Dam Pool
Interest Rate	- 8% Yield on Total Loan	- 5.8% (3.3% Yield on Total Loan)
Amortization Period	- 35 Years	- 40 years
Annual Debt Service	- Level Debt Service With Ramp Features.	- Level debt service with Purchasers to pay amount in proportion to energy usage; Ramp features included.
Ramp Features	- Initially 2¢/KWH below alternative cost (2.5¢ for CVEA) decreasing to 0¢ at the point where Project costs without ramp and alternative costs cross.	- Defer part of principal and interest payments in years 1-5 and repay, with interest, in years 6-40.
Deferred Payments	- All payments deferred in Ramp features are repayed with interest by the end of 35 years.	- Principal amount deferred due to unused Project capability is repaid, without interest, in years 41-50. Principal and interest deferred due to ramp features is repayed, with interest, in years 6-40.

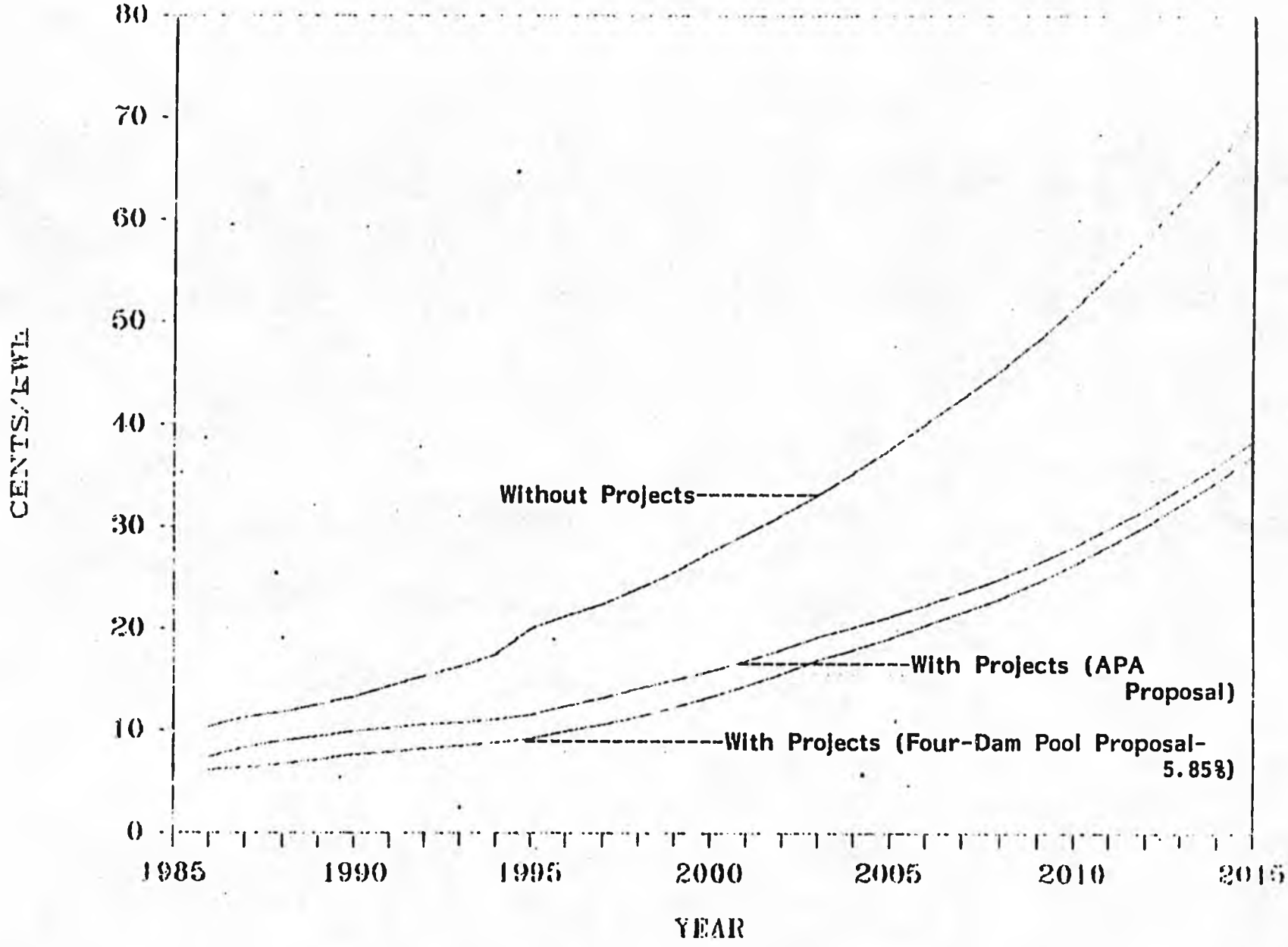
ALASKA POWER AUTHORITY

FOUR-DAM POOL ANALYSIS
PROJECT COSTS
(cents/kWh)



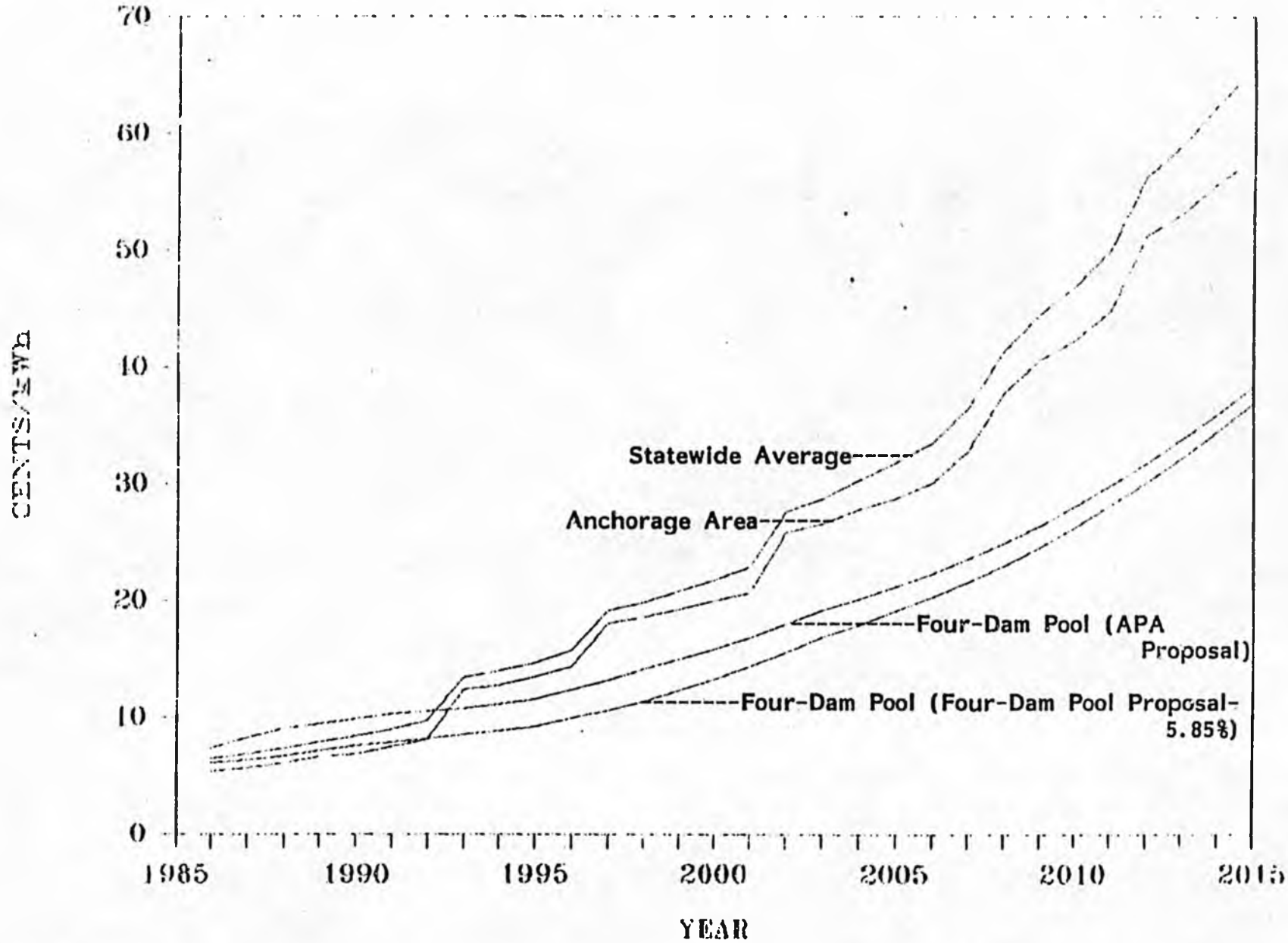
ALASKA POWER AUTHORITY

FOUR-DAM POOL ANALYSIS
PARTICIPANT PRODUCTION COSTS
WITH AND WITHOUT PROJECTS
(cents/kWh)



ALASKA POWER AUTHORITY

FOUR-DAM POOL ANALYSIS
PRODUCTION COSTS
(cents/kWh)



	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)
	BPA PROPOSAL					FOUR-DAM POOL PROPOSAL - 5.85%					W/O PROJECT						******PROJECT COSTS ONLY****** FOUR-DAM POOL PROPOSAL - 4.00%			
YEAR	DEBT SERVICE ($000)	O & M ($000)	OTHER COSTS ($000)	TOTAL NOMINAL (C/kWh)	TOTAL 1986$ (C/kWh)	DEBT SERVICE (c/kWh)	O & M ($000)	OTHER COSTS ($000)	TOTAL NOMINAL (C/kWh)	TOTAL 1986$ (C/kWh)	W/O EXIST DS & OTHR (c/kWh)	OTHER ($000)	TOTAL (c/kWh)	1986$ (C/kWh)	GENERATION (GWh)	PROJ SALES (GWh)	DEBT SERVICE ($000)	DEBT SERVICE (C/KWH)	O&M ($000)	PROJ COSTS (C/KWH)
1986	7713	5027	8513	7.4	7.4	4879	5027	8513	6.1	6.1	9.7	1882	10.3	10.3	287.6	181.5	3858	2.12	5027	4.9
1987	10622	5354	8865	8.3	7.8	4835	5354	8865	6.4	6.0	10.7	1848	11.3	10.6	298.9	191.4	4306	2.25	5354	5.0
1988	12810	5782	9459	9.0	8.0	5653	5782	9459	6.7	5.9	11.2	1778	11.8	10.4	309.9	199.2	4751	2.39	5782	5.3
1989	13882	6072	10186	9.4	7.8	6571	6072	10186	7.1	5.9	12.0	1758	12.6	10.4	319.6	206.8	5212	2.53	6072	5.5
1990	15036	6467	11855	9.9	7.7	7633	6467	11855	7.6	5.9	12.8	1754	13.3	10.4	329.1	213.8	5714	2.68	6467	5.7
1991	15942	6887	12821	10.3	7.5	7851	6887	12821	7.9	5.8	13.9	1756	14.4	10.5	337.7	219.1	5077	2.68	6887	5.8
1992	16351	7335	13109	10.6	7.3	8132	7335	13109	8.2	5.6	14.8	1766	15.3	10.5	347.4	226.9	6888	2.68	7335	5.9
1993	16660	7812	14245	10.8	7.0	8464	7812	14245	8.5	5.5	15.8	1694	16.3	10.5	358.4	236.2	6336	2.68	7812	6.0
1994	17300	8320	15770	11.2	6.7	8812	8320	15770	8.9	5.4	17.8	1867	17.5	10.6	370.8	245.9	6597	2.68	8320	6.1
1995	18248	8868	17488	11.6	6.6	9154	8868	17488	9.2	5.2	19.6	1455	20.8	11.3	384.8	255.4	6853	2.68	8868	6.1
1996	19189	9436	20838	12.4	6.6	9338	9436	20838	9.9	5.3	20.9	1356	21.3	11.3	398.7	268.6	6991	2.68	9436	6.3
1997	20211	10858	24148	13.2	6.6	9529	10858	24148	10.6	5.3	22.2	1197	22.5	11.2	412.3	285.9	7134	2.68	10858	6.5
1998	21316	10783	28285	14.1	6.6	9729	10783	28285	11.4	5.4	23.7	1153	24.8	11.3	426.5	271.5	7283	2.68	10783	6.6
1999	21646	11399	33868	15.0	6.6	9939	11399	33868	12.3	5.4	25.3	1138	25.6	11.3	440.7	277.3	7441	2.68	11399	6.8
2000	21774	12140	38485	15.9	6.6	10159	12140	38485	13.3	5.5	27.3	1058	27.5	11.4	455.8	283.5	7606	2.68	12140	7.0
2001	21882	12929	44707	16.9	6.6	10329	12929	44707	14.4	5.6	29.1	1052	29.3	11.4	471.8	288.2	7732	2.68	12929	7.2
2002	21882	13769	51763	18.0	6.6	10394	13769	51763	15.6	5.7	31.0	1054	31.2	11.4	485.8	290.8	7781	2.68	13769	7.4
2003	21882	14664	59761	19.2	6.6	10462	14664	59761	17.0	5.8	33.0	1053	33.2	11.4	500.8	291.9	7832	2.68	14664	7.7
2004	21882	15617	66687	20.2	6.5	10532	15617	66687	18.0	5.8	35.1	1053	35.3	11.4	516.2	293.9	7885	2.68	15617	8.0
2005	21882	16632	74484	21.2	6.4	10605	16632	74484	19.1	5.8	37.4	1053	37.6	11.4	532.1	295.9	7939	2.68	16632	8.3
2006	21882	17713	82995	22.3	6.3	10682	17713	82995	20.3	5.8	39.8	1053	40.0	11.4	548.6	298.1	7997	2.68	17713	8.6
2007	21882	18865	92564	23.6	6.3	10761	18865	92564	21.6	5.8	42.4	1053	42.6	11.4	565.5	300.3	8056	2.68	18865	9.0
2008	21882	20091	103215	24.9	6.2	10844	20091	103215	23.0	5.8	45.2	1053	45.4	11.4	583.0	302.6	8118	2.68	20091	9.3
2009	21882	21397	115440	26.4	6.2	10931	21397	115440	24.6	5.8	48.1	1053	48.3	11.3	601.0	305.0	8183	2.68	21397	9.7
2010	21882	22788	129866	28.0	6.2	11021	22788	129866	26.3	5.8	51.2	1053	51.4	11.3	619.6	307.5	8251	2.68	22788	10.1
2011	21882	24269	144245	29.8	6.2	11115	24269	144245	28.1	5.8	54.6	1053	54.7	11.3	638.8	310.2	8321	2.68	24269	10.5
2012	21882	25846	161151	31.7	6.2	11213	25846	161151	30.1	5.9	58.1	1053	58.3	11.3	658.6	312.9	8395	2.68	25846	10.9
2013	21882	27526	179978	33.8	6.2	11315	27526	179978	32.2	5.9	61.9	1053	62.1	11.3	679.1	315.8	8471	2.68	27526	11.4
2014	21882	29316	200939	36.0	6.2	11422	29316	200939	34.5	5.9	65.9	1053	66.1	11.3	700.1	318.7	8559	2.68	29316	11.9
2015	21882	31221	224272	38.4	6.2	11533	31221	224272	37.0	6.0	70.2	1053	70.4	11.3	721.9	321.8	8634	2.68	31221	12.4
2016	21882	33250	238850	39.5	6.0	11649	33250	238850	38.1	5.8	74.8	1053	74.9	11.3	744.3	325.1	8721	2.68	33250	12.9
2017	21882	35412	254375	40.6	5.8	11769	35412	254375	39.3	5.6	79.6	1053	79.8	11.3	767.3	328.4	8811	2.68	35412	13.5
2018	21882	37713	270909	41.8	5.6	11895	37713	270909	40.5	5.4	84.8	1053	84.9	11.3	791.1	331.9	8905	2.68	37713	14.0
2019	21882	40165	288518	43.0	5.4	12026	40165	288518	41.8	5.2	90.3	1053	90.5	11.3	815.7	335.6	9003	2.68	40165	14.6
2020	0	42776	307272	41.6	4.9	12163	42776	307272	43.1	5.1	96.2	1053	96.3	11.3	840.9	339.4	9106	2.68	42776	15.3
2021	0	45556	327245	43.0	4.7	12305	45556	327245	44.4	4.9	102.4	1053	102.6	11.3	867.0	343.4	9212	2.68	45556	15.9
2022	0	48517	348516	44.4	4.6	12454	48517	348516	45.8	4.7	109.1	1053	109.2	11.3	893.9	347.5	9323	2.68	48517	16.6
2023	0	51671	371169	45.9	4.5	12609	51671	371169	47.2	4.6	116.2	1053	116.3	11.3	921.6	351.8	9439	2.68	51671	17.4
2024	0	55029	395295	47.4	4.3	12770	55029	395295	48.7	4.5	123.8	1053	123.9	11.3	950.2	356.3	9560	2.68	55029	18.1
2025	0	58686	420989	49.0	4.2	3522	58686	420989	49.3	4.2	131.8	1053	131.9	11.3	979.6	361.0	4826	1.34	58686	17.6
2026	0	62416	448354	50.6	4.1	3522	62416	448354	50.9	4.1	140.4	1053	140.5	11.3	1010.0	365.9	4826	1.32	62416	18.4
2027	0	66473	477497	52.2	4.0	3522	66473	477497	52.6	4.0	149.5	1053	149.6	11.3	1041.3	371.0	4826	1.30	66473	19.2
2028	0	70793	508534	54.0	3.8	3522	70793	508534	54.3	3.9	159.2	1053	159.3	11.3	1073.6	376.3	4826	1.28	70793	20.1
2029	0	75395	541589	55.7	3.7	3522	75395	541589	56.1	3.7	169.6	1053	169.6	11.3	1106.9	378.6	4826	1.27	75395	21.2
2030	0	80296	576792	57.6	3.6	3522	80296	576792	57.9	3.6	180.6	1053	180.7	11.3	1141.2	378.6	4826	1.27	80296	22.5
2031	0	85515	614283	59.7	3.5	3522	85515	614283	59.8	3.5	192.3	1053	192.4	11.3	1176.6	378.6	4826	1.27	85515	23.9
2032	0	91073	654212	61.4	3.4	3522	91073	654212	61.7	3.4	204.8	1053	204.9	11.3	1213.0	378.6	4826	1.27	91073	25.3
2033	0	96993	696736	63.5	3.3	3522	96993	696736	63.7	3.3	218.1	1053	218.2	11.3	1250.6	378.6	4826	1.27	96993	26.9
2034	0	103298	742023	65.6	3.2	3522	103298	742023	65.8	3.2	232.3	1053	232.4	11.3	1289.4	378.6	4826	1.27	103298	28.6

N O T E S

Column No.	Explanation
(1)	Debt sevice per Commerce Loan Agreement.
(2)	Estimated by APA and inflated at the assumed general inflation rate (6.5% per year).
(3)	Other power production costs of the Participants including diesel generation and transmission (estimated by R. W. Beck and Associates).
(4)	(Col.(1)+Col.(2)+Col.(3))/Col.(15)/10. Total production costs with the Projects.
(5)	Discounted at 6.5% per year.
(6)	Per January 23, 1985, memorandum from the Four-Dam Pool to the APA Board of Directors - Tab D.
(7)	Same as Col.(2).
(8)	Same as Col.(3).
(9)	(Col.(6)+Col.(7)+Col.(8))/Col.(15)/10. Total production costs with the Projects.
(10)	Same as Col.(5).
(11)	Weighted average "avoided cost" of Participants and includes some fixed costs. Estimated by R. W. Beck and Associates.
(12)	Existing debt service of Participants. Estimated by R. W. Beck.
(13)	Col.(12)/Col.(15)/10 + Col.(11). Total production costs without the Projects.
(14)	Same as Col.(5).
(15)	Total generation of Participants including the Projects and other generation. Estimated by R. W. Beck.
(16)	Generation of Projects utilized by the Participants. Estimated by the Participants.
(17)	Per proposal by the Participants utilizing 4.0% interest on loans.
(18)	Col.(17)/Col.(16)/10.
(19)	Same as Col.(2).
(20)	(Col.(17)+Col.(19))/Col.(16)/10. Project costs only and CANNOT be compared with Cols. (4), (9), and (13).

	PARTICIPANTS' TOTAL PRODUCTION COSTS								PROJECT COSTS ONLY		
	APA PROPOSAL		4 DP PROPOSAL		ALT. COSTS						
YEAR	NOMINAL (C/kWh)	1986$ (C/kWh)	NOMINAL (C/kWh)	1986$ (C/kWh)	NOMINAL (C/kWh)	1986$ (C/kWh)	SW AVG (C/kWh)	ANCHORAGE (C/kWh)	APA	4-DP (5.85%)	4-DP (4.00%)
1985											
	7.4	7.4	6.1	6.1	10.3	10.3	6.5	5.4	7.0	5.0	4.9
	8.3	7.8	6.4	6.0	11.3	10.6	6.9	5.7	8.3	5.3	5.0
	9.0	8.0	6.7	5.9	11.8	10.4	7.4	6.1	9.3	5.7	5.3
	9.4	7.8	7.1	5.9	12.6	10.4	7.9	6.6	9.7	6.1	5.5
1990	9.9	7.7	7.6	5.9	13.3	10.4	8.4	6.9	10.1	6.6	5.7
	10.3	7.5	7.9	5.8	14.4	10.5	9.0	7.3	10.4	6.7	5.8
	10.6	7.3	8.2	5.6	15.3	10.5	9.7	8.1	10.4	6.8	5.9
	10.8	7.0	8.5	5.5	16.3	10.5	13.4	12.4	10.4	6.9	6.0
	11.2	6.7	8.9	5.4	17.3	10.6	14.0	12.8	10.4	7.0	6.1
1995	11.6	6.6	9.2	5.2	20.0	11.3	14.7	13.5	10.6	7.1	6.1
	12.4	6.6	9.9	5.3	21.3	11.3	15.8	14.4	11.0	7.2	6.3
	13.2	6.6	10.6	5.3	22.5	11.2	19.2	18.1	11.4	7.4	6.5
	14.1	6.6	11.4	5.4	24.0	11.3	19.9	18.6	11.8	7.5	6.6
	15.0	6.6	12.3	5.4	25.6	11.3	20.9	19.2	11.9	7.7	6.8
2000	15.9	6.6	13.3	5.5	27.5	11.4	21.8	20.0	12.0	7.9	7.0
	16.9	6.6	14.4	5.6	29.3	11.4	22.9	20.7	12.1	8.1	7.2
	18.0	6.6	15.6	5.7	31.2	11.4	27.7	25.9	12.3	8.3	7.4
	19.2	6.6	17.0	5.8	33.2	11.4	28.8	26.6	12.5	8.6	7.7
	20.2	6.5	18.0	5.8	35.3	11.4	30.4	27.9	12.8	8.9	8.0
2005	21.2	6.4	19.1	5.8	37.6	11.4	31.8	28.8	13.0	9.2	8.3
	22.3	6.3	20.3	5.8	40.0	11.4	33.5	30.1	13.3	9.5	8.6
	23.6	6.3	21.6	5.8	42.6	11.4	36.5	32.8	13.6	9.9	9.0
	24.9	6.2	23.0	5.8	45.4	11.4	41.4	37.8	13.9	10.2	9.3
	26.4	6.2	24.6	5.8	48.3	11.3	44.5	40.6	14.2	10.6	9.7
2010	28.0	6.2	26.3	5.8	51.4	11.3	46.9	42.3	14.5	11.0	10.1
	29.8	6.2	28.1	5.8	54.7	11.3	49.9	44.8	14.9	11.4	10.5
	31.7	6.2	30.1	5.9	58.3	11.3	56.3	51.3	15.3	11.8	10.9
	33.8	6.2	32.2	5.9	62.1	11.3	59.0	53.1	15.6	12.3	11.4
	36.0	6.2	34.5	5.9	66.1	11.3	62.5	55.8	16.1	12.8	11.9
2015	38.4	6.2	37.0	6.0	70.4	11.3	65.7	58.0	16.5	13.3	12.4
	39.5	6.0	38.1	5.8	74.9	11.3			17.0	13.8	12.9
	40.6	5.8	39.3	5.6	79.8	11.3			17.4	14.4	13.5
	41.8	5.6	40.5	5.4	84.9	11.3			18.0	14.9	14.0
	43.0	5.4	41.8	5.2	90.5	11.3			18.5	15.6	14.6
2020	41.6	4.9	43.1	5.1	96.3	11.3			12.6	16.2	15.3
	43.0	4.7	44.4	4.9	102.6	11.3			13.3	16.9	15.9
	44.4	4.6	45.8	4.7	109.2	11.3			14.0	17.5	16.6
	45.9	4.5	47.2	4.6	116.3	11.3			14.7	18.3	17.4
	47.4	4.3	48.7	4.5	123.9	11.3			15.4	19.0	18.1
2025	49.0	4.2	49.3	4.2	131.9	11.3			16.2	17.2	17.6
	50.6	4.1	50.9	4.1	140.5	11.3			17.1	18.0	18.3
	52.2	4.0	52.6	4.0	149.6	11.3			17.9	18.9	19.2
	54.0	3.8	54.3	3.9	159.3	11.3			18.8	19.7	20.1
	55.7	3.7	56.1	3.7	169.6	11.3			19.9	20.8	21.2
2030	57.6	3.6	57.9	3.6	180.7	11.3			21.2	22.1	22.5
	59.5	3.5	59.8	3.5	192.4	11.3			22.6	23.5	23.9
	61.4	3.4	61.7	3.4	204.9	11.3			24.1	25.0	25.3
	63.5	3.3	63.7	3.3	218.2	11.3			25.6	26.5	26.9
			[illegible]	3.2	232.4	11.3			27.3	28.2	28.6

(3) access for the line that would be installed with loan proceeds;
(4) availability of other utility service in the area; and
(5) the economic feasibility of the extension of electric service with the proceeds of the loan. (§ 1 ch 118 SLA 1981)

Article 9. Energy Program for Alaska.

Section
380. Program established
382. Power development fund established
384. Use of fund balance
386. Investment of fund
388. Allotment to projects
390. Reappropriation of fund balance
392. Lapse of excess appropriations
396. Operation of power project
398. Sale of power from power project
400. Energy conservation
410. Continuing appropriation for Susitna River hydroelectric project [Repealed effective June 30, 1991]
420. Continuing appropriation for Bradley Lake hydroelectric project [Repealed effective June 30, 1988]
425. Definitions

Sec. 44.83.380. Program established. (a) The energy program for Alaska is established. The program shall be administered by the Alaska Power Authority.

(b) The energy program for Alaska is a program by which the authority may acquire or construct power projects with money appropriated by the legislature to the power development fund established in AS 44.83.382. A power project may be acquired or constructed as part of the energy program for Alaska only if the project is submitted to and approved by the legislature in accordance with procedures set out in AS 44.83.177 — 44.83.187.

(c) The provisions of AS 36.10.010 — 36.10.125 apply to power projects constructed by the authority under AS 44.83.380 — 44.83.425. (§ 1 ch 118 SLA 1981)

Revisor's notes. — Enacted as AS 44.83.400. Renumbered in 1981.

Sec. 44.83.382. Power development fund established. (a) A power development fund is established in the Alaska Power Authority to carry out the purposes of the energy program for Alaska (AS 44.83.380 — 44.83.425).

(b) The fund includes

(1) money appropriated to it by the legislature; and

(2) *[Repealed, § 27 ch 89 SLA 1983.]* (§ 1 ch 118 SLA 1981; am § 27 ch 89 SLA 1983)

Revisor's notes. — Enacted as AS 44.83.410. Renumbered in 1981.

Effect of amendments. — The 1983 amendment, repealed paragraph (2) of subsection (b).

Sec. 44.83.384. Use of fund balance. (a) The fund may be used by the authority to provide money for

(1) reconnaissance and feasibility studies and power project finance plans prepared under AS 44.83.177 — 44.83.181;

(2) the cost of a power project, including but not limited to costs of acquiring necessary licenses, preparing engineering designs, obtaining land, and constructing the power project;

(3) the defeasance of bonds, or the payment of debt service on loans for or on an issue of bonds sold in connection with a power project;

(4) the cost of operating and maintaining power projects; and

(5) debt service on power projects.

(b) Money in the fund may be used under (a) of this section only for a power project that

(1) is economically feasible; and

(2) provides the lowest reasonable power cost to utility customers in the market area for the estimated life of the power project, whether operated by itself or in conjunction with other power projects in the market area, and that operates or will operate on one or more of the following:

(A) renewable energy resources, including but not limited to hydroelectric power, wind, biomass, geothermal, tidal or solar energy, or a method that uses temperature differentials or other physical properties of the ocean;

(B) coal or peat;

(C) energy derived from waste heat; or

(D) fossil fuel, including oil or natural gas.

(c) Notwithstanding (b)(1) of this section and AS 44.83.396 — 44.83.398, the fund may be used by the authority to provide money for the cost of a power project that is or was either constructed or owned by the United States government if the requirements of this subsection are met. The provisions of AS 44.83.177 — 44.83.187 do not apply to a power project financed under this subsection. The authority may use money in the fund for the cost of a power project under this subsection if

(1) the legislature enacts a law approving the project;

(2) the office of management and budget in the Office of the Governor reviews a feasibility study and a plan of finance for the project and determines that the feasibility study complies with the requirements for a feasibility study submitted under AS 44.83.181(b) and that the plan of finance complies with the requirements for a plan of finance submitted under AS 44.83.181(c); and

(3) the project meets the other requirements of this chapter. (§ 1 ch 118 SLA 1981; am § 12 ch 133 SLA 1982; am § 28 ch 63 SLA 1983; am §§ 14, 15 ch 89 SLA 1983)

Revisor's notes. — Enacted as AS 44.83.420. Renumbered in 1981.

Effect of amendments. — The 1982 amendment added subsection (c).

The first 1983 amendment, substituted "office of management and budget" for "division of budget and management" in paragraph (c)(2).

The second 1983 amendment, rewrote paragraph (1) of subsection (b) and substituted "AS 44.83.396 — 44.83.398" for "AS 44.83.394 — 44.83.398" and "or was either constructed or owned" for "constructed and owned" in the first sentence of subsection (c).

Sec. 44.83.386. Investment of fund. The Department of Revenue shall invest the money in the fund in accordance with AS 37.10.070 and 37.10.075. The Department of Revenue shall provide money in the fund to the authority only after costs have been incurred or amounts in the fund have been otherwise obligated under contracts for the acquisition and construction of a project. Amounts that have been obligated, but for which costs have not yet been incurred, may be segregated by the Department of Revenue or transferred to the authority only with the prior approval or agreement of the commissioner of revenue. Interest received on money that is segregated or transferred under this section must be deposited in the general fund. (§ 1 ch 118 SLA 1981; am § 16 ch 89 SLA 1983)

Revisor's notes. — Enacted as AS 44.83.430. Renumbered in 1981.

Effect of amendments. — The 1983 amendment, substituted the language beginning "costs have been incurred" for "a cost for a project is incurred" at the end of the second sentence and added the third and fourth sentences.

Sec. 44.83.388. Allotment to projects. (a) The authority shall maintain records of power project allocations from the fund for each power project

(1) approved in accordance with AS 44.83.185; and

(2) for which an allocation is made from an appropriation made by the legislature without specifying an appropriation to a project.

(b) Income earned from investment of money appropriated to the fund shall be deposited in the general fund and may be appropriated to the fund by the legislature. (§ 1 ch 118 SLA 1981)

Revisor's notes. — Enacted as AS 44.83.440. Renumbered in 1981.

Sec. 44.83.390. Reappropriation of fund balance. (a) If a power project designated by the legislature by law is not constructed, the amount appropriated to it may be reappropriated to other power projects by the legislature.

(b) The legislature may reappropriate money under (a) of this section only for a power project that is economically feasible under AS 44.83.181(b) and only if the project will serve the market area that would have been served by the power project designated by the legislature and not constructed. (§ 1 ch 118 SLA 1981)

Revisor's notes. — Enacted as AS 44.83.450. Renumbered in 1981.

Sec. 44.83.392. Lapse of excess appropriations. If at the end of construction of a power project appropriations for the power project exceed the amount required for construction of it, the excess lapses into the general fund. (§ 1 ch 118 SLA 1981)

Revisor's notes. — Enacted as AS 44.83.460. Renumbered in 1981.

Sec. 44.83.394. Revenue requirements. [Repealed, § 27 ch 89 SLA 1983.]

Sec. 44.83.396. Operation of power project. (a) A power project that is acquired or constructed as part of the energy program for Alaska is owned, and shall be administered, by the authority.

(b) When a power project has been acquired or constructed by the authority, the project may be operated for the authority under a contract or lease entered into by a qualified utility and the authority.

(c) The authority shall enter into a contract or lease under reasonable terms and conditions to permit the applicant utility to operate the power project when the applicant utility is the only wholesale power customer to be served directly by the power project unless the authority determines a utility making application for a contract or lease to operate a power project is not a qualified utility or is not capable of operating that power project efficiently and in a manner that is consistent with national standards for the industry and with agreements with bondholders.

(d) The authority shall adopt regulations to determine the manner of selecting a qualified utility to operate a power project under a contract or lease when there is more than one wholesale power customer to be served directly by the power project.

(e) When the authority permits a power project to be operated by a qualified utility under a contract or lease, the authority shall

(1) review and approve the annual budget for the operation and maintenance of the power project; and

(2) assure that the project is being operated efficiently and in a manner that is consistent with national standards for the industry and agreements with bondholders. (§ 1 ch 118 SLA 1981; am §§ 17 — 19 ch 89 SLA 1983)

Revisor's notes. — Enacted as AS 44.83.480. Renumbered in 1981.

Effect of amendments. — The 1983 amendment, deleted "by the state" following "is owned" in subsection (a), inserted "a qualified utility or is not" near the end of subsection (c), added the language beginning "efficiently and in a manner that is consistent" to the end of subsection (c), added "and" to the end of paragraph (1) of subsection (e), and added "and agreements with bondholders" to the end of paragraph (2) of subsection (e).

Sec. 44.83.398. Sale of power from power project. (a) The authority shall sell power produced from power projects acquired or constructed under the energy program for Alaska. For purposes of this section, Lake Tyee, Swan Lake, Solomon Gulch, and Terror Lake hydroelectric facilities are considered to be one power project. This power project is referred to as the initial project

(b) The authority shall establish a wholesale power rate structure applicable to sales of power to the customers of a power project as follows:

(1) The authority shall establish and maintain a separate wholesale power rate applicable to each power project that it has acquired or constructed under the energy program for Alaska, other than a project described in (f) of this section. The wholesale power rate established by the authority for the initial project shall be a rate calculated under this paragraph except that the portion of the rate applicable to (A) and (C) of this paragraph shall be adjusted for the hydroelectric facilities in the initial project as set out in (3) of this subsection. The wholesale power rate shall be computed by the authority annually, or more frequently as may be necessary, and shall equal the rate that the authority estimates is necessary to produce revenue that is sufficient to pay

(A) operation, maintenance, and equipment replacement costs of the power project;

(B) the power project's proportionate share of the debt service on state loans and bonds for all power projects in the energy program for Alaska, determined in accordance with (g) of this section;

(C) safety inspections and investigations of the power project by the authority.

(2) *[Repealed, § 7 ch 169 SLA 1984.]*

(3) For the purposes of determining amounts to be allocated to each hydroelectric facility in the initial project under (1)(A) and (1)(C) of this subsection, the authority shall determine for each hydroelectric facility its individual operation, maintenance, equipment replacement, safety inspection, and investigation costs.

(c) The authority shall transmit all the money that it receives under (a) of this section to the commissioner of revenue for deposit in the state general fund except for money it has pledged or otherwise covenanted to secure bonds.

(d) *[Repealed, § 8 ch 169 SLA 1984.]*

(e) After determining the wholesale power rate for a power project under the provisions of this section, the authority may adjust the rate or change the rate provisions to insure that the revenue derived from that power project and the aggregate revenues of the authority will be adequate to comply with the rate covenants and other agreements contained in any trust indenture or trust agreement entered into by the authority for the security of the holders of bonds issued to finance power projects in the energy program for Alaska. The authority may agree with a purchaser of power to limit rate increases caused by debt service payable by the authority on subsequent projects.

(f) The provisions of (b) of this section do not apply to an intertie that is authorized as a separate project under AS 44.83.380. The authority shall establish and maintain separate power rate schedules applicable to each intertie that it has acquired or constructed as a separate power project under the energy program for Alaska. The power rate schedules shall produce sufficient revenue from utilities connected by the intertie to pay (1) operation, maintenance, and equipment replacement costs of the intertie; (2) debt service of the intertie; and (3) safety inspections and investigations of the intertie by the authority. If the authority determines that an intertie has ceased to function as a separate project and has become a part of one or more other power projects and has become a part of one or more other power projects as a transmission line, the power rate schedules established under this subsection shall be terminated and a wholesale power rate applicable to the former intertie shall be calculated under (b) of this section for the project or projects of which it has become a part.

(g) For the purposes of (b)(1)(B) of this section, a power project's proportionate share of debt service on state loans and bonds for all power projects in the energy program for Alaska is equal to the state's investment in the power project divided by the state's investment in all power projects in the energy program for Alaska and multiplied by the debt service on state loans and bonds for all power projects in the energy program for Alaska. In this subsection

(1) "state's investment in the power project" includes all state money invested in a power project, including loans, grants, and proceeds from bonds, less the principal repayments on the project's proportionate share of debt service on state loans and bonds;

(2) "state's investment in all power projects in the energy program for Alaska" includes all state money invested in the power projects, other than interties, in the energy program for Alaska, including loans, grants, and proceeds from bonds, less the principal repayments on bonds and state loans issued for the power projects.

(h) Notwithstanding (g) of this section, in the 1983 state fiscal year the proportionate share of debt service under (b) of this section, expressed as a rate, for a power project for which a construction contract has been awarded before June 25, 1982 may not exceed the average debt service component of the wholesale power rate for all power projects in the energy program for Alaska. The limit imposed by this subsection shall be increased in the 1984 state fiscal year to four percent above the average debt service component of the wholesale power rate for all power projects in the energy program for Alaska and by an additional four percent above that average in each succeeding state fiscal year. If application of this subsection results in the production of insufficient revenue to pay the total debt service for all projects in the energy program for Alaska, a project that does not have its share of debt service limited under this subsection shall be subject to a rate

in addition to the rate established under (b) of this section. The additional rate is the rate that the authority estimates is necessary to produce revenue that is sufficient to pay the difference between the total debt service for all projects in the energy program for Alaska and the revenue actually produced to pay that debt service, multiplied by a fraction whose numerator is the total cost of the project and whose denominator is the total cost of all of the projects that are subject to the additional rate. In this subsection, "projects in the energy program for Alaska" does not include an intertie that is authorized as a separate project as described in (f) of this section.

(i) The authority may place in a separate interest bearing account money appropriated to the authority as a loan for the purpose of meeting the operating expenses of a facility in the initial project. The money may be used to replace amounts which were expected to be paid by a utility potentially served by a facility in the initial project, which has not entered into a power sales agreement with the authority. Repayment of the amount loaned must be made from revenues attributable to power sales from that facility, as limited by the terms of power sales agreements with power purchasers from that facility. A loan made in accordance with this subsection is not a state loan for purposes of calculating the wholesale power rate under (b)(1) of this section. (§ 1 ch 118 SLA 1981; am §§ 13 — 16 ch 133 SLA 1982; am §§ 20 — 23 ch 89 SLA 1983; am § 125 ch 6 SLA 1984; am §§ 2-8 ch 169 SLA 1984)

Revisor's notes. — Enacted as AS 44.83.490. Renumbered in 1981.

Effect of amendments. — The 1982 amendment, in subsection (b), substituted "a power project" for "the power project" in the introductory language, substituted "separate" for "single" and "each power project" for "all power projects" in the first sentence of paragraph (1), added "other than a project described in (f) of this section" to the end of the first sentence of paragraph (1), inserted "or more frequently as may be necessary" in the introductory language of the second sentence of paragraph (1), substituted "power project" for "power projects" in subparagraph (1)(A) and (C), added "the power project's proportionate share of the" to the beginning of subparagraph (1)(B), substituted the language beginning "on state loans and bonds" for "of the power projects" in subparagraph (1)(B), substituted "separate" for "single" and "each power project that is" for "all power projects that it has" in the first sentence of paragraph (2), inserted "or more frequently as may be necessary" in the introductory language of the second sentence of paragraph (2), substituted "power project" for "power projects" in subparagraph (2)(A) and (2)(B)(iii), and substituted the present provisions of subparagraph (2)(B)(ii) for the former provisions, which read: "debt service of power projects by the authority; and." In subsection (c), the amendment substituted "under (a) of this section" for "under (b) of this section" and "money it has pledged to secure bonds in accordance with contracts with bondholders" for "the money it receives under (b)(1)(A) and (B) and (b)(2)(B)(i) and (ii), or the money it would have received under (b)(1)(A) and (B) and (b)(2)(B)(i) and (ii) of this section if those items had been used in part to establish the wholesale power rate in effect at the time the money is received by the authority." In subsection (e), the amendment substituted "a wholesale" for "the wholesale" and "or (f)" in the first sentence and added the second sentence. The amendment also added subsections (f) — (h).

The 1983 amendment, substituted "July 1, 1991" for "July 1, 1986" near the beginning of paragraph (2) of subsection (b), substituted "or otherwise covenanted

to secure bonds" for "to secure bonds in accordance with contracts with bondholders" at the end of subsection (c), rewrote subsection (e), and added the last sentence of subsection (h).

The first 1984 amendment made a technical change in the last sentence in subsection (f).

The second 1984 amendment added subsection (i), repealed former paragraph (2) of subsection (b), relating to a separate wholesale power rate beginning July 1, 1991, and repealed former subsection (d), relating to industrial consumer rates. The 1984 amendment also, in subsection (a), deleted former paragraphs (1) and (2) and the former last sentence in the introductory paragraph, relating to a utility that purchases power produced by a power project of the authority, and, in the remaining language, added the last two sentences; in subsection (b), substituted "the customers" for "its customers at the busbar" in the introductory language, inserted the second sentence in the introductory paragraph of paragraph (1), and added paragraph (3); in subsection (e), added the second sentence and substituted "energy program" for "Energy Program" in the first sentence; and changed the internal reference in the first sentence in the introductory paragraph of subsection (g).

Sec. 44.83.400. Energy conservation. The authority shall ensure

(1) that communities that benefit from the energy program for Alaska implement cost-effective energy conservation measures for residences, commercial and public buildings, and industries; and

(2) that communities shall fulfill their responsibilities under (1) of this section by cooperating with state agencies concerned with development and conservation of energy, including but not limited to

(A) the Alaska Public Utilities Commission;

(B) the Department of Community and Regional Affairs; and

(C) the division of business loans, Department of Commerce and Economic Development. (§ 1 ch 118 SLA 1981; am § 5 ch 79 SLA 1983)

Revisor's notes. — Enacted as AS 44.83.500. Renumbered in 1981.

Effect of amendments. — The 1983 amendment, substituted "Department of Community and Regional Affairs" for "division of energy and power development, Department of Commerce and Economic Development" in paragraph (2)(B).

Sec. 44.83.410. Continuing appropriation for Susitna River Hydroelectric project. [Repealed effective June 30, 1991] The sum of $100,000,000 is appropriated on July 1, 1984 and the sum of $200,000,000 is appropriated on July 1 of each subsequent fiscal year from the general fund to the authority for deposit in the power development fund (AS 44.83.382) for the purpose of equity investment in, and rate stabilization for, the Susitna River hydroelectric project. (§ 314 ch 171 SLA 1984; r § 317 ch 171 SLA 1984)

Postponed repeal. — This section is repealed effective June 30, 1991.

Editor's notes. — Section 316, ch. 171, SLA 1984, provides that the appropriations made in §§ 313—315 and 319 of ch. 171, SLA 1984, which enacted this section, are not one-year appropriations and do not lapse under AS 37.25.010.

Sec. 44.83.420. Continuing appropriation for Bradley Lake hydroelectric project. [Repealed effective June 30, 1988.] The sum

of $50,000,000 is appropriated on July 1, of each fiscal year from the general fund to the authority for deposit in the power development fund (AS 44.83.382) for the purpose of equity investment in, and rate stabilization for, the Bradley Lake hydroelectric project. (§ 314 ch 171 SLA 1984; r § 318 ch 171 SLA 1984)

Postponed repeal. — This section is repealed effective June 30, 1988.

Editor's notes. — Section 316, ch. 171, SLA 1984, provides that the appropriations made in §§ 313—315 and 319 of ch. 171, SLA 1984, which enacted this section, are not one-year appropriations and do not lapse under AS 37.25.010.

Sec. 44.83.425. Definitions. In AS 44.83.380 — 44.83.425,

(1) "bus bar" means the substation that serves as the delivery point from the generation and transmission system of the authority to the transmission and distribution system of the utility;

(2) "debt service" means the amounts covenanted with respect to, or pledged to pay, bonds under a trust agreement securing bonds;

(3) "fund" means the power development fund established by AS 44.83.382;

(4) "industrial consumer" means a customer of a utility which customer has a peak power demand in excess of 500 kilowatts and uses the power principally for

(A) manufacturing;

(B) pipeline transportation;

(C) the recovery or processing of minerals;

(D) the processing of timber, agricultural, or seafood products or their by-products; or

(E) the operation of facilities owned by the federal government;

(5) "qualified utility" means an electric utility that is certified by the Alaska Public Utilities Commission to serve all or part of a market area that is served or will be served by the power project, and that the authority determines is capable of operating and maintaining the power project. (§ 1 ch 118 SLA 1981; am § 24 ch 89 SLA 1983)

Revisor's notes. — Enacted as AS 44.83.510. Renumbered in 1981.

Effect of amendments. — The 1983 amendment, rewrote the definition of "debt service" in paragraph (2).

Chapter 85. Alaska Municipal Bond Bank Authority.

Section	Section
05. Legislative findings	70. Staff
10. Legislative policy	80. Powers of bond bank authority
20. Municipal Bond Bank Authority	90. Limitations
30. Membership and vacancies	95. Regulations
40. Officers, quorum, and meetings	100. Annual report and audit
50. Bonding of members	110. Annual budget
60. Compensation and expenses	120. Care and custody of bonds

Article 9. Power Development Revolving Loan Fund.

Section	Section
600. Creation of fund	620. Loan terms
610. Powers and duties of department in administering the fund	630. Definitions

Sec. 44.33.600. Creation of fund. (a) There is established in the Department of Commerce and Economic Development the power development revolving loan fund to carry out the purpose of AS 44.33.600 — 44.33.630. The fund may be used for no other purpose.

(b) The fund consists of

(1) appropriations to the fund by the legislature;

(2) repayments of principal to the fund; and

(3) income from investment of money in the fund and from loans made from the fund. (§ 1 ch 169 SLA 1984)

Sec. 44.33.610. Powers and duties of department in administering the fund. (a) The department may make a loan from the power development revolving loan fund to the Alaska Power Authority for the purpose of financing a power project acquired or constructed by the authority under the energy program for Alaska (AS 44.83.380 — 44.83.425). Repayment of a loan from the fund must be made with the proceeds from the sale of power from projects in the energy program for Alaska. Except as provided in AS 44.83.398(i), the payments required to be made by the authority on a loan from the fund constitute debt service for the purpose of calculating the wholesale power rate in AS 44.83.398(b)(1).

(b) After completion of a final plan of finance and approval of a project under AS 44.83.185(c), a loan may be made from the fund for

(1) the cost or a portion of the cost of final design, acquisition, and construction of a power project;

(2) defeasance or payment of bonds or notes of the authority issued for a power project;

(3) the establishment of a reserve fund for renewals and replacements for the operation of a completed power project; and

(4) any other project related expenses including those described in AS 44.83.398(i). (§ 1 ch 169 SLA 1984)

Sec. 44.33.620. Loan terms. (a) A loan from the fund must be repaid in accordance with the terms that the department determines to be appropriate. In establishing the terms, including provision for a return to the state of an amount in excess of the principal amount of the loan, the department shall consider the revenue that the authority could reasonably derive from the sale of power from the projects based upon

(1) the market rate of interest for a loan of comparable size and duration at the time the loan is made; and

(2) the estimated costs of alternative sources of energy generation for utilities purchasing power from a project financed with a loan from the fund.

(b) The department may agree with the authority to defer repayment of a loan. However, the loan must be repaid in full during the period of the loan agreement.

(c) A loan to the authority from the fund may not exceed 50 years. (§ 1 ch 169 SLA 1984)

Sec. 44.33.630. Definitions. In AS 44.33.600 — 44.33.630

(1) "authority" means the Alaska Power Authority;

(2) "department" means the Department of Commerce and Economic Development;

(3) "fund" means the power development revolving loan fund;

(4) "power project" means a project acquired or constructed under the energy program for Alaska, AS 44.83.380 — 44.83.425. (§ 1 ch 169 SLA 1984)

Chapter 35. Department of Military and Veterans' Affairs.

Section	Section
10. Adjutant general	30. Construction of memorials to Alaska veterans
20. Duties of department	

Sec. 44.35.010. Adjutant general. The principal executive officer of the Department of Military and Veterans' Affairs is the adjutant general. (§ 15 ch 64 SLA 1959; am E.O. No. 58, § 20 (1984))

Effect of amendments. — The 1984 amendment inserted "and Veterans'."

Collateral references. — 53 Am. Jur. 2d, Military, and Civil Defense, §§ 4, 30, 33, 37.

57 C.J.S., Militia, § 11.

Sec. 44.35.020. Duties of department. The Department of Military and Veterans' Affairs shall

(1) conduct the military affairs of the state as prescribed by the Military Code; and

(2) cooperate with the federal government in matters of mutual concern pertaining to the welfare of Alaskan veterans, including establishing, extending, or strengthening services for veterans in Alaska. (§ 15 ch 64 SLA 1959; am E.O. No. 58, § 21 (1984))

Effect of amendments. — The 1984 amendment rewrote and restructured this section, which formerly read "The Department of Military Affairs shall conduct the military affairs of the state as prescribed by the Military Code."

Editor's notes. — For the Military Code of Alaska, see AS 26.05.

Collateral references. — 53 Am. Jur. 2d, Military, and Civil Defense, § 1 et. seq.

HB

2277

HOUSE RESOURCES COMMITTEE

PACKET CONTENTS:

CS HB 227 (Fisheries)

Letter-of-Intent (Special Committee on Fisheries)

Memorandum: Rep. Binkley

HB 227 (First Version)

Fiscal Notes:

Department of Public Safety = 0
Department of Labor = 0
Department of Fish and Game = 0
Department of Revenue = 0

Memorandum: Rep. Goll

Back-up Letters from Rep. Binkley

Regulations for Processor Surety

Alaska Statutes for Security pertaining to HB 227

Alaska State Legislature
House of Representatives
Special Committee on Fisheries

Juneau, Alaska 99811
Phone:
(907) 465-4924

Official Business

M E M O R A N D U M

February 4, 1986

TO: Irene Cashen
Chief Clerk

FROM: Representative Peter Goll
Chairman, House Special Committee on Fisheries

SUBJECT: Letter of Intent for CS HB227 (Fisheries)

LETTER OF INTENT
CSHB 227 (Fisheries)

This legislation is designed to help ensure that Alaska fishermen have some recourse when a fish processor or primary fish buyer fails to make promised payments for the delivery of raw fisheries resources. The effectiveness of this surety bond program is questionable unless fishermen are aware of how the program works.

The Fourteenth Alaska Legislature respectfully requests the Alaska Department of Labor to work closely with the Office of Commercial Fisheries Development, Alaska Department of Commerce and Economic Development in the development of an educational program for the surety bond program. These agencies should work through the Alaska Marine Advisory Program, commercial fishermen's organizations, Native groups, fish and game advisory committees and the news media reaching coastal Alaska and the fishing fleets.

HOUSE

COMMITTEE REPORT

(9)

Date referred: 2/5/86

FURTHER REFERRALS: FINANCE

DATE: 2/14/86

The RESOURCES Committee has considered HB 227

"An Act relating to fish processors and primary fish buyers."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[X] replace with CS HB 227 (Resources) [ ] same title [X] new title

and recommends Do Pass

[ ] further referral to the _____ Committee

and attaches: [X] letter of intent (Fisheries)
[ ] first fiscal note
[ ] new fiscal note
[3] zero fiscal notes

SIGNING DO PASS:

Herrmann Adelheid Herrmann

Wallis F. Kay Wallis

Thompson Dave Thompson

Pearce Irene Pearce

Jenkins Roger Jenkins

Cato Bette Cato

Shultz Dick Shultz

SIGNING OTHER RECOMMENDATIONS:

Sund John Sund no vote

Co-Chairman Adelheid Herrmann

STATE OF ALASKA

MEMBER
FINANCE COMMITTEE
SPECIAL COMMITTEE ON FISHERIES

POUCH V
JUNEAU ALASKA 99811
(907) 465-4737

PO BOX 1065
BETHEL ALASKA 99559
(907) 543-2922

REPRESENTATIVE JOHNE BINKLEY

Febuary 13, 1986

M E M O R A N D U M

To: House Resources Committee

From: Representative Johne Binkley

Re: House Bill 227

After numerous revisions since this bill was introduced on February 22, 1985, the House Special Committee on Fisheries passed HB 227.

House Bill 227 provides for an increased bond rate to $50,000 or $100,000 depending on previous final judgements filed against a fish processor or primary fish buyer. It attempts to address situations where the previous bond was inadequate to satisfy claims.

Operators who do not purchase fish or hire employees are exempt from the bonding requirements.

The bill requires those that were not in compliance with the bonding requirements and had not satisfied a final judgement, to post a bond at $100,000. In Quinhagak last year, 42 fishermen and 20 employees were owed an estimated $21,000 from a fish buyer who did not post a bond. In Elim about 16 fishermen were owed about $11,000. In Klawock one fish buyer was assessed one final judgement which ate up his $10,000 bond, other fishermen have filed against the fish buyer.

A letter of intent is attached to the bill to request the Department of Labor to work closely with the Department of Commerce and Economic Development to develop an educational program for fishermen and fishermen's groups throughout the state. This would be done using existing resources within these departments. A zero fiscal note is attached.

This bill would take effect immediately upon passage and signature of the Governor, and would apply towards the upcoming fishing season.

First Version

Introduced: 2/22/85
Referred: House Special Committee
on Fisheries, Resources and Finance

IN THE HOUSE BY BINKLEY

HOUSE BILL NO. 227

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to fish processors and primary fish buyers."

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

* Section 1. AS 16.10 is amended by adding new sections to read:

Sec. 16.10.285. NOTICE OF BONDED AND LICENSED OPERATORS. The Department of Fish and Game shall maintain a list of fish processors and primary fish buyers who have furnished to the department a written statement of intent to operate. The list shall specify whether the processor or buyer has complied with the security bond requirements of AS 16.10.290 - 16.10.296 and has been issued a valid Alaska Business License or Fisheries Business License by the Department of Revenue. The list shall note the processor's or buyer's standing, if any, with the Alaska Better Business Bureau and membership in a chamber of commerce in the State. The Department of Fish and Game shall, at the beginning of each commercial fishing season,

(1) publish the list in a newspaper of general circulation that serves each area of the state in which the fish processors and primary fish buyers have stated an intent to operate; and

(2) distribute copies of the list to the offices of local governments and village councils and to fishermen's associations in the areas of the state in which the fish processors and primary fish buyers have stated an intent to operate.

Sec. 16.10.286. INSPECTION OF LICENSES. Enforcement officers of the division of fish and wildlife protection shall regularly inspect

fish processors and primary fish buyers for possession of proper licenses.

* Sec. 2. AS 16.10.290(b) is amended to read:

(b) The amount of the bond shall be $100,000 [$10,000]. In lieu of the surety bond the fish processor or primary fish buyer may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner in the amount specified for the bond. If no claim is asserted under this section within two years from the date the bond, cash deposit or other security is filed, the term of the bond, cash deposit or other security shall be two years; if a claim has been asserted within two years, the term of the bond, cash deposit or other security shall be for five years.

* Sec. 3. AS 16.10.290(c) is amended to read:

(c) A person applying for a license as a fish processor or primary fish buyer who has less than $100,000 [$10,000] in lienable property in the state, with proof of the property satisfactorily made to the commissioner, shall file with the application a bond or other security as specified in this section. A [NO] bond is not required if the fish processor or primary fish buyer has more than $100,000 [$10,000] in lienable property as specified in this subsection. An appraiser from the area of the state in which the lienable property is located may be used to determine the value of the property for purposes of this subsection.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 227 (Fish)
Title : "An Act relating to fish processors and primary fish buyers..."

Sponsor : Binkley
Requestor : House Resources
Date of Request : 2/12/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Fish & Wildlife Protection

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Kathy Niles, Admin. Assistant — Phone : 465-4336
Division : Commissioner's Office — Date : 2/12/86

Approved by Commissioner : [signature] — Date : 2/12/86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Bill No. Committee Substitute for House Bill No. 227 (Fisheries)

Title "An Act relating to surety for collection of wages and payment."

Date February 6, 1986

Contact: Eileen Plate
465-2700
Robert J. Bacolas
465-4870

This bill provides for an increase in the bonding requirements for fish processors and primary fish buyers if the processors or buyers previous bonding was insufficient to satisfy judgments against it. Basically, the bill provides for bonding commensurate with the processor's or buyer's track record during previous bonding periods.

The provisions of this bill, therefore, appear to be an equitable solution to the fish processor and buyer bonding problem in that they provide for the increased bonding sanction to only be imposed on those processors and buyers who fail to meet their obligations.

This legislation would not have a fiscal impact on the Department of Labor.

APPROVED:

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS HB 227 (Fisheries)
Title : "An Act relating to fish processors & primary fish buyers

Sponsor : Binkley
Requestor : Hs Special Committee on Fisheries
Date of Request : 2/5/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Labor Standards & Safety

Components : Wage & Hour

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Bob Bacolas
Division : Labor Standards & Safety
Phone : 465-4870
Date : 2/5/86

Approved by Commissioner : Jim Robison
Agency : Labor
Date : 2/5/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/11/86

REQUEST

Bill/Resolution No. : CS HB 227(Fisheries)
Title : Fish processors and primary fish buyers

Sponsor : Binkley
Requestor : House Resources
Date of Request : 2/11/86

FISCAL DETAIL

Agency Affected : Fish and Game
BRU : Fisheries Resource Conservation

Components : Commercial Fisheries BRU and component

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Robert C. Clasby
Division : Commercial Fisheries
Phone : 465-4210
Date : 2/11/86

Approved by Commissioner : Owen Cattensworth
Agency : Fish and Game
Date : 2-11-86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25 SS

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Revenue	Public Services	HB227 / SB164	Binkley

DEPARTMENT POSITION

Neutral

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Sally Smith	2-27-85		3/4/85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
The Department of Labor	Fisheries Businesses
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Unknown	Unknown

FISCAL IMPACT ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Unknown

ANALYSIS OF BILL/PROGRAM EFFECTS

This bill raises the bond amount on the fisheries surety bond which guarantees wages for processing workers and the purchase price of fish to fishermen.

The raise in bonding amount will raise the bond premium which could adversely impact smaller fisheries.

AMENDMENTS PROPOSED

We suggest that the bond amount be based on a percentage of the dollar amount of fish purchases. This could be set on the prior year purchases or current year estimate.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

01-005 (Rev. 12/83)

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB227

Title: An Act relating to fish processors and primary fish buyers

Sponsor: Binkley

Requestor: HSC on Fisheries

Date of Request: 2-27-85

FISCAL DETAIL

Agency Affected: Department of Revenue

Program Category Affected: Revenue Collection and Management

BRU, Program or Suoprogram(s) Affected: Public Services - Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 SUPPLIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS	0	0	0	0	0	0
800 MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Prepared By: Sally Smith, Director Sally Smith Phone: 465-2392

Division: Public Services Date: February 27, 1985

Approved by Commissioner: [signature] Date: 3/1/85

Agency: Department of Revenue

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

M E M O R A N D U M

January 23, 1986

TO: Members
House Special Committee on Fisheries

FROM: Representative Peter Goll

SUBJECT: CSHB 227 (Fish Buyers' Bonds)

Attached is a committee substitute for House Bill 227 (An Act relating to surety for collection of wages and payment). As you may recall, we decided last session to hold the original legislation over the interim for additional work.

Under existing law (AS 16.10.290), fish buyers and processors are required to post a $10,000 bond with the Department of Labor conditioned upon the promise to pay commercial fishermen for raw seafood, and wages owed processing workers. In response to reports that many fishermen in Western Alaska were not being paid by fish buyers, Representative Binkley proposed in HB 227 to raise the amount of the bond to $100,000.

The legislation was held for additional work when it became clear during committee hearings that the higher bond amount would cause significant problems for smaller seafood processors and fish buyers. The Senate Resources Committee made a similar determination in regard to companion legislation (SB 165).

Scores of fishermen from such widespread locations as Ruby, Haines and Klawock reported difficulties in obtaining payments for deliveries of salmon during the 1985 fishing season.

The proposed committee substitute was worked out in conjunction with staff to the Senate Resources Committee. It would raise the amount of the required bond only for those fish buyers and seafood processors who have final judgments levied against their bonds or other security deposits. The amount of the bond would be raised to $50,000 or $100,000 according to the amount of judgments.

The draft substitute is designed to ensure that operators who fail to pay their fishermen are required to post additional security for future purchases, while those who have a clean record are not. The proposed committee substitute would avoid undue impacts on smaller buyers.

Existing statutes provide for a waiver of the bond requirements for processors who do not purchase fish from others or hire non-family members. Section three of the committee substitute would change the waiver to an exemption so these "mom and pop" operations no longer have to apply to the Department of Labor for the waiver. If the measure is signed into law, such operators would only have to sign a form saying they qualify for the exemption when they obtain their tax security bonds from the Department of Revenue. The Department of Labor expects to receive about 300 such waiver applications this year.

The proposed substitute also provides for an immediate effective date to allow implementation for the 1986 fishing season.

HB22 file

City of Quinhagak
P.O. Box 58
Quinhagak, Alaska 99655
March 26.1985

APR 1

Representative Johne Binkley
Pouch V
Juneau, Alaska 99801

Dear Johne,

The Quinhagak City Council support the increase of the bond rate of primary fish buyers and processors. The main problem of some fish buyers is they often don't have the funds to pay the fishermen on time. The average individual fisherman earns about $6.000.00 in a commercial season, and that money is of a great need to the person to pay some bills that accumulated over the winter. We would like the situation remedied, so that the fishermen would be assured to get paid on time for what they bargained for.

Thank you for your time.

Sincerly,
Albert Foster for Albert Foster
Albert Foster, Mayor

cc: file

March 20, 1985

Representative Johne Binkley
Pouch V
Juneau, AK 99811

Dear Johne:

Thank you for the opportunity to respond to this issue.

First of all, I find fault in the proposal that the surety bond be necessary for each location. For example, last year we leased a facility in Togiak where we purchased and dressed out the fish. The expense necessary to fly product elsewhere for freezing and packaging, encourages me to defend against yet another expense. Does it mean our Bethel operation would have to add a bond to buy at Goodnews or Platinum? What if we buy at both places and fly from both, is that one or two locations?

Any attempt to have the bond amount fluctuate from year to year, might encourage unrealistic projections or be complicated by late paying methods of reward to fishermen, such as "bonuses".

I favor the plan proposed to recognize processors that have demonstrated reliability over the years, and some incentive be present for them to continue business in Alaska. The suggested amount of $20,000. is acceptable and appreciated.

I would guess that enforcement would be easy in some fisheries and very difficult in others. It would be necessary for their presence most of a season since buyers might move in at any time during the course of a season.

I'm hopeful this letter is timely in reaching you.

Sincerely,

Tom Hyland
General Manager

KEMP-PAULUCCI SEAFOODS, INC. 4832 W. SUPERIOR STREET DULUTH MINN. 218-624-00
PO BOX 6506 55806

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
POST OFFICE BOX 248
BETHEL, ALASKA 99559
TELEPHONE 543-2238

December 20, 1984

Bob Charles
Assistant to Rep. Johne Binkley
Bethel, Alaska

Re: Meeting of December 20

Dear Bob;

Thanks for the opportunity to meet with you personally about the needs which we see for legislative changes which could help the people on the Yukon-Kuskokwim Delta. Here are four suppestions which we can make to Rep. Binkley.

1. It is necessary to tighten restrictions on fish buyers who do business in Alaska in order to protect fishermen and other buyers.

Johne attended a meeting in Quinhagak in October where local fishermen discussed their problems caused by a fish buyer who received fish from them but did not pay for the fish. The buyer was Phil Lesher, and he has since filed for bankruptcy in Oregon. The bankruptcy papers show that Lesher had several court judgments against him. He owed money to other fishermen and other fish buyers. We had already learned that earlier in the year his bond had expired. Here are some things which might be done.

First, deny all operating rights to buyers who have outstanding fishermen's liens against them. This will not stop dishonest people who are buying fish in Alaska for the first time, but it will stop them from returning year after year unless they are willing to pay their debts.

It would work like this. Right now, fishermen who are owned money from a buyer can file a lien under AS 34.35.391. This is filed in the local recorder of deeds office. This section of the law could be amended to require the recorder of deeds to send copies of such liens to the Department of Fish and Game; the Department of Fish and Game would then deny approval of the Intent to Operate, and refuse to approve issuance of fish tickets. When the applicant showed that the liens had been released, then the Department would issue the necessary papers to buy fish in Alaska.

This system would help prevent deadbeats from getting receiving permissions to operate.

Second, the bond for fish buyers should be raised from $10,000 to $75,000. I do not know what current regulations are in this area, but I think that the Department of Fish and Game should evidence in advance that the fish buyer has paid in full the permiums for a bond which will be effective at least through December 31 of the current year. These two bonding modifications would help protect other fish buyers, as well.

2. The Commercial Fisheries Entry Commission or the State Legislature should make some rule to cover a situation where a permit holder dies leaving a minor to inherit the permit.

This situation is causing a lot of headaches in Alaska Legal Services. Typically, a young man who has a small child dies in an accident. Fither the man is divorced, widowed, or dies with his wife in the same accident; the permit holder and the mother of the child might not be married at all. In the absence of a surviving wife, the minor child is left as the only heir.

The net result is a mess. The child cannot fish with the permit because he or she is too young. The Commission will allow the permit to be transferred to somebody else on an emergency basis for only one year; this means that nobody can use the permit until the child is grown, except for that one year. The Superior Court appoints a personal representative for the deceased permit holder, who is authorized to take care of the decedent's property; however, the court does not want to hold the probate case open for 14 or 16 years whild the minor is growing up. The court wants to close the case within a year or two, and closing the case and the authority of the personal representative. The permit absolutely cannot be transferred with the promise that the buyer will return it at the end of a year; such restrictions are comepletely illegal. The only thing left for the family is to sell the limited entry permit, and, of course, nobody wants to do that. The permit is often the family's only source of income.

The law must be modified to allow the minor heir to take the permit when he or she is old enough, and to allow someone to use the permit while the minor is growing up. Often the permit is the family's only substantial asset, and its only means of earning a living. Some agency, either the court or the Commission, will have to bear the administrative burden of supervising the permit for possibly 18 years. However, it is more desirable for a state agency to alter its procedures than it is for the family to do with the permit.

My impression now is that there is enough work in the Bethel area to keep a second judge busy. I donnot know if part-time judicial positions can be created, but this might be considered.

Those are my suggestions. Again, thanks very much for the opportunity to talk with you.

Good luck in Juneau, and a Merry Christmas to you and Johne.

Very truly yours,

ALASKA LEGAL SERVICES CORPORATION

Mark Andrews

MA/fa

cc: Robert Hickerson, ALSC

April 12, 1985

Ms. Linda Schmitz
P. O. Box 47
Wrangell, Alaska 99929

Re: House Bill 227

Dear Ms. Schmitz:

I appreciate your taking time to write about House Bill 227 which would increase bonding amounts for fish processors and buyers.

I can assure you that the intent of HB 227 is not to stamp out small businesses. It's intent is to protect fishermen. The problem is that a lot of fishermen get ripped off by unscrupulous processors. What do you suggest we do to protect them?

We're just regular people like yourself. That's why we need input from the public. The reason we hold hearings through our statewide teleconference system on proposed legislation is to get input from people who are affected. The next time you're at a teleconference and you have an opinion on something, speak up--we want to hear from you.

The House Special Committee on Fisheries met again to consider HB 227 yesterday, and has decided to do further work on the bill during the interim months. Thank you for comments.

Sincerely,

Johne Binkley
Representative

cc: Senator Robert Ziegler, Jr.
Senator Richard Ellison
Representative Robin Taylor
Representative John Sund
Representative Peter Goll

April 2, 1985

Dear Mr. John Binkley,

I observed the March 29th teleconference having to do with your house bill 227 asking to change the surety bond requirements for fish processor, buyers from $10,000 to $100,000.

This deeply concerns me. I've lived in Wrangell for 31 years. I'm in the process of starting a business of buying, freezing and marketing our Alaskan prawns. I will be buying a maximum of 5,000 lbs of shrimp per month from 4 local fishermen. This involves one fishery and one process (freezing). A $10,000 bond is reasonable for a small volume business. However, it is not right for my small volume business to pay the same bond amount as the large (full scale) companies who deal in larger volume, various fisheries, different methods of processing and retail. (bate, gear, ice, etc.)

If the federal government were to impose a flat tax to be the same for every working person, regardless of income level; would this be constitutional?

Is it the intent of H.B. 227 to set forth laws to protect the fishermen?

Is it the intention of H.B. 227 to stamp-out small business?

I feel the needs of both the fishermen and the processor can be addressed in this bill.

We are all vulnerable to the fly-By-nights who leave the country with-out paying their dues.

Someone has to be held accountable and I'm confident good lawmakers such as yourself will find a means of doing this.

This Bill needs to be written allowing for input from Alaskans involved in the fisheries. I feel, applications for processor, buyer permits should be reviewed individually and seriously. All processor buyers should be bonded including those who pay cash. Bonding amounts should vary according to guide lines set forth and agreed upon by the special fisheries committee. Guide lines should be written into the bill, after considering testimony offered by Alaskans involved in the fisheries.

Thank-you for your time and patients.

Sincerely,

Linda Schmitz
P.O. Box 47
Wrangell, AK 9992
Ph (907-874-3755)

W/copies sent to:
Robin L. Taylor
John Sund
Robert H. Ziegler Sr.
Andre Marrou
Peter Goll

ALASKA LEGAL SERVICES CORPORATION

MARK ANDREWS 12/20/84

LEGISLATIVE CONTACTS: DON COOPER, CHIEF COUNSEL (276-6282)
MICHEAL STURM, CONTROLLER
ROBERT DICKERSON, EXECUTIVE DIRECTOR (DOES LOBBYING)

ISSUES: (REFER TO LETTER)

1. RESTRICTION ON FISH BUYERS.

THERE IS A PROBLEM WITH FISH BUYERS NOT PAYING THE FISHERMEN IN QUINHAGAK AND ELIM.
THERE ARE 42 FISHERMEN IN QUINHAGAK--$16,000 EST. OWED TO FISHERMEN
$4,000 -- $5,000 OWED TO 20 EMPLOYEES WHO ARE PAID COMMISSIONS/SALARIES/RENT.
THERE ARE 15-16 FISHERMEN IN ELIM -- $9,000 TO $11,000 OWED TO FISHERMEN
SOME WAGES ARE ALSO OWED TO EMPLOYEES.
FISH BUYERS BOND SHOULD COVER THE ENTIRE FISHING SEASON. PREMIUMS SHOULD BE FOR THE WHOLE CALENDAR YEAR.

2. PERMIT HOLDER INHERITANCE -- ONE HEIR.

3. PERMIT HOLDER INHERITANCE -- TWO OR MORE HEIRS.

THERE ARE 5 CASES (#2 ABOVE), 3 CASES (#3 ABOVE) BEING PROCESSED BY THE BETHEL ALS OFFICE. THE LIMITED ENTRY COMMISSION IS NOT DEALING WITH THE PROBLEM. THE PERMIT IS BEING HELD AND IS NOT ABLE TO BE USED. SOMEONE IN THE FAMILY SHOULD BE ABLE TO USE IT DURING THE SEASON. FOR MINORS, THE PROBLEM IS HAVING TO HANDLE THE CASE UNTIL THE MINOR COMES OF AGE.

DETERMINE THE IMPACT ON THIS PROBLEM IN OTHER AREAS OF THE STATE (ACQUIRE STATISTICS FROM OTHER ALS OFFICES.) LOOK AT THE RESTRICTIONS ON LIMITED ENTRY PERMITS (AS16.43.140-182, 20AAC05.700-770) REFER TO RESEARCH AGENCY ON THE LEGAL ASPECTS ON THE LIMITATIONS ON THE PERMITS.

OPERATING NEEDS:

1. MAINTAIN 3RD ATTORNEY POSITION.

CURRENTLY HAS 3 ATTORNEYS PLUS ONE PART-TIME. 180-210 CASES ARE BEING PROCESSED AT ANY GIVEN TIME. THE OFFICE HANDLES 1800 NATIVE ALLOTTMENT OPEN CASES. BETHEL ALS IS LOSING ONE ATTORNEY POSITION. NO MONEY TO JUSTIFY IT. THE FAIRBANKS AND BETHEL OFFICES ARE IN TIGHT SITUATIONS. (DETERMINE ORGANIZATIONAL STRUSTURE--STAFFING & EQUIPMENT PRIORITIES.) THE CASE LOAD CAN JUSTIFY KEEPING THE 3RD ATTORNEY POSITION.

CHAPTER 27.
FISH PROCESSORS AND PRIMARY FISH BUYERS

Article
1. Security (8 AAC 27.010–8 AAC 27.050)
2. Suspension and Revocation of License (8 AAC 27.060)
3. Assignment of Claims (8 AAC 27.070)
4. General Provisions (8 AAC 27.900)

ARTICLE 1.
SECURITY

Section
10. Security required
20. Certification of license applicant
30. Waiver of security
40. Revocation of waiver of security
50. Release of security

8 AAC 27.010. SECURITY REQUIRED. (a) A fish processor or primary fish buyer shall file with the division evidence of compliance with AS 16.10.290 and this chapter on forms prescribed by the commissioner. Acceptable security includes

(1) a surety bond in the amount of $10,000 issued by a surety company licensed to do business in Alaska with an assignment in favor of the commissioner;

(2) lienable real property located in Alaska, provided

(A) an appraisal is filed with the commissioner which was issued by a public tax assessor or by a bona fide real estate appraiser, current within 12 months before the date of application;

(B) a title search is filed with the commissioner which was issued by a company or person qualified to perform a title search, current within 30 days before the date of application and which clearly demonstrates the license applicant has an equity of at least $10,000 in the real property; and

(C) the license applicant executes a lien upon the real property in favor of the commissioner in the amount prescribed by AS 16.10.290(b);

(3) a negotiable instrument as defined in AS 45.03.104, assigned to the commissioner, in the amount of $10,000; or

(4) a combination of acceptable security, including those listed in (1) – (3) of this subsection, which equals the amount of $10,000.

(b) Separate security is required for each operational location which requires a separate license. (Eff. 7/30/83, Reg. 87)

Authority: AS 16.10.275
AS 16.10.290(a), (b), (c)

8 AAC 27.020. CERTIFICATION OF LICENSE APPLICANT. The commissioner will certify in writing to the Department of Revenue and the Department of Fish and Game when the license applicant has complied with the provisions of this chapter. The license applicant will receive notice of this certification. (Eff. 7/30/83, Reg. 87)

Authority: AS 16.10.275
AS 16.10.290(d)

8 AAC 27.030. WAIVER OF SECURITY. (a) An operation which does not purchase raw fish and which does not hire employees may request a waiver from the provisions of AS 16.10.290 – 16.10.296 by submitting Form 07-6086 to the commissioner, at least 30 days before commencement of operation, setting out

(1) the names of the persons involved in the operation;

(2) the relationship of the persons to the operation;

(3) the name of the business, if applicable;

(4) the location of the operation;

(5) the date that the operation will commence; and

(6) certification that no fish will be purchased and that no employees will be used in the operation.

Editor's Note: Form 07-6086, mentioned in 8 AAC 27.030(a), may be obtained from the Department of Labor, Box 1149, Juneau, AK. 99811.

(b) Within 15 days after receipt of a properly prepared and sworn application, the director, after investigation by the division, will approve or deny the application for a waiver. The director will deliver a written notice of approval or denial of the waiver to the applicant in person or by certified mail. A notice of denial must set out the reasons for the denial.

(c) An applicant may appeal a denial to the commissioner within 30 days after receipt of the notice of denial. No particular form for the appeal is prescribed. However, the appeal must be specific in its reasons.

(d) A waiver approved under this section is valid for one year from the date of approval. Re-application for a waiver must be made in accordance with this section.

(e) The commissioner will notify the Department of Revenue and the Department of Fish and Game of a person or business granted a waiver from the provisions of AS 16.10.290 – 16.10.296. (Eff. 7/30/83, Reg. 87)

Authority: AS 16.10.275
AS 16.10.290(d)
AS 16.10.291

8 AAC 27.040. REVOCATION OF WAIVER OF SECURITY. (a) The department will, in its discretion and for good cause, revoke a waiver granted to a person or business under AS 16.10.291 and 8 AAC 27.030 and require filing of security as required by AS 16.10.290 and as prescribed in this chapter.

(b) The commissioner will notify the Department of Revenue and the Department of Fish and Game of a person or business whose waiver has been revoked. The commissioner will request suspension of the license of the fish processor or primary fish buyer until the person or business complies with AS 16.10.290 – 16.10.296. (Eff. 7/30/83, Reg. 87)

Authority: AS 16.10.275
AS 16.10.291
AS 16.10.294

8 AAC 27.050. RELEASE OF SECURITY. When the term of security filed with the commissioner under AS 16.10.290(b) has expired, the department shall release the security to the fish processor or primary fish buyer. Notification of release of security will be delivered in person or by certified mail. (Eff. 7/30/83, Reg. 87)

Authority: AS 16.10.275
AS 16.10.290

ARTICLE 2.
SUSPENSION AND REVOCATION OF LICENSE

Section
60. Notification

8 AAC 27.060. NOTIFICATION. (a) If the liability of the security required by AS 16.10.290 is impaired or depleted, if a bonding company cancels its bond of a fish processor or primary fish buyer, or if a fish processor or primary fish buyer violates the provisions of AS 16.10.290 – 16.10.296, the commissioner will

(1) immediately notify the Department of Revenue by certified mail of the specific sections of AS 16.10.270 – 16.10.296 which the fish processor or primary fish buyer has violated, request that the license of the fish processor or primary fish buyer be suspended or revoked under AS 16.10.294, and recommend a period of time for which the license should be suspended;

(2) by copy of the notice, through certified mail, inform the Department of Fish and Game and the fish processor or primary fish buyer of the action; and

(3) issue a cease and desist order to the fish processor or primary fish buyer who is violating AS 16.10.270 – 16.10.296, prohibiting the individual or business from acting as a fish processor or primary fish buyer.

(b) The cease and desist order will be rescinded upon a showing, acceptable to the commissioner, that the fish processor or primary fish buyer has complied with AS 16.10.270 – 16.10.290 and the requirements of this chapter. (Eff. 7/30/83, Reg. 87)

Authority: AS 16.10.275
AS 16.10.294

year, or by a fine of not more than $5,000, or by both. (§ 1 ch 49 SLA 1965; am § 1 ch 34 SLA 1969; am § 1 ch 102 SLA 1977)

Legislative history reports. — For report on ch. 34, SLA 1969 (CSHB 40 am S), see 1969 House Journal, p. 142.

NOTES TO DECISIONS

Cited in Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

Sec. 16.10.275. Regulations. The commissioner may adopt regulations to carry out the provisions of AS 16.10.270 — 16.10.296. (§ 1 ch 18 SLA 1981)

Sec. 16.10.280. Price disputes between fishermen and fish processors. In an area where a price dispute exists between at least one-third of the registered commercial fishermen for that area, as certified by the Department of Fish and Game, and fish processors on the price to be paid for salmon, and no agreement has been reached up to 120 days before the opening of the salmon fishing season in that area, a representative from the Department of Labor shall intervene as mediator of the dispute upon request of either party. (§ 1 ch 242 SLA 1970; am § 1 ch 59 SLA 1980)

Revisor's notes. — Enacted as AS 16.10.290. Renumbered in 1970.

Effect of amendments. — The 1980 amendment substituted "120" for "30" near the middle of the section.

Sec. 16.10.290. Security for collection of wages and payment for raw fish. (a) A fish processor or primary fish buyer shall file with the commissioner of labor a surety bond running to the State of Alaska conditioned upon the promise to pay (1) all persons furnishing labor to a fish processor or primary fish buyer, including contractual employee benefits; and (2) independent registered commercial fishermen for the price of the raw fishery resource purchased from them. The surety or sureties shall be satisfactory, in the determination of the commissioner.

(b) The amount of the bond shall be $10,000. In lieu of the surety bond the fish processor or primary fish buyer may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner in the amount specified for the bond. If no claim is asserted under this section within two years from the date the bond, cash deposit or other security is filed, the term of the bond, cash deposit or other security shall be two years; if a claim has been asserted within two years, the term of the bond, cash deposit or other security shall be for five years.

(c) A person applying for a license as a fish processor or primary fish buyer who has less than $10,000 in lienable property in the state, with proof of the property satisfactorily made to the commissioner, shall file with the application a bond or other security as specified in this section. No bond is required if the fish processor or primary fish buyer has more than $10,000 in lienable property as specified in this subsection.

(d) Upon certification by the commissioner that a person applying for a license as a fish processor or primary fish buyer has complied with AS 16.10.290 — 16.10.296, the Department of Revenue may issue that person a license to engage in the business of fish processor or primary fish buyer.

(e) The commissioner may accept the assignment of a claim held by a person against a fish processor or primary fish buyer under this section and may bring suit upon the bond, cash deposit or other security on behalf of the assignor in the superior court of the judicial district in which the work is done or in any judicial district in which jurisdiction may be obtained. This action shall not be construed to limit the right of a person having a claim under AS 16.10.270 — 16.10.296 against a fish processor or primary fish buyer to personally bring suit upon the bond, cash deposit or other security, in which case a copy of the complaint shall be served by registered or certified mail upon the commissioner at the time suit is filed. The commissioner shall maintain a record, available for public inspection, of all suits commenced under this subsection. The service shall constitute service on the surety, and the commissioner shall transmit the complaint or a copy of it to the surety within 72 hours after it has been received.

(f) If the surety on the bond desires to cancel the bond, the surety may do so by giving the commissioner written notice of intention to cancel. The cancellation is effective 30 days after the notice is delivered to the commissioner.

(g) If a judgment is entered against the cash deposit, the commissioner, upon receipt of a certified copy of a final judgment, shall pay the judgment from the amount of the deposit. (§ 2 ch 102 SLA 1977)

Sec. 16.10.291. Waiver of bonding requirement. The commissioner may, after investigation, grant a waiver from the bonding requirement of AS 16.10.290 — 16.10.296 for those operations that do not purchase fish or hire employees. (§ 2 ch 18 SLA 1981)

Editor's notes. — Enacted as AS 16.10.292(b). Renumbered in 1981.

Sec. 16.10.292. Filing evidence of compliance. A fish processor or primary fish buyer subject to AS 16.10.270 — 16.10.296 shall initially file evidence of compliance with the bonding requirements of AS 16.10.290 — 16.10.296, in the form prescribed by the commissioner. (§ 2 ch 102 SLA 1977)

Sec. 16.10.293. Exemptions from bonding requirement. (a) Restaurants, grocery stores, and established fish markets are exempt from the bonding requirement of AS 16.10.290 — 16.10.295.

(b) For purposes of this section

(1) "established fish market" means a market maintained in a permanent structure exclusively for the sale of seafood to the public at retail;

(2) "grocery store" means a store maintained for the sale of food products exclusively to the public at retail;

(3) "restaurant" includes a place maintained for the sale and on-premise consumption of food, and a street vendor who sells food prepared for immediate consumption. (§ 1 ch 23 SLA 1982)

Sec. 16.10.294. Suspension and revocation of license. (a) If a final judgment impairs the liability of the surety upon the bond or depletes the cash deposits or other security so that there is not in effect the bond, undertaking cash deposit or other security in the full amount prescribed in AS 16.10.290, the license of the fish processor or primary fish buyer shall be suspended until the liability in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

(b) If a bonding company cancels its bond of a fish processor or primary fish buyer, the fish processor's or primary fish buyer's license shall be revoked. The fish processor or primary fish buyer may again obtain a license by complying with the requirements of this chapter.

(c) If a licensed fish processor or primary fish buyer fails to fulfill the obligations as set out in AS 16.10.290, the license of the processor or buyer shall be suspended for a period of time the commissioner determines is appropriate. After three suspensions the license may be permanently revoked.

(d) Proceedings to suspend or revoke a license are governed by the Administrative Procedure Act (AS 44.62).

(e) If the commissioner determines that a fish processor or primary fish buyer is acting in violation of AS 16.10.270 — 16.10.296, the commissioner shall give written notice prohibiting further action by the person as a fish processor or primary fish buyer. The prohibition continues until the person has submitted evidence acceptable to the commissioner showing that the violation has been corrected.

(f) A person affected by an order issued under this chapter may seek equitable relief preventing the commissioner from enforcing the order.

(g) In an action instituted in the superior court by the commissioner or a representative of the commissioner, a person acting in the capacity of a fish processor or primary fish buyer in violation of this chapter may be enjoined from acting as a fish processor or primary fish buyer. (§ 2 ch 102 SLA 1977)

Sec. 16.10.295. Penalty. A person who is required to obtain the bond required by AS 16.10.290 — 16.10.296 and fails to obtain that bond is guilty of a class A misdemeanor. Each day a violation occurs constitutes a separate offense. (§ 3 ch 18 SLA 1981)

Cross references. — For sentences for misdemeanors, see AS 12.55.135.

Sec. 16.10.296. Definitions. In AS 16.10.265 — 16.10.296, unless the context otherwise requires,

(1) "commissioner" means the commissioner of labor;

(2) "fish" means any species of aquatic finfish, invertebrates and amphibians, shellfish, or any other raw fishery resource, in any stage of its life cycle, found in or introduced into the state, and includes fish eggs except fish eggs sold for stock enhancement purposes;

(3) "fish processor" means a person engaging or attempting to engage in a business for which a license is required under AS 43.75.010 — 43.75.090;

(4) "primary fish buyer" means a person, other than a cooperative corporation organized under AS 10.15, engaging or attempting to engage in the business of originally purchasing or buying any fishery resource in intrastate, interstate, or foreign commerce. (§ 2 ch 102 SLA 1977; am § 3 ch 94 SLA 1982)

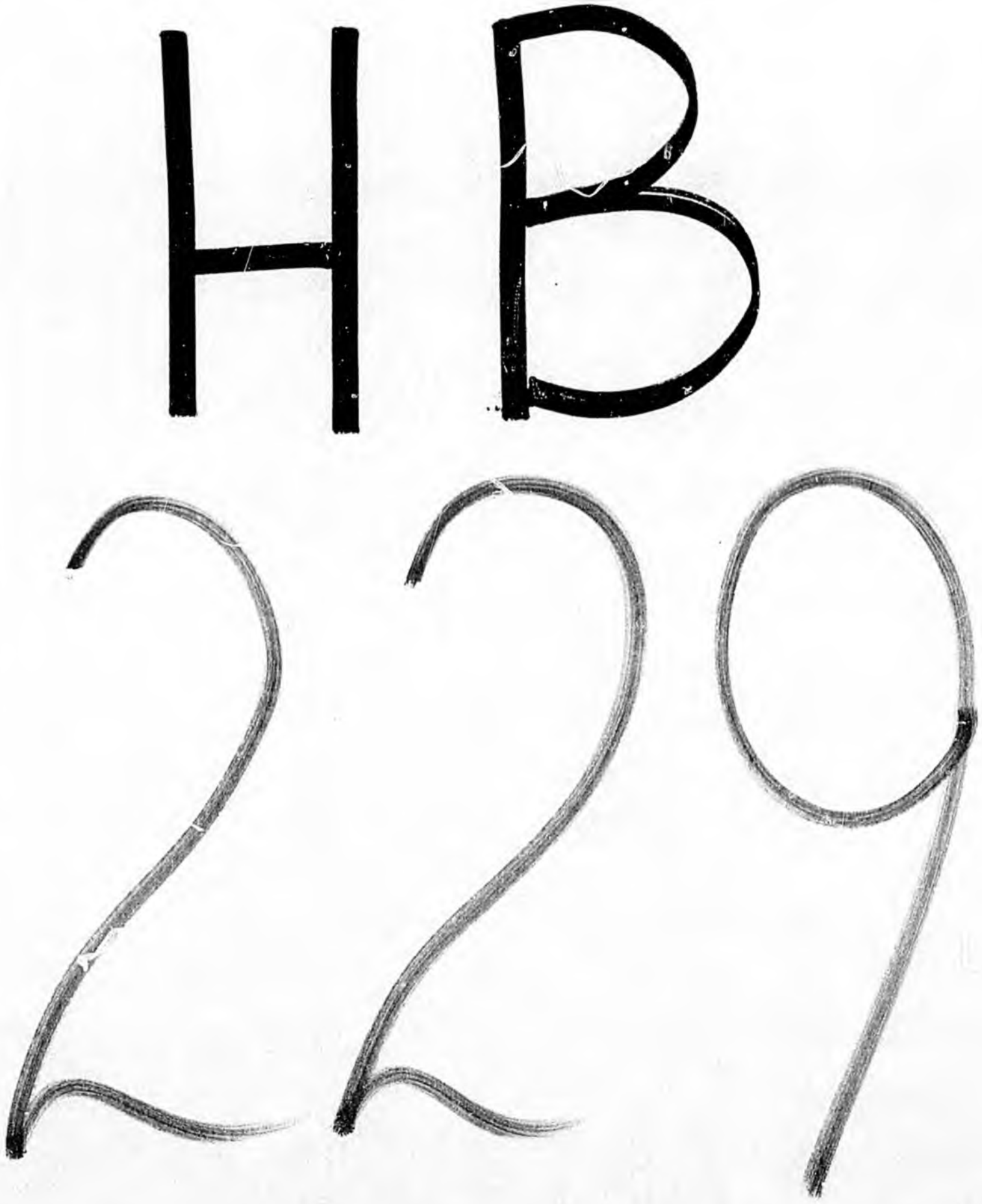
Effect of amendments. — The 1982 amendment substituted "AS 16.10.265 — 16.10.296" for "AS 16.10.270 — 16.10.296" in the introductory language, added the language beginning "and includes fish eggs" to the end of paragraph (2), and deleted "raw" preceding "fishery resource" in paragraph (4).

Article 7. Commercial Fishing Loan Act.

Section	
300.	Declaration of policy
310.	Powers of the department
315.	Allocation of loans
320.	Limitations on loans
325.	Guarantors
333.	Loans for purchase of Alaska limited entry permits
335.	Default and foreclosure
337.	Deficiencies and transfer of entry permits after foreclosure
338.	Entry permits as collateral
339.	Regulations
340.	Creation of fund
342.	Special account established
350.	Administration of fund
360.	Definitions
370.	Short title

Legislative history reports. — For report on ch. 134, SLA 1972 (SCS CSHB 102 am FCC), see 1971 House Journal, p. 399; 1972 House Journal p. 554.

For statement of legislative intent, see 1983 Senate Journal, p. 621.


HB
2229

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

LETTER OF INTENT FOR HOUSE BILL 229

March 29, 1985

It is the intent of the Legislature that the approval process by the Alaska Department of Fish and Game for operations permitted under Section 1 be kept as simple as possible. The Commissioner should base his authorization upon a letter from the operator of the processing plant which details specific plans to operate in accordance with applicable state laws and regulations.

It is also the intent of the Legislature that an ongoing assessment of economically feasible alternatives for the use of herring carcasses should be a priority within existing fisheries programs of the administration, particularly the Department of Commerce. This priority should be made because of (1) the changing economics of the herring industry which sometimes make it impossible for local citizens in some areas of the state to derive benefits from utilization of the herring resource under current Alaska Statutes, (2) the current lack of economically feasible processing alternatives for the developing Bering Sea herring fisheries, and (3) the tremendous potential for increase in employment in Alaska's processing industry, statewide, which might be realized through such ongoing research.

It is the intent of the Legislature that the Department of Commerce will report to the Legislature by the fifteenth day of the first regular session of each legislature, with this information.

Hein
3/28/85 ✓

Original sponsors: Herrmann, Fuller
and Binkley

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 229 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to herring stripping; and providing for an effective date."

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

* Section 1. HERRING STRIPPING. (a) Notwithstanding AS 16.10.173 and until July 1, 1986, the stripping of commercially taken herring for the purpose of removing and selling the roe product is authorized if the herring is taken from and the carcass disposal process occurs in the Bering Sea and prior authorization is obtained from the commissioner of fish and game. The commissioner may authorize a person to dispose of herring carcasses in the Bering Sea only if the person demonstrates an intent to operate in accordance with applicable state laws and regulations.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) regarding disposal of herring carcasses for each administrative area where disposal occurs.

(c) The provisions of AS 46.03.100 apply to the disposal of herring carcasses under this section.

* Sec. 2. Section 1(b), ch. 27, SLA 1980 is repealed.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

ANALYSIS OF THE DIFFERENCE BETWEEN CS HB 229 (Fisheries) AND DRAFT CS HB 229 (Resources)

To: House Resources Committee Files
From: Janet Fries, Committee Aide
Date: March 29, 1985

Section 1

The wording of this section has been changed to simplify the department's interpretation of the authorization process for operations wishing to dispose of carcasses in the Bering Sea. It bases this authorization upon the processors demostration of intent to operate within applicable state laws.

Section 2

This repeals only paragraph (b) of Section 1, ch. 27, SLA 1980.

Section 3

No change.

ANALYSIS OF HB 229

To: House Resources Committee Files
From: Janet Fries, Committee Aide
Date: March 12, 1985 (revised)

Section 1

This section creates a temporary exception to AS 16.10.173 until July 1, 1988. This section permits the stripping of herring roe and the disposal of herring carcasses into the Bering Sea, only for herring that is also harvested from the Bering Sea, during the period of the exception.

This section also gives the Board of Fisheries the authority to adopt regulations regarding this disposal, and states that the Department of Environmental Conservation regulations regarding waste will also apply to this disposal.

Section 2

This section provides for an immediate effective date.

Offered: 3/13/85
Referred: Resources

Original sponsors: Herrmann, Fuller and Binkley

IN THE HOUSE

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

CS FOR HOUSE BILL NO. 229 (Fisheries)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to herring stripping; and providing for an effective date."

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

* Section 1. HERRING STRIPPING. (a) Notwithstanding AS 16.10.173 and until July 1, 1986, the stripping of commercially taken herring for the purpose of removing and selling the roe product is authorized if the herring is taken from and the carcass disposal process occurs in the Bering Sea. Herring stripping may be allowed during 1986 only if the commissioner of fish and game has given written approval after determining that the processing operation that is seeking approval is capable of continuing after July 1, 1986, without the commercial stripping of herring.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) regarding disposal of herring carcasses for each administrative area where disposal occurs.

(c) The provisions of AS 46.03.100 apply to the disposal of herring carcasses under this section.

* Sec. 2. Section 1, ch. 27, SLA 1980 is repealed.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 998

Phone:
(907) 465-4924

Special Committee on Fisheries

LETTER OF INTENT FOR HOUSE BILL 229

It is the intent of the Legislature that the approval process by the Alaska Department of Fish and Game for 1986 herring stripping operations be kept as simple as possible. The Commissioner should base his determination upon a letter or other documentation from the operators of the processing plant detailing specific plans to operate in accordance with the provisions of AS 16.10.173 after July 1, 1986.

ANALYSIS OF DIFFERENCES BETWEEN HB 229 AND CSHB 229 (Fisheries)

To: House Resources Committee Files
From: Janet Fries, Committee Aide
Date: March 17, 1985

Section 1

The CS (Fisheries) for HB 229 reduces the length of time of the Bering Sea exception from the herring carcass disposal statutes, from four herring seasons in the original bill, to two seasons (ending July 1, 1986).

It also adds language which says that for the 1986 season, the Commissioner of Fish and Game must give his approval for a stripping operation from which carcasses will be disposed into the Bering Sea, in writing. The sentence in which this has been stated is not completely clear nor does it address the intent of AS 16.10.172 and 173, that it is the disposal of carcasses that is prohibited, not the stripping of roe.

In addition, this sentence makes the Commissioner's approval of such operations contingent on the condition that they will be capable of continuing operations after July 1, 1986, without stripping the roe. There is no stated reason why this should be a factor in the Commissioner's determination.

Section 2

This section rolls the intent of HB 260, introduced by Rep. Pignalberi, by Request, into HB 229. The effect of this section is to remove the Legislature's intent of Section 1, Chapter 27, SLA 1980, which states that there are certain conditions under which exceptions might be made to AS 16.10 172 and 173.

Section 3

No change.

Letter of Intent

This letter specifies that the application process authorized in Section 1 is to be as simple as possible. This will help to make any associated administrative costs as minimal as possible. This letter also reiterates the language of the CS, which places the condition that plants be able to operate without stripping after July, 1986, in order to receive approval from the Department for operation during the 1986 season.

MAR 1 2 1985

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game

District 5

Kenai — Sterling
Soldotna — Anchor Point
Homer — Point Graham
Seldovia — English Bay
Kachemak — Nikolaevsk
Kasilof — Halibut Cove
Ninilchik — Clam Gulch

Representative Andre Marrou

12 March, 1985

TO: Reps. Dick Shultz and Adelheid Herrmann,
Co-Chairman, Resources Committee

FROM: Rep. Andre Marrou, Member, Fisheries Committee

This morning, the Fisheries Committee passed out CSHB 229(Fish.), on a vote of 4-2. I was one of the dissenters.

CSHB 229(Fish.) combines HB 229 and HB 260 with two additional restrictions:

1. Herring stripping would end 1 Jul.86 instead of 1 Jul.88, thus reducing from 39 months to 15 months the period for herring stripping.

2. ADF&G would be required to render a written decision as to why herring stripping should be allowed past 1 Jul.86 under any conditions.

As you may know, HB 260 would repeal important exemptions to a prior ban on herring stripping.

In testimony today, no environmental nor economic reasons were advanced for banning the herring stripping industry. To the contrary, it was pointed out that if Alaskans don't strip herring, then Canadians, Washingtonians, Koreans, and Japanese will.

Therefore, I strongly recommend that CSHB 229(Fish.) not be passed, but that HB 229 be passed.

Rep. Andre Marrou

AVM/mc

During Session: Pouch V, Juneau, Alaska 99811, (907) 465-2719 During Interim: Box 1572, Homer, Alaska 99603, (907) 235-8200

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

M E M O R A N D U M

March 11, 1985

TO: Representative Adelheid Herrmann
Representative Richard Schultz
Co-chairs, House Resources Committee

FROM: Representative Peter Goll
Chairman, House Special Committee on Fisheries

SUBJECT: CS for HB 229

I respectfully urge the Resources Committee to adopt the committee substitute for House Bill 229 developed by the House Special Committee on Fisheries. The committee substitute received strong support from members of the Fisheries Committee, as well as from Rep. Jack Fuller, who co-sponsored the original measure.

The committee substitute was designed to provide the waivers sought for Bering Sea herring operations, while establishing a mechanism that should ensure that the entire Alaska seafood industry can comply with the state's full utilization policy within two more fishing seasons.

A brief recounting of the history of the state's full utilization policy may be helpful for the members of the Resources Committee.

In 1977, the Legislature passed a policy calling for the full utilization of herring caught in the commercial sac roe fishery. The policy was aimed at eliminating the wasteful practice of "stripping," in which the flesh of the herring is allowed to deteriorate and the valuable eggs can be easily "popped" out.

The Board of Fisheries was given authority to promulgate regulations to implement the policy. The developing Bering Sea sac roe fishery was exempted from the full utilization policy until January 1, 1979.

In 1980, the Legislature passed a law requiring the processing of herring before the seafood could leave the state. An exemption for the Bering Sea until July 1, 1982 also was granted.

In 1983, the Legislature approved a bill granting the Bering Sea another exemption from the full utilization policy; this time until July 1, 1984.

The original version of HB 229 grants the Bering Sea area an exemption until July 1, 1988. After determining that two additional fishing seasons would meet the needs of the Bering Sea herring industry, we amended that provision in the committee substitute to read July 1, 1986.

The committee substitute also incorporated the thrust of House Bill 260 which seeks to repeal legislative findings from 1980 that say that herring stripping is acceptable under certain circumstances, i.e. where healthy herring stocks exist and the seafood industry is underdeveloped.

The revised HB 229 adopted by the Fisheries Committee also would require herring stripping operations in the Bering Sea seeking to dump carcasses during 1986 to demonstrate their intent to comply with Alaska's full utilization policy during the 1987 herring season. This provision is designed to put the herring processing industry on notice that the state's full utilization policy will be fully enforced by 1987.

The Bering Sea herring processing industry is close to complying with the full utilization policy. A total of 400 metric tons of herring was stripped in the Bristol Bay fishery during 1984 out of a total harvest of 17,500 metric tons. Processors also strip herring in other areas of Alaska, but these operations all utilize the partially decomposed carcasses.

I would like to offer an amendment to CSHB229 (Fisheries) that should help clear up some confusing language and a letter of intent that clarifies the procedure for granting carcasses dumping waivers during 1986. The Alaska Department of Fish and Game says the committee substitute will not change the zero fiscal note, if the clarifying language and letter of intent are adopted.

I strongly urge adoption of the Fisheries Committee substitute bill and letter of intent.

Official Business

Alaska State Legislature

House of Representatives

Special Committee on Fisheries

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

LETTER OF INTENT FOR HOUSE BILL 229

It is the intent of the Legislature that the approval process by the Alaska Department of Fish and Game for 1986 herring stripping operations be kept as simple as possible. The Commissioner should base his determination upon a letter or other documentation from the operators of the processing plant detailing specific plans to operate in accordance with the provisions of AS 16.10.173 after July 1, 1986.

PROPOSED AMENDMENT TO CSHB229 (FISHERIES)

Replace lines 13-16, page 1, with the following language:

"Sea and authorization is obtained from the commissioner of the Department of Fish and Game. The commissioner may authorize a person or company to dispose of herring carcasses in the waters of the Bering Sea if the person or company demonstrates that after July 1, 1986, the processing operation will no longer need an exception to AS 16.06.173."

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Commercial Fisheries	HB 229	Herrmann

DEPARTMENT POSITION

Neutral

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Robert C. Clasby	2/26/85	Steve Pennoyer	3/4/85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
DEC	Bering Sea Herring Fishermen and Processors
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Unknown	Unknown

FISCAL IMPACT: ☐ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Except for 1984, similar legislation has been in effect since about 1979. The intent is to allow this activity until full processing can take place. Most roe herring are now frozen on the grounds, with a small amount being transported to locations such as Kodiak for shoreside reprocessing. It is this product that is stripped on the grounds.

ANALYSIS OF BILL/PROGRAM EFFECTS

None. Regulations governing herring carcass disposal in the Bering Sea are still in effect; see 5 AAC 27.093.

AMENDMENTS PROPOSED

None.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

01-009 (Rev. 12/83)

Article 3. Herring Spawn.

Section

172. Legislative policy on utilization of herring
173. Utilization of commercially taken herring
175. Removal of herring from state

Sec. 16.10.140 — 16.10.170. Taking of herring spawn; exceptions; certain restrictive covenants; penalties. [Repealed, § 2 ch 91 SLA 1970.]

Sec. 16.10.172. Legislative policy on utilization of herring. The legislature finds the following: (1) extensive and valuable herring populations are available for harvest in waters subject to the jurisdiction of the state; (2) commercial markets are available for herring processed in several forms; (3) one processing technique presently employed involves deliberately permitting decomposition of the herring carcass to allow for removal and subsequent sale of the roe product, with the consequence that the flesh is unusable and discarded The legislature declares that the process referred to in (3) of this section is wasteful and does not constitute utilization of this resource for the maximum benefit of the people. Therefore, it is the policy of the legislature that this process should be eliminated to the fullest extent possible. (§ 1 ch 9 SLA 1977)

Editor's notes. — Section 1, ch. 27, SLA 1980 provides: "LEGISLATIVE FINDINGS AND POLICY ON HERRING STRIPPING. (a) Notwithstanding AS 16.10.172, the legislature finds that in certain circumstances the processing technique described in AS 16.10.172(3), commonly referred to as "stripping", provides benefits of such importance to the state economy that the benefits may outweigh the waste involved in the process.

"(b) It is the policy of the legislature that notwithstanding AS 16.10.173 the disposal of herring carcasses is acceptable only if

"(1) the herring is taken from waters in which the herring population is large enough to support a stripping industry without substantially reducing the availability of the herring for other uses; and

"(2) the stripping process is conducted in an area of the state where local industry either does not exist or, if it does exist, it is insufficient to provide reasonable economic support to the people who live in the area."

Sec. 16.10.173. Utilization of commercially taken herring. (a) A person may not waste or cause to be wasted any commercially taken herring. For purposes of this subsection, "person" has the meaning given in AS 01.10.060 and also includes a joint venture.

(b) As used in this section, "waste" means the failure to use the flesh of commercially taken herring for reduction to meal, production of fish food, human consumption, food for domestic animals, scientific or educational purposes, or round herring bait. Normal, inadvertent loss of flesh associated with the uses described in this subsection which cannot be prevented by practical means does not constitute waste. The com-

missioner may authorize other uses of commercially taken herring consistent with the intent of this section and AS 16.10.172 upon receipt of a request accompanied by a detailed justification.

(c) For purposes of this section, "flesh" means all muscular body tissue surrounding the bony skeleton of the herring.

(d) The Board of Fisheries may adopt regulations under the Administrative Procedure Act (AS 44.62) it considers necessary for implementation of this section. The board may delegate its authority under this section to the commissioner.

(e) The provisions of this section do not apply to herring taken commercially in the Bering Sea (including appurtenant bays, sounds, estuaries, and water of the state) north of 56° North Latitude, until January 1, 1979. (§ 1 ch 9 SLA 1977)

Editor's notes. — Section 1, ch. 14, SLA 1983 reads as follows:

"Section 1. HERRING STRIPPING. (a) Notwithstanding AS 16.10.173 and until July 1, 1984, the stripping of commercially taken herring for the purpose of removing and selling the roe product is authorized if the herring is taken from and the carcass disposal process occurs in the Bering Sea.

"(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) regarding disposal of herring carcasses for each administrative area where disposal occurs.

"(c) The provisions of AS 46.03.100 apply to the disposal of herring carcasses under this section."

Sec. 16.10.175. Removal of herring from state. (a) A person may not remove herring from the state before the herring has been frozen or otherwise processed for shipment.

(b) In this section, "processed for shipment" includes, but is not limited to, icing, stripping or salting of the herring; however, it does not include salting of the herring if five percent or more of the body weight of the herring consists of roe. (§ 3 ch 27 SLA 1980)

Article 4. Migratory Fish and Shellfish.

Section

180. Legislative findings
190. Regulations
200. Unlawful taking prohibited
210. Unlawful sale or offer prohibited
220. Penalties for violation of AS 16.10.200 and 16.10.210
230. Exemptions

Sec. 16.10.180. Legislative findings. The legislature finds and recognizes these facts:

(1) Migratory fish and migratory shellfish are present in commercial quantities inside and outside the territorial waters of the state.

(2) Migratory fish and migratory shellfish taken from the waters of the state are indistinguishable, in most cases, from those taken from the adjacent high seas.

(3) Substantial quantities of migratory fish and migratory shellfish move inshore and offshore intermittently and at various times during

5 AAC 27.070. REGISTRATION AND INSPECTION DOCUMENTS. Repealed 4/14/82.

ARTICLE 3.
PROHIBITIONS

Section
90. Unlawful possession of herring or herring gear
92. Unlawful acts within an adjacent seaward biological influence zone
93. Disposal of herring
95. General restrictions
96. Violation of reporting requirements
97. Violation of landing requirement
98. Violation of regulations

5 AAC 27.090. UNLAWFUL POSSESSION OF HERRING OR HERRING GEAR. (a) It is unlawful for any person to possess unprocessed herring aboard a vessel licensed as a commercial fishing vessel within any statistical area unless the season is open or unless the person is acting under the authorization of 5 AAC 27.030(b). This prohibition does not apply to herring possessed for subsistence or personal bait purposes under applicable cable regulations.

(b) It is unlawful for any person to possess aboard a vessel licensed as a commercial fishing vessel within any statistical area any herring or any gear used in the taking of herring if the herring or herring gear are prohibited by other regulations in 5 AAC 27 governing the area, unless the vessel is acting under the authorization of 5 AAC 27.030(b).

(c) It is unlawful for any person to possess, purchase, sell, barter, or transport herring within the state or within waters subject to the jurisdiction of the state if that person knows or has reason to know that that herring was taken or possessed in contravention of the regulations of this chapter. (In effect before 1982; am 4/14/82, Reg. 82)

Authority: AS 16.05.251(a)(4),(7) and (10)
AS 16.05.720
AS 16.05.900
AS 16.05.920

5 AAC 27.092. UNLAWFUL ACTS WITHIN AN ADJACENT SEAWARD BIOLOGICAL INFLUENCE ZONE. It is unlawful for any person to take, attempt to take, cause to be taken, or possess herring, or to operate, attempt to operate, or cause to be operated any vessel or gear or to possess any gear or to take, attempt to take, cause to be taken, or fail to take any action in violation of 5 AAC 27.010(b).

Authority: AS 16.05.251(a)(4),(7) and (10)
AS 16.05.720
AS 16.05.900
AS 16.05.920

5 AAC 27.093. DISPOSAL OF HERRING. In statistical areas N, T, W and Q, herring carcasses may be disposed of only as follows:

(1) any vessel with less than 5 metric tons of herring on board may only dump herring carcasses in waters more than five fathoms in depth;

(2) any vessel with five metric tons or more of herring on board may only dump herring carcasses in waters more than three miles from the mainland;

(3) or as specified by a permit issued by the Department of Environmental Conservation.

Authority: AS 16.05.251(a)(7)
AS 16.10.172–16.10.173

5 AAC 27.095. GENERAL RESTRICTIONS. A person shall obtain a permit from the department before taking herring during the period June 15 through February 28 in statistical areas K, L, M and N. (In effect before 1982; am 4/14/82, Reg. 82)

Authority: AS 16.05.251(a)(7) and (7)

5 AAC 27.096. VIOLATION OF REPORTING REQUIREMENTS. (a) It is unlawful for any person to file a fish ticket representing the catch governed by the fish ticket as having been taken in a particular statistical area when in fact the catch or part of the catch were taken in another statistical area.

(b) It is unlawful to file any fish ticket containing information which has been purposely falsified.

Authority: AS 16.05.251(a) AS 16.05.900
AS 16.05.690 AS 16.05.920
AS 16.05.720

5 AAC 27.097. VIOLATION OF LANDING REQUIREMENT. It is unlawful for any vessel

Sec. 46.03.090. Plans for pollution disposal. The department may require the submission of plans for sewage and industrial waste disposal or treatment or both for a publicly or privately owned or operated industrial establishment, community, public or private property subdivision or development. (§ 3 ch 120 SLA 1971)

Sec. 46.03.100. Waste disposal permit. (a) A person who conducts an operation which results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state must procure a permit from the department before disposing of the waste material or water. The permit must be obtained for direct disposal and for disposal into publicly operated sewerage systems.

(b) This section does not apply to a person discharging only domestic sewage into a sewerage system.

(c) A permit for disposal of a hazardous waste may not be issued under this section unless the applicant for the permit has furnished proof to the commissioner of financial ability to control the hazardous waste. Proof of financial responsibility may be demonstrated by self-insurance, insurance, surety, or guarantee, under regulations issued by the department. Acceptance of proof of financial responsibility under this subsection expires

(1) one year from its issuance for self-insurance;

(2) on the effective date of a change in the surety bond, guarantee, or insurance agreement; or

(3) on the expiration or cancellation of the surety bond, guarantee, or insurance agreement. (§ 3 ch 120 SLA 1971; am § 3 ch 220 SLA 1976; am § 9 ch 93 SLA 1981)

Cross references. — As to compliance with financial responsibility requirements, see AS 46.03.833.

Effect of amendments. — The 1981 amendment added subsection (c).

Opinions of attorney general. — This section confers upon the Department of Environmental Conservation permit authority over dredge or fill activities, including residential subdivisions, within wetlands, estuaries, and inland and coastal marshes periodically inundated by discernible bodies of fresh or salt water upland from the mean high tide line to the extent of the aquatic or salt water vegetation line. November 13, 1975, Op. Att'y Gen.

Dredge or fill activities in coastal and fresh water wetlands shoreward to the aquatic vegetation line to result in the disposal of solid waste material into the waters of the state within the meaning of this section and thus, to the extent that these activities are of a commercial or industrial nature do require a permit from the Department of Environmental Conservation. November 13, 1975, Op. Att'y Gen.

Sec. 46.03.110. Waste disposal permit procedure. (a) An application for a permit shall be made on forms prescribed by the department or on forms prescribed by the United States Environmental Protection Agency and shall contain the name and address of the applicant, a description of his operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and

any other information considered necessary by the department. Application for permit shall be made at least 60 days before commencement of a proposed discharge.

(b) Upon receipt of a proper application the department shall publish notice of the application in two separate publications of a newspaper of general circulation within the general area in which the disposal of waste material is proposed to be made. The notice may also be published in other appropriate information media. The notice shall include a statement that a person who wants to present his views to the department in regard to the application may do so in writing to the department within 30 days of the second publication of the notice. The written response entitles the writer to a copy of the application.

(c) When the department receives an application, the commissioner shall immediately send copies of the application to the commissioner of fish and game, the commissioner of natural resources, the commissioner of commerce and economic development and the commissioner of health and social services.

(d) The department may specify in a permit the terms and conditions under which waste material may be disposed of. The terms and conditions shall be directed to avoiding pollution and to otherwise carry out the policies of this chapter. No permit may be effective for a period in excess of five years from the date of issuance.

(e) If the department has certified a National Pollutant Discharge Elimination System permit under sec. 401 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. sec. 1341), and the United States Environmental Protection Agency has issued that permit to a person, the department may waive the requirements of this section, and adopt the federal permit as the permit required under AS 46.03.100. (§ 3 ch 120 SLA 1971; am § 6 ch 104 SLA 1971; am § 116 ch 218 SLA 1976; am §§ 4, 5 ch 220 SLA 1976)

Opinions of attorney general. — This section requires no more than that the Department of Environmental Conservation allow a 30-day public comment period, and that it fully and completely review those comments on receipt. June 11, 1975. Op. Att'y Gen.

The Department of Environmental Conservation cannot issue a waste disposal permit prior to expiration of the 30-day public comment period. June 11, 1975. Op. Att'y Gen.

If the Department of Environmental Conservation has reviewed and considered all public and agency comments prior to the expiration of the 60-day period, and has also completed the preparation of the permit itself within that period, it would be competent for the department to waive the remainder of the 60-day "pre-commencement" period, and issue the permit at that time. June 11, 1975. Op. Att'y Gen.

The public comments received pursuant to subsection (b) of this section function similarly to environmental impact statements for federal agencies contemplating major federal actions significantly affecting the quality of the environment. June 11, 1975. Op. Att'y Gen.

Sec. 46.03.120. Termination or modification of waste disposal permit. (a) The department may terminate a permit upon 30 days written notice if the department finds

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 229
Title: An Act Relating to Herring Stripping & Providing an Efftv. Date
Sponsor: Herrmann and Fuller
Requestor: Hs.Spec.Conc.Com.Fish + Res.
Date of Request: Mar 4, 1985

FISCAL DETAIL
Agency Affected: Fish and Game
Program Category Affected: Fisheries Resource Conservation
BRU, Program or Subprogram(s) Affected: Commercial Fisheries BRU and Components

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

(please see attached page)

Robert L. Wilbur

Prepared By: Bob Wilbur Phone: 465-4210
Division: Commercial Fisheries Date: 3-7-85

Approved by Commissioner: Ronald Peterson Date: 3-7-85
Agency:

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Analysis:

HB 260 seeks to repeal an AS16.10.173 exception which allows the roe of commercially harvested herring in the Bering Sea to be stripped and the carcasses disposed of in the Bering Sea. HB 229 seeks to extend that exception through July 1, 1988.

If either bill is enacted, the impacts on state programs and funding requirements will be negligible. The only foreseeable direct costs to the state would involve Board of Fisheries time allocated to public hearing and regulatory considerations, and these should represent comparatively insignificant time and cost requirements under either bill.

Should the exception be repealed (HB 260), some herring fishermen who have traditionally taken herring roe in the Bering Sea by allowing the flesh to decompose prior to roe stripping would have to conform to freezing techniques. While this prevents wastage of the flesh, it may increase capital and processing costs for the affected fishermen and processors and thereby reduce fisherman profits. Some minor impacts to local economics could therefore occur.

Alaska State Legislature

REPRESENTATIVE
ADELHEID HERRMANN

P.O. BOX 63
NAKNEK, ALASKA 99633
(907) 246-4495

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4942, 465-4943

House of Representatives

CO-CHAIRMAN
RESOURCES COMMITTEE

MEMBER
TRANSPORTATION
COMMITTEE

DISTRICT 26

ADAK
AKUTAN
ALEKNAGIK
ATKA
BELKOFSKI
CLARK'S POINT
COLD BAY
DILLINGHAM
DUTCH HARBOR
EGEGIK
EKUK
EKWOK
FALSE PASS
IGIUGIG
ILIAMNA
KING COVE
KING SALMON
KOKHANOK
KOLIGANEK
LEVELOCK
MANOKOTAK
NAKNEK
NELSON LAGOON
NEWHALEN
NEW STUYAHOK
NIKOLSKI
NONDALTON
PEDRO BAY
PILOT POINT
PORT ALSWORTH
PORT HEIDEN
PORT MOLLER
PORTAGE CREEK
SAND POINT
SOUTH NAKNEK
SOUAW HARBOR
ST GEORGE
ST PAUL
TOGIAK
TWIN HILLS
UGASHIK
UNALASKA

TO: Representative Peter Goll, Chairman
Special Committee on Fisheries

FROM: Representative Adelheid Herrmann

DATE: March 8, 1985

RE: HB 229 AN ACT RELATING TO HERRING STRIPPING

Attached are letters from fishermen and processors in Togiak, Norton Sound, and Nelson and Nunivak Islands, which should provide the Fisheries Committtee with additional backup to the letters and other information sent by Representative Fuller.

The herring season in western Alaska can begin as early as the end of April. Allowing the local people to strip herring will bring much needed cash income at a difficult time of year. These letters explain the reasons why they cannot comply with the state law at this time, as well as what they plan to do in the future to correct this situation.

This bill will not affect the herring resource or the environment in western Alaska, nor will it affect anyone in any other part of the state. I hope we can move the bill through the committee process as soon as possible so the fishermen can make plans for this season.

February 28, 1985

Representative A. Herrman
Pouch V
Juneau, AK

RE: Herring Carcass Utilization

Dear Rep. A. Herrman:

It has come to our attention that you are introducing legislation towards a moritorium on the Herring Carcass Utilization bill now in effect.

We have been deluged with calls from native fishermen in Togiak Twinn Hills and Manakotak villages on the possibility of our company purchasing drift net herring during the Togiak fisheries.

At this time we are budgeting for 2,200 tons of herring (seine) for processing on the M/V Bering Trader and our shore plant in Dillingham. These facilities are set up to freeze the product and will not be able to take any additional product other than that which is already committed.

Most of these fishermen are alternates on the list for the Japanese Herring Co-op in Dillingham, Alaska. These people in the past have not been able to sell because of the volume already caught by the co-op. We would be able to offer these fishermen a market if we could process at our Togiak facility. But there is no freezing. We would have to strip the roe then grind the carcasses.

We would be able to purchase approximately 350 to 400 of gillnet herring if processing is available in Togiak.

This would mean, in dollars, a total of $297,500 to $340,000 for the fishermen that would not have been there previously. The fish tax would be $2,975.00 to $3,400.00 for a shore based facility. The local labor for the herring processing would be approximately $43,000. This is for the nonfishermen type of local villagers.

Again our company would be happy to offer a market but are unable to do so as the laws stand now. We do not want a total moratorium, only for the next two seasons to place freezers into our Togiak facility.

Regards,

Kemp Paulucci Seafoods

Greg Hull
Togiak Plant Manager

KEMP-PAULUCCI SEAFOODS, INC. 2613 NORTHWEST 54th SEATTLE, WA 98107 206-783-7512

Rep. Jack Fuller
ATTENTION: Linda Wilde
Capital Room # 500/502
Pouch V
Juneau, Alaska 99811

Dear Rep. Fuller:

On behalf of 3NC Fisheries, I am requesting a permit to dump the herring carcasses in the Norton Sound area for this coming 1985 fishing season. We anticipate to open the herring processing in the Stebbins area, in hopes that their economy will benefit both their people and our company. We understand that dumping herring has special guidelines and know that there are certain limits to dumping.

3NC Fisheries consists of the Unalakleet, Shaktoolik, and Stebbins Native corporations and is a profit company. Our main goal is to provide some form of economy for our people and service the people in our region. We have worked with the salmon species for the past two years and look forward for a profitable one this coming season.

We understand the problems that may occur with discarding of the herring and we plan to work on this along with your help. Our latest talk with other companies was to sell the whole female herring and transport them out of the Norton Sound Region. It is also our contention that some plan be made with male herring, and in working with your office, we hope that a solution will be drawn up.

If you need further information please call me at 624-3053 during the workhours and at 624-3931 during the evenings. You may also call Davis Nashalook with the Arctic Sea Fisheries in Anchorage at 562-2322.

Our anticipated tonage with herring for the 1985 season is 300 metric tons.

Thank you.

Sincerely yours,

Henry Oyoumick

Henry Oyoumick, 3NC President

cc: Henry Mitchell, Bering Sea Fisheries

Bering Sea
Fishermen's Association
805 West 3rd Avenue
Anchorage, Alaska 99501
(907) 279-6519

March 4, 1985

Representative Binkley
Pouch V
Juneau, AK 99811

Dear Representative Binkley:

I am writing to express our strong support for House Bill 229. The bill proposes to waive, for the Bering Sea, the statute prohibiting fishermen from stripping herring for roe.

A number of fishermen from Nelson Island and Nunivak Island are interested in participating in the herring fishery which will open this year. The Bering Sea Fishermen's Association (BSFA) anticipates training a minimum of 80 fishermen from Nelson Island and Nunivak Island in order to prepare them for the fishery. As you know, these areas are poor in terms of a cash economy, and commercial fishing will be the main source of jobs and income for many.

As this is the first time residents of Nelson Island and Nunivak Island will be participating in a commercial herring fishery, their lack of experience during the first year or two will naturally put them at a significant disadvantage in competing for the limited quota of herring available.

The participation of Nelson and Nunivak Island fishermen during the start-up of the commerical herring fishery is dependent upon their being able to strip for roe. At present, there are no facilities available on either Nelson Island or Nunivak Island for refrigeration and processing of herring carcasses. And, it is neither practical nor feasible to build these facilities prior to initial participation in the fishery.

We see waiving the statute prohibiting the stripping of herring for roe in the Bering Sea as an interim yet crucial measure which will provide the people of Nelson and Nunivak Island the opportunity to become competitive in the fishery. Once the fishery is successful, it would then make sense to build refrigeration facilities and to process

Representative Binkley
March 4, 1985

herring carcasses -- thus providing more jobs and income for residents.

If I can provide any further information on this very important issue, please do not hesitate to contact me.

Sincerely,

Henry Mitchell

Henry Mitchell, Director
Bering Sea Fishermen's Association

cc: Adelheid Herrmann
Co-Chairman, House Resources Committee

JLS

Herrmann

REP. JOHN G. (JACK) FULLER

DISTRICT 23

ALAKANUK
BREVIG MISSION
CHEVAK
DIOMEDE
ELIM
EMMONAK
GAMBELL
GOLOVIN
HOOPER BAY
KOTLIK
KOYUK
NOME
SAVOONGA
SCAMMON BAY
SHAKTOOLIK
SHELDON'S POINT
SHISHMAREF
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

CHAIRMAN
BUSH CAUCUS
LEGISLATIVE COUNCIL
ADMINISTRATIVE REGULATION
REVIEW COMMITTEE

MEMBER
POLICY COMMITTEE
SPECIAL COMMITTEE ON LOANS
RULES COMMITTEE
COMMITTEE ON COMMITTEES

Alaska House of Representatives

MEMORANDUM

TO: Rep. Peter Goll, Chairman
House Special Committee on Fisheries
FROM: Rep. Jack Fuller
DATE: March 2, 1985
SUBJECT: Additional information regarding HB 229 - herring stripping

Three different groups of fishermen in Western Alaska have contacted either Rep. Herrmann or me requesting a temporary waiver of the herring stripping law.

In my district, 3NC Fisheries, a cooperative effort of the native corporations of Unalakleet, Stebbins and Shaktoolik, has asked for additional time to gear up. These local people began to fish herring commercially in 1979, and at this time don't have enough on-shore freezing capacity to process all of the herring caught by their members.

In the Yukon-Kuskokwim area, the people of Nelson Island plan to begin their first commercial herring fishery next year. Until now, herring was fished for subsistence only, but with the rebuilding of herring stocks they are looking to this new fishery for much-needed cash income.

In Togiak, about 35 local gillnet fishermen without markets have asked Kemp-Paulucci to operate the shore-based plant this year. This plant will be able to provide a market for all their fish. Kemp just recently bought the plant and plans to install freezers within the next two years, but would only be able to operate the plant this season if they were able to strip.

The closest fish meal plant is in Seward, thousands of miles away, and there is not enough freezing capacity for all of the fish. Because the non-local fishermen who come up to western Alaska to fish sell their catch mostly to floating processors with freezing capacity, the herring stripping law affects local fishermen who are relatively new to the fishery and do not have established markets.

Unlike the rest of the state, the herring fishery in western Alaska is in its infancy. The fishery used to be almost entirely within the domain of outsiders, with very few locals participating even as fishermen. Local fishermen are just now learning to take vertical control of the fishery themselves, without total dependence on outsiders. As fishermen and as managers, they have gained much valuable

HOME
P.O. BOX 689
NOME, ALASKA 99762
(907) 443-2968

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3789
465-4984 465-4529

experience in a short time. With limited entry for Bering Sea herring fisheries looming on the horizon, I want local people to have every opportunity to become established in the fishery. Outside of fishing, there are very few ways of making a living in these villages.

The herring season comes at the end of the long winter and before salmon season starts, a time when cash is very low. On-shore herring processing provides much-needed cash income for local people, as well as markets for local fishermen. In Unalakleet alone, stripping 50-60 tons of fish provides up to twenty people with jobs, and puts up to $35,000 into the economy. With an average annual income of less than $3,000 in rural Alaska, this is an important source of cash.

I will be providing you with additional back-up from 3NC, Nelson Island and Togiak Natives Limited, which will set out each group's reasons for requesting an extension of the time they are allowed to strip herring, as well as their plans for compliance as the fishery is developed.

MAR 11 1985

```
**********************************************************
*                                                        *
* DELIVER TO: JPOM                                       *
*                                                        *
*                                                        *
* ORIGINAL                                               *
* SENT:          03/08/85  TIME: 14:28                   *
* FROM:          LIOKOD                                  *
* SUBJECT:       KODIAK POM                              *
* PRINT DATE:    03/08/85  TIME: 14:28                   *
*                                                        *
**********************************************************
```

16

TO: SENATORS ZHAROFF, FISCHER, STURGULEWSKI, HALFORD

TO: REPRESENTATIVES THOMPSON, HERRMANN, FULLER, GOLL, SUND, PEARCE, HURLEY, BINKLEY, NAVARRE, JENKINS, MARROU

FR: NICK SZABO
BOX 1633
KODIAK, AK. 99615
HM: 486-3853

RE: HB 229 - EXTENDING HERRING STRIPPING IN THE BERING SEA

I STRONGLY SUPPORT HB 229 AND OPPOSE HB 260. SINCE THERE ARE NO CARCASS REDUCTION PLANTS IN THE BERING SEA, THE PASSAGE OF HB 229 WILL ALLOW SMALL PROCESSORS AND GROUPS OF FISHERMEN TO PROCESS THEIR OWN HERRING ROE. THIS ADDED VALUE PROCESSED HERRING ROE COULD BENEFIT MANY SMALL COMMUNITIES.

EOM

HISTORY OF HB 229

To: House Resources Committee Files
From: Janet Fries, Committee Aide
Date: March 17, 1985

AS 16.10.172 and 173, the statutes which prohibit the waste of carcasses from herring that have been stripped of roe, were passed by the Legislature in 1977. Section 173 included an exception from these statutes for the Bering Sea until January 1, 1979, because there was little or no infrastructure for the developing herring fishery in this area to support the processing of herring without disposal of the carcasses.

During the 1978 and 1979 herring seasons, many processors in the state who were not equipped to either freeze the roe herring whole or near enough to a reduction plant to have it reduced to fish meal economically, shipped the herring whole, lightly salted, to Japan. This herring was stripped for roe in Japan, Alaska fishermen and processors were paid less for it, and Japanese labor was used to process it, thus leaving Alaska with little economic benefit from this fishery.

In 1980, the Legislature passed Section 1, ch. 27, SLA 1980, Legislative Findings and Policy on Herring Stripping. This law did three things:

(1) It created the language which appears in the statutes (although it is not part of the statutes) following AS 16.10.172. These findings report that in some circumstances, stripping herring may provide such important economic benefits to the state that they may outweigh the waste involved in the process.

(2) It created an exception from the stripping law for the Bering Sea only from September 1, 1980 to July 1, 1982.

(3) This law also added AS 16.10.175 to the statutes, which prohibits removal of herring from the state before it is processed. This was done to solve the problem of herring being shipped from Alaska with little or no processing, that was created when the stripping statutes first became effective.

In 1983, the Legislature passed House Bill 267 which became Chapter 14 SLA. This bill created a third exception from the stripping law for the Bering Sea only until July 1, 1984, because the herring fishery was still developing in western Alaska and there was still no freezing capacity or reduction plant to support many local processing operations.

HOUSE SPECIAL COMMITTEE
ON FISHERIES
March 12, 1985
8:30 a.m.

Members Present: Representative Peter Goll, Chair
Representative Andre Marrou
Representative David Thompson
Representative Johne Binkley
Representative Roger Jenkins
Representative Kate Hurley
Representative Mike Navarre

COMMITTEE CALENDAR

HB 229 — An Act relating to herring stripping; and providing for an effective date.

HB 260 — An Act relating to legislative policy on herring stripping and providing for an effective.

WITNESS REGISTER

Representative Jack Fuller
Alaska State Legislature
Pouch V
Juneau, Alaska 99811
Telephone: 465-4984
Position Statement: Co-sponsor HB 229

Clements Ady
Chugach Alaska Fisheries
4241 21st Avenue West
Seattle, Washington
Position Statement: Supports broadening of HB 229

Larry Cotter
International Longshoremen and Warehousemens's Union
307 South Franklin Street
Juneau, Alaska 99801
Telephone: 586-6642
Position Statement: Supports original version HB 229

Henry Oyoumick
3NC Fisheries
P. C. Box 37
Unalakleet, Alaska
Telephone: 624-3931
Position Statement: Supports original version HB 229

Jerry Abramczyk

Administrative Assistant
Representative Marco Pignalberi
Pouch V
Juneau, Alaska 99811
Telephone: 465-4944
Position Statement: Testified in behalf of Representative Pignalberi, sponsor of HB 260.

Janet Fries
Administrative Assistant
Representative Adelheid Herrmann
Pouch V
Juneau, Alaska 99811
Telephone: 465-4942
Position Statement: Testified in behalf of Representative Herrmann, prime sponsor HB 229.

Ken Parker, Director
Division of Commercial Fisheries
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99811
Telephone: 465-4210
Position Statement: Observer

Bob Clasby
Division of Commercial Fisheries
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99811
Telephone: 465-4210
Position Statement: Observer

Christine L. Kelly
Licensing Administrator
Commercial Fisheries Entry Commission
Pouch KB
Juneau, Alaska 99811
Telephone: 465-4081
Position Statement: Observer

Reed Stoops
Chugach Fisheries
2 Marine Way, Suite 218
Juneau, Alaska 99801
Telephone" 586-3561
Position Statement: Observer

PREVIOUS ACTION

HB 260: Read first time 03/04/85 and referred to Fish, Res, and Rules. No previous action in this committee. HB 229:

Read first time 02/22/85 and referred to Fish, Res and rules. No previous action in this committee. Today Fish reported out CS with 4DP and 1NR, 1NOT CS; zero fiscal note with analysis in Supplement No. 28.

ACTION NARRATIVE

TAPE #11, SIDE ONE

Recording Number 005 — The meeting was called to order at 8:35 a.m. by Chairman Goll who announced the calendar and asked for motion to adopt a committee substitute for HB 229 for purposes of discussion. Representative Thompson made the motion. Representative Marrou asked for clarification of the committee substitute. The motion carried and CS for HB 229 was adopted for purposes of discussion.

Number 035 — Representative Fuller called attention to background information and letters of support in the members packets and began his presentation with history and utilization of herring and urged the members to consider passage of the committee substitute to get the industry going.

Number 140 — Chairman Goll addressed the two bills and commented to Representative Marrou that while the prohibition on herring stripping would remain the same in statute, the exemption would be deleted and by reenacting new legislation it would create that exemption again with certain stipulations.

Number 229 — Janet Fries, Assistant to Representative Herrmann, testified that HB 229 creates a temporary exception to legislative policy on herring utilization to permit the stripping of herring and disposal of carcasses in the Bering Sea only. She urged quick approval of the bill.

Number 333 — Larry Cotter, President, Local - International Longshoremen and Warehousemen's Union, stated he was unsure of supporting the committee substitute but did support allowing herring stripping to continue in Bering Sea.

Number 367 — Representative Marrou asked Mr. Cotter what he sees as environmental concerns with

herring stripping. Mr. Cotter discussed pollution and the potential of full utilization of the herring resource including roe extraction, herring carcasses and employment opportunities.

Number 416 — Clements Ady, Director - Special Projects, Chugach Alaska Fisheries stated their primary business is processing seafood from Prince William Sound and Cook Inlet and testified support of herring roe stripping and expansion of the industry. All herring produced in the State of Alaska, he continued, is sent to Japan in some form. There is no other market in the world to his knowledge for herring, including fish meal. The herring produced in the State of Alaska is transported out of Prince William Sound to Korea or Canada for stripping; the Japanese have a quota on the importation of frozen herring. He continued that Alaska processors are in the same position again as when the Japanese initially purchased all the seafood plants and feels that a major reason for the decline in Alaska fisheries is because of the stranglehold the Japanese have on plant facilities. If the processors were able to strip herring, he continued, depending on the way the product is graded, they would get four times the present value by doing their own production.

CHANGE TAPE #11 TO SIDE TWO

Number 023 — Jerry Abramczyk, testified in behalf of Representative Pignalberi - prime sponsor of HB 260, and began with preparatory remarks regarding introduction of the bill and possible defects in existing state statute. He continued that in state statute, the clear intent of the state has been to prohibit the stripping of roe and an exception to policy is needed; by repealing Section 1, Chapter 27 SLA 1980 the business of the state can continue more clearly to enhance the herring industry.

Number 191 — Representative Marrou said it was his understanding of the bill and legal opinion that if HB 260 is passed it would ban herring stripping and asked what specifically is the intent of the sponsor.

Number 392 — This is a verbatim transcript of the

testimony of Mr. Henry Oyoumick, chairman of 3NC Fisheries before the House Resources and Special Committee on Fisheries joint committee meeting March 13, 1985.
"My name is Henry Oyoumick from Unakaleet 3NC Fisheries and I'm chairman and what I'm going to do is give you a little history that we have been exposed to in herring fisheries and the Norton Sound Herring fishery has been ongoing substantially since 1979, although there were small amounts taken in '77 and '78.

Traditionally the process is that freezer ships and in the case of one buyer a processing boat will come to the Norton Sound with a large number of their own fishermen. The local fishermen will go out to the herring grounds and deliver to either their favorite buyer or to the closest tender boat. All of the herring will be brine chilled until they are transferred to a larger freezer or processing boat. These herring will be brought outside of the area to such places as Seward or even to Korea for final processing. Irregardless of where they are brought as far as we know locally, essentially none of the herring is processed in Norton Sound area. There is no one hired by these outside processors from the local areas.

In 1981, the Norton Sound Fishermens' Cooperative tried processing herring on the ground in Unakaleet. The fishermen, all local, delivered herring from the herring grounds about 7 miles from the plant. The herring was salted and four days later split open to extract the eggs from the females. All of the male carcasses and the stripped female carcasses were stored until after all of the females were stripped. After rough finish packing of the roe was completed, the male and female carcasses were rolled in a combination of rice, bran and salt, delivered to Korean transfer boats and shipped to Korea where they were packed in their finished form.

Norton Sound Fishermen's Co-op records show that there were 571,075 pounds of herring salted, stripped and processed or close to 286 tons. Of this there were approximately 80% Number One roe recovery as compared with

most of the rest of the state. At this time this was a very high return meaning that there was a lot less of the smaller, immature or less valued roe extracted.

Although it was not originally planned nor part of the herring stripping contract, rather than dump the carcasses, our buyer decided that male and stripped female carcasses would be rolled in rice, bran, salt combination to be shipped to Korea to be sold there for food preparing. Except for approximately 50 tons of carcasses that had been sitting in the sun for a day or two all of the 286 tons were shipped. After asking the local people if they wanted the spoiled herring carcasses for food or dog food, only 50 tons or 17.5 % of the local catch was dumped in the Norton Sound. Further, it might interest you to note that the amount of herring dumped in the Norton Sound as opposed to the total catch for that year amounted to approximately 2% of the total catch for '81 which was, according to ADF&G records, 2,448 short tons area wide. Because of the short time of preparation the NFSC payroll records are sketchy at this point. We estimate that approximately $40,000 was expended towards payroll for processing the herring in '81 as was done in 1980.

For your information, the Norton Sound Fishermens' Cooperative did not operate their plant after 1981 opting themselves instead to lease their plant to other operators. Irregardless, the impact that the stripping on Unakaleet was fairly substantial in labor, supplies, utilities and operations in general. It might interest you also, that those employees during the '81 season would not otherwise begin working until June 15 when our salmon season begins. All of these people draw unemployment during the off season because of lack of other employment.

In 1983 the 3NC Fisheries Incorporated decided to make another attempt at stripping herring. 3NC Fisheries is a joint venture fish buying, and processing for profit corporation made up of the village corporations from Unakaleet, Shaktoolik and Stebbins equally of which I am chairman.

We leased the fish plant from the Norton Sound Fishermens' Co-op annually, our primary goal is first to return a profit i[illegible] our sponsoring village corporations and secondly to reap as much impact from the fisheries on our local economies. The latter reason was the reason for attempting stripping herring in Unakaleet again in 1983.

Perhaps a short explanation of herring fisheries trend would be in order at this point. Because of the rush of the fish coming into the area, and the worry by fishermen that the sitcord of approximately 20% of the biomass could be eaten up within 5-10 days. It is impossible anymore to expect fishermen to deliver fish 7 miles away from the fishing grounds. It is more economical for fishermen to stay with their nets, deliver to out of the area tender boats that are sitting within a quarter of a mile away at the most and return back to the cleaning of their nets again for another delivery.

Understanding this, plus the fact that many of the out of the area processors will not take fish from small 16 to 18 foot boats with a ton or less that many of our local fishermen out of necessity and further chose same processors would have started taking only 8% herring or better.

3NC tried a small stripping operation in '83. The results were fair. There were approximately 141,570 pounds of herring delivered to the plant in Unakaleet or approximately 71 short tons. Of this there was a realization of $25,000 paid to the fishermen for that product and approximately another $25,000 paid for labor and processing in handling the herring.

Because of the market conditions, the carcass from that product could not be sold. What we were essentially told was that we could have a 20¢ per pound product that would cost 40¢ per pound to ship to the market. Which made it not feasible to market the carcass as opposed to the 1981 situation for the co-op. Estimating that 7.6% of that roe, our total dumpage was approximately 66 tons into Norton Sound.

Even with this that amounted to less than 1.5% of the total harvest for Norton Sound which was 4,572 short tons, according to ADF&G figures.

3NC Fisheries and other organizations locally are again interested in local production of finished herring roe. As it was inferred earlier because of market conditions, it is impossible for the Norton Sound herring carcass to compete with other areas in the food and herring based products which is the prime reason for asking again for an extension of the ability to dump herring carcass into Norton Sound.

At a recent 3NC board meeting, it was agreed that 3NC would dump strip herring only in the Stebbins-St. Michael area of the fishing grounds, utilizing those local people for labor. I'm sorry I don't have specific statistics to pass on to you of their local economy, but I'm sure that each of you are familiar with the general conditions of the villages in our area. For your information, St. Michael's and Stebbins are not involved in salmon fisheries whereas the rest of the communities in Norton Sound are. Stripping of herring would then have a very positive impact on those communities. There is no other resource development in that area. Nor is there any other economy except for a local few jobs.

The general plan for operation is to collect fresh herring on a locally owned barge-tug boat combination. Local people would be used to separate the male and female as they are purchased. As time permits the females would be stripped and the finished roe product would be rough packed in brine to be shipped out by air for final packing. For those female products that cannot be stripped, which according to our calculations would be at least 50% of the females, those would be flown to Anchorage to be frozen and shipped overseas for final processing.

The barge tug operation holds approximately 300 tons of herring. Estimating that 50% of the herring purchases would be female, we would then have 150 tons of fresh female herring, of this approximately 75 tons would

be stripped and 75 tons flown to Anchorage for freezing. Being there is no market for the male carcass, we would then estimate that approximately 225 tons would be dumped into Norton Sound. These figures seem optimistic and seem out of proportion to our past experiences, we mean to give you as our estimate the worst possible scenario from the standpoint of having to dump herring. ADF&G estimates that this year that they would allow 3,740 short tons of herring to be caught in the Norton Sound. If 3NC were lucky to have the aforementioned production, the 225 tons of them would be approximately 6.4% of the total production of Norton Sound. Relatively speaking considering the overly optimistic forecast for our production, 6.4% seems rather a small dumpage, which would probably be naturally eaten up by the many varied bottom fish in the Norton Sound.

Our long term plans are continuing to develop the natural resources in our area, to develop the local economies in our communities. As has been done in the past, it is always our goal to sell the whole product for food and not realize wasteage by dumping.

The logistics are such that we cannot compete at this point in time with other producing areas, the fact that the dollar is very strong in the foreign exchange is definitely not helping our efforts either. Our attempts are to make ourselves as self-sufficient as possible and I am here to pass on to you that our people given the chance will be very happy to eliminate some of the programs that are provided by the state.

Allowing our operation and were you to word it such that only local owned entities and shore-based entities were allowed to dump herring and setting a maximum of 10% of the total harvest allowed to be dumped would lead our people towards that goal. And, I guess, in some of the questions that were asked earlier in relationship to both the CS 229 and the original I have had not I guess sufficient time to analyze both but it sounds as though from looking at either one I would probably prefer the original.

Thank you.

Number 562 — Representative Navarre moved to pass committee substitute for HB 229 with individual recommendations. Representative Marrou objected. Committee substitute for HB 229 passed out of committee with individual recommendations. Representatives Thompson, Navarre, Hurley and Goll voted DO PASS, Representative Jenkins voted No Recommendation and Representative Marrou voted pass HB 229 only (not CS).

Number 567 — The meeting was adjourned at 10:00 a.m.

TESTIMONY OF REPRESENTATIVE ADELHEID HERRMANN ON HB 229

BEFORE THE HOUSE RESOURCES COMMITTEE

MARCH 29, 1985

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I WOULD FIRST LIKE TO EXPLAIN THE LEGISLATIVE HISTORY OF THE STATE'S HERRING STRIPPING LAWS, AND THEN EXPLAIN TO YOU WHY I HAVE INTRODUCED HOUSE BILL 229.

THE SAC ROE FISHERY FOR HERRING IN ALASKA DEVELOPED IN THE LATE 1960'S AND EARLY 70'S, IN SOUTHEASTERN ALASKA, COOK INLET AND PRINCE WILLIAM SOUND, DUE TO AN INCREASE IN DEMAND FOR THE HIGHLY VALUED ROE PRODUCT ON THE JAPANESE MARKET. THERE WAS LITTLE FREEZING CAPACITY IN THE STATE AT THAT TIME AND THE DEMAND WAS FOR THE EGGS ONLY, SO THE HERRING WERE STRIPPED OF THEIR ROE AND THE CARCASSES WERE DISPOSED INTO THE WATERS NEXT TO THE PROCESSING PLANTS.

FOR THOSE OF YOU WHO ARE NOT FAMILIAR WITH THE PRACTICE OF HERRING STRIPPING, IT IS A PROCESS BY WHICH HERRING ARE HARVESTED IN THE SPRING, WHEN THEY ARE ABOUT TO SPAWN, PLACED IN A BRINE SOLUTION FOR SEVERAL DAYS, AND THEN THE EGGS ARE STRIPPED OUT OF THE FEMALE HERRING AND BOTH THE FEMALE CARCASSES AND MALE HERRING ARE EITHER DISPOSED OF, SOLD AS FOOD OR BAIT, OR PROCESSED INTO FISH MEAL AND OIL.

BECAUSE THE SAC ROE FISHERY DEVELOPED SO RAPIDLY DURING THE EARLY YEARS AND BECAUSE MOST PROCESSORS SIMPLY DUMPED WHOLE HERRING CARCASSES INTO THE BAYS ADJACENT TO THEIR PLANTS, IN SOME CASES KILLING THE BAYS AND CREATING BAD ODORS, MANY PEOPLE IN THE COASTAL COMMUNITIES OBJECTED TO THIS FISHERY.

RESPONDING TO THIS, GOVERNOR HAMMOND INTRODUCED LEGISLATION IN 1977 WHICH, IN ITS AMENDED FORM, BECAME THE ALASKA STATUTES 16.10.172 AND 173, WHICH PROHIBIT THE WASTE OF HERRING CARCASSES IN THE STATE. THESE STATUTES DO NOT PROHIBIT THE STRIPPING OF HERRING AS LONG AS THE CARCASSES ARE UTILIZED AS FOOD, BAIT OR FISH MEAL.

AT THE TIME THE GOVERNOR INTRODUCED THIS LEGISLATION, THE TOGIAK HERRING FISHERY WAS JUST BEGINNING AND THERE WERE NO OTHER COMMERCIAL HERRING FISHERIES IN THE BERING SEA. BECAUSE OF THIS, THE ORIGINAL VERSION OF THE GOVERNOR'S BILL CALLED FOR AN EXCEPTION TO THIS LAW FOR THE BERING SEA, UNTIL SUCH TIME AS THE COMMISSIONER OF FISH AND GAME DETERMINED THAT SUFFICIENT PROCESSING CAPACITY EXISTED IN THIS REGION TO ALLOW THE APPLICATION OF THE LAW WITHOUT CREATING UNDUE HARDSHIP.

THE SENATE AMENDED THIS SECTION TO PUT A TIME LIMIT ON THE BERING SEA EXCEPTION AND THE BILL PASSED BOTH HOUSES UNANIMOUSLY. HOWEVER, WHEN THIS LAW BECAME EFFECTIVE, THERE WERE MANY PROCESSORS IN THE STATE THAT WERE UNABLE TO COMPLY, AND IN ORDER TO TAKE ADVANTAGE OF THE FISHERY, THEY SHIPPED THE HERRING DIRECTLY TO JAPAN, IN THE ROUND, IN A BRINE SOLUTION, WITH THE RESULT THAT NONE OF THE ECONOMIC BENEFITS OF THE PROCESSING REMAINED IN ALASKA.

IN ORDER TO CORRECT THIS PROBLEM, THE LEGISLATURE PASSED SECTION 1, CHAPTER 27 OF THE STATE LAWS OF ALASKA IN 1980. THIS BILL DID THREE THINGS:

FIRST, IT REPORTED THE FINDINGS OF THE LEGISLATURE THAT IN CERTAIN CIRCUMSTANCES THE BENEFITS TO THE STATE OF ALLOWING HERRING STRIPPING OPERATIONS MAY OUTWEIGH THE WASTE INVOLVED IN THE PROCESS.

SECOND, THIS BILL OUTLAWED THE EXPORT OF HERRING FROM THE STATE WITHOUT IT FIRST BEING PROCESSED.

AND FINALLY, FINDING THAT THERE WERE STILL NO PROCESSING ALTERNATIVES FOR THE BERING SEA REGION, IT EXTENDED THE EXCEPTION FOR THIS AREA UNTIL 1982.

IN 1983, THE LEGISLATURE AGAIN SAW THE NEED TO EXEMPT THE BERING SEA FROM THE STATE'S HERRING WASTE STATUTES.

I THINK THERE IS A TENDENCY ON THE PART OF THE LEGISLATURE TO IMAGINE THAT DEVELOPMENT CAN OCCUR MORE RAPIDLY THAN IT ACTUALLY DOES. PEOPLE WHO HAVE BEEN INVOLVED WITH TRYING TO DEVELOP A SHORE-BASED BOTTOMFISH INDUSTRY IN ALASKA HAVE FOUND THIS AGAIN AND AGAIN.

THE FACT IS THAT IN THE BERING SEA THERE IS STILL A LACK OF FREEZING CAPACITY, THERE IS STILL NO FISH MEAL PLANT, AND IT IS STILL NOT ECONOMICAL TO PROCESS HERRING ON-SHORE IN MOST COMMUNITIES WITHOUT THE EXCEPTION TO THE STATUTES THAT HAS BEEN GRANTED SINCE THOSE STATUTES BECAME LAW. FOR THIS REASON, I HAVE INTRODUCED HOUSE BILL 229, WHICH WOULD CREATE SUCH AN EXCEPTION FOR A FEW MORE YEARS.

WHILE I'M HOPING THAT THIS WILL GIVE THE COMMUNITIES A CHANCE TO BUILD FREEZERS OR FIND SOME WAY TO USE THE CARCASSES, I CERTAINLY CAN'T GUARANTEE THAT AT THIS TIME.

WHAT HOUSE BILL 229 WILL DO, IF PASSED, IS TO GIVE 30 FISHERMEN IN TOGIAK A MARKET FOR THEIR FISH AND 45 TO 50 LOCAL PEOPLE JOBS IN THE PROCESSING PLANT. THIS INCOME COMES AT A TIME OF THE YEAR WHEN THERE ARE FEW OTHER SOURCES, AND THE LONG WINTER HAS DEPLETED FOOD SUPPLIES OR SAVINGS THEY MAY HAVE.

THE PROCESSOR WHO INTENDS TO OPERATE IN TOGIAK, KEMP-PAULUCCI, HAS JUST BOUGHT A PLANT THERE AND PLANS TO INSTALL FREEZERS, BUT THEY WON'T BE READY FOR THIS YEAR AND THEY MAY NOT BE READY UNTIL THE 1987 SEASON. THERE IS A LETTER IN YOUR PACKETS FROM KEMP-PAULUCCI, AS WELL AS FROM THE BERING SEA FISHERMEN'S ASSOCIATION, WHICH IS ASSISTING THE NELSON AND NUNIVAK ISLAND PEOPLE TO DEVELOP THEIR FIRST COMMERCIAL HERRING FISHERY THIS YEAR. THERE IS ALSO A LETTER FROM THE 3NC FISHERMEN'S COOP IN NORTON SOUND, WHICH ALSO WILL ONLY BE ABLE TO OPERATE IF HOUSE BILL 229 IS PASSED.

I UNDERSTAND THERE ARE PROCESSORS IN OTHER AREAS OF THE STATE THAT ARE ALSO INTERESTED IN GETTING AN EXCEPTION FOR THEIR AREA. I UNDERSTAND THEIR PROBLEM AND KNOW THAT THE COST OF SHIPPING CARCASSES TO A FISH MEAL PLANT DOES COST THEM SOME OF THEIR PROFITS, BUT THESE COSTS ARE NOT SO HIGH THAT THEIR OPERATIONS WOULD NOT BE PROFITABLE IF THEY COMPLIED WITH THE CURRENT STATE LAW.

IN YOUR PACKETS YOU WILL FIND A DRAFT RESOURCES COMMITTEE SUBSTITUTE FOR HOUSE BILL 229, AS WELL AS AN ANALYSIS OF THE CHANGES IN THIS CS, COMPARED TO THE ONE THE SPECIAL COMMITTEE ON FISHERIES PASSED.

SECTION 1 OF THE RESOURCES CS SHOULD TAKE CARE OF THE CONCERNS OF THE FISHERIES COMMITTEE, BUT THE WORDING IS SIMPLIFIED SO THAT IT IS EASIER FOR THE DEPARTMENT OF FISH AND GAME TO IMPLEMENT.

SECTION 2 HAS BEEN CHANGED SO THAT ONLY PARAGRAPH (B) IS REPEALED. THIS SHOULD ELIMINATE THE QUESTION OF WHETHER AN EXCEPTION MAY BE CREATED FOR, SAY, A PROCESSOR IN SOUTHEASTERN ALASKA, AND AT THE SAME TIME, LEAVE THE INTENT OF THE 1980 LEGISLATURE ON THE BOOKS.

THE DRAFT RESOURCES COMMITTEE LETTER OF INTENT THAT IS IN YOUR PACKETS RESTATES THAT THE LEGISLATURE INTENDS THAT THE AUTHORIZATION PROCESS FOR BERING SEA PROCESSORS BE KEPT AS SIMPLE AS POSSIBLE. IN ADDITION, IT REQUESTS THE DEPARTMENT OF COMMERCE TO CONTINUE TO LOOK INTO NEW ALTERNATIVES FOR UTILIZATION OF HERRING CARCASSES IN ALASKA.

I'M ASKING FOR YOUR SUPPORT FOR THE DRAFT RESOURCES CS OF HOUSE BILL 229 AND THE LETTER OF INTENT, SO THAT THE LOCAL COMMUNITIES IN THE BERING SEA CAN BENEFIT FROM THE COMMERCIAL HERRING FISHERY IN THEIR REGION.

COOPERATIVE EXTENSION SERVICE
UNIVERSITY OF ALASKA, USDA & SEA GRANT COOPERATING

P.O. Box 621, Cordova, Alaska 99574

March 7, 1985

Clemens A. Ady, Director
Special Projects
Chugach Alaska Fisheries, Inc.
4241 21st Avenue West, Suite 204
Seattle, WA 98199

Dear Clem:

Re: Herring Stripping

I have been asked by your local representative [illegible] provide comment on current restrictions [illegible] dumping in Prince William Sound.

As I understand the current interpretation of the statute concerning wastage of fish and game resources, "waste" of herring is defined as failure to use the carcass for things such as reduction to meal, fish or domestic animal food, human consumption, bait, etc.

I understand your company is currently supporting legislation to legalize dumping as an alternative primarily for economic reasons. I'll just relay a few observations on the situation:

1. The current restrictions pose a serious financial burden on herring processors. The economics of fully utilizing herring carcasses are at best marginal and in many cases prohibitive. Also, Japanese import quotas on round herring can present real market limitations.

2. The current restrictions significantly affect several coastal communities in Alaska in that they in effect make it non-profitable to strip locally and thus preclude the positive economic benefits of local processing.

3. The sac-roe fishery is an extremely important one both in timing and in the magnitude of economic benefits

4. Deep water dumping is probably one of the most economic alternatives available to processors.

5. Deep water dumping of stripped carcasses would not, in a strict marine ecological sense, constitute "waste" of organic material. The biochemical constituents of the carcasses will be rather quickly reincorporated into the marine food web that supports biomass production. If carcasses are dumped in deep water, a number of mechanical (wave action, turbulence, etc.), biological (bacterial digestion, grazing by other zooplankters and fish), and chemical (oxidation, etc.) processes will within a relatively short amount of time degrade all the material into its basic organic components which will then be reincorporated into either the benthic (bottom) or pelagic (water column) food webs. Such an addition of nutrients, especially the nitrates from degraded amino acids and proteins, could enhance phytoplankton production on a very limited scale, since most oceanic phytoplankton production seems to be limited by available sources of nitrate. It would be, in effect, fertilizing a very, very small volume of ocean water. The degradation process would be sped along by grinding the carcasses but will occur even if they are not ground. Larger chunks of carcasses might make their way into benthic food webs via crabs or bottom feeding fishes such as black cod, halibut, rockfish, etc. In a strict sense, the nutrient balance of Prince William Sound is being upset by continual removal of organic nutrients incorporated into both salmon and herring and could possibly even exceed the rate of usable nutrient input at specific times and places. If such a situation does indeed exist, then these localized nutrient deficits could actually be limiting the overall productivity of the Sound for things such as wild and hatchery-reared salmon fry, herring, etc. Any reintroduction of nutrients removed by commercial fishing, if done in the proper manner, could only help the productivity of the sound. The University of Alaska Institute of Marine Science presently is involved in a multi-

institution program to study just such a process of nutrient cycling in the Bering Sea. The project is called ISHTAR.

6. The main issue in "wastage" of herring carcasses seems to be more moral/ethical than biological.

7. It would probably be to the long-term economic advantage of Alaskan processors to develop an economical means of fully utilizing herring carcasses, i.e., meal, ensiling, etc. I would be glad to help you analyze any of these alternatives.

If you have any questions on any of this or need any additional information, please give us a call.

Sincerely,

Rick Steiner

RICK STEINER
Assistant Professor of Fisheries

gf

Cordova District Fisheries Union

Headquarters: Box 939, Cordova, Alaska 99574
(907) 424-3447 (907) 424-7473

3/29/85

Mr. Madam Chairman - Members of the committee:

While you are discussing CS for HB 229 we would like the Committee to consider including Prince William Sound in Addition to the Bering Sea. We request your consideration because by doing so you would be increasing the economy of Cordova, Valdez and possibly Whittier, increasing the prices paid for the resource to Alaskan fishermen and subsequently increasing the revenues to the State via the raw fish tax.

The following is a list of reasons we feel are pertanant to your consideration

1- Current market conditions of stripped herring roe fear exceed the value of frozen roe herring.

2- Increased profits to processors means increased prices to the fishermen. Higher ex vessel prices means more raw fish taxes to the State.

3- Increased raw fish taxes return more revenue to the communities.

4- Under present processing restrictions local land based processors can only process about 20% of the 5000 ton herring quota

5- With relief from the present restrictions the local land based processors could process up to 40 or 50% of the quota providing they can purchase that amount from the fishermen.

Cordova District Fisheries Union

Headquarters: Box 939, Cordova, Alaska 99574
(907) 424-3447 (907) 424-7473

(2)

6- 5 of the 6 established land based processors are Alaskan owned corporations.

7- A large labor force will be required for a two week period rather than a small labor force for a one week period. Probably a four fold increase in labor requirements.

8- Because of the current market conditions - and if the processor restrictions are not relaxed much of this herring will be transported to Canada or the Lower 48 for processing which will be a substantial loss to the local and state wide economy.

9- There are no objections by PWS residents to this proposal.

We urge your careful consideration of this proposal

Thank you

Bob Blake

Grand Camp
Alaska Native Brotherhood
P.O. Box 76
Angoon, Alaska 99820

March 15, 1985

Honorable Peter Goll
Alaska State House of Representatives
Alaska Capitol Building Pouch V
Juneau
Alaska

Re: CSHB 229

Dear Peter:

This is to confirm my phone call to you in which I expressed my feeling on the CSHB 229 concerning the "Stripping of herring." This is a bad bill and should not be put into law. It allows special Privilege to a small area and will be discriminating to other communities that do not waste any part of the harvest of herring.

Only a small amount of "Roe" is taken from a large take of herring from the female species and if the males are included this becomes a large woton waste, this is not including the immature portion of the complete harvest of herring.

Unalakleet, Stebbins and Shaktoolik, has begun to fish herring commercially since 1979 which is about six years ago and still do not have a freezing plant to handle their harvest makes us stop to think if there will be any at all.

The bill SSHB 229 if passed will open the doors to other areas to "strip for the Roe"only. This is what we should stop from becoming law before it results in depletion of the herring population in our State. We should prevent the practise of stripping herring for the "Roe only" from spreading to other areas of our fishing industries which depends on herring.

All species of fish follow the herring and feeds on it, and where there are no feed there are no salmon. We should do all we can to preserve our herring stock.

Let me touch on Personal use, fishing. There are still those that depand on fish for a living. There are those that cannot get a job during the winter months that have to put up enough fish for the hard winter ahead. So when you vote on personal use fishing bill please remember these people when you vote, this is my plea.

Yours with best regards,

Cyrus E. Peck
Grand Secretary Emeritus
Alaska Native Brotherhood

cc: file
The Senate

Past ANB Grand Presidents
Dr. Alfred Widmark
Patrick J. Paul
Thomas Jackson
John Hope
Frank See
Dr. Walter Soboleff
Richard Stitt
Steven V. Hotch
Nelson D. Frank
Frank O. Williams
Herbert Hope
Robert R. Martin

Roy Peratrovich, Grand President Emeritus
Dr. Cyrus Peck, Sr., Grand Secretary Emeritus
Dr. Mildred Sparks, ANS Grand President Emeritus

Introduced: 3/4/85
Referred: House Special Committee
on Fisheries and Resources

IN THE HOUSE BY PIGNALBERI BY REQUEST

HOUSE BILL NO. 260

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to legislative policy on herring stripping; and providing for an effective date."

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

* Section 1. Section 1, ch. 27, SLA 1980 is repealed.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Article 3. Herring Spawn.

Section

172. Legislative policy on utilization of herring
173. Utilization of commercially taken herring
175. Removal of herring from state

Sec. 16.10.140 — 16.10.170. Taking of herring spawn; exceptions; certain restrictive covenants; penalties. [Repealed, § 2 ch 91 SLA 1970.]

Sec. 16.10.172. Legislative policy on utilization of herring. The legislature finds the following: (1) extensive and valuable herring populations are available for harvest in waters subject to the jurisdiction of the state; (2) commercial markets are available for herring processed in several forms; (3) one processing technique presently employed involves deliberately permitting decomposition of the herring carcass to allow for removal and subsequent sale of the roe product, with the consequence that the flesh is unusable and discarded. The legislature declares that the process referred to in (3) of this section is wasteful and does not constitute utilization of this resource for the maximum benefit of the people. Therefore, it is the policy of the legislature that this process should be eliminated to the fullest extent possible. (§ 1 ch. 9 SLA 1977)

Editor's notes. — Section 1, ch. 27, SLA 1980 provides: "LEGISLATIVE FINDINGS AND POLICY ON HERRING STRIPPING. (a) Notwithstanding AS 16.10.172, the legislature finds that in certain circumstances the processing technique described in AS 16.10.172(3), commonly referred to as "stripping", provides benefits of such importance to the state economy that the benefits may outweigh the waste involved in the process.

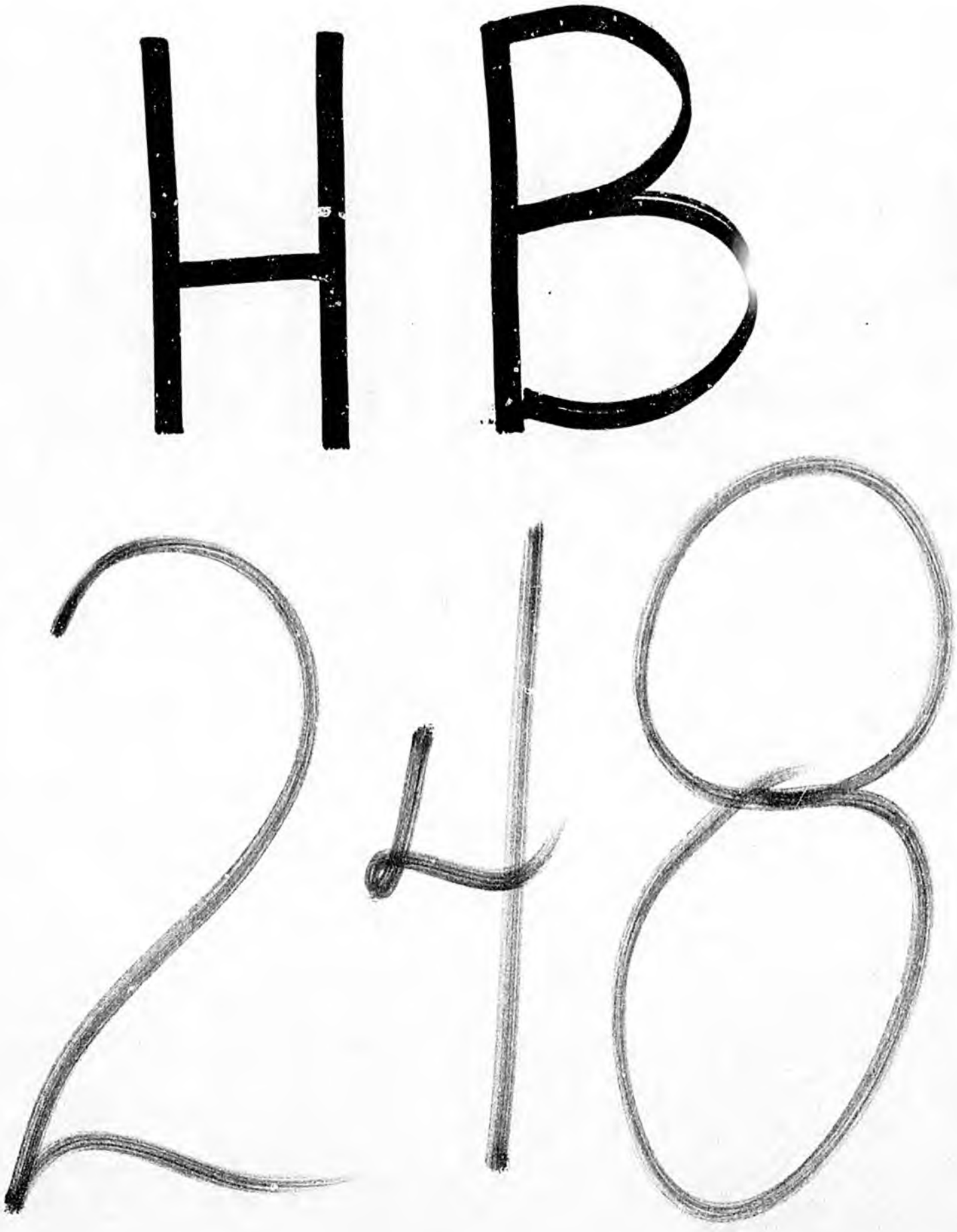
"(b) It is the policy of the legislature that notwithstanding AS 16.10.173 the disposal of herring carcasses is acceptable only if

"(1) the herring is taken from waters in which the herring population is large enough to support a stripping industry without substantially reducing the availability of the herring for other uses; and

"(2) the stripping process is conducted in an area of the state where local industry either does not exist or, if it does exist, it is insufficient to provide reasonable economic support to the people who live in the area."

Sec. 16.10.173. Utilization of commercially taken herring. (a) A person may not waste or cause to be wasted any commercially taken herring. For purposes of this subsection, "person" has the meaning given in AS 01.10.060 and also includes a joint venture.

(b) As used in this section, "waste" means the failure to use the flesh of commercially taken herring for reduction to meal, production of fish food, human consumption, food for domestic animals, scientific or educational purposes, or round herring bait. Normal, inadvertent loss of flesh associated with the uses described in this subsection which cannot be prevented by practical means does not constitute waste. The com-


HB
248

Bradley
3/21/85

Original sponsors: Shultz, Sund,
M.M.Miller and Marrou

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 248 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to leases on certain land formerly described as university-grant land; and providing for an effective date."

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

* Section 1. (a) A person and the assignee of a person who was a lessee of university-grant land on June 17, 1983, and whose lease is, on the effective date of this Act, managed by the Department of Natural Resources may request the commissioner of natural resources to issue a quitclaim deed conveying the land.

(b) Except as provided in (c) of this section, a lessee who holds a lease of former university-grant land under AS 38.05.070 may purchase the land for the lower of

(1) the appraised fair market value of the land under the lease as specified in Appendix F of the Settlement Agreement between the Department of Natural Resources, the Department of Revenue, the Department of Administration, and the University of Alaska and its Board of Regents as trustee for the University of Alaska as ratified in ch. 22, SLA 1983; or

(2) its appraised fair market value on June 17, 1983, as determined under AS 38.05.085(b).

(c) A lessee who holds a lease of former university-grant land that was subject to reappraisal under AS 38.05.085(a) may purchase the land for the lower of

(1) the appraised fair market value of the land under the lease as the value has been determined under Paragraph 15 of the Settlement

Agreement between the Department of Natural Resources, the Department of Revenue, the Department of Administration, and the University of Alaska and its Board of Regents as trustee for the University of Alaska as ratified in ch. 22, SLA 1983; or

(2) its appraised fair market value under the lease on June 17, 1983, as determined under AS 38.05.085(b).

(d) A lessee on the effective date of this Act who was a lessee on June 17, 1983, and who would have been entitled to rights under former AS 38.05.058 before its repeal may exercise those rights in a purchase under (b) or (c) of this section.

(e) A lessee who holds a lease of former university-grant land that is classified as agricultural land may purchase the land under (b) or (c) of this section subject to AS 38.05.321(a).

(f) The commissioner of natural resources shall advise each lessee who may have rights under this section of the enactment of this section.

(g) A lessee of former university-grant land who does not give the commissioner of natural resources notice of an intent to purchase within 180 days after receiving the notice of rights provided for in (f) of this section may purchase the former university-grant land for its appraised fair market value at the time the notice of an intent to purchase is given.

(h) A purchase of land under this section extinguishes all rights and claims arising out of the lease against the state by a lessee.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

ATTACHMENT #1

STATE - UNIVERSITY / LEASES

BACKGROUND:

University Trust Lands were Leased by the State, Division of Lands, during the period 1960 to 1975, as Long Term 55yr., Renewable Leases. From 1975-1977 Lessees of All State Land, (Mental Health, School, University, etc.), were appealing absorbitant rental increases, resulting in the Legislature passing New Lease, Amendment Laws in 1977,1978, (repealing the former Disposal/Lease Laws), providing an option to "Request Conversion, prior to January 1, 1979", of State Leases in effect on or before June 23, 1977, under the "New Laws"; thereby, was to follow an executed Lease amendment. At that time All Leases of State-owned land, including Mental Health, School, Municipality, etc., were amended, and Leaseholder's were permitted to buy their lands at the amended Lease Appraisal Valuation.

With rare exception, by early 1978, University Land Leases were not amended, even though the Lessees filed Lawful "Conversion Requests", (nor allowed to be sold to an applicant) because the University objected, "At its meeting February 15-16, 1978, the Board of Regents declined to approve conversion of Leases", although dictated by the State Statutes.

The University filed a lawsuit on April 23, 1979 vs the State, "alledging mismanagement", also filing a Lis-pendens on all University Trust Land, (including Leased Land, and "some" other land, not belonging to the University). They sought an injuction to stop Lease Conversions, (Amendments), Lease Renewal, or any Dispoal thereof, seeking ultimate management of all University Lands. The State sought to enjoin the Lessees as defendants in the Suit; But failed to show the Court how Third Party Lessee's would be damaged. In February, 1981, the Supreme Court ruled that the "State, not the University, owned th Land and could dispose of it only by law, and only the Legislature makes the Law".

XXX On March 11, 1982, the State and University entered into a tentative, (without predjudice), "Settlement Agreement", subject to ratification by the Legislature. Whereby: Compensation for Damages by the State would be paid; Leases were agreed to be binding, and management would be continued by the State, until transfer was requested by the University; Lease Conversion,(Amendments) could finally be completed; All University Lands would be conveyed to the University by the State, except any "unduly encumbered land, including any Lease's" the University elected not to retain, which would be replaced by other State land. Legislative concurrance and the Governors approval finally occurred on June 17, 1983, thru passage of SB 41. During this time Leaseholders complained to Legislators of their ongoing plight, and the Unviversity decided to give up ALL Leased Land to the State, and to speed up the schedule of reconveyance of Leases. Thru all this time the Lis-pendens has remained, until the final reconveyance.

XXX In the meantime, following the March 11, 1982, tentative "Settlement Agreement", the Division of Lands started processing University Lease (Amendments), which still remained unexecuted by the Lessor and Lessee, subsequent to the "Conversion Request" Agreement (to Amend), previously entered into by the Lessee and the State prior to 1-1-79. The old 1977,1978 paperwork was dug out, completely ignoring a Lease Conversion Amendment to the 1977,1978 Lease Conversion Laws enacted in 1981, (SLA 113, Sec.44.), and made effective retroactivly to July 18, 1978. THREE different Conversion Law provisions could now apply; per the "REQUEST" Agreement, Stipulating Provisions/Instructions on back.

(1) 1977 Conversion Law created "New" lease, (rental) based on last appraisal prior to 1-1-75 brought forward to 1-1-76 @ 10% a year, or, if leased after 1-1-7 @ the original lease rate.

(2) 1978 Conversion Law "Amends" lease, (rental) based on last appraisal prior to 1-1-75 brought forward to 1st quarter following request @ 10% a year, or, if leased after 1-1-75 "@ the original leased rate". (SLA 182, Sec.21. "If leased after 1-1-75 a New lease is the fair market value brought forward to conversion date @ 10% per year).

(3) 1981 (SLA 113, Sec.44., Retroactive to 7-18-78) Conversion Law "Amends" lease, (rental) based on last appraisal prior to 1-1-74 brought forward to 1st quarter following request @ 10% a year, or, if leased after 1-1-74 @ 10% per year to date of reqest.
XXX"A YEAR" is compounded;XXXX "PER YEAR" is straight Annual Interest.

The Division of Lands, offered only ONE provision to all University Land Lessee's, which included AGREEING to NOW execute a Lease Amendment (@ approximately Double the current rental rate), unneccessarily back-dating the Amendment, retroactively to 1979, or earlier; Also, demanding the immediate payment of a retroactive Compounded rental rate increase, (Lessee's had never been notified of any "additional", accruing, rental-billing, prior to this demand). The Lesse's were forced to pay-up, or supposedly "lose their rights" under the provisions of the "Amended Lease Law" now in effect.

ISSUES:

Since the Lessee's were innocent Third Parties to the lawsuit between the University and the State, and the land was in limbo, the Lessee's feel the inequity they suffered was a gross injustice, which they had no control over. The only thing Lessee's could do during this period, was pay the Lease expenses, and the Taxes, and pray for a just outcome. In the interim: Lessee's lost the opportunity to utilize their Residency Credits, for purchase of their Leased Land; They had to forestall plans for building, improving, or even retireing. Some have died; and some just gave up!

Since it has been the policy of the State to dispose of lands to its citizens, allowing a preference right to Leaseholders; due to the forestated circumstances, it is respectfully requested the State agree "It is in the best interest of the State" to offer to sell its Equity in these leased lands to the present Lessee's, under an equitable, applicable Preference Right Statute, such as AS 38.05.035(b)2.

ANALYSIS OF HB 248

Sec. 1 (a) Would allow a person who leased University Grant land on June 17, 1983 and whose lease is managed by the Commissioner of Natural Resources when this bill takes effect, to request the Commissioner to issue a patent to the land.

Sec. 1 (b) The person who holds a lease of former University Grant land under AS 38.05.07 (c) or .085 (a) (allows a lease to be issued for up to 55 years and sets out rules for reaching a fair appraisal price) may buy the land for the lower of the Appraised . r market value as set out in the Settlement Agreement between e Department of Natural Resources, Revenue, Administration and the University of Alaska or the appraised value on June 17, 1983 under AS 38.085 (b) (under this law the Director of the Division of Land had to have the property appraised)

Sec. 1 (d) A person who holds a lease on the land when this bill becomes law and who leased the land on June 17, 1983 and who would have been entitled to rights under the former AS 38.05.085 before its repeal, may exercise the purchase rights outlined above. (Sec. 1 (b) and (c)).

Sec. 1 (e) A person who holds a lease of former university grant land that is classified as agricultural may purchase it subject reservations by the State of all interests except agricultural rights.

Sec. 1 (f) The Commissioner of Natural Resources is responsible for advising lessee's who may have rights under this law when it is enacted.

Sec. 1 (g) A lessee of former university grant land who does not give the Commissioner notice of intent to purchase with 180 days after receiving notice may purchase the land at its appraised fair market value at the time the notice of intent to purchase is given

Sec 2. Provides Act takes effect immediately.

FOLLETT & ASSOCIATES
4141 B Street, Suite 402, Anchorage, Alaska 99503 (907) 562-4279

Richard H. Follett, MAI
Eric G. Follett, MAI

February 18, 1985

Ms. Bev Aleck
2524 Redwood
Anchorage, Alaska 99504

Regarding: Former University of Alaska Lands leased by the State of Alaska.

Dear Ms. Aleck:

The following letter sets forth the terminology, definitions and appraisal practices used in valuing real estate, when the property is affected by a lease. The eighth edition of The Appraisal of Real Estate, published by the American Institute of Real Estate Appraisers states, "The bundle of rights Theory holds that total real property ownership, or title in fee, includes several distinct rights, each of which can be separated from the bundle and conveyed by the fee owner to other parties in perpetuity or for limited time periods. When a right is separated from the bundle and transfered, a partial, or fractional property interest is created.

"Lease practice is one practical application of the Bundle of Rights Theory. An owner of the total bundle (a lessor) may convey to a tenant (a lessee) rights to use and occupy a property for a fixed time period. In return, the tenant assumes an obligation to pay an agreed upon periodic rent."

It goes on to say that, "A leasehold interest is said to have value when contract rent is less than market rent, which is the amount a property could earn in a competitive real estate market. Market rent is not profit from a business operated on the premises. It is the rent the real estate could command in the market. In a perfectly negotiated lease, contract rent would probably not differ from market rent. When market rent exceeds contract rent, the leasehold interest acquires value."

Under the Cannons and Regulations of the American Institute of Real Estate Appraisers, it would be unethical for an appraiser to render an opinion of market value for a property, and not take into consideration the effect of any leases on that property. If the tenant had a favorable lease at below market rent, whereby a leasehold interest existed, the market value of the property would be of the leased fee estate, which can be found by deducting the value of the leasehold interest from the total property value in fee simple. It would be unethical for the appraiser to merely value the property in fee simple and not take into account a favorable lease creating a leasehold interest by the lessee.

At this point it may be helpful to define some of the terms used in this letter:(1)

Lessor -	One who holds title and conveys the right to use and occupy a property under a lease agreement.
Lessee -	One who possesses the right to use or occupy a property under lease agreement.
Lessor's Interest -	Leased Fee Interest - The present (discounted) value of the contract (lease) rents in addition to the present (discounted) value of the reversion (a leased fee).
Lessee's Interest -	The market value of the property less the value of the lessor's interest.
Leasehold Value -	The value of the leasehold interest; that is, the right to the use, enjoyment and profit existing by virtue of the rights granted under a lease instrument. The value of the leasehold interest is the present (discounted) worth of the rent saving, when the contractual rent at the time of appraisal is less than the current market rent.
Reversion -	The returning of an item of real estate to its grantor, such as the return of the future use of real estate to a lessor at the expiration of the lease controlling it.

In the case of the University of Alaska Lands, which were leased by the State of Alaska, these properties all have an existing valid lease which must be taken into consideration when an appraiser estimates the current market value of the property. The State of Alaska is the lessor and owns the leased fee interest, which is the right to receive rent and to get the property back at the end of the lease.

The individual leaseholders own the leasehold interest, which is the right to use the property for a specific period of time, and may include improvements to the property or subleasing.

(1) Definitions are from the Appraisal Terminology and Handbook, published by the American Institute of Real Estate Appraisers.

Most of the University Land Leases were made in the early 1970's, and contain a clause allowing the lease payment to be increased to market rent upon reappraisal every five years. They were 55 year leases with an option to renew the lease for an additional 55 years at market rent.

In the late 1970's the State offered a conversion program whereby the lessees could convert the lease to a level payment, 25-year lease, after which the lease payment could be increased on every ten year anniversary, but the lease payment could not be greater than 150% of the payment during the previous 10 year period.

In all the instances reviewed by the appraiser, this created a substantial leasehold interest for the lessees.

The State of Alaska is now offering to sell the properties to the leaseholders. Since the properties are affected by valid leases, and the lessees have a saleable leasehold interest, the market value of the portion of the property owned by the State of Alaska is the leased fee interest.

In the Addenda of this letter, is an example analysis of a leased property which has been patterned after an actual leasehold under consideration. The assumptions in this example are as follows:

Current Land Value:	$280,000 (160 acres @ $1,750/acre)
Beginning of Lease:	7/23/74
End of Lease:	7/23/2029
Lease Term:	55 years
Option:	Additional 55 years at market rent.
Lease Rate:	25-year level payment at $950 per quarter beginning 1/23/78. The lease rate may increase up to 50% of the previous period every 10 years.

A survey of land leases in the market indicates that land lease rates for this type property would be about 8% of value annually. This would indicate a quarterly lease payment of $5,600 (.08 x $280,000 ÷ 4 = $5,600). The lessee has a substantial leasehold advantage of $4,650 per quarter ($5,600 less $950 equals $4,650). A typical investor would expect this property to increase in value approximately 70% every 10 years. For example, a property valued at $20,000 today would be worth $34,000 ten years hence. Thus, the lease advantage will increase over time, since the lease payment is level for 25 years and then only can be increased 50% every 10 years.

The lease goes to market rent at the beginning of the option period during the 55-year option. Therefore, the lessee's leasehold interest is calculated for only the initial 55 year term of the lease.

The underlying logic for estimating the market value of the leasehold interest, or the leased fee interest, is that a person would not pay a dollar today for a dollar received in the future. The difference in the amount paid is reflected by the discount rate, or interest rate.

Addendum A represents the calculations for a leased fee interest where the property is leased under the above terms and conditions, except the lease payment is at market rent and can be increased every 10 years. It shows that the present value of the discounted lease payments at 12% interest, plus the present value of the reversion of the property at 12% interest equals the present value of the property in fee simple. This calculation is used to check the assumptions and discount rates to make sure the discounted cash flows of the model equals the current fee simple market value of the property.

Addendum B shows the calculations for the leased fee interest using the discount rates from the model and applying the terms and conditions of the lease to this property. This example shows the leased fee interest has a current value of $50,733. This is the State of Alaska's Leased Fee Interest. Subtracting this amount from the value in fee simple of $280,000 indicates that the leasehold interest is worth $229,267.

As a check against these calculations, the appraiser can also estimate the value of the leasehold interest directly. It is based on the discounted cash flow of the rental advantage from the lease. During each time period, the rental advantage between market rent and the rent stated in the contract is discounted to present value.

Addendum C summarizes these calculations, indicating a total leasehold interest based on the above lease information and assumptions, of $228,470. Adding the estimated value of the leased fee interest yields a total property value estimate of $279,203, ($228,470 + $50,733 = $279,203) which is very close to the current market value of the property ($280,000).

It is the appraiser's hope that the example outlined in the Addenda will help clarify the University Land Leasehold situation and help identify the proper procedure to estimate the current market value of a property involving a lease. This paper shows the method of valuing both a Leased Fee Interest and the Leasehold Interest.

It is interesing to note that in this example, if the lease continues, the State of Alaska will receive a total of $294,262 in lease payments, plus the right to get back the property (the reversion) at the end of the lease, at which time the property will have appreciated to an estimated value of $2,970,000.

Alternately, if the State of Alaska sells its Leased Fee Interest for $50,733 (see Addendum B), and puts the money in an account receiving 10% interest compounded monthly, the investment would grow to $4,265,000 by the end of the lease (7/23/2029).

I would like to reemphasize that when a property is appraised for "Fair Market Value" and there is an existing lease, the appraiser must analyze the lease, and appraise the Leased Fee Interest (sometimes called Leased Fee Estate).

If we can be of any further help to you regarding the analysis of leases, please call us.

Sincerely yours,
FOLLETT & ASSOCIATES

Eric G. Follett

Eric G. Follett, MAI

ADDENDUM A

Leased Fee Interest Calculations - at Market Rents

As a check of the model, if we apply a market rent to the lease of a $280,000 property. The Present Worth of the lease payments and reversion should equal today's market value of the property.

Annual market rent would be 8% of land value (8% x $280,000 = $22,400), or $5,600 quarterly. An investor would also expect land values to increase 70% every 10 years, which would also increase the rent 70% every 10 years.

1st Period - 1/23/85 to 1/23/95

The Present Worth Factor for 40 quarters at 12% interest is 23.808 (from Compound Interest Tables).
The lease rate is $5,600.

$5,600 x 23.808 = $133,325

2nd Period - 1/23/95 to 1/23/2005

The Present Worth Factor for 40 quarters, deferred 40 quarters at 12% interest is (31.107 - 23,808) = 7.299
The lease rate can be increased by 70% to $9,520.

$9,520 x 7.299 = $ 69,486

3rd Period - 1/23/2005 to 1/23/2015

The Present Worth Factor for 40 quarters, deferred 70 quarters at 12% interest is (33.344 - 31.107) = 2.237.
The lease rate can be increased by 70% to $16,184.

$16,184 x 2.237 = $ 36,204

4th Period - 1/23/2015 to 1/23/2025

The Present Worth Factor for 40 quarters, deferred 120 quarters at 12% interest is (34.030 - 33.344) = .686.
The lease rate can be increased 70% to $27,513.

$27,513 x .686 = $ 18,874

5th Period - 1/23/2025 to 7/23/2029

The Present Worth Factor for 18 quarters, deferred 160 quarters at 12% interest is (34.155 - 34.030) = .125.
The lease rate can be increased 70% to $46,771.

$46,771 x .125 = $ 5,846

Present Worth of Market Lease Payments $263,736

Present Worth of Reversion

The estimated land value in year 2029 is $2,970,000, which reflects a 70% increase in land value every 10 years, simple interest.

Present Worth Factor for $1.00 received after 178 quarters at 12% annual interest is .0052

$2,970,000 x .0052 = + 15,444

Total Indicated Present Value of Lease Payment and Reversion $279,180

The model checks, since this is equal to the current value of the property in fee simple interest.

ADDENDUM B

Leased Fee Interest Calculations - Based on the Lease Terms

The "converted" lease states the quarterly rent on this property is $950 until 1/23/2003. The payment can then be increased up to 50% every 10 years.

1st Period - 1/23/85 thru 1/23/2003

The Present Worth Factor for 72 quarters at 12% interest is 30.246. The current lease rate is $950 per quarter.

$950 x 30.246 = $28,734

2nd Period - 1/24/2003 thru 1/23/2013

The Present Worth Factor for 40 quarters, deferred 72 quarters at 12% interest is (33.080 - 20.246) = 2.834. The lease rate can be a maximum of $950 plus 50%, or $1,425.

$1,425 x 2.834 = $ 4,038

3rd Period - 1/24/2013 thru 1/23/2023

The Present Worth Factor for 40 quarters, deferred 112 quarters at 12% interest is (33.949 - 33.080) = .869. The lease payment can be a maximum of $1,425 plus 50%, or $2,137.50

$2,137.50 x .869 = $ 1,857

4th Period - 1/24/2023 thru 7/23/2029

The Present Worth Factor for 26 quarters, deferred 152 quarters at 12% interest is (34.155 - 33.949) = .206. The lease payment can be a maximum of $2,137.50 plus 50%, or $3,206.25.

$3,206.25 x .206 = $ 660

Present Value of Lease Payment $35,289

Reversion

At the end of the 55 year lease the leaseholder has the option of renewing the lease for another 55 years, but the lease payment can be increased to market rent. Thus, the appraiser assumes that the leaseholder would no longer have a leasehold interest at that point, and the value of the Leased Fee Interest would equal the value of the Fee Simple Interest. The estimated value of the property in the year 2029 is $2,970,000, which reflects a 70% increase in land value every 10 years.

Present Value of Reversion

Present Worth Factor for $1 received after 178 quarters at 12% annual interest is .0052.

$2,970,000 x .0052 = $15,446

Total Estimated Market Value of Leased Fee Interest $50,733

Note: This represents the market value of the State of Alaska's Leased Fee Interest in the property.

ADDENDUM C

Leasehold Interest Calualations

Based on Lease Terms and Investor Expectations in Market

Period - 1/23/85 thru 1/23/95

PW of the rental advantage of $4,650 ($5,600 - $950) per quarter for 40 quarters discounted at 12% interest. The Factor is 23.808

$4,650 x 23.808 = $110,708

Period - 1/23/95 thru 1/23/2003

Present Worth of the Rental Advantage of $8,570 ($9,520 - $950) discounted at 12% interest for 32 quarters, deferred 40 quarters. The Factor is 30.246 - 23.808 = 6.438

$8,570 x 6.438 = $ 55,174

Period - 1/23/2003 thru 1/23/2005

Present Worth of the Rental Advantage of $8,095 ($9,520 - $1,425) discounted at 12% interest for 8 quarters, deferred 72 quarters. The Factor is 31.107 - 30.246 = .861

$8,095 x .861 = $ 6,968

Period - 1/23/2005 thru 1/23/2013

Presetn Worth of the Rental Advantage of $14,759 ($16,184 - $1,425) discounted at 12% interest for 32 quarters, deferred 80 quarters. The Factor is 33.080 - 31.107 = 1.973

$14,759 x 1.973 = $29,125

Period - 1/23/2013 thru 1/23/2015

Present Worth of the Rental Advantage of $14,046 ($16,184 - $2,138) discounted at 12% interest for 8 quarters, deferred 112 quarters. The Factor is 33.344 - 33.084 = .264

$14,046 x .264 = $ 3,711

Period - 1/23/2015 thru 1/23/2023

Present Worth of the Rental Advantage of $25,375 ($27,513 - $2,138) discounted at 12% interest for 32 quarters, deferred 120 quarters. The Factor is 33.949 - 33.344 = .605

$25,375 x .605 = $15,357

Period - 1/23/2023 thru 1/23/2025

Present Worth of the Rental Advantage of $24,307 ($27,513 - $3,206) discounted at 12% interest for 8 quarters, deferred 152 quarters. The Factor is 34.030 - 33.949 = .081

$24,307 x .081 = $ 1,972

Period - 1/23/2025 thru 1/23/2029

Present Worth of the Rental Advantage of $43,565 ($46,771 - $3,206) discounted at 12% interest for 18 quarters, deferred 160 quarters. The Factor is 34.155 - 34.030 = .125

$43,565 x .125 = $ 5,455

Total Discounted Present Value of Leasehold Interest $228,470

Add: Leased Fee Interest +50,733

TOTAL of Leasehold and Leased Fee Interests $279,203

Note: This is equal to the value in Fee Simple of $280,000, which provides a check against the assumptions and calculations.

APPRAISER'S QUALIFICATIONS

ERIC G. FOLLETT, MAI

American Institute of Real Estate Appraisers, Designation — MAI

EDUCATION

College: B.S. in Mathematics, University of Washington, 1973

Courses: American Institute of Real Estate Appraisers:
- AIREA Course IA - Seattle Pacific, 1974
- AIREA Course IB - University of Portland, 1977
- AIREA Course II - University of Colorado, 1978
- AIREA Course IV - Litigation - U. of Portland, 1980

BUSINESS EXPERIENCE

Appraiser - FOLLETT & ASSOCIATES, Anchorage, AK, 1/77 to present
Appraiser - ERICKSON & ASSOCIATES, Anchorage, AK, 4/75 to 7/81
Programer/Analyst - SAFECO INSURANCE CO., Seattle, WN, 3/73 to 4/75

SCOPE OF ASSIGNMENTS

Appraisals of commercial property, office buildings, medical buildings, industrial buildings, residential, special use properties and vacant land. Feasability studies, and Consulting. Qualified as an expert witness. Assignments located in Municipality of Anchorage, Matanuska-Susitna Borough, Kenai Borough, Valdez, Cordova, Seward, Kodiak, Bethel, Dutch Harbor, Juneau, Haines, Sitka, and numerous "Bush Communities".

MAJOR ASSIGNMENTS (over $1,000,000)

Jewel Lake Shopping Center & Bowling Alley, Anchorage
Alaska Hospital & Professional Building, Debarr Rd., Anchorage
Eastgate Shopping Center, Boniface Parkway, Anchorage
"Alyeska" Office Building Complex, Bragaw Street, Anchorage
Viewpoint Subdivision - 128 Lots
Bowling Alley and Bar, Sitka, Alaska
Vagabond Mobile Home Park, Anchorage, Alaska
Medical Clinic, Anchorage, Alaska
"Cottonwood Village" Condominiums - 104 Units
Wasilla Business Park, Wasilla, Alaska
Apartment Complex - 24-unit, Kenai, Alaska

TYPICAL CLIENTELE

All major Banks in Alaska
Carr-Gottstein Properties
Jack White Company
Area Realtors
Bureau of Land Management
Hines Investments
State of Alaska Division of Parks
Alaska State Housing Authority
Calista Native Corporation
Kuskokwim Management Corp.
Parker Drilling Company
Union Oil Company
Professional Contractors
U.S. Postal Service

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 248

Title: University grant land leases

Sponsor: Shultz

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400

Division: Commissioner's Office Date: 22 March 1985

Approved by Commissioner: Arnold, Deputy Date: 22 March 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

HB

256

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 256

Title: Economic Development of the State

Sponsor: Ringstad

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400

Division: Commissioner's Office Date: March 21, 1985

Approved by Commissioner: Norm D Arnold, Deputy Date: March 21, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Alaska State Legislature

Representative John Ringstad
District 20-B
P.O. Box 1848
Fairbanks, Alaska 99707
(907) 456-8336

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4998

House of Representatives

HB 256, an act establishing the economic development policy of the state, is a general policy statement, addressing the need for a stable, diversified economic base, and declaring Alaska's commitment to foster such development through the state's cooperation with the private sector.

Alaska sorely lacks an economic development policy.

This fact has hit us hard, with the sudden decline in revenues we are currently facing. It had been anticipated, that by the time the oil revenue dollars started falling off, Alaska would be well on the road to a stable, diversified economy. The oil revenues are now on the decline, and looking at the world-wide market situation and pricing structure for oil, this is a long-term situation.

HB 256 reflects Alaska's need and desire to further its economic viability. This confirmation is a long-term commitment towards the goal of diversifying our economy, thus creating more jobs for the citizens of this great state, and allowing them the opportunity to continue to make Alaska their home. Further, HB 256 will serve as a signal to domestic and foreign businesses of our commitment to economic development.

Passage of HB 256 will confirm this intent. This legislation is a general policy statement and is not intended to favor any industry or project.

I've been asked about the need for this legislation as a statute rather than a resolve. Billy Berrier, Director of Legal Services, has stated that a resolve does not have the weight or intent that a statute carries. Further, the intent of a resolution only holds for a particular Legislature. Our goal must be a long-term, continuous commitment to develop Alaska's economy.

I ask for your support, and thank you for your consideration of HB 256.

THE Aftl-DITTMAN POLL

of Alaska business leaders

The Aftl-Dittman Poll is a regular monthly feature of **Alaska Construction & Oil** *and Alaska Analysts/Dittman Research. Each month several hundred Alaska businessmen and businesswomen are contacted and asked their opinions on questions of statewide importance. The statewide totals are combined and published in the weekly business newsletter* **Alaska from the Inside (Aftl)** *and in* **Alaska Construction & Oil.** *The respondents included in the sample are representative of their fields of activity and are located throughout the state.*

QUESTION

"Overall, do you feel state government regulations and policies are most likely to encourage or discourage well-planned, responsible resource development?"

RESULTS

	Encourage	Discourage	Undecided
Construction and Timber	22%	78%	—
Petroleum and Mining	13%	85%	2%
Finance and Services	42%	56%	2%
TOTAL	24%	74%	2%

ANALYSIS

Nearly three-quarters (74%) of Alaska's business leaders interviewed in November feel state government regulations and policies *discourage* well-planned and responsible resource development.

The percentage of respondents agreeing varies widely by industry. Petroleum and Mining respondents are the most adamant, with 85% answering "discourage."

A review of the respondents' comments offered during the poll shows that the Alaska Department of Fish and Game was the most frequently mentioned example of a state agency that discourages resource development. The comments also indicated two main reasons for respondents' concern about government policies:

(1) It is difficult to justify the expense and time required to design a well-planned development and take it through the permitting process when the likelihood of success is always in doubt.
(2) The state employees who work in regulatory agencies are more likely to have regulatory ("protective") mentalities which may blind them to the benefits of resource development.

COMMENTS

"Mainly in the permit area — the Department of Fish and Game stops more projects than any agency. They are always on the side of the Sierra Club and SEACC. *No development* is their policy."

"It took 16 years to get a water-use permit for mining and I have a coal prospecting permit application that is nine years old and still pending."

"The tendency in state government is to over-regulate. That can only be one result of that tendency — operating costs are increased both by the requirements for compliance and the cost of processing paper."

"It takes too much time and effort to get permission for access. It discourages people before they even start."

"Regulations are built around a negative attitude."

"Definitely encouraged — a marked improvement noted in both words and deeds!"

"Until the Department of Fish and Game is restricted from making unilateral and arbitary decisions concerning resource development, we will be unable to encourage development no matter how well-planned and responsible!"

CALENDAR

ENERGY-SOURCES TECHNOLOGY CONFERENCE & EXHIBITION — Sponsored by the American Society of Mechanical Engineers at Loews Anatole Hotel, Dallas, TX, (214) 247-1747, Feb. 17-22.

TRAINING SESSIONS ON DRILLING AND BLASTING TECHNIQUES — Explosives Services Corp. of Issaquah, Wash., (206) 392-7112, is conducting a five-day training session on drilling and blasting techniques in Ketchikan, Feb. 18-Feb. 22; and in Anchorage, Feb. 25-March 1.

INTRODUCTION TO MICROCOMPUTERS — A short course presented by the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers, Hilton Hotel, New York, NY, (303) 973-9550, Feb. 23-24.

FINANCE FOR THE MINERALS INDUSTRY — A symposium that is part of the annual meeting events for the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers; Hilton Hotel, New York, NY, (303) 973-9550, Feb. 24-28.

STATE OIL AND GAS LEASE SALE NO. 46A — Anchorage Westward Hilton Hotel, Anchorage, Feb. 26.

AGC 66TH ANNUAL CONVENTION/CONSTRUCTOR EXPOSITION — The Associated General Contractors of America 1985 convention, San Francisco, CA, Feb. 27-March 5.

ALASKA SUPPORT INDUSTRY ALLIANCE — Conference on marginal oil field development, Captain Cook Hotel, Anchorage, March 2.

FOURTH ANNUAL ALASKA CONSTRUCTION SUPPLY AND EQUIPMENT SHOW — Exhibits and technical sessions, Sullivan Arena, Anchorage, (907) 346-2424, March 21-22.

ARCTIC '85: CIVIL ENGINEERING IN THE ARCTIC OFFSHORE — A national specially conference of the American Society of Civil Engineers at the Sheraton Palace Hotel, San Francisco, CA, (713) 772-0876, March 25-27.

34TH ANNUAL VEHICLE MAINTENANCE/MANAGEMENT CONFERENCE — Sponsored by the University of Washington, College of Engineering, at Kane Hall, Seattle, WA, (206) 543-5539, March 25-28.

ALASKA TRANSPORTATION FORUM — University of Alaska-Fairbanks, April 15-16.

CABLE HARVEST TECHNIQUES — Holiday Inn-Downtown, Spokane, WA, (509) 838-6101, April 15-19.

United Way of King County
Thanks to you.

THE Aftl-DITTMAN POLL

of Alaska business leaders

The Aftl-Dittman Poll is a regular monthly feature of **Alaska Construction & Oil** *and Alaska Analysts/Dittman Research. Each month several hundred Alaska businessmen and businesswomen are contacted and asked their opinions on questions of statewide importance. The statewide totals are combined and published in the weekly business newsletter* **Alaska from the Inside (AftI)** *and in* **Alaska Construction & Oil.** *The respondents included in the sample are representative of their fields of activity and are located throughout the state.*

QUESTION

"Overall, do you feel state government regulations and policies are most likely to encourage or discourage well-planned, responsible resource development?"

RESULTS

	Encourage	Discourage	Undecided
Construction and Timber	22%	78%	—
Petroleum and Mining	13%	85%	2%
Finance and Services	42%	56%	2%
TOTAL	24%	74%	2%

ANALYSIS

Nearly three-quarters (74%) of Alaska's business leaders interviewed in November feel state government regulations and policies *discourage* well-planned and responsible resource development.

The percentage of respondents agreeing varies widely by industry. Petroleum and Mining respondents are the most adamant, with 85% answering "discourage."

A review of the respondents' comments offered during the poll shows that the Alaska Department of Fish and Game was the most frequently mentioned example of a state agency that discourages resource development. The comments also indicated two main reasons for respondents' concern about government policies:

(1) It is difficult to justify the expense and time required to design a well-planned development and take it through the permitting process when the likelihood of success is always in doubt.
(2) The state employees who work in regulatory agencies are more likely to have regulatory ("protective") mentalities which may blind them to the benefits of resource development.

COMMENTS

"Mainly in the permit area — the Department of Fish and Game stops more projects than any agency. They are always on the side of the Sierra Club and SEACC. *No development* is their policy."

"It took 16 years to get a water-use permit for mining and I have a coal prospecting permit application that is nine years old and still pending."

"The tendency in state government is to over-regulate. There can only be one result of that tendency — operating costs are increased both by the requirements for compliance and the cost of processing paper."

"It takes too much time and effort to get permission for access. It discourages people before they even start."

"Regulations are built around a negative attitude."

"Definitely encouraged — a marked improvement noted in both words and deeds!"

"Until the Department of Fish and Game is restricted from making unilateral and arbitary decisions concerning resource development, we will be unable to encourage development no matter how well-planned and responsible!"

CALENDAR

ENERGY-SOURCES TECHNOLOGY CONFERENCE & EXHIBITION — Sponsored by the American Society of Mechanical Engineers at Loews Anatole Hotel, Dallas, TX, (214) 247-1747, **Feb. 17-22.**

TRAINING SESSIONS ON DRILLING AND BLASTING TECHNIQUES — Explosives Services Corp. of Issaquah, Wash., (206) 392-7112, is conducting a five-day training session on drilling and blasting techniques in Ketchikan, **Feb. 18-Feb. 22;** and in Anchorage, **Feb. 25-March 1.**

INTRODUCTION TO MICROCOMPUTERS — A short course presented by the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers, Hilton Hotel, New York, NY, (303) 973-9550, **Feb. 23-24.**

FINANCE FOR THE MINERALS INDUSTRY — A symposium that is part of the annual meeting events for the Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers; Hilton Hotel, New York, NY, (303) 973-9550, **Feb. 24-28.**

STATE OIL AND GAS LEASE SALE NO. 46A — Anchorage Westward Hilton Hotel, Anchorage, **Feb. 26.**

AGC 66TH ANNUAL CONVENTION/CONSTRUCTOR EXPOSITION — The Associated General Contractors of America 1985 convention, San Francisco, CA, **Feb. 27-March 5.**

ALASKA SUPPORT INDUSTRY ALLIANCE — Conference on marginal oil field development, Captain Cook Hotel, Anchorage, **March 2.**

FOURTH ANNUAL ALASKA CONSTRUCTION SUPPLY AND EQUIPMENT SHOW — Exhibits and technical sessions, Sullivan Arena, Anchorage, (907) 246-2424, **March 21-22.**

ARCTIC '85: CIVIL ENGINEERING IN THE ARCTIC OFFSHORE — A national specialty conference of the American Society of Civil Engineers at the Sheraton Palace Hotel, San Francisco, CA, (713) 772-0876, **March 25-27.**

34TH ANNUAL VEHICLE MAINTENANCE/MANAGEMENT CONFERENCE — Sponsored by the University of Washington, College of Engineering at Kane Hall, Seattle, WA, (206) 543-5539, **March 25-28.**

ALASKA TRANSPORTATION FORUM — University of Alaska-Fairbanks, **April 15-16.**

CABLE HARVEST TECHNIQUES — Holiday Inn-Downtown, Spokane, WA, (509) 838-6101, **April 15-19.**

United Way of King County
Thanks to you.

Resource Development Council for Alaska, Inc.

807 "G" Street, Suite 200, Anchorage, Alaska 99501-3440
Box 100516, Anchorage, Alaska 99510-0516 - 907/276-0700

EXECUTIVE DIRECTOR
Paula P. Easley

EXECUTIVE COMMITTEE
Charles R. Webber, President
K. Daniel Hinkle, Vice Pres.
E. Thomas Pargeter, Vice Pres.
Dale P. Tubbs, Secretary
J. Shelby Stastny, Treasurer
Boyd J. Brownfield
Don L. Finney
Robert W. Fleming*
John Forceskie
Mano Frey
O.K. "Easy" Gilbreth
John L. Hall
Sara S. Hemphill
Joseph R. Henri
Phil R. Holdsworth
John T. Kelsey
Ethel H. "Pete" Nelson
John Rense
R. G. Rodriguez
R. D. Stock
Robert I. Swetnam
Jack Werner

DIRECTORS/FOUNDERS*
John Abshire
Hameed Ahmad
Earl H. Beistline
Rex I. Bishopp
Robert T. Blaney
Robert A. Breeze
Glen E. Briggs
Milton Byrd
Larry Dinneen
James V. Drew
James G. "Bud" Dye*
Fred O. Eastaugh*
Tom Fink*
Lee E. Fisher*
Dan R. Fondell
Kelly Gay
Robert Gilliland
Howard Grey
Dave Harbour
Arthur R. Hauver
Roger R. Haxby
Hazel Heath
Dave Heatwole
Carl W. Heinmiller
Charles F. Herbert
M. A. Higgins
Joe Jackovich
Jerry E. Jean
John Choon Kim
Frank Klett
Kay H. Lasley
Kay Linton*
Phillip L. Locker
Charles E. Logsdon
Dennis W. Lohse
Jeffrey B. Lowenfels
Paul J. Martin
G. R. Meeks
Michael Milhollin
Pat Mulligan
Max D. Nalley
Richard A. Peluso
William Purrington
Irene Ryan
Lin S. Sloane
Mary J. Sutliff
Dale Teel
Joe J. Thomas
Richard W. Tindall
Rudy J. Trosclair
Joe Usibelli
Lyle Von Bargen
James Wakefield
Cyril R. Wanamaker
Anita Williams
Lew M. Williams
Jed Holley, Staff Consultant

EX-OFFICIO MEMBERS
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Governor Bill Sheffield

Doug

March 5, 1985

Representative Dick Shultz
Pouch V
Juneau, AK 99811

Dear Dick:

I was glad to see your name listed as a cosponsor of HB 256. This is an important bill for the state of Alaska and the Resource Development Council. Your support is significant and is creating support for the bill by those who know you and your record.

We and others have been pushing for this sort of state economic development policy for several years. With this bill Alaska can have the statutory guidelines for economic development envisioned in our constitution.

I am aware that HB 256 is tentatively scheduled to be heard in your committee March 20. I appreciate the priority you have given this. You can be sure that the Resource Development Council will have testimony prepared to support this bill and encourage its timely passage in the House.

Please let us know if there is any background or related information we can provide to aid your committee in reviewing this bill.

Thank you again for your support.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Paula Easley

Paula P. Easley
Executive Director

cc: Michael Abbott, RDC Legislative Coordinator

Testimony of the Resource Development Council on HB 256

Before the House Resource Committee

March 22, 1985

Good morning. My name is Beverly Ward and I am representing the Resource Development Council for Alaska of which I am a member of the board of directors. We appreciate the opportunity to comment on HB 256.

The economic development policy outlined in this bill is a positive addition to the Alaska Statutes. We encourage the passage of this bill in its present form.

Our objectives regarding this legislation are very simple. We want to see that there are statutory mandates for economic development. The tenets of this bill are broadly supported by Alaskans from every region. Our goals, within the context of this legislation, are not to influence specific regulatory or development proposals, but to create guidelines for all branches of government.

Specifically, HB 256 mandates purposeful development of Alaska's natural resources to further its goals of a sound economy, stable employment and a desirable quality of life. It also mandates state involvement as a catalyst for responsible economic development.

None of the provisions of this bill are new to any discussion of economic development. This bill simply places them within a framework which allows Alaska to measure itself against its own economic development goals.

Thank you for the opportunity to present the comments of the Resource Development Council.

Resource Development Council for Alaska, Inc.

807 "G" Street, Suite 200, Anchorage, Alaska 99501-3440
Box 100516, Anchorage, Alaska 99510-0516 – 907/276-0700

EXECUTIVE DIRECTOR
Paula P. Easley

EXECUTIVE COMMITTEE
Charles R. Webber, President
K. Daniel Hinkle, Vice Pres.
E. Thomas Pargeter, Vice Pres.
Dale P. Tubbs, Secretary
J. Shelby Stanley, Treasurer
Boyd J. Brownfield
Don L. Finney
Robert W. Fleming*
John Forceskie
Nana Frey
K. "Easy" Gilbreth
John L. Hall
Sara S. Hemphill
Joseph R. Henri
Phil R. Holdsworth
John T. Kelsey
Ethel H. "Pete" Nelson
John Rense
R. G. Rodriguez
R. D. Stock
Robert I. Swetman
Jack Werner

DIRECTORS/FOUNDERS*
John Abshire
Hameed Ahmad
Earl H. Beistline
Rex I. Bishopp
Robert T. Blaney
Robert A. Breeze
Glen E. Briggs
Milton Byrd
Larry Dinneen
James V. Drew
James G. "Bud" Dye*
Fred O. Eastaugh*
Tom Fink*
Lee E. Fisher*
Dan R. Fondell
Kelly Gay
Robert Gilliland
Howard Grey
Dave Harbour
Arthur R. Hauver
Roger R. Haxby
Hazel Heath
Dave Heatwole
Carl W. Heinmiller
Charles F. Herbert
M. A. Higgins
Joe Jackovich
Jerry E. Jean
John Choon Kim
Frank Kleft
Kay H. Lasley
Kay Linton*
Phillip L. Locker
Charles E. Logsdon
Dennis W. Lohse
Jeffrey B. Lowenfels
Paul J. Martin
G. R. Meeks
Michael Mitholtin
Pat Mulligan
Max D. Nalley
Richard A. Peluso
William Purrington
Irene Ryan
Lin S. Sloane
Mary J. Sutliff
Dale Teel
Joe J. Thomas
Richard W. Tindall
Rudy J. Trasclair
Joe Usibelli
Lyle Von Bargen
James Wakefield
Cyril R. Wanamaker
Anita Williams
Lew M. Williams
Jed Holley, Staff Consultant

EX-OFFICIO MEMBERS
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Governor Bill Sheffield

March 5, 1985

MAR 12 1985

Representative John Ringstad
Pouch V
Juneau, AK 99811

Dear John:

We are so pleased to see HB 256 introduced with you as sponsor. This is an important bill for the state of Alaska and the Resource Development Council. Your sponsorship is significant and is creating support for the bill by those who know you and your record.

We and others have been pushing for this sort of state economic development policy for several years. With this bill Alaska can have the statutory guidelines for economic development envisioned in our constitution.

I am aware that HB 256 is tentatively scheduled to be heard in House Resources March 20. You can be sure that the Resource Development Council will have testimony prepared to support this bill and encourage its timely passage in the House.

Please let us know if there is any background or related information we can provide to aid its passage.

Thank you again for your support.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Paula Easley

Paula P. Easley
Executive Director

cc: Michael Abbott, RDC Legislative Coordinator

Fairbanks North Star Borough

Mayor: B.B. Allen

February 12, 1985

FEB 19 1985

Representative John Ringstad
Alaska State Legislature
Pouch V
Juneau AK 99811

Dear John:

Based on the advice of several people including Harold Heinze, President, ARCO Alaska, Inc., Bob Bettisworth, Dr. Earl Beistline, Dr. William Wood and others, we have formed a statewide Resource Policy Coalition to address the needs of resource development throughout our state.

At our initial meeting, the first resolution we adopted was a policy statement on economic development. I would like for you and other members of the interior delegation to review the policy statement in hopes that you will do whatever is necessary to establish this as a statement of the State of Alaska's policy on economic development.

This policy statement on economic development has been supported by the Alaska Municipal League, Alaska Conference of Mayors, Fairbanks North Star Borough, Greater Fairbanks Chamber of Commerce, City of Seward, Alaska Mining Association and several others. I think it is important that members of the interior delegation, representing the area where most of the resources are located, provide the leadership by introducing and supporting the resolution for the development and processing of those natural resources.

If you have questions regarding this matter, please do not hesitate to contact me.

Sincerely yours,

Bill

B.B. ALLEN
Borough Mayor

BBA:al

enclosure

P.O. Box 1267 Fairbanks, Alaska 99707 (907) 452-4761

HB

2677

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 03-19-86

REQUEST

Bill/Resolution No.: HB 267
Title: State Park Camping Fees

Sponsor: House Resources
Requestor: House Finance
Date of Request: 03-20-86

FISCAL DETAIL

Agency Affected: Natural Resources
BRU: Park Management, Management & Admin.

Components:

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		31.4	38.3	38.3	38.3	38.3
TRAVEL						
CONTRACTUAL		9.0	6.0	6.0	6.0	6.0
SUPPLIES		42.0	15.4	15.4	15.4	15.4
EQUIPMENT		5.0	5.0	5.0	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		87.4	64.7	64.7	59.7	59.7
CAPITAL						
REVENUE		250.0	420.0	440.0	480.0	520.0

FUNDING : (Thousands of Dollars)

GENERAL FUND		87.4	64.7	64.7	59.7	59.7
FEDERAL FUNDS						
OTHER						
TOTAL		87.4	64.7	64.7	59.7	59.7

POSITIONS :

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME		1	1	1	1	1
TEMPORARY		-0-	-0-	-0-	-0-	-0-

ANALYSIS : Attach a separate page if necessary

See Attached

Prepared by: Neil Johannsen/Sharon Barton
Division: Parks and Ourdoor Recreation/Management
Phone: 762-4505
Date: 03-20-86

Approved by Commissioner: Norman D Dowell, Deputy
Date: 3/20/86
Agency: Natural Resources

Distribution (by Agency prepari fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Attachment to Bill Analysis
State Park Campground Fees

The bill would authorize camping fees for developed campgrounds in the state the state park system. Fees would be charged on a daily, per vehicle basis in those campgrounds that offer the highest level of facilities and that are economical in terms of administering the program. The cost of implementing the proposed fee system is $87.4 in FY 87. These funds would provide for the installation of "iron rangers" at self-service fee payment stations at the entrances of state-operated campgrounds. The "iron ranger" is a heavily built iron deposit box that is designed to receive envelopes, providing a very high degree of security. The fiscal note would provide a part-time Accounting Technician for the Division of Management; the Division of Parks and Outdoor Recreation will add time to existing positions for employee overtime to perform the revenue collection tasks, compliance checks, communication with campground hosts, and field accounting functions.

The Division of Parks and Outdoor Recreation would implement the fee collection system through the use of the "Iron ranger" and the use of volunteer camp hosts to insure compliance. The U.S. Forest Service, National Park Service, British Columbia Provincial Park Service and numerous state park systems have found self-collection "iron rangers" vandal proof and to have a very high (80%) public compliance. The contractual service funds would be used to build instructional signs at fee stations and to fund additional vehicle mileage involved with collection, cash deposits, and compliance checks. Supplies funding is needed to purchase the building materials for the self-service collection stations, printing of collection envelopes and field accounting forms. Equipment funds will be used to purchase the safes for remote ranger stations.

The fiscal note reflects the high first year costs of a camping fee program, but assuming that the Division of Parks and Outdoor Recreation does not have a fee system functioning until July 15 and in only nine campgrounds, the expected revenue is $250.0. This revenue will increase substantially over the five-year period forecasted. The investment-return ration becomes substantial following initial start-up costs. Within 4 years, an investment of about $60,000 will return revenues of nearly half a million dollars.

We were also asked to comment on the possibility of contracting for state parks management. It would be possible to have fourteen parks under contract management within the first year. The state would realize a savings in the operating budget of $200.0. However, it would realize reduced revenues of approximately the same amount

Introduced: 3/6/85
Referred: Resources
and Finance

IN THE HOUSE BY THE RESOURCES COMMITTEE

HOUSE BILL NO. 267

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the levy and collection of fees for the use of state park facilities; and providing for an effective date."

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

* Section 1. AS 41.21 is amended by adding a new section to read:

Sec. 41.21.023. FEES FOR THE USE OF STATE PARK CAMPSITES. (a) The department may establish and collect fees for the use of state park developed campsites. When setting these fees, the department shall consider

(1) the cost to the state of operating the facility;

(2) the fees charged for the use of a similar facility by a nongovernmental entity;

(3) the cost of administering a fee collection program for the facility; and

(4) the public interest.

(b) A person who fails to pay a fee established under this section is guilty of a misdemeanor punishable under AS 41.21.950.

(c) In this section

(1) "developed campsite" means a campsite having access to the following public facilities: restrooms, a picnic table, an outdoor cooking facility, and an approved water source;

(2) "state park" has the meaning given in AS 38.04.910(8).

* Sec. 2. AS 28.10.411(e) and AS 41.35.045(b) are repealed.

* Sec. 3. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).

Original sponsor: Resources Committee

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 267 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the levy and collection of fees for the use of state park facilities; and providing for an effective date."

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

* Section 1. AS 41.21 is amended by adding a new section to read:

Sec. 41.21.023. FEES FOR THE USE OF STATE PARK CAMPSITES. (a) The department may establish and collect fees for the overnight use of state park developed campsites. When setting these fees, the department shall consider

(1) the cost to the state of operating the facility;

(2) the fees charged for the use of a similar facility by a nongovernmental entity;

(3) the cost of administering a fee collection program for the facility; and

(4) the public interest.

(b) In this section

(1) "developed campsite" means a campsite having access to the following public facilities: restrooms, a picnic table, an outdoor cooking facility, and an approved water source;

(2) "state park" has the meaning given in AS 38.04.910.

* Sec. 2. AS 28.10.411(e) and AS 41.35.045(b) are repealed.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Attachment to Bill Analysis
State Park Campground Fees

The bill would authorize camping fees for developed campgrounds in the state park system. Fees would be charged on a daily, per vehicle basis in those campgrounds that offer the highest level of facilities and that are economical in terms of administering the program. The cost of implementing the proposed fee system is $87.4 in FY 86. These funds would provide for the installation of "iron rangers" at self-service fee payment stations at the entrances of state-operated campgrounds. The "iron ranger" is a heavily built iron deposit box that is designed to receive envelopes, providing a very high degree of security. The fiscal note would provide a part-time Accounting Technician for the Division of Management; the Division of Parks and Outdoor Recreation will add time to existing positions for employee overtime to perform the revenue collection tasks, compliance checks, communication with campground hosts, and field accounting functions.

The Division of Parks and Outdoor Recreation would implement the fee collection system through the use of the "Iron ranger" and the use of volunteer camp hosts to insure compliance. The U. S. Forest Service, National Park Service, British Columbia Provincial Park Service and numerous state park systems have found self-collection "iron rangers" vandal proof and to have a very high (80%) public compliance. The contractual service funds would be used to build instructional signs at fee stations and to fund additional vehicle mileage involved with collection, cash deposits, and compliance checks. Supplies funding is needed to purchase the building materials for the self-service collection stations, printing of collection envelopes and field accounting forms. Equipment funds will be used to purchase the safes for remote ranger stations.

The fiscal note reflects the high first year start-up costs of a camping fee program, but assuming that the Division of Parks and Outdoor Recreation does not have a fee system functioning until July 15 and in only nine campgrounds, the expected revenue is $108.6. This revenue will increase substantially over the five-year period forecasted. The investment-return ration becomes substantial following initial start-up costs. Within 4 years, an investment of about $60,000 will return revenues of near half a million.

ALASKA VISITORS ASSOCIATION

P.O. BOX 10-2220
ANCHORAGE, AK 99510
(907) 276-6663

Telex:
Within Alaska 25-147
Lower U.S. 090-25-147
Canada 0305-25-147
International 314-25-147

1983-84
EXECUTIVE OFFICERS
President
ROBERT H. BRENNAN
Princess Tours
Seattle, Washington
Vice President/
Administration
RAL WESTHARDWICK
Alaska West Associates
Anchorage, Alaska
Vice-President/
Government Relations
CHRIS VON IMHOF
Alyeska Resort
Girdwood, Alaska
Vice-President/
Marketing
DEAN WEIDNER
TravAlaska Tours
Seattle, Washington
Secretary
DENNIS BRANDON
Sheffield Enterprises
Anchorage, Alaska
Treasurer
A. K. "KIRK" LANTERMAN
Westours, Inc.
Seattle, Washington
Executive Director
DALE FOX

PAST PRESIDENTS
GEORGE SUNDBORG
1950
ROBERT E. ELLIS
1951-1952
EDWARD D. COFFEY
1952-1955
MARSHALL CRUTCHER
1955-1956
BEN CRAWFORD
1956-1957
EVERETT PATTON
1957-1959
ROBERT A. BAKER
1959-1960
ROBERT E. ELLIS
1960-1962
ROBERT GIERSDORF
1962-1963
E.E. SWOFFORD
1963-1964
H. JACK MUSIEL
1964-1966
JAMES JOHNSON
1966-1967
FRANK DOWNEY
1967-1968
BILL SHEFFIELD
1968-1969
JOHN MONROE
1969-1970
RONALD LATIMORE
1970-1971
JOHN STEVENS
1971-1972
LEN LAURANCE
1972-1973
E. AL PARRISH
1973-1974
A.E. "BUD" HAGBERG
1974-1975
CHUCK WEST
1975-1977
CHARLES CONWAY
1977-1978
JIM BINKLEY
1978-1979
MARTHA EDWARDS
1979-1980
ROLF KLUG
1980-1981
DAVE PALMER
1981-1982
CHRIS VON IMHOF
1982-1983

April 16, 1984

Honorable Robert Bettisworth
Alaska House of Representatives
State Capital
Pouch V
Juneau, Alaska

Dear Rep. Bettisworth:

I am pleased to inform you that the AVA Board of Directors last week voted to support passage of House Bill 486, relating to user fees for parks facilities. As sponsor of the measure, I'm sure you understand how private industry feels about unfair competition the state currently participates in around Alaska.

The state will benefit from this legislation and AVA lends it support to efforts to getting the bill passed.

Sincerely,

Dale Fox

Dale Fox,
Executive Director

cc: Neil Johannsen

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION

225A CORDOVA STREET
ANCHORAGE, ALASKA 99501
PHONE (907) 276-2653

MAILING ADDRESS
POUCH 7001
ANCHORAGE, ALASKA 99510

February 19, 1985

Re: Legislation for Campground Fees

The Honorable Bettye Fahrenkamp
Alaska State Legislature
Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

We recently discussed the concept of generating additional revenue for the state by charging fees for the use of state park campgrounds in Alaska. I'm hoping to see a bill introduced into this year's legislative session to authorize state park campground fees. My staff and I have compiled some facts, figures, and projections which I'd like to share with you.

The History of Fees in Public Campgrounds

The federal government began collecting fees in national parks over 50 years ago. Today, Alaska is the only state to not charge for the use of recreational facilities. Of the country's 50 state park systems, only Alaska has no campsite fee program. Here in Alaska, the U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service and Municipal campgrounds all charge fees for camping. And, of course, private campgrounds charge.

In 1976, there was a $10.00 annual entrance fee established in the Alaska State Park System. This program was terminated two years later by legislation dealing with motor vehicles [AS 28.10.411(e)] which stated that any vehicle with an Alaskan license plate need not pay State Park fees. To have a campsite fee program in Alaska's 100 state parks will require legislation.

Why Should We Charge Fees Again?

In a few words -- declining revenues and increasing demands. In 1982, there were 2.2 million visitors to our state park system; in 1983, 4.3 million; and last year, about 5 million! Information from other agencies charging fees shows that people desire well-developed, well-maintained camping facilities and they are willing to pay for them. Managers have also found a decrease in vandalism and a number of positive management spin-offs which occur when campsite fees are charged. Although government-operated campgrounds are seldom fully self-supporting, nationwide approximately 10% are. At a minimum, we can reduce the government subsidy of this popular, but nontheless expensive, program. Developed campgrounds are very expensive to develop and operate. They are also very popular.

How Do People Feel About Campground Fees?

Surprisingly, more than half of facility users will pay without hesitation. The Forest Service here in Alaska reports 77% compliance at more remote facilities and 92% compliance where a volunteer campground host is on the premises. My field staff tells me that many visitors, especially those from Outside, are amazed that no fees are charged in Alaska State Park campgrounds. Owners of private campgrounds are very much in favor of the charge. They are tired of the free competition. Last year, the Alaska Visitors' Association supported a previous attempt at legislation authorizing campsite fees.

How Much Would Be Charged and At Which Facilities?

Fees would be approximately $6.00 per overnight use of a campsite for residents, and approximately $8.00 for non-residents. At first, only those campgrounds with substantial improvements would be included, with a graduated fee being charged for facilities with running water and modern restrooms. A "season pass" should also be made available at between $50.00 and $75.00 per year. Many of the less-developed, more primitive campgrounds would remain free. But generally, the fancier the campground, the higher the fee.

How Would The Fees Be Collected?

The "iron ranger" self-registration fee station has been very successful for other agencies through the years. This is essentially a simple, slotted iron container located near the park entrance into which fees are deposited by visitors who will be overnighting at the campground. The fee station is self-operating and does not require staff. The station issues a camping permit which is placed on each vehicle dashboard. Park staff can then readily determine who has paid while on routine patrol. At larger facilities, a volunteer campground host will welcome each visitor, assisting with nearby facility locations and assuring general compliance with the campsite fee program.

How Much Revenue Would Be Generated and How Soon?

If legislation is passed in the 1985 session, the program could be started in May of 1986 at selected sites. Estimating a visitation rate for this year (1986) of nearly 7 million, initially $400,000 to $500,000 could be realized, increasing considerably each year. Indiana State Parks, for example, now collects 80% of their operating costs through fees and concession revenues.

Along with this proposed camping fee, I hope to work through existing regulations and statutes to generate revenue from programs such as public use cabins, guides and outfitters permits, concessions and tours of historical sites. I feel that with tourism being one of the largest job and revenue producing industries in Alaska, State Parks should be an active member of that

industry. And with a declining revenue curve, it is encumbant on me to formulate economic strategies which make money and save money while serving the public.

Sincerely,

Neil C. Johannsen
Director

enclosure

cc: Esther C. Wunnicke, Commissioner, DNR

NCJ:clk

Province of
British Columbia
Ministry of
Lands, Parks
and Housing

FORUM

SELF REGISTRATION IN PARKS A SUCCESS

Will B.C. campers voluntarily register and pay for campground use when there isn't an official there to ask for their money? The answer is an overwhelming "yes", as the Parks and Outdoor Recreation Division showed this year in 52 provincial parks.

Two years ago, the division launched a pilot program of self-registration fee collections in seven parks, then increased it to 11 parks in 1979 and 52 this year. The objective was to monitor both the response of campers and the effectiveness from an operations standpoint. It has proven to be an entirely valid system for both users and operators.

B.C. was the first Canadian province to use the self-registration system, but credit for its organization goes to the U.S. Forest Service, which pioneered it in the early 1970's.

The principle behind self-registration is simple: the responsibility for registering and paying camping fees falls to the camper rather than park staff. The advantage to campers is obvious: convenience. They can now pay their fee when they arrive instead of waiting for a collector to come around at a specified time. They can also pay in advance for as many nights as they wish. Assuming they do (and statistics now show this to be an entirely valid assumption), fee collectors are now free to work in other areas of park operations to improve service to the public.

The implementation of the system is also fairly simple: as campers enter the campground, a sign advises them that attendants do not collect fees. Campers are asked to select a site, then go to the self-registration station and pay. At these fee stations, strategically located in the campground, envelopes are provided, the camper fills in the registration information, puts the fee in the envelope, seals it, and deposits it in a vault, first tearing off the receipt stub. During the evening, park staff check each vault to ensure payment has been received.

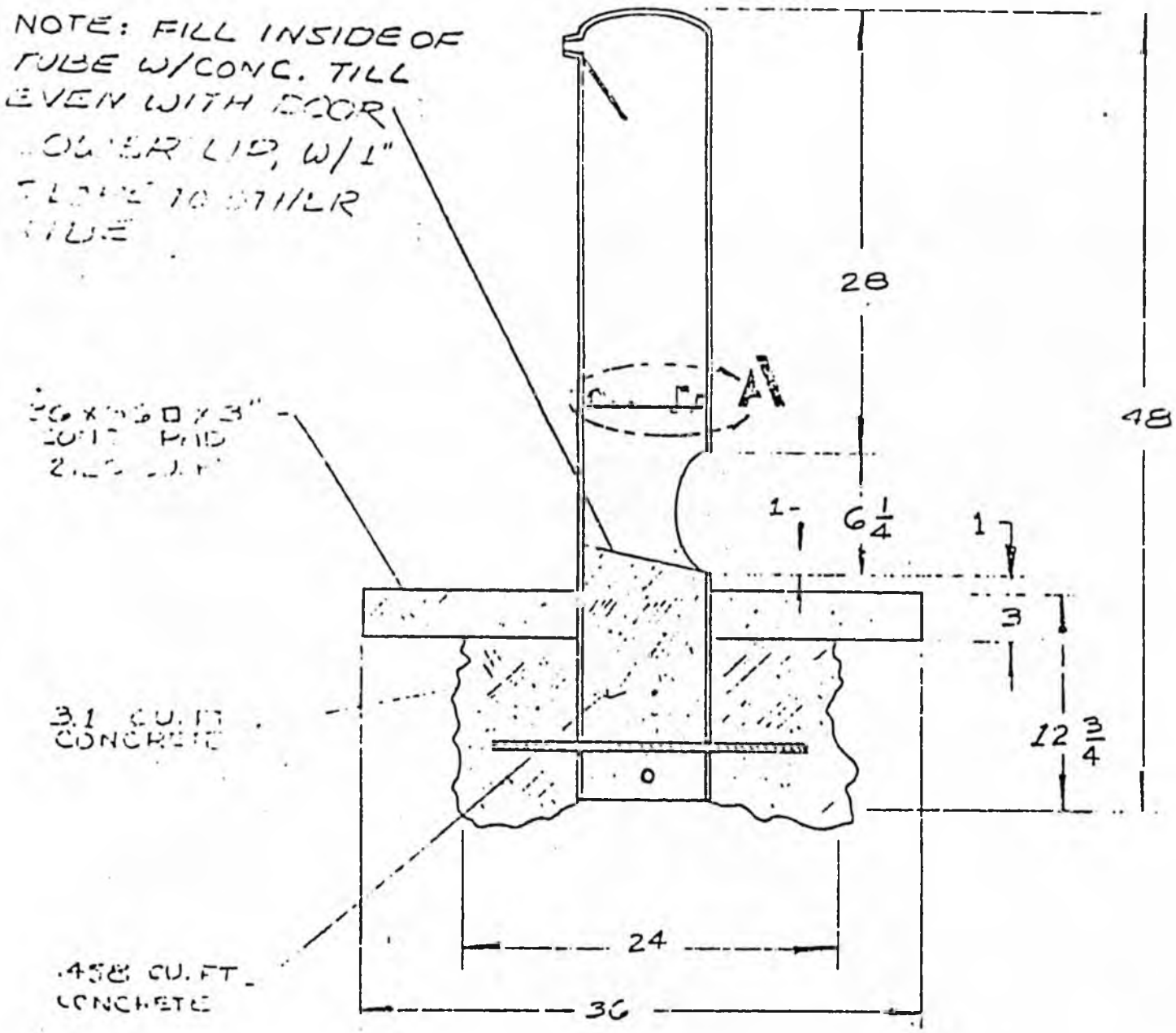
During the two year period, the average voluntary compliance rate was over 80% and, when additional information, instructions, or reminders were given, the average was a stunning 96%! This rate is as high as that achieved with traditional methods of fee collection. Based on B.C.'s experimental program, Yoho National Park started a similar system in the summer of 1979. Their volunteer compliance averaged 92% — another indication of the system's viability and people's basic honesty!

To get public reaction to the new system, the division monitored some of the 20,000 camping parties who participated in the 1978 pilot program. At that time, users did not show any strong objections to the system. They were undecided as to whether or not there was a decrease in contact with staff and it was generally felt there were no problems with change, foreign currency (American) or the instructions. They did, however, remark on the appearance of the fee station, because it did not blend with park environment. This response was welcomed because the fee stations and vaults were designed to be easily identified.

As with most new concepts, improvements are an integral part of their success. The self-registration system was no exception. Several recommendations were made by field staff and improvements and modifications were made.



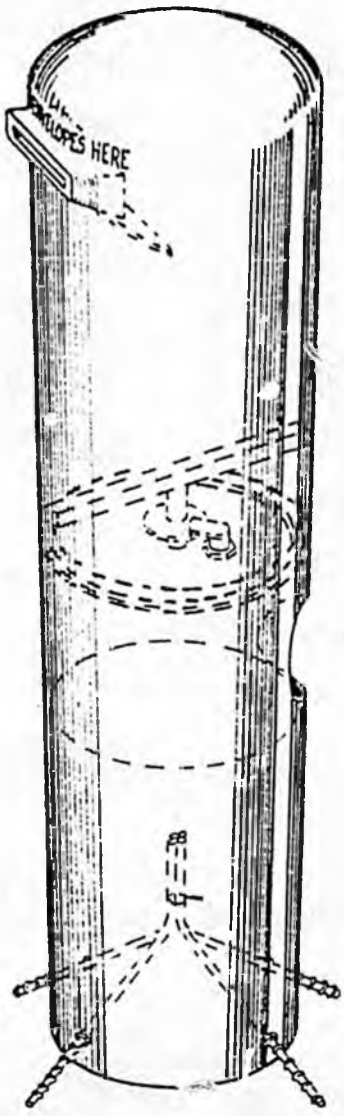
Ron Kerr of the Parks and Outdoor Recreation Division Operations Branch demonstrates the self-registration fee system. Ron is filling out the permit envelope following the instructions on the sign. In the foreground is the vault where Ron will deposit the permit envelope and camping fee.



Side view of a typical fee collection devise or "iron ranger".

SAMPLE

ENVELOPE DEPOSITORY



- D-625 DEPOSITORY BOX 48" HIGH
- DOMED HEAD AND REINFORCED SLOT PREVENTS DISTORTION BY PRYING
- STURDY 5" IRON PIPE PREVENTS USE OF PIPE CUTTER
- HIDDEN LOCK PANEL INACCESSIBLE FOR CHISELING, DRILLING OR PRYING
- ANTI TILT RING ABOVE LOCK PLATE
- CEMENT CAST INTO PIPE ANCHORS IT PERMANENTLY TO BASE
- FOREST GREEN PAINT

72.50 EACH

ALL PRICES F.O.B. ORLAND
Subject To Change Without Notice

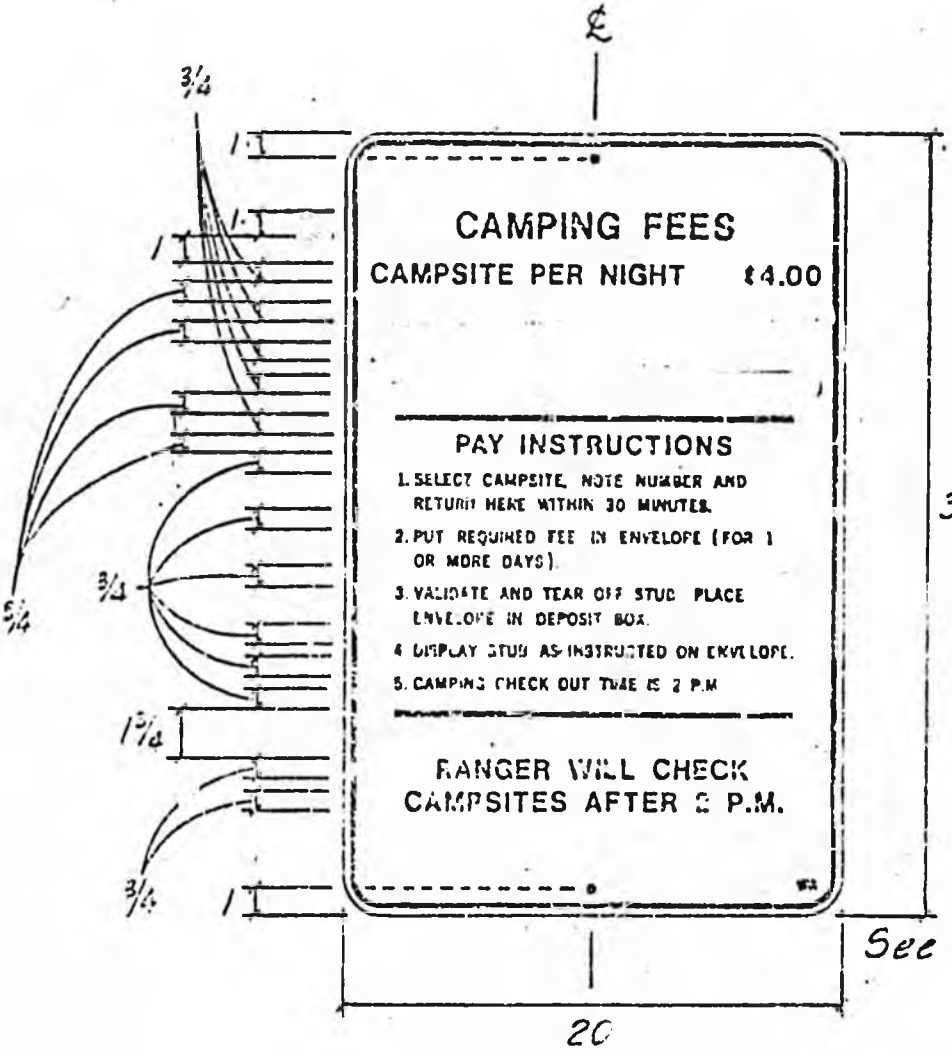
NOTE: ALL shipments will be prepaid via most economical method
Shipping charges will appear as a separate item on your invoice.

B&K INDUSTRIES INCORPORATED

P.O. BOX 876 • ORLAND, CA. 95963 • (916) 865-4777

State of California – The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

SIGN DIMENSIONS



Note: Unless otherwise noted lettering is to be 1/2" and spacing between lines is 1/2".

Sign Number: 190-477 (Revised) ALL DIMENSIONS IN INCHES

Size	Border Width	Margin Top	Margin Bottom	Margin Left	Margin Right	Frame Stiffener Dwg	Frame Stiffener A	Frame Stiffener B	Frame Stiffener C	Bear	Hole	Gauge	Corner Radius
20×30	1/4	3	4	1	1	—	—	—	—	1/2	5/16	.050	1/2

Colors		Production Method	
Symbol			Reflective — Non-Reflective —
Size		Background	
Border	Brown	Border	
Background	Brown	Letters & Symbols	
Letters	Buff	Die Cut Borders	
Diamond		Die Cut Letters & Sy	
Diamond Letters		Drawn By: J.F.	
Approved	[illegible]	Supervisor, Sign Unit	Date: 12-1-1

Typical Fee Payment Instruction Sign

DRAFT

Alaska State Park System User Fee Policy

The policy of the Division of Parks and Outdoor Recreation regarding user fees in state park units is:

1. To establish and levy affordable entry, facility use and program fees where it is practical to do so and where the facilities or programs are worthy of the fees charged. Initial fees shall be levied only for high quality and urban adjacent campsites and for tours of the Wickersham State Historic Site.

2. Fees should be charged for highly specialized developments or programs catering to a specific clientele. Fee schedules shall seek to significantly reduce, or if possible eliminate, user subsidies.

3. Some fees may be adjusted annually, effective January 1. The overall percentage fee increase shall not be greater than the rate of inflation for the preceding year and/or a reasonable amount of increase if it is found that a user fee has been artificially low.

4. Fees schedules shall generally be in round dollar numbers to avoid the expense and inconvenience of making change.

5. Fees may be waived for school groups on a reservation basis, when their visit or trip is in conjunction with an educational program for grades K through 12.

6. Where fees are charged on an individual rather than a per vehicle basis, fees may be reduced for visitors under 12 or over 65 years of age.

7. Insofar as possible every effort should be made to insure that user fees do not unreasonably discriminate against economically disadvantaged or other minority groups.

8. Annual use permits may be established and used in lieu of paying daily fees to provide a moderate savings to frequent users of park facilities.

PERMIT

Valid Only at This Site for the Day(s) Paid Beginning Purchase Date __/__/__
Campers: Check Out 2 p.m.
Number of Days Paid ____

No. B 0531009

Detach this stub and display on vehicle dashboard clearly visible from outside.

No. B 0531009

U.S. Department of Agriculture
Forest Service

COMPLETE THIS BLOCK ONLY ONCE DURING YOUR STAY			
ARRIVAL	(HOUR)		(AM or PM)
No. PEOPLE IN VEHICLE		HOME ZIP CODE	
EXPECTED DEPARTURE	(DATE)	(HOUR)	(AM or PM)

TO VALIDATE COMPLETE THE FOLLOWING

Amount Enclosed $_____ Number of Days Paid_____
Purchase Date__/__/__
Car License_____ State_____
Golden Age Passport No. (if applicable)_____

CAMPGROUND USERS MUST COMPLETE THE FOLLOWING:

Camp Unit No._____

2300-26b (2/76)

PERMIT

Valid Only at This Site for the Day(s) Paid Beginning Purchase Date __/__/__
Campers: Check Out 2 p.m.
Number of Days Paid ____

No. B 0531010

Detach this stub and display on vehicle dashboard clearly visible from outside.

No. B 0531010

U.S. Department of Agriculture
Forest Service

COMPLETE THIS BLOCK ONLY ONCE DURING YOUR STAY			
ARRIVAL	(HOUR)		(AM or PM)
No. PEOPLE IN VEHICLE		HOME ZIP CODE	
EXPECTED DEPARTURE	(DATE)	(HOUR)	(AM or PM)

TO VALIDATE COMPLETE THE FOLLOWING

Amount Enclosed $_____ Number of Days Paid_____
Purchase Date__/__/__
Car License_____ State_____
Golden Age Passport No. (if applicable)_____

CAMPGROUND USERS MUST COMPLETE THE FOLLOWING:

Camp Unit No._____

2300-26b (2/76)

Sample of typical campground fee payment envelopes

Projected revenue from
State Park Campground Fee
Summer 1986

South Central Region	RT$	% mean occup.	Capacity	Open days	Comml. Rate	Total
A. Mat-Su						
1. Byers Lake SRS	6	40	60	90	80	10.4
2. Nancy Lk. SRS	6	60	30	120	80	10.4
3. South RollyCG	6	30	100	110	80	15.8
4. Finger Lk.SRS	6	50	40	120	85	12.2
5. King MNT SRS	6	50	20	110	75	5.0
6. Moose R. SRS	6	50	10	110	75	2.5
7. Matanuska.GL	6	50	13	110	75	3.2
8. Rocky Lk. SRS	3	50	10	110	75	1.2
B. Copper Basin						
1. Dry CRK. SRS	6	60	60	120	80	20.7
2. Lk. Louise SRS	6	40	20	90	60	2.6
3. Blueberry SRS	6	40	10	90	60	1.3
4. Little Tonsina	6	60	10	110	70	2.8
5. Porcupine Crk	6	60	10	110	70	2.8
C. Chugach						
1. Eklutna CG.	6	50	50	150	75	16.9
2. Eagle R. CG.	8	80	36	150	85	29.4
3. Bird Creek CG	6	80	25	150	85	15.3
Kenai Area						
1. Izaak Walt.srs	6	75	25	120	75	5.9
2. Discovery CG.	6	40	67	120	70	11.5
3. Johnson Lk.sra	6	40	40	120	80	9.2
4. Ninilchik SRA	6	60	50	120	80	17.3
5. Anchor R. SRA	3	60	38	120	80	6.7
6. Kasilof R. SRS	6	50	16	120	80	4.6
Kodiak Ranger District						
1. Ambercr.SHP	6	80	14	120	85	6.9
2. Bushkin R. Srs	6	80	18	120	70	7.3
SE Region						
1. Settlers Cove	6	60	12	120	70	3.6
2. Chilcoot Lk.	6	80	32	150	85	19.6
3. Chilkat SP.	6	50	32	150	80	11.5
Northern Region						
1. Quartz Lk.sra	6	60	16	110	75	4.8
2. Harding Lk.sra	6	40	90	110	90	21.4
3. Chena R. SRA	6	35	56	110	60	7.8
4. Chena SRS	8	85	60	120	90	44.0
5. Eagle Tr. SRS	6	50	40	110	70	9.2

NORTHERN (CON'T)	RTS	MEAN OCCUP.	CAPACITY	OPEN DAYS	COMPL RATE	TOTAL
6. Tok River SRS	6	50	40	110	70	9.2
7. Clearwater SRS	6	50	20	90	70	3.8
SUBTOTAL RESIDENT						357.8
NON-RESIDENT SURCHARGE						62.2
GRAND TOTAL						$420.0

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

March 12, 1985

The Honorable Richard Shultz
Co-Chair, House Resources Committee
Pouch V
Juneau, AK 99811

Dear Representative Shultz:

As you have requested, the Department of Natural Resources has reviewed HB 267 which authorizes the collection of fees for use of developed state park campsites.

The department supports this bill because it will generate revenue for the state and help to offset state park operation and maintenance costs. In addition, when recreation user fees are charged, park managers have found that vandalism decreases. Decreases in vandalism would, in turn, save the state money and allow park employees more time for necessary maintenance and supervisory activities.

Please let me know if I may provide additional information about the proposed fee system.

Sincerely,

for Esther C. Wunnicke
Commissioner

10-J9LH

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 267

Title: State Park Camping Fees

Sponsor: House Resources

Requestor: House Resources Comm.

Date of Request: 3/11/85

FISCAL DETAIL

Agency Affected: Natural Resources, Div. of Parks

Program Category Affected: NFMEC

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		31.4	38.3	38.3	38.3	38.3
200 TRAVEL						
300 CONTRACTUAL		9.0	6.0	6.0	6.0	6.0
400 SUPPLIES		42.0	15.4	15.4	15.4	15.4
500 EQUIPMENT		5.0	5.0	5.0	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		87.4	64.7	64.7	59.7	59.7
CAPITAL						
REVENUE		108.6	420.0	440.0	480.0	520.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		87.4	64.7	64.7	59.7	59.7
FEDERAL FUNDS						
OTHER						
TOTAL		87.4	64.7	64.7	59.7	59.7

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME		1	1	1	1	1
TEMPORARY		-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary

Prepared By: Neil Johannsen/Sharon Barton Phone: 265-4504

Division: Parks and Outdoor Recreation/ Management Date: 3/5/85

Approved by Commissioner: Date: 3/12/85

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Attachment to Bill Analysis
State Park Campground Fees

The bill would authorize camping fees for developed campgrounds in the state park system. Fees would be charged on a daily, per vehicle basis in those campgrounds that offer the highest level of facilities and that are economical in terms of administering the program. The cost of implementing the proposed fee system is $87.4 in FY 86. These funds would provide for the installation of "iron rangers" at self-service fee payment stations at the entrances of state-operated campgrounds. The "iron ranger" is a heavily built iron deposit box that is designed to receive envelopes, providing a very high degree of security. The fiscal note would provide a part-time Accounting Technician for the Division of Management; the Division of Parks and Outdoor Recreation will add time to existing positions for employee overtime to perform the revenue collection tasks, compliance checks, communication with campground hosts, and field accounting functions.

The Division of Parks and Outdoor Recreation would implement the fee collection system through the use of the "Iron ranger" and the use of volunteer camp hosts to insure compliance. The U. S. Forest Service, National Park Service, British Columbia Provincial Park Service and numerous state park systems have found self-collection "iron rangers" vandal proof and to have a very high (80%) public compliance. The contractual service funds would be used to build instructional signs at fee stations and to fund additional vehicle mileage involved with collection, cash deposits, and compliance checks. Supplies funding is needed to purchase the building materials for the self-service collection stations, printing of collection envelopes and field accounting forms. Equipment funds will be used to purchase the safes for remote ranger stations.

The fiscal note reflects the high first year start-up costs of a camping fee program, but assuming that the Division of Parks and Outdoor Recreation does not have a fee system functioning until July 15 and in only nine campgrounds, the expected revenue is $108.6. This revenue will increase substantially over the five-year period forecasted. The investment-return ration becomes substantial following initial start-up costs. Within 4 years, an investment of about $60,000 will return revenues of near half a million.

HB

2273

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

DS

Revision Date:

REQUEST

Bill/Resolution No.: CS (RES) HB 273

Title: Extralateral rights of lode mining claims

Sponsor: Duncan

Requestor:

Dat. of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Minerals and Energy Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar 3/20 Phone: 465-2400

Division: Commissioner's Office Date: March 18, 1985

Approved by Commissioner: Mike D Arnold Deputy Date: March 18, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Moen
3/19/85

Original sponsors: Duncan, Pourchot,
Taylor, et al

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 273 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to extralateral rights of federal lode mining claims; and providing for an effective date."

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

* Section 1. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.252. EXTRALATERAL RIGHTS UNDER SHORE, TIDE, AND SUBMERGED LAND. (a) Extralateral rights under shoreland, tideland, and submerged land are confirmed and granted to an owner of a lode mining claim located before January 3, 1959 under the mining laws of the United States, subject to AS 38.05.275.

(b) In this section, "extralateral rights" means rights given to an owner of a mining claim under 30 U.S.C. 26 to follow, and mine, any vein or lode the apex of which lies within the boundaries of the location of the surface of the mining claim, notwithstanding the course of the vein or lode on its dip or downward direction may so far depart from the perpendicular as to extend beyond the planes which would be formed by the vertical extension downwards of the sidelines of the location.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Alaska State Legislature

Representative Jim Duncan

Pouch V Juneau, Alaska 99811

(907) 465-4766

COMMITTEES:
Finance
Budget and Audit
Loans
Policy

MEMORANDUM

March 11, 1985

TO: Representative Shultz
Representative Herrmann
Co-Chairs of the House
Resources Committee

FROM: Representative Jim Duncan

SUBJECT: HB 273 Extralateral Rights

House Bill 273, Extralateral Rights has been referred to your committee.

Please schedule HB 273 for a hearing in your committee as soon as possible.

All pertinent back-up material is attached for your information.

Purpose and Effect of Proposed Extralateral Rights Legislation

SUMMARY

The purpose of the proposed extralateral rights legislation is to clarify the law in Alaska and confirm that the owners of federal lode mining claims located prior to statehood may pursue their extralateral rights into lands under navigable waters which are owned by the State ("submerged lands"). The effect of the proposed legislation will be to remove a potential cloud on the title to many lode claims located prior to statehood in Alaska, thereby facilitating additional private investment in the exploration and development of such claims.

DISCUSSION

Extralateral rights are the rights granted to the owner of a lode mining claim located under the federal mining laws to follow and mine any vein or lode the apex of which lies within the surface boundaries of his claim, notwithstanding that the down-dip course of the vein of lode may so far depart from the perpendicular as to extend into lands outside of and beyond the sidelines of his claim.

Not all federal mining claims are entitled to extralateral rights. Extralateral rights attach only to a lode deposit contained within an identifiable vein or lode structure having (1) a definite downward dip and (2) its apex within a properly located federal lode claim. Extralateral rights do not exist in connection with placer deposits, flat-lying lode deposits, or disseminated lode deposits not contained within an identifiable vein or lode structure.

It is important to note that the doctrine of extralateral rights relates only to the title to the minerals contained in the vein or lode structure. A claimowner who is entitled to extralateral rights is not entitled to use the surface of any lands outside his claim, nor is he relieved from obtaining all necessary permits required by law before conducting operations.

The current extralateral rights provision of the federal mining laws was enacted as part of the General Mining Law of 1872, and has been in effect for over 100 years. Even before this, the early mining laws and customs of England, Germany, France, Spain, and Mexico recognized extralateral rights in one form or another. Extralateral rights were also recognized in the miners' rules and customs adopted in California in the mid-1800's prior to the enactment of the federal mining laws. That Congress saw fit to recognize

extralateral rights when it enacted the General Mining Law of 1872 shows that Congress believed extralateral rights to be an important attribute of federal lode mining claims.

For the most part, the lode claims and mines which have utilized the doctrine of extralateral rights have been situated on federal land well removed from the coastlines and navigable rivers of our country. This especially has been the case in the Rocky Mountain states, where hardrock mines have been developed entirely on uplands. The applicability of the doctrine of extralateral rights on uplands is clear and not disputed.

In Alaska, many hardrock mines are situated immediately adjacent to navigable waters along Alaska's extensive coasts. The owners of these mines have consistently held and developed their claims with the understanding and belief that the federal mining laws afforded them extralateral rights, regardless of the direction their lode deposits may take in their downward course. Naturally, some of these lode deposits extend into submerged lands, and in the years prior to statehood a great deal of mining was conducted in Alaska under submerged lands by miners exercising their extralateral rights (e.g., Treadwell Mine at Juneau).

The good faith activities and beliefs of these claimowners notwithstanding, the law is unclear on whether extralateral rights can be asserted in submerged lands. In the only case addressing the issue, the Federal District Court for the Territory of Alaska stated that:

> the law giving a party the right to follow all veins, the apices of which are within the limits of his claim, ev[illegible] outside of the sidelines thereof, (should) permit him to go below the waters of the sea in following such vein without trespassing any law of property existing in the United States.

Alaska United Gold Mine. Co. v. Barbridge, 1 Alaska 311, 329 (1901). This early lower court decision has not been overruled, but it is inadequate assurance of the current state of the law for any claimowner seeking to make a substantial investment in developing a mine where ownership of the valuable minerals may depend in part on the existence of extralateral rights.

The Legislature is in a position today to clarify this uncertainty in the Law because on January 3, 1959, title to all submerged lands in Alaska vested in the State. In 1960 the Legislature enacted similar legislation which confirmed and granted title to the surface of submerged lands to those persons who in good faith had occupied or developed the lands before statehood. AS 38.05.820 (1984). Now with lode mining

30 USC § 26

§ 26. Locators' rights of possession and enjoyment

The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim existed on the 10th day of May 1872 so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. Nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

R.S. § 2322.

AMERICAN LAW OF MINING

Second Edition

By

THE ROCKY MOUNTAIN
MINERAL LAW FOUNDATION

Boulder, Colorado

Cheryl Outerbridge
Editor-in-Chief

VOLUME 2

(Dates originally published: First Edition 1960, Second Edition 1984)

MATTHEW BENDER
235 E. 45TH STREET, NEW YORK, N.Y. 10017
450 SANSOME STREET, SAN FRANCISCO, CALIF. 94111

CHAPTER 37

EXTRALATERAL RIGHTS

SYNOPSIS

§ 37.01 Nature of Extralateral Rights

- [1] Definition and Nature of Extralateral Rights
- [2] Character of Estate in Granted Veins and Lodes
- [3] Right of Pursuit Associated with Extralateral Rights
- [4] Blanket Veins
- [5] Lodes in Placers

§ 37.02 Requirements for Exercising Extralateral Rights

- [1] Apex within Boundaries of the Claim
- [2] Legal, Theoretical, or Judicial Apex
- [3] Continuity of Vein
- [4] Parallel End Lines
- [5] Restriction to Downward Course

§ 37.03 Relation of Location to Course of Vein as Affecting Extralateral Rights

- [1] Location Parallel with Course of the Vein
- [2] Location with Vein Crossing Two Side Lines
- [3] Location with Vein Departing Through Side Line or Stopping within Location
- [4] Location with Vein Entering and Departing Through the Same Boundary
- [5] Extralateral Rights to Lodes with a Wide Apex

§ 37.04 Extralateral Rights in Secondary Veins

- [1] Application of Extralateral Rights to Secondary Veins
- [2] End Lines of Discovery Vein Control
- [3] Amount of Apex of Secondary Vein within the Claim
- [4] Relation of Location to Course of Secondary Vein

§ 37.05 Subsurface Conflicts as to Extralateral Rights

- [1] General Rules
- [2] Patented Non-Mining Lands
- [3] Intersecting Veins
- [4] Uniting Veins
- [5] Conflicts on Different Portions of the Same Vein

CHAPTER 37

EXTRALATERAL RIGHTS

§ 37.01 Nature of Extralateral Rights

[1] Definition and Nature of Extralateral Rights

Extralateral rights are rights to the dip of a vein based on ownership of its apex by means of a valid location. The term "extralateral rights"[1] refers to rights to a vein outside the side line limits of a lode location. The term is used in contradistinction to "intraliminal rights" which refers to rights to ore within the limits of a location.[2]

There is no common law to support the principle of extralateral rights which are purely statutory in origin.[3] The statutory authority appears in the Mining Law of 1872 which provides that lode locators:

> shall have the exclusive right of possession and enjoyment. . .of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges.[4]

Extralateral rights are property rights and other rights in the nature of easements[5]

---

[1] Lindley attributed the coining of "extralateral" to Dr. Rossiter W. Raymond, formerly United States Commissioner of Mining Statistics, who introduced it in his paper, "The Law of the Apex," XII *Transactions of the American Inst. of Mining Engineers* 387 (1884). 2 *Lindley on Mines*, § 565 at 1251 (3d ed. 1914). The term has been adopted almost universally by the courts, although other terms are sometimes used, such as "extralimital," "extraliminal," "the right of lateral pursuit," and "apex rights."

[2] See § 36.01, *supra*, discussing intraliminal rights.

[3] Arizona Commercial Mining Co. v. Iron Cap Copper Co., 27 Ariz. 202, 232 P. 545, *aff'd as modified on rehearing*, 29 Ariz. 23, 239 P. 290 (1925), *cert. denied*, 270 U.S. 642 (1926). *See also* § 37.01[2], *infra*.

[4] 30 U.S.C. § 26 (1982).

[5] *See* § 37.01[3], *infra*.

which are granted by the statute in "veins, lodes, and ledges,"[6] and which attach to lode locations containing the apex[7] of a vein which extends[8] outside the side lines of a location with parallel end lines,[9] and which may be exercised (under specified conditions) by following the vein downward[10] beneath the surface of certain categories of adjacent lands.[11]

Extralateral rights are granted by the statute only to lode deposits properly located as lode mining claims.[12] Thus, extralateral rights do not apply to placer locations made on placer deposits[13] or placer locations improperly made on lode deposits.[14] Because of the statutory limitation, extralateral rights do not apply to mill sites,[15] tunnel sites,[16] or nonmineral land patented under agricultural, townsite, or other nonmining laws,[17] nor to lode locations based upon blanket veins which lack the required dip.[18] Extralateral rights may not be exercised by entering upon the surface of a claim possessed by another,[19] and are applicable only to valuable mineral deposits locatable as lode deposits[20] on the public domain.[21]

Because ownership of an apex by means of a valid location is a prerequisite to the existence of extralateral rights, courts and commentators often refer to the statute creating this unique property interest as the "apex law" and the right

---

6 The terms "vein," "lode," and "ledge" are synonymous.

7 *See* § 37.02[1], *infra*.

8 *See* § 37.02[3], *infra*.

9 *See* § 37.02[4], *infra*.

10 *See* § 37.02[5], *infra*.

11 *See generally* § 37.05, *infra*.

12 30 U.S.C. § 26 (1982). *See* Carson City Gold & Silver Mining Co. v. North Star Mining Co., 83 F. 658, 663 (9th Cir. 1897), *cert. denied*, 171 U.S. 687 (1898); Doe v. Waterloo Mining Co., 54 F. 935, 937 (C.C.S.D. Cal. 1893). See also § 32.02, *supra*, discussing the characteristics of lode and placer deposits and factors for distinguishing them.

13 30 U.S.C. § 35 (1982) excepts veins from entry and patent as a placer.

14 Such locations are void. *See* Cole v. Ralph, 252 U.S. 286, 295 (1920). But see § 32.05, *supra*, and § 37.01[5], *infra*, as to lodes in placer locations for which a placer locator may obtain rights but not extralateral rights.

15 Walsen v. Gaddis, 118 Colo. 63, 194 P.2d 306, 318 (1948). See generally § 32.06, *supra*, on mill sites.

16 After discovery of a lode within the tunnel, a surface lode location may be made and, if it contains an apex, extralateral rights attach. *See* § 32.07[7], *supra*.

17 Empire Star Mines Co. v. Grass Valley Bullion Mines, 99 F.2d 228, 234 (9th Cir. 1938) (agricultural patent); Amador Medean Gold Mining Co. v. South Spring Hill Gold Mining Co., 36 F. 668 (C.C.N.D. Cal. 1888) (agricultural entry), *rev'd on other grounds*, 145 U.S. 300 (1892).

18 *See* § 32.03[3][a], *supra*, and § 37.01[4], *infra*.

19 30 U.S.C. § 26 (1982). *See* § 37.01[3], *infra*.

20 30 U.S.C. § 23 (1982). *See* §§ 32.02[2] & .02[4], *supra*.

21 30 U.S.C. § 22 (1982). *See* Chapter 6, *supra*.

as "apex rights."[22] The apex statute and most of the cases construing it are relatively old, most of the judicial decisions having been made before 1920. Yet, the statute has not been amended,[23] and the judicial construction of it has not changed since the early years, so the early cases remain of continuing importance.

Since World War II the expenses of exploration and of mining at depths of several thousand feet have impelled miners to seek control of large acreages to assure them of the opportunity to recover their investment.[24] If sole control and ownership of deep deposits cannot be achieved, miners frequently enter into joint exploration and development agreements for cooperative efforts.[25] Both arrangements have tended to reduce the amount of apex litigation as compared with early years when litigation between apex claimants was rife.[26]

[2] Character of Estate in Granted Veins and Lodes

The extralateral rights obtained by a lode locator in "veins, lodes and ledges" as specified by the Mining Law of 1872[27] might be regarded as a modification of the common law maxim that ownership extends from the surface to the center of the earth in vertical planes.[28] Strictly speaking, this is not correct because the statutory grant constitutes a severance of the vein from the surrounding soil, is not repugnant to the common law, and should not be so interpreted or construed.[29] Rights to veins apexing within a properly located lode mining claim are part and parcel of the location, and at the time a location is perfected the locator obtains a vested estate in the veins throughout their entire length within the statutorily required parallel end lines.

---

22 *See, e.g.*, Collins v. Bailey, 22 Colo. App. 149, 125 P. 543, 548 (1912); Neff, "The Law of the Apex—A Continuing Enigma," 18 *Rocky Mt. Min. L. Inst.* 387 (1973); Arnold, "Lode Locations: A Specific Question of Extralateral Rights and a General Theory of Intralimital Rights," 22 *Harv. L. Rev.* 339 (1909).

23 The forerunner of the apex statute, 30 U.S.C. § 26 (1982), was the Lode Law of 1866, ch. 262, 14 Stat. 251 (surviving portions codified at 30 U.S.C. §§ 43, 46, & 51 and 43 U.S.C. § 661 (1982). Many of the judicial decisions construing the 1866 statute are applicable to the 1872 statute. *See* § 30.03, *supra*.

24 *See* § 32.03[3][b], *supra*.

25 *See* Title XIII, *infra*.

26 Neff, "The Law of the Apex—A Continuing Enigma," 18 *Rocky Mt. Min. L. Inst.* 387, 414 (1973) (hypothesizing that the extreme cost of proving identity and continuity of veins at great depths will encourage compromise agreements between conflicting claimants).

27 30 U.S.C. § 26 (1982).

28 *See* Collins v. Bailey, 22 Colo. App. 149, 125 P. 543, 548 (1912) (" 'apex right' is in derogation of the common law which granted to the owner of lands all veins within the vertical lines of his land to the center of the earth"); Duggan v. Davey, 4 Dak. 110, 26 N.W. 887, 890-91 (1886), *appeal dismissed*, 131 U.S. 433 (1889). See § 36.02, *supra*, as to intraliminal mineral rights based upon common law.

29 3 *Lindley on Mines* § 568 (3d ed. 1914). *See* Neff, "The Law of the Apex—A Continuing Enigma," 18 *Rocky Mt. Min. L. Inst.* 387, 397-402 (1973).

The ownership estate in mining claims is subject to limitation and extension. Limitation occurs because a locator is not necessarily the owner of veins and lodes found within his claim; if their apexes are outside his claim, his rights may be subject to another's extralateral rights.[30] Extension occurs because by statute a locator owns and therefore is entitled to follow, possess, and mine any vein or lode which apexes within his claim even though it might dip beyond his side lines and under adjoining land.[31]

The estate granted by the statute is a possessory right to the minerals.[32] It is not an easement, although certain easements attach because of the need to disturb a portion of adjoining rock when following a vein into adjacent lands.[33] The exercise of extralateral rights does not depend upon seniority, but follows automatically from location of an apex whenever a claim is staked out in the manner prescribed by the statute,[34] provided that the apex dips downward into land not previously appropriated as non-mining land and does not conflict with a prior apex right.[35]

As with other real property interests, boundaries of extralateral rights to a vein may be fixed by agreement, either a conveyance or a contract.[36] Conveyances of extralateral rights, however, require a very clear-cut expression of intent as to whether or not a conveyance of a lode location includes just the minerals within the vertical boundaries of the location or some or all of the extralateral rights.[37] While a locator's interest in extralateral ore bodies may be divested by adverse possession, it is settled law that possession of the surface is not necessarily sufficient possession of the minerals underneath to give title to them.[38]

---

30 Grant v. Pilgrim, 95 F.2d 562, 565 (9th Cir. 1938); Duggan v. Davey, 4 Dak. 110, 26 N.W. 887, 891 (1886).

31 St. Louis Mining & Milling Co. v. Montana Mining Co., 194 U.S. 235 (1904); Tom Reed Gold Mines v. United E. Mining Co., 24 Ariz. 269, 209 P. 283, 287, *cert. denied*, 260 U.S. 744 (1922).

32 *See* § 36.03[1], *supra*.

33 *See* § 37.01[3], *infra*.

34 Colorado Cent. Consol. Mining Co. v. Turck, 50 F. 888, 894-95 (8th Cir. 1892).

35 *See* § 37.05, *infra*.

36 *See* Kennedy Mining & Milling Co. v. Argonaut Mining Co., 189 U.S. 1 (1903); Richmond Mining Co. v. Eureka Mining Co., 103 U.S. (13 Otto.) 839 (1880).

37 *See* Montana Mining Co. v. St. Louis Mining & Milling Co., 204 U.S. 204, 216-218 (1907) (finding that conveyance of lode location by party entitled to the extralateral rights did not transfer vein *in total* but only the portion between the vertical side lines of the ground transferred); Silver Surprize, Inc. v. Sunshine Mining Co., 15 Wash. App. 1, 547 P.2d 1240 (1976), *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977).

38 *See* Cole v. Ralph, 252 U.S. 286 (1920); Last Chance Mining Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 131 F. 579 (9th Cir.), *cert. denied*, 200 U.S. 617 (1904); Consolidation Coal Co. v. Yonts, 25 F.2d 404, 406 (6th Cir. 1928); Gill v. Colton, 12 F.2d 531, 533 (4th Cir. 1926); Birmingham Fuel Co. v. Boshell, 190 Ala. 597, 67 So. 403, 404 (1914).

[3] Right of Pursuit Associated With Extralateral Rights

The Mining Law of 1872 grants to the locator of the apex of a vein the vein throughout its entire depth extended outside of the side lines of his location.[39] The right granted is one to follow the vein on its downward course, sometimes called the right of lateral pursuit.[40]

As a practical matter, a locator often cannot safely or economically mine his vein by following its decline from the surface. This is especially true if the decline undulates, turns, faults, or passes through unconsolidated country rock which will not support a hanging wall. Frequently, therefore, it is necessary to use other land in aid of mining and for the mine workings to consist of vertical shafts which connect to a vein by horizontal adits, cross cuts, and drifts.[41] Yet, the statute granting extralateral rights expressly provides that a locator has no right "to enter upon the surface of a claim owned or possessed by another,"[42] so there is no surface right of access to an underground vein.[43] Similarly, the common law rights of owners of other mining locations and other lands entitle them to the exclusive use and possession of the subsurface of their lands,[44] so there is no right of approach by tunnelling through land owned by another.[45] In the absence of consent by the landowner[46] or legislation allowing condemnation,[47] a locator may not enter the subsurface of adjacent land to explore, acquire a right of way, or reach the extralateral extension of his ore body.[48] When attempted, such activity may be restrained, or if completed, an action for ejectment will lie.[49]

Certain rights, however, are integrally associated with the exercise of extralateral rights, being necessary or incidental to underground mining outside the boundaries of a claim in pursuit of the extralateral extension of a vein. Assuming

---

39 30 U.S.C. § 26 (1982).

40 St. Louis Mining & Milling Co. v. Montana Mining Co., 194 U.S. 235 (1904); Tyler Mining Co. v. Last Chance Mining Co., 71 F. 848, 851 (C.C.D. Idaho 1895), *appeal dismissed*, 97 F. 394 (9th Cir. 1899). *See* § 37.02[5], *infra*.

41 *See* L. Mall, *Public Land and Mining Law* 160-161 (3d ed. 1981).

42 30 U.S.C. § 26 (1982).

43 *See* St. Louis Mining & Milling Co. v. Montana Mining Co., 113 F. 900, 902 (9th Cir. 1902), *aff'd*, 194 U.S. 235 (1904); Corection Lode, 15 L.D. 67 (1892).

44 Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55 (1898). See § 36.02, *supra*, as to a locator's common law intraliminal rights.

45 St. Louis Mining & Milling Co. v. Montana Mining Co., 194 U.S. 235 (1904) (claimant may not run a tunnel from its mine shaft to the extralateral extension of a vein through nonmineralized territory outside his claim); Patten v. Conglomerate Mining Co., 35 L.D. 617, 621 (1907).

46 *See* § 112.04, *infra*.

47 *See* § 112.05, *infra*.

48 Richards v. Dower, 64 Cal. 62, 28 P. 113 (1883) (even though no apparent damages would be suffered).

49 Empire Star Mines Co. v. Grass Valley Bullion Mines, 99 F.2d 228, 235 (9th Cir. 1938); Cheesman v. Shreve, 37 F. 36 (C.C.D. Colo. 1888); Richards v. Dower, 64 Cal. 62, 28 P. 113 (1883) (perpetual injunction).

legal continuity of a vein,[50] without which a locator asserting extralateral rights would be a trespasser, excavating along its course under adjacent mining locations and other categories of land is a legitimate exercise of extralateral rights. In doing so, it is usually necessary to disturb rock surrounding the vein in order to pursue the ore zone successfully. Thus, the right exists to excavate necessary workings beyond the vein itself and into the country rock when a vein cannot economically be worked within its own confines because it is too crooked or too narrow.[51] This right is analogous to the way of necessity which attaches through the space of intersection of cross veins.[52] Because of this right, a surface owner cannot restrain the excavation of necessary ore pockets, shafts, stations, and chutes in his subsurface.[53] Easements and rights of way necessary for the practical and economical operation of a mine, such as sublateral tunnels, drainage ways, and railways, may be acquired by condemnation or otherwise as permitted by state statute.[54]

[4] Blanket Veins

Not all deposits properly located as lodes admit to the possibility of extralateral rights. The Mining Law of 1872's grant of extralateral rights[55] contemplates the location and subsequent mining of a typical fissure vein,[56] that is, a mineral mass in a more or less vertical position, occupying an extensive crack, break, or fracture in the enclosing country rock which has been filled with mineral matter different from the walls, and which outcrops at the surface, or near it, at a point known as the apex.[57] The statute grants extralateral rights in all veins which have an apex within a claimant's location, but no extralateral rights are granted

---

50 *See* § 37.02[3] *infra*.

51 Twenty-One Mining Co. v. Original Sixteen To One Mine, 255 F. 658 (9th Cir. 1919). *See* Iron Silver Mining Co. v. Cheesman, 116 U.S. 529 (1886); Collins v. Bailey, 22 Colo App. 419, 125 P. 534 (1912).

52 *See* Little Josephine Mining Co. v. Fullerton, 58 F. 521 (8th Cir. 1893); Watervale Mining Co. v. Leach, 4 Ariz. 34, 33 P. 418 (1893), *appeal dismissed*, 159 U.S. 258 (1895); Lee v. Stahl, 9 Colo. 208, 11 P. 77 (1886). *See also* § 37.05[3], *infra*.

53 Twenty-One Mining Co. v. Original Sixteen To One Mine, 265 F. 547 (9th Cir. 1920).

54 30 U.S.C. § 43 (1982): "As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent." See § 112.05, *infra*, on condemnation.

55 30 U.S.C. § 26 (1982).

56 *Cf.* Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 84 (1898); Stevens v. Williams, 23 F. Cas. 40, 44 (C.C.D. Colo. 1879) (Nos. 13,413, 13,414) (jury instructions).

57 See § 37.02[1] as to the requirement of an apex. The apex is the uppermost edge of a mineral vein nearest the surface of the ground, whether it outcrops on the surface or not. *A Dictionary of Mining, Mineral and Related Terms*, (P. Thrush ed. 1968). *Accord* Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 90-91 (1898); Mining Co. v. Tarbet, 98 U.S. 463, 469 (1878); Duggan v. Davey, 4 Dak. 110, 26 N.W. 887, 901 (1886), *appeal dismissed*, 131 U.S. 433 (1889); Stewart Mining Co. v. Ontario Mining Co., 23 Idaho 724, 132 P. 787 (1913), *aff'd*, 237 U.S. 350 (1915). See § 32.03[2][a] discussing the meaning of "apex."

without such an apex.[58] Many mineral deposits which meet the definition of a "vein" or "lode" do not have an apex. This is especially true of blanket veins, mineralized zones which lie in a more or less horizontal position.[59] These wide, bedded formations, while validly located if the deposit meets the definition of a lode,[60] do not give rise to extralateral rights because they do not have an apex with the required dip.[61]

Other reasons have been given for the denial of extralateral rights to lode locations made on blanket veins. These are that the apex of a horizontal lode is coextensive with the side lines,[62] making a location so many feet on either side of the center of the vein, as contemplated by the statute,[63] a logical impossibility. Also, blanket veins do not meet the statutory provision for extralateral rights which requires that the vein be parallel with the side, but not the end, lines.[64] Extralateral rights may be obtained, however, in some lodes which have a wide apex.[65]

---

[58] Montana Co. v. Clark, 42 F. 626 (C.C.D. Mont. 1890); Tom Reed Gold Mines Co. v. United E. Mining Co., 24 Ariz. 269, 209 P. 283, *cert. denied*, 260 U.S. 744 (1922); Duggan v. Davey, 4 Dak. 110, 26 N.W. 887, 901-03 (1886), *appeal dismissed*, 131 U.S. 433 (1889); Jones v. Prospect Mtn. Tunnel Co., 21 Nev. 339, 31 P. 642 (1892).

[59] *See, e.g.*, Bowen v. Chemi-Cote Perlite Corp., 5 Ariz. App. 28, 423 P.2d 104, 118-123 (1967) (perlite lying in a horizontal bed "generally parallel with the surface" and found to be from a common igneous source, segregated in physical appearance from the overlying volcanic deposits, and, at some indeterminate depth, "not too deep" from underlying volcanic deposits properly locatable as a lode deposit). *But see* Titanium Actynite Indus. v. McLennan, 272 F.2d 667 (10th Cir. 1960) (disseminated mass of vermiculite extending over 8 to 12 square miles is a placer deposit); Ranchers Explor. & Dev. Co. v. Anaconda Co., 248 F. Supp. 708 (D. Utah 1965) (widespread beryllium-bearing tuff not locatable as lode). See generally § 32.02, *supra*, on the difficulties of determining whether such widely disseminated deposits are lode or placer deposits.

[60] Iron Silver Mining Co. v. Mike & Starr Gold & Silver Mining Co., 143 U.S. 394 (1892). See § 32.03[3][a], *supra*, for a fuller discussion of the locatability of these deposits.

[61] Tom Reed Gold Mines Co. v. United E. Mining Co., 24 Ariz. 269, 209 P. 283 *cert. denied*, 260 U.S. 744 (1922); Stewart Mining Co. v. Ontario Mining Co., 23 Idaho 724, 132 P. 787, 792 (1913), *aff'd*, 237 U.S. 350 (1915). *See* Gilpin v. Sierra Nev. Consol. Mining Co., 2 Idaho 662, 23 P. 547 (1890). *See also* Iron Silver Mining Co. v. Cheesman, 8 F. 297 (C.C.D. Colo. 1881), *aff'd*, 116 U.S. 529 (1886); Iron Silver Mining Co. v. Murphy, 3 F. 368 (D. Nev. 1880); Stevens v. Williams, 23 F. Cas. 40, 43 (C.C.D. Colo. 1879) (Nos. 13,413, 13,414); Brugger v. Lee Yim, 12 Cal. App. 2d 38, 55 P.2d 564, 570 (1936) ("dip" is a miners' term synonymous with the expression "downward course" used in the statute, and means the direction of the vein in its descent into the earth).

[62] United States v. Arizona Manganese Corp., 57 L.D. 558, 566 (1942); Homestake Mining Co., 29 L.D. 689, 691 (1900).

[63] 30 U.S.C. § 23 (1982) ("No claim shall extend more than 300 feet on each side of the middle of the vein at the surface . . ."). See §§ 32.03[1][c], [d], *infra*, as to this requirement.

[64] *Cf.* Catron v. Old, 23 Colo. 433, 441, 48 P. 687, 690 (1897); Rico-Argentine Mining Co. v. Rico Consol. Mining Co., 74 Colo. 444, 223 P. 31 (1924).

[65] *See* § 32.03[2][b], *supra*, and § 37.03[5], *infra*.

[5] Lodes in Placers

A special problem arises with lodes which exist within placer locations.[66] Placer patents pass absolute title to veins and lodes which apex within a placer claim if they are either known to exist and specifically applied and paid for during patent proceedings or not known to exist on the date of patent application and found later.[67] On the other hand, veins or lodes known to exist within placers on the date of patent application but not specifically applied and paid for are conclusively excluded from the patent.[68] In any event, extralateral rights do not attach to placer claims and, hence, may not be asserted by placer claimants.[69]

Lode locators may obtain extralateral rights to veins or lodes apexing within placers under certain conditions. Known lodes within placers, unless applied and paid for during patent proceedings, are subject to peaceable appropriation and location as lode mining claims[70] to which extralateral rights may attach.[71] A previously unknown lode within a patented placer cannot be appropriated by a lode locator since title to it passed with the patent,[72] but such situations may give rise to litigation as to whether the lode was known or unknown at the time of the patent application.[73] Furthermore, a lode locator may obtain extra-

---

[66] See generally § 32.05, *supra*, as to lodes within placers.

[67] 30 U.S.C. § 37 (1982). *See* Inyo Marble Co. v. Loundagin, 120 Cal. App. 298, 7 P.2d 1067 (1932). *See also* § 32.02[1], *supra*.

[68] 30 U.S.C. § 37 (1982). *See* Clipper Mining Co. v. Eli Mining & Land Co., 194 U.S. 220, 228 (1904).

[69] *See* Woods v. Holden, 26 L.D. 198, 205-206 (1898) ("It has been indisputably settled, . . . that a placer claimant cannot follow a vein or lode beyond the surface boundaries of this claim extended vertically downward."). *See also* 2 *Lindley on Mines* § 619 (3d ed. 1914).

[70] Clipper Mining Co. v. Eli Mining & Land Co., 29 Colo. 377, 68 P. 286, 289 (1902), *aff'd*, 194 U.S. 220 (1904); Noyes v. Clifford, 37 Mont. 138, 94 P. 842, 844 (1908) (where a lode is known to exist, and land containing the same is patented as a placer claim, the lode is open for "exploitation and location by any citizen of the United States"). *Accord* Excelsior Iron Mining Co. v. Justheim, 122 Utah 573, 252 P.2d 1084, 1086 (1953). *See* Note, "Known Lodes Within Placers," 3 *Calif. L. Rev.* 156 (1915). *See also*, Note, "Lodes in Placers: Presumption Arising from Lapse of Time," 3 *Calif. L. Rev.* 249 (1915).

[71] Excelsior Iron Mining Co. v. Justheim, 122 Utah 573, 252 P.2d 1084, 1087 (1953) ("...d when the Cora lode claimant filed on this ground, he was entitled to all of the lode which apexed within the fifty feet of surface rights awarded to him by his patent, and he had a right to follow the ore beyond the sidelines to the limits of the ore body. Thus was segregated from the public domain all of the iron ore body contained within the forty-acre placer claim . . ."). *Accord* Daphne Lode Claim, 32 L.D. 513 (1904); Mt. Rosa Mining, Milling & Land Co. v. Palmer, 26 Colo. 56, 56 P. 176,177 (1899).

[72] 30 U.S.C. § 37 (1982). *See* Sullivan v. Iron Silver Mining Co., 143 U.S. 431 (1892), 109 U.S. 550 (1883).

[73] Iron Silver Mining Co. v. Mike & Starr Gold & Silver Mining Co., 143 U.S. 394 (1892); United States v. Iron Silver Mining Co., 128 U.S. 673 (1888); Noyes v. Mantle, 127 U.S. 348 (1888); Thomas v. South Butte Mining Co., 211 F.2d 105 (9th Cir. 1914); Clark Mont. Realty Co. v. Ferguson, 218 F. 959 (D.C. Mont. 1914); Barnard Realty Co. v. Nolan, 215 F. 996 (D.C. Mont. 1914); Inyo

lateral rights to the extralateral extension of the apex of a vein which is within a prior placer location based on the concept of a "legal apex."[74]

§ 37.02 Requirements for Exercising Extralateral Rights

[1] Apex within Boundaries of the Claim

The Mining Law of 1872 provides for exclusive possession and enjoyment of veins or lodes "the top or apex of which lies inside of such surface lines. . . ."[1] Thus, among the limitations governing the exercise of extralateral rights,[2] is the universally-stated rule that in order for extralateral rights to obtain, the top or apex of the vein must be found within the surface boundaries of the claim.[3] Furthermore, the length of the apex within the surface boundaries limits the area in which extralateral rights may be exercised.[4] As suggested by the statute, the apex of a vein, lode, or ledge is the top or highest point of the vein proper, whether at or below the surface,[5] and not a mere spur, feather, or offshoot.[6] It is the terminal edge from which the vein extends downward to form its dip, and it is the point at which the vein also continues horizontally along its strike.[7]

Marble Co. v. Loundagin, 120 Cal. App. 298, 7 P.2d 1067 (1932); Mutchmor v. McCarty, 149 Cal. 603, 87 P. 85 (1906).

74 *See* Woods v. Holden, 26 L.D. 198 (1898). See generally § 37.02[2], *infra*, as to legal and theoretical apex.

1 30 U.S.C. § 26 (1982).

2 Three general conditions or limitations apply to the exercise of extralateral rights. "One conditions it on the presence of the top or apex inside the boundaries of the claim. Another restricts it to the dip or course downward, and so excludes the strike or onward course along the top or apex. And the last confines it to such outside parts as lie between the end lines continued outwardly in their own direction and extended vertically downward." Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co., 247 U.S. 450, 454-455 (1918).

3 Stewart Mining Co. v. Ontario Mining Co., 237 U.S. 350 (1915), *aff'g* 23 Idaho 724, 132 P. 787 (1913); Grant v. Pilgrim, 95 F.2d 562 (9th Cir. 1938). The identity of the apex of a vein with its spurs or extensions is the crucial test which fixes proprietary rights to the vein. *See* William H. Hoegee Inv. Co. v. Burton Bros., 132 Cal. App. 2d 863, 283 P.2d 314 (1955); Brugger v. Lee Yim, 12 Cal. App. 2d 38, 55 P.2d 564 (1936); Alameda Mining Co. v. Success Mining Co., 29 Idaho 618, 161 P. 862 (1916), *appeal dismissed*, 249 U.S. 622 (1919); Butte & Boston Mining Co. v. Societe Anonyme des Mines de Lexington, 23 Mont. 177, 58 P. 111, 113 (1899). *See generally* § 32.03[2][a], *supra*.

4 Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55 (1898) (mining locator can have but the same number of feet along the dip of the vein beneath the surface as he has at its apex). *Accord* Anaconda Copper Mining Co. v. Pilot-Butte Mining Co., 52 Mont. 165, 156 P. 409 (1916). *See* § 37.03[1], *infra*.

5 Larkin v. Upton, 144 U.S. 19, 23 (1892).

6 Stewart Mining Co. v. Ontario Mining Co., 23 Idaho 724, 132 P. 787 (1913), *aff'd*, 237 U.S. 350 (1915) (the highest point of the vein must be along a more or less continuous edge of the vein proper, that is, like the roof of a house and not simply its chimney). *See* Annot., "What is 'Top' or 'Apex' of Vein or Lode," 1 A.L.R. 418 (1919). *See also* § 32.03[2], *supra*.

7 Brugger v. Lee Yim, 12 Cal. App. 2d 38, 55 P.2d 564 (1936) (apex of a vein can be ascertained by following its ascent along the line of its dip or outcropping beyond which it extends no further

Hence, the "strike" of a vein is its horizontal course,[8] and its "dip" is its downward course at a right angle to the strike.[9]

A possible exception to the requirement of an apex within the surface boundaries is the concept that extralateral rights may be predicated upon a fictional apex.[10] In any event, parallel end lines[11] and continuity of a vein with an apex[12] are required to authorize its pursuit outside the boundaries of a location, but even then extralateral rights exist only for the downward course of a vein.[13]

[2] Legal, Theoretical, or Judicial Apex

"Legal," "judicial," and "theoretical" apex are terms which have been used to express the concept of allowing a locator extralateral rights when a portion of the apex of the vein located by him is held under a prior location or patent without extralateral rights for the corresponding portion of the dip having attached. The concept is best illustrated by the case of *Woods v. Holden* in which the Mary Mabel lode claim overlapped the northwest corner of the previously patented Mt. Rosa Placer. The result was that a segment of the lode's apex, but not the entire lode claim, was bisected by the placer.[14] Since the lode was unknown at the time the Mt. Rosa was patented, the portion of the lode claim and its apex that were within the placer had been conveyed by the patent.[15] The vein dipped to the north, away from the placer claim. Since placer locations do not convey extralateral rights,[16] limiting the Mary Mabel to extralateral rights for only those portions of the apex not within the Mt. Rosa would leave a portion

---

to the surface of the land); Alameda Mining Co. v. Success Mining Co., 29 Idaho 618, 161 P. 862, 865 (1916), *appeal dismissed*, 249 U.S. 622 (1919). *See* Stewart Mining Co. v. Ontario Mining Co. 237 U.S. 350, 360 (1915), *aff'g* 23 Idaho 724, 132 P. 787 (1913): "An apex is . . . 'all that portion of the terminal edge of a vein from which the vein has extension downward in the direction of the dip.' And . . . the definition has been approved in *Lindley on Mines*, because as therein expressed it 'involves the elements of terminal edge, and downward course therefrom.' We may accept the definition."

8 Brugger v. Lee Yim, 12 Cal. App. 2d 38, 55 P.2d 564 (1936). *See also* Flagstaff Mining Co. v. Tarbet, 98 U.S. 463, 469 (1878) (course of vein is shown by surface outcrop or surface explorations and workings); Alameda Mining Co. v. Success Mining Co., 29 Idaho 618, 161 P. 862 (1916), *appeal dismissed*, 249 U.S. 622 (1919).

9 Empire Star Mines Co. v. Butler, 62 Cal. App. 2d 466, 145 P.2d 49, 58 (1944) (" 'Dip' is broadly defined as the downward course of a vein, the direction or inclination toward the depth, while 'strike,' at right angles to dip, is used to designate the longitudinal or horizontal course of a vein."); Brugger v. Lee Yim, 12 Cal. App. 2d 38, 55 P.2d 564, 570 (1936).

10 *See* § 37.02[2], *infra*.

11 *See* § 37.02[2], *infra*.

12 *See* § 37.02[3], *infra*.

13 *See* § 37.02[5], *infra*.

14 Woods v. Holden, 26 L.D. 198, (On Review) 27 L.D. 375 (1898).

15 Woods v. Holden, 26 L.D. 198, 205 (1898). See § 32.05, *supra*, discussing lodes in placers.

16 *See* § 37.01[1], *supra*.

of the dip to which neither party could claim extralateral rights. Instead of allowing this to happen, the Land Department found that:

> For the purposes of discovery and purchase under the mining laws, the legal apex of a vein like the Mary Mabel, dipping out of the ground disposed of under the placer or non-mineral laws, is that portion of the vein within the public lands which would constitute its actual apex if the vein had no actual existence in the ground so disposed of.[17]

Because the portion of the apex for which extralateral rights were allowed was not held by the lode locator but owned by the placer patentee, the "legal apex" allowed by the Land Department has also been termed a "theoretical apex."[18]

The concept of a "judicial apex" arises from a similar situation presented the United States Supreme Court in *Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*[19] Two lode claims had been placed on a winding vein so that they overlapped each other at an angle. Among the questions certified to the court was whether it had been proper for the junior locator to enter the senior location to lay his boundary lines for the purpose of establishing parallel end lines and securing extralateral rights.[20] The court held that such was proper.[21] It was careful to note that a junior locator cannot obtain rights to the prejudice of a senior locator, but it left open the extent of extralateral rights to which the junior locator was entitled.[22] Thus, while the senior locator was entitled to the full extent of the apex within his location and corresponding extralateral rights, the Court did not decide whether the junior locator's extralateral rights were to be measured from his location's original end lines or from a false end line drawn parallel to his end lines from the point the apex left his claim.[23] Because the claims crossed at an angle, the latter choice would mean that the

---

17 Woods v. Holden, 26 L.D. 198, 206 (1898). *See* McElligott v. Krogh, 151 Cal 126, 90 P. 823 (1907) (permitting lode claim overlapping previously patented agricultural land and other granted land).

18 *See* 1 *Lindley on Mines* § 312a (3d ed. 1914); G. Costigan, *Mining Law* § 118m (1908).

19 171 U.S. 55 (1898).

20 *Id.* at 59.

21 *Id.* at 84-85. *See* Zula C. Brinkerhoif, 75 IBLA 179, 181, GFS(MIN) 217 (1983), *modified*, Santa Fe Mining, Inc., 79 IBLA 48, GFS(MIN) 48 (1984). *But see* Bagg v. New Jersey Loan Co., 88 Ariz. 182, 354 P.2d 40, 44 (1960) (in a possessory dispute not involving extralateral rights the court said that it is not competent for junior locators to project their location over a senior location while the senior locator has possession).

22 Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 85 (1898): "It may be observed in passing that the answer to this question does not involve a decision as to the full extent of the rights beneath the surface which the junior locator acquires. . . . Perhaps the rights of the junior locator below the surface are limited to the length of the vein within the surface of the territory patented to him, but it is unnecessary now to consider that matter. All that comes fairly within the scope of the question before us is the right of the owners of the Last Chance to pursue the vein as it dips into the earth . . . and to appropriate so much of it as is not held by the prior location of the New York, and to that extent only is the question answered. The junior locator is entitled to have the benefit of making a location with parallel end lines. The extent of that benefit is for further consideration."

23 *Id. See* §§ 37.03[2], [3], *infra*.

extralateral extensions of the end lines of the two claims would extend over the vein's dip in diverging directions, leaving a slice in the middle unowned by either party. This has led commentators to suggest that since the senior locator obtained all that he was entitled to, the junior should judicially be allowed the additional slice as though he also held its apex.[24]

Although differences can readily be found between the two cases, the concepts of legal, theoretical, and judicial apexes are basically the same in permitting extralateral rights which could not otherwise be obtained because of prior appropriation of the true apex. In doing so they implicitly engage in a legal fiction that the locator holds more of the apex than he actually does. The real difference is that the application of the doctrine to previously patented placer or nonmineral land has been recognized in *Woods v. Holden*, while its application to overlapping lode locations, although consistent with case law, is merely conjectural.[25]

[3] Continuity of Vein

While the Mining Law of 1872 grants extralateral rights in "veins, lodes, and ledges throughout their entire depth" to the locator of a vein,[26] a claimant of extralateral rights must establish the continuity of the ore body outside his claim with a vein or lode which apexes within his location.[27] This requirement imposes substantial difficulties of proof. A vein usually cannot be directly followed in its downward course because it is discontinuous, even if only for a short distance, and it may twist or turn in such a way that it is mechanically or economically impractical to excavate an incline shaft alongside it.[28] For these reasons, extra-

---

24 1 Snyder, *Mines* § 807 (1902); C. Costigan, *Mining Law* § 118h (1908). *See* Arnold, "Lode Locations: A Specific Question of Extralateral Rights and a General Theory of Intralimital Rights," 22 *Harv. L. Rev.* 266 (1909).

25 *See* Walrath v. Champion Mining Co., 171 U.S. 293 (1898) (allowing more territory on dip of secondary vein than length of apex held); Bunker Hill & Sullivan Mining & Concentrating Co. v. Empire State-Idaho Mining & Dev. Co., 131 F. 591 (9th Cir. 1904) (allowing extralateral rights measured from end line laid across surface of senior location). *But see* State *ex rel.* Anaconda Copper Mining Co. v. District Court, 25 Mont. 504, 65 P. 1020 (1901), holding that a junior locator who has no apex within his surface area cannot obtain rights to an apex within other claims. The court rejected the argument that a junior locator might acquire extralateral rights under the surface of prior patented land when (1) the junior locator had to lay his lines upon a senior location to obtain parallelism, (2) the junior had no part of the apex within his claim but a valid discovery otherwise, and (3) a senior locator had the apex but no extralateral rights because he had laid his lines improperly.

26 30 U.S.C. § 26 (1982). *See generally* Neff, "The Law of the Apex—A Continuing Enigma," 18 *Rocky Mt. Min. L. Inst.* 387, 411-12 (1973).

27 Iron Silver Mining Co. v. Cheesman, 116 U.S. 529 (1886); Leadville Co. v. Fitzgerald, 15 F. Cas. 98 (C.C.D. Colo. 1879) (No. 8,158).

28 *See, e.g.*, Twenty-One Mining Co. v. Original Sixteen To One Mine, 265 F. 547 (9th Cir. 1920); Carson City Gold & Silver Mining Co. v. North Star Mining Co., 73 F. 597 (C.C.N.D. Cal. 1896) (strike of vein below surface nearly at right angles to its strike on surface), *aff'd*, 83 F. 658 (9th Cir. 1897), *cert. denied*, 171 U.S. 687 (1898).

lateral portions of veins are usually pursued by exploratory drilling, and when the locale of an ore body is established, production is often by underground mine workings consisting of vertical shafts from which horizonta s, cross-cuts, and drifts are run to reach the ore deposits.[29]

In the early decision of *Iron Silver Mining Co. v. Cheesman*, still the leading case, the Supreme Court adopted the rule that absolute continuity of a vein need not be shown if the identity of the vein is established between two points separated by minor interruptions, but that if the mineral disappears, or the fissure and its walls disappear, so that the identity of the vein can no longer be traced, the extralateral right is lost.[30] This may have been a practical test at the time, but the current practice of exploration by expensive deep drilling cannot meet the requirement of continutiy and usually does not meet the requirement of identity if the drill holes are more than a few dozen feet apart.[31]

Continuity of a vein may, of course, be established by actual mine workings on its downward dip.[32] The vein need be continuous only in the sense that it can be traced through the surrounding rock; neither slight interruptions in the ore-bearing rock nor partial closure of the fissure for short distances destroys continuity if either resumes a little further on.[33] Continuity may also mean such mineral or geological connection as enables a person to follow the vein along its dip and through obstructions, interruptions, and breaks with reaonable certainty that it is the same vein from the apex to the point of controversy.[34] If the mineral and fissure are far from the original trend or appear under different geological conditions or surroundings, continuity does not exist.[35] The presence of

---

29 *See* L. Mall, *Public Land and Mining Law* 160-61 (3d ed. 1981).

30 116 U.S. 529 (1886). The court recognized that a vein is "by no means always a straight line of uniform dip, or thickness, or richness of mineral matter throughout its course." *Id.* at 534.

31 *E.g.*, Collins v. Bailey, 22 Colo. App. 149, 125 P. 543 (1912) (continuity between an apex and a vein not established over an unexposed distance of 550 feet); Silver Surprize, Inc. v. Sunshine Mining Co., 15 Wash. App. 1, 547 P.2d 1240 (1976) (continuity of extralateral portion of vein not established by drill hole samples taken at intervals of up to 800 feet, *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977). *Accord* Tom Reed Gold Mines Co. v. United E. Mining Co., 24 Ariz. 269, 209 P. 283 (no extralateral rights exist if vein is interrupted "for a very great distance"), *cert. denied*, 260 U.S. 744 (1922).

32 Alameda Mining Co. v. Success Mining Co., 29 Idaho 618, 161 P. 862 (1916), *appeal dismissed*, 249 U.S. 622 (1919).

33 Gold, Silver & Tungsten, Inc. v. Wallace, 104 Colo. 273, 91 P.2d 975, *cert. denied*, 308 U.S. 612, *reh'g denied*, 308 U.S. 639 (1939), *Accord* Buffalo Zinc & Copper Co. v. Crump, 70 Ark. 525, 69 S.W. 572 (1902). *See* Hyman v. Wheeler, 29 F. 347 (C.C.D. Colo. 1886).

34 *See* Butte & Boston Mining Co. v. Societe Anonyme des Mines de Lexington, 23 Mont. 177, 58 P. 111, 113-16 (1899). *Accord* Fitzgerald v. Clark, 17 Mont. 100, 42 P. 273 (1895), *aff'd*, 171 U.S. 92 (1898)

35 Tom Reed Gold Mines Co. v. United E. Mining Co., 24 Ariz. 269, 209 P. 283, *cert. denied*, 260 U.S. 744 (1922). *Accord* Utah Consol. Mining Co. v. Utah Apex Mining Co., 285 F. 249 (8th Cir. 1922) (when the mineral and fissure come to an end, the contiguity is gone and so are extralateral rights), *cert. denied*, 261 U.S. 617 (1923); Cheesman v. Shreeve, 40 F. 787 (C.C.D. Colo. 1889).

transverse veins, seams, or spurs does not necessarily destroy continuity of the main vein.[36] Likewise, the fact that the vein has step-faulted does not destroy the identity of the vein and abridge the extralateral right.[37]

It is impossible to prescribe a definite rule as to the degree of continuity or identity which an extralateral right claimant must show to exist between an apex within his claim and the vein he is pursuing under adjoining ground.[38] Absolute truth as to the identity of ore bodies found on different levels in an underground mine is difficult to obtain[39] and is legally always a question of fact.[40] The most that can be said is that identification in some reasonable manner must be made,[41] although courts will not accept speculation or conjecture as the required proof.[42]

Because a surface owner is presumed to be the owner of ores found in his subsurface,[43] one who asserts extralateral rights to a vein penetrating another claim has the burden of proving that the vein has its apex within his claim.[44] The courts have not agreed upon the required degree of proof necessary for the extralateral claimant to establish his right. A majority has required an apex claimant to demonstrate by a preponderance of the evidence that the deposit in dispute is the same vein as that which has its apex within his location.[45] Some

---

36 Pennsylvania Consol. Mining Co. v. Grass Valley Explor. Co., 117 F. 509 (C.C.N.D. Cal. 1902). *See* Utah Consol Mining Co. v. Utah Apex Mining Co., 285 F. 249 (8th Cir. 1922), (dyke cutting through limestone bedded vein at approximate point where mineralization ended terminated extralateral rights), *cert. denied*, 261 U.S. 617 (1923).

37 Iron Silver Mining Co. v. Cheesman, 116 U.S. 529 (1886); Original Sixteen To One Mine, Inc. v. Twenty-One Mining Co., 254 F. 630 (D. Cal. 1918) (segment comencing 15 or more feet below fault plane held to be a continuation of the same vein), *aff'd*, 260 F. 724 (9th Cir. 1919); National Mines Co. v. Charleston Hill Nat'l Mining Syndicate, 205 F. 787 (D.C. Nev. 1912).

38 2 *Lindley on Mines* § 615 (3d ed. 1914). *See* Silver Surprize, Inc. v. Sunshine Mining Co., 15 Wash. App. 1, 547 P.2d 1240, 1246 (1976), *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977).

39 Justice Mining Co. v. Barclay, 82 F. 554 (C.C.D. Nev. 1897).

40 Silver King Coalition Mines Co. v. Conkling Mining Co., 256 U.S. 18 (1921); Wm. H. Hoegee Inv. Co. v. Burton Bros., 132 Cal. App. 2d 863, 283 P.2d 314 (1955); Walsen v. Gaddis, 118 Colo. 63, 194 P.2d 306 (1948).

41 Iron Silver Mining Co. v. Cheesman, 116 U.S. 529 (1886).

42 Collins v. Bailey, 22 Colo. App. 149, 125 P. 543 (1912); Silver Surprize, Inc. v. Sunshine Mining Co., 15 Wash. App. 1, 547 P.2d 1240 (1976), *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977).

43 Bourne v. Federal Mining & Smelting Co., 243 F. 466, 468 (C.C.D. Idaho 1908); Parrot Silver & Copper Co. v. Heinze, 25 Mont. 139, 64 P. 326 (1901). *See* § 37.01[2], *supra*.

44 Consolidated Wyo. Gold Mining Co. v. Champion Mining Co., 63 F. 540 (C.C.N.D. Cal. 1894); Mount Diablo Milling & Mining Co. v. Callison, 17 F. Cas. 918 (C.C.D. Nev. 1879) (No. 9,886); Leadville Co. v. Fitzgerald, 15 F. Cas. 98 (C.C.D. Colo. 1879) (No. 8,158); Walsen v. Gaddis, 118 Colo. 63, 194 P. 2d 306 (1948); Collins v. Bailey, 22 Colo. App. 149, 125 P. 543, 548 (1912); Barker v. Condon, 53 Mont. 585, 165 P. 909, 912 (1917); Heinz v. Boston & Mont. Consol. Copper & Silver Mining Co., 30 Mont. 484, 77 P. 421 (1904).

45 Utah Consol. Mining Co. v. Utah Apex Mining Co., 285 F. 249 (8th Cir 1922), *cert. denied*, 261 U.S. 617 (1923); Pennsylvania Consol. Mining Co. v. Grass Valley Explor. Co., 117 F. 509 (C.C.N.D. Cal. 1902); Parrot Silver & Copper Co. v. Heinz, 25 Mont. 139, 64 P. 326 (1901).

courts which require a preponderance of evidence to prove continuity have stated that there is no established degree of continuity or identity which an extralateral rights claimant must show,[46] but rather that the required showing is dependent upon the facts of each case.[47]

[4] Parallel End Lines

The Mining Law of 1872 grants extralateral rights to veins even though they "extend outside the vertical side lines" of the location.[48] Another section of the statute, pertaining to the form of a lode claim, provides that "[t]he end lines of each claim shall be parallel to each other," and also provides that a mining claim shall not exceed 1,500 feet in length along the vein.[49]

The history of disputes over rights to the dip of veins located under the Lode Law of 1866[50] suggests that the requirement of parallel end lines under the 1872 Act was intended to establish more definite boundary planes between adjacent locations.[51] This is not, however, the reason assigned to the requirement by the Supreme Court. Instead, the Court believed that Congress expected a lode locator to align his location with the course of a vein, thus appropriating the 1,500 feet of vein allowed by the statute, and to use parallel end lines, which, when extended downward, would limit the locator's extralateral rights to the same horizontal length along the vein's dip.[52] While a locator may follow his vein in its descent beyond his own side lines into another's territory, he may not follow its strike beyond his end lines.[53] Thus, the maximum length of a vein which is granted at the surface as well as in the subsurface is 1,500 feet.[54]

---

[46] Silver Surprize, Inc. v. Sunshine Mining Co., 15 Wash. App. 1, 547 P.2d 10 (1976), *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977).

[47] Gold, Silver & Tungsten, Inc. v. Wallace, 104 Colo. 273, 91 P.2d 975, *cert. denied*, 308 U.S. 612, *reh'g denied*, 308 U.S. 639 (1939).

[48] 30 U.S.C. § 26 (1982).

[49] 30 U.S.C. § 23 (1982).

[50] Act of July 26, 1866, ch. 262, 14 Stat. 251 (surviving portions codified at 30 U.S.C. §§ 43, 46, 51 and 43 U.S.C. § 661 (1982)).

[51] *See* § 30.03, *supra*.

[52] Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 84 (1898). *See* Bunker Hill & Sullivan Mining & Concentrating Co. v. Empire State Idaho Mining & Dev. Co., 100 F. 189 (C.C.D. Idaho 1900), *aff'd*, 109 F. 538 (9th Cir.), *cert. denied*, 136 U.S. 482 (1901); Fitzgerald v. Clark, 17 Mont. 100, 42 P. 273 (1895), *aff'd*, 171 U.S. 92 (1898).

[53] Butler Tonopah Mining Co. v. West End Consol. Mining Co., 247 U.S. 450, 454 (1918); Larkin v. Upton, 144 U.S. 19 (1892); Walsen v. Gaddis, 118 Colo. 63, 194 P.2d 306 (1948).

[54] Golden Fleece Gold & Silver Mining Co. v. Cable Consol. Gold & Silver Mining Co., 12 Nev. 312 (1877) (Hawley, C.J. concurring). Patents issued for locations made under the Lode Law of 1866, however, are not limited by the Mining Law of 1872 to 1,500 feet along the vein. Ames v. Empire Star Mines Co., 17 Cal. 2d 213, 110 P.2d 13 (1941), *cert. denied*, 314 U.S. 651 (1941). *See* § 30.03, *supra*.

The statute does not impose a penalty for the lack of parallel end lines,[55] but it has been uniformly construed with the section granting extralateral rights to impose a condition upon the exercise of such rights.[56] Only extralateral rights are affected by non-parallel end lines, and the claim itself is not invalid.[57]

A distinction must be drawn, however, between nonparallel end lines which diverge and those which converge in the direction of the dip. In the case of diverging end lines, courts have uniformly denied extralateral rights,[58] and the locator has only intraliminal common law rights.[59] The reason for the denial is that as the vein descends into the ground, diverging end lines would include an ever increasing amount of it.[60] As to converging end lines, there is a split of authority. The strict view applies the statute literally and denies extralateral rights.[61] The liberal view permits the right because the wedge-like area of appropriation is smaller than would have been permitted had the lines been parallel.[62] In any event, substantial parallelism has been held to be sufficient for purposes of extralateral rights.[63]

While the length of an end line is not determinative of extralateral rights, it

---

55 *See* 30 U.S.C. § 26 (1982).

56 Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 85 (1898). *See* Butler Tonopah Mining Co. v. West End. Consol. Mining Co., 247 U.S. 450 (1918); Elgin Mining & Smelting Co. v. Iron Silver Mining Co., 14 F. 377 (C.C.D. Colo. 1882), *aff'd*, 118 U.S. 196 (1886); Daggert v. Yreka Mining & Milling Co., 149 Cal. 357, 86 P. 968, 974 (1906). *But see* Moody v. General Beryllium Corp., 224 F. Supp. 934, 947 (D. Utah 1963) (under equitable decree of court, end lines of claims intersected by peripheral boundary line established by private contract may be deemed parallel for purposes of extralateral rights between parties and as to third parties).

57 Eureka Consol. Mining Co. v. Richmond Mining Co., 8 F. Cas. 819, 826-28 (C.C.D. Nev. 1877) (No. 4,548); Gibson v. Hjul, 32 Nev. 360, 108 P. 759, 762 (1910).

58 Iron Silver Mining Co. v. Elgin Mining & Smelting Co., 118 U.S. 196 (1886); Montana Co. v. Clark, 42 F. 626 (C.C.D. Mont. 1890); Daggett v. Yreka Mining & Milling Co., 149 Cal. 357, 86 P. 968 (1906); Quilp Gold Mining Co. v. Republic Mines Corp., 96 Wash. 439, 165 P. 57 (1917). This is not necessarily true, however, as to mining claims located prior to 1872. *See* § 30.03, *supra*.

59 Grant v. Pilgrim, 95 F.2d 562 (1938); Doe v. Waterloo Mining Co., 54 F. 935 (C.C.S.D. Cal. 1893), *aff'd*, 82 F. 45 (8th Cir. 1897).

60 *See* Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 85 (1898) ("the requisition that the end lines shall be parallel was for the purpose of bounding the extralateral rights . . . and the end lines must be parallel in order that going downwards he shall acquire no further length of the vein than the planes of those lines extended downward inclose").

61 Iron Silver Mining Co. v. Elgin Mining & Smelting Co., 118 U.S. 196, 208 (1886).

62 Grant v. Pilgrim, 95 F.2d 562, 568 (9th Cir. 1938) (converging lines limit the extralateral area, and, therefore, no one can complain, citing Carson City Gold & Silver Mining Co. v. North Star Mining Co., 73 F. 597, 602 (C.C.N.D. Cal. 1896), *aff'd*. 83 F. 658 (9th Cir. 1897), *cert. denied*, 171 U.S. 687 (1898)).

63 Consolidated Wyo. Gold Mining Co. v. Champion Mining Co., 63 F. 540 (C.C.N.D. Cal. 1894); Tyler Mining Co. v. Sweeney, 54 F. 284, 293 (9th Cir. 1893). *See* Grant v. Pilgrim, 95 F.2d 562, 568 (9th Cir. 1938) (end lines were "substantially parallel" even though they converged at a six-degree angle).

must have sufficient distance to qualify for purposes of the law.[64] End lines, for the purpose of obtaining extralateral rights, are those originally laid out when a claim is located, and extralateral rights are not affected if prior patented claims necessitate that the territory conveyed by a later patent be bound by a zig-zag end line.[65] The United States Supreme Court has established the doctrine that a junior lode locator may enter a senior location for the purpose of making his end lines parallel so as to obtain extralateral rights.[66] Explanations for failure to comply with the parallel end lines requirement will not excuse noncompliance.[67]

While end lines must be parallel in order for the statutory grant of extralateral rights to apply, side lines need not be.[68] End lines must be straight and neither broken nor curved, but irregular side lines do not necessarily have an adverse effect upon extralateral rights; side lines may have angles and elbows and be converging or diverging so long as their general course is along the vein and the statutory restriction on width of claims is met.[69] However, extralateral rights do not attach to claims staked out in the form of a horseshoe[70] or an isosceles triangle,[71] because they do not have parallel end lines, and denomination on one side line of such an irregular location as an end line will not be controlling.

[5] Restriction to Downward Course

The Mining Law of 1872 grants extralateral rights to "veins, lodes, and ledges throughout their entire depth" even though they "depart from a perpendicular in their course downward as to extend outside the vertical side lines" of the location.[72] Restricting extralateral rights to the dip or downward course of the vein[73] excludes any right to follow the strike or onward course of the vein along

---

64 Belligerent and Other Lode Mining Claims, 35 L.D. 22 (1906), *review denied*, 36 L.D. 7 (1907); Jack Pot Lode Mining Claim, 34 L.D. 470 (1906) (two-tenths of a foot in length is not an end line within the meaning of the statute).

65 Big Hatchet Copper Mining Co. v. Colvin, 19 Colo. App. 405, 75 P.605 (1904).

66 Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55 (1898).

67 *See* Montana Co. v. Clark, 42 F. 626 (C.C.D. Mont. 1890).

68 Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co., 247 U.S. 250 (1918); Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55 (1898).

69 Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co., 247 U.S. 250 (1918).

70 Iron Silver Mining Co. v. Elgin Mining & Smelting Co., 118 U.S. 196 (1886) (a nine-sided figure in the shape of a horseshoe with two lines denominated as end lines did not qualify for extralateral rights because the court held that one of the lines marked as an end line was a side line).

71 Montana Co. v. Clark, 42 F. 626 (C.C.D. Mont. 1890) (triangular claim geometrically could not have two parallel lines).

72 30 U.S.C. § 26 (1982).

73 King v. Amy & Silversmith Consol. Mining Co., 9 Mont. 543, 24 P. 200 (1890), *rev'd on other grounds*, 152 U.S. 222 (1894); Tom Reed Gold Mines Co. v. United E. Mining Co., 24 Ariz. 269, 209 P. 283, *cert. denied*, 260 U.S. 744 (1922). The terms "downward course" and "course downward" are used interchangeably and signify the course of the vein from the surface toward the center of the earth whether in a perpendicular or on a dip. A vein's "downward course" contrasts with

the top or apex.[74] Thus, there cannot be extralateral rights in a horizontal vein because it has no downward course.[75] Likewise, the upward trend of a vein cannot be followed.[76] Of course, the dip within the extension of the end lines may be followed to its entire depth, even though it enters another claim.[77]

The statute does not specify a degree of angle of descent, but it has been suggested that the angle must not be less than 45° for any substantial distance or the extralateral right will be lost.[78] Other courts have rejected any limitation as judicial legislation.[79] Under this view, the right to follow the dip of a vein remains if it departs from its apex at any angle other than horizontal because there is a departure from the perpendicular so long as the vein is not at a right angle to the perpendicular.[80]

§ 37.03 Relation of Location to Course of Vein as Affecting Extralateral Rights

[1] Location Parallel with Course of the Vein

Extralateral rights exist only when certain conditions and requirements have

---

its "strike" or onward course. *See* King v. Amy & Silversmith Consol. Mining Co., *supra*; Duggan v. Davey, 4 Dak. 110, 26 N.W. 887 (1886), *appeal dismissed*, 131 U.S. 433 (1889).

74 Walsen v. Gaddis, 118 Colo. 63, 194 P.2d 306 (1948); Stewart Mining Co. v. Ontario Mining Co., 23 Idaho 724, 132 P. 787 (1913), *aff'd*, 237 U.S 350 (1915).

75 Butler Tonopah Mining Co. v. West End Consol. Mining Co., 39 Nev. 375, 158 P. 876 (1916), *aff'd*, 247 U.S. 450 (1918); Tom Reed Gold Mines Co. v. United E. Mining Co., 24 Ariz. 269, 209 P. 283 (no extralateral right on a vein if it becomes "flattened and extends from thence horizontally in a departure from the approximate general plane"), *cert. denied*, 260 U.S. 744 (1922). See § 37.01[4], *supra*, as to blanket veins.

76 Tom Reed Gold Mines Co. v. United E. Mining Co., 24 Ariz. 269, 209 P. 283, *cert. denied*, 260 U.S. 744 (1922); Southern Nev. Gold & Silver Mining Co. v. Holmes Mining Co., 27 Nev. 107, 73 P. 759 (1903). *But see* Silver Surprize, Inc. v. Sunshine Mining Co., 15 Wash. App. 1, 547 P.2d 1240 (1976) (suggesting that mining upward to establish continuity with an apex at the surface would be possible except for the unfavorable economics—a procedure previous authorities would not seem to allow), *aff'd*, 88 Wash. 2d 64, 558 P.2d 186 (1977).

77 Mining Co. v. Tarbet, 98 U.S. 463 (1879); Colorado Cent. Consol. Mining Co. v. Turck, 54 F. 262 (8th Cir.), *aff'd*, 150 U.S. 138 (1893); Arizona Commercial Mining Co. v. Iron Cap Copper Co., 27 Ariz. 202, 232 P. 545, *modified on other grounds*, 29 Ariz. 23, 239 P. 290 (1925), *cert. denied*, 270 U.S. 642 (1926). *Accord* Iron Silver Mining Co. v. Murphy, 3 F. 368 (D. Nev. 1880).

78 Stewart Mining Co. v. Ontario Mining Co., 23 Idaho 724, 132 P. 787 (1913) (dictum), *aff'd*, 237 U.S. 350 (1915).

79 Alameda Mining Co. v. Success Mining Co., 29 Idaho 618, 161 P. 862 (1916) (extralateral rights must be determined by the course of the vein at the apex at the surface and not at lower levels; there is no degree or angle which would arbitrarily bar extralateral pursuit), *appeal dismissed*, 249 U.S. 622 (1919). *Accord* Bunker Hill & Sullivan Mining & Concentrating Co. v. Empire State-Idaho Mining & Dev. Co., 134 F. 268 (C.C.D. Idaho 1903).

80 Stevens v. Williams, 23 F. Cas. 44 (C.C.D. Colo. 1879) (No. 13,414). *Accord* Leadville Co. v. Fitzgerald, 15 F. Cas. 98 (C.C.D. Colo. 1879) (No. 8,158).

been met.[1] The relation of a location's boundaries to the course of the vein nearest the surface may also abridge or restrict the maximum rights obtainable because the location is entitled to only as much horizontal length of the dip as the length of the apex within the surface boundaries.[2] The extent of extralateral rights is determined by the course or strike of the vein nearest the surface, and subsurface variations in direction do not affect extralateral rights.[3] It has been held that extralateral rights are determined by the actual course of the vein on the ground rather than as shown on the survey plat of a patent.[4]

The maximum possible extent of extralateral rights is obtained when there has been an ideal location upon an ideal lode, that is, a location with parallel end lines and side lines running generally parallel with the course of a vein which is nearly straight, has continuity and passes out of the location at each end line.[5] An ideal location is properly staked out in relation to a vein or lode so that the side lines encompass the course or strike of the vein and the vein bisects each parallel end line.[6] Because in an ideal location the strike of the vein located runs the full length of the location, and the surface boundaries of the location are the maximum statutory length of 1,500 feet, its locator is entitled to pursue the vein's dip anywhere between the extensions of the end lines, which is also the maximum allowable distance of 1,500 feet. Often, of course, mining locators mistake the true course of the vein, or the vein itself is irregular, which results in obtaining less than maximum extralateral rights.[7]

[2] Location with Vein Crossing Two Side Lines

Locators often find it difficult or impossible to determine the true direction or course of a vein at the time of location, with the result that the location is

---

[1] Extralateral rights will be denied when a location fails to meet requirements as to apex, parallel end lines, and downward dip; when the location is located as a placer claim or is improperly located as a lode claim; and when the extralateral vein extends into land previously appropriated as non-mining land, or conflicts with a prior apex, or in some instances, prior dip rights. *See* §§ 37.01[1], 37.02, *supra*.

[2] Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 89 (1898).

[3] Mining Co. v. Tarbet, 98 U.S. 463 (1879) (the direction of the side lines must correspond substantially with the course or strike of the vein at its apex near the surface of the ground); Arizona Commercial Mining Co. v. Iron Cap Copper Co., 27 Ariz. 202, 232 P. 545, 550, *modified on other grounds*, 239 P. 290 (1925), *cert. denied*, 270 U.S. 642 (1926); Alameda Mining Co. v. Success Mining Co., 29 Idaho 618, 161 P. 862, 866 (1916) ("[T]he course of a vein is not determined by its direction at any single given point where the vein is a crooked one. . . . The . . . extralateral rights must be determined by the course of the vein at its apex at the surface of the claim.").

[4] Consolidated Wyo. Gold Co. v. Champion Mining Co., 63 F. 540 (N.D. Cal. 1894).

[5] *See* § 37.02, *supra*.

[6] Silver King Coalition Mines Co. v. Conkling Mining Co., 256 U.S. 18 (1921). *Accord* Mining Co. v. Tarbet, 98 U.S. 463 (1879).

[7] See Clayberg, "Extralateral Rights to Quartz Veins Granted by the Act of Congress of May 10, 1872," 1 *Calif. L. Rev.* 336 (1913); Note, "Extra-Lateral Rights in Mining," 15 *Notre Dame Law.* 68, 74 (1939), for discussions of various situations which result in a locator receiving less than the maximum obtainable extralateral rights.

laid crosswise instead of lengthwise on the strike. In this event, a locator is often allowed to adjust his location within a statutory period.[8] If the statutory time has expired or it is otherwise not possible to change the lines of the location after the course of the vein is acertained, the judicial concept of "false end lines" may apply.

Since a vein cannot be pursued on its strike beyond the end lines of a location,[9] extralateral rights cannot be exercised when the strike of a vein crosses the side lines. Courts have uniformly recognized, however, that the designation of lines by a locator is not controlling and that what were specified as side lines may be regarded as end lines for extralateral rights purposes.[10] As explained by the Supreme Court:

> When, therefore, a mining claim crosses the course of the lode or vein instead of being 'along the vein or lode,' the end lines are those which measure the width of the claim as it crosses the lode. Such is evidently the meaning of the statute. The side lines are those which measure the extent of the claim on each side of the middle of the vein at the surface.[11]

Under this doctrine, a locator is entitled to the same rights regarding his new side and end lines as if they were originally located as such.[12] Hence, extralateral rights may be fully exercised beyond the originally designated end lines[13] and the originally designated side lines define the vertical planes within which the rights may be exercised.[14] In order for the side lines to become end lines, they must be opposite and parallel, and the same rules apply as for conventional end lines.[15] This "cross-lode" type of mining location is the only exception to the rule that the end lines, once located, establish limits beyond which the locator cannot go.[16]

---

8 *See* §§ 33.04[3] & [4], *supra*.

9 Southern Nev. Gold & Silver Mining Co. v. Holmes Mining Co., 27 Nev. 107, 73 P. 759, 762 (1903).

10 *See, e.g.*, Consolidated Wyo. Mining Co. v. Champion Mining Co., 63 F. 540, 549 (C.C.N.D. Cal. 1894). *See also* § 32.03[1][d], *supra*.

11 Argentine Mining Co. v. Terrible Mining Co., 122 U.S. 478, 485 (1887). *Accord* Silver King Coalition Mines Co. v. Conkling Mining Co., 256 U.S. 18 (1921); King v. Amy & Silversmith Consol. Mining Co., 152 U.S. 222, 228 (1894); Mining Co. v. Tarnet, 98 U.S. 463 (1879); Northport Smelting & Ref. Co. v. Lone Pine-Surprise Consol. Mines Co., 217 F. 105 (E.D. Wash. 1920), *aff'd*, 278 F. 719 (9th Cir. 1922); Tombstone Milling & Mining Co. v. Way Up Mining Co., 1 Ariz. 426, 25 P. 794 (1883); Round Mtn. Mining Co. v. Round Mtn. Sphinx Mining Co., 35 Nev. 392, 129 P. 308, 310 (1913).

12 Empire Milling & Mining Co. v. Tombstone Mill & Mining Co., 100 F. 910 (C.C.D. Conn. 1900).

13 Silver King Coalition Mines Co. v. Conkling Mining Co., 256 U.S. 18 (1921).

14 Northport Smelting & Ref. Co. v. Lone Pine-Surprise Consol. Mines Co., 271 F. 105 (E.D. Wash. 1920), *aff'd*, 278 F. 719 (9th Cir. 1922).

15 Empire State-Idaho Mining & Dev. Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 131 F. 591, 605 (9th Cir. 1904), *cert. denied*, 200 U.S. 617 (1906); Last Chance Mining Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 131 F. 579, 588 (9th Cir. 1904), *cert. denied*, 200 U.S. 617 (1906). *See* § 37.02[4], *supra*.

16 Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 89-90 (1898).

The false end line doctrine is applicable to the discovery vein only, and cannot be applied to secondary veins so as to create more than one set of end lines for a location.[17] Within this limitation, however, any vein can be pursued extralaterally.[18]

[3] Location with Vein Departing Through Side Line or Stopping Within Location

A common cause of a location with a discovery vein which stops within a location is miscalculation of its direction so that the vein is later found to depart from the claim through a side line. Apparently this situation was not contemplated by the Mining Law of 1872, but courts have supplied a solution by a legal fiction. The judicial declaration is that extralateral rights obtain, defined by an imaginary line drawn from the point the vein passes out of the claim, opposite and parallel to the end line through which the vein passes.[19] The rule is that the end line which is crossed remains an end line for all purposes, and extralateral rights are granted within the area bounded by parallel planes drawn from the end line and the imaginary line.[20]

The same rule applies if a vein abruptly terminates within a claim after entering through an end line, except that the imaginary line is drawn parallel to the end line at the point the apex terminates.[21]

If an apex both begins and ends within a claim, the authorities are generally agreed that subsurface rights attach within imaginary planes drawn parallel to the end lines at the points the vein terminates.[22] If the vein runs more nearly parallel to the end rather than the side lines, courts will apply the false end line doctrine to the permit the exercise of extralateral rights.[23]

---

17 *Id.* at 89 (the end lines as fixed relative to the discovery vein constitute an absolute limit relative to the appropriation of all other veins within the mining location); Clark-Mont. Realty Co. v. Butte & Superior Copper Co., 233 F. 547 (D. Mont. 1916), *aff'd*, 248 F. 609 (1918), *aff'd*, 249 U.S. 12 (1919).

18 *See* § 37.04, *infra*.

19 Clark v. Fitzgerald, 171 U.S. 92 (1898); Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 89 (1898); London Extension Mining Co. v. Ellis, 134 F.2d 405 (10th Cir. 1943); Bourne v. Federal Mining & Smelting Co., 243 F. 466 (C.C.D. Idaho 1908); Rico-Argentine Mining Co. v. Rico Consol. Mining Co., 74 Colo. 444, 223 P. 31, 33 (1923).

20 Clarke v. Fitzgerald, 171 U.S. 92 (1898); London Extension Mining Co. v. Ellis, 134 F.2d 405 (10th Cir. 1943); Ajax Gold Mining Co. v. Hilkey, 31 Colo. 131, 72 P. 447 (1903).

21 Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55 (1898); Tyler Mining Co. v. Sweeney, 54 F. 264, 293 (9th Cir. 1893); Carson City Gold & Silver Mining Co. v. North Star Mining Co., 73 F. 597 (C.C.N.D. Cal 1896); Wakeman v. Norton, 24 Colo. 192, 49 P. 283 (1897).

22 Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55 (1898). *See* Work Mining & Milling Co. v. Doctor Jack Pot Mining Co., 194 F. 620, 629 (8th Cir. 1912).

23 *See* § 37.03[2], *supra*.

[4] Location With Vein Entering and Departing Through the Same Boundary

Few cases have ruled on the problem presented by a vein which enters and departs a claim through the same boundary line, and they conflict. However, there would appear to be no less reason for granting extralateral rights in this circumstance than when a vein enters a claim through an end line and departs through a side line.[24] The United States Supreme Court apparently sees no difference between the two situations,[25] and a series of federal cases suggest that extralateral rights may be obtained, as defined by lines drawn parallel to the end lines at the points the vein departs through the side line.[26] If a vein enters and departs through an end rather than a side line, the false end line doctrine can apply.[27]

In any event, extralateral rights are restricted to the amount of apex actually within the claim.[28] Hence, if a vein returns to a claim after departing through a side line and then departs through an end or side line, extralateral rights will not be granted for the portion of the apex outside the claim[29] unless the legal apex doctrine applies.[30]

Unfortunately, in the only case directly on point the Colorado Supreme Court stated that extralateral rights could not be obtained when a vein enters and de-

---

24 *See* § 37.03[3], *supra*.

25 In *Montana Mining Co. v. St. Louis Mining & Milling Co.*, 204 U.S. 204, 211 (1906), the Court states that "the right of the St. Louis Company to follow its vein, although it enters at the side line and departs through the same line, has been established by this court in other cases." It cites *Last Chance Mining Co. v. Tyler Mining Co.*, 157 U.S. 683 (1895), which concerned a claim with the vein entering through an end line and departing through a side line.

26 St. Louis Mining & Milling Co. v. Montana Mining Co., 104 F. 664 (9th Cir. 1900) (granting extralateral rights in secondary vein). While this case is distinguishable in that subsurface rights already existed by virtue of the discovery vein which cut both end lines, it would seem that if extralateral rights are obtained in a secondary vein, they would also be obtained in a discovery vein. The decision results in the St. Louis Mining & Milling Company acquiring extralateral rights to a vein which enters and departs a claim through the same side line. The United States Supreme Court, on a writ of certiori, reviewed the case and did not question the theory of extralateral rights established by the lower court. Montana Mining Co. v. St. Louis Mining & Milling Co., 204 U.S. 204 (1906). Subsequently, in an appeal of the same case, the Ninth Circuit Court of Appeals expressed the view that the Supreme Court affirmed its decision that the St. Louis Mining Company had "the right . . . to extralegal rights . . . to the extent that the vein apexes within the St. Louis claim. . . ." Montana Mining Co. v. St. Louis Mining & Milling Co., 183 F. 51, 61 (9th Cir. 1910). Unfortunately, the matter is never discussed as being in dispute in any of these decisions.

27 *See* § 37.03[2], *supra*.

28 Mining Co. v. Tarbert, 98 U.S. 463 (1879). *See also* Waterloo Mining Co. v. Doe, 82 F. 45, 55 (1897) ("The grant is to lodes having their apex in the ground patented. The fact that a part of the apex may be in the ground granted would not give any right to that part of the apex which is not therein. . . .").

29 Waterloo Mining Co. v. Doe, 82 F. 45 (9th Cir. 1897).

30 *See* § 37.02[2], *supra*.

parts through the same boundary.[31] This case has been disregarded by the federal courts,[32] repudiated by dicta in a later Supreme Court of Colorado case,[33] and rejected by scholars.[34] However, the case has never been directly overruled.

[5] Extralateral Rights to Lodes with a Wide Apex

Some lodes have wide apexes so that, when located, they lie within more than one claim, divided by a common side line. Three positions have been taken as to whether extralateral rights can be obtained in these circumstances. First, it has been strictly ruled that in order for a mining locator to be entitled to subsurface rights, he must include within his claim the entire width of the apex.[35] Under this view, both mining locators would be denied extralateral rights to a vein bisected by their common boundary line. The second approach is to grant extralateral rights to the senior claimant when the end line extensions of both claims correspond.[36] A third, more liberal, position has been adopted which would permit both locators to obtain extralateral rights when the end lines do not correspond. Under this view, the senior locator obtains rights to any conflict area and a junior locator obtains his extralateral rights outside of the conflict area.[37]

The third rule includes the priority concepts of the second and also recognizes extralateral rights in the junior locator when there is no conflict. It has the advantage of not establishing underground areas from which minerals are unlikely to be developed, and it is more consistent with the intent of the statute and the

---

31 Catron v. Old, 23 Colo. 433, 48 P. 687 (1897) (court emphasized the fact that very little of the apex was actually within the claim, and that it did not run parallel with the side lines).

32 Montana Mining Co. v. St. Louis Mining & Milling Co., 204 U.S. 204 (1906); St. Louis Mining & Milling Co. v. Montana Milling Co., 104 F. 644 (9th Cir. 1900).

33 Rico-Argentine Mining Co. v. Rico Copper Mining Co., 74 Colo. 444, 223 P. 31, 33 (1923) (the court, although dealing with a vein crossing an end line and a side line, said it was compelled "to conclude that extralateral rights are conferred where the discovery vein crosses . . . the same side line twice.").

34 G. Costigan, *Mining Law* § 118g at 63 (1908), suggests the propriety of refusing to follow" the *Catron* case. *See also* Clayberg, "Extralateral Rights to Quartz Veins Granted by the Act of Congress of May 10, 1872," 1 *Calif L. Rev.* 336, 345-347 (1913); Note, "Extralateral Rights in Mining," 15 *Notre Dame Law.* 68, 75-76 (1939).

35 Grand Cent. Mining Co. v. Mammoth Mining Co., 29 Utah 490, 83 P. 648 (1905) (extralateral rights may not be predicated upon such bisected broad lode desposits). The court said: "What constitutes a discovery that will validate a location is a very different thing from what constitutes an apex, to which attaches the statutory right to invade the possession of and appropriate the property which is presumed to belong to an adjoining owner." *Id.* at 677. *Accord* Big Hatchet Consol. Mining Co. v. Colvin, 19 Colo. App. 405, 75 P. 605, 606 (1904).

36 Argentine Mining Co. v. Terrible Mining Co., 122 U.S. 478 (1887); United States Mining Co. v. Lawson, 134 F. 769 (8th Cir. 1904), *aff'd*, 207 U.S. 1 (1907); St. Louis Mining & Milling Co. v. Montana Mining Co., 104 F. 664 (9th Cir. 1900).

37 Empire State-Idaho Mining & Dev. Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 114 F. 417, 419 (9th Cir.), *cert. denied*, 186 U.S. 482 (1902).

policy of the courts to grant extralateral rights whenever there has been reasonable compliance with the law. It appears to be the standard rule.[38]

§ 37.04 Extralateral Rights in Secondary Veins

[1] Application of Extralateral Rights to Secondary Veins

"Secondary," "accidental," and "incidental" are terms commonly applied to apexing veins or lodes other than the one upon which a mining location is based, known as the "primary" or "discovery" vein.[1] The Mining Law of 1872 constitutes a grant of rights in all veins or lodes which apex within the surface lines of a mining location,[2] and it is settled law that extralateral rights are conferred in secondary as well as primary veins.[3] Thus, extralateral rights may be based upon "blind" veins or lodes, unknown or undiscovered at the time of location.[4] In general, the same conditions and limitations apply to extralateral rights conferred in secondary veins as apply to discovery veins,[5] except that rights in secondary veins are further conditioned upon the validity of the location on the discovery vein.

[2] End Lines of Discovery Vein Control

There can be but one set of end lines for a location, and they limit all veins apexing within the surface lines.[6] Hence, extralateral rights in secondary veins are fixed by the end lines of the discovery vein.[7] Courts will not create new lines

---

38 *See* § 12.03[2][b], *supra*.

1 *See* Cosmopolitan Mining Co. v. Foote, 101 F. 518 (C.C.D. Nev. 1900).

2 30 U.S.C. § 26 (1982). Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 88 (1898):

> Every vein whose apex is within the vertical limits of his [a locator's] surface lines passes to him by virtue of his location. He is not limited to only those veins which extend from one end line to another, or from one side line to another, or from one line of any kind to another, but he is entitled to every vein whose top or apex lies within his surface lines. Not only is he entitled to all veins whose apexes are within such limits, but he is entitled to them throughout their entire depth, 'although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations.' In other words, given a vein whose apex is within his surface limits, he can pursue that vein as far as he pleases in its downward course outside the vertical side lines.

3 Ajax Gold Mining v. Hilkey, 31 Colo. 131, 72 P. 447 (1903).

4 Calhoun Gold Mining Co. v. Ajax Gold Mining Co., 182 U.S. 499, 508 (1901).

5 *See* §§ 37.01, .02, .03, *supra*, and § 37.05, *infra*.

6 Walrath v. Champion Mining Co., 171 U.S. 293, 308, 311 (1898); Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55 (1898); Ajax Gold Mining Co. v. Hilkey, 31 Colo. 131, 72 P. 447 (1903).

7 Work Mining & Milling Co. v. Doctor Jack Pot Mining Co., 194 F. 620, 629 (8th Cir.), *cert. denied*, 226 U.S. 610 (1912); Ajax Gold Mining Co. v. Hilkey, 31 Colo. 131, 72 P. 447, 449 (1903) ("The end lines constitute a barrier beyond which a locator cannot follow a vein on its strike, whether it be a discovery or secondary vein. . . .").

for secondary veins.[8] Thus, if the discovery vein crosses both side lines, the side lines will be regarded as end lines and will determine extralateral rights in all veins which apex within the claim, even though a secondary vein might perfectly bisect the original end lines.[9] Nor can a locator relocate his claim using new end lines so as to expand his extralateral rights in secondary veins which dip outside of the bounding planes of the location of the discovery vein. When such an attempt is made, the side lines of the new location, will be regarded as end lines.[10] Hence, it is not possible to obtain extralateral rights in a secondary vein which lies at a right angle to the discovery vein, parallel with the located end lines.[11]

[3] Amount of Apex of Secondary Vein within the Claim

Extralateral rights attach to any secondary vein or lode which apexes within a location without regard to the extent of extralateral rights obtainable in the discovery vein. Hence, the apex of a secondary vein need not be in the same part of a claim as the apex of the discovery vein, and whether it is or not, extralateral rights to the dip of a secondary vein are defined by vertical planes fixed by the original end lines.[12] This is illustrated by the not uncommon situation of a claim inaccurately located so that the discovery vein passes through an end line and a side line. Extralateral rights to the discovery vein are bounded by a vertical plane extended downward from the crossed end line and, under the false end line doctrine, another vertical plane parallel thereto drawn from the point the vein crosses the side line.[13] These planes, however, do not limit extralateral rights in the secondary vein, which are governed by planes drawn from the original end lines.[14]

Since the end line bounding planes of the discovery vein fix extralateral rights to secondary veins, it has been argued that the dip of a secondary vein may

---

[8] Walrath v. Mining Co., 63 F. 552, 557 (C.C.N.D. Cal. 1894) ("The Act of 1872, in granting all other veins that were within the surface lines of previous locations, did not create any new lines for such other veins, nor invest the court with any authority to make new lines for such other veins."), *aff'd*, 171 U.S. 293 (1898). *Accord* Cosmopolitan Mining Co. v. Foote, 101 F. 518, 523 (C.C.D. Nev. 1900).

[9] Northport Smelting & Ref. Co. v. Lone Pine-Surprise Consol. Mines Co., 278 F. 719 (9th Cir. 1922). *See* § 37.03[2], *supra*.

[10] Cosmopolitan Mining Co. v. Foote, 101 F. 518, 521-23 (C.C.D. Nev. 1900). *See* Walrath v. Mining Co., 63 F. 552, 557 (C.C.N.D. Cal. 1894) ("When the end lines of a mining location are once fixed, they bound the extralateral rights to all the lodes that are thereafter found within the surface lines of the location.").

[11] Cosmopolitan Mining Co. v. Foote, 101 F. 518 (C.C.D. Nev. 1900). *See also* § 37.04[4], *infra*.

[12] Ajax Gold Mining Co. v. Hilkey, 31 Colo. 131, 72 P. 447, 450 (1903).

[13] *Id. See* § 37.03[3], *supra*.

[14] Ajax Gold Mining Co. v. Hilkey, 31 Colo. 131, 72 P. 447, 449 (1903) ("This, however, does not mean that all such veins have exactly the same extralateral rights, nor can it be said that only so much of a secondary vein as apexes within that part of the claim where the apex of the discovery vein is found has such rights."). *See* § 37.04[4], *infra*.

be followed anywhere between their extensions regardless of the amount of apex within the location. This result has been permitted by the United States Supreme Court,[15] but is contrary to the generally accepted principle of mining law that only so much of the dip of a vein may be followed as there is apex within the surface boundaries of the location.[16] The legal apex doctrine is an exception to this rule.[17]

[4] Relation of Location to Course of Secondary Vein

The rules concerning extralateral rights in discovery veins also apply to extralateral rights in secondary veins. Variations in the position of secondary veins in relation to the discovery vein do not alter these rules, but may limit their application.

There is no doubt that extralateral rights attach to secondary veins if they are approximately parallel to the discovery vein and are within the parallel planes which measure extralateral rights to it.[18] On the other hand, if a secondary vein crosses a location at a right angle to the discovery vein, extralateral rights in the secondary vein cannot be obtained because there is no right to pursue the strike or onward course of the vein.[19]

Between the two extremes, when the discovery vein and secondary vein do not have the same extent or direction, three views have been expressed. One, now in general disrepute, was to deny extralateral rights beyond the portion of the claim covered by extralateral rights in the discovery vein.[20] Another view, founded upon dicta in a Supreme Court decision, would permit extralateral rights within the area bounded by the end lines even though portions of the apex were outside the claim.[21] The view accepted by most authorities allows extralateral rights in secondary veins to the extent of their apex within a claim, limited by bounding planes drawn through the original end lines for the discovery

---

15 Walrath v. Champion Mining Co., 171 U.S. 293 (1898). The effect of the decision was to grant a greater extent on the dip of a secondary vein than there was apex within the mining claim; the extralateral rights were bounded by the end lines of the discovery vein. This decision is criticized in Zane, "A Problem in Mining Law: Walrath v. Champion Mining Company," 16 *Harv. L. Rev.* 94 (1902). Lindley denied that this result was intended by the court. 2 *Lindley on Mines* § 593 (3d ed. 1914).

16 Bunker Hill & Sullivan Mining & Concentrating Co. v. Empire State-Idaho Mining & Dev. Co., 109 F. 538 (C.C.D. Idaho 1900), *aff'g* 108 F. 189 (C.C.D. Idaho 1900).

17 *See* § 37.02[2], *supra*.

18 Walrath v. Champion Mining Co., 197 U.S. 193 (1897). *Accord* Jefferson Mining Co. v. Anchoria-Leland Mining & Milling Co., 32 Colo. 176, 75 P. 1070 (1904).

19 Cosmopolitan Mining Co. v. Foote, 101 F. 518 (C.C.D. Nev. 1900). *See also* § 37.04[2], *supra*.

20 Jefferson Mining Co. v. Anchoria-Leland Mining Co., 32 Colo. 176, 75 P. 1070 (1904). *See* § 37.04[3], *supra*.

21 Walrath v. Champion Mining Co., 197 U.S. 193 (1897). *See* Zane, "A Problem in Mining Law: Walrath v. Champion Mining Company," 16 *Harv. L. Rev.* 94 (1902).

vein.[22] Under this approach, the fact that the apex of a secondary vein does not cross an end line would be of no consequence,[23] nor would its position in a claim, whether the claim be patented or unpatented.[24]

§ 37.05 Subsurface Conflicts as to Extralateral Rights

[1] General Rules

Conflicts as to extralateral rights may occur underneath mining or non-mining land. In general, all mining lands, whether unpatented or patented, are subject to the exercise of valid extralateral rights, even though the apex itself may be located at a later date than the land under which it dips.[1] On the other hand, previously patented non-mining lands are not subject to extralateral rights, provided that on the date patent issued the land was not known to be valuable for minerals.[2] Unpatented non-mining lands are subject to extralateral rights regardless of the date of mining location.

As a general proposition, the locator of an apex may assert his statutory right to the dip irrespective of priority of location and may follow the dip underneath mining land previously located.[3] Some courts have held to the contrary in order to prevent intrusion upon the common law rights of a prior dip locator.[4] Since statutory enactments modify the common law, intraliminal rights recognized under the common law are subject to the statutory grant of extralateral rights.[5] Nevertheless, courts might be particularly reluctant to adhere to this concept against a prior dip locator when a junior apex locator's rights are predicated

---

22 Ajax Gold Mining Co. v. Hilkey, 31 Colo. 131, 72 P. 447 (1903) (the extralateral rights of the locator of a secondary vein which had a longer apex than the discovery vein with which it united on the dip and passed out the north side line under adjoining land were determined by a line to the east parallel with the west end line). *See also* Anaconda Copper Mining Co. v. Pilot-Butte Mining Co., 52 Mont. 165, 156 P. 409 (1916).

23 Work Mining & Milling Co. v. Doctor Jack Pot Mining Co., 194 F. 620, 629 (8th Cir.), *cert. denied*, 226 U.S. 610 (1912).

24 Ajax Gold Mining Co. v. Hilkey, 31 Colo. 131, 72 P. 447 (1903).

1 *See* Clark v. Fitzgerald, 171 U.S. 92 (1898).

2 *See* § 37.05[2], *infra*.

3 Colorado Cent. Consol. Mining Co. v. Turck, 50 F. 888, 895 (8th Cir. 1892) ("The statute conferring the right to follow a lode outside the side lines of a location, when the top or apex of the lode lies within the boundaries of the location, does not, in terms or by necessary implication, limit the exercise of that right, especially where mining claims are involved, to cases where the adjoining claims are held under junior locations or patents, and we think we would not be justified in placing such a limitation upon the right by construction."). *Accord* Cheesman v. Hart, 42 F. 98 (C.C.D Colo. 1890). See § 37.01[2], *supra*.

4 *E.g.*, Van Zandt v. Argentine Mining Co., 8 F. 725 (C.C.D. Colo. 1881) (jury instructions). *See* § 36.03[2], *supra*, discussing common law rights in mining locations.

5 *See* § 37.01[2], *supra*.

upon the fiction of a judicial apex[6] or patent has already issued.[7]

[2] Patented Non-Mining Lands

The Mining Law of 1872 grants extralateral rights to locators and patentees of lode claims, and also makes mineral patents subject to the extralateral rights of subsequent valid apex locations.[8] Nonmineral patents, however, neither confer extralateral rights nor are made subject to extralateral rights by statute.[9] Consequently, disputes as to the exercise of extralateral rights may arise whenever nonmineral patents have been issued for land in the vicinity of either patented or unpatented lode claims.

Courts have approached such conflicts using the principle that the United States cannot convey what it no longer owns or what has been specifically reserved from transfer by statute.[10] The extralateral rights accompanying a valid mining location cannot be defeated by a subsequent nonmineral patent because the rights vested when the mining claim was perfected and from then on were not the government's to grant.[11] On the other hand, when a nonmineral patent has been issued prior to the perfection of a valid mineral location, unless miner-

---

6 *See* § 37.02[2], *supra*.

7 While there is a presumption that patented nonmineral land does not contain an apex, the presumption is rebuttable, and patent proceedings establishing surface rights do not necessarily determine extralateral rights. *See* Butte & Superior Copper Co. v. Clark-Mont. Realty Co., 248 F. 609 (9th Cir. 1918), *aff'd*, 249 U.S. 12 (1919). *But see* Pacific Coast Mining & Milling Co. v. Spargo, 16 F. 348 (C.C.D. Cal. 1883), and Amador Medean Gold Mining Co. v. South Spring Hill Gold Mining Co., 36 F. 668 (C.C.D. Cal. 1888). Both cases hold that the extralateral rights of appropriators of veins apexing outside a patented claim apply only when the appropriator's claim was in existence at the time of entry and payment during patent proceedings.

8 *See* § 37.05[1], *supra*. *Cf.* Walrath v. Champion Mining Co., 171 U.S. 293 (1898) (a mineral patent is read as if the statute were written in it, whatever the terms of the patent may be).

9 *See* Empire Star Mines Co. v. Grass Valley Bullion Mines, 99 F.2d 228, 234 (9th Cir. 1939); Empire Star Mines Co. v. Butler, 72 Cal. App. 2d 466, 145 P.2d 49 (1944).

10 *See* Davis's Adm'r v. Weibold, 139 U.S. 507, 529-30 (1891) ("but if the lands patented were not at the time public property, having been previously disposed of, or no provision had been made for their sale, or other disposition, or they had been reserved from sale, the department had no jurisdiction to transfer the land, and their attempted conveyance by patent is inoperative and void"); Amador Medean Gold Mining Co. v. South Spring Hill Gold Mining Co., 36 F. 668, 669 (C.C.N.D. Cal. 1888) ("The United States can undoubtedly grant easements, and other limited rights, in any portion of the public lands, and subsequent purchasers must take them burdened with such easements or other rights, but when it has once disposed of its entire estate in the lands to one party, it can, afterwards, no more burden it with other rights than any other proprietor of lands."); Ames v. Empire Star Mines Co., 17 Cal. 2d 213, 110 P.2d 13, 16 (1941) ("Under the act they acquired legal title to such extralateral rights provided such rights had not been previously conveyed away by the government, for the Mining Act could not, of course, operate to divest private owners of existing vested rights.").

11 Hecla Mining Co. v. Atlas Mining Co., 92 Idaho 476, 445 P.2d 225, 227-228 (1968) (prior validly located claims which contained an apex carried extralateral rights as against subsequently issued nonmineral patent, and to the extent of conflict the nonmineral grant is void). *See* Ames v. Empire Star Mines Co., 17 Cal. 2d 213, 110 P.2d 13 (1941).

als were reserved or known to exist, the entire interest in the land vested in the patentee, and the subsequent mineral locator obtains no extralateral rights to minerals within the land.[12]

Nonmineral land grants and patents in the Western mining states generally reserve minerals to the United States, and it has been held that known minerals cannot pass in a nonmineral patent.[13] However, it is also a rule that, as against subsequent mineral locators, the absence of valuable minerals is conclusively established by the issuance of a nonmineral patent.[14] Therefore, a subsequent mineral locator cannot obtain extralateral rights in patented nonmineral lands by claiming that minerals were in fact known to occur at the time of patent.[15] A mineral locator who has perfected his claim prior to issuance of the nonmineral patent, however, will prevail on such a claim by virtue of the fact that his rights vested upon discovery of the minerals.[16]

Except for cases involving railroad patents,[17] the cases are not in agreement

---

12 Amador Medean Gold Mining Co. v. South Spring Hill Gold Mining Co., 36 F. 668 (C.C.N.D. Cal. 1888); Reeves v. Oregon Explor. Co., 127 Or. 686, 273 P. 389, 391 (1929) ("The right of a junior lode claimant, whether his claim be patented or unpatented, to follow the dip of his vein into an adjoining patented or unpatented lode claim, is one which arises under the mining laws, and is confined to titles acquired under the mining laws, and has no application to a case where the vein of a lode claim on its dip extends to lands the title to which has been acquired under agricultural patents.").

13 Davis's Adm'r v. Weibold, 139 U.S. 507 (1891), Deffeback v. Hawke, 115 U.S. 392 (1885); Lonely v. Scott, 57 Or. 378, 112 P. 172, 174 (1910) ("The rule is, that a patent to government land transfers to the patentee all veins, lodes or other minerals, within its boundaries, unless such mineral deposits were known to exist at the time of the issuance of the patent, in which latter case the known mineral deposits do not pass by the patent.").

14 Burke v. Southern Pac. R.R., 234 U.S. 669, 691-92 (1914) ("when a patent issues it is to be taken . . . as affording conclusive evidence of the non-mineral character of the land"); Davis's Adm'r v. Weibold, 139 U.S. 507 (1891); Dredge v. Husite Co., 78 Nev. 126, 369 P. 2d 676, 682 (1962); Reeves v. Oregon Explor. Co., 127 Or. 686, 273 P. 389, 391 (1929).

15 *See* Burke v. Southern Pac. R.R., 234 U.S. 669, 692 (1914) ("Of course, if the land officers are induced by false proofs to issue a patent for mineral lands under a non-mineral land law, or if they issue such a patent fraudulently or through a mere inadvertence, a bill in equity, on the part of the Government, will lie to annul the patent and regain the title, or a mineral claimant who then had acquired such rights in the land as to entitle him to protection may maintain a bill to have the patentee declared a trustee for him; but such a patent is merely voidable, not void, and cannot be successfully attacked by strangers who had no interest in the land at the time the patent was issued and were not prejudiced by it.")

16 Helca Mining Co. v. Atlas Mining Co., 92 Idaho 476, 445 P.2d 225 (1968). *Accord* Ames v. Empire Star Mines Co., 17 Cal. 2d 213, 110 P.2d 13, 16 (1941) (an agricultural patent is conclusive as to the character of the land as against mining claims subsequently located, but such a patent, "issued merely on the basis of an ex parte hearing on behalf of the claimant to the land, can in no way abrogate the existing vested extralateral rights of parties who had nothing to do with the proceedings"); Chicago Quartz mining Co. v. Oliver, 75 Cal. 194, 16 P. 780 (1888).

17 Burke v. Southern Pac. R.R., 234 U.S. 669 (1914). *See* Wyoming v. United States, 255 U.S. 489 (1921). *See also* Northern Pac. Ry., 56 L.D. 201, 203 (1937) (the land department may inquire into the mineral character of railroad land at any time prior to the issuance of patent).

as to the date for determining when the rights of a nonmineral claimant vest so as to prevent subsequent mineral claimants from acquiring extralateral rights. Some cases hold that the date of issuance of the nonmineral patent controls,[18] while others follow the rule governing mineral patents and hold that the rights of the nonmineral claimant vest once he has done all that he was required to do to receive legal title.[19]

The specific language in the patents involved and the statutory authority for those patents are important in determining the relative rights of mineral and nonmineral patentees. Although most nonmineral grants and patents are in absolute terms and typically transfer to the patentee all unknown veins, lodes, and minerals within the boundaries of the land,[20] the language of a particular grant or patent should always be consulted for a reservation of minerals. In addition, the legislation authorizing the patent or grant should be consulted because the statute controls, and reservations required by statute are effective whether or not expressed in the patent.[21]

[3] Intersecting Veins

The Mining Law of 1872 provides that:

> Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of

---

18 Davis's Adm'r v. Weibold, 139 U.S. 507 (1891) (the patent to a townsite location is conclusive as to the character of the land as against mining claims subsequently located); Reeves v. Oregon Explor. Co., 127 Or. 686, 273 P. 389, 392 (1929) (a patent issued under the Timber and Stone Act "is conclusive upon all third parties whose rights did not attach before a patent was issued"). In both bases a mineral entry was made subsequent to the nonmineral patent, and, therefore, it was unnecessary to hold that the nonmineral patentee's rights vested prior to patent issuing in order for the nonmineral patentee to prevail. The *Davis* case, however, states at p. 528 that, "proceedings for the acquisition of title to a mining claim within a townsite, commenced before the issuance of a townsite patent, could undoubtedly be prosecuted to completion afterwards," and also asserts at p. 521: "There must be some point of time, when the character of the land must be finally determined, and, for the interest of all concerned, there can be no better point to determine this question than at the time of issuing patent." It is clear in *Davis* that the date of patent is considered the date when rights vest in a nonmineral patentee.

19 Wyoming v. United States, 255 U.S. 490 (1920) (nonmineral character of school grant lands determined and rights vested when lands selected even though minerals were subsequently discovered prior to issuance of nonmineral patent); Amador Medean Gold Mining Co. v. South Spring Hill Gold Mining Co., 36 F. 668, 669 (C.C.N.D. Cal. 1888) (the equitable title to agricultural lands vests in the purchaser immediately upon the lawful entry, payment of purchase money, and issue of certificate of purchase thereon and cannot be defeated by subsequent mineral grants). *See* § 12.02[5], *supra*.

20 Such purported grants are ineffectual against prior valid unpatented mining claims to the extent that extralateral rights in the claims are vested. Hecla Mining Co. v. Atlas Mining Co., 92 Idaho 476, 445 P.2d 225 (1968) (nonmineral patent purporting to grant all rights to the subsurface area, including mineral rights without regard to apexes of veins or lodes, did not negate vested extralateral rights).

21 *See* § 9.02, *supra*. See Chapter 9, *supra*, for comprehensive discussion of federal reserved mineral interests.

> intersection; but the subsequent location shall have the right-of-way through the space of intersection for the purposes of the convenient working of the mine.[22]

A basic difficulty in applying this statute is the wide variation and unconventional patterns of most veins and lodes which defy ready classification as intersecting or crossing veins.[23] The statute clearly applies where there is an intersection, which ideally involves the crossing of two vein segments resembling the letter "X," but this is in contrast to a uniting which involves three vein segments resembling the letter "Y."[24] A determination of intersection is always a question of fact which involves the position of the strike, dip, and other physical characteristics of the vein.[25] An intersection can exist within the meaning of the statute even though it is geologically impossible to tell one intersecting vein from the other, as when there is a difference in age and hence an uncertainty as to which vein in fact cuts across the other.[26] Exacting geological tests and determinations are unnecessary, however, in that title to the "ore or mineral contained within the space of an intersection" is granted by statute to the prior location.[27]

In considering the nature and extent of a junior locator's right of way through the "space of intersection," a question arises whether the statute applies to intersections on the strike as well as on the dip of a vein. The statute is clearly applicable to dip intersections. The senior locator takes the ore in the "space of intersection," subject to a right of way in the nature of an easement in the junior locator to go through the intersection[28] and take ore on the dip of his vein.[29] The latter's

---

[22] 30 U.S.C. § 41 (1982).

[23] E. De Soto & A. Morrison, *Mining Rights on the Public Domain* 177, 178 (16th ed. 1936): "The U.S. Mining Acts concerning lode claims are based on the supposition or theory that a lode is a straight vein whose course can be redily ascertained and indicated by a straight line or a series of straight lines; and that occasionally such a vein is crossed by another in a similar straight line, merely requiring the right of way to give each claim its proper lode. But in fact the lode is rarely a straight line; it is seldom to be traced without confusion for more than a few hundred feet; and in its course other veins are absorbed into it; and offshoots (not only spurs, but perhaps better developed veins than itself) run about it; and in its extension downward, it invariably dips laterally; and often shows a fork of which both parts approach the surface; and it will divide, and may or may not unite at another point; and it will abut suddenly upon country rock and so be thrown far to one side; and instead of showing distinct lines, mineral veins are as irregular, as disproportioned in length and width, as much intermingled, though on a larger scale, as are the veins in a block of marble."

[24] *See* § 37.05[4], *infra*.

[25] *See* Empire Star Mines Co. v. Butler, 62 Cal. App. 2d 466, 145 P.2d 49, 62 (1944).

[26] *Id.* "[I]t seems apparent that, while the words 'intersect' and 'intersection' are used to describe the geological process by which one vein cuts across another of earlier formation, in which sense a time element inheres in the use of these words, that they were not used with that limited meaning in the statute. . . . The statute was designed to regulate subsurface ownership, rather than to describe geological development."

[27] *See id.* at 61-62.

[28] Twenty-One Mining Co. v. Original Sixteen to One Mine, Inc., 255 F. 658 (9th Cir. 1919); Watervale Mining Co. v. Leach, 4 Ariz. 34, 33 P. 418, 422 (1893) ("the ore within the space of intersection" is the body of ore contained within "the foot and hanging walls of one lode extended in a general course of that lode, and the foot and hanging walls of the intersecting lode extended upon its general course").

right is confined to a right of way to drift through, with no estate in, the vein crossed, and all ore must be left as the property of the crossed lode claimant.[30] It also seems clear that although the statute speaks of "two or more veins," the same rule applies to a dip intersection of two locations made upon different portions of one vein.[31]

With regard to the intersection of the strikes of two veins with conflicting locations made over each, there has been confusion as to the application of the statute. Early Colorado cases interpreted the statute to both grant a junior locator a right to the portion of his vein within the senior location's boundaries and a right of way for the purpose of its excavation.[32] The supreme courts of Arizona[33] and California[34] rejected the Colorado interpretation of the statute on the basis that under the Mining Law of 1872 the senior locator had by statute[35] already acquired the exclusive right to possess the ground covered by his location and all veins which apex within it. This approach was subsequently adopted by the Colorado Supreme Court in overruling its prior decision.[36] The court went on, however, to interpret "space of intersection" in the statute to mean the "intersection of the claims," and found that the statutory provision operates to reserve an easement that allows a junior locator a right of way across the senior location.[37] The decision was affirmed on review by the United States Supreme Court which agreed with the finding of a right of way but reserved its ruling as to its extent.[38]

---

29 Empire State-Idaho Mining & Dev. Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 121 F. 973 (9th Cir. 1903); Davis v. Shepherd, 31 Colo. 141, 72 P. 57 (1903).

30 Pardee v. Murray, 4 Mont. 234, 2 P. 16 (1882); Watervale Mining Co. v. Leach, 4 Ariz. 34, 33 P. 418 (1893); Wilhelm v. Silvester, 101 Cal. 358, 35 P. 997 (1894); Calhoun Gold Mining Co. v. Ajax Gold Mining Co., 27 Colo. 1, 59 P. 607 (1899), *aff'd*, 182 U.S. 499 (1901).

31 *See* G. Costigan, *Mining Law* § 120 (1908), "The principle of the statute covering lodes crossing on the dip is applied, on the theory that the statute is simply declaratory of that law of mining which would apply in the absence of a statute."

32 Hall v. Equator Mining Co., 11 F. Cas. 222 (C.C.D. Colo. n.d.) (No. 5,931); Branagan v. Dulaney, 8 Colo. 408, 8 P. 669, 671 (1885). *See also* Pardee v. Murray, 4 Mont. 234, 2 P. 16 (1882).

33 Watervale Mining Co. v. Leach, 4 Ariz. 34, 33 P. 418, 422 (1893) ("The statute does not in any place contemplate a crossing of locations.").

34 Wilhelm v. Silvester, 101 Cal. 358, 35 P. 997, 998 (1894) (inclining towards the view that the statute only applies to intersections on dip).

35 30 U.S.C. § 26 (1982).

36 Calhoun Gold Mining Co. v. Ajax Gold Mining Co., 27 Colo. 1, 59 P. 607, 613, 616 (1899).

37 *Id.* at 615.

38 Calhoun Gold Mining Co. v. Ajax Gold Mining Co., 182 U.S. 499, 505 (1901): "Section 2332 [30 U.S.C. § 41] does not conflict with § 2322 [30 U.S.C. § 26], but supplements it. Section 2322 imposes a servitude upon the senior location, but does not otherwise affect the exclusive rights given the senior location. It gives a right of way to the junior location. To what extent, however, there may be some ambiguity; whether only through the space of the intersection of the veins, as held by the Supreme Courts of California, Arizona and Montana, or through the space of intersection of the claims, as held by the Supreme Court of Colorado in the case at bar. It is not necessary to determine between these views. One of them is certainly correct, and therefore the contention of the plaintiff in error is not correct, and, more than that, it is not necessary to decide on this record."

[4] Uniting Veins

The Mining Law of 1872 provides that "where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection."[39] It has been uniformly ruled in vein junction cases that the senior locator takes the entire vein below the point of union,[40] including forks and other splits below the junction into which the vein might later divide.[41] The rule of priority of location applies even though a junior locator has been granted a prior patent.[42] If two veins unite on their dip and enter into a third mining claim, the third claimant has no right to the veins.[43]

Whether a junction actually exists is a question of fact, and the same considerations apply as for intersections.[44] Sufficient doubt as to the existence of a junction will defeat the assertion that there is one, and it is not necessary to show as a defense that the vein structure is an intersection or otherwise.[45] If a junction is shown to exist, however, the junior locator may take the ore in his vein to the boundary of the union, and there is no duty to leave a barrier of ore for the convenience of the senior locator.[46] The statute's provision does not apply to veins uniting on the strike, and such veins belong to the senior location in which they apex.[47]

[5] Conflicts on Different Portions of the Same Vein

Two or more mining claims may be staked upon a single vein without conflicting because their end lines may be placed so that, when projected in the direction of the dip, they do not cross and include extralateral territory belonging to the other claim. Conflicts as to extralateral rights on a single vein can arise,

---

39 30 U.S.C. § 41 (1982).

40 Calhoun Gold Mining Co. v. Ajax Gold Mining Co., 182 U.S. 499 (1901); Little Josephine Mining Co. v. Fullerton, 58 F. 521, 522 (8th Cir. 1893); Consolidated Wyo. Gold Mining Co. v. Champion Mining Co., 63 F. 540 (C.C.N.D. Cal. 1894); Watervale Mining Co. v. Leach, 4 Ariz. 34, 33 P. 418 (1893); Wilhelm v. Silvester, 101 Cal. 358, 35 P. 997 (1894); Stinchfield v. Gillis, 96 Cal. 33, 30 P. 839 (1892); Rico-Argentine Mining Co. v. Rico Consol. Mining Co., 74 Colo. 444, 223 P. 31 (1923).

41 Empire Star Mines Co. v. Butler, 62 Cal. App. 2d 466, 145 P.2d 49, 56-57 (1944).

42 *See* Champion Mining Co. v. Consolidated Wyo. Gold Mining Co., 75 Cal. 78, 16 P. 513 (1888). *See also* Little Josephine Mining Co. v. Fullerton, 58 F. 521 (8th Cir. 1893); Consolidated Wyo. Gold Mining Co. v. Champion Mining Co., 63 F. 540 (C.C.N.D. Cal. 1894); Lee v. Stahl, 13 Colo. 174, 22 P. 436 (1889); Anaconda Copper Mining Co. v. Pilot-Butte Mining Co., 51 Mont. 443, 153 P. 1006 (1915).

43 Roxanna Gold Mining & Tunneling Co. v. Cone, 100 F. 168 (C.C.D. Colo. 1899).

44 *See* § 37.05[3], *supra*.

45 Clark-Mont. Realty Co. v. Butte & Superior Copper Co., 233 F. 547, 559 (D. Mont. 1916). *See also* Keely v. Ophir Hill Consol. Mining Co., 169 F. 601 (8th Cir. 1909).

46 Empire Star Mines Co. v. Butler, 62 Cal. App. 2d 466, 145 P.2d 49, 82-83 (1944).

47 Book v. Justice Mining Co., 58 F. 106 (C.C.D. Nev. 1893); Lee v. Stahl, 13 Colo. 174, 22 P. 436 (1889).

however, if the end lines of two locations are laid at such angles to each other that their extensions in the direction of the dip cross each other. This may occur if the strike of the vein is iregular, or even if the strike is straight if the end lines of the locations are laid at an angle, perhaps because the direction of the strike was misapprehended.

The general rule applicable to the crossing of extralateral rights on the dip of a vein is that priority of location governs as to the conflict area, so the senior locator prevails.[48] It is also recognized that a junior locator has the right to follow his vein to the point of conflict, that he has an easement through the conflict area, and that he is entitled to extralateral rights in the extension of his vein beyond the point of conflict.[49] This is true even when a junior locator's extralateral plane of rights is wholly bisected by the senior locator's extralateral plane.[50] The right of a junior locator to his vein beyond the conflict area obtains from a literal reading of the statute that possessory rights in veins are granted "throughout their entire depth" between the end lines of a location.[51] While an easement through the conflict area is not given by the statute, granting such an easement is consistent with the portion of the statute applicable to cross lodes,[52] providing the same result for one vein as for two.

---

48 Argentine Mining Co. v. Terrible Mining Co., 122 U.S. 478 (1887). *See* § 37.05[3], *supra*.

49 Bunker Hill & Sullivan Mining & Concentrating Co. v. Empire State-Idaho Mining & Dev. Co., 134 F. 268 (C.C.D. Idaho 1903); Empire State-Idaho Mining & Dev. Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 121 F. 973 (9th Cir. 1903); Empire State-Idaho Mining & Dev. Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 114 F. 417 (9th Cir. 1902). *Accord* Davis v. Shepherd, 31 Colo. 141, 72 P. 57 (1903).

50 Empire State-Idaho Mining & Dev. Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 121 F. 973, 976 (9th Cir. 1903).

51 30 U.S.C. § 26 (1982). Even if it were supposed that the junior locator has no right of easement through the conflict area, that would be a mere inconvenience to the junior locator and not a limitation upon his title beyond the area of conflict.

52 *See* § 37.05[3], *supra*. The easement granted by the statute in the case of cross lodes, or intersecting veins, is declaratory of the mining law and "would probably be recognized in the absence of a statute. . . ." Empire State-Idaho Mining & Dev. Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 121 F. 973, 977 (9th Cir. 1903). Since the government owns title to all of the land and all of the vein, grants of a portion to *A* and a subsequent portion to *B* would be subject to the rule relative to private conveyances that a right of access is reserved even though not explicitly stated. *See* Montana Mining Co. v. St. Louis Mining & Milling Co., 204 U.S. 204, 219 (1907).

1 Alaska 311

Rule 16, subd. 2 (31 C. C. A. clx, 90 Fed. clx), also provides that the respondent may docket the case in the Circuit Court of Appeals, and file a copy of the record there, at any time after the appeal has been perfected in the lower court, and may have the same heard upon its merits. This would have enabled the plaintiff in this cause to have determined the question of the appealable nature of the order complained of upon the failure of the appellants to perfect their appeal within the 30 days. The attorneys who now ask to vacate the order allowing the appeal have been the respondent's attorneys since April 16th, and could have adopted the correct practice during the open season, but did not do so. For the reason that the cause has been regularly appealed to the Circuit Court of Appeals, and for the want of jurisdiction to do so, this court is now compelled to overrule the motion to vacate, and leave the respondent to his remedy in the Circuit Court of Appeals. The motion to vacate is denied.

THE ALASKA GOLD MIN. CO. v. BARBRIDGE et al.

(First Division. Juneau. December Term, 1901.)

No. 40a.

1. TIDE LANDS—MINES AND MINING.

Lands lying below ordinary high tide on the shore of the ocean and arms of the sea in the District of Alaska are not subject to location under the mining laws of the United States.

2. MINES AND MINERALS—EVIDENCE—PATENT.

As a general rule the recitals in a mining patent are conclusive evidence of the extent and boundaries of the claim; other evidence may be admitted to determine the location of the monuments and boundaries called for by the patent.

3. INJUNCTION—TRESPASS.

One who, within the District of Alaska, trespasses upon the tide lands not subject to location under the mineral laws of the United States, may be enjoined from sinking shafts thereon, and

causing an increased flow of water into, and threatening the complete flooding and irreparable injury to, lower levels excavated by an adjoining mine owner underneath the same tide lands in following his vein or lode beyond his boundary line.

Action to Restrain Damage to Mine.

Maloney & Cobb, for plaintiff.
Crews & Hellenthal, for defendants.

BROWN, District Judge. This action was brought to restrain and enjoin the defendants from sinking a certain shaft situated at a point where the surface of the earth is below mean high tide on Gastineau channel, and immediately above the workings of the plaintiff corporation on a vein or lode, the apex of which is within the surface boundaries of the mining claim of the corporation. It is alleged that, by following the vein or lode on the dip thereof, the plaintiff has passed beyond the side line of its lode mining claim and beyond the shore line of Gastineau channel, which said channel is an arm of the sea, and is now working under said arm of the sea, the greatest working depth attained being about 900 feet; that the defendants, in sinking their shaft and discharging blasts in that behalf, cause the ground beneath to vibrate and the waters of the sea to flow through fissures in the rock that forms the roof above the workings of the plaintiff, thereby causing large quantities of the water of the sea to flow in upon the plaintiff, to its great and irreparable injury; and that unless the defendants are restrained from further pursuing the work of sinking their said shaft, the plaintiff's mine will become flooded and made valueless. The defendants deny these matters generally, but admit they are engaged in sinking a shaft, etc.; allege it to be on a lode mining claim properly located by them, and that their work in no wise damages plaintiff. This is practically the case before the court.

The evidence shows that plaintiff has a patent to its certain mining claim, and the patents offered in evidence show by reference to points, distances, courses, etc., that the line of said claim, at some points, is some little distance from the shore line of mean high tide of said channel. It further appears that the defendants have sunk shafts a few feet in depth, the surface at the point of sinking being above mean high tide, and have exposed rock in place of some value, the quartz taken therefrom showing good value; that shafts have been sunk at one or more places, the defendants claiming a lawful location of a lode mining claim, and that they are entitled to work the same even though some injury should result therefrom to the plaintiff. It is admitted that the particular shaft complained of is on what defendants claim to be the strike of their vein, and that the surface where said shaft was begun is below mean high tide. It further appears from the evidence, the admitted facts, and the personal observation of the court when present upon the ground, on invitation of the parties to this action, that only a few feet of the vein claimed by defendants extends, at either end thereof, above mean high tide, and that, following the strike of the vein or lode a few feet from the point of discovery, the vein passed below the tide line, and that the apex of the vein, except at low tide, other than these few feet, is beneath the sea, and a considerable portion is below even low tide.

It is contended by the defendants that, under the mining laws of the United States, all of the public mineral lands of the United States are subject to exploration and location; that mineral lands below high tide are a part of the public mineral lands of the United States, and therefore subject to exploration and location the same as the like character of land above high tide; that, beginning at or near the shore line, the defendants have a right to follow a vein upon the

strike thereof beyond the shore line beneath tide waters for the entire length of a claim. As before stated, except for a few feet, the apex of the entire vein claimed by the defendants is below the tide line. The above proposition is denied and contested by plaintiff. It is further claimed by plaintiff that plaintiff's land runs to the shore line of Gastineau channel and to mean high tide thereof; that the points designated by stakes constitute the meander line, and, though these are a few feet back from the point of mean high tide, their patented land in fact runs to mean high tide; and that therefore there is no land above shore line on which defendants could sink a shaft, make explorations, or locate a lode mining claim or any part thereof.

Thus are outlined the main points contested in this case. To what extent it is necessary for the court to follow these in order to determine the rights of the parties under the pleadings, the court does not at this time determine. It is sufficient to say that some of them will be examined. The arguments of counsel have been long, learned, and highly interesting, but, if counsel will excuse the court for so saying, unnecessary to follow at length in order to determine this case.

It seems to be expedient to determine, first, whether a mining claim can be located on lodes situated on the shore of the sea below mean high tide, or whether, where the vein or lode extends on its strike beyond the shore line under the sea, the discoverer can lawfully locate the part of the lode above mean high tide, and include in such location the larger part thereof that lies below the waters. Stating the proposition in another way, can the locator of a mining claim lawfully include in his claim any mineral lands of the United States that may extend into and under the sea below mean high tide, or must his claim end at the shore line?

Section 2319 of the Revised Statutes of the United States [U. S. Comp. St. 1901, p. 1424] provides that:

"All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States," etc.

It is claimed that the language of the section is broad enough to include land below, as well as above, high tide. Considering the language of the section, it might possibly include any of the mineral lands of the United States; but, under the policy of our government, the tide lands have never been sold by the general government. The original states, upon the formation of the Union, held the tide lands subject to their several control. In order that new states, carved out of the various portions of the public domain, should, when admitted as states of the Union, be admitted on an equality with all the other states, it has been deemed wise —and perhaps obligatory upon the general government—to so hold these tide lands that, when the new states should be formed, they should be transferred to the sole control of such states, to be disposed of as might seem wise to them. Considering this policy of the government in dealing with this class of lands, it would seem that the legislation by Congress relative to the disposition of its agricultural and mineral lands should be treated as subject in this respect to this general policy. It has been frequently said by our courts of last resort that these tide lands do not really belong to the United States, and are not subject to disposition, but are simply by the United States held in trust for the new states that shall be carved out of the public domain. Hardin v. Jordan, 140 U. S. 371, 11 Sup. Ct. 808, 838, 35 L. Ed. 428. See, also. Shively v. Bowlby, 152 U. S. 47, 14 Sup. Ct. 548, 38 L. Ed. 331; Knight v. The U. S. Land Ass'n, 142 U. S. 163,

12 Sup. Ct. 258, 35 L. Ed. 974; Weber v. Commissioners, 18 Wall. 65, 21 L. Ed. 798.

While this doctrine is supported by high authority, it seems to me that it is true only in the sense that the general government has established this policy in dealing with its lands. That the general government is the owner, and might, if it chose, dispose of them as it pleased, I have no doubt. But it is not difficult to perceive that the disposition of the tide lands in the outlying district of the United States might, when new states should be carved out of the public domain, create difficulties in the admission of the same as states of the Union; hence the policy of the government. It is fair to conclude, in construing the act of Congress providing for the disposition of the public lands of the United States, that the Congress only intended to provide for the disposition of such lands as have been held for disposition under the general policy of the government. In Weber v. Harbor Commissioners, 18 Wall. 57, 21 L. Ed. 798, Mr. Justice Field, delivering the opinion in the case, said:

"Although the title to the soil under the tide waters of the bay was acquired by the United States by cession from Mexico equally with the title to the upland, they held it only in trust for the future state. Upon the admission of California into the Union on an equal footing with the original states, absolute property in, and dominion and sovereignty over, all soils under the tide waters within her limits, passed to the state, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters."

In Knight v. U. S. Land Association, Mr. Justice Lamar said:

"It is the settled rule of law in this court that absolute property in, and dominion and sovereignty over, the soils under the tide waters in the original states, were reserved to the several states, and that the new states since admitted have the same rights, sover-

eignty, and jurisdiction in that behalf as the original states possessed within their respective borders."

In the case of Hardin v. Jordan, 140 U. S. 371, 11 Sup. Ct. 808, 838, 35 L. Ed. 428, Mr. Justice Bradley, speaking for a majority of the court, said:

"With regard to grants of the government for lands bordering on tide water, it has been distinctly settled that they only extend to high-water mark, and that the title to the shore and lands under water in front of lands so granted inures to the state in which they are situated, if a state has been organized and established there."

In many other cases in the Supreme Court, the dictum is frequently found that the lands belonging to the United States, in territories, below high-water mark, are held in trust for the future state, and title therein is not vested in the United States, to the extent that the same might be sold. If this should be deemed to be true as a legal proposition, then, of course, as before stated, the laws of Congress providing for the disposition of the public mineral lands could by no possibility include the lands below ordinary high tide.

But another result might follow if this were true. If the general government has no title in these lands, and holds them simply in trust, the title being in the future state, then a person having a lode location near the shore of the sea might not be permitted to follow his ledge on the dip beyond the shore line, because it is very apparent that, if the United States cannot dispose of this land, any grant it may convey in the sale of a mining claim must stop at the line of the grant, and cannot extend into lands that the United States does not own. It is well settled that, where agricultural lands have been conveyed by patent, a party obtaining title to a contiguous mining claim cannot follow the dip of his vein beyond a point where a line let fall perpendicularly from the boundaries of the agricultural land would strike the lip of the vein. This is true because, where agricultural

land is conveyed by the United States, it carries everything with it, not only within its boundaries upon the surface, but to any depth which the party may seek to go to explore it. But, as before stated, it is not believed that these dicta—by our very learned Supreme Court in many cases—can be the true theory of the law in these matters.

Mr. Justice Gray, in Shively v. Bowlby, 152 U. S. 47, 14 Sup. Ct. 565, 38 L. Ed. 331, after quoting many of the decisions on this question, says:

"Notwithstanding the dicta contained in some of the opinions of this court already quoted to the effect that Congress has no power to grant any land below high-water mark of navigable waters in a territory of the United States, it is evident that this is not strictly true."

Judge Gray in this case, referring to the opinion of Chief Justice Taney, says:

"One delivering an opinion already cited, after the subject has been much considered, in cases from Alabama, said, 'Undoubtedly Congress might have granted this land to a patentee, or confirmed his Spanish grant, before Alabama became a state.'"

Again, Judge Gray says:

"By the Constitution, as is now well settled, the United States, having rightfully acquired the territories, and being the only government which can impose laws upon them, have the entire dominion and sovereignty, national and municipal, federal and state, over all the territories so long as they remain in a territorial condition"—citing many cases. "We cannot doubt, therefore," continues Judge Gray, "that Congress has the power to make grants of lands below high-water mark of navigable waters in any territory of the United States, whenever it becomes necessary to do so in order to perform international obligations, or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several states, or to carry out other public purposes appropriate to the objects for which the United States hold the territories. But Congress has never undertaken by general laws to dispose of such lands. And the reasons are not far to seek."

Speaking of the policy of the general government in reference to these particular lands, Judge Gray says:

"The Congress of the United States, in disposing of the public lands, has constantly acted upon the theory that those lands, whether in the interior or on the coast, above high-water mark, may be taken up by actual occupants, in order to encourage the settlement of the country, but that the navigable waters and the soils under them, whether within or above the ebb and flow of the tide, shall be and remain public highways, and, being chiefly valuable for the purposes of commerce, navigation, and fishery, and for the improvements necessary to secure and promote those purposes, shall not be granted away during the period of territorial government, but, unless in case of some international duty or public exigency, shall be held by the United States in trust for the future states, and shall vest in the several states, when organized and admitted into the Union, with all the powers and prerogatives appertaining to the older states."

Concluding this opinion, which is very learned and reviews all the cases upon this subject, Judge Gray says:

"The United States, while they hold the country as a territory, having all the powers both of national and municipal government, may grant, for appropriate purposes, titles or rights in the soil below high-water mark of tide waters. But they have never done so by general laws, and, unless in some cases of international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the people and with the object for which the territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters and the soil under them to the control of the states, respectively, when organized and admitted into the Union."

From the discussion of this question by the learned Mr. Justice Gray, we think it is evident, considering the general policy of the government, that Congress never intended, by its act giving to citizens the right to go upon the public lands and explore the same for mineral, and obtain title thereto on proper discovery and location, that such right should ever extend to the lands lying below ordinary high

tide on the shore of the ocean and the arms of the sea. The conclusion of the court, therefore, in this case, is that, if the defendants have acquired any right in the lands upon the shore of Gastineau channel, so soon as their vein on the strike thereof goes beyond the shore line and below mean high tide, they can make no claim whatever thereto; and in going upon a ledge or lode at any such place, and undertaking to occupy the same and acquire title, they place themselves in the position of trespassers having no rights whatever in the land or the lode, and no right to occupy or possess the same.

Second. It is claimed on the part of the plaintiff that the patented lands constituting their several lode mining claims run to the shore of Gastineau channel, and that there is no land between their lode claim and the said channel upon which the defendants could lawfully enter to make exploration or discovery; that the apices of any veins that can be found above mean high tide along the shore of said channel, opposite their several patented claims, are all within the boundary lines of their several patented claims; that the meander line fixing the boundaries of their several claims, while indicated in the patent and survey by several stakes and monuments, is in fact the meander line of Gastineau channel, notwithstanding such fixed boundary points as are described in the patent. In aid of the description of the land covered by their several patents, they offer the field notes of the survey made by the United States mineral surveyor Garside, and also the oral testimony of Garside, to show the intent and purpose of said survey in fixing said boundary line along Gastineau channel. When this evidence was offered, objection was made by the defendants, on the ground that the same was incompetent, and that the patent is the only competent evidence that can be offered in this case to show the lands embraced by the same. It is believed that

the legal effect of a conveyance must be determined by the terms employed therein, and that nothing can be added to or taken from the same by parol testimony. This is undoubtedly the general rule controlling the question of testimony. Fletcher v. Phelps, 28 Vt. 262; Platt v. Jones, 43 Cal. 219; Bartlett v. Corliss, 63 Me. 287. But if there is a latent ambiguity in the description itself as furnished by the deed or patent, then the true intent and meaning may be added by parol. White v. Lunning, 93 U. S. 515, 23 L. Ed. 938; Pride v. Lunt, 19 Me. 115.

As to patent for mining claims, as a general rule, a patent is conclusive as to the limits of a location, and it cannot be assailed by showing that its actual boundaries are different from those described in the patent. In Waterloo Min. Co. v. Doe, 27 C. C. A. 50, 82 Fed. 45, it was claimed that a certain portion of the ground had been omitted from the patent through the fraudulent acts of one Bohton. The acts of Bohton, the court thought, did not amount to fraud, and in the absence of fraud, it was held that the patent was conclusive evidence as to the limits of the claim patented. In 27 C. C. A. 50, 82 Fed. 45–50, the question arose as to whether the party in possession under the patent could follow the dip of their vein beyond the side lines extended down vertically. The defendant in that case contended that the plaintiff had no extralateral rights, as his end lines were not parallel. The plaintiff's patent, however, described the end lines as being parallel. The court held that, since the patent described the end lines as parallel, the court was bound by the terms thereof, and no evidence could be received that tended to show that the end lines were not parallel. The court said:

"The presumptions are in favor of the correctness of the land department in issuing these patents. Its action was within its jurisdiction, and we cannot go behind the same in a collateral action."

Again, in Golden Reward Min. Co. v. Buxton Min. Co., 38 C. C. A. 228, 97 Fed. 413, the contest was between two patented claims—the Bonanza and the Silver Case. Fraud was alleged, but not proven. The court held that, in the absence of fraud or mistake, the boundaries as described in the patent were conclusive.

It is said in the case at bar that the field notes that have been offered in evidence make reference to the meander line of Gastineau channel, but the patent offered in evidence makes no reference to Gastineau channel whatever, and determines the lines by the monuments and courses and distances run. The contention of the defendants is that the field notes of the surveyor cannot be introduced to help out the lines established by the patent, or to explain the same; that there is no latent or patent ambiguity in the conveyance issued by the government, and that there is therefore nothing to explain. It is not claimed by the plaintiff that there is any mistake in the patent. And not only are the field notes of the surveyor that were offered in evidence objected to by the defendants, but also the oral testimony of Surveyor C. W. Garside as to what his intentions were in fixing the line of the claim owned by plaintiff bordering on Gastineau channel. My recollection is that the field notes referred but once to the tide water of the channel. Nothing in the field notes and nothing in the patent is found fixing the boundaries of the claim on that side by the line of the sea or the shore line of Gastineau channel. The court is unable to see in what particular the field notes of the surveyor aid or explain the directions and distances given in the patent itself. The field notes are therefore rejected as evidence in this case, as also are the statements of the witness Garside as to his intentions in making the survey of said claim. It is evident that the surveyor's intentions did not enter into the consideration of the land department when title was con-

veyed to the land in question. They cannot, therefore, be considered in determining what land the government intended to convey by its patent. Garside's testimony, however, that he placed the different stakes that bounded the claim on the side next to Gastineau channel, upon the line of ordinary tide is, perhaps, testimony of importance in the case.

Third. Another fact that may be considered of some importance in determining the rights of the parties to this action is the width of the claim that was patented, and that is now owned by the plaintiff. An examination of the maps offered in evidence, and the patent itself, as to the distances, shows that the claim is not 600 feet wide, and that the claimants did not take 300 feet on each side of their vein, as was their right under the law. Having taken less than the full width on the side bordering on Gastineau channel, the only possible reason that could exist to indicate why the claim was not taken of its usual width must have been the limit that was fixed by natural conditions, viz., the shore line of Gastineau channel.

The defendant Barbridge, in testifying in this case, says that a certain stake, that was pointed out to the judge of this court when examining the ground in person and while the attorneys and officers and parties were present, is now where it has stood for many years and where it was originally placed. This stake was placed upon the bank, as close to the edge of the same as it could be planted, and where the bank from the beach rises abruptly some six feet or more, and as close to the tide line as it could well be placed without danger of being washed away by the waves that would roll up at times from the sea, the waves having evidently at times washed away the ground up the edge of the embankment on which the post was placed. MacDonald, the manager of the plaintiff corporation, stated in the presence of the court that this stake, so far as he knew, was one of the posts

marking the boundary of plaintiff's claim. Another point marked and designated on this line as at the corner of the mill was evidently below mean high tide before the beach at the shore of the sea had been filled in by débris and waste from the mill. But at the point where the stake is there was a controversy between MacDonald, on behalf of the corporation, and Barbridge, one of the defendants, as to whether the shaft of the defendants, a hole about six or eight feet deep that had been sunk near the post referred to, was in part within the boundaries of the patented claim, or whether the same was all outside. The court is of the opinion that it is not important whether said shaft is in part within, or in part or wholly without, the lines of the patented claim. In Railroad Co. v. Schurmeier, 7 Wall. 272, 19 L. Ed. 74, it is said:

"Meander lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser."

It is very earnestly contended by counsel for the plaintiff that this case is an authority in support of his claim that the line as indicated by the patent, and the survey as shown by the field notes, were simply the establishment of a meander line on the shores of Gastineau channel for the convenience of the government in determining the acreage of land within the proposed claim, and not with a view of excluding from the patent any portion of the land which might rightfully come within said claim that was above the tide waters of Gastineau channe.. Many cases of this character are presented, but they all refer to surveys of the public agricultural lands of the United States and certain rules of the department that require the United States surveyors, in subdividing

sections where a portion thereof would border upon the sea or upon lakes or river or tide waters, not with a view of excluding any of the land from the fractional portion of the section, but to determine the price to be paid, etc.; and that, notwithstanding such meander line so established on the shore of a lake or sea, the land should run to the sea. But I fail to see the force of the principles and theories announced by the court in Railroad v. Schurmeier, and many other cases to the same effect, when applied to the case at bar. No authority has been shown vesting in the United States mineral surveyor any right or authority to establish a meander line, and the department very evidently refrains from any mention of such a line in the patent. No authority is shown under the rules of the Department of the Interior, having the sale of the public lands in charge, for arranging or establishing any such meander lines upon the mineral lands. It would, therefore, seem that in this case the court is bound by the usual rule that the language of the patent governs, and I am therefore compelled to hold practically that the lines of the claim in controversy are established according to the points, lines, courses, and distances mentioned in the patent.

In White v. Luning, 93 U. S. 524, 23 L. Ed. 938, the court says:

"It is true that, as a general rule, monuments, natural or artificial, referred to in a deed, control, on its construction, rather than courses and distances; but this rule is not inflexible. It yields wherever, taking all the particulars of the deed together, it will be absurd to apply it."

At common law the ordinary high-water mark is the boundary of the adjoining lands. Commonwealth v. Alger, 7 Cush. 53; Rogers v. Jones, 1 Wend. 237, 19 Am. Dec. 493. Had the land in question been bounded by the sea, the tide water, or by the harbor, bay, cove, creek, or any such words, or had the patent described a corner set upon the tide line at the

sea, and thence running with the sinuosities of the shore to another point, there would have been no question as to what land would have been included within the grant in this case. Whatever may be the rule for determining grants where they run to the sea—and unquestionably under all such descriptions they run to ordinary high tide and are bounded thereby—we have no such description in this patent, and we are bound to determine the boundaries of the land by the patent itself. But it is not always easy to determine to just what point the land embraced in the patent extends, because of the monuments being destroyed and thrown down or removed, as it is claimed in some instances they were in this case. We may be compelled to resort to parol evidence, surveys and measurements, to determine the point at which monuments were placed and should be found. Such evidence has been offered and received in this case. The testimony of Garside, the original surveyor of these claims, is to the effect that the posts and monuments, as originally set, were placed upon the tide line, and that the line indicated between the monuments was as near on the tide line as it could be placed. Considering this testimony, and considering further the width of this claim, its relation to the tide line, the quantity of land conveyed being less than is usually covered in a full-sized mining claim, 600 by 1,500 feet; the fact that the full 300 feet is not taken on the side line next to Gastineau channel—all these matters may be reasonably considered in determining where the line of this claim really was and is, and what and where the lands are as described in the terms of the patent. While this question is not one necessary for the court to decide in this case, I am inclined to the opinion that the patented claim owned by the plaintiff company ran to ordinary high tide and included all the land above high tide within its limits, and that there was, in fact, no land above high tide upon which a location could be properly

made by the defendants. But, as stated, this is not a matter of any special interest to the court, and one that the court does not now definitely pass upon.

Fourth. The proposition before the court is in reality a simple one. The defendants were about to sink a shaft at a point close to the shore of Gastineau channel, over which the tide ebbed and flowed every day, and which was immediately above some of the workings of plaintiff in this case. These people were here upon this land below mean high tide, where they could acquire no right whatsoever, and where they were trespassers upon the lands and rights of the United States. The plaintiff is the owner of several patented claims; has expended many hundreds of thousands of dollars in developing the same and in extracting minerals from the ores therein; has, it is said, distributed among its stockholders from $4,000,000 to $5,000,000; is employing about a thousand men; and has followed down on the dip of its vein until it is now beneath the waters of an arm of the sea called "Gastineau Channel," and immediately beneath this particular shaft of the defendants. It further appears that any work on the shaft of defendants in question, and the blasts being exploded there, so increase the flow of water through the roof above where the plaintiff is taking out ore that, if continued, it will drive plaintiff from its mine and prevent the further working of the same; and because of this result plaintiff asks that the defendants be restrained from such work.

If these defendants had an unquestioned right to occupy the ground where they now are, and to develop a lode which they may have undertaken to locate and that is situated below tide water, they could hardly use their own in such a way as to bring inevitable calamity on their neighbor. One may not sink on the line of his own ground and excavate it in such a way as to allow his neighbor's land to fall into

the excavation so made. Matters of this character have been so frequently determined that they now need no discussion and no citation of authorities; the proposition is settled beyond controversy. Can it be said, then, that these defendants, having no rights whatever below tide water in the location and development of a mine so situated, may be permitted to enter upon and so work the same as to destroy the property of the plaintiff, which is engaged in a like business, but has reached the point beneath the tide waters by following the dip of a vein the apex of which is within its patented land? While it is true that, under the general policy of the government, lands below tide water are not for sale and disposition, and have never been held for sale and disposition by the United States, these tide lands having been reserved to the states that might be organized out of the territories of the United States, the purposes for which these lands are held in trust for the future state are trade, commerce, navigation, and the convenience of the public, and for such purposes only. If the plaintiff is usurping any of the rights of the government in the land it now possesses, by the working of its mining claim beneath the water of the sea, no one, save the United States, through its proper channels, can complain. They are in possession, and by their efforts are adding millions to the wealth of the country. The defendants, though trespassers upon the rights of the United States in going upon and locating land below ordinary high tide, were they in nowise damaging any one else, could not be stopped, perhaps, except upon complaint by the government. But, as before stated, even if they were rightfully in possession of the ground where their shaft is being sunk, and were operating in a way to injure and destroy property owned by the plaintiff, the court is of the opinion that the defendants should be restrained and enjoined from further work. Under the facts and circumstances of this

case, the court is compelled to the conclusion that the defendants should be restrained and enjoined from further continuing the sinking of their shaft, or further interfering in this behalf with the rights of the plaintiff.

It may be said in this connection that the situation of the parties plaintiff and defendant are not the same. The plaintiff has a lawful location, and, under the mining laws of the United States, a lawful right to pursue its vein on its dips beyond the side lines of its claim and wherever it may run; and while, as before observed, the lands below mean high tide are reserved from sale, it is believed that the law giving a party the right to follow all veins, the apices of which are within the limits of his claim, even outside of the side lines thereof, would permit him to go below the waters of the sea in following such vein, without trespassing any law of property existing in the United States.

The temporary injunction heretofore issued under the order of this court will therefore be made perpetual, and the plaintiffs are awarded their costs and disbursements.

FOX, Administrator, et al. v. MACKAY et al.

(First Division. Juneau. December Term, 1901.)

No. 483.

1. PARTIES—ABATEMENT—ADMINISTRATOR—SURVIVORSHIP.

While, under section 956, Rev. St. [U. S. Comp. St. 1901, p. 697], an action may be continued by one surviving plaintiff against a surviving defendant without abatement, an administrator can neither continue nor defend an action of this character.

2. MINES AND MINERALS—ADVERSE SUIT—PUBLIC LANDS.

When an application is made to the United States Land Department for a patent to a mining claim, and an adverse claim


HB
280

Bradley
4/1/85✓

Original sponsors: Navarre and Goll

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 280 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating the Anchor River and Fritz Creek Critical Habitat Area."

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

* Section 1. AS 16.20.230 is amended by adding a new paragraph to read:

(12) Anchor River and Fritz Creek: All land and water contained in the following description:

(A) Township 4 South, Range 13 West, Seward Meridian
Section 25
Section 35
Section 36

(B) Township 5 South, Range 12 West, Seward Meridian
Sections 17 - 20

(C) Township 5 South, Range 13 West, Seward Meridian
Section 2
Section 3
Section 4: E 1/2
Section 8: S 1/2
Sections 9 - 11
Sections 13 - 20
Section 21: W 1/2
Section 24

(D) Township 5 South, Range 14 West, Seward Meridian
Section 13
Section 20: NE 1/4

Sections 21 - 24

Section 26: N 1/2

Section 27: N 1/2

Section 28: N 1/2

(New language)

* Sec. 2. AS 16.20.230 is amended by adding a new subsection to read:

(b) Notwithstanding AS 16.20.220 and the establishment of the Anchor River and Fritz Creek Critical Habitat Area under AS 16.20.-230(a)(12),

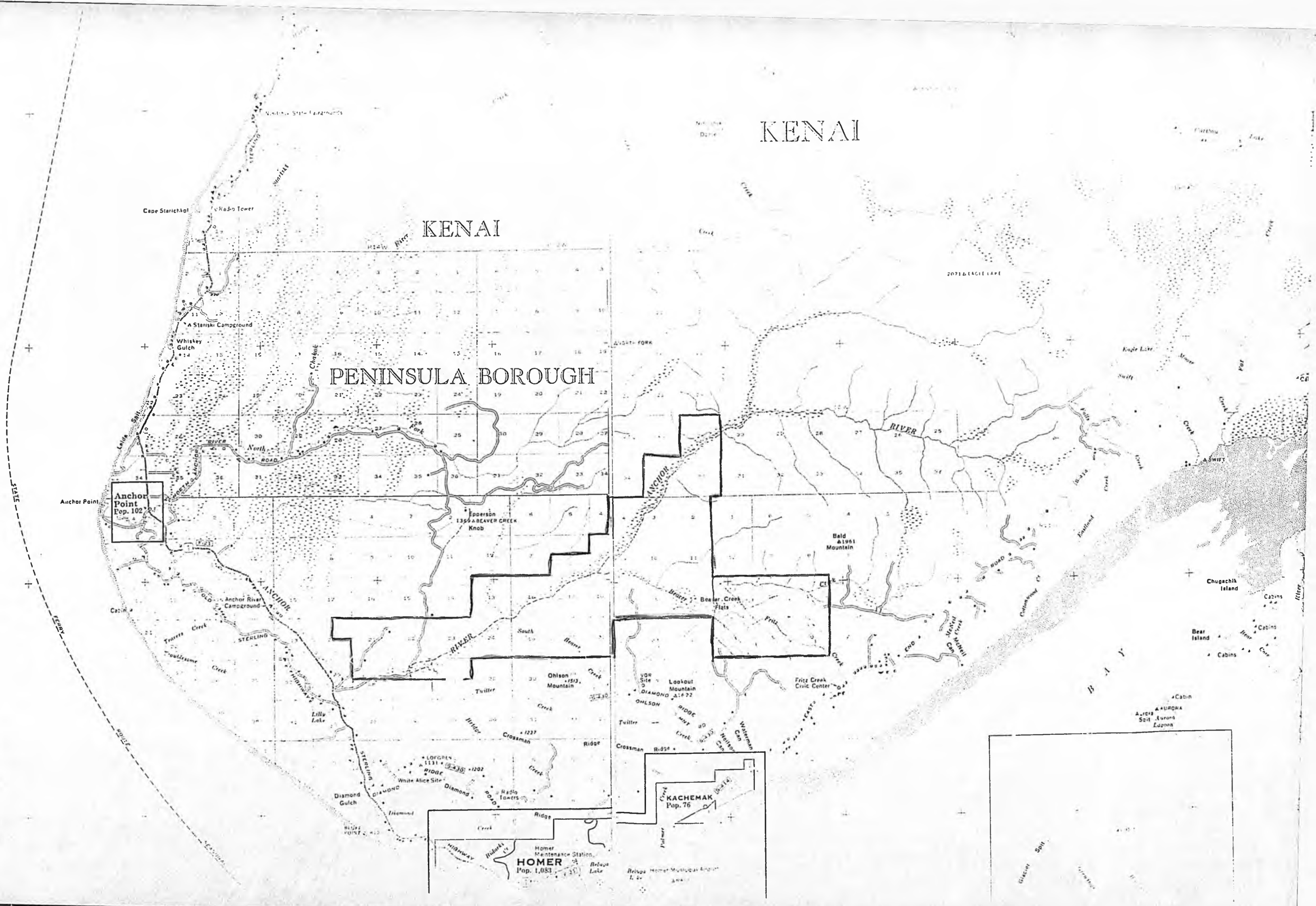
(1) the use of Fritz Creek as a municipal and community water source is protected within the Anchor River and Fritz Creek Critical Habitat Area;

(2) the possibility of the construction of a dam and reservoir on Fritz Creek is reserved within the Anchor River and Fritz Creek Critical Habitat Area;

(Deletion * (See Original Bill))

(3) the use and enjoyment of inholdings is guaranteed within the Anchor River and Fritz Creek Critical Habitat Area;

(4) the land owned by the Kenai Peninsula Borough that is located within the boundaries of the Anchor River and Fritz Creek Critical Habitat Area and that is committed to the Anchor River and Fritz Creek Critical Habitat Area by the borough is subject to joint management by the Department of Fish and Game and the Kenai Peninsula Borough.


KENAI
KENAI
PENINSULA BOROUGH
Cape Starichkof
Radio Tower
Stariski Campground
Whiskey Gulch
Anchor Point
Anchor Point
Pop. 102
Epperson Knob
Bald Mountain
Anchor River Campground
Beaver Creek Flats
Ohlson Mountain
Lookout Mountain
Fritz Creek Civic Center
Lilly Lake
Crossman Ridge
White Alice Site
Diamond Gulch
Radio Towers
KACHEMAK
Pop. 76
HOMER
Pop. 1,083
Homer Maintenance Station
Chugachik Island
Bear Island
Cabins
Aurora Spit
Aurora Lagoon
Glacier Spit
Eagle Lake
Swift
Cabin
STATE FERRY ROUTE
ANCHOR RIVER
STERLING HIGHWAY
OLD STERLING HIGHWAY
NORTH ANCHOR ROAD
DIAMOND RIDGE ROAD
OHLSON MTN RD
EASTLAND ROAD
END ROAD
BAY

```
 CHAPTER   = 16.20
 SECTION   = 16.20.240
 TITLE     = 16
HEADINGS   TITLE 16.
           FISH AND GAME.
           CHAPTER 20.
           CONSERVATION AND PROTECTION OF ALASKAN WILDLIFE.
           ARTICLE 5.
           FISH AND GAME CRITICAL HABITAT AREAS.
CITATION   SEC. 16.20.240.
CATCH LINE
            REGULATIONS.
TEXT       THE BOARD OF FISHERIES AND THE BOARD OF GAME, WHERE APPROPRIATE,
           SHALL ADOPT REGULATIONS THEY CONSIDER ADVISABLE FOR CONSERVATION
           AND PROTECTION PURPOSES GOVERNING THE TAKING OF FISH AND GAME IN
           STATE FISH AND GAME CRITICAL HABITAT AREAS.
```

```
 CHAPTER   = 16.20
 SECTION   = 16.20.250
 TITLE     = 16
HEADINGS   TITLE 16.
           FISH AND GAME.
           CHAPTER 20.
           CONSERVATION AND PROTECTION OF ALASKAN WILDLIFE.
           ARTICLE 5.
           FISH AND GAME CRITICAL HABITAT AREAS.
CITATION   SEC. 16.20.250.
CATCH LINE
            MULTIPLE LAND USE.
TEXT       BEFORE THE USE, LEASE OR OTHER DISPOSAL OF LAND UNDER PRIVATE
           OWNERSHIP OR STATE JURISDICTION AND CONTROL, WITHIN STATE FISH
           AND GAME CRITICAL HABITAT AREAS CREATED UNDER THIS CHAPTER, THE
           PERSON OR RESPONSIBLE STATE DEPARTMENT OR AGENCY SHALL NOTIFY THE
           COMMISSIONER OF FISH AND GAME.  THE COMMISSIONER SHALL
           ACKNOWLEDGE RECEIPT OF NOTICE BY RETURN MAIL.
HISTORY    (SEC. 2 CH 140 SLA 1972)
R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.
```

```
 CHAPTER   = 16.20
 SECTION   = 16.20.260
 TITLE     = 16
HEADINGS   TITLE 16.
           FISH AND GAME.
           CHAPTER 20.
           CONSERVATION AND PROTECTION OF ALASKAN WILDLIFE.
           ARTICLE 5.
           FISH AND GAME CRITICAL HABITAT AREAS.
CITATION   SEC. 16.20.260.
CATCH LINE
            SUBMISSION OF PLANS AND SPECIFICATIONS.
TEXT           (A)  WHEN A BOARD DETERMINES THAT THE FOLLOWING INFORMATION
           IS REQUIRED, IT SHALL INSTRUCT THE COMMISSIONER, IN THE LETTER OF
           ACKNOWLEDGMENT, TO REQUIRE THE PERSON OR GOVERNMENTAL AGENCY TO
           SUBMIT:
                    (1)  FULL PLANS FOR THE ANTICIPATED USE;
                    (2)  FULL PLANS AND SPECIFICATIONS OF PROPOSED
               CONSTRUCTION WORK;
                    (3)  COMPLETE PLANS AND SPECIFICATIONS FOR THE PROPER
               PROTECTION OF FISH AND GAME; AND
                    (4)  THE APPROXIMATE DATE WHEN THE CONSTRUCTION OR WORK
               IS TO COMMENCE.
               (B)  THE BOARD SHALL REQUIRE THE PERSON OR GOVERNMENTAL
           AGENCY TO OBTAIN THE WRITTEN APPROVAL OF THE COMMISSIONER AS TO
           THE SUFFICIENCY OF THE PLANS OR SPECIFICATIONS BEFORE
           CONSTRUCTION IS COMMENCED.
HISTORY    (SEC. 2 CH 140 1972; AM SEC. 28 CH 206 SLA 1975)
```

```
SELECT - QUERY
00001 ALL SECTION EQ 16.20.220

AS16.20.220  DOCUMENT=        1 OF         1

 CHAPTER   = 16.20
 SECTION   = 16.20.220
 TITLE     = 16
HEADINGS   TITLE 16.
           FISH AND GAME.
           CHAPTER 20.
           CONSERVATION AND PROTECTION OF ALASKAN WILDLIFE.
           ARTICLE 5.
           FISH AND GAME CRITICAL HABITAT AREAS.
CITATION   SEC. 16.20.220.
CATCH LINE
            PURPOSE.
TEXT       THE PURPOSE OF AS 16.20.220 - 16.20.270 IS TO PROTECT AND
           PRESERVE HABITAT AREAS ESPECIALLY CRUCIAL TO THE PERPETUATION OF
           FISH AND WILDLIFE, AND TO RESTRICT ALL OTHER USES NOT COMPATIBLE
           WITH THAT PRIMARY PURPOSE.
HISTORY    (SEC. 2 CH 140 SLA 1972)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.
```

CITIZENS FOR RESPONSIBLE LAND USE

Co-Chairmen:
Roberta Highland
235-8214 (home)
235-5223 (work)

Michael Sheppard
235-7486 (home)
235-5397 (work)

P.O. Box 15227 • Fritz Creek, Alaska 99603

March 26, 1985

Richard Shultz
Pouch V
Juneau, Alaska 99811

Dear Richard:

I am writing this letter in regards to Bill #280 which is in your committee at this time. I've been very involved in promoting the Critical Wildlife Habitat. My husband and I live in the Fritz Creek area - this area is growing with leaps and bounds. We all know what population explosions can do tho the wildlife habitat. The Adhoc committee has proven the definite need for that area to be designated as Critical Habitat. That drainage area gets counts of hundreds of moose in the winter.

There has been talk about leasing part of that property to the Koreans to raise 5-10 thousand cattle which the community is very much against for various reasons. (I will not take the time to go into that issue now). The DNR is also in the process of trying to give 3700 acres of the proposed Critical Habitat to the Borough, of which they would probably develop and subdivide. There is also controversy right now regarding the damming of Fritz Creek for a future water supply for Homer, thus creating a need for watershed protection, which would be very compatible with a Critical Habitat.

I am becoming more and more fearful of our future with the trend development is taking. We've got to take action now, before it's too late. We've got to save land for the wildlife in these all to fast developing areas. I just hope we can prove we've learned something from the past mistakes made Outside.

Please give this Bill serious consideration and support.

Thanks for your time.

Sincerely,
Roberta Highland

Roberta Highland/Co-Chairperson
Citizens for Responsible Land Use

6611 Sherwood Circle
Anchorage, Alaska
99504
March 26, 1983

Richard Shultz
Pouch V
Juneau, Alaska
99811

Dear Rep. Shultz:

Please approve H B285, the Creation
of an Anchor River and Fritz Creek
Critical Habitat area.
Please pass it out of the Resource
Committee and please listen to us.

Sincerely Yours,
Mary Light

Jennifer Buckland
7371-H Huntsmen Circ
Anchorage, AK 9950

Richard Shultz
Pouch V
Juneau, AK 99811

Dear Rep. Shultz:

Please approve HB280, the creation of an Anchor River and Fritz Creek Critical Habitat Area. Please pass it out of the Resource Committee.

Jennifer Buckland

26 March 85

Richard Shultz
Pouch V
Juneau, Ak 99811

Dear Representative Shultz,

Please approve HB 280 - Creation of the Anchor River & Fritz Creek Critical Habitat Area. Please pass it out of the Resource Committee.

Warner Bradley
8021 Campbell Place
Anchorage Ak 99507

Michael Buckland
7371-H Huntsmen Circle
Anchorage, Ak, 99811

Richard Shultz
Route V
Juneau, Ak 99811

Dear Rep. Shultz

I urge you to approve HR 280, creating the Anchor River - Fritz Creek Critical Habitat Area.

Yours very truly,

Michael Buckland

5705 Sterling Way
Anch. Ak. 99504

Richard Shultz
Pouch V
Juneau, Alaska
99811

Dear Representative Shultz,

Please approve H.B. 280 for the creation of the Anchor River / Fritz Creek Critical Habitat Area.

Please pass it out of the Resource committee.

Sincerely,

Daniel Wagner

3/26/85

Richard Schultz
Couch V
Juneau, AK 99811

DEAR REP Schultz

Please support H.B. 280. As you know this bill would create a critical habitat area in the Fritz Creek-Anchor River area.

Please pass it out of the Resource committee.

Thank you for your consideration and support.

Sincerely,

David Hart
1400 Garden
Anch, AK 99508

HERMAN GEIGER
8414 LAKE OTIS PKWY
ANCHORAGE, AK 99507

26 MARCH 1985

RICHARD SHULTZ
POUCH V
JUNEAU, AK 99811

Dear Rep. Schultz,

I am gravely concerned about these wanton destruction of wildlife habitat in this state to the extent that I am sending my first letter to any legislature. You must support the passage of H.B. 290, Anchor River / Fritz Creek Critical moose habitat. When will the people of this state realize that our natural/wildlife and fisheries resources are our most valuable - long term renewable resources?

How many state dollars have been spent on agriculture? How many dollars have been brought into the state by this investment? Why is Alaska milk, eggs, etc more expensive than Seattle produce? What a waste!

Let's stop raping the natural resources of this state.

Thank you for the support.

Sincerely,
Herman Geiger

Dear Rep. Shultz

I am writing you in support of House Bill No. 282 which would allow temporary service to be counted toward public employees retirement. Seasonal workers now credit their work time toward retirement. Prior to 1980 seasonal employees were a rare classification in the Department of Fish and Game and people were hired as temporaries. Temporary employees could not credit their working time towards retirement even though the work temporaries did is the same work that seasonal employees are doing today and crediting towards retirement.

It only seems fair that temporary working time should be counted toward retirement if the employee is required to pay into the retirement system the amount which would have been required had he been in the retirement system. I sincerely hope you will support this bill.

Sincerely,

Len Schwarz

Len Schwarz
Box 1036
Nome, AK 99762

KENAI PENINSULA CRITICAL HABITAT
TASK FORCE

BOX 1236
HOMER, AK 99603



March 27, 1985

Rep. d'Amato:

Enclosed are copies of endorsements for HB 280 from various groups, municipalities, and individuals. I hope the bill will have a speedy passage through the House Resources Committee.

Sincerely —

Allen A. Davis
Task Force Member

CITY OF HOMER
HOMER, ALASKA

RESOLUTION 85-33

A RESOLUTION ENDORSING HOUSE BILL 280 "AN ACT CREATING THE ANCHOR RIVER AND FRITZ CREEK CRITICAL HABITAT AREA".

WHEREAS, the City of Homer has an interest in preserving the Fritz Creek Watershed for future use as a water supply for residents of the Southern Kenai Peninsula; and

WHEREAS, the City has an interest in preserving areas for wildlife habitat; and

WHEREAS, the City has an interest in protecting and preserving certain lands for public access and public recreation purposes;

NOW THEREFORE, the City endorses House Bill 280 "An Act creating the Anchor River and Fritz Creek Critical Habitat Area";

DATED, at Homer, Alaska this 25th day of March, 1985.

CITY OF HOMER

Wayne Kessler, Mayor

ATTEST:

Kathleen Herold

Kathleen Herold, City Clerk

To Whom It May Concern:

Whereas the South Central Regional Council represents 17 Local Fish and Game Advisory Commitees and;

Whereas those Advisory Committees are concerned with the moose population in South Central Alaska as well as Game Management Unit 15 C and;

Whereas the South Central Regional Council realizes the critical function of winter moose habitat and;

Whereas the South Central Regional Council understands that development in the Homer area has and will continue to spread and eliminate critical winter moose habitat and;

Whereas this critical habitat must be set aside before development begins in the area where this habitat exists;

Therefore be it Resolved by the South Central Regional Council, at a meeting on March 21, 1985 by unanimous vote, to support the ANCHOR RIVER/FRITZ CREEK CRITICAL HABITAT AREA.

Submitted by:

Daniel R. Calhoun

Daniel R. Calhoun
Vice-Chairman
South Central Regional Council

Homer Soil Conservation Sub-District
P.O. Box 415 · Homer, Alaska 99603 · Telephone: 235-8177

March 26, 1985

Dave Vanderbrink
Kenai Peninsula Critical Habitat
Task Force
P.O. Box 1236
Homer, Alaska 99603

RE: Critical Habitat - Anchor River & Fritz Creek Drainage

Dear Dave,

I am writing on behalf of the Board of Supervisors of the Homer Soil & Water Conservation District. As you well know, we have followed your committee's activities with regard to the formulation of the critical moose habitat legislation.

We wish to express our support and encouragement for the ultimate passage of this legislation. On 13 March 1985, we were given ample assurances by you and your committee that the critical habitat designation would allow continued management as a multiple resource, thus allowing open grazing of livestock and associated activities that would not conflict with or deplete the habitat. This assurance eliminated our primary concern.

We therefore wish to, once again, express our support for the critical habitat designation by legislation and hope that your activities will bring a successful conclusion to your efforts.

Sincerely,

Pat Marquis

Pat Marquis
Chairman

bg

United States Department of the Interior

IN REPLY REFER TO:

KENAI NATIONAL WILDLIFE REFUGE
P.O. BOX 2139
SOLDOTNA, ALASKA 99669-2139
(907) 262-7021

January 31, 1985

Kenai Peninsula Critical Habitat Task Force
ATTN. Mr. Allen Davis
P. O. Box 598
Homer, Alaska 99603

Dear Mr. Davis:

We have reviewed the proposal on "The Anchor River/Fritz Creek Critical Habitat Area" as submitted by the task force and offer these comments.

Designation of critical habitat areas in Game Management Unit (G.M.U.) 15C, other than lands contained within the Kenai National Wildlife Refuge, will be essential if viable populations of moose, brown bear, and wolves are to continue. Refuge lands in GMU15C do not contain all of the essential habitat components to support populations of these species year around.

Delineation of critical habitat areas off of the refuge is a logical and essential action, if the public desires to have moose and other wildlife species in GMU15C, coincidental with a variety of other uses on these lands.

This concept has our support. We feel it is the only practical alternative that will allow viable wildlife populations to coexist with increased human use and development within GMU15C.

Sincerely,

Robert L. Delaney
Refuge Manager

MBH/pf
0115p/7

Resolution No. 85-8

FRITZ CREEK WATERSHED

The cities of Homer and Kachemak City have a need for additional quantities of water for municipal use in the immediate future. The cities have identified Fritz Creek as the best source to meet their needs, evaluating water quantity, quality, and proximity of the stream. Because the use of Fritz Creek would be for a public water supply, a watershed protection plan would need to be established.

A possible solution would be to designate the watershed area as a wildlife reserve. This could serve two useful purposes: it would preserve some rapidly diminishing winter habitat for game animals on the lower Kenai Peninsula, and it would protect the watershed of the municipal water supply.

THE ALASKA WATER RESOURCES BOARD recommends that the Director of the Division of Land and Water Management put into motion the mechanism to designate the Fritz Creek Drainage as a wildlife refuge to preserve winter habitat for large game animals and to protect the watershed for the future municipal water supply for the cities of Homer and Kachemak City.

Adopted this 1st day of November, 1984

ALASKA WATER RESOURCES BOARD

David Vanderbrink, Chairman

6611 SHERWOOD
ANCH, AK.
99504

RICHARD SHULTZ
POUCH V
JUNEAU, AK.
99504

DEAR REP. SHULTZ,

PLEASE APPROVE HB 208, THE CREATION OF AN ANCHOR RIVER AND FRITZ CREEK CRITICAL HABITAT AREA. PLEASE PASS IT OUT OF THE RESOURCE COMMITTEE,

SINCERELY YOURS,

STEPH Marsh

****
*
* DELIVER TO: JPOM
*
*
* ORIGINAL
* SENT: 03/29/85 TIME: 10:37
* FROM: TCHOM
* SUBJECT: POM
* PRINT DATE: 03/29/85 TIME: 10:37
*
****

10

TO: REP. HERRMANN, SHULTZ, WALLIS, CATO, JENKINS, MIKE W. MILLER, PEARCE, SUND AND THOMPSON

FROM: NANCY LORD, BOX 558, HOMER, AK. 99603 235-8252

SUBJECT: SSHB 280

PLEASE SUPPORT THE CRITICAL HABITAT AREA. SSHB 280 REPRESENTS YEARS OF CONCERN AND WORK BY AREA RESIDENTS AND ENJOYS SOLID SUPPORT ON THE PENINSULA. CRITICAL HABITAT IS THE PROPER DESIGNATION. MOOSE RANGE OR OTHER WOULD NOT ADEQUATELY PROTECT FISHERIES.

EOM**********

****
*
* DELIVER TO: JPOM
*
*
* ORIGINAL
* SENT: 03/29/85 TIME: 15:55
* FROM: TCHOM
* SUBJECT: POM
* PRINT DATE: 03/29/85 TIME: 15:55
*
****

TO: REP. SHULTZ

FROM: KAREN BURY, 15115 F.C.B. HOMER, AK. 99603 235-8739

SUBJECT: HB 280

PLEASE SUPPORT HB 280. ANCHOR RIVER\FRITZ CREEK CRITICAL HABITAT AREA IS TRADITIONAL WINTER FEEDING AREA FOR MOOSE AND HABITAT FOR FISH AND WILDLIFE. THIS BILL INCLUDES TRADITIONAL USE BY PEOPLE--HUNTING, FISHING, SKIING, HIKING AND SNOWMOBILING. I WANT MY CHILDREN TO ENJOY THE TRADITION OF A RICH WILDLIFE HERITAGE.

EOM**********

****
*
* DELIVER TO: JPOM
*
*
* ORIGINAL
* SENT: 03/29/85 TIME: 16:07
* FROM: TCHOM
* SUBJECT: POM
* PRINT DATE: 03/29/85 TIME: 16:14
*
****

TO: REP. HERRMANN, SHULTZ, WALLIS, CATO, JENKINS, MIKE W. MILLER PEARCE, SUND AND THOMPSON

FROM: IRWIN RAVIN, BOX 3219, HOMER, AK. 99603 235-5456

I AM IN FAVOR OF HB 280.

EOM**********

6655 Macbeth Dr.
Anchorage AK
99516

March 25, 1985

Richard Shultz
Pouch V
Juneau AK
99811

Dear Representative Shultz:

I urge you to support H.B. 280. The establishment of a critical moose habitat in the Anchor Point - Fritz Creek area is essential both to the preservation and maintenance of the moose population and to control of development in a critical tourist area.

Please support House Bill 280, and pass it out of the resource committee.

Sincerely,

Julie W. deSherbinin

David + Suzy Boulware
750 Fairbanks
Anchorage, AK 99501

Richard Shultz
Pouch V
Juneau, AK 99811

Dear Mr. Shultz,

Please approve HB 280, the creation of an Anchor River-Fritz Creek critical habitat area. Please pass it out of the Resource Committee

Sincerely,
David E. Boulware
Suzy Boulware

REPRESENTATIVE
MIKE NAVARRE

DISTRICT 5A

CHAIR, LABOR & COMMERCE
VICE-CHAIR, STATE AFFAIRS

Alaska State Legislature



House of Representatives

HOME ADDRESS
P O BOX E
KENAI, ALASKA 99611
(907) 283-7813

WHILE IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3893

Representative Dick Shultz, Co-Chair
House Resources Committee

March 27, 1985

Dear Representative Shultz:

The winter moose habitat on the lower Kenai Peninsula is rapidly disappearing. House Bill 280 is an attempt to preserve some wintering area for moose, to insure their survival in numbers of any consequence.

Attached is a copy of the original proposal by the Kenai Peninsula Critical Habitat Task Force, a panel of concerned citizens of Homer. Some of these people are experts in the field of wildlife and resource management. This proposal outlines the reasons for the creation of the area, and points out what other forms of wildlife would also benefit. Traditional uses of the area, such as hunting, fishing and recreation would be unaffected.
Also, under HB 280, concerns of local municipalities in regard to the use of the Fritz Creek watershed as a water source are addressed.

I might add that I have received a petition that was circulated by Citizens for Responsible Land Use (another Homer group endorsing this proposal). The petition has over 900 signatures of Homer residents that support the creation of the Critical Habitat Area. While the legislation must stand or fall on its own merit, the fact this has such widespread community support should be given some attention.

I sincerely hope you'll read the attached informational packet, and give this measure your support when it is heard at the regular meeting of the House Resources Committee April 1, 1985.

Sincerely,

Mike

Representative Mike Navarre

MN/pm

KA STATE ALASKA STATE

REFUGES

KA STATE ALASKA STATE

CRITICAL HABITATS

<A STATE ALASKA STATE

NCTUARIES

<A STATE ALASKA STATE



The Alaska Legislature has protected portions of Alaska's outstanding natural habitat and associated fish and wildlife resources by establishing State Game Refuges, State Game Sanctuaries, and State Critical Habitat Areas. The statutes which authorize these special areas give the Alaska Department of Fish and Game authority to preserve and protect the unique aspects for which they were established.

STATE GAME REFUGES are established to make sure wildlife continue to populate specific areas and to insure the public continues to have use of these wildlife resources. These areas have fairly sizable concentrations, or many different types, of waterfowl, big game, shorebirds, or other species. One or more elements of habitat — such as food, vegetation, water, etc. — needed by this wildlife is present

The Alaska Department of Fish and Game manages state game refuges by focusing on a featured wildlife species or group of species. This may mean rehabilitating or improving the habitat on which the wildlife depends. Uses of refuge lands are controlled to prevent habitat changes which would be harmful to the wildlife. Activities are also controlled to prevent disturbance of the wildlife itself. Human uses — including recreational pursuits and harvest of wildlife resources — are permitted so long as they are in keeping with the primary reason for establishing the refuge.





STATE GAME SANCTUARIES are also established to protect fish and wildlife and their natural habitats. The primary reason for setting aside lands as state game sanctuaries is to give asylum to important wildlife populations. The wildlife in these cases normally uses the land in somewhat exclusive ways. A sanctuary may provide the only place where a certain population carries out some part of its annual life cycle such as feeding, nesting, hauling out, or migration. (Sanctuaries are special areas set aside to protect featured wildlife populations.)

In managing sanctuaries, other uses of the land are closely controlled, or are prohibited, in order to prevent changes in the habitat or disturbance of the protected species. Use of the wildlife itself is also closely controlled.

STATE CRITICAL HABITAT AREAS are places where protective emphasis is on the environment in which wildlife occurs. Critical habitat areas may be complete biotic systems — identifiable environmental units that operate as self-sustaining systems — or well-defined areas specifically needed by wildlife for certain functions such as nesting or spawning.

Management by the Alaska Department of Fish and Game is aimed primarily at providing protection for the habitat. All uses of the land which are not compatible with that aim are restricted. In most instances, harvest of wildlife is not precluded in a critical habitat area.

State critical habitat areas are set aside to protect the land and resources necessary for certain species of wildlife.



A PROPOSAL

THE ANCHOR RIVER/FRITZ CREEK CRITICAL HABITAT AREA

Submitted by:

Kenai Peninsula Critical Habitat Task Force

Dave Vanderbrink, Chairman P.O. Box 1236 Homer, Alaska 99603	235-8784
Lynn Whitmore	235-7220
Rob Moss	235-8788
John H. McLay	235-8816
Allen S. Davis	235-8626
Derek Stonorov	235-8273

December 17, 1984

AREA NAME

Anchor River/Fritz Creek Critical Habitat Area

PURPOSE

The primary purpose of the proposed special area is to protect and maintain critical moose winter habitat along the upper Anchor River and Fritz Creek drainages. A secondary purpose is to protect the habitats of salmonid fishes and other wildlife which occur along these drainages. These lands would be managed by the Alaska Department of Fish and Game (ADF&G).

LEGAL DESCRIPTION

46080

T4S, R13W, Seward Meridian
Sections: 25, 35 and 36.
T5S, R14W, Seward Meridian
Sections: 13, NE¼20, 21, 22, 23, 24, N½26, N½27 and N½23.
T5S, R13W, Seward Meridian
Sections: 2,3, E½4, S½8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, W½21 and 24.
T5S, R12W, Seward Meridian
Sections: 17, 18, 19 and 20

AREA DESCRIPTION

The proposed special area is located approximately 6 miles due north of the City of Homer on the lower Kenai Peninsula, Alaska (see Appendix A). It is approximately 19,000 acres in size, and includes most of the upper Anchor River valley and the adjacent sloping uplands, the area known as "Beaver Flats", and the headwaters of Fritz Creek. The main

valley consists of a relatively narrow valley floor with a meandering stream, moderately steep hillsides which flank either side of the valley floor, and numerous small tributaries. Vegetation along the Anchor River is comprised of a mosaic of willow thickets, grass/forb meadows, scattered Sitka spruce, and clumps of cottonwood; mature Sitka spruce forests and stands of alder on the adjacent hillsides; dense willow thickets along small tributaries; and spruce forests and open meadows on gently sloping ground above 1,000 feet elevation. The extensive muskeg along Beaver Creek supports low heath shrubs and willows. The terrain in the headwaters of Fritz Creek is gently sloping; and the vegetation consists of an open spruce forest with a dense understory of willows in the bottomlands, and mixed spruce forests and open meadows at higher elevations.

WILDLIFE RESOURCE VALUES

The Anchor River valley and Fritz Creek drainages function as moose winter habitat. Aerial survey information collected by the ADF&G indicates between 300 and 500 moose concentrate in this area during average winters. A density of 23 moose per square mile were documentated on Beaver Flats in 1983. The riparian habitats along these drainage systems provide moose with a concentrated food supply in the form of willow browse, adjacent resting and hiding cover in the form of spruce forests, and an environment where snow accumulations are normally small enough to not impede winter feeding activities. The existence of areas which provide these elements is absolutely essential to winter survival of moose on the lower Kenai Peninsula.

The Anchor River is spawning and rearing habitat for king salmon, coho salmon, steelhead/rainbow trout, and dolly varden char. These habitats are also essential with respect to the life cycle and perpetuation of these species.

Riparian habitats such as those found in the proposed special area are important to a variety of other wildlife. Spawning salmon along the Anchor River are important food sources for brown bear, black bear and bald eagles. Stands of mature cottonwoods at the western end of the proposed area have been used by bald eagles for nesting. The valley serves as a travel corridor for most species of big game, furbearers and small forms of wildlife.

RECREATIONAL USES

The Anchor River valley and Fritz Creek drainages are popular recreation areas. In recent years uses have included hunting, trapping, fishing, wildlife viewing and photography, general hiking, snowmachining, snowshoeing, and nordic skiing. ADF&G records show that in the 1983 moose season 25% of the bull harvest (n=61) was taken in the Anchor River drainage. Beaver, river otter, mink, coyote, and wolf are the furbearers most commonly taken in this area. Sport fishing for salmon is prohibited in the proposed special area, but trout and char fishing are allowed from July through December. Snowmachining, snowshoeing, and nordic skiing occur throughout the area during most winters. All of the above recreational activities would be encouraged in the proposed special area as long as they did not pose a serious threat to wildlife of habitat resources.

JUSTIFICATION

Moose are the dominant big game animal on the Kenai Peninsula. They occupy a vital position in the food chain of the boreal forest, and represent an important renewable resource. Moose are browsers which assimilate energy and nutrients from the plant material they eat. In turn, large predators such as the wolf and the brown bear and a host of smaller scavengers are dependent upon moose as a source of food. Moose are directly important to man through the viewing and hunting opportunities they provide and the revenue these activities funnel

into local economies. ADF&G records show that the moose resource on the Kenai Peninsula has generated a total of 92,018 hunter days of recreation and a total harvest of 3,162 moose worth an estimated 5.5 million dollars between 1978 and 1983. In a less tangible sense, most Alaskans feel that the mere presence of wildlife, of which the moose is symbolic, contributes highly to their quality of life. They want future generations of Alaskans to be able to enjoy the tradition of a rich wildlife heritage.

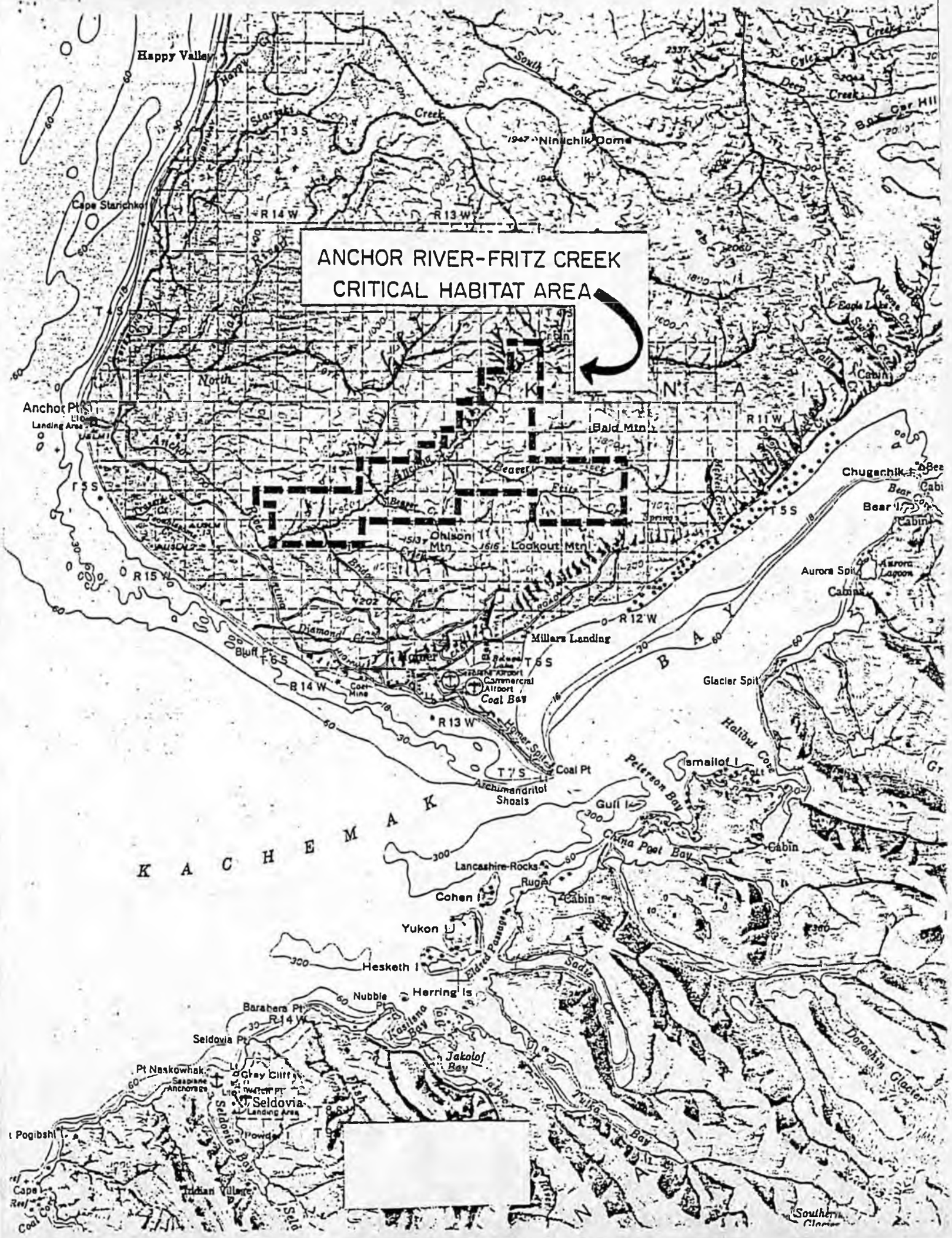
It is estimated that there are currently between 2,500 and 3,000 moose on the lower Kenai Peninsula (Game Management Subunit 15C). These moose range throughout most of the 760,000 acres of lowlands in Subunit 15C in summer and early fall, but are restricted to stream and river bottoms and south-facing benchlands below 800 feet elevation during winter. ADF&G tagging studies and aerial surveillance of moose show that the Homer Benchland, lower Fox River valley, lower Anchor River valley, lower Deep Creek/Ninilchik River valleys, Fritz Creek and the Coho Beach area are historic winter habitats. These areas provide the concentrated food, cover, and relatively small snow accumulation necessary for successful overwintering of moose. It is significant to note that the sum of these winter habitats comprise less than 10% of the surface area of all the utilized summer and early fall habitat in Subunit 15C. Virtually no overwintering of moose occurs in the Kenai National Wildlife Refuge south of Tustumena Lake.

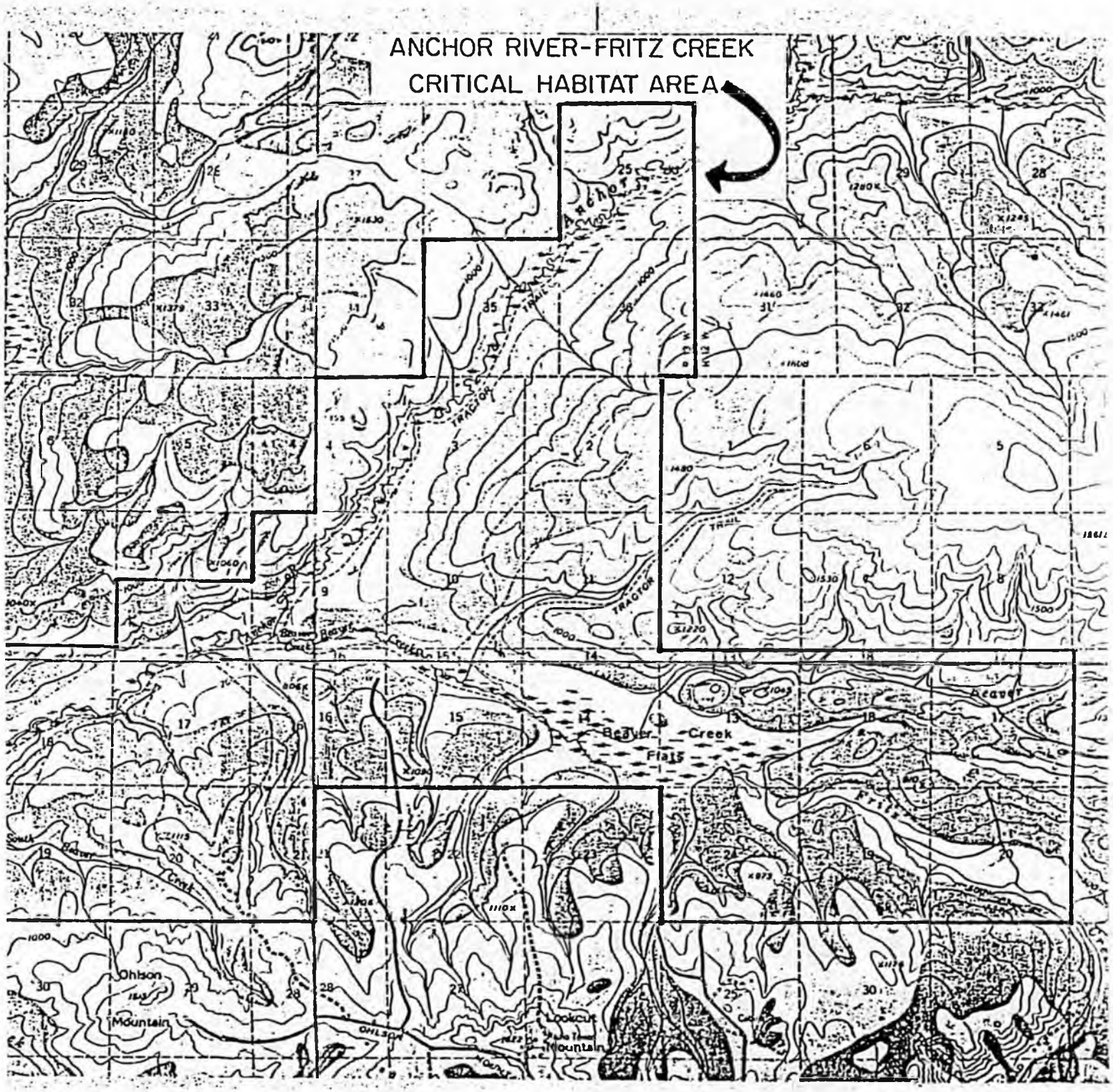
Moose winter habitats on the lower Kenai Peninsula are mostly privately owned and have been seriously diminished in the quality and extent by human development in the last three decades. For instance, an estimated 4,500 people now compete with moose for space on the Homer Benchland, and considerable habitat alteration and loss have occurred. Consequently, this historically important winter habitat can now support only a fraction of the moose it once did. Substantial amounts of residential and commercial development have also occurred on the Coho Beach, lower Ninilchik, lower Deep Creek, lower Anchor River and Homer Benchland winter habitats.

The lower Fox River winter habitat has been intensively grazed by horses and cattle since the 1940's, and supports a growing human population of approximately 200 people. It is reasonable to assume that these developments have lowered the winter carrying capacity of that area for moose. Water development and intensive cattle grazing are potential threats which have recently been proposed for the Fritz Creek winter habitat.

These trends are expected to worsen as the human population on the Kenai Peninsula continues to grow. Lands along the upper Anchor River valley and headwaters of Fritz Creek are in State ownership, and present the best opportunity to protect and maintain moose winter range on the lower Kenai Peninsula. Legislative designation as a State critical habitat area would keep these lands in public trust, and ensure the future of their wildlife resource and habitat values.

APPENDIX A


ANCHOR RIVER-FRITZ CREEK
CRITICAL HABITAT AREA
Happy Valley
Cape Starichkof
Ninilchik Dome
Anchor Pt
Landing Area
Bald Mtn
Ohlson Mtn
Lookout Mtn
Millers Landing
Homer
Commercial Airport
Coal Bay
Coal Pt
Archimandritof Shoals
Chugachik I
Bear I
Aurora Spit
Aurora Lagoon
Glacier Spit
Halibut Cove
Ismailof I
Peterson Bay
Gull I
China Poot Bay
Cabin
Lancashire Rocks
Cohen I
Yukon I
Hesketh I
Herring Is
Nubble Pt
Barabara Pt
Seldovia Pt
Pt Naskowhak
Seaplane Anchorage
Gray Cliff
Seldovia
Landing Area
Powder I
Indian Village
Kasilsna Bay
Jakolof Bay
Tulka Bay
Doroshin Glacier
Southern Glacier
K A C H E M A K
B A Y
R 14 W
R 13 W
R 12 W
R 11 W
R 15 W
T 3 S
T 5 S
T 6 S
T 7 S
T 8 S


ANCHOR RIVER-FRITZ CREEK
CRITICAL HABITAT AREA
Beaver Creek
Beaver Flats
Ohlson Mountain
Lookout Mountain

Anch. Daily News Thurs. March 28, 1985

Plan for creation of habitat area wins support of Homer council

By RONNIE CHAPPELL
Daily News reporter

A plan to create a 19,000-acre wildlife habitat area on the southern Kenai Peninsula has won the support of the Homer city council.

On a unanimous vote, the council Monday enacted a resolution urging the legislature to approve a bill placing the state-owned acreage under the management of the Alaska Department of Fish and Game.

Creation of the critical habitat area would halt development of a major cattle export project in the H mer area. It contains a 3,000-acre grazing lease in the Fritz Creek drainage that Han-A Samick America Corp. says is crucial to its plans for the production and exportation of 10,000 head of beef cattle a year.

According to state biologists, the grazing lease is part of the last big trac' of undeveloped winter moose range in the Homer area.

They warn that unless it and other important winter feeding areas are preserved, the number of moose on the southern Peninsula will decline dramatically.

"We need to preserve places for moose to live and for people to enjoy them," said Councilman John Calhoun. "With the continued development of rural subdivisions around the city, it is important to set aside a parcel of land that people can enjoy in its natural state."

The bill now pending before the legislature guarantees the city's right to dam Fritz Creek and use the resulting reservoir as a municipal water supply.

Similar assurances were offered under other plans for disposal of the Fritz Creek acreage. But city officials were skeptical, Calhoun said, that water quality in the watershed could be protected if the lease was used for intense livestock production.

By endorsing creation of the critical habitat area, Calhoun said, he and other council members were "trying to represent the views of a majority" of people in the Homer area.

More than 600 local residents have signed petitions endorsing the idea. Another 50 have written letters to lawmakers.

The bill protects the rights of inholders and gives the Kenai Peninsula Borough a say in the management of lands it nominates for inclusion in the habitat area. Hunting, trapping, skiing, hiking, camping and snowmachining would be allowed in the area, but residential and agricultural development would not.

•••PRESENTING•••

SONRISE CHRISTIAN SCHOOL

— A Christian Alternative —

— Professional Classroom Education based on God's Word
— Parentally Controlled and Governed
— Certified and Professional Teachers
— Committed to High Educational Standards

We have openings for next term in grades K-6. Call: 279-9325 or 346-2281 for more information, or write: P.O. Box 8182, Anchorage, Ak 99508.



1156

Box 1236
Homer, Alaska 99603
March 14, 1985

Commissioner Don Collinsworth
Dept. of Fish and Game
P.O. Box 3-2000
Juneau, Ak. 99802

COMMISSIONER'S OFFICE
RECEIVED
MAR 19 1985
DEPARTMENT OF FISH AND GAME

Re: HB 280

Dear Commissioner Collinsworth:

Enclosed find a packet of letters and resolutions in support of HB 280, an Act creating the Anchor River and Fritz Creek Critical Habitat Area. We are pursuing additional ones and will forward them as we receive them.

Our task force has found strong support for the proposal. In fact, we have encountered no opposition to it. You will note that some of the endorsements are conditional upon the accor.odation of additional uses. We believe that there is no conflict in meeting such identified needs as water supply within the critical habitat area.

Please feel free to contact me or any member of our task force should you need any more information. We look forward to working with you towards passage of HB 280.

Sincerely,

Dave Vanderbrink, Chair
Kenai Peninsula Critical Habitat
Task Force

Alaska Center for the Environment
1069 W. 6th Avenue
Anchorage, Alaska 99501 274-3621

Position Statement

CITY OF KACHEMAK
KACHEMAK, ALASKA

RESOLUTION NO. 85-4

A RESOLUTION SUPPORTING THE CRITICAL MOOSE WINTER HABITAT

WHEREAS, the Common Council of the City of Kachemak recognizes the need to protect and maintain critical moose winter habitat along the upper Anchor River and Fritz Creek Drainages; and,

WHEREAS, the Kenai Peninsula Critical Habitat Task Force, working with the Alaska Department of Fish and Game proposes such; and,

WHEREAS, the area in question is approximately 19,000 acres, as proposed by this Task Force; and,

WHEREAS, the City of Kachemak recognizes that a watershed and critical habitat area are compatible; and,

WHEREAS, the City of Kachemak is appealling the Department of Natural Resources conveyance of 3,183.4 acres in the Fritz Creek drainage to the Kenai Peninsula Borough; and,

WHEREAS, the 3,183.4 acres in question is included in the proposal of the Kenai Peninsula Critical Habitat Task Force for the critical moose winter habitat;

NOW THEREFORE LET IT BE RESOLVED: that the Common Council of the City of Kachemak supports the Kenai Peninsula Critical Habitat Task Force, Dave Vanderbrink, Chairman, in its efforts to provide, protect and maintain critical winter moose habitat along the upper Anchor River and Fritz Creek Drainages AS LONG AS THE WATERSHED INTERESTS OF THE

Moose winter habitats on the lower Kenai Peninsula are mostly privately owned and have been notably reduced in both quality and quantity due to residential and commercial development in places such as Coho Beach, lower Deep Creek, lower Ninilchik River, lower Anchor River and Homer Benchland winter habitats. If we hope to insure a significant moose population in this region, it is essential to protect the remaining winter ranges on the state-owned lands along the upper Anchor River and Fritz Creek drainages

Finally, large portions of the proposed area are being threatened by a major cattle grazing and feedlot operation. Preventing this incapatible use by designating the critical habitat area would protect not only moose winter range but also water quality in both Fritz Creek, a source of water for Homer, and the Anchor River, one of Southcentral's top sportfishing streams.

Mary Cole

Mary Cole
Executive Director
March 11, 1985

February 27, 1985

To Whom it May Concern:

In a meeting on 2/19/85 the Homer Fish and Game Advisory Committee unanimously voted to support the establishment of the Anchor River/Fritz Creek Critical Habitat Area as proposed by the Kenai Peninsula Critical Habitat Task Force.

Daniel R. Calhoun

Daniel R. Calhoun
Chairman Homer Fish and Game Advisory Committee
Box 566
Homer, Alaska 99603.

CITIZENS FOR RESPONSIBLE LAND USE

Co-Chairmen:
Roberta Highland
235-8214 (home)
235-5223 (work)

Michael Sheppard
235-7486 (home)
235-5397 (work)

P.O. Box 15227 • Fritz Creek, Alaska 99603

March 5,1935

To: Mr. Dave Vanderbrink, Chairman

From: Ed Schumann

Subject: Anchor River- Fritz Creek Critical Moose Habitat Area

Dear Dave;

Citizens for Responsible Land Use respectfully submit our endorsment of the Kenai Peninsula Critical Habitat Task Force proposal to create the 19,000 acre Anchor River- Fritz Creek Critical Moose Habitat Area.

We offer our continual support on this matter. We have to date; held public meetings, attended meetings, initiated letter writing campains to our legislators, circulated petitions and written appeals to the Department of Natural Resources. What can be done, Will be done.

Sincerely,

Ed Schumann

Ed Schumann
commitee member
Citizens for Responsible Land Use

KBCS



KACHEMAK BAY CONSERVATION SOCIETY
BOX 846
HOMER ALASKA 99603

March 1, 1985

Dave Vanderbrink
POB 123[illegible]
Homer, Alaska 99603

Dear Mr. Vanderbrink:

This is to inform you that the Kachemak Bay Conservation Society Board of Directors voted unanimously to support the Kenai Peninsula Critical Habitat Task Force's proposed "Anchor River/Fritz Creek Habitat Area." We have conveyed our support to Governor Sheffield and will do what we can to see that this vital watershed remains viable for moose and other wildlife.

Sincerely,

Edgar Bailey

Edgar Bailey

United States Department of the Interior

IN REPLY REFER TO:

KENAI NATIONAL WILDLIFE REFUGE
P.O. BOX 2139
SOLDOTNA, ALASKA 99669-2139
(907) 262-7021

January 31, 1985

Kenai Peninsula Critical Habitat Task Force
ATTN. Mr. Allen Davis
P. O. Box 598
Homer, Alaska 99603

Dear Mr. Davis:

We have reviewed the proposal on "The Anchor River/Fritz Creek Critical Habitat Area" as submitted by the task force and offer these comments.

Designation of critical habitat areas in Game Management Unit (G.M.U.) 15C, other than lands contained within the Kenai National Wildlife Refuge, will be essential if viable populations of moose, brown bear, and wolves are to continue. Refuge lands in GMU15C do not contain all of the essential habitat components to support populations of these species year around.

Delineation of critical habitat areas off of the refuge is a logical and essential action, if the public desires to have moose and other wildlife species in GMU15C, coincidental with a variety of other uses on these lands.

This concept has our support. We feel it is the only practical alternative that will allow viable wildlife populations to coexist with increased human use and development within GMU15C.

Sincerely,

Robert L. Delaney
Refuge Manager

MBH/pf
0115p/7

Resolution No. 85-8

FRITZ CREEK WATERSHED

The cities of Homer and Kachemak City have a need for additional quantities of water for municipal use in the immediate future. The cities have identified Fritz Creek as the best source to meet their needs, evaluating water quantity, quality, and proximity of the stream. Because the use of Fritz Creek would be for a public water supply, a watershed protection plan would need to be established.

A possible solution would be to designate the watershed area as a wildlife reserve. This could serve two useful purposes: it would preserve some rapidly diminishing winter habitat for game animals on the lower Kenai Peninsula, and it would protect the watershed of the municipal water supply.

THE ALASKA WATER RESOURCES BOARD recommends that the Director of the Division of Land and Water Management put into motion the mechanism to designate the Fritz Creek Drainage as a wildlife refuge to preserve winter habitat for large game animals and to protect the watershed for the future municipal water supply for the cities of Homer and Kachemak City.

Adopted this 1st day of November, 1984

ALASKA WATER RESOURCES BOARD

D Vanderbrink

David Vanderbrink, Chairman



Alaska Environmental Lobby, Inc.

204 N. Franklin Street, Suite 3 Juneau, Alaska 99801 907-586-2345

March 25, 1985

Representative Mike Navarre
Pouch V
Juneau, Alaska 99811

Dear Representative Navarre:

Congratulations on your recent introduction of HB 280, "An Act creating the Anchor River and Fritz Creek Critical Habitat Area." This proposed legislative designation would maintain critical moose wintering grounds, protect important riparian and fur bearing habitat, protect popular recreational opportunities on the Kenai, and ensure a future water supply for lower peninsula residents.

Protection of relatively undisturbed stream and river bottoms in the lower Kenai is essential to the perpetuation of the area's moose population. Though wide ranging in the summer and fall months, the estimated 2500 moose of the area rely upon only five or six drainages during the winter for the food, cover and diminshed snowfall necessary for survival. These streams and rivers, however, are changing quickly as the human population of the Kenai increases. The moose must contend with loss of habitat and associated human uses of the area such as grazing. Without being alarmist, it is safe to say that protection of some of these overwintering areas is necessary for the survival of moose populations in the lower Kenai.

Of course, moose are not the only users of the area. The riparian habitat that support the moose also support a variety of other important species including dolly varden, steelhead, cohos and king salmon. Bald eagles, black and brown bear, and fur bearing animals like mink, coyote, wolf, river otter and beaver utilize the area as well.

Alaskans would stand to benefit from the proposed designation also. Recreational uses of the area would be encouraged under critical habitat management. Skiing, hiking, hunting, fishing, trapping, wildlife viewing and photography would all be proper uses of the area, subject to ADF&G's protection of the wildlife habitat. (Salmon sportfishing, for instance, is already prohibited in the area). The area is currently widely used for these activities and these uses would be enhanced under critical habitat designation.

Finally, parts of the proposed critical habitat area are being considered for a cattle grazing and feedlot operation. This would threaten both moose habitat and a watershed identified as important by the cities of Homer and Katchemak. Creating the Anchor River and Fritz Creek Critical Habitat Area makes good sense: it means that future generations of Alaskans on the Kenai will be able to enjoy a healthy moose population; and the cities of Homer and Katchemak will be ensured a future source of drinking water. The Alaska Environmental Lobby--on behalf of 19 conservation groups statewide--is pleased to endorse HB 280.

Sincerely,

Scott Highleyman

Scott Highleyman
Executive Director

cc: Rep. Peter Goll

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP, SIERRA CLUB • SITKA GROUP, SIERRA CLUB
KNIK GROUP, SIERRA CLUB • DENALI GROUP, SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY
DENALI CITIZENS' COUNCIL • ALASKA FRIENDS OF THE EARTH • JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY
KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • ALASKA WILDERNESS GUIDES ASSOCIATION
SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL

MEMORANDUM State of Alaska

TO: Tom Hawkins, Director
ADNR/Div. of Land & Water Mgmt.
Anchorage

DATE:

FILE NO:

Sent out Jan 8th. (according to Kelso's office)

ATTN: Russell R. Cunningham, Jr.
Natural Resource Manager

TELEPHONE NO: 267-2284

FROM: Dennis D. Kelso, Deputy Commissioner

SUBJECT: Reclassif ation and Conveyanc ADL# 53853, 206347, d 206348

BY: Dimitri B. Bader DB
Habitat Biologist
Habitat Division
Anchorage

The Alaska Department of Fish and Game (ADF&G) has reviewed the proposed reclassification and conveyance. The department opposes the reclassification and conveyance of that portion of the proposed action referred to as unit two (map attached) based on the need to protect important moose winter range occurring there, even though these lands are currently under lease for grazing. Neither Fritz and/or Beaver Creek drainage supports vegetation suitable for grazing. Beaver Flats is composed of open heath with a high percentage of low willow; the headwaters of Fritz Creek are characterized by open stands of Sitka spruce and white spruce which have a dense understory of willow,. These areas would have to be drained, cleared and planted to grass to make them suitable for cattle grazing. Such intensive pasture development would eliminate moose winter forage.

It is our understanding that an ad hoc committee of Homer residents have submitted draft legislation to local legislators proposing the establishment of this land as a critical habitat area (see attached map). This area has long been recognized as important winter range for moose on the southern Kenai Peninsula. Approximately 300 to 500 moose use the area each winter, depending on winter severity. The area's importance takes on added significance due to the fact that virtually no overwintering of moose occurs on the Kenai National Wildlife Refuge in game management subunit 15C. With the exception of the proposed critical habitat area, most southern Kenai Peninsula moose winter range occurs on private land where residential, commercial and agricultural development will most likely occur. In addition to moose, the proposed critical habitat area provides habitat for brown and black bears, several species of furbearers, numerous nongame species and spawning/rearing habitat for salmon and trout. This area receives considerable recreational use including hunting, trapping, wildlife viewing and photography, snowmachining, skiing, and hiking.

We recommend that alternative lands be identified for conveyance to the University if a conveyance is necessary. Last July, our department discussed a proposed reclassification of certain lands within the Deep Creek Management Area with Pat Beckley of your Southcentral Regional Office. This proposal identified grazing lands based on recent Soil Conservation Service (SCS) findings. Since the state has expressed the intent of managing a portion of the Deep Creek lands for grazing, the possibility exists that some lands here may be suitable for conveyance.

We recommend that staff from our two departments meet and jointly review land status on the southern Kenai Peninsula to identify alternative lands for conveyance. In the event the Deep Creek lands are determined to be unsuitable, we could support the conveyance of other state lands if they have real capability for grazing and do not contain regionally important wildlife habitat.

Thank you for the opportunity to comment. If you have any questions please don't hesitate in contacting this office.

cc: D. Timm
G. Bos
D. Holdermann
S. Logan
R. Redick

Attachment

Moose winter food supply threatened

Biologist, citizens' group want to establish Peninsula habitat area

By RONNIE CHAPPELL
Daily News reporter

The continued destruction of critical winter feeding areas could decimate the moose population on the southern Kenai Peninsula, state biologists warn.

One of the biologists and a citizens' group want to set aside an area of the Peninsula to assure the moose have a sufficient winter food source.

Residential subdivisions and agricultural development are fast gobbling up the lowland, willow forests on which moose depend for winter browse. Once these feeding areas are destroyed they can never be replaced, said Dave Holderman of the Alaska Department of Fish and Game.

None of the winter feeding areas south of Tustumena Lake lies within the boundaries of the Kenai National Wildlife Refuge, Holderman said. Almost all are on private land "that is being developed at a pretty rapid pace."

This shrinking winter range now represents less than 10 percent of the acreage foraged by the giant ungulates in the spring, summer and fall, Holderman said.

It also is the factor that will determine the size of the area's moose population in the future. If moose don't survive the winter, they can't reproduce in the spring he said.

To prevent the complete destruction of the winter range, Holderman and an ad hoc citizens' committee from the Homer area have proposed creating a 19,000-acre critical habitat area that includes parts of the Anchor River and Fritz Creek drainages.

Population densities as high as 23 moose per square mile have been recorded in the area. All of the land is owned by the state.

"This is the last opportunity to set aside a big portion of public land for the benefit of the wildlife populations on the southern Peninsula," Holderman said.

If approved by the legislature, the habitat area would be managed by the state Department of Fish and Game. People could still hunt, fish, trap, hike, camp, ski and snowmachine in the area, Holderman said, but residential and agricultural development would not be allowed.

The plan is a controversial one.

Many of the people who support it see it as a way to block the development of a major cattle export project in the Homer area. A similar tactic was used in the late 1970s to prevent oil exploration in Kachemak Bay.

According to Holderman, the critical habitat area was not conceived as a reaction to the cattle export venture. Work on the plan began in 1981, he said. "We were hoping to get a proposal to the 1985 legislature, which we have done. This other issue came up in the meantime."

The "other" issue is a 3,000-acre grazing lease in the Fritz Creek drainage that almost everybody wants.

The University of Alaska wants title to the land so that it can lease the propeprty to Han-A Samick America Corp., a Korean firm, that says the land is crucial to its plans to raise and export 10,000 head of cattle a year.

The cities of Homer and Kachemak want the drainage preserved as a possible municipal water source. The Kenai Peninsula Borough and the Seldovia Native Assocation have expressed an interest in owning the land.

Fish and Game, Holderman and the citizens' committee would like to see the tract included in the proposed critical habitat area.

Earlier this month, the state decided to transfer ownership to the borough. But now borough officials say they don't want the land if its use is going to be limited by restrictions placed in the title. University officials say there's a good chance they will appeal the decision.

"It's unfortunate the timing has occurred like this," said homesteader Bob Moss who serves on the ad hoc task force. "No one on the committee has taken a stand, one way or the other."

Instead, he said, task force members oppose the destruction of irreplaceable moose habitat for the sake of a grazing operation that could take place on other state land.

CITIZENS FOR RESPONSIBLE LAND USE

Co-Chairmen:
Roberta Highland
235-8214 (home)
235-5223 (work)

Michael Sheppard
235-7486 (home)
235-5397 (work)

P.O. Box 15227 • Fritz Creek, Alaska 99603

MEMBERS

Roberta Highland - Co-Chairperson 235-8214 (hm); 235-5223 (wk)
Michael Sheppard- Co-Chairperson 235-7486 (hm); 235-5397 (wk)

OBJECTIVES

1. We support the conveyance of the 80 ac. Olson Mountain parcel to the university of Alaska, along with a covenant that limits it it its historic use as an ezperimental station.
2. We support the Kenia Peninsula Critical Habitat task force and their proposal (to be put before the legislature) to define some 19,000 acres in the Anchor River, Beaver Flats, and Fritz Creek Valley area as Critical Moose Habitat. Public opinion is essential to the passage of this legislation.
3. We support responsible use of wetlands and recognize that the property commonly known as the Red Meat Farm and its associated wetlands are not suitable for intensive grazing or large scale feedlot.
4. We support the development of the 80 ac. Red Meat Farm as a community or, preferably, four year college.
5. We support the maintenance of the Fritz Creek/Beaver Flats/Anchor River areas as watershed, if it is not used for industrial use & all other studies have been exhausted. for an alternative water supply.

CITY OF HOMER
HOMER, ALASKA

RESOLUTION 85-33

A RESOLUTION ENDORSING HOUSE BILL 280 "AN ACT CREATING THE ANCHOR RIVER AND FRITZ CREEK CRITICAL HABITAT AREA".

WHEREAS, the City of Homer has an interest in preserving the Fritz Creek Watershed for future use as a water supply for residents of the Southern Kenai Peninsula; and

WHEREAS, the City has an interest in preserving areas for wildlife habitat; and

WHEREAS, the City has an interest in protecting and preserving certain lands for public access and public recreation purposes;

NOW THEREFORE, the City endorses House Bill 280 "An Act creating the Anchor River and Fritz Creek Critical Habitat Area";

DATED, at Homer, Alaska this 25th day of March, 1985.

CITY OF HOMER

Wayne Kessler, Mayor

ATTEST:

Kathleen Herold

Kathleen Herold, City Clerk

March 29, 1985

Dave Vanderbrink, Chairman
Kenai peninsula Critical Habitat Task Force
Box 1236
Homer, Alaska 99603

Dear Mr. Vanderbrink:

In a meeting held March 22, 1985 the officers and board of directors voted unanimously to support HB #280.

The International Moose Federation feels that any use of this land other than preservation for the use of wild life on the Southern portion of the Kenai Peninsula would cause a permanent decline in opportunities for recreational use of our wildlife resources and water quality.

Sincerely,

Stan O. Smith
President
International Moose Federation

Homer Soil Conservation Sub-District
P.O. Box 415 · Homer, Alaska 99603 · Telephone: 235-8177

March 26, 1985

Dave Vanderbrink
Kenai Peninsula Critical Habitat
Task Force
P.O. Box 1236
Homer, Alaska 99603

RE: Critical Habitat - Anchor River & Fritz Creek Drainage

Dear Dave,

I am writing on behalf of the Board of Supervisors of the Homer Soil & Water Conservation District. As you well know, we have followed your committee's activities with regard to the formulation of the critical moose habitat legislation.

We wish to express our support and encouragement for the ultimate passage of this legislation. On 13 March 1985, we were given ample assurances by you and your committee that the critical habitat designation would allow continued management as a multiple resource, thus allowing open grazing of livestock and associated activities that would not conflict with or deplete the habitat. This assurance eliminated our primary concern.

We therefore wish to, once again, express our support for the critical habitat designation by legislation and hope that your activities will bring a successful conclusion to your efforts.

Sincerely,

Pat Marquis

Pat Marquis
Chairman

bg

To Whom It May Concern:

Whereas the South Central Regional Council represents 17 Local Fish and Game Advisory Commitees and;

Whereas those Advisory Committees are concerned with the moose population in South Central Alaska as well as Game Management Uni 15 C and;

Whereas the South Central Regional Council realizes the critical function of winter moose habitat and;

Whereas the South Central Regional Council understands that development in the Homer area has and will continue to spread and eliminate critical winter moose habitat and;

Whereas this critical habitat must be set aside before developmen begins in the area where this habitat exists;

Therefore be it Resolved by the South Central Regional Council, a a meeting on March 21, 1985 by unanimous vote, to support the ANCHOR RIVER/FRITZ CREEK CRITICAL HABITAT AREA.

Submitted by:

Daniel R. Calhoun

Daniel R. Calhoun
Vice-Chairman
South Central Regional Council

HELP ESTABLISH THE ANCHOR RIVER/FRITZ CREEK CRITICAL HABITAT AREA

SUPPORT HB 280

The future of a healthy moose population on the lower Kenai Peninsula is being threatened. Moose in this region concentrate during the lean winter months in the lower segments of major river valleys and south-facing benchlands. These areas are unique in providing moose with the essentials for overwinter survival-- an abundant food supply in the form of willow browse, resting and hiding cover, and relief from deep snows. Unfortunately, most moose winter habitat on the lower Kenai Peninsula is privately owned and has been seriously diminished in quality and extent by a rapidly growing human population during the past two decades.

House Bill 280, introduced in the Alaska Legislature on March 13, 1985 by Representative Mike Navarre (D-Kenai) at the request of many Homer-area residents, would provide for the creation of the Anchor River and Fritz Creek Critical Habitat Area. This legislation needs your support.

Important Facts:

1. The winter period is the bottleneck in the moose's annual cycle. Reproductive success and population growth depend on overwinter survival.

2. Moose on the lower Kenai Peninsula are restricted during the winter period to less than 10% of the area that they occupy in summer and fall.

3. Virtually no moose overwinter on the Kenai National Wildlife Refuge south of Tustumena Lake.

4. Substantial amounts of residential and commercial development have already occurred on moose winter habitat at Coho Beach, lower Deep Creek/Ninilchik River, lower Anchor River, and the Homer Bench.

5. The Anchor River is important spawning and rearing habitat for king salmon, coho salmon, steelhead/rainbow trout, and dolly varden.

6. The Anchor River/Fritz Creek area has been identified since the early 1970's as critical moose winter habitat. The effort to have it legislatively designated began several years ago.

House Bill 280:

HB 280 would set aside 19,000 acres as the Anchor River and Fritz Creek Critical Habitat Area. The purpose is to protect and preserve the habitat of the area for wildlife and fish. Traditional uses such as hunting, fishing, recreation, etc. would be allowed, but incompatible uses would be restricted. Specific multiple uses for the area would be determined through the adoption of a management plan developed by ADF&G after public hearings. Existing grazing leases would be unaffected by the designation.

The bill includes these specific provisions:
(1) The use of Fritz Creek as a water source is protected.
(2) The possibility of a dam and reservoir on Fritz Creek is reserved.
(3) The use of inholdings is guaranteed.
(4) Borough land within the boundaries that is committed to the critical habitat area by the borough is subject to joint management by the state and borough. (All of the 19,000 acres proposed for the area is state-owned except for 3000 acres on the Fritz Creek end which was recently conveyed to the Kenai Peninsula Borough. The conveyance is currently under appeal.)

How You Can Help:

HB 280 has been referred to the House Resources and Finance Committees for public hearings. The Resources Committee is expected to take it up very soon and may teleconference its meeting to Homer and other sites.

You can let legislators know of your support for the bill by writing them at Pouch V, Juneau, Ak. 99811 or by sending them a free public opinion message by calling 235-7878 (Homer), 262-9364 (Soldotna), or 278-3668 (Anchorage). People at those numbers can inform you of the bill's progress.

The future of a healthy moose population on the southern Kenai Peninsula depends on the availability of large tracts of undeveloped winter habitat. Lands along the upper Anchor River and Fritz Creek represent the last opportunity to preserve a major moose winter range on the lower Peninsula.
Urge legislative passage of HB 280!

prepared by:
Kenai Peninsula Critical Habitat Task Force
Dave Vanderbrink, Chair
Box 1236, Homer, Ak. 99603

3/14/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 280

Title: Anchor River Critical Habitat

Sponsor: Navarre and Goll

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Mike Vediner Phone: 465-2400

Division: Land and Water Management Date: March 28, 1985

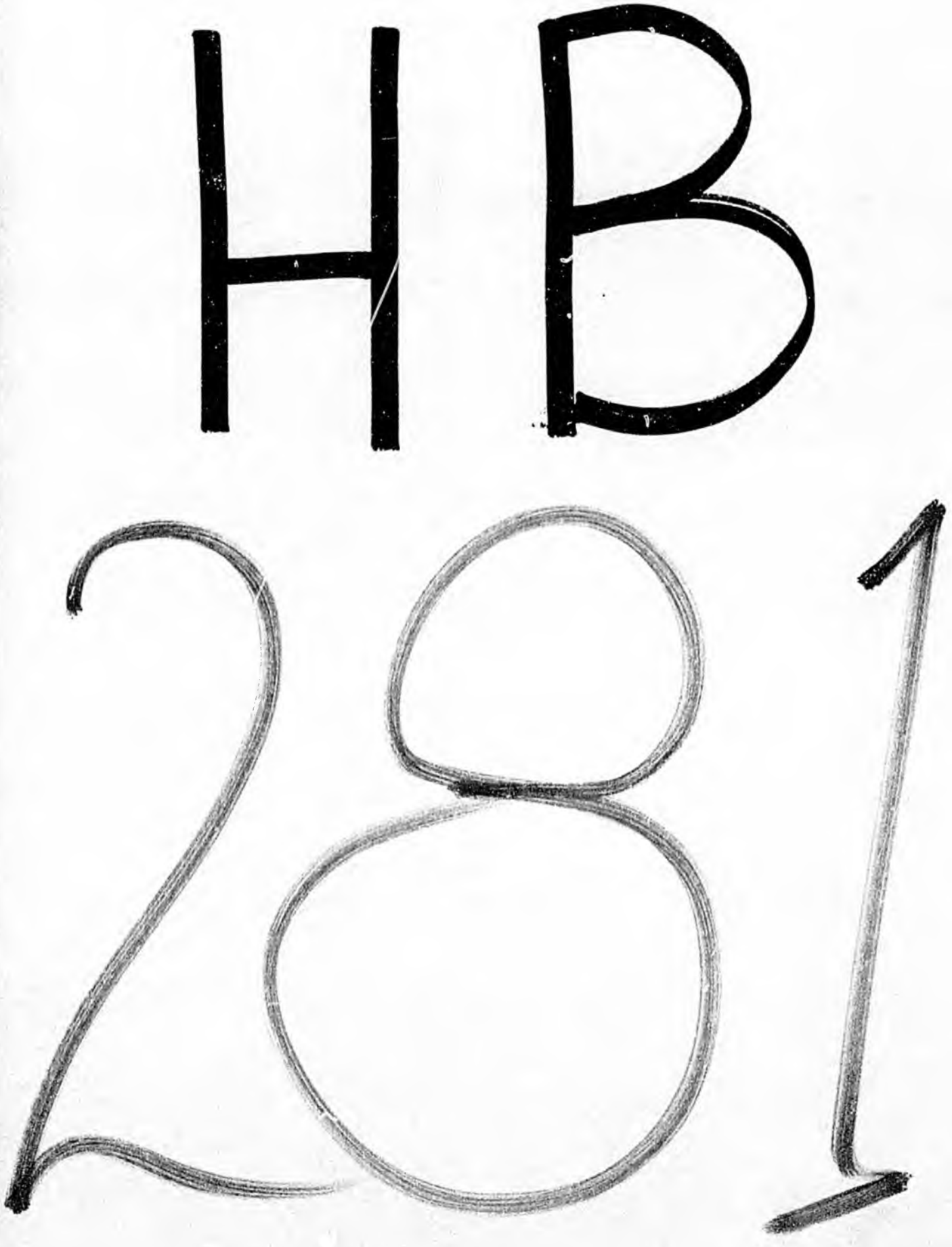
Approved by Commissioner: Robert D. Arnold Date: March 28, 1985

Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84


HB
2281

COMMITTEE REPORT

HOUSE

4/12

(9)

FURTHER: Rules

3/13/85

Date: April 11, 1985

The Committee on RESOURCES has had HB 281

"An Act relating to trapping cabin permits."

under consideration and recommends:

[XXX] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 281 (Resources) [XXX] same title [ ] new title

and recommends 12 do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [XXX] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

	MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
Shultz	Dick Shultz	
Herrmann	[illegible]	
Cato	Bettie Cato	NEW
Jenkins	Roger L. Jenkins	
Pearce	[illegible]	
Thompson	David W. Thompson	
Sund	[illegible]	
Wallis	F. Kaylorecis	
Miller(NP)	M.W. Miller	

Dick Shultz

Co-Chair CHAIRMAN

Sec. 38.95.080. Trapping cabin construction permits. (a) The commissioner may issue a nontransferable permit for the construction of a trapping cabin on state land to a person who meets the following qualifications:

(1) the person must have an established trapline with proof of regular use;

(2) the person must have a trapline of sufficient length to justify the need for cabin construction.

(b) Nothing in (a) of this section prevents the director from issuing a permit to more than one qualified person for the construction and use of the same trapping cabin.

(c) The director shall establish, by regulation, conditions attaching to the permit issued under (a) and (b) of this section. These conditions shall include the following:

(1) permits shall be issued for a period of not more than 10 years, with succeeding 10-year renewal options, if periodic use and occupancy is established, and the qualifications of (a) of this section continue to be met;

(2) a cabin shall be constructed and maintained according to reasonable specifications established by the director; one cabin constructed under a permit may contain not more than 400 square feet; however, in no case may another cabin constructed under the same permit exceed 192 square feet;

(3) a permit shall specify the number of cabins allowed to be constructed and indicate their specific geographical location; the director may establish a maximum number of cabins per person or otherwise limit their number because of the probability of adverse consequences;

(4) adequate provision must be made for waste and garbage disposal, as determined by the director;

(5) the payment of a trapping cabin permit fee of $10.

(d) A permit issued under (a) and (b) of this section entitles its holder to use timber in the immediate vicinity of the cabin for personal noncommercial purposes only. No ownership rights to the land are conveyed by the issuance of a trapping cabin permit under this section.

(e) A person who makes a false statement as to any material fact relating to a permit issued under this section is guilty of a misdemeanor. A person who violates this subsection or any of the terms and conditions of a permit issued under this section may have the permit immediately revoked and is subject to payment of all costs required in dismantling the cabin structure. (§ 1 ch 115 SLA 1976; am § 40 ch 113 SLA 1981; am § 1 ch 41 SLA 1982; am § 76 ch 152 SLA 1984)

Effect of amendments. — The 1981 amendment substituted "ten years" for "five years" following "period of not more than" and substituted "ten-year" for "five-year" preceding "renewal options" in paragraph (1) of subsection (c).

The 1982 amendment, in subsection (c), deleted "but not be limited to" in the sec-

ond sentence
substituted "
paragraph (1
structed unde
more than fo
substituted "
under the san

A

Section
100. Purpose
110. Steering
tion

Sec. 38.9.
17(d)(2) of t
the Secretar
forms of ap
mining and
Statehood A
unreserved p
deems suitab
Forest, Wildl

(b) Congre
acres for incl
section. The
opportunity t
in Alaska in
Statehood Ac
Native Claim
economic base

Sec. 38.95.
created the St
as follows: the
Planning Com
ernor, three m
speaker of the
president of th
of Natural Re
council may se
1977)

Sec. 38.95.1
unified lobbyin
tion rights of t
Natives are pro
needs and futu

Bradley
4/2/85

Original sponsor: Shultz

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 281 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to trapping cabin permits."

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

* Section 1. AS 38.95 is amended by adding a new section to read:

ARTICLE 2A. TRAPPING CABINS.

Sec. 38.95.075. PERMITS FOR THE USE OF TRAPPING CABINS. The commissioner shall issue a permit to an individual for the use of a trapping cabin when the applicant provides to the commissioner a notarized statement witnessed by three adult residents of the area in which the cabin is located stating that

(1) the applicant had used the cabin on a regular basis for * trapping before August 1, 1984;

(2) the past, present, and intended use of the cabin is for temporary shelter while trapping; and

(3) the three residents witnessing the statement have lived in the area in which the cabin is located for no less than five years and are familiar with the applicant's use of the cabin for trapping purposes.

Bradley
4/10/85

Original sponsor: Shultz

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 281 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to trapping cabin permits."

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

* Section 1. AS 38.95 is amended by adding a new section to read:

ARTICLE 2A. TRAPPING CABINS.

Sec. 38.95.075. PERMITS FOR THE USE OF TRAPPING CABINS. The commissioner shall issue a permit to an individual for the use of a trapping cabin when the applicant provides to the commissioner a

* New notarized statement witnessed by the local fish and game advisory committee chairman of the area in which the cabin is located stating that

(1) the applicant had used the cabin on a regular basis for trapping before August 1, 1984; and

(2) the past, present, and intended use of the cabin is for temporary shelter while trapping.

(subsection (3) Deleted)

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 281 (RESOURCES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to trapping cabin permits."

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

* Sec. 1. AS 38.95.080(a) is amended to read:

(a) The commissioner may issue a nontransferable permit for the construction or use of a trapping cabin on state land to a person who meets the following qualifications:

(1) the person must have an established trapline with proof of regular use;

(2) the person must have a trapline of sufficient length to justify the use of the cabin for trapping <NEED FOR CABIN CONSTRUCTION>.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 281

Title: Trapping Cabin Permits

Sponsor: Shultz

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:

Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Mike Vediner

Phone: 465-2400

Division: Land and Water Management

Date: April 3, 1985

Approved by Commissioner: Robert D. Arnold

Date: April 3, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

January 20, 1986

The Honorable Arliss Sturgulewski
Chair, Resources Committee
Alaska State Senate
Pouch V
Juneau, AK 99810

Dear Senator Sturgulewski:

At Friday's Resources Committee meeting there were a lot of questions about HB 281, Representative Shultz's bill intended to assure the issuance of trapping cabin permits to qualified applicants. The department's major concern with the bill -- that discretion remain to reject permit applications where resource management conflicts exist -- was satisfied in the House amendments to the original bill.

Last year the department recommended also that it would be preferable simply to amend the existing trapping cabin construction statute (AS 38.95.080) to allow use of existing cabins. This approach would not satisfy Representative Shultz's interests as stated above.

I hope that the following information will assist the Committee in its consideration of trapping cabin permitting.

Existing programs

The department has two cabin permitting programs in effect at present, for personal use cabins and trapping cabin construction. A third program, for the construction of remote cabins on state land, has not been implemented (AS 38.05.079). There also exists a public use cabin program in the state park system (11 AAC 12.245).

Personal Use Cabins

Conditions for the permitting and use of personal use cabins are found at 11 AAC 65.010-900. Here is a general summary of the regulations:

- $25 application fee, $100 annual rental;
- documented use and occupancy prior to August 1, 1984;
- one-time-only application period;
- availability to a group of applicants for a single permit;
- no conveyance of land or interest in land by permit;

10-J9LH

- permit term up to six years, renewable during the lifetime of original applicant;
- not transferable, assignable, or inheritable;
- improvements must be removed or revert to state at termination;
- not issued in areas:
  where land sale has occurred or is anticipated,
  where municipal entitlement selections exist,
  in state parks or sensitive ecological areas,
  on roads in game refuges or critical habitat units,
  on shoreland, tidelands, or submerged lands,
  near scheduled or anticipated materials sales, timber sales, mining lands, or recreational transportation development areas, or
  on Native allotments;
- not intended for residential purposes; and
- revocable if used for other purposes than permitted.

As you can see, there are many public concerns with permitting cabin use on state lands, but we have found that the overwhelming majority of applications are approved and that this list of concerns and conditions is needed in only a few -- though important -- instances.

Trapping Cabin Construction

For trapping cabin construction on state lands (AS 38.95.080, 11 AAC 94.010-030), there are the following general terms and conditions:

- up to three cabins may be permitted per permittee;
- current, valid trapping license required;
- evidence of regular trapping use required, with map marked to show traplines;
- fire protection language and liability;
- $100 application/permit fee;
- nontransferable and revocable;
- size limitations;
- automatically renewable for each ten-year term if conditions are met; and
- applications not accepted:
  for land scheduled or nominated for subdivision,
  for use of an existing cabin on state general grant lands not vacant, unappropriated, or unreserved, or
  for cabins generally within two miles of another trapping cabin or within ten miles of a road.

I am including for your information the department's permit application form for trapping cabin construction.

Ownership and Joint Use

Members of the Committee questioned whether an applicant would have to prove ownership of the cabin and whether more than the original permittee would be allowed to use the trapping cabin permitted under the proposed law.

Language generally suggested by Senator Halford would require a permit applicant to show evidence that he or she owns the cabin, has the concurrence of the owner, or can prove that the cabin has been abandoned or unoccupied on state land. However, this would contradict our interpretation of the words "nonexclusive use," under which we would hope to see the cabins remain available -- as they traditionally have -- for permitted use by more than the original applicant. If such language is included, we would recommend adding language allowing the department to issue additional permits to bona fide trappers, with or without the concurrence of the trapping cabin owner or permittee.

Mandatory Issuance

As indicated above, our major concern has been that the department must have the flexibility to deny applications where there are land management reasons to do so. The list of possible conflicts preventing the issuance of a personal use cabin permit (above, near the top of page 2) encompasses the possible resource management conflicts that we can foresee.

It does make me somewhat uncomfortable to have a land management decision (the issuance of a cabin permit) delegated by the Legislature to the local fish and game advisory board, and my staff have discussed this in the past with Representative Shultz and his staff. We have agreed with Representative Shultz that it would be beneficial to have clear statutory authority to issue permits for existing trapping cabins on state land, but we do continue to question whether the issuance should be mandatory and at the direction of the fish and game advisory board. Last year another member of the House Resources Committee drafted possible amendments to the existing trapping cabins law that would have provided clear authority to permit existing trapping cabins and would have satisfied our concerns about the language in the bill before you, but would not have met

Representative Shultz's desire to see mandatory permit issuance based on local fish and game advisory board approval. I am attaching a copy of that proposed amendment as it came to us.

Shorefishery Leases

The shorefish lease program is different from the proposed and existing trapping cabin programs largely in that it conveys an exclusive interest in land rather than a permitted use of improvements. In fact, the construction or use of improvements on shorefish leases is not allowed unless authorized under other law or permit.

I appreciate the attention that you and other Committee members have given this bill. As I stated in a letter to you last week, the department can accept Representative Shultz's bill as it passed the House because it provides us the ability to deny permit applications where resource management conflicts exist, but refinement and improvement of the current bill would probably be beneficial and might prevent the department from having to rely too heavily on regulations to implement the trapping cabin permitting program.

Sincerely,

Esther C. Wunnicke
Commissioner

Attachments

cc: Senate Resources Committee members
Representative Shultz
Representative Wallis
Representative Pourchot
Representative Clocksin
Commissioner Collinsworth
Jim Ayers
Molly McCammon

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 281 (RESOURCES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to trapping cabin permits."

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

* Sec. 1. AS 38.95.080(a) is amended to read:

(a) The commissioner may issue a nontransferable permit for the construction or use of a trapping cabin on state land to a person who meets the following qualifications:

(1) the person must have an established trapline with proof of regular use;

(2) the person must have a trapline of sufficient length to justify the use of the cabin for trapping <NEED FOR CABIN CONSTRUCTION>.

January 15, 1986

The Honorable Arliss Sturgulewski
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

I am writing to provide comments to the Senate Resources Committee on CSHB 281 (Resources) am, relating to Trapping Cabins on state land.

As it passed the House last session the bill requires that, except where a resource management conflict exists, the commissioner shall issue a nonexclusive, nontransferable permit for the use of a trapping cabin. The department finds this amended language sufficient to provide the necessary discretion for sound resource management.

Because the details of the permitting program are not provided in statute, the department will adopt regulations to establish terms and conditions such as length of permit term, conditions of revocability, and the nature of resource management conflicts which would require denial of an application.

Sincerely,

Esther C. Wunnicke
Commissioner

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT
323 East Fourth Avenue
Anchorage, Alaska 99501

APPLICATION FOR TRAPPING CABIN CONSTRUCTION PERMIT AS 38.95.080

ADL #_____

Date of Application_____

Filing Fee $50.00

(Please Print)

1. Name of Applicant_____
2. Address of Applicant_____
3. Does applicant have a current trapping license? _____.
4. If question 3 is answered yes, give trapping license number _____
5. Has applicant regularly used an established trapline? _____.
6. If question 5 is answered yes, adequate evidence of regular use of the trapline must be attached to application (such as tax returns, receipts showing previous income derived from trapping, statements by witnesses or Fish and Game officers, and similar documents.)
7. General location of trapline_____ _____. Attach a United States Geological Survey Map (1:63,360 scale) or its equivalent showing location of trapline and proposed cabin site(s).
8. Length of trapline_____. Frequency of proposed cabins approximately____miles. Proposed means of transportation_____.
9. Number of cabin(s) applied for (maximum 3). _____
10. Declaration of purpose and need for each cabin. _____ _____ _____.

NOTICE TO APPLICANT

A. This application will not be considered unless it is accompanied by a single nonrefundable filing fee of $50.00 and the first annual permit fee of $10.00. The permit fee will be refundable if the permit is not issued. All checks are to be made payable to the Department of Revenue, State of Alaska.

B. Application will be accepted for proposed trapping cabins located only on vacant, unappropriated, unreserved patented and tentatively-approved state general grant land which is unclassified, or is classified agriculture, grazing, commercial, industrial, private recreation, residential, utility, or open-to-entry. No application will be accepted for a cabin which is within two miles of an existing trapping cabin or site, or within 10 miles of a road. No more than 3 cabins may be permitted to a qualified individual.

C. The applicant agrees to assume full responsibility for forest fire prevention within the cabin structure and an area within 150 feet of it, and full liability for any damages resulting from his negligence. The applicant further agrees to comply with the provisions of AS 38.95.080 and 11 AAC 94.010-.110, which he has read and understands.

IN WITNESS WHEREOF, the undersigned applicant certifies that the statements, evidence, and representations appearing herein and attached hereto are to the best of his knowledge true and correct, and that the conditions of eligibility and issuance of a permit are binding upon him.

_____
Signature of Applicant

UNITED STATES OF AMERICA)
State of Alaska)

THIS IS TO CERTIFY that on this_____day of _____, 19____, before me, the undersigned, a Notary Public in and for the State of Alaska duly commissioned and sworn, personally appeared_____to me personally known to be the person described in and who executed the foregoing instrument and the said person acknowledged to me that he signed and executed the same freely and voluntarily for the uses and purposes therein mentioned, and that the statements contained therein were true and correct to the best of his knowledge.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

_____
Notary Public in and for the State of Alaska
My commission expires_____

10-165 3/78

Trapping Cabin Construction Permit

To facilitate rapid processing of your application, please be sure your application is accompanied by:

1. One USGS (preferably 1:63,360 scale) map showing trapline and proposed cabin sites.

2. $100.00 filing fee.

3. Valid state trapping license (we will photocopy).

4. A completed, signed, and notarized application.

5. Proof of regular use of established trapline.

Primary proof:

Tax returns claiming income from furs,
Receipts from fur buyers showing date, quantity, type,
Receipts from fur tanning,
State ADFG biologists or protection officers statements,
Sealing certificates.

Supplementary proof:

Air charter receipts for travel to remote portions of trapline,
Statements by witnesses.

SUMMARY OF HB 281

The purpose of this legislation is to enable trappers who have been using existing trapping cabins to continue to be able to do so.

This legislation is not intended to deal with existing law concerning trapping cabin construction permits as found in AS 38.95.080.

The requirements of the applicant have been drafted to provide assurance to the commissioner that the cabins being applied for are bonafide trapping cabins used on a temporary basis by a specific individual.

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Representative Dick Shultz, Co-Chair
Representative Adelheid Herrmann, Co-Chair
Members of the House Resources Committee

FROM: Scott A. Burgess
Executive Director

DATE: April 2, 1985

SUBJECT: HJR 24 - OCS Revenue Sharing

THe Alaska Municipal League supports HJR 24 relating to sharing federal revenue generated from the development of the Outer Continental Shelf (OCS).

At its annual business meeting on November 17, 1984 the membership of the Alaska Municipal League again expressed its support of the program by endorsing enactment by the United States Congress of an OCS Revenue Sharing Program to be funded annually from the proceeds of the oil and gas lease sales on the OCS at the level of at least $300 million. The League further endorses an automatic pass-through of at least one-third of a state's allocation under such a program directly to communities affected by OCS activities. And the League endorses the concept that a state's and community's allocation of OCS Revenue Sharing funds be used for coastal planning and preparation, resources protection programs, construction of capital infrastructure resulting from OCS activity and health and social service needs resulting from OCS activity.

March 27, 1985

Esther C. Wunnicke, Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Commissioner Wunnicke:

You can consider this the appeal for my trapping cabin permit on Billy Creek. I feel that this was denied wrongly because I have met the requirements of AAC 941010/3 which pertains to this permit.

In response to the Director's comments in the first paragraph of his decision, Joe Pinto in the Fairbanks office suggested that I drop Dave Sowards' name since he had trapped with me for just one year.

As to the disqualifying of my evidence of operating an established trap line for the last 15 years, I have submitted all of the evidence I can come up with and firmly believe I have met the requirements of the State law. The second cabin site was applied for at the same time as the first with a map of my trapping locations on the Robertson River which is on file at the DNR office in Fairbanks.

The cabin is a prefabricated building about 8 feet by 15 feet that I used as a gas shack at the airport at Tanacross until I no longer had a use for it.

I am not familiar with the ADF&G study done for the Tanana Basin Area Plan but, having used an airplane to trap for most of my adult life, consider myself an expert in the field. I believe an airplane trapper is much more at the mercy of the elements and every airplane trapper I know checks traps every week, including myself.

At the end of the Director's Decision, it would appear that he is challenging my judgment as a pilot as to the areas I am willing to operate my airplane with supplies of traps and fuel. I am an Airline Transport Rated Pilot and, once again, feel I am the expert in the field and will operate off the lake with the biggest margin of safety.

I did provide transportation for the two men who constructed the cabin at T Lake in exchange for their labor but this had nothing to do with use of this cabin.

In conclusion, it has become more than obvious that the other applicant at T Lake is the State Representative that has provided the information that I consider to be ambiguous. If he can prove that I am not eligible, he will construct a cabin on the site that he has actively hunted during September for at least four years. I have never hunted T Lake and have no plans to do so.

Respectively,

Charles Warbelow

CW:jsj - Enc.
cc: Richard Schultz

Charles M. Warbelow
Post Office Box 93
Tok, Alaska 99780

Tom Hawkins, Director
Division of Land and Water Management
Pouch 7-005
Anchorage, Alaska 99510

August 12, 1984

re: Trapping Cabin Construction Permit (TCCP) ADL 410865

Dear Mr. Hawkins:

I would like to submit this letter and the enclosed documents as my appeal for my trapping cabin permit application which was denied by Jerry Brossia per his letter of July 3, 1984.

I have a need for a cabin in Billy Creek as it is near the midpoint of my trap line. I picked T-Lake because it is the only lake in the area that is big enough to operate out of with any kind of load in the airplane with which I trap. For several years I have trapped from my airplane, landing on lakes and snow-covered flats in the 40-Mile country and many of the lakes in Billy Creek and parts of the Robertson River.

I started trapping Billy Creek in the late '60's with my father, Marvin Warbelow, and have trapped it consistently since 1980. I have had different partners over the years and make an arrangement with them to skin and stretch the furs. As a result, I am not the person who actually receives payment from the fur buyers. This has caused a problem in showing receipts. I do have some for last year with a copy of the cancelled check issued by my partner to me, but of course have not been able to do this with past years and partners. Also, over the past three years I have been trading my fur for lynx pelts with which to build coats.

With regards to the complaint from the Fairbanks office to my trapping on Doyon land, I would attempt to seek approval from Doyon to trap these areas or pull out of them as they are by no means prime areas. With regards to the other applicant on the lake, we have discussed our mutual problem and the facts that we are separated by the lake and employ different methods of trapping (he traps on foot). We have not had a conflict and do not foresee one. I would not object to sharing a cabin with him.

It was also mentioned that some of my trapping areas might be included as a selection under the Wild and Scenic Rivers Act. According to Bob Burritt of the 40-Mile Area Bureau of Land Management Office, there are some studies going on, but the West Fork of the Dennison River, Mosquito Fork, Billy Creek

or any portion of the Robertson River are not currently being considered by either the federal or state government, and he does not anticipate their future consideration.

I have lived in the Tok area for 28 years and have trapped my line of over 50 miles for 15 years and am looking forward to having some comfortable shelter on this line due to the short winter days and inclement weather. When you trap with an airplane, you are more at the mercy of the weather than with any other type of transportation. I have spent several nights over the years waiting all night on a lake or river when the weather has deteriorated while I checked my traps. The location of T-Lake may make it feasible to reach suitable shelter even if I am not able to return home.

Thank you for your consideration.

Sincerely,

Charles Warbelow

enclosures

STATEMENT OF DONALD W. BUNSELMEIER, FISH AND WILDLIFE PROTECTION OFFICER, DELTA JUNCTION, AK.

I HAVE PERSONAL KNOWLEDGE OF RONALD STEWART HAVING A TRAPLINE IN THE UPPER BILLY CREEK AREA NEAR T LAKE. RONALD STEWART HAS BEEN A RESIDENT OF THE DELTA JUNCTION AREA FOR ALMOST 6 YEARS. HE HAS BEEN USING THE UPPER BILLY CREEK AREA FOR THE LAST 2-3 YEARS. STEWART HAS DEVELOPED 3 SMALL TRAPLINES, EACH TAKING A DAY TO WALK. HE HAS BEEN STAYING NEAR T LAKE IN A WALL TENT. STEWART IS FLOWN INTO T LAKE AND STAYS FOR A WEEK OR TWO AT A TIME.

I HAVE WORKED IN THE DELTA AREA FOR ALMOST 6 YEARS AND HAVE BEEN VISITING T LAKE AND THE UPPER BILLY CREEK AREA FOR 5 YEARS. THERE ARE TWO OLD CABIN SITES OVER THERE, BOTH BEING OVER 3 MILES FROM RON STEWART'S PROPOSED CABIN SITE. THE ONLY EVIDENCE I HAVE SEEN OF OTHER TRAPPERS IN THAT AREA ARE FROM FISH AND GAME STUDIES AND KILLING OF WOLVES WITH AIRPLANES.

Donald W. Bunselmeier

DONALD W. BUNSELMEIER
P.O. BOX 465
DELTA JUNCTION, AK. 99737

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF LAND AND WATER MANAGEMENT
NORTHCENTRAL DISTRICT OFFICE - 4420 AIRPORT WAY, FAIRBANKS, ALASKA 99701

TO: Jerry L. Brossia
District Manager

DATE: July 13, 1984

FILE NO: ADL 411294

THRU: Rick Smith
Chief, Retained Lands Section

TELEPHONE NO: 479-2243

FROM: Joe Pinto
Natural Resource Officer
Retained Lands Section

SUBJECT: Ron Stewart's TCCP Application

Don Bunselmeier came into the office today on Ron Stewart's behalf to inquire into the status of both Stewart's and Walbelow's (TCCP application ADL 410865) applications on T. Lake.

Don gave me a copy of a list he had generated from official Fish and Game records illustrating wolverine, lynx and wolf takes from the Billy Creek and T. Lake areas. Don stated that Walbelow had contacted Stewart about the situation at T. Lake.

I stated to Don that I had drafted another letter to Stewart asking for more evidence of regular use of his trap line because I only had receipts for 1983. (I have not sent the letter as of the date of this memo). I explained that Stewart's application may be denied if he could not prove use beyond one year.

Don stated that they had only the one year's proof and if the permit was denied based on lack of proof (in terms of length of use) that would be acceptable to them and they would work to continue to trap and provide proof for as long as it took to acquire the permit. They are currently using a wall tent and platform.

Recommendation:

The Retained Lands Section recommends that Stewart's application be held for one year so the applicant can establish regular use. It is clear that Mr. Stewart has trapped on a regular basis for the last year or so and derives a portion of his income from it.

District Managers Comments:

I concur JLB.

to · Rick Smith

6-5-84

Fr. Jerry Brossia

Re: Bunselmeier/Steward TCCP

Please have one of your staff go down to "T" lake and check out the trespass cabin that Bunselmeier F/G says is being built. If the cabin owned by the other applicants we need contact them w/ trespass notice. Please do before 30 June 84. You should be able to use DOF chopper in B-Delta ~~Since~~ After we check out the trespass I'd proceed to issue the above TCCP as Doyon appears to have no objections; and they're dropping the line on private property.

If we have 2 valid application for the area we should not put them in the same cabin. I'd like at least a (2) mile separation.

thanks

JB

Jerry Brossia

I talked to you this last winter at the Pilot seminar in Fairbanks about this application for the trapping cabin construction permit. I know I wonit get to stay in Delta for to many more years and since Ronald Stewart and I have used this area together I felt it best if he filled out the application. He will be able to fulfill the conditions of the permit by trapping out there at least every other year.

Any other details on information needed give me a call or write.

Thanks

Donald W. Bunselmeier
P.O. Box 465
Delta Jct Ak. 99737
907-895-4830

RECEIVED
JUL 28 12 51 PM '03
DIVISION OF LAND
MANAGEMENT

May 31, 1984

RECEIVED
DIVISION OF LANDS
'84 JUN -4 PM 3 00
FAIRBANKS

Jerry L. Brossia
District Manager
Department of Natural Resources
4420 Airport Way
Fairbanks, Alaska 99701

Dear Mr. Brossia:

Per our telephone conversation and letter correspondence Ronald W. Stewart is resubmitting his Application for a Trapping Cabin Construction Permit accompanied by a check for $100.00 and a letter of non-objection to this proposed cabin site from Doyon, Limited.

The other two private lands indicated on the copy of the map are requested native allotments by a Reka Paul and Julius Paul of Tanacross. They have requested several allotments but have not been granted any. These individuals indicated they used this area to trap muskrat and fish in the 50's and early 60's. One of their requests was moved to another area which is marked on the carbon copy of the map in pencil.

Mr. Stewart has plans to alter his trapline to where it does not enter any private or proposed private lands. He has been unable to contact the Pauls and with his moving his trapline wonders if it is still necessary.

Sincerely,

Donald W. Bumsedmeier

P.O. Box 51
Delta Junction, Alaska
99737

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

NORTHCENTRAL DISTRICT
4420 AIRPORT WAY
FAIRBANKS, ALASKA 99701
(907) 479-2243

August 9, 1983

Ronald Stewart
P.O. Box 51
Delta Junction, Alaska 99737

RE: Application for Trapping Cabin Construction Permit

Dear Mr. Stewart:

The Northcentral District has received a letter from Donald Bunselmeier which included an application for a Trapping Cabin Construction Permit located in T.23N., R.8E., C.R.M., signed by you, along with your check in the sum of $60.00.

Before we can accept and adjudicate the application an additional $40.00 is required. A copy of the current regulations (amended 3/30/83) is enclosed for your information. Please note Section 10(b) which states an application must be accompanied by a nonrefundable combined filing and permit fee of $100.00.

Your proposed cabin site is approximately one-half mile from private property to the north and to the east. The entire township to the north of T Lake has been Interim Conveyed under #108 to Doyon Regional Corporation. On a xerox copy of the map you submitted showing your trapline, I have identified the private land. Two portions of your trapline are on private property.

Returned herewith is your check #437 and all material received, including your application. Should you decide to resubmit your application we recommend that you obtain letters of nonobjection from the private landowners to the effect that they do not object to you locating a cabin close to their property.

Please feel free to contact this office if you have any questions.

Sincerely,

JERRY L. BROSSIA
District Manager

By: Pamela C. Ledgerwood
Pamela C. Ledgerwood
Natural Resource Officer
Retained Lands Section

Enclosures

cc: Donald Bunselmeier

MEMORANDUM

State of Alaska

TO File

DATE 8/9/83

FILE NO 2370

TELEPHONE NO

FROM Pam Ledgerwood

SUBJECT TCCP apln - Stewart

452-2114 ext 246

Don Bunselmeier called to find out status of Stewart apln. I explained that I was returning the apln with a letter of explanation — we discussed the new regs. and the problem of Stewart locating so close to private property. Bunselmeier or Stewart will call if they have questions after Stewart receives my letter.

HB
286

Introduced: 3/13/85
Referred: Resources and Finance

BY KOPONEN, M.M. MILLER, SUND, GOLL, MARTIN, UEHLING AND JENKINS

IN THE HOUSE

HOUSE BILL NO. 286

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to access ~~to~~ survey requirements for state land intended for disposal and to the description of the land."

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

* Section 1. AS 38.04.045(b) is amended to read:

(b) Before the conveyance of surface rights to state land, an official cadastral survey shall be accomplished, unless a comparable, acceptable survey exists that has been conducted by the federal Bureau of Land Management. The rectangular survey section corner positions shall be monumented and shown on a cadastral survey plat approved by the state. [HOWEVER, FOR THOSE AREAS WHERE THE STATE MAY WISH TO CONVEY SURFACE ESTATE OUTSIDE OF AN OFFICIAL CADASTRAL SURVEY GRID, THE DIRECTOR MAY WAIVE MONUMENTATION OF ALL INDIVIDUAL SECTION CORNER POSITIONS AND SUBSTITUTE AN OFFICIAL CONTROL SURVEY WITH CONTROL POINTS BEING MONUMENTED AND SHOWN ON CONTROL SURVEY PLATS APPROVED BY THE STATE. NO PORTION OF LAND TO BE CONVEYED MAY BE LOCATED MORE THAN TWO MILES FROM SUCH A SURVEY CONTROL MONUMENT EXCEPT THAT THE COMMISSIONER MAY WAIVE THIS REQUIREMENT ON A DETERMINATION THAT TOPOGRAPHIC FEATURES, DIFFUSE SETTLEMENT, OR THE PUBLIC INTEREST DO NOT JUSTIFY THE REQUIREMENT.] The lots and tracts in state subdivisions shall be monumented and the cadastral survey and plats for the subdivision shall be approved by the state. Where land is located within a municipality with planning, platting, and zoning powers, plats for state subdivisions shall comply with local ordinances and regulations in the same manner and to the same extent as plats for subdivisions by other

landowners. State subdivisions shall be filed in the district recorder's office. The requirements of this section do not apply to land made available through a cabin permit system, material sales, or short-term leases; however, for short-term leases the lessee must comply with local subdivision ordinances unless waived by the municipality under procedures specified by ordinance.

* Sec. 2. AS 38.09.010(b) is amende to read:

(b) The commissioner shall complete a cadastral survey of homestead entry state land under AS 38.04.045 before disposing of state land for homestead entry. A homestead entry parcel shall be established in aliquot parts of a surveyed section or as lots or tracts that are fractions of aliquot parts of a surveyed section. The commissioner shall ensure practical access to each homestead entry parcel [BUT THE COMMISSIONER MAY WAIVE THE CADASTRAL SURVEY ON A DETERMINATION THAT TOPOGRAPHIC FEATURES, DIFFUSE SETTLEMENT, OR THE PUBLIC INTEREST DO NOT JUSTIFY OR REQUIRE THE CADASTRAL SURVEY].

* Sec. 3. AS 38.09.020(a) is amended to read:

(a) A homestead entry permit entitles an applicant to enter land within an area designated under AS 38.09.010 and to [SURVEY,] occupy [,] and improve the land in order to qualify for a patent under this chapter.

* Sec. 4. AS 38.09.040(a) is amended to read:

(a) A homestead entry permit may be revoked by the commissioner for any substantial breach of the permit conditions or the requirements of this chapter, including

(1) an assignment, conveyance, or transfer of the permit not authorized under AS 38.09.030(c);

(2) failure of the permit holder to submit an aliquot parts description of the homestead entry [A PLAT OF SURVEY] to the

commissioner within two years after the issuance of the permit or under (b) of this section;

(3) failure of the permit holder to erect a dwelling in the time required under AS 38.09.050(a), except that if the commissioner finds that the dwelling has been nearly completed and progress toward completion is being made at the expiration of the time required, the commissioner may extend the time required for completion for not more than one year;

(4) failure to brush the boundaries of the land within 90 days after issuance of the homestead entry permit;

(5) failure to clear and either put into production or prepare for cultivation 25 percent of the land classified for agricultural use within five years after the issuance of the permit.

* Sec. 5. AS 38.09.050(a) is amended to read:

(a) The commissioner shall issue a patent to homestead entry land if the permit holder

(1) resides and lives on the homestead entry land for not less than 25 months within five years after the issuance of the homestead entry permit;

(2) <u>submits an aliquot parts description</u> [COMPLETES AN APPROVED SURVEY] of the land within two years after the issuance of the permit or under AS 38.09.040(b);

(3) erects a habitable, permanent dwelling on the homestead within three years after the issuance of the homestead entry permit;

(4) brushes the boundaries of the land within 90 days after the issuance of the permit;

(5) clears and either puts into production or prepares for cultivation either 25 percent of the land classified for agricultural use or 50 percent of the land having class II or III soils, whichever

is less, within five years after issuance of the permit.

* Sec. 6. AS 38.09.040(b) is repealed.

1/27

COMMITTEE REPORT

HOUSE

(9)

FURTHER: FINANCE

3/13/85

Date: 1/22/86

The Committee on RESOURCES has had HB 286

"An Act relating to access to state land intended for disposal and to the description of the land."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 784 (Res) [ ] same title [✓] new title

and recommends do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[✓] Zero Fiscal Note Attached w/ original Sup #76

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
	Harrold Herrmann No Rec
Cato	Herrmann
Pearce	Ken Wallis no rec
Jankins	Wallis
Thompson	
Miller(NP) M.W. Miller	
Shultz	
Sund	

Co-CHAIRMAN Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 286

Title : An Act relating to access to State land intended for disposal and to the description of the land.

Sponsor : Koponen, M.M.Miller, Sund

Requestor : Goll, Martin, Uehling, Jenkins

Date of Request : 1/16/86

FISCAL DETAIL

Agency Affected : Natural Resources

BRU : Information/Records Mgmt.

Components : Information/Records Mgmt.

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Survey appropriations for land offerings currently are funded annually by the Legislature. The effect of this bill would be felt in 2 to 3 years by the reduction of operating budgeted State employees and expenditures currently required to administer the long-term effects of other types of survey monumentations.

Prepared by : Joseph C. Burch Phone : 762-2400

Division : Technical Services Date : 1/17/86

Approved by Commissioner : [signature] Date : 1/22/86

Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

GLOSSERY OF TERMS

CADASTRAL SURVEY: has particular reference to extensive rural land surveys made for the purpose of locating property lines and improvements in detail, primarily for use in connection with value, ownership and transfer of land.

ALIQUOT: contained an exact number of times in something else, used of a divisor or part,(5 is an aliquot part of 15), to divide a quantity into equal parts.

METES AND BOUNDS: the boundaries of land established by reference to natural or artificial monuments along it(as a stream, ditch, ridge, or road) as distinguished from those established by beginning at a fixed point and running therefrom by stated compass courses and stated distances.

TOWNSHIP: a unit of land in the U.S. land survey, six miles square, containing 36 mile-square section.

MONUMENTS: a physical arifact of the surveyor's work, a boundary marker,usually a brass capped metal pipe.

Alaska State Legislature

Representative Niilo Koponen
District 21, Democrat

S.R. 10059
Fairbanks, Alaska 99701
479-6782

Pouch V
Juneau, Alaska 99811
465-4992

MEMORANDUM January 18,1986

SUBJECT: Sectional Analysis, HB 286

TO: House Resources Committee

FROM: Doug Yates, staff to Rep. Koponen

Re: AS 38.04.045(b), rectangular survey section corner positions will be monumented and shown on a plat prior to conveyance of surface rights to state lands. Metes and bounds surveys tied to control monuments will no longer be allowed.

Re: AS 38.09.010, homestead entry parcels will be aliquot parts of sections monumented in accordance with AS 38.04.045(b), except when practical and legal access exists adjoining a boundary or through a designated route. Such access would include public roads created in platted subdivisions. Access to aliquot parts parcels is insured by AS 38.04.050.

RE: AS 38.09.020, since section corner positions will be monumented and platted prior to conveyance (AS 38.04.045(b)), and homestead entry parcels will be aliquot parts of those sections (AS 38.09.010), the State should not require an applicant to survey the land. The aliquot parts description of the monumented section provides a complete description of each unique parcel, with no encumbrance of surrounding lands.

RE: AS 38.09.040(a)(2), an aliquot parts description of the homestead entry, along with the plat prepared in accordance with AS 38.04.045(b), will eliminate the need for a plat of survey prepared by the permit holder

RE: AS 38.09.040(b), since a plat of survey would not be required, the need for the time extensions to complete the plat of survey is eliminated.

RE: AS 38.09.050(a)(2), again, the aliquot parts description of a parcel within a monumented and platted section eliminates the need for an applicant to obtain an approved survey for issuance of a patent.

DY/dy

Representative Koponen's Position Paper HB 286

HB 286 is a measure that will implement proven land management goals in regard to the continuing disposal of State lands to Alaskan citizens.

In the past land disposals were made without the benefit of boundaries being monumented and identified on the ground. In the name of expediency and false economy land was released with no regard to a proven identification system that has been in use in the Federal system for 200 years.

This system is the cadastral rectangular land survey which allowed any parcel to be readily identified, plotted accurately on status maps, and virtually eliminated boundary disputes. Federal law prescibes that all public domain lands will be physically surveyed and monumented in conformance with the rectangular survey and aliquot part syustem prior to disposal. This cadastral system has been followed in all public domain states except Alaska.

The rectangular cadastral system is understood by surveyors, title companies, lending institutions, recording offices, attorneys, and most citizens. It is the backbone of all land record systems and has procedural manuals adopted and in place.

What is occuring in Alaska however, is a system of metes and bounds, the least desirable of all possible land identification systems. It creates a patch-work of oddly shaped and irregularly adjoining parcels to which access and intelligent utility distribution is next to impossible. It creates slivers of unclaimed State land that become worthless to the citizens of the State. It is expensive and difficult to survey accurately, creates voluminous land records, and makes it impossible to plot parcels correctly on a status map without a field survey and encumbers all residual land within a township until all applicant's parcels are surveyed.

For the new landowner under a system of metes and bounds the problems are just starting. He must shoulder the burden of having an adequate survey made in preparation of a legal description of the land. A legal description is necessary to obtain financing for improvements, and clear title from a tilte company. Boundary problems with neighbors often occur and the landowner may find no legal or practical access to the parcel.

HB 286 will eliminate these inequities and shortcomings. It will set in place a proven and recognized system of land identification that acknowledges the State's responsibility to carefully manage our lands slated for disposal. A law of parallel intent (HB 170 Chapter 32 SLA 85) for privately held lands is already in place.

JUSTIFICATION
AMENDMENTS TO AS 38

Sections AS 38.04.045(b) and AS 38.09.010(b) Requiring Cadastral Surveys and Aliquot Part Description

During the rewrite of the Title 38 legislation last year, the provisions allowing waiver of cadastral surveys and control surveys were considerably expanded over the belated opposition of the surveyors, mappers, and photogrammetrists in the State. These professionals' concerns appear to have been amply justified as the Division of Land and Water Management has subsequently distributed a draft of their implementing policy (attached). It, for all practical purposes, will allow nearly all disposals in the future to occur without prior survey whatsoever, ignoring the fact that history reveals settlement prior to survey creates many problems paramount to chaos. They are forgetting land boundaries must be monumented and identified on the ground in order for their own land managers to know what they are managing, that section line access right-of-ways are legally and practically useless without surveys, that a nightmare of cost, access, and boundary problems are being dumped on citizens who receive parcels, and that title to thousands of acres of residual State land becomes tainted and of no value for years. In the name of expediency and false economy they are abandoning a proven land identification system in favor of a system that is destined to bring chaos into the management of Alaska lands and disillusionment to the citizens who will obtain lands under the future disposal programs.

The State of Alaska is failing to observe and benefit from the experience of the United States Government and our sister states in this matter. Early in the history of our Federal Government it was recognized that a system must be adopted to not only transfer public lands into private hands, but to allow the recipient to physically identify his boundaries, assure access, protect him to the maximum extent from conflicts with neighboring properties, and provide a method of description to assure ease of conveyance, financing or other procedures. The resultant system was the rectangular land survey system which allowed any parcel to be readily identified, plotted accurately on status maps even without survey, eliminated the excess or deficiency in acreage problem, virtually eliminated boundary disputes and provided a single set of survey procedures for establishment. Federal law prescribes that all public domain lands will be physically surveyed and monumented in conformance with the rectangular survey system prior to disposal, acknowledging the fact that this was a governmental responsibility that should not be forfeited or passed to private entities. This system has been followed in all public domain states except Alaska.

The rectangular survey system has historical precedent of 200 years in the United States, is understood by surveyors, title companies, lending institutions, recording offices, attorneys, and most citizens, is utilized as the backbone of all land record systems and has procedural manuals already adopted and in place. It, however, is gradually being discarded in Alaska. In its place basically a metes and bounds system is being adopted, the least desirable of all possible land identification systems. This system is outlawed in most boroughs as a means of subdividing property, as they see first hand the problems it manifests. It creates a patchwork of oddly-shaped and irregularly-adjoined parcels to which access and intelligent utility distribution is next to impossible. It creates slivers of unclaimed State land that become of zero value to the citizenship of the State as a whole. It is expensive and difficult to survey accurately, creates voluminous land records, makes it impossible to plot parcels accurately on a status map without field survey and encumbers all residual land within a township (36 square miles or 23,040 acres) until all applicants' parcels are surveyed. It is the worst of all possible methods and should only in specific, exceptional cases be allowed to be utilized in the disposal of State lands.

The planners and land managers in the Division of Lands and Waters Management may feel comfortable in having small-scale, inaccurate, topographic maps in their hands to manage the lands in their jurisdiction. The individual or entity obtaining the lands, however, has little need or use for a map that only marginally represents his property's characteristics and provides no benefits in assisting him in identifying his specific parcel or legally describing its boundaries. It is at this point he suddenly finds the "cheap" land he obtained from the State to be a tremendously expensive parcel when the cost of an adequate survey and preparation of legal description is contemplated. The fact that he will usually seek and contract for this survey as an individual, instead of becoming the beneficiary of a vast survey of many thousands of acres as would be done in a State-performed survey, gives him no benefit whatsoever of economies of scale. He finds difficulty obtaining financing for improvements, runs into title problems with title companies, boundary conflicts with his neighbors, and often finds he has no legal or practical access. He becomes disillusioned, and, instead of the State having a citizen that is pleased with the State's stewardship of its natural resources, he instead feels he has been misled and tricked by his government.

In addition to the land recipient's problems, the surrounding public domain for years remains in a "no man's land," unable to be properly and accurately platted on a status map, and, as a result, preventing it from being utilized in any useful manner by private citizens or governmental agencies.

The State must face its responsibilities to its citizens. It must amend AS 38 to again require minimal cadastral surveys be performed prior to disposal and the aliquot part method be utilized to the maximum extent to convey ownership, especially to the larger homestead parcels. Our lands with their resources are of such value that the need for efficient land management far outweighs the cost of survey.

DRAFT POLICY
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT

Regional Offices may recommend the Commissioner waive cadastral survey requirements of homestead entry lands under AS 38.09.010(b) upon making one or more of the following findings:

Topographic Features:

The presence of features such as swamps or steep hills escalate the cadastral survey costs above the benefits to be obtained from such survey.

Diffuse Settlement:

The settlement pattern resulting from the State's proposed disposal program will result in private ownership of less than 30 percent of the land within the minimum rectangle encompassing the land to be disposed.

Public Interest:

1. The cost associated with a cadastral survey is greater than the direct benefit in increased land values that would accrue to the public from such a survey and the public benefit to be derived from the disposal is greater than the cadastral survey cost.

2. The time to complete a cadastral survey will significantly impact the State disposal program and the benefit from such survey does not equal or exceed the benefit from accomplishing the State's public interest land disposal goals.

Alaska Section
AMERICAN CONGRESS ON SURVEYING AND MAPPING
P. O. BOX 376
ANCHORAGE, ALASKA 99510

FISCAL IMPACT ANALYSIS RESULTING FROM PROPOSED AMENDMENTS TO AS

This paper presents an analysis by a joint Legislative Committee of the American Congress on Surveying and Mapping, Alaska Section, the American Society of Photogrammetry, Alaska Region and the Alaska Society of Professional Land Surveyors, of the cost impact to the State of Alaska if the proposed amendments to AS 38, as recommended by the professional groups, are passed. The analysis will show that the proposed amendments present little, if any, additional fiscal impact to the State while providing a broad range of short and long term benefits.

The fiscal impact data, as presented, was derived from an analysis of actual cost to the State during FY85 and includes direct survey costs relative to the disposal program and the cost incurred by the Division of Technical Services, Department of Natural Resources, to administer and technically monitor the survey projects. These costs are then extrapolated to determine acreage that can be surveyed under current proposed budgeting for FY86 and appropriate budget levels for surveying in future years.

During FY85, the State appropriated $3.5 million for surveys to expedite the State land disposal programs. These monies were expended in the following manner:

Function	Amount	Percent of Total
State of Alaska personnel administering and technically monitoring the survey projects	$ 423,000.00	12.09%
Travel (by State employees)	20,000.00	00.57%
Commodities (expendable supplies furnished by State of Alaska)	10,000.00	00.29%
Equipment (purchased by State of Alaska for internal use)	14,000.00	00.40%
Professional survey contracts (to accomplish the required field and platting procedures)	3,032,700.00	86.65%
Totals	$3,500,000.00	100.00%

Of the above, approximately half was utilized to conduct rectangular cadastral surveys similar to those which would be required under the proposed legislation. The remainder was utilized to perform small lot subdivisional and control surveys. These small lot surveys are now being phased out in favor of the larger parcel homestead program and the control survey would be generally eliminated by the proposed legislative amendments. The majority of future appropriations, therefore, would be available to conduct the recommended rectangular cadastral surveys.

To determine the current cost of performing rectangular cadastral surveys similar to those that would be required under the Title 38 amendments, we utilized contracts awarded by the Division of Technical Services, Department of Natural Resources, State of Alaska, during FY85 as historical data. The projects analyzed consist of the following, all of which were awarded during the study year.

FY85 Rectangular Cadastral Surveys

Project	Contracting Firm	Contract Cost	Gross Acreage	Per Acre Cost
Kobe/Clear Sky	Stutzmann Engineering	$206,500	9,210	$22.42
Two Mile Lake	Laurence Irving	25,900	2,504	10.34
Willow Creek	Silvers Engineering	23,800	1,160	20.52
Cosna	Roen Design	289,700	17,920	16.17
Southwind/Windy	ABC	221,000	10,000	22.10
Homer	Branch/Sharp	65,000	2,480	26.21
Talkeetna Foothills	Max Stevens	139,900	5,760	24.25
Cannery Creek	Quadra Engineering	318,900	13,856	23.02
South Bank	Itech	157,000	6,834	22.97
		$1,447,500	69,724	$20.76 avg

From the above historical data, it becomes apparent the average per acre cost for rectangular cadastral surveys as performed during FY85 was $20.76 per acre. To this must be added an overhead percentage of 13.35% to reflect personnel, equipment, commodities and travel costs of the Department of Technical Services resulting in a historical total cost per acre surveyed of $23.53.

The Sheffield Administration has proposed funding for surveying activities during FY86 relative to the land disposal program in

the approximate same amount as FY85 ($3.5 million). Based upon historical data, it is clear that if this funding was utilized 100% to perform cadastral rectangular surveys, a total of 148,746 acres could be surveyed. As the stated goal of the administration is to dispose of 35,000 acres during FY86, it is also clear that approximately 4.25 times the stated goal could be surveyed. In other words, only 23.53% of the land surveyed must be disposed to meet the target goal. If 23.53% of the acreage of the lands surveyed are not suitable for disposal, we feel there is a land selection and management problem as lands that obviously have little potential for disposal are being targeted for survey.

It should also be noted that the FY85 projects utilized to develop historical costs involved not only setting section corners, as would be required by the proposed legislation, but also quartner corners, effectively doubling the field monumentation. All of the projects also required brushing section lines, not required by the legislation, but a useful function serving the needs of both the potential entryman and land managers in the future. These lines greatly simplify the identification of land boundries on the ground. The projects represent a good cross section as to location, difficulty and accessibility. Due to the quarter corner monumentation requirement, it can be fairly stated that the above projects represent a "worst case" cost scenario. In the future, rectangular cadastral projects can likely be done for less per acre cost.

If the rectangular cadastral survey program were adopted as an ongoing program, larger size projects could be awarded, allowing for economies of scale to reduce the per acre cost considerably. Moreover, if past experience is an example, once the surveying industry recognizes that the rectangular system will be adopted as State policy for the long term, it will invest in capabilities allowing it to perform such surveys more efficiently, hence lowering the cost even further.

Any proposed legislation should be viewed in terms of not only what is possible today, but what will be possible in the near future. Long term historical data shows that the cost per acre for cadastral surveys has decreased dramatically over the last ten year period, mainly due to the rapid advancement of new technologies, greater use of modern transportation and the

development of innovative techniques. Greater advances are expected in the next two to five year period. The Global Positioning System (GPS) technology will become widely available during this time frame, likely reducing the cost of rectangular cadastral surveys by a factor of 25% or more. Legislation should be in place to take advantage of this rapidly developing technological progress.

If State provided rectangular surveys to section corner level were mandated and the State enacted the accompanying provisions of the amendment allowing aliquot part described lands to be patented to the entryman without further survey, additional savings in other administrative monies would accrue to the State. An officially adopted procedural manual for surveying the section into aliquot part parcels already exists. Therefore, the need for providing individual survey instructions for each entryman's survey, as is currently done, would be eliminated. In addition, the need for technical monitoring and checking of these individual surveys could be eliminated. This would allow considerable savings in personnel costs to administer the disposal program. Similarly, the State record keeping system would be less costly due to simpler and less voluminous property legal descriptions.

The reduction in cost to individual applicants should also be considered. Adoption of the proposed legislation would allow patent to be issued to the individuals without further survey activities by the State or the applicant after the rectangular survey is completed. Not only could title be transferred to the applicant, but it would be good marketable title, recognized by banks, title insurance companies and totaly acceptable for all related land transactions. Only if the applicant deems it necessary, at his own time, convenience and expense would further surveys be undertaken. Such surveys would be far less expensive than those presently required of the applicant to secure title from the State. Any such survey, totally funded and at the discretion of the entryman, would also have the side benefit of at least partially defining all other parcels within the section, whether in private ownership or remaining in State ownership. Thus, all such privately funded surveys would provide for multiple benefits and savings. In the present control survey and metes and bounds method often used, each survey stands alone and provides little mutual benefit or savings. The absence of a rectangular survey also adversely impacts the

title to remaining lands in a township, as the location of the metes and bounds survey (by section) is indeterminate until the sections are surveyed. This very condition is causing delays in transfer of title of federal lands due to the presence of metes and bounds U.S. surveys for native allotment, headquarters sites and homesteads within townships not subdivided into sections by rectangular methods.

It is not the intent of this committee to recommend or encourage the rectangular survey of all State lands. Obviously, the majority of lands in or coming into State ownership are of such character, remoteness or potential use as to totally eliminate the need for any surveys whatsoever except, perhaps, for surface mapping purposes. That small percentage of lands, however, that may be suitable for disposal should be carefully inventoried, priortized as to suitability for disposal and an ongoing rectangular cadastral survey program should be required as a matter of State policy. A minimal funding level should be allocated annually allowing a reservoir of lands to be always available, surveyed to the section boundary level, to be utilized to meet disposal needs as may arise to satisfy the needs of Alaska residents in the future.

Based on the historical data presented and the probable cost per acre for rectangular surveys in the future it appears that the current level of funding is sufficient to support this program if the lands for disposal are selected with reasonable care. The State should no longer spend substantial sums to address short term needs in a manner which creates greater future problems. The rectangular surveys, once completed, would serve many functions and be suitable for nearly any type of disposal program. The proposed legislation would allow for a more orderly disposal of Alaska lands over the longer period at much less cost and greater benefit to the entryman while simultaneously meeting the technical requirements for adequate land management and identification.

Respectfully submitted,

Clarence A. Herschbach

Alaska Section,
American Congress on Surveying
and Mapping

Ronald G. Cochran

Alaska Region,
American society of Photogrammetry

Robert D. K[illegible]

Alaska Society of Professional
Land Surveyors

HB

2087

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 287

Title: Approving royalty oil contract with GVEA

Sponsor:

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Oil and Gas

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400

Division: Commissioner's Office Date: March 5, 1985

Approved by Commissioner: Easton C. Wunnicke Date: March 5, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

REVISED FINANCIAL ANALYSIS HB 287

	Maximum Bbls. Per Day	Product Gal. Per Bbl.		Product Gal. Per Day (5,000 Bbl.)		Estimated MAPCO Markup		Estimated MAPCO Daily Gross Profit		Estimated MAPCO Annual Gross Profit	
		Revised	Original	Revised	Original	Revised	Original	Revised	Original	Revised	Orginal
GV Turbine Fuel	5,000	5.25	5.25	26,250	26,250	$0.017	$0.09	$ 446.25	$ 2,362.50	$ 162,881	$ 862,313
Other Products	5,000	9.45	11.18	47,250	55,900	$0.23**	$0.26	$10,867.50	$14,534.00	$3,966,638	$5,304,910
TOTALS		14.7	16.43	73,500	82,150			$11,313.75	$16,896.50	$4,129,519	$6,167,223

More Accurate Data
"Revised" 4/12/85

GVEA Estimated Savings Ranges From $889,000 to $1,345,000*

Percent of Estimated Profit to GVEA 21-1/2% to 32-1/2%

* Depending on where one assumes the amount of Amerada-Hess settlement will fall between zero dollars to $2.00 per barrel.

** Based on current posted rack prices.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

April 4, 1985

Commissioner Esther Wunnicke
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Commissioner Wunnicke:

The House Special Committee on Oil and Gas requests that the Department of Natural Resources amend the royalty oil contract with the Golden Valley Electric Association (GVEA) dated February 8, 1985, so that the contract will extend for a period of one year, rather than for ten years as is presently written.

This request is based on the committee's desire to maintain the financial benefit to GVEA's consumers that would be realized from this contract, and the committee's coincident belief that it is possible for this contract to be renegotiated in a manner that will be far more favorable to these same consumers.

It is therefore the intent of this committee that passage and ratification of CSHB 287 is premised upon the condition that this amendment be made to the February 8, 1985 contract.

Sincerely,

Representative Mike Davis
Chairman

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

POUCH 7-034
ANCHORAGE, ALASKA 99510

April 4, 1985

Marco Pignalberi
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Pignalberi:

As you requested, this letter responds to your concern that the Department of Natural Resources' ("DNR") January 16, 1985 Final Findings and Determination to Sell Prudhoe Bay Royalty Oil to Golden Valley Electric Association, Inc. contained an inexplicable factual error. This letter will explicate those concerns.

In that Finding DNR stated that approximately one-third (625 barrels) of GVEA's daily turbine fuel requirements would be provided at a discounted price to GVEA through the proposed disposal. GVEA Manager Burt Sharp noted at a recent House Oil & Gas Committee Hearing that at the time the Findings were prepared the DNR only had 1983 numbers. Mr. Sharp also noted that in his recent analysis of 1984 figures the barrels which would be provided at a discounted price to GVEA through the proposed disposal are now closer to one-half (983 barrels) of GVEA's daily turbine fuel requirement.

Although the contract contemplated a maximum quantity of 5000 bpd, as you can see by Attachment 1 (Exhibit B to the original GVEA contract), there are annual ceiling limits to this quantity, such limits expiring December 15, 1983. On December 3, 1980, GVEA gave notice to the State that they wished to commence taking 2,055 barrels per day of state royalty oil (1.096%), with deliveries commencing on June 17, 1981 (Attachment 2). The 2,055 barrels per day was the maximum GVEA could have taken at that time under the annual ceiling. On April 15, 1983 notification was sent to the producers at GVEA's request (See Attachment 3 - April 7, 1983 letter to Mike Kelly) increasing the maximum quantity to the 5,000 bpd authorized under the terms of the contract. Therefore, deliveries for 1983 to GVEA can be calculated as follows:

January 1 - July 31 @ 2,055 bpd X 212 days	= 435,660
August 1 - December 31 @ 5,000 bpd X 153 days	= 765,000
Total barrels	1,200,660

In 1984 deliveries were not subject to the annual quantity ceiling.

The amount of discounted turbine fuel provided to GVEA through the new contract will represent a larger proportion of GVEA's overall turbine fuel needs than DNR reported in its Findings. Measured as a proportion, the proposed contract will have an even more favorable impact on GVEA. However, this proportion does not affect the $550,000 annual benefit to GVEA or the per-kilowatt hour savings of between one and two-tenths of one percent as specified in DNR's January Findings.

If there is anything else I can help you with please do not hesitate to ask.

Sincerely,

Donna Wood Johnson

Donna Wood Johnson
Royalty Manager, Oil & Gas

DWJ/skt/3443s

EXHIBIT B

Attached to and Made a Part of the Royalty Oil Sales Agreement dated _____, 1977, Between GOLDEN VALLEY ELECTRIC ASSOCIATION, INC., an Alaskan Non-profit Corporation, "Buyer", and the Commissioner of Natural Resources of THE STATE OF ALASKA, acting pursuant to AS 38.05.183(d), "Seller", With Respect to Certain Royalty Oil Owned and Taken In-Kind by Seller Under the Leases Described in Exhibit "A", Covering Lands in the State of Alaska and Following the Herein Described Schedule of Delivery of Crude Oil.

SCHEDULE OF
DELIVERY OF CRUDE OIL

DATES			QUANTITY
From	To	(bbls/day)	(But not to exceed on an annual basis*)
December 15, 1977	December 15, 1978	2000	500,000
December 15, 1978	December 15, 1979	3000	750,000
December 15, 1979	December 15, 1980	3000	750,000
December 15, 1980	December 15, 1981	3000 ✓	750,000
December 15, 1981	December 15, 1982	5000	1,200,000
December 15, 1982	December 15, 1983	5000	1,200,000

*in barrels

Attachment 1

GOLDEN VALLEY ELECTRIC ASSOCIATION INC. Box 1249, Fairbanks, Alaska 99707, Phone 907-452-1151

December 3, 1980

Mr. Robert LeResche, Commissioner
Department of Natural Resources
Pouch M
Juneau, AK 99811

Dear Commissioner LeResche:

Pursuant to the conditions and terms of GVEA's agreement with the State of Alaska dated April 12, 1977 and as amended thereafter, GVEA gives notice to the State of intent to take receipt of 2,055 barrels per day of ANS royalty crude, an amount equal to 1.03% of State royalty crude. This notification shall continue until the expiration date of our agreement as it may be further amended unless notice is given by GVEA to the contrary.

This amount represents GVEA's total annualized allotment of royalty crude at this time.

I would like to request that the State waive the seven months notification provision to the extent that it is in the power of the State to do so.

Very truly yours,

R. L. Hufman
General Manager

RLH:es

ATTACHMENT

GOLDEN VALLEY ELECTRIC ASSOCIATION INC. Box 1249, Fairbanks, Alaska 99707 Phone 907-452-1151

December 3, 1980

Mr. Robert LeResche, Commissioner
Department of Natural Resources
Pouch M
Juneau, AK 99811

Dear Commissioner LeResche:

Pursuant to the conditions and terms of GVEA's agreement with the State of Alaska dated April 12, 1977 and as amended thereafter, GVEA gives notice to the State of intent to take receipt of 2,055 barrels per day of ANS royalty crude, an amount equal to 1.08% of State royalty crude. This notification shall continue until the expiration date of our agreement as it may be further amended unless notice is given by GVEA to the contrary.

This amount represents GVEA's total annualized allotment of royalty crude at this time.

I would like to request that the State waive the seven months notification provision to the extent that it is in the power of the State to do so.

Very truly yours,

R. L. Hufman
General Manager

RLH:es

Attachment

4880.14 E

April 7, 1983 .

Mr. Michael P. Kelly
General Manager
Golden Valley Electric
Association, Inc.
Box 1249
Fairbanks, AK 99707

Dear Mr. Kelly:

Thank you for your letter concerning a renewal of your royalty oil contract.

I will support extending your present contract for 5,000 b/d, for at least an additional five years. I am willing to consider a longer time period if you can make an adequate showing of the need for the longer commitment. I am also willing to remove the 1.2 million barrel annual limit which exists in your present contract.

I understand that Mark Wittow of my staff has provided you with a copy of our standard form contract. Please feel free to discuss particular provisions of the contract with Assistant Attorney General Robert Maynard, who can be reached at 465-3600. After you have had a chance to review the contract, I would recommend that you discuss it with Mr. Maynard and Mr. Wittow, since there are provisions of the standard form contract that may not be appropriate for GVEA.

We would plan to finalize a contract in time for submittal to the Royalty Board (see AS 38.05) by September, and to the Legislature for their review in January 1984. I understand that you would like to work out a back-up arrangement, to prevent an interruption of your taking in the period immediately following expiration of your present contract in July 1984. We will try to work out provisions to accomplish that, and I foresee no serious problems in doing so.

ATTACHMENT.

We are pursuing a contract renewal with GVEA because of the tangible benefits that will be provided to your customers, who will pay less for power with this contract, without reducing State revenues. I would appreciate your providing written documentation of the fuel savings that you will pass on to customers as a result of the contract, for inclusion in our administrative record.

We have initiated the work necessary to accomplish an increase in your taking under the existing contract to 5,000 b/d, as you have requested.

Please feel free to contact me, or my staff, if you have any questions.

Sincerely,

Esther C. Wunnicke
Commissioner

cc: Royalty Board
Robert Maynard
Kay Brown

Attachment

TESTIMONY

BY DIRECTOR, DIVISION OF OIL & GAS

TO HOUSE RESOURCES COMMITTEE & HOUSE SPECIAL COMMITTEE ON OIL & GAS

ON HB 287

ROYALTY OIL CONTRACT WITH GOLDEN VALLY ELECTRIC ASSOCIATION

MARCH 20, 1985

Thank you Mr. Chairman. For the record, I'm Kay Brown, Director of the Division of Oil and Gas for the Alaska Department of Natural Resources. With me is Assistant Attorney General Steve Porter. I appreciate this opportunity to discuss the proposed long-term royalty oil contract with the Golden Valley Electric Association, also known as GVEA.

Contract Terms

The proposed contract would sell about 2.6% of the state's daily royalty oil from Prudhoe Bay Unit -- currently about 5,000 barrels a day -- to GVEA for 10 years.

The contract price is the monthly volume weighted average of the producers' current reported netback prices, plus field costs, plus adjustments for the final outcome of the Amerada Hess litigation, plus a 30¢ premium, with a price reopener in July 1987 and every two years thereafter.

I would refer the committee to the one-page sheet of background information we have provided on SB 232/HB 287, which summarizes the major

provisions of the contract.

Background

Golden Valley Electric Association is a cooperative which generates electricity for sale to its members. It uses a variety of fuels to generate the electricity, including turbine fuel. Some of the turbine fuel GVEA purchases is refined directly from royalty oil purchased under the cooperative's present state contract. GVEA purchases additional turbine fuel directly from the Mapco refinery.

Under its present and former state royalty oil contracts, GVEA assigns the royalty oil to Mapco, which processes the oil at its North Pole Refinery and sells Golden Valley turbine fuel at a discount. The discount on those purchases amounts to about $550,000 annually in savings to GVEA. When measured from the consumer's perspective, this discount translates to a savings of about 1.5% on the average consumer bill.

History of GVEA Sales and Negotiations

I would like to briefly give the committee some history on the state's royalty oil sales with Golden Valley Electric Association. The first contract with Golden Valley was signed in April 1977, shortly after establishment of the Royalty Oil and Gas Development Advisory Board and the adoption of new statutory procedures governing royalty oil sales. Golden Valley did not commence taking under the contract until June 1981, when it began purchasing 5,000 barrels per day and assigning it to Mapco.

That contract expired in June 1984.

In November 1982, well in advance of the expiration of Golden Valley's original contract, GVEA requested a 10-year extension of the contract. No action was taken by the outgoing administration in 1982, and the new administration began negotiations with Golden Valley in March 1983. In November 1983, the department published a public notice of its intention to adopt a new contract with Golden Valley. The royalty board reviewed the contract in December 1983, and that review revealed specific concerns by both the public and the board members with respect to the state's option on residual oil and the relationship between Mapco and GVEA. In view of those reservations and the limited time for further negotiation, the long-term GVEA contract was not presented for legislative approval in 1984. Instead, an interim contract not requiring legislative approval was put into effect pending contract revisions responsive to the issues raised at the meeting of December 7, 1983. That interim contract expires June 30, 1985.

Intermittent negotiations were held on the proposed long-term contract during 1984. We had planned to complete negotiations so that approval legislation for the long-term contract could be introduced on the first day of the 1985 session.

Our timeline called for a preliminary contract and findings to be completed and a preliminary notice to be published in early October 1984. The final contract and findings were to be available November 16, 1984, Royalty Board review was scheduled for December 7, 1984, and approval

legislation was to be introduced on the first day of the session. Due to denomination deadlines, it was apparent to all the parties that if legislative approval did not occur by March 29, 1985, oil deliveries would have to be interrupted.

During September 1984, I informed Golden Valley and Mapco of the time pressure under this timeline, and had numerous negotiation sessions with representatives of both Golden Valley and Mapco. Draft agreements were exchanged, and we believed that agreement had been reached in early October 1984. However, at the conclusion of a negotiation session on October 9, 1984, Bert Sharp of Golden Valley stated his severe reservations about Golden Valley's liability for retroactive adjustments to the royalty oil price based on the Amerada Hess litigation. His primary objection was that as a regulated public utility, Golden Valley could only pass on to its customers retroactive adjustments for a one-year period. Amerada Hess adjustments for purchases older than one year could not be passed on to Golden Valley's customers, and would cause Golden Valley severe financial difficulty. Mr. Sharp proposed that the state charge an increased price premium but that it waive Amerada Hess adjustments. This price term offer was unacceptable to the state, and we suggested contract terms that would require Mapco to pay the Amerada Hess adjustments.

Negotiations stalled for almost two months at this deadlock. However, on November 23, 1984, I wrote to Bert Sharp and stated that an agreement among the state, Golden Valley and Mapco looked unlikely. I suggested commencing negotiations towards a contract between Golden Valley and the

state, without any assignment of the oil to Mapco. Negotiations resumed immediately, and on November 29, 1984, an agreement was reached on the terms now found in the proposed long-term contract. We immediately prepared findings and a final contract, and worked to get the contract before the royalty board and the legislature as soon as possible. However, due to the negotiation stalemate, legislation approving the long-term contract could not even be introduced in the legislature until mid-March 1985.

Unless a new contract with Golden Valley is approved prior to March 29, 1985, - or unless the present contract is extended - we will denominate the oil and return it to in-value. CSSB 152 would give the commissioner the authority to extend the existing Golden Valley contract for up to three months to avoid a lapse in taking by GVEA during the summer of 1985.

I want to briefly discuss two concerns that have been raised with the contract that were originally identified at the royalty board meeting of December 1983.

Consumer Benefits

The sale is premised on providing benefits to Alaska consumers. These consumer benefits depend on GVEA's assignment agreement with Mapco, which provides turbine fuel at a price lower than what GVEA would otherwise pay. Under GVEA's current contract, the state is unable to enforce the degree of advantage afforded to GVEA since that agreement is between GVEA and Mapco only.

Exhibit A to the new contract is a three-party agreement signed by the state, GVEA and Mapco. Exhibit A recognizes existing agreements between GVEA and Mapco. In Exhibit A, the state consents to those agreements so long as they are not modified to reduce the benefits to GVEA's consumers. The state retains the option to terminate the contract should the relationship between GVEA and Mapco change materially.

Thus, the modest consumer benefit that I described earlier will continue over the life of the contract, or the state will have the option to cancel the contract.

Return Oil

A second issue of concern involves the return oil provision of the contract. The Mapco refinery, because of its location near the Trans Alaska Pipeline, is able to reinject the heavy and lightest ends of the barrel which are not converted into products back into the pipeline. This so-called "return oil" then reemerges as whole oil at Valdez, with Mapco paying a $.10 per degree quality bank differential penalty.

We did negotiate an option to purchase the return oil into the new GVEA contract. However, although the option to purchase return oil is embodied in Section 3.4 of the new GVEA contract, the state has agreed in Exhibit A that we will not exercise that option in return for Mapco paying Amerada Hess adjustments on the portion of the royalty oil that is converted into turbine fuel used by GVEA.

As I mentioned a moment ago, the negotiations were deadlocked for several months, and foregoing the return oil option was a concession we made to break the deadlock.

Refinery Profits

Another issue of concern raised by legislators during consideration of the three-month extension bill, CSSB 152, involves the amount of profits made by Mapco off of the Golden Valley contract.

For a number of reasons, it is difficult to calculate the profitability of a refinery based on information in the public record. Although the Department of Natural Resources has access to some confidential information provided by Mapco, we are obligated to hold this information confidential under AS 38.05.035 at Mapco's request. However, considering those constraints, we have attempted to provide some general information about refining profits.

Mapco's refining profits were examined in the February 1983 report entitled Alaska Petroleum Product Pricing prepared for the Senate Resources Committee. That document was authored by Messers. Pernela and Delong, both of whom are former employees of North Pole Refining. As can be seen in the report and the responses of Mapco and Tesoro to that document, the profitability of a refiner is nearly impossible to infer without access to certain cost data which is normally held confidential. This has proven true even though the authors, as former employees of

Mapco, may have had access to such data. This information gap largely accounts for the difference in the return to investment calculated in the report - 46% - and Mapco's stated return to investment of 15% to 17% (see Mapco's letter to Sen. Fahrenkamp of April 8, 1983).

Like most refiners, Mapco does not make available to the public separate accounts of its various operations such as the North Pole refinery. While Mapco's overall profitability is stated in its annual reports, the profits of a particular refinery cannot be deduced from those reports. The operating costs of a refinery are not normally available to the public since such knowledge would be of considerable advantage to a competitor.

For this reason Messers. Pernela and Delong were forced to rely on a variety of unsatisfactory proxy figures which included the original cost of the North Pole refinery, a supposed cost of capital, and the adjusted operating costs of refiners in the continental United States, among other things. These shortcomings enabled Mapco to handily rebut the report by mentioning such items as investment which occurred after the initial construction, interest during construction, the original investment risk, the irrelevance of operating costs in other parts of the U.S. and the vagaries of the federal crude oil entitlement program, which was in effect over part of the study period.

Although Mapco's apparent markup can be found by comparing their wholesale prices with the aquisition cost of crude oil, a net profit per barrel cannot be arrived at without knowing all the capital and operating costs of the refinery as well as the method of amortization. Mapco has not

volunteered this information to date.

Summary

In summary, Mr. Chairman, this contract is intended to provide a modest amount of consumer benefit to the Alaska citizens living in the Interior and served by the Golden Valley Electric Assiciation cooperative, and also to provide the state with a market price for the royalty oil. I believe that the state's interest is served by pursuing this alternative, compared to the alternative of not making a sale and leaving the oil in-value. It could be argued that this contract does not maximize the value of royalty oil relative to what could be obtained by selling the oil competitively. However, the statutes do not require competitive sales and. in fact, the statutes clearly contemplate negotiated sales that provide ancillary benefits from using the royalty oil within the State of Alaska. I think you could view this contract as maintaining the status quo between the in-state refiners, as it does not increase Mapco's benefit relative to the present situation. In fact, Mapco's benefit is slightly decreased under the new GVEA contract.

Mr. Chairman, I believe this contract complies with all requirements of the statute and the regulations, and that it is consistent with the state's policy of obtaining market value for its royalty oil.

For these reasons, the administration supports the contract and we urge your approval of HB 287.

Sam Murray, a petroleum economist on my staff, is standing by in Anchorage

to assist us with answering any questions the committee may have. That concludes my formal remarks, Mr. Chairman. Thank you.

1623K

TESTIMONY BY DIRECTOR, DIVISION OF OIL AND GAS
TO HOUSE RESOURCES COMMITTEE AND
HOUSE SPECIAL COMMITTEE ON OIL AND GAS
ON HOUSE BILL 287

ROYALTY OIL CONTRACT WITH
GOLDEN VALLEY ELECTRIC ASSOCIATION

March 21, 1985

Thank you Mr. Chairman. For the record, I'm Kay Brown, Director of the Division of Oil and Gas for the Alaska Department of Natural Resources.

Several issues and questions were raised at the hearing yesterday, and I'd like to provide the committee with some additional information on those points.

Many of the questions at the hearing yesterday centered on the benefits to be derived from the proposed contract -- what those benefits are and who receives them. Three parties would receive benefits -- the State, GVEA, and Mapco.

I'd like to briefly summarize those benefits as we perceive them, Mr. Chairman.

Benefits to the State of Alaska

The benefits to the State are described in our final finding of January 16, 1985. Under the statutes governing royalty oil and gas sales, the commissioner is obligated to maximize benefits to the citizens in a negotiated sale.

The price received is a benefit to the State. The State will receive a 30¢ premium above in-value, which makes this sale roughly equivalent to the Tesoro and Chevron royalty oil contracts approved by the Legislature last session. There is no price subsidy to GVEA, and to the extent that Mapco gets the oil, it pays more for this oil than it does for the oil it buys directly from the State.

Other benefits to the State are explained in detail in the final findings, but they include cheaper electricity rates for Fairbanks consumers, a dependable electricity supply, and protection of existing investments in the North Pole refinery and the utility's turbines.

Benefits to GVEA

GVEA's benefits come not from a reduced sale price, but from the reduced turbine fuel price Mapco gives GVEA on the turbine fuel Mapco produces from GVEA's royalty oil.

GVEA's benefit can be calculated by comparing two prices. Those prices are Mapco's general turbine fuel price to GVEA (which covers roughly half of GVEA's turbine fuel needs) and Mapco's reduced price to GVEA for turbine fuel processed from GVEA's royalty oil (which covers the other half of GVEA's turbine fuel needs). Specifically, the 1980 Petroleum Products Agreement

between GVEA and Mapco generally obligates Mapco to sell turbine fuel to GVEA at a price of Mapco's acquisition cost plus a processing fee. Mapco has requested that we keep that exact processing fee confidential. A second 1980 agreement between GVEA and Mapco obligates Mapco to sell GVEA turbine fuel processed from GVEA's royalty oil at a reduced processing fee. Mapco has also requested that we keep that exact fee confidential.

Although the exact processing fees charged by Mapco are confidential, GVEA manager Bert Sharp testified yesterday that the difference is between 5 and 6 cents a gallon. Multiplying that savings by 42 gallons per barrel, by 625 barrels per day, and by 365 days per year, GVEA achieves a yearly savings of between $479,000 and $575,000. In our final sale findings, our petroleum economist projected an annual savings to GVEA of approximately $550,000.

This $550,000 yearly savings translates into a benefit to GVEA's consumers of .1446¢ per kilowatt hour. (This number is obtained by dividing the $550,000 yearly benefit by the 380,412,000 kwh that GVEA produces each year.)

Benefits to Mapco

The committee's third area of concern is the amount of benefits to Mapco under this contract. Mapco does benefit since it gets 87.5%

of each barrel, either as non-turbine fuel products or as return oil.

The profitability figures for Mapco shown on the chart prepared by staff that you received yesterday are basically accurate. However, the six-million dollar gross profit figure does not include the expenses Mapco incurs in refining the oil.

A more relevant comparison could be made by looking at the price that Mapco would otherwise have to pay the producers to obtain oil if it did not receive royalty oil on assignment from GVEA. For example, the January, 1985 Pump Station 1 in-value price is $16.90. Thus Mapco's Pump 1 price would be $17.20. By way of comparison, Pump 1 prices in January were reported as $18.13 for British Petroleum, $17.16 for Phillips and $16.95 for Sohio. Thus, it is not clear that Mapco would pay less for State royalty oil than it would for producers oil.

A similar comparison can be made with regard to the return oil. The value of the return oil to Mapco at Valdez would roughly be the Pump 1 price of $17.20, plus tariffs of about ~~$6.01~~ $6.10, plus a $1.22 quality differential penalty, for a Valdez price of $24.52. By comparison, Valdez prices for producers oil would be $24.14 for BP, $23.17 for Phillips and $22.96 for Sohio. Again, this does not appear to be a windfall for Mapco.

To the extent that committee members feel that Mapco is getting a "good deal" from the State, I would suggest that the "good deal" does not come from this contract. Rather, Mapco's competitive advantage comes from Mapco's own royalty oil contract, which contains terms significantly more attractive than those found in Alaska's other royalty oil contracts, and from Mapco's geographical location, which insulates it from the competition of other refiners.

Since the information available to DNR concerning Mapco's profitability must by statute be held confidential, I would suggest that your specific questions about the relationship between GVEA and Mapco, and about Mapco's profits from this sale, be addressed to either GVEA or Mapco.

I'd like to correct one number that I gave to the committee yesterday. The amount of return oil barrels from the GVEA contract is roughly 3,300 bpd, rather than 1,500 to 1,600 bpd.

Thank you, Mr. Chairman. That concludes my remarks.

FINANCIAL ANALYSIS HB 287

	Bbls. per Day	Gal. Per Bbl.	Gal. Per Day (5000 Bbl.)	MAPCO Markup	MAPCO daily Gross Profit	MAPCO Annual Gross Profit
Turbine Fuel	5,000	5.25	26,250	$0.09	$2,362.50	$862,312.50
Diesel/heating	5,000	11.18	55,900	$0.26	$14,534.00	$5,304,910.00
Totals			82,150		$16,896.50	$6,167,222.50
						==========
G.P. Turbine/per bbl		0.4725				
G.P. Diesel/heating		2.9068		GVEA Estimated Savings		$550,000.00
Total G.P. per bbl/crude		3.3793				==========
				% of profit to GVEA		8.92%
Crude bbl per day		5,000				==========
G.P. per day (total)		$16,896.50				

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

This bill packet for HB 287 contains the following materials:

Letter of Transmittal

In which certain inconsistencies in the royalty statutes are noted, and the view is expressed that the statutory requirement that the legislature approve royalty oil contracts is unconstitutional.

Fiscal Note

Zero fiscal note.

Royalty Board Resolution

The Royalty Board recommends that the legislature approve the GVEA contract.

MAPCO Statement

Provides breakdown of additional refined products to be produced by MAPCO, and notes aspects of agreement between MAPCO and GVEA.

Royalty Oil Production Table

North Slope royalty oil production, royalty oil obligated through current negotiated contracts, and remaining in-value royalty oil are all shown on the cover table. The other tables refer to the competitive royalty oil sale held in December, 1984.

DNR Final Findings & Determination

This document provides a background and chronology of the contract, summary of proposed contract terms, contract revisions since November, 1983, and findings leading to the determination that this contract is in the best interests of the state.

Agreement for the Sale and Purchase of Royalty Oil

Contract between the State of Alaska and GVEA. Brief descriptions of the three agreements related to this contract are made on the following page. Exhibit A is dated 1985. Exhibit B and the Petroleum Products Agreement, both dated 1980, were confirmed this Fall by MAPCO and GVEA as the working agreements for the present contract.

Exhibit A

Agreement between the State of Alaska, MAPCO, and GVEA. This agreement address the assignment of royalty oil from GVEA to MAPCO, MAPCO's ability to designate the volume of royalty oil that GVEA will receive, Amerada Hess adjustments and penalties for breaking the assignment agreement, and the State's agreement to not exercise its return oil option so long as MAPCO receives royalty oil under the GVEA contract.

Exhibit B - Assignment and Product Sales Agreement

Agreement between MAPCO and GVEA. This agreement specifies that MAPCO will sell to GVEA turbine fuel equal to 12.5% of the total crude oil received by MAPCO under this agreement. At 5,000 b/d, this equates to 625 b/d of turbine fuel. This agreement also states that the turbine fuel will be sold at MAPCO's acquisition cost, plus a processing fee.

Petroleum Products Agreement

Agreement between MAPCO and GVEA. This agreement specifies the quantity, quality, and title of the turbine fuel to be sold by MAPCO to GVEA. This agreement also specifies a fixed margin allowed to MAPCO on this turbine fuel, and addresses the duration of the contract and the three year cancellation clause.

Letter of Credit

An irrevocable letter of credit for GVEA in the amount of $5,400,000.

Tesoro's Letter of Concern

Concerns expressed by Tesoro that the present contract does not benefit the consumer sufficiently to justify the arrangement between MAPCO and GVEA.

House Research Agency

A brief analysis of the major provisions of MAPCO's current royalty oil contract with the State of Alaska.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 485-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

To: Rep. Mike Davis, Chairman
From: Jonathan Sperber, Committee Aide
Date: March 19, 1985
Re: HB 287

The sale of royalty oil to Golden Valley Electric Association (GVEA) involves the purchase of royalty oil by GVEA, the assignment of that oil from GVEA to MAPCO, and the sale of 625+ b/d of industrial turbine fuel from MAPCO to GVEA at a discounted price. This discounted fuel represents approximately one-third of GVEA's turbine fuel needs, and one-sixth of the utility's total energy requirements.

The 625 b/d of turbine fuel is sold to GVEA at MAPCO's acquisition cost, plus a processing fee and a fixed margin. This represents a $550,000 annual discount to GVEA, which is passed through to GVEA's members as a 1.57% savings on their electric costs. This consumer benefit satisfies the best-interest requirement set forth in AS 38, and this serves as the basis and justification for the state to sell royalty oil to GVEA.

Direct consumer benefit is an extremely important aspect of negotiated royalty oil contracts. In order to maximize benefits to both local consumers and the state as a whole, however, attention should be given to the following terms of the proposed GVEA contract:

1. Contract terms: duration, volume, premium
2. Three-year cancellation clause
3. Agreement for the state to not purchase return oil
4. Amerada Hess adjustment liabilities
5. Consumer savings v. MAPCO profits
6. Value of royalty oil taken in-kind v. in-value

1. Contract Terms

Duration: Ten years. The present GVEA contract is for a 7-year period, the Tesoro and Chevron contracts approved last year are both 10-year contracts, and the MAPCO contract lasts 25 years.

Volume: 2.667% of Prudhoe Bay Unit royalty oil production. Initial volume of 5,000 b/d, decreasing to 2,167 b/d in 1994. Since one-eighth of the crude oil volume must be made available to GVEA as turbine fuel at a discounted price, GVEA will receive 625 b/d of this fuel in 1985, and 270 b/d in 1994.

Premiums: 30¢ per barrel. This is the same as the premium negotiated with Chevron last year. Premiums on competitive bid sales significantly exceed those on negotiated sales, however, as evidenced by average premiums of 51¢, 69¢, and 84¢ on the three Prudhoe Bay and Kuparuk categories offered in the December, 1984 competitive bid sale.

2. Three-Year Cancellation Clause

The extreme length of notice required for GVEA to cancel its agreement with MAPCO, in concert with GVEA's being liable for Amerada Hess adjustments on all turbine fuel purchased under this agreement if the agreement is cancelled, is a very strong disincentive against breaking the agreement with MAPCO. A three-year cancellation clause effectively locks out GVEA's ability to negotiate a better deal on its energy purchases should favorable opportunities arise.

3. Agreement For the State to Not Purchase Royalty Oil

Based on MAPCO's agreement to be responsible for Amerada Hess adjustments, the state has agreed to not exercise its option to purchase return oil as long as MAPCO receives royalty oil under the GVEA contract. It is worth noting that the state does not have an opportunity to purchase return oil under the MAPCO contract, although this option does exist with both the Tesoro and Chevron contracts negotiated last year.

Return (or residual) oil is returned by MAPCO to the Trans-Alaska Pipeline at Fairbanks, and is then reclaimed by MAPCO as whole crude oil at Valdez. MAPCO may then exchange this oil for crude oil from the North Slope, thereby repeating the process of receiving, refining, returning, and exchanging oil. As a penalty for returning lower-quality oil into the pipeline, MAPCO pays a quality bank differential of 10¢ per API degree loss. At a 7 degree quality loss, MAPCO would pay a penalty of 70¢ per barrel.

4. Amerada Hess Adjustment Liabilities

GVEA is liable for Amerada Hess adjustments on the turbine fuel received under the agreement with MAPCO for a 12-month period immediately prior to final resolution of Amerada Hess litigation. At an Amerada Hess adjustment figure of $2 per barrel, and following MAPCO's stated intent to sell GVEA 685 b/d under this agreement, this equates to a loss of $500,000. This loss represents approximately one year's annual savings to GVEA at the high-volume end of the contract. As mentioned above, GVEA will be liable for all Amerada Hess adjustments on turbine fuel received under this agreement if the utility cancels its agreement with MAPCO.

5. Consumer Savings v. MAPCO Profits

Each barrel of crude oil refined by MAPCO produces approximately 5.25 gallons of turbine fuel and 11.18 gallons of jet fuel and diesel/heating oil. The remaining oil is reinjected into the pipeline as resid. MAPCO marks-up turbine fuel at about 9¢/gal. (from assignment agreement with MAPCO) and jet and diesel/heating oil at about 26¢/gal. (from Alaska Petroleum Product Pricing). This implies an annual gross profit of about $1,800,000 based on 1469 b/d at a mark-up of $3.38 per barrel. Operating and depreciation expenses would be deducted from this figure to arrive at MAPCO's annual net profit.

6. Value of Royalty Oil Taken In-Kind v. In-Value

The difference in net value between oil taken in-kind and that taken in-value is based upon the premium and the extent (if any) to which the West Coast value of return oil emerging at Valdez exceeds the in-value price paid of it plus the quality bank penalty.

Provided by DNR/ Commissioner's Office 3/19

Background Information on SB 232/HB 287
Overview of proposed GVEA long-term contract
dated February 8, 1985

- Price - Monthly volume-weighted average of producer's current reported netback prices, plus field costs, plus adjustments for the final outcome of the Amerada Hess litigation, plus a $.30 premium, with a price reopener in July 1987, and every two years thereafter.

- Term - Delivery of oil commences four months after approval by the Governor and the Legislature (unless the State sets an earlier date) and terminates on June 30, 1995.

- Quantity - 2.6667% of the State's daily production of royalty oil from the Prudhoe Bay Unit (approximately 5,000 bpd).

- Point of Delivery - Custody transfer meters into the Trans Alaska Pipeline system at Prudhoe Bay.

- In-State Use - When the Department executes the agreement, it will also execute an agreement with GVEA and MAPCO approving GVEA's assignment of its royalty oil to MAPCO. Should the MAPCO/GVEA relationship be terminated, GVEA's continued receipt of royalty oil would be conditioned upon GVEA arranging a new means of using royalty oil to provide GVEA consumers electricity at a cost lower than otherwise possible.

- Security - GVEA will provide a letter of credit to the State in the amount of $5,316,000, which is equivalent to approximately 60 days' worth of oil.

- Standard Contract Terms - The contract will contain all appropriate standard State contract terms.

- Exhibit A - The proposed long-term contract contains as Exhibit A an agreement signed by the State, GVEA, and MAPCO. Exhibit A recognizes existing agreements between GVEA and MAPCO, under which MAPCO takes GVEA's royalty oil, refines it and sells the resulting turbine fuel to GVEA. In Exhibit A, the State consents to those agreements so long as they are not modified to reduce the benefits to GVEA's consumers. Exhibit A also provides that MAPCO will pay any Amerada Hess adjustments on the royalty oil turbine fuel it sells to GVEA, except that 1) GVEA will pay Amerada Hess adjustments on the last 12 months of turbine fuel purchases prior to resolution of Amerada Hess, and 2) GVEA will pay all Amerada Hess adjustments on the royalty oil

turbine fuel if it terminates the agreements or causes the State to terminate the royalty oil contract.

- Return Oil - The State will have the option to purchase all return oil produced, refined or exchanged under the contract. However, in exchange for MAPCO's agreement to pay Amerada Hess adjustments, the State agrees not to exercise its return oil option.

BILL SHEFFIELD
GOVERNOR

HB 287

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 13, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that provides for legislative approval of a royalty oil contract between the state and Golden Valley Electric Association for the sale of Prudhoe Bay royalty oil. Also transmitted with this bill is a copy of the resolution of the Alaska Royalty Oil and Gas Development Advisory Board recommending approval of this contract, along with a letter from the board chairman. This resolution is being transmitted in accordance with AS 38.06.040(a)(3) and AS 38.06.070(c).

This contract is also described in the findings issued by the Department of Natural Resources on January 16, 1985. Copies of these findings have been made available to the legislature and the public for review.

This contract is being submitted for legislative approval for two reasons. First, although this and the previous administration have consistently taken the position that the statutory requirement of legislative approval of royalty oil contracts (AS 38.06.055) is unconstitutional, as a matter of comity I respect the legislature's desire to have a direct voice in major disposals of royalty oil. Therefore, this contract contains provisions requiring approval by the legislature before it becomes effective. Second, this bill would ratify the agreement for sale of oil. This ratification would cure any procedural defect that may have occurred in the process of entering into this contract. Although we believe that all necessary steps have been taken, the statutes and regulations governing the disposal of royalty oil represent often conflicting desires and goals -- both procedural and substantive. For example, even if statutorily requiring legislative approval were constitutional, the present statutes provide, on the one hand, that the legislature is to approve the contract by enacting

legislation (AS 38.06.055(a)), but, on the other hand, they also provide that a report of the Royalty Board "shall be submitted for legislative review at the time a resolution for legislative approval of a proposed disposition of royalty oil and gas is introduced in the legislature" (AS 38.06.070(c)). Since legislative approval is required anyway as a matter of contract, I believe that it is only prudent to present this contract for legislative approval and ratification at this time.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 287

Title: Approving royalty oil contract with GVEA

Sponsor:

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Oil and Gas

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400

Division: Commissioner's Office Date: March 5, 1985

Approved by Commissioner: Date: March 5, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

RECEIVED
2/21/85

3/13

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

POUCH 7-034
ANCHORAGE, ALASKA 99510

March 11, 1985

The Honorable Ben F. Grussendorf
Speaker of the House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Reference: "An Act Relating to the Sale and Purchase of Royalty Oil from the Prudhoe Bay Unit between the State of Alaska and Golden Valley Electric Association, Inc."

Dear Mr. Speaker:

In accordance with AS 38.06.040(3), I am forwarding for your consideration the resolution of the Alaska Royalty Oil and Gas Development Advisory Board which recommends that the legislature approve the referenced sale of royalty oil to Golden Valley Electric Association, Inc.

If we can be of further service, please do not hesitate to call.

Sincerely,

James B. Gottstein
Chairman

Findings

1. On December 5, 1984, the Alaska Royalty Oil and Gas Development Advisory Board ("board") received the preliminary findings and determinations of the commissioner of the Alaska Department of Natural Resources ("commissioner") on the sale of Prudhoe Bay royalty oil to Golden Valley Electric Association, Inc. ("GVEA") and the draft contract with GVEA for the sale and purchase of that royalty oil.

2. On January 16, 1985, the board received the commissioner's final findings and determinations on the sale of Prudhoe Bay royalty oil to GVEA.

3. On February 8, 1985, the State of Alaska, through the commissioner, executed the agreement for the sale of royalty oil with GVEA and provided each board member with a copy of the GVEA contract.

4. On February 20, 1985, the board held a public hearing in Anchorage, with telecommunication hookups in Fairbanks, Juneau, and Valdez, to receive testimony on the proposed sale of Prudhoe Bay royalty oil to GVEA and met to discuss the GVEA contract, the commissioner's findings and determination, and the public testimony.

Conclusions

Based on the board's review of the GVEA contract, the commissioner's findings and determinations, and the public testimony, the board concludes that the proposed disposal of Prudhoe Bay royalty oil to GVEA meets the requirements of AS 38.06.

Resolution

Based on these findings and conclusions, the board recommends to the Fourteenth Alaska Legislature that the "Agreement for the Sale and Purchase of Royalty Oil" between the State of Alaska and Golden Valley Electric Association, Inc., dated February 8, 1985, be APPROVED.

Dated: March 11, 1985

Document prepared by MAPCO

3/18/85

MAPCO has had a contract with Golden Valley Electric Association (GVEA) since September 1, 1977. The contract is for MAPCO to deliver industrial turbine fuel into GVEA's fuel storage tanks via pipeline, based on a monthly requirement from GVEA. MAPCO assumes financial obligation to deliver product from the refinery to GVEA's storage tanks. For all ANS crude that is delivered through GVEA's feeder line to MAPCO's refinery, which runs approximately 2.3 miles from the TAPS line, MAPCO pays to GVEA a transportation fee.

MAPCO and GVEA signed a contract on May 1, 1980 whereby MAPCO supplied turbine fuel (which includes HF/DF #1 and HF/DF #2) for diesel generator facilities at North Pole and in Fairbanks. The Fairbanks product is delivered by rail tank car or transport truck. The proposed royalty oil contract between State of Alaska and GVEA insures a continued source of turbine fuel.

MAPCO signed an agreement with GVEA on October 22, 1984 whereby MAPCO had constructed, at a cost of $2,250,000, an electric substation to connect MAPCO electrical facilities to the transmission system of GVEA. GVEA provides MAPCO system control and data acquisition capabilities for the 69 KV portion of the substation. As MAPCO and GVEA's operations are in close proximity, either party is available for any required maintenance work on a 24 hour basis.

GVEA is working with the Department of Natural Resources, State of Alaska, for a 5000 BPD royalty oil contract. A breakdown of that product, based on average percentage yields, is listed below:

Refinery fuel		60 BPD
GVEA - turbine fuel		685
Return oil		2786
Refined product		1469
JP-4/Jet B	407	
#1 fuel oil - Jet A	784	
#2 fuel oil -10°	242	
#2 fuel oil +05°	36	
	1469	
		5000 BPD

The turbine fuel is provided at a discount to GVEA. This accounts for approximately one-third of GVEA's daily turbine fuel requirements. The refining charge GVEA pays for the other two-thirds of its daily turbine fuel needs would translate into a savings to GVEA of about $550,000 annually.

MAPCO and GVEA have an agreement for MAPCO to keep and dispose of the royalty return oil on an earlier contract. As the state has requested additional consideration from MAPCO for assignment agreement, MAPCO will be responsible for any GVEA liabilities resulting from retroactive price

adjustments regarding the resolution of the Amerada Hess dispute. GVEA would be responsible for one-eighth of the Amerada Hess liability accrued in one year. The remaining seven-eights during that one year period, and any liabilities accrued in all other years during the term of the proposed GVEA contract, would be assumed by MAPCO. This provision guards GVEA from the effects of a favorable outcome for the state and increases benefits to be received by GVEA customers. With MAPCO's agreement to cover the largest share of any future liability, the benefit to GVEA members on the proposed royalty oil contract is great. This protection allows GVEA the freedom from a liability which could accumulate for up to ten years and be financially devastating.

The negotiation of this contract would have great benefits for the residents of Interior Alaska.

1. With population increasing in Interior Alaska, a constant electrical energy source is assured.

2. The benefits of an electrical cooperative will continue.

3. Local labor markets will benefit by employment with GVEA and MAPCO.

4. Alaska's petroleum requirements can be met with additional refined products available.

JAN. 14, 1985

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

ESTIMATED PRODUCTION FOR PRUDHOE BAY AND KUPARUK RIVER UNITS

	ESTIMATED TOTAL PRODUCTION (BARRELS PER DAY)			ESTIMATED ROYALTY (BARRELS PER DAY)			ESTIMATED SALES OF ROYALTY OIL (BARRELS PER DAY)							
YEAR	TOTAL PRUDHOE	(1) TOTAL KUPARUK	TOTAL	PRUDHOE ROYALTY	KUPARUK ROYALTY	TOTAL ROYALTY	NAPCO	(2) GVEA (OLD)	(3) GVEA (PROPOSED)	(4) TESORO (OLD)	(5) TESORO (NEW)	(6) CHEVRON	(7) COMPETITIVE SALE	ROYALTY IN VALUE
1984	1,500,000	120,000	1,620,000	187,500	15,000	202,500	35,000	5,000		33,765		18,000		184,735
1985	1,532,000	150,000	1,682,000	187,500	22,500	210,000	35,000		5,000	45,999	25,001	18,000	65,000	15,000
1986	1,538,000	150,000	1,688,000	187,500	22,500	210,000	35,000		5,000	45,999	26,001	18,000		80,000
1987	1,475,000	160,000	1,635,000	184,375	22,500	206,875	35,000		4,917	45,233	25,567	17,700		78,458
1988	1,325,000	200,000	1,525,000	165,625	25,000	190,625	35,000		4,417	40,633	22,967	15,900		71,708
1989	1,175,000	200,000	1,375,000	146,813	25,000	171,875	35,000		2,917	36,833	20,367	14,100		62,458
1990	1,050,000	200,000	1,250,000	131,251	25,000	156,250	35,000		3,500	32,200	18,200	12,600		54,750
1991	950,000	200,000	1,150,000	118,750	25,000	143,750	35,000		3,167	29,133	16,467	11,400		48,583
1992	850,000	200,000	1,050,000	106,250	25,000	131,250	35,000		2,833	26,066	14,734	10,200		42,417
1993	750,000	200,000	950,000	93,750	25,000	118,750	35,000		2,500	23,000	13,000	9,000		36,250
1994	650,000	170,000	820,000	81,250	21,250	102,500	35,000		2,167	19,933	11,267	7,800		26,333
1995	575,000	145,000	720,000	71,875	18,125	90,000	35,000							55,000
1996	510,000	120,000	630,000	63,750	15,000	78,750	35,000							43,750
1997	460,000	100,000	560,000	57,500	12,500	70,000	35,000							35,000
1998	420,000	80,000	500,000	52,500	10,000	62,500	35,000							27,500
1999	380,000	75,000	455,000	47,500	9,375	56,875	35,000							21,875
2000	340,000	65,000	405,000	42,500	8,125	50,625	35,000							15,625
2001	300,000	55,000	355,000	37,500	6,875	44,375	35,000							9,375
2002	270,000	50,000	320,000	33,750	6,250	40,000	35,000							5,000
2003	240,000	40,000	280,000	30,000	5,000	35,000	35,000							0
2004	210,000	35,000	245,000	26,250	4,375	30,625								30,625
2005	180,000	25,000	205,000	22,500	3,125	25,625								25,625
2006	160,000	25,000	185,000	20,000	3,125	23,125								23,125
2007	140,000	20,000	160,000	17,500	2,500	20,000								20,000
2008	110,000	20,000	130,000	13,750	2,500	16,250								16,250
2009	80,000	10,000	90,000	10,000	1,250	11,250								11,250
2010	50,000	10,000	60,000	6,250	1,250	7,500								7,500

NOTES:

(1) DNR ESTIMATE OF FIELD PERFORMANCE, OCTOBER 1984.

(2) GVEA'S CURRENT CONTRACT EXPIRES JUNE 30, 1985.

(3) GVEA'S PROPOSED TEN-YEAR CONTRACT WOULD COMMENCE FOUR MONTHS AFTER APPROVAL BY THE LEGISLATURE AND GOVERNOR. QUANTITY IS 2.667% OF DAILY PRUDHOE ROYALTY OIL.

(4) TESORO'S CURRENT CONTRACT CALLS FOR A MAXIMUM QUANTITY OF 21.533% OF DAILY PRUDHOE ROYALTY OIL LESS COOK INLET ROYALTY PRODUCTION. THE QUANTITY IS 21.288% IN 1984, AND WILL BE 21.326% STARTING JAN. 1, 1985. THIS CONTRACT WILL BE INCREASED TO ITS MAXIMUM QUANTITY ON OCTOBER 1, 1985 DUE TO CANCELLATION OF THE COOK INLET CONTRACT ON THAT DATE. THE CONTRACT EXPIRES JANUARY 1995.

(5) MOST OF THIS VOLUME (ABOUT 25,000 BPD), WHICH IS CURRENTLY BEING TAKEN "IN VALUE," WAS SOLD COMPETITIVELY FOR DELIVERY APRIL 1, 1985 THRU SEPT. 30, 1985. ON OCTOBER 1, 1985 IT IS ANTICIPATED THAT TESORO WILL COMMENCE DELIVERIES UNDER ITS 12/9/83 PRUDHOE CONTRACT, WHICH HAS A MAXIMUM QUANTITY OF 13.86% OF DAILY PRUDHOE ROYALTY OIL AND EXPIRES JAN. 1, 1995.

(6) CHEVRON'S CONTRACT CALLS FOR A MAXIMUM QUANTITY OF 3.6% OF DAILY PRUDHOE ROYALTY OIL. THE CONTRACT EXPIRES JANUARY 1, 1995.

(7) DELIVERIES WILL COMMENCE APRIL 1, 1985 FOR 50,000 BPD OF PRUDHOE BAY UNIT ROYALTY OIL AND 15,000 BPD OF KUPARUK RIVER UNIT ROYALTY OIL, AND WILL CONTINUE FOR ONE-YEAR, AND SIX-MONTH PERIODS, RESPECTIVELY, AS A RESULT OF THE DEC. 11, 1984 COMPETITIVE SALE. PRIOR TO THAT TIME THIS OIL REMAINS "IN VALUE."

dmj

STATE OF ALASKA
COMPETITIVE ROYALTY OIL SALE

DEC. 11, 1984

PURCHASER		LOT #	ESTIMATED BARRELS PER DAY	CONTRACT LENGTH (IN DAYS)	TOTAL EST. BARRELS PER CONTRACT	BASE PRICE	PREMIUM	TOTAL REALIZED (1)	DIFFERENCE REALIZED (1) (2)
CATEGORY A: KUPARUK									
CHEVRON	*	1	5,000	182.5	912,500	$16.92	$0.82	$16,187,750.00	$804,177.13
UNION	*	2	5,000	182.5	912,500	$16.92	$0.53	$15,923,125.00	$539,552.13
CHEVRON	*	3	5,000	182.5	912,500	$16.92	$0.17	$15,594,625.00	$211,052.13
SUBTOTAL			15,000		2,737,500	-	-	$47,705,500.00	$1,554,781.38
		HIGHEST PREMIUM BID:		$0.82	AVERAGE PREMIUM BID:		$0.51		
CATEGORY B: PRUDHOE									
U.S. OIL		1	5,000	365	1,825,000	$17.92	$1.84	$34,682,000.00	$1,783,655.75
U.S. OIL		2	5,000	365	1,825,000	$17.92	$1.84	$34,682,000.00	$1,783,655.75
CHEVRON	*	3	5,000	365	1,825,000	$17.92	$1.83	$34,583,750.00	$1,685,405.75
CHEVRON	*	4	5,000	365	1,825,000	$17.92	$1.83	$34,583,750.00	$1,685,405.75
CHEVRON	*	5	5,000	365	1,825,000	$17.92	$1.83	$34,583,750.00	$1,685,405.75
TEXACO	*	6	5,000	365	1,825,000	$17.92	$0.64	$33,872,000.00	$973,655.75
TEXACO	*	7	5,000	365	1,825,000	$17.92	$0.64	$33,872,000.00	$973,655.75
TEXACO	*	8	5,000	365	1,825,000	$17.92	$0.64	$33,872,000.00	$973,655.75
TEXACO	*	9	5,000	365	1,825,000	$17.92	$0.64	$33,872,000.00	$973,655.75
TEXACO	*	10	5,000	365	1,825,000	$17.92	$0.64	$33,872,000.00	$973,655.75
SUBTOTAL			50,000		18,250,000			$342,315,250.00	$13,331,887.50
		HIGHEST PREMIUM BID:		$1.84	AVERAGE PREMIUM BID:		$0.84		
CATEGORY C: PRUDHOE									
CHEVRON	*	1	5,000	182.5	912,500	$17.92	$1.83	$17,291,875.00	$842,782.88
TEXACO	*	2	5,000	182.5	912,500	$17.92	$0.64	$16,936,000.00	$486,827.88
TEXACO	*	3	5,000	182.5	912,500	$17.92	$0.64	$16,936,000.00	$486,827.88
TEXACO	*	4	5,000	182.5	912,500	$17.92	$0.64	$16,936,000.00	$486,827.88
SOHIO		5	5,000	182.5	912,500	$17.92	$0.51	$16,817,375.00	$368,282.88
SUBTOTAL			25,000		4,562,500			$84,917,250.00	$2,671,389.38
		HIGHEST PREMIUM BID:		$1.83	AVERAGE PREMIUM BID:		$0.69		
TOTALS FOR ALL LOTS:		18	90,000		25,550,000			$474,938,000.00	$17,557,978.25

(1) THESE PROJECTIONS ASSUME THAT CURRENT MARKET CONDITIONS AND PRICES CONTINUE.

(2) THIS AMOUNT IS THE DIFFERENCE BETWEEN THE ESTIMATED ROYALTY-IN-VALUE RECEIPTS BASED ON THE VOLUME WEIGHTED AVERAGE OF PRODUCERS' REPORTED NETBACK PRICES (OCTOBER) AND THE ESTIMATED RECEIPTS OF THE COMPETITIVE SALE BASED ON THE BID PREMIUM PLUS THE BASE PRICE.

(*) PRIORITY BIDDERS

STATE OF ALASKA
COMPETITIVE ROYALTY OIL SALE

DEC. 11, 1984

NUMBER OF BIDS SUBMITTED:	49
NUMBER OF BIDDERS PARTICIPATING:	8
HIGHEST PREMIUM BID: SUBMITTED BY: U.S. OIL	1.84
ESTIMATED TOTAL REVENUES FROM SALE:	$474,938,000
COMPANY WITH MOST WINNING BIDS:	TEXACO WITH 8 LOTS
NUMBER OF LOTS WON BY PRIORITY BIDDERS:	15
NUMBER OF LOTS WON BY NON-PRIORITY BIDDERS:	3

State of Alaska

Department of Natural Resources

Final Findings & Determination

to Sell Prudhoe Bay Royalty Oil to

Golden Valley Electric Association, Inc.

January 16, 1985

TABLE OF CONTENTS

		Page
I.	Introduction	1
II.	Background and Chronology	1
III.	Summary of Proposed Contract Terms	2
IV.	Comments Received	3
V.	Contract Revisions	4
VI.	Findings and Determinations	7
VII.	Conclusion	9

I. Introduction.

The State of Alaska proposes to sell 2.667% of its daily royalty oil (approximately 5,000 barrels per day) from the Prudhoe Bay Unit to Golden Valley Electric Association, Inc. (GVEA) under a long-term, noncompetitive contract. In accordance with AS 38, the Department of Natural Resources must determine whether this disposal serves the state's best interest before the sale may take place. This final finding describes the proposed sale and analyzes its potential effects.

II. Background and Chronology.

GVEA is the public cooperative electric utility in Fairbanks. The state's previous long-term royalty oil contract with GVEA, executed in 1976, was the first royalty oil contract negotiated and executed after the 1976 establishment of the Alaska Royalty Oil and Gas Development Advisory Board. GVEA requested royalty oil so that crude oil might be used as turbine fuel for power generation in the event that the cost of turbine fuel from the North Pole Refinery became prohibitive.

GVEA's contract with the state was for the purchase of 5,000 bpd. GVEA did not exercise its option to purchase royalty oil until June 17, 1981. GVEA assigned its contract rights to North Pole Refinery, Inc., which is now owned by MAPCO Petroleum Inc. (MAPCO), in exchange for a price discount on the turbine fuel refined from the royalty oil. MAPCO refines the royalty oil into jet fuels, diesel, heating oil, and other refined products in addition to turbine fuel, and reinjects the remaining return oil into the Trans Alaska Pipeline System (TAPS).

In a November 1982 letter to the Department of Natural Resources, GVEA requested an extension of its contract for an additional ten years. No action was taken on that request pending the change of administrations. In March 1983, the new administration began negotiations with GVEA on a new ten-year contract to assist in satisfying the needs of GVEA's 50,000 in-state consumers. Notice of the proposed long-term sale to GVEA was published on November 8, 1983. A notice of that royalty board meeting, which included a review of the proposed GVEA disposal (among other things), was also published on November 16, 1983.

The Alaska Royalty Oil and Gas Development Advisory Board's December 7, 1983 review of the proposed GVEA disposal and the agreement, as negotiated to that date, revealed specific concerns by both the public and board members with respect to the state's option on return oil and the relationship between MAPCO and GVEA. In view of those reservations and the limited time for further negotiation, the long-term GVEA contract was not presented for legislative approval. Instead, an interim one-year contract not requiring legislative approval was put into effect. Subsequently, GVEA and the Department undertook sporadic negotiations during early 1984 with the goal of making long-term contract revisions responsive to the issues raised at the December 7, 1983 royalty board meeting. During this period, the assignment agreement between MAPCO and GVEA also remained in effect. On September 12, 1984, the Director of the Division of Oil & Gas briefed the royalty board on the Department's continuing negotiations with GVEA and MAPCO.

On November 29, 1984, GVEA, MAPCO and the Department reached tentative agreement on a new long-term contract to be presented to the royalty board and the legislature. The terms of the proposed contract, which were included in the Department's Preliminary Findings and Determination to Sell Prudhoe Bay Royalty Oil to Golden Valley Electric Association, Inc. of December 7, 1984, are again summarized below.

III. Summary of Proposed Contract Terms.

1. Price: The total price per barrel to be received by the state in the proposed contract is the sum of the following components:

   (a) The (monthly) volume weighted average of the Prudhoe Bay lessees' current reported netback prices, as adjusted for transportation and other costs by those lessees.

   (b) Additional amounts, primarily from GVEA's assignee (MAPCO), if the state obtains a favorable resolution of litigation disputing the validity of the Prudhoe Bay lessees' current reported netback prices (State of Alaska, et al vs. Amerada Hess, et al).

   (c) Those cleaning and dehydration field costs which the state must pay when either taking its royalty share in-value (receiving money from the Prudhoe Bay lessees equal to the volume weighted average of their current reported netback prices, as may be retroactively adjusted upon resolution of the Amerada Hess litigation) or taking title to its royalty share of oil for an "in-kind" disposal. In a 1980 partial settlement of the Amerada Hess litigation, the state acknowledged limited responsibility for certain field costs in either case. And,

   (d) A $.30 per barrel premium.

2. Term:

   (a) The date of first delivery will be four months after enactment of legislation by the State of Alaska (including approval by the Governor) approving the agreement unless the state, in its sole discretion, sets an earlier date.

   (b) The termination date of the contract is June 30, 1995.

   (c) The price specified above is subject to renegotiation in July 1987 and every two years thereafter for the duration of the contract.

3. Quantity: 2.667% (approximately 5,000 bpd) of daily royalty oil from the Prudhoe Bay Unit.

4. Point of Delivery: Custody transfer meters into the Trans Alaska Pipeline system at Prudhoe Bay.

5. In-State Use: When the Department executes the agreement, it will also execute an agreement with GVEA and MAPCO approving GVEA's assignment of its royalty oil to MAPCO. The state retains the right to terminate its approval of the MAPCO/GVEA relationship, in which MAPCO provides GVEA a specific discount on a specific quantity of turbine fuel. Should the assignment be terminated, GVEA's continued receipt of royalty oil would be conditioned upon GVEA arranging a new means of using royalty oil to provide GVEA consumers electricity at a cost lower than otherwise possible.

6. Security: GVEA will arrange to provide a letter of credit to the state in the amount of $5,316,000, which is equivalent to approximately sixty days' worth of oil. Upon default, this letter is redeemable upon signature of the Attorney General and the Commissioner.

7. Return Oil: Throughout the term of the contract, the state will have the option to purchase all return oil produced, refined, or exchanged under the contract. In consideration of MAPCO's consent to accept the majority of any liabilities stemming from the resolution of the Amerada Hess dispute, the state has agreed not to exercise its return oil option so long as MAPCO receives royalty oil under the GVEA royalty oil contract.

8. Standard Contract Terms: The contract will contain all appropriate standard state contract terms.

IV. Comments Received

Written comments addressing the Preliminary Finding and Decision were received from two parties prior to the close of the comment period. By a letter dated December 28, 1984, Tesoro Alaska Petroleum Company (Tesoro) expressed concern about the extent to which the proposed disposal may benefit MAPCO. Tesoro suggested that a more favorable contract for GVEA might have been secured during negotiations with MAPCO. The Department agrees that the benefits to GVEA of the proposed disposal are modest. While perhaps not sufficiently emphasized in the Preliminary Findings, the proposed disposal is based upon benefits to the state as well as to GVEA. Consequently, the price terms of the proposed disposal are similar to those of the state's recently executed royalty oil contracts with Tesoro and Chevron.

Since the state would be a major financial beneficiary of the proposed disposal, more advantageous contract terms for GVEA could not necessarily be borne by MAPCO. Although MAPCO must benefit to some degree as an indirect party to the agreement, the Department has sought to confine (to the extent possible in collective bargaining) the benefits of the proposed disposal to the state and GVEA. Upon receiving Tesoro's comments, the Department encouraged direct consultations between Tesoro and GVEA. As these discussions did not lead GVEA to conduct further negotiations with MAPCO, GVEA has presumably secured the best terms possible from MAPCO as well as the state.

By a letter dated January 8, 1985, James B. Gottstein, the Chair of the Royalty Oil and Gas Advisory Board (Royalty Board), also submitted comments related to the proposed disposal. Gottstein was concerned with a possible relationship between this disposal and the decision to shorten the contract terms of three 5,000 b/d lots of Kuparuk River royalty oil from one year to six months for the competitive royalty oil sale of December 11, 1984. However, the Kuparuk oil withdrawn from the sale was not committed to MAPCO or GVEA as Gottstein apparently believed was the case. That oil remains uncommitted.

Gottstein also said the Department did not properly inform the Royalty Board of that decision, as he believed was required. The Royalty Board review mandated by AS 38.06.050 extends only to royalty oil dispositions for which legislative approval is required. The December 11, 1984 competitive royalty oil sale was a short-term market conditions sale, for which legislative approval was not required (AS 38.06.055(b)(1)). At the September 12, 1984 Royalty Board meeting, the division did brief the Royalty Board about the competitive sale. In the Invitation to Bid discussed at the Royalty Board meeting, future revisions to sale terms at the direction of the commissioner were clearly contemplated. The rationale for the Department's revision was also publicly analyzed in-depth in the November 28, 1984 Supplemental Findings for the Competitive Royalty Oil Sale. Royalty Board input was not required for the decision to decrease the terms of the Kuparuk lots, and the division's consultation with regard to the sale in general exceeded statutory and regulatory requirements.

V. Contract Revisions

Since publication of the previous preliminary notice in November, 1983, the proposed GVEA contract has been altered by the Department and GVEA to address the concerns raised about the earlier proposed contract. Two key issues, both of which led to revisions in the contract form, were in-state use and return oil.

Currently, the consumer benefits of the GVEA contract depend on MAPCO's agreement with GVEA to provide turbine fuel at a price lower than what GVEA would otherwise pay. Under GVEA's present contract, the state is unable to enforce the degree of advantage afforded to GVEA since that agreement is between GVEA and MAPCO only. Consequently, Section 2.11 (In-State Use) of the proposed contract has been rewritten, and an agreement between the state, GVEA, and MAPCO has been added to assure that the agreed upon refining arrangement with MAPCO will be maintained, within certain bounds, over the life of the GVEA contract. The state will have the option to terminate its approval of the assignment should the relationship between GVEA and MAPCO change materially.

The state has insisted on the option to terminate the contract on these grounds since the proposed disposal is based in part on the specific benefits provided for GVEA members. Approximately one-third (625 barrels) of GVEA's daily turbine fuel requirements would be provided at a discounted price to GVEA through the proposed disposal. When compared to the refining charge which GVEA must pay for the remaining two-thirds of its turbine fuel needs, this discount translates into an annual savings to GVEA of about $550,000.

GVEA's total turbine fuel consumption now accounts for about 45% of its fuel use. The balance of GVEA's power generation comes from coal. Given the operations costs of GVEA's turbine fuel and coal-fired generation and the volume of discounted turbine fuel the proposed royalty oil contract would provide GVEA, MAPCO's discount to GVEA would reduce the GVEA consumer's average power generation cost by about 1.57%. Due to a mathematical oversight, the Preliminary Findings erroneously implied that an average power generation cost savings to GVEA of about 1% would result from the proposed disposal.

The state's ability to ensure that the GVEA contract would continue to provide these consumer benefits has been reinforced by the addition of Exhibit A, an agreement (attached to the proposed GVEA contract) between the State, GVEA, and MAPCO. Article II of Exhibit A calls for MAPCO and GVEA to keep the state apprised of any changes in their assignment agreement, and reiterates that changes to that agreement which materially affect the consumer benefits are grounds for termination of the assignment approval by the state. In addition, Article III of Exhibit A ensures that MAPCO will give nine (9) months written notice to GVEA before reducing the amount of royalty oil taken, since GVEA must also notify the state nine (9) months in advance of such a reduction.

Residual oil is a by-product of most refineries, including the North Pole Refinery. Residual oil represents that portion of a barrel of crude oil which a refinery is unable to process into product. Because MAPCO is situated to reinject residual oil into TAPS (where it re-emerges as whole oil at Valdez), this oil is also referred to as "return oil".

The assignment agreement between MAPCO and GVEA allows MAPCO to keep and dispose of the royalty return oil for export. Because MAPCO appeared to be a major beneficiary of the prior GVEA royalty oil contract, in part through its control over the return oil, the state has sought additional consideration from MAPCO for state approval of the assignment agreement. Consequently, Article IV of Exhibit A makes MAPCO primarily responsible for any GVEA liabilities resulting from retroactive price adjustments attending the resolution of the Amerada Hess dispute.

GVEA would be responsible only for one-eighth of the Amerada Hess liability accrued in a period not to exceed one year. The remaining seven-eighths of the liability accrued in that period, and all liabilities accrued in all other years during the term of the proposed GVEA contract, would be borne by MAPCO. This provision of Exhibit A insulates GVEA from the effects of a favorable outcome for the state in the Amerada Hess dispute and consequently, increases the benefits received by GVEA's consumers. MAPCO's agreement to bear the largest share of any future liability would increase the effective benefit to GVEA members of the proposed royalty oil contract by several fold. With this protection, GVEA largely avoids a potential liability which could accumulate for a period of up to ten years and consequently harm its financial position.

The return oil provision of the proposed contract gives the state the option to purchase all return oil produced, refined, or exchanged under the contract. However, in consideration of Article IV of Exhibit A, by which MAPCO accepts the potential Amerada Hess liabilities discussed above, the state agrees not to exercise its right to purchase return oil so long as MAPCO receives royalty oil under the GVEA royalty oil contract.

In addition to the revisions of the in-state use and return oil provisions, other changes have been made to the proposed 1983 contract to conform GVEA's proposed contract to the state's most recent contract forms where possible. These changes can be found in Section 7.1 (Default), Section 8.2 (Inability to Receive Oil) Article XIX (Amendment), and a number of minor areas.

For the state's protection, a new clause in Section 8.2 assigns to the state all transportation rights, including nominations, charter agreements, and any other transportation arrangements which GVEA has for state royalty oil, in the event of the purchaser's inability to receive royalty oil. This is now a standard provision for state royalty oil contracts and is found in both the backup and primary form contracts for the December 11, 1984 competitive sale.

An additional sentence in Article XIX (Amendment) states that, "Any material amendment to the contract which appreciably reduces the consideration received by the state requires prior approval of the Legislature of the State of Alaska". This contract language is required by AS 38.05.183(f).

In Section 7.1 (Default), the first of the six conditions of default listed has been added so that the state may, with evidence of impending failure to perform, declare a condition of default. This is an important protection for the state since there is often circumstantial evidence, such as inadequate transportation arrangements, which precede actual failure to perform.

Minor revisions can be found in two sections of Article V (Payments and Accounting). These revisions, which track the state's recent royalty oil contracts, make the terms of payment somewhat more stringent for the purchaser. Section 5.3 now calls for payment by wire transfer, and no longer provides for clerical mistakes as an acceptable basis for failing to pay the amount billed. Section 5.7 also eliminates several circumstances previously specified as acceptable grounds for failure to make full payment.

The remaining changes to the GVEA contract are technical in nature and concern numerical corrections, date corrections, definition clarifications, changes in the format, and minor revisions to Sections 3.2 (Good Standing and Due Authorization) and 16.1 (Preferential Hiring). Also, the word "Royalty" has been deleted throughout the contract wherever it precedes the word "Oil" and certain terms made unnecessary by the introduction of the term "Purchase Price" have been deleted.

The clauses particular to GVEA's situation, and to long-term negotiated contracts in general, have been left intact. Examples include Section 2.1 (Quantity), where GVEA may elect to change, within certain bounds, the quantity of royalty oil received, and Section 7.3 (Seller's Remedies), which allows the state to release GVEA from the in-state use requirement, at the state's sole discretion. Section 8.1 (Disposition of Oil Upon Default or Termination) also falls into this category, but GVEA's obligation to continue payment in event of default has a four-month, rather than the standard seven-month, duration. This is because the Prudhoe Bay Unit producers will, by contractual agreement, accept physical custody of small quantities of royalty oil with only a 90-day notice. The volume of royalty oil proposed for sale to GVEA falls within that quantity range.

VI. Findings and Determinations.

1. Competitive bidding is waived.

I have determined in accordance with AS 38.05.183(a) that the best interest of the state does not require competitive bidding for this disposal. The best interest of the state is served by making this award on factors other than the highest price received from a competitive sale. Those factors are detailed in the following section of this document.

In order to realize the objectives implied by the considerations listed in AS 38.05.182-183 and AS 38.06.070 and to obtain benefits for Alaska consumers, disposal by competitive bid with the award determined entirely upon the cash value offered is not in the best interest of the state in this instance. Rather, it is in the best interest of the state to dispose of this royalty oil to GVEA, which offers maximum benefits to state citizens and which will pay a $.30 premium over what the state would have received had the state taken the oil at the weighted average of the Prudhoe Bay lessees' current reported netback prices, as may be retroactively adjusted by resolution of the Amerada Hess litigation.

2. The sale is in the best interests of the State.

Under AS 38.05.183(e) a noncompetitive sale, exchange, or other disposal of royalty oil or gas taken in-kind by the state may be awarded by the commissioner to the prospective buyer whose proposal offers maximum benefits to the citizens of the state.

In accordance with AS 38.05.035(e), AS 38.05.183(c) and (e), and 11 AAC 03.010(d), I find and determine that the taking of royalty oil in-kind and the disposal of that oil to Golden Valley Electric Association, Inc. (GVEA) for use in-state is in the best interests of the state. The following has been considered in making this determination:

a. The state will receive no less from this sale than if it had continued to take its royalty oil in-value at the weighted average of the Prudhoe Bay lessees' current reported netback prices as retroactively adjusted by litigation. The premium of $.30 over that price will likely offset any adverse effects on that price (and state revenues) which could occur when the state meets the needs of a refinery (in this case MAPCO) that would otherwise be a crude oil customer on the West Coast. The Commissioner's Preliminary Findings and Determination to Negotiate Backup Royalty Oil Contract(s) and Conduct a Competitive Royalty Oil Sale of July 12, 1984 detail those potential effects. It is not possible to forecast the impact of customer displacement on West Coast prices, let alone its influence on the current reported in-value price. However, the amount of the premium is likely to cover a reasonable differential. Further, MAPCO presently receives similar amounts of crude oil daily under the existing GVEA short-term contract. AS 38.05.183(e)(1).

b. A disposal to GVEA will have a favorable effect on the economy of the state because it will ensure that the cooperative's members continue to benefit directly from lower electric rates than would otherwise be possible. Each consumer to whom GVEA provides electric service is a member of the cooperative. Profit margins are allocated back to the consumer owners, all of whom are Alaska residents. The cooperative's goal is to provide dependable electrical service to its member-owners at the most economical price.

GVEA is regulated by the Alaska Public Utilities Commission. Over the past year, GVEA has experienced increased consumer need represented by an addition of 2,700 new households. GVEA currently employs 174 people (25 more workers than last year) to bring electric service to more than 50,000 Alaskans. AS 38.05.183(e)(2).

c. An in-state refiner, MAPCO, will be favorably impacted by the proposed GVEA contract. MAPCO's assigned right to purchase 5,000 bpd of state royalty oil enables MAPCO to refine many products for Alaskans in addition to turbine fuel for GVEA. The 5,000 bpd of royalty oil also assists MAPCO in meeting the feedstock requirements of its soon-to-be-expanded refinery. MAPCO may also sell or exchange the resulting return oil (so long as the price discount on turbine fuel provided to GVEA remains materially unaltered) to acquire more oil from TAPS near its Fairbanks refinery.

Although MAPCO will benefit from the proposed GVEA contract, it will not receive a windfall. Because of the $.30 premium, MAPCO will likely pay more for the assigned oil than it does under its own state royalty oil contract. Further, MAPCO's Exhibit A agreement to pay most of any Amerada Hess liabilities arising under the proposed GVEA contract precludes it from passing on Amerada Hess adjustments to GVEA, as it would otherwise do. AS 38.05.183(e)(3).

d. GVEA is uniquely able to use its royalty oil purchases to allow it to supply electrical energy to more than 50,000 Alaskans who currently enjoy price benefits directly attributable to the cooperative's purchase of state royalty oil. AS 38.05.183(e)(4).

e. The state is now highly dependent on oil revenues and will continue to depend on oil revenues in the future. The price term of the proposed sale protects the state's interest by ensuring that revenues from this sale will exceed the in-value alternative. AS 38.06.070(a)(1).

f. The local and regional needs of the Fairbanks area for electrical supply are met by service provided by GVEA to its member owners. The assignment agreement with MAPCO also helps satisfy local and regional needs for petroleum products. AS 38.06.070(a)(2).

g. The continued operation of GVEA, with the attendant payroll and secondary benefits, will have a positive and desired effect on the citizens of the state. While this disposal will likely not result in new capital investment or development, it will enable the efficient use of existing investment and development and contribute to the requirements of a refinery planned for expansion. AS 38.06.070(a)(3).

h. The projected social impacts of a disposal to GVEA are anticipated to be favorable. The benefits presently received from the operation of the electrical cooperative will continue. AS 38.06.070(a)(4).

i. Any additional costs and responsibilities which could be imposed upon the state and affected political subdivisions are likely to be minimal. AS 38.06.070(a)(5).

j. Local and regional consumption of both fuel oil-fired electricity and refined petroleum products will be directly and favorably affected by the GVEA disposal. Local labor markets will continue to benefit through employment opportunities at both GVEA and MAPCO. AS 38.06.070(a)(6).

k. Environmental effects resulting from the proposal will be negligible, if any, since the facility is already in existence. AS 38.06.070(a)(7).

l. The proposed disposal will help existing commercial private enterprise and patterns of investments by assisting in the continued operation of the GVEA cooperative and providing, through assignment, royalty oil to the North Pole Refinery for processing into refined products. AS 38.06.070(a)(8).

In accordance with 11 AAC 03.060(b), the weight given to the applicable criteria in determining the maximum benefit to Alaska citizens must be addressed. In making this finding the Department first assured itself that the state would not lose money by making a disposal to GVEA. Once so assured, other benefits attendant to the disposal were examined. If the price offered did not assure the state at least what it would have received had it left the oil in-value then the sale would not, in the Department's view, serve the state's best interests. For this reason the greatest weight in this disposal was placed on AS 38.05.183(e)(1), the cash value offered. After the cash value offered, the greatest weight was given to the projected benefits of using the oil in the state to directly benefit Alaskan citizens through lower electric rates.

VII. Conclusion.

By the terms of the proposed contract, the state is guaranteed the litigation-adjusted in-value price for its oil as well as a premium on each barrel. The additional premium assures that the state is not initially receiving less for its oil than if it elected to take its royalty share in money at the weighted average of the Prudhoe Bay lessees' reported prices. Should the Amerada Hess litigation be resolved in the state's favor, the state will be entitled to reimbursements resulting from the retroactive price adjustments provided for in the contract, with MAPCO holding the major responsibility for that potential liability. The satisfactory price terms of the proposed contract, coupled with associated direct and secondary benefits for Alaska citizens, supports the decision to waive competitive bidding.

AGREEMENT FOR THE SALE AND PURCHASE OF ROYALTY OIL

THIS AGREEMENT is entered into as of February 8, 1985 by and between THE STATE OF ALASKA ("Seller") and GOLDEN VALLEY ELECTRIC ASSOCIATION INC., an Alaskan Electric Cooperative Corporation, hereinafter referred to as "Purchaser".

ARTICLE I
DEFINITIONS

As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "Commissioner" means the Commissioner of the Alaska Department of Natural Resources or her designee.

1.2 "Day" means a period of twenty-four (24) consecutive hours, beginning at 12:01 a.m., Alaska Standard Time.

1.3 "Effective Date" shall have the meaning set out in Article VI.

1.4 "Leases" means the Oil and Gas leases which are subject to the terms of the Unit Agreement.

1.5 "Lessee" means any person owning a working interest in any of the Leases.

1.6 "Month" means the period beginning at 12:01 a.m., Alaska Standard Time, on the first day of the calendar Month and ending at the same time on the first day of the next succeeding calendar Month.

1.7 "Oil" or "crude oil" shall have the same meaning as the word "Oil" under the Unit Agreement.

1.8 "Point of Delivery" shall have the meaning set out in Section 2.4.

1.9 "Royalty Oil" means the Oil which the Seller may take in-kind (amount) as its royalty under the Leases whether or not Seller has elected to take or is taking that royalty in-kind.

1.10 "Daily Royalty Oil" means the quantity of Royalty Oil produced by the Lessees each day.

1.11 "Unit Agreement" means the Prudhoe Bay Unit Agreement effective April 1, 1977, by and between Seller and the Lessees, as amended from time to time.

1.12 "TAPS" means the Trans Alaska Pipeline System.

ARTICLE II
SALE OF ROYALTY OIL

2.1 Quantity. Seller agrees to sell to Purchaser and Purchaser agrees to buy from Seller that amount of Oil equal to 2.667% of the Daily Royalty Oil (Maximum Quantity"). Upon at least nine (9) Months written notice to Seller, Purchaser may increase or decrease the amount of Oil to be tendered by Seller at the Point of Delivery, but the amount tendered by Seller under this Agreement shall not exceed the Maximum Quantity. Purchaser recognizes that Seller must normally give six (6) Months notice under the Unit Agreement (or ninety (90) days if the amount increased or decreased is less than ten (10) percent of the current nominations) to increase or decrease the amount of Daily Royalty Oil to be taken in-kind. It is understood and agreed that the volume of Daily Royalty Oil available to Seller will vary and may be interrupted from time to time, and depends upon a variety of factors, including the rate of production from the Leases. Seller disclaims and Purchaser waives any representation, covenant or warranty, expressed or implied, as to the specific quantity or the total or daily, Monthly, average, or aggregate volume of Royalty Oil to be sold or tendered under this Agreement. Seller warrants that it has good title to the Oil tendered under this Agreement. Seller shall hold Purchaser harmless from all liens, encumbrances and valid adverse claims that may affect the Royalty Oil at the time the Royalty Oil is tendered to Purchaser.

If Seller underlifts or stores Royalty Oil at Prudhoe Bay, or if Seller recovers underlifted or stored Royalty Oil, the quantity of Oil tendered under this Agreement shall be calculated as if no Royalty Oil was underlifted or stored or recovered.

2.2 Quality. The Oil sold shall be the same quality as the Royalty Oil delivered by the Lessees to the Seller at the Point of Delivery. It is understood and agreed that the quality of the Oil sold may vary from time to time. Seller disclaims, and Purchaser waives, any guarantee, representation, or warranty, either expressed or implied, of the merchantability, fitness for use, or suitability for any particular use or purpose, or otherwise, of any of the Oil delivered under this Agreement or as to any specific, average or overall quality or characteristic of Oil to be sold or tendered under this Agreement.

2.3 Price of the Royalty Oil. The price for the oil tendered under this Agreement shall be equal to the amount that Seller would have received from its Lessees for the Royalty Oil tendered if that royalty had been payable in money (taken in value) rather than taken in kind plus a premium of $0.30 per barrel plus the Field Cost Allowance incurred by that oil as determined under the Prudhoe Bay Royalty Settlement Agreement (dated April 1, 1980 for reference purposes only), which was entered as part of a final judgment dated Aug[illegible] 1980 in State of Alaska, et al v. Amerada Hess Corp., et al., (Superior Court for the State of Alaska, First Judicial District at Juneau) ("Amerada Hess") ("Settlement Agreement") ("Purchase Price"). The Purchase Price shall be determined by Seller based upon the reports submitted by the Lessees for royalty purposes or, when those reports are unavailable, incomplete, or inaccurate, upon information submitted by the Lessees for production tax or other tax purposes, as may be adjusted from time to time as provided in this Agreement. Buyer will only be entitled to review or request material or information which is not confidential under state law or regulation.

The method, basis and amount of royalty due Seller when it takes its royalty in value from the Leases is presently the subject of litigation in Amerada Hess. One of the issues involved is the proper method to be used by the Lessees in calculating the state's royalty when the royalty is payable in money (in value). Until there is a resolution of that dispute through judicial resolution or settlement, the Purchase Price will be based upon the calculation of an amount per barrel equal to the per barrel volume weighted average of the in-value prices reported by the Lessees to Seller for royalty purposes or, when the royalty reports are unavailable, incomplete, or inaccurate, upon information submitted by the Lessees for production tax or other tax purposes, plus $0.30 per barrel plus the Field Cost Allowance as determined under the Settlement Agreement. Upon final non-appealable resolution of each of the various issues that are or will be involved in Amerada Hess, adjustments will be made to previous payments in accordance with each resolution.

If additional amounts are owed by Purchaser to Seller, interest on those amounts will be paid at a variable interest rate which is the higher of: (1) the reference rate as may be announced from time to time by The Bank of America, San Francisco, California, plus three percent (3%); or (2) the rate of return as is realized from time to time in the investment of the State of Alaska's general fund. Amounts owed from Seller to Purchaser shall be repaid at the rate set out in Article 5.6. Buyer will not voluntarily intervene or otherwise participate in Amerada Hess unless Seller expressly consents to that participation in writing. A settlement of Amerada Hess will be binding upon Buyer whether or not Buyer agrees with or consents to the terms of that settlement.

If any applicable law of the United States of America or any rule or regulation promulgated by a federal agency will, in the judgment of Seller, operate to prohibit or prevent Seller from receiving the full amount due under the above provision, Purchaser's obligation to pay the amount of the Purchase Price in excess of the amount permitted will be suspended or adjusted to the minimum extent required for Seller to comply with that law, rule or regulation.

Either party shall have the right to reopen this Agreement, as to price only, during the Month of July, 1987 and every two years thereafter for the purpose of negotiating a new price for the Royalty Oil to be paid under this Section 2.3. The right to reopen may be exercised by either party by giving to the other party thirty (30) days prior written notice. Upon receipt of a notice to reopen, the parties will promptly commence good-faith negotiations in an attempt to establish a new price. In the event that a new price is not agreed to by the parties within ninety (90) days of the effective date of the notice to reopen, either party may terminate this Agreement upon nine (9) Months written notice to the other. The price for any Oil tendered during any such period pending termination shall be calculated as set out hereinabove or as agreed to in a previous reopener. If a new price is agreed to by both parties, such new price shall be effective for Oil tendered in the Month following agreement by the parties on the new price.

2.4 Point and Time of Delivery. Simultaneous with receipt of its Royalty Oil from its Lessees, Seller shall tender the Oil to Purchaser at the point at which Seller receives the Royalty Oil from its Lessees. That point as presently agreed to by Seller and its Lessees in Section 2.3 of the Settlement Agreement is the custody transfer meters into TAPS at Prudhoe Bay.

2.5 Passage of Title and Risk of Loss. Title and risk of loss to the Oil sold under this Agreement shall pass from Seller to Purchaser for all purposes when Seller tenders the Oil at the Point of Delivery.

2.6 Purchaser's Responsibility. Purchaser shall be responsible for the Oil after passage of title. Purchaser will indemnify and hold Seller harmless from and against any and all claims, costs, damages (including reasonably foreseeable consequential damages), expenses or causes of action arising from or in connection with any transaction or event which relates to the crude Oil after title has passed to Purchaser.

2.7 Transportation Arrangements. Purchaser shall make all necessary arrangements for transporting the Oil sold under this Agreement from the Point of Delivery, including satisfaction of line fill obligations and storage tank bottom requirements of TAPS, if any. If and as requested by the Seller, and

at the time or times requested by Seller, Purchaser shall submit specific information concerning the arrangement it has made for transportation of the Oil sold under this Agreement through and away from TAPS and for the resale or other disposal of the Oil. Such information may include the specific tenders of Oil made to TAPS and identification of tankers which will transport the Oil. In addition, Purchaser will provide Seller, if and as requested by Seller, with satisfactory evidence or reasonable assurance of the existence and continuing validity of adequate arrangements for the transportation or disposal of the Oil subject to this Agreement. Failure to provide information, evidence or assurances requested will, at Seller's election by notice to Purchaser, be a material default under this Agreement.

2.8 Absolute Obligations. The obligations of Purchaser to accept, pay for, and arrange for the transportation of the Oil tendered or sold under this Agreement are absolute and will not be excused or discharged by the operation of any disability of Purchaser, event of force majeure, impracticability of performance, change in conditions, or any other reason or cause.

2.9 Date of First Delivery. The date of First Delivery will be four (4) Months after the Effective Date unless Seller, in its sole discretion, sets an earlier date.

2.10 Performance Guaranty and Reservation Fee. If Purchaser does not take the Maximum Quantity on the Date of First Delivery, Purchaser shall pay to Seller, in addition to the Purchase Price, an amount equal to 1.25% of the Purchase Price per barrel per day on the difference between the Maximum Quantity and the actual quantity tendered to and accepted by Purchaser ("Actual Quantity") for each day Purchaser does not take the Maximum Quantity on and after the Date of First Delivery. The payment of this fee shall end on the day that Purchaser accepts delivery of the Maximum Quantity. When Purchaser accepts the Maximum Quantity, all of the amounts paid under this Article 2.10 will be allowed to be credited against future payments for Oil tendered under this Agreement except for an amount to be retained by Seller equal to .75% of the Purchase Price per barrel per day on the difference between the Maximum Quantity and the Actual Quantity for each day Purchaser did not take the Maximum Quantity on and after the Date of First Delivery. If

Purchaser should thereafter decrease the amount of Oil to be tendered under this Agreement, Purchaser shall pay to Seller, in addition to the Purchase Price, an amount equal to .75% of the Purchase Price per barrel per day after the date that the decrease in the amount of Oil to be tendered by Seller takes effect on the difference between the Maximum Quantity and the Actual Quantity.

2.11 In-State Processing. Purchaser agrees that all Oil purchased under the terms of this agreement shall be processed or burned in the State of Alaska. As used in this Agreement "processed or burned in the State of Alaska" means the following described uses or a use substantially similar to those uses, which provides an equivalent benefit to GVEA's consumers. Purchaser has assigned its Oil to MAPCO PETROLEUM Inc. for processing the crude oil into a fuel usable at Purchaser's generating station. Under this arrangement, Purchaser is assured of a dependable supply of fuel, which assists Purchaser in providing uninterrupted electrical service to its consumers. Purchaser also receives from MAPCO a lower refining charge or processing fee which Purchaser passes directly through to its consumers in the form of reduced electric rates. If Purchaser's arrangement with MAPCO ever fails to yield these benefits, Purchaser has a commitment from the Rural Electrification Administration for mortgage funds to be made available to pay for the prompt conversion of Purchaser's generating units so that the Oil could be burned as fuel by Purchaser without first being processed. Upon such conversion, Purchaser could again provide its consumers with a dependable supply of electricity at a cost lower than otherwise possible.

Purchaser's continued receipt of a dependable supply of fuel upon terms that allow Purchaser to provide its consumers with electricity at a cost significantly lower than otherwise possible is a material element of this agreement. Purchaser's failure to process or burn in the State of Alaska as defined in this Agreement the Oil tendered under this agreement will, at Seller's option, constitute a material default under this agreement. However, Seller may, at its option, waive the in-state processing or burning requirement in whole or in part, if Seller is satisfied that the waiver would not be contrary to the underlying intent of the other provisions of this Agreement.

ARTICLE III
REPRESENTATION AND OBLIGATIONS OF PURCHASER

Purchaser warrants, represents, and agrees:

3.1 Good Standing and Due Authorization. Purchaser is, and at all times during the operation of this Agreement shall remain, a corporation organized and existing under and by virtue of the laws of the United States or of any state, territory or the District of Columbia, and qualified to do business in, and in good standing with, the State of Alaska. Purchaser has all necessary corporate power to enter into this Agreement and to perform its covenants and obligations under this Agreement. All necessary corporate action has been taken to authorize Purchaser's entering into this Agreement and performing its covenants and obligations under this Agreement.

3.2 Financial Condition. The financial information submitted to Seller is complete and correct and fairly presents Purchaser's financial condition at the time the information was submitted to Seller. The financial information was prepared in accordance with generally accepted accounting principles consistently applied. Since the date the information was submitted, the condition, business and properties of Purchaser have not been materially adversely affected in any way. Purchaser agrees to inform Seller immediately if during the term of this Agreement there is any material adverse change in the condition, business, or properties of Purchaser which would have an appreciable adverse effect on Purchaser's ability to perform under this Agreement. Purchaser, in addition, will immediately inform Seller of any significant change in ownership of either Purchaser or any of its affiliates or parent company, and of any change in Purchaser's operations or agreements, which would appreciably affect Purchaser's performance under this Agreement.

3.3 Financial Statements. As soon as possible after the end of each fiscal year of Purchaser, and in any event within one hundred twenty (120) days thereafter, Purchaser will furnish to Seller, at Purchaser's sole cost and expense, a report or a complete copy of a report in a form to be prescribed from time to time by Seller which will include Purchaser's balance

sheet as of the close of the fiscal year and the income statement for that year, prepared in each case in accordance with generally accepted accounting principles consistently applied by certified public accountants of recognized standing. For purposes of complying with this Article, Purchaser may submit, and Seller will accept, the anrual report of the Golden Valley Electric Association, Inc.

3.4 Option to Purchase Return Oil. If Purchaser assigns Oil purchased under this agreement for fuel usable in the present configuration of its generating station, there may remain a portion of Oil or Oil products which will not be processed for consumption in-state ("Return Oil"). This Return Oil may be shipped through TAPS. Return Oil shipped through TAPS becomes intermingled with unprocessed crude oil so that when the Return Oil is picked up in Valdez it is identical to the common stream crude oil shipped through TAPS. ~~A shipper of Return Oil presently is, and may continue to be, liable for the payment of a quality bank adjustment differential based upon the resulting degradation of TAPS common-stream crude ("quality penalty").~~

~~Purchaser grants Seller an option to purchase all the Return Oil.~~ For the purposes of determining the volume of Return Oil for which Seller may exercise its option to purchase under this Agreement, that volume shall be a proportion of the Oil tendered under this Agreement equivalent to the ninety (90) day rolling weighted average, determined monthly, of the ratio of total refined products produced to total refinery charge. Seller shall exercise this option by giving Purchaser nine (9) months' advance written notice. The notice shall specify the date delivery will commence and the point of delivery to Seller. Thereafter Seller may terminate the purchase of Return Oil by giving nine (9) months' advance written notice.

Seller shall have the option to take title to the Return Oil either at the tanker flange inlet in Valdez, Alaska, or at the MAPCO refinery outlet to the Golden Valley Pipeline at North Pole, Alaska. ~~The per-barrel Return Oil purchase price shall be the full cost to Purchaser or Purchaser's assignee at the point of redelivery minus any "quality penalty" which had or would attach, which will be paid by Purchaser.~~ Purchaser or Purchaser's assignee will assign all necessary shipment rights to guarantee delivery to Seller at

Seller's designated delivery point and to facilitate the reinjection into and transportation of the Return Oil through TAPS.

Purchaser or Purchaser's assignee shall furnish Seller or the Seller's designee, on or before the tenth day of the month following the month of delivery, a provisional invoice covering the Return Oil delivered to Seller or Seller's designee in the preceding month. The price of the Return Oil to Seller or Seller's designee shall be the price paid by Purchaser for Oil tendered under this Agreement for the month preceding delivery. The Seller or the Seller's designee shall make payment to Purchaser or Purchaser's assignee on or before the twentieth day of the month following the month of delivery. The initial billing may be adjusted in a subsequent month's invoice as more accurate or complete information concerning the quantity and Purchase Price of the Return Oil delivered each Month is available. Subsequent adjustments to the Return Oil initial billing shall also be made for Amerada Hess as specified in Section 2.3 and for other adjustments as specified in Section 5.5.

The amount of all sums which are not paid when due under this option or which are subsequently determined to be due under an adjustment, shall bear interest from the date accrued until paid in full at a variable rate per annum equal to the reference rate as announced from time to time by the Bank of America, San Francisco, California, plus one and one-quarter percent (1.25%) per annum, provided, however, that any interest due on an adjustment made as a result of the Amerada Hess litigation shall be at the same rate charged by Seller under Section 2.3.

The option to purchase Return Oil will remain in effect for the term of this Agreement. Failure to exercise this option for any period of time will not affect the Seller's right to exercise the option at a later time. This option, in whole or in part, and for any term, shall be freely assignable by Seller and such assignment shall release Seller from all obligations to receive or pay for the Return Oil sold under this option, provided, however, that Purchaser or Purchaser's assignee shall have the right to demand of an assignee of the Seller reasonable security for the Return Oil sold to that assignee. If authorized in an assignment by Seller, that assignee shall have the further right freely to assign that option, however, that assignment shall

not release the assignee (or any subsequent assignee) of any responsibilities or liabilities to Purchaser or Purchaser's assignee unless agreed to by Purchaser or Purchaser's designee. Seller shall provide Purchaser or Purchaser's designee with written notice of any such assignment.

ARTICLE IV
MEASUREMENTS AND TESTS

The quantity and quality of the crude Oil sold under this Agreement shall be determined at the Point of Delivery. Procedures and methods for measuring and metering the Oil sold under this Agreement shall be in accordance with the practices then in effect at Prudhoe Bay, Alaska.

ARTICLE V
PAYMENTS AND ACCOUNTING

5.1 Billing. Seller will send to Purchaser, on or before the 10th (tenth) business day of each Month after delivery of Oil, an invoice statement of account of all Royalty Oil estimated to have been measured at the custody transfer meter into TAPS and tendered to Purchaser under this Agreement during the immediately preceding Month according to the best information available to Seller, the estimated Purchase Prices applicable to those deliveries, and the total amount due ("initial billing"). The estimates will be made by Seller according to the best information reasonably available to Seller. Seller may render its initial billing to Purchaser based in part upon information reported by the Lessees to Seller and information published by the U.S. Government. Seller shall thereafter adjust its initial billing under this Article as soon as more accurate information concerning the quantity and Purchase Price of Oil delivered each Month is available. Seller, however, shall not be required to adjust the initial billing prior to the sending of the next Month's invoice statement of account.

5.2 Initial Adjustment. After the Monthly invoice under Section 5.1, the subsequent Monthly invoice will also state Seller's initial adjustments to be made, if any, to the invoice rendered in the immediately preceding Month, in accordance with any additional or more accurate information which may have become available to Seller. Whether or not initial adjustments are made, however, subsequent adjustments may be made under Section 5.5.

5.3 Payment. Purchaser will make payment of each amount billed under this Article within ten (10) days after receipt of the invoice statement of account. Payment shall be made without any deduction, set off, or withholding, by wire transfer of immediately available funds to Seller's account at the following address:

First Pennsylvania Bank Philadelphia
ABA No. 031000024
For Credit to State of Alaska
Account No. 07/089250/00
Attn: Catherine Hess

Payment may be made in such other manner or to such other address as Seller may specify in the invoice statement of account or by other written notice. All other payments to be made under this Agreement shall be paid in the same manner. If payment is due on a Saturday, Sunday, or legal holiday of the place where payment is to be received, payment shall be made on the next following business day. It is recognized that Seller may bill, and that Purchaser will pay, amounts that are based upon confidential information held or received by Seller. If confidential information is used as the basis for a billing, then upon request Seller will furnish Purchaser with the certified statement of the Commissioner that the amounts billed are correct based upon the best information available to Seller. If a dispute concerning a bill arises, Purchaser agrees to pay the full amount billed by Seller, pending final resolution of the dispute.

5.4 Payment to Lessee. Purchaser, at the request of Seller in the invoice statement of account or otherwise in writing, shall pay all or any portion designated by Seller of that payment required to be made to one or more of the Lessees at an address or addresses and in the manner designated by Seller. The payment will be made within the time limit specified in Section 5.3. Seller may authorize and designate a third party to make the request and

designate the amount, manner and place of payment under this provision. Unless otherwise specified, the balance of the payment due, if any, and payment for subsequent Months, shall be made in accordance with Section 5.3.

5.5 Subsequent Adjustments. Purchaser acknowledges that more accurate information concerning the quantity of or Purchase Price for Royalty Oil tendered may subsequently become available to Seller. In the event that any such information should subsequently become available to Seller, Seller shall promptly furnish a corrected invoice statement of account to Purchaser and the parties will adjust the amount billed and pay or refund the amount of those adjustments. In the event that Seller should render a corrected invoice to Purchaser, any amount to be refunded from Seller to Purchaser or paid from Purchaser to Seller will be paid within fifteen (15) days after the date of the corrected invoice. However, when the adjustment concerns an amount last invoiced more than sixty (60) days before the corrected invoice, the amount will be paid by Purchaser or refunded by Seller, as the case may be, in equal Monthly installments over the same period of time as that over which the adjustment accrued or six (6) Months, whichever is the shorter period. No adjustment will be made more than twelve (12) Months after the date of the last original invoice to which the adjustment relates, except for adjustments resulting from: (i) regulatory or court proceedings (including appeals) commenced or pending during that twelve (12) Month period, whether or not Seller or Purchaser is a party to the proceeding, or (ii) bona fide audits by Seller of any Lessee(s) commencing at any time during the period six (6) years after the date of the last invoice to which such adjustment relates, or any resolution of disputes arising out of those audits. Adjustments due to audits or regulatory proceedings or court proceedings may be made at any time. The provisions of this Section 5.5 will survive any termination of this Agreement.

5.6 Interest. Except for adjustments made upon resolution of Amerada Hess under Article 2.3, the amount of all sums which are not paid when due under this Agreement or which are subsequently determined to be due under an adjustment under Section 5.5, shall bear interest from the date accrued until paid in full at a variable rate per annum equal to the reference rate as announced from time to time by the Bank of America, San Francisco, California, plus one and one-quarter percent (1.25%) per annum.

5.7 Late Payment Penalty. If Purchaser fails to make full payment within one (1) day of the date that payment is due, then in addition to the amount due plus interest from the date that payment was due until the date of payment, Purchaser will pay an amount equal to one percent (1%) of the amount owed.

5.8 Payment to Third Parties. Seller may direct that Purchaser pay any amount due or which may become due directly to a third party in the manner and time as may be directed by Seller in written notice to Purchaser if, in the Seller's sole discretion, the payment to the third party will assist Seller in monitoring or enforcing this Agreement.

ARTICLE VI
TERM

This Agreement shall become effective upon execution by the parties and after enactment of legislation by the State of Alaska (including approval by the Governor) approving this Agreement. This Agreement shall be null and void if it is not so approved by September 30, 1985. Subject to the other provisions contained in this Agreement, Seller's obligation to sell and Purchaser's obligation to buy Royalty Oil shall begin as provided above, and ~~shall end June 30, 1995.~~ As used in this Article, "enactment of legislation" is as defined in AS 01.10.070(f)(4).

ARTICLE VII
DEFAULT OR TERMINATION

7.1 Default. If any one or more of the following events ("Events of Default") occur, then at Seller's option, Seller may terminate or suspend its obligation to tender and sell Royalty Oil and proceed to exercise any one or more of the rights and remedies provided in this Agreement:

(i) At any time, Purchaser (a) repudiates any of its covenants or obligations under this Agreement, or (b) fails, within five (5) Days after written request from Seller, to provide Seller with written affirmation of this Agreement and of Purchaser's intention to perform under this Agreement (together with evidence or assurances of transportation arrangements pursuant to Section 2.7 reasonably satisfactory to Seller); or

(ii) Purchaser does not pay in full any sum owed under this Agreement at the time when payment is due; or

(iii) Purchaser fails to observe or perform any of its other covenants and obligations under Article II; or

(iv) Purchaser does not perform any act required or contemplated under this Agreement and either: (a) the nonperformance continues for more than thirty (30) days after Seller has notified Purchaser of Purchaser's nonperformance; or (b) Purchaser had failed to perform the same or any other act required or contemplated under this Agreement during the immediately preceding twelve (12) Month period; or

(v) There is a material adverse change in Purchaser's condition, business or property which appreciably affects the ability of Purchaser to perform any of its obligations under this Agreement, and Purchaser is unable to give Seller adequate assurance of continued performance either within five (5) days of a request for such an assurance or within such other shorter time period as Seller may reasonably request under the circumstances; or

(vi) Any representation or warranty made by Purchaser in this Agreement proves to have been false or incorrect in any material respect at the time that the representation or warranty was made.

7.2 Failure to Pay Debts. If at any time Purchaser becomes unable to pay any of its debts when those debts are due, or should otherwise become insolvent (without regard to how that insolvency may be evidenced), Purchaser will immediately give notice of that fact to Seller. Whether or not that notice is given, if Purchaser becomes unable to pay any of its debts when those debts are due or should otherwise become insolvent, Seller's obligation to tender and sell Oil under this Agreement will automatically and immediately terminate without any requirement of notice or other action by Seller; however, Purchaser will nevertheless be and remain liable for payment and performance of all of its obligations and covenants under this Agreement with respect to Oil actually tendered by Seller to and after any such termination. Within thirty (30) days after receipt of Purchaser's notice or, if no notice is given, after Seller otherwise becomes aware (as determined in Seller's sole discretion) of Purchaser's insolvency, Seller will have the right, upon written notice to Purchaser, to reinstate all of Seller's and Purchaser's obligations under this Agreement retroactively to the date of termination.

7.3 Seller's Remedies. Upon the occurrence of any Event of Default or if Seller's obligation to tender and sell Oil under this Agreement is terminated or suspended under Sections 7.1 and 7.2, all obligations of Purchaser accrued but not otherwise due and payable under this Agreement will immediately be due and payable in full. In addition, Purchaser will indemnify and hold Seller harmless from and against all other liability, damages (including reasonably foreseeable consequential damages), costs, losses and expenses (including reasonable attorneys' fees and disbursements) incurred by Seller and arising out of the Event of Default, termination, or suspension. Seller shall have the right cumulatively to exercise any and all other rights and remedies and to obtain all other relief available under applicable law or at equity, including mandatory injunction and specific performance. Seller, upon occurrence of any Event of Default, in its sole discretion, may arrange for any disposition to third parties of Royalty Oil to be tendered and sold under this Agreement. Upon the occurrence of any Event of Default, Purchaser may, in Seller's discretion, be released from the obligations set forth in Article 2.11 (In-State Processing) until the Event of Default no longer exists or the obligation of Purchaser to take Oil under this Agreement expires. If upon occurrence of any Event of Default Seller makes arrangement for

disposition to third parties of Oil, or if Purchaser is released from Article 2.11, whether or not this Agreement is terminated, Purchaser will nevertheless be and remain liable to Seller for the full amount of the Purchase Price for that Oil in excess of the Purchase Price over any amount or amounts received by Seller on account of that disposition, net of the expenses of that disposition and for all other costs, expenses (including reasonable attorneys' fees and disbursements), and losses incurred by Seller and arising out of the Event of Default or disposition.

7.4 Purchaser's Exclusive Remedies. Upon any breach of, or default in, the due and timely observance or performance of any of Seller's convenants or obligations under this Agreement, Purchaser acknowledges and agrees that Purchaser's remedies will not include a temporary restraining order or preliminary injunction preventing Seller from taking any action with regard to the Royalty Oil which is the subject of this Agreement.

ARTICLE VIII
DISPOSITION OF OIL

8.1 Disposition of Oil Upon Default or Termination. Purchaser acknowledges and agrees that under the Unit Agreement and Leases, Seller's election to take Royalty Oil in-kind can be revoked or reversed only upon the satisfaction of various conditions, including the giving of six (6) Months notice to return all or more than ten percent (10%) of Seller's then current nominations. Purchaser acknowledges and agrees that Seller's election to invoke its rights to return to taking its Royalty Oil in value on less than six (6) Month's prior notice, or to attempt to secure a waiver of any condition or requirement, is at Seller's sole and complete discretion. Notwithstanding termination of this Agreement for default or for any other reason, including expiration or termination under any provision contained in this Agreement, Purchaser shall continue to take and purchase Seller's Royalty Oil in the amount and for the price set forth in this Agreement for up to four (4) Months following termination of this Agreement if Seller, in its discretion, so requires.

8.2 Inability to Receive Oil. If for any reason Purchaser is unable or refuses to accept or receive any Oil tendered under this Agreement, Purchaser shall nevertheless be and remain responsible for the disposal of that Oil and for paying Seller for the Oil as though it had been received and accepted by Purchaser unless Seller, in its sole discretion, elects to waive this requirement. In order to secure the obligations of Purchaser under this Section 8.1 and under Section 2.8, Purchaser shall, if and as Seller may request from time to time, assign to Seller all right, title and interest of Purchaser under any nominations, leases, agreements, contracts, charter parties and other arrangements for the transportation of the Oil sold under this Agreement through and away from the Trans Alaska Pipeline System; provided, that Seller shall not have any liability or obligations under any such nominations, leases, agreements, contracts, charter parties or other arrangements unless, and to the extent that, Seller shall actually exercise its rights to succeed to Purchaser's interest thereunder and shall obtain the benefits thereof.

8.3 No Right to Storage or Underlift. Purchaser waives and disclaims any interest or right that it may assert to storage of Royalty Oil, including by underlift or other means, to which Seller is or may come to be entitled under the Leases or any other agreement.

ARTICLE IX
WAIVER

The failure of either party to insist upon strict performance of any provision of this Agreement shall not constitute a waiver of, or estoppel against, asserting the right to require that performance in the future. A waiver or estoppel in any one instance shall not constitute a waiver or estoppel with respect to a later breach of a similar nature or otherwise. A course of performance established by a party shall also not estop the other party from complaining of a later breach similar in nature.

ARTICLE X
VALIDITY

If any provision or clause of this Agreement or application of this Agreement to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application. If, however, an invalidity should operate to impair any material right or remedy of a party to this Agreement, that party may terminate this Agreement by notice to the other.

ARTICLE XI
FORCE MAJEURE AND CHANGE IN CONDITION

11.1 Effect of Force Majeure. Except for Purchaser's obligations to make payment of money for Oil tendered under this Agreement and except for Purchaser's obligations to accept and dispose of Royalty Oil, neither party shall be liable for any failure to perform the terms of this Agreement when the failure is due in whole or in substantial part to force majeure. The term "force majeure" as applied to this Agreement shall mean Acts of God, strikes, lockouts and industrial disputes or disturbances, civil disturbances, arrests and restraints from rulers or people, interruptions by government or court orders or by present or future orders of any regulatory body having or asserting jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, inability to secure materials by reasons of allocations promulgated by authorized governmental agencies, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or pipelines, or any other event or condition, whether of the kind herein enumerated or otherwise, not within the reasonable control of the party claiming the benefit of this excuse. If, however, any material obligation of Purchaser is excused or suspended because of a claim of force majeure for a period of three hundred sixty-five (365) successive days or more, Seller will have the right to terminate this Agreement. Prior to Seller exercising its right to terminate this Agreement Seller and Purchaser shall enter into good faith negotiations to restore, to the fullest extent possible, Seller and Purchaser to the

benefits and obligations that existed under this Agreement before the occurrence of the force majeure condition.

11.2 Responsibility. Upon the occurrence and discovery of an event providing the basis for a claim of force majeure, the party making a claim shall notify the other party to this Agreement of its claim of force majeure. Upon the occurrence of an event constituting force majeure, that event shall, so far as possible, be remedied with all reasonable diligence and dispatch. Except for Purchaser's obligations to make payment of money for Oil tendered under this Agreement and except for Purchaser's obligation to dispose of Oil, the obligations of the disabled party to perform under this Agreement, insofar as they are affected by that force majeure, shall be suspended from the time that force majeure occurs and for so long as the disability caused should have continued had the party claiming the existence of the force majeure remedied the event providing the basis of the claim of force majeure with reasonable diligence and dispatch, and for no longer. The settlement of strikes or lockouts or industrial disputes or disturbances will be entirely within the discretion of the party having the difficulty, and the above requirement that any force majeure shall be remedied with diligence and dispatch shall not require the settlement of strikes, lockouts, or industrial disturbances by acceding to the demands of any opposing party therein when such course is inadvisable in the sole discretion of the disabled party.

ARTICLE XII
NOTICES

12.1 Method. All notices, requests, demands or statements shall be in writing, and may be delivered personally to the party to be notified or may be sent by registered or certified United States mail, postage prepaid, with a return receipt requested to such party. Notice deposited in the mail in this manner shall be effective upon the expiration of seven (7) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the addressee. For the purposes of notice, the addresses of the parties to this Agreement shall be as follows:

If to Seller: State of Alaska
Commissioner of Natural Resources
Pouch "M"
Juneau, Alaska 99811

and

Commissioner of Revenue
Pouch "S"
Juneau, Alaska 99811

and

Director, Division of Oil and Gas
Pouch 7-034
Anchorage, Alaska 99510

If to Purchaser:

GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.
P.O. Box 1249
Fairbanks, Alaska 99707

and (as long as the right to Oil is assigned thereto)

Vice President-Supply
MAPCO PETROLEUM Inc.
P.O. Box 645
Tulsa, Oklahoma 74101-0645

12.2 Change of Address. Each party may change its address for notice by giving notice of the change.

ARTICLE XIII
RULES AND REGULATIONS

This Agreement is subject to all present and future valid laws, orders, rules and regulations of the United States, the State of Alaska, and any duly constituted agency thereof.

ARTICLE XIV
SOVEREIGN POWER OF THE STATE

This Agreement and its covenants shall not be interpreted as a limit on the exercise by the State of Alaska of any of its sovereign or regulatory powers, whether conferred on the State by constitution, statute or regulation, including but not limited to, its regulatory power over the Leases. The exercise by the State of Alaska of any sovereign or regulatory power will not operate or be deemed to enlarge any rights of Purchaser or to limit or impair any obligations or liability of Purchaser under this Agreement, except for state statutes enacted after the effective date of this Agreement which have a direct and significant adverse effect on the ability of Purchaser to perform an obligation under this Agreement other than the obligations to accept, dispose, and pay for Royalty Oil tendered under this Agreement.

ARTICLE XV
SECURITY

Thirty (30) days prior to the Date of First Delivery, Purchaser shall cause to be furnished to Seller evidence that an irrevocable stand-by letter of credit for the benefit of Seller effective by Date of Delivery, will be issued by a state or national banking institution of the United States which is a member of the Federal Deposit Insurance Corporation and has an aggregate capital and surplus of not less than One Hundred Million Dollars ($100,000,000), or other banking institution acceptable to Seller in its sole discretion. The principal face amount of the letter of credit shall initially be Five Million, Three Hundred Sixteen Thousand Dollars ($5,316,000). The letter of credit shall be substantially in a form satisfactory to the Commissioner, but in any event shall not require any documents to be submitted in support of drafts drawn against this letter of credit other than the certified statement of the Commissioner or her designee and the Attorney General of the State of Alaska or his designee that Purchaser is liable to Seller for a sum equal to the amount of such draft, and that that sum is due and payable in full and has not been timely paid. In the event that Seller should have reasonable grounds for asserting any claims against Purchaser

under this Agreement and does assert those claims in an aggregate amount in excess of the aggregate principal face amount of the letter of credit then in effect, Purchaser shall upon Seller's request (whether or not Purchaser may deny, reject or otherwise resist such claims) cause the principal face amount of the letter of credit to be increased by an amount equal to the excess. The principal face amount of the letter of credit shall also be automatically increased by Purchaser without request from Seller whenever the face amount is less than the expected Purchase Price of sixty (60) days of Oil tendered under this Agreement, to an amount equal to the expected Purchase Price of sixty (60) days of Oil tendered. The principal face amount of the letter of credit may be decreased by Purchaser upon approval of Seller (which approval will not be unreasonably withheld) if the face amount is more than the expected Purchase Price of sixty (60) days of Royalty Oil tendered under this Agreement, to an amount equal to the expected Purchase Price of sixty (60) days of Royalty Oil tendered. The Commissioner may accept such other or additional security as she, in her sole discretion, considers adequate to protect Seller.

ARTICLE XVI
PREFERENTIAL HIRING AND NON-DISCRIMINATION

Purchaser agrees to hire and employ Alaska residents and Alaska companies to the extent they are available, willing and qualified for all work performed in Alaska that is performed under or in connection with this agreement. As used in this agreement "Alaska resident" means an individual who has resided in the State for one year at the time of hiring or employment and "Alaska companies" means those companies who are incorporated in the State of Alaska or whose principal place of business is in Alaska.

If this provision is determined to be unconstitutional by a court of competent jurisdiction, then Purchaser agrees to hire and employ Alaska residents and Alaska companies to the extent such preferential hiring is determined to be constitutional.

ARTICLE XVII
APPLICABLE LAW

17.1 Alaska Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska, excluding any conflict-of-law rule or principle which might refer such construction to the laws of another state or country.

17.2 Submission to Jurisdiction. Any legal action or proceeding arising out of or relating to this Agreement or for the enforcement of the covenants or obligation of either party must be instituted in a State court of general jurisdiction sitting in the State of Alaska, and Purchaser hereby irrevocably submits to the jurisdiction of that court in any such action or proceeding.

ARTICLE XVIII
WARRANTIES

The purchase and sale of Royalty Oil under this Agreement is subject only to the warranties of Seller expressly set forth in this Agreement and Seller disclaims and Purchaser waives all other warranties, expressed or implied in law, whatsoever.

ARTICLE XIX
AMENDMENT

This Agreement may be supplemented, amended or modified at any time, but only by written instrument duly executed by the parties to this Agreement. Any material amendment to the contract which appreciably reduces the consideration received by the State requires prior approval of the Legislature of the State of Alaska.

ARTICLE XX
SUCCESSORS AND ASSIGNS

No assignment, pledge or encumbrance of this Agreement shall be made by either party without first obtaining the written consent of the other party. The Commissioner may grant such consent on behalf of the Seller. The Commissioner shall have sole and complete discretion in granting or denying a proposed assignment, pledge or encumbrance. Subject to the above requirements in this Article, this Agreement will be binding upon and inure to the benefit of each of the parties and its successors and permitted assignees. In addition, if Purchaser gains or acquires a controlling interest in an entity which has an agreement with Seller for the sale of Royalty Oil ("Other Agreement"), then Seller, at its option and on one year's notice, may require Purchaser to terminate either this Agreement or the Other Agreement. The choice of which Agreement to terminate will be Purchaser's. Purchaser may request that Seller waive this option in advance of Purchaser gaining a controlling interest in an entity which has an agreement with Seller for the sale of Royalty Oil. The Commissioner has sole and complete discretion in granting or denying the requested waiver.

ARTICLE XXI
HEADINGS

Headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

ARTICLE XXII
RECORDS

22.1 Preservation of Records. Purchaser will preserve and maintain all books, accounts, and records relating to or arising out of the performance of this Agreement, including but not limited to the purchase or sale of Royalty Oil and its refined products, for a period of six (6) years. Purchaser will also maintain and preserve all similar books, accounts, and records of which

it has possession belonging to those third parties with whom it contracts for the performance of various parts of this Agreement. Neither Purchaser nor Seller shall be required to retain any records for more than six (6) years unless retention of such records is specifically required by applicable law or regulation. Purchaser shall either maintain its records within the State of Alaska or make such records available to Seller at Purchaser's principal office in the State of Alaska within thirty (30) days after written request by Seller.

22.2 Inspection of Records of Parties. Purchaser and Seller will accord to each other and to their authorized agents, attorneys, and auditors during reasonable business hours access to any and all property, records, books, documents, and indexes directly relating to Purchaser's or Seller's performance of this Agreement and which are under the control of the party from which access is desired so that the other party may inspect, photograph and make copies of that property, records, books, documents and indexes. In no event, however, shall Seller be required to disclose any information, data, or records which are required to be held confidential by state law or regulation. If the information obtained by Seller may be held confidential under state or federal law or regulation, Purchaser may request that that information be held confidential by Seller.

ARTICLE XXIII
INTERPRETATION OF TERMS AND CONDITIONS

In the event that there is a disagreement about the meaning or application of a word, term, or condition in this Agreement, Purchaser will present the arguments supporting its view in writing to the Commissioner for her consideration. The Commissioner will subsequently, within a reasonable time, issue a finding on the meaning or application of the disputed word, term, or condition, setting forth the basis for her conclusions. Purchaser agrees to accept findings by the Commissioner under this Article as long as there is substantial evidence supporting the Commissioner's findings. None of the above shall empower the Commissioner to set the price of the Oil should such price become subject to renegotiation pursuant to Section 2.3.

DATED this 8th day of February 1985.

SELLER: THE STATE OF ALASKA

_____
Commissioner,
Department of Natural Resources

PURCHASER: GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.

By _____
Michael P. Kelly
General Manager

EXHIBIT A

THIS AGREEMENT is entered into this 8th day of February, 1985 by and between the State of Alaska (State), and MAPCO PETROLEUM Inc. (MAPCO), and Golden Valley Electric Association, Inc. (GVEA).

ARTICLE I

DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1 "MAPCO" includes MAPCO PETROLEUM Inc. and its predecessors in interest, MAPCO Alaska Inc. and Earth Resources Company of Alaska, including the North Pole Refining Division of Earth Resources Company of Alaska.

1.2 "GVEA Royalty Oil Contract" means the Agreement for the Sale and Purchase of Royalty Oil dated February 8, 1985 between the State and Golden Valley Electric Association Inc. (GVEA).

1.3 "Assignment" means the Assignment and Product Sales Agreement between MAPCO and GVEA executed May 27, 1980. That Assignment provides for the assignment to MAPCO of GVEA's rights under the GVEA Royalty Oil Contract in exchange for GVEA paying MAPCO a reduced processing fee for turbine fuel.

1.4 "Petroleum Products Agreement" means the ~~Petroleum Products Agreement between GVEA and MAPCO executed May 27, 1980.~~ That Petroleum Products Agreement provides for MAPCO's sale of processed turbine fuel to GVEA at a price based on MAPCO's net acquisition cost for ANS crude plus a fixed margin.

ARTICLE II
APPROVAL OF ASSIGNMENT

The State consents to the Assignment and to the Petroleum Products Agreement in their present forms as modified by the terms of this Agreement, to include amending the term of said agreements to run as long as MAPCO receives Royalty Oil in the quantities specified under the GVEA Royalty Oil Contract. MAPCO and GVEA agree to notify the State of any modifications to those agreements; provided, that changes in price do not constitute a modification so long as the actual pricing mechanism (as compared to the price itself) contained in the Assignment is not changed and the price charged GVEA for fuel under the Assignment remains equal to or less than the price that would then be in effect calculated under the pricing mechanism contained in the Assignment. MAPCO agrees that modifications to the Assignment (or to the quality, price, or escalation provisions of the Petroleum Products Agreement) which materially reduce GVEA's benefits will give the State the right, in its discretion, to terminate the GVEA Royalty Oil Contract and/or the State's approval of the Assignment.

ARTICLE III
DESIGNATION OF ROYALTY OIL VOLUMES

The Assignment states that ~~MAPCO is entitled to designate the volume of Royalty Oil that GVEA will take under the GVEA Royalty Oil Contract.~~ However, GVEA can only reduce the quantity of Royalty Oil it takes under the GVEA Royalty Oil Contract by giving the State nine (9) Months written notice. In consideration of these facts MAPCO agrees that it will give GVEA nine (9) Months' written notice before exercising any rights it may have to decrease the amount of Royalty Oil it requires GVEA to designate under the GVEA Royalty Oil Contract, which nine (9) Month notice will be concurrent with the nine (9) Months' written notice GVEA gives the State (which notice GVEA agrees to give the State immediately upon receipt of any such notice from MAPCO).

ARTICLE IV

SUBSEQUENT AMERADA HESS ADJUSTMENTS

Except as provided herein, MAPCO agrees that the retroactive price adjustment provisions contained in Paragraph IV of the Petroleum Products Agreement, as it applies to the Assignment, shall not extend to adjustments made upon final non-appealable resolution of each of the issues in the Amerada Hess litigation pursuant to Section 2.3 of the GVEA Royalty Oil Contract. GVEA agrees to pay that portion of the Amerada Hess adjustment based on the ratio of the barrels of product purchased by GVEA under the assignment to the total barrels of Royalty Oil purchased under the GVEA Royalty Oil Contract during the twelve-month period immediately preceding the final non-appealable resolution of each of the issues of the Amerada Hess litigation. With the exception of the twelve-month period immediately preceding the final non-appealable resolution of each of the issues in the Amerada Hess litigation, MAPCO agrees to pay to the State any such adjustments owed by GVEA or MAPCO as a result of purchases made by MAPCO under the GVEA Royalty Oil Contract; provided, however, that ~~if GVEA exercises its right to terminate the~~ Assignment and/or Petroleum Products Agreement under Paragraph X of the Petroleum Products Agreement, ~~or if the State terminates the GVEA Royalty Oil~~ Contract and/or this Agreement approving the Assignment as a result of a breach of either agreement by GVEA, ~~GVEA will pay to the State a percentage of~~ the Amerada Hess adjustment, with the percentage based on the ratio of the barrels of product purchased by GVEA under the assignment to the total barrels of royalty oil purchased under the GVEA Royalty Oil Contract during the period in which the Amerada Hess adjustment applies. Within ten days of being notified by the State that there has been a final non-appealable resolution of each of the issues in the Amerada Hess litigation, GVEA and MAPCO shall discuss with each other and advise the State of the percentage of the adjustment by month and year each is to pay the State.

ARTICLE V

OPTION ON RETURN OIL

MAPCO acknowledges that the State has reserved an option to purchase all Return Oil resulting from the sale of Royalty Oil under the GVEA Royalty Oil Contract. In consideration of MAPCO's agreements in Article IV of this Agreement concerning subsequent Amerada Hess adjustments, the State agrees to not exercise its return oil option so long as MAPCO receives Royalty Oil under the GVEA Royalty Oil Contract.

By _____
Commissioner,
Department of Natural Resources

GOLDEN VALLEY ELECTRIC ASSOCIATION

By _____
Michael P. Kelly
General Manager

MAPCO PETROLEUM INC.

_____
Robert M. Howe
President

File, use when [illegible] is [illegible].

North Pole Refining P.O. Box 5028, North Pole, Alaska 99705

DIVISION OF EARTH RESOURCES COMPANY OF ALASKA

907/488-2741
907/488-2742

PETROLEUM PRODUCTS AGREEMENT

This Agreement, dated the 1st day of May 1980, by and between:

NORTH POLE REFINING (NPR), Division of Earth Resources Company of Alaska, an Alaskan Corporation, and GOLDEN VALLEY ELECTRIC ASSOCIATION, INC. (GVEA).

Witnesseth

The Agreement, when duly executed, shall constitute an agreement under which NPR, shall sell and deliver to GVEA, and GVEA shall purchase and receive from NPR, processed turbine fuel, as per Section I below, at GVEA's North Pole and Zhender generating plants effective the date of first delivery at GVEA's meter station of Royalty crude oil as provided for in BUYER's Assignment and Product Sales Agreement, by NPR under terms and conditions as follows:

I QUANTITY AND QUALITY

NPR shall sell and deliver to GVEA hereunder Industrial Turbine Fuel (including HF/DF #1 and HF/DF #2) meeting G. E. specification GE141047H for Heavy True Distillate and all petroleum products identified herein as "Turbine Fuel" for use at the GVEA's gas turbine and/or diesel generator facilities located at North Pole and Fairbanks (Zhender), Exhibit I, II(A), and II(B). Said Industrial Turbine Fuel (heavy true distillate) shall be delivered by pipeline from NPR, at his expense, into the GVEA's Turbine Fuel storage tanks located at the North Pole Facility. Deliveries to Fairbanks (Zhender) locations will be by rail tank car or transport

I QUANTITY AND QUALITY (CONTINUED)

truck in full capacity of the conveyance as determined by GVEA. GVEA and NPR recognize highway weight restrictions in the fall and spring of each year may require scheduling of liftings to avoid this period with deliveries by transport truck. Deliveries shall be made during each month of the term hereof on GVEA's orders. GVEA will furnish NPR with estimated annual projections of all monthly petroleum fuel requirements to be updated at three (3) months intervals. GVEA hereby recognizes that product requirements in excess of one-hundred-ten percent (110%) of original monthly nominations (Exhibit III) may not, at NPR's option, be available. GVEA will confirm estimates of the quantities to be delivered during each month at least forty-five (45) days prior to the first day of the month in which said quantities are to be delivered. Exhibit IV formats the required data (modifications may be made that are mutually acceptable). Scheduling for deliveries of volumes specified will be coordinated on a weekly basis between NPR and GVEA's designated agent(s).

II MEASUREMENT AND TEST

Quantity and quality of Turbine Fuel sold and purchased hereunder shall be determined from NPR's recording flow meters and from samples taken at NPR's facility. Observed volume shall be corrected to sixty (60) degrees Fahrenheit by use of API Table 6. All sampling and testing shall be done as mutually agreed. Claims for errors, deficiencies or imperfections will not be entertained by NPR unless notice in writing is given by GVEA to NPR within ten (10) days of discover.

III TITLE

Title to the Turbine Fuel sold and delivered hereunder shall pass to GVEA when the Turbine Fuel enters GVEA's storage tanks or truck transport,

III TITLE (CONTINUED)

and risk of loss shall follow title. All Turbine Fuel sold hereunder shall be deemed to be in the entire custody and control of GVEA, immediately upon delivery into GVEA's terminal (GVEA's intake headers or storage tanks at North Pole or Zhender) or into GVEA's truck transport; GVEA shall indemnify and hold NPR harmless from any and all liability (including reasonable attorney's fees) for loss, damage, injury or other casualty to persons or property caused or occasioned by any leakage, fire, explosion and/or any other damage caused directly or indirectly by the Turbine Fuel sold hereunder when the said Turbine Fuel is in the custody of GVEA as aforesaid.

IV PRICE

For each net barrel of forty-two (42) U.S. gallons sold and purchased hereunder of Industrial Turbine Fuel only (heavy true distillate), GVEA agrees to pay and NPR agrees to accept a price equal to NPR's net acquisition cost for each barrel of forty-two (42) U.S. gallons of North Slope Alaskan crude oil plus a fixed margin of [redacted] per barrel. NPR's net acquisition cost shall include all tariffs for transportation of said crude oil, the effects of any programs of any governmental agencies and 67.67 percent of the cost associated with any specific gravity adjustments; Sulphur and B S & W relative to oil returned to the TAPS, excluding any impurities introduced into the return crude stream which was not an element of the acquired crude or generic to that portion of said return penalty shall be excluded when calculating GVEA's price of turbine fuel as it relates to NPR's total acquisition cost). NPR will certify to GVEA, within sixty (60) days following the end of the month in question, the actual acquisition cost of crude received during said month and will at that time issue any resulting retro-active adjustments to the selling prices for all deliveries made during the month in question. It is understood by both parties that certain components of

IV PRICE (CONTINUED)

the final cost of crude oil purchased by NPR may not be finalized until an indeterminate time in the future. It is therefore, agreed between both parties that any adjustments to the final crude cost for any months in question irrespective of the timing of these adjustments, will be handled retro-actively to the month in question in accordance with the pricing terms herein notwithstanding any limitations to the contrary contained elsewhere in this agreement.

For billing purposes, sales will be expressed in gallons. The price which GVEA shall pay NPR for delivery of the following Turbine Fuel products hereunder shall be as follows:

North Pole Refining Plant Posted Prices, F. O. B. NPR, at the time of each delivery for the particular product involved, less a discount equal to the maximum discount per gallon given to any other buyer of the particular product.

Diesel Fuel #1
Diesel Fuel #2

Notice of a change in discount for the above products will be given to GVEA by NPR ten (10) calendar days prior to change.

NPR will notify GVEA, in writing, within five (5) working days of the effective date of the posting change for the above products.

Transportation fee to be agreed upon by separate agreement.

V ESCALATION

Price of Industrial Turbine Fuel (heavy true distillate) will escalate/de-escalate relative to the August 1977 U.S. Bureau of Labor Statistics Wholesale Price Index for Major Commodity and Special Groupings (Table 1 Manufacture Goods) times eighty-seven percent (87%) of the fixed margin ($2.62 per barrel). Examples are shown in Exhibit II. Price escalations are to be computed at the end of each calendar quarter commencing on December 31, 1977 and quarterly hereafter, and be effective on purchases made during following quarters.

Escalator to be reviewed annually upon written request by either party no later than sixty (60) days prior to the anniversary date of this agreement.

VI PAYMENT

All payments for Turbine Fuel sold and delivered to GVEA hereunder during each calendar week shall be billed on the following Monday, payment terms net four (4) days from date of invoice.

VII TAXES

All taxes, fees, assessments and charges now or in the future assessed, levied and charged by any State, Federal and local government against or upon the Turbine Fuel covered hereby and against or upon the selling and transportation thereof shall be paid by GVEA; and if NPR has paid or shall hereafter pay any such tax, fee, assessment and charge; GVEA agrees to promptly reimburse NPR the full amount therefore, together with all penalties, interest and costs there on. Any such payments shall be in addtiion to the price otherwise provided for.

VIII FORCE MAJEURE

Except as to payments due hereunder, each of the parties hereto shall be excused from performance under this agreement as long as to the extent that performance may be prevented in whole or in part by reason of strike, fires, washouts, breakage of pipeline or tankage, acts of God, war, sabotage, the elements, earthquakes, differences of disputes with workmen (however arising or from whatever cause) inability to obtain labor or personnel service, shortages of supplies of crude oil, scheduled or unscheduled shutdown of plants, or any other cause, except financial, beyond its control, whether of a similar or dissimilar class, including specifically acts, orders or recommendations of Government officers, bodies or committees acting under claim of authority.

IX MUTUAL AGREEMENT

Any details of this agreement not specified herein shall be resolved by mutual agreement of the parties hereto.

X CONDITIONS/TERMS

This Agreement shall become effective on May 1, 1980. This Agreement shall remain in full force and effect for seven (7) years and thereafter until terminated. Either party may, at any time, terminate this Agreement upon three (3) year's written notice to the other.

XI NON-ASSIGNMENT: MODIFICATION

This Agreement may not be assigned to any third party except the administrator of the Rural Electrification Administration without the written

XI NON-ASSIGNMENT: MODIFICATION (CONTINUED)

consent of NPR. This agreement may not be modified or terminated except by instrument in writing, signed by the parties hereto.

XII GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Alaska. All terms and provisions hereof are subject to the applicable orders, rules, and regulations of all governmental authorities.

XIII SUPERSEDING AGREEMENTS

This Agreement supersedes any previous Petroleum Product Agreement effective the date NPR receives first delivery of GVEA's State Royalty crude oil as provided for in GVEA's Assignment and Product Sales Agreement dated May 1, 1980.

ACCEPTED AND AGREED TO:

GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.	NORTH POLE REFINING
By: P L Hufman	By: Brenda K Mock
Title: Gen Mgr.	Title: Asst Marketing Manager
Date: 5-27-80	Date: May 27, 1980

EXHIBIT B

North Pole Refining P.O. Box 5028, North Pole, Alaska 99705

DIVISION OF EARTH RESOURCES COMPANY OF ALASKA

907/488-2741
907/488-2742

ASSIGNMENT AND PRODUCT SALES AGREEMENT

This Agreement, dated the 1st day of May 1980, by and between:

NORTH POLE REFINING, Division of Earth Resources Company of Alaska, an Alaskan Corporation, (NPR) and GOLDEN VALLEY ELECTRIC ASSOCIATION, INC., (GVEA)

shall be as follows:

1. GVEA, holder of certain rights to crude oil under a State Royalty Oil Contract, does hereby assign, transfer and convey its rights under said contract (as well as any future similar contracts) to NPR, effective on May 1, 1980, subject to the following terms and conditions:

   a. GVEA shall make request for State crude oil under its contract immediately upon receipt of written notice by NPR for the volumes so designated by NPR.

   b. NPR shall assume and be responsible for all obligations and duties of GVEA under its State Royalty Oil Contract for the volumes so designated.

   c. Certain provisions of the current GVEA Royalty Oil Contract and any future contracts may be excepted and modified as

dictated by any State declared GVEA/State Royalty contract relationships if mutually agreed to by NPR and GVEA.

d. NPR agrees that so long as GVEA State Royalty Oil is being delivered to NPR per the terms of this agreement, NPR will not issue notice of cancellation to the Petroleum Products Agreement referenced herein.

2. NPR, in consideration of this Agreement, agrees to sell GVEA and GVEA agrees to purchase quantities of turbine fuel to 12.5 volume percent of those barrels of crude oil acquired by NPR under this assignment at a cost equal to NPR's net acquisition cost as defined in the attached Petroleum Products Agreement between the parties plus a processing fee of $[illegible]/barrel. This fee shall escalate only as set forth in the Petroleum Products Agreement effective between the parties except for base period. Base period for the excalation of the $[illegible] processing fee shall be concurrent with the reporting period of the Bureau of Labor and Statistics Wholesale Price Index for Major Commodities and Special Groupings on May 1, 1980. Due to cyclic seasonal requirements and the limitations of GVEA storage facilities, the difference in quantities of turbine fuel available to GVEA and the amount purchased by GVEA under the 12.5% provision of this paragraph, shall accumulate month by month for annual periods and be available for puchase by GVEA until the end of each annual period. At the end of the annual period, that turbine fuel not purchased by GVEA shall not be carried forward into the next annual period. The annual period shall commence sixty (60) days after the anniversary date of the date of delivery of Royalty crude oil to NPR provided for in this agreement, and annually thereafter. The purpose of this accumulation statement is to guarnatee GVEA the option of purchasing turbine fuel equal to 12.5 volume percent of the total crude oil acquired by NPR under this agreement during the annual period. It is understood by both

parties that NPR has limited storage for turbine fuel at the refinery (a usable amount of approximately 20,000 barrels) and that transfer of quantities in any short period of time and in great excess of this amount, would be impractical.

3. It is further agreed by NPR and GVEA that no part of this agreement constitutes an obligation by NPR to nominate any or all of the State Royalty Oil rights assigned herein.

4. GVEA and NPR specifically agree that in the event any court shall decree or determine that NPR's acquisition of crude oil under this agreement shall be in any way unlawful, then the terms and conditions of this Assignment and Product Sales Agreement shall be null and void and no longer binding on either party.

ACCEPTED AND AGREED TO:

GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.

By: R L Mehner

Title: Gen Mgr.

Date: 5-27-80

NORTH POLE REFINING

By: Brenda L Mesa

Title: Asst Marketing Manager

Date: May 27, 1980

Bankers Trust Company
LETTER OF CREDIT DIVISION
1 BANKERS TRUST PLAZA • NEW YORK

MAILING ADDRESS
P.O. BOX 318—CHURCH ST STA
NEW YORK, N.Y. 10015

JUNE 9, 1983

IRREVOCABLE LETTER OF CREDIT
NO. W-78702-S

COMMISSIONER OF NATURAL RESOURCES
STATE OF ALASKA
POUCH M
JUNEAU, ALASKA 99811

GENTLEMEN:

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT FOR ACCOUNT OF GOLDEN VALLEY ELECTRIC ASSN. (GVEA) , P.O. BOX 1249, FAIRBANKS, ALASKA 99701 FOR A SUM NOT TO EXCEED U.S. DOLLARS FIVE MILLION FOUR HUNDRED THOUSAND AND 00/100 **$5,400,000.00** WHICH IS AVAILABLE AGAINST PRESENTATION OF YOUR SIGHT DRAFT(S) DRAWN ON US WHEN ACCOMPANIED BY:

1) COPY OF UNPAID INVOICE REFERRED TO IN DOCUMENTARY REQUIREMENT NO. 2 IN THE AMOUNT PAYABLE TO THE STATE OF ALASKA BY GVEA FOR THEIR PURCHASE OF THE STATE OF ALASKA ROYALTY CRUDE OIL.

2) A STATEMENT PURPORTEDLY SIGNED BY THE COMMISSIONER OF NATURAL RESOURCES FOR THE STATE OF ALASKA OR HIS DESIGNEE, INDICATING NAME AND TITLE OF SIGNATOR READING AS FOLLOWS:

"THE UNDERSIGNED HEREBY CERTIFIES THAT:

A) THE ROYALTY OIL COVERED BY THE ACCOMPANYING INVOICE HAS BEEN DELIVERED TO GVEA AND THE AMOUNT COVERED BY THE INVOICE IS PAST DUE AND REMAINS UNPAID TO THE STATE OF ALASKA AT THE TIME OF DRAWING.

B) AN AUTHORIZED REPRESENTATIVE OF THE STATE OF ALASKA HAS DISCUSSED THE NON-PAYMENT OF SUCH INVOICE WITH AN OFFICER OF GVEA AND AN OFFICER OF MAPCO PETROLEUM, INC. (OF ALASKA).

C) THE TERMS OF PAYMENT DEFINED IN ARTICLE VIII, CLAUSES 8.1, 8.2, 8.4, 8.5 IN THE "AGREEMENT FOR THE SALE AND PURCHASE OF STATE ROYALTY OIL" BETWEEN GVEA AND THE STATE OF ALASKA DATED 4/12/77, HAVE NOT BEEN COMPLIED WITH; AND

D) A WRITTEN NOTICE OF DEFAULT PER CLAUSE 6.1 OF ARTICLE XVI HAS BEEN GIVEN BY THE STATE OF ALASKA TO GVEA.

BY_____

(*COMMISSIONER OF NATURAL RESOURCES FOR STATE OF ALASKA) OR (*DESIGNEE FOR COMMISSIONER OF NATURAL RESOURCES FOR STATE OF ALASKA)"

*APPROPRIATE DESIGNATION TO BE USED TO IDENTIFY PARTY SIGNING THE CERTIFICAT

This credit/advice is subject to the Uniform Customs and Practice for Documentary Credits (1974 Revision), International Chamber of Commerce Publication No. 290.

- C O N T I N U E D -

7

Bankers Trust Company
LETTER OF CREDIT DIVISION
BANKERS TRUST PLAZA • NEW YORK

MAILING ADDRESS
P.O. BOX 318—CHURCH ST. STA
NEW YORK, N.Y. 10015

 RE: L/C W-78702-S

NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS OR REFERENCES IN SUCH OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS TO THIS LETTER OF CREDIT, THIS LETTER OF CREDIT CONTAINS THE ENTIRE AGREEMENT AMONG THE ACCOUNT PARTY, BENEFICIARY AND THE ISSUER HEREUNDER RELATING TO THE OBLIGATIONS OF THE ISSUER HEREUNDER.

ALL DRAFTS MUST BE MARKED "DRAWN UNDER BANKERS TRUST CO. CREDIT NO. W-78702-S".

DRAFTS AND ACCOMPANYING DOCUMENTS MUST BE PRESENTED TO THE DRAWEE NOT LATER THAN JUNE 30, 1984.

WE HEREBY AGREE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT SHALL BE DULY HONORED ON DUE PRESENTATION TO THE DRAWEE.

VERY TRULY YOURS,

M. A. Orlando

AUTHORIZED SIGNATURE

This credit/advice is subject to the Uniform Customs and Practice for Documentary Credits (1974 Revision), International Chamber of Commerce Publication No. 290.

17

LETTER OF CREDIT DIVISION
1 BANKERS TRUST PLAZA • NEW YORK

MAILING ADDRESS:
P.O. BOX 318 - CHURCH ST. STA.
NEW YORK, N.Y. 10015

ADVICE OF AMENDMENT
OUR CREDIT NO. #787028

NEW YORK, APRIL 17, 1984

********** NOTE **********
THIS CONFIRMS OUR CABLE OF TODAY
****

BENEFICIARY:

COMMISSIONER OF NATURAL RESOURCES
STATE OF ALASKA
POUCH M
JUNEAU, ALASKA 99811

APPLICANT:

GOLDEN VALLEY ELECTRIC
ASSN. (GVEA)
P. O. BOX 1249
FAIRBANKS, ALASKA 99701

ADVISING BANK:

RECEIVED
APR 26 1984
DIVISION OF OIL & GAS
ANCHORAGE, ALASKA

GENTLEMEN:

THIS CREDIT HAS BEEN AMENDED AS FOLLOWS.

IN REFERENCE TO ITEM 28 THAT PART READING: "....AN OFFICER OF MAPCO PETROLEUM INC. (OF ALASKA)..." NOW TO READ "....AN OFFICER OF MAPCO PETROLEUM INC. (ALASKA)..."

IN REFERENCE TO ITEM 20 AFTER "... BY THE STATE OF GVEA". ADD "AND MAPCO PETROLEUM INC. (ALASKA)"

DRAFTS MUST BE PRESENTED TO THE DRAWEE NOT LATER THAN JUNE 30, 1985.

ALL OTHER TERMS AND CONDITIONS AS PREVIOUSLY ADVISED REMAIN UNCHANGED.

IMMEDIATE NOTIFICATION MUST BE GIVEN TO US IF THIS AMENDMENT IS NOT ACCEPTED.

VERY TRULY YOURS,

Lorraine Gordon
AUTHORIZED SIGNATURE

Kathryn West
561-5521

Kay
cc: Dwight, Bill, Tom Sam, Steve, Ted & Dana
1/4
Clifford Gish



RECEIVED
JAN 4 1985
DIVISION OF OIL & GAS
ANCHORAGE, ALASKA

Ewell A. Clarke
Vice President
Domestic Crude Oil

December 28, 1984

Alaska Department of Natural Resources
Attn: Ms. Kay Brown, Director
Division of Oil & Gas
Pouch 7-034
Anchorage Alaska 99510

Dear Ms. Brown:

In response to your December 7 notice, we offer herewith our comment on the proposed royalty oil sale to Golden Valley Electric Association (GVEA). The purpose of our remarks is not to discourage the awarding of a contract which will benefit consumers of electric power in Fairbanks; but rather to suggest improvements in the clarity and definition of the agreements which would better assure that indeed it will be the consumers who benefit from the royalty oil sale.

It is clear that GVEA cannot employ the crude oil directly in its power generation facilities and therefore must rely on Mapco's adjacent refinery to process the crude, extracting a gas oil fraction which GVEA can use. Therefore, it is incumbent upon the State to assure that such processing and extraction results in the maximum benefit to GVEA rather than a windfall to Mapco. This is particularly important since the Commissioner's Preliminary Findings state (on page 7) that:

> "No profits accrue to persons who are not both residing in Alaska and utilizing the GVEA services in-state."

Before addressing the question "Who benefits?", we should like to turn briefly to the situation referred to in Paragraph 2.11 of the Agreement where GVEA would utilize directly the crude oil sold thereunder. We believe that the words "prompt conversion of Purchaser's generating units" may be misleading. There are a number of substantial problems which do not lend themselves to promptness, the least of which is the REA financing. Design of the facilities, ordering and delivery of materials, and construction are time-consuming. Far more difficult to resolve promptly, however, are the approval and permitting required by regulatory agencies to construct and operate facilities which would burn unprocessed crude oil with low flash point and high sulfur content. We believe that the facility conversion referred to in the Agreement represents a project which can be completed at best in many months to several years, and at worst, never. Furthermore, the cost of such conversion, together with interest cost of the financing, could eliminate any cost advantage of burning crude oil vs burning coal.

Turning now to the question of who benefits from this sale of royalty oil to GVEA, we note on page 4 of the Preliminary Findings that the "benefit" to the consumers will be about $0.00095/kwh and that the benefit results entirely from a "discount" which Mapco gives GVEA on the price of the gas oil extracted from the royalty crude.

It is unclear just what this discount is -- a discount below what? Paragraph 2.11 of the Agreement refers to it as a "lower refining charge" but does not indicate lower than what? The Preliminary Findings shed some light on the question, Paragraph IV, page 3, where it states that the Mapco/GVEA agreement provides fuel "at a price lower than what GVEA would pay otherwise." We conclude that GVEA gets a lower-priced gas oil from Mapco when Mapco buys GVEA's royalty oil than when Mapco buys its royalty oil from other sources.

If that is the correct conclusion, the obvious question is: Why does Mapco give GVEA the discount? One explanation might be that Mapco pays less for GVEA's crude than for crude acquired from others. However, we believe that such is not the case. The price which Mapco pays the State for its long-term royalty oil is within pennies of the price which GVEA pays the State (and assigns to Mapco). Therefore, if Mapco's costs are essentially the same when running its own royalty crude and when running GVEA's royalty crude, how is the "discount" justified? Or one could ask: how is Mapco's <u>undiscounted</u> price to GVEA justified? Or how is the amount of the discount determined?

Nothing in the Preliminary Findings or the Agreement speaks to the <u>amount</u> of the discount, although this amount is the heart of the justification for the royalty oil sale. Reference is made in the Preliminary Findings that:

> "Mapco's discount to GVEA would reduce GVEA's average power generation cost by about $0.00095/kwh."

This hardly seems to be a bonanza for the electric power consumer. A typical residential user on GVEA's system pays about $0.09/kwh; so the cost saving resulting from the Mapco discount amounts to about 1% of the price which the consumer pays for his electricity.

We suggest that there may be several alternatives available to GVEA which are more beneficial to consumers than a "discount" on 12% of the crude barrel. There are options which could result in GVEA's utilization of substantially more than 12% of the crude, at lower cost to GVEA than that of conventional refinery fractionation. We will be happy to discuss such options with you at your convenience.

In summary, since GVEA cannot use the crude oil to generate power, the State's proposed sale of royalty oil is really a sale to Mapco, contingent upon Mapco's agreement to sell to GVEA the gas oil which is extracted from the crude; and contingent upon Mapco's selling the gas oil at some unspecified "discount" below some unspecified price level. Viewed in this context, and recognizing that GVEA may have other available options which will yield greater benefits from the State royalty oil, we suggest that the awarding of a long-term crude contract to GVEA be deferred until the State is satisfied that the royalty oil being committed to GVEA is indeed being employed in the best interests of the GVEA consumer; and that GVEA's current needs be satisfied by short-term commitments not exceeding two years.

Very truly yours,

Emmett A. Clark

EAC/ml

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 19, 1983

MEMORANDUM

TO: Representative John Cowdery

FROM: David Teal
Research Staff

RE: MAPCO Contract for Alaska Royalty Oil
Research Request 83-158

You asked this agency to review the contract for the sale of State royalty oil to the North Pole Refinery (MAPCO) and to describe significant details of the contract, particularly as they differ from provisions of the proposed Tesoro and Chevron contracts. This memorandum responds to your request.

The contract in question was originally with the Earth Resources Company of Alaska, who operated the North Pole refinery until it was sold to MAPCO in 1981. The contract was approved by the Legislature in May of 1978. It provides royalty oil from the Prudhoe Bay Unit to the North Pole refinery through the year 2003. Some specific provisions of the contract are discussed below.

Quantity of Oil

The contract specifies that no more than 15 percent of the State's share of oil from the Prudhoe Bay leases is to be sold to MAPCO. Note, however, that 15 percent of current production levels is about 28,000 barrels per day while MAPCO is actually receiving about 35,000 barrels of royalty oil per day. This apparent discrepancy can be explained by a careful reading of sections 2.1.1 through 2.1.3. Section 2.1.1 allows MAPCO to nominate additional oil from the Prudhoe Bay leases as long as "such oil is unobligated and available." Section 2.1.3 limits the total amount of oil supplied by the State under this contract to 35,000 barrels per day. In addition, section 2.1.2 of the contract gives MAPCO an option on royalty oil from other leases (including future discoveries) so that the refinery can nominate up to 35,000 barrels of oil per day through 2003.

NOTE * INTERESTING CONSIDERATION. MAPCO HAS STATED IN WRITTEN TESTIMONY THAT THE PRICE THEY PAY FOR ROYALTY IS HIGHER THAN WHAT THEY COULD BUY IT FROM PRODUCERS

The North Pole refinery is not only purchasing the full 15 percent share of Prudhoe Bay oil to which it is entitled, but is also exercizing its option to purchase an additional 7,000 barrels per day to bring its total purchase to the contractual ceiling of 35,000 barrels per day. According to the contract, North Pole could nominate as little as 5,000 barrels per day without paying a penalty or endangering the contract. The continued high level of nomination is probably due to a combination of uncertainty in oil markets and the 7-month lag from date of notification of a change in volume to implementation of that change. * NOTE

The fixed volume provision (35,000 barrels per day) in the MAPCO contract could allow the North Pole refinery to claim nearly half of all State royalty oil by 2003, when the contract terminates. (Unless additional discoveries are made, the State's share of crude oil is expected to decline to about 75,000 barrels per day in the year 2000.) The proposed Tesoro and Chevron contracts specify a proportion of Prudhoe Bay royalty oil (13.867 percent and 9.6 percent, respectively) so that the amount of oil delivered to them would decline as production from Prudhoe Bay declines.

Price of Oil

As you know, the proposed Tesoro and Chevron contracts call for a 30¢ per barrel premium over the in-value price of oil. North Pole does not pay a premium for royalty oil, but it does pay the "Exhibit B" price, which is about 50¢ per barrel above the average in-value price.[1] The price differential is due to different ways of making the price of royalty oil subject to resolution of the Almerada Hess litigation. The MAPCO contract specifies that the Exhibit B price will be paid, with the differential refunded if the State loses the case. The Tesoro and Chevron contracts specify that the average in-value price will be paid, with additional payments to be made if the State's arguments prevail.

[1]The Exhibit B price for a hypothetical Company X is defined as the higher of 1) the average price received by all producers including Company X and 2) the average price received by all producers except Company X.

Residual Oil

One of the more controversial aspects of the MAPCO contract is the disposition of residual oil. The North Pole refinery currently reinjects its residual oil into the pipeline. North Pole pays a fee for degradation of the virgin crude in the line and reclaims the oil at Valdez, where it is indistinguishable from any other oil that comes through the pipeline. Section 2.4 of the contract gave the State an option on the residual oil, but the option expired (unused) on September 1, 1978. The Tesoro and Chevron contracts would give the State an option on the residual oil for the life of the contracts.

Other Provisions

The 25-year term of the MAPCO contract, the lack of a premium over the in-value price, the tion on future reserves, and the lack of a claim on residual oil have been discussed above. Other points of interest are briefly discussed below.

- The contract fails to impose in-state processing requirements. The proposed Tesoro and Chevron contracts specify that all royalty oil must be processed in-state and that 32 percent and 34.44 percent, respectively, of royalty oil must be refined into usable products.

- The contract fails to restrict exports of the petroleum products. The proposed Tesoro and Chevron contracts specify that the refiners must use their best efforts to market all royalty oil products in Alaska and require the purchasers to submit reports on performance. The MAPCO contract merely states that the refinery will notify the Commissioner of the Department of Natural Resources if products are exported.

- The contract does not impose a reservation fee if North Pole elects to claim less than the maximum quantity allowed by the contract. The proposed Tesoro and Chevron contracts specify that the purchaser shall pay a fee of .75 percent of the purchase price (about 15¢ per barrel at current prices) for each barrel difference between the maximum quantity and the quantity actually nominated.

- The contract has a much weaker security agreement than the proposed Tesoro and Chevron contracts. MAPCO is required to grant a security interest in all oil delivered or to provide security in the form of a bond. Under the proposed contracts, Tesoro and Chevron must furnish an irrevocable letter-of-credit that can be drawn upon by unilateral action of the State.

- The contract does not include a provision on disagreements. Section 23 of the proposed Tesoro and Chevron contracts says that, in the event of disagreement over the meaning or application of terms or conditions of the contract, the purchaser shall agree to accept the findings of the Commissioner of Natural Resources unless there is clear evidence for a contrary interpretation.

The conclusion of our review of the MAPCO contract is that it has significant disadvantages (to the State) relative to the proposed Tesoro and Chevron contracts. In addition to the differences listed in this section, the term of the MAPCO contract is longer, the price the State obtains for its royalty oil is lower, it gives options on future oil discoveries, and it gives the State no option on the residual product of the refinery. There is some possibility that these provisions could be renogotiated if the North Pole refinery wished to expand and if additional supplies of royalty oil were required to support that expansion.

* * *

I hope this review of the MAPCO contract is useful in your deliberation of the proposed contracts for royalty oil. If you have additional information requests, please contact the agency.

DT

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

Dave

March 19, 1985

The Honorable Richard Shultz
Co-Chair, House Resources Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Shultz:

I am enclosing information about the proposed royalty oil contract between the State and Golden Valley Electric Association (SB 232 and HB 287).

This information includes a briefing paper and the Department's final finding and determination from January. The Royalty Oil and Gas Advisory Board provided recommendations in separate letters to House Speaker Grussendorf and Senate President Bennett on March 11.

Please inform me or Kay Brown, Director of the Division of Oil and Gas, if you need more materials or background. I look forward to working with you on the proposed royalty oil contract.

Sincerely,

Esther

Esther C. Wunnicke
Commissioner

10-J9LH

Background Information on SB 232/HB 287
Overview of proposed GVEA long-term contract
dated February 8, 1985

- Price - Monthly volume-weighted average of producer's current reported netback prices, plus field costs, plus adjustments for the final outcome of the Amerada Hess litigation, plus a $.30 premium, with a price reopener in July 1987, and every two years thereafter.

- Term - Delivery of oil commences four months after approval by the Governor and the Legislature (unless the State sets an earlier date) and terminates on June 30, 1995.

- Quantity - 2.6667% of the State's daily production of royalty oil from the Prudhoe Bay Unit (approximately 5,000 bpd).

- Point of Delivery - Custody transfer meters into the Trans Alaska Pipeline system at Prudhoe Bay.

- In-State Use - When the Department executes the agreement, it will also execute an agreement with GVEA and MAPCO approving GVEA's assignment of its royalty oil to MAPCO. Should the MAPCO/GVEA relationship be terminated, GVEA's continued receipt of royalty oil would be conditioned upon GVEA arranging a new means of using royalty oil to provide GVEA consumers electricity at a cost lower than otherwise possible.

- Security - GVEA will provide a letter of credit to the State in the amount of $5,316,000, which is equivalent to approximately 60 days' worth of oil.

- Standard Contract Terms - The contract will contain all appropriate standard State contract terms.

- Exhibit A - The proposed long-term contract contains as Exhibit A an agreement signed by the State, GVEA, and MAPCO. Exhibit A recognizes existing agreements between GVEA and MAPCO, under which MAPCO takes GVEA's royalty oil, refines it and sells the resulting turbine fuel to GVEA. In Exhibit A, the State consents to those agreements so long as they are not modified to reduce the benefits to GVEA's consumers. Exhibit A also provides that MAPCO will pay any Amerada Hess adjustments on the royalty oil turbine fuel it sells to GVEA, except that 1) GVEA will pay Amerada Hess adjustments on the last 12 months of turbine fuel purchases prior to resolution of Amerada Hess, and 2) GVEA will pay all Amerada Hess adjustments on the royalty oil

turbine fuel if it terminates the agreements or causes the State to terminate the royalty oil contract.

- Return Oil - The State will have the option to purchase all return oil produced, refined or exchanged under the contract. However, in exchange for MAPCO's agreement to pay Amerada Hess adjustments, the State agrees not to exercise its return oil option.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

BILL SHEFFIELD, GOVERNOR

POUCH 7-034
ANCHORAGE, ALASKA 99510

STATE OF ALASKA
Alaska Royalty Oil & Gas Development Advisory Board
Notice of Public Hearing

The Alaska Royalty Oil and Gas Development Advisory Board will hold a public hearing on a proposed sale of State royalty oil from the Prudhoe Bay Unit. The hearing will be held by teleconference on Wednesday, February 20, 1985, at 10:30 a.m. The teleconference system will be available at that time in Anchorage, Fairbanks, and Juneau. The public may appear at the following locations to present testimony:

Legislative Information Office
1024 West 6th
Anchorage, Alaska
278-9624

Legislative Information Office
315 Barnett Street, Suite 101
Fairbanks, Alaska
452-4448

State Office Building
10th Floor Conference Room
Juneau, Alaska
465-3836

The Department of Natural Resources has proposed a long-term, noncompetitive sale of State royalty oil from the Prudhoe Bay Unit to Golden Valley Electric Association (GVEA).

The proposed GVEA agreement is for the sale of 2.667% of the daily royalty oil available from the Prudhoe Bay Unit (approximately 5,000 bpd). The contract would commence four months after approval by the Governor and the Legislature, and would terminate June 30, 1995. The proposed contract includes a provision allowing either party to reopen price negotiations during the month of July, 1987 and every two years thereafter.

The Alaska Royalty Oil and Gas Development Advisory Board, under AS 38.06.040 (a)(2), is required to "hold public hearings on proposed sales, exchanges, or other disposals of royalty oil or gas to determine whether the proposals comply with AS 38.06.070."

AS 38.06.070 states the "criteria" the Board must consider in the exercise of its powers. These are:

(1) the revenue needs and projected fiscal condition of the state;

(2) the existence and extent of present and projected local and regional needs for oil and gas products and by-products, the effect of state and federal commodity allocation requirements which might be applicable to those products and by-products, and the priorities among competing needs;

(3) the desirability of localized capital investment, increased payroll, secondary development and other possible effects of the sale, exchange or other disposition of oil and gas or both;

(4) the projected social impacts of the transaction;

(5) the projected additional costs and responsibilities which could be imposed upon the state and affected political subdivisions by development related to the transaction;

(6) the existence of specific local or regional labor or consumption markets or both which should be met by the transaction;

(7) the projected positive and negative environmental effects related to the transaction; and

(8) the projected effects of the proposed transaction upon existing private commercial enterprise and patterns of investments.

The evaluation of proposed sales in accordance with the criteria and the public hearing process is to enable the Board to more effectively carry out its purpose to "facilitate the wise development of Alaska's oil and gas royalty interests by providing means and procedures for sales, exchanges or other disposition of those interests in ways calculated to promote private economic growth consistent with applicable environmental standards and public fiscal stability...." AS 38.06.010. The Board is required to recommend to the State Legislature whether the proposed sale to GVEA should be approved or rejected. AS 38.06.050

The Board solicits comments from the public concerning this proposed sale. You are invited to present a statement, oral or written, at the hearing or send it directly to the Chairman, Alaska Royalty Oil and Gas Development Advisory Board, c/o Kay Brown, Director, Division of Oil and Gas, Department of Natural Resources, Pouch 7-034, Anchorage, Alaska 99510.

Copies of the proposed meeting agenda, applicable Alaska statutes, regulations, and other information relating to the proposed sale may be obtained by contacting Sandra Schwartzbauer at 265-4274.

James B. Gottstein
Chairman

Pub: January 17, 1985

State of Alaska

Department of Natural Resources

Final Findings & Determination

to Sell Prudhoe Bay Royalty Oil to

Golden Valley Electric Association, Inc.

January 16, 1985

TABLE OF CONTENTS

		Page
I.	Introduction	1
II.	Background and Chronology	1
III.	Summary of Proposed Contract Terms	2
IV.	Comments Received	3
V.	Contract Revisions	4
VI.	Findings and Determinations	7
VII.	Conclusion	9

I. Introduction.

The State of Alaska proposes to sell 2.667% of its daily royalty oil (approximately 5,000 barrels per day) from the Prudhoe Bay Unit to Golden Valley Electric Association, Inc. (GVEA) under a long-term, noncompetitive contract. In accordance with AS 38, the Department of Natural Resources must determine whether this disposal serves the state's best interest before the sale may take place. This final finding describes the proposed sale and analyzes its potential effects.

II. Background and Chronology.

GVEA is the public cooperative electric utility in Fairbanks. The state's previous long-term royalty oil contract with GVEA, executed in 1976, was the first royalty oil contract negotiated and executed after the 1976 establishment of the Alaska Royalty Oil and Gas Development Advisory Board. GVEA requested royalty oil so that crude oil might be used as turbine fuel for power generation in the event that the cost of turbine fuel from the North Pole Refinery became prohibitive.

GVEA's contract with the state was for the purchase of 5,000 bpd. GVEA did not exercise its option to purchase royalty oil until June 17, 1981. GVEA assigned its contract rights to North Pole Refinery, Inc., which is now owned by MAPCO Petroleum Inc. (MAPCO), in exchange for a price discount on the turbine fuel refined from the royalty oil. MAPCO refines the royalty oil into jet fuels, diesel, heating oil, and other refined products in addition to turbine fuel, and reinjects the remaining return oil into the Trans Alaska Pipeline System (TAPS).

In a November 1982 letter to the Department of Natural Resources, GVEA requested an extension of its contract for an additional ten years. No action was taken on that request pending the change of administrations. In March 1983, the new administration began negotiations with GVEA on a new ten-year contract to assist in satisfying the needs of GVEA's 50,000 in-state consumers. Notice of the proposed long-term sale to GVEA was published on November 8, 1983. A notice of that royalty board meeting, which included a review of the proposed GVEA disposal (among other things), was also published on November 16, 1983.

The Alaska Royalty Oil and Gas Development Advisory Board's December 7, 1983 review of the proposed GVEA disposal and the agreement, as negotiated to that date, revealed specific concerns by both the public and board members with respect to the state's option on return oil and the relationship between MAPCO and GVEA. In view of those reservations and the limited time for further negotiation, the long-term GVEA contract was not presented for legislative approval. Instead, an interim one-year contract not requiring legislative approval was put into effect. Subsequently, GVEA and the Department undertook sporadic negotiations during early 1984 with the goal of making long-term contract revisions responsive to the issues raised at the December 7, 1983 royalty board meeting. During this period, the assignment agreement between MAPCO and GVEA also remained in effect. On September 12, 1984, the Director of the Division of Oil & Gas briefed the royalty board on the Department's continuing negotiations with GVEA and MAPCO.

On November 29, 1984, GVEA, MAPCO and the Department reached tentative agreement on a new long-term contract to be presented to the royalty board and the legislature. The terms of the proposed contract, which were included in the Department's Preliminary Findings and Determination to Sell Prudhoe Bay Royalty Oil to Golden Valley Electric Association, Inc. of December 7, 1984, are again summarized below.

III. Summary of Proposed Contract Terms.

1. Price: The total price per barrel to be received by the state in the proposed contract is the sum of the following components:

   (a) The (monthly) volume weighted average of the Prudhoe Bay lessees' current reported netback prices, as adjusted for transportation and other costs by those lessees.

   (b) Additional amounts, primarily from GVEA's assignee (MAPCO), if the state obtains a favorable resolution of litigation disputing the validity of the Prudhoe Bay lessees' current reported netback prices (State of Alaska, et al vs. Amerada Hess, et al).

   (c) Those cleaning and dehydration field costs which the state must pay when either taking its royalty share in-value (receiving money from the Prudhoe Bay lessees equal to the volume weighted average of their current reported netback prices, as may be retroactively adjusted upon resolution of the Amerada Hess litigation) or taking title to its royalty share of oil for an "in-kind" disposal. In a 1980 partial settlement of the Amerada Hess litigation, the state acknowledged limited responsibility for certain field costs in either case. And,

   (d) A $.30 per barrel premium.

2. Term:

   (a) The date of first delivery will be four months after enactment of legislation by the State of Alaska (including approval by the Governor) approving the agreement unless the state, in its sole discretion, sets an earlier date.

   (b) The termination date of the contract is June 30, 1995.

   (c) The price specified above is subject to renegotiation in July 1987 and every two years thereafter for the duration of the contract.

3. Quantity: 2.667% (approximately 5,000 bpd) of daily royalty oil from the Prudhoe Bay Unit.

4. Point of Delivery: Custody transfer meters into the Trans Alaska Pipeline system at Prudhoe Bay.

5. In-State Use: When the Department executes the agreement, it will also execute an agreement with GVEA and MAPCO approving GVEA's assignment of its royalty oil to MAPCO. The state retains the right to terminate its approval of the MAPCO/GVEA relationship, in which MAPCO provides GVEA a specific discount on a specific quantity of turbine fuel. Should the assignment be terminated, GVEA's continued receipt of royalty oil would be conditioned upon GVEA arranging a new means of using royalty oil to provide GVEA consumers electricity at a cost lower than otherwise possible.

6. Security: GVEA will arrange to provide a letter of credit to the state in the amount of $5,316,000, which is equivalent to approximately sixty days' worth of oil. Upon default, this letter is redeemable upon signature of the Attorney General and the Commissioner.

7. Return Oil: Throughout the term of the contract, the state will have the option to purchase all return oil produced, refined, or exchanged under the contract. In consideration of MAPCO's consent to accept the majority of any liabilities stemming from the resolution of the Amerada Hess dispute, the state has agreed not to exercise its return oil option so long as MAPCO receives royalty oil under the GVEA royalty oil contract.

8. Standard Contract Terms: The contract will contain all appropriate standard state contract terms.

IV. Comments Received

Written comments addressing the Preliminary Finding and Decision were received from two parties prior to the close of the comment period. By a letter dated December 28, 1984, Tesoro Alaska Petroleum Company (Tesoro) expressed concern about the extent to which the proposed disposal may benefit MAPCO. Tesoro suggested that a more favorable contract for GVEA might have been secured during negotiations with MAPCO. The Department agrees that the benefits to GVEA of the proposed disposal are modest. While perhaps not sufficiently emphasized in the Preliminary Findings, the proposed disposal is based upon benefits to the state as well as to GVEA. Consequently, the price terms of the proposed disposal are similar to those of the state's recently executed royalty oil contracts with Tesoro and Chevron.

Since the state would be a major financial beneficiary of the proposed disposal, more advantageous contract terms for GVEA could not necessarily be borne by MAPCO. Although MAPCO must benefit to some degree as an indirect party to the agreement, the Department has sought to confine (to the extent possible in collective bargaining) the benefits of the proposed disposal to the state and GVEA. Upon receiving Tesoro's comments, the Department encouraged direct consultations between Tesoro and GVEA. As these discussions did not lead GVEA to conduct further negotiations with MAPCO, GVEA has presumably secured the best terms possible from MAPCO as well as the state.

By a letter dated January 8, 1985, James B. Gottstein, the Chair of the Royalty Oil and Gas Advisory Board (Royalty Board), also submitted comments related to the proposed disposal. Gottstein was concerned with a possible relationship between this disposal and the decision to shorten the contract terms of three 5,000 b/d lots of Kuparuk River royalty oil from one year to six months for the competitive royalty oil sale of December 11, 1984. However, the Kuparuk oil withdrawn from the sale was not committed to MAPCO or GVEA as Gottstein apparently believed was the case. That oil remains uncommitted.

Gottstein also said the Department did not properly inform the Royalty Board of that decision, as he believed was required. The Royalty Board review mandated by AS 38.06.050 extends only to royalty oil dispositions for which legislative approval is required. The December 11, 1984 competitive royalty oil sale was a short-term market conditions sale, for which legislative approval was not required (AS 38.06.055(b)(1)). At the September 12, 1984 Royalty Board meeting, the division did brief the Royalty Board about the competitive sale. In the Invitation to Bid discussed at the Royalty Board meeting, future revisions to sale terms at the direction of the commissioner were clearly contemplated. The rationale for the Department's revision was also publicly analyzed in-depth in the November 28, 1984 Supplemental Findings for the Competitive Royalty Oil Sale. Royalty Board input was not required for the decision to decrease the terms of the Kuparuk lots, and the division's consultation with regard to the sale in general exceeded statutory and regulatory requirements.

V. Contract Revisions

Since publication of the previous preliminary notice in November, 1983, the proposed GVEA contract has been altered by the Department and GVEA to address the concerns raised about the earlier proposed contract. Two key issues, both of which led to revisions in the contract form, were in-state use and return oil.

Currently, the consumer benefits of the GVEA contract depend on MAPCO's agreement with GVEA to provide turbine fuel at a price lower than what GVEA would otherwise pay. Under GVEA's present contract, the state is unable to enforce the degree of advantage afforded to GVEA since that agreement is between GVEA and MAPCO only. Consequently, Section 2.11 (In-State Use) of the proposed contract has been rewritten, and an agreement between the state, GVEA, and MAPCO has been added to assure that the agreed upon refining arrangement with MAPCO will be maintained, within certain bounds, over the life of the GVEA contract. The state will have the option to terminate its approval of the assignment should the relationship between GVEA and MAPCO change materially.

The state has insisted on the option to terminate the contract on these grounds since the proposed disposal is based in part on the specific benefits provided for GVEA members. Approximately one-third (625 barrels) of GVEA's daily turbine fuel requirements would be provided at a discounted price to GVEA through the proposed disposal. When compared to the refining charge which GVEA must pay for the remaining two-thirds of its turbine fuel needs, this discount translates into an annual savings to GVEA of about $550,000.

GVEA's total turbine fuel consumption now accounts for about 45% of its fuel use. The balance of GVEA's power generation comes from coal. Given the operations costs of GVEA's turbine fuel and coal-fired generation and the volume of discounted turbine fuel the proposed royalty oil contract would provide GVEA, MAPCO's discount to GVEA would reduce the GVEA consumer's average power generation cost by about 1.57%. Due to a mathematical oversight, the Preliminary Findings erroneously implied that an average power generation cost savings to GVEA of about 1% would result from the proposed disposal.

The state's ability to ensure that the GVEA contract would continue to provide these consumer benefits has been reinforced by the addition of Exhibit A, an agreement (attached to the proposed GVEA contract) between the State, GVEA, and MAPCO. Article II of Exhibit A calls for MAPCO and GVEA to keep the state apprised of any changes in their assignment agreement, and reiterates that changes to that agreement which materially affect the consumer benefits are grounds for termination of the assignment approval by the state. In addition, Article III of Exhibit A ensures that MAPCO will give nine (9) months written notice to GVEA before reducing the amount of royalty oil taken, since GVEA must also notify the state nine (9) months in advance of such a reduction.

Residual oil is a by-product of most refineries, including the North Pole Refinery. Residual oil represents that portion of a barrel of crude oil which a refinery is unable to process into product. Because MAPCO is situated to reinject residual oil into TAPS (where it re-emerges as whole oil at Valdez), this oil is also referred to as "return oil".

The assignment agreement between MAPCO and GVEA allows MAPCO to keep and dispose of the royalty return oil for export. Because MAPCO appeared to be a major beneficiary of the prior GVEA royalty oil contract, in part through its control over the return oil, the state has sought additional consideration from MAPCO for state approval of the assignment agreement. Consequently, Article IV of Exhibit A makes MAPCO primarily responsible for any GVEA liabilities resulting from retroactive price adjustments attending the resolution of the Amerada Hess dispute.

GVEA would be responsible only for one-eighth of the Amerada Hess liability accrued in a period not to exceed one year. The remaining seven-eighths of the liability accrued in that period, and all liabilities accrued in all other years during the term of the proposed GVEA contract, would be borne by MAPCO. This provision of Exhibit A insulates GVEA from the effects of a favorable outcome for the state in the Amerada Hess dispute and consequently, increases the benefits received by GVEA's consumers. MAPCO's agreement to bear the largest share of any future liability would increase the effective benefit to GVEA members of the proposed royalty oil contract by several fold. With this protection, GVEA largely avoids a potential liability which could accumulate for a period of up to ten years and consequently harm its financial position.

The return oil provision of the proposed contract gives the state the option to purchase all return oil produced, refined, or exchanged under the contract. However, in consideration of Article IV of Exhibit A, by which MAPCO accepts the potential Amerada Hess liabilities discussed above, the state agrees not to exercise its right to purchase return oil so long as MAPCO receives royalty oil under the GVEA royalty oil contract.

In addition to the revisions of the in-state use and return oil provisions, other changes have been made to the proposed 1983 contract to conform GVEA's proposed contract to the state's most recent contract forms where possible. These changes can be found in Section 7.1 (Default), Section 8.2 (Inability to Receive Oil) Article XIX (Amendment), and a number of minor areas.

For the state's protection, a new clause in Section 8.2 assigns to the state all transportation rights, including nominations, charter agreements, and any other transportation arrangements which GVEA has for state royalty oil, in the event of the purchaser's inability to receive royalty oil. This is now a standard provision for state royalty oil contracts and is found in both the backup and primary form contracts for the December 11, 1984 competitive sale.

An additional sentence in Article XIX (Amendment) states that, "Any material amendment to the contract which appreciably reduces the consideration received by the state requires prior approval of the Legislature of the State of Alaska". This contract language is required by AS 38.05.183(f).

In Section 7.1 (Default), the first of the six conditions of default listed has been added so that the state may, with evidence of impending failure to perform, declare a condition of default. This is an important protection for the state since there is often circumstantial evidence, such as inadequate transportation arrangements, which precede actual failure to perform.

Minor revisions can be found in two sections of Article V (Payments and Accounting). These revisions, which track the state's recent royalty oil contracts, make the terms of payment somewhat more stringent for the purchaser. Section 5.3 now calls for payment by wire transfer, and no longer provides for clerical mistakes as an acceptable basis for failing to pay the amount billed. Section 5.7 also eliminates several circumstances previously specified as acceptable grounds for failure to make full payment.

The remaining changes to the GVEA contract are technical in nature and concern numerical corrections, date corrections, definition clarifications, changes in the format, and minor revisions to Sections 3.2 (Good Standing and Due Authorization) and 16.1 (Preferential Hiring). Also, the word "Royalty" has been deleted throughout the contract wherever it precedes the word "Oil" and certain terms made unnecessary by the introduction of the term "Purchase Price" have been deleted.

The clauses particular to GVEA's situation, and to long-term negotiated contracts in general, have been left intact. Examples include Section 2.1 (Quantity), where GVEA may elect to change, within certain bounds, the quantity of royalty oil received, and Section 7.3 (Seller's Remedies), which allows the state to release GVEA from the in-state use requirement, at the state's sole discretion. Section 8.1 (Disposition of Oil Upon Default or Termination) also falls into this category, but GVEA's obligation to continue payment in event of default has a four-month, rather than the standard seven-month, duration. This is because the Prudhoe Bay Unit producers will, by contractual agreement, accept physical custody of small quantities of royalty oil with only a 90-day notice. The volume of royalty oil proposed for sale to GVEA falls within that quantity range.

VI. Findings and Determinations.

1. Competitive bidding is waived.

I have determined in accordance with AS 38.05.183(a) that the best interest of the state does not require competitive bidding for this disposal. The best interest of the state is served by making this award on factors other than the highest price received from a competitive sale. Those factors are detailed in the following section of this document.

In order to realize the objectives implied by the considerations listed in AS 38.05.182-183 and AS 38.06.070 and to obtain benefits for Alaska consumers, disposal by competitive bid with the award determined entirely upon the cash value offered is not in the best interest of the state in this instance. Rather, it is in the best interest of the state to dispose of this royalty oil to GVEA, which offers maximum benefits to state citizens and which will pay a $.30 premium over what the state would have received had the state taken the oil at the weighted average of the Prudhoe Bay lessees' current reported netback prices, as may be retroactively adjusted by resolution of the Amerada Hess litigation.

2. The sale is in the best interests of the State.

Under AS 38.05.183(e) a noncompetitive sale, exchange, or other disposal of royalty oil or gas taken in-kind by the state may be awarded by the commissioner to the prospective buyer whose proposal offers maximum benefits to the citizens of the state.

In accordance with AS 38.05.035(e), AS 38.05.183(c) and (e), and 11 AAC 03.010(d), I find and determine that the taking of royalty oil in-kind and the disposal of that oil to Golden Valley Electric Association, Inc. (GVEA) for use in-state is in the best interests of the state. The following has been considered in making this determination:

a. The state will receive no less from this sale than if it had continued to take its royalty oil in-value at the weighted average of the Prudhoe Bay lessees' current reported netback prices as retroactively adjusted by litigation. The premium of $.30 over that price will likely offset any adverse effects on that price (and state revenues) which could occur when the state meets the needs of a refinery (in this case MAPCO) that would otherwise be a crude oil customer on the West Coast. The Commissioner's Preliminary Findings and Determination to Negotiate Backup Royalty Oil Contract(s) and Conduct a Competitive Royalty Oil Sale of July 12, 1984 detail those potential effects. It is not possible to forecast the impact of customer displacement on West Coast prices, let alone its influence on the current reported in-value price. However, the amount of the premium is likely to cover a reasonable differential. Further, MAPCO presently receives similar amounts of crude oil daily under the existing GVEA short-term contract. AS 38.05.183(e)(1).

b. A disposal to GVEA will have a favorable effect on the economy of the state because it will ensure that the cooperative's members continue to benefit directly from lower electric rates than would otherwise be possible. Each consumer to whom GVEA provides electric service is a member of the cooperative. Profit margins are allocated back to the consumer owners, all of whom are Alaska residents. The cooperative's goal is to provide dependable electrical service to its member-owners at the most economical price.

GVEA is regulated by the Alaska Public Utilities Commission. Over the past year, GVEA has experienced increased consumer need represented by an addition of 2,700 new households. GVEA currently employs 174 people (25 more workers than last year) to bring electric service to more than 50,000 Alaskans. AS 38.05.183(e)(2).

c. An in-state refiner, MAPCO, will be favorably impacted by the proposed GVEA contract. MAPCO's assigned right to purchase 5,000 bpd of state royalty oil enables MAPCO to refine many products for Alaskans in addition to turbine fuel for GVEA. The 5,000 bpd of royalty oil also assists MAPCO in meeting the feedstock requirements of its soon-to-be-expanded refinery. MAPCO may also sell or exchange the resulting return oil (so long as the price discount on turbine fuel provided to GVEA remains materially unaltered) to acquire more oil from TAPS near its Fairbanks refinery.

Although MAPCO will benefit from the proposed GVEA contract, it will not receive a windfall. Because of the $.30 premium, MAPCO will likely pay more for the assigned oil than it does under its own state royalty oil contract. Further, MAPCO's Exhibit A agreement to pay most of any Amerada Hess liabilities arising under the proposed GVEA contract precludes it from passing on Amerada Hess adjustments to GVEA, as it would otherwise do. AS 38.05.183(e)(3).

d. GVEA is uniquely able to use its royalty oil purchases to allow it to supply electrical energy to more than 50,000 Alaskans who currently enjoy price benefits directly attributable to the cooperative's purchase of state royalty oil. AS 38.05.183(e)(4).

e. The state is now highly dependent on oil revenues and will continue to depend on oil revenues in the future. The price term of the proposed sale protects the state's interest by ensuring that revenues from this sale will exceed the in-value alternative. AS 38.06.070(a)(1).

f. The local and regional needs of the Fairbanks area for electrical supply are met by service provided by GVEA to its member owners. The assignment agreement with MAPCO also helps satisfy local and regional needs for petroleum products. AS 38.06.070(a)(2).

g. The continued operation of GVEA, with the attendant payroll and secondary benefits, will have a positive and desired effect on the citizens of the state. While this disposal will likely not result in new capital investment or development, it will enable the efficient use of existing investment and development and contribute to the requirements of a refinery planned for expansion. AS 38.06.070(a)(3).

h. The projected social impacts of a disposal to GVEA are anticipated to be favorable. The benefits presently received from the operation of the electrical cooperative will continue. AS 38.06.070(a)(4).

i. Any additional costs and responsibilities which could be imposed upon the state and affected political subdivisions are likely to be minimal. AS 38.06.070(a)(5).

j. Local and regional consumption of both fuel oil-fired electricity and refined petroleum products will be directly and favorably affected by the GVEA disposal. Local labor markets will continue to benefit through employment opportunities at both GVEA and MAPCO. AS 38.06.070(a)(6).

k. Environmental effects resulting from the proposal will be negligible, if any, since the facility is already in existence. AS 38.06.070(a)(7).

l. The proposed disposal will help existing commercial private enterprise and patterns of investments by assisting in the continued operation of the GVEA cooperative and providing, through assignment, royalty oil to the North Pole Refinery for processing into refined products. AS 38.06.070(a)(8).

In accordance with 11 AAC 03.060(b), the weight given to the applicable criteria in determining the maximum benefit to Alaska citizens must be addressed. In making this finding the Department first assured itself that the state would not lose money by making a disposal to GVEA. Once so assured, other benefits attendant to the disposal were examined. If the price offered did not assure the state at least what it would have received had it left the oil in-value then the sale would not, in the Department's view, serve the state's best interests. For this reason the greatest weight in this disposal was placed on AS 38.05.183(e)(1), the cash value offered. After the cash value offered, the greatest weight was given to the projected benefits of using the oil in the state to directly benefit Alaskan citizens through lower electric rates.

VII. Conclusion.

By the terms of the proposed contract, the state is guaranteed the litigation-adjusted in-value price for its oil as well as a premium on each barrel. The additional premium assures that the state is not initially receiving less for its oil than if it elected to take its royalty share in money at the weighted average of the Prudhoe Bay lessees' reported prices. Should the Amerada Hess litigation be resolved in the state's favor, the state will be entitled to reimbursements resulting from the retroactive price adjustments provided for in the contract, with MAPCO holding the major responsibility for that potential liability. The satisfactory price terms of the proposed contract, coupled with associated direct and secondary benefits for Alaska citizens, supports the decision to waive competitive bidding.

The foregoing facts and analysis support my final finding that this disposal is in the best interests of the state and that it maximizes benefits to Alaska citizens.

Kay Brown

Kay Brown, Director
for/Esther C. Wunnicke
Commissioner

January 16, 1985
Date

AGREEMENT FOR THE SALE AND PURCHASE OF ROYALTY OIL

THIS AGREEMENT is entered into as of February 8, 1985 by and between THE STATE OF ALASKA ("Seller") and GOLDEN VALLEY ELECTRIC ASSOCIATION INC., an Alaskan Electric Cooperative Corporation, hereinafter referred to as "Purchaser".

ARTICLE I
DEFINITIONS

As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "Commissioner" means the Commissioner of the Alaska Department of Natural Resources or her designee.

1.2 "Day" means a period of twenty-four (24) consecutive hours, beginning at 12:01 a.m., Alaska Standard Time.

1.3 "Effective Date" shall have the meaning set out in Article VI.

1.4 "Leases" means the Oil and Gas leases which are subject to the terms of the Unit Agreement.

1.5 "Lessee" means any person owning a working interest in any of the Leases.

1.6 "Month" means the period beginning at 12:01 a.m., Alaska Standard Time, on the first day of the calendar Month and ending at the same time on the first day of the next succeeding calendar Month.

1.7 "Oil" or "crude oil" shall have the same meaning as the word "Oil" under the Unit Agreement.

1.8 "Point of Delivery" shall have the meaning set out in Section 2.4.

1.9 "Royalty Oil" means the Oil which the Seller may take in-kind (amount) as its royalty under the Leases whether or not Seller has elected to take or is taking that royalty in-kind.

1.10 "Daily Royalty Oil" means the quantity of Royalty Oil produced by the Lessees each day.

1.11 "Unit Agreement" means the Prudhoe Bay Unit Agreement effective April 1, 1977, by and between Seller and the Lessees, as amended from time to time.

1.12 "TAPS" means the Trans Alaska Pipeline System.

ARTICLE II
SALE OF ROYALTY OIL

2.1 Quantity. Seller agrees to sell to Purchaser and Purchaser agrees to buy from Seller that amount of Oil equal to 2.667% of the Daily Royalty Oil (Maximum Quantity"). Upon at least nine (9) Months written notice to Seller, Purchaser may increase or decrease the amount of Oil to be tendered by Seller at the Point of Delivery, but the amount tendered by Seller under this Agreement shall not exceed the Maximum Quantity. Purchaser recognizes that Seller must normally give six (6) Months notice under the Unit Agreement (or ninety (90) days if the amount increased or decreased is less than ten (10) percent of the current nominations) to increase or decrease the amount of Daily Royalty Oil to be taken in-kind. It is understood and agreed that the volume of Daily Royalty Oil available to Seller will vary and may be interrupted from time to time, and depends upon a variety of factors, including the rate of production from the Leases. Seller disclaims and Purchaser waives any representation, covenant or warranty, expressed or implied, as to the specific quantity or the total or daily, Monthly, average, or aggregate volume of Royalty Oil to be sold or tendered under this Agreement. Seller warrants that it has good title to the Oil tendered under this Agreement. Seller shall hold Purchaser harmless from all liens, encumbrances and valid adverse claims that may affect the Royalty Oil at the time the Royalty Oil is tendered to Purchaser.

If Seller underlifts or stores Royalty Oil at Prudhoe Bay, or if Seller recovers underlifted or stored Royalty Oil, the quantity of Oil tendered under this Agreement shall be calculated as if no Royalty Oil was underlifted or stored or recovered.

2.2 Quality. The Oil sold shall be the same quality as the Royalty Oil delivered by the Lessees to the Seller at the Point of Delivery. It is understood and agreed that the quality of the Oil sold may vary from time to time. Seller disclaims, and Purchaser waives, any guarantee, representation, or warranty, either expressed or implied, of the merchantability, fitness for use, or suitability for any particular use or purpose, or otherwise, of any of the Oil delivered under this Agreement or as to any specific, average or overall quality or characteristic of Oil to be sold or tendered under this Agreement.

2.3 Price of the Royalty Oil. The price for the oil tendered under this Agreement shall be equal to the amount that Seller would have received from its Lessees for the Royalty Oil tendered if that royalty had been payable in money (taken in value) rather than taken in kind plus a premium of $0.30 per barrel plus the Field Cost Allowance incurred by that oil as determined under the Prudhoe Bay Royalty Settlement Agreement (dated April 1, 1980 for reference purposes only), which was entered as part of a final judgment dated August 13, 1980 in State of Alaska, et al v. Amerada Hess Corp., et al., (Superior Court for the State of Alaska, First Judicial District at Juneau) ("Amerada Hess") ("Settlement Agreement") ("Purchase Price"). The Purchase Price shall be determined by Seller based upon the reports submitted by the Lessees for royalty purposes or, when those reports are unavailable, incomplete, or inaccurate, upon information submitted by the Lessees for production tax or other tax purposes, as may be adjusted from time to time as provided in this Agreement. Buyer will only be entitled to review or request material or information which is not confidential under state law or regulation.

The method, basis and amount of royalty due Seller when it takes its royalty in value from the Leases is presently the subject of litigation in Amerada Hess. One of the issues involved is the proper method to be used by the Lessees in calculating the state's royalty when the royalty is payable in money (in value). Until there is a resolution of that dispute through judicial resolution or settlement, the Purchase Price will be based upon the calculation of an amount per barrel equal to the per barrel volume weighted average of the in-value prices reported by the Lessees to Seller for royalty purposes or, when the royalty reports are unavailable, incomplete, or inaccurate, upon information submitted by the Lessees for production tax or other tax purposes, plus $0.30 per barrel plus the Field Cost Allowance as determined under the Settlement Agreement. Upon final non-appealable resolution of each of the various issues that are or will be involved in Amerada Hess, adjustments will be made to previous payments in accordance with each resolution.

If additional amounts are owed by Purchaser to Seller, interest on those amounts will be paid at a variable interest rate which is the higher of: (1) the reference rate as may be announced from time to time by The Bank of America, San Francisco, California, plus three percent (3%); or (2) the rate of return as is realized from time to time in the investment of the State of Alaska's general fund. Amounts owed from Seller to Purchaser shall be repaid at the rate set out in Article 5.6. Buyer will not voluntarily intervene or otherwise participate in Amerada Hess unless Seller expressly consents to that participation in writing. A settlement of Amerada Hess will be binding upon Buyer whether or not Buyer agrees with or consents to the terms of that settlement.

If any applicable law of the United States of America or any rule or regulation promulgated by a federal agency will, in the judgment of Seller, operate to prohibit or prevent Seller from receiving the full amount due under the above provision, Purchaser's obligation to pay the amount of the Purchase Price in excess of the amount permitted will be suspended or adjusted to the minimum extent required for Seller to comply with that law, rule or regulation.

Either party shall have the right to reopen this Agreement, as to price only, during the Month of July, 1987 and every two years thereafter for the purpose of negotiating a new price for the Royalty Oil to be paid under this Section 2.3. The right to reopen may be exercised by either party by giving to the other party thirty (30) days prior written notice. Upon receipt of a notice to reopen, the parties will promptly commence good-faith negotiations in an attempt to establish a new price. In the event that a new price is not agreed to by the parties within ninety (90) days of the effective date of the notice to reopen, either party may terminate this Agreement upon nine (9) Months written notice to the other. The price for any Oil tendered during any such period pending termination shall be calculated as set out hereinabove or as agreed to in a previous reopener. If a new price is agreed to by both parties, such new price shall be effective for Oil tendered in the Month following agreement by the parties on the new price.

2.4 Point and Time of Delivery. Simultaneous with receipt of its Royalty Oil from its Lessees, Seller shall tender the Oil to Purchaser at the point at which Seller receives the Royalty Oil from its Lessees. That point as presently agreed to by Seller and its Lessees in Section 2.3 of the Settlement Agreement is the custody transfer meters into TAPS at Prudhoe Bay.

2.5 Passage of Title and Risk of Loss. Title and risk of loss to the Oil sold under this Agreement shall pass from Seller to Purchaser for all purposes when Seller tenders the Oil at the Point of Delivery.

2.6 Purchaser's Responsibility. Purchaser shall be responsible for the Oil after passage of title. Purchaser will indemnify and hold Seller harmless from and against any and all claims, costs, damages (including reasonably foreseeable consequential damages), expenses or causes of action arising from or in connection with any transaction or event which relates to the crude Oil after title has passed to Purchaser.

2.7 Transportation Arrangements. Purchaser shall make all necessary arrangements for transporting the Oil sold under this Agreement from the Point of Delivery, including satisfaction of line fill obligations and storage tank bottom requirements of TAPS, if any. If and as requested by the Seller, and

at the time or times requested by Seller, Purchaser shall submit specific information concerning the arrangement it has made for transportation of the Oil sold under this Agreement through and away from TAPS and for the resale or other disposal of the Oil. Such information may include the specific tenders of Oil made to TAPS and identification of tankers which will transport the Oil. In addition, Purchaser will provide Seller, if and as requested by Seller, with satisfactory evidence or reasonable assurance of the existence and continuing validity of adequate arrangements for the transportation or disposal of the Oil subject to this Agreement. Failure to provide information, evidence or assurances requested will, at Seller's election by notice to Purchaser, be a material default under this Agreement.

2.8 Absolute Obligations. The obligations of Purchaser to accept, pay for, and arrange for the transportation of the Oil tendered or sold under this Agreement are absolute and will not be excused or discharged by the operation of any disability of Purchaser, event of force majeure, impracticability of performance, change in conditions, or any other reason or cause.

2.9 Date of First Delivery. The date of First Delivery will be four (4) Months after the Effective Date unless Seller, in its sole discretion, sets an earlier date.

2.10 Performance Guaranty and Reservation Fee. If Purchaser does not take the Maximum Quantity on the Date of First Delivery, Purchaser shall pay to Seller, in addition to the Purchase Price, an amount equal to 1.25% of the Purchase Price per barrel per day on the difference between the Maximum Quantity and the actual quantity tendered to and accepted by Purchaser ("Actual Quantity") for each day Purchaser does not take the Maximum Quantity on and after the Date of First Delivery. The payment of this fee shall end on the day that Purchaser accepts delivery of the Maximum Quantity. When Purchaser accepts the Maximum Quantity, all of the amounts paid under this Article 2.10 will be allowed to be credited against future payments for Oil tendered under this Agreement except for an amount to be retained by Seller equal to .75% of the Purchase Price per barrel per day on the difference between the Maximum Quantity and the Actual Quantity for each day Purchaser did not take the Maximum Quantity on and after the Date of First Delivery. If

Purchaser should thereafter decrease the amount of Oil to be tendered under this Agreement, Purchaser shall pay to Seller, in addition to the Purchase Price, an amount equal to .75% of the Purchase Price per barrel per day after the date that the decrease in the amount of Oil to be tendered by Seller takes effect on the difference between the Maximum Quantity and the Actual Quantity.

2.11 In-State Processing. Purchaser agrees that all Oil purchased under the terms of this agreement shall be processed or burned in the State of Alaska. As used in this Agreement "processed or burned in the State of Alaska" means the following described uses or a use substantially similar to those uses, which provides an equivalent benefit to GVEA's consumers. Purchaser has assigned its Oil to MAPCO PETROLEUM Inc. for processing the crude oil into a fuel usable at Purchaser's generating station. Under this arrangement, Purchaser is assured of a dependable supply of fuel, which assists Purchaser in providing uninterrupted electrical service to its consumers. Purchaser also receives from MAPCO a lower refining charge or processing fee which Purchaser passes directly through to its consumers in the form of reduced electric rates. If Purchaser's arrangement with MAPCO ever fails to yield these benefits, Purchaser has a commitment from the Rural Electrification Administration for mortgage funds to be made available to pay for the prompt conversion of Purchaser's generating units so that the Oil could be burned as fuel by Purchaser without first being processed. Upon such conversion, Purchaser could again provide its consumers with a dependable supply of electricity at a cost lower than otherwise possible.

Purchaser's continued receipt of a dependable supply of fuel upon terms that allow Purchaser to provide its consumers with electricity at a cost significantly lower than otherwise possible is a material element of this agreement. Purchaser's failure to process or burn in the State of Alaska as defined in this Agreement the Oil tendered under this agreement will, at Seller's option, constitute a material default under this agreement. However, Seller may, at its option, waive the in-state processing or burning requirement in whole or in part, if Seller is satisfied that the waiver would not be contrary to the underlying intent of the other provisions of this Agreement.

ARTICLE III
REPRESENTATION AND OBLIGATIONS OF PURCHASER

Purchaser warrants, represents, and agrees:

3.1 Good Standing and Due Authorization. Purchaser is, and at all times during the operation of this Agreement shall remain, a corporation organized and existing under and by virtue of the laws of the United States or of any state, territory or the District of Columbia, and qualified to do business in, and in good standing with, the State of Alaska. Purchaser has all necessary corporate power to enter into this Agreement and to perform its covenants and obligations under this Agreement. All necessary corporate action has been taken to authorize Purchaser's entering into this Agreement and performing its covenants and obligations under this Agreement.

3.2 Financial Condition. The financial information submitted to Seller is complete and correct and fairly presents Purchaser's financial condition at the time the information was submitted to Seller The financial information was prepared in accordance with generally accepted accounting principles consistently applied. Since the date the information was submitted, the condition, business and properties of Purchaser have not been materially adversely affected in any way. Purchaser agrees to inform Seller immediately if during the term of this Agreement there is any material adverse change in the condition, business, or properties of Purchaser which would have an appreciable adverse effect on Purchaser's ability to perform under this Agreement. Purchaser, in addition, will immediately inform Seller of any significant change in ownership of either Purchaser or any of its affiliates or parent company, and of any change in Purchaser's operations or agreements, which would appreciably affect Purchaser's performance under this Agreement.

3.3 Financial Statements. As soon as possible after the end of each fiscal year of Purchaser, and in any event within one hundred twenty (120) days thereafter, Purchaser will furnish to Seller, at Purchaser's sole cost and expense, a report or a complete copy of a report in a form to be prescribed from time to time by Seller which will include Purchaser's balance

sheet as of the close of the fiscal year and the income statement for that year, prepared in each case in accordance with generally accepted accounting principles consistently applied by certified public accountants of recognized standing. For purposes of complying with this Article, Purchaser may submit, and Seller will accept, the annual report of the Golden Valley Electric Association, Inc.

3.4 Option to Purchase Return Oil. If Purchaser assigns Oil purchased under this agreement for fuel usable in the present configuration of its generating station, there may remain a portion of Oil or Oil products which will not be processed for consumption in-state ("Return Oil"). This Return Oil may be shipped through TAPS. Return Oil shipped through TAPS becomes intermingled with unprocessed crude oil so that when the Return Oil is picked up in Valdez it is identical to the common stream crude oil shipped through TAPS. A shipper of Return Oil presently is, and may continue to be, liable for the payment of a quality bank adjustment differential based upon the resulting degradation of TAPS common-stream crude ("quality penalty").

Purchaser grants Seller an option to purchase all the Return Oil. For the purposes of determining the volume of Return Oil for which Seller may exercise its option to purchase under this Agreement, that volume shall be a proportion of the Oil tendered under this Agreement equivalent to the ninety (90) day rolling weighted average, determined monthly, of the ratio of total refined products produced to total refinery charge. Seller shall exercise this option by giving Purchaser nine (9) months' advance written notice. The notice shall specify the date delivery will commence and the point of delivery to Seller. Thereafter Seller may terminate the purchase of Return Oil by giving nine (9) months' advance written notice.

Seller shall have the option to take title to the Return Oil either at the tanker flange inlet in Valdez, Alaska, or at the MAPCO refinery outlet to the Golden Valley Pipeline at North Pole, Alaska. The per-barrel Return Oil purchase price shall be the full cost to Purchaser or Purchaser's assignee at the point of redelivery minus any "quality penalty" which had or would attach, which will be paid by Purchaser. Purchaser or Purchaser's assignee will assign all necessary shipment rights to guarantee delivery to Seller at

Seller's designated delivery point and to facilitate the reinjection into and transportation of the Return Oil through TAPS.

Purchaser or Purchaser's assignee shall furnish Seller or the Seller's designee, on or before the tenth day of the month following the month of delivery, a provisional invoice covering the Return Oil delivered to Seller or Seller's designee in the preceding month. The price of the Return Oil to Seller or Seller's designee shall be the price paid by Purchaser for Oil tendered under this Agreement for the month preceding delivery. The Seller or the Seller's designee shall make payment to Purchaser or Purchaser's assignee on or before the twentieth day of the month following the month of delivery. The initial billing may be adjusted in a subsequent month's invoice as more accurate or complete information concerning the quantity and Purchase Price of the Return Oil delivered each Month is available. Subsequent adjustments to the Return Oil initial billing shall also be made for Amerada Hess as specified in Section 2.3 and for other adjustments as specified in Section 5.5.

The amount of all sums which are not paid when due under this option or which are subsequently determined to be due under an adjustment, shall bear interest from the date accrued until paid in full at a variable rate per annum equal to the reference rate as announced from time to time by the Bank of America, San Francisco, California, plus one and one-quarter percent (1.25%) per annum, provided, however, that any interest due on an adjustment made as a result of the Amerada Hess litigation shall be at the same rate charged by Seller under Section 2.3.

The option to purchase Return Oil will remain in effect for the term of this Agreement. Failure to exercise this option for any period of time will not affect the Seller's right to exercise the option at a later time. This option, in whole or in part, and for any term, shall be freely assignable by Seller and such assignment shall release Seller from all obligations to receive or pay for the Return Oil sold under this option, provided, however, that Purchaser or Purchaser's assignee shall have the right to demand of an assignee of the Seller reasonable security for the Return Oil sold to that assignee. If authorized in an assignment by Seller, that assignee shall have the further right freely to assign that option, however, that assignment shall

not release the assignee (or any subsequent assignee) of any responsibilities or liabilities to Purchaser or Purchaser's assignee unless agreed to by Purchaser or Purchaser's designee. Seller shall provide Purchaser or Purchaser's designee with written notice of any such assignment.

ARTICLE IV
MEASUREMENTS AND TESTS

The quantity and quality of the crude Oil sold under this Agreement shall be determined at the Point of Delivery. Procedures and methods for measuring and metering the Oil sold under this Agreement shall be in accordance with the practices then in effect at Prudhoe Bay, Alaska.

ARTICLE V
PAYMENTS AND ACCOUNTING

5.1 Billing. Seller will send to Purchaser, on or before the 10th (tenth) business day of each Month after delivery of Oil, an invoice statement of account of all Royalty Oil estimated to have been measured at the custody transfer meter into TAPS and tendered to Purchaser under this Agreement during the immediately preceding Month according to the best information available to Seller, the estimated Purchase Prices applicable to those deliveries, and the total amount due ("initial billing"). The estimates will be made by Seller according to the best information reasonably available to Seller. Seller may render its initial billing to Purchaser based in part upon information reported by the Lessees to Seller and information published by the U.S. Government. Seller shall thereafter adjust its initial billing under this Article as soon as more accurate information concerning the quantity and Purchase Price of Oil delivered each Month is available. Seller, however, shall not be required to adjust the initial billing prior to the sending of the next Month's invoice statement of account.

5.2 Initial Adjustment. After the Monthly invoice under Section 5.1, the subsequent Monthly invoice will also state Seller's initial adjustments to be made, if any, to the invoice rendered in the immediately preceding Month, in accordance with any additional or more accurate information which may have become available to Seller. Whether or not initial adjustments are made, however, subsequent adjustments may be made under Section 5.5.

5.3 Payment. Purchaser will make payment of each amount billed under this Article within ten (10) days after receipt of the invoice statement of account. Payment shall be made without any deduction, set off, or withholding, by wire transfer of immediately available funds to Seller's account at the following address:

First Pennsylvania Bank Philadelphia
ABA No. 031000024
For Credit to State of Alaska
Account No. 07/089250/00
Attn: Catherine Hess

Payment may be made in such other manner or to such other address as Seller may specify in the invoice statement of account or by other written notice. All other payments to be made under this Agreement shall be paid in the same manner. If payment is due on a Saturday, Sunday, or legal holiday of the place where payment is to be received, payment shall be made on the next following business day. It is recognized that Seller may bill, and that Purchaser will pay, amounts that are based upon confidential information held or received by Seller. If confidential information is used as the basis for a billing, then upon request Seller will furnish Purchaser with the certified statement of the Commissioner that the amounts billed are correct based upon the best information available to Seller. If a dispute concerning a bill arises, Purchaser agrees to pay the full amount billed by Seller, pending final resolution of the dispute.

5.4 Payment to Lessee. Purchaser, at the request of Seller in the invoice statement of account or otherwise in writing, shall pay all or any portion designated by Seller of that payment required to be made to one or more of the Lessees at an address or addresses and in the manner designated by Seller. The payment will be made within the time limit specified in Section 5.3. Seller may authorize and designate a third party to make the request and

designate the amount, manner and place of payment under this provision. Unless otherwise specified, the balance of the payment due, if any, and payment for subsequent Months, shall be made in accordance with Section 5.3.

5.5 Subsequent Adjustments. Purchaser acknowledges that more accurate information concerning the quantity of or Purchase Price for Royalty Oil tendered may subsequently become available to Seller. In the event that any such information should subsequently become available to Seller, Seller shall promptly furnish a corrected invoice statement of account to Purchaser and the parties will adjust the amount billed and pay or refund the amount of those adjustments. In the event that Seller should render a corrected invoice to Purchaser, any amount to be refunded from Seller to Purchaser or paid from Purchaser to Seller will be paid within fifteen (15) days after the date of the corrected invoice. However, when the adjustment concerns an amount last invoiced more than sixty (60) days before the corrected invoice, the amount will be paid by Purchaser or refunded by Seller, as the case may be, in equal Monthly installments over the same period of time as that over which the adjustment accrued or six (6) Months, whichever is the shorter period. No adjustment will be made more than twelve (12) Months after the date of the last original invoice to which the adjustment relates, except for adjustments resulting from: (i) regulatory or court proceedings (including appeals) commenced or pending during that twelve (12) Month period, whether or not Seller or Purchaser is a party to the proceeding, or (ii) bona fide audits by Seller of any Lessee(s) commencing at any time during the period six (6) years after the date of the last invoice to which such adjustment relates, or any resolution of disputes arising out of those audits. Adjustments due to audits or regulatory proceedings or court proceedings may be made at any time. The provisions of this Section 5.5 will survive any termination of this Agreement.

5.6 Interest. Except for adjustments made upon resolution of Amerada Hess under Article 2.3, the amount of all sums which are not paid when due under this Agreement or which are subsequently determined to be due under an adjustment under Section 5.5, shall bear interest from the date accrued until paid in full at a variable rate per annum equal to the reference rate as announced from time to time by the Bank of America, San Francisco, California, plus one and one-quarter percent (1.25%) per annum.

5.7 Late Payment Penalty. If Purchaser fails to make full payment within one (1) day of the date that payment is due, then in addition to the amount due plus interest from the date that payment was due until the date of payment, Purchaser will pay an amount equal to one percent (1%) of the amount owed.

5.8 Payment to Third Parties. Seller may direct that Purchaser pay any amount due or which may become due directly to a third party in the manner and time as may be directed by Seller in written notice to Purchaser if, in the Seller's sole discretion, the payment to the third party will assist Seller in monitoring or enforcing this Agreement.

ARTICLE VI
TERM

This Agreement shall become effective upon execution by the parties and after enactment of legislation by the State of Alaska (including approval by the Governor) approving this Agreement. This Agreement shall be null and void if it is not so approved by September 30, 1985. Subject to the other provisions contained in this Agreement, Seller's obligation to sell and Purchaser's obligation to buy Royalty Oil shall begin as provided above, and shall end June 30, 1995. As used in this Article, "enactment of legislation" is as defined in AS 01.10.070(f)(4).

ARTICLE VII
DEFAULT OR TERMINATION

7.1 Default. If any one or more of the following events ("Events of Default") occur, then at Seller's option, Seller may terminate or suspend its obligation to tender and sell Royalty Oil and proceed to exercise any one or more of the rights and remedies provided in this Agreement:

(i) At any time, Purchaser (a) repudiates any of its covenants or obligations under this Agreement, or (b) fails, within five (5) Days after written request from Seller, to provide Seller with written affirmation of this Agreement and of Purchaser's intention to perform under this Agreement (together with evidence or assurances of transportation arrangements pursuant to Section 2.7 reasonably satisfactory to Seller); or

(ii) Purchaser does not pay in full any sum owed under this Agreement at the time when payment is due; or

(iii) Purchaser fails to observe or perform any of its other covenants and obligations under Article II; or

(iv) Purchaser does not perform any act required or contemplated under this Agreement and either: (a) the nonperformance continues for more than thirty (30) days after Seller has notified Purchaser of Purchaser's nonperformance; or (b) Purchaser had failed to perform the same or any other act required or contemplated under this Agreement during the immediately preceding twelve (12) Month period; or

(v) There is a material adverse change in Purchaser's condition, business or property which appreciably affects the ability of Purchaser to perform any of its obligations under this Agreement, and Purchaser is unable to give Seller adequate assurance of continued performance either within five (5) days of a request for such an assurance or within such other shorter time period as Seller may reasonably request under the circumstances; or

(vi) Any representation or warranty made by Purchaser in this Agreement proves to have been false or incorrect in any material respect at the time that the representation or warranty was made.

7.2 Failure to Pay Debts. If at any time Purchaser becomes unable to pay any of its debts when those debts are due, or should otherwise become insolvent (without regard to how that insolvency may be evidenced), Purchaser will immediately give notice of that fact to Seller. Whether or not that notice is given, if Purchaser becomes unable to pay any of its debts when those debts are due or should otherwise become insolvent, Seller's obligation to tender and sell Oil under this Agreement will automatically and immediately terminate without any requirement of notice or other action by Seller; however, Purchaser will nevertheless be and remain liable for payment and performance of all of its obligations and covenants under this Agreement with respect to Oil actually tendered by Seller to and after any such termination. Within thirty (30) days after receipt of Purchaser's notice or, if no notice is given, after Seller otherwise becomes aware (as determined in Seller's sole discretion) of Purchaser's insolvency, Seller will have the right, upon written notice to Purchaser, to reinstate all of Seller's and Purchaser's obligations under this Agreement retroactively to the date of termination.

7.3 Seller's Remedies. Upon the occurrence of any Event of Default or if Seller's obligation to tender and sell Oil under this Agreement is terminated or suspended under Sections 7.1 and 7.2, all obligations of Purchaser accrued but not otherwise due and payable under this Agreement will immediately be due and payable in full. In addition, Purchaser will indemnify and hold Seller harmless from and against all other liability, damages (including reasonably foreseeable consequential damages), costs, losses and expenses (including reasonable attorneys' fees and disbursements) incurred by Seller and arising out of the Event of Default, termination, or suspension. Seller shall have the right cumulatively to exercise any and all other rights and remedies and to obtain all other relief available under applicable law or at equity, including mandatory injunction and specific performance. Seller, upon occurrence of any Event of Default, in its sole discretion, may arrange for any disposition to third parties of Royalty Oil to be tendered and sold under this Agreement. Upon the occurrence of any Event of Default, Purchaser may, in Seller's discretion, be released from the obligations set forth in Article 2.11 (In-State Processing) until the Event of Default no longer exists or the obligation of Purchaser to take Oil under this Agreement expires. If upon occurrence of any Event of Default Seller makes arrangement for

disposition to third parties of Oil, or if Purchaser is released from Article 2.11, whether or not this Agreement is terminated, Purchaser will nevertheless be and remain liable to Seller for the full amount of the Purchase Price for that Oil in excess of the Purchase Price over any amount or amounts received by Seller on account of that disposition, net of the expenses of that disposition and for all other costs, expenses (including reasonable attorneys' fees and disbursements), and losses incurred by Seller and arising out of the Event of Default or disposition.

7.4 Purchaser's Exclusive Remedies. Upon any breach of, or default in, the due and timely observance or performance of any of Seller's convenants or obligations under this Agreement, Purchaser acknowledges and agrees that Purchaser's remedies will not include a temporary restraining order or preliminary injunction preventing Seller from taking any action with regard to the Royalty Oil which is the subject of this Agreement.

ARTICLE VIII
DISPOSITION OF OIL

8.1 Disposition of Oil Upon Default or Termination. Purchaser acknowledges and agrees that under the Unit Agreement and Leases, Seller's election to take Royalty Oil in-kind can be revoked or reversed only upon the satisfaction of various conditions, including the giving of six (6) Months notice to return all or more than ten percent (10%) of Seller's then current nominations. Purchaser acknowledges and agrees that Seller's election to invoke its rights to return to taking its Royalty Oil in value on less than six (6) Month's prior notice, or to attempt to secure a waiver of any condition or requirement, is at Seller's sole and complete discretion. Notwithstanding termination of this Agreement for default or for any other reason, including expiration or termination under any provision contained in this Agreement, Purchaser shall continue to take and purchase Seller's Royalty Oil in the amount and for the price set forth in this Agreement for up to four (4) Months following termination of this Agreement if Seller, in its discretion, so requires.

8.2 Inability to Receive Oil. If for any reason Purchaser is unable or refuses to accept or receive any Oil tendered under this Agreement, Purchaser shall nevertheless be and remain responsible for the disposal of that Oil and for paying Seller for the Oil as though it had been received and accepted by Purchaser unless Seller, in its sole discretion, elects to waive this requirement. In order to secure the obligations of Purchaser under this Section 8.1 and under Section 2.8, Purchaser shall, if and as Seller may request from time to time, assign to Seller all right, title and interest of Purchaser under any nominations, leases, agreements, contracts, charter parties and other arrangements for the transportation of the Oil sold under this Agreement through and away from the Trans Alaska Pipeline System; provided, that Seller shall not have any liability or obligations under any such nominations, leases, agreements, contracts, charter parties or other arrangements unless, and to the extent that, Seller shall actually exercise its rights to succeed to Purchaser's interest thereunder and shall obtain the benefits thereof.

8.3 No Right to Storage or Underlift. Purchaser waives and disclaims any interest or right that it may assert to storage of Royalty Oil, including by underlift or other means, to which Seller is or may come to be entitled under the Leases or any other agreement.

ARTICLE IX
WAIVER

The failure of either party to insist upon strict performance of any provision of this Agreement shall not constitute a waiver of, or estoppel against, asserting the right to require that performance in the future. A waiver or estoppel in any one instance shall not constitute a waiver or estoppel with respect to a later breach of a similar nature or otherwise. A course of performance established by a party shall also not estop the other party from complaining of a later breach similar in nature.

ARTICLE X
VALIDITY

If any provision or clause of this Agreement or application of this Agreement to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application. If, however, an invalidity should operate to impair any material right or remedy of a party to this Agreement, that party may terminate this Agreement by notice to the other.

ARTICLE XI
FORCE MAJEURE AND CHANGE IN CONDITION

11.1 Effect of Force Majeure. Except for Purchaser's obligations to make payment of money for Oil tendered under this Agreement and except for Purchaser's obligations to accept and dispose of Royalty Oil, neither party shall be liable for any failure to perform the terms of this Agreement when the failure is due in whole or in substantial part to force majeure. The term "force majeure" as applied to this Agreement shall mean Acts of God, strikes, lockouts and industrial disputes or disturbances, civil disturbances, arrests and restraints from rulers or people, interruptions by government or court orders or by present or future orders of any regulatory body having or asserting jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, inability to secure materials by reasons of allocations promulgated by authorized governmental agencies, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or pipelines, or any other event or condition, whether of the kind herein enumerated or otherwise, not within the reasonable control of the party claiming the benefit of this excuse. If, however, any material obligation of Purchaser is excused or suspended because of a claim of force majeure for a period of three hundred sixty-five (365) successive days or more, Seller will have the right to terminate this Agreement. Prior to Seller exercising its right to terminate this Agreement Seller and Purchaser shall enter into good faith negotiations to restore, to the fullest extent possible, Seller and Purchaser to the

benefits and obligations that existed under this Agreement before the occurrence of the force majeure condition.

11.2 Responsibility. Upon the occurrence and discovery of an event providing the basis for a claim of force majeure, the party making a claim shall notify the other party to this Agreement of its claim of force majeure. Upon the occurrence of an event constituting force majeure, that event shall, so far as possible, be remedied with all reasonable diligence and dispatch. Except for Purchaser's obligations to make payment of money for Oil tendered under this Agreement and except for Purchaser's obligation to dispose of Oil, the obligations of the disabled party to perform under this Agreement, insofar as they are affected by that force majeure, shall be suspended from the time that force majeure occurs and for so long as the disability caused should have continued had the party claiming the existence of the force majeure remedied the event providing the basis of the claim of force majeure with reasonable diligence and dispatch, and for no longer. The settlement of strikes or lockouts or industrial disputes or disturbances will be entirely within the discretion of the party having the difficulty, and the above requirement that any force majeure shall be remedied with diligence and dispatch shall not require the settlement of strikes, lockouts, or industrial disturbances by acceding to the demands of any opposing party therein when such course is inadvisable in the sole discretion of the disabled party.

ARTICLE XII
NOTICES

12.1 Method. All notices, requests, demands or statements shall be in writing, and may be delivered personally to the party to be notified or may be sent by registered or certified United States mail, postage prepaid, with a return receipt requested to such party. Notice deposited in the mail in this manner shall be effective upon the expiration of seven (7) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the addressee. For the purposes of notice, the addresses of the parties to this Agreement shall be as follows:

If to Seller: State of Alaska
Commissioner of Natural Resources
Pouch "M"
Juneau, Alaska 99811

and

Commissioner of Revenue
Pouch "S"
Juneau, Alaska 99811

and

Director, Division of Oil and Gas
Pouch 7-034
Anchorage, Alaska 99510

If to Purchaser:

GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.
P.O. Box 1249
Fairbanks, Alaska 99707

and (as long as the right to Oil is assigned thereto)

Vice President-Supply
MAPCO PETROLEUM Inc.
P.O. Box 645
Tulsa, Oklahoma 74101-0645

12.2 Change of Address. Each party may change its address for notice by giving notice of the change.

ARTICLE XIII
RULES AND REGULATIONS

This Agreement is subject to all present and future valid laws, orders, rules and regulations of the United States, the State of Alaska, and any duly constituted agency thereof.

ARTICLE XIV
SOVEREIGN POWER OF THE STATE

This Agreement and its covenants shall not be interpreted as a limit on the exercise by the State of Alaska of any of its sovereign or regulatory powers, whether conferred on the State by constitution, statute or regulation, including but not limited to, its regulatory power over the Leases. The exercise by the State of Alaska of any sovereign or regulatory power will not operate or be deemed to enlarge any rights of Purchaser or to limit or impair any obligations or liability of Purchaser under this Agreement, except for state statutes enacted after the effective date of this Agreement which have a direct and significant adverse effect on the ability of Purchaser to perform an obligation under this Agreement other than the obligations to accept, dispose, and pay for Royalty Oil tendered under this Agreement.

ARTICLE XV
SECURITY

Thirty (30) days prior to the Date of First Delivery, Purchaser shall cause to be furnished to Seller evidence that an irrevocable stand-by letter of credit for the benefit of Seller effective by Date of Delivery, will be issued by a state or national banking institution of the United States which is a member of the Federal Deposit Insurance Corporation and has an aggregate capital and surplus of not less than One Hundred Million Dollars ($100,000,000), or other banking institution acceptable to Seller in its sole discretion. The principal face amount of the letter of credit shall initially be Five Million, Three Hundred Sixteen Thousand Dollars ($5,316,000). The letter of credit shall be substantially in a form satisfactory to the Commissioner, but in any event shall not require any documents to be submitted in support of drafts drawn against this letter of credit other than the certified statement of the Commissioner or her designee and the Attorney General of the State of Alaska or his designee that Purchaser is liable to Seller for a sum equal to the amount of such draft, and that that sum is due and payable in full and has not been timely paid. In the event that Seller should have reasonable grounds for asserting any claims against Purchaser

under this Agreement and does assert those claims in an aggregate amount in excess of the aggregate principal face amount of the letter of credit then in effect, Purchaser shall upon Seller's request (whether or not Purchaser may deny, reject or otherwise resist such claims) cause the principal face amount of the letter of credit to be increased by an amount equal to the excess. The principal face amount of the letter of credit shall also be automatically increased by Purchaser without request from Seller whenever the face amount is less than the expected Purchase Price of sixty (60) days of Oil tendered under this Agreement, to an amount equal to the expected Purchase Price of sixty (60) days of Oil tendered. The principal face amount of the letter of credit may be decreased by Purchaser upon approval of Seller (which approval will not be unreasonably withheld) if the face amount is more than the expected Purchase Price of sixty (60) days of Royalty Oil tendered under this Agreement, to an amount equal to the expected Purchase Price of sixty (60) days of Royalty Oil tendered. The Commissioner may accept such other or additional security as she, in her sole discretion, considers adequate to protect Seller.

ARTICLE XVI
PREFERENTIAL HIRING AND NON-DISCRIMINATION

Purchaser agrees to hire and employ Alaska residents and Alaska companies to the extent they are available, willing and qualified for all work performed in Alaska that is performed under or in connection with this agreement. As used in this agreement "Alaska resident" means an individual who has resided in the State for one year at the time of hiring or employment and "Alaska companies" means those companies who are incorporated in the State of Alaska or whose principal place of business is in Alaska.

If this provision is determined to be unconstitutional by a court of competent jurisdiction, then Purchaser agrees to hire and employ Alaska residents and Alaska companies to the extent such preferential hiring is determined to be constitutional.

ARTICLE XVII
APPLICABLE LAW

17.1 Alaska Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska, excluding any conflict-of-law rule or principle which might refer such construction to the laws of another state or country.

17.2 Submission to Jurisdiction. Any legal action or proceeding arising out of or relating to this Agreement or for the enforcement of the covenants or obligation of either party must be instituted in a State court of general jurisdiction sitting in the State of Alaska, and Purchaser hereby irrevocably submits to the jurisdiction of that court in any such action or proceeding.

ARTICLE XVIII
WARRANTIES

The purchase and sale of Royalty Oil under this Agreement is subject only to the warranties of Seller expressly set forth in this Agreement and Seller disclaims and Purchaser waives all other warranties, expressed or implied in law, whatsoever.

ARTICLE XIX
AMENDMENT

This Agreement may be supplemented, amended or modified at any time, but only by written instrument duly executed by the parties to this Agreement. Any material amendment to the contract which appreciably reduces the consideration received by the State requires prior approval of the Legislature of the State of Alaska.

ARTICLE XX
SUCCESSORS AND ASSIGNS

No assignment, pledge or encumbrance of this Agreement shall be made by either party without first obtaining the written consent of the other party. The Commissioner may grant such consent on behalf of the Seller. The Commissioner shall have sole and complete discretion in granting or denying a proposed assignment, pledge or encumbrance. Subject to the above requirements in this Article, this Agreement will be binding upon and inure to the benefit of each of the parties and its successors and permitted assignees. In addition, if Purchaser gains or acquires a controlling interest in an entity which has an agreement with Seller for the sale of Royalty Oil ("Other Agreement"), then Seller, at its option and on one year's notice, may require Purchaser to terminate either this Agreement or the Other Agreement. The choice of which Agreement to terminate will be Purchaser's. Purchaser may request that Seller waive this option in advance of Purchaser gaining a controlling interest in an entity which has an agreement with Seller for the sale of Royalty Oil. The Commissioner has sole and complete discretion in granting or denying the requested waiver.

ARTICLE XXI
HEADINGS

Headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

ARTICLE XXII
RECORDS

22.1 Preservation of Records. Purchaser will preserve and maintain all books, accounts, and records relating to or arising out of the performance of this Agreement, including but not limited to the purchase or sale of Royalty Oil and its refined products, for a period of six (6) years. Purchaser will also maintain and preserve all similar books, accounts, and records of which

it has possession belonging to those third parties with whom it contracts for the performance of various parts of this Agreement. Neither Purchaser nor Seller shall be required to retain any records for more than six (6) years unless retention of such records is specifically required by applicable law or regulation. Purchaser shall either maintain its records within the State of Alaska or make such records available to Seller at Purchaser's principal office in the State of Alaska within thirty (30) days after written request by Seller.

22.2 Inspection of Records of Parties. Purchaser and Seller will accord to each other and to their authorized agents, attorneys, and auditors during reasonable business hours access to any and all property, records, books, documents, and indexes directly relating to Purchaser's or Seller's performance of this Agreement and which are under the control of the party from which access is desired so that the other party may inspect, photograph and make copies of that property, records, books, documents and indexes. In no event, however, shall Seller be required to disclose any information, data, or records which are required to be held confidential by state law or regulation. If the information obtained by Seller may be held confidential under state or federal law or regulation, Purchaser may request that that information be held confidential by Seller.

ARTICLE XXIII
INTERPRETATION OF TERMS AND CONDITIONS

In the event that there is a disagreement about the meaning or application of a word, term, or condition in this Agreement, Purchaser will present the arguments supporting its view in writing to the Commissioner for her consideration. The Commissioner will subsequently, within a reasonable time, issue a finding on the meaning or application of the disputed word, term, or condition, setting forth the basis for her conclusions. Purchaser agrees to accept findings by the Commissioner under this Article as long as there is substantial evidence supporting the Commissioner's findings. None of the above shall empower the Commissioner to set the price of the Oil should such price become subject to renegotiation pursuant to Section 2.3.

DATED this 8th day of February 1985.

SELLER: THE STATE OF ALASKA

_____
Commissioner,
Department of Natural Resources

PURCHASER: GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.

By _____
Michael P. Kelly
General Manager

HB

2088

File #1

House Resources Committee
Packets on HB 288
An Act Relating to the Taking of Fish and Game for Subsistence and Personal Use

TABLE OF CONTENTS

House Bill 288 and the Fiscal Note
Governor's Transmittal Letter

Comments by the Speaker of the House
Comments by the Chairman of the Bush Caucus
Letter from the House Special Committee on Fisheries
Floor Speech by House Special Committee on Fisheries Chairman

Memoranda from the Alaska Department of Fish and Game
Memoranda from the Attorney General
Board of Fisheries Findings

Supreme Court Decision, Madison vs. ADF&G
Briefs Submitted by the Attorneys in the Madison vs. ADF&G Case:
- Larri I. Spengler, Assistant Attorney General
- Donald C. Mitchell, Intervenor
- Martin Friedman, Arthur Robinson
- Martin Friedman, Arthur Robinson

Statutes and Regulations Pertaining to the Alaska State Subsistence Law
Pertinent Sections of the Alaska National Interest Lands Conservation Act

Letters in Support of House Bill 288
Letters in Opposition of House Bill 288
Other Letters and Comments

HOUSE BILL 228

AND

FISCAL NOTE

Introduced: 3/13/85
Referred: Resources and
Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 288

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that

(1) the taking of fish stocks and game populations for personal and family consumption and related uses is essential to the health, safety, and general welfare of Alaskans domiciled in rural communities or rural areas in which the taking of fish and game for such uses is a significant part of the economy of the community or area; and

(2) the taking of fish stocks and game populations for personal, sport, and commercial uses is also of economic and recreational importance to Alaskans who reside anywhere in the state.

* Sec. 2. AS 16.05.251(a) is amended to read:

(a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.-62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

(3) setting quotas, bag limits, harvest levels, and sex and

size limitations on the taking of fish;

(4) establishing the means and methods employed in the pursuit, capture and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish, personal use fish, or predators or other categories essential for regulatory purposes;

(7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation and stocking of fish;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(10) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(11) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43;

(12) personal use fishing.

* Sec. 3. AS 16.05.940(23) is amended to read:

(23) "subsistence uses" means the customary and traditional uses by rural [IN] Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel,

clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

* Sec. 4. AS 16.05.940 is amended by adding a new paragraph to read:

(28) "personal use fishing" means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other similar means defined by the Board of Fisheries.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 288

Title: An Act relating to the taking of fish & game for subsistence & personal use

Sponsor: Rules Comm. at Gov. request

Requestor: Rules Comm. at Gov. req.

Date of Request: March 13, 1985

FISCAL DETAIL

Agency Affected: Department of Fish and Game

Program Category Affected:

BRU, Program or Subprogram(s) Affected: All ADF&G BRU's

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Passage of bill will reduce management costs substantially. Failure to adopt will require a major increase in funds for monitoring growing subsistence fisheries.

If state is found to not comply with federal requirements, then state may lose federal matching grants and revenues

Prepared By: Steven R. Behnke Phone: 465-4147

Division: Subsistence Date: 3/12/85

Approved by Commissioner: Date: 3-12-85

Agency: Department of Fish and Game

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

GOVERNOR'S TRANSMITTAL LETTER

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 13, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill regarding the taking of fish and game for subsistence and personal uses. The purpose of this bill is to amend AS 16 to delegate to the Alaska Board of Fisheries and Alaska Board of Game the same authority to regulate the taking of fish stocks and game populations that the boards exercised before the recent decision of the Alaska Supreme Court in Madison v. Alaska Department of Fish and Game, Supreme Court Opin. No. 2911 (February 22, 1985).

The bill does so in two ways. First, the bill would amend AS 16.05.940(23) to limit the identification of "subsistence uses" of fish stocks and game populations to hunting and fishing for personal and family consumption and related uses by residents of rural communities or rural areas, where the taking of fish and game for such uses is a significant part of the economy of the community or area. This change recognizes that in rural Alaska the taking of fish and wildlife is essential to the health, safety, and general welfare of Alaskans domiciled in many of the rural communities and rural areas of our state and to the economy of the community or area in which they reside. As the Alaska Department of Fish and Game has determined from its research on this subject:

> Alaska is characterized by a diversity of socioeconomic systems and patterns of resource use. ... It seems clear that the economic and social stability of many communities depend upon access to and utilization of renewable fish and wildlife resources. ... Disruptions of the relationships between the community and the resource base may affect the viability of these ways of life.

Alaska Department of Fish and Game, Division of Subsistence, Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities, technical paper No. 61, 274 (1983).

Second, the bill would establish a statutory definition of the term "personal use fishing" (proposed AS 16.05.940(28)). The Alaska Board of Fisheries has already established this category by regulation. This category of harvest, though not subsistence fishing, is important to Alaska residents. After the board has identified the "subsistence uses," if any, of particular fish stocks, AS 16.05.940(28) and the amendment to AS 16.05.251(a)(6) and addition of AS 16.05.251(a)(12), in sec. 2 of the bill, would authorize the board to adopt regulations allocating access to those stocks for the purposes of personal use, sport, and commercial fishing in a fair and reasonable manner consistent with its constitutional responsibility to adopt regulations to use, develop, and conserve fish stocks for the maximum benefit of all Alaskans.

As previously mentioned, this legislation is intended only to provide the boards the same regulatory authority which they exercised before Madison v. Alaska Department of Fish and Game. Consequently, I urge your expeditious consideration of this bill, since its enactment is essential to provide the boards sufficient regulatory flexibility to ensure that Alaskans are provided fair and reasonable access to our fish stocks and game populations. Enactment will also ensure that the State of Alaska remains in compliance with the provisions of Title VIII of the Alaska National Interest Lands Conservation Act and, consequently, retains full authority to regulate the taking of fish and game on all land and in all water of the state.

Sincerely,

Bill Sheffield
Governor

COMMENTS BY

THE SPEAKER OF THE HOUSE

REPRESENTATIVE
BEN GRUSSENDORF

P.O. BOX 928
SITKA, ALASKA 99835
(907) 747-8458

RULES COMMITTEE
LEGISLATIVE COUNCIL

DISTRICT 3
EFFIN COVE
PELICAN
PORT ALEXANDER
SITKA
TENAKEE

Alaska State Legislature

House of Representatives
SPEAKER OF THE HOUSE

WHILE IN JUNEAU
ROUGH V
JUNEAU, ALASKA 99811
(907) 465-3824
(907) 465-3[illegible]

PRESS RELEASE #7

March 12, 1985

COMMENTS ON SUBSISTENCE BY REP. BEN GRUSSENDORF

Today the Governor introduced a proposed remedy for the recent court action on subsistence. We now have before us an unexpected, undiscussed issue which requires us to proceed carefully, calmly and constructively.

It appears that the court decision, unless remedied this spring, could cause signficant disruption in the livelihood of thousands of Alaskans. Not only subsistence users, but also sport and commercial fishermen, and big game guides could be very directly and deeply impacted. The court decision also raises the old and unwelcome issue of federal management of Alaska's fish and game. But, with appropriate action by the Legislature, these potential impacts can be minimized, if not avoided altogether.

We will begin by gathering basic facts and clearly identifying issues. We will also evaluate the immediate and longterm impacts on all the resource users. We recognize that there may be differing perspectives and perhaps competing concerns.

Throughout our discussions, we will seek a solution which recognizes the importance of subsistence fishing and hunting in our rural areas, and provides for the needs of personal users, guides, sportsmen and commercial groups as well.

We will provide, of course, for extensive public comment and, hopefully, at the same time, provide a forum for public understanding of what is really at stake in our deliberations. We will seek throughout this process to work on the basis of facts, not opinions; on the basis of reason, not emotion. Our goal will be to minimize any disruptions this unexpected and largely unwelcome change might cause. Only after fact-finding and public input will we decide what constitutes positive, reasonable action on our part.

COMMENTS BY THE CHAIRMAN OF THE BUSH CAUCUS

COMMENTS ON INTRODUCTION OF SUBSISTENCE LEGISLATION

MARCH 11, 1985

REP. JACK FULLER

465-3789

NOW THAT WE HAVE HAD SOME TIME TO DIGEST THE MADISON DECISION AND REALIZE ITS IMPACTS, IT IS CLEAR THAT THE LEGISLATURE MUST TACKLE THE SUBSISTENCE ISSUE THIS SESSION. IT MUST BE HANDLED IN A CAREFUL, REASONABLE FASHION, WITH PLENTY OF OPPORTUNITY TO HEAR FROM DIFFERENT AND PERHAPS COMPETING PERSPECTIVES.

FIRST, PEOPLE ACROSS THE STATE MUST HAVE THE FACTS. THEY MUST LEARN JUST WHAT THE COURT DECISION MEANS FOR ALL USERS OF OUR RESOURCES. THIS IS AN ISSUE AFFECTING ALL ALASKANS WHO HUNT, FISH, OR GUIDE NO MATTER WHERE THEY LIVE. FOR EXAMPLE, IN COOK INLET THE BOARD OF FISHERIES HAS LIMITED SUBSISTENCE USE TO THREE AREAS AND ESTABLISHED A PERSONAL USE FISHERY TO TAKE CARE OF THOSE PEOPLE WHO LIVE OUTSIDE THOSE AREAS AND HAD PREVIOUSLY FISHED. ALL USES AND ALL USERS WERE ACCOMMODATED. WHAT MAY VERY LIKELY HAPPEN NOW, IF NOTHING IS DONE, IS THAT SUBSISTENCE USERS WILL INCREASE TO SUCH AN EXTENT THAT SPORT AND COMMERCIAL FISHING WILL HAVE TO BE SEVERELY CURTAILED, AND PERHAPS ELIMINATED.

ANY SOLUTION MUST RECOGNIZE THE IMPORTANCE OF SUBSISTENCE TO RURAL ALASKA. PEOPLE IN DIFFERENT PARTS OF THE STATE USE RESOURCES DIFFERENTLY. IN RURAL ALASKA, SUBSISTENCE IS A VITAL PART OF THE CULTURAL HERITAGE AND THE BASIC ECONOMICS OF LIFE. THERE, CHOICES OF

HOW TO MAKE A LIVING ARE FEW. SUBSISTENCE IS SURVIVAL. IN URBAN AREAS, ALTHOUGH PEOPLE MAY GO OUT AND TAKE FISH OR GAME BY SUBSISTENCE MEANS, THERE ARE ALTERNATIVES.

SINCE THE 1978 LAW WAS ENACTED, THE BOARDS OF FISHERIES AND GAME HAVE IMPLEMENTED THE LAW IN A FAIR AND REASONABLE FASHION. THE EIGHT-POINT CRITERIA ADOPTED BY THE BOARDS PROVIDED THAT ALL [illegible]S WOULD BE MET. SUBSISTENCE USE WAS FAIRLY NARROWLY DEFINED, RURAL RESIDENTS WERE PROTECTED, AND ALL OTHER USES WERE STILL ACCOMMODATED. AFTER MADISON, ANYONE MUST BE CONSIDERED A SUBSISTENCE USER, WHICH WILL DRASTICALLY INCREASE THE AMOUNT OF A RESOURCE THAT MUST BE ALLOCATED TO SUBSISTENCE. THIS MAKES IS ALL TOO LIKELY THAT OTHER USES WILL BE SEVERELY RESTRICTED OR ELIMINATED.

THE DECISION PROBABLY PUTS THE STATE OUT OF CONFORMITY WITH FEDERAL LAW, SO THE UNFORTUNATE SPECTER OF FEDERAL CONTROL OF ALASKA'S FISH AND WILDLIFE RESOURCES LOOMS OVER OUR HEADS.

GIVEN ALL THIS, WE RECOGNIZE THE NEED FOR LEGISLATIVE CONSIDERATION THIS YEAR, BEFORE THE SUMMER SEASON BRINGS CHAOS TO WHAT HAS BECOME AN ORDERLY SYSTEM OF ALLOCATING FISH AND GAME RESOURCES. APPROPRIATE ACTION BY THE LEGISLATURE NOW WILL MINIMIZE THE NEGATIVE IMPACTS, AND PERHAPS AVOID THEM ALTOGETHER.

######

LETTER FROM

THE HOUSE SPECIAL COMMITTEE ON FISHERIES

AND

MINUTES FROM

THE HOUSE SPECIAL COMMITTEE ON FISHERIES

SUBSISTENCE HEARINGS

REPRESENTATIVE
PETER GOLL

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

March 21, 1985

TO: Representative Dick Schultz
Representative Adelheid Herrmann
Co-Chairs, House Resources Committee

FROM: Representative Peter Goll
Chairman, House Special Committee on Fisheries

SUBJECT: Subsistence Hearings

The House Special Committee on Fisheries has been studying the impacts of the Madison decision since shortly after the Supreme Court made its ruling. I will be making a verbal presentation to the Resources Committee as you begin consideration of House Bill 288.

Attached is a letter from the members of the Fisheries Committee addressing the subsistence issue and a resolution adopted by the Joint Board of Fisheries and Game which urges adoption of the governor's subsistence legislation. A transcript of the Fisheries Committee's March 21 briefing on subsistence is being prepared and will be forwarded to the Resources Committee as soon as it is completed and reviewed. We also will transmit other information on the subsistence issue as it becomes available.

The Fisheries Committee found the briefings to be very helpful, particularly the hands-on perspective offered by members of the Board of Fisheries and regional fisheries managers. While the verbatim transcript of our hearings would be a useful research and reference tool, the document cannot replace the value of interaction between committee members and fisheries managers.

As your committee deals with the complexities of the Madison decision, I believe the perspective of those who are responsible for formulating and implementing management policies would be invaluable.

Add - Please let me know if I can be of any help and support.
PG

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

DATE: March 21, 1985

TO: House Resources Committee

SUBJECT: Special Committee on Fisheries
Comments on Subsistence

The Madison decision by the Alaska Supreme Court on subsistence has the potential of seriously disrupting the management of Alaska's fish and wildlife resources. According to testimony before the Special Committee on Fisheries, the Madison decision could force radical shifts in established patterns of resource allocation, upsetting the carefully balanced approach to fish and game management achieved in recent years.

The Fisheries Committee received testimony on the Madison decision from the Department of Law, Department of Fish and Game, and chairman of the Joint Boards of Fisheries and Game. Although the state's fish and wildlife managers are still in the process of developing specific management strategies responsive to Madison, this much is clear:

1) Sport and commercial fishing in Cook Inlet may have to be cut back to accommodate anticipated increases in non-commercial net fishing.

2) The commercial drift net fishery in Prince William Sound may have to be sharply restricted to provide increased dip-netting opportunities in the Copper River.

3) Many of Alaska's big game guides may be forced out of business because of major decreases in non-resident hunting activities.

The members of the Special Committee on Fisheries believe that the subsistence issue must be addressed by the Legislature in a prompt but thorough manner. The committee respectfully requests the Resources Committee to take all possible steps to address this critical issue in a manner providing for action by the Legislature in the remaining weeks of the Legislative session.

Respectfully,

Peter Gøll, Chair

85-13-JB DRAFT

WHEREAS, the Alaska Board of Fisheries and Alaska Board of Game have been delegated responsibility and authority by the Alaska Legislature to regulate the taking of fish stocks and game populations for the maximum benefit of all of the people of Alaska; and

WHEREAS, prior to the decision of the Alaska Supreme Court in Madison v. Alaska Department of Fish and Game the boards developed procedures which provided adequate regulatory flexibility, both to protect opportunities for subsistence hunting and fishing in rural communities and areas, and to provide hunting and fishing opportunities for recreational, commercial, and other uses; and

WHEREAS, it is unclear to what extent the boards may restrict subsistence harvest after the Madison ruling and as a result, substantial and significantly disruptive reallocations of opportunities to harvest fish stocks and game populations may be necessary. For example:

1. The commercial gill net fishery which is an important component of the Prince William Sound economy may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to accommodate both the historic commercial fishery and other users.

2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Susitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.

3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the Madison decision the Board of Game had adequate regulatory flexibility to accommodate these users reasonably.

WHEREAS, prior to the Madison decision the State of Alaska was in compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). As a result of the Madison decision the federal government may now take control over game populations on public lands and fish stocks on public lands and within navigable waters; and

WHEREAS, if the State of Alaska is no longer in compliance with ANILCA, the state will lose the ongoing million dollar per year federal appropriation for the state's public participation system which is essential to the success of the state's regulatory and management activities; and

WHEREAS, the Alaska Board of Fisheries and Board of Game strongly believe that the potential restrictions, closures, reallocations

and loss of funding described above are not in the best interest of the fish and wildlife resources and the people of Alaska;

NOW THEREFORE BE IT RESOLVED, that the Alaska Board of Fisheries and Board of Game meeting in joint session respectfully, but strongly urge the Alaska Legislature to enact legislation during the current legislative session which returns to the boards the regulatory authority and flexibility which they exercised before the Madison decision; and

THEREFORE BE IT FURTHER RESOLVED, that the Alaska Board of Fisheries and Alaska Board of Game have reviewed SB 231 and HB 288, the legislation introduced by the Governor to accomplish this purpose, and urge that this legislation be enacted into law as expeditiously as possible.

House Special Committee on Fisheries
Governor's Conference Room
March 21, 1985
8:30 a.m.

Members Present: Representative Peter Goll, Chair
Representative Mike Navarre
Representative Kate Hurley
Representative Roger Jenkins
Representative Johne Binkley
Representative David Thompson

Members Absent: Representative Andre Marrou

Legislators Present: Representative Walt Furnace
Representative Jack Fuller
Representative Randy Phillips
Representative Steve Frank

Legislative Staff Present: Offices of Senators: Zharoff, Sturgulewski, and Senate Advisory Committee. Representatives: M. M. Miller, Sund, Binkley, Jenkins, Thompson, Wallis, Boucher, Navarre, Larson, Reiger, Grussendorf Herrmann, Szymanski, and Fuller.

COMMITTEE CALENDAR: Briefing on Subsistence and HB 288 by the Department of Law, the Department of Fish and Game and Alaska Board of Fisheries. Some members of the departments and Alaska Board of Fisheries participated via teleconference.

WITNESS REGISTER:

James R. Ayers, Special Assistant
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Conference Moderator

Elizabeth A. Stewart, Director
Division of Boards
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Via Teleconference

Ken Parker, Director
Division of Commercial Fisheries
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Via Teleconference

Steven R. Behnke, Director
Division of Subsistence
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99811
Telephone: 465-4120
Position Statement: Via Teleconference

Kenneth R. Florey
Regional Supervisor/Region II
Division of Commercial Fisheries
333 Raspberry Road
Anchorage, Alaska 99502
Telephone: 267-2104
Position Statement: Via Teleconference

Bob Clasby, Fisheries Biologist IV
Division of Commercial Fisheries
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Via Teleconference

Ron Jolin, Chairman
Alaska Board of Fish
P. O. Box 2022
Kodiak, Alaska 99615
Telephone: 486-5949
Position Statement: Via Teleconference

Bix Bonney, Vice Chairman
Alaska Board of Fish
3101 C Street, Suite 301
Chalis 1 Building
Anchorage, Alaska 99503
Telephone: 561-5115
Position Statement: Via Teleconference

John Garner
Alaska Board of Fish
P. O. Box 448
Juneau, Alaska 99802
Telephone: 586-9500
Positions Statement: Via Teleconference

Larri Spengler
Assistant Attorney General
Alaska Department of Law
Pouch K
Juneau, Alaska 99811
Telephone: 465-3600
Position Statement: Via Teleconference

Heidi Borson-Paine
House Research Agency
Alaska State Legislature
Pouch V
Juneau, Alaska 99811
Telephone: 586-3991
Position Statement: Observer

Ron Sommerville
Alaska Outdoor Council
Juneau, Alaska 99801
Telephone: 789-3450
Position Statement: Observer

Rupert Andrews
National Rifle Association
Juneau, Alaska 99801
Telephone: 789-7422
Position Statement: Observer

Cass Parsons, Executive Director
United Fishermen of Alaska
319 Seward Street
Juneau, Alaska 99801
Telephone: 586-2820
Position Statement: Observer

James Martinez
Alaska Native Brotherhood
Klawock, Alaska 99925
Position Statement: Observer

Richard McKinley
Alaska Native Brotherhood
Juneau, Alaska 99801
Telephone: 789-0971
Position Statement: Observer

Woodrow F. Morrison
Bureau of Indian Affairs - Subsistence
Juneau, Alaska 99801
Telephone: 586-7177
Position Statement: Observer

Ron Williams
Alaska Native Brotherhood
Juneau, Alaska 99801
Telephone: 586-7613
Position Statement: Observer

Richard Stitt
Sealaska
One Sealaska Plaza
Juneau, Alaska 99801

Telephone: 586-1512
Position Statement: Observer

Jackie Martin
Bureau of Indian Affairs - Subsistence
Juneau, Alaska 99801
Telephone: 586-7177
Position Statement: Observer

Marilyn Heiman
Alaska Environmental Lobby
204 North Franklin, Suite 3
Juneau, Alaska 99801
Telephone: 586-2345
Position Statement: Observer

Barbara Basham
3601 C Street, Suite 740
Anchorage, Alaska 99503
Telephone: 562-3719
Position Statement: Observer

Bob Richardson
3601 C Street, Suite 740
Anchorage, Alaska 99503
Telephone: 562-3779
Position Statement: Observer

Dale Bondurant
SR-1, P. O. Box 2516
Chugiak, Alaska 99567
Telephone: 688-2692
Position Statement: Observer

Sam McDonnell
336 East 23rd Avenue
Anchorage, Alaska 99501
Telephone: 272-6605
Position Statement: Observer

Mary Bishop
1555 Guss'Grind
Fairbanks, Alaska 99701
Telephone: 455-6151
Position Statement: Observer

ACTION NARRATIVE:
TAPE 12, SIDE A
Recording
Number 003 Chairman Goll called the special meeting on subsistence to order at 8:39 a.m. and listed those present: We have a number of distinguished guests representing a variety of organizations and interest groups. We are here today to receive a briefing by the Department of Fish

and Game, its various divisions, the Department of Law and to receive an announcement and some information from the joint boards of fisheries and game regarding their position on the subsistence bill and their guidance on the issue in general. So with that I would invite Mr. Ayers representing the Commissioner's office of the Department of Fish and Game to open our meeting.

Number 015 Jim Ayers, Alaska Department of Fish and Game: Thank you Mr Chairman, members of the committee and other Representatives. I appreciate this opportunity. My name is Jim Ayers, I'm Deputy Commissioner of the Department of Fish and Game. What we would like to do this morning is provide a framework from which we think that you will be able to construct and a reasonable discussion and action regarding the Governor's bill and most particularly as it relates to the Madison decision. We're here in the spirit of cooperation. We're here to assist in any way we can and to hopefully, help us all understand that the Madison Decision has removed the board's ability to achieve balance. It has removed the board's ability to obviate the potential devisiveness that was throughout our state for a while. We would like to discuss in this presentation three major aspects: One, a review of the Madison decision and the legal holdings; two, the implications that we think are there with some definition and some implications that are potentially there with regard to federal law; and the third aspect is of course, the potential impact on users as a result of the Madison decision. God willing there are participants in Anchorage at the board meetings who are going to make the majority of this presentation. And so I will become a pretty face and a listener as you all are. The participants in Anchorage are Bix Bonney, a member of the fish board, Beth Stewart, who is the director of our boards' division; Steve Behnke who is the director of the subsistence division; Larry Spengler who is assistant attorney general from the Department of Law; Ron Jolin, who is the chairman of the joint boards and chairperson of the fish board; Ken Florey who is a regional supervisor with the Department of Fish and Game; John Garner, who is a board member of the fish board; if there are others there that I have not mentioned, I'm sure they will identify themselves as the need arises. What we thought would be most helpful is if we began with a presentation from Ron Jolin who is the chairman of the joint boards. Ron, hopefully, is awaiting my silence and will then discuss with you what he believes the current situation is and give you the boards' perspective. I will mention one other thing and that is that we have distributed a copy of the resolution that was passed by the joint boards yesterday. And so Ron will know you have in front of you a copy of their resolution. With that said, Mr. Chairman, and with a gentle reminder that we are here in a spirit of cooperation and to work with you in any way we can to resolve this potential conflict. And with that I would hope, Mr. Chairman, that we can then move to Anchorage to hear from Ron Jolin.

Number 115 Chairman Goll: Thank you very much Mr. Ayers. Yes, we will move to Anchorage. I'd like to request of you and all the other participants today to the extent possible that you send us your comments in writing. What we'd like to do is make sure that other members of the House and Senate who are not present today are thoroughly briefed and by getting either your written comments or transcripts of your comments telecopied down to us here in Juneau, we would take it upon ourselves to get that distributed. Secondly, I'd like to say we were hoping to go until 11

o'clock this morning, but there's a majority caucus at 10:00 and things may wrap up earlier, so that gives us about an hour and a half, a little less to get our business done and I just wanted all participants to be aware of the schedules. Thank you very much and once again back to you and back to Anchorage.

Ayers: Ron Jolin are you in Anchorage?

Number 118 Ron Jolin: Yes, good morning Mr. Chairman and ladies and gentlemen of the House Committee on Fisheries. I'll give a little overview on what the boards' perspective is of the Madison decision. As you know under Title 16, the boards' responsibilities are the preservation and enhancement of the resource for the people of Alaska. And the allocation of those resources to the different user groups in the state of Alaska. I think the board feels that prior to Madison, we were following a process that was working fairly well. Maybe I can give you some of our perspectives of what the Madison decision means to the board or what we feel are some of the problems we would be facing under the decision. We would have some problems in trying to accommodate our commercial and sport users in the state of Alaska. I think that under the decision we are put in a position of having to allocate fish to one user group in preference over all user groups in the state, especially the commercial and sport fishermen. It's taken away a lot of flexibility of the board to regulate our fisheries. I think that as we move into this we will be getting a more indepth report on that from our legal staff, from the AG's office and from some of the people in the department. HB 288 would return the flexibility that we need to regulate and manage our fisheries resources. It's not an easy job in a state as large as Alaska to try and allocate all of the resources in an equitable manner to all of our user groups. But we really feel that we're doing the best job that could be done under the circumstances. I think that anything that we can do to return our regulatory authority to the balance that we had prior to Madison, would be in the best interests of all people and all user groups in the state. I suppose as we move into this we'll be getting into some of the worst-case scenarios and what might happen - what might not happen this year and in following years if we do indeed not get back to our previous position before Madison and if we do return to our position. If we can find the support that we need to pass both bills. With that maybe I'll turn it over to Larri and she can run through some of the AG's perspectives.

Number 167 Larri I. Spengler: Thank you. This is Larri Spengler with the Department of Law. What I'm going to do is give a very brief overview of Madison, the decision which put us all in this position and also of the series of events that led up to the Madison case and the holdings of Madison, generally how they impact the board's authority and also briefly how that has implications with regard to the federal subsistence law. After that, the different people from the Department of Fish and Game, and to whatever extent I can be of assistance in that, along with board members will talk about the various specific situations that we know we'll need to address under Madison if the Governor's bill does not pass. We thought it might be most useful for questions to be asked after each section, rather than waiting to the end of the whole presentation. So when I'm done with the legal overview, if there are any questions on that maybe we could take them then and then after we talk about each resource

situation, if the committee has questions on that we could take those questions at that time before getting into the next one.

The Madison case is the first time that the State Supreme Court has had an opportunity to evaluate the state's subsistence statutes and what it means. In doing that the court basically turned on its head the authority the board had thought it was exercising up to that point and made it very difficult for the board to continue the balance and the ability to accommodate all of the different uses that had been thought to rest in the board earlier.

Madison is a case that came out of Cook Inlet. It's a case that was filed by people living in Kenai and Homer. The board's approach to subsistence in Cook Inlet is perhaps a useful microcosm to how it has been approaching subsistence throughout the state as well. And therefore the chronology that led up to this case, to this lawsuit, provides a good background against which to look at Cook Inlet in more detail and also to look at the other situations.

The state subsistence statute was passed in 1978. Before 1978, the board of Fisheries had been delegated from the Legislature the authority to authorize commercial fishing, sport fishing and subsistence fishing in the board's discretion. Subsistence fishing at that time, before 1978, was simply described as fishing by net for personal use. Sport fishing was defined as fishing by rod and reel for personal use and commercial fishing was defined as fishing for profit. What the Legislature did in 1978 was take away some of the board's discretion with regards to subsistence fishing. The Legislature said that if there were subsistence uses on a fish stock or a game population, for the game board, then the board no longer had the discretion to authorize or not authorize that. It had to authorize fishing unless it would hurt the resource. So it removed some of the board's discretion and it also said that if there was a resource situation that required restriction, subsistence would have the priority. So, the law was passed in '78 and several years went by. No real effort was made or no real examination was made of the law and what it required by the board of fisheries. In 1980, there were three lawsuits filed by different individuals around Cook Inlet and communities.

And that brought the board's attention and the state's attention generally sharply into focus on the subsistence law and what it required. The state lost all three cases simply because the board had not really been looking up to that point at the subsistence law and what it required.

Those cases came from the Homer, Kenai and Tyonek areas. As a result of that summer, the board in a winter meeting of 1980 and the spring of 1981 examined the uses around Cook Inlet and examined which of those uses were subsistence uses of salmon under the state law and in order to do that they had developed criteria against which they would examine a use of salmon to determine if it was a customary and traditional use of salmon. That was, customary and traditional being some of the catch words in the definition of subsistence uses. Under those criteria, the board determined that in Cook Inlet only three communities qualified for subsistence uses: Tyonek, English Bay and Port Graham. The board

authorized subsistence uses for those communities and then looked at the rest of the Inlet. Elsewhere in the Inlet, there had been subsistence fishing authorized since statehood and before, under the definition of net fishing for personal use. Now, the board had determined that that fishing was not subsistence fishing because it did not meet the criteria that they had develcped and in the spring of 1981 before the 1981 summer the board did not authorize any net fishing for any one else in Cook Inlet for their own personal use except for the subsistence fishing which was to occur in Tyonek, English Bay and Port Graham. That summer, the summer of 1981, individuals from Homer and Kenai filed two different lawsuits. In both cases, the people claimed that they were subsistence fishermen and always had been, and should be able to continue to subsistence fish, But, also claimed that in any event, they ought to be able to have some kind of access to the fishery with nets because they had historically done so. The court in Madison at the lower level refused to overturn the board's assessment, that there were no longer subsistence uses existent in the Kenai area, but also said that the board had to treat those people fairly and could not eliminate that historic use without some good reason. And that basically that in treating them fairly they might have to set up some kind of personal use fishery that would allow those people, Mr. Madison, the plaintiff in that case, and others in the area, access to the fish. So, the board then established, after the summer of 1981, established the personal use fishing category in regulation. Personal use fishing was defined, basically the way subsistence fishing had been defined before the subsistence law was passed: fishing by net for personal use. Subsistence fishing was now defined as fishing for subsistence uses, customary and traditional uses for certain purposes. So subsistence fishing was a subset after 1978 of what subsistence fishing had been before 1978. It was, under the board's interpretation, narrowed. The definition of subsistence fishing had been narrowed in 1978 to protect the uses and harvests in rural communities and areas. Ok, so the board set up a personal use fishery and authorized personal use fisheries opportunities for Mr. Madison and everyone else in the Anchorage area, Kenai area Homer area on sockeye in the summer in Cook Inlet and some coho in the fall. What the lawsuit was filed over was a more extensive coho fishery in the fall, that's what the people had been seeking. The court, as I said in Madison, said these criteria that you've been applying are the right approach to identifying rural communities in the areas that are reliant on fishing for personal uses and a significant component of the economy of the community or area. And that's exactly what the Legislature meant in 1978. You're doing it right, board go ahead. So the board went ahead and in combination with the joint board adopted 8 criteria which eventually replaced the 10 criteria from Cook Inlet which both boards would use on a statewide basis to identify subsistence uses of fish stocks and game populations.

The board of fisheries applied those criteria in various situations, including the Copper River and we'll get into that a little bit more later. At the end of February the Supreme Court issued its ruling in Madison. All along since 1981, the case had been slowly winding its way through the court system and finally reached the State Supreme Court. The court said that the board's implementation of the statute was inconsistent with the statute. The court did not rule on any constitutional issues, but rather looked at what the court thought the Legislature in 1978 meant. And the court determined that the Legislature

in 1978 had not meant nor had authorized the board to identify subsistence uses as rural uses in rural communities and areas. That the Legislature had not authorized the board to look at the uses of communities or areas. And conversely that the Legislature had not authorized the board to look at individuals to see at first instance who gets in to be able to subsistence fish.

Mr. Jones can because he's lived here for 20 years, Mr. Smith can't because he's been here for two years is not a system that the board had ever tried, but the court said by the way, don't try it because that wasn't meant either. What this left us with is a situation where, under the court's ruling, if there has been a subsistence fishery at any time on a particular fish stock, the board has to authorize subsistence fishing on that stock unless any fishing would be dangerous to the stock. The board cannot say who can go and fish in that fishery. All Alaskans can go and fish until or unless all sport and commercial fishing on that relevant stock has been eliminated. So an example which we'll talk about more in the Cook Inlet section is the village of Tyonek across the inlet from Cook Inlet. The board established a subsistence fishery for which only residents of Tyonek could qualify on king salmon in the spring. They took approximately 2000 king salmon in a year in that fishery. Now, there is no question in that fishery is a customary and traditional fishery, the board will have to authorize it and cannot exclude anyone from participating in it. So anyone from Anchorage or from anywhere else can go over there and fish and the board cannot restrict that until and unless the sport fishery in the Susitna drainage afterwards and any relevant commercial fishery have been closed down.

The Madison case then left us with two different sets of problems. One is the potential disruption to the balance that the boards have achieved among the different use groups. And the other is a probably inconsistency with federal law. If it's acceptable, I'll go straight on into the federal law problem and then pause for questions, unless someone would like some now. (no questions)

The federal subsistence law, ANILCA Title 8, allows the state to continue its traditional management on all of the federal land in the state, which makes up 60% of the land, it's not just the parks and monuments, it's all federal land. If the state by a law of general applicability provides for three things which are specified in ANILCA: one is the advisory committee and regional council system, which the state already has; another is the subsistence priority which the state has; and the third is the definition of subsistence uses that is found in ANILCA. ANILCA defines subsistence uses identically to the state with the exception that it is specifically stated in the statute that subsistence are customary and traditional uses by rural Alaska residents. Up until the Madison decision, we were in compliance with ANILCA because the boards had been interpreting our subsistence law as the intention of the law was to protect the harvests of fish and game in rural communities and areas which were dependent on the resource. So, we were in compliance. Now the court has said that the boards are not authorized to identify subsistence uses as rural uses. If the boards cannot protect rural uses as subsistence uses, separately from other uses then we will not be in compliance with ANILCA and the federal government may be required to take some action to impinge upon the board's

regulatory authority over fish and game. There are several questions with regard to this. One aspect of this, as I mentioned, is taking over the management of the federal land in the state. Land is defined in the statute as water and there is an argument to be made, although the state has not and would not concede this, that navigable waters are included under the definition. So, if that were the case, then the federal government would have to exercise some management over all of the navigable water.

The other thing to keep in mind is that even if the federal government doesn't particularly want to take over management there is a section in the federal law that allows another private party to go into court and sue the federal government to make them do their duty as such under the law. So, a private party or group could go into court and sue the federal government and say: 'federal government, the state is not now authorized to protect rural uses as opposed to other uses and that means that you have to go in and do something.' And the court might well order them to do something.

Another consequence of this is financial. Because the statute says that if the state is in compliance we will receive and we have been receiving matching money in the amount of about $1 million dollars a year from the federal government to support the advisory committee and regional council system. And maybe Jim Ayers could summarize the financial consequences before we take any questions.

Number 376 Ayers: Thank you Mr. Chairman. I will do two things actually, I will mention Larri and to Beth Stewart who, hopefully, is waiting to discuss some other aspect of the impacts subsequent to this. We are under a time line here and maybe, Mr. Chairman, you could give us some direction.

Chairman Goll: Yes, Jim, thank you. Rep. Fuller has just come back and advised us that we will be able to continue until 10:30 a.m. So that's a little bit better, but we will still have to move rapidly if we are going to get through all of the facets of your presentation.

Ayers: Those of us who are inclined to enjoy the sound of our own voice will try to restrain ourselves. Thank you Mr. Chairman. The financial implications with regard to the federal funds are most specifically those ANILCA funds that we receive from the federal government to ensure that we carry out the intent of the federal language with regard to rural Alaskans and subsistence use. The subsistence way of life has given cause to the federal government to provide funds to the state of Alaska to ensure that the advisory committees and the regional councils have sufficient funds to address their own issues in the names of solving their own problems and bring those forward to the board. Those funds also assist the department through the division of Subsistence in providing support staff to address questions such as resource uses in rural areas, and those funds total a million dollars. Those are on a reimbursable basis, so what we have is a reimbursement from the federal government each subsequent year to the expenditure.

There's a million dollars of the ANILCA fund. A question that would arise is other federal funds - for example we have as some members who might have attended the finance discussions what is referred to as Dingell/Johnson or now Dingell/Johnson/Wallop/Breaux funds. Those funds come as support funds for the sport fishing industry from the federal government to us. It is not clear what the status of those funds would be and I won't belabor that point unless there are specific questions. There also Pittman/Robertson funds, those funds come from the federal government as a result of hunting activities. Both of those funds are based on a formula that have to do with hunting license and area and those kinds of things. So it's not clear what the status of those funds would be, although as the Department of Law has mentioned, there is some question about whether guiding, outside activity, sport fishing, hunting, what the results would be and therefore those funds could be called into question by the federal government. But we have no information at this time which direction the federal would go with regard to those funds.

Those funds total a little over $5 million. So you have a direct question on a little over a million dollars. There is a subsequent question of probably another $5 million. With that said, Mr. Chairman, perhaps the best thing to do is to answer any questions at this point and of Mr. Jolin, the board chair, Larri Spengler of the department of Law and her overview or of myself and then we'll go immediately to some specific concerns and potential impact on users.

Number 436 Representative Furnace: Mr. Chairman, a question.

Goll: Rep. Furnace.

Representative Furnace: Mr. Chairman, a request to Mr. Ayers. I'd like to have a more detailed breakdown on these federal funding sources. Perhaps you could track that over several years as to what those funds have been and the specific sources and conditions.

Ayers: Mr. Chairman, Rep. Furnace, we'll have that by tomorrow for you.

Goll: Mr. Jolin, do you have any other comments in behalf of the board that you're planning to make during this presentation. Are other board members going to be making further presentations?

Jolin: No, we're just going to talk about them in the context of each situation as we discuss them.

Goll: Then maybe it would be helpful to the people present if maybe you or I were to briefly read the resolution of the board of fisheries and game. Is that now the position of the board? Has that been officially voted on and are we to take this as the joint boards' stand on this issue?

Jolin: That was voted on yesterday by the joint boards and that is our joint resolution and our stand on the issue.

Goll: Then with the permission of the members I'll just quickly read this statement so that all the people with us today will be aware of where the boards stand and then go on as Mr. Ayers suggested. The statement reads:

WHEREAS the Alaska Board of Fisheries and Alaska Board of Game have been delegated responsibility and authority by the Alaska Legislature to regulate the taking of fish stocks and game populations for the maximum benefit of all of the people of Alaska; and

WHEREAS, prior to the decision of the Alaska Supreme Court in "Madison v. Alaska Department of Fish and Game" the boards developed procedures which provided adequate regulatory flexibility, both to protect opportunities for subsistence hunting and fishing in rural communities and areas, and to provide hunting and fishing opportunities for recreational, commercial, and other uses; and

WHEREAS, it is unclear to what extent the boards may restrict subsistence harvest after the "Madison" ruling and as a result, substantial and significantly disruptive reallocations of opportunities to harvest fish stocks and game populations may be necessary. For example:

1. The commercial gill net fishery which is an important component of the Prince William Sound economy may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the "Madison" decision the Board of Fisheries had adequate regulatory flexibility to accomodate both the historic commercial fishery and other users.

2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Susitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the "Madison" decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.

3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the "madison" decision the Board of Game had adequate regulatory flexibility to accomodate these users reasonably.

WHEREAS, prior to the "madison" decision the State of Alaska was in compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). As a result of the "Madison" decision the federal government may now take control over game populations on public lands and fish stocks on public lands and within navigable waters; and

WHEREAS, if the State of Alaska is no longer in compliance with ANILCA, the state will lose the ongoing million dollar per year federal appropriation for the state's public participation system which is essential to the success of the state's regulatory and management activities; and

WHEREAS, the Alaska Board of Fisheries and Board of Game strongly believe that the potential restrictions, closures,

reallocations and loss of funding described above are not in the best interest of the fish and wildlife resources and the people of Alaska;

NOW THEREFORE BE IT RESOLVED, that the Alaska Board of Fisheries and Board of Game meeting in joint session respectfully, but strongly urge the Alaska Legislature to enact legislation during the current legislative session which returns to the boards the regulatory authority and flexibility which they exercised before the "Madison" decision; and

THEREFORE BE IT FURTHER RESOLVED, that the Alaska Board of Fisheries and Alaska Board of Game have reviewed SB 231 and HB 288, the legislation introduced by the Governor to accomplish this purpose, and urge that this legislation be enacted into law as expeditiously as possible.

Thank you very much. Mr. Jolin and Mr. Ayers please proceed.

Ayers: Mr. Chairman, the next brief presentation that we have designed is from Beth Stewart, who is director of our board's division. We're going to ask Beth to talk a little bit about the boards approach in current potential problems from the perspective of proposals or petitions. Perhaps Beth could lead that off. Mr. Chairman, members of the committee - Beth Stewart, if you're in Anchorage.

Number 534 Beth Stewart: The boards have two situations facing them at this meeting. Some of the proposed changes to the regulations which are before them will have to be considered in light of Madison and the changes that it has imposed on the board. Also, the boards have situations that are not before them at this meeting, that were not regularly scheduled that they may have to contemplate changes in the regulations to for next summer. In both of those situations, the uncertainty about the status of the subsistence law, whether it remains as it currently is written and under the Supreme Court's interpretation or whether it changed makes the boards task extremely difficult. At this meeting, both boards are probably going to spend a great deal of time discussing alternative approaches to the proposals before them. Also, preparing alternative approaches to the situations that may occur this summer. For the fisheries board in terms of the situations that may occur this summer, there has been little or no opportunity for people to come before the board to request changes in the current regulations under Madison. We don't have the kind of regulatory time frame available to us that would allow a full-scale board of fisheries hearing and regulatory cycle. So if changes in the regulations must be made, to conduct fisheries this summer, the board most probably will not be meeting at the time those changes would need to be made. And under the delegation of authority to the commissioner of fish and game, the boards would ask Commissioner Collinsworth to adopt emergency regulations to conduct fisheries this summer.

Both boards plan to meet again in joint session, on March 25, which is the last day of the board meetings to discuss directions to the Commissioner for emergency regulations for this summer. Those

directions may not end up being very specific since neither one of the boards will have had the kind of public input that would guide them in making specific recommendations. I'll just stop here in a second. The way that people may have access to the regulatory system now that no call for proposals is out or no proposals are being solicited is through petition. The Administrative Procedures Act allows anyone to petition any regulatory agency in the state for a regulatory change.

That's the sort of unpredictable portion of what the board and the department may be facing this summer. We have no way of knowing whether people will petition us for changes in the regulations to authorize additional subsistence fisheries and no way to really predict how those can be handled come summer. And with that I'll just close.

Ayer: Thank you Beth. Are there any questions of Beth or Mr. Jolin about the issues confronting the board at this point? At least those that we can see?

Number 594 Representative Furnace: I'd like to pose a question to Ms. Stewart and perhaps Mr. Jolin of their specific intent of perhaps holding hearings, realizing that there is somewhat a shortage of time. It appears that this is an important issue which the public does deserve its ability to participate in.

Number 643 Stewart: Mr. Chairman, the board doesn't have a special hearing scheduled at this time, the decision came out well after the board's regular announcements for public hearings and proposals had already been well underway. The board is going to provide an opportunity on the 25th, as I said, for people to come in and speak to the board about the Madison decision and what they think its implications will be. But at this point we have no plans to conduct hearings under any other circumstances. We don't have, for instance, the time to call for proposed changes to the regulations. The board of fisheries has a very complex and lengthy process that it undergoes for soliciting proposed changes to its regulations. About 120 days before the board meets, we issue a call for proposals. We have about a month and a half available for people to mail proposed changes in. Then we must compile those proposals and send them to the printer, then have them distributed to over, I think we have over 3,000 people on our mailing list now. We provide about another 2 months for people to comment on those proposed changes and hold advisory committee and regional council meetings. Then we actually conduct the board meeting and allow people to comment on specific proposals. At that point then, if the board adopts changes, the changes are reviewed by the Department of Law and then sent to the Lt. Governor and then become effective 30 days after the Lt. Gov. signs them. That time alone from when a change is adopted to the time it becomes effective is about 90 days, so as I said earlier, about the only way to change the regulations this summer would be through the emergency regulation process.

Goll: Thank you very much Ms. Stewart, would the next person now like to come forward and speak to the issues affecting their division?

Ayers: Mr. Chairman, there are division directors and as well as perhaps a board member in Anchorage and its my understanding that we would first like to speak about the Cook Inlet area. So, let's go directly to Anchorage, Mr. Chairman, and if people are prepared there why don't you introduce yourself and step right off.

Number 675 Mr. Chairman, this is Ron Jolin again, maybe we'll let everyone introduce themselves so you'll have an idea of who's here. (Anchorage participants introduce themselves, see witness register)

Jolin: I'd like to pose a question to Larri. Larri, under the Madison decision, do we now have to open all fisheries restricted to local to all residents of Alaska?

Spengler: Yes, Mr. Chairman, at least at the first instance. And in the Cook Inlet situation the management people can talk about this more specifically, I believe there are three fisheries currently which are open to residents of particular communities; Tyonek, English Bay and Port Graham. The Madison decision would require that those fisheries be opened to everyone until or unless any sport or commercial fisheries on the same stock had been closed. The Madison decision also requires that if there has been a subsistence use of fish that the board authorize that use and now that the court has said the board does not have the authority to speak in terms of rural uses. This would apply to any area of Cook Inlet, whether it was rural or not. Maybe what would be useful is for Ken Florey who is directly involved with Cook Inlet to talk about where those uses might be in Cook Inlet and what affects that might have.

Number 724 Ken Florey: Yes, thank you Larri. Well under your definitions you just gave we do have the three local area fisheries that were defined by the board after a 1981 board meeting as being subsistence fishing. Those being the early spring fishery in Tyonek for chinook salmon, king salmon; and then the two fisheries in Port Graham and English Bay which go on throughout the year, through the summer months - the spring through the fall months for local residents. Under my understanding or how it's been presented, those no longer would be open only to local residents or those domiciled in those areas, but anyone who's a resident of the state of Alaska can participate. As far as other fisheries in Cook Inlet, it's my understanding that those that we have called personal use would now be under a subsistence name and that those could also be opened and would be opened to any participants who wanted to get involved in that fishery. There are depending upon how far back you want to go with the old subsistence laws those would be primarily all the beach areas in Cook Inlet and taking to an extreme even some fresh water areas in Cook Inlet, primarily the Susitna drainage and Knik Arm, parts of Turnagin Arm that have been closed upwards to 25 years. And then all of the eastside beaches and the current setnet commercial areas in upper sub district and northern district of Cook Inlet.

Spengler: It might helpful for the committee if some of the board members could talk about what impact they would see that those fisheries being open would have on different use groups depending of course on the level of participation in those subsistence fisheries.

Number 752 Bix Bonney: Mr. Chairman this is Bix Bonney, board member and more or less representing the sport fishery groups in the Anchorage area. I was contacted by the two major groups the Kenai Sport Fishing Association and the Alaska Sport Fishing Association to attend steering committee and board meetings to get their thoughts out. Essentially their thoughts will be enclosed in a letter...

CHANGE TAPE # TO SIDE TWO

Number 003 ... public hearings throughout this time information can be gathered to more definitively approach the subsistence problem. They essentially are worried that, in their words, "chaos and confusion" that result with no regulation going on and the short circuiting or the cutting off of the fish that would get into the traditional sport areas, particularly the Kenai River. Whether they are right or wrong they can foresee where there could be subsistence nets out on the eastside beaches cutting off the run of the king salmon as it approaches the Kenai River. They don't want that at all. They said they are not subsistence fishermen, never thought of themselves that way. They're sport fishermen and they want to continue that way. That's essentially what's happened. These two groups represent an aggregate made up membership of about approximately 2,000 sport fishermen and there will be letters from both groups going out, one went out yesterday and the other will be going out this afternoon. If there's any questions, I'll be happy to answer them.

Ayers: Bix, with your approval, I have a telecopy version of the letter of which you speak of the Kenai River Sport Fishing Association. If you would like I would distribute that if you think that there have been modifications, I'll hold it. It's at your pleasure.

Bonney: Jim, the first one that went out, that's complete. The second one is essentially the same as the first one, only the second one comes from the Alaska Sportfishing Association and the trend of their reasoning is just about exactly the same, they're just now getting the words put down they hope in a little cleaner manner than the first letter. But that's definitely there and it's coming.

Goll: Well, thank you very much. We are having that copied at this time and it will be distributed out to the folks present today.

John Garner: This is John Garner, a board member. I think that it might be useful, Larri, if you could explain to us what the Madison decision says about keeping the harvest limits on the subsistence fisheries, both as to the overall harvest and in terms of individual bag limits so that we can get some feel of the impact.

Number 103 Spengler: Yes, this is Larri Spengler with the Dept. of Law, The Madison decision basically requires that customary and traditional uses must be authorized and the people must be given a reasonable opportunity to participate in those uses unless sport and commercial have been eliminated first. Customary and traditional uses are spoken of by the court in terms of individual Alaskans reliance and dependence on resources and that is their reading of what the Legislature in 1978 was concerned

about. There are two different concepts of levels of tasks that I suppose would be considered. The first thing to understand is that the Madison decision does not mean that subsistence fishing would be unregulated. Regulation must reflect however, customary and traditional levels. So, for example, in Tyonek, the customary and traditional levels of the King salmon harvest has been 70 fish per household. So that is what is authorized under the current regulations. Because before the Madison decision came out only the people in Tyonek were fishing, as I mentioned before that fishery only took about 2,000 fish a year. If that fishery had to be opened to everyone as it does under Madison, then those 70 fish per family per household, bag limits must be retained, because that is the customary and traditional use level that is supposed to be perpetuated. The question of whether an overall allocation could be made to the subsistence fishery in Tyonek, say, so that, for example, perhaps the board might want to say well, this will open and everyone can go fish at 70 fish per household until the whole fishery has taken - I'll just make something up - 8,000 fish and then it will close. That question of whether a harvest cap can be put on a fishery was not addressed directly in the Madison decision. The strong implication in the decision is that that cannot be done. That is partly because the fishery then could conceivably be diluted in the sense that if there were a lot of people going to fish people would not get anywhere near the 70 fish per household that was customary/traditional or that if the first group of people all got 70 fish per household, then it would close and nobody else would get to go. So they'd be cut off from the opportunity entirely. It might be useful to ask Ken Florey or Ken Parker or maybe Bob Clasby what might help in Cook Inlet if the Governor's bill doesn't pass and the Tyonek Fisheries has to be opened to everyone at the normal limit and, assuming the board can't put a cap on it, which seems to be the implication of the case, what that might mean and what other fisheries might be affected by that.

Ken Parker: This is Ken Parker, director of commercial fisheries. It's difficult to anticipate exactly all the impacts of such an action. But, if you took the worst case scenario where we did have a large immigration of effort into that fishery, the first thing the department would have to do of course is very accurately monitor the harvests that are occurring in that area and then evaluate that in terms of our reproductive needs of the stocks that are contributing to the fishery. If we got to the point where we were pushing against our escapement needs then we would have to take regulatory actions on the fisheries that also impact that stock and of course under the Madison decision, it seems that the first fisheries that would have to be impacted would be commercial or recreational uses. So, I think in that we don't have any commercial activity in those Chinook stocks, of course we would have to direct our attention to the recreational fisheries and I would suspect that if we got to a point where we were concerned about our escapements, we would be obliged to close those recreational fisheries, until we were at least felt confident about our escapement levels in the various contributing stocks. Essentially that would be our action as a department: we would have to closely monitor the fishery, and then take appropriate regulatory action to ensure that our escapement needs are met. If we sense that the subsistence harvest was progressing at a rate that they were threatening escapement then we would also have to implement restrictions in that subsistence

fishery according to the law and restrict to the most dependent users as you mentioned earlier.

Spengler: Ken, where does the recreational fishery take place, on the same stocks at Tyonek fishing ground?

Florey: Yes, Larri, We don't have a sport fish division representative here, but maybe I can answer that. There's several tributaries within the Susitna System both on the east side and the west side; there's ....fisheries primarily in the Deshka River, Lake Creek, up several other systems on the other side being Willow Creek, Montana Creek, ..., some of those are open seven days a week and there's other smaller stocks primarily on the east side that are week end only fisheries. Depending on what the harvest level were those would be the fisheries we would have to watch quite closely. A question that we have is trying to determine how we would try to manage this if this were to be confined to the area we now have open for the Tyonek subsistence fishery is one thing, but if it were to be open to a large portion of the beach, I know we could not monitor it closely enough to have an accurate catch harvest. When we're faced with those situations, fisheries managers are normally more conservative, not knowing what's going on unless we could have accurate catch figures. I just know from the area we were talking about if it were extended beyond the current boundaries, that we could not accurately monitor that fishery.

Spengler: Before we move onto Copper River, maybe it would be useful to talk a little bit about what the effect would be on the east side of Cook Inlet and if the the eastside beaches were opened at various times during the summer, true subsistence fishing, depending on the level of participation in that fishery, which fisheries might be affected and what measures the department might want to consider.

Number 116 Representative Thompson: My question is addressed to Mr. Parker, I want to make sure I understood what you just said and I don't want to put words in your mouth, but I thought I understood you to say that Fish and Game would be obliged to close sport fisheries if there was an imbalance as a result of this decision. Is that correct?

Parker: If we sense exploitation at Tyonek, and that subsistence fishery was occurring at such a level and it was confined to a certain limited period of time that essentially would perhaps focus that exploitation on a few of the contributing stocks, we would be obliged to implement closures in the recreational fishery to ensure that our escapement objectives are achieved. Of course, this is our mandate under Title 16 to provide for the proper conservation and protection of the resource so that they can continue to support fisheries in future years. So we would have to react to those exploitations and take whatever appropriate actions we felt necessary given the data at hand. As Ken Florey points out, if the fishery was expanded beyond the confines of Tyonek, it would be essentially impossible for the department to accurately monitor that fishery. Then, I think in that situation we would also be compelled to take a very restrictive action in any other fisheries that may impact the stock.

Thompson: Could you give me some sense of your time... how long would it take Fish and Game to study an issue like that before it could lift such a ban?

Number 128 Florey: That is a very difficult question to answer, not knowing how expansive the fishery would be. If it were quite restrictive in an area we could easily monitor, we could get the information just based on interviews with the fishermen. If the area was very large, and we were really unable to monitor the amount of use say other than aerial surveys to get a generalized number, it would be extremely difficult within a timely manner where those fish are going to be available to those different sport fisheries to monitor in a fast enough manner where we could say close and reopen and have an effective fishery because within a very short period of time those fish move out of those areas that sport fishermen are allowed to participate in up into the closed waters. So it's almost impossible to answer your question any clearer than that. It's just a difficult situation to try to assess until we get into it. If we had lots of stocks of fish and very few participants, there probably wouldn't be any impact. If we had returns of chinook on that earlier run that were very weak, which we have not had, in the number of years we've had very good returns and we had a fair number of people over there trying to harvest them, then we'd have to be more conservative. But I just can't be more specific than that.

Goll: Thank you very much, if you care now Larri to proceed with the presentation on the issues that you were leading up to.

Larri Spengler: Thank you. Yes, I had just asked Ken Florey if he could please talk a little bit about what the effects might be if the board were required by Madison to open subsistence fishing on various stocks on the eastside beaches at various times during the summer.

Number 159 Florey: Currently within Cook Inlet we manage the summer salmon runs under a plan that was adopted by the board of fisheries, the Cook Inlet Salmon Management Plan, which specifically states periods of time when certain users will be given preference or primary use of the resource. During the times of July 1 through August 15, it's primarily for commercial uses and the stocks migrating through Cook Inlet at that time, especially on the eastside beaches are now primarily taken by commercial users with secondary uses on certain stocks by sport fishermen. I don't feel that we would have many problems managing those stocks during that time period just based on the fact that we now have a very intensive commercial fishery and were able to monitor them quite well and do very well at it. The problem that you would have would be the social problems between the subsistence net users trying to compete for or establish beach areas with the commercial users and that could be quite dramatic and traumatic for those that try to monitor it. Because it would be very, very difficult to do and I'm afraid you could have some real problems that way. From a biological standpoint I don't foresee any major problems during that time period. After August 15 and say prior to July 1, we're looking at a totally different situation. We have one sockeye stock moving in Cook Inlet at that time primarily destined for the Russian River on the Kenai Penninsula which is a heavily used Sport fishery. It's not a large returning number of fish. We haven't had a commercial fishery on it for a good

number of years. A net fishery on that stock could be very, very dramatic, on those beaches and would probably mean having to close the Russian River to sport fishing determining what the escapement levels are. The other stocks during that early time, would be the early Chinook return, a king return to the Kenai River, and some to the Crooked Creek which is a hatchery return on the Kasilof River. A large net fishery if it were effective and that is yet to be determined, by subsistence users early, could have an impact on the early returning Chinook or king salmon return to the Kenai River, probably not much of an impact on the hatchery supported return to Crooked Creek. In the late fall, the late coho return which is one that the original petitioners or subsistence users wanted to target on that would totally depend on run strength. Last year we had a very large return of coho to the Kenai River, over probably in the neighborhood of 70,000 harvest by sport fishermen. In a year like last year, I don't think it would be that big of a concern. But on years when we'd go back to an historic level if you had a large net catch or subsistence catch on that late run it would probably mean having to curtail the sport fishery within the Kenai River or close it.

Number 205 Bonney: One of the real worries that has come up is there's an extremely heavy fishery on the early run king, particularly on the Anchor River and the Ninilchik and Deep Creek. It's probably as big as the second largest city in the state during those particular weekends. It's worried that if the beaches are open to subsistence fishing could and would cut off the early kings in June going into these streams and effectively have those streams shut off to sport fishing. It would be rightly so because the run would be jeopardized. That's a real worry as well as having an early run into the Kenai River which is heavily fished also jeopardized by the possibility of subsistence nets along the beach. The subsistence nets could be mesh size that are equipped to specifically catch king salmon whereas now the commercial nets are set for sockeyes and its an incidental catch in the commercial nets. But if they were to get a specific mesh size that would select the king salmon it would be extremely detrimental to the runs in the recreational fishery that go on during June.

Number 213 Goll: One of the questions that has been posed to me as chairman and I think to some of the committee members as well has been whether or not the threat to sport fishing is a serious as it is described. But your comments suggest to me, and you are probably the most experienced in the sport fish industry present at this meeting today. We don't have the representative from the department, division of sport fish, so from your comments I gather that the threat to sport fishing is very real and significant and one way or another something that really should be dealt with before this summer season commences. Is that a correct understanding of your position?

Bonney: Yes, it certainly is. The potential is one that we can't really live with. We don't know what will happen, but the potential is there for the very worst scenario that you could think of. And one of the worst ones I can think of is when you have the large urban area of Anchorage sitting here is to have the subsistence fishery..right in so that it would have to have the recreational fishery shut off. That's the worst possible thing that could happen and the potential is very definitely there. Whether it would happen or not, is another story.

That's why we have to buy some time to start finding out where we are in this situation.

Goll: Thank you very much.

Number 241 Garner: I think that comment sort of summarizes the position that the board took in our resolution. Our concern is that it's unclear what kind of regulatory restrictions we can impose on customary and traditional subsistence users. If the worst case situation is correct, if Madison requires us to allow bag limits that are customary and traditional, if Madison does not allow us an overall quota on these fisheries then these kinds of impacts are very likely. It has the potential to remove the ability of the board to balance the interests of each of these groups.

Spengler: If there are any more questions about Cook Inlet, maybe this is the time to take them before we move on to the Copper River situation.

Number 259 Stewart: Mr. Chairman, maybe to make one thing a little more clear before we go into the Copper River, I spoke to you about petitions earlier. The question that board is having to deal with at this meeting and that the department will have to deal with throughout the summer is if someone walks in this summer with a petition to open a subsistence fishery in Knik, for instance, the department is struggling with whether or not that would have to be done instantly. During the time that the boards were dealing with applying the subsistence law in Cook Inlet, we received a great deal of testimony from people who had fished in various parts of Cook Inlet in the past with subsistence gill nets. One of those areas was Knik, another area was Eklutna. Virtually the records the board has behind it includes almost every place in Cook Inlet that was accessible. Perhaps Larri could speak to whether or not we would be in the position of having to authorize fisheries all summer long on demand.

Spengler: It is fairly clear from Madison that if a customary and traditional use has occurred it doesn't matter whether it's in a rural area or not and the board is mandated by the law to authorize that unless there's a biological problem and the sport and commercial fishery have been closed. So, given the record that the board has in Cook Inlet, a very thorough record, that indeed subsistence fishing has existed everywhere, basically. There would be practically no legal excuse not to grant those petitions as they came in and open fisheries throughout the summer and make any necessary adjustments in sport and commercial fisheries. Are there any further comments on Cook Inlet or questions from Juneau?

Number 289 Florey: As I earlier stated, depending upon the extent in Cook Inlet, we would have to open fisheries those limited number stocks both earlier in the summer and late in the summer now under the management plan are primarily recreational uses we feel would probably be the ones most impacted. That is not the case in the Copper River. It's a total reversal of that situation. In the Copper River we have an extensive gill net fishery that operates in salt water at the mouth of the river then almost two to three weeks delay time until we get to Chitina where we have a large dip net fishery which we last year defined as a personal use

fishery. And also a subsistence fishwheel fishery. Under our interpretation, or my understanding or as it's been told to me, now we have a subsistence fishery as it used to be in the Upper Copper River open to any resident who wants to. Under the current bag limits, which have been established by the board, if we did not have a lid on that, it could be a major impact trying to ensure that we could get enough fish through the commercial fishery, well, we could do it easily enough, close the commercial fishery, not knowing how many people we were going to have show up at Chitina two weeks later. We struggled with this and have struggled with it for years. We come up with a plan the last two years that has worked quite well. Now we have a quota for the old personal use fishery in the neighborhood of 60,000 sockeye salmon. The highest number that that fishery took prior to the new plan was about double that in the neighborhood of 120,000. We do not know how many people would show up, but given we had to give them an opportunity at current bag limits it would be very difficult to manage the Copper River commercial fishery to ensure those numbers would escape. First of all, our biological goals, by stock, second of all the subsistence fishery in the Chitina area from Chitina all the way up to Salana and thirdly then to provide for the Copper River fishery on the flats. One of the major problems we have is that although the Upper Copper River is a large component of that system it only contributes, or it has in the last few years, about 50% of the returning sockeye to the Copper River, the other being the Delta stock which do not have and have not had any fishery other than a commercial fishery on them to any extent. So we would have to forego a rather large portion of the harvest for the commercial fishermen on the Delta stocks to ensure we would have enough fish upriver for the subsistence users. It would be extremely difficult management situation, not impossible.

Number 333 Garner: Just to make it clear it's my impression that there's no other opportunity to harvest those Delta stocks. The only opportunity that we have is as they come in mixed with the upriver stock.

Florey: Yes, John that is correct. Only with the net fishery at the mouth of the river there is no other opportunity to harvest Delta stock.

Beth Stewart: Ken, at the time the board was dealing with the Copper River and the Chitina personal use or subsistence fishery there were a lot of questions about being able to know how many fish were coming out of that upper river harvest. Knowing exactly what the subsistence take is during the summer, maybe you could speak to that a little bit.

Florey: Yes, Beth, are you saying what's the upriver component in the commercial fishery is? I don't quite understand your question.

Stewart: I'm sorry Mr. Chairman. No, what the actual take is by subsistence fishermen, monitoring that catch.

Florey: Well, under the plan that we implemented this last year we set the days of the week that they could fish depending upon what our predetermined quota for that week would be and the fact that they

king salmon fishing. It's not a large stock, we're only talking anywhere from 10-15,000 king salmon. We could have an impact there and we would have to probably have to curtail the sport fishing in the Naknek River, but for sockeye, I don't anticipate any problem.

Spengler: Any questions on the Naknek fishery or any comments by anyone else here before we move on to Angoon?

Number 428 Bob Clasby: For southeastern Alaska, there are only two subsistence coho fisheries. That's one at Klukwan and the other one is in Angoon. The one in Angoon was opened by the board at its December 1980 meeting was restricted only to residents of Angoon. With Madison decision that fishery would now have to be open to all, I assume 12-month, Alaska residents. Certainly if my memory serves me right, the harvest level in the last year for Angoon has been around 1,000 or 2,000 coho salmon. The fishery takes place in Salt Lake and Mitchell Lake. Apparently that's also a very popular coho sportfishing area. I'd like to go back and say there's no way for us to even guess at what level of participation or harvest might come out of that fishery with it being opened to all Alaska residents. Because I think I mentioned before, except for Klukwan, there have been no subsistence coho fisheries allowed in Southeast. So, you don't have any past harvest data to even guess at. If one does get an increase in that harvest above probably the 2-4,000 level, it's probably going to result in closures to the sports fishery in that Salt Lake-Mitchell Bay area. The other harvesters on those stocks, of course, are primarily the hand troll fish fishery. Primarily the troll fishery on the inside that fishery occurs before the subsistence fishery so there'd be no time to react and make closures on that troll fishery ...probably to substantially increase the amount of coho moving in to Mitchell Bay. One would make the assumption if you carry the scenario that the fishery has to be open to all Alaska residents into the future and the harvest levels increase, it's going to mean reductions to the troll harvest. And of course that's probably going to have a very significant impact on the residents of Angoon also, because I think as far as cash income to that community, they are very heavily dependent on that hand/troll catch. I think that's about all I have to say on it if there's any questions from the committee members.

Number 478 Spengler: We will not go into detail about the Illiama-Lake Clark fishery which has a similar restriction as the Naknek fishery did, which is that currently only residents of Illiama-Lake Clark drainages can fish in those drainages and under Madison those would have to be opened to everyone. Also, in trying to give you a sense of the impact, it has been impossible to predict where as Beth Stewart mentioned in Cook Inlet, but in other places throughout the state people may petition to open areas which formerly had been closed and now the board will not be able to refuse to open them based on any criteria of ruralness or other concepts. For example, most of the road systems in the larger Southeast communities are closed currently to subsistence fishing and if petitions are received, those would probably have to be opened. I believe we're basically concluded with the Anchorage portion of the presentation. Ron Jolin, chairman of the joint board has a few concluding remarks and then we'll turn it back to Jim Ayers.

Number 493 Jolin: Thank you Larri. I really don't have an awful lot to put in at the conclusion of this meeting. I think I brought most of it up when we started. The crux is that the boards feel that we need the flexibility that we had prior to the Madison decision in order to regulate. In order to regulate our fisheries and game issues. We feel now that our hands are somewhat tied and we're really unsure what might happen in the following year. So, if we can get back to that position, it would certainly help the boards to do their job.

Number 509 Ayers: Do you have any further comments in Anchorage, Larri, or Ron or anyone else there? (none)

Number 511 Rep. Fuller: I think most people are aware, but on the 25th and 26th the Resources Committee will be having an informational hearing on HB 288. At that time we're going to ask to have nets open throughout the state so that people can be informed of what's going on. This is an informational hearing. Then after these hearings we're going to open it up throughout the state for people to participate in it. I just want to make everybody aware of that. I don't know whether Ron Jolin will be available on the 25th or not, because I know we're getting ready to adjourn, but I wanted everyone to know about it. Thank you, Mr. Chairman.

Goll: Thank you very much Rep. Fuller. I'd like also to assure people that this would be a good opportunity to Resources hearing to follow this issue as we move it through the House. Mr. Ayers?

Number 553 Ayers: Thank you Mr. Chairman. I will be brief in my concluding remarks. There have been a variety of rumors and comments regarding the effects of Madison and what we are trying to do, as I mentioned earlier, is work with you in a cooperative spirit to provide you the information and the framework that will allow you to take immediate action to return regulatory jurisdiction to the boards. Our effort and the governor's bill, HB 288, is focused on restoring harmony in the use of our fish and wildlife resources. Let me also say that that bill is basic and thorough in renewing a system that has been working. You've heard today from a variety of people talking about the Madison decision and the potential impacts and a plea for your assistance to restore that harmony. They have respectfully, but strongly, requested your assistance and guidance in restoring sufficient regulatory flexibility to the boards that will ensure all Alaskans that they are provided fair and reasonable access to our fish and game populations. Anything we can do Mr. Chairman, to assist you in moving this bill and restoring that harmony, we are at your pleasure. Thank you very much for this opportunity as well as the members in coming forward. We are available. Thank you.

Number 569 Goll: Thank you very much Mr. Ayers, and all of you in Anchorage. It's really a favor to us that you come forward and provided us with this information and we're very grateful and hope the people gathered here today have benefited from your presentation.

I'd like at this time to read a letter which I'd like to send to the House Resources Committee. The letter basically restates some of the comments made today and asks for expedient action in looking for a solution to these problems. It does not recommend specific action,

but simply asks that the Resources Committee move as rapidly as they can to get the issue solved. I'd like to read the letter for the record at this time and seek unanimous consent from the members of the committee. Also other members of the Legislature who wish to sign on the letter are certainly invited to do so.

"The Madison decision by the Alaska Supreme Court on subsistence has the potential of seriously disrupting the management of Alaska's fish and wildlife resources. According to testimony before the Special Committee on Fisheries, the Madison decision could force radical shifts in established patterns of resource allocation, upsetting the carefully balanced approach to fish and game management achieved in recent years.

The Fisheries Committee received testimony on the Madison decision from the Department of Law, Department of Fish and Game and chairman of the Joint Boards of Fisheries and Game. Although the state's fish and wildlife managers are still in the process of developing specific management strategies responsive to Madison, this much is clear:

1) Sport and commercial fishing in Cook Inlet may have to be cut back to accommodate anticipated increases in non-commercial net fishing.

2) The commercial drift net fishery in Prince William Sound may have to be sharply restricted to provide increased dip-netting opportunities in the Copper River.

3) Many of Alaska' big game guides may be forced out of business because of major decreases in non-resident hunting activities.

The members of the Special Committee on Fisheries believe that the subsistence issue must be addressed by the Legislature in a prompt but thorough manner. The committee respectfully requests the Resources Committee to take all possible steps to address this critical issue in a manner providing for action by the Legislature in the remaining weeks of the Legislative session."

I would ask unanimous consent from the members that I submit this letter to House Resources. Rep. Hurley...

Number 614 Rep. Hurley has moved the letter and asked unanimous consent. Are there any objections. Hearing none, then we will send this letter to House Resources today and distribute it to members of the Legislature and members of the public. I thank you.

I have a couple of brief announcements before we adjourn. Number one, I'd like to state that the next meeting of the House Fisheries Committee will be held at 4:30 p.m. on Friday a week from tomorrow. If any member has a problem with that. We will be getting in touch with you to firm up those arrangements.

(discussion of HESS committee schedule and the calendar for the next meeting)

Number 621 I'd also like to just take a moment to express in behalf of the committee our grave sadness at the passing of Mr. John Clark who was the director of the habitat division and one of the most dedicated and competent public servants I've ever met. And I'd like to just say in behalf of the committee, we would like to extend our sympathies to Mrs. Clark and recognize his contribution to the state.

Rep. Hurley: In that regard, I believe that I'd like the minutes to reflect the contribution of the late Senator Al Owen who appeared before this committee just one month ago. And who died last week in Kodiak.

Number 670 Goll: Let the record show that we recognize the passing of this Alaskan and his great contribution to the state. It's certainly been a tragic week and I hope that with this meeting will go on the upward track. Once again thank you all for attending today. This meeting of the Special Committee on Fisheries is adjourned, the time is 10:11 a.m.

FLOOR SPEECH BY

THE HOUSE SPECIAL COMMITTEE ON FISHERIES CHAIRMAN

REPRESENTATIVE
PETER GOLL

POUCH V
JUNEAU, ALASKA 998
(907) 465-4925

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

ALASKA'S SPORT AND COMMERCIAL FISHERMEN, BIG GAME GUIDES AND RURAL SUBSISTENCE USERS ARE FACING A CRISIS OF MAJOR PROPORTIONS THAT MAY ONCE AGAIN DIVIDE THE RESIDENTS OF THIS GREAT LAND.

OF COURSE, I'M REFERRING TO THE RECENT STATE SUPREME COURT DECISION ON FISH AND GAME ALLOCATION. TWO WEEKS AGO, THE COURT RULED IN WHAT HAS BECOME KNOWN AS THE MADISON CASE THAT FISHERIES MANAGERS CANNOT PRIORITIZE AMONG RURAL AND URBAN SUBSISTENCE USERS UNTIL ALL OTHER USES OF FISH AND WILDLIFE ARE ELIMINATED.

THE IMPLICATIONS OF THIS DECISION CAN BE FAR-REACHING. IF WE THE LEGISLATURE DO NOT ACT WITH CAREFUL DISPATCH, THE DECISION COULD CREATE MAJOR PROBLEMS FOR ALASKA.

WE KNOW THAT THE DECISION COULD HAVE CHAOTIC RESULTS FOR FISH AND GAME MANAGEMENT, AND COULD SERVE TO PIT ALASKAN AGAINST ALASKAN. I THINK THESE PROBLEMS CAN AND SHOULD BE AVOIDED.

THE COURT HAS RULED IN MADISON THAT UNDER EXISTING LAW, THE BOARDS CAN NEITHER ALLOCATE AMONG SUBSISTENCE USERS (INCLUDING THE PERSONAL USERS) NOR LIMIT SUBSISTENCE USES UNTIL ALL OTHER USES HAVE BEEN ELIMINATED. WHILE THE CONCEPT THAT EVERY ALASKAN IS A SUBSISTENCE USER MAY SOUND ATTRACTIVE ON ITS FACE, LET'S ANALYZE WHAT THIS MEANS IN APPLICATION.

PRIOR TO MADISON, THE BOARD OF FISHERIES RESTRICTED SUBSISTENCE FISHING TO THREE SMALL RURAL COMMUNITIES WHICH TOOK RELATIVELY SMALL AMOUNTS OF SALMON. HOWEVER, THE BOARD OF FISHERIES HAS DOCUMENTED HISTORIC NET FISHERIES FOR KING, COHO AND SOCKEYE SALMON FROM KACHEMAK BAY TO KNIK ARM AND ON THE WEST SIDE OF COOK INLET. ACCORDING TO THE DEPARTMENTS OF LAW AND FISH AND GAME, THE BOARD OF FISHERIES MUST NOW PROVIDE FOR SUBSISTENCE NET FISHERIES IN THOSE LOCATIONS FOR ALL ALASKA RESIDENTS WHO DESIRE TO TAKE FISH FOR THEIR PERSONAL USE. UNDER THE COURT'S INTERPRETATION OF EXISTING STATUTES, THIS PRIORITY FISHING EFFORT WILL DISPLACE THE SPORT AND COMMERCIAL FISHERIES, AND PROBABLY LEAD TO DRASTIC CUTBACKS FOR SPORT FISHERMEN AND SIGNIFICANT REDUCTIONS IN THE CATCHES OF COMMERCIAL USERS.

MADISON ALSO COULD CAUSE SUBSTANTIAL DISPLACEMENTS IN THE COPPER RIVER SALMON FISHERY. LAST YEAR, FISH AND GAME ISSUED 562 SUBSISTENCE PERMITS TO WATERSHED RESIDENTS AND 5,328 PERSONAL USE FISHING PERMITS TO OTHER ALASKANS. ALSO ACCOMMODATED WERE THE SPORT FISHERY AND THE COMMERCIAL FISHERY AT THE MOUTH OF THE COPPER RIVER WHICH IS THE MAINSTAY OF THE PRINCE WILLIAM SOUND ECONOMY. UNDER MADISON, THE PERSONAL USE DIPNETTERS ARE CONSIDERED SUBSISTENCE USERS AND MUST BE GIVEN THE SUBSISTENCE PRIORITY OVER COMMERCIAL AND SPORT FISHERMEN. ACCORDING TO FISH AND GAME, THE COMMERCIAL FISHERY PROBABLY WOULD HAVE TO BE CUT BACK SUBSTANTIALLY OR EVEN ELIMINATED.

THE IMPACT OF MADISON WON'T BE LIMITED TO THE SALMON FISHERIES, HOWEVER. THE DEPARTMENT OF FISH AND GAME REPORTS THAT THE COURT RULING PROBABLY WILL PUT MOST OR ALL OF THE STATE'S BIG GAME GUIDES OUT OF BUSINESS. THE GROWING GUIDING AND RECREATION INDUSTRIES WHICH DEPEND UPON OUT OF STATE USERS OF ALASKA FISH AND GAME CAN BE CRIPPLED BY THIS DECISION. I REGRET THAT IN TERMS OF PROBLEMS, THESE IMPACTS MAY REPRESENT ONLY THE TIP OF THE ICEBERG.

HISTORY SHOWS THAT THESE SITUATIONS CAN BE VERY DIVISIVE AND CAN CAUSE SIGNIFICANT DISRUPTIONS IN THE PRIMARY LIVELIHOODS OF THOUSANDS OF ALASKANS.

IN ADDITION TO UPSETTING THE DELICATELY BALANCED ALLOCATIONS AMONG USERS OF ALASKA'S FISH AND WILDLIFE RESOURCES, THE COURT DECISION RAISES THE SPECTER OF FEDERAL MANAGEMENT OF OUR FISH AND GAME. THE DEPARTMENT OF LAW REPORTS THAT THE MADISON RULING PROBABLY PUTS ALASKA OUT OF COMPLIANCE WITH THE PROVISIONS OF ANILCA WHICH GIVES SUBSISTENCE PRIORITIES IN FISH AND WILDLIFE MANAGEMENT TO RURAL RESIDENTS.

GOVERNOR SHEFFIELD HAS PROMISED TO INTRODUCE LEGISLATION EARLY NEXT WEEK THAT WOULD RETURN FISH AND WILDLIFE MANAGEMENT TO THE BALANCE ACHIEVED PRIOR TO THE MADISON RULING. AS WE CONSIDER THE BILL AND ATTEMPT TO RESOLVE THE PROBLEMS CREATED BY MADISON, THE LEGISLATURE MUST KEEP TWO THINGS VERY FIRMLY IN MIND:

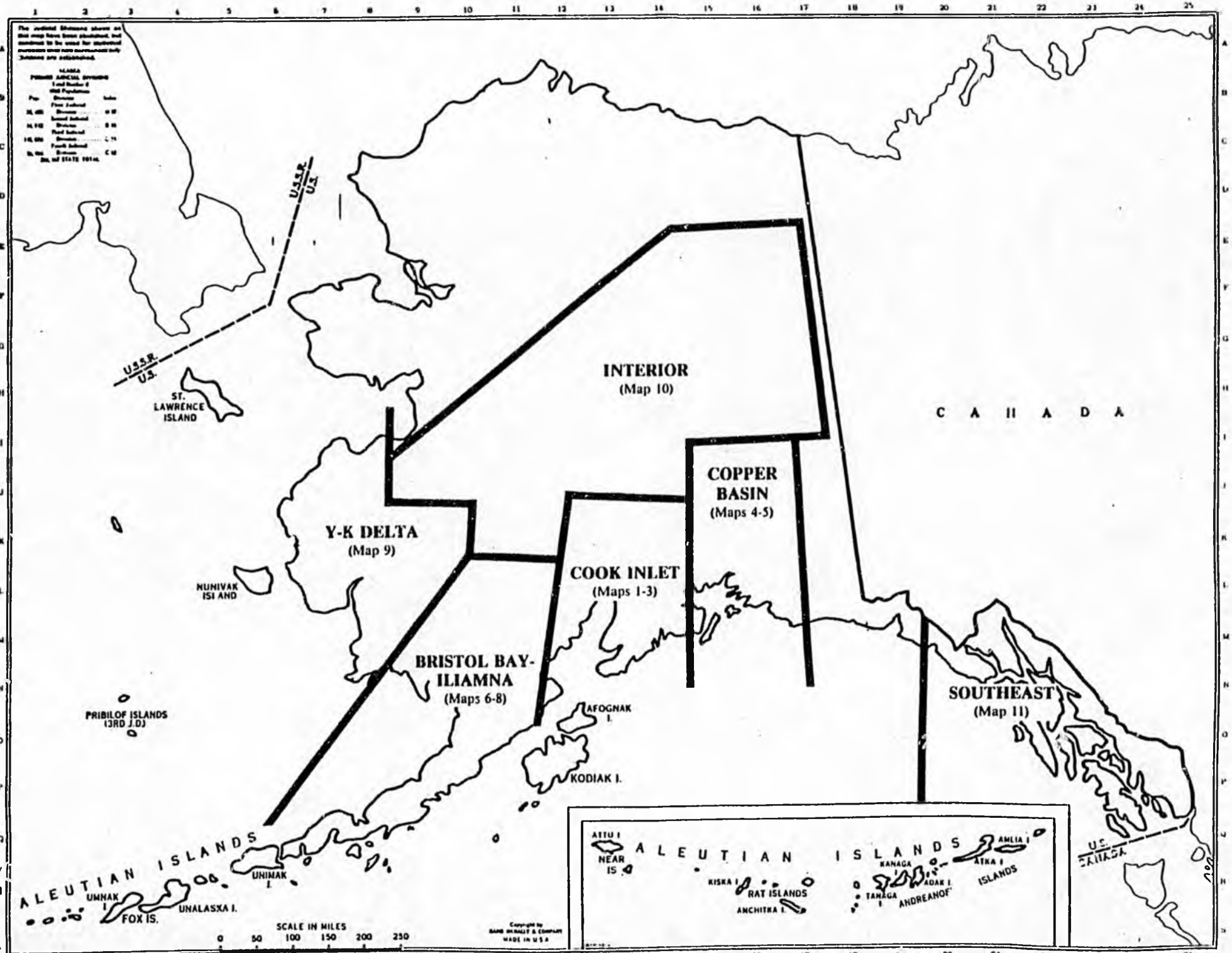
FIRST, SUBSISTENCE FISHING AND HUNTING ACTIVITIES REPRESENT THE PRIMARY ECONOMIC SYSTEM OF OUR RURAL AREAS. ALASKANS RECOGNIZED THAT REALITY WHEN THEY VOTED SO OVERWHELMINGLY TWO YEARS AGO TO RETAIN THE STATE'S SUBSISTENCE PRIORITY.

SECONDLY, THE BOARDS OF FISHERIES AND GAME HAD ACCOMPLISHED AN ADMIRABLE JOB IN PROVIDING FOR THE NEEDS OF URBAN AND RURAL ALASKANS PRIOR TO THE MADISON CASE. DISRUPTION OF THIS BALANCE WILL LEAD TO MAJOR SUFFERING BY ALL RESOURCE USING GROUPS: GUIDES, SPORTSMEN, PERSONAL, COMMERCIAL, AND SUBSISTENCE USERS ALIKE. GOVERNOR SHEFFIELD'S LEGISLATION WOULD RESTORE THAT BALANCE.

IT IS OUR JOB IN THE COMING WEEKS TO CAREFULLY WEIGH THE NEEDS OF PRESENT AND FUTURE GENERATIONS OF ALASKANS IN THE MANAGEMENT OF FISH AND GAME. LET US STRIVE TO RETAIN CONTROL OVER OUR MOST CRITICAL OF NATURAL RESOURCES IN A MANNER THAT PROTECTS THE RIGHTS AND LIVELIHOODS OF RURAL AND URBAN ALASKA.

MEMORANDA FROM THE

ALASKA DEPARTMENT OF FISH & GAME


INTERIOR
(Map 10)
COPPER BASIN
(Maps 4-5)
Y-K DELTA
(Map 9)
COOK INLET
(Maps 1-3)
BRISTOL BAY-ILIAMNA
(Maps 6-8)
SOUTHEAST
(Map 11)
C A N A D A
U.S.S.R.
U.S.
ST. LAWRENCE ISLAND
NUNIVAK ISLAND
PRIBILOF ISLANDS (3RD J.D.)
AFOGNAK I.
KODIAK I.
ALEUTIAN ISLANDS
UNIMAK I.
UMNAK I.
FOX IS.
UNALASKA I.
ATTU I.
NEAR IS.
KISKA I.
RAT ISLANDS
ANCHITKA I.
KANAGA I.
ADAK I.
TANAGA I.
ANDREANOF ISLANDS
AMLIA I.
ATKA I.
SCALE IN MILES
0 50 100 150 200 250

Map 1

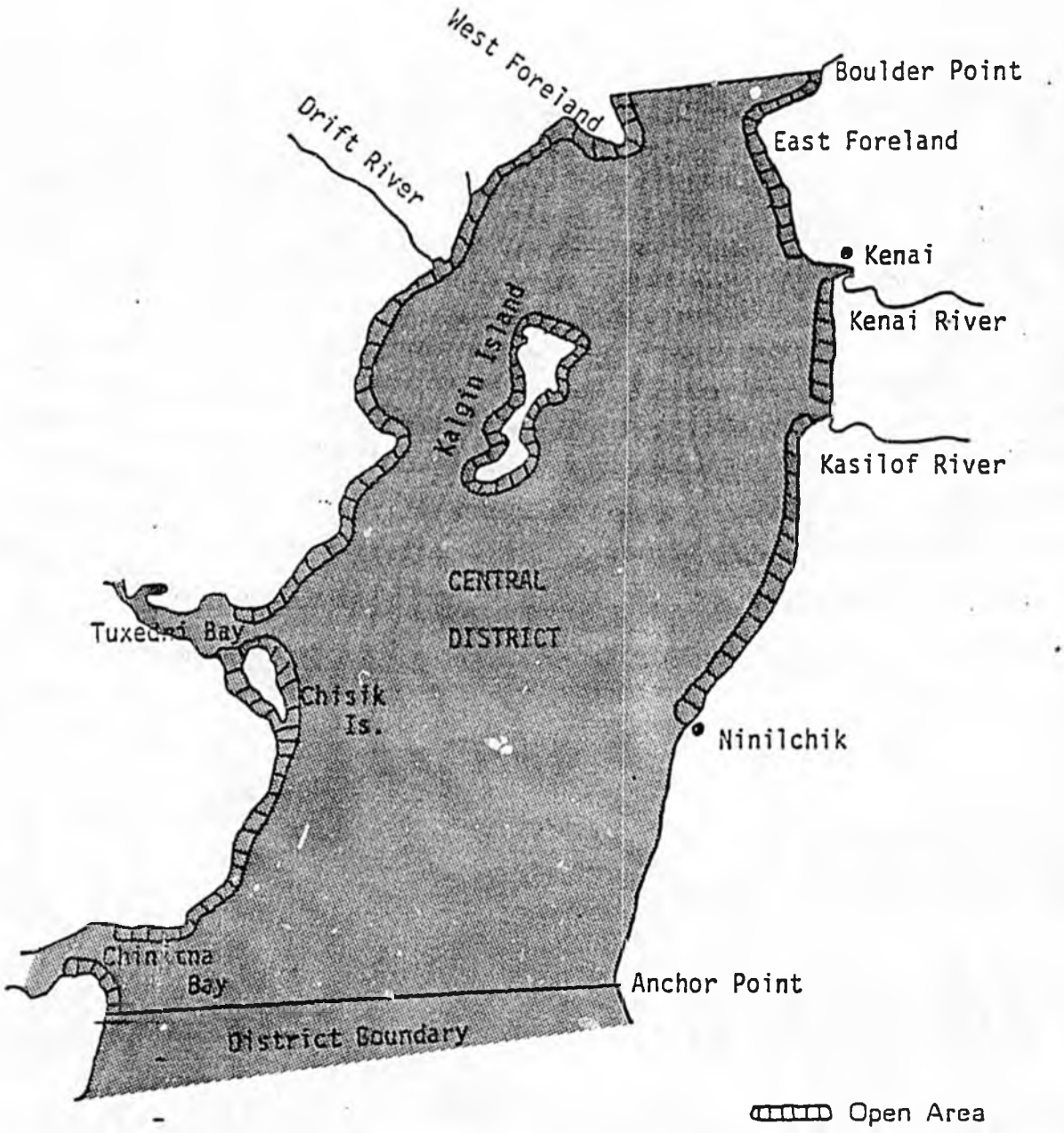
From Tech. Rpt. 54, ADFG Subsistence Div.



Cook Inlet and Kenai Peninsula.

Cook Inlet - Map 2

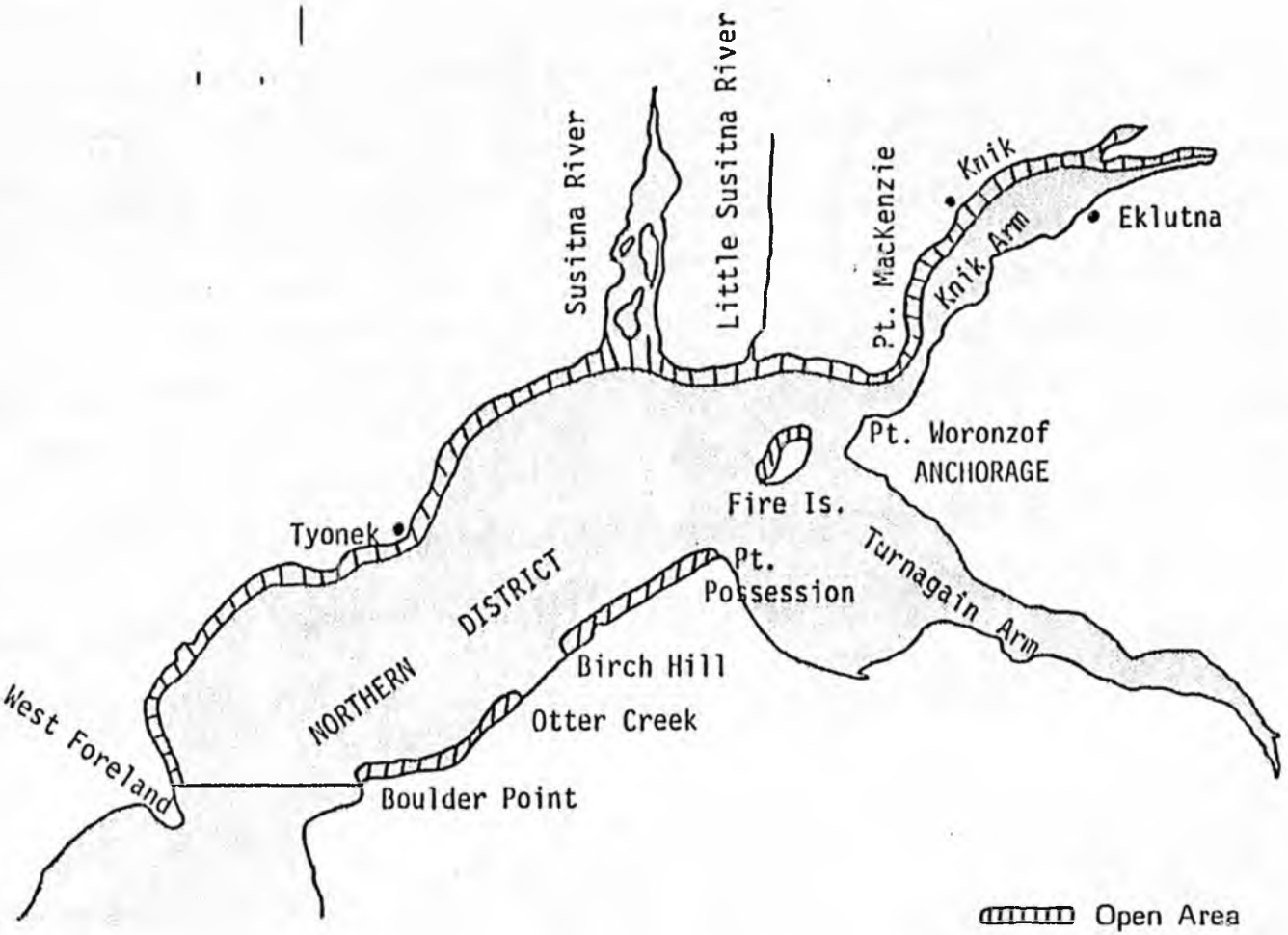
From Tech. Rpt. 54, ADFG Subsistence Div.



Area Open to Subsistence Fishing in the Central District of Cook Inlet, 1960-1978 (except closures within one mile of various river mouths).

Cook Inlet - Map 3

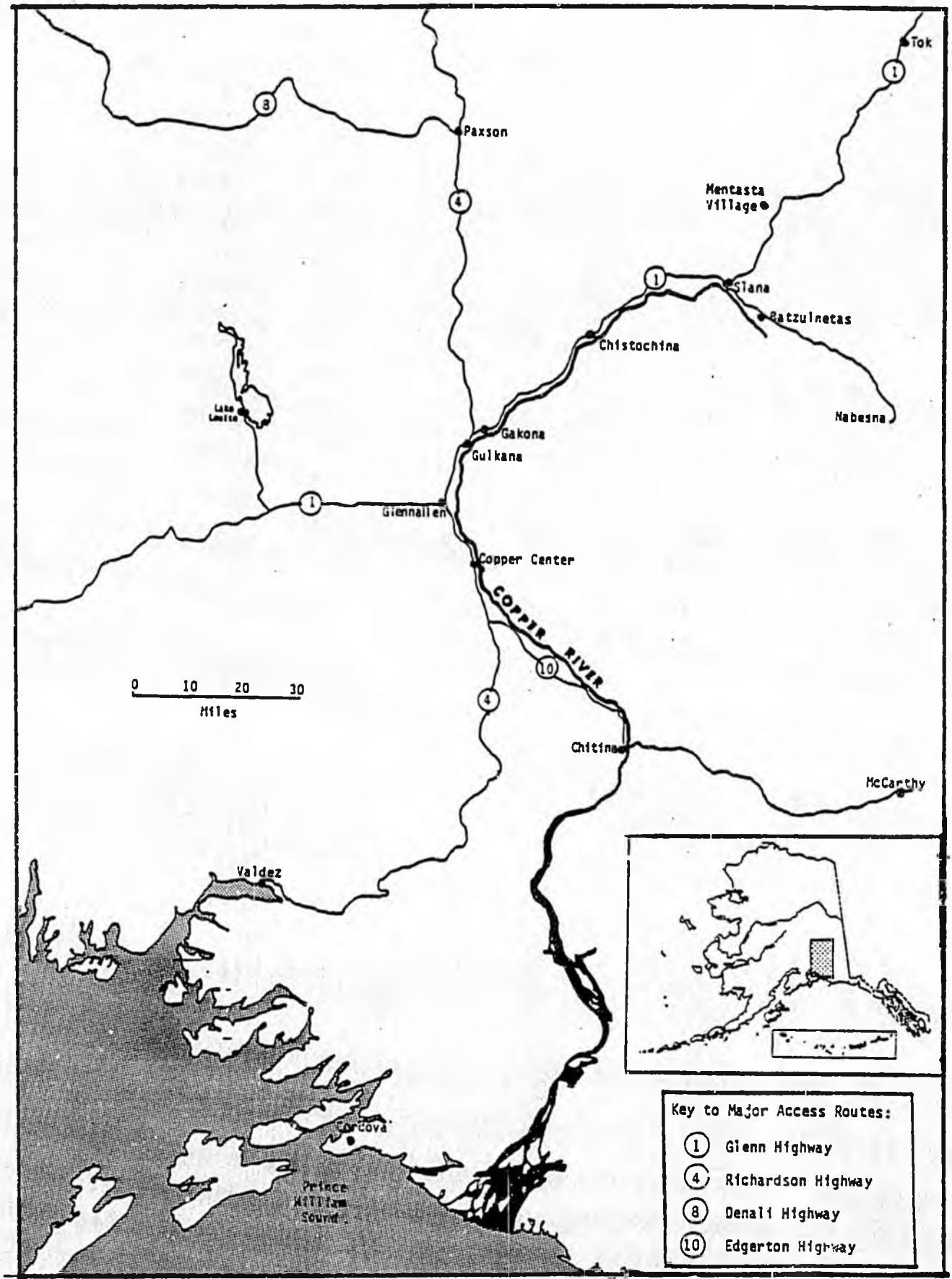
From Tech. Rpt. 54, ADFG Subsistence Div.



Area Open to Subsistence Fishing in the Northern District of Cook Inlet, 1960-1970 (except closures within one mile of various river mouths).

Cook Inlet - Map 4

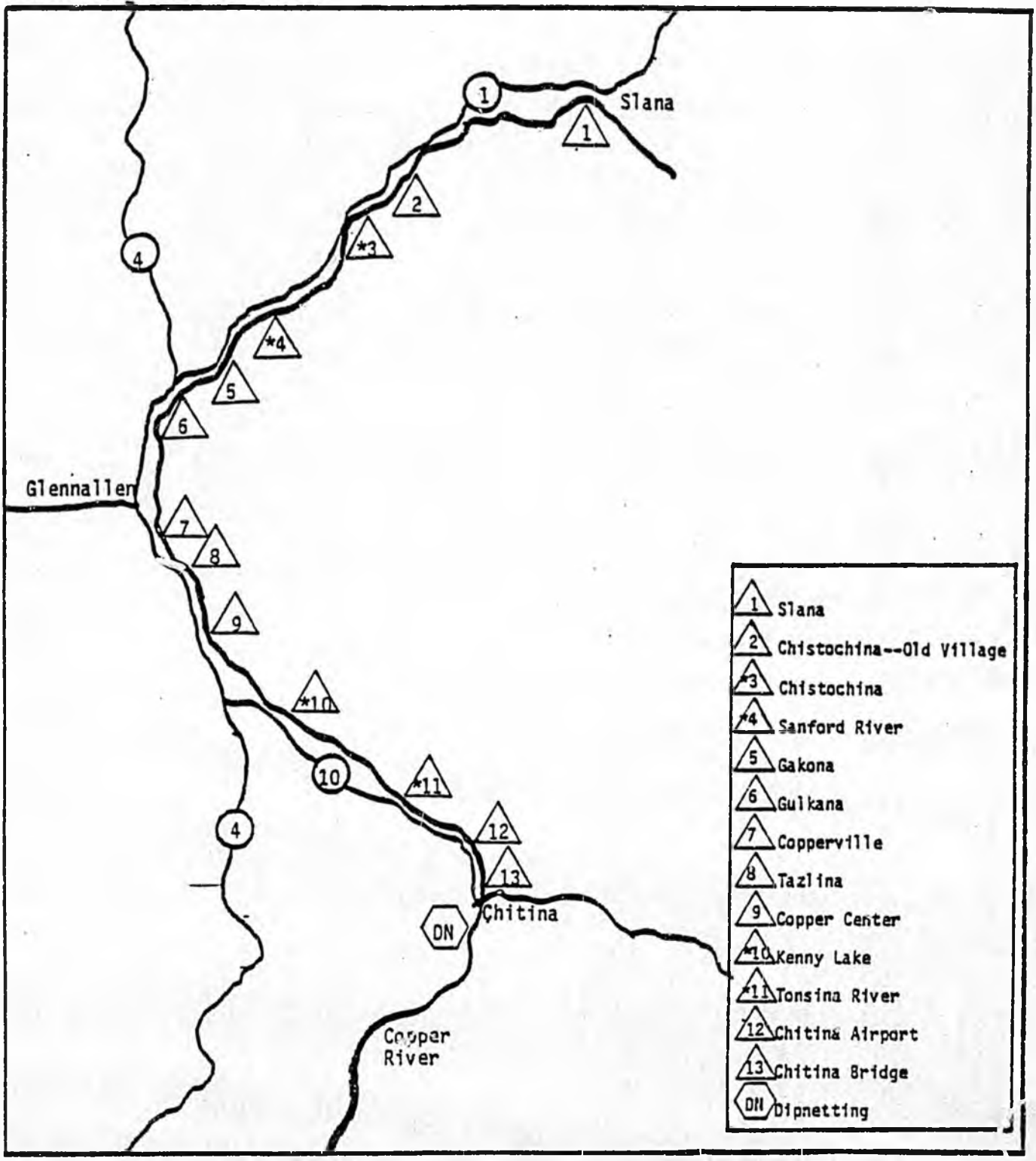
From Tech. Rpt. 37, ADFG Subsistence Div.



Copper Basin and Cordova.

Copper Basin - Map 5

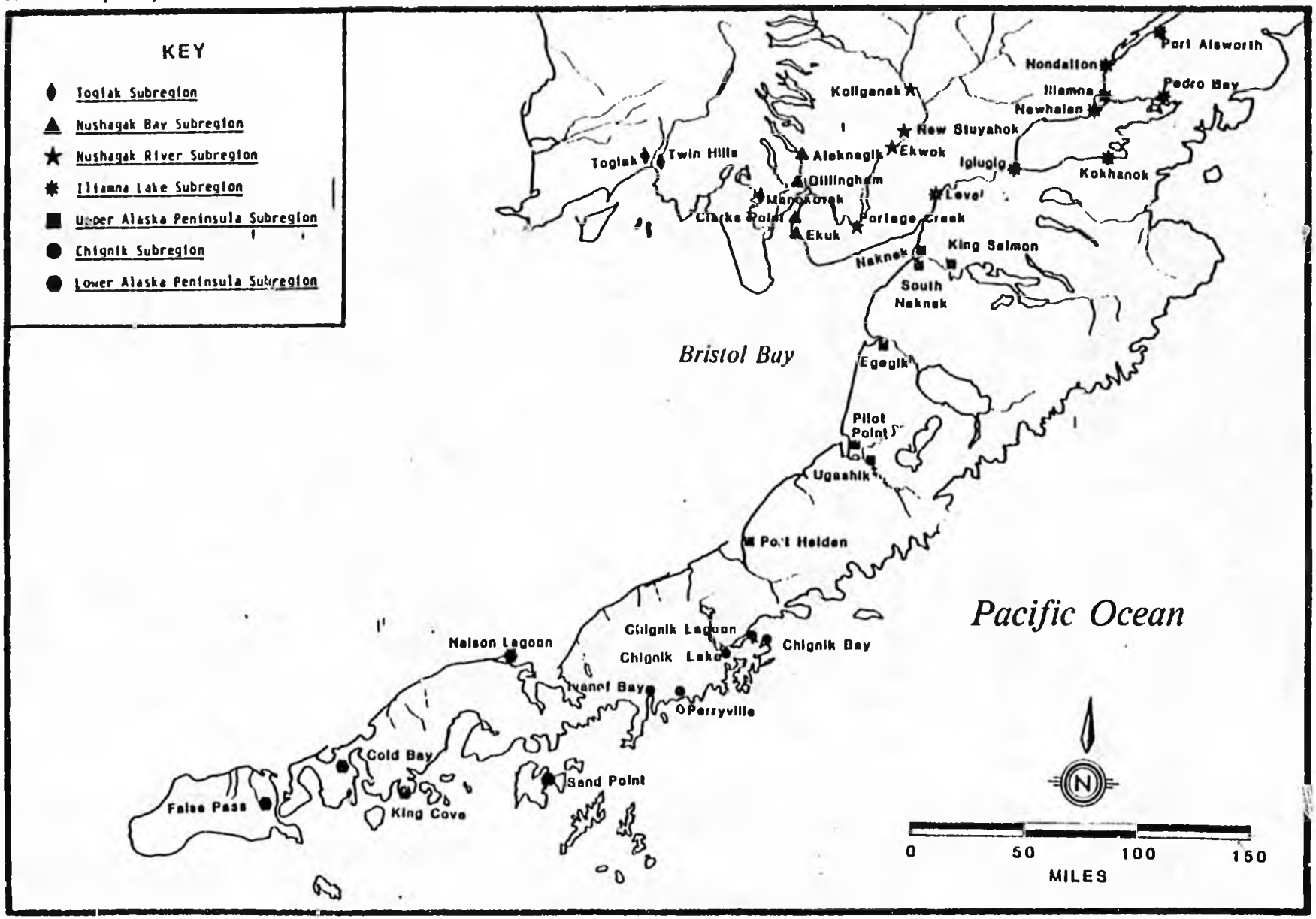
From Tech. Rpt. 37, ADFG Subsistence Div.



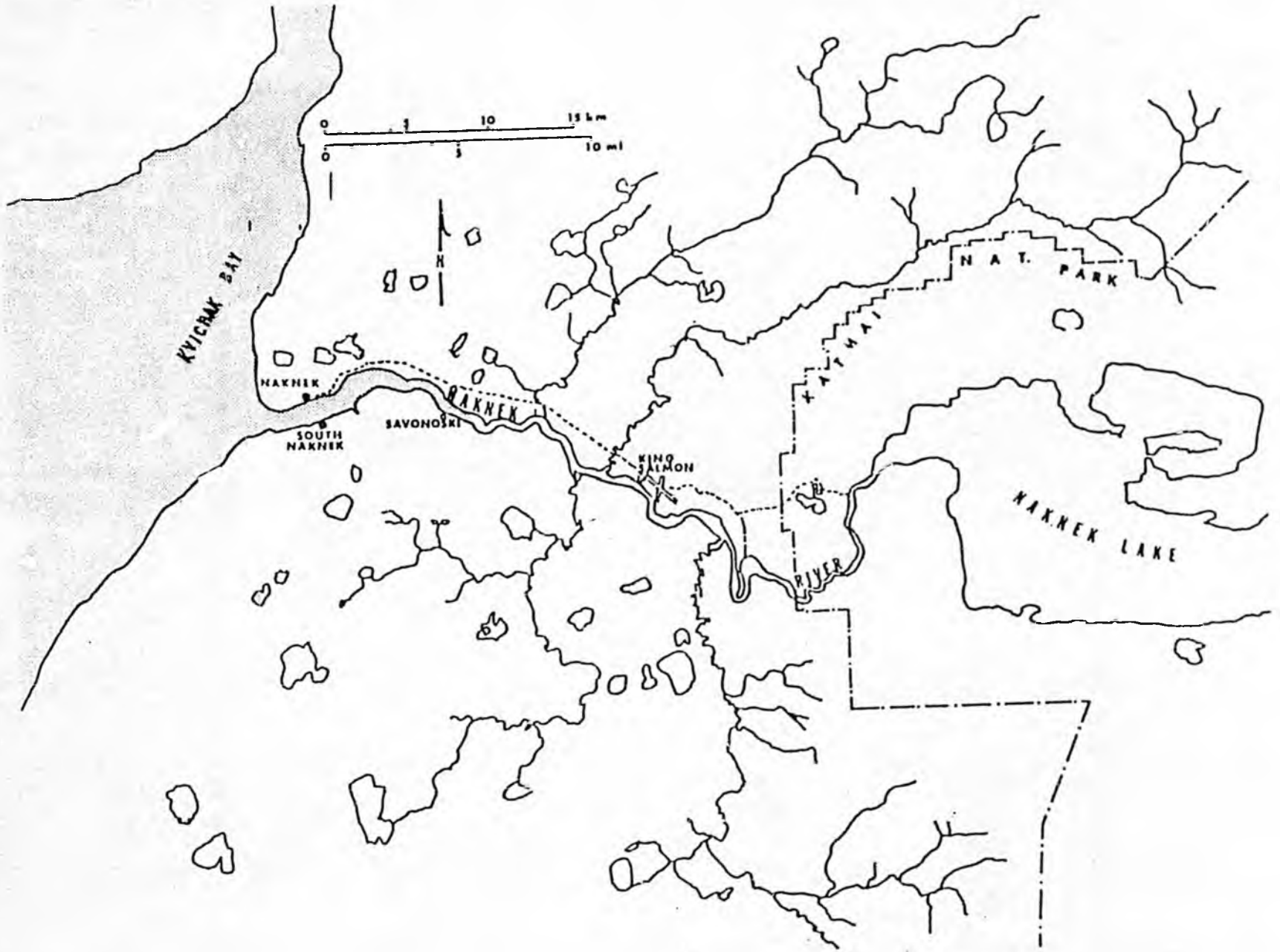
Fishwheel and Dipnet Areas, Copper Basin.

Copper Basin - Map 6

From Tech. Rpt. 114, ADFG Subsistence Div.


KEY
Togiak Subregion
Nushagak Bay Subregion
Nushagak River Subregion
Iliamna Lake Subregion
Upper Alaska Peninsula Subregion
Chignik Subregion
Lower Alaska Peninsula Subregion
Bristol Bay
Pacific Ocean
Port Alsworth
Nondalton
Pedro Bay
Iliamna
Newhalen
Kokhanok
Iguigig
Kokhanok
Kokhanok
Kokhanok

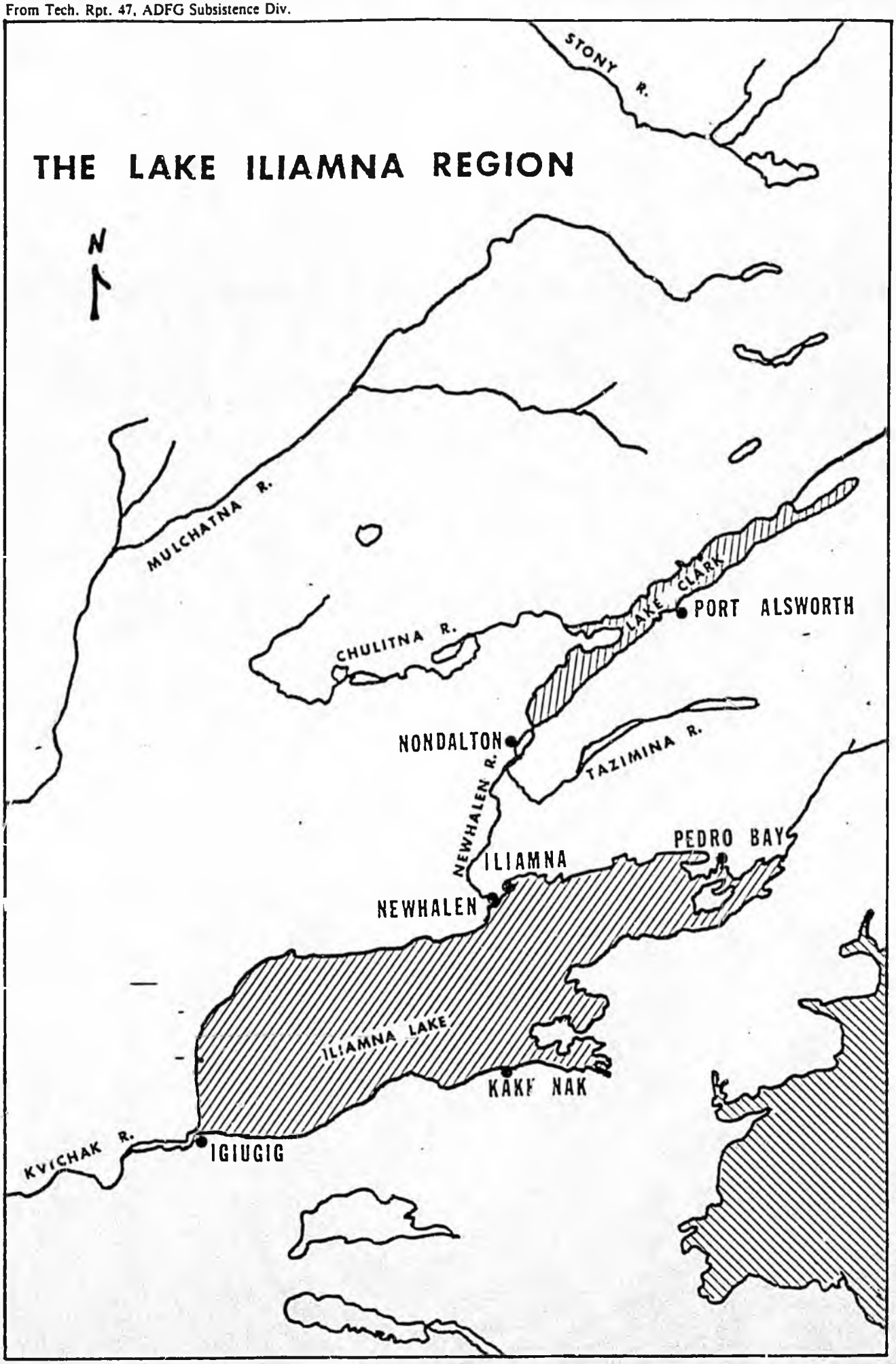
From Tech. Rpt. 48, ADFG Subsistence Div.



Naknek River Area.

Bristol Bay/Iliamna - Map 8

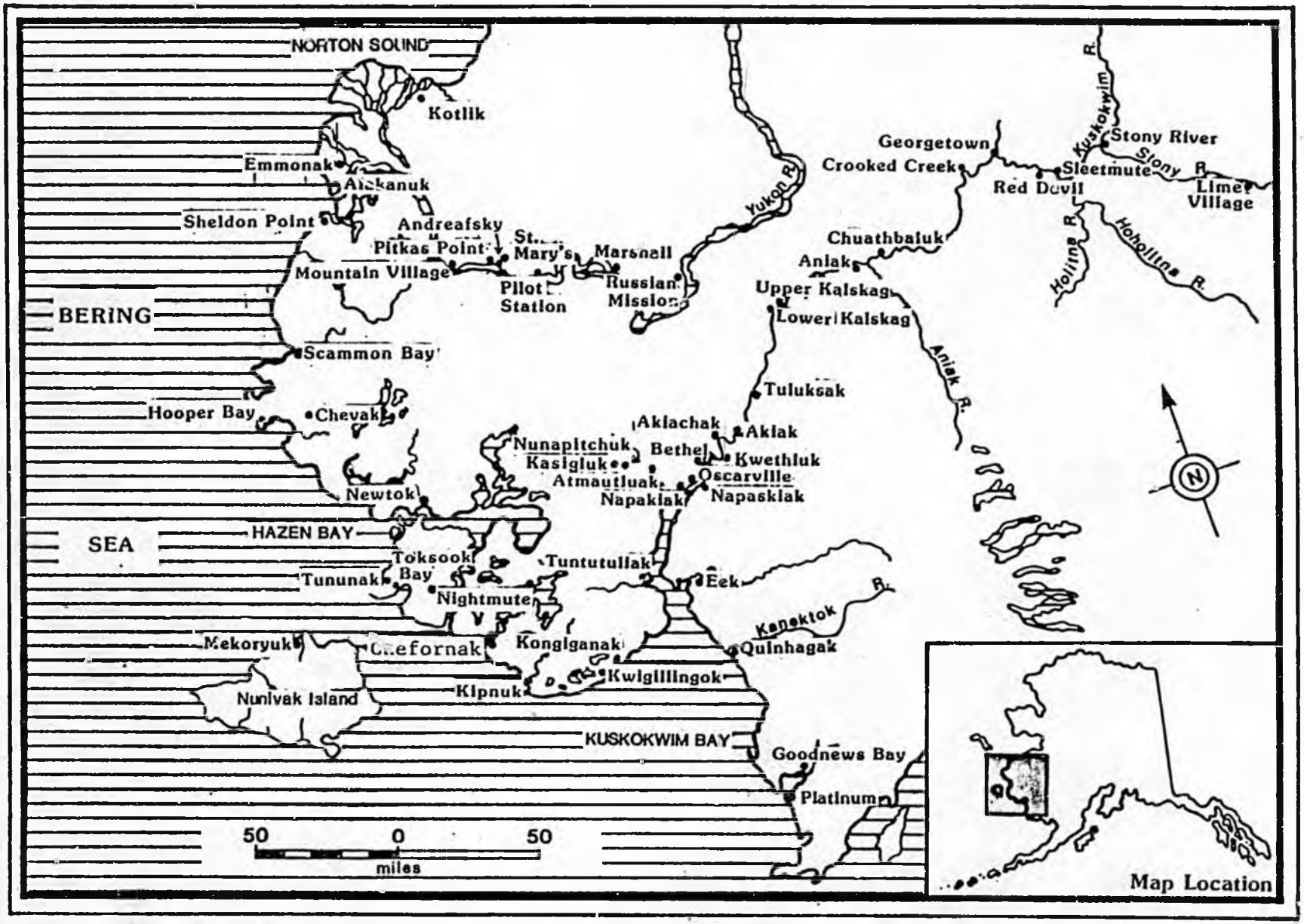
From Tech. Rpt. 47, ADFG Subsistence Div.



Lake Iliamna Region.

Bristol Bay/Iliamna - Map 9

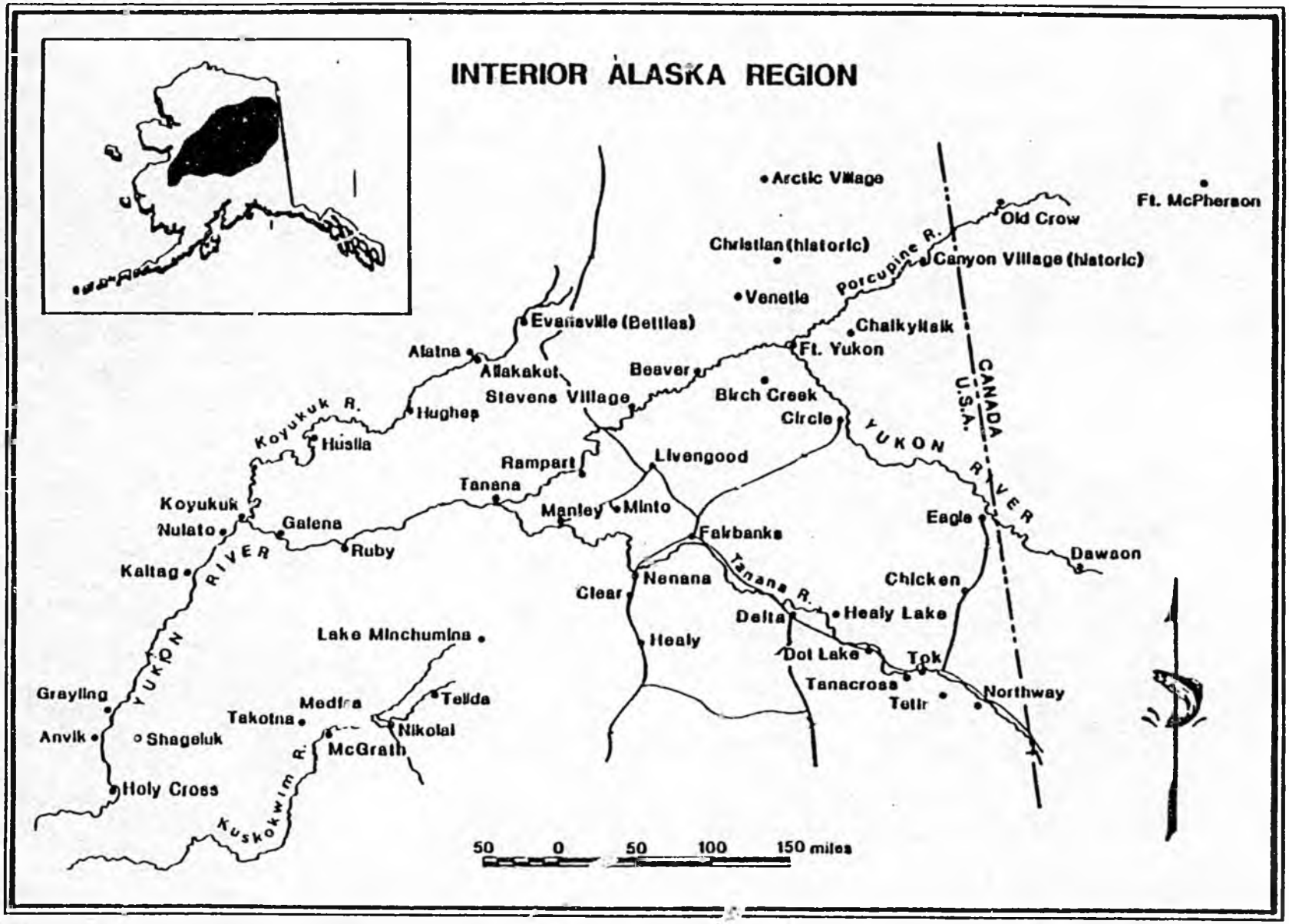
From ADFG Subsistence Div.



Yukon-Kuskokwim Delta Region.

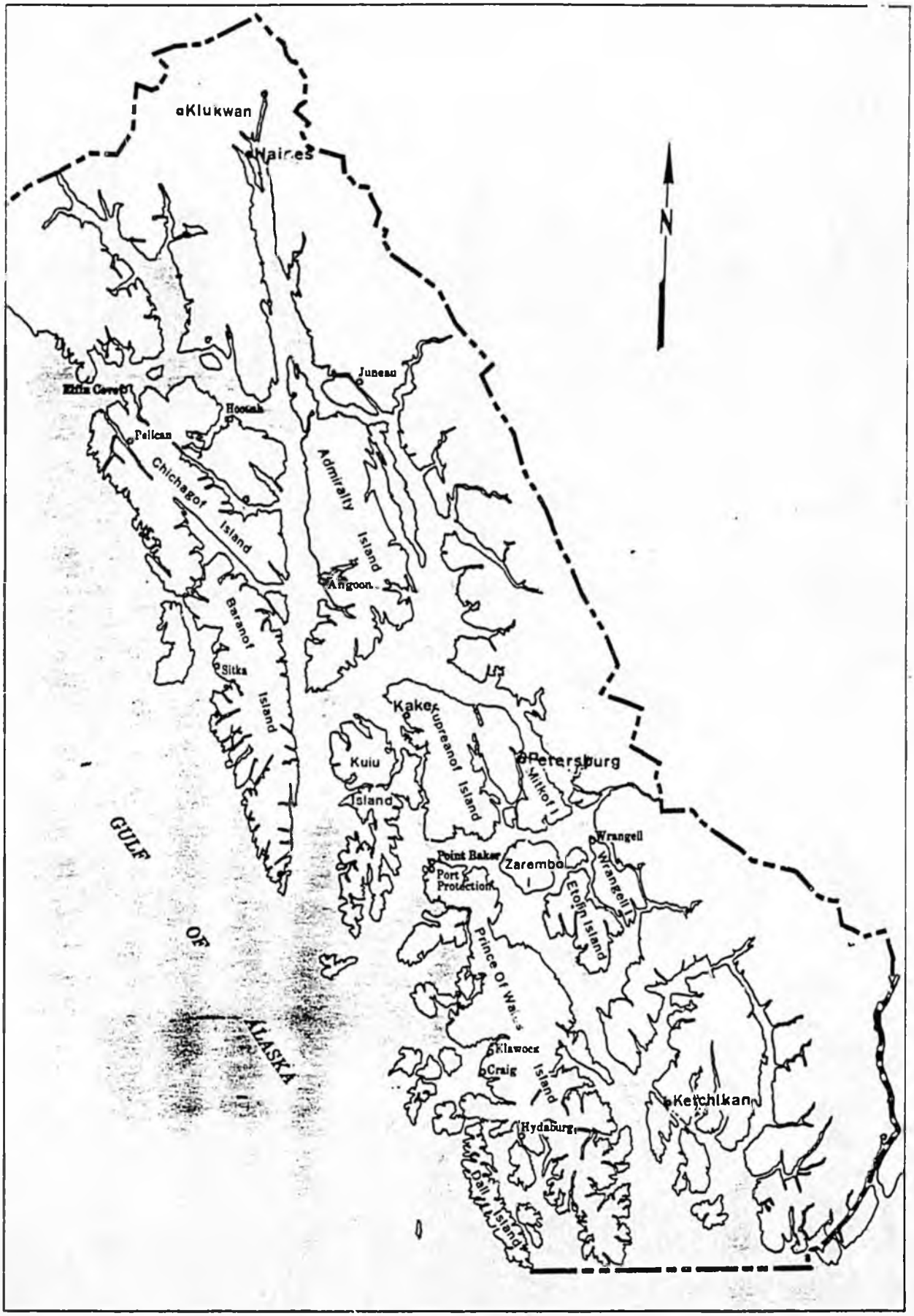
Y-K Delta - Map 10

From: ADFG Subsistence Div.



Interior Region.

From Tech. Rpt. 103, ADFG Subsistence Div.



Southeast Region.

Southeast - Map 12

Don W. Collinsworth, Commissioner

Public Communications
Box 3 - 2000
Juneau, Alaska 99802
(907) 465-4113

Alaska Department of Fish & Game NEWS

FOR IMMEDIATE RELEASE MARCH 21, 1985

Boards of Fisheries and Game to Discuss Madison

JUNEAU--The Board of Fisheries will take public testimony on March 25, 1985 during its spring meeting in Anchorage regarding impacts of the recent Madison decision. On February 22 the Alaska Supreme Court handed down its decision on Madison vs. ADF&G, reversing lower court decisions on the board's interpretation and application of Alaska's 1978 subsistence law. Although the court case was brought by Cook Inlet fishermen, the decision affects the Board of Fisheries and Board of Games interpretation of the 1978 subsistence law in all of the state's subsistence regulations.

The boards had interpreted the 1978 law as a mandate to protect customary and traditional uses of fish by rural Alaskans. This interpretation was consistent with the standards set out in Alaska National Interest Lands Conservation Act.

-MORE-

The Alaska Supreme Court held that the board's interpretation was incorrect, and said that under the current statute the board must allow all Alaskans to participate in subsistence fisheries, unless fish stocks have declined to the point that commercial and sport fisheries have been eliminated. Unless the statute is amended many of the board's regulations will need revision.

At a minimum, the court's ruling apparently means that the board must recommend a regulatory plan for the 1985 fishing season. It is unclear whether the board will be asked to reauthorize every subsistence net fishery which existed, but board records indicate that this could include set net fisheries on king, sockeye and coho on the the east and west sides of Cook Inlet. The board may also have to examine subsistence salmon fishing regulations for the Copper River, Naknek--Kvichak, Lake Iliamna--Lake Clark, Angoon, and other areas.

Department of Law reviewed the Madison decision for the Board of Fisheries and the Board of Game during their joint meeting March 18, 1985, at the Captain Cook Hotel in Anchorage. This gave the boards an opportunity to discuss the regulatory impacts of the Madison decision. After

public testimony on March 25, 1985 at the Captain Cook Hotel, the Board of Fisheries will discuss plans for this summer's fisheries. The Board of Game may hold similar discussions on April 2, 1985 (also at the Captain Cook Hotel in Anchorage).

######

MEMORANDUM State of Alaska

TO: Ron Jolin, Chairman
Joint Boards of Fish and Game

DATE: March 15, 1985

FILE NO:

TELEPHONE NO: 465-4100

FROM: Don W. Collinsworth
Commissioner
Department of Fish and Game

SUBJECT: Management Issues Arising From the Madison Decision

INITIAL ASSESSMENT

As you requested, my staff has completed an initial assessment of the Madison decision's implications for fish and wildlife management. This memorandum uses the Cook Inlet, Naknek River, and Copper River fisheries as examples, but Madison also affects existing Board of Fisheries regulations for Angoon and Lake Iliamna-Lake Clark and existing Game Board regulations for permit hunts.

Although the Game Board has not applied the eight criteria in the same way the Board of Fisheries has, Department of Law has said that the Game Board may be unable to continue providing permit hunts restricted to particular communities unless guided hunting and hunting by non-residents have already been eliminated. Further the legal analysis concludes that Madison may require the Game Board to discontinue non-state-resident and guided hunting for all permit hunts.

Department of Law and the management divisions are continuing to analyze Madison impacts and more information will be developed. However, this memorandum is intended to alert you to some of the anticipated area impacts.

COOK INLET/KENAI RIVER/SUSITNA RIVER SALMON

Testimony and data presented to the Board of Fisheries indicate that within the last 20-30 years, almost every part of Cook Inlet, including Knik Arm and Turnagain Arm, has been open to subsistence set-net fishing for salmon (Braund, 1980). The open season for fishing varied from location to location, as well as through time, but included the period May through September. Until 1978, 50 fathoms of net could be used in many areas. Species harvested in these set-net fisheries included primarily kings, sockeye, and coho.

As Anchorage and the Kenai Peninsula grew, subsistence salmon seasons were gradually restricted until only small areas remained open for very short periods with limited gear. Since 1980, subsistence fisheries have been authorized in very limited areas for residents of Tyonek, English Bay, and Port Graham only.

The impacts of the Madison decision on existing Cook Inlet fisheries depend on how many people decide to participate, and where and when they

fish, which makes it difficult for us to precisely assess immediate or long term effects. At a minimum, however, we would expect to see an increase in the gill net harvest of west side and Susitna River king salmon, since any Alaskan will be able to participate in the Tyonek district subsistence king fishery. This fishery begins in May, and has limits of 70 kings per household. Presently, this fishery is restricted to persons domiciled in Tyonek, and on average, 2,000 kings have been harvested annually.

It is impossible to predict how much new effort would occur, but any significant increase in this fishery will require compensating reductions in the expanding sport fishery of the Susitna drainage. This, of course, would mean reductions in seasons, bag limits, or even closures of certain areas to fishing if the subsistence harvest grows substantially.

In addition, the Kenai Peninsula subsistence net fisheries which existed in the late 1970s, and which have been closed since 1980, may have to be reopened to all Alaskans. This would include set net fisheries on king, sockeye, and coho stocks which enter all of the Kenai Peninsula drainages. King and coho stocks, which are already the focus of major allocation conflicts between sport and commercial users, will now have to be shared with another user group, which will have a priority. Additional harvest restrictions on sport and commercial fisheries in Cook Inlet may have to be imposed either before the fishing season or in-season as we determine whether escapements are being achieved.

Because of recent regulatory constraints, past harvests are a poor indicator of the potential demand for subsistence fishing in Cook Inlet. Further, recorded harvests probably underestimate the actual historical subsistence harvest due to inadequate catch reporting systems. If accessible beach areas are opened to net fishing, we would expect a substantial interest, similar to that in the Copper River dip net fishery. One indicator of this demand is the fact that participation in the Cook Inlet subsistence fishery increased from less than 100 people to more than 1,300 between 1977 and 1980, before the Board adopted the regulations restricting subsistence use. An additional indicator of demand are the requests the Fisheries Board has received from people wanting to fish with nets in Knik Arm and other parts of Cook Inlet.

In an extreme scenario, the Board could be required by a court to authorize subsistence fishing wherever it has occurred in Cook Inlet, Turnagain Arm, and Knik Arm, throughout the summer, by any Alaskan. The Madison decision clearly states that sport and commercial uses must be eliminated before subsistence uses can be restricted. Therefore, it seems unlikely that the Board or department could impose subsistence harvest limits or quotas to ensure that commercial and sport uses could continue.

In summary, we see major demands being imposed upon the department for in-season monitoring and management of all harvests to ensure adequate escapements in Cook Inlet. We also see the potential for confusion and controversy over Cook Inlet salmon management escalating and making it more complex.

NAKNEK RIVER SALMON

The Naknek River is currently open to subsistence fishing only by residents of the Naknek and Kvichak river drainages. This regulation was adopted in 1981 because of concern about growth in the Naknek subsistence salmon fishery by other Alaskans. From 1976 to 1980, participation and king harvests in the Naknek subsistence fishery doubled as more people learned about the fishery and came to the Naknek-King Salmon area to take part in it.

The Board, local residents, and sport fishermen all became concerned that this growing harvest was beginning to affect the allocation of the Naknek River's limited king salmon stocks. By restricting the fishery to local residents, the Board of Fisheries was able to allow continued development of the Naknek sport fishery on kings, which has become increasingly significant to guides and transportation services. By creating a personal use sockeye fishery on the Naknek, the Board was able to accommodate non-local fishing demand and shift it to more abundant species.

The Madison decision appears to open the Naknek net subsistence fishery again to all residents of the state. If significant effort occurs, it seems quite likely that restrictions will have to be imposed on the sport fishery in order to ensure king salmon escapement.

COPPER RIVER/PRINCE WILLIAM SOUND SALMON

Historically, Copper River sockeye have been harvested by commercial fishermen in Prince William Sound, residents of the Copper Basin and other interior communities, as well as Fairbanks and Anchorage residents. With population growth and increased publicity, the Chitina dip net fishery grew dramatically; harvests more than tripled from 1980 to 1983. Additionally, many urban dip net fishermen preferred to fish the early portion of the Copper River run, which posed potentially severe management problems for early run sockeye. About 50 percent of the Copper River run passes through the commercial fishery district in the first two to three weeks of the season, which means any management decisions to restrict the fishery must be made on very short notice.

As subsistence harvests increased in the 1970s, the board began restricting fishwheel and dip net harvests in the Copper River. In 1984, the board examined subsistence dip net and fishwheel fisheries in the Copper River. It authorized subsistence fishing for Copper Basin residents. Harvest by the subsistence fishery was predicted to be approximately 20,000 salmon and individual bag limits could go as high as 500. The board then established a personal use fishery for people who did not reside in the communities identified as having subsistence uses. The personal use fishery had bag limits of 15 salmon for individuals and 30 for households. The total catch was limited to 60,000 sockeye plus twenty-five percent of any excess escapement. The in-river sport fishery was predicted to harvest approximately 5,000 sockeye and the Prince William Sound commercial drift gill net fishery was managed to provide for these known harvest and escapement levels.

Under Madison, the Fisheries Board may have difficulty in predicting harvest levels for the Copper River fishwheel and dip net fishery, due to uncertainty about how many people will participate and how many fish they will take. Additional management problems are posed by the timing of the sockeye run and the heavy dip net harvest, which occurs on the early part of the run. These considerations seem to require more conservative management of the Prince William Sound commercial fishery.

In summary, we see a number of complex management issues arising from the Madison decision. Regulation specialists for Commercial Fisheries and Game Divisions are presently identifying the specific regulatory options which the Boards could address for the upcoming season.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

PO BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4100

September 6, 1984

Mr. Robert Willard, Chairman
Legislative Affairs Committee
Alaska Native Brotherhood
320 West Willoughby Avenue
Juneau, Alaska 99801

Dear Mr. Willard:

Thank you for your August 15, 1984, letter regarding the personal use fishing category. I am pleased to have this opportunity to help clarify this topic for your shareholders. Since you plan to run my responses in your newsletter, perhaps it would be best to answer the questions in the order you presented.

1. Before 1978, "subsistence fishing" was defined as fishing with a net for personal use, and "sport fishing" was defined as fishing with rod and reel for personal use. Thus, the difference between "subsistence" and "sport" fishing was based on the type of gear used.

   After the state subsistence law was passed in 1978, subsistence fishing was defined differently. It was no longer defined in terms of "personal use," but rather, in terms of "subsistence uses." In 1978, the legislature also enacted a definition of subsistence uses which hinged upon "customary and traditional uses."

   The other important change brought about by the state subsistence law was that before 1978, the Board of Fisheries could authorize subsistence fisheries at its discretion. Since 1978, the board has been required to authorize subsistence fishing if subsistence uses have been associated with a particular fish stock, unless the sustained yield of that stock would be jeopardized by fishing. Additionally, if fishing must be restricted to protect a certain fish stock, sport, commercial, and personal use fisheries must be curtailed before the subsistence harvest could be cut back.

   As the Boards of Fisheries and Game began to implement the subsistence law, they developed 5 AAC 99.010 -- a regulation which interprets the statute. This regulation

contains eight criteria by which subsistence uses can be identified.

When the board examines salmon uses in a particular area, it looks at these eight criteria to determine whether communities or areas demonstrate subsistence uses. If subsistence uses are found, then the board authorizes subsistence fishing. In some cases, communities or areas which had fished a particular stock of salmon did not qualify under the eight criteria, generally because their use of the salmon could not be called "customary and traditional." Neither could these uses be classified as sport fisheries since the primary gear type was nets rather than rods and reels.

Thus the board had to find a "new" category of fishing for those who had previously fished under the subsistence category but could not continue to do so. The "personal use" category was established to remedy this problem. All personal use fishing regulations may be found in 5 AAC 77. This category simply provides continued access to fishery resources for those whose uses do not meet the eight criteria and cannot be classified as commercial or sport.

Perhaps the Copper River salmon fisheries can provide a useful example. In February 1984, the Board of Fisheries examined the uses of salmon in the Copper River. The board determined that under the eight criteria subsistence uses could be found in the communities of the Copper River Basin and five other nearby communities. The board then authorized a subsistence fishery for the individuals living in these areas. However, this finding meant that a large number of people, primarily from Fairbanks and Anchorage, who had been able to dip net or use fishwheels for Copper River salmon, no longer qualified for subsistence fishing permits. In order to treat those people fairly and not exclude them entirely from a fishery resource which they had harvested for many years, but not by definition customarily or traditionally, the board authorized a personal use fishery for those people who do not live in the Copper Basin or the five nearby communities.

2. Subsistence fishermen need not be concerned that the personal use fishery category will jeopardize subsistence fishing by establishing a new user group. As you can see from the answer above, personal use fisheries are not really new. They are essentially fisheries that used to be called subsistence before the 1978 law.

3. Only subsistence fisheries have a statutory priority. Personal use, sport, and commercial fisheries have no

statutory priority. It is up to the board to allocate reasonably between these three categories.

4. So far the Fisheries Board has established personal use salmon fisheries for the Copper River, Cook Inlet, and Bristol Bay. As the board applies the subsistence criteria to more and more fisheries, they will probably continue to create personal use fisheries. The Game Board has not established a personal use hunting category.

5. Unlike subsistence fisheries, where eligibility hinges on the boards eight criteria, there are no special eligibility requirements for personal use fisheries other than general requirements -- for finfish, a resident Alaska sport fishing license and for aquatic plants or shellfish, a resident or non-resident Alaska sport fishing license.

6. Reporting requirements for personal use fisheries are set by the board when each fishery is established and are generally similar to subsistence fishing reporting requirements.

7. No one may legally fish unless the board has authorized the fishery by regulation.

8. In southeastern Alaska, the board has not yet established personal use fisheries. As mentioned above, so far personal use fisheries have only been authorized for salmon in Bristol Bay, Cook Inlet, and the Copper River. As noted above, the Game Board has never established a "personal use" hunting category.

9. The subsistence law clearly mandates that where harvestable surpluses occur, the board must provide for subsistence uses first. Likewise, when the harvestable surplus is not great enough to satisfy all uses, subsistence uses are the last to be cut back. Therefore, under the law, subsistence allocations could not be reduced to protect personal use allocations.

10. There are areas open for personal use fisheries that are not open for subsistence fishing. For example, in Cook Inlet, the board found that only the communities of Tyonek, English Bay, and Port Graham met the criteria set out for subsistence fisheries. Since no other communities qualified for subsistence fisheries, the board used the personal use category to allow historical non-commercial net fisheries to continue in areas where subsistence fisheries are no longer authorized. Anyone with an Alaska resident sport fish license may participate, including residents of Tyonek, English Bay, and Port Graham.

11. Advisory committees and regional councils always play an important role in the regulatory process and we certainly hope that they will continue to do so. The information they provide the board is critical to the board's ability to analyze regulatory proposals relating to all fishing--subsistence, commercial, sport, and personal use.

12. The primary difference between subsistence and personal use is that subsistence uses are defined as customary and traditional uses and must be authorized, with a priority as necessary. Authorizing personal use and sport fishing is left to the board's reasonable discretion and no statutory priority applies. Sport fishing is restricted to hook and line gear attached to a pole, whereas personal use fishing primarily includes nets.

13. The annual southeast salmon catch for 1982 and 1983 is as follows (there are no personal use salmon fisheries in Southeast):

	COMMERCIAL	SPORT	SUBSISTENCE
1982	29,536,800	138,486	40,180
1983	42,202,700	138,510	not available

14. The board sets bag and possession limits for personal use fisheries as they are established or modified just as it does for sport and subsistence fisheries. The Game Board has not established a personal use hunting category.

I hope that these responses will help your readers understand the personal use category. While it is a new term, it simply describes fisheries that have long been conducted, but which no longer fit under the 1978 definition of subsistence.

Please let me know if my staff and I can be of any further assistance. We greatly appreciate your efforts to help people better understand fish and game regulations.

Sincerely,

Don W. Collinsworth

Don W. Collinsworth
Commissioner

Grand Camp
Alaska Native Brotherhood

320 West Willoughby Avenue
Juneau, Alaska 99801
(907) 586-2049

1984 Officers
Grand President ANB
Ronald O. Williams
1st Vice President
William Thomas
2nd Vice President
James Martinez
Secretary
Albert Kookesh
Treasurer
Paul Young
Sergeant-At-Arms
Lawrence Sweet
Grand President ANS
Ethel Lund

August 16, 1984

Honorable Donald W. Collinsworth
Commissioner
Alaska Department of Fish & Game
Post Office Box 3-2000
Juneau, Alaska 99802

Dear Commissioner Collinsworth:

There is some confusion among the people of Southeast Alaska regarding the Personal Use fishing category, and its interaction with subsistence law. It would be much appreciated if you could clarify the situation by providing answers to a series of questions.

In an effort to avoid a major confrontation these questions and your responses will be printed in the SEALASKA Shareholder, a monthly publication which goes out to the 16,000 + shareholders. We feel that if our contituents are informed they are less likely to react to some of the letters to the editor(s) appearing frequently in Alaska Newspapers.

Please provide answers to the following questions:

Past ANB Grand Presidents
Dr. Alfred Widmark
Patrick J. Paul
Thomas Jackson

John Hope
Frank See
Dr. Walter Soboleff

Richard Stitt
Steven V. Holch
Nelson D. Frank

Frank O. Williams
Herbert Hope
Robert R. Martin

Roy Peratrovich, Grand President Emeritus
Dr. Cyrus Peck, Sr., Grand Secretary Emeritus
Dr. Mildred Sparks, ANS Grand President Emeritus

1 ° "Personal use fishing" is not a category of fishing mentioned in the Alaska Statutes. Could you please explain the origin of this category of fishing?

2 ° Is there any foundation to concerns that personal use fishing could jeopardize subsistence fishing by establishing a new and competing use group?

3 ° What is the relative priority that personal use fishing has with relation to subsistence fishing, commercial fishing, and sport fishing?

4 ° Are there any Personal Use regulations that cover: waterfowl, shellfish, aquatic plants, fur bearing animals, deer, moose, wild roots, berries and vegtables, bottem fish and trout species?

° Can any person participate in personal use fishing? In other words, are there any eligibility requirements?

° What are the reporting requirements for Personal Use fishing? for Game?

7 ° Can people engage in personal use fishing if the Board of Fisheries has not authorized personal use fishing by regulation?

8 ° What seasons have been instituted by regulation on salmon, halibut and other bottom fish, wild game, waterfowl?

- Will Personal Use cause a reduction of allocation for Subsistence?

- Are there areas that are open to Personal Use, but closed to Subsistence?

- Will the advisory councils/committees have a role in Personal Use in their areas, and of the region?

- What is the difference between Personal Use and Subsistence? Sports?

- Since 1982, what has been the annual take of salmon in the Southeast in the following categories? Commercial, Sports, Subsistence, Personal Use.

- Is there a limit for fish taken for Personal Use? Game? Waterfowl?

Commissioner, so often correct information can eliminate misunderstandings and problems before they occur. We will appreciate your help by responding to the above questions, and done so timely for this being published.

Thank you in advance for your cooperation.

Sincerely,

ALASKA NATIVE BROTHERHOOD

RONALD D. WILLIAMS
GRAND PRESIDENT

By: _____

Chairman ANB
Legislative Affairs Committee

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

March 22, 1985

The Honorable Peter Goll
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Goll:

We appreciated the opportunity to have our department, the Department of Law, and the Boards representives meet with your committee and believe it went well. In response to the inquiry of Representatives Furnace and Phillips concerning Federal Funding available under ANILCA, Dingell/Johnson (D-J), and Pittman/Robertson (P-R), following is an outline of the Federal Funding that was available for the past three years:

	ANILCA	D-J	P-R
FY 85	$1,000.0	$1,639.0	$4,600.2
FY 84	$1,000.0	$1,569.0	$3,804.5
FY 82/83	$ 960.0	$1,753.0	$3,387.4

The ANILCA funding, which is available specifically for the implementation of subsistence provisions, required 100 percent matching funds from the State of Alaska, and the D-J and P-R funds require a 25 percent match.

It is our understanding that the solicitor of the Department of Interior is reviewing possible compliance questions, including funding ramifications, related to the Madison decision. The ANILCA funds are directly related to subsistence provisions as mentioned. However, the D-J and P-R funds are only indirectly potentially affected.

I hope this provides the information requested. If you have additional questions, please call me.

Sincerely,

Don W. Collinsworth
Commissioner

11-K11LH

MEMORANDA FROM THE

ATTORNEY GENERAL

MEMORANDUM State of Alaska

TO: Honorable Bill Sheffield
Governor

DATE: March 6, 1985

FILE NO: 366-375-85

Thru: John Shively
Chief of Staff

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Briefing memorandum: subsistence

I. Suggested Attendees

A. Governor Sheffield and appropriate staff

B. Department of Fish and Game

1. Don W. Collinsworth, Commissioner
2. Dennis D. Kelso, Deputy Commissioner
3. Steven R. Behnke, Director, Division of Subsistence

C. Department of Law

1. Norman Gorsuch, Attorney General
2. Larri Irene Spengler, Assistant Attorney General

II. Issue Summary

-- For several years, the Boards of Fisheries and Game have implemented the state subsistence law in a way which protected fishing and hunting by rural Alaskans.

-- At the same time, the boards provided reasonably for other uses, such as personal use net fishing by non-rural Alaskans, sport fishing, and commercial fishing.

-- This exercise of regulatory authority had been certified as complying with the federal subsistence law, ANILCA.

-- On February 22, 1985, the Alaska Supreme Court declared that the boards lacked statutory authority for the regulatory approach used in implementing the subsistence law. Madison v. Alaska Department of Fish and Game, No. 7410.

-- Madison means that all Alaskans may participate in subsistence uses, and that those uses cannot be restricted until sport and commercial fishing, and non-resident hunting and big game guiding are eliminated.

- Example: The Prince William Sound commercial fishery may need to be restricted or even closed if necessary to accommodate the dip net fishery in the Copper River.

- Example: The Kenai River and Susitna drainage sport fisheries may need to be restricted or even closed if "subsistence fishing" by gill net must be allowed in large areas of Cook Inlet closed in recent years.

-- If the boards cannot protect fishing and hunting by rural Alaska residents under the state statutes, noncompliance with ANILCA could mandate some federal action.

III. Necessity for Governor's Briefing

A decision is required from the Governor on whether the state should proceed under the statutes as interpreted by the court in Madison, or whether an amendment to the state statutes should be sought to return the regulatory authority the boards exercised before this court decision.

IV. Background

A. Pre-Madison: The state's position on the Alaska statutory and regulatory framework before this court decision was:

1. The legislature in 1978 intended to protect fishing and hunting by individuals who reside in rural areas and communities in which the taking of fish stocks and game populations for personal and family consumption is a significant part of the local economy.

2. The eight criteria developed by the joint boards correctly identified subsistence uses in rural areas and communities.

3. Fishing by net for personal use by people from other areas of the state could be accommodated through the personal use fishing category established by the Board of Fisheries in regulation.

4. Personal use fishing did not have a priority over sport fishing and commercial fishing.

B. Madison: The court held with regard to the statutory and regulatory framework in Alaska

1. The legislature in 1978 did not intend that subsistence uses were to be limited to hunting and fishing by rural Alaska residents.

2. The legislature in 1978 did not intend subsistence uses to be identified in terms of the uses of an area or community.

3. Conversely, the legislature in 1978 did not intend a "grandfather" rights, limited entry-type system to control eligibility for subsistence.

4. The legislature in 1978 intended that subsistence uses could be restricted only if it is necessary for sustained yield purposes and if non-subsistence uses -- sport and commercial fishing, and by analogy, non-state-resident and trophy hunting, and big game guiding -- have already been eliminated.

5. If a situation requires restriction of subsistence uses, distinctions among subsistence users will be based on the three criteria contained in the statute: customary and direct dependence on the resource, local residency, and availability of alternative resources.

V. Relevant Laws

A. State law: Because the court ruled on statutory construction and legislative intent alone, without reaching any constitutional issues, the legislature may act on this issue.

B. Federal law:

1. The Alaska National Interest Lands Conservation Act allows the state to continue exercising its traditional management prerogatives on all land and water in Alaska if the state in a law of general applicability provides, among other things, the definition of subsistence uses contained in ANILCA.

a. ANILCA defines subsistence uses as uses of fish and game by rural Alaska residents.

b. It is unclear precisely what federal management would entail, but it has been argued that all navigable waters would be included, and that possibly some state lands would be included if migratory species were involved.

2. The Marine Mammal Protection Act also requires that if the state is to resume management, state law must define subsistence uses as uses of fish and game by rural Alaska residents.

VI. Alternatives

A. Implement the current statutes as interpreted by the court. Consequences:

1. All hunting and all net fishing for personal use by all Alaskans is now defined as "subsistence uses," which must be authorized unless the resource will be harmed, and which must be given a priority over sport and commercial uses.

2. As participation increases in a subsistence fishery, sport and commercial fishing must be closed before subsistence fishing can be restricted. (For example, theoretically the Prince William Sound commercial fishery could be closed because of an increase in "subsistence fishing" in the Copper River.)

3. Similarly, all commercial big game guiding and all non-state-resident and trophy hunting would have to be eliminated before subsistence hunting by Alaska residents could be restricted.

4. Subsistence fishing would probably have to be authorized any place in the state where it had been authorized in the past, unless the resource would be harmed. (For example, Madison could require areas in Cook Inlet closed to subsistence fishing for years to reopen, possibly affecting the Kenai River and Susitna drainage sport fisheries.)

5. Assuming non-compliance with ANILCA, the following could result:

   a. Federal management of some kind on all federal lands and possibly all navigable waters of the state could be asserted by the Department of Interior, or sought through judicial action.

   b. One million dollars in matching federal funds authorized by ANILCA would be lost to the state.

6. It would not be possible for the state to resume marine mammal management.

B. Amend the current statutes to return the regulatory authority that the boards exercised before Madison. Consequences:

1. By inserting the words "rural Alaska residents" into the definition of subsistence uses, the scope of uses qualifying for the protection and priority of the subsistence law would be narrowed.

2. By inserting the words "rural Alaska residents" into the definition of subsistence uses, compliance with ANILCA could be assured.

3. By establishing the personal use fishing category in statute, harvest opportunities for people who do not qualify for subsistence uses could be protected, without giving those uses a priority over sport and commercial fishing.

MEMORANDUM State of Alaska

TO Ron Jolin, Chairman
Joint Boards of Fisheries and Game

DATE March 11, 1985

FILE NO 366-375-85

TELEPHONE NO. 465-3600

FROM Norman C. Gorsuch
Attorney General

SUBJECT Subsistence

The State subsistence law must be implemented by the Boards of Fisheries and Game in a new and problematic way under Madison v. Alaska Department of Fish and Game, No. 7410, a decision issued by the Alaska Supreme Court on February 22, 1985. The precise holdings of the court could be interpreted by extrapolation to affect the entire state and regulation of game as well as fish.

The state statutes require:

-- That subsistence hunting and fishing be allowed, unless the resource would be harmed.

-- That subsistence be given a priority, if restrictions are necessary.

Before Madison:

-- These special protections applied to fishing and hunting by rural Alaskans.

-- Because subsistence consisted only of those rural harvests, the boards were able to accomodate non-state resident and guided hunting, personal use net fishing by non-rural Alaskans, sport fishing, and commercial fishing.

-- The state was in compliance with ANILCA.

After Madison:

-- All Alaskans may engage in subsistence fishing or hunting.

-- Subsistence fishing or hunting on a resource by all Alaskans cannot be restricted unless all non-subsistence uses are first eliminated.

- Example: The Prince William Sound commercial fishery may need to be restricted or even closed if necessary to accommodate the dip net fishery in the Copper River.

- Example: The Kenai River and Susitna drainage sport fisheries may need to be restricted or even closed if "subsistence fishing" by gill net must be allowed in large areas of Cook Inlet closed in recent years.

- Example: All Alaskans could subsistence fish near Tyonek for kings, near Angoon for cohos, in the Naknek River for kings, sockeye, and coho, and in the Iliamna-Lake Clark drainage for sockeye, unless any associated sport or commercial fishery were closed.

- Example: For any permit hunt, non-state resident and guided hunting may need to be eliminated.

-- If the boards cannot protect fishing and hunting by rural Alaska residents under the state statutes, non-compliance with ANILCA could mandate some federal action.

- It is unclear precisely what federal management would entail, but it has been argued that besides all federal land, all navigable waters would be affected, and that possibly some state lands would be affected if migratory species were involved.

NCC/LIS:rn

MEMORANDUM State of Alaska

TO: Honorable Bill Sheffield
Governor, State of Alaska

DATE: February 22, 1985

FILE NO: 822-642-82

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Madison v. Alaska Dept. of Fish & Game

The Alaska Supreme Court today issued an opinion in Madison v. Alaska Department of Fish and Game, file No. 7410, which holds that the regulatory approach of the Boards of Fisheries and Game to subsistence is inconsistent with Alaska's subsistence statutes. A copy is attached.

The state's position on the Alaska statutory and regulatory framework before this decision was that:

-- The legislature in 1978 intended to protect fishing and hunting by individuals who reside in rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area.

-- The eight criteria developed by the board correctly identified subsistence uses in rural, reliant areas.

-- The harvest of people in other areas of the state could be accommodated through the personal use fishing category created in regulation by the Board of Fisheries.

-- Personal use fishing did not have a priority over sport fishing and commercial fishing.

With regard to the statutory and regulatory framework in Alaska, the court in Madison held:

-- The legislature did not intend that subsistence uses were to be limited to rural uses, and the boards do not have the authority to do so.

-- The legislature did not intend subsistence uses to be identified in terms of the uses of a community or area.

-- The legislature did not intend that people qualify for subsistence fishing on an individual basis, and there is no authority to develop a "grandfather" rights system with respect to subsistence.

-- The legislature intended that subsistence uses coul be restricted only if it is necessary to restrict harvest for sustained yield purposes and if sport and commercial uses have already been eliminated.

-- If a situation requires restriction of subsistence uses, distinction among subsistence users will be based upon the three statutory criteria, customary and direct dependence on the resource, local residency, and availability of alternative resources.

With regard to the federal subsistence law:

-- Federal management of fish and game on all federal lands in Alaska is mandated if the state does not by a law of general applicability define subsistence uses as uses of rural Alaska residents.

-- It is unclear precisely what federal management would entail.

LIS:rn

cc: (with attachment)

Don Collinsworth
John Shively
Lenny Boston
John Greeley
Molley McCammon

MEMORANDUM State of Alaska

TO: Hon. Bill Sheffield
Governor

DATE: February 25, 1983

FILE NO: 166-448-83

TELEPHONE NO:

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Subsistence law: real and perceived problems

I recently asked the attorneys on my staff who work in the fish and game area to prepare an overview of the current status of the state subsistence law, with relevant background information for your review. The material which follows is the result of that effort. I have reviewed it personally and concur fully with its content.

OVERVIEW

The framework for the implementation of the subsistence law is now in place. The approach codified in regulation by the Joint Boards of Fisheries and Game is fairly straightforward, and with one notable exception, the definition of "rural," it is likely to be upheld by Alaska courts. See Madison v. ADF&G, 3KN 81-542, CIV; Glosund v. ADF&G, 3HO 80-92, 77-22104 Homer. This memorandum will explain the state statutory and regulatory framework and its relationship to federal law. It also will discuss three actual problems and twelve perceived "problems" in the current situation and identify specific issues that require attention.

STATE LAW

The Alaska Boards of Fisheries and Game are authorized by the legislature to allocate Alaska's fish and game resources among various uses, so long as sustained yield will not be jeopardized. Since statehood, the boards and their predecessor, the Board of Fish and Game, have had the discretion to decide which non-subsistence uses (for example, sports, commercial) should be allowed in each area of the state, and to what extent. Under AS 16.05.251(b) and 255(b), the boards are required to adopt regulations allowing subsistence uses, unless sustained yield will be jeopardized. Attachment A.

Although contained in the same statute, the requirement to allow subsistence uses is separate from the priority for subsistence uses over non-subsistence uses, which is triggered only by a relative resource shortage. The boards must accord the priority to subsistence uses whenever "it is necessary to

restrict the taking" of a fish stock or game population in order to assure maintenance of sustained yield or continuation of subsistence uses. AS 16.05.251(b) and 255(b). Attachment A. As discussed below, the mere existence of regulations authorizing subsistence uses does not mean that taking is "restricted" so as to trigger the priority. Rather, the priority comes into play only in relative resource shortage, when restrictions on non-subsistence uses must be imposed because harvest competition among user groups or decline in numbers of fish or game would jeopardize sustained yield of the resource or subsistence uses of the resource.

The legislature has defined subsistence uses as "customary and traditional uses" of wild, renewable resources for certain purposes. AS 16.05.940(26). Attachment B. The state statutory definition of "subsistence uses" is practically identical to that found in Title VIII of the federal Alaska National Interest Lands Conservation Act (ANILCA). Virtually the only difference is ANILCA's specification that subsistence uses are "customary and traditional uses by rural Alaska residents." ANILCA §803 (emphasis added). Attachment C.

However, the boards have determined that the state definition of "subsistence uses" also is limited to customary and traditional uses by "rural Alaska residents." 5 AAC 99.010(a). Attachment D. Not all uses of fish and game by rural Alaska residents are "subsistence uses." Rather, subsistence uses by rural Alaska residents are customary and traditional uses, which can be identified by eight criteria. 5 AAC 99.010(b). Attachment D. See April 1, 1982, memorandum from our office to Clint Buckmaster, Chairman of the Joint Boards of Fisheries and Game, A66-432-82. These criteria are based upon the ten criteria in 5 AAC 01.597 which the Board of Fisheries has employed to identify which uses of salmon in Cook Inlet are subsistence uses. The ten criteria have been upheld by two state superior court judges in the last year. Madison v. ADF&G, supra; Giosund v. ADF&G, Supra. In approving the ten criteria, the court in Madison concluded at page 4 of the March 5, 1982, findings of fact and conclusions of law that:

> The intent of AS 16.05.251(b) and .940(26) is to provide for and protect personal use ... fisheries conducted by persons who reside in rural communities which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the community. (Emphasis added.)

The boards determine on a case by case basis whether a use qualifies as a subsistence use by evaluating information presented by the public, the advisory system, and the Department of Fish and Game in light of the criteria. Attachment D. The joint board regulation also sets out the procedures each board will follow in allocating between subsistence uses and other uses. 5 AAC 99.010. In brief, if a fish stock or game population can be harvested without jeopardizing sustained yield, the board will provide reasonable opportunities for subsistence uses of that resource. If the resource population is adequate, the board may permit opportunities for other uses as well. Attachment D.

FEDERAL LAW

ANILCA established a procedure for the state to continue managing fish and game on federal lands and in all the waters of Alaska if the state meets certain standards. In particular, ANILCA §805(d) requires the state to have "laws of general applicability" which mirror the federal provisions in three areas: (1) the definition of "subsistence uses," (2) a preference for those uses in times of relative resource shortage, and (3) public participation which includes advisory committees and regional councils. The Department of the Interior has determined that the state statutes, together with the boards' procedural regulation (5 AAC 99.010) and the regulations governing fish and game advisory committees and regional councils (5 AAC 96), satisfy the requirements of ANILCA. See December 2, 1981, and April 28, 1982, letters from our office to Governor Hammond, A66-120-82. Thus, under the approach now in place, the state is authorized to continue to regulate the taking of fish and game on federal lands and in all the waters of Alaska.

ACTUAL PROBLEMS

There are three actual problems with the implementation of the subsistence law which have not yet been resolved.

1. "Rural": When the joint boards adopted the criteria and procedures specified in 5 AAC 99.010, they also adopted a definition of "rural" in 5 AAC 99.020, Attachment E:

143267

> In this chapter 'rural' means outside the road connected area of a borough, municipality, or other community with a population of 7,000 or more as determined by the Alaska Department of Community and Regional Affairs.

The definition poses serious equal protection problems under state and federal constitutions, in part in that whether an area of the state is "rural" is to be determined by whether the area has or has not organized as a borough. Equal protection requires that persons similarly situated be treated alike. Ketchikan Gateway Borough, Alaska v. Breed, 639 P.2d 995 (Alaska 1981). A definition of "rural" keyed to the presence or absence of a borough appears to violate that principle. For example, the Matanuska-Susitna Borough boundary bisects game management unit 13. Under 5 AAC 81.055(c)(3), rural residents of game management 13 who meet certain other requirements qualify for a subsistence permit to hunt Nelchina caribou. If the definition of "rural" in 5 AAC 99.010 is applied, residents of game management unit 13 living outside the borough are eligible, and those living inside are not. Information supplied to the Department of Law by the Alaska Department of Fish and Game would probably lead a court examining the classification to conclude that persons living inside and outside the borough are apparently similarly situated, except for the location of the borough boundary line. That boundary appears to be entirely unrelated to factors considered important by the boards in identifying subsistence uses, such as available opportunities. Consequently, a court would probably conclude that classification of land as being within a borough is a factor which does not reflect a difference in the pattern of harvest and use of resources and that different treatment of Alaskans based only on their residency in a borough violates equal protection principles. See June 17, 1982, memorandum from our office to Ronald Skoog, Commissioner of Fish and Game, J99-098-82.

The current definition of "rural" is also potentially flawed by vagueness. Regulations must be precise enough to enable the agency implementing them and the public to know what is intended. Woodards v. State, 604 P.2d 250 (Alaska 1979). For that reason, the Department of Law discourages the use in regulations of words like "adjacent" or "near", since courts have found that other such relative terms are too vague to be enforceable. Marks v. City of Anchorage, 500 P.2d 644 (Alaska 1972). Similarly, in the definition of "rural" the term "road connected area" is potentially vague. There is no way of knowing whether the definition of "road" was intended to include frozen

rivers in winter, logging roads, animal trails, or railroads. Nor is there any information on the amount of "area" anticipated to be included in terms of specific distances in yards or miles from a "road." It should also be mentioned that even if specific guidelines were set out, a differentiation in treatment based on proximity to a road also would have to bear a fair and substantial relationship to a legitimate governmental purpose under an equal protection analysis. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976).

A definition of "rural" is not required by state law. The April 2, 1982, letter from our office to Representative Ramona Barnes, J66-561-82, points out that it is not necessary under federal law either. ANILCA requires only that subsistence uses be rural customary and traditional uses, not that "rural" be defined. ANILCA §803, §805(d). As the April 2, 1982, letter discusses, the legislative history of ANILCA indicates that Congress envisioned subsistence uses occurring in rural areas, and rural areas being places where subsistence uses occur. Although seemingly circular, that approach enables the state to provide for subsistence uses on a case-by-case basis through the operation of criteria which have the effect of limiting those uses to rural areas. The joint boards' eight criteria for identifying subsistence uses and their acknowledgement in 5 AAC 99.010(a)(2) that subsistence uses are rural uses would probably be sufficient under ANILCA to accomplish the rural focus. For example, Madison, supra, and Giosund, supra, held that the Board of Fisheries' ten criteria, which are similar to the joint boards eight criteria, identified rural subsistence uses in the Cook Inlet area.

In addressing the concept of "rural," consideration also should be given to the term "residents" as used in section 803 of ANILCA and 5 AAC 99.01)(b). Enforcement of the subsistence regulations will require a definition of residency for subsistence purposes. A possible model is the definition of "domicile" recently approved by the Board of Fisheries at its January meeting. See 5 AAC 39.975(30) (not yet filed with Lt. Governor's office).

2. Avoiding disruption of non-subsistence harvest opportunities: Another problem related to implementation of the subsistence law is the authorization and use of a workable system to avoid disrupting harvest opportunities of those whose uses are no longer classified by the boards as subsistence uses and are not commercial or sport. A solution to this problem is the personal use category established by the Board of Fisheries in 5 AAC 77.001-015, in response to the court's action in Madison,

143257

supra. */ This category is intended to authorize regulations which provide access to fishery resources for those whose uses do not qualify under the criteria as subsistence uses, and cannot be classified as commercial or sport.

This personal use category has generated concern among some members of the public. There are those who fear that it will receive a disproportionately high allocation of the resource, and others that it will consistently be relegated to the lowest position. If the relationship between personal use and sport and commercial use can be resolved, the application of the personal use category as the board addresses different fisheries can be a useful tool to assure the adequacy of harvest opportunities when a particular use is not classified as subsistence use. For example, suppose a fishery has been conducted on a particular fish stock under subsistence fishing regulations for a number of years. As the Board of Fisheries considers proposals for regulations, the uses of that fish stock are examined, and only some of the uses are identified under the criteria as subsistence uses. In addition to providing for the identified subsistence uses, the board could authorize a personal use fishery to continue the uses no longer eligible to be classified as subsistence uses. Assuming the target stock and the continuation of subsistence uses would not be jeopardized. the personal use harvests could be regulated as before, except

---

*/ In 1981 in Cook Inlet, the board had identified the non-commercial gillnet fisheries in Port Graham, English Bay and Tyonek as subsistence use fisheries. Gillnet fisheries had long occurred in other parts of Cook Inlet under previous subsistence regulations, but the board in 1981 simply eliminated those other harvests. In Madison, the court did not find that the subsistence law was flawed, nor that the board had erred under the law or the constitution in identifying subsistence uses in Cook Inlet. However, the court ruled at the preliminary injunction stage that the board's action in eliminating the other gillnet harvests which did not qualify as subsistence uses violated due process, in that all use groups had not been treated fairly. In response, the board established the personal use category. For 1982, a personal use gillnet fishery was permitted in Cook Inlet for gillnet harvests not qualifying as subsistence uses. 5 AAC 77.547.

under a new name. If it ever became necessary to restrict the harvest of that particular fish stock, the board would then of course treat the personal use and subsistence fisheries differently.

3. Apparent reluctance to follow Attorney General's advice and confusion among state officials:

There has been reluctance by some board members and some Department of Fish and Game personnel to follow the advice of the Department of Law in implementing the subsistence law. For example, that department chose to ignore our recommendation that the flawed definition of "rural," Attachment E, be severed and not be applied in issuing permits for the subsistence hunt of the Nelchina caribou herd. Such a procedure would have allowed any qualifying resident of game management unit 13 to apply for a subsistence permit, rather than only those living outside the Matanuska-Susitna Borough. That would have avoided the equal protection problem discussed above which was caused by the use of the borough boundary in the classification of uses. See July 23, 1982, memorandum from our office to Ronald Skoog, Commissioner of Fish and Game, 366-042 83.

Another example is the refusal to publish a legal notice for the March 1982 meeting of the Joint Boards of Fisheries and Game which was adequate to allow action at that time to bring the state into compliance with ANILCA. Under the Administrative Procedure Act, state agencies are required to give notice to the public at least 30 days before taking action adopting proposed regulations. The notice must be specific enough to give a clear idea of the area in which action may be taken. AS 44.62.190, .200. For the March 1982 joint board meeting, despite advice from our office, a decision was made not to publish a notice sufficient to give the boards the flexibility to adopt regulations to meet the specifications of ANILCA at that session.

An additional ongoing problem is confusion among some board members and department personnel about what is possible or necessary under the subsistence statutory and regulatory framework. For example, some board members continue to insist that partial compliance is sufficient under ANILCA. As discussed earlier, ANILCA §805(d) requires the state law to be the same as the federal law in three areas: (1) the definition of "subsistence uses," (2) preference for those uses in times of relative resource shortage, and (3) a public participation system (advisory committees and regional councils). Although this has

143255

been explained on a number of occasions by our office, suggestions have continued to be made by some board members that Alaska could fail to comply in one or more of the areas specified and somehow still retain management on federal lands and in all the waters of Alaska.

Another example of ongoing confusion is the discussion outline prepared by the boards' executive director for the joint board meeting which began on November 30, 1982. The thrust of the outline is the purported need to formulate a "policy" on subsistence when, in fact, as discussed earlier, 5 AAC 99.010 already clearly sets out the boards' approach. Attachment D. It is now simply a matter of following those procedures.

PERCEIVED "PROBLEMS"

Numerous other "problems" which are perceived as stemming from the subsistence law are based on misinformation and misinterpretation.

1. Misperception: unconstitutional: In an April 1, 1982, memorandum to Clint Buckmaster, Chairman of the Joint Boards of Fisheries and Game, A66-432-82, our office analyzed the most commonly alleged constitutional flaws in the state subsistence law and concluded that the law was constitutionally sound.

Article VIII, section 4, of the Alaska Constitution allows for preferences "among beneficial uses." Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 897, 904 (Alaska 1981), affirmed the authority of the Board of Fisheries to provide for "different treatment of such diverse user groups as commercial, sports, and subsistence." That authority is not diminished by Article VIII, section 15, of the Alaska Constitution, which prohibits exclusive fisheries and was derived from 48 USC §222, The White Act. 1961 Op. Att'y Gen., No. 3. The intent of the White Act, and Article VIII, section 15, was to preclude creation of classes of use of Alaska's fisheries for which some individuals could never qualify. Hynes v. Grimes Packing Co., 11 Alaska 564, 165 F.2d 323 (9th Cir. 1947), vacated and remanded on other grounds, 23 Alaska 348, 337 U.S. 86 (1949). As discussed below, the subsistence law is not the equivalent of exclusive use, nor does it create a class closed to participation by people who wish to qualify.

The constitutionality of the subsistance law also is not affected by Article VIII, section 3, of the Alaska Constitution, which reserves fish and wildlife to the people for common use. As the April 1, 1982, memorandum explains in more detail, the record of Alaska's constitutional convention shows that section was intended to prohibit private ownership of fish or game still in their natural state. This does not occur under the subsistence law.

The April 1, 1982, memorandum also concluded that identifying subsistence uses as rural uses was permissible under state law. The classification does not violate the equal protection clause of the Alaska Constitution, since the boards have received substantial evidence that basic differences exist between rural and urban areas with respect to economies, social and cultural systems, and resource use characteristics. Indeed, in another context the state supreme court has acknowledged the great differences. In Alvarado v. State, 486 P.2d 891, 894 (Alaska 1971), the court described the differences:

> ... economies which rely on hunting, fishing, and gathering activities, strong kinship bonds, isolation from those parts of Alaska that approximate mainstream America, different seasonal activity patterns, concepts of time and scheduling, which, in accordance with other cultural divergences, may be quite different from those of mainstream America, and finally, very limited participation in the cash economy.

2. Misperceptions: exclusive use: Participation in subsistence uses is not restricted to a closed class. This means eligibility is not limited in a way that precludes entry; it is not limited to individuals who have lived here since statehood, or to Alaska Natives. For example, in Cook Inlet the Board of Fisheries has determined that the uses of salmon by English Bay, Port Graham, and Tyonek are subsistence uses, and that any person domiciled in those communities may participate. 5 AAC 01.580(a). The class is not closed, since individuals may move to one of the communities and enter the subsistence system, or may move away.

The subsistence law also does not automatically preclude non-subsistence uses, for example, sport and commercial fishing. As always, no harvest is allowed if sustained yield would be jeopardized, but the legislature obviously intended non-subsistence uses to continue, and the boards have the discretion to authorize them. AS 16.05.251(a) and .255(a). For

143253

example, when the Board of Fisheries provides for subsistence uses identified by the eight criteria, some fisheries which previously have been termed "subsistence" may not qualify. That does not mean those harvests will cease to exist. As discussed above, the personal use category can be employed at the board's discretion to permit continued resource harvest opportunity.

If relative resource shortage, which is described earlier, occurs and the priority must be implemented, the boards still have available all their traditional management options to restrict non-subsistence uses and to continue regulating subsistence uses, such as altering seasons or prohibiting use of aircraft. These options can be used to implement the priority in ways that do not exclude non-subsistence uses, although that option is available to the boards in extreme cases.

3. Misperception: harm to resource: Under the regulations, statutes, and Article VIII, section 4 of the Alaska Constitution, maintaining sustained yield of the resource is always the paramount consideration. No uses, including subsistance uses, are allowed to interfere with that. If any harvest of a fish stock or game population will jeopardize sustained yield, no harvests, subsistence or otherwise, may be authorized on that stock or population.

4. Misperception: dilution of advisory committee effectiveness and creation of regional council regulatory authority: Created by the boards to assist in gathering information on resource issues, fish and game advisory committees have existed in all regions of Alaska long before the state or federal subsistence laws. Currently, there are 67 of these advisory committees, each of which is represented on one of the state's six regional councils, which were formed by the boards before passage of ANILCA.

In order to satisfy the public participation requirements of ANILCA §805, modifications were made to the advisory system regulations, some of which strengthened the regional councils' role in the regulatory process. Two concerns have since emerged regarding the regional councils. The first is that the councils will replace the committees, and thus hinder public access to the boards. However, under the current regulations, individuals may express their views directly to the boards, councils and committees. Committees may channel information both to the councils and to the boards. The councils supplement, rather than replace, communication with the boards by individuals and committees.

The second concern is that the councils will have undue authority over the boards, or will have separate regulatory authority. In conformance with the specifications of ANILCA §805(d), the boards now give limited deference to council recommendations concerning subsistence uses, although they receive council recommendations on all fish and game issues. The boards may reject the recommendations concerning subsistence uses if they are not supported by substantial evidence, if they would violate conservation principles, or if they would harm subsistence uses. 5 AAC 96.610(e). The regional councils have no authority to promulgate regulations; rather, they are authorized to make recommendations to the boards.

5. Misperception: courts managing resources: Although the subsistence law was enacted in 1978 (ch 15, SLA 1978), the boards did not begin implementing it immediately. In fact, the boards' actions were often inconsistent with the law. As a consequence, the state lost four lawsuits in 1980. For example, Tyonek v. Alaska Board of Fisheries, 3AN 80-3073, ruled that it was improper for the board to authorize a sport fishery on Susitna River king salmon while not allowing a subsistence fishery on those stocks, when sustained yield would not be jeopardized by harvest of the fish.

However, once the boards began articulating and applying standards for implementation of the subsistence law, recent litigation has been more successful. For example, the Board of Fisheries' approach to subsistence uses in Cook Inlet has been upheld completely in Madison, supra, and in large part in Glosund, supra. The state's success in such cases hinges primarily on the boards' reasonableness in following the requirements of the law.

6. Misperception: waste permitted: The subsistence law does not authorize waste, which is prohibited separately by statute and regulation. See, for example, AS 16.05.831. Waste is not allowed by any use, subsistence or otherwise.

7. Misperception: racial criteria: The requirements of the subsistence law are race neutral. This is true of both the state statute and ANILCA.

8. Misperception: guaranteed take: 5 AAC 99.010(c) requires that "reasonable opportunities" for subsistence be provided. Attachment D. No participant is guaranteed a harvest.

143251

9. Misperception: subsistence harvests may not be regulated without triggering the priority: AS 16.05.251(b) and .255(b) require the boards to "adopt regulations" allowing subsistence fishing and hunting. Attachment A. However, the fact that a subsistence harvest is regulated does not automatically trigger the priority. The priority becomes active if "it is necessary to restrict the taking" of fish and game, because of relative resource shortage, which is described earlier. AS 16.05.251(b) and .255(b). Attachment A. See February ___, 1983, memorandum from our office to Don Collinsworth, Commissioner of the Department of Fish and Game, 166-423-83. This is also true under ANILCA §804. See S. Rep. No. 413, 96th Cong., 1st Sess. 269 (1979).

Just as with other uses, subsistence harvests can be regulated by specified areas, openings, and other management measures. Indeed, regulation of subsistence uses has been and is part of sound resource management, and it was expected by the legislature. For example, the legislature indicated in section 1, ch. 151, SLA 1978, the intent section of the subsistence law, that beneficial uses of fish and game by all state residents "should be carefully monitored and regulated." Historically, the Board of Fisheries has adopted regulations denominated "subsistence." The Board of Game has generally regulated subsistence uses without designating the regulations as "subsistence."

10. Misperception: requirement for precipitous change: As discussed in the March 22, 1982, memorandum regarding subsistence regulations from our office to Clint Buckmaster, Chairman of the Joint Boards of Fisheries and Game, the regulatory process contemplated by ANILCA is ongoing. Under ANILCA §806, the Department of the Interior will monitor the state's subsistence program on a continuing basis. Accordingly, instantaneous regulatory change in all fishing and hunting situations statewide is neither necessary nor desirable. As potential problems are identified and as data become available, the boards should act according to the procedures in 5 AAC 99.010. Attachment D. See May 4, 1982, memorandum to Milstead Zahn, Executive Director, Boards of Fisheries and Game, regarding effect of joint boards' subsistence regulations.

11. Misperception: limited entry system threatened and commercial sale or subsistence harvested fish or game allowed: Both state and federal laws include "customary trade" as a component of "subsistence uses." AS 16.05.940(26), Attachment B; ANILCA §803, Attachment C. However, legislative history indicates that Congress was mostly concerned about trapping, and neither state law nor ANILCA authorizes significant commercial activity. The state law limits the scope of customary trade by the phrase "for personal or family consumption." AS 16.05.940(26). Attachment B. Although those words do not modify "customary trade" in ANILCA §803, legislative history is clear that Congress did "not intend that 'customary trade' be construed to permit the establishment of significant commercial enterprises under the guise of 'subsistence uses'." S. Rep. No. 413, 96th Cong., 2nd Sess. 234. See December 2, 1981, letter from our office to Governor Hammond, A66-120-81, p. 26-29. Thus, under the subsistence law any exchanges involving cash which are eventually authorized by board regulation would be of a very limited nature, perhaps recognizing established exchange and distribution networks within subsistence economic systems.

The inclusion of "barter" as a component of "subsistence uses" as defined in AS 16.05.940(26) does not authorize commercial exchanges, either. "Barter" is defined in AS 16.05.940(27) as the exchange of fish or game taken for subsistence uses for other fish or game, or for "other food or nonedible items other than money if the exchange is of a limited and noncommercial nature."

12. Misperception: flexibility to define subsistence uses by economic need: It has been suggested that either the legislature or the boards should narrow the definition of subsistence to encompass only economic need, based, for example, on individual income level. Whatever the policy advantages or disadvantages of that approach, it is not an amendment that can be made if the state is to remain in compliance with federal law. An economic need requirement would be inconsistent with the language of ANILCA and with Congressional intent, as amply evidenced in legislative history. For example, in discussing the policy expressed in ANILCA §802(1), Representative Udall noted that it "also requires that regulatory systems which employ income requirements not be imposed upon rural residents." 126 Cong. Rec. H10546 (daily ed. November 12, 1980).

143249

CONCLUSION

State regulations and statutes provide a framework for implementing the subsistence law in a manner consistent with ANILCA. Many "problems" which have been perceived with the framework actually arise from misinformation and misinterpretation. Providing the public with correct information on the law would dispel the impression that these "problems" exist.

One problem which needs to be addressed is the authorization and use of a workable system to avoid disrupting harvest opportunities for those whose uses are no longer classified by the boards as subsistence uses. The personal use category established by the Board of Fisheries is a potential solution, though its relation to sport and commercial uses needs to be resolved. For example, Cook Inlet is a highly populated area where all four categories of fishery -- subsistence, sport, commercial, and personal use -- occur. Examining the appropriate application of the personal use category in Cook Inlet could develop a model not only for Cook Inlet but for other areas in the state.

Another problem is the current definition of "rural", which is vulnerable to equal protection and vagueness challenges. The definition could be amended, or even repealed, since a definition of "rural" is not required by either state or federal law.

If I can provide any further information or assistance, please let me know.

BOARD OF FISHERIES FINDINGS

1985

ALASKA BOARD OF FISHERIES FINDINGS
SUBSISTENCE REGULATIONS FOR THE 1985 FISHING SEASON

The Alaska Board of Fisheries, meeting in Anchorage, Alaska on March 26, 1985, finds that the Alaska Supreme Court decision in Madison v. Alaska Department of Fish and Game will require a revision of certain subsistence, personal use, sport, and commercial fishing regulations. However, the board finds insufficient time exists before the smelt, herring, bottomfish, shellfish and salmon seasons to allow for an orderly, comprehensive review of all regulations which may be impacted, considering the need to provide an adequate opportunity for public comment and review. Therefore, to ensure an orderly process allowing the opportunity for all members of the public to participate, and implement the count's decision in Madison as possible in the interim, the board finds:

(1) The board will, by emergency regulation, authorize the subsistence take of smelt, herring, shellfish and bottomfish as they were allowed under the 1978 subsistence regulations.

(2) The board will, by emergency regulation, authorize access by all Alaska residents to existing Tyonek, Port Graham, and English Bay subsistence salmon fisheries in Cook Inlet. Existing bag and possession limits, time, gear and area regulations and overall guideline harvest will not be adjusted for the 1985 season. The board finds that such regulations promote an orderly harvest which will reasonably satisfy anticipated subsistence uses. Modification of these regulations at this time is not in the best public interest of the public given the inadequate opportunity for public comment at this time, and uncertainty about 1985 participation levels.

(3) During 1985, the board will continue the following presently authorized personal use salmon fisheries in Cook Inlet as personal use fisheries:

the spring Kasilof gill net fishery,
the Kasilof and Kenai River sockeye dipnet fishery,
the China Poot hatchery sockeye fishery,
and the shellfish, herring, and smelt fisheries.

The board cannot reasonably modify or eliminate these fisheries without an opportunity for public comment, which is not possible under the present time frame.

(4) The fall coho set gill net personal use fishery will however, by emergency regulation, be identified as a subsistence fishery, as required by Madison, and will be managed under the regulations used during the 1981 season, except that current reporting requirements will apply.

(5) The Kachemak Bay salmon set gill net fishery will, by emergency regulation, be identified as a subsistence fishery, as required by Madison, and will be managed under the regulations

developed for the court ordered fishery. Alaska residents will be able to participate in both of these fisheries.

(6) The board will, by emergency regulation, allow access by all Alaska residents to the following existing subsistence fisheries:

Copper River (salmon)
Iliamna/Lake Clark (salmon)
Naknek River (salmon), and
Angoon (salmon).

The bag and possession, time, area, gear, and overall harvest guidelines of each of these fisheries shall remain as described in existing regulations. The board finds that such regulations are necessary to conduct an orderly fishery and to provide a reasonable opportunity for subsistence needs. Modification of these regulations at this time in not in the best interest of the public given the inadequate opportunity for public comment at this time.

(7) As to the Copper River subsistence and personal use salmon fisheries, which will combined into a subsistence fishery by emergency regulation, the board will retain existing regulations as to bag and possession limits, time, area, gear, and overall harvest guidelines, except that rather than separate regulations based on domicile, the regulations developed for those domiciled in the Copper Basin and other specified communities will be applied to the fishwheel fishery and those developed for those not so domiciled will be applied to the dip net fishery. The board finds these regulations to be necessary to conduct an orderly fishery and to provide a reasonable opportunity for subsistence needs. Further, the overall harvest guidelines, bag limits, and areas represent historical harvest. The dip net portion of this guideline represents a total harvest which was not taken during the 1984 season. The harvest lid is necessary to manage the downriver commercial salmon drift gill net fishery to ensure escapement for reproductive needs and the upriver subsistence fishery. The bag and possession limits, while different for dipnetters and fishwheel fishermen were developed by the board after extensive public testimony and information demonstrating that the differing bag limits reflected historical use by each group.

The board hereby calls for proposals from the public on all subsistence and personal use regulations to be considered at the fall/winter 1985 finfish meeting. The board will consider all proposals to establish, eliminate or modify any or all subsistence or personal use regulations any any changes in commercial or sport fishery regulations required by such regulations.

Ron Jolin, Chairman Board of Fisheries — March 27, 1985

SUPREME COURT DECISION

MADISON V. ALASKA DEPARTMENT OF FISH AND GAME

SUPREME COURT OPINION NO. 2911, FILE NOS. 6824/7181/7410

ALASKA COURT SYSTEM NEWS RELEASE

For release Friday, February 22, 1985, 12:30 p.m.

Court Strikes Down Fisheries Regulation

Madison v. Alaska Department of Fish and Game

Supreme Court Opinion No. 2911, File Nos. 6824/7181/7410

Contact: David A. Lampen
Clerk of the Appellate Courts
Anchorage (907) 264-0607

[The following was prepared by the office of the Clerk of the Appellate Courts and is not an official statement of the Alaska Supreme Court.]

The Alaska Supreme Court Friday struck down a Board of Fisheries regulation designed to identify eligibility for subsistence fishing in the Cook Inlet region.

Under the regulation, certain residents of the Kenai coastline and an area near Homer were forbidden to fish for subsistence purposes. The regulation had been declared valid by Superior Court Judges Victor D. Carlson and Paul B. Jones.

The supreme court, in an opinion by Justice Daniel A. Moore, Jr., held that the board erred in denying subsistence permits to certain residents who had fished with set nets for personal and family use for many years.

The supreme court found that the board's regulation on subsistence uses was inconsistent with Alaska law because the regulation was too restrictive.

The opinion stated: "Under a statute designed to protect subsistence uses, the board has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect."

END

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

GENE MADISON, LUCY CASEY, KEN McGAHAN, SR., ANDY JOHNSON, MARGIE KIVI, J. W. WARE, DICK FRANCIS, DON GROLESKE, KEN JORDON and SHIRLEY DEVAULT, Appellants, v. ALASKA DEPARTMENT OF FISH AND GAME, and ALASKA BOARD OF FISHERIES, Appellees, and THE ALASKA FEDERATION OF NATIVES, Intervenor.	File Nos. 6824/ 7181 O P I N I O N
ALASKA DEPARTMENT OF FISH AND GAME, RONALD SKOOG, ALASKA BOARD OF FISHERIES, Appellants, v. LOUIS GJOSUND, DORA MULCH, and KACHEMAK BAY SUBSISTENCY GROUP, INC., Cross-Appellees.	File No. 7410 [No. 2911 - February 22, 1

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Victor D. Carlson, Judge, and Third Judicial District, Homer, Paul B. Jones, Judge.

Appearances: Martin Friedman, Homer, Arthur Robinson, Soldotna, for Appellants/Cross-Appellees. Larri Irene Spengler, Assistant Attorney General, Norman C. Gorsuch, Attorney General, Juneau, for Appellees/Appellants. Donald C. Mitchell, Anchorage, for Intervenor/Amicus Curiae.

Before: Rabinowitz, Chief Justice. Burke, Matthews, Compton and Moore, Justices.

MOORE, Justice.

This case arises as a consolidated appeal of two cases. It concerns the validity of a Board of Fisheries' (hereafter board) regulation designed to identify eligibility for subsistence fishing in the Cook Inlet region.

Appellants (hereafter Madison and Gjosund) are two groups of Alaskan residents who live along the Kenai coastline and near Homer. For many years, they have fished with set nets for salmon for their personal and family use. Nonetheless, the board denied subsistence permits to Madison and Gjosund because their use of salmon did not meet the board's regulatory definition of subsistence. Both Madison and Gjosund challenged the regulation as exceeding the scope of the state's subsistence law. In both cases, the trial courts upheld the regulation as consistent with the

statutory grant of authority. We hold the regulation invalid since it is inconsistent with AS 16.05.251(b), AS 16.05.940(22) and AS 16.05.940(23) and contrary to the legislature's intent in enacting the 1978 subsistence law.

I. SUMMARY OF FACTS

Records indicate that subsistence fishing in Cook Inlet was minimal through the mid-1970s.[1] However, a core group of residents of each Cook Inlet community has traditionally fished for Cook Inlet salmon for subsistence. Participation in the subsistence salmon fishery is most visible in the smaller, more isolated villages, where the subsistence group represents a larger percentage of the population.

In 1977 the board established a comprehensive management policy for Cook Inlet, 5 AAC 21.363, which essentially allocated specific salmon stocks to sports fishermen and commercial fishermen on the basis of seasonal fish movements. See Kenai Peninsula Fisherman's Cooperative

---

1. From 1971 to 1977, the average number of subsistence permits issued annually for the Upper Cook Inlet was 87 and the average catch was 405 salmon. Commercial harvest averaged about two million fish per year. However, this statistical data does not necessarily reveal the total subsistence use since many people did not obtain permits and some commercially caught salmon were used for subsistence.

Ass'n v. State, 628 P.2d 897 (Alaska 1981). Although the policy did not specifically refer to subsistence uses of salmon in Cook Inlet, it had a substantial impact on subsistence fishing. Commercial fishermen, accustomed to taking subsistence salmon from their commercial catch, instead obtained subsistence salmon fishing permits in order to fish for their personal and family use after the commercial season was over.

Before 1978, subsistence fishing was defined in AS 16.05.940(17) as fishing for "personal use and not for sale or barter."[2] In 1978, the Alaska State Legislature enacted ch. 151 SLA 1978 (hereafter the 1978 subsistence law). Subsistence fishing was redefined as fishing for "subsistence uses."[3] Subsistence uses were defined as "customary and

---

2. Section 4, ch. 131 SLA 1960:

> "subsistence fishing": the taking, fishing for or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means as defined by the Board.

3. AS 16.05.940(22), (formerly AS 16.05.940(17)), states:

> "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by

(Footnote Continued)

traditional uses . . . for direct personal or family consumption, and for the customary trade, barter or sharing. . . ." AS 16.05.940(23).[4] Furthermore, the legislation required the board to adopt regulations permitting "subsistence uses" of fish stocks, absent a showing that this use would jeopardize the sustained yield principle. AS 16.05.251(b).[5] Under AS 16.05.251(b), subsistence uses have

---

(Footnote Continued)

the Board of Fisheries.

4. AS 16.05.940(23), (formerly AS 16.05.940(26)), states:

> "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis.

5. AS 16.05.251(b) states:

> The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board

(Footnote Continued)

priority over sport and commercial uses if the board finds it necessary to restrict the taking of fish to assure the maintenance of fish stocks or to assure the continuation of subsistence uses. If further restrictions are necessary after giving priority to all subsistence uses, the legislature established specific criteria to restrict subsistence uses based on the subsistence user's customary and direct dependence on the resource, local residency and availability of alternative resources. Id. As a result,

---

(Footnote Continued)

> determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:
>
> (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
>
> (2) local residency; and
>
> (3) availability of alternative resources.

the board could no longer allocate for subsistence uses at its discretion pursuant to AS 16.05.251(a).[6] The

---

6. AS 16.05.251(a) states:

> The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedures Act (AS 44.62) for
>
> (1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;
>
> (2) establishing open and closed seasons and areas for the taking of fish;
>
> (3) setting quotas and bag limits on the taking of fish;
>
> (4) establishing the means and methods employed in the pursuit, capture and transport of fish;
>
> (5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;
>
> (6) classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes;
>
> (7) engaging in biological research, watershed and habitat improvement, fish management, protection, propagation and stocking;
>
> (8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(Footnote Continued)

legislature mandated in AS 16.05.251(b) that the board regulate for the protection of subsistence uses as the priority use of fish and game.

The passage of the 1978 subsistence law, combined with adoption of the board's 1977 management policy, heightened public awareness of the state's subsistence fishing provisions. This public interest resulted in a

---

(Footnote Continued)

> (9) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote fish research, management, education and information and to train persons for fish management;
>
> (10) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;
>
> (11) establishing seasons, areas, quotas and methods of harvest for aquatic plants;
>
> (12) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43.

2911

substantial increase in the demand for subsistence permits and a corresponding increase in total catch.[7] The board responded to the permit increase by restricting subsistence fishing; it limited areas open to subsistence fishing, length of fishing periods and maximum length of gill nets. Several lawsuits were filed, all of which resulted in decisions unfavorable to the board.

In December 1980, the board held hearings to respond to the 1978 subsistence law and received a considerable amount of testimony on subsistence uses in Cook Inlet. The meeting resulted in the establishment of characteristics for identification of "customary and traditional uses" of Cook Inlet salmon.[8] In addition, the

---

7. This chart reflects the trend in Upper Cook Inlet:

	Subsistence Use		Commercial Harvest
	Permits Issued	Salmon Caught	
1978	323	3,735	5,118,041
1979	1,161	9,923	1,923,229
1980	1,331	14,775	4,138,648

In 1980, household permits were issued instead of individual permits.

8. With some modification, these characteristics became the basis of 5 AAC 01.597, which states:

> CHARACTERISTICS OF SUBSISTENCE FISHERIES.
> (a) The Board of Fisheries finds that certain customary and traditional practices

(Footnote Continued)

board decided to "adopt a set of criteria drawn from the

(Footnote Continued)

> and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:
>
> (1) a long-term, stable, reliable pattern of use and dependancy, excluding interruption generated by outside circumstances, e. g., regulatory action or fluctuations in resource abundance;
>
> (2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;
>
> (3) a use pattern associated with specific stocks and seasons;
>
> (4) a use pattern based on the most efficient and productive gear and economical use of time, energy and money;
>
> (5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;
>
> (6) a use pattern occurring in locations with easiest and most direct access to the resources;
>
> (7) a use pattern which includes a history of traditional modes of handling, preparing and storing the product without precluding recent technological advances;
>
> (8) a use pattern which includes the intergenerational transmission of activities and skills;

(Footnote Continued)

characteristics . . . and apply [them] to communities, subcommunities, groups and individuals who wish to continue to participate in an established customary and traditional fishing effort in Cook Inlet."

At its March 1981 meeting, the board received written testimony from the public about subsistence uses of Cook Inlet salmon stock. Subsequently, it decided to apply all of the ten criteria to determine "customary and

---

(Footnote Continued)

> (9) a use pattern in which the effort and products are distributed on a community and family basis including trade, bartering, sharing and gift-giving; and
>
> (10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.
>
> (b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.
>
> (c) For purposes of this section, a "community" is generally considered to be several households of full-time residents who all reside in a specific geographic area because of common interests.

traditional uses" eligible for the subsistence priority. When the board applied the ten criteria, it determined that no group or community in the Cook Inlet region other than Tyonek, English Bay and Port Graham satisfied all ten of the criteria. The board limited the 1981 subsistence catch to these three communities. As a result, the board eliminated from the protection of the state's subsistence statute the majority of Cook Inlet fishermen who formerly fished under subsistence regulations.

Madison and Gjosund challenged the validity of the board's subsistence criteria (now 5 AAC 01.597) on several grounds. They claimed that: (1) the criteria were inconsistent with the statutory language and legislative intent of the 1978 subsistence law; (2) the board failed to comply with the Administrative Procedure Act in adopting the criteria; and (3) their equal protection and due process rights were violated by the board's action.[9] Both courts issued preliminary injunctions compelling the board to authorize personal use fishing for Madison and Gjosund similar to that allowed in the previous year. The board

---

9. Since we hold the regulation invalid because it is inconsistent with AS 16.05.251(b) and AS 16.05.940(22) and (23), and contrary to the legislature's intent in enacting the 1978 subsistence law, we need not consider the APA, due process and equal protection issues raised regarding the regulation's validity.

moved for summary judgment on the plaintiffs' first claim. Both trial courts granted summary judgment to the board, after finding the subsistence criteria consistent with the legislative intent "to provide for and protect personal use . . . by persons who reside in rural communities. . . . "

On appeal, Madison and Gjosund seek reversal of the two trial court decisions. They claim that the board did not act within the legislative authority granted by AS 16.05.251(b) and AS 16.05.940(22) and (23) when it adopted the ten characteristics ultimately codified as 5 AAC 01.597.[10]

II. STANDARD OF REVIEW

We first consider the appropriate standard of review for this case. The legislature enacted AS 16.05.251(b), which requires the board to adopt regulations permitting the taking of fish for "subsistence uses." The legislature then defined subsistence uses as "customary and traditional" uses in AS 16.05.940(23), but it never defined

---

10. Madison and Gjosund also contend that the board exceeded its statutory authority under AS 16.05.251(a) when it established a personal use fishery to accommodate people excluded from the subsistence fishery by 5 AAC 01.597. Because we hold 5 AAC 01.597 invalid, we need not address the issue of the board's authority to establish a personal use fishery.

"customary and traditional." The board developed the ten criteria (now codified as 5 AAC 01.597) to identify customary and traditional uses qualifying for a subsistence priority under AS 16.05.251(b). Therefore, the board interpreted the 1978 subsistence law and devised its regulatory criteria accordingly.

In Kelly v. Zamarello, 486 P.2d 906, 917 (Alaska 1971), we stated that the "reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations." However, the issues in this case concern statutory interpretation of the words "customary and traditional" and the question whether the board has acted within the scope of its statutory authority. Such issues "fall into the realm of special competency of the courts." Alaska Public Utility Commission v. Municipality of Anchorage, 555 P.2d 262, 266 (Alaska 1976). See also State, Commercial Fisheries Entry Commission v. Templeton, 598 P.2d 77, 80 (Alaska 1979).

In this instance, we are dealing with a question of statutory interpretation and will apply the substitution of judgment standard.

> The substitution of judgment standard is applied when the questions of law presented do not involve agency expertise, and, thus, a court need not take the deferential stance embodied in the rational basis test. . . . The standard is appropriate where the

> knowledge and experience of the agency is of little guidance to the court or where the case concerns "statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience."

Earth Resources Co. v. State, Department of Revenue, 665 P.2d 960, 965 (Alaska 1983), quoting Kelly v. Zamarello, 486 P.2d at 916 (emphasis added). Application of this standard allows the reviewing court to substitute its judgment about a statute's meaning for the board's interpretation, even if the board's interpretation had a reasonable basis in law. In this case, both trial courts erred by applying the rational basis standard to the board's statutory interpretation.

III. LEGISLATIVE HISTORY OF THE 1978 SUBSISTENCE LAW

Before 1978, subsistence fishing was defined as fishing for "personal use and not for sale or barter." Formerly AS 16.05.940(17). The 1978 subsistence law redefined subsistence fishing as fishing for "subsistence uses." AS 16.05.940(22). "Subsistence uses" were defined as "the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption . . . and for the customary trade, barter or sharing . . . . " AS 16.05.940(23). The board argues that the legislature intended to narrow the scope of subsistence fishing to mean fishing by individuals residing in those

rural communities that have historically depended on subsistence hunting and fishing. Under this interpretation, the board asserts that its criteria are consistent with the legislature's intent.

The board's argument reveals a fundamental misconception about the structure of the 1978 subsistence law. There are potentially two tiers of subsistence users under AS 16.05.251(b). The first tier includes <u>all</u> subsistence users. Under the statute, all subsistence uses have priority over sport and commercial uses "whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources. . . ." AS 16.05.251(b). If the statutory priority given all subsistence users over commercial and sport users still results in too few fish for all subsistence uses, then the board is authorized to establish a second tier of preferred subsistence users based on the legislative criteria expressed in AS 16.05.251(b), namely, customary and direct dependence on the resource, local residency, and availability of alternative resources.

Criteria like the ten criteria of 5 AAC 01.597(a) could be used to distinguish first-tier general subsistence users from second-tier preferred subsistence users, since most of the criteria relate to either "customary and direct

dependence" or "local residency," two of the three criteria set out in AS 16.05.251(b). However, before there is any occasion to restrict subsistence fishing to second-tier preferred subsistence users as distinct from all subsistence users, the board must make two findings. It must find: (1) that it is necessary to restrict the taking of fish for sustained-yield purposes; and (2) that eliminating sport and commercial uses will not assure the maintenance of fish stocks on a sustained-yield basis and, thus, establishing a priority among subsistence users is also necessary. The board erred because it applied the ten criteria without making these findings.

The board argues that the words "customary and traditional" in AS 16.05.940(23) authorize it to define first-tier subsistence users by their area of residence. We reject this argument for several reasons. First, the argument ignores the two-tier structure of AS 16.05.251(b) that defines only the second-tier subsistence users in terms of residency. If the legislature had intended to define the class of first-tier general subsistence users by area of residence, it would not have expressed that factor with respect to only the second tier of preferred subsistence users. Moreover, the phrase "customary and traditional" modifies the word "uses" in AS 16.05.940(23). It does not refer to users. The 1978 subsistence law refers to

"customary users" at only one point, when it defines the preferred subsistence users of the second tier with the three statutory criteria in AS 16.05.251(b).

The House Special Committee on Subsistence drafted a letter of intent for House Bill 960[11] that supports our interpretation. With respect to AS 16.05.251(b) (which was § 6 of House Bill 960),[12] the letter of intent made clear the priority to be given subsistence uses in general over sport and commercial uses and explained the two-tier system among subsistence users.

> Sections six and seven: These two sections, which are virtually identical for the Boards of Fisheries and the Board of Game, are intended to statutorily set out the priority given to subsistence use of fish and game resources. . . . Further, these sections set forth a priority of users if restrictions are needed because of the unavailability of resources. The priority list is an attempt to insure that those with the most dependence upon the fish and game resources are the last to be restricted.
>
> If there is a need to restrict the taking of fish or game in order to avoid damaging the fish stocks or game populations, or in order to assure that subsistence users may continue to take fish or game, it is the intent of the Committee that sports or commercial use be restricted before

---

11. HB 960 became the 1978 subsistence law, ch. 151 SLA 1978.

12. The committee also intended to provide a priority for subsistence hunting in AS 16.05.255, as indicated in § 6 of HB 960.

> subsistence use. If these restrictions are inadequate, restricting of subsistence use as well is authorized based upon the dependence on the resource, the local residence of the subsistence users, and the availability of alternate resources.

(Emphasis added).

Only in connection with AS 16.05.251(b) does the letter of intent discuss applying residence criteria to subsistence users, and it does so only with respect to second-tier subsistence users. With respect to the definition of subsistence uses in § 17 of House Bill 960 (now AS 16.05.940(23)), the letter of intent does not suggest that the phrase "customary and traditional" was meant to describe users as well as uses. The letter of intent states:

> Section seventeen: Subsection (26) defines what uses can be made of subsistence caught fish and game. It allows it to be used for direct personal or family consumption, for barter as defined in subsection (27) and for sharing the subsistence caught fish and game with other persons. This subsistence caught fish and game which is shared can then only be used for personal or family consumption. This subsection also broadens the definition of family to include the extended family situation.

The letter of intent clearly expressed the legislative resolve to establish a priority for subsistence use of fish and game. The 1978 subsistence law also increased the number of uses qualifying as subsistence fishing by including trade and barter.

The board based its restrictive regulation, 5 AAC 01.597, on the words "customary and traditional." The legislature did not define these words in the 1978 subsistence law. In such a case, reference to legislative history may provide an insight into the legislature's intent and a statute's meaning. North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 540 (Alaska 1978). In the House floor debate on House Bill 960, Representative Cotton introduced an amendment to delete the words "customary and traditional" from the statute. The floor manager of the bill, Representative Anderson, opposed the amendment in the following speech:

> The two words are used in this context to put some guidelines around the uses of Alaska's freedom of resources. What we were afraid of, it was brought to our attention by people who were concerned that this would leave the field of the definition wide open. That newcomers just coming to the State of Alaska would automatically be able to establish not only residency in 30 days, but be able to go out and state that they have a customary and traditional use of Alaska's fish and game resources. The use of customary and traditional also is in recognition of a historical use of fish and game for food, shelter, fuel, clothing, tools, transportation, etc. This is not only in conformance with the aboriginal uses, but also those that have come in, those people who have come in later. . . . [T]he nonnative people in the State of Alaska have established customary and traditional uses of Alaska's fish and game resources for subsistence purposes. And in order to give the Board of Fish and Game more clarification in the area, we have come up with the (inaudible) of customary and traditional rather than leaving that section

> wide open. The design is not to be restrictive but to provide guidelines and that is basically what I feel and many . . . members felt it was necessary in . . . adding or retaining those two words "customary and traditional."

(Emphasis added).

We consider statements made by a bill's sponsor in the course of legislative deliberations to be relevant evidence when a court is trying to determine legislative intent. Alaska Public Employees Association v. State, 525 P.2d 12, 16 (Alaska 1974). Anderson argued for the retention of "customary and traditional" for use as a guideline. His major concern focused on the potential pressure put on resources by newcomers. In his view, the words "customary and traditional" recognized and protected a historical subsistence use by both native and non-native Alaskans. The words were not intended to restrict subsistence use.

Another part of the House debate serves to clarify the statute's meaning. Representative Parr expressed concern that the board might use AS 16.05.251(b) to eliminate Fairbanks residents from subsistence use. Some Fairbanks residents often traveled to the Chitina Dip Net Fishery near the Copper River for their fishing. Representative Anderson responded to these concerns:

> If we get into a condition where the fish stock gets down to the point where there is no way that you can allow any take, the first people that you are going to cut off are the commercial and then the sports, first, and

> then the last people that you are going to cut off are the subsistence people who have the greatest reliance on the resource. . . . [I]f it were defined that dip net fishing were for subsistence uses and not for sale or any other purpose, that would be allowed and I would think that people from Fairbanks would fall under these categories. I don't know where else they would go to . . . where people from Fairbanks make it a custom to go down to the Chitina area and if it was determined that that resource was down to the point where only subsistence would be allowed, those people would be taken care of under this section. I don't see that it is eliminating.

(Emphasis added).

In the House debate, Anderson attempted to assure Parr that residents of urban Fairbanks could be considered priority subsistence users. Contrary to the board's interpretation of the subsistence statutes, there is no indication that legislators understood the 1978 subsistence law to restrict subsistence use to either a rural or a community context. In fact, the House debate indicates that the 1978 subsistence law was necessary to protect subsistence uses as a priority use of Alaska's fish and game resources. This intent is clearly expressed by the preamble to the subsistence law:

> [I]t is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaskan residents. The legislature further finds that beneficial use of those resources by all state residents should be carefully monitored and regulated with as much input as possible from the affected

> users, so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained yield principle.

(Emphasis added).

The legislative history indicates that the legislature intended to protect subsistence use, not limit it. The words "customary and traditional" serve as a guideline to recognize historical subsistence use by individuals, both native and non-native Alaskans. In addition, subsistence use is not strictly limited to rural communities. For these reasons, the board's interpretation of "customary and traditional" as a restrictive term conflicts squarely with the legislative intent.[13]

---

13. The board notes that the words "customary and traditional" in the 1978 subsistence law were taken from § 703 of HR 39, 95th Congress, 2nd Session (1978), which Congress passed in modified form in 1980 as the Alaska National Interests Land Conservation Act (ANILCA), Public Law No. 96-487, 16 U.S.C. § 3113. Therefore, the board argues that the words in the Alaska act should have the same meaning as the words in the federal act and limit subsistence uses to residents of rural Alaska. We reject this argument for several reasons. First, § 703 of HR 39 in its 1978 form did not contain the "rural Alaska residents" limitation now found in 16 U.S.C. § 3113. Second, the Alaska House floor debate reveals that Representative Anderson, the bill's floor manager, understood the 1978 subsistence law to allow the urban residents of Fairbanks to qualify as general subsistence users. Finally, in the preamble to the 1978 subsistence law, the Alaska Legislature expressed its intent to "recognize the needs, customs and traditions of Alaskan residents." While the legislature declared that beneficial use of fish and game resources "by

(Footnote Continued)

IV. THE BOARD'S ADOPTION AND APPLICATION OF 5 AAC 01.597

We now turn to the board's interpretation of the 1978 subsistence law. In December 1980, the board met to examine the uses of salmon in Cook Inlet and to determine which uses would qualify for the subsistence use priority. Tom Lonner, the director of the subsistence section of the Alaska Department of Fish and Game, presented the department's recommendations on the subsistence statute. He suggested that the board begin its analysis of customary and traditional uses with an assessment of user profiles and use patterns on a case by case basis. Lonner noted that such information was most lacking in the major Cook Inlet subsistence fishery because of the rapid growth of subsistence uses in recent years, and that obtaining such information would be expensive.

The board did not follow Lonner's suggested approach.[14] After the board heard extensive testimony on subsistence use, its chairman appointed a committee,[15]

(Footnote Continued)

all state residents" should be carefully monitored and regulated, it did not express an intention to limit subsistence uses to rural Alaska residents.

14. A board member, Nick Szabo, stated that the board's limited budget prevented implementation of a case by case approach.

15. The board stipulated in 1982 that it violated

(Footnote Continued)

consisting of board members and staff, to identify subsistence uses of salmon in Cook Inlet. The committee drafted ten criteria to identify subsistence uses and presented them to the board.

Lonner worked with the committee to develop the ten criteria and explained them to the board. He stated: "These tenets here are . . . based on . . . the evidence about four relatively self-contained communities. . . . If, however, you have individual applicants, . . . this might not suffice as a test." Therefore, the board was fully aware of the limitations of the proposed criteria.

At its March 1981 meeting, the board received further testimony on uses of Cook Inlet salmon from the area advisory committees and several individual witnesses. After deliberation, the board decided to apply all of the ten criteria "to determine which uses are customary and traditional and therefore are eligible for the subsistence priority." Only the fisheries associated with Tyonek, English Bay and Port Graham met all ten criteria.

In its findings of fact, the board applied the ten criteria to individuals such as Madison and Gjosund. In particular, the individuals failed to meet the second

---

(Footnote Continued)

AS 44.62.310-12 (public meeting provision) at its December 1980 meeting.

criterion: "A use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use."[16] The board found:

> Although some users have shown the existence of a community of interest (e.g., the Kenaitze Tribe and the Kachemak Bay Subsistence Group), these persons either are too widely dispersed or are too heterogeneous to be considered an identifiable community, subcommunity or group. On the evidence presented, the Board cannot conclude either that activities are conducted in common or that sharing or other group interchange occurs in relation to the resource.

In other words, an individual subsistence user (such as Madison or Gjesund) would not qualify for a subsistence use priority from the board unless he were part of an identifiable subsistence community or group.[17] Under the

---

16. See 5 AAC 01.597 set out in n. 8 above.

17. In contrast, the Commercial Fisheries Entry Commission issues commercial fishing permits on an individual basis. See AS 16.43.250. We do not, however, read the words "customary and traditional" as a grant of authority to the Department of Fish and Game and the Board of Fisheries to impose a "grandfather" rights system with respect to subsistence users. Imposing an equitable system of grandfather rights is an extremely complicated task, as Alaska's experience with such a system in the commercial salmon and herring fisheries has demonstrated. See AS 16.43.010-990 and the numerous, and ever increasing, judicial decisions interpreting this act noted in the annotations. Such a system would also be extremely controversial. It is preposterous to suppose that the legislature intended to create such a system merely by using

(Footnote Continued)

board's regulation, many individual users who have historically depended on subsistence fishing are eliminated from subsistence use at the outset.

The board's regulation, 5 AAC 01.597, is inconsistent with the legislative intent to provide guidelines for the protection of subsistence fishing. The regulation exceeds the authority delegated to the board because it operates too restrictively in its initial differentiation between subsistence and non-subsistence uses. Under a statute designed to protect subsistence uses, the board has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect.

The decision of the two trial courts that 5 AAC 01.597 is consistent with AS 16.05.251(b) and AS 16.05.940(22) and (23) is REVERSED.

(Footnote Continued)

the words "customary and traditional" in the definition of subsistence uses, with no more notice or guidance than is inherent in those words.

BRIEFS SUBMITTED BY ATTORNEYS

IN THE SUPREME COURT CASE

MADISON VS. ALASKA DEPARTMENT OF FISH AND GAME

IN THE SUPREME COURT FOR THE STATE OF ALASKA

GENE MADISON, LUCY CASEY, KEN McGAHAN, SR., ANDY JOHNSON, MARGIE KIVI, J.W. WARE, DICK FRANCIS, DAN GROLESKE, KEN JORDON and SHIRLEY DEVAULT, Appellant, v. ALASKA DEPARTMENT OF FISH AND GAME, and ALASKA BOARD OF FISHERIES, Appellees, and THE ALASKA FEDERATION OF NATIVES, Intervenor.	Supreme Court Nos. 6824/7181 Superior Court No. 3KN-81-542 Civil APPEALED FROM THE SUPERIOR COURT, THIRD JUDICIAL DISTRICT, HONORABLE VICTOR D. CARLSON
ALASKA DEPARTMENT OF FISH AND GAME, RONALD SKOOG, ALASKA BOARD OF FISHERIES Appellants, v. LOUIS GJOSUND, DORA MULCH, and KACHEMAK BAY SUBSISTENCY GROUP, INC., Cross-Appellees.	Supreme Court No. 7410 Superior Court Nos. 3HO-80-92 Civil 3HO-77-11014 Homer APPEALED FROM THE SUPERIOR COURT, THIRD JUDICIAL DISTRICT, HONORABLE PAUL B. JONES

BRIEF OF APPELLEES/APPELLANTS

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: _____
Larri Irene Spengler
Assistant Attorney General
Department of Law
Pouch K, Capitol Building
Juneau, Alaska 99811

Filed in the Supreme Court in Anchorage of the State of Alaska this 27th day of January, 1984.

_____
ROBERT B. BACON
Clerk of Court

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES. iii

AUTHORITIES PRINCIPALLY RELIED UPON vii

I. JURISDICTIONAL STATEMENT 1

II. ISSUES PRESENTED FOR REVIEW. 1

III. STATEMENT OF THE CASE. 3

IV. COURSE OF PROCEEDINGS IN THE TRIAL COURT 15

V. ARGUMENT 17

A. Summary 17

B. The Criteria for Identifying "Subsistence Uses" of Cook Inlet Salmon Are Consistent with the Intent of the Subsistence Law, and Are Reasonable. 18

1. Standard of review 18

2. Intent to narrow definition. 20

3. Criteria consistent with intent, and reasonable 26

4. Conclusion 32

C. The Board's Violation of the Public Meetings Law while Developing the Criteria in December 1980 Is Moot. 33

D. The Board May Use the Criteria to Identify "Subsistence Uses" of Cook Inlet Salmon, Regardless of the Biological Status of the Target Stocks 36

E. The Classifications Described by and Resulting from the Application of the Criteria Do Not Violate Equal Protection. 39

1. Equal protection standards 39

2. The classifications described by the criteria 40

Page

3. The classifications resulting from the application of the criteria. 41

F. The Board Is Authorized to Establish "Personal Use Fishing" as a Category for Regulatory Purposes. 44

G. The Board Has Not Violated Plaintiffs' Substantive Due Process Rights by Not Authorizing "Subsistence Fishing" Opportunities for Them, but instead Authorizing "Personal Use Fishing". 46

VI. CONCLUSION 52

TABLE OF AUTHORITES

Cases — Page

Borkowski v. Snowden, 665 P.2d 22 (Alaska 1983) 6

City and Borough of Juneau v. Thibodeau, 595 P.2d 626 (Alaska 1979) 41-42

Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980) 40, 41

Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972) 35

Green v. State, 462 P.2d 994 (Alaska 1969). 46

Hood v. State, Workmen's Compensation Board, 574 P.2d 811 (Alaska 1978). 27

Jefferson v. Asplund, 458 P.2d 995 (Alaska 1969). 36

Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971) 19, 20, 25, 26, 44, 46

Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 897 (Alaska 1981) 4, 41, 47, 50-51

Ketchikan Gateway Borough, Alaska v. Breed, 639 P.2d 995 (Alaska 1981). 40

Pan American Petroleum Corporation v. Shell Oil Company, 455 P.2d 12 (Alaska 1969). 25

Rose v. Commercial Fisheries Entry Commission, 647 P.2d 154 (Alaska 1982). 40, 41

State v. Aleut Corporation, 541 P.2d 730 (Alaska 1975). . . . 19

State v. Bundrant, 546 P.2d 530 (Alaska 1976) 23

State v. Tanana Valley Sportsmen's Association, Inc., 583 P.2d 854 (Alaska 1978). 41

University of Alaska v. Geistauts, 666 P.2d 424 (Alaska 1983) 34

Weaver Brothers, Inc., v. Alaska Transportation Commission, 588 P.2d 819 (Alaska 1978). 27

Constitution — Page

Alaska Const. art. I, § 1 39

Alaska Const. art. I, § 7 46

Alaska Const. art. VIII, § 4. 38

Alaska Const. art. VIII, § 17 40

Federal Statutes

Pub. L. No. 96-487 (1980) 30

16 U.S.C. § 3111-3136 30

16 U.S.C. § 3113. 30

Sec. 703, H.R. 39, 95th Cong., 2nd Sess. (1978) 30, 31

State Statutes

Ch. 131, SLA 1960 . . . . . 3, 20

Ch. 199, SLA 1975 24

Ch. 269, SLA 1976 24

Ch. 151, SLA 1978 5

AS 16.05.221(a) 3, 50

AS 16.05.241. 47

AS 16.05.251(a) 2, 3, 6, 13, 14, 37, 39, 45, 50, 52

AS 16.05.251(a)(2). 3

AS 16.05.251(a)(3). 3

AS 16.05.251(a)(4). 3

AS 16.05.251(a)(6). 44

AS 16.05.251(b) 2, 6, 12, 22, 37, 38, 39, 48, 50

AS 16.05.257. 23

State Statutes (cont.) — Page

AS 16.05.260. 8

AS 16.05.940(5) 3

AS 16.05.940(21). 3

AS 16.05.940(22). 6, 19, 20

AS 16.05.940(23). 6, 20

AS 22.05.010. 1

AS 44.62.310. 33

AS 44.62.310(f) 34

State Regulations

5 AAC 01.580(a) 42

5 AAC 01.597 . . . . . 1, 10, 13, 15, 17, 19, 29, 41, 42

5 AAC 01.597(a)(3). 39, 50

5 AAC 21.363. 3

5 AAC 77.001. . . . . 14, 44, 49

5 AAC 77.001(a) 45

5 AAC 77.001(b) 14, 45

5 AAC 77.015. 47

5 AAC 77.530(a) 15, 50

5 AAC 77.546. . . . . 14, 36, 47, 50

5 AAC 77.547. . . . . 14, 36, 47, 50

5 AAC 99.010. 15

5 AAC 99.010(b) 15

State Rules

Alaska Appellate Rule 202 1

Federal Legislative Materials — Page

H.R. Rep. No. 1045, 95th Cong., 2nd Sess. (1978). 31

H.R. Rep. No. 97, 96th Cong., 1st Sess. (1979). 31

S. Rep. No. 413, 96th Cong., 1st Sess. (1979) 31

126 Cong. Rec. H10546 (daily ed., Nov. 12, 1980) (statement of Rep. Udall) 32

State Legislative Materials

Recording of Proceedings, 9th Leg., 2nd Sess., tape 130H, index nos. 527-1276 (1976) 24

House Journal, 10th Leg., 2nd Sess. 1155 (1978) 23

Other Authorities

2A C. Sands, Sutherland Statutory Construction, §48.13 (4th ed. rev. 1978) 21

Webster's New Collegiate Dictionary (1981) 23

D. Kelso, "Legal Issues in Federal Protection for Subsistence on Proposed National Interest Lands," (unpublished) (1976), reprinted in H.R. Rep. No. 16, 95th Cong., 1st Sess. 273 (1977) 33

AUTHORITIES PRINCIPALLY RELIED UPON

State Constitutional Provisions

Alaska Const. art. I, § 1, cl. 2 (in pertinent part)

> that all persons are equal and entitled to equal rights, opportunities, and protection under the law; ...

Alaska Const. art. I, § 7 (in pertinent part)

> No person shall be deprived of life, liberty, or property, without due process of law.

Alaska Const. art. VIII, § 17

> UNIFORM APPLICATION. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Federal Statutes

16 U.S.C. § 3113

> DEFINITIONS. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term --
>
> (1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and
>
> (2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses --

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

Sec. 703, H.R. 39, 95th Cong., 2d. Sess. (1978) (the version of H.R. 39 passed by the House of Representatives in 1978).

As used in this Act, the term "subsistence uses" means the noncommercial (except as provided under paragraph (2)) customary and traditional utilization within the State of wild, renewable resources for --

(1) direct personal or family use for food, shelter, fuel, clothing, tools, or transportation;

(2) the making and selling of handicraft articles (including clothing), but only out of nonedible byproducts of fish and wildlife taken for such personal or family use; or

(3) customary trade, barter, or sharing among subsistence users for personal or family use.

State Statutes

AS 16.05.221(a)

For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

AS 16.05.251

REGULATIONS OF THE BOARD OF FISHERIES. (a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

(3) setting quotas and bag limits on the taking of fish;

(4) establishing the means and methods employed in the pursuit, capture and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes;

(7) engaging in biological research, watershed and habitat improvement, fish management, protection, propagation and stocking;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote fish research, management, education and information and to train persons for fish management;

(10) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(11) establishing seasons, areas, quota and methods of harvest for aquatic plants;

(12) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

Sec. 4, ch. 131, SLA 1960 (formerly AS 16.05.940(17))

"Subsistence fishing": the taking, fishing for or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means as defined by the Board.

AS 16.05.940(22) (prior to renumbering, AS 16.05.940(17))

"subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, line line, or other means defined by the Board of Fisheries.

AS 16.05.940(23) (prior to renumbering, AS 16.05.940(26))

"subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption; for the

purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living with the household on the permanent basis.

AS 44.62.310(a)

All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

AS 44.62.310(f)

Action taken contrary to this section is void.

State Regulations

5 AAC 01.597

CHARACTERISTICS OF SUBSISTENCE FISHERIES. (a) The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:

(1) a long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance;

(2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;

(3) a use pattern associated with specific stocks and seasons;

(4) a use pattern based on the most efficient and productive gear and economical use of time, energy and money;

(5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;

(6) a use pattern occurring in locations with easiest and most direct access to the resources;

(7) a use pattern which includes a history of traditional modes of handling, preparing and storing the product without precluding recent technological advances;

(8) a use pattern which includes the intergenerational transmission of activities and skills;

(9) a use pattern in which the effort and products are distributed on a community and family basis including trade, bartering, sharing and gift-giving; and

(10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.

(b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.

(c) For purposes of this section, a "community" is generally considered to be several households of full-time residents who all reside in a specific geographic area because of common interests.

5 AAC 77.001(a)

The Board of Fisheries finds that

(1) before the enactment of the state's subsistence priority law in ch. 151, SLA 1978, an individual could fulfill his personal use needs for fish under subsistence fishing regulations;

(2) the state's subsistence priority law changed the definition of subsistence in a manner that now precludes some individuals from participating in customary and traditional subsistence fisheries and efficiently harvesting fish for their personal use;

(3) there presently are areas of the state with harvestable surpluses of fish in excess of both spawning escapement needs and present levels of subsistence, commercial and sport uses; and

(4) it is necessary to establish a new fishery classified as "personal use" because

(A) since the sale of fish is not appropriate or permissible, this fishery cannot be classified as commercial;

(B) since the use is not a rural customary and traditional use this fishery cannot be classified as subsistence; and

(C) since the gear for this fishery is often different from that historically associated with sport fishing, this fishery should not be classified as a sport fishery, to prevent confusion among the public.

5 AAC 77.001(b)

It is the intent of the board that the taking of fish under 5 AAC 77 will be allowed when that taking does not jeopardize the sustained yield of a resource and either does not negatively impact an existing resource use or is in the broad public interest.

5 AAC 99.010

JOINT BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES. (a) In applying a subsistence priority, the Board of Fisheries and the Board of Game

will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

(1) each board will assess the biological status of fish or game resources and determine whether a surplus may be harvested during a regulatory year consistent with the conservation and development of the resources on the sustained yield principle and compatible with the public interest;

(2) each board will identify subsistence uses of fish or game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing.

(b) Customary and traditional subsistence uses by rural Alaska residents will be identified by use of the following criteria:

(1) a long-term consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;

(5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a

definable community of persons, including customary trade, barter, sharing, and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

(c) After identifying subsistence uses based upon the criteria set out in (b) of this section, each board will determine the approximate amount of fish or game necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses.

(d) Each board will adopt regulations that provide an opportunity for the subsistence taking of fish or game resources in amounts sufficient to provide for the customary and traditional uses identified in (b) of this section, and consistent with sound conservation and management practices. In no instance may the subsistence taking jeopardize or interfere with the maintenance of a specific fish stock or game population on a sustained-yield basis.

(e) Each board will, in its discretion, adopt regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish or game resources on a sustained yield basis, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in (d) of this section.

(f) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for

non-subsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained-yield basis.

I. JURISDICTIONAL STATEMENT

This is a consolidated appeal from two third judicial district superior court cases. The final judgments in Madison, et al. v. Alaska Department of Fish and Game and Alaska Board of Fisheries, 3KN-81-542 Civil (hereinafter, "Madison"), were entered on March 5, 1982 and January 26, 1983, by Judge Victor D. Carlson. The final judgment in Gjosund, et al., v. Alaska Department of Fish and Game, et al., 3HO-80-92 Civil and 3HO-77-11014 Homer (hereinafter, "Gjosund"), was entered on November 19, 1982, by Judge Paul B. Jones. This court has jurisdiction to consider this consolidated appeal pursuant to Alaska Appellate Rule 202 and AS 22.05.010.

II. ISSUES PRESENTED FOR REVIEW

The state intends to address the issues raised in this appeal in the context of the following questions: 1/

1. In enacting the subsistence law, did the legislature intend "subsistence fishing" to mean fishing by individuals who reside in rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area, rather than

---

1/ Plaintiffs list seven questions in their statement of issues, but the briefing in their argument sections does not entirely adhere to those seven questions, nor to the argument headings. The state submits that its list of questions subsumes all issues plaintiffs raise and brief from their appeal in Madison, as well as the issue that the state is appealling in Gjosund.

all fishing for personal use?

2. Is the Board of Fisheries' determination that "subsistence uses" of salmon in Cook Inlet can be identified on a community basis by the application of the ten criteria in 5 AAC 01.597 consistent with the intent of the subsistence law, and reasonable?

3. Did the promulgation in December 1981 of 5 AAC 01.597, codifying the ten criteria used to identify "subsistence uses" of salmon in Cook Inlet moot a violation of the public meetings law which occurred when the criteria were first formulated in December 1980?

4. Is the Board of Fisheries authorized by AS 16.05.-251(b) to identify "subsistence uses" of salmon in Cook Inlet in order that only fishing for those uses will be provided for as "subsistence fishing," regardless of the biological status of the target stocks?

5. Are the classifications determined by the ten criteria of individuals eligible and individuals ineligible to participate in "subsistence fishing" in Cook Inlet a reasonable means to accomplish a legitimate state purpose?

6. Is the Board of Fisheries authorized by AS 16.05.-251(a) to established "personal use fishing" as a category for regulatory purposes?

7. Has the Board of Fisheries treated plaintiffs fairly by not authorizing "subsistence fishing" opportunities for them, but instead authorizing "personal use fishing"?

III. STATEMENT OF THE CASE

This appeal in its most general perspective is about fishing. More particularly, about the different kinds of fishing that occur in the waters and tributaries of Cook Inlet. "Commercial fishing" is defined as fishing for profit; "sport fishing" is defined as taking fish for personal use, primarily by hook and line. AS 16.05.940(5) and (21). Before 1978, "subsistence fishing" was defined as taking fish for personal use, with, among other gear, gill nets. Sec. 4, ch. 131, SLA 1960. All three kinds of fishing occur in Cook Inlet. These lawsuits arose because the legislature in 1978 narrowed the definition of "subsistence fishing."

The Alaska Board of Fisheries ("board") is established in AS 16.05.221(a) to promote the "conservation and development" of state fisheries. Before 1978, the board had the discretion to determine whether and how much of a fish stock should be allocated to various uses. In AS 16.05.251(a), the legislature delegated to the board the authority to adopt regulations "the board considers advisable" on twelve different subjects, including establishing seasons, areas, quotas and bag limits, and methods and means. AS 16.05.251(a)(2), (3) and (4).

Under its discretionary authorities, in 1977 the board adopted a salmon management plan for upper Cook Inlet to address the annual allocation controversy involving sport fishing and commercial fishing. The plan, now 5 AAC 21.363, reflects the

board's determination that salmon stocks which move through Cook Inlet between July 1 and August 15 would be managed primarily for commercial uses, and those moving through the inlet before and after those dates would be managed primarily for sport uses. See Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 897 (Alaska 1981).

There was no need to address "subsistence fishing" in Cook Inlet, authorized as fishing with set gill nets for personal use, in the plan, because it was viewed as a minimal presence. Between 1971 and 1977, there were an average of only 87 "subsistence fishing" permits issued annually, with an average yearly total catch for the fishery for that period of 405 salmon. (G File 4, at 21) 2/ The area open to the "subsistence fishing" included most of the east side beaches in the northern district and central district (near Kenai) of Cook Inlet and the north shore of Kachemak Bay and the Homer spit in the southern district, all of which are relatively accessible by road. (G File 4, at 24, 29, and 70) 3/

Between 1978 and 1980, "subsistence fishing" experienced substantial growth in Cook Inlet. This was partly due to commercial fishermen obtaining "subsistence" permits after

---

2/ The Madison and Gjosund records on appeal will be identified by "M" and "G".

3/ For a map of the Cook Inlet fishing districts, see M File 3, Exhibit S.

August 15, when commercial fishing was precluded under the upper Cook Inlet management plan, and partly due to increased publicity about the availability of "subsistence fishing." (G File 4, at 19 and 22) The number of permits rose in 19[illegible] to 323, and in 1979 it jumped to 1,161. In 1980, permits began to be issued on a household, rather than individual, basis, but still the number of permits increased to 1,331. The amount of salmon harvested by "subsistence fishing" increased as well, to 3,735 fish in 1978, 9,923 fish in 1979, and 14,775 fish in 1980. (G File 4, at 21)

Over the same period, the board instituted restrictions on "subsistence fishing." The east side beaches in the northern and central districts were closed to "subsistence fishing," except for a small open section, and in the southern district, the north shore of Kachemak Bay and the Homer spit were closed. (G File 4, at 25, 30 and 70) Beginning in 1980, permits were issued on a household, rather than an individual, basis, and the limits were modified from 50 fish per permit to 25 fish for head of the household plus 10 additional fish for each dependent. (G File 4, at 26, 27 and 70) The board also reduced the gear length in all three districts from the previously authorized 50 fathom total to 20 fathoms, and finally to 10 fathoms. (G File 4, at 26, 27 and 70)

In the meanwhile, the Alaska legislature in 1978 had enacted ch. 151, SLA 1978, the subsistence law, which made important changes in the statutes authorizing the board's activities, including the definitional change which brought about

these lawsuits. The legislature amended the definition of "subsistence fishing" so that it no longer meant the taking of fish for personal use with, among other gear, gill nets. Under the new definition, "subsistence fishing" means the taking of fish for "subsistence uses," with, among other gear, gill nets. AS 16.05.940(22). A definition of "subsistence uses" was established, which is more restrictive than simply "personal use."

> '[S]ubsistence uses' means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption [for specified purposes] ...

AS 16.05.940(33). (Emphasis added.) Thus, under the statutory definitions, simply fishing by gill net for personal use is no longer "subsistence fishing." Rather, "subsistence fishing" would be taking fish with gill nets for "customary and traditional uses."

The subsistence law also removed the board's discretion to determine whether or not to allocate salmon to "subsistence fishing." In AS 16.05.251(b), the legislature mandated that the board authorize "subsistence uses," unless sustained yield would be jeopardized, and also mandated that if a relative resource shortage occurred, "subsistence uses" would be the last to be restricted. (The board retains its discretion under AS 16.05.-251(a) to make allocation decisions regarding other fishing activities.)

Although the subsistence law was enacted in 1978, the board did not modify its authorization of "subsistence fishing" in Cook Inlet for the 1979 or 1980 seasons in response to the

law. As noted earlier, the board had promulgated restrictions, but they were in response to the growth of what was still being called "subsistence fishing" in Cook Inlet, rather than in response to the new definitions provided by the subsistence law.

During the summer of 1980, three lawsuits were directed at the board's actions in Cook Inlet, all alleging noncompliance with the subsistence law. 4/ (See, G File 3, Exhibit A)

Realizing that the "subsistence fishing" that it was authorizing in Cook Inlet was still simply taking fish with set gill nets for personal use, under the old statutory definition, in December 1980 the board began examining the uses of salmon in Cook Inlet, so that in the future it would authorize as "subsistence fishing" only that subset of fishing for personal use that involved "customary and traditional uses." It considered the report of the subsistence section (now the division of subsistence) of the Alaska Department of Fish and Game on a year long study on Cook Inlet, which detailed the number of fish taken, number of people participating, trends, etc. (M File 2, Volume 3, at 1-43) 5/ It listened to the explanation of the results of a survey taken by the division of subsistence of Cook Inlet

---

4/ The three cases were Tyonek v. Alaska Board of Fisheries, 3AN-80-3073, Gjosund v. Alaska Department of Fish and Game, 3HO-80-92 Civil (the first phase of the Gjosund case on appeal here) and Francis v. Alaska Department of Fish and Game, 3KN-80-546 Civil.

5/ Hereinafter, the board transcripts contained in M File 2 will be designated by volume and page number alone.

"subsistence" permit holders. Volume 3, at 106-121. It was given a history of territorial and state "subsistence" regulations in Cook Inlet by the Department of Fish and Game. Volume 7, at 7-24. It also heard a presentations on behalf of Native groups. 6/

The local advisory committees, which are established by the board under AS 16.05.260, were asked to report on the uses of resources in their areas. 7/ Additionally, the board heard testimony on uses of resources in Cook Inlet from at least 18 other individuals, mostly from small and large communities and isolated areas on the shores of Cook Inlet, but from areas farther away as well. 8/

6/ There was a report by the North Pacific Rim (a nonprofit Native corporation) subsistence coordinator, explaining a survey which she had conducted of English Bay and Port Graham's use of resources, Volume 7, at 104-115, and by the president and chief of the Kenaitze Indians, accompanied by his resource and research person, who also presented the results of their information gathering activity on the use of resources by the Kenaitze Indians. Volume 7, at 171-201.

7/ Reports were received from the Anchorage committee, Volume 5, at 66-92, the Seward committee, Volume 5, at 93-107, the Homer committee, Volume 7, at 34-64, the Central Peninsula committee, Volume 7, at 70-78, and the Port Graham committee, Volume 7, at 87-93.

8/ The board heard testimony from individuals from North Kenai, Volume 4, at 74-99, from the Kenai Peninsula Fishermen's Cooperative, Volume 5, at 2-26, from the Cook Inlet Drift Association, Volume 5, at 26-32, from Tyonek (three witnesses), Volume 5, at 50-66, from the Isaac Walton League and Sports and Game Preservation Association, Volume 6, at 66-81, from the Parks Highway area, Volume 7, at 2-7, from a commercial fisherman from Bristol Bay, Volume 7, at 64-69, from English Bay, Volume 7, at 93-104, from the Homer Kachemak Bay Subsistence Group, Volume 7,

Thus, the board received a mass of information about the uses of salmon in Cook Inlet. The task remained to identify which uses were "customary and traditional uses" that must be provided for under the subsistence law. In order to facilitate that identification, the chairman of the board appointed a committee, which consisted of board members and staff of the Department of Fish and Game. Its meetings were announced at the board meetings, and were held during recesses in the board meetings. Volume 3, at 122-126.

This committee drafted ten criteria which could be used to identify "subsistence uses" of salmon in Cook Inlet, and presented them to the board for full review and consideration. Volume 11, at 2. The board generally concurred that the ten criteria restated in a manageable framework what had been discussed in the board meeting during the preceding two weeks. Volume 11, at 5. The board analyzed the proposed ten criteria in detail, and concluded that they formed a common thread which could be used to identify "customary and traditional uses" of salmon in Cook Inlet. Volume 10, at 8-54. 9/ The ten criteria

---

at 115-155, from the west side of Cook Inlet, Volume 7, at 155-162, from Seldovia, Volume 7, at 201-211, from a Cook Inlet commercial fisherman, Volume 7, at 211-214, from Anchorage, Volume 7, at 224-228, from a commercial fisherman, Volume 7, at 228-237, from Resurrection Bay, Volume 8, at 9-29, and from Kenai, Volume 8, at 58-76.

9/ The contents of Volume 11 precede the content of Volume 10 chronologically; this is clear because both contain precedings from December 19, 1980, and Volume 10 begins at 7:00 p.m., while

were set out in the findings and policy regarding subsistence uses of Cook Inlet salmon. (M File 3, Exhibit H)

The criteria included a long term pattern of resource use by an identifiable community. Such uses targeted on specific stocks relatively close and accessible to the community. Efficient and economical methods of harvest were used, as well as traditional modes of preparing and storing the harvest. Skills were passed from one generation to the next, and sharing of the harvest product occurred on a community basis. Finally, there was a reliance on a wide range of resources. See 5 AAC 01.597.

The criteria have the effect of restricting the identification of "subsistence uses" of Cook Inlet stocks to fishing with set gill nets for personal use by residents of the rural communities around Cook Inlet which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the community. (See unchallenged finding of fact entered in both Madison (M File 1, at 56, ¶ 10), and Gjosund (G File 2, at 258, ¶ 18).) This determination was certainly not agreeable to some witnesses who had testified to the board on behalf of sportsmen's groups. These witnesses argued that "subsistence uses" should encompass all personal use of the resource, the ultimate "use" being

---

Volume 11 ends with a statement that the meeting would reconvene after dinner at 7:00 p.m. Volume 10, at 1, and Volume 11, at 20.

consuming the fish. 10/

In the spring 1981 meeting, further testimony on uses of salmon in Cook Inlet was received from the Cook Inlet area advisory committees. 11/ Much of it favored the ten criteria, although the view of the estimated 800 people who attended the Anchorage advisory committee meeting was that the term "subsistence uses" should apply to any personal consumption of noncommercially caught fish.

Seven witnesses were called by board members. Two represented political and sportsmen's groups, which advocated the view that all personal use of fish was "subsistence use." 12/ Other witnesses, some representing a Native group and a commercial fishing group, spoke directly to the ten criteria, and two

---

10/ This was advocated in the December 1980 meeting by a representative of the Isaac Walton League and the Sports and Game Preservation Association, Volume 6, at 66-81, and by the Isaac Walton League, Volume 14, at 50-78, the Sports and Game Preservation Association, Volume 14, at 78-94, and the Alaska Sports Council, Volume 14, at 94-106.

11/ Advisory committees testifying were from Seward, Volume 20, at 102-110, mentioning the ten criteria, from English Bay and Port Graham, Volume 20, at 110-115, praising the ten criteria, from Homer, Volume 20, at 115-129, employing the ten criteria in its analysis, from the Matanuska Valley, Volume 20, at 129-133, from the Central Peninsula, Volume 20, at 134-138, from Anchorage, Volume 20, at 138-151, and from Kenai/Soldotna, Volume 21, at 230-232.

12/ Testifying were Dale Bondurant, from Alaskans for Equal Fishing and Hunting, Volume 20, at 163-168, and Sam McDowell, from the Isaac Walton League, and the Alaska Fisheries Resource Committee, Volume 20, at 182-191.

of the witnesses praised the criteria and urged their use by the board. 13/ Additionally, extensive written comments were received, and a long period of time was allotted for the board to review those. Volume 21, at 315.

After those deliberations, the board again embraced the criteria as a mechanism to identify "subsistence uses" in Cook Inlet. Volume 22, at 318-334 and Volume 29, at 6-16. The final wording was adopted on April 6, 1981. (M File 3, Exhibit I)

At the spring 1981 meeting, the board applied the ten criteria to the uses of salmon in Cook Inlet, and concluded that the uses in Tyonek, English Bay, and Port Graham were "customary and traditional uses." The board also concluded that, on the evidence before it, no communities on the Kenai Peninsula (other than English Bay and Port Graham) satisfied the criteria. The board developed findings of fact regarding subsistence fishing in Cook Inlet, reflecting those determinations. (M File 3, Exhibit L)

The board was not required by AS 16.05.251(b) to authorize the personal use gill net fishing which had been previously authorized as "subsistence fishing" on the Kenai Peninsula,

---

13/ Testifying were Chief Alex and Dr. Elizabeth Shadura, of the Kenaitze Indians, Volume 20, at 169-181, Chuck Robinson, on behalf of the Kenaitze Indians, speaking to the ten criteria, Volume 21, at 277-314, Don Mitchell, speaking on his own behalf, Volume 20, at 191-201; and Volume 21, at 202-228, urging the board to ratify the ten criteria, and Rodger Painter, Executive Director of the United Fishermen of Alaska, Volume 20, at 154-159, speaking approvingly of the ten criteria.

since "customary and traditional uses" had not been evidenced there. The board did not authorize under its discretionary powers contained in AS 16.05.251(a) any personal use set gill net fishing on the Kenai Peninsula for the 1981 season.

During the summer of 1981, the Gjosund plaintiffs filed a "petition" in the superior court in Homer, and the Madison plaintiffs filed a complaint in the superior court in Kenai. (G File 2, at 1-9 and M File 1, at 1-5) Both lawsuits challenged the validity of the ten criteria, alleging that they were inconsistent with the intent of the subsistence law. Also, both lawsuits alleged that there had been procedural irregularities in the adoption of the ten criteria, and that the board's actions had violated plaintiffs' due process and equal protection rights. Gjosund additionally asked that the board be held in contempt. The Alaska Federation of Natives ("AFN") intervened as a party in Madison. 14/

In December 1981, the validity of the ten criteria was upheld in Madison, with the granting of motions for partial summary judgment filed by the state and AFN on that claim. (M File 1, at 45-49) The ten criteria were then codified into the Alaska Administrative Code after the board adopted them again at its December 1981 meeting. 5 AAC 01.597.

In March 1982, the validity of the ten criteria as a

14/ AFN's motion to intervene and the order granting the motion are not a part of the record on appeal.

mechanism for identifying subsistence uses in a manner intended by the subsistence law was also upheld in Gjosund. (G File 2, at 221-245) However, Gjosund inexplicably further concluded that the board could not apply the criteria to identify what personal use set gill net fishing should be authorized as "subsis ce fishing," unless it was necessary to do so because of the biological status of the target fish stock.

At the spring 1982 meeting, the board established a new category of fishing, "personal use fishing," to accommodate those activities which had formerly been termed "subsistence fishing," but which could no longer be so designated since the subsistence law had narrowed the definition to only those uses which were "customary and traditional." 5 AAC 77.001. The board specified that "personal use fishing" would not be authorized if sustained yield would be jeopardized, but other than that safeguard, maintained the flexibility to authorize "personal use fishing" whenever it would be "in the broad public interest." 5 AAC 77.001(b). Thus, "personal use fishing" joined "commercial fishing" and "sport fishing" as activities which can be regulated by the board in its discretion under AS 16.05.251(a).

At that same meeting, the board then authorized "personal use fishing" on the Kenai Peninsula for the 1982 season. A sockeye salmon fishery in June was established in the central district (near Kenai), 5 AAC 77.547, and a fall coho fishery was established in the southern district (near Homer), 5AAC 77.546, though the latter was superceded by the so-called "subsistence

fishing" authorized by the court in Gjosund. The harvest limits imposed on "personal use fishing" in these two locations were identical to the "subsistence fishing" limits previously in effect for those areas. 5 AAC 77.530(a).

In the spring of 1982, the board, together with the Board of Game, jointly adopted a procedural regulation which describes how "subsistence uses" will be identified and provided for under the subsistence law. 5 AAC 99.010. The joint regulation contains eight criteria which are to be used to identify "customary and traditional subsistence uses" throughout the state, and which are very similar to the ten criteria at issue here. 5 AAC 99.010(b).

In August 1982, the court in Madison upheld the authority of the board to establish and authorize "personal use fishing," and determined that the authorization of "personal use fishing" in June on the coho salmon in the central district of Cook Inlet was reasonable and fair, despite the fact that plaintiffs would have preferred a fall coho fishery. The court also refused to second-guess the board's determination that none of the communities on the Kenai Peninsula met the ten criteria. Instead, it remanded that claim to the board with instructions to consider any properly submitted proposals to authorize "subsistence fishing" under the ten criteria contained in 5 AAC 01.597. (M File 4, at 293-295; M File 6, at 361-369)

IV. COURSE OF PROCEEDINGS IN THE TRIAL COURTS

The state adopts AFN's description of the proceedings

in Madison and of the consolidation. Although AFN's description of the proceedings in Gjosund is accurate, some further detail may be useful.

On May 29, 1981, the Gjosund plaintiffs filed a "petition" in the superior court in Homer, setting forth five claims for relief. (G File 2, at 1-9) A preliminary injunction was issued on August 4, 1981, which ordered the opening of a personal use set gillnet fishery in the southern district, which the court termed a "subsistence fishery." In December 1981, plaintiffs moved for summary judgment on all five counts, and the state moved for partial summary judgment on count I, and to dismiss count II as moot. Oral argument occurred on those motions on February 16, 1982. (G File 2, at 254)

On March 8, 1982, the court issued a decision resolving counts I and IV, and part of count II. (G File 2, at 221-253) On June 22, 1982, the parties stipulated to the disposition of counts III and V, and the remaining part of count II. (M File 6, at 328)

On November 19, 1982, the court entered amended findings of fact and conclusions of law, and an amended final judgment, setting out the disposition of all the counts. (G File 2, at 254-261 and 265, ¶ 8; M File 6, at 328-330) The state was granted summary judgment on count I (the validity of the ten criteria). Plaintiffs were granted summary judgment on counts II (procedural aspects) and IV (the application of the ten criteria). The court refused to dismiss count II as moot, and counts

III (contempt) and V (subsumed by count IV) were dismissed according to the stipulation.

On December 13, 1982, the state filed a notice of appeal from the court's ruling on count IV. (G File 2, at 262)

V. ARGUMENT

A. Summary

The legislative history of the subsistence law clearly indicates that the legislature intended to narrow the definition of "subsistence fishing" to mean fishing by individuals who reside in rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area. To the extent that there is any question in that regard, the board's interpretation and implementation of the subsistence law, which is entitled to significant weight, resolve it.

In carrying out its delegated responsibilities under the subsistence law, the board determined that "subsistence uses" of salmon in Cook Inlet can be identified on a community basis by the application of ten criteria, and that determination is both consistent with the intent of the subsistence law and reasonable.

The promulgation by the board in December 1981 of 5 AAC 01.597, codifying the ten criteria used to identify "subsistence uses" of salmon in Cook Inlet, was a sufficiently new beginning to cure and moot a violation of the public meetings law which occurred when the criteria were first formulated in December 1980.

The board is authorized by the subsistence law to identify "subsistence uses" of salmon in Cook Inlet in order that only fishing for those uses will be provided for through "subsistence fishing," regardless of the biological status of the target stocks.

The classifications determined by the ten criteria of individuals eligible and individuals ineligible to participate in "subsistence fishing" in Cook Inlet are a reasonable means to accomplish the legitimate state purpose furthered by the subsistence law.

The board is authorized to establish "personal use fishing" as a category for regulatory purposes.

In not authorizing "subsistence fishing" opportunities for plaintiffs, but instead authorizing "personal use fishing" opportunities, the board has treated plaintiffs fairly.

B. The Criteria for Identifying "Subsistence Uses" of Cook Inlet Salmon Are Consistent with the Intent of the Subsistence Law, and Are Reasonable

1. Standard of review

Plaintiffs assert that the ten criteria which the board developed to identify "subsistence uses" of salmon in Cook Inlet are not consistent with the intent of the subsistence law. Plaintiffs' argument can be separated into two alternatives: 1) that the legislature did not intend the scope of what had been called "subsistence fishing" to be narrowed when it changed the definition of "subsistence fishing" and established the definition of "subsistence uses," or 2) that the legislature did intend

to narrow the scope, but that the board has not properly accomplished that result with the ten criteria.

The state contends that the 1978 amendments reflect a legislative intent to narrow the scope of "subsistence fishing," and that the method chosen by the board is both consistent with that intent and reasonable. The standard of review for each of the two questions is somewhat different.

There is no question that it is the court's job to construe statutes, and that the court is free to substitute its judgment for that of an administrative agency when reviewing a regulation which merely interprets a statute. However, it is also true that the court should give "consideration and respect" to the agency's construction, and substitute its judgment only if there are "weighty reasons" for doing so. Kelly v. Zamarello, 486 P.2d 906, 910-911 (Alaska 1971). Accordingly, this court should apply "the long-standing principle of statutory interpretation that special consideration will be given to the interpretations of the agency charged with administrating the statute," State v. Aleut Corporation, 541 P.2d 730, 737 n.15 (Alaska 1975), when determining whether the legislature intended to narrow the scope of fishing classified as "subsistence fishing" when it amended the definition of that term in AS 16.05.940(22).

However, assuming the legislature did intend a narrower meaning, the question is whether or not the ten criteria as established in 5 AAC 01.597 are "consistent with and reasonably necessary to carry out the purposes of the statutory provisions"

and are "reasonable and not arbitrary." Kelly v. Zamarello, supra, at 911. The court said:

> when a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, we should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute.

Id.

2. Intent to narrow definition

Before 1978, "subsistence fishing" was defined in terms of "personal use." Sec. 4, ch. 131, SLA 1960. Following the enactment of the subsistence law, it now is defined in terms of "subsistence uses," which in turn are defined as "the customary and traditional uses in Alaska of wild, renewable resources" for certain purposes. AS 16.05.940(22) and (23). Thus, "subsistence fishing" is now defined in terms of "customary and traditional uses," not just "personal use." On its face, it would seem that "subsistence fishing" now requires something other than merely catching fish to eat. If no change had been intended (as contended by plaintiffs), there would have been no need for the amendments.

The legislative history of the subsistence law supports this facial analysis and demonstrates that the legislature intended to narrow the scope of fishing which could be termed "subsistence fishing." In essence, the legislature determined that fishing for "subsistence uses" would include only fishing by

individuals who reside in rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area, and not merely the taking of fish for personal use.

For example, during the House debate on the bill that became the subsistence law, proposed Amendment No. 3 to the bill would have eliminated the qualifying words "customary and traditional" from the definition of "subsistence uses." (M File 3, Exhibit U, at 8) Representative Anderson explained that the two words were used "to put some guidelines around the uses of Alaska's ... resources." (Id. at 9) The remarks of Representative Anderson, floor manager for the bill, assume a special role in determining legislative intent. See 2A C. Sands, Sutherland Statutory Construction, § 48.13 (4th ed. rev. 1973).

The fear was that without those modifiers, the field of definition would be "wide open." (M File 3, Exhibit U, at 9) Representative Anderson further commented:

> The use of "customary and traditional" also is in recognition of a historical use of fish and game for food, shelter, fuel, clothing, tools, transportation, etc. This is not only in conformance with aboriginal uses, but also those that have come in, those people who have come in later. They have ... the non-native people in the State of Alaska have established customary and traditional use of Alaska's fish and game resources for subsistence purposes. And in order to give the Board of Fish and Game more clarification in the area, we have come up with the (inaudible) of "customary and traditional" rather than leaving that section wide open.

(Id. at 9-10) Representative Anderson certainly intended "customary and traditional" to encompass something narrower than all

personal use. By not adopting Amendment No. 3 (id. at 16), the legislature answered part of the question put by Representative Cotton:

> What is the difference between a sport fisherman who takes his fish home and eats it, and a subsistence fisherman who takes his fish home and eats it?

(Id. at 11) The answer is bound up in the historically significant role fish and game resources play in the social and economic life of certain rural areas of the state. In leaving the modifying terms "customary and traditional," the legislature showed that it intended something other than "personal use." 15/

A different provision of the bill requires the board in certain circumstances to distinguish among subsistence users, giving priority among them on the basis of customary and direct dependence upon the resource, local residency and availability of alternative resources. See AS 16.05.251(b). In discussing proposed Amendment No. 2, which eventually failed (id. at 7), but which would have deleted this requirement (id. at 1-2), Representative McKinnon asked what the difference was between those three criteria, and "subsistence uses" generally. (Id. at 4-5) Representative Anderson responded that in a very poor resource situation, sport and commercial fishing would be cut first, and

---

15/ Nor was it relying on gear type as the controlling definitional element. Representative Gruening, in the House debate, made it very clear that "there are two questions here," referring to "methods of taking" and "customary and traditional use." (M File 3, Exhibit U, at 12)

the:

> last people that you are going to cut off are the subsistence people who have the greatest reliance on the resource.

(Id. at 5) (Emphasis added.)

The answer to Representative McKinnon's question is thus that "subsistence uses" are not defined in terms of individual dependence on the resources. This is relevant only in certain circumstances. (See discussion in section D.) Instead, "subsistence uses" are associated with all those living in rural areas in which the social and economic life of the area is reliant upon fish and game resources. That conclusion is supported by the letter of intent accompanying the subsistence law, which notes: "Presently, research is not being specifically directed toward the subsistence hunting and fishing economy of the state." House Journal, 10th Leg., 2nd Sess. 1155 (1978). "Economy" is defined most pertinently as "the structure of economic life in a country, area, or period ... an economic system." Webster's New Collegiate Dictionary 375 (1981). It is clear that the legislature intended the importance of fish and game to the economy of an area to be within the scope of "subsistence uses."

When a statute involves the same subject matter as a subsequent, but approximately contemporaneous statute, the legislative history of the first is indicative of the legislative intent of the second. State v. Bundrant, 546 P.2d 530, 545 (Alaska 1976). The subsistence law was preceded by AS 16.05.257,

the statutory basis for subsistence hunting areas. Ch. 199, SLA 1975; amended ch. 269, SLA 1976. In amending that statute in 1976, the legislature indicated that "subsistence uses" should not be considered to exist throughout all Alaska. For example, it found "that traditional dependence on fish and game resources is a continuing and necessary way of life in many areas of the state and that the protection of subsistence usage of these resources is essential to the health, safety and general welfare of the citizens of the state in those areas." Sec. 1, ch. 269, SLA 1976. (Emphasis added.)

The House debate on subsistence hunting area amendments in 1976 also indicates that proponents of the bill contemplated a limit to geographical scope. For example, Representative Miller, the floor manager for the House debate, indicated that "subsistence uses" which occurred in a particular area should not be subordinated to "pressures from outside sportsmen like myself." Recording of proceedings, 9th Leg., 2nd Sess., tape 130 H, index nos. 527-1276 (1976). Representative Huntington, the original sponsor of the bill which became chapter 199, SLA 1975, expressed concern about outside hunting pressure on people "in the area where they live." Id. He noted:

> Now, the Nowitna River on the Yukon River above Ruby, 30 miles above Ruby, has been hunted for many years. It was one of the finest hunting rivers in the area, and it was destroyed by hunting, there is not doubt about that. The people were flown in from airplanes and they cut the moose down to practically zero in two-year's time.

Id.

In light of this legislative history, it appears clear that the legislature intended the 1978 amendments to narrow the scope of "subsistence fishing." To the extent that there is any remaining question in that regard, however, it is removed by the board's subsequent action interpreting and implementing the subsistence law. Since board determined that the legislature intended by the definitional change to narrow the scope of what would be called "subsistence fishing," this determination should be given "great deference":

> When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.

Pan American Petroleum Corporation v. Shell Oil Company, 455 P.2d 12, 22 (Alaska 1969).

Both Madison and Gjosund concluded that in in developing the ten criteria to identify "subsistence uses" of salmon in Cook Inlet and in focusing upon rural communities around Cook Inlet which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the community, the board is acting consistently with legislative intent. (M File 1, at 57, ¶ 4; G File 2, at 260, ¶ 6)

There are no "weighty reasons" to overturn the board's determination. See Kelly v. Zamarello, supra, at 910-911. The

decision the board made was that "customary and traditional uses" amounted to something more than simply eating fish, and its decision is consistent with the amendments which occurred in 1978. In light of the ample legislative history supporting the board's determination, the court need not overturn it under a substitution of judgment analysis.

3. Criteria consistent with intent, and reasonable

The job of identifying which uses of fish and game resources are "customary and traditional" has been delegated to the board within specific guidelines. In fact, the legislature intended the words "customary and traditional" to give "a better handle for the board to work for in defining the range of subsistence." (M File 3, Exhibit U, at 12) (Emphasis added.)

Since the legislature delegated authority to the board to carry out the task of further clarifying the definition of "subsistence uses," its actions in that regard should be reviewed for consistency with the purposes of the statute, and for reasonableness. Kelly v. Zamarello, supra, at 911. This clarification concerns "administrative expertise" as to a "complex subject matter," and in such cases, the court will not substitute its judgment for that of the agency, as explained in Borkowski v. Snowden, 665 P.2d 22, 25 (Alaska 1983). That case involved an interpretation of a regulation for which the substitution of judgment test was used. The meaning of the term "findings" was at issue, as it appeared in the phrase "written findings on each issue shall be issued to the respondent." Id. at 26. The

interpretation of the term "findings" takes no particular expertise, unlike the clarification of the term "customary and traditional" as it relates to uses of Alaska's fishery resources. The legislature intended in the subsistence law to narrow the purview of "subsistence fishing." However, the legislature had established the board to deal with just such complex subject matter, and the board was delegated the task of selecting a mechanism to accomplish the legislature's intent, within the guidelines provided. As discussed, in developing criteria that identify "subsistence uses" with rural communities around Cook Inlet with historic reliance on fishing and hunting activities, the board is acting consistently with the intent of the subsistence law.

In formulating the ten criteria challenged in this appeal, and applying them on a community basis, the board is also acting reasonably. Some evidence of that is found in the adoption by the board in conjunction with the Board of Game of a joint regulation which sets out the procedures for identifying subsistence on a statewide basis. This regulation contains eight criteria, very like the ten in question here. 5 AAC 99.010(b).

Where an "agency decision concerns 'administrative expertise as to either complex subject matter or fundamental policy formulation, deference should be given to an administrative determination if it has a reasonable basis in law and in fact'." Weaver Brothers, Inc. v. Alaska Transportation Commission, 588 P.2d 819, 821 (Alaska 1978). See also Hood v. State, Workmen's Compensation Board, 574 P.2d 811, 813 (Alaska 1978).

In this instance, the board decision clearly was based on its factual expertise, as well as being consistent with the law. Information 16/ presented to the board in December 1980 and

---

16/ That information is contained in the board record supporting the ten criteria in at least the following places:

1) long-term stability: Volume 4 at 84, 97; Volume 5 at 9, 47, 69-70, 85, 91-92; Volume 7 at 33, 53-54, 94, 130, 138, 139, 156, 160-162, 172; Volume 8 at 59-62, 75-76, 112, 113, 114-115, 116-117; Volume 10 at 18-19, 19-20, 32-35; Volume 12 at 77, 78, 81, 82; Volume 13 at 85-86; Volume 14 at 24-25, 31, 126-127; Volume 16 at 102-103; Volume 19 at 77, 78; Volume 20 at 103-104, 105, 108, 112, 115, 117-118, 123, 157, 170, 172-173; Volume 21 at 223-224, 278, 283-284, 296, 306; Volume 22 at 326;

2) community identification: Volume 1 at 70-71; Volume 5 at 22, 61-62, 85; Volume 7 at 33, 46-47, 64-65, 75, 87, 92, 100-101, 112-113, 115-116, 135-137, 144-146, 147, 154, 160-162, 179, 197; Volume 8 at 28, 59, 60, 75-76, 101-105, 107; Volume 12 at 79-80; Volume 13 at 86, 88; Volume 14 at 25-26, 27-28, 38-39, 114, 166, 168; Volume 19 at 77; Volume 20 at 158, 172, 177-198; Volume 21 at 203-205, 217-218, 220, 221, 225, 262-263, 267-268, 286, 288-289, 296, 301;

3) targeting on specific stocks: Volume 1 at 20-21, 33-37; Volume 7 at 19-20, 34-35, 36-37, 42-43, 44-45, 46-47, 57-58, 60, 63-64, 76, 87-89, 91, 96, 118, 141, 180-188, 228-229, Volume 8 at 59; Volume 12 at 29-30, 33-34, 96, 104; Volume 13 at 25-26, 32-38, 47; Volume 14 at 138, 217; Volume 18 at 269-273; Volume 21 at 234;

4) efficiency of harvest methods: Volume 3 at 41, 60, 92-93; Volume 4 at 85, 88; Volume 7 at 12, 34-35, 42-43, 46-47, 60, 76, 87-89, 92, 95-96, 96-98, 116, 121, 123-124, 180-188, 202; Volume 8 at 13, 14-15, 17; Volume 10 at 20-24; Volume 12 at 8, 31-32, 32-33, 92-96, 105; Volume 20 at 99, 104-105, 161-162, 196; Volume 21 at 236, 297;

5) proximity: Volume 3 at 40; Volume 4 at 79, 88-90; Volume 5 at 24-25, 75-76, 82, 84; Volume 7 at 42-43, 46-47, 49-50, 60, 77, 99-100, 101-102, 103, 105-106, 126, 147, 150, 158, 180; Volume 12 at 41; Volume 14 at 43-44, 182-183; Volume 20 at 104-105, 171; Volume 21 at 297;

6) access relatively good: Volume 4 at 79, 86; Volume 5 at

spring 1981, regarding the uses of salmon in Cook Inlet included evidence that "customary and traditional uses" could be distinguished from mere "personal use" by ten factors, which became the ten criteria of 5 AAC 01.597. 17/

The reasonableness of the board employing the ten criteria to identify communities 18/ in which "subsistence uses"

36, 41, 45, 76, 84; Volume 7 at 37, 39, 105, 126-127, 131, 132, 133, 213, 231-232; Volume 10 at 25; Volume 12 at 42, 44, 45-46, 52, 86; Volume 14 at 182-183; Volume 21 at 297.

7) relationship to historical methods of preparation: Volume 3 at 18, 21-22, 61; Volume 5 at 55-56, 59-61, 85, 91-92; Volume 7 at 53-54, 54-55, 76, 87-89, 91-92, 94, 158, 233; Volume 8 at 25; Volume 10 at 25-27; Volume 19 at 77; Volume 20 at 172; Volume 21 at 297-298;

8) inter-generational transmission: Volume 4 at 74, 87; Volume 5 at 59-61, 85, 91-92; Volume 7 at 53, 96; Volume 8 at 25, 58, 59, 75-76; Volume 10 at 27-30; Volume 13 at 86; Volume 14 at 126-127; Volume 17 at 153; Volume 20 at 112, 172; Volume 21 at 278;

9) community and family sharing: Volume 3 at 115; Volume 5 at 61-63; Volume 7 at 90, 117; Volume 8 at 27-28, 58; Volume 10 at 35-41; Volume 13 at 86; Volume 21 at 298; and

10) reliance on variety of resources: Volume 5 at 64-65, 75-76; Volume 7 at 87-89, 94, 101-103, 106, 116, 123-124, 147; Volume 10 at 41; Volume 13 at 27; Volume 20 at 172; Volume 21 at 216, 221, 283-284, and 299.

17/ Contrary to plaintiffs' assertions, the criteria are not racially based. Anyone living in a qualifying community in Cook Inlet, currently Tyonek, English Bay, and Port Graham, 5 AAC 01.580(a), may participate, regardless of race. Conversely, individuals living in communities in Cook Inlet for which the existence of "subsistence uses" of salmon under the ten criteria has not been demonstrated may not participate. Thus, the Kenaitze Indians, who live on the Kenai peninsula, are not authorized. (M File 3, Exhibit L, at 9)

18/ Plaintiffs assert that the method of applying the ten

occur is also evidenced by the fact that the federal subsistence law was clearly aimed at protecting communities reliant upon resources. In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. No. 96-487 (1980). "Subsistence uses" of Alaska's fish and game are protected by ANILCA Title VIII, 16 U.S.C. § 3111-3126. The definition of "subsistence uses" in ANILCA is virtually identical to the state definition, including the critical words "customary and traditional uses." 16 U.S.C. § 3113. The version of ANILCA that was under consideration by Congress in 1978 when the state subsistence law was passed also contains in its definition of "subsistence uses" the key words "customary and traditional." Sec. 703, H.R. 39, 95th Cong., 2nd Sess. (1978). The state legislature was aware of that definition when it was debating, and deciding against, removing the words "customary and traditional" from the state definition. (M File 3, Exhibit U at 8)

The legislative history of ANILCA and its precursors indicates that Congress was concerned about communities reliant upon resources in Alaska. There are references to the "more than

---

criteria in Cook Inlet, on a community-by-community basis, is a strategy of recent vintage, devised long after the criteria were formulated. In fact, the explanation accompanying the motion to adopt the ten criteria as the method of identifying "subsistence uses" of salmon for all of Cook Inlet in March 1981 emphasized the need to focus on "an identifiable community, subcommunity or group" rather than "a small group intermingled throughout the length and width of the Kenai peninsula with other individuals and groups." (Emphasis in original.) (M File 3, Exhibit R, at 1)

200 rural communities throughout Alaska" and "the economic importance of subsistence uses to the rural economy." H.R. Rep. No. 1045, 95th Cong., 2nd Sess. 182 (1978). Congress commented on the "subsistence-dependent villages in the area," and the tension over subsistence "between the rural and urban communities in the State." H.R. Rep. No. 97, 96th Cong., 1st Sess. 158 (1979). It was also intended that former residents of communities reliant on subsistence who were currently living in a larger population center would not be eligible to participate in "subsistence uses." Id. at 192.

Congress was concerned with the issue because "Alaska's more than 200 rural villages are unique in that they are the last communities in the United States in which a substantial number of residents are still dependent upon the harvest of renewable resources...." S. Rep. No. 413, 96th Cong., 1st Sess. 230-231 (1979). Additionally, Congress intended to protect "subsistence uses" which "have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation." Id. at 269.

Those are but a few examples of Congress's concern with communities reliant upon resources. The clearest statement of that is included in the remarks of Representative Morris K. Udall, the chief sponsor of H.R. 39, just before ANILCA became law in December 1980:

> It should also be noted that customary and traditional subsistence uses must be evaluated on a community or area basis rather than an individual basis.

126 Cong. Rec. H10546 (daily ed. Nov. 12, 1980) (statement of Rep. Udall). (Emphasis added.)

The fact that Congress was so concerned in enacting the federal subsistence law with communities reliant upon fish and game resources augments the evidence demonstrating that the board in adopting criteria which identified communities in Cook Inlet reliant upon fish and game resources was acting reasonably.

4. Conclusion

In providing guidelines for the board, the Alaska legislature created a definitional framework for "subsistence uses." The legislature thus avoided imposing a more rigid approach which would have entailed inherent risks identified by one commentator:

> [S]ome content for the term "subsistence" must be agreed upon before a management scheme can be developed. This does not mean that such agreement should necessarily be in the form of a legislative definition. A too-rigid meaning ... could impinge on at least three other criteria: flexibility and assurances to both subsistence ... and nonsubsistence interests.
>
> ....
>
> ... An exhaustive statutory list of harvestable resources and permitted takers, methods, and uses not only would be difficult to generate but also would be too narrow and too rigid for practical administration. Use of animals and plants has varied widely among geographical regions, cultural groups and time periods. Harvesting methods have continued to evolve--particularly since introduction of high-powered hunting arms and motorized vehicles. Concentrations and locations of

> resources, populations and users have also changed. These diverse factors will undoubtedly move rapidly in the future, and a legislative description of the uses intended to be permitted should provide both breadth and flexibility to deal with new conditions.

D. Kelso, "Legal Issues in Federal Protection for Subsistence on Proposed National Interest Lands," (unpublished) (1976), reprinted in H.R. Rep. No. 16, 95th Cong., 1st Sess. 273 (1977), at 407 and 412 (footnote omitted).

The board correctly determined that the legislature intended the definition of "subsistence fishing" to be narrowed by the 1978 amendments, and carried out its delegated responsibility to identify "subsistence uses" in a reasonable manner, consistent with the legislative guidelines of "customary and traditional."

C. The Board's Violation of the Public Meetings Law while Developing the Criteria in December 1980 Is Moot

As explained in the statement of the case, the board in December 1980 gathered a great deal of information about the uses of salmon in Cook Inlet. In order to sort through that information, a committee was appointed, and its meetings were announced during the board meetings, and held during board recesses. (Volume 3, at 122-126) However, the state has stipulated that the committee meetings in December 1980 were conducted in violation of AS 44.62.310, which requires public meetings to be open. (M File 7, at 371-372)

Action taken contrary to the public meetings

requirement is void. AS 44.62.310(f). In University of Alaska v. Geistauts, 666 P.2d 424, 430 (Alaska 1983), the consequences of such voidness are discussed. The court concludes that the process which led to the void result must "begin anew." Id. Since that has already occurred three times since the violation in December 1980, the Madison court correctly concluded that count II, alleging procedural irregularities, was moot. (M File 4, at 296)

The first rehabitation of the violation occurred in the same December 1980 meeting. After the committee reported to the board, with the first draft of the ten criteria, the board discussed the criteria and supporting reasoning in great detail. (Volume 10, at 8-54) The board concluded that the ten criteria accurately summarized the common threads that had appeared throughout the testimony and that had emerged from the information presented, and the full board then adopted the ten criteria. (M File 3, Exhibit H)

The second time the process began anew was in the spring 1981 meeting, which was noticed twice in regard to subsistence. The first notice was the board notice of proposed changes for March 1981, which stated in part:

> The issues that will be before the board are the establishment of a subsistence salmon fishing permit system for Cook Inlet ...

(M File 3, Exhibit O) The second notice was the Cook Inlet subsistence fishing special notice, which stated in part:

> The session will focus on the application of the State's subsistence law to salmon fishing in Cook

> Inlet. The law sets a priority on certain customary and traditional uses of subsistence resources. The board intends to examine different methods for providing the priority in Cook Inlet.

(M File 3, Exhibit P)

As set out in the statement of the case, additional oral and written testimony was received during the spring 1981 meeting, and the board readopted the ten criteria, after slightly amending them. (M File 3, Exhibit I)

The third time the process began anew was in the December 1981 board meeting. The general legal notice for that meeting listed the subjects open for consideration, including the Cook Inlet subsistence fishery, which was noticed broadly. (M File 3, Exhibit W) The board could adopt, amend, repeal or take no action on the following:

> set characteristics that describe or define subsistence uses and users that will be used by the board to identify subsistence fisheries; set locations open and closed to subsistence fishing; set fishing seasons, periods, gear requirements and restrictions; set conditions and requirements for obtaining subsistence fishery permits; set harvest limits; set fish marketing requirements.

(Id. at 3)

In addition to the general subject area being opened and noticed, a specific proposal in the board's proposal packet outlined the ten criteria already adopted by the board. (M File 3, Exhibit X)

Alaska law is clear that courts should not decide issues not actually in controversy. Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972).

Mootness precludes judicial determinations. Jefferson v. Asplund, 458 P.2d 995 (Alaska 1969). The consequence of the voidness resulting from the violation of the public meetings law during the December 1980 board meeting is that the process must "begin anew." Since that has occurred on three occasions since the violation occurred, the matter is moot, and the court should not consider it.

D. The Board May Use the Criteria to Identify "Subsistence Uses" of Cook Inlet Salmon Regardless of the Biological Status of the Target Stocks

As discussed, prior to the board's development and application of the ten criteria, the "subsistence fishing" which was authorized in Cook Inlet was simply fishing for personal use with set gill nets, under the pre-subsistence law definition of that term. After the board developed the ten criteria, and it determined that no communities on the Kenai Peninsula except English Bay and Port Graham had evidenced "subsistence uses" of Cook Inlet salmon. (M File 3, Exhibit L) Thus, "subsistence fishing" was not authorized. However, in 1982 the board did authorize "personal use fishing." 5 AAC 77.546 and 5 AAC 77.547.

The Gjosund court upheld the ten criteria as a mechanism to identify "subsistence uses" which is consistent with the intent of the subsistence law. (G File 2, at 260-261, ¶¶ 6-8) However, the court then concluded that the board could not apply the criteria to see if what had been authorized as "subsistence fishing" was still "subsistence fishing" under the new definitions supplied by the subsistence law unless the target fish

stocks were in such jeopardy that the fishing required restriction. (Id. at 261, ¶¶ 9, 10.)

In reaching this conclusion, the court misconstrued AS 16.05.251(b) by melding its three distinct statutory mandates to the board. In order to understand the misconstruction upon which the court's conclusion is based, it is necessary to understand how AS 16.05.251(b) operates.

The first sentence of AS 16.05.251(b) states:

> The Board ... shall adopt regulations ... permitting the taking of fish for subsistence uses unless ... adoption of the regulations will jeopardize ... sustained-yield....

Thus, unless sustained yield is jeopardized, the board is required to allow opportunities for "subsistence uses." Identifying these uses is implicitly authorized in the requirement to provided for them. At the same time, the board may, under AS 16.05.251(a) allow opportunities for nonsubsistence uses, such as "personal use fishing."

The second sentence of AS 16.05.251(b) states:

> Whenever it is necessary to restrict the taking of fish to assure ... sustained-yield ... or ... the continuation of subsistence uses of such resources, subsistence use shall be the priority use.

Thus, if increase in competition or decrease in harvestable surplus result in a relative resource shortage, restriction of some harvest opportunities may be necessary, and, if so, the priority for "subsistence uses" would come into play. The board can use any of the many management options available to it in imposing the needed restrictions on nonsubsistence uses and in

continuing to regulate "subsistence uses" in a way that protects the opportunity for "subsistence fishing." Of course, in extreme cases the option of precluding nonsubsistence uses would remain available.

The third sentence of AS 16.05.251(b) states:

> If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:
>
> (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
>
> (2) local residency; and
>
> (3) availability of alternative resources.

Thus, a more serious resource shortage resulting from greater increase in competition or decrease in harvestable surplus may require still further restriction of harvest opportunities, ever after only "subsistence uses" remain. At that point, the criteria listed in the statute would form a basis for distributing the allowable harvest among the participants in "subsistence uses."

The statutory mandate contained in AS 16.05.251(b) that sustained yield always be the paramount concern is consistent with the constitutional requirement contained in article VIII, section 4 of the Alaska Constitution. If the status of a fish stock is such that maintenance of sustained yield requires that all harvest cease, no use (including subsistence) may be allowed.

The first requirement of AS 16.05.251(b) is that the board authorize the taking of fish for "subsistence uses." The board has determined in the ten criteria that "subsistence uses"

of salmon in Cook Inlet are targeted on specific stocks during specific seasons. 5 AAC 01.597(a)(3). Thus, "subsistence fishing" must be permitted on those specific stocks during those specific seasons. No matter what the biological status of the stocks is, the board may wish to examine the fishing that has been called "subsistence fishing" to determine what segment of it is really "personal use fishing" that may be authorized reasonably on whatever stocks and in whatever seasons the board selects, under its discretionary authority in AS 16.05.251(a), rather than being mandated on specific stocks and in specific seasons.

It is implicit in the requirement that the board authorize "subsistence uses" that it have the authority to identify those uses. That task is separate from the later portions of AS 16.05.251(b) which come into play when the priority has been triggered and when the biological status of the target stocks is relevant. The Gjosund court confused the relevance of the biological status of the resource at the priority stage with the requirement that "subsistence uses" be provided at the first stage.

E. The Classification Described by and Resulting from the Application of the Criteria Do Not Violate Equal Protection

1. Equal protection standards

Although plaintiffs allege violation of both the state and federal equal protection clauses, their brief focuses only on the state test, which generally has been discussed in connection with article I, section 1 of the Alaska Constitution, providing

in part that "all persons are equal and are entitled to equal rights." See also Alaska Constitution art. VIII, § 17.

The equal protection guarantees are designed to ensure that those situated similarly with regard to the subject matter and purpose of a law will be treated equally under that law. Ketchikan Gateway Borough, Alaska v. Breed, 639 P.2d 995 (Alaska 1981). A classification must bear "a fair and substantial relationship to a legitimate governmental objective." Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1264 (Alaska 1980). However, equal protection does not demand absolute perfection in the classification system. Id. at 1267. As the court noted in Rose v. Commercial Fisheries Entry Commission, 647 P.2d 154, 160 (Alaska 1982):

> The focus of our inquiry under Alaska equal protection analysis is whether the legislative classification is a reasonable means to accomplish a legitimate state purpose.

2. The classifications described by the criteria

The basic classifications at issue in this appeal are those individuals eligible to participate in "subsistence fishing," and those individuals who are not. As discussed above in section B, use of the ten criteria results in the identification of rural communities reliant upon fish and game resources. The board has determined that people residing in rural communities reliant on fish and game resources in the Cook Inlet area are differently situated with regard to fish and game resources than individuals residing elsewhere in the Cook Inlet area. Again, as discussed above in section B, this determination is consistent

with the intent of the subsistence law, and is reasonable.

Not only is the identification of "subsistence uses" in Cook Inlet as uses by residents of rural communities reliant upon fish and game resources reasonable, but it also bears a fair and substantial relationship to a legitimate governmental objective, as required by the equal protection test. Commercial Fisheries Entry Commission v. Apokedak, supra, at 1264. State v. Tanana Valley Sportsmen's Association, Inc., 583 P.2d 854, 859-860 n.18 (Alaska 1978), acknowledged the critical importance in Alaska of preserving and protecting "subsistence uses," and in Kenai Peninsula Fisherman's Cooperative Association v. State, supra, at 903, the court noted that the subsistence law addressed the important issue on a statewide basis.

The classifications described by the ten criteria are "a reasonable means to accomplish a legitimate state purpose," and do not violate equal protection. Rose v. Commercial Fisheries Entry Commission, supra, at 160.

3. The classifications resulting from the application of the criteria

To the extent that plaintiffs challenge the specific results of the application of the criteria to their communities, and allege that they are "similarly situated" to those living in communities in Cook Inlet which are eligible under 5 AAC 01.597 for "subsistence uses," the equal protection issue is not ripe for review. A superior court decision which remands an issue for further proceedings is not a final judgment for purposes of appeal. City and Borough of Juneau v. Thibodeau, 595 P.2d 626,

629 (Alaska 1979). The Madison court remanded count IV, questioning the application of the ten criteria to the Madison plaintiffs, to the board with instructions to consider under 5 AAC 01.597, containing the ten criteria, any proposals to authorize "subsistence fishing" in Cook Inlet. (M File 4, at 293)

The remand occurred because plaintiffs were apparently claiming that they are similarly situated to those individuals residing in the qualifying Cook Inlet communities, English Bay, Port Graham, and Tyonek, with respect to their use of fish and game resources. See 5 AAC 01.580(a). However, on the evidence before it the board could not reach that conclusion, and neither could the Madison court. The board's findings of fact regarding subsistence fishing in Cook Inlet first discusses the communities of English Bay, Port Graham, and Tyonek, and measures them against the ten criteria, finding customary and traditional uses present. (M File 3, Exhibit L, at 1-9) Then, the board measures some of the other Cook Inlet communities against the ten criteria, and finds them all lacking on the evidence presented. (Id. at 9-10) The board's determination means that individuals residing in those communities are situated differently for the purposes of the subsistence law with regard to fish and game resources than individuals residing in English Bay, Port Graham, and Tyonek.

Specifically, the board finds that no showing had been made that a long-term, stable and reliable use pattern applied to

any community or subcommunity. The board finds that lack extremely important, viewing the other criteria which may have been demonstrated as less persuasive, in light of the absence of long-term, stable and reliable use patterns. The board acknowledges that some groups, such as the Kachemak Bay Subsistence Group, had shown the existence of a community of interest at the present time, but the board finds that the members were either too widely dispersed or were too heterogeneous to be considered identifiable as a community. The board acknowledges that in parts of Cook Inlet there was targeting on specific stocks, use of the most efficient and productive gear, reasonable geographic proximity to the town sites, and easy and direct access to the resource. However, the board points out that only the Kenaitze Indians had made an adequate showing of handling salmon by traditional modes (e.g., using all the parts of the fish, including the heads, fins, tails and eggs; drying, smoking). The board finds that no user concentration showed technique and skill transmittal within and between families, distribution throughout the entire user concentration, nor reliance on a wide range of wild resources taken in proximity to the community. (Id.)

The board did not close the door on further proposals seeking to demonstrate "subsistence uses" in Cook Inlet communities, and in fact stated:

> As with all its determination, the Alaska Board of Fisheries will consider additional information from the public during its next regulatory proposal cycle, if such information is offered. In the event adjustments to the findings or regulations are necessary, appropriate changes can be

> made at that time. However, no extension of eligibility ... is warranted on the present record.

(Id. at 10)

Since the board reasonably did not find on the evidence before it that plaintiffs were similarly situated to those residing in Cook Inlet communities authorized to participate in "subsistence fishing," and since the Madison court remanded this issue to the board, a violation of equal protection cannot be found in the board's application of the ten criteria.

F. The Board Is Authorized to Establish "Personal Use Fishing" as a Category for Regulatory Purposes

In 1982, the board established "personal use fishing" as a category which it can use in regulating fishing in the state. 5 AAC 77.001. This action is consistent with the board's statutory authorities and is reasonable, and thus, it should be upheld. Kelly v. Zamarello, supra, at 911.

AS 16.05.251(a)(6) authorizes the board to make regulations it deems necessary for "classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes." (Emphasis added.) Plaintiffs' assertion that the provision only authorizes the board to use categories established by the legislature is inconsistent with the language itself, which delegates that authority to the board.

Under AS 16.05.251(a)(6), the board may employ "other categories" only if to do so is "essential for regulatory purposes." In establishing the category of "personal use fishing," the board made specific findings on the necessity. The board

found that before the subsistence law, individuals could fulfill their personal use requirements by "subsistence fishing," but that now "subsistence fishing" is narrower in scope, and does not include all such previously authorized personal use fishing. The board found that "commercial fishing" was not the proper category for that activity, since the sale of fish is not involved. Further, "sport fishing" has become so associated with hook and line, rather than nets, that to classify personal use net fishing as sport fishing would be confusing to the public. Thus, it was necessary to establish "personal use fishing." 5 AAC 77.001(a).

Assuming the board is correct in its interpretation that the new definition of "subsistence fishing" is narrower than the previous one, it seems odd that plaintiffs would challenge the board's authority to establish "personal use fishing," since the category was established in order to provide for fishing which cannot now be called "subsistence fishing." Plaintiffs are incorrect in characterizing "personal use fishing" as a matter of "charity;" the board made clear that "personal use fishing" could be authorized whenever it "is in the broad public interest." 5 AAC 77.001(b). The board can thus authorize it in its discretion under AS 16.05.251(a), just as it does commercial fishing and sport fishing.

The board was authorized to establish "personal use fishing" as a category, since it is essential for regulatory purposes. Indeed, if it had not done so, there would be no mechanism for it to authorize fishing for personal use by set

gill nets by plaintiffs.

G. The Board Has Not Violated Plaintiffs' Substantive Due Process Rights by Not Authorizing "Subsistence Fishing" Opportunities for Them, but instead Authorizing "Personal Use Fishing"

Substantive due process, guaranteed in article I, section 7 of the Alaska Constitution, protects people against arbitrary governmental action, and encompasses "our traditional concept of fair play and substantial justice," "fundamental principles of liberty and justice," and "fundamental fairness." Green v. State, 462 P.2d 994, 996-997 (Alaska 1969). Thus, the board may not take arbitrary or unreasonable action. Kelly v. Zamarello, supra. Plaintiffs assert that they have been treated unreasonably; however, an examination of their allegations demonstrates that the board has not violated plaintiffs substantive due process rights, and has not treated them arbitrarily.

Plaintiffs first assert that they have been treated unreasonably because of the violation of the public meetings act which occurred during the December 1980 board meeting. As discussed above in section C, that violation has been cured, and is moot.

Plaintiffs next assert that they have been treated unreasonably because there was not a biological need to restrict the "subsistence fishing" that was authorized in Cook Inlet under the old definition. Plaintiffs refer to a report that purportedly confirms that "subsistence fishing" occurs in their part of the inlet, but that report speaks in the terms used in the years reported on, which were terms related to the old definition.

(G File 4, at 1-97) As discussed above in section D, the board may identify "subsistence uses," regardless of the biological status of the target stocks.

Plaintiffs third claim of unreasonable treatment is that the board in applying the ten criteria undertook an administrative function which the board is prohibited from engaging in under AS 16.05.241. That claim is based on a misconception that the board was granting and denying "subsistence fishing" opportunities to particular individuals. In fact, the board was identifying "subsistence uses," which can be participated in by anyone in Cook Inlet living in a community where "customary and traditional uses" exist. Kenai Peninsula Fisherman's Cooperative Association v. State, supra, at 901-902, noted that the board has no administrative powers, but simultaneously held that the board

> has the power to make decisions effecting the utilization of fishery resources in this state.

Id. at 903.

What the board did in applying the ten criteria was to identify "subsistence uses" and provide for them. For the 1982 season the board also identified and provided for "personal use fishing," for which any Alaska resident qualifies. 5 AAC 77.015, 5 AAC 77.546, and 5 AAC 77.547. Kenai Peninsula Fisherman's Cooperative Association v. State, supra, states that the board is not prohibited from:

> differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen.

Id. at 904. Thus, in identifying "subsistence uses" and

providing for them pursuant to AS 16.05.251(b), the board is not improperly exercising administrative powers. In fact, although plaintiffs suggest that somehow the Department of Fish and Game should apply the criteria (brief of appellant/cross-appellee at 45-46), that task has been delegated to the board, not the department.

Plaintiffs fourth assertion is that the board has treated them unreasonably by allegedly excluding them from fishing opportunities. It is true that after the board identified and provided for "subsistence uses" for the 1981 season, it did not authorize any other fishing for personal use with set gill nets for that season. At that time, the board had not yet established "personal use fishing" as a category under which it could accommodate individuals such as plaintiffs.

Additionally, the board was very cognizant of its responsibility in weighing biological factors with the interests of different user groups and making a decision that would be in the greatest public interest. The board extensively discussed its reasons for not authorizing any fishing for personal use with set gill nets for 1981, other than "subsistence fishing." (Volume 28, at 42-72) The board expressed concern that the net fishing was too efficient, and involved too many people, so that even though it had historically existed, it might not be reasonable to allow a large number of people to continue to use the most efficient gear type. (Id. at 51) The board felt that if the more efficient set gill nets harvested the fish before they

reached their home streams, a few people could benefit disproportionately, whereas the maximum benefit to the maximum people could be provided by restricting the fishing to rod and reel (sport fishing), thus allowing more fish to reach their home streams. (Id. at 44-45) The set gillnet fishing was compared to snagging, which has also been discontinued:

> I don't look at any differently then say, for instance, snagging in the sport fishery. For a long time snagging was -- was permitted in the sport fishery. The board came to a point where it was too efficient, there were too many people in it, there was harvesting at a higher rate than what the board felt was prudent as far as the conservation of the resource. And so, even though historically snagging had existed for a long time the board decided that it was just not something that could be justified as far as the conservation of the resource.
>
> And so, I look at this net fishery in a similar fashion, and in order to live up to the mandates of the constitution to -- for providing the resources for the maximum use of its people you can no long -- when you get to a point where you have a limited resource you -- you cannot continue to allow the most efficient means of harvest.

(Id. at 44) The board noted net fishermen had alternative means to meet their protein needs, and that they would have access to the resource by use of rod and reel. (Id. at 48)

In light of those reasons, the board for the 1981 season did not authorize fishing for personal use with set gill nets, other than "subsistence fishing," in Cook Inlet.

However, by the time the board considered the matter again for 1982, it had established "personal use fishing" as a category it could employ. 5 AAC 77.001. The board authorized "personal use fishing" in both the southern and central districts

of Cook Inlet, under the same individual harvest limits that had been in effect for what was called "subsistence fishing" in those areas previously. 5 AAC 77.530(a), 5 AAC 77.546 and 5 AAC 77.547.

The Madison plaintiffs would like to fish on coho salmon in the central district of Cook Inlet in the fall. Instead, the board authorized a fishery on sockeye salmon in the central district in June. (M File 6, at 365-366, ¶¶ 17, 18) A consequence of the absence of "subsistence uses" is that the board retains the discretion to authorize "personal use fishing" on whatever stocks and in whatever seasons it determines best serve the public interest, just as it retains discretion for when and where to authorize commercial fishing and sport fishing. AS 16.05.251(a). Kenai Peninsula Fisherman's Cooperative Association v. State, supra, recognized that the board is authorized to make allocation decisions. The factors upon which those allocations are based may change over time, and the allocations may shift accordingly. Such allocations are consistent with the board's statutory authority. AS 16.05.221(a) and AS 16.05.-251(b).

Thus, the board must authorize "subsistence fishing" on the specific stocks and in the specific seasons with which the "subsistence uses" are associated. See AS 16.05.251(b) and 5 AAC 01.597(a)(3). On the other hand, the board has the latitude to direct "personal use fishing" to any stock or season, as long as its decision is reasonable and not arbitrary. Kelly v.

Zamarello, supra, at 911. The Madison court determined that the shift from the fall coho to the summer sockeye was reasonable and not arbitrary. (M File 6, at 368-369, ¶¶ 11, 12)

The plaintiffs finally assert that they have been treated unreasonably because particular board members allegedly had a biased attitude toward them. 19/ The incidents that plaintiffs rely upon to attempt to demonstrate the "unreasonable" attitude of particular board members all involve board action that plaintiffs did not like. The board did not authorize "subsistence fishing" for plaintiffs, but the criteria that the board used in that process were consistent with the intent of the subsistence law and reasonable, and under the remand to superior court, plaintiffs are free to submit proposals to the board and show why, under the criteria, they do in fact engage in "subsistence uses." See sections B, D, and E above.

It is true that no fishing for personal use with set gill nets was authorized for plaintiffs in 1981, but as the earlier discussion shows, the board based that action on resource

---

19/ AFN asserts that plaintiffs are alleging that the board as an institution suffers from unconstitutional bias. (Brief of intervenor/amicus curiae at 37-45.) That is not an accurate characterization of plaintiffs' allegations, which instead are directed at the attitudes of particular board members. For example, the contempt allegations in Gjosund were dismissed by stipulation "based upon a significant change in the membership and leadership of the [board]..." (M File 7, at 371) AFN asks that the purported issue be remanded to superior court to develop a record. In fact, the reason there is no record is that no such issue has been raised or briefed in either Gjosund or Madison.

and allocation concerns. However, before 1982, the board reconsidered, and authorized "personal use fishing" in which plaintiffs can participate.

The "personal use fishing" authorized by the board in the central district of Cook Inlet is on the summer sockeye, instead of the fall coho preferred by plaintiffs, but, as discussed above, that decision is within the discretion of the board and reasonable. AS 16.05.251(a). (M File 6, at 368-369, ¶¶ 11, 12)

Plaintiffs may not have made the decisions that the board made on these matters. That does not mean, however, that the board decisions were arbitrary, and, in fact, as the discussion shows, the decisions were reasonable.

Thus, the actions objected to by plaintiffs do not violate substantive due process.

VI. CONCLUSION

This appeal is not about mere semantics. It is about important legislative changes in the definition of "subsistence fishing" which are being put into effect in a reasonable manner consistent with the legislative intent to protect rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area. In Cook Inlet, "subsistence fishing" is now being authorized for rural communities reliant upon fish and game resources, and "personal use fishing" is being authorized for individuals, such as plaintiffs, who do not live in such reliant communities.

The state requests that the holdings of the Madison court be affirmed, that the holding of the Gjosund court which is the subject of this appeal be reversed, and that the request by AFN for a remand on an issue that is not at issue in this consolidated appeal be denied.

DATED: January 26, 1984

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Larri Irene Spengler
Larri Irene Spengler
Assistant Attorney General

IN THE SUPREME COURT FOR THE STATE OF ALASKA

GENE MADISON, et al., Appellants, vs. ALASKA DEPARTMENT OF FISH AND GAME and ALASKA BOARD OF FISHERIES, Appellees, THE ALASKA FEDERATION OF NATIVES, Intervenor.	Supreme Court No. 6824 No. 7181 Superior Court No. 3KN 81-542
ALASKA DEPARTMENT OF FISH AND GAME, et al., Appellants, vs. LOUIS GJOSUND, et al., Appellees, THE ALASKA FEDERATION OF NATIVES, Amicus Curiae.	Supreme Court No. 7410 Superior Court No. 3HO 80-92 No. 3HO 77-11014 APPEALED FROM THE SUPERIOR COURT, THIRD JUDICIAL DISTRICT, HONORABLE VICTOR CARLSON

BRIEF OF INTERVENOR/AMICUS CURIAE

DONALD C. MITCHELL
Suite 1A
411 West Fourth Avenue
Anchorage, Alaska 99501

Filed in the Supreme Court
in Anchorage, State of Alaska
on this 27th day of December,
1983.

ROBERT B. BACON
Clerk of Court

TABLE OF CONTENTS

Page

TABLE OF CASES AND OTHER AUTHORITIES..... iii

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS..... vii

STATEMENT OF THE CASE..... 1

THE COURSE OF PROCEEDINGS IN THE TRIAL COURT..... 13

ISSUES PRESENTED FOR REVIEW..... 16

ARGUMENT..... 17

A. INTRODUCTION..... 17

B. THE CRITERIA ADOPTED BY THE BOARD OF FISHERIES TO IDENTIFY "SUBSISTENCE USES" OF COOK INLET SALMON STOCKS ARE CONSISTENT WITH THE INTENT OF A.S. 16.05.251(b) AND A.S. 16.05.940(26)..... 19

1. INTRODUCTION..... 19

2. IN DETERMINING WHETHER 5 A.A.C. 01.597 IS CONSISTENT WITH THE LEGISLATURE'S INTENT WHEN IT ENACTED A.S. 16.05.251(b) AND A.S. 16.05.940(26), THIS COURT MAY SUBSTITUTE ITS OWN JUDGMENT FOR THAT OF THE BOARD OF FISHERIES..... 20

3. ALTHOUGH THE COURT MAY SUBSTITUTE ITS JUDGMENT FOR THE JUDGMENT OF THE BOARD OF FISHERIES, THE BOARD'S INTERPRETATION OF A.S. 16.05.940(26) IS A VALUABLE AID WHICH SHOULD BE AFFORDED CONSIDERABLE DEFERENCE..... 21

4. THE LEGISLATIVE HISTORY OF THE SUBSISTENCE STATUTE AND OF EARLIER STATUTES WHICH ARE IN PARI MATERIA WITH THE SUBSISTENCE STATUTE INDICATES THAT 5 A.A.C. 01.597 IS CONSISTENT WITH THE INTENT OF A.S. 16.05.251(b) AND A.S. 16.05.940(26)..... 22

Page

5. THE HISTORY OF THE TIMES DURING WHICH THE LEGISLATURE ENACTED THE SUBSISTENCE STATUTE INDICATES THAT 5 A.A.C. 01.597 IS CONSISTENT WITH THE INTENT OF A.S. 16.05.251(b) AND A.S. 16.05.940(26)..... 29

6. CONCLUSION..... 33

C. THE ALASKA FEDERATION OF NATIVES HAS NOT TAKEN A POSITION ON THE VALIDITY OF THE POLICY ADOPTED BY THE BOARD OF FISHERIES AT ITS DECEMBER 1980 AND MARCH 1981 MEETINGS..... 33

D. EQUAL PROTECTION..... 34

1. THE BOARD'S DETERMINATION THAT THE SET GILL NET FISHERY IN WHICH THE PLAINTIFFS PARTICIPATED PRIOR TO THE ENACTMENT OF THE SUBSISTENCE STATUTE IS NOT A "SUBSISTENCE USE" FISHERY DID NOT VIOLATE THE PLAINTIFFS' RIGHT TO EQUAL PROTECTION..... 34

E. DUE PROCESS..... 35

1. THE SUPERIOR COURT PROPERLY REMANDED THE FACTUAL QUESTION OF WHETHER THE SET GILL NET FISHERY IN WHICH THE PLAINTIFFS PARTICIPATED PRIOR TO THE ENACTMENT OF THE SUBSISTENCE STATUTE IS A "SUBSISTENCE USE" FISHERY..... 35

2. THE PLAINTIFFS' CLAIM THAT THE BOARD OF FISHERIES IS NOT AN IMPARTIAL TRIBUNAL SHOULD BE REMANDED TO THE SUPERIOR COURT..... 37

F. A.S. 16.05.251(a) AUTHORIZES THE BOARD OF FISHERIES TO ADOPT A REGULATION ESTABLISHING A "PERSONAL USE FISHING" CATEGORY FOR REGULATORY PURPOSES..... 46

Page

G. THE BOARD OF FISHERIES' DECISION TO AUTHORIZE A "PERSONAL USE" FISHERY IN THE CENTRAL DISTRICT OF COOK INLET WHICH TARGETS ON SOCKEYE SALMON RATHER THAN COHO SALMON DID NOT VIOLATE THE PLAINTIFFS' RIGHT TO DUE PROCESS OF LAW..... 48

H. WITH RESPECT TO THE PERSONAL USE SET GILL NET FISHERY WHICH THE BOARD OF FISHERIES AUTHORIZED IN THE SOUTHERN DISTRICT OF COOK INLET PRIOR TO THE ENACTMENT OF THE SUBSISTENCE STATUTE, THE BOARD IS AUTHORIZED TO DETERMINE WHETHER THE FISHERY IS OR IS NOT A "SUBSISTENCE USE" FISHERY, REGARDLESS OF WHETHER THE BIOLOGICAL STATUS OF THE SALMON STOCKS WHICH ARE THE TARGET OF THE FISHERY DOES OR DOES NOT REQUIRE IT TO DO SO..... 49

CONCLUSION..... 52

TABLE OF CASES AND OTHER AUTHORITIES

CASES

Alvarado v. State, 486 P.2d 891 (Alaska 1971)..... 26

Berryhill v. Gibson, 331 F. Supp. 122 (D.C. Ala. 1971)..... 43

Carter v. Carter Coal Co., 298 U.S. 238,

56 S.Ct. 855, 80 L.Ed. 1160 (1936)..... 42, 44

Carver v. Gilbert, 387 P.2d 928 (Alaska 1963)..... 30

Gibson v. Berryhill, 411 U.S. 564,

93 S.Ct. 1689, 36 L.Ed.2d 488 (1973)..... 43

Green v. State, 462 P.2d 994 (Alaska 1969)..... 36-37

Herscher v. State, 568 P.2d 996 (Alaska 1977)..... 35, 48, 51

Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977)..... 26

Horowitz v. Alaska Bar Ass'n, 609 P.2d 39 (Alaska 1980)..... 35

Isakson v. Rickey, 550 P.2d 359 (Alaska 1976)..... 35

Page

Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971)..... 21-22

Kenai Peninsula Fisherman's Cooperative Ass'n v. State, 628 P.2d 897 (Alaska 1981)..... 4, 46-47, 50-51

Kimotoak v. State, 584 P.2d 25 (Alaska 1978)..... 35

Northern Commercial Co. v. United States, 4 Alaska Fed. 245 (9th Cir. 1941)..... 29

North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534 (Alaska 1978)..... 22

Sekinoff v. United States, 283 F. 38 (Alaska 1922)..... 30

State Bd. of Dry Cleaners v. Thrift-D-Lux Cleaners, 254 P.2d 29 (Calif. 1953)..... 41-42, 44

State v. Bundrant, 546 P.2d 530 (Alaska 1976)..... 25

State v. Tanana Valley Sportsmen's Ass'n, 583 P.2d 854 (Alaska 1978)..... 28

Timberlev v. Jeffries, Alaska Supreme Court No. 2765, (December 16, 1983)..... 27

Udall v. Tallman, 380 U.S. 1, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965)..... 22

Wien Air Alaska, Inc. v. Department of Revenue, 647 P.2d 1087 (Alaska 1982)..... 21-22

FEDERAL STATUTES

Pub. L. No. 96-487 (1980)..... 29

Pub. L. No. 85-508 (1958)..... 38-39

16 U.S.C. 3111-3126..... 29-31

STATE CONSTITUTION

Alaska Const., art. VIII, sec. 2 ..... 48, 50

STATE STATUTES

ch. 151 SLA 1978 5

ch. 269 SLA 1976 ..... 25-26, 28, 35

ch. 206 SLA 1975 ..... 1, 40

ch. 199 SLA 1975 25

ch. 131 SLA 1960 1

ch. 94 SLA 1959 ..... 1, 39-40

ch. 63 SLA 1957 38

A.S. 16.05.221(a) 44, 50

A.S. 16.05.221(b) 50

A.S. 16.05.251(a) ..... 12, 16, [illegible] 21, 41, 46-47, 50

A.S. 16.05.251(b) 6, 9, 11 20-22, 29, 33, 41

A.S. 16.05.255(a) 50

A.S. 16.05.255(b) 33

A.S. 16.05.257 ..... 25, 29

A.S. 16.05.940(17) 5

A.S. 16.05.940(26) 5-6, 11, 16, 20-23, 29-30, 33, 37

A.S. 16.43.050 45

A.S. 44.62.030 21

STATE RULES OF EVIDENCE

Rule 201 40

STATE REGULATIONS

5 A.A.C. 01.597 ..... 11-12, 16, 18-20, 22, 24, 28-29, 33-35, 37, 41

5 A.A.C. 77.001 ..... 12, 46

5 A.A.C. 77.546 12

5 A.A.C. 77.547 ..... 12, 48

5 A.A.C. 99.010 ..... 12, 19

FEDERAL LEGISLATIVE MATERIALS

House Report No. 95-1045, 95th Cong., 2d Sess. 1978 ... 30-32

Hearings on H.R. 39 et al. Before the Subcomm. on General Oversight and Alaska Lands of the House Comm. on Interior and Insular Affairs, 95th Cong., 1st Sess. 1978 39-40

104 Cong. Rec. 9747-9750 (May 28, 1958) 39

126 Cong. Rec. H10545-H10547 (daily ed. November, 12, 1980) 32

STATE LEGISLATIVE MATERIALS

HB 804, 9th Leg., 2d Sess. (1976) 26-27

HB 960, 10th Leg., 2d Sess. (1978) 23

1975 House Journal, 9th Leg., 1st Sess. 25

1976 House Journal, 9th Leg., 2d Sess. 26

1983 Senate Journal, 13th Leg., 1st. Sess. 41

Report of the Special Committee on Subsistence, Alaska House of Representatives, 12th Leg., 1st Sess. (1981) 28

Alaska House of Representatives, Bill History and Journal Index, Tenth Legislature 1977-78 23

Recording of Proceedings, 9th Leg., 2d Sess., Tape 130 H 27

OTHER MATERIALS

Page

Chappell, Battle Over Kenai King Salmon Brews, Anchorage Daily News, July 29, 1983 45

Executive Order No. 10857 (January 5, 1960) 40

Rollins, Census Alaska: Numbers of Inhabitants, 1792-1970, University of Alaska Anchorage Library, (1978) 2

U.S. Dept. of Commerce, 1980 Census of Population and Housing (Alaska PHC80-V-3) 2

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

CONSTITUTIONAL PROVISIONS

Alaska Const., art. VIII, sec. 2

> The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

FEDERAL STATUTES

16 U.S.C. 3113

> As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term -
>
> (1) "family" means all persons related by blood, adoption, or any person living within the household on a permanent basis; and
>
> (2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses -
>
> (A) for other fish or wildlife or their parts; or
> (B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

sec. 703, H.R. 39, 95th Cong., 2d Sess. (1978)(The version of H.R. 39 passed by the House of Representatives in 1978).

As used in this Act, the term "subsistence uses" means the noncommercial (except as provided under paragraph (2)) customary and traditional utilization within the State of wild, renewable resources for -

(1) direct personal or family use for food, shelter, fuel, clothing, tools, or transportation;

(2) the making and selling of handicraft articles (including clothing), but only out of nonedible byproducts of fish and wildlife taken for such personal or family use; or

(3) customary trade, barter, or sharing among subsistence users for personal or family use.

STATE STATUTES

sec. 4, ch. 131 SLA 1960

"Subsistence fishing": the taking, fishing for or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means as defined by the Board.

sec. 14, ch. 151 SLA 1978

A.S. 16.05.940(17) is amended to read:

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries.

A.S. 16.05.05.221(a)

For the purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

A.S. 16.05.251

(a) The Board of Fisheries may make regulations it considers advisable in accordance with the Administrative Procedure Act (A.S. 44.62.010 - 44.62.650) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishment of open and closed seasons and areas for the taking of fish;

(3) setting quotas and bag limits on the taking of fish;

(4) establishment of the means and methods employed in the pursuit, capture and transport of fish;

(5) establishment of marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes;

(7) engaging in biological research, watershed and habitat improvement, fish management, protection, propagation and stocking;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote fish research, management, education and information and to train men for fish management;

(10) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(11) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(12) establishment of the times and dates during which the issuance of fishing licenses, permits and

registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under A.S. 16.43.010 - 16.43.380.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (A.S. 44.62.010 - 44.62.650) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

A.S. 16.05.940(26)

"subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis.

STATE REGULATIONS

5 A.A.C. 01.597

(a) The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used

to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:

(1) a long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g. regulatory action or fluctuations in resource abundance;

(2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;

(3) a use pattern associated with specific stocks and seasons;

(4) a use pattern based on the most efficient and productive gear and economical use of time, energy and money;

(5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;

(6) a use pattern occurring in locations with easiest and most direct access to the resources;

(7) a use pattern which includes a history of traditional modes of handling, preparing and storing the product without precluding recent technological advances;

(8) a use pattern which includes the intergenerational transmission of activities and skills;

(9) a use pattern in which the effort and products are distributed on a community and family basis including trade, bartering, sharing and gift-giving; and

(10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residence.

(b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.

(c) For purposes of this section, a "community" is generally considered to be several households of full-time residents who all reside in a specific geographic area because of common interests.

5 A.A.C. 77.001

(a) The Board of Fisheries finds that

(1) before the enactment of the state's subsistence priority law in ch. 151 SLA 1978, an individual could fulfill his personal use needs for fish under subsistence fishing regulations;

(2) the state's subsistence priority law changed the definition of subsistence in a manner that now precludes some individuals from participating in customary and traditional subsistence fisheries and efficiently harvesting fish for their personal use;

(3) there presently are areas of the state with harvestable surpluses of fish in excess of both spawning escapement needs and present levels of subsistence, commercial and sport uses; and

(4) it is necessary to establish a new fishery classified as "personal use" because

(A) since the sale of fish is not appropriate or permissible, this fishery cannot be classified as commercial;

(B) since the use is not rural customary and traditional use this fishery cannot be classified as subsistence; and

(C) since the gear for this fishery is often different from that historically associated with sport fishing, this fishery should not be classified as a sport fishery, to prevent confusion among the public.

(b) It is the intent of the board that the taking of fish under 5 A.A.C. 77 will be allowed when that taking does not jeopardize the sustained yield of a resource and either does not negatively impact an existing resource use or is in the broad public interest.

(c) - (e) (These subsections are not pertinent).

(f) In this chapter, "personal use fishing" means the taking, attempting to take, or possession of finfish, shellfish or aquatic plants by an individual for consumption as food or use as bait by that individual or his immediate family.

5 A.A.C. 99.010

(a) In applying a subsistence priority, the Board of Fisheries and the Board of Game will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

(1) each board will assess the biological status of fish and game resources and determine whether a surplus may be harvested during a regulatory year consistent with the conservation and development of the resources on the sustained yield principle and compatible with the public interest;

(2) each board will identify subsistence uses of fish and game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing.

(b) Customary and traditional subsistence uses by rural Alaska residents will be identified by use of the following criteria:

(1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;

(5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community

of persons, including customary trade, barter, sharing, and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

(c) After identifying subsistence uses based upon the criteria set out in (b) of this section, each board will determine the approximate amount of fish or game necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses.

(d) Each board will adopt regulations that provide an opportunity for the subsistence taking of fish or game resources in amounts sufficient to provide for the customary and traditional uses identified in (b) of this section, and consistent with sound conservation and management practices. In no instance may the subsistence taking jeopardize or interfere with the maintenance of a specific fish stock or game population on a sustained-yield basis.

(e) Each board will, in its discretion, adopt regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish or game resources on a sustained-yield basis, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in (d) of this section.

(f) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for non-subsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained-yield basis.

I.

STATEMENT OF THE CASE

In 1959, the Alaska legislature established a Board of Fish and Game (hereinafter "the Board") and delegated the Board authority to adopt "such rules and regulations as it deems advisable" relating to the taking of fish stocks and game populations in Alaska. sec. 6, art. II, ch. 94 SLA 1959.[1] The 1959 statute also included definitions of "sport fishing" and "commercial fishing". In 1960, the legislature added the following definition of "subsistence fishing":

> "Subsistence fishing": the taking, fishing for or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means as defined by the Board.
> sec. 4, ch. 131 SLA 1960 (Emphasis added).

Based on the language of that definition, any Alaskan who used a set gill net to obtain fish for personal use was "subsistence fishing" regardless of whether he lived in Selawik, Anchorage, or Kenai. And the "as it deems advisable" regulatory standard afforded the Board near unfettered discretion to allocate access to salmon stocks among subsistence, sport, and commercial fishermen.

This relatively simple regulatory system reflected Alaska's

1/ In 1975, the legislature divided the Board into two seven member boards. ch. 206 SLA 1975. However, the legislature retained the whatever regulations a board "considers advisable" rulemaking standard.. With respect to actions taken after 1975, "the Board" refers to actions taken by the seven member Board of Fisheries.

small population and abundant fishery resources. In 1960, the population of the Anchorage area was only 82,833 and the population of the Kenai Peninsula was only 6,097.[2]

Because of the lack of fishing pressure, the Board provided liberal opportunities for residents of Anchorage and the Kenai Peninsula to go "subsistence fishing". In the northern district of Cook Inlet the entire northern shoreline, the west side of Fire Island, and most of the shoreline between Boulder Point and the mouth of Turnagain Arm was open to "subsistence fishing". In the central district, Kalgin Island, most of the shoreline on the west side of Cook Inlet, and most of the shoreline on the east side of Cook Inlet between Ninilchik and Boulder Point was open to "subsistence fishing". In the southern district, the shoreline south of Anchor Point, around the Homer Spit, and then around Kachemak Bay was open to "subsistence fishing".[3]

But then the population of southcentral Alaska began to explode. Between 1960 and 1980 the population of the Anchorage area more than doubled to 173,017 and the population of the Kenai Peninsula almost quadrupled to 22,473.[4]

2/ Rollins, Census Alaska: Numbers of Inhabitants, 1792-1970, University of Alaska Anchorage Library (1978).

3/ See Gjosund File No. 4, pp. 24, 29, 69. The Madison and Gjosund Records on Appeal are hereinafter designated "MA" and "GJ". A map of the boundaries of the nothern, central, and southern districts of Cook Inlet is located at GJ File No. 4, p. 16.

4/ U.S. Dept. of Commerce, 1980 Census of Population and Housing (Alaska PHC80-V-3).

The major effect of such rapid population growth on the politics of fishery management was to bring tens of thousands of new sport fishermen to the rivers of the Kenai Peninsula to compete with commercial fishermen for access to valuable king and coho (silver) salmon stocks. The demands by sport fishermen for access to those stocks placed new and unfamiliar psychological and political pressures on members of the Board. And the relatively de minimus number of Alaskans on the Kenai Peninsula who engaged in "subsistence fishing" began to bear the brunt of the Board's inability to cope with those pressures.

For reasons known only to itself, in 1976 the Board closed the southern district of Cook Inlet to "subsistence fishing" for the 1977 fishing season. Homer residents filed a lawsuit challenging the closure and the Superior Court determined that the Board's decision to do so was without a substantiated rational basis. The Court then enjoined the Board from eliminating "subsistence net fishing" in the southern district and reinstated the regulations for the fishery which had been in effect prior to December 1976.[5]

In 1977, the Board responded to the political conflict between sport and commercial fishermen by adopting a comprehensive management policy for Cook Inlet salmon stocks. The heart of the policy was the Board's decision to manage all stocks which move through Cook Inlet before June 15th and after August 15th for the

---

5/ GJ File No. 2, pp. 19, 22.

benefit of sport fishermen and to manage all stocks which move through Cook Inlet between those dates for the benefit of commercial fishermen. The practical effect of the policy was to allocate king and coho salmon (which move through Cook Inlet during the spring and fall) to sport fishermen and sockeye salmon (which move through Cook Inlet during the middle of the summer) to commercial fishermen. See Kenai Peninsula Fisherman's Co-operative Ass'n v. State, 628 P.2d 897 (Alaska 1981).

The third group of fishermen who harvested Cook Inlet stocks, i.e. Alaskans who engaged in "subsistence fishing", received little consideration during the development of the policy.[6]

Regulations implementing the policy were adopted by the Board for the 1978 fishing season. Id. The regulations closed the central district to commercial fishing after August 15th. However the district remained open to "subsistence fishing". As a result, some commercial fishermen who previously had harvested coho salmon for personal use during the now-closed commercial fishing periods applied for "subsistence fishing" permits.[7] That, combined with increased publicity about the fishery, resulted in a significant increase in the number of "subsistence fishing" permits issued during the 1978 fishing season.[8]

In response, the Board made a number of regulatory changes

6/ GJ File No. 4, pp. 19, 22.

7/ Id. 19.

8/ Id. 20.

for the 1979 fishing season intended to limit access to the "subsistence" fishery. The new regulations reduced the length of gill nets, the number of fishing periods, and the area of shoreline available for "subsistence fishing". The regulations also moved the "subsistence fishing" season in the central district from August 1 - September 21 to June 23 - August 15.[9] The effect of the latter change was to target the "subsistence" fishery on sockeye salmon (harvested primarily by commercial fishermen) rather than coho salmon (harvested primarily by sport fishermen).

At the same time the Board was responding to political pressures created by commercial and sport fishermen, the legislature enacted ch. 151 SLA 1978 (hereinafter "the subsistence statute"). The subsistence statute made a number of important changes to title 16 of the Alaska Statutes intended to identify and protect "subsistence uses" of fish stocks and game populations. Three important changes were:

1. The enactment of a definition of "subsistence uses" of fish stocks and game populations. A.S. 16.05.940(26).

2. The amendment of the definition of "subsistence fishing". A.S. 16.05.940(17).

3. The enactment of a statutory requirement that absent a showing that to do so would jeopardize sustained yield, the Board shall (as op-

---

9/ Id. 26-27.

posed to "may") adopt regulations authorizing "subsistence uses" of fish stocks, and, if necessary, afford such uses a priority over other uses. A.S. 16.05.251(b). See also A.S. 16.05.255(b).

The subsistence statute altered the Board's authority to regulate fishing for Cook Inlet salmon stocks in several significant ways. Although the original definition of "subsistence fishing" included any Alaskan who fished with a set gill net for "personal use", the amended definition limited the purview of "subsistence fishing" to fishing with a set gill net for "subsistence uses". The definition of "subsistence uses" is considerably more narrow than "personal use":

> "Subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption... A.S. 16.05.940(26). (Emphasis added).

In other words, fishing with a gill net to obtain fish for personal use is no longer "subsistence fishing" unless the activity is also "customary and traditional". However, the subsistence statute does not define the phrase "customary and traditional" and during the 1979 and 1980 fishing seasons the Board did not attempt to do so.[10]

Prior to the opening of the 1980 season the Board did, how-

10/ Although the subsistence statute was enacted into law at the beginning of the 1978 fishing season, its effective date was October 10, 1978 - a month after the end of most fishing activity.

ever, renew its effort to restrict fishermen such as the plaintiffs who prior to the enactment of the subsistence statute had engaged in "subsistence fishing". The Board closed the entire shoreline of the Kenai Peninsula in the central district to "subsistence fishing" but opened a few miles of inaccessible, boulder strewn beach in the southern portion of the northern district which had not been used by commercial fishermen because among other reasons it was too dangerous to do so.[11] In the southern district the Board further reduced the length of gill nets and closed the Homer Spit and the shoreline immediately east of the Spit to "subsistence fishing".[12] The Board's actions produced two lawsuits.

The first was Gjosund v. Alaska Department of Fish and Game, 3HO 80-92 Civil, filed by Homer residents in an attempt to reopen the Homer Spit to "subsistence fishing" and to eliminate the restrictions on the length of gill nets. After a hearing, the Superior Court granted the requested relief.[13]

The second was Francis v. Alaska Department of Fish and Game, 3KN 80-546 Civil, filed by Kenai residents. Francis was settled out of court when ADF&G agreed to open several areas of shoreline in the central and northern districts for additional periods of

---

11/ GJ File No. 4, p. 30.

12/ Id. 69.

13/ GJ File No. 2, pp. 185-186.

"subsistence fishing".

At its December 1980 meeting the Board for the first time began the work necessary to conform its regulation of "subsistence fishing" in Cook Inlet to the legislature's modification of that term in the subsistence statute. As part of that effort, the Board adopted a policy setting forth criteria for the identification of "subsistence uses" of Cook Inlet salmon stocks.[14] The criteria were intended to identify set gill net fisheries around Cook Inlet conducted by residents of rural communities in which the harvest of fish stocks and game populations for personal and family use is a significant part of the economy of the community.[15] Although the Board heard considerable testimony about the uses of Cook Inlet salmon stocks by residents of Kenai Peninsula communities, because the criteria were adopted at the same meeting during which the testimony was presented, residents of the Kenai Peninsula were not afforded a fair opportunity to present evidence that their communities satisfied the criteria.

At its March 1981 meeting the Board received written testimony from the public about "subsistence uses" of Cook Inlet salmon stocks, but limited oral testimony.[16] The Board then adopted a slightly revised version of the criteria[17] and written findings

---

14/ GJ File No. 2, pp. 30-31.

15/ See GJ File No. 2, p. 258 (Paragraph No. 18); MA File No. 1, p. 56 (Paragraph No. 10).

16/ GJ File No. 1, pp. 2727-2784.

17/ MA File No. 3 (Exhibit "I").

which stated that no communities on the Kenai Peninsula satisfied the criteria.[18] The findings meant that none of the personal use set gill net fisheries on the Kenai Peninsula authorized by the Board prior to 1980 were "subsistence use" fisheries which the Board was compelled to authorize pursuant to A.S. 16.05.251(b). After arriving at that conclusion, the members of the Board then voted to eliminate all fishing with set gill nets for personal use on the Kenai Peninsula; a decision which resulted in a flurry of new lawsuits.

On May 29, 1981, the Gjosund plaintiffs filed a pleading in the Superior Court in Homer entitled a "petition" which requested injunctive and declaratory relief and an order holding the Board in contempt of the 1980 injunction.[19] On August 4, 1981, the Superior Court issued a preliminary injunction compelling the defendants to authorize "subsistence fishing" in areas along the shoreline of the southern district which had been open to such fishing during 1980.

On August 13, 1981, ten residents of the central district filed Madison v. Alaska Department of Fish and Game[20] in the

---

18/ MA File No. 2, pp. 32-41. The Board did, however, determine that set gill net fishing for personal use by residents of the communities of Tyonek, English Bay, and Port Graham are "subsistence uses" of Cook Inlet salmon stocks. The validity of that determination is not at issue in this appeal.

19/ GJ File No. 2, pp. 1-9.

20/ MA File No. 1, pp. 40-43.

Superior Court in Kenai. The plaintiffs' first claim for relief alleged that the criteria adopted by the Board to identify "subsistence uses" of Cook Inlet salmon stocks were inconsistent with the intent of the statutory definition of "subsistence uses". The second claim alleged procedural irregularities in the Board's adoption of the criteria. The third claim alleged that the Board's decision to close the central district to fishing with set gill nets for personal use violated the plaintiffs' rights to equal protection and due process. And the fourth claim alleged that the closure violated the subsistence statute and several sections of the Alaska Constitution.

On August 19, 1983, the Superior Court issued a preliminary injunction which ordered the defendants to open a "non-commercial" set gill net personal use fishery in the central district.[21] Although it was requested by the plaintiffs to do so, the Court specifically refused to characterize the fishery which it had ordered opened as a "subsistence use" fishery.

The Alaska Federation of Natives (hereinafter "AFN") intervened as a party[22] and joined with the defendants in filing a motion for summary judgment on the first claim for relief. The plaintiffs responded by filing a motion for summary judgment on all four of their claims. On December 10, 1981, the Superior Court granted AFN's and the defendants' motions for summary judgment on the first

---

21/ MA File No. 1, pp. 40-43.

22/ AFN's motion to intervene and the order granting the motion are not a part of the Record on Appeal.

claim.[23] The Court determined that the criteria were consistent with the intent of A.S. 16.05.251(b) and A.S. 16.05.940(26). The Court later adopted a Conclusion of Law which states that:

> The intent of A.S. 16.05.251(b) and .940(26) is to provide for and protect personal use, primarily net, fisheries conducted by persons who reside in rural communities which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the community. 24

Shortly thereafter at its December 1981 meeting, the Board adopted the criteria as a regulation. 5 A.A.C. 01.597.

On March 8, 1982, the Gjosund Court issued an opinion which also upheld the validity of the criteria.[25] But the Court then inexplicably concluded that the Board can not apply the criteria to determine whether the personal use set gill net fishery in the southern district is a "subsistence use" fishery unless it first determines that the biological condition of the salmon stocks which are the target of the fishery requires it to do so. The Court also characterized the Gjosund plaintiffs' harvest activities as "subsistence fishing".

At its March 1982 meeting the Board recognized the unfairness of eliminating all personal use set gill net fishing on the Kenai Peninsula merely because such fishing may no longer be "subsist-

---

23/ MA File No. 1, pp. 45-49.

24/ Id. 57 (Paragraph No. 4).

25/ GJ File No. 2, pp. 221-245.

ence fishing". But such fishing also is not "sport fishing" or "commercial fishing".

To alleviate the effects of that legislative oversight, the Board established a new category for regulatory purposes entitled "personal use fishing". 5 A.A.C. 77.001. The Board also adopted regulations authorizing "personal use fishing" on the Kenai Peninsula for sockeye salmon in the central district and coho salmon in the southern district. 5 A.A.C. 77.547 and 77.546.

The Board also met in joint session with the Board of Game and adopted a comprehensive joint regulation which establishes criteria for the identification of "subsistence uses" of all fish stocks and game populations in the state. 5 A.A.C. 99.010. The criteria were drawn in large measure from the criteria developed by the Board in 5 A.A.C. 01.597.

On March 5, 1982, the Madison Court dismissed the plaintiffs' second claim for relief as moot.[26] On August 30, 1982, the Court issued its decision, and later Findings of Fact and Conclusions of Law, relating to the third and fourth claims.[27] The Court inter alia determined that A.S. 16.05.251(a) delegates the Board authority to establish a "personal use fishing" category, that the Board's allocation of salmon stocks among personal use, sport, and commercial fishermen must be done in a manner consistent with due process considerations of fundamental fairness, that the

---

26/ MA File No. 4, p. 256.

27/ MA File No. 6, pp. 361-369.

Board's decision not to authorize any "personal use fishing" in the central district during the 1981 fishing season was fundamentally unfair and a violation of the plaintiffs' right to due process of law, but that the Board's decision to authorize "personal use fishing" in the central district during the 1982 season for sockeye salmon rather than coho salmon was not fundamentally unfair and not a violation of the plaintiffs' right to due process of law. The Court remanded the fourth claim to the Board with instructions to consider any regulatory proposals, and any evidence presented by the plaintiffs, that persons who fish in the central district with set gill nets for personal use are engaged in "subsistence uses" of Cook Inlet salmon stocks.[28]

II.

THE COURSE OF PROCEEDINGS IN THE TRIAL COURT

A. Madison v. Alaska Department of Fish and Game

On August 13, 1981, the plaintiffs filed a complaint in the Superior Court in Kenai setting forth four claims for relief.[29] After a hearing on the same day, the Court issued a preliminary injunction which ordered the opening of a "non-commercial" set gill net fishery in the central district of the Kenai Peninsula.[30] AFN participated as amicus curiae in the hearing on the injunction and later intervened as a party.

28/ MA File No. 4, p. 293.

29/ MA File No. 1, pp. 1-5.

30/ Id. 40-43.

On September 18, 1981, AFN and the defendants filed motions for summary judgment on the first claim for relief. The plaintiffs then filed a motion for summary judgment on all four of their claims. On October 28, 1981, the Court heard oral argument on the cross-motions for summary judgment on the first claim.

On November 9, 1981, the defendants moved to dismiss the second claim as moot.[31]

On December 10, 1981, the Court granted AFN's and the defendants' motions for summary judgment on the first claim.[32] On March 5, 1982, the Court entered Findings of Fact and Conclusions of Law relating to the first claim and dismissed the second claim as moot.[33] final J MA # 1, p 57

On June 21, 1982, the defendants filed a motion to remand the fourth claim to the Board.[34] On August 30, 1982, the Court denied the plaintiffs' motion for summary judgment on the third and fourth claims and granted the defendants' motion to remand the fourth claim.[35] [illegible] findings - Jun 24, 1983 MFile 6 361-369

The plaintiffs timely filed Notices of Appeal.[36] final J - MA # 5-322

31/ MA File No. 4, p. 296.

32/ MA File No. 1, pp. 45-48.

33/ MA Files No. 1, pp. 54-57, and No. 4, p. 296.

34/ MA File No. 4, p.293.

35/ Id. 293-295.

36/ MA Files No. 1, p. 50, and No. 4, p. 297.

B. Alaska Department of Fish and Game v. Gjosund

On May 29, 1981, the plaintiffs filed a pleading entitled a "petition" in the Superior Court in Homer.[37] On August 4, 1981, the Court issued a preliminary injunction which ordered the opening of a personal use set gill net fishery in the southern district. On March 8, 1982, the Court issued a decision and a permanent injunction requiring the defendants not to interfere with the fishery.[38]

The defendants timely filed a Notice of Appeal.[39]

C. Consolidation

On January 21, 1983, the Alaska Supreme Court ordered the consolidation of all appeals pending in the two above-described cases. On April 1, 1983, the Court granted AFN's motion to participate as amicus curiae in Alaska Department of Fish and Game v. Gjosund.

37/ ... File No. 2, pp. 1-9.

38/ Id. 221-245.

39/ Id. 262.

III.

ISSUES PRESENTED FOR REVIEW

A. Madison v. Alaska Department of Fish and Game

1. What is the proper standard of judicial review of the validity of 5 A.A.C. 01.597?

2. Are the criteria in 5 A.A.C. 01.597 for the identification of "subsistence uses" of Cook Inlet salmon stocks consistent with the intent of A.S. 16.05.251(b) and A.S. 16.05.940(26)?

3. Did the Board's adoption of 5 A.A.C. 01.597 moot the plaintiffs' second claim for relief?

4. Were the plaintiffs denied their rights to equal protection and due process of law when the Board determined that the personal use set gill net fishery in which the plaintiffs participated prior to the enactment of the subsistence statute is not a "subsistence use" fishery as defined by A.S. 16.05.940(26)?

5. Does A.S. 16.05.251(a) authorize the Board to adopt a regulation establishing a "personal use fishing" category for regulatory purposes?

6. Were the plaintiffs denied their right to due process of law when the Board decided to authorize a personal use fishery in the central district which targets on sockeye salmon rather than coho salmon?

B. Alaska Department of Fish and Game v. Gjosund

1. With respect to a personal use set gill net fishery which prior to the enactment of the subsistence statute fell within the

purview of the statutory definition of "subsistence fishing", is the Board precluded from determining whether the fishery is or is not a "subsistence use" fishery until such time as it is compelled to do so in order to protect fish stocks which are the target of the fishery from overharvest?

IV.

ARGUMENT

A. Introduction

For residents of rural Alaska, the subsistence statute is possibly the most important legislation enacted by the legislature since statehood. The statute recognizes that the economy of several hundred rural communities continues to be based in large measure on the harvest of fish stocks and game populations for personal and family consumption. Prohibiting hunting and fishing by residents of Anchorage or Juneau would engender considerable inconvenience and occasional personal hardship, but would hardly threaten the economy of either community or the health, safety, or general welfare of their residents. However, prohibiting hunting and fishing by residents of Selawik or Anaktuvuk Pass or English Bay would have devastating social and economic consequences. The legislature enacted the subsistence statute to prevent the latter result.

The foundation of the regulatory system established by the subsistence statute is the identification of "subsistence uses" of fish stocks and game populations around the state. Unfortun-

ately, as this litigation well illustrates, the development of criteria to identify "subsistence uses" has become intertwined with the politics of the Cook Inlet salmon fishery and the Board's institutional collapse in the face of escalating demands by competing fishing groups. A review of the transcripts which are a part of the Record on Appeal will indicate that the plaintiffs' contention that some members of the Board may have used the subsistence statute as a pretext to restrict the fishery in which the plaintiffs participated to placate more numerous and politically powerful sport and commercial fishermen is not without some basis in fact.

But that regrettable reality is unrelated to the validity of the criteria developed by the Board to identify "subsistence uses" or to the Board's authority to establish a "personal use fishing" category to provide Alaskans whose fishing activities are not "subsistence uses" with an opportunity to obtain salmon with set gill nets for personal use.

Consequently, while AFN strongly supports the plaintiffs' efforts to obtain a reasonable opportunity to harvest Cook Inlet salmon stocks, AFN has just as strongly disagreed with the plaintiffs as to why they should be afforded an opportunity to fish.

For the reasons set forth below, AFN believes that the plaintiffs should be afforded a reasonable opportunity to harvest Cock Intlet salmon stocks in the central district with set gill nets, that 5 A.A.C. 01.597 is consistent with the intent of the legislature when it enacted the subsistence statute, that the plain-

tiffs should be afforded an opportunity to present evidence to the Board that the communities in which they reside satisfy the criteria for the identification of "subsistence uses" set forth in 5 A.A.C. 01.597, that A.S. 16.05.251(a) authorizes the Board to establish a "personal use fishing" category, and that if the Board determines that the plaintiffs' fishing activities are not "subsistence uses" and that they are no longer "subsistence fishing", then fundamental fairness requires the Board to adopt "personal use fishing" regulations to provide the plaintiffs a reasonable opportunity to harvest Cook Inlet salmon stocks.

With respect to the Gjosund appeal, AFN believes that no group of Alaskans, including the plaintiffs, have a "right" to harvest any fish stock or game population. The legislature and the Board may alter, restrict, or even eliminate, previously authorized harvest opportunities, so long as they do so in a manner consistent with recognized constitutional principles.

B. The Criteria Adopted By The Board Of Fisheries To Identify "Subsistence Uses" Of Cook Inlet Salmon Stocks Are Consistent With The Intent Of A.S. 16.05.251(b) And A.S. 16.05.940(26).

1. Introduction

5 A.A.C. 01.597 sets forth criteria for identifying "subsistence uses" of Cook Inlet salmon stocks. 5 A.A.C. 99.010 sets forth similar criteria for identifying "subsistence uses" of all fish stocks and game populations in the state.

Application of the criteria has the effect of restricting

the identification of "subsistence uses" of Cook Inlet salmon stocks to fishing with set gill nets for personal use by residents of rural communities around Cook Inlet which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the community.[40]

One of the most important issues presented in this appeal is whether that is the result the legislature intended to achieve when it enacted A.S. 16.05.251(b) and A.S. 16.05.940(26)? The Madison and Gjosund Courts, the defendants, and AFN are of the opinion that it was.

2. In Determining Whether 5 A.A.C. 01.597 Is Consistent With The Legislature's Intent When It Enacted A.S. 16.05.251(b) And A.S. 16.05.940(26), This Court May Substitute Its Own Judgment For That Of The Board Of Fisheries.

During the proceedings before the Madison Court, there was considerable confusion among the parties as to the proper standard of judicial review of the criteria developed by the Board to identify "subsistence uses" of Cook Inlet salmon stocks. Although the Board first adopted the criteria as a policy,[41] it later adopted the policy as a regulation. 5 A.A.C. 01.597.

40/ See the Findings of Fact entered by both the Madison and Gjosund Courts. MA File No. 1, pp. 54-57 (Paragraph No. 10). GJ File No. 2, p. 258 (Paragraph No. 18). Significantly, neither the Madison nor the Gjosund plaintiffs challenge the validity of those important findings.

41/ MA File No. 3 (Exhibits "H" and "I").

The standard for determining the validity of a regulation is the test enunciated by this Court in Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971). See also A.S. 44.62.030. To be valid, a regulation must be consistent with the statute pursuant to which it was adopted and it must be reasonably necessary to carry out the purpose of the statute.

Whether adoption of a regulation which establishes criteria for the identification of "subsistence uses" is reasonably necessary to carry out the purpose of A.S. 16.05.251(b) involves questions of fact about the regulation of the Cook Inlet salmon fishery which the Board, rather than the Court, is probably best able to judge. And the Madison Court correctly deferred to the judgment of the Board on that question.

However, the Board has no particular expertise to determine the intent of the Legislature when it enacted A.S. 16.05.251(b) and A.S. 16.05.940(26). The final construction of a statute enacted by the Alaska legislature rests with this Court, not the Board. Wien Air Alaska, Inc. v. Department of Revenue, 647 P.2d 1087 (Alaska 1982). Consequently, the Madison Court incorrectly refused to substitute its judgment on the question of whether the criteria adopted by the Board are consistent with A.S. 16.05.251(b) and A.S. 16.05.940(26).

3. Although The Court May Substitute Its Judgment For The Judgment Of The Board, The Board's Interpretation Of A.S. 16.05.940(26) Is A Valuable Aid Which Should Be Afforded Considerable Deference.

A.S. 16.05.940(26) states that "subsistence uses" are "cus-

tomary and traditional" uses of fish stocks and game populations for personal and family consumption and other specified purposes. The statute does not define the phrase "customary and traditional". The criteria set forth in 5 A.A.C. 01.597 reflect the Board's interpretation of the phrase.

Although the Court may substitute its judgment for the judgment of the Board that the criteria are consistent with the legislature's intent when it enacted A.S. 16.05.251(b) and A.S. 16.05.940(26), the Board's interpretation of the latter statute is a valuable aid which the Court should afford considerable deference. See Wien Air Alaska, Inc. v. Department of Revenue, supra. See also Udall v. Tallman, 380 U.S. 1, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965). The Board's interpretation supports the opinion of the Madison Court that the criteria are consistent with the statute pursuant to which they were adopted.

4. The Legislative History Of The Subsistence Statute And Of Earlier Statutes Which Are In Pari Materia With The Subsistence Statute Indicates That 5 A.A.C. 01.597 Is Consistent With The Intent Of A.S. 16.05.251(b) And A.S. 16.05.940(26).

In determining legislative intent, the Court should investigate a statute's legislative history. North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534 (Alaska 1978). The legislative history of the subsistence statute supports the Madison Court's opinion that 5 A.A.C. 01.597 is consistent with A.S. 16.05.251(b) and A.S. 16.05.940(26).

The subsistence statute was reported to the Alaska House of

Representatives by the Special Committee on Subsistence as HB 960.[42] The Special Committee was chaired by Representative Nels Anderson[43] who was also the manager of HB 960 during the floor debate.

During the debate Representative Sam Cotton offered an amendment to A.S. 16.05.940(26) to strike the phrase "customary and traditional" from the definition of "subsistence uses". He did so because like both the Madison and Gjosund plaintiffs, he was of the opinion that any person who hunts and fishes for personal or family consumption should be considered to be engaging in "subsistence uses" regardless of whether they live in Selawik, Anchorage, or Kenai:

> "Mr. Speaker, I think the reason I introduced this amendment was to raise a point of confusion on my part. I don't know what 'customary and traditional' means? I think that when we talk about subsistence use, we are talking about uses of wild resources for direct personal or family consumption." 44

The Cotton amendment was defeated. In speaking against the amendment, Representative Anderson explained that the intent of the Special Committee when it drafted the definition of "subsistence

---

42/ The legislative history of HB 960 is set forth in Alaska House of Representatives, Bill History and Journal Index, Tenth Legislature 1977-78, p. 336.

43/ Id. xii.

44/ MA File No. 3 (Exhibit "U", p. 8).

uses" was to delegate the Board and the Board of Game authority to protect traditional uses of fish stocks and game populations from being overrun by new hunters and fishermen who are a by-product of Alaska's rapid urban population growth:

> "The two words are used in this context to put some guidelines around the uses of Alaska's freedom of resources. What we were afraid of, it was brought to our attention by people who were concerned that this would leave the field of the definition wide open. That newcomers just coming to the State of Alaska would automatically be able to establish not only residency in thirty days, but be able to go out and state they have a customary and traditional use of Alaska's fish and game resources. The use of 'customary and traditional' use also is in recognition of a historical use of fish and game for food, shelter, fuel, clothing, tools, transportation, etc. This is not only in conformance with aboriginal uses, but also those that have come in, those who come in later. They have...the non-native people in the State of Alaska have established customary and traditional uses of Alaska's fish and game resources for subsistence purposes. And in order to give the Board of Fish and Game (sic) more clarification in the area, we have come up with the (inaudible) of 'customary and traditional' rather than leaving the section wide open. The design is not to be restrictive but to provide guidelines and that is basically what I feel and many...many members felt it was necessary in retaining those two words 'customary and traditional'." 45 (Emphasis added).

The debate on the Cotton amendment is clear evidence that the legislature did not intend mere hunting and fishing for personal uses

---

45/ Id. 9-10. It also is important to note that 5 A.A.C. 01.597 does not identify "subsistence uses" on a racial basis (all residents of a community which meets the criteria can participate in "subsistence uses") or establish any type of durational residency requirement (all residents of a community which meets the criteria can participate in "subsistence uses" regardless of the length of their residency. But if they move to an urban area they may no longer participate regardless of the length of their residency in the state).

to be "subsistence uses".

But what uses of fish stocks and game populations was the legislature trying to protect? The legislative history of two earlier statutes which are in pari materia with the subsistence statute indicates that the intent of the legislature was to keep the rural Alaska hunting and fishing economy from being overwhelmed by tens of thousands of urban sport hunters and fishermen.[46]

The first statute was ch. 199 SLA 1975 sponsored by Representative Jimmy Huntington, a rural legislator from the Interior.[47] The statute authorized, but did not require, the Board of Game to adopt regulations inter alia establishing "subsistence hunting areas". See A.S. 16.05.257. The next year ch. 269 SLA 1976 was enacted to provide greater local participation in decisions by the Board of Game relating to the implementation of the 1975 statute. Section 1, ch. 269 SLA 1976 is a legislative finding which explains the goal both statutes were enacted to achieve:

> The legislature finds that traditional dependence on fish and game resources is a continuing and necessary way of life in many areas of the state and that protection of subsistence usage of these resources is essential to the health, safety, and general welfare of the citizens of the state in those areas. (Emphasis added).

Although the location of the "many areas of the state" where dependence on fish stocks and game populations is "a continuing

---

46/ State v. Buncrant, 546 P.2d 530, 545 (Alaska 1976)("(T)he general rule is that a statute in pari materia with a subsequent, but approximately contemporaneous, measure is a proper source of evidence of legislative intent in the second measure.").

47/ 1975 House Journal, 9th Leg., 1st Sess. 625.

and necessary way of life" is not identified, it is reasonable to assume that the legislature's concern was directed toward rural Alaska where the local economy is grounded on hunting and fishing, rather than urban Alaska where hunting and fishing is a de minimus part of the local economy.[48]

Chapter 269 SLA 1976 was introduced as HB 804[49] by Representative Philip Guy, a rural legislator from Kwethluk.[50] During the debate on HB 804, Representative Keith Specking opposed the bill on the theory that all hunting in Alaska is subsistence hunting. Speaking in opposition to Representative Specking, Representative Mike Miller, himself an urban legislator from Juneau, indicated that the purpose of the bill was to protect "subsistence hunting" by residents of rural Alaska from being overwhelmed by competition from urban hunters:

> "I think when we say that all hunting in Alaska is subsistence hunting because of the provision that the meat be used, I think that's kind of stretching it a little bit. Mr. Speaker, I enjoy hunting a little bit and I fly up to Yakutat and certainly I used every ounce of meat, but to say that I depend on that meat on a subsistence basis to feed my family and clothe my family, to - you know, it's a little bit - well it's a joke.

48/ In Alvarado v. State, 486 P.2d 891, 894 (Alaska 1971), this Court recognized that the economy of most rural communities is organized around hunting and fishing. Similarly, in Hicklin v. Orbeck, 565 P.2d 159, 164 (Alaska 1977), the Court recognized that the cash economy provides few employment opportunities in rural communities.

49/ 1976 House Journal, 9th Leg., 2d Sess. 340.

50/ Id. iii.

> I don't have to go up there and hunt. I enjoy doing it and as long as the game is available and it's not depriving people who depend on that meat for subsistence, you know, for their real food and bread for the table, so to speak, I don't see anything wrong with me going up there and hunting. But on the other hand, if there's an area where people literally are going to be denied the food they need to live because of pressure from outside sportsmen like myself, then, Mr. Speaker, I just question very seriously whether I should be in that area at all." 51 (Emphasis added).

The debate on HB 804 was concluded by Representative Huntington, the sponsor of the 1975 statute, who made the implicit point that the legislature's intent was to protect the hunting economy of rural communities:

> "And this bill here I went along with because I think it's a good bill and it adds to the possibility of people having some say in the area where they live. And let's just take a little coincidence. Now the Nowitna River on the Yukon River above Ruby, thirty miles above Ruby, has been hunted for many years. It was one of the finest hunting rivers in the area, and it was destroyed by hunting, there's no doubt about that. The people were flown in from airplanes and they cut the moose down to practically zero in two years time. The people of Ruby, the people of Tanana hollered their head off trying to get them (i.e. the Board of Game) to set that aside as a subsistence area, just for the purpose of letting the herd build up again. That was the only purpose behind it and we couldn't do it. Now maybe under this bill an advisory board could advise Fish and Game and that part could be carried out." 52 (Emphasis added).

51/ Recording of Proceedings, 9th Leg., 2d Sess., Tape 130 H, Meter Nos. 527-1208 (1976)(On file at Anchorage State Law Library). The tape index is inadequate to cite to meter numbers more specific than those defining the parameter of the debate. See also Timperley v. Jeffries, Alaska Supreme Court No. 2765, p. 12 (December 16, 1983)(Tapes of legislative proceedings are evidence of legislative intent).

52/ Id.

In 1977 the authority of the Board of Game to adopt regulations pursuant to the 1975 statute to limit hunting of the western arctic caribou herd to residents of rural northwest Alaska communities was challenged by Fairbanks sportsmen in litigation which culminated in State v. Tanana Valley Sportsmen's Ass'n, 583 P.2d 854 (Alaska 1978). The uncetainty which that litigation created as to the scope of authority which had been delegated to the Board of Game was a significant factor in the legislature's decision to enact the subsistence statute.[53]

The purpose of the subsistence statute was inter alia to delegate the Board and the Board of Game adequate regulatory authority to enable each to better achieve the governmental objective set forth in sec. 1, ch. 269 SLA 1976. And that is precisely the same objective the Madison and Gjosund Courts determined is the factual result of applying the criteria in 5 A.A.C. 01.597 to fishing for Cook Inlet salmon stocks.[54]

53/ See Report of the Special Committee on Subsistence, Alaska House of Representatives, 12th Leg., 1st Sess. 14 (1981).

54/ It should again be emphasized that the consistency of the criteria in 5 A.A.C. 01.597 with the intent of the legislature when it enacted the subsistence statute is unrelated to the question of whether the fishery in which the plaintiffs participated prior to the enactment of the statute satisfies the criteria. The former is a question of law of considerable importance to all Alaskans who reside in rural communities around the state whose local economies are dependent on hunting and fishing. The latter is a somewhat more parochial question of fact.

5. The History Of The Times During Which The Legislature Enacted The Subsistence Statute Indicates That 5 A.A.C. 01.597 Is Consistent With The Intent Of A.S. 16.05.251(b) And A.S. 16.05.940(26).

The history of the times during which the legislature enacted a statute is relevant evidence of its intent in doing so. Northern Commercial Co. v. United States, 4 Alaska Fed. 245 (9th Cir. 1914). And the history of the times during which the legislature enacted the subsistence statute indicates that 5 A.A.C. 01.597 is consistent with the intent of A.S. 16.05.251(b) and A.S. 16.05.940(26).

At the same time that Fairbanks sportsmen were challenging the authority delegated to the Board of Game pursuant to A.S. 16.05.257, the United States Congress began consideration of legislation which three years later became the Alaska National Interest Lands Conservation Act (hereinafter "ANILCA").[55] Title VIII of ANILCA[56] establishes federal guidelines which control the Board's and the Board of Game's regulation of fishing and hunting on the public lands and in the navigable waters of Alaska.

A number of sections of the subsistence statute embody concepts and language drawn by the legislature from the version of title VIII of ANILCA passed by the United States House of Representatives in the spring of 1978. In particular, as Representative Cotton pointed out during the debate on the subsistence

---

55/ Pub. L. No. 96-487 (1980).

56/ 16 U.S.C. 3111-3126.

statute,[57] the definition of "subsistence uses" in A.S. 16.05 940(26) is nearly identical to the definition of the same term in the then current version of ANILCA.[58]

When a statute is borrowed from another jurisdiction, the legislature is presumed to have intended to adopt the construction of the statute adopted by the original jurisdiction's highest court. Carver v. Gilbert, 387 P.2d 928 (Alaska 1963), Sekinoff v. United States, 283 F. 38 (Alaska 1922). AFN would urge this Court to consider extending that rule of statutory construction to the legislative history in the original jurisdiction as well.

With respect to ANILCA, the legislative history indicates clearly that the Congress intended its definition of "subsistence uses" to identify uses of fish stocks and game populations by residents of rural communities in which hunting and fishing is a significant characteristic of the economic and social life of the community.

For example, section 702 of the bill reported by the House

57/ MA File No. 3 (Exhibit "U", p. 8)("I want to point out that the legislation that recently passed Congress (sic), H.R. 39, does define "subsistence" (sic) in almost exactly the same way as HB 960 does. They do, in fact, use the words 'customary and traditional'. HR 39 goes quite a bit further in defining what subsistence means and they agree specifically in Title VII on subsistence.").

58/ Compare A.S. 16.05.940(26) with sec. 703, H.R. 39, 95th Cong., 2d Sess. (1978), reprinted in House Rept. No. 95-1045, Part I, 95th Cong., 2d Sess. 1978 (hereinafter "House Report"). This version of H.R. 39 was reported by the House Comm. on Interior and Insular Affairs on April 7, 1978. See also MA File No. 3 (Exhibit "V", sec. 703) and 16 U.S.C. 3113.

Committee on Interior and Insular Affairs during the spring of 1978 states that:

> It is hereby declared to be the policy of the Congress that -
>
> (1) management policies on the public lands in Alaska are to cause the least adverse impact possible on rural people who traditionally and consistently depend upon subsistence uses of the resources of such lands... 59 (Emphasis added).

In pertinent part, the report filed by the Committee to explain its version of H.R. 39 states that:

> After consideration of the testimony at the subcommittee's hearings and town meetings throughout Alaska and review of studies done by a variety of Federal, State, academic and other agencies and groups, the Committee has no doubt about the importance of subsistence uses to the rural people of Alaska. 60
>
> ...
>
> There are more than 200 rural communities throughout Alaska. In many, fresh meat, fish, and produce are unavailable except through the subsistence harvest. 61
>
> ...
>
> The rapid population growth of Alaska's urban centers has been a major factor threatening subsistence uses, along with inadequate State and Federal actions, declines in certain wildlife populations, and increasing accessibility of remote areas. Between 1965 and 1975, Alaska's population increased from 265,000 to 405,000 people and the number of resident hunting licenses almost doubled - from 93 000 to 170,350. Anchorage

---

59/ House Report 27. See also 16 U.S.C. 3111-3112.

60/ Id. 181.

61/ Id. 182.

> presently is the third fastest growing city in the United States... As a result of such developments, pressure on many traditional subsistence resources has been unacceptably increased as urban hunters have intruded into more remote, subsistence-dependent areas of the State. 62 (Emphasis added).

Lastly, although his views were not available to the legislature at the time it drafted and debated the subsistence statute, the comments of Representative Morris K. Udall, the chief sponsor of H.R. 39 and the chairman of the Committee on Interior and Insular Affairs, are the definitive explanation of what the Congress intended to accomplish by including title VIII in ANILCA. His explanation of the operation of the federal and state subsistence management system is important in its entirety, but is too lengthy to reprint here.[63] However, his explanation of the manner in which "subsistence uses" of fish stocks and game populations are to be identified is particularly pertinent:

> "The subsistence preference applies to individual wildlife populations and fish (sic), and State regulation of each population and stock must be consistent with section 804. The State must first identify the customary and traditional uses of each population and stock by rural residents.
>
> ...
>
> It also should be noted that customary and traditional subsistence uses must be evaluated on a community or area basis rather than an individual basis." 64 (Emphasis added).

62/ Id. 184.

63/ 126 Cong. Rec. H10545 - H10547 (daily ed. November 12, 1980) (remarks of Representative Udall).

64/ Id. H10546.

6. Conclusion

In summary, the interpretation of the intent of A.S. 16.05.251(b), A.S. 16.05.255(b), and A.S. 16.05.940(26) adopted by the Board and the Board of Game, the legislative history of the subsustence statute, and the legislative history of the federal statute upon which the subsistence statute is based all support the decision of both the Madison and Gjosund Courts that when the legislature enacted the subsistence statute, it intended to protect hunting and fishing by persons who reside in rural communities which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the community.

The criteria set forth in 5 A.A.C. 01.597 are consistent with that intent.

C. The Alaska Federation Of Natives Has Not Taken A Position On The Validity Of The Policy Adopted By The Board Of Fisheries At Its December 1980 And March 1981 Meetings.

The Madison plaintiffs second claim for relief alleges that the policy adopted by the Board at its December 1980 and March 1981 meetings to identify "subsistence uses" of Cook Inlet salmon stocks[65] is invalid because it was not adopted pursuant to the procedures set forth in the Administrative Procedure Act.

At its December 1981 meeting the Board adopted the policy as a regulation. 5 A.A.C. 01.597. The plaintiffs have not alleged that the regulation was adopted by the Board in an unlawful manner.

65/ MA File No. 3 (Exhibits "H" and "I").

Subsequent to the Board's adoption of 5 A.A.C. 01.597, the defendants moved to dismiss the second claim on the ground that it is moot and the plaintiffs resisted the motion. On March 5, 1982, the Madison Court granted the motion and dismissed the second claim.

During the Court's consideration of the merits of the motion, AFN took no position on the viability of the second claim subsequent to the Board's adoption of 5 A.A.C. 01.597.

D. Equal Protection

1. The Board's Determination That The Set Gill Net Fishery In Which The Plaintiffs Participated Prior To The Enactment Of The Subsistence Statute Is Not A "Subsistence Use" Fishery Did Not Violate The Plaintiffs' Right To Equal Protection.

The plaintiffs do not allege that the legislature's division of fishermen into two classes, i.e. those who engage in "subsistence uses" of fish stocks and those who do not, and then providing each class of fishermen disparate fishing opportunities violates their right to equal protection. Rather, they take issue with the Board's factual determination that they are members of the latter rather than the former class.

Consequently, although their brief mobilizes well-worn "equal protection" rhetoric and case law in support of the result they are prosecuting this appeal in an attempt to achieve,[66] the gravamen of their argument is actually the allegation that the Board's

66/ See Brief of Appellant/Cross Appellee, pp. 30-41.

factual determination that the plaintiffs do not engage in "subsistence uses" of Cook Inlet salmon stocks was arbitrary, capricious, and hence, a violation of the plaintiffs' right to due process.[67]

E. Due Process

1. The Superior Court Properly Remanded The Factual Question Of Whether The Set Gill Net Fishery In Which The Plaintiffs Participated Prior To The Enactment Of The Subsistence Statute Is A "Subsistence Use" Fishery.

The courts will consider a due process claim only in situations in which a plaintiff alleges a deprivation of liberty or property sufficient to warrent constitutional protection. Horowitz v. Alaska Bar Ass'n, 609 P.2d 39 (Alaska 1980). Although the Madison plaintiffs have no "right' to harvest Cook Inlet salmon stocks, their opportunity to do so is certainly a property interest of sufficient importance to warrent constitutional protection. See Herscher v. State, 568 P.2d 996 (Alaska 1977).

Whether the Board's factual determination that the set gill net fishery in which the plaintiffs participated prior to the enactment of the subsistence statute is not a "subsistence use"

67/ Assuming arguendo that 5 A.A.C. 01.597 correctly describes the class of fishermen who engage in "subsistence uses", then whether the class is a violation of equal protection is dependent upon whether providing disparate fishing opportunities to residents of rural communities in which hunting and fishing is a significant characteristic of the social and economic life of the community bears a fair and substantial relation to a legitimate governmental objective. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976). The governmental objective in this case is protection of the health, safety, and general welfare of citizens who reside in rural Alaska. sec. 1, ch. 269 SLA 1976. The presumption is that the classification does. Kimoktoak v. State, 584 P.2d 25, 31 (Alaska 1978). And the plaintiffs have presented no evidence to the contrary.

fishery violates the plaintiffs' right to due process of law depends on whether the determination violates fundamental principles of liberty and justice or is an arbitrary administrative action shocking to the universal sense of justice. See Green v. State, 462 P.2d 994 (Alaska 1969).

Although the question is a close one, the Board's determination probably does not violate due process. The criteria to identify "subsistence uses" of Cook Inlet salmon stocks were adopted by the Board in December 1980.[68] Although the Board did not provide an opportunity for the public to present oral testimony at its March 1981 meeting, it did provide the public, including the plaintiffs, an opportunity to submit written testimony on "subsistence uses" of Cook Inlet salmon stocks.

A considerable volume of oral and written testimony on "subsistence uses" of Cook Inlet salmon stocks was generated during the December and March meetings,[69] but the record is near devoid of information about the relationship of hunting and fishing to the economy of the area around the City of Kenai in which the plaintiffs reside.

Whether the economy of the Kenai Peninsula is more like the economy of Selawik than the economy of Anchorage is a question of fact. Based on a review of the record before the Board, it is difficult to conclude that on its face the Board's determination was

---

68/ MA File No. 3 (Exhibit "H").

69/ See generally MA File No. 2.

so arbitrary as to violate the plaintiffs' right to due process of law.

However, because of the confusion surrounding the criteria pursuant to which the Board made its determination, the Madison Court correctly remanded the plaintiffs' fourth claim for relief to the Board to determine anew whether the set gill net fishery in which the plaintiffs participated prior to the enactment of the subsistence statute satisfies the requirements of 5 A.A.C. 01.597 and A.S. 16.05.940(26).

2. The Plaintiffs' Claim That The Board Of Fisheries Is Not An Impartial Tribunal Should Be Remanded To The Superior Court.

An impartial administrative decisionmaker is basic to a democratic society and representative government. Green v. State, supra. And every Alaskan, including the plaintiffs, who wishes to participate in the harvest of fish stocks is entitled to have his or her opportunity to do so considered by all seven members of the Board in a fair and impartial manner.

Although they have not aggressively pursued the allegation in their brief, the plaintiffs claim that the Board itself is a violation of due process of law in that it is not an impartial tribunal.[70]

The plaintiffs' allegation in this regard raises a constitu-

70/ See Brief of Appellant/Cross Appellee, p. 47 ("Due process violations can ensue from cummulative patterns of behavior resulting in basic and intuitivly (sic) recognizable unfair actions. Madison alleges at the least that this is what has happened.").

tional question of both first impression and fundamental importance. However, the Record on Appeal is not adequate to decide the question in this appeal.

But because of the serious constitutional and public policy implications of the plaintiffs' claim, they should be afforded an opportunity to present evidence in the Superior Court in support of the argument that the composition of the Board violates the plaintiffs' right to due process of law. An argument which appears to have considerable merit.

The 1959 statute which established the Board of Fish and Game was not the first attempt to create an administrative agency to regulate hunting and fishing in Alaska. In 1957 the Territorial Legislature enacted a statute which established a seven member Fish and Game Commission. ch. 63 SLA 1957. By law the commission was required to be composed of three commercial fishermen representing specific geographical areas, one hunter, one trapper, and one sport fisherman. In other words, the legislature purposely delegated its authority over hunting and fishing to a group premeditatively composed of individuals with substantial vested interests in, and prejudgments about, the regulations they were empowered to adopt.

During its consideration of the Alaska Statehood Act,[71] the Congress determined that the Fish and Game Commission was unacceptable because it purposely delegated control of Alaska's fish stocks to the commercial fishing industry and because it excluded

---

71/ Pub. L. No. 85-508 (1958).

Alaska Natives from participation in the regulatory process.[72] As a result, the Congress took the extraordinary step of including section 6(e) in the Statehood Act. In pertinent part, section 6(e) states:

> ... (T)he administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the first day of the first calendar year following the expiration of ninety calendar days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of said resources in the broad national interest.

On March 2, 1959, Secretary of the Interior Fred A. Seaton wrote Hugh J. Wade, Acting Governor of Alaska, and detailed the requirements imposed on the new state by section 6(e).[73] With respect to the composition of a new board of fish and game, the Secretary stated that:

> "...(T)he policy-making officials should be selected for their ability and their dedicated interest in the resource, and no identification should be made between a policy-making official and any particular segment of the population; likewise, no official should be bound to represent the interests of a specific geographical region."

On April 17, 1959, the legislature enacted ch. 94 SLA 1959.

72/ 104 Cong. Rec. 9747-9750 (May 28, 1958).

73/ Letter from Fred A. Seaton to Hugh J. Wade (March 2, 1959) reprinted in Hearings on H.R. 39 et al. Before the Subcomm. on General Oversight and Alaska Lands of the House Comm. on Interior and Insular Affairs, 95th Cong., 1st Sess., Part XI 411-412 (1978) (hereinafter "House Hearings").

Section 6 of the 1959 statute established a Board of Fish and Game "composed of eight members having a general knowledge of the fish and game resources of the State and selected without regard to political affiliation or special interest".

On April 27, 1959, Secretary Seaton certified to the Congress that the State of Alaska was in compliance with section 6(e) of the Statehood Act,[74] and on January 5, 1960, President Eisenhower transferred the administration and management of fish and game from the federal government to the State.[75]

In 1975 the legislature split the Board of Fish and Game into a seven member Board of Fisheries and a seven member Board of Game. ch. 206 SLA 1975. The members of both boards are required to be appointed by the Governor and confirmed by the legislature "without regard to political affiliation or geographical location of residence". See sec. 3, ch. 206 SLA 1975.

However, what the Congress and the legislature prohibited by statute has been honored primarily in the breach. This Court may take judicial notice[76] of the fact that for almost a quarter of a century five Alaska governors have appointed persons to the Board because of their identification with particular fishing

---

74/ Letter from Fred A. Seaton to Sam Rayburn (April 27, 1959) reprinted in House Hearings, Part XI 413.

75/ Executive Order No. 10857 (January 5, 1960).

76/ The Court may judicially notice a fact that is generally known within the state. Alaska Rule of Evidence 201(b).

groups, the geographical area of the state in which they reside, and their vested interest in particular fisheries. For example, during the 1983 session the legislature refused to confirm Governor Sheffield's appointments to the Board[77] because a majority of the members of the legislature were of the opinion that the Governor had not appointed an adequate number of persons to the Board who represented sport fishing groups. In response, the Governor has publicly promised to appoint a sport fisherman from Fairbanks to the Board.

In such a politicized environment for administrative rulemaking, it is small wonder that the plaintiffs argue that the Board was not impartial when it determined that the set gill net fishery in which the plaintiffs participated prior to the enactment of the subsistence statute does not satisfy the criteria set forth in 5 A.A.C. 01.597.

And the plaintiffs are correct that a delegation of regulatory authority to persons who individually or as members of a group have a direct interest in, or prejudgment about, the regulations they are empowered to adopt is a violation of due process of law. Particularly, when the legislature has not delegated such authority pursuant to clear standards to govern its exercise.[78]

For example in State Bd. of Dry Cleaners v. Thrift-D-Lux

77/ See 1983 Senate Journal, 13th Leg., 1st Sess. 1238, 1243-44.

78 Assuming that the fishery in which the plaintiffs desire to participate is not a "subsistence use" fishery regulated pursuant to A.S. 16.05.251(b), then the Board may adopt or not adopt whatever regulations "it considers advisable" authorizing or not authorizing the plaintiffs to harvest Cook Inlet salmon stocks. See A.S. 16.05.251(a).

Cleaners, 254 P.2d 29 (Calif. 1953), the California Supreme Court struck down a scheme for regulating the dry cleaning industry in California which was similar in many respects to the scheme employed by the Governor and the legislature to regulate fishing in Alaska.

Six of the seven members of the Board of Dry Cleaners were required to be members of the dry cleaning industry. The statute which established the board also included no standards to govern the board's exercise of regulatory authority. One of the grounds cited by the Court in support of its decision invalidating the board's authority to fix dry cleaning prices was that the regulatory scheme established by the legislature violated due process:

> "While the delegation of government authority to an administrative body is proper in some instances, the delegation of absolute legislative discretion is not. To avoid such a result it is necessary that a delegating statute establish an ascertainable standard to guide the administrative body. Here the statute assumes to confer legislative authority upon those who are directly interested in the operation of the regulatory rule and its penal provisions with no guide for the exercise of the delegated authority." 254 P.2d at 36.

In support of that conclusion, the Court cited Carter v. Carter Coal Co., 298 U.S. 238, 56 S.Ct. 855, 80 L.Ed. 1160 (1936). Carter invalidated a section of the Bituminous Coal Conservation Act which delegated large coal producers authority to regulate wages paid by small producers and the number of hours small producers could require their employees to work. In doing so, the United States Supreme Court held:

> "The difference between producing coal and regulating its production is, of course, fundamental. The former is a private activity; the latter is

> necessarily a governmental function, since, in the very nature of things, one person may not be intrusted with the power to regulate the business of another, and especially of a competitor. And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of this court which foreclose the question." 56 S.Ct. at 873 (Emphasis added).

Lastly, in Gibson v. Berryhill, 411 U.S. 564, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973), the United States Supreme Court upheld a lower court decision which held that the Alabama Board of Optometry was so biased by prejudgment and pecuniary interest that its members could not constitutionally conduct hearings on whether to revoke the licenses of a group of optometrists employed by a private company. Although the case turned on its own peculiar facts, the lower court opinion is instructive with respect to the plaintiffs' claim in the instant appeal in that it recognizes that due process is violated even in situations in which it is difficult to prove demonstrable bias with respect to a particular decision:

> "The question of possible bias of the Board members in this case is not whether the members are actually biased but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him. A basic element of justice in America is that the court must avoid, not only evil, but the appearance thereof." Berryhill v. Gibson, 331 F. Supp. 122, 125 (D.C. Ala. 1971).

The plaintiffs' claim in the instant appeal is obviously dif-

ferent from Thrift-D-Lux Cleaners and Carter in that A.S. 16.05. 221(a) does not mandate the appointment of individuals to the Board who have a vested interest in the regulations they adopt. However, for almost a quarter of a century, tradition has produced the same result.

If the Governor were to appoint the counsel of the Chugach Electric Association to the attorney seat on the Alaska Public Utilities Commission, the public uproar would be deafening. But until the filing of this lawsuit, there has been little public outcry about the Board as five governors have appointed fish processors, commercial fishermen, sport fishing guides with a vested economic interest in the regulation of the Cook Inlet fishery, persons designated to represent the interests of fishermen in a particular geographic area of the state, or, most recently, an official of a southcentral Alaska sport fishing organization who shortly after his appointment to the Board appeared before the Kenai River Sport Fishing Association and, according to the Anchorage press, told a room full of sport fishermen:

> "Those 10,000 kings are worth more, to more people, than all those sockeyes. This group is headed to making the Kenai king the number one priority and to hell with the 4.4 million sockeyes.
>
> ...
>
> Let's get some more members in this Kenai River Sport Fishing Association and knock hell out of them (commercial fishermen). That's the only way it can be done. We've got to organize the 170,000 sports fishing

> people that live in Anchorage and on the Kenai Peninsula." 79

A regulatory scheme which purposely produces such prejudgment and bias is constitutionally flawed.

It also should be noted that in a related situation the legislature has recognized the problem and taken steps to eliminate it. The legislature has delegated the Board authority to regulate all aspects of fishing in Alaska with one exception: the regulation of entry into most commercial salmon fisheries. That responsibility has been delegated to the Alaska Commercial Fisheries Entry Commission. In recognition of possible bias, prejudgment, and conflict of interest, A.S. 16.43.050 establishes the following requirements for appointment to the Commission:

> The commission shall consist of three members with a broad range of professional experience, none of whom has a vested economic interest in an interim-use permit, entry permit, commercial fishing vessel or gear, or in any fishery resource processing or marketing business. (Emphasis added).

Why the legislature has purposely eliminated bias and conflict of interest in the regulation of who may participate in the commercial fishery while at the same time actively participating in the appointment of individuals to the Board because of their bias and conflict of interest is best explained by history and political tradition. But history and tradition are not adequate justification for denial of the plaintiffs' right to due

---

79/ Chappell, Battle Over Kenai King Salmon Brews, Anchorage Daily News, July 29, 1983, at C1. The above-cited quotation is not a part of the Record on Appeal. It is, however, indicative of the type of record the plaintiffs may be able to develop if their due process claim is remanded to the Superior Court.

process of law.

The plaintiffs have raised a serious constitutional question of first impression which, because it involves a number of questions of fact, cannot be answered based on the record in this appeal. But fundamental fairness requires that the plaintiffs be afforded an opportunity to present evidence in support of their claim.

Consequently, the Court should consider articulating the constitutional standard pursuant to which the Governor is required to appoint persons to the Board, and then remand the plaintiffs' due process claim to the Superior Court for trial.

F. A.S. 16.05.251(a) Authorizes The Board Of Fisheries To Adopt A Regulation Establishing A "Personal Use Fishing" Category For Regulatory Purposes.

Pursuant to A.S. 16.05.251(a), at its March 1982 meeting the Board adopted a regulation which establishes a "personal use fishing" category for regulatory purposes. 5 A.A.C. 77.001.

The plaintiffs now argue that A.S. 16.05.251(a) does not delegate the Board authority to adopt 5 A.A.C. 77.001.[80] However, the plaintiffs are simply incorrect. This Court has already held that A.S. 16.05.251(a) is a broad delegation of authority to "make decisions affecting the utilization of fishery resources" which should be liberally construed to achieve its intended purpose. Kenai Peninsula Fisherman's Cooperative Ass'n v. State, supra at 903. As long as a particular method of regulation is based on

---

80/ See Brief of Appellant/Cross Appellee, p. 47-51.

the need to conserve and develop a particular fishery, the Board is empowered by A.S. 16.05.251(a) to adopt it. Id. Consequently, it is difficult to identify even a scintilla of merit in the plaintiffs' argument to the contrary.

To the extent they offer one, it appears to be that the plaintiffs do not believe that the establishment of a "personal use fishing" category is "essential" for regulatory purposes. See A.S. 16.05.251(a)(6). However, the Board, and not the plaintiffs, is the best judge of what is or is not "essential" to the discharge of its statutory responsibilities. A question of fact within the Board's regulatory expertise.

And the plaintiffs' argument is meritless on an even more obvious ground. What could be more "essential" than establishing a regulatory category to enable the Board to adopt regulations authorizing the plaintiffs to continue to harvest Cook Inlet salmon stocks?

The subsistence statute narrowed the statutory definition of "subsistence fishing" to exclude fishing with a set gill net for personal use by residents of communities in which hunting and fishing is not a significant characteristic of the social and economic life of the community.[81] Consequently, absent the "personal use fishing" category, the Board is without a methodology pursuant to which to continue to authorize fishing with set gill nets by residents of such communities. Assuming arguendo

---

81/ See MA File No. 1, pp. 54-57 (Findings of Fact and Conclusions of Law relating to the plaintiffs' first claim).

that the plaintiffs' fishing activities are no longer "subsistence fishing", the "personal use fishing" category is "essential" to provide the plaintiffs an opportunity to continue to harvest Cook Inlet salmon stocks.

G. The Board of Fisheries' Decision To Authorize A "Personal Use" Fishery In The Central District Of Cook Inlet Which Targets On Sockeye Salmon Rather Than Coho Salmon Did Not Violate The Plaintiffs' Right To Due Process Of Law.

The legislature has near plenary authority to regulate the utilization of Cook Inlet salmon stocks. Alaska Const. art. VIII, sec. 2. Prior to the enactment of the subsistence statute, the legislature delegated the Board its entire regulatory authority subject only to the requirement that the Board exercise that authority in a manner consistent with recognized due process standards. See Herscher v. State, supra. Assuming arguendo that the plaintiffs' fishing activities are "personal use fishing" rather than "subsistence fishing", they continue to be regulated by the Board pursuant to A.S. 16.05.251(a) and due process limitations.

In 1979 the Board adopted regulations which moved fishing in the central district with set gill nets for personal use from August 1 - September 21 to June 23 - August 15.[82] The purpose of the change was to move the fishery off coho salmon stocks and onto sockeye salmon stocks. Regulations adopted by the Board which authorize "personal use fishing" in the central district during the middle, rather than the end, of the summer[83] are con-

---

82/ GJ File No. 4, pp. 26-27.

83/ 5 A.A.C. 77.547.

sistent with the 1979 regulations. The Board's decision to adopt such regulations was not so totally arbitrary as to violate due process standards[84] and the plaintiffs do not challenge that decision in this appeal.

H. With Respect To The Personal Use Set Gill Net Fishery Which The Board Of Fisheries Authorized In The Southern District Of Cook Inlet Prior To The Enactment Of The Subsistence Statute, The Board Is Authorized To Determine Whether The Fishery Is Or Is Not A "Subsistence Use" Fishery, Regardless Of Whether The Biological Status Of The Salmon Stocks Which Are The Target Of The Fishery Does Or Does Not Require It To Do So.

The Gjosund Court upheld the validity of the criteria adopted by the Board to identify "subsistence uses" of Cook Inlet salmon stocks, but then inexplicably held that the Board is prohibited from applying the criteria to the personal use set gill net fishery which it authorized prior to the enactment of the subsistence statute until such time as it is required to do so to prevent overfishing of the salmon stocks which are the target of the fishery. However, such a result misconstrues the nature of the Gjosund plaintiffs' interest in Cook Inlet salmon stocks and sets a dangerous precedent for the regulation of hunting and fishing in Alaska.

The Court's decision implicitly assumes that "conservation" is the sole purpose of the Board's regulation of the harvest of Alaska's fishery resources. The Court ignores the Board's co-equal

---

84/ In reaching this result, it is important to differentiate between unfairness and "fundamental" unfairness. Only the latter is a constitutional violation. Because many questions of fact relating to fishery management are so close and so complex, it is particularly important that the Board be composed of seven truly impartial persons. It is extremely difficult for this or any other Court to substitute its judgment for that of the Board with respect to most decisions involving questions of fact.

responsibilities to facilitate the "utilization" and "development" of fish stocks. A.S. 16.05.221(a). See also Kenai Peninsula Fisherman's Cooperative Ass'n v. State, supra.

The allocation of the harvestable surplus of fish stocks among competing groups of fishermen can have a profound social and economic effect. As population growth, new settlement, and economic change occurs, whether a particular allocation of the harvestable surplus of a particular fish stock does or does not provide the "maximum benefit"[85] to all the people of Alaska may also change. And for better or for worse, the legislature has delegated responsibility for making such important decisions to the Board.

But the Court's decision assumes that once the Board has allocated the harvestable surplus of a particular fish stock to a particular group of fishermen, those fishermen acquire some type of vested interest in the harvest of the stock which can be reduced or eliminated only if "conservation" considerations so require. Such a result ignores two important decisions by this Court. And if affirmed in this appeal, will wreck havoc on the legislature's and the Board's responsibility to advance the "utilization" and "development" of Alaska's fishery resources.[86]

85/ Alaska Const. art. VIII, sec. 2 (The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State...for the maximum benefit of its people.).

86/ The legislature's and the Board of Game's responsibility to advance the "utilization" and "development" of Alaska's game populations would also be similarly compromised. Compare A.S. 16.05.221(a) and .251(a) with A.S. 16.05.221(b) and .255(a).

The decision of the Gjosund Court is squarely opposed to the opinion of this Court in Herscher v. State, supra, that the only limitation on the legislature's authority to regulate (or eliminate) the harvest of a fish stock or game population is that imposed by due process:

> "It is true that the state has the right to direct the use of its natural resources, including fish and game. We recognize that there is a difference between the state's plenary control over the natural resources and the taking away of a formerly granted state license. The state's power over natural resources is such that it could entirely eliminate the role of hunting guides, and no problem of due process would arise. However, when the state decides to permit the harvesting of its fish and game, and in so doing so permits the issuance of hunting guide licenses, then problems of due process do arise when the individual, rather than the group as a whole, is affected. At that point the consideration is whether the state's procedures in taking the property right in the individual's guide license comported with due process requirements." 568 P.2d at 1003. (Emphasis added).

Similarly, in Kenai Peninsula Fisherman's Cooperative, Ass'n v. State, supra, this Court upheld the Board's authority to reallocate certain Cook Inlet salmon stocks from commercial to sport fishermen. The decision of the Gjosund Court precludes that result absent a showing of necessity related solely to "conservation".

The Gjosund holding is bad law, worse public policy, and, consequently, the Superior Court's decision should be reversed.

V.

CONCLUSION

The Madison and Gjosund plaintiffs initiated this litigation because they want to harvest the same Cook Inlet salmon stocks in the same manner and in the same places along the shoreline of the central and southern districts of the Kenai Peninsula as they did prior to the enactment of the subsistence statute. Although AFN is sympathetic to the plaintiffs' goal, AFN intervened in Madison because of its concern about the public policy implications of the issues raised in the plaintiffs' pleadings and requested this Court for an opportunity to participate as amicus curiae in the Gjosund appeal because of its concern about the public policy implications of the portion of the Superior Court's decision now under review. Tens of thousands of Alaskans who live in the bush will be effected by the Court's decision in this case.

Because the issues raised in this consolidated appeal are so important, this Court should be careful to differentiate between the governmental objective the legislature intended to achieve when it enacted the subsistence statute, and the Board's implementation of the statute. Although the criteria developed by the Board to identify "subsistence uses" of Cook Inlet salmon stocks are consistent with A.S. 16.05.251(b) and A.S. 16.05.940 (26), the Board's application of the criteria to the fishery in which the Madison plaintiffs participated prior to the enactment of the subsistence statute may or may not have been made in a

manner consistent with due process requirements. If it was not, the reason may not be the fundamental unfairness of any particular Board decision as much as the lack of impartiality by the members of the Board as a whole which the legislature and five Alaska governors have purposely encouraged.

For all the reasons set forth above, the Alaska Federation of Natives respectfully requests that the holdings of the Madison Court be affirmed, that the holding of the Gjosund Court which is the subject of this appeal be reversed, and that the Madison plaintiffs' claim that the composition of the Board of Fisheries violates their right to due process of law be remanded to the Superior Court for trial.

DATED: December 27, 1983

Donald C. Mitchell
Attorney for Intervenor/
Amicus Curiae

IN THE SUPREME COURT FOR THE STATE OF ALASKA

GENE MADISON, LUCY CASEY, KEN McGAHAN, SR., ANDY JOHNSON, MARGIE KIVI, J.W. WARE, DICK FRANCIS, DON GROLESKE, KEN JORDON and SHIRLEY DEVAULT, Appellant, vs ALASKA DEPARTMENT OF FISH AND GAME and ALASKA BOARD OF FISHERIES, Appellees, and THE ALASKA FEDERATION OF NATIVES, Intervenors.	Supreme Court Nos. 6824/7181 Superior Court No. 3 KN 81-542 Civil
ALASKA DEPARTMENT OF FISH AND GAME, RONALD SKOOG, ALASKA BOARD OF FISHERIES Appellants, vs LOUIS GJOSUND, DORA MULCH, and KACHEMAK BAY SUBSISTENCE GROUP, INC., Cross-Appellees.	Supreme Court No. 7410 Superior Court Nos. 3HO-80-92 Civil 3HO-77-11014 Homer

MERIT APPEAL FROM THE SUPERIOR COURT, STATE OF ALASKA
THIRD JUDICIAL DISTRICT
JUDGE VICTOR CARLSON

BRIEF OF APPELLANT/CROSS APPELLEE

MARTIN FRIEDMAN
P.O. Box 337
Homer, Alaska 99603

ARTHUR ROBINSON
P.O. Box 3519
Soldotna, Alaska 99669

Filed in the Supreme Court in Anchorage of the State of Alaska this 3RD day of OCTOBER, 1983.

ROBERT B. BACON
Clerk of Court

TABLE OF CONTENTS

Table of Contents.....i

Table of Authorites.....ii

Constitutional Provisions, Statutes, and Regulations.....v

Statement of Jurisdiction.....xviii

Statement of issues.....1

Statement of facts.....3

Introduction of Facts.....8

Argument:

I Did the Board Exceed its legislative Authority in Adopting and Applying the 10 criteria
- A. Applicable Law.....12
- B. Administrative Review.....15

II Did the Board violate, AS 44.62.310, 312, the Public Meetings Provisions of the APA and was Judge Carlson's Ruling that this issue was moot In Error.....26

III Did the Superior Court Err in Failing to Find that the Action of the Board of Fisheries violated the Plaintiffs' Rights to Equal Protection of Law Under the Federal and State Constitution.....30

IV Has the Board of Fisheries Violated Plaintiffs' Right Due Process of Law.....41
- A. Due Process- Arbitrary Exclusion/Biased Hearing....41
- B. Due Process - Closed Hearings.....43
- C. Due Process- Administrative Actions by the Board are Improper.....44
- D. Due Process - Generally.....46

V In the Creation of a New Fishery, Namely a Personal Use Fishery, Beyond the Authority Delegated to the Board of Fisheries.....47

Conclusion.....51

TABLE OF AUTHORITIES

Cases

Aguchak v Montgomery Ward Co. Inc., 520 P2d 1352, 1357, (Alaska 1974).....42

Bachner v Pierson, 479 P2d 319 (Alaska 1970).....46

Castner v City of Homer, 598 P2d 95 (Alaska 1979).....14

Chin Hilbers v Municipality of Anchorage, 611 P2d 31, (Alaska 1980).....42

Commercial Fisheries Entry Commission v Apokedak, 606 P2d 1255, (Alaska 1980).....30

Green v State, 462 P2d 994, (Alaska 1969).....42,46

Herscher v State, 568 P2d 996 (Alaska 1977).....41

Hood v State, 574 P2d 811, 813.....13

Isakson v Rickey, 550 P2d 359 (Alaska 1976).....30, 31

Kelly v Zamarello, 486 P2d 906, (Alaska 1971).....12

Kenai Peninsula Fisherman's Cooperative Assn, Inc. v State of Alaska, 628 P2d 897, (Alaska 1981)....44, 49

Kenai River Sports Fisherman v State, _____ _____(Sept 1983).....6, 51

Rogers Construction Co. v Hill, 384 P2d 219, 222, (Oregon 1963).....12

State of Alaska v Bowers Office Products, Inc., 621 P2d 11, (Alaska 1980).....14

State v Erickson, 574 P2d 1 (Alaska 1978).....30, 31

State v Tanana Valley Sportsman's Association, 583 P2d 354, (Alaska 1978).....4

Stevenson v Burgess, 570 P2d 728 (Alaska 1977).....13

Tyonek v Alaska Board of Fisheries, 3AN 80 3073.....4

Vick v Board of Electrical Examiners, 626 P2d 90, (Alaska 1981).....42

Constitutions

Alaska Constitution, Article 1, Section 7.....41

Alaska Constitution, Article 1, Section 1.....30

U. S. Constitution, 14th Amendment, Section 1.....30, 41

Statutes

AS 16.05.050(9).....44

AS 16.05.090 - 094.....2, 5

AS 16.05.221(a).....49

AS 16.05.241.....10, 44

AS 16.05.251(a)(6).....6,48,49

AS 16.05.251(b).....16,19, 6,4,2 1,9,31

AS 16.05.251(b)(1)(2) & (3).....4

AS 16.05.940(17).....1,6,17, 18,9,49

AS 16.05.940(26).....1,6,17, 9,40,49

AS 16.20.010.....49

AS 16.20.020.....49

AS 44.62.020.....12

AS 44.62.030.....13

AS 44.62.180-290.....28

AS 44.62.310.....2,5, 28,29

AS 42.62.310(c)(1).....26

AS 44.62.312.....2,5, 26,29

Regulations

5 AAC 01.597.....18,9

5 AAC 01.597(a)(b) & (c).....5,16,40

5 AAC .01.597(b).....44

5 AAC 77.001.....6,48
50

5 AAC 77.001(a)(4) & (b).....51

5 AAC 77.548.....7

80-79FB, 'G', Appendix A.....6,8,
18,44

Amended 80-79 FB, 'G', Appendix A-1.....5,6,8
16,18,
44

Texts

American Heritage Dictionary (1973).....50

Ballentine's Law Dictionary, 3rd edition.....45

Black's Law Dictionary, Revised 4th Edition.....50,45

Funk & Wagnalles, Standard College Dictionary (1963).....50

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS RELIED UPON

Constitutional Provisions

U.S. Constitution, Fourteenth Amendment, Section 1, provides:

> "...nor shall any state deprive any person of life, liberty, or property without due pr cess of law..."

Alaska Constitution, Article 1, Section 1, provides:

> Uniform application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law and regulations.

Alaska Constitution, Article 1, Section 7, provides:

> "No person shall be deprived of life, liberty, or property without due process of law."

Statutes

Alaska Statute 16.05.050 (9) reads:

> "Powers and duties of the commissioner: The Commissioner has, but not by way of limitation, the following powers and duties:
>
> (9) Administrative, budgeting, and fiscal powers;

AS 16.05.090 states:

> (a) The commissioner may, with the approval of the governor, establish a departmental division of commercial fishe ies, a departmental division of sport fisheries, a departmental division of game, and other departmental divisions as are necessary.
>
> (b) The commissioner shall establish a departmental division of fisheries rehabilitation, enhanc ment and development
>
> (c) There is established in the Department of Fish and Game a section of subsistence hunting and fishing.

AS 16.05.094 states:

AS 16.05.094 states:

> Duties of section of subsistence hunting and fishing. The section of subsistence hunting and fishing shall
>
> (1) compile existing data and conduct studies to gather information, including data from subsistence users, on all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state;
>
> (2) quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing;
>
> (3) make information gathered available to the public, appropriate agencies, and other organized bodies;
>
> (4) assist the department, the Board of Fisheries, and the Board of Game in determining what uses of fish and game, as well as which users and what methods, should be termed subsistence uses, users, and methods;
>
> (5) evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the department;
>
> (6) make recommendations to the Board of Game and the Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing;
>
> (7) participate with other divisions in the preparation of statewide and regional management plans so that those plans reorganize and incorporate the needs of subsistence users of fish and game.

AS 16.05.221 states:

> Boards of Fisheries and Game.
>
> (a) For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven member appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location or residence. The commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

AS 16.05.241 states:

"Powers excluded. The boards have regulation making powers as set out in this chapter, but do not have administrative, budgeting, or fiscal powers.'

Alaska Statute 16.05.251, which states:

"(a) The Board of Fisheries may make regulations it considers advisable in accordance with the Administrative Procedures Act for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishment of opena dn closed seasons and areas for the taking of fish;

(3) setting quotas and bag limits on the taking of fish;

(4) establishment of the means and methods employed in the pursuit, capture and trasport of fish;

(5) establishment of marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes;

(7) engaging in biological research, watershed and habitat improvement, fish management, protection, propagation and stocking;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote fish research, amangement, education and information and to train men for fish management;

(10) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(11) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(12) establishment of the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43.010 - 16.43.380.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 - AS 62.650) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorites for the consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

AS 16.05.940 (17) states:

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence use with gill net,seine, fish wheel, long line, or other means defined by the Board of Fisheries;

AS 16.05.940.(26) states:

(26) "subsistence uses" means <u>the customary and traditional uses</u> in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons

related by blood, marriage, or adoption, and any person living within the household on a permanent basis.

AS 16.20.010 states:

> The legislature recognized that
>
> (1) the state has jurisdiction over all fish and game in the state except in those areas where it has assented to federal control;
>
> (2) the state ahs not assented to federal control of fish and game in those areas which were set apart as National Bird and Wildlife Refuges while the state was a United States territory;
>
> (3) special recognition of the value to the state and the nation of areas of unspoiled habitat and the game characteristic to it will be demonstrated by designating as state game refuges those federal lands whcih were National Bird and Wildlife Refuges or Ranges at the time that Alaska achieved statehood.

AS 16.20.020 states:

> Purpose. The purpose of this chapter is to protect and preserve the natural habitat and game population in certain designated areas of the state.

AS 62.020 states:

> Authority to adopt, administer, or enforce regulations. Except for the authority conferred upon the lieutenant governor in AS 44.62.130 - 44.62.170, AS 44.62.010 - AS 44.62.320 do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

AS 44.62.030 states:

> Consistency between regulation and sta u e. If, by express or implied terms of of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

AS 44.62.310 states:

Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrtive body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, or the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assembl es, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state of local governmwnt supported in whol_ or in part by public money or authorized to spend public mon y, are op_n to the public exc_pt as otherwise provided by this section. Except when voice votes ar' authorized, the vote shall be conducted in such a manner that the public may know the vote of each persons entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except tho_e mentioned in the motion calling for the executive session unless auxiliary to the main question. No acion may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to
(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; of

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Resonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void.

AS 44.62.312 states:
State policy regarding meetings.

(a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) It is the intent of the law that actions of these units be taken openly and that the deliberations be conducted openly;

(3) The people of this state do not yield their soveriegnity to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) The people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions.

Regulations

5 AAC 01.597 states:
CHARACTERISTICS OF SUBSISTENCE FISHERIES. (a) The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identificatior of subsistence fisheries:

(1) a long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g. regulatory action or fluctuations

in resource abundance;

(2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;

(3) a use pattern associated with specific stocks and seasons;

(4) a use pattern based on the most efficient and productive gear and economical use of time, energy and money;

(5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;

(6) a use pattern occurring in locations with easiest and most direct access to the resources;

(7) a use pattern which includes a history of traditional modes of handling, preparing and storing the product without precluding recent technological advances;

(8) a use pattern which includes the intergenerational transmission of activities and skills;

(9) a use pattern in which the effort and products are distributed on a community and family basis including trade, bartering, sharing and gift-giving; and

(10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residence.

(b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the

characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.

(c) For purposes of this section, a "community" is generally considered to be several households of full-time residents who all reside in a specific geographic area because of common interests.

5 AAC 77.001 states:

INTENT AND APPLICATION OF THIS CHAPTER.

(a) The Board of Fisheries finds that

(1) before the enactment of the state's subsistence priority law in ch. 151, SLA 1978, an individual could fulfull his personal use needs for fish under subsistence fishing regulations;

(2) the state's subsistence priority law changed the definition of subsistence in a manner that now precludes some individuals from participating in customary and traditional subsistence fisheries and efficiently harvesting fish for their personal use;

(3) there presently are areas of the state with harvestable surpluses of fish in excess of both spawning escapement needs and present levels of subsistence, commercial and sport uses; and

(4) it is necessary to establish a new fishery classified as "personal use" because

(A) since the sale of fish is not appropriate or permissible, this fishery cannot be classified as commercial;

(B) since the use is not a rural customary and traditional use this fishery cannot be classified as subsistence; and

(C) since the gear for this fishery is often different from that historically associated with sport fishing, this fishery should not be classified as a sport fishery, to prevent confusion among the public.

(b) It is the intent of the board that the taking of fish under a 5 AAC 77 will be allowed when that taking

does not jeopardize the sustained yield of a resource and either does not negatively impact an existing resource use or is in the broad public interest.

(c) Regulations in 5 AAC 77 apply to the taking of finfish, shellfish and aquatic plants fof personal use. The regulations in 5 AAC 77.001 - 5 AAC 77.049 apply to the taking of finfish, shellfish and aquatic plants in all waters of Alaska.

(d) The regulations in 5 AAC 77 do not prohibit the personal use of finfish, shellfish or aquatic plants legally taken under the subsistence, commercial and sport fishing regulations in 5 AAC 01 - 5 AAC 75.

(e) The definitions of legal gear in 5 AAC 35.105(d). escape mechanisms for pots in 5 AAC 39.145, unlawful possession of fish in 5 AAC 39.197, definitions in 5 AAC 39.975, and abbreviations and symbols in 5 AAC 39.997 apply to the regulations in 5 AAC 77.

(f) In this chapter, "personal use fishing" means the taking, attempting to take, or possession of finfish, shellfish or aquatic platns by an individual for consumption as food or use as bait by that individual or his immediate family.

FINDINGS AND POLICY REGARDING SUBSISTENCE USE OF COOK INLET SALMON #80-79-FB states:

The Board of Fisheries finds that the past and current permitting system and regulations governing Subsistence fishing in Cook Inlet do not necessarily reflect and protect the customary and traditional use of salmon resources in the area. Evidence presented to the Board at its fall 1980 meeting described certain customary and traditional practices and procedures of utilizing fish in Cook Inlet. This evidence described and established a basis for allowing those persons who engage in the uses to be given a reasonable opportunity to harvest fish in the historically established places, manners, times and quantities.

The evidence suggests that Customary and Traditional uses continue to be nutritionally, economically, and socially important, particularly in the non-road-connected villages of Cook Inlet. These uses may be recognized by the following characteristics:

(1) A long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g. regulatory action, or fluctuations in resource abundance.

(2) A use pattern established by an identified community,

subcommunity, or group having preponderant concentrations of persons showing past use.

(3) A use pattern associated with specific stocks and seasons.

(4) A use pattern based on the most efficient and productive gear and economical use of time, energy, and money.

(5) A use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual.

(6) A use pattern occurring in locations with easiest and most direct access to the resources.

(7) A use pattern which includes a history of traditional modes of handling, preparing, and storing the product (without precluding recent technological advances).

(8) A use pattern which includes the intergenerational transmission of activities and skills.

(9) A use pattern in which the effort and products are distributed on a communal and family basis (including trade, bartering, sharing, and gift-giving).

(10) A use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.

Evidence indicates that these use patterns may occur in road-connected communities as well as in the non-road connected areas. The Board intends that these use patterns be identified and acknowledged in regulations. The Board will adopt a set of criteria drawn from the characteristics noted above and apply these criteria to communities, subcommunities, groups, and individuals who wish to continue to participate in an established customary and traditional fishing effort in Cook Inlet. Those who fail to meet the criteria may request the Commissioner of the Department of Fish and Game to review evidence establishing their claim in an expeditious amnner.

ADOPTED: Anchorage, Alaska
December 21, 1980

VOTE: 7-0

/S/ Nick Szabo, Chairman

AMENDED FINDINGS AND POLICY REGARDING SUBSISTENCE USE OF COOK INLET SALMON #80-79-FB

The Board of Fisheries finds that the past and current permitting system and regulations governing subsistence fishing in Cook Inlet do not necessarily reflect and protect the customary and traditional use of salmon resources in the area. Evidence presented to the Board at its fall 1980 meeting described certain customary and traditional practices and procedures of utilizing fish in Cook Inlet. This evidence described and established a basis for allowing those persons who engage in the uses to be given a reasonable opportunity to harvest fish in the historically established places, manners, times, and quantities.

The evidence suggests that customary and traditional uses continue to be nutritionally, economically, and socially important, particularly in the non-road-connected villages of Cook Inlet. These uses shall be identified by applying all of the following characteristics:

(1) A long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance.

(2) A use pattern established by an identified community, subcommunity, or group having preponderant concentrations of persons howing past use.

(3) A use pattern associated with specific stocks and seasons.

(4) A use pattern based on the most efficient and productive gear and economical use of time, energy, and money.

(5) A use pattern occurring in reasonable geographic proximity to the primary residence of the community, group, or individual

(6) A use pattern occurring in locations with easiest and most direct access to the resources.

(7) A use pattern which includes a history of traditional modes of handling, preparing, and storing the product (without recluding recent technological advances).

(8) A use pattern which includes the intergenerational transmission of activities and skills.

(9) A use pattern in which the effort and products are distributed on a community ad family basis (including trade, bartering, sharing, and gift-giving).

(10) A use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.

Evidence indicates that these use patterns may occur in road-connected communities as well as in the non-road-connected areas. The Board intends that these use patterns be identified and acknowledged in regulations. The Board will apply all of the above-described characteristics to communites, subcommunities, groups, and individuals in order to determine which uses are customary and traditional and therefore are eligible for the subsistence priority.

ADOPTED: Anchorage, Alaska
April 6, 1981

VOTE: 7-0

/S/ Nick Szabl, Chairman.

STATEMENT OF JURISDICTION

This is an appeal from the judgments and findings of Superior Court Judge Victor Carlson, State of Alaska, Third Judicial District in the case of Gene Madison et al, vs The Alaska Department of Fish and Game and Alaska Board of Fisheries , #3KN 81-532 Civil, entered on March 5, 1982, August 30, 1982, November 9, 1982, and January 26, 1983. This is a consolidated appeal with Gjosund et. al., 3HO-80-92 Civil and 3HO-77-11014 Homer. This court has jurisdiction to consider this appeal pursuant to Appellate Rule 202 and Alaska Statute 22.05.010

STATEMENT OF THE ISSUES *

1. Was the Board of Fisheries, (hereinafter Board), acting within their legislative and statutory authority granted by Alaska Statute 16.05.251(b) and 940(17) & (26), in adopting the 10 characteristics ultimately codified at 5AAC 01.597? ('M' file #1, pages 58, 59)

2. Did the trial court err in applying the 'judicial deference' standard to the Board's actions and upholding the regulatory scheme adopted under AS 16.051(b) and 940(17) and (26)? ('M' File #1, pages 58,59)

3. Did the trial court err in determining that questions of violation of the Administrative Procedures Act, AS

*This case is a consolidated appeal. Most of the issues in both cases are identical and rely on the same record. Citations to the record in Appellant's opening brief will refer to the record in both Madison and Gjosund to avoid unnecessary duplication and repetition in Appellant Cross-/ Appellee's brief in Madison and his Appellees brief in Gjosund . Also the appendices and exhibits are substantially the same in both cases. References to the record in Madison will be preceeded by the letter 'M' and to the record in Gjosund by a 'G'.

.310, 312 were moot? ('M' File #4, page 296)

4. Did the trial court err in finding that the actions of ard eliminating and excluding Plaintiffs as subsistence of the fish stocks moving through Cook Inlet did not te Plaintiff's rights to equal protection of the law? ('M' #4, page 295)

5. Were the characteristics of 5 AAC.01.597 overly ctive and exclusive on their face and do they result in g and discrimating against Plaintiff's class without a d substantial connection to the purposes of the tence Bill, (AS 16.05.251(b))? ('M' File #4, page 295)

6. Have the Defendant's violated the Due Process rights ntiffs by:

a. excluding them from the fishery in an arbitrary, and capricious manner;

b. improper administrative proceeding;

c. failing to provide an impartial hearing;

d. failing to comply with the directions and purposes .05.094;

e. failing to hold public meetings when formulating ssing basic policy affecting Plaintiffs in violation 62.312? ('M' File #1 & #4, pages 1-36, 92, 94)

Is creation of a 'personal use fishery', 5 AAC 77.001 yond the statutory authority of the Board? ('M' File 2)

STATEMENT OF FACTS

This appeal in its most general perspective is about fish. More particularly about those fish which move in and through the waters of Cook Inlet. The Plaintiffs in both cases under review have harvested and used those fish for their family and personal consumption for up to 50 years. ('G' File #2; App M p.13-221; 'M' File #1, Affidavits to Complaint pages 1-36) This fishery has been identified and regulated as a subsistence fishery since 1959 by the state and prior to that time by the federal government. ('G' File #2, p 13 et seq; Appendix R. Braund Subsistence Report). The Plaintiffs have participated in this subsistence fishery subject to those regulations which regulations have been generally consistent over the years.

The Plaintiffs' long term and continued participation in the subsistence fishery as well as their dependency upon the salmon moving through Cook Inlet has been documented and established. The recognition of the importance of subsistence uses and the consumption of fish and game for personal and family use was formally set out by the State of Alaska in 1973. (ADF&G Game Management Policy , 'G' File #2, pages 13 - 221, Appendix. S, page 4)

In 1978, The Alaska legislature enacted CH. 151 SLA 1978. These statutes mandated that the taking of fish for subsistence uses was no longer a matter of discretion of the Board of

Fisheries. The legislation also established a priority of use for subsistence whenever it was necessary to restrict the taking of fish because of sustained yield shortages, (AS 16.05.251(b)),and set up criteria for priorities for the 'consumptive uses' if further shortages existed.(AS 16.05.261(b)(1), (2) & (3)).

The subsistence bill was passed in part to codify the 1973 policy statement of the commissioner of the Department of Fish and Game and, in part, to correct the Board's failure to protect the subsistence uses especially where there was competition with sports or commercial uses. (Draft- Report of the Special Committee on Subsistence , pages 44-45, 'G' File #2, pages 13-221, Appendix BB).

The Board's action or inaction regarding subsistence, both prior and subsequent to, the enactment of the subsistence bill has generated a great deal of litigation and controversy.[eg's State v Tanana Valley Sportsman's Association 583 P2d 854 (Alaska 1978); Superior Court Orders 1977, 1980, 1981; 'G' File #2, page 13 et seq, Appendix O, P, and Q; Tyonek v Alaska Board of Fisheries, 3 AN 80-3073; and the 1982 Initiative Repeal aimed at the subsistence bill.

The subsistence bill also established a special Section (now a Division) of subsistence hunting and fishing within the Department of Fish and Game. The duties of the Subsistence Hunting and Fishing Section were very particularly spelled out and the Section was created to raise the subsistence fishery to

created b/c no date (?)

the same level as the commercial and sports fisheries. (See AS 16.05.090 & .094).

The Board, in 1980, took action under the subsistence bill. That action precipitated these lawsuits. At the December 1980 Board hearings, the Board adopted Findings And Policy Regarding Subsistence , #80-79-FB. ('G' File #2, page 13-221, Appendix A-1). These Findings and Policy , with some refinements, are the substance of 5 AAC 01.597. The refinements, (5 AAC .01.597(b) & (c)), were developed in part at the Board's hearings concerning Knik subsistence use on December 14, 1981. (Proceedings December 14, 1981, Knik Discussions, page 126, 'M' file #4, Exhibits EE, page 70-292). The Board of Fisheries in April, 1981, adopted 80-79 FB which was an Amended Findings and Policy Regarding Cook Inlet ('G' file #2, page 13 et. seq. Appendix A) which contained the same 10 criteria as 80-79 FB from the December 1980 meeting. They also applied those 10 criteria to Cook Inlet. (Findings of Fact , 81-92 FB, 'G' File #2, pages 13-221, Appendix B).

The December 1980 meetings, out of which the 10 criteria were created and enunciated, violated the public meeting provision of AS 44.62.310,312 (See Amended Findings of Fact and Conclusions of Law , November 12, 1982, Finding of Fact #23, 'G' File #2, page 254,).On June 22, 1982, the Board through their counsel, signed a stipulation admitting a violation of AS 44.62.310, 312 at the December 1980 Board meeting.

The Board of Fishery regulations ('G' Appendices A, A-1, & B supra) in their adoption and application excluded the Plaintiffs from harvesting salmon in the manner, by the means and at the times, they had historically subsistence fished. The Board determined that Plaintiffs' subsistence uses were not intended to be permitted uses pursuant to AS 16.05.251 (b). Their fishing was no longer subsistence fishing nor was their use a subsistence use under AS 16.05.940(17) & (26).

This lawsuit was filed by the Plaintiffs on August 13, 1981, and Judge Carlson granted preliminary relief opening a set gill net fishery in the Central and Northern District of Cook Inlet similar to the fishery that was in effect during and prior to the 1980 subsistence fishing season.

On December 10, Judge Carlson in his Memorandum of Decision granted Defendant's motion for summary judgment on the Plaintiff's first claim for relief. In April 1982, the Board adopted regulations establishing a personal use fishery. 5 AAC 77.001 et. seq. The personal use fishery was adopted pursuant to AS 16.05.251(a)(6) and is generally an excess fishery only permissible after the subsistence, commercial and sports users harvest has been guaranteed or established. 5 AAC 77.001 (a)(3) & (b). The personal use fishery in Cook Inlet has recently been successfully attacked preliminarily in Kenai River Sport's Fishing Association v Alaska Department of Fish and Game, Alaska Board of Fisheries , # _____ , September 15, 1983). Superior Court Judge Cranston issued a

preliminary injunction severely restricting the 1983 Cook Inlet personal use fishery established at 5 AAC 77.548. The Board created the fishery as an excess fishery to satisfy Judge Carlson's Findings of Fact and Conclusion of Law #11, signed on January 26, 1983. Judge Carlson denied Plaintiff's request for summary judgement on counts II, III, and IV and granted Defendant's request for summary judgment on Plaintiff's count I. This appeal proceeded from these actions.

One other factual precondition should be established. The subsistence harvest of salmon in Cook Inlet, since data has been available, has never exceeded one half of one percent of the total harvest taken by sport and commercial users. As an example, on a four year average annual harvest, including the years 1977 through 1980, of an average annual harvest of 3,807,406 fish by commercial users and 255,884 fish by sports fisherman, the subsistence average has been 7,198 fish. There has never been, nor is there anticipated to be, any jeopardy to the sustained yield of the fish stocks running in and through Cook Inlet. In fact, the 1983 commercial season in Cook Inlet has been one of the largest in recorded history.(Braund Report ,page 15, 'G' File #2, page 13-221, Appendix R and 'M' File #3, exhibit T.)

INTRODUCTION TO ARGUMENT

The Plaintiffs have brought this action to affirm their right to harvest fish by the use of set gill nets on the eastern shore of Cook Inlet. The Plaintiffs, consistent with state and federal subsistence fishing regulations, have for many years fished for Cook Inlet salmon as a means of feeding themselves and their families. The season's weekly fishing periods, gear, bag limits, and permits per person have remained generally the same during that period of time. Changes in 1979 and 1980 moved the seasons to June through August, reduced the actual fishing time within that period to one 12 hour period per week and changed the bag limits. The gear length was also reduced in 1979 and 1980, from an original 35 fathom set net to a 10 fathom net. (Braund Report 'G', Appendix R, supra, page 30). The Plaintiffs have subsistence fished in conjunction with their other subsistence activities.e.g. coal/wood gathering, gardening, berry picking, logging, hunting, etc. Subsistence fishing has provided a good part of their dietary and protein needs and has been an integral part of the natural pattern and rhythm of their lives for a considerable length of time. (Affidavits of Plaintiffs,'G' and 'M' supra)

The Board of Fisheries, in December of 1980, (80-79 FB, 'G', Appendix A-1, supra) and in March and April of 1981, (Amended 80-79 FB; 81-92 FB, 'G' Appendix A and Appendix B, supra) adopted regulations which systematically and immutably

eliminated the Plaintiffs from their customary and traditional manner of obtaining salmon for their family and personal consumption. This action was taken by the Board under their interpretation and implementation of the subsistence bill. AS 16.05.251(b)(1), (2) & (3), AS 16.05.940 (17) & (26).

5 AAC 01.597(b)(c) is the latest regulation incorporating all of the 10 criteria plus the additional community criteria refinements.

The Board interpreted the purposes of the subsistence statutes to be restrictive and exclusive, and developed the 10 criteria as a tool of elimination for all individuals, families, or groups residing on the Eastern shores of Cook Inlet and the Northern shores of Kachemak Bay. When the Board was finished the only individuals qualifying as subsistence users were residents of the villages of English Bay, Port Graham, and through judicial intervention, Tyonek. The action to permit the three named villages was taken reluctantly and only after the Tyonek decision. Statements of the Board indicate that even these three communities were "dangerously on the borderline" of not being considered as subsistence users. ('M' File #2, Volumes 27, 28, page 37).

Plaintiffs' ask judicial assistance to restore what they believe are their rights to participate in a subsistence fishery in the general manner and for the particular purposes they have in the past. The Board's enactment of an exclusive and restrictive policy was an incorrect interpretation of the

intent and purposes of the statutes.

The Board also misintrepretated the subsistence statute as authorizing them to administer their policy and regulations, a power which they are precluded by AS 16.05.241 from doing. Plaintiffs' position is that this court should independently review the regulatory scheme, including the formulated policy for its application. They should substitute their judgement and independently examine the meaning of the statute because the impetus for the Board's action required interpretation of the intent of the subsistence legislation.

Contrarily, even under a more inhibited review of agency actions the regulation is not consistent with, nor reasonably necessary to carry out the purposes of, the statute and is ultimately unreasonable and arbitrary.

Plaintiffs also contend that the matrix for the ten characteristics i.e. the regulation and application thereof, was adopted in violation of an APA regulation requiring public meetings. The Board may have readopted the 10 characteristics in April, 1981, that originated in the December 1980 Board meeting, but they did not recreate or reenact their closed meeting activity that resulted in selecting and developing those criteria.

Plaintiffs also contend that they were denied equal protection of law under the State and Federal Constitution. The Board of Fisheries has created two clasess. One is an idealized model pictured as a 'pure native rural village

community' whose members have particular ethnic and racial characteristics. The members of this class are subsistence users. All other individuals or families not satisfying all of these virtues are excluded.

This scheme does not fairly and substantially further the purposes of providing for, and permitting, the taking of fish for subsistence uses for all Alaskan residence and therefore the class is under-inclusive and does not bear a substantial relationship to the purposes of the legislation.

Plaintiffs also seek recognition of their rights to harvest fish for their personal and family consumption under the due process clauses of the State and Federal Constitution. The actions of the Board in certain individual aspects and cumulatively have violated traditional concepts of fair play and substantial justice in the exclusion of Plaintiffs from parity, much less priority, participation with sports and commercial users of Cook Inlet.

Finally, the case law applicable to this appeal is basically uncontested. The threshold analysis on almost all issues should deal with the application of that law to the vast array and morass of reports, papers, documents and exhibits evidencing the intentions and actions of the Board of Fisheries.

ARGUMENT

I

DID THE BOARD EXCEED ITS LEGISLATIVE AUTHORITY IN ADOPTING AND APPLYING THE 10 CHARACTERISTICS .

A. APPLICABLE LAW

An analysis of the manner and scope of judicial review of administrative actions circles Kelly v Zamarello , 486 Pd2d 906, (Alaska 1971). Kelly involved a complex fact situation and a circuitous path to conclusion. This Court decided that the highest bids for oil leases, which included a cash plus bonus royality in excess of the fixed 12 1/2% could have been superfluous and rejected for being non-responsive to the sale notice. They were in fact rejected because of higher cash only bids and may not have been the high bid. Policy considerations set out in the regulation dictated that the bids should be final and that drilling should proceed. The Court in Kelly deferred to the administrative interpretation since the expertize of the agency would be of "material assistance to the court". The Court went on to state at page 916:

> "the amount of deference varies depending upon the apparent degree of reasonableness of the administrative decision and the degree to which the problem involves knowledge peculiar to an industry, business, etc." Kelly 916 citing Rogers Construction Company v Hill ,384 P2d 219, 222, (Oregon 1963)).

This analysis, in conjunction with AS 44.62.020 which reads:

> "To be effective, each regulation adopted must be within the scope of authority conferred in accordance with standards prescribed by other provisions of law."

and AS 44.62.030:

> "[NO] regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purposes of the statute".

led the Kelly decision to formulate the most oft quoted review standard for administrative actions.

> "First, we will ascertain whether the regulations are consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, we will determine whether the regulation is reasonable and not arbitrary." Kelly , at 911

Kelly also set out the second standard for appellate review of administrative regulations. Where there is a question of statutory interpretation or where the agency was not acting within its ambiance of specialized knowledge, the court has applied a much broader standard of review and in these cases has substituted its own judgment for the agency's. Kelly , at 917; also see Hood v State , 574 P2d 811, 813. Thus the second standard for review, generally considered the 'substituted judgment', was formulated although not applied.

The Kelly decision was bedded on policies necessitating predictability in bidding procedures and carefully delineating public competitive bidding standards.(Also see Stevenson v

Burgess , 570 P2d 728, (Alaska 1977), substitution of judgment in interpretation of taxing statute because no special competency was required. Reversed on other grounds); and State of Alaska v Bowers Office Products Inc. , 621 P2d 11, (Alaska 1980).

Therefore, attempting to hone the focus of the applicable standards to the case at hand, the threshold question is whether the subsistence statutes authorized the Board to formulate fundamental policy for subsistence use and users, (as Plaintiffs claim the Board interpreted the statutes to do) or whether the statute is clear on its face and does not authorize the regulatory scheme and its application adopted and administered by the Board. This is the decision which should decide the standard to apply in this case.

Counsel's instincts sense a conclusion oriented test in this area. Even though certain of the factual situations in the cases considered aren't clearly drawn, there are many where the determinatation of which standard applies, results in reversal in 'substituted judgment cases', and affirmation in 'deference cases'. *

*The same conclusion oriented analysis was recognized as a problem in equal protection analysis i.e. strict scrutiny versus the rational basis test. See generally, Gunther G, Harvard Law Review , (November 1972), page 1. This theory was a bit diluted in the case of Castner v City of Homer , 598 P2d 95, (Alaska 1979) where a strict scrutiny of fundamental rights analysis was used and yet the local ordinance was upheld under the compelling interest standard.

Plaintiffs assert that under either standard a rigorous and critical analysis should result in reversal of the Superior Court's affirmation of the Board's actions.

B. ARGUMENT

ADMINISTRATIVE REVIEW

Plaintiffs aver that the regulations promulgated under the ostensible authority of the subsistence statute together with the Board's explicit policy evident in the application and effect of these regulations represents a formulation of fundamental policy in conflict with, and outside the scope of, the regulatory authority set out in the subsistence statutes. In other-words, the Board is interpreting the statutory scheme. Under this analysis the court can subsitute its judgment for that of the Board's. The above analysis depends in part on whether authority exists in the statute for the Board to formulate fundamental policy. Obviously if this court determines that the intent and authority is inherent in the statute then the inquiry moves to the regulations and policy i.e. whether the regulation and policy is reasonable and not arbitrary in light of the purposes and intent.

If there is a question of statutory interpretation, then the courts are uniquely qualified to examine and interpert the statutes independent of the Board.

The regulations under consideration here are #80-79 FB

('G', Appendix A-1 supra) and its ultimate successor, 5 AAC 01.597 (a)(b) and (c).

The significant changes to the 10 criteria since the December 1980 Board meetings are (b) and (c):

> (b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.
>
> (c) For purposes of this section a community is generally considered to be several households of full time residents who all reside in a specific geographic are because of common interests.

The legislative source of authority to adopt regulations is in AS 16.05.251(b) and the Legislative Intent preamble:

> LEGISLATIVE INTENT. The legislature finds that there is a need to develop a statewide policy on the utilization, development and conservation of fish and game resources, and to recognize that those resources are not inexhaustible and that preferences must be established among beneficial users of the resources. The legislature further determines that it is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaskan residents . The legislature further finds that beneficial use of those resources by all state residents should be carefully monitored and regulated with as much input as possible from the affected users, so that the viability of fish and game recources is not threatened and so that resources are conserved in a manner consistent with the sustained yield principle.(emphasis added).

AS 16.05.251(b):

> REGULATIONS OF THE BOARD OF FISHERIES. (b) The Board

of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources. (emphasis added)

The legislature defined subsistence uses in AS 16.05.940.(26):

(26) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption , and for the customary trade, barter or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis. (emphasis added).

and subsistence fishing is defined in AS 16.05.940 (17):

17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence use with gill net,seine, fish wheel, long line, or other means defined by the Board of Fisheries;

The intention of the Subsistence Bill was to codify the state's 1973 policy statement of the Commissioner and Board of Fish and Game ('G', File #2, Appendix S, page 4, supra) and to overcome the failure of the Board to protect subsistence use in light of competiting uses. The Report of the Special Legislative Committee on Subsistence states:

> "the subsistence law was passed to enable the Board to provide for subsistence use during times of resource shortage and intense competition, and to make certain that the Boards took care of subsistence use prior to allowing other uses of these important economic resources.
>
> "...Be that as it may, what the subsistence law did was to codify this policy (the 1973 Commissioner's Policy) in order that its intent be enforceable rather than subject to the whims of the resource managers." ('G' File #2, pages 13-221, Appendix LL, page 44)

The intent was to be protective of, and provide for subsistence uses, most particularly during times of resource shortage and competition. The pre-1978 statute, AS 16.05.940(17) defined subsistence fishing as:

> "[S]ubsistence fishing" means the taking, fishing for, or possession of fish, shellfish or other fishery resources for personal use and not for sale or barter with gill net, seine, fish wheel, long line, or other means defined by the Board of Fishery.

The 1978 Amendment substituted "subsistence uses" for "personal uses not for sale or barter."

Relying on the amended definition of subsistence fishing and the added definition of subsistence uses as customary and traditional uses, the Board adopted regulations 80-79 FB and Amended 80-79 FB (supra) and ultimately 5 AAC 01.597.

The Board interpreted the statutes as almost being absolutely exclusive and adopted regulations consistent with

this interpretation.

Plaintiffs and every other person and family in the area of Cook Inlet other than those persons residing in the villages of Port Graham, English Bay, and Tyonek have been segregated from subsistence participation. This interpretation ignores the permissive nature of the statute and elevates 'customary and traditional' to such complexity and mystery that it requires ph.d.'s in metaphyics to unravel the meaning.

The definition of customary and traditional is secondary to the primary purpose of the subsistence bill which is to:

> "clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs, and traditions of Alaskan residents"; and to "permit the taking of fish unless....[it] will jeopardize or interfere with the maintenance of fish stocks on a sustained yield basis,"; AS 16.05.251(b) and Legislative Intent and preamble
>
> and to "set forth a priority of users if restrictions are needed because of unavailability of resources...to insure that those with the most dependence upon the fish and game resources are the last to be restricted." House Journal, May 13, 1978, page 1155, ('G' File #2, pages 13-22, Appendix N)

The Board's interpretation of the legislature's meaning of customary and traditional overlooks the manifest ambition of the legislation to provide for and permit, and to protect, when there is a resource shortage.

Customary and traditional are not words of art or mystery. Representative Gruening, in the House debate on an amendment to eliminate the words customary and traditional states in part:

> "I think that the meaning of customary and traditional applying to use is...not that confusing. After all,

> this bill is to establish a framework in which these can be developed. And I don't think we need a definition of words that have a common dictionary meaning . But just so the members don't confuse, there are two questions here, one is traditional methods of taking and one is traditional and customary uses. And that is what we are talking about. Uses here in this amendment. I oppose it. It don't think it is necessary to take these words out. I think that really gives a better handle for the Board to work for in defining the range of subsistence." (House Debate on House Bill 960, Tenth Legislature, Second Session, March 26, 1978. ('M' file #3, Exhibit U) (emphasis added)

Customary and traditional should be used in the general dictionary sense having a similar context as 'historical' or 'of having some past'. Subsistence uses and users have been defined at least since 1959 by the legislature. One doesn't read the regulations to learn how to fish or what to do with the fish. One obviously learns from neighbors, friends, or family h ow to fish. What one does with the fish other than immediately eat it is also a skill acquired from others and refined by resources available. e.g. electricity for freezing, wood for smoking, salt for salting. etc.

The statutes indicate subsistence fishing has two components. One is a means or method of harvest, the other is the use to which the resource is put. Since 1959, the legislature has defined the means and methods of harvest. In Cook Inlet, those means of taking subsistence fish has been primarily with set gill net. Plaintiffs have been using gill

nets as a means to harvest their subsistence salmon for food for many years.

From 1959 to 1978, the legislature defined subsistence uses as "personal use, not for sale or barter." Personal use as defined and allowed by statute was for the direct personal or family consumpion of fish as food. Plaintiffs have historically consumed their gill net caught salmon on a direct personal and family basis for food.

To adopt a regulatory policy and scheme that excludes the Plaintiff's 1978 personal use of Cook Inlet Salmon as food from inclusion as a subsistence use because it is not a customary and traditional use raises the art of linguistic analysis to a high science. The fact of consistent use prior to 1978 is precisely why the legislature defined it as a customary and traditional use. The use does not require a complexly conceived, idealized, rural, native village as a model community to recognize customary and traditional uses of salmon in Cook Inlet. This is in fact what the Board has done. They have failed to provide any means or method whereby an Alaskan resident or family, or a small group of families can take fish for subsistence uses. The community requirements of the regulatory scheme are absolute prohibitions consistent with the Board's historical attitudes. They have now attributed those attitudes to the legislature.

The transcript of the Knik Board hearing of December 14, 1981, ('M' File #4, pages 70-272, Appendix EE) and the hearings

of March and April 1981 resulting in the adoption of 81-92 FB, ('G' File #2, pages 13-221, appendix B) indicates the Board's policy inherent in the 10 criteria and the interpretation and administration the Board has endowed on the subsistence bill. The Knik discussion neglects referrence to 'permitting subsistence uses' or 'maintainence of fish stock on a sustained yield basis' or 'protection of or continuation of subsistence uses'. These are the impetus for and the stated intent of the legislature in adopting and enacting the subsistence bill. The transcript shows why the Board developed the community criteria as a pre-condition. It was to exclude Knik. Since Knik had already satisfied the 10 criteria, the Board raised the 'community criteria' to an insurmountable prerequisite.

At the Knik hearing, the Board was presented with a subsistence report by James Fall of the South Central Region, Division of Subsistence, essentially establishing that Knik residents were subsistence users ('G' File #2, page 13- 221, Appendix GG). The community criteria became a means of enforcing the Board's exclusionary policy. They interpreted the statutes as authorizing them to not only define community in such a specially and narrow sense but also to administer and apply their regulations and policy.

On page 126 of the Knik proceedings ('M' File #4, Appendix EE):

Szabo (Board chairman):...We decide, is that an actual community or not? And if we do look at it, then we look at little groups like neighborhoods and little

enclaves, we look at individuals and so forth and see if, you know, 70% of the individuals are doing this, two or three of the groups are doing that and so forth and if they exhibit all these qualities then we say, o.k. this community meets the ten criteria. But first you have to have a community there . I think that what we did here, we said, well, obviously this whole area doesn't meet the ten criteria and then we start looking at well, just these two acres that one household was on. And we said, well, maybe those two acres and one household. If you viewed them as a community would meet those ten criteria, we don't think they should be viewed as a community ."

Chris Goll, (Board member), page 126, 127, supra:"Yeah. Just one comment, Mr. Chairman, and that is I think, perhaps, some people are under the false impression that the ten criteria is the only thing , the only latitude that the Board has, and that's not in fact. the case . Not the way that I understand it. It's part, we can go beyond that too, it's only ten points. There are many other things that we may wish to consider also. Am I not correct in that? (emphasis added)

Szabo, page 127: "Well,I think there's other things. But I think that the key to this thing is that before you know you have to determine if something is actually a community before you apply the 10 criteria to it. And I think that was a decision that we made last year, was we were gonna identify communities and then apply the ten criteria. " (emphasis added)

The Board's prepossessed responses to subsistence uses in Cook Inlet jaded their interpretation of the subsistence statutes. Their proclivities for exclusion and elimination of subsistence uses in Cook Inlet as well as their inability to control themselves is well documented. It has kept the

State's attorneys busy representing and trying to civilize the Board. The Tyonek case and the two southern district cases (77-22014, Homer and 3HO-80-92)* occurred prior to the Board's formal consideration of the subsistence statute although after its 1978 enactment.

The Board begrudgingly 'allowed' subsistence uses in Port Graham, English Bay and Tyonek, and only after judicial intervention in Tyonek. The Board doles out, almost as a matter of charity, subsistence use largess, and even this is done reluctantly. In the April 1, 1981 meeting ('G' File #1, volume 27 page 37).

> Beaton, (a Board member): " I've really felt that even Tyonek in my own mind and English Bay and Port Graham are dangerously on the borderline , but I certainly think that Kenaitze---everything I heard up until now led me to believe that just maybe they'd want, you know, into that new world there or whatever they're really overwhelmed by..."(emphasis added)

*3HO-80-92 Civil was filed in the Superior Court and heard without a jury on June 16, 1980 and the Superior Court entered a permanent injunction against the Defendants. In May of 1981, Plaintiffs, under the same case heading and number, filed a Petition for Imposition of Sanctions for Contempt, Request of Preliminary Permanent and Declaratory Relief , which was again ruled on favorably to the Plaintiffs and which is under appeal by the state in Supreme Court No. 7410. Also see Frances et. al. v Alaska Department of Fish and Game, 3KN 80-546.

It is somewhat ironic that of all Cook Inlet subsistence users, the users in the three native villages participated the least in the permitted subsistence fishery while most other Cook Inlet users excluded after 1979 complied with the regulations.

> "In all communities [Cook Inlet] there are families who have participated in the subsistence salmon fishery for a long time (generally without permits) and have received social, economic and nutritional benefits from the harvest of this resource. Although this pattern of use is often most visible in the relatively isolated communities (English Bay , Port Graham , Tyonek , and Seldovia) it is not restricted to these places. Rural food connected communities...and more urban centers...all have residents who have trationally subsistence fished for Cook Inlet Salmon." (Braund Report-next to last page , (unnumbered) ('G' File #2, Appendix R. supra).

Plaintiff's offer that under either administrative review standard, the regulations and policy adopted are inconsistent with and outside the authority of the legislative enactment. The statute is clear in terms of its intent. It is meant to include individuals as Alaskan residents,as families, and as community members. It tells the Board to adopt regulations permitting subsistence uses and that these uses shall be a priority when certain preconditions exist. It also sets out the criteria for imposing restrictions and limitations among subsistence users.

The Board did not have any authority to formulate fundamental policy. For purposes of argument, even if it did, that authorization did not designate the Board to administer

that policy. Under any conditions the regulations and policy adopted and used in this case are not reasonably related to nor consistent with the purposes of the subsistence statutes and are capricious acts beyond the scope and intent of these statutes.

II

DID THE BOARD VIOLATE AS 44.62.310, 312; THE PUBLIC MEETINGS PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT AND WAS JUDGE CARLSON'S RULING THAT THIS ISSUE WAS MOOT IN ERROR

Judge Carlson held that Plaintiff's Count II was moot. Count II alleged violations of the Administrative Procedures Act, particularly the notice and public meetings provisions of Title 44. Plaintiffs, in this brief, will deal with the public meetings provision.

AS 44.62.312 states:

State policy regarding meetings.

(a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) It is the intent of the law that actions of these units be taken openly and that the deliberations be conducted openly;

(3) The people of this state do not yield their soveriegnity to the agencies which serve them;

(4) The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) The people's right to remain informed shall be protected so that they may maintain control of the instruments they have created.

(b) AS 42.62.310(c)(1) shall be contrued narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions.

Plaintiffs claim that in December, 1980, the Board held closed meetings in violation of Alaska Statute 44.62.310 and 312. During these closed meetings it appears that the Board discussed, analyzed, and developed strategic findings which affected the public and its use of Cook Inlet salmon resources. These meetings designedly formulated and led to the adoption of the 10 criteria which are the nucleus for all subsistence action taken by the Board since that meeting. As a result of those secret meetings, the Board adopted 80-79 FB ('G', Appendix A-1, supra) (See Affidavit of Larry Smith , "G" file #2, page 13-221, Appendix L., paragraphs 4, 5, 7, 8, 9; also Affidavit of Arthur S. Robinson , 'G' file #2, page 13-221, Appendix MM, paragraphs 3, 4, 5, 6, & 8; and transcript of Board meetings December 15, 1980. 'G' file #1, volume 3, pages 122, 124, 126 and volumne 8, pages 101, 115, 117).

When the subsistence bill was enacted, the legislature independently emphasized the importance of public meetings on all actions affecting subsistence issues.

> "...it is the intent of this committee that the decisions and determinations of the Board of Fisheries and the Board of Game will be subject to complete public scrutiny and that reasons will be given for any action or any failure to act. May 12, House Journal, page 1155, Session 697, ('G' Appendix N, supra). (emphasis added)

Defendants have acknowledged that during the 1980 Board meetings they violated AS 44.66.310 and 312. On June 22, 1982, Defendants stipulated to Entry of Judgment against them on Count II of Plaintiffs' complaint in Gjosund et al v Alaska Department of Fish and Game et al , 3HO 80-92 Civil and 77-11014, Homer. Count II in Gjosund is identical to Count II in Madison. It alleges that the Board violated AS 44.66.310. The parties stipulated that:

> "It is the agreement and the stipulation of the parties to this action that, the defendants having examined the evidence available to them in light of the public meetings law, entry of judgment can be had against the defendants on the second part of plaintiffs count two alleging violations of the public meeting provisions of AS 44.62.310, and 312 and therefore judgment can be entered against the defendant on all parts of count two of plaintiffs complaint."

Stipulation Relating To Counts Two, Three and Five of Plaintiffs' Complaint was filed and the Order signed November 12, 1982, by Judge Paul Jones (also see Findings of Fact and Conclusions of Law in Support of Declaratory Judgment and Permanent Injunctive Relief dated November 12, 1982, signed by Judge Paul Jones in Gjosund . Findings of Fact #23 'G' file #2 at 254 et seq) and the Order of Judge Jones of Declaratory Judgment and Permanent Injunctive Relief , Order #3, signed November 12, 1982, Judge Paul Jones.

Judge Carlson ruled that Plaintiffs' count II was moot, however, he apparently only considered AS 44.62.180-290 which deals principally with the procedural aspects of the Administrative Procedures Act. Although Judge Carlson's ruling

claims to decide all the issues raised in Count II, i.e. public notice and public meetings, and moots Count II on this ground, neither the record nor his Findings and Conclusions support his Judgment of January 26, 1983. (See Findings of Fact and Conclusion of Law on Counts II and III , Judge Victor Carlson, January 26, 1983.

Plaintiffs' position is that the closed meeting issue has been incorrectly resolved and is not moot. All of the subsistence use criteria were apparently discussed, analyzed, compromised and effectively agreed to in the closed meetings of December 1980 in violation of the public meeting provisions of the Administrative Procedures Act. Immediately after the closed meetings, the Board adopted regulation #80-79 FB.

AS 44.62.310 and 312 combined with the legislature's particular proscription against anything less than 'complete public scrutiny' compels a substantive right to public meetings. Therefore since the ten criteria creation process took place in violation of the Plaintiffs' right to observe and be informed of the conduct of business relating to them; and since the subsequent public notices and hearings only attempted to correct what had previously been done in public without proper notice; then the ten criteria and all subsequent regulations and measures incorporating those criteria are void.

The open meeting and public scrutiny policy statement of AS 44.62.312 are so forceful that even a questionable deviation must nullify the resultant actions. In this case the

violations are considerably deviant.

III

DID THE SUPERIOR COURT ERR IN FAILING TO FIND THAT THE ACTIONS OF THE BOARD OF FISHERIES VIOLATED THE PLAINTIFFS RIGHTS TO EQUAL PROTECTION OF LAW UNDER THE FEDERAL AND STATE CONSTITUTION

Equal protection rights are set out in the U. S. Constitution, Amendment 14, Section 1 and in the Alaska Consitution at Article 1, Section 1.

Article 8 Section 17 of the Alaska Constitution states:

> Uniform application . Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law and regulations."

No cases have really distinguished the natural resources constitutional equal protection provision from Article 1, Section 1. Plaintiffs offer that the equal protection restatment for natural resources requires an even more diligent and sensitive approach to equal protection analysis than areas not doubly protected.

The standards to be applied in equal protection challenges under the Alaska constitution have been developed and enunciated in Isakson v Rickey ., 550 P2d 359 (Alaska 1976); State v Erickson , 574 P2d 1, (Alaska 1978) and Commercial Fisheries Entry Commission v Apokedak , 606 P2d 1255, (Alaska 1980). The test to be applied can be stated as follows:

Initially, we must look to the purpose of the statute,

> viewing the legislation as a whole on the circumstances surrounding it. It must be determined that its purposes are legitimate, that it falls under the police power of the state. Examining the means used to accomplish the legislative objectives and the reasons advanced, therefore, the court must then determine whether the means chosen substantially further the goals of the enactment. Finally, the state interest in the chosen means must be balanced against the nature of the constitutional right involved." Erickson , supra, page 12

The equal protection test has also been stated in Isakson , supra, at 362,

> "In order for a classification to survive judicial scrutiny, the classification must be reasonable, not arbitrary and must rest on some grounded difference having a substantial relationship to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

Plaintiffs allege that the Board of Fisheries through regulation, policy and application established a screening model for subsistence use inclusion which is unrelated to the intent of AS 16.05.251(b) and which discriminates against and amongst subsistence users unreasonably.

As a preamble to the equal protection analysis, we offer that the Board has done two things. Firstly, they have created a set of 10 criteria using as a paradigm an ethnically pure rural native village community to screen all applications for subsistence users. In conjunction with this they have adopted a policy and precedent requiring conformance to this model prior to evaluating whether or not an applicant satisfies all of the 10 criteria.

The Board has then gone one step further, apparently assuming that 16.05.251(b), granted them administrative powers enabling the Board to apply the regulations they enacted.

What has in effect occurred is that the Board has interpreted the legislation, enacted regulations, and then applied those regulations to restrict the taking of fish for subsistence uses from all Alaskan residents unless they reside in an established geographic community precisely mirroring an idealized rural native village community. This is not a legitimate purpose of the statute.(*)

It also unfairly discriminates against all excluded Alaskan residents who are and have been subsistence users without any rational connection to the statute's legitimate purposes.

Examples describing how the Board deliberates, decides, creates, and applies their regulations is critical to understanding Plaintiffs' arguments in this brief. Since 1977, the Board has actively attempted, due to their personal philosophies and bias, to exclude all subsistence uses in Cook Inlet.

At the December, 1976 meetings, the Board eliminated subsistence fishing in the Southern District of Cook Inlet. The record of proceedings illustrated that there were no legitimate or supportable biological concerns. It was a 'shoot from the lip' decision that subsistence use no longer existed in the Southern

*To avoid repetition, Plaintiffs incorporate in this equal protection argument their analysis of legislative intent from Argument I, A & B Administrative Review.

District of Cook Inlet. Judge Lewis in June of 1977, entered a preliminary injunction reinstating the regulations that had existed prior to 1977. (See 'G' File #2, Appendices Q, M, supra).

Over the next three years the Board reduced the area, catch per permit, and size of gear for subsistence fishing to where the fishery was effectively eliminated. On June 16, 1980, the Superior Court was called upon again, and entered a permanent injunction reinstating the subsistence fishery as it had been in effect prior to 1978. ('G', file #2, Appendix O, supra).

Part of the record in Gjosund upon which Judge Jones made his decision was the Board's discussion of gear length reduction for subsistence fishing from 35 to 20 fathoms.

> Beaton, (Board member): Mr. Chairman, I'd like to amend it to read "Southern District set gill Nets 20 fathoms". I don't see any reason they need 35... I think 20 would be plenty. I think there is a problem of wastage.* Got to be something reasonable. I'd like to get down to 5 to 10 but I know you couldn't catch anything then . (Big laugh)...
>
> Szabo: Is there a second to that motion,...(Motion and Amendment seconded and passed)
>
> Beaton : They might have beat us but we got our little licks at them ...(laugh) (emphasis added)

The Board has now discovered that the subsistence bill provides them with a more sophisticated tool to fulfil their purposes. Neither the body of the subsistence legislation nor the statments of intent offer indications, implications, or

*No evidence was ever presented to the Board showing that wastage existed or was a noteable problem.

hints of racial or ethnic considerations. However, the Board has consistently referred to race and ethnicity in their discussions and have fashioned a community prerequisite to subsistence inclusion based upon an ethnically pure rural native village community.

The effect of this has been two fold. It has made it impossible for any individual, family or small community Native or non-Native, to be considered a Cook Inlet subsistence user and has also excluded all Natives living on Cook Inlet (except those in Port Graham, English Bay, and Tyonek) due to their lact of 'ethnic purity'.

Following are excepts from the Board's hearings of April 1, 1981, discussing the qualities and characteristics of subsistence in Cook Inlet in regard to the Kenaitze Indians. ('G' file #1, volume 27, 28).

Beaton, (Board member):---that the Kenaitzes fall somewhere in between, <u>obviously the blood/cultural thing is there,</u> but it is not there to the degree that it was in the three villages. (line 23, page 19, 20) (<u>emphasis added</u>)

Beaton: Well what I'm saying there, I guess, essentially is that the three villages, ---- there have been some inroads made by some outsiders, you know, intermarriage, a few school teachers, things in that nature, but small--- in comparison to the over-all population is. But in the Kenaitze, it really gets down to where it is really a lot harder to identify them as an entity, and that is probably the best proof it that is in these land claims and I think that under ---- these land claims <u>they couldn't clearly identify them as a village</u> ; (line 15, page 21, 22) (<u>emphasis added</u>)

Beaton: ...But, in other places,---alluding to there such as Anchorage and everything, it literally over whelmed that culture. I mean, you know, for whatever reason, either they didn't have enough (indiscernible) of the culture, and you know, the people weren't purist enough , or whatever, but they really just kind of got steamrolled over that their culture really did change.(line 16, page 36) (emphasis added)

...And that gets dangerously close to that if not that in the case of the Kenaitze. You know, that's what I'm concerned about. It may not be the case, but it certainly is on that really borderline area there. I really felt that even Tyonek in my own mind, English Bay and Port Graham are dangerouly on the borderline, but I certainly think that the Kenaitze...everything I've heard until now led me to believe that just maybe they'd want, you know, into that new world there whatever they are really overwhelmed by... (line 6, page 37) (emphasis added)

Beaton: But, nevertheless I can see why they did check out the Kenaitze because that is where all the pressure is coming from. They claim they are a native village , they claim all of these things.(line 6, page 43) (emphasis added)

But at best they are not meeting all of the same criteria such I think it is to the discretion of the Board whether the Kenaitze have been maybe classified as a village or, you know, as one that was subsistence type rights and...of the three. (line 22, page 43, 44) (emphasis added)

Quintin: Mr. Chairman, I'll just get back to the same subsistence thing here again that without a real definite interpretation of subsistence I would submit that 99 percent of the people are not subsistence users. Now, the reason that I say that is simply the fact that a 100 years ago now, the ethnic people --- the native people or whoever lived here were truely subsistence users. (line 13, page 50) (emphasis added)

Beaton: ... why the Kenaitzes seem to be almost singled out is, I guess that they made a real allegation that they are one in the same as those three villages, and I

don't think anyone else on that list, or anybody else, has really come forward with positions papers and the rest of it that they are asserting that they are one and the same as those three villages. (line 15, page 42) (emphasis added)

The following excerpts are from the Board's consideration of the Homer area for subsistence use. ('G' file #2, April 1, 1981, volume 28)

Huntington: Homer is a fishing community.

Szabo: Well, yeah but... I don't even think it has its roots as far as being a native village or anything. I mean...I don't even know what the history of Homer was. Maybe...maybe Grif knows better what existed in Homer back 70 years ago when you...(line 20, page 10)

Quinton: It was never a native community. Never was. (line 10, page 10)

Beaton: Seldovia was at one time a native village .....Then later became a logging area which it is now. Logging and fishing area. But it was originally a native village. However, there are an awful lot of people in Seldovia today...I've lived there three years myself, Johnnie---- and there are of mixed blood there ... and particularlly all of the natives that were, you know, ---really oriented to the native lifestyle pretty well moved back into Port Graham and English Bay. T ones that essentially don't like all of this change, so to speak. And, now you have a lot of progressive Natives like Pete Alsaut (Ph) is part native ---and, you know, he is a real time - big time, big crabber, big fisherman, and the rest of it....But they, the rest of them kind of moved back over into the Port Graham and English Bay part ....part of the native community. (line 25, page 11, 12)

Beaton: ...for a lack of a better term, (the term used was 'pseudo subsistence users') I mean in otherwords,...you know they really did just run in there and kind of (indiscernible) it up in anyway. They decided that they are going to emmulate the three villages but they are really not true subsistence users. (line 16, page 18)

Szabo: I think if they had come here, you---say, several hundred years ago and started this same thing that he is doing now...you could certainly make the same case for them as you are making for these other villages. But, the fact that this group, you know, arrives new on the scene with no---you know cultural ties, no family ties or anything else. And that they all just appear and then they set up, you know, something that mimics what subsistence means then...

Beaton: It's almost like (indiscernible) blue blood, (ph) or something. I mean you just...just money alone doesn't really get you into this thing anyway. (line 7, page 19)

Szabo: But, you know, as far as any---they still don't have---all of them aren't fourth --- fourth generation people, you know. whereas like Tyonek you can trace their existence back for many generations, the same with English Bay and Port Graham. (line 22, page 20) (emphasis added)

An example of the Board discussing Ninilchik:

Beaton: I think the key component...you would have a hard time dealing with Ninilchik---like you said Mr. Glosslein, (ph) who was causing the problem and super siener there, Jerry (indiscernible) in Ninilchik. I mean, it is just a tremendous variation of guys from Ninilchik that are up on there. ---you know--- and there's some Native involvment there, and there is all these others. And certainly Gloslein is about as different from a Native as anybody (indiscernible voice drops)--- you know, I mean as far as his background and stuff. (line 12, page 22) (emphasis added)

The Board also shows particular prejudice and cynicism towards subsistence reports which contradict their desires and beliefs. At the March 20, 1981, hearings ('G' file #1 volumes 19-22) the chairman of the Board inquires about a subsistence report from the Subsistence Division and continually infers,

without any substantiation, that the people who filled out the questionaire were liars. On page 88 Mr. Szabo says in response to certain charts presented to him.

Szabo: ...or else, how many liars you had...

Szabo: Yeah, but that's assuming that the people didn't lie about their family size...also didn't lie about anything else. (page 92)

Mr. Szabo's cynicism towards the information provided by the subsistence section comesout again when he questions their information:

Szabo: The information coming out is only as good as the information going in." (page 93)

Szabo: I mean we found two hundred and thirty liars yesterday...now we don't know how many other liars we have... (page 270)

At the March 23, 1981, meetings Mr. Kelso of the Subsistence Section and Mr. Szabo have a dialogue. Mr. Szabo attempts to pressure Mr. Kelso to write supportive findings for the Board's conclusions when the Subsistence Section's data regarding subsistence users leads to a contrary conclusion. Mr. Kelso advises Mr. Szabo of this information and advises him that the Subsistence Section is not in the business of "creative writing" ('G' File #1, volumes 24, 24, 26, pages 58-68, see page 63)

In the December, 1981 proceedings the Board first receives a report from James Fall of the Subsistence Division. ('G' File #2, Appendix GG, Traditional Resource Uses in the Knik

Arm Area by James Fall, December 1981). The report and testimony establish that Knik satisfies the 10 criteria. As the Board realizes this they adjourn and upon returning they developed the new idealized community definition which must be satisfied before the Board will apply the 10 criteria. They then also formulate the policy requiring conformity with all 10 criteria after satisfying the community requirement.

The Board then reevaluates Knik with the community definition and finds that Knik is not a community and therefore the 10 criteria are now inapplicable. Conclusion: No one in Knik is a subsistence user.

Referring to Knik: ('M' File #4, Exhibit EE supra)

Szabo: ...And we said well, maybe that two acres and that one household. If you viewed them as a community would meet those ten criteria, but we don't think they could be viewed as a community. (page 126)

Goll: Yeah. Just one comment, Mr. Chairman...some people are under the false impression that the ten criteria is the only think, the only latitude the Board has, and that's not, in fact, the case...It's part of it, but we can go beyond that too...Am I correct in that?

Szabo: Well, I think there's other things... (page 126, 127)

The Board also shows a patronizing and often cynical view of Native activities. For example see pages 5, 6, 12, and 13.

To clarify Plaintiffs' position in light of the above referred to record with one final example: The Board

effectively set up two classes. One results from 5 AAC 01.597(b and (c) requiring that one belong to "the community" (See proceedings, Knik, 'M' , Appendix EE, supra) before requiring satisfaction of all ten criteria. The community includes the class that lives in an established geographic community, which may be participating in a subsistence system, with at least several households of full time residents who reside in a specific geographical area because of common interests and who look like a pure native village and then satisfy all ten of the criteria.(5 AAC 01.597(b)(c). The excluded class is made up of all other Alaskan residents either as individuals, families, groups or communties who have a history of use of set gill nets and use of salmon for their family and personal consumption consistent with all subsistence regulations in effect prior to 1979 and who otherwise may satify some or all of the ten criteria but are not considered subsistence users because they are not members of the idealized community.

Although the class descriptions are a bit wordy they do describe what the Board has done. It is incredible that this scheme and all of the hearings and litigation spring from the Board's belief that the legislature in 16.05.940(26) intended the term customary and traditional to proscribe all Alaskans but those in the 'perfect idealized native community' category. Plaintiffs submit that this scheme does not further the purposes of "permitting the taking of fish for subsistence uses", "of recognizing the needs, customs and traditions of

all Alaskans" and of maintaining fish stock on a sustained yield basis." Further that the class system set up discriminates against Plaintiffs and persons similarly situated without any rational basis.

IV

HAS THE BOARD OF FISHERIES VIOLATED PLAINTIFF'S RIGHT TO DUE PROCESS OF LAW?

Plaintiffs claim that they have a right to fish, minimally, on a parity basis with all other user groups. This claim is based upon their prior continued and long term use of the salmon moving through Cook Inlet. The method used has primarily been with set gill nets in particular areas on the east shores of Cook Inlet. The salmon have been used for their personal and family consumption. The Fourteenth Amendment to the U.S. Constitution, Section 1, provides as follows:

> "...nor shall any state deprive any person of life, liberty, or property without due process of law..."

The Consitution of the State of Alaska, Article 1, Section 7, provides:

> "No person shall be deprived of life, liberty, or property without due process of law."

The allegations in this section include cummulative violations, some of which alone are sufficient to support due process violation.

(A) Due process - Arbitrary Exclusion/Biased Hearing

The Board terminated Plaintiffs access to equally participate in the harvest of Cook Inlet salmon with the other user groups i.e. sports and commercial users. The history of Plaintiffs' use is set out earlier in this brief by reference to the record and affidavits. We assert that the deprivation of access to harvest and supply food for oneself and one's family is of comparable importance to warrant protection under the due process clauses the interests in Kerscher v State , 568 P2d 996 (Alaska 1977) and Chin Hilbers v Municipality of Anchorage , 611 P2d 31 (Alaska 1980) Actions of an agency or government, although discretionary must still conform to principles of fundamental due process. See Vick v Board of Electrical Examiners , 626 P2d 90 (Alaska 1981). Due process requires notice, which is "reasonably calculated ....to....afford an opportunity...to be heard at a meaningful time and a meaningful manner' Aguchak v Montgomery Ward Co. Inc , 520 P2d 1352, 1357 (Alaska 1974) Plaintiffs submit that a due process hearing in a 'meaningful manner' includes an impartial hearing i.e. impartial jury or Board. Green v State, 462 P2d 994, 997, (Alaska 1969).

The exclusion of Plaintiffs was devoid of considerations of resource shortages or biological need to limit the harvest or protect the sustained yield of salmon moving in and through Cook Inlet. The record also fails to establish that the Subsistence Section was requested to, and did, provide the Board with comprehensive research data on the Plaintiffs or

persons in their area regarding subsistence use qualification under AS 16.05.094.

Contrarily the Braund Report , ('G' Appendix R,pages 26-35, supra) concludes that there are numbers of subsistence users participating in subsistence uses on the east shore of Cook Inlet. The record of this Board's action imp s concluding that the Board can not, where these Plain fs particularly and subsistence use in Cook Inlet generallyis concerned, conduct fair and impartial hearings.(Plaintiff directs the Court to the facts set out in this brief at the Statement of Facts and in the Equal Protection argument including references to quotations from the record.) The record also confirms that Plaintiffs' exclusion was a capricious act by a biased hearing board without any substantial base. The result deprived Plaintiffs of the right to fish as they have historically and traditionally done and to feed themselves and their families. As such the Plaintiffs have been denied due process of law.

(B) Due Process - Closed Hearings

Madison also alleges that the closed meeting violations by the Board (argued and discussed in argument II i.e. Public meetings issue) which resulted in the formulation, synthesis and ultimately the adoption of the 10 criteria violates the principles of procedural and substantive due process. There is a substantive aspect of the Administrative Procedures Act which

appears in AS 44.62.310, 312. The public meetings policy act does not involve procedural matter such as contained in AS 44.62.040-290. Therefore Plaintiffs submit that the Board's failure to comply with AS 44.62.310, 312 is both procedural due process violation under Aguchak v Montgomery Ward Co., Inc , 520 P2d 1352 (Alaska 1974), and a substantive due process under an analysis of the Administrative Procedures Act.

C. Due Process - Administrative Actions By The Board Are Improper

Madison alleges that the Board is administrating their own regulations. (See 5 AAC .01.597(b). Also 80-79 FB, Amended 80-79 FB; 81-92 FB and Knik hearings, pages 126, 127; 'G', Appendix A-1, A and B respectively and 'M' Exhibit EE supra)

The application of the subsistence regulations is an administrative act which the Board is statutorily precluded from doing. There are no formal procedural administrative rules within which the Board can competently and fairly administer the regulations. AS 16.05.241 states:

> "Powers excluded. The boards have regulation making powers as set out in this chapter, but do not have administrative, budgeting, or fiscal powers.'

Alaska Statute 16.05.050 (9) reads:

> "Powers and duties of the commissioner: The Commissioner has, but not by way of limitation, the following powers and duties:
>
> (9) Administrative, budgeting, and fiscal powers; Also see Kenai Peninsula Fisherman's Cooperative Association, Inc. v State of Alaska, 628 P2d 397,

(Alaska 1981)

The Board has assumed the powers of applying the policy and regulation adopted by it. Black's Law Dictionary , 4th edition, defines administrative acts as:

> "those acts which are necessary to be done to carry out legislative policies and purposes already declared by legislative body..."

Ballentine's Law Dictionary , 3rd edition, defines administer as:

> "...to apply or enforce the law..."

and defines administrative power as:

> "...the power of carrying laws into effect, giving them practical application to carry on affairs by way of management, oversight, investigation, regulation, and control, in accordance with and in execution with the principles precribed by the law maker...,"

The necessity for separating administrative powers from regulatory powers is reflected by the actions of this Board in the present controversy. They tend to blend the regulation making with the application of those regulations and the result is a general and vague process pretending precision. Their actions in process fail to objectively and fairly represent to the public a system of recognizable standards and mechanisms for applying those standards so that the public can be treated with and reasonably expect some degree of predictability. (Knik Transcripts, 126, 127, 'M' Appendix EE supra).

The basic point is that the Board may adopt criteria, policy, and regulations but the mechanical process of uniform application can and should only be done by technical and

managerial staff in the affected areas and under the Commissioner of Department of Fish and Game. The mechanics of applying for subsistence status to the Board invites irregular and haphazard results when, especially in this case, the policy making body attempts to weigh individual applications while at the still formulating and defining the regulation and policy which they have created. (Knik Transcripts, supra).

D. Due Process - Generally

In combination or alone, [1] the Board's personal predilictions; [2] the absence of any biological need to restrict use of Cook Inlet salmon; [3] violations of the Administrative Procedures Act; [4] absolute exclusion of Plaintiffs as equal participants with other user groups; and the [5] illegal administration of the regulations, exemplify violations of Plaintiffs' due process rights.

This Supreme Court has described due process in Bachner v Pierson , 479 P2d 319 (Alaska 1970) and Green v State , 462 P2d 994, (Alaska 1969). Both cases dealt with allegations of improper jury selection, and defined due process as:

> "The term due process of law is not susceptible to a precise definition or reduction to a mathematical formula" But, in the course of judicial decision has come to express a basic concept of justice under the law, such as "our traditional conception of fair play and substantial justice", of "protection of the individual from arbitrary actions"; "fundamental principles of liberty and justice", whether there have been a denial of fundamental fairness, shocking to the universal sense of justice, "that whole community sense of decency and fairness that has been woven by common experience into the fabric of acceptable conduct." and

" respect for those personal immunities which...are so rooted in the traditions and consciencness of our people as to be ranked as fundamental....or implict in the concept of liberty." Green v State , at 996, 997, Citations omitted).

Due process violations can ensue from cummulative patterns of behavior resulting in basic and intuitivly recognizable unfair actions. Madison alleges at the least that this is what has happened.

V

IS THE CREATION OF A NEW FISHERY, NAMELY A PERSONAL USE FISHERY, BEYOND THE AUTHORITY DELEGATED TO THE BOARD OF FISHERIES?

The Board of Fisheries, in 1981, birthed a new fishery, originally labeled a family use fishery. However the abbreviated form of family use (using the first letter of 'family' and the first letter of 'use,' i.e. FU) caused the Board to doubt the wisdom of that selection. Finally they selected 'personal use' as the label for the new fishery, (The abbreviated form of which was not considerably better than their prior selection). This personal use fishery was assumedly conceived as a token for the former subsistence users now disenfranchised by the Board. Both occurred at the Spring 1981 Board meetings.

Personal use is an excess stock fishery and, as a food source, is dependent on whether or not the other users' catch i.e. sports, commercial, and subsistence, is assured.

The rationale for creating the personal use fishery and

its limitations are set out in 5 AAC 77.001 entitled Intent and Application of this Chapter .

(a) The Board of Fisheries finds that

(1) before the enactment of the state's subsistence priority law in ch. 151, SLA 1978, an individual could fulfull his personal use needs for fish under subsistence fishing regulations;

(2) the state's subsistence priority law changed the definition of subsistence in a manner that now precludes some individuals from participating in customary and traditional subsistence fisheries and efficiently harvesting fish for their personal use;

(3) there presently are areas of the state with harvestable surpluses of fish in excess of both spawning escapement needs and present levels of subsistence, commercial and sport uses ; and

(4) it is necessary to establish a new fishery classified as "personal use" because

(A) since the sale of fish is not appropriate or permissible, this fishery cannot be classified as commercial;

(B) since the use is not a rural customary and traditional use this fishery cannot be classified as subsistence; and

(C) since the gear for this fishery is often different from that historically associated with sport fishing, this fishery should not be classified as a sport fishery, to prevent confusion among the public.

(b) It is the intent of the board that the taking of fish under a 5 AAC 77 will be allowed when that taking does not jeopardize the sustained yield of a resource and either does not negatively impact an existing resource use or is in the broad public interest. (emphasis added)

As authority for adopting and creating this fishery, Defendants relied on Alaska Statute 16.05.251(a)(6), which

states:

> "(a) The Board of Fisheries may make regulations it considers adviseable in accordance with the Administrative Procedures Act for
>
> (6) classifying fish as commercial fish, sports fish or predators or other categories essential for regulatory purposes". (emphasis added)

Significantly this section only refers to classifying 'fish' not creating new fishery categories and this classification must be essential for regulatory purposes i.e. conservation and development, AS 16.05.221(a).

Plaintiffs propose that the language of 16.05.251(a)(6) contains two limitations. First the 'fish' to be classified must be within statutorily designated categories. The legislature particularly set out some of these categories in the statute, i.e. predatory fish, commercial fish, and sports fish. Any other category must be authorized by the legislature such as subsistence, AS 16.05.940(17)(26); endangered AS 16.20.010, 020; experimental, educational, and scientific, AS 16.15.020; or any other categories set out in Title 16. The legislature did not authorize the Board to create a new category of fish, i.e. the personal use fish.

Secondly, the category must be essential for regulatory purposes. Essential for the conservation, development and utilization of fishing resources, (Kenai Peninsula Fisherman's Association v State , 628 p2d 897 (Alaska 1981).

Essential is defined as 'extremely important; 'of the

greatest importance; indispensable'. American Heritage Dictionary , (1973) Funk and Wagnalls, Standard College Dictionary , (1963). Black's Law Dictionary Revised Fourth Edition. Essential is not the equivalent of 'want' or 'convenience'.

The intent outlined in 5 AAC 77.001 does not satisfy 'essential'. Therefore for both of the above reasons, Plaintiffs believe the Board has exceeded its legislative authority by creating a new category of fish, i.e. personal use. Additionally, even if the Board could create the new category, they would have to show that it was 'indispensible' to the conservation, development and utilization of the fisheries.

Plaintiff's position on the personal use fishery independent of the above arguments is that this fishery is closer to a charity fishery than a parity fishery. Plaintiffs feel that they are minimally entitled to equality of use even independent of the subsistence bill. This right was recognized by the Superior Court in Gjosund 77-22104, Homer and 3HO-80-92 Civil, and to a degree by Judge Carlson in Madison . (See Findings of Fact and Conclusions of Law on Counts II and III, January 26, 1983, Conclusions of Law, 9, 10)

The personal use fishery is an excess stock fishery and it does not provide certain essential attributes, i.e. it does not provide a predictable and reliable means in terms of time, gear, location and species, of providing food for Plaintiffs and their families as they have in the past.

The true character of this fishery is set out in 5 AAC

77.001(a)(4) and (b). The Board's attempt to use this as a solution to the problems they have created, has merely created additional problems. For example see Kenai River Sports Fisherman v State , _____(September, 1983).

CONCLUSION

The Plaintiffs ask the Supreme Court to recognize that they have a right to participate in the harvest of Cook Inlet Salmon at least on a parity with other users. Their political and financial influence with the Board is considerably less than that of the sports and commercial users, however, their traditional, historical and customary life pattern including fishing with set gill nets to feed themselves and their families is of considerable importance. The documents, exhibits, papers, time and energy spent on these cases demonstrates conflicting interests, but certainly the legislature did not mean to align the interests of Mr. Madison, Lucy Casey and their neighbors, relatives and friends against the Board of Fisheries' interests. Certainly their uses are subsistence uses under any reasonable definition or conceptualization ofsubsistence ues. The arguments and law here are meant to demonstrate and pursuade this Court to recognize the Plaintiffs' right to continue to set their nets, gather their fish, and feed themselves and their families consistent

with Plaintiffs' life patterns and with the legislature's directive to the Board of Fisheries to " permit the taking of fish for subsistence uses".

DATED at Homer, Alaska this 1 day of Oct, 1983.

Respectfully submitted,

MARTIN FRIEDMAN

ARTHUR ROBINSON

IN THE SUPREME COURT FOR THE STATE OF ALASKA

GENE MADISON, et al. Appellant, ALASKA DEPARTMENT OF FISH AND GAME and ALASKA BOARD OF FISHERIES, Appellees, vs THE ALASKA FEDERATION OF NATIVES, Intervenor.	Supreme Court Nos. 6824/7181 Superior Court No. 3KN-81-542 Civil
ALASKA DEPARTMENT OF FISH AND GAME, et al., Appellants, vs LOUIS GJOSUND, et al., Cross-Appellees.	Supreme Court No. 7410 Superior Court Nos. 3HO-80-92 Civil 3HO-77-11014 Homer

MERIT APPEAL FROM THE SUPERIOR COURT, STATE OF ALASKA
THIRD JUDICIAL DISTRICT
JUDGE VICTOR CARLSON

REPLY BRIEF OF APPELLANT/CROSS-APPELLEES

MARTIN FRIEDMAN
P.O. Box 337
Homer, Alaska 99603

ARTHUR ROBINSON
P.O. Box 3519
Soldotna, Alaska 99669

Filed in the Supreme Court in Anchorage of the State of Alaska this 30 day of May, 1984.

R. Andrews

~~ROBERT B. BACON~~ David A. Lampen
Clerk of Court

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

STATUTES RELIED ON..... iv

REGULATIONS RELIED ON..... iv

STATEMENT OF ISSUES..... 1

ARGUMENT

LEGISLATIVE INTENT..... 2

ADMINISTRATIVE REVIEW..... 10

RURALNESS ISSUE..... 13

THE PUBLIC MEETINGS ISSUE..... 16

EQUAL PROTECTION..... 17

DUE PROCESS..... 19

IMPARTIALITY..... 22

PERSONAL USE FISHERY..... 23

THE GJOSUND DECISION..... 23

CONCLUSION..... 24

TABLE OF AUTHORITIES

CASES:

Alaska Transportation Commission v Grandia, 602 P2d 402 (Alaska 1979)..... 17

Aleknagik Native's Limited v Andrus, 648 P2d 496..... 22

Doe v State, 487 P2d 47 (Alaska 1971)..... 17

Green v State, 462 P2d 994 (Alaska 1969)..... 20

Ketchikan Gateway Borough, Alaska v Breed, 639 P2d 995 (Alaska 1981)..... 15

Lynch v McCann, 478 P2d 835 (1970)..... 6

Marks v City of Anchorage, 500)2d 644 (Alaska 1972)..... 15

Towne v Eisner, 245 US 418, 425 (1918)..... 2

Tyonek v Alaska Board of Fisheries, 3AN 80-3073..... 5

Woodards v State, 604 P2d 250 (Alaska 1979)..... 15

STATUTES:

AS 01.10.040..... 6

AS 16.05.094..... 21

AS 16.05.251(b)..... 2,12

AS 16.05.251(b)(1), (2) & (3)..... 24

AS 16.05.940(17)..... 1,2,3,12,21

AS 16.05.940(17) pre-1978..... 3

AS 16.05.940(26)..... 1,2,3,12

AS 44.62.310..... 16

AS 44.62.312..... 16

AS 44.62.330(9)(40)..... 22

AS 44.62.630..... 22

REGULATIONS:

5 AAC 01.597(a)(1-10)(b)(c).....4,5, 7, 8, 12,16

5 AAC 99.020..... 14

STATUTES RELIED ON

AS 01.10.040

> Words and phrases. Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and appropriate meaning.

AS 16.05.094:

> Duties of section of subsistence hunting and fishing. The section of subsistence hunting and fishing shall
>
> (1) compile existing data and conduct studies to gather information including data from subsistence users, on all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state;
>
> (2) quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing;
>
> (3) make information gathered available to the public, appropriate agencies, and other organized bodies;
>
> (4) assist the department, the Board of Fisheries, and the Board of Game in determining what uses of fish and game, as well as which users and what methods, should be termed subsistence uses, users, and methods;
>
> (5) evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the department;
>
> (6) make recommendations to the Board of Game and the Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing;

(7) participate with other divisions in the preparation of statewide and regional management plans so that these plans reorganize and incorporate the needs of subsistence users of fish and game.

AS 16.05.251

Regulations of the Board of Fisheries.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
(2) local residency; and
(3) availability of alternative resources.

AS 16.05.940

Definitions. In this chapter

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence use with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(26) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as resources for direct personal or family

consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption: for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis.

AS 16.05.940 - pre-1978

"Subsistence fishing": the taking, fishing for or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means as defined by the Board.

AS 44.62.310

Agency Meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivision, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to orgainze the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the

motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void.

AS 44.62.312:

State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the

people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) AS 44.62.310(c)(1)1 shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executve sessions.

AS 44.62.330:

(a) The procedure of the state boards, commissions, and officers listed in this subsectin or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 - AS 44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatment or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under AS 44.62.330 - 44.62.630 is limited to named functions of the agency

(40) Board of Fisheries

AS 44.62.630:

Impartiality. The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of ex parte matters authorized by law, shall not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with these officers shall be served upon all parties.

REGULATIONS RELIED ON

5 AAC 01.597

CHARACTERISTICS OF SUBSISTENCE FISHERIES.(a) The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:

(1) a long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance;

(2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;

(3) a use pattern associated with specific stocks and seasons;

(4) a use pattern based on the most efficient and productive gear and economical use of time, energy and money;

(5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;

(6) a use pattern occurring in locations with easiest and most direct access to the resources;

(7) a use pattern which includes a history of traditional modes of handling, preparing and storing the product without precluding recent technological advances;

(8) a use pattern which includes the intergenerational transmission of activities and skills;

(9) a use pattern in which the effort and products are distributed on a community and family basis including trade, bartering, sharing and gift-giving; and

(10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.

(b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.

(c) For purposes of this section, a "community" is generally considred to be several households of full-time residents who all reside in a specific geographic area because of common interests. (Eff. 4/14/82, Reg. 82)

5 AAC 99.020 Definitions.

In this chapter, "rural" means outside the road connected area of a borough, municipality, or other community with a population of 7,000 or more, as determined by the Alaska Department of Community and Regional Affairs. (Eff. 5/30/82, Reg 82)

STATEMENT OF ISSUES

The issues under consideration have been set out in the Opening and Responsive Briefs of the parties. This Reply will deal with the points raised in the State and Intervenor's briefs. The argument heading in this Reply refers to the issue discussed under that heading. All arguments in this reply have been dealt with and described in the Statement of Issues in the Opening and Responsive Briefs.

ARGUMENT

"A word is not a crystal, transparent or unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and time in which it is used." Mr. Justice Holmes in Towne v Eisner, 245 US 418, 425 (1918)

I. LEGISLATIVE INTENT

Gjosund and Madison (hereinafter Plaintiffs) will try to clarify the primary issues in this case and deal with the legal arguments countering and supporting these issues in subsequent parts of this reply.

With time for reflection and a renewed and hopefully clearer examination of the heart of this controversy, it appears that much has been done about nothing. If this Court, independent of the Board's interpretation, examines AS 16.05.251(b) and AS 16.05.940 (17) and (26), this conclusion will result. It will not be because of any reference to newly discovered insights into applicable legal standards, but by macroscopic view of the acknowledged history and bias of the Board of Fisheries in dealing with subsistence fishery issues. (Intervenor's brief, page 3, 18 and 37 through 46 and Plaintiff's opening brief.)

Plaintiffs will attempt to minimize repetition by referencing to earlier briefs.

Plaintiff's position regarding the subsistence legislation is that the intentions of the state legislature were permissive, protective and inclusive. The legislature wanted to maintain and protect the status quo regarding subsistence uses in the state of Alaska. The subsistence bill also reflects a delineation and expansion of uses by including some uses, such as barter and trade, which were not included in the pre-1978 subsistence use definition. To argue that inclusion of the words 'customary and traditional use' instead of 'personal use' was intended to be restrictive, narrowing and exclusive ignores the plain and simple meaning of the words used as well as every legislative and legislator's statement of intent.

An objective view of legislative intention shows an intention to maintain and protect the usual uses by 'all Alaska residents,' 'native and non-native' by setting out in particular what those usual uses are. Subsistence use now means and includes, in particular, uses for food, shelter, clothing, tools or transportation and what had been excluded before, customary trade and barter. (Compare AS 16.05.940(17(26) with the pre-1978 AS 16.05.940(17)).

The new legislative statement is more inclusive than the

former, which contained means and uses in one statute, and excluded sale and barter from personal use. The subsistence law was passed to force the Board, by statutory enactment, to protect subsistence use. The legislature felt that the 1973 policy statement of the Commissioner of Fish and Game was neither adequate nor sufficient legal justification for protecting subsistence uses because the Board had failed to protect subsistence users where competition existed in the fishery with other user groups.

> " There are other individual examples of the failure of the Board to protect subsistence use in light of competing uses. In summary, however, the subsistence law was passed to enable the Board to provide for subsistence use during times of resource shortage and intense competition and to make certain that the Board took care of subsistence use prior to allowing other uses of these important economic resources ... .In the same way reliance upon the 1973 policy statement of the Commissioner and Board was not deemed adequate. First, this policy did not provide the legal justification for protecting subsistence uses and, in the generally held view in rural Alaska, was only a policy statement which the Board could point to without implementing it with any substantive measures. Be that as it may, all the subsistence law did was to codify this policy in order that its intent be enforceable rather than subject to the whims of the resource managers ....While this is only one example of the Board of Fisheries proclivities when 'left with its own devises' it is a clear indication of what fate is in store for subsistence users in highly intensive competitive fisheries and hunting situations, where there is no protection guaranteed by statute". (page 44, 45 - Draft Report of Special Committee on Subsistence. G file #2, page 13-221, Appendix BB) (emphasis

added)

The cases involving the Board of Fisheries (except the first Gjosund case (1977)) arose subsequent to the passage of the subsistence bill in 1978. These cases evidence the Board's approach to the Cook Inlet subsistence fishery.

The legislature must have been aware of the Cook Inlet Management Plan adopted by the Board in 1977, which omitted any consideration of subsistence. That plan was the subject of KPFCA v State, 628 P2d 897 (Alaska 1981) and was another impetus to upgrading the 1973 policy into legislation.

Tyonek v Alaska Board of Fisheries, 3An 80-3073, occurred after 1978 when the Board was fully aware of the particular wording and directon of the subsistence bill. However, they completely ignored the village of Tyonek which, for the past 15 years, had not been able to fish legally for King Salmon. After the stock recovered, the sports and commercial users were allowed to fish. Obviously Tyonek would be considered a subsistence user without any discussion. However, court action was still necessary. Through a Superior Court Order the Board enfranchised the village of Tyonek, its residents, and all timber and logging workers and state and school distict employees working in the area. In otherwords anyone who moved to or near Tyonek was now, at least after the Court order, a subsistence user.

The record before the Board and before this court shows a long time continual, usual, common, historical use by plaintiffs of the salmon in Cook Inlet.

The entire foundation for the Board's actions, and the position of Intervenors and the State, is that the division of subsistence uses from subsistence methods into two separate statutes, together with the language 'customary and traditional uses', justifies every action the Board has taken in excluding the plaintiffs in these cases. That change supposedly authorized the Board to adopt 5 ACC 01.597 i.e. Characteristics for Subsistence Fisheries. These criteria confuse what is a very simple legislative statement.

Customary and traditional should be interpreted according to their common and approved usage. They have not acquired any pecular meaning and no further statutory definition, judicial interpretation, or construction of these words has been set out. Taken in their very simple form or dictionary definition, they are adjectives meaning 'usual' and/or 'conventional'. Alaska Statute 01.10.040 states as follows:

> "Words and phrases: Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a pecular and appropriate meaning, whether by legislative definition or otherwise shall be construed according to the pecular and appropriate meaning." (For interpretation see Lynch v McCann, 478 P2d 835, (1970))

Customary and traditional should be accorded their common and approved usage.i.e. dictionary definition and general understanding of those words. These words are not terms of art from which the legislature intended 5 AAC 01.597(a)(1-10)(b)(c) to emerge.

Intervenor's brief (page 24) and the State's brief (page 21), both refer to a quote of Representative Anderson discussing the subsistence bill in the Alaska State Legislature as support for their understanding of the legislative intent. The language is much more consistent with plaintiffs' position. Since it has already been quoted twice, one additional time can't be too harmful.

> "The two words are used in this context to put some guidelines around the uses of Alaska's freedom of resources. What we were afraid of, it was brought to our attention by people who were concerned that this would leave the field of the definition wide open. That newcomers just coming to the State of Alaska would automatically be able to establish not only residency in thirty days, but be able to go out and state they have a customary and traditional use of Alaska's fish and game resources. The use of customary and traditional' use also is in recognition of a historical use of fish and game for food, shelter, fuel, clothing, tools, transportation, etc. This is not only in conformance with aboriginal uses, but also those that have come in, those who come in later. They have... the non-native people in the State of Alaska have established customary and traditional uses of Alaska's fish and game resources for subsistence purposes. And in order to give the Board of Fish and Game (sic) more clarification in the area, we have come up with the (inaudible) of 'customary and

> traditional' rather than leaving the section wide open. The design is not to be restrictive but to provide guidelines and that is basically what I feel and many...many members felt it was necessary in retaining those two words 'customary and traditional'." (emlphasis added).

Representative Anderson's points indicate that the statute wanted to 'put some guidelines around the use of Alaska's freedom of resources' and that the 'design was not to be restrictive.' 'Customary and traditional use' is recognition of historical use 'of those (Alaskan residents) that come in later'...'the non-native people.' 'Customary and traditional' are used to give the Board more clarification. The State and Intervenor are now arguing that plaintiffs pre-1978 use of salmon is no longer subsistence use because the Board has developed 10-criteria (plus two community criteria) which do not include the plaintiffs. In fact they were adopted to exclude them. (See discussion of Knik hearings in plaintiff's brief at page 21-23).

5 AAC 01.597(b)& (c) are examples of over-extension of the Board's authority and are exactly why the legislature felt a need to adopt a subsistence bill. Subsistence users had to be protected from the Board. However, the Board has again pursued its own course and found a means to subvert the intentions of the subsistence bill. 5 AAC 01.597(b) states.

> "The Board will identify established geographic communities which may be participating in a subsistence system. The Board will then apply

> all the characteristics in (a) of this section to the communities and to subcommunites, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority."

The Board has developed an exclusion mechanism for any individuals, families, or groups of families from consideration as subsistence users unless they live in an 'identified established geographic community which may be particiating in a subsistence system.' Where does the subsistence bill authorize or offer a hint as to what this regulation means? The Board then goes on in subparagraph (c) to state:

> "for purposes of this section, a "community" is generally considered to be several households of full time residents who all reside in a specific geographic area because of common interest."

The intention of this regulation is clear. It is to exclude anyone in Cook Inlet who does not live in a model native rural village and completely controvenes the legislative intent.

Intervenor (page 26 and 27) and the State (page 20) use two quotes attributed to Representatives Miller and Huntington describing hunters flying in to rural areas to hunt and take meat from the subsistence users. These quotes emphasize, (and its a point we do not disagree with), that the people in the place of the subsistence resources should have a say about the use of resources in the area they live in. Assumedly

Intervenor and State accept these quotes as supporting their case. It is our position, illustrated by the record, that plaintiffs in Madison and Gjosund live where the fish are, and the Board has in fact excluded them from subsistence fishing, instead of protecting and permitting their subsistence fishery, because of threats to the resource by people from other areas. I assume Representatives Miller and Huntington wanted the area users protected from, and not excluded by, the fly-in hunters or fishermen.

II ADMINISTRATIVE REVIEW

One point connected to the discussion and argument above relates to the continual flux of positions, arguments and rationales that this case seems to birth. As an example, the Intervenor and State briefs are apparently now disagreeing with both Judge Carlson's and Judge Jones' standard of review of administrative action. The Superior Courts, in both cases, deferred to the Board's interpretations and resultant promulgations of subsistence criteria and refused to substitute their judgment for that of the Board. Intervenor and the State argued 'judicial deference' at the Superior Court level. It appears that they are now arguing that the Superior Court and this Court should substitute their judgment in the first stage of analysis for the Board's interpretation of the intentions of the subsistence bill (Intervenors brief, page 21; State's

brief, page 19) and defer to the Board regarding the enactment of the criteria regulations.

Plaintiff's position is that Judge Jones in Gjosund would have found that the criteria were not an accurate reflection of the intention of the statute and voided those criteria if he had substituted his judgment for that of the Board. The same could be argued for Judge Carlson. If the State and Intervenor are stipulating that the Superior Court erred in arriving at their conclusion regarding the administrative review issue all parties are now in agreement.

Plaintiffs have consistently argued that the courts should substitute their judgment for the Board's. The Board has predictably misinterpreted the intention of the subsistence statute and has over-extended and distorted the words 'customary and traditional' to the point where the criteria are incomprehensible to the public and tailored to fulfill the Board's pre-set intentions to close Cook Inlet to subsistence.

This Supreme Court must view the events and arguments in this case in a continuum. Individual elements of the issues may hold a certain attractiveness or reasonableness, however, when viewed in process from 1973 through 1983, the picture becomes much clearer.

The fact that subsistence use and gear prior to 1978 was set out in one statute and subsistence use and gear subsequent

to 1978 is set out in two statutes is nothing more than an intention to keep the same gear criteria to identify methods of harvest, and to amplify and exemplify subsistence uses separately. The uses set out in AS 16.05.940(26) are the particular and usual subsistence uses. The statute both expands on, and particularizes personal use to the existing users by including barter and specifying other uses that had heretofore been general. Substituting the words 'usual' in paragraph (26) for the words customary and traditional would make much more sense than substituting all of the characteristics contained in 5 AAC 01.597(a)(b) & (c) for customary and tradi ional.

In Gjosund, Judge Jones deferred to the Board of Fisheries' adoption of the criteria, however, he found that the criteria were only effective when determining priorities between and amongst subsistence users under subparagraphs (1), (2), & (3) of 16.25.251(b). Judge Jones determined that the Board's interpretation, insofar as excluding the plaintiffs in Gjosund, was unsound at the pre-priority level. He found that the plaintiffs in Gjosund were subsistence users of Cook Inlet Salmon stocks in accordance with AS 16.05.251(b) & AS 16.05.940(17)(26) and that they could not be restricted unless there was a factual showing that the salmon stocks were jeopardized.

"RURALNESS" ISSUE

Although this issue was not brought up in plaintifs' opening brief, it has been assumedly and subtly included in Intervenor's and State's briefs. It appears as a new criteria, undefined and absolute, called 'ruralness'. How and under what conditions it has been injected into the Cook Inlet drama is unclear. However, it seems that both Intervenor and State have accepted, and are now arguing, that the subsistence legislation includes the term 'rural' as a prerequisite to subsistence use. They also must then argue that the legislative intent was to define rural so the public and the Board could identify and know that it was a pre-condition to subsistence use. The State and Intervenor argue that rural is as integral to the subsistence legislaton as customary and traditional. However, if that is so, why did not the legislature set out rural, as it did customary and traditional.

Plaintiffs were never presented with the question of whether they were rural or not. In fact rural is now a conclusion without a defined origin. If the legislature was going to use a rural versus non-rural subsistence use discrimination, then one must assume that because of the history and source from which the subsistence bill arguably originated, (i.e. ANILCA, according to the Intervenor and the State; page 32, & 30 of their briefs respectively), then the

state legislature would have said what they were in fact doing. They would have defined rural and described its application to the issue. However, the state subsistence legislation does not include a rural versus non-rural standard.

One federal standard for rural in Alaska designates Fairbanks, Ketchikan, Anchorage, and Juneau as urban and all else rural. (see Federal Register January, 1981, Statement of Secretary of Interior) The State Board of Fish and Game became aware of the problem and tried to resolve it by adopting a definition of rural in 1982. (5 AAC 99.020, Attachment E) stated:

> "In this chapter 'rural' means outside the road connected area of a borough, municipality, or other community with a population of 7,000 or more as determined by the Alaska Department of Community and Regional Affairs."

The Board apparently realized that defining 'rural' exposed their errors more than it hid them and repealed this regulation in 1983.

No opportunity to respond to the rural criteria in proceedings before the Board was ever noticed nor was this standard anticipated in the state subsistence bill or the Board's action. A rural standard without notice and definition poses serious consitutional questions. What and where are the rural/non-rural borderlines and what is the delineation of, and factors identifing 'ruralness'? Are these Borough or City

boundaries, population or census district boundaries, or life style characteristic delineations? (See Ketchikan Gateway Borough, Alaska v Breed, 639 P2d 995 (Alaska 1981)), (persons similarly situated must be treated alike.) Obviously persons residing on opposite sides of a border boundary must be distinguished by something other than an arbitrary line. Questions arise of vagueness and due process, in light of the fact that no regulatory definition of rural existed at the time the Board excluded plaintiffs, (See Woodards v State, 604 P2d 250, (Alaska 1979), and Marks v City of Anchorage, 500 P2d 644 (Alaska 1972)).

Also raised are procedural and substantive due process questions regarding notice and hearing in conjunction with plaintiffs' due process agrument in their brief.

Rural or area categorizations are not unconditionally repugnant. Plaintiffs feel that their situation is the same as that referred to by Representatives Miller and Huntington. They live where the subsistence resources and uses are located and they live where the customary and traditional i.e. historical, conventional, usual, uses have and do exist. Plaintiffs have never had an opportunity to respond or relate to the rural criteria since it appears to have developed in the conclusions of the Board and briefs of Intervenor and State and not in the subsistence legislation or regulations.

THE PUBLIC MEETINGS ISSUE

Intervenor takes no position on the question of violations of the public meetings provisions except to imply that this issue only relates to actions prior to the adoption of 5 AAC 01.597.

The State responds by saying that the issue is moot. However, plaintiffs refer this Court to our brief (page 26 through 30) and point out that the policies and regulations adopted in the December 1980, Board meeting were in violation of AS 44.62.310 & 312. That illegality, by acknowledgment of the State, has not been, nor could it be, remedied by the subsequent public notices and meetings on subsistence issues, especially when the policy was formulated at an illegal closed meeting and all subsequent policies, with certain minor deviations, mirror the policy originating from the closed meeting. Until such time as there is a replay and representation of what in fact took place at those closed meetings, so the public will have an opportunity to confront and participate in the presentations and deliberations, claims of mootness and renotices do not vitiate the original and acknowledged stains.

Without relinquishing our claim that the issue is not moot, plantiffs offer that an exception to the mootness doctrine exists in public interest situations. The Board's

violation of the public meetings laws can be reviewed by this court, especially if it is a matter of public concern and capable of evading review. (See Doe v State, 487 P2d 47 (Alaska 1971); Alaska Transportation Commission v Grandia, 602 P2d 402 (Alaska 1979))

It is rare that issues of violations of notice or public meetings can be pursued both through trial and appellate stages within the period of time between public meetings. In this case the record of the Board's proceedings mandates an independent review by this court of the actions of the Board at the illegal public meeting to determine how much of the Board's subsequent policy and regulations on Cook Inlet subsistence uses were tainted.

EQUAL PROTECTION

The State's description of Gjosund's equal protection questions lumps equal protection with due process by confusing the constitutional distinctions between the two. They also, (State's brief page 40), refer consistently to the fact that the Board has identified subsistence fishing only in 'rural' communities. As earlier indicated, 'rural' has never been clearly identified, defined, or applied.

The Board has apparently used some notion of 'ruralness' to set up a class of residents of the idealized rural native village community model as subsistence users as opposed to the

class of people which plaintiffs belong (who cannot tell whether they live in a rural or non-rural area because no definition exists), and who have otherwise historically fished by subsistence means and used salmon for their family and personal consumption and nevertheless have been excluded from subsistence fishing.

The Intervenor misstates our case. It matters little whether state or agency legislation sets up classifications. If the classifications are arbitrary and unrelated to the object of the legislation and do not treat all persons similarly circumstanced alike it is an equal protection issue. Plaintiffs' claim is that the regulatory scheme, i.e. the ten plus criteria, has set up two classifications of Alaskan residents and that these classifications are not substantially related to the purposes of the statute and discriminate against plaintiffs without any reason.

There is no legitimate purpose or distinction to setting up a class of subsistence users in Port Graham, English Bay and Tyonek, which class includes all residents of that area whether they be natives, non-natives, school district employees, transient cannery workers, or timber employees, and setting up an excluded class of all other persons residing on Kachemak Bay in or near Homer or Kenai or any place on the entire shoreline of Kachemak Bay or Cook Inlet i.e. Halibut Cove, Bear Cove,

Fritz Creek, Clam Gulch, Aurora Lagoon, Ninilchik, etc.

The class exclusion does not suit the purposes of the legislation nor does it further the purposes of permitting the taking of fish for subsistence uses and "of recognizing the needs, customs, traditions, of all Alaskans" and "maintaining fish stock on a sustained yield basis."

As indicated earlier, the plaintiffs have all been fishing for lengths of time up to 50 years by the use of set gill nets. They are residents of the general Kenai Peninsula Borough area, have fished in the localities closest to where they live, have used the fish for family and personal consumption and have participated in other subsistence activities (i.e. coaling, gardening, gathering, clamming, etc.) To argue that this is not an equal protection issue overlooks the obvious.

DUE PROCESS ISSUES

The plaintiffs' due process claims are on pages 41-47 of their brief and will only be discussed here to counter specific arguments raised by Intervenor and State. Intervenor claims that Judge Carlson's remand of plaintiffs' Count IV, (Intervenor's brief, pages 35-37), somehow postpones what Intervenor acknowledges is a close substantive due process question. i.e. whether plaintiffs' right to due process of law was violated by exclusion of their use as a subsistence user.

This issue will be addressed in the reply brief to amplify

our claim that the Board acted arbitrarily in an aspect other than those set out in plaintiffs' opening brief. The inclusion of rural as a prerequsite to subsistence use inclusion is one more cumulative step in our claim. As indicated earlier in the reply brief, no definition, discussion, or elements of 'ruralness' were set out by the Board for plaintiffs' to confront or respond to. This is a cumulative element in the Board's behavior patterns which plaintiffs' claim have resulted in violations of fundamental principals of liberty and justice and is another arbitrary administrative action 'shocking to the universal sense of justice.' See Green v State, 462 P2d 994, (Alaska 1969).

The remand order on Count IV is lacking integrity when compared with the simultaneous order of Judge Carlson denying plaintiffs' Motion for Summary Judgment on Counts III and IV on 30 August 1982. By denying plaintiffs' motions, he was finding that no violations of due process or equal protection existed, therefore a remand is inappropriate.

Judge Carlson's remand suggested that proposals be resubmitted to the Board. Plaintiffs did in fact submit another round of proposals. The result and record before the Board were the same.

The Board had the same record before it as this Court does, i.e. testimony on behalf of Kenai area plaintiffs and the

Kenai Kenaitze reports, testimony and reports of Kachemak Bay susbsistence group and Larry Smith; affidavits presented to the court in Madison and Gjosund; and proposals requesting establishment of subsistence use fisheries. The Board responded as it had done in the past.

At the time those proceediings took place this appeal was moving through the court system and to date nothing has in fact changed. The remand to the Board was an empty remand. No standards were set nor were instructions or directions given to the Board. The Superior Court merely said "proceed as you had in the past" and the Board followed that instruction and did not acknowledge any subsistence uses in Cook Inlet or Kachemak Bay other than Port Graham, English Bay, and Tyonek.

The obligation to research and provide information on plaintiffs subsistence use (in addition to plaintiffs' contributions to the record) is with the Division of Subsistence (see AS 16.05.094) and this data should be before the Board prior to any action. The Braund report (G File #2 Appendix M, revised November 1982) concludes that there are numbers of subsistence users both on the east shore of Cook Inlet and along the borders of Kachemak Bay. Assumedly the Board had, or should have had, this information and the Board still retained its stubborn stance.

Plaintiffs claim that the record in this case demonstrates

that confronting the Board again would be a futile gesture and that judicial action is plaintiffs' only hope for a remedy (see Aleknagik Native's Limited v Andrus, 648 F2d 496).

IMPARTIALITY

Plaintiffs aver, contrary to Intervenor's position, that ample record exists co determine that the Board has acted arbitrarily, discriminiatorily, and with prejudgment. Alaska Statute 44.62.630 states as follows:

> Impartiality: The functions of hearing officers and those officer participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of exparte matters authorized by law, shall not engage in interviews with, or recieve evidence or arguments from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communcations with these officers shall be served upon all parties."

This section applies to the Board of Fishery. (See AS 44.62.330(a)(40)). It further supports plaintiffs' claim that the public meeting law deviation is a serious breach which cannot be rectified without a full and complete statement and avowal of the events that occurred during that closed meeting.

This section also relates to plaintiff's due process claims. Remand to the Superior Court and/or the Board for

trial/hearing would be superfluous. Very little could be added to the record that is not there already. Additionally the tenuous state of the Board's composition and existence, in light of the conflict between the governor and the legislature regarding confirmation of appointments of Board members, together with recently proposed legislation aimed at reorganizing Board member representation, changes the complexion of plaintiffs' position again.

PERSONAL USE FISHERY

Questions of the personal use fishery must be decided on the basis of statutory interpretation and due process standards. Judge Carlson's decision specifically did not consider any record of the Board's personal use hearings and those records were not a part of the record on appeal. It is deceitful to suggest or imply that the personal use fishery involved only a name change and minor shift in location on the 'use scale.' The personal use fishery moved the pre 1980 subsistence users from first consideration to last consideration.

THE GJOSUND DECISION

In reviewing and trying to discredit the Gjosund decision, Intervenor raises the spectre of catastrophe 'to tens of thousands of Alaskans who live in the bush.' This is not the case and Intervenor misinterprets what Judge Jones did.

Judge Jones deferred to the Board's adoption of the criteria but determined that the criteria 'kick in' when a priority selection was necessary. The court firstly found that the plaintiffs were subsistence users of the Southern District salmon based upon the legislative definition and history of use of the Gjosund plaintiffs. He further found that the criteria would come into effect when and to the extent that jeopardy to the sustained yield of fish stocks took place and that the criteria were applicable to the need for further restrictions, based upon AS 16.05.251(b)(1), (2), & (3), to distinguish between different types of subsistence users.

It is offered that if Judge Jones had determined that he could substitute the court's judgment for that of the Board in interpreting the statutes, (as the Intervenor and State now concede is the law) then Judge Jones would most likely have voided the criteria if they were to be used to exclude plaintiffs as subsistence users. Judge Jones found that the statute was clear and no further criteria was needed to find that plaintiffs were subsistence users.

CONCLUSION

Plaintiff again asks this Supreme Court to review the subsistence statutory scheme and the state legislative record and independently determine if, in fact, that scheme was meant to be restrictive, narrowing and as complex as the Board,

Intervenor, and State suggest. We also ask this court to examine how, when and where 'ruralness' enters into any of the legislative enactments or Board deliberations to the point where plaintiffs were put on notice of a rural prerequisite for subsistence inclusion.

Plaintiffs offer that they, in their community and together with their families, reside near, and have been subsistence fishing in and around Cook Inlet for periods of time up to 50 years. They live in the area and are the persons intended to be included under subsistence use by the legislature. We also claim that the convolutions undertaken to exclude plaintiffs fatally taints the Board's actions regarding the Cook Inlet subsistence fishery.

Plaintiffs submit that the Board has violated the equal protection and due process rights of the plaintiffs.

We request this court to make such findings and to order that the plaintiffs' use of the salmon moving in and through Kachemak Bay and Cook Inlet is a subsistence use as intended by the State legislature.

SIGNED AND DATED this 29 day of May, 1984.

Martin Friedman

Arthur Robinson

STATUTES AND REGULATIONS

PERTAINING TO

SUBSISTENCE

Sec. 16.05.251. Regulations of the Board of Fisheries.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.650) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources. (§ 3 ch 206 SLA 1975; am § 2 ch 218 SLA 1976; am § 4 ch 151 SLA 1978; am §§ 1, 2 ch 110 SLA 1980)

Sec. 16.05.255. Regulations of the Board of Game.

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.650) permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources. (§ 3 ch 206 SLA 1975; am § 5 ch 151 SLA 1978)

ATTACHMENT A

Sec. 16.05.940. Definitions. In AS 16.05.010 — 16.05.950 /

(26) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

ATTACHMENT B

the state files a civil complaint on the next working day following the seizure, and the owners are promptly notified, the owners are afforded procedural due process. State v. Baranof, Sup. Ct. Op. No. 2785 (File Nos. 7287, 7324), P.2d (1984).

Section not preempted by federal law. — The Fishery Conservation and Management Act, 16 U.S.C. § 1801 et seq., does not preempt state regulation of king crab harvesting in the extraterritorial fishery conservation zone by vessels registered in Alaska. State v. F/V Baranof, Sup. Ct. Op. No. 2787 (File Nos. 7287, 7324), 677 P.2d 1245 (1984).

The federal Fishery Management and Conservation Act does not preempt Alaskan king crab regulation of vessels registered in Alaska. State v. Baranof, Sup. Ct. Op. No. 2785 (File Nos. 7287, 7324), P.2d (1984).

Concurrent state jurisdiction of in rem admiralty forfeiture actions. — In rem admiralty forfeiture actions brought by the state to enforce violations of law may be brought in state courts under concurrent state jurisdiction. State v. Baranof, Sup. Ct. Op. No. 2785 (File Nos. 7287, 7324), P.2d (1984).

Article 2. Boards of Fisheries and Game.

Section

251. Regulations of the Board of Fisheries
255. Regulations of the Board of Game

Sec. 16.05.251. Regulations of the Board of Fisheries. (a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

(3) setting quotas, bag limits, harvest levels, and sex and size limitations on the taking of fish;

(4) establishing the means and methods employed in the pursuit, capture and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes;

(7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation and stocking of fish;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(10) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(11) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

(c) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explantion for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later. (§ 3 ch 206 SLA 1975; am § 2 ch 218 SLA 1976; am § 4 ch 1[illegible] SLA 1978; am §§ 1, 2 ch 110 SLA 1980; am §§ 8, 9 ch 132 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 3, 1984, in subsection (a), substituted "bag limits, harvest levels, and sex and size limitations" for "and bag limits" in paragraph (3), deleted "engaging in biological research" from the beginning of paragraph (7), substituted "and management, conservation, protection, use, disposal, propagation and stocking of fish" for "fish management, protection, propagation and stocking" in paragraph (7), repealed paragraph (9), and renumbered former paragraphs (10)-(12) as present paragraphs (9)-(11). The amendment also added subsection (c).

NOTES TO DECISIONS

Cited in Langesater v. State, Ct. App. Op. No. 279 (File No. 7357), 668 P.2d 1359 (1983).

Sec. 16.05.255. Regulations of the Board of Game. (a) The Board of Game may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

Effective dates. — Section 30, ch. 132, SLA 1984, makes this section effective July 3, 1984, in accordance with AS 01.10.010(c).

Sec. 16.05.930. Exempted activities. (a) This chapter does not prevent the collection or exportation of fish and game, a part of fish or game or a nest or egg of a bird for scientific or educational purposes, or for propagation or exhibition purposes under a permit which the department may issue and prescribe the terms thereof.

(b) This chapter does not prohibit a person from taking fish or game during the closed season, in case of dire emergency, as defined by regulation adopted by the appropriate board.

(c) AS 16.05.920 does not prohibit rearing and sale of fish from private ponds, the raising of wild animals in captivity for food or the raising of game birds for the purpose of recreational hunting on game hunting preserves, under regulations adopted by the appropriate board. In this subsection, "animals" includes all animal life, including insects and bugs.

(d) Nondomestic animals of any species may not be transferred or transported from the state under (a) of this section unless approved by the Board of Game in regular or special meeting. Animals transferred or transported under (a) of this section shall be animals that are certified by the department to be surplus and unnecessary to the sustained yield management of the resource. Each application for a permit under (a) of this section shall be accompanied by a statement prepared by the Department of Fish and Game examining the probable environmental impact of the action.

(e) This chapter does not prevent the traditional barter of fish and game taken by subsistence hunting or fishing, except that the commissioner may prohibit the barter of subsistence-taken fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs.

(f) A permit may not be required for possessing, importing or exporting mink and fox for fur farming purposes. (§ 28 art I ch 94 SLA 1959; am § 1 ch 7 SLA 1972; am § 2 ch 104 SLA 1972; am § 4 ch 82 SLA 1974; am §§ 16, 17 ch 206 SLA 1975; am § 1 ch 20 SLA 1976; am § 13 ch 151 SLA 1978; am § 4 ch 23 SLA 1983; am § 23 ch 132 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 3, 1984, in subsection (c), made a word correction in the first sentence and added the second sentence.

Sec. 16.05.940. Definitions. In AS 16.05 — AS 16.40

(1) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(2) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;

(3) "a board" means either the Board of Fisheries or the Board of Game;

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

(5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

(6) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;

(7) "department" means the Department of Fish and Game unless specifically provided otherwise;

(8) "domestic mammals" include musk oxen, bison, and reindeer, if they are lawfully owned;

(9) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;

(10) "fish derby" means a contest in which prizes are awarded for catching fish;

(11) "fishing derby association" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes and which has been in existence for five years before applying for a permit under this chapter, but does not include an organization formed or operated for gaming or gambling purposes;

(12) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means

having the fish or game under positive control, as in a pen, pond, or an area of land or water which is completely enclosed by a generally escape-proof barrier;

(13) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person's own use;

(14) "game" means any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05 — AS 16.40,

(15) "hunting" means the taking of game under AS 16.05 — AS 16.40 and the regulations adopted under those chapters;

(16) "nonresident" means a person who is not a resident of the state;

(17) "nonresident alien" means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;

(18) "operator" means the individual by law made responsible for the operation of the vessel;

(19) "resident" means a person who for 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this paragraph, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this paragraph, and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of this paragraph;

(20) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 — AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(21) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(22) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence

uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(23) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

(24) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(25) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(26) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(27) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but does not include aircraft. (§ 2 art I ch 95 SLA 1959; am §§ 1 — 4 ch 131 SLA 1960; am § 1 ch 21 SLA 1961; am §§ 1, 2 ch 102 SLA 1961; § 9 art III ch 94 SLA 1959; am § 23 ch 131 SLA 1960; am § 1 ch 160 SLA 1962; am §§ 13, 14 ch 31 SLA 1963; am § 2 ch 32 SLA 1968; am § 3 ch 73 SLA 1970; am § 1 ch 91 SLA 1970; am § 4 ch 110 SLA 1970; am § 1 ch 90 SLA 1972; am § 5 ch 82 SLA 1974; am §§ 26, 82 ch 127 SLA 1974; am §§ 18 — 20 ch 206 SLA 1975; am § 12 ch 105 SLA 1977; am §§ 14, 15 ch 151 SLA 1978; am § 1 ch 78 SLA 1979; am § 1 ch 24 SLA 1980; § 4 ch 74 SLA 1982; am § 24 ch 132 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 3, 1984, substituted "AS 16.05 — AS 16.40" for "this chapter" in the introductory language and paragraphs (14), (15) and (20); in paragraph (9), substituted "invertebrate, or amphibian" for "invertebrates and amphibians" and "its" for "their" preceding "life cycle" and added the language beginning "and includes any part of such aquatic finfish"; reworded the contents of paragraph (13); inserted "reptile" near the beginning of paragraph (14); substituted "those chapters" for "it" in paragraph (15); substituted "this paragraph" for "this chapter" in three places in paragraph (19); inserted "of" following "taking" in paragraph (22); deleted "for the purposes of this chapter" preceding "does not include aircraft" in paragraph (27); and repealed paragraph (28), defining "visitor."

June Register 89, April 1984

PART 8.
SUBSISTENCE HUNTING, FISHING, AND TRAPPING

Chapter
99. Subsistence Uses

CHAPTER 99.
SUBSISTENCE USES

Section
10. Joint Boards of Fisheries and Game subsistence procedures
20. (Repealed)

5 AAC 99.010. JOINT BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES. (a) In applying a subsistence priority, the Board of Fisheries and the Board of Game will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

(1) each board will assess the biological status of fish or game resources and determine whether a surplus may be harvested during a regulatory year consistent with the conservation and development of the resources on the sustained yield principle and compatible with the public interest;

(2) each board will identify subsistence uses of fish or game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing.

(b) Customary and traditional subsistence uses by rural Alaska residents will be identified by use of the following criteria:

(1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;

(5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing, and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

(c) After identifying subsistence uses based upon the criteria set out in (b) of this section, each board will determine the approximate amount of fish or game necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses.

(d) Each board will adopt regulations that provide an opportunity for the subsistence taking of fish or game resources in amounts sufficient to provide for the customary and traditional uses identified in (b) of this section, and consistent with sound conservation and management practices. In no instance may the subsistence taking jeopardize or interfere with the maintenance of a specific fish stock or game population on a sustained-yield basis.

(e) Each board will, in its discretion, adopt

regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish or game resources on a sustained-yield basis, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in (d) of this section.

(f) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for non-subsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained-yield basis. (Eff. 5/30/82, Reg. 82)

Authority: AS 16.05.251(b)
AS 16.05.255(b)

5 AAC 99.020. DEFINITIONS. Repealed 10/9/83.

(2) subsistence salmon fishing permits for the Port Graham subdistrict will be issued only to those persons domiciled in the villages of Port Graham and English Bay.

(b) Smelt may only be taken under the authority of a subsistence fishing permit, except that a permit is not required for smelt fishing in the Kenai River.

(c) Freshwater species other than trout, grayling, char and burbot may only be taken in freshwater under the authority of a subsistence fishing permit.

Authority: AS 16.05.251(a)(2),(7),(10) and (b)

5 AAC 01.590. MARKING OF SUBSISTENCE-TAKEN SALMON. (a) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(b) It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed.

Authority: AS 16.05.251(a)(2),(4),(5), (7) and (b)

5 AAC 01.595. SUBSISTENCE BAG AND POSSESSION LIMITS. (a) The total annual possession limit for each subsistence salmon fishing permit is as follows:

(1) there is no total annual possession limit for holders of Port Graham subdistrict subsistence salmon fishing permits; subsistence salmon catches must be recorded on forms provided by the department;

(2) 25 salmon for the head of a household and 10 salmon for each dependent of the permit holder;

(3) in addition to the limits in (2) of this subsection, the holder of a Tyonek subdistrict subsistence salmon fishing permit may take 70 king salmon; no more than 4,200 king salmon may be taken in the Tyonek subdistrict from May 15 through June 30.

(b) The daily bag and possession limit for halibut is two. No person may possess sport-taken and subsistence-taken halibut on the same day. (In effect before 1981; am 4/15/81, Reg. 78; am 5/17/81, Reg. 78)

Authority: AS 16.05.060
AS 16.05.251(a)(3),(7),(10) and (b)

5 AAC 01.597. CHARACTERISTICS OF SUBSISTENCE FISHERIES. (a) The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:

(1) a long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance;

(2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;

(3) a use pattern associated with specific stocks and seasons;

(4) a use pattern based on the most efficient and productive gear and economical use of time, energy and money;

(5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;

(6) a use pattern occurring in locations with easiest and most direct access to the resources;

(7) a use pattern which includes a history of traditional modes of handling, preparing and storing the product without precluding recent technological advances;

(8) a use pattern which includes the intergenerational transmission of activities and skills;

(9) a use pattern in which the effort and products are distributed on a community and family basis including trade, bartering, sharing and gift-giving; and

(10) a use pattern which includes reliance on

subsistence taking of a range of wild resources in proximity to the community or primary residency.

(b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.

(c) For purposes of this section, a "community" is generally considered to be several households of full-time residents who all reside in a specific geographic area because of common interests. (Eff. 4/14/82, Reg. 82)

Authority: AS 16.05.251(b)

ARTICLE 12.
PRINCE WILLIAM SOUND AREA

Section
600. Description of Prince William Sound area
605. Description of districts and subdistricts
610. Fishing seasons
620. Lawful gear and gear specifications
625. Waters closed to subsistence fishing
630. Subsistence fishing permits
640. Marking of subsistence-taken salmon
645. Subsistence bag and possession limits
647. Copper River subsistence salmon management plan

5 AAC 01.600. DESCRIPTION OF PRINCE WILLIAM SOUND AREA. The Prince William Sound area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

Authority: AS 16.05.251(a)(2) and (b)

5 AAC 01.605. DESCRIPTION OF DISTRICTS AND SUBDISTRICTS. The Upper Copper River district consists of all waters of the main Copper River from the confluence of the Slana River downstream to an east-west line crossing the Copper River at the confluence of the unnamed stream located approximately one and one-fourth mile below the U.S.G.S. gauging cable across the Copper River, as designated by Alaska Department of Fish and Game regulatory markers

(1) the Chitina subdistrict consists of all waters of the main Copper River from the downstream edge of the Chitina-McCarthy Road Bridge downstream to an east-west line crossing the Copper River at the confluence of the unnamed stream located approximately one and one-fourth mile below the U.S.G.S. gauging cable across the Copper River, as designated by the Alaska Department of Fish and Game regulatory markers;

(2) the Glennallen subdistrict consists of all waters of the main Copper River from the confluence of the Slana River downstream to the downstream edge of the Chitina-McCarthy Road Bridge.

Authority: AS 16.05.251(a)(2) and (b)

5 AAC 01.610. FISHING SEASONS. (a) Unless restricted in this section and 5 AAC 01.625, or unless restricted under the terms of subsistence fishing permit, fish may be taken at any time in the Prince William Sound area.

(b) Salmon may be taken in the Upper Copper River District only as follows:

(1) in the Glennallen Subdistrict, from June 1 through September 30;

(2) in the Chitina Subdistrict, only when that subdistrict is open to personal use salmon fishing;

(3) when the Copper River subsistence fishery is closed or restricted because of an inadequate escapement of sockeye or chinook salmon, the fishery may be reopened September 1 for the taking of coho salmon, which constitute the majority of the salmon at that time.

(c) Repealed 6/30/83.

(d) Herring spawn on kelp may be taken only during the open commercial herring spawn on kelp season. (In effect before 1983; am 6/30/83, Reg. 86; am 4/28/84, Reg. 90)

Authority: AS 16.05.060
AS 16.05.251

5 AAC 01.620. LAWFUL GEAR AND GEAR SPECIFICATIONS. (a) Fish may be taken by gear listed in 5 AAC 01.010(a) unless restricted

angler needs. When this situation occurs, the department will attempt to achieve a minimum escapement of 30,000 sockeye salmon into the Russian River system.

(d) Early and late Russian River system sockeye salmon are discrete stocks with established escapement goals. Because of this they will be managed by the department as a separate entity without regard to Kenai River system sockeye salmon run size. The Russian River sockeye salmon harvest, therefore, will not be included in the Kenai River system recreational harvest quota outlined in 5 AAC 21.360(c).

(e) When the department determines that late Russian River system sockeye salmon stocks are comprising the majority of the Kenai River sockeye salmon run, appropriate restrictions will be placed on the various fisheries to protect the remaining Kenai River system sockeye salmon escapement.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3),(4),
(6) and (7)

5 AAC 21.362. EARLY KENAI RIVER KING SALMON MANAGEMENT PLAN. Repealed 5/3/84.

5 AAC 21.363. UPPER COOK INLET SALMON MANAGEMENT PLAN. (a) The Department of Fish and Game should receive long-term direction in management of upper Cook Inlet salmon stocks rather than being called upon to respond annually to changing management policies. Divisions within the department must receive long-term direction in order to accomplish their missions and plan management, research, administrative, and other programs. Therefore, the board establishes the following priorities for the use of upper Cook Inlet salmon stocks:

(1) consistent with the statutory priority for subsistence, the harvest of upper Cook Inlet salmon for customary and traditional subsistence uses will be allowed for specific species in appropriate areas, seasons, and periods to satisfy subsistence needs; other beneficial uses, to the extent they are consistent with the publ interest and overall benefit of the people Alaska, will be allowed in order to maximize t benefits of these resources;

(2) Susitna king, early Kenai king, and ear Russian River sockeye salmon stocks, whic normally move in upper Cook Inlet to spawnin areas before June 30 will be managed primaril for recreational uses in order to promote th public interest and provide maximum benefit to the people of Alaska and to the extent tha management is consistent with the statutor subsistence priority; and

(3) insofar as the following managemer steps are consistent with the statutory subsis tence priority:

(A) from July 1 through August 15 salmon stocks which normally move in upp Cook Inlet will be managed primarily commercial uses;

(B) after August 15, salmon stock moving to spawning areas in Kenai Peninsul drainages will be managed primarily for rec reational uses; and

(C) salmon stocks other than those spawning in Kenai Peninsula drainages will be managed primarily for commercial uses.

(b) The department shall

(1) manage the upper Cook Inlet commercial salmon fisheries to minimize the incidental take of Susitna coho, late Kenai king and early Kenai coho salmon stocks;

(2) assist the board in setting optimal salmon harvest rates for all uses by monitoring upper Cook Inlet salmon fisheries to determine the interception of Susitna coho, late Kenai king, and early Kenai coho salmon stocks;

(3) maintain the sustained yield of more abundant pink, chum, and sockeye salmon stocks; and

(4) insure that subsistence use priorities are met.

(c) In this section "upper Cook Inlet salmon

stocks" means those salmon that move through the Northern and Central districts as defined in 5 AAC 21.200(a) and (b) and spawn in waters draining into those districts. (Eff. 5/17/81, Reg. 78)

Authority: AS 16.05.251(a)(2),(6),(7) and (b)

5 AAC 21.380. UNLAWFUL POSSESSION OF SUBSISTENCE-TAKEN SALMON. It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed as required by 5 AAC 01.590.

Authority: AS 16.05.251(a)(2),(4),(7) and (b)

ARTICLE 4.
BOTTOMFISH FISHERY

Section
410. Fishing season
430. Gear

5 AAC 21.410. FISHING SEASON. There is no closed season on bottomfish.

Authority: AS 16.05.250(2)

5 AAC 21.430. GEAR. (a) Bottomfish may be taken only by trawls, longlines, pots, and mechanical jigging machines, except as provided in (c) of this section.

(c) Bottomfish may be taken in the Outer and Eastern districts by sunken gill nets under the authority of a permit issued by the commissioner. The permit may specify open areas, fishing periods, gear specifications and operating specifications, and may require completion by the vessel operator of log books supplied by the department.

Authority: AS 16.05.251(a)(4)

ARTICLE 5.
SMELT FISHERY

Section
510. Fishing seasons
531. Gill net specifications and operation
534. Identification of gear
535. Minimum distance between units of gear
550. Closed waters

5 AAC 21.510. FISHING SEASONS. (a) Smelt may be taken in the Northern and Central districts from October 1 to June 1.

(b) Smelt may be taken in the Eastern, Outer, Southern and Kamishak Bay districts from January 1 to December 31.

(c) Smelt may not be taken in freshwater.

Authority: AS 16.05.251(2) and (10)

5 AAC 21.531. GILL NET SPECIFICATIONS AND OPERATION. (a) The mesh size of a gill net used for taking smelt may not be more than two and one-half inches.

(b) No set gill net may exceed 35 fathoms in length. Each fisherman is allowed to operate 105 fathoms of set gill net in the aggregate.

PERTINENT SECTIONS OF

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

managed for the purpose of protecting their suitability for wilderness designation pending revision of the initial plans; and

(4) unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

FINDINGS

16 USC 3111.

SEC. 801. The Congress finds and declares that—

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

(2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

43 USC 1601 note.

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

POLICY

16 USC 3112.

SEC. 802. It is hereby declared to be the policy of Congress that—

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized

scientific principles and the p
designated, or expanded by or
this Act, the purpose of this tit
rural residents engaged in a

(2) nonwasteful subsistence
renewable resources shall be t
such resources on the public la
to restrict taking in order to a
fish or wildlife population or th
of such population, the taking
subsistence uses shall be give
over other consumptive uses; a

(3) except as otherwise provi
laws, Federal land managing a
activities on the public lands
viability of all wild renewable
ate with adjacent landowners
Native Corporations, appropri
and other nations.

DEFINI

SEC. 803. As used in this Act, th
the customary and traditional uses
renewable resources for direct pe
food, shelter, fuel, clothing, tools,
and selling of handicraft articles o
and wildlife resources taken for pe
barter, or sharing for personal
customary trade. For the purposes o

(1) "family" means all perso
adoption, or any person living
nent basis; and

(2) "barter" means the ex
parts, taken for subsistence u

(A) for other fish or gam

(B) for other food or for n

if the exchange is of a lim

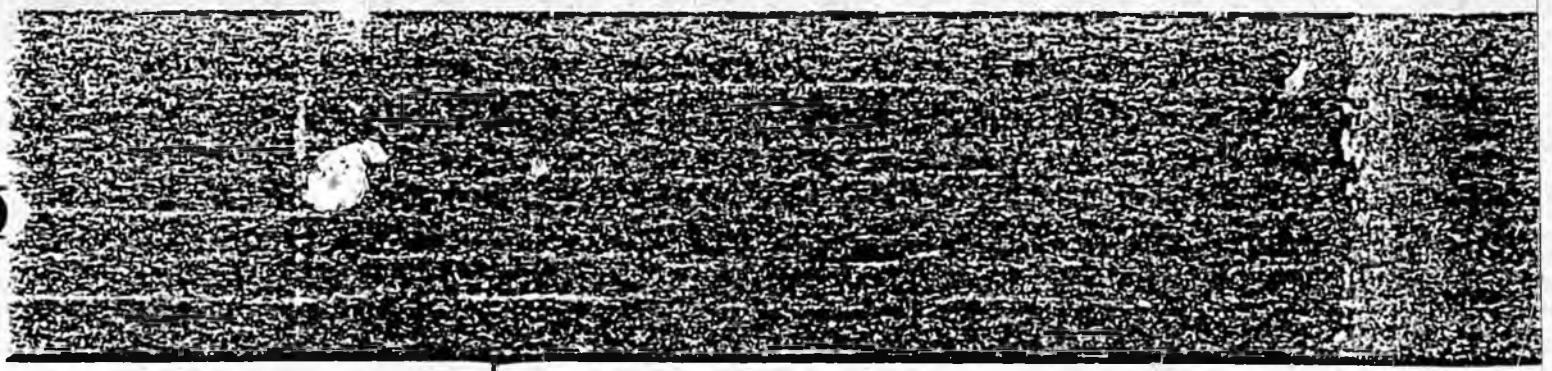
PREFERENCE FOR S

SEC. 804. Except as otherwise
Federal laws, the taking on publi
nonwasteful subsistence uses shal
taking on such lands of fish and w
ever it is necessary to restrict the
wildlife on such lands for subsiste
continued viability of such populatio
priority shall be implemented throu
on the application of the following cr

(1) customary and direct dep
the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternat



se of protecting their suitability for
ending revision of the initial plans; and
horized by Congress the Department of
nduct any further statewide roadless
ion of National Forest System lands in
e purpose of determining their suitabil-
ie National Wilderness Preservation

:NC" MANAGEMENT AND USE

FINDINGS

s and declares that—
the opportunity for subsistence uses by
ka, including both Natives and non-
nds and by Alaska Natives on Native
ive physical, economic, traditional, and
non-Native physical, economic, tradi-
:e;
ska is unique in that, in most cases, no
is are available to replace the food
athered from fish and wildlife which
pendent on subsistence uses;
e opportunity for subsistence uses of
other lands in Alaska is threatened by
n of Alaska, with resultant pressure on
sudden decline in the populations of
ch are crucial subsistence resources, by
f remote areas containing subsistence
ng of fish and wildlife in a manner
principles of fish and wildlife

he policies and purposes of the Alaska
nt Act and as a matter of equity, it is
ss to invoke its constitutional authority
its constitutional authority under the
commerce clause to protect and provide
tinued subsistence uses on the public
Native rural residents; and
st in the proper regulation, protection,
h and wildlife on the public lands in
tion of the opportunity for a subsistence
f rural Alaska require that an adminis-
olished for the purpose of enabling rural
onal knowledge of local conditions and
meaningful role in the management of
subsistence uses on the public lands in

POLICY

red to be the policy of Congress that—
ound management principles, and the
populations of fish and wildlife, the
lands in Alaska is to cause the least
n rural residents who depend upon
sources of such lands; consistent with
wildlife in accordance with recognized

scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so; *Ante*, p. 2377.

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; and

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

DEFINITIONS

SEC. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term— 16 USC 3113.

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses—

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

PREFERENCE FOR SUBSISTENCE USES

SEC. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria: 16 USC 3114. Priority criteria.

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

LOCAL AND REGIONAL PARTICIPATION

16 USC 3115.

SEC. 805. (a) Except as otherwise provided in subsection (d) of this section, one year after the date of enactment of this Act, the Secretary in consultation with the State shall establish—

(1) at least six Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;

(2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and

(3) a regional advisory council in each subsistence resource region.

Regional advisory council, authority.

Each regional advisory council shall be composed of residents of the region and shall have the following authority:

(A) the review and evaluation of proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife within the region;

(B) the provision of a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(C) the encouragement of local and regional participation pursuant to the provisions of this title in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

Annual report to Secretary.

(D) the preparation of an annual report to the Secretary which shall contain—

(i) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(ii) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(iii) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(iv) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy. The State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to, and assist, the regional advisory councils in carrying out the functions set forth in this paragraph.

(b) The Secretary shall assign adequate qualified staff to the regional advisory councils and make timely distribution of all available relevant technical and scientific support data to the regional advisory councils and the State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of subsection (a).

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported by substantial evidence, violates reco: wildlife conservation, or would be detr subsistence needs. If a recommendatior tary, he shall set forth the factual b decision.

(d) The Secretary shall not implemen this section if within one year from the the State enacts and implements laws c are consistent with, and which provide and participation specified in, sections unless and until repealed, shall super such sections govern State responsibilit taking of fish and wildlife on the publ Laws establishing a system of local advi advisory councils consistent with sectic State rulemaking authority shall consic dations of the regional councils conce wildlife populations on public lands wi for subsistence uses. The regional counc tions, and the evidence upon which such to the State rulemaking authority duri trative proceedings of such authori authority may choose not to follow ar determines is not supported by substant the course of its administrative proc principles of fish and wildlife conservati the satisfaction of rural subsistence nee adopted by the State rulemaking autho forth the factual basis and the reasons fc

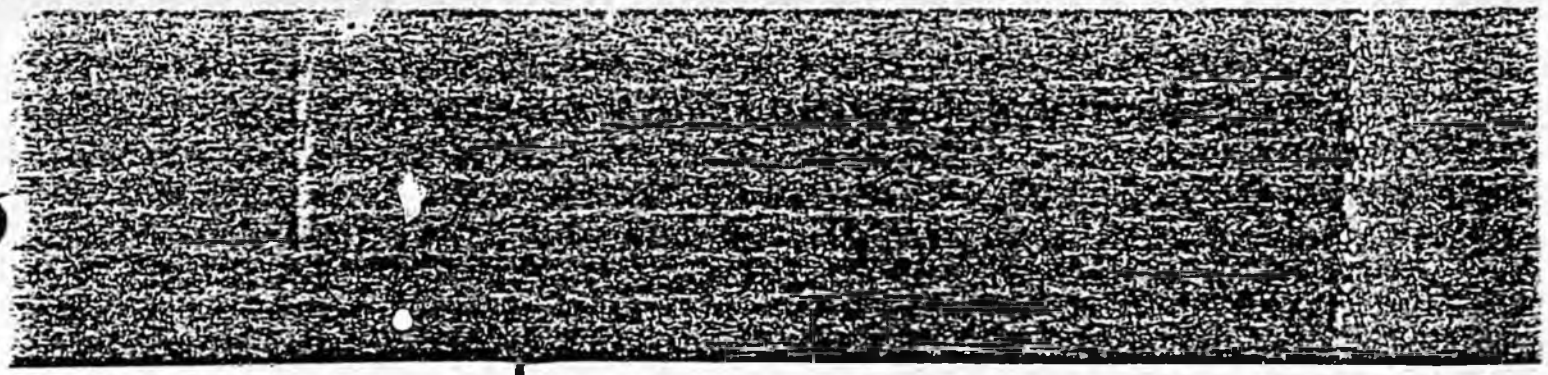
(e)(1) The Secretary shall reimburse th ated to the Department of the Interior f able costs relating to the establishment advisory councils established by the Sta tion (d) and the operation of the St committees so long as such committee Secretary pursuant to paragraph (2) o bursement may not exceed 50 per centu year. Such costs shall be verified in a st determines to be adequate and accur subsection shall be in addition to any gra to which the State is entitled from appr of the Interior.

(2) Total payments to the State ur exceed the sum of $5,000,000 in any or shall advise the Congress at least onc whether or not the maximum payment are adequate to ensure the effectiveness by the State to provide the preference fo wildlife set forth in section 804.

FEDERAL MONITO

SEC. 806. The Secretary shall monitor the subsistence preference set forth in the State and the Committee on Interio Merchant Marine and Fisheries of the H the Committees on Energy and Natural and Public Works of the Senate annuall





D REGIONAL PARTICIPATION

ıtherwise provided in subsection (d) of this
the date of enactment of this Act, the
vith the State shall establish--
ıska subsistence resource regions which,
le all public lands. The number and bound-
shall be sufficient to assure that regional
ence uses are adequately accommodated;
or: mmittees within each region as he
ch t...e as he may determine, after notice
e existing State fish and game advisory
equately perform the functions of the local
forth in paragraph (3)(D)(iv) of this subsec-

sory council in each subsistence resource

uncil shall be composed of residents of the
ollowing authority:
l evaluation of proposals for regulations,
plans, and other matters relating to sub-
wildlife within the region;
a forum for the expression of opinions and
persons interested in any matter related to
of fish and wildlife within the region;
ment of local and regional participation
isions of this title in the decisionmaking
taking of fish and wildlife on the public
n for subsistence uses;
of an annual report to the Secretary which,

tio.. . current and anticipated subsistence
l wildlife populations within the region;
on of current and anticipated subsistence
ıd wildlife populations within the region;
nded strategy for the management of fish
ılations within the region to accommodate
uses and needs; and
ıdations concerning policies, standards,
egulations to implement the strategy. The
game advisory committees or such local
tees as the Secretary may establish pursu-
(2) of this subsection may provide advice to,
gional advisory councils in carrying out the
ı in this paragraph.
l assign adequate qualified staff to the
and make timely distribution of all availa-
d scientific support data to the regional
State fish and game advisory committees or
mittees as the Secretary may establish
of subsection (a).
performing his monitoring responsibility
nd in the exercise of his closure and other
over the public lands, shall consider the
s of the regional advisory councils con-
d wildlife on the public lands within their
istence uses. The Secretary may choose not
tion which he determines is not supported

by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision. Implementation.

(e)(1) The Secretary shall reimburse the State, from funds appropriated to the Department of the Interior for such purposes, for reasonable costs relating to the establishment and operation of the regional advisory councils established by the State in accordance with subsection (d) and the operation of the State fish and game advisory committees so long as such committees are not superseded by the Secretary pursuant to paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such costs in any fiscal year. Such costs shall be verified in a statement which the Secretary determines to be adequate and accurate. Sums paid under this subsection shall be in addition to any grants, payments, or other sums to which the State is entitled from appropriations to the Department of the Interior. Reimbursement to States.

(2) Total payments to the State under this subsection shall not exceed the sum of $5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in every five years as to whether or not the maximum payments specified in this subsection are adequate to ensure the effectiveness of the program established by the State to provide the preference for subsistence uses of fish and wildlife set forth in section 804. Report to Congress.

FEDERAL MONITORING

SEC. 806. The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 804 and shall advise the State and the Committee on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives and the Committees on Energy and Natural Resources and Environment and Public Works of the Senate annually and at such other times as Report to congressional committees. 16 USC 3116.

he deems necessary of his views on the effectiveness of the implementation of this title including the State's provision of such preference, any exercise of his closure or other administrative authority to protect subsistence resources or uses, the views of the State, and any recommendations he may have.

JUDICIAL ENFORCEMENT

Civil actions. 16 USC 3117.

SEC. 807. (a) Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 804 (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 805(d)) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 804; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

Hearing.

(b) A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

(c) This section is the sole Federal judicial remedy created by this title for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 804.

PARK AND PARK MONUMENT SUBSISTENCE RESOURCE COMMISSIONS

16 USC 3118.

SEC. 808. (a) Within one year from the date of enactment of this Act, the Secretary and the Governor shall each appoint three members to a subsistence resources commission for each national park or park monument within which subsistence uses are permitted by this Act. The regional advisory council established pursuant to section 805 which has jurisdiction within the area in which the park or park monument is located shall appoint three members to the commission each of whom is a member of either the regional advisory council or a local advisory committee within the region and also engages in subsistence uses within the park or park monument. Within eighteen months from the date of enactment of this Act, each commission shall devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or park monument. Such program shall be prepared using technical information and other pertinent data assembled or produced by necessary field studies or investigations conducted jointly or se administrative personnel of the State Interior, information submitted by, ar appropriate local advisory committee cils, and any testimony received in a p by the commission prior to preparatio location or locations in the vicinity of Each year thereafter, the commissior appropriate local committees and reg relevant data and holding one or mo vicinity of the park or park monument, to the Secretary and the Governor for its implementation which the commissi

Subsistence hunting program.

(b) The Secretary shall promptly recommendations submitted to him b finds in writing that such program recognized principles of wildlife conse vation of healthy populations of wildli ment, is contrary to the purposes monument is established, or would be of subsistence needs of local residen Governor, the Secretary shall take n commission for sixty days during whic proposed changes in the program or re the commission which the Governor pr

(c) Pending the implementation of a of this section, the Secretary shall pe residents in accordance with the pro applicable Federal and State law.

COOPERATIVE AGR

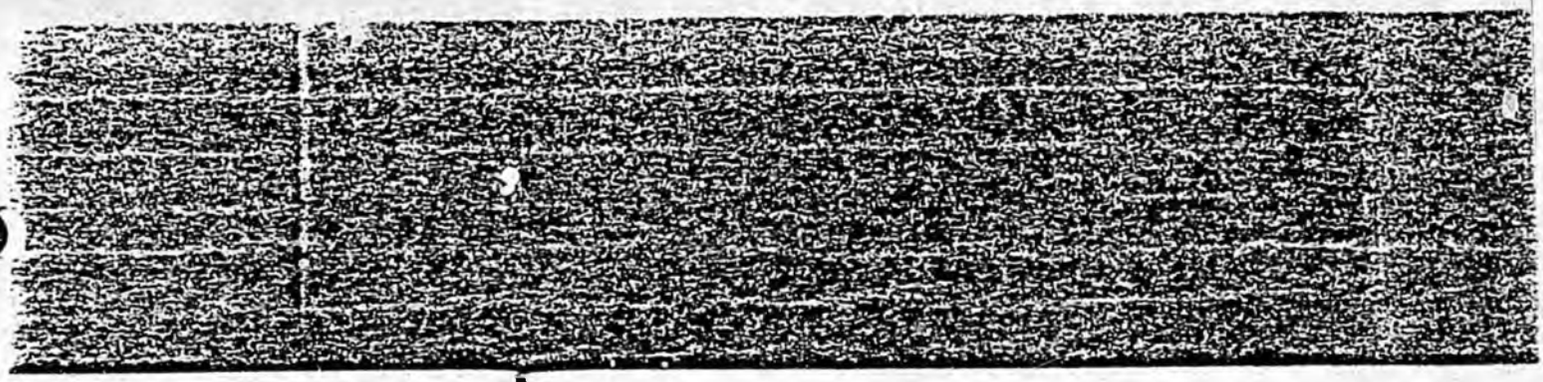
SEC. 809. The Secretary may enter i otherwise cooperate with other Feder Corporations, other appropriate pers acting through the Secretary of State, purpcses and policies of this title.

SUBSISTENCE AND LAND

SEC. 810. (a) In determining whether otherwise permit the use, occupancy, under any provision of law authorizin Federal agency having primary juris designee shall evaluate the effect of su tion on subsistence uses and needs, the the purposes sought to be achieved, would reduce or eliminate the use, occu lands needed for subsistence purposes. tion, lease, permit, or other use, occu lands which would significantly restr effected until the head of such Federal

(1) gives notice to the appro appropriate local committees and pursuant to section 805;

(2) gives notice of, and holds, area involved; and



views on the effectiveness of the implemen-
ng the State's provision of such preference,
ire or other administrative authority to
ces or uses, the views of the State, and any
have.

ICIAL ENFORCEMENT

ents and other persons and organizations
the State or the Federal Government to
sut tence uses set forth in section 804 (or
as set forth in a State law of general
has fulfilled the requirements of section
on of any State or Federal (as appropriate)
hich may be available, file a civil action in
Court for the District of Alaska to require
s are necessary to provide for the priority.
st the State, the Secretary may be joined as
e court may grant preliminary injunctive
the granting of such relief is appropriate
h the action is based. No order granting
issued until after an opportunity for
filed against the State, the court shall
reliminary relief, by directing the State to
satisfy the requirements of section 804;
rt, such regulations shall be incorporated
order, and such order shall be valid only
normally provided by State law for the
residents and other persons and organiza-
parties in an action filed pursuant to this
eir s and attorney's fees.
rsu to this section shall be assigned for
ible date, shall take precedence over other
cket of the United States district court at
edited in every way by such court and any

e Federal judicial remedy created by this
d other residents who, and organizations
failure of the State to provide for the
set forth in section 804.

NT SUBSISTENCE RESOURCE COMMISSIONS

ear from the date of enactment of this Act,
rnor shall each appoint three members to
mmission for each national park or park
bsistence uses are permitted by this Act.
ncil established pursuant to section 805
in the area in which the park or park
ppoint three members to the commission
either the regional advisory council or a
within the region and also engages in
park or park monument. Within eighteen
ctment of this Act, each commission shall
Secretary and the Governor a program
n the park or park monument. Such
using technical information and other
produced by necessary field studies or

investigations conducted jointly or separately by the technical and administrative personnel of the State and the Department of the Interior, information submitted by, and after consultation with the appropriate local advisory committees and regional advisory councils, and any testimony received in a public hearing or hearings held by the commission prior to preparation of the plan at a convenient location or locations in the vicinity of the park or park monument. Each year thereafter, the commission, after consultation with the appropriate local committees and regional councils, considering all relevant data and holding one or more additional hearings in the vicinity of the park or park monument, shall make recommendations to the Secretary and the Governor for any changes in the program or its implementation which the commission deems necessary.

Program and recommendation implementation.

(b) The Secretary shall promptly implement the program and recommendations submitted to him by each commission unless he finds in writing that such program or recommendations violates recognized principles of wildlife conservation, threatens the conservation of healthy populations of wildlife in the park or park monument, is contrary to the purposes for which the park or park monument is established, or would be detrimental to the satisfaction of subsistence needs of local residents. Upon notification by the Governor, the Secretary shall take no action on a submission of a commission for sixty days during which period he shall consider any proposed changes in the program or recommendations submitted by the commission which the Governor provides him.

(c) Pending the implementation of a program under subsection (a) of this section, the Secretary shall permit subsistence uses by local residents in accordance with the provisions of this title and other applicable Federal and State law.

COOPERATIVE AGREEMENTS

SEC. 809. The Secretary may enter into cooperative agreements or otherwise cooperate with other Federal agencies, the State, Native Corporations, other appropriate persons and organizations, and, acting through the Secretary of State, other nations to effectuate the purposes and policies of this title. 16 USC 3119.

SUBSISTENCE AND LAND USE DECISIONS

SEC. 810. (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency— 16 USC 3120.

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and Hearing.

(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Notice and hearings.
42 USC 4332.

(c) If the Secretary is required to prepare an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act, he shall provide the notice and hearing and include the findings required by subsection (a) as part of such environmental impact statement.

(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

48 USC note prec. 21.
43 USC 1601 note.

(d) After compliance with the procedural requirements of this section and other applicable law, the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law.

ACCESS

16 USC 3121.

SEC. 811. (a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation.

RESEARCH

16 USC 3122.

SEC. 812. The Secretary, in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands; seek data from, consult with and make use of, the special knowledge of local residents engaged in subsistence uses; and make the results of such research available to the State, the local and regional councils established by the Secretary or State pursuant to section 805, and other appropriate persons and organizations.

PERIODIC REPORTS

Submittal to Speaker of House and President of Senate.
16 USC 3123.

SEC. 813. Within four years after the date of enactment of this Act, and within every three-year period thereafter, the Secretary, in consultation with the Secretary of Agriculture, shall prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives on the implementation of this title. The report shall include—

(1) an evaluation of the results of the monitoring undertaken by the Secretary as required by section 806;

(2) the status of fish and wildlife populations on public lands that are subject to subsistence uses;

(3) a description of the nature and extent of subsistence uses and other uses of fish and wildlife on the public lands;

(4) the role of subsistence uses in rural Alaska;

(5) comments on the Secretary's r advisory councils and regional advi the Secretary or the State pursua appropriate persons and organizatio

(6) a description of those actions be taken in the future, to permit ation of activities relating to subsist and

(7) such other recommendations ti ate.

A notice of the report shall be published the report shall be made available to the

REGULATION

SEC. 814. The Secretary shall prescr necessary and appropriate to carry out title.

LIMITATIONS, SAVING

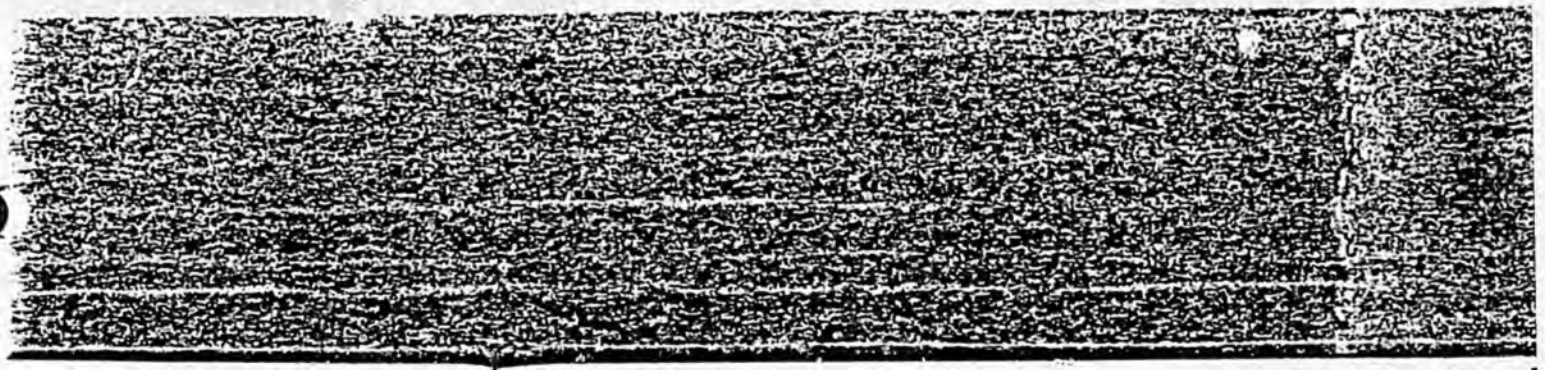
SEC. 815. Nothing in this title shall be c

(1) granting any property right in resource of the public lands or as pe ence uses of fish and wildlife within be inconsistent with the conservatio within a national park or monumer conservation of natural and healt wildlife. No privilege which may be individual with respect to subsiste any other individual;

(2) permitting any subsistence us portion of the public lands (whether tion system unit) which was perma January 1, 1978, or enlarging or authority to manipulate habitat o lands;

(3) authorizing a restriction on th for nonsubsistence uses on the publ parks and park monuments) unless tion of healthy populations of fish an forth in section 816, to continue sub tions, or pursuant to other applicabl

(4) modifying or repealing the pr governing the conservation or pro including the National Wildlife Re Act of 1966 (80 Stat. 927; 16 U.S.C. Service Organic Act (39 Stat. 535, 16 Act of 1966 (80 Stat. 1091; 16 U. Species Act of 1973 (87 Stat. 884; 16 U Mammal Protection Act of 1972 1361-1407), the Act entitled "An A Bald Eagle", approved June 8, 19 742a-754), the Migratory Bird Treat 703-711), the Federal Aid in Wildl 917; 16 U.S.C. 669-669i), the Fisher ment Act of 1976 (90 Stat. 331; 16 U



A) such a significant restriction of subsist-
consistent with sound management prin-
on of the public lands, (2) the proposed
ie minimal amount of public lands neces-
purposes of such use, occupancy, or other
asonable steps will be taken to minimize
subsistence uses and resources resulting

uired to prepare an environmental impact
ion 102(2)(C) of the National Environmen-
ide notice and hearing and include the
ction (a) as part of such environmental

be construed to prohibit or impair the
ative Corporation to make land selections
es pursuant to the Alaska Statehood Act
s Settlement Act.
th the procedural requirements of this
e law, the head of the appropriate Federal
spose of public lands under his primary
uses or purposes authorized by this Act or

ACCESS

tary shall ensure that rural residents
s shall have reasonable access to subsist-
lands.
other provision of this Act or other law,
on the public lands appropriate use for
vmobiles, motorboats, and other means of
ionally employed for such purposes by
uso le regulation.

RESEARCH

in cooperation with the State and other
es, shall undertake research on fish and
es on the public lands; seek data from,
f, the special knowledge of local residents
; and make the results of such research
ocal and regional councils established by
ant to section 805, and other appropriate

RIODIC REPORTS

s after the date of enactment of this Act,
r period thereafter, the Secretary, in
tary of Agriculture, shall prepare and
ent of the Senate and the Speaker of the
the implementation of this title. The

e results of the monitoring undertaken
red by section 806;
nd wildlife populations on public lands
nce uses;
nature and extent of subsistence uses
wildlife on the public lands;

(4) the role of subsistence uses in the economy and culture of rural Alaska;

(5) comments on the Secretary's report by the State, the local advisory councils and regional advisory councils established by the Secretary or the State pursuant to section 805, and other appropriate persons and organizations;

(6) a description of those actions taken, or which may need to be taken in the future, to permit the opportunity for continuation of activities relating to subsistence uses on the public lands; and

(7) such other recommendations the Secretary deems appropriate.

A notice of the report shall be published in the Federal Register and the report shall be made available to the public. Publication in Federal Register.

REGULATIONS

SEC. 814. The Secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title. 16 USC 3124.

LIMITATIONS, SAVINGS CLAUSES

SEC. 815. Nothing in this title shall be construed as— 16 USC 3125.

(1) granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. No privilege which may be granted by the State to any individual with respect to subsistence uses may be assigned to any other individual;

(2) permitting any subsistence use of fish and wildlife on any portion of the public lands (whether or not within any conservation system unit) which was permanently closed to such uses on January 1, 1978, or enlarging or diminishing the Secretary's authority to manipulate habitat on any portion of the public lands;

(3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law; or

(4) modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927; 16 U.S.C. 668dd-jj), the National Park Service Organic Act (39 Stat. 535, 16 U.S.C. 1, 2, 3, 4), the Fur Seal Act of 1966 (80 Stat. 1091; 16 U.S.C. 1157), the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361-1407), the Act entitled "An Act for the Protection of the Bald Eagle", approved June 8, 1940 (54 Stat. 250; 16 U.S.C. 742a-754), the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-711), the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669i), the Fishery Conservation and Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801-1882), the Federal

Aid in Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777-777K), o
any amendments to any one or more of such Acts.

CLOSURE TO SUBSISTENCE USES

16 USC 3126.

SEC. 816. (a) All national parks and park monuments in Alask
shall be closed to the taking of wildlife except for subsistence uses t
the extent specifically permitted by this Act. Subsistence uses an
sport fishing shall be authorized in such areas by the Secretary an
carried out in accordance with the requirements of this title an
other applicable laws of the United States and the State of Alaska

(b) Except as specifically provided otherwise by this section, noth
ing in this title is intended to enlarge or diminish the authority of th
Secretary to designate areas where, and establish periods when, t
taking of fish and wildlife shall be permitted on the public lands fo
reasons of public safety, administration, or to assure the continue
viability of a particular fish or wildlife population. Notwithstandin
any other provision of this Act or other law, the Secretary, afte
consultation with the State and adequate notice and public hearing
may temporarily close any public lands (including those within an
conservation system unit), or any portion thereof, to subsistence use
of a particular fish or wildlife population only if necessary for reason
of public safety, administration, or to assure the continued viabilit
of such population. If the Secretary determines that an emergenc
situation exists and that extraordinary measures must be taken fo
public safety or to assure the continued viability of a particular fis
or wildlife population, the Secretary may immediately close th
public lands, or any portion thereof, to the subsistence uses of suc
population and shall publish the reasons justifying the closure in th
Federal Register. Such emergency closure shall be effective whe
made, shall not extend for a period exceeding sixty days, and may no
subsequently be extended unless the Secretary affirmatively estab
lishes, after notice and public hearing, that such closure should b
extended.

Publication in Federal Register.

TITLE IX—IMPLEMENTATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT AND ALASKA STATEHOOD ACT

SUBMERGED LANDS STATUTE OF LIMITATION

43 USC 1631.

43 USC 1601 note.

SEC. 901. (a) Notwithstanding any other provision of law, th
ownership by a Native Corporation or Native Group of a parcel o
submerged land conveyed to such Corporation or Group pursuant t
the Alaska Native Claims Settlement Act or this Act, or a decision b
the Secretary of the Interior that the water covering such parcel i
not navigable, shall not be subject to judicial determination unless a
civil action is filed in the United States District Court within fiv
years after the date of execution of the interim conveyance if th
interim conveyance was executed after the date of enactment of thi
Act, or within seven years after the date of enactment of this Act i
the interim conveyance was executed on or before the date o
enactment of this Act. If a parcel of submerged land was conveyed b
a patent rather than an interim conveyance, the civil actio
described in the preceding sentence shall be filed within five year
after the date of execution of the patent if the patent was executed
after the date of enactment of this Act, or within seven years after th
date of enactment of this Act if the patent was executed on or befor
the date of enactment of this Act. The civil action described in thi
subsection shall be a de novo determinati
parcel which is the subject of the action.

(b) No agency or board of the Departmen
the Bureau of Land Managemen shall ha
the navigability of water covering a parcel
by a Native Corporation or Native Grou
Native Claims Settlement Act unless a de
of Land Management that the water cove
land is not navigable was validly appeale
prior to the date of enactment of this Act. T
conveyance or patent (whichever is execu
Land Management conveying a parcel of s
Corporation or Native Group shall be th
respect to a decision by the Secretary of t
covering such parcel is not navigable,
validly appealed prior to the date of en
agency or board of the Department of th
Bureau of Land Management.

(c) If the court determines that a parcel
the subject of a civil action described in sub
Native Corporation or Native Group t
pursuant to the Alaska Native Claims S
each defendant Native Corporation an
awarded a money judgment against the pl
to its costs and attorney's fees, including
incurred on appeal.

(d) No Native Corporation or Native Gr
have been conveyed its acreage entitlemen
Claims Settlement Act until—

(1) the statutes of limitation set fo
expired with respect to every parcel of
to such Corporation or Group; and

(2) a final judgment or order not sub
obtained in every civil action filed p

(e)(1) Whenever a parcel of submerged
Native Corporation or Native Group is loca
of a conservation system unit such Corp
State of Alaska may mutually agree that s
by and conveyed to the State under the p
the Alaska Statehood Act.

(2) In any instance in which the State co
of submerged land pursuant to an agreeme
Native Corporation or Native Group pur
such parcel had not previously been conve
Group, such Corporation or Group is au
parcel to the Secretary, and the Secretar
veyance. If the surface estate and subsurfa
owned by different Native Corporations
Corporation and Group with an interest in
its entire interest in such parcel to the Secr

(3) In any agreement made between a Na
Group and the State of Alaska pursuant to
reconveyance executed by a Native Corp
pursuant to paragraph (2), each affected C
disclaim its interest in the parcel whi
agreement or reconveyance. If such parcel
surface area of fifty acres or greater or a
three chains or greater, the Secretary sh

LETTERS IN SUPPORT OF

HOUSE BILL 288

HB #288

attention Adelheid Herrmann

I am writing to urge you to pass [redacted] and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Robin [illegible]
Box 1251
Cordova 99571

HB #288

I am writing to urge you to pass [redacted] and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Jack + Heidi Babic
Box 1208 Cordova 99571

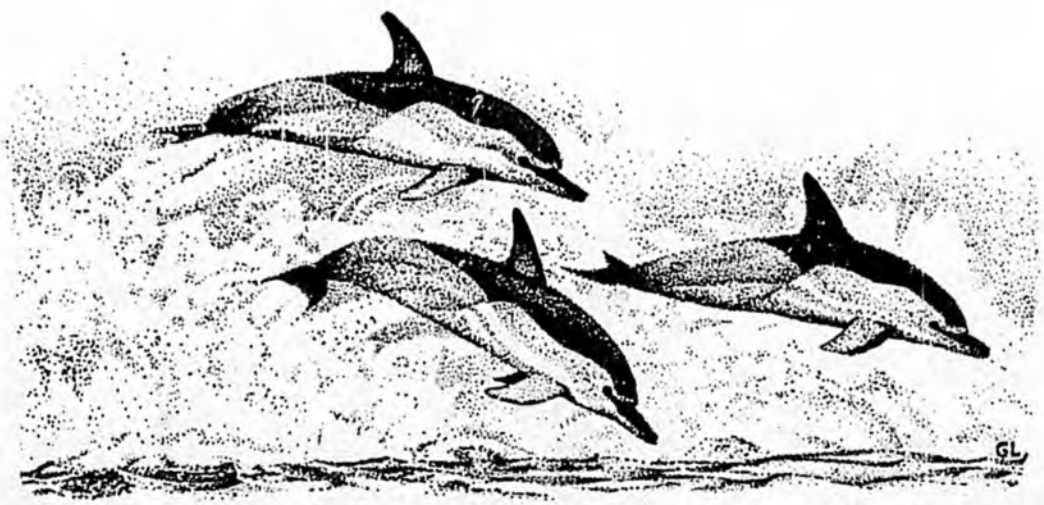
4-1-85

Dear Representative Herrmann,

I urge you to [redacted] and Senate Bill 231. We are Cordova fishermen and our livelihood depends on our ability to commercially fish the Copper River Flats.

Sincerely,

Mr. + Mrs. E. L. Cheshier
Box 116
Cordova, Alaska
99574



4-1-85

Dear Representative Hermann,

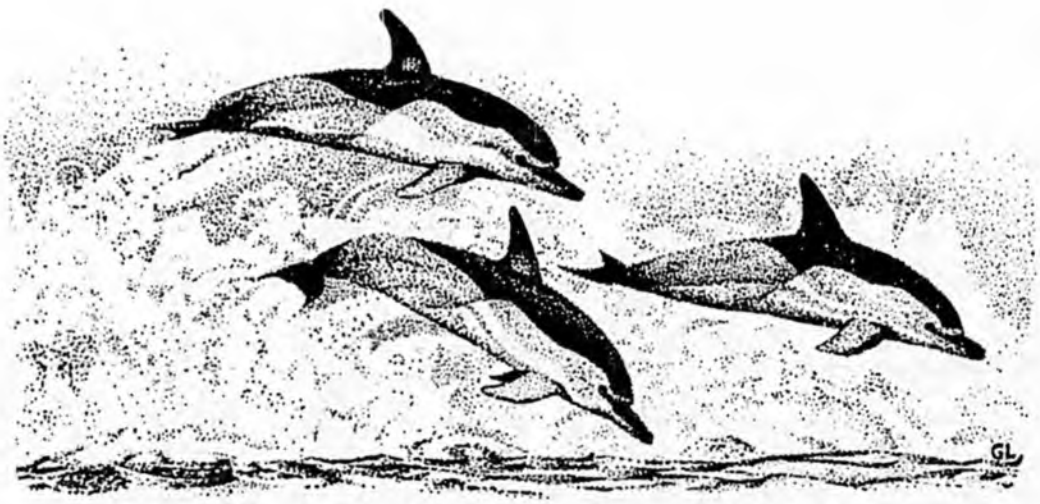
I urge you to [redacted] and Senate Bill 231. We are Cordova fishermen and our livelihood depends on our ability to Commercially fish the Copper River Flats.

Sincerely,

Mike + Clara Phillips

Box 391

Cordova AK 99574



4/1/85

Rep. Hermandson,

I urge you to read my enclosure which expresses my feelings better than I can.

I also urge you to support Senate Bill #231 [redacted].

Commercial fishing is my living and I want to go on living. Please help me and the rest of the Copper River commercial fishermen.

C. M. DeVille
Box 652 - Cordova

Main Trails & Bypaths

We recently passed the opinion that sportsman anglers should not be allowed to fish salmon after the fish have entered their fresh-water spawning streams . . . and we were bitterly taken to task by at least one Anchorage resident whose opinion was that we were "far out of touch with Alaskans and especially South-Central and Western Alaska sport-fishing enthusiasts."

Well, Mr. Anchoragite . . . "we" (that's polite for editorial use to keep from using the big personal pronoun) have fished an awful lot of Alaskan rivers for more than half a century, and we've seen the changes in both regulations and the type of fisherman in Alaska. In years past, nobody except a few Natives took salmon out of spawning streams. It just wasn't done. There were markers at the mouths of streams beyond which commercial fishermen were not allowed, and, maybe because there were not too many of us sports fishermen, it was natural that since we didn't have to fish spawning salmon runs, we didn't.

The problem, reduced to simple terms, is largely with numbers and attitude. Now, we'll agree that it is great for folks to be able to go catch, with rod and reel, bright sockeye and bright silvers . . .even bright kings . . .for their annual stuffing of the freezer or the Sears canning equipment . . .but for folks to think pink-sided or black-jowled kings or silvers are "trophy" is kind of hard to swallow for a guy who grew up with bright sea fish. And for anybody to think a turned humpback or dog salmon is good fodder . . .that just shows they "don't know no better."

People ask this old-timer once in awhile as to "What changes do we notice in Alaska, over the years?" Well, we'll have to be honest and say that the "new breed" of sports fisherman who've arrived in Alaska in recent years, and the biologists and the fish management programs that have resulted, are among the greatest . . . and most serious changes . . . we've noticed.



The question put to us by our outraged Anchorage reader deserves some discussion. Times have changed. A lot of people have changed. And it may be a good time to begin bringing out a lot of untouchable subjects and begin fashioning a little more thoughtful ethic among all fishermen . . . Native as well as White . . . and their administrators.

Our Anchorage complainer accused us of leaning to the Native subsistence fishermen and "against" non-Native fishermen . . . sportsmen. The answer to that criticism is yes and no . . . "yes," because we believe time-honored (and against the total fish run numbers, extremely small) traditional takings of spawning fish were . . . and note we said "were" . . . legitimate, and "no" because what is being lost in the shuffle of this whole "subsistence" fishing management problem is that there are probably more whites than there used to be Natives, qualified for "subsistence" fishing on spawning streams, plus the fact that for a variety of legal and economic reasons, there are now many more Natives than there were before . . . you don't have to be "half," you can be "quarter" . . . the collective Native health and living conditions have greatly improved . . . in many instances, it is more profitable to be Native . . . and, not insignificantly, there is no longer stigma in being non-white.

The old Native, in his fewer numbers, did not take much. The new Native, and his white neighbors privileged to have subsistence, are not only legally allowed salmon from spawning streams, but where in years past fishing in streams for salmon was discouraged for Natives in any great numbers and totally disallowed in any commercial sense, and prohibited altogether for whites, now a new generation of biologists and fish and game administrators has abandoned all old stream-watching protection systems and has jumped headlong into political administration of fish stocks . . . for votes . . . trying to answer pressure from all gear groups and certainly answering to pressure from Native groups . . . and we hasten to emphasize here, a "new" kind of Native group . . . not the old-time folks who truly lived off the land, but the modern-day political corporations spawned by whites themselves.

In actual administration practices for fish and game protection, no longer are stream watchmen put out for a few weeks or a few months at the mouths of important salmon streams to inhibit or prevent poaching of salmon above the markers. Any number of important fish runs are being gradually whittled down to dangerous stock levels by legal subsistence fishing. Many runs could be wiped out in a season, for all time, if a handy market should appear.

White rights? What rights does a pair of white school teachers pulling $50 to $100 thousand a year in wages have for "subsistence" sockeye they can take from a spawning stream with a drag net or with other gear?

Sooner or later we are going to have to come to grips with the fact that the blood lines between Natives and whites have become blurred . . . even the political rights of inheritance for Native rights and for fish permits have become blurred.

Political fights, gear fights, and racial fights . . . plus the importation of new "sportsman" fishing ethics . . . have collided in places like the crowded Kenai River and the Russian. Probably only improved policing and sharing rules will smooth things out on the Kenai, but there are other rivers where rules and regulations might be better adjusted before the fact. We need more ethic, more concern for preserving what we can of what used to be.

Let us understand that there are too many new whites, too many only partly native Natives, too many politicians and too many fish and game administrators controlled by politicians. It is a time for soul searching.

Kreaky, our bald-headed eagle at Angoon, was sure nice and white in the head and tail feathers in November, when this was being written. Probably fresh winter feathers, and he wasn't getting them so stained with spawning salmon. Incidentally, with the herring into winter holes, salmon runs over, and bottom fish moved out to deeper water, Kreaky was



making a meal the other day of a big starfish. He'll be after the unwary duck or sea gull soon.

Asked about subsistence fishing, Kreaky says, "At the best it's lousy, this subsistence fishing. Some years there are hardly any fish in the streams at all. Maybe one day there won't be any salmon. Hope there will still be herring . . .but if all the eggs get shipped to Japan . . . can we have herring without eggs?"

Robert A. Henning

Publisher

Dear Legislator 3-31-85

I am [redacted] of Governor Sheffield's [redacted]

I was raised in Anchorage since 1956 and my family relied heavily on sport caught moose, caribou and salmon. We never considered ourselves subsistence users. This food was incidental to our hunting and fishing. It was the sport and not the food which sent us to Alaska's wilds.

In 1972 my wife and I moved to the Aleutian Chain for four years. Here we witnessed people living a true subsistence lifestyle. Their wealth is their knowledge of the land and resultant ability to provide the majority of their needs from it. To these people the need for food, not sport, was the compelling factor.

In 1976 my family moved to Valdeana in the Copper River Basin. The majority of these people live in a more cash orientated economy. Subsistence is important to supplement their lifestyle.

The subsistence lifestyle is a part of Alaska's past and present which should be protected. I would not favor a system of subsistence which "Doles" out fish and game like welfare on a needs basis. The subsistence lifestyle deserves to be encouraged and lived with pride. Under Governor Sheffield's bill, subsistence would be regulated as in the past based on rural residency. I feel this is a good solution as it is less need orientated. One of our subsistence groups our Alaska natives have traditionally shared

On the Copper River personal use was created to protect both the true subsistence users and commercial fisherman by giving a lower priority to recreational dipnetting. I have nothing against recreational dipnetting so long as it is called such and managed as such.

Today we are back at square 1 with Anchorage and Fairbanks recreational dipnetters having a priority over commercial fishermen and threatening the priority of the true subsistence users to this resource.

What is the future of the Copper River commercial fisherman and true subsistence user as our state population grows?

What is the future of our sport fishing, commercial fishing, sport hunting and subsistence users in other areas of the State of Alaska?

Will recreational gillnetting close the world famous Kenai sport fishery?

Please address this problem rationally, responsibly and quickly by passing governor Sheffield's subsistence bill.

Fred Dison
STAR RT. BOX 6700-L
WASILLA, ALASKA
99687

PHONE 1-907-424-7318

GILBERT L. URATA, D.M.D.
GENERAL DENTISTRY
BOX 518
CORDOVA, ALASKA 99574

March 26, 1985

Alaska State Legislature
Pouch 5
Juneau, Ak. 99811

Dear Legislator:

Am asking for your immediate support of Senate Bill 231 and House Bill 288 for the following reasons.

1) Subsistence merely means existence or an aid to existence. Not all people of Alaska need to catch fish in order to exist. Those that do, ought to have the opportunity to do so, those that don't should be restricted. The ADFG and Board of Fisheries have, and need to be allowed to continue to regulate such. Many residents of the state can't use 200 fish. The fish are not in prime condition as they are at the mouth of a river. Others waste or sell their subsistence fish, or are actually sport fishing, driving hundreds of miles for an outing while others indeed need the resource.

2) The state legislature is not qualified, able, and definitly lacks the time to regulate a fisheries. Therefore, give the proper agency the ADFG, the authority to do so. Shelving both of these bills will eventually undermine commercial fishing in all fishing districts in Alaska. Besides the Copper River and Cook Inlet regions, others will be invaded as access improves. The dipnetters and true subsisters have been getting their fair share of fish. They don't require expensive boats, gear, andpermits. Look at Oregon and Washington. They allowed a judge to kill their fisheries, especially during difficult times with their other industries. How about the Stikine River? Fishing there is practically wiped out following Canadian fishing at the headwaters. When salmon survive the difficult cylcle back to their spawning grounds, let em.

3) My final reason deals with the community of Cordova and others like it. Who's to pay for the vessels and permits? How are the banks to withstand the defaults? Who wants to foot our welfare checks? Class action litigation against the state, including legislators and the CFEC will undoubtly follow. How can the state deny a resident the right to make a living he or she's had for a lifetime?

Please, urge for quick action on this matter. Passage must be concluded prior to May 1, 1985. The red season peak(highest priced reds in Aklaska) lasts only 2-3 weeks starting in May. Most fisherman make their boat and permit payments from reds and use the silver season to the survive the winter. Keep a historic way of life alive.

Cordially,

Gilbert L. Urata DMD

Tanana Chiefs Conference, Inc.

Doyon Building
201 First Avenue
Fairbanks, Alaska 99701
Phone (907) 452-8251

March 27, 1985

Hon. Richard Schultz
Co Chair, House Committee on
Natural Resources
Alaska State Legislature
Pouch V MS 3100
Juneau, Alaska 99811

RE: ~~H.B. 288~~

Dear Rep. Schultz:

Enclosed please find a copy of Resolution No. 85-77, "Support for SB 231 and HB 288, Governor's Subsistence Bill". This resolution was passed by the full Board of Directors of the Tanana Chiefs Conference, Inc. gathered at their annual convention mid March, and is being forwarded at their request to the House Committee on Natural Resources to please be made an official part of the record of hearings which your committee is currently holding on this proposed legislation.

The resolution emphasizes the need to treat subsistence priority as a rural occurrence on a community basis, that is that communities subsist as communities not as individuals.

We also urge action to be taken in this bill this session.

Thank you in advance for any consideration you and the committee hopefully will make of the information set forth in the resolution.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

Jim Kowalsky, Director
Wildlife and Parks

684.1

cc: Rep. Adilheid Herrmann
Rep. Kay Wallis
Rep. John Sund
Rep. David Thompson
Rep. Mike Miller, North Pole
Rep. Bette Cato
Rep. Drew Pearce
Rep. Roger Jenkins
Ted Charles, Director, TCC Tok Subregion

enclosure

JK/kk

TANANA CHIEFS CONFERENCE, INC.

Support for SB 231 and HB 288,
Governor's Subsistence Bill

Resolution No. 85-77

WHEREAS: the Alaska Supreme Court has recently ruled, in Madison v. Alaska Department of Fish and Game, that the State Board of Fisheries could not distinguish between rural and urban subsistence users until all other uses such as commercial and sport fishing have been eliminated first; and

WHEREAS: this ruling means that potentially large numbers of urban fishers and hunters will share scarce subsistence resources equally with rural fishers and hunters up to the time that those resources reach a critical level; and

WHEREAS: this ruling also means that only when such local resources reach a critcally low level, and only when all sport and commercial uses thusly are eliminated, can local rural communities be given priority subsistence use of that resource over all other including urban uses; and

WHEREAS: this ruling fails to fully recognize that Alaska's urban and rural economics, lifestyles, institutions, opportunities for employment, culture, customs and traditions of communitywide sharing greatly differ; and

WHEREAS: characteristically, rural communities acting together as whole communities have few or no alternatives to the subsistence harvest of locally available resources; and

WHEREAS: urban communities, as whole communities, have diversified economic opportunities and support systems as alternatives to the subsistence harvest; and

TANANA CHIEFS CONFERENCE, INC.

WHEREAS: local populations of game and fish cannot support harvests of large numbers of urban subsistence users fishing and hunting alongside, and in competition with, rural subsistence hunters and fishers; and

WHEREAS: federal law (the Alaska National Interest Lands Conservation Act of 1981) does define subsistence as "rural" in contrast to State law which does not; and

WHEREAS: Governor Sheffield proposed legislation SB 231 and HB 288 to specifiy that subsistence users are customary and traditional uses of fish and game made only by rural Alaska residents; and

WHEREAS: such legislation, if enacted, would essentially resolve the problems created by Alaska's Supreme Court ruling;

BE IT HEREBY RESOLVED that the Board of Directors of the Tanana Chiefs Conference, Inc. supports the proposed legislation SB 231 and HB 288 which would specifiy that subsistence users are rural users of fisn and game resources.

CERTIFICATION

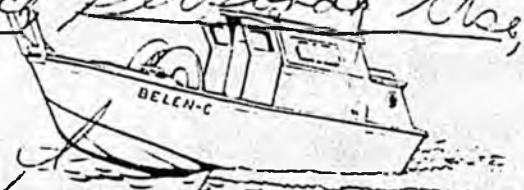
I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 14, 1985 at Fairbanks, Alaska.

Tanana Chiefs Conference, Inc.
Dorothy Shockley
Secretary/Treasurer

F/V Belen-C
Joe and Belen Cook, Jr.
P. O. Box 215
Cordova, Alaska 99574
Phone (907) 424-3507

House of Representatives [illegible]

I am writting this letter because of my
at concern of what has happened in the
st month dealing with [redacted]
I would first like to start by telling
ow a little about myself and family.
Both my husband and I work on our 28 ft
bowpicker boat. Starting May 15 to Sept
each year, salmon fishing on the Copper
River Flats. I also do the bookkeeping
for the business, I am also a member
of the Fish and Game Advisory Committee
for this area, so I am well aware of the
problems we have had in the past.
I was on the Fish and Game Advisory
Committee, when it was first decided to
bring before the Board of Fish having
three user groups Subsistence, Personal Use,
and Commercial. I was very
happy to see it pass, since I
believe this to be an excellent way to manage the



F/V Belen-C
Joe and Beler Cook, Jr.
P. O. Box 215
Cordova, Alaska 99574
Phone (907) 424-3507

(2)

resource.

I do not want to give you the impression that I am only involved in fishing intrests, because this is not the case! I am also on the Cordova Hospital Auxiliary, and The Women's Resource Center, which I am a board of directors of.

My husband has been a Commercial Fisherman since he was 13 years old and he is now 34 years old. Our livelyhood depends on fishing, we depend on the Copper River Flats for 85 percent of our living and 15 percent on the Prince William Sound.

Besides fishermen, the Community of Cordova also depends on fishing, thus I believe HB288 must pass and pass in this session.

You see its quite simple if we fishermen cannot meet our obligations to our creditors, they in turn cannot meet theirs, which can cause great problems in the near future as far as economic hardship.

I am positive Cordova will be the only community



F/V Belen-C
Joe and Belen Cook, Jr.
P. O. Box 215
Cordova, Alaska 99574
Phone (907) 424-3507

affected in the marine Alaska
to ask you again to support HB 282

Sincerely,

Belen Cook





RAINBIRD FISHERIES, Inc.
P.O. Box 1065
Cordova, AK. 99574

March 31, 1985

Adelheid Herrmann, Co-Chairman
Richard Shultz, Co-Chairman
House of Representatives Resources
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Sirs:

We [redacted] and SB #231) to give back the power to the Alaska Board of Fisheries and Game to manage our resources. We urgently request your supportas, if this legislation is not passed, this will have a serious impact on the Town of Cordova.

It is most important that this issue be resolved during this Session.

Thank you very much for your efforts.

Very truly yours,

R. J. Shaw

Box 993
Cordova, Alaska, 99574
March 27, 1985

Dear Representative,

Please take immediate action, Concerning Senate Bill #231 or [redacted] 288.

Unless Fish & Game open the Copper River fishery by the beginning of May our family and the city of Cordova will have no income to sustain them. Cordova's only industry is fishing.

My husband, age 42, has been fishing in Cordova all of his life and the early red run may be as much as 90% of his yearly income.

It is hard to understand how it could be allowed for people who have regular jobs and or excess of income to take fish they don't need and put others out of work.

I am hoping that the Judiciary and Finance Committees will waive Senate Bill #231 so this can be resolved in time.

Thank you,
Rebecca Garland

Box 993
Cordova, Al.
99574
March 26, 1985

Dear Representative;

I'm writing to you on behalf of the ~~[illegible]~~ fishing ordeal. I think that the Legislature should find some way to solve the fishing problem Alaskans are faced with. My father is a commercial fisherman, and without the money he makes during the fishing season, we may starve this winter.

I'm seriously hoping that you'll give the matter at hand some thought and fast action.

Sincerly,
Ai'em Garland
age 14

Box 254
Cordova, Alaska
March 28, 1985

Representative Adelheid Herrmann, Co-Chairman
House of Representatives Resources
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Herrmann;

I am writing to request your support on [redacted] or any similar legislation that would give the Alaska Board of Fish and Game the power back to regulate and manage our fish and game resources. If not passed this could virtually destroy Cordova. Cordova's main industry is fishing and the only industry that is keeping Cordova alive today. We cannot depend on tourism.

Many Cordova fishermen would loose their boats and their only means of making a living if they are not allowed to fish (gill-net). Does the state want to see this happen? Nearly all of the Cordova fleet is financed thru the state. What will this do to the state?

My husband has been in the fisheries since 1969. We make our home here in Cordova and have been residents for over 25 years. This is our only means of employment. We are not young and certainly do not want to loose our boat. We also prefer to be employed and not on Welfare.

I urge you, along with all of Cordova, to please give this bill your support.

Sincerely,

Kathy Crow

Kathy Crow

HIGH TIDE SEAFOODS
P. O. Box 1556
VALDEZ, AK 99686

March 29, 1985

Representative Adelheid Herrmann
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative:

The commercial salmon industry is a major resource of revenue and employment in the State of Alaska. We urge you to support SB #231.

Thank you.

Sincerely,

James L. Shefler
Partner

JLS/jcs

ALASKA POWER SERVICES

P.O. BOX 622 • CORDOVA, ALASKA 99574
(907) 424-3300

March 25, 1985

[illegible], Co-Chairman
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

[illegible]:

I am writing this letter as a private business owner in the city of Cordova in support of HB#288 Alaska Power Services is solely dependent upon the commercial fisheries in Cordova, providing mechanical services and parts to the gillnet fleet of Cordova. If HB#288 is not acted upon by May 1, the survival of my business and many others in Cordova are doubtful this year. There are many resident's livelihoods at stake pending the decision of this bill. We urge that you make every effort to pass this bill as quickly as possible.

Business has dropped off sharply due to the confusion and uncertainty created by the Madison decision, whether or not the gillnet fleet will fish May 15 or not.

We, the owners and employees of Alaska Power Services urge you to act immediately on HB# 288 to ensure a stable economic base for Cordova and it work force.

Your cooperation in this important matter in Cordova is greatly appreciated.

Sincerely,

Charles E. Maxwell

March 28, 1985

Dear Representative Heinmann,

I am a commercial fisherman's wife who is very concerned about the courts interpretation of priority in allocating fish. Giving ~~subsistence~~ more priority over commercial fishermen means financial disaster to us personally and to the future of the Copper River salmon. For the past three years we have worked hard in Prince William Sound and now find ourselves with an investment in a doomed industry.

I am asking for immediate action this session to protect our livelihood. Commercial fishing was under strict regulation by the State board of fish and game. I feel qualifying as a subsistence user should also be strictly limited. Salmon is a fragile resource - mismanagement one year may have lasting effects.

Sincerely,

Jean C Phillips
3308 Lois Dr
Anchorage AK
99503

Dear Sir

3-21-85

I am writting to urge you to Pass House Bill # 788 and give back to the Board of Fisheries the flexibility to manage the Resource for the user groups.

Thank you

John Johnson

House Resources Comm.

Adelheid HERRMANN

Sir,

I ask your Support on H.B. # 288 or any other Legislation that would put the Board of fish and game Back in Power to Regulate the Resources as they have in the Past.

The Economy of Cordova and Every other fishing Community in the State may well hinge on this Bill.

Thank you

Jack Kittel
Box 489
Cordova, AK.

->

Dear ~~Sir~~ Respresentative

As a commercial fisherman who is very dependent upon the Copper River gillnet fishery for my livelyhood, I am very concerned about the current threat by [redacted] usage and possible loss of this fishery to commercial fishermen

I think the problem lies with the definition of subsistance. As far as fisherman we really are completly dependent upon these fish. Our homes, vehicles, and vessels are centered around this fishery. We are the ultimate subsistance users. We are not casual users as seems to be the case with many urban up-river people who travel hundreds of miles to fish under the guise of subsistance.

I urge you to support SB 231 and HB. 228 and manage the Copper River fishery as had been done successfully under the Board of Fishes pre-Madison decision plan. This plan was agreed upon by the various factions involved: true rural subsistance users, sports

fishermen and commercial fishermen. Your support of this bill will help keep our fishing industry which is very important to the State of Alaska. alive and healthy.

Sincerely
W. F. Fleming
Box 363
Cordova, Alaska
99574

Cordova Chamber of Commerce

P.O. Box 99
Cordova, Alaska 99574
(907) 424-7260



March 19, 1985

R E S O L U T I O N

WHEREAS commerical fishing is the backbone of the economy of Cordova and other Prince William Sound Communities, and

WHEREAS the Madison Decision severely impairs the opportunity for commerical gillnetting on the Copper River Flats, and

WHEREAS a speedy resolution is necessary in order to allow the 1985 commercial gillnet fishing to start as scheduled, now therefore

BE IT RESOLVED that the Cordova Chamber of Commerce supports the passage of HB 288 and SB 231 and urges members of both the House and Senate to put their support behind these bills.

CORDOVA CHAMBER OF COMMERCE

Margy K. Johnson

Margy K. Johnson
President

P.O. Box 1142
Cordova, Alaska 99574
March 24, 1985

House of Representatives
Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Sirs,

As a resident of Cordova, Alaska, and a Prince William Sound Drift Gillnet permit holder I am urging your support of HB #288 and any similar legislation restoring the Alaska Board of Fisheries and Game to their previous management position of fish and game. The impact of the Madison Decision on my community and myself is catastrophic. Please reinstate the Board of Fisheries and Game as the managing body for our fisheries.

Sincerely,

Karol R. Marx

3-21-82

I am writing to urge you to pass house bill 288 and give back to the board of fisheries the flexibility to manage the resource for the user groups.

thank you
Jeff Davis

March 25

Dear Mr. Schultz,

I'm writting to urge you to please pass House Bill 288 and give to the Board of Fisheries the flexibility to manage the resource for the user groups.

Thank you,
Mike McKenzie

CORDOVA, AK 99574

REP. SHULTZ

THIS LETTER IS IN SUPPORT OF SENATE BILL #231 AND HOUSE BILL #288 WHICH WILL SAVE THE COPPER RIVER FISHERY.

I MOVED TO CORDOVA TOO LATE TO BE ELIGIBLE FOR A LIMITED ENTRY PERMIT ON THE POINT SYSTEM. FOR THE PAST 10 YEARS I HAVE FISHED FULL-TIME AS A DECKHAND ON CRAB & SALMON BOATS WHILE ALSO RUNNING MY SMALL BOAT ON OTHER HARVESTS.

AS OF LAST YEAR MY HOUSE WAS NEARLY PAID FOR AND I COULD INVEST IN A P.W.S GILLNET PERMIT (VIA A STATE LOAN). IF I AM NOT ALLOWED TO FISH THE COPPER RIVER RED SALMON TEN YEARS OF EFFORT, IN ACCORDANCE WITH LEGISLATIVE POLICY, WILL HAVE BEEN WASTED.

CRAB & OTHER FISHERIES AT THIS POINT ARE NOT LUCRATIVE ENOUGH TO MAKE PAYMENTS. WITHOUT THE GILLNET FISHERY I WOULD BE FORCED TO LEAVE CORDOVA.

AFTER WORKING FOR 10 YEARS, IN COMPLIANCE WITH LEGISLATIVE POLICY, TO HAVE ALL I'VE WORKED FOR THROWN OUT BY LEGISLATIVE ACTION WOULD ~~[illegible]~~ LEAVE ME WITH A DEEP RESENTMENT & LOSS OF RESPECT FOR THOSE LAWS I HAVE TRIED TO OBEY AND RESPECT.

SINCERELY

LYNN POTTER - COMM. FISHERMAN

CORDOVA.

Richard Shultz, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz,

I was born and raised on the Copper River, and I have been a commercial fisherman for 19 years. Over the past few years the fishing time on the Copper River has been restricted time and time again due to escapement reasons and increasing pressures on the upper Copper River. Over 50% of my annual income is generated from gillnetting on the Copper River. I am also a partner in a small fishing co-op. We started this five years ago with 12 fishermen, and our operation has been selling fresh reds and kings to various restaurant markets throughout the country. The entire success of the operation is based on the early fishing we have had and soley relies on the Copper River.

I live in Cordova 12 months a year and 90% of what I buy is bought in Cordova. In my opinion the gillnet fleet cannot survive without utilizing the Copper River fisheries. Therefore I'm asking you to support House Bill #288. I feel that this would be devastating to the economy of Cordova, and I feel that the community itself would have a hard time surviving it if this bill is not passed.

Thank You

Jean Jackson

Richard Shultz, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz,

I live in Cordove and I run a small fish business, along with Tom Johnson also of Cordova. The whole of our business runs strictly off the Copper River red and king salmon run.

I'm writing to you now in the hopes that you will support House Bill #288. If this bill is not passed, I'm afraid the future of the people of Cordova and our children will be limited to handouts from the state welfare. I know this sounds drastic but everything in this small fishing town is centered around the commercial fishing fleet. Personally the affects on myself if this bill is not passed will be devastating as I have no other means from which I depend. I feel stuck between a rock and a hard spot as we who depend on commercial fishing are a minority. I only hope you will take our livelihoods into serious concideration.

Thank You for your time and effort.

Sincerly
Betty J. York

Betty J. York

I am writing to urge you to pass House Bill #288 and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Kim L Johnson
BOX 1179
CORDOVA, AK. 99574

Dear Rep. Young

I am writing to support speedy passage of Senate Bill #231 and House Bill #288 to save the Copper River Salmon fishery.

As a resident and employee in the city of Cordova I do become very aware of the large contribution the P.W.S. gillnetter make to the economic base here. I don't believe Cordova can survive without healthy fisheries.

I believe that the State Fish and Game Board have done a pretty good job, if preservation and growing numbers of Salmon are any indication, and a return to the system that has worked well is the best solution.

As an Alaskan I favor ~~[illegible]~~ subsistence for those who need it. Has anyone considered an income ceiling for subsistence permit holders?

We are all anxiously awaiting the outcome of these bills as the future of so many hang in the balance.

Sincerely
Carol Emmett
Bartender
Cordova

Richard Shultz, Co-Chairman

Addressing House of Representatives Resoures

Dear Representative, as a Copper River Commercial Salmon Gillnet Fisherman and a ten year resident of Alaska, I urge you to support House Bill #288 or similar legislation to save the Copper River Salmon Fishery, my profession, and the town of Cordova. Failure to stop un-limited subsistance usage by the Urban masses of the state will end the Traditional 70 year old Commercial Fishery on the Copper River, as well as take 75% of my yearly earned income away. As a Gillnet Fisherman for Salmon, the Copper River Fishery provides the bulk of my yearly catch, and supports my livelihood. Cutting off the Copper River Commercial fishing season would put a serious threat to the town of Cordova's very existance. Cordova's local economy depends on the revenue generated thru the Copper River Fishery. All local business would face the possibility of closing their doors in the event of NO Commercial Fishing on the Copper River. Without this Fishery my profession as a Gillnetter would be seriously jeopardized. I rely totally on the income from Salmon Fishing. If the fishery is taken away from me, I have no way to make a living and have limited training in other Fields of work. How would you as a legislator like it if a law was passed that basically eliminated politicans as a bread earning profession, thus forcing you to find another way to earn a living?

You would probably react the same way Iam and make an effort to protect your way of life and career. My Career as a Drift Gillnetter is likely to be finished without the Copper River Fishery. I strongly urge you To support legislation that would return the power back to the Alaska Board of Fisheries and Game to regulate the resource. They have studied the Copper River Fish Stock's and have a set management plan. We must protect the resource above all else. Unlimited Subsistance harvests would soon eventually wipe out the Copper River Salmon runs. I feel Subsistance should be based on the individuals needs and traditional use basis. Those individuals who need the Salmon to help survive should be able to take what they can personally consume. For one individual to take 200 Salmon or a Family 500 Salmon when they cannot in all probability consume that many Fish is absurd. That makes an under-the-table Fish Sale situation likely for illegally dealing with the surplus Fish. It turns every Subsistance fisherman into a Commercial Fisherman on the 200 fish quota system. How many Families actually eat that many fish? There are only a few choices with that many fish, Sell them, Smoke them, or blantantly waste them! I myself eat a lot of Salmon annually. Including Canning, Smoking, and gifts to relatives,

I have personal use of 30 to 50 Salmon at the most, and I am a professional Fisherman! There should be a personal use fishery for all resident Alaskans, but it should regulated by need. Those residents who need the fish To subsist on would get them under House Bill #288. This Bill would also allow Traditional use groups, such as Commercial Fisherman, and Copper River Valley resident to be able to continue our set-way of existance and help assure management of future stocks of Salmon. I have my whole life's investment tied up in the industry at age 32. I have State backing on a resident loan from the Alaska Commercial Fishing and Agriculture Bank. All in all I have over $100,000 tied up in my fishing business. I live a modest existance and work hard and take many risks against the ocean just to get by on most years I have participate in this Fishery. So its not as easy or lucrative as many might seen to think about the life of an Alaskan Commercial Fisherman. It should be my constitutional right to be allowed to continue this traditional way to make a living. Why is my profession any different than anyones **elses**? Give me a chance to earn a living! With Alaska's concern over falling oil Revenues, the State should be concerned about enhancing its Commercial Fishing Industry, not pinching it out of existance and those who earn their livings from it.

Fishing Vessel — Sincerely, John C. Gregory — Copper River Salmon Drift Gillnetter
" " "

Box 1210 602 Railroad Avenue
Cordova, Alaska 99574
Phone: (907) 424-3237
or 424-3238

"The Friendly City"

March 20, 1985

Leonard V. Pingatore
Mayor

Richard J. Leland
City Manager

Donna M. Sherby
City Clerk

Council Members
Joe Gunderson
Phyllis Day
Oliver Osborn
Lew L. Cochran
R. L. Van Brocklin
John Wheeler

Representative Bette Cato
Pouch V
Juneau, AK 99811

Dear Representative Cato:

On March 13, 1985, Governor Sheffield introduced Senate Bill 231 and House Bill 288 relating to the taking of fish and game for subsistence and personal use. As you know, this was necessitated by the Supreme Court's findings in the matter of Madison et al versus the Alaska Department of Fish and Game and the Alaska Board of Fisheries. The intent of the proposed legislation is to provide definition and clarification to the Board of Fisheries' authority to manage Alaska's most valuable renewable resource.

We, in Cordova, have reviewed the proposed legislation with representatives of the commercial and sport fishing industry as well as those who participate in the personal use fisheries. While it is clear that additional work will be necessary to define the various fisheries and the role of the Board of Fisheries over the long term, we feel it is imperative that the Legislature enact the proposed legislation immediately to assure a fishing season in 1985.

On behalf of my colleagues and the City Council and all Cordovan's who depend on a well-managed fishery, I strongly urge your immediate passage of Senate Bill 231 and House Bill 288.

Sincerely,

Leonard V Pingatore

LEONARD V. PINGATORE
Mayor

Enclosure: Resolution 85-9

CITY OF CORDOVA, ALASKA

RESOLUTION 85-9

A RESOLUTION OF THE CITY OF CORDOVA, ALASKA URGING IMMEDIATE PASSAGE OF SENATE BILL 231 AND HOUSE BILL 288, RELATING TO SUBSISTENCE FISHERIES, BY THE ALASKA STATE LEGISLATURE

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in non-subsistence uses, and

WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and non-subsistence fishery issues, and

WHEREAS, the economy of the City of Cordova is critically dependant on the Copper River Fishery, as is the State of Alaska dependant on the revenue and employment resulting from the commercial and sport fisheries, and

WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Council of Cordova, Alaska, recommend and urge the immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

PASSED AND APPROVED THIS 20 DAY OF March 1985.

Leonard J. Pingatore
Mayor

Theresa M. Shelby
City Clerk

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
Margy K Johnson	Box 150 ~ Cordova, AK	424 3272
Harold Brown	BOX 873	424-7434
Roger E Brown	Box 404	424-7645
Frank L. Plant	Box 641 "	424-5230
Vina Young	Box 933	424-3508
Elnora Lorey	Box 393	424-3419
Charlotte Reeves	Box 150	424-3272
Denise Covey	Box 150	424-3272
Chris Carlough	BOX 323	424-3603
Michael J Rajcich	Box 1601 "	424-3272
Cynthia A. Kerry	BX 61	424-7388
Gail Steen	Box 610 Cordova AK	424-7153
VOTE: ANCHORAGE Hanna L. Sundt	2843 Redwood Pl (ANCHORAGE) AK	279-7745
William H. Scofield	BOX 1305 CORDOVA	
Peter E McCallum	Box 362 Cordova AK	424-5324
Lua Flynn	BOX 847 Cordova AK	424546[illegible]
Irene Gunners	Box 72 Cordova	424-7428
Lee Ann Farrall	Box 72 Cordova	424-7428
Travis L. Yarbrough	Box 804 Cordova	424-3689
ANCHORAGE Harold E. Milbaugh	14620 Seward Hwy Anch.	345-3661
Kim Kamerton	9[illegible]E TUDOR ANCH AK	562 2672
Lynda Brady	Box 1643 Cordova	424-7377
Robert E Maxwell	Box 344 Cordova	
Paul Nordline	Box 1129 CORDOVA	-7351
Larry Allen	Box 1003 Cordova	

NAME	ADDRESS	PHONE NO.
[illegible] Butler	P.O. Box 1021 / CDV, AK	424-5359
William J Allender	P.O. Box 1136 CWA. AK	424-7555
Beverly R Steffe	Box 1221 CDV AK	424 5628
Anna Ballum	Box 98 Cordova, AK	424-3663
Kathy Halverson	Box 1210 " "	424-5644
Rick Halverson	Box 1292 " "	424-5644
Guy Beedle	Box 39 " "	424-3509
Peter Anderson Jr.	Box 126	5317
Florence Anderson	Box 126	424-5317
Curtis J Cochran	Box 121	424-5541
Gary W Taylor	Box 545	424-3123

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill Bill #231.

****

NAME	ADDRESS	PHONE NO.
Jeannine Buller	P.O. Box 1051	424-7536
Terry McCune	PO Box 372	424-7480
Robin Vinton	P.O. Box 1133	424-7358
[illegible] Webber	P.O. Box 876	424-3500
Heather McCarty	P.O. Box 2368	424-7485
Judy M Reynolds	PO Box 903	424-3608
Phil Lian	P.O Box 106	424-7528
Libbie Lian	P.O. Box 106 — 99574	424-7528
Lorraine Stone	Box 83 99574	———
Gerri Koechling	Box 533	424-5108
[illegible]	Box 473	424-5165
Carly A Kritchen	Box 1255	424-3649
Kim [illegible]	Box 2271	424-3694
[illegible] (Chet) Cheshier	BOX 116	424-7240
Kathleen A Brown	Box 161 - 99574	424-3657
[illegible] E [illegible]	Box 1067 [illegible] 99574	424-7596
Geo Anderson Jr.	Box 1149	424-7707
Georgia Farris	Box 93	424-7480
[illegible]	Box 1139	424-3305
[illegible]	Box 2262	424-5657
Herbert + Jensen	Box 294	424-3584
Wallace H [illegible]	Box 1014	424-7326
Alan N. [illegible]	Box 572	424-7291
Jeanne A. [illegible]	Box 989	424-7327
Joe Cook Jr	Box 215	424-3507

NAME	ADDRESS	PHONE NO.
Kris Simon	Box 1564	424-5356
Collette Pettit	Box 745	424-7608
Douglas Pettit	"	" "
John P Hopkins	Box 343	424-7632
Belen Cook	Box 215	424-3507
Frank V Collins	Box 2361	424-5689
Robert J Kopchak	Box 1126	424-7178
Jack Kuitel	Box 489	424-3110
John Cunningham	1275	" 7371
Sharon Latchett	Box 701	—
[illegible]	G.D.	—
John A. [illegible]	Box 376	424-7442

NAME	ADDRESS	PHONE NO.
Michael C. O'Leary	P.O. Box 1052	424-7758
Verla Clubb	P.O. Box 179	424-3206
Anna Kompkoff	Box 1	424-7216
Martha Nichols	Box 235	424-7559
Joann Thomas	Box 284	424-7497
Dana Patton	Bx 2265	424-7366
Robin Beaudry	Box 1174, City	424-7197
Verla D. Travis	Box 1059, City	424-7486
Ann Campbell	Box 147 "	" 3293
[illegible]	Box 1611	" 7354
Mimi Kiertel	Box 489	3110
Caleb Kompkoff	Box 455	" " 5625
Gerald E. Edwards	Box 405	
[illegible] Johannessen	Box 474	424-7310
Paul McHogan	Box 579	424 5298
Ruth Tiedeman	Bx 902	424-3619
Kathy Wamser	Box 286	424-7378
Howard Johnson	Box 146	424 3561
Mabel Kompkoff	Box 435	424-3521
Cheryl Greenwald	Box 1531	424-5208
Chris Phuse	Box 305	424-3471
Mary A. Gordanoff	2308 W. 46th Anch.	248-0101
Cecilia A. Wiesel	Box 47	424-3667
Mary Gene Dunnett	Box 78	424-3666
Julia J. Nordman	Box 608	424-3615
Jack Oslin	Box 980	424-3528
Dick Shellhorn	Box 820	424-3543
John D. Johnson	Box 1179	424-7243
Bobbie Jo Sherman	Box 225	424-7626
Nikki S. Cheshire	Box 116	424-7240

NAME		
Kerri Crawley	BOX 1483	424-5371
Judith Cunningham	Box 1139	424-3305
Sharon Blake	Box 2666	424-3322
Grace Jansen	Box 2334	" " 3418
Dan Strickland	Box 1517	424-5277
Linda Mazzolini	Bx 102	424-7489
Wm Adam Bauer III	Box 1604	424-7422
[illegible]	Box 1179	424-7243
[illegible]	Box 191	424-3541
Serina Ruks	Box 542	
Cuca McBride	686	7462
Mary Cunningham	1275	7371
Betty M. Turner	Box 260	424-7676
Diana M. Clary	1573	424-33-25
Lydia Allen	Box 358	424-3678
Ron Mullins	Box 436	424-3664
James M. Fowler	PO #1015	424-7503
John W. Starek	PO # 1289	424. 3586
[illegible] Lankard	1289	424-3586
Rufee Nestor	Box 697	424-7224
Charles R. Nestor	Box 697	424-7224
[illegible]	BOX 2377	NONE
Ora M. Warner	Box 266	424-3322
Lynn Hendrix	Box 343	424-7632
Lloyd Kockoff	Box 1	424-7216

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
Lanny Gillespie	Po box 2312	424 5561
Claudia Bain White	Box 988	424-7763
Cathy Allender	Box 1136	424-7335
Alice Reilly	Box 1125	424-7210
Nena S Totemoff	Box 1232	
Neva Kohler	Box 1194	424-3589
Joseph W. Gunderson	Box 1294	424-7425
Gilbert Dean	Box 665	424-3441
Clifford [illegible]	Box 665	424-3444
Terry C. Holliday	Box 352	424-3346
Donnita R. Lankard	Box 976	424-7470
Ralph R. Morehouse	Box 976	424-7470
Harrin L Phillips	Box 2315	424-5144
Wendy D. Kimber	Box 1226	5507
Ed Shipman	Box 1108	424-7271
Teresa Hardie	Box 931	424-5166
Linda Cooper	Box 1286	424-7349
Ken Blake	Box 1043	4247193
Barbara Webber	Box 934 Cordova AK	424 7343
James Kallander	Box 2272	424 7603
Andy Allen	Box 1117	424-3684
[illegible] LeBlanc	Box 1026	424-7102
[illegible]	P.O Box 681	424-3695
[illegible] Kopchak	Box 1126	424-7178
[illegible] Muller	P.O. Box 1227	424-541

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
David J Burke	P.O. Box 2086 Sitka AK	747-8730
Gary Barnes	Box 255 Cordova	
Dan Demott	424-7449	
[illegible]	Box 807	424-3144
Russell Balm	Box 1157	
Andrew Parraco	Box 1503	424-5623
[illegible]	Box 482	424-3451
[illegible]	Box 1005	3541
Richard D Cole	Box 478	7363
Andi Taggart	Box 1268	3357
John K [illegible]	Box 256	424-7563
Susan Butler	Box 1021	424-5359
Kenneth E Holbrook	Box 998	424-3106
[illegible]	Box 835	424-7293
Daniel O Slaughter	Box 259	424-7321
[illegible]	Box 1457	424 3171
William Reid Jr	PO 1234	424 7448
Roy W [illegible]	Box 1069	424-3128
Lestye Hidalgo	Box 1635	424-5602
Gibson Barnes	Box 255	424-7449
Richard L Collins	Box 337	424-5272
[illegible]	Box 711	4[illegible]-7494
Karin Mullins	Box 1554	—
Chris Langley	1228	5320
Mike [illegible]	Box 783	424 3676
Jon [illegible]	Box 1473	—
Jon Sund		
Brandy Johnson	Box 460	424-3353
Terry Barnes	Box 255	424 7449

NAME	ADDRESS	PHONE NO.
Natalia May Parsons	Box 573	424-7404
Bill Bauer	Box 121	424-3541
Bill Stucki	Box 1003	✓
Rt Nippell	1245	3196
Sheryl A Nippell	1245	"
Patrick M Harris	Box 1524	424-3511
[illegible] Shipman	Box 1108	424-7694
Chris L Fulton	Box 1068	424-5120
(Elizabeth Bender)	Bx 415	424-3157
[illegible] Castles	Box 751	424-7766
[illegible] L Eaki	Box 96	424-5441
Becki Flaschee	Box 455	424-5625
John M. Appleton	Box 777	424-7597
Bill Melvin	PoBox 1228	424-5320
Ivan Jory	Box 1597	
[illegible] Nixon	Gen del	424-5643
Mark Williams	PO Box 1293	424-5659
James M Spear	Box 3	" 3179
[illegible]	Box 1062	" - 7318
Debbie Bessie	Box 1626	424-3160
Terry Makurka	Box 452	424-7390
Pat Nicolo	Box 259	424-7319
Wm. A. Nicolo	PoB 259	424-7319
Marlon Pollitt	Box 461	424-7311
[illegible] Kempkoff Sr	Box 1	424-7216
Larry Hanson	Box 253	424-5106
[illegible] Vicki Lawler	Box 66	424-3179
[illegible] McBurthen	Box 141	424-3699
David Gorla	Box 752	
[illegible]	Box 55	" 3392
P. M. Harman	Box 2347	5584
Russell L [illegible]	[illegible]	[illegible]

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME.	ADDRESS	PHONE NO.
Sandee Maxwell	Box 1574	424-5477
Mike Maxwell	Box "	" "
Ron Horton	Box 216	3638
Leslie A. Justice	Box 991	424-7303
Nina L. Alber	Box 111	424-7508
Lorrie Alber	Box 111	424 7508
Sue Muma	Box 987	424-5134
Dave Muma	Box 987	424-5134
Gary McWhorter	P.O. Box 1222	424-7671
Ginny Burch	Box 132	424-3422
Donald Burch	" "	" "
Betty King	" 356	424-3670
Kelly L Owens	776	424-7248 (Cellon)
Merle L Hanson	Box 345	424-3662
David F. Primer	Box 1636	424-5253
Carmen L. Smallwood	Box 453	424-7618
D. Smallwood	Box 453	424-7618
John Goodridge	P.O. Box 137	424-7493
Roy Srb	P.O. Box	424-3128
Dede Srb	P.O. Box	424-3128
C. Jensen	PO Box 442	424-7373
Brad Evans	P.O. # 1314	7797
Ruth Steele	Box 392	424-3409
Pauline Allen	Box 1281	424-5443
Tobias R. Calamont	Box 989	424-7327

NAME	ADDRESS	PHONE NO.
Jim McSpee		
Betty Ott	Box 457	424-7382
Paul Lambert	Box 1135	424-5718
Laura Lambert	" "	" "
Pam Pedersen	Box 864	424-5218
Gordon Lipscomb	Box 1311	4247145
Elaine Zeine	Box 54	424-3192
Lila Johnson	Box 574	424-3368
Corrine Erickson	Box 472	424-3581
[illegible]	Box 1616	424-5659
Jeanne Harrington	Box 2246	424-7410
John K Renner	Box 756	424-7563
Dawn M Renner	Box 756	424-7563
Kim Evans	Box 776	424-7245
John F Burch	Box 1012	424-7658
Carol E. Burch	Box 1012	424-7658
Pamela M. Jones	Box 1177	424-3518
Elvera Lary	Box 393	424-3419
Patricia L. Jones	Box 544	424-3652
Janet Bailey	Box 412	424-7586
Mary R Hogart	Box 579	424-5298
Linda Damas	Box 1461	424-5164
Alberta McCracken	Box 940	424-3400
Elizabeth E. Adams	Box 772	424-7852
Hunter A Roche	Box 1524	
Lon Anderson	Box 107	424-7381
Carol A. Maxwell	Box 717	424-3361
Fred S. Brady	Box 1643	424-7377
Sandra D King	Box 965	424-3323
Rose Weathers	Box 1167	424-7492
Kevin Weathers	BOX 1167	424-7492

NAME	ADDRESS	PHONE NO.
Diane Johnson	Box 202	424-7738
Thane Elsworth	Box 978	424-7138
	97	
Larry D. Fulton	Box 2355	424-5560
Rebecca Garland	Box 993	424-7519
Carol Emmett	Box 1472	424 5226
Neal W O'Brien	Bx 1166	
Harry L. Woods	Bx 954	~~[illegible]~~
Terri E Woods	Box 954	Hospital
Henry Kay Weathers	Box 837	UHF Ch 6
Lyn W. Erbey	Box 2263	Cordova Ak 424-317
Dave Erbey	Box 2263	424-3176 Cordova, Ak
[illegible]	Box 266	Cordova, Ak
Diana L. Moore	Box 1119	Cordova
Delnes Crowley	P.O. Box 1123	Cordova Ak
Jean C Swenson	Box 225	Cordova Ak
Bob Sherman	Box 225	Cordova Ak
Anne L Herschleb	Box 1252	Cordova, Ak
Mike Flynn	Box 847	Cordova Ak 424 5460
[illegible]	Box 365	Cordova AK 99574 424/716
Karen Chappell	Box 92	Cordova, Ak 99574
Matthew C [illegible]	P.O Bx 151	CORDOVA AK. 99574
J MERDENHALL	PO Box 1453	CORDOVA, AK 99574

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
Jennie Blake	Box 1122	424-3804
Jerri L Makarka	Box 534	424-5523
[illegible]	Box 636	424-3638
[illegible] Phillips	Box 396	424-5355
[illegible]	Box 771	424-3395
Carla Church	Box 406	424-3389
[illegible]	Box 723	424-3475
Dan Bilderback	Box 723	424 3475
[illegible]	Box 1066	7273
[illegible]	Box 962	—
Charlie Botta	Box 548	424-7171 3529
Kenneth W Pratt	Box 1033	424 5445
Alice Jones	Box 1112	424-5221
P.J. Roberts	Box 507	424-3357
R. Sandusky	Box 481	5504
Ed Ulasaik	Box 367	424-7421
Charlotte Carroll	Box 281	424-3432
Michael S. Scott	Box 833	424-3584
Frances Scott	Box 833	424-3584
Nancy Brady	Box 531	424-5441
Robin Hanna	Box 1105	424-7256-7108
Fawn Wentworth	Box 1243	424-7564
Ratha L MacMarta	Box 343	424 7439
Bonita Parsons	Box 573	424-7404
Susan L. Ramlo	BOX 277	424-7354
Dawn Williams	Box 2311	[illegible]

NAME	ADDRESS	PHONE NO.
[illegible]	Box 2346	424-5209
[illegible]	Box 1571	424-5308
[illegible]	Box 731	424 3524
[illegible]	Box 21	424-3545
[illegible]	Box 150	424-3272
[illegible]	Box 532	424-3586
[illegible]	Box 771	424-3395
[illegible]	Box 542	———
[illegible]	Box 863	7597
[illegible]	Box 997	424-3103
[illegible]	" 1161	3331
[illegible]	" 804	424-3689
[illegible]	Box 141	424-7170
[illegible]	Box 1302	424-3678
[illegible]	Box 772	424-5688
[illegible]	Box 1155	424-7456
[illegible]	Box 1208	424-7244
[illegible]	Box 80	424 3364
[illegible]	Box 286	424-7328
[illegible]	Box 286	424-7378
[illegible]	Box 282	424-7263
[illegible]	Box 1187	424-7426
[illegible]	Box 731	424-3524
[illegible]	" 782	424-5384
[illegible]	" 937	" -5593
[illegible]	Box 109	424-3152
[illegible]	Box 52	424-7684
[illegible]	Box 178	424-3431
[illegible]	Box 178	424-3431
[illegible]	Box 254	424-3636
[illegible]	Box 1611 Cordova	424-7361

DO NOT SIGN

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS		PHONE NO.
Michael Galambush	Box 1223	Cordova	424-7355
[illegible]	Box 1251	Cordova	424-5467
Tom Baughn	Box 296	Cordova	424-3316
Jim Pahl	Box 1128	Cordova	—
Patsy B. Fisher	Box 321	Cordova	424-7505
Susan K Welte	Box 982	Cordova	424-7509
Donald D. Eckland	Box 341	Cordova	424-7279
Charles A McCracken	Box 940	Cordova	424-3419
Ron Adkinson	Box 2251	Cordova	424-34[illegible]
Kip Carroll	Box 1594	Cordova	424-751[illegible]
Virgil L. Carroll	Box 281	CORDOVA	424-34[illegible]
Dennis O. Lang	Box 393	Cordova	424-3419

NAME	ADDRESS		PHONE NO.
D. L. Kuntz	Gen Del	Cordova, AK	4243835
[illegible]	Box 451	Cordova AK	424-7339
[illegible]	Box 2366	Cordova AK	424-3187
Mike Mellen	3321 UERKA	Anchorage, AK	561-5694
[illegible]	Box 37	Cordova AK	424-7470
Keith B. Fenwick	BOX 15 87	Westport Wash	
Fred A. Fagg	BOX 1515	Cordova AK	424-5268
Jerry L. Blaisdell	Box 605	Cordova AK	424 [illegible]64

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
Frank Foode	P.O Box 2356 CDV-AK	424-3584
Charlotte Maxwell	Box 622 CDV-AK	424-7500
[illegible]	Box 311 Cordova AK	424 5687
Bill [illegible]	PO Box 1221 Cordova	424-5628
Charles E Maxwell	PO Box 622 Cordova AK	424-3300
Luke Weinrick	P.O. Box 354 Cordova Ak.	424-7309
[illegible]	Box 832 Cordova AK	424-3401
Bill [illegible]	Box 43 CORDOVA AK	274-1922
Chris Clark	Gen Delivery Cordova AK	424-3802
Andrew J [illegible]	Gen. Del. Cordova AK 99574	
Rita M. Gunderson	Box 261 Cordova AK 99574	424-3624
William A. Merritt	Box 1108 Cordova AK. 99574	424-7271
[illegible]	964 Cordova AK. 99574	424-7243
David M. Phillips	Box 396 Cordova AK	424-5388
[illegible] D. Phillips	Box 989 Valdez AK	835-4506
Don Bailey	Box 472 Cordova	424-7586
Eli Shipman	Box 1108 CORDOVA	424-7271
[illegible]	Box 903 Cordova AK	424-7606
[illegible]	Box 174 [illegible]	424 7530
[illegible]	Box 124 Cordova	424 3484
[illegible]	Box 1611 Cordova	424 7361
[illegible]	Box 58 Cordova	424.5318
[illegible] C Mallott	Box 52 Cordova	424-7684
Axel Jansen	Box 576 Cordova	424-3418
[illegible]	Box 261 CORDOVA	424-3624

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS		PHONE NO.
Carl Allison	Box 427	Cordova Ak.	424-3302
Ron Wagner	Box 1534	Cordova AK	424-7671
Bill Hanson	Box 43	CORDOVA AK	274-1922
Dan Whitaker	Box 235	Cordova AK	424-7559
Fred Weiss	Box 1102	Cordova AK	424-7670
Max H Bennett	Box 1006	Cordova AK	424-3695
E J Cheshier	Box 2264	CORDOVA AK	424 7106
Tom Masolini	Box 102	Cordova AK	424-7489
Noel Dellos	Box 1522	Cordova AK	424-5370
Dan Joy	Box 1597	Cordova AK	424-5370
Steve Blanford	Box 112	Cordova AK	424-5578
Marc S Collins	Box 501	Cordova AK	424-3606
Raymond J Herfel	Box 174	Cordova AK	424 7550
Mike Webber	Box 257	Cordova AK	424-7471
G. E. Thorne	Box 842	Cordova, AK	424-3309
Edward Veine	Box 34	Cordova Ak.	424-3192
Ronald Gahn	Box 246	Cordova Alaska	424 7582
Michael K Brown	Box 953	CORDOVA	424-7616
William J. Webber Jr.	Box 1146	Cordova	424-7208
W.H. Hagmuller	Box 2325	CORDOVA	424-7420
Jack B. Shaw	Box 891	CORDOVA	424-335[illegible]
Ross Johnson	Box 252	Cordova	424-3315
S.D. Thorne	Box 1192	Cordova	424-7342
R.G. [illegible]	Box 1035	Cordova AK	424-7118
Byron L Jones	Box 544	Cordova, Ak.	424-3652
Robert A Hooker	Box 1034	Cordova AK	424 7387

NAME	ADDRESS	PHONE NO.
Kim D. Johnson	Box 414	Cordova Alaska
Richard Zimmerman	Box 1274	Cordova Alaska
Deborah A. Zimmerman	Box 1274	Cordova Ak
Lars A. Olhoffman	Box 637	Cordova Ak
Dorgleen K. Hite	Box 901	Cordova Alaska 5436
Martin Parsons	Box 573	Cordova Alaska 9957
Martin M. Parsons	Box 573	Cordova Alaska
Wayne Patchett	Box 701	Cordova Ak.
Robert L. Sanford	Box 25	Cordova, Ak.

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
Bonnie Hounde	Box 124	424-3484
Sharon Ermoll	Box 746	424-3697
Ken Kitchen	Box 1255	424-3649
Ruth L. Steen	Box 621	424-3650
Bill Jensen	Box 1150	424-7285
Philip J. Klein	Box 82	
Martin Parsons	Box 573	424-7404
Diana Masolini	Box 1131	424-7328.
D.W. Gulbronson	Box 1216	424-3334
Rip F. Dingham	Box 1057	424-5387
Barbara Jensen	Box 294	
JoAnne Banta	Box 13	424-7264.
Jean McDaniel	Bx 1118	424-7736
Bob Smith	Box 251	424-3520
Chas. Clark	Bx 75	~ 5189
Frank Steen	Bx 610	424-7153
Brian Shaw	Bx 891	424-3359
Wanda Rosenbaum	Box 893	424-5256
Wayne Halverson	Box 975	424-3117
Scott E. Aiken	Box 44	424-3414
Pete Ochs	Box 441	424-3191
Ronald P. Kompkoff Sr	Box 357	424-3577
[illegible]	1635	424-5602
Lucille O'Brien	2206	7640
Gary W. Weinrich	1011	424-7440

NAME	ADDRESS	PHONE NO.
Daniel C. Chappell	Box 2242	424-3105
Robert Ott		424 5171
Brian A Halverson	Box 975	424-3117
John C. Gregory	Box 342 Cordova	424 5292

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
DONALD R. NARRANCE	P.O. Box 320 Cordova	424-3284
Shannon J. Willis	P.O.B. 1521 Cordova	424-5617
Judy Arcudiano	P.O. Box 11 Cordova	424-3284
John C. [illegible]	P.O. Box 342 Cordova	424-5292
Andrew Wilts	PO Box 139 Cordova	424-7354
Stefanie Hendrickson	General Delivery Cordova	424-5697
John M. [illegible]	Cordova	4247371

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
Bob Halverson	Box 975	424-3117
James A. Rankin	Box 1309 Cordova, Ak.	424-3282
Richard [illegible]	Box 801 Cdv. Ak	424-3108
Lynna Merritt	Box 1108 Cdv Ak	424-7271
Mary Beth Albee	Box 32 Cdv Ak	424-3550
Gigle Leary	Box 431 Cordova ak	424-5411
Steve Graves	Box 1453 Cordova, Ak	424-5677
[illegible]	Box 401 Cordova, Ak	424-3680
Robert D. Trani	Box 1059 Cordova, Ak	424-3486
George F. Morris	Box 402 Cordova Ak	424-3635
Patty Graves	Box 1453 Cordova Ak	424-5677
Tom [illegible]	" 1286 Cordova, Ak	424-7349
Wm. Gurske	" 282 " "	424-726[illegible]
Doris J. Anderson	Box 2 Cordova	424-3669
Nancy L. Plucker	Box 80 Cordova	424-5341
Richard B. Plucker	Box 80 Cordova Ak.	424-5341
Jim Webber	Box 934 Cordova Ak.	424-7343
Daniel L. Knocker	Box 685 Cordova, Ak	424-5109

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
[illegible]	Chevron USA, Box 910 Cdv.	424-3264
Frank Foode	P.O. Box 2356 CDV-AK	424-3534
Rick Johnson	P.O. Box 1202 Cdv. AK.	424-7738
[illegible]	P.O. Box 80 Cdv. AK	424-3202
Paul Cole	PO Box 100 CORDOVA AK.	424-3240
Cindy Scott	Box 505 Cordova AK	424-7597
Mary Boyer	Box 413 Cordova ak	424-3188
James R. Ujioka	Box 932 CORDOVA	424-3135
Bob Henrichs	Box 299 Cordova	424-7781
Tim Immer	Box 2208 Cordova	424-5437
Teresa Allen	Box 67 Cordova	424-3130
Dan R. Burch	Box 132 Cordova, AK	424-3422
Sue Laird	Box 1240 Cordova, AK.	424-5597
Ed Shyman	Box 1108 CORDOVA AK.	424-7271
Nic Minill	Box 1108 CORDOVA AK	424-7271
Alan Olson	Box 665 CORDOVA AK	424-3444
[illegible]	Box 1623 CDV, AK 99574	424-3624
Gerald Eckman	Box 245 CDV AK	424-5657
John R. Snyder	Box 1464 CDV AK	" -7448
Mary M Wentworth	Box 895 Cordova	424-3151
Bruce Istout	Box 354 Cordova	424-7654
[illegible]	Bx 656 Cordova	424-3638
[illegible]	Bx 831 Cordova AK	424-3801

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
[illegible]	Box 662	424-7608
Robert B. Grube	Box 2375 308 Sunshine VIEW	
John K Renner	Box 756	424-7563
Leslye Hidalgo	Box 1635	424-5602

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
Mrs Carol J Cummins	P.O. Box 727	424-3679
Mrs Emily Campbell	Box 44	424-3414
[illegible]	Box 727	424-[illegible]
Deandi C	P.O. D 1542	424-3533
Suzanne G. Knearer	Box 685	424-5109
Debbie Denton	Box 490	424-3491

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
Norman R. Roberts	Box 38 Cordova	424-3450
Chris Fenin	Box 2354 Cordova	424-5406
Robert A. Maxwell	Box 717 - Cordova	424-3361
Joyce P. Kuder	Box 353 Cordova	424-3411
Marvin J. Van Den Broek	Box 921 Cordova	424-3486
Robert F. Wiese	Box 477	Cordova AK. 424-727
[illegible]	Box 1472	Cordova AK 424-52
Vern L. Kuder	Box 353	CORDOVA AK 424-3411
[illegible]	Box 747	Cordova ak 1154725
[illegible]	Box 358	Cordova, Alas 424-3674 99574
[illegible] M Glasen	Box 432	Cordova, Alaska 424-3539 995
David L. Glasen	Box 432	Cordova, AK 424-3539 99574
Victor E. Jones	Box 1177	Cordova, AK 424-3518 99574
Sandra C. Van Dyck	Box 473	CORDOVA 5165
Bob Wentworth	Box 1243	" "
Dixie Lambert	Box 17	CORDOVA AK 5146
BE Murray	Box 1111	Cordova, AK 424-7324
Brent Songer	Box 1019	CORDOVA AK 424 3152
Sharon Eccleus	Box 341	Cordova, AK 424-727
Gary L. [illegible]	Box 925	Cordova, AK 424-363
[illegible] Bynum	Box 173	Cordova AK 424-756
[illegible] Kay Carroll	Box 1594	Cordova AK 424-7517
[illegible] Carroll	Box 1594	Cordova, AK 424-7517
Ken Adams	Box 1617	Cordova " 424-347
William O'Brien	Box 2206	Cordova AK

NAME	ADDRESS	PHONE NO.
Mary B. Osborn	Box 1183 Cordova, AK 99574	424-3492
William A. Bailey III	Box 1302 Cordova Ak 99574	424-567
Mary J. Johannessen	Box 1625 Cordova Ak 99574	42452
Jeffrey A Moore	Box 1119 Cordova Ak 99574	424-7581
Jack Bahr	Box 1208 Cordova AK 99574	42422
Ruth Tiedeman	Bx 902 CORDOVA 99574	424-56
[illegible] W Rocci	Box 1312 Cordova Ak 99574	424-5
Jim McDaniel	Box 503 Cordova AK 99574	424-53
Erich Kaitchen	Box 935 Cordova AK 99574	424-746
Steve Copeland	Box 53 Cordova Ak 99574	424-3186
Randy D Barnes	Box 1304 Cordova, AK 99574	

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
Thea Thomas	Box 1566	424-5402
Stanley Samuelson	Box 934	424-7714
Barry A. Pottom	Box 2265	424-7366
Russell Baker	Box 1157	
Ed Swenson	Box 1295	
John K Pennes	Box 756	424-7563
Dawn Lemmer	Box 756	424-7563
Marvin E. Fox	Box 373	424-3288
Carol A. Baw	Box 1622	424-5563
Dolly Sherman	Box 185	424-3288
Chris Dymon	Box 92	424-3165
Liz Friend	Box 1138	424-3442
[illegible]	Box 986	424-5536
Alberta J. Beger	Box 1266	424-3511
Victor R. Guerrero	Box 972	424-5402
Nick Borodkin	Gen. Del. Cordova, Ak	-3674
Debra L. James	Box 2342 Cordova, Ak	424-7472
[illegible]	Box 186 Cordova	424-3540
Larry K. Mayer	Cordova, Ak	424-5153
Mary F. Kompkoff	Box 725 Cordova, Ak	424-7284
Pete Kompkoff	Box 725 Quak	" "
Julia E. McMurt	Box 217 Cordova	
Don McMurt	Box 27 Cordova	
[illegible]	Box 636 Cordova	
Wm [illegible]	Box 57 Cordova Al	

NAME	ADDRESS	PHONE NO.
Steve Kaufman	P.O. Box 323	424 565
Carrol Kompkoff	Box 435, Cordova Ak.	424-35
Newell K. Anderson	Box 1038 Cordova, AK 99574	424-747
Mike Roberts	gen del Cordova	
Willie Hamilton	Box 2235	Mess. 424-5171
Charlotte L. Smith	Box 663	Cordova, AK 99574
Glenda Trickett	Box 1158	Cordova AK 99574
Daniel O. Sleighter	Box 259	Cordova
Daniel L Pettit + Wingham	Box 662	CORDOVA
Jake Goldy	Box 565	None Cordova A
Lyle Kitter	Box 935 424-7464	Cordova AK
Donald Shaw	Box 753	CORDOVA
Carl Burton	" ~~88~~ 81	"
John Shuse @	Box 1026	Cordova, AK 99574
Dale C Hunt	Box 291	Cordova AK 99574
Nancy Morris Cannery Workers, 73 years	424-3635 Box 167	Cdv. AK
Faith L. Barnes	Box 1158	Cordova AK 995
Faye Fahey	Box 752	" " "
Kenneth L. [illegible]	Box 1254	Cordova, AK 99574
Brian Hutchinson	Box 700	Cordova, AK 99574
August Hudeman	Box 65	Cordova AK
Neal Simon	P.O. Box 200	Cordova Alaska
Paul Pappas	Box 365	Cordova AK

PETITION

Because the economy of Cordova is entirely based on commercial fishing on the Copper River and Prince William Sound, we the undersigned citizens of Cordova would like to respectfully request the Alaska Legislators to act immediately on House Bill #288 and Senate Bill #231.

****

NAME	ADDRESS	PHONE NO.
Steve Rooney	Box 2349 Cordova	424-3324
x [signature]	Box 31 Cordova	424-5393

Carol Emmett
P.O. Box 1472
Cordova AK 99574

Dear Rep. Herrmann
I am writing to support speedy passage of Senate Bill #231 and House Bill #283 to save the Copper River Salmon fishery.

As a resident and employee in the city of Cordova I have become very aware of the large contribution the P.W.S. gillnetters make to the economic base here.
I don't believe Cordova can survive without healthy fisheries.

I believe that the State Fish and Game Board have done a pretty good job, if preservation and growing numbers of Salmon are any indications, and a return to the system that has worked well is the best solution.

As an Alaskan I favor subsistence for those who need it. Has anyone considered an income ceiling for subsistence permit holders?

We are all anxiously watching the
outcome of this battle as the future
of so many things in the balance.

Sincerely
Carl Smith
Portland
Indiana

My name is Ray Estes. I was born and raised in Cordova.

I believe that our renewable resources can be used equally, by all of the people of Alaska. This can only be done if the Board of Fish & Game are allowed to do the job they were hired for.

As a lifelong fisherman, I can see no feasible way to allow any sensible management under present conditions.

Allowing unlimited harvesting means the end of our fisheries - and eventually, our salmon. This is our reality, as things stand now.

Please pass SB 231 and House bill 388. Without it, Cordova will just about cease to exist.

Thank you
Ray Estes
Box 1307
Cordova, Alaska

MAR 25 1985

March 21, 1985

The Honorable Adeheid Herrmann, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811
Dear Respresentative Herrmann,

We urge your support of HB #288 which will help save our Copper River fishery.

This request is not from a casual concern, but we are dependent on the salmon fisheries for our livelihood.

Sincerely yours,
Chris D. Billings
Chris D. Billings
P.O. Box 219
Cordova Ak. 99574

"In Support of Legislation to Maintain Orderly Harvest of Fish and Game Resources."

WHEREAS, the orderly harvest of fish and game resources is essential to the general welfare of rural Alaskans who depend on these resources for a large part of their livelihood; and

WHEREAS, the Alaska Supreme Court, in Madison, et al. vs. the Alaska Department of Fish and Game, struck down state regulations designed to determine eligibility for subsistence as being inconsistent with state law and legislative intent; and

WHEREAS, the decision would have the effect of allowing massive increases in the number of subsistence permits which may be issued; and

WHEREAS, this ruling also has the effect of preventing orderly harvest of subsistence fish and game resources because it diminishes the authority delegated to the Alaska State Board of Fisheries to establish criteria for the eligibility of users; and

WHEREAS, the ruling broadens the eligibility for subsistence permits to include all residents of the state, because it focuses on the place where customary and traditional uses have occurred, rather than the people who conduct them; and

WHEREAS, relaxing the eligibility requirements may necessitate emergency closure of commercial and sport harvests due to the influx of "court-created" subsistence users; and

WHEREAS, the court recognized that the legislature intended to protect subsistence rights in the 1978 statute; and

WHEREAS, the court, by broadening subsistence access so dramatically, jeopardizes the preference for those who depend most directly on the resource: rural residents of Alaska; and

WHEREAS, Governor Sheffield has introduced legislation that would restore order to the harvest of fish and game by more strictly defining the personal use and subsistence use of fish and game; and

WHEREAS, the subsistence use definitions must include the use of the words "rural" and "residents" in order to protect limited resources from virtually unlimited access by urban residents who have never depended upon fish and game resources for maintaining their way of life.

NOW THEREFORE BE IT RESOLVED,

that the Board of Directors of the Rural Alaska Community Action Program, Inc., endorses Senate Bill No. 231, "An Act Relating to the Taking of Fish and Game for Subsistence and Personal Use," and

BE IT FURTHER RESOLVED,

that the Alaska State Legislature is urged to act immediately ~~expeditiously~~ on this legislation, in order to maintain harmonious relations among Alaska fish and game user groups.

ETC.

MAR 27 1985

3-21-85

I am written to urge you to pass house bill [illegible] and give back to the board of [illegible] the [illegible] to manage [illegible] for the [illegible] groups.

Thank you

[illegible]

[illegible]

[illegible]

LYNN W. POTTER
P.O. BOX 1472
CORDOVA, AK 99574

REPRESENTATIVE HERRMANN

THIS LETTER IS IN SUPPORT OF SENATE BILL #231 AND HOUSE BILL #283 WHICH WILL SAVE THE COPPER RIVER FISHERY.

I MOVED TO CORDOVA TOO LATE TO BE ELIGIBLE FOR A LIMITED ENTRY PERMIT ON THE POINT SYSTEM. FOR THE PAST 10 YEARS I HAVE FISHED FULL-TIME AS A DECKHAND ON CRAB & SALMON BOATS WHILE ALSO RUNNING MY SMALL BOAT ON OTHER HARVESTS.

AS OF LAST YEAR MY HOUSE WAS NEARLY PAID FOR AND I COULD INVEST IN A P.W.S GILLNET PERMIT (VIA A STATE LOAN). IF I AM NOT ALLOWED TO FISH THE COPPER RIVER RED SALMON TEN YEARS OF EFFORT, IN ACCORDANCE WITH LEGISLATIVE POLICY, WILL HAVE BEEN WASTED.

CRAB & OTHER FISHERIES AT THIS POINT ARE NOT LUCRATIVE ENOUGH TO MAKE PAYMENTS. WITHOUT THE GILLNET FISHERY I WOULD BE FORCED TO LEAVE CORDOVA.

AFTER WORKING FOR 10 YEARS, IN COMPLIANCE

WORKED FOR THROWN OUT BY LEGISLATIVE ACTION WOULD [redacted] LEAVE ME WITH A DEEP RESENTMENT A LOSS OF RESPECT FOR THOSE LAWS I HAVE TRIED TO OBEY AND RESPECT.

SINCERELY

LYNN POTTER - COMM. FISHERMAN

CORDOVA.

MAR 28 1985

Dear Sir 3-21-85

I am writing to urge you to Pass House Bill #288 and give the Board of Fisheries the flexability to manage the resource for the user groups.

Mark Gall

John Gall

Box 1179

Cordova, AK 99574

MAR 2 [illegible] 1988

CORDOVA DISTRICT FISHERMEN UNITED

P.O. Box 939

Cordova, Alaska 99574

(907) 424-3477

Represenative Adelheid Herrmann,
Co Chairman, Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska

Represenative Herrmann,

I am writing to urge you to pass House Bill #288 as quickly as possible. It is most urgent that the flexibility to manage the resources is returned to the Board of Fisheries this year. The Copper River will be hard to manage if the Madison decision stands the way it is now.

A lot of hard work has been accomplished by Fish and Game, PWSAC and the Advisory Board to come up with a management plan for the Copper River. This plan did work and did provide for all the user groups on the Copper River in the form of personal use and Subsistence. That balance to manage and maintain a small sockeye fishing time will further burden the financial stability of Cordova as a whole.

Thank you for your cooperation on this important matter.

Sincerly,

Jerry McCune

Jerry McCune
Vice President
CDFU

JM/ru

cc Richard Shultz
F. Day Wallis
Bette Cato
Roger Jenkens
Mike W. Miller
Drue Pearce
John Sund
Dave Thompson

Box 1210 602 Railroad Avenue
Cordova, Alaska 99574
Phone: (907) 424-3237
or 424-3238

"The Friendly City"

March 22, 1985

Leonard V. Pingatore
Mayor

Richard J. Leland
City Manager

Donna M. Sherby
City Clerk

Council Members
Joe Gunderson
Phyllis Day
Oliver Osborn
Lew L. Cochran
R. L. Van Brocklin
John Wheeler

Chairman, House Resources Committee
State of Alaska

On March 13, 1985, Governor Sheffield introduced Senate Bill 231 and House Bill 288 relating to the taking of fish and game for subsistence and personal use. As you know, this was necessitated by the Supreme Court's findings in the matter of Madison et al versus the Alaska Department of Fish and Game and the Alaska Board of Fisheries. The intent of the proposed legislation is to provide definition and clarification to the Board of Fisheries' authority to manage Alaska's most valuable renewable resource.

We, in Cordova, have reviewed the proposed legislation with representatives of the commercial and sport fishing industry as well as those who participate in the personal use fisheries. While it is clear that additional work will be necessary to define the various fisheries and the role of the Board of Fisheries over the long term, we feel it is imperative that the Legislature enact the proposed legislation immediately to assure a fishing season in 1985.

On behalf of colleagues and the City Council and all Cordovans who depend on a well-managed fishery, I strongly urge your immediate passage of Senate Bill 231 and House Bill 288.

Sincerely,

LEONARD V. PINGATORE
Mayor

CITY OF CORDOVA, ALASKA

RESOLUTION 85-9

A RESOLUTION OF THE CITY OF CORDOVA, ALASKA URGING IMMEDIATE PASSAGE OF SENATE BILL 231 AND HOUSE BILL 288, RELATING TO SUBSISTENCE FISHERIES, BY THE ALASKA STATE LEGISLATURE.

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in non-subsistence uses, and

WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and non-subsistence fishery issues, and

WHEREAS, the economy of the City of Cordova is critically dependent on the Copper River fishery, as is the State of Alaska dependent on the revenue and employment resulting from the commercial and sport fisheries, and

WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource,

NOW THEREFORE BE IT RESOLVED, that the Mayor and City Council of Cordova, Alaska, recommend and urge the immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

PASSED AND APPROVED THIS 20th DAY OF March, 1985.

Leonard J. Pinkerton
Mayor

City Clerk

MAR 27 198

March 25

Dear Mr. Herrmann,

I'm writting to urge you to please pass House Bill 288 and give to the Board of Fisheries the flexibility to manage the resource for the user groups.

Thank You.

Mike McKenzie

Dear Sir 3-21-85

I am writting, urge you to Pass House Bill # 288 and give back to the Board of Fisheries the flexability to manage the resource for the user groups.

Thank you

John Johnson

LETTERS IN OPPOSITION TO

HOUSE BILL 288

THE CHITINA DIPNETTERS ASSN.
1002 PIONEER ROAD
FAIRBANKS, ALASKA 99701



March 9, 1985

Rep. Richard Shultz
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Rep. Shultz:

In a teleconference Tuesday night 3-5-85 I along with Stan Bloom, Dick Burley and Marry Bishop all testified on the Alaska Supreme Court Opinion on subsistence.

The Chitina Dipnetter's Assn. agree with this opinion and want the law to stay as it is and we do not want to be disfranchise again.

I received a phone call from Juneau the next day (3-6-85) in which it was stated that there was some confusion after the teleconference as why we wanted the law to be changed. We do not want the law to be changed we support the Supreme Court Opinion. If there is a bill from the Governer or other legislatures to change this Opinion the Chitina Dipnetter's Assn. would like for you to do whatever you can to defeat there efforts.

If the interior delegation is positive the other side may have a chance to get a bill passed then you should work for a compromise to make sure that RURAL, LOCAL RESIDENCY OR COMMUNITY are not included and to try an identify "CUSTOMARY AND TRADITIONAL" in order to cut down on users.

If any changes are going to be made there will need to be public hearings on all changes. The main thing is that you go slow and get all of the input you can and make a good and constitutional law.

In the Daily News-Miner this morning Rep. Peter Goll stated that "Alaskans voted overwhelmingly in 1982 to keep the subsistence priority for rural Alaskans". This is incorrect the vote was to repeal the State of Alaska Subsistence Law and the word RURAL is not in the State Law.

Again I say if there has to be a change go very slowly.

Sincerely

Byron W. Haley

March 23/85

Tina M. Simmons
Box 80303
College, Ak 99708

Representative Shultz
Porch V
Juneau, Alaska 99811

Dear Representative Shultz,

I am opposed to Governor Sheffield's subsistence law

Sincerely

Tina Simmons

Tina Simmons

3/23/85

Representative Shultz
Pouch V
Juneau Ak 99811

Dear Representative Shultz

I am in shock that the Subsistance law could be passed as is. Please remit the issue to more public hearings. The future of my children's Alaska is at stake. Thanks

Michael L Ross
292 Narrow View lane
Fairbanks, Alaska 99701

P.S. Don't let it pass.

To: House Resources Committee

From: Mary Bishop
1555 Gus's Grind
Fairbanks, AK 99701 Phone: 455-6151

Date: March 26, 1985

Re: HB 288, Subsistence priority

Yesterday, in Anchorage, I attended the Joint Boards of Fisheries and Game hearing on the Madison case. During the hearing the winning lawyers on the Madison case offered their advise--free of charge--to the boards. I fear the boards may not accept the offer.

These two lawyers, Martin Freidman and Chuck Robinson, have a very different interpretation of the subsisence priority law than does the AG office. Using that interpretation Freidman and Robinson have not only won the Madison case before the state's supreme court. Evidently they have also won other cases against the state regarding this issue. Yet, for some reason, the administration continues to listen only to the AG office and not to the "winners".

I urge your committee to receive substantial input from Mr. Friedman and Mr. Robinson before taking any action on HB 288. It would be nice if they could make a 10 minute presentation at the April 8 teleconference so that all of us who are interested in the issue might benefit from their input.

After speaking personally to Mr. Freidman, I am convinced that the impact upon Cordova commercial fishing interests has been misrepresented by the AG office. The boards may, right now, regulate and restrict total subsistence harvest of a resource to the customary and traditional level of that subsistence use. For example, if the traditional level of subsistence harvest at Chitina is 60,000 sockeye, then any fish available for harvest above that 60,000 quota can be allocated to recreation, sport or commercial users in any manner the board desires.

This is not the same as saying all Chitina subsistence users get the traditional "bag limit" of 300 fish. Rather, the traditional total harvest level (60,000) must be maintained. As the court opinion makes clear on both pages 17 and 19, the priority goes for the customary and traditional use, not for the user.

The priority language as written in AS 16.05.251(b) and .255(b) needs to be rewritten and the intent of the legislature made clear. The original bill was passed in haste back in 1978. The language is vague and confusing; I am concerned about parts of the legislative history. We don't need to do this right now.

The Boards of Fisheries and Game are dealing with an incredibly difficult situation--not made easier by the fact that virtually all of them are newly appointed, with the notable exception of Sydney Huntington.

A problem exists--not necessarily the one described by the AG office. Passing the Governor's bill is no solution. It would merely create more tension among state residents.

Mary Bishop

REP. JOHN G. (JACK) FULLER

DISTRICT 23
ALAKANUK
BREVIG MISSION
CHEVAK
DIOMEDE
ELIM
EMMONAK
GAMBELL
GOLOVIN
HOOPER BAY
KOTLIK
KOYUK
NOME
SAVOONGA
SCAMMON BAY
SHAKTOOLIK
SHELDON'S POINT
SHISHMAREF
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

CHAIRMAN
BUSH CAUCUS
LEGISLATIVE COUNCIL
ADMINISTRATIVE REGULATION
REVIEW COMMITTEE

MEMBER
POLICY COMMITTEE
SPECIAL COMMITTEE ON LOANS
RULES COMMITTEE
COMMITTEE ON COMMITTEES

Alaska House of Representatives

MEMORANDUM

DATE: March 25, 1985

TO: Bush Caucus Members

FROM: Rep. Jack Fuller
Chairman

SUBJECT: Kenaitze Tribe Resolution - Subsistence

Cora Sacaloff of Kenai asked that I distribute the attached resolution to all Bush Caucus members.

HOME
P.O. BOX 689
NOME, ALASKA 99762

WHILE IN JUNEAU
POUCH V

KENAITZE INDIAN TRIBE
Resolution 85-6

RESOLUTION IN OPPOSITION TO HOUSE BILL 288 AND SENATE BILL 231

WHEREAS, the Kenaitze Indian Tribe is a federally recognized Indian Tribe which was reorganized in August of 1971 under the statutes of the Indian Reorganization Act of 1934 as amended for Alaska in 1936; and,

WHEREAS, the Kenaitze Indian Tribe represents and promotes the security, social welfare as well as the interests and common bond of association of its 500 Tribal members; and,

WHEREAS, it is the conviction of the Kenaitze Indian Tribe that the preservation and fostering of a customary and traditional subsistence lifestyle for its members is the primary means of promoting the interests of its members; and,

WHEREAS, the State of Alaska's Subsistence Law (Chapter 151 SLA 1978) recognizes that the fish and game resources of the state "... are not inexaustible and that preferences must be established among beneficial users of the resources..."; likewise that: "... it is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources, and to recognize the needs, customs, and traditions of Alaska residents" (Sec. 1, Chapter 151); and,

WHEREAS, it is the Supreme Court of Alaska's opinion that the Board of Fisheries interpretation of "customary and traditional" uses (§ 703 HR 39) in the 1978 Subsistence Law is inconsistent with the legislative intent to provide guidelines for the protection of subsistence fishing (5 AAC 01.597); and,

WHEREAS, 5 AAC 01.597 was designed to protect subsistence uses; and,

WHEREAS, the Board of Fisheries has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect; and,

WHEREAS, House Bill 288 and Senate Bill 231 - an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date" - was introduced at the request of Governor Sheffield; and,

WHEREAS, House Bill 288 and Senate Bill 231 intends to amend Section 3 AS 16.05.940(23) to read: (23) " 'subsistence uses' means the customary and traditional uses by rural [IN] Alaska residents of wild, renewable resources for direct personal or family consumption..."; and,

WHEREAS, Section 4 AS 16.05.940 is amended by adding a new paragraph to read: " (28) 'personal use fishing' means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter..."; and,

WHEREAS, amending Section 3 (AS 16.05.940(23) to regulate "subsistence uses" to rural Alaska residents only and creating "personal use" fishery for urban residents is viewed as an attempt to divide Aalskans and to legalize something that has been illegal in the past;

NOW THEREFORE BE IT RESOLVED BY THE EXECUTIVE COMMITTEE/TRIBAL COUNCIL OF THE KENAITZE INDIAN TRIBE at a meeting held on March 18, 1985 that the Tribe goes on record as being opposed to House Bill 288 and Senate Bill 231 introduced at the request of the Governor;

BE IT FURTHER RESOLVED that the Tribe urges all Senators and Representatives to carefully review the legality of House Bill 288 and Senate Bill 231 before making this important decision;

BE IT FINALLY RESOLVED that the Tribe will request federal intervention if further attempts to circumvent Supreme Court rulings are taken.

CERTIFICATION

This Resolution 85-6 was duly adopted by the Executive Committee/Tribal Council of the Kenaitze Indian Tribe at a meeting held on March 18, 1985 by a vote of 6 for and 0 against with 1 absent and 0 abstaining.

Ms. Clara Swan
Chairperson, Kenaitze Indian Tribe

Secretary, Kenaitze Indian Tribe

OTHER LETTERS AND COMMENTS

other

3/23/85

Representative Shultz
Pouch V
Juneau Ak 99811

Dear Representative Shultz

I am in shock that the Subsistance law could be passed as is. Please remit the issue to more public hearings. The future of my children's Alaska is at stake. Thanks

Michael L Ross
292 Narrow View Lane
Fairbanks, Alaska 99701

P.S. Don't let it pass.

C.E. Seidl
Myrt Manor
Koliganek, Alaska 99576

Representative Adelheid Herrmann
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

March 29, 1985

Dear Adelheid;

The recent Madison decision concerning [redacted] concerns me very much, as I am sure it does you and Fred Zharoff. Governor Sheffield's initive to reinstate subsistence is very encouraging.

The purpose of this letter is to obtain information from you and your staff. Would you please supply me with a copy of the Madison decision, or direct me to a source for such a copy? Would you please identify just who are the individuals in the Senate Republican leadership, that are opposed to the Governor's initive to reinstate subsistence, as I wish to correspond with those who are opposed.

The basic argument in favor of subsistence rights that I expect to be hearing from proponents of subsistence, will be based on "traditional use". While that argument will be valid, and I do support the "traditional use" concept, I feel that a more pragmatic argument to those who are moderate in their viewpoints or maybe even downright opposed to subsistence, will be based on my own particular economic situation, that I am sure is shared by other bush residents. My argument in favor of subsistence rights is based on the fact that we live in a semi-cash/subsistence economy. Further that the utilization of subsistance resources to offset the limited cash income is a major factor in keeping me off of many social programs such as, food stamps, free school lunch, energy assistance, and welfare. Why would any tax paying citizen want to support me with their tax dollars, when I can support myself between limited cash income and subsistence?

On the subject of the Alaska National Guard, everyone who supported the effort is to be commended. Members of the Guard have done a lot toward local establishment of a unit. At this site we have at least nineteen interested applicants, there are more at other Nushagak River sites. On February fourteenth, officials of the

Alaska National Guard arrived here in Noligonek and conducted an assessment meeting and presentation, with members of both the Village Council and Noligonek Natives Ltd. At that meeting the Guard officials instructed village officials in a few very basic and straightforward steps that are required for local establishment of an Alaska National Guard unit. Since that February fourteenth meeting the initive for the establishment of a local Guard unit, has been with the Village Council and Noligonek Natives, Ltd. Your support in the National Guard project, has been very appreciated, thank you.

Sincerely,

C.T. Seidl

C.T. Seidl

Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

March 21, 1985

Representative Richard Shultz
Pouch V
Juneau, Ak 99811

Dear Dick,
The recent Alaska Supreme Court decision (Madison Case) has resulted in a potentially chaotic and explosive situation. It leaves nearly all of Alaska's people as "priority subsistence users" under the subsistence law and it precludes restricting these subsistence users until sport and commercial fishing is closed down. Although on the outside this may appear to be fair, it creates an unmanageable mess of the Dept of Fish and Game and renders the Board of Fisheries nearly useless. This could be disasterous to the sportfishing, commercial and hunting industries. Additionally, some rivers cannot stand an efficient harvesting method without a threat to the fish resource. The current legislation proposed by the Administration will not resolve these issues and, as a permanent bill, will harm sport and commercial fisheries.

The citizens of Alaska did not vote or participate in the designation of "rural" Alaska as the only ones qualified for priority subsistence, nor is the definition of "rural" or "subsistence priority" clearly understood. These are issues that need full public discussion prior to considering a permenent change to the subsistence law. Therefore, as an interim measure, the Alaska Sportfishing Association calls for immediate action to:

1. Enact legislation this session with a termination or sunset clause expiration date of December 31, 1985, that will enable the Dept of Fish and Game and particularly the Boards of Fish and Game to limit subsistence fishing in the same manner as they were before the Madison decision.

2, Immediately take action that will insure that prior to the 1986 legislative session the priority subsistence issue is fully aired at public hearings with this input assembled and given to the 1986 legislature.

3. During the 1986 legislative session, thoroughly debate the subsistence priority statute and bring about a long term, fair solution for resource users in all areas of the state.

One possible means of identifying the Boards authority in a temporary law for this year would be to include the eight points utilized by the Board.

We believe that a true subsistence priority need does exist for a very few long time residents in very remote areas. Putting any individual in a position where he has priority of a resource, if even legal, over all other people in Alaska, and the world for that matter, is a law and priority that must be severely restricted.

Bob Hunter
Robert L. Hunter
Alaska Sportfishing Association

SUBSISTENCE

With the recent Supreme Court decision, the State now has the direction and opportunity to assure to All Alaskans the equal consideration to take fish and game for their own personal consumptive use. This decision supports the Constitution's provision that "Wherever occuring in their natural state fish, wildlife and waters are reserved to the people for common use." The court stressed that common 'use' and not priority 'users was the main intent and should be the effect of the subsistence regulations. They found that all consumptive users, and not just rural residents, are eligible priority subsistence users.

Government and its laws should apply even handedly to All Alaskans and make sure that whatever criteria is used is not unjustly discrimintory in intent or effect. The Constitution does not on a whole and should not have severe restrictive provisions. This same need should be observed by any legislation and should be used to make sure that its clear intent is to protect and insure the equal and just consideration of All Alaskans.

But the same politics that supported the illegal discrimintory subsistence regulations are at work to speedily fix their court failure. Their main weapon, now as in the past, is their threats aimed at the majority of Alaskans. One such threat is that the over 200,000 sportfishermen will be severly impacted by the Supreme Court decision. The court, in fact, said that all personal consumptive user were to be given equal consideration. As most so-called sport fishermen eat the fish that they catch, any priority subsistence use must include them. And those 'pure sport fishermen' who catch and release are not harvesters of the resource, therefore have a negligible impact. With an annual harvest of well over 100,000,000 salmon, All Alaskan should be entitled to the equal opportunity to take fish for their own dinner table.

Another political threat used is that the federal government will deny our State the right to manage our fish and game unless the subsistence priority is based on rural residency. When the Feds mandate that the resource must be managed as they say, the State has in fact already lost the right of management authority. This restriction resulted from State politics that requested and supports such residency discrimination. When Ron Sommerville, Alaska's representative during early d-2 / ANILCA, opposed this federal mandated discrimination he was removed from his Washinton D.C. post. Governor Hammond admitted in a public meeting of the Boards of Fish and Game that Sommerville was removed because of Native pressure. His replacement, John Katz, has compromised the Alaskan public's constitutional rights on this and many other issues. For the State not to politically and judicialy oppose this discrimintory action, which specifically denies equality to all residents of Anchorage, Fairbanks, Juneau and Ketchikan, shows a planed sell out of our rights. This plan includes the continued lobbying action of Larry Spengler, Attorney General office, supporting a priority subsistence use of Alaska's fish and game to be as discrimintory and restrictive as has been politcally motivated. Alaska would be better served if our Attorney General would be motivated by a responsibility to assure that all residents are not discrimintorly restricted in their rights.

The history of Governor Sheffield's stern actions has been a well known threat to any state employee who would question these unconstitutional subsistence regulations. He fired Fish and Game Commissioner Ron Skoog and Game Division Chief Ron Sommerville because of their private personal stands against these regulations. And he then requested the resignations of all Board of Fish and Game members when they began questioning the balatant directions ordered by Larry Spengler. It is time that All Alaskans are again "equal" under the law, no matter where they reside, and that such equality is promoted by our State and is not necessitated by continued court challenges by its residents.

Dale Bondurant

Dale Bondurant
SR 1 Box 2516
Chugiak, Alaska 99567

ALASKA OUTDOOR COUNCIL, INC.
3780 McGINNIS DR. JUNEAU, AK 99801
(907) 789-3450

March 5, 1985

PRESIDENT
Rupert Andrews
9416 Long Run Drive
Juneau, AK 99801
(907) 789-7422

REGIONAL VICE-PRESIDENT
Lyle Carlson
Box 2741
Fairbanks, AK 99707
(907) 452-3498

REGIONAL VICE-PRESIDENT
Robert Rausch
P.O. Box 2662
Juneau, AK 99803
(907) 789-3764

REGIONAL VICE-PRESIDENT
Ron Swanson
417 Katllan
Eagle River, AK 99577
(907) 694-9564

TREASURER
Ed Grasser
Box 1350
Palmer, AK 99645
(907) 745-3772

SECRETARY
Sam Harbo
P.O. Box 80522
Fairbanks, AK 99708
(907) 452-7815

DIRECTOR-AT-LARGE
Warren Hoflich
6901 Tall Spruce Dr.
Anchorage, AK 99502
(907) 243 4790

Representative Richard Shultz
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: Possible Amendment to 1978 Subsistence Law

Dear Representative Shultz:

This letter is written because our Executive Director was recently advised that there may be an effort to amend the 1978 subsistence law and that effort may be tailored to accomplish those amendments with little or no public hearings.

We understand that if an effort to amend the law is offered this year, it will be to permit the Alaska Boards of Fish and Game to discriminate against individuals who reside in a community defined as "urban".

The purpose of this letter is to make it as clear as possible that we believe the 1978 subsistence law should not be amended in the absence of committee hearings which are open to the public, including hearings which involve teleconferences. In other words, public participation should be permitted.

Sincerely,

LYLE R. CARLSON
Vice-President Interior Region

ok

Kenai Peninsula Fishermen's Cooperative Assn.

Political and Legal Action Committee

Box 546, Soldotna, Alaska 99669

Phone: 262-2492



March 18, 1985

Representative Richard Shultz
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Shultz:

We are writing to you to ask your support on Senate Bill 37 and its corresponding House Bill 235. It is an act relating to management plans and regulations adopted by the Board of Fisheries. We have enclosed a Request for Support for this piece and legislation and hope that you will take time to read it.

We are especially concerned that we make it clear to you that we do not support United Fishermen Of Alaska in their position on the Governor's piece of subsistence legislation. In a March 8 letter to past UFA members, support was sought for the this legislation. It was stated that "efforts will require a rigorous and expensive lobbying effort, and even then the outcome will be uncertain because of the powerful seats held in the Legislature by the Fairbanks delegation." These are NOT our sentiments as commercial fishermen who fish the waters of Cook Inlet. In years past, we played a very active role as members of UFA with Cook Inlet commercial fishermen comprising a large number of their membership. When we called upon UFA to assist us with problems that we faced in Cook Inlet, they did not want to become involved. When we needed their help, they were not there to help. As a result of these types of things, we withdrew our support from the organization, but, unfortunately, UFA stills thinks that they have the authority to speak for every commercial fisherman in our state. There have been many issues that UFA has supported in recent years that we cannot support. Please do not think that they speak our minds when they speak on commercial fishing issues.

Our legislation is not a special interest bill. It is designed to benefit all user groups of our very valuable resource of fish. We believe that it would allow the Alaska Board of Fisheries to operate apart from the political pressures and whims of specie' interest groups that they are at present so susceptible to. It is designed to have our resource managed on a biological basis which will insure its future for generations to come. It is not an "exclusive right" bill and we are not endeavouring to remove anyone from their opportunity to have a part in the harvest of this resource.

We appreciate your time and consideration and hope that you will support us on our bill.

Sincerely,

Cheryl Sutton(Mrs.)
Committee Coordinator
Political and Legal Action Committee

CS:cp

Enclosures

Alaska Fish and Wildlife Federation and Outdoor Council

and

Alaska Fish and Wildlife Conservation Fund
3780 McGinnis Dr.
Juneau, Ak. 99801

SPECIAL NOTICE

Alaska Supreme Court Subsistence Ruling

The Alaska Supreme Court Friday February 22, 1985 struck down a Board of Fisheries regulation designed to identify eligibility for subsistence fishing in the Cook Inlet region. Under the regulation, certain residents of the Kenai coastline and an area near Homer were forbidden to fish for subsistence purposes.

The Supreme Court, in a 5-0 ruling, held that the board erred in denying subsistence permits to certain residents who had fished with set nets for personal and family use for many years. The Supreme Court found that the board's regulation on subsistence uses was inconsistent with Alaska law because the regulation was too restrictive.

The opinion stated: "Under a statute designed to protect subsistence uses, the board has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect."

The ruling by the Supreme Court was not a Constitutional decision but rather a statutory ruling. The Court decision went far beyond just eliminating the particular regulation, however.

The Court opinion emphasized the following points:

1. The State subsistence law does not allow the Boards of Fisheries and Game to distinguish between rural and urban subsistence fish and game users.

2. The State law does not allow the Boards to restrict initial subsistence users to a specific community.

3. The Court ruled that the ten point criteria used by the Board of Fisheries was too restrictive and was thrown out.

4. The State law requires the Boards to adopt regulations permitting "subsistence uses".

5. A major point of departure from the State's previous position was the ruling by the Court that <u>all</u> sport and

7. The Alaska Outdoor Council annual meeting is scheduled for Juneau from April 11-14, 1985 where subsistence and other critical issues are scheduled for deliberation. We request that no immediate action be taken until after the Council's annual meeting.

8. We agree that some resource management problems could exist this year if the administration chooses to direct the Fisheries and Game Boards to adopt sweeping regulatory changes. It is our opinion that this type of action isn't necessary nor equitable to the general public.

9. If however, it is determined, after full deliberations by the legislature, that immediate temporary corrective measures are essential, we propose that the legislature consider passing a law creating a one year moratorium or "freeze" on the subsistence law which will give them, the public and the Subsistence Task Force one full year to appropriately tackle the entire issue.

3-23-85

Dear Rep. Richard Shultz

Please hold public hearings in Fbks on the subsistance law before acting on it!

Thank you

Tobi Petersen

1153 Donna dr
Fbks, Ak 99701

THEODORE J. ALMASY
Pioneer "Alaskan Woodsman" Guide-Outfitter
McGrath, Alaska 99627
The Tikchik Lakes – The Kuskokwim – The Alaska Range
Trophy Fishing • Trophy Hunting • Recreation & Exploration
Dec. 15, 1984

State of Alaska
Boards of Fisheries & Game
Box 3-2000
Juneau, Alaska 99801

Subject: Regulation Proposal Item 4. (extra sheets as required)

DEFINITION: Subsistance in Alaska today is simply all or that portion of an individual or family unit's living or livelihood that is derived and obtained from land and sea by self-employment through use, utilization and development of available natural resources by Alaska's permanent inhabitants (without reguard to race or ancestrial heiredity); and, including, but not limited to: agriculture, mining and forest products along with personal harvest of fur, fish and game.

IN SHORT: Self-support by direct acquisition and personal processing and use of Alaska's land and sea natural resources to provide all or most of one's living or livelihood, and with cash flow not involving wages and salaries from this self-employment.

* * * * * * * * *

LEGAL BASIS: "GRANDFATHER RIGHTS" established by present day Alaskan inhabitants by and through historic personal use. These rights are not limited to any particular race, but rather belong to an ethnic group in a mixed and integrated society. The U.S. Government, after all, invited foreign immigration, permanent settlement, and encouraged and fostered economic development by these pioneers through use, utilization and development of Alaska's natural resources for more that 100 years; and, while she may have changed the rules and policies with reference to recent and current immigrants - she (and her Colonial Arm - the so-called State of Alaska) are legally duty and honor bound to keep promises and committments made in the past. Thus, after some 250 years (beginning with the Russian occupation) of foreign immigration, permanent settlement, and racial integration and assimilation both an ethnic group has developed and a way of life evolved in which individual rights cannot be decided nor judged based upon racial nor ancestrial heiredity; but must be treated on the basis of members of an ethnic society. We are now aware of many flaws in thw Alaska Native Claims Settlement Act, and a major flaw yet to be contested in the courts is based on the Civil Rights of those Alaska Nationals forcefully segregated and disenfranchised because of our race, and thus denied our "equal rights".

IN SHORT: "GRANDFATHER RIGHTS".

* * * * * * * * * *

* * * * * * * * * * *

DETERMINATION of WHO and WHOM QUALIFIES

* * * * * * * * * * *

WHO IS QUALIFIED? : All Legal Residents of Alaska whose home and permanent residence is outside of the limits of first and second class cities tied into the integrated highway system and Marine Highway Systems, and who as individuals or family units qualify as subsistance users under the "DEFINITION" and "LEGAL BASIS" as stated.

WHO IS EXCLUDED ? : All persons whose home and permanent residence is located within the city limits of any First or Second Class City tied into the integrated highway or Marine Highway systems; residents of government (federal or state) owned housing located upon government owned or reserved lands; and, all U.S. Citizen immigrants who may hold Alaska Resident Status under Law, but whom are themselves in Alaska under "labor" or "tour of duty" contracts or agreements on full time wages and/or salaries; and, who are granted and accorded special benefits, privileges, and tax exemptions including "cost of living allowances" by their employer and governments "as an condition of employment" that are not equally granted nor accorded nor available to local permanent inhabitants of Alaska. Such "Residents" cannot claim Subsistance Rights in Alaska.

****

IMPLIMENTATION

****

1. (a) For the purpose of implimenting this Section: Each full Game Unit (as they currently exist including all divisions and sub-units) shall henceforth be declared to be also a Subsistance Unit and Unit of Permanent Residence for all legal (one year) Alaska Residents who maintain their home and permanent Post Office address within such Unit's boundaries.

(b) Both Subsistance Rights and Resident Hunting and Fishing Rights (without payment of trophy fees) for all Resident Alaskans shall be limited to (1) Unit only - the Unit of Permanent Residency; and, in order to maintain these rights a party must reside year around in Alaska and not less than six (6) months per year within the boundaries of the Unit for which he claims these rights.

2. All Subsistance Users and legal Residents hunting and fishing outside of their Unit of Permanent Residence shall be deemed to be Trophy Hunting and Sports Fishing and subject to the prevailing trophy fees, but exempt (as Residents) from the Registered Guide Requirement.

3. Trapping is hereby designated as a subsistance right, and trapping is closed except to Subsistance Users.

4. Any Alaskan holding a "Permanent Hunting, Fishing & Trapping License is automatically declared to be a subsistance user and hold Subsistance Rights.

5. That where the taking of certain game animals is restricted by permit that subsistance users within said Game Unit shall have first preference rights to these permits with the general public taking the excess.

Implimentation Continued:

6. Nothing in this or these regulations is intended nor shall prevent immigrant settlers from acquiring Subsistance Rights as an Earned Right so long as they meet the requirements.

* * * * * * * * * * * *

END

* * * * * * * * * * * * *

by Theodore J. Almasy

Theodore J. Almasy

ALASKAN ALPINE CLUB
3641 SANDVIK
FAIRBANKS
ALASKA
99701



LEADERS IN PROTECTING THE HERITAGE OF AMERICAN MOUNTAINEERING FREEDOM

23 March 1985

Representative Richard Shultz
Pouch V
Juneau, Alaska 99811

Subject: Subsistence

Dear Representative Shultz,

Reference subsistence: The Alaskan Alpine Club is appalled by the nature and degree of fallacious information presented to legislators by Governor Sheffield's appointees.

These are the same tactics used by the Native Corporations/ Sierra Club to gain the blackmail Federal subsistence law. It is important that Alaska legislators not tolerate such tactics.

Futhermore, the recommendation of Governor Sheffield's now fully politicized Boards of Game and Fisheries demonstrate a classic case of dishonest politics undermining the achievements of scientific wildlife management in this nation.

Every credible wildlife management agency and organization in the nation is on record as acknowledging that subsistence priorities greatly harm sound biological management of wildlife resources.

If the Alaska State Legislature holds any vestage of honesty, it is inconceivable that Legislators would acquiesce to the same entity which illegally managed the subsistence law amid years of public complaints against that abusive and illegal management.

The self-serving intents of Sheffield administrators are too obvious to later claim any position other than intentional dishonesty, and acquiescence to such.

The subsistence issue CANNOT avoid blowing up in the face of Alaska, not only for Alaskans, but for the witness of the nation.

Its ramifications involve all outdoor users.

Alaska's legislators may not then wish to be identified with the actions that caused such irreparable harm.

Now is the time to demonstrate the honesty and integrity so notably lacking in the imposition of the subsistence scam.

We urge you to address this profound issue with the care and full public participation that it demands.

I must ask: Where are the recommendations of Governor Sheffield's Subsistence Task Force?

Like many other Alaskans, who sincerely accepted the merits of that promised Task Force, the Alaskan Alpine Club was waiting to testify before that entity!!!!

Governor Sheffield catagorically lied to the public when he used the promise of that Task Force to get elected and gloss over this critical issue. That sham Task Force has branded Sheffield and Butrovitch as contemptable examples of Alaskan government officials.

Are the Interior Alaska State Legislators of the same nature, and too cowardous to demand credible results from that Task Force? Are they incapable or unwilling to study the results of this law and hear the people, as Alaskans were led to believe would be done?

I respectfully request answers to these questions from yourself and other interior legislators.

Thank you for considering these views.

And have a pleasant day.

Sincerely,

Doug Buchanan
Executive Director

cc: interior delegation
Governor Sheffield
Mr. Butrovitch
Board of Game and Fisheries
news media

GREGORY FRANK COOK

ATTORNEY AT LAW
P.O. Box 618, Douglas, Alaska 99824
Residence (907) 586-9719
Admitted to Practice in Alaska and Oregon

Representative Dick Shultz
Chairman, House Resources Committee
Pouch V
Juneau, Alaska 99811

March 26, 1985

Dear Representative Shultz,

This is in response to your request for a written memorandum of the oral testimony I presented before the House Resources Committee on March 25, 1985 regarding subsistence legislation.

In dealing with the subsistence issue, the Legislature should bear in mind two key provisions of the Alaska Constitution.

> "Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use." (Article VIII, Sec. 3.)
>
> "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." (Article VIII, Sec. 17.)

Recently introduced legislation (HB 288; SB 231) should be carefully assessed in the light of these Constitutional provisions.

Before adopting any subsistence legislation, the Legislature would be wise to carefully formulate the specific goals it seeks to achieve. Also, it would be prudent to specify the tasks to be delegated to the Board of Fisheries and Board of Game.

Once its goals are made clear, the Legislature's purposes should be put into draft legislation. A broad variety of public comment, together with a range of legal opinions, should be studied until a political resolution is reached that does not violate our state Constitution.

Thank you.

Sincerely,

Gregory F. Cook

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
1117 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
907-456-2899

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE (907) 465-3763
HESS COMMITTEE
(907) 465-3834
HOME 907-780-6027

Senate

March 26, 1985

Representative Richard Shultz
Chairman, House Resources Committee
Pouch V
Juneau, AK 99811

Dear Dick:

Because of the ramifications of the recent Supreme Court decision in Madison vs. the State of Alaska, the Governor has introduced legislation to establish a personal use fishery in law and further broaden the definition of "subsistence user" to mean customary and traditional uses by rural Alaska residents.

HB 288 currently before the House Resources Committee affects many of our constituents. Last year many of our Interior Delegation teleconferences were dominated by those interested in this issue. Now, once again our constituents are requesting hearings before the Legislature takes any final action on the Governor's proposal. We respectfully request that you hold hearings on this bill in those communities most affected, including Fairbanks.

Thanking you in advance for your consideration.

Senator Bettye Fahrenkamp

Representative John Ringstad

Senator Don Bennett

Representative Mike Davis

Senator Jack Coghill

Representative Mike Miller

Representative Hillo Koponen

Representative Steve Frank

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3700

To: Resources
Room 118 CAPITOL

Ms. Hermann, Mr. Shultz +
Committee members,

I am a Cordova, Alaska resident. At present, I have all my personal funds tied up and hanging in the Balance of further decisions, follow the initial decision on Subsistance which has brought such chaos to our community. The Last industry of Cordova being chocked off at the whim of one supreme court decision.

I am at the mercy, financially at a critical moment, having

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

invested properly & Sanely in a viable Limited entry Fishery, whish Another Arm of State Goverment — the Dept. of Fish & Game has worked hard & well to manage and the results are begining to show

Suddenly — this is all in Jeopardy and the future of an Alaskan town with the Fishermen whove worked & Died on these coasts for so many years will suffer a dismal & degrading end.

I beg that your comittee will find solutions acceptable to all Alaskans in this matter. Give the working person — the Fisherman — the respect he has earned over the Long history of Fishing in Alaska

Dennis McGuire



KENAI RIVER SPORTFISHING ASSOCIATION

3301 "C" Street Suite 202
Anchorage, Alaska 99503
Phone (907) 276-1451



To: Alaska State Legislators

On March 19, 1985 the Steering Committee of the Kenai River Sportfishing Association unanimously approved the following motion:

"We favor interim legislation this session having a sunset clause of December 31, 1985 that accomplishes:

(1) Return of the regulatory jurisdiction of fish and game back to the boards of fish and game as it existed prior to the Madison decision of February 22, 1985 by the Alaska Supremen Court.

(2) That the legislature then cause to have public hearings held state wide prior to the 1986 legislative session that would frame legislation that would accomplish a permanent solution. to the relationship between subsistence, sport, commercial and personal use fisheries as well as all aspects of recreational and subsistence hunting."

Chaos must be remove from the management of our fish and game resource until a permanent solution be gained from public input from all citizens of the State of Alaska on the permanent use and allocation of fish and game. We cannot allow any situation to continue that has the potential of causing severe damage to the fishery resource. Resource regulation must be preserved.

TESTIMONY OF CHUCK ROBINSON
BEFORE THE HOUSE RESOURCES
COMMITTEE ON APRIL 2, 1985

SUBSISTENCE AFTER MADISON

In the recent case of Madison v. Alaska Dept. of Fish and Game, the Alaska Supreme Court ruled that a set of regulations adopted by the Alaska Board of Fisheries concerning eligibility into the Cook Inlet Subsistence Fishery were unlawful and inconsistent with the intent of the current subsistence law. The regulations invalidated by the court excluded the majority of subsistence users, mostly Kenai Peninsula residents from participation in the Cook Inlet Subsistence Fishery. This, the court declared, was contrary to the intent and spirit of the state's subsistence laws.

To fully understand the ruling of the court, it is necessary to review the language of the law, the circumstances which surrounded the passage of the law, and the facts and circumstances concerning the application and interpretation of the law by the Board of Fisheries which led to the court's ruling. Further, any enlightened discussion of subsistence fishing cannot occur without including the relationship of this fishery with other uses of fish, such as sports and commercial fishing. The Cook Inlet salmon fisheries provide the best example of salmon fishing user conflicts in terms of the means and ways that the Board has used to resolve or heighten and intensify those conflicts. Only by reviewing the law, the facts and the application and interpretation of the law by the Board can an accurate picture of the Madison decision be depicted.

The current subsistence law, adopted by the Alaska Legislature in 1978, is a fairly simple law. It was enacted by the Legislature in the spirit of cooperation with federal law and is founded upon sound social policy. The law was passed in light of a need on the part of Alaskan people to protect subsistence uses of fish resources in face of changing social and economic development bound to occur in the state with increase in growth and the need to conserve the fish stocks for sustained yield purposes.

The law provides that the Board of Fisheries must

permit subsistence use of fish unless a factual determination is made that such use is harmful to or jeopardises the fish stocks in question. If fish resources are in short supply, then subsistence use of the resources shall have a priority use over all other beneficial uses. If fish resources are in such short supply that only subsistence uses can be permitted on fish stocks then, those subsistence users who have a customary need and dependence on the stocks, live closest to the resource and have no other alternate available resources for use have a priority of use over all other subsistence users on these resources. Until such time that the fish resource is in such scarcity that only subsistence use is allowed and there is not enough fish to go around among subsistence users any Alaska resident is eligible to obtain a subsistence permit.

The law establishes a two tier or two class category of subsistence users. The first tier is the general class, to which any resident may belong and the second tier, which is the preferred class, which only certain residents may qualify for. Any Alaskan resident is eligible for a subsistence permit at such times when fish stocks are abundant and even when fish stocks may be low, but not necessarily depleted to the point of severe jeopardy. Only certain residents may qualify for preferred subsistence status, based on dependency, local residency, and alternate available resources, When fish resources are so low that only subsistence use is allowed on these resources, sports and commercial use have been prohibited and there are not enough fish stocks to adequately supply subsistence use. Further, if the Board determines that subsistence use may jeopardize the viability of available fish stocks this use may too be eliminated.

The subsistence law defines subsistence fishing as the taking of fish by longline, seine, fishwheel, gill net or other means defined by the Board for subsistence uses. Subsistences uses are defined as those customary and

traditional uses of fish in Alaska for direct personal and family consumption for food, shelter, clothing, fuel, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish resources taken for personal or family consumption, and for customary trade, barter, or sharing of these resources for personal or family consumption. Subsistence use covers a wide range of personal use of fish resources.

The law was adopted in response to a number of factors that had occurred and were occuring in the area of conservation, utilization and development of fish and game resources in Alaska during the 1970's. In 1972 Governor Bill Egan's administration established a state-wide policy within the Department of Fish and Game that made subsistence use by Alaska residents of fish and game resources the highest priority use during resource shortages. This policy was established one year after Congress enacted the Alaska Native Land Claim Settlement Act (ANSCA) and at the infancy of the Alaska oil pipeline boom. During the same year the constitutional amendment allowing limited entry into Alaska's commercial fisheries was ratified and the commercial fishery entry law was passed.

Between 1972 and 1981, Alaska experienced a dramatic increase in population. By 1980 there were approximately 400,000 people living in the state. Also many thousands of people visited the state each year. In 1976 Congress, after the election of President Carter, proposed the Alaska National Interest Land Conservation Act (ANILCA). The proposed legislation, enacted in 1980 was in part the result of the transfer of federal lands to the state and native Alaskans under Section D-2 of ANSCA. The ANILCA legislation creates a subsistence use priority on fish and game resources on federal lands and water within Alaska. In 1978 the Alaska legislature in an attempt to protect subsistence uses and to conserve on state fish and game resources enacted the subsistence law. In part the subsistence use priority was etablished to comply with federal law.

Despite the establishment of the 1972 subsistence policy and the passage of the 1978 subsistence law, the Board of Fisheries continued to regulate Alaska fisheries in such a way that completely ignored the mandate of the social policies on subsistence use of fish resources. Even during periods of shortages the Board failed to allow subsistence fishing to be the priority use. The Cook Inlet salmon fishery is a prime example of the Board's reluctance during the late 1970's and early 1980's to accommodate subsistence use of these resources.

In 1977 the Board of Fisheries established the Upper Cook Inlet management plan. This plan was used by the Board to allocate Cook Inlet salmon stocks between sports and commercial fishermen until it was invalidated by the Supreme Court in 1981. The plan essentially allocated Cook Inlet salmon stocks between sport and commercial use based upon seasonal fish movements. The plan did not include any specific allocations for subsistence use. The plan was adopted by the Board in response to political pressures placed upon it by the Anchorage chapter of the Isaac Walton League, an international organization comprised mostly of recreational fishermen and hunters and outdoor enthusiasts. The argument put forth in support of the plan was that Cook Inlet king and silver salmon resources should be allocated to sports use on a priority basis because sports users outnumber commercial users and the sport use demand is growing. Threats were made to the Board that if it did not adopt the plan sportfishermen would urge a referendum vote on the subject or get the Legislature to adopt the policies outlined in the plan.

The plan allocated all salmon found in Upper Cook Inlet prior to June 30 to exclusive sport use and all salmon destined to spawn on the Kenai Peninsula after August 15 to priority sport use. All salmon moving in Upper Cook Inlet between July 1 and August 15 is primarily for commercial fishing use, except certain salmon stocks which must be

minimized in the commercial harvest. No specific priority allocations were made in the plan for subsistence use of Cook Inlet salmon stocks.

The stocks moving in Upper Cook Inlet prior to June 30 are the majority of Cook Inlet king salmon and other runs of red salmon. After August 15 the stocks moving in Upper Cook Inlet are mostly fall silver salmon. Between July 1 and August 15 the Upper Cook Inlet salmon stocks are comprised mostly of red, pink and chum salmon. However, there are stocks of silver and king salmon present. The Kenai River king salmon, for instance, is present during July, though it is a much smaller run of salmon than the early runs present prior to June 30.

The Cook Inlet salmon subsistence fishery until 1977 was opened by regulation to any Alaskan resident. It had been in existence since territorial days and was opened in practically all areas of the inlet. The seasons were from early May until December 31, until the early 1960's when the seasons were shortened along with commercial and sports fishing seasons to protect for conservation purposes the depleted early run of Cook Inlet king salmon. From the mid 1960's until 1978 the season opened in the Northern district of the Inlet from June 30 until September 21 and in the rest of the Inlet from August 15 until December 31. The open periods were the same as the open commercial fishing periods. The method of subsistence harvest was with set gill nets, one per permit holder, ranging in size from 20 to 75 fathoms. The bag limit or quota per permit holder was no more than 50 salmon. The subsistence fishery primarily throughout its history targeted on king and silver salmon, though other species in smaller quantities were also harvested.

The lead plaintiffs in the Madison case, Gene Madison and Louis GJosund are Alaska residents living in North Kenai and Homer respectively. Each has been a subsistence fisherman since the mid 1940's. They and others similar to them, have regularly subsistence fished for salmon for personal and family consumption as food ever since settling

in Alaska nearly 40 years ago. In addition to salmon, they have used other natural resources such as wood, coal, berries and wildlife for subsistence purposes for food and fuel.

In 1977 the Board by regulation eliminated the Homer subsistence fishery. The elimination of the fishery was done in response to sportfishing pressure, mainly from Anchorage sportsfishermen who wanted no competition from subsistence users on their take of fall silver salmon in the Homer area. Louis GJosund and other subsistence fishermen went to Superior Court and requested an injunction against the elimination of the Homer salmon subsistence fishery. The court after finding that the Board's action was unjust, enjoined the enforcement of the regulation closing the fishery.

In 1978, less than two months after the current subsistence law went into effect, the Board adopted regulations eliminating all of the subsistence fisheries along the Eastern shore of Cook Inlet and severely restricted the gear, area, and quota for the Homer subsistence fishery. This action was taken to accommodate and prioritize sport use of fall silver salmon. Again, Louis GJosund went to court to enjoin the regulations and again the Superior Court ruled in favor of GJosund and against the Board.

Pursuant to the 1977 salmon management plan the Board in 1978 adopted regulations permitting the sport use of early Susitna River drainage king salmon. It refused to allow any subsistence or commercial use of these resources. In 1979 a group of Tyonek residents requested of the Board to allow a subsistence fishery on these stocks. The Board denied the request in light of much objection by Anchorage sport fishing interest groups. In 1980 the Tyonek residents, mostly people from a small Indian village located on the northwest shore of Cook Inlet, brought suit against the Board claiming that their customary and traditional subsistence fishery for king salmon should be allowed if the Board was going to allow sport use of these stocks. The Superior Court ruled in favor

of the people of Tyonek and ordered the Board to open a king salmon subsistence fishery in the Tyonek area. As a result of the ruling in the Tyonek case, the Board was forced to address subsistence fishing in all other parts of the Cook Inlet and to provide for subsistence use. In 1980 the Board opened the Tyonek fishery and opened a subsistence fishery along the Eastern shore of Cook Inlet. However, the area opened along Eastern Cook Inlet was in a place that was rock strewn, extremely muddy and terribly inaccessible. Again, the Board was sued in Superior Court. This time the Board reached a compromise and out of court settlement with the litigants and opened the fishery in an area that was more suitable to subsistence fishing. The series of court cases against the Board exemplifies the Board resistance to protecting subsistence use of Cook Inlet salmon resources as mandated by the Egan policy and the subsistence law.

By 1981, the Board was convinced that subsistence use of salmon was to be permitted in Cook Inlet despite the opposition from sport interest groups. However, the Board was still looking for a way to allow the use in its most narrow form, so as not to upset the sports fishing priority set forth in the management plan. The means that it found to accomplish this objective was the interpretation of the words customary and traditional use as found in the current subsistence law. The Board interpreted those words to mean that only rural residents in the Cook Inlet region were eligible to participate in the subsistence fishery and only areas close to rural communities would be open to subsistence fishing. The only rural areas and residents that the Board found to exist in Cook Inlet were Tyonek, Port Graham, and English Bay. These communities are predominantly native in composition and are isolated. The only access to these areas is by water or air travel. The rest of the Kenai Peninsula areas were considered urban and their residents ineligible to participate in subsistence fishing. This included communities such as Clam Gulch, population 100, Ninilchik, population 200, and other Peninsula communities like Homer, Kenai,

Soldotna, Seward, and North Kenai. Also the whole of the Mat-Su valley which borders the Inlet was considered urban along with the Anchorage community. None of the residents of these areas could qualify for subsistence fishing permits and no areas near these communities were open to subsistence fishing. As a result of the Board's 1981 subsistence fishing regulations the majority of the Cook Inlet subsistence users were excluded from the subsistence salmon and other subsistence fisheries including halibut, herring, bottom fish and smelt fisheries.

Prior to 1978 subsistence fishing was defined by law as the taking of fish by longline, gill net, fishwheel, seine or other means as defined by the Board for personal use, not for barter or sale. The 1978 law changed the definition to the taking of fish by such means for subsistence uses, which includes barter trade and selling of nonedible parts of fish as handicrafts. At the insistence of the Attorney General's office, the Board made a distinction between subsistence use and personal use and adopted the narrowest interpretation of the subsistence law in order to exclude the majority of the subsistence users. It found that only the residents of the three villages of Tyonek, Port Graham, and English Bay had a history of subsistence use of Cook Inlet salmon.

In 1981 Madison, GJosund and other Cook Inlet subsistence fishermen brought suit in two Superior Courts to enjoin the enforcement of the Board of Fisheries subsistence regulations. Superior Court Judge Paul Jones presided over a case brought in Homer and Superior Court Judge Victor Carlson presided over another case brought in Kenai. Judge Jones ruled that the subsistence criteria were valid, however, the Board's application of these criteria violated equal protection of the laws and was not based on a factual finding that it was necessary to exclude Homer subsistence fishermen to protect subsistence fishing in Tyonek, Port Graham and English Bay. Judge Carlson ruled that even though the Board's criteria were valid, that the Board's exclusion of

Upper Cook Inlet subsistence fishermen was without due process of law and remanded the case to the Board with a request to provide a personal use fishery for these fishermen. In March of 1982, the Board pursuant to Judge Carlson's ruling, created a personal use fishery on Kasilof red salmon and Upper Cook Inlet fall coho salmon. The personal use fishery was created as an excess "charity" fishery to be accommodated only after subsistence, sports, and commercial fishermen had satisfied their needs. Also, the fishery would not permit trade and barter of the fishery resources. However, the former subsistence fishery remained open and has continued as a subsistence fishery since the Court's ruling.

In 1983 the Kenai River Sportsfishing Association, the sports interest group of which Board member Bix Bonney was an officer, brought suit in Kenai Superior Court to halt the all coho personal use fishery. The court issued a restraining order against the operation of the fishery in favor of Bonney's group.

Then, in 1985, the Supreme Court reversed the two Superior Court rulings in the Madison and G. Josund cases, declaring the Board's subsistence criteria and the regulations adopted pursuant to them invalid and inconsistent with the subsistence law.

It is from this Supreme Court ruling that much debate has followed concerning subsistence use of fish and game and has led the Governor to introduce House Bill 288. Though the Court's ruling is fairly clear and simple, some confusion has been created over the issue. The alleged purpose behind HB 288 is to clear up the confusion, bring state law into compliance with ANILCA, and prevent the elimination of sports and commercial fishing because of runaway subsistence use. None of the objectives of the Governor's bill are well founded. Indeed, the legislation is not essential nor reasonably needed to deal with subsistence fishing in Alaska.

Taking each alleged purpose for the passage of the legislation one at a time and discussing them openly and

rationally should convince members of the Legislature that such legislation is not needed and moreover may be unconstitutional under Alaska law.

It has been alleged by the Governor's administration that unless HB 288 is enacted the state's subsistence law will not be in compliance with ANILCA and this will lead to a takeover of management by the federal government of Alaska fish and game resources and a denial to the state of certain federal revenues intended for management of sea mammals and sports fishing. This allegation is not founded on the truth.

On April 6, 1982, Under Secretary of the Department of the Interior Bill Horn gave a presentation to the joint Boards of Fish and Game at a joint Board meeting in Anchorage Attached to this document are the transcribed comments of Mr. Horn made to the Boards concerning what actions the Board needed to take to be in compliance with ANILCA. In his presentation Mr. Horn made it perfectly clear that regulations adopted by the Boards which encompass either a one tier or two tier subsistence use approach to subsistence users would satisfy the federal requirements of ANILCA. The one tier approach would make only rural residents eligible to be subsistence users. The two tier approach would allow any Alaska resident to qualify until such time that fish resources are so low that only subsistence use can be permitted and the supply of fish stocks available is not enough to reasonably accommodate all subsistence users. Then a priority between subsistence users can be established for subsistence uses, based upon customary dependence on the resource, local residency, and alternative available resources.

The Board opted for the one tier approach to subsistence use. The court in Madison reviewed the one tier approach of the Board and rejected that approach as inconsistent with intent of the current law. The court declared that the current subsistence law intends a two tier approach on the issue of eligibility into the subsistence

fisheries. The two tier approach embodied in the law is consistent with and in compliance with ANILCA. In fact, the court stated that our law is not intended to limit subsistence users to rural residents only, but that all Alaska residents can qualify for a permit. The court also found that the subsistence fishery in which Madison ha' participated in for approximately 40 years was a customary and traditional use of salmon for personal and family consumption and other subsistence uses. The claim that the current law is not in compliance with ANILCA is patently false.

The next misrepresentation of the Madison decision concerns the Governor's administration's claim that subsistence use of fish cannot be limited until such time that sports and commercial fishing has been eliminated. This representation, like the noncompliance with ANILCA representation, is unfounded. The administration has either mistakenly or wilfully confused the issues of use and users. The two are distinctly different. Subsistence use is intended by the current law to be carefully monitored and regulated. This is clearly stated in the preamble to the subsistence law. In the preamble it states:

> It is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaskan residents. The legislature further finds that beneficial use of those resources by all state residents should be carefully monitored and regulated with as much input as possible from the affected users, so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained yield principle.

The legislative intent to regulate subsistence use in order to avoid jeopardy to fish stocks is abundantly clear. Therefore subsistence use of fish resources can be limited by bag limits, quotas, time, area, and other means available to the Board of Fisheries without the elimination of sports or commercial fishing.

In Madison, the court merely stated that before the Board may limit priority use among subsistence users, it

must factually find two things: 1) that it is necessary to restrict the taking of fish for sustained yield purposes and 2) that eliminating sports and commercial users will not assure the maintenance of fish stocks for sustained yield purposes and establishing a priority among subsistence users is also necessary. It is this interpretation of the law by the court that the administration has confused and misrepresented. It is not necessary to eliminate sports and commercial use of fish in order to limit and regulate subsistence use. It is required to find that it is necessary to restrict the taking of fish to avoid damage and harm to the stocks and that eliminating sports and commercial uses will not assure the viability to the stocks before there is any occasion to limit subsistence fishing to second tier preferred or priority subsistence users as distinct from all subsistence users. The concept of use and users must be kept separate in discussing the intent of the law.

The Cook Inlet subsistence fishery has never posed a real and substantial threat to salmon resources or other beneficial uses of the resource. The Cook Inlet salmon subsistence fishery since the 1960's and until the 1980's has never harvested more the one half percent to one percent of the total salmon harvest by all user groups.

Between 1978 and 1980 the number of persons licensed by the state to participate in the Cook Inlet salmon subsistence fishery ranged from 323 to 1,331. This number is compared to 1300 commercial salmon entry permit holders and from 180,000 to 200,000 sportfishing license holders for the same period. In comparing the number of sport license holders with subsistence permit holders it is readily apparent that the Cook Inlet sport fishery rather than the subsistence fishery has experienced the more dramatic increase in the number of participants. The Cook Inlet sportfishery is comprised of approximately 47 percent non-resident participants. The subsistence fishery is a 100 percent resident fishery. The Cook Inlet salmon commercial fisheries are comprised of seine and gill net fisheries. The Cook Inlet salmon seine fishery

is a 100 percent resident fishery. The set gill net fishery is 90 percent resident and the salmon drift gill net fishery is 60 percent resident and 40 percent non-resident.

The intent of the current subsistence law is to establish subsistence use by Alaska residents of fish as the priority use during times of resources shortage. Most of the sport fisheries and many of the commercial fisheries are comprised of resident and non-resident participants. The social policy embodied in the subsistence law is to make available on a priority basis fish stocks for subsistence use by Alaska residents over non-residential use of these stocks for sports and commercial use in times of resource shortages. This is good sound policy designed to protect the needs, customs, and traditions of Alaskan residents.

The Governor's proposed legislation may also run afoul of the state's constitution. Article VIII, Section 15 of the constitution reads:

> Section 15. No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state. This section does not restrict the power of the State to limit entry into any fishery for the purpose of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Article VIII, Section 17 of the constitution reads:

> Section 17. Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulations.

These two constitutional provisions create major stumbling blocks to the attempt by the Governor or the Legislature to limit entry into the subsistence fishery to rural residents only, and the establishment of a personal use fishery as an alternative for urban residents. Article VIII, Section 15 prevents exclusive and special rights or privileges of fisheries in the natural waters of the state except for commercial fishing and aquaculture. The recent Supreme Court case of Ostrosky v. State gives a clear

interpretation of what this constitutional provision means. If HB 288 was enacted limiting entry into subsistence fisheries to rural residents only, this law would create an exclusive or special right or privilege of fishery based solely on residency. This scheme would be contrary to this constitutional provision prohibiting such action. This is so because the law would create a closed class of persons, namely rural residents, which have an exclusive right or special privilege to subsistence fish.

Next, Article VIII, Section 17 would prevent the rural vs. urban classification of subsistence users. If the purpose behind the governor's bill is to protect subsistence use of fish then those uses demonstrated by Gene Madison and others to have customarily and traditionally existed as subsistence uses in Cook Inlet for many years would be entitled to uniform treatment by the law. Those individuals who have demonstrated use of the Cook Inlet salmon resources for personal and family consumption as food, etc., and for trade and barter are similarly situated with other Alaska residents in rural communities like Tyonek, Port Graham and English Bay with respect to the use and disposal of salmon resources. The constitution requires that these individuals be given equal treatment. Therefore, it would be unconstitutional to allow subsistence use by rural residents only and exclude urban residents from such use. Further the creation of a personal use category for urban users is not equal treatment. Under the personal use category trade, barter, and sale of non-edible by products of fish would not be permitted. The prohibition of these activities to urban residents and the permission to rural residents would not be uniform treatment. Both groups of people would be harvesting the resource for personal and family consumption but only rural residents would be able to extend this consumption to trade, barter and sale of non edible by products as handicrafts. This limitation on urban users would not withstand the mandate of Article VIII, Section 17 as it would result in unreasonable differential treatment among persons similarly situated with

respect to the use of fish resources.

In conclusion it must be said that HB 288 is not a well founded piece of proposed legislation. The bill would create more problems than it allegedly attempts to resolve. The current subsistence law achieves the twin objectives of conserving fish stocks and protecting subsistence uses of these resources. The current law when circumstances warrant would protect a rural priority for subsistence use, for instance, when the fish are in such short supply that priorities must be set among subsistence users.

It is urged that the legislature take no action on HB 288. The time has come to allow subsistence fishing to take its course. There are no present circumstances that have been clearly demonstrated which require subsistence use of fish resources to be limited solely to rural residents. Until such time that a clear and present need arises for such action the type of legislation proposed by the Governor should be shelved. The sky over subsistence use of fish and game is not falling.

If a problem does exist over subsistence use perhaps the solution is not in changing the law but rather in a close re-examination of the Board's process and its application of the law.

DATED this 1 day of April, 1985.

Arthur S. Robinson
ARTHUR S. ROBINSON

Martin Friedman
MARTIN FRIEDMAN

JOINT MEETING OF THE ALASKA BOARD OF FISHERIES
AND BOARD OF GAME, APRIL 6, 1982

Testimony of Deputy Undersecretary of the Department of Interior Bill Horne.
BM: stands for Board of Fish/Game member

Horne: Thank you, Mr. Chairman, I appreciate the opportunity to appear before the Joint Boards and discuss the State's compliance and implementation with the Alaska Lands Act, and hope that the cooperation that we've been engaged in with the State since last August can continue and we can bring this matter to a satisfactory conclusion. Let me say at the outset that reiterate the Dept. remains philosophically and policy-wise strongly committed to state management. We believe that the State possesses the requisite expertise to protect the fish and game resources of the State of Alaska. It is expertise that we cannot hope to match and as a consequence, we are most anxious to have this matter resolved in such a fashion that we can continue to defer to your judgement, expertise and not have to comply with any manadatory statutory requirements that would force us into the fray. Let me state that from where we're sitting, the federal law that is at issue imposes some fairly minimal requirements on the state, it is obvious that these minimal requirements can have some fairly major repercussions but in and of themselves, we see the requirements to be very bare bones and they are that the State establish some law of general applicability which includes regulations that would provide for a rural priority for subsitence, of course, rural is not the sole criteria, and it also includes the terms "customary and traditional" and there are continued references in the legislative history to nonwasteful taking. That's basic requirement number one. Requirement number two is that the state establish this regional advisory council system and that the recommendations that come up from the regional advisory councils be dealt with by these boards. That is all that the federal law requires and all that we've asked for in our review so far is demonstration from the state that you have laws or regulations that meet these minimal requirements. One of the courses of action suggested to us last year when this process began, was that the State has historically provided this type of preference to its rural residents and that Dept. of Interior should look to the factual track record of recent years, we can conclude on that basis that yes, indeed, the State was doing an adequate job in providing that rural priority and therefore, we could approve a state program without any form of specific laws or regulations. We choose to reject that approach for two basic reasons, one legal and one policy. From the legal perspective, the statute requires us to determine whether or not the state has loss of general applicability to implement Sections 803-805, and factual track record and policies and such as terms of _____ do not consititute laws of

general applicability, we could not satisfy a federal court of law that we had done an adequate and appropriate job of review if all we brought in was the factual track record. It's one of those crazy circumstances in which you need a regulation rather than the facts. The second reason, from a policy prespective, we found even more persuasive. We did not want to engage in a thorough review of the State's track record on fish and game management and try to determine by looking over your shoulder whether or not you had done a job on a resource by resource basis to satisfy rural priority. Frankly, we are not equipped to do that job, we did not possess the requisite expertise to go through the process and say, "well, in game area X you didn't give enough moose to this particular group or in fishing area Y you divied up the resource incorrectly and not in keeping with federal statute". We did not possess the expertise to engage in that type of review, we didn't think it was appropriate of the federal government to second-guess your track record. More important, when it came, if at some stage of the game, this whole process ends up in court, which we regard as a pretty good prospect, we did not want to be going to some federal judge and having that federal judge look over our shoulder at the nature of the factual review that we conducted the program. Consequently we have limited our review to a legal review, which is why since last August, you've been dealing with our friendly solicitors rather than our folks from the Wildlife Service or other resource experts that we possess. All we are looking for is does the state have laws or regulations that establish the regional council system and provide for a rural priority with customary and traditional criteria. That's all we've looked for, that's as far as our review is going to go. Regarding implementation, and obviously we've tried to keep our review to a bare statutory requirements, we've also received many questions about how if the state has this type of priority, codified in a regulation, what sort of guidelines regarding implementation, what sort of practical on the ground effects will that regulation have. Frankly, we don't know. That is something we have refrained from engaging in because it is pretty clear in our mind that the statutory scheme outlined in Title 8 defers those judgements to the State of Alaska, and the state of course, has chosen to defer those judgements to these boards. It is essentially the state's job and the state's responsibility to define rural. The only guidelines in the legislative history regarding what rural means is one phrase in the Senate committee report that says "Anchorage, Fairbanks, Ketchikan and Juneau aren't and Dillingham, Barrow, Bethel, Kotzbue, Nome are". Now that obviously is one criteria, there is nothing in the legislative history regarding what is customary and tradional is, that's clearly yours, and of course, the statute also refers to nonwasteful levels of taking. That again, is a determination for the state to make. Consequently, all that we need is the assurance in some law or regulation that you will provide the adequate rural priority and then in terms of how that is to

be specifically implemented, the statute clearly confers those decisions on you, and as a matter of policy we would like very much to have those decisions conferred on you because, frankly, we don't possess the requisite expertise.

Regarding the timing, the consequences of approval, disapproval. We made it very clear in all of the meetings that we've been conducting, starting last August, that all we need is these minimal requirements. And the stage where we are now is that either one of the approaches outlined by John Gisberg would satisfy ourselves. I will say that from sort of a selfish perspective, we would prefer what I call, for lack of better term, a "one tier" approach that would simply recognize and provide a priority to rural subsistence without trying to define and establish a second category of other subsistence. That is the cleanest way for us, it is abundently clear that would be in full compliance with Title 8. However, based on the process that we have gone through, we are fully prepared to accept what I call the "two tier" system, which is embodied in the proposed regulation that is in your book, which of course is the minor modifications made to your December policy statement and have that modified policy statement recast as a regulation. As the letter from the Secretary to the Governor on February 25, indicated, if that particular proposal is enacted as a regulation by the boards, upon our formal receipt of notification from either the commissioner, the boards, or the governor, that that is now a binding regulation on the State of Alaska. The Secretary will immediately issue the letter of approval and the resonsibilities for implementing this program will remain firmly in the State. I guess I can't emphasize enough how much we wish to do that, that's our primary desire. The reason the Secretary has asked me to come up for these meetings, to pass that on. Obviously if passage of that proposal or something similar that provides for the rural priority. If that goes, we obviously are in a position to approve. I guess the other side of the coin, what are the consequences of inaction or some action that does not establish a sufficiently clear, sufficiently firm rural priority. You know the Act basically says that the Secretary is supposed to grant the state one year to put a program in place, and if at the end of one year, a program is not in place, that the Dept. was mandated, and I guess I should emphasize that it was nondiscretionary, it was mandated to step in and begin to undertake a subsistence management program on federal lands. We received the state's submission on December 2, exactly one year after enactment of the Alaska Lands Bill. We have been engaged in the review process since and conseqently have held off and have conducted no planning and no activities in terms of preparing for any contingencies such as federal intervention and assumption of management. However, the clock is ticking on us and we feel that sometime very soon we are going to have to take some action and determine whether the state is in compliance or not in compliance. Consequently, if at the conclusion of the

meetings, we have not received from the state some form of regulation or law that establishes the priority in proper fashion that conforms with the federal statute. We will be shortly be forced to issue some kind of preliminary finding of noncompliance, schedule a hearing within a matter of days in which we will take testimony, I think we will probably have to have it here in the state, regarding whether or not the state program does comply with Title 8. Following that hearing, the Secretary will render his decision. Obviously if this decision is that the state is in noncompliance, we will have to being on a very fast basis the tooling up to assume the management authority on federal lands and of course, we will have to establish further provisions of 805, the regional council system that right now is set up under state law. We don't undertake that activity very lightly. We don't undertake it with much relish. It is something that we hope to avoid at all costs. But nonetheless it is very explicit, nondiscretionary requirement of the law and if we fail to act, any party can go to court and get a writ of mandamus forcing the Secretary to do it. Frankly, one of the concerns we have and there have been various points of view expressed that well, that the Dept. could take a rather minimal back of the hand approach. We wouldn't have to do much in terms of assuming this management authority on federal lands. That type of approach frightens us and it frightens, I could sum it up in two words "federal courts". We are concerned that if the necessity for federal assumption came to pass, and we engaged in what I call a "minimalist approach", it ever so barely satisfied the requirements in the Act, that we may well be hauled into federal court. I think the chances of that are fairly high. If we get before some federal judge, I have a sneaking suspicion we might end up before the judges in the District of Columbia, the prospects of a judge finding that the Dept. has failed to comply with its obligations under the provisions of Title 8 and then the judge take it upon himself to say "Dept. you've acted in bad faith, I'm assuming management of the program." We think the prospects and the chances by our inaction of our obligation under Title 8, that this would end up, there is a good prospect of having this whole thing end up under the jurisdiction of a federal judge in the District of Columbia. We would regard that as an unmitigated travesty and would do all in our power to see that that does not come to pass.

Let me just basically conclude and prepared to answer any questions you might have. We are fully committed to state management. You're the people with the expertise, not ourselves. We will have to engage in a real scramble to catch up effort if this responsibility is thrust on us. We think that the federal law establish some basic minimum requirements that we believe the state, from a policy prespective has been doing this for years, and that in essense, what this regulation does is merely codify the actual enacted policy of many years. Consequently, we would think that that would have rather minimal impacts within the

state. We would hope that the state would take appropriate action. That we would approve the program on a very fast track because we are committed to state management, as evidenced by the recent memorandum of understanding that we executed between our Fish & Wildlife Service and the Alaska Dept. of Fish & Game regarding state involvement in refuge management. We are currently negotiating a similar agreement with the Parks Service regarding fish and game management in the National Park areas. It's common knowledge that we are working very hard to attempt to return marine mammal management to the people of the state of Alaska. Again, you are the people who possess the expertise. We would like to assure that our Secretary's policy of trying to get these things back in the hands of the people with the expertise can be continued and the way to best continue that is for us to have the state enact the appropriate laws and regulations that would permit us to certify compliance with Title 8. Thank you much.

BM: Bill, from your reading of the law there, does the state only have one chance to actually comply, the language just says that within one year the state complies then (inaudible) assume this thing under the guidelines, you're saying that you know, that this is where (inaudible) is here now, bu either we have to take some action at this meeting to decide whether we choose to comply or not. But, for example, if we choose not to comply at this time, would there be an opportunity, say a year from now or five years from now for the state to say "OK, we've rethought this whole thing and maybe we will (inaudible).

Horne: The statute is not explicitly clear. It is very clear that it says one year. Our general belief is that there may well be an opportunity that if the state did not comply at this stage, for the state to come into compliance at a future stage and resubmit something to the Secretary. So that I think that there is a possibility of future compliance by the state. My major concern is that I don't think the statute is explicitly clear and someone may well argue that the door has been closed. Obviously from a practical standpoint, we don't engage frankly in the federal management efforts, we don't think that would be good for the resource, we'd much prefer for the state to take appropriate action now.

HB

2088

File #2

Dear Sir

3-21-85

I am writting to urge you to Pass House Bill # 288 and give to the Board of Fisheries the flexability to manage the resource for the user groups.

Thank You

John Johnson

Put in 288
file in Res.
Committee

Original sponsor: Rules/Governor

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 288 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that

(1) the taking of fish stocks and game populations for personal and family consumption and related uses is essential to the health, safety, and general welfare of Alaskans domiciled in rural communities or rural areas in which the taking of fish and game for such uses is a significant part of the economy of the community or area; and

(2) the taking of fish stocks and game populations for personal, sport, and commercial uses is also of economic and recreational importance to Alaskans who reside anywhere in the state.

* Sec. 2. AS 16.05.251(a) is amended to read:

(a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.-62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

(3) setting quotas, bag limits, harvest levels, and sex and size limitations on the taking of fish;

(4) establishing the means and methods employed in the pursuit, capture and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish, personal use fish, or predators or other categories essential for regulatory purposes;

(7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation and stocking of fish;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(10) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(11) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43;

(12) personal use fishing.

* Sec. 3. AS 16.05.940(23) is amended to read:

(23) "subsistence uses" means the customary and traditional noncommercial uses [IN ALASKA] of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or

(4) establishing the means and methods employed in the pursuit, capture and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish, personal use fish, or predators or other categories essential for regulatory purposes;

(7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation and stocking of fish;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(10) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(11) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43;

(12) personal use fishing.

* Sec. 3. AS 16.05.940(23) is amended to read:

(23) "subsistence uses" means the customary and traditional noncommercial uses [IN ALASKA] of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or

transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in [FOR THE PURPOSES OF] this paragraph [,]

(A) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

(B) "rural area" means a community or area of the state in which the taking of fish or wildlife for personal and family consumption is a significant characteristic of the economy of the community or area;

* Sec. 4. AS 16.05.940 is amended by adding a new paragraph to read:

(28) "personal use fishing" means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other similar means defined by the Board of Fisheries.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.-10.070(c).

APR 10 1985

ALASCOM

Telegram

04003

ANCHORAGE ALASKA 18 04-10 1105 AST

PMS

REPRESENTATIVE ADELHEID HERRMANN

0424

JUNEAU AK

THE BRISTOL BAY NATIVE CORPORATION SUPPORTS THE PASSAGE OF HB288 IN REGARD TO SUBSISTENCE HUNTING AND FISHING.

SINCERELY,

DONALD F. NIELSEN, SR. VICE-PRES.

L-0167-0 1601876

APR 10 1985

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 8512

A RESOLUTION OF THE CITY OF VALDEZ, ALASKA URGING IMMEDIATE PASSAGE OF SENATE BILL 231 AND HOUSE BILL 288, RELATING TO SUBSISTENCE FISHERIES, BY THE ALASKA STATE LEGISLATURE

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in nonsubsistence uses, and

WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and nonsubsistence fishery issues, and

WHEREAS, the economy of the City of Valdez is critically dependent on the revenue and employment resulting from the commercial and sport fisheries, and

WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that

Section 1. There be immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA this 1st day of April, 1985.

CITY OF VALDEZ, ALASKA

John Devens, Mayor

ATTEST:

Jim Watson
City Manager/City Clerk

TESTIMONY OF CHUCK ROBINSON
BEFORE THE HOUSE RESOURCES
COMMITTEE ON APRIL 2, 1985

SUBSISTENCE AFTER MADISON

In the recent case of Madison v. Alaska Dept. of Fish and Game, the Alaska Supreme Court ruled that a set of regulations adopted by the Alaska Board of Fisheries concerning eligibility into the Cook Inlet Subsistence Fishery were unlawful and inconsistent with the intent of the current subsistence law. The regulations invalidated by the court excluded the majority of subsistence users, mostly Kenai Peninsula residents from participation in the Cook Inlet Subsistence Fishery. This, the court declared, was contrary to the intent and spirit of the state's subsistence laws.

To fully understand the ruling of the court, it is necessary to review the language of the law, the circumstances which surrounded the passage of the law, and the facts and circumstances concerning the application and interpretation of the law by the Board of Fisheries which led to the court's ruling. Further, any enlightened discussion of subsistence fishing cannot occur without including the relationship of this fishery with other uses of fish, such as sports and commercial fishing. The Cook Inlet salmon fisheries provide the best example of salmon fishing user conflicts in terms of the means and ways that the Board has used to resolve or heighten and intensify those conflicts. Only by reviewing the law, the facts and the application and interpretation of the law by the Board can an accurate picture of the Madison decision be depicted.

The current subsistence law, adopted by the Alaska Legislature in 1978, is a fairly simple law. It was enacted by the Legislature in the spirit of cooperation with federal law and is founded upon sound social policy. The law was passed in light of a need on the part of Alaskan people to protect subsistence uses of fish resources in face of changing social and economic development bound to occur in the state with increase in growth and the need to conserve the fish stocks for sustained yield purposes.

The law provides that the Board of Fisheries must

permit subsistence use of fish unless a factual determination is made that such use is harmful to or jeopardises the fish stocks in question. If fish resources are in short supply, then subsistence use of the resources shall have a priority use over all other beneficial uses. If fish resources are in such short supply that only subsistence uses can be permitted on fish stocks then, those subsistence users who have a customary need and dependence on the stocks, live closest to the resource and have no other alternate available resources for use have a priority of use over all other subsistence users on these resources. Until such time that the fish resource is in such scarcity that only subsistence use is allowed and there is not enough fish to go around among subsistence users any Alaska resident is eligible to obtain a subsistence permit.

The law establishes a two tier or two class category of subsistence users. The first tier is the general class, to which any resident may belong and the second tier, which is the preferred class, which only certain residents may qualify for. Any Alaskan resident is eligible for a subsistence permit at such times when fish stocks are abundant and even when fish stocks may be low, but not necessarily depleted to the point of severe jeopardy. Only certain residents may qualify for preferred subsistence status, based on dependency, local residency, and alternate available resources, When fish resources are so low that only subsistence use is allowed on these resources, sports and commercial use have been prohibited and there are not enough fish stocks to adequately supply subsistence use. Further, if the Board determines that subsistence use may jeopardize the viability of available fish stocks this use may too be eliminated.

The subsistence law defines subsistence fishing as the taking of fish by longline, seine, fishwheel, gill net or other means defined by the Board for subsistence uses. Subsistences uses are defined as those customary and

traditional uses of fish in Alaska for direct personal and family consumption for food, shelter, clothing, fuel, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish resources taken for personal or family consumption, and for customary trade, barter, or sharing of these resources for personal or family consumption. Subsistence use covers a wide range of personal use of fish resources.

The law was adopted in response to a number of factors that had occurred and were occuring in the area of conservation, utilization and development of fish and game resources in Alaska during the 1970's. In 1972 Governor Bill Egan's administration established a state-wide policy within the Department of Fish and Game that made subsistence use by Alaska residents of fish and game resources the highest priority use during resource shortages. This policy was established one year after Congress enacted the Alaska Native Land Claim Settlement Act (ANSCA) and at the infancy of the Alaska oil pipeline boom. During the same year the constitutional amendment allowing limited entry into Alaska's commercial fisheries was ratified and the commercial fishery entry law was passed.

Between 1972 and 1981, Alaska experienced a dramatic increase in population. By 1980 there were approximately 400,000 people living in the state. Also many thousands of people visited the state each year. In 1976 Congress, after the election of President Carter, proposed the Alaska National Interest Land Conservation Act (ANILCA). The proposed legislation, enacted in 1980 was in part the result of the transfer of federal lands to the state and native Alaskans under Section D-2 of ANSCA. The ANILCA legislation creates a subsistence use priority on fish and game resources on federal lands and water within Alaska. In 1978 the Alaska legislature in an attempt to protect subsistence uses and to conserve on state fish and game resources enacted the subsistence law. In part the subsistence use priority was etablished to comply with federal law.

Despite the establishment of the 1972 subsistence policy and the passage of the 1978 subsistence law, the Board of Fisheries continued to regulate Alaska fisheries in such a way that completely ignored the mandate of the social policies on subsistence use of fish resources. Even during periods of shortages the Board failed to allow subsistence fishing to be the priority use. The Cook Inlet salmon fishery is a prime example of the Board's reluctance during the late 1970's and early 1980's to accommodate subsistence use of these resources.

In 1977 the Board of Fisheries established the Upper Cook Inlet management plan. This plan was used by the Board to allocate Cook Inlet salmon stocks between sports and commercial fishermen until it was invalidated by the Supreme Court in 1981. The plan essentially allocated Cook Inlet salmon stocks between sport and commercial use based upon seasonal fish movements. The plan did not include any specific allocations for subsistence use. The plan was adopted by the Board in response to political pressures placed upon it by the Anchorage chapter of the Isaac Walton League, an international organization comprised mostly of recreational fishermen and hunters and outdoor enthusiasts. The argument put forth in support of the plan was that Cook Inlet king and silver salmon resources should be allocated to sports use on a priority basis because sports users outnumber commercial users and the sport use demand is growing. Threats were made to the Board that if it did not adopt the plan sportfishermen would urge a referendum vote on the subject or get the Legislature to adopt the policies outlined in the plan.

The plan allocated all salmon found in Upper Cook Inlet prior to June 30 to exclusive sport use and all salmon destined to spawn on the Kenai Peninsula after August 15 to priority sport use. All salmon moving in Upper Cook Inlet between July 1 and August 15 is primarily for commercial fishing use, except certain salmon stocks which must be

minimized in the commercial harvest. No specific priority allocations were made in the plan for subsistence use of Cook Inlet salmon stocks.

The stocks moving in Upper Cook Inlet prior to June 30 are the majority of Cook Inlet king salmon and other runs of red salmon. After August 15 the stocks moving in Upper Cook Inlet are mostly fall silver salmon. Between July 1 and August 15 the Upper Cook Inlet salmon stocks are comprised mostly of red, pink and chum salmon. However, there are stocks of silver and king salmon present. The Kenai River king salmon, for instance, is present during July, though it is a much smaller run of salmon than the early runs present prior to June 30.

The Cook Inlet salmon subsistence fishery until 1977 was opened by regulation to any Alaskan resident. It had been in existence since territorial days and was opened in practically all areas of the inlet. The seasons were from early May until December 31, until the early 1960's when the seasons were shortened along with commercial and sports fishing seasons to protect for conservation purposes the depleted early run of Cook Inlet king salmon. From the mid 1960's until 1978 the season opened in the Northern district of the Inlet from June 30 until September 21 and in the rest of the Inlet from August 15 until December 31. The open periods were the same as the open commercial fishing periods. The method of subsistence harvest was with set gill nets, one per permit holder, ranging in size from 20 to 35 fathoms. The bag limit or quota per permit holder was no more than 50 salmon. The subsistence fishery primarily throughout its history targeted on king and silver salmon, though other species in smaller quantities were also harvested.

The lead plaintiffs in the Madison case, Gene Madison and Louis GJosund are Alaska residents living in North Kenai and Homer respectively. Each has been a subsistence fisherman since the mid 1940's. They and others similar to them, have regularly subsistence fished for salmon for personal and family consumption as food ever since settling

in Alaska nearly 40 years ago. In addition to salmon, they have used other natural resources such as wood, coal, berries and wildlife for subsistence purposes for food and fuel.

In 1977 the Board by regulation eliminated the Homer subsistence fishery. The elimination of the fishery was done in response to sportfishing pressure, mainly from Anchorage sportsfishermen who wanted no competition from subsistence users on their take of fall silver salmon in the Homer area. Louis GJosund and other subsistence fishermen went to Superior Court and requested an injunction against the elimination of the Homer salmon subsistence fishery. The court after finding that the Board's action was unjust, enjoined the enforcement of the regulation closing the fishery.

In 1978, less than two months after the current subsistence law went into effect, the Board adopted regulations eliminating all of the subsistence fisheries along the Eastern shore of Cook Inlet and severely restricted the gear, area, and quota for the Homer subsistence fishery. This action was taken to accommodate and prioritize sport use of fall silver salmon. Again, Louis GJosund went to court to enjoin the regulations and again the Superior Court ruled in favor of GJosund and against the Board.

Pursuant to the 1977 salmon management plan the Board in 1978 adopted regulations permitting the sport use of early Susitna River drainage king salmon. It refused to allow any subsistence or commercial use of these resources. In 1979 a group of Tyonek residents requested of the Board to allow a subsistence fishery on these stocks. The Board denied the request in light of much objection by Anchorage sport fishing interest groups. In 1980 the Tyonek residents, mostly people from a small Indian village located on the northwest shore of Cook Inlet, brought suit against the Board claiming that their customary and traditional subsistence fishery for king salmon should be allowed if the Board was going to allow sport use of these stocks. The Superior Court ruled in favor

of the people of Tyonek and ordered the Board to open a king salmon subsistence fishery in the Tyonek area. As a result of the ruling in the Tyonek case, the Board was forced to address subsistence fishing in all other parts of the Cook Inlet and to provide for subsistence use. In 1980 the Board opened the Tyonek fishery and opened a subsistence fishery along the Eastern shore of Cook Inlet. However, the area opened along Eastern Cook Inlet was in a place that was rock strewn, extremely muddy and terribly inaccessible. Again, the Board was sued in Superior Court. This time the Board reached a compromise and out of court settlement with the litigants and opened the fishery in an area that was more suitable to subsistence fishing. The series of court cases against the Board exemplifies the Board resistance to protecting subsistence use of Cook Inlet salmon resources as mandated by the Egan policy and the subsistence law.

By 1981, the Board was convinced that subsistence use of salmon was to be permitted in Cook Inlet despite the opposition from sport interest groups. However, the Board was still looking for a way to allow the use in its most narrow form, so as not to upset the sports fishing priority set forth in the management plan. The means that it found to accomplish this objective was the interpretation of the words customary and traditional use as found in the current subsistence law. The Board interpreted those words to mean that only rural residents in the Cook Inlet region were eligible to participate in the subsistence fishery and only areas close to rural communities would be open to subsistence fishing. The only rural areas and residents that the Board found to exist in Cook Inlet were Tyonek, Port Graham, and English Bay. These communities are predominantly native in composition and are isolated. The only access to these areas is by water or air travel. The rest of the Kenai Peninsula areas were considered urban and their residents ineligible to participate in subsistence fishing. This included communities such as Clam Gulch, population 100, Ninilchik, population 200, and other Peninsula communities like Homer, Kenai,

Soldotna, Seward, and North Kenai. Also the whole of the Mat-Su valley which borders the Inlet was considered urban along with the Anchorage community. None of the residents of these areas could qualify for subsistence fishing permits and no areas near these communities were open to subsistence fishing. As a result of the Board's 1981 subsistence fishing regulations the majority of the Cook Inlet subsistence users were excluded from the subsistence salmon and other subsistence fisheries including halibut, herring, bottom fish and smelt fisheries.

Prior to 1978 subsistence fishing was defined by law as the taking of fish by longline, gill net, fishwheel, seine or other means as defined by the Board for personal use, not for barter or sale. The 1978 law changed the definition to the taking of fish by such means for subsistence uses, which includes barter trade and selling of nonedible parts of fish as handicrafts. At the insistence of the Attorney General's office, the Board made a distinction between subsistence use and personal use and adopted the narrowest interpretation of the subsistence law in order to exclude the majority of the subsistence users. It found that only the residents of the three villages of Tyonek, Port Graham, and English Bay had a history of subsistence use of Cook Inlet salmon.

In 1981 Madison, GJosund and other Cook Inlet subsistence fishermen brought suit in two Superior Courts to enjoin the enforcement of the Board of Fisheries subsistence regulations. Superior Court Judge Paul Jones presided over a case brought in Homer and Superior Court Judge Victor Carlson presided over another case brought in Kenai. Judge Jones ruled that the subsistence criteria were valid, however, the Board's application of these criteria violated equal protection of the laws and was not based on a factual finding that it was necessary to exclude Homer subsistence fishermen to protect subsistence fishing in Tyonek, Port Graham and English Bay. Judge Carlson ruled that even though the Board's criteria were valid, that the Board's exclusion of

Upper Cook Inlet subsistence fishermen was without due process of law and remanded the case to the Board with a request to provide a personal use fishery for these fishermen. In March of 1982, the Board pursuant to Judge Carlson's ruling, created a personal use fishery on Kasilof red salmon and Upper Cook Inlet fall coho salmon. The personal use fishery was created as an excess "charity" fishery to be accommodated only after subsistence, sports, and commercial fishermen had satisfied their needs. Also, the fishery would not permit trade and barter of the fishery resources. However, the Homer subsistence fishery remained open and has continued as a subsistence fishery since the Court's ruling.

In 1983 the Kenai River Sportsfishing Association, the sports interest group of which Board member Bix Bonney was an officer, brought suit in Kenai Superior Court to halt the fall coho personal use fishery. The court issued a restraining order against the operation of the fishery in favor of Bonney's group.

Then, in 1985, the Supreme Court reversed the two Superior Court rulings in the Madison and G. Josund cases, declaring the Board's subsistence criteria and the regulations adopted pursuant to them invalid and inconsistent with the subsistence law.

It is from this Supreme Court ruling that much debate has followed concerning subsistence use of fish and game and has led the Governor to introduce House Bill 288. Though the Court's ruling is fairly clear and simple, some confusion has been created over the issue. The alleged purpose behind HB 288 is to clear up the confusion, bring state law into compliance with ANILCA, and prevent the elimination of sports and commercial fishing because of runaway subsistence use. None of the objectives of the Governor's bill are well founded. Indeed, the legislation is not essential nor reasonably needed to deal with subsistence fishing in Alaska.

Taking each alleged purpose for the passage of the legislation one at a time and discussing them openly and

rationally should convince members of the Legislature that such legislation is not needed and moreover may be unconstitutional under Alaska law.

It has been alleged by the Governor's administration that unless HB 288 is enacted the state's subsistence law will not be in compliance with ANILCA and this will lead to a takeover of management by the federal government of Alaska fish and game resources and a denial to the state of certain federal revenues intended for management of sea mammals and sports fishing. This allegation is not founded on the truth.

On April 6, 1982, Under Secretary of the Department of the Interior Bill Horn gave a presentation to the joint Boards of Fish and Game at a joint Board meeting in Anchorage Attached to this document are the transcribed comments of Mr. Horn made to the Boards concerning what actions the Board needed to take to be in compliance with ANILCA. In his presentation Mr. Horn made it perfectly clear that regulations adopted by the Boards which encompass either a one tier or two tier subsistence use approach to subsistence users would satisfy the federal requirements of ANILCA. The one tier approach would make only rural residents eligible to be subsistence users. The two tier approach would allow any Alaska resident to qualify until such time that fish resources are so low that only subsistence use can be permitted and the supply of fish stocks available is not enough to reasonably accommodate all subsistence users. Then a priority between subsistence users can be established for subsistence uses, based upon customary dependence on the resource, local residency, and alternative available resources.

The Board opted for the one tier approach to subsistence use. The court in Madison reviewed the one tier approach of the Board and rejected that approach as inconsistent with intent of the current law. The court declared that the current subsistence law intends a two tier approach on the issue of eligibility into the subsistence

fisheries. The two tier approach embodied in the law is consistent with and in compliance with ANILCA. In fact, the court stated that our law is not intended to limit subsistence users to rural residents only, but that all Alaska residents can qualify for a permit. The court also found that the subsistence fishery in which Madison had participated in for approximately 40 years was a customary and traditional use of salmon for personal and family consumption and other subsistence uses. The claim that the current law is not in compliance with ANILCA is patently false.

The next misrepresentation of the Madison decision concerns the Governor's administration's claim that subsistence use of fish cannot be limited until such time that sports and commercial fishing has been eliminated. This representation, like the noncompliance with ANILCA representation, is unfounded. The administration has either mistakenly or wilfully confused the issues of use and users. The two are distinctly different. Subsistence use is intended by the current law to be carefully monitored and regulated. This is clearly stated in the preamble to the subsistence law. In the preamble it states:

> It is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaskan residents. The legislature further finds that beneficial use of those resources by all state residents should be <u>carefully monitored and regulated</u> with as much input as possible from the affected users, so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained yield principle.

The legislative intent to regulate subsistence use in order to avoid jeopardy to fish stocks is abundantly clear. Therefore subsistence use of fish resources can be limited by bag limits, quotas, time, area, and other means available to the Board of Fisheries without the elimination of sports or commercial fishing.

In Madison, the court merely stated that before the Board may limit priority use among subsistence users, it

must factually find two things: 1) that it is necessary to restrict the taking of fish for sustained yield purposes and 2) that eliminating sports and commercial users will not assure the maintenance of fish stocks for sustained yield purposes and establishing a priority among subsistence users is also necessary. It is this interpretation of the law by the court that the administration has confused and misrepresented. It is not necessary to eliminate sports and commercial use of fish in order to limit and regulate subsistence use. It is required to find that it is necessary to restrict the taking of fish to avoid damage and harm to the stocks and that eliminating sports and commercial uses will not assure the viability to the stocks before there is any occasion to limit subsistence fishing to second tier preferred or priority subsistence users as distinct from all subsistence users. The concept of use and users must be kept separate in discussing the intent of the law.

The Cook Inlet subsistence fishery has never posed a real and substantial threat to salmon resources or other beneficial uses of the resource. The Cook Inlet salmon subsistence fishery since the 1960's and until the 1980's has never harvested more the one half percent to one percent of the total salmon harvest by all user groups.

Between 1978 and 1980 the number of persons licensed by the state to participate in the Cook Inlet salmon subsistence fishery ranged from 323 to 1,331. This number is compared to 1300 commercial salmon entry permit holders and from 180,000 to 200,000 sportfishing license holders for the same period. In comparing the number of sport license holders with subsistence permit holders it is readily apparent that the Cook Inlet sport fishery rather than the subsistence fishery has experienced the more dramatic increase in the number of participants. The Cook Inlet sportfishery is comprised of approximately 47 percent non-resident participants. The subsistence fishery is a 100 percent resident fishery. The Cook Inlet salmon commercial fisheries are comprised of seine and gill net fisheries. The Cook Inlet salmon seine fishery

is a 100 percent resident fishery. The set gill net fishery is 90 percent resident and the salmon drift gill net fishery is 60 percent resident and 40 percent non-resident.

The intent of the current subsistence law is to establish subsistence use by Alaska residents of fish as the priority use during times of resources shortage. Most of the sport fisheries and many of the commercial fisheries are comprised of resident and non-resident participants. The social policy embodied in the subsistence law is to make available on a priority basis fish stocks for subsistence use by Alaska residents over non-residential use of these stocks for sports and commercial use in times of resource shortages. This is good sound policy designed to protect the needs, customs, and traditions of Alaskan residents.

The Governor's proposed legislation may also run afoul of the state's constitution. Article VIII, Section 15 of the constitution reads:

> Section 15. No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state. This section does not restrict the power of the State to limit entry into any fishery for the purpose of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Article VIII, Section 17 of the constitution reads:

> Section 17. Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulations.

These two constitutional provisions create major stumbling blocks to the attempt by the Governor or the Legislature to limit entry into the subsistence fishery to rural residents only, and the establishment of a personal use fishery as an alternative for urban residents. Article VIII, Section 15 prevents exclusive and special rights or privileges of fisheries in the natural waters of the state except for commercial fishing and aquaculture. The recent Supreme Court case of Ostrosky v. State gives a clear

interpretation of what this constitutional provision means. If HB 288 was enacted limiting entry into subsistence fisheries to rural residents only, this law would create an exclusive or special right or privilege of fishery based solely on residency. This scheme would be contrary to this constitutional provision prohibiting such action. This is so because the law would create a closed class of persons, namely rural residents, which have an exclusive right or special privilege to subsistence fish.

Next, Article VIII, Section 17 would prevent the rural vs. urban classification of subsistence users. If the purpose behind the governor's bill is to protect subsistence use of fish then those uses demonstrated by Gene Madison and others to have customarily and traditionally existed as subsistence uses in Cook Inlet for many years would be entitled to uniform treatment by the law. Those individuals who have demonstrated use of the Cook Inlet salmon resources for personal and family consumption as food, etc., and for trade and barter are similarly situated with other Alaska residents in rural communities like Tyonek, Port Graham and English Bay with respect to the use and disposal of salmon resources. The constitution requires that these individuals be given equal treatment. Therefore, it would be unconstitutional to allow subsistence use by rural residents only and exclude urban residents from such use. Further the creation of a personal use category for urban users is not equal treatment. Under the personal use category trade, barter, and sale of non-edible by products of fish would not be permitted. The prohibition of these activities to urban residents and the permission to rural residents would not be uniform treatment. Both groups of people would be harvesting the resource for personal and family consumption but only rural residents would be able to extend this consumption to trade, barter and sale of non edible by products as handicrafts. This limitation on urban users would not withstand the mandate of Article VIII, Section 17 as it would result in unreasonable differential treatment among persons similarly situated with

respect to the use of fish resources.

In conclusion it must be said that HB 288 is not a well founded piece of proposed legislation. The bill would create more problems than it allegedly attempts to resolve. The current subsistence law achieves the twin objectives of conserving fish stocks and protecting subsistence uses of these resources. The current law when circumstances warrant would protect a rural priority for subsistence use, for instance, when the fish are in such short supply that priorities must be set among subsistence users.

It is urged that the legislature take no action on HB 288. The time has come to allow subsistence fishing to take its course. There are no present circumstances that have been clearly demonstrated which require subsistence use of fish resources to be limited solely to rural residents. Until such time that a clear and present need arises for such action the type of legislation proposed by the Governor should be shelved. The sky over subsistence use of fish and game is not falling.

If a problem does exist over subsistence use perhaps the solution is not in changing the law but rather in a close re-examination of the Board's process and its application of the law.

DATED this 1 day of April, 1985.

Arthur S. Robinson
ARTHUR S. ROBINSON

Martin Friedman
MARTIN FRIEDMAN

JOINT MEETING OF THE ALASKA BOARD OF FISHERIES
AND BOARD OF GAME, APRIL 6, 1982

Testimony of Deputy Undersecretary of the Department of Interior Bill Horne.
BM: Stands for Board of Fish/Game member

Horne: Thank you, Mr. Chairman, I appreciate the opportunity to appear before the Joint Boards and discuss the State's compliance and implementation with the Alaska Lands Act, and hope that the cooperation that we've been engaged in with the State since last August can continue and we can bring this matter to a satisfactory conclusion. Let me say at the outset that reiterate the Dept. remains philosophically and policy-wise strongly committed to state management. We believe that the State possesses the requisite expertise to protect the fish and game resources of the State of Alaska. It is expertise that we cannot hope to match and as a consequence, we are most anxious to have this matter resolved in such a fashion that we can continue to defer to your judgement, expertise and not have to comply with any manadatory statutory requirements that would force us into the fray. Let me state that from where we're sitting, the federal law that is at issue imposes some fairly minimal requirements on the state, it is obvious that these minimal requirements can have some fairly major repercussions but in and of themselves, we see the requirements to be very bare bones and they are that the State establish some law of general applicability which includes regulations that would provide for a rural priority for subsitence, of course, rural is not the sole criteria, and it also includes the terms "customary and traditional" and there are continued references in the legislative history to nonwasteful taking. That's basic requirement number one. Requirement number two is that the state establish this regional advisory council system and that the recommendations that come up from the regional advisory councils be dealt with by these boards. That is all that the federal law requires and all that we've asked for in our review so far is demonstration from the state that you have laws or regulations that meet these minimal requirements. One of the courses of action suggested to us last year when this process began, was that the State has historically provided this type of preference to its rural residents and that Dept. of Interior should look to the factual track record of recent years, we can conclude on that basis that yes, indeed, the State was doing an adequate job in providing that rural priority and therefore, we could approve a state program without any form of specific laws or regulations. We choose to reject that approach for two basic reasons, one legal and one policy. From the legal perspective, the statute requires us to determine whether or not the state has loss of general applicability to implement Sections 803-805, and factual track record and policies and such as terms of _____ do not consititute laws of

general applicability, we could not satisfy a federal court of law that we had done an adequate and appropriate job of review if all we brought in was the factual track record. It's one of those crazy circumstances in which you need a regulation rather than the facts. The second reason, from a policy prespective, we found even more persuasive. We did not want to engage in a thorough review of the State's track record on fish and game management and try to determine by looking over your shoulder whether or not you had done a job on a resource by resource basis to satisfy rural priority. Frankly, we are not equipped to do that job, we did not possess the requisite expertise to go through the process and say, "well, in game area X you didn't give enough moose to this particular group or in fishing area Y you divied up the resource incorrectly and not in keeping with federal statute". We did not possess the expertise to engage in that type of review, we didn't think it was appropriate of the federal government to second-guess your track record. More important, when it came, if at some stage of the game, this whole process ends up in court, which we regard as a pretty good prospect, we did not want to be going to some federal judge and having that federal judge look over our shoulder at the nature of the factual review that we conducted the program. Consequently we have limited our review to a legal review, which is why since last August, you've been dealing with our friendly solicitors rather than our folks from the Wildlife Service or other resource experts that we possess. All we are looking for is does the state have laws or regulations that establish the regional council system and provide for a rural priority with customary and traditional criteria. That's all we've looked for, that's as far as our review is going to go. Regarding implementation, and obviously we've tried to keep our review to a bare statutory requirements, we've also received many questions about how if the state has this type of priority, codified in a regulation, what sort of guidelines regarding implementation, what sort of practical on the ground effects will that regulation have. Frankly, we don't know. That is something we have refrained from engaging in because it is pretty clear in our mind that the statutory scheme outlined in Title 8 defers those judgements to the State of Alaska, and the state of course, has chosen to defer those judgements to these boards. It is essentially the state's job and the state's responsibility to define rural. The only guidelines in the legislative history regarding what rural means is one phrase in the Senate committee report that says "Anchorage, Fairbanks, Ketchikan and Juneau aren't and Dillingham, Barrow, Bethel, Kotzbue, Nome are". Now that obviously is one criteria, there is nothing in the legislative history regarding what is customary and tradional is, that's clearly yours, and of course, the statute also refers to nonwasteful levels of taking. That again, is a determination for the state to make. Consequently, all that we need is the assurance in some law or regulation that you will provide the adequate rural priority and then in terms of how that is to

be specifically implemented, the statute clearly confers those decisions on you, and as a matter of policy we would like very much to have those decisions conferred on you because, frankly, we don't possess the requisite expertise.

Regarding the timing, the consequences of approval, disapproval. We made it very clear in all of the meetings that we've been conducting, starting last August, that all we need is these minimal requirements. And the stage where we are now is that either one of the approaches outlined by John Gisberg would satisfy ourselves. I will say that from sort of a selfish perspective, we would prefer what I call, for lack of better term, a "one tier" approach that would simply recognize and provide a priority to rural subsistence without trying to define and establish a second category of other subsistence. That is the cleanest way for us, it is abundently clear that would be in full compliance with Title 8. However, based on the process that we have gone through, we are fully prepared to accept what I call the "two tier" system, which is embodied in the proposed regulation that is in your book, which of course is the minor modifications made to your December policy statement and have that modified policy statement recast as a regulation. As the letter from the Secretary to the Governor on February 25, indicated, if that particular proposal is enacted as a regulation by the boards, upon our formal receipt of notification from either the commissioner, the boards, or the governor, that that is now a binding regulation on the State of Alaska. The Secretary will immediately issue the letter of approval and the resonsibilities for implementing this program will remain firmly in the State. I guess I can't emphasize enough how much we wish to do that, that's our primary desire. The reason the Secretary has asked me to come up for these meetings, to pass that on. Obviously if passage of that proposal or something similar that provides for the rural priority. If that goes, we obviously are in a position to approve. I guess the other side of the coin, what are the consequences of inaction or some action that does not establish a sufficiently clear, sufficiently firm rural priority. You know the Act basically says that the Secretary is supposed to grant the state one year to put a program in place, and if at the end of one year, a program is not in place, that the Dept. was mandated, and I guess I should emphasize that it was nondiscretionary, it was mandated to step in and begin to undertake a subsistence management program on federal lands. We received the state's submission on December 2, exactly one year after enactment of the Alaska Lands Bill. We have been engaged in the review process since and consequently have held off and have conducted no planning and no activities in terms of preparing for any contingencies such as federal intervention and assumption of management. However, the clock is ticking on us and we feel that sometime very soon we are going to have to take some action and determine whether the state is in compliance or not in compliance. Consequently, if at the conclusion of the

meetings, we have not received from the state some form of regulation or law that establishes the priority in proper fashion that conforms with the federal statute. We will be shortly be forced to issue some kind of preliminary finding of noncompliance, schedule a hearing within a matter of days in which we will take testimony, I think we will probably have to have it here in the state, regarding whether or not the state program does comply with Title 8. Following that hearing, the Secretary will render his decision. Obviously if this decision is that the state is in noncompliance, we will have to being on a very fast basis the tooling up to assume the management authority on federal lands and of course, we will have to establish further provisions of 805, the regional council system that right now is set up under state law. We don't undertake that activity very lightly. We don't undertake it with much relish. It is something that we hope to avoid at all costs. But nonetheless it is very explicit, nondiscretionary requirement of the law and if we fail to act, any party can go to court and get a writ of mandamus forcing the Secretary to do it. Frankly, one of the concerns we have and there have been various points of view expressed that well, that the Dept. could take a rather minimal back of the hand approach. We wouldn't have to do much in terms of assuming this management authority on federal lands. That type of approach frightens us and it frightens, I could sum it up in two words "federal courts". We are concerned that if the necessity for federal assumption came to pass, and we engaged in what I call a "minimalist approach", it ever so barely satisfied the requirements in the Act, that we may well be hauled into federal court. I think the chances of that are fairly high. If we get before some federal judge, I have a sneaking suspicion we might end up before the judges in the District of Columbia, the prospects of a judge finding that the Dept. has failed to comply with its obligations under the provisions of Title 8 and then the judge take it upon himself to say "Dept. you've acted in bad faith, I'm assuming management of the program." We think the prospects and the chances by our inaction of our obligation under Title 8, that this would end up, there is a good prospect of having this whole thing end up under the jurisdiction of a federal judge in the District of Columbia. We would regard that as an unmitigated travesty and would do all in our power to see that that does not come to pass.

Let me just basically conclude and prepared to answer any questions you might have. We are fully committed to state management. You're the people with the expertise, not ourselves. We will have to engage in a real scramble to catch up effort if this responsibility is thrust on us. We think that the federal law establish some basic minimum requirements that we believe the state, from a policy prespective has been doing this for years, and that in essense, what this regulation does is merely codify the actual enacted policy of many years. Consequently, we would think that that would have rather minimal impacts within the

state. We would hope that the state would take appropriate action. That we would approve the program on a very fast track because we are committed to state management, as evidenced by the recent memorandum of understanding that we executed between our Fish & Wildlife Service and the Alaska Dept. of Fish & Game regarding state involvement in refuge management. We are currently negotiating a similar agreement with the Parks Service regarding fish and game management in the National Park areas. It's common knowledge that we are working very hard to attempt to return marine mammal management to the people of the state of Alaska. Again, you are the people who possess the expertise. We would like to assure that our Secretary's policy of trying to get these things back in the hands of the people with the expertise can be continued and the way to best continue that is for us to have the state enact the appropriate laws and regulations that would permit us to certify compliance with Title 8. Thank you much.

BM: Bill, from your reading of the law there, does the state only have one chance to actually comply, the language just says that within one year the state complies then (inaudible) assume this thing under the guidelines, you're saying that you know, that this is where (inaudible) is here now, but either we have to take some action at this meeting to decide whether we choose to comply or not. But, for example, if we choose not to comply at this time, would there be an opportunity, say a year from now or five years from now for the state to say "OK, we've rethought this whole thing and maybe we will (inaudible).

Horne: The statute is not explicitly clear. It is very clear that it says one year. Our general belief is that there may well be an opportunity that if the state did not comply at this stage, for the state to come into compliance at a future stage and resubmit something to the Secretary. So that I think that there is a possibility of future compliance by the state. My major concern is that I don't think the statute is explicitly clear and someone may well argue that the door has been closed. Obviously from a practical standpoint, we don't engage frankly in the federal management efforts, we don't think that would be good for the resource, we'd much prefer for the state to take appropriate action now.

APR 0 2 1985

attention Adelheid Herrmann

I am writing to urge you to pass House Bill # 288 and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Robi Schmalz

Box 1251
Cordova 99571

APR 0 2 1985

I am writing to urge you to pass House Bill #288 and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Jack & Heidi Babic
Box 1208 Cordova 99571

4-1-85

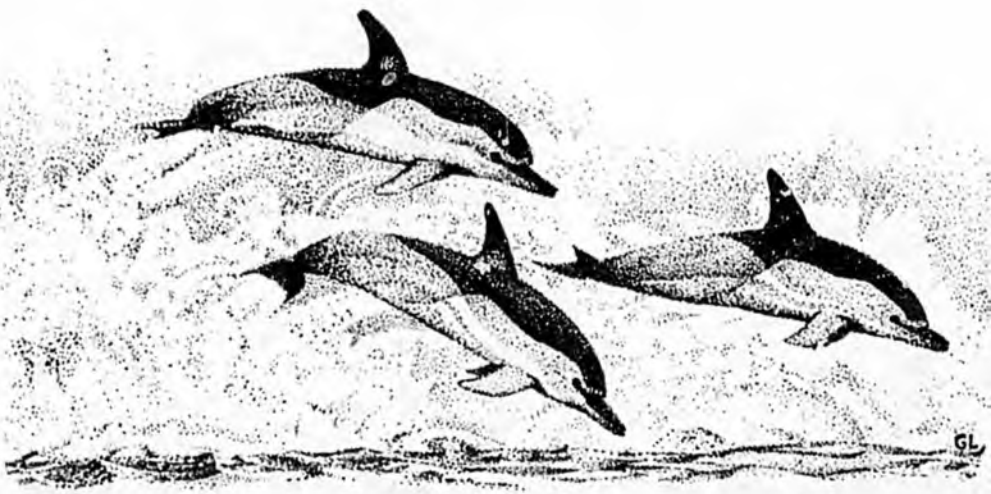
APR 04

Dear Representative Herrmann,

I urge you to support HB. 288 and Senate Bill 231. We are Cordova fishermen and our livelihood depends on our ability to commercially fish the Copper River Flats.

Sincerely,

Mr. & Mrs. E. L. Chesher
Box 116
Cordova, Alaska
99574



4-1-85

APR 0 4 1985

Dear Representative Hermann.

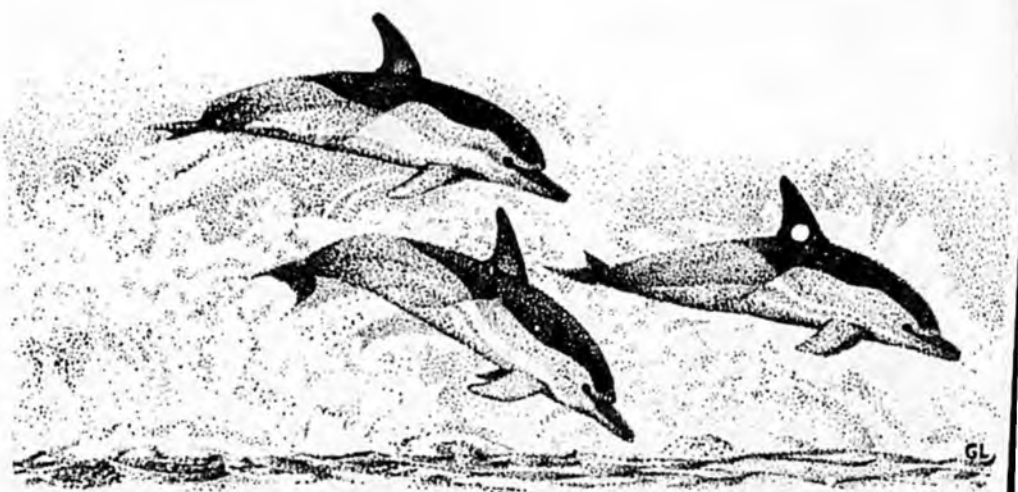
I urge you to support HB.288 and Senate Bill 231. We are Cordova fishermen and our livelihood depends on our ability to commercially fish the Copper River Flats.

Sincerely,

Mike + Clare Phillips

Box 396

Cordova, AK 99574



4/1/85

Rep. Herrmann,

I urge you to read my enclosure which expresses my feelings better than I can.

I also urge you to support Senate Bill #231 & House Bill #283.

Commercial fishing is my living and I want to go on living. Please help me and the rest of the Copper River Commercial fishermen.

E. M. DeVille
Box 652 - Cordova

Main Trails & Bypaths

We recently passed the opinion that sportsman anglers should not be allowed to fish salmon after the fish have entered their fresh-water spawning streams . . . and we were bitterly taken to task by at least one Anchorage resident whose opinion was that we were "far out of touch with Alaskans and especially South-Central and Western Alaska sport-fishing enthusiasts."

Well, Mr. Anchoragite . . . "we" (that's polite for editorial use to keep from using the big personal pronoun) have fished an awful lot of Alaskan rivers for more than half a century, and we've seen the changes in both regulations and the type of fisherman in Alaska. In years past, nobody except a few Natives took salmon out of spawning streams. It just wasn't done. There were markers at the mouths of streams beyond which commercial fishermen were not allowed, and, maybe because there were not too many of us sports fishermen, it was natural that since we didn't have to fish spawning salmon runs, we didn't.

The problem, reduced to simple terms, is largely with numbers and attitude. Now, we'll agree that it is great for folks to be able to go catch, with rod and reel, bright sockeye and bright silvers . . .even bright kings . . .for their annual stuffing of the freezer or the Sears canning equipment . . .but for folks to think pink-sided or black-jowled kings or silvers are "trophy" is kind of hard to swallow for a guy who grew up with bright sea fish. And for anybody to think a turned humpback or dog salmon is good fodder . . .that just shows they "don't know no better."

People ask this old-timer once in awhile as to "What changes do we notice in Alaska, over the years?" Well, we'll have to be honest and say that the "new breed" of sports fisherman who've arrived in Alaska in recent years, and the biologists and the fish management programs that have resulted, are among the greatest . . . and most serious changes . . . we've noticed.



MEMBERSHIP IN THE ALASKA OUTDOORSMEN SOCIETY IS THE PERFECT GIFT

The question put to us by our outraged Anchorage reader deserves some discussion. Times have changed. A lot of people have changed. And it may be a good time to begin bringing out a lot of untouchable subjects and begin fashioning a little more thoughtful ethic among all fishermen . . . Native as well as White . . . and their administrators.

Our Anchorage complainer accused us of leaning to the Native subsistence fishermen and "against" non-Native fishermen . . . sportsmen. The answer to that criticism is yes and no . . . "yes," because we believe time-honored (and against the total fish run numbers, extremely small) traditional takings of spawning fish were . . . and note we said "were" . . . legitimate, and "no" because what is being lost in the shuffle of this whole "subsistence" fishing management problem is that there are probably more whites than there used to be Natives, qualified for "subsistence" fishing on spawning streams, plus the fact that for a variety of legal and economic reasons, there are now many more Natives than there were before . . . you don't have to be "half," you can be "quarter" . . . the collective Native health and living conditions have greatly improved . . . in many instances, it is more profitable to be Native . . . and, not insignificantly, there is no longer stigma in being non-white.

The old Native, in his fewer numbers, did not take much. The new Native, and his white neighbors privileged to have subsistence, are not only legally allowed salmon from spawning streams, but where in years past fishing in streams for salmon was discouraged for Natives in any great numbers and totally disallowed in any commercial sense, and prohibited altogether for whites, now a new generation of biologists and fish and game administrators has abandoned all old stream-watching protection systems and has jumped headlong into political administration of fish stocks . . . for votes . . . trying to answer pressure from all gear groups and certainly answering to pressure from Native groups . . . and we hasten to emphasize here, a "new" kind of Native group . . . not the old-time folks who truly lived off the land, but the modern-day political corporations spawned by whites themselves.

In actual administration practices for fish and game protection, no longer are stream watchmen put out for a few weeks or a few months at the mouths of important salmon streams to inhibit or prevent poaching of salmon above the markers. Any number of important fish runs are being gradually whittled down to dangerous stock levels by legal subsistence fishing. Many runs could be wiped out in a season, for all time, if a handy market should appear.

White rights? What rights does a pair of white school teachers pulling $50 to $100 thousand a year in wages have for "subsistence" sockeye they can take from a spawning stream with a drag net or with other gear?

Sooner or later we are going to have to come to grips with the fact that the blood lines between Natives and whites have become blurred . . . even the political rights of inheritance for Native rights and for fish permits have become blurred.

Political fights, gear fights, and racial fights . . . plus the importation of new "sportsman" fishing ethics . . . have collided in places like the crowded Kenai River and the Russian. Probably only improved policing and sharing rules will smooth things out on the Kenai, but there are other rivers where rules and regulations might be better adjusted before the fact. We need more ethic, more concern for preserving what we can of what used to be.

Let us understand that there are too many new whites, too many only partly native Natives, too many politicians and too many fish and game administrators controlled by politicians. It is a time for soul searching.

Kreaky, our bald-headed eagle at Angoon, was sure nice and white in the head and tail feathers in November, when this was being written. Probably fresh winter feathers, and he wasn't getting them so stained with spawning salmon. Incidentally, with the herring into winter holes, salmon runs over, and bottom fish moved out to deeper water, Kreaky was



making a meal the other day of a big starfish. He'll be after the unwary duck or sea gull soon.

Asked about subsistence fishing, Kreaky says, "At the best it's lousy, this subsistence fishing. Some years there are hardly any fish in the streams at all. Maybe one day there won't be any salmon. Hope there will still be herring . . .but if all the eggs get shipped to Japan . . . can we have herring without eggs?"

Robert A. Heinl

Publisher

APR 0 4 1985

Dear Legislator 3-31-85

I am writeing in support of Governor Sheffield's subsistence bill.

I was raised in Anchorage since 1956 and my family relied heavily on sport caught moose, caribou and salmon. We never considered ourselves subsistence users. This food was incidental to our hunting and fishing. It was the sport and not the food which sent us to Alaska's wilds.

In 1972 my wife and I moved to the Aleutian Chain for four years. Here we witnessed people living a true subsistence lifestyle. Their wealth is their knowledge of the land and resultant ability to provide the majority of their needs from it. To these people the need for food, not sport, was the compelling factor.

In 1976 my family moved to Nabesna in the Copper River Basin. The majority of these people live in a more cash orientated economy. Subsistence is important to supliment their lifestyle.

The subsistence lifestyle is a part of Alaskas past and present which should be protected. I would <u>not</u> favor a system of subsistence which "Doles" out fish and game like welfare on a needs basis. The subsistence lifestyle deserves to be encouraged and lived with pride.

Under Governor Sheffield's bill, subsistence would be regulated as in the past based on rural residency. I feel this is a good solution as it is less need orientated. One of our subsistence groups our Alaska natives have traditionally shared

food within the community. Today this most successful hunters are those who can afford the use of snowmachines, outboards ect. To deprive these people subsistence oportunity thru a needs based program, would affect many others within this community.

The recent ruling by the Alaska Supreme Court creates a situation, which cheats the true subsistence user. The subsistence lifestyle needs to be protected by prisrity. To allow everyone to become a subsistence user cheats the true subsistence user of his protection by priority. I further feel it is a joke to allow Anchorage and Fairibanks residents equality under subsistence as subsistence is a <u>lifestyle</u> that cannot coexist in a city enviroment. We must address this problem immediately to restore balance to our subsistence program. If we delay, we will create a new user group, the city subsistence user. I feel this would impact true subsistence, commercial fishing, sport fishing and sport hunting. It will be harder to solve in the future than now as undoubtably some will not want to loose this new found subsistence rights. The Copper River stands as an excellent example of a new user group being created under the pretext of subsistence. You can argue that the Copper River dipnet fishing is done more for a weekend outing, rather than based on a need to put food on the table. Often more is spent on this recreational outing to catch these fish than if these subsistence users had bought these fish from the market at home.

On the Copper River personal use was created to protect both the true subsistence users and commercial fisherman by giveing a lower priority to recreational dipnetting. I have nothing against recreational dipnetting so long as it is called such and managed as such.

Today we are back at square 1 with Anchorage and Fairbanks recreational dipnetters having a priority over commercial fishermen and threatening the priority of the true subsistence users to this resource.

What is the future of the Copper River commercial fisherman and true subsistence user as our state population grows?

What is the future of our sport fishing, commercial fishing, sport hunting and subsistence users in other areas of the State of Alaska?

Will recreational gillnetting close the world famious Kenai sport fishery?

Please address this problem rationally, responsibly and quickly by passing governor Sheffield's subsistence bill.

Fred Dison
STAR RT. BOX 6700-E
WASILLA, ALASKA
99687

APR 0 2 1985

PHONE 1-907-424-7318

GILBERT L. URATA, D.M.D.
GENERAL DENTISTRY
BOX 518
CORDOVA, ALASKA 99574

March 26, 1985

Alaska State Legislature
Pouch 5
Juneau, Ak. 99811

Dear Legislator:

Am asking for your immediate support of Senate Bill 231 and House Bill 288 for the following reasons.

1) Subsistence merely means existence or an aid to existence. Not all people of Alaska need to catch fish in order to exist. Those that do, ought to have the opportunity to do so, those that don't should be restricted. The ADFG and Board of Fisheries have, and need to be allowed to continue to regulate such. Many residents of the state can't use 200 fish. The fish are not in prime condition as they are at the mouth of a river. Others waste or sell their subsistence fish, or are actually sport fishing, driving hundreds of miles for an outing while others indeed need the resource.

2) The state legislature is not qualified, able, and definitly lacks the time to regulate a fisheries. Therefore, give the proper agency the ADFG, the authority to do so. Shelving both of these bills will eventually undermine commercial fishing in all fishing districts in Alaska. Besides the Copper River and Cook Inlet regions, others will be invaded as access improves. The dipnetters and true subsisters have been getting their fair share of fish. They don't require expensive boats, gear, andpermits. Look at Oregon and Washington. They allowed a judge to kill their fisheries, especially during difficult times with their other industries. How about the Stikine River? Fishing there is practically wiped out following Canadian fishing at the headwaters. When salmon survive the difficult cylcle back to their spawning grounds, let em.

3) My final reason deals with the community of Cordova and others like it. Who's to pay for the vessels and permits? How are the banks to withstand the defaults? Who wants to foot our welfare checks? Class action litigation against the state, including legislators and the CFEC will undoubtly follow. How can the state deny a resident the right to make a living he or she's had for a lifetime?

Please, urge for quick action on this matter. Passage must be concluded prior to May 1, 1985. The red season peak(highest priced reds in Aklaska) lasts only 2-3 weeks starting in May. Most fisherman make their boat and permit payments from reds and use the silver season to the survive the winter. Keep a historic way of life alive.

Cordially,

Gilbert L. Urata DMD

APR 0 2 1985

Tanana Chiefs Conference, Inc.

Doyon Building
201 First Avenue
Fairbanks, Alaska 99701
Phone (907) 452-8251

March 27, 1985

Hon. Richard Schultz
Co Chair, House Committee
Natural Resources
Alaska State Legislature
Pouch V MS 3100
Juneau, Alaska 99811

RE: H.B. 288

Dear Rep. Schultz:

Enclosed please find a copy of Resolution No. 85-77, "Support for SB 231 and HB 288, Governor's Subsistence Bill". This resolution was passed by the full Board of Directors of the Tanana Chiefs Conference, Inc. gathered at their annual convention mid March, and is being forwarded at their request to the House Committee on Natural Resources to please be made an official part of the record of hearings which your committee is currently holding on this proposed legislation.

The resolution emphasizes the need to treat subsistence priority as a rural occurrence on a community basis, that is that communities subsist as communities not as individuals.

We also urge action to be taken in this bill this session.

Thank you in advance for any consideration you and the committee hopefully will make of the information set forth in the resolution.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

Jim Kowalsky, Director
Wildlife and Parks

684.1

cc: Rep. Adilheid Herrmann
Rep. Kay Wallis
Rep. John Sund
Rep. David Thompson
Rep. Mike Miller, North Pole
Rep. Bette Cato
Rep. Drew Pearce
Rep. Roger Jenkins
Ted Charles, Director, TCC Tok Subregion

enclosure

JK/kk

TANANA CHIEFS CONFERENCE, INC.

Support for SB 231 and HB 288,
Governor's Subsistence Bill

Resolution No. 85-77

WHEREAS: the Alaska Supreme Court has recently ruled, in Madison v. Alaska Department of Fish and Game, that the State Board of Fisheries could not distinguish between rural and urban subsistence users until all other uses such as commercial and sport fishing have been eliminated first; and

WHEREAS: this ruling means that potentially large numbers of urban fishers and hunters will share scarce subsistence resources equally with rural fishers and hunters up to the time that those resources reach a critical level; and

WHEREAS: this ruling also means that only when such local resources reach a critcally low level, and only when all sport and commercial uses thusly are eliminated, can local rural communities be given priority subsistence use of that resource over all other including urban uses; and

WHEREAS: this ruling fails to fully recognize that Alaska's urban and rural economics, lifestyles, institutions, opportunities for employment, culture, customs and traditions of communitywide sharing greatly differ; and

WHEREAS: characteristically, rural communities acting together as whole communities have few or no alternatives to the subsistence harvest of locally available resources; and

WHEREAS: urban communities, as whole communities, have diversified economic opportunities and support systems as alternatives to the subsistence harvest; and

TANANA CHIEFS CONFERENCE, INC.

WHEREAS: local populations of game and fish cannot support harvests of large numbers of urban subsistence users fishing and hunting alongside, and in competition with, rural subsistence hunters and fishers; and

WHEREAS: federal law (the Alaska National Interest Lands Conservation Act of 1981) does define subsistence as "rural" in contrast to State law which does not; and

WHEREAS: Governor Sheffield proposed legislation SB 231 and HB 288 to specifiy that subsistence users are customary and traditional uses of fish and game made only by rural Alaska residents; and

WHEREAS: such legislation, if enacted, would essentially resolve the problems created by Alaska's Supreme Court ruling;

BE IT HEREBY RESOLVED that the Board of Directors of the Tanana Chiefs Conference, Inc. supports the proposed legislation SB 231 and HB 288 which would specifiy that subsistence users are rural users of fish and game resources.

CERTIFICATION

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 14, 1985 at Fairbanks, Alaska.

Tanana Chiefs Conference, Inc.
Dorothy Shockley
Secretary/Treasurer

F/V Belen-C
Joe and Belen Cook, Jr.
P. O. Box 215
Cordova, Alaska 99574
Phone (907) 424-3507

APR 0 4 1985

[illegible]

House of Representatives and Resources,

I am writing this letter because of my great concern of what has happened in the last month dealing with subsistance.

I would first like to start by telling you a little about myself and family. Both my husband and I work on a 28 ft bowpicker boat. Starting May 15 to Sept each year, salmon fishing on the Copper River Flats. I also do the bookkeeping for the business, I am also a member of the Fish and Game Advisory Committee for this area, so I am well aware of the problems we have had in the past.

I was on the Fish and Game Advisory Committee, when it was first decided to bring before the Board of Fish having three user groups Subsistance, Personal Use, and Commercial. I was very happy to see it pass, since I believe this to be an excellent way to manage the



F/V Belen-C
Joe and Belen Cook, Jr.
P. O. Box 215
Cordova, Alaska 99574
Phone (907) 424-3507

(2)

resource

I do not want to give you the impression that I am only involved in fishery issues, because this is not the case! I am also on the Cordova Hospital Auxiliary, and The Women's Resource Center, which I am a board director of.

My husband has been a Commercial Fisherman since he was 13 years old and he is now 34 years old. Our livelihood depends on fishery, we depend on the Copper River Flats for 85 percent of our living and 15 percent on the Prince William Sound.

Besides fisherman, the Community of Cordova also depends on fishing, thus I believe HB288 must pass and pass in this session.

You see its quite simple if we fishermen cannot meet our obligations to our creditors, they in turn cannot meet theirs, which can cause great problems in the near future for as economic hardship.

I am positive Cordova will be the only community



F/V Belen-C
Joe and Belen Cook, Jr.
P. O. Box 215
Cordova, Alaska 99574
Phone (907) 424-3507

(5)

affected in this manner in Alaska
so I ask you again to support HB 288

Sincerely,

Belen Cook





APR 04 1985

RAINBIRD FISHERIES, Inc.
P.O. Box 1065
Cordova, AK. 99574

March 31, 1985

Adelheid Herrmann, Co-Chairman
Richard Shultz, Co-Chairman
House of Representatives Resources
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Sirs:

We support House Bill #288 (and SB #231) to give back the power to the Alaska Board of Fisheries and Game to manage our resources. We urgently request your supportas, if this legislation is not passed, this will have a serious impact on the Town of Cordova.

It is most important that this issue be resolved during this Session.

Thank you very much for your efforts.

Very truly yours,

R Shaw

R. J. Shaw

APR 04 1985

Box 993
Cordova, Alaska, 99574
March 27, 1985

Dear Representative,

Please take immediate action, Concerning Senate Bill # 231 or House Bill # 288.

Unless Fish & Game open the Copper River Fishery by the beginning of May our family and the city of Cordova will have no income to sustain them. Cordova's only industry is fishing.

My husband, age 42, has been fishing in Cordova all of his life and the early red run may be as much as 90% of his yearly income.

It is hard to understand how it could be allowed for people who have regular jobs and or sources of income to take fish they don't need and put others out of work.

I am hoping that the Judiciary and Finance Committees will pass Senate Bill # 231 so this can be resolved in time.

Thank you,
Rebecca Garland

APR 04 1985

Box 993
Cordova, Al
99574
March 26, 1985

Dear Representative;

I'm writing to you on behalf of the subsistance fishing ordeal. I think that the Legislature should find some way to solve the fishing problem Alaskans are faced with. My father is a commercial fisherman, and without the money he makes during the fishing season, we may starve this winter.

I'm seriously hoping that you'll give the matter at hand some thought and fast action.

Sincerly,
Adam Garland
age 14

APR 0 2 1985

Box 254
Cordova, Alaska
March 28, 1985

Representative Adelheid Herrmann, Co-Chairman
House of Representatives Resources
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Herrmann;

I am writing to request your support on HB#288 or any similar legislation that would give the Alaska Board of Fish and Game the power back to regulate and manage our fish and game resources. If not passed this could virtually destroy Cordova. Cordova's main industry is fishing and the only industry that is keeping Cordova alive today. We cannot depend on tourism.

Many Cordova fishermen would loose their boats and their only means of making a living if they are not allowed to fish (gill-net). Does the state want to see this happen? Nearly all of the Cordova fleet is financed thru the state. What will this do to the state?

My husband has been in the fisheries since 1969. We make our home here in Cordova and have been residents for over 25 years. This is our only means of employment. We are not young and certainly do not want to loose our boat. We also prefer to be employed and not on Welfare.

I urge you, along with all of Cordova, to please give this bill your support.

Sincerely,

Kathy Crow

Kathy Crow

APR 0 2 1985

HIGH TIDE SEAFOODS
P. O. Box 1556
VALDEZ, AK 99686

March 29, 1985

Representative Adelheid Herrmann
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative:

The commercial salmon industry is a major resource of revenue and employment in the State of Alaska. We urge you to support SB #231.

Thank you.

Sincerely,

James L. Shefler
Partner

JLS/jcs

APR 0 2 1985

ALASKA POWER SERVICES

P.O. BOX 622 • CORDOVA, ALASKA 99574
(907) 424-3300

March 25, 1985

Adelheid Herrmann, Co-Chairman
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Adelheid Herrmann:

I am writing this letter as a private business owner in the city of Cordova in support of HB#288 Alaska Power Services is solely dependent upon the commercial fisheries in Cordova, providing mechanical services and parts to the gillnet fleet of Cordova. If HB#288 is not acted upon by May 1, the survival of my business and many others in Cordova are doubtful this year. There are many resident's livelihoods at stake pending the decision of this bill. We urge that you make every effort to pass this bill as quickly as possible.

Business has dropped off sharply due to the confusion and uncertainty created by the Madison decision, whether or not the gillnet fleet will fish May 15 or not.

We, the owners and employees of Alaska Power Services urge you to act immediately on HB# 288 to ensure a stable economic base for Cordova and it work force.

Your cooperation in this important matter in Cordova is greatly appreciated.

Sincerely,

Charles E Maxwell

APR 0 2 1985

March 28, 1985

Dear Representative Herrmann,

I am a commercial fisherman's wife who is very concerned about the courts interpretation of priority in allocating fish. Giving subsistence users priority over commercial fishermen means financial disaster to us personally and to the future of the Copper River salmon. For the past three years we have worked hard in Prince William Sound and now find ourselves with an investment in a doomed industry.

I am asking for immediate action this session to protect our livelihood. Commercial fishing was under strict regulation by the State Board of fish and game. I feel qualifying as a subsistence user should also be strictly limited. Salmon is a fragile resource - mismanagement one year may have lasting effects.

Sincerely,

Joan C Phillips
3308 Lois Dr
Anchorage AK
99503

Dear Sir 3-21-85

I am writting to urge you to Pass House Bill # 288 and give back to the Board of Fisheries the flexability to manage the resource for the user groups.

Thank you

John Johnson

House Resources Comm.

Adelheid Herrmann

Sir.

I ask your support on H.B. 288 or any other Legislation that would put the Board of fish and game Back in Power To Regulate the Resources as they have in the Past.

The Economy of Cordova and Every other Fishing Community in the State may well hinge on this Bill.

Thank you

Jack Kreitel
Box 489
Cordova, AK.

→

APR 02 1985

Dear ~~Sir~~ Respresentative

As a commercial fisherman who is very dependent upon the Copper River gillnet fishery for my livelyhood, I am very concerned about the current threat by subsistance usage and possible loss of this fishery to commercial fishermen.

I think the problem lies with the definition of subsistance. As far as us fishermen we fully are completly dependent upon these fish. Our homes, vehicles, and vessels are centered around this fishery. We are the ultimate subsistance users. We are not casual users as seems to be the case with many urban up-river people who travel hundreds of miles to fish under the guise of subsistance.

I urge you to support SB 231 (and HB. 235) and manage the Copper River fishery as had been done successfully under the Board of Fishes pre-Madison decision plan. This plan was agreed upon by the various factions involved: true rural subsistance users, sports

fishermen, and commercial fishermen. Your support of this bill will help keep our fishing industry which is very important to the State of Alaska, alive and healthy.

Sincerly

W. F. Fleming

Box 363

Cordova, Alaska

99574

MAR 29 1985

I am writing to urge you to pass House Bill # 288 and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You,

Kim L. Johnson
Box 1159
CORDOVA, AK. 99574

THEODORE J. ALMASY
Pioneer "Alaskan Woodsman" Guide-Outfitter
McGrath, Alaska 99627
The Tikchik Lakes - The Kuskokwim - The Alaska Range
Trophy Fishing • Trophy Hunting • Recreation & Exploration
Dec. 15, 1984

State of Alaska
Boards of Fisheries & Game
Box 3-2000
Juneau, Alaska 99801

Subject: Regulation Proposal Item 4. (extra sheets as required)

DEFINITION: Subsistance in Alaska today is simply all or that portion of an individual or family unit's living or livelihood that is derived and obtained from land and sea by self-employment through use, utilization and development of available natural resources by Alaska's permanent inhabitants (without reguard to race or ancestrial heiredity); and, including, but not limited to: agriculture, mining and forest products along with personal harvest of fur, fish and game.

IN SHORT: Self-support by direct acquisition and personal processing and use of Alaska's land and sea natural resources to provide all or most of one's living or livelihood, and with cash flow not involving wages and salaries from this self-employment.

* * * * * * * * *

LEGAL BASIS: "GRANDFATHER RIGHTS" established by present day Alaskan inhabitants by and through historic personal use. These rights are not limited to any particular race, but rather belong to an ethnic group in a mixed and integrated society. The U.S. Government, after all, invited foreign immigration, permanent settlement, and encouraged and fostered economic development by these pioneers through use, utilization and development of Alaska's natural resources for more that 100 years; and, while she may have changed the rules and policies with reference to recent and current immigrants - she (and her Colonial Arm - the so-called State of Alaska) are legally duty and honor bound to keep promises and committments made in the past. Thus, after some 250 years (beginning with the Russian occupation) of foreign immigration, permanent settlement, and racial integration and assimilation both an ethnic group has developed and a way of life evolved in which individual rights cannot be decided nor judged based upon racial nor ancestrial heiredity; but must be treated on the basis of members of an ethnic society. We are now aware of many flaws in thw Alaska Native Claims Settlement Act, and a major flaw yet to be contested in the courts is based on the Civil Rights of those Alaska Nationals forcefully seggregated and disenfranchised because of our race, and thus denied our "equal rights".

IN SHORT: "GRANDFATHER RIGHTS".

* * * * * * * * * *

* * * * * * * * * * *

DETERMINATION of WHO and WHOM QUALIFIES

* * * * * * * * * * *

WHO IS QUALIFIED? : All Legal Residents of Alaska whose home and permanent residence is outside of the limits of first and second class cities tied into the integrated highway system and Marine Highway Systems, and who as individuals or family units qualify as subsistance users under the "DEFINITION" and "LEGAL BASIS" as stated.

WHO IS EXCLUDED ? : All persons whose home and permanent residence is located within the city limits of any First or Second Class City tied into the integrated highway or Marine Highway systems; residents of government (federal or state) owned housing located upon government owned or reserved lands; and, all U.S. Citizen immigrants who may hold Alaska Resident Status under Law, but whom are themselves in Alaska under "labor" or "tour of duty" contracts or agreements on full time wages and/or salaries; and, who are granted and accorded special benefits, privileges, and tax exemptions including "cost of living allowances" by their employer and governments "as an condition of employment" that are not equally granted nor accorded nor available to local permanent inhabitants of Alaska. Such "Residents" cannot claim Subsistance Rights in Alaska.

****

IMPLIMENTATION

****

1. (a) For the purpose of implimenting this Section: Each Full Game Unit (as they currently exist including all divisions and sub-units) shall henceforth be declared to be also a Subsistance Unit and Unit of Permanent Residence for all legal (one year) Alaska Residents who maintain their home and permanent Post Office address within such Unit's boundaries.

(b) Both Subsistance Rights and Resident Hunting and Fishing Rights (without payment of trophy fees) for all Resident Alaskans shall be limited to (1) Unit only - the Unit of Permanent Residency; and, in order to maintain these rights a party must reside year around in Alaska and not less than six (6) months per year within the boundaries of the Unit for which he claims these rights.

2. All Subsistance Users and legal Residents hunting and fishing outside of their Unit of Permanent Residence shall be deemed to be Trophy Hunting and Sports Fishing and subject to the prevailing trophy fees, but exempt (as Residents) from the Registered Guide Requirement.

3. Trapping is hereby designated as a subsistance right, and trapping is closed except to Subsistance Users.

4. Any Alaskan holding a "Permanent Hunting, Fishing & Trapping License is automatically declared to be a subsistance user and hold Subsistance Rights.

5. That where the taking of certain game animals is restricted by permit that subsistance users within said Game Unit shall have first preference rights to these permits with the general public taking the excess.

Implimentation Continued:

6. Nothing in this or these regulations is intended nor shall prevent immigrant settlers from acquiring Subsistance Rights as an Earned Right so long as they meet the requirements.

* * * * * * * * * * * *

END

* * * * * * * * * * * * *

by Theodore J. Almasy

Theodore J. Almasy

CORDOVA DISTRICT FISHERMEN UNITED

P.O. Box 939

Cordova, Alaska 99574

(907) 424-3477

Represenative Adelheid Herrmann,
Co Chairman, Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska

Represenative Herrmann,

I am writing to urge you to pass House Bill #288 as quickly as possible. It is most urgent that the flexibility to manage the resources is returned to the Board of Fisheries this year. The Copper River will be hard to manage if the Madison decision stands the way it is now.

A lot of hard work has been accomplished by Fish and Game, PWSAC and the Advisory Board to come up with a management plan for the Copper River. This plan did work and did provide for all the user groups on the Copper River in the form of personal use and Subsistence. That balance to manage and maintain a small sockeye fishing time will further burden the financial stability of Cordova as a whole.

Thank you for your cooperation on this important matter.

Sincerly,

Jerry McCune
Vice President
CDFU

JM/ru

cc Richard Shultz
F. Day Wallis
Bette Cato
Roger Jenkens
Mike W. Miller
Drue Pearce
John Sund
Dave Thompson

ALASKAN ALPINE CLUB
641 SANDVIK
FAIRBANKS
ALASKA
99701



LEADERS IN PROTECTING THE HERITAGE OF AMERICAN MOUNTAINEERING FREEDOM

23 March 1985

Representative Richard Shultz
Pouch V
Juneau, Alaska 99811

Subject: Subsistence

Dear Representative Shultz,

Reference subsistence: The Alaskan Alpine Club is appalled by the nature and degree of fallacious information presented to legislators by Governor Sheffield's appointees.

These are the same tactics used by the Native Corporations/ Sierra Club to gain the blackmail Federal subsistence law. It is important that Alaska legislators not tolerate such tactics.

Futhermore, the recommendation of Governor Sheffield's now fully politicized Boards of Game and Fisheries demonstrate a classic case of dishonest politics undermining the achievements of scientific wildlife management in this nation.

Every credible wildlife management agency and organization in the nation is on record as acknowledging that subsistence priorities greatly harm sound biological management of wildlife resources.

If the Alaska State Legislature holds any vestage of honesty, it is inconceivable that Legislators would acquiesce to the same entity which illegally managed the subsistence law amid years of public complaints against that abusive and illegal management.

The self-serving intents of Sheffield administrators are too obvious to later claim any position other than intentional dishonesty, and acquiescence to such.

The subsistence issue CANNOT avoid blowing up in the face of Alaska, not only for Alaskans, but for the witness of the nation.

Its ramifications involve all outdoor users.

Alaska's legislators may not then wish to be identified with the actions that caused such irreparable harm.

Now is the time to demonstrate the honesty and integrity so notably lacking in the imposition of the subsistence scam.

We urge you to address this profound issue with the care and full public participation that it demands.

I must ask: Where are the recommendations of Governor Sheffield's Subsistence Task Force?

Like many other Alaskans, who sincerely accepted the merits of that promised Task Force, the Alaskan Alpine Club was waiting to testify before that entity!!!!

Governor Sheffield catagorically lied to the public when he used the promise of that Task Force to get elected and gloss over this critical issue. That sham Task Force has branded Sheffield and Butrovitch as contemptable examples of Alaskan government officials.

Are the Interior Alaska State Legislators of the same nature, and too cowardous to demand credible results from that Task Force? Are they incapable or unwilling to study the results of this law and hear the people, as Alaskans were led to believe would be done?

I respectfully request answers to these questions from yourself and other interior legislators.

Thank you for considering these views.

And have a pleasant day.

Sincerely,

Doug Buchanan
Executive Director

cc: interior delegation
Governor Sheffield
Mr. Butrovitch
Board of Game and Fisheries
news media

GREGORY FRANK COOK

ATTORNEY AT LAW
P.O. Box 618, Douglas, Alaska 99824
Residence (907) 586-9719
Admitted to P tice in Alaska and Oregon

Representative Dick Shultz
Chairman, House Resources Committee
Pouch V
Juneau, Alaska 99811

March 26, 1985

Dear Representative Shultz,

This is in response to your request for a written memorandum of the oral testimony I presented before the House Resources Committee on March 25, 1985 regarding subsistence legislation.

In dealing with the subsistence issue, the Legislature should bear in mind two key provisions of the Alaska Constitution.

> "Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use." (Article VIII, Sec. 3.)
>
> "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." (Article VIII, Sec. 17.)

Recently introduced legislation (HB 288; SB 231) should be carefully assessed in the light of these Constitutional provisions.

Before adopting any subsistence legislation, the Legislature would be wise to carefully formulate the specific goals it seeks to achieve. Also, it would be prudent to specify the tasks to be delegated to the Board of Fisheries and Board of Game.

Once its goals are made clear, the Legislature's purposes should be put into draft legislation. A broad variety of public comment, together with a range of legal opinions, should be studied until a political resolution is reached that does not violate our state Constitution.

Thank you.

Sincerely,

Gregory F. Cook

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
1117 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
907-456-2899

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE (907) 465-3763
HESS COMMITTEE
(907) 465-3834
HOME 907-780-6027

Senate

March 26, 1985

Representative Richard Shultz
Chairman, House Resources Committee
Pouch V
Juneau, AK 99811

Dear Dick:

Because of the ramifications of the recent Supreme Court decision in Madison vs. the State of Alaska, the Governor has introduced legislation to establish a personal use fishery in law and further broaden the definition of "subsistence user" to mean customary and traditional uses by rural Alaska residents.

HB 288 currently before the House Resources Committee affects many of our constituents. Last year many of our Interior Delegation teleconferences were dominated by those interested in this issue. Now, once again our constituents are requesting hearings before the Legislature takes any final action on the Governor's proposal. We respectfully request that you hold hearings on this bill in those communities most affected, including Fairbanks.

Thanking you in advance for your consideration.

Senator Bettye Fahrenkamp

Representative John Ringstad

Senator Don Bennett

Representative Mike Davis

Senator Jack Coghill

Representative Mike Miller

Representative Niilo Koponen

Representative Steve Frank

APR 0 2 1985

SUBSISTENCE

With the recent Supreme Court decision, the State now has the direction and opportunity to assure to All Alaskans the equal consideration to take fish and game for their own personal consumptive use. This decision supports the Constitution's provision that "Wherever occuring in their natural state fish, wildlife and waters are reserved to the people for common use." The court stressed that common 'use' and not priority 'users was the main intent and should be the effect of the subsistence regulations. They found that all consumptive users, and not just rural residents, are eligible priority subsistence users.

Government and its laws should apply even handedly to All Alaskans and make sure that whatever criteria is used is not unjustly discrimintory in intent or effect. The Constitution does not on a whole and should not have severe restrictive provisions. This same need should be observed by any legislation and should be used to make sure that its clear intent is to protect and insure the equal and just consideration of All Alaskans.

But the same politics that supported the illegal discrimintory subsistence regulations are at work to speedily fix their court failure. Their main weapon, now as in the past, is their threats aimed at the majority of Alaskans. One such threat is that the over 200,000 sportfishermen will be severly impacted by the Supreme Court decision. The court, in fact, said that all personal consumptive user were to be given equal consideration. As most so-called sport fishermen eat the fish that they catch, any priority subsistence use must include them. And those 'pure sport fishermen' who catch and release are not harvesters of the resource, therefore have a negligible impact. With an annual harvest of well over 100,000,000 salmon, All Alaskan should be entitled to the equal opportunity to take fish for their own dinner table.

Another political threat used is that the federal government will deny our State the right to manage our fish and game unless the subsistence priority is based on rural residency. When the Feds mandate that the resource must be managed as they say, the State has in fact already lost the right of management authority. This restriction resulted from State politics that requested and supports such residency discrimination. When Ron Sommerville, Alaska's representative during early d-2 / ANILCA, opposed this federal mandated discrimination he was removed from his Washinton D.C. post. Governor Hammond admitted in a public meeting of the Boards of Fish and Game that Sommerville was removed because of Native pressure. His replacement, John Katz, has compromised the Alaskan public's constitutional rights on this and many other issues. For the State not to politically and judicialy oppose this discrimintory action, which specifically denies equality to all residents of Anchorage, Fairbanks, Juneau and Ketchikan, shows a planed sell out of our rights. This plan includes the continued lobbying action of Larry Spengler, Attorney General office, supporting a priority subsistence use of Alaska's fish and game to be as discrimintory and restrictive as has been politcally motivated. Alaska would be better served if our Attorney General would be motivated by a responsibility to assure that all residents are not discrimintorly restricted in their rights.

The history of Governor Sheffield's stern actions has been a well known threat to any state employee who would question these unconstitutional subsistence regulations. He fired Fish and Game Commissioner Ron Skoog and Game Division Chief Ron Sommerville because of their private personal stands against these regulations. And he then requested the resignations of all Board of Fish and Game members when they began questioning the balatant directions ordered by Larry Spengler. It is time that All Alaskans are again treated under the law, no matter where they reside, and that such equality is promoted by our State and is not necessitated by continued court challenges by its residents.

Dale Bondurant

Dale Bondurant
SR 1 Box 2516
Chugiak, Alaska 99567

Dear Rep. Kerttula

I am writing to support speedy passage of Senate Bill #231 and House Bill #288 to save the Copper River Salmon fishery.

As a resident and employer in the city of Cordova I have become very aware of the large contribution the P.W.S. gillnetters make to the economic base here. I don't believe Cordova can survive without healthy fisheries.

I believe that the State Fish and Game Board have done a pretty good job, if preservation and growing numbers of Salmon are any indication, and a return to the system that has worked well is the best solution.

As an Alaskan I favor subsistence for those who need it. Has anyone considered an income ceiling for subsistence permit holders?

We are all anxiously watching the outcome of these bills as the futures of so many hang in the balance.

Sincerely
Carol Emmett
Bartender
Cordova

MAR 29 1985

Adelheid Herrmann, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Ms. Herrmann,

I live in Cordove and I run a small fish business, along with Tom Johnson also of Cordova. The whole of our business runs strictly off the Copper River red and king salmon run.

I'm writing to you now in the hopes that you will support House Bill #288. If this bill is not passed, I'm afraid the future of the people of Cordova and our children will be limited to handouts from the state welfare. I know this sounds drastic but everything in this small fishing town is centered around the commercial fishing fleet. Personally the affects on myself if this bill is not passed will be devastating as I have no other means from which I depend. I feel stuck between a rock and a hard spot as we who depend on commercial fishing are a minority. I only hope you will take our livelihoods into serious concideration.

Thank You for your time and effort.

Sincerly
Betty J. York

Betty J. York

Betty York
Box 835
Cordova 99574

MAR 29 1985

Adelheid Herrmann, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Ms. Herrmann,

I was born and raised on the Copper River, and I have been a commercial fisherman for 19 years. Over the past few years the fishing time on the Copper River has been restricted time and time again due to escapement reasons and increasing pressures on the upper Copper River. Over 50% of my annual income is generated from gillnetting on the Copper River. I am also a partner in a small fishing co-op. We started this five years ago with 12 fishermen, and our operation has been selling fresh reds and kings to various restaurant markets throughout the country. The entire success of the operation is based on the early fishing we have had and soley relies on the Copper River.

I live in Cordova 12 months a year and 90% of what I buy is bought in Cordova. In my opinion the gillnet fleet cannot survive without utilizing the Copper River fisheries. Therefore I'm asking you to support House Bill #288. I feel that this would be devastating to the economy of Cordova, and I feel that the community itself would have a hard time surviving it if this bill is not passed.

Thank You

Tom Johnson

Tom Johnson
Box 835
Cordova

CITY OF CORDOVA
INCORPORATED 1909

Box 1210 602 Railroad Avenue
Cordova, Alaska 99574
Phone: (907) 424-3237
or 424-3238

"The Friendly City"

March 20, 1985

Leonard V. Pingatore
Mayor

Richard J. Leland
City Manager

Donna M. Sherby
City Clerk

Council Members
Joe Gunderson
Phyllis Day
Oliver Osborn
Lew L. Cochran
R. L. Van Brocklin
John Wheeler

MAR 2 3 1985

Representative Bette Cato
Pouch V
Juneau, AK 99811

Dear Representative Cato:

On March 3, 1985, Governor Sheffield introduced Senate Bill 231 and House Bill 288 relating to the taking of fish and game for subsistence and personal use. As you know, this was necessitated by the Supreme Court's findings in the matter of Madison et al versus the Alaska Department of Fish and Game and the Alaska Board of Fisheries. The intent of the proposed legislation is to provide definition and clarification to the Board of Fisheries' authority to manage Alaska's most valuable renewable resource.

We, in Cordova, have reviewed the proposed legislation with representatives of the commercial and sport fishing industry as well as those who participate in the personal use fisheries. While it is clear that additional work will be necessary to define the various fisheries and the role of the Board of Fisheries over the long term, we feel it is imperative that the Legislature enact the proposed legislation immediately to assure a fishing season in 1985.

On behalf of my colleagues and the City Council and all Cordovan's who depend on a well-managed fishery, I strongly urge your immediate passage of Senate Bill 231 and House Bill 288.

Sincerely,

Leonard V Pingatore

LEONARD V. PINGATORE
Mayor

Enclosur Resolution 85-9

CITY OF CORDOVA, ALASKA

RESOLUTION 85-9

A RESOLUTION OF THE CITY OF CORDOVA, ALASKA URGING IMMEDIATE PASSAGE OF SENATE BILL 231 AND HOUSE BILL 288, RELATING TO SUBSISTENCE FISHERIES, BY THE ALASKA STATE LEGISLATURE

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in non-subsistence uses, and

WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and non-subsistence fishery issues, and

WHEREAS, the economy of the City of Cordova is critically dependant on the Copper River Fishery, as is the State of Alaska dependant on the revenue and employment resulting from the commercial and sport fisheries, and

WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Council of Cordova, Alaska, recommend and urge the immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

PASSED AND APPROVED THIS 20 DAY OF March 1985.

Leonard V Kingatore
Mayor

Donna M Shelby
City Clerk

Richard Shultz, Co-Chairman
Alaska State legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz,

I live in Cordove and I run a small fish business, along with Tom Johnson also of Cordova. The whole of our business runs strictly off the Copper River red and king salmon run.

I'm writing to you now in the hopes that you will support House Bill #288. If this bill is not passed, I'm afraid the future of the people of Cordova and our children will be limited to handouts from the state welfare. I know this sounds drasticm but everything in this small fishing town is centered around the commercial fishing fleet. Personally the affects on myself if this bill is not passed will be devastating as I have no other means from which I depend. I feel stuck between a rock and a hard spot as we who depend on commercial fishing are a minority. I only hope you will take our livelihoods into serious concideration.

Thank You for your time and effort.

Sincerly
Betty J. York

Betty J. York

Richard Shultz, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz,

I was born and raised on the Copper River, and I have been a commercial fisherman for 19 years. Over the past few years the fishing time on the Copper River has been restricted time and time again due to escapement reasons and increasing pressures on the upper Copper River. Over 50% of my annual income is generated from gillnetting on the Copper River. I am also a partner in a small fishing co-op. We started this five years ago with 12 fishermen, and our operation has been selling fresh reds and kings to various restaurant markets throughout the country. The entire success of the operation is based on the early fishing we have had and soley relies on the Copper River.

I live in Cordova 12 months a year and 90% of what I buy is bought in Cordova. In my opinion the gillnet fleet cannot survive without utilizing the Copper River fisheries. Therefore I'm asking you to support House Bill #288. I feel that this would be devastating to the economy of Cordova, and I feel that the community itself would have a hard time surviving it if this bill is not passed.

Thank You

John Johnson

Adelheid Hermann Co-Chairman
(John Gregory
Box 342 - Cordova 99574)

MAR 29 1985

Addressing House of Representatives Resources

Dear Representative, as a Copper River Commercial Salmon Gillnet Fisherman and a ten year resident of Alaska, I urge you to support House Bill #288 or similar legislation to save the Copper River Salmon Fishery, my profession, and the town of Cordova. Failure to stop un-limited subsistance usage by the Urban masses of the state will end the Traditional 70 year old Commercial Fishery on the Copper River, as well as take 75% of my yearly earned income away. As a Gillnet Fisherman for Salmon, the Copper River Fishery provides the bulk of my yearly catch, and supports my livelihood. Cutting off the Copper River Commercial fishing season would put a serious threat to the town of Cordova's very existance. Cordova's local ecoromy depends on thr revenue generated thru the Copper River Fishery. All local business would face the possibility of closing their doors in the event of No Commercial Fishing on the Copper River. Without this Fishery my profession as a Gillnetter would be seriously jeopardized. I reley totally on the income from Salmon Fishing. If the fishery is taken away from me, I have no way to make a living and have limited training in other Fields of work. How would you as a legislator like it if a law was passed that basically eliminated politicans as a bread earning profession, thus forcing you to find another way to earn a living?

You would probably react the same way I am and make an effort to protect your way of life and career. My Career as a Drift Gillnetter is likely to be finished without the Copper River Fishery. I strongly urge you To support legislation that would return the power back to the Alaska Board of Fisheries and Game to regulate the resource. They have studied the Copper River Fish Stocks and have a set management plan. We must protect the resource above all else. Unlimited Subsistance harvests would soon eventually wipe out the Copper River Salmon runs. I feel Subsistance should be based on the individuals needs and traditional use basis. Those individuals who need the Salmon to help survive should be able to take what they can personally consume. For one individual to take 200 Salmon or a Family 500 Salmon when they cannot in all probability consume that many Fish is absurd. That makes an under-the-table Fish sale situation likely for illegally dealing with the surplus Fish. It turns every Subsistance fisherman into a Commercial Fisherman on the 200 fish quota system. How many Families actually eat that many fish? There are only a few choices with that many fish, Sell them, Smoke them, or blantantly waste them! I myself eat a lot of Salmon annually. Including Canning, Smoking, and gifts to relatives,

(Cont.)

I have personal use of 30 to 50 Salmon at the most, and I am a professional fisherman! There should be a personal use fishery for all resident Alaskans, but it should regulated by need. Those residents who need the fish To subsist on would get them under House Bill #288. This Bill would also allow Traditional use groups, such as Commercial Fisherman, and Copper River Valley resident to be able to continue our set-way of existance and help assure management of future stocks of Salmon. I have my whole life's investment tied up in the industry at age 32. I have State backing on a resident loan from the Alaska Commercial Fishing and Agriculture Bank. All in all I have over $100,000 tied up in my fishing business, I live a modest existance and work hard and take many risks against the ocean just to get by on most years I have participate in this Fishery. So its not as easy or lucrative as many might seen to think about the life of an Alaskan Commercial Fisherman. It should be my constitutional right to be allowed to continue this traditional way to make a living. Why is my profession any different than anyones **elses**? Give me a chance to earn a living! With Alaska's concern over falling oil Revenues, the State should be concerned about enhancing its Commercial Fishing Industry not pinching it out of existance and those who earn their livings from it.

Fishing Vessel "NAIAD" — Sincerely, John C. Gregory — Copper River Salmon DRIFT GILLNETTER

CITY OF CORDOVA
INCORPORATED 1909

Box 1210 602 Railroad Avenue
Cordova, Alaska 99574
Phone: (907) 424-3237
or 424-3238

"The Friendly City"

March 20, 1985

MAR - 3 1985

Leonard V. Pingatore
Mayor

Richard J. Leland
City Manager

Donna M. Sherby
City Clerk

Council Members
Joe Gunderson
Phyllis Day
Oliver Osborn
Lew L. Cochran
R. L. Van Brocklin
John Wheeler

Representative Bette Cato
Pouch V
Juneau, AK 99811

Dear Representative Cato:

On March 13, 1985, Governor Sheffield introduced Senate Bill 231 and House Bill 288 relating to the taking of fish and game for subsistence and personal use. As you know, this was necessitated by the Supreme Court's findings in the matter of Madison et al versus the Alaska Department of Fish and Game and the Alaska Board of Fisheries. The intent of the proposed legislation is to provide definition and clarification to the Board of Fisheries' authority to manage Alaska's most valuable renewable resource.

We, in Cordova, have reviewed the proposed legislation wich representatives of the commercial and sport fishing industry as well as those who participate in the personal use fisheries. While it is clear that additional work will be necessary to define the various fisheries and the role of the Board of Fisheries over the long term, we feel it is imperative that the Legislature enact the proposed legislation immediately to assure a fishing season in 1985.

On behalf of my colleagues and the City Council and all Cordovan's who depend on a well-managed fishery, I strongly urge your immediate passage of Senate Bill 231 and House Bill 288.

Sincerely,

Leonard V Pingatore

LEONARD V. PINGATORE
Mayor

Enclosure: Resolution 85-9

CITY OF CORDOVA, ALASKA

RESOLUTION 85-9

A RESOLUTION OF THE CITY OF CORDOVA, ALASKA URGING IMMEDIATE PASSAGE OF SENATE BILL 231 AND HOUSE BILL 288, RELATING TO SUBSISTENCE FISHERIES, BY THE ALASKA STATE LEGISLATURE

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in non-subsistence uses, and

WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and non-subsistence fishery issues, and

WHEREAS, the economy of the City of Cordova is critically dependant on the Copper River Fishery, as is the State of Alaska dependant on the revenue and employment resulting from the commercial and sport fisheries, and

WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Council of Cordova, Alaska, recommend and urge the immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

PASSED AND APPROVED THIS 20 DAY OF March 1985.

Leonard V Pingatore
Mayor

Donna M Shelby
City Clerk

. Richard Shultz, Co-Chairman

Addressing House of Representatives Resoures

Dear Representative, as a Copper River Commercial Salmon Gillnet Fisherman and a ten year resident of Alaska, I urge you to support House Bill #288 or similar legislation to save the Copper River Salmon Fishery, my profession, and the town of Cordova. Failure to stop un-limited subsistance usage by the Urban masses of the state will end the Traditional 70 year old Commercial Fishery on the Copper River, as well as take 75% of my yearly earned income away. As a Gillnet Fisherman for Salmon, the Copper River Fishery provides the bulk of my yearly catch, and supports my livelihood. Cutting off the Copper River Commercial fishing season would put a serious threat to the town of Cordova's very existance. Cordova's local economy depends on the revenue generated thru the Copper River Fishery. All local business would face the possibility of closing their doors in the event of No Commercial Fishing on the Copper River. Without this Fishery my profession as a Gillnetter would be seriously jeopardized. I rely totally on the income from Salmon Fishing. If the fishery is taken away from me, I have no way to make a living and have limited training in other Fields of work. How would you as a legislator like it if a law was passed that basically eliminated politicans as a bread earning profession, thus forcing you to find another way to earn a living?

You would probably react the same way Iam and make an effort to protect your way of life and career. My Career as a Drift Gillnetter is likely to be finished without the Copper River Fishery. I strongly urge you To support legislation that would return the power back to the Alaska Board of Fisheries and Game to regulate the resource. They have studied the Copper River Fish Stocks and have a set management plan. We must protect the resource above all else. Unlimited Subsistance harvests would soon eventually wipe out the Copper River Salmon runs. I feel Subsistance should be based on the individuals needs and traditional use basis. Those individuals who need the Salmon to help survive should be able to take what they can personally consume. For one individual to take 200 Salmon or a Family 500 Salmon when they cannot in all probability consume that many Fish is absurd. That makes an under-the-table Fish Sale situation likely for illegally dealing with the surplus Fish. It turns every Subsistance fisherman into a Commercial Fisherman on the 200 fish quota system. How many Families actually eat that many fish? There are only a few choices with that many fish, Sell them, Smoke them, or blantantly waste them! I myself eat a lot of Salmon annually. Including Canning, Smoking, and gifts to relatives,

I have personal use of 30 to 50 Salmon at the most, and Iam a professional Fisherman! There should be a personal use fishery for all resident Alaskans, but it should regulated by need. Those residents who need the fish To subsist on would get them under House Bill #288. This Bill would also allow Traditional use groups, such as Commercial Fisherman, and Copper River Valley resident to be able to continue our set-way of existance and help assure management of future stocks of Salmon. I have my whole life's investment tied up in the industry at age 32. I have State backing on a resident loan from the Alaska Commercial Fishing and Agriculture Bank. All in all I have over $100,000 tied up in my fishing business. I live a modest existance and work hard and take many risks against the ocean just to get by on most years I have participate in this Fishery. So its not as easy or lucrative as many might seen to think about the life of an Alaskan Commercial Fisherman. It should be my constitutional right to be allowed to continue this traditional way to make a living. Why is my profession any different than anyones **elses**? Give me a chance to earn a living! With Alaska's concern over falling Oil Revenues, the State should be concerned about enhancing its Commercial Fishing Industry, not pinching it out of existance and those who earn their livings from it.

Sincerely,

John C. Gregory

John C. Gregory

Fishing Vessel — "[illegible]" — Copper River Salmon Drift Gillnetter

Richard Shultz, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz,

I was born and raised on the Copper River, and I have been a commercial fisherman for 19 years. Over the past few years the fishing time on the Copper River has been restricted time and time again due to escapement reasons and increasing pressures on the upper Copper River. Over 50% of my annual income is generated from gillnetting on the Copper River. I am also a partner in a small fishing co-op. We started this five years ago with 12 fishermen, and our operation has been selling fresh reds and kings to various restaurant markets throughout the country. The entire success of the operation is based on the early fishing we have had and soley relies on the Copper River.

I live in Cordova 12 months a year and 90% of what I buy is bought in Cordova. In my opinion the gillnet fleet cannot survive without utilizing the Copper River fisheries. Therefore I'm asking you to support House Bill #288. I feel that this would be devastating to the economy of Cordova, and I feel that the community itself would have a hard time surviving it if this bill is not passed.

Thank You

Joan Johnson

Richard Shultz, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz,

I live in Cordove and I run a small fish business, along with Tom Johnson also of Cordova. The whole of our business runs strictly off the Copper River red and king salmon run.

I'm writing to you now in the hopes that you will support House Bill #288. If this bill is not passed, I'm afraid the future of the people of Cordova and our children will be limited to handouts from the state welfare. I know this sounds drasticm but everything in this small fishing town is centered around the commercial fishing fleet. Personally the affects on myself if this bill is not passed will be devastating as I have no other means from which I depend. I feel stuck between a rock and a hard spot as we who depend on commercial fishing are a minority. I only hope you will take our livelihoods into serious conciderration.

Thank You for your time and effort.

Sincerly
Betty J. York

Betty J. York

I am writing to urge you to pass House Bill #288 and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Ken L Johnson
BOX 1179
CORDOVA, AK 99574

Dear Rep. Kerttula

I am writing to support speedy passage of Senate Bill #231 and House Bill #288 to save the Copper River Salmon fishery.

As a resident and employer in the city of Cordova I have become very aware of the large contribution the P.W.S. gillnetters make to the economic base here. I don't believe Cordova can survive without healthy fisheries.

I believe that the State Fish and Game Board have done a pretty good job, if preservation and growing numbers of Salmon are any indication, and a return to the system that has worked well is the best solution.

As an Alaskan I favor subsistence for those who need it. Has anyone considered an income ceiling for subsistence permit holders?

We are all anxiously watching the outcome of these bills as the future of so many hang in the balance.

Sincerely
Carol Emmett
Bartender
Cordova

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4453/4530

2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234

MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
HOUSE STATE AFFAIRS COMMITTEE

Representative Roger Jenkins

DISTRICT 11

MEMORANDUM

TO: Representative Richard Shultz
Chairman, House Resources Committee

FROM: Representative Roger L. Jenkins
Representative Drue Pearce

DATE: March 27, 1985

SUBJECT: Information Requested for HB 288

The following information is requested to aid in making a sound longlasting decision on the Subsistence House Bill 288:

1. During the next Resource Committee hearing on HB 288 request the prevailing attorneys, Martin Freidman and Chuck Robinson to give their interpretation of the Madison Case decision.

2. Ask the Attorney General's Office to define the following words:
   a) rural
   b) customary
   c) traditional

3. What is the Attorney General's Office opinion on the ability of hand held hook and line fishing being used for subsistence?

4. Since a large number of Alaskans do not understand the full impact of HB 288 that public hearings be held at least in Anchorage, Fairbanks, and maybe other areas of Alaska

Only after we acquire and review the preceding information can we make a responsible decision.

Thank you.

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
1117 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
907-456-2899

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE (907) 465-3763
HESS COMMITTEE
(907) 465-3834
HOME 907-780-6027

Senate

March 26, 1985

Representative Richard Shultz
Chairman, House Resources Committee
Pouch V
Juneau, AK 99811

Dear Dick:

Because of the ramifications of the recent Supreme Court decision in Madison vs. the State of Alaska, the Governor has introduced legislation to establish a personal use fishery in law and further broaden the definition of "subsistence user" to mean customary and traditional uses by rural Alaska residents.

HB 288 currently before the House Resources Committee affects many of our constituents. Last year many of our Interior Delegation teleconferences were dominated by those interested in this issue. Now, once again our constituents are requesting hearings before the Legislature takes any final action on the Governor's proposal. We respectfully request that you hold hearings on this bill in those communities most affected, including Fairbanks.

Thanking you in advance for your consideration.

Senator Bettye Fahrenkamp

Representative John Ringstad

Senator Don Bennett

Representative Mike Davis

Senator Jack Coghill

Representative Mike Miller

Representative Niilo Koponen

Representative Steve Frank

GREGORY FRANK COOK

ATTORNEY AT LAW

P.O. Box 618, Douglas, Alaska 99824

Residence (907) 586-9715

Admitted to Practice in Alaska and Oregon

Representative Dick Shultz
Chairman, House Resources Committee
Pouch V
Juneau, Alaska 99811

March 26, 1985

Dear Representative Shultz,

This is in response to your request for a written memorandum of the oral testimony I presented before the House Resources Committee on March 25, 1985 regarding subsistence legislation.

In dealing with the subsistence issue, the Legislature should bear in mind two key provisions of the Alaska Constitution.

> "Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use." (Article VIII. Sec. 3.)
>
> "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." (Article VIII, Sec. 17.)

Recently introduced legislation (HB 288; SB 231) should be carefully assessed in the light of these Constitutional provisions.

Before adopting any subsistence legislation, the Legislature would be wise to carefully formulate the specific goals it seeks to achieve. Also, it would be prudent to specify the tasks to be delegated to the Board of Fisheries and Board of Game.

Once its goals are made clear, the Legislature's purposes should be put into draft legislation. A broad variety of public comment, together with a range of legal opinions, should be studied until a political resolution is reached that does not violate our state Constitution.

Thank you.

Sincerely,

Gregory F. Cook

CORDOVA DISTRICT FISHERMEN UNITED

P.O. Box 939

Cordova, Alaska 99574

(907) 424-3477

Represenative Adelheid Herrmann,
Co Chairman, Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska

Represenative Herrmann,

I am writing to urge you to pass House Bill #288 as quickly as possible. It is most urgent that the flexibility to manage the resources is returned to the Board of Fisheries this year. The Copper River will be hard to manage if the Madison decision stands the way it is now.

A lot of hard work has been accomplished by Fish and Game, PWSAC and the Advisory Board to come up with a management plan for the Copper River. This plan did work and did provide for all the user groups on the Copper River in the form of personal use and Subsistence. That balance to manage and maintain a small sockeye fishing time will further burden the financial stability of Cordova as a whole.

Thank you for your cooperation on this important matter.

Sincerly,

Jerry McCune
Vice President
CDFU

JM/ru

cc Richard Shultz
F. Day Wallis
Bette Cato
Roger Jenkens
Mike W. Miller
Drue Pearce
John Sund
Dave Thompson

THEODORE J. ALMASY
Pioneer "Alaskan Woodsman" Guide-Outfitter
McGrath, Alaska 99627
The Tikchik Lakes – The Kuskokwim – The Alaska Range
Trophy Fishing • Trophy Hunting • Recreation & Exploration
Dec. 15, 1984

State of Alaska
Boards of Fisheries & Game
Box 3-2000
Juneau, Alaska 99801

Subject: Regulation Proposal Item 4. (extra sheets as required)

DEFINITION: Subsistance in Alaska today is simply all or that portion of an individual or family unit's living or livelihood that is derived and obtained from land and sea by self-employment through use, utilization and development of available natural resources by Alaska's permanent inhabitants (without reguard to race or ancestrial heiredity); and, including, but not limited to: agriculture, mining and forest products along with personal harvest of fur, fish and game.

IN SHORT: Self-support by direct acquisition and personal processing and use of Alaska's land and sea natural resources to provide all or most of one's living or livelihood, and with cash flow not involving wages and salaries from this self-employment.

* * * * * * * * *

LEGAL BASIS: "GRANDFATHER RIGHTS" established by present day Alaskan inhabitants by and through historic personal use. These rights are not limited to any particular race, but rather belong to an ethnic group in a mixed and integrated society. The U.S. Government, after all, invited foreign immigration, permanent settlement, and encouraged and fostered economic development by these pioneers through use, utilization and development of Alaska's natural resources for more that 100 years; and, while she may have changed the rules and policies with reference to recent and current immigrants - she (and her Colonial Arm - the so-called State of Alaska) are legally duty and honor bound to keep promises and committments made in the past. Thus, after some 250 years (beginning with the Russian occupation) of foreign immigration, permanent settlement, and racial integration and assimilation both an ethnic group has developed and a way of life evolved in which individual rights cannot be decided nor judged based upon racial nor ancestrial heiredity; but must be treated on the basis of members of an ethnic society. We are now aware of many flaws in thw Alaska Native Claims Settlement Act, and a major flaw yet to be contested in the courts is based on the Civil Rights of those Alaska Nationals forcefully seggregated and disenfranchised because of our race, and thus denied our "equal rights".

IN SHORT: "GRANDFATHER RIGHTS".

* * * * * * * * * *

* * * * * * * * * *

DETERMINATION of WHO and WHOM QUALIFIES

* * * * * * * * * *

WHO IS QUALIFIED? : All Legal Residents of Alaska whose home and permanent residence is outside of the limits of first and second class cities tied into the integrated highway system and Marine Highway Systems, and who as individuals or family units qualify as subsistance users under the "DEFINITION" and "LEGAL BASIS" as stated.

WHO IS EXCLUDED ? : All persons whose home and permanent residence is located within the city limits of any First or Second Class City tied into the integrated highway or Marine Highway systems; residents of government (federal or state) owned housing located upon government owned or reserved lands; and, all U.S. Citizen immigrants who may hold Alaska Resident Status under Law, but whom are themselves in Alaska under "labor" or "tour of duty" contracts or agreements on full time wages and/or salaries; and, who are granted and accorded special benefits, privileges, and tax exemptions including "cost of living allowances" by their employer and governments "as an condition of employment" that are not equally granted nor accorded nor available to local permanent inhabitants of Alaska. Such "Residents" cannot claim Subsistance Rights in Alaska.

****

IMPLIMENTATION

****

1. (a) For the purpose of implimenting this Section: Each Full Game Unit (as they currently exist including all divisions and sub-units) shall henceforth be declared to be also a Subsistance Unit and Unit of Permanent Residence for all legal (one year) Alaska Residents who maintain their home and permanent Post Office address within such Unit's boundaries.

(b) Both Subsistance Rights and Resident Hunting and Fishing Rights (without payment of trophy fees) for all Resident Alaskans shall be limited to (1) Unit only - the Unit of Permanent Residency; and, in order to maintain these rights a party must reside year around in Alaska and not less than six (6) months per year within the boundaries of the Unit for which he claims these rights.

2. All Subsistance Users and legal Residents hunting and fishing outside of their Unit of Permanent Residence shall be deemed to be Trophy Hunting and Sports Fishing and subject to the prevailing trophy fees, but exempt (as Residents) from the Registered Guide Requirement.

3. Trapping is hereby designated as a subsistance right, and trapping is closed except to Subsistance Users.

4. Any Alaskan holding a "Permanent Hunting, Fishing & Trapping License is automatically declared to be a subsistance user and hold Subsistance Rights.

5. That where the taking of certain game animals is restricted by permit that subsistance users within said Game Unit shall have first preference rights to these permits with the general public taking the excess.

Implimentation Continued:

6. Nothing in this or these regulations is intended nor shall prevent immigrant settlers from acquiring Subsistance Rights as an Earned Right so long as they meet the requirements.

* * * * * * * * * * * *

END

* * * * * * * * * * * * *

by Theodore J. Almasy

Theodore J. Almasy

Dear Sir 3-21-85

I am writting to urge you to Pass House Bill # 288 and give back to the Board of Fisheries the flexibility to manage the resource for the user groups.

Thank you

John Johnson

3/23/85

Representative Shultz
Pouch V
Juneau Ak 99811

Dear Representative Shultz

I am in shock that the Subsistance law could be passed as is. Please remit the issue to more public hearings. The future of my children's Alaska is at stake. Thanks

Michael L Ross
292 Narrow View Lane
Fairbanks, Alaska 99701

P.S. Don't let it pass.

March 23/85

Tina M. Simmons
Box 80303
College, Ak 99708

Representative Shultz
Ponch V
Juneau, Alaska 99811

Dear Representative Shultz,

I am opposed to Governor Sheffield's subsistence law.

Sincerely

Tina Simmons

Tina Simmons

3-25-85

Dear Rep. Richard Shultz.

Please hold public hearings in Fbks on the subsistance law before acting on it!

Thank you

Tobi Petersen

1153 Donna dr
Fbks, Ak 99701

P.O. Box 1142
Cordova, Alaska 99574
March 24, 1985

House of Representatives
Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Sirs,

As a resident of Cordova, Alaska, and a Prince William Sound Drift Gillnet permit holder I am urging your support of HB #288 and any similar legislation restoring the Alaska Board of Fisheries and Game to their previous management position of fish and game. The impact of the Madison Decision on my community and myself is catastrophic. Please reinstate the Board of Fisheries and Game as the managing body for our fisheries.

Sincerely,

Karol R. Max

Karol R. Max

3-21-85

I am writing to urge you to pass House bill 288 and give back to the board of fisheries the flexability to manage the resource for the user groups.

thank you
Jeff Dwyer

March 25

Dear Mr. Schultz,

I'm writting to urge you to Please pass House Bill 288 and give to the Board of Fisheries the flexibility to manage the resource for the user groups.

Thank you,
Mike McKenzie

CORDOVA, AK 99574

REP. SHULTZ

THIS LETTER IS IN SUPPORT OF SENATE BILL #231 AND HOUSE BILL #288 WHICH WILL SAVE THE COPPER RIVER FISHERY.

I MOVED TO CORDOVA TOO LATE TO BE ELIGIBLE FOR A LIMITED ENTRY PERMIT ON THE POINT SYSTEM. FOR THE PAST 10 YEARS I HAVE FISHED FULL-TIME AS A DECKHAND ON CRAB & SALMON BOATS WHILE ALSO RUNNING MY SMALL BOAT ON OTHER HARVESTS.

AS OF LAST YEAR MY HOUSE WAS NEARLY PAID FOR AND I COULD INVEST IN A P.W.S GILLNET PERMIT (VIA A STATE LOAN). IF I AM NOT ALLOWED TO FISH THE COPPER RIVER RED SALMON TEN YEARS OF EFFORT, IN ACCORDANCE WITH LEGISLATIVE POLICY, WILL HAVE BEEN WASTED.

CRAB & OTHER FISHERIES AT THIS POINT ARE NOT LUCRATIVE ENOUGH TO MAKE PAYMENTS. WITHOUT THE GILLNET FISHERY I WOULD BE FORCED TO LEAVE CORDOVA.

AFTER WORKING FOR 10 YEARS, IN COMPLIANCE WITH LEGISLATIVE POLICY, TO HAVE ALL I'VE WORKED FOR THROWN OUT BY LEGISLATIVE ACTION WOULD LEAVE ME WITH A DEEP RESENTMENT A LOSS OF RESPECT FOR THOSE LAWS I HAVE TRIED TO OBEY AND RESPECT.

SINCERELY

LYNN POTTER - COMM. FISHERMAN

CORDOVA.

Cordova Chamber of Commerce

P.O. Box 99
Cordova, Alaska 99574
(907) 424-7260

March 19, 1985

R E S O L U T I O N

WHEREAS commerical fishing is the backbone of the economy of Cordova and other Prince William Sound Communities, and

WHEREAS the Madison Decision severely impairs the opportunity for commerical gillnetting on the Copper River Flats, and

WHEREAS a speedy resolution is necessary in order to allow the 1985 commercial gillnet fishing to start as scheduled, now therefore

BE IT RESOLVED that the Cordova Chamber of Commerce supports the passage of HB 288 and SB 231 and urges members of both the House and Senate to put their support behind these bills.

CORDOVA CHAMBER OF COMMERCE

Margy K. Johnson
President

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

To: Resources
Room 118 Capitol

Ms. Hermann, Mr. Shultz +
Committee members,

I am a Cordova, Alaska resident. At present, I have all my personal funds tied up and hanging in the Balance of further decisions, Follow the initial decision on Subsistance which has brought such chaos To our community. The Last industry of Cordova being choked off AT the whim of one supreme court decision.

I am AT the mercy, financially AT A critical moment, having

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

invested properly & Sanely in a viable Limited entry Fishery, which Another Arm of State Goverment — the Dept. of Fish & Game has worked hard & well to manage and the results are begining to show

Suddenly — this is all in Jeopar and the future of an Alaskan town with the Fishermen whove worked & Died on these coasts for so many years will suffer a dismal & degrading end.

I beg that your comittee will find solutions acceptable to all Alaskans in this matter. Give the working person — the Fisherman — the respect he has earned over the Long history of fishing in Alas

Dennis McGuire

My name is Ray Eaton. I live here in Cordova.

I believe that our renewable resources can be used equally by all of the people of Alaska. This can be done only if the Board of Fish & Game are allowed to do the job they were hired for.

As a lifelong fisherman, I can see no feasible way to allow any sensible management under present conditions.

Allowing unlimited harvesting means the end of our fisheries — and eventually, our salmon. This is our reality, as things stand now.

Please pass SB 231 and House bill 388. Without it, Cordova will just about cease to exist.

Thank you
Ray Eaton
Box 1307
Cordova, Alaska

To: House Resources Committee

From: Mary Bishop
1555 Gus's Grind
Fairbanks, AK 99701 Phone: 455-6151

Date: March 26, 1985

Re: HB 288, Subsistence priority

Yesterday, in Anchorage, I attended the Joint Boards of Fisheries and Game hearing on the Madison case. During the hearing the winning lawyers on the Madison case offered their advise--free of charge--to the boards. I fear the boards may not accept the offer.

These two lawyers, Martin Freidman and Chuck Robinson, have a very different interpretation of the subsisence priority law than does the AG office. Using that interpretation Freidman and Robinson have not only won the Madison case before the state's supreme court. Evidently they have also won other cases against the state regarding this issue. Yet, for some reason, the administration continues to listen only to the AG office and not to the "winners".

I urge your committee to receive substantial input from Mr. Friedman and Mr. Robinson before taking any action on HB 288. It would be nice if they could make a 10 minute presentation at the April 8 teleconference so that all of us who are interested in the issue might benefit from their input.

After speaking personally to Mr. Freidman, I am convinced that the impact upon Cordova commercial fishing interests has been misrepresented by the AG office. The boards may, right now, regulate and restrict total subsistence harvest of a resource to the customary and traditional level of that subsistence use. For example, if the traditional level of subsistence harvest at Chitina is 60,000 sockeye, then any fish available for harvest above that 60,000 quota can be allocated to recreation, sport or commercial users in any manner the board desires.

This is not the same as saying all Chitina subsistence users get the traditional "bag limit" of 300 fish. Rather, the traditional total harvest level (60,000) must be maintained. As the court opinion makes clear on both pages 17 and 19, the priority goes for the customary and traditional use, not for the user.

The priority language as written in AS 16.05.251(b) and .255(b) needs to be rewritten and the intent of the legislature made clear. The original bill was passed in haste back in 1978. The language is vague and confusing; I am concerned about parts of the legislative history. We don't need to do this right now.

The Boards of Fisheries and Game are dealing with an incredibly difficult situation--not made easier by the fact that virtually all of them are newly appointed, with the notable exception of Sydney Huntington.

A problem exists--not necessarily the one described by the AG office. Passing the Governor's bill is no solution. It would merely create more tension among state residents.

Mary Bishop

CITY OF CORDOVA
INCORPORATED 1909

Box 1210 602 Railroad Avenue
Cordova, Alaska 99574
Phone: (907) 424-3237
or 424-3238

"The Friendly City"

March 22, 1985

Leonard V. Pingatore
Mayor

Richard J. Leland
City Manager

Donna M. Sherby
City Clerk

Council Members
Joe Gunderson
Phyllis Day
Oliver Osborn
Lew L. Cochran
R. L. Van Brocklin
John Wheeler

Chairman, House Resources Committee
State of Alaska

On March 13, 1985, Governor Sheffield introduced Senate Bill 231 and House Bill 288 relating to the taking of fish and game for subsistence and personal use. As you know, this was necessitated by the Supreme Court's findings in the matter of Madison et al versus the Alaska Department of Fish and Game and the Alaska Board of Fisheries. The intent of the proposed legislation is to provide definition and clarification to the Board of Fisheries' authority to manage Alaska's most valuable renewable resource.

We, in Cordova, have reviewed the proposed legislation with representatives of the commercial and sport fishing industry as well as those who participate in the personal use fisheries. While it is clear that additional work will be necessary to define the various fisheries and the role of the Board of Fisheries over the long term, we feel it is imperative that the Legislature enact the proposed legislation immediately to assure a fishing season in 1985.

On behalf of colleagues and the City Council and all Cordovans who depend on a well-managed fishery, I strongly urge your immediate passage of Senate Bill 231 and House Bill 288.

Sincerely,

LEONARD V. PINGATORE
Mayor

CITY OF CORDOVA, ALASKA

RESOLUTION 85-9

A RESOLUTION OF THE CITY OF CORDOVA, ALASKA URGING IMMEDIATE PASSAGE OF SENATE BILL 231 AND HOUSE BILL 288, RELATING TO SUBSISTENCE FISHERIES, BY THE ALASKA STATE LEGISLATURE.

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in non-subsistence uses, and

WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and non-subsistence fishery issues, and

WHEREAS, the economy of the City of Cordova is critically dependent on the Copper River fishery, as is the State of Alaska dependent on the revenue and employment resulting from the commercial and sport fisheries, and

WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource,

NOW THEREFORE BE IT RESOLVED, that the Mayor and City Council of Cordova, Alaska, recommend and urge the immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

PASSED AND APPROVED THIS 20th DAY OF March, 1985.

Leonard J. Pinquitor
Mayor

City Clerk

Grand Camp
Alaska Native Brotherhood

320 West Willoughby Avenue
Juneau, Alaska 99801
(907) 586-2049

1984 Officers
Grand President ANB
Ronald D. Williams
1st Vice President
William Thomas
2nd Vice President
James Martinez
Secretary
Albert Kookesh
Treasurer
Paul Young
Sergeant-At-Arms
Lawrence Sweet
Grand President ANS
Ethel Lund

August 16, 1984

Honorable Donald W. Collinsworth
Commissioner
Alaska Department of Fish & Game
Post Office Box 3-2000
Juneau, Alaska 99802

Dear Commissioner Collinsworth:

There is some confusion among the people of Southeast Alaska regarding the Personal Use fishing category, and its interaction with subsistence law. It would be much appreciated if you could clarify the situation by providing answers to a series of questions.

In an effort to avoid a major confrontation these questions and your responses will be printed in the SEALASKA Shareholder, a monthly publication which goes out to the 16,000 + shareholders. We feel that if our contituents are informed they are less likely to react to some of the letters to the editor(s) appearing frequently in Alaska Newspapers.

Please provide answers to the following questions:

...ast ANB Grand Presidents
Dr. Alfred Widmark
Patrick J. Paul
Thomas Jackson
John Hope
Frank See
Dr. Walter Soboleff
Richard Stitt
Steven V. Hotch
Nelson D. Frank
Frank O. Williams
Herbert Hope
Robert R. Martin

Roy Peratrovich, Grand President Emeritus
Dr. Cyrus Peck, Sr., Grand Secretary Emeritus
Dr. Mildred Sparks, ANS Grand President Emeritus

1 ° "Personal use fishing" is <u>not</u> a category of fishing mentioned in the Alaska Statutes. Could you please explain the origin of this category of fishing?

2 ° Is there any foundation to concerns that personal use fishing could jeopardize subsistence fishing by establishing a new and competing use group?

3 ° What is the relative priority that personal use fishing has with relation to subsistence fishing, commercial fishing, and sport fishing?

4 ° Are there any Personal Use regulations that cover: waterfowl, shellfish, aquatic plants, fur bearing animals, deer, moose, wild roots, berries and vegtables, bottem fish and trout species?

° Can any person participate in personal use fishing? In other words, are there any eligibility requirements?

6 ° What are the reporting requirements for Personal Use fishing? for Game?

7 ° Can people engage in personal use fishing if the Board of Fisheries has not authorized personal use fishing by regulation?

8 ° What seasons have been instituted by regulation on salmon, halibut and other bottom fish, wild game, waterfowl?

9 ° Will Personal Use cause a reduction of allocation for Subsistence?

° Are there areas that are open to Personal Use, but closed to Subsistence?

11 ° Will the advisory councils/committees have a role in Personal Use in their areas, and of the region?

2 ° What is the difference between Personal Use and Subsistence? Sports?

13 ° Since 1982, what has been the annual take of salmon in the Southeast in the following categories? Commercial, Sports, Subsistence, Personal Use.

° Is there a limit for fish taken for Personal Use? Game? Waterfowl?

Commissioner, so often correct information can eliminate misunderstandings and problems before they begin. We will appreciate your help by responding to the above questions, and done so timely for this being published.

Thank you in advance for your cooperation.

Sincerely,

ALASKA NATIVE BROTHERHOOD

RONALD D. WILLIAMS
GRAND PRESIDENT

By: [signature]

Chairman ANB
Legislative Affairs Committee

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O.BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4100

September 6, 1984

Mr. Robert Willard, Chairman
Legislative Affairs Committee
Alaska Native Brotherhood
320 West Willoughby Avenue
Juneau, Alaska 99801

Dear Mr. Willard:

Thank you for your August 16, 1984, letter regarding the personal use fishing category. I am pleased to have this opportunity to help clarify this topic for your shareholders. Since you plan to run my responses in your newsletter, perhaps it would be best to answer the questions in the order you presented.

1. Before 1978, "subsistence fishing" was defined as fishing with a net for personal use, and "sport fishing" was defined as fishing with rod and reel for personal use. Thus, the difference between "subsistence" and "sport" fishing was based on the type of gear used.

   After the state subsistence law was passed in 1978, subsistence fishing was defined differently. It was no longer defined in terms of "personal use," but rather, in terms of "subsistence uses." In 1978, the legislature also enacted a definition of subsistence uses which hinged upon "customary and traditional uses."

   The other important change brought about by the state subsistence law was that before 1978, the Board of Fisheries could authorize subsistence fisheries at its discretion. Since 1978, the board has been required to authorize subsistence fishing if subsistence uses have been associated with a particular fish stock, unless the sustained yield of that stock would be jeopardized by fishing. Additionally, if fishing must be restricted to protect a certain fish stock, sport, commercial, and personal use fisheries must be curtailed before the subsistence harvest could be cut back.

   As the Boards of Fisheries and Game began to implement the subsistence law, they developed 5 AAC 99.010 -- a regulation which interprets the statute. This regulation

statutory priority. It is up to the board to allocate reasonably between these three categories.

4. So far the Fisheries Board has established personal use salmon fisheries for the Copper River, Cook Inlet, and Bristol Bay. As the board applies the subsistence criteria to more and more fisheries, they will probably continue to create personal use fisheries. The Game Board has not established a personal use hunting category.

5. Unlike subsistence fisheries, where eligibility hinges on the boards eight criteria, there are no special eligibility requirements for personal use fisheries other than general requirements -- for finfish, a resident Alaska sport fishing license and for aquatic plants or shellfish, a resident or non-resident Alaska sport fishing license.

6. Reporting requirements for personal use fisheries are set by the board when each fishery is established and are generally similar to subsistence fishing reporting requirements.

7. No one may legally fish unless the board has authorized the fishery by regulation.

8. In southeastern Alaska, the board has not yet established personal use fisheries. As mentioned above, so far personal use fisheries have only been authorized for salmon in Bristol Bay, Cook Inlet, and the Copper River. As noted above, the Game Board has never established a "personal use" hunting category.

9. The subsistence law clearly mandates that where harvestable surpluses occur, the board must provide for subsistence uses first. Likewise, when the harvestable surplus is not great enough to satisfy all uses, subsistence uses are the last to be cut back. Therefore, under the law, subsistence allocations could not be reduced to protect personal use allocations.

10. There are areas open for personal use fisheries that are not open for subsistence fishing. For example, in Cook Inlet, the board found that only the communities of Tyonek, English Bay, and Port Graham met the criteria set out for subsistence fisheries. Since no other communities qualified for subsistence fisheries, the board used the personal use category to allow historical non-commercial net fisheries to continue in areas where subsistence fisheries are no longer authorized. Anyone with an Alaska resident sport fish license may participate, including residents of Tyonek, English Bay, and Port Graham.

11. Advisory committees and regional councils always play an important role in the regulatory process and we certainly hope that they will continue to do so. The information they provide the board is critical to the board's ability to analyze regulatory proposals relating to all fishing--subsistence, commercial, sport, and personal use.

12. The primary difference between subsistence and personal use is that subsistence uses are defined as customary and traditional uses and must be authorized, with a priority as necessary. Authorizing personal use and sport fishing is left to the board's reasonable discretion and no statutory priority applies. Sport fishing is restricted to hook and line gear attached to a pole, whereas personal use fishing primarily includes nets.

13. The annual southeast salmon catch for 1982 and 1983 is as follows (there are no personal use salmon fisheries in Southeast):

	COMMERCIAL	SPORT	SUBSISTENCE
1982	29,536,800	138,486	40,180
1983	42,202,700	138,510	not available

14. The board sets bag and possession limits for personal use fisheries as they are established or modified just as it does for sport and subsistence fisheries. The Game Board has not established a personal use hunting category.

I hope that these responses will help your readers understand the personal use category. While it is a new term, it simply describes fisheries that have long been conducted, but which no longer fit under the 1978 definition of subsistence.

Please let me know if my staff and I can be of any further assistance. We greatly appreciate your efforts to help people better understand fish and game regulations.

Sincerely,

Don W. Collinsworth
Commissioner

ALASKA OUTDOOR COUNCIL, INC.
3780 McGINNIS DR. JUNEAU, AK 99801
(907) 789-3450

March 5, 1985

PRESIDENT
Rupert Andrews
9416 Long Run Drive
Juneau, AK 99801
(907) 789-7722

REGIONAL VICE-PRESIDENT
Lyle Carlson
Box 2741
Fairbanks, AK 99707
(907) 452-3498

REGIONAL VICE-PRESIDENT
Robert Rausch
PO. Box 2662
Juneau, AK 99803
(907) 789-3764

REGIONAL VICE-PRESIDENT
Ron Swanson
3417 Katilan
Eagle River, AK 99577
(907) 694-9564

TREASURER
Ed Grasser
Box 1350
Palmer, AK 99645
(907) 745-3772

SECRETARY
Sam Harbo
PO. Box 80522
Fairbanks, AK 99708
(907) 452-7815

DIRECTOR-AT-LARGE
Warren Hoflich
6901 Tall Spruce Dr.
Anchorage, AK 99502
(907) 243-4790

Representative Richard Shultz
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: Possible Amendment to 1978 Subsistence Law

Dear Representative Shultz:

This letter is written because our Executive Director was recently advised that there may be an effort to amend the 1978 subsistence law and that effort may be tailored to accomplish those amendments with little or no public hearings.

We understand that if an effort to amend the law is offered this year, it will be to permit the Alaska Boards of Fish and Game to discriminate against individuals who reside in a community defined as "urban".

The purpose of this letter is to make it as clear as possible that we believe the 1978 subsistence law should not be amended in the absence of committee hearings which are open to the public, including hearings which involve teleconferences. In other words, public participation should be permitted.

Sincerely,

LYLE R. CARLSON
Vice-President Interior Region

REPRESENTATIVE
BEN GRUSSENDORF

P O Box 928
SITKA, ALASKA 99835
(907) 747-8458

RULES COMMITTEE
LEGISLATIVE COUNCIL

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
TENAKEE

Alaska State Legislature

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3824
(907) 465-3720

House of Representatives
SPEAKER OF THE HOUSE

PRESS RELEASE #7

March 12, 1985

COMMENTS ON SUBSISTENCE BY REP. BEN GRUSSENDORF

Today the Governor introduced a proposed remedy for the recent court action on subsistence. We now have before us an unexpected, undiscussed issue which requires us to proceed carefully, calmly and constructively.

It appears that the court decision, unless remedied this spring, could cause signficant disruption in the livelihood of thousands of Alaskans. Not only subsistence users, but also sport and commercial fishermen, and big game guides could be very directly and deeply impacted. The court decision also raises the old and unwelcome issue of federal management of Alaska's fish and game. But, with appropriate action by the Legislature, these potential impacts can be minimized, if not avoided altogether.

We will begin by gathering basic facts and clearly identifying issues. We will also evaluate the immediate and longterm impacts on all the resource users. We recognize that there may be differing perspectives and perhaps competing concerns.

Throughout our discussions, we will seek a solution which recognizes the importance of subsistence fishing and hunting in our rural areas, and provides for the needs of personal users, guides, sportsmen and commercial groups as well.

We will provide, of course, for extensive public comment and, hopefully, at the same time, provide a forum for public understanding of what is really at stake in our deliberations. We will seek throughout this process to work on the basis of facts, not opinions; on the basis of reason, not emotion. Our goal will be to minimize any disruptions this unexpected and largely unwelcome change might cause. Only after fact-finding and public input will we decide what constitutes positive, reasonable action on our part.

THE CHITINA DIPNETTERS ASSN.
1002 PIONEER ROAD
FAIRBANKS, ALASKA 9970T



March 9, 1985

Rep. Richard Shultz
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Rep. Shultz:

In a teleconference Tuesday night 3-5-85 I along with Stan Bloom, Dick Burley and Marry Bishop all testified on the Alaska Supreme Court Opinion on subsistence.

The Chitina Dipnetter's Assn. agree with this opinion and want the law to stay as it is and we do not want to be disfranchise again.

I received a phone call from Juneau the next day (3-6-85) in which it was stated that there was some confusion after the teleconference as why we wanted the law to be changed. We do not want the law to be changed we support the Supreme Court Opinion. If there is a bill from the Governer or other legislatures to change this Opinion the Chitina Dipnetter's Assn. would like for you to do whatever you can to defeat there efforts.

If the interior delegation is positive the other side may have a chance to get a bill passed then you should work for a compromise to make sure that RURAL, LOCAL RESIDENCY OR COMMUNITY are not included and to try an identify "CUSTOMARY AND TRADITIONAL" in order to cut down on users.

If any changes are going to be made there will need to be public hearings on all changes. The main thing is that you go slow and get all of the input you can and make a good and constitutional law.

In the Daily News-Miner this morning Rep. Peter Gell stated that "Alaskans voted overwhelmingly in 1982 to keep the subsistence priority for rural Alaskans". This is incorrect the vote was to repeal the State of Alaska Subsistence Law and the word RURAL is not in the State Law.

Again I say if there has to be a change go very slowly.

Sincerely
Byron W. Haley
Byron W. Haley President

Alaska Fish and Wildlife Federation and Outdoor Council

and

Alaska Fish and Wildlife Conservation Fund
3780 McGinnis Dr.
Juneau, Ak. 99801

SPECIAL NOTICE

Alaska Supreme Court Subsistence Ruling

The Alaska Supreme Court Friday February 22, 1985 struck down a Board of Fisheries regulation designed to identify eligibility for subsistence fishing in the Cook Inlet region. Under the regulation, certain residents of the Kenai coastline and an area near Homer were forbidden to fish for subsistence purposes.

The Supreme Court, in a 5-0 ruling, held that the board erred in denying subsistence permits to certain residents who had fished with set nets for personal and family use for many years. The Supreme Court found that the board's regulation on subsistence uses was inconsistent with Alaska law because the regulation was too restrictive.

The opinion stated: "Under a statute designed to protect subsistence uses, the board has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect."

The ruling by the Supreme Court was not a Constitutional decision but rather a statutory ruling. The Court decision went far beyond just eliminating the particular regulation, however.

The Court opinion emphasized the following points:

1. The State subsistence law does not allow the Boards of Fisheries and Game to distinguish between rural and urban subsistence fish and game users.

2. The State law does not allow the Boards to restrict initial subsistence users to a specific community.

3. The Court ruled that the ten point criteria used by the Board of Fisheries was too restrictive and was thrown out.

4. The State law requires the Boards to adopt regulations permitting "subsistence uses".

5. A major point of departure from the State's previous position was the ruling by the Court that <u>all</u> sport and

commercial uses must be eliminated before subsistence uses are restricted in any way.

The Administration Proposal

It is our understanding that the Sheffield Administration is preparing a bill to at least insert the word "rural" into the State law. This would offer a patchwork response to the court ruling that has opened subsistence use to all Alaskans. This type of reaction will perpetuate the present political atmosphere of competition between urban and rural residents. The divisiveness of this issue requires a full and open discussion of what the legislature intends to define as subsistence use and users.

The Alaska Outdoor Council Position

The following points and options should be considered:

1. The court ruling has focused on several critical issues involved with the State subsistence law and any changes should be carefully considered and the public fully involved. This was a socially divisive issue two years ago and any exclusion of the public will only create more animosities.

2. The Governor created a Subsistence Task Force two years ago, to prepare recommendations on this issue. So far, there has been no report from the committee.

3. Legislative action this session should focus on clarifying the elements of the issue as the first step in resolving this controversy. Hasty amendments will cause the issue to emerge annually.

4. It is feasible to consider the desireability of changing the Federal law to comply with existing State law by excluding the word "rural". All of the original hearings in Alaska on the State subsistence law did not include "rural" in the proposal which led everyone equally situated to believe they were a subsistence user.

5. The position of the Alaska Outdoor Council membership has consistently been that subsistence should be based on some equitable basis of individual or family "need". Is this the proper time to consider restructuring the State law to include "need" as a viable criteria?

6. We propose the Legislature not be panicked into quickly altering the State's subsistence law because of this accurate interpretation by the Supreme Court without due deliberations and consideration of all alternatives.

7. The Alaska Outdoor Council annual meeting is scheduled for Juneau from April 11-14, 1985 where subsistence and other critical issues are scheduled for deliberation. We request that no immediate action be taken until after the Council's annual meeting.

8. We agree that some resource management problems could exist this year if the administration chooses to direct the Fisheries and Game Boards to adopt sweeping regulatory changes. It is our opinion that this type of action isn't necessary nor equitable to the general public.

9. If however, it is determined, after full deliberations by the legislature, that immediate temporary corrective measures are essential, we propose that the legislature consider passing a law creating a one year moratorium or "freeze" on the subsistence law which will give them, the public and the Subsistence Task Force one full year to appropriately tackle the entire issue.

SUBSISTENCE

With the recent Supreme Court decision, the State now has the direction and opportunity to assure to All Alaskans the equal consideration to take fish and game for their own personal consumptive use. This decision supports the Constitution's provision that "Wherever occuring in their natural state fish, wildlife and waters are reserved to the people for common use." The court stressed that common 'use' and not priority 'users was the main intent and should be the effect of the subsistence regulation. They found that all consumptive users, and not just rural residents are eligible priority subsistence users.

Government and its laws should apply even handedly to All Alaskans and make sure that whatever criteria is used is not unjustly discrimintory in intent or effect. The Constitution does not on a whole and should not have severe restrictive provisions. This same need should be observed by any legislation and should be used to make sure that its clear intent is to protect and insure the equal and just consideration of All Alaskans.

But the same politics that supported the illegal discrimintory subsistence regulations are at work to speedily fix their court failure. Their main weapon, now as in the past, is their threats aimed at the majority of Alaskans. One such threat is that the over 200,000 sportfishermen will be severly impacted by the Supreme Court decision. The court, in fact, said that all personal consumptive user were to be given equal consideration. As most so-called sport fishermen eat the fish that they catch, any priority subsistence use must include them. And those 'pure sport fishermen' who catch and release are not harvesters of the resource, therefore have a negligible impact. With an annual harvest of well over 100,000,000 salmon, All Alaskan should be entitled to the equal opportunity to take fish for their own dinner table.

Another political threat used is that the federal government will deny our State the right to manage our fish and game unless the subsistence priority is based on rural residency. When the Feds mandate that the resource must be managed as they say, the State has in fact already lost the right of management authority. This restriction resulted from State politics that requested and supports such residency discrimination. When Ron Sommerville, Alaska's representative during early d-2 / ANILCA, opposed this federal mandated discrimination he was removed from his Washinton D.C. post. Governor Hammond admitted in a public meeting of the Boards of Fish and Game that Sommerville was removed because of Native pressure. His replacement, John Katz, has compromised the Alaskan public's constitutional rights on this and many other issues. For the State not to politically and judicialy oppose this discrimintory action, which specifically denies equality to all residents of Anchorage, Fairbanks, Juneau and Ketchikan, shows a planed sell out of our rights. This plan includes the continued lobbying action of Larry Spengler, Attorney General office, supporting a priority subsistence use of Alaska's fish and game to be as discrimintory and restrictive as has been politcally motivated. Alaska would be better served if our Attorney General would be motivated by a responsibility to assure that all residents are not discrimintorly restricted in their rights.

The history of Governor Sheffield's stern actions has been a well known threat to any state employee who would question these unconstitutional subsistence regulations. He fired Fish and Game Commissioner Ron Skoog and Game Division Chief Ron Sommerville because of their private personal stands against these regulations. And he then requested the resignations of all Board of Fish and Game members when they began questioning the balatant directions ordered by Larry Spengler. It is time that All Alaskans are again equal under the law, no matter where they reside, and that such equality is promoted by our State and is not necessitated by continued court challenges by its residents.

Dale Bondurant

Dale Bondurant
SR 1 Box 2516
Chugiak, Alaska 99567

Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

March 21, 1985

Representative Richard Shultz
Pouch V
Juneau, Ak 99811

Dear Dick,
The recent Alaska Supreme Court decision (Madison Case) has resulted in a potentially chaotic and explosive situation. It leaves nearly all of Alaska's people as "priority subsistence users" under the subsistence law and it precludes restricting these subsistence users until sport and commercial fishing is closed down. Although on the outside this may appear to be fair, it creates an unmanageable mess of the Dept of Fish and Game and renders the Board of Fisheries nearly useless. This could be disasterous to the sportfishing, commercial and hunting industries. Additionally, some rivers cannot stand an efficient harvesting method without a threat to the fish resource. The current legislation proposed by the Administration will not resolve these issues and, as a permanent bill, will harm sport and commercial fisheries.

The citizens of Alaska did not vote or participate in the designation of "rural" Alaska as the only ones qualified for priority subsistence, nor is the definition of "rural" or "subsistence priority" clearly understood. These are issues that need full public discussion prior to considering a permenent change to the subsistence law. Therefore, as an interim measure, the Alaska Sportfishing Association calls for immediate action to:

1. Enact legislation this session with a termination or sunset clause expiration date of December 31, 1985, that will enable the Dept of Fish and Game and particularly the Boards of Fish and Game to limit subsistence fishing in the same manner as they were before the Madison decision.

2, Immediately take action that will insure that prior to the 1986 legislative session the priority subsistence issue is fully aired at public hearings with this input assembled and given to the 1986 legislature.

3. During the 1986 legislative session, thoroughly debate the subsistence priority statute and bring about a long term, fair solution for resource users in all areas of the state.

One possible means of identifying the Boards authority in a temporary law for this year would be to include the eight points utilized by the Board.

We believe that a true subsistence priority need does exist for a very few long time residents in very remote areas. Putting any individual in a position where he has priority of a resource, if even legal, over all other people in Alaska, and the world for that matter, is a law and priority that must be severely restricted.

Bob Hunter
Robert L. Hunter
Alaska Sportfishing Association

March 21, 1985

The Honorable Richard Shultz, Co-Chariman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811
Dear Respresentative Shultz,

We urge your support of HB #288 which will help save our Copper River fishery.

This request is not from a casual concern, but we are dependent on the salmon fisheries for our livelihood.

Sincerely yours,
Chris D. Billings
Chris D. Billings
P.O. Box 219
Cordova Ak. 99574

ok

Kenai Peninsula Fishermen's Cooperative Assn.
Political and Legal Action Committee
Box 546, Soldotna, Alaska 99669

Phone: 262-2492



March 18, 1985

Representative Richard Shultz
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Shultz:

We are writing to you to ask your support on Senate Bill 37 and its corresponding House Bill 235. It is an act relating to management plans and regulations adopted by the Board of Fisheries. We have enclosed a Request for Support for this piece and legislation and hope that you will take time to read it.

We are especially concerned that we make it clear to you that we do not support United Fishermen Of Alaska in their position on the Governor's piece of subsistence legislation. In a March 8 letter to past UFA members, support was sought for the this legislation. It was stated that "efforts will require a rigorous and expensive lobbying effort, and even then the outcome will be uncertain because of the powerful seats held in the Legislature by the Fairbanks delegation." These are NOT our sentiments as commercial fishermen who fish the waters of Cook Inlet. In years past, we played a very active role as members of UFA with Cook Inlet commercial fishermen comprising a large number of their membership. When we called upon UFA to assist us with problems that we faced in Cook Inlet, they did not want to become involved. When we needed their help, they were not there to help. As a result of these types of things, we withdrew our support from the organization, but, unfortunately, UFA stills thinks that they have the authority to speak for every commercial fisherman in our state. There have been many issues that UFA has supported in recent years that we cannot support. Please do not think that they speak our minds when they speak on commercial fishing issues.

Our legislation is not a special interest bill. It is designed to benefit all user groups of our very valuable resource of fish. We believe that it would allow the Alaska Board of Fisheries to operate apart from the political pressures and whims of special interest groups that they are at present so susceptible to. It is designed to have our resource managed on a biological basis which will insure its future for generations to come. It is not an "exclusive right" bill and we are not endeavouring to remove anyone from their opportunity to have a part in the harvest of this resource.

We appreciate your time and consideration and hope that you will support us on our bill.

Sincerely,

Cheryl Sutton(Mrs.)
Committee Coordinator
Political and Legal Action Committee

CS:cp

Enclosures

KENAITZE INDIAN TRIBE
Resolution 85-6

RESOLUTION IN OPPOSITION TO HOUSE BILL 288 AND SENATE BILL 231

WHEREAS, the Kenaitze Indian Tribe is a federally recognized Indian Tribe which was reorganized in August of 1971 under the statutes of the Indian Reorganization Act of 1934 as amended for Alaska in 1936; and,

WHEREAS, the Kenaitze Indian Tribe represents and promotes the security, social welfare as well as the interests and common bond of association of its 500 Tribal members; and,

WHEREAS, it is the conviction of the Kenaitze Indian Tribe that the preservation and fostering of a customary and traditional subsistence lifestyle for its members is the primary means of promoting the interests of its members; and,

WHEREAS, the State of Alaska's Subsistence Law (Chapter 151 SLA 1978) recognizes that the fish and game resources of the state "... are not inexaustible and that preferences must be established among beneficial users of the resources..."; likewise that: "... it is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources, and to recognize the needs, customs, and traditions of Alaska residents" (Sec. 1, Chapter 151); and,

WHEREAS, it is the Supreme Court of Alaska's opinion that the Board of Fisheries interpretation of "customary and traditional" uses (§ 703 HR 39) in the 1978 Subsistence Law is inconsistent with the legislative intent to provide guidelines for the protection of subsistence fishing (5 AAC 01.597); and,

WHEREAS, 5 AAC 01.597 was designed to protect subsistence uses; and,

WHEREAS, the Board of Fisheries has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect; and,

WHEREAS, House Bill 288 and Senate Bill 231 - an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date" - was introduced at the request of Governor Sheffield; and,

WHEREAS, House Bill 288 and Senate Bill 231 intends to amend Section 3 AS 16.05.940(23) to read: (23) " 'subsistence uses' means the customary and traditional uses by rural [IN] Alaska residents of wild, renewable resources for direct personal or family consumption..."; and,

WHEREAS, Section 4 AS 16.05.940 is amended by adding a new paragraph to read: " (28) 'personal use fishing' means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter..."; and,

WHEREAS, amending Section 3 (AS 16.05.940(23) to regulate "subsistence uses" to rural Alaska residents only and creating "personal use" fishery for urban residents is viewed as an attempt to divide Aalskans and to legalize something that has been illegal in the past;

NOW THEREFORE BE IT RESOLVED BY THE EXECUTIVE COMMITTEE/TRIBAL COUNCIL OF THE KENAITZE INDIAN TRIBE at a meeting held on March 18, 1985 that the Tribe goes on record as being opposed to House Bill 288 and Senate Bill 231 introduced at the request of the Governor;

BE IT FURTHER RESOLVED that the Tribe urges all Senators and Representatives to carefully review the legality of House Bill 288 and Senate Bill 231 before making this important decision;

BE IT FINALLY RESOLVED that the Tribe will request federal intervention if further attempts to circumvent Supreme Court rulings are taken.

CERTIFICATION

This Resolution 85-6 was duly adopted by the Executive Committee/Tribal Council of the Kenaitze Indian Tribe at a meeting held on March 18, 1985 by a vote of 6 for and 0 against with 1 absent and 0 abstaining.

Ms. Clare Swan
Chairperson, Kenaitze Indian Tribe

DG
Secretary, Kenaitze Indian Tribe

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

March 22, 1985

The Honorable Peter Goll
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Goll:

We appreciated the opportunity to have our department, the Department of Law, and the Boards representives meet with your committee and believe it went well. In response to the inquiry of Representatives Furnace and Phillips concerning Federal Funding available under ANILCA, Dingell/Johnson (D-J), and Pittman/Robertson (P-R), following is an outline of the Federal Funding that was available for the past three years:

	ANILCA	D-J	P-R
FY 85	$1,000.0	$1,639.0	$4,600.2
FY 84	$1,000.0	$1,569.0	$3,804.5
FY 82/83	$ 960.0	$1,753.0	$3,387.4

The ANILCA funding, which is available specifically for the implementation of subsistence provisions, required 100 percent matching funds from the State of Alaska, and the D-J and P-R funds require a 25 percent match.

It is our understanding that the solicitor of the Department of Interior is reviewing possible compliance questions, including funding ramifications, related to the Madison decisior. The ANILCA funds are directly related to subsistence provisions as mentioned. However, the D-J and P-R funds are only indirectly potentially affected.

I hope this provides the information requested. If you have additional questions, please call me.

Sincerely,

Don W. Collinsworth
Commissioner

House Special Committee on Fisheries
Governor's Conference Room
March 21, 1985
8:30 a.m.

Members Present: Representative Peter Goll, Chair
Representative Mike Navarre
Representative Kate Hurley
Representative Roger Jenkins
Representative Johne Binkley
Representative David Thompson

Members Absent: Representative Andre Marrou

Legislators Present: Representative Walt Furnace
Representative Jack Fuller
Representative Randy Phillips
Representative Steve Frank

Legislative Staff Present: Offices of Senators: Zharoff, Sturgulewski, and Senate Advisory Committee. Representatives: M. M. Miller, Sund, Binkley, Jenkins, Thompson, Wallis, Boucher, Navarre, Larson, Reiger, Grussendorf Herrmann, Szymanski, and Fuller.

COMMITTEE CALENDAR: Briefing on Subsistence and HB 288 by the Department of Law, the Department of Fish and Game and Alaska Board of Fisheries. Some members of the departments and Alaska Board of Fisheries participated via teleconference.

WITNESS REGISTER:

James R. Ayers, Special Assistant
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Conference Moderator

Elizabeth A. Stewart, Director
Division of Boards
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Via Teleconference

Ken Parker, Director
Division of Commercial Fisheries
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Via Teleconference

Steven R. Behnke, Director
Division of Subsistence
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99811
Telephone: 465-4120
Position Statement: Via Teleconference

Kenneth R. Florey
Regional Supervisor/Region II
Division of Commercial Fisheries
333 Raspberry Road
Anchorage, Alaska 99502
Telephone: 267-2104
Position Statement: Via Teleconference

Bob Clasby, Fisheries Biologist IV
Division of Commercial Fisheries
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Via Teleconference

Ron Jolin, Chairman
Alaska Board of Fish
P. O. Box 2022
Kodiak, Alaska 99615
Telephone: 486-5949
Position Statement: Via Teleconference

Bix Bonney, Vice Chairman
Alaska Board of Fish
3101 C Street, Suite 301
Chalis 1 Building
Anchorage, Alaska 99503
Telephone: 561-5115
Position Statement: Via Teleconference

John Garner
Alaska Board of Fish
P. O. Box 448
Juneau, Alaska 99802
Telephone: 586-9500
Positions Statement: Via Teleconference

Larri Spengler
Assistant Attorney General
Alaska Department of Law
Pouch K
Juneau, Alaska 99811
Telephone: 465-3600
Position Statement: Via Teleconference

Heidi Borson-Paine
House Research Agency
Alaska State Legislature
Pouch V
Juneau, Alaska 99811
Telephone: 586-3991
Position Statement: Observer

Ron Sommerville
Alaska Outdoor Council
Juneau, Alaska 99801
Telephone: 789-3450
Position Statement: Observer

Rupert Andrews
National Rifle Association
Juneau, Alaska 99801
Telephone: 789-7422
Position Statement: Observer

Cass Parsons, Executive Director
United Fishermen of Alaska
319 Seward Street
Juneau, Alaska 99801
Telephone: 586-2820
Position Statement: Observer

James Martinez
Alaska Native Brotherhood
Klawock, Alaska 99925
Position Statement: Observer

Richard McKinley
Alaska Native Brotherhood
Juneau, Alaska 99801
Telephone: 789-0971
Position Statement: Observer

Woodrow F. Morrison
Bureau of Indian Affairs - Subsistence
Juneau, Alaska 99801
Telephone: 586-7177
Position Statement: Observer

Ron Williams
Alaska Native Brotherhood
Juneau, Alaska 99801
Telephone: 586-7613
Position Statement: Observer

Richard Stitt
Sealaska
One Sealaska Plaza
Juneau, Alaska 99801

Telephone: 586-1512
Position Statement: Observer

Jackie Martin
Bureau of Indian Affairs - Subsistence
Juneau, Alaska 99801
Telephone: 586-7177
Position Statement: Observer

Marilyn Heiman
Alaska Environmental Lobby
204 North Franklin, Suite 3
Juneau, Alaska 99801
Telephone: 586-2345
Position Statement: Observer

Barbara Basham
3601 C Street, Suite 740
Anchorage, Alaska 99503
Telephone: 562-3719
Position Statement: Observer

Bob Richardson
3601 C Street, Suite 740
Anchorage, Alaska 99503
Telephone: 562-3779
Position Statement: Observer

Dale Bondurant
SR-1, P. O. Box 2516
Chugiak, Alaska 99567
Telephone: 688-2692
Position Statement: Observer

Sam McDonnell
336 East 23rd Avenue
Anchorage, Alaska 99501
Telephone: 272-6605
Position Statement: Observer

Mary Bishop
1555 Guss'Grind
Fairbanks, Alaska 99701
Telephone: 455-6151
Position Statement: Observer

ACTION NARRATIVE:
TAPE 12, SIDE A
Recording
Number 003 Chairman Goll called the special meeting on subsistence to order at 8:39 a.m. and listed those present: We have a number of distinguished guests representing a variety of organizations and interest groups. We are here today to receive a briefing by the Department of Fish

and Game, its various divisions, the Department of Law and to receive an announcement and some information from the joint boards of fisheries and game regarding their position on the subsistence bill and their guidance on the issue in general. So with that I would invite Mr. Ayers representing the Commissioner's office of the Department of Fish and Game to open our meeting.

Number 015 Jim Ayers, Alaska Department of Fish and Game: Thank you Mr. Chairman, members of the committee and other Representatives. I appreciate this opportunity. My name is Jim Ayers, I'm Deputy Commissioner of the Department of Fish and Game. What we would like to do this morning is provide a framework from which we think that you will be able to construct and a reasonable discussion and action regarding the Governor's bill and most particularly as it relates to the Madison decision. We're here in the spirit of cooperation. We're here to assist in any way we can and to hopefully, help us all understand that the Madison Decision has removed the board's ability to achieve balance. It has removed the board's ability to obviate the potential devisiveness that was throughout our state for a while. We would like to discuss in this presentation three major aspects: One, a review of the Madison decision and the legal holdings; two, the implications that we think are there with some definition and some implications that are potentially there with regard to federal law; and the third aspect is of course, the potential impact on users as a result of the Madison decision. God willing there are participants in Anchorage at the board meetings who are going to make the majority of this presentation. And so I will become a pretty face and a listener as you all are. The participants in Anchorage are Bix Bonney, a member of the fish board, Beth Stewart, who is the director of our boards' division; Steve Behnke who is the director of the subsistence division; Larry Spengler who is assistant attorney general from the Department of Law; Ron Jolin, who is the chairman of the joint boards and chairperson of the fish board; Ken Florey who is a regional supervisor with the Department of Fish and Game; John Garner, who is a board member of the fish board; if there are others there that I have not mentioned, I'm sure they will identify themselves as the need arises. What we thought would be most helpful is if we began with a presentation from Ron Jolin who is the chairman of the joint boards. Ron, hopefully, is awaiting my silence and will then discuss with you what he believes the current situation is and give you the boards' perspective. I will mention one other thing and that is that we have distributed a copy of the resolution that was passed by the joint boards yesterday. And so Ron will know you have in front of you a copy of their resolution. With that said, Mr. Chairman, and with a gentle reminder that we are here in a spirit of cooperation and to work with you in any way we can to resolve this potential conflict. And with that I would hope, Mr. Chairman, that we can then move to Anchorage to hear from Ron Jolin.

Number 115 Chairman Goll: Thank you very much Mr. Ayers. Yes, we will move to Anchorage. I'd like to request of you and all the other participants today to the extent possible that you send us your comments in writing. What we'd like to do is make sure that other members of the House and Senate who are not present today are thoroughly briefed and by getting either your written comments or transcripts of your comments telecopied down to us here in Juneau, we would take it upon ourselves to get that distributed. Secondly, I'd like to say we were hoping to go until 11

o'clock this morning, but there's a majority caucus at 10:00 and things may wrap up earlier, so that gives us about an hour and a half, a little less to get our business done and I just wanted all participants to be aware of the schedules. Thank you very much and once again back to you and back to Anchorage.

Ayers: Ron Jolin are you in Anchorage?

Number 118 Ron Jolin: Yes, good morning Mr. Chairman and ladies and gentlemen of the House Committee on Fisheries. I'll give a little overview on what the boards' perspective is of the Madison decision. As you know under Title 16, the boards' responsibilities are the preservation and enhancement of the resource for the people of Alaska. And the allocation of those resources to the different user groups in the state of Alaska. I think the board feels that prior to Madison, we were following a process that was working fairly well. Maybe I can give you some of our perspectives of what the Madison decision means to the board or what we feel are some of the problems we would be facing under the decision. We would have some problems in trying to accommodate our commercial and sport users in the state of Alaska. I think that under the decision we are put in a position of having to allocate fish to one user group in preference over all user groups in the state, especially the commercial and sport fishermen. It's taken away a lot of flexibility of the board to regulate our fisheries. I think that as we move into this we will be getting a more indepth report on that from our legal staff, from the AG's office and from some of the people in the department. HB 288 would return the flexibility that we need to regulate and manage our fisheries resources. It's not an easy job in a state as large as Alaska to try and allocate all of the resources in an equitable manner to all of our user groups. But we really feel that we're doing the best job that could be done under the circumstances. I think that anything that we can do to return our regulatory authority to the balance that we had prior to Madison, would be in the best interests of all people and all user groups in the state. I suppose as we move into this we'll be getting into some of the worst-case scenarios and what might happen - what might not happen this year and the following years if we do indeed not get back to our previous position before Madison and if we do return to our position. If we can find the support that we need to pass both bills. With that maybe I'll turn it over to Larri and she can run through some of the AG's perspectives.

Number 167 Larri I. Spengler: Thank you. This is Larri Spengler with the Department of Law. What I'm going to do is give a very brief overview of Madison, the decision which put us all in this position and also of the series of events that led up to the Madison case and the holdings of Madison, generally how they impact the board's authority and also briefly how that has implications with regard to the federal subsistence law. After that, the different people from the Department of Fish and Game, and to whatever extent I can be of assistance in that, along with board members will talk about the various specific situations that we know we'll need to address under Madison if the Governor's bill does not pass. We thought it might be most useful for questions to be asked after each section, rather than waiting to the end of the whole presentation. So when I'm done with the legal overview, if there are any questions on that maybe we could take them then and then after we talk about each resource

situation, if the committee has questions on that we could take those questions at that time before getting into the next one.

The Madison case is the first time that the State Supreme Court has had an opportunity to evaluate the state's subsistence statutes and what it means. In doing that the court basically turned on its head the authority the board had thought it was exercising up to that point and made it very difficult for the board to continue the balance and the ability to accommodate all of the different uses that had been thought to rest in the board earlier.

Madison is a case that came out of Cook Inlet. It's a case that was filed by people living in Kenai and Homer. The board's approach to subsistence in Cook Inlet is perhaps a useful microcosm to how it has been approaching subsistence throughout the state as well. And therefore the chronology that led up to this case, to this lawsuit, provides a good background against which to look at Cook Inlet in more detail and also to look at the other situations.

The state subsistence statute was passed in 1978. Before 1978, the board of Fisheries had been delegated from the Legislature the authority to authorize commercial fishing, sport fishing and subsistence fishing in the board's discretion. Subsistence fishing at that time, before 1978, was simply described as fishing by net for personal use. Sport fishing was defined as fishing by rod and reel for personal use and commercial fishing was defined as fishing for profit. What the Legislature did in 1978 was take away some of the board's discretion with regards to subsistence fishing. The Legislature said that if there were subsistence uses on a fish stock or a game population, for the game board, then the board no longer had the discretion to authorize or not authorize that. It had to authorize fishing unless it would hurt the resource. So it removed some of the board's discretion and it also said that if there was a resource situation that required restriction, subsistence would have the priority. So, the law was passed in '78 and several years went by. No real effort was made or no real examination was made of the law and what it required by the board of fisheries. In 1980, there were three lawsuits filed by different individuals around Cook Inlet and communities.

And that brought the board's attention and the state's attention generally sharply into focus on the subsistence law and what it required. The state lost all three cases simply because the board had not really been looking up to that point at the subsistence law and what it required.

Those cases came from the Homer, Kenai and Tyonek areas. As a result of that summer, the board in a winter meeting of 1980 and the spring of 1981 examined the uses around Cook Inlet and examined which of those uses were subsistence uses of salmon under the state law and in order to do that they had developed criteria against which they would examine a use of salmon to determine if it was a customary and traditional use of salmon. That was, customary and traditional being some of the catch words in the definition of subsistence uses. Under those criteria, the board determined that in Cook Inlet only three communities qualified for subsistence uses: Tyonek, English Bay and Port Graham. The board

authorized subsistence uses for those communities and then looked at the rest of the Inlet. Elsewhere in the Inlet, there had been subsistence fishing authorized since statehood and before, under the definition of net fishing for personal use. Now, the board had determined that that fishing was not subsistence fishing because it did not meet the criteria that they had developed and in the spring of 1981 before the 1981 summer the board did not authorize any net fishing for any one else in Cook Inlet for their own personal use except for the subsistence fishing which was to occur in Tyonek, English Bay and Port Graham. That summer, the summer of 1981, individuals from Homer and Kenai filed two different lawsuits. In both cases, the people claimed that they were subsistence fishermen and always had been, and should be able to continue to subsistence fish, But, also claimed that in any event, they ought to be able to have some kind of access to the fishery with nets because they had historically done so. The court in Madison at the lower level refused to overturn the board's assessment, that there were no longer subsistence uses existent in the Kenai area, but also said that the board had to treat those people fairly and could not eliminate that historic use without some good reason. And that basically that in treating them fairly they might have to set up some kind of personal use fishery that would allow those people, Mr. Madison, the plaintiff in that case, and others in the area, access to the fish. So, the board then established, after the summer of 1981, established the personal use fishing category in regulation. Personal use fishing was defined, basically the way subsistence fishing had been defined before the subsistence law was passed: fishing by net for personal use. Subsistence fishing was now defined as fishing for subsistence uses, customary and traditional uses for certain purposes. So subsistence fishing was a subset after 1978 of what subsistence fishing had been before 1978. It was, under the board's interpretation, narrowed. The definition of subsistence fishing had been narrowed in 1978 to protect the uses and harvests in rural communities and areas. Ok, so the board set up a personal use fishery and authorized personal use fisheries opportunities for Mr. Madison and everyone else in the Anchorage area, Kenai area Homer area on sockeye in the summer in Cook Inlet and some coho in the fall. What the lawsuit was filed over was a more extensive coho fishery in the fall, that's what the people had been seeking. The court, as I said in Madison, said these criteria that you've been applying are the right approach to identifying rural communities in the areas that are reliant on fishing for personal uses and a significant component of the economy of the community or area. And that's exactly what the Legislature meant in 1978. You're doing it right, board go ahead. So the board went ahead and in combination with the joint board adopted 8 criteria which eventually replaced the 10 criteria from Cook Inlet which both boards would use on a statewide basis to identify subsistence uses of fish stocks and game populations.

The board of fisheries applied those criteria in various situations, including the Copper River and we'll get into that a little bit more later. At the end of February the Supreme Court issued its ruling in Madison. All along since 1981, the case had been slowly winding its way through the court system and finally reached the State Supreme Court. The court said that the board's implementation of the statute was inconsistent with the statute. The court did not rule on any constitutional issues, but rather looked at what the court thought the Legislature in 1978 meant. And the court determined that the Legislature

in 1978 had not meant nor had authorized the board to identify subsistence uses as rural uses in rural communities and areas. That the Legislature had not authorized the board to look at the uses of communities or areas. And conversely that the Legislature had not authorized the board to look at individuals to see at first instance who gets in to be able to subsistence fish.

Mr. Jones can because he's lived here for 20 years, Mr. Smith can't because he's been here for two years is not a system that the board had ever tried, but the court said by the way, don't try it because that wasn't meant either. What this left us with is a situation where, under the court's ruling, if there has been a subsistence fishery at any time on a particular fish stock, the board has to authorize subsistence fishing on that stock unless any fishing would be dangerous to the stock. The board cannot say who can go and fish in that fishery. All Alaskans can go and fish until or unless all sport and commercial fishing on that relevant stock has been eliminated. So an example which we'll talk about more in the Cook Inlet section is the village of Tyonek across the inlet from Cook Inlet. The board established a subsistence fishery for which only residents of Tyonek could qualify on king salmon in the spring. They took approximately 2000 king salmon in a year in that fishery. Now, there is no question in that fishery is a customary and traditional fishery, the board will have to authorize it and cannot exclude anyone from participating in it. So anyone from Anchorage or from anywhere else can go over there and fish and the board cannot restrict that until and unless the sport fishery in the Susitna drainage afterwards and any relevant commercial fishery have been closed down.

The Madison case then left us with two different sets of problems. One is the potential disruption to the balance that the boards have achieved among the different use groups. And the other is a probably inconsistency with federal law. If it's acceptable, I'll go straight on into the federal law problem and then pause for questions, unless someone would like some now. (no questions)

The federal subsistence law, ANILCA Title 8, allows the state to continue its traditional management on all of the federal land in the state, which makes up 60% of the land, it's not just the parks and monuments, it's all federal land. If the state by a law of general applicability provides for three things which are specified in ANILCA: one is the advisory committee and regional council system, which the state already has; another is the subsistence priority which the state has; and the third is the definition of subsistence uses that is found in ANILCA. ANILCA defines subsistence uses identically to the state with the exception that it is specifically stated in the statute that subsistence are customary and traditional uses by rural Alaska residents. Up until the Madison decision, we were in compliance with ANILCA because the boards had been interpreting our subsistence law as the intention of the law was to protect the harvests of fish and game in rural communities and areas which were dependent on the resource. So, we were in compliance. Now the court has said that the boards are not authorized to identify subsistence uses as rural uses. If the boards cannot protect rural uses as subsistence uses, separately from other uses then we will not be in compliance with ANILCA and the federal government may be required to take some action to impinge upon the board's

regulatory authority over fish and game. There are several questions with regard to this. One aspect of this, as I mentioned, is taking over the management of the federal land in the state. Land is defined in the statute as water and there is an argument to be made, although the state has not and would not concede this, that navigable waters are included under the definition. So, if that were the case, then the federal government would have to exercise some management over all of the navigable water.

The other thing to keep in mind is that even if the federal government doesn't particularly want to take over management there is a section in the federal law that allows another private party to go into court and sue the federal government to make them do their duty as such under the law. So, a private party or group could go into court and sue the federal government and say: 'federal government, the state is not now authorized to protect rural uses as opposed to other uses and that means that you have to go in and do something.' And the court might well order them to do something.

Another consequence of this is financial. Because the statute says that if the state is in compliance we will receive and we have been receiving matching money in the amount of about $1 million dollars a year from the federal government to support the advisory committee and regional council system. And maybe Jim Ayers could summarize the financial consequences before we take any questions.

Number 376 Ayers: Thank you Mr. Chairman. I will do two things actually, I will mention Larri and to Beth Stewart who, hopefully, is waiting to discuss some other aspect of the impacts subsequent to this. We are under a time line here and maybe, Mr. Chairman, you could give us some direction.

Chairman Goll: Yes, Jim, thank you. Rep. Fuller has just come back and advised us that we will be able to continue until 10:30 a.m. So that's a little bit better, but we will still have to move rapidly if we are going to get through all of the facets of your presentation.

Ayers: Those of us who are inclined to enjoy the sound of our own voice will try to restrain ourselves. Thank you Mr. Chairman. The financial implications with regard to the federal funds are most specifically those ANILCA funds that we receive from the federal government to ensure that we carry out the intent of the federal language with regard to rural Alaskans and subsistence use. The subsistence way of life has given cause to the federal government to provide funds to the state of Alaska to ensure that the advisory committees and the regional councils have sufficient funds to address their own issues in the names of solving their own problems and bring those forward to the board. Those funds also assist the department through the division of Subsistence in providing support staff to address questions such as resource uses in rural areas, and those funds total a million dollars. Those are on a reimbursable basis, so what we have is a reimbursement from the federal government each subsequent year to the expenditure.

There's a million dollars of the ANILCA fund. A question that would arise is other federal funds - for example we have as some members who might have attended the finance discussions what is referred to as Dingell/Johnson or now Dingell/Johnson/Wallop/Breaux funds. Those funds come as support funds for the sport fishing industry from the federal government to us. It is not clear what the status of those funds would be and I won't belabor that point unless there are specific questions. There also Pittman/Robertson funds, those funds come from the federal government as a result of hunting activities. Both of those funds are based on a formula that have to do with hunting license and area and those kinds of things. So it's not clear what the status of those funds would be, although as the Department of Law has mentioned, there is some question about whether guiding, outside activity, sport fishing, hunting, what the results would be and therefore those funds could be called into question by the federal government. But we have no information at this time which direction the federal would go with regard to those funds.

Those funds total a little over $5 million. So you have a direct question on a little over a million dollars. There is a subsequent question of probably another $5 million. With that said, Mr. Chairman, perhaps the best thing to do is to answer any questions at this point and of Mr. Jolin, the board chair, Larri Spengler of the department of Law and her overview or of myself and then we'll go immediately to some specific concerns and potential impact on users.

Number 436 Representative Furnace: Mr. Chairman, a question.

Goll: Rep. Furnace.

Representative Furnace: Mr. Chairman, a request to Mr. Ayers. I'd like to have a more detailed breakdown on these federal funding sources. Perhaps you could track that over several years as to what those funds have been and the specific sources and conditions.

Ayers: Mr. Chairman, Rep. Furnace, we'll have that by tomorrow for you.

Goll: Mr. Jolin, do you have any other comments in behalf of the board that you're planning to make during this presentation. Are other board members going to be making further presentations?

Jolin: No, we're just going to talk about them in the context of each situation as we discuss them.

Goll: Then maybe it would be helpful to the people present if maybe you or I were to briefly read the resolution of the board of fisheries and game. Is that now the position of the board? Has that been officially voted on and are we to take this as the joint boards' stand on this issue?

Jolin: That was voted on yesterday by the joint boards and that is our joint resolution and our stand on the issue.

Goll: Then with the permission of the members I'll just quickly read this statement so that all the people with us today will be aware of where the boards stand and then go on as Mr. Ayers suggested. The statement reads:

WHEREAS the Alaska Board of Fisheries and Alaska Board of Game have been delegated responsibility and authority by the Alaska Legislature to regulate the taking of fish stocks and game populations for the maximum benefit of all of the people of Alaska; and

WHEREAS, prior to the decision of the Alaska Supreme Court in "Madison v. Alaska Department of Fish and Game" the boards developed procedures which provided adequate regulatory flexibility, both to protect opportunities for subsistence hunting and fishing in rural communities and areas, and to provide hunting and fishing opportunities for recreational, commercial, and other uses; and

WHEREAS, it is unclear to what extent the boards may restrict subsistence harvest after the "Madison" ruling and as a result, substantial and significantly disruptive reallocations of opportunities to harvest fish stocks and game populations may be necessary. For example:

1. The commercial gill net fishery which is an important component of the Prince William Sound economy may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the "Madison" decision the Board of Fisheries had adequate regulatory flexibility to accomodate both the historic commercial fishery and other users.

2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Susitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the "Madison" decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.

3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the "madison" decision the Board of Game had adequate regulatory flexibility to accomodate these users reasonably.

WHEREAS, prior to the "madison" decision the State of Alaska was in compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). As a result of the "Madison" decision the federal government may now take control over game populations on public lands and fish stocks on public lands and within navigable waters; and

WHEREAS, if the State of Alaska is no longer in compliance with ANILCA, the state will lose the ongoing million dollar per year federal appropriation for the state's public participation system which is essential to the success of the state's regulatory and management activities; and

WHEREAS, the Alaska Board of Fisheries and Board of Game strongly believe that the potential restrictions, closures,

reallocations and loss of funding described above are not in the best interest of the fish and wildlife resources and the people of Alaska;

NOW THEREFORE BE IT RESOLVED, that the Alaska Board of Fisheries and Board of Game meeting in joint session respectfully, but strongly urge the Alaska Legislature to enact legislation during the current legislative session which returns to the boards the regulatory authority and flexibility which they exercised before the "Madison" decision; and

THEREFORE BE IT FURTHER RESOLVED, that the Alaska Board of Fisheries and Alaska Board of Game have reviewed SB 231 and HB 288, the legislation introduced by the Governor to accomplish this purpose, and urge that this legislation be enacted into law as expeditiously as possible.

Thank you very much. Mr. Jolin and Mr. Ayers please proceed.

Ayers: Mr. Chairman, the next brief presentation that we have designed is from Beth Stewart, who is director of our board's division. We're going to ask Beth to talk a little bit about the boards approach in current potential problems from the perspective of proposals or petitions. Perhaps Beth could lead that off. Mr. Chairman, members of the committee - Beth Stewart, if you're in Anchorage.

Number 534 Beth Stewart: The boards have two situations facing them at this meeting. Some of the proposed changes to the regulations which are before them will have to be considered in light of Madison and the changes that it has imposed on the board. Also, the boards have situations that are not before them at this meeting, that were not regularly scheduled that they may have to contemplate changes in the regulations to for next summer. In both of those situations, the uncertainty about the status of the subsistence law, whether it remains as it currently is written and under the Supreme Court's interpretation or whether it changed makes the boards task extremely difficult. At this meeting, both boards are probably going to spend a great deal of time discussing alternative approaches to the proposals before them. Also, preparing alternative approaches to the situations that may occur this summer. For the fisheries board in terms of the situations that may occur this summer, there has been little or no opportunity for people to come before the board to request changes in the current regulations under Madison. We don't have the kind of regulatory time frame available to us that would allow a full-scale board of fisheries hearing and regulatory cycle. So if changes in the regulations must be made, to conduct fisheries this summer, the board most probably will not be meeting at the time those changes would need to be made. And under the delegation of authority to the commissioner of fish and game, the boards would ask Commissioner Collinsworth to adopt emergency regulations to conduct fisheries this summer.

Both boards plan to meet again in joint session, on March 25, which is the last day of the board meetings to discuss directions to the Commissioner for emergency regulations for this summer. Those

directions may not end up being very specific since neither one of the boards will have had the kind of public input that would guide them in making specific recommendations. I'll just stop here in a second. The way that people may have access to the regulatory system now that no call for proposals is out or no proposals are being solicited is through petition. The Administrative Procedures Act allows anyone to petition any regulatory agency in the state for a regulatory change.

That's the sort of unpredictable portion of what the board and the department may be facing this summer. We have no way of knowing whether people will petition us for changes in the regulations to authorize additional subsistence fisheries and no way to really predict how those can be handled come summer. And with that I'll just close.

Ayer: Thank you Beth. Are there any questions of Beth or Mr. Jolin about the issues confronting the board at this point? At least those that we can see?

Number 594 Representative Furnace: I'd like to pose a question to Ms. Stewart and perhaps Mr. Jolin of their specific intent of perhaps holding hearings, realizing that there is somewhat a shortage of time. It appears that this is an important issue which the public does deserve its ability to participate in.

Number 643 Stewart: Mr. Chairman, the board doesn't have a special hearing scheduled at this time, the decision came out well after the board's regular announcements for public hearings and proposals had already been well underway. The board is going to provide an opportunity on the 25th, as I said, for people to come in and speak to the board about the Madison decision and what they think its implications will be. But at this point we have no plans to conduct hearings under any other circumstances. We don't have, for instance, the time to call for proposed changes to the regulations. The board of fisheries has a very complex and lengthy process that it undergoes for soliciting proposed changes to its regulations. About 120 days before the board meets, we issue a call for proposals. We have about a month and a half available for people to mail proposed changes in. Then we must compile those proposals and send them to the printer, then have them distributed to over, I think we have over 3,000 people on our mailing list now. We provide about another 2 months for people to comment on those proposed changes and hold advisory committee and regional council meetings. Then we actually conduct the board meeting and allow people to comment on specific proposals. At that point then, if the board adopts changes, the changes are reviewed by the Department of Law and then sent to the Lt. Governor and then become effective 30 days after the Lt. Gov. signs them. That time alone from when a change is adopted to the time it becomes effective is about 90 days, so as I said earlier, about the only way to change the regulations this summer would be through the emergency regulation process.

Goll: Thank you very much Ms. Stewart, would the next person now like to come forward and speak to the issues affecting their division?

Ayers: Mr. Chairman, there are division directors and as well as perhaps a board member in Anchorage and its my understanding that we would first like to speak about the Cook Inlet area. So, let's go directly to Anchorage, Mr. Chairman, and if people are prepared there why don't you introduce yourself and step right off.

Number 675 Mr. Chairman, this is Ron Jolin again, maybe we'll let everyone introduce themselves so you'll have an idea of who's here. (Anchorage participants introduce themselves, see witness register)

Jolin: I'd like to pose a question to Larri. Larri, under the Madison decision, do we now have to open all fisheries restricted to local to all residents of Alaska?

Spengler: Yes, Mr. Chairman, at least at the first instance. And in the Cook Inlet situation the management people can talk about this more specifically, I believe there are three fisheries currently which are open to residents of particular communities; Tyonek, English Bay and Port Graham. The Madison decision would require that those fisheries be opened to everyone until or unless any sport or commercial fisheries on the same stock had been closed. The Madison decision also requires that if there has been a subsistence use of fish that the board authorize that use and now that the court has said the board does not have the authority to speak in terms of rural uses. This would apply to any area of Cook Inlet, whether it was rural or not. Maybe what would be useful is for Ken Florey who is directly involved with Cook Inlet to talk about where those uses might be in Cook Inlet and what affects that might have.

Number 724 Ken Florey: Yes, thank you Larri. Well under your definitions you just gave we do have the three local area fisheries that were defined by the board after a 1981 board meeting as being subsistence fishing. Those being the early spring fishery in Tyonek for chinook salmon, king salmon; and then the two fisheries in Port Graham and English Bay which go on throughout the year, through the summer months - the spring through the fall months for local residents. Under my understanding or how it's been presented, those no longer would be open only to local residents or those domiciled in those areas, but anyone who's a resident of the state of Alaska can participate. As far as other fisheries in Cook Inlet, it's my understanding that those that we have called personal use would now be under a subsistence name and that those could also be opened and would be opened to any participants who wanted to get involved in that fishery. There are depending upon how far back you want to go with the old subsistence laws those would be primarily all the beach areas in Cook Inlet and taking to an extreme even some fresh water areas in Cook Inlet, primarily the Susitna drainage and Knik Arm, parts of Turnagin Arm that have been closed upwards to 25 years. And then all of the eastside beaches and the current setnet commercial areas in upper sub district and northern district of Cook Inlet.

Spengler: It might helpful for the committee if some of the board members could talk about what impact they would see that those fisheries being open would have on different use groups depending of course on the level of participation in those subsistence fisheries.

Number 752 Bix Bonney: Mr. Chairman this is Bix Bonney, board member and more or less representing the sport fishery groups in the Anchorage area. I was contacted by the two major groups the Kenai Sport Fishing Association and the Alaska Sport Fishing Association to attend steering committee and board meetings to get their thoughts out. Essentially their thoughts will be enclosed in a letter...

CHANGE TAPE # TO SIDE TWO

Number 003 ... public hearings throughout this time information can be gathered to more definitively approach the subsistence problem. They essentially are worried that, in their words, "chaos and confusion" that result with no regulation going on and the short circuiting or the cutting off of the fish that would get into the traditional sport areas, particularly the Kenai River. Whether they are right or wrong they can foresee where there could be subsistence nets out on the eastside beaches cutting off the run of the king salmon as it approaches the Kenai River. They don't want that at all. They said they are not subsistence fishermen, never thought of themselves that way. They're sport fishermen and they want to continue that way. That's essentially what's happened. These two groups represent an aggregate made up membership of about approximately 2,000 sport fishermen and there will be letters from both groups going out, one went out yesterday and the other will be going out this afternoon. If there's any questions, I'll be happy to answer them.

Ayers: Bix, with your approval, I have a telecopy version of the letter of which you speak of the Kenai River Sport Fishing Association. If you would like I would distribute that if you think that there have been modifications, I'll hold it. It's at your pleasure.

Bonney: Jim, the first one that went out, that's complete. The second one is essentially the same as the first one, only the second one comes from the Alaska Sportfishing Association and the trend of their reasoning is just about exactly the same, they're just now getting the words put down they hope in a littler cleaner manner than the first letter. But that's definitely there and it's coming.

Goll: Well, thank you very much. We are having that copied at this time and it will be distributed out to the folks present today.

John Garner: This is John Garner, a board member. I think that it might be useful, Larri, if you could explain to us what the Madison decision says about keeping the harvest limits on the subsistence fisheries, both as to the overall harvest and in terms of individual bag limits so that we can get some feel of the impact.

Number 103 Spengler: Yes, this is Larri Spengler with the Dept. of Law, The Madison decision basically requires that customary and traditional uses must be authorized and the people must be given a reasonable opportunity to participate in those uses unless sport and commercial have been eliminated first. Customary and traditional uses are spoken of by the court in terms of individual Alaskans reliance and dependence on resources and that is their reading of what the Legislature in 1978 was concerned

about. There are two different concepts of levels of tasks that I suppose would be considered. The first thing to understand is that the Madison decision does not mean that subsistence fishing would be unregulated. Regulation must reflect however, customary and traditional levels. So, for example, in Tyonek, the customary and traditional levels of the King salmon harvest has been 70 fish per household. So that is what is authorized under the current regulations. Because before the Madison decision came out only the people in Tyonek were fishing, as I mentioned before that fishery only took about 2,000 fish a year. If that fishery had to be opened to everyone as it does under Madison, then those 70 fish per family per household, bag limits must be retained, because that is the customary and traditional use level that is supposed to be perpetuated. The question of whether an overall allocation could be made to the subsistence fishery in Tyonek, say, so that, for example, perhaps the board might want to say well, this will open and everyone can go fish at 70 fish per household until the whole fishery has taken - I'll just make something up - 8,000 fish and then it will close. That question of whether a harvest cap can be put on a fishery was not addressed directly in the Madison decision. The strong implication in the decision is that that cannot be done. That is partly because the fishery then could conceivably be diluted in the sense that if there were a lot of people going to fish people would not get anywhere near the 70 fish per household that was customary/traditional or that if the first group of people all got 70 fish per household, then it would close and nobody else would get to go. So they'd be cut off from the opportunity entirely. It might be useful to ask Ken Florey or Ken Parker or maybe Bob Clasby what might help in Cook Inlet if the Governor's bill doesn't pass and the Tyonek Fisheries has to be opened to everyone at the normal limit and, assuming the board can't put a cap on it, which seems to be the implication of the case, what that might mean and what other fisheries might be affected by that.

Ken Parker: This is Ken Parker, director of commercial fisheries. It's difficult to anticipate exactly all the impacts of such an action. But, if you took the worst case scenario where we did have a large immigration of effort into that fishery, the first thing the department would have to do of course is very accurately monitor the harvests that are occurring in that area and then evaluate that in terms of our reproductive needs of the stocks that are contributing to the fishery. If we got to the point where we were pushing against our escapement needs then we would have to take regulatory actions on the fisheries that also impact that stock and of course under the Madison decision, it seems that the first fisheries that would have to be impacted would be commercial or recreational uses. So, I think in that we don't have any commercial activity on those Chinook stocks, of course we would have to direct our attention to the recreational fisheries and I would suspect that if we got to a point where we were concerned about our escapements, we would be obliged to close those recreational fisheries, until we were at least felt confident about our escapement levels in the various contributing stocks. Essentially that would be our action as a department: we would have to closely monitor the fishery, and then take appropriate regulatory action to ensure that our escapement needs are met. If we sense that the subsistence harvest was progressing at a rate that they were threatening escapement then we would also have to implement restrictions in that subsistence

fishery according to the law and restrict to the most dependent users as you mentioned earlier.

Spengler: Ken, where does the recre onal fishery take place, on the same stocks at Tyonek fishing ground?

Florey: Yes, Larri, We don't have a sport fish division representative here, but maybe I can answer that. There's several tributaries within the Susitna System both on the east side and the west side; there's ....fisheries primarily in the Deshka River, Lake Creek, up several other systems on the other side being Willow Creek, Montana Creek, ..., some of those are open seven days a week and there's other smaller stocks primarily on the east side that are week end only fisheries. Depending on what the harvest level were those would be the fisheries we would have to watch quite closely. A question that we have is trying to determine how we would try to manage this if this were to be confined to the area we now have open for the Tyonek subsistence fishery is one thing, but if it were to be open to a large portion of the beach, I know we could not monitor it closely enough to have an accurate catch harvest. When we're faced with those situations, fisheries managers are normally more conservative, not knowing what's going on unless we could have accurate catch figures. I just know from the area we were talking about if it were extended beyond the current boundaries, that we could not accurately monitor that fishery.

Spengler: Before we move onto Copper River, maybe it would be useful to talk a little bit about what the effect would be on the east side of Cook Inlet and if the the eastside beaches were opened at various times during the summer, true subsistence fishing, depending on the level of participation in that fishery, which fisheries might be affected and what measures the department might want to consider.

Number 116 Representative Thompson: My question is addressed to Mr. Parker, I want to make sure I understood what you just said and I don't want to put words in your mouth, but I thought I understood you to say that Fish and Game would be obliged to close sport fisheries if there was an imbalance as a result of this decision. Is that correct?

Parker: If we sense exploitation at Tyonek, and that subsistence fishery was occurring at such a level and it was confined to a certain limited period of time that essentially would perhaps focus that exploitation on a few of the contributing stocks, we would be obliged to implement closures in the recreational fishery to ensure that our escapement objectives are achieved. Of course, this is our mandate under Title 16 to provide for the proper conservation and protection of the resource so that they can continue to support fisheries in future years. So we would have to react to those exploitations and take whatever appropriate actions we felt necessary given the data at hand. As Ken Florey points out, if the fishery was expanded beyond the confines of Tyonek, it would be essentially impossible for the department to accurately monitor that fishery. Then, I think in that situation we would also be compelled to take a very restrictive action in any other fisheries that may impact the stock.

Thompson: Could you give me some sense of your time... how long would it take Fish and Game to study an issue like that before it could lift such a ban?

Number 128 Florey: That is a very difficult question to answer, not knowing how expansive the fishery would be. If it were quite restrictive in an area we could easily monitor, we could get the information just based on interviews with the fishermen. If the area was very large, and we were really unable to monitor the amount of use say other than aerial surveys to get a generalized number, it would be extremely difficult within a timely manner where those fish are going to be available to those different sport fisheries to monitor in a fast enough manner where we could say close and reopen and have an effective fishery because within a very short period of time those fish move out of those areas that sport fishermen are allowed to participate in up into the closed waters. So it's almost impossible to answer your question any clearer than that. It's just a difficult situation to try to assess until we get into it. If we had lots of stocks of fish and very few participants, there probably wouldn't be any impact. If we had returns of chinook on that earlier run that were very weak, which we have not had, in the number of years we've had very good returns and we had a fair number of people over there trying to harvest them, then we'd have to be more conservative. But I just can't be more specific than that.

Goll: Thank you very much, if you care now Larri to proceed with the presentation on the issues that you were leading up to.

Larri Spengler: Thank you. Yes, I had just asked Ken Florey if he could please talk a little bit about what the effects might be if the board were required by Madison to open subsistence fishing on various stocks on the eastside beaches at various times during the summer.

Number 159 Florey: Currently within Cook Inlet we manage the summer salmon runs under a plan that was adopted by the board of fisheries, the Cook Inlet Salmon Management Plan, which specifically states periods of time when certain users will be given preference or primary use of the resource. During the times of July 1 through August 15, it's primarily for commercial uses and the stocks migrating through Cook Inlet at that time, especially on the eastside beaches are now primarily taken by commercial users with secondary uses on certain stocks by sport fishermen. I don't feel that we would have many problems managing those stocks during that time period just based on the fact that we now have a very intensive commercial fishery and were able to monitor them quite well and do very well at it. The problem that you would have would be the social problems between the subsistence net users trying to compete for or establish beach areas with the commercial users and that could be quite dramatic and traumatic for those that try to monitor it. Because it would be very, very difficult to do and I'm afraid you could have some real problems that way. From a biological standpoint I don't foresee any major problems during that time period. After August 15 and say prior to July 1, we're looking at a totally different situation. We have one sockeye stock moving in Cook Inlet at that time primarily destined for the Russian River on the Kenai Penninsula which is a heavily used Sport fishery. It's not a large returning number of fish. We haven't had a commercial fishery on it for a good

number of years. A net fishery on that stock could be very, very dramatic, on those beaches and would probably mean having to close the Russian River to sport fishing determining what the escapement levels are. The other stocks during that early time, would be the early Chinook return, a king return to the Kenai River, and some to the Crooked Creek which is a hatchery return on the Kasilof River. A large net fishery if it were effective and that is yet to be determined, by subsistence users early, could have an impact on the early returning Chinook or king salmon return to the Kenai River, probably not much of an impact on the hatchery supported return to Crooked Creek. In the late fall, the late coho return which is one that the original petitioners or subsistence users wanted to target on that would totally depend on run strength. Last year we had a very large return of coho to the Kenai River, over probably in the neighborhood of 70,000 harvest by sport fishermen. In a year like last year, I don't think it would be that big of a concern. But on years when we'd go back to an historic level if you had a large net catch or subsistence catch on that late run it would probably mean having to curtail the sport fishery within the Kenai River or close it.

Number 205 Bonney: One of the real worries that has come up is there's an extremely heavy fishery on the early run king, particularly on the Anchor River and the Ninilchik and Deep Creek. It's probably as big as the second largest city in the state during those particular weekends. It's worried that if the beaches are open to subsistence fishing could and would cut off the early kings in June going into these streams and effectively have those streams shut off to sport fishing. It would be rightly so because the run would be jeopardized. That's a real worry as well as having an early run into the Kenai River which is heavily fished also jeopardized by the possibility of subsistence nets along the beach. The subsistence nets could be mesh size that are equipped to specifically catch king salmon whereas now the commercial nets are set for sockeyes and its an incidental catch in the commercial nets. But if they were to get a specific mesh size that would select the king salmon it would be extremely detrimental to the runs in the recreational fishery that go on during June.

Number 213 Goll: One of the questions that has been posed to me as chairman and I think to some of the committee members as well has been whether or not the threat to sport fishing is a serious as it is described. But your comments suggest to me, and you are probably the most experienced in the sport fish industry present at this meeting today. We don't have the representative from the department, division of sport fish, so from your comments I gather that the threat to sport fishing is very real and significant and one way or another something that really should be dealt with before this summer season commences. Is that a correct understanding of your position?

Bonney: Yes, it certainly is. The potential is one that we can't really live with. We don't know what will happen, but the potential is there for the very worst scenario that you could think of. And one of the worst ones I can think of is when you have the large urban area of Anchorage sitting here is to have the subsistence fishery..right in so that it would have to have the recreational fishery shut off. That's the worst possible thing that could happen and the potential is very definitely there. Whether it would happen or not, is another story.

That's why we have to buy some time to start finding out where we are in this situation.

Goll: Thank you very much.

Number 241 Garner: I think that comment sort of summarizes the position that the board took in our resolution. Our concern is that it's unclear what kind of regulatory restrictions we can impose on customary and traditional subsistence users. If the worst case situation is correct, if Madison requires us to allow bag limits that are customary and traditional, if Madison does not allow us an overall quota on these fisheries then these kinds of impacts are very likely. It has the potential to remove the ability of the board to balance the interests of each of these groups.

Spengler: If there are any more questions about Cook Inlet, maybe this is the time to take them before we move on to the Copper River situation.

Number 259 Stewart: Mr. Chairman, maybe to make one thing a little more clear before we go into the Copper River, I spoke to you about petitions earlier. The question that board is having to deal with at this meeting and that the department will have to deal with throughout the summer is if someone walks in this summer with a petition to open a subsistence fishery in Knik, for instance, the department is struggling with whether or not that would have to be done instantly. During the time that the boards were dealing with applying the subsistence law in Cook Inlet, we received a great deal of testimony from people who had fished in various parts of Cook Inlet in the past with subsistence gill nets. One of those areas was Knik, another area was Eklutna. Virtually the records the board has behind it includes almost every place in Cook Inlet that was accessible. Perhaps Larri could speak to whether or not we would be in the position of having to authorize fisheries all summer long on demand.

Spengler: It is fairly clear from Madison that if a customary and traditional use has occurred it doesn't matter whether it's in a rural area or not and the board is mandated by the law to authorize that unless there's a biological problem and the sport and commercial fishery have been closed. So, given the record that the board has in Cook Inlet, a very thorough record, that indeed subsistence fishing has existed everywhere, basically. There would be practically no legal excuse not to grant those petitions as they came in and open fisheries throughout the summer and make any necessary adjustments in sport and commercial fisheries. Are there any further comments on Cook Inlet or questions from Juneau?

Number 289 Florey: As I earlier stated, depending upon the extent in Cook Inlet, we would have to open fisheries those limited number stocks both earlier in the summer and late in the summer now under the management plan are primarily recreational uses we feel would probably be the ones most impacted. That is not the case in the Copper River. It's a total reversal of that situation. In the Copper River we have an extensive gill net fishery that operates in salt water at the mouth of the river then almost two to three weeks delay time until we get to Chitina where we have a large dip net fishery which we last year defined as a personal use

fishery. And also a subsistence fishwheel fishery. Under our interpretation, or my understanding or as it's been told to me, now we have a subsistence fishery as it used to be in the Upper Copper River open to any resident who wants to. Under the current bag limits, which have been established by the board, if we did not have a lid on that, it could be a major impact trying to ensure that we could get enough fish through the commercial fishery, well, we could do it easily enough, close the commercial fishery, not knowing how many people we were going to have show up at Chitina two weeks later. We struggled with this and have struggled with it for years. We come up with a plan the last two years that has worked quite well. Now we have a quota for the old personal use fishery in the neighborhood of 60,000 sockeye salmon. The highest number that that fishery took prior to the new plan was about double that in the neighborhood of 120,000. We do not know how many people would show up, but given we had to give them an opportunity at current bag limits it would be very difficult to manage the Copper River commercial fishery to ensure those numbers would escape. First of all, our biological goals, by stock, second of all the subsistence fishery in the Chitina area from Chitina all the way up to Salana and thirdly then to provide for the Copper River fishery on the flats. One of the major problems we have is that although the Upper Copper River is a large component of that system it only contributes, or it has in the last few years, about 50% of the returning sockeye to the Copper River, the other being the Delta stock which do not have and have not had any fishery other than a commercial fishery on them to any extent. So we would have to forego a rather large portion of the harvest for the commercial fishermen on the Delta stocks to ensure we would have enough fish upriver for the subsistence users. It would be extremely difficult management situation, not impossible.

Number 333 Garner: Just to make it clear it's my impression that there's no other opportunity to harvest those Delta stocks. The only opportunity that we have is as they come in mixed with the upriver stock.

Florey: Yes, John that is correct. Only with the net fishery at the mouth of the river there is no other opportunity to harvest Delta stock.

Beth Stewart: Ken, at the time the board was dealing with the Copper River and the Chitina personal use or subsistence fishery there were a lot of questions about being able to know how many fish were coming out of that upper river harvest. Knowing exactly what the subsistence take is during the summer, maybe you could speak to that a little bit.

Florey: Yes, Beth, are you saying what's the upriver component in the commercial fishery is? I don't quite understand your question.

Stewart: I'm sorry Mr. Chairman. No, what the actual take is by subsistence fishermen, monitoring that catch.

Florey: Well, under the plan that we implemented this last year we set the days of the week that they could fish depending upon what our predetermined quota for that week would be and the fact that they

king salmon fishing. It's not a large stock, we're only talking anywhere from 10-15,000 king salmon. We could have an impact there and we would have to probably have to curtail the sport fishing in the Naknek River, but for sockeye, I don't anticipate any problem.

Spengler: Any questions on the Naknek fishery or any comments by anyone else here before we move on to Angoon?

Number 428 Bob Clasby: For southeastern Alaska, there are only two subsistence coho fisheries. That's one at Klukwan and the other one is in Angoon. The one in Angoon was opened by the board at its December 1980 meeting was restricted only to residents of Angoon. With Madison decision that fishery would now have to be open to all, I assume 12-month, Alaska residents. Certainly if my memory serves me right, the harvest level in the last year for Angoon has been around 1,000 or 2,000 coho salmon. The fishery takes place in Salt Lake and Mitchell Lake. Apparently that's also a very popular coho sportfishing area. I'd like to go back and say there's no way for us to even guess at what level of participation or harvest might come out of that fishery with it being opened to all Alaska residents. Because I think I mentioned before, except for Klukwan, there have been no subsistence coho fisheries allowed in Southeast. So, you don't have any past harvest data to even guess at. If one does get an increase in that harvest above probably the 2-4,000 level, it's probably going to result in closures to the sports fishery in that Salt Lake-Mitchell Bay area. The other harvesters on those stocks, of course, are primarily the hand troll fish fishery. Primarily the troll fishery on the inside that fishery occurs before the subsistence fishery ... there'd be no time to react and make closures on that troll fishery ...probably to substantially increase the amount of coho moving in to Mitchell Bay. One would make the assumption if you carry the scenario that the fishery has to be open to all Alaska residents into the future and the harvest levels increase, it's going to mean reductions to the troll harvest. And of course that's probably going to have a very significant impact on the residents of Angoon also, because I think as far as cash income to that community, they are very heavily dependent on that hand/troll catch. I think that's about all I have to say on it if there's any questions from the committee members.

Number 478 Spengler: We will not go into detail about the Illiama-Lake Clark fishery which has a similar restriction as the Naknek fishery did, which is that currently only residents of Illiama-Lake Clark drainages can fish in those drainages and under Madison those would have to be opened to everyone. Also, in trying to give you a sense of the impact, it has been impossible to predict where as Beth Stewart mentioned in Cook Inlet, but in other places throughout the state people may petition to open areas which formerly had been closed and now the board will not be able to refuse to open them based on any criteria of ruralness or other concepts. For example, most of the road systems in the larger Southeast communities are closed currently to subsistence fishing and if petitions are received, those would probably have to be opened. I believe we're basically concluded with the Anchorage portion of the presentation. Ron Jolin, chairman of the joint board has a few concluding remarks and then we'll turn it back to Jim Ayers.

Number 493 Jolin: Thank you Larri. I really don't have an awful lot to put in at the conclusion of this meeting. I think I brought most of it up when we started. The crux is that the boards feel that we need the flexibility that we had prior to the Madison decision in order to regulate. In order to regulate our fisheries and game issues. We feel now that our hands are somewhat tied and we're really unsure what might happen in the following year. So, if we can get back to that position, it would certainly help the boards to do their job.

Number 509 Ayers: Do you have any further comments in Anchorage, Larri, or Ron or anyone else there? (none)

Number 511 Rep. Fuller: I think most people are aware, but on the 25th and 26th the Resources Committee will be having an informational hearing on HB 288. At that time we're going to ask to have nets open throughout the state so that people can be informed of what's going on. This is an informational hearing. Then after these hearings we're going to open it up throughout the state for people to participate in it. I just want to make everybody aware of that. I don't know whether Ron Jolin will be available on the 25th or not, because I know we're getting ready to adjourn, but I wanted everyone to know about it. Thank you, Mr. Chairman.

Goll: Thank you very much Rep. Fuller. I'd like also to assure people that this would be a good opportunity to Resources hearing to follow this issue as we move it through the House. Mr. Ayers?

Number 553 Ayers: Thank you Mr. Chairman. I will be brief in my concluding remarks. There have been a variety of rumors and comments regarding the effects of Madison and what we are trying to do, as I mentioned earlier, is work with you in a cooperative spirit to provide you the information and the framework that will allow you to take immediate action to return regulatory jurisdiction to the boards. Our effort and the governor's bill, HB 288, is focused on restoring harmony in the use of our fish and wildlife resources. Let me also say that that bill is basic and thorough in renewing a system that has been working. You've heard today from a variety of people talking about the Madison decision and the potential impacts and a plea for your assistance to restore that harmony. They have respectfully, but strongly, requested your assistance and guidance in restoring sufficient regulatory flexibility to the boards that will ensure all Alaskans that they are provided fair and reasonable access to our fish and game populations. Anything we can do Mr. Chairman, to assist you in moving this bill and restoring that harmony, we are at your pleasure. Thank you very much for this opportunity as well as the members in coming forward. We are available. Thank you.

Number 569 Goll: Thank you very much Mr. Ayers, and all of you in Anchorage. It's really a favor to us that you come forward and provided us with this information and we're very grateful and hope the people gathered here today have benefited from your presentation.

I'd like at this time to read a letter which I'd like to send to the House Resources Committee. The letter basically restates some of the comments made today and asks for expedient action in looking for a solution to these problems. It does not recommend specific action,

but simply asks that the Resources Committee move as rapidly as they can to get the issue solved. I'd like to read the letter for the record at this time and seek unanimous consent from the members of the committee. Also other members of the Legislature who wish to sign on the letter are certainly invited to do so.

"The Madison decision by the Alaska Supreme Court on subsistence has the potential of seriously disrupting the management of Alaska's fish and wildlife resources. According to testimony before the Special Committee on Fisheries, the Madison decision could force radical shifts in established patterns of resource allocation, upsetting the carefully balanced approach to fish and game management achieved in recent years.

The Fisheries Committee received testimony on the Madison decision from the Department of Law, Department of Fish and Game and chairman of the Joint Boards of Fisheries and Game. Although the state's fish and wildlife managers are still in the process of developing specific management strategies responsive to Madison, this much is clear:

1) Sport and commercial fishing in Cook Inlet may have to be cut back to accommodate anticipated increases in non-commercial net fishing.

2) The commercial drift net fishery in Prince William Sound may have to be sharply restricted to provide increased dip-netting opportunities in the Copper River.

3) Many of Alaska's big game guides may be forced out of business because of major decreases in non-resident hunting activities.

The members of the Special Committee on Fisheries believe that the subsistence issue must be addressed by the Legislature in a prompt but thorough manner. The committee respectfully requests the Resources Committee to take all possible steps to address this critical issue in a manner providing for action by the Legislature in the remaining weeks of the Legislative session."

I would ask unanimous consent from the members that I submit this letter to House Resources. Rep. Hurley...

Number 614 Rep. Hurley has moved the letter and asked unanimous consent. Are there any objections. Hearing none, then we will send this letter to House Resources today and distribute it to members of the Legislature and members of the public. I thank you.

I have a couple of brief announcements before we adjourn. Number one, I'd like to state that the next meeting of the House Fisneries Committee will be held at 4:30 p.m. on Friday a week from tomorrow. If any member has a problem with that. We will be getting in touch with you to firm up those arrangements.

(discussion of HESS committee schedule and the calendar for the next meeting)

Number 621 I'd also like to just take a moment to express in behalf of the committee our grave sadness at the passing of Mr. John Clark who was the director of the habitat division and one of the most dedicated and competent public servants I've ever met. And I'd like to just say in behalf of the committee, we would like to extend our sympathies to Mrs. Clark and recognize his contribution to the state.

Rep. Hurley: In that regard, I believe that I'd like the minutes to reflect the contribution of the late Senator Al Owen who appeared before this committee just one month ago. And who died last week in Kodiak.

Number 670 Goll: Let the record show that we recognize the passing of this Alaskan and his great contribution to the state. It's certainly been a tragic week and I hope that with this meeting will go on the upward track. Once again thank you all for attending today. This meeting of the Special Committee on Fisheries is adjourned, the time is 10:11 a.m.

Introduced: 3/13/85
Referred: Resources and
Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

HOUSE BILL NO. 288

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that

(1) the taking of fish stocks and game populations for personal and family consumption and related uses is essential to the health, safety, and general welfare of Alaskans domiciled in rural communities or rural areas in which the taking of fish and game for such uses is a significant part of the economy of the community or area; and

(2) the taking of fish stocks and game populations for personal, sport, and commercial uses is also of economic and recreational importance to Alaskans who reside anywhere in the state.

* Sec. 2. AS 16.05.251(a) is amended to read:

(a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.-62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

(3) setting quotas, bag limits, harvest levels, and sex and

size limitations on the taking of fish;

(4) establishing the means and methods employed in the pursuit, capture and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish, personal use fish, or predators or other categories essential for regulatory purposes;

(7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation and stocking of fish;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(10) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(11) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43;

(12) personal use fishing.

* Sec. 3. AS 16.05.940(23) is amended to read:

(23) "subsistence uses" means the customary and traditional uses by rural [IN] Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel,

clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

* Sec. 4. AS 16.05.940 is amended by adding a new paragraph to read:

(28) "personal use fishing" means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other similar means defined by the Board of Fisheries.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.-10.070(c).

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 13, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill regarding the taking of fish and game for subsistence and personal uses. The purpose of this bill is to amend AS 16 to delegate to the Alaska Board of Fisheries and Alaska Board of Game the same authority to regulate the taking of fish stocks and game populations that the boards exercised before the recent decision of the Alaska Supreme Court in Madison v. Alaska Department of Fish and Game, Supreme Court Opin. No. 2911 (February 22, 1985).

The bill does so in two ways. First, the bill would amend AS 16.05.940(23) to limit the identification of "subsistence uses" of fish stocks and game populations to hunting and fishing for personal and family consumption and related uses by residents of rural communities or rural areas, where the taking of fish and game for such uses is a significant part of the economy of the community or area. This change recognizes that in rural Alaska the taking of fish and wildlife is essential to the health, safety, and general welfare of Alaskans domiciled in many of the rural communities and rural areas of our state and to the economy of the community or area in which they reside. As the Alaska Department of Fish and Game has determined from its research on this subject:

> Alaska is characterized by a diversity of socioeconomic systems and patterns of resource use. ... It seems clear that the economic and social stability of many communities depend upon access to and utilization of renewable fish and wildlife resources. ... Disruptions of the relationships between the community and the resource base may affect the viability of these ways of life.

Alaska Department of Fish and Game, Division of Subsistence, Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities, technical paper No. 61, 274 (1983).

Second, the bill would establish a statutory definition of the term "personal use fishing" (proposed AS 16.05.940(28)). The Alaska Board of Fisheries has already established this category by regulation. This category of harvest, though not subsistence fishing, is important to Alaska residents. After the board has identified the "subsistence uses," if any, of particular fish stocks, AS 16.05.940(28) and the amendment to AS 16.05.251(a)(6) and addition of AS 16.05.251(a)(12), in sec. 2 of the bill, would authorize the board to adopt regulations allocating access to those stocks for the purposes of personal use, sport, and commercial fishing in a fair and reasonable manner consistent with its constitutional responsibility to adopt regulations to use, develop, and conserve fish stocks for the maximum benefit of all Alaskans.

As previously mentioned, this legislation is intended only to provide the boards the same regulatory authority which they exercised before Madison v. Alaska Department of Fish and Game. Consequently, I urge your expeditious consideration of this bill, since its enactment is essential to provide the boards sufficient regulatory flexibility to ensure that Alaskans are provided fair and reasonable access to our fish stocks and game populations. Enactment will also ensure that the State of Alaska remains in compliance with the provisions of Title VIII of the Alaska National Interest Lands Conservation Act and, consequently, retains full authority to regulate the taking of fish and game on all land and in all water of the state.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 288

Title: An Act relating to the taking of fish & game for subsistence & personal use

Sponsor: Rules Comm. at Gov. request

Requestor: Rules Comm. at Gov. req.

Date of Request: March 13, 1985

FISCAL DETAIL

Agency Affected: Department of Fish and Game

Program Category Affected:

BRU, Program or Subprogram(s) Affected: All ADF&G BRU's

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Passage of bill will reduce management costs substantially. Failure to adopt will require a major increase in funds for monitoring growing subsistence fisheries.

If state is found to not comply with federal requirements, then state may lose federal matching grants and revenues

Prepared By: Steven R. Behnke Steven Behnke Phone: 465-4147

Division: Subsistence Date: 3/12/85

Approved by Commissioner: James L. Brooks Date: 3-12-85

Agency: Department of Fish and Game

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

DATE: March 21, 1985

TO: House Resources Committee

SUBJECT: Special Committee on Fisheries
Comments on Subsistence

The Madison decision by the Alaska Supreme Court on subsistence has the potential of seriously disrupting the management of Alaska's fish and wildlife resources. According to testimony before the Special Committee on Fisheries, the Madison decision could force radical shifts in established patterns of resource allocation, upsetting the carefully balanced approach to fish and game management achieved in recent years.

The Fisheries Committee received testimony on the Madison decision from the Department of Law, Department of Fish and Game, and chairman of the Joint Boards of Fisheries and Game. Althougn the state's fish and wildlife managers are still in the process of developing specific management strategies responsive to Madison, this much is clear:

1) Sport and commercial fishing in Cook Inlet may have to be cut back to accommodate anticipated increases in non-commercial net fishing.

2) The commercial drift net fishery in Prince William Sound may have to be sharply restricted to provide increased dip-netting opportunities in the Copper River.

3) Many of Alaska's big game guides may be forced out of business because of major decreases in non-resident hunting activities.

The members of the Special Committee on Fisheries believe that the subsistence issue must be addressed by the Legislature in a prompt but thorough manner. The committee respectfully requests the Resources Committee to take all possible steps to address this critical issue in a manner providing for action by the Legislature in the remaining weeks of the Legislative session.

Respectfully,

Peter Gøll, Chair

85-13-JB DRAFT

WHEREAS, the Alaska Board of Fisheries and Alaska Board of Game have been delegated responsibility and authority by the Alaska Legislature to regulate the taking of fish stocks and game populations for the maximum benefit of all of the people of Alaska; and

WHEREAS, prior to the decision of the Alaska Supreme Court in Madison v. Alaska Department of Fish and Game the boards developed procedures which provided adequate regulatory flexibility, both to protect opportunities for subsistence hunting and fishing in rural communities and areas, and to provide hunting and fishing opportunities for recreational, commercial, and other uses; and

WHEREAS, it is unclear to what extent the boards may restrict subsistence harvest after the Madison ruling and as a result, substantial and significantly disruptive reallocations of opportunities to harvest fish stocks and game populations may be necessary. For example:

1. The commercial gill net fishery which is an important component of the Prince William Sound economy may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to accommodate both the historic commercial fishery and other users.

2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Susitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.

3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the Madison decision the Board of Game had adequate regulatory flexibility to accommodate these users reasonably.

WHEREAS, prior to the Madison decision the State of Alaska was in compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). As a result of the Madison decision the federal government may now take control over game populations on public lands and fish stocks on public lands and within navigable waters; and

WHEREAS, if the State of Alaska is no longer in compliance with ANILCA, the state will lose the ongoing million dollar per year federal appropriation for the state's public participation system which is essential to the success of the state's regulatory and management activities; and

WHEREAS, the Alaska Board of Fisheries and Board of Game strongly believe that the potential restrictions, closures, reallocations

and loss of funding described above are not in the best interest of the fish and wildlife resources and the people of Alaska;

NOW THEREFORE BE IT RESOLVED, that the Alaska Board of Fisheries and Board of Game meeting in joint session respectfully, but strongly urge the Alaska Legislature to enact legislation during the current legislative session which returns to the boards the regulatory authority and flexibility which they exercised before the Madison decision; and

THEREFORE BE IT FURTHER RESOLVED, that the Alaska Board of Fisheries and Alaska Board of Game have reviewed SB 231 and HB 288, the legislation introduced by the Governor to accomplish this purpose, and urge that this legislation be enacted into law as expeditiously as possible.

HB

300

Suggested Amendment to HB300

p. 1, line 18; Add after combined:

and the approved development plan or ~~plans~~ must be amended to accommodate the combination,

Suggested Amendment to HB300

p. 1, line 18; Add after combined:

and the approved development plan or plans must be amended to accommodate the combination,

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

M E M O R A N D U M

April 12, 1985

TO: HOUSE RESOURCES COMMITTEE

FROM Committee Staff

SUBJ: HB 300 "An Act relating to the splitting and combining of agricultural parcels."

House Bill 300 would allow the Commissioner of the Department of Natural Resources to approve splitting and combining of agricultural project parcels if certain conditions are met. This legislation would affect 37 Delta barley project parcels and 31 Point MacKenzie project parcels.

If a parcel is split, no more than one farmstead (house, barns, outbuildings) of 20 acres may be maintained. If a parcel is combined, there is no limit to the size but only one farmstead may be maintained.

The commissioner must evaluate each request for splitting or combining and must find that it is in the public interest, has an approved development plan and has designated an operator for each parcel. In addition, the Commissioner must provide for public notice and hearings on the proposed action.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 300

Title: Splitting and Combining of Agricultural Parcels

Sponsor: Shultz and Marrou

Requestor: House Resources Committee

Date of Request: 4/9/85

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The legislation would likely affect only the 37 Delta barley project parcels and the 31 Point MacKenzie project parcels. Applications for combining or splitting of ag parcels would be processed, as received, by existing staff.

Prepared By: Carol Wilson

Phone: 465-2400

Division: Commissioner's Office

Date: 4/9/85

Approved by Commissioner: Almond, Deputy

Date: 4/10/85

Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Analysis of House Bill No. 300

This legislation will allow the Commissioner of Natural Resources to approve requested splitting or combining of agricultural project parcels, and sets out the following conditions under which these changes may occur:

--only one farmstead per 320 acre parcel that results from a split;
--only one farmstead on a parcel resulting from combining other parcels;
--farmsteads may not exceed 20 acres in size;
--splitting or combining of parcels must promote the public interest or the development of agriculture;
--new development plans must be approved by the commissioner;
--one operator will be designated for each resulting parcel;
--public notice and a written explanation of the proposed split or combination is provided.

HB

306

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

March 26, 1986

Representative Al Adams
Chairman, House Finance Committee
P.O. Box V
Juneau, AK 99811

Dear Mr. Chairman:

Please accept this letter as it accompanies CSHB 306 (Res) to the Finance Committee and include it in your members files.

In addressing HB 306 in subcommittee it became evident that the present administration has both the ability and the willingness to assist in building a stronger Alaska forest products industry.

To that end, what started out as a bill establishing a forest marketing institute was reduced to an appropriation bill to allow the existing Office of Forest Products to take more aggressive action in helping to expand Alaska's timber industry and associated economies.

Last year the railbelt area of our state alone used an estimated 120 million board feet of dimensional wood, and 55 million square feet construction grade plywood and composition board. Unfortunately 95% of these products were brought in to our state from other areas.

The funding provided in this bill will permit the current process of state and private sector marketing efforts to move more rapidly and more efficiently. This effort will be coordinated by the Office Of Forest Products (Department of Commerce) in concert with the already established Advisory Forest Products Market Committee comprised of industry members.

As a pledge of good faith private industry has agreed in principle to the raising of at least $50,000.00 to be used in addition to the dollars appropriated through this legislation.

The Resources Committee supports the administration and the private sector in their efforts to expand the forest products industry in Alaska and as a result would encourage a favorable consideration of this legislation.

Respectfully submitted,

Rep. Shultz

Rep. Herrmann

Rep. Wallis

Rep. Cato

Rep. Jenkins

Rep. Miller

Rep. Pearce

Rep. Sund

Rep. Thompson

Department of Commerce & Economic Development / POSITION PAPER

CS for House Bill No. 306 (Resources):

"An Act making a special appropriation to the Department of Commerce and Economic Development for the promotion of forest products and providing for an effective date."

Department Position Statement: The Department of Commerce and Economic Development supports the Committee substitute for House Bill 306, making a special appropriation to the Office of Forest Products for the promotion of Alaskan forest products. This bill responds to the broadly recognized need for a statewide forest products market development program. During this time of declining oil revenues, it is more important than ever to promote the economic development of our timber resources.

Background: The Office of Forest Products was formed in September 1984 as an advocacy office for the forest products industry within the economic development arm of the department. The office operates with a staff of two and budget of under $200,000. Objectives of the office include:

* To act as a facilitator in market development for Alaska's wood products.

* To promote a business climate which affords an economically viable industry with a competitive market position.

* To aid industry in forming a statewide forest products association and market development strategy.

* To promote better knowledge and understanding of Alaska's forest industry and the products produced.

Last Spring, the office formed a Market Advisory Committee consisting of private operators statewide. The committee has functioned to determine areas of marketing activity that can be pursued for the common good of the industry and plan how industry can better organize in order to deal with market development, communications, and government relations. The committee has also defined specific market development activities in which they would like the Office of Forest Products to participate.

Program: The Market Advisory Committee would serve as an important advisory ingredient in the planning and implementation of the market development and promotion program.

The program would include activities such as:

Initiation of a program to establish a certified lumber grading system.
Generic advertising.
Publication and translation of technical species and product brochures.
Sample shipments of wood products to new potential markets.
Trade Show participation.
Communication and contact with architects, contractors, municipalities, State agencies, and other users.
Facilitate and participate in trade missions.
Economic research of the markets.

Benefits: The State has two major reasons for being involved in supporting the timber industry through these kinds of activities. The first relates to the State's interest in the social and economic well-being of the State as enhanced by economic diversification. The chart below shows the direct employment benefit per million board feet.

The second reason relates to the State's role as a major timberland owner. The revenue generated in the form of stumpage fees from State timber sales can be significant.

Conclusion: The State has an important role to play as an active participant and facilitator in the development of Alaska's timber resources. A dedicated resource base for timber production and a market development program provide the organized process needed to move us toward our goal to strengthen and expand a statewide forest products industry. The department fully supports the appropriation provided in HB 306 to help attain this goal.

Jobs Created Per Million Board Feet

	Workers per MMBF
Logging	2.4
Sawmilling green lumber	1.2 to 1.7
Sawmilling cants	1.0
Sawmilling dried lumber	2.0 to 2.3
Remanufacturing lumber	7.9 to 8.3
Pulp	2.4
Plywood	5.2

The figures are from U.S. Forest Service employment studies.

Loren H. Lounsbury

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 3/28/86

Thyes Shaub

Thyes Shaub, Director
Office of Forest Products

Date: 3/28/86

1t0205A

COMMITTEE REPORT

HOUSE

(9)

4/26/85

FURTHER: FINANCE

Date: March 26, 1986

The Committee on RESOURCES has had HB 306

"An Act relating to the promotion of the marketing of forest products"

under consideration and recommends:

[ ] o pass [ ] do not pass

[ ] do pass with attached amendments(s)

[XX] replace with CS for HB 306 (Resources) [ ] same title [XX] new title

and recommends do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS		MEMBERS HAVING OTHER RECOMMENDATIONS:	
Shultz	Dick Shultz		
Cato	Bette Cato	Herrmann	
Jenkins	Rose Jenkins	Kay Wallis	No Rec
Pearce		Wallis	
Sund			
Thompson	Mark W. Thompson		

Dick Shultz

Co-CHAIRMAN Shultz

Alaska Loggers Association, Inc.

111 STEDMAN, SUITE 200
KETCHIKAN, ALASKA 99901
Phone 907-225-6114

PRESENTED AND SUBMITTED
BY
ALASKA LOGGERS ASSOCIATION

DRAFT

March 12, 1986

Letter of Intent:

Regarding the Appropriation of $500,000.00 to the Office of Forest Products in the Department of Commerce and Economic Development for the 1987 Fiscal Year.

The Alaska forest products industry in Southeast Alaska has been experiencing difficult times in their participation in the international markets for an extended period and the results have been highly detrimental to employment and the general economy of that portion of the State al o the new land ownership patterns now unfolding in Southcentral and Interior Alaska clearly indicate the new owners are interested in bringing the commercial forest they now or soon will own to the market as soon as markets, economic access, and owner needs dictate, and that about half of that forest is owned by the State of Alaska.

The International Pacific Rim off shore market is currently strong and rising for hardwood and it is projected and reasonable to expect that the softwood demand will increase over the next ten years.

The railbelt of Alaska is currently consuming an estimated 120 million board feet of dimensional wood, and 55 million square feet of construction grade ply or composition board per year and this imported wood represents 95% of the total consumed and these facts clearly indicates that Alaskans need to be developing and using our natural resources to generate employment and economic activity in and for Alaska.

With the international forest products markets for the next decade projected at a slow steady growth in wood demand with a real price improvement during the next few years, and a reasonable assumption that in existing and future wood markets Alaskan forest products can be competitive in domestic and overseas markets if we proceed now to renew and develop our timber industry in an orderly and prudent manner. We must move ahead with our government/industry effort to assure a healthy economic benefit from our timber resource.

The State of Alaska for the reasons mentioned above has several good and valid reasons for proceeding to embark upon a program to initiate the first coordinated market development activity for our current and future forest products industry.

The funds being appropriated in __(Bill #)__ will permit this process of state and private industry to begin to deal with a cooperating effort on a relatively small scale and build on this effort from year to year to help with current industry problem areas but most importantly prepare ourselves for the timely and prompt entrance into the future markets. This effort will be directed by the Office of Forest Products with Assistance and input from an Advisory Forest Products Market Development Committee composed of up to ten appropriately qualified industry persons. This committee will be structured and operated under the direction of the Office of Forest Products with periodic review by the Commissioner of Commerce and Economic Development.

The main functions and uses for these funds will be:

1. For the good and general purposes of "Market Development of our Alaskan Forest Products".

2. That said market development activity shall include any reasonable and prudent function that will aid and assist in relating and bringing the potential and existing Alaska timber resource to the markets including, but not limited to, market research, new product development, generic advertising of Alaskan wood products, quality control and grading of wood products, technical publications and translations, sales aids, trade mission participation, customer identification and education, and similar related pursuit of new and expanding markets.

The private industry as represented in part by the members of the committee has agreed in principal that they shall make a special effort to raise a minimum of $50,000 in cash and in-kind services as their participation in this 1987 FY market development activity and they expect to participate on a larger percentage in future years, and that it is clearly understood and as stated herein that a coordinated market development effort is necessary if Alaskans are to be a beneficial participant in and profit substantially from the forest products industry in the next decade and that this effort will take several years and the combined leadership and resources of industry and government.

END OF DRAFT

Respectfully submitted,

John Galea
General Manager

JG/jmg

Original sponsors: Taylor and Sund

Funding Information	
General Fund	$500,000
Other Funds	- 0 -
	$500,000

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR FOR HOUSE BILL NO. 306 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Commerce and Economic Development for the promotion of forest products; and providing for an effective date."

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

* Section 1. The sum of $500,000 is appropriated from the general fund to the Department of Commerce and Economic Development, office of forest products, for the marketing and promotion of forest products from the state.

* Sec. 2. The unexpended and unobligated portion of the appropriation made by this Act lapses into the general fund June 30, 1987.

* Sec. 3. This Act takes effect July 1, 1986.

Department of Commerce & Economic Development / POSITION PAPER

House Bill No. 306: An Act relating to the promotion of the marketing of forest products.

Department position statement: The Department of Commerce and Economic Development supports the concept of the bill which addresses the serious need for generic marketing of Alaska timber products. However, the department is not in favor of HB 306 in its present form. The department feels this function could more effectively be served within the existing Office of Forest Products rather than creating a new and separate institution for this purpose. A pilot program within the Department of Commerce and Economic Development with advisory direction from a market development advisory committee would perhaps be a more appropriate way to start.

Bill Summary: HB 306 proposes a forest marketing institute not unlike ASMI (fisheries). It establishes a public corporation with an industry board appointed by the Governor and a mechanism for a small staff. The board would plan and implement a statewide generic marketing effort. Funding would come from a self-imposed assessment (tax) of from .001 to .004 of the value of forest products purchased by forest producers which would be voted on by processors. Revenue would be deposited in the State's general fund. The Legislature could then make appropriation to the department to support the institute including "appropriate" additional money beyond the assessment collected.

Analysis:

1. HB 306 responds to the broadly recognized need for a statewide forest industry marketing program. It has opted for a public corporation rather than a direct agency marketing effort or State support to a predominantly private effort.

2. HB 306 proposes a self-imposed tax or assessment on the purchase of timber products by processors. Unfortunately, pulp mills bear the brunt of this tax and benefit the least as their markets are very few in number and highly institutionalized and, hence, don't lend themselves to generic marketing. Conversely, round log exporters benefit from generic marketing, yet bear little tax. There is no simple solution to this inequity.

3. Given the financial distress of the timber industry the timing is poor for a new assessment.

4. Limiting the assessment to businesses purchasing forest products in the State valued at $50,000 or more would eliminate many of the small portable sawmill operators in the Interior, leaving much of the Interior industry outside the assessment system.

In general the bill is a first and important step toward a coordinated State/private market development effort for forest products. However, there are several approaches which could be used to address this problem. For instance, the current Market Development Advisory Committee within the Office of Forest Products has proposed a market development fund be set up within the Office of Forest Products. Proposed activities include in part, generic marketing, market research, trade mission participation, publication of technical brochures on Alaska tree species and wood products, and general public education activities.

Department Proposal: The department believes the bill could be overhauled and made more equitable and responsive to industry needs. The department would work with the sponsors and members of the industry to accomplish this restructuring.

Loren H. Lounsbury, Commissioner

Date: 1/30/86

TS/cw0162A
130866

MEMORANDUM State of Alaska

TO: Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

DATE: January 16, 1986

FILE NO.:

THRU:

TELEPHONE NO.:

SUBJECT:

FROM: Thyes Shaub, Director
Office of Forest Products
Department of Commerce & Economic Development

The Alaska Loggers Association Legislative Committee asked the Office of Forest Products Market Development Advisory Committee to establish a plan for an increased advocacy and market development program.

The committee met late in November. The basic plan agreed upon was to build up the advocacy and market development activities within the Office of Forest Products and, at some point in the future, pass over a majority of that function to a nonprofit private organization concerned with a statewide forest products industry. This would occur in a stairstep fashion over a period of 3-5 years.

The committee voted to draft a resolution regarding the establishment of a special market development fund in the Office of Forest Products. If appropriated, this fund would be administered by the Office of Forest Products with direction of an advisory committee of statewide representation such as currently exists.

It is anticipated that by the end of five years the private sector would be providing 30-40% of the funds and the State 40-50% with the balance coming from federal sources to assist with the overseas market development.

The resolution is attached.

TS/cw0154A
11686a
Attachment
cc: Greg Baker

Committee Resolution
Market Development Advisory Committee
Office of Forest Products
November 22, 1985

ESTABLISHING A MARKET DEVELOPMENT
FUND IN THE OFFICE OF FOREST PRODUCTS

WHEREAS the Alaska forest products industry in Southeast Alaska has been experiencing difficult times in their participation in the international markets for an extended period and the results have been highly detrimental to employment and the general economy of that portion of the State;

WHEREAS the new land ownership patterns now unfolding in Southcentral and Interior Alaska clearly indicate the new owners will and are interested in bringing the commercial forest they now or soon will own to the market as soon as markets, economic access, and owner needs dictate, and that about half of that forest is owned by the State of Alaska;

WHEREAS the railbelt of Alaska is currently consuming an estimated 120 million board feet of dimensional wood, and 55 million square feet of construction grade ply or composition board per year and this imported wood represents 95% of the total consumed and does clearly indicate that Alaskans need to be developing and using our natural resources to generate employment and economic activity in and for Alaska;

WHEREAS the international forest products markets for the next decade are projected at a slow steady growth in wood demand with a real price improvement during the next few years, and that in existing and future wood markets Alaskan forest products can be competitive in domestic and overseas markets if we proceed now to renew and develop our timber industry in an orderly and prudent manner; and,

WHEREAS the State of Alaska has several good and valid reasons for proceeding to embark upon a program to initiate the first coordinated market development activity for our current and future forest products industry, said reasons include, but are not limited to, those listed above.

NOW, THEREFORE BE IT RESOLVED BY THIS ADVISORY COMMITTEE:

The appropriate State governmental bodies and agencies, including the State Legislature, Governor's Office, Commissioners of Commerce and Economic Development, Natural Resources and such others as may be involved to take steps to accomplish and acknowledge the following:

1. Appropriate and authorize the expenditure of $250,000 for the 1987 fiscal year by the Office of Forest Products for the good and general purposes of "Market Development of our Alaskan Forest Products." These funds to be spent generally in the following manner:

    50% For International Market Development Activity
    30% For Market Development in Alaska
    20% For Participation Assistance to Industry Associations

2. That said market development activity shall include in these formative years any reasonable and prudent function that will aid and assist in relating and bringing the potential and existing Alaska timber resource to the markets including, but not limited to, market research, new product development, generic advertising of Alaskan wood products, quality control and grading of wood products, technical publications and translations, sales aids, trade mission participation, customer identification and education, and similar related pursuit of new and expanding markets.

AND BE IT FURTHER RESOLVED:

The private industry as represented in part by the members of this committee does agree and concur that they shall make a special effort to raise a minimum of $50,000 in cash and in-kind services as their participation in this 1987 FY market development activity and they would expect to participate on a larger percentage in future years, and that it is clearly understood and as stated herein that a coordinated market development effort is necessary if Alaskans are to be a beneficial participant in and profit substantially from the forest products industry in the next decade and that this effort will take several years and the combined leadership and resources of industry and government.

RESOLVED THIS 22ND DAY OF NOVEMBER, 1985
by the MARKET DEVELOPMENT ADVISORY COMMITTEE
Members Present -
Steve Seley, Greg Bell, Gerry Engel, Terry Brady

3161m

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

Section 1 is the findings of the legislature for a marketing institute for forest products in the state.

Section 2 lists seven purposes for establishing an institute.

Section 3 adds a new chapter to AS 41 setting up the framework of the Alaska Forest Products Marketing Institute as an independent public corporation in the executive branch as follows:

(a) An 18 member board of directors is appointed by the governor of which 12 are member affiliated with processors, five are persons engaged in harvesting and one is a member not involved in the industry. Members serve three year staggered terms at the pleasure of the governor, and may be reappointed. Ten members are required for a quorum for meetings of which there must be at least one a year. Meetings are at the call of the chair or when requested in writing by two members. Members receive per diem but no compensation. Employment and compensation is provided for institute staff.

(b) Eleven powers and four duties are listed.

(c) An assessment is provided for not less than .001 or more than .004 of the value of forest products in the state if the assessment is approved by at least 51 percent of the eligible processors. The director of elections approves the election procedures used by the institute and certifies the results. The commissioner

of revenue may terminate an assessment if a petition signed by at least 25 percent of processors who voted in an election approving the assessment, is approved by at least 51 percent of the eligible processors. As in the approval election, the institute must follow certain procedures in termination. The section provides for collection of the assessment by the Department of Commerce and Economic Development and deposit in the general fund, as well as appropriations of additional money by the legislature to finance the institute. There is a provision for the enforcement, determination of forest product value and processor eligibility and a definition portion that defines critical words in the bill.

Section 4 adds a new paragraph to AS 39.25.110 providing for the executive director and employees of the institute to be in exempted service classification.

Section 5 adds the institute to entities in AS 39.50.200 who must comply with conflict of interest laws.

Section 6 makes provision for temporary appointments to the board of the institute to accomplish the staggered terms of members.

RCF:ojb
J4/025

Sponsors for back-up

DNR
Fiscal Note
Position Paper
Testify

Receive not testifying

Introduced: 3/20/85
Referred: Labor & Commerce,
Resources and Finance

IN THE HOUSE BY TAYLOR AND SUND

HOUSE BILL NO. 306

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the promotion of the marketing of forest products."

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

* Section 1. FINDINGS AND PURPOSES. (a) The legislature finds that a cooperative effort by the state and private industry to stabilize and develop the forest products industry of Alaska, promote quality control within the industry, and foster expansion of the market for Alaska forest products throughout the state, nation, and world is in the public interest and is a valid public purpose. The legislature further finds that a cooperative effort would benefit the forest products industry in Alaska and that, therefore, some of the cost of maintaining the effort should be borne by the industry. The legislature further finds that the assessments that forest product processors may levy upon themselves under this Act are intended to reimburse the state for the industry's rightful share of the forest products marketing effort, while reserving the legislature's right under the state constitution to spend the money so collected for any purpose. The legislature further finds that public financing of this program in excess of the amounts realized from the assessment during the development phases of the program is appropriate.

(b) The purpose of this Act is to

(1) encourage the forest products industry in the state to make greater use of the forest products resources in the state;

(2) expand the range of forest products harvested by the forest products industry in the state;

(3) enable the forest products industry to maintain and enhance the quality of forest products harvested and processed by loggers and processors in the state;

(4) enable the forest products industry in the state to stimulate consumer identification of Alaska forest products to increase the use and consumption of forest products harvested and processed in the state;

(5) stabilize and diversify the distribution of forest products processed and harvested in the state by encouraging consumers to purchase Alaska forest products;

(6) provide for the reimbursement to the state, through assessments made on forest products processors, of a part of the financial assistance provided by the state to maintain the forest products marketing effort provided for under this Act; and

(7) create an effort that will be financed jointly by the state and by forest product processors.

* Sec. 2. AS 41 is amended by adding a new chapter to read:

CHAPTER 47. ALASKA FOREST PRODUCTS MARKETING INSTITUTE.

Sec. 41.47.010. ALASKA FOREST PRODUCTS MARKETING INSTITUTE ESTABLISHED. There is established the Alaska Forest Products Marketing Institute. The institute is a public corporation of the state in the Department of Commerce and Economic Development with separate and independent legal existence.

Sec. 41.47.020. BOARD OF DIRECTORS. (a) The governing body of the institute is a board of directors consisting of 18 members appointed by the governor. In making appointments to the board the governor may consider nominees presented by persons engaged in forest product processing, the financing of forest product processing, or the harvesting of forest products.

(b) Twelve members of the board shall be affiliated with forest

products processors; eight of these members shall be affiliated with a forest products processor that has an annual payroll in the state of $1,000,000 or more; four of these members shall be affiliated with a forest products processor that has an annual payroll in the state of at least $50,000 but less than $1,000,000. Five members of the board shall be individuals engaged in harvesting forest products. One member of the board shall be an individual not involved with the forest products industry.

(c) The board shall annually elect a presiding officer and other necessary officers from among its members.

Sec. 41.47.030. TERM OF OFFICE. Members of the board serve three-year staggered terms and may be reappointed. A member appointed to fill a vacancy holds office for the balance of the term.

Sec. 41.47.040. REMOVAL AND VACANCIES. A member of the board serves at the pleasure of the governor. A vacancy on the board occurring other than by expiration of a term shall be filled in the same manner as the original appointment.

Sec. 41.47.050. QUORUM. Ten members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board.

Sec. 41.47.060. COMPENSATION OF BOARD MEMBERS. A board member serves without compensation but shall receive the per diem and travel pay authorized under AS 39.20.180 for board members.

Sec. 41.47.070. MEETINGS. The board shall meet at least once a year. Meetings are held at the call of the presiding officer or when requested in writing by two members of the board.

Sec. 41.47.080. EMPLOYMENT OF PERSONNEL. The board may employ and shall establish the compensation of an executive director. The executive director may, with the approval of the board, employ and

establish the compensation of additional staff as necessary.

Sec. 41.47.090. POWERS. The board may

(1) have a corporate seal;

(2) adopt and change bylaws;

(3) sue and be sued;

(4) adopt regulations governing the exercise of its powers;

(5) cooperate with a public or private board, organization, or agency engaged in work or activities similar to the work or activities of the institute, including entering into contracts for joint programs of consumer education, sales promotion, quality control, advertising, or research relating to the production, processing, or distribution of forest products;

(6) conduct, or contract for, scientific research to develop and discover uses for forest products harvested and processed in the state;

(7) receive contributions of money from persons;

(8) establish offices in the state and otherwise incur expenses incidental to the performance of its duties;

(9) appear on behalf of the institute before boards, commissions, departments, or other agencies of municipal, state, or federal government;

(10) acquire, lease, sell, or dispose of property necessary to carry out its purposes and powers;

(11) establish bank accounts for the transaction of the institute's business.

Sec. 41.47.100. EXECUTIVE BUDGET ACT. The operating budget of the institute shall be prepared and submitted under AS 37.07.

Sec. 41.47.110. DUTIES. The board shall

(1) conduct education, research, advertising, or sales

promotion programs designed to accomplish the purposes of this chapter;

(2) prepare market research and product development plans to promote forest products and their by-products that are harvested in the state and processed for sale;

(3) develop market-oriented quality specifications for Alaska forest products for developing a high quality image for Alaska forest products in world markets, and adopt and distribute recommendations for harvesting and marketing forest products; and

(4) submit an annual report to the governor and the legislature describing the activities of the institute.

Sec. 41.47.120. PROHIBITED PROMOTIONS. The board may not promote or enter into a contract that promotes forest products by

(1) geographic origin other than from the state generally;

(2) geographic region of the state; or

(3) specific brand name.

Sec. 41.47.130. FOREST PRODUCTS MARKETING ASSESSMENT. (a) A processor who buys forest products in the state valued at $50,000 or more during each calendar year shall pay an assessment of not less than .001 or more than .004 of the value paid by the processor.

(b) An assessment may be levied or collected under (a) of this section only if the assessment is approved by eligible processors under AS 41.47.140.

Sec. 41.47.140. ELECTION TO APPROVE OR TERMINATE ASSESSMENT. (a) The institute shall conduct an election under this section after the director of the division of elections approves

(1) the notice to be published by the institute;

(2) the ballot to be used in the election; and

(3) the registration and voting procedure for the approval

or termination of the assessment.

(b) The assessment is levied under AS 41.47.130 on the effective date stated on the ballot if

(1) it is approved by at least the number of eligible processors who together purchased at least 51 percent of the total value of forest products purchased in the state during the 12 months immediately preceding the month of the election under this section; and

(2) the election results are certified by the director of the division of elections.

(c) The institute shall adopt the following procedures for an election under this section:

(1) The institute shall hold at least one public meeting not less than 30 days before the date that ballots must be postmarked to be counted in the election to explain the reason for the proposed assessment and to explain the registration and voting procedure to be used in the election. The institute shall provide notice of the meeting by

(A) mailing the notice to each eligible processor;

(B) publishing the notice in at least one newspaper of general circulation in each judicial district in the state at least once a week for two consecutive weeks before the meeting.

(2) The institute shall mail a ballot to each eligible processor not later than 45 days before the date ballots must be postmarked to be counted in the election.

(3) The ballot shall

(A) ask the question whether an assessment shall be levied under one of the following assessments:

(i) .001;

(ii) .002;

(iii) .003; or

(iv) .004;

(B) provide an effective date for the levy of the assessment; and

(C) indicate the date returned ballots must be postmarked in order to be counted.

(4) The ballots shall be returned by mail and shall be counted by the director of elections.

(d) The director of elections shall certify the results of an election under this section if the director determines that (a) and (c) of this section have been complied with.

(e) A ballot of a corporation is presumed valid under this section and AS 41.47.150 if the ballot is signed by an officer of the corporation and imprinted with the corporate seal.

(f) Except as provided in AS 41.47.150(b)(2), an election to terminate an assessment shall be conducted under (a), (c), and (d) of this section.

Sec. 41.47.150. TERMINATION OF FOREST PRODUCTS MARKETING ASSESSMENT. (a) An assessment levied under AS 41.47.130 may be terminated by the commissioner of revenue if an election is held under AS 41.47.140 and termination of the assessment is approved by at least the number of eligible processors who together purchased at least 51 percent of the total value of forest products purchased in the state during the 12 months immediately preceding the month of the election under this section.

(b) An assessment shall be terminated by the commissioner of revenue under (a) of this section following an election if

(1) a petition is presented to the director of the division

of elections requesting termination of the assessment that is signed by at least 25 percent of processors who voted under AS 41.47.140 in the election approving the assessment;

(2) eligible processors who together purchased at least 51 percent of the total value of forest products purchased in the state during the 12 months immediately preceding the month of the election under this section cast ballots for terminating the assessment; and

(3) the institute provides notice of the election under this section within two months after receiving notice from the director of the division of elections that a valid petition under (1) of this subsection has been received.

Sec. 41.47.160. COLLECTION OF ASSESSMENTS AND DISPOSITION OF PROCEEDS. (a) A processor shall collect and remit to the Department of Revenue by April 1 of each year the total amount of an assessment owed on the value paid for forest products by the processor in the previous calendar year.

(b) The forest products marketing assessment collected under AS 41.47.130 - 41.47.170 shall be deposited in the general fund. The legislature may make an appropriation based on collections of assessments remitted to the Department of Commerce and Economic Development for the purpose of providing financing to the institute and may appropriate additional money beyond the assessment collected under this section as need is demonstrated by the institute.

Sec. 41.47.170. ENFORCEMENT OF ASSESSMENTS. AS 43.05 and AS 43.10 apply to the enforcement and collection of the forest products marketing assessment.

Sec. 41.47.180. DETERMINATION OF VALUE AND ELIGIBILITY. When requested by the director of elections or the institute's board of directors, the commissioner of revenue shall determine

(1) the total value of forest products purchased in Alaska during any calendar year;

(2) whether the eligible processors approving the levy or termination of an assessment together purchased at least 51 percent of the total value of forest products purchased in Alaska during the 12 months immediately preceding the month of election under AS 41.47.140; or

(3) whether the eligible processors petitioning for an election under AS 41.47.150(a)(1) are at least 25 percent of processors who voted in the election approving the assessment; or

(4) the eligibility of a processor under this chapter.

Sec. 41.47.200. DEFINITIONS. In this chapter,

(1) "assessment" means the forest products marketing assessment;

(2) "board" means the Board of Directors of the Alaska Forest Products Marketing Institute;

(3) "forest products" means timber and timber by-products resulting after harvesting of timber;

(4) "harvesting" means removal of timber for sale;

(5) "institute" means the Alaska Forest Products Marketing Institute;

(6) "processor" includes a person or firm who engages in milling and chipping;

(7) "value" means the actual price paid for the forest product resource by the forest product business, including indirect consideration such as fuel, supplies, or machinery, whether paid at the time of purchase of the forest product resource or tendered as a deferred or delayed payment, except that "value" means the market value of the forest product resource if the harvesting of the forest

product resource is done by company-owned or company-subsidized logging firms operated by employees of the forest product business or by logging firms that are operated under lease or other arrangement.

* Sec. 3. AS 39.25.110 is amended by adding a new paragraph to read:

(23) executive director and employees of the Alaska Forest Products Marketing Institute.

* Sec. 4. AS 39.50.200(b) is amended by adding a new paragraph to read:

(48) Alaska Forest Products Marketing Institute (AS 41.47.-010).

* Sec. 5. Initial appointments to the Board of Directors of the Alaska Forest Products Marketing Institute under AS 41.47.020 enacted in sec. 2 of this Act shall be made for the following terms:

(1) six members shall serve for one year;

(2) six members shall serve for two years;

(3) six members shall serve for three years.

Logger Letter

Vol. XXII No. 12 December 1985

Promoting Alaska Timber in the Pacific Rim

The new State of Alaska representative in Taiwan is attorney Chen-nan Wang who is located in the city of Taipei. He has been in contact with Frank Seymour, State of Alaska Office of Forest Products' marketing specialist, regarding Alaska timber resources and their potential uses.

Alaska's Korean representative in Seoul, K. S. Yang, has met with Mr. Kim Nak Dong, Managing Director of Korea Lumber Industrial Cooperative, and presented him with copies of "Alaska Commercial Forest Resource", a booklet which was prepared by the Alaska Department of Commerce and Economic Development and translated into Korean. Mr. Yang reported that information from this booklet will be used in the February edition of the "Timber Bulletin", published monthly by the Cooperative. Mr. Yang will also be traveling with Mr. Kim Nak Dong to Inchon Nest to promote the Alaska Timber Import of Ssangyong Company. Mr Yang reports that the Korean government has lowered the timber import quota for 1986. He says, "Therefore, we need more intensive marketing activities in the future".

Kaz Hayashi, Alaska's representative in Japan, is seeking memberships in foreign associations such as the Japanese Rayon Association to be able to better promote Alaska wood products and to establish a network of information coming back to Alaska for industry's use.

Meanwhile the market development efforts by the industry and the State are progressing here on the home front. A sample shipment of wood from the Interior of Alaska is being prepared and Frank Seymour will be traveling overseas in January to prepare the way for an ALA delegation to visit China in March.

Worker's Comp

This one went right down to the wire. All members of Alaska Timber Insurance Exchange were pleased to learn their company has obtained reinsurance and will be writing 1986 workmen's compensation policies. The ability to write the coverage was in question for awhile but Corroon & Black notified the Alaska Timber Insurance Management Committee on December 30 that the reinsurance had been placed.

ATIE is in business and will be serving its members in 1986.

Associate Member Project

Once again, ALA Associate Members held a hospitality room for Alaska delegates at the Pacific Logging Congress. Here officers Dale Sanregret of Mack Trucks and Tom Winter of Six Robblees man the refreshment center.



The Capital REPORTER

A Journal of Alaskan Political News and Opinion

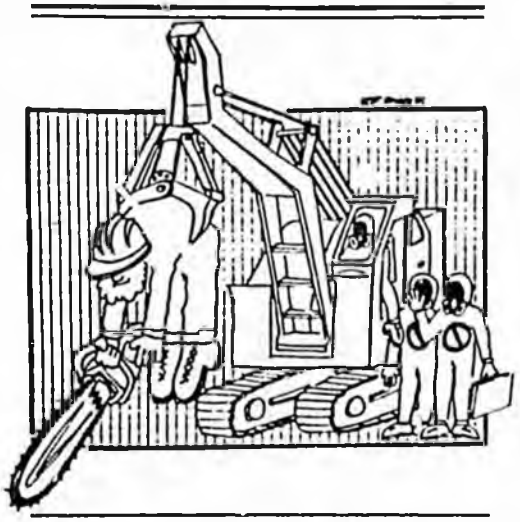
Volume 1, No. 2 January 9, 1985

Alaska's Ailing Timber Industry: What Next?

Southeast Alaska's timber industry has been ravaged by a slump in the world market and rising production costs. Sitka and Ketchikan, Southeast Alaska's mill towns, have suffered the greatest economic loss, with intermittent closure of Louisiana-Pacific Ketchikan (LPK) and Alaska Lumber & Pulp (ALP) mills. Environmental Protection Agency (EPA) standards for water quality have to be taken seriously by the industry, argue the environmentalists, and Louisiana-Pacific Ketchikan has recently decided to compromise with the EPA over those standards, rather than continue on in a long and expensive court battle. The people of the small logging towns who are losing jobs and being dislocated find it hard to accept water quality and fish and game habitats as the reason they are unemployed.

Alaskan environmental groups do not find the timber industry's plight such a terrible thing. They simply advocate cutting less timber, and they have come out against the practices employed by the Forest Service, Alaska Lumber and Pulp and LPK. They would like to see long-term contracts let by the Forest Service in the 1950's terminated, or at least scaled down. They want the logging industry returned to the small operators, out of the hands of LPK and ALP, the two large companies that hold the contracts.

Bart Koehler, Executive Director of the Southeast Alaska Conservation Council (SEACC), said that SEACC, the environmental group who most closely watches the timber industry, is



putting together a management proposal for Southeast Alaska that "will balance as fast as we can the various economic uses, to make sure that there is a viable timber industry, that it is not dominating other resources, and that the other existing economies survive and prosper...."

SEACC came out with a study of cutting practices in the Tongass National Forest in mid-December, at the same time the Governor's Timber Task Force handed down its final report. The SEACC study condemns the level of timber available for harvest (the 450-cut), the Forest Service's management policies, and accuses the Forest Service of giving special treatment to industry at the expense of small companies and the residents of Alaska.

Jim Clark, Chairman of the Governor's Timber Task Force and a lobbyist for Alaska Lumber and Pulp, rebutted some of the environmentalists charges in a December radio interview with Juneau reporter Laury Roberts. "I view that report and some of the things in there as unreasonable and unfair ... for two reasons. The notion of doing away with the 450 million board feet and the ANILCA funding provisions is one-half of an agreement that was reached at the time the D-2 lands bill was put together. There were two objectives that Congress was trying to meet. It wanted to maximize the wilderness in the Tongass National Forest and it wanted to preserve the industry. So to say that we're just going to unilaterally cancel one half of the deal now that the land has been put into wilderness really is not a realistic alternative ... it's not even a ballpark proposal." Clark said he hoped the environmentalists would be given a seat on the Task Force in the future.

Industry/Government Solutions

On December 13, the Governor's "Alaska Timber Task Force" presented its hefty package of suggested remedies for the ailing timber industry. Sheffield created the 14-member industry/government group in October and directed it to come up with recommendations in four areas: marketing, rules and regulations, infrastructure, and finance.

According to Jim Clark there are several reasons for the decline of the timber industry including a soft market for pulp, the strong U.S. dollar, and competition from cheaper foreign competitors.

(Continued on page 7)

Timber...

(Continued from page 1)

The Task Force would like to expand Pacific Rim markets and research domestic markets, and advocates the use of generic advertising to promote the Alaska product. The industry feels that it can work with biologists to solve fish and wildlife habitat problems. They want more specific guidelines on population goals for deer, and the report of the Task Force states that the major difficulty faced by the industry with the agencies responsible for protecting fish habitat "is an understanding of their missions. Even though fisheries are a renewable resource, such agencies seem to see their mission as preserving all fish...."

The Task Force tried to keep new programs to a minimum, but did recommend several state studies be performed and that funding be made available through several existing programs. Alaska Industrial Development Authority should be authorized to purchase loans for the development of roads, camps, and other short-use logging facilities. The state Commercial Fishing and Agriculture Bank should increase its participation in the Alaska timber industry, and the Small Business Loan Fund should be funded, the loan limits raised above $500,000, and a specific portion of the funding dedicated to forest operations.

Another financing incentive suggested by the Task Force would be to enact a special investment tax credit for the timber industry as was done in 1984 for the oil and gas industry. Other suggestions included industrial property tax exemptions for timber facilities, study by the industry of using regional resource development authorities in timber producing regions, establishment of a bonding program for small operators to obtain performance and payment bonds for Federal and State timber sales, and establishment of an Alaska Export-Import Bank capitalized by tax exempt bonds to provide a secondary market for loans made by private banks collateralized by contracts for international sales of timber.

In the area of marketing, the group recommended a concerted push to expand markets for Alaska pulp and timber among Pacific Rim nations, and endorsed Sheffield's recent policy statement on foreign trade. It recommended the state take advantage of the U.S. Trade Representative's Office and the Alaska Asian Office in Tokyo to help publicize and pave the way for increased foreign sales. The group also recommended that the industry establish an Export Trading Company to promote trade with the People's Republic of China, that instate markets should be developed, if feasible, and that the Forest Assistance Program in the Dept. of Natural Resources be expanded to provide more management and marketing assistance to small operators.

In the area of rules and regulations the Task Force recommended the following measures:

—a State/Federal/Industry review of fish habitat protection measures be undertaken and that industry take what steps it can now to mitigate the impact of timber harvest on deer.

—continuation of the U.S. Forest Service's emergency utilization program in the Tongass whereby logging companies can leave in the woods material less than 30 board feet.

—increasing the size of clearcuts to reap the corresponding economic benefits of increased production and reduced costs, but not entering new areas until the appropriate research is completed to determine environmental impacts.

--elimination of the "Alaska Proviso" to the National Forest Management Act, which would authorize small operators to have the Forest Service build roads for them.

--seeking assured access across State-owned uplands and tidelands for loggers.

—recognizing forestry as a "use of State concern"

--changing U.S. Forest Service accounting procedures to charge the cost of roads over all entries in an area, rather than just the first.

—reducing road standards to make timber entry less costly.

--implementing a more flexible timber appraisal system.

—a determination as to whether the U.S. Army Corps of Engineers may be exceeding its jurisdiction over wetlands.

—that the Dept. of Environmental Conservation waive certification of certain activities already certified by the Army Corps of Engineers to speed up the process.

Infrastructure suggestions include:

—use of the maximum amount of ANILCA funding possible for roads and other facilities, to be used for secondary roads, landings and other

(Continued on page 8)

Legislature...

(Continued from page 4)

political action committee. Dec. 30, charging Marrou with perjury, he asked Lt. Governor McAlpine to certify the election and declare him the winner in that race.

--Senator Paul Fischer (R-Soldotna) will be investigated by APOC about failure to report $8,500 in loans in 1984. On Dec. 18 he was ordered to answer questions about his resignation from his previous job.

--Dec. 16 Senator Mitch Abood (R-Anchorage) announced plans to hold hearings in State Affairs to "straighten out the mess" with the APOC. Outgoing State Affairs Chairman Vic Fischer (D-Anchorage), as one of his last official actions, proposed a major rewrite of political financial laws, from an opposite perspective.

—Dec. 17, the Senate coalition claimed it will do away with controversial leadership funds, following the House's lead, and revitalize the Legislative Council and Legislative Research.

--Dec. 20 a House committee picked Mobile Video of Juneau as the low bidder for the contract to provide TV coverage of the House in 1985. Owner Bob Poole beat out the only other bidder, Roark-Harmon of Juneau, with a bid of $265,000. The Senate has yet to make a decision.

--Dec. 22 Rep. Virginia Collins (R-Anchorage) announced she would introduce a bill to prevent legislators from voting themselves large pay raises without voter approval.

—Dec. 26, freshman Democrats Pat Pourchot and Katie Hurley of Anchorage announced plans to seek repeal of the payraise legislators voted themselves in 1983.

--The Ethics Committee will review an $85,000 state contract to the Alaska Business Development Center, in which Rep. Walt Furnace (R-Anchorage) holds a majority interest.

--Dec. 30 the Supreme Court agreed to expedite handling of the outgoing House coalition's lawsuit over confirmation of Sheffield's appointees in 1983.

--Senator Rick Halford (R-Anchorage) has prefiled a bill (SB 44) that will substantially change laws governing condo's and common property.

--A State Senate committee (HESS) heard testimony in early January from irate residents along the railroad about careless use of herbicides.

UNDERSTANDING LOG EXPORTS

by Jay Gruenfeld

Jay Gruenfeld is a forest resources and management consultant in Seattle, WA. He was formerly Manager of Timber and Log Sales for Weyerhaeuser in Tacoma, WA, and Vice President of Lands and Forestry for Potlatch Corporation in Lewiston, ID.

A commonsense look at the facts and fictions, pros and cons of this complex and often misunderstood issue

Jay Gruenfeld
Forest Resources Consultant
11411 Arroyo Beach Pl. S.W.
Seattle, WA 98146

A DEEP-WATER PORT in Japan serves as journey's end for a shipload of American-grown logs. Such logs, harvested from timberland in Washington and Oregon, are the focus of a developing controversy over the log-export policies of the United States. On one end of the disagreement are those who would favor a total ban on log exports; on the opposite end are people who hold the belief that a free market is in the best national interest. And, as is typical of most controversies, there is a vast middle ground of circumstances and opinions that will affect the ultimate decisions.

The major purpose of this article is to acquaint the reader with the basics of the log-export issue. The issue is complex; many knowledgeable people simply don't know what position to take. Individual economic and forestry beliefs certainly have an effect on personal opinion. Perhaps, as pressures mount for either/or decisions, the perspectives offered in this article can help the reader to form a considered opinion.

Pro and Con Arguments

Arguments *against* exports include: 1) log exports cause a log shortage, which increases prices to local consumers and decreases employment. An emotional statement of this argument goes: "We are exporting jobs while running a tree farm for Japan." 2) We need to preserve our trees for future use.

Arguments *for* exports include: 1) logs should be allocated by the forces of a free market. In the long run, consumers benefit from free trade that forces uncompetitive industry to either change or go out of business. 2) Even if log exports were banned, Japan and other nations would purchase logs from other countries and then buy lumber and other products from the lowest-cost supplier, which, in most cases, would not be the United States. 3) The more profitable wood-growing is, the greater the volume of wood that will be grown. Reducing the value of

Hemlock and white fir await export to Japan from a dock in Everett, WA. Pen stuck in identifying tag of largest log gives scale

Jay Gruenfeld

of four other fuels as they were priced in Morgantown, WV, in May of 1981. These costs are for fuel only and do not include the cost of a furnace or other fixed costs. They are applicable to the homeowner who already has one of these four heating systems in place and wishes to compare its cost with a wood heating system, including the purchase of a stove. If one is deciding what type of system to install in a new home, or if one is replacing the entire system in an older home, the initial cost of any system should be prorated over the expected life of the system.

By selecting an appropriate wage rate it was possible to estimate a break-even point between wood and each of the other fuels. For example, if the alternative fuel was oil at $1.20 per gallon, and if a value of $4.00 per hour was placed on time, we could afford to cut and haul wood from about 17 miles away; at distances greater than 17 miles the $4.00/hour curve for wood heat lies above the line representing the cost of fuel oil. On the other hand, with natural gas available at $.40 per therm, a $4.00 per hour value on our time means that gas heat is decidedly more economical; no matter what the hauling distance the $4.00/hour curve for wood heat is above the line representing the cost of natural gas. Wood heat is competitive with coal only if zero value is attached to one's time, and then only if the hauling distance is 17 miles or less. It should be recognized, however, that the use of coal demands some time for furnace tending. The cost of coal in Fig. 3 includes fuel only.

Home heating with wood is obviously a labor-intensive activity, and the cost of wood heat depends heavily on the value an individual places on his or her time.

A more detailed account of the West Virginia study, together with a method of estimating your own cost of heating with wood, is available in *The Cost of Heating With Wood*, P. 680, Cooperative Extension Service, West Virginia University, Morgantown, WV 26506. ■

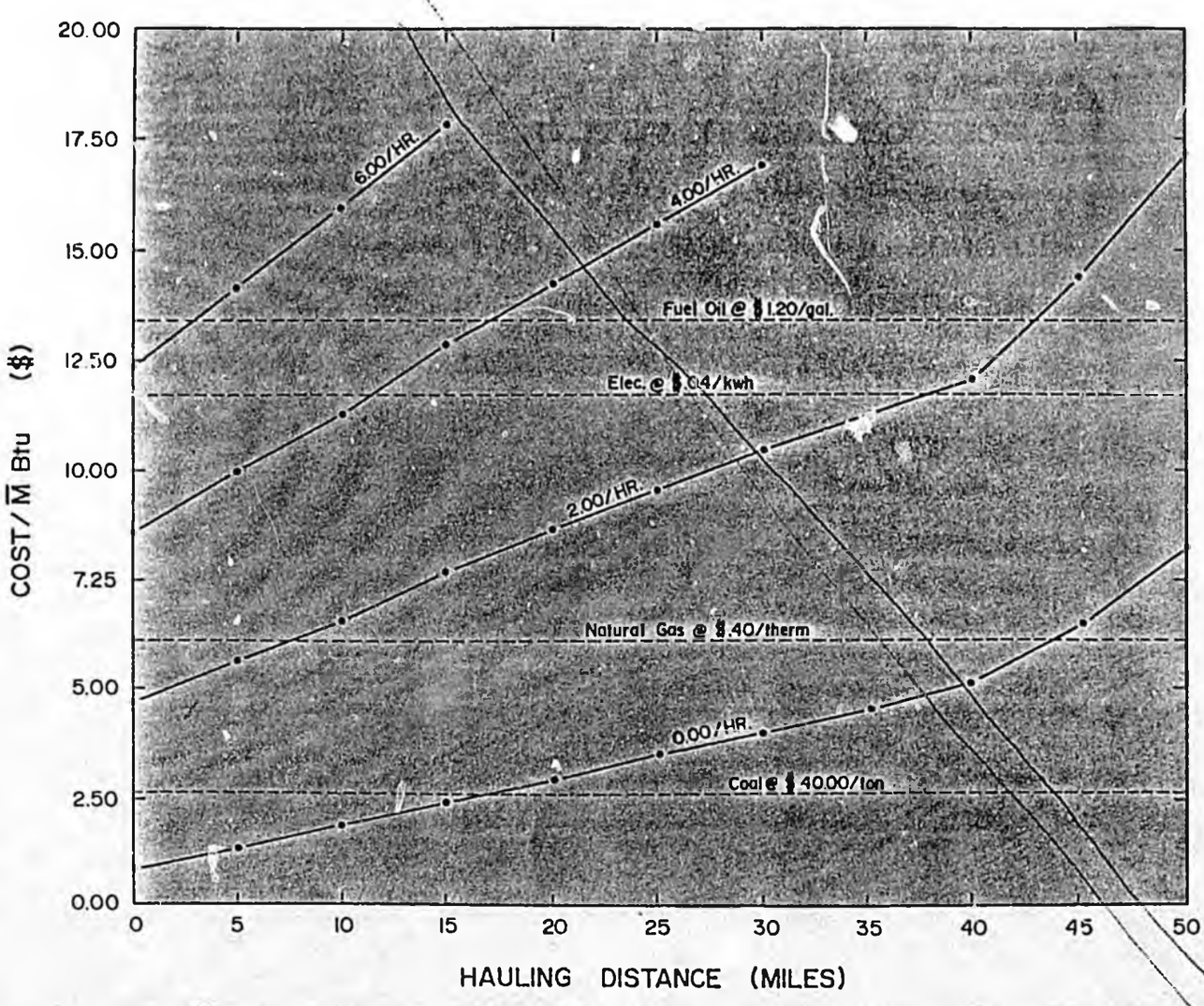


Fig. 3 Cost per MBtu for wood heat, by wage and hauling distance, and comparison with cost per MBtu of other fuels

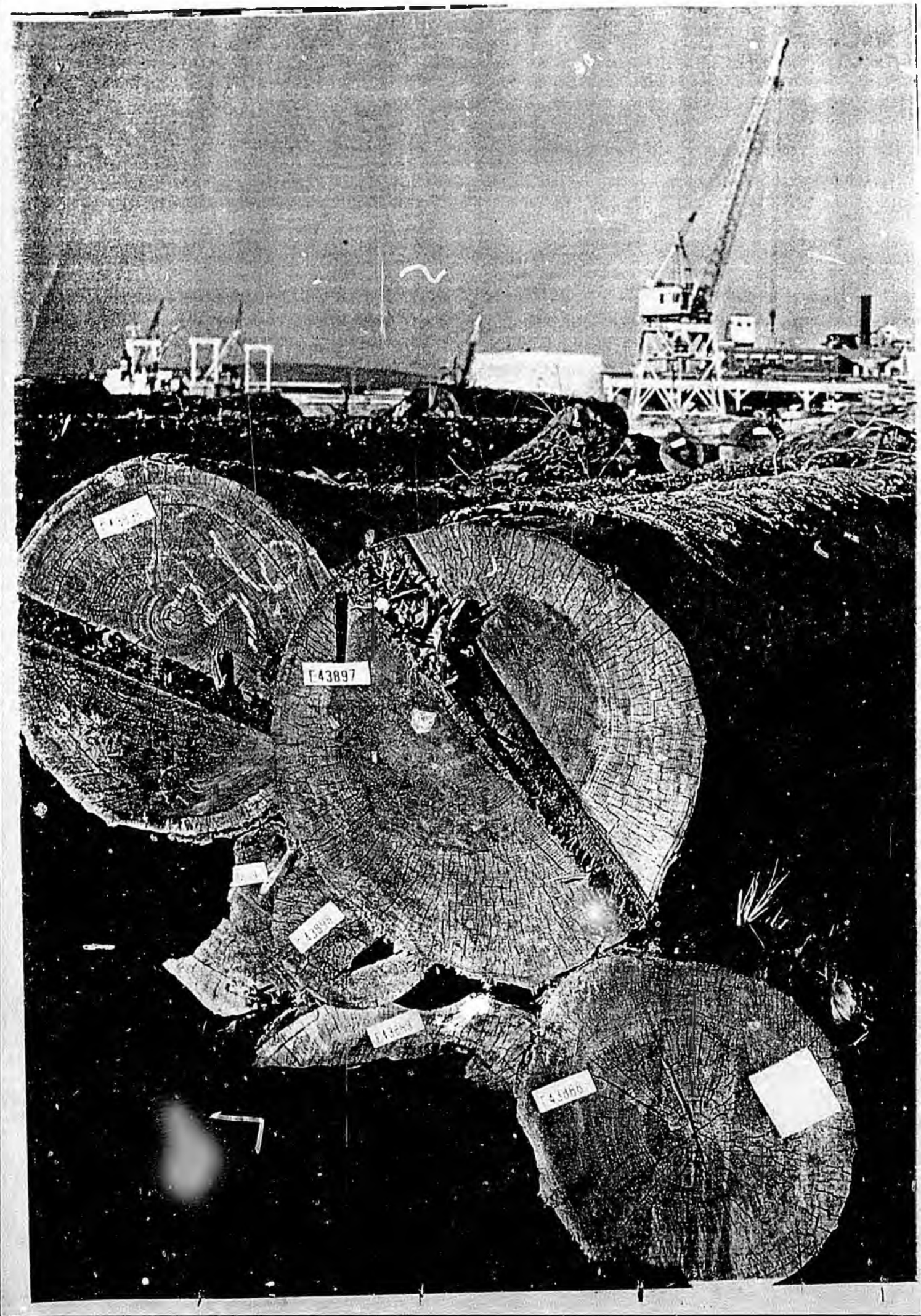

Г43897

TABLE I

SOFTWOOD LOG EXPORTS FROM WASHINGTON AND OREGON

Selected Years 1965-1980

Year	Billion Board-Feet Scribner Scale	% to Japan
1965	.9	95 (Author estimated)
1970	2.2	96
1975	2.2	90
1980	2.6*	90

* Equals 92.8% of total softwood log exports from U.S. Is 19% less than in 1979.

Source: Forest Policy Project, Washington State University

The author estimates that about 80% of the exports were from Washington, principally from private land.

Below: author inspects Orient-bound Sitka spruce on Afognak Island, Alaska

Jay Greenfield



TABLE II

JAPAN SOFTWOOL LOG IMPORTS FROM NORTH AMERICA (1978)

(Almost entirely from U.S.)

Species	Volume (in thousands of cubic meters*)	Percentage
Hemlock	4748	45.0
Douglas-fir	4380	41.6
Spruce	513	4.9
Red cedar	269	2.5
White fir	245	2.3
Subtotal	10155	96.3
Other species	381	3.7
Total	10536	100.0

Source: Japanese Log Importer's Assn.

* 1 cubic meter equals 35.3 cubic feet

wood by restricting markets will in turn reduce the level of forestry as currently practiced. 4) The national interest requires more exports to improve the balance of payments. Despite log exports, the U.S. is the world's largest importer of forest products.

Economists have disagreed over the effects of various degrees of export bans. For example, it is argued that a log-export ban would divert Canadian lumber and plywood from current U.S. markets to Japan. This could increase the price of those products in the U.S.

Obviously, those who have the most to gain from log exports are the tree growers and sellers. Those who would gain directly from a ban on log exports are those companies, usually small and medium size, who are heavily dependent on purchasing logs and timber on the open market.

The national interest, as usual, is not clear.

Who Imports?

The major issue involves the export of coniferous (softwood) logs, principally from the states of Washington and Oregon. Japan is the major buyer—in 1980 it received 90 percent of logs exported from the two northwestern states. (Table I summarizes softwood log exports from Washington and Oregon from 1965 to 1980, and Table II summarizes Japanese softwood imports from North America in 1978.)

A large volume of wood is being exported. The 2.8 billion board-feet exported from Washington and Oregon in 1979 was about 20 percent of the total wood harvested and is enough wood to build about 280,000 three-bedroom homes.

Foreign purchasers (including mainland China, which in 1980 became a major importer) obtain American logs by the simple fact of being the highest bidder. American timber companies are in the business to make a profit; that objective, along with the belief that a free market is in the best national interest, determines the selling motive.

Who Exports?

Currently, the larger timber companies in the states of Washington and Oregon are the primary exporters. Weyerhaeuser Company is the largest, with Crown Zellerbach, ITT Rayonier, Georgia Pacific, and others also involved. Weyerhaeuser is by far the dominant exporter—a log-market analyst was quoted this year in the Wall Street Journal as saying, "The Japanese think of Weyerhaeuser as a separate country. They trade with the United States, with Russia, and with Weyerhaeuser."

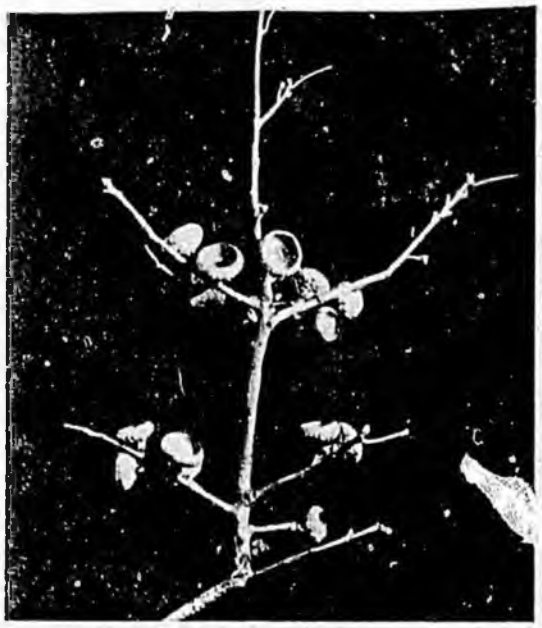
The state of Washington forest lands have an annual cut of about 800 million board-feet, and the great majority of this timber is exported by the purchasers as logs. Revenues from these timber sales (163 million in 1980) are used principally for public education. In March of this year, a bill was introduced that would phase out such export. Many educators are concerned. Most sawmillers are pleased.

What Part Will Alaska Play?

Alaska has recently become a major source of export logs. Under terms of the Alaska Native Claims Settlement Act, which was part of the Alaskan Statehood Act, natives can select over 40 million acres of federal land. This land is then considered to be privately owned and is exempt from the log-export prohibition on logs from federal and state lands in Alaska.

Old-growth timber on the exempt land is of great interest to the Japanese. Although no definite figure is available on the amount of timber that would be eligible for export, it will probably be at least a couple of hundred million board-feet annually. Alaskan log exports in 1980 increased 24 percent over 1979 to an all-time high of 160 million board-feet. Some new contracts with Japanese importers have been

(Turn to page 54)



(1) Little cups that hold nutlike fruit identify this hardwood tree, renowned for furniture, construction, and fireplace fuel.

W _____ O _____



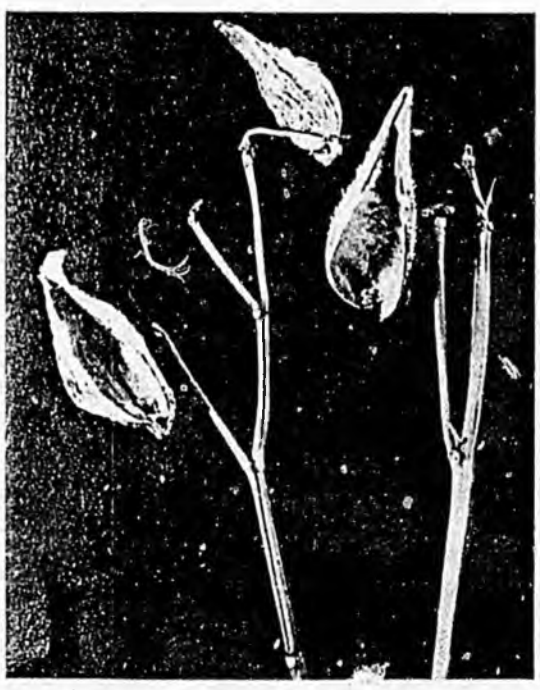
(2) Nutlike fruit, about the size of peas, dangle from twigs far into winter on this symmetrical tree.

B _____



(3) Sharp barbs, curled tendrils, and dark blue berries cling to green stems throughout the winter.

G _____ B _____



(7) The fluffy parachute seeds are gone, but dry pods remain.

M _____



(8) Furry twigs and bright red tassels identify these winter twigs.

S _____ S _____



(9) Seed balls decorate twigs on this tree that sheds bark patches as well as leaves during the fall.

S _____

Know Your Twigs?

by Don Shiner

Outdoor Photographers League photos by the author

able timber," he said.

The Forest Service is not happy about the loss, either. In fact, in its recent analysis of the timber situation in the United States, the Forest Service acknowledged the problem squarely. Pointing out that the heaviest mortality occurred in the Douglas-fir region, the agency explained that the high mortality "is related to the concentration of timber volumes and the high proportion of overmature timber characteristics of old-growth stands." The agency went further to say that half of the nation's timber mortality occurs on National Forests and that "nearly all of the mortality on the National Forests occurs in areas that are unroaded and inaccessible for trucks and tractors.

"At this time, with the existing technology, the location of processing plants, and current product prices, salvage of such mortality is not economically feasible in most forest stands, including those in roaded areas," the Forest Service analysis states.

Regardless of the old-growth problem, the pressing need is to regenerate the areas of nonstocked forest, which amounts to about 2.6 million acres in the Rocky Mountains and 3 million in the Pacific Coast. Again, almost half (46 percent) is in National Forests, largely in the Rocky Mountain region. It will cost about a billion dollars to regenerate the nonstocked acreage in the West and much of the regeneration must take place on private lands.

In California the possibility that private landowners can accomplish the task looks promising. In the 1980 report of the California Forest Improvement Committee, the group identified one-fourth of the state's 16 million acres of commercial forest lands as prime forestland. Although these four million acres comprise a small percentage of the total, they carry 49 percent of the total potential for timber growth in the state. But here's the bottom line: 65 percent of all prime land is in private ownership. What's more—and listen closely because good news isn't that plentiful these days—most of the privately owned forestland in California is owned by those with more than 500 acres. Not many scattered small tracts here. And most of these owners live near their timber, not farther away than the next county, according to the report.

This is encouraging because California has its share of regeneration to accomplish. Because of past selective logging, where only the good trees were taken, some 1.8 million acres of private lands are in disrepair. Unstocked private acreage totals about two million acres.

As more than one forestry leader has stated, "we know how to do the job of growing and harvesting trees while providing the other forest resources and without harming the environment. Let's do it." If proper planning was all there was to it, the timber would be grown, nurtured, and harvested without a doubt. But the active ingredient in the formula is people and their attitudes. Southern forests are nice to look at, but western forests are paintings of majesty, breathtaking in their grandeur. Let a woodsman in their life? Not on your life! Landowners' attitudes will determine if harvests are made on private lands and on what scale. The public's attitude will determine how much timber is harvested from federal lands (and on private lands where legislation has dictated regulations).

The same attitudes will determine how much more public land will be dedicated to wilderness, parks, or other uses. In California, wilderness areas already total 2.8 million acres, 57 percent of which is forestland.

Someone once said that if it weren't for people, there would be no public relations problems. Of course, there would be no need to grow timber either, except that some species of wildlife have fared better in most areas with proper forest management than in the virgin timber.

Some people uninitiated in forestry develop chills and the ague when trees are cut, but ruin trees themselves when left to their own devices. Del Brown, assistant state forester of Colorado, shakes his head in wonderment. "People are using their forested lands more intensely while often not knowing how or why trees should be managed. We see them build a cabin on 10 acres of forest land and unintentionally cut half the roots of trees chosen to frame the view. They pave over the root zone of other trees and their roads cause erosion," he said. It's understandable that he feels "the main forestry problems of the West are people problems."

Tough questions? Of course, be-



THE GARDEN WAY CIDER PRESS

Making cider can be as much fun (and as easy!) as drinking it! With Garden Way's complete system, fresh cider is just minutes from the tree. Grind apples (and many other fruits) in the top-mounted grinder—then press the pulp into delicious cider and juices. Full bushel capacity—stands over 4 ft. tall. Constructed from pine and Vermont maple hardwood to last a lifetime. Available also in two money-saving kits. Send for FREE information TODAY.

GARDEN WAY RESEARCH
Charlotte, Vermont 05445
© 1980 Garden Way, Inc

Garden Way Research 07
Dept. A1523P
Charlotte, VT 05445
Please send FREE information about the Garden Way Cider Press and Cider Press Kits.
Name _____ (Please print)
Address _____
City _____
State _____ Zip _____

Carrots Love Tomatoes

(But don't plant beans near onions!)

Hard to believe, but botanical characteristics in vegetables actually help (or hinder) their growth and taste when planted near or apart from other vegetables. Our strange but true new 224-pg companion planting book tells what to plant together for outstanding results and why. Fun, educational, a great gift for gardeners! Only $6.50 (we pay postage). Send to Garden Way Publishing, Dept. A1012, Charlotte, VT 05445

Great Gift for Gardeners!

Rare Wood Collecting

Discover the FASCINATING World of Wood

Begin to collect and display rare, exotic and beautiful examples crafted in the form of charming wood eggs. Catalog gives history and description of 31 unusual woods from every corner of the globe.

Wood Eggs are precious an irresistible fascination



Send $1.00 for Wood Egg Catalog

Woods of the World, Inc.

Box 24007, AF 1281, Cincinnati, OH 45224

FORESTRY MANAGEMENT TOOL

Ideal for clearing cutting sites before chain saw use. Stows and carries neatly. Thousands used by chain sawyers, surveyors, foresters, and land managers.
The Woodman's Pal™ FORESTRY TOOL
Light, Strong, Sharp

cut • clear trim • prune blaze • thin brush-out



ORDER TODAY
Satisfaction Guaranteed. Full refund if not completely satisfied.

Name
Address
City State Zip

Gentlemen: Please send me____Woodman's Pal Forestry Tools in handsome oiled bridle sheath c/w belt loop @ $49.95 each. Amount enclosed $_____
____Check ____Master Card ____Visa
Card Account Number:

Month ☐☐ Year ☐☐ _____
Card Expiring Date Customer Signature
Penna. residents please include 6% Sales Tax.

SURVIVAL EQUIPMENT CO.
370 N. Main • Oley, PA 19547

cause the entire problem has to be solved in a fishbowl. Few industries' operations stand the chance of affecting so many other important values of American life. Harvests of trees can improve water quality or ruin it, depending upon how and where it takes place. Indiscriminate harvesting in Colorado, for example, cannot be allowed. The state is the headwaters of five major rivers. What the people have to decide, and soon, is how to match the needs with the solutions.

But lest we forget, forest production in the West is not only a people problem, it's *the people's problem.* California is predicting a six-percent drop in timber harvests during the next 20 years. David E. Pesonen, director of the California Department of Forestry, sums up the future for the entire West in one sentence. Unless future supplies can be increased, he said, Californians can expect "higher prices, lower quantities, reduced quality, increased imports or any combination of these."

Commercial forests cover only 15 percent of the land area in the West. Forestry leaders in the region don't feel that dedication of the acreage primarily to timber use is an unreasonable request. ■

Understanding Log Exports *(From page 19)*

negotiated, and others are pending. Alaska's importance as a log source will increase sharply if any restriction is put on exports of state of Washington timber.

Alaskan natives are naturally interested in receiving income from their lands, so some logs will continue to be exported. However, a domestic wood-utilization industry, rather than log exporting, is attractive because it can provide more jobs and income per unit of wood volume. Therefore, some of the revenue will doubtless be used in forest management and to develop a wood-processing industry in Alaska.

The fact remains, however, that local sawmills, plywood plants, and other manufacturing facilities are not profitable if the cost of their logs is calculated as the value of those logs if they were sold export. This is the principal reason that logs are exported from the United States, as well as from other countries such as New Zealand, Chile, and the Soviet Union. Log-export profitability takes precedence over national preferences for processing logs at home. Homeprocessing would provide increased employment opportunities and greater final product values. It will be interesting to see how Alaska balances these two needs.

Regulations

Basic to understanding the export issue is some knowledge of current regulations affecting log exports from the West Coast. The following somewhat oversimplified summary gives the basic regulatory information. In a few cases, there are provisions that logs can be exported if declared surplus to industry needs, but this affects an insignificant volume.

The export of timber in log form is prohibited from state-owned lands in California, Oregon, Alaska, and British Columbia.

On federally owned lands, export of logs west of the 100th Meridian (which cuts the 48 states on a line through North Dakota to Texas) is almost entirely prohibited. A 1968 act, often referred to as the Morse Amendment, limited exports from federal lands to 350 million board-feet (12.5 percent of the 1980 exports of 2.8 billion board-feet); however, more recent regulations essentially make it illegal to export logs from federal land.

Privately owned timber, therefore, has the pivotal role in exports. A 1977 study of Washington state log exports showed that in 1976, 69 percent of Washington exports (by far the largest of any state) came from private land, compared to 25 percent from state land.

Clearly, any sizable reduction of log exports by regulation would have to be the result of new regulations affecting either or both private and state forest harvest allocations.

The Japanese Log Market

Japan will increase its domestic production of softwoods over the next two decades, but will continue to import huge volumes of logs and chips. Over 23,000 sawmills depend primarily on imported conifers to supply the needs of their customers.

The reason Japan is able to pay more for logs than the domestic mills in the U.S. is complex, and includes many economic and socio-political factors. For instance, Japanese sawmills recover a much higher per-

centage of a log in the form of lumber than do domestic mills. U.S. mills put greater emphasis on production speed, thereby producing more low-value byproducts such as chips and sawdust. The 23,000 sawmills in Japan, mostly very small, are not only supplying customers with exactly what they need in sizes and grades of finished products, but also are a potent political force. The Japanese government naturally favors imports of raw material to keep employment at high levels, and will encourage log imports over milled wood imports if the economics are at all favorable.

Market Competition

There most assuredly is international competition for the Japanese log market. U.S. suppliers are concerned that further bans on log exports will force Japan to turn to other suppliers.

The Soviet Union now provides most of the competition for U.S. logs in the Japanese log market, but other countries such as Chile have begun substantial shipments to Japan. Chile exports Radiata logs to Japan despite the 10,600-mile distance, about double that from Seattle to Tokyo. New Zealand was one of the first countries to export fast-growing exotic conifers to Japan. (Usually this is *Pinus radiata*, called Monterey pine in the U.S., where it is native, and Radiata pine in New Zealand.)

Fiji is the latest entry into the exportation of fast-growth exotic coniferous species to Japan. In July 1980, I watched the first cargo of plantation-grown Caribbean pine logs (*Pinus caribaea*) being loaded for shipment to Japan.

Indonesia and the Philippines supply Japan with the large-diameter logs that sell as Philippine mahogany. And Taiwan supplies cypress in five to six feet and even larger diameter logs (often split lengthwise). Larch, pine, and true fir logs arrive at Japanese ports from Siberia.

The Protagonists

Self-interest puts people on different sides of the issue. If a U.S. company is primarily a processor of purchased wood, its profits are hurt because log exports decrease the supply of logs and drive the price up. If a company, individual, or agency is a round-wood producer, it is more likely to favor log exports because they increase the profit on what it sells and increase the value of its trees and land.

Employees whose jobs are either threatened by a ban on log exports or enhanced by a continuation of the status quo tend to take opposing positions.

Preservationists generally prefer to see less timber harvested rather than more, so they usually oppose log exports.

Forest managers tend to favor anything that encourages more intensive and more profitable forestry operations, so they choose the higher profit route.

Facts and Fictions

Any complex issue has an element of fiction that obscures facts and interferes with the ideal decision-



P.C.H. TREE GUARDS

- protect young trees most effectively against rabbits and other gluttonous animals.
- diminish damage through extreme weather influences.
- are regularly perforated for light penetration and air circulation.
- are easy to handle.
- labour and costsaving.
- high quality and weather resistancy give several years protection to the tree.
- guaranteed fast delivery in big quantities and different sizes.

Other P.C.H. products: P.C.H. Tree-ties and P.C.H. Tree-mate

Polycom Holland

For further information please contact: Polycom Holland, Schuberlaan 24, 1411 HZ Naarden, Holland

Distributors wanted

L.L.Bean®

Outdoor Sporting Specialties



Chamois Cloth Shirts (For Men, Women & Children)

Mr. Bean's favorite hunting and fishing shirt. Well made from a 7 oz. cotton flannel, thickly napped on both sides. Warm, wind resistant and comfortable to wear. Machine washable. Six colors: Navy, Bright Red, Tan, Forest Green, Slate Blue, Ivory. Men's regular sizes 14½ to 20, 1611W, $17.00 ppd. Men's long sizes 15 to 19, 1612W, $18.25 ppd. Women's sizes 6 to 20, 4311W, $17.00 ppd. Children's sizes 8 to 18, 4335W, $15.75 ppd. (No Ivory.)

Camouflage Chamois Shirt in Olive Green, Tan and Brown pattern. Men's regular sizes 14½ to 20, 1622W, $18.75 ppd. Long sizes 15 to 19, 1625W, $19.75 ppd.

FREE Fall Catalog



Fully illustrated. Features practical apparel and footwear for men, women and children. Camping, hunting, hiking and winter sports equipment. Many items of our own manufacture. All guaranteed to be 100% satisfactory. Our 69th year of providing dependable outdoor sporting specialties.

Ship Postage Paid 100% Guaranteed ☐ SEND FREE CATALOG

Item#	Qty.	Color	Size	Description	Price

Add 5% Maine Sales Tax on Shipments to Maine Addresses — TOTAL

☐ Check
☐ Master Card
☐ VISA
☐ American Express
Card Number _____
Exp. Date _____

Name _____ Address _____

City _____ State _____ Zip _____

L. L. Bean, Inc., 6181 Spruce St., Freeport, ME 04033

making process. Before we get into the arguments for and against log exports, it will be helpful to throw some light on these misconceptions:

• *Fiction:* Log exports are not really a problem, because generally what goes overseas are low-grade or other logs not suitable for domestic use.

• *Fact:* Simply not true. In fact, the opposite generalization is more correct. The photos accompanying this article show logs typical of a large percentage of exports; such logs are also in great demand by U.S. users.

• *Fiction:* All we have to do is ban log exports from the Northwest and the Japanese and others will then have to buy our manufactured products.

• *Fact:* Not true. Japanese importers would expand the purchase of logs from other suppliers, which include the Soviet Union, Chile, New Zealand, and Alaska. And they would buy lumber, plywood, and other products from the lowest-cost supplier. Historically and currently, the major supplier tends to be British Columbia rather than the U.S.

• *Fiction:* The Japanese buy our logs in the Northwest, then make them into lumber and sell the lumber back to us.

• *Fact:* Not true. Nearly 100 percent of the hemlock, Douglas-fir, and other West Coast log volume never returns to this country in solid wood form. Some does come back as paper or packaging, and a small volume is used in musical instruments and toys that are sold here. For example, some of the faces on Japanese guitars are made from Sitka spruce.

Predictions

From this matrix of national and international economics and politics, I am unable to predict a specific outcome. However, here are three predictions about what will happen to log exports in the '80s. These are primarily political observations, and the reader can add his/her own economic and forestry beliefs.

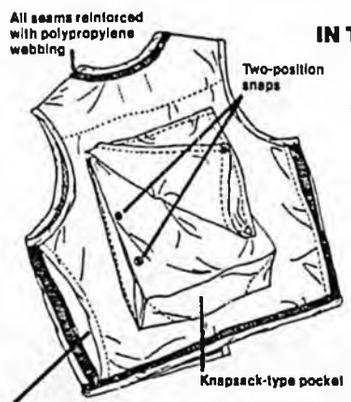
There will not be a ban on the export of logs from private lands. The Reagan Administration interprets its mandate as favoring less regulation, not more. Therefore, those forest products companies hurt by log exports, and the environmentalists proposing a total log-export ban, are not going to generate much support from the top levels of the Administration. In addition, preservation of private property rights is now popular, and it's hard to imagine that Southerners and other champions of private property rights would support such restrictions.

There will be a continuing major effort to ban the export of logs from the state forest lands of Washington. Emotion will have at least as much to do with the resolution of this issue as will facts. If those in favor of a ban are successful in convincing people that "exporting logs means exporting jobs," and that "the state of Washington is a tree farm for Japan," then they may prevail. The most effective arguments for proponents may also be those that provoke emotion; for example, "there are too many regulations already," "the consumer benefits most from freer trade," and "better markets make better forestry."

The Japanese are politically as well as economically astute, so in addition to log imports, they **will probably increase purchases of American lumber and plywood to help forestall additional restrictions on log exports.**

Debate is sure to continue, and it's likely that log-export policy will stay between the extremes of total prohibition and free trade. Log exports will continue to be an issue. ■

POCKET EVERYTHING FROM A PENCIL TO A PAINT BUCKET



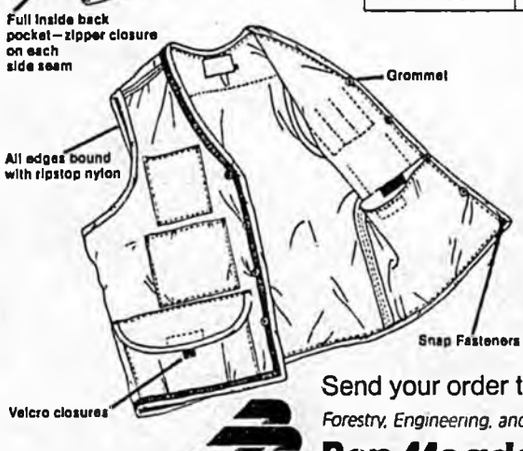
IN THE SUPER DURABLE BEN MEADOWS FIELD VEST...ONLY $30.00*

*add $1.50 for shipping and handling. Offer valid until March 1, 1982

ORDER YOUR VEST TODAY!

SIZE	ORDERING NO. GREEN	ORANGE*	TOTAL @30.00 each
SMALL (34-36)	250670	250660	
MEDIUM (38-40)	250672	250662	
LARGE (42-44)	250674	250664	
X-LARGE (46-48)	250676	250666	
XX-LARGE (50-54)	250678	250668	
CIRCLE YOUR CHOICE(S)	SHIPPING CHARGE ($1.50 ea.)		
	TOTAL		

*TANGERINE ORANGE



- Made of 10 oz. Heavy-Duty, Light-Weight Army Duck
- Ten Pockets to Hold All of Your Essential Field Gear
- All Seams Reinforced with Polypropylene Webbing
- All Edges Bound with Rip-Stop Nylon

To speed up delivery call in your order 1-800-241-6401. In Georgia, Hawaii, and Alaska call collect 404/455-0907. We accept VISA, Master Charge or Mastercard.

Send your order to dept: AF

Forestry, Engineering, and Educational Supplies

Ben Meadows Company

3589 Broad Street, Atlanta (Chamblee), Georgia 30366
Telephone 404/455-0907 / Cable Address "Benco"

7225A

2-13-84

Cape Fox Corporation
P.O. Box 8558
Ketchikan, Alaska 99901
(907) 225-5163

February 7, 1984

Mr. John Sturgeon
State Forester
Alaska State Dept. of
Natural Resources
Pouch 7-005
Anchorage, Alaska 99510

Dear Mr. Sturgeon,

Recently my office has received and responded to a State survey being conducted by your office regarding the problems with the forest industry in the State of Alaska and seeking suggestions of what might be done by the State to restore the economic viability of this industry.

After filling out and mailing in the survey, I thought about the subject further and regreted not taking additional time to express our thoughts and concerns in greater detail. Therfore, this letter is being forwarded to you. I am taking the liberty of providing a copy of this letter to other officials in the hope that my thoughts might be of some small value to them as we deal with this serious economic problem. Indeed, perhaps our single largest problem is that it has taken so long for us to realize that the timber industry in the State of Alaska is in serious jeopardy. All of us in a leadership position in the private and public sectors have helped to contribute to the current problem through non-action or acquiescence to public pressures. I can assure you that the problem extends beyond and to a greater depth than those factors created by the current economic recession. The timber industry in Alaska is in danger of dropping to significantly lower levels than we have experienced and remain there for an indefinite and lengthy period of time.

The current closures of sawmills will be followed by the closure of pulp mills; the closure of pulp mills will be followed by a shutdown of logging activity. Each of these will be followed by massive lay-offs, unemployment and industry wide economic depression. From the point of view of the timber industry the economic depression was achieved in 1981 and continues. And there is no indication that it will recover in the near future. It is highly probable that the economy of the timber industry in Alaska will be much worse before it gets better.

The question at hand and directed to us in the industry is what can the State Government do to help correct this situation? Our response follows.

The State of Alaska has with only rare and minor exceptions approached and dealt with the Alaska timber industry in its regulatory functions. the State Forestry Service has been under staffed, under funded, and almost exclusively concerned with regulatory and fire fighting functions. Our fires are few to none and our regulatory offerings abound. This attitude and approach in it's concerns with the timber industry by the State of Alaska has contributed to our economic problem. The State is a land owner with large timber assets to be managed to the advantage of all of our citizens. "Your in Business"! The State should be aggressively incouraging and cooperating as a member (owner of large timber assets) of that industry.

The State and Federal Government has adopted and implemented laws that authorize, if not direct, government officials to regulate the industry in such a manner that not one fish, not one deer, not one egg or inch of ground, will be relinquished to the advantage of economy for the growing and harvesting of timber. At the same time millions of trees and millions of acres of private and public forest land are sacrificed to enhance the harvesting of fish and the preservation of wilderness area, and this is within designated public and private timber harvest areas. There has developed a gross distortion and disproportionate application of environmental restraints on each individual timber development "site specific". This irrational lopsided process must stop!

Permit me to restate this important point - Economy in the growth and harvest of trees is not a factor that is considered in the implementation of laws regulating the use of land and intertidal areas. This needs to be changed immediately!

To help relieve the cash drain from near empty accounts we suggest the state waive all easement and tideland lease fees for five years on all lands that are being used primarily for timber industry production purposes.

There is a desperate need for improved statewide communications within the far-flung reaches of the timber industry in Alaska as well as a need for the industry to communicate with government in an orderly and constructive manner. The State needs to play a much larger role in industry communications and research.

There are needs and opportunities for reduction in the cost of converting trees to logs and bringing them to shipside or pulp mills. This could be achieved with little or no sacrifice on the part of our environment. As a Forester I am sure that you recognize that the timber industry is a captive of the laws of economy of scale. There is a great differance in the ability for cost to be absorbed depending on the size of the operation. Inexpensive beaver slide log dumps is a good case in point. The industry has been prohibited from the use of free fall beaver slides for the last few years except for beaver slides previously in operation. For the smaller operations that are dumping 30 mmbf a year or less a beaver slide dump is an economic advantage that should not only be authorized but encouraged. The additional cost for bringing into place and operating a non-violent log transfer facility is unwarranted and without justification. Certainly any log transfer facility is going to have some negative impact on the current environment in the immediate area. However, those negative impacts are temporary and occur infrequently - in Southeast Alaska one per 100 miles of shoreline (average) or less.

The State of Alaska should take the lead, with representatives from the private sector in the establishment of an "Alaska Forest Products Association". This association would have as it's primary function the promotion of Alaska forest products throughout the international market place. An important second function would be communications between the private sector of the timber industry and public bodies, particularly the State and Federal Governments. In addition, the role of economic analysis and economic data input regarding regulatory law needs a well staffed and broad based professional voice. Such an association would, by necessity, be funded principally in its initial years by State funds; however, it could and should be structured so that over a period of - say five years the State's participation decreases and the private sector participation increases. In such an association the State of Alaska as well as the Federal Government should participate in part from the point of view of a large land owner.

There are inequities in State law that places timber owners such as Cape Fox Corporation at an unfair disadvantage to those timber land owners outside organized boroughs. The problem is we are required to absorb property tax cost for services which our timber land is not a beneficiary and our competitors are not taxed. In the 100 to 150 year Alaska timber growth cycle this circumstance jeopardizes the ability of owners of large timber tracts in organized bor-

oughs to retain ownership of that property. We suggest the State assumes the perogative of taxing of timber lands when and if such taxes are necessary and can be justified.

In summary, we suggest that the largest single problems that we have even more that the market place, is an attitude on the part of State as well as Federal and local government and general public in their dealings with the timber industry. There has been over the past decade a systematic erosion of the economic footings that sustained the industry. Requests for relief have been for the most part totally ignored by government and the public. A majority of the timber industry operators have been complacent during the high market period enjoyed in the 70's. Many people have already suffered the consequences of these attitudes and complancencies. With each passing month additional businesses collapse, millions of dollars are lost and our economy is disturbed. It is time to move out of the discussion and analysis stage and start taking concrete action along several fronts if we are to correct this very serious circumstance.

Thank you very much for the opportunity to submit the earlier material and this letter to you.

Sincerely,

CAPE FOX CORPORATION

F.A. Seymour,
Executive Vice President

cc: William Sheffield,
Governor of Alaska

Robert Ziegler,
State Senator

Jack McBride,
State Represenative

Ron Wendte,
State Represenative

Don Bell,
Alaska Loggers Association

Richard Lyon,
Commissioner of Commerce and
Economic Development

Ester Wunnicke,
State Director of Dept. of Nat. Res.

John Sandor,
U.S. Forest Service

Win Green,
U.S. Forest Service

Ron Wolfe,
Tlingit & Haida Central Council

Robert Loescher,
Vice President, Sealaska Corp.

Lennie Boston,
Special Assistant, Governors Office

FAS:jlj

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
POST OFFICE BOX 1211
JUNEAU, ALASKA 99802-1211

JUNEAU OFFICE
COURT PLAZA BUILDING SUITE 800
240 MAIN STREET
POST OFFICE BOX 1211
JUNEAU, ALASKA 99802-1211
PHONE: (907) 586-3340
TELEX: 090-49-376
TELECOPY: 907-586-6818

OF COUNSEL
M E MONAGLE

R E ROBERTSON (1885-1951)
F O EASTAUGH
J B BRADLEY
WILLIAM G RUDD
JAMES F CLARK
PAUL M HOFFMAN
J P TANGEN
HAROLD E SNOW JR
D ELIZABETH CUADRA
STEVEN W SILVER
JAMES M SHINE
PAMELA FINLEY
JOSEPH D DARNELL

ANCHORAGE OFFICE
THE HUNT BUILDING
550 WEST SEVENTH AVE SUITE 1290
POST OFFICE BOX 679
ANCHORAGE ALASKA 99510-0679
PHONE: (907) 277-6653
TELEX: 090-26-486
TELECOPY: 907-276-1555

ROBERT B BAKER
MICHAEL T THOMAS
LEROY J BARLER
L G BERRY
CARL W WINNER
SUSAN L MENDENHALL
KENNETH W LEGACKI
JULIA E BOCKMON

March 20, 1985

Ms. Lennie Boston
Special Assistant
Office of the Governor
Pouch A
Juneau, Alaska 99811

Dear Lennie:

Enclosed for your review, please find the draft letter to Governor Sheffield reporting on the results of the March 15, 1985 meeting of the Alaska Timber Task Force. After you have had a chance to look it over, perhaps we can get together some time tomorrow to discuss it.

Yours very truly,

James F. Clark

JFC:sd
Enclosure

FILE COPY

DRAFT

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
POST OFFICE BOX 1211
JUNEAU, ALASKA 99802-1211

JUNEAU OFFICE
COURT PLAZA BUILDING SUITE 800
240 MAIN STREET
POST OFFICE BOX 1211
JUNEAU, ALASKA 99802-1211
PHONE (907) 586-3340
TELEX: 090-45-276
TELECOPY 907-586-6818

ANCHORAGE OFFICE
THE HUNT BUILDING
550 WEST SEVENTH AVE. SUITE 1260
POST OFFICE BOX 679
ANCHORAGE ALASKA 99510-0679
PHONE (907) 277-6693
TELEX: 090-26-486
TELECOPY 907-276-1959

OF COUNSEL
M.E. MONAGLE

R.E. ROBERTSON (1955-1969)
F.O. EASTAUGH
J.B. BRADLEY
WILLIAM G. BUDD
JAMES F. CLARK
PAUL M. HOFFMAN
J.P. TANGEN
HAROLD E. SNOW, JR.
D. ELIZABETH QUADRA
STEVEN W. SILVER
JAMES M. SHINE
PAMELA FINLEY
JOSEPH D. DARNELL

ROBERT E. BAKER
MICHAEL T. THOMAS
LEROY J. BARKER
L.G. BEERS
CARL W. WINTER
SUSAN L. WENDENHALL
KENNETH W. LEGACKI
JULIE B. BOCKMON

March 20, 1985

The Honorable Bill Sheffield
Governor, State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Sheffield:

This is to report to you on the excellent meeting which the Alaska Timber Task Force had on March 15, 1985. The Task Force reviewed your administration's response to the December 14, 1984 Task Force Report, as well as the responses of the Forest Service and industry. We would like to commend you on your response and commend to you the responses we received from the other Task Force participants. The setting of priorities by the State, the Forest Service and industry was reasonable and realistic considering what can be done to help the industry within Federal and State budget constraints.

This letter is to list the Task Force's priorities after reviewing the responses:

A. Marketing Program.

1. At page 7 of the Task Force report, the Task Force recommended that the U.S. Trade Representative's office be made more fully aware of the declining position of dissolving the sulfite pulp industry both in Alaska and the lower 48. We urged that diplomatic persuasion be used in an attempt to increase the United States' market share of dissolving sulfite pulp. As you know, South Africa is one of Alaska's chief competitors on the Pacific Rim because it produces at far less cost than Alaska pulp.

We appreciate having your Washington Office cooperate with the Congressional delegation in urging the help of the U.S. Trade Representative. The Task Force considers this a priority matter.

2. The Alaska Railroad can greatly assist our effort to use Alaska wood products in the Southcentral and Interior markets in two ways:

a. As you know, hemlock is an Alaska species which has been difficult to market. Hemlock can be used to produce railroad ties.

At pages 12 and 13 of the report, the Task Force discussed the use of the Alaska Forest Product Preference (AS 36.15.010 - .020) to increase the marketing of Alaska wood products in Alaska. Purchase of Alaska hemlock railroad ties by the Alaska Railroad would be of great help to the industry and the Railroad would meet the intent of this Act.

b. At page 36 of the report, the Task Force recommended a study of the use of the Alaska Railroad to move logs to a central processing location and then move the finished product to South Central and Interior markets.

It would be helfpul to receive more cooperation from the Alaska Railroad regarding each of these objectives:

a. Representative Sund has raised concerns, which the Task Force shares about whether the Alaska Railroad plans to give Alaska timber processors a chance to sell railroad ties to the Alaska Railroad. Apparently, neither of the FOB points specified by the Railroad are in Alaska.

b. The Task Force recommended a study of the Alaska Railroad as a vehicle for moving logs to a processing facility along the railbelt and then moving manufactured products to markets along the railbelt. This proposal has been set back by the Railroad's recent raise in rates. The rate on logs has increased by eighty-eight percent (88%).

The Task Force urges that your good offices be used to raise the consciousness of Alaska Railroad officials about the role it might play in assisting the timber industry in Alaska. If the Interior and Southcentral timber industry plays the role the Task Force has proposed for it, it will someday be a major revenue producer for the Railroad.

3. As part of the overall marketing program, specifically with the People's Republic of China in mind, the Task Force recommended at page 38 of its report that an export-import bank be established. The Task Force did not make a recommendation whether this should be done by the State or by the private sector. However, state leadership is needed to help develop a plan. Since this would effect not only the timber industry, but other industries as well, the Task Force suggests that your office call a meeting with interested industries, including the banking industry, to explore the possible structure of a state export-import bank.

4. At page 9 of the Report, the Task Force recommended that the State assist in marketing in two ways: (a) generic marketing through the Asian offices and (b) participation with associations in Pacific Rim countries which use Alaska wood products. The Task Force urges that the Department of Commerce and Economic Development's Forest Division be provided sufficient funds to pursue these marketing objectives.

B. State Budget Matters.

1. At pages 14 and 15 of the Report, the Task Force recommended a forestry assistance program, which would provide technical assistance and training in forest matters, forest products processing, and wood utilization in Southcentral and the Interior. The Task Force urges that this be a priority matter in setting the Division of Forestry's budget for this upcoming year. This program is a priority with the Task Force because it could be of great assistance in South Central and the Interior. Accordingly, we urge that the positions for this program be budged in the State Forester's office.

2. Attached to this letter is a letter written by me on behalf of the Alaska Loggers' Association to Representative Cotten. It urges that the budget of the State Division of Forestry be increased to include a staff position to allow the State Forester to participate in interagency discussions involving regulatory matters - specifically stipulations proposed by other agencies concerning timber harvest activities. The thrust of the letter was subsequently endorsed by the Alaska Loggers' Association and a copy of that resolution is attached.

It is the recommendation of the Task Force that money be found to allow the State Forester to participate in permitting, regulatory matters and interagency discussions of forest development proposals. The Task Force was distressed to learn that State Forester Sturgeon is required to do his own research and staff work in order to participate. Accordingly, the Task Force urges that money be found within the DNR budget to provide such staff.

4. I presented a loan guarantee program to the Task Force on behalf of the forest industry which would convert the money set aside last year for Ketchikan Pulp Corporation's proposed employee stock ownership plan to a program that would benefit the entire industry as a loan guarantee program. I have talked with a number of officials within your administration regarding this proposal and received very sound and realistic advice about how to proceed in shaping a bill which will be worthy of realistic consideration.

The proposed legislation is attached as Exhibit B. The guarantee program would be administered through the banking industry which would have an important interest in the loans. The loans must be commercially reasonable - i.e. that is to say, they must fully collateralized. The loans would be made at market interest rates. In addition, users of the guarantee program would pay a "user fee."

We feel that this is a reasonable program in light of existing budget constraints and urge your consideration and assistance in shaping it.

4. Attached to this letter as Exhibit C, are letters from Greg Bell to Senator Edna Armstrong DeVries concerning a demonstration project at the Goose Bay facility. We believe that this type of project can be extremely worthwhile in providing data which will assist in determining the viability of using a kiln to produce dimensionally stable lumber in the Interior and South Central Alaska. This would be coupled with a training program for the prisoners.

We ask the help of your administration in bringing together the necessary people to consider and coordinate this idea. To the extent necessary, we would urge that Corrections' budget be sufficient for this program.

C. Federal Budget Matters.

1. The Alaska National Interest Lands Conservation Act (ANILCA) provided funding for intensive management in Section 705(a) and for a revolving loan fund to purchase equipment to harvest timber in marginal and special areas in Section 705(b). The Task Force report discusses Section 705(b) funding at page 43. The Task Force, however, failed to make a recommendation with respect to this source of funding.

This was simply an oversight. Creation of this source of funding is a priority with the Task Force. At our meeting the Forest Service reported that the Farmer's Home Loan Administration is prepared to promulgate regulations for the use of this funding, but that Congress has not yet appropriated money to fund the program. We would urge the assistance of your Washington office, working with the Congressional delegation, to obtain the funding needed to make this a viable program.

2. At page 32 of its report, the Task Force urges increased expenditures for the intensive management funds authorized by Section 705(a) of ANILCA. The intensive management program is designed to fund precommercial thinning, advanced logging technology, and preroading. Even with the reallocation

of funds in FY 1984, the Forest Service spent only fifty-three percent (53%) on preroading of what it told Congress it would spend during the D-2 debates. Ten million dollars more would have been spent in Southeast Alaska for preroading in FY 84 had the Forest Service fully funded the program.

We need to continue to push for more funding of the preroading program because it provides jobs for Alaskans in Southeast Alaska who would work for the construction companies which obtain the preroading contracts and makes it economically possible to harvest the timber, thus providing timber-related jobs.

We appreciate the assistance you have given us on this matter, including the pledge to continue to have your Washington office work with the Congressional delegation to increase the amount of this funding. This is a priority matter with the Task Force.

3. Section 14(i) of the National Forest Management Act contained a proviso which excluded small operators in Alaska from the opportunity of electing to have the Forest Service build the roads needed for their sales. Roading costs are a major front-end cost that makes it impossible for many small operators to obtain the financing needed to perform Forest Service sales. If this Alaska exclusion were removed, it would be a great assistance to independent loggers and operators, particularly in Southeast Alaska. We appreciate your continuing cooperation on this matter and appreciate the efforts of your Washington office to assist the Congressional delegation. This is a priority item with the Task Force.

D. Rules and Regulations.

1. We appreciate the continued cooperation of your administration in attempting to eliminate the necessity to obtain a Section 402, National Pollution Discharge Elimination System (NPDS), permit in order to construct a log transfer facility. This point is fully discussed at pages 20 through 22 of the Task Force report. We need to get administrative cooperation from the Corps of Engineers by eliminating newly instituted requirements in their permits which incorporate erroneous provisions from the now-defunct general permit proposed by EPA (and opposed by the State, industry, and the Forest Service). The Task Force asked the Forest Service to obtain a meeting to seek this goal with the relevant agencies which will take place on April 15, 1985.

In addition, we are seeking legislation in Congress which would make it clear that a Section 402 permit is not

required to construct a log transfer facility. Your administration supports this legislation. Sealaska is taking the lead on it for industry.

It is important to get these matters resolved as soon as possible because of the major expenses involved in retrofitting log transfer facilities and building new transfer facilities would have to the industry. This is a key priority item with the Task Force.

2. The Alaska Coastal Zone Management Program has increasingly involved itself in timber harvesting matters. Consistency determinations are now playing an important role in deciding what is and what is not permitted. We have found that there has been in the past insufficient liaison between those administering the Program and those upon whom the Program is being administered. Accordingly at page 26, the Task Force recommended that there be in-the-field workshops to narrow the gap between parties. We would urge that sufficient funds be made available within the budget to accommodate this important need. We urge your continuing assistance in nominating forestry as a use of State concern.

E. Infra-Structure Matters. At pages 33 and 34, the Task Force report discusses log hauling on public highways. The Task Force recommended the State consider amending the Alaska Administrative Code to provide for regulation of log hauling on designated routes. At our meeting State Represenatives reported to the Task Force that the regulation changes proposed in the Report could not be made until 1986. This is a matter of great urgency within the industry. Therefore, the Task Force requests that your administration consider emergency regulations for the 1985 logging season.

I wish to thank you again for the excellent cooperation we have received from your administration. The Task Force continues to believe that its other recommendations are valuable and important suggestions. However, the Task Force thought it would be helpful to you to prioritize our concerns in order to provide a realistic program for moving a number of these suggestions along.

The Task Force will meet again on April 16 to continue to work for implementation of its recommendations. Thank you again for all your assistance.

Yours Very Truly,

James F. Clark

cc: Congressional Delegation
Regional Forester Mike Barton

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST No.1 page 1 of 3

Bill/Resolution No.: HB 306

Title: Marketing of Forest Products

Sponsor: Taylor & Sund

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		106,000	111.0			
200 TRAVEL		20,000	21.0			
300 CONTRACTUAL		206,000	216.0			
400 SUPPLIES		2,000	2.0			
500 EQUIPMENT		9,000				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		343,000	350.0			
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		243,000	245			
FEDERAL FUNDS						
OTHER PROGRAM RECEIPTS		100,000	105			
TOTAL		343,000	350			

POSITIONS:

FULL-TIME		2	2			
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This budget assumes program receipts from the assessment of $100,000 and a general fund appropriation of $243,000 in FY '86. This $343,000 budget would fund an Executive Director (R-26), Clerk (R-8), 2 trips for staff and 18 board members at $500/trip, plus basic expenses. There is also $200,000 for generic marketing contracts. Assessment revenue can vary widely and State match above and beyond the assessment is totally optional.

Prepared By: William H. Beardsley, Director Phone: 465-2094

Division: Office of Forest Products Date:

Approved by Commissioner: Loren H. Lounsbury Date: 4/24/85

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

2215WA42485a

1.	POSITION TITLE Executive Director			RANGE/STEP 26A	BARG. UNIT	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
3.	CONFIRMATION LEVEL		ADDITION		JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT					
	1		2	3					
	PERSONAL SERVICES								
5.	Salary		62,508						
6.	Benefits		10,120						
7.	Supplemental Benefits		3,832						
8.	Fixed Benefits		2,630						
9.	TOTAL PERSONAL SERVICES		01	79,090					
10.	Travel		02						
11.	Contractual		03						
12.	Commodities		04						
13.	Equipment		05						
14.	Other								
15.	TOTAL COST								

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSR USE ONLY
KEY NUMBER — — - — — - — — - — — - — —

REQUEST FOR NEW POSITION

AGENCY _____

PROGRAM _____

BRU _____

COMPONENT _____

No. 1 HB 306

Page 2 of 3

Revised Date _____

FY 86

1.	POSITION TITLE Clerk III				RANGE/STEP 8A	BARG. UNIT	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL	ADDITION			JUSTIFICATION					

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	19,572	
6.	Benefits	3,169	
7.	Supplemental Benefits	1,200	
8.	Fixed Benefits	2,732	
9.	TOTAL PERSONAL SERVICES	01	26,673
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
KEY NUMBER — — - — — - — — - — — - — —

REQUEST FOR NEW POSITION

AGENCY _____

PROGRAM _____

BRU _____

COMPONENT _____

HB 306

No.1

Page 3 of 3

Revised Date _____

FY 86

1-1136 (7/82)-15

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 3-27-85

REQUEST
Bill/Resolution No: HB 306
Title: Forest Products Marketing

Sponsor: Taylor and Sund
Requestor: Resource and Finance
Date of Request: March 27, 1985

FISCAL DETAIL
Agency Affected: Department of Revenue
Program Category Affected: Collection and Management
BRU, Program of Subprogram(s) Affected:
Audit Division
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
	OPERATING						
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	3.0	-0-	-0-	-0-	-0-
400	SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-0-	1.0	-0-	-0-	-0-	-0-
600	LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800	MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL OPERATING	-0-	4.0	-0-	-0-	-0-	-0-
	CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
	REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
	FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
	OTHER	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
	PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
	TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Please see attached.

Prepared By: Martin J. Richard, Director — Phone: 465-2320
Division: Audit Division — Date: March 27, 1985

Approved by Commissioner: — Date: 3/29/85
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Analysis for HB 306

If enacted, operating expenses within the Audit Division will increase as follows:

Contractual $3.0:

To initiate the Forest Products Marketing Assessment program, the Division will incur additional expense for forms design and publication, postage; and in drafting and promulgating regulations.

Equipment $1.0:

To handle additional paperwork filed by processors, additional facilities are necessary.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: HB 306
Title: An Act relating to the promotion of forest products
Sponsor: Taylor and Sund
Requestor: House Labor & Commerce
Date of Request: March 22, 1985

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	(See Analysis)		-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page for analysis.

RWE
Prepared By: Robert Elliott
Division: Revenue - Research Section II
Phone: 465-2173
Date: 3/28/85

Approved by Commissioner:
Agency:
Date: 3/29/85

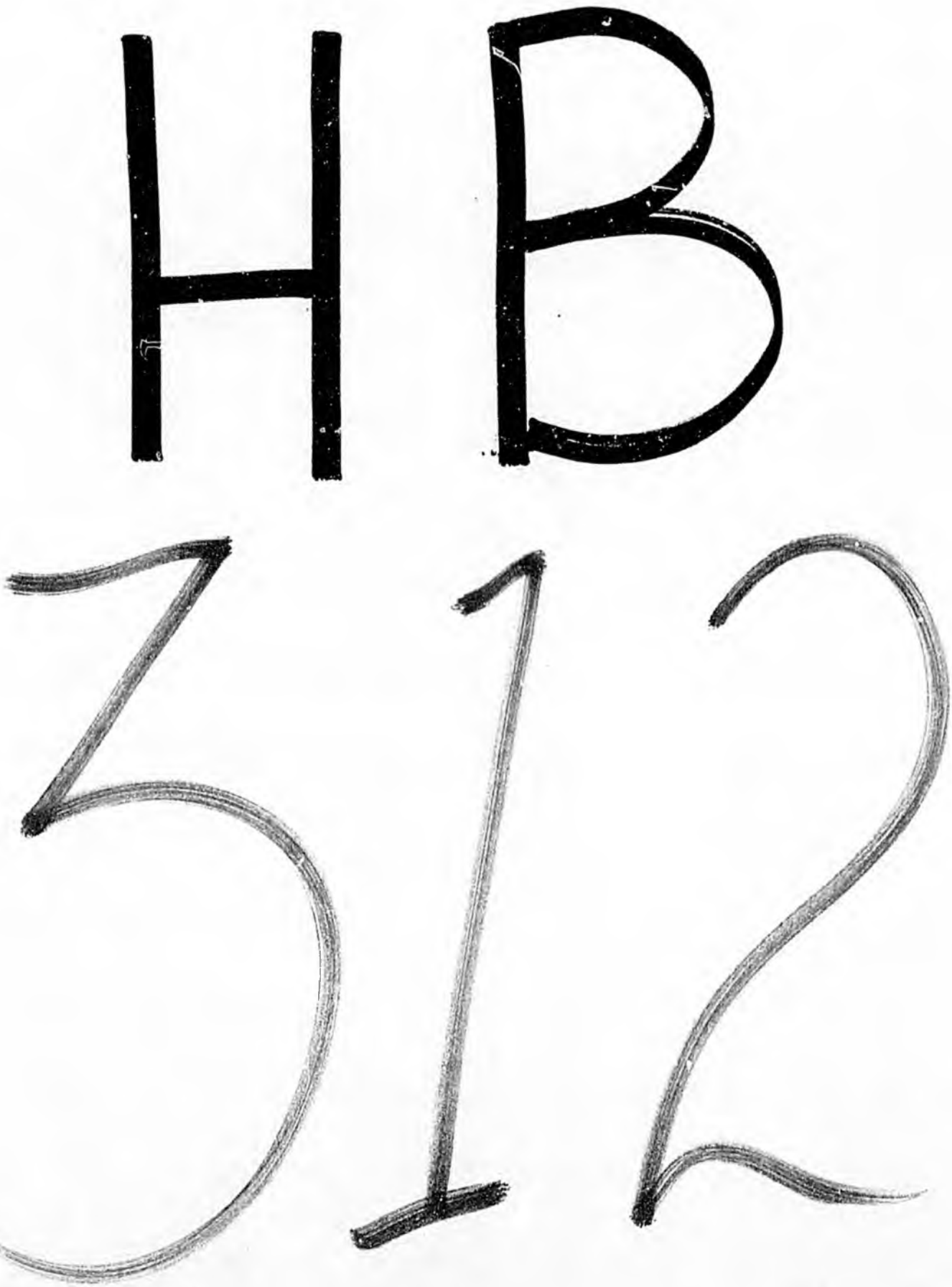
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE HB 306
ATTACHMENT

Analysis for HB 306

The figures below represent the estimated revenues collected and available for legislative appropriation, if eligible processors elect a forest product marketing assessment. Value was determined by the Department of Revenue's Audit Division utilizing tax returns to determine "the costs to procure logs." It was assumed the marketing assessment could become operational in calendar year 1986, and subsequently collect assessments for FY 1987. The possible assessment rate scenarios for FY 1987 follow:

	Assessment Rate	(Thousands of Dollars)
a)	.1 percent of value	25.0
b)	.2 percent of value	50.0
c)	.3 percent of value	75.0
d)	.4 percent of value	100.0


HB
312

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

April 10, 1985

The Honorable Richard Shultz, Co-Chair
The Honorable Adelheid Herrmann, Co-Chair
House Resources Committee
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Shultz and Representative Herrmann:

I am writing with regard to two bills scheduled for hearing in your committee on Wednesday, April 10, 1985, House Bill 312, creating the Dude Creek Critical Habitat Area, and House Bill 316, relating to navigable or public waters. The department provides the following information for the committee's consideration.

Dude Creek Critical Habitat Area(CHA)

This proposed 3,730 acre critical habitat area includes 3,090 acres of mental health land. Though these lands were redesignated and have been managed as general grant lands since 1978, the recent concern about mental health lands heard by this committee in House Bill 128 suggested that I point out this fact. Designation as CHA is not inconsistent with general grant land management.

The Department has received a 640 acre grazing lease application within the proposed CHA which is being held pending the outcome of this legislation. While grazing is listed as a permitted use it may be considered unacceptable with ground nesting-cranes. This could be considered in the management plan.

Section 1(b) states that the Department of Fish and Game will develop a management plan in consultation with the community of Gustavus. I believe the Department of Natural Resources, as the land manager, should also be consulted in development of that management plan. Section 1(c) specifies that the Department of Fish and Game will manage the critical habitat. In other refuge and critical habitat

areas in the state, the Department of Fish and Game prepares the management plan, and the Department of Natural Resources manages the land in accordance with that plan. This same approach could be considered within the Dude Creek CHA.

House Bill 316, Public and Navigable Waters

House Bill 316 undertakes to make more explicit the State Constitution's provision assuring access to the navigable or public waters of the State, and we defer to the legislature as to whether such legislation is required. In describing a right to use privately owned land beneath public waters, section 1(c) may be subject to challenge as a taking of land without compensation.

Thank you for the opportunity to comment on these two pieces of legislation.

Sincerely,

Esther C. Wunnicke
Commissioner

Attachment

cc: Representative Goll
Representative Cotten
Don W. Collinsworth, Commissioner, Department of Fish and Game
Tom Hawkins, Director, Division of Land and Water Management

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 312

Title: Dude Cr. CHA

Sponsor: Goll, Duncan, MM Miller & Binkley

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Land & Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact

Prepared By: Mike Vediner

Phone: 465-2400

Division: Land & Water Management

Date: April 9, 1985

Approved by Commissioner:

Date: April 9, 1985

Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

EYED TOWNSHIP 40 SOUTH RANGE 58 EAST OF THE COPPER RIVER MERIDIAN, ALASKA

OFFICIALLY FILED 5/1/1980

Proposed Dude Creek Critical Habitat Area

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

MTP

FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS. REFER TO INDEX OF MISCELLANEOUS DOCUMENTS.

AA 12503 SS entire Tp Amdt

WARNING
THIS PLAT IS THE BUREAU'S RECORD OF TITLE AND SHOULD BE USED ONLY AS A GRAPHIC DISPLAY OF TOWNSHIP SURVEY DATA. RECORDS HEREON DO NOT REFLECT TITLE CHANGES WHICH MAY HAVE BEEN EFFECTED BY LATERAL MOVEMENTS OF RIVERS OR OTHER BODIES OF WATER. REFER TO THE CADASTRAL SURVEY FOR OFFICIAL SURVEY INFORMATION.

CURRENT TO
JUL 20 1982

135.52. 135.50. 135.48. 135.46.

58.20.

58.25.

58.24.

58.23.

50-68-0020 R/W
50-67-0344 R/W
1221624 R/W
50-68-0020 R/W
1234820 R/W
1225236 R/W
1234820 R/W
1221624 R/W
1106941 R/W
1003151 R/W
50-65-0484 R/W
50-67-0479 R/W
50-69-0020 R/W
1078765 R/W
1003151 R/W
50-68-0020 R/W
1013834 R/W
1107462 R/W
50-68-0020 R/W
1221624 R/W
1225236 R/W DC
1221624 R/W
1221624 R/W

5 4 3 2 1
8 9 10 11 12 13 14
17 16 15
20 21 22 23

1-39.32
3-23.96
2-13.94
1-45.72
2-32.21
3-56.29
4-21.46
8-42.52
7-14.25
6-43.01
5-36.48
3-43.21
2-21.69
1-18.22
2-40.74
1-22.34
3-33.92
2-26.83
1-13.90
4-50.48
3-44.76
2-46.54
1-38.54
3-27.10
2-26.93
1-40.61
4-25.40

FL 96-487
Glacier Bay Wilderness

FL 96-487
Glacier Bay NP

Tongass NF

PT. GUSTAVUS

A-1 A-3 A-5 B-1 B-2 C-1 C-2 D-2 D-3 E-1 A-10 B-5 C-5

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Habitat	HB312	Goll, Duncan, Miller, Binkley

DEPARTMENT POSITION

Strongly Support

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Habitat Division/Debra Clausen	4/2/85	[signature]	4-5-85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Department of Natural Resources	Community of Gustavus
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Community of Gustavus	None known

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The purpose of establishing the Dude Creek Critical Habitat Area is to protect and enhance the wet meadow habitat that is the key roosting area for migrating lesser sandhill cranes, to protect lesser sandhill cranes, and for the continued public use and enjoyment of the area.

ANALYSIS OF BILL/PROGRAM EFFECTS

1. Establishes the Dude Creek Critical Habitat Area.
2. Identifies the purpose for which the area is established.
3. Provides for the management of the Dude Creek Critical Habitat Area including the development of a management plan.

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB312

Title: Dude Creek Critical Habitat Area

Sponsor: Goll, Duncan, Miller, Binkley

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Dept. of Fish and Game

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		0				
CAPITAL		0				
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Bruce H. Baker

Division: Habitat Division

Phone:

Date: 4/3/85

Approved by Commissioner: Don Collinsworth

Date: 4-5-85

Agency:

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

REPRESENTATIVE
PETER GOLL

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

April 1, 1985

TO: House Resources Committee

FROM: Representative Peter Goll

SUBJECT: Briefing Paper for House Bill 312

DUDE CREEK CRITICAL HABITAT AREA

Location

Gustavus, Alaska

Land Status

There are no in-holdings: the parcel proposed for the critical habitat area is state-owned or selected.

History

The residents of Gustavus have been working on the proposal for the past three years. The critical habitat status was selected after a careful review of the available land management options.

The concept was endorsed in a community-wide January, 1984, referendum by a 66-25 vote. A committee of resident citizens was formed to work with the Alaska Department of Fish and Game to develop proposed legislation.

The resulting legislation (House Bill 312) and accompanying letter of intent received the unanimous endorsement of the Gustavus Community Association on March 4, 1985.

Purpose

The wet meadow at the western edge of the community of Gustavus is a major resting area for the Pacific population of Lesser Sandhill Cranes during their annual migration between western Alaska and southern California.

Research shows that half or more of the entire Pacific population of Lesser Sandhill Cranes uses the Dude Creek meadow during the September and April-May migratory periods. The adjacent national park is little used by the cranes.

The crane habitat at Gustavus has been greatly reduced in recent years by development and natural reforestation. The proposed critical habitat area includes the largest remaining block of appropriate habitat in the area. The wet meadow favored by the cranes is very susceptible to alteration by draining. The birds also are very easily disturbed by human presence.

The proposed legislation requested by Gustav[illegible] is designed to give the Alaska Department of Fish and Game authority to manage human uses of the Dude Creek wet meadow to protect the habitat needed by the cranes. The legislation and letter of intent also make it clear that existing compatible human uses will be accommodated. The letter of intent also gives ADF&G clear direction to work in close cooperation with Gustavus residents in drafting a management plan.

DUDE CREEK CRITICAL HABITAT AREA

Letter of Intent

It is the intent of the Legislature that surface vegetation and soils be maintained to preserve the wetlands nature of the critical habitat area and provide protection to migrating lesser sandhill cranes.

In creating the Dude Creek Critical Habitat Area, the Legislature also intends that hunting, fishing and trapping activities will continue to occur in accordance with harvest regulations as established by the Boards of Fisheries and Game. The following public uses of the area are recognized as historic and traditional: wildlife viewing, firewood harvesting, public access, hiking, berry picking, and grazing. It is the intent of the Legislature that the listed uses will continue unless they are determined to be incompatible with the purpose for which the area is established. The Department of Fish and Game will conduct specific fact finding, including public hearings in Gustavus, prior to making final determination of the compatibility of the listed uses during various times of the year.

The Department is to consult with the community of Gustavus in the preparation and implementation of a management plan for the Dude Creek Critical Habitat Area. In the event that the community forms a local fish and game advisory committee or a critical habitat advisory group, the Department will work closely with those entities in preparation of the plan.

Representative Peter Goll
Alaska House of Representatives
Pouch V, Juneau, AK 99811

February 25,1985

Dear Representative Goll,

The committee which has been working towards the creation of the Dude Creek Critical Habitat Area gives its full endorsement to the draft letter of intent, dated February 21, 1985. We feel that this second draft expresses our desire to provide habitat for the sandhill crane while ensuring human usage of the area in consultation with Fish and Game.
We appreciate the help that you and your staff have given us and are looking forward to the enactment of this legislation.

Sincerely,

Morgan Deboer
Deborah D. Woodruff
Lloyd E. Prouty

Gustavus Community Assoc.
Box 62
Gustavus Ak. 99826

Representative Peter Goll
Alaska House of Reppresentatives
Pouch V, Juneau, Ak 99811

March 4, 1985

Dear Representative Goll,

The Gustavus Community Association gives its full support to the second draft letter of intent, as approved by the committee working for the creation of the Dude Creek crane habitat.
We feel that this draft meets the criteria of co.tinued human useage of the Dude Creek meadows in conjunction with the sandhill crane, as desired by a survey of registered voters in 1983.
Thank you for your help and let us know if we can be of any further assistance.

Sincerely,

Sally C Lech president
Gustavus Community Association

Alaska State Legislature

House of Representatives
House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

March 28, 1985

The Honorable Richard Schultz
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: HB 312

Dear Dick:

I would like to ask your help in scheduling HB 312 for an early hearing in the Resources Committee. HB 312 would establish the "Dude Creek Critical Habitat Area" on state land in Gustavus, sixty miles west of Juneau.

This land is wet and marshy, not used for any other purpose and unfit for disposal as homesites. Because of its open, wet and marshy nature, it is a major stopover point for migratory waterfowl in fall and spring, including very large numbers of Sandhill Cranes (as many as 13,000 at a time), other crane species, several species of ducks and geese, and swans.

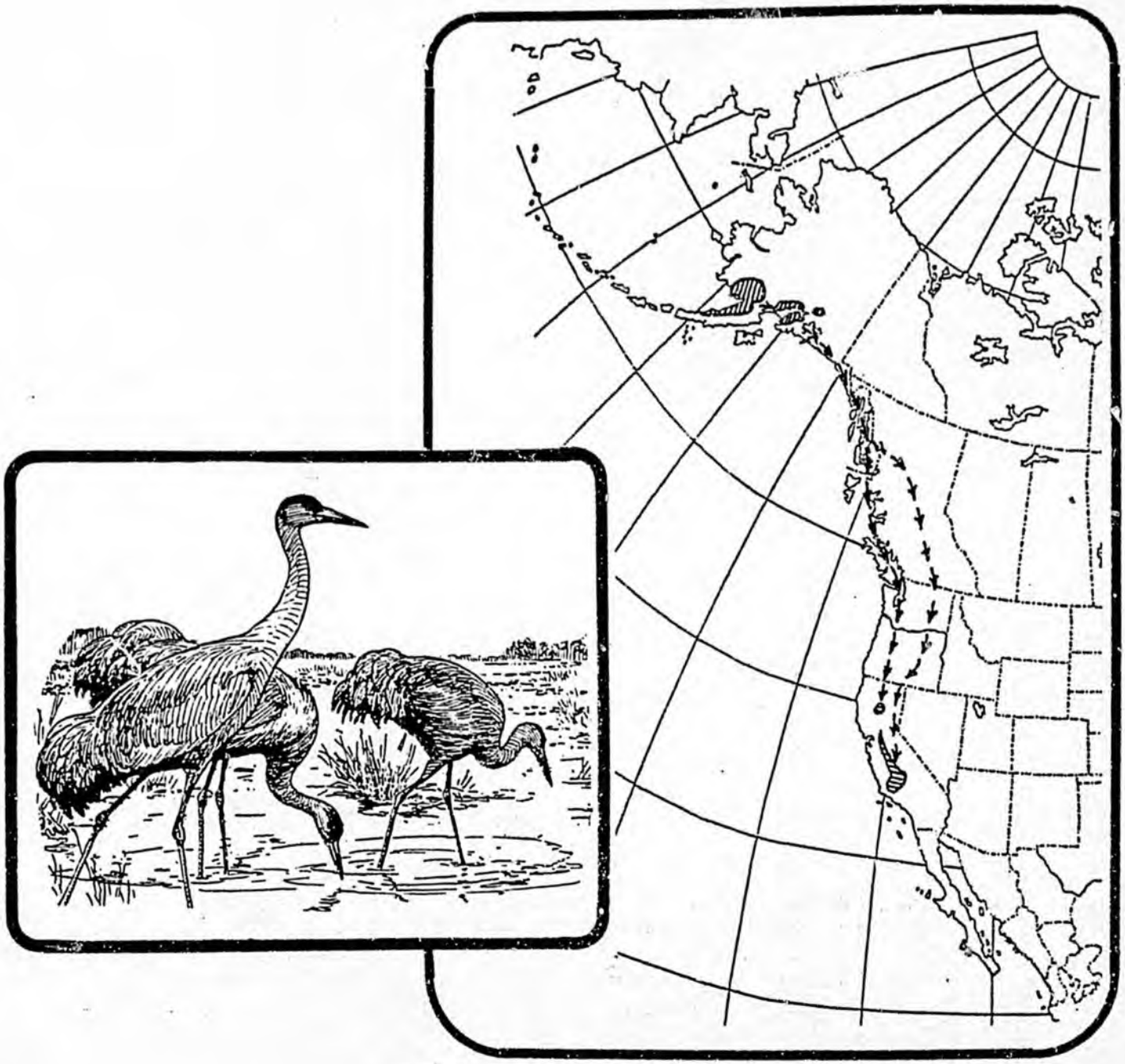
A very large majority of the people of Gustavus support this proposal, as do the state Departments of Fish and Game and Natural Resources. There is no significant opposition to the establishment of this critical habitat area.

The proposed area is a waterfowl treasurehouse. Even though it is not in my district, it is an area I have long been interested in. I would very much like to get the bill moving and would appreciate whatever help you could give to that end.

Sincerely,

M.M. Miller

Pacific Flyway Population of Lesser Sandhill Cranes



PACIFIC FLYWAY MANAGEMENT PLAN

FOR THE

PACIFIC FLYWAY POPULATION OF

LESSER SANDHILL CRANES

Prepared for the:

Pacific Flyway Council
Canadian Wildlife Service
U. S. Fish and Wildlife Service

March 1983

PACIFIC FLYWAY MANAGEMENT PLAN
FOR THE
PACIFIC FLYWAY POPULATION OF
LESSER SANDHILL CRANES

Prepared by the Subcommittee on the Pacific Flyway Population of Lesser Sandhill Cranes of the Pacific Flyway Study Committee:

Gary W. Kramer, U.S. Fish and Wildlife Service, Delano, CA, Subcommittee Chairman
Bruce Conant, U.S. Fish and Wildlife Service, Juneau
Gary Kaiser, Canadian Wildlife Service, Delta, B.C.
Carroll D. Littlefield, Arizona Cooperative Wildlife Research Unit, Tucson
Ronald W. Schlorff, California Department of Fish and Game, Sacramento
Daniel E. Timm, Alaska Department of Fish and Game, Anchorage

Approved by:

William A. Molini — 3/20/83
Chairman, Pacific Flyway Council — Date

Director General, Canadian Wildlife Service — Date

Director, U.S. Fish and Wildlife Service — Date

TABLE OF CONTENTS

		Page
I.	INTRODUCTION	1
II.	GOALS AND OBJECTIVES	1
III.	STATUS	1
	Population and Distribution	1
	Uses	7
	Management	9
IV.	PROBLEMS	9
V.	RECOMMENDED MANAGEMENT PROCEDURES	10
	Habitat	10
	Uses	11
	Surveys and Research	12
	Annual Review of Plan	13
VI.	LITERATURE CITED AND SELECTED REFERENCES	15
	APPENDIXES	18

I. INTRODUCTION

The lesser sandhill crane (Grus canadensis canadensis) as its common name implies is the smallest race of the species. The race nests throughout north-central and northwestern Canada, Alaska, and into the extreme northeastern portion of the U.S.S.R., and winters in southern portions of both the Pacific and Central Flyways. Relationships between breeding areas, migration routes and wintering areas are poorly defined.

The purpose of this management plan is to provide guidelines for the cooperative management of the Pacific Flyway Population (PFP) of lesser sandhill cranes which winters in California and breeds probably in southwestern and south-central Alaska (Fig. 1). Management of the larger Mid-Continent Population is being covered in another plan.

II. GOALS AND OBJECTIVES

The goals of this management plan are to maintain and enhance the Pacific Flyway Population of lesser sandhill cranes for its intrinsic values as well as for its direct benefits to man.

Objectives of this plan are to:

A. Maintain the wintering population of lesser sandhill cranes in California at the current level of an estimated 20,000 to 25,000 birds. (This objective may be modified pending results from more complete inventories of the population.)

B. Maintain production, migration, and wintering habitat for lesser sandhill cranes in adequate quantity and quality to support the population at levels and distribution shown in Figures 1-3 and listed in Table 1. (Because relationships between production, migration, and wintering areas are so poorly defined, the objective for distribution as listed in Table 1 will certainly be changed pending results from banding investigations and population surveys.)

C. Maintain consumptive and nonconsumptive uses of this population at their current levels (See III Status, Use, Table 2). (Changes in levels of use would be dependent upon more definitive estimates of population status.)

III. STATUS

Population and Distribution

Summer

The nesting areas used by those lesser sandhill cranes wintering in California have not been confirmed by banding or color-marking information. Lesser sandhill cranes nest at scattered locations throughout

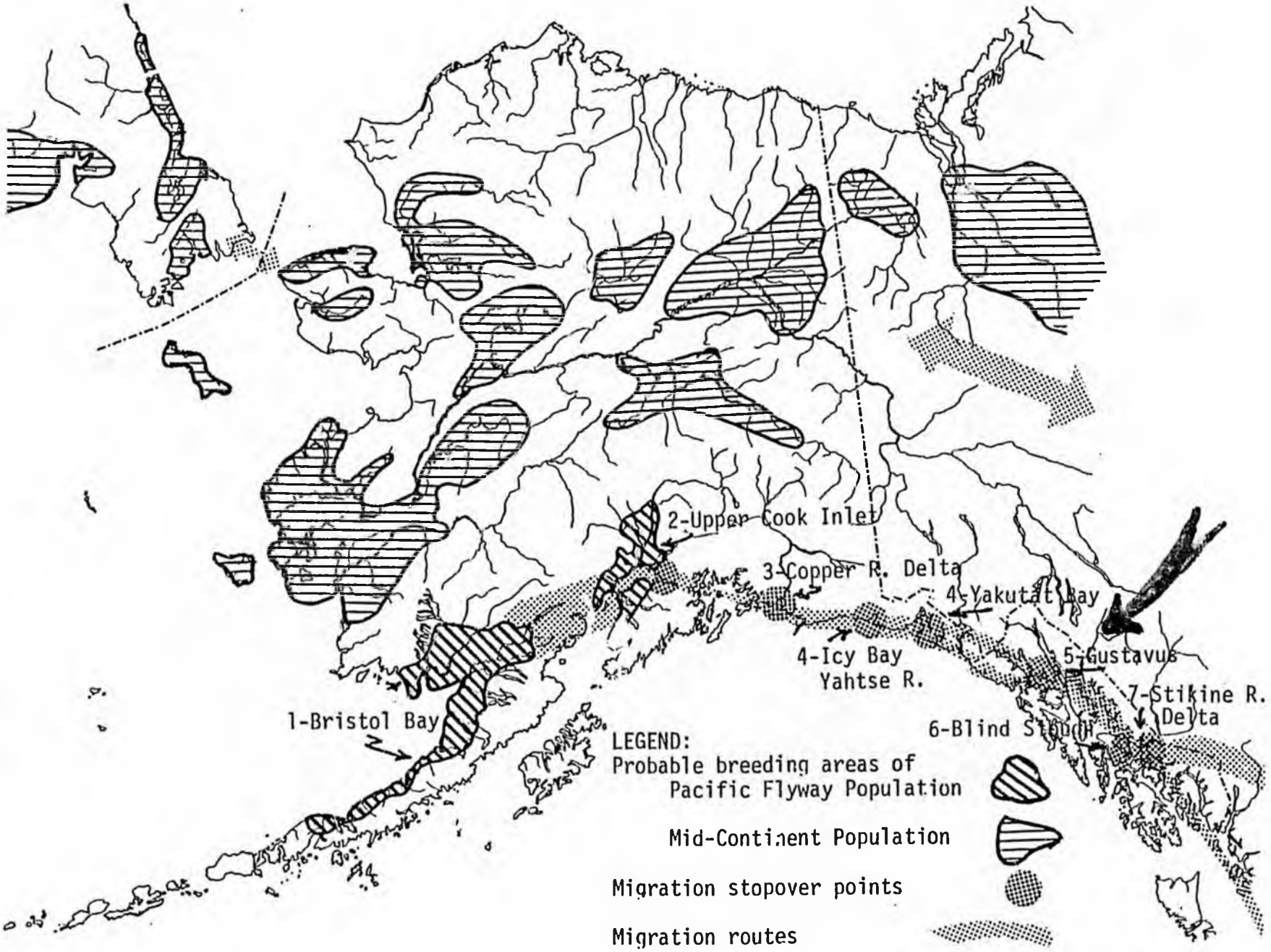


Figure 1. Major breeding grounds of lesser sandhill cranes in Alaska and portions of the U.S.S.R. and Canada. Probable breeding areas for both the Pacific Flyway and Mid-Continent Populations are shown. Migration stopover points and routes for only the PFP cranes are shown.

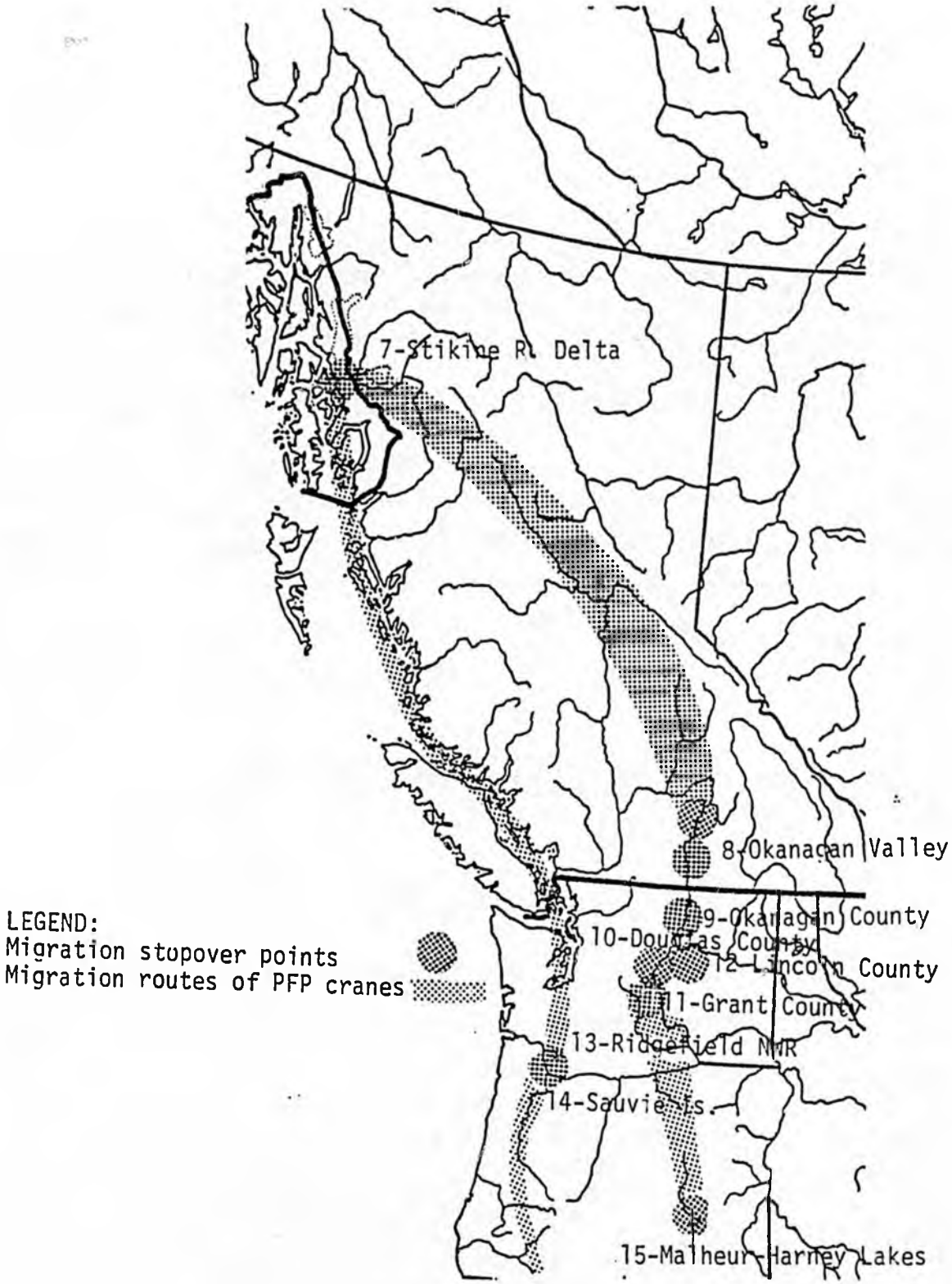


Figure 2. Migration routes and stopover points of the Pacific Flyway Population of lesser sandhill cranes.

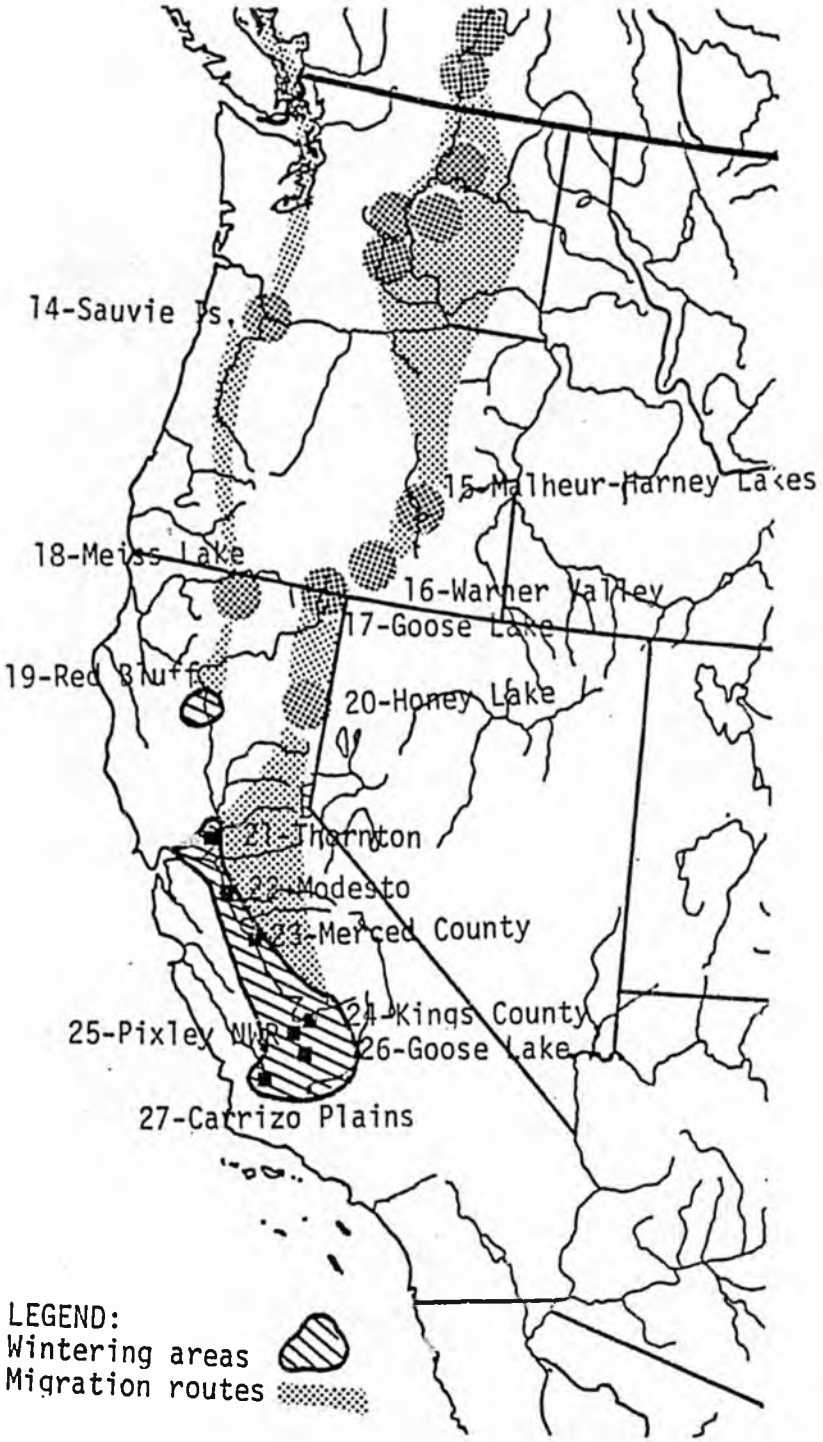


Figure 3. Migration routes, stopover points and wintering areas of Pacific Flyway Population of lesser sandhill cranes.

Table 1. Principal locations used by the Pacific Flyway population (PFP) of lesser sandhill cranes, use of those areas and estimated numbers of cranes. Map numbers correspond to locations shown on Figures 1-3.

Map Number	Location	Use by Cranes	Estimated Number of Cranes & Remarks
ALASKA			
1	Bristol Bay Lowlands	Nesting	Unkown numbers; presumably the major breeding grounds for PFP cranes; about 2,400 counted in spring Breeding Waterfowl Survey
2	Upper Cook Inlet-Susitna River Marshes	Limited nesting; major migration stopover	Estimated 500-1,000 cranes summer in Cook Inlet marshes; estimated 10,000+ cranes stopover in fall, with fewer stopping in spring; Portage Flats is a particularly important stopover point.
3	Copper River Delta	Major stopover	20,000+ cranes stopover both in spring and fall
4	Icy Bay, Yahtse River, & Yakutat Bay	Migration stopover	Unknown
5	Gustavus Area	Migration stopover	Unknown
6	Blind Slough	Migration stopover	Unknown
7	Stikine River Delta	Migration stopover	Unknown
BRITISH COLUMBIA			
8	Okanagan Valley	Migration stopover	Unkown
WASHINGTON			
9	Okanogan County	Migration stopover	1,200 cranes stopping in October 1978; numerous sightings of small numbers stopping and
10	Douglas County	Migration stopover	Repeated sightings of 1,000-2,000 cranes resting on pond near St. Andrews; numerous sightings of cranes feeding and in migration.
11	Grant County	Migration stopover	1,000 cranes at Banks Lake in October 1967
12	Lincoln County	Migration stopover	Numerous records of cranes feeding and in migration, with flock size upwards of 500 birds.
13	Cowlitz County	Migration stopover	Cranes are found in the vicinity of Woodland and on Ridgefield NWR (feeding area). large numbers in flight.
OREGON			
14	Sauvie Island, Columbia County	Migration stopover	1,400 cranes
15	Malheur-Harney Lakes area, Harney Co.	Migration stopover	Major stopover point; 14,000+ cranes
16	Warner Valley, Lake County	Migration stopover	10,000+ cranes
17	Goose Lake, Lake County	Migration stopover	4,000+ cranes
CALIFORNIA			
17	Goose Lake, Modoc County	See above	See above
18	Meiss Lake, Siskiyou County	Migration stopover	Unknown
19	Red Bluff, Siskiyou County	Wintering	About 1,400 cranes; probably a distinct subpopulation.
20	Honey Lake, Lassen County	Migration stopover	10,000+ cranes
21	Thornton, San Joaquin County	Wintering	4,100 cranes in winter of 1969-79*
22	Modesto, Stanislaus County	Wintering	2,400 cranes in winter of 1969-70**
23	Merced County	Wintering	9,800 cranes in winter of 1969-70*
24	Kings County	Wintering	325 crane in winter of 1969-70*
25	Pixley NWR, Tulare County	Wintering	8 cranes in winter of 1969-70*
26	Goose Lake, Kern County	Wintering	630 cranes in winter of 1969-70**
27	Carrizo Plains, San Luis Obispo Co.	Wintering	2,765 cranes in winter of 1969-70*

*Examination of these areas in 1970, 1971, and 1976 showed that they were still being used by lesser sandhill cranes in about the same numbers as during the survey of 1969-70.
**During 1978 and 1979, respectively, peak populations were 1,300 (13 December) and 1,200 (14 December).

much of northern Canada, Alaska and the Chukotsk-Kolyma region of the U.S.S.R. Almost three-fourths of the cranes breeding in surveyed portions of Alaska do so on the Yukon-Kuskokwim Delta (Conant et al. 1981). The principal nesting areas of the PFP cranes, however, are presumably to the south in the lowlands of Alaska's Bristol Bay and Upper Cook Inlet where an estimated 8.3% and 0.3%, respectively, of cranes from surveyed areas are found (Figure 1). PFP cranes may also nest further north in areas used by the Mid-Continent Population. As with other populations of birds of the same subspecies that nest in close proximity, a small percentage of cranes from the Pacific Flyway Population probably exchange with those of the Mid-Continent Population. A very few cranes have been reported as nesting or suspected to be nesting on Kupreanof, Kuiu, and Sergief islands in southeastern Alaska (Gabrielson and Lincoln 1959) and could belong to either the PFP cranes or to the Central Valley Population of greater sandhill cranes (G. c. tabida) whose northern range extends into British Columbia and is also poorly defined.

Winter

Wintering PFP cranes within the Central Valley of California are separated into two groups or subpopulations (Figure 3, Table 1). The northernmost and smallest group, about 1,400 birds, winters just east of Red Bluff, Tehama County. These birds loaf and roost near the Sacramento River north of Red Bluff. The southern group, about 20,000 to 24,000 birds, winters from near Thornton, southeast to the Carrizo Plains in San Luis Obispo County (Littlefield and Thompson 1982). A majority of this group winters on and near Merced and San Luis NWRs, but during the winter of 1979-80 when conditions were unusually dry large numbers wintered in the Delta-Grizzly Island area. Up to 6,500 lesser sandhill cranes winter in the Carrizo Plain and use the shallow waters of Soda Lake for roosting (Bowen 1982).

Few PFP cranes have been seen between Red Bluff and Thornton, and apparently there is no interchange, at least in the wintering ground, between these two wintering groups. Appendix A contains more detailed information on population size and distribution in winter.

Migration

Confirmation of the migration routes used by PFP cranes is based partly upon conjecture and part by limited observations of marked birds. Forty-three cranes were color-marked at Merced NWR in February and March 1980 which resulted in three sightings in spring east of Klamath Falls, Oregon, four sightings on or near Malheur NWR in spring, two sightings in spring and two in fall on the Copper River Delta, a fall sighting near Gustavas in southeastern Alaska, and three sightings in the Central Valley during the subsequent fall and winter (Herter 1982). Bandings of cranes breeding on the Yukon-Kuskokwim Delta showed an affinity for migrating east of the Rocky Mountains (Boise 1979). Hereter (1982) reviews information on sightings of lesser sandhill cranes along the Pacific Coast states and in British Columbia.

During late February and March, PFP cranes leave the Central Valley in a northward direction (Figure 30). The migration route for the southern group of the population crosses the Sierra Nevada Mountains over Placerville. From there they continue north to Honey Lake, near Susanville. After leaving Honey Lake the migration slows as birds spend time feeding. The cranes enter Oregon south of Lakeview and in Warner Valley, and further to the west through Klamath County (Littlefield and Thompson 1982).

The major spring stopover area for the southern group is in Harney County where the birds spend a few weeks feeding in the native-grass meadows south and east of Burns (Figure 3). About 6,000 cranes are normally present during peak periods. However, when inclement weather persists their departure is delayed; and up to 14,000 birds may be present. Migration progresses rapidly through eastern Oregon after the cranes leave Harney County (Littlefield and Thompson 1982). The cranes fly north between John Day and Dayville, to the west of Pendleton, and enter Washington in the vicinity of Pasco. PFP cranes regularly stop near Moses Lake and Ephrata, Grant County, and near Mansfield, Douglas County, central Washington.

Upon leaving central Washington the migration of the southern group continues north into British Columbia through the Okanagan Valley (Figure 2). Where these birds go through British Columbia is uncertain, but they likely follow routes shown in Figure 2.

Cranes have been reported stopping in spring near the Stikine River Delta and at Gustavus in Alaska (Figure 1). They apparently follow a coastal route to the Copper River Delta and from there spread across the Kenai Peninsula and Upper Cook Inlet area before going to the various breeding areas mainly to the west. The reverse is true during fall, although more use is made of staging areas then than in spring for at least Portage Flats (D. E. Timm pers. comm.).

The small northern group of PFP cranes that winters near Red Bluff apparently uses a separate route. From Red Bluff this group migrates north to Meiss Lake, enters the Willamette Valley near Eugene, and stages on Sauvie Island in the Columbia River. From there they move to the Puget Sound region of Washington and then migrate along the coast of British Columbia and Alaska (Figure 1). The fall migration route is probably the reverse of that of spring, and Sauvies Island is again an important use area. During mild winters a few birds remain on Sauvie Island, but normally all continue south to Red Bluff (Littlefield and Thompson 1982). The nesting population in Cook Inlet and the group wintering near Red Bluff are approximately the same size and may be synonymous (D. E. Timm pers. comm.).

Uses

Legal hunting of PFP cranes occurs only in Alaska. The season opens on 1 September in most portions of the State and extends as late as 22 January. All birds, however, have migrated from Alaska by early November. The daily bag and possession limits are 2 and 4, respectively. The past 10-year average harvest of cranes in Alaska was about 765, with an

Table 2. Retrieved sport harvest of lesser sandhill cranes in Alaska as measured by State Mail Surveys (1971-77) and Federal Mail Survey (1978 to date). Ratio of cranes belonging to the Pacific Flyway Population and the Mid-Continent Population is estimated to be 3:7.

Year	Estimated Sport Harvest of Cranes		
	Pacific Population	Mid-Continent Population	Total
1971	145	345	490
1972	230	535	765
1973	180	420	600
1974	190	450	640
1975	490	1,150	1,640
1976	260	615	875
1977	185	435	620
1978	90	220	310
1979	205	470	675
1980	315	735	1,050
Average	230	535	765

estimated 230 cranes being PFP birds and the remaining 535 birds belonging to the Mid-Continent Population (Table 2). Hunting of this particular population is prohibited in all other states and in British Columbia.

Subsistence harvest of PFP cranes is believed to be negligible. Two estimates of subsistence harvest have been made on the Yukon-Kuskokwim delta, Alaska, where in 1965 an estimated 1,033 cranes were taken from spring through fall (Klein 1966) and in 1981 an estimated 1,477 were taken in spring (Copp and Smith 1981). Additional subsistence harvest may occur in Canada and the U.S.S.R. Birds from these areas, however, probably belong to the Mid-Continent Population.

Observing sandhill cranes is an important pastime throught the birds' southern range. It is particularly important in Central Douglas County, Washington, in migration near Portland, Oregon, near Thornton and at the Merced and San Luis NWRs in the San Joaquin Valley. Fewer people have opportunities for observing cranes on their breeding grounds, but for many in the North seeing and hearing cranes contribute towards a truly "wilderness experience."

Management

Lesser sandhill cranes have benefited largely from measures taken to manage migratory birds in general, e.g. protection afforded by State and Federal regulations and habitat protection through refuges, the Grassland Easement Program, and the Water Bank Program. The Bureau of Land Management is considering implementing cooperative management practices at Soda Lake in the Carrizo Plain that would benefit cranes and other wildlife (Bowen 1982). The PFF cranes have benefited directly by cereal grain production on Merced NWR and warning markers on power-lines. Breeding populations of lesser sandhill cranes have been surveyed annually in portions of Alaska since 1957 as part of the continental Waterfowl Breeding-pair Survey Conant et al. 1981). The PFP cranes have been studied on one of their principal staging grounds, the Copper River Delta (Herter 1982). Forty-three cranes were color-marked in California to obtain information on their migration and relationships to staging and man-caused disturbances on the Copper River Delta (Herter 1982). Inferences on breeding biology of PFP cranes can be drawn from a study of cranes of the Mid-continent Population on the Yukon-Kuskokwim delta (Boise 1979).

IV. PROBLEMS

The breeding origin of PFP cranes and most northern routes and stopovers of their northern migration to and from California are have not been verified. Stopover points and their relative importance to the birds have been only cursorily identified.

Estimates of population size, production, and sport harvest are not precise. The lack of field identification techniques for distinguishing between lesser and greater sandhill cranes makes it difficult to accurately gather population data in areas where they mingle.

Unregulated spring and summer harvests of lesser sandhill cranes occur in Alaska, and possibly in Canada and U.S.S.R.; and likely exceeds the legal sport harvest. The harvest is believed to be proportionately greater on the Mid-Continent Population than on the PFP. The magnitude and consequence of this harvest on either population are unknown; and, lack of harvest data confounds purposeful management efforts.

With increasing human populations and expanded natural resource exploitation, disturbances of PFP cranes throughout their range is an increasing problem. Loss of wintering habitat, particularly roost sites, from various forms of land development in California poses the most serious threat. Depredation on grain fields by PFP cranes is now a minor problem that could change under different circumstances.

Cranes collide with transmission lines and fences. There remains a potential for disease outbreaks in wintering areas where cranes concentrate, but presently the impact is minor.

V. RECOMMENDED MANAGEMENT PROCEDURES

The following management procedures are recommended. The degree and timing of their implementation by the various lead agencies will be influenced by manpower, fiscal, and legislative constraints. Whenever possible, management procedures in this plan should be coordinated and incorporated into those procedures recommended in plans for other species and populations of Pacific Flyway birds.

Habitat

1. Inventory of Habitats.--Identify and catalog the habitats used by PFP cranes in order to facilitate protection of these areas.

   Lead Agencies: USFWS, ADFG (State lands), CWS, BCFWB, WDG, ODFW, CDFG

   Participating: BLM

   Priority: 1

   Schedule: 1984-85

2. Habitat Preservation.--Acquire through either fee title, easements, or cooperative agreements protection for key wintering habitats of PFP cranes, particularly roost sites. Continue to provide suitable habitat for cranes on National Wildlife Refuges in California and in Alaska.

   Lead Agencies: USFWS and CDFG

   Participating: Other State and Federal land-managing agencies and citizen organizations will be invited to participate in providing protection to these habitats.

Priority: 1

Schedule: Ongoing.

3. Utility Corridors.--Assist utility companies in planning corridors that would avoid primary migration pathways and concentration areas of cranes. Where construction of new transmission lines would pose hazards to cranes, efforts would be made to have them buried, rerouted or strung with highly visible markers.

   Lead Agencies: USFWS, ADFG (State and private lands), CWS, BCFWB WDG, ODFW, CDFG

   Participating:

   Priority: 2

   Schedule: Ongoing

4. Disturbance.--Disturbance to cranes, particularly in staging and wintering areas, should be minimized, unless it is purposefully intended to alleviated crop depredations. Pilots should be advised as to recommended minimum altitudes to be flown over areas used by cranes. As appropriate, minimum altitude requirements over refuges should be enforced and other human disturbances minimized.

   Lead Agencies: USFWS, ADFG (State lands), CWS, BCFWB, WDG, ODFW, CDFG

   Participating: BLM

   Priority: 1-3

   Schedule: Ongoing.

Uses

1. Interpretive Programs.--The Subcommittee will develop written and pictoral information of the life history of PFP cranes and on the nature and necessity for a cooperative program. State, Provincial, and Federal agencies, schools and citizen groups could use these materials, in part, to develop interpretive programs that include cranes.

   Lead Agencies/Group: Subcommittee develop materials.
   USFWS, CWS, BCFWB, WDG, ODFW, CDFG develop and implement interpretive programs

   Participating: Citizens' organizations

   Schedule: Develop material by 1984
   Develop and begin implementing interpretive programs by 1986.

2. Sport Harvest.--Maintain the sport harvest of PFP cranes within limits of harvest potential and in consideration of other uses of the population.

   Lead Agencies: USFWS and ADFG

   Priority: 1

   Schedule: Ongoing

3. Subsistence Harvest.--The size and distribution of subsistence harvest of PFP cranes should be assessed and related to the annual harvestable surplus. Recommendations for allowable spring and summer harvest should be made in consideration of these other factors.

   Lead Agency: USFWS

   Participating: ADFG

   Priority: 2

   Schedule: Ongoing.

Surveys and Research

1. Delineation of Populations.--Cranes should be color-marked or telemetered first in the Bristol Bay and Cook Inlet-Susitna lowlands and second in the areas where they could belong to either the PFP or the Mid-continent Population. Searching for and making observations on marked cranes is an obligate part of this task.

   Lead Agencies: USFWS, CWS, BCFWB, WDG, ODFW, CDFG

   Participating: ADFG

   Priority: 1

   Schedule: 1984-86

2. Winter Population Survey.--Either aerial or ground surveys of PFP cranes wintering in California should be conducted biannually. This survey could be done during either the periodic fall waterfowl surveys or during the midwinter waterfowl survey. Appropriate timing will be determined through trial uses of both types of surveys.

   Lead Agencies: CDFG and USFWS

   Priority: 1

Schedule: Evaluate appropriateness of various surveys during 1982-84.
Implement survey in fall and winter of 1984-85 and conduct at 2-year intervals, thereafter.

3. Field Identification Technique.--A field identification key will be developed to distinguish between lesser and greater sandhill cranes.

Lead Agencies/Group: Subcommittee

Participating:

Priority: 1

Schedule: 1984

4. Productivity Survey.--Obtain productivity data at Merced NWR and if it can be done incidental to other surveys also on the Copper River Delta. Surveys in California should be conducted prior to December because afterwards it becomes increasingly difficult to distinguish birds of the year from older birds.

Lead Agencies: USFWS and CDFG

Priority: 3

Schedule: Ongoing

5. Development and Review of Research Proposals.--The Subcommittee shall propose or develop as necessary research projects for Federal, State, or other source funding, recommend needed research, and review unsolicited research proposals. The Subcommittee shall consider priorities of that information needed on the population as a whole, rather than on a local or provincial basis.

Lead Agency/Group: Subcommittee

Priority: 1

Schedule: Ongoing

Annual Review of Plan

The Subcommittee shal meet annually or as needed to measure progress toward achieving the goal and objectives of this plan and to recommend revisions. The Subcommittee shall report on accomplishments and shortcomings of the cooperative management efforts to the Pacific Flyway Council (through the Western Migratory Upland Game Bird Technical Committee), those State, Provincial and Federal agencies having management responsibilities, and those agencies and organizations interested or cooperating in the management of cranes. Composition of the Subcommittee should be comprised of, but not limited to, representatives from those agencies having management responsibility for PFP cranes.

Lead Agencies/Group: Subcommittee

Priority: 1

Schedule: Annually (March meeting of the WMUGBTC) or as needed.

VI. LITERATURE CITED AND SELECTED REFERENCES

Bailey, A. M. 1925. A report on the birds of northwestern Alaska and regions adjacent to the Bering Strait. Condor 27:232-238.

Boise, C. 1976. Breeding biology of the lesser sandhill crane - a preliminary report. Pages 126-129 in J. C. Lewis, ed., Proceedings of the International Crane Workshop. Oklahoma State Univ. Publ. Print., Stillwater.

Boise, C. M. 1979. Lesser sandhill crane banding program on the Yukon-Kuskokwim Delta, Alaska. Pages 229-236 in J. C. Lewis, ed., Proceedings 1978 Crane Workshop. Colorado State Univ. Print. Serv., Ft. Collins.

Bowen, B. 1982. Soda Lake habitat management plan. Bur. Land Mgt., Bakersfield, California. Unpubl. admin. rept.

Brandt, H. 1943. Alaska bird trails. Bird Research Foundation, Cleveland.

Breckenridge, W. J., and D. Cline. 1967. Sandhill cranes and other birds from the Bering Strait, Alaska. Auk 84:277-278.

Brooks, A., and H. S. Swarth. 1925. A distribution list of the birds of British Columbia. Pac. Coast Avifauna 17.

Campbell, R. W., and A. L. Meugens. 1971. The summer birds of Richter Pass, B.C. Syesis 4(1 & 2):93-123.

Cogswell, H. L. 1977. Waterbirds of California. Univ. Calif. Press, Berkeley, Los Angeles, London.

Conant, B., J. G. King, and H. A. Hansen. 1981. Alaska-Yukon sandhill crane survey data, 1957-1980. U.S. Fish Wildl. Service, Juneau. Unpubl. Adm. Rept. 8 pp.

Copp J., and M. E. Smith. 1981. A preliminary analysis of the spring take of migratory waterfowl by Yupik Eskimos on the Yukon-Kuskokwim Delta, Alaska. U. S. Fish Wildl. Serv., Bethel, Alaska. Unpubl. admin. rept. 53 pp. Typewritten.

Dice, L. R. 1918. The birds of Walla Walla and Columbia counties, southeastern Washington. Auk 35:40-51.

Fisher, M. D. 1893. Report on birds. In The Death Valley Expedition; A biological survey of parts of California, Nevada, Arizona and Utah. N. Am. Fauna 7.

Gabrielson, I. A., and F. C. Lincoln. 1959. The birds of Alaska. Stackpole Co., Harrisburg, Pa. 922 pp.

Grinnel, J., and M. W. Wythe. 1927. Directory to the bird-life on the San Francisco Bay region. Pac. Coast Avifauna 18.

Gullion, G. W. 1948. Crane migration in the Willamette Valley, Oregon. Condor 50:165.

Harris, S. W. 1966. Summer birds of the lower Kaskunuk River. Yukon-Kuskokwim Delta, Alaska. Murrelet 47:57-65.

Hatler, D. F., R. W. Campbell, and A. Dorst. 1978 Birds of Pacific Rim National Park. Occ. Papers B.C. Prov. Mus. 20. 194 pp.

Herter, D. R. 1982. Habitat use and harassment of sandhill cranes staging on the eastern Copper River Delta, Alaska. M.S. thesis, Univ. Alaska, Fairbanks. 170 pp. Typewritten.

Islieb, M. E., and B. Kessel. 1973. Birds of the North Gulf Coast-Prince William Sound region. Univ. Alaska Biol. Papers 14. 151 pp.

Jaques, F. L. 1929. Cranes crossing Bering Strait. Auk 46:230.

Jewett, S. G. 1954. A specimen of the lesser sandhill crane near Portland, Oregon. Murrelet 35:13.

Kelley, J. W. 1940. Hunting for cranes. Gull 23(3):9-10.

Klein, D. R. 1966. Waterfowl in the economy of the Eskimos on the Yukon-Kuskokwim Delta, Alaska. Arctic 19:319-336.

Lewis, J. C. 1977. Sandhill crane. Pages 5-43 in C. G. Sanderson, ed., Management of migratory shore and upland game birds in North America. The International Assoc. of Fish and Wildlife Agencies.

Littlefield, C. D. 1970. The ecology and behavior of greater sandhill cranes in Oregon and California. U.S. Fish and Wildl. Serv., Unpubl. ms.

Littlefield, C. D., and S. P. Thompson. 1982. The Pacific Coast population of lesser sandhill cranes in the contiguous United States. Pages 288-294 in J. C. Lewis, ed., Proceedings 1981 Crane Workshop. Nat. Aud. Soc., Tavernier, Florida.

McLean, D. D. 1930. Spring observations on cranes in Fresno County, California. Condor 32:3-8.

McLeod, R. 1954. Sandhill cranes at Meiss Lake, northern California. Condor 56:227.

Munro, J. A. 1919. Notes on some birds of the Okanagan Valley, British Columbia. Auk 36:64-74.

Munro, J. A., and I. McT. Cowan. 1947. A review of the bird fauna of British Columbia. B.C. Prov. Mus. Spec. Publ. 2. 285 pp.

Murie, O. J. 1959. Fauna of the Aleutian Islands and Alaska Peninsula. N. Am. Fauna 61.

Murdoch, A. M. 1885. Birds. Pages 104-132, in P. H. Ray, International Polar Expedition to Point Barrow, Alaska. 48th Congress, Ex. House Doc. 44, 2nd Session.

Myres, M. T., and S. R. Cannings. 1971. A Canada goose migration through the southern interior of B.C. Pages 23-34, in Studies of bird hazards to aircraft. Canadian Wildl. Service Per. Ser. 14.

Osgood, W. H. 1909. Biological investigations in Alaska and Yukon Territory. N. Am. Fauna 30.

Pogson, T., and K. Kinchloe. 1981. Winter survey of the Pacific Flyway population of lesser sandhill cranes in California. Unpubl. m ept. 26 pp. Typewritten. (On file USFWS, Portland, Oregon.)

Paul, W. A. B. 1959. The birds of Klenna Kleene, Chilcotin District, British Columbia, 1947-1958. Canadian Field-Natur. 73(2):83-93.

Rand, A. L. 1946. List of Yukon birds and those of the Canol Road. Natl. Mus. Can. Bull. 105.

Turner, L. M. 1886. Contributions to the natural history of Alaska. Arctic Series in connection with the Signal Service, U.S. Army, No. 2, Part 5.

Tyler, J. C. 1913. Some birds of the Fresno District, Calif., Pac. Coast Avifauna 9.

Walkinshaw, L. H. 1949. The sandhill crane. Cranbrook Inst. Science, Bloomfield Hills, Mich.

Walkinshaw, L. H. 1961. The problem of the lesser sandhill crane. Blue Jay 19(1):8-13.

Walkinshaw, L. H. 1973. Cranes of the world. Winchester Press, New York.

Williamson, F. S. L. 1957. Ecological distribution of birds in the Napaskiak area of the Kuskokwim River Delta, Alaska. Condor 59:317-338.

Wilson, I. D. 1950. Further records of the birds of the Kettleman Hills area, California. Condor 52:82-85.

APPENDIX A. Winter distribution of the Pacific Flyway Population of lesser sandhill cranes (Littlefield and Thompson 1981).

During the winters of 1969-70 and 1970-71 all areas in California known to be used by cranes were examined for their presence.

Upon entering the Central Valley in the fall most lesser sandhill cranes concentrate near Merced, then disperse northwest and southeast after spending 3 to 4 weeks in the Merced area.

Near Thorton, San Joaquin County, 828 lessers were counted on 14 December 1969. After this date a substantial increase was recorded. By late December over 2,000 were there, and an estimated 4,100 were present on 7 January.

In Stanislaus County, the subspecies winter about 8 to 10 mi west of Modesto on the Faith and Mape's Ranches at the confluence of the Tuolumne and San Joaquin Rivers. In 1969, lesser sandhill crane numbers fluctuated through mid-November, but stabilized in December. Dates of counts and numbers were:

October 31	404
November 4	2,403
November 14	617
December 12	898
February 3	800

The peak number was on 4 November when cranes were decreasing in Merced County.

Five roost sites in Merced County were periodically surveyed during the winter of 1969-79. Counts at these sites tallied the following:

Merced NWR and vicinity

24 October	5,934	10 December	1,042
25 November	2,600	26 January	2,253

Greenhouse (2 mi west and 4 mi north of Merced NWR)

1 December	754	8 December	864

Bowles Farm (8 mi east and 2 mi north of Los Banos)

2 November	4,000	11 December	573
16 November	2,500	29 January	0
2 December	597		

San Luis NWR

6 November	599	12 December	802
19 November	2,838	2 February	52
30 November	56	18 March	30

Kesterson NWR

31 October	800	11 December	183
12 November	121	1 February	540
29 November	790		

Merced County is the most important wintering region for PFP cranes in the Central Valley. Estimated peak numbers of cranes at the Merced NWR (from Refuge Narrative Reports) were:

1951	3,000	1961	9,000	1971	1,500
1952	1,500	1962	21,000	1972	750
1953	2,000	1963	15,000	1973	2,000
1954	5,000	1964	9,000	1974	10,000
1955	5,000	1965	4,000	1975	10,000
1956	1,200*	1966	6,500	1976	5,000
1957	30,000**	1967	6,000	1977	5,250
1958	21,500	1968	2,500	1978	8,000
1959	15,000	1969	5,950	1979	8,000
1960	15,000	1970	1,460	1980	5,400

On 23 November 1969, 324 PFP cranes were using Melga Reservoir, 12 mi south of Hanford, Kings County. By 15 December their numbers had dropped to four, and none was recorded on 26 January.

In Tulare County, 8 PFP cranes were observed on Pixley NWR on 22 November 1969, for the only record. However, southwest of this refuge at Goose Lake, 11 mi west and 4 mi south of Wasco, Kern County, cranes wintered in large numbers. On 21 November, 223 were using the area, increasing to 415 on 16 December and 628 on 26 January.

West of Goose Lake large numbers of cranes usually winter at the Carrizo Plains, San Luis Obispo County. In the winter of 1969-70, three counts were made: on 24 November, 1,011 cranes were counted; 17 December, 1,439; and 25 January, 2,763.

In addition to those that winter in the Central Valley a few are sometimes seen in the Imperial Valley. Four were seen 7 mi southeast of Brawley, Imperial County, on January 1971, and one was recorded near Blythe, Riverside County, on 31 January 1976. These birds probably migrate south along the east side of the Sierra Nevada Mountains.

*Population was reported in the Refuge narrative report to be 50,000 cranes, but this number was believed to be grossly overestimated.
**Believed to be an overestimation of the true population size.

A Preliminary Evaluation of Wildlife Populations and Habitats on Gustavus Beaches and Dude Creek Uplands

February 1983

Gregory P. Streveler

and

Craig O. Matkin

A Contract Paper Completed by the North Gulf Oceanic Society for the Alaska Department of Fish and Game Regional Office, Game Division, Juneau, Alaska

Contract No. 82-0848

CONTENTS

Introduction 1
Methods. 1
Results and Discussion 2
Physiography and Vegetation 2
Dude Creek Uplands (Subunit IX). 3
Gustavus Beach 3
Human Use 5
Birds 6
Beach Surveys - Fall and Winter. 6
Avian Use Patterns - Late Winter and Spring. 7
Avifauna of Dude Creek Uplands 7
Avian Species Accounts 8
Sandhill Crane. 8
Canada Goose. 9
Mallard 9
Other Anatinae (Pintail, Wigeon, Teal). 10
Surf Scoter 10
Merganser (Red-breasted and Common) 11
Bald Eagle. 11
Winter Shorebirds (Sanderling, Rock Sandpiper). . . . 11
Fall Shorebirds (Dowitcher, Least/Western Sandpiper, Snipe) 11
Large Gulls (Glaucous-Winged Gull, Herring Gull). . . 12
Mew Gull. 12
Bonaparte's Gull. 12
Mammals 12
General Description. 12
Species Accounts by Family 13
Phocidae (Harbor Seal). 13
Ursidae (Brown Bear, Black Bear). 13
Canidae (Wolf, Coyote, Red Fox) 13
Mustelidae (Short-Tailed and Least Weasel, River Otter, Marten, Mink, Wolverine) 14
Cervidae (Moose, Deer). 14
Erethizontidae (Porcupine). 15
Sciuridae (Red Squirrel, Flying Squirrel) 15
Cricetidae (Voles). 15
Soricidae (Shrews). 15
Domestic Animals. 15
Further Discussion and Conclusions 16
The Outlook for Cranes. 16
Birds of the Beach. 17
Mammals 17
Recommendations. 18
Acknowledgements 19
Literature Cited 19

INTRODUCTION

There has been concern both within the Gustavus community and from others over the fate of the State-owned beaches and wetlands that flank the Gustavus community to the west and south. The potential of these lands for subsistence, recreational, agricultural, mineral and commercial use has often been cited, but to this point they have not been placed into an appropriate classification and management framework. Intelligent selection among the many potential combinations of uses is dependent on specific knowledge of existing resources. Our study was designed as a step in gathering this information.

Objectives were to:

1. identify the species of birds and mammals inhabiting the study area and provide indices of abundance for key species during the fall and winter months.

2. describe the localities and habitats used by key species.

3. describe the present physiography and vegetation, noting tendencies for change as they may relate to habitat quality and species diversity.

4. draw conclusions and make general recommendations based on the completion of the first 3 objectives.

The study period covered one year beginning 7 September 1981. Intensive surveys were limited to the fall 1981 period although regular monthly surveys continued through the winter. Spring and summer observations were made opportunistically. Information from other areas and from other years was collected as available and appropriate.

METHODS

The study area (Figures 1 and 2) roughly coincided with lands once proposed for a State Game Refuge. This area was divided into 9 subunits, eight along the beach and one encompassing the uplands flanking Dude Creek. To aid in description of physiography, the beach subunits were also grouped into four physiographic units (Fig. 2). Survey data were logged by subunit and survey date.

Surveys of beaches were made approximately every 10 days during September and October 1981 and approximately once a month thereafter until late March 1982. Each survey covered the entire beach and took portions of 2 to 3 days to complete due to constraints of tide and daylight. All surveys were conducted on foot at low tide except for the short segment between the Good River and the Salmon River which was occasionally done by skiff at high water.

The September and October surveys were performed by two observers; one observer walked the low tide margin, while the other observer walked the high tide margin. Avian counts were tallied separately for the upper

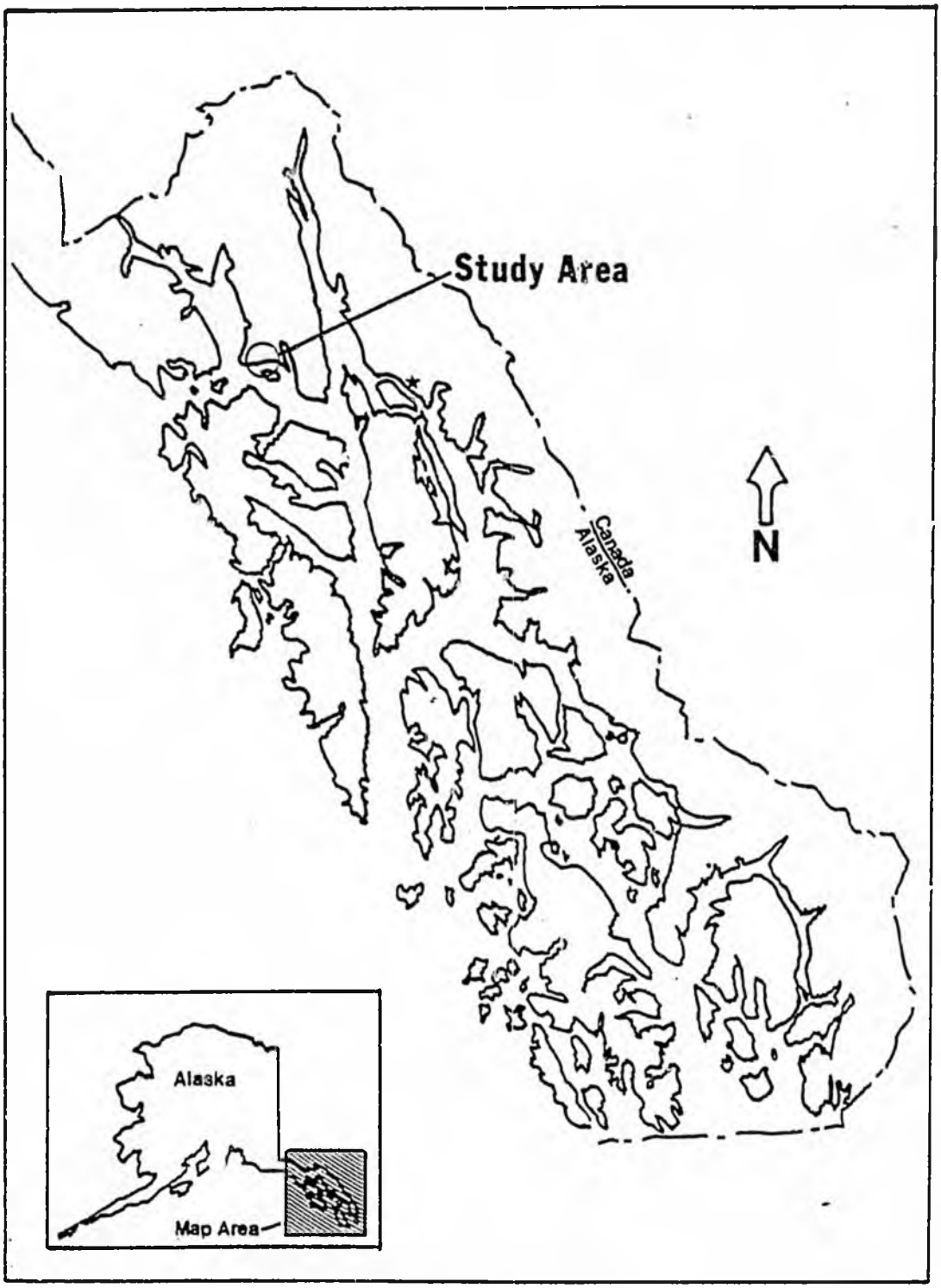


Fig. 1. Location of the Study Area in Northern Southeast Alaska.

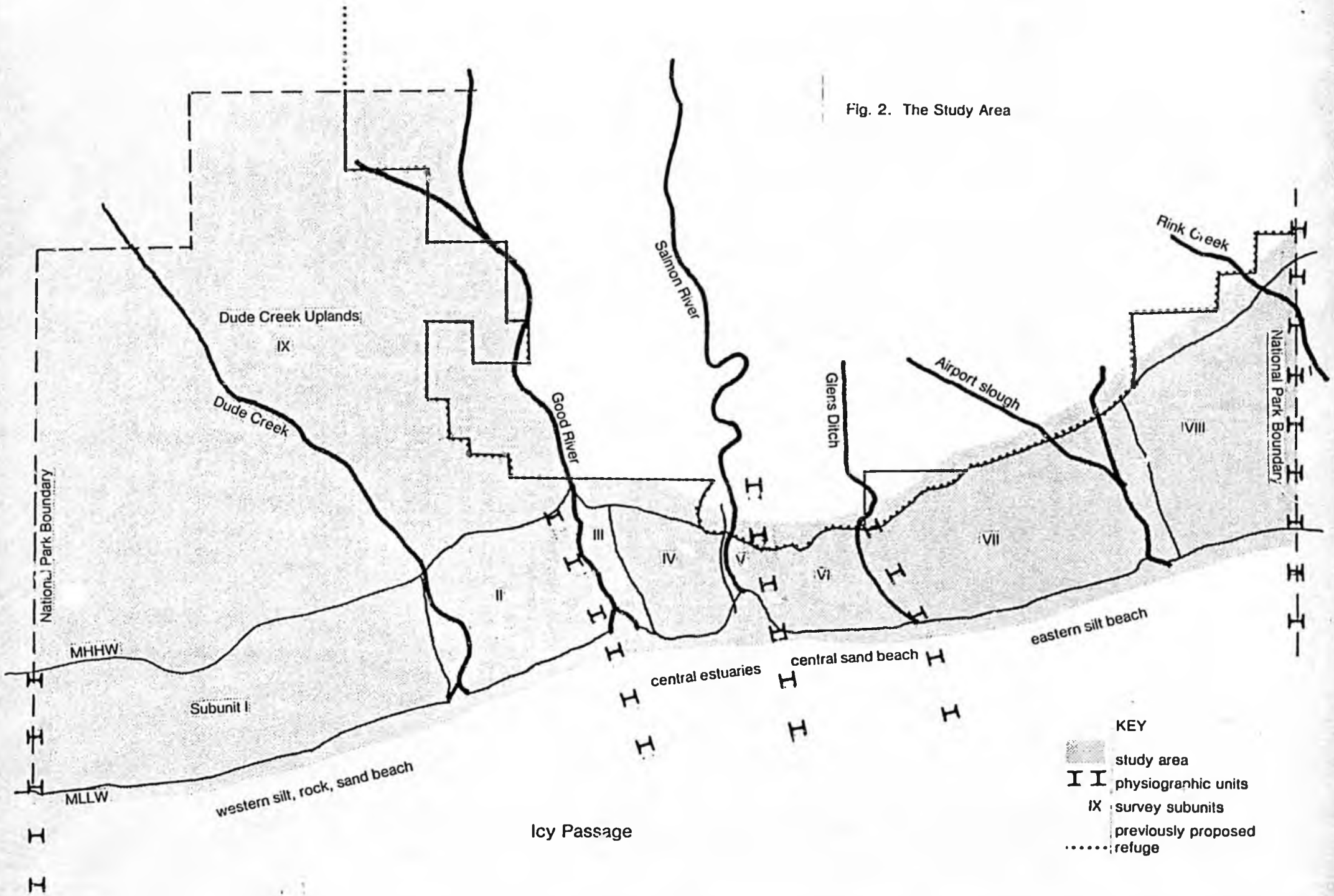


Fig. 2. The Study Area

beach and lower beach when possible. During winter surveys, a single observer walked the lower tide margins and on return spot-checked the generally ice-choked and empty upper beach margin.

All birds sighted during the surveys were identified and recorded by subunit of occurrence. Since birds often flushed ahead into the next subunit, two totals for each species were kept when this occurred: first, the total of all individuals sighted regardless of the possibility of their having been previously counted and, second, that number minus the number of individuals that flew ahead (and possibly landed). In calculations the mean of these two totals were used.

Observations were made along beaches during spring migration and occasionally in summer. These general observations were not systematic.

All cranes observed in flight in the Gustavus area were recorded by the authors and by Bob Howe in fall 1981. Daily comparison of totals yielded an estimate of the total number of cranes passing over the Gustavus area. From Matkin's residence, cranes that used the Dude Creek uplands could be heard arriving in the evening. As time allowed on mornings following a landing of cranes, a foot survey and crane count on the Dude Creek uplands was conducted. Crane sign was noted and care taken not to flush the birds. The birds were then counted as they left their roosting area and headed southeast over Icy Strait.

Crane observations were most intensive and systematic in the fall. Although there appears to be a substantial spring migration, observations and counts were opportunistic at that time.

On all foot surveys, each mammal sighting or instance of identifiable mammal sign was recorded. Additional foot surveys in the Dude Creek uplands, including the game trails along Dude Creek and Good River, were made approximately once monthly during winter. These surveys were timed to coincide with good tracking conditions when possible. A standard itinerary for such surveys (Fig. 3) was followed except when traveling conditions made the route impractical.

A vegetation map was prepared using aerial photos provided through courtesy of the State Department of Transportation. Interpretation was based on examination of plant communities during foot surveys. Beach physiography was also examined in the field, described in the report, and depicted in conceptualized cross sections. Bird and mammal observations were discussed in relation to the vegetation and physiography of the study area.

RESULTS AND DISCUSSION

Physiography and Vegetation

The location of the study area in southeast Alaska is illustrated in Figure 1. Study area boundaries enclose two landscape units: the Dude

Fig. 3. Winter mammal survey itinerary.

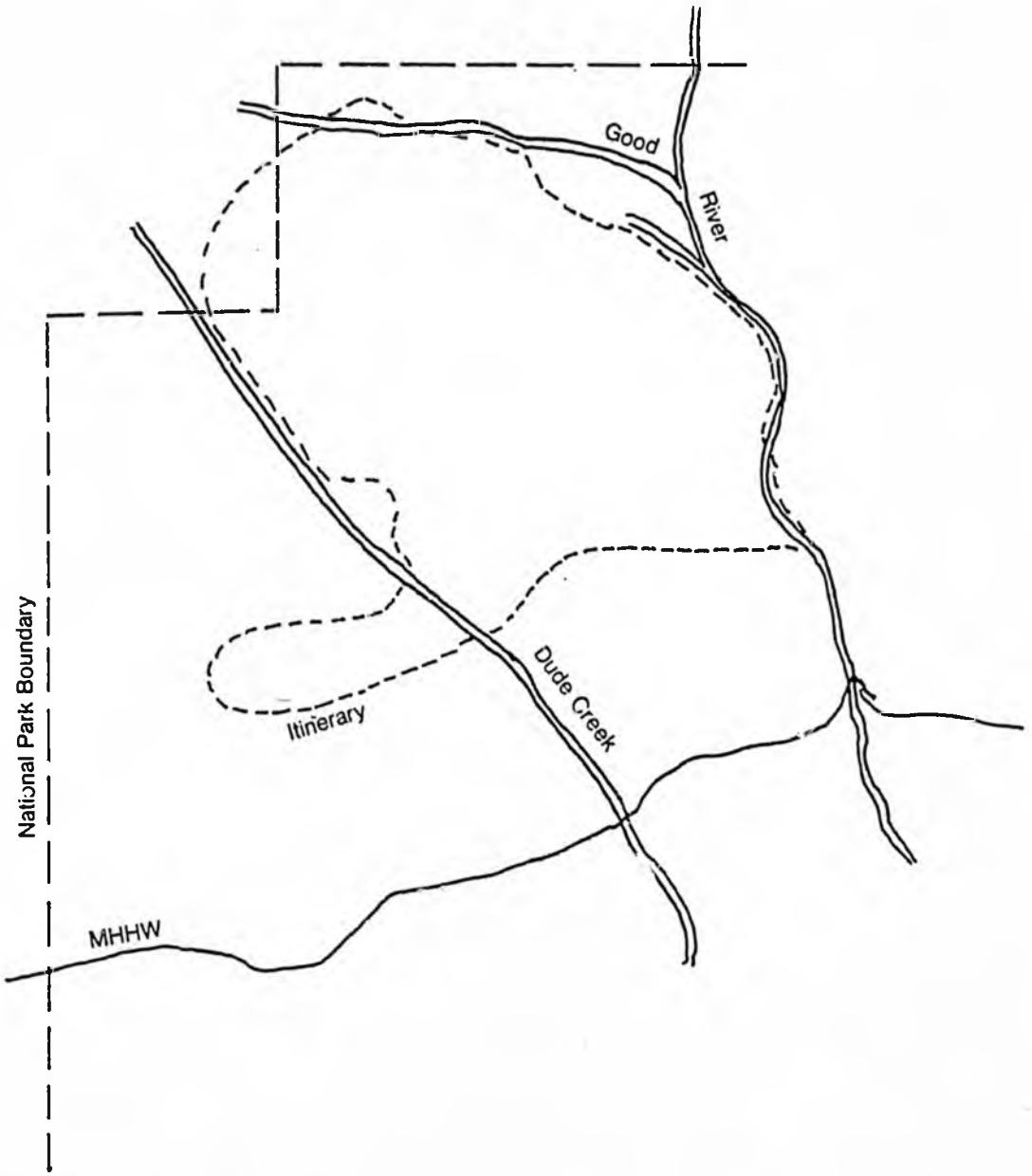


Fig. 3. Winter mammal survey itinerary.

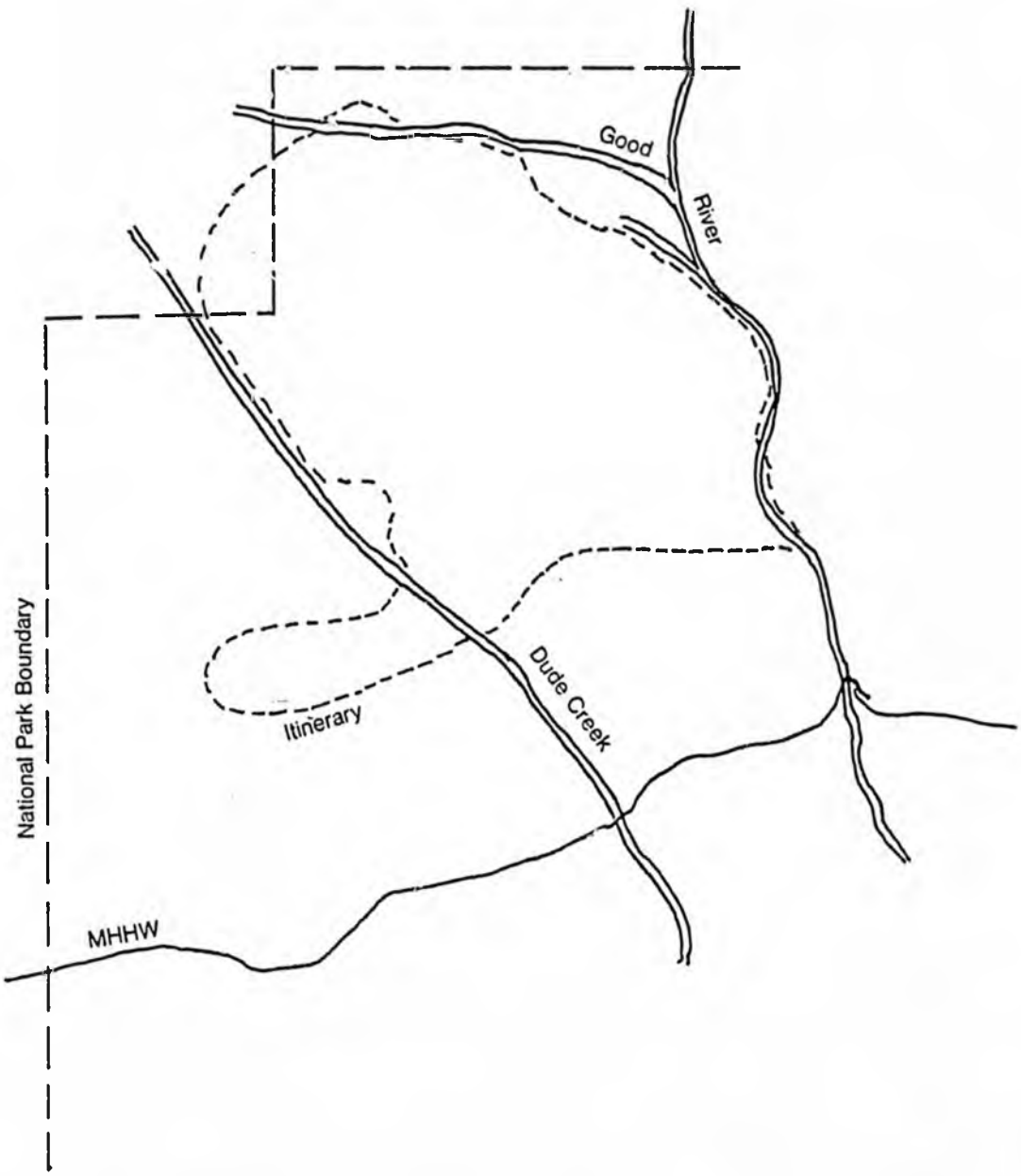


Fig 4 Vegetation of the Study Area

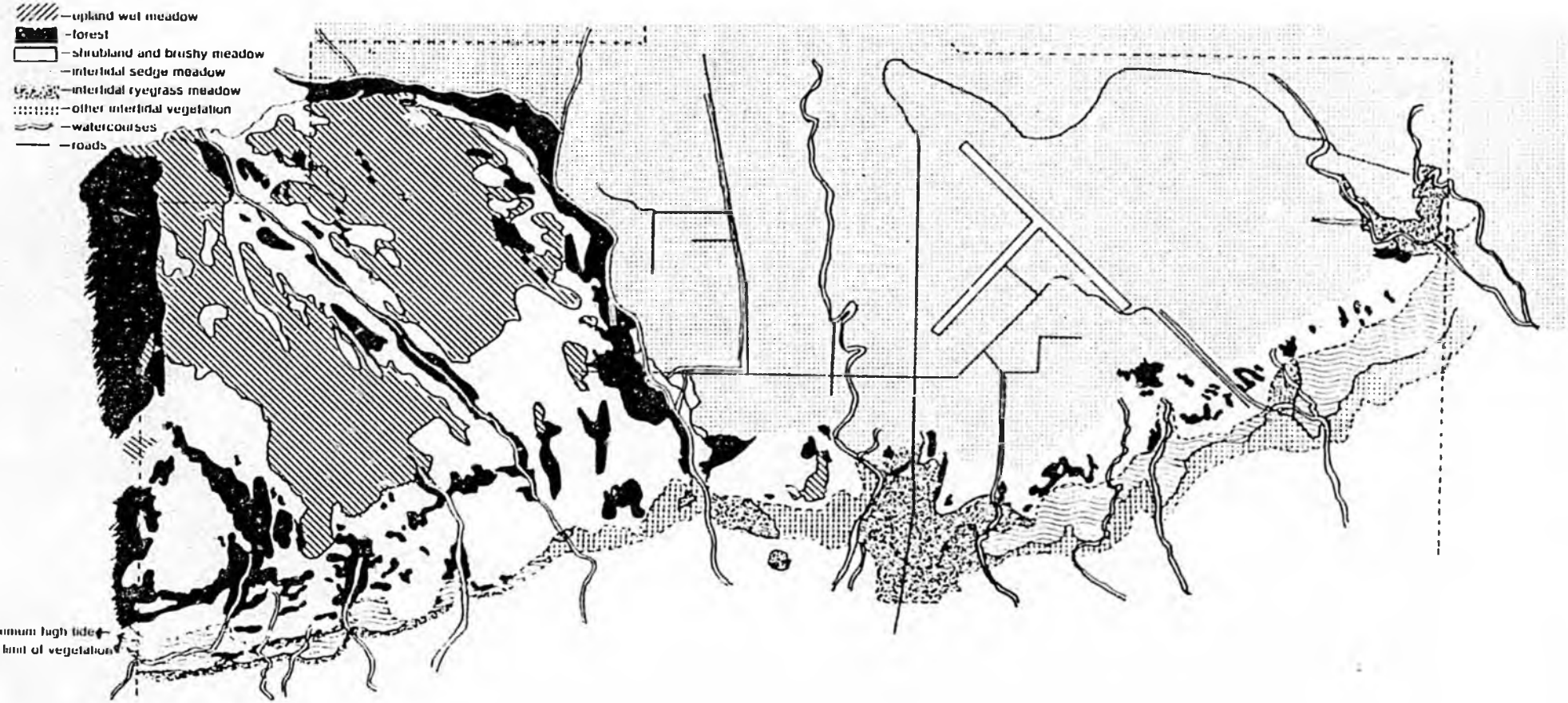
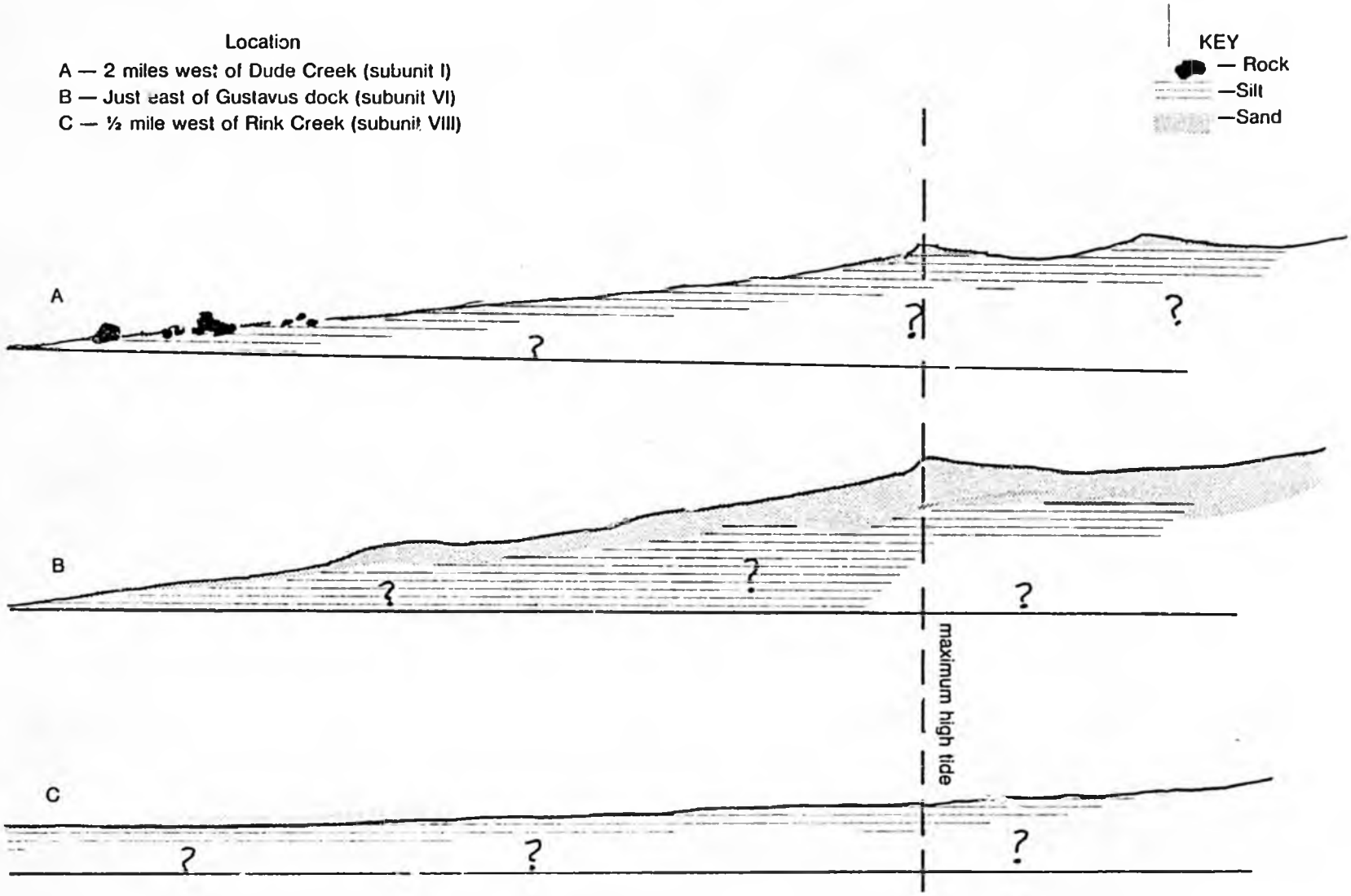


Fig. 5. Diagrammatic cross sections of the Gustavus beach.



As one proceeds eastward past the mouth of Dude Creek, the high tide strand disappears and is replaced by a silty upper beach occupied by willows and mats of moss and horsetail (subunit II). Glacial boulders decrease in frequency until the Good River estuary is encountered (subunit III). This large entrenchment of the beach forms the western limit of deposition of the superficial sands deposited by the Salmon River approximately 3/4 mile further east.

East of the Good River the beach remains essentially the same except for the increased superficial sands deposited throughout the intertidal zone (subunit IV). The Salmon River estuary (subunit V) cuts down through these sands well into the underlying silts. These "central estuaries" (the Good and Salmon Rivers) extend the intertidal zone inland into upland vegetation types including sedge and ryegrass meadows, horsetail/moss mats, willow shrubland and pine-spruce forest.

East of the Salmon River estuary is the "central sandy beach" (subunit VI) which stretches from this estuary to Glen's Ditch, an estuary draining the ditches of Glen Parker's homestead. This is a sand-dominated area; only at the low tide margins does one encounter small amounts of surficial silt (Fig. 5). Surf clams and horse clams may reach peak abundance in this subunit, but in general its invertebrate fauna seems depauperate.

The causeway to the Gustavus dock has apparently impeded sand transport eastward from the Salmon River, causing the formation of a secondary strand well seaward of the original high tide line. Large amounts of sand have been deposited behind this strand. This sandy region is occupied by beach ryegrass meadow and open sand flat. Although partially inundated by extreme tides, the area was not included in our surveys; this should be recalled when interpreting data from Unit VI.

The "eastern silt beach" (subunit VII) begins to the east of Glen's Ditch. This beach has an even more gradual slope than the western units. Small volumes of superficial sand are restricted to dune-like structures in the upper intertidal and a discontinuous, often shell-covered veneer in the lower intertidal. Rocks are nearly absent and silt predominates. The intertidal and supratidal zones tend to merge without an intervening strand (Fig. 5). High intertidal sedge meadows are often extensive; they merge into supratidal moss-horsetail-willow mats or silty flats or into beach ryegrass meadows on sandy dunes. Three creek estuaries meander across subunit VII; the easternmost and largest is Airport Slough. Beyond this estuary is the last mile of beach to the Park boundary (subunit VIII). This area is a vast, nearly horizontal silt flat and extensive sedge meadow. Here at the eastern margin of the Gustavus flats wave action is minimal and the Salmon River sand source is remote. Consequently, landforms are extremely subdued (Fig. 5) and probably most closely resemble the conditions at the close of the Neoglacial, when the silt deposition and leveling effect of glacial outwash rivers were the predominant beach-shaping forces. Softshell clams and small members of the clam genus Macoma may reach peak abundance in this subunit.

Superimposed on the dynamic forces of sand deposition and wave action on the Gustavus beach is the uplift due to isostatic rebound. As a consequence of uplift beach landforms are being moved into the supratidal, plant communities are marching seaward, and on any given spot there is a succession from beach to meadow to shrubland and finally to forest. The result is a striking zonation, especially in areas not altered extensively by erosion or sand deposition.

Uplift will favor continued erosion of the beach surface (this is now quite evident during the winter) inhibiting the organic enrichment of surface sediments and exposing beach invertebrates to frost and predation. Erosion, mobility of sand deposits and the down-beach shifting of plant communities all appear to favor retention of a relatively immature, moderately productive beach ecosystem into the forseeable future.

Human Use

The Dude Creek uplands were used to some extent by the original homesteaders in the first half of this century. Cattle were run in the open meadows; two cabins on Dude Creek (now defunct) were briefly occupied; and a field along the eastern margin of the meadows was cultivated.

By the mid 1960's all these uses had ceased and the area was seldom visited. A subdivision was planned by Glacier Bay Land Company in the late 1970's, but this has not yet occurred. State land disposals in 1980 placed several parcels along the eastern meadows' southern margin in private hands. One parcel is now occupied; the owner has built a large ditch along the north edge of the property and plans to clear about 100 acres (proposed State land lease) for cattle grazing. This will probably not greatly affect the eastern meadow. An agricultural parcel let at the same time straddles the Good River and projects slightly into the study area.

Gustavus beaches have always been used by local residents for a variety of purposes. This has been documented in the context of a legal suit concerning land accretion and in the recent proposal by the Gustavus Community Association to disallow mining. Uses include hunting, fishing, clamming, berry picking, collection of beach logs, kelping, grazing, hiking, and use of recreational vehicles.

Present road access to the beaches and Dude Creek area is diagrammed in Figure 4. In recent years, road access has been supplemented to an increasing (but still small) degree by use of ATCs and trail bikes. The beaches are not easy accessed by boat; only the central estuaries and sandy beach are visited by vessels with regularity, although trolling and crabbing occurs in the immediately adjacent waters.

Birds

Beach Surveys - Fall and Winter:

Beach survey data are summarized in Table 1. Of the 59 species recorded, 12 were sighted more than 500 times. These 12 species, the species that are hunted, and the major avian predators are considered "important" and discussed in more detail.

Survey data are further condensed and represented geographically in Figure 6. The greatest number of bird sightings were made on the western silt/sand/rocky beach, due in part to the size of the area and to contribution by scoters, gulls and shorebirds - birds often associated with rocky beach habitat. Hunted bird species (geese, mallards, pintail, teal and wigeon) were also most numerous on the western beaches, but were most densely distributed in the relatively small central estuaries unit. In contrast, the central sand beach was relatively poorly represented both in total birds and in numbers of species. Numbers in this area would have been even less if not for the attractiveness of Glen's Ditch to waterfowl, the use of the Gustavus dock as a gull roost, and the single occurrence of a very large flock of migratory mergansers.

There was a tendency for birds to be grouped along the water's edge on beaches and estuaries. To some degree, bird densities in each unit may have been proportional to the extent of the land/water interface at low tide (the apparent principal avian foraging period).

However, other factors affected avian use of a beach area. The type of beach edge seemed important, the silt/rock/sand areas being more popular with many species than open silty beach or sandy beach. Larger estuaries supported higher waterfowl densities than smaller estuaries. Remoteness from human activity was probably significant for some species. High tide sedge meadows were also attractive to waterfowl.

The timing of avian species occurrence on Gustavus beaches during fall and winter 1981-82 is shown in Table 2. Most species were represented in the initial surveys. Early migrants such as the least sandpiper and semipalmated plover soon disappeared. By the end of October most migrant shorebirds were gone and were replaced by the winter resident rock sandpipers and sanderlings. By late October raptors were reduced to the ever present bald eagles and ravens. By December the migrant avian population was gone and the avifauna reached its winter makeup of about 25 species.

The five hunted species displayed varying patterns of abundance (Fig. 7). All were present in the fall, but only the Canada geese and mallards were common after November and were classified as winter residents.

Almost all species varied considerably in number from survey to survey and from subunit to subunit. This indicated a generally mobile avian population that was not tied in any strict sense to the study area, but shifted and moved on a larger scale.

Table 1. Summary of nine fall/winter bird surveys of Gustavus beach, 1981-82 (total no. of observations).

Species	Beach Subunit I	II	III	IV	V	VI	VII	VIII	Total
Common loon				1		2	1		4
Horned grebe				2	4	10	15		31
Whistling swan	1								1
CANADA GOOSE	528	140	270	355	341	14	377	193	2,218
MALLARD	469	369	482	48	293	260	1,055	134	3,110
PINTAIL	75	60	26		21	37	37	190	446
GREEN-WINGED TEAL	169	68	8	40	28		33	12	358
Blue-Winged Teal							3		3
Shoveler							6		6
WIGEON	232	230	183	153	162	130	68	51	1,209
Goldeneye spp.	7				4	5	10		26
Bufflehead			3		4		2	8	17
Harlequin	4								4
SURF SCOTER	2,705	200				20			2,925
MERGANSER SPP.	300	18	263	123	63	604	168	3	1,542
Sharp-shinned hawk	1								1
Rough leg hawk						1	1		2
BALD EAGLE	16	6	4	9	10	2	5	14	66
Marsh hawk	5	5	2	1		1	6	1	21
Merlin		1	1				3	2	7
G. blue heron							2		2
SANDHILL CRANE	P							6	6+
Semipalm. plover	10								10
Killdeer			3						3
Golden plover		61				2	2		65
Black bell. plover	22						8		30
Bar-tailed godwit	6								6
Snipe							1	2	3
Yellowlegs spp.			6						6
ROCK SANDPIPER	812	122					385	206	1,525
"Peeps"[1]	68	80			7		570	45	770
Pectoral sandpiper	104	74	6	65			22	17	288
Dunlin	12	184					75		271
DOWITCHER	15	168	53	95	15		29	160	535

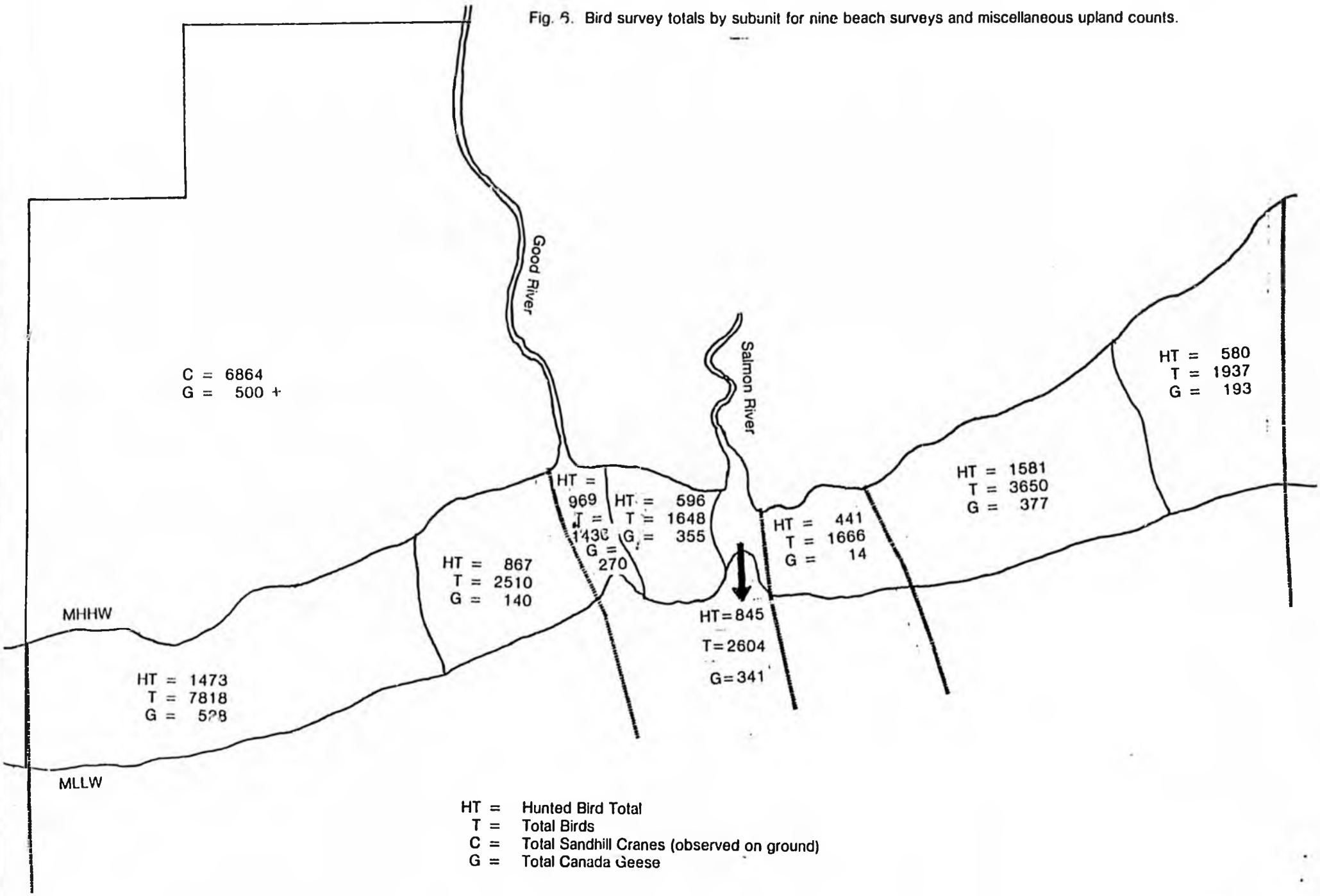
Table 1 (Cont'd). Summary of nine fall/winter bird surveys of Gustavus beach, 1981-82 (total no. of observations).

Species	Beach Subunit I	II	III	IV	V	VI	VII	VIII	Total
SANDERLING	357		40	46		6	193	238	899
Parasitic jaeger						1	1		9
GLAUC. W/HERRING GULL	489	127	37	87	296	130	184	78	1,419
MEW GULL	990	304	21	523	371	100	227	319	2,855
BONAPARTE'S GULL	99	63	18	116	187	45	59	185	772
Bl. leg. kittiwake				3	403				406
Short-eared owl							1		1
Kingfisher			1		1				2
Magpie	3		4		1				8
Raven	5	2	4	3	5	7	2	1	30
N.W. crow	2	30						2	34
Ch. bk. chickadee	P								P
N. shrike			1						1
Savannah sparrow	P								P
Fox sparrow	P								P
Tree sparrow	6								6
Water pipit	P								P
Snow bunting	3				40	300			343
Longspur	160+						100	70	330+
W. front goose							2		2
Uni.D. Ducks	152	6		8	352	1			519
Plover sp.	2								2
TOTALS: Hunted Species	1,473	867	969	596	845	441	1,581	580	
All Species	7,821	2,350	1,436	1,672	2,608	1,678	3,653	1,937	

[1] Western, least and Bairds sandpipers.

P Present but uncounted.

Fig. 6. Bird survey totals by subunit for nine beach surveys and miscellaneous upland counts.



HT = Hunted Bird Total
T = Total Birds
C = Total Sandhill Cranes (observed on ground)
G = Total Canada Geese

Table 2. Timing of bird species occurrence on Gustavus beaches, 1981-82.

Species	September Week 1	2	3	4	October Week 1	2	3	4	November Week 1	2	3	4	December Week 1	2	3	4	January Week 1	2	3	4	February Week 1	2	3	4	March Week 1	2	3	4	Probable Status*
Common loon																	X				X				X				1, 4
Horned grebe			X		X																X				X				1, 4
Whistling swan							X																						1
Canada goose	X	X	X		X	X	X		X	X	X				X		X				X				X				0, 1, 3
Mallard	X	X	X		X	X	X		X	X	X				X		X				X				X				0, 1, 3
Pintail	X	X	X		X	X	X			X																			3
Green-winged teal	X	X	X		X	X	X																						0, 1, 3
Blue-winged teal	X	X	X		X	X	X		X	X	X				X		X				X				X				3
Shoveler	X																												3
Wigeon	X	X	X		X	X			X	X	X				X		X				X								1, 3
Gadwall		X																											3
White-fronted goose	X																												3
C. Goldeneye																					X								1, 4
B. Goldeneye																													1, 4
Bufflehead							X				X				X		X								X				2
Harlequin																	X												0, 1, 4
Surf Scoter																	X				X								0, 1, 4
C. Merganser			X		X	X	X								X		X				X								1, 3
Red-breasted merganser	X	X	X		X	X	X		X	X	X				X		X				X				X				0, 1, 3
Sharp-shinned hawk	X	X																											3
Rough leg hawk	X																												3
Bald eagle	X	X	X		X	X	X			X	X				X		X				X				X				0, 1
Marsh hawk	X	X	X		X	X	X																						3
Merlin	X	X	X																										3
G. blue heron	X																												4
Sandhill crane	X	X	X																										3
Semipalm. plover	X																												3
Killdeer			X																										3
Golden plover	X				X		X																						3
Black bell. plover			X				X																						3
Bar-tailed godwit			X																										3
Snipe					X	X																							3
G. yellowlegs	X				X																								3
Rock sandpiper							X				X				X		X				X				X				2, 3

Table 2 (Cont'd). Timing of bird species occurrence on Gustavus beaches, 1981-82.

Species	September Week 1 2 3 4	October Week 1 2 3 4	November Week 1 2 3 4	December Week 1 2 3 4	January Week 1 2 3 4	February Week 1 2 3 4	March Week 1 2 3 4	Probable Status*
Pectoral sandpiper	X X X	X X						3
Western sandpiper	X X X							3
Least sandpiper	X X							3
Dunlin	X X X	X X						3
Dowitcher	X X X	X X						3
Sanderling	X X X	X X X	X X	X	X	X	X	1, 3
Parasitic jaeger	X							3
Glaucus W. gull	X X X	X X X	X X X	X	X	X	X	0, 1, 3
Herring gull	X X	X X X		X	X			1, 3
Mew gull	X X X	X X X	X X X	X	X	X	X	0 1, 3
Bonaparte's gull	X X X	X X X						0, 3
Bl. leg. kittiwake	X	X X						0, 3
Short-eared owl		X						0, 3
Kingfisher	X							1
Magpie	X X	X		X		X	X	0, 1
Raven	X X	X X	X X	X	X	X	X	0, 1
N.W. crow	X		X	X				0, 1, 4
Ch. bk. chickadee			X					4
N. shrike					X	X		2, 4
Savannah sparrow	X							0, 3
Fox sparrow	X							0, 3
Tree sparrow			X					4
Water pipit	X	X						3
Snow bunting		X	X X		X			2, 3
Lap. longspur	X X X	X X						3

* - based on authors' general knowledge of the area.

0 - summer/fall resident.

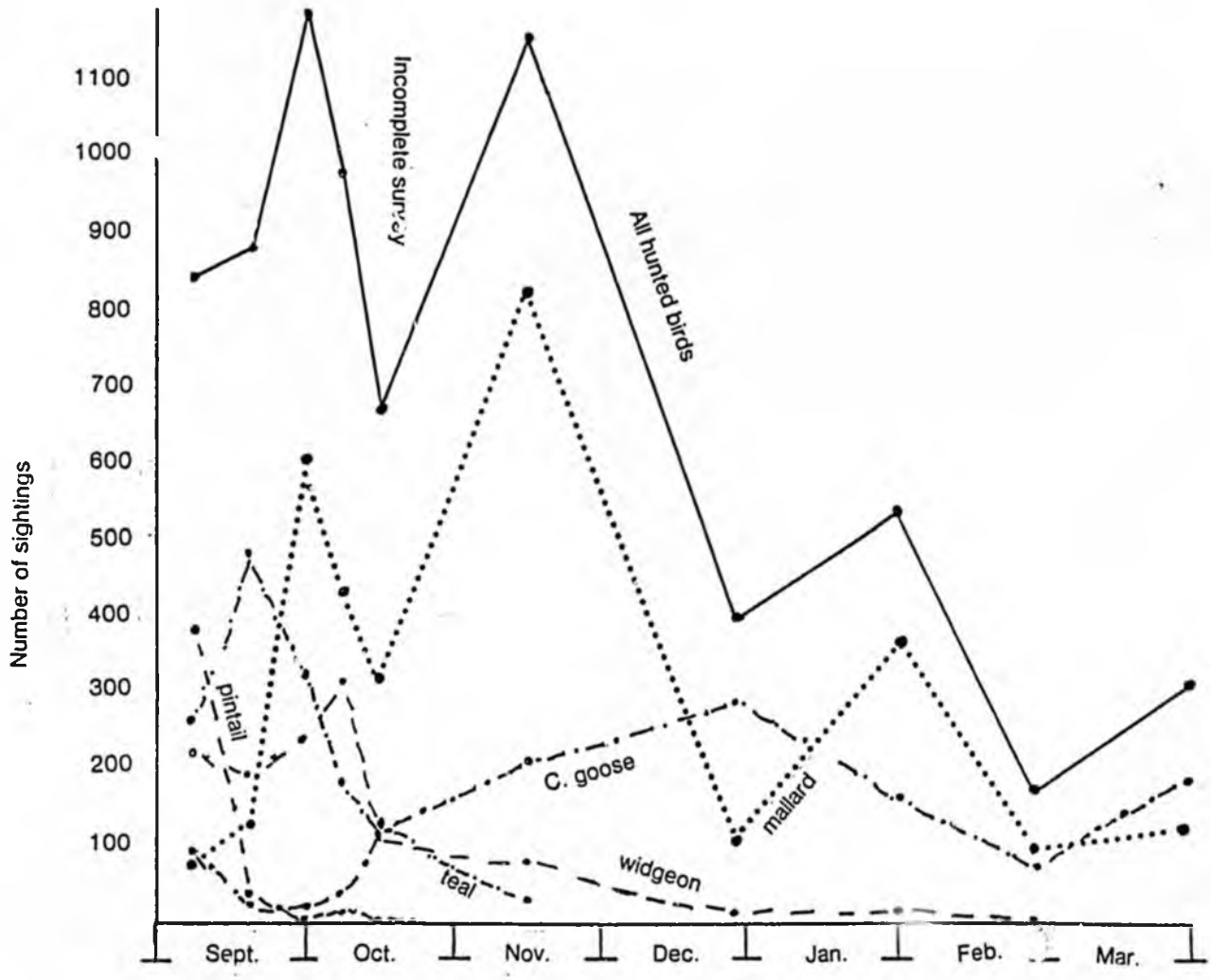
1 - fall/winter resident.

2 - winter resident.

3 - migrant.

4 - in neighborhood, but seldom in study area.

Fig. 7. Numbers of hunted bird species counted during fall/winter surveys of Gustavus beaches. 1981/82.



Avian Use Patterns - Late Winter and Spring:

Systematic foot surveys ended April 1, 1982. Information on bird populations and distribution for late winter and spring is based on our general knowledge and specific opportunistic observations.

Winter 1981-82 had few thaws and all but the upper beaches were generally coated with ice into March. In early April the upper beaches had thawed, providing foraging habitat for early migrant waterfowl and songbirds. Shorebirds began arriving in late April. By early May many species were present, including several that were scarce or absent in fall (notably whimbrels and yellowlegs). Total shorebird numbers in spring appeared to exceed those of fall migrants; the peak of migration was probably in early May. In spring 1982 foraging in upland habitats by whimbrels, pectoral sandpipers, and dowitchers seemed unusually pronounced.

Spring migration included waterfowl that were scarce or absent during fall; examples were brant, snow geese, white-fronted geese, and harlequin ducks. Migrant Canada geese arrived in May, joining the residents of that species. All geese were found principally on upper beaches and in grassy upland meadows. Marsh hawks and short-eared owls also were prominent in these open areas.

Migration appeared to be over by early June. Our visits to the study area during summer were too limited to provide the basis for generalizations. However, it would appear that the study area is not critical nesting habitat for any shorebird or waterfowl species.

Avifauna of the Dude Creek Uplands:

Sandhill cranes were the focus of our observations in these uplands. They occurred in large numbers, especially during fall migration (see species accounts below). In the course of crane observations and during winter mammal surveys, data on other birds also was accumulated.

In general, fall and winter bird populations were sparse and poor in species diversity on the uplands. Ravens, magpies and eagles occupied the area in small numbers, and the songbirds typical of Gustavus at this time of year (notably chickadees and crossbills) were present.

Pectoral sandpipers and snipe occurred in modest numbers during migration. Geese of several species, but primarily Canadas, used the meadows in some number during spring and fall; the largest single observation was of 290 Canada geese on 19 September 1981.

In spring, snipes' territorial displays were prominent over the Dude Creek meadows. This species, along with least sandpipers and savannah sparrows, nested there during summer.

Avian Species Accounts:

Sandhill Crane.

The magnitude, location, and timing of use by migrating cranes was documented during fall 1981. Observations showed that a minimum of 12,899 cranes passed through the Gustavus area during this period (Fig. 8). Of these at least 6,870 landed, nearly all of these on the Dude Creek uplands. Small groups were also reported from the upland meadows near Gustavus Chapel, Rink Creek and Salmon River, and six were observed on the upper beach in subunit VIII. About 3,500 that overflew Gustavus appeared to have taken off from the Carolus or Dundas areas of Glacier Bay National Park.

Most cranes observed on the ground were west of Dude Creek (5,926), but the distribution of sign, and discussion with the Prouty family (who can see the eastern Dude Creek Meadows from their home), indicated that substantial use occurred throughout. Use of the open meadows was considerable, but a substantial amount of activity also occurred at meadow margins, even when the mosaic of brush and scrub forest precluded long views. Sightings were scattered, suggesting that no particular localities were consistently favored.

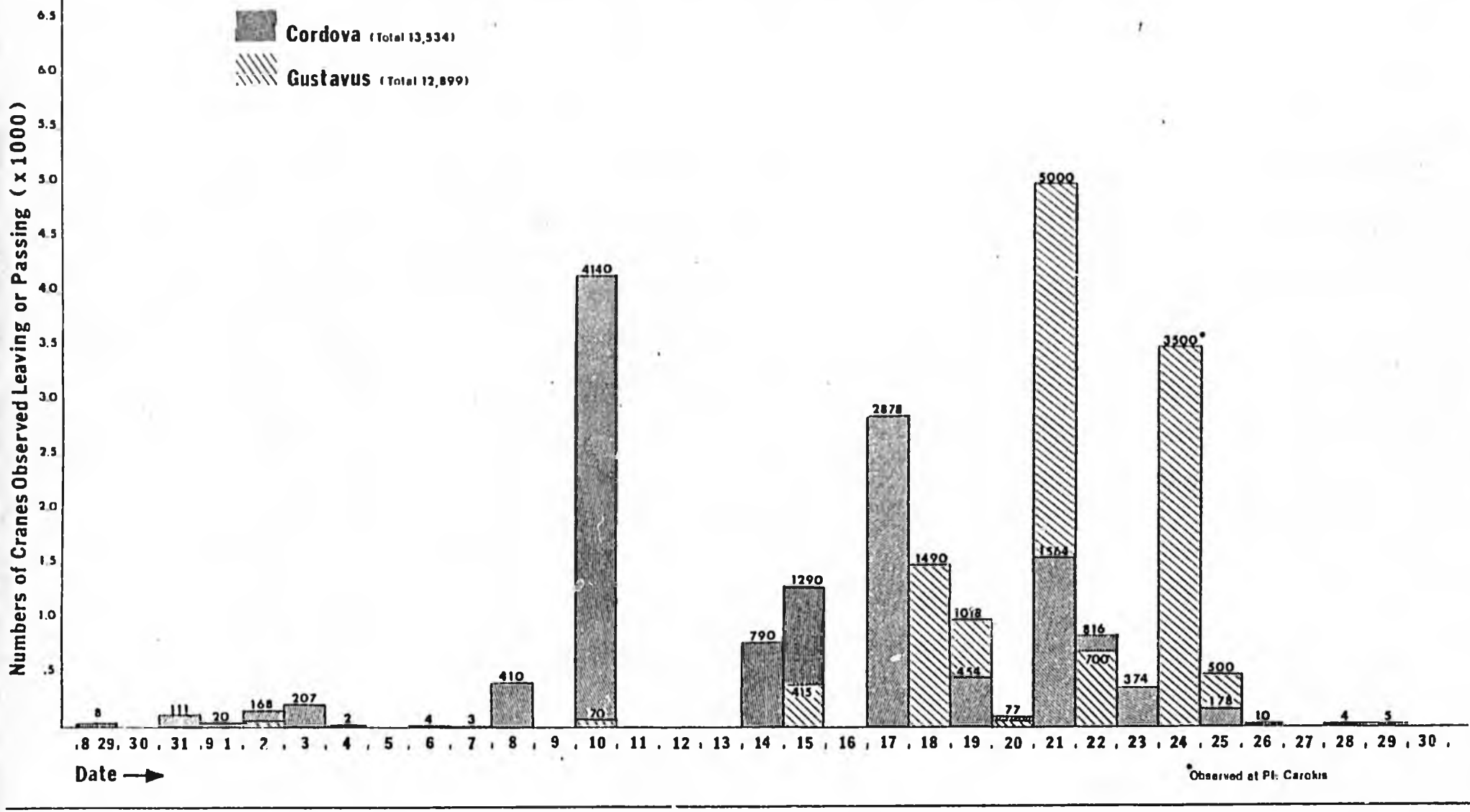
The small number of scats and probings found, even in areas occupied previously by large flocks, indicated light feeding activity, but more observations are needed to confirm this. Food preferences were not determined.

The fall 1981 crane migration occurred almost entirely during September (Fig. 8). Flocks moved through in pulses, often just after a period of bad weather and during either calm or northerly winds. Typically, large flocks arrived during the evening, then lifted off in late morning or early afternoon the next day.

Although they cannot be considered complete, our count totals are remarkably similar to those of Dale Herter's (University of Alaska) research group for the eastern Copper River delta (Fig. 8). This similarity, plus the temporal differences in occurrence of peak numbers observed, strongly suggest that the two counts refer to substantially the same population of birds. If so, the shift in peaks indicates that cranes took about a week, on average, to move from the eastern Copper River delta to the Gustavus area.

Observations of cranes during the spring of 1982 were infrequent and opportunistic; they provide an incomplete picture of this migration period. Cranes were first observed on 21 April and last seen in number on 21 May, although a group of three stayed at Gustavus into July. The spring migration seemed less voluminous than that of the previous fall; however, the recorded spring total of 1,295 is certainly an underestimate.

Fig. 8. **Observed Timing and Magnitude of Crane Migration Past Cordova and Gustavus, Fail 1981**



A single foot survey of the Dude Creek uplands during spring 1982 (27 May) documented the presence of 530 cranes in the eastern meadows. Sign of other crane activity was found at that time both to the east and west of Dude Creek. The Proutys reported frequent crane activity in the eastern meadows within view of their property throughout the spring migration period.

Canada Goose.

Canada geese were resident in the study area, but did not appear to nest there. Only a few evidently unpaired birds were observed during the summer, but our observations were too few to be conclusive in this respect. Goose numbers appeared to increase to some extent during fall, perhaps mainly due to the return of local birds (little of the increase was due to the influx of the small-bodied races). By early December the populations consisted of the winter residuum which on 27 December 1981 numbered at least 265 birds, judging from the counts made that day in subunits IV and V.

Canada geese used all beach subunits as well as upland areas (Table 1), but the distribution of concentrations varied. Some of the variation appeared seasonal. The Dude Creek uplands were deserted by geese when frozen up in winter, while up to 308 were counted in this area during the September 1981 crane surveys. Eastern beaches were deserted during mid-winter, but were concentration areas during fall. It was likely that many geese left for other areas (such as Bartlett Cove in Glacier Bay National Park) during mid-winter cold snaps. In March, goose activity increased on the upper beaches as thaws opened the seaward edges of the sedge meadows.

Some distributional changes may have been related to human activity, however. Geese tended to frequent the more remote beach subunits during fall. During winter and early spring, when hunting, boating and hiking were at a minimum, there was a tendency for the geese to return to the central estuaries and beaches.

This supposition is supported by observed goose sensitivity to human presence. During surveys, geese typically occupied sites with long views. They flushed readily and repeatedly at a distance and often moved to peripheral beach units or left the area altogether.

Mallard.

This species was present throughout the study period. Non-breeders were often observed during summer, and it was likely that a few nested along the upland streams and marshes of the study area. Numbers of mallards swelled dramatically in late September 1981, stayed at high levels through November, then declined to a winter population of no less than 150 individuals (subunits I, II, III; 2 February 1982). During the fall period, mallards were almost as numerous as all other hunted waterfowl species combined (Fig. 7).

Mallards were common in all beach subunits except the central sand beach, exclusive of Glen's Ditch (Table 1). They were spread through all beach habitats, being especially common along sloughs and estuaries. Mallards (and pintails) occupied the middle beach more frequently than any other duck species. No seasonal shifts in distribution were perceived. Distribution patterns suggested little tendency to avoid areas of human activity.

Human presence appeared to have less effect on mallards (and other Anatinae) than on Canada geese. Although ducks flushed readily, they often doubled back to the same area after the disturbance (hiker, boater, etc.) had passed.

Other Anatinae (Pintail, Wigeon, Teal).

Although all of this group were common spring and fall migrants, they were relatively uncommon in summer months. None were found to nest in the study area.

During migration, these ducks were spread throughout the beach subunits (Table 1). However, there was a general preference for estuaries and sloughs.

Pintails were notable early fall migrants in 1981. Conceivably, many had moved through the area before beach surveys began in early September (Fig. 7). Of all waterfowl, this species showed the greatest tendency to occupy the sedge meadows of the upper beach. By late September, pintails were nearly absent and their ecologically similar relative, the mallard, was appearing in number.

Teal appeared to arrive in two waves during fall migration: one at or before the beginning of the survey period and another in October (Fig. 7). By late December they were absent. Nearly all teal were green-winged, although some blue-winged teal were recorded. The relatively low teal count numbers were surprising.

The abundance of the American wigeon also appeared somewhat bimodal. Wigeons were always more numerous than teal and persisted in small numbers through most of the winter. Wigeon and teal densities appeared to shift from central estuaries to the more remote beaches in October, perhaps in response to human activity.

Surf Scoter.

Surprisingly, this was the only species of scoter recorded in the study area; white-winged and black scoters are also present in the Icy Passage area. Surf scoters were often observed in large rafts just offshore. During winter they were found in the rocky shallows of the western beach subunits on several occasions. Most likely they were feeding on organisms of the mussel-barnacle community found on these rocks and almost nowhere else in the study area.

Merganser (Red-Breasted and Common).

These ecologically similar species are combined here because of difficulty in field separation.

Both species occurred the year around, and a few may have nested in the study area. They were present in number during spring migration, when they congregated around the salmon river estuary, presumably feeding on sandlance and salmon fry.

Substantial groups (primarily red-breasted) occurred during fall in the larger estuaries and low-intertidal margins. Mergansers were among the few species that frequented the central sand beach unit.

Bald Eagle.

Adult and immature eagles occurred the year around in the study area, but were not found to nest there. The Proutys, however, suspect the presence of a nesting pair near the lower margin of the Dude Creek meadows. At least four individuals were present in the study area during fall and winter.

Winter Shorebirds (Sanderling, Rock Sandpiper).

These were the shorebirds found in some number on winter beaches of the eastern and westernmost beaches. Although found in the same hundred yards of beach edge, there was some habitat separation. Rock sandpipers tended to occupy rocky patches, while sanderlings were often found in sandier spots. In the absence of rocks on eastern beaches, rock sandpipers tended to use spots with irregular surfaces such as the shell reefs of subunits VII and VIII.

Fall Shorebirds (Dowitcher, Least/Western Sandpiper, Snipe).

In early fall when sanderlings were scarce and rock sandpipers had not yet arrived, this group of shorebirds (except snipe) was common on study area beach margins and (unlike the winter shorebirds) along estuaries. They often occurred as mixed flocks that included the dunlin. Activity was centered on the silty or sandy intertidal flats.

By October most of these sandpipers were gone (Table 2), although dowitchers were found in small numbers through that month. Like many of the shorebirds, these species appeared to be more common during spring migration. They were essentially absent from the beaches during summer and winter, although least sandpipers appeared to nest in the Dude Creek meadows.

Migratory and summer resident/nesting snipe were conspicuous in study area uplands. Their spring displays were prominent over the Dude Creek meadows. Areas with considerable standing water were points of concentration for snipe in September and October.

Large Gulls (Glaucous-Winged Gull, Herring Gull).

These two closely related gulls often occurred together on study area beaches, the glaucous-winged being by far the most numerous. Neither was found to nest in the study area, but they (as a group) were abundant and ubiquitous the year round. Large flocks occurred in the spring and at times in the fall.

Their numbers on beaches were probably inversely related to the availability of "balls" of schooling capelin and sandlance offshore. These gulls foraged on all portions of the beach, being particularly active along the water's edge and along the flotsam lines left by recent high tides.

Mew Gull.

This abundant medium-sized gull was resident in the study area, and may have nested there in small numbers. It was commonly observed in large flocks, particularly in spring. Often it formed mixed flocks with other gulls, foraging on beaches and diving for schooling fishes. It was frequently observed immediately off the beach dabbling for small crustaceans in a few inches of water. Perhaps because of this plasticity in feeding strategy, it was found throughout the study area beaches in the largest numbers of any gull during fall and winter.

Bonaparte's Gull.

Non-breeding individuals of this small gull species were common during summer and fall. Bonaparte's gulls typically foraged in shallow waters, where they apparently concentrated on small fishes and invertebrates. Beaches appeared to be used only for resting sites: at this time the species formed large mixed flocks with other gulls, typically at estuary mouths.

Mammals

General Description:

Because of their generally secretive ways, mammals cannot be visually enumerated as readily as birds. Consequently, much of our data comes from analysis of sign. Because of the small volume of information accumulated per unit effort in this work, general observations from previous years were used to supplement 1981-82 data.

About 17 species of mammal representing nine families have been recorded from the study area. This faunal composition is typical of mainland northern southeast Alaska in most respects.

As the study area's physiography and vegetation are dynamic, so have been the mammal populations. Previously common species (e.g. fox) have died out and new ones (e.g. mink and moose) may be in the process of moving in. Those now established have demonstrated marked yearly variations. Few large mammals could be classified as "common", but a number of smaller ones could.

During the study period, general mammal densities appeared to be low to moderate compared to the previous few years. Densities were typically greatest along: 1) upper beaches, especially in the westernmost sununits remote from human settlement and adjacent to the rich Point Gustavus area, and 2) Dude Creek and portions of Good River, whose game trails link the western beaches with upland sites.

Species Accounts by Family:

Phocidae (Harbor Seal).

Seal population levels were high in the general area during our study. Consequently, up to a dozen seals were seen frequently in the study area despite scarcity of high-quality feeding or haulout habitat. The major estuaries, notably Salmon River, and western inshore waters were most often utilized. Occasionally, a few seals hauled out on the larger rocks of the western beach subunits.

Ursidae (Brown Bear, Black Bear).

Brown bears once occurred in the Dude Creek/western beach area and probably on far eastern beaches in the study area as well. The last record we know of was of a sow and cub along Dude Creek in the late 1960's.

Black bears were at low population levels during the study period; perhaps as few as 3 were present in the Dude Creek/western beach area. Bear tracks were seen on the beach only in subunit III. Sign was noted on the upper Good River and upper Dude Creek in fall 1981. Our last record was on 11 November 1981.

This was in contrast to 1979 and 1980 when black bear populations were higher and game trails along Dude Creek and Good River showed regular use. Highbush cranberries along these watercourses were heavily used by bears in those years.

Canidae (Wolf, Coyote, Red Fox).

There were apparently few wolves using the study area during fall/winter 1981-82. Sign of one to two wolves was occasionally noted along the Good River and two individuals were observed at the carcass of a winter-killed horse in February.

Wolf use of the Gustavus area is usually greatest when high population levels in the surrounding National Park combine with difficult winter conditions and low prey availability to force individuals into the proximity of people. This situation did not exist during our study, which perhaps accounts for the low level of documented wolf use.

Coyotes were the most evident large mammals of the beach; they or their sign were observed in all subunits. Although sign was not so frequently observed in the uplands and along watercourses, howling indicated the presence of coyotes in these areas during fall 1981 and

especially in February 1982 (during what is probably their mating time). Scats examined over the years suggest a broad diet emphasizing voles and birds up to the size of Canada goose and blue heron.

The relative prominence of coyotes during the study period underscores their apparent reciprocal relationship with wolves. Observations in past years have suggested that when wolves show regular use of the Gustavus area coyotes are less conspicuous.

Red foxes were once common in Gustavus, but declined around the 1920's, after coyotes became established. The last record in the Gustavus area was in 1968.

Mustelidae (Short-Tailed and Least Weasel, River Otter, Marten, Mink, Wolverine).

Short-tailed weasel sign was abundant, especially in the Dude Creek uplands in winter 1981-82. A recent decline in voles may have forced widespread foraging, notably in the semi-open Dude Creek meadows, where voles were the apparent target species. In previous winters, small tracks, possibly of the least weasel, were observed; however, the presence of this species has not been confirmed.

The often common river otter was relatively scarce in the study area during our period of observation. An otter was seen on lower Good River in September and tracks of one to four were observed on several occasions on the west, and central beach subunits II, III, and IV. Some sign was also noted on Dude Creek in winter. In other years "family" groups of up to six animals have been tracked and observed.

Because the light-footed and often arboreal marten leaves little sign under most conditions, its status is evident only when there is good tracking snow. Although marten can be numerous at times, the study period was a time of apparent average abundance. Tracks were scattered throughout forested areas of the Dude Creek uplands and associated meadow margins and occasionally crossed open meadows.

The mink has apparently moved only recently into the area, and is uncommon. Clear tracks were observed on 11 January 1982 along central Good River at the eastern edge of the study area.

The wolverine is also rare or absent in the study area. The most recent record from the area was on upper Dude Creek several years ago.

Cervidae (Moose, Deer).

Occasional moose wander through the Gustavus area from expanding populations to the north, but they have not yet become established. One set of tracks was observed in subunit VIII in September.

Deer are established on the Excursion ridge to the east and Pleasant Island to the south, but only one record exists for the study area. Sign was noted along lower Dude Creek once in the late 1960's.

Erethizontidae (Porcupine).

The porcupine has maintained relatively constant numbers in the study area over the past few years. Porcupine sign was observed in fall and early winter in several areas along Good River and Dude Creek where well-drained denning sites closely adjoin the lush swales preferred for foraging during the growing season. There are a few localized spots, especially along Dude Creek, where porcupine have caused some spruce tree mortality.

Sciuridae (Red Squirrel, Flying Squirrel).

Red and (presumably) flying squirrels are common only in the mature spruce forests along Good River and Dude Creek. Red squirrel populations fluctuate substantially; the study period appeared to be a time of "average" numbers. Flying squirrels are secretive and nocturnal; scattered observations were recorded at a feeder near Good River, but their abundance in the study area cannot be estimated.

Cricetidae (Voles).

Only the long-tailed vole was recorded from the study area, although certainly the red-backed vole and possibly the tundra vole occur as well. Long-tailed voles are at times very abundant in the Dude Creek and supratidal meadows. The last major population highs were about 1969 and 1974. A moderate peak occurred about 1980. A decline since that time put the population at generally low levels during the study period.

Soricidae (Shrews).

Shrews of undetermined species were noted in the study area. Dusky and wandering shrews have been collected from nearby localities, as has been a species of water shrew.

Domestic Animals.

Horses have grazed unrestricted for many winters in the upper beach meadows between the Good and Salmon Rivers. About eight individuals were present during our study. One animal that died of natural causes provided a considerable attraction for scavenging birds, coyotes and wolves.

No sign of domestic animals was seen in the Dude Creek uplands, except along lower Good River and in the immediate vicinity of Proutys'. Sign of dogs was noted occasionally in proximity to that of hunters or hikers, but we noted no instances of wide-ranging individuals. Domestic cats have been known to range into the meadow fringes on the west side of Good River.

FURTHER DISCUSSION AND CONCLUSIONS

In examining the conclusions of this report, the limitations of our data should be kept in mind. Survey methods were designed to generate indices of comparative abundance, rather than actual population estimates. The cumulative observation time was a small fraction of the total study period. And finally, this was a one-year study of a biological system notable for its annual fluctuations. Though we have included some inferences of change over longer periods, much more study is required before firm conclusions on most important topics would be warranted.

The Outlook for Cranes

As the Glacier Bay ice sheet began its retreat about 200 years ago, outwash rivers ceased their action. The Gustavus area, which had been a barren outwash plain, began to support vegetation. Since then progressive forestation has diminished the area of open meadow, until now only a relatively small proportion of Gustavus (primarily the Dude Creek uplands) remains open (Fig. 4).

Sandhill cranes clearly prefer to use the largest remaining wet, open meadows in the Gustavus area, a habit they adhere to elsewhere along the coastal flyway, as well as in the continental interior (Lovvorn and Kirkpatrick, 1981). Cranes have landed in Gustavus as long as the oldest residents can remember, although areas of concentration may have changed.

Areas remaining as wet meadows are those with the highest water tables. Natural creek entrenchment has lowered the water table in many areas and ditching has lowered it in others. Thus far, no ditches have been dug that interrupt the flow of ground or surface water into the Dude Creek meadows (although a new ditch will affect the country just to the southeast). Any lowering of the water table would accelerate the drying of the surface soils and the advance of forest into open meadows, a process already occurring naturally. Conversely, any activity raising the water table or directly removing trees and shrubs may enhance the habitat for cranes.

Despite the tendency for a few cranes to land in areas of heavy human use, a majority of cranes land in the most remote large meadows in Gustavus. This species also tends to seek remote sites in other areas along the Alaskan coast (notably the Copper River Delta) and in the continental United States (Lovvorn and Kirkpatrick, 1981). Cranes generally show strong fidelity to traditional landing sites (ibid. 1981), and the few that land in the Salmon River area may be the last adherents to an old pattern.

Currently, there is very little human activity on the Dude Creek uplands. Except for a single, newly-resident family, no one lives within sight of the principle crane landing areas. Should this situation change, the tolerance of cranes is uncertain, but very probably low. With substantial human activity or alteration of the upland habitat, abandonment of the area by cranes is a distinct possibility. The proposal for a subdivision at the southeast edge of the major eastern meadow is of concern in this context.

Birds of the Beach

Beach surfaces and landforms are kept youthful by wave action and isostatic rebound, both of which can be expected to continue into the forseeable future. Thus, the spectrum of plant communities and intertidal productivity should not change appreciably, although the positions of landforms and communities will change.

There is potential for various human modifications of the beaches. Ditching of uplands would probably channel more water into estuaries and reduce ground water moving through the beaches. The enlargement of existing estuaries might increase the carrying capacity of beaches for waterfowl, since these species seem to be attracted to water edge and large estuary habitat. For instance, Airport Slough and Glen's Ditch have both been enlarged by upland ditching and are important waterfowl habitat. However, ditching or vehicle rutting in sedge meadows may affect these valuable foraging areas detrimentally.

Extensive, uncontrolled use of beach areas by people, their machines, and their pets may also alter bird use of the area. Data suggest that mallards are quite resistant to human displacement; that wigeons and teal may be less so; and that geese likely respond to human presence by shifting their preferred use areas (at least during the hunting season). Current hunting pressure is not a problem because of the moderate number of hunters, limited access, and erratic presence of migratory birds.

Mammals

Although prediction of changes in mammal populations in response to possible habitat changes is difficult, certain general predictions seem warranted. Shrinkage of the Dude Creek meadows would mean reduction of long-tailed vole populations and a probable subsequent drop in short-tailed weasels and avian predators such as the short-eared owl and marsh hawk. The extension of forest might favor such species as squirrels, marten, and porcupine.

The clearest threat to mammals is habitat preemption by humans. In settled or intensely used portions of Gustavus, mammals larger than squirrels and weasels generally seem to be eliminated. Coyotes provide a partial exception to this rule, perhaps in part due to deriving protection from wolves in the vicinity of people. Yet, even they tend to avoid the most populous parts of Gustavus, including such prime foraging habitat as the Salmon River upland meadows.

Of particular concern are the corridors used by larger mammals to move between uplands and beaches. The major water courses and riverside forests provide such corridors in the Gustavus area. When interrupted by human settlement/activity, they become little used. The lower Salmon River has been almost completely disrupted as a corridor, and Good River and Rink Creek substantially so. Dude Creek is the last corridor to remain intact in the Gustavus area.

RECOMMENDATIONS

We have found no substantial cause for concern over present human activity in the study area. However, use appears to be increasing. Recent State land disposals and plans for development on private land suggest that this trend will continue. Future land disposal policy and management decisions will determine whether the wildlife and habitat values identified in this study are perpetuated.

We recommend that:

- Key wildlife habitat be retained in public ownership.

- Public lands in the study area be classified to protect and perhaps enhance 1) use of upland meadows by migrating cranes, 2) use of beaches and estuaries by migrating waterfowl, and 3) large mammal access to key habitat. In particular, plans for the area should,

  in the case of cranes:

  - avoid drainage of the Dude Creek uplands,

  - retain levels of human use compatible with continued occupation by cranes during fall and spring,

  - place special emphasis on protection of the major crane landing areas west of Dude Creek, and

  - allow for the future possibility of maintaining selected meadows free of encroaching brush and trees.

  in the case of waterfowl:

  - avoid upgrading access, especially to remote beach subunits,

  - provide Canada geese protection from excessive disturbance by foot or machanized traffic,

  - avoid drainage changes that diminish the extent or productivity of sedge meadows, and

  - provide for the channeling of any new upland drainage into existing sloughs and estuaries.

  in the case of mammals:

  - protect thoroughfare along Dude Creek, and

  - avoid improved access to western beach areas.

These recommendations do not comprise a complete or final list of requirements for successful wildlife management of the study area. For this reason, it is important that provisions be be made for monitoring the status of at least the cranes, geese and large mammals as a test of the effectiveness of future management strategies.

ACKNOWLEDGEMENTS

We thank Senator Richard Eliason for his concern over the fate of State lands in the Gustavus area and his support of research efforts. Don McKnight of the Alaska Department of Fish and Game was instrumental in assuring support for our efforts. Bob Howe provided information on his crane sightings in Gustavus. Dena Matkin assisted on several surveys, and Barb Streveler typed the original manuscript. Dara Miller, ADF&G typed the final report.

LITERATURE CITED

Lovvorn, J. R. and C. M. Kirkpatrick. 1981. Roosting Behavior and Habitat of Migrant Greater Sandhill Cranes. J. Wildl. Manage. 45(4):842-857.



Alaska Environmental Lobby, Inc.

204 N. Franklin Street, Suite 3 Juneau, Alaska 99801 907-586-2345

DUDE CREEK CRITICAL HABITAT AREA: HB312

Even the modest growth and development around small towns can have big consequences for the wildlife of Alaska. The case of Gustavus, in Southeast Alaska, is a good example. Half or more of the entire Pacific population of lesser sandhill cranes stop over in the Gustavus area during their Fall migration South. In years past, the cranes were dispersed over the whole Gustavus area, because wet meadows, their favorite habitat, were plentiful. But the construction of the airport and main roads, combined with natural forest succession, have severely reduced the wet meadows in the area. These meadows provided the cranes with rich food for their migration, shallow water for roosting, visibility for protection from predators, and remoteness from human activity. Most of the migrating cranes now concentrate in the Dude Creek area immediately west of Gustavus, one of the few areas where suitable meadows remain.

House Bill 312 would establish the Dude Creek Critical Habitat Area, for the protection and enhancement of the cranes and of the Dude Creek wet meadows, the key roosting area for the migrating cranes. The State owns almost all of the meadows--about 4100 acres presently managed by the Department of Natural Resources. The rest of the land (160 acres) is federally owned. Under the bill, the meadows would be open to public access, grazing, firewood harvesting, wildlife viewing, hiking and berry picking, as long as those activites didn't harm the cranes or their habitat. The Department of Fish and Game would develop a plan in consultation with the community of Gustavus and approved by the Board of Game for the management of the area.

Similar efforts to protect the flyway of the lesser sandhill cranes are being made in the four Pacific states, as well as in British Columbia. The concept of the Dude Creek Critical Habitat Area was endorsed in a community-wide referendum in Gustavus in January 1984, by a 66-25 vote. This bill has subsequently received the unanimous endorsement of the Gustavus Community Association.

The Alaska Environmental Lobby supports HB312 with enthusiasm. The sandhill cranes that stop over in Gustavus travel nearly statewide. Because of their distincitve profile, these handsome birds are often recognized at great distances as they fly. Although the critical habitat area is in Gustavus, it benefits all of Alaska.

Issue paper #5 prepared for the AEL by Brian Allen, 4/8/85

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP, SIERRA CLUB • SITKA GROUP, SIERRA CLUB
KNIK GROUP, SIERRA CLUB • DENALI GROUP, SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY
DENALI CITIZENS' COUNCIL • ALASKA FRIENDS OF THE EARTH • JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY
KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • ALASKA WILDERNESS GUIDES ASSOCIATION
SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL

HB

316

REPRESENTATIVE
SAM COTTEN
DISTRICT 15



P.O. BOX 296, EAGLE RIVER, AK 99577
POUCH V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

MEMORANDUM

TO: Members of the House Resources Committee
FROM: Rep. Sam Cotten
RE: HB 316, an act relating to navigable or public waters
DATE: April 10, 1985

The purpose of this bill is to clarify the right of the public to use public and navigable waters, as created by the Alaska Constitution, Article VIII, Section 14.

Public and navigable waters are defined by statute, AS 38.05.965 (12) and (16). Basically, public waters encompass a very wide range of water bodies. Navigable waters are basically those waters that are susceptible for use in commerce, mainly navigation. All public waters are navigable but not all navigable waters are public. Public waters are those that may be important for any public purpose, including wildlife habitat.

This bill clarifies the public's right to use and have access over water. It creates a remedy, namely, misdemeanor sanctions for any obstructions of that public right.

Currently, courts are the only recourse. A public or private party that is obstructed faces the task of suing the obstructor in superior court. This can be very expensive. HB 316 will make this access right more easily enforced, providing the public with a clearer standard.

The bill does not guarantee or allow any access over private land, except to the entent already provided by AS 38.05.127 over state land.

There is one case currently being handled by the Department of Law concerning the obstruction across a passage along the Talkeetna River. The bill, if it becomes law, would expedite abatement of such an obstruction.

y general. — It
the public notice
n applies equally
disposals actions.
Att'y Gen.
uirement of AS
not apply to the
extension that
e of unitization
s a measure to
of unitized oper-
n. November 25,

os. 2551, 2587),

- Where the last
r was less than a
re was not suffi-
to this section.
p. No. 1284 (File
d 8 (1976).
one of general
aper which con-
rest to the com-
rse readership is
. Moore v. State,
File Nos. 2551,

ation entitled
ng within 30
commissioner
ion to hold a

3.05.945(c)" was
section" in the
or of statutes in

ited; penal-
mpts to bar-
ot bid freely
public sale;
nt, hinders,
idding upon
by a fine of
an one year,
2 ch 61 SLA

Revisor's notes. — Formerly AS 38.05.355. Renumbered in 1984.

Sec. 38.05.965. Definitions. In this chapter, unless the context otherwise requires,

(1) "acquired land" means land belonging to the state including tide, submerged and shoreland which has been obtained by escheat, purchase, or any means other than by general land grant;

(2) "agricultural land" means land chiefly valuable for agricultural purposes;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

(5) "director" means the director of the division of lands of the Department of Natural Resources;

(6) "geothermal resources" means the natural heat of the earth at temperatures greater than 120 degrees Celsius, measured at the point where the highest-temperature resources encountered enter or contact a well or other resource extraction device, and includes

(A) the energy, including pressure, in whatever form present in, resulting from, created by, or that may be extracted from that natural heat;

(B) the material medium, including the geothermal fluid naturally present, as well as substances artificially introduced to serve as a heat transfer medium; and

(C) all dissolved or entrained minerals and gases that may be obtained from the material medium, but excluding hydrocarbon substances and helium;

(7) "grazing land" means land chiefly valuable for grazing purposes;

(8) "industrial and commercial land" means land chiefly valuable for industrial trade, manufacturing or business use;

(9) "lieu and indemnity land" means land which the state is entitled to select under the provisions of 38 Stat. 1214, as amended (48 USC 353) or a similar statute to compensate for land in place of surveyed rectangulars, which have been lost to the state by reason of deficient sections, prior rights, claims, withdrawals, reservations and other appropriations;

(10) "mineral land" means land prospectively valuable for mineral deposits;

(11) "multiple use" has the meaning given in AS 38.04.910;

(12) "navigable water" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

(13) "park and recreation land" means land chiefly valuable for public park and recreation use;

(14) "preference right forest lease" means a lease granted to a lessee whose United States Forest Service term special use permit was cancelled to allow the land under permit to be selected by the state;

(15) "preference right grazing lease" means a grazing lease granted to a lessee whose federal grazing lease was cancelled to allow the land under lease to be selected by the state;

(16) "public water" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest;

(17) "rule of approximation" is the rule which is applied in determining whether or not a lease complies with the area limits set forth in this chapter and regulations adopted under it and in keeping the boundaries of leased land coincidental with legal subdivisions; under the rule, if the area covered by a lease in excess of the permitted maximum is smaller than the area of any deficiency that would result by eliminating from the lease the smallest legal subdivision covered by the lease or application for lease, the excess area will be permitted to remain in the lease; if the excess area is greater than the deficient area would be, then the smallest legal subdivision will be eliminated from the lease;

(18) "shoreland" means land belonging to the state which is covered by nontidal water that is navigable under the laws of the United States up to ordinary high water mark as modified by accretion, erosion, or reliction;

(19) "state land" or "land" means all land, including shore, tide and submerged land, or resources belonging to or acquired by the state;

(20) "submerged land" means land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or further as may hereafter be properly claimed by the state;

(21) "tideland" means land which is periodically covered by tidal water between the elevation of mean high and mean low tides;

(22) "timber land" and "material land" mean state land chiefly valuable for materials, including, but not limited to, sand, stone, gravel, pumice, common clay, or timber and other forest products;

(23) "university land"

(A) means

(i) all sections 33 reserved to the university under 38 Stat. 1214, as amended;

(ii) all land granted to or reserved for the benefit of the university that retains its designation as university land;

Section 11. Mineral Rights. Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

Section 12. Mineral Leases and Permits. The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.

Section 13. Water Rights. All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Cross reference. — See note to Alaska Const., art. VIII, § 15.

Legislative intent. — The provisions in this article were intended to permit the broadest possible access to and use of state waters by the general public. Wernberg v. State, Sup. Ct. Op. No. 972 (File No. 1797), 516 P.2d 1191 (1973), rehearing denied, 519 P.2d 801 (1974).

Section 14. Access to Navigable Waters. Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Legislative intent. — The provisions in this article were intended to permit the broadest possible access to and use of state waters by the general public. Wernberg v. State, Sup. Ct. Op. No. 972 (File No. 1797) 516 P.2d 1191 (1973), rehearing denied, 519 P.2d 801 (1974).

The owner of the uplands has been stated to have the right of access for the purpose of navigation, but no right of possession of the land below high water mark as against another. 1959 Op. Att'y Gen., No. 1.

Free access may be exercised by means of wharf or other structure. — In Dalton v. Hazelet, 182 F. 561 (9th Cir. 1910), it was recognized that the right of free and unobstructed access may be exercised by means of a wharf or other structure over shoal water from the upland property to deep water. 1959 Op. Att'y Gen., No. 1.

Right to use foreshore. — The mere physical passage is not the only right involved in the right of access. The upland owner has the right to use the foreshore in such manner as is necessary for the complete enjoyment of his right. 1959 Op. Att'y Gen., No. 1.

Actionable use of tidelands. — Any use of tidelands in such a manner as to deny the upland owner access to the navigable waters would be actionable. 1959 Op. Att'y Gen., No. 1.

The Alaska Constitution allows the state to take riparian or littoral property rights for "beneficial or public uses" other than in aid of water navigation. Wernberg v. State, Sup. Ct. Op. No. 972 (File No. 1797), 516 P.2d 1191 (1973), rehearing denied, 519 P.2d 801 (1974).

Section 15. No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amendment effective October 14, 1972]

Cross reference. — For provisions relating to the limitation of entry into the fisheries of the state, see AS 16.43.

Effect of amendment. — The amendment approved August 22, 1972 (7th Legislature's HCS CSSJR 10) added the last sentence.

This section was derived from the White Act, 48 U.S.C. §§ 221, 222. 1961 Op. Att'y Gen., No. 3.

The first judicial application of this constitutional provision should properly be by an Alaska court. Reetz v. Bozanich, 397 U.S. 82, 90 S. Ct. 788, 25 L. Ed. 2d 68 (1970).

The White Act merely expressed the common law in prohibition against exclusive fishing rights. Grimes Packing Co. v. Hynes, 11 Alaska 154, 67 F. Supp. 43 (D. Alas. 1946), vacated and remanded on other grounds, 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

It did not permit a monopoly of fishing in Indian citizens as a conservation measure. Hynes v. Grimes Packing Co., 11 Alaska [illegible]

other grounds, 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

Under the language of the White Act (48 USC § 222) the Secretary of Interior was prohibited from granting any exclusive or several right of fishery in favor of the Natives on the Karluk River on Kodiak Island. The court held that the prohibition against granting and exclusive right of fishery applied to commercial fishing by natives equally with fishing companies, and that the secretary could not grant to the occupants of an Indian reservation the privilege of exclusive commercial fishing rights. 1960 Op. Att'y Gen., No. 9, citing Hynes v. Grimes Packing Co., 12 Alaska 348, 337 U.S. 86, 69 S. Ct. 968, 93 L. Ed. 1231 (1949).

Constitutionality of ch. 186, SLA 1968. — See Bozanich v. Reetz, 297 F. Supp. 300 (D. Alas. 1969); Reetz v. Bozanich, 397 U.S. 82, 90 S. Ct. 788, 25 L. Ed. 2d 68 (1970).

Quoted in Metlakatla Indian Community [illegible]

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 316

Title: Navigable or Public Waters

Sponsor: Cotten,Shultz,MW Miller, & Phillips

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Land & Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact

Prepared By: Mike Vediner

Phone: 465-2400

Division: Land & Water Management

Date: 4-9-85

Approved by Commissioner: Ronald D Arnold, Deputy

Date: 4-9-85

Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

HB

323

REPRESENTATIVE
BEN GRUSSENDORF

P O Box 928
SITKA, ALASKA 99835
(907) 747-8458

RULES COMMITTEE
LEGISLATIVE COUNCIL

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
TENAKEE

Alaska State Legislature

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3824
(907) 465-3720

House of Representatives

SPEAKER OF THE HOUSE

April 12, 1985

POSITION PAPER
HB 323 - Pelican Land Grant

The City of Pelican has been the unfortunate victim of a series of legislative and administrative decisions over several years. Unlike other Alaska communities, Pelican has never received any land under the municipal entitlement program.

The original entitlement act called for any municipality to receive ten percent of the "vacant, unappropriated, unreserved" state lands available at the date on which the municipality applied for entitlement. That date of application varied, of course, from community to community, which created administrative difficulties as state land records were not adequate to determine [illegible] acreage was actually conveyed to the State on such and such a day. The state was receiving title to federal lands under terms of the Statehood act, and there was often uncertainty over the timing and location of "new" state lands being transferred from the federal government. In response to the situation, the Legislature in 1979 required established communities to apply for land entitlement by a fixed date.

Unfortunately for Pelican, as of that fixed date, the State had not received any land from the federal government in Pelican's vicinity. With no nearby State lands, there was zero percentage available for Pelican's entitlement rather than the ten percent envisioned by earlier statute. The city, however, was assured by the Director of Lands, Mike Smith, that it would somehow be accommodated in the future when the State did gain lands in its vicinity.

The State has since received lands from the federal government, including 8.9 acres directly adjacent to the City of Pelican. Current statutes, however, allow the transfer of land to Pelican only for public and charitable uses, not for the community expansion which Pelican needs and wants. A municipal entitlement for Pelican is possible only through enactment of the proposed legislation in HB323. The bill corrects an inequitable situation, putting Pelican on the same basis as other Alaska communities which enjoy municipal land entitlements.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

March 28, 1985

POSITION PAPER

RE: HB 323

SPONSOR: Representative Grussendorf

Program Effects of Bill

The bill would grant 10 acres of state land to the City of Pelican. The property in question was recently annexed to the city, and contains the location of the city's sanitary landfill. The city council has considered purchase of the property to allow for community expansion, and while it has not met to formally endorse HB 323, its support appears certain. The council was very supportive of the acquisition when the city received a copy of a letter from Speaker Grussendorf to Commissioner Wunnicke, indicating that such a bill would be introduced. There is a shortage of developable land in Pelican, and the acquisition of this property would be a significant step in alleviating this shortage.

The property is surveyed, and no fiscal note is anticipated.

Comments

The purpose of the bill is to make state land available to the city which the city is not otherwise entitled to receive. A brief history follows.

The state's original municipal land entitlement statutes allowed established cities to select up to 10% of the vacant and unappropriated land within their boundaries by a time certain to be set by the city. At the same time, the state was receiving title to federal lands under the terms of the Statehood act. Transfers between the state and local governments became somewhat confusing, due to uncertainty over the timing and location of state acquisition of federal lands. The legislature responded to the situation in 1979, by requiring established communities to apply for their land entitlement by a fixed date.

Unfortunately for Pelican there was no state land available for municipal selection as this date arrived then passed, as the state had not received title to federal lands in or near Pelican. Thus, the city did not apply for entitlement lands, and found itself without the authorization to receive entitlement properties, except under AS 38.05.810. This citation requires that the land be used for a general public purpose and not for settlement as the city wishes. Likewise, the city could not receive land under AS 29.18.201-.213, as they were an established and not a new municipality, and, as mentioned, their "window of opportunity" had closed.

This bill is simply to rectify the situation, and provide Pelican with the same rights to property enjoyed by other communities. It expands the scope of municipal land entitlements by allowing Pelican, as an established community, to use the entitlement for other than a general public purpose, but the language of the bill appears sufficiently specific to prevent a precedent from being established.

The Department supports passage of this legislation.

Emil Notti, Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 323

Title: Land Grant to Pelican

Sponsor: Grussendorf

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact

Prepared By: Mike Vedine Phone: 465-2400

Division: Land and Water Management Date: April 15, 1985

Approved by Commissioner: Date: April 15, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84


HB
3555

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 355

Title : An Act authorizing the establishment & implementation of onboard observer programs; & providing an effective date

Sponsor : Thompson

Requestor : House Resources

Date of Request : _____

FISCAL DETAIL

Agency Affected : ADF&G

BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

K Nutgrass

Prepared by : Captain James R. Nutgrass — Phone : 269-5509

Division : Fish & Wildlife Protection — Date : 2/21/86

Approved by Commissioner : [signature] — Date : 2/24/86

Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 355
February 21, 1986
SUPPORT

HB 355 - "An Act Authorizing the establishment and implementation of onboard observer programs; and providing for an effective date."

The Department of Public Safety is in support of House Bill No. 355.

The Department of Public Safety supports House Bill 355, an act authorizing the establishment and implementation of an onboard observer program.

The State has experienced in recent years a sharp decline in the shellfish stocks being available in the commercial crab fisheries.

In conjunction with the Department of Fish and Game management program, this Department has over the years expended a considerable amount of effort through inspection of vessels and shore plants, extended vessel patrol days and air patrol hours monitoring the fishing activity of the State's crab fisheries.

The State has experienced in recent years an increase in numbers of catcher/processor vessels in the crab fishery since the first one was operational in 1973.

The catcher/processor type vessel has proven to be economically superior in its ability of being mobile in catching and processing crab at any time or place within a fishing ground.

This situation does create a management and enforcement problem by the inability to monitor catches being processed and to receive or accurately monitor catch composition.

The major concern that exists in this situation is the inaccurate management data being received and the capability of a catcher/processor type vessel harvesting undersize crab undetected, thus placing the present and future stocks in jeopardy by the illegal take and the lack of accurate data for properly managing the resource.

Since 1973 to the present the following type of violations have been documented involving catcher/processor vessels:

The taking of king crab after the closure of the fishery and reporting the poundage on a shellfish ticket as being tanner crab and processing sublegal crab.

The quota system that is established for a specific area allowing specified poundage of crab to be harvested can be affected by the misinformation provided on shellfish tickets, which is detrimental to sound management and an economical disadvantage to the majority of the hard working, honest fishermen.

Robert J. Sundberg
Commissioner

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 355

Title : An Act authorizing the Board of Fisheries to establish onboard observer program.

Sponsor : _____

Requestor : Governor

Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept. of Fish & Game

BRU : Commercial Fisheries BRU and Components

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		355.3	400.3	445.3	490.3	535.3
TRAVEL		37.5	42.5	46.3	50.9	55.3
CONTRACTUAL		3.2	3.2	3.8	4.0	4.3
SUPPLIES		4.0	4.0	4.6	4.8	5.1
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS		-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS		-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING		400.0	450.0	500.0	550.0	600.0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		400.0	450.00	500.0	550.0	600.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		0	0	0	0	0
PART-TIME		20	20	20	20	20
TEMPORARY		0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

Prepared by : GW Thornbrough Phone : 465-4210

Division : Commercial Fisheries Date : 1/30/86

Approved by Commissioner : _____ Date : _____

Agency : Department of Fish and Game

Distribution (by Agency preparing fiscal note) :

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

KODIAK FISH & GAME ADVISORY COMMITTEE
211 Mission Rd.
Kodiak, Alaska 99615

January 7, 1986

JAN 13 1986,

Alaska State Board of Fish
Box 3-2000
Juneau, Alaska 99802

Dear Board Members,

The Kodiak Fish & Game Advisory committee met on January 3, 1986 to discuss time and area closures for trawl gear in king crab sensitive areas. Approximately seventy eight people were in attendance. As mentioned in our January 4 letter to you, the K.A.C. recommends specific time and area closures for hard on the bottom trawling and strongly urges protection of Kodiak's rebuilding king crab stocks.

One important issue discussed was ADF&G funding for observers on trawl vessels to document incidental catch statistics on all species, i.e. salmon, halibut, tanner crab, etc. The K.A.C. voted unanimously, vote 9-0, to put pressure on the ADF&G and the legislature stressing the importance of obtaining funds for observer programs for all fisheries which ADF&G needs to obtain incidental catch information.

It was brought to the K.A.C. attention that $100,000 in fines from the "Baranof case" was earmarked to be spent on observers. The committee is also aware that in most cases fines from violations are deposited directly into the state's general fund. However, in this case, since the $100,000 from the "Baranof case" has been specifically earmarked already for use in funding observers, the K.A.C. requests your assistance in assuring this much needed observer money <u>does not</u> get deposited into the General Fund but into the ADF&G observer program.

Cordially,

Sid Omlid, Chairman
Kodiak Fish & Game Advisory Committee

cc Governor Sheffield
Don Collinsworth, Commissioner ADF&G
Senator Fred Zharoff
Representative Dave Thompson

UNITED FISHERMEN OF ALASKA

Jack Cadigan
Executive Director
907-586-2820
1-800-478-FISH

Mr. Anthony Calio
NOAA Administrator
U.S. Department of Commerce
14th and Constitutional Ave. N.W.
Washington, D.C. 20730

18 February 1986

Dear Mr. Calio:

United Fishermen of Alaska have been supporting efforts for better control and enforcement of all fisheries, both foreign and domestic. We today testified in support of legislation before the (Alaska) House Special Committee on Fisheries that would authorize on-board observers for domestic vessels operating in state waters. We plan to continue lobbying hard for this legislation so that it will clear the legislature this session.

The state pilot program has a fiscal tag of $300,000. This is, however, insufficient to meet what is really needed. We therefore solicit your support for the allocation of $250,000 submitted by the Alaska office of NMFS for a pilot observer program. This should meld the federal and state governments into creating a multi-funded comprehensive observer program, and set the stage for continued teamwork for a common goal.

Your interest and assistance in this significant proposed step is most appreciated.

Very respectfully,

J. J. Cadigan
Captain, USCG(Ret)

Copy to: Rep. Peter Goll (Ch. Spec Comm. on Fisheries)
Rep Adelheid Herrmann (Ch. House Resources)
Senator Arliss Sturgelewski (Ch. Senate Resources)

BUSINESS • FISHERMEN • PROCESSORS • INDIVIDUALS

ALASKA COASTAL COMMUNITIES ALLIANCE

P.O. Box 382 Kodiak, Alaska 99615 Phone (907) 486-5096

Kevin O'Leary
486-5488
try after 4:00

March 21, 1985

Senator Arliss Sturgulewski
Senate Resources Committee
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Sturgulewski,

The Alaska Coastal Communities Alliance would like to express its support for Senate Bill 79 which would authorize an onboard observer program on certain fishing vessels engaged in Alaskan fisheries. We agree that direct benefits would be derived through enhanced management, more reliable data gathering, and improved compliance.

In addition to the obvious improved enforcement and compliance, the data gathered could certainly aid in the management of a particular fishery or fisheries. New knowledge gained could include, but definitely not limited to; predator-prey relationships between species of different fisheries, the effects that catching non-targeted species (incidental catch) have on one fishery by another fishery, the optimum timing or area of harvesting a given fishery to reduce any impact on other fisheries or to enhance the impact on the primary fishery, the benefits of a total ecological approach to managing a fishery versus a single species approach, and of course many other areas of needed new information.

Of particular concern to many fishermen and processors lately is the predator-prey and incidental catch relationships between fisheries. Examples of some questions that reflect on these relationships are in the following sentences. If one fishery targets on and harvests a predator species, does it directly enhance the yields and fortunes of another fishery engaged in harvesting a prey species? If one fishery takes a proportionately high incidental catch of a species being targeted on by another fishery, does it significantly detract from the yields and fortunes of the other fishery? We feel these and other questions could best be answered through the implementation of an onboard observer program.

Our support for the onboard observer program is not without qualifications however. First and foremost among these is the addition of subsection 14(D) to section 2AS 16.05.050 dealing with fees being assessed to the operators of vessels within the given fishery to pay for the onboard observer program. We are adamant and unanimous in our opposition to the assessment of any new and extraneous fees to cover the cost of this program. We feel the operators of these vessels and processors are currently paying sufficient fees (such as gear, vessel, and crew licenses, and etcetera) and taxes to support this and other management programs. We further feel that with the improved compliance resulting from this program the State should realize particular cost

savings through reduced enforcement burden and overhead. Again, we ask that the offending 14(D) subsection be stricken from this bill.

A related area of concern is the increased operational costs incurred by the vessel operator due directly to the onboard observer program. We feel an actual reimbursement to these vessel operators needs to be considered. An example being the cost of food. Some operators pay insurance premiums based on crew size and with the addition of an observer onboard could be liable for increased insurance costs. Costs which we might add are already out of reach of some vessel operators and owners. In the case of insurance, simple reimbursement of increased premiums is not enough. We feel that the State should bear the full liability for the observer beyond the gross negligence of the operator or vessel owner. Some sort of hold-harmless clause protecting the vessel operators from frivolous or occupational related lawsuits needs to be considered to make this bill palatable to the majority of our fishermen.

If the above concerns are addressed then we feel we can be wholeheartedly behind the passage of Senate Bill 79. This bill properly enacted could go a long ways toward enhancing and protecting the various fisheries of Alaska.

In closing we wish to thank you for taking the time to consider this letter and wish you the very best in your decisions and deliberations. Again, thank you.

Sincerest Regards,
ALASKA COASTAL COMMUNITIES ALLIANCE

Slim M. Jorgensen
Member-Director

cc: Alliance's Member Organizations
Representative David W. Thompson
Senator Fred F. Zharoff

ADF&G

On-Board Observer Program for groundfish and shellfish fisheries in the Central Gulf of Alaska, Alaska Peninsula and Bering Sea, and Southeast Alaska.

This document is designed to provide information and guidance for administrators in preparation of a budget document for a Westward groundfish--shellfish observer program. Attached is a detailed operational plan for groundfish observation procedures including the purpose, objectives and detailed sampling procedures. Included also is a table showing the proposed scheme of effort distribution relative to quarter, management area and species for the proposed budget by line item.

The primary purpose of this observer effort would be to monitor and document the composition of catches as they come aboard commercial groundfish and shellfish vessels during fishing operations. This purpose would be achieved through accomplishment of the following objectives:

1. Monitor the composition and catch per effort of target, incidental and prohibited species catches made by commercial shellfish-groundfish operations relative to time and area fished.

2. Study the spatial and temporal distribution of prohibited species catches in an effort to determine if cyclic spatial and/or temporal relationships can be detected for specific species groups.

3. Distribute observer effort on the various species based on the times and areas of primary fleet emphasis.

4. Work closely with the various user groups to learn the problem areas relative to prohibited species by-catches and the extent to which the fleet can avoid these species.

5. Continue to evaluate the sampling strategy, data collection procedures, and sampling methodologies used to collect, record and summarize shipboard observer data.

6. Determine the statistical validity of expanding prohibited species catch rates into the catch by the total fleet on a time-geographic area basis. Revise existing procedures, if necessary.

7. Continue to develop summaries and overviews of observer results. Attempt to develop routine summaries which answer the many questions posed by the various user groups.

8. Attempt to improve the data exchange on observer results with NMFS. The goal of this coordination would be to develop an integrated observer reporting system which includes the domestic as well as joint venture and directed foreign fishing effort.

9. Develop a data summarization program with the flexibility to summarize the accumulated data base on any desired group of parameters so as to satisfy needs of diverse user and agency groups.

This observation effort would be allocated quarterly on a prioritized basis among four fisheries management areas (Kodiak-Chignik, South Alaska Peninsula, the Bering Sea, and Southeast Alaska, and six species (Pacific cod, pollock, Tanner crab, Dungeness crab, king crab and sablefish). In terms of species priority, the catcher processing operations targeting on king crab, cod and pollock would have first priority, with the shore-based fleet targeting on cod and pollock having second priority. Effort would be most intense during the April-June quarter due to heavy effort for pollock and sablefish, with the least effort scheduled during the June-September quarter when the primary effort is for Pacific cod in the Bering Sea. This prioritization scheme is incorporated into the effort distribution table (Table 1) by quarter, management area and species group.

A breakdown of cost factors for this proposed observer effort by line item is shown in Table 2. Review of the proposed expenditures by line item shows that 88% of the costs would be in personnel services. These personnel services costs are based on Fishery Technician III salaries and the observers being paid sea pay for seven days a week during one-half of their total employment period. Sea pay is presently paid at the rate of 3.5 hours per weekday at sea

and 15 hours per weekend day or holiday while at sea. This calculates to 85 hours per full week at sea including base pay.

As mentioned above, this observation effort would be distributed over five fisheries-Pacific cod, king crab, pollock, sablefish and Tanner crab. The fisheries for cod and pollock use bottom trawl gear, those for king and Tanner crab utilize pots, and that for sablefish utilizes bottom trawls, longline gear as well as pots. While the majority of observation effort would be in the trawl and crab pot fisheries due to their higher potential for prohibited species catches, effort would be expended in the sablefish longline fishery on a time available basis due to its potential for catching halibut.

The final product of the observer data collection procedure would be estimates of the total catches of each species by haul. These estimates are coupled with the basic haul parameters from each tow via an integrated Lotus/R-base program which can summarize catches according to nearly any desired group of variables. In-depth operational plans for observation procedures including subsampling, effort distribution and data handling protocols trawl, have been developed and are available for use in this program.

Table 1. Distribution of FY 1987 shellfish and groundfish on-board observer effort (man-months) by quarter, management area, and species group.

Area	Species Group	Quarter Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
Kodiak	PC-Pol	6	8	-	8
	Tanner	2	-	-	-
	Dungeness	-	2	0.5	-
	Sablefish	-	2	-	-
Shumagin	PC-Pol	2	2	2	-
	Tanner	2	-	-	-
Bering Sea	PC-Pol	3	9	6	3
	Tanner	-	-	-	-
	King Crab	-	-	-	2
Southeast	Rockfish	1.5	2	0.5	1.5
	Sablefish	-	2	0.5	-
	Flatfish	1.5	-	-	1.5
Totals		18	27	9.5	16

Table 2. Shipboard observer cost distribution.

ON-BOARD OBSERVER PROGRAM
Shellfish/Groundfish FY87
Proposed Expenditures

LINE ITEM			COST
100 Personal Services			
FB I - 6.0 MM @ 2518/mo.			$ 15.1
FT III - 64.6 MM @ $2185/mo.			140.9
900 hrs. sea pay @ 16.78/hr	(2 FB I's)		15.1
7316 hrs. sea pay @ 13.14/hr	(18 FT III's)		96.1
			267.2
Employee Benefits @ 33%			88.1
		Total	$355.3
200 Travel			
18 Roundtrip Kodiak-Dutch Harbor @ $854			$ 15.4
1080 days per diem on vessels @ 20			21.6
6 days commercial per diem @ $80			0.5
		Total	$ 37.5
300 Contractual Services			
Xerox charges			$ .6
Contingency inter-island air charter			1.0
Telephone charges			0.8
Printing of forms			0.2
Computer supplies			0.6
		Total	$ 3.2
400 Commodities			
Sampling Equipment:			
Plastic baskets			$ .5
Scales			.5
Repair & equipping of survival equipment			.6
Misc. sampling equipment			.4
Raingear			.5
Professional and scientific supplies			1.5
		Total	$ 4.0
		GRAND TOTAL	$400.0

MEMORANDUM State of Alaska

DRAFT

TO: Molly McCammon
Special Staff Assistant
Office of the Governor

DATE: February 4, 1986

FILE NO:

TELEPHONE NO: 465-4100

FROM: Steven Pennoyer
Deputy Commissioner
Department of Fish and Game

SUBJECT: Onboard Observer Bills; SB 79 and HB 355

Enclosed is a bill analysis and fiscal note for HB 355, Representative Thompson's onboard observer bill. It is identical to the department's bil SB 79, except that it contains no provision to fund the observer program through a fee structure system, or any other method.

During the last few years, there has been a growing interest, on the part of the public and the federal and state agencies, to develop an onboard observer program for the domestic fisheries. All feel that such a program is needed to provide basic biological data, particularly in the case of groundfish, as the domestic fleet replaces the foreign fleet. Observers can also be used to enforce regulations, such as those dealing with size and sex restrictions in the king and Tanner crab fisheries. Any effective observer program will have to be legally achievable in both federal and state waters and be funded.

The Magnuson Fishery Conservation and Management Act (MFCMA) allows the federal government to place observers on domestic fishing vessels. This authorization is by statute so does not require implementing regulations. The Board of Fisheries has authority to require onboard observers by regulation. Both the board and the North Pacific Fishery Management Council in 1984 decided to work towards a goal of complimentary onboard observer programs in state and federal waters. Since the regulatory mechanisms are in place, the major hurdle has been funding.

The department, in conjunction with the Department of Law, developed SB 79 as the state's answer to the funding problem. The primary purpose of that bill is to provide a source of funding, via permit fees, for the program. Declining revenues have caused reductions in operational budgets. The department cannot fund the observer program without taking cuts in other ongoing projects of high priority to the management of established fisheries. One option is for the program to fund itself. Originally, we thought this concept might be feasible. As it turns out, we are now unsure. The federal government cannot use such a fee structure to fund a domestic observer program since it is forbidden by the MFCMA. If the state accepts the king crab delegation, and I believe we will, we

the Magnuson Fishery Conservation & Management Act!

most likely will fall under that prohibition. Since the king crab fishery is one of the two fisheries most in need of observers, this loss of a funding source will gut the program. Additionally, there seems to be a great deal of opposition from fishermen and processors for a fee structure. They are saying the state should fund the program out of current revenue sources.

The bottom line is that there is no money for an onboard observer program in the FY 86 or FY 87 budget. The department priority for such a program is above the increment level, and it is very unlikely the Legislature will approve a permit fee structure. Since the Board of Fisheries has already adopted a program identical to that suggested in the bill, the legislation is no longer necessary for the department to legally implement such a program if funds were made available.

The key point to get across to the Legislature and the public is that passage of either bill, without some funding source, will not cure the problems they perceive are happening.

The enclosed fiscal note and proposal reflect the minimum level observer program that both we and the Board of Fisheries feel is needed to provide basic coverage of current fisheries. Any increase in the king and Tanner crab harvests or implementation of additional prohibited species catch levels in the groundfish fisheries would require increased funding above the level in the fiscal note.

Enclosures

cc: J. Ayers
B. Clasby
K. Parker

5 AAC 39.141. ONBOARD OBSERVER PROGRAM. (a) The Board of Fisheries finds that, in particular fisheries, observers on board fishing vessels would greatly enhance management, primarily by facilitating information gathering, and by improving regulatory compliance. Onboard observers may be the only practical fishery monitoring, data-gathering, or enforcement mechanism in some Alaska fisheries where a large component of vessels, such as catcher/processors and floating processors, rarely or never enter Alaskan ports. The Board of Fisheries, therefore, finds it necessary to authorize the Alaska Department of Fish and Game to implement onboard observer programs in particular fisheries when the board determines that it

(1) is the only practical data-gathering or enforcement mechanism;

(2) will not unduly disrupt the fishery; and

(3) can be conducted at a reasonable cost.

(b) Onboard observers of the Departments of Public Safety and Fish and Game shall have free and unobstructed access to inspect the catch, equipment, gear or operations of the fishing vessel, tender or processor to which assigned while that vessel is

(1) within waters under the jurisdiction of the state;

(2) taking or intending to take any species of fish; or

(3) transporting or processing any species of fish.

(c) Onboard observers must be as unintrusive to vessel operations as practicable and must make the scheduling and scope of their activities predictable and practicable.

(d) Onboard observers are not required to obtain criminal or administrative search warrants to conduct their duties.

(e) Onboard observers shall carry out such scientific and other duties as deemed necessary or appropriate to manage, protect, maintain, improve, and extend the fish and aquatic plant resources of the state.

Authority: AS 16.05.251

5 AAC 39.145. ESCAPE MECHANISM FOR SHELLFISH AND BOTTOMFISH POTS. A sidewall of all shellfish and bottomfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. For shrimp pots, the opening may be on the top of the pot. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tie-down strips secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

Authority: AS 16.05.251
AS 16.10.125

Domestic Observers: Is it Time to Start Watching Ourselves?

by John van Amerongen

"I feel like a doctor trying to find the cure for AIDS." That's how fisherman Bart Eaton described his frustration at the first meeting of the NPFMC workgroup on domestic observers. The seven-man team met in Seattle October 14 at the Wharf restaurant.

The challenge for the workgroup is to come up with a method for implementing observer coverage on U.S. vessels operating within the 200-mile FCZ. It's an ironic twist to the whole concept of Americanization —once the foreigners have gone, we have to start watching ourselves.

Since the Magnuson Act was amended in 1982 and provisions were made for an observer surcharge to foreign fleets, the NMFS goal has been to place an observer on every foreign fishing vessel. Actual coverage is somewhat less. During 1984 the Foreign Fisheries Observer Program provided more than 24,000 days of observer coverage on foreign and joint-venture fisheries. Actual coverage attained in the Bering Sea-Aleutians amounted to 86.3 percent and Gulf of Alaska coverage was better than 90 percent.

The federally mandated role of the observer on a foreign vessel is twofold. Not only is he present to record catch data, but he is also there to ensure the vessel is operated in accordance with current U.S. fishery regulations.

As observers train their binoculars from the foreign to the domestic fleet, three key questions must be answered: 1) Will domestic observers continue to be both biologists and policemen? 2) How many will be needed to adequately cover the domestic fleet? 3) Who's going to pay for them? These questions, of course, are predicated on the assumption that observers are necessary at all.

Why do we need observers on U.S. vessels? According to Russ Nelson, who coordinates the NMFS observer program at the Northwest and Alaska Fisheries Center, observer data is necessary to round out and verify the data collected by NOAA vessels on their annual stock assessment surveys. As fishermen themselves often argue, survey data does not always mirror information collected from actual fishing vessels involved in an ongoing fishery.

Nelson, who did not attend the October meeting, admits that observers aren't necessary for all information on the domestic catch. Data on the total retained catch is generally available when domestic vessels off-load, particularly when they off-load unprocessed fish.

When the catch is filleted, formed, or minced, however, it becomes much more difficult to generate information on the size, sex and age composition of the catch. Nevertheless, the focus isn't just on catcher/processors. Important data on incidental catches and discards of prohibited and low-quota species need to represent all vessels in the fishery if it's to be accurate. And accuracy counts.

If biologists and fishery managers don't get enough information, as Nelson puts it, "They have to live with the data they have."

According to Nelson, there are data gaps already developing as a result of Americanization. A prime area of concern right now is Shelikof Strait. Both foreign and joint-venture fisheries will likely be eliminated next year due to a decline in pollock stocks and an increase in domestic effort.

Shelikof stock assessments in the past have been based on a combination of survey and foreign observer data. Said Nelson, "For the past 4-5 years we've used both sources." Soon there will be no foreign observer data on that fishery, one less piece in the puzzle.

Faced with a shortage of verifiable data, managers take a more cautious, conservative approach to OY figures and quotas—at least that's what fishermen claim. Since nobody wants to take responsibility for wiping out a resource, ties go to the fish, not the fishermen.

Better domestic coverage, some argue, would not only decrease the possibility of a manmade resource disaster, but it would likely result in more liberal quotas for verifiably healthy stocks. Accurate recording might also open the door to retention of non-target species that would otherwise have to be discarded. That's the bottom-line reason for fishermen to support the domestic observer program—but unfortunately, nothing is simple.

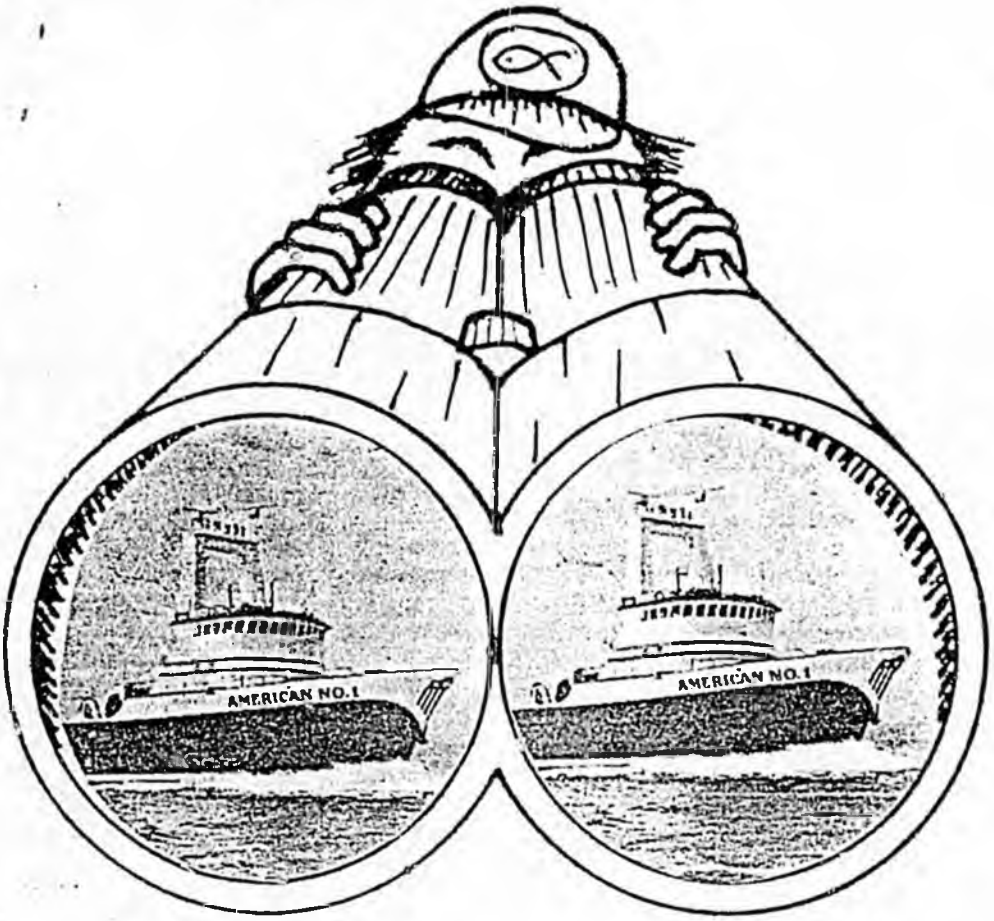
As Councilman Rudy Peterson put it, "It's a tough nut."

The first tough question is whether domestic observers should also be policemen. Most of those attending the October workgroup meeting agreed that fishermen would not likely welcome a Big Brother onboard.

Councilman Oscar Dyson questioned whether it would be reasonable to expect observers to report violations by domestic fishermen. "Unless the observer is trained," Dyson noted, "you put him in a hostile environment . . . he's not going to do it."

Bob Alverson, chairman of the workgroup, noted that observers and their logs would be subject to subpoena, whether the intent was scientific, or not.

The next big question deals with observer coverage. Just how many



If biologists and fishery managers don't get enough information . . . they have to live with the data they have.

observers would it take to handle the domestic fishery? According to Russ Nelson, and these were his personal ideas, "somewhere between 25 and 30 percent" coverage would be enough to get a scientific picture of the catch.

Nelson's estimate was a far cry from Oscar Dyson's suggestion to keep one observer in Kodiak year round and assign him to special target fisheries as needed. Dyson's philosophy was to "start small . . . and see where it goes."

One observer would be enough, said Nelson, if he were sampling a four-boat fishery. Larger fleets would require more observers to obtain a statistically representative sampling. Said Nelson, "You need to get enough to make some judgments about the data you get."

If you want observers to be enforcement officers in the domestic fishery, coverage would have to be closer to 100 percent, Nelson said. It's safe to say that would cause a more than small rumble in the fishing community, especially if fishermen had to pay for the service themselves. And that brings up the third big question: Who's going to pay for this?

Foreign fleets pay for the observers on their own vessels through the observer surcharge authorized by Congress in 1982, but there are no funds currently available to fund domestic observers. Some fishermen think the federal government should pick up the tab for Americanization of the observer program, but Rudy Peterson thinks the Feds have other ideas.

Commenting on the federal trend toward user fees, Peterson said, "I don't think anybody in government has any other idea than this (funding) coming out of the industry."

That makes the nut particularly tough, especially when you figure in insurance cost. Some consider insurance liability the ultimate roadblock to the implementation of the program. Given the large awards available to crewmen injured at sea, what's to prevent an injured observer—or worse, the family of a dead observer—from suing the vessel owners for millions? The question has yet to be answered fully.

Bob Alverson brought with him some estimates of liability insurance premiums. According to Alverson, $2 million worth of liability insurance for one observer on a dragger in the Bering Sea would cost the vessel owner about $1800 a month. That's just for the insurance; the cost of the observer would be extra.

There are some in the industry who claim nothing will happen until the insurance crisis is solved. Still, there are plenty of other questions to be answered: Is this just a program for draggers, or are pot vessels and longliners eligible as well? Surely longliners would benefit from closer scrutiny of dragger bycatch, so wouldn't they be considered users and share the cost? What about salmon fishermen and crabbers? What if there isn't a bunk available for the observer? What if the skipper refuses to take an observer aboard? Who's going to administer the program, the Council or NMFS? And what if the Council can't get the information it needs to make sound management decisions?

Fishermen with answers, opinions, or further questions about the domestic observer program can attend the next meeting of the domestic observer workgroup to be held in conjunction with the Anchorage meeting of the North Pacific Fishery Management Council. Call the Council office (907) 274-5467 for time and location. Those not able to attend can send written comments to Ron Miller at the Council office (P.O. Box 103163, Anchorage 99501) or contact the following workgroup members: Bob Alverson, Rudy Peterson, Bart Eaton, John Winther, Barry Fisher or Oscar Dyson. □

HB

3803

Introduced: 4/17/85
Referred: Resources

IN THE SENATE BY HALFORD

SENATE BILL NO. 285

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the recoupment conveyance for land at Illinois Creek; and providing for an effective date."

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

* Section 1. PURPOSES AND FINDINGS. (a) The purposes of this Act are to permit the state to recoup certain land selection rights provided for in sec. 606(d)(6) of Public Law 97-468 and to realign the ownership of land as between the state, Cook Inlet Region, Inc., and the United States in order to

(1) facilitate land management;

(2) create private land ownership patterns that encourage mineral development in appropriate areas;

(3) facilitate implementation of the Alaska Native Claims Settlement Act; and

(4) assure maximum public benefit from selections made under the Alaska Statehood Act.

(b) The legislature finds that the recoupment conveyance of land at Illinois Creek is a matter of statewide significance, is in the general public interest, and will accomplish the purposes intended.

* Sec. 2. APPROVAL OF TRANSFER. (a) The commissioner of natural resources may convey certain land described in the "Out of Region Agreement" dated November 18, 1982, between Cook Inlet Region, Inc. and the state to the United States for reconveyance to Cook Inlet Region, Inc., in return for recoupment of selection rights under the Alaska Statehood Act

and other consideration described in the "Out of Region Agreement." Notwithstanding AS 38.05.125, a conveyance by the commissioner of natural resources under this subsection transfers all of the right, title, and interest of the state in the land, including the subsurface mineral estate as authorized by sec. 12(b)(11) of Public Law 92-204 as amended by sec. 606(d)(1) of Public Law 97-468.

(b) The commissioner of natural resources may grant those easements described on a map entitled "Illinois Creek Recoupment Conveyance-1985."

* Sec. 3. WAIVER. AS 38.50 does not apply to a conveyance under sec. 2(a) of this Act.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

COMMITTEE REPORT

HOUSE

5/3

(9)

4/17/85

FURTHER: FINANCE

Date: May 2, 1985

The Committee on RESOURCES has had HB 383

"An Act relating to the recoupment conveyance for land at Illinois Creek; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 383 (Resources) [✓] same title [ ] new title

and recommends it do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS		MEMBERS HAVING OTHER RECOMMENDATIONS:
Shultz	Dick Shultz	
Herrmann	Willis J. Herrmann	
Thompson	David W. Thompson	
Sund	John L. Sund	
Wallis	J. Kay Wallis	

Dick Shultz

Co-Chair CHAIRMAN

Original sponsor: Szymanski

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 383 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the recoupment conveyance for land at Illinois Creek; and providing for an effective date."

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

* Section 1. PURPOSES AND FINDINGS. (a) The purposes of this Act are to permit the state to recoup certain land selection rights provided for in sec. 606(d)(6) of Public Law 97-468, to realign the ownership of land as between the state, Cook Inlet Region, Inc., and the United States in order to

(1) facilitate land management;

(2) create private land ownership patterns that encourage mineral development in appropriate areas;

(3) facilitate implementation of the Alaska Native Claims Settlement Act; and

(4) assure maximum public benefit from selections made under the Alaska Statehood Act.

(b) The legislature finds that the recoupment conveyance of land at Illinois Creek is a matter of statewide significance, is in the general public interest, and will accomplish the purposes intended.

* Sec. 2. APPROVAL OF TRANSFER. (a) In return for the recoupment of selection rights under the Alaska Statehood Act and other consideration described in the "Out of Region Settlement" dated November 18, 1982, between the Cook Inlet Region, Inc. and the state, the commissioner of natural resources may convey the following described land to the United

States for reconveyance to Cook Inlet Region, Inc.:

(1) Township 15 South, Range 6 East, Kateel River Meridian
Sections 11 - 14
Sections 23 - 25

(2) Township 15 South, Range 7 East, Kateel River Meridian
Sections 17 - 20
Sections 29 - 30

(3) Township 16 South, Range 4 East, Kateel River Meridian
Sections 1 - 2
Sections 11 - 14
Sections 23 - 27
Sections 34 - 36

(4) Township 16 South, Range 5 East, Kateel River Meridian
Sections 6 - 9
Sections 16 - 36

(5) Township 17 South, Range 4 East, Kateel River Meridian
Sections 1 - 3
Section 12

(6) Township 17 South, Range 5 East, Kateel River Meridian
Sections 1 - 12

(b) Notwithstanding AS 38.05.125, a conveyance by the commissioner of natural resources under this section transfers all of the right, title, and interest of the state in the land, including the subsurface mineral estate as authorized by sec. 12(b)(11) of Public Law 92-204 as amended by sec. 606(d)(1) of Public Law 97-468.

(c) The commissioner of natural resources may grant those easements described on a map entitled "Illinois Creek Recoupment Conveyance-1985."

* Sec. 3. WAIVER. AS 38.50 does not apply to a conveyance under sec. 2(a) of this Act.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

April 29, 1985

Mike Penfold, State Director
Bureau of Land Management
701 C. Street, Box 13
Anchorage, AK 99513

Subject: F-44008

Dear Mr. Penfold:

The State of Alaska's land conveyance priority list (p. 28) for federal fiscal year 85 (FFY 85) includes state selection F-44008 (Township 7 South, Range 8 West, F.M.) near Anderson. I am aware that your staff has previously been unable to convey this land to the state due to two factors: competing Cook Inlet Region, Inc. (CIRI) selections; and two military withdrawals (PLO 1847 and PLO 547).

Recently, CIRI relinquished its land selections near Anderson, thereby helping to facilitate the transfer of this land to the state. Unfortunately, however, the military withdrawals have not yet been removed. I therefore request your assistance to help expedite the removal of these excess military withdrawals as they apply to Sections 4, 5, 7 and 8. I am informed the withdrawal revocation process is underway. Conveyance of this land to the state will enable us to work directly with the City of Anderson to address its urgent need for land associated with community development activities. Thanks for your assistance.

Sincerely,

Tom Hawkins

Tom Hawkins
Director

TH/GG/vlf

DELIVER TO: Mike Vediner LOCATION: Comm-Juneau
FROM: Gary Gustafson LOCATION: Anch-DLG AK89
TELEPHONE/TELECOPIER #: TOTAL NUMBER OF PAGES: 1
TRANSMITTING ON/SPEED: DATE: 4-30-85 TIME: 10:50
PHONE FOR PROBLEMS-NAME/NUMBER: Vicki 265-4346
COMMENTS:

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

May 1, 1985

The Honorable Richard Shultz
Co-Chairman
House Resources Committee
Pouch V
Juneau, AK 99811

Dear Representative Shultz:

Re: HB 383 - Illinois Creek Recoupment Conveyance

My staff and I have received a copy of the ten questions on HB 383 which were posed to you on May 1 by Resource Committee staff. Although several of these questions were discussed before the committee this morning by Gary Gustafson and myself, I am pleased to respond to each of the questions.

1. What are the resource values of the land being relinquished by the state (surface and subsurface)?

   Preparatory to signing the November, 1982 Out-of-Region Agreement with CIRI, the department conducted a resource inventory analysis of the Illinois Creek land and also consulted with other stage agencies. The Illinois Creek region is largely a mountainous area of treeless tundra east of the Yukon River. The surface resource values were determined to be relatively insignificant in comparison to other land statewide. The only natural resources identified as significant were hard rock minerals, particularly lead, zinc, silver and gold. The hard rock mineral resources were determined to be in the top 30 percent statewide by the department's 1978 Resource Assessment System inventory.

2. Why did the state select the lands originally if they do not possess any significant resource values presently?

   The Illinois Creek area was selected as part of the massive 40 million acre state selections conducted in 1976 and 1977. In those days, it was commonplace for the state to select entire township blocks. This particular area was selected because it was one of the last available tracts near the Yukon River and mineral terranes were considered favorable.

3. What lands are available to the state in return and why won't these lands be available otherwise?

   HB 383 allows the state to recoup another 43,000 acres of general grant selection rights which can then be applied between now and 1994 to any vacant, unappropriated and unreserved federal land in Alaska. There are currently about 35 million acres of federal land (managed by BLM) available for selection. In addition, it is likely that additional land, not presently selectable, will become available for selection before 1994. This could include land currently encompassed by Native overselections, excess military withdrawals and other archaic federal withdrawals, which might be revoked in the near future. In short, the state will have the opportunity to obtain replacement land for Illinois Creek of greater value and utility. These lands will be available otherwise, but the recoupment provision allows the state another 43,000 acres to use to select them.

4. What factors in the original Cook Inlet Land Trade caused the Out-of-Region Agreement between CIRI and the state?

   This question was discussed and answered in my letter to you dated April 30, 1985.

5. What types of land did Cook Inlet Region and the state trade originally?

   All kinds. The specific lands and values thereof are discussed at great length in the 1976 State-Federal Land Use Planning Commission Report on the Cook Inlet Land Trade which has been provided you under separate cover.

6. Why does Cook Inlet presently have a nomination priority over future state land selections outside Cook Inlet Region?

   Section I.C.(1)(c) of the "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area" which was approved by Congress and the Alaska State Legislature, provides that any CIRI out-of region land nomination "shall be superior to and take precedence over any state selection made after July 18, 1975". The vast majority of the state's pending land selections were filed after this date.

7. Why is there a waiver in this bill of AS 38.50 which requires legislative approval of land exchanges involving values over $5 million?

   Because HB 383 is not a land exchange. Rather, it allows the state to convey patented land back to the U.S. (for reconveyance to CIRI) in return for an equal acreage amount of new selections which can be applied elsewhere. The land thus conveyed to CIRI would occur pursuant to CIRI's entitlement under ANCSA.

8. Why are there no legal descriptions of the land being relinquished by this legislation?

   Legal descriptions were provided at the committee hearing and the bill has now been amended to incorporate them.

9. What aspects of the Out-of-Region Agreement will CIRI be legally required to carry out if this legislation is enacted?

   The only discretionary provision of the agreement is Section 7 - the Illinois Creek recoupment conveyance. This section was made discretionary because it required legislative approval. If HB 383 passes, the entire agreement must be implemented by CIRI and the state. The department has asked the Attorney General's Office (AGO) to review HB 383 so as to ensure that this is the case. The AGO has responded affirmatively.

10. DNR records show that at the time of state selection there were 457 unpatented federal mining claims filed within the 43,000 acres cited in this bill. What information is known about these claims and the resource value of this land?

    Actually, state records reveal the presence only of state mining claims on the 43,000 acres (filed entirely by Anaconda), not federal claims. According to the Division of Mining, these claims remain in good standing. Any transfer of the Illinois Creek land would occur subject to these claims. Also, it is my understanding that should this conveyance occur, Anaconda intends to relinquish its state claims in favor of a leasehold system with CIRI. As you know, the Anaconda Mineral Corporation is in strong support of this legislation.

I appreciated the opportunity to testify in support of HB 383 before the committee this morning. Department staff will also be present at tomorrow's committee meeting to discuss the bill and respond to further questions.

As you know, I also addressed the City of Anderson's land status situation in my April 30 letter. I would like to add that the department agrees to consult the City of Anderson should any land use application be submitted to the state in the adjacent area. Should Anderson be granted a municipal entitlement, you may count upon the department being responsive.

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Commissioner

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

The 1976 approval of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Region (hereafter "Terms and Conditions") by the Alaska State Legislature signaled the end of a protracted period of Native, State and federal disagreement, litigation and negotiation. Since that time, the parties have worked together closely and diligently to fairly implement the provisions of that very complicated legislation.

During the past 30 months, the Department of Natural Resources, with cooperation from other State agencies, has worked with Cook Inlet Region, Inc. (CIRI) and other interested parties to finalize one of the last major aspects of the Terms and Conditions document. This aspect is most logically described in two parts, as follows below.

First, at the end of 1982, the State and CIRI signed an agreement concerning their respective rights to select and receive certain federal land outside the boundaries of the Cook Inlet Region. Essentially, the agreement identified a pool of approximately 30 townships of State-selected land which CIRI could select to fulfill its remaining out-of-region land entitlement. In return, CIRI waived its blanket priority right of nomination over existing State-selected lands, thus allowing the State to prioritize and receive the remainder of its previous selections in an orderly and expedited manner. This agreement obviated the possibility that the parties might resort unnecessarily to the complex and unknown results of the "strike and select mechanism" set out in the Terms and Conditions document.

The second area of agreement, and the primary subject of this letter, concerns a proposal by CIRI that approximately 43,000 acres of its remaining out-of-region selection entitlement be fulfilled with State land located near Illinois Creek, approximately 50 miles southwest of the village of Galena, and 20 miles east of the Yukon River. However, because these lands are already patented to the State, and the transfer includes the subsurface estate (as authorized by federal law), I believe legislative authorization of this proposal would be appropriate. Therefore, in anticipation of legislative consideration of this proposal during the 1985 session, I would like to explain the key components of this proposal.

If authorized by enabling legislation, the State will transfer to CIRI approximately 43,000 acres of land in partial fulfillment of CIRI's out-of-region land entitlement. In return, the State will receive a full acre-for-acre recoupment of the lands through additional selection rights to be applied to other available federal lands. Also, CIRI will waive its priority rights over the State to nominate for its own selection any future State land selections, thus precluding the need for the State to subject itself to the aforementioned "strike and select" mechanism.

I believe legislative approval of this proposal is in the best interests of the State for the following reasons:

1. This land is already included in the 30-township pool of land which CIRI may select to fulfill its out-of-region entitlement as provided in the November 18, 1982, State/CIRI Out-of-Region Agreement. This means that these lands have already been reviewed for transfer to CIRI by appropriate State agencies, and the requisite access and other public interests have been addressed and protected. Other than hard-rock mineral values (lead, zinc, silver, gold) the Illinois Creek area is not known to possess any significant resource values.

2. The hard-rock mineral rights (which are CIRI's major interest) have already been completely alienated from State ownership by claims filed by Anaconda Mining Company. CIRI and Anaconda have a working agreement which will significantly increase the changes for development of the resource. Anaconda has already stated its support for the proposal in writing, and there are no other mining claimants in the area. The State's sovereign authority to levy severance, income or other taxes on mineral production would not be affected by implementation of the proposal.

3. CIRI's waiver of its nomination priority over future State land selections will ensure that State selections are not subject to competition from CIRI for fulfillment of the State's remaining statehood land entitlement.

4. CIRI will waive any claim to lands within the TAPS Corridor between the North Slope Borough and the Yukon River. This will enable the State to be the sole entity able to select land within this important interior transportation corridor.

5. The interests of the local people will be fully considered. By terms of the original exchange legislation, CIRI must obtain certain approvals from local Native corporations before they may obtain title to any lands outside of their region. Gana-a'Yoo, Ltd., the Galena village corporation closest to the Illinois Creek area, has already indicated in writing its support of this proposal.

6. It will move the State and CIRI near the end of the major implementation issues of the Terms and Conditions document.

In advocating legislative approval of this proposal, I wish to point out that it is doubtful that this land would be selected today by the State, given our more sophisticated natural resource information base and selection processes, and that the only known resource value (hard-rock minerals) has already been alienated from State ownership.

Legislative approval of the proposal will put behind us the vast majority of the many difficult implementation issues raised by the Terms and Conditions. Your timely and thoughtful consideration of the proposal is therefore appropriate and encouraged.

Sincerely,

Esther C. Wunnicke
Commissioner

cc: George Kriste, CIRI
John Shively, Governor's Office

bcc: Tom Hawkins, DLWM
Gary Gustafson, DLWM
Pedro Denton, Mining
Jim Barnett, Deputy Commissioner
Marlyn Twitchell, Governor's Office

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM MAY 1, 1985

TO: REP. DICK SHULTZ, CO-CHAIR
HOUSE RESOURCES

FROM: COMMITTEE STAFF

RE: HB 383 ILLINOIS CREEK

At your request I have reviewed HB 383 and offer the following comments.

The subject of HB 393 involves the relinquishment of 43,000 acres of State land to the Federal Government for their conveyance to Cook Inlet Regional Corporation.

In return via an "Out of Region Agreement", the state could select an equivalent acreage from the Federal Government elsewhere in the state.

The following questions regarding this transaction would seem appropriate;

1. What are the resource values of the land being relinquished by the state? (surface and sub-surface)

2. Why did the state select the lands originally if they "do not possess any significant resource values presently"? (see fact sheet, page 1, paragraph 3)

3. What lands are available to the state in return, and why wouldn't these lands be available otherwise ?

4. What factors in the original Cook Inlet Land Trade caused the Out of Region Agreement between Cook Inlet Region and the State?

5. What types of land did Cook Inlet Region and the State trade originally?

6. Why does Cook Inlet Corporation presently have a "nomination priority over future state land selections outside Cook Inlet Region"? (see fact sheet, page 1, last paragraph)

7. Why is there a waiver in this bill of AS 38.50 which requires legislative approval of land exchanges involving values over 5 million dollars in?

8. Why are there no legal descriptions of the lands being relinquished by this legislation?

9. What aspects of the "Out of Region Agreement" will Cook Inlet be legally required to carry out if this legislation is enacted?

10. DNR records show that at the time of State selection there were 457 unpatented federal lode claims filed within the 43,000 acres cited in this bill. What information is known about these claims and the resource value of this land?

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 383

Title: Illinois Creek

Sponsor: Szymanski

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact

Prepared By: Mike Vediner

Phone: 465-2400

Division: Land and Water Management

Date: April 30, 1985

Approved by Commissioner: Norm D Arnold, Deputy

Date: April 30, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

ILLINOIS CREEK DESCRIPTION

T 16 S, R 4 E Kateel River Meridian

Section 1: ALL
Section 2: ALL
Section 11: ALL
Section 12: ALL
Section 13: ALL
Section 14: ALL
Section 23: ALL
Section 24: ALL
Section 25: ALL
Section 26: ALL
Section 27: ALL
Section 34: ALL
Section 35: ALL
Section 36: ALL

± 8,960 acres

T 17 S, R 4 E Kateel River Meridian

Section 1: ALL
Section 2: ALL
Section 3: ALL
Section 12: ALL

± 2,560 acres

T 16 S, R 5 E Kateel River Meridian

Section 6: ALL
Section 7: ALL
Section 8: ALL
Section 9: ALL
Section 16: ALL
Section 17: ALL
Section 18: ALL
Section 19: ALL
Section 20: ALL
Section 21: ALL
Section 22: ALL
Section 23: ALL
Section 24: ALL
Section 25: ALL
Section 26: ALL
Section 27: ALL
Section 28: ALL
Section 29: ALL
Section 30: ALL
Section 31: ALL
Section 32: ALL
Section 33: ALL
Section 34: ALL
Section 35: ALL
Section 36: ALL

± 16,000 acres

T 17 S, R 5 E Kateel River Meridian

Section 1: ALL
Section 2: ALL
Section 3: ALL
Section 4: ALL
Section 5: ALL
Section 6: ALL
Section 7: ALL
Section 8: ALL
Section 9: ALL
Section 10: ALL
Section 11: ALL
Section 12: ALL

± 7,590 acres

T 15 S, R 6 E Kateel River Meridian

Section 11: ALL
Section 12: ALL
Section 13: ALL
Section 14: ALL
Section 23: ALL
Section 24: ALL
Section 25: ALL

± 4,480 acres

T 15 S, R 7 E Kateel River Meridian

Section 17: ALL
Section 18: ALL
Section 19: ALL
Section 20: ALL
Section 29: ALL
Section 30: ALL

± 3,840 acres

KAH:cif/185:6

CIRI

COOK INLET REGION, INC.

April 30, 1985

The Honorable Richard Schultz
House of Represe...atives
State of Alaska
Juneau, Alaska 99811

Re: House Bill No. 383

Dear Representative Schultz:

We have been asked to provide the House Resources Committee with background information about H.B. 383 (Illinois Creek Recoupment Conveyance). More specifically, it is our understanding that the Committee has requested answers to eight questions. In the very short time available to us we have attempted to assemble this information and it is presented below on a question-by-question basis.

Several of the questions concern aspects of the Cook Inlet Land Exchange which was passed by the Alaska Legislature in March of 1976, over nine years ago. While we are happy to provide this information for the Committee's review, I would like to point out that the land exchange was very complicated in nature and received more public, legislative, and judicial scrutiny than any land exchange in Alaska's history.

1. Identify all lands CIRI received in the Cook Inlet Land Exchange (including maps).

The Cook Inlet land exchange was a three-way exchange among the State, Federal Government, and Cook Inlet Region, Inc. (CIRI). Maps showing the locations of the lands involved, and a specific list of the acreages involved, are found on pages 2-4 of Attachment A. This attachment, entitled "A Report to the Senate and House of Representatives Resources Committees of the Alaska State Legislature on the Proposed Cook Inlet Land Trade (March 6, 1976)" was prepared by the Joint Federal-State Land Use Planning Commission for Alaska. This report was prepared by the Planning Commission at the specific request of the House and Senate Resources Committees during their deliberations on the Cook Inlet land exchange. The report

CIRI BUILDING 2525 "C" STREET P.O. DRAWER 4-N ANCHORAGE, ALASKA 99509
(907) 274-8638 TELECOPIER (907) 279-8836

represents the most unbiased and professional review of the merits of the land exchange that was done at that time.

II. What is the value of the lands involved in the Cook Inlet Land Exchange for both the State and CIRI?

Economic evaluation of resources covering an area as large as that included in the Cook Inlet land exchange is difficult at best. The values used during debate on the land exchange are shown in Table 1 of Appendix E to the Land Use Planning Commission Report cited above.

III. What is the value of the mineral resources involved at Illinois Creek?

As the result of valid mining claims previously filed under state law by Anaconda Mining Company, title to the mineral estate in these lands already has passed into private hands. As the Committee may appreciate, a mining company's assessments of value are derived at the cost of substantial investments in exploration, and are therefore considered proprietary in nature. However, like virtually all mineral prospects in Alaska, the present value of mineral resources on these lands is subject to the extreme variables of future development costs and world market conditions. CIRI and Anaconda have a working agreement which they believe will significantly increase the chances for development of this resource. The State, of course, will retain its full sovereign authority to regulate and to impose severance or other taxes upon the mineral resources in these lands.

IV. What is the number of total acres nominated under the original agreement?

The exact meaning of this question is not clear to us. However, it appears to address the acreage nominated by CIRI under its out-of-region selection entitlement. While the formal nomination process for out-of-region lands did not occur because the State and CIRI consummated an Out-of-Region Selection Agreement, had CIRI nominated lands they would have totaled 180 townships. While some of these lands would have been federal lands not selected by the State, probably in excess of 70%, or 126 townships, would have been lands already selected by the State. These State-selected lands would have been clouded with a potential priority of CIRI's selection rights. Implementation of the Out-of-Region Agreement, of which the present legislation is a part, will virtually eliminate this nomination process as a cloud on State selection of federal lands.

V. What is the nature of public easements along rivers and lakes on CIRI lands?

CIRI has taken the lead among Native Corporations in promoting use of all its land for public recreational purposes, not just along lakes and streams. Attachment B shows an example of CIRI's newspaper ads soliciting public use of CIRI lands. Moreover, CIRI also has entered into land exchanges with the federal government which would ensure public ownership of important recreational lands (e.g., the public fishing site at the confluence of the Kenai and Russian Rivers). Finally, public easements under ANSCA also have been placed on all CIRI lands, as has been done on all Native conveyances.

VI. Why was AS 38.50 waived in the Illinois Creek Recoupment Legislation?

Because H.B. 383 is not a land exchange. The values received by the State include nonquantifiable values which would not fit A.S. 38.50 procedures. For example A.S. 38.50 applies to land exchanges where the lands to be exchanged have been specifically identified. In this situation, the State will recoup an equivalent acreage of selections, but exactly which lands it will select are unknown at this time. To ensure that the State receives at least equal value, this matter has been presented to the Legislature for its review of all values involved.

VII. Why did Cook Inlet select petroleum-producing lands?

In fulfilling its selection entitlement CIRI selected lands having a multitude of resource capabilities including timber, agriculture, grazing, gravel, and hardrock minerals as well as lands with oil and gas potential. Any entity selecting lands for management of a broad resource base would logically include lands with oil and gas potential.

VIII. What is the total resource value of CIRI vs. state lands?

The exact nature of this question is unclear. If it refers to the resource values of lands involved in the Cook Inlet land exchange, the information may be found as described in the response to question #2 above. If it refers to the resource values of the Illinois Creek lands vs. lands the State will recoup through additional selection of equal acreage, the answer can not be given because the recoupment acreage has not yet been identified. However, since the mineral values have already been alienated from state ownership at Illinois Creek, and since the surface values are generally considered to be low, the recoupment lands would likely be at least as valuable, and probably of greater value, than the resource value the State presently retains at Illinois Creek. It should be noted

that much of the value the State will receive in exchange for the Illinois Creek lands are not direct resource values, but other values such as the ability to obtain title to other state selected lands, which could otherwise be selected by CIRI, in an orderly and expioited manner.

As many of the questions are related to the "Out-of-Region Agreement" signed by the State and CIRI, I am including a copy of that agreement as Attachment C for your information.

The information we have supplied above is a good faith attempt to answer the eight questions as we understand them. If there is any additional information which we can provide, we will do our best to make it available to the Committee as soon as possible. To ensure that the Committee has as much time as possible to review this information, we are supplying copies of this letter, and attachments, to all Committee members.

Your consideration of the legislation is very much appreciated.

Yours truly,

COOK INLET REGION, INC.

Roy M. Huhndorf
President

RMH:cif/213:6

cc: House Resources Committee Members

Attachments

A. Joint Federal-State Land Use Planning Commission Report to the Senate and House of Representatives Resources Committees of the Alaska State Legislature on the Proposed Cook Inlet Land Trade (March 6, 1976).

B. CIRI's Public Use and Access Program

C. State-CIRI Out-of-Region Agreement

Land Dept

ATTACHMENT A

"COOK INLET" REPORT

733 W. FOURTH AVE.
ANCHORAGE, ALASKA

FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

A REPORT TO THE SENATE AND HOUSE OF REPRESENTATIVES
RESOURCES COMMITTEES OF THE ALASKA STATE LEGISLATURE
ON THE PROPOSED COOK INLET LAND TRADE

MARCH 6, 1976



The Joint Federal–State Land Use Planning Commission for Alaska was created by Congress and the Alaska Legislature to provide a statewide land use planning process that will insure the economic development of the State in a manner that is compatible with the social and economic well-being of the public, their interests, and the environment.

The Commission also is to improve coordination and resolve conflicts between the State, Federal government, and private landowners in the State, and recommend laws, policies and programs to the President, Congress and the Governor of Alaska for a coordinated comprehensive statewide land use planning process.

The Commission, created by the Alaska Native Claims Settlement Act of 1971, is headed by the Governor of Alaska or his full time Co-Chairman, and by a Federal Co-Chairman appointed by the President of the United States. Four Commissioners are appointed by the Secretary of the Interior, and four by the Governor of Alaska.

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

A REPORT TO THE SENATE AND HOUSE OF REPRESENTATIVES RESOURCES COMMITTEES OF THE ALASKA STATE LEGISLATURE ON THE PROPOSED COOK INLET LAND TRADE

This report is a summary of the primary considerations underlying the recommendation of the Commission on the proposed Cook Inlet Land Trade. It is submitted in response to a request for Commission review and recommendation made on February 11, 1976 by the Resources Committees of the Alaska State House of Representatives and Senate and by the President of the Senate, Senator Chancy Croft, on February 17, 1976.

The Commission's recommendation is:

> That appropriate legislation be passed authorizing the Cook Inlet Settlement under the terms and conditions of P.L. 94-204.

CONTENTS

ITEM	PAGE
SYNOPSIS OF PROPOSED LAND TRADE	1
Map - Current Land Status	2
Map - Proposed Cook Inlet Land Exchange	3
Table - Proposed Cook Inlet Land Exchange	4
THE COMMISSION'S ROLE	6
Commission Involvement in Cook Inlet Selection Problems	6
Commission's Review	7
PRIMARY CONSIDERATIONS	
Overall Considerations	8
Legal Considerations	9
Land Use Considerations	10
Economic Considerations	11
RECOMMENDATIONS	13
Cook Inlet Land Trade	13
Future Land Trades	13
APPENDICES	
Appendix A - Commission Involvement in Cook Inlet Land Selection	
Appendix B - Alternatives to Land Settlement	
Appendix C - Legal Issues	
Appendix D - Land Use and Planning Implications Related to Proposed and Existing Federal and State Reserves	
Appendix E - Cook Inlet Land Trade: Some Economic Considerations	

SYNOPSIS OF PROPOSED LAND TRADE

Section 12 of Public Law 94-204, passed by Congress on January 2, 1976, together with an agreement entered into December 10, 1975, by representatives of the Department of the Interior, Cook Inlet Region, Inc., and the State of Alaska, which is incorporated by reference in the Act, sets out the terms and conditions of the Cook Inlet Land Trade. The major elements of this complex trade are:

.....Agreement by Cook Inlet Region to shift more than half of its statutory entitlement under ANCSA away from the Cook Inlet area and, with the consent of other regions and villages, into adjacent regions.

.....Conveyance by the Federal government of approximately 50 townships of land to the State of Alaska above the entitlement provided in the Alaska Statehood Act, as well as key tracts such as Campbell Airstrip, Campbell Point, Point Woronzof, and Goose Lake in the Anchorage bowl in exchange for approximately 20.5 townships of State land to be conveyed to the United States for the benefit of the Cook Inlet Region and certain of its village corporations. This results in an increase of total State land selections of approximately 30 townships.

.....Conveyance by the Federal government of approximately 10,000 acres in fee and 220,000 acres of subsurface rights outside of known producing oil fields in the Kenai National Moose Range and certain other lands to Cook Inlet Region, Inc., in addition to the lands received from the State. The lands received by Cook Inlet are in complete satisfaction of its entitlement under Section 12(c) and Section 14(h)(8) of ANCSA.

A map illustrating the current land status of the region and one delineating the lands proposed for exchange with an accompanying chart of the size of the tracts are on the following pages. Full details of the settlement may be found in the agreement which is reproduced in House Report 94-729, dated December 15, 1975.

State ratification of the endorsement requires legislative concurrence no later than sixty days after the convening of the second session of the Ninth Alaska State Legislature, or by March 12, 1976.

SYNOPSIS OF PROPOSED LAND TRADE

Section 12 of Public Law 94-204, passed by Congress on January 2, 1976, together with an agreement entered into December 10, 1975, by representatives of the Department of the Interior, Cook Inlet Region, Inc., and the State of Alaska, which is incorporated by reference in the Act, sets out the terms and conditions of the Cook Inlet Land Trade. The major elements of this complex trade are:

.....Agreement by Cook Inlet Region to shift more than half of its statutory entitlement under ANCSA away from the Cook Inlet area and, with the consent of other regions and villages, into adjacent regions.

.....Conveyance by the Federal government of approximately 50 townships of land to the State of Alaska above the entitlement provided in the Alaska Statehood Act, as well as key tracts such as Campbell Airstrip, Campbell Point, Point Woronzof, and Goose Lake in the Anchorage bowl in exchange for approximately 20.5 townships of State land to be conveyed to the United States for the benefit of the Cook Inlet Region and certain of its village corporations. This results in an increase of total State land selections of approximately 30 townships.

.....Conveyance by the Federal government of approximately 10,000 acres in fee and 220,000 acres of subsurface rights outside of known producing oil fields in the Kenai National Moose Range and certain other lands to Cook Inlet Region, Inc., in addition to the lands received from the State. The lands received by Cook Inlet are in complete satisfaction of its entitlement under Section 12(c) and Section 14(h)(8) of ANCSA.

A map illustrating the current land status of the region and one delineating the lands proposed for exchange with an accompanying chart of the size of the tracts are on the following pages. Full details of the settlement may be found in the agreement which is reproduced in House Report 94-729, dated December 15, 1975.

State ratification of the endorsement requires legislative concurrence no later than sixty days after the convening of the second session of the Ninth Alaska State Legislature, or by March 12, 1976.

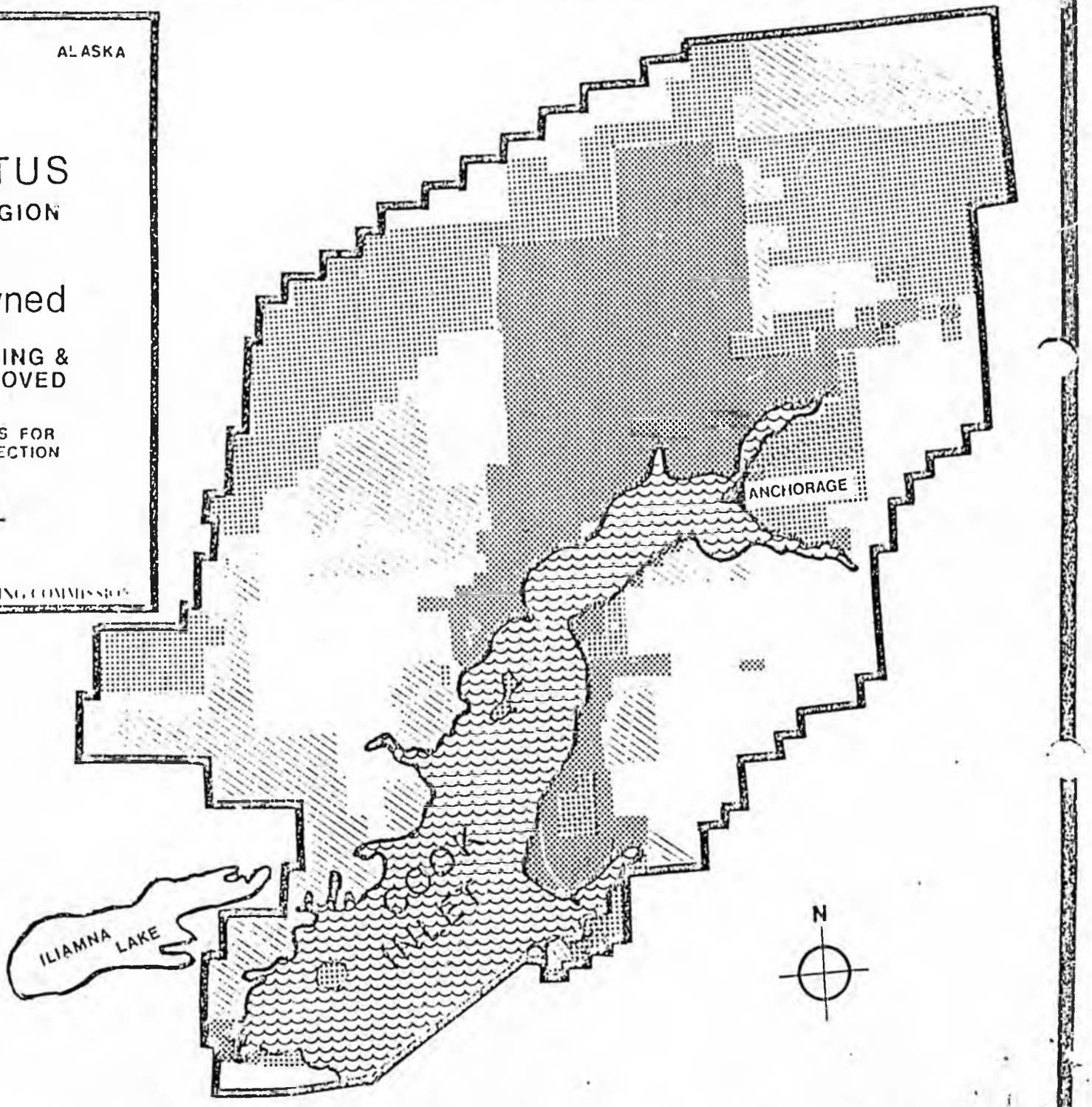
MARCH 1976 ALASKA

CURRENT LAND STATUS

COOK INLET REGION

- State Owned
- State PENDING & APPROVED
- Native AREAS FOR SELECTION
- FEDERAL

FEDERAL - STATE LAND USE PLANNING COMMISSION



MARCH 1976 ALASKA

PROPOSED

COOK INLET LAND EXCHANGE

SETTLEMENT

Native*

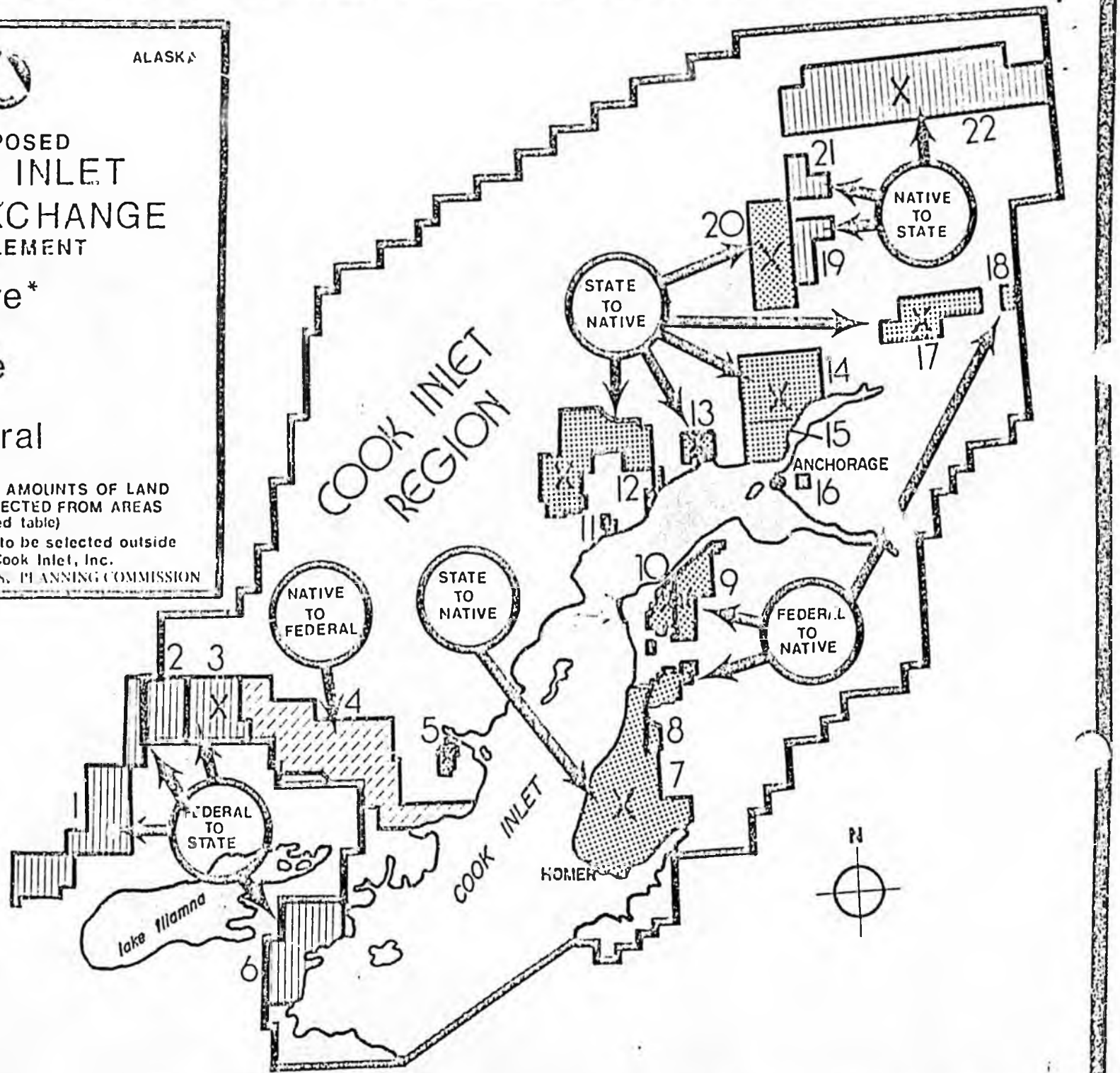
State

Federal

XX SMALLER AMOUNTS OF LAND TO BE SELECTED FROM AREAS (see attached table)

* 29.66 Townships to be selected outside region by Cook Inlet, Inc.

FEDERAL - STATE LAND USE PLANNING COMMISSION



PROPOSED COOK INLET LAND EXCHANGE

Map No.	Area Name	Approx. Area Size in Twnshps.	Approx. Number of Townships to be Selected, and Notes
1	Nushagak-Chulitna	19	23-27 - depends on village lands relinquished in Lake Clark. Additional from d-2.
2	Tutna Lake	7	7*
3	Koksetna	7	See No. 22
4	L[illegible] Clark	28	All village selections to U.S.
5	Tuxed[illegible]	2	.5 - plus road and port easement.
6	Kamishak Bay	13	13*
7	Kenai	25	5 - scattered sites from State land, subject to State guidance.
8	Tustumena	.5	.5
9	Moose Range	4)	3.6 to 9.6 - varies with other selections.
		)	Subsurface oil, gas, and coal only.
10	Moose Range	6)	Excludes existing production.
11	Nikolai)		
	)	16	13.5 - excludes Beluga and Nikolai gas fields.
12	Beluga)		
13	Alexander	2	Depends on area relinguished in Lake Clark. Probably less than .25
14	Knik-Willow	12	.19 - see note, area 7.
15	Point Mackenzie	4	.14 - see note, area 7.
16	Campbell Tract	.2	.2
17	Chickaloon	7	.2 - see note, area 7.
18	Matanuska Glacier	1	All U.S. interest.
19	Sheep Creek	4	4*
20	Kashwitna	10	1.7
21	Talkeetna River	3	3*
22	Susitna-Chunilna	36	1* (Chunilna) 12.4 - option here and area 3.

Area Name	Approx. Area Size in Twnshps.	Approx. Number of Townships to be Selected, and Notes
These not shown on map:		
Anchorage area	.1	Miscellaneous tracts if surplused.
Healy	1	1
Intra-Regional exchange pool	6	0-6 - from surplus or revoked U.S. reserves and unperfected land entries. Available for exchange only on acre/equivalent basis for extra regional selection.
Extra Regional	N.A.	Up to 29.6 - subject in part to exchange, appropriate village regional, U.S., and State agreement, and State %-strike provisions.

* These total 28 townships - only 26 to be selected.

THE COMMISSION'S ROLE

The Joint Federal-State Land Use Planning Commission for Alaska was created by Act of Congress in the Alaska Native Claims Settlement Act and by Act of the Legislature of the State of Alaska (A.S. 41.40.010). The primary goals of the Commission as established by law are to: (1) insure that the economic growth of Alaska is orderly and compatible with environmental values and the economic and social well-being of the State's residents; and (2) plan for the wisest and best use of Alaska's lands. The Commission is expressly directed to: (1) seek ways to avoid conflicts among the State, the Federal government, and Alaska Natives over the selection, use, and management of lands; (2) improve coordination between the State and Federal governments; and (3) recommend changes in laws, policies, and programs affecting land use and management in Alaska. The Commission has ten members, half of whom serve as Federal appointees and half appointed by the State of Alaska.[1/] Providing executive leadership are the Governor of Alaska or his designee as State Co-Chairman and a Federal Co-Chairman appointed by the President of the United States. The Governor is required by law to name an Alaska Native to, at least, one of the State seats on the Commission. A small staff, including planners, resource specialists, lawyers, and economists, supports the Commission in its deliberations.

The Commission as a body upon which State, Federal, and Alaska Native interests are represented and whose mandated intent is to promote cooperation and resolve conflicts among these major landowners, occupies a unique position from which to provide oversight on land trades and adjustments.

Commission Involvment in Cook Inlet Selection Problems

Section 17(a)(7)(B) of the Alaska Native Claims Settlement Act directs the Commission to make recommendations concerning proposed land selections by Native village and regional corporations. Pursuant to this and other authority provided in Section 17(a) of the Act the Commission has been involved since 1972 in seeking a satisfactory solution to the land selection problems which have confronted Cook Inlet Region, Inc., and its constituent villages.

In general and specific recommendations the Commission recognized the necessity of providing lands of "similar in character" to Cook Inlet Region, Inc. to fulfill their entitlement under the Claims Act. Constraints imposed by the Claims Act prohibit selections of State lands, selections within the Kenai Moose Range, selections out of the Cook Inlet Region, or selections within a two-mile buffer zone of first class municipalities. In recognition of these constraints and problems they posed for fulfillment of the Native entitlement, the Commission recommended on March 29, 1974 that acreage in the Lake Clark area be withdrawn for Cook Inlet Region, Inc. When it appeared that Congressional amendments to the

---

1/ Two vacancies, one State seat and one Federal seat, currently exist on the Commission.

Claims Act would remove most of these prohibitions and that negotiations between the Department of the Interior and Cook Inlet Region, Inc. also included the participation of State government, the Commission on October 30, 1975 communicated its unanimous support of the approach taken by the negotiators. The Commission set out the premises of its support of the concept and cautioned that technical problems required solution and that the views of neighboring regions and the full participation of Cook Inlet villages be obtained. (Copies of the letters communicating the actions cited above, as well as a detailed summary of Commission involvement in the Cook Inlet land selection problems, are included as Appendix A.)

Public Law 94-204 was enacted by Congress January 2, 1976 incorporating the agreement reached through the negotiations entitled "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area." In its deliberations on the agreement, the House and Senate Resources Committees met in joint session on February 11, 1976, and passed a motion to request Commission review and report to the Legislature on the agreement.

The Commission's Review

In response to the Legislature's request, all staff were committed to an intensive compilation and analysis of land and resource data and legal issues. A special session of the Commission was scheduled for March 5 and 6. Data was solicited from all parties to the exchange, other Federal and State agencies, and the public. Transcripts of legislative and administrative hearings and minutes of legislative committee meetings on the proposed settlement were reviewed, together with testimony both supporting and opposing the settlement[2/] in order to assure that all major issues and questions would be addressed in the Commission deliberations. Data previously compiled in the Commission's Statewide Resources Inventory and research conducted in prior instances when the selection problems of the Cook Inlet Region have been considered by the Commission were reviewed. Staff presentations reflected multidisciplinary expertise and individual evaluations of alternatives to the proposed settlement.

Commissioners had the opportunity to review staff memoranda and information submitted from other sources prior to the meeting and to consult directly with the staff a day in advance of the meeting. Problems with the settlement were cited by staff, as well as benefits accruing to the settlement parties. At the meeting, comprehensive presentations were made by the lead negotiators of the Federal and State governments and the Cook Inlet Region, Incorporated. Commissioners posed questions on all major aspects of the proposed settlement to the negotiators. Each geographical area subject to the proposed exchange was examined.

2/ Written statements and documentation from Harold Galliett, David S. Jackman, and Bristol Bay Native Corporation. Copies of these statements and documents are included in the notebooks transmitted to the two Resources Committees.

PRIMARY CONSIDERATIONS

In evaluating the proposed land trade, the Commission considered how the wide variety of interests of different citizen groups affected by this trade had been accommodated. The Commission and the State have a responsibility to protect the interests of the 6,000 citizens of Cook Inlet as they strive to receive their rights from the Federal government under the Alaska Native Claims Settlement Act. At the same time, the interests of the citizens of the State as a whole, of which the Cook Inlet people are a part, must not be sacrificed. The effect of the trade on the State's overall economic well-being must be assessed and the rights of other Native regional corporations must be considered. The Anchorage area, which has been the center of the State's rapid population growth, has a need for close-in recreation space which must be considered, and plans for Anchorage's north/south runway and for a new State capital site must not be jeopardized by the trade. In addition to these and other factors which concern both the Commission and the State, the Commission has a responsibility to consider the national interest in Federal lands and in nationally and internationally important resources such as the Bristol Bay fishery.

Among the many different interests affected by the proposed trade, the Commission identified the following as primary considerations:

Overall Considerations

1. The decision on this proposal is not simply whether or not to approve this trade but, rather, whether this is the best of a range of congressional and judicial alternatives.[1/] One element is certain--Cook Inlet's entitlement under the Settlement Act to approximately 54 townships of land must be satisfied in some manner.

2. The negotiated approach embodied in this proposal represents a far better means of harmonizing conflicting interests than the other alternative means by which the Federal government might meet its obligations to Cook Inlet. Without a three-party negotiation, the transfer would be between the Federal government and Cook Inlet, and the State would have little or no input. Through the terms and conditions built into this negotiated proposal, checks and balances have been provided to insure that the interests of all parties are protected.

3. The cooperation of Federal, State, and Native interests to come to a mututally acceptable trade sets a healthy precedent for future land planning in Alaska. In the future, joint planning by the three major landowners within the State is essential if the massive redistribution of land tenure caused by the Statehood Act and the Alaska Native Claims Settlement Act is to be arranged into a satisfactory management pattern.

1/ Detailed in Appendix B.

4. This agreement involved a great deal of give and take by the parties involved. For example, Cook Inlet agreeded to take over half of its entitlement outside its own region in areas that are generally remote from the Cook Inlet people, and to accept Federal and State controls over land selection and use that would not be required under the regular provisions of the Settlement Act.

5. The proposal provides protection for the interests of Native corporations in other regions by giving both village and regional corporations veto powers over selections adjacent to and up to 12 miles from lands withdrawn for selection by Native corporations within the region.

6. State selections in the early years of Alaska statehood were concentrated in the area that was to become the Cook Inlet Region. By 1971, when the Settlement Act passed, the lowlands of the region were virtually all in State and private ownership except for Federal withdrawals such as the Moose Range and the military reservations. Given this situation, without the proposed settlement, and without State assistance and the State selected lands, there is little leeway within the Cook Inlet Region to satisfy Cook Inlet's entitlement to lands "of a charcter similar" to village sites.

Legal Considerations

1. The probability of protracted law suits is less under this proposal than under other alternative ways by which the Federal obligation to Cook Inlet could be fulfilled.

2. Most of the legal impediments to the proposed trade were removed by Public Law 94-204.[2/] The only remaining legal necessity to enable the trade is for the State Legislature to approve the conveyance of subsurface by the State government and to waive requirements for determination of equal value on a purely monetary basis.

3. The conflict between Anchorage's proposed north/south runway extension and park and recreation uses is recognized by all parties involved. This problem may be solved by the Federal process of surplusing Federal withdrawals which would eliminate land identified as needed for airport purposes from the parcel before conveyance to the State for park and recreation purposes.

4. All vested third party interests are protected by the terms and conditions of the proposed agreement. Lands made available for Native selections were in areas where there were already many private land holdings which will be protected.

2/ Detailed in Appendix C.

5. Approval of the proposed trade would assure the continuance of the 1972 settlement between the State and the Department of the Interior.[3/] Without this trade, the Cook Inlet Region will continue its litigation which challenges the 1972 settlement. A decision in favor of Cook Inlet would jeopardize approximately two-thirds of the State's existing land selections.

Land Use Considerations

1. Under the terms of the agreement, the State obtained powers to guide and control the selection process and to keep lands with particular values for recreation and other public purposes in public ownership. Similar planning powers would be unavailable to the State under the unnegotiated alternatives to this proposal.

2. The trade is designed to protect the large regions in Southcentral Alaska which have high values for public purposes.[4/] Ownership boundaries around such areas, for example, Lake Clark, Iliamna Lake, and the proposed Talkeetna State Park, have been drawn to establish workable management units.

3. Where possible, land ownership units have been consolidated and simplified. For example blocks of State owned land are expanded in the Susitna Valley and west of Iliamna Lake, and village holdings on the west side of Cook Inlet have been consolidated.

4. This trade provides substantial protection for the Kenai National Moose Range, which has high public value as a prime recreation area for the State's rapidly growing population. Other proposed alternatives could have conveyed large areas of Moose Range surface ownership or producing oil fields to Cook Inlet.

5. Native villages will receive lands closer to village sites than under existing selection withdrawals which were far removed from villages. Such lands generally have more use and value for village purposes.

6. The proposed trade will enable Cook Inlet to acquire lands that are suitable for private land use purposes. Lands which have currently been made available for Cook Inlet selection are primarily mountainous areas which would have little or no value for a private corporation.

7. The trade retains proposed capital site areas in State ownership.

8. The trade will accelerate and assure the transfer to the State of prime areas for recreation and public purposes in the urban area of the Anchorage bowl. Of special concern to the Municipality of Anchorage is the Campbell tract. The agreement specifies that this

---

3/ Copy of 1972 agreement included in notebook submitted to the Resources Committees.

4/ Detailed in Appendix D.

tract will be managed in accordance with a generalized land use plan already proposed for the area. If and when other Federal tracts, i.e., Point Woronzof, Point Campbell, and Goose Lake, are declared surplus for Federal use, they, also, will be conveyed to the State.

Economic Considerations

1. Because of the nature and complexity of the trade, and the very real difficulties in applying ordinary valuation methods, broad economic standards must be used in judging the trade. These standards must include the Commission's mandate to make recommendations relating to orderly economic growth compatible with other social, cultural, and environmental values. The standards must also include an assessment of the impact of the trade on the future fiscal and economic well-being of Alaska.

2. The economic losses that the State will purportedly incur as a result of the trade appear to be exaggerated. When highly speculative gross asset values are converted to "net present value" of probable foregone revenues, the State's expected losses are minimal.5/

3. The future fiscal viability of the State is largely unaffected by the trade. This is so for a variety of reasons, including the following:

   a. Economic development is at least as likely to occur if resources are in private ownership as would be the case if the State retained ownership of the resources. Thus, State revenues from corporate income taxes, personal income taxes, and most other tax sources will be at least as great under private resource ownership as public. Economic rents that might possibly be foregone (in the form of royalties) can for the most part be recouped through the State's power of taxation.6/

   b. It is probable that revenues foregone under the proposed trade will constitute only a minute fraction of total State revenues in the future. Anticipated revenues in the 1990's, amounting to several billion dollars annually, dwarf potential foregone revenues. For example, expected coal royalties from a proposed development in the Beluga fields are only about 1.5 million dollars per year, which amounts to about 0.03 percent of projected total State revenues in 1990.

4. The general level of economic activity will be largely independent of resource ownership. In fact, if Cook Inlet Region is assumed to be at least as development oriented as the State, then total economic activity can be expected to increase.

5/ Detailed in Appendix E.

6/ Detailed in Appendix E.

5. Economic benefits to Cook Inlet will, in part, be redistributed to other regional corporations in the State under the provision in the Settlement Act which requires that 70 percent of the revenues from resource development by any one Native regional corporation be shared with all the regional corporations.

6. The proposed trade protects the State's Swanson River petroleum revenues by excluding all producing oil fields within the Moose Range from conveyance to Cook Inlet.

RECOMMENDATIONS

Cook Inlet Trade

After its consideration of the major issues and aspects of the proposed settlement, Commissioner James Hurley moved and Commissioner Celia Hunter seconded "That this Commission recommend to the Joint Resources Committee of the Alaska Legislature that appropriate legislation be passed authorizing the Cook Inlet settlement under the terms and conditions of P.L. 94-204." The motion carried unanimously, with Federal Co-Chairman Burton W. Silcock, Acting State Co-Chairman George W. Roger, and Commissioners James J. Hurley, Celia M. Hunter, Phil R. Holdsworth, Joseph H. FitzGerald, John W. Schaeffer, and Richard A. Cooley voting "aye".

The recommendation made, the Commission proceeded to address guidelines for future land exchanges. Summarized below are tentative general guidelines accepted by the Commission.

Future Land Trades

It has become increasingly apparent that a series of trades and exchanges will be necessary to adjust land ownership patterns established by the Statehood Act to enable sound land use planning and management by all involved. Both the Commission and members of the State Legislature have recognized the necessity for legislation which would guide and facilitate the exchange process. With clearer ground rules, much of the complexity and difficulties experienced in the Cook Inlet land trade could be reduced.

The Cook Inlet experience offers an excellent test case which should be carefully studied in developing guidelines for future land trades. The basic elements for such exchange legislation, as suggested by the Cook Inlet experience, are as follows:

1. Land trades should further the establishment of land ownership patterns that will enable planning and management to foster the wise use and disposition of land and land resources.

2. Land trades should result in an equitable exchange of values between the parties involved. In determining equity, intangible values such as sound land use and management as well as social and economic benefits should be included.

3. Trade procedures should include consultation with affected local governments and relevant State and Federal agencies, as well as a specific program for public consultation.

The Commission plans to analyze the Cook Inlet trade process in detail, as well as to review land trade and exchange procedures utilized elsewhere. On this basis, the Commission will make recommendations for legislation that would establish guidelines for future land exchange.

APPENDIX

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

March 3, 1976

MEMORANDUM

TO: Commissioners

FROM: Esther C. Wunnicke

SUBJECT: Commission Involvement in Cook Inlet Land Selection

Section 17(a)(7)(B) of the Settlement Act directs the Commission to make recommendations concerning proposed land selections by Native village and regional corporations. Pursuant to this and other authority provided in Section 17(a) the Commission has been involved since 1972 in seeking a satisfactory solution to the land selection problems which have confronted Cook Inlet Region, Inc., and its constituent villages

.....August 16, 1972. The Commission urged the Secretary to accord the deficiency land needs of Native organizations priority in every instance over 17(d)(1) and 17(d)(2) withdrawals.

.....March 6, 1973. In addressing Chugach Native deficiency problems the Commission adopted the following general principles:

a. land withdrawals made under Section 11(a)(3) for possible regional selection should include any lands remaining after village selections from the same areas.

b. the "similar in character" standard should apply to both regional and village deficiency withdrawals made pursuant to Section 11(a)(3).

.....March 7, 1973. Formula 3 adopted for calculating gross acreage of village and regional deficiency.

.....August 2, 1973. National interest d-2 use recommendations.

.....August 6, 1973. Commission stated that none of its recommendations concerning the use of d-2 lands should be construed so

as to preclude necessary deficiency classifications. Finally the Commission requested that the Secretary exercise his administrative authority by designating needed deficiency lands prior to transmittal to Congress of recommendations regarding d-2 withdrawals.

.....September, 1973. Staff presented resource summary to Cook Inlet on lands available for possible selection.

.....January 10, 1974. Commission provided Secretary with an interim staff report on Kenai Moose Range. Second study completed and transmitted April 16, 1974.

.....March 29, 1974. Recommendations that acreage in Lake Clark area be withdrawn for Cook Inlet deficiency - based on land status problems and legal constraints in ANSCA, e.g.

no out-of-region selections
no administrative authority to open Moose Range lands to regional selections
no availability of State lands for regional selection
2-mile buffer zone

.....June 6, 1974. Small withdrawal review.

.....August, 1974. At the request of Cook Inlet Region, Inc., the Commission prepared an analysis of lands which could be withdrawn by the Secretary pursuant to Section 11(a)(3) to satisfy the deficiency entitlement of that region.

.....April 29, 1975. Staff memorandum was prepared by Counsel setting out pending Federal legislation. The memo regarding Cook Inlet land exchange set out these considerations:

-appeal of adverse District Court ruling vs. CIRI
-commencement of discussions with State
-Moose Range and Lake Clark townships for selection
-selection of small scattered tracts - Campbell and Woronzof
-lands in Eklutna withdrawals
-suspension of land selection rules requiring odd-odd and even-even regional selections

.....May 2, 1975. Commission meeting. Motion that the Commission express an encouragement to discussions presently underway between the State, CIRI and other entities that may result in better overall solutions in terms of overall management in the Cook Inlet Region, and that the Commission resources in terms of technical assistance be made available to these discussions. Also that additional time be provided to Cook Inlet; passed by general consensus.

.....October 24, 1975. Commission meeting. Michael C.T. Smith, Director of the State Division of Lands, briefed the Commission on the present situation with respect to Cook Inlet Region, Inc. Motion by Silcock, second by Holdsworth, to endorse the land trade concept in its present status and to communicate the Commission's endorsement to the House and Senate Interior and Insular Affairs Committees; motion passed unanimously.

Elements of that briefing are as set out in 10-2/3-75 "Opening Statement" prepared by Department of Natural Resources.

.....October 30, 1975. Recommendations were made to the House and Senate Committees on Interior and Insular Affairs stating that the Commission had considered the tentative agreement arrived at between Cook Inlet and the State of Alaska, and was in unanimous support of the approach taken in the proposed agreement. The premises for Commission approval of the concept of the agreement are set out as: the insufficiency of lands to meet deficiency requirements; disagreement with the District Court's ruling; improved land management units through the consolidation of ownership; and lessened impact of private land ownership in the Kenai National Moose Range. In supporting the agreement the Commission did not minimize the technical problems which needed to be overcome prior to final adoption, and the Commission urged that the views of neighboring regions be obtained and that the full participation of Cook Inlet village corporations be assured.

.....February 6, 1976. At a regular Commission meeting, after a brief explanation of P.L. 94-204 and the corresponding "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area" the Commission, by unanimous vote, authorized the State Co-Chairman to support state law reform concerning land trades on behalf of the Commission. Co-Chairman Jackman advised that he would be testifying before House and Senate Natural Resources Committees of the Alaska Legislature.

.....February 11, 1976. Co-Chairman Jackman was asked by the House and Senate Natural Resources Committees to convey to the full Commission their request for Commission review and submission of a report of its findings on the proposed Cook Inlet land trade.

.....February 17, 1976. Confirmation of the legislative request was sent to the Commission by the President of the Senate together with a request that the Commission expedite its report as much as possible to enable the Alaska Legislature to act within the times established in the agreement.

.....February 23, 1976. Formal request of the Senate Resources Committee for Commission assistance was transmitted by Committee Chairperson, Kay Poland. Concern of the Committee about relative values of lands given and received, impact on future land selections by the State, and long term effects of the amendment of Section 6(i) of the Alaska Statehood Act was expressed.

.....March 5, 6, 1976. A Commission meeting to consider the Cook Inlet land trade and to make recommendations to the Joint Senate and House Resources Committees was scheduled.

Federal-State
Land Use Planning Commission
For Alaska

APPENDIX B

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

October 30, 1975

Honorable Henry M. Jackson
Chairman
Senate Committee on Interior
and Insular Affairs
Attn: Steve Quarles
3106 Dirksen Building
Washington, D.C. 20510

Dear Chairman Jackson:

It is our understanding that the Interior Committee will soon commence its markup of certain proposed amendments to the Alaska Native Claims Settlement Act. With this in mind, I am writing to communicate the Commission's strong support for amendatory legislation relating to the land entitlement of Cook Inlet Region, Inc., and its constituent villages, as such legislation is described in the recently announced agreement between Cook Inlet and the State of Alaska.

For the past three years, the Commission has been actively involved in efforts to resolve the land-related problems which have confronted Cook Inlet and its constituent villages. These efforts have taken the form of technical assistance to the regional corporation and, more recently, to the State of Alaska, and recommendations to the Secretary of the Interior with respect to the location and quantity of withdrawals needed to help satisfy the requirements provided in Section 11(a)(3) of the Settlement Act. Most recently, the full Commission has considered the tentative agreement arrived at between Cook Inlet and the State of Alaska. On the basis of this consideration, which took place at a Commission meeting held on October 24-25, 1975, I have been authorized to communicate our unanimous support for the approach taken in the proposed agreement.

The Commission's position is premised on the following principal considerations. First, in our opinion, a significant portion of the acreage presently withdrawn for possible selection by Cook Inlet does not meet the qualitative criterion provided in Section 11(a)(3) of the

Settlement Act. In arriving at this conclusion, we are cognizant of the Federal District Court's ruling in Cook Inlet v Morton, and are constrained to disagree with that portion of the ruling which relates to compliance with the criteria specified in Section 11. Second, the land status pattern in the Cook Inlet region, which encompasses large Federal withdrawals and significant acreage in State and private ownership, indicates that it would be very difficult for Cook Inlet to obtain a satisfactory land entitlement in the absence of the land exchanges and other mechanisms provided in the pending agreement. Third, implementation of the agreement would greatly improve land management within the Cook Inlet region by consolidating Federal, State, and Native ownership in areas which aptly reflect the interests of the various parties. Thus, for example, the agreement would result in Native ownership of certain areas on the Kenai Peninsula which, by virtue of their location, soils, and other characteristics, appear suitable for private settlement and development. Similarly, the State would obtain additional lands in the Bristol Bay watershed, which is of critical importance to the State for its fishery and recreational values, and the Federal government would be assured of a viable management unit in the Lake Clark area, which has been proposed for national park status pursuant to Section 17(d)(2) of the Settlement Act. Improved management and ownership patterns would also result in other areas of the Cook Inlet region, including the Talkeetna Mountains and the Kenai Peninsula. Fourth, the proposed agreement would lessen the impact of private ownership on the Kenai National Moose Range by reducing the total acreage that might otherwise be transfered to Native corporations and by requiring that certain protective measures be taken in a significant portion of the lands that would be conveyed. In short, implementation of the agreement would permit the creation of rational patterns of land management and ownership which reflect the varied interests of the parties involved. Neither the administrative nor judicial alternatives afford the flexibility which is necessary to accomplish this result.

In supporting the proposed agreement, the Commission does not mean to minimize the technical and other problems which must be overcome prior to its final adoption. For example, there are certain legal issues which must be addressed. However, the research conducted by our staff and more extensive work performed by attorneys for Cook Inlet and the State indicate that solutions to these problems do exist. Moreover, since the agreement would authorize Cook Inlet to select lands within the boundaries of certain other regional corporations, the views of those corporations must be considered with great care, and an effort must be made to insure that in the process of improving land ownership and management patterns in the Cook Inlet region, we do not jeopardize

the opportunity to create sensible patterns in other areas of the State. In addition, full participation on the part of Cook Inlet's constituent villages and groups will be required, for the agreement calls for the relocation of certain withdrawals made for their benefit. We believe that the participation and cooperation of all of the parties to the agreement and other affected Native corporations will create an atmosphere in which possible problems can be resolved and the objectives of the current proposal can be successfully achieved.

Thank you for your consideration of this correspondence.

Sincerely,

Burton W. Silcock
Federal Co-Chairman

cc: Senator Ted Stevens
Senator Mike Gravel
Royston C. Hughes, Assistant Secretary, Program Development and Budget
Ken Brown, Legislative Counsel, Department of the Interior
Guy Martin, Commissioner, State Department of Natural Resources
Michael C.T. Smith, Director, State Division of Lands
Sam Kito, President, Alaska Federation of Natives
Roy Huhndorf, President, Cook Inlet Region, Inc.

Alternatives to Land Settlement	Possible outcomes, remedies and restrictions	Effect on: State	Federal	Native
1. Rejection of current offer.	1. Cook Inlet goes back to Court and loses:			
	a) Secretary does nothing to alter current land status.	Retains currently held lands & resources but could potentially lose control of very limited unselected lands near Anchorage.	Retains currently held lands & resources. Lake Clark management unit proposed as park-lands reduced in size or lands must be purchased from village corporations to maintain proposal dimension under current agreement.	Retains currently held lands & resources Because of the nature of current holdings potential more intensive development would be required to establish same return as is possible with better lands obtained through the trade.
	b) Secretary offers alternative lands to Cook Inlet.	Retains currently held lands & resources. Could potentially lose control of some lands near Anchorage & could be forced to set aside some additional state lands for recreation & habitat if Moose Range land losses severely restrict recreational opportunities. Potential time delay if attempt is made to transfer Moose Range lands. Loss of oil & gas revenue.	Because of limited lands available of "like kind" within region may be forced to attempt to transfer lands within Moose Range. Serious legal questions over Secretary's ability to transfer Moose Range lands for these purposes. Other Federal lands within region of much lower quality even in Lake Clark d-2 areas or any of the remaining d-1 areas.	Possible gain of additional better quality lands. However without going out of region, lands available to Secretary are very limited & will probably include additional Moose Range lands which could delay settlement & could result in Cook Inlet gaining nothing.

Alternatives to Land Settlement	Possible outcomes, remedies and restrictions	Effect on: State	Federal	Native
	c) Congressional action which does not neutralize the "1972 memorandum of agreement."	State would retain lands currently patented "T.A.'d" or in patent pending status. Could potentially lose control of small amount of unselected lands near Anchorage. State could be forced to set aside some additional lands for recreation and habitat if Moose Range losses are incurred & if same general level of recreational opportunities are to be maintained. Could lose oil revenue from Swanson River field.	Because of limited lands of like kind available it is likely that Congress would be forced to transfer lands from the Moose Range & from the Lake Clark d-2 areas. Federal government might lose oil revenues.	Cook Inlet would gain much better quality lands, however it might be difficult to give full entitlement in lands of "like kind." Natives would probably receive oil royalties & other minerals in the Moose Range.
	d) Congressional action which in effect neutralizes the "1972 memorandum of agreement."	The ramifications of this type of action to the State are enormous. Those State lands which were put into a selection pending status could (unless stipulated by Congress) all be subject to reclassification throughout the entire State. The Secretary could be forced to reclassify substantial amounts of this land into d-2 status or Native deficiency forcing the	The breakdown of the "1972 agreement" will leave the Secretary open to suits which could force him to reclassify much of the land currently under State selection into d-2 status. The whole process of determining "national interest" lands could be reopened resulting in a high cost both in terms of time & money.	Cook Inlet would gain substantially particularly if out-of-region selections are allowed. They could possibly pick-up lands within the Moose Range as well as being able to select out-of-region lands which are currently under State control.

Alternatives to Land Settlement	Possible outcomes, remedies and restrictions	Effect on: State	Federal	Native
		State to reselect & redevelop its selection patterns. This could also make it more difficult for the State to select its full entitlement by the 1984 deadline. The State could lose some of the best "settlement lands" available to them.		
2. State makes a settlement which involves State & CIRI only. (This exchange would probably do little to affect Cook Inlet's economic status, merely transfer to them lands of "like kind & character.")	1. Primary constraint is meeting equal value criterion.	Even considering the problems of determining "equal value" (see Tuck memo). The State would be hard pressed to exchange land with Cook Inlet on an acre for acre basis which would probably end in the State receiving more land of average lower value than that currently held. Legal questions resolved within State courts.	This arrangement would not affect the Federal government land status.	Cook Inlet would probably receive considerably less acreage than their current entitlement. A few more development options might be open to them, however, their near-term economic position is likely to remain unchanged.
3. Settlement between Federal State, and Cook Inlet. (Modifications of current agreement.)	1. Possible area changes. a) Force Cook Inlet to select within their own region.	Lands might not be sufficient to avoid potential State selections completely. Could have the effect of speeding completion of the settlement however, thereby	Federal government might be forced to give up additional acres in Moose Range or possibly some d-2 lands to compensate Cook Inlet for selection of "like	Cook Inlet would improve their position over a no-agreement position although depending on the choices available for out-of-region selections they could

Alternatives to Land Settlement	Possible outcomes, remedies and restrictions	Effect on: State	Federal	Native
		allowing the State to complete its selection in other regions.	kind" lands within the region.	possibly be worse off than under the current agreement. The time taken to complete the settlement might be shortened from current agreement.
	b) Do not allow Cook Inlet to select land within the Moose Range.	Because of the high values present on the Moose Range lands pressure will be on State to make additional State lands available to compensate for the high value lands the Natives would lose.	The same problem exists here as with the State. The high values on the Moose Range could force the Federal government to increase the amount of land available to Cook Inlet to compensate for the loss of Moose Range lands. If values received by Cook Inlet & the Natives are not an issue, there is probably sufficient land within the region to fulfill the strict ANCSA requirements for Cook Inlet.	Cook Inlet, unless compensated by a selection of large blocks of land would probably lose value under this situation, at least as far as known. Total value could be held at the same level if the region were allowed more land outside of the region, however, it would be difficult to swap on this basis completely within the region.
	c) Exclude Beluga area from Native selection.	This alternative would protect currently selected coal reserves in the Beluga area. The total value of the loss to the State is likely to be small since the State would retain sufficient taxing authority to tax most of the "economic	This alternative could bring additional pressures on the Secretary to release other equal value lands for Cook Inlet. Since the lands are limited, this could mean either more land, higher value land as in the Moose Range, or	Cook Inlet could lose one of its prospects for near term income. This could accelerate the rate at which they develop other lands. They are also likely to push for additional income-generating lands in other areas.

Alternatives to Land Settlement	Possible outcomes, remedies and restrictions	Effect on: State	Federal	Native
		rents" that would be associated with the field.	possibly more land outside of the region.	
	d) Allow CIRI to select more land outside of the region.	State will lose additional lands and control of lands outside of region could also be forced to select lower quality lands in other regions.	This should not affect current d-2 lands; however, additional lands would have to be made available for CIRI selection. Total lands held in other regions would decline.	Cook Inlet could gain some additional "high quality" lands outside of region which could improve their economic viability.

Appendix C

Federal-State
Land Use Planning Commission
For Alaska

323 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

March 4, 1976

MEMORANDUM

TO: Commissioners

FROM: Esther C. Wunnicke, Attorney Advisor

SUBJECT: Legal Issues in Cook Inlet Land Trade

At the time the Commission made detailed recommendations to the Secretary of the Interior of lands to be made available for deficiency selections by Cook Inlet Region, Inc., in March, 1974, the following legal constraints applied:

- out-of-region selections were prohibited by Section 12(c)(3) of the Alaska Native Claims Settlement Act;

- selections in the Kenai Moose Range were prohibited by apparent Congressional intent in the Settlement Act to respect then-existing boundaries of Federal withdrawals and prohibit Regional selections within them. Qualified villages located within the range are entitled to village selections within the range;

- the agreement between the State of Alaska dnd the United States of September 1, 1972, confirmed selection by the State of Alaska of lands in the Cook Inlet Region making them unavailable for Regional selection;

- Section 6(i) of the Alaska Statehood Act prohibited conveyance by the State of subsurface title on pain of forfeiture to the United States;

- no selections were allowed Native corporations within a two-mile buffer zone of first class municipalities as provided in Section 22(l) of the Settlement Act.

The above constraints were addressed in the Congressional enabling legislation, P.L. 94-204, January 2, 1976, and the remaining legal barrier to the completion of the proposed agreement is premised on provisions of State law.

A.S. 38.05.125 mandates the reservation of mineral rights to the State in any deed of State land, except for land originally acquired by purchase, exchange, condemnation, gift, excheat, or foreclosure. Most lands in the exchange were obtained by the State as selections under the Alaska Statehood Act. Division Order No. 121 which further defines Alaska policy in this regard also states:

> The State shall retain all mineral rights. The other party to the exchange may transfer or retain the mineral rights. In no event shall the mineral estate be contemplated in equating the value of the respective parcels.

A.S. 38.95.060 provides for exchange with Native corporations created under the Alaska Native Claims Settlement Act. Subpart (b) of that Section provides that exchange "shall be on the basis of equal value and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged."

This proposed settlement may be distinguished from exchanges contemplated under the Alaska Native Claims Settlement Act. Exchanges of this magnitude and, particularly, exchanges before title had been obtained by Native corporations had not been considered previously. Although it is arguable that "equal value" in the economic sense may not be required in this exchange and that since the conveyance by the State is to the United States to whom it would forfeit the lands anyway if a reservation of mineral estate were not made, it would be well for the State Legislature expressly to waive the application of A.S. 38.05.125 and A.S. 38.95.060 in any legislation approving the participation of the State of Alaska in the proposed exchange.

The Commission has had the benefit of the opinion submitted to the Senate Resources Committee by Mr. Berrier, Director of Legal Services of the Legislative Affairs Agency, and reiterates the following portion of that opinion:

> Any specific legislation should (1) contain recitals relating to the Cook Inlet Land Trade and what the legislature intends to accomplish by approval of the land trade; (2) a specific waiver of the provision of AS 38.05.125 since this is clearly the major impediment existing currently; (3) a specific waiver of the equal value exchange requirement contained in AS 38.95.060. While arguably this equal value requirement would not apply in any event, the values on both sides of the transaction are of such nature that appraisals would be complex and subject to substantial dispute....

Other legal issues which have been raised apparently need only clarification or further agreement of the parties. These encompass such things as:

Restrictions on Point Woronzof, Point Campbell, and Goose Lake titles for recreational purposes. These tracts will not be available until surplused by the Federal government and it appears that any conflict, particularly that of the use of portions of the Point Woronzof tract, for airport purposes, may be solved by excision of particular sites before surplusing and conveyancing. A letter from Deputy Assistant Secretary for Fish and Wildlife and Parks of the Department of the Interior, chief negotiator for the Federal government, addressed to Alaska Attorney General Avrum Gross speaks to this issue.

Mental Health lands included in earlier tentative agreement among the parties for conveyance by the State of Alaska have been removed from the agreement. These were Mental Health lands in the Beluga area. The trust status of any Mental Health lands which may be included in pool areas in the exchange dictates that the State either use its blocking power to prevent selection of these trust lands or that the State assure that a fair exchange is made for other lands of equal value for Mental Health funds.

The status of Port Alsworth as a group under the Alaska Native Claims Settlement Act and its entitlement to land which will become part of a d-2 proposal for National Park purposes remains to be resolved. Legal staff has prepared a memorandum on this issue.

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

March 4, 1976

MEMORANDUM

TO: Commissioners

FROM: Richard J. Stenmark, Natural Systems Analyst

SUBJECT: Cook Inlet Region Land Settlement
Land Use and Planning Implications related to
Existing and Proposed Federal and State Reserves

Lake Clark Management Units:

The proposed land settlement helps to define boundaries of the Lake Clark management unit and provides opportunities to enhance the unit for conservation, preservation, and public recreation purposes by providing for:

1. Greater Federal retention of lands in public ownership along the middle section of Lake Clark, at Kontrashibuna Lake and its scenic valley, and in the connecting lands between the Kontrashibuna drainage and Chinitna Bay on the Cook Inlet coast.

2. Relinquishment of certain Native land selections along the middle section of Lake Clark, and around Kontrashibuna Lake so more of these important recreation lands remain in public ownership.

3. Sets the stage for possible future Federal acquisition or consolidation of village selected lands between Chinitna Bay north to Harriet Point subject to village consent. Acquisition might be by purchase or exchange.

The settlement also helps to clarify Federal and State interests and concerns in the general area:

1. Nationally significant resources are recognized in the area by the Secretary, CIRI, and the State.

2. Management of this area should be flexible and recognize the scenic, recreational, and inspirational resources that should be preserved, as well as State and local interests, including subsistence and sport hunting.

If the aforementioned public/private land adjustments were not made now as part of the Cook Inlet land settlement, it seems likely that the adjustments would be sought by the Federal government through exchange of lands involving lands elsewhere in the State, or possibly by purchase. Basis for this probable action is that many people believe these lands have important public values and are an integral part of the Lake Clark management unit whether it ultimately becomes a park, preserve, or whatever.

Past actions or recommendations by the Federal-State Land Use Planning Commission or others regarding all or portions of the area include:

1. Recognition by Interior agencies and the Forest Service of national interest values.

2. F-SLUPC land use recommendations that addressed the recreational, fishery, subsistence, mineral, and other values of the area in August, 1973.

3. Lake Clark National Park proposal by the Federal government in December, 1973.

4. A preliminary proposal in November, 1975, by the State of Alaska for Alaska Resource Lands unit.

5. A tentative proposal by the Federal-State Land Use Planning Commission for a national preserve unit within the National Park System.

The proposals in items 3, 4, and 5 did not include the area proposed to be added to the Lake Clark unit by the Cook Inlet Settlement, partly because of the lack of settlement of the Cook Inlet Region Natives' entitlement.

Iliamna Lake Management Unit:

Several factors may be relevant to this management unit and how it relates to the Cook Inlet Region land settlement. An Iliamna National Resource Range was proposed by the Federal government which includes lands in the vicinity of Iliamna Lake and in the Nushagak River drainage, and was to be a unit of the National Wildlife Refuge System. The area is also of considerable State interest.

Though a variety of values are present within the area, the dominant values are generally considered to be the fisheries and fishery habitats. Sport trophy fishing opportunities are recognized as exceptional. Spawning habitats, especially in streams entering Iliamna Lake, are perhaps the most important element related to the Bristol Bay commercial salmon fisheries.

Significance of the Bristol Bay commercial fisheries is assigned to local, State, national, and international levels.

During bargaining of the land settlement, the State has apparently sought to strengthen its presence in the general area but has ended up primarily with lands in the Nushagak drainage with lesser fishery and recreation values. A position has apparently been taken by Interior to retain as much of the most important lands and waters of the proposed range in a management unit in Federal ownership for fishery and other values. Several reasons could exist for this. One may be related to United States involvement in North Pacific international fishery treaties and any commitment conceived from those treaties regarding protection of habitat used by fish involved. Another reason probably considers the quality and significance of this resource area and since it is the heart of a proposal before Congress, the Department should not usurp the right of Congress to consider the area and provide for its disposition.

Proposed resource range lands that are involved in the proposed land settlement appear to be less critical lands and waters. They tend to round out or complement previous State selections and interests in the general area.

Past discussion by the F-SLUPC and others has recognized the changing land ownership pattern in the Iliamna Lake vicinity and suggested that perhaps there is merit in the lands adjoining Iliamna Lake going into State ownership and administration. This is a possible future for these lands but one not assured.

There are two additional aspects regarding this area. The Bureau of Land Management has had a long-time interest in these lands and did classify the area for Federal retention prior to the ANCSA. Management of the proposed resource range was to involve both BLM and the Fish and Wildlife Service. However, recent action in Congress regarding wildlife ranges, indicated an overwhelming concern that units of the National Wildlife Refuge System be administered directly by the Fish and Wildlife Service.

How these various factors will affect Federal and State interests in the area and ultimate disposition of the lands is only conjectural at this time.

Kenai National Moose Range

The moose range has been the subject of previous studies by the F-SLUPC related to the Cook Inlet Region, Inc., land settlement, and Kenai Borough requests for land. In general, the range has been viewed as an extremely important public reserve because of its varied recreational opportunities, wilderness values, wildlife, and habitat values, and for certain subsurface mineral resources. Its recreational attributes are particularly important because of the relative proximity to large population areas of the State. Federal-State Land Use Planning Commission's opinion regarding the range was essentially to minimize any intrusion into the range in terms of land transfers that would significantly affect key values.

The question raised in the case of this proposed land settlement is, does the intrusion into the moose range to help satisfy CIRI's entitlement seriously affect the values and purpose of the range? This can be viewed by looking at the regional interests only or in conjunction with the village selections that will also remove certain lands along the western edge.

From previous analysis information, it appears the combined intrusion will not significantly and adversely affect the long-term viability of the range in most respects. Village selections are subject to the laws and regulations governing use and development of the moose range.

Surface estate lost to the Regional Corporation at the west end of Tustumena Lake can be developed in a manner complementary to values of the lake. Sufficient restrictions in this regard appear to exist.

Extraction of subsurface minerals at some future time will be in areas of village selection, where development has occurred, or is expected to occur and there are restrictions on the manner of extraction. A problem that might occur in this regard would be subsidence of the land following removal of coal in the form of gas [illegible] and when coal extraction is authorized.

Critical habitats need not be lost. Only one (Elephant Lake--the smallest) of the areas identified as suitable for wilderness is involved, and the popular canoe trails are not affected except for a possibility along the Swanson River which need not occur through proper planning and appropriate easements.

It does appear, however, that any further intrusion into the moose range, than that provided by the agreement, could very well affect the quality or quantity of certain values, such as the number of moose that could be supported on the range.

Proposed Talkeetna Mountains State Park:

Through the proposed land settlement, the State would receive certain lands along the western edge of the Talkeetna Mountains which lie within a State park proposal now before the Legislature. Without the proposed settlement, these lands would likely be selected at least in part by Cook Inlet Natives. Acquisition by the State of these lands through purchase or exchange would be necessary to overcome land ownership and administrative problems.

A park or recreation area in this general section of the Talkeetna Mountains has been pursued the past few years. Hatcher Pass and the old Independence Mine area were focal points for this area. However, agricultural and mining interests in certain lands as well as other factors have caused a change in the current bill to help minimize some of the overlapping interests. Principal drainage in the current park proposal is the Kashwitna. Few lowlands would be in the park unless the lower Kashwitna River area is included. While the westernmost lowlands are State patented lands, the next range of lowland and valley entrance to the east is presently in regional deficiency classification for Native selection. These are the lands that would become available to the State through the settlement.

The value of these lands is that they would complete State ownership of all the lands within the proposed park.

These lowland areas are particularly important in this context in that this is the likely zone where access, camping, and other facilities might be developed for the general public visiting this section of the park. The Independence Mine area which is an interest area has certain use limitations. Other than the above values, the tract does not appear to possess any particular attributes differing from lands to the north or south. However, this aspect must be viewed in the context of the whole park proposal.

Proposed Far North Bicentennial Park:

Three areas within the Anchorage Bowl are very important to the State as well as the Anchorage municipality for recreation and other purposes. Point Woronzof, the Campbell Tract, and Point Campbell are prime recreational lands that will be utilized more and more in the coming years. The State Division of Parks views the Campbell Tract not only as an excellent urban recreation area immediately accessible to a growing community but also as an entrance to nearby Chugach State Park. This would create a complete unit, with recreational lands close to the people and park and wilderness somewhat further away. Lands adjoining Point Campbell and the Point Woronzof area are already used for recreational purposes.

These three areas are well located in that each one is in a different part of Anchorage.

The Campbell Tract has had considerable support as a municipal park to be named the Far North Bicentennial Park.

Appendix E

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

March 5, 1976

MEMORANDUM:

TO: Commission

FROM: Dr. Bradford H. Tuck, Economic Analyst

SUBJECT: Cook Inlet Land Trade: Some Economic Considerations

I. Introduction

Recent discussions surrounding the Cook Inlet land trade, including those presented in various testimony, in the newspapers, and in discussions at the Commission have raised a variety of economic issues. Many of these are related to a major concern of all parties, namely, that the lands involved including resources, are of equal value. A variety of State and Federal statutes require some treatment of the equal value issue in land trades, and Cook Inlet Region, Inc. is of course interested that it receives at least equal value. However, none of the statutes are explicit about how value is to be determined.

When the magnitude of the trade is taken into account and uncertainty surrounding lands and resources involved in the Cook Inlet trade are considered, the problems of determining equal value are extreme. Ordinary valuation procedures are simply inadequate.

The Commission must decide whether or not the trade meets standards implicit in the ANCSA; specifically that its recommendations are conducive to enhanced land use planning for Alaska and that its recommendations are designed to:

> "insure that economic growth and development is orderly, planned and compatible with State and national environmental objectives, the public interest in the public lands, parks, forests, and wildlife refuges in Alaska, and the economic and social well-being of the Native people and other residents of Alaska."

The State must also apply broad economic standards in attempting to evaluate the trade. Three major questions of economic significance should be addressed.

1. What, in real economic measures, is the State either gaining or losing in the trade?

2. What impact does the trade have on the future fiscal viability of the State?

3. What consequences does the trade have with respect to the future general economic well-being of the State?

An analysis of these issues and questions, and not a parcel by parcel evaluation, must be the basis for measuring the economic values of the trade.

II. Summary and Conclusions

A variety of issues of economic significance have been explored in relation to the proposed land trade. The conclusions can be summarized as follows.

1. Because of the complexities of the trade and the very real difficulties in applying ordinary valuation methods, broad economic standards must be used in judging the trade. These standards must include the Commissison's mandate to make recommendations relating to orderly economic growth compatible with other social, cultural, and environmental values. The standards must also include an assessment of the impact of the trade or the future fiscal and economic viability of Alaska.

2. The economic losses that the State will purportedly incur as a result of the trade are generally found to be highly exaggerated. When highly speculative gross asset values are converted to "net present value" of possible foregone revenues, the State's probable losses are minimal. In short, little, if anything of economic consequence, is lost.

3. The future fiscal viability of the State is largely unaffected by the trade. This is so for a variety of reasons, including the fact that the State power of taxation can effectively recoup possible economic rents given up in the trade. Also, the probable foregone revenues would constitute only a minute fraction of total State revenues.

4. The net effect of the trade on total economic activity is quite limited, and in any case, the bias would be toward increased activity. This is based on the assumption that CIRI is at least as economically development oriented as the State.

III. The Problem of "Equal Value"

Value can be determined (at least theoretically) in a variety of ways, but for present discussion purposes, there are two methods that are of particular interest. The first of these relates to determining value on the basis of market comparisons or other transactions of a similar nature, and the second approach attempts to find a present value of some kind of expected future income from the lands and resources involved. The concepts are not mutually exclusive, but can be treated separately.

The market comparison approach is one frequently used in appraisals. The basic idea is to find other transactions of "like kind and character" which reflect what the present market is willing to pay for a particular parcel. When one attempts to apply this method to an evaluation of the Cook Inlet trade, many serious flaws emerge. The first is, quite simply, that the magnitude of the land parcels involved in almost all cases dwarfs anything that typically trades in the private sector. In other words, there are no comparable trades. Hence, we must look at much smaller parcels and then estimate what the effect of a significant increase in the quantity of land would have on the market clearing price, and this involves, in turn, some estimate of the rate of disposal of the lands and resources.

A second major problem in the present situation is that in most instances both surface and subsurface property rights are involved. While the surface resources are known to some degree, knowledge of the subsurface is much more limited. Thus, a high level of uncertainty surrounds any attempt at evaluating the subsurface resources. Even if subsurface resources were known, major problems in valuing these resources would exist. Specifically, we would have to know the net income stream that could be derived from the resource. At best, such estimates are highly speculative.

A much more fundamental problem with market comparison valuation lies in the theoretical underpinnings of this method. In essence, valuation by market comparison rests on the assumptions of pure competition; a large number of buyers and sellers, none of which is sufficiently large to effect the market price, and freedom of entry and exit from the market by all interested parties. If these conditions are not met, then the result is bargaining between parties holding some degree of monopoly control over the market and, as a consequence, over the resulting price. A price, or value, determined under these conditions does not necessarily reflect the "socially desirable" market clearing price that is the basis for market comparison valuation.

In the present trade we are faced with a situation in which the sheer magnitude of the lands involved (even with full knowledge of the quality of the lands and resources) means that no valid market comparisons exist. Both in terms of the size of the trade and the limited number of parties involved, the setting is one that closely parallels an oligopolistic bargaining situation. It is highly unlikely that the three-party valuation of the trade would be anything like that which would emerge on the basis of competitive market forces.

With these reservations in mind, it is interesting to look at some rough attempts at valuation of the trade. A somewhat cursory attempt at placing market comparison values on the State lands involved in the trade was carried out by the State Division of Lands. Using their data, and supplementary guesses where necessary, Table 1 was constructed. The assumptions underlying the table are set out in the notes to the table, but in general, only surface values are considered. In one instance (the Beluga area) discounted coal royalties are included, and in one other instance (Campbell tract) sand and gravel values are included in one case.

It is clear from inspection of the information in the table that the net value of the trade is highly sensitive to certain assumptions. Using value per acre figures that would find some support in at least some quarters in all instances, the State either gains, loses, or emerges in a neutral position, depending upon which set of assumptions one wishes to use. A recent suit filed in which it is claimed that the State is losing 285.7 million dollars in the trade (surface estate only) is a further indication that the problem of determining value (in the appraisal sense) is great.

A second approach to the valuation of lands or resources is based on the capitalization of expected net income flows resulting from the lands and resources involved. The problems associated with this approach also present serious obstacles to accurate valuation of the present trade. In general, two key variables, the "net income stream" and the "discount" rate are involved.

From the State's perspective, the net income flows from the lands and resources involved may take the form of sales revenue, leases, bonus payments, rentals, royalties, severance taxes, property taxes, etc. In some cases there may also be personal and corporate income taxes that might otherwise not occur. From these revenues must be subtracted the administrative costs of managing and disposing of the lands and resources involved to obtain the net income stream. Thus, the revenues to the State depend on a complex set of policy considerations relating to the disposition of State lands and resources as well as the timing of this disposition, and on a whole

TABLE 1

Sensitivity of "Equal Valuation" Considerations to Per Acre Valuations,
Cook Inlet Land Trade, State Lands

Area Lands to State	Acres (000)	[1]Valuation, State $/Acre	Total (mil$)	Modified Valuation[4] "Unfavorable" $/Acre	Total (mil$)	Modified Valuation[5] "Favorable" $/Acre	Total (mil$)
Nushagak) Chulitna)	599.04	40	24.0	30	17.97	120	71.88
Sheep Creek	23.04	40	0.9	30	0.69	120	2.76
Sheep Creek	69.12	40	2.8	30	2.07	120	8.29
Campbell Tract	4.00	1501	5.9	1000	4.00	1000	16.00
Pt. Woronzof	0.59	5598	6.6	1000	0.59	1000	0.59
Pt. Campbell	1.18	7083	4.2	1000	1.18	1000	1.18
Tutna Lake	161.28	40	6.5	30	4.84	120	19.35
Chunilna	23.04	40	0.9	30	0.69	120	2.76
Talkeetna River	69.12	40	2.8	30	2.07	120	8.29
Koksetna :sitna	285.70	40	11.4	30	8.57	120	34.28
Kamishak Bay	299.52	40	12.0	30	8.99	120	35.94
TOTAL	1535.63		$78.0		$51.66		$201.32
Lands From State							
Pt. Mackenzie	3.20	200	0.640	667	2.13	667	2.13
Knik-Willow	4.48	300	1.344	1000	4.48	1000	4.48
Kashwitna	38.40	250	9.600	500	19.20	500	19.20
Chickaloon	4.80	125	0.600	300	1.44	300	1.44
Kenai	115.20	150	17.280	450	51.84	450	51.84
Beluga, Nikolai[2]	311.04	70	38.872	100	48.20	100	48.20
Misc. Lands to Villages[3]	41.47	225	9.331	300	12.44	300	12.44
TOTAL	518.59		$77.667		$139.73		$139.73
NET TOTAL (To-From)			+0.333		-88.07		+61.59

Source: See Notes.

Notes:

1. Valuation based on information contained in a memorandum from Michael C.T. Smith to Guy Martin, dated December 6, 1975, and in supporting materials for memorandum.

2. Includes 15.9 million for coal royalties and revenues foregone, and 1.2 million dollars of foregone timber values. Both numbers are present value figures.

3. Informed guess.

4. Assumes; "$40" land is actually worth $30 per acre; that restriction on use of Campbell Tract, Point Woronzof, and Point Campbell (for recreation, etc.) reduce value to $1,000 per acre; and that lands relinquished by the State are revalued upwards as indicated. While there is no particular basis for assuming these figures, they are not out of keeping with general observations on land prices in the respective areas, and the probable impact that relocation of the capital might have.

5. Assumes that the values for lands relinquished by the State remain as in note 4, but that the value of lands received by the State is $120 per acre instead of $30, and that sand and gravel sales from development of Campbell Tract (at 12 million dollars) are included. Gravel sales are restricted to the development of Campbell Tract for recreation purposes only. Data based on Division of Lands information.

set of future economic conditions which in general have neither been predicted nor in any sense are knowable at present. Some truly Herculean assumptions would be necessary to even begin to estimate either the magnitude or the timing of the net income stream that the State is either giving up or obtaining in the trade.

A further problem exists in the case of public resources in attempting to estimate net income. It is one of attempting to assign dollar values to nonmonetary flows of services such as those derived from recreational use of the lands. For example, the Campbell tract if restricted to park and recreation uses might be expected, at the outside, to yield an annual income of perhaps $100,000 net. If we capitalize this income stream, in perpetuity, at 5 percent then the tract is theoretically worth 2 million dollars, or about $500 per acre. I suspect that many people would place a substantially higher valuation on the tract precisely because the land is restricted to park and recreation purposes. Or, for example, how does one place a dollar value on the preservation of fisheries habitat? In other words, there are real problems with setting dollar values on many of the benefits associated with public lands.

The problems that Cook Inlet Region, Inc. and the Federal government face are similar, although in the case of Cook Inlet, the subjective valuations (aside from uncertainty due to imperfect knowledge) are of a different nature given the private identity of the corporation.

To compare net income streams they must somehow be capitalized or discounted to obtain comparable present values. Thus, a second major consideration in this approach to valuation is the choice of discount or capitalization rates.

The present value of income received far in the future is highly sensitive to the particular discount rate selected. For example, $100 received 50 years in the future has a present value of $8.72 if the discount rate is 5 percent, while the value of $100, 50 years in the future, is only $2.13 if the discount rate is 8 percent. Alternatively, the capitalized value of a perpetual income stream of $100 is $2,000 at a 5 percent capitalization rate, but only $1,250 at an 8 percent rate. The point is simple; the value of future income or the capitalized value of a future stream of income, is highly sensitive to the discount or capitalization rate used. When this is combined with the highly speculative nature of future net income streams, either public or private, any attempt to estimate value is subject to extreme error.

The discussion of the issue of "equal value" can be summarized as follows. A serious problem arises as soon as we attempt to determine value on the lands and resources involved in the trade. The

magnitude of the tracts involved, and the uncertainties as to the kinds and qualities of the lands and resources involved, as well as the uncertainties related to future income anticipated, make standard valuation techniques inappropriate. In short, if the concept of equal value is to have real meaning in the analysis of the present trade it must be based on broader economic concepts than those set out above.

IV. What is the Economic "Loss" to the State?

There currently are many numbers being mentioned purporting to show various values that the State is losing in the trade. In a suit filed by Galliett and Lewis, asking for a permanent injunction against the trade, the net loss to Alaskan citizens is estimated to exceed 5 billion dollars in present value. Figures prepared by the Bureau of Mines, which you have, indicate that about 2.0 billion dollars of potential royalty income to the State will be foregone. Another figure points to roughly 90 million dollars of potential agriculture and forest land values that will be lost by the State. A detailed critique of these and other numbers goes beyond the scope of this memorandum, but certain points should be made.

The most important point is that generally the losses are grossly exaggerated. What the State stands to lose (and the same standard applies to what it might gain) is the present value of revenues that it would derive from the disposition of the lands and resources that it would not otherwise derive, minus the associated costs of managing and disposing of the lands and resources.

In each of the above cases, it is implicitly assumed that every acre and every resource, be it known, inferred, or hypothesized, is going to be sold, leased, extracted, or in some other way converted into revenue going to the State. Such an assumption is simply in error. Clearly only a small fraction of land that the State is giving up in the trade would have gone into private ownership or in some other way generated revenue for the State. Even with substantial population growth in the State, market demand will not exist in sufficient magnitude to absorb the vast quantities of acreages being discussed.

In a period of rising land prices past history must be interpreted with caution, but it is instructive to take note of the history of land disposition in the State. It is generally recognized that revenue was only one of several forces influencing land disposal. Much of the pressure was, in fact, counter to the revenue objective, inspired as it was by the desire to obtain "cheap" land. Presently proposed legislation to create "homestead" land is indicative of a continuing sentiment that revenue is not the only concern in the disposal of land.

A second consideration is that, for example, during the years 1972-74, land disposal revenues to the State ranged between 1.5 and 3.0 million dollars per year. This is hardly a significant source of revenue. Furthermore, disposal of lands, particularly when random settlement and development is the result, probably generates costs to the State far in excess of the revenues received.

For similar reasons, it is highly unlikely that the State would or could market every last acre of timber resource that has been identified in the trade, nor is it probable that the State could convert all of the lands with agricultural potential that have been identified into some form of revenue. In other words, the gross value of the surface estate is a far cry from future income streams that the State might derive from these lands.

It was pointed out earlier that the relevant economic value to the State is the present value of the revenues, not their nominal value some generations in the future. This clearly further reduces any hypothetical loss to the State.

Similar remarks apply to the subsurface resources. The assumption that all of the known, inferred, and hypothesized deposits or resources will be developed, even with the time frame suggested, is at best rank speculation. There is, firstly, a real question as to whether some (or perhaps any) of these resources will ever have commercial value. Secondly, it is entirely possible that, as a matter of State choice, the resources would not have been developed in any event.

It is meaningless to compare future gross royalties when no adjustment is made either for timing or for the uncertainty of the future revenues. It is a problem of adding apples and oranges. A common denominator is necessary and present value is the most frequently accepted means of making the comparison. For example, if the numbers prepared by the U.S. Bureau of Mines are discounted for both time and risk, the present value (1976) of all royalties estimated amounts to about 24 million dollars. This is a far cry from the several billion dollars that might be inferred from the tables. While the choice of risk factors and timing are arbitrary, a wide range of factors will result in present value amounting to millions, not billions of dollars.

A more concrete example of what present coal prospects look like is available. According to the Alaska Scouting Service, a huge coal complex is planned for the Beluga area. Informed sources place annual production at an average of 5 million tons per year, at a royalty of $0.30 per ton. Thus the revenue amounts to 1.5 million dollars per year. Assuming that production begins four

years from now, and lasts for thirty years, the present value of the royalty (discounted at 8 percent) is about 12 million dollars. It might also be pointed out that the project is still in the planning stage and there is no guarantee that production will ever take place.

There is another point that needs to be made with respect to State "losses." This relates to the issue of income foregone by the State on resources traded off. Since economic rents are closely tied to this discussion, we should briefly define the concept. We can define economic rent as the revenue received from the sale of a resource minus the real economic cost of producing the resource (including a competitive rate of return on investment).

The importance of this concept is that economic rent is a "surplus" above and beyond that necessary to bring a resource into production, and that the economic rent is the only source of revenue from the resource that the State may acquire. In other words, only if economic rent is present will the State be able to impose any kind of royalty or tax on the resource. If the rent is not there, and the State attempts to impose a royalty, production will not take place.

Hence, the question of what the State gives up in the transfer of the resource is really a question of how much economic rent the State stands to loose. The answer varies according to the assumption one makes.

If we assume that the State uses its full power of taxation, then 100 percent of the economic rent can be returned to the State, and the State has given up nothing in the transfer of the resource to the private sector.

While the State is unlikely to do this, it is reasonable to expect that the State will be as successful at "capturing" rents from the private sector as it is in capturing them in its own negotiations. Under these assumptions, the State again has lost little or nothing.

In other words, while the State may give up ownership of the resource, it in no way gives up the ability to derive roughly the same revenue that it would have derived otherwise. Whether it chooses to do so or not is another matter.

V. The Issue of the State's Fiscal Viability

The second major economic question that should be addressed is "does the trade impair the future fiscal viability of the State?" The answer is almost certainly no.

ATTACHMENT B

COOK INLET REGION, INC. PUBLIC USE AND ACCESS POLICIES

Historically, Cook Inlet Region, Inc. (CIRI) has made numerous efforts to allow for public use of, and access across, its lands. An example of a major commitment to public use is CIRI's Public Use Permit Program which allows for public access to over 400,000 acres within the Cook Inlet Region boundaries (attached).

CIRI has also entered into numerous agreements which provide for public use of, and access across, an extensive amount of CIRI land holdings. The more significant agreements include:

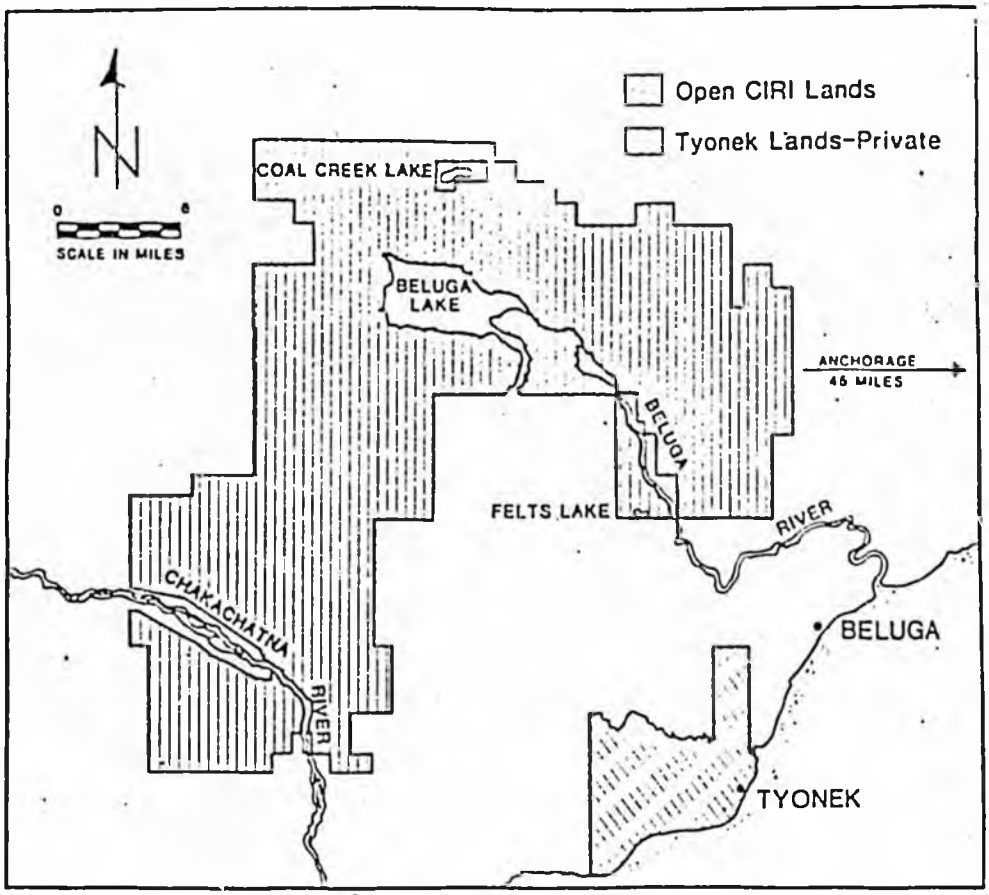
1. CIRI-State Out-of-Region Agreement - allows for public use of over 98,000 acres near Farewell, Alaska.

2. CIRI-State East Forelands Agreement - provides an opportunity for the State to lease, at $1.00 per year, over 150 acres on the Kenai Peninsula for important recreational purposes.

3. CIRI-State-Mat-Su Borough Alexander Creek Agreement - guarantees public access along the popular Alexander Creek.

In summary, CIRI has taken numerous steps to accommodate public use and access needs on and over its lands, and intends to continue doing so in the future.

COOK INLET REGION LANDS IN THE BELUGA AREA OPEN FOR PUBLIC USE



Cook Inlet Region Inc. (CIRI) is continuing its program of allowing for the public to utilize 300,000 acres of private lands in the Beluga area for the recreational uses: hunting, fishing, camping and hiking. All person or parties planning on utilizing CIRI lands for recreational purposes as shown above will be required to obtain a Recreational Use Permit. Permits are valid for a maximum of 30 days and are free of charge.

Land owned by Tyonek Native Corporation are not covered under this permit program. Those lands should be respected as private property.

To obtain a permit or receive additional information contact: Cook Inlet Region, Inc., Land Department, 2525 C Street, Anchorage, Alaska 99503 or call 274-8638.

Cook Inlet Region, Inc.'s Public Use Permit Program represents a positive approach to public use management on private lands. The program has been in existence for over two years. During that time it was limited to 300,000 acres in the Beluga area. Because of the program's success in the Beluga area it will be expanded this year to include all unimproved CIRI lands within the Cook Inlet Region. The expanded program will cover over 400,000 acres and will now include lands in the Talkeetna and Pt. MacKenzie areas as well as on the Kenai Peninsula.

ATTACHMENT C

OUT OF REGION AGREEMENT

This Agreement is entered into November 18, 1982, between the State of Alaska (the State) and Cook Inlet Region, Inc. (CIRI), regarding the provisions of subparagraph I(C)(1)(b) of the "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area," as clarified and supplemented (the Terms and Conditions).

The parties agree as follows:

1. Approval of CIRI "Red Line Pool". The State shall, upon request by CIRI, affirmatively support in writing expeditious conveyance of the lands to CIRI specified in Appendices I through VIII to this Agreement (the Red Line Pool) subject to the covenants, easements and conditions described in this Agreement and the Appendices. Within ten (10) days after written notice by CIRI of selection of the township(s), the State shall relinquish its selection or selections regarding a particular township(s).

2. Effect of "Red Line Pool". Within thirty (30) days after the date of this Agreement, the State shall note on its surface and subsurface estate status plats that there is a high probability that lands in the Red Line Pool may be selected by CIRI. CIRI agrees, subject to paragraph 8 of this Agreement, that it will not nominate to the Secretary under subparagraph I(C)(1)(b) of the Terms and Conditions any State-selected lands not contained in the Red Line Pool, provided that CIRI may request that State-selected lands outside of the Red Line Pool be included in said pool under the following circumstances:

In the event of a failure of required consent from the Secretary or a Regional Corporation under subparagraphs I(C)(1)(a) or (b) of the Terms and Conditions, or of a failure of required consent from the Secretary or a Native Corporation under subsection 12(b)(6) of Public Law 94-204; then CIRI may submit, and within thirty (30) days thereafter the State shall review and comment upon, additional CIRI selection interest

lands. Unless otherwise mutually agreed to, the parties shall meet at least once per week thereafter and negotiate in diligent good faith regarding approval of such lands for placement in the Red Line Pool. The intent of this process will be to attempt to replenish expeditiously the Pool in an amount equal to the lands for which there exists a failure of required consent as described above.

3. Release of Lands from the Red Line Pool and from CIRI Claims. Within 120 days of the date set by subparagraph I(C)(1)(b) of the Terms and Conditions, as extended by Congress, when CIRI is required to nominate at least six times its entitlement to the Secretary, CIRI shall make its final selections from the Red Line Pool. Any land in the Red Line Pool which CIRI does not select by that date is released from any claim under subparagraph I(C)(1)(b) of the Terms and Conditions. Any land in Alaska outside of the CIRI Region which CIRI may select under subparagraph I(C)(1)(b) of the Terms and Conditions and which CIRI has not selected within four months of completion of the pool is released from any further claim by CIRI under said paragraph.

4. Prioritization for Reduction of Nominations. Lands within the Red Line Pool described above have been prioritized into eight township groups, as described in Appendix IX, with Group A being CIRI's highest priority for retention in the pool and Group H being the lowest priority. Each township group has been further divided into two or more approximately township-sized units, with number one being CIRI's highest priority for retention in the pool. Within thirty (30) days of receipt of interim conveyance or title for any accumulation of 23,040 or greater acreage of CIRI's entitlement under subparagraph I(C)(1)(b) of the Terms and Conditions by any means other than the conveyance of lands from the Red Line Pool, including but not limited to conveyance of land pursuant to subparagraph I(C)(2) of the Terms and Conditions and the purchase of excess and surplus property, CIRI shall relinquish an equivalent number of acres according to the then lowest existing priority unit or units as shown in Appendix IX. The priorities in Appendix IX may be modified upon mutual consent of the parties.

5. Extension of Deadlines. The State hereby agrees to an extension, by appropriate federal legislation or valid agreement, of the

deadlines established in subparagraph I(C)(1)(b) of the Terms and Conditions for a period of twenty-four (24) months beyond the period established by Public Law 96-311.

6. Interim Abevance of CIRI Nominations. Unless otherwise mutually agreed to by the parties, and subject to the provisions of paragraph 2 above, CIRI shall not designate any additional pre-June 1, 1982 state-selected lands pursuant to subparagraph I(C)(1) of the Terms and Conditions. CIRI may at any time, however, subject to paragraph 3 of this Agreement, nominate to its out-of-region pool any federal lands not selected by the State as of June 1, 1982, provided that in the event of a nomination by CIRI of such federal lands pursuant to subparagraph I(C)(1)(b) of the Terms and Conditions, the total number of acres to be nominated initially by CIRI ("6 times its remaining out-of-region entitlement") shall be reduced by the number of acres then-remaining in the Red Line Pool.

7. Proposed "Illinois Creek" Legislation. With respect to the lands described in Appendix II to this Agreement (hereinafter Illinois Creek), CIRI may formulate a legislative proposal containing the following terms:

(a) consideration for the conveyance of Illinois Creek to CIRI under the legislative proposal shall include:

(i) recoupment of selection rights by the State, with the ability to select federal lands unencumbered by mining claims (including lands with predominant surface value or oil and gas potential) and with the enlarged scope of selection provided by the extension of State selection deadlines and the ability to "top file" under Section 906 of Public Law 96-487;

(ii) subject to paragraph 8 of this Agreement, a waiver by CIRI of its priority over the State, pursuant to subparagraph I(C)(1)(c) of the Terms and Conditions, regarding selections of federal land outside of the Cook Inlet Region;

(iii) waiver by CIRI of any claim, including a claim under the Terms and Conditions to lands within the Trans-Alaska Pipeline

System Corridor (inner and outer) between the southern boundary of the North Slope Borough and the northern shore of the Yukon River, excluding lands placed in the Red Line Pool.

(iv) satisfaction of a portion of the CIRI out-of-region pool.

(b) the proposal shall be placed before the Alaska Legislature for affirmative approval;

Within ten (10) days after submission to the Department of Natural Resources of the legislative proposal as described above, the Commissioner of the Department of Natural Resources shall review the legislative proposal and consult with CIRI. Within ten (10) days thereafter, the Commissioner shall determine if the proposal is in the public interest and, if so, he shall provide to CIRI, to the Governor, to the President of the State Senate and the Speaker of the State House of Representatives, a letter affirmatively supporting approval of the legislative proposal and containing a detailed finding that the proposal is in the public interest and the reasons therefore.

8. Waiver of Claims to Portion of TAPS Corridor. CIRI waives any claim, including a claim under the Terms and Conditions, to lands within the inner and outer Trans-Alaska Pipeline System Corridor (TAPS Corridor) south of the north shore of the Yukon River, excluding lands placed in the Red Line Pool. This waiver does not affect the TAPS Corridor within the North Slope Borough.

9. Direct Convevance Agreement. To the extent permitted by federal law, the State and CIRI agree to enter into an agreement with the Secretary of the Interior for direct convevance of land in the Red Line Pool from the State to CIRI pursuant to Section 12(b)(11)(iii) of the Cook Inlet Region, Inc., Alaska Railroad Waiver Amendments, dated September 16, 1982.

10. Post-Convevance Procedures. Within ninety (90) days following a conveyance to CIRI of particular lands as described in Appendices I through VIII, CIRI shall grant to the State the respective easements and submerged lands depicted and described in Appendices I through VIII. With respect to

the lands described in Appendices I, II and VII, the State, within ninety (90) days after such time as CIRI has been conveyed such lands and the State has been conveyed the adjacent lands, shall grant to CIRI the easements designated in those Appendices. Road, trail and site easements shall be reserved in the general locations depicted and described in Appendices I through VIII, although actual final locations shall be determined upon field examination and mutual agreement. Easements are not ANCSA 17(b) easements and will continue until terminated by mutual agreement of both parties. Terms used in the Appendices are defined as follows:

(a) 25' Trail Easement. The 25 foot trail easements described and depicted on the maps in the Appendices are restricted to travel by foot, dogsleds, animals, snowmobiles, two- and three-wheeled vehicles, and small all-terrain vehicles (less than 3,000 lbs. G.V.W).

(b) 50' Road Easement. The 50 foot road easements described and depicted on the maps in the Appendices are restricted to travel by large all-terrain vehicles (more than 3,000 lbs. G.V.W.), track vehicles and 4-wheel drive vehicles, in addition to the uses for 25 foot trail easements.

(c) Site Easement. Site easements described and depicted on the maps in the Appendices are reserved for aircraft landing or vehicle parking (e.g. aircraft, boats, ATV's, cars, trucks), temporary camping, loading or unloading at a trailhead, along an access route or waterway, or within a reasonable distance of a transportation route or waterway. Temporary camping, loading, or unloading shall be limited to 24 hours, except for site easements identified in Appendix I where camping shall be allowed for a period not to exceed fourteen (14) days.

(d) Submerged Land. CIRI shall convey whatever interest, if any, it has in land between the far left and far right banks of the waterbodies depicted in the Appendices, up to the line of ordinary high water.

11. Waiver of Right to Contest Certain Mining Claims on the Basis of Land Status. CIRI agrees that, with respect to mining claims, locations or

entries initiated on or before November 1, 1982, and asserted under Alaska state law on lands within the Red Line Pool, CIRI will not object to such claims, locations or entries on the basis that they were initiated on lands which were selected by, rather than tentatively approved or patented to, the State. This restriction applies solely to lands within the Red Line Pool and does not preclude objection or contest of any such claim, location or entry on any other grounds. CIRI shall not unreasonably deny access to any such valid existing claim. The holder of the mining claim, location or entry will have the complete enjoyment of all rights, privileges and benefits granted to such claim under state law. Upon issuance of patent, CIRI shall succeed and become entitled to any and all interests of the State as grantor and licensor of the mining claim location or entry, including its administration pursuant to applicable state law.

12. Both parties to this Agreement participated in its drafting; accordingly, it should be construed in order to effectuate the intents and purposes of the parties, without a preference for resolution of its terms in favor of one party or the other. The effect of this provision is limited to the terms of this Agreement.

Dated: Nov 8, 1982

State of Alaska

John W. Katz, Commissioner
Department of Natural Resources

Dated: 11/17/82

Cook Inlet Region, Inc.

Roy M. Huhndorf, President

Dated: 11/18/82

Approved as to form.
Office of the Attorney General

Bradley
4/30/85

Original sponsor: Szymanski

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 383 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the recoupment conveyance for land at Illinois Creek and to land at Clear; and providing for an effective date."

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

* Section 1. PURPOSES AND FINDINGS. (a) The purposes of this Act are to permit the state to recoup certain land selection rights provided for in sec. 606(d)(6) of Public Law 97-468, to realign the ownership of land as between the state, Cook Inlet Region, Inc., and the United States and to permit the transfer of certain land to the City of Anderson in order to

(1) facilitate land management;

(2) create private land ownership patterns that encourage mineral development in appropriate areas;

(3) facilitate implementation of the Alaska Native Claims Settlement Act; and

(4) assure maximum public benefit from selections made under the Alaska Statehood Act.

(b) The legislature finds that the recoupment conveyance of land at Illinois Creek and that the acquisition of land at Clear is a matter of statewide significance, is in the general public interest, and will accomplish the purposes intended.

* Sec. 2. APPROVAL OF TRANSFER. (a) The commissioner of natural resources may convey certain land described in the "Out of Region Agreement" dated November 18, 1982, between Cook Inlet Region, Inc. and the state to the United States for reconveyance to Cook Inlet Region, Inc., in

return for recoupment of selection rights under the Alaska Statehood Act and other consideration described in the "Out of Region Agreement." Notwithstanding AS 38.05.125, a conveyance by the commissioner of natural resources under this subsection transfers all of the right, title, and interest of the state in the land, including the subsurface mineral estate as authorized by sec. 12(b)(11) of Public Law 92-204 as amended by sec. 606(d)(1) of Public Law 97-468.

(b) The commissioner of natural resources may grant those easements described on a map entitled "Illinois Creek Recoupment Conveyance-1985."

* Sec. 3. RELINQUISHMENT OF CLEAR AIR FORCE BASE SELECTION. As a condition of the conveyance authorized under sec. 2 of this Act, the Cook Inlet Region, Inc. shall relinquish land selected by Cook Inlet Region, Inc. that has been excessed by the U.S. Department of Defense from the Clear Air Force Station. The commissioner of natural resources shall select all land excessed from the Clear Air Force Station that is relinquished by Cook Inlet Region, Inc. under this section and request a priority conveyance of the land to the state by the U.S. Department of the Interior, Bureau of Land Management. On receipt of tentative approval from the Bureau of Land Management, the commissioner of natural resources shall convey to the City of Anderson the land selected by the City of Anderson in an amount equal to 10 percent of the state land within the boundaries of the City of Anderson and all the land near the Clear Airport but not to exceed 1,500 acres.

* Sec. 4. WAIVER. AS 38.50 does not apply to a conveyance under sec. 2(a) of this Act.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.-10.070(c).

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

April 30, 1985

The Honorable Richard Shultz
Co-Chairman
House Resources Committee
Pouch V
Juneau, AK 99811

Dear Representative Shultz:

In response to your recent questions concerning HB 383, my staff has forwarded your office several informational items. Other factual information should have arrived under separate cover from CIRI.

Following your discussion with Gary Gustafson last week concerning possible municipal entitlement land for the City of Anderson, he and his staff contacted BLM to obtain an update on land status. As you know, CIRI has recently relinquished its selections near Anderson, thereby removing the only competing interest to the existing state selection in the area. Unfortunately, the land desired by the city is still withdrawn by the military (PLO 1647 and PLO 547). These federal withdrawals bar the State's selection from attaching. However, the State requested the revocation of these withdrawals (as they apply to Sections 4, 5, 7, 8 with Township 7 South, Range 8 West, F.M.) some time ago, and just recently contacted BLM again to help facilitate their removal (attachment). As soon as BLM is able to revoke these withdrawals, the State's land selection will attach and the land will be conveyed to the State. The Anderson land is included on the State's land conveyance priority list for federal fiscal year 1985 (FFY 85). BLM has assured us that they should be able to expeditiously convey the land to the State as soon as the withdrawals are removed.

I would also like to explain the relationship of HB 383 to the 1976 Cook Inlet Land Trade. As you know, the Cook Inlet Land Trade, between the State, CIRI and United States, was debated at some length and ultimately approved by the Alaska State Legislature. One of its provisions allowed CIRI a 29.66 township land entitlement to be obtained from federal land (including state selected land) outside the Cook Inlet Region. CIRI is required to receive title to 10 townships of its out-of-region land entitlement in Alaska. The remainder can be converted to bidding "chits" ($250/acre)

10-J9LH

which, as authorized by federal law may be used to obtain surplus federal property in other states at public auction. Therefore, it is in the State's interest that CIRI convert as much of its out-of-region selection rights to "chits" as possible.

There is also a provision of the Cook Inlet Land Trade that could allow CIRI to nominate to BLM at least six times its remaining out-of-region land entitlement for possible conveyance. The BLM then approves from these nominations a pool of three times the remaining entitlement. Upon completion of the pool the State and CIRI commence a strike and select process which alternates until the final CIRI entitlement acreage is established. Obviously, this process is less than satisfactory for both parties.

In order to mutually agree upon which state selected lands would compose CIRI's out-of-region entitlement without having to resort to the above mentioned strike and select mechanism, the parties negotiated and signed the 1982 State/CIRI Out-of-Region Agreement. This agreement specifies and prioritizes those state selected lands which CIRI may receive. It also includes a provision whereby, subject to legislative approval, CIRI may obtain state patented land near Illinois Creek as part of its out-of-region entitlement. This arrangement is articulated in HB 383 and includes a recoupment provision for the State to recover its selection rights on an acre-for-acre basis and CIRI's agreement to waive any further selection rights of priority over future and existing state selections outside the areas specified in the agreement.

Last year the State implemented the first part of the agreement by relinquishing 98,000 acres of selections in the Farewell block to allow their conveyance to CIRI. This action alone makes up half of CIRI's required 10 township in-state conveyance requirement. The Illinois Creek recoupment conveyance would add another 43,000 acres (approximately 2 townships), leaving CIRI with less than 3 townships to obtain in-state.

A comprehensive briefing on this subject will require additional time. My staff will remain available as required to provide you with whatever information you see as useful to the Committee.

Sincerely,

Bob Arnold, Deputy

Esther C. Wunnicke
Commissioner

Enclosure

April 29, 1985

Mike Penfold, State Director
Bureau of Land Management
701 C. Street, Box 13
Anchorage, AK 99513

Subject: F-44008

Dear Mr. Penfold:

The State of Alaska's land conveyance priority list (p. 28) for federal fiscal year 85 (FFY 85) includes state selection F-44008 (Township 7 South, Range 8 West, F.M.) near Anderson. I am aware that your staff has previously been unable to convey this land to the state due to two factors: competing Cook Inlet Region, Inc. (CIRI) selections; and two military withdrawals (PLO 1847 and PLO 547).

Recently, CIRI relinquished its land selections near Anderson, thereby helping to facilitate the transfer of this land to the state. Unfortunately, however, the military withdrawals have not yet been removed. I therefore request your assistance to help expedite the removal of these excess military withdrawals as they apply to Sections 4, 5, 7 and 8. I am informed the withdrawal revocation process is underway. Conveyance of this land to the state will enable us to work directly with the City of Anderson to address its urgent need for land associated with community development activities. Thanks for your assistance.

Sincerely,

Tom Hawkins

Tom Hawkins
Director

COOK INLET LAND TRADE FACT SHEET

Background

Under the Alaska Native Claims Settlement Act the people of the Cook Inlet Region are entitled to 1,250,000 acres of land of "like and similar character" to their original sites. The Cook Inlet Basin, however, is the most highly developed part of the state. The federal government has limited suitable holdings in this area from which land might be selected since virtually all of the low-lying, habitable lands were patented to the state under the Statehood Act. So the Native people were offered an entitlement rich only in mountain tops and glaciers--hardly "like and similar in character" to the lands they inhabited for many centuries, nor within the intent and spirit of the Claims Settlement Act.

For almost three years the Cook Inlet Region tried to resolve its land problems through a series of discussions with the Secretary of Interior. When further negotiation proved futile, the Region sued the Secretary in federal court and the case remains there now on appeal.

The State of Alaska was not a party to any of these actions, nor did Cook Inlet make any claims on it. But it soon became evident that despite its lack of legal involvement, the state had a vital stake in the conflict. For instance, if the legal appeal mentioned above is decided in favor of Cook Inlet, there is a very good chance that substantial tracts of land in the Lake Chelatna and Tuxedni Bay areas, selected by the state in a 1972 agreement with the Interior Department, would become available for selection by the native region. And not only would the state's Lake Chelatna area be jeopardized, but all of the 75,000,000 acres transferred to Alaska under that agreement might be lost.

Cook Inlet also took its problems to Congress where support came immediately from Senator Henry Jackson and Representative Lloyd Meeds, both effective advocates of native affairs, who publicly pledged to see that Congress protects Cook Inlet's rights. Again the state saw its interests in possible jeopardy as Congress mentioned areas for consideration in settlement such as the Swanson River oil field.

Either solution--judicial or Congressional--could be made at the expense of the State of Alaska without its consent or participation.

The state, therefore, at the urging of the Alaska Delegation, became a party to renewed negotiations along with the Department of Interior and the native region. The proposed agreement, hammered out after more than eight months of give and take, and approved by Congress and the President, is now before the Alaska Legislature awaiting approval.

Proposed Agreement

The purpose of this agreement is to end the element of uncertainty surrounding land use in the Southcentral part of Alaska by settling the native claims and the federal court case.

The basic design is thus: The federal government, realizing it cannot meet its responsibility to the Cook Inlet Region under the Claims Act for land of "similar character" because the state has patented to it virtually all such land in the Cook Inlet Basin, proposes to purchase approximately 500,000 acres from the state to satisfy the Region's entitlement. In return for these lands, the state will receive from the federal government approximately 2½ acres for one acre given up, or a total of 1,200,000 acres (a considerable increase over the Statehood allotment).

The opportunity was taken during the negotiations to help rectify the scattered, irrational land ownership patterns that presently exist and might continue to exist under any other solution.

State Receives:

--- 26 townships in the Lake Clark, Iliamna area and 7 townships in the Tutna Lake area for fisheries management and development of parks and recreation to include sport hunting and fishing.

--- 8 townships in the Talkeetna Mountains for parks and recreation.

--- 11 townships in the Kamishak Bay area. This would become the only state-owned coastal land from Pt. Harriet on the west side of the Inlet to the tip of the Aleutian chain.

--- Campbell Airstrip (site of proposed Far North Bicentennial Park), Pt. Woronzof, Pt. Campbell and Goose Lake.

--- An additional selection right to 12.4 townships in the Talkeetna Mountains (in the [redacted] River area where the state Experimental Forest is now located).

Cook Inlet Receives:

Federal lands

--- Approximately 30 townships outside the Region. The federal and state governments will have the right to exclude certain lands from selection; in addition the state has an alternative "strike" prerogative throughout the selection.

--- Subsurface rights only in one half township on the west side of the Inlet.

--- 10,000 acres in the Kenai Moose Range. This land may not be sold for 25 years and the federal government retains first right of refusal. There is also a 300 yard restricted zone (compatible development) running along the waterfront of Tustumena Lake and Kasilof River.

--- Subsurface rights only in 9¼ townships in the Moose Range with development restricted to oil, gas or coal for gasification.

State Lands

--- 1.2 townships in scattered tracts in the Mat-Su Valley.

--- 5 townships in the lower Kenai Peninsula.

--- 13.5 townships in the Beluga area containing 25% of the proven coal reserves (75% retained by the state).

Federal Government Receives:

--- No land directly, but retains title to a number of townships within Cook Inlet Region which the Regional Corporation would otherwise select.

--- Settlement of Cook Inlet Region's entitlement under the Claims Act.

--- Settlement of Cook Inlet's law suit against the Secretary of the Interior.

--- Minimal impact on the Moose Range.

Other Considerations:

--- All lands transferred to the native corporation will contain Claim safeguards, such as easements.

--- All state lands coveyed will contain dedicated or platted section line easements and highway or other rights of way.

--- Guarantee of townships in Lake Chelatna and Tuxedni Bay now held by the state but under challenge in the federal law suit mentioned above.

--- No oil and gas fields will be transferred to native ownership. All revenues currently received by the state, e.g., Swanson River, will continue.

Prepared by Cook Inlet Region, Inc. February, 1976.

FACT SHEET 3/6/85

ILLINOIS CREEK RECOUPMENT CONVEYANCE

This fact sheet addresses the attributes of the proposed Illinois Creek Recoupment Conveyance. This conveyance is part of the overall implementation of the Out-of-Region portion of the 1976 Cook Inlet Land Exchange.

Proposal

The proposed legislation would convey approximately 43,000 acres of state patented land near Illinois Creek in western Alaska (see map) to Cook Inlet Region, Inc. (CIRI) in partial fulfillment of CIRI's Out-of-Region land entitlement. In return the State would receive (recoup) equivalent acreage selection rights from the federal government for lands elsewhere in Alaska, as well as other considerations cited below.

Benefits to the State

The State could select, acre for acre, better land:

- ANILCA Sec. 906 now permits an enlarged scope of state selection through "top filling" on federal withdrawals and Native overselections.

- New selections could be for lands unencumbered by mining claims and include lands with predominant surface values or oil and gas potential.

- The Illinois Creek lands do not possess any significant resource values presently under state control (the hard rock mineral rights have already been alienated from state ownership by claims filed four years ago by Anaconda, and it is questionable if these lands would be selected today by the State given the more sophisticated resource information base available).

These lands are already included in a 30-township pool of otherwise state selected lands which have been approved for transfer to CIRI by appropriate state agencies, and the requisite access and other public interests have been protected.

The State's sovereign authority to levy severance, income or other taxes, and to administer environmental controls, would not be affected by the conveyance.

CIRI would waive its nomination priority over future state land selections outside Cook Inlet Region, thus insuring the State an orderly fulfillment of its remaining Statehood entitlement.

CIRI would waive any claim to lands within the TAPS Corridor between the North Slope Borough and the Yukon River.

The conveyance would satisfy obligations of the State regarding fulfillment of a portion of CIRI's Out-of-Region entitlement, and would significantly move the State and CIRI nearer the end of the major implementation issues of the Cook Inlet Land Exchange.

Benefits to CIRI

CIRI and Anaconda have a working agreement which would significantly increase chances for development of the mineral resources to the economic benefit of both parties (Anaconda has already stated its strong support for the proposal in writing).

Other Considerations

The interests of local residents would be fully considered by terms of the original land exchange legislation which require CIRI to obtain certain approvals from local Native corporations before CIRI may obtain title to any lands outside its region.

Alaska Natives as a whole would benefit under the provisions of ANCSA Section 7(i) which requires that 70% of all revenues received by CIRI from mineral development be divided among all twelve regional Native corporations.

Local residents would benefit from the local Native hire provisions of the Anaconda/CIRI joint venture agreement.

There are no other known mineral claimants on the proposed transfer lands. Still, CIRI has agreed in writing that any valid claimant shall have reasonable access to his or her claim and the complete enjoyment of all rights, privileges and benefits granted to such claim under state law.

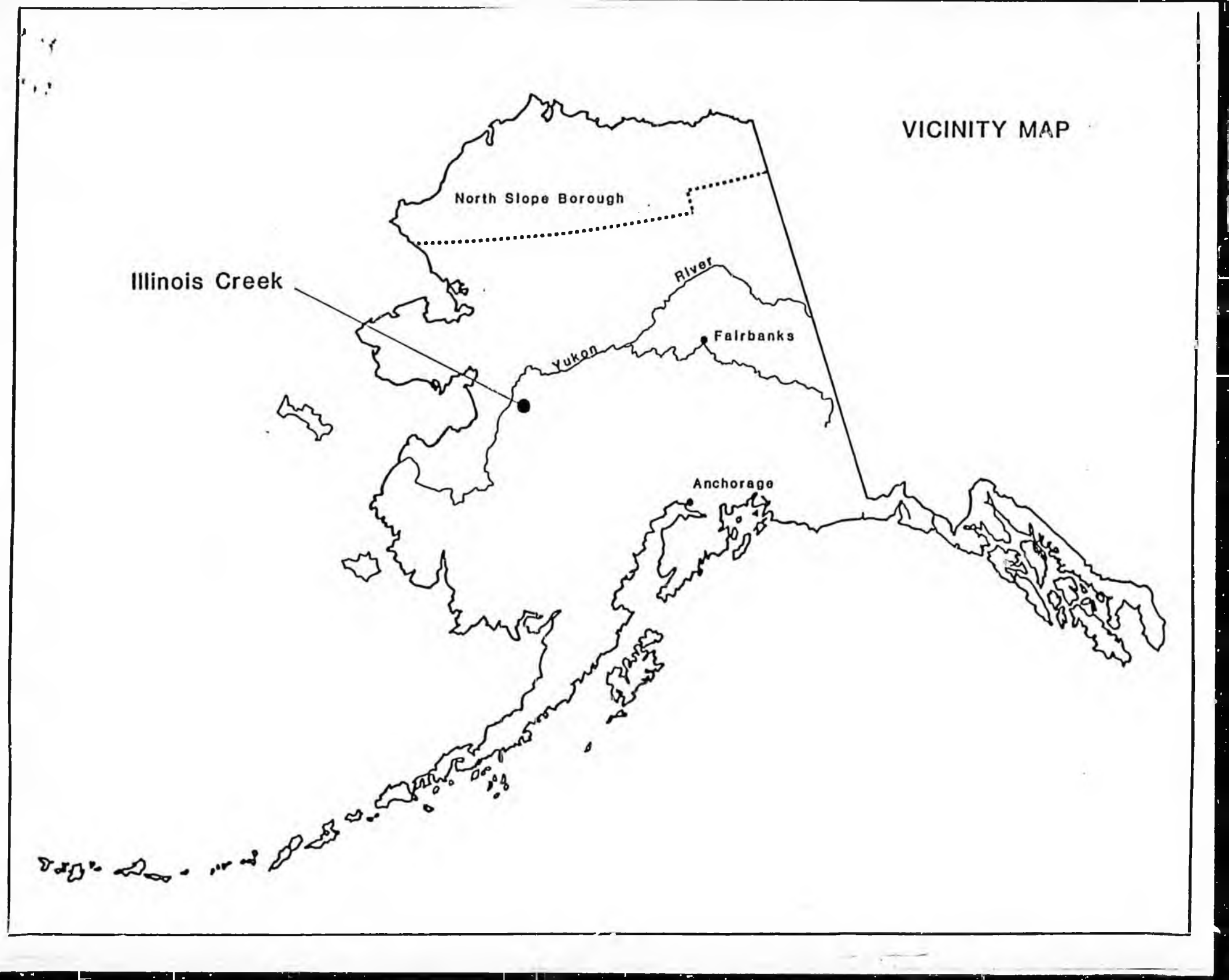
Successful development of a major mine in interior Alaska would provide a big boost to the mining industry statewide.

Gana-A' Yoo, Ltd., the Village corporation representing the only populated areas near Illinois Creek, has expressed its support for the Recoupment Conveyance.

ILLINOIS CREEK
RECOUPMENT CONVEYANCE
-1985-



Road easements are fifty feet wide and shall be reserved in the general locations depicted, although final location shall be determined by field examination and mutual agreement between Cook Inlet Region, Inc. (CIRI) and the State of Alaska within ninety days from a request for easement determination by CIRI. Said easements are not easements pursuant to Section 17(b) of ANCSA, and will continue until terminated by mutual agreement of both parties.


VICINITY MAP
North Slope Borough
Illinois Creek
Yukon River
Fairbanks
Anchorage

HB
3835

Dave
File this with Bill

MISCONCEPTIONS RELATING TO HB 385 AND CONTROLLED LIVESTOCK DISTRICTS

On March 14, 1986 the House Resource Committee held a teleconference hearing on HB 385, dealing with responsibility for the actions of uncontrolled livestock. A number of comments were made in opposition to the bill which indicate a lack of understanding of the purpose of it and of the nature of existing and past law relating to uncontrolled livestock. I would like to comment on these misconceptions.

COMMON LAW PROTECTION OF PERSONS AND PROPERTY

Any person suffering injury due to uncontrolled livestock now has the right to recover damages through litigation. This is true for all lands in the state, fenced or not (see O'Meara vs. Anderson #3HO 84-276 SC). In spite of what some individuals may believe, there is no "open range" in Alaska, where stockmen are free of responsibility for their uncontrolled animals.

NATURE OF CONTROLLED LIVESTOCK DISTRICTS

A "controlled livestock district" is an area established by a district court judge in which it is against the law for domestic animals to run at large, unattended. Within such an area any person suffering injury from uncontrolled livestock need not go through litigation to recover damages. Any such person may impound the offending animal and demand payment from the owner. If the owner fails to comply, the injured party has the right to sell the animal at auction in order to recover.

The "controlled livestock district" thus provides for a non-judicial remedy in addition to the common law protection for persons and property. It does not limit liability for domestic animals to within the boundaries of such districts (see AS Chapter 35).

THE EFFECT OF HB 385

House Bill 385 would not increase existing liability for the owners of uncontrolled domestic animals. It would serve to state in simple and clear language just what that liability is. In so doing it would help to dispel the myth of "open range" and so should result in fewer confrontations between stockmen and other citizens and less litigation. HB 385 makes no changes in the law relating to "controlled livestock districts" and it has nothing to do with fencing.

MIKE O'MEARA
P.O. BOX 1125
HOMER, AK 99603

1,Millie Martin,P.O. Box 2652,"Homer, AK",99603,Millie

2,An Peischel,Box 15193 F.C.,"Homer, AK",99603,An

3,Daisy Lee Bitter,60385 Skyline Dr.,"Homer, AK",99603,Daisy

4,Victoria Hand,P.O. Box 2889,"Homer, AK",99603,Victoria

5,Dan Long,Box 15297 F.C.,"Homer, AK",99603,Dan

6,Sue Mohn,SR Box 700 A.P.,'Homer, AK",99603,Sue

7,Jean Strutz,Box 1143,"Homer, AK",99603,Jean

8,Kenton Bloom,Box 1141,"Homer, AK",99603

9,Marilyn Kirkham,1275 Ocean Dr.,"Homer,AK",99603

FOR YOUR INFORMATION..
NO REPLY AND NO
NOTIFICATION OF
THE HEARING.

MICHAEL S. O'MEARA
P.O. BOX 1125
HOMER, AK 99603

FEBRUARY 8, 1986

REPRESENTATIVE ANDRE MARROU
ALASKA STATE LEGISLATURE
POUCH V (MS 3100)
JUNEAU, AK 99811

DEAR REPRESENTATIVE MARROU:

I was pleased to finally receive your response to my letter of December 28 regarding the matter of uncontrolled livestock. Thank you very much for including a copy of your bill, HB 428, and for the copy of the Alaska State Legislature Directory.

We are in agreement about the need to resolve the confusion over stockmen's responsibilities under the law. Unfortunately, I cannot see how the passage of HB 428 would do that. Our legal research indicates that common law protection would still apply to all private property and persons, in or out of a "grazing district". If indeed legislation was passed which attempted to remove such equal protection for all citizens, it seems unlikely to withstand the constitutional challenge which would assuredly follow. The "controlled livestock district" simply provides injured parties within with a nonjudicial remedy in addition to that available through the courts. That really isn't a bad idea, except that confusion about liability is generated, resulting in a "wild west" attitude on the part of some stockmen.

I realize that since Edna Anderson was your campaign manager, and is no doubt a personal friend, that it will be difficult for you to avoid seeing the issue through her eyes. She and Elton are good people and deserve to prosper...but not at the expense of the majority of citizens in Alaska. When you refer to "decimating one entire industry" you would do well to consider the impact of an "open range" policy upon agriculture in general. If such a policy were ever attempted, barley growers and other farmers could face financial ruin in attempting to protect their developments from a small group of stockmen. How does one justify favoring one form of agriculture over all others?

As a libertarian you claim to defend such things as private ownership of land and elimination of intrusive "big government". It is therefore surprising to see you supporting governmental actions which would eliminate the right to control and enjoy private property, subsidize stockmen with a grant of free use of all public and unfenced private land (basically a form of social welfare), and deny equal protection under the law for all citizens.

As you can tell, I am not ready to support your bill, and have been in contact with many other legislators and concerned property owners suggesting that in its present form it should not be passed out of committee. You are no doubt aware that I do strongly support HB 385 (Thompson) and have suggested additional language which would provide nonjudicial remedies for injured parties, similar to those now available within "controlled livestock districts". I have also suggested that legislation requiring livestock to be adequately branded or marked be introduced, since it is difficult to prove which animals caused damage otherwise. Obviously I would hope that you would look at these proposals seriously and consider supporting them in place of HB 428.

In closing let me say that like you, I do not enjoy the process of litigation and hope to see our laws written in such a way as to help avoid it in the future. This can be done, I believe, only if such laws clearly provide for equal treatment of all citizens and make clear the need for each person to be responsible of his or her own actions. Any attempt to legislate "open range" policy can only assure an increase in the number of lawsuits involving stockmen, the state of Alaska, and other citizens. As Judge Fuld wrote in his opinion,"...the rights of the private property owner in this and other states are absolute as far as free and untrammelled enjoyment subject only to taxation, zoning, and some limitations against noxious use".

Sincerely,

MICHAEL S. O'MEARA

March 10, 1986

Representative Richard Shultz,
Pouch V
Juneau, Alaska 99811

Dear Representative Shultz,

It has come to our attention that there are several bills pending in this legislature that pertain to stock, grazing, grazing rights and liabilities. We refer to H.B. 428, An Act relating to grazing districts, S.B. 277, An Act relating to cattle and domesticated animals and H.B. 385 An Act relating to liability for damage caused by domestic animals and providing for an effective date.

As property owners in an area designated "Open Range", having sufered at the hands of an absent stockman who leaves his animals for months on end to forage and sometimes starve, we watched with particular interest the recent court ruling (O'Meara vs. Anderson, No. 3HO 84-276 SC) which for once proved that stockmen are liable for damages caused by their animals to private property under existing law.

It was also anticipated that a small handful of stockmen in the state would endeavor to create laws to circumvent this ruling. To our dismay, even the local soil conservation district supported this legislation, of which we are members, and to which we strongly disagreed. Their actions are not representative of these members.

We own property just outside of Homer in a well populated area, yet these stockmen would like to deny us our private property rights so they can run stock over it, or force us to build very costly fences (SB 277), so they can operate their business??? And I think that is wrong. It is undemocratic when one individual has the right to do so much damage, and to dictate to so many - and we have no rights in return. This occurs to us yearly in the Skyline Drive, Olson Mountain area of Homer. It is not right.

Of the bills mentioned above the only one we might support would be that of Mr. Thompson, H.B. 385, and that with reservation.

However we would like to strongly suggest that public hearings be held, in the communities that are so affected by them. Such as Homer. I believe you will find there exists a great deal of opposition to reinstating grazing districts or the fence out law. Please, before enacting new laws, give us a chance to speak in a public forum.

Thank you for your attention.

Sincerely,

Darol and Mildred Martin

Darol B. and Mildred M. Martin
59490 E. Skyline Drive
Homer, Alaska 99603
235-6652

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 385
Title : "An Act relating to liability for damage caused by domestic animals; ..."
Sponsor : Representative Thomson
Requestor : Representative Thomson
Date of Request : March 12, 1986

FISCAL DETAIL

Agency Affected : Department of Law
BRU : Legal Services
Components : Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This bill appears to set liability for damage on injury to a person by a domestic animal, and it provides for a private right to seek recovery for such damage or injury. Actions that may grow out of these provisions will be between private parties and will not involve the Department of Law.

Prepared by: Richard L. Pegues — Richard L. Pegues, Director — Phone : 465-3672
Division : Administrative Services Division — Date : 3/14/86
Approved by Commissioner Richard L. Pegues/For/ Harold M. Brown, Atty General — Date : 3/14/86
Agency : Department of Law

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

1 1

10/25/85

Post Office Box 3385
Kodiak, Alaska 99615

May 1, 1985

Representative Dave Thompson
Pouch V
Juneau, Alaska 99811

Dear Dave,

I am in receipt of House Bill No. 385 which you introduced on April 17, 1985.

As you know I was a victim of a cow crossing the road late at night. My children and I were lucky this time. We were wearing seatbelts and no one was seriously injured. Our car did'nt fair as well. It sustained $2,000 dollars in damages.

What I think this bill attempts to do is place the responsibility and liability of any domestic animal with its owner.
I support this bill in its entirety and will be willing to testify when the time comes. Thank you.

Sincerely,

Teresa D. Stone

WILLIAM R. DEVRIES
ATTORNEY AT LAW
P. O. BOX 2456
HOMER, ALASKA 99603
(907) 235-7504

October 23, 1985

Office of Mike Navarre, State Representative
312 Tyee Street
Soldotna, Alaska 99669

Re: O'Meara lawsuit

Dear Sir or Madam,

In response to your request, I enclose the most pertinent documents from the above case. My file is about a foot thick. If you have any further inquiries, please feel free to contact me.

I also enclose a copy of the Estray Act (Alaska Compiled Laws Annotated 1949) for your reference. This act was in existence from 1933 until its repeal in 1963. The other side in the lawsuit kept insisting there was a time in Alaskan history when cattlemen could let their animals roam without liability. The Estray Act totally negates that argument.

Sincerely,

William R. De Vries

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT HOMER

ELTON ANDERSON and EDNA ANDERSON,

Appellants,

vs.

MICHAEL S. O'MEARA and JANET V. O'MEARA,

Appellees.

Case No. 3HO-84-276 SC

APPEAL FROM THE DISTRICT COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT HOMER
WILLIAM H. FULD, JUDGE

BRIEF OF APPELLEES

DATED: April 2, 1985

William R. De Vries
Attorney for Appellees
P. O. Box 2456
Homer, Alaska 99603
235 7594

WILLIAM R. DEVRIES
ATTORNEY AT LAW
P. O. BOX 2456
HOMER, ALASKA
99603
907/235-7594

TABLE OF CONTENTS

Table of Authorities	i
Restatement of Issues Presented for Appeal	iii
Statement of Case	iv
Argument	1
Conclusion	6

TABLE OF AUTHORITIES

CASES	PAGE
Bastian v. King, 661 P.2d 953 (Utah 1983	4
Buford v. Houtz, 133 U.S. 321 (1890)	4
Camfield v. United States, 167 U.S. 518 (1897)	3
Carver v. Ford, 591 P.2d 305 (Okla 1979)	4
Dunbar v. Emigh, 158 P.2d 311 (Mont. 1945)	4
Garcia v. Sumrall, 121 P.2d 640 (Ariz 1942)	3, 4
Lazarus v. Phelps, 152 U.S. 81 (1894)	3, 4
Light v. United States, 220 U.S. 523 (1911)	2
SaBell's, Inc. v. Flens, 627 P.2d 750 (Colo. 1981)	3, 4
STATUTES	
A. S. 01.10.010	1
A. S. 03.30.010	1
A. S. 03.30.040	1
A. S. 03.35.010 - A. S. 03.35.070	4, 5

OTHER REFERENCES

73 AmJur2d, Section 384	1
Restatement of Torts, Second, Sec. 504	2
Kingery, The Public Grazing Lands, 43 Denver L. J. 329	2, 3
Scott, The Range Cattle Industry: Its Effect Western Land Law, 28 Montana L. Rev. 155	2
Prosser, Handbook on Torts, p. 497	4

RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Appellees object to appellants' statement of issues and restate all issues on appeal as follows:

In a case of trespass of livestock upon unenclosed private property, does the State of Alaska follow the common law rule of liability making the owner of the livestock liable for any damages caused by the trespass?

STATEMENT OF THE CASE

The appellants, Elton Anderson and Edna Anderson, and the appellees, Michael S. O'Meara and Janet V. O'Meara, live off the North Fork Road near Anchor Point, Alaska. The Andersons purchased their property in 1959 and the O'Mearas purchased their property in 1971.

The relevant facts are uncontested on appeal. It is uncontested that certain livestock owned and possessed by Elton and Edna Anderson trespassed upon property owned by the O'Mearas and caused damages. The trial court decided that the Andersons were liable for the damages based upon the common law rule of liability pertaining to trespassing livestock.

The record at trial is devoid of any evidence as to grazing customs in the State of Alaska which would qualify as "ancient custom" or "usages and customs of immemorial antiquity". Appellees object to all references in appellants' argument pertaining to the alleged custom of cattle owners in Alaska as irrelevant, untrue, and without any substantiation in the record at trial.

ARGUMENT

Since 1949, Alaska has had the following statute adopting the common law for this state:

> "So much of the common law not inconsistent with the Constitution of the State of Alaska or the Constitution of the United States or with any law passed by the legislature of the State of Alaska is the rule of decision in this state." A. S. 01.10.010.

In 1949, Alaska enacted statutes defining a legal fence and providing that the owner of cattle is liable for damages done to lands of another enclosed by a legal fence. A. S. 03.30.010 and A. S. 03.30.040. These fence statutes were repealed in 1977.

Judge Fuld correctly reasoned that the repeal of the fence statutes, to the extent that said statutes abrogated the common law, resulted in the reinstatement of the common law. See 73 AmJur2d Section 384, p. 505. The only issue then is to define the common law liability.

The appellants use the term "open range" in a way that has not been used even in the western grazing states of the United States. Even in the states that rejected the common law rule, there was still liability for trespass of livestock upon private land enclosed by a fence. Thus, the Restatement of Torts Second provides two possible rules of liability applicable to this case. One, the possessor of livestock is liable regardless

of whether the possessor of land maintains a fence. Two, the possessor of livestock is liable only if the possessor of land maintains a fence. See Restatement of Torts, Second, Section 504. It should be noted that the Restatement covers all jurisdictions and refers to newly opened and sparsely settled land under the commentary section.

As to private property, there never was a situation in any state where the livestock owner could turn his livestock loose with complete immunity. This position is what appellants attempt to now maintain is the common law in the State of Alaska at this time.

The term "open range" actually refers to the uses of public lands by livestock men. See Kingery, The Public Grazing Lands, 43 Denver L. J. 329:

> "The tradition of the open range - uncontrolled use of public lands by western livestock men - has meant violence not only between users and would-be-users, but violence to the range itself, caused overgrazing and consequent damaging erosion."

See also Scott, The Range Cattle Industry: Its Effect on Western Land Law, 28 Montana L. Rev. 155, 156:

> "The open range cattle industry was based on the availability of hundreds of thousands of square miles of free and unoccupied public domain."

The days of "open range" on public lands ended at the turn of the century. See Kingery, ibid., Light v. United States

220 U.S. 523 (1911), and Camfield v. United States, 167 U.S. 518 (1897).

As to unenclosed private property, some western states rejected the common law rule of liability and required that the owner of land maintain a fence as a prerequisite to suing the livestock owner for damages due to trespassing cattle.

See Garcia v. Sumrall, 121 P.2d 640, 644 (Ariz. 1942):

> "The obvious purpose and effect of these statutes was to change the common law rule and to make the owner of private premises fence his land to keep animals out, rather than to compel the owner of the animals to fence the land upon which they were grazing in order to keep them in."

See also GaBell's, Inc. v. Flens, 627 P.2d 750, 751 (Colo. 1981):

> "The Colorado Fence Law, section 35-46-102, C.R.S 1973, originally enacted in the latter part of the 19th century, makes the maintenance of a "lawful fence", as defined in section 35-46-101 C.R.S 1973, a condition precedent to recovery of damages caused by trespassing livestock....The statute modified the common law doctrine which held the owner of trespassing livestock strictly liable for their trespasses on the lands of others."

See also Lazarus v Phelps, 152 U.S. 81, 84 (1894).

Kingerly, The Public Grazing Lands, ibid., at page 330 states:

> "Early in their history, the western states had enacted "fence laws" declaring that livestock which inadvertently wander onto unfenced land not belonging to their owners could not be regarded as trespassers."

It is submitted that every western grazing state that has rejected the common law rule of liability has done so by statute. See Garcia v. Sumrall, ibid., SaBell's, Inc. v. Flens, ibid., Lazarus v. Phelps, ibid., Dunbar v. Emigh, 158 P.2d 311, 312 (Mont. 1945), Buford v. Houtz, 133 U.S. 321, 328 (1890), and Carver v. Ford, 591 P2d 305, 307 (Okla. 1979).

It is not even correct to suggest that all western grazing states have rejected the common law rule. See specifically Carver v. Ford, 591 P.2d 305 (Okla. 1979) and Bastian v. King, 661 P.2d 953, 955 (Utah 1983). Apparently, the State of Utah even goes so far as to require that the cattleman fence in his livestock.

Also, the trend in the western grazing states that have rejected the common law rule is to restore the common law rule. See Prosser, Handbook of the Law of Torts, p. 497.

It is submitted that Judge Fuld correctly ruled that the proposition of the rejecting the common law is properly a matter to be addressed by the legislature. Absent a statute to the contrary, Alaska is bound by the common law rule that the cattleman is liable in this instance.

Appellants also refer to "herd districts" and A. S. 03.35.010. A. S. 03.35.010 through A. S. 03.35.070 provide for the non-judicial impounding and sale of trespassing livestock in an area where a grazing district has been established

No grazing district has been established concerning the property involved in the present case. References to "herd districts" and A. S. 03.35.010 are irrelevant.

A letter from former Governor Hammond has also been referred to by the appellants. The letter has no substantive value on the issue of the law of this jurisdiction. In any event, the letter says nothing more than that by repealing the fence laws Governor Hammond was concerned that there would be substantial doubt and uncertainty unless there was further legislation.

As previously stated appellees deny that Alaska custom would allow livestock to trespass on private property with complete immunity. That has never been the custom in any jurisdiction.

CONCLUSION

Appellees submit that the trial court correctly applied the law of this jurisdiction and that the decision and judgment should be affirmed.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT HOMER

ELTON ANDERSON and
EDNA ANDERSON,

Appellants,

vs.

MICHAEL S. O'MEARA and
JANET V. O'MEARA,

Appellees.

FILED in the Trial Courts
State of Alaska, Third District
at Kenai
JUL 01 1985
Clerk
By Deputy

Case No. 3HO-84-276 SC

OPINION ON APPEAL

This case is on appeal from the District Court at Homer upon the Decision of William H. Fuld, District Court Judge, dated December 19, 1984. The notice of appeal was filed by appellants Elton Anderson and Edna Anderson on January 18, 1985. The Court has read the briefs of appellants and appellees and has heard the arguments of counsel at the hearing for oral argument which took place on June 17, 1985.

It was determined that there are no factual issues raised on this appeal. The question on appeal concerns the legal ruling of the trial court that the owner of livestock is liable for damages caused by the trespass of his livestock upon unenclosed private property of another.

It is the opinion of this Court that by the repeal by the legislature of A. S. 03.30.010 and A. S. 03.30.040 in 1977, the common law rule of liability that the owner of livestock is liable for damages caused by the trespass of his livestock upon the unenclosed private lands of another was reinstated as the law in this state.

The decision and judgment of the trial court is affirmed.

DATED: 7/1

RALPH E. MOODY
Superior Court Judge Pro Tem

WILLIAM R. DEVRIES
ATTORNEY AT LAW
P. O. BOX 8450
HOMER, ALASKA
99603
907/235-7504

IN THE SUPREME COURT OF THE STATE OF ALASKA

ELTON ANDERSON and EDNA ANDERSON, Petitioners, vs. MICHAEL S. O'MEARA and JANET V. O'MEARA, Respondents.	)	Supreme Court No. S-1081

Superior Court No. 3HO-84-276

Filed and Entered
APPELLATE COURTS of the
STATE of ALASKA
SEP 3 1985
By
CLERK
Deputy

ORDER

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

On consideration of the petition for hearing, filed on July 16, 1985, and the response to the petition, filed on August 2, 1985,

IT IS ORDERED:

The petition for hearing is denied.

Entered by direction of the court at Anchorage, Alaska on August 30, 1985.

CLERK OF THE SUPREME COURT

David A. Lampen
DAVID A. LAMPEN

[Rabinowitz, Chief Justice and Burke, Justice, dissent and would grant the petition.]

ccs: Justices
Counsel

ACLA 1949

§ 33-3-62. Renewal of brand or mark. Every owner of a brand or mark recorded with the Auditor must, five years after date of recording, renew said brand or mark by making application for renewal in the office of the Auditor. The fee for renewal shall be $1.00. If the owner of any brand or mark shall fail or refuse to make renewal within thirty days after same becomes due, such brand shall no longer be carried on the record of brands and marks in said office. [L 1933, ch 92, § 2, p 176; CLA 1933, § 637; am L 1939, ch 14, § 2, p 82.]

§ 33-3-63. Certified copy of record. At any time after the recording of any brand or mark with the Auditor as provided in this article, the owner thereof may procure from the Auditor a certified copy of the record of such brand or mark by paying therefor the sum of $1.00. [L 1933, ch 92, § 3, p 176; CLA 1933, § 638; am L 1939, ch 14, § 3, p 82.]

COLLATERAL REFERENCES

2 Am Jur 715.

§ 33-3-64. Property in recorded brands or marks: Sale or transfer: Recording instruments of transfer and effect thereof. Any brand or mark recorded in compliance with the requirements of this article shall be the property of the person, firm, or corporation causing such a record to be made and shall be subject to sale, assignment, devise and descent as personal property. Instruments of writing evidencing any such sale, assignment, or transfer, shall be acknowledged, and shall, if such brand or mark is for use on domestic animals other than reindeer, be recorded in the office of the Auditor in a book kept for that purpose, upon the payment to him of a fee of $1.00; and if such brand or mark is for use on reindeer, instruments of writing evidencing sale, assignment, or transfer of same may be recorded with the General Reindeer Supervisor at Nome, Alaska. The recording of any such instrument shall have the same force and effect as to third parties as the recording of instruments affecting real estate, and a certified copy of the record of any such instrument may be introduced in evidence as is now provided for certified copies of instruments affecting real estate. [L 1933, ch 92, § 4, p 176; CLA 1933, § 639; am L 1939, ch 14, § 4, p 82.]

COLLATERAL REFERENCES

2 Am Jur 715.

§ 33-3-65. Reindeer brand or mark as evidence. In all suits at law or in equity or in any criminal proceeding when the title or right of possession is involved, the brand or mark of any reindeer shall be prima facie evidence that the reindeer belongs to the owner of the

brand or mark, and that such owner is entitled to the possession of the said animal at the time of the action; provided such brand or mark has been approved by, and recorded with, the General Reindeer Supervisor; and marks shall be understood to include earmarks, earbuttons, or any other marks used on reindeer to designate ownership thereof. [L 1933, ch 92, § 5, p 177; CLA 1933, § 640; am L 1939, ch 14, § 5, p 83.]

CROSS REFERENCES

List of brands and marks as evidence: § 33-3-67.

COLLATERAL REFERENCES

2 Am Jur 714.

Notes: 51 ALR 1168, 86 ALR 186 (constitutionality of statute making presence of brand on animal prima facie evidence that animal belongs to owner of brand).

NOTES OF DECISIONS

Judicial notice taken by United States Supreme Court of statutory regulations as to branding. New Mexico ex rel. McLean v Denver & R. G. R. Co. (1906) 203 US 38, 27 S Ct 1, 51 L ed 78.

§ 33-3-66. List of brands and marks to be posted. On the first day of July in each year the Auditor shall forward to each United States Commissioner in whose precinct there may be domesticated livestock other than reindeer, a list of all brands and marks recorded in his office; such list shall contain the facsimile of such marks, brands, and earmarks, with the name and residence of the owner and the date of recording the same and of any assignment thereof; the Commissioner shall promptly, securely, and conspicuously post such list in his office; additions thereto shall be made of new brands, or marks, or assignments thereof, as the same are recorded. [L 1933, ch 92, § 7, p 177; CLA 1933, § 642; am L 1939, ch 14, § 7, p 84.]

§ 33-3-67. Use of list in evidence. Such list may be used in evidence in any proceeding in any court where the ownership of domesticated livestock other than reindeer is involved and shall have the same force and effect as if a certified copy of the record of brands or marks of reindeer or other domesticated livestock were introduced. [L 1933, ch 92, § 8, p 177; CLA 1933, § 643; am L 1939, ch 14, § 8, p 84.]

Article 6

Estrays

§ 33-3-71. Record of estrays.
§ 33-3-72. Who may impound.
§ 33-3-73. Notice of taking up or impounding.
§ 33-3-74. Surrender of estray to owner upon payment of expenses and damages.
§ 33-3-75. Statement on failure of owner to reclaim estray: Filing: Contents.
§ 33-3-76. Hearing on statement: Assessment of damages: Appeal.

§ 33-3-77. Public sale of estrays: Notice of sale.
§ 33-3-78. —— Auctioneer: Bidders: Disposition of proceeds: Title of buyer: Right of owner, mortgagee or other person to retake.
§ 33-3-79. —— Disposition of excess proceeds of sale.
§ 33-3-80. Penalty for impounding or using estrays contrary to Act.
§ 33-3-81. Act inapplicable to authorized public officers.
§ 33-3-82. Commissioner's fees for services in proceedings.

§ 33-3-71. Record of estrays. The Commissioner of each precinct in this Territory shall keep a suitable book which shall be called "Record of Estrays," wherein he shall keep a record of claims, notices, awards, orders, affidavits and proceedings herein provided relative to estrays. [L 1933, ch 47, § 1, p 95; CLA 1933, § 596.]

A former act relating to estrays (CLA 1913, §§ 676 to 683) was repealed by L 1933, ch 47 § 13, p 99.

COLLATERAL REFERENCES

2 Am Jur 794.

§ 33-3-72. Who may impound. Any person, or his agent, upon whose premises any estray may be running at large, may take up and impound such estray in a reasonably safe place. [L 1933, ch 47, § 2, p 95; CLA 1933, § 597.]

COLLATERAL REFERENCES

2 Am Jur 792.

§ 33-3-73. Notice of taking up or impounding. If the owner or person entitled to possession of such estray is known to the taker-up, the latter shall immediately notify him of such taking up. Should the owner or person entitled to possession of such estray fail, upon receipt of such notice from the taker-up, to immediately take and remove said estray, or should such person or owner entitled to possession of such estray be unknown to the taker-up, the latter shall forthwith give ten days' notice of such taking up by posting, within two miles of the place of taking up, notices in three public places of which one shall be at the nearest post office, if within that distance. Such notices shall contain a reasonably correct description of the estray's sex, breed, size, probable age, natural, artificial and other identifying marks, the name of the taker-up, and the time and place of taking up. [L 1933, ch 47, § 3, p 95; CLA 1933, § 598.]

§ 33-3-74. Surrender of estray to owner upon payment of expenses and damages. If the owner or person entitled to the possession of the estray shall prove previous to the expiration of said ten days' period, his ownership of or possessory right to said estray, the taker-up shall immediately surrender possession thereof to him upon his paying the taker-up one dollar ($1.00) for the latter's services of taking up said estray and posting said notices, and a reasonable

rate for keeping the same together with payment for any damages said estray has caused to the property of the taker-up; if the taker-up knew, at the time of taking up said estray, the owner or person entitled to the possession thereof but failed to notify him as required by Section 3 [§ 33-3-73 herein], then the taker-up shall not recover for taking up, posting or keeping the estray. [L 1933, ch 47, § 4, p 95; CLA 1933, § 599.]

§ 33-3-75. Statement on failure of owner to reclaim estray: Filing: Contents. If, at the expiration of ten days said estray shall not have been reclaimed from him as provided in Section 4 [§ 33-3-74 herein], the taker-up shall file with the Commissioner of the precinct wherein said estray is taken up a verified statement showing such failure and the efforts made by him to find the owner or person entitled to possession of the estray and, also, the damages, if any, he has suffered by said estray running at large upon his premises and the keeping rates, if any, he claims as compensation for keeping said estray. [L 1933, ch 47, § 5, p 96; CLA 1933, § 600.]

§ 33-3-76. Hearing on statement: Assessment of damages: Appeal. The Commissioner, with whom said statement is filed, shall promptly hold a public hearing thereon at which the owner or person entitled to possession of said estray is entitled to be heard; the Commissioner at said hearing shall allow and assess against said estray all such reasonable damages, keeping rates and costs to which it appears said taker-up is justly entitled. Upon request of said taker-up or of the owner or person entitled to possession of said estray, and payment of the required fees, the Commissioner shall appoint three residents of the precinct, who have the qualifications to act as jurors therein, to assess said damages, keeping rates and costs. The decision of the Commissioner or, if he appoint assessors, then of a majority of them, shall be final, but, if the amount involved exceeds Fifty Dollars ($50.00), an appeal shall lie to the District Court as in other civil cases of appeal from the Commissioner's or Justice's court. The assessors shall receive for their services the same compensation as is paid the jurors in the Commissioner's court, to be taxed as costs in the proceeding. [L 1933, ch 47, § 6, p 96; CLA 1933, § 601.]

§ 33-3-77. Public sale of estrays: Notice of sale. Any estray, against whom damages, keeping rates, or costs have been assessed, shall be sold to satisfy them at public auction within not less than two or more than three weeks after such assessment is entered by the Commissioner. The taker-up shall give notice of such sale by publication for not less than once a week for two consecutive weeks in a newspaper published nearest the place where such estray is

taken up and by posting, within two miles of the place of said sale, notices in three public places, of which one shall be the nearest post office if it be within that distance, provided publication may be omitted if no newspaper of general circulation is published within twenty-five miles of the place where said estray is taken up. The notice of sale shall contain a description of said estray's sex, breed, brand, size, probable age, natural, artificial and other identifying marks, the name of the taker-up, the date of taking-up, the date, hour and place of sale, and a statement of the assessed damages, keeping rates, costs and expenses for which said estray will be sold. [L 1933, ch 47, § 7, p 97; CLA 1933, § 602.]

COLLATERAL REFERENCES

2 Am Jur 792.

§ 33-3-78. —— Auctioneer: Bidders: Disposition of proceeds: Title of buyer: Right of owner, mortgagee or other person to retake. Any person, other than the taker-up, may act as auctioneer at such sale, and any person may bid at such sale. The proceeds derived from said sale shall be applied in the following manner: First, costs and expenses of sale; Second, Commissioner's, assessors' and auctioneer's fees, and expenses of publishing and posting notice of sale; Third, keeping rates up to the time of sale, including the aforesaid fee of One Dollar ($1.00); and Fourth, damages done by said estray and assessed as aforesaid. The buyer of the animal, if the proceedings be regular, shall acquire good title to the same superior to all liens, encumbrances and mortgages; Provided, However, the owner, mortgagee, or person entitled to possession of the estray may, at any time before such sale, re-take it upon paying to the taker-up all damages, keeping rates, costs, charges and expenses incurred hereunder up to the time of such re-taking. [L 1933, ch 47, § 8, p 97; CLA 1933, § 603.]

COLLATERAL REFERENCES

2 Am Jur 795.

§ 33-3-79. —— Disposition of excess proceeds of sale. Any excess proceeds derived from said sale, shall be held by the Commissioner in trust for the owner of the estray sold, and shall be paid by the Commissioner to said owner upon the latter's making written, verified claim thereto, with proof of his ownership, to the Commissioner within six months after the date of said sale; if no such claim be made within six months after the date of said sale, he shall thereupon immediately pay such excess proceeds to the Territorial Treasurer who shall cover the same into the Territorial Treasury, and said owner, within seven years thereafter, may recover said money from the Territory in the same manner as though said money had been escheated. [L 1933, ch 47, § 9, p 98; CLA 1933, § 604.]

§ 33-3-80. Penalty for impounding or using estrays contrary to Act. If any person shall take up, impound, or use any estray, except in accordance with the provisions hereof, he shall be liable to a penalty of double the value of such estray, which may be recovered by the owner or person entitled to possession of such estray in any court of the Territory having jurisdiction of the parties. [L 1933, ch 47, § 10, p 98; CLA 1933, § 605.]

§ 33-3-81. Act inapplicable to authorized public officers. The provisions hereof shall not apply to municipal or other public officers who by statute or municipal ordinance are empowered and authorized to take up and impound animals running at large or in contravention of such statutes or municipal ordinance. [L 1933, ch 47, § 11, p 98; CLA 1933, § 606.]

COLLATERAL REFERENCES

2 Am Jur 802.

§ 33-3-82. Commissioner's fees for services in proceedings. For filing, recording, entering and docketing orders and other papers in the proceedings the Commissioner shall charge and receive the same fees charged and received by him for similar services in other proceedings in his court. [L 1933, ch 47, § 12, p 98; CLA 1933, § 607.]

Article 7

Dogs

§ 33-3-91. Killing of vicious or mad dog authorized.
§ 33-3-92. Dogs deemed vicious.
§ 33-3-93. Dogs annoying or evincing tendency to bite animals, birds or fowls: Killing: Prior notice to owner or keeper.

§ 33-3-91. Killing of vicious or mad dog authorized. It shall be lawful for any person at any time to kill any vicious or mad dog found running at large. [L 1915, ch 37, § 1, p 82; CLA 1933, § 593.]

COLLATERAL REFERENCES

2 Am Jur 719, 731, 799.

Notes: 49 ALR 852 (constitutionality of law regulating right of dogs to run streets), 107 ALR 1323 (owner or keeper of trespassing dog as liable for damages), 92 ALR 732 (liability of owner or occupant of premises for injury to person thereon by dog not owned nor harbored by former), 134 ALR 705 (statutes relating to dogs as affecting right of action for negligently killing or injuring dog), 145 ALR 993 (liability for killing or injuring unlicensed or untagged dog), 49 ALR 853 (constitutionality of law making owner liable for damage done by dog), 79 ALR 1066 (unlicensed dog as nuisance), 79 ALR 1061 (right to kill dog as nuisance), 42 ALR 437 (presence of owner as affecting liability for killing trespassing dog), 8 ALR 74 (constitutionality of statute providing for destruction of dogs running at large).

quarantine, he shall prescribe the conditions and the length of time the animal is subject to quarantine.

(c) If the inspector determines that the animal should be slaughtered or destroyed, he may condemn and have the animal slaughtered or destroyed in the manner he determines. Reimbursement may be allowed for the slaughter or destruction of dairy cattle only. In such case, the inspector and the owner shall appraise the dairy cattle at a fair valuation without regard to the disease. Where they cannot agree as to the value of the animal, the owner and inspector may select a disinterested third party to aid in the appraisement. Where they cannot agree on the selection of a third party, a peace officer in the judicial district where the inspection is made may designate a third disinterested party to act with the inspector and owner to determine the value of the animal. The amount realized from the sale of the carcass of the slaughtered animal shall be paid to the owner of the animal and the inspector shall certify to the commissioner the name and address of the owner, the date the animal was condemned, the appraised value of the animal, together with the net sum realized from the salvage thereof, or which could have been realized. (§ 33-3-16 ACLA 1949; am § 2 ch 181 SLA 1955)

Applied in Martin v. Sheely, 10 Alaska 437, 144 F.2d 754 (9th Cir. 1944).

Sec. 03.45.070. Compensation to owners of dairy cattle destroyed; records to be kept. The commissioner may enter into cooperative agreements with the United States Department of Agriculture for controlling diseases among dairy cattle and may match federal indemnity payments for livestock slaughtered thereunder, from any funds available. He shall keep a record of all payments made, with a copy of the inspector's certification of appraised value and salvage value. (§ 33-3-17 ACLA 1949; am § 3 ch 181 SLA 1955)

Sec. 03.45.080. Record and payment of value of destroyed dairy cattle. The Department of Administration shall keep a record of the appraised value of all dairy cattle slaughtered or destroyed and of the salvage value thereof, stating the date when the animal was slaughtered or destroyed and the name of the inspector who ordered the animal slaughtered or destroyed. The Department of Administration, with the approval of the Department of Natural Resources shall pay the owner of the animal slaughtered or destroyed two-thirds of the difference between the appraised value and the salvage value of the animal slaughtered or destroyed. The appraised valuation of each slaughtered animal may not exceed $175 in the first judicial district and not more than $200 in the second and third judicial districts and not more than $250 in the fourth judicial district. No payment may be made if at the time of inspection, test or destruction, the animal was upon the premises of any person to which it had been sold, shipped or delivered for the purpose of being slaughtered. No payment may be made unless the owner has complied with all lawful quarantine regulations. (§ 33-3-18 ACLA 1949)

Chapter 50. Estrays.

Section
10—110. [Repealed]

Secs. 03.50.010—03.50.110.

Repealed by § 1 ch 66 SLA 1963.

Editor's note.—The repealed chapter derived from §§ 33-3-71 to 33-3-81, ACLA 1949.

Chapter 55. Dogs.

Section
10. Killing of vicious or mad dog authorized
20. Dogs deemed vicious
30. Killing dogs annoying or evincing tendency to bite animals or fowls
40—60. [Repealed]

Sec. 03.55.010. Killing of vicious or mad dog authorized. Any person may lawfully kill any vicious or mad dog running at large. (§ 33-3-91 ACLA 1949)

Cross references.—As to the power of a municipality to regulate licensing, impounding and dispositon of animals, see AS 29.48.035(a)(5). As to killing dogs annoying or evincing tendency to bite animals or fowl, see AS 03.55.030. As to permitting dangerous animals to be at large, see AS 11.60.200.

Am. Jur., ALR and C.J.S. references.—2 Am. Jur., Animals, §§ 4, 6, 7, 29 to 34, 49, 56, 58, 61, 64, 67, 70, 93 to 101, 105, 128, 129, 146, 162 to 165.

Constitutionality of statute or ordinance providing for destruction of dogs running at large, 8 ALR 74; 56 ALR2d 1024.

Constitutionality of statute providing for destruction of dogs as affected by property rights in dogs, 8 ALR 77; 56 ALR2d 1024.

Joint liability of several independent owners of dogs for injury by them, 9 ALR 946; 35 ALR 411; 91 ALR 763.

Liability for killing to protect domestic animal or fowl, 10 ALR 689.

Liability for injuries inflicted by rabid dog, 13 ALR 492.

Presence of owner as effecting liability for killing trespassing dog, 42 ALR 437.

Constitutionality of law making owner liable for damage done by dog, 49 ALR 853.

Right to kill dogs dangerous to human beings as nuisance, 79 ALR 1061.

Killing dogs dangerous to domestic animals as nuisance, 79 ALR 1064.

Liability for injury inflicted by dog exhibited at show, 129 ALR 431.

Civil liability of landowner for killing or injuring trespassing dog, 16 ALR2d 578.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MICHAEL O'MERA, and
JANET O'MERA,

Plaintiffs,

vs

ELSON ANDERSON, and
EDNA ANDERSON,

Defendants.

RECEIVED
12/21/84

CASE NO. 3HO 84-276 SC

D E C I S I O N

This complicated small claims case was heard in several installments while the undersigned was visiting judge at Homer. Judge Hornaday had disqualified himself from hearing this case due to some personal knowledge of the facts. The basic issue in this case is whether the owner of a cattle ranch in the Homer area who had traditionally enjoyed the use of open range as well as many acres of leased range land, was liable when his cattle trespassed on the plaintiff's land which adjoins the Anderson ranch. The case presents the classic confrontation of cattlemen versus farmers that resulted in much litigation throughout the western states. Defendants plead that there is no liability for trespassing cattle on private property unless the property owner has constructed a fence. Defendants argue that the western states have adopted the so-called western common law which requires a farmer or other land owner to erect barriers to wandering cattle and only after the cattle have broken down a fence will the owner of the cattle be liable Plaintiff urges the court to adopt the English common law, which is also the majority common law rule in the United States with the alleged exception of some western states, that the owner

Exhibit "A"

of trespassing cattle is liable in the absence of a specific legislative policy.

The State of Alaska did have a legislative policy adopting the western states approach to liability for wandering cattle. Thus, the fence outlaw act required the land owner to build a fence before he could recover for damages caused by trespassing livestock. However, the Alaska law was repealed in 1977, chapter 55 SLA 1977. I have delayed the decision in this case hoping to get some legislative history on the repeal. However, the tapes sent from Juneau, of the House and Senate hearings on the repeal, are blank and it's my understanding that the master tapes are difficult to understand. Thus, the legislative history on this act is apparently missing. In his message on the repeal, Governor Hammond foresaw the problem that would arise in this case and apparently drew the conclusion that the owner of animals would no longer be able to the landowner.

As a result of plaintiff's efforts to form a closed livestock district which would create liability, the Attorney General took the position that the common law of Alaska did in fact make the owner of trespassing animals liable for any damages caused to ajoining agricultural lands or for other foreseeable torts such as highway accidents. Judge Hornaday, in rejecting the petition for a closed livestock district, cited the common law rule that owners of livestock are liable for damages caused by their trespass.

I have read every case cited by the parties, as well as Law Review articles, and many cases from the western states, not cited by the parties. As far as I can determine very few judicial decisions eliminated the liability of cattle owners for damage created by their cattle. It was the legislatures of the western states responding to the special interests of the cattle owners that resulted in the limitation of liability. That is not to say that the cattle owners did not deserve such legislative relief as

the business of open range ranching makes it impossible to adequately fence in cattle and it certainly makes sense that it would be alot easier for the farmer with less acreage to fence out cattle. However, I conclude that Alaska, like the English "Eastern" and American common law should protect the interests of private property over that of the cattle owner. I see no reason to distinguish between cattle which may trespass on ajoining land or oil company equipment or employees or trespassing hunters. With the exception of certain easements by prescription, the rights of the private property owner in this and other states are absolute as far as free and untrammelled enjoyment subject only to taxation, zoning and some other imitations against noxious use. Under defendant's theory, plaintiff could spend thousands and thousands of dollars improving his land, and planting crops and if defendant's cattle trespass and eat the crops, there is no remedy.

Defendant's testified that since they enjoyed the use of the open range first and plaintiff was a late arrival and a late entrant into the area of public domain, plaintiff should bear the costs of fencing out defendant's cattle. Defendant argues persuasively that the costs of fencing in the miles of property is prohibitive and would force him into bankruptcy. It certainly would be alot cheaper for plaintiff to fence in his 50 or 100 acres on which he might someday engage in large scale farming. Be that as it may, I suggested to the defendants when this case arose that defendants and plaintiffs should cooperate in erecting fences around plaintiff's property.

This case certainly bears out the saying that good fences makes good neighbors. While the legislature may adopt the policy advocated by the defendant that the landowner must build a fence, my previous remarks and the reasoning of Judge Hornaday and other jurists who have considered this issue, convinced me that if anyone has to build a fence, it's the defendant unless the legislature

has acted or should act.

I recognize that there is no decision in Alaska, that the question is a close one and there are good policy reasons to encourage agriculture and to encourage cattle ranching in the Kenai area and other areas in the state. Thus an appelate court could require the landowner to mitigate damages by building a fence around the area to be farmed even though the legislature has left a gap in this area of the law. However, as a court of limited jurisdiction I choose to follow the established common law and decide in that there is liability. (See Prosser on Torts [(4th ed. P 497)]

The question of damages in this case is even more complex than the question of liability. Plaintiff's were seeking to establish a tree farm by importing seedlings and dedicating a few acres in various parcels to the growing of various pine trees, such as scotch pine and other non-native species. Plaintiff's claim the following damages: damage to the trees by defendant's cattle and claim that trees that cost a dollar as seedlings were worth fifteen dollars if sold at retail, that substantial labor had gone into the trees that were allegedly killed by cattle. Plaintiff also claims damages for a broken ladder which allegedly cattle dragged onto a road where the ladder was run over by plaintiff's truck. Cattle identified as belonging to defendant, broke into plaintiff's vegtable garden in the fall of 1980 and destroyed produce, peas, and trampled on strawberries, the value of the vegtable garden, strawberries, peas, lettuce was put at $195.00. The trees were planted in 1980, most of the alleged damage occurred in 1983-84. There was substantial testimony about whether in fact a non-native species of evergreen trees would grow in the Kenai area, plaintiff's conceeded that winter kill, killed a large majority of trees. It was also established that there were cattle belonging to other defendant's grazing in the area. Howeve., defendant's

acknowledged that it would be reasonable to state that 50% of the cattle identified were their cattle and the court would make a finding that plaintiff does not have to prove specific damage by specific cattle and that it would be reasonable to hold defendant liable for 50% of the damages found by the court. There was sufficient instances of where defendant's cattle were identified, grazing around the trees, and in the vegtable garden, so that 50% liabilty is reasonable. Defendant claims that cattle will not eat spruce trees, and will not step on spruce trees. Plaintiff's evidence was that due to the nurturing of the trees that tender grasses were growing around the trees, that there was mass movement of cattle in the spring and fall and that trampling did occur, that the compression of the soil by the cattle, milling around, even if the cattle didn't eat trees, that they inhibited growth and caused a loss of certain trees. Plaintiff has the burden of proof and I would have to find that on the cattle damaging the trees, I can't find that it is more likely than not in view of the conflict of testimony, I would have to find that plaintiff has failed to meet the burden of proof as to cattle killing the trees. On the damaged ladder, the proof of causation is too speculative. On the trespass to the vegtable garden, I find that defendant should be held liable for one-half of $195.00 or $97.50. I also find that the trespassing cattle caused clean-up work, that plaintiff's spent time trying to get the cattle to move, spent time repairing the damage to fields caused by cattle, cleaning up cow-pies etc., and that plaintiff's expended $300.00 or 30 hours of time at $10.00 an hour, half of which is attributable to defendant's, so plaintiff should recover a total of $247.50. Both sides hired attorneys in this case, who while not present at all hearings, diligently briefed the issues of law and plaintiff should be entitled to recover reasonable attorney fees and may submit a request for reasonable attorney fees as

the prevailing party on the issue of liability.

DATED at Anchorage, Alaska, this 14 day of December, 1984.

William H. Fuld
District Court Judge

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

JAN 23 1986

October 1, 1985

MEMORANDUM

TO: Representative Dave Thompson

ATTN: Bob Thomas

FROM: Brad Pierce
Legislative Analyst

RE: Livestock Branding Requirements
Research Request 86-026

You requested this agency to do some research on branding requirements for livestock on open range in Alaska and other western states. In addition, you asked that we examine the statutes of western states to see what liability provisions are in place for damages caused to vehicles that hit livestock on highways passing through open grazing land.

We contacted individuals in the Cooperative Extension Agency, Kodiak Borough, Bureau of Land Management (BLM), and Department of Natural Resources (DNR) to fulfill this request.

Alaska Regulations[1]

The appropriate Alaska statutes and Administrative Code concerning livestock grazing on public land in Kodiak are summarized as follows:

AS 03.35.010 - 03.35.070 creates controlled grazing districts and establishes liability for damages caused by animals within districts.

AS 03.40.010 - 03.40.270 sets up recording procedures for branding and marking livestock as legal proof of ownership.

AS 38.05.020 - 38.05.070 empowers the Division of Lands to sell grazing leases and require prequalification of lessees including submitting development plans.

---

[1]Complete copies of the relevant statutes and administrative code are attached.

11 AAC 60.070 requires all livestock permitted on a State grazing lease to be properly identified and marked.

13 AAC 02.505 states that an owner or attendant of livestock may not allow the animals to be on a highway except if they are in a grazing district and attended according to AS 03.35.010.

There appear to be two ways that Alaska law deals with problems caused by roaming livestock, depending on whether they are in a controlled grazing district or not. Within a controlled grazing district, the livestock owner is responsible for containing his animals and for damages caused to other's property. Outside of controlled grazing districts, it is up to property owners to fence out roaming livestock. According to DNR, there is no controlled grazing district at the present time on Kodiak Island.

Alaska law sets up a procedure to brand or mark animals and record them in an official brand book as legal proof of ownership. The regulations for State grazing leases specifically require livestock owners to brand or mark their animals. All of the current grazing leases on the Kodiak road system are in the process of being transferred to DNR, Division of Lands control.[2] Public safety regulations require owners of livestock to keep their animals off the highways and allow Public Safety officers to cite violators.

Western State Statutes

We conducted a search of the statutes of the western states, which revealed that all have some sort of regulations concerning the branding and identification of livestock (attached). In general, a brand inspector is in charge of certifying the ownership of animals before they can be sold or slaughtered. An official brand book is used to record individual identifying brands and is used to verify legal ownership. Three states--Idaho, Arizona and Nevada--have statutory branding requirements for livestock on open range land. Idaho regulations state that the owner of range livestock has no duty to keep his animals off the roadways and is not liable for damages caused by vehicle collisions with his animals.

---

[2]One BLM grazing lease is being transferred to Native ownership.

The Situation in Kodiak

We contacted Gene Gade, the Cooperative Extension agent in Kodiak to obtain some specific information about the open range policy on the island. According to Mr. Gade, there is about 85 miles of unfenced roadway on the island through open grazing land. Eight livestock owners are on the road system and have a total of between 500 and 600 head of cattle grazing at any given time. Five of these owners have legitimate grazing leases and three are trespassing on State grazing land.

Mr. Gade suggested that the most critical areas on the road system where collisions frequently occur are at the heads of three bays: Woman's Bay, Middle Bay, and Kalson Bay. The Woman's Bay area apparently has the worst problem and the cattle there are in trespass on land with no grazing lease.

As an advocate of the local livestock industry, Mr. Gade expressed a concern that if ranchers were forced to assume the expense of fencing in their animals, i.e., if a controlled grazing district were established, it might drive them out of business. He advocates periodic handling and tagging or branding of all livestock as a standard business practice.

The grazing leases on the Kodiak road system are in the process of transfer from Bureau of Land Management to State control. The transfer will be completed sometime within the next several months. The Division of Lands has assumed administrative control. We contacted Jim Frechione, DNR Chief of Retained Lands, about the status of these grazing leases and the department's intentions concerning enforcement of its administrative regulations.

The Division of Lands is renegotiating the leases. Present BLM leaseholders must reapply for a State grazing lease and file a development plan with the division. When all of these plans have been collected, the division will examine them closely to determine how much of the leased grazing land will actually be used. According to the Extension Agent, one of the main reasons for the problem of cattle on the roadways is that owners don't manage their herds properly. Rotational grazing, where livestock are herded into the higher elevations during the summer months and allowed to graze on lowlands in the winter, would keep them off the roads for a good portion of the year.

We contacted Keith Quintavell at the Division of Agriculture for more information on the lease renegotiation process. According to him, there will be a meeting of personnel from the Alaska Association of Soil and Water Conservation Districts on October 18 in Kodiak. All of the problems associated with the grazing leases will be discussed. Mr.

Quintavell is sending this agency a copy of the itinerary for this meeting which we will forward to your office as soon as possible. Since all the principals involved with the livestock problems outlined in your research request should be in attendance, this would appear to be an excellent opportunity to resolve this situation.

It appears that the State statutes and administrative code contain sufficient regulatory power to deal with this issue if they are enforced. Other options mentioned by the officials we contacted include: 1) fencing the roadway in the problem areas; 2) establishing a grazing lease at Woman's Bay or removing the trespassing animals; and 3) requiring livestock owners to practice rotational grazing as a precondition for holding a State grazing lease.

We hope we have provided sufficient information to satisfy your request. Please contact us if we can be of further assistance in this matter.

BP

Attachments

Persons Contacted for this Request

Gene Gade - Kodiak Extension Agent 486-6369

Steve Laskowski - Bureau of Land Management 267-1200

Jim Frechione - DNR, Chief of Retained Lands 786-2270

Keith Quintavell - DNR, Division of Agriculture 745-7200

MICHAEL S. O'MEARA
P.O. BOX 1125
HOMER, AK 99603

FEBRUARY 8, 1986

REPRESENTATIVE M. MIKE MILLER
ALASKA STATE LEGISLATURE
POUCH V (MS 3100)
JUNEAU, AK 99811

DEAR REPRESENTATIVE MILLER:

Back in December I wrote to you regarding my concerns about legislation dealing with uncontrolled livestock. It seemed logical that as chairman of the House Judiciary Committee you would be called upon to deal with that type of bill. Since that time it has come to my attention that Representative Dave Thompson's HB 385 has been referred to your committee.

In my opinion this is an excellent bill. It is very simple and fixes responsibility for damage inflicted by uncontrolled domestic animals with their owners, where it belongs. For years this has been the case under common law, but there was a great deal of confusion created because of the existence of statutes which provide for the creation of "controlled livestock districts". Research and subsequent litigation proved that all that such a district does is provide a nonjudicial remedy to people who suffer injury by uncontrolled livestock. Not a bad idea, but it encouraged countless incidents of trespass outside of such districts. Please do what you can to see that HB 385 is passed out of committee.

Since I have had to deal with the problem of uncontrolled livestock on my land for many years, I have given the matter much thought. While I fully support SB 385, I would eventually go beyond it and have made up a number of suggestions for legislation which I have included for your review. As yet I have not managed to get anyone to sponsor them, and it is a bit late for this session, but I will continue to pursue the matter.

Please keep me informed of any action on SB 385 or related matters. Many thanks for taking the time to read this and for giving consideration to my ideas.

Sincerely,

Mike

MICHAEL S. O'MEARA

MIKE O'MEARA
P.O. BOX 1125
HOMER, AK 99603

LEGISLATIVE PROPOSALS FOR ALTERING AS CHAPTER 35. GRAZING DISTRICTS AND AS CHAPTER 40. BRANDS AND MARKS.

CHAPTER 35. GRAZING DISTRICTS

Alterations to this chapter include deletion of the category of grazing district, makes it illegal to let domestic animals roam at large, and provide non-judicial remedies for recovery of damages to private property done by roaming domestic animals.

Section 03.35.010. Creation and restriction in use of controlled livestock districts, is altered so as to eliminate the special classification of land previously referred to as controlled livestock districts.

Further, it is established that it is unlawful for any domestic animal to graze or run at large unless the domestic animal is restrained by fence or tether or is herded on open public domain and tended by a person and prevented from grazing upon privately owned land or upon any roads or highways.

Section 03.35.020. Petition to create, add, or abolish, is deleted.

Section 03.35.030. Notice, hearing, and order, is deleted.

Section 03.35.040. Liability for damages. (a) The owner of land, whether the land is fenced or unfenced, (1) is entitled to recover, from the owner or person having custody and control of a domestic animal, for any injury done by it when grazing or running at large contrary to the provisions of this chapter, and (2) has a lien upon the domestic animal for the amount of the damage done.

Section 03. 35.050. Impounding of animals running at large. The owner of any land may impound a domestic animal trespassing upon his land and keep the animal until damages, together with reasonable charges for capturing, keeping and feeding it, are paid. Within 24 hours after impounding an animal, the person impounding it shall give notice in writing to the owner or claimant of the animal, if the owner is known, or, if the owner is unknown, file a notice of impounding with the district judge for the district and post a copy of the notice in a public place nearest to the enclosure of the impounded animal. If, within five days after receipt of posting of the notice, the owner or claimant fails to claim the animal and pay the reasonable charges for capturing, keeping and feeding it, together with damages and costs, the animal shall be dealt with as in the case of an estray.

Section 03.35.060. Penalty for removing impounded animal. A

person who takes or removes an impounded domestic animal from the possession of the person in whose custody it may be, without his consent, is punishable by a fine of not less than $100 nor more than $500 or by imprisonment for not more than 90 days, or by both. The penalty does not affect the lien on the animal.

Section 03.35.070. Definitions. As used in this chapter (1) "owner of land" includes a feeholder, tenant, contract vendee or other person in actual possession of land; (2) "domestic animal" includes goats, sheep, cattle, horses, swine, or other exotic species which may be kept in place of these more common varieties.

CHAPTER 40. BRANDS AND MARKS.

Alterations to this chapter require owners of domestic animals to brand or otherwise mark them for clear identification and to make those brands or marks a matter of public record.

Sections 10 through 30 and 50 through 270 require further study to determine the need for further changes.

Section 03.40.010. Brands and marks. All domestic animals, as defined in AS Chapter 35, shall carry an easily recognizable brand or mark. Owners of said animals shall apply their unique brand or mark to their animals in a conspicuous place and, in the event that it becomes obliterated by damage or growth of hair or fur, shall immediately restore it. All brands and marks shall be recorded as provided in Section 30 of this chapter and shall be made a matter of public record. Persons so recording a brand or mark shall have the exclusive right to its use.

HB

3886

COMMITTEE REPORT

HOUSE

(9)

4/17/85

FURTHER: FINANCE

Date: April 21, 1986

The Committee on RESOURCES has had HB 386

"An Act relating to cabins on state land; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[XX] replace with CS for HB 386 (Resources) [XX] same title [ ] new title

recommends do pass

[ ] AND attaches a "Letter of Intent" [XX] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the Committee

	MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
Shultz	Dick Shultz	John Lindsay
Cato	Pete Cato	Synd
Jenkins	Roger Jenkins	Herrmann
Thompson	David W. Thompson	
Miller(NP)	M.W. Miller	

Dick Shultz

Co- CHAIRMAN Shultz

Version #2
Bradley
4/17/86

Original sponsors: Ringstad and Marrou

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 386 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to cabins on state land; and providing for an effective date."

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

* Section 1. On the application before June 1, 1988 of a person who owns a cabin on state land on the effective date of this Act, the commissioner of natural resources shall sell not to exceed one acre of state land occupied by the cabin if the cabin had been erected on the land before January 1, 1968 and if the land was open to entry under applicable state or federal law at the time the cabin was erected, unless the commissioner makes a written best interest finding that a land or resource management conflict exists. The state land shall be sold for the fair market value of the land as determined by the commissioner. The applicant shall pay costs of appraisal, public notice, and surveying the land. If the cabin is located on a waterfront, the commissioner shall reserve an easement not to exceed 50 feet wide above the mean high water line. The commissioner may establish reasonable restrictions on use of the cabin or on future transfers of the land sold under this section.

* Sec. 2. This Act is repealed June 1, 1988.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 4/19/86

REQUEST (386)

Bill/Resolution No. : CSHB 386 (Res)
Title : Cabins on State Land

Sponsor : Ringstad
Requestor : House Resources
Date of Request : 4/17/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Land and Water

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		43.2	43.2	43.2		
TRAVEL		5.0	6.0	6.0		
CONTRACTUAL		12.0	12.0	12.0		
SUPPLIES		3.0	3.0	3.0		
EQUIPMENT		4.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		67.2	66.2	66.2		
CAPITAL						
REVENUE			100.0	100.0	100.0	100.0

FUNDING : (Thousands of Dollars)

GENERAL FUND		67.2	66.2	66.2		
FEDERAL FUNDS						
OTHER						
TOTAL		67.2	66.2	66.2		

POSITIONS :

FULL-TIME		1.0	1.0	1.0		
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The Committee Substitute reduces the costs of implementing the cabin sale program by setting a deadline for applications, placing some costs on the applicant, reducing the number of cabins which suit the bill, and not requiring the sale of a cabin where land or resource management conflicts exist. One new Resource Technician would be necessary through FY 89.

Prepared by : _____ Phone : 465-2400
Division : Commissioner's Office Date : 4/19/86

Approved by Commissioner : Ned Farquhar Date : 4/19/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 386
Title: Cabins on State Land

Sponsor: Ringstad
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:
Land and Water Management; Information and Records

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		87.5	380.5	438.5	438.5	438.5
200 TRAVEL		3.0	40.0	40.0	40.0	40.0
300 CONTRACTUAL		6.0	50.0	50.0	50.0	50.0
400 SUPPLIES		2.0	6.0	6.0	6.0	6.0
500 EQUIPMENT		4.0	12.0	12.0	12.0	12.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		102.5	488.5	546.5	546.5	546.5
CAPITAL						
REVENUE				300.0	300.0	300.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		102.5	488.5	546.5	546.5	546.5
FEDERAL FUNDS						
OTHER						
TOTAL		102.5	488.5	546.5	546.5	546.5

POSITIONS:

FULL-TIME		2	9	10	10	10
PART-TIME			1	2	2	2
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached explanation for yearly program goals. Within seven to ten years operating costs would be reduced to about one-third. Estimate based on 2,000 cabins.

Because this would amount to a major new land disposal program, it will require full administrative support in regional offices and contract administration. Annual costs will include adjudication/survey and appraisal review/planning, etc.

Prepared By: DTS/DLWM/Commissioner's Office Phone: 465-2400
Division: Date: 4/25/85

Approved by Commissioner: Ned Farquhar Date: 4/25/85
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

FISCAL NOTE ANALYSIS

HB 386
DEPARTMENT OF NATURAL RESOURCES

With the passage of HB 386, the Department of Natural Resources would encounter a large number and variety of administrative responsibilities that could not be met under existing budgets. These responsibilities would include the implementation of regulations for the cabin program, title and records review, survey instructions and review, public notice/decisions/findings, appraisal instructions and review, issuance of title, and contract administration and enforcement where the purchaser chooses to purchase the land over a period of twenty years.

Because the Department estimates that there are 2,000 cabins on state land, and it would be impossible to accomplish the proposed conveyance in a short term, the fiscal impact is estimated for a five- to ten-year cabin land sale program. Most of the administrative handling of cabin purchase applications would be done in the three regional offices: Anchorage, Fairbanks, and Juneau. Both the Division of Land and Water Management and the Division of Technical Services would be closely involved.

YEAR ONE -

1. Prepare regulations for program. How determine the one-acre parcel? How accommodate owners who are within game refuges or state parks? Convey submerged lands title for waterside cabins? Reserve easements/rights-of-way across adjacent public lands and through the parcel? How determine 1980 appraised value and provide for appeals? Who pays survey/appraisal costs? What are conditions for contracts of sale (AS 38.05.065)? May an owner purchase more than one cabin? How prove ownership and use before 1980? What if more than one owner applies to purchase a cabin? Is program open forever at same appraisal amount? What opportunities are there for public notice/comment on proposed conveyances? May the state conduct its own land disposals, timber sales, leases, R/W conveyances if there is an unauthorized cabin nearby or within the area and an application has been filed? Can commissioner decide that less than an acre will be conveyed? May the commissioner prevent subdivision (for other cabins, trailer lots, etc.) within refuges and parks? How prepare survey/appraisal instructions?

2. Announce program to public and begin preparation for applications. Provide application forms, information sheets, procedural directions to all regional staff.

YEAR TWO -

1. Accept applications. Answer public inquiries.

2. Begin adjudicating applications. Determine which are on state lands, notify applicants who are not on state lands. Review proof of cabin construction prior to 1980.

3. Begin public notice, review of cabin conveyances consistent with AS 38.05.945 and AS 38.05.035(e) and constitutional provisions for equal protection and use/management of the public domain.

5. Begin to field check cabins, surveys, appraisals.

6. Begin planning/platting easements and rights-of-way for public needs.

YEAR THREE -

1. Continue 1-6 above.

2. Close application opportunities in some areas, open in others to distribute regional impact of applications on administrative staff.

3. Begin to issue accurate title/quitclaim deed to some applicants who meet conditions.

4. Issue contracts of sale and prepare twenty-year payment schedule and conditions for successful applicants wishing to pay over time.

5. Note title changes, applications on land title records (must record applications immediately on receipt for awareness during other land disposal/management planning).

6. Begin to accept new title documents in Recorder's Offices.

YEARS FOUR TO TEN -

1. Continue with the program, aiming to complete within four to seven years.

LINE ITEM EXPLANATIONS - HB 386

FY 86

100 - Two positions, 87.5
1. Natural Resource Manager I (47.5)
Supervise start-up of program, including regulations and public information
2. Natural Resource Technician I (40.0)
Assist in program start-up, begin policy/procedures directives for regional staff, coordinate with survey/title/records staff to assure timely notation of applications on status plats and conveyance of accurate title, coordiante with contract administration staff to begin handling sales contracts

200 - 3.0
Travel to regions

300 - 6.0
Special legal research for regulations

400 - 2.0
Supplies and commodities for new staff

500 - 4.0
Office equipment for new staff (chair, desk, typewriter, file)

FY 87

100 - Seven new positions, 293.5 + 87.5 from FY 86
1,2,3. Natural Resource Technician in each regional office (127.5)
Begin adjudication/review of applications, provide local response to inquiries, conduct public notice, negotiate difficulties with applicant and adjacent landowners or citizens; begin review of appeals on appraisals, adjudication
4,5,6. Survey/Title Staff in central/regional offices (127.5)
Begin survey check (some field work required), conduct full title check, note applications and conveyances on state land records.
7. Accounting Technician and part-time clerical (38.0)
Begin issuing contracts of sale for successful applicants

200 - 40.0
Travel to field check cabins/appriasals/surveys, review area resources for possible conflicts

300 - 50.0
Advertising, hearings, legal assitance for adjudicating applications and administering appeals; preparation and issuance of some title documents

400 - 6.0
Supplies and commodities for new staff

500 - 12.0
Office equipment for seven new staff

FY 88-94/5

Continue all costs but add one Accounting Technician and some part-time clerical staff for future contract administration.

Personal Use Cabins

① SCRO: 144 applications received for St. Game Refuges - expect to begin issuing permits in June. SCRO will open rest of region to applications in Sept./Oct.

② NRO: applic. period just closed. approx 75 applications received expect to begin issuing permits by June.

③ SERO: applic. period open until May 31. 2 applic. received so far. SERO anticipates receiving ± 20 applic.

Lance Key estimated ± 2500 trespass cabins statewide on state & federal land in ALUC Trespass Report.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 269

Title: Cabins on State Land

Sponsor: Bennett

Requestor: Senate Finance

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Land and Water Management; Information and Records

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES		87.5	380.5	438.5	438.5	438.5
200 TRAVEL		3.0	40.0	40.0	40.0	40.0
300 CONTRACTUAL		6.0	50.0	50.0	50.0	50.0
400 SUPPLIES		2.0	6.0	6.0	6.0	6.0
500 EQUIPMENT		4.0	12.0	12.0	12.0	12.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		102.5	488.5	546.5	546.5	546.5
CAPITAL						
REVENUE				300.0	300.0	300.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		102.5	488.5	546.5	546.5	546.5
FEDERAL FUNDS						
OTHER						
TOTAL		102.5	488.5	546.5	546.5	546.5

POSITIONS:

FULL-TIME		2	9	10	10	10
PART-TIME			1	2	2	2
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached explanation for yearly program goals. Within seven to ten years operating costs would be reduced to about one-third. Estimate based on 2,000 cabins.

Because this would amount to a major new land disposal program, it will require full administrative support in regional offices and contract administration. Annual costs will include adjudication/survey and appraisal review/planning, etc.

Prepared By: DTS/DLWM/Commissioner's Office Phone: 465-2400

Division: Date: 4/25/85

Approved by Commissioner: Ned Farquhar Date: 4/25/85

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

FISCAL NOTE ANALYSIS
SB 269
DEPARTMENT OF NATURAL RESOURCES

With the passage of SB 269, the Department of Natural Resources would encounter a large number and variety of administrative responsibilities that could not be met under existing budgets. These responsibilities would include the implementation of regulations for the cabin program, title and records review, survey instructions and review, public notice/decisions/findings, appraisal instructions and review, issuance of title, and contract administration and enforcement where the purchaser chooses to purchase the land over a period of twenty years.

Because the Department estimates that there are 2,000 cabins on state land, and it would be impossible to accomplish the proposed conveyance in a short term, the fiscal impact is estimated for a five- to ten-year cabin land sale program. Most of the administrative handling of cabin purchase applications would be done in the three regional offices: Anchorage, Fairbanks, and Juneau. Both the Division of Land and Water Management and the Division of Technical Services would be closely involved.

YEAR ONE -

1. Prepare regulations for program. How determine the one-acre parcel? How accommodate owners who are within game refuges or state parks? Convey submerged lands title for waterside cabins? Reserve easements/rights-of-way across adjacent public lands and through the parcel? How determine 1980 appraised value and provide for appeals? Who pays survey/appraisal costs? What are conditions for contracts of sale (AS 38.05.065)? May an owner purchase more than one cabin? How prove ownership and use before 1980? What if more than one owner applies to purchase a cabin? Is program open forever at same appraisal amount? What opportunities are there for public notice/comment on proposed conveyances? May the state conduct its own land disposals, timber sales, leases, R/W conveyances if there is an unauthorized cabin nearby or within the area and an application has been filed? Can commissioner decide that less than an acre will be conveyed? May the commissioner prevent subdivision (for other cabins, trailer lots, etc.) within refuges and parks? How prepare survey/appraisal instructions?

2. Announce program to public and begin preparation for applications. Provide application forms, information sheets, procedural directions to all regional staff.

YEAR TWO -

1. Accept applications. Answer public inquiries.

2. Begin adjudicating applications. Determine which are on state lands, notify applicants who are not on state lands. Review proof of cabin construction prior to 1980.

3. Begin public notice, review of cabin conveyances consistent with AS 38.05.945 and AS 38.05.035(e) and constitutional provisions for equal protection and use/management of the public domain.

5. Begin to field check cabins, surveys, appraisals.

6. Begin planning/platting easements and rights-of-way for public needs.

YEAR THREE -

1. Continue 1-6 above.

2. Close application opportunities in some areas, open in others to distribute regional impact of applications on administrative staff.

3. Begin to issue accurate title/quitclaim deed to some applicants who meet conditions.

4. Issue contracts of sale and prepare twenty-year payment schedule and conditions for successful applicants wishing to pay over time.

5. Note title changes, applications on land title records (must record applications immediately on receipt for awareness during other land disposal/management planning).

6. Begin to accept new title documents in ecorder's Offices.

YEARS FOUR TO TEN -

1. Continue with the program, aiming to complete within four to seven years.

LINE ITEM EXPLANATIONS - SB 269

FY 86

100 - Two positions, 87.5
1. Natural Resource Manager I (47.5)
Supervise start-up of program, including regulations and public information
2. Natural Resource Technician I (40.0)
Assist in program start-up, begin policy/procedures directives for regional staff, coordinate with survey/title/records staff to assure timely notation of applications on status plats and conveyance of accurate title, coordiante with contract administration staff to begin handling sales contracts

200 - 3.0
Travel to regions

300 - 6.0
Special legal research for regulations

400 - 2.0
Supplies and commodities for new staff

500 - 4.0
Office equipment for new staff (chair, desk, typewriter, file)

FY 87

100 - Seven new positions, 293.5 + 87.5 from FY 86
1,2,3. Natural Resource Technician in each regional office (127.5)
Begin adjudication/review of applications, provide local response to inquiries, conduct public notice, negotiate difficulties with applicant and adjacent landowners or citizens; begin review of appeals on appraisals, adjudication
4,5,6. Survey/Title Staff in central/regional offices (127.5)
Begin survey check (some field work required), conduct full title check, note applications and conveyances on state land records.
7. Accounting Technician and part-time clerical (38.0)
Begin issuing contracts of sale for successful applicants

200 - 40.0
Travel to field check cabins/appriasals/surveys, review area resources for possible conflicts

300 - 50.0
Advertising, hearings, legal assitance for adjudicating applications and administering appeals; preparation and issuance of some title documents

400 - 6.0
Supplies and commodities for new staff

500 - 12.0
Office equipment for seven new staff

FY 88-94/5

Continue all costs but add one Accounting Technician and some part-time clerical staff for future contract administration.

SB 269

Golden -
DNR comments +
fiscal note on
cabins -
AF

April 25, 1985

The Honorable Arliss Sturgulewski
Chair, Senate Resources Committee
Pouch V
Juneau, AK 99811

Dear Senator Sturgulewski:

I am writing to provide comments on SB 269 (cabins on state land).

The department has attempted to address the issue of unauthorized cabins on state land by enacting regulations that allow the issuance of a temporary, non-transferable permit to a cabin holder. The permit may be renewed through the lifetime of the permittee but the improvements must be removed or revert to state ownership at the permit's expiration.

In adopting this approach to the management of unauthorized cabins on state land, I considered adopting an approach that is represented by Senator Bennett's proposal. I saw a considerable challenge to the coherent management of state lands and resources and recognized the concerns of many Alaskans who own cabins on public lands. The problem deserved attention and action.

In the course of my review of the situation, however, I discerned that it could be a violation of the constitutional and statutory conditions for equal protection and public process to convey public land or cabins on public land to persons who built them without authorization. I also saw a fairness problem: would it be equitable to other Alaskans (some of whom might have attempted to gain authorization to build but were denied) to make a retroactive determination that unauthorized cabins would suddenly be given legal recognition? I also noted that providing an assured right to purchase the cabin or land in some cases would be in conflict with the State's best interest, because the land is needed for other purposes from settlement to timber harvest to habitat protection.

I understand the intent of the bill and I am all too aware of the frustration that some cabinholders feel, but I believe that the department has already taken steps to address the issue in a way that also protects the public purpose.

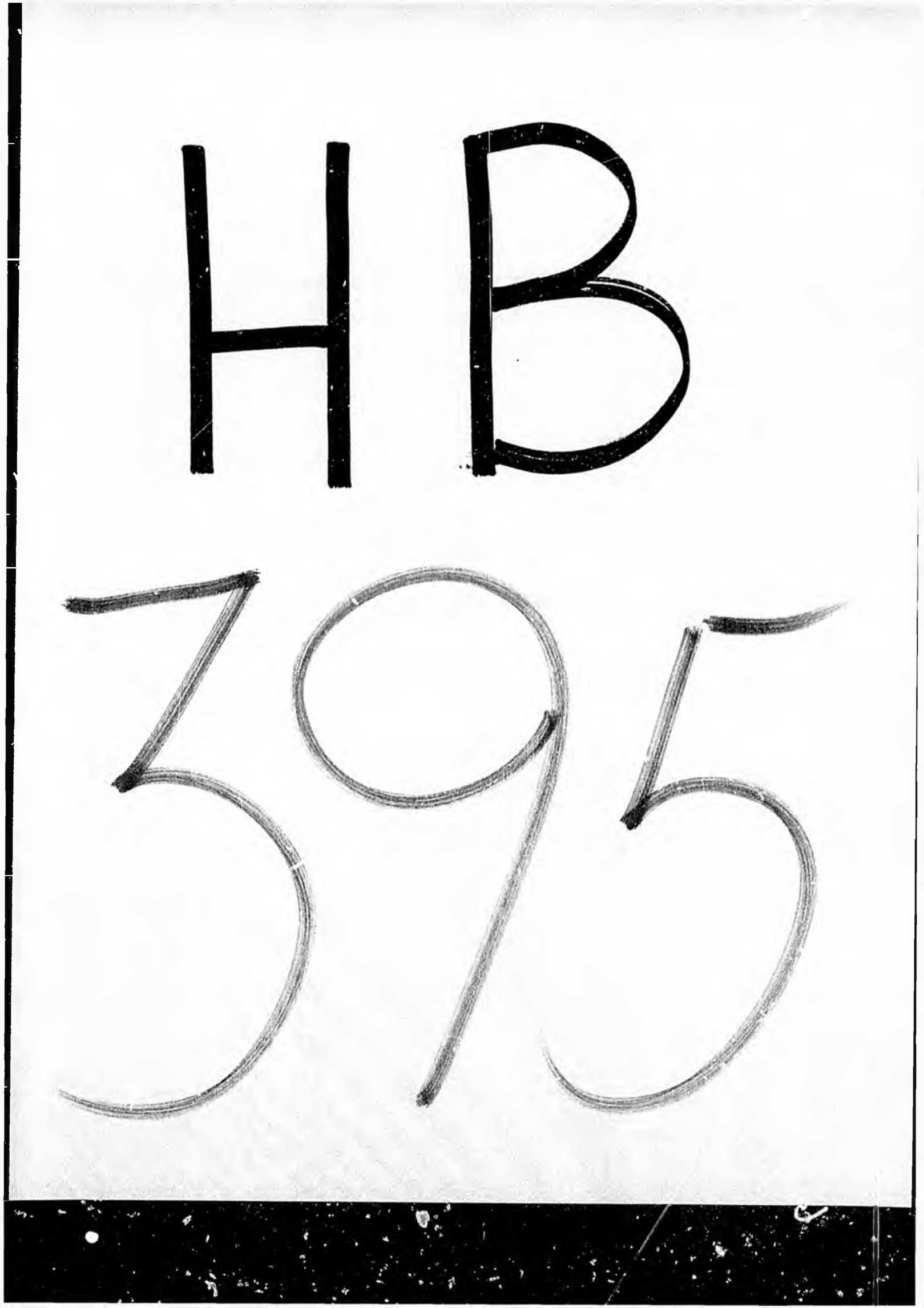
If the Committee needs a briefing on our cabin permitting programs, our preference rights programs for persons holding valid state or federal permits or leases, or our land disposal programs, I would be pleased to offer any staff assistance you may request.

Sincerely,

Esther C. Wunnicke
Commissioner

Esther C Wunnicke

cc: Senator Don Bennett
Representative John Ringstad


HB
3975

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 395
Title: Homestead Lotteries

Sponsor: Shultz
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:
Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400
Division: Commissioner's Office Date: April 26, 1985

Approved by Commissioner: Robert D Arnold, Deputy Date: April 26, 1985
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

HB 395 SUMMARY

THE PURPOSE OF THIS LEGISLATION IS TO EXTEND TO THE COMMISSIONER OF NATURAL RESOURCES THE SAME AUTHORITY IN THE DISPOSAL OF HOMESTEADS BY LOTTERY THAT IS PRESENTLY EXISTING IN OTHER TYPES OF LAND DISPOSALS.

THIS CHANGE WOULD GIVE THE COMMISSIONER THE OPTION OF REQUIRING THAT LOTTERIES BE HELD IN THE COMMUNITY CLOSEST TO THE LAND DISPOSAL AND IN ADDITION REQUIRE THAT THE WINNER OF THE ENTRY BE PRESENT.

THE LEGISLATION AS WRITTEN WOULD NOT REQUIRE A BUDGET INCREASE TO THE DEPARTMENT OF NATURAL RESOURCES.

HB

407

Offered: 2/28/86
Referred: Rules

Original sponsors: Shultz, Marrou
and Thompson

IN THE HOUSE BY THE RULES COMMITTEE

CS FOR HOUSE BI NO. 407 (Rules) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the use of, and certain reports and records concerning game animals."

added Trapping

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.783. USE OF GAME AS BAIT. (a) A person may use as bait the following parts of a dead big game animal:

Deleted

(1) the skin, viscera, bones, skinned carcass of bear, head, legs below the distal joint of the tibia-fibula (stifle joint), tallow, fat, trimmings, and hide, except the hide of a bear;

Reworded

(2) the meat that is not edible meat from a big game animal that is found dead from natural causes if the person does not disturb the animal and notifies either the department or the Department of Public Safety of the use and the approximate location where the dead animal was found at the earliest opportunity; and

Reworded

(3) the edible meat that is determined by the department or the Department of Public Safety in a particular situation to be non-edible if the animal was killed by a motor vehicle and if the person obtains the written permission of either department for the use.

(b) In this section,

(1) "dead from natural causes" includes death caused by another animal;

(2) "edible meat" means the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and the radius-ulna (knee), hindquarters as far as the distal joint of the

tibia-fibula (stifle joint), and that portion of the animal between the front and hindquarters; "edible meat" does not include meat that has been damaged and made inedible by the method of taking;

(3) "taking" does not include causing death by a vehicle;

(4) "trimmings" means the parts of butchered game animals that are not edible meat and customarily discarded during the butchering process.

Deleted (not needed)

* Sec. 2. AS 16.05.815 is amended by adding new subsections to read:

(c) A report or record that is required by regulations of the department concerning the taking, sealing, acquisition of the untanned skin, or exportation from the state of the fur, of a game animal taken by trapping or hunting and that identifies an individual trapper or hunter is confidential and may be released by the department only

(1) to the Department of Revenue to assist that department in carrying out its statutory responsibilities;

(2) as necessary to comply with a court order;

(3) on request, the report that accompanies the sealing of a game animal to the person who is identified in the report as having taken the game animal; and

(4) to the division of fish and wildlife protection of the Department of Public Safety to assist that department in carrying out its statutory responsibilities.

Reworded to make sure public has access to non-confidential records.

(d) Except to the extent necessary to prosecute a criminal action based on a record or report that is confidential under (c) of this section, a department that receives a confidential record or report from the department under (c) of this section shall also maintain the confidentiality of the record or report.

(e) A record or report received by the department that relates to the taking, sealing, acquisition of the untanned skin, or

exportation from the state of the fur, of a game animal taken by trapping or hunting and that does not identify an individual trapper or hunter or the specific location where an animal has been taken is public information.

(f) In this section, "sealing" means the placement of a seal by the department on a portion of the carcass of a game animal taken by trapping or hunting.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 407 (Rules) am
Title : re the use of & certain reports & records concerning game animals

Sponsor : Shultz, Marrou & Thompson
Requestor : Senate Resources
Date of Request : _____

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Fish & Wildlife Protection

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

Prepared by : Captain J. R. Nutgrass
Division : Fish & Wildlife Protection
Phone : 269-5509
Date : 3/18/86

Approved by Commissioner : _____
Agency : Public Safety
Date : 3/19/86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSHB 407 (Rls) am

NEUTRAL
March 18, 1985

CSHB 407 (Rules) am - "An Act relating to the use and sealing of certain game animals."

The Department of Public Safety is neutral on CSHB 407 (Rls) am.

The parts of game as defined will not create an enforcement problem, and will serve to clarify and eliminate any past practices where non-edible parts, if used, could be considered a violation of regulations.

By allowing the trapper to set traps in the vicinity of a big game animal found dead by natural causes, if not disturbed, would not pose a problem for the Department.

The reporting requirement is realistic that a trapper who uses a big game animal found dead by natural causes must report the location at the earliest opportunity. This is particularly true of those trappers in the remote areas, where they may not have an opportunity or capability for reporting the location of a dead animal for an extended period of time.

We recommend the following on page 1, line 19, after opportunity, delete "after the use;"

We support the records and documentation on trapping and sealing information being confidential and that the Department of Public Safety has access for official business.

Robert J. Sundberg
Commissioner

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Game	HB 407	Representative Shultz

DEPARTMENT POSITION

Neutral

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Robert Hinman	1/17/86		1/20/86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Department of Public Safety Division of Boards, ADN&G	Trappers
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Unknown	Unknown

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Dick

ANALYSIS OF BILL/PROGRAM EFFECTS

Existing Game Regulation 5 AAC 92.210 allows (for bait) only of the "hide, skin, viscera or bones," "skinned carcasses of bears or furbearers," "hares, rabbits and red squirrels," or unclassified game.

Not allowed by this regulation is big game meat, even though it may not be "edible" per AS 16.30. Therefore, road killed animals (big game), or meat spoiled in storage, or inedible because of being bloodshot (as examples) may not be used for bait. The Division of Fish and Wildlife Protection (Department of Public Safety) has extended this to mean that animals killed by predators may not be used as trapping sites.

HB 407 would provide that all game meat could be used as bait except that defined as edible by AS 16.30, but only if that game animal were killed in the state and by the person using it for bait. As written, it would not allow use of inedible game meat taken by another, as in road kills for instance. It also would not address the legality of using game carcasses of animals taken by predators (or other natural mortality sources) as bait.

(continued)

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 407 (Rules)
Title : An Act relating to the use and sealing of certain game animals

Sponsor : Shultz and Marrou
Requestor : House Rules
Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept. of Fish & Game & AK Railroad
BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

Prepared by : Captain James R. Nutgrass
Division : Fish & Wildlife Protection
Phone : 269-5509
Date : 2/24/86

Approved by Commissioner : D Imholt
Agency : Public Safety
Date : 2/25/86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSHB 407 (Rls)

February 24, 1986

NEUTRAL

CSHB 407 (Rules) - "An Act relating to the use and sealing of certain game animals."

The Department of Public Safety is neutral on CSHB 407 (Rls).

The parts of game as defined will not create an enforcement problem, and will serve to clarify and eliminate any past practices where non-edible parts, if used, could be considered a violation of regulations.

By allowing the trapper to set traps in the vicinity of a big game animal found dead by natural causes, if not disturbed, would not pose a problem for the Department.

The reporting requirement is realistic that a trapper who uses a big game animal found dead by natural causes must report the location at the earliest opportunity. This is particularly true of those trappers in the remote areas, where they may not have an opportunity or capability for reporting the location of a dead animal for an extended period of time.

We recommend the following on page 1, line 19, after opportunity, delete "after the use;"

We support the records and documentation on trapping and sealing information being confidential and that the Department of Public Safety has access for official business.

Robert J. Sundberg
Commissioner

2/3

Rules

COMMITTEE REPORT

HOUSE

(9)

4/29/85

FURTHER:

Date: 1/31/86

The Committee on RESOURCES has had HB 407
"An Act relating to the use of game as bait."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 407 (RES) [ ] same title [✓] new title

and recommends do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [✓] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS		MEMBERS HAVING OTHER RECOMMENDATIONS:
Shultz	Dick Shultz	Herrmann No Rec
		Sund
Cato	Bette Cato	Thompson No REC
Jenkins	Roger Jenkins	F. Kaylwallis no rec until
Pearce	[illegible]	Wallis review game bd action
Miller(NP)	M.W. Miller	in Rules Committee

Dick Shultz
CO-CHAIRMAN Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/10/86

REQUEST

Bill/Resolution No. : CSHB 407 (Res)
Title : An Act relating to the use and and sealing of certain game animals.

Sponsor : Shultz & Marrou
Requestor : Resources Committee
Date of Request : 2/4/86

FISCAL DETAIL

Agency Affected : Dept. of Public Safety
BRU : Fish & Wildlife Protection Div.

Components : Enforcement

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

Prepared by : J. R. Nutgrass — Phone : (907) 269-5509
Division : Fish & Wildlife Protection — Date : 2/10/86

Approved by Commissioner : [signature] — Date : 2/11/86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSHB 407 (Res)

February 10, 1986

NEUTRAL

HB 407 - "An Act relating to the use and sealing of certain game animals."

The Division of Fish & Wildlife Protection is neutral on CS House Bill No. 407. This bill defines the non-edible parts of a big game animal that can be used as bait. These parts of game as defined would not create an enforcement problem, and should serve to clarify and eliminate any past practices, where non-edible parts, if used, could be considered a violation of regulations.

We would recommend that the wording, "the hide" be clarified, in that bear hides could not be used as bait where prohibited by regulations or law, 16.05.783(2). By not allowing a big game animal to be disturbed that is found dead by natural causes will eliminate the major concerns expressed, if the whole or parts of an animal were removed for use. This would allow the Department the opportunity for documenting the locations and numbers of dead animals that trappers are finding, which could be beneficial for management purposes.

The Department would not be opposed to traps being set in the immediate vicinity of naturally dead animal as long as the animal is not disturbed and proper notification is provided by the trapper setting the traps.

The notification requirement of three days may not be a reasonable period of time for trappers located in the more remote parts of the state.

The wording in section 16.05.783(3) could include multiple reasons for game meat not being edible. It is difficult for us to determine to what extent this section would effect the Department's ability to perform an investigation from an enforcement point of view.

It would require the Departments to perform an investigation for determining the cause of game meat now being found non-edible.

We believe this section could provide an avenue to abuse if game meat that is determined as non-edible is allowed as bait for taking fur bearing animals.

The Alaska Railrod records indicate that 253 moose were killed by trains between November 1984 and March 1985. This is a result of an abnormally heavy snow condition that lent itself to higher numbers of moose being

killed by trains. In comparison, the average number of moose killed by trains under normal snow conditions is between 25 to 30 moose yearly. In 1985 we had approximately 493 big game animals that were reported killed by vehicles on the highways of the state. These animals were salvaged for human consumption.

We support the records and documentation on trapping and sealing information being confidential and that the Dept. of Public Safety has access for official business.

Robert J. Sundberg
Commissioner

Original sponsors: Shultz and Harrou

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 407 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the use and sealing of certain game animals."

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.783. USE OF GAME AS BAIT. (a) A person may use as bait the following parts of a dead big game animal:

(1) the hide, skin, viscera, bones, skinned carcass of bear, head, legs below the distal joint of the tibia-fibula (stifle joint), tallow, fat, and trimmings;

(2) the meat that is not edible meat from a big game animal that is found dead from natural causes if the person does not disturb the animal and notifies either the department or the Department of Public Safety of the use and the approximate location where the dead animal was found within three days of the use; and

(3) the edible meat that is determined by the department or the Department of Public Safety in a particular situation to be nonedible if the person obtains the written permission of either department for the use.

(b) In this section,

(1) "dead from natural causes" includes death caused by another animal;

(2) "edible meat" means the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and the radius-ulna (knee), hindquarters as far as the distal joint of the

tibula-fibula (stifle joint), and that portion of the animal between the front and hindquarters; "edible meat" does not include meat that has been damaged and made inedible by the method of taking;

(3) "taking" does not include causing death by a vehicle;

(4) "trimmings" means the parts of butchered game animals that are not edible meat and customarily discarded during the butchering process.

* Sec. 2. AS 16.05.815 is amended by adding new subsections to read:

(c) A report or record that is required by regulations of the department concerning the sealing of a game animal taken by trapping or hunting and that identifies an individual trapper or hunter is confidential and may be released by the department only

(1) to the Department of Revenue to assist that department in carrying out its statutory responsibilities;

(2) as necessary to comply with a court order;

(3) on request, the report that accompanies the sealing of a game animal to the person who is identified in the report as having taken the game animal; and

(4) to the division of fish and wildlife protection of the Department of Public Safety to assist that department in carrying out its statutory responsibilities.

(d) Except to the extent necessary to prosecute a criminal action based on a record or report that is confidential under (c) of this section, a department that receives a confidential record or report from the department under (c) of this section shall also maintain the confidentiality of the record or report.

(e) A record or report received by the department that relates to the sealing of a game animal taken by trapping or hunting and that does not identify an individual trapper or hunter or the specific

location where an animal has been taken is public information.

(f) In this section, "sealing" means the placement of a metal seal by the department on a portion of the carcass of a game animal taken by trapping or hunting.

CS. HB 407
AMEND — Sund
pg 3 line 3. 1/31/86

(f) Records or reports received by the department which do not identify individual hunters or trappers or the specific locations where animals have been taken are public information.

#3
1/30/86
Bowman
9:35 am

Bannister

01-30-86

Original sponsors: Shultz and Marrou

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 407 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the use and sealing of certain game animals."

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.783. USE OF GAME AS BAIT. (a) A person may use as bait the following parts of a dead big game animal:

(1) the hide, skin, viscera, bones, skinned carcass of bear, head, legs below the distal joint of the tibia-fibula (stifle joint), tallow, fat, and trimmings;

(2) the meat that is not edible meat from a big game animal that is found dead from natural causes if the person does not disturb the animal and notifies either the department or the Department of Public Safety of the use and the approximate location where the dead animal was found within three days of the use; and

(3) the edible meat that is determined by the department or the Department of Public Safety in a particular situation to be nonedible if the person obtains the written permission of either department for the use.

(b) In this section,

(1) "dead from natural causes" includes death caused by another animal;

(2) "edible meat" means the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and the radius-ulna (knee), hindquarters as far as the distal joint of the

tibula-fibula (stifle joint), and that portion of the animal between the front and hindquarters; "edible meat" does not include meat that has been damaged and made inedible by the method of taking;

(3) "taking" does not include causing death by a vehicle;

(4) "trimmings" means the parts of butchered game animals that are not edible meat and customarily discarded during the butchering process.

* Sec. 2. AS 16.05.815 is amended by adding new subsections to read:

(c) A report or record that is required by regulations of the department concerning the sealing of a game animal taken by trapping and that identifies an individual trapper is confidential and may be released by the department only

(1) to the Department of Revenue to assist that department in carrying out its statutory responsibilities;

(2) to a court under a court order;

(3) on request, the report that accompanies the sealing of a game animal to the person who is identified in the report as having taken the game animal; and

(4) to the division of fish and wildlife protection of the Department of Public Safety to assist that department in carrying out its statutory responsibilities.

(d) Except to the extent necessary to prosecute a criminal action based on a record or report that is confidential under (c) of this section, a department that receives a confidential record or report from the department under (c) of this section shall also maintain the confidentiality of the record or report.

(e) In (c) of this section, "sealing" means the placement of a metal seal by the department on a portion of the carcass of a game

animal taken by trapping.

January 29, 1986

The Honorable Richard Shultz
Alaska State House
P. O. Box V
Juneau, AK 99811

Dear Representative Shultz:

The Game Division forwarded your request to this office concerning past board action on the use of game as trap bait.

Three times in the past four years (1982, 1984 and 1985) the board has taken up the issue of using road killed game as trap bait. Each time the board rejected the proposals because the Division of Fish and Wildlife Protection testified against such use. Protection is opposed because several days after an animal is dead it is difficult to tell the difference between animals killed for bait from those killed by auto collisions.

I have enclosed the proposals that were before the board and attached the appropriate public comments.

I appreciate the opportunity to provide you this information.

Sincerely,

Bob Larson
Assistant Executive Director

Enclosures

bcc: Roland Shanks
Special Assistant to the Commissioner

Wayne Fleek
Fish and Wildlife Protection

BL:rsm

Nov. 1985

PROPOSAL #137 - 5 AAC 92.210. GAME AS ANIMAL FOOD OR BAIT.

Allow the use of big game meat that is not usable for human consumption to be used as bait for trapping wolves in areas approved by the board.

Proposed by: Upper Tanana/Forty Mile Advisory Committee (11)

FAVOR OPPOSE

Move to adopt SS
Second JB
Move to amend _____
Second _____
Carries _____ Fails _____

Move to table _____
Second _____
Carries _____ Fails _____
Move to remove from table _____
Carries _____ Fails _____

FINAL ACTION: 0 / 5 / 1 No action _____
yes / no / abstain/absent (by consensus)

Date: 11/22 Time: _____

418/84

73. 5 AAC 81.140. (a). POSSESSION AND TRANSPORTATION. pg. 17. Allow use of road-killed game that is unsalvagable for human consumption for animal food and trap bait.

(a) No person may possess, transport, or place into the possession of another, any game or parts of game that the person has taken in violation of AS 16 or a regulation promulgated thereunder, except game or parts of game unsalvagable for human consumption from road kills or predator kills may be utilized for animal food or trap bait after notification and approval of the Department of Public Safety or the Department of Fish and Game.

Justification: Allows utilization of many road kills that are not found or reported until unfit for human consumption. Allows a trapper to place predator kills in areas where catches are more likely.

Proposed by: Tok Cutoff-Nabesna Road A.C.

Favor	Oppose
Upper Tanana/Forty-mile AC (298)	Paxson AC (332)
Alaska Trappers Association (384)	Fairbanks AC (380)
Tok Cutoff/Nabesna Road AC (391)	Cindy Lowrey (395)
Gastineau Channel AC (393)	Alaska Wildlife Alliance (406)
Mr. & Mrs. Blais (402)	William O'Connor (410)
Copper Basin AC (417)	Delta AC (425)
Matanuska Valley AC (427)	
U.S. Fish & Wildlife Service (378) w/amendment	

DPS opposed of difficulty in telling difference between animals killed for bait animals killed by auto/predator.

8-7 NG.

4/8

334. 5 AAC 81.210. (X). GAME AS ANIMAL FOOD OR BAIT. pg. 20. Allow use of unsalvageable road-killed game for animal food.

(X) Unsalvageable game from road and predator kills may be utilized for animal food or trap bait after notification and approval of the Department of Public Safety or the Department of Fish and Game.

Justification: Allows utilization of many road kills that are not found or reported until unfit for human consumption. Allows a trapper to place predator kills in areas where catches are more likely.

Proposed by: Tok Cutoff-Nabesna Road A.C.

Favor	Oppose
Upper Tanana/Forty Mile AC (298)	Fairbanks AC (380)
Tok Cutoff/Nebesna Road AC (391)	Cindy Lowrey (395)
Gastineau Channel AC (393)	Petersburg AC (398)
Mr. & Mrs Blais (402)	Alaska Wildlife Alliance (406)
Copper Basin AC (417)	William O'Connor (410)
Mt. Yenlo AC (426)	Yukon Flats AC (424)

unclear regard
e of 73
~~C-7 NG~~.

Upper Tanana / 40 mile AAC

73 WE FAVOR THIS

92 } WE OPPOSE THIS (#92) AND ASK
93 } THAT 93 (OUR PROPOSAL) BE RECINDED
NEW INFORMATION AND RECONSIDER-
ATION MAKES US BELIEVE THIS
PROPOSAL TO BE UNWISE AT
THIS TIME

114 WE FAVOR THIS

119 WE OPPOSE THIS

141 }
142 } WE OPPOSE ~~THIS~~ THESE
143 }

184 WE OPPOSE THIS. WE JUST MADE
THIS SEASON WHAT IT IS LAST
YEAR

185 WE FAVOR THIS. WHAT WE WANT
IS TO KEEP THE 50 INCH OR
4 BROW TINES TO RECRUIT MORE
YOUNG BULLS TO THIS POPULATION

186 WE OPPOSE THIS COMMENT 298

227 WE FAVOR THIS

229 WE FAVOR THIS

upper Tanana/40 mile AC

329 WE FAVOR THIS

334 WE FAVOR THIS. ALLOWING THIS SHOULD NOT ADVERSLY AFFECT ANY RESOURCE.

335 WE FAVOR THIS

336 WE FAVOR THIS IT IS REASONABLE AND THE JUSTIFICATION GIVEN IS ACCURATE.

337 WE FAVOR THIS

338 WE OPPOSE THIS #336 IS MORE REASONABLE. SOME HUNTS ~~ESBE~~ TAKE PLACE IN COOL ENOUGH WEATHER AND THIS PROPOSAL COULD MAKE SPECIAL AIRPLANE FLIGHTS NESASSARY NEEDLESSLY.

339 WE FAVOR THIS

COMMENT 298

340, 341 WE FAVOR THIS

PROPOSAL #

(70) 5AAC 81.090 REJECT Feel the way this proposal is worded it would open for abuse by the running of dogs.

(71) 5AAC 81.090 and companion prop (297) 5AAC 84.060 REJECT

(73) 5AAC 81.140 REJECT

(91-92) 5AAC 81.320 ACCEPT

(114) 5 AAC 81.320 ACCEPT

(119) 5AAC 81.320 REJECT

(121) 5AAC 81.320 REJECT

(122) 5AAC 81.320 ACCEPT if amended to (NONRESIDENT PERMITS NOT TO EXCEED 10% of TOTAL PERMITS)

(124-125) 5AAC 81.320 REJECT

(160) 5 AAC 81.320 REJECT

(186-1870) 81.320 REJECT

(188) 5AAC 81.320 ACCEPT

(191) 5AAC 81.320 REJECT

(193) 5ACC 81. 320 ACCEPT ~~ONLY~~ if amended to delete permit hunt. We agree with staff for a research program in this area, but not a permit hunt for larger bulls.

(194) 5AAC 81.320 REJECT

(195) 5ACC 81.320 REJECT

(256-257-258) 5AAC 81.320 REJECT

(268-269) 5AAC 81.340 ACCEPT

(271) 5AAC 81.340 ACCEPT

(283-284) 5 AAC 81.030 REJECT

(285) 5AAC 84.050 REJECT

(286 tnrough 290) 5AAC 84.050 REJECT

(291) 5AAC 84.050 We recommend the use of artificial light only for the killing of an animal in the trap and resetting of trap.

(292) 5AAC 84.050 REJECT

Fairbanks Advisory Committee 3-1-84

Proposal 329	Passed	7 For	0 Against	
Proposal 332	Failed	0 For	7 Against	
Proposal 334	Failed	0 For	7 Against	
Proposal 335	Failed	0 For	7 Against	
Proposal 336	Failed	1 For	6 Against	
Proposal 337	Passed	4 For	3 Against	
Proposal 343	Passed	7 For	0 Against	
Proposal 344	Passed	5 For	1 Against	1 Abstain
Proposal 345	Failed	0 For	7 Against	
Proposal 346	Passed	7 For	0 Against	
Proposal 347	Failed	0 For	7 Against	
Proposal 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358	Failed	0 For	7 Against	
Proposal 359 360	Passed	6 For	1 Against	
Proposal 361	Failed	0 For	7 Against	We are oppose to one + two.

COMMENT
380

Byron Haley Sec.
Fairbanks Adv. Committee

Fairbanks Adv. Committee 2-23-84

Proposal 66 Failed 0 For 9 Against

~~Proposal [redacted] Passed 9~~

Proposal 68 Failed 0 For 9 Against

Proposal 69 Failed 0 For 9 Against

Proposal 71 Failed 0 For 9 against

Proposal 73 Failed 0 For 9 against

Proposal 74 Failed 4 For 5 Against

Proposal 75 Passed 9 For 0 Against

Proposal 76 Failed 4 For 5 against

Proposal 77 Failed We do not want this area closed to hunting. it ~~should~~ to be open for Bow + arrow hunting and we recommend that this area be included in the Fairbanks Management area with one of the boundary the South bank of the Chena River.

Proposal 82 Failed 0 For 9 against If they want this for Northeastern Kodiak Island that would be alright but leave Afognak Island registration permit

Proposal 92 Passed 9 For 0 Against

Proposal 93 Passed 9 For 0 Against

ALASKA TRAPPERS ASSOCIATION
P.O. BOX 60418
FAIRBANKS, ALASKA 99706

73. ATA wages support and passage of this proposal as justified in the packet.

282. ATA wages defeat of this proposal for the reasons given in comments on proposal 28.

283. ATA wages support of this proposal. Dynamiting and shooting of beaver along road systems by DOT/PF is a waste of important fur and meat resources that could be utilized by humans.

293. ATA wages defeat of this proposal. While the localized area noted by the authors of the proposal may very well suffer at the hands of some unethical people, the solution is not to cripple the muskrat trapping industry in the rest of the state. proper trapping of pushups is the only practical method of taking muskrats under the ice. Ethical trappers do this anyway; the problem is not widespread. We would also suggest that factors other than trapping could easily have accounted for the mortality near Jim Creek.

297. ATA supports this proposal. "House- Cleaning proposals that help FWP to do their job fairly and efficiently are always important to us.

301. ATA wages defeat of this proposal. If passed this regulation would be an unreasonable burden on trappers and quite impossible to enforce. Unethical trappers making sets too close to town would simply ignore the regulation anyway. Legally tagged traps, if stolen could be reset in an illegal manner, resulying in harassment of their original owner. Most trappers atready mark their traps in some way so as to identify them if they are stolen.

303. ATA supports the concept of this proposal. We are not sure however, that without the companion proposal, that it is a workable regulation. Trappers do have an ethical responsibility to ensure that their snares and traps are rendered inoperable at the end of the season.

March 2, 1984

BOARDS OF FISHERIES & GAME
RECEIVED
MAR 5 1984
DEPARTMENT OF FISH & GAME

ADF&G Division of Boards
Box 3-2000
Juneau, Alaska 99802

TC NR AC 391

Dear Sir:

The Tok Cutoff-Nabesna Road Advisory Committee met on February 29, 1984 and would like to offer comments on the following comments:

1. We believe the Task Force the Governor promised during his campaign should be put into effect.
3. Against - Children may be called upon to demonstrate their hunting & shooting capabilities right now. There is no need for any additional law.
4. Against - The Department and Postal Service is too inefficient to risk such a law on the books.
6. For - We would like to amend the proposal to include units 11 and 13. This advisory committee requested our representative to introduce legislation to rid the residents of our units 11, 12, 13, 20E of this requirement.
13. For - bear baiting permits are serving no purpose, but are loading the Department down with additional paperwork.
14. For - same as #13
15. Against - we are endorsing the deletion of the permit system.
27. Against - This proposal would force a late season when the moose population might not be able to biologically stand it. It would also force many areas into a permit system.
29. For - Amended to age 16 or younger. If you are not old enough for a State hunting license, you should be able to transfer the permit to your child.
30. Against -
31. Against -
32. Against -
33. Against -
34. Against -
~~35. Against~~
35. For - very sound biological proposal
36. For - this type system is working very well on Kodiak.
40. For - Amended to read registration hunts, the number of caribou to be killed at 400, and the season to be closed by emergency closure when that number is reached.
44. For - biologically sound proposal
45. Against - This proposal would endanger small game hunting, the subsistence hunter, older individuals, and those who cannot afford ATV's.
46. Against - The animal should not be left to rot when the meat could come out with the injured.
47. For - good proposal.

COLLATED

391

GASTINEAU CHANNEL ADVISORY COMMITTEE

BOARDS OF FISHERIES & GAME
RECEIVED
DEPARTMENT OF FISH & GAME

Minutes: 1 March 1984

Meeting opened at 7:30 pm with quorum present: Dean, Henkins, Yurko, Whiting, Bartoo, Reddekopp, Cartmill, Lewis, Jensen. Absent: Finley, Donohue, Kalk, Porter. Vacancy: two. Alternate: Smoker present. Hand absent.

Discussion began with consideration of the Hoonah and Yakutat petitions. Points considered were the effect of limited entry and reduced gear pressure, a desire to spread out Cohoe harvest to inside waters, the standard position of Hoonah to have a steady fishery close to town. and the effects on a steady fishery in taking a finite number of fish- something would have to give. Emergency closure if needed to allow fish to get to inside waters. Committee divided 5-4 to reject the closure. A redefining of the 10 day closure petition was supported 7-1-1.

The annual election was held after ~~some~~ efforts to have nominations open d, ~~were~~ were rejected. ~~and~~ It proceeded under 5 AAC 96.060 (B) & (h)

Port r, Henkins, Dean, Finley, were re-elected to 3 year terms. Alt. Smok r was elected to 3 year regular term. New members: Gary Beal, Jim Becker and Greg Young. ~~to 3 year~~ Terms: Becker 3 years,; Beal and Young to 2 year terms as replacements for Bartoo and Sewell (determined by number of votes) Kalk and Cartmill tied for Alternate with 10 votes apiece, and a delayed run-off gave Cartmill the seat. (Three members checked the figures and did not note the tie until later) None of the new members were present. (This procedure approved prior to election as a reasonable method of selection)

See Footnote

Consideration of Game proposals in the packet beginning with #322 and votes are as follows:

324 thru 327	~~Approved~~ Rejected	Unanimous.	
329-31	~~Same~~ Approved	Un	
332	Rejected	Un	
333-4	Approved	Un	
335	Rejected	Un	It appears the wording of this proposal does not agree with intent. Modify.
336-8	Rejected	Un	
(337)	" 0-6-3		The concept is good, but present regs adequately provide for meat recovery.
339	Approved 8-1		Considerable discussion over the value
340-1	Approved 6-1-1		of Swan Cove to local hunting. Minority opinion that Non-consumptive use during summer and hunting in season not conflicing use.
342	Approved	Und	

A letter from Mr Joel Bennet suggesting retention of a small portion at the Mitchel Bay Salt Chuck was considered but opinion agreed that the Board can adjust this matter themselves.

345	Rejected	Un
346	Approved	Un
347	Rejected	Un
348	No action. Confused proposal. Local opinion favors Wolf control by use of boats if established.	
349 thru 358	Rejected	Un
359 - 361	Approved	Un

COMMENT 393

TO RUN AS THEY PLEASE UNLESS THE OWNERS HAVE THEIR LAND FENCED IN IN WHICH CASE THEIR PET'S WOULD BE FENCED IN AND THE TRAPPERS FENCED OUT.
I MAY ADD THAT I HAVE NOT TRAPPED IN ALASKA (9 YEAR RESIDENT).

320 YES
321 YES
322 YES
325 NO I BELIEVE IN WOLVE CONTROL AND THINK THAT ANY METHOD WHICH IS SAFE AND EFICTIVE SHOULD BE USED.
326 NO
327 NO
329 YES
334 YES
343 YES
344 YES
345 NO. AIRCRAFT WEATHER FIXED WING OR
347 NO. ROTOR CRAFT AND BOATS HAVE PROVED
349 NO. TO BE A MOST EFECTIVE MEANS OF WOLVE CONTROL AND IN SOME SECTIONS THE ONLY EFECTIVE MEANS OF CONTROL. I (MY FAMILY) CONSUME OUR MOOSE EVERY YEAR WE GET ONE AND DON'T FEEL I (WE) OWE THAT MOOSE TO ANY WOLVE. THERE IS NO QUESTION IN MY MIND THAT FEEDING ONES FAMILY TAKES PRES IDENCE OVER WOLVES.
351 NO
352 NO
353 NO
354 NO

402

Mr. & Mrs Blais

Mr. & Mrs Blais

(63) NO. I DON'T THINK WE NEED THESE RESTRICTIONS AT ~~THESE~~ THIS TIME MANY ALASKANS ONLY GET TWO DAYS A WEEK TO HUNT AND CANNOT AFFORD TO WASTE ONE OF THEM. AS A TRAVEL DAY.

(65) YES

(66) NO. BOW HUNTING IS AN EFFECTIVE WAY OF HUNTING AND IS SAFE IN POPULATED AREAS PROBUBLY ~~ONE OF~~ THE SAFEST WAY$ TO HUNT. (WITH REGARDS TO THE GENERAL POPULATION.)

(67) YES

(68) NO

(73) YES

(75) YES

(77) NO

(103) YES

(114) YES

(119) NO. GENE B SALINAS SOUNDS LITE A BROKEN RECORD PLEASE DO NOT ACCEPT ANY OF HIS (HER) PROPOSALS INCLUDING # 119, # 134, # 135, # 140, # 141, # 142, #143, #144, # 187, # 220, # 221, # 223, #225, # 226, # 230, # 233, # 235, # 236, # 237, #239, # 281, #319, #324, # 350 PERHAPS MR OR MRS SALINAS COULD HAVE MADE A GENERAL PROPOSAL TO END ALL SPORT HUNTING AND SAVE ALL THIS PAPERWORK.

(120) NO. I THINK THIS RESOURSE SHOULD BE OPEN TO ALL ALASKAN RESIDENTS NOT A SELECT FUE.

Alaska Wildl. Alliance

tion.

We support proposal #319 to recognize the value, status and importance of the wolf to the ecosystem and the public by removing the double jeopardy and excessive pressure to which wolves are subject as both fur animal and big game species.

We have no particular comment on proposal #322 other than the issuance of aerial hunting permits should be contingent upon the conditions we have proposed for the conduct of any predator control program. We also question why the staff is proposing adding these regulations to the hunting regulations when a couple of years ago they specifically removed them from the hunting regulations.

We oppose proposal #323 for the same reasons as we specified in to the Board for the December, 1983 meeting.

We support proposals #324 and #325 if our proposals #284 and #357 are not adopted.

We support proposal #327 as similar to one of our own.

We oppose proposal #330 as illegal aerial hunting.

Proposal #331 represents an attempt to bring some regulation to the implementation of wolf control in Alaska. While the proposed regulation is better than the absence of regulation which currently exists, we feel our proposals #284 and #356 are superior in many ways. For example, proposal #331 does not establish, or guarantee the implementation of, alternative, complementary or preventive wildlife management measures. Nor does it establish wolf control as an emergency measure or require annual population surveys. The terms of review of any control program should be annual rather than every three years.

We support proposal #332 for the reason given in the justification.

We oppose proposal #334 for the same reasons we oppose proposal #73.

We support proposal #336 as a means of reducing waste and predator conflicts.

We support proposals #337 and #338 as a means of reducing waste.

We oppose proposal #339 for the same reasons we oppose the baiting of black bears in the first place. For additional explanation, see our comments on similar black bear baiting proposals above.

We support proposals #340 and #341 as protecting non-consumptive use and promoting fair chase.

We oppose proposals #343 and #344. They ignore the value and importance of wolves to their prey and to most of the public. In addition, they imply that wolves are solely responsible for declines in prey populations and that they should be permanently suppressed to low levels.

We support proposal #347 if our proposals #284 and #357 are not adopted.

COMMENT
406

COPPER BASIN FISH & GAME ADVISORY COMMITTEE
Box 83
Glennallen, AK 99588

Proposal #	Comments
284	Against
285	Against
286	Against
287	Against
288	Against
290	Against
291	Against
292	Against
293	Against
296	For
297	For
301	Against
302	Against
319	Against
322	For
324	Against
325	Against
326	Against
327	Against
331	For
334	For
335	For
336	Against Too sloppy written - Idea good
337	Against
338	For
345	Against
347	Against
349	Against
350	Against
351	Against
352	Against
353	Against
354	Against
355	Against
356	Against
357	Against
358	Against

COPPER BASIN FISH & GAME ADVISORY COMMITTEE
Box 83
Glennallen, AK 99588

Proposal #	Comments
1	Against
3	Against
4	For with an amendment that one (1) reminder be sent
5	Against
6	For with an amendment that Units 11 & 13 be included
13	For
27	Against
29	For with an amendment that age be changed to 16 years or younger
30	Against
31	Against
32	Against
33	Against
34	Against
40	For with the adoption of Proposal #123 with amendment
45	Against
47	Against
52	Against
59	Against
61	Against
62	Against
63	Against
69	For
70	Against
71	Against
73	For
90	For
91	For
121	Against
122	For
123	For with the following amendment

Subsistence Permittees: Aug.20-Sept.20 Jan.1-Mar.31	One caribou by registration permit only. The season will be closed by emergency order if or when 500 caribou are taken.

etc. the same

124	Against
125	Against
160	Against
191	Against
192	For
193	For with the amendment of striking the 50 permits
194	Against
195	Against
256	For
258	For
268	Against
269	For
281	Against
283	For

COMMENT
417

PET EMERGENCY TREATMENT, Inc.
3315 Fairbanks Street
Anchorage, Alaska 99503

Telephone 274-5636

BOARDS OF FISHERIES & GAME
RECEIVED
MAR 7 1984
DEPARTMENT OF FISH & GAME

3/4/84

Alaska Board of Game
P.O. Box 3-2000
Juneau, AK. 99803

To whom it may concern;

As a non-consumptive user of Alaska's wildlife I am concerned about the hunting and trapping regulations and policy proposals that the board will be dealing with this Spring. I feel that the non-consumptive user both state resident and tourist should be given a stronger consideration as the board formulates it's policies for the future. Tourism being Alaska's third largest industry care should be taken to preserve the wildlife that those tourists have come to see.

I am against a number of the proposals that the board has before them. The numbers are 47,57,59,70,73,300,323 334,339and 343. I am in favor of a number of proposals put forth by the Alaska Wildlife Alliance. the numbers are 45,60,63,68,201,284,285,287,326,345,352,356, and 357.

Your consideration of those of us that neither eat nor wear Alaska's wildlife would be appreciated. At present no demand is being made of the non-consumptive user ,monitarily . I am infavor of a tax system that would access the extent of the non-consumptive users and contribute to the financing of the programs that we support. I appreciate your time and your consideration of my position.

COMMENT
410

Sincerely,

William F. O'Connor, D.V.M.

Petersburg Advisory Committee
Alaska Dept. of Fish & Game
Petersburg, Alaska 99833
5th March 1984

Alaska Board of Game
Box 3-2000
Juneau, Alaska 99801

Gentlemen:

The Petersburg Advisory Committee recently met to review proposed regulatory changes for trapping regulations. We have several proposals that we are concerned with and submit the following to you for the March meeting.

1. The following numbered areas be opened by our committee: 52 - 57 - 58 - 61 - 62 - 75 - 103 - 104 - 160 - 169 - 170 - 171 - 174 - [illegible] - 203 - 204 - 205 - 221 - 222 - 230 - 231 - 235 - [illegible] - 241 - 243 - 245 - 250 - 251.

[illegible] be closed [illegible]

[illegible] "this" [illegible] (1).

[illegible]

[illegible]

by [illegible]

398

#303	Support	with an amendment to allow continued use of no trap during those summer months which is larger than an number 1 size trap; this will allow the continued trapping only of ground squirrels which is a traditional practice of local peoople within GMU25
#305	Oppose	Too non-specific as to specified conditions
#317	Support	This of course is our proposal and we do fully support it
#319	Oppose	Trappers depend upon wolves as a part of their overall economy for the sale of the fur
#322	Oppose	See justification #28
#324	Support	We oppose shooting any game from any aircraft
#325	Support	See justifictaion #324
#326 and #327	Support	It's already in regulation
#328	Oppose	See justification #319
#329	Oppose	See justification #319
#331	Support	It will be interesting to us to see what management policies would be implemented by such a program for the wolf
#332	Oppose	See justification #301
#334	Oppose	All road-killed game should be removed; we do not use game for baiting
#336	Support	we like to see meat recovered from the field and not wasted
#337	Support	See justification #336
#338	Support	See justification #336 and #337
#339	Support	See justification #334
#344	Oppose	See justification #331
#345	Support	Refer to game regulations
#346	Oppose	This is to be consistent with the committee's position
#347	Support	No one should be allowed to hunt wolves with aircraft
#349	Support	See justification #347
#348	Oppose	(our justification will follow)
#350	Support	See justifications #347, 348, 349
#351	Support	See regulations
#352	Support	See justification #297

DELTA FISH & GAME
ADVISORY COMMITTEE



BOX 1082
DELTA JUNCTION ALASKA
99737

RECEIVED
MAR 7 1984
DEPARTMENT OF FISH & GAME

Minutes

Feb. 29, 1984

Members Present: Floyd Weaver, Larry Fett, Ralph Miller, Lou Heinbockel, Ron Beck, Bob Hilliker, Jim Goodman, and Jim Storey.

Members Absent: Dean Cummings and John Palmer.

1. The meeting was called to order at 7:30 PM.

2. The minutes of the previous meeting of Jan. 24, 1984 were read and were approved.

3. Ralph Miller briefed the committee on his attendance of the Fisheries Board meeting. A number of local citizens were onhand to discuss the decisions that were made at that meeting regarding dipnet regulations and subsistence definitions. The statements from these individuals reflected dissatisfaction with the Fisheries Board decisions specifically; these decisions favored commercial activities and the subsistence user group was distroted in terms of geographic identification.

4. In keeping with the tradition of the Delta Committee a good deal of time was spent discussing the affairs of the American Bison Herd wihich favors our area. As usual Dave Johnson presented the latest information which included the status of the present legislative actions and the impact and positions of the various political personalities. Essentially the funding for bison range improvement is looking favorable however the draft barrier is on shaky ground.

5. Dick Peckham was also onhand and gave the committee an update concerning access to Jan Lake. Dick also informed the committee that he is considering emergency closure action for burbot fishing on Fielding Lake. This committee has previously proposed prohibiting open water set line fishing on Fielding Lake and so was supportive of Dick's intentions. This support was verified by committee vote following a motion from Jim Goodman with a second from Lou Heinbockel.

6. The remainder of the meeting was directed towards establishing support or opposition for the current game law proposals. The following listed proposals reflect the collective position of the Delta Advisory Committee:

PROPOSALS SUPPORTED ----1,4,10,46, 114, 122, 139, 222, 228, 231, 253, 268, 271, 302, and 303. 227 with admendment. Proposals 30-34 and others dealing with drawing permits, a drawing permit applicant should possess a current sport hunting license.

PROPOSALS OPPOSED ---- 5, 27, 29, 36, 37, 42, 44, 47, 48, 49, 53, 55, 56, 57, 58, 59, 64, 70, 73, 120, 256, 292, 301, and 309. Proposals 18-26 and any other proposal dealing with falconry.

7. There being no further business the meeting was adjourned at 12:30 AM.

For the Committee

USFish & Wildl. Service

28 - OPPOSE - Restrict hunting of wolves in specified units. The purpose of this proposal is to prevent dispersal of infected wolves and prevent man from providing an intermediate host. Unfortunately the dog-biting louse occurs on domestic dogs throughout much of the state and could appear in other wolf populations. While the pelt quality may be somewhat lower in wolf populations with lice, the populations still produce a harvestable surplus.

53, 55-59 - OPPOSE - Allow same day airborne hunting. In general we believe this would encourage airborne hunting violations, mainly through driving animals to hunters on the ground and by spotting for hunters on the ground. Also, under some circumstances, overharvest would be a distinct possibility.

73 - SUPPORT - Allow use of road-killed game that is unsalvagable for human consumption for animal food. This proposed regulation would have to be clarified to indicate that migratory birds could not be used for animal food or bait.

81, 96 - OPPOSE - Lengthen brown bear seasons in Units 7 and 15. Brown bear populations on the Kenai peninsula are at unknown levels. Recently concern over the mounting pressures that may negatively affect brown bears resulted in the formation of a study team representing the Alaska Department of Fish and Game, Fish and Wildlife Service and Forest Service. The team hopes to develop a data base which will provide reliable information on the Kenai brown bear population. Until such information is available, it is premature to increase the brown bear season and/or harvest.

115 - SUPPORT - Increase number of caribou permits issued in Unit 7. We support increasing the number of permits to 200. We would like to see the herd maintained below 300 animals until range studies can be undertaken and the harvest must be increased to keep the herd at this level.

128 - CLARIFY - Establish season and bag limit for caribou in Unit 15(A). We would like to correct a misleading statement in this proposal. We did not support this proposal as stated in the justification. We did tell the Kenai-Soldotna Advisory Council that if this herd was to be hunted, then the obvious conflicts with viewing could be reduced if the hunt was limited to harvesting one or two of the large bulls (four large bulls were seen in 1982) and if hunting occurred away from the road system. This herd has not shown any growth since 1977 when a limited hunt was first proposed on an estimated 80 caribou. The bull/cow ratio of this herd should not go below that of the mountain herd (40 bulls/100 cows) since these caribou are viewed much more frequently than the mountain herd. Obviously the taking of three bulls will not have an adverse biological impact on this herd but we believe that the best use of these caribou is in viewing rather than hunting. The trophy bulls are commonly seen along the highway, Kenai River flats and near the Kenai airport.

OVERVIEW: CSHB 407

PREPARED BY HOUSE RESOURCES COMMITTEE STAFF

JANUARY 31, 1986

******* ******* ******** ******** ******** ******* ******* ***

At the last Resources Committee meeting regarding CSHB 407 several aspects of the bill were discussed.

The first item concerned potential enforcement problems that could occur if trappers were allowed to use big game meat in general for bait.

* This CS addresses this problem by specifically naming those parts of big game animals that may be legally used for trapping bait.

The second concern involved the use of big game animals that are found dead in the field from natural causes.

* This CS deals with this problem on page one lines 15 - 19 by requiring persons who use these dead animals to report the use and the location of the carcass within three days.

The third item discussed concerned road or train killed animals and their use as trapping bait.

* This CS would require written permission from the Dept. of Fish and Game or Public Safety before a road killed animal could be used by a person as bait.

The fourth and final topic concerned the patterning of section 2 of the bill after existing statutes dealing with confidentiality of fish tickets.

* CSHB 407 now contains this conforming provision.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 407
Title : "an act relating to the use game as bait"

Sponsor : Representative Schultz
Requestor : H. Resources
Date of Request : 1/20/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Fish & Wildlife Protection

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

K Niles

Prepared by : Kathy Niles, Administrative Ass't
Division : Commissioner's Office
Phone : 465-4336
Date : 1/17/86

Approved by Commissioner : [signature]
Agency : Public Safety
Date : 1-17-86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page ____ of ____

10/25/85

(c) In this section,

(1) "process" means to butcher, cook, chill, or freeze crab for commercial use;

(2) "registration area" means a specific king crab registration area as designated by regulation of the Board of Fisheries. (§ 2 ch 70 SLA 1974; am § 12 ch 206 SLA 1975; am § 17 ch 132 SLA 1984)

Effect of amendments. — The 1984 amendment deleted "and includes the Bering Sea shellfish area and the western Aleutian Islands king crab area" from the end of paragraph (c)(2).

Sec. 16.05.720. Penalties.

From Supplement

NOTES TO DECISIONS

Quoted in Langesater v. State, Ct. App. Op. No. 279 (File No. 7357), 668 P.2d 1359 (1983).

Article 6. Miscellaneous Provisions.

Section
789. Prohibition on hunting adjacent to highway between Yukon River and Arctic Ocean
815. Confidential nature of certain reports and records
826. Waterfowl conservation stamp program
831. Waste of salmon
900. Penalty for violations
903. [Repealed]

Sec. 16.05.789. Prohibition on hunting adjacent to highway between Yukon River and Arctic Ocean. (a) Hunting with firearms is prohibited north of the Yukon River in the area within five miles on either side of the highway between the Yukon River and the Arctic Ocean.

(b) A person who violates this section is guilty of a class A misdemeanor. (§ 2 ch 177 SLA 1980)

Revisor's notes. — By judgment dated March 19, 1981, in Alaska Legislative Council v. Hammond, case no. 4FA-80-1689, the superior court for the fourth judicial district upheld the validity of the enactment of ch. 177, SLA 1980. The attorney general's opinion cited in the legislative history note to this section in the main pamphlet should be disregarded.

Sec. 16.05.815. Confidential nature of certain reports and records. (a) Except as provided in (b) of this section, records required by regulations of the department concerning the landings of fish, shellfish or fishery products, and annual statistical reports of buyers and processors required by regulation of the department are confidential and may not be released by the department except that the department may release

(1) any of its records and reports to the National Marine Fisheries Service as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the fishery conservation zone; however, information released to the National Marine Fisheries Service under this paragraph may not disclose the identity of individual fishermen or their vessels;

(2) any of its records and reports to the Department of Revenue and to the Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities;

(3) records or reports of the total value purchased by each buyer to a municipality that levies and collects a tax on fish, shellfish, or fishery products if the municipality

(A) requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable; and

(B) maintains the confidentiality of reports and records that it receives under this paragraph;

(4) such records and reports as necessary to be in conformity with a court order;

(5) on request, the report of a person to the person whose fishing activity is the subject of the report; and

(6) fish tickets and fish ticket information to the division of fish and wildlife protection, Department of Public Safety.

(b) Records or reports received by the department which do not identify individual fishermen, buyers, or processors or the specific locations where fish have been taken are public information. (§ 1 ch 117 SLA 1970; am § 1 ch 117 SLA 1974; am § 1 ch 66 SLA 1980; am §§ 1, 2 ch 72 SLA 1982; am § 1 ch 84 SLA 1985)

Effect of amendments. — The 1985 amendment, effective June 3, 1985, in subsection (a) substituted "that" for "which" in two places, added paragraph (6), and made related stylistic changes.

Sec. 16.05.826. Waterfowl conservation stamp program. (a) The waterfowl conservation tag authorized in AS 16.05.340(a)(17) shall be produced annually in stamp form by the department in an amount the Department of Revenue considers appropriate. The department shall make stamps available for the creation of waterfowl conservation limited edition prints and shall provide for the sale of stamps and prints to the public.

(b) The department shall provide by appropriate means for the selection of the design of the annual waterfowl conservation stamp and for the production and sale of the stamps.

(c) The department may contract to others the performance of the department's responsibilities under this section. A contract may

(2) if the fish or game or part of fish or game is in a preserved condition whether frozen, smoked, canned, salted, pickled or otherwise preserved, or

(3) with respect to crab aboard a commercial crab fishing vessel, during the first full three days after the time when a taking is prohibited. (§ 26 art I ch 94 SLA 1959; am § 1 ch 42 SLA 1974)

Sec. 16.05.815. Confidential nature of certain reports and records. (a) Except as provided in (b) of this section, records required by regulations of the department concerning the landings of fish, shellfish or fishery products, and annual statistical reports of buyers and processors required by regulation of the department are confidential and may not be released by the department except that the department may release

(1) any of its records and reports to the National Marine Fisheries Service as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the fishery conservation zone; however, information released to the National Marine Fisheries Service under this paragraph may not disclose the identity of individual fishermen or their vessels;

(2) [Effective July 1, 1984] any of its records and reports to the Department of Revenue and to the Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities;

(3) records or reports of the total value purchased by each buyer to a municipality which levies and collects a tax on fish, shellfish, or fishery products if the municipality

(A) requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable; and

(B) maintains the confidentiality of reports and records which it receives under this paragraph;

(4) such records and reports as necessary to be in conformity with a court order; or

(5) on request, the report of a person to the person whose fishing activity is the subject of the report.

(b) Records or reports received by the department which do not identify individual fishermen, buyers, or processors or the specific locations where fish have been taken are public information. (§ 1 ch 117 SLA 1970; am § 1 ch 117 SLA 1974; am § 1 ch 66 SLA 1980; am §§ 1, 2 ch 72 SLA 1982)

Postponed amendment. — Until July 1, 1984, paragraph (2) of subsection (a) provides: "(2) any of its records and reports to the Department of Revenue, to the division of fish and wildlife protection, Department of Public Safety, and to the Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities;".

Cross references. — For reporting of wholesale canned salmon prices, see AS 43.80.050 — 43.80.100.

Effect of amendments. — The 1980 amendment substituted "Except as pro-

vided in (b) of this section, records" for "Reports" at the beginning of present subsection (a), substituted "may" for "shall" preceding "not be released" near the end of the introductory paragraph of present subsection (a), deleted "in the form of individual records" following "not be released" near the end of the introductory paragraph of present subsection (a), added "that the department may release" at the end of the introductory paragraph of present subsection (a), restructured the former section into present subsection (a) and paragraphs (1) — (5), added all of the provisions contained therein except for paragraphs (2) and (4); in paragraph (2) of subsection (a), added "any of its records and reports" at the beginning of the paragraph, and substituted "to assist them in carrying out their statutory responsibilities" for "or" at the end of paragraph (2); in paragraph (4) of subsection (a), added "such records and reports as necessary to be" at the beginning of the paragraph, and added "or" at the end of the paragraph.

Section 1, ch. 72, SLA 1982 inserted "to the division of fish and wildlife protection, Department of Public Safety" in paragraph (2) of subsection (a). Section 2 of ch. 72, effective July 1, 1984, deletes that language from paragraph (2).

Sec. 16.05.820. Research by the federal government. The Secretary of the Interior, the Secretary of Commerce or the Secretary of Agriculture of the United States and their authorized agents or other appropriate federal agencies may conduct fish cultural operations and scientific investigations in the state in the manner and at the times jointly considered necessary or proper by the Board of Fisheries and the secretary and their authorized agents. (§ 29 art I ch 94 SLA 1959; am § 14 ch 206 SLA 1975; am § 10 ch 208 SLA 1975)

Sec. 16.05.825. State upland game bird release program. (a) In addition to any other program for the stocking or propagation of game birds that the department has as of July 23, 1974, the department shall establish a special program for the raising, maintenance, and release of upland game birds in the state. Birds raised under this program may be released in an appropriate area of the state, at any time, but may be harvested only during regular hunting seasons, as specified by the board under AS 16.05.255(2). The board shall adopt regulations necessary to implement this section.

(b) The department shall establish an appropriate facility for the raising and maintenance of upland game birds to be located at an appropriate place, as determined by the commissioner, in interior Alaska.

(c) The department shall employ a method of tagging game birds released under this section, compile harvest statistics, and report its results and findings to the legislature annually.

(d) In this section, "upland game bird" means a game bird for which a season is established under AS 16.05.255(2) as of July 23, 1974, excluding waterfowl. (§ 1 ch 31 SLA 1974; am § 15 ch 206 SLA 1975)

Sec. 16.05.827. Sale of subsistence salmon roe. [Repealed, § 4 ch 99 SLA 1975.]

Sec. 16.05.830. Wanton waste. [Repealed, § 1 ch 73 SLA 1968.]

OVERVIEW: CSHB 407

TRAPPING BAIT
(Section 1)

Present regulations prohibiting the use of non-edible big game meat as trapping bait are causing difficulties for many trappers. As a result much of this meat is being wasted when it could be put to a more practical use.

Working with several trapping organizations and Advisory Committees, research confirmed that the problem lies in the administration of 5AAC 84.170 which was put in place based on existing statutory language found in 16.05.255.

****

CSHB 407 is designed to preempt part of that regulation and allow those parts of a big game animal or wild fowl legally taken or legally possessed, that are not edible (as defined in AS 16.30.030), to be used for bait.

CSHB 407 would clarify and make more complete present law which seems based on AS 16.30.010 and AS 16.30 030 to only address what can not be done with edible meat. Unfortunately there isn't anything mentioned about lawful uses of non-edible game meat thus allowing regulations to be promulgated under the authority found in AS 16.05.255 to prohibit such use for bait. (5AAC 84.170)

In trying to find the justification for this regulation it seems that there has been concern that it would be difficult for enforcement people to determine whether or not game animals were being misused for trapping purposes if game meat was allowed in any form to be used for trapping.

From a practical sense this fear apppears to be unfounded for several reasons. * First game meat that is edible is far to precious to be used as trapping bait, especially in rural Alaska. * Secondly the type of person that would waste game meat is already sufficiently deterred by the penalties established for "wanton waste" presently found in AS 16.030.010. * Lastly and most importantly, trappers tell us they are not following this regulation to any great degree and never have, and yet few are cited and even fewer successfully prosecuted for violation of this regulation. This would indicate that the regulation is not accomplishing its desired effect and in light of the wanton waste statute ,is no longer needed.

Safeguards

CSHB 407 would require each person wishing to use the non-edible portions of big game for bait to abide by all other state requirements governing the possession, transportation, and use of the dead animal and its parts.

The language in CSHB 407 combined with the wanton waste statute will provide the protection necessary for the care and use of big game meat without causing trappers using traditional trapping methods to be in violation of state law.

********* ********** ********** ********** ********** *******

SEALING RECORDS

(Section 2)

Trappers who provide information the Department of Fish and Game via fur sealing records are concerned that private information from those records could be distributed without their permission.

HB 407 in the CS version has been expanded to help alleviate this concern without diminishing the authority of the agencies who use information from sealing records to assist in their management processes.

* Note: Both the method used, and the rationale for the method are patterned after the statute dealing with the protection of private information recorded on commercial fish tickets.

Some of the practical problems associated with the regulation prohibitting the use of big game meat as trapping bait:

* Wild fowl carcasses that have been discarded after the breast has been removed cannot be used for bait even though there is no violation of the wanton waste law.

Reason given to trappers: The feet and feathers are still attached to the bird carcass,therefore it violates present regulation.

* A successful hunter may remove the head, feet, and lower legs of a moose as they are not considered edible under present statute, however he may not use, or may any person who receives these parts use them for bait.

Reason given to trappers: Violates present regulations concerning the use of big game meat.

* A carcass of a big game animal that has been wolf killed or has died another type of natural death and is found by a trapper may not be used as bait. Even if the carcass is not disturbed in any way by the trapper.

Reason given to trappers: This could create an enforcement problem for officers in the field.

* Troopers or other officials faced with the removal of road killed, or train killed moose can not offer even the most obvious non-edible meat to trappers for bait.

Reason given to trappers: Violates present regulations concerning the use of big game meat.

Bannister
1/17/86

Original sponsors: Shultz and Marrou

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 407 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the use and sealing of certain game animals."

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.783. USE OF GAME AS BAIT. Except for the edible meat of big game animals and wild fowl, as defined in AS 16.30.030, a person may use as bait the carcass of game that the person has

(1) killed in the state, if the person has complied with all other state requirements relating to the killing, and the possession, transportation, and use of the carcass of the game; or

(2) otherwise obtained in the state, if the person has complied with all other state requirements relating to the possession, transportation, and use of the carcass of the game.

* Sec. 2. AS 16.05.815 is amended by adding new subsections to read:

(c) The personal identity information in a fur-sealing document is confidential and may be released by the department only

(1) to a state agency when the information is necessary for the management of the game resources of the state; except to the extent necessary to prosecute a criminal action based on the fur-sealing document, the state agency receiving the information from the department shall also maintain the confidentiality of the personal identity information;

(2) to a court under a court order; or

(3) to the person who is identified in the fur-sealing

document as having taken the animal.

(d) In (c) of this section,

(1) "fur-sealing document" means the report that accompanies the placement by the department of a metal seal on a portion of the carcass of a game animal taken by trapping;

(2) "personal identity information" means the name, address, phone number, social security number, and trapping license number of the person identified in a fur-sealing document as having taken the animal;

(3) "state agency" means a department in the executive branch of the state.

Introduced: 4/29/85
Referred: Resources

IN THE HOUSE BY SHULTZ

HOUSE BILL NO. 407

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the use of game as bait."

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.783. USE OF GAME AS BAIT. Except for the edible meat of big game animals and wild fowl, as defined in AS 16.30.030, a person may use as bait the carcass of game that the person has killed in the state, if the person has complied with all other state requirements relating to the killing, and the possession, transportation, and use of the carcass, of the game.

Section
20. Animals exempted
30. Definitions

Sec. 16.30.010. Wanton waste of big game animals and wild fowl. (a) It is a class A misdemeanor for a person who kills a big game animal or a species of wild fowl to fail intentionally, knowingly, recklessly, or with criminal negligence to salvage for human consumption the edible meat of the animal or fowl.

(b) If a person is convicted of violating this section and in the course of that violation failed to salvage from a big game animal at least the hindquarters as far as the distal joint of the tibia-fibula (stifle joint), the court shall impose a sentence of imprisonment of not less than seven consecutive days and a fine of not less than $2,500.

(c) The imposition or execution of the minimum sentence prescribed in (b) of this section may not be suspended under AS 12.55.080 or 12.55.085. The minimum sentence prescribed in (b) of this section may not be reduced. (§ 39-8-1 ACLA 1949; am § 1 ch 111 SLA 1957; am § 2 ch 73 SLA 1968; am § 1 ch 11 SLA 1974; am § 1 ch 34 SLA 1976; am § 1 ch 5 SLA 1980; am § 1 ch 123 SLA 1982)

Effect of amendments. — The 1980 amendment affected provisions of this section defining the term "most of the edible meat" of a wild food animal. The 1982 amendment, however, deleted these provisions. Similar provisions now appear in AS 16.30.030(5).

The 1982 amendment rewrote this section.

Sec. 16.30.012. Possession of horns or antlers. (a) It is a class A misdemeanor for a person to possess the horns or antlers of a big game animal that was killed after the opening of the current or most recent lawful hunting season for that animal if the person does not possess the edible meat of the animal.

(b) A person may not be arrested or prosecuted for a violation of this section unless the arresting officer determines that there is probable cause to believe that the edible meat of the big game animal from which the horns or antlers were taken has not been salvaged. (§ 2 ch 34 SLA 1976; am § 2 ch 123 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote this section.

Sec. 16.30.015. Surrender of salvaged portions, license forfeiture. A person convicted of violating AS 16.30.010

(1) shall surrender to the department all salvaged portions of the animal or fowl;

(2) forfeits the convicted person's hunting license;

(3) is ineligible to hold a hunting license for

(A) the year in which the conviction is entered and the year following the year in which the conviction is entered;

(B) a period of five years from the date of the conviction if the person has failed to salvage from a big game animal at least the hindquarters as far as the distal joint of the tibia-fibula (stifle joint). (§ 3 ch 123 SLA 1982)

Sec. 16.30.017. Defenses. (a) It is a defense to a criminal charge under AS 16.30.010 or 16.30.012 that the failure to salvage or possess the edible meat was due to circumstances beyond the control of the person charged, including

(1) theft of the animal or fowl;

(2) unanticipated weather conditions or other acts of God;

(3) unavoidable loss in the field to another wild animal.

(b) It is a defense to a criminal charge under AS 16.30.012 that the defendant does not possess the edible meat of the big game animal because the meat was

(1) consumed by human beings; or

(2) delivered to another person.

(c) In this section, "delivered" means given, sold, or bartered in a manner that does not violate state or federal law. (§ 3 ch 123 SLA 1982)

Sec. 16.30.020. Animals exempted. The provisions of AS 16.30.010 and 16.30.012 do not apply to animals which the board exempts by regulation. (§ 3 ch 73 SLA 1968; am § 3 ch 34 SLA 1976; am § 4 ch 123 SLA 1982)

Effect of amendments. — The 1982 amendment made a minor section catchline change.

Sec. 16.30.030. Definitions. In this chapter

(1) "big game animal" means moose, caribou, mountain sheep, mountain goat, feral reindeer, deer, elk, bison, walrus, or musk-ox;

(2) "criminal negligence" means criminal negligence as defined in AS 11.81.900(a)(4);

(3) "department" means the Department of Fish and Game;

(4) "edible meat" means, in the case of big game animals, the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and the radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (stifle joint), and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast; however, "edible meat" of big game or wild fowl does not include

(A) meat of the head;

(B) meat that has been damaged and made inedible by the method of taking;

(C) bones, sinew, and incidental meat reasonably lost as a result of boning or a close trimming of the bones;

(D) viscera;

(5) "intentionally" means intentionally as defined in AS 11.81.900(a)(1);

(6) "knowingly" means knowingly as defined in AS 11.81.900(a)(2);

(7) "possess the edible meat" includes possessing portions of the edible meat in more than one location while the meat is being transported from the place where it was salvaged;

(8) "recklessly" means recklessly as defined in AS 11.81.900(a)(3);

(9) "wild fowl" means species of wild fowl for which seasons or bag limits have been established by state or federal law. (§ 3 ch 73 SLA 1968; §§ 5, 6 ch 123 SLA 1982)

Revisor's notes. — Reorganized in 1983 to alphabetize the defined terms.

Effect of amendments. — The 1982 amendment repealed former paragraph (2), which defined "wild food animal," and added present paragraphs (4)-(9).

Chapter 35. Predatory Animals.

Article
1. Employment of Hunters and Trappers to Suppress Predatory Animals (§§ 16.35.010 — 16.35.040)
2. Bounties on Wolverines, Wolves and Coyotes (§§ 16.35.050 — 16.35.130)
3. Bounty on Hair Seals (§§ 16.35.140 — 16.35.180)
4. Miscellaneous Provisions (§ 16.35.200)

Article 1. Employment of Hunters and Trappers to Suppress Predatory Animals.

Section
10. Commissioner of fish and game to employ hunters and trappers
20. Duties of leaders
30. Leaders' compensation and sale of skins
40. Disposition of proceeds from sale of skins

Sec. 16.35.010. Commissioner of fish and game to employ hunters and trappers. The governor may suppress predatory animals in the state, and may employ not more than two expert hunters and trappers, hereafter referred to as leaders. Only persons who have had scientific training by the Department of Natural Resources for the suppression of predatory animals and who are recognized by that department as experts in that field shall be employed. (§ 33-3-101 ACLA 1949)

Revisor's notes. — This section gives the power to suppress predatory animals to the governor with the Department of Agriculture to train persons to suppress predatory animals. Section 7, ch. 64 SLA 1959, does not mention this power as one belonging to the governor. Section 16, ch. 64 SLA 1959, listing the powers of the Department of Natural Resources, to which were transferred the powers of the

department within 30 days after the close of the trapping season. (In effect before 1980; am 9/30/81, Reg. 79; am 6/30/84, Reg. 90)

Authority: AS 16.05.255

5 AAC 84.120. EXPORTATION OF SKINS. (a) No person may ship, mail, or otherwise transport from Alaska the raw skins of a wild fur bearer or hair seal without properly executing a fur export permit or shipping tag and an export report or post card provided by the department or any post office or commercial carrier.

(b) A person who ships, mails, or otherwise transports from Alaska the raw skin of a wild fur bearer or hair seal shall attach a fur export permit to the outside of the package containing the raw skin and shall include a statement that the skin was legally taken and possessed. No carrier or post office may accept for shipment from Alaska any raw skin of a wild fur bearer or hair seal unless a fur export permit is attached. Before shipment, the person shipping, mailing, or otherwise transporting the raw skin shall detach the fur export report from the fur export permit, and shall properly execute and mail the report to the department. (In effect before 1985; am 6/23/85, Reg. 94)

Authority: AS 16.05.255

5 AAC 84.130. EXPORTING AND POSSESSION OF SEA OTTER. Repealed 7/4/80.

5 AAC 84.140. IMPORTING OF SEA OTTER SKINS. Repealed 7/4/80.

5 AAC 84.150. PROCESSING OF SEA OTTER SKINS. Repealed 7/4/80.

ARTICLE 4.
USE OF GAME

Section
160. Purchase and sale
170. Game as animal food or bait
175. Utilization of carnivores

5 AAC 84.160. PURCHASE AND SALE. The purchase, sale, or barter of a fur bearer or a part of a fur bearer is permitted, with the exception of an unsealed or untagged beaver, wolf, wolverine, lynx, or river otter skin. (In effect before 1980; am 7/4/80, Reg. 75; am 6/23/85, Reg. 94)

Authority: AS 16.05.255
AS 16.05.920

5 AAC 84.170. GAME AS ANIMAL FOOD OR BAIT. The use of game as food for a dog or a fur bearer, or as bait, is prohibited, with the following exceptions:

(1) the hide, skin, viscera, or bones of any game;

(2) repealed 9/25/76;

(3) the skinned carcass of bear or fur bearer;

(4) hares, rabbits and red squirrels;

(5) repealed 7/4/80;

(6) legally taken unclassified game. (In effect before 1980; am 7/4/80, Reg. 75; am 6/23/85, Reg. 94)

Authority: AS 16.05.255

5 AAC 84.175. UTILIZATION OF CARNIVORES. The hide or flesh of bears and the hides of wolves, wolverine, coyotes, and lynx must be salvaged for human use. (In effect before 1983; am 6/30/83, Reg. 86)

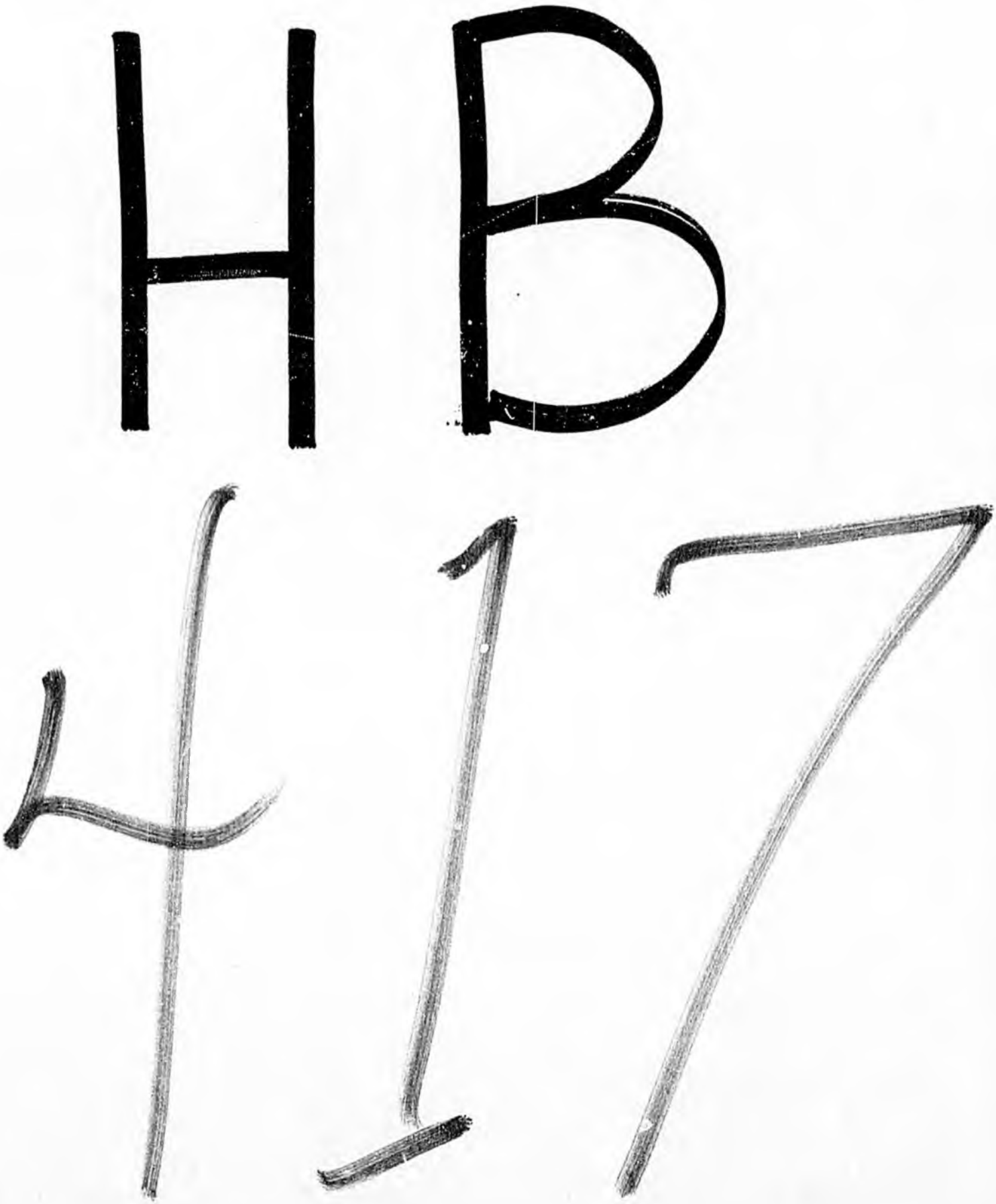
Authority: AS 16.05.255

ARTICLE 5.
AREAS CLOSED TO TRAPPING

Section
180. Application of 5 AAC 84.190–5 AAC 84.200
190. Southeastern Alaska (Units 1–5)
200. Southcentral Alaska (Units 6–16)
210. (Repealed)

5 AAC 84.180. APPLICATION OF 5 AAC 84.190 – 5 AAC 84.200. Unless otherwise provided in 5 AAC 84.190 – 5 AAC 84.200, the areas listed in those sections are closed to trapping fur bearers except under authority of a permit that may be issued at the discretion of the commissioner. (In effect before 1985; am 6/23/85, Reg. 94)

Authority: AS 16.05.255
AS 16.05.340


HB
417

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game

Andre Marrou
Representative

District 5

Kenai — Sterling
Soldotna — Anchor Point
Homer — Port Graham
Seldovia — English Bay
Kachemak — Nikolaevsk
Kasilof — Halibut Cove
Ninilchik — Clam Gulch

April 4, 1986

To: Chairpersons and Members of the H. Resources Committee
From: Andre Marrou, Representative AM

Subject: HB 417, Annul DEC Subdivision Platting Regulations

The Department of Environmental Conservation conducted hearings on these new regulations in the fall of 1984. According to DEC's own "Responsiveness Summary" dated November 1984, only 5 people out of 23 who responded, favored these new regulations. Quoting this summary: "Many commentors complained of the expense, redundancy, and inefficient uses of the subdivision plan review process." also, "Many commentors thought that the deletion of the 'isolated subdivision exemption from the subdivision plan review process would put an additional cost and strain on the workload of the Department."

In several instances in the report, "many commentors" who were opposed to the new regulations were lumped together, whereas any one favoring the new regulations were quoted in detail with a separate paragraph outlining his/her concerns.

THE REGULATIONS WERE APPROVED REGARDLESS OF THE OVERWHELMING TESTIMONY AGAINST THEM.

The Department went on to say that people were buying lots that were incapable of on-site sewage disposal. But, the Department did not say how many times this happened. Nor did they consider alternatives to solving the problem other than more regulations.

DEC pompously concluded that "Until local government does assume these health-related responsibilities, this service must be provided...". It strikes me odd that "...this service must be provided..." when the over whelming majority of us have been getting along just fine without it. A few people who are not cognizant of all considerations when buying real estate should not bind us all to the tyranny of DEC's approval.

Private market alternatives are available, but we must let people know that they are responsible for their actions-- not the government. If we continue to request these services from the State, the State will in turn, continuously usurp our own individual freedoms in a futile attempt to provide some unattainable, mystical security.

These services are, in effect, a State subsidy to home-buyers and financiers that can be provided by the private sector.

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game

Andre Marrou
Representative

District 5

Kenai — Sterling
Soldotna — Anchor Point
Homer — Port Graham
Seldovia — English Bay
Kachemak — Nikolaevsk
Kasilof — Halibut Cove
Ninilchik — Clam Gulch

February 20, 1986

To: Rep. Schultz & Rep. Herrmann; Co-Chairs House Resources Committee
From: Rep. Marrou

Subject: HB 417; Annul DEC's Subdivision Regulations, 18 AAC 72.065

Please read the attached regulations that I propose be annulled. As you can see, they are anything but simple and easily complied with.

Prior to March of last year, isolated subdivisions (of 5 lots or less in remote areas) were exempt from these regulations. Imposing these regulations upon rural Alaskans strongly discourages free enterprise and competitive land trading plus, they cost the State a lot of money.

These regulations usurp the platting and zoning authority of municipalities. They are currently being challenged in court.

Commissioner Ross apparently feels that these regulations are necessary to protect the environment. It is my opinion that the Commissioner does not fully understand how free market forces work to do what regulations cannot do. I would be delighted to testify on how free market forces protect the environment in the real estate business, if given the opportunity.

Would you please schedule a hearing for this bill?

Attachments:

°18 ACC 72.065
°HB 417
°The repealed definition of an isolated subdivision.

During Session: P. O. Box V, Juneau, Alaska 99811, (907) 465-2719 During Interim: Box 1572, Homer, Alaska 99603, (907) 235-8200

(a) A person proposing a subdivision shall submit the following information to the department within five days after the submission of a proposed subdivision plat to a platting authority or, where no plat is filed, 60 days before subdividing:

(1) a drawing and written description showing proposed sewers, domestic wastewater treatment works and disposal systems, and potential or existing drinking water sources for each typical set of on-site conditions existing within the subdivision; the department will, in its discretion, waive the requirements of this paragraph when it finds the information is not needed for plan review;

(2) a plot plan showing spacial relationships between wastewater disposal and drinking water systems on nearby lots; the department will. in its discretion, waive the requirements of this paragraph when it finds the information is not needed for plan review;

(3) soil information sufficient to determine suitability for a domestic wastewater disposal system, if a soil absorption system is proposed, including soil tests, borings, test holes, or percolation tests required by 18 AAC 72.026, approved and signed by a registered engineer;

(4) a map of the proposed subdivision showing

(A) lot and street layout with lot dimensions and areas;

(B) contours which show topography, drainage, muskeg, and marshy or wet areas;

(C) existing or proposed improvements;

(D) waters located within and 200 feet around the proposed subdivision;

(E) waters suitable for drinking water sources; and

(F) nearest road or highway accesses;

(5) a statement and timetable concerning the possible development of future community drinking water or sewer systems to the extent known;

(6) a statement identifying persons who will own, operate, and maintain water supply systems, sewers, treatment works, and disposal systems in the proposed subdivision;

(7) types and amounts of sewage, graywate or other wastes that would be generated on typical lot in the subdivision;

(8) information, including a timetable, f domestic wastewater disposal systems whic require electrical service or road access, i cluding electrical service needed for domest wastewater treatment and pumping equi ment, transportation access for material ar equipment needed to construct the propose domestic wastewater treatment works, dispos system, holding tank, and septic tank pumpir service; and

(9) location of storm sewers, drainag ditches, their ultimate discharges, and trea ment, if required to protect receiving water

(b) The department will issue a decision to th applicant within 30 days after receipt c complete subdivision plans.

(c) The department will, in its discretior attach terms and conditions to subdivision plan needed to ensure compliance with this chapter

(d) The subdivider shall include the terms an conditions of the department's subdivision pla approval for domestic wastewater treatment an disposal systems on the subdivision's plat an instruments.

(e) The department will place its approval o the plans on the subdivision's final plat befor recording. Department approval must appear o the plat of record and recorded instruments.

(f) A person creating a subdivision may sell contract to sell, lease, or otherwise convey an interest in any lot within that subdivisior only with plan approval for that subdivisior under this section. (Eff. 2/3/77, Reg. 61; am 3/4/78, Reg. 65; am 12/30/82, Reg. 84; am 3/30/85, Reg. 93)

Authority: AS 46.03.020
AS 46.03.050
AS 46.03.090

FORMER REGS.
[REPLACED MARCH 1985.]

The changes are shown below. Additions are underlined and deletions are bracketed and capitalized.

18 AAC 72.065. SUBDIVISION PLAN REVIEW. (a) A person proposing a subdivision [EXCEPT AN ISOLATED SUBDIVISION,] shall submit the following information to the department within five days after the submission of a proposed subdivision plat to a platting authority or, where no plat is filed, 60 days before subdividing:

(f) A person creating a subdivision after February 3, 1977, [EXCEPT AN ISOLATED SUBDIVISION,] may sell, contract to sell, lease, or otherwise convey an interest in any lot within that subdivision only with plan approval for that subdivision under this section. (Eff. 2/3/77, Reg. 61; am 3/4/78, Reg. 65; am 12/30/82, Register 84; am / /85, Register)

18 AAC 72.990(27) ["ISOLATED SUBDIVISION" MEANS THE SUBDIVISION OF A PARCEL OF LAND INTO FIVE OR FEWER LOTS WHICH IS NOT PART OF A SUBDIVISION PLAN OR SCHEME INVOLVING MORE THAN FIVE LOTS; A SUBDIVISION IS NOT AN ISOLATED SUBDIVISION IF THE SUBDIVIDER, OR PERSONS ACTING IN CONCERT WITH THE SUBDIVIDER, HAVE, WITHIN THE PRECEDING FIVE YEARS, SUBDIVIDED LAND SO THAT THE TOTAL NUMBER OF LOTS CREATED BY THE SUBDIVISION AND WITHIN TWO MILES OF THE SUBDIVISION EXCEEDS FIVE.] (Repealed).

SEARCH - QUERY
00002 '46.03.020'

AS46.03.020 DOCUMENT= 1 OF 2
CITATION SEC. 46.03.020.
CATCH LINE
POWERS OF THE DEPARTMENT.
TEXT THE DEPARTMENT MAY

(1) ENTER INTO CONTRACTS NECESSARY OR CONVENIENT TO CARRY OUT THE FUNCTIONS, POWERS AND DUTIES OF THE DEPARTMENT;

(2) REVIEW AND APPRAISE PROGRAMS AND ACTIVITIES OF STATE DEPARTMENTS AND AGENCIES IN LIGHT OF THE POLICY SET OUT IN AS 46.03.010 FOR THE PURPOSE OF DETERMINING THE EXTENT TO WHICH THE PROGRAMS AND ACTIVITIES ARE CONTRIBUTING TO THE ACHIEVEMENT OF THAT POLICY AND TO MAKE RECOMMENDATIONS TO THE DEPARTMENTS AND AGENCIES, INCLUDING BUT NOT LIMITED TO, ENVIRONMENTAL GUIDELINES;

(3) CONSULT WITH AND COOPERATE WITH

(A) OFFICIALS AND REPRESENTATIVES OF ANY NONPROFIT CORPORATION OR ORGANIZATION IN THE STATE;

(B) PERSONS, ORGANIZATIONS AND GROUPS, PUBLIC AND PRIVATE, USING, SERVED BY, INTERESTED IN OR CONCERNED WITH THE ENVIRONMENT OF THE STATE;

(4) APPEAR AND PARTICIPATE IN PROCEEDINGS BEFORE ANY STATE OR FEDERAL REGULATORY AGENCY INVOLVING OR AFFECTING THE PURPOSES OF THE DEPARTMENT;

(5) UNDERTAKE STUDIES, INQUIRIES, SURVEYS OR ANALYSES IT MAY CONSIDER ESSENTIAL TO THE ACCOMPLISHMENT OF THE PURPOSES OF THE DEPARTMENT; THESE ACTIVITIES MAY BE CARRIED OUT BY THE PERSONNEL OF THE DEPARTMENT OR IN COOPERATION WITH PUBLIC OR PRIVATE AGENCIES, INCLUDING EDUCATIONAL, CIVIC AND RESEARCH ORGANIZATIONS, COLLEGES, UNIVERSITIES, INSTITUTES AND FOUNDATIONS;

(6) AT REASONABLE TIMES ENTER AND INSPECT WITH THE CONSENT OF THE OWNER OR OCCUPIER ANY PROPERTY OR PREMISES TO INVESTIGATE EITHER ACTUAL OR SUSPECTED SOURCES OF POLLUTION OR CONTAMINATION OR TO ASCERTAIN COMPLIANCE OR NONCOMPLIANCE WITH A REGULATION WHICH MAY BE PROMULGATED UNDER AS 46.03.020 - 46.03.040; INFORMATION RELATING TO SECRET PROCESSES OR METHODS OF MANUFACTURE DISCOVERED DURING INVESTIGATION IS CONFIDENTIAL;

(7) CONDUCT INVESTIGATIONS AND HOLD HEARINGS AND COMPEL THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF ACCOUNTS, BOOKS AND DOCUMENTS BY THE ISSUANCE OF A SUBPOENA;

(8) ADVISE AND COOPERATE WITH MUNICIPAL, REGIONAL AND OTHER LOCAL AGENCIES AND OFFICIALS IN THE STATE, TO CARRY OUT THE PURPOSES OF THIS CHAPTER;

(9) ACT AS THE OFFICIAL AGENCY OF THE STATE IN ALL MATTERS AFFECTING THE PURPOSES OF THE DEPARTMENT UNDER FEDERAL LAWS NOW OR HEREAFTER ENACTED;

(10) ADOPT REGULATIONS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS CHAPTER, INCLUDING, BY WAY OF EXAMPLE AND NOT LIMITATION, REGULATIONS PROVIDING FOR

(A) CONTROL, PREVENTION AND ABATEMENT OF AIR, WATER, OR LAND OR SUBSURFACE LAND POLLUTION;

(B) SAFEGUARD STANDARDS FOR PETROLEUM AND NATURAL

GAS PIPELINE CONSTRUCTION, OPERATION, MODIFICATION OR ALTERATION;

(C) PROTECTION OF PUBLIC WATER SUPPLIES BY ESTABLISHING MINIMUM DRINKING WATER STANDARDS, AND STANDARDS FOR THE CONSTRUCTION, IMPROVEMENT, AND MAINTENANCE OF PUBLIC WATER SUPPLY SYSTEMS;

(D) COLLECTION AND DISPOSAL OF SEWAGE AND INDUSTRIAL WASTE;

(E) COLLECTION AND DISPOSAL OF GARBAGE, REFUSE, AND OTHER DISCARDED SOLID MATERIALS FROM INDUSTRIAL, COMMERCIAL, AGRICULTURAL AND COMMUNITY ACTIVITIES OR OPERATIONS,

(F) REPEALED BY SEC. 12 CH 172 SLA 1976.

(G) CONTROL OF PESTICIDES;

(H) SUCH OTHER PURPOSES AS MAY BE REQUIRED FOR THE IMPLEMENTATION OF THE POLICY DECLARED IN AS 46.03.010;

(I) HANDLING, TRANSPORTATION, TREATMENT, STORAGE, AND DISPOSAL OF HAZARDOUS WASTES;

(11) AFTER CONSULTATION WITH OTHER STATE AGENCIES AND LOCAL GOVERNMENT OFFICIALS, IDENTIFY AND PROPOSE FOR ADDITIONAL OR DELETION, BY REGULATION, OTHER LICENSES, PERMITS OR AUTHORIZATIONS FOR WHICH THE PROVISIONS OF AS 46.35 ARE APPLICABLE, AND REPORT ANNUALLY TO THE LEGISLATURE THE PERMITS WHICH HAVE BEEN INCLUDED OR DELETED.

```
DOCUMENTS         1 TO         1                    PAGE =      1 OF       1
AS46.03.090  DOCUMENT=         1 OF         1
CITATION  SEC. 46.03.090.
CATCH LINE
           PLANS FOR POLLUTION DISPOSAL.
TEXT       THE DEPARTMENT MAY REQUIRE THE SUBMISSION OF PLANS FOR SEWAGE AND
           INDUSTRIAL WASTE DISPOSAL OR TREATMENT OR BOTH FOR A PUBLICLY OR
           PRIVATELY OWNED OR OPERATED INDUSTRIAL ESTABLISHMENT, COMMUNITY,
           PUBLIC OR PRIVATE PROPERTY SUBDIVISION OR DEVELOPMENT.
R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

DOCUMENTS         1 TO         1                    PAGE =      1 OF       1
AS46.03.050  DOCUMENT=         1 OF         1
CITATION  SEC. 46.03.050.
CATCH LINE
           AUTHORITY.
TEXT       THE DEPARTMENT HAS JURISDICTION TO PREVENT AND ABATE THE
           POLLUTION OF THE WATERS OF THE STATE.
R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.
```

COMMITTEE REPORT

HOUSE

(9)

5/1/85

FURTHER:

Date: April 4, 1986

The Committee on RESOURCES has had HB 417

"An Act annuling a regulation requiring a person proposing a subdivision to submit certain information to the Department of Environmental Conservation."

under consideration and recommends:

[XX] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [✓] Zero Fiscal Note Attached

[ ] reports it back without recommendation w/ Analysis Sup108

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
Herrmann	
Miller(NP)	Pearce
Thompson	
Jenkins	
Cato	

Co-CHAIRMAN Herrmann

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : ____

REQUEST

Bill/Resolution No. : HB 417
Title : Annulling regulation requiring person to submit subdivision information to ADEC
Sponsor : Marrou
Requestor : --
Date of Request : --

FISCAL DETAIL

Agency Affected : ADEC
BRU : ____
Components : ____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS : None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This zero fiscal note should be entered into the record with the attached analysis which addresses the impossibility to accurately assess the cost of repairing the damage caused by failed systems statewide in years to come

Prepared by : Dan Easton — Phone : 465-2600
Division : Environmental Quality — Date : 4/3/86

Approved by Commissioner : Bill Ross Amy Dilyla/for — Date : 4/3/86
Agency : Environmental Conservation

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 417

It is impossible to accurately assess the fiscal impact of passage of this bill. While the four positions currently devoted to reviewing subdivision plans woul longer be required to do that, they would undoubtedly be needed to respond to the increased complaints resulting from failed wastewater disposal systems.

While the net fiscal impact will probably be to increase departmental costs related to residential wastewater treatment and disposal, the zero fiscal note is mandated by the fact that those additional costs cannot be quantified at this time, but it is believed they would be substantial.

POSITION PAPER

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BILL No. HB 417 **DATE** April 3, 1986

TITLE: Annuling a regulation requiring a person proposing a subdivision to submit certain information to the Department of Environmental Conservation

The Department of Environmental Conservation opposes this legislation. The main reasons for this opposition are:

(1) its enactment would threaten the health, safety, and welfare of Alaska's citizens;

(2) very positive support for department review of subdivision plans has been received from municipalities statewide;

(3) the Administrative Regulation Review Committee of the 1977 Legislature convened public hearings to evaluate the necessity of 18 AAC 72.065, and determined that there was a valid need for it;

(4) while on the surface, this legislation would appear to reduce fiscal impact, the attached fiscal note explains the impossibility of forecasting the cost to the State to repair the damage done by failing systems statewide;

(5) most of the other states have the same or a very similar provision as that proposed for annulment; and

(6) there may be a separation of powers issue here that needs to be addressed by the Attorney General.

A more comprehensive analysis of our position follows.

* * * * *

AS 44.46.020(4) mandates that this department take "primary responsibility for the promulgation and enforcement of regulations setting standards for the prevention and abatement of <u>all water, land, subsurface land and air pollution, and other sources or potential sources of pollution of the environment</u>." (Emphasis added)

That law further prescribes that the department shall "take such actions as are necessary and proper to further the policy declared in AS 46.03.010," which is the legislature's declaration of environmental policy:

> (a) It is the policy of the state to conserve, improve and protect its natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being.
>
> (b) It is the policy of the state to improve and coordinate the environmental plans, functions, powers and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations and concerned individuals, and to develop and manage the basic resources of water, land and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations. (Emphasis added)

AS 46.03.090 provides:

> The department may require the submission of plans for sewage and industrial waste disposal or treatment or both for a publicly or privately owned or operated industrial establishment, community, public or private property subdivision or development. (Emphasis added)

Our mandate to protect the environment and public health includes AS 46.03.090; and 18 AAC 72 is the vehicle we use to prevent serious diseases that are spread either by contamination of drinking water systems with sewage, or by sewage surfacing in a yard. It is also our responsibility, as "trustee of the environment for . . . future generations," to guard against the need for the State of Alaska to have to address the need for expensive remedial construction of subdivision wastewater disposal systems which were improperly designed.

Our review also provides some assurance that potential property buyers are given proper and sufficient notice before their decision to buy of the suitability of the property for on-site waste disposal. Soils testing serves at least two purposes: (1) it determines whether soil absorption wastewater disposal systems can be used on a proposed lot; and (2) it determines whether the proposed lot is large enough to properly dispose of wastewater.

When septic systems are to be used to dispose of sewage on individual lots, the review entails an examination of the soil types, terrain, locations of water bodies, locations of sources of drinking water, etc. -- factors vitally important to the success or failure of such systems.

In many areas, typical septic systems simply will not work. For example, areas with permafrost, high water tables, or limited soil cover are not suitable for conventional septic systems. When the department finds that a subdivision--or a certain lot within a subdivision--is not suitable for a conventional septic system, we may require that this fact be noted on the plat or in the covenants, require that alternative methods of on-lot disposal be designed by a professional engineer and approved by the department, or stipulate other necessary conditions.

If this legislation were to become law, we would be placed in a restorative role rather than a preventative one, as systems begin to fail statewide. For that reason, in order to fulfill our mandate to protect Alaskan's health, safety, and welfare, we would need to amend 18 AAC 72.060 to require each individual landowner to perform the tests now required of the developer. The cost to the landowner to perform individual analyses would be substantially greater than the cost to the developer to perform a single, comprehensive analysis. Another problem is timing: it is not until a person has purchased the lot (and perhaps constructed a house) that the feasibility of disposing of generated wastewater is evaluated. The result would be that a substantial number of landowners could end up with undevelopable lots.

A legal Opinion dated November 13, 1975, states that:

> Certainly, no broader mandate to protect the . . . environment and abate . . . pollution can be found than that contained in Title 46, Chapter 3.
>
> . . . .
>
> Section 010 makes it abundantly clear that the purpose of Title 46 is not to merely control certain types of polluting activities, but to control and abate <u>pollution</u>.
>
> . . . .
>
> <u>[P]rivately-created residential subdivisions have caused, and will continue to cause, often catastrophic impacts on marshland and wetland areas.</u> (November 13, 1975, Op. Att'y Gen., citations omitted, emphasis added)

That Opinion concludes that residential subdivisions fall within the definition of "commercial" development, and that there was, therefore

> a greater need for supervision . . . where the dominant factor is the hope for profit than in a non-commercial development where land is being prepared for public enjoyment or divided for family distribution or for some other purpose than profit. In other words, commercial residential developments have a propensity for being big, concentrated and exhausting the resources of the environment. (November 13, 1975, Op. Att'y Gen., quoting In re Spring Valley Development, 300 A.2d 736, 742 (Me. 1973) (Emphasis added)

And, in an Opinion dated May 11, 1983, the Department of Law stated:

> Development restrictions resulting from DEC approval . . . are a necessary result of protecting the purity of the water to be consumed by the people of the state. The regulation in question reflects a determination that in order to protect the health of the people of the state, a buffer zone must be placed around drinking water sources. In fact, if DEC chose not to enforce the regulation in favor of lessening development restrictions, there would be significant likelihood of liability if a disease then spread because of water system contamination. A consequence of the regulation may be that certain small lots will not be easily developed. If that is the case, then it is because the health of the people of the state so requires. (May 11, 1983, Op. Att'y Gen., emphasis added)

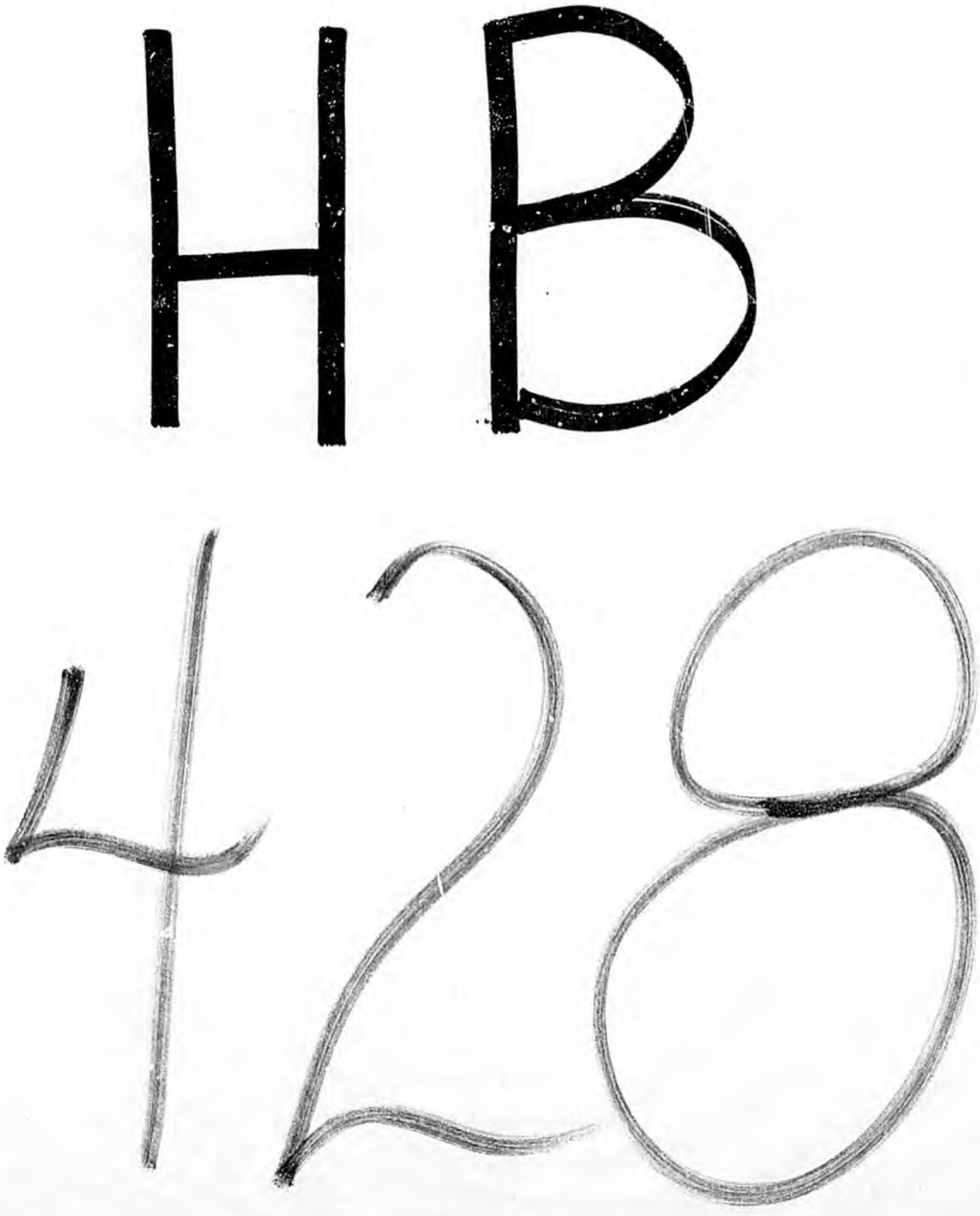
ADEC review of subdivision plans helps ensure that subdivisions formed in Alaska will not harm the environment or threaten public health. A mere submission of plans to ADEC, without authority to evaluate and rule on the quality of those plans, would surely give unfortunate or clearly unintended results to the various laws in question.

It should be kept in mind that our review can also benefit the developer. Through discussion, plans can be modified to overcome various problems with terrain, location of water bodies, or other factors that might mitigate against approval of the original plan.

We are formulating plans to improve our regulations by, among other things, clarifying requirements for subdivision plan review. By so doing, we should be able to reduce the burden on the developer while continuing to fulfill our legislative mandate. A draft should be ready this summer.

Finally, the regulation in question is now the subject of judicial review, and many of the issues which may have prompted this legislation are before both the Superior Court and the Alaska Supreme Court. We believe it would be in the public interest to have the benefit of those judicial findings before such a drastic change is made in a very important public health regulation.

Amy D. Kyle/ for
Bill Ross / Commissioner


HB
428

HOUSE

COMMITTEE REPORT

(7)
Date referred: 3/12/86
(Referral reversed 3/12/86)

FURTHER REFERRALS: C & RA

DATE: 4/21/86

The RESOURCES Committee has considered HB 428
"An Act relating to grazing districts."

and recommends:

[ ] do pass
[ ] do not pass
[ ] do pass with attached amendment(s)
[ ] no recommendation
[XX] replace with CS for HB 428 (Resources) [ ] same title
[X] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[X] first zero fiscal note

SIGNING DO PASS:

Shultz [signature]
Miller(NP) [signature]
Thompson [signature]
Jenkins [signature]
Cato [signature]

SIGNING OTHER RECOMMENDATIONS:

[signature]
Sund

[signature]
Co- Chairman Shultz

Bradley
4/17/86

Original sponsor: Marrou

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 428 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to controlled livestock districts."

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

* Section 1. AS 03.35.010 is amended to read:

Sec. 03.35.010. CREATION AND RESTRICTION IN USE OF CONTROLLED LIVESTOCK DISTRICTS. Except as provided in (b) of this section, a borough assembly [A DISTRICT JUDGE] may by ordinance create and establish a controlled livestock district within the [A CITY OR ORGANIZED] borough [,OR IN OTHER SETTLED AREAS OF THE STATE,] as provided in this chapter, to consist of [ONE OR MORE TOWNSHIPS OR PORTIONS THEREOF OR OF] a contiguous area of not less than 1,280 acres. It is unlawful for any domestic animal to graze or run at large within a controlled livestock district unless the domestic animal is [HERDED ON OPEN PUBLIC DOMAIN AND] tended by a person and prevented from grazing or running upon private roads or highways and privately owned land.

* Sec. 2. AS 03.35.010 is amended by adding a new subsection to read:

(b) Each city of any class constitutes a controlled livestock district. The area of a former city of any class within a municipality unified under AS 29.68.240 - 29.[illegible].440 constitutes a controlled livestock district. The area of the state that is not within a controlled livestock district constitutes open public domain.

* Sec. 3. AS 03.35.020(a) is amended to read:

Sec. 03.35.020. [illegible]ITION TO CREATE, ADD, OR ABOLISH. (a) A controlled livestock district may be created upon petition of not

fewer [LESS] than 10 [60 PER CENT OF THE] resident owners or [AND] lessees of cultivated or improved land within the area to be included in the district. The petition shall contain a statement of its purpose, shall define the boundaries of the area to be included within the district, shall be signed by the 10 [REQUISITE 60 PER CENT OF THE] resident owners or [AND] lessees within the area described, and shall be filed with the borough clerk [DISTRICT JUDGE] for the borough [DISTRICT] within which the land is situated.

* Sec. 4. AS 03.35.020(c) is amended to read:

(c) Portions of a district or an entire district may be abolished or eliminated if 10 [60 PERCENT OF THE] owners or [AND] lessees of cultivated or improved land within the district or the area affected petition for the abolishment, in which event the procedure set out in this section for formation of a controlled livestock district shall be followed for dissolution.

* Sec. 5. AS 03.35.030 is amended to read:

Sec. 03.35.030. NOTICE, HEARING, AND ORDINANCE [ORDER]. (a) Upon receipt of a petition for the establishment of a controlled livestock district, the borough assembly [DISTRICT JUDGE] shall set a time for hearing the petition not less than 30 days after the receipt of the petition [THEREAFTER]. Notice of the time and place of the hearing and its purpose shall be posted in not less than three conspicuous public places within the proposed district, including a post office, for a period of at least 30 days before the hearing. If there is no post office within the proposed district, then the notice shall be posted in two conspicuous public places in the proposed district and in the post office nearest the proposed district.

(b) If, at the hearing, the borough assembly [DISTRICT JUDGE] finds that the petition is sufficient and that notice of the hearing

has been given, it may adopt an ordinance [THE DISTRICT JUDGE SHALL ENTER AN ORDER] creating and establishing the controlled livestock district and describing its boundaries. The borough clerk [DISTRICT JUDGE SHALL CERTIFY TO THE CLERK OF THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT A COPY OF THE FINDINGS AND ORDER. THE DISTRICT JUDGE] shall send a copy of the ordinance [ORDER] to the commissioner of natural resources [DIRECTOR, DIVISION OF AGRICULTURE, DEPARTMENT OF NATURAL RESOURCES].

* Sec. 6. AS 03.35.040. is amended to read:

Sec. 03.35.040. LIABILITY FOR DAMAGES, AND LIEN. (a) The owner of land within a controlled livestock district, whether the land is fenced or unfenced,

(1) is entitled to recover, from the owner or person having custody and control of a domestic animal, for actual damages or injuries [ANY INJURY] done or caused by the domestic animal [IT] when grazing or running at large within a controlled livestock district contrary to the provisions of this chapter, and

(2) has a lien upon the domestic animal for the amount of the damage done.

(b) A [HOWEVER, NO] claim for damages in excess of $5,000 [$50] is not allowed against any one animal for any one trespass.

* Sec. 7. AS 03.35.070 is amended to read:

Sec. 03.35.070. DEFINITIONS. In [AS USED IN] this chapter

(1) "domestic animal" includes goats, sheep, cattle, horses, [AND] swine; ~~dogs, and cats;~~

(2) "owner of land" means a [INCLUDES A FREEHOLDER, TENANT, CONTRACT VENDEE OR OTHER] person in actual possession of land.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M April 18, 1986

SUBJECT: Controlled livestock districts [CSHB 428(Resources)]

TO: Representative Andre Marrou

FROM: Richard A. Bradley
Legislative Counsel

Jack Sanderson has requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill amends AS 03.35.010, Creation and Restriction in Use of Controlled Livestock Districts.

Sec. 10(a) transfers from the district court to a borough assembly the power to establish a controlled livestock district; the section limits the power to establish the controlled livestock districts to the areas within a borough. The assembly will adopt a controlled livestock district by ordinance.

The phrase "or in other settled areas of the state" is deleted as inconsistent with the logic of the amendment.

The phrase "one or more townships or portions thereof or of" was deleted because it did not, in fact, establish a limitation; the only legislative limitation is the minimum size of "1,280 acres", an area one mile by two miles.

The phrase "herded on open public domain and" was deleted as essentially inconsistent with the logic of the description of a "controlled livestock district."

Section 2 of the bill adds Sec. 03.35.010(b). It provided that the area of a city of any class constitutes a controlled livestock district. Moreover, the area of any former city of any class within a unified municipality (i.e., Juneau, Sitka, Anchorage) constitutes a controlled livestock district. And the remainder of the state is "open public domain."

Section 3 of the bill amends AS 03.35.020(a). It changes from "60 percent of the resident owners and lessees of cultivated land within the area" to "10 resident owners or lessees of cultivated or improved land within the area" the number of those who are required to petition for the establishment of a controlled livestock district. As amended, sec. 10 would provide that the only areas in which a controlled livestock district may be established within a borough are the areas of the borough that are not within the limits of a city or former city of any class. The petition shall be filed with the borough clerk rather than the district judge.

Section 4 of the bill amends AS 03.35.020(c). The section permits a petition to abolish all or a portion of a controlled livestock district using the same procedures as for its establishment, that is, by ordinance.

Section 5 amends AS 03.35.030, Notice, Hearing, and Ordinance, and conforms the language of th section to the substantive changes already made.

Sec. 30(a) relates to the receipt of the petition and its notice by the borough assembly.

Sec. 30(b) permits the assembly, in its discretion, to establish the controlled livestock district. It directs the borough clerk to send a copy of the ordinance to the commissioner of natural resources.

Section 6 of the bill amends AS 03.35.040, Liability for Damages, and Lien.

Sec. 40(a) permits the owner of land within a controlled livestock district, "whether the land is fenced or

unfenced," to recover for "actual damages or injuries done or caused" in place of the existing law's "any injury done".

Sec. 40(b) provides that no claim may exceed "$5,000" in place of the existing "$50").

Section 7 of the bill amends AS 03.35.070, Definitions. Sec. 70(1) adds "cats and dogs" to the definition of "domestic animals".

Sec. 70(2) provides that "owner of land" means a person in actual possession of land and eliminates some extraneous examples.

The bill does not have an affirmative effective date section.

If I may be of further assistance, please advise.

RAB:mkr
m4/142

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 428
Title : Grazing Districts

Sponsor : Rep. Marrou
Requestor : House Resources
Date of Request : 4/10/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Agriculture Management

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Carol Wilson CW
Division : Commissioner's Office
Phone : 465-2400
Date : 4/10/86

Approved by Commissioner : Mona D Amend, Deputy
Date : 4/10/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game



Andre Marrou
Representative

District 2

April 11, 1986

To: Chairpersons & Members of the H. Resources Committee
From: Andre Marrou, Representative

Subject: HB 428, Controlled Grazing Districts

Public feelings on this issue are very strong. On one side, there are small private landowners upset about cattle and horses grazing on their land, and in some cases their gardens and lawns, without accountability of the livestock owners. On the other hand, there are farmers and ranchers whose very livelihood depends upon access to open range, which they have had for decades upon decades here in Alaska.

As a case in point, ranchers are adamant that they need open range in the Fox River Valley at the head of Kachemak Bay, comprising thousands of acres. On the other hand, there have been abuses of the system -- such as a man turning his horses loose at the end of Skyline Drive (a state road), near Homer, where they graze on private land.

Mr. O'Meara, in his lawsuit against the Andersons, claims that the courts have agreed with him that open range is a "myth" in Alaska. As I have advised Mr. O'Meara, I disagree with him and feel that the courts clearly said that the situation is now muddled and should be clarified by the Legislature. I pointed out to Mr. O'Meara that two former Governors, two former Senators, and one incumbent Senator, all have pointed out that open range has been a fact of life in Alaska for decades.

However, times change as more people move into an area, and laws need to be adjusted to current situations. HB 428 is offered as a partial solution-- a compromise. Please refer to the "Sectional Analysis" and the list of "Further Possible Compromises".

Consider what a rancher would feel if he/she were suddenly required to build miles upon miles of fences around a state lease which he/she has been using for 20, 30, or 40 years. I daresay no rancher in the State could afford it. For example, there are now 39 grazing leases on State land, totaling 215,750 acres or about 5,532 acres per lease. Some ranchers have been using these grazing leases for 40 years. Which makes more sense-- asking a relative newcomer to fence in 1 acre, or suddenly requiring ranchers to fence in 5,500 acres (about 8½ square miles) that they've been using for a very long time?

During Session: P. O. Box V, Juneau, Alaska 99811, (907) 465-2719 During Interim: Box 1572, Homer, Alaska 99603, (907) 235-8200

Perhaps those few ranchers abusing open range privileges should be taken to task, rather than issuing a blanket condemnation of all livestock owners.

Also, please note that the five letters and affidavits from previous legislators and governors included two from original delegates to the Alaska Constitutional Convention in 1955-56. I included them because of the historical perspective, which I am not able to provide. One of the Constitutional Conventional delegates is current Sen. Jack Coghill. These delegates knew what they meant when they wrote the original Constitution of the State of Alaska, and therefore can provide a unique view of how Alaska has progressed during the last 30 years. Alaska has only had 5 Governors, including the current one, and 2 of these went to the trouble of recently addressing letters to the Alaska Supreme Court in support of open range.

SECTIONAL ANALYSIS HB 428

Section 1 of the bill (copy enclosed) bars a city from having a livestock district within its boundaries. Also, it adds the areas of cities to controlled livestock districts as places where animals must be "tended by a person and prevented from grazing upon... privately owned land".

Section 2 states that every city and unified municipality constitutes a controlled livestock district. This extends considerably the area where people are required to tend their livestock.

Section 3 adds improved land to cultivated land, "the resident owners and lessees" of which can vote to form a livestock district. This increases the number of eligible people, and could simplify a formation of a district by allowing house (or cabin) owners to vote as well as the farmers and ranchers.

Section 4 is the opposite of Section 3 and allows the abolition or elimination of a livestock district, as Section 3 allows it to be created.

Further Possible Compromises

(A)

Allow open range in certain well established areas (such as the Fox River Valley), but require livestock owners to control their animals within, say, one-quarter mile of State roads.

(B)

If a person does not have a State grazing lease, perhaps he/she should not be allowed to utilize open range.

(C)

Allow ranchers to buy the grazing leases that they've been using for decades, and then require them to fence it in. This was part of the reasoning behind HB 248 last year regarding University-grant land--allow the farmer/rancher to own the land.

STATE OF ALASKA
THE LEGISLATURE

APR 0 2 1985

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 2, 1985

SUBJECT: Open range (Work Order No. 14-0972)

TO: Representative Andre Marrou

FROM: Richard A. Bradley
Legislative Counsel

You have requested an "overview" of the law relating to the responsibilities of owners of cattle.

I gather that there have been at least two cases, both arising in the jurisdiction of the Homer District Court, that have been concerned with these issues. The cases are the C'Meara v. Anderson case that you provided me the pleadings on and In re New Way Agriculture Cooperative, (3HO 83-264 CIV). My information does not suggest which way the latter case was decided since all that I have is the Brief of the state opposing the creation of a controlled livestock district on the real property described in the petition. The decision in the New Way Agriculture Cooperative case is not indicated but the state opposed the establishment of the controlled livestock district because of technical problems in the petition.

Judge Fuld's decision may or may not become a significant precedent for the future. But I have some difficulties with the decision.

He concludes that Alaska law, like the English common law, should "protect the interests of private property over that of the cattle owner." He is unable to distinguish between trespassing cattle and trespassing oil company equipment or trespassing hunters.

He arrives at this conclusion from an essentially pure common law approach, that is, he finds the law under AS 03.30 confused and unhelpful and legislative intent uncertain; he seems unaware of AS 03.35 (or fails to note its existence)

and thus he is forced to find a solution in the uncodified, common law.

I think it is fair to state that the law is in a state of disrepair.

Two separate chapters of the law have dealt with the regulation of cattle in this context. See former AS 03.30 ("Fences") and present AS 03.35 ("Grazing Districts"). Both are derived from the compilation of the laws in 1949 (ACLA 1949) though I have not sought to determine which is the more venerable; each is (or was) in its way equally venerable.

The provisions of former AS 03.30 adopted the "fence-out" concept; before that law was largely repealed in 1977 (ch. 55, SLA 1977), it protected the property owner who fenced his property and kept the fence in repair according to statutorily established standards (found in former AS 03.30.010). In such a case, the owner of trespassing cattle was liable for resulting damages if the cattle were to breach the fence. Viewing AS 03.30 as the exclusive law on the subject, the area fenced under former AS 03.30 would therefore have ceased to be open public domain land and been excluded from the application of the so-called Western common law rule.

The difficulty is that there is other law.

The provisions of AS 03.35 permit the establishment of "controlled livestock districts." In my view, a slightly (well, thoroughly) confused statement in AS 03.35.010 may reflect the intention of the legislature:

> Sec. 03.35.010. CREATION AND RESTRICTION IN USE OF CONTROLLED LIVESTOCK DISTRICTS. * * * It is unlawful for any domestic animal to graze or run at large within a controlled livestock district unless the domestic animal is herded on open public domain and tended by a person and prevented from grazing upon private roads or highways and privately owned land.

If I were to recast the quoted language into clearer prose, I would delete the phrase "herded upon open public domain and"; it would then read:

> It is unlawful for any domestic animal to graze or run at large within a controlled livestock district unless the domestic animal is tended by a person and prevented from grazing upon private roads or highways and privately owned land.

The result in this situation is not different from the situation under AS 03.30 before its amendment in 1977.

I note that Governor Hammond expressed concern in 1977 when the fence-out laws were repealed. See 1977 House Journal at 1484. No useful legislative history (beyond the governor's letter) appears to remain to indicate what was intended. Note, however, that while the amendment to AS 03.30 deleted the option of the individual to erect a fence, AS 03.35 continues to permit the establishment of a controlled livestock area by judicial decree.

In the area outside the controlled livestock area, open range conditions exist. And, under AS 03.30 as it existed before the 1977 amendment, the area outside fences is an area of the "open public domain."

And while there are some suggestions about the status of the "common law" in Alaska at this time (including the decision of Judge Fuld in O'Meara), I believe that that suggestion is not altogether accurate. AS 03.35 has supplanted the "common law" by its enactment of a statutory framework that explicitly recognizes open range conditions except when a controlled livestock district has been established.

The statutory law in the state does not, however, have a fence- out aspect. In my view, that fact has no implications for the common law and does not revive the common law.

Therefore, in my opinion, the law in Alaska is generally that the entire state is open range except to the extent that controlled livestock districts have been established under AS 03.35. There are clear problems with this result in urban areas but the law permits the establishment of controlled livestock districts in these circumstances. Note, moreover, that the legislature apparently intended the controlled livestock district to be the answer in urban areas since it is in these areas that AS 03.35.010 suggests that the districts be established. It is under this situation that I have reservations about the decision suggesting that the English common law rule applies in urban areas.

Having said that, I note an existing problem with AS 03.35 that may have been the basis for the state's opposition to the establishment of the controlled livestock district in the New Way Agriculture Cooperative case. The threshold requirement for the establishment of the district is that a certain number of the owners of "cultivated land" join in the petition. The term "cultivated" is not defined in AS 03.35; if it really has its usual meaning, it would not likely be useful in urban areas-- but I suspect that it should be read as "improved" (or as "cultivated or improved"). I confess that I am substantially rewriting the law as I say this and suggest that the legislature may wish to reconsider what was meant by the usage of the term.

And a general review of the law in both AS 03.30 and 03.35 is timely.

If I may be of further assistance, please advise.

RAB:csh
c3/081

IN THE SUPREME COURT FOR THE STATE OF ALASKA

AT ANCHORAGE

ELTON ANDERSON and EDNA ANDERSON,	)
Petitioners,	)
vs.	)
MICHAEL s. O'MEARA and JANET V. O'MEARA,	)
Respondents.	)

Case No. 3HO-84-276 SC

AFFIDAVIT OF JAY HAMMOND

Jay Hammond states as follows:

1. I am a former Governor of the State of Alaska.

2. I recall drafting the attached letter dated May 25, 1977 in which I expressed my concern about the impact that repeal of the fence-out law would have on liability on open range land.

3. It was then, and continues to be my opinion that the "open-range" rule of liability has long applied in Alaska concerning trespass by cattle on unenclosed property not located within the closed grazing district. I believe the trial court in case no. 3HO-84-276 SC erred insofar as it failed to acknowledge the existence of the open-range rule of liability as it has existed in Alaska.

DATED THIS 22nd day of September, 1985.

I, Jay Hammond, represent that there is no notary available in the Lake Clark area where I live, and that I have executed this document. I would sign this document under oath if a notary were available.

Jay Hammond

DAVID G. STEBING
Attorney at Law
P. O. BOX 1771
HOMER, ALASKA 99603
PHONE: (907) 235-6244

"May 25, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

I am allowing to become law without my signature and am transmitting the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

SCS CSHB 90 — SENATE COMMITTEE SUBSTITUTE COMMITTEE SUBSTITUTE HOUSE BILL NO. 90 (Relating to domestic animals) Chapter 55, SLA 1977

I am concerned about the final provision of the bill repealing certain provisions of the law relating to open range land, specifically, the section defining a legal fence and the section providing that an owner of an animal which enters upon land enclosed by a legal fence shall be liable to the landowner. By repealing these sections, substantial doubt and uncertainty is created concerning the rights of a person owning land in an open range district to protect himself from possible damage caused by another's domestic animals. The present statute clearly provides for liability; its repeal suggests that the owner of animals is no longer to be liable to the landowner. Yet, general principles of tort law, as well as common sense, suggest that a landowner, if he puts up a fence to keep animals off his property, should be entitled to damages if the animals knock down the fence and come upon his property. Repeal of the definition of a legal fence further complicates this issue and leaves in doubt the current law. I am hopeful that the legislature might clarify this next session.

Sincerely,

Jay S. Hammond
Governor"

Messages dated May 25, 1977 were read stating the Governor has signed the following bills and is transmitting the enrolled and engrossed copies to the Lieutenant Governor's office for permanent filing:

SB 197 am H — SENATE BILL NO. 197 amended House (sale of subsistence salmon roe) Chapter 56, SLA 1977

HCS SB 188 — HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 188 (membership on the Alaska Code Commission and Criminal Law Revision Subcommission) Chapter 57, SLA 1977

MESSAGES FROM THE SENATE

A message dated May 24, 1977 was read stating the Senate has passed the following and they are returned:

HCR 65 am — HOUSE CONCURRENT RESOLUTION NO. 65 amended (Requesting Governor to preserve the superintendent's quarters at the Alaska Pioneers' Home in Sitka)

CSHB 193 am — COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 193 amended (child care; effective date)

The above were referred to the Chief Clerk for enrollment.

A message dated May 24, 1977 was read stating the Senate has concurred in the House amendment to SENATE BILL NO. 50 amended (utilities and state rights-of-way; effective date), thus adopting HCS SB 50 (Fin) am H

HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 50 (Finance) amended House (utilities; effective date)

A message dated May 24, 1977 was read stating the Senate has failed to concur in the House amendment to COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 150 (supplemental appropriation, Department of Education; effective date), namely, HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 150 (appropriations to Department of Education; effective date), and respectfully requests the House to recede from its amendment. HCS CSSB 150

In the event that the House does not recede, the President has appointed the following members to a Conference Committee to meet with a like Committee from the House to consider the above bills:

Senator Hackney, Chairman
Senator Ferguson
Senator Orsini

A message dated May 24, 1977 was read stating the Senate has adopted the Free Conference Committee report on COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 238 amended and HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 238 (oil and gas properties production tax; effective date) thus adopting HCS CSSB 238

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 238 (oil and gas taxation; effective date)

Walter J. Hickel

Box 101700
Anchorage, Alaska 99510-1700
907-276-7400

September 20, 1985

Justice Jay A. Rabinowitz
Supreme Court
Box 850
Fairbanks, AK 99707

Dear Justice Rabinowitz:

I am writing to you in the hopes that the Supreme Court might hear a case that could have long-range implications for the State of Alaska, specifically Case Number 3HO-84-276 SC.

Attorney David G. Stebing has brought this matter to my attention and, while the statutes are clear and I am very much aware of them as they relate to Alaska's historical open-range, it is my feeling that this whole situation should be adjudicated.

Thank you for your consideration of this matter.

Sincerely,

Walter J. Hickel

bcc: David G. Stebing

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4921

Box 55028
North Pole, Alaska 99705
(907) 488-7332

April 10, 1986

MEMORANDUM

TO: Representative Shultz

FROM: Senator Coghill

RE: HB 428

I am supporting HB 428 as introduced by Representative Marrou. This bill addresses a problem that we are facing as urban development grows and the conflicts over grazing uses inc ases.

We have always had the concept of open range in Alaska. As a member of the Alaska Constitutional Convention I have a historical perspective to add on the concept of open range within the state. Attached you will find an affidavit that I signed in September of 1985.

cc Representative Marrou

IN THE SUPREME COURT FOR THE STATE OF ALASKA

AT ANCHORAGE

RECEIVED
9/20/85 SMH

ELTON ANDERSON and EDNA ANDERSON,	)
Petitioners,	)
vs.	)
MICHAEL s. O'MEARA and JANET V. O'MEARA,	)
Respondents.	)

Case No. 3HO-84-276 SC

AFFIDAVIT OF JACK COGHILL

Jack Coghill being duly sworn and under oath, states as follows:

1. I was a delegate to the Alaska Constitutional Convention, a member of the territorial legislature, and am presently a Senator in the Alaska Legislature.

2. I am aware that the fence-out law previously codified at Alaska Stat. §03.30.010 et seq. was repealed in 1977. It is my belief that with the repeal of the fence-out law the "open range" rule of liability applies in situations involving trespass by cattle.

3. In 1957 as a member of the territorial legislature, I assisted in the codification of the original fence-out law. At that time it was my understanding that the "open range" rule of liability had previously been followed in Alaska.

4. I am of the opinion that the 1977 repeal of the fence-out law may have been an oversight insofar as it is determined that the act did away with open range.

5. In the last legislative session, I introduced a bill to effectively reinstate the fence-out law. That bill never made it out of committee.

DAVID G. STEBING
Attorney at Law
P. O. BOX 1771
HOMER, ALASKA 99603
PHONE: (907) 235-8244

DATED THIS 18 day of September, 1985.

Senator Jack Coghill

SUBSCRIBED and SWORN to before me the date and year last above wr'tten.

NENANA, AK SEP 18 1985 USPS

Earl Trumbo, Postmas

Notary Public for Alaska
My Commission Expires:

IN THE SUPREME COURT FOR THE STATE OF ALASKA

AT ANCHORAGE

ELTON ANDERSON and EDNA ANDERSON,	)
Petitioners,	)
vs.	)
MICHAEL s. O'MEARA and JANET V. O'MEARA,	)
Respondents.	)

Case No. 3HO-84-276 SC

AFFIDAVIT OF YULE KILCHER

Yule Kilcher, being duly sworn and under oath, states as follows:

1. I was a delegate to the Alaska Constitutional Convention in 1955-56, and was an Alaskan Senator from 1963-66.

2. I have raised cattle in the Kachemak Bay area from 1945 until the present, and was a co-founder of the Fox River Valley Cattlemen's Association which was founded in the early 1950s.

3. The Fox River Valley Cattlemen's Association accepted the Open Range concept as a fundamental precept in the Alaska cattle industry.

4. While a member of the Alaska Senate, I drafted and introduced the Little Taylor Grazing Act and the Farmers' Preference Act. Both of these pieces of legislation were enacted into law. Both of these laws favored ranching. The concept of "Open Range" was discussed and acknowledged by state legislators at the time as an old-standing rule of liability for Alaska.

5. The Open Range concept was in fact the foundation and starting point for all legislation in Alaska favoring ranching.

6. I believe the failure of the Alaska judicial system to recognize the Open Range rule of liability as it has existed

DAVID G. STEBING
Attorney at Law
P. O. BOX 1771
HOMER, ALASKA 99603
PHONE: (907) 235-4244

in Alaska for decades will result in numerous family-run cattle ranching operations going out of business because of the inability of these individuals to fence vast acreages of grazing land in order to avoid liability for trespass by their cattle.

DATED this 16th day of September, 1985.

Yule Kilcher

Yule Kilcher

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

SUBSCRIBED AND SWORN to before me this 16th day of September, 1985.

David G. Stebing

Notary Public for Alaska
My commission expires:
5/2/85

State of Alaska
NOTARY PUBLIC
DAVID G. STEBING
My Commission Expires

1

RECD
14 FEB 86
FROM
DAVE STEGGING, ATTY.
BOX 1771
HOMER 99603

Sept.12,1985
Halibut Cove

Justice Jay A. Rabinowitz
Supreme Court
Box 850
Fairbanks, Alaska 99707

Dear Jay:
I am writing in regard to Case 3HO-84-276 SC.

I feel the Lower Courts have brought in a verdict on the above case that is not in conformance with actual Law.

As the first Bill I worked on as a Freshman Legislator in 1963 was the Open Range issue I introduced legislation repealing the Estray Act as it had been used to impound horses running at large in the Sterling area; it at that time not being included in a Controlled Grazing District and we didn't want a law on the Books that in any way put a burden on the livestock industry.

I was joined in my open range argument by Jacob Stalker, the reindeer herder from the Seward Peninsula ,who had a fear that small tract owners up north would impound deer to get free meat and by Art Harris who had a large ranch on the Aleutians and was afraid the small land owuers could use impoundment as a hassement tool.

At the time on the House floor argument was made by those who opposed the Act that if Alaska remained truly Open Range then the law would not only effect the private property owners in areas that did not have a Controlled Grazing District but in the absence of highway regulation motorists as well..in other words if you were to hit an animal in an Open Range area the motorist paid for the animal and in areas closed to Open Range the owner of the animal pays the cost.

Some years later the cattlemen were faced with a fence law that made fencing an area once included in a Controlled Grazing district very expensive so I did what was necessary to repeal the fence law.

Dr. Honsinger, the State Veternarian, asked why I hadn't just modified the fence law but the reasoning at that time was if the people formed a controlled grazing district the live stock owners job was to keep his stock confined and to dictate the kind of fence that was necessary.

Again a few years later then Representative Leo Rhode came to my office on the Senate side and asked if he modified the Controlled Grazing District Law to make it easier to form a Grazing District if I would allow the Bill through the Senate as times were changing. I raised no objection but I think you will find that Alaska is

predominately open range and for a court to award damages to a property owner outside a controlled area is more a case of a Judge writing Law than ruling on it.

The two remedies for a property owner outside a Controlled Grazing District still remain #1. form a Grazing District or #2. go back to the Legislature and change the Law.

Yours truly,

Clem V. Tillion

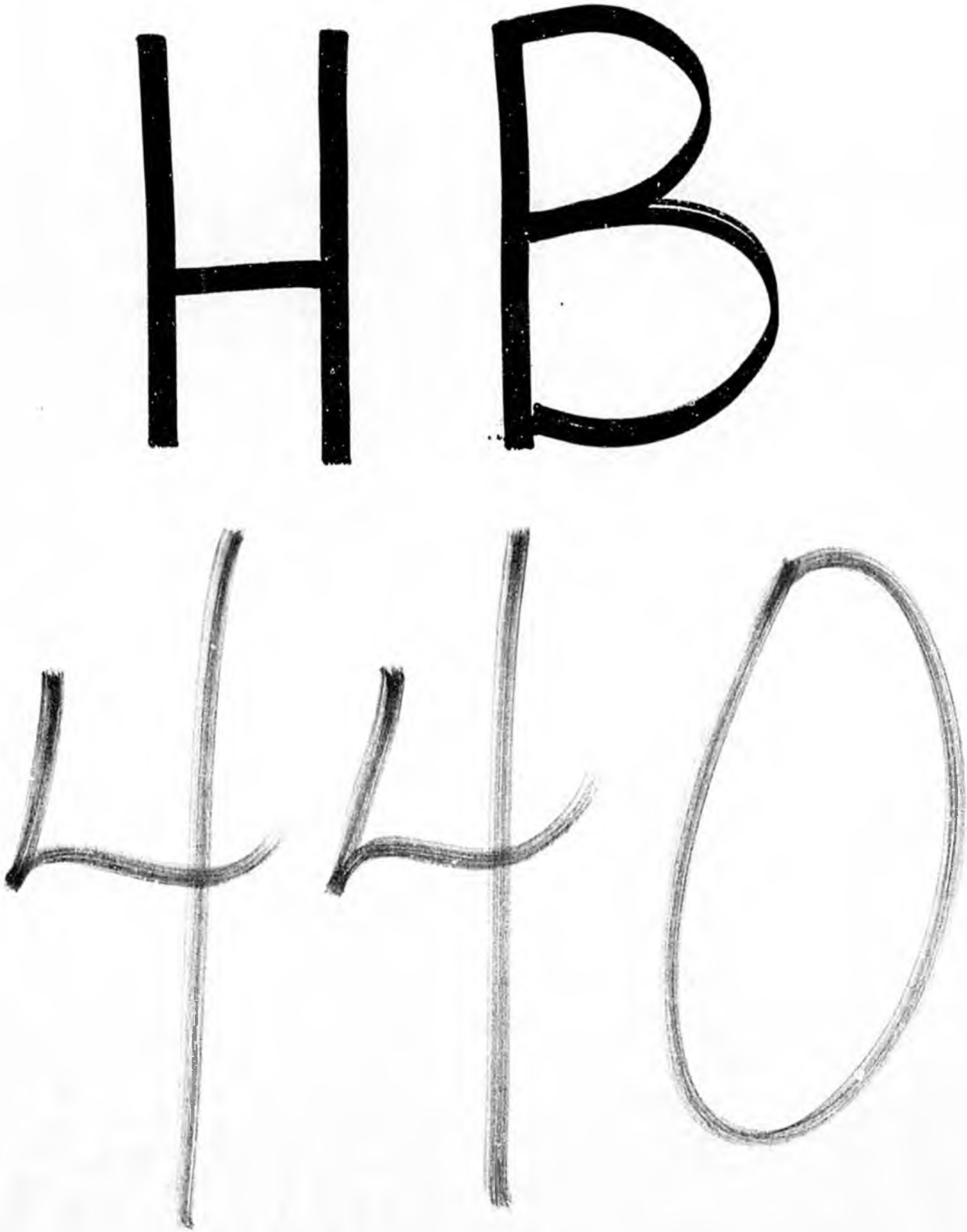
Clem V. Tillion

State of Alaska)
City of.....)

On this 14 day of September 19 54, personally appeared before me Clem V. Tillion, who acknowledged to me that he signed and sealed the same as his free and voluntary act and deed.

Lucile A. Chamberlain
.....
NOTARY PUBLIC in and for the State of Alaska, residing at

.....
My Commission expires 6/29/56


HB
440

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HR 3/24/86 8:30 am

****

10

TO: HOUSE RESOURCES COMMITTEE MEMBERS
REPRESENTATIVES HERRMANN AND SHULTZ, CO-CHAIR
REPRESENTATIVES WALLIS, CATO, JENKINS, M.W.MILLER, PEARCE, SUND AND THOMPSON

FROM: JACK WOOD, BOX 112, KING SALMON, ALASKA 99613

SUBJ: HB440, BRISTOL BAY RECREATION MANAGEMENT PLAN

I'M IN SUPPORT OF HB440 AND WOULD LIKE IT IMPLEMENTED AS SOON AS POSSIBLE, EVEN EARLIER THAN 2 YEARS IF POSSIBLE. I AM A MEMBER OF THE NAKNEK LAKE AND RIVER SPORT FISHING ASSOCIATION AND REPRESENTING WOODS ALASKA SPORTS FISHING AND GUIDING SERVICE.

DRAFT

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

House Resources Committee Letter of Intent for House Bill 440

In order that the recreation management plan is developed comprehensively, it is the intent of House Bill 440 that the plan be developed in two parts. The first would address the Mulchatna/Nushagak River Drainage, where the pressures from recreational uses have been the greatest and the second part of the plan would focus on Iliamna Lake and Naknek/Kvichak River drainage.

While the lead agency is the Department of Natural Resources, the information used to develop the plan should come from a number of sources, including the data from studies in progress. These data should include data from the studies of the Bristol Bay Coastal Resource Service Area, and the Alaska Department of Fish and Game.

As stated in the bill, the advisory committee is the official working group charged with developing the plan. However, it is the intent of the legislature that the state allow and encourage the participation of members of the public in any of the subcommittees or working groups that the advisory committee may establish. The state is also encouraged to allow other major private land holders in the region to participate in these subcommittees and working groups.

With respect to federal and private land, the role of the plan is primarily to provide information, define issues, organize public discussions of these issues, and facilitate cooperative agreements among the various landowners.

Representative Adelheid Herrmann
Co-Chair, House Resources Committee
3/2 /86

ANALYSIS

Bristol Bay Recreation Study (HB 440)

The Bristol Bay region has long been known by sportsmen for its trophy fishing and big game hunting opportunities. A number of guiding operations use the Bristol Bay area, with most of the activity concentrated in the spring, summer, and fall months. Sport fishermen in 1980 harvested about 37,000 salmon, and fishing for trophy rainbow trout and grayling is very popular. Sport hunting for big game species such as brown bear, moose, and caribou occurs throughout much of the area. The Institute of Social and Economic Research estimates that the economic value of recreational hunting, fishing and non-consumptive uses of fish and wildlife resources in the region is between $20 and $40 million per year. The rivers described in Section 2 along with the two congressionally designated National Wild and Scenic Rivers in the region and other rivers in adjacent parks have become increasingly popular for river floating. The area contains many commercial lodges catering to hunters and fishermen; recreational cabins and campsites are also spread throughout. Maintained and unmaintained airstrips abound, and floatplanes make use of the lakes and larger rivers. Wood-Tikchik State Park is the largest of Alaska's state parks and provides high quality fishing and boating. Three national parks or monuments (Lake Clark, Katmai, and Aniakchak) and four national wildlife refuges (Togiak, Becharof, Alaska Peninsula and Alaska Maritime) adjoin the planning area. These parks, the several national wildlife refuges and recreational rivers and lakes all attract increasing numbers of recreationists from around the world.

As the Bristol Bay Area Plan was developed as part of a cooperative effort for 31 million acres of land, it was not able to make detailed recommendations regarding management of important rivers on state land. The area plan was signed in September 1984 by the Commissioners of Natural Resources, Fish and Game and Environmental Conservation. The area plan recommends that agencies undertake a regional recreation study for the area. The plan recommends that the study address the following:

1. recreation management of rivers and lakes with high recreation potential;

2. refinement of the primary recreation designations of the BBAP;

3. the numbers and location of future commercial recreation facilities;

4. the concept of setting aside a strip of State and BLM land on both sides of the Nushagak, Nuyukuk, Mulchatna, Kokwok, Koktuli, Swan, King Salmon (off the Nuchagak), Chichitna, and Kvichak Rivers and shoreline of Iliamna Lake as special management corridors or public reserve lands that would be manager entirely and exclusively for traditional and public recreational uses;

5. acquisition and marking of public access sites, easements, and campsites and identification of and propose solutions to trespass problems;

6. the need for cooperative land management agreements to ensure maintenance of habitats of fish and wildlife resources used for subsistence and recreation;

7. what is the existing and potential growth in recreation demand and facilities;

8. how compatible is recreation with subsistence and other sectors of the region's economy;

9. how does Bristol Bay recreation contribute to the state's economy;

10. what effect will land disposals and other land uses have on recreation;

11. how do net economic benefits compare with other sectors of the economy; and

12. the disposal (including leasing) of state land for public and private recreation, particularly state land disposals around Iliamna Lake.

The recreation plan outlined in HB 440 would be prepared under the direction of an advisory committee. The local committee members would not receive compensation, but travel and per diem would be paid through this appropriation. The Division of Land and Water Management, Resource Allocation Section, would serve as project staff with assistance from the Division of Parks and Outdoor Recreation.

The plan would be started in the summer of 1986 and would be submitted to the Commissioner by spring of 1988. The final plan would be printed at the end of fiscal year 1988. The budget provides funding for a part-time local coordinator in Dillingham to be hired through the Coastal Resource Service Area Board (CRSA) or Bristol Bay Native Association.

The fiscal note does not identify funds necessary for implementation of the recreation plan.

BUDGET

FY 1987

100 Personal Services			Thousands of Dollars
DNR-DLWM	Natural Resource Manager I	12 months	49.0
DNR-Parks	Natural Resource Officer II	4 months	14.8
Total Personal Services			63.8

200 Travel	
10 rd.trips Anchorage to Dillingham or King Salmon	4.0
Travel to villages and rivers	2.2
Travel of advisory board members	2.0
Total Travel	8.2

300	Contractual	
	Printing - brochure	3.0
	Local coordination through CRSA	15.0
	Miscellaneous expenses (phone, xerox, maps, etc.)	6.0
	Total Contractual	24.0
400	Supplies	4.0
TOTAL FY 87		100.0

FY 1988

100	Personal Services			
	DNR-DLWM	Natural Resource Manager I	12 mos.	49.0
	DNR-Parks	Natural Resource Officer II	1.5 mos.	4.8
	Total Personal Services			53.8
200	Travel			
	10 rd. trips Anchorage to Dillingham or King Salmon			4.0
	Travel to villages and rivers			2.2
	Travel to advisory boards			2.0
	Total Travel			8.2
300	Contractual			
	Printing - draft and final plans			15.0
	Local coordination through CRSA			15.0
	Miscellaneous expenses (phone, xerox, maps, etc.)			6.0
	Total Contractual			36.0
400	Supplies			2.0
TOTAL FY 1988				100.0

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

March 20, 1986

The Honorable Adelheid Herrmann
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 440

Dear Representative Herrmann:

I have reviewed HB 440. The Department of Natural Resources supports it in concept. However, the department is unable to commit itself to undertaking this project during fiscal year 1987 because it was not included in the Administration's budget request. House Bill 440 calls for me to develop and adopt a recreation management plan for the Bristol Bay area. This management plan was an important recommendation of the Bristol Bay Area Plan, which I adopted in September 1984.

As envisioned in the Bristol Bay Area Plan, the recreation management plan would be a cooperative effort of state land managers and private landowners to address management of rivers and lakes with high recreation potential. The rivers specified in HB 440 have high recreation potential. However, I recommend the addition of the Nuyakuk River to part one of the plan (Section 2, page 1, line 23), and the Newhalen River to part two (Section 2, page 1, line 24). Except for the Mulchatna River, the Nuyakuk River, and the upper reaches of the Nushagak River, the state owns little land adjacent to the rivers mentioned in HB 440. Consequently, while the state could develop specific management guidelines and allocations for state-owned land, in all other areas it will serve primarily to provide information, define issues, organize public discussion of these issues, and facilitate cooperative agreements among various landowners.

There is one section of the bill which I would urge you to change. The second sentence of Section 4 calls for a moratorium on recreational development and disposal of interest in state land in the Bristol Bay region until the recreation management plan has been adopted. I can appreciate the concern which prompted this provision, that is, that

10-J9LH

land management actions taken prior to adoption of the plan might undermine the intent and force of the plan. However, I would like to allay your fears on this point. All of the department's land management decisions are based on the best available information and a determination that the action is in the public interest. If an area or management plan is in progress, proposed land management actions are frequently reviewed by the planning team so that the land manager has access to the most current information and concerns expressed by the planning team. The land manager can then decide on a case-by-case basis whether it is in the public interest to proceed with the proposed action or whether to defer action until the plan is adopted. A blanket moratorium throughout the region would deprive the department of the discretion it needs to manage state land wisely over the 18 to 24 month period the management plan would be in preparation.

I have enclosed a suggested amendment for Section 4 of the bill for your consideration.

Please let me know if there is further information I might provide.

Sincerely,

Ned Fay-Lee

for Esther C. Wunnicke
Commissioner

Enclosure

cc: Tom Hawkins, Director
Division of Land and Water Management

March 20, 1986

DEPARTMENT OF NATURAL RESOURCES

Suggested Amendment No. 1

Section 4 shall be amended to read as follows:

Sec. 4. To the maximum extent possible, the commissioner of natural resources shall implement the recommendations of the recreation plan in the management of the land, water, and natural resources of the rivers and land in the Bristol Bay region. Furthermore, prior to adoption of the recreation plan, the commissioner shall consider the impact of proposed actions on the recreational resources of the Bristol Bay region. (THE COMMISSIONER OF NATURAL RESOURCES SHALL DEFER RECREATIONAL DEVELOPMENT OF THE RIVERS AND LAND ADJACENT TO THE RIVERS IN THE BRISTOL BAY REGION AND SHALL DEFER THE DEVELOPMENT OF PERMANENT RECREATIONAL FACILITIES OR DISPOSING OF AN INTEREST IN STATE LAND WITHIN THE BRISTOL BAY REGION UNTIL THE RECREATION MANAGEMENT PLAN HAS BEEN ADOPTED.)

Sept 14, 1983

Dear Rep Herman + Sen Mulcahy:

We the undersigned participants in the BBN "Village Government Workshop" hereby support BBNA Executive Committee's Resolution 83-29 "Management Corridors" + request your assistance in implement. this concept

Dan Miller - Levelock/Igiugig
Fritz Sharp Twin Hills
C.T. Sedl - Kolyonek
Nick Holstrom Jr. So. Naknek
Gerald J. Anelon - Alianna
Joseph L. Clark Clarks Point
Elaine L Holm Port Heiden
Karen Carlson Chignik Bay
Sharon Clark Clarks Point
Gregory Anelon, Jr Newhalen
Lydia Wilson, Nondalton
Michael O'Neill
Karen Evanoff - Nondalton
Barbara Jacobs - Pedro Bay
Kimona Denny Levelock
Agnes Rychnovsky - Newhalen
Arthur Sharp Twin Hills
Moses Toyukak Sr. - Manokotak

BRISTOL BAY NATIVE ASSOCIA ON
P.O. BOX 189
DILLINGHAM, ALASKA 99576
By Executive Committee

Resolution No. 83-29

WHEREAS, the Nushagak, Nuyakuk, Mulchatna, Kokwok, Koktuli, Swan, King Salmon (off the Nushagak), Chichitna, Kvichak Rivers, and areas around the Iliamna lake are among the last of the wilderness waterways in the public domain; and

WHEREAS, the setbacks called for in the Bristol Bay Cooperative Management Plan proposals are inadequate to protect these areas; and

WHEREAS, the wilderness waterways and surrounding areas are constantly subject to various pressures from State, land disposals, oil leasing, mineral location, and other uses; and

WHEREAS, the Bristol Bay Native Association is now taking the initiative to impose a legal designation on these lands to protect them for all future generations.

NOW THEREFORE BE IT RESOLVED, that the Executive Committee of BBNA urges the Alaska State Legislature to enact a law that will protect these waterways by setting aside a five mile wide strip on both sides of a center line (i.e., a total ten mile wide strip of land) on the Nushagak, Nuyakuk, Mulchatna, Kokwok, Koktuli, Swan, King Salmon (off the Nushagak), Chichitna, and Kvichak Rivers and an area of land five miles inland from the shoreline of the Iliamna Lake on State lands as special Management Corridors.

BE IT FURTHER RESOLVED, that said lands in these Management Corridors be set aside and managed entirely and exclusively for traditional and recreational uses.

SIGNED: _____
PRESIDENT

CERTIFICATION:

I, the undersigned secretary of said Association, do hereby certify that the Executive Committee is composed of ten (10) members, of whom 8 were present at a meeting this 9 day of September, 1983, and that the foregoing resolution was adopted by the affirmative vote of 8 members.

SIGNED: _____
ASSISTANT SECRETARY

KOLIGANEK VILLAGE COUNCIL

KOLIGANEK, ALASKA 99576 - VILLAGE TELEPHONE (907) 596-8001

August 31, 1983

Dear Adelheid,

There are a couple of matters that I wanted to bring to your attention at this time, as I am not sure of the time-table that is envolved in a final decesion concerning them. It may be that there is plenty of time, and these matters could wait until the next session-I don't know.

The first concerns the coastal zone management plan. A concept I have discussed with many people, both local's and sportfishermen alike has met with about one hundred percent approval, but has received no mention in the public hearings, possibly because the local's may have difficulty in articulating their thoughts. It is a concept I have discussed with you here in the house. It is based on two premises, the first being that the locals do not want changes in their life brought about by the disposal/leases of state lands within the river areas they have traditionally utilized, nor do sportfishermen, rafters, and lodge owners want these areas devoloped. The second premise is that oil/mining is coming to this area sometime down the road. The solution is a "managment Corridor" to maintain the status-quo. The corridor would be of a given width, five, ten, fifteen miles or whatever. But the crucial point is that in the center of the corridor would be the Nushagak, Mulchatna, Koktuli, Swan, Nuyakok, King Salmon, and Chichitna Rivers. The corridor would be open to traditional and recreational useage, but would be closed to leases, disposals, and commercial devolopment. Oil and mining activities would have to take part outside of the corridor and could not use the corridor for industrial transportation. Existing lodges could be grandfathered in, new ones would be restricted to dismantable tent frame camps, and would chose their sites annually by drawing, to avoid "squatters claims" in the future. This not only protects locals, but also the recreational users, including guiding businesses. If you agree with me in this matter, what can be done to get the corridor implemented into the CZM?

The second matter involves the new phone rates and construction being considered by the APUC. All present rating structures being considered charge villagers a flat rate for their calling area which is limited to their own village per month. In bush Alaska I contend that this is wrong. We allre dy communicate in a village by walking, three wheeler, VHF, or CB, without a charge. Any neccessary telephone calls are out of the village and therefore considered long distance. At present the single phone system has set a precedent in that a user only pays for the calls made, and not a flat rate. I contend that any phone system put into a village should only charge for the calls made, and not a

flat rate, per month plus the long distance calls. The flat rate per month for a "calling area" is an urban concept, that is counter-productive to the bush consumer. I have mentioned this on occasion to the [illegible], both by letter and by phone, and have received no response. As Kolig nek is slated for construction (first this year, now next) I am very concerned that my fellow residents will be stuck with unnecessarily high bills which will include phone service for a calling area that is allready adequetly served without a telephone.

On a brighter note, I would like to inform you that almost all of our electrical grant distribution work is done. Once the site-control was established (a long process) the construction went very fast. Excellent workmanshop was preformed as was the planning. We received many extra services not in the contract, help in home wiring problems, extra services (meterbox & hookups), and possibly five street lights yet to come. The firm was Humphrey, P.E. or the P.E. Company (it is listed both ways with the directory services) Tom Humphrey did the engineering. Vinny McClellan did all of the land planning/site control. Kolig nek just did not have the expertise for it. Vinny has given us excellent maps of the village that will be usefull in future planning and 14(c) reconveyances. The same firm did our bulkfuel storage grant, which envolved alot of red tape to turn the legislative appropriation into a check. Even though Diamond Willow Construction lost in It's bid to build our cathouse and councilhouse (Diamond Willow works closly with the P.E. Company) The P.E. Company installed a powerpole, meter, & wire out to where the cathouse is being built, so that the competitors who won the cathouse contract, would be assured of electrical power to build with. By utilizing Tom Humphrey and Vinny McClellan, we got the best deal money can buy, they were a real credit to the use of public funds.

Sincerely,

C.T.

C.T.

Provided by the Office of Representative Adelheid Herrmann 3/21/86

State and Federal Bristol Bay Plans Call for Further Recreation Planning

The Bristol Bay Plan emerged from the Bristol Bay Cooperative Management Plan which was a joint effort of state and federal agencies to plan for the region. Before the cooperative plan was adopted, a decision was made that the plans be adopted by the federal and state governments separately. The state plan was adopted as the Bristol Bay Area Plan and the federal plan was adopted as Bristol Bay Regional Management Plan. Both plans as adopted recognize the need for additional planning for the recreational management of the region.

Excerpt from the State Bristol Bay Area Plan

Guidelines

1. Future Management Plans Should Address Recreation

   State agencies should develop management plans that maintain public recreation, scenic areas, wilderness, unique geological features, and fragile or unique ecosystems in areas with significant recreation values.

2. Recreation Facility Siting

   Recreation facilities will be sited in a manner to minimize the adverse impact on existing wildlife populations and traditional uses while at the same time providing the recreation facilities needed by the public.

Excerpt from the Federal Bristol Bay Regional Management Plan

Recreation Study: ADNR, ADF&G, BLM, and USFWS should develop a recreation management plan for the study area. The study should specifically address the various issues and concerns missed in the public review of the Draft BBCMP as well as the following:

1. recreation management of rivers and lakes with high recreation potential;
2. refinement of the primary recreation use recommendations of the BBRMP;
3. the location of future commercial recreation facilities;
4. the concept of setting aside a strip of State and BLM land on both sides of the Nushagak, Nuyukuk, Mulchatna, Kokwok, Koktuli, Swan, King Salmon (off the Nushagak), Chichitna, and Kvichak Rivers and shoreline of Iliamna Lake as special management corridors that would be managed entirely and exclusively for traditional and public recreational uses;
5. acquisition and marking of public access sites, easements, and campsites;
6. the need for cooperative land management agreements to ensure maintenance of habitats of fish and wildlife resources used for subsistence and recreation.
7. identification and recommended diversification of the entire recreation industry in the study area.

Provided by the Office of Representative Adelheid Herrmann 3/21/86

BRISTOL BAY COASTAL RESOURCE SERVICE AREA PROJECTS

I. Nushagak River Basin Mapping Project

This project represents the largest-scale mapping effort done on a river system in Bristol Bay to date and includes:

- three (3) 1:500,000 index sheets showing the location of larger scale 1:63,360 maps; and
- thirty-four (34) maps at a scale of 1 inch to 1 mile showing various sections of the Nushagak River drainage basin's major river and lakes.

These blueline maps are intended to be used as working maps by the Bristol Bay CRSA Board, various state agencies and village corporations for land and water resource inventory work. These maps were produced at the level of detail necessary for preparing a management plan. The Bristol Bay CRSA Board also has the contact mylars and the negatives for each map sheet and is able to reproduce any portion of the mapping project for the cost of reproduction (blueline paper).

II. Commercial Recreation Study

Because of the rapidly accelerating use of the Nushagak River drainage by recreation and virtual lack of information on the intensity and location of this use, the CRSA Board received a $30,000 special appropriation to do a study on commercial recreation use of the Nushagak/Mulchatna River drainages. Due to funding limitations, the study focused on the Nushagak/Mulchatna area (study area) and does not reflect the substantial amount of recreation use in the Iliamna subregion or other areas experiencing significant use.

Phase I of the study has been completed and resulted in a directory of commercial service providers - lodges, guides and air taxis - that operate in the study area. A total of 128 lodges, guides and air taxis were found to operate full-time or part-time in the Nushagak/Mulchatna area alone, representing a significant indication of the amount of recreational use this river system currently receives. The value of the directory was both to define the number of operators using the area, and to establish a current population base from which to administer a detailed survey.

Phase II of the study involved developing and administering three separate survey questionnaires for the three broad categories of commercial service providers. The survey questionnaires were designed to collect specific information on the location, timing and other use characteristics in the study area for sport fishing, hunting and recreational rafters, as well as information on the types and costs of services provided by lodges, guides and air taxis. Commercial service providers were also asked to map regularly used areas for these activities, locations of permanent and non-permanent facilities (lodges, campsites, tents, cabins) and commonly used access points.

A total of 71 surveys have been completed representing 55% of the recreation businesses that operate in the study area. 52 of the 71 surveys were done by personal interview (averaging two hours per interview). Mail out questionnaires were sent to those operators not available for interview and a total of 19 questionnaires have been received. The information from these surveys is presently being analyzed, and a final report on the study summarizing the results of the survey will be published by the end of April 1986.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 3-20-86

REQUEST

Bill/Resolution No. : HB 440
Title : An Act relating to a recreation management plan for Bristol Bay
Sponsor : Representative Herrmann
Requestor : House Resources
Date of Request : 3-20-86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Land & Water Management - Public Use
Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		63.8	63.8			
TRAVEL		8.2	8.2			
CONTRACTUAL		24.0	26.0			
SUPPLIES		4.0	2.0			
EQUIPMENT		0.0	0.0			
LAND & STRUCTURES		0.0	0.0			
GRANTS, CLAIMS		0.0	0.0			
MISCELLANEOUS		0.0	0.0			
TOTAL OPERATING		100.0	100.0			
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		100.0	100.0			
FEDERAL FUNDS						
OTHER						
TOTAL		100.0	100.0			

POSITIONS :

FULL-TIME		1	1			
PART-TIME		1	1			
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached.

Prepared by : Richard H. Mylius
Division : Land and Water Management
Phone : 762-4413
Date : March 20, 1986

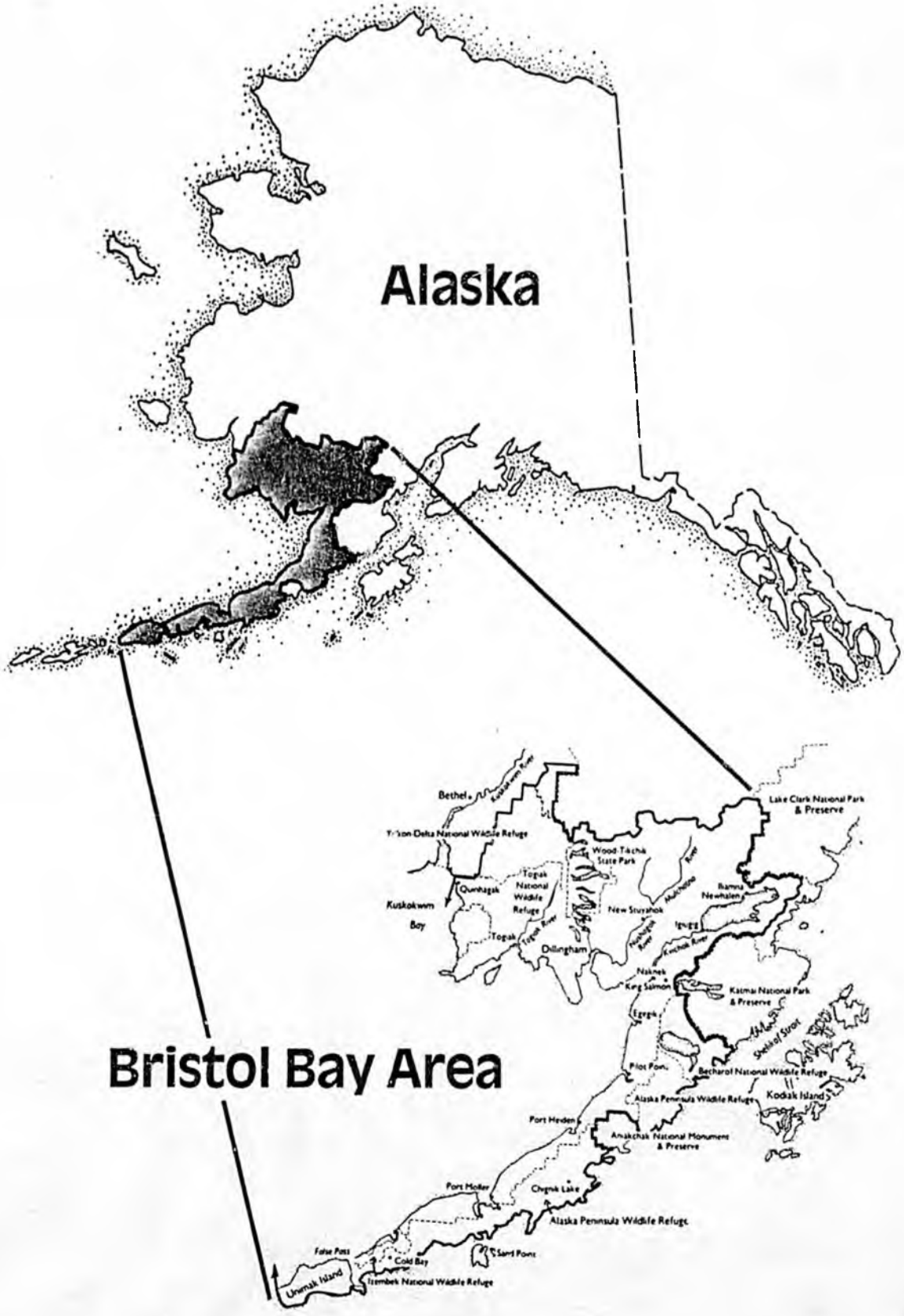
Approved by Commissioner : Ned Fletcher
Agency : Natural Resources
Date : 3/20/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Study Area

Map 1



BRISTOL BAY NATIVE CONVENTION

RECREATIONAL RIVERS

Resolution No. 85-31

WHEREAS Bristol Bay's Native community has lived upon and in harmony with the region's lands for many centuries, and

WHEREAS the land management programs and policies of the region's public land owners are of great interest and importance to the Native community because these lands are part of its traditional land base, and

WHEREAS the Native community has expressed the desire in past resolutions for special land management for the region's important rivers and adjacent lakes; and

WHEREAS Alaska's Governor Sheffield and the Legislature are studying different proposals to establish protective land management programs for certain important rivers, and

WHEREAS the Bristol Bay Native community supports efforts to create special river corridors if these programs recognize the habitat protection and traditional use patterns crucial to people of the region and their cultural, economic, and subsistence values.

NOW THEREFORE BE IT RESOLVED By the Delegates to the 1985 Bristol Bay Native Convention in convention assembled that:

1) Bristol Bay Native Association and Coastal Resource Management Boards study the proposals now pending and participate to shape a program that addresses regional values and requirements, and

2) Our legislative representatives (Sen. Zharoff and Rep. Herrmann) work to insure a river management program that requires local participation in its planning and management programs, and

3) BBNA express the region's support for the efforts of the Governor and Legislature to address the important issues of river corridor management.

CERTIFICATION

I hereby certify that the foregoing is a full, true, and correct copy of the resolution adopted by the Delegates to the 1985 Bristol Bay Native Convention, February 25, 26, 26, 1985, Dillingham, Alaska, at which a quorum was present.

WITNESS My hand and seal this 27th day of February, 1985.

Willis P. Johnson

Chairman, Bristol Bay Native Convention

WITNESSED:

H. Darlene Smith

Chairperson, Resolutions Committee

BRISTOL BAY NATIVE CONVENTION
Resolution 86-08

WHEREAS: the State of Alaska adopted the Bristol Bay Area Plan (BBAP) in 1984 as policy for management of state lands and resources within the Bristol Bay/Alaska Peninsula regions; and

WHEREAS: the management of recreation in upper Bristol Bay is practically non-existent, and both the BBAP and Bristol Bay Coastal Management Program acknowledged the lack of information available on the location and intensity of recreational use of upper Bristol Bay waterbodies; and

WHEREAS: over the last five to ten years the region has experienced a dramatice increase in recreational use of these waterbodies resulting in increasing conflicts between commercial recreation users and traditional users of fish and wildlife; and

WHEREAS: implementation of the BBAP calls for a recreation management plan to be developed based on a recreation study to address twelve specific topics; and

WHEREAS: this recreation study was to be initiated within two years of adoption of the BBAP by State and Federal agencies in coordination with private landholders (particulary Native Corporations), lodges, guides, sport fish organizations, and other interested parties; and

WHEREAS: Representative Herrmann has introduced HB 440 last year relating to a recreation management plan implementing the BBAP which will come up for consideration this Legislative session;

NOW THEREFORE BE IT RESOLVED that the Bristol Bay Native Convention supports HB 440 that would enact a Recreation Management Planning process for upper Bristol Bay.

BE IT FURTHER RESOLVED that the Bristol Bay Native Convention urges the Department of Natural Resources and Alaska Department of Fish and Game to assume their responsibility for undertaking the recreation study mandated by the Bristol Bay Area Plan.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the resolution adopted by the delegates of the 1986 Bristol Bay Native Convention February 23, 24, 25, & 26, Dillingham, Alaska, at which a quorum was present.

WITNESS My hand and seal this 26th day of February, 1986.

Chairman, Bristol Bay Native Convention

WITNESS:

Chairperson, Resolutions Committee

A RESOLUTION IN SUPPORT OF HOUSE BILL #440

WHEREAS, the State of Alaska has implemented the Bristol Bay Area Plan, and

WHEREAS, further study is required relating to the Recreational Management Plan of Bristol Bay River Systems.

NOW, THEREFORE BE IT RESOLVED, that the Southwest Alaska Municipal Conference support the concept of H.B. #440.

October 10, 1985

Adelheid,

Enclosed are copies of the letters between the CRSA and Richard Logan (ADF&G) as you requested.

It was our understanding that the Division of Sport Fish was directed to do a "comprehensive sport fish plan" for the area between Cape Newenham and Port Heiden. I believe the directive to prepare such a plan was made by the Board of Fisheries.

Please let me know if there is any additional information our office can provide.

Sue Flensburg SF
Bristol Bay CRSA

Bristol Bay
Coastal Resource Service Area
P.O. Box 189, Dillingham, Alaska 99576
(907) 842-5257 — 842-5258

May 6, 1985

Richard Logan, Director
Division of Sport Fisheries
Department of Fish and Game
P.O. Box 3-2000
Juneau, Alaska 99802

Dear Richard,

The need for further research and planning in regard to recreational management has been a long-standing concern of the Bristol Bay CRSA Board. The Bristol Bay Coastal Management Program (BBCMP) identifitied the Nushagak/Mulchatna area as a suggested Area Merriting Special Attention (ASMA) because of the increase in land and water use, and growing conflict between recreational and traditional subsistence user groups. The Bristol Bay Area Plan, signed by the Department of Natural Resources, Department of Fish and Game, and, Department of Environmental Conservation also acknowledged the lack of information on recreation use and called for further planning.

Enclosed is a resolution requesting that funds be allocated or diverted for a Division of Sport Fisheries staff person for the the Dillingham ADF&G Offices. The Bristol Bay CRSA Board feels this staff person would be able to monitor some of the more immediate recreation management concerns, and generate specific resource and recreational use information needed for long-range planning purposes. The CRSA Board recognizes that a comprehensive management plan is a major undertaking and will require the cooperative efforts of many organizations and agencies. The CRSA Board is currently looking at using some of it's coastal program monies for a mapping project for the Nushagak/Mulchatna, and a lodge owner survey.

Unfortunately, our resolution for a Sport Fisheries staff person is probably too late to be considered in the budget process for next year. However, we would appreciate consideration of our request for fiscal year 1987.

Thank you.

Sincerely,

Tim Hostetler

Tim Hostetler, Director
Bristol Bay Coastal Management Program

cc: Don Collinsworth, Commissioner
Representative Adelheid Herrmann
Senator Fred Zharoff

Bristol Bay Coastal Resource Service Area Board

P.O. Box 189

Dillingham, Alaska 99576

RESOLUTION NO. 85-05

WHEREAS, The Bristol Bay Coastal Resource Service Area (CRSA) Board was organized in October, 1981 for the purpose of developing a coastal management program for the Bristol Bay Region; and

WHEREAS, The CRSA Board used a wide range of public and private input, and the best available resource information, to formulate land and water use policies in the coastal area of Bristol Bay; and

WHEREAS, The CRSA Board's coastal management program, as well as the area planning effort undertaken concurrently by the State of Alaska, acknowledged the lack of resource information on the issue of recreational use of upper Bristol Bay's waterbodies; and

WHEREAS, The dramatic increase in the last five years in the recreational use of the waterbodies of the upper Bristol Bay subregion is the contributing factor to the growing conflict between recreational and traditional subsistence uses, and friction between both user groups; and

WHEREAS, There is little information available on the location and intensity of recreational use of the region's waterbodies or on specific recreational user groups, particularly in regard to sport fishing; and

WHEREAS, There is a need to address and moniter immediate recreation management concerns as well as pursue further research and planning in regard to recreational management; and

WHEREAS, The Alaska Department of Fish and Game (ADF&G) is the appropriate agency to provide some of these needed services through their Division of Sport Fish; and

NOW THEREFORE BE IT RESOLVED that the Bristol Bay CRSA Board urges the ADF&G to use whatever means is at their disposal to include funds in their budget for a Division of Sport Fish staff person for the Dillingham ADF&G Offices.

SIGNED: Perry Edleson
Chairman

CERTIFICATION:

I, the undersigned Secretary of said Board, do hereby certify that the full Bristol Bay Coastal Resource Service Area Board composed of seven (7) members, of whom 6 were present at a meeting on the 3rd of May, 1985, adopt the following resolution by the affirmative vote of 6 members.

SIGNED: Ronald N. Aaberg

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
DIVISION OF SPORT FISH

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4180

July 3, 1985

Tim Hostetler, Director
Bristol Bay Coastal Management Program
Coastal Resource Service Area
P.O. Box 189
Dillingham, AK 99576

RECEIVED JUL 9 1985

Dear Tim:

I held off answering your letter of May 6 concerning Bristol Bay recreational management until the budget mad house spit out our final numbers. As expected, each of our budgets were less than requested, complicating our decision process. Consequently, your assumption is correct that FY86 budgeting for a Dillingham position is not possible.

Let me describe to you what our plans are for the Bristol Bay sport fishery in the near term and what I would like to see happen in the future. The sport fishery in your area is becoming immensely popular in a number of forums around the United States, and for that matter internationally. With the number of proposed industrial and local planning efforts blossoming it is, as you suggest, encumbant on us to be in a position to provide the most up-to-date information possible for those efforts. This year we initiated a voluntary census creel with lodge owners to assess the effort levels of that portion of the sport fishing industry. This summer we also intend to initiate a sport fish assessment and planning effort for the entire area to evaluate the impact of the sport fishery and what actions we need to take to identify the key issues and solutions. This effort is designed and weighted heavily on local input. We would like to visit with as many individuals as we can to describe opportunities and listen to their concerns.

The ultimate end product will serve as guidance to the Board of Fisheries as to how they address sport fisheries in the bay in the future.

Options available to implement the program include staffing in new areas, research, more intense management, joint projects, and other ideas that will help us adequately address these fisheries. I appreciate your interest in the recreational fisheries and request that we stay in close touch over the next year as we jointly try to solve these problems.

Sincerely,

DWK

Richard Logan
Director

cc: Representative Adelheid Hermann
Senator Fred Zharoff

11-K25LH

ROBERT F. WILLIAMS
Drawer F
Kenai, AK 99611

4-8-85

DEAR ADELHEID,

I WANTED TO WRITE A SHORT NOTE AND PASS ON SOME INFORMATION YOU MIGHT WANT TO BE AWARE OF.

A LOCAL SPORTS SHOP OWNER IN KENAI COMMENTED TO ME LAST WEEK HOW MORE AND MORE GUIDES ARE LEAVING THE KENAI AREA AND MOVING THEIR OPERATION TO KING SALMON ON THE NAKNEK RIVER. HE SUGGESTED THAT PEOPLE SHOULD KEEP AN EYE ON THAT RIVER SO IT DOES NOT GROW INTO THE KIND OF PROBLEMS PEOPLE FACE ON THE KENAI RIVER.

I THOUGHT YOU MIGHT WANT THIS INPUT SO YOU CAN KEEP INFORMED ABOUT THIS AREA OF GROWTH IN THE AREA.

HOPE THE WINTER IS TURNING INTO SPRING IN SE. GOOD LUCK WITH THE REST OF THE SESSION. I SHOULD BE DOWN ON UNIVERSITY BUSINESS APRIL 24 + 25.

Bob W

BRISTOL BAY NATIVE ASSOCIATION

P. O. BOX 189
DILLINGHAM, ALASKA 99576

PHONE (907) 842-5257 — 842-5258

October 7, 1983

Representative Adelheid Herrmann
P.O. Box 63
Naknek, Alaska 99633

Dear Adelheid:

Attached are two letters of support received in reference to Resolution No. 83-29, that the Bristol Bay Native Association passed.

Sincerely,

BRISTOL BAY NATIVE ASSOCIATION, INC.

Dee Dee Bennis

Dee Dee Bennis
Office Manager

DB/mn

Attachment:

Dillingham Village Council
P.O. Box 216
Dillingham, Alaska 99576
Phone (907)842-5933/5257

RECEIVED SEP 2 7 1983

September 27, 1983

Kay E. Larson, Executive Director
Bristol Bay Native Association
P.O. Box 189
Dillingham, Alaska 99576

Dear Kay:

At a recent Dillingham Village Council Board of Directors meeting held September 19, 1983 the Board passed a motion supporting BBNA's resolution numbered 83-29 urging the Alaska State Legislature to enact a law that will protect waterways by setting aside a five mile wide strip on both sides of a center line on the Nushagak, Nuyakuk, Mulchatna, Kokwok, Koktuli, Swan, King Salmon (off the Nushagak), Chickitna, and Kvichak rivers and an area of land five miles inland from the shoreline of the Liamna Lake on State lands as special Management Corridors.

Sincerely,

DILLINGHAM VILLAGE COUNCIL

Herman Schroeder
President

HS:ls

William Hennyon for

RECEIVED SEP 2 3 1983

TO: B.B.N.A. Board Members

FROM: New Stuyahok City Council

DATE: September 20, 1983

This letter is in response to resolution 83-29 concerning the ten mile wide strips of land along the rivers as mentioned in the resolution;

We are greatly in favor of this resolution because we use the river waves for both traditional and recreational use.

With this resolution we can protect our water waves and use them for our use.

Sincerely,

Ivan Blunka

New Stuyahok City Council

October 31, 1984

Representative
House District 26
Po.ch V
Juneau, Ak. 99811

Dear District 26 Representative:

In a recent meeting of the Nushagak Fish and Game Local Advisory Committee (10/30/84), it was noted that increasing sport fishing pressure is being exerted on virtually all stocks in western Bristol Bay and particularly the chinook (king) and coho (silver) salmon. The lack of sound biological information concerning sport fish effort and catch was found tc be decidedly lacking.

It was further noted that the increased commercial fishing effort was being directed toward king and coho salmon, making the issue of sport fish harvest more important to the actions of the Board.

The committee therefore resolved that letters to the Office of the Governor and Legislature be sent, requesting additional funds be appropriated to provide for sport fish research and management activities in western Bristol Bay. In the view of this committee, this is a pressing matter that deserves your attention.

Very truly yours,

Joseph McGill,
Nushagak Advisory Committee

Joe McGill

HB

445

Original sponsor: Pignalberi

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 445 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to information on royalty oil and gas."

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

* Section 1. AS 38.05.183 is amended by adding new subsections to read:

(h) The department shall collect and compile information necessary to determine on a monthly basis a representative

(1) price paid for state royalty oil and gas by in-state refiners;

(2) refinery gate sales price of in-state refined fuel products;

(3) wholesale or market exchange sales price of in-state refined fuel products; and

(4) retail price of in-state refined fuel products.

(i) The commissioner may not enter into a contract of more than one year for the sale of state royalty oil or gas to an in-state refiner unless the refiner agrees to provide information to, and assist or allow the collection of information by, the department on a monthly basis to determine the representative monthly wholesale price, market exchange sales price, and refinery gat sales price of the in-state refined fuel products of the refiner.

(j) A person who contracts to purchase royalty oil from the state under this section under a contract of more than one year for in-state use shall provide to the commissioner, during the period that the purchaser takes, refines, transports, or otherwise deals with the

purchased royalty oil, a report for the preceding month that indicates for the purchased royalty oil

(1) the volume of oil taken;

(2) the products, including residual oil, produced from the oil;

(3) the volume of oil sold in the state; and

(4) the volume of oil exported from the state.

* Sec. 2. AS 38.05.965 is amended by adding a new paragraph to read:

(24) "fuel products" means all oil and gas refined products produced at an in-state refinery from state royalty oil and gas.

* Sec. 3. AS 38.05.183(j) enacted by sec. 1 of this Act applies to contracts of more than one year for the purchase of royalty oil for in-state use from the state that are entered into on or after the effective date of this Act.

HOUSE
COMMITTEE REPORT

4/29

(9)
Date referred: 2/21/86

FURTHER REFERRALS: FINANCE

DATE: 4/28/86

The RESOURCES committee has considered HB 445

"An Act requiring in-state refiners to submit and the Department of Commerce and Economic Development to collect information concerning the purchase and sale price of royalty oil and gas and fuel products by in-state refiners."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with CS for HB 445 (Resources) [ ] same title [XX] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Pearce

Jenkins

Cato

Shultz

SIGNING OTHER RECOMMENDATIONS:

Herrmann

Sund

Co-Chairman Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/19/86

REQUEST

Bill/Resolution No. : CSHB 445 (oil + gas)
Title : An Act Requiring Refiners TO Submit...

Sponsor : Pignalberi
Requestor : Pignalberi
Date of Request : 2/17/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Oil & Gas

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	3,900	3,900	3900	3,900	3,900	3,900
TRAVEL	.500	.500	.500	.500	.500	.500
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	4,400	4,400	4,400	4,400	4,400	4,400
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	4400	4400	4400	4400	4400	4400
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME	1/12	1/12	1/12	1/12	1/12	1/12
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Ned Farquhar
Division : Commissioner's Office
Phone : 465-2400
Date : 465-2400

Approved by Commissioner : Esther C. Wunnicke
Date : 2-19-86
Agency : Department of Natural Resources

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

April 26, 19C

MEMORANDUM

TO: Representative Marco Pi[illegible]

FROM: Gretchen Keiser G. Keiser Keiser
Legislative Analyst

RE: A Comparison of Royalty Oil and Retail Fuel Prices
Research Request 86-187

You asked us to provide a comparison of the price paid by instate refiners for royalty oil with retail prices for gasoline and heating fuel in Anchorage and Fairbanks during 1985 and 1986.

Table 1 summarizes the prices of royalty oil (paid by Tesoro Petroleum Company), unleaded regular gasoline (self service), and heating fuel #2 in Anchorage. We provide prices on a quarterly basis for the first half of 1985, and monthly September 1985 through February 1986. You will note that Tesoro's royalty price maintained a fairly narrow range of $16.90 - $17.13/barrel between January and December 1985.[1] However, the February 1986 royalty oil price of $10.88/barrel is markedly lower than the $17.13 price of December 1985--about 36 percent lower.

During the same period, the changes in retail fuel prices were mixed. Unleaded regular gasoline prices in Anchorage dropped over 6¢/gal. between January and December 1985, but experienced a negligible decline between December 1985 and February 1986. The retail price of heating Fuel No. 2 increased during 1985 and declined less than a 1¢/gal between December 1985 and February 1986. Figure 1 graphs these price changes for Tesoro royalty oil and Anchorage retail fuel prices.

Table 2 presents the prices of royalty oil (paid by MAPCO Petroleum Company), unleaded regular gasoline (self service), and heating fuel No. 1 (also called Arctic Diesel) in Fairbanks. Unfortunately, consistent retail price data are not readily available for Fairbanks, particularly in the case of heating fuel prices. Nevertheless, we can

---

[1]Tesoro began receiving royalty oil under a new 26,000 bpd contract in October 1985--in addition to its existing 46,000 bpd contract. We weighted the two separate royalty oil contract prices in order to obtain an average price for this memorandum.

make the following general observations about the prices.

1) MAPCO royalty oil prices did not change markedly during 1985, but the price dropped about 33 percent between December 1985 ($17.30/barrel) and February 1986 ($11.64/barrel).

2) Unleaded regular gasoline retail prices increased over 7¢/gal during 1985 and then remained virtually unchanged until early April 1986 when a survey by the Community Research Center (Fairbanks North Star Borough) noted an average drop of about 9¢/gal (or six percent).

3) Heating fuel No. 1 retail prices declined about 10¢/gal between September 1985 and early April 1986.

* * * * *

I hope this information is useful. Please contact me if I can be of further assistance.

GK

TABLE 1
COMPARISON OF ROYALTY OIL AND RETAIL GASOLINE AND HEATING FUEL PRICES
IN ANCHORAGE: 1985-1986

Date	Tesoro Royalty Oil Price ($/Barrel)	Retail Price: Unlead Reg Gas ($/gal)	Retail Price: Heating Fuel #2 ($/gal)
January 1985	$16.95	$1.268	$1.117
April	16.90	1.225	1.115
June	16.97	1.261	1.115
September	16.91	1.274	1.115
October‡‡	17.06	1.192	1.104
November	17.07	1.197	1.107
December 1985	17.13	1.200	1.134
January 1986	15.53	1.198	1.136
February	10.88	1.196	1.132
March	na	na	na

‡‡Beginning in October 1985, the royalty oil price is weighted to account for different prices under two separate contracts.

Sources: Royalty prices: Royalty Accounting Section, Dept. of Natural Resources.
Retail prices: Bureau of Labor Statistics, U.S. Dept. of Labor.

Prepared by the House Research Agency, April 1986.

FIGURE 1

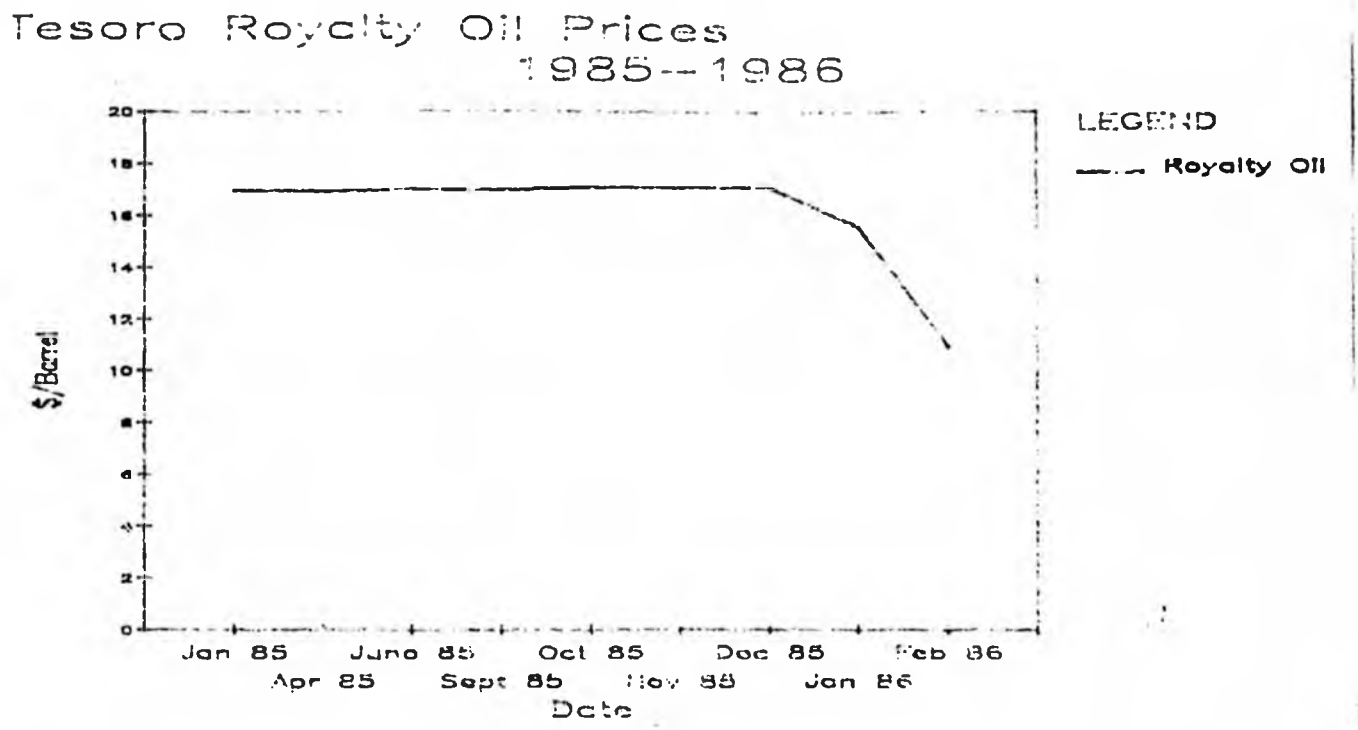
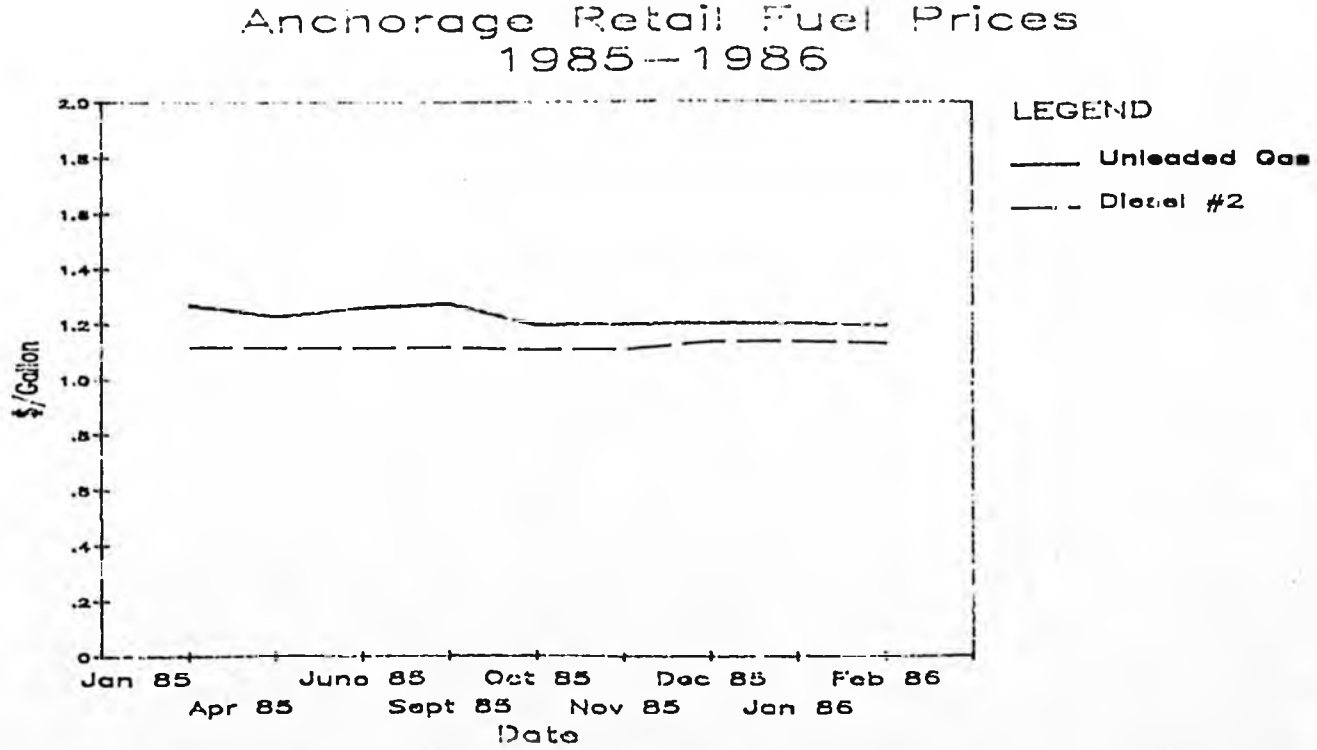


FIGURE 2



Prepared by the House Research Agency, April 1986.

TABLE 2
COMPARISON OF ROYALTY OIL AND RETAIL GASOLINE AND HEATING FUEL PRICES
IN FAIRBANKS: 1985-1986

Date	MAPCO Royalty Oil Price ($/Barrel)	Retail Price: Unlead Reg Gas ($/gal)	Retail Price: Heating Fuel #1 ($/gal)
January 1985	17.13	1.299	na
March	--	1.291	na
April	17.20	na	na
June	17.25	1.312	na
September	17.09	1.347	1.098
October	17.15	na	na
November**	17.13	na	na
December 1985	17.30	1.373	na
January 1986	16.34	1.375	na
February	11.64	na	na
March	na	1.373	na
April	na	1.285	0.990

**MAPCO begins producing gasoline at the North Pole refinery.

Sources: Royalty prices: Royalty Accounting Section, Dept. of Natural Resources.
Retail prices: Community Research Center, Fairbanks North Star Borough and Alaska Dept. of Law.

Prepared by the House Research Agency, April 1986.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☒ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 11, 1986

The Honorable Bill Sheffield
Governor
State of Alaska
P.O. Box A
Juneau, AK 99811

Dear Governor Sheffield:

Enclosed is my office's report on Fairbanks gasoline prices, as requested by your letter of January 13, 1986. As you know, during the last year gasoline prices in Fairbanks have increased, during a time when crude oil prices have decreased substantially.

Our investigation looked at all levels of the gasoline distribution system in Fairbanks: retail, wholesale, distributor, and refinery. Our conclusion is that the higher prices are the result of price increases at the refinery level. That is, the refineries are charging more for refined gasoline, even though they are paying less for the crude oil they use to make the gasoline. This price increase has been entirely passed on through the distribution chain to the Alaska consumer.

There is no law against charging high prices, as far too many Alaskans can testify. However, this situation is particularly deplorable. Alaskans are being paid less and less for the state royalty oil that goes into the refinery, but are being charged more for the product that comes out of the refinery.

Sincerely yours,

Harold M. Brown
Attorney General

HMB:RDM:cck
Enclosure:

cc: Hon. Mike Davis
Alaska State House of
Representatives

FAIRBANKS GASOLINE REPORT

February, 1986

The Fairbanks North Star Borough Assembly passed a resolution on December 9, 1985, requesting that the Governor investigate the price of gasoline and fuel oils in Interior Alaska. The Assembly asked for an explanation of why retail prices for gasoline and fuel oils in Interior Alaska have increased during a time when (1) world oil prices have declined, (2) the supply of crude oil exceeds the demand, and (3) retail gasoline and fuel oil prices have declined in many Lower 48 markets. The Governor referred the matter to the Attorney General for investigation.

The Attorney General's investigation focussed primarily on the price of motor gasoline at the refiner, wholesale, and retail levels in the Fairbanks and North Pole area. Where appropriate, the Fairbanks gasoline market was compared to the Anchorage and Juneau markets. Additionally, the investigation examined the Fairbanks home heating oil market, as requested by the Borough Assembly's resolution.

In preparing this report, the Attorney General's Office interviewed numerous petroleum product distributors, gasoline retailers in Fairbanks and North Pole, state economists, and industry representatives familiar with the Anchorage, Fairbanks,

and Juneau gasoline markets. 1/ Several subpoenas for testimony and documents were issued pursuant to the Attorney General's authority under the Alaska Restraint of Trade Act, AS 45.50.562 -- AS 45.50.596.

This report contains a general summary of our findings. Most of the individuals and corporations who provided information did so under the condition that some or all of the specific information related to us be kept confidential from their competitors. Additionally, information received pursuant to the Alaska Restraint of Trade Act is confidential as a matter of law. AS 45.50.492(e). Therefore, the material presented in this report is of necessity general in nature. In all instances, the prices charged, volumes of gas sold, and other information have been verified independently from more than one source.

A. General Market Characteristics and Comparisons

1. Fairbanks

Most gasoline retailers in Fairbanks purchase their gasoline from independently-owned distributors known as "jobbers," who own bulk fuel storage facilities. The jobbers purchase bulk fuel either from Tesoro's bulk fuel storage

---

1/ For a more complete description of the Juneau gasoline market, please refer to the Attorney General's report concerning that subject dated May 13, 1985.

facility in Fairbanks, from Tesoro's Nikiski refinery via Alaska Railroad shipments, or from the Mapco refinery in North Pole. The Mapco refinery began selling motor gasoline as of October 31, 1985.

The four motor gasolines sold on the retail level in Fairbanks are Chevron, Tesoro, Texaco, and Union Oil of California. The Chevron, Texaco, and Union jobbers each mix a unique additive package into the Tesoro or Mapco fuel they purchase before selling it as brand-name gasoline.

Within a rough five-mile radius of the downtown Fairbanks core area there are 32 retail gas stations. This area includes the City of Fairbanks and the Chena Gold Stream, University, and Steese fire service areas, and has an approximate population of 48,000 persons. Consequently, there is one gas station in the Fairbanks area for about every 1,500 people. These stations range from complete-service branded gas stations to convenience stores with gas pumps to unbranded "pumps-only" self-serve operations.

2. Anchorage

The Anchorage retail market offers the same four branded motor gasolines sold in Fairbanks. All motor gasolines sold in Anchorage originate from Tesoro's Nikiski refinery. Chevron, Texaco, and Union each have product exchange agreements with Tesoro under which they receive gasoline in Anchorage in

return for delivering a similar quantity of crude oil or refined gasoline to Tesoro at designated Lower 48 locations. Chevron, Texaco and Union "additize" Tesoro gasoline before selling it in the Anchorage area as their own branded product. Unlike the jobber system in Fairbanks, most retailers in Anchorage buy gasoline directly from bulk plants owned by the major companies. There is approximately one gas station for every 2,300 persons in Anchorage.

3. Juneau

Juneau area retailers buy gasoline directly from one of just two bulk fuel suppliers: a Chevron commission agent and a Union distributor. Juneau area gasoline originates from west coast refineries in the Lower 48 and from Tesoro's Nikiski refinery. There is approximately one gas station per 3,200 persons in the Juneau-Douglas area.

B. Alaska Gasoline Retailers Passed on Wholesale Price Increases to Consumers during 1985

According to retail gas price data complied by the Community Research Center of the Fairbanks North Star Borough, the average per gallon retail price of leaded regular gas in Fairbanks increased by 7.9 cents between January 1985 and December 1985. This figure exceeds the 7.3 cent per gallon increase over the same period in the leaded regular wholesale price by .6 cents per gallon. See Appendix A, Price Comparison Charts, and Appendix B, Price Comparisons.

Fairbanks Community Research Center data shows a 7.4 cent per gallon increase in the average retail price of unleaded regular between January 1985 and December 1985. This also exceeds the 6.8 cents per gallon increase over the same period in the wholesale price paid by Fairbanks retailers by .6 cents per gallon. It appears that Fairbanks retailers passed the wholesale price increases they experienced in the last year on to Fairbanks consumers without significantly increasing their profit margins.

Anchorage retail prices for leaded and unleaded regular gas increased by an average of about 8 cents and 9.7 cents per gallon, respectively, between January 1985 and January 1986. These average retail price increases match the average wholesale price increase of 8.0 cents per gallon during the same period in the case of leaded regular, and slightly exceed the average wholesale price increase of 8.0 cents per gallon in the case of unleaded regular. Thus, Anchorage retailers also passed along wholesale price increases directly to local consumers.

Juneau retail prices for leaded and unleaded gas each increased by an average of 2.5 cents per gallon between January 1985 and January 1986. The retail price increases considerably exceeded the average wholesale price increases of .8 cents (leaded) and 1.8 cents (unleaded) over the same period. Therefore, Juneau retailers not only passed along wholesale price

increases to the local consumer, but increased their profit margins as well.

C. Profit Comparisons

"Gross Profit Margin Per Gallon" is used by the industry to describe the difference between a retailer's per gallon sales price and the per gallon wholesale price, including federal tax (9 cents per gallon), state tax (8 cents per gallon in Alaska) and any local tax (4 percent in Juneau, none in Fairbanks or Anchorage). The "gross profit margin per gallon" is calculated prior to deduction of overhead costs such as utilities, salaries, insurance, rents/mortgages, etc.; and often varies according to grade of gasoline (leaded, unleaded, supreme, or diesel), type of service (self-serve or full serve), and method of payment (cash or credit). Many, but not all, stations charge more for credit card purchases than for cash transactions. Sales volume also varies according to grade, type of service, and method of payment.

When the weighted average is computed for all gross profit margins at a particular service station, the result is what the industry refers to as the "pool margin." Pool margins for Fairbanks dealers average about 18 to 22 cents per gallon, as compared to 9 to 11 cents per gallon for Anchorage dealers and about 21 to 23 cents per gallon for Juneau dealers.

Fairbanks dealers pump an average of about 65,000 -- 70,000 gallons of gas per month, although there are a number of gasoline retailers in Fairbanks that sell either substantially above or below that average. At 70,000 gallons per month, and with a 20 cent per gallon pool margin, a Fairbanks retailer's annual gross profits from gasoline sales would total $168,000.

Anchorage and Juneau dealers, on the average, pump about 100,000 gallons monthly, although as with Fairbanks retailers, there are a number that sell substantially above or below the average. At 100,000 gallons per month, and with a 10 cent per gallon pool margin, an Anchorage retailer's annual gross profits from gasoline sales would total $120,000. At 100,000 gallons monthly, and with a 22 cent per gallon pool margin, a Juneau retailer's annual gross profits from gasoline sales would total $264,000. Thus, Fairbanks is squarely in the center of Alaska's three largest cities as far as retail gasoline profits are concerned.

Slightly higher average overall operating expenses translate into an average 3 cents per gallon higher cost of doing business for Fairbanks retailers as compared with their Anchorage counterparts. Utilities and rents/mortgages are chiefly responsible for the operating cost differential between Anchorage and Fairbanks. Salaries paid by Fairbanks retailers are, on the average, only marginally higher than those paid by Anchorage

retailers, and insurance costs run about the same for each location.

Thus, Fairbanks retailers make greater profits per gallon than their Anchorage counterparts. To illustrate, the Fairbanks-Anchorage average retail price differential is 22.5 cents per gallon. Subtracting the 11.8 cent per gallon average wholesale price differential and the 3.0 cent per gallon higher cost of doing business from this figure leaves a 7.7 cent per gallon higher average profit margin for Fairbanks retailers than for Anchorage retailers. This 7.7 cent per gallon difference translates into annual profits of about $65,000 for the average Fairbanks retailer.

D. Comparative Market Dynamics: Fairbanks and Anchorage

Although Anchorage and Fairbanks are both railbelt communities, the market dynamics of the two cities are quite different. The 22.5 cent per gallon average retail price difference between Fairbanks and Anchorage is only partially explained by the approximately 11.8 cent per gallon higher wholesale prices paid by Fairbanks retailers and the 3.0 cent per gallon higher cost of doing business in Fairbanks.

Anchorage profit margins have been less that half of those of Fairbanks dealers for the last several years. This is primarily because of the presence of high volume discount retailers in the Anchorage market. Low profit margins in

Anchorage means that retail prices there have been held at the lowest levels in Alaska for a protracted period. Industry officials consistently characterize the Anchorage market as "fiercely competitive."

It appears that the absence in Fairbanks of a high volume price cutter along the lines of those currently found in Anchorage has enabled Fairbanks dealers to hold on to their higher profit margins. With one gas station in Fairbanks for every 1,500 people, compared with one for every 2,300 people in Anchorage, competition should be stronger. 2/

E. North Pole: Potential Retail Price Reductions

North Pole is a community of about 1,600 people and is located 13 miles southeast of downtown Fairbanks. There are three gas stations at the intersection of the Richardson Highway and Badger Road/Santa Claus Lane that, according to a November 4, 1985 article in The North Pole Paper, were engaged at the time in a "gas war." All three stations were selling gas at self-serve cash prices of $1.149 (leaded) and $1.209 (unleaded), and one

---

2/ This is not to say that there are no high volume gas stations in the Fairbanks area. Two high volume stations are found in the South Cushman Street area of Fairbanks. However, after differences in wholesale prices and operating costs are taken into account, high volume stations in Fairbanks do not cut prices anywhere near as much as the Anchorage discount stations.

station reportedly claimed to be selling gasoline below cost. During the week of January 13, 1986, prices at these stations had increased slightly to $1.189 (leaded) and $1.249 (unleaded). This was roughly 12.5 cents per gallon cheaper than the Fairbanks price.

The prices at the North Pole stations have over a period of months remained at least 12 to 13 cents below average self-serve cash prices in Fairbanks. The station owners we interviewed stated that these low prices were a direct result of intense competition among the three stations for the commuter trade. The North Pole stations still make an approximate 5.0 cents per gallon profit on these sales.

Even though the three North Pole stations are 13 miles from downtown Fairbanks, if this price difference persists over a long period of time, it may very well have a lowering effect on Fairbanks prices. The retailers we interviewed were acutely aware of the North Pole prices. One Fairbanks dealer expressed great concern over this price difference. Another reported that his customers have asked him for explanations of why retail prices are higher in Fairbanks than in North Pole. A third dealer stated that he is watching the gas pricing of the North Pole stations very closely; and that if the North Pole retail marketing strategy of waging gas wars reaches the Fairbanks market, it will have a considerable effect on Fairbanks prices.

F. Heating Oil Prices

Unlike motor gasoline prices, number 1 and number 2 heating oil prices in the Fairbanks areas have been on the decline. The Fall 1985 Community Research Quarterly published by the Fairbanks North Star Borough Community Research Center indicates that the average retail prices for number 1 and number 2 heating oil have decreased by 5.5 cents and 5.2 cents per gallon respectively, between September 1984 and September 1985; (see page 83 of that publication).

The average per gallon price in September 1985 for number 1 heating oil was $1.098 and the average for number 2 was $1.04. A January 1986 phone survey of home heating oil prices in Anchorage revealed an average per gallon price for number 1 of $1.195 and an average price for number 2 of $1.115. (Both Fairbanks and Anchorage prices cited here are based on automatic delivery of 500 gallons of heating oil.) Thus, home heating oil prices in Fairbanks are not only declining, but also average 9.7 cents (number 1) and 7.5 cents (number 2) per gallon less than Anchorage home heating oil prices.

CONCLUSIONS

A. Higher Margins in Fairbanks Due to Weak Competition

The Attorney General's Office examined the possibility that price differences between Anchorage and Fairbanks are due in part to violations of the state's antitrust laws. However, we have found no evidence to date which indicates any widespread conspiracy on the part of Fairbanks retailers to engage in price fixing, nor is there any indication that such activity has occurred at the jobber or refiner levels. 3/

Instead of uncovering antitrust violations, the investigation revealed that the higher Fairbanks profit margins are the result of unaggressive pricing by retailers. Price competition in the Fairbanks retail gas market is sluggish, despite a comparatively high concentration of retail gas stations. The high per capita gas station ratio in Fairbanks should encourage much more vigorous competition than presently exists.

3/ There are indications that at least one gas station attempted to fix prices by trying to convince a nearby competitor to join in a plan to raise prices. Further investigation, however, revealed that the competitor who was approached with the price-fixing proposal did not agree to it. In the absence of an agreement by two or more competitors to fix, raise, maintain, or otherwise manipulate prices, there is no conspiracy in restraint of trade actionable under state antitrust laws.

Instead, Fairbanks dealers are able to maintain consistently high prices and thus high profit margins. When asked to explain this phenomenon, one Fairbanks dealer offered the following explanation:

> Everybody here seems to have a feel for what it costs to operate, and they're not really trying to prove anything to anybody. Tomorrow, if I wanted to, I could knock 10 cents a gallon off of all of my prices. I'll pick up volume for maybe one or two days. But the minute that's up, (my competitors) are going to see that I went down and I guarantee that within two or three days they'll match me. So therefore, there's no advantage for me to be down there. The only advantage is, it would make us all go broke, and that's just common sense. In this area up here, we know that, and we know that's basically how it's worked for years up here. Everybody watches everybody. By watching everybody in that aspect, you really kind of, I would say, control the market. I would never say it's a form of price fixing, but it's a form of maintaining your margins, I would say.

To the extent that these comments are representative of Fairbanks dealers generally, they reflect a less-than-aggressive attitude toward competitive pricing, and are consistent with some of the conclusions reached in a February 1, 1983 report entitled, "Alaska Petroleum Product Pricing" prepared for the Alaska Senate Resources Committee by Louis F. DeLong and Lloyd M. Pernela of Pacific-Alaska, Inc. The DeLong and Pernela report, which covered the period of 1980 -- 1982, arrived at the following conclusions:

> The prices of motor gasoline in Fairbanks at the retail level increased significantly during 1980,

> a period of increased costs of crude oil. Starting in early 1981 until today (February 1, 1983), gasoline prices have remained steady in spite of significant decreases in crude costs. The motor gasoline retail market has reacted to cost increases on the upside but not on the downside. This lack of a market reaction to declining costs seems to indicate a "structured" noncompetitive retail environment in Fairbanks.

DeLong and Pernela, 1983, at 83.

We were told by several sources that by summer's end this year, between 4 and 12 additional gas stations of various types will have opened in the Fairbanks area. This would result in the highest concentration of gas stations per capita in Alaska, if not in the entire Northwest. There is speculation that these new stations will sell gasoline substantially below current prices to establish a market share. In that event, existing gas stations would be forced to lower prices to preserve their current market share. Whether this scenario actually becomes a reality, of course, remains to be seen.

As matters stand, we conclude that weak competition and tacit agreement between Fairbanks retailers "not to rock the boat" has kept their profit margins high during the last several years. This does not explain, however, why Fairbanks gasoline retail prices have increased during the last year, when in-state oil prices have dropped significantly. The increase in retail prices does not appear to be the result of increased profit margins at the retail level. Rather, the retailers have simply

passed on price increases at the wholesale level to the Fairbanks consumer. These wholesale price increases, we have determined, are due to price increases at the refinery level. 4/

B. Alaska Price Increases Result from High Refinery Prices

The price of crude oil purchased by Tesoro, Alaska's principal in-state refiner of motor gasoline during 1985, is governed largely by a long-term royalty oil supply contract with the State of Alaska. Under this contract, Tesoro's purchase price is set at the weighted average of in value amounts reported monthly by Prudhoe Bay producers and is subject to adjustment in accordance with the current litigation over the value of North Slope oil production. Unlike the rapidly fluctuating world spot prices, the reported in value North Slope royalties, and hence the price under Tesoro's long-term contract, generally react slowly to changes in the world oil market. 5/

4/ See Appendix B. The refinery price for leaded gasoline increased by 6.2 cents per gallon between January, 1985 and January, 1986. The jobbers passed this increase (with a little extra) on to the retailers, increasing the wholesale price by 7.3 cents per gallon during the same period. Unleaded gasoline went up 6.8 cents per gallon at the refinery, and 6.8 cents per gallon at the wholesale level. Thus, the refinery price increase for unleaded was passed-through by the jobbers to the retailers with only a slight surcharge.

5/ Between early December 1985 and mid-February 1986, world spot

The slow decline in royalty contract prices does not provide an explanation of why gas prices in Fairbanks have increased over the last year. Despite a documented one dollar per barrel decline in reported Prudhoe Bay royalty oil prices over the last year, our office has independently verified that Alaska's major gasoline producer has actually raised its selling prices during that time.

Tesoro is the only in-state refiner which produced motor gasoline throughout the entire calendar year 1985. As mentioned earlier, Mapco only started refining motor gasoline as of October 31, 1985. All gasoline sold in Fairbanks and Anchorage is either Tesoro or Mapco gasoline, regardless of what brand name is on the pump. The bulk of Tesoro's Nikiski refinery feedstock in 1985, approximately 40,000 barrels per day, comes

---

market prices have dropped by more than $10 per barrel, to the $15 per barrel range. However, the posted price of a major Prudhoe Bay producer, Sohio, has only fallen $4 per barrel in that period. Further, that decline did not occur until February 1986.

The decline resistance of North Slope crude oil prices is amplified for in-state refiners since there is a two-month lag period before price changes are passed on to Alaska refiners. This is due to the method used to report and calculate the value of royalty oil. Thus, the current decline in spot market prices will not be reflected in state royalty oil contracts until this spring.

from the long-term state Prudhoe Bay royalty oil contract described above.

Because of the lag in the price changes under the royalty oil contracts, the per barrel price billed to Tesoro for royalty oil in January, 1985 was based on the in value amount reported by the Prudhoe Bay producers for the month of November 1984. That price, as most recently revised, was $17.96 under Tesoro's 40,000 barrel-per-day contract.

The per barrel price billed to Tesoro under the same contract in January 1986, based on November 1985's reported in value amount, was $16.99. Therefore, the per barrel price paid by Tesoro for the bulk of its 1985 Prudhoe Bay feedstock decreased by 97 cents between January 1985 and January 1986. This amounts to a 2.3 cent reduction on a per gallon basis.

Despite the decrease in Tesoro's price for the bulk of its 1985 feedstock, the wholesale prices for all four brands of gasoline in Anchorage and Fairbanks increased by an average of about 6.5 cents per gallon over the last year.

The inverse relationship between decreasing 1985 royalty oil prices and increasing 1985 selling prices is a strong indication that Tesoro and the oil companies which sell Tesoro gasoline under their brand names have been pursuing a "what the market will bear" pricing strategy for selling motor gasoline in Alaska. Over the last year, increases established by oil

companies in their Alaska selling prices have been passed on throughout the petroleum distribution chain to retailers, and ultimately to Alaskan consumers.

Conversely, reductions in crude acquisition costs during 1985, insofar as such data is available to us, do not appear to have been passed along by the oil companies. In this regard, the DeLong and Pernela report, on page 82, asserts that one reason Alaska refineries are highly profitable is that "... the reductions in crude pricing are not being reflected in the Alaska market price of the refined products."

A sustained lowering of crude supply prices, in traditional economic theory, should result in an eventual lowering of retail prices to consumers. However, Alaska refiners appear to be stretching their profit margins by increasing their prices despite the lower cost of crude oil. As reported in an Anchorage Daily News article dated February 12, 1986, titled "Alaska Won't See Cheaper Gas Soon," oil industry officials expressed uncertainty as to whether and when Alaska's consumers will benefit from the kind of retail gas price reductions currently enjoyed by consumers in many Lower 48 markets. The consumer certainly will not see lower gas prices at the pump when prices at the refinery are going up.

APPENDIX A

PRICE COMPARISON SHEET

(Self-Serve Cash Prices)

I. January 1985 Leaded Regular Gas Average Per Gallon Prices

	Fairbanks	Anchorage	Juneau
Average Jobber Buying Price	$1.031	$0.943	N/A
Average Wholesale Price	$1.080	$0.955	$1.165
Average Retail Price	$1.237	$0.990	$1.405
Average Retail Profit Margin	$0.157	$0.035	$0.240

II. January 1986 Leaded Regular Gas Average Per Gallon Prices

	Fairbanks	Anchorage	Juneau
Average Jobber Buying Price	$1.093	$1.008	N/A
Average Wholesale Price	$1.153	$1.035	$1.173
Average Retail Price	$1.316	$1.070	$1.430
Average Retail Profit Margin	$0.163	$0.035	$0.257

III. January 1985 Unleaded Regular Gas Average Per Gallon Prices

	Fairbanks	Anchorage	Juneau
Average Jobber Buying Price	$1.077	$0.989	N/A
Average Wholesale Price	$1.132	$1.002	$1.205
Average Retail Price	$1.301	$1.070	$1.464
Average Retail Profit Margin	$0.169	$0.068	$0.259

IV. January 1986 Unleaded Regular Gas Average Per Gallon Prices

	Fairbanks	Anchorage	Juneau
Average Jobber Buying Price	$1.141	$1.056	N/A
Average Wholesale Price	$1.200	$1.108	$1.223
Average Retail Price	$1.375	$1.167	$1.489
Average Retail Profit Margin	$0.175	$0.059	$0.266

Note: All prices include 17 cents federal/st te tax.

APPENDIX B
PRICE COMPARISONS

I. JOBBER BUYING PRICES

Many fuel purchaser who buy motor gasoline at jobber buying prices hold a qualified dealer's license which enables them to make fuel purchases on a tax-exempt basis. Some companies who are not qualified dealer license holders are able to purchase motor gasoline from an oil company at jobber buying prices, but such purchases are not tax-exempt. For the sake of uniformity and for ease of comparison with wholesale and retail prices presented later in this report, the jobber buying prices presented in this section are inclusive of federal and state tax.

A. Fairbanks

In January 1985, the average per gallon price of gasoline paid by Fairbanks jobbers to the major oil companies, including 17 cents federal/state tax, was $1.031 for leaded regular and $1.077 for unleaded regular. By January 1986, the average price for these products had increased to $1.093 (leaded) and $1.41 (unleaded). This resulted in an average per gallon increase over the last year of 6.2 cents (leaded) and 6.4 cents (unleaded).

B. Anchorage

Even though most Anchorage retailers do not buy gasoline from jobbers, the major oil companies maintain jobber buying prices for the Anchorage area, as some retailers are served by

jobbers. In January 1985, the average per gallon jobber buying price of gasoline in Anchorage, including 17 cents federal/state tax, was $.943 (leaded) and $.989 (unleaded). By January 1986, these averages had increased to $1.008 (leaded) and $1.056 (unleaded), representing average per gallon annual increases of 6.6 cents and 6.7 cents, respectively.

C. Juneau

Since branded motor gasolines in Juneau are sold to retailers by bulk facilities owned by Chevron and Unocal rather than by independently-owned jobbers, no jobber buying prices are available for Juneau.

D. Fairbanks/Anchorage Jobber Buying Prices

In January 1985, Fairbanks jobber buying prices averaged 8.8 cents per gallon higher than for both leaded and unleaded gasoline than Anchorage jobber buying prices. In January 1986, Fairbanks jobber buying prices averaged 8.5 cents per gallon higher for both leaded and unleaded gasoline than Anchorage jobber buying prices.

II. WHOLESALE PRICES

A. Fairbanks

In January 1985, the average per gallon delivered wholesale price of gasoline paid by Fairbanks retailers, including 17 cents federal/state tax, was $1.08 for leaded regular and $1.132 for unleaded regular. By January 1986, the

average price paid by Fairbanks retailers for these products increased to $1.153 and $1.20 respectively. Thus, over the last year, the average wholesale price increased by 7.3 cents per gallon for leaded regular and 6.8 cents per gallon for unleaded regular.

B. Anchorage

In January 1985, the average per gallon delivered wholesale price of gasoline paid by Anchorage retailers was $.955 for leaded regular and $1.002 for unleaded regular. By January 1986, these averages increased to $1.035 and $1.108 respectively. Thus, over the last year, the average wholesale price increased by 8.0 cents per gallon for leaded regular and 8.0 cents per gallon for unleaded regular. In early 1985, Anchorage average wholesale prices were lower than those in Seattle. However, at present, Seattle wholesale prices average about 10 cents lower than those in Anchorage.

C. Juneau

In January 1985, the average per gallon delivered wholesale price of gasoline paid by Juneau retailers was $1.165 for leaded regular and $1.205 for unleaded regular. By January 1986, these figures were $1.173 and $1.223 respectively. This represents an average net increase of .8 cents (leaded) and 1.8 cents (unleaded) as between January 1985 and January 1986. However, Juneau wholesale prices actually rose to a mid-1985

average of about 4 cents per gallon higher than 1985 year-end levels.

D. Fairbanks/Anchorage/Juneau Wholesale Price Comparison

In January 1985, Fairbanks retailers paid an average of 12.5 cents per gallon more for leaded regular and 13.0 cents per gallon more for unleaded regular than did Anchorage retailers. At the same time, Juneau retailers paid an average of 8.5 cents (leaded) and 7.3 cents (unleaded) per gallon more than Fairbanks retailers.

In January 1986, Fairbanks retailers paid an average of 11.8 cents per gallon more for leaded regular and 11.8 cents per gallon more for unleaded regular than did Anchorage retailers. In the same month, Juneau dealers paid an average of 2.0 cents (leaded) and 2.3 cents (unleaded) more than Fairbanks retailers.

Freight and loading costs associated with transporting motor gasoline from Anchorage to Fairbanks have ranged from about 9 to 12 cents per gallon, depending upon the quantity of fuel shipped.

III. RETAIL PRICES

A. Leaded Regular

During the week of January 13, 1986, with one or two exceptions, cash prices for self-serve leaded regular gasoline in the Fairbanks area (excluding North Pole) ranged from $1.279 to $1.349 per gallon, and averaged $1.316 per gallon. During the

same week, leaded gas at self-serve cash prices in Anchorage sold at between $1.039 and $1.099, with an average of about $1.07 per gallon. In Juneau, with one or two exceptions, self-serve cash prices for leaded regular ranged from $1.319 to $1.469, with an average of $1.43 per gallon.

B. Unleaded Regular

During the week of January 13, 1986, with one or two exceptions, cash prices for self-serve unleaded regular gasoline in the Fairbanks area ranged from $1.319 to $1.409 with an average of $1.375. Unleaded self-serve cash prices in Anchorage during the same week ranged from $1.139 to $1.199, and averaged about $1.167 In Juneau, with one or two exceptions, unleaded regular cash prices ranged from $1.369 to $1.519, and averaged $1.489. (Note: For about a 35-day period at the end of 1985, several Juneau retailers lowered their prices by approximately 20 cents per gallon.)

C. Average Retail Price Comparisons

Fairbanks leaded regular self-serve cash prices during the week of January 13, 1986 averaged 24.6 cents per gallon higher than those in Anchorage, and 11.4 cents per gallon lower than those in Juneau. Fairbanks unleaded regular self-serve cash prices during the same week averaged 20.8 cents per gallon higher than those in Anchorage, and 10.5 cents per gallon lower than those in Juneau. Overall, Fairbanks self-serve cash prices

averaged about 22.5 cents per gallon higher than Anchorage prices, and about 11.0 cents per gallon lower than Juneau prices during mid-January 1986.

7/21

COMMITTEE REPORT

HOUSE

RESOURCES

(7)

FURTHER: FINANCE

5/11/85

Date: 2/20/86

The Committee on HOUSE SPECIAL COMMITTEE ON OIL & GAS has had HB 445

"An Act requiring in-state refiners to submit and the Department of Commerce and Economic Development to collect information concerning the purchase and sale price of royalty oil and gas and fuel products by in-state refiners."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 445 (O&G) [ ] same title [✓] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [✓] New Fiscal Note [ ] Zero Fiscal Note Attached

[✓] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

[signature]

MEMBERS HAVING OTHER RECOMMENDATIONS:

[signature] MARROU NO REC

[signature] DON'T PASS - MORE BURIERTIC PAP

[signature] NO REC

[signature] NO REC COTTEI

[signature] NO REC

[signature] NO REC SUND

[signature]

CHAIRMAN

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 445
Title : An Act relating to information on royalty oil and gas.

Sponsor : Marco A. Pignalberi
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Commerce & Economic Development
BRU : Economic Development Advocates

Components : Research and Support

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	55.0	58.0	60.6	63.0	65.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	55.0	58.0	60.6	63.0	65.5
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

DCED plans to subcontract the task in the form of a telephone survey and report the results of this survey on a monthly basis. It is assumed that transactions of royalty oil and refined products, as well as transaction prices, will be reported to DCED by oil producers and refiners.

Prepared by : Orhan Yildiz, Chief Economist
Division : Research and Support
Phone : 465-2079
Date : February 13, 1986

Approved by Commissioner : _____
Agency : Commerce & Economic Development
Date : 2/13/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

3365m21386a

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 445
Title : Requiring in-state refiners to submit and Dept. of Commerce and Economic Development to....
Sponsor : Rep. Pignalberi
Requestor : Rep. Pignalberi
Date of Request : 2-6-86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Petroleum Management

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

No fiscal impact.

Prepared by : Bob Butts [signature] Phone : 465-2400
Division : Oil and Gas Date : 2-6-86

Approved by Commissioner : [signature], Deputy Date : _____
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

February 7, 1986

The Honorable Marco Pignalberi
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Pignalberi:

As you requested, the Department has examined House Bill 445, which is entitled "An Act relating to information on royalty oil and gas." The bill calls for the submission and gathering of a variety of data to enable precise estimates of the consumer benefits attributable to in-state royalty oil contracts. The availability of such data would enhance considerably the department's ability to address this very complex and recurring question.

The department annually gathers the data mentioned in this bill that pertain to the regional and intrastate movement of refined products. That task represents a large share of the staff time embodied in the Historical and Projected Oil and Gas Consumption report. As was mentioned in my letter to you of February 4, 1986, some reporting requirements are also contained in the royalty contracts held by Tesoro and Chevron. A similar clause appears in the Petro Star/Chevron royalty contract presently before the Legislature.

With some exceptions, the new data sought under House Bill 445 relates to wholesale and retail product prices. The implementation of the reporting and data gathering system for those prices is the department's main area of concern with this bill. The foremost difficulty with obtaining such data stems from the language of the royalty oil contracts presently in force or before the Legislature. MAPCO, Tesoro, and Chevron, which together nearly constitute the State's refining industry, did not negotiate their long-term royalty oil contracts with price reporting provisions. Such a provision would doubtless be regarded as a material item by those refiners.

The absence of direct wholesale information from those refiners severely undermines the ability of this or any other department to gather such data. Of the first set of four data items listed in this legislation, the refinery

gate sales price (3) and the wholesale and market exchange sales price (4) would be affected by this limitation. As presently written, a number of areas would also be left to the interpretation of the agency charged with this task. For example, the distinction between refinery gate, wholesale, and market exchange prices is not clear.

The interpretation of the term "regional" as it corresponds to "average" may also prove troublesome. For instance, the second data item shown in the bill refers to the retail price of refined products. While such prices would be relatively easy to gather, they vary substantially within the State according to region. Further, considerable price variation can be expected within any region selected since transportation costs, even over small distances, account for much of that variation. A hypothetical region such as Western Alaska, where retail prices in Dutch Harbor are markedly less than those of Bethel, is a case in point. The retail price differentials between Fairbanks and remote locations in the Interior region provide a further example. Since there are nearly as many "retail price regions" as there are remote settlements in Alaska, the attempt to produce average retail prices on a regional basis, if this is intended, would not yield meaningful figures.

The apparent utility of the data requested is to learn the price effects of state royalty oil contracts. However, the task of relating retail prices to refinery gate prices, even when available, is much complicated by the interim activities of transportation and distribution. In that process, the ownership of refined products may change several times before reaching the final consumer. These factors are a prime obstacle to a satisfactory measurement of the price effects of royalty oil contracts to in-state refiners. The measurement of those price effects must entail a comparison to some base case. That base case would be the price of Alaska refined products in the absence of state royalty oil contracts. This in turn depends on the actual cost of refining, including the amortization of refinery capital stock at present value. Such sensitive cost data would not likely be made available to the State. Generally, the price advantages traceable to a royalty oil contract could not exceed the difference between the cost of royalty oil and the cost of alternative feedstocks, plus what value the purchasers may place on the advantages of a long-term contract.

The cost to the department of implementing this bill is very dependent on which agency is given the task of compiling the information, the bill's interpretation, and the degree of cooperation from in-state refiners. As now written, the

fiscal impact in DNR is negligible since the Department of Commerce and Economic Development is responsible for compiling the information. If it is decided to give DNR this responsibility and under the most demanding interpretation with no cooperation from in-state refiners beyond their present contractual obligations, the department conservatively estimates that the equivalent of one staff member would be permanently assigned to this task. This preliminary estimate is based on a discussion with staff from the University's Institute of Social and Economic Research and the department's previous experience with the annual Historical and Projected Oil and Gas Consumption report.

I hope this is helpful. Please contact Kay Brown if you would like additional information.

Sincerely,

Esther C. Wunnicke
Commissioner

cc: Kay Brown, Director
Division of Oil and Gas

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

February 4, 1986

The Honorable Marco Pignalberi
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Pignalberi:

I am writing in response to your recent information requests of the department regarding mental health lands and royalty oil.

It would be costly and take a great deal of staff time to reproduce a complete set of maps, status plats, and reports on state mental health lands. Instead, we have provided your office a copy of the Alaska-wide map indicating townships containing mental health lands. I also would be willing to meet with you to describe the programs and would gladly put our microfiche records and hard-copy reports at your disposal if you or your staff wish to do research in Juneau or Anchorage. Please let me know if you need anything more on this topic.

The department does not keep a royalty oil chart of the kind that you requested, and it would be expensive and time consuming to undertake the preparation of one. Similar information is available in the historic oil and gas supply/demand report submitted annually to the Legislature. The House Research Agency might be able to prepare a chart like the one you have requested.

In response to your inquiries of January 16 and January 30, 1986, on royalty oil management, I would like to raise several points helpful to your consideration of a bill calling for specific reporting requirements of in-state royalty oil purchasers. Presently, two of the state's four in-state refiners are contractually obligated to report on a monthly basis most of the data listed in your letter. The long-term negotiated royalty contract for Petro Star/Chevron presently before the Legislature also contains those reporting obligations, but on a quarterly basis. The earlier

10-J9LH

Mapco contract contains no regular reporting obligation, however, the contract calls for Mapco to consult with the state prior to exporting refined products from Alaska. (See Sec. 3.3 and 3.3.1 of the contract.)

Section 2.12 of the Tesoro, Chevron, and Petro Star/Chevron royalty oil contracts states in part that the purchaser shall report "the quantity of refined petroleum products produced and marketed in the State of Alaska...." While this section does not explicitly call for the product slate of the purchaser, the purchasers have, as a matter of practice, included their product slate with the monthly report. Petro Star, which has a very narrow product slate, is expected to follow suit. To avoid prospective competitive disadvantages, Chevron has requested that its monthly report be held confidential.

In addition to a more explicit requirement with respect to product slate, the department believes there may be merit to * your suggestion for an export report requirement. However, this information may be roughly deduced by comparing the volume of products marketed in Alaska to the volume of refined products produced in Alaska. The volume of residual oil may be obtained in a similar manner.

As your letter acknowledges, it probably would be difficult at this point to tighten the reporting requirements of Mapco, Tesoro and Chevron. We are also precluded against taking such action with the Petro Star/Chevron contract for two reasons: 1) Petro Star has virtually no capacity for export, and 2) Petrostar's limited product slate may be ascertained by examining its report of the volume of refined products produced in Alaska, as the product ratios of this simple distillation refinery are relatively inflexible. Nevertheless, I believe the reporting requirements you are considering may be of some aid to the department's data * gathering efforts in the future. Naturally, the degree of resistance to these requirements on the part of a potential purchaser is an offsetting factor.

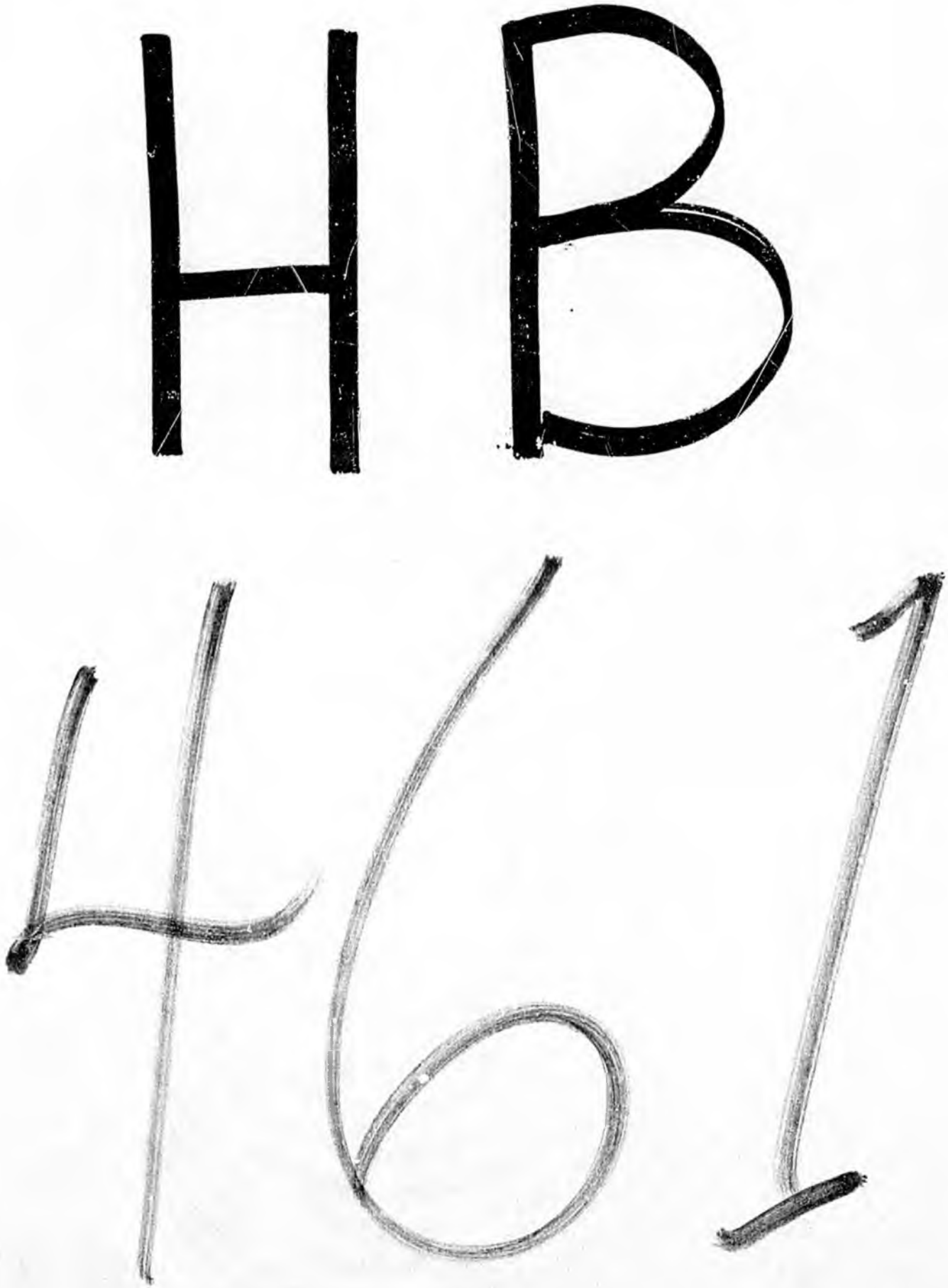
With respect to the additional price related data mentioned in your correspondence of January 30, 1986, the royalty * contracts presently in force or before the Legislature do not call for the reporting of such price information. As for the last two items of that correspondence regarding the volume of oil sold in and exported from the state, I believe you are referring to refined products and perhaps residual oil, all of which is either directly or indirectly attainable from Tesoro, Chevron, and Petro Star.

We are preparing a response to your most recent information request regarding HB 445 and will be in touch with you as soon as our work is complete. If you have any further questions, please contact me or Kay Brown, Director of the Division of Oil and Gas.

Sincerely,

Esther C. Wunnicke
Commissioner

cc: Tom Koester, Department of Law
Kay Brown, Division of Oil and Gas
Tom Hawkins, Division of Land and Water Management
Jim Ayers, Governor's Office


HB
4611

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 461(HESS)
Title : Act relating to grants for water quality enhancement programs;
Pearce, Gruenberg, Uehling, Boucher,
Sponsor : Furnace, Hanley, Martin, Jenkins
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : _____
BRU : _____
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Gary Hayden, Director — Phone : 465-2610
Division : Facility Construction & Operation — Date : 2/04/86

Approved by Commissioner : Bill Ron — Date : 2/4/86
Agency : Department of Environmental Conservation

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Submitted by Representative Drue Pearce

March 12, 1986

Letter of Intent - CSHB 461

This letter of intent is in regard to Section 3 of CSHB 461. In Section 3, AS 46.03.030 is amended to expand eligible costs for grant funds to include costs of testing, research, education, enforcement, and clean-up programs for the purpose of discovering and solving water pollution problems. It is the intent of Section 3 of this legislation to first fund actual clean-up programs. If funds are remaining they may be used for testing, research, education, and enforcement.

Representative Dick Shultz
Co-Chair, House Resources

HOUSE

COMMITTEE REPORT

3/14

(9)

Date referred: 2/26/86

FURTHER REFERRALS: FINANCE

DATE: 3/14/86

The RESOURCES Committee has considered HB 461

"An Act relating to grants for water quality enhancement programs; and providing for an effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[✓] replace with CS HB 461 (Hess) [ ] same title [✓] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [X] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

SHULTZ Dick Shultz

HERRMANN Adelheid Herrmann

CATO Bette Cato

JENKINS Roger Jenkins

PEARCE Drue Pearce

SUND

THOMPSON David Thompson

MILLER (W.P.) M.W. Miller

SIGNING OTHER RECOMMENDATIONS:

Dick Shultz

Co - Chairman SHULTZ

HOUSE

COMMITTEE REPORT

2/26

RESOURCES

Date referred: 1/13/86

FURTHER REFERRALS: FINANCE

DATE: 2/25/86

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee has considered HB 461

"An Act relating to grants for water quality enhancement programs; and providing for an effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with CSHB 461 (HESS) [ ] same title [ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] ero fiscal note

SIGNING DO PASS:

Vice Chair

SIGNING OTHER RECOMMENDATIONS:

co-chairman

co-chairman

co-chairman

HB 461 File Contents

1) HB 461

2) HESS Committee Substitute for HB 461

3) Bill Summary -- Legislative Reporting Service

4) Sectional Analysis -- Tamara Brandt Cook

5) Fiscal Note and Position Paper -- Department of Environmental Conservation

6) Municipality of Anchorage -- letter of support

7) Anchorage Waterways Council -- letter of support

8) Department of Environmental Conservation -- Grants Program History

9) Department of Environmental Conservation -- Criteria System

10) Key Points for Revisions/Amendments to Title 46, Alaska Statutes

11) Alaska Statutes -- Title 46

12) Article regarding water quality

HB 458,cont'd)

Provides for court review of the validity of a regulation by authorizing any person to bring an action in Superior Court for declaratory relief to determine whether the justification of need presents sufficient facts to establish the need for the regulation.

Introduced Jan. 13, and referred to State Affairs and Judiciary Committees.

State Grants (interest on)

HOUSE BILL NO. 459, by Rep. Martin. Gives the recipients of state grant money the option of retaining interest earned on the money, or turning it over to the state for deposit in the general fund. Takes effect July 1, 1986.

Introduced Jan. 13, and referred to Community and Regional Affairs and Finance.

Off-road Vehicles (Registration)

HOUSE BILL NO. 460, by Rep. Hurley. Adds a new chapter to Title 5 (Amusement & Sports), making it unlawful for anyone to operate an off-road vehicle unless it has been registered with the Department of Public Safety, except on the owner's property. The registration fee is $15, valid for 3 years. Provides for issuance of registration certificate and decal; transfer and ownership of off-road education and training program; operation by minors; required safety equipment; retail sales; and use on highway. A violation constitutes a misdemeanor, subject to a fine of up to $500.

Introduced Jan. 13 and referred to the Transportation, Judiciary and Finance Committees.

Water Quality (grants)

HOUSE BILL NO. 461, by Reps.Pearce, Gruenberg, Uehling, Boucher, Furnace, Hanley, Martin and Jenkins. Adds water quality enhancement facilities to those water supply, sewerage and solid waste facilities for which a fund has been established to enable the Dept. of Environmental Conservation to carry out those functions. Also authorizes the department to grant to a municipality from the fund not more than 50 percent of the eligible costs not financed by the federal government of enhancing water quality in bodies of water, if the costs are incurred after July 1, 1986.

Introduced Jan. 13 and referred to the H&SS, Resources and Finance Committees.

Perm. Fund Dividends (disposal)

HOUSE BILL NO. 462, by Rep. Pearce. Authorizes eligible recipients of a permanent fund dividend, or one who is authorized to claim one on behalf of another, to direct that the dividend be paid back into the permanent fund. Directs the Dept. of Revenue to furnish an application form for those who elect to pay dividends into the permanent fund.

HB 357, (cont'd)

required fees and room and board. Also applies to teachers' loans.

School Bus Drivers (licensing)

HOUSE BILL NO. 409, (see page 777, 1985 report). On 1/22 Rep. Furnace added his name as co-sponsor.

Our summary from last year follows:

School Bus Drivers (licensing)

HOUSE BILL NO. 409, by Reps. Jenkins, Larson, Hurley, Hanley, Collins, Pearce, Phillips, Rieger, Thompson, Uehling, and Cotten. Amends the Motor Vehicle Code as it pertains to drivers' licenses (AS 28.15) by adding a new section providing a person may not drive a school bus or a bus transporting school children until the person has applied for and has been issued a license for that purpose. The Dept. of Public Safety is prohibited from issuing the license unless the applicant is at least 19, has had a drivers license for at least a year when he applies, has successfully completed all required driving, written and physical exams, has submitted sufficient information to complete a background check consisting of a fingerprint check of national and state criminal records, and has completed a state approved school bus driver training course or has for the previous two years been licensed by the state to operate a school bus.

Would not allow the Dept. to issue a license to an applicant who has been convicted within the past 20 years of sexual abuse or assault, incest, unlawful exploitation of a minor, contributing to the delinquency of a minor, a felony involving possession of a controlled or imitation controlled substance, a felony or misdemeanor involving distribution of a controlled or imitation controlled substance, promoting prostitution in the first or second degree. Convictions under prior state law or in another jurisdiction of offenses having similar elements count.

An applicant who has been convicted of drunk driving within two years or who has two or more drunk driving convictions within 20 years of application could not get a license.

Costs of having a background check shall be paid by the applicant. School bus drivers' licenses expire September 1 of the year following issuance. Application for renewal can be made by submitting the results of a current physical exam and by paying the required fee. Deletes reference to driving a school bus from current classification section. Provides Act takes effect 9/1/85.

Judicial Reprimand (disclosure)

HOUSE BILL NO. 451, (see page 23). On 1/22 Rep. Uehling added his name as co-sponsor.

Water Quality

HOUSE BILL NO. 461, (see page 26). On 1/22 Rep. Rieger added his name as co-sponsor.

Misdemeanor Crimes

HOUSE BILL NO. 463, (see page 27). On January 20 Rep. Wallis added her name as co-sponsor.

Job Preference

HOUSE BILL NO. 466, (see page 28). On 1/22 Rep. Koponen added his name as co-sponsor.

HB 407, (cont'd)

confidential reports which may be released by the Dept. of Fish and Game reports dealing with the acquisition of untanned skin or exportation from the state of the fur of a game animal only under certain expressed conditions, and specifies that sealing means the placement of a "metal" seal on the animal carcass.

Water Quality (grants)

HOUSE BILL NO. 461 (see pages 26, 76). Reported back to the House by HESS Feb. 26 with a committee substitute and do pass recommendation. Signing the committee report were Koponen and Gruenberg (co-chairs), Taylor, Thompson, Hanley and Pettyjohn. To Resources.

The HESS substitute adds "repairs" to eligible costs, and further defines eligible costs to include "testing, research, education, enforcement and clean-up programs for the purpose of discovering and solving water solution problems."

Volunteer Guardians (authorized)

HOUSE BILL NO. 474 (see pages 30, 77, 158). Reported back to the House Feb. 26 by Judiciary with a committee substitute and a do pass recommendation. Signing the committee report were M.M. Miller (chair) Sund, Gruenberg, Taylor, Pettyjohn and Clocksin. Phillips had no recommendation. To Finance.

The Judiciary substitute removed language in the title and text added by HESS pertaining to "special advocates" and added a section providing that non-attorney guardians ad litem may not give legal advice or act in the capacity of counsel for a minor before a court or administrative agency. The Judiciary substitute appears to contain a drafting error on page 2, line 21, wherein the language "local governments, persons" is not underlined as new language, but apparently should be.

Permanent Fund (deposit)

HOUSE BILL NO. 484 (see page 32). Reported back to the House Feb. 24 by State Affairs with a do pass recommendation. Signing the committee report were Hurley (chair), M.M. Miller, Collins and Navarre. Cato had no recommendation. To Finance.

Duties of Guardians

HOUSE BILL NO. 485 (see pages 33, 159). Reported back to the House Feb. 26 by Judiciary with a committee substitute and a do pass recommendation. Signing the committee report were Sund, Gruenberg, Taylor and Pettyjohn. Clocksin recommends do not pass, while M.M. Miller (chair) and Phillips had no recommendation.

The Judiciary substitute modifies language stating that a guardian is not required to oppose cessation or withholding of lifesaving medical procedures when those procedures will only serve to prolong the dying process and offer no reasonable expectation of effecting a temporary or permanent cure by adding the language "unless the ward has clearly stated that livesaving medical procedures not be withheld;".

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M January 27, 1986

SUBJECT: Grants for water quality enhancement programs
HB 461

TO: Representative Drue Pearce

FROM: Tamara Brandt Cook TBC
Director
Division of Legal Services

Here is the sectional analysis that you requested for HB 461.

Section 1. The term "water quality enhancement" is added to the description of the grant fund that under existing law is used for water supply, sewage and solid waste facilities.

Sec. 2 A new subsection allows the Department of Environmental Conservation to grant to municipalities up to 50 percent of eligible costs of enhancing water quality if the costs are not financed by the federal government and if they are incurred after July 1, 1986. Costs of administering the water quality enhancement program are not included and a grant may be made only for a program approved by the department.

Sec. 3 The Act would take effect at the beginning of the next fiscal year.

TBC:mkr
M2:090

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER
POUCH O, JUNEAU 99811

Telephone:(907) 465-2600
Address:

February 25, 1986

The Honorable Drew Pearce
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Drew:

I would like to offer my support for HB 461 "An Act Relating to Grants for Water Quality Enhancement Programs . . ." I presented testimony in favor of the proposed amendments to AS 46.03.030 before the Senate Community and Regional Affairs Committee during their February 18, 1986, hearing of SB 324. SB 324 and HB 461 are identical bills.

The Sheffield administration and the proponents of this legislation are in strong agreement on the need to preserve the quality of Alaska's water resources. Recent monitoring and analysis by the Department of Environmental Conservation (DEC) indicates the need to reduce the pollution in several of Alaska's streams, lakes, and tributaries. A very graphic example of the type of problem was the discovery of high fecal coliform bacteria in the Lower Campbell and Fish Creeks in Anchorage. As you know, this public health threat led to the cancellation of the annual canoe race on Campbell Creek. Once this problem was discovered, the Governor allocated $110,000 from the contingency fund for a grant to Anchorage to assist in defining the source of this problem. The Legislature appropriated an additional $200,000 grant to Anchorage to address the problem.

The proposed bill would amend DEC's current authority (AS 46.03.030) for administration of 50 percent grants for new construction to allow us to administer grants to address "water quality enhancement" projects. DEC's grant program has successfully administered funds for construction since 1970. The matching grants program offers several advantages to administration of State funds. Four of these are:

1. Providing technical review of projects.
2. Stretching State and local dollars. In a cooperative partnership, State and local government can combine efforts to achieve twice as much as either body could do alone.
3. Accountability is ensured by all parties.
4. DEC staff are trained and experienced in water quality management, troubleshooting, monitoring, analysis, evaluation, and program implementation.

I would point out that the proposed amendment would limit water quality enhancement grants to new construction projects. The additional amendments proposed by the Anchorage Waterways Council, recently sent to you by Jim Nordlund, would broaden the statute to include grants for program type activities, in addition to construction of water quality enhancement facilities.

I also support their proposal. The ability to address water quality issues through both facility construction and program implementation activities, such as monitoring, will provide an effective tool for making water quality improvements to adversely impacted waters.

Our analysis of the fiscal impact of this proposed bill shows it would have a zero inpact on our operating budget and staffing levels. As with other capital projects, the Legislature will control the fiscal impact of program through the appropriation of grant money. The Department does not have a separate source of revenue for the matching grant program other than what is appropriated from the general funds each year of the Legislature.

Again, I support the proposed Water Quality Enhancement Bill. If this Bill passes and funds are appropriated, we will work with the communities in a joint effort to addresss significant water quality problems.

Sincerely,

Bill Ross

Bill Ross
Commissioner

cc: Senator Tim Kelly

ANCHORAGE WATERWAYS COUNCIL

801 W. Fireweed Lane, Suite 103 • Anchorage, Alaska 99503

February 20, 1986

Senator Tim Kelly
Representative Drue Pearce
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly and Representative Pearce:

The Anchorage Waterways Council wants to extend our appreciation to each of you for introducing SB 324 and the identical bill HB 461, both titled, "An Act relating to grants for water quality enhancement programs...". The initiative that you have taken by proposing this legislation will help to establish stronger state sponsored programs to improve water quality.

The Council believes that the 50/50 match program is an excellent vehicle for water quality enhancement. We agree that this program will encourage local participation, will place little or no burden on existing state agencies, will leverage additional funds from municipalities, and will be subject to rational allocation mechanisms already in place within the Department of Environmental Conservation.

We do, however, have reservations about the contents of SB 324 and HB 461. The bills only go part of the way toward establishing a comprehensive program. Grant funds would be limited to the construction of facilities only, and no funds could be used for the administration of a water quality enhancement program. Except for the construction of certain facilities, such as oil and grease separators and water detention basins, this bill does not address many important measures that could be taken to improve surface and subsurface water quality in Anchorage, and other communities.

We have enclosed an amended version of the bills and encourage your support. What we have done is to allow programs as well as facilities to be funded by the 50/50 match. Also, we have stricken the sentence disallowing the costs of administration and made eligible the costs of research, testing, education, enforcement and clean up.

Using Anchorage as an example, it would be impossible to resolve the stream pollution problem without these components:

* Research would enable an effective monitoring program to be designed to track pollutants.

* Testing would allow for the collection of water samples and their lab analysis.

* Enforcement would enable violators to be located and brought into compliance.

* Clean-up would help fund efforts to clean up litter and other pollutants when violators cannot be located.

* Education is most important. Stream pollution sources in Anchorage are widely dispersed, most often due to the activities of average citizens. Without an effort to inform people about their role in contributing to and alleviating water pollution, the problem will not go away. In dealing with air pollution, for example, the success of Anchorage's vehicle maintenance and inspection program is due, in large part, to a very effective public education program by the Municipality.

In short, just building facilities will not do the job. To illustrate this clearly, last year's legislative appropriation to the Municipality of Anchorage for the detection of stream pollution, could not have been funded through your proposed legislation.

Our version of the bill reflects one additional change to the existing statute. Sec. 46.03.030 (d) states that the "replacement" of a facility is not eligible for funding under this section. We can see no reason for this exclusion. For example, an old wood stave water main needs replacement in Fairbanks and is ineligible for the 50/50 program because of the exclusion. Indeed, the goal of water pollution control will be promoted by eliminating this unnecessary exclusion.

We apologize for not informing you earlier of our proposed version. Committee action on SB 324 has compelled us to respond. We urge you to adopt our amendments to SB 324 and HB 461 so that a comprehensive water quality enhancement program can be created.

If you have any questions, please contact me in Juneau at 465-4968 or our office in Anchorage at 277-WATR.

Thank you again for your concern about water quality.

Sincerely,

Jim Nordlund

Jim Nordlund
President

c.c. All Co-Sponsors
Rep. Koponen
Rep. Clocksin
Govenor Sheffield
Commissioner Ross, DEC
Mayor Knowles, Municipality of Anchorage

Municipality of Anchorage

P.O. BOX 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4960

TONY KNOWLES, MAYOR

FEB 2 7 1986

INTERGOVERNMENTAL AFFAIRS

February 20, 1986

Rep. Drue Pearce
Pouch V
Juneau, Alaska 99801

Re: Revisions to Title 46 to Water Quality Enhancement

Dear Rep. Pearce:

The Water Quality Council of the Municipality of Anchorage has reviewed this matter again recently, and it heartily supports your draft bill to add surface and subsurface water quality enhancement to the DEC 50/50 match program.

Anchorage is making progress in the matter of surface and groundwater pollution through defining accurately the problem, searching out point sources of contamination, planning for better drainage, and raising public consciousness about the need for more sewers. Two state grants in 1985 - $110,000 from the Governor's contingency fund, and $200,000 appropriated from the Legislature through DEC - have helped us greatly in those efforts.

Also, as you know, Anchorage citizens approved in October the sale of $15 million in sewer bonds and $10 million for various water quality projects including purchase of wetlands and buffer zones along certain endangered streams and other projects to halt or reverse degradation.

Recently, Mayor Knowles gave a major address on water quality before the Anchorage Chamber of Commerce. In addition to setting policy goals for the administration in this area over the next several years, he stressed the integrated approached which we are taking in dealing with water resources - through providing safe drinking water (Eklutna), dealing with our subsurface waters (water and sewer extensions and a new wastewater ordinance), and surface waters (our water quality bond issue). The State has a partnership with the Municipality in each of these areas. We view the matching construction grants program as an ongoing program. Adding the category of water quality enhancement to that program is consistent with the overall policy direction the Municipality has taken in integrating all of our water programs.

We appreciate your concern and leadership in this matter. We offer our assistance in helping you achieve passage of your proposed amendments to Title 46.

Sincerely yours,

Chip Dennerlein

cc: Bill Ross, Commissioner, ADEC
Jim Ayers

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
GRANTS PROGRAM HISTORY

Funding Source	Municipal Grants	VSW	Grant Funds to Municipality of Anchorage
70 BF	$ 8,000,000	$ 3,000,000	$ 3,459,407 (43%)
72 BF	32,000,000	1,000,000	8,746,279 (27%)
76 BF	29,500,000	1,500,000	12,119,015 (41%)
78 BF	19,890,000	7,750,000	4,110,649 (21%)
80 BF	23,000,000	10,000,000	1,197,374 (5%)
Total	$112,390,000	$23,250,000	$29,632,724 (26.4%)

Funding Source	Municipal Grants	VSW	Federal Funds
FY82 approp	$ 9,359,000	$ 1,608,900	$11,300,000
FY83 approp	4,590,000	515,000	14,642,000
FY84 approp	19,302,969	690,610	14,642,000
FY85 approp	15,700,000	7,972,000	14,642,000
FY86 approp	1,823,100	1,219,000	14,642,000*

FUNDING FOR WATER, WASTEWATER, AND SOLID WASTE
FROM GENERAL FUNDS

Fiscal Year	Through ADEC	Direct	Total
FY83	$ 5,105,000	$ 26,441,700	$ 31,546,700
FY84	19,993,579	108,587,100	128,580,679
FY85	16,492,000	132,501,525	148,993,525
FY86	3,042,100	25,115,300	28,157,400
Total	$41,632,679	$292,645,625	$337,278,304

BOND FUNDS OBLIGATED TO ANCHORAGE
WATER AND SEWER PROJECTS

70	$ 3,459,407
72	8,746,279
76	12,119,015
78	4,110,649
80	1,197,374
Total Bond Funds	$29,632,724

ANCHORAGE FUNDING HISTORY FOR
GENERAL FUND APPROPRIATIONS

Fiscal Year	Through ADEC	Direct	Total	% of Statewide
FY83	$ 3,744,038	$ 8,382,000	$ 12,126,038	38%
FY84	6,397,069	55,423,500	61,820,569	48%
FY85	-0-	49,920,300	49,920,300	33%
FY86	-0-	5,860,600	5,860,000	21%
Total			$129,727,507	

During this time, Anchorage received 38.5 percent of all State money spent on this type of project.

ANCHORAGE AND FEDERAL FUNDS
September 18, 1985

	Total Available	Awarded to Anchorage	
FY83	$14,642,000	$ 6,836,292	
FY84	$14,642,000	3,786,904	
FY85	$14,642,000	18,464,000	
FY86	$14,642,000	8,500,000	*
Total	$58,568,000	$37,587,196	(64.2% of Total available)

*Estimated to be awarded

ANCHORAGE PROJECTS

70 BOND FUND

Project	Amount
Pt Woronzof Improvements	$ 12,555
Water System	500,000
Phase II Water	203,482
South Street & 14th Ave. Water	5,565
Pressure Reducing Stations	43,498
Laterals	377,045
Sewer Treatment	1,571,456
Sewer Interceptor	575,252
Eagle River	75,936
Henshaw Service	42,343
Infiltration/Inflow	52,275
TOTAL	$3,459,407

76 BOND FUND

Project	Amount
Water System	$ 188,000
LID 69 & 70	154,612
1977 LID	431,033
Ace LID 50-9	31,727
LID 50-8	53,830
Halo Extension	8,464
Yale LID 88	28,07[illegible]
Production Well #12	66,583
36th Avenue Main	148,885
SE Interceptor	33,490
SE Int/Diamond E-2	77,046
E-2 Trunk	111,420
Lake Otis/Dowling E-77	221,036
E-1 Trunk Phase II	210,165
E-3 Crossing of Old Sewer	17,985
LID 93-Homecrest	36,190
Kelly LID 92	114,576
"A" Street Water/Benson-39	99,204
E-1-1 Trunk Phase II	287,509
SE Inc Crossing of Old Sewer	17,214
Well #4 Aux Power	81,035
5th Avenue Unga-Gambell	620,037
LID 90 - Hyatt Estates	32,148
LID 91 - Campbell Heights	109,205
LID 95 - Marys	32,197
Misc Test Wells	31,917
East 68th Ave Water	18,970
Shalikoff	46,140
"A" Street Alley Water	29,876
10th Avenue Water	84,944
Bluff/Richardson Water	32,562
O'Malley Crossing Seward	10,418
LID 98 - Shelikof	47,089
LID 100 - Century	12,222
LID 96 - Timothy	44,523
Misc Water Main Extensions	17,557
Gruman Water	21,330
South Street Water	14,466
Water Improvements #6	72,018
Test Wells	36,288
Panchos Villa Sewer	8,738
DeBarr Road Sewer	34,273
Airport 12" Water	44,773
Industrial LID 75	125,812
Sewer A-2 Phase II	109,448
Brookwood LID 87	238,818
5th Avenue Water	161,715
Sewer Extension 77-1	23,919
Baxter LID 89	8,855

76 BOND FUND (Continued)

Project	Amount
Roberts Lateral Extensions	$ 4,546
East 4th Avenue Main	30,734
LID 311	49,071
Railroad Bore Crossings	19,121
Campbell Creek Pump	111,500
D-3 Trunk Sewer	51,305
LID 94 - Hathor	137,710
LID 102 - Alpine	18,098
LID 107 - O'Brien	86,109
LID 113 - O'Brien	36,822
Water Well #7	6,449
Laterals	116,328
LID 126 - Atkins	17,027
Eagle River STP	789,765
"C" Street Trunk	35,750
Well House #12	242,605
SE Interceptor Xing New Seward Hwy	250,000
Int'l Airport Road "A" Minnesota	242,500
SE Interceptor E-2 to O'Malley	278,918
Infiltration/Inflow	134,883
E-3 Trunk, Phase I	150,323
Water Main, Dam to WTP	1,087,002
LID 115 Bruce	206,000
Bragaw, Tudor to University	290,000
Hawthorne Subdivision Water	18,300
Hawthorne Sewer Stubouts	7,600
Fireweed Lane Water	16,860
Wisconsin Street Water	42,610
Eagle River Urban Sewer Crossings	16,100
Arctic Blvd Main	58,200
Pt. Woronzof STP Improvements	357,316
16th Ave Water Main Extension	88,353
Girdwood STP	1,4[illegible]1,330
Fire lake Interceptor	87,500
44th Avenue Fish Creek Trunk	556,880
Spruce Street 68th - 64th Avenue	82,925
Gambell Street Water	14,370
LID 50-13 Citation	50,650
LID 127 Poggas	17,117
Prroduction Well #13	69,737
CBD-2 Trunk	282,250
	$12,119,015

72 BOND FUND

Project	Amount
Water System	$ 646,828
Water Well #7	111,250
1977 LID	166,591
Dowling Road/Potter	99,391
Campbell Creek Pump	129,000
Campbell Creek Force	148,991
Willow Street Main	11,822
East 26th Avenue	30,425
5th Avenue Unga-Gambell	58,250
"A" Street Alley	3,230
Pt. Woronzof Waterline	234,192
Tudor Corners LID 103	93,775
LID 118 Stewart	39,206
LID 119 Frisley	15,258
Laterals	1,237,832
New Eagle River	29,661
Sewer Treatment	1,300,906
Sewer Interceptor	107,336
Eagle River	69,531
Henshaw Service	5,031
Lambert WID 3 4	28,188
LID 130 Mason	29,531
12th Avenue Water P-R	13,371
78th West Interceptor	643,526
"C" Street Trunk	35,750
International Airport Road Water	401,635
STP Extension Design	85,000
SE Interceptor Crossing	196,200
Eagle River STP	11,471
Infiltration/Inflow	67,000
Girdwood STP	1,792,503
Northern Lights Water	30,296
Eagle River Road Sewer Trunk	95,399
Gambell Street Water	29,399
Gambell Street Sewer	31,100
Production Well #13	79,320
CBD-2 Trunk	347,300
7th Avenue Watermain	241,244
Downtown Alley Waterline	49,788
	$8,746,279

78 BOND FUND

Project	Amount
O'Malley - Seward	$ 1,062
East 76th Avenue 16" Main	113,840
LID 86-Campbell Hts. North	115,942
LID 67-Kim	9,348
"C" Street Trunk	93,250
Eagle River STP	18,000
East 68th - Hyatt to Abbott	331,600
10 MG Reservoir #4	1,638,000
Fire Lake Interceptor Phase I	500,000
LID 123-Hillcrest	138,667
LID 50-11-Tonsina Court	142,100
Arctic Blvd Sewer	17,850
CBD-1 Sewer Trunk	90,504
Well House #13	324,750
Gambell Street Water	114,436
Warehouse Avenue Trunk	135,850
Lake Otis Water Main	325,450
	$4,110,649

80 BOND FUND

Project	Amount
10 MG Reservoir #4	$ 112,000
Aero WID 315	170,949
Eagle River Road Sewer Trunk	131,000
Gambell Street Water	281,875
Intn'l Airport Road Sewer	373,300
Denali Street Sewer	28,450
Abbott Road Water Main	99,800
	$1,197,374

CRITERIA SYSTEM

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CAPITAL PROJECTS

		Points
1.	Problem Addressed	
	A. Public Health	
	1. A documented existing disease event exists (documented by a recognized public health organization and confirmed by ADEC sanitarians).	500
	2. The potential for a disease event exists. (All the elements are there, it just has not yet happened.)	200
	3. The potential for a disease does not exist. Not all the elements exist but development suggests the event will occur in the future unless this project is constructed.	100
	B. Public Safety	
	1. This project is needed to provide water for fire protection. The existing population currently has no fire protection through a piped water/hydrant system.	100
	2. This project is needed to provide water for fire protection. New development is being constructed which needs a piped water/hydrant system.	50
	C. Environmental	
	1. A documented existing pollution event exists.	100
	2. The potential for a pollution event exists.	75
	3. Development suggests a pollution event will occur in the future unless this project is constructed.	50
	4. An esthetic "pollution" problem needs correcting.	25
2.	This project is being done in conjunction with an EPA funded project.	100
3.	Project Development Status	
	A. Project has engineering plans and specification already prepared.	75
	B. A feasibility study or facility plan has been prepared for the project.	45
	C. A comprehensive study has been prepared which addresses the need for this project among other community needs.	20
	D. No documentation has been prepared for this project.	0

	Points
4. Matching Funds Available	
A. Matching funds are currently available for this project.	100
B. Matching funds have been approved by appropriate authorities.	60
C. There is reasonable expectation that matching funds will be available and the source has been specified.	45
5. Grant Funds Cost/Population Benefitted. This criteria will use the actual population expected to be benefitted.	
A. The cost/population ratio is low: 0 to 400.	75
B. The cost/population is moderate: 401 to 4,000.	45
C. The cost/population ratio is high: >4,000.	15
6. Operational and Maintenance costs have been considered and either are not existent or a source of funds will exist to pay for them.	50
7. Phased or Segmented Project	
A. Part of the project is already started. This phase is needed to make the project functional.	50
B. The project is composed of more than one segment. This segment is needed to meet the water quality or public health intent of the plan but is not necessary to make the project functional.	25
8. Effect on Other Projects	
A. Project needs to be accomplished in conjunction with another project to reduce overall cost to State (paving, etc.).	15

SENATE RULES CHAIRMAN

KEY POINTS FOR REVISIONS/AMENDMENTS TO TITLE 46, ALASKA STATUTES:

1. STATE POLICY: Section 46.03.010 "Declaration of Policy" provides overall guidance and authority for actions by the State of Alaska in improving and enhancing water quality.

2. Sen. Tim Kelly is offering revisions and amendments to Title 46, Alaska Statutes, that will enable the Department of Environmental Conservation to work with, assist and provide funding to local governments in Alaska in our efforts to enhance the quality of our surface and subsurface waters.

3. It is totally unacceptable that within the Great Land we now have polluted streams, rivers and lakes. State and local government, and all concerned people of our state must make correcting this situation a high priority. As custodians of our natural environment we owe it to ourselves and to our children to maintain the waters of this state in as high quality condition as resonably possible.

4. For several years there has been in effect a program within DEC that was popularly refered to as the 50/50 match program. This program provided state grants to local governments for the purpose of constructing water and sewer systems and solid waste facilities. Sen. Kelly is proposing that this current program (46.03.030 Grants) be expanded to include grant funding for surface and subsurface water quality enhancement.

5. Sen. Kelly believes that expanding the current program is preferable to instituting a new program for the following reasons:

a. The current 50/50 match program has been quite successful in the past and it is well accepted and even praised by both state and local officials.

b. The program is cost effective.

c. The program works.

d. This program encourages local participation and responsibility regarding water quality enhancement.

e. This is a long range solution, a comprehensive program that will enable state and local governments to make a continuing effort to enhance our water quality throughout the state.

f. State funds can go twice as far when they are combined with matching funds from local governments. We get twice the "bang for the buck".

h. By expanding the current program administrative cost are held to a minimum. No new state personnel positions will be required to administer this program. There already exists within DEC a municipal grants section, and this section will be able to carryout the expanded mission of Title 46. No new bureaucracy!

i. This will be a statewide program that will enable DEC to allocate scarce resources on a logical and rational priority basis.

j. This program, to a large de , will de-politicize the regional allocation of resources.

k. These revisions/amendments have the su ort of DEC and the Municipality of Anchorage.

l. For the past couple of years this grant program has not - cieved adequate funding. Sen. Kelly will work to fund this progiam at a reasonable level. DEC would like to see 15 to 20 million per year allocated to this program. Keep in mind that this will be funding statewide, domestic water systems, sewer systems, solid waste facilities and now water quality enhancement.

m. It is very important that we get our residents off of on site septic systems and hooked into municipal sewer systems as soon as possible so our ground water does not become saturated beyond the point that it can naturally handle. By fully funding this program we will be able to make progress in this regard.



Alaska Statutes

Title 46. Water, Air, Energy, and Environmental Conservation.

Chapter
03. Environmental Conservation (§§ 46.03.010 — 46.03.900)
04. Oil Pollution Control (§§ 46.04.010 — 46.04.120)
05. Water Pollution Control Act (Repealed)
06. Recycling and Reduction of Litter (§§ 46.06.010 — 46.06.150)
07. Village Safe Water Act (§§ 46.07.010 — 46.07.080)
10. Pollution as Nuisance (Repealed)
11. Conservation of Energy and Materials (§§ 46.11.010 — 46.11.900)
12. Alaska Energy Center (§§ 46.12.010 — 46.12.500)
15. Water Use Act (§§ 46.15.010 — 46.15.270)
25. Alaska State Commission of Oceanography (Repealed)
26. Commission for Ocean Advancement Through Science and Technology (Repealed)
30. Certification of Water and Wastewater Systems Operators (§§ 46.30.010 — 46.30.130)
35. Environmental Procedures Coordination (§§ 46.35.010 — 46.35.210)
40. The Alaska Coastal Management Program (§§ 46.40.010 — 46.40.210)

Chapter 03. Environmental Conservation.

Article
1. Declaration of Policy (§ 46.03.010)
2. Department of Environmental Conservation (§§ 46.03.020 — 46.03.040)
3. Water Pollution Control (§§ 46.03.050 — 46.03.130)
4. Air Pollution Control (§§ 46.03.140 — 46.03.240)
5. Radiation and Hazardous Waste Protection (§§ 46.03.250 — 46.03.311)
6. Pesticide Control (§§ 46.03.320 — 46.03.330)
7. Prohibited Acts and Penalties (§§ 46.03.710 — 46.03.850)
8. General Provisions (§§ 46.03.860 — 46.03.900)

Editor's notes. — Section 5, ch. 120, SLA 1971, provides: "All litigation, hearings, investigations and other proceedings pending under any law amended or functions which may be transferred by this Act, continue in effect and may be continued and completed notwithstanding any such transfer or amendment provided for in this Act. Certificates, orders, rules or regulations issued or filed under authority of a law amended by this Act or functions which may be transferred by this Act, remain in effect for the term issued, unless or until revoked, vacated, or otherwise modified under the provisions of this Act. All contracts or other obligations created by any law amended by this Act or by virtue of functions which may be transferred by this Act, and in effect on July 1, 1971, remain in effect unless or until revoked, or

Section
10. Declaration of policy

Sec. 46.03.010. Declaration of policy. (a) It is the policy of the state to conserve, improve and protect its natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being.

(b) It is the policy of the state to improve and coordinate the environmental plans, functions, powers and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations and concerned individuals, and to develop and manage the basic resources of water, land and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations. (§ 3 ch 120 SLA 1971)

NOTES TO DECISIONS

This chapter is not void for vagueness under the Alaska and United States constitutions. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

When the somewhat shadowy boundaries of the area of prohibited conduct were contrasted with the overall purpose of this chapter and the absence of any evidence of discriminatory application, the supreme court could not say that the presumption of constitutionality of the statute was overcome. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

There can be no doubt of the general frame of operation of this chapter; no contention can be made that this chapter has a subterfugal purpose or effect of curtailing the exercise of protected political or individual rights to speech, association, privacy and the like. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

As to adequacy of notice of what acts prohibited, see Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

The concern indicated by this chapter is the protection of the environment from pollution. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Collateral references. — 61A Am. Jur. 2d, Pollution Control, §§ 46-49.

39A C.J.S., Health and Environment, §§ 115-124.

Power of state to prohibit or restrict exportation of natural resources. 32 ALR 331.

Preservation or protection of animals or birds as subject of charitable trust. 66 ALR 465.

Constitutionality of reforestation or forest conservation legislation. 13 ALR2d 1095.

Article 2. Department of Environmental Conservation.

Section
20. Powers of the department
50. Grants for water supply, sewerage and solid waste facilities
40. Alaska environmental plan

Collateral references. — 61A Am. Jur. 2d, Pollution Control, § 6.

39A C.J.S., Health and Environment, §§ 5, 9-15, 125-145.

Power of state to prohibit or restrict exportation of natural resources. 32 ALR 331.

Preservation or protection of animals or birds as subject of charitable trust. 66 ALR 465.

Constitutionality of reforestation or forest conservation legislation. 13 ALR2d 1095.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 ALR3d 665.

Sec. 46.03.020. Powers of the department. The department may

(1) enter into contracts necessary or convenient to carry out the functions, powers and duties of the department;

(2) review and appraise programs and activities of state departments and agencies in light of the policy set out in AS 46.03.010 for the purpose of determining the extent to which the programs and activities are contributing to the achievement of that policy and to make recommendations to the departments and agencies, including but not limited to, environmental guidelines;

(3) consult with and cooperate with

(A) officials and representatives of any nonprofit corporation or organization in the state;

(B) persons, organizations and groups, public and private, using, served by, interested in or concerned with the environment of the state;

(4) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;

(5) undertake studies, inquiries, surveys or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with public or private agencies, including educational, civic and research organizations, colleges, universities, institutes and foundations;

(6) at reasonable times enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation which may be promulgated under AS 46.03.020 — 46.03.040; information relating to secret processes or methods of manufacture discovered during investigation is confidential;

(7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books and documents by the issuance of a subpoena;

(8) advise and cooperate with municipal, regional and other local agencies and officials in the state, to carry out the purposes of this chapter;

(9) act as the official agency of the state in all matters affecting the purposes of the department under federal laws now or hereafter enacted;

(10) adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for

(A) control, prevention and abatement of air, water, or land or subsurface land pollution;

(B) safeguard standards for petroleum and natural gas pipeline construction, operation, modification or alteration;

(C) protection of public water supplies by establishing minimum drinking water standards, and standards for the construction, improvement, and maintenance of public water supply systems;

(D) collection and disposal of sewage and industrial waste;

(E) collection and disposal of garbage, refuse, and other discarded solid materials from industrial, commercial, agricultural and community activities or operations;

(F) Repealed by § 12 ch 172 SLA 1978.

(G) control of pesticides;

(H) such other purposes as may be required for the implementation of the policy declared in AS 46.03.010;

(I) handling, transportation, treatment, storage, and disposal of hazardous wastes;

(11) after consultation with other state agencies and local government officials, identify and propose for additional or deletion, by regulation, other licenses, permits or authorizations for which the provisions of AS 46.35 are applicable, and report annually to the legislature the permits which have been included or deleted. (§ 3 ch 120 SLA 1971; am § 1 ch 220 SLA 1976; am § 2 ch 60 SLA 1977; am § 12 ch 172 SLA 1978; am § 8 ch 93 SLA 1981)

Revisor's notes. — In ch. 120, SLA 1971, paragraph (6) of this section contained a reference to AS 46.03.030 — 46.03.040. The engrossed version of the bill (SB 75 am H) referred to "this article" which includes AS 46.03.020; therefore the provision has been corrected here to a reference to AS 46.03.020 — 46.03.040. In paragraph (11), a reference to AS 46.35 was substituted for a reference to 46.30 by the revisor of statutes under the authority of AS 01.05.031.

Cross references. — For status of enforcement and inspection employees of the Department of Environmental Conservation as peace officers, see AS 46.04.090(b). For provisions relating to environmental procedures coordination, see AS 46.35.010 et seq.

Effect of amendments. — The 1977 amendment added paragraph (11).

The 1978 amendment, in paragraph (10), repealed subparagraph (F), which read "control of radiation sources to pro-

hibit and prevent unnecessary radiation."

The 1981 amendment added subparagraph (f) in paragraph (10).

Editor's notes. — Section 10, ch. 172, SLA 1975, provides: "Regulations adopted under authority of statutes repealed or amended by this Act shall remain in effect until repealed by the Department of Environmental Conservation in consultation with the Department of Health and Social Services."

Sec. 46.03.030. Grants for water supply, sewerage and solid waste facilities. (a) Repealed by § 19 ch 220 SLA 1976.

(b) The department may grant to a municipality, as funds are available, up to 50 percent of eligible costs not financed by the federal government, for public water supply, treatment and distribution systems and public sewage collection, treatment and discharge facilities for which construction has not commenced on or before June 21, 1976. The eligible cost of a project or portions of a project will be as determined by the federal agency granting the most monetary assistance. On projects or portions of projects, for which federal participation is not available, eligible costs will be determined by the department in accordance with (d) of this section. Projects shall be constructed in accordance with plans and specifications approved by the department.

(c) There is a water supply, sewerage and solid waste facilities fund created in the department to carry out the purposes of this section.

(d) The department shall, by regulation, identify those costs which are eligible costs for the purposes of this section. Eligible costs include the costs established in a construction contract which are necessary for construction of a project, but do not include the cost of interest and financing and right-of-way acquisition, or costs related to operation, maintenance, repair or replacement of a project.

(e) The department may grant to a municipality not more than 50 percent of the eligible costs, including costs of obtaining federal waivers from the requirement for secondary treatment plants, which are not paid for by the federal government for solid waste processing or disposal facilities constructed after July 1, 1980. However, the department may grant a municipality up to 60 percent of the eligible costs not paid for by the federal government for a solid waste processing or disposal facility constructed after July 1, 1980, if the facility is used for resource recovery. The eligible costs of a solid waste processing or disposal facility are determined by the federal agency granting the most monetary assistance for construction of the facility. For a solid waste processing or disposal facility for which federal money is not available, the department shall determine the eligible costs in accordance with (d) of this section. A municipality shall construct solid waste processing or disposal facilities financed by grants under this section according to plans and specifications approved by the department. (§ 3 ch 120 SLA 1971; am §§ 2, 19 ch 220 SLA 1976; am §§ 30, 31 ch 168 SLA 1978; am §§ 1-4 ch 163 SLA 1980)

Kelly Vows To Cleanup Waterways



Senators Tim Kelly and Arliss Sturgulewski inspect a polluted portion of Chester Creek with Jim Nordlund, Chair of the Anchorage Waterways Council.

Citing recent reports which indicated many of Anchorage's streams were unfit for even wading purposes, Sen. Tim Kelly has drafted legislation to help municipalities cleanup polluted waters. Under Kelly's proposal the state would provide matching grants to local governments for water quality improvement. Kelly believes the matching grant program is one of the most efficient, effective ways to begin correcting this problem.

"I'm upset," stated Sen. Kelly, "that our natural streams in Eagle River and Anchorage have become contaminated. There is no excuse for allowing our creeks, rivers and streams to deteriorate to the extent that they are no longer useable for fishing or recreational purposes, much less for human consumption."

During the 1985 session, Kelly convinced the Anchorage Senate Caucus to fund initial cleanup efforts of the area's waterways. The money was appropriated to the Municipality of Anchorage for preliminary studies to determine the sources of the pollution.

While Kelly was pleased with the initial appropriation to begin isolating the problem, he pointed out the need for additional state funding once the matching grant program is passed to begin cleanup efforts as well as providing for a long-term solution.

"This is just a small first step," added Kelly. "There is a need for all Alaskans to commit themselves to a clean environment. These same problems are also occurring in the Mat-Su valley, Ketchikan, and other communities in the state. We need to begin cleanup efforts now, before the problem worsens, and begin long-term measures to restore our waterways to their original condition. We need to ensure our children the opportunity to enjoy the same Alaska we've all known and lived in."

"The Anchorage delegation has told municipal officials we would support their requests next session to help solve some of the problems of water contamination," said Kelly. "We want to see those pollution signs come down."

HB

4677

HOUSE

COMMITTEE REPORT

(9)
Date referred: 1/22/86

JUDICIARY

FURTHER REFERRALS: FINANCE

DATE: 2/12/86

The RESOURCES Committee has considered SSHB 467

"An Act relating to the herding of fish."

and recommends:

[X] do pass
[ ] do not pass
[ ] do pass with attached amendment(s)
[ ] no recommendation
[ ] replace with _____ [ ] same title
[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [X] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Herrmann Adelheid Herrmann
Sund
Thompson
Cato Bette Cato
Pearce
Wallis F. Kaywallis

SIGNING OTHER RECOMMENDATIONS:

M.W. Miller No Rec
Roger Jenkins No Rec

Adelheid Herrmann
Chairman

LETTER OF INTENT FOR HOUSE BILL 467

House Bill 467 is intended to prohibit the herding of fish by aircraft. It is not the intent of the legislature to otherwise restrict the legal uses of aircraft for spotting schools of fish in conjunction with commercial fishing operations.

Adelheid Herrmann 2/12/86

Co- Chair Adelheid Herrmann

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

M E M O R A N D U M

February 8, 1986

TO: Representative Adelheid Herrmann
Representative Dick Schultz
Co-chairmen, House Resources Committee

FROM: Representative Peter Goll

SUBJECT: SSHB 467

Sponsor Substitute for House Bill 467 is designed to clarify state policy regarding the use of aircraft in fishing operations.

It prohibits the use of aircraft to herd fish. The legislation was drafted at the request of commercial fishermen for statutory language to prevent what they consider to be a dangerous and unfair use of aircraft in fishing operations.

Allegations that a helicopter was successfully used to drive herring from shallow waters into a waiting seine last year and numberous questions to the Fisheries Committee as to the state of the law necessitated this bill to clarify the rights of pilots prior to the 1986 fishing season.

The Alaska Department of Fish and Game strongly supported the bill during testimony before the House Special Committee on Fisheries. A Department spokesman said fisheries managers are concerned that widespread use of aircraft in this manner could increase the fishing power of vessels to the point where they would be concerned about opening some fisheries.

This legislation was thoroughly discussed and strongly endorsed by the UFA's member organizations at their recent annual meeting.

Present law does not provide the state with the necessary legal tools to halt the herding of fish by aircraft. The language is patterned after a regulation prohibiting the use of aircraft to herd or drive wildlife. This regulation has been successfully used several times, the most recent conviction coming in a case where a big game guide used an airplane to drive brown bear toward his clients.

One issue raised during hearings on the legislation is whether the state has the proper jurisdiction to enforce the restrictions. I posed that question to the Alaska headquarters of the Federal Aviation Administration, and was advised that the state has the proper authority. As examples, the FAA cited regulations relating to the herding of game, aerial wolf hunts and airborne hunting.

I respectfully request that you consider the attached letter of intent for the legislation. The purpose of the letter is to clarify that the legislation is not intended to restrict the use of spotter planes in any commercial fishery.

LETTER OF INTENT FOR HOUSE BILL 467

House Bill 467 is intended to prohibit the herding of fish by aircraft. It is not the intent of the legislature to otherwise restrict the legal uses of aircraft for spotting schools of fish in conjunction with commercial fishing operations.

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

M E M O R A N D U M

January 30, 1986

TO: Representative Mike Miller
Chairman, House Judiciary Committee

Representative Adelheid Herrmann
Co-Chairman, House Resources Committee

FROM: Representative Peter Goll
Chairman, House Special Committee on Fisheries

SUBJECT: SSHB 467 (An Act relating to the herding of fish)

During hearings by the Special Committee on Fisheries on SSHB 467, two points were raised regarding the penalties proposed in this legislation. It was decided that these matters would be the most appropriately addressed by the Judiciary Committee.

Specifically, Representative Mike Navarre suggested that the $1,000 fine allowed under the legislation may not provide a significant enough deterrent when such fishing operations might allow a fishermen to catch $400,000 worth of fish in a single set of a seine. Representative Navarre said he would like to have the deterrent effect of higher fines examined more closely.

A second issue the Fisheries Committee decided to ask the Judiciary Committee to examine is whether specific language should be added to the legislation regarding confiscation of aircraft used in such violations.

I appreciate your consideration of these two issues.

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

M E M O R A N D U M

January 18, 1986

TO: Members
House Special Committee on Fisheries

FROM: Representative Peter Goll
Chairman

SUBJECT: SSHB 467

The first meeting this session of the House Special Committee on Fisheries will take place at 8:30 a.m. Tuesday, January, 21, 1986, in Room 17 of the Capitol Building. Up for consideration will be SSHB 467, An Act relating to the herding of fish.

This legislation is designed to prevent the use of aircraft in the herding of fish into commercial fishing gear. I drafted the legislation at the request of commercial fishermen who wished to halt what they considered to be a dangerous and unfair use of aircraft in fishing operations.

This concern was raised when a helicopter was successfully used to drive herring from shallow waters into a waiting seine during the Sitka herring fishery last spring. The estimated value of helicopter-aided haul of herring was $400,000.

The fishermen who approached me contend the practice not only represented an unfair use of aircraft but endangered other vessels crowded into an extremely small fishing area. The Department of Fish and Game and Division of Fish and Wildlife Protection have voiced concern about the practice becoming more widespread.

As the attached correspondence from the Departments of Law and Fish and Game reveal, present law does not provide the state with the necessary legal tools to halt the herding of fish by aircraft. After discussing the matter with the Department of Law, I introduced the sponsor substitute to shift the focus of enforcement from the fisherman to the pilot.

The sponsor substitute is patterned after a regulation prohibiting the use of aircraft to herd or drive wildlife. This regulation has been successfully used several times, the most recent conviction coming in a case where a big game guide used an airplane to drive brown bear toward his clients.

Some attorneys in the Department of Law believe the actions of an aircraft in driving fish toward a fishing net will be easier to prove than the mental state of a fisherman.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CS SSHB 467 (FISH)

NEUTRAL

HB 467 - "An Act relating to the herding of fish."

The Division of Fish & Wildlife Protection is neutral on this bill. It would be difficult, in many cases, to obtain sufficient evidence to prove the elements of the crime that an aircraft did in fact drive or herd fish. The Division of Fish & Wildlife Protection would pursue the most obvious cases where sufficient evidence and witnesses are available to prove the elements of the crime. In conjunction with the Department of Law, marginal cases, lacking sufficient evidence to prove the elements of herding or driving fish by aircraft will not be prosecuted.

This bill does not specifically address safety. However, with the high number of aircraft presently being used as fish spotters, any measures that will decrease hazardous flying conditions and increase the safety margins for all participants is a positive approach.

Robert J. Sundberg
Commissioner, Public Safety

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: 1/29/86

REQUEST

Bill/Resolution No.: CSSSHB 467 (FISH)

Title: Relating to the herding of fish.

Sponsor: Goll

Requestor: H. Resources

Date of Request: 1/24/86

FISCAL DETAIL

Agency Affected: Dept. of Public Safety

Program Category Affected: Fish & Wildlife Protection

BRU, Program or Subprogram(s) Affected: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

K. Nies

Prepared By: J. R. Nutgrass Phone: 269-5509

Division: Fish & Wildlife Protection Date: 1/26/86

Approved by Commissioner: [illegible] Date: 1/29/86

Agency: Public Safety

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

MEMORANDUM State of Alaska

TO: Steven Pennoyer
Deputy Commissioner
Dept. of Fish & Game

Norman C. Gorsuch
Attorney General

FROM:
By: Larri Irene Spengler
Assistant Attorney General
Department of Law

DATE: May 29, 1985

FILE NO:

TELEPHONE NO: 465-3600

SUBJECT: helicopter herring herding

Attached is a copy of a letter I recently prepared in response to questions from Representative Ben Grussendorf on the herding of herring by helicopter. It sounds as though he and Representative Goll are concerned about the same episode. As you can see, I agree with your analysis, and have added more information, in response to the specific questions put by Representative Grussendorf.

LIS:dlm

Attachment

cc w/attachment: Representative Peter Goll
Ken Parker, ADF&G

02-001A(Rev. 10-79)

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☑ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 29, 1985

The Honorable Ben Grussendorf
Speaker of the House
P.O. Box 928
Sitka, Alaska 99835

Re: helicopter herring herding

Dear Representative Grussendorf:

You have asked several questions based on an incident which apparently occurred during the Sitka herring sac roe fishery in April, involving the herding of herring by a helicopter. The activity as you described it involved a helicopter hovering near the beach a few feet above the water, frightening the herring away from the aircraft. This is probably not illegal under current statutes and regulations. It is fairly clear that the helicopter would be exempt from vessel licensing requirements, since vessel is defined in AS 16.05.940(27) as a floating craft. However, the pilot of the helicopter would probably have to have a commercial fishing license, since commercial fisherman is defined in AS 16.05.940(4) as individuals who participate directly or indirectly in the taking of fish.

The activity you described probably does not constitute waste of herring, which would be prohibited by AS 16.10.173. That statute defines waste as the failure to use the flesh of commercially-taken herring for certain specified purposes, which does not seem on its face to apply. In any event, there would be a factual question. Further, the prohibition on wanton waste in AS 16.30.010 applies only to specified game animals.

The Board of Fisheries technically has the authority to prohibit the use of helicopters or aircraft in fishing, under the general regulatory powers set out in AS 16.05.251(a). However, it has been the experience of the Department of Public Safety, Division of Fish and Wildlife Protection, in the past that such prohibitions are very hard to enforce, if not virtually impossible. The board does not have the authority to prohibit helicopters or airplanes from flying at certain heights or speeds, nor from entering certain areas. That authority is preempted by the

federal government through the FAA. Therefore, if helicopters or airplanes are present above an area where fishing is going on, it is necessary to prove that the helicopter or airplane was participating in the fishing, in association with a vessel or set of gear below. It might be helpful for you to contact the Division of Fish and Wildlife Protection about the enforcement problems.

Of course, putting aside the enforcement problems, any individual may submit a regulatory proposal to the Board of Fisheries under 5 AAC 96.610. Interested people could contact the Department of Fish and Game, Division of Boards, 465-4110, about the time frame for submitting such proposals. Of course, simply because a proposal is submitted does not mean the board will automatically adopt it in regulation, since the board must weigh all factors, including enforceability.

If you have any further questions, please give me a call.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

/s/

By:
Larri Irene Spengler
Assistant Attorney General

LIS:dlm

cc: Elizabeth A. Stewart
Director
Division of Boards
Department of Fish & Game

Captain Jack Jordan
Division of Fish & Wildlife Protection
Department of Public Safety

commodity bidding business." In other words, a crab stick is a crab stick is a crab stick.

While some experts claim "the end of the boom is nowher_ in sight" and suggest that the market could hit a billion pounds by 1990, Berelson offers a more sobering vision. "Once the novelty wears off," he said, "the consumer will be disenchanted if quality slips. People have too many options today, and low quality gets lost in the backwater."

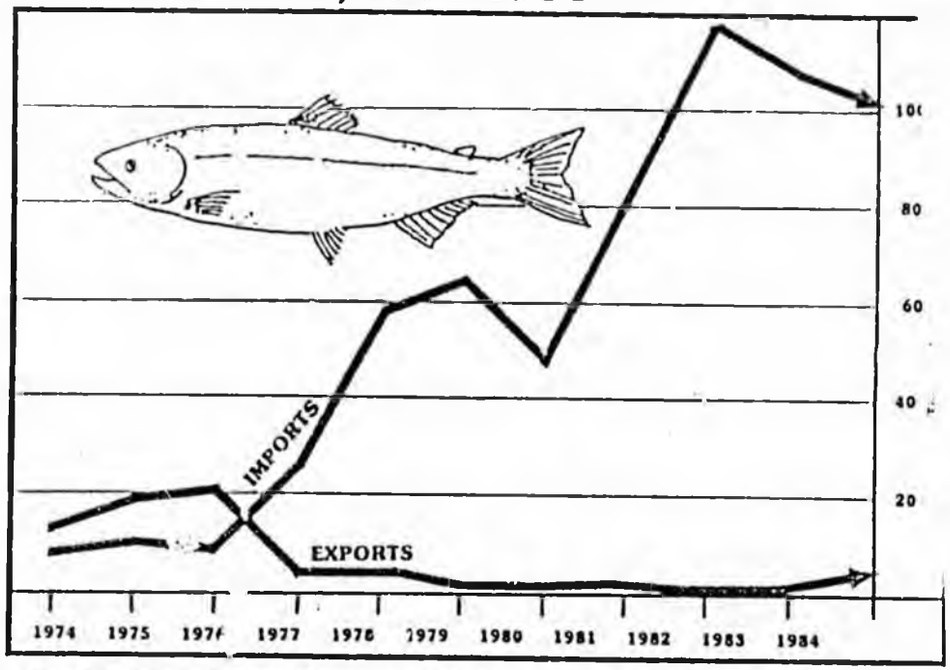
Hopefully, Be relson_ boom and doom scenario is premature, but it'll be up to the industry to see that quality and value stay high. Seafood analogs don't have to go the way of the fish stick.

Fish sticks don't even have to go the way of the fish stick, judging from the new products in John Oaksmith's freezer case at Fisherman's Terminal. How about minced pollock nuggets or reformed pollock fillets from the 'Arctic Trawler?' Solves the problem of portioning small fillets and you'd be surprised how they hang together. Breaded or not, here they come. Good, too!

If you've got a helicopter, here's a tip for next year: Sitka herring. One enterprising skipper reportedly nailed 400 tons by stretching his net across the mouth of a bay filled with herring and seiners trying to catch them. When the herring saw the helicopter hovering overhead like a giant eagle, they split for deep water, right into the waiting purse seine. Now who would ever have thought of that?

Speaking of herring, you already know the Southeast prices, $1000 a ton for seine and $1350 for gillnet. Beats the pants off of last year, and bodes well for the next herring stops. No doubt you'll know the halibut price by the time the issue hits the streets. At press time all we know is that last year's cold storage fish have been sneaked [illegible]

JAPAN SALMON IMPORTS AND EXPORTS, 1974-1984 (PRODUCT WEIGHT)



Prior to passage of the Magnuson Act, Japan caught 65% of its salmon on the high seas and exported more than it imported. Since then imports have grown steadily along with demand, and by 1983 the high seas catch represented only 15% of the total supply.

the fresh again. Prices should start high for them and drop like a rock when the rest hits the wharf.

U.S. Customs law requires that some species, including rockfish, taken by a Canadian vessel must be caught within their territorial waters (12-miles) if direct delivery is made to U.S. ports. Under the provisions of the IPHC, however, a Canadian fisherman is allowed to deliver halibut directly to ports in the United States. "As far as we [illegible]

MEMORANDUM State of Alaska

TO: Larri I. Spengler
Assistant Attorney General
Department of Law

DATE: May 22, 1985

FILE NO:

TELEPHONE NO: 465-4100

FROM: Steven Pennoyer
Deputy Commissioner
Department of Fish and Game

SUBJECT: Commercial Fishing--Aircraft

Representative Goll sent two of his constituents over to talk to us about an incident that occurred during the 1985 Sitka Sound herring sac-roe fishery. The two, who are participants in that fishery, observed a helicopter being used to herd herring into a seine. They felt that type of activity was illegal, and that both the aircraft and the pilot should be licensed. We told them that as far as we could determine, there are no laws that prohibit the harassing of fish or the use of aircraft to take fish. It did seem clear that AS 16.05.940(27) would exempt such aircraft from the vessel licensing requirements, and that since the pilot's activities were a direct participation in the taking of fish, he would have to have a Commercial Fisheries Entry Commission permit or a crew member's license.

Representative Goll requested that if we determined that the helicopter's activities were not prohibited by law, we would ask you for your determination. If you agree with us, I think Representative Goll will plan on introducing some type of legislation to prohibit or restrict the activity.

cc: The Honorable Peter Goll
Ken Parker

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

June 11, 1985

The Honorable Peter Goll
Alaska State House
P. O. Box 581
Haines, AK 99827

JUN 14 1985

Dear Representative Goll:

Thank you for your letter of May 28 regarding use of aircraft in fishing. We will be available to assist you in developing the recommendations, although, quite frankly, I am not sure what the "solution" will be.

The first decision point is: what are the problems and what needs to be done about it. The use of aircraft has its advantages and disadvantages. In some locations, for example, the Togiak herring fishery, the use of spotters makes the fishery operate efficiently. On the flip side, driving herring with a helicopter in a very fast-paced fishery, like Sitka herring, can cause management problems. These two factors will most likely have to be considered in any piece of legislation which is drafted. Also, in some cases, restricted use of aircraft could have allocative overtones, i.e., big boat vs. small boat, local vs. nonlocal, and seine vs. gill net. The department will have to be careful to not appear to favor one side over the other as we assist you and then testify before the various legislative committees.

An equally difficult task is going to be the forging of something that is enforceable. The major problem the Board of Fisheries has had with requests to restrict the use of aircraft is that its authorities are limited in the field. I expect the Legislature will have the same problem. While both bodies can restrict the use of aircraft in fishing operations, the state cannot control the airspace; only the federal government has the authority. So, what happens is a situation where if restrictions are in place, the pilot and fishermen can avoid citation by saying the aircraft was used for supplies or navigation, and the state must prove otherwise. This is the experience we had when spotter aircraft were prohibited in the Kodiak herring fishery.

My staff will be glad to contribute our past experience regarding regulations relative to the use of aircraft in fishing operations to your drafting process. I will ask Bob Clasby to work directly with Rodger Painter on this.

Sincerely,

Don W. Collinsworth

Don W. Collinsworth
Commissioner

cc: Bob Clasby
Rodger Painter
Larri Spengler

5 AAC 39.175. USE OF LIGHTS PROHIBITED. It is unlawful to use artificial lights to attract salmon out of closed waters for the purpose of a commercial taking.

Authority: AS 16.05.251(a)(4),(7),(8)

5 AAC 39.180. TIME LIMIT FOR PRESERVATION OF SALMON. It is unlawful to preserve for sale as food any salmon, unless it has been canned, salted, iced, frozen, brine chilled, smoked or dried within 48 hours after being killed.

Authority: AS 16.05.250(3)

5 AAC 39.185. POLICY ON CLOSURES DUE TO ILLEGAL FISHING. (a) Some fisheries have had a documented history of illegal commercial fishing dating back to 1968. Enforcement efforts by the Department of Public Safety have been largely ineffective in controlling this recurring problem on a long-term basis. The Board recognizes the difficulty of enforcement in some areas of the state, and, although the current regulations are sufficient to protect fish stocks, they may be ineffective due to special enforcement problems.

(b) In the interest of the conservation of valuable renewable fish resources, the Board of Fisheries directs the commissioner, or his authorized designee, to take the following actions given the specified circumstances. If illegal fishing activities develop to the point that regulations pertaining to protection of fish stocks become ineffective, the commissioner shall consider closing the affected fishery by emergency order for a period of up to one week. When the fishery reopens and illegal fishing continues to be a problem, the appropriate fishery may be closed for an additional period of time. Continued violations may result in additional closures of the fishery.

Authority: AS 16.05.060
AS 16.05.251(a)(2) and (7)

5 AAC 39.190. DRIVING SALMON PROHIBITED. It is unlawful to drive or attempt to drive salmon from waters closed to salmon fishing.

Authority: AS 16.05.251(7) and (8)
AS 16.10.010

5 AAC 39.195. ANNOUNCEMENT OF EMERGENCY ORDERS. Announcement of emergency orders will be publicized and made known to interested persons, fishermen, buyers, packers and canneries by one or more of the following means if possible:

(1) radio transmission by department stations;

(2) notice posted at canneries and public places;

(3) press releases and announcements in local newspapers and commercial radio stations;

(4) telegrams and commercial radio facilities.

Authority: AS 16.05.060

5 AAC 39.197. UNLAWFUL POSSESSION OF FISH. No person may possess, purchase, sell, barter or transport fish within the state or within waters subject to the jurisdiction of the state if that person knows or has reason to know that the fish were taken or possessed in contravention of chs.3-39 of this title.

Authority: AS 16.05.251(a)(10)

5 AAC 39.198. FOREIGN FISH PROCESSING PERMITS. (a) Except as p ed in this chapter, a foreign fishing vessel is prohibited from engaging in fish cessing in the inter ers of Alaska.

(b) A foreign fishing vessel may engage in fish processing in the internal w of Alaska if

(1) the foreign nation under which it is flagged will be a party to an a ment or a treaty, as required by 16 U.S.C. § 1856(c), and during the time the v will engage in the fish processing;

(2) the owner or operator of the foreign fishing vessel, or a person repre ting the owner or operator, applies to the governor for, and is granted, a foreign cessing permit for the vessel to engage in fish processing in the internal wate Alaska.

(c) The governor will not grant a permit under (b)(2) of this section if he de mines that fish processors in Alaska have adequate capacity, and will use that capa to process all of the United States harvested fish from the fishery concerned t are landed in Alaska.

(d) In determining whether or not fish processors in Alaska have adequate cap ty, and will use that capacity, to process all of the United States harvested fish fr the fishery, the governor will, in his discretion, consider the following factors:

(1) the total allowable catch expected in the fishery;

(2) availability and capability of harvesting vessels in Alaska, seasonal fish and processing schedules, and marketing and other similar conditions in the fish concerned and in alternative fisheries;

(3) availability of labor, adequacy and condition of processing machine freezers, and cold storage facilities of fish processors in Alaska, and the ability, tent and plans of those processors to process particular species;

(4) economic considerations, including contracts, agreements, and negot tions for the purchase of United States harvested fish by processors in Alaska;

(5) geographical considerations including proximity of harvest areas to t facilities of fish processors in Alaska; and

(6) the extent to which fish processors in Alaska have processed particul species.

(e) An owner or operator of a foreign fishing vessel who submits an applicatio for a permit to engage in fish processing in the internal waters of Alaska must

(1) state the reasons why fish processors in Alaska do not have adequat capacity, or will not use their capacity, to process all of the United States harveste fish from the fishery concerned that are landed;

(2) provide the following information

(A) vessel description and identification;

(B) names and descriptions of the vessels, if known, from which the ap plicant will purchase fish;

110. Unclassified game
115. Waterfowl, snipe, and cranes
120. (Repealed)
125. Control of predation by wolves
126. Wolf predation control programs

5 AAC 81.070. BIG GAME. Repealed 4/5/81.

5 AAC 81.072. GENERAL GAME PROVISIONS. The following methods and means of taking game are prohibited:

(1) by shooting from, on, or across a highway;

(2) with the use of poisons except with the written consent of the Board of Game;

(3) with the use of helicopter or rotorcraft in any manner, including transportation either to or from the field of any unprocessed game or parts of game, hunters or hunting gear, or any equipment used in the pursuit or retrieval of game; this paragraph does not apply to transportation of hunters, hunting gear, or game during emergency rescue operations in a life-threatening situation;

(4) unless otherwise provided in this chapter, from any mechanical vehicle or from a motor-driven boat unless the motor h been completely shut off and the boat's progress from the motor's power has ceased; however, a motor-driven boat underway may be used in taking wolves and coyotes in all units, and in taking caribou in Unit 23;

(5) with use of an aircraft, snowmachine, motor-driven boat, or other motorized vehicle for the purpose of driving, herding, or molesting game;

(6) with the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge;

(Eff. 4/5/81, Reg. 78; am 7/17/82, Reg. 83; 6/30/83, Reg. 86; am 6/30/84, Reg. 90)
Authority: AS 16.05.2

Editor's Note: The text of 5 AAC 81.072 is based on 5 A 81.120 which was in effect before 1980.

5 AAC 81.075. BIG GAME. (a) The followi methods and means of taking big game are pr hibited, in addition to the prohibitions listed 5 AAC 81.072:

(1) with the aid or use of a dog, except th dogs may be used to hunt black bear under th terms of a permit issued by the commissio under 5 AAC 81.040;

(2) with the use of traps, snares, or barbe arrows;

(3) while big game animals are swimming except that swimming caribou may be taken i Unit 23;

(4) a person who has been airborne may not take or assist in taking big game until after 3:00 a.m. following the day in which the flying occurred; however, this subsection does not apply to the following:

(A) taking or assisting in taking Sitka black-tailed deer in Units 1 – 6 and 8;

(B) repealed 6/23/85;

(5) from any boat in Units 1 – 5, except that wolves may be taken in Units 1 – 5 from a boat;

(6) repealed 6/28/85.

(b) The following methods and means of taking big game are authorized:

(1) with a shotgun, muzzle-loading rifle, or rifle or pistol using center-firing cartridges;


HB
470

HB 470
Table of Contents

1. Overview - Committee Staff
2. Sectional Analysis - Committee Staff
3. Fiscal Note - Dept. of Environmental Conservation
4. Fiscal Note - Dept. of Labor
5. Site Assessment Summary - Tetra Tech
6. Index of Response Funds - Council of State Governments
7. Oil Spill Mitigation Account - ADEC Memo
8. Hazardous Substance Definition - CERCLA
9. Resolutions
   a. Alaska Municipal League
   b. Alaska Federation of Natives
10. Letters
   a. Governor Bill Sheffield
   b. Attorney General Hal Brown
   c. Commissioner Bill Ross - ADEC
   d. Commissioner Don Collinsworth - ADF&G
   e. Commissioner Jim Robison - Dept. of Labor
   f. Environmental Protection Agency
   g. U.S. Fish and Wildlife Service
   h. Fairbanks Native Association
   i. Alaska Health Project
   j. League of Women Voters
   k. Alaska Environmental Lobby
   l. Hazardous Material Task Force
   m. City of Nome
   n. Bering Straits Coastal Management Program
   o. Bristol Bay Borough
   p. Fairbanks North Star Borough
   q. Municipality of Anchorage
   r. City of Valdez
   s. City of Valdez - Memo
   t. City of Petersburg
   u. City/Borough of Juneau

HOUSE
COMMITTEE REPORT

2/10

Date referred: 1/13/86

FURTHER REFERRALS: FINANCE

DATE: Feb 7, 1986

The RESOURCES Committee has considered HB 470

"An Act relating to the release of oil and hazardous substances; and providing for an effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[✓] replace with CS HB 470 (RES) [✓] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[2] first fiscal note/s Sep 82
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Jenkins Roger L. Jenkins

Sund

Thompson David W. Thompson

Herrmann Adelheid Herrmann

Wallis J. Kay Wallis

Cato Bettie Cato

SIGNING OTHER RECOMMENDATIONS:

Wm Pearce (No Rec)
Pearce

Dick Shultz (No Rec)
Shultz

M.W. Miller (No. Rec)
Miller (NP)

Dick Shultz
Co-Chairman Shultz

HB 470 AMENDMENT #1

page 4, line 21

46.09.050

Sec. 46.08.080 is amended to read:

Sec. 46.08.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter. Regulations shall include criteria directing the commissioner when to commence containment and cleanup activities. The department shall adopt these regulations not later than October 1, 1987.

HB 470 AMENDMENT #2

page 6, line 17

Sec. 46.09.020 (b) is amended to read:

(b) The commissioner shall develop [ADOPT] guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance [AND IN THE DISPOSAL OF WASTE FROM THE CONTAINMENT OR CLEANUP]. The department shall develop these guidelines not later than October 1, 1987.

January

HB 470 AMENDMENT #3

page 8, line 18

46.08.080

Sec. 46.09.080 is amended to read:

Sec. 46.09.080. REGULATIONS. The commisioner shall adopt regulations necessary to implement the provisions of this chapter. The department shall adopt these regulations not later than October 1, 1987.

Proposed amendments to CSHB 470 (Resources), drafted by Rep. Mike Davis with members of the House Resources Committee.

Page 1, Line 29

A new subsection (d) is added to Sec. 46.08.010 to read:

(d) For the purposes of this section, a capital improvement includes a building, but does not include a dike, retaining wall, or other improvement to real property necessary to implement the provisions of this chapter.

Page 2, Line 27

Sec. 46.08.040(3) is amended to read:

(3) help the Department of Labor to assist [employers] emergency response personnel in developing safety education programs under AS 18.60 for employees who may be called upon to respond to a release of oil or a hazardous substance;

Page 6, Line 15

Sec. 46.09.020(b) is deleted and rewritten to read:

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of hazardous substances. The commissioner shall develop these guidelines not later than January 1, 1987.

Page 13, Line 21

Sec. 15 is deleted.

Hein
2/6/86

Original sponsors: Davis, Koponen,
Hurley, et al

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 470 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the release of oil and hazardous substances; and providing for an effective date."

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

* Section 1. AS 46 is amended by adding a new chapter to read:

CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

Sec. 46.08.005. PURPOSE. The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of the expenses incurred by the Department of Environmental Conservation in the protection of the environment of the state from the release of oil or hazardous substances.

Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in the state general fund the oil and hazardous substance release response fund. The fund shall be administered by the commissioner of environmental conservation, but the commissioner of revenue shall be the custodian of the fund.

(b) Money from an appropriation made to the fund remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements.

Sec. 46.08.020. FINANCING OF THE FUND. The legislature may appropriate from the following sources to the fund:

(1) money received from federal, state, or other sources or from a private donor;

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site, but excluding funds from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered under this chapter or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS SUBSTANCE RELEASES. It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available.

Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval of the governor, the commissioner may use money from the fund to

(1) contain and clean up releases or threatened releases of oil or a hazardous substance;

(2) undertake plans, inspections, sampling, tests, investigations, public notification, damage assessment, surveys, analyses, engineering, construction, operations, and maintenance necessary or appropriate to contain and clean up releases or threatened releases of oil or hazardous substances;

(3) help the Department of Labor to assist employers in developing safety education programs under AS 18.60 for employees who may be called upon to respond to a release of oil or a hazardous

substance;

(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation and Liability Act of 1980); and

(5) recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance.

Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) By July 1 of each year, the department shall determine the projected cost for the following fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

(c) The commissioner shall consult with the commissioner of revenue and the governor before adopting regulations governing fund accounting. The department shall develop procedures and adopt rules governing the expenditure of, and accounting for, money expended from the fund, and may not delay implementation of this chapter pending the effective date of the procedures and rules.

(d) The proper state officer shall pay disbursements from the fund on presentation of vouchers signed by the governor or the governor's authorized representative.

Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner shall submit a report to the governor and to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

(1) the amount of money expended under AS 46.08.040 during the preceding fiscal year; and

(2) the amount and source of money received and money recovered during the preceding fiscal year as specified in AS 46.08.-020.

Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a) The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(b) The attorney general, at the request of the commissioner, may seek to recover money expended by the department under this chapter or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

Sec. 46.08.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.08.900. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of environmental conservation;

(2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, the restoration of the environment to its former state, and incidental administrative costs;

(3) "department" means the Department of Environmental Conservation;

(4) "employee" means a person who works for an employer in a place that is not used primarily as a personal residence;

(5) "employer" means a person, including the state and a political subdivision of the state, who has one or more employees

working in a place that is not used primarily as a personal residence;

(6) "fund" means the oil and hazardous substance release response fund;

(7) "hazardous substance" means

(A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or

(B) a substance defined as a hazardous substance under state or federal law or by regulations adopted under state or federal law;

(8) "oil" means petroleum products of any kind and in any form, whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, oil mixed with other wastes, liquified natural gas, propane, butane, and other liquid hydrocarbons regardless of specific gravity;

(9) "release" means an intentional or unintentional release into the environment of the state.

* Sec. 2. AS 46 is amended by adding a new chapter to read:

CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a) Except as provided in (b) of this section, a person in charge of a vehicle, vessel or container from which, or a place at which, a hazardous substance is released shall report the release to the department and appropriate public safety agencies promptly after learning of the release.

(b) The commissioner may enter into an agreement with a person

for the periodic reporting of a controlled release of a hazardous substance if the release is not into water.

Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS SUBSTANCE. (a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than the release would cause if unabated; or

(3) that containment or cleanup would pose a greater threat to human life or health than the release itself.

(b) The commissioner shall adopt guidelines prescribing procedures and methods to be used in the containment and cleanup of a hazardous substance and in the disposal of waste from the containment or cleanup.

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.

(d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment and cleanup of the release unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is

technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than the release would cause if unabated; or

(3) that containment or cleanup would pose a greater threat to human life or health than the release itself.

(e) The commissioner shall enter into agreement with the Environmental Protection Agency, and may enter into agreements with other persons and municipalities, in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state;

(2) provide for cooperative hazardous substance release notification procedures; or

(3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency under AS 26.23, the commissioner may assist the adjutant general in the relief of the emergency.

Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP. The commissioner may contract with a person or a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter. If the commissioner determines that it is infeasible to contract with a person or a municipality, the commissioner may establish and maintain containment and cleanup personnel, equipment, and supplies necessary to carry out the requirements of this chapter.

Sec. 46.09.050. PEACE OFFICERS. Employees of the department

designated by the commissioner as enforcement officers in the implementation of this chapter are peace officers of the state.

Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter into supplementary agreements, reciprocal arrangements, and compacts with another state or country for the implementation of this chapter subject to the approval of the Congress of the United States, if required, under the Constitution of the United States.

Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this chapter or of a regulation adopted by the commissioner under this chapter conflicts with the charter, ordinance, or regulation of a municipality, the provision of this chapter or of the regulation adopted by the commissioner under this chapter prevails.

(b) Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement AS 46.08 - AS 46.09, are granted to municipalities that do not otherwise have that authority. Except as provided in (a) of this section, a municipality may exercise its police power within the area of the municipality.

Sec. 46.09.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of environmental conservation;

(2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, the restoration of the environment to its former state, and incidental administrative costs;

(3) "department" means the Department of Environmental Conservation;

(4) "hazardous substance" means

(A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or

(B) a substance defined as a hazardous substance under state or federal law or by regulations adopted under state or federal law;

(5) "release" means an intentional or unintentional release into the environment of the state.

* Sec. 3. AS 26.23.050(b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund <u>or the oil and hazardous substance release response fund, as appropriate</u>. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow from the United States government or other public or private sources for a term not to exceed two years.

* Sec. 4. AS 26.23.230(1) is amended to read:

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or nonmilitary man-made cause including,

but not limited to, fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT DANGER OR DAMAGE], volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage;

* Sec. 5. AS 37.05.159 is amended by adding a new subsection to read:

(g) Notwithstanding the provisions of (b) of this section and AS 37.07.080(e), the governor may transfer $1,000,000 during a fiscal year from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund (AS 46.08).

* Sec. 6. AS 44.19.050 is amended to read:

Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049, "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause including, but not limited to, fire, flood, earthquake, landslide, avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air contamination, blight, infestation, explosion, [OR] riot, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage.

* Sec. 7. AS 46.03.290(a) is amended to read:

(a) When the department finds that an actual or imminent discharge of oil, a hazardous substance, or low level radioactive materials to the air, water, land or subsurface land of the state poses an immediate threat to the public health or welfare, or the environment

of the state, it may issue an order declaring an emergency and directing a person or persons to take action the department believes necessary to meet the emergency, and protect the public health, welfare, or environment.

* Sec. 8. AS 46.03.760(a) is amended to read:

(a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250 - 46.03.314, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $500 nor more than $100,000 for the initial violation, nor more than $5,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

* Sec. 9. AS 46.03.765 is amended to read:

Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09 or of a regulation, a lawful order of the department, or permit,

approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

* Sec. 10. AS 46.03.780(a) is amended to read:

(a) A person who violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an order, permit, or other determination of the department made under the provisions of this chapter, [OR] AS 46.04. or AS 46.09, respectively, and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages.

* Sec. 11. AS 46.03.790(a) is amended to read:

(a) Except as provided in (d) - (f) of this section, a person who negligently violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or of a regulation, lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09 is guilty of a class B misdemeanor.

* Sec. 12. AS 46.03.790(b) is amended to read:

(b) Except as provided in (d) - (f) of this section, a person who knowingly violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or of a regulation, lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit,

approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09 is guilty of a class A misdemeanor.

* Sec. 13. AS 46.03.790(d) is amended to read:

(d) Notwithstanding (a) and (b) of this section, a person who fails to provide or falsely states information required under AS 46.03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

* Sec. 14. AS 46.04.010 is amended to read:

Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The department shall promptly seek reimbursement [, EITHER] under AS 46.03.760(e), AS 46.08.070, or from an applicable federal fund, for the expenses it incurs in cleaning up or containing a discharge of oil. If the department obtains reimbursement for a portion of its expenses from a federal fund, the remainder of the expenses incurred may be recovered under AS 46.03.760(e) or AS 46.08.070. Money received by the department under this section shall be deposited in the general fund and may be appropriated by the legislature to the oil and hazardous substance release response fund (AS 46.08).

* Sec. 15. AS 46.03.758(k) is repealed.

* Sec. 16. This Act takes effect immediately in accordance with AS 01.10.070(c).

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 28, 1986

SUBJECT: CSHB 470 (Resources)

TO: Rep. Mike Davis

FROM: Ed Hein, LAA EH

Enclosed is the draft committee substitute requested on your behalf by Jonathan Sperber. He asked whether the draft allows the Department of Environmental Conservation to contract with municipalities and entities in unincorporated communities.

Proposed Sec. 46.09.020(e) provides that the commissioner may enter into agreements with "other persons or municipalities." Proposed Sec. 46.09.040 provides that the commissioner may contract with a person or a municipality. Under existing law, AS 01.10.060, "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person. This definition applies in this bill and appears to cover virtually any "entity" that is organized in an unincorporated community, such as a fire department, for example.

"Municipality" is likewise defined in AS 01.10.060 and

- One of two -

organized under State law.

includes all forms of local government. This definition took effect January 1, 1986, and applies to this bill.

Thus, in my opinion, the bill provides the authority to contract that you desire.

If you have further questions or comments, feel free to contact me at your convenience.

X X X

- two of two -

Proposed CS for HB 470 (Resources)

Page 5, Line 16

Corrects a typographical error, in which the word 'or' had inadvertently been omitted.

Page 7, Line 7

Expands language allowing the commissioner to enter into agreements with other persons and municipalities.

Page 7, Line 12

Allows the commissioner to enter into agreements with other persons and municipalities in order to provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Page 8, Line 12

New language, stating that the authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement AS 46.08 - AS 46.09, are granted to municipalities that do not otherwise have that authority.

Page 9, Line 10

Corrects a typographical error, in which a definition was numbered incorrectly.

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 470 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the release of oil and hazardous substances; and providing for an effective date."

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

* Section 1. AS 46 is amended by adding a new chapter to read:

CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

Sec. 46.08.005. PURPOSE. The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of the expenses incurred by the Department of Environmental Conservation in the protection of the environment of the state from the release of oil or hazardous substances.

Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in the state general fund the oil and hazardous substance release response fund. The fund shall be administered by the commissioner of environmental conservation, but the commissioner of revenue shall be the custodian of the fund.

(b) Money from an appropriation made to the fund remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

Sec. 46.08.020. FINANCING OF THE FUND. The legislature may appropriate from the following sources to the fund:

(1) money received from federal, state, or other sources or from a private donor;

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site, but excluding funds from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered under this chapter or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS SUBSTANCE RELEASES. (a) It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available.

(b) Notwithstanding the establishment of the fund under AS 46.-08.010, the commissioner shall, to the extent available, prefer funds appropriated to the department in the abatement of a release of oil or a hazardous substance. If appropriated funds are not available, then the commissioner may use money from the fund or, if the governor issues a proclamation of a disaster emergency under AS 26.23, funds available for disaster relief under AS 26.23.050 may be used in the abatement of a release of oil or a hazardous substance.

Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval of the governor, the commissioner may use money from the fund to

(1) contain and clean up releases or threatened releases of oil or a hazardous substance;

(2) undertake plans, inspections, sampling, tests,

investigations, surveys, analyses, engineering, construction, operations, and maintenance necessary or appropriate to contain and clean up releases or threatened releases of oil or hazardous substances;

(3) assist facilitate the efforts of the Department of Labor under AS 18.60 to assist employers to develop safety education programs for employees who may be called upon to respond to a release of oil or a hazardous substance;

(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation and Liability Act of 1980); and

(5) recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance.

Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) By July 1 of each year, the department shall determine the projected cost for the following fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

(c) The commissioner shall consult with the commissioner of revenue and the governor before adopting regulations governing fund accounting. The department shall develop procedures and adopt rules governing the expenditure of, and accounting for, money expended from the fund, and may not delay implementation of this chapter pending the effective date of the procedures and rules.

(d) The proper state officer shall pay disbursements from the fund on presentation of vouchers signed by the governor or the

AS 46.03.758

(g) Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply. If mitigating circumstances are proven by a preponderance of the evidence, the court may reduce or totally eliminate the penalty, in accordance with the purposes of this section.

(h) A person otherwise liable for penalties under (e) of this section is not liable if he demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section;

(3) a negligent or intentional act of the State of Alaska or the United States; or

(4) an act of war.

(i) Notwithstanding AS 46.03.875, a person liable under this section is not also liable for the discharge of oil under AS 46.03.760(a). A person causing or permitting a discharge of oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than $500 for the discharge.

(j) The court may reduce the penalty imposed under this section if the person charged demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section.

(k) Penalties received by the state under this section shall be deposited in the general fund and credited to a special account called the "oil spill mitigation account". The legislature may annually appropriate from the oil spill mitigation account a sum equivalent to the amount of penalties received under this section for the calendar year preceding the legislative session in which the appropriation is made, the appropriations to be made for the purpose of restoring and enhancing environments affected by oil pollution, including but not limited to the funding of aquaculture projects.

(l) As used in this section,

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1986

SUBJECT: CSHB 470 (Resources)

TO: Rep. David Thompson

FROM: Ed Hein, LAA

You have asked whether proposed AS 46.08.010(b), which appears at page 1, lines 25 - 27 of CSHB 470 (Resources)(2/6/86 draft), violates the prohibition against dedicated funds in Alaska Constitution, Art. IX, sec. 7. You also have asked whether the bill's language is binding on future legislatures.

The language in question is an anti-lapse clause, which should be read as if it included the phrase, "Notwithstanding the provisions of AS 37.25.010." Subsection (b) is an exception to the requirement of AS 37.25.010 that one-year appropriations lapse on June 30 of the fiscal year for which appropriated. If an appropriation to the response fund did not specify a lapse date or make reference to AS 37.25.010, subsection (b) would control.

Subsection (b) does not violate the dedicated fund prohibition because that applies only to state revenue placed in a fund automatically, without being appropriated. Money in the response fund must have been appropriated to it. The response fund is not a dedicated fund.

If you have further questions, feel free to contact me at your convenience.

c.c.: Rep. Richard Shultz

From: Rep. Davis

Proposed amendments to CSHB 470

Page 1, Line 28

Sec. 46.08.010. A new subsection (c) is added to read:

#2 adopted

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements.

Page 2, Line 29

Sec. 46.08.040. Subsection (2) is amended to read:

#3 adopted

(2) undertake plans, inspections, sampling, tests, investigations, public notification, damage assessment, surveys, analyses, engineering, construction, operations, and maintenance necessary or appropriate to contain and cleanup releases or threatened releases of oil or hazardous substances;

Page 6, Line 13

Sec. 46.09.020 (a) (1) is amended to read:

#6

(1) after consulting the Environmental Protection Agency or ~~and~~ other public safety agencies, as appropriate, that containment or cleanup is technically infeasible; or

Page 6, Line 17

Sec. 46.09.020 (b) is amended to read:

#11

(b) The commissioner shall adopt [regulations] guidelines prescribing procedures and methods to be used in the containment and cleanup of a hazardous substance and in the disposal of waste from the containment or cleanup.

Page 7, Line 1

Sec. 46.09.020 (d) (1) is amended to read:

(1) after consulting the Environmental Protection Agency or ~~and~~ other public safety agencies, as appropriate, that containment or cleanup is technically infeasible; or

Page 9, Line 12

Sec. 26.23.050 (b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow from the United States government or other public or private sources for a term not to exceed two years.

Page 9, Line 24

Sec. 37.05.159 (g) is amended to read:

(g) Notwithstanding the provisions of (b) of this section and AS 37.07.080(e), the governor may transfer [a maximum of $10,000,000] $1,000,000 during a fiscal year from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund (AS 46.08).

governor's authorized representative.

Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner shall submit a report to the governor and to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

(1) the amount of money expended under AS 46.08.040 during the preceding fiscal year; and

(2) the amount and source of money received and money recovered during the preceding fiscal year as specified in AS 46.08.-020.

Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a) The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(b) The attorney general, at the request of the commissioner, may seek to recover money expended by the department under this chapter or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

Sec. 46.08.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.08.900. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of environmental conservation;

(2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, the restoration of the environment to its former state, and incidental administrative costs;

(3) "department" means the Department of Environmental Conservation;

(4) "employee" means a person who works for an employer in a place that is not used primarily as a personal residence;

(5) "employer" means a person, including the state and a political subdivision of the state, who has one or more employees working in a place that is not used primarily as a personal residence;

(6) "fund" means the oil and hazardous substance release response fund;

(7) "hazardous substance" means

(A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found;



(B) a substance defined as a hazardous substance under state or federal law or by regulations adopted under state or federal law;

(8) "oil" means petroleum products of any kind and in any form, whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, oil mixed with other wastes, liquified natural gas, propane, butane, and other liquid hydrocarbons regardless of specific gravity;

(9) "release" means an intentional or unintentional release into the environment of the state.

* Sec. 2. AS 46 is amended by adding a new chapter to read:

CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

Except as provided in (b) of this section, a person in charge of a vehicle, vessel or container from which, or a place at which, a hazardous substance is released shall report the release to the department promptly after learning of the release.

(b) The commissioner may enter into an agreement with a person for the periodic reporting of a controlled release of a hazardous substance if the release is not into the water of the state.

Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS SUBSTANCE. (a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

(1) after consulting the Environmental Protection Agency, that containment or cleanup is technically infeasible; or

(2) that containment or cleanup would cause greater environmental damage than the release would cause if unabated.

(b) The commissioner shall adopt regulations prescribing procedures and methods to be used in the containment and cleanup of a hazardous substance and in the disposal of waste from the containment or cleanup.

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.

(d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment and cleanup of the release unless the commissioner determines

(1) after consulting the Environmental Protection Agency, that containment or cleanup is technically infeasible; or

(2) that containment or cleanup would cause greater environmental damage than the release would cause if unabated.

(e) The commissioner shall enter into agreement with the Environmental Protection Agency, and may enter into agreements with other persons and municipalities in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state;

(2) provide for cooperative hazardous substance release notification procedures; or

(3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency under AS 26.23, the commissioner may assist the adjutant general in the relief of the emergency.

Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP. The commissioner may contract with a person or a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter. If the commissioner determines that it is infeasible to contract with a person or a municipality, the commissioner may establish and maintain containment and cleanup personnel, equipment, and supplies necessary to carry out the requirements of this chapter.

Sec. 46.09.050. PEACE OFFICERS. Employees of the department designated by the commissioner as enforcement officers in the

implementation of this chapter are peace officers of the state.

Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter into supplementary agreements, reciprocal arrangements, and compacts with another state or country for the implementation of this chapter subject to the approval of the Congress of the United States, if required, under the Constitution of the United States.

Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this chapter or of a regulation adopted by the commissioner under this chapter conflicts with the charter, ordinance, or regulation of a municipality, the provision of this chapter or of the regulation adopted by the commissioner under this chapter prevails.

(b) Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement AS 46.08 - AS 46.09, are granted to municipalities that do not otherwise have that authority. Except as provided in (a) of this section, a municipality may exercise its police power within the area of the municipality.

Sec. 46.09.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of environmental conservation;

(2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, the restoration of the environment to its former state, and incidental administrative costs;

(3) "department" means the Department of Environmental Conservation;

(4) "hazardous substance" means

(A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or

(B) a substance defined as a hazardous substance under state or federal law or by regulations adopted under state or federal law;



"release" means an intentional or unintentional release into the environment of the state.

* Sec. 3. AS 26.23.230(1) is amended to read:

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or nonmilitary man-made cause including, but not limited to, fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT DANGER OR DAMAGE], volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage;

* Sec. 4. AS 37.05.159 is amended by adding a new subsection to read:

(g) Notwithstanding the provisions of (b) of this section and AS 37.07.080(e), the governor may transfer a maximum of $10,000,000 during a fiscal year from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund (AS 46.08).

* Sec. 5. AS 44.19.050 is amended to read:

Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049, "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause including, but not limited to, fire, flood, earthquake, landslide, avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air contamination, blight, infestation, explosion, [OR] riot, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage.

* Sec. 6. AS 46.03.290(a) is amended to read:

(a) When the department finds that an actual or imminent discharge of oil, a hazardous substance, or low level radioactive materials to the air, water, land or subsurface land of the state poses an immediate threat to the public health or welfare, or the environment of the state, it may issue an order declaring an emergency and directing a person or persons to take action the department believes necessary to meet the emergency, and protect the public health, welfare, or environment.

* Sec. 7. AS 46.03.760(a) is amended to read:

(a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250 - 46.03.314, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $500 nor more than $100,000 for the initial violation, nor more than $5,000 for

each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

* Sec. 8. AS 46.03.765 is amended to read:

Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09 or of a regulation, a lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

* Sec. 9. AS 46.03.780(a) is amended to read:

(a) A person who violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an order, permit, or other determination of the department made under the

provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively, and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages.

* Sec. 10. AS 46.03.790(a) is amended to read:

(a) Except as provided in (d) - (f) of this section, a person who negligently violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or of a regulation, lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09 is guilty of a class B misdemeanor.

* Sec. 11. AS 46.03.790(b) is amended to read:

(b) Except as provided in (d) - (f) of this section, a person who knowingly violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or of a regulation, lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09 is guilty of a class A misdemeanor.

* Sec. 12. AS 46.03.790(d) is amended to read:

(d) Notwithstanding (a) and (b) of this section, a person who fails to provide or falsely states information required under AS 46.03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

* Sec. 13. AS 46.04.010 is amended to read:

Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The department shall promptly seek reimbursement [, EITHER] under AS 46.03.760(e), AS 46.08.070, or from an applicable federal fund, for the

expenses it incurs in cleaning up or containing a discharge of oil. If the department obtains reimbursement for a portion of its expenses from a federal fund, the remainder of the expenses incurred may be recovered under AS 46.03.760(e) or AS 46.08.070. Money received by the department under this section shall be deposited in the general fund and may be appropriated by the legislature to the oil and hazardous substance release response fund (AS 46.08).

* Sec. 14. AS 46.03.758(k) is repealed.

* Sec. 15. This Act takes effect immediately in accordance with AS 01.-10.070(c).

HB 470
Question and Answer Overview

Why is there a need for the Oil and Hazardous Substance Release Response Fund?

Releases of oil and hazardous substances pose a direct threat to the public health, environment, and economy of the state. HB 470 would provide ADEC with the statutory authority and readily available funding necessary to contain and cleanup releases of these materials. The response fund would allow ADEC to respond to future releases of oil and hazardous substances, as well as to cleanup existing sites.

What is the relationship between the response fund and the federal 'Superfund' program?

The 'Superfund' is directed toward the nationwide cleanup of existing sites. The Environmental Protection Agency evaluates these sites on a national priority basis to determine which sites will receive federal funding. Because this ranking system is biased in favor of densely populated areas, Alaska is expected to receive only slight assistance from the 'Superfund'. HB 470 does make provision, however, for the federal requirement that states provide matching funds of between 10 percent and 50 percent of site cleanup costs in order to receive 'Superfund' money.

Who decides which sites will be cleaned up?

The commissioner of ADEC is given the authority to determine which sites will be cleaned up. The commissioner may also, by regulation, develop criteria for prioritizing the cleanup of existing sites. It is the intent of this legislation, however, that money in the response fund always remain available for the containment and cleanup of future releases of oil and hazardous substances.

When would the response fund be used?

Persons responsible for the release of oil or hazardous substances must notify ADEC of the release and then begin containment and cleanup efforts. ADEC may use money from the response fund for these purposes, however, if the responsible party's containment and cleanup efforts are inadequate or if the cause of the release is unclear or unexplained.

How does the funding mechanism of the response fund work?

The Oil and Hazardous Substance Release Response Fund is modeled after the Disaster Relief Fund and the Fire Suppression Fund. These three funds are also similar in that they are all directed toward the abatement of emergency situations. The response fund allows the governor to transfer up to $10 million during a fiscal year from the emergency operating expenses account to the fund, and money remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

The response fund may also receive legislative appropriations based on federal grants, money recovered from responsible parties for containment and cleanup, money recovered from responsible parties for fines, penalties or damages, and other sources.

What level of accounting oversight is provided for?

The response fund is administered by ADEC, although the commissioner of the Dept. of Revenue is custodian of the fund. Accounting records are maintained by ADEC, and the commissioner of ADEC must consult with the Governor and the commissioner of the Dept. of Revenue before adopting regulations governing fund accounting. The commissioner must also submit a fiscal report regarding the response fund to the Governor and the Legislature no later than the 10th day of each regular legislative session.

How does the response fund affect businesses and local communities?

The commissioner may enter into agreements with businesses, municipalities, and other entities in order to facilitate a coordinated and effective oil and hazardous substance release response in the state. Agreements may also be entered into that provide for oil and hazardous substance release notification procedures.

What provisions are made for the training and safety of workers cleaning up these materials?

Money from the response fund may be used to facilitate the efforts of the Department of Labor to assist employers in developing safety education programs for employees who may be called upon to respond to a release of oil or a hazardous substance.

HB 470
Sectional Analysis

* Section 1.

Chapter 8. Oil and Hazardous Substance Releases.

Sec. 46.08.005. Statement of purpose declaring the release of oil or hazardous substances into the environment to be a threat to the public health and welfare, environment, and economy of the state. Concludes that it is in the best interest of the state to have funds readily available for ADEC to respond to releases of these materials.

Sec. 46.08.010. Establishes the Oil and Hazardous Substance Release Response Fund. The fund is administered by ADEC, although the Dept. of Revenue is custodian of the fund.

Sec. 46.08.020. Lists sources from which the legislature may appropriate money to the fund. Sources include the state and federal governments, money recovered from parties responsible for a release of oil or hazardous substances for containment and cleanup expenses, and fines, penalties, or damages received from a party responsible for such a release.

Sec. 46.08.030. (a) Statement of legislative intent that funds for the abatement of a release of oil or a hazardous substance will always be available.

(b) The commissioner shall use money appropriated to the department for response to releases of oil or hazardous substances before using money in the fund for such purposes. Money may also be available to respond to a release through the Disaster Relief Fund if the governor proclaims such a release to be a disaster emergency under AS 26.23.

Sec. 46.08.040. Lists acceptable uses of money from the fund, subject to the approval of the governor. These uses are to contain and cleanup releases or threatened releases of oil or hazardous substances, conduct work associated with such a release or threatened release, assist the Dept. of Labor in working with employers to develop employee safety education programs, provide matching funds for federal oil discharge and 'Superfund' (CERCLA) programs, and recover costs resulting from the release or threatened release of oil or hazardous substances.

How does the response fund affect existing state programs?

The state is attempting to gain federal authorization to establish a state-controlled hazardous waste management program (RCRA). Negotiations between the state and the Environmental Protection Agency would not be affected by establishment of the response fund. Industry requirements regarding RCRA authorization would also remain unaffected by creation of the fund.

The Oil Spill Mitigation Account would be repealed immediately upon the effective date of the Oil and Hazardous Substance Release Response Fund.

(c) The commissioner, upon determining that containment and cleanup activities by a responsible party are inadequate, may order the person to cease the activity and ADEC may then take over the containment and cleanup operation.

(d) The commissioner may immediately undertake the containment and cleanup of a release if the cause of the release is unclear or unexplained. The same restrictions delineated in (a) of this section apply in this situation.

(e) The commissioner may enter into agreements with persons, including public or private corporations, municipalities, and unincorporated communities, in order to facilitate a coordinated and effective hazardous substance response in the state, provide for cooperative hazardous substance release notification procedures, or provide for cooperative review of hazardous substance contingency plans submitted to the department.

Sec. 46.09.030. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency, the commissioner may assist the adjutant general (Division of Emergency Services) in the relief of the emergency.

Sec. 46.09.040. The commissioner may contract with a person, including a public or private corporation, municipality or unincorporated community, for personnel, equipment, or services in order to carry out the purposes of this chapter. If such a contract is infeasible, the commissioner may establish and maintain personnel, equipment, and supplies for containment and cleanup purposes.

Sec. 46.09.050. ADEC employees designated by the commissioner as enforcement officers for the purposes of this chapter are also peace officers of the state.

Sec. 46.09.060. For the purposes of this chapter, the commissioner may enter into agreements, arrangements, or compacts with other states or countries.

Sec. 46.09.070. In the event of a regulatory conflict between the state and a municipality regarding the containment and cleanup of releases, the provisions of this chapter or regulations adopted by the commissioner prevail.

Sec. 46.09.080. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

Sec. 46.08.050. Delineates accounting procedures of the fund. Accounting records are maintained by ADEC, and by July 1 of each year the department must determine projected costs of the fund for the next fiscal year. The commissioner must adopt rules governing fund accounting, but shall consult with the governor and the commissioner of the Dept. of Revenue before adopting regulations in this regard.

Sec. 46.08.060. No later than the 10th day of each regular legislative session, the commissioner must submit a fiscal report to the legislature and the governor. The report must include the amount of money expended from the fund, and the amount and source of money recovered or received by the fund, during the previous fiscal year.

Sec. 46.08.070. (a) The commissioner is directed to seek reimbursement for costs incurred in the containment or cleanup of releases.

(b) At the request of the commissioner, the attorney general may attempt to recover money expended by the department in responding to releases or threatened releases of oil or hazardous substances.

Sec. 46.08.080. The commissioner shall adopt regulations in order to carry out the provisions of this chapter.

Sec. 46.08.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 2.

Chapter 9. Hazardous Substance Release Control.

Note: AS 46.09 is modeled after AS 46.04 (Oil Pollution Control).

Sec. 46.09.010. A person in charge of a unit from which a hazardous substance is released must promptly notify ADEC of the release. Persons may, however, enter into agreements with the commissioner for the periodic reporting of a controlled release of hazardous substances if the release is not into the waters of the state.

Sec. 46.09.020. (a) A person responsible for a release must make reasonable efforts to contain and cleanup the release unless the commissioner determines that containment and cleanup is either technically infeasible, or that such action would create greater environmental harm than the release itself.

(b) The commissioner must adopt regulations prescribing procedures and methods for containing and cleaning up releases and for disposing of wastes from a release.

(c) The commissioner, upon determining that containment and cleanup activities by a responsible party are inadequate, may order the person to cease the activity and ADEC may then take over the containment and cleanup operation.

(d) The commissioner may immediately undertake the containment and cleanup of a release if the cause of the release is unclear or unexplained. The same restrictions delineated in (a) of this section apply in this situation.

(e) The commissioner may enter into agreements with persons, including public or private corporations, municipalities, and unincorporated communities, in order to facilitate a coordinated and effective hazardous substance response in the state, provide for cooperative hazardous substance release notification procedures, or provide for cooperative review of hazardous substance contingency plans submitted to the department.

Sec. 46.09.030. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency, the commissioner may assist the adjutant general (Division of Emergency Services) in the relief of the emergency.

Sec. 46.09.040. The commissioner may contract with a person, including a public or private corporation, municipality or unincorporated community, for personnel, equipment, or services in order to carry out the purposes of this chapter. If such a contract is infeasible, the commissioner may establish and maintain personnel, equipment, and supplies for containment and cleanup purposes.

Sec. 46.09.050. ADEC employees designated by the commissioner as enforcement officers for the purposes of this chapter are also peace officers of the state.

Sec. 46.09.060. For the purposes of this chapter, the commissioner may enter into agreements, arrangements, or compacts with other states or countries.

Sec. 46.09.070. In the event of a regulatory conflict between the state and a municipality regarding the containment and cleanup of releases, the provisions of this chapter or regulations adopted by the commissioner prevail.

Sec. 46.09.080. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 13.

Sec. 46.04.010. ADEC is directed to promptly seek reimbursement for expenses incurred in the containment or cleanup of oil discharges, and the commissioner may request the attorney general to assist in the recovery of funds from responsible parties. Money received by ADEC under this section may be appropriated by the legislature to the response fund.

* Section 14.

Sec. 46.03.758. (k) The Oil Spill Mitigation Account is repealed.

* Section 15.

Sec. 01.10.070. (c) Immediate effective date.

* Section 3.

Sec. 26.23.230. (l) The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 4.

Sec. 37.05.159. (g) The governor may transfer a maximum of $10 million during a fiscal year from the reserve for emergency operating expenses account to the fund.

* Section 5.

Sec. 44.19.050. The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 6.

Sec. 46.03.290. (a) Departmental findings regarding the declaring of an emergency are expanded to include oil and hazardous substances.

* Section 7.

Sec. 46.03.760. (a) Provides for civil liabilities for persons violating provisions of AS 46.09.

* Section 8.

Sec. 46.03.765. The superior court has jurisdiction to enjoin a violation of AS 46.09.

* Section 9.

Sec. 46.03.780. (a) Liability to the state for damages for injury or degradation to the environment in violation of AS 46.09.

* Section 10.

Sec. 46.03.790. (a) A person who negligently violates a provision of AS 46.09 is guilty of a class B misdemeanor.

* Section 11.

Sec. 46.03.790. (b) A person who knowingly violates a provision of AS 46.09 is guilty of a class A misdemeanor.

* Section 12.

Sec. 46.03.790. (d) A person who fails to provide or falsely states information required under AS 46.09 is guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than $25,000 or by imprisonment for not more than one year, or both.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

NOTE: In the 1987 Budget, the agency also requested one additional position, funded by Federal Superfund (CERCLA) dollars, to manage contracts to perform investigations of sites where hazardous materials may have been inappropriately managed or disposed. This position would also negotiate for federal dollars to clean up sites which are eligible for the Superfund, to supplement the State monies in this response fund.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and make effective use of the fund created by this proposed legislation, several new positions would be required.

TOTAL REQUEST

Funding for nine months is requested for FY 87 — 210.7

A. Program Management

1. A program person to develop regulations, negotiate contracts, initiate appropriate cost-recovery actions, coordinate training and report to the legislature.

2. An administrative assistant to monitor contracts, track and record expenditures from the fund, maintain records describing incidents across the State and other data necessary to obtain cost recovery and to prepare reports to the legislature.

3. A clerk/typist to provide clerical support and enter data into computer files.

Response Capability

1. Three environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned as follows: 1) one and one-half positions in Anchorage for the Southcentral Region; 2) one position in Fairbanks for the Northern Region; and 3) a half-time position in Juneau for the Southeast Region.

B. Support Costs

1. Travel funds of 5.0 per technical and field officer position and 3.0 for the administrative position will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs. — 28.0

2. Contractual funds of about 5.0 per position are required to pay office costs including telephones, Xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses. An additional 20.0 is requested for use in contracting with approved laboratories for analyses of hazardous materials/wastes which are beyond the technical and safety limitations of the Department's laboratory. — 53.5

3. Funds for office supplies amounting to about 1.5 are requested for each position; 2.0 is requested to replace expendable field sampling and safety supplies for each field officer; and 5.0 is requested to repair laboratory testing equipment and replace supplies. — 23.5

Equipment funds of about 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position. — 14.0

329.7

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and make effective use of the fund created by this proposed legislation, several new positions would be required. TOTAL REQUEST

Funding for nine months is requested for FY 87 210.7

A. Program Management

1. A program person to develop regulations, negotiate contracts, initiate appropriate cost-recovery actions, coordinate training and report to the legislature.

2. An administrative assistant to monitor contracts, track and record expenditures from the fund, maintain records describing incidents across the State and other data necessary to obtain cost recovery and to prepare reports to the legislature.

3. A clerk/typist to provide clerical support and enter data into computer files.

Response Capability

1. Three environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned as follows: 1) one and one-half positions in Anchorage for the Southcentral Region; 2) one position in Fairbanks for the Northern Region; and 3) a half-time position in Juneau for the Southeast Region.

B. Support Costs

1. Travel funds of 5.0 per technical and field officer position and 3.0 for the administrative position will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs. 28.0

2. Contractual funds of about 5.0 per position are required to pay office costs including telephones, Xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses. An additional 20.0 is requested for use in contracting with approved laboratories for analyses of hazardous materials/wastes which are beyond the technical and safety limitations of the Department's laboratory. 53.5

3. Funds for office supplies amounting to about 1.5 are requested for each position; 2.0 is requested to replace expendable field sampling and safety supplies for each field officer; and 5.0 is requested to repair laboratory testing equipment and replace supplies. 23.5

Equipment funds of about 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position. 14.0

329.7

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 470
Title : An Act Relating to the Release of Oil and Hazardous Substances
Sponsor : Rep. M. Davis
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected : Environmental Conservation
BRU : Environmental Quality
Components : Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		210.7	264.6	264.6		
TRAVEL		28.0	28.0	28.0		
CONTRACTUAL		53.5	53.5	53.5		
SUPPLIES		23.5	23.5	23.5		
EQUIPMENT		14.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		329.7	371.6	371.6		
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		7.0*	7.0	7.0		
FEDERAL FUNDS						
OTHER						
TOTAL						

*6.0 FTE

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : S.W. Hungerford
Phone : 465-2666
Division : Environmental Quality
Date : 1/17/86

Approved by Commissioner :
Date : 1/17/86
Agency : Dept. of Environmental Conservation

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

NOTE: In the 1987 Budget, the agency also requested one additional position, funded by Federal Superfund (CERCLA) dollars, to manage contracts to perform investigations of sites where hazardous materials may have been inappropriately managed or disposed. This position would also negotiate for federal dollars to clean up sites which are eligible for the Superfund, to supplement the State monies in this response fund.

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Ecologist II	One	18 A	GGU			

Time Status	Staff Months	RP Number	Location	Election District
Full Time	12		Juneau	

Type of Expenditure		Amount
1	2	3
Salary	28.1	
Benefits	8.3	
Premium Pay		
Other		
Total Personal Services		36.4
Travel		5.0
Contractual		25.0
Commodities		6.5
Equipment		2.0
Other		
Total Cost		74.9

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	74.9
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ____ - ____ - ____ - ____ - ____

Justification

This new position will be responsible for writing regulations related to implementation of this bill, including procedures to be used in containment and cleanup of a hazardous substance, reporting the release of a hazardous substance, use of the response fund, procedures to assess fines, penalties and recovery of costs. This person will also negotiate contracts to contain and clean up incidents requiring immediate response, determine liability for incidents, initiate appropriate actions to recover costs or other penalties, coordinate a training and safety program for field staff and report program activities to appropriate State and federal agencies and the State Legislature.

We expect to fill this position on October 1, 1986.

Funding for nine months has been requested for FY 87.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Water Quality Management

Page	of
Revised Date	

FY 87

Position Title		No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Administrative Assistant II		One	14 A	GGU			
Time Status	**Staff Months**	**RP Number**	**Location**	**Election District**			
Full Time	12		Juneau				

Type of Expenditure		Amount
1	2	3
Salary	21.2	
Benefits	6.8	
Premium Pay		
Other		
Total Personal Services		28.0
Travel		3.0
Contractual		5.0
Commodities		1.5
Equipment		2.0
Other		
Total Cost		39.5

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	39.5
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This new position will assist the program staff by preparing documents necessary to contract for services to contain and clean up hazardous substances, by recording and tracking expenditures from the response fund and preparing the fiscal reports required to report program activities to the Legislature. This person will also maintain records describing incidents and spills from across the State and other data necessary to obtain cost-recovery from responsible parties.

We expect to fill this position on October 1, 1986.

Funding for nine months has been requested for FY 87.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Water Quality Management

Page of
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Clerk Typist III	One	8 A	GGU			
Time Status	**Staff Months**	**RP Number**	**Location**	**Election District**		
Full Time	12		Juneau			

Type of Expenditure		Amount
1	2	3
Salary	14.7	
Benefits	5.3	
Premium Pay		
Other		
Total Personal Services		20.0
Travel		
Contractual		3.5
Commodities		1.5
Equipment		2.0
Other		
Total Cost		27.0

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	27.0
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ __ . __ __ __ . __ __ __ . __ __ __ . __ __ __

Justification

This new position will provide clerical support to the new program staff and enter data into computer files established to record program activities. This person will be required to prepare regulations, contract documents and fiscal reports as well as routine correspondence.

We expect to fill this position on October 1, 1987.

Funding for nine months has been requested for FY 87.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Water Quality Management

Page of
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Environmental Field Officer III	One	18 A	GGU			
Time Status	**Staff Months**	**RP Number**	**Location**	**Election District**		
Perm. Part Time	6		Juneau			

Type of Expenditure		Amount
1	2	3
Salary	18.7	
Benefits	5.6	
Premium Pay		
Other		
Total Personal Services		24.3
Travel		5.0
Contractual		5.0
Commodities		3.5
Equipment		2.0
Other		
Total Cost		39.8

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	39.8
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Southeast Region

Page of
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Environmental Field Officer III	One	18 A	GGU			

Time Status	Staff Months	RP Number	Location	Election District
Full Time	12		Anchorage	

Type of Expenditure		Amount
1	2	3
Salary	28.1	
Benefits	8.3	
Premium Pay		
Other		
Total Personal Services		36.4
Travel		5.0
Contractual		5.0
Commodities		3.5
Equipment		2.0
Other		
Total Cost		51.9

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	51.9
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number _____

Justification

This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.

We expect to fill this position on October 1, 1986.

Funding for nine months has been requested for FY 87.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Southcentral Region

Page of
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Environmental Field Officer III	One	18 A	GGU			

Time Status	Staff Months	RP Number	Location	Election District			
Full Time	12		Fairbanks				

Type of Expenditure		Amount
1	2	3
Salary	32.1	
Benefits	9.2	
Premium Pay		
Other		
Total Personal Services		41.3
Travel		5.0
Contractual		5.0
Commodities		3.5
Equipment		2.0
Other		
Total Cost		56.8

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	56.8
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

Justification

This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.

We expect to fill this position on October 1, 1987.

Funding for nine months has been requested for FY 87.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Northern Region

Page	of
Revised Date	

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Environmental Field Officer III	One	18 A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
Perm. Part Time	6		Anchorage				

Type of Expenditure		Amount
1	2	3
Salary	18.7	
Benefits	5.6	
Premium Pay		
Other		
Total Personal Services		24.3
Travel		5.0
Contractual		5.0
Commodities		3.5
Equipment		2.0
Other		
Total Cost		39.8

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	39.8
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ____ - ____ - ____ - ____ - ____

Justification

This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Southcentral Region

Page ____ of ____
Revised Date

FY 87

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. 470

The Department of Environmental Conservation, as the administrator of the "Oil and Hazardous Substance Release Response Fund" will transfer funding by Reimbursable Services Agreement to the Department of Labor. This will allow the Department of Labor to meet its responsibilities under the proposed Section 46.08.040(3).

The $5000 travel monies will be used to send two industrial health consultants to the Environmental Protection Agency's (EPA's) Hazardous Material Incidence Operations training course. It is estimated that it will cost $2,500 each. The course is held at EPA's New Jersey training facility. This will assure that the Department's Occupational Safety and Health Consultation Section will have persons with knowledge to assist employers set up training programs.

The $5000 in commodities will be used to purchase books and other written materials and films or video tapes recommended by EPA that can be loaned out to employers who need audio visual materials for their training classes.

This fiscal note assumes, though the bill has an "immediate effective date", the funding for the above will not be available until FY 87.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill Resolution No. : HB 470
Title : An Act Relating to the Release of Oil and Hazardous Substances

Sponsor : Davis, Kobonen, etc.
Requestor : House Resources
Date of Request : 1/14/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Occupational Safety and Health

Components : Occupational Safety and Health

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL		5.0				
CONTRACTUAL						
SUPPLIES		5.0				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	10.0	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		10.0				
TOTAL	-0-	10.0	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS : Attach a separate page if necessary

Prepared by : Bob Bacolas, Director
Division : Labor Standards and Safety
Phone : 465-4870
Date : 1/21/86

Approved by Commissioner : Jim Robison
Agency : Labor
Date : 1/21/86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency

page ___ of ___

TC-3924

PRELIMINARY ASSESSMENT OF 45 POTENTIAL HAZARDOUS WASTE SITES IN THE STATE OF ALASKA

by

Tetra Tech, Inc.

for

Alaska Department of Environmental Conservation
Juneau, Alaska 99811

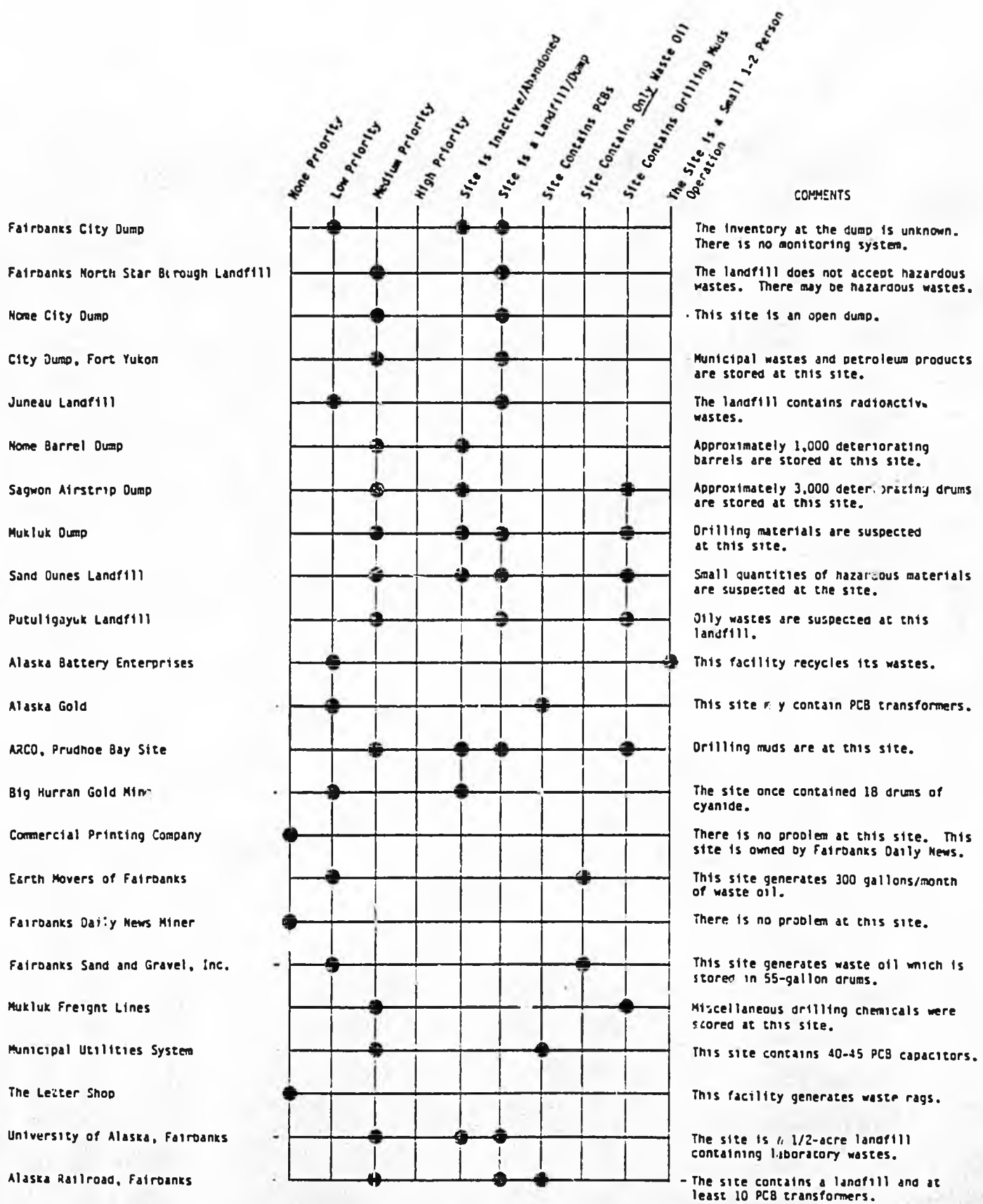
December, 1984

Tetra Tech, Inc.
11820 Northup Way, Suite 100
Bellevue, Washington 98005

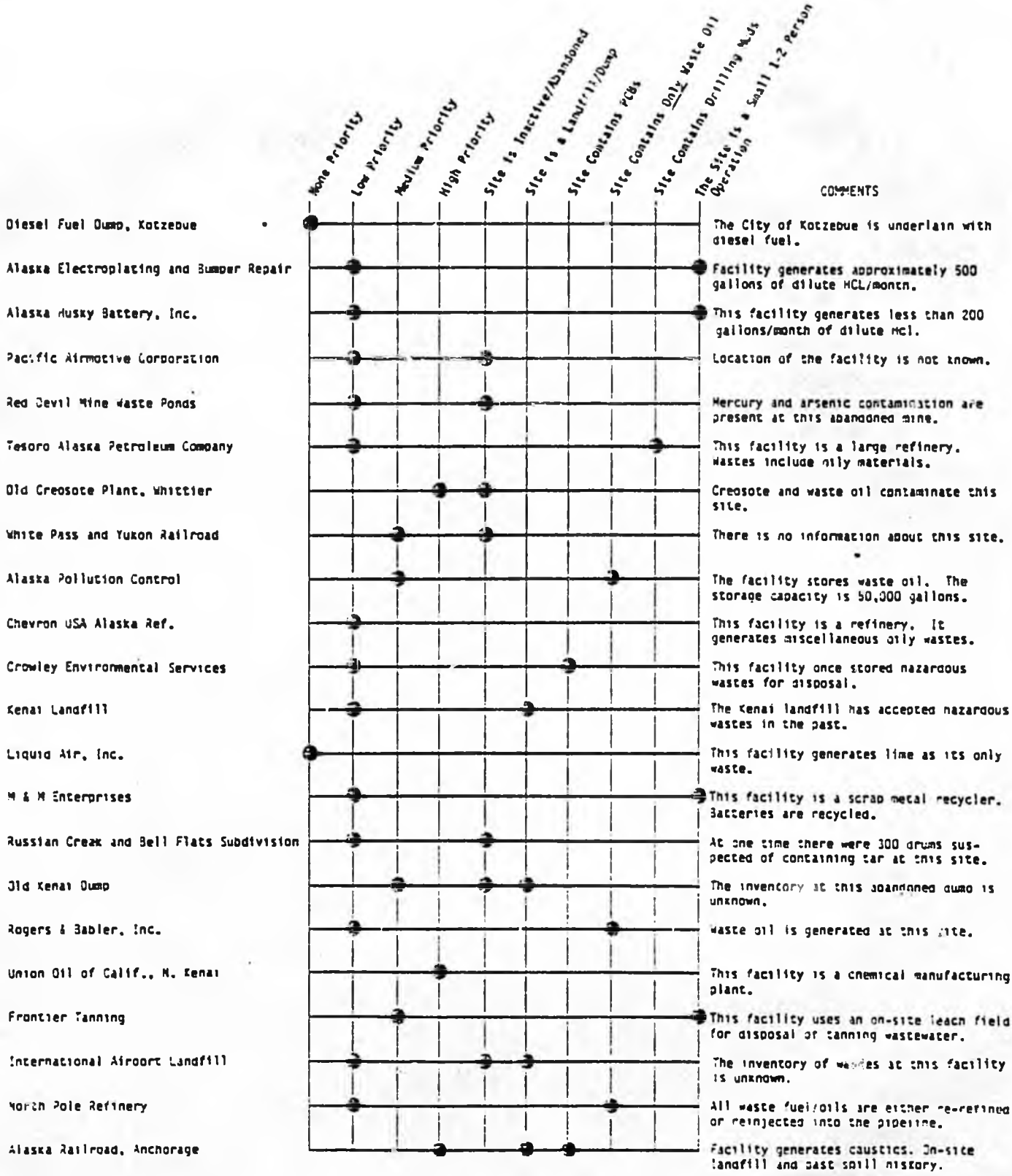
TABLE 1. PRIORITY ACTION RANKINGS

None: No further action required	Low: Inspect on a time-available basis	Medium: Inspection required	High: Inspection required immediately
• Commercial Printing Company	• Fairbanks City Dump, 2nd Ave.	• Fairbanks North Star Borough Landfill	• Old Creosote Plant
• Fairbanks Daily News-Miner	• Juneau Landfill	• Nome City Dump	• Union Oil of California
• The Letter Shop	• Alaska Battery Enterprises	• City Dump, Fort Yukon	• Alaska Railroad, Anchorage
• Diesel Fuel Dump, Kotzebue	• Alaska Gold	• Nome Barrel Dump	
• Liquid Air, Inc.	• Big Hurrah Gold Mine	• Sagwon Airstrip Dump	
	• Earth Movers of Fairbanks	• Mukluk Dump	
	• Fairbanks Sand & Gravel, Inc.	• Sand Dune Landfill	
	• Alaska Electroplating & Bumper Repair, Anchorage	• Putuligayuk Landfill	
	• Alaska Husky Battery, Inc.	• ARCO - Prudhoe Bay Site	
	• Pacific Airmotive Corp.	• Mukluk Freightlines	
	• Red Devil Mine Waste Ponds	• Municipal Utilities System	
	• Tesoro Alaska Petroleum	• University of Alaska, Fairbanks	
	• Chevron USA Alaska	• Alaska Railroad, Fairbanks	
	• Crowley Environmental Services	• White Pass/Yukon Railroad	
	• Kenai Landfill	• Alaska Pollution Control	
	• M & M Enterprises	• Old Kenai Dump	
	• Russian Creek/Bell Flats	• Frontier Tanning	
	• Rogers & Babler, Inc.		
	• International Airport Landfill		
	• North Pole Refinery		

SUMMARY MATRIX



SUMMARY MATRIX



RECOMMENDATIONS

As a result of this study, it is recommended that the five sites ranked "None" priority be removed from the ERRIS list. A site inspection should be performed, on a time-available basis, on the 20 sites ranked "Low" priority. The 17 sites in the "Medium" priority group should receive prompt site inspection.

There were three sites ranked in the "High" priority group: Old Creosote Plant, Whittier; Union Oil of California, North Kenai; and the Alaska Railroad, Anchorage. Creosote and waste oil tank bottoms are present in the soil and in a pond at the Old Creosote Plant in Whittier. The Union Oil of California chemical manufacturing facility in North Kenai has had large chemical spills and has disposed of hazardous wastes on-site. The Alaska Railroad in Anchorage has discharged hazardous materials on-site and houses an abandoned on-site landfill. It is recommended that these three sites receive the highest priority for inspection.

State or Other Jurisdiction	State Hazardous Waste Trust And Spill Funds	Source of Fund	Major Scope of Fund
ALABAMA	Hazardous Waste Management Fund Perpetual Care Fund	F(o) F(o)	Administrative costs Monitoring beyond the active use of the site
ALASKA	....	....	....
ARIZONA	Hazardous Waste Trust Fund	L,F(o),P	Operation, maintenance, perpetual care, matching federal superfund monies
ARKANSAS	....	....	....
CALIFORNIA	Hazardous Substances Account	Fe,B,T(g),P	Match federal superfund monies, cleanup, incident contingency fund, victim compensation fund, health studies, emergency equipment
COLORADO	Emergency Response Cash Fund	L,P	Emergency response
CONNECTICUT	Emergency Spill Response Fund	F(g),L,B,Fe	Oil and hazardous spills
DELAWARE	Hazardous Substances Spill Fund	L*	Contain and cleanup spills
FLORIDA	Hazardous Waste Management Trust Fund Inland Spill Fund	F(p),T(g),L,B,P T	Reduce hazard at abandoned sites, monitoring Cleanup underground petroleum storage tanks
GEORGIA	Hazardous Waste Trust Fund	F(o),B*	Maintenance of abandoned sites
HAWAII	....	....	....
IDAHO	....	....	....
ILLINOIS	Hazardous Waste Fund	F(o)	Take action against long-term danger, research and development of recycling
INDIANA	Hazardous Substances Emergency Trust Fund Environmental Management Special Fund	T(o) F,P	Emergency response, match under superfund Multipurpose environmental response

[illegible]	Hazardous Waste Emergency Fund	L,R,P	Cleanup, disposal, containment
[illegible] YORK	Hazardous Waste Remedial Fund Environmental Protection and Spill Compensation Fund	T(g),L,P P	Emergency response Oil spills only
[illegible] CAROLINA	Hazardous Waste Fund Oil Pollution Protection Fund	F(o) P,L,R,F	Perpetual care Oil and hazardous substances spills
[illegible] DAKOTA	....	....	....
O	Hazardous Waste Facility Management Special Account Emergency Response Spill Fund	F(p),F(o) L,P,R	Administration, closure, abatement, grants Emergency response to spills
[illegible]	Controlled Industrial Waste Fund	L	Emergency response
[illegible]	Hazardous Waste Account	F(g)	Perpetual care
[illegible] SYLVANIA	Solid Waste Abatement Fund	P,R,R*	Emergency situations, spills
[illegible] ISLAND	Hazardous Substance Emergency Fund Feasibility Study for State Superfund	L,R	Abandoned site spills
[illegible] CAROLINA	Hazardous Waste Contingency Fund	L,F(g)(g')	Emergencies at permitted landfills
[illegible] DAKOTA	....	....	....
[illegible]	Hazardous Waste Trust Fund Perpetual Care Trust Fund	R* F(o)	Cleanup, perpetual care Containment of abandoned site
AS	Disposal Facility Response Fund	L,Fo	Match federal superfund monies
[illegible]	....	....	....
[illegible]	Oil and Hazardous Spill Contingency	L, C	Response to spills, hazardous substances
[illegible]	....	....	....
[illegible]	....	...	....

	Hazardous Waste Remedial Fund	F(o),F(t)	Cleanup, emergency response, superfund match, postclosures, maintenance, disposal alternatives
KANSAS	Perpetual Care Trust Fund	F(o),L	Cleanup and monitoring
	Hazardous Waste Cleanup Fund	L,Fe	Cleanup, emergency response, legal costs, match superfund
KENTUCKY	Hazardous Waste Management Fund	F(g)(o),R	Emergency response, postclosure, monitoring, and maintenance
LOUISIANA	Hazardous Waste Protection Fund	R*,L,Fe	Perpetual care, assure financial responsibility
	Abandoned Hazardous Waste Site Fund	R,excess $,L	Match federal funds, cleanup at abandoned sites
	Environmental Emergency Response Fund	Fe,R,L,F	Environmental emergency response, match federal funds
MAINE	Hazardous Waste Fund	R,F(g),F(t*)	Emergency response
MARYLAND	Oil Disaster Containment Cleanup and Contingency Fund	F(o),F,R	Oil and petroleum products spills
	Hazardous Substance Control Fund	F(o)(p),L	Hazardous substances in water cleanup
MASSACHUSETTS	Oil Spills Cleanup Fund	R,L,R	Contain and remove oil and hazardous waste spills, match superfund
MICHIGAN	Disposal Facility Trust Fund	F,(o)	Long-term care of closed facilities
	Hazardous Waste Service Fund	L,R	Emergency response
MINNESOTA	Environmental Response, Compensation and Compliance Fund	T(g),L,F,R,F	Emergency response, cleanup, match superfund, alternative water supplies
MISSISSIPPI	Hazardous Waste Fund	F(o)	Perpetual care, county reimbursement
MISSOURI	Hazardous Waste Fund	F(t)(p),Fe(g),L	Administrative costs, cleanup
MONTANA	Resource Indemnity Fund	L**	Match federal superfund
NEBRASKA	....	....	....
NEVADA	State Emergency Fund	L	Emergency response
NEW HAMPSHIRE	Hazardous Waste Cleanup Fund	T(g),F,F,L	Cleanup, administrative costs
NEW JERSEY	Spill Compensation Fund	R,T(o),L,F	Cleanup of spills

WEST VIRGINIA	....	....	....
WISCONSIN	Hazardous Waste Fund	F(o),R	Closing and long-term care
	Hazardous Substances Spill Fund	L,R	Cleanup and disposal
WYOMING	....	....	....

Key:
B - Bond supported
B* - Bond forfeiture
F - Fees
F(d) - Depending on method of disposal
Fe - Federal funds or grants
g - Generator
g* - Out-of-state generator
L - Legislative appropriations
L* - Emergency appropriations
L** - 60 percent of interest from tax on minerals
O - Operator
P - Penalties
p - permit
R - Reimbursements
T - Taxes
t - transporter
t* - Out-of-state transporters
T(g) - Depending on method of disposal

Source: Compiled by the Council of State Governments, November, 1981; Updated May 5, 1984

MEMORANDUM State of Alaska

TO: Bill Ross
Commissioner

DATE: Febuary 19, 1985

FILE NO:

TELEPHONE NO: 465-2640

FROM: Keith Kelton
Director
Division of Environmental Quality

SUBJECT: Spill Expense Reserve Account History and Status Report

In 1976, the Alaska Legislature passed its first major legislation addressing the problem of oil spills. It required oil spill contingency plans, proof of financial responsibility for cleanup efforts, as well as provisions for charges against terminal users and oil tankers based on the degree of spill risk their equipment and operations presented. Funds collected from the program were to be used to develop a contingency fund to meet cleanup costs in the event of a major spill. The fund was struck down by the courts, leaving the other two provisions intact.

In order to maintain the State's oil pollution control program, a new bill, HB 205, was introduced by the 1979 Legislature. This legislation extended the contingency plans and financial responsibility to offshore exploration and production facilities, and oil barges. The new legislation was to correct the defects in the 1976 law and ensure that Alaska had a strong program for preventing and mitigating the effects of an oil spill. Chapter 120, SLA 80, Section 53 provided $1,542,600 for HB 205 (FY 80), and provided a $1 million expense reserve and a fiscal note to start and fund the Oil Pollution Control Program. The Spill Expense Reserve was to pay costs directly involved in the abatement, containment, and removal of a discharge of oil or hazardous substances: the fiscal note provided for staff, equipment, and training.

House Journal Supplement No. 43 indicated that, "the cleanup reserve be maintained by capital appropriation at the $1 million level. The balance of the reserve should carry over from year to year. Subsequent budget requests may be less than $1 million." An additional $250,000 was appropriated in 1981 and another $250,000 in 1984.

Since the inception of the program, hundreds of spills have been cleaned up. Most of the expenses are charged directly to the spiller. When the spiller was unknown or the spill incident required immediate emergency action, the spill reserve was used to fund the cleanup work.

Some spills involve action by the courts and the Attorney General's Office. The account balance on January 31, 1985, was $410,080.74. There are several spills that are still in the litigation or pre-litigation stages and may require sizable funding. The Nome Gasoline Spill has cost over $680,000 to date.

On December 27, 1984, we received a reimbursement of $597,896.07 for spill expenses from the U.S. Coast Guard for the Nome Spill; this is the first time that the state has received federal funds for reimbursement of spill expenses.

On July 14, 1983, a settlement/agreement was reached between the State and the Alyeska Pipeline Service Company on the two spills that occurred over four years prior, the Atigun Pass Spill and the Mile Post 734 Spill. The settlement was for $350,000.

AS 46.03.758(k) states that "penalties received by the state under this section shall be deposited in the general fund and credited to a special account called the 'oil spill mitigation account.' The legislature may annually appropriate from the spill mitigation account a sum equivalent to the amount of penalties received under this section for the calendar year preceding the legislative session in which the appropriation is made, the appropriation to be made for the purpose of restoring and enhancing environments affected by oil pollution, including but not limited to the funding of aquaculture projects."

Amount expended in FY 84		$ 785,112.62
Amount expended for FY 85 to date		69,827.18
	TOTAL	$ 854,939.80
Amount recovered FY 84		354,541.73
Amount recovered FY 85 to date		608,885.58
	TOTAL	$ 963,427.31

We are asking for a capital appropriation of $550.0 for FY 86 to bring the Spill Reserve Account back up the $1.0 million level.

(13) "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act;

(14) "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas);

33 USC 1321.

42 USC 6921.

42 USC 7412.

15 USC 2606.

(15) "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas;

(16) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

16 USC 1801 note.

(17) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(18) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States;

(19) "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party;

(20)(A) "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;

CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980)

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. 86-07

A RESOLUTION REGARDING HAZARDOUS WASTE SITE INVESTIGATIONS AND A STATE HAZARDOUS SUBSTANCES RESPONSE FUND.

WHEREAS, nearly 100 potential hazardous waste sites have been identified in the State of Alaska by the U.S. Environmental Protection Agency and the Alaska Department of Environmental Conservation for investigation as to possible Superfund sites under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and

WHEREAS, these potential hazardous waste sites are a possible threat to the public health and environment in each of the communities they are located and are spread throughout the State of Alaska, impacting numerous local governments, and

WHEREAS, the U.S. Environmental Protection Agency and Alaska Department of Environmental Conservation have initiated preliminary assessments and site investigations at many of these locations, and the Department of Army and Air Force are conducting similar investigations under the Defense Environmental Restoration Program (DERP) for clean-up of hazardous waste sites at abandoned and active facilities, and

WHEREAS, none of the involved agencies have made adequate efforts to include participation by affected local governments in conducting preliminary assessments, site investigations, or emergency or remedial clean-up actions, and

WHEREAS, it is the right and responsibility of affected local governments to know about and participate in any such determinations, and

WHEREAS, local governments do not have the financial capability or technical expertise to assume responsibility for any hazardous waste sites found in a community, and

WHEREAS, many potential hazardous waste sites will not be cleaned up by the Superfund program, even though a potential threat to the health and environment exists, since the Hazard Ranking System used by the U.S. Environmental Protection Agency is biased against Alaska sites due to low populations exposed;

NOW THEREFORE, BE IT RESOLVED that the Alaska Municipal League requests the U.S. Environmental Protection Agency, Alaska Department of Environmental Conservation, and Department of Defense to establish procedures to involve affected local governments in all phases of evaluating potential hazardous waste sites identified under CERCLA.

BE IT FURTHER RESOLVED that the Alaska Municipal League requests the Alaska Legislature to establish a Hazardous Substances Response Fund to provide funds for matching purposes for participation in Superfund clean-ups, to provide funds for clean-up of hazardous waste sites not eligible for federal clean-up actions, and for instances when an emergency response is appropriate.

Adopted this 16th day of November 1985.

LEO B. RASMUSSEN, President

ATTEST:

SCOTT A. BURGESS, Executive Director

ALASKA FEDERATION OF NATIVES, INC.
1984 ANNUAL CONVENTION

RESOLUTION NO. 84-30

TITLE: HAZARDOUS MATERIALS INDEMNITY

WHEREAS, Widespread contamination with polychlorinated biphenyls (PCBs) occurred between 1971 - 1983 at an abandoned U.S. Air Force White Alice Site at Aniak; and

WHEREAS, Costs for health hazard assessment, environmental monitoring and environmental clean-up have been excessive, estimated at greater than $1.0 million, and are continuing; and

WHEREAS, 68 White Alice sites exist in Alaska, many of which can be expected to have toxic or hazardous materials on site similar to those found at the Aniak site; and

WHEREAS, These White Alice sites may be turned over to the State or local ownership in the future, as was the Aniak White Alice site,

NOW THEREFORE BE IT RESOLVED that the Alaska Federation of Natives urges the State of Alaska to develop a comprehensive strategy to ensure that future White Alice sites or other federal lands or facilities which have been conveyed or may be conveyed to State or local ownership in the future do not contain toxic or hazardous materials and

BE IT FURTHER RESOLVED that the Alaska Federation of Natives urges representatives of the U.S. Department of Defense, Legislature, Governor's office, Department of Environmental Conservation, Department of Health and Social Services, Department of Community and Regional Affairs, and the State's Congressional Delegation meet to ensure that adequate procedures are developed to protect the State from hazardous materials and to indemnify the State in the event that investigation, sampling, monitoring, and disposal program at federal sites conveyed to State or local ownership become necessary in future.

RESOLUTIONS COMMITTEE RECOMMENDATION: DO PASS

CONVENTION ACTION: PASSED



BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

October 7, 1985

The Honorable Mike Davis
Chairman, House Special Committee
on Oil and Gas
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Davis:

Thank you for the opportunity to review your proposal to establish an emergency fund to pay for containing or cleaning up unpermitted discharges of oil and hazardous substances. Since access to federal funds may not be as prompt as required, and since the availability of federal funds depends on a priority system which may be inappropriate to deal with any particular incident in Alaska, I believe State emergency response funds as you have proposed are appropriate.

I have asked the Attorney General and the Commissioner of Environmental Conservation to review the draft legislation, and have directed them to work with you and the Committee as you refine this legislation.

Thank you again for your letter.

Sincerely,

Bill Sheffield
Governor

cc: Attorney General Hal M. Brown
Department of Law
Commissioner Bill Ross
Department of Environmental
Conservation

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☑ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

October 15, 1985

Johnathan Sperber
House Special Committee on Oil and Gas
Pouch V
Juneau, Alaska 99811

Re: Proposed legislation pertaining to oil and hazardous substance response fund

Dear Mr. Sperber:

Thank you for sending the most recent version of the proposed act which would establish an oil and hazardous substance response fund.

We certainly support the concept embodied in this legislation. Our principle concern regarding this piece of legislation is that it not run afoul of the constitutional prohibitions against "dedicated funds". In its current form, we do not believe the proposed bill runs afoul of the dedicated fund provision.

We will be working closely with the Department of Environmental Conservation supporting this measure as it moves through the legislature.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Joseph W. Geldhof
Joseph W. Geldhof
Assistant Attorney General

JWG:rn

cc: Stan Hungerford
Molly McCammon
Doug Mertz

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Telephone:(907)
Address:

OFFICE OF THE COMMISSIONER
POUCH O, JUNEAU, ALASKA 99811

465-2600

January 16, 1986

The Honorable Mike Davis
Chairman
House Committee on Oil and Gas
Pouch V
Juneau, AK 99811

Dear Representative Davis:

Thank you for continuing to provide us with an opportunity to work with you on your proposed legislation establishing a State Oil and Hazardous Substance Response Fund. Enclosed are a fiscal note along with associated forms, as you requested, and a comment on the current draft of the bill. As you predicted, administration of this fund will require additional staff. I have requested nine month funding in FY 87 with full funding in subsequent years.

The fiscal note requests a program manager to establish and manage the program, one administrative assistant to help with administration of contracts and fiscal matters, and one clerk typist to provide clerical support. We anticipate that it would take at least one year to establish the program. After that, management of this program will require a reassessment of how the activities and workload should be integrated with other closely related federal and State programs.

I also am requesting additional field staff to respond to incidents involving materials which are sufficiently dangerous to require trained investigators for safety reasons. We have found that well-trained investigators are needed to manage cleanup efforts efficiently, even those conducted through contractors. Current staff available for this purpose is severely limited. I propose to add one and one-half positions in Anchorage for the Southcentral Region, a full-time position in Fairbanks for the Northern Region, and a half-time position in Juneau.

As the Legislature considers providing increased resources at the State level for cleanup of hazardous substances, you might be interested to know we are also increasing our involvement in the federal "Superfund" program. The Governor's FY 87 operating budget includes an increment for a new federally funded position. If funded and your legislation is passed, this federally funded position would work closely with the positions established as a result of your legislation. As you know, the

U.S. Environmental Protection Agency awarded us $300,000 of their FY 85 appropriation to investigate about a dozen sites which may have had inappropriate management of hazardous waste in the past. They are offering $500,000 in FY 86 to investigate about fifteen more. EPA has lent an employee to manage these contracts for the past several months, until we establish our own position to manage these site investigations ourselves.

The federal Superfund program is likely to provide limited resources for cleanup of many of these sites, even if problems are discovered. Funding under the federal Superfund requires a ranking high enough to place the site on a national priority list. This ranking gives great weight to the population of areas affected by a site, and probaly could be expected to result in very few Alaska sites being eligible for federal cleanup. Consequently, the State fund would provide a vehicle to allow more rapid cleanup of sites not eligible for Superfund sites.

Thank you for the opportunity to provide this information. My staff is available to continue working with you as the proposal moves through the legislative process.

Sincerely,

Bill Ross
Commissioner

Enclosures

cc: Jim Ayers, Director of Legislative Relations
Office of the Governor

ADEC
1/16/86

Technical Comments on Proposed

Oil and Hazardous Substance Release Fund

Section 46.04 of the proposed legislation is modeled after the Department of Environmental Conservation's existing oil pollution statutes contained in AS 46.04. However, two elements from 46.04 dealing with contingency plans and financial responsibility were not extended. There may be merit in classifying activities or facilities which should have contingency plans and financial responsibility for hazardous substances. This may be more appropriately done by local governments.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

December 19, 1985

The Honorable Mike Davis
Chairman, House Special Committee
on Oil and Gas
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Davis:

Thank you for the opportunity to review your proposed legislation dealing with an Oil and Hazardous Substance Release Response Fund. I would like to commend you for taking a leadership role on this important issue. As the Governor stated in his letter of October 7, it is very appropriate for the state to have a fund of this type.

The Department of Environmental Conservation has the expertise most applicable to this proposal. However, if I or my department can be helpful in this regard, feel free to call me.

Sincerely,

for Don W. Collinsworth
Commissioner

cc: Bill Ross, Commissioner
Department of Environmental Conservation

Bill No. House Bill 470

Date January 22, 1986

Title "An Act relating to the release of oil and hazardous substances."

Contact: Richard Arab
(907) 465-4856
Eileen Plate
(907) 465-2700

This legislation will provide a reliable funding source to assist the Department of Environmental Conservation (DEC) regulate and help in the clean-up of oil or hazardous substances into the environment. It does not add additional requirements to the laws on how these substances have to be handled. However, it should do much to assist in the clean-up of such substances by providing the monies necessary to accomplish proper clean-up. A fund made up of State and Federal monies, private donations, and fines levied against parties responsible for hazardous waste spills will be used by DEC to perform various tasks involved in the clean-up of oils or hazardous substances.

Under the provisions of this bill, one of the tasks this fund can be used for is to help the Department of Labor assist employers to develop safety education programs for employees who may be called upon to respond to a release of oil or a hazardous substance. The department currently provides safety and health training upon request. However, we have only limited resources and materials relating to hazardous waste clean-up. The department could, therefore, use the monies that may become available from the fund to better train our industrial hygienists and to purchase training materials and films so that we can assist employers to develop safety education programs for employees.

This bill meets the objectives of the Occupational Safety and Health program in that it will assist in assuring that persons involved in clean-up of oil and hazardous waste are properly trained to safely do this work. This should, in turn, prevent occupational injuries and illnesses.

The bill places the responsibility of providing the training on the employer. This will assure that the employer has the flexibility to tailor training to meet his/her need. The department will assist the employer by providing advice and by making available materials and training films on loan. This will assist the employer, employees and the department to work as a team to assure that clean-up of oil and hazardous substances is accomplished in a safe and healthful manner.

The Department supports House Bill 470.

APPROVED:

Jim Rodison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION X
ALASKA OPERATIONS OFFICE
3200 HOSPITAL DRIVE
SUITE 101
JUNEAU, ALASKA 99801

REPLY TO ATTN OF: A00/J

January 21, 1986

The Honorable Mike Davis
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Davis:

We have reviewed the proposed legislation introduced this month that would establish two new chapters within Alaska Statute 46: Water, Air, Energy & Environmental Conservation. Since the State currently lacks a mechanism to expend funds to contain and cleanup releases of hazardous substances other than oily substances, these chapters creating a Response Fund and addressing Hazardous Substance Release Control will certainly be a positive addition.

Very instrumental in this program is the ability to efficiently and effectively manage operations. The authority to recoup costs is, in itself, a key point. One suggestion we have is to provide for a mechanism that will determine what incidents are eligible for these funds. Subsequent regulations could define criteria for determining when the fund is to be utilized.

Some question was raised as to the definition of hazardous substance, and whether by being so general, it indeed unintentionally excluded some hazardous materials. It is our opinion that this is not the case. By using the "federal" definition, your bill not only encompasses the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) and an extensive listing under 40 CFR Part 302, but also the Water Pollution Control, Solid Waste Disposal, Clean Air, and the Toxic Substances Control Acts.

While this bill covers immediate response, there is another concern that warrants similiar attention. Under CERCLA, the Department of Environmental Conservation has received two grants to assist EPA in investigating suspected hazardous waste sites throughout the state. A scoring system enables EPA to prioritize these sites on a national level. Present federal guidelines however, indicate that most Alaska sites probably will not rank high enough to receive further funding (Superfund) for remedial action. Consequently, other mechanisms are needed to allow for appropriate remedial actions at these sites.

As written, HB 470 appears consistent with EPA policy. We fully support this measure and intend to coordinate efforts with DEC for an effective program. We appreciate the opportunity to comment on this most needed legislation. Please contact me if you have any questions on our comments or if we can be of any assistance.

Sincerely,

Steven A. Torok
Air/Waste Coordinator

United States Department of the Interior

FISH AND WILDLIFE SERVICE

IN REPLY REFER TO:

NORTHERN ALASKA ECOLOGICAL SERVICES
Room 222, Federal Building, Box 20
101 12th Avenue
Fairbanks, Alaska 99701-6267
September 5, 1985

Mr. Jonathan Sperber, Committee Aide
House Special Commitee on Oil and Gas
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Mr. Sperber:

I have reviewed the proposed provisions of legislation for the Oil Discharge Response Fund, Hazardous Substance Control, and Hazardous Substances Response Fund. In general, these are excellent pieces of legislation for protecting Alaska's environment. The following are some specific comments and recommendations for your consideration.

I recommend that "acts of God" should be further defined to explicitly exclude blowouts. Currently some oil exploration on the North Slope is being conducted in gas-rich areas that are very vulnerable to blowouts. Blowouts present very high risks to human safety and often result in environmental disasters. Oil companies should remain fully liable for any oil spills that occur as a result of blowouts, as an impetus to assure that safety and prevention are foremost in the exploration operations.

The FWS also recommends that "containment and cleanup" be further defined to include (1) revegetation of lands on which vegetative cover is destroyed and (2) erosion control where cleanup or containment procedures induce or enhance erosion. In the case of a large-scale oil or hazardous waste spill, a provision for long-term monitoring of chronic effects on vegetation, fish and/or wildlife would be valuable and certainly justified.

I was pleased to have the opportunity to review this draft legislation and would be happy to discuss any of my comments further. If you have any questions, please contact me at 456-0323.

Sincerely yours,

Elaine Snyder-Conn

Elaine Snyder-Conn
Resource Contaminant Biologist

cc: H. Metsker, USFWS
R. Jacobsen, USFWS
L. Dietrich, ADEC



December 20, 1985

Representative Mike Davis
P.O. Box 81435
Fairbanks, Alaska 99708

Dear Representative Davis:

Jonathan Sperber has reviewed with me your Hazardous Substance handling. I favor such legislation.

My initial concern expressed to Jonathan was that such legislation not hamper subsistence lifestyles. I see that it does not. I appreciate your sensitivity to the concerns of all Alaskans in the exercise of your office.

I wish you and yours pleasant and peaceful holidays.

Sincerely,

FAIRBANKS NATIVE ASSOCIATION, INC.

Elizabeth L. Keating
Executive Director

ELK/ab

cc: File



CITY OF NOME

P.O. BOX 281 - NOME, ALASKA 99762
TELEPHONE (907) 443-5242

December 27, 1985

Representative Mike Davis
Pouch V
Juneau, AK 99811

Dear Representative Davis:

We are in support of legislation on

1. Oil and hazardous substance response fund
2. Hazardous substance release control
3. Related statutory changes.

We appreciate your informing us of the legislation in your letter of November 25.

Sincerely,

Tim Holder
Coastal Management Planner

TH/il

As a professional firefighter, I find it encouraging that you have a taken an interest in a common problem firefighters must share.

Sincerely,

Everett A. Long

cc: FNSB Haz-Mat Task Force

League of Women Voters of Alaska

January 21, 1986

Representative Mike Davis
Chairman, House Special Committee on Oil and Gas
Alaska State House
Pouch V
Juneau, Alaska 99811

Dear Representative Davis:

The League of Women Voters of Alaska commends you on authorship of House Bill 470. There is a demonstrated need for a fund that can be used to respond to hazardous substance release in addition to oil spills. The bill reflects careful analysis of the necessity for containment of hazardous materials, creates a mechanism by which the state can respond to hazardous substance releases and copes with the constitutional prohibition of dedicated funds.

The League of Women Voters of Alaska recommends additions to the legislation based on the National League of Women Voters position on hazardous waste. Full legal fees should be awarded the Attorney General's office if an enforcement action under H.B. 470 goes to court and the state wins the enforcement action. All decisions to respond to a spill or release are based on the Commissioner of Environmental Conservation's discretion. Two mechanisms for citizen access to due process should be included. First, the legislation should provide for citizens to sue in state courts to stop hazardous releases from waste sites that endanger their health. Under most state law a citizen can only sue to stop an action after harm is done. The citizen provision will assist in enforcement action. Second, a mechanism should be included by which citizens can bring a suit against the state of Alaska if the state does not respond to a clean up request in a statutorily established process. This would allow the citizens to seek relief from the court system.

HB470 is especially timely given the scope of present and potential problems with containment and clean up of existing sites. For instance a list presently being investigated by the Alaska Department of Environmental Conservation and U.S. Environmental Protection Agency, lists 101 sites suspected to contain hazardous wastes. Given the EPA's

Alaska Health Project

Providing information about hazardous materials on the job and in the community.
417 West Eighth Avenue, Anchorage, Alaska 99501 (907) 276-2864

January 9, 1986

Representative Mike Davis
Pouch V
Juneau, Alaska 99811

Dear Representative Davis:

Alaska Health Project is a non-profit organization dedicated to providing information and education in the area of hazardous materials on the job and in the community. We appreciate the opportunity to express our opinion on your legislation addressing state response to hazardous substances releases.

Alaska Health Project has been closely following the development of a hazardous substance response fund in Alaska. We appreciate your efforts in this area and give you our support for the expansion of AS 46 to include: AS 46.08: Oil and Hazardous Substance Response Fund; and AS 46.09: Hazardous Substance Release Control. The limitations in both the existing state oil and hazardous substance clean-up fund and the federal Superfund program underscore the need for the legislation you propose.

In addition, we appreciate the broad scope and applicability of the proposed fund. We strongly endorse use of the fund to facilitate Department of Labor efforts to provide technical assistance and safety education to employers and employees called upon to respond to hazardous substances releases.

Our major concern is with regard to the defintion of a hazardous substance as written in Sections 46.08.080 and 46.09.090. We feel that new language should be added to make certain that hazardous substance also means hazardous waste, toxic substance (such as PCBs) and hazardous material. We understand the proposed intent of the bill is to include all such releases, but we believe that the current defintion of hazardous substance does not support this intended purpose.

Please keep us informed of the progress of this legislation. We are available to review additional drafts, if appropriate.

Sincerely,

David Wigglesworth
Occupational Health Specialist

cc: Jonathan Sperber

GCU

priorities nationwide, none of these sites will likely be addressed by federal Superfund dollars.. It may become necessary for the legislature to establish a mandatory schedule for clean up as the present schedule for investigating the 101 sites will take place over the next fifteen years. Fifteen years may present a real and substantial threat to the public health, to the environment, and to the economy of the state. HB470 could provide a mechanism for addressing this problem. However, the situation may be so grave that additional legislative action may be necessary.

While the League urges additions to HB470 we congratulate you on addressing the serious and complicated problem of hazardous substance escapement.

Respectfully submitted,

Mary Whitmore Core

Mary Whitmore Core
Natural Resource Issues
Alaska State Board



Alaska Environmental Lobby, Inc.

204 N. Franklin Street, Suite 3 Juneau, Alaska 99801 907-586-2345

January 20, 1986

Representative Mike Davis
Pouch V
Juneau, AK 99811

Dear Representative Davis:

Congratulations on the introduction of HB 470, creating an oil and hazardous substance release response fund. Creation of this fund is an integral part of Alaska's approach to hazardous substances.

As we learn more about the transportation, use and disposal of hazardous substances in our state, we may draw two conclusions. First, Alaska is faced with a wide range of hazardous substance related problems. For instance, a recent report by Tetra Tech identified 45 potential hazardous waste sites in Alaska, 17 of which where determined to be of medium priority and three of high priority. Second, we are learning that the approach taken by federal programs to address hazardous waste and hazardous substance problems nation-wide often do not fit our young state's needs. The federal "superfund," for example, is of little help to Alaska because of our low population relative to other states. There is little likelihood that any of the sites identified by Tetra Tech will be cleanedup by the EPA.

The timely introduction of HB 470, directing the Alaska Department of Environmental Conservation to contain and clean up hazardous releases, speaks directly to these two points. Such a fund would allow the Department, if necessary, to take prompt remedial action to minimize environmental damage to people and the surrounding ecosystem in the occurrence of a hazardous rele. . At the same time, the approach taken is well suited to the specific nature of Alaska's situation. A state program as outlined in the bill would ensure responsiveness to local hazardous substance problems not afforded by federal programs.

Of course, the most important part of a state response fund is clear legislative direction to the executive branch to pursue reimbursement from responsible parties. This fund would allow prompt state action if necessary for the sake of human saftey and the integrity of the environment; it would in no way absolve those responsible for hazardous substance spills from being held accountable. To the contrary, it emphasizes pursuit of guilty parties.

The Alaska Environmental Lobby has two suggestions for improving the effectiveness of HB470. First, we believe the bill should establish a date for promulgation of regulations needed to implement the fund. Specific legislative direction for a time-certain date would clearly underscore the importance and timeliness of the fund. Second, we believe the list of activities which may require funds should include public notification and education. Public notification would ensure site-specific information to local inhabitants about a spill in their area. Public education would be an important mechanism for briefing local municipalities, boroughs, and others on the purpose and scope of the program.

Thank you for this chance to comment on HB470. We enthusiastically support the bill and appreciate the care you have shown in crafting it.

Sincerely,

Scott Highleyman
Executive Director

Cliff Landesman
AEL volunteer

Everett A. Long
Member Fairbanks North Star Borough
Hazardous Material Task Force
Box 1
Ester, AK 99725

Representative Mike Davis
P.O. Box 81435
Fairbanks, Alaska 99708

December 9, 1985

Dear Mike:

I have read your proposed bill concerning hazardous substance containment and cleanup. I concur with your proposed legislation. We must have the force of this legislation to react to dangerous hazardous material spills, and hopefully prevent serious incidents by having a law with some teeth.

I am a member of a Task Force to develop a Borough wide Haz-Mat Response Team. The Response Team will not be involved in enforcement or clean-up. The team will consist of trained personnel from area fire departments, and trained personnel in the transportation industry, ie, the Alaska Railroad. Our task is like the medical First Responder.

Although we can express concern about Haz-Mat enforcement, our task limits us to being -- first in, attack the immediate threat (fire, spill, toxic, evacuation, etc.) and contain the problem. Funding for initial development is by a State grant to the Borough.

Once the equipment, and the basic training are completed for the response team, I'm not sure how future maintaining of that team is funded. Is it possible that some sort of matching funds be developed to keep these valuable teams operational. Of interest, Anchorage is developing a similar concept.

In the proposed bill, "Oil and Hazardous Substance Response Fund " does "Response" mean only a response "to an incident." Or will it include maintaining the "Response Capablities," such as the Haz-Mat teams.

If that is too involved to include with your present proposal, maybe it can be dealt with later. In the mean time, I encourage you to continue pushing the present proposal.

BERING STRAITS COASTAL MANAGEMENT PROGRAM
Box 28
Unalakleet, Alaska 99684
(907) 624-3062

December 5, 1995

Represenative Mike Davis
Pouch V
Juneau, Alaska 99811

Re: Proposed Hazardous Waste Legislation

Dear Mike:

Thank-you for including us on your mailing list of organizations concerned about the management and treatment/disposal of hazardous waste. We appreciate the opportunity to review the legislation you propose to introduce in the upcoming legislative session.

We have completed a preliminary review. There is a definite need for the type of legislation you are proposing and you may count on our support. On page 8, we found Section 46.09.010 a bit cumbersome to comprehend.

Your letter indicated more than just a passing familiarity with the Environmental Restoration Act's mandate to clean up active and abandoned military sites. At a regional level, we are extremely concerned and distressed with the Army Corps of Engineers management of the St. Lawrence Island Clean-up. For your review, I have enclosed a copy of Resolution 95-09 ("A Resolution of The Bering Straits Coastal Resource Service Area Board Requesting The Army Corps Of Engineers To Work With Local Entities In Developing A Mutually Agreeable Set Of Locally Affected Communities And Private Landowners During The Implementation Of The Environmental Restoration Act") that was adopted on November 15,1995. Resolution 95-09 outlines the Board's concerns and position. We would appreciate any intercession or assistance you may be in a position to provide. Should you require more background or detailed information, I would be pleased to work with your staff.

As you pursue the development of a comprehensive State management policy for hazardous wastes, please feel free to call on us if we can be of assistance.

Sincerely,

Bryan Mac Dean, Director
Bering Straits Coastal
Management Program

JIM D. CLARK
BOROUGH MANAGER

TELEPHONE
(907) 246-4224

Bristol Bay Borough

BOX 189 • NAKNEK, ALASKA 99633

December 3, 1985

Representative Mike Davis
Alaska State Legislature
P.O. Box 81435
Fairbanks, AK 99508

Dear Mike:

I have reviewed your proposed legislation, and agree there is a need to strengthen the laws in the containment and cleanup of hazardous wastes.

I have two points that in my opinion should be clarified or given additional thought.

1. Sec. 46.08.030 Financing the Fund, Paragraph 6.

I think it should be made mandatory that the Attorney General or the Department through the Attorney Generals office use any means possible to recover the costs from the perpetrator. "May Recover" as stated, is rather nebulous. Particularly when dealing with the expenditure of public funds to cleanup, or contain a hazardous substance that belonged to a private source.

Possibly, when an individual or firm applies for a permit to store hazardous wastes in particular, that he be required to post a bond to insure that in the event of a spill, or leak that funds will be available for cleanup or damage to persons or the environment.

This way, the use of public funds would only be used in extraordinary cases.

Also, if the funds set aside as a separate entity of the general fund the oil ans substance response fund could be partially self-perpetuating through the interest income it may derive.

2. Sec. 46.08.100 Definitions, Page 7, Item 5, Hazardous Substance, Letters "A" & "B".

A smart attorney representing a client perpetrator may put you in a position of the states word against his clients if you get involved in an exotic substance that is not currently listed as a hazardous substance by either the federal government or state regulation.

Perhaps a "catchall" clause such as determined by so and so, etc.

Fairbanks
North
Star
Borough

JAN 17

Mayor: Juanita Helms

January 14, 1986

Representative Mike Davis
Pouch V
Juneau, Alaska 99811

Dear Representative Davis:

I wanted to thank you for the opportunity to comment on your proposed Hazardous Substance legislation. Overall, we are very pleased with the legislation and would like to offer the following comments:

1.) Can provisions for reimbursing local municipalities for costs they might incur in containment or cleanup of hazardous substances be included in this legislation?

2.) This legislation allows ADEC to contract with municipalities or persons for cleanup or containment operations. However, it does not appear to allow ADEC to delegate its authority for cleanup or containment of hazardous substances to a municipality. Should the legislation allow such a delegation, within an area where an emergency response authority exists? The language in the legislation at present would result in ADEC taking a leading role in emergency response to hazardous substance spills. Is this the intent of this legislation? Perhaps language should be added to clarify the relationship between ADEC and recognized emergency responders, and their respective roles in the event of a hazardous substance spill.

We feel it would be advisable to allow ADEC to delegate its authority to approved emergency response authorities within their jurisdictions.

Thanks again for allowing us to review this legislation.

Sincerely,

Heather T. Stockard
Environmental Services Director

HTS/mnb
rj4-1

P.O. Box 1267 Fairbanks, Alaska 99707 (907) 452-4761

Sincerely,

Don Penner
Director of Community Development

Municipality of Anchorage

P.O. BOX 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4960

TONY KNOWLES,
MAYOR

INTERGOVERNMENTAL AFFAIRS

January 20, 1986

Rep. Mike Davis
Pouch V
Juneau, Alaska

Dear Mike:

The Municipality of Anchorage appreciates the opportunity to review H.B. 470, proposing the establishment of an oil and hazardous substances response fund. The Municipality strongly endorses the concept of the bill, and believes the bill will significantly reduce the potential for a catastrophic hazardous substances incident in the State of Alaska.

Suzanne Tryck of my staff has already delivered to your office detailed comments and suggested language for inclusion in the bill. The most significant provisions contained in these comments are those dealing with the set-aside of funds for training and equipping local public safety agencies and allowing access to the fund by local public safety agencies in the event of a hazardous substance emergency.

These two provisions are of major importance since, in nearly all hazardous substance emergencies, local public safety agencies - namely, fire departments - will be the first responders. The first responders must be prepared to contain any such emergency so as to protect health, property and the environment. The actions taken within the first few hours are critical to the successful control of a hazardous substances emergency. Without properly trained and equipped local public safety agencies, chances of diverting a disaster are greatly diminished.

During my recent visit to Juneau, I discussed this legislation with Representatives Mike Szymanski and Don Clocksin, who I understand are co-sponsoring the bill. The Municipality is prepared to continue to work closely with you, Representatives Clocksin and Szymanski, other members, and their staffs to assure passage of a bill adequately reflecting the concerns of local governments.

Thank you for your continued cooperation in working with us on this important legislation.

Sincerely,

Chip Dennerlein

cc: Rep. Don Clockson
Rep. Mike Szymanski

Municipality of Anchorage

Comments on the Oil and Hazardous Substances
Response Fund Bill

Sec. 46.08.050. Financing the Abatement of Oil or Hazardous Substances

Add a new paragraph (b) as follows and change existing (b) to (c):

(b) Ten percent (10%) of the fund balance at the beginning of each fiscal year shall be dedicated to local public safety agencies for training, contingency planning and equipment specifically related to developing and maintaining oil and hazardous substance response capabilities. The department shall develop criteria and guidelines for distribution of funds authorized under this Chapter to local public safety agencies within 90 days of enactment. Criteria for distribution of funds shall include, but not be limited to: population at risk, current hazardous substances inventory, current response capabilities, and intended use of funding.

Sec. 46.09.070. Records of the Fund

Add a new paragraph (d) as follows and change existing (d) to (e):

(d) The department shall promulgate regulations within 90 days of enactment for authorizing local public safety agencies assuming on-scene control to commit funds for emergency containment and cleanup of oil and hazardous substance releases.

Sec. 40.08.100. Definitions

Add to the end of paragraph 5(A) the word "or".

Reword paragraph 5(B) as follows (words in [] added; -- deleted):

(B) a substance defined as a hazardous substance [, hazardous material, hazardous waste, or toxic substance] under [state or] federal law or regulations [adopted in accordance with state or federal law] ~~of the department;~~

Sec. 46.09.010. Report of a Release of a Hazardous Substance

Reword paragraph (a) as follows (words in [] added):

(a) A person who is aware of the release or threatened release of a hazardous substance shall immediately notify the department [and a local public safety agency].

Add a new paragraph (b) as follows and change existing (b) to (c):

(b) The department shall establish and maintain a 24 hour per day duty officer to provide technical guidance and assistance and empowered to authorize expenditures of the fund for containment and cleanup of oil and hazardous substance releases.

Municipality of Anchorage

P.O. BOX 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4960

TONY KNOWLES,
MAYOR

INTERGOVERNMENTAL AFFAIRS

January 20, 1986

Rep. Mike Davis
Pouch V
Juneau, Alaska

Dear Mike:

The Municipality of Anchorage appreciates the opportunity to review H.B. 470, proposing the establishment of an oil and hazardous substances response fund. The Municipality strongly endorses the concept of the bill, and believes the bill will significantly reduce the potential for a catastrophic hazardous substances incident in the State of Alaska.

Suzanne Tryck of my staff has already delivered to your office detailed comments and suggested language for inclusion in the bill. The most significant provisions contained in these comments are those dealing with the set-aside of funds for training and equipping local public safety agencies and allowing access to the fund by local public safety agencies in the event of a hazardous substance emergency.

These two provisions are of major importance since, in nearly all hazardous substance emergencies, local public safety agencies - namely, fire departments - will be the first responders. The first responders must be prepared to contain any such emergency so as to protect health, property and the environment. The actions taken within the first few hours are critical to the successful control of a hazardous substances emergency. Without properly trained and equipped local public safety agencies, chances of diverting a disaster are greatly diminished.

During my recent visit to Juneau, I discussed this legislation with Representatives Mike Szymanski and Don Clocksin, who I understand are co-sponsoring the bill. The Municipality is prepared to continue to work closely with you, Representatives Clocksin and Szymanski, other members, and their staffs to assure passage of a bill adequately reflecting the concerns of local governments.

Thank you for your continued cooperation in working with us on this important legislation.

Sincerely,

Chip Dennerlein

cc: Rep. Don Clockson
Rep. Mike Szymanski

Sec. 46.09.020. Containment and Cleanup of a Released Hazardous Substance

Reword paragraph (a) as follows ([] added; -- deleted):

(a) A person causing or permitting the release of hazardous substances shall immediately contain and cleanup the hazardous substances. The department may waive this requirement if [it determines, in consultation with the United States Environmental Protection Agency and local public safety agencies, as appropriate, that]

~~(1) it determines, in consultation with the United States Environmental Protection Agency, as appropriate, that~~ [(1) the] containment or cleanup is technically not feasible; or

(2) the cleanup or containment activities would result in greater environmental damage then the release itself, [; or]

[(3) the cleanup or containment would result in a greater threat to life and human health than the release itself.]

Reword paragraph (d) as follows ([] added; -- deleted):

(d) The department shall provide for the immediate containment or cleanup of a hazardous substance release of unexplained origin [or when the person causing or permitting the release is unable or unwilling to immediately take responsibility] unless [the department determines, in consultation with the United States Environmental Protection Agency and local public safety agencies, as appropriate, that]

~~(1) the department determines, in consultation with the United States Environmental Protection Agency, that~~ [(1) the] containment or cleanup of the hazardous substance release is technically not feasible; or

(2) the containment or cleanup activities would result in greater environmental damage than the release itself, [; or]

adopted #7 2/6

[(3) the cleanup or containment would result in a greater threat to life and human health than the release itself.]

Add a new paragraph (e) as follows:

(e)(1) A local jurisdiction with capability to assume on-scene control of an oil and hazardous substance emergency shall notify the department of such capability, including a description of response training and equipment. The notification must be provided before a local public safety agency can commit funds for oil and hazardous substance containment and cleanup without prior department authorization;

(2) The department shall establish guidelines and procedures for authorizing other local public safety agencies to commit

funds for emergency containment and cleanup when the local jurisdiction assumes on-scene control;

(3) A local public safety agency that has assumed on-scene control for an oil and hazardous substances emergency shall maintain that responsibility until the incident has been contained and cleanup commenced or until on-scene control has been released to the department.

Change existing paragraph (e) to (f).

Sec. 46.09.030. Catastrophic Hazardous Substance Release

Add new paragraph (a) as follows:

(a) The department and the Alaska Division of Emergency Services shall develop and maintain a statewide oil and hazardous substances annex to the state emergency operations plan, including guidelines and procedures for determining if a release or threatened release constitutes a catastrophic hazardous substances release. The oil and hazardous substances annex shall be developed within one year of enactment and updated annually.

Change existing paragraph (a) to (b) and reword as follows ([] add; -- delete):

(b) The actual or imminent occurrence of a catastrophic release of hazardous substances constitutes a disaster emergency under AS 26.23. The department shall consult and coordinate its duties under this section with the Alaska Division of Emergency Services [.] ~~, and the commissioner may direct the department to perform the duties of the Alaska Division of Emergency Services under AS 26.23.020~~.

Change existing paragraph (b) to (c).

Sec. 46.09.040. Hazardous Substances Containment and Cleanup

Delete existing sections and add new section as follows:

(a) The department may contract with a person, or a municipality of the state for personnel, equipment, or services necessary to carry out all training, planning, inspecting, sampling, testing, investigating, surveying, analyzing, and engineering activities.

(b) The department shall contract with a person, or a municipality of the state for personnel, equipment, or services necessary for constructing, operating, and maintaining oil and hazardous substance containment and cleanup operations.

Sec. 46.09.050. Peace Officers

Delete this section.

Sec. 46.09.090. Definitions

Change paragraph (1) as follows ([] add; -- delete):

(1) "catastrophic release of hazardous substances" means any ~~discharge which~~ [release or threatened release exceeding the response capabilities of a local jurisdiction and for which the highest local elected official and] the governor determines represents a grave and substantial threat to the public health and safety, economy, or environment of the state;

Add to the end of paragraph 5(A) the work "or".

Reword paragraph 5(B) as follows ([] added; -- deleted):

(B) a substance defined as a hazardous substance [hazardous material, hazardous waste, or toxic substance] under [state or] federal law or regulations [adopted in accordance with state or federal law] ~~of the department~~;

City of Valdez



Office of Community Development
December 13, 1985

Representative Mike Davis
Pouch V
Juneau, AK. 99811

Dear Mike,

Thank you for the opportunity to review proposed AS 46.08 and 46.09. I have asked the City Fire Chief, who is responsible for hazardous waste, to review the draft and I've attached his comments.

I ageee with Chief McAlisters' comments on cost. The program could becorne very costly and cumbersome with some high side boards.

The main problem I have is with Sec. 46.09.070. Maybe I"m being somewhat sensitive to this issue as its a current problem with our local Coastal Zone Management draft, but Title 29 gives the City authority to manage if its ordinances are equal to or more strict than the state law. I do have a problem with the State overriding city ordinances regardless if they are in conflict or not. I suggest that city"s (municipalities) be given the option of developing their own hazardous management plan. DEC could approve of the plan and once approved it would be the prevailing ordinance or legislation within that community. The plan would have the obvious coordination language with the necessary state agencies.

Please keep us informed. As a major shipping point for both crude oil and other hazardous material we are very interested in your progress on legislation.

Please let me know if we can provide any further assistance.

Sincerely,
CITY OF VALDEZ

Dennis R. Thomason
Director, Community Development

DRT/lrf

enclosure

#20Davis.Dec

MEMO

City of Valdez, Alaska Box 307, 99686

To Dennis Thomason

Date December 5, 1985

Subject Proposed Legislation Relating to Hazardous Substances

From Tom McAlister

This bill does many things that I think would be benifical to the City of Valdez. To name a few:

1. Provides funds for emergency cleanup.
   a) At present the fire department and harbor department pays for materials and manpower used in cleanup activities.
2. Provides for mutual aid agreements and contracts to Municipalities.
3. Provides a means to recover costs from persons responsible.
4. Provides for training.

Disavanges may include a large bureaucracy and a tremendous expense to the state each year if it is fully funded.

If not funde. DEC would be shackled with a great statutary responsibility that they cannot carry out as a number of other agencies are at present.

Its going to be interesting to keep an eye on this one and see what the outcome is.

City of Petersburg
P. O. Box 329
Petersburg, Alaska 99833

December 11, 1985

Alaska State Legislature
Representative Mike Davis
Pouch V
Juneau, Alaska 9811

Dear Representative Davis:

Thank you in advance for the opportunity to respond to you and the legislation which you plan to propose in January to the Legislature.

Basically, the Legislation which you are proposing looks very good, and as we both know, the response fund protion of this legislation is very needed.

On December 9, 1985, I attended a Public meeting in Juneau put on by the Alaska Department of Environmental Conservation, Hazardous Waste Division, regarding their upcoming hazardous waste management program. This meeting or any of their other scheduled public meetings would have been a good meeting for you to attend and discuss your proposed legislation with the public in attendance.

ADEC's program, as I am sure you are aware, is designed to develop and adopt state regulations that would be managed and enforced by the department. The goal of ADEC is to eventually have a hazardous waste program ran by the state and to eliminate the Federal Environmental protection agency from the hazardous waste program here in Alaska.

The Super Fund legislation you are proposing appears to me to be similar to the EPA "CERCLA" act of 1980. At this aforementioned public meeting, we discussed this EPA fund and found that our current identified locations of hazardous waste do not qualify as a serious enough threat to health as is needed to receive a portion of this fund. Therefore, this state fund could be a real bonus to us in Alaska. Hopefully, the requirements and or

procedures for aquiring this money for use at hazardous waste sites will not be so burdensome so that any spill or location of waste site regardless of size can rely on these funds if needed.

In some aspects, this proposed legislation already closely coincides with the programs which ADEC has proposed. Further, their direction from the 1984 Alaska legislature, mandated some very specific points. I wonder if your legislation and their proposed programs might be duplicating each others efforts. The director of the hazardous waste division of ADEC who was also at this meeting is Dave Detrailia. A suggestion would be to contact him regarding their efforts if you have not already done so.

In closing, the component which is lacking in your proposal and also lacking in the DEC program is the identification/disposal problems of other hazardous substances such as PCB's and Asbestos. It is a confusing situation when items such as these corner a majority of the public outcry, but are not considered hazardous waste under either EPA or DEC guidelines. PCB's in old electrical transformers, and asbestor insulation will not just dissappear, and the inability to use this proposed state fund for the elimination of this type of hazardous substance in my opinion is a mistake. As the proposed DEC program does not address this problem, and your proposed legislation eliminates them from "Super Fund" use, this type of material will continue to be located around population centers. Small municipalities will continue to be forced to deal with various divisions of EPA for removal, and will never receieve any financial assistance in this disposal process.

Knowing the amount of electrical transformers in our area with PCB contamination, and multiplying these times the communities in Alaska, I feel this type of substance is far more a concern then most substances as defined in the EPA-Resource Conservation and recovery act of 1976.

I urge you to amend your proposed legislation for the inclusion of PCB and Asbestor removal as a realistic candidate for use of Super Fund money for disposal. Further, I feel direction should be given to ADEC to expand their proposed programs to include all hazardous substances indentification/disposal areas as previously defined by EPA, so that state controls can be placed on all materials which are identified as hazardous, and Federal EPA regulations can be abandoned.

Again, thank you for the chance to respond and I hope my comments will be of value to you.

Sincerely,

Roger Krieger

Roger Krieger
Building Official

RK/ec

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

Planning Department

December 18, 1985

File No. 2500

Representative Mike Davis
P.O. Box 81435
Fairbanks, AK 99708

Re: Oil and Hazardous Substance Response Fund

Dear Rep. Davis:

Thank you for the opportunity to review your draft of legislation to create an Oil and Hazardous Substance Response Fund dated November 12, 1985. From the way your letter was addressed, I offer a personal response rather than an official response on behalf of the City of Juneau.

By way of background, let me note that I worked with a consultant to the Department of Environmental Conservation (DEC) on the subject of setting criteria for hazardous waste handling and disposal sites. It was my impression then that DEC was planning to either seek new legislation or enact regulations to set these criteria and a permit system to carry them out. The comments below are based, in part, on the prospect of some sort of permit system for regulating those sites.

I applaud the idea of a fund for DEC to use in reacting to oil and hazardous waste incidents. Using fines and penalties to buttress the fund sounds good too, although this is a bit of a departure from normal state practice where fines and fees are paid into the general fund. DEC should be fully equipped and authorized to assure that all monies intended for the Response Fund actually get there and stay there.

The source of money for the Response Fund is very likely going to be a problem. I gather that some money is available from Superfund but that a state matching share would be needed. As written, your bill is freestanding and does not depend on other programs or laws to function. If, however, a permit system for new and existing oil and hazardous waste facilities (or an improvement to an existing permit system) is established, then an annual fee could be assessed, based on quantities handled. These fees could make up the state share of the Response Fund. DEC could collect the fees as part of annual recertification and even reward good operators with rebates.

Some sort of system seems necessary for DEC to monitor the number of locations and type of facilities. This will allow them to focus their efforts on inspection and compliance. I would urge you to look at coupling the Response Fund to a regulatory system. I think the result will be better regulation and a fund that is self-supporting. The problem will thus be addressed more completely and lastingly.

I do not know what opportunities and amounts are offered by Superfund so the ideas above may not be workable. I also do not know how large our fund should be to prepare for likely emergencies. I would guess, however, that if we could establish a system based on less than one half percent of the operators' revenues that they would adjust easily. If this generates enough money for the state share of the Response Fund, and the administration of it, then you have an industry supported monitoring and emergency response package that stands alone.

A few words about the local government role in this matter should also be offered. Many communities have some sort of engineering or maintenance departments which have equipment and operators. Many of us are also engaged in planning for various forms of disaster. Local government warehouses are likely places for DEC to store special equipment for particular facilities. Finally, some DEC functions, notably subdivision review and air quality, can be turned over to local governments.

A lot of the planning, monitoring and inspection functions could be transferable to local governments as well as the pre-disaster activities. Some of the post-disaster responsibility could be lodged at the local level. The full package should allow for this.

As an overall summary, I would say that your bill as it stands is a good one and should be enacted if a more comprehensive solution is not possible. I would, however, urge a more comprehensive approach that includes:

- criteria for oil and hazardous waste sites and facilities;
- a permit system, with annual renewals, inspections and fees;
- an industry-generated base for the state's share of the Response Fund;
- provision for transfer of responsibilities to local governments; and
- the Response Fund itself.

Again, thanks for the opportunity to review this bill and thank you for your interest in this very important environmental concern. I hope my comments are helpful and if I can assist in any other way, please let me know.

Sincerely,

Murray R. Walsh
Planner III

792/52/MW/ym

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 19 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RES

RECEIVED
APR 21 1983

MEMORANDUM

DATE:

SUBJECT: Subtitle C Exclusion of Drilling Fluids and Produced Waters

FROM: John H. Skinner
Director, Office of Solid Waste

TO: Kenneth D. Feigner
Chief, Waste Management Branch
E.P.A. - Region X

Your interpretation of the oil and gas waste exclusion in 40 CFR 261-4, as expressed in your February 14, 1983 memorandum to me, is the correct interpretation of the scope of that exclusion. The Agency's policy on oil and gas exploration, development and production wastes, is the same as the policy stated in the preamble to the November 19, 1980 regulations (45 FR 76619) for mining and cement kiln dust wastes. Specifically, wastes such as spent solvents, pesticide wastes, and discarded commercial chemical products, that are not uniquely associated with the exploration, development, or production of crude oil or natural gas or geothermal energy, are not eligible for the exclusion. As you noted, a memorandum from EPA's Office of General Counsel to Region VII on September 2, 1981 confirms that policy.

Although some judgment is required to determine those wastes that are "unique" and those that are not, the interpretation in the last paragraph of your memorandum of February 14, 1982 is consistent with our policy on this issue.

- Skinner Ltr -

This exclusion does not, however, apply to solid wastes, such as spent solvents, pesticide wastes, and discarded commercial chemical products, that are not uniquely associated with these mining and allied processing operations, or cement kiln operations. Therefore, should either industry generate any of these non-indigenous wastes and the waste is identified or listed as hazardous under Part 261 of the regulations, the waste is hazardous and must be managed in conformance with the Subtitle C regulations.

It is our opinion that Congress did not intend to exclude absolutely all wastes generated at drilling or exploration sites. It seems apparent in RCRA 3001 that along with the exclusion there is a clear concern with whether the excluded wastes have characteristics which would necessitate their being regulated as hazardous. It is only those wastes "uniquely" associated with the activities under consideration about which there might be any such question. (This same concern was also reflected in EPA's initial proposals to consider these wastes as "special wastes.") However, for those wastes which are not uniquely associated, it should be clear that the issue of the extent of their hazardousness does not arise. Consistent with our sense of Congressional intent, we feel that EPA is obligated to make it clear that the hazardous wastes in this latter category are regulated as hazardous wastes under RCRA. Please be aware that an August 1981 response from OGC to a question raised by Region 7 on this issue supports this same position.

To summarize, we feel that the exclusion should properly cover soils, muds, fluids, etc., whether they are removed from the earth or added during the drilling or exploration operation. It should not include wastes routinely generated at construction sites, spent solvents from maintenance activities, unused chemical products intended for disposal, unused fuels, or any other wastes which are not unique to the exploration, development or production of crude oil, natural gas, or geothermal energy.

cc: Ron Kreizenbeck, AOD
Geoff Lewis, OSWER

They set some support from Martin et al, V. Glass, 571 F. Supp 1406

DHanline:nay:2-9-83

Alaska State Legislature

Representative Mike Davis

Pouch V
Juneau, Alaska 99811
(907) 465-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708

February 9, 1986

Mr. Scott Burgess, Executive Director
Alaska Municipal League
105 Municipal Way, Suite 301
Juneau, Alaska 99801

Dear Mr. Burgess,

I am writing to you at the request of the House Resources Committee regarding HB 470, an act relating to the release of oil and hazardous substances.

The bill has several provisions regarding municipalities, a brief description of which follows below:

Section 46.09.020(e) provides that the commissioner of the Dept. of Environmental Conservation may enter into agreements with municipalities in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state;
(2) provide for cooperative hazardous substance release notification procedures; or
(3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Section 46.09.040 provides that the commissioner of the Dept. of Environmental Conservation may contract with a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter.

In order to allow municipalities to enter into these agreements and contractual agreements should they choose to do so, language was placed in Sec. 46.09.070 stating that

" Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement AS 46.08 - AS 46.09. are granted to municipalities that do not otherwise have that authority."

The question raised by the House Resources Committee is whether or not municipalities, as a result of being granted this authority, would in any way be obligated or compelled to implement this authority. Specifically, this question is directed toward second-class boroughs and home-rule municipalities.

I would appreciate receiving your response to this question as soon as possible.

Sincerely,

Mike

Rep. Mike Davis

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL QUALITY
POUCH O, JUNEAU, ALASKA 99811

Telephone:(907)
Address:
465-2666

February 7, 1986

The Honorable Richard Schultz
Chairman, House Resources Committee
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Schultz:

Enclosed is a revised fiscal note for CSHB 470. I have deleted the administrative assistant from the fiscal note due to the reduced administrative burden resulting from the amendments. This fiscal note will be adequate since the scope of the fund has been focused on site investigations and response to small or moderate incidents. Under this approach, major incidents would be addressed through capital appropriations or through funds available for emergencies declared by the Governor.

Thank you again for the opportunity to work with you in refining the proposed legislation.

Sincerely,

Bill Ross
Commissioner

Enclosure

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/4/86

REQUEST

Bill/Resolution No.: HB 470
Title: An Act Relating to the Release of Oil and Hazardous Substance
Sponsor: Representative Mike Davis
Requestor:
Date of Request:

FISCAL DETAIL

Agency Affected: Environmental Conservation
BRU: Environmental Quality
Components: Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		182.7	227.3	227.3		
TRAVEL		25.0	28.0	28.0		
CONTRACTUAL		48.5	53.5	53.5		
SUPPLIES		22.0	23.5	23.5		
EQUIPMENT		12.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		290.2	334.3	334.3		
CAPITAL						
RESPONSE FUND (non-lapsing)		1,000.0	(replenishment to 1,000.0)			
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		1290.2	334.3	334.3		
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS : *5.0 FTE

FULL-TIME		4	4	4		
PART-TIME		2	2	2		
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Stan Hungerford Phone: 465-2666
Division: Environmental Quality Date: 2/4/86

Approved by Commissioner: Bill Van Date: 2/4/86
Agency: Department of Environmental Conservation

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 470
Title : An Act Relating to the Release of Oil and Hazardous Substances
Sponsor : Rep. M. Davis
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected : Environmental Conservation
BRU : Environmental Quality
Components : Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		210.7	264.6	264.6		
TRAVEL		28.0	28.0	28.0		
CONTRACTUAL		53.5	53.5	53.5		
SUPPLIES		23.5	23.5	23.5		
EQUIPMENT		14.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		329.7	371.6	371.6		
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		7.0*	7.0	7.0		
FEDERAL FUNDS						
OTHER						
TOTAL						

*6.0 FTE

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : S.W. Hungerford
Phone : 465-2666
Division : Environmental Quality
Date : 1/17/86

Approved by Commissioner : Bill Reid
Date : 1/17/86
Agency : Dept. of Environmental Conservation

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Ecologist II	One	18 A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
Full Time	12		Juneau				

Type of Expenditure		Amount
1	2	3
Salary	28.1	
Benefits	8.3	
Premium Pay		
Other		
Total Personal Services		36.4
Travel		5.0
Contractual		25.0
Commodities		6.5
Equipment		2.0
Other		
Total Cost		74.9

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	74.9
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ - ___ - ___ - ___ - ___

Justification

This new position will be responsible for writing regulations related to implementation of this bill, including procedures to be used in containment and cleanup of a hazardous substance, reporting the release of a hazardous substance, use of the response fund, procedures to assess fines, penalties and recovery of costs. This person will also negotiate contracts to contain and clean up incidents requiring immediate response, determine liability for incidents, initiate appropriate actions to recover costs or other penalties, coordinate a training and safety program for field staff and report program activities to appropriate State and federal agencies and the State Legislature.

We expect to fill this position on October 1, 1986.

Funding for nine months has been requested for FY 87.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Water Quality Management

Page	of
Revised Date	

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Administrative Assistant II	One	14 A	GGU			

Time Status	Staff Months	RP Number	Location	Election District			
Full Time	12		Juneau				

Type of Expenditure		Amount
1	2	3
Salary	21.2	
Benefits	6.8	
Premium Pay		
Other		
Total Personal Services		28.0
Travel		3.0
Contractual		5.0
Commodities		1.5
Equipment		2.0
Other		
Total Cost		39.5

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	39.5
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ - ___ - ___ - ___ - ___

Justification

This new position will assist the program staff by preparing documents necessary to contract for services to contain and clean up hazardous substances, by recording and tracking expenditures from the response fund and preparing the fiscal reports required to report program activities to the Legislature. This person will also maintain records describing incidents and spills from across the State and other data necessary to obtain cost-recovery from responsible parties.

We expect to fill this position on October 1, 1986.

Funding for nine months has been requested for FY 87.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Water Quality Management

Page	of
Revised Date	

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Clerk Typist III	One	8 A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
Full Time	12		Juneau				

Type of Expenditure		Amount
1	2	3
Salary	14.7	
Benefits	5.3	
Premium Pay		
Other		
Total Personal Services		20.0
Travel		
Contractual		3.5
Commodities		1.5
Equipment		2.0
Other		
Total Cost		27.0

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	27.0
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ - ___ - ___ - ___ - ___

Justification

This new position will provide clerical support to the new program staff and enter data into computer files established to record program activities. This person will be required to prepare regulations, contract documents and fiscal reports as well as routine correspondence.

We expect to fill this position on October 1, 1987.

Funding for nine months has been requested for FY 87.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Water Quality Management

Page of
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Environmental Field Officer III	One	18 A	GGU			
Time Status / **Staff Months** / **RP Number**	**Location** / **Election District**					
Perm. Part Time / 6	Anchorage					

Type of Expenditure		Amount
1	2	3
Salary	18.7	
Benefits	5.6	
Premium Pay		
Other		
Total Personal Services		24.3
Travel		5.0
Contractual		5.0
Commodities		3.5
Equipment		2.0
Other		
Total Cost		39.8

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	39.8
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ - ___ - ___ - ___ - ___

Justification

This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Southcentral Region

Page of
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Environmental Field Officer III	One	18 A	GGU	Leg.		

Time Status	Staff Months	RP Number	Location	Election District
Full Time	12		Fairbanks	

Type of Expenditure		Amount
1	2	3
Salary	32.1	
Benefits	9.2	
Premium Pay		
Other		
Total Personal Services		41.3
Travel		5.0
Contractual		5.0
Commodities		3.5
Equipment		2.0
Other		
Total Cost		56.8

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	56.8
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

Justification

This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.

We expect to fill this position on October 1, 1987.

Funding for nine months has been requested for FY 87.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Northern Region

Page of
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Environmental Field Officer III	One	18	GGU			
Time Status / **Staff Months** / **RP Number**	**Location** / **Election District**			**Leg.**		
Perm. Part Time / 6 /	Juneau /					

Type of Expenditure		Amount
1	2	3
Salary	18.7	
Benefits	5.6	
Premium Pay		
Other		
Total Personal Services		24.3
Travel		5.0
Contractual		5.0
Commodities		3.5
Equipment		2.0
Other		
Total Cost		39.8

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	39.8
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Southeast Region

Page	of
Revised Date	

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Environmental Field Officer III	One	18 A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
Full Time	12		Anchorage				

Type of Expenditure		Amount
1	2	3
Salary	28.1	
Benefits	8.3	
Premium Pay		
Other		
Total Personal Services		36.4
Travel		5.0
Contractual		5.0
Commodities		3.5
Equipment		2.0
Other		
Total Cost		51.9

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	51.9
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For A&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.

We expect to fill this position on October 1, 1986.

Funding for nine months has been requested for FY 87.

Request For New Position

Agency: Environmental Conservation
BRU: Environmental Quality
Component: Southcentral Region

Page of
Revised Date

FY 87

Original sponsors: Davis, Koponen,
Hurley, et al

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 470 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the release of oil and hazardous substances; and providing for an effective date."

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

* Section 1. AS 46 is amended by adding a new chapter to read:

CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

Sec. 46.08.005. PURPOSE. The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of the expenses incurred by the Department of Environmental Conservation in the protection of the environment of the state from the release of oil or hazardous substances.

Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in the state general fund the oil and hazardous substance release response fund. The fund shall be administered by the commissioner of environmental conservation, but the commissioner of revenue shall be the custodian of the fund.

(b) Money from an appropriation made to the fund remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements.

Sec. 46.08.020. FINANCING OF THE FUND. The legislature may appropriate from the following sources to the fund:

(1) money received from federal, state, or other sources or from a private donor;

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site, but excluding funds from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered under this chapter or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS SUBSTANCE RELEASES. It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available.

Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval of the governor, the commissioner may use money from the fund to

(1) contain and clean up releases or threatened releases of oil or a hazardous substance;

(2) undertake plans, inspections, sampling, tests, investigations, public notification, damage assessment, surveys, analyses, engineering, construction, operations, and maintenance necessary or appropriate to contain and clean up releases or threatened releases of oil or hazardous substances;

(3) help the Department of Labor to assist emergency response employers in developing safety education programs under AS 18.60 for employees who may be called upon to respond to a release of

oil or a hazardous substance;

(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 960' - 9657 (Comprehensive Environmental Response, Compensation and Liability Act of 1980); and

(5) recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance.

Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) By July 1 of each year, the department shall determine the projected cost for the following fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

(c) The commissioner shall consult with the commissioner of revenue and the governor before adopting regulations governing fund accounting. The department shall develop procedures and adopt rules governing the expenditure of, and accounting for, money expended from the fund, and may not delay implementation of this chapter pending the effective date of the procedures and rules.

(d) The proper state officer shall pay disbursements from the fund on presentation of vouchers signed by the governor or the governor's authorized representative.

Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner shall submit a report to the governor and to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

(1) the amount of money expended under AS 46.08.040 during the preceding fiscal year; and

(2) the amount and source of money received and money recovered during the preceding fiscal year as specified in AS 46.08.-020.

Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a) The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(b) The attorney general, at the request of the commissioner, may seek to recover money expended by the department under this chapter or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

Sec. 46.08.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.08.900. DEFINITIONS. In this chapter

(1) "capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall;

(2) "commissioner" means the commissioner of environmental conservation;

(3) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, the restoration of the environment to its former state, and incidental administrative costs;

(4) "department" means the Department of Environmental Conservation;

(5) "employee" means a person who works for an employer in a place that is not used primarily as a personal residence;

(6) "employer" means a person, including the state and a political subdivision of the state, who has one or more employees working in a place that is not used primarily as a personal residence;

(7) "fund" means the oil and hazardous substance release response fund;

(8) "hazardous substance" means

(A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or

(B) a substance defined as a hazardous substance under state or federal law or by regulations adopted under state or federal law;

(9) "oil" means petroleum products of any kind and in any form, whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, oil mixed with other wastes, liquified natural gas, propane, butane, and other liquid hydrocarbons regardless of specific gravity;

(10) "release" means an intentional or unintentional release into the environment of the state.

* Sec. 2. AS 46 is amended by adding a new chapter to read:

CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a) Except as provided in (b) of this section, a person in charge of a vehicle, vessel or container from which, or a place at which, a

hazardous substance is released shall report the release to the department and appropriate public safety agencies promptly after learning of the release.

(b) The commissioner may enter into an agreement with a person for the periodic reporting of a controlled release of a hazardous substance if the release is not into water.

Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS SUBSTANCE. (a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than the release would cause if unabated; or

(3) that containment or cleanup would pose a greater threat to human life or health than the release itself.

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance.

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.

(d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment

and cleanup of the release unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than the release would cause if unabated; or

(3) that containment or cleanup would pose a greater threat to human life or health than the release itself.

(e) The commissioner shall enter into agreement with the Environmental Protection Agency, and may enter into agreements with other persons and municipalities, in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state;

(2) provide for cooperative hazardous substance release notification procedures; or

(3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency under AS 26.-23, the commissioner may assist the adjutant general in the relief of the emergency.

Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP. The commissioner may contract with a person or a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter. If the commissioner determines that it is infeasible to contract with a person or a municipality, the commissioner may establish and maintain containment and cleanup personnel,

equipment, and supplies necessary to carry out the requirements of this chapter.

Sec. 46.09.050. PEACE OFFICERS. Employees of the department designated by the commissioner as enforcement officers in the implementation of this chapter are peace officers of the state.

Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter into supplementary agreements, reciprocal arrangements, and compacts with another state or country for the implementation of this chapter subject to the approval of the Congress of the United States, if required, under the Constitution of the United States.

Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this chapter or of a regulation adopted by the commissioner under this chapter conflicts with the charter, ordinance, or regulation of a municipality, the provision of this chapter or of the regulation adopted by the commissioner under this chapter prevails.

(b) Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement AS 46.08 - AS 46.09, are granted to municipalities that do not otherwise have that authority. Except as provided in (a) of this section, a municipality may exercise its police power within the area of the municipality.

Sec. 46.09.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of environmental conservation;

(2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, the restoration of the

environment to its former state, and incidental administrative costs;

(3) "department" means the Department of Environmental Conservation;

(4) "hazardous substance" means

(A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or

(B) a substance defined as a hazardous substance under state or federal law or by regulations adopted under state or federal law;

(5) "release" means an intentional or unintentional release into the environment of the state.

* Sec. 3. AS 26.23.050(b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund <u>or the oil and hazardous substance release response fund, as appropriate</u>. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow from the United States government or other public or private sources for a term not to exceed two years.

* Sec. 4. AS 26.23.230(1) is amended to read:

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or nonmilitary man-made cause including, but not limited to, fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT DANGER OR DAMAGE], volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot. equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage;

* Sec. 5. AS 37.05.159 is amended by adding a new subsection to read:

(g) Notwithstanding the provisions of (b) of this section and AS 37.07.080(e), the governor may transfer $1,000,000 during a fiscal year from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund (AS 46.08).

* Sec. 6. AS 44.19.050 is amended to read:

Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049, "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause including, but not limited to, fire, flood, earthquake, landslide, avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air contamination, blight, infestation, explosion, [OR] riot, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage.

* Sec. 7. AS 46.03.290(a) is amended to read:

(a) When the department finds that an actual or imminent

discharge of oil, a hazardous substance, or low level radioactive materials to the air, water, land or subsurface land of the state poses an immediate threat to the public health or welfare, or the environment of the state, it may issue an order declaring an emergency and directing a person or persons to take action the department believes necessary to meet the emergency, and protect the public health, welfare, or environment.

* Sec. 8. AS 46.03.760(a) is amended to read:

(a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250 - 46.03.314, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $500 nor more than $100,000 for the initial violation, nor more than $5,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

* Sec. 9. AS 46.03.765 is amended to read:

Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09 or of a regulation, a lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

* Sec. 10. AS 46.03.780(a) is amended to read:

(a) A person who violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an order, permit, or other determination of the department made under the provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively, and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages.

* Sec. 11. AS 46.03.790(a) is amended to read:

(a) Except as provided in (d) - (f) of this section, a person who negligently violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or of a regulation, lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09 is guilty of a class B misdemeanor.

* Sec. 12. AS 46.03.790(b) is amended to read:

(b) Except as provided in (d) - (f) of this section, a person

who knowingly violates a provision of this chapter, [OR] AS 46.04, or AS 46.09, or of a regulation, lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09 is guilty of a class A misdemeanor.

* Sec. 13. AS 46.03.790(d) is amended to read:

(d) Notwithstanding (a) and (b) of this section, a person who fails to provide or falsely states information required under AS 46.03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

* Sec. 14. AS 46.04.010 is amended to read:

Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The department shall promptly seek reimbursement [, EITHER] under AS 46.03.760(e), AS 46.08.070, or from an applicable federal fund, for the expenses it incurs in cleaning up or containing a discharge of oil. If the department obtains reimbursement for a portion of its expenses from a federal fund, the remainder of the expenses incurred may be recovered under AS 46.03.760(e) or AS 46.08.070. Money received by the department under this section shall be deposited in the general fund and may be appropriated by the legislature to the oil and hazardous substance release response fund (AS 46.08).

* Sec. 15. Not later than January 1, 1987, the commissioner of environmental conservation shall develop guidelines under AS 46.09.020, added by sec. 2 of this Act.

* Sec. 16. Not later than October 1, 1987, the commissioner of environmental conservation shall adopt regulations under AS 46.09.080, added by sec. 2 of this Act.

* Sec. 17. This Act takes effect immediately in accordance with AS 01.-10.070(c).

PRESS RELEASE FROM THE PUBLIC INFORMATION OFFICE
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
POUCH O, JUNEAU, ALASKA 99811 (907) 465-2606

Bill Sheffield, Governor Bill Ross, Commissioner
Joe Ferguson, Information Officer

FOR IMMEDIATE RELEASE JANUARY 29, 1986

JUNEAU--DEC Commissioner Bill Ross today testified on behalf of Governor Bill Sheffield before the House Resources Committee in favor of House Bill 470, a measure that would establish an Oil and Hazardous Substance Release Fund to deal with spills of hazardous substances. The bill is sponsored by Rep. Mike Davis of Fairbanks. If passed by the Legislature, it would broaden the State's current Oil Spill Response Fund to allow the cleanup of hazardous substances in addition to oil, gasoline or other petroleum products.

In his testimony, Commissioner Ross indicated the proposed legislation would fill a gap in the State's available tools for dealing with improper hazardous waste disposal or spills. He said, "Access to federal funds for cleanup may not be as prompt as required and funds may not always be available, since the federal ranking system may not assign a sufficiently high priority for many spill occurrences or cleanup needs in Alaska. Federal priorities are weighted toward highly populated areas." Many situations that require prompt, professional response occur in remote areas, adding to the difficulty of cleanup efforts.

Ross explained that HB 470 creates the mechanism for prompt response when spills or improper disposal require either immediate removal or costly

-MORE-

remedies that cannot be charged to responsible parties or do not clearly fall under the responsibility of existing programs.

Governor Sheffield bases his support for the bill on the success of the existing Oil Spill Response Fund, which will be expanded under this measure to include hazardous waste spills. Ross said the existence of the oil spill fund encourages spillers to act quickly to contain and clean up their spills. "If they wait for DEC to perform the cleanup, it often costs them more in later reimbursement expenses. However, the real usefulness of the fund is to clean up a problem promptly when it is difficult to ascertain who is responsible for a discharge, when the spiller is reluctant to clean up an incident, or when a cleanup has been inadequate. It is important to include hazardous substances under such a program because they may be even more harmful to public health in certain cases than petroleum products," Ross said.

The Commissioner explained that monies used from the fund would be required to be reimbursed, just as the oil spill fund has been in the past. The existing oil spill program has dealt with a number of major events and many smaller incidents in its nine years. Of the $1.2 million spent, approximately $1.1 million has been repaid to date by those responsible for spills.

In his testimony regarding funding for the bill, Commissioner Ross said that the Sheffield Administration proposes that the fund be used to

respond to small or moderate emergencies and cleanups, site investigations of major hazardous spill or disposal sites, and for matching funds needed to obtain EPA monies from the federal Superfund program. State funding required to initiate the program could thus be limited to the $1 million range. He explained, "For large, expensive cleanups where EPA superfund dollars are not available, DEC should not use this emergency fund. A better option would be to seek capital budget appropriations for any major cleanups, thus allowing for the appropriate level of public scrutiny and debate on major projects, or if absolutly necessary, provide statutory authority for the Governor to declare an emergency and tap funds designated for that purpose."

Ross said, "The legislation has strong appeal because it is straightforward, providing the ability to do what has to be done promptly and efficiently, minimizing confusion as to whether there is adequate funding and available staff to do the job. It would give DEC a way to manage and coordinate responses regardless of who is responsible, where the event has occurred, and what has been released. Once proper cleanup has been completed, DEC can levy enforcement penalties and recover expenses charged to the fund."

# # #

HOUSE BILL NO. 470

An Act Relating to the Release of Oil and Hazardous Substances; and Providing for an Effective Date

Testimony presented by James M. Posey, ARCO Alaska, Inc. to the House Resources Committee, January 29, 1986.

Mr. Chairman and members of the committee, my name is Jim Posey. I am the Manager of Issues Advocacy. I have with me today Mr. Thomas R. Fink, the Environmental Conservation Manager.

We appreciate the opportunity to present this testimony today on this very important piece of legislation. ARCO Alaska, Inc., is a concerned corporate citizen and we consider environmental protection to be a paramount concern in our total activities and encourage environmental statutes that are based on scientific facts and urge that they be adopted and implemented in a sound and cost effective manner.

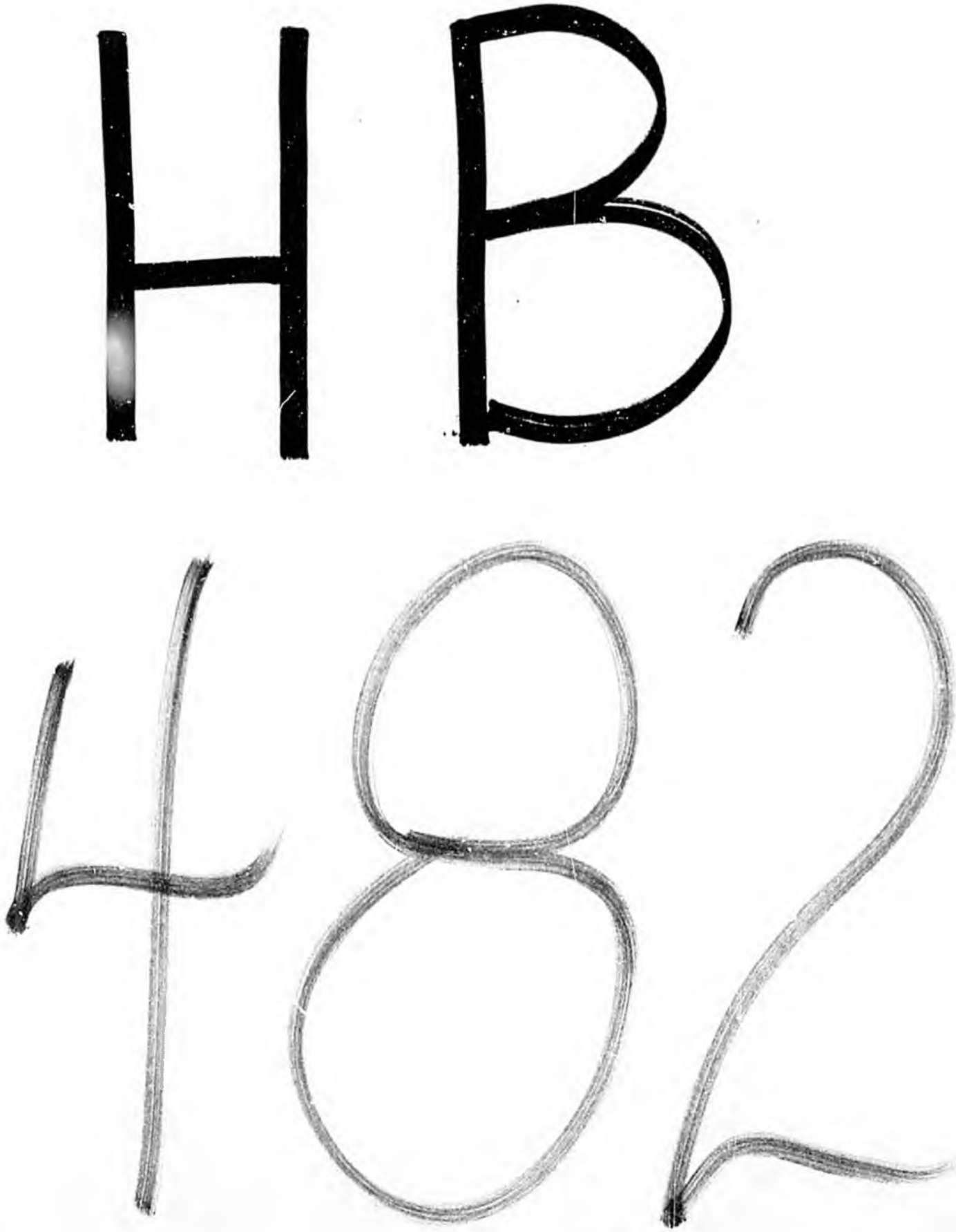
ARCO Alaska, Inc. has reviewed HB 470 and is of the opinion that it does little to enhance environmental protection, and it circumvents the normal appropriations process.

To the extent that legislators feel that the existing statutory framework should be changed to provide for an oil and hazardous spill fund, modification of existing AS 46, Chapter 04, would seem to be a more appropriate vehicle for expansion to include hazardous substances.

While we recognize that there may be a legitimate need to expand the existing statute to include hazardous substances requiring a spiller to clean those substances up and respond in damages, we do not feel that establishing a fund without adequate safeguards on its expenditures is a wise course or one that enhances environmental protection.

In this time of falling revenues to the State, it is not appropriate to establish a new special purpose fund that would siphon off general revenues that would escape the close scrutiny of the appropriations process.

Therefore, we do not believe that this legislation is necessary or fiscally responsible. Existing state and federal statutes, such as the Superfund (CERCLA), adequately address the environmental concerns for which this bill is intended.


HB
4082

HOUSE
COMMITTEE REPORT

4/17

Date referred: 1/17/86

FURTHER REFERRALS: FINANCE

DATE: April 17, 1986

The RESOURCES Committee has considered HB 482

"An Act relating to protection of natural rangelands."

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[XX] zero fiscal note w/analysis Sup 118

SIGNING DO PASS:

Shultz Dick Shultz

Herrmann Adelheid Herrmann

Cato Betty Cato

Thompson David W. Thompson

Miller(NP) M.W. Miller

Wallis F. Kaye Wallis

Jenkins Roger Jenkins

Sund John Sund

SIGNING OTHER RECOMMENDATIONS:

Dick Shultz
Co- Chairman Shultz

Original sponsor: Fuller

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 482 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an act entitled: "An Act relating to protection of natural rangeland."

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

* Section 1. The legislature finds that there is a substantial public purpose in the protection of existing naturally occurring rangeland and for the establishment of state owned or acquired land valuable for grazing as state grazing preserves for the perpetuation of personal, commercial, and other beneficial uses of the resources under the principles of multiple-use and sustained-yield management. In this section, "naturally occurring rangeland" means land of the state where cattle, sheep, or reindeer are grazing or where cattle, sheep, or reindeer may graze under lease or permit of the commissioner of natural resources.

* Sec. 2. The commissioner of natural resources shall report to the Second Session of the Fifteenth State Legislature within the first 10 days of the session on state land recommended for protection as state grazing preserves.

REP. JOHN G. (JACK) FULLER

DISTRICT 23

ALAKANUK
BREVIG MISSION
CHEVAK
DIOMEDE
ELIM
EMMONAK
GAMBEL
GOLOVIN
HOOPER BAY
KOTLIK
KOYUK
NOME
SAVOONGA
SCAMMON BAY
SHAKTOOLIK
SHELDON'S POINT
SHISHMAREF
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

CHAIRMAN
BUSH CAUCUS
LEGISLATIVE COUNCIL
ADMINISTRATIVE REGULATION
REVIEW COMMITTEE

MEMBER
POLICY COMMITTEE
SPECIAL COMMITTEE ON LOANS
RULES COMMITTEE
COMMITTEE ON COMMITTEES

Alaska House of Representatives

MEMORANDUM

TO: Rep. Adelheid Herrmann, Co-Chair
Rep. Richard Shultz, Co-Chair
House Resources Committee

FROM: Rep. Jack Fuller JF

SUBJECT: House Bill 482 - An Act Relating to Protection Natural Rangeland

DATE: April 9, 1986

I would like to offer the following amendment to House Bill 482.

Section 1, line 14, after management. Insert the following sentence:

> In this section, "naturally occurring rangeland" means state land where cattle, sheep, or reindeer are grazing or may graze under lease or permit of the commissioner of natural resources.

Thank you.

HOME
P.O. BOX 689
NOME, ALASKA 99762
(907) 443-2968

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3789
465-4984 465-4529

Introduced: 1/17/86
Referred: Resources and
Finance

IN THE HOUSE BY FULLER

HOUSE BILL NO. 482

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to protection of natural range-lands."

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

* Section 1. The legislature finds that there is a substantial public purpose in the protection of existing naturally occurring rangelands and for the establishment of state owned or acquired land valuable for grazing as state grazing preserves for the perpetuation of personal, commercial, and other beneficial uses of the resources under the principles of multiple-use and sustained-yield management. INCL

* Sec. 2. The commissioner of natural resources shall report to the Second Session of the Fifteenth State Legislature within the first 10 days of the session on state land recommended for protection as state grazing preserves.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/20/86

REQUEST

Bill/Resolution No. : HB 482
Title : Protection of Natural Rangelands

Sponsor : Representative Fuller
Requestor : House Resources
Date of Request : 2/12/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Land-Water Management/ Agriculture Management

Components : Public Use/Agriculture Management

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached

Prepared by : Michael E. Vediner Phone : 465-2400
Division : Land & Water Management Date : 2/20/86

Approved by Commissioner : Norman D Arnold, Deputy Date : 2/24/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

ANALYSIS

No fiscal impact to the department is anticipated. Identification of rangelands will occur during the department's regular area planning process. The department assumes that eventual designation of state grazing preserves will not require additional activity for fire protection or preserve management. The department currently issues grazing leases and permits for activity on state land. This permitting and leasing activity would be employed in state grazing preserves.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

February 13, 1986

The Honorable John G. Fuller
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Fuller:

As you requested, the Department of Natural Resources has reviewed HB 482 which provides protection for naturally occurring rangelands in Alaska. The department supports the use of Alaska's rangelands for grazing as a part of its objectives to make maximum use of State land resources.

The importance of insuring the protection of naturally occurring rangelands has been recognized in the Alaska Association of Soil and Water Conservation Districts' resolution AASWCD 85-10 (attach.). Additional support for the resolution has come from the Reindeer Herders Association. These two groups are particularly concerned about the protection of traditional grazing areas on Kodiak Island and reindeer grazing areas on the Seward Peninsula.

Section 1 of HB 482 finds that there is substantial benefit in the protection of existing, naturally occurring rangelands in Alaska under the principles of multiple use and sustained yield. The department concurs with this finding. The department does not object to the establishment of grazing preserves as long as they are recommended through a comprehensive resource planning process, evaluating other natural resource potential besides grazing. We are also concerned that preserves should not require fire protection beyond that already in place. The preserves should be managed for other compatible uses. The flexibility to meet all of these concerns exists in the bill as it is proposed.

A definition of naturally occurring rangelands is needed within the bill. We would suggest that naturally occurring rangelands are those lands where cattle, sheep, or reindeer are currently grazing under lease or permit. Additionally, more than 50 percent of the area to be included in a grazing preserve for cattle or sheep should be naturally vegetated to grasses or forbs.

Section 2 asks the department to report to the Second Session of the Fifteenth State Legislature on State land recommended for protection as grazing preserves. Again, this should be done through the department's area planning process. The additional fiscal impact to the department of this legislation should be zero if the identification and recommendation of grazing preserves is done through this planning process. Since area plans are amenable, we would hope that any grazing preserve legislation would provide the opportunity through area plans (AS 38.04) to review grazing preserves on a regular basis for additions, deletions, or modifications.

If you need additional information on grazing issues, please let me know.

Sincerely,

Esther C. Wunnicke
Commissioner

Attachment



KAWERAK, INC.

P.O. BOX 948 • NOME, ALASKA 99762

(907) 443-5231

SERVING THE VILLAGES OF:

BREVIG MISSION
COUNCIL
DIOMEDE
ELIM
GAMBELL
GOLOVIN
KOYUK
NOME
SAVOONGA
SHAKTOOLIK
SHISHMAREF
SOLOMON
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

Representative John G. Fuller
Pouch V
Juneau, Ak 99811

Dear Representative Fuller:

It was good to see you on Front Street near the Post Office the other day. As I mentioned, the Reindeer Herders' Association (RHA) is interested in supporting a Bill relating to the conservation and protection of natural rangelands.

I have been in touch with Jim Burton of Kodiak, a member of the Alaska Association of Soil and Water Conservation, District (AASWCD). He referred me to Senator Zharoff's office regarding Resolution No. AASWCD 85-10 and a proposed bill, (enclosed) which would create State Grazing Preserves. The Management Plans section of the proposed bill gives a very comprehensive list of multiple land uses other than grazing permits and leases.

Reindeer have been on the Seward Peninsula for almost 100 years and this should set some precedent for future land use designation. The reindeer herd dustributions outside the Seward Peninsula are at Shaktoolik, Stebbins, Islands of Hagemeister, St. Paul, Umnak, Atka, Kodiak and St. Lawrence; as well as on the Baldwin Peninsula.

The cattle and sheep are two other examples of livestock in Alaska that I can think of which would benefit through a multiple-use management plan for Alaska's resources.

The Reindeer Herders' Association is asking for your assistance in sponsoring or co-sponsoring a bill to create and establish state grazing preserves.

I want to thank you for your continued support of the reindeer industry.

Sincerely,

Henry Ahgupuk

Henry Ahgupuk, Director

RESOLUTION NO. AASWCD 85-10

SUBJECT OF RESOLUTION Kodiak Island Grazing Preserve

ORIGIN OF RESOLUTION Alaska Association of Soil and Water Conservation Districts

DATE OF ORIGIN October 19,1985

WHEREAS, grazing and red meat production are valuable to the state's economy and represent an important link in the state's agricultural industry; and

WHEREAS, due to favorable environmental factors the natural grasslands on the peninsula of Kodiak Island located between Chiniak Bay and Ugak Bay afford grazing year round; and

WHEREAS, such rangeland constitutes unique and irreplaceable resources of statewide importance;

THEREFORE BE IT RESOLVED, that the Legislature of the State of Alaska protect those rangelands by enacting the attached bill, entitled "An Act relating to the conservation and protection of natural rangelands" further identified as exhibit I of this resolution.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to:

Governor Bill Sheffield
Senate Resources Committee
House Resources Committee
Commissioner Esther Wunnicke

ACTION TAKEN BY AASWCD STANDING COMMITTEE _____

ACTION TAKEN BY AASWCD RESOLUTIONS COMMITTEE _____

ACTION TAKEN BY AASWCD _____



KAWERAK, INC.

P.O. BOX 948 • NOME, ALASKA 99762

(907) 443-5231

SERVING THE
VILLAGES OF

BREVIG MISSION
COUNCIL
DIOMEDE
ELIM
GAMBELL
GOLOVIN
HOOPER BAY
KOYUK
NOME
SAVOONGA
SHAKTOOLIK
SHISHMAREF
SOLOMON
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

Tom Panamaroff
Aide of Senator Fred F. Zharoff
Alaska State Senator
Alaska State Legislature Senate

Pouch V
State Capital
Juneau, Alaska 99811

Dear Tom;

I have enclosed Resolution No. AASWCD 85-10 passed by the Alaska Association of Soil and Water Conservation Districts on October 19, 1985 and a proposed Bill for an act entitled: " An Act relating to the conservation and protection of natural rangelands;"...

The Reindeer Herders' Association (RHA) supports the need to protect naturally occurring rangelands and to permit the establishment of state owned or acquired land and water areas as state grazing preserves.

It is my understanding that some thought has been given, not to identify specific areas or regions as grazing preserves. Instead that a general approach be used to determine and identify state lands that would be considered rangelands on a state-wide basis.

A statewide grazing act needs to be developed to outline policies and regulations pertaining to grazing. Land users need something concrete to fall back on when issues arise. Open herding should continue and an open range is ar issue that should be addressed.

I am thankful that Senator Zharoff has assigned you the task of looking into RHA's interest to establish state grazing preserves.

Sincerely;

Henry Ahgupuk
Director, RHA

cc: Jim Burton, Kodiak
John B. Coghill, Senator
Albert P. Adams, Rep.
John G. Fuller, Rep.
Frank R. Ferguson, Senator

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an act entitled: An act relating to the conservation and protection of natural rangelands; and providing for an effective date.

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

Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 12. CONSERVATION AND PROTECTION OF NATURAL RANGELANDS.

ARTICLE 1. STATE GRAZING PRESERVES

Sec 41.12.010. PURPOSE. The purpose of this chapter is to protect naturally occurring rangelands and to permit the establishment of state owned or acquired land and water areas as state grazing preserves. The primary purpose in the establishment of state grazing preserves is the perpetuation of personal, commercial, and other beneficial uses of resources through multiple-use management and sustained yield.

Sec 41.12.020. MANAGEMENT PLANS. The commissioner shall prepare and may amend management plans to assist in meeting the requirements of this chapter. A management plan prepared under this section may designate imcompatible uses and shall permit the following uses:

(1) grazing permits and leases;

(2) timber harvest;

(3) material extraction;

(4) mineral location and leasing;

(5) surface lease, consistent with AS 38.05.070, for uses other than grazing;

(6) recreation;

(7) wildlife and fisheries habitat management;

(8) hunting, fishing, and trapping; and

(9) other traditional, compatible uses.

ARTICLE 2. KODIAK ISLAND STATE GRAZING PRESERVE

Sec 41.12.200. KODIAK ISLAND STATE GRAZING PRESERVE. Subject to valid existing rights, the state owned or acquired land and water lying within the parcels described in this section is designated as the Kodiak Island Grazing Preserve.

[legal description]

Section 2. This Act takes effect July 1, 1986.

Alaska State Legislature

House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MEMORANDUM

TO: Tamara Brandt Cook
Deputy Director
Division of Legal Affairs

FROM: Rep. Jack Fuller

RE: Protection of Natural Rangelands

DATE: January 15, 1986

Attached is Work Draft 14-1571 by Senator Ferguson for introduction in the Senate. Please prepare identical legislation for introduction in the House by Rep. Jack Fuller.

Thank you.

Alaska Association of Soil and Water Conservation Districts
PO Box 953 - Delta Junction, Alaska 99737

January 30, 1986

The Honorable Richard Shultz
Alaska State Legislature
PO Box V
Juneau, Alaska 99811

RE: HB 482, SB 343 An Act Relating to the protection of natural rangelands.

Dear Representative Shultz:

The Alaska Association of Soil and Water Conservation Districts (AASWCD) supports the legislation identified above, and further recommends that the bills be amended as in our own draft included with this letter.

The draft we've included establishes a system of creating state grazing preserves in Article 1, with Articles 2 and 3 identifying specific State Grazing Preserve areas. (The Kodiak Island State Grazing Preserve and the Seward Peninsula State Grazing Preserve respectively.)

We feel that these natural rangelands are unique and irreplaceable resources of statewide importance, and as such deserve protection for present and future contribution to the economy.

Thank you for the oppurtunity to comment.

Sincerely,

Mike Carlson

Mike Carlson
President

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an act entitled: An act relating to the conservation and protection of natural rangelands; and providing for an effective date.

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

Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 12. CONSERVATION AND PROTECTION OF NATURAL RANGELANDS.

ARTICLE 1. STATE GRAZING PRESERVES

Sec 41.12.010. PURPOSE. The purpose of this chapter is to protect naturally occurring rangelands and to permit the establishment of state owned or acquired land and water areas as state grazing preserves. The primary purpose in the establishment of state grazing preserves is the perpetuation of personal, commercial, and other beneficial uses of resources through multiple-use management and sustained yield.

Sec 41.12.020. MANAGEMENT PLANS. The commissioner shall prepare and may amend management plans to assist in meeting the requirements of this chapter. A management plan prepared under this section may designate imcompatible uses and shall permit the following uses:

(1) grazing permits and leases;

(2) timber harvest;

(3) material extraction;

(4) mineral location and leasing;

(5) surface lease, consistent with AS 38.05.070, for uses other than grazing;

(6) recreation;

(7) wildlife and fisheries habitat management;

(8) hunting, fishing, and trapping; and

(9) other traditional, compatible uses.

ARTICLE 2. KODIAK ISLAND STATE GRAZING PRESERVE

Sec 41.12.200. KODIAK ISLAND STATE GRAZING PRESERVE. Subject to valid existing rights, the state owned or acquired land and water lying within the parcels described in this section is designated as the Kodiak Island State Grazing Preserve.

SEWARD MERIDIAN

T 29 S, R 19 W, Secs. 31-36

T 29 S, R 20 W, Secs. 7, 12-14, 19-24, 25-35

T 29 S, R 21 W, Secs. 24-36

T 29 S, R 22 W, Secs. 33-36

T 30 S, R's 19-22 W

T 31 S, R's 19-21 W

T 31 S, R 22 W, Secs. 1-12

T 32 S, R 19 W Secs. 3-6, 9

T 32 S R 20 W, Secs. 1-5, 9, 10.

ARTICLE 3. SEWARD PENINSULA GRAZING PRESERVE

Sec 41.12.300. SEWARD PENINSULA GRAZING PRESERVE. Subject to valid existing rights, the state owned or acquired land and water lying within the parcels described in this section is designated as the Seward Peninsula State Grazing Preserve.

KATEEL RIVER MERIDIAN

T 1 N, R's 10-20, 28-44 W

T 2 N, R's 10-20, 28-44 W

T 3 N, R's 10-20, 28-43 W

T 4 N, R's 10-19, 28-39 W

T 5 N, R's 10-22, 28-37 W

T 6 N, R's 10-22, 30-37 W

T 7 N, R's 10-21 W

T 8 N, R's 10-21 W

T 9 N, R's 11-14 W

T 10 N, R's 11, 13, 15 W

T 11 N, R's 8-13, 15 W

T 12 N, R's 10-15 W

T 13 N, R 15 W

T 14 N, R's 15, 16 W

T 15 N, R's 16-18 W

T 16 N, R's 16-18 W

T 17 N, R's 16, 17 W

T 18 N R 17 W

T 1 S, R's 10-20, 28, 29 W

T 2 S, R's 10-18, 28, 29 W

T 3 S, R's 10, 28, 29 W

T 4 S, R's 28, 29 W

T 5 S, R's 25-30 W

T 6 S, R's 25-31 W

T 7 S, R's 26-33 W

T 8 S, R's 25-38 W

T 9 S, R's 21, 22, 24-38 W

T 10 S, R's 20, 21, 23-37 W

T 11 S, R's 20-38 W

T 12 S, R's 20, 22, 23, 30-33 W

T 13 S, R's 20 21 W.

Section 2. This Act takes effect July 1, 1986.



STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

SOIL AND WATER CONSERVATION BOARD

PO Box 949, Palmer, Alaska 99645

Bill Sheffield, Governor

Susan Jane Brook
Gustavus

Lawrence T Davis
Nome

Norman Cosgrove
Delta Junction

Peter C Roberts
Homer

Mark A Weaver
Palmer

Due

April 10, 1986

Representative Richard Shultz
PO Box V
Juneau, AK 99811

RE: HB 482, SB 343, SB 406

Dear Representative Shultz:

We support protection of naturally occuring rangelands through enactment of legislation which would create a system of state grazing preserves. The preferred bill for accomplishing this is SB 406, as opposed to HB 482 or SB 343. While the latter two would study the proposal, SB 406 would create the grazing preserves.

Attached is a copy of a letter which exemplifies the need to create the grazing preserves as soon as possible. We do not feel that further studies are necessary. Range vegetation surveys have already been completed on the lands involved, indicating their high value for grazing. Additionally, the lands involved are already under grazing permit or lease from the federal or state governments.

The resource data has already been acquired, the lands are already being used for grazing purposes, and there should be no impediment to establishing the grazing preserves. Time is of the essence to prevent further erosion of the grazing potential of these lands through encroachment of private property.

Thank you.

Sincerely,

Larry Davis
Chairman



STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

SOIL AND WATER CONSERVATION BOARD

Bill Sheffield, Governor

PO Box 949, Palmer, Alaska 99645

Susan Jane Brook
Gustavus

Lawrence T Davis
Nome

Norman Cosgrove
Delta Junction

Peter C Roberts
Homer

Mark A Weaver
Palmer

April 9, 1986

Honorable Esther Wunnicke, Commissioner
Alaska Department of Natural Resources
PO Box M
Juneau, Alaska 99811

RE: Land Disposal Conflict with the Seward Peninsula Reindeer Industry

Dear Commissioner Wunnicke:

We have received notice that DNR plans to proceed this summer with disposal of certain lands on the Seward Peninsula. This disposal (Pilgrim Homestead), is scheduled to be followed by another disposal the following year (Grand Central Subdivision). We feel that recent court decisions warrant a new look at DNR's plans for land disposals on the traditional reindeer grazing lands of the Seward Peninsula.

It had been argued that, based on western common law, Alaska is an "open range" state, in which a livestock owner is not held liable for damages caused by his livestock to another person's property. However, based on the Anderson case at Homer, the courts have determined that western common law, and hence "open range", does not exist. Also addressed in the court decisions is the repeal of Alaska's "fence out" law.

The "fence out" law, effective in Alaska from 1949 thru 1977, required that property had to be enclosed by a legal fence in order for that property owner to hold a livestock owner liable for damage done to the property owner's land by the livestock owner's animals. Chapter 55, SLA 77 repealed the "fence out" provisions from Alaska law. The court decisions have determined that absent the "fence out" law, common law would protect the interests of private property over that of the livestock owner, thereby making the livestock owner liable for damage caused by his livestock in trespass on the property owner's land.

If a reindeer herder wants to avoid liability for damage to private property, he would have to fence his grazing area. Based on the prohibitive cost of fencing to the livestock owner, the effect of DNR's Seward Peninsula land disposal plans would be to create a problem where presently one does not exist, and quite possibly, could lead to the elimination of the Seward Peninsula reindeer industry.

With the significance of the reindeer industry to the diversification of Alaska's economy, as well as its importance as a local food source, we feel DNR should make every effort to support the industry. There are no other areas of the state as well suited for reindeer herding as the Seward Peninsula. The federal government has recognized the importance of the reindeer industry to the Seward Peninsula by providing for continued reindeer grazing within the ANILCA created, Bering Land Bridge National Preserve.

Commissioner, we request that you recognize the importance of the Seward Peninsula reindeer industry by prohibiting any state land actions there which would jeopardize the industry. In light of the court decisions and the fact that the issues inherent were not considered in plans for disposal of the subject lands, we formally request that you prohibit any land disposals on the Seward Peninsula.

Thank you for your consideration.

Sincerely,

Larry Davis
Chairman

cc: Reindeer Herders Association
Richard B. Thompson

HB

4092

March 3, 1986

Honorable Dick Shultz
Co-Chair
House Resource Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Shultz:

This letter for you and the members of the House Resources Committee is in regards to HB 492, submitted by Representative Duncan of Juneau. HB 492 is a bill wishing to do away with current regulations concerning vessel registration. HB 492 wants it to be legal to commercial salmon fish and sport salmon fish from the same vessel. This same bill was introduced by Representative Duncan last year and was not adopted. The Elfin Cove Fish and Game Advisory Committee is, as we were last year and in previous years, opposed to HB 492.

Firstly, and perhaps most importantly, HB 492 is a Board of Fisheries matter. Our understanding of the system is that fish and game allocation matters are considered by the respective board, either Fisheries or Game. We, as an Advisory Committee, review proposals submitted to the boards and then make our advisory comments directly, first written then orally at the proper Board meeting. This way with due public notice of Fish and Game issues all concerned individuals, groups, etc., can get together and hammer things out at a meeting. We believe this to be a good regulatory-making process that gives anyone so inclined free direct access to the policymakers at a certain time at a certain place. When Fish and Game issues of an allocative nature surface in the Legislature, it's upsetting to us that lawmakers are not willing to use the proper forum to further their voters' wishes. We believe that HB 492 is this type of allocative fisheries issue.

We suggest that your Committee invite Dave Cantillion from the Juneau ADF&G office to speak to your Committee. The delicate balance of salmon allocation amongst the user groups would become clear once you were briefed to the regulations, allocation policies and fishing patterns and areas that the Troll Fishery operates by. Ask ADF&G the allocative ramifications of more commercial hand troll effort in July and August on the Coho stocks in Lynn Canal, Chatham and Icy Staights.

Of the 2,200 hand troll permits, almost 500 are held by people in the Juneau area and are not being used. Current regulations require a person to register their vessel either sport or commercial fish every year prior to the summer troll season, with no dual registration allowed. Therefore, many hand troll permit holders

in Juneau choose to register their boats (generally of fiberglas, 19 to 26 foot sport/pleasure type craft (the Juneau harbors are full of them)) for sport, in order to fish Kings in April, May and the first of June around Juneau on days off and weekends, and then later on fish in the Derby and also fish for Cohos.

If HB 492 carries, then this sport/hand troll fleet, numbering hundreds in the Juneau area alone, are from Auke Bay within two hours cruising time of fertile Coho fishing in Lynn Canal, Chatham and Icy Straights. So they want to enjoy the best of both worlds, sport fishing spawning sized kings in the Spring, and doing a little commercial hand trolling for Cohos during summer vacations. The hand troll fleet, by regulation, is allocated 20% of the total troll catch of Cohos; right now that is being maintained at about 18% though in 1980 it was 34% when 2,000 hand trollers fished because Limited Entry was coming in soon. So any substantial increase in hand troll effort on the Cohos will put that group over their allocation and they have to quit fishing.

This would really hurt the rural resident hand troller in Hoonah, Angoon, Gustavus, Elfin Cove and similar places who depend on Cohos for the large share of their fishing income. Also, the whole Troll Fishery could be tied up due to the Department's policy of monitoring the strength of the Coho run in Southeast Alaska by using run strength indicators in Northern Southeast, these are the Juneau sports fishery and the inside gill netters. If escapement and inside fishery allocation goals are not above the past ten year average, then the troll fleet, not the gill netters, seiners or sports, is closed totally for ten days.

The Department is very conservative with this policy. In the last three out of four years all criteria had been met but there was still a ten-day August closure. Hoonah had their fishing time reduced in Icy Straights to eight days on, six days off schedule from seven days a week not too long ago. They probably are not too interested in any extra fishing effort in their area. They will once again be asking the Board to repeal the "eight and six" at a meeting in Sitka this March. From my experience of attending board meetings for the last five years, all these issues -- early registration for vessels, 80/20 Coho allocation split, 10-day August Coho closure, "eight and six" in Icy Straights and similar proposals -- have come up for vote. Policy has remained the same because an allocation balance has been reached that provides for the stocks to regenerate and a viable allocation to each user group. Introduction of a new major user would have to be absorbed in respect to the plan the users are already

operating under, this could only fairly be done at a Board of Fisheries meeting.

We trust your Committee can see the value in keeping the job of making regulations in the proper forum and not give HB 492 a favorable recommendation for passage.

Unfortunately, we cannot send a representative to your Committee hearing on HB 492 for further information exchange, though we remain at your service. My number in Elfin Cove is 239-2222.

Sincrely,

Jim Wild, Chairman
Elfin Cove Fish and Game
Advisory Committee
Box 52
Elfin Cove, Alaska 99825

JW:pas

P.S. This letter was not signed; it was dictated by phone due to adverse weather conditions.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 492
Title : " An Act relating to sport fishing from commercially licensed troll vessels..."
Sponsor : Duncan
Requestor : House Fisheries
Date of Request : 2/03/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Fish & Wildlife Protection

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Kathy Niles, Admin. Ass't Phone : 465-4336
Division : Commissioner's Office Date : 2/03/86

Approved by Commissioner : _____ Date : 2/3/86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 492

NEUTRAL

February 5, 1986

SB 492 - "An act relating to sport fishing from commercially licensed troll vessels; and providing for an effective date."

The Board of Fisheries has considered various proposals over the past years for allowing salmon sport fishing from commercial troll vessels. The Board has taken the position to not relax prohibition against salmon sport fishing from troll vessels as this could have an effect on the allocation of the commercial catch between the power and hand troll vessels. The U.S. - Canadian treaty presently regulates the number of King Salmon that can be taken by the commercial fishermen. They felt sport fishing if allowed could alter the present allocation and jeopardize the treaty. The Board of Fisheries did pass a regulation at the December meeting to allow sport fishing for bottom fish and halibut from commercial troll vessels in Southeast and Yakutat. The regulation will prohibit halibut being on board the vessel if there are salmon aboard. The enforcement will not be fully known until spring when commercial salmon trolling is in full swing.

Under the current regulations, only two citations were issued over the past twelve months, for observed violations of this regulation.

Robert J. Sundberg
Commissioner

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

February 7, 1986

The Honorable Jim Duncan
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Duncan:

This is in response to your request for information regarding the Division of Fish and Wildlife's enforcement efforts related to sport fishing violations by commercial trollers.

It is difficult, if not impossible, to place a priority level or amount of time consumed in that particular area of enforcement, as the salmon sport fishing prohibition regulation is but one of a broad spectrum of regulations that are enforced while Troopers are conducting commercial and sport fishing patrols. That regulation is given no more nor less attention or time than others to be enforced.

Cost factors as related to not enforcing the regulation in question could not be calculated because, as stated before, it is just one of many incorporated in the enforcement effort of patrols. If that regulation were deleted, the enforcement effort would still be carried on.

There were two citations issued for violations of sport fishing from a commercial troll vessel over the past twelve months. One was issued out of Ketchikan, and the other out of Juneau.

I apologize for not being more precise in priority, time and cost factors related to the subject matter, but it is just one part of an overall patrol enforcement operation.

Sincerely,

Robert J. Sundberg
Commissioner

12-L2LH

5 AAC 49.050. WATERS CLOSED TO SPORT FISHING. (a) The Situk River drainage is closed to king salmon fishing upstream from the U.S. Forest Service Middle Cabin from July 1 through August 31 and is closed to all fishing from the old railroad bridge downstream to its mouth.

(b) The Lost River drainage is closed to fishing upstream from the Lost River bridge from August 15 through December 31.

(c) Tawah Creek drainage, tributary to Lost River, is closed to fishing within 50 yards of the R.E.L. Bridge. (In effect before 1985; am 5/31/85, Reg. 94)

Authority: AS 16.05.251

5 AAC 49.060. SPORT FISHING FROM COMMERCIALLY LICENSED VESSELS. (a) No person may sport fish from a registered salmon hand troll or power troll vessel, as those vessels are identified by the marking requirements of 5 AAC 39.270(c) and (d), except that this prohibition does not apply

(1) to charter vessels;

(2) in derby zones during derbies authorized by the department.

(b) The owner or operator of a charter vessel shall register that vessel annually with the department before the vessel is used for sport fishing. The following information must be provided at the time of registration with the department:

(1) the name of the individual or company owning the charter service;

(2) the permanent residence address, and mailing address, of the owner or company;

(3) the permanent vessel license plate number (ADF&G number) for the vessel,

(4) a photostatic copy of the current Alaska Business License of the company or individual owning the charter service; and

(5) a photostatic copy of the U.S. Coast Guard license to carry passengers for hire issued to the owner or operator of the vessel.

(c) Each person who sport fishes from a vessel licensed for commercial fishing, including a charter vessel, in waters closed to commercial salmon fishing shall, immediately upon boating, mark each salmon by removing its dorsal (large back) fin.

(d) Sport fishing is illegal in waters closed to commercial fishing while commercially caught troll salmon are in possession. (In effect before 1984; am 4/28/84, Reg. 90; am 5/31/85, Reg. 94)

Authority: AS 16.05.251

CHAPTER 49.

YAKUTAT AREA

5 AAC 49.050(a) is amended to read

5 AAC 49.050. WATERS CLOSED TO SPORT FISHING. (a) The Situk River drainage is closed to king salmon fishing upstream from the U.S. Forest Service middle cabin from July 1 through August 31, and is closed to all fishing from the old railroad bridge downstream to its mouth from June 15 through October 14. (In effect before 1985; am 5/31/85, Register 94; am __/__/86, Register __)

Authority: AS 16.05.251

5 AAC 49.060(a)(3) is added and (b)(4) and (5) are amended to read:

5 AAC 49.060. SPORT FISHING FROM COMMERCIALLY LICENSED VESSELS. (a) No person may sport fish from a registered salmon hand troll or power troll vessel, as those vessels are identified by the marking requirements of 5 AAC 39.119, except that this prohibition does not apply

(3) to sport fishing for bottomfish and halibut; no halibut may be on board the vessel if there are salmon on board.

(b) The operator of a charter vessel shall register that vessel annually with the department before the vessel is used for sport fishing in salt water. The following information must be provided at the time of registration with the department:

(4) the number of the current Alaska Business License of the company or individual owning the charter service; and

(5) the number of the U.S. Coast Guard license to carry passengers for hire issued to the operator of the vessel.

(In effect before 1984; am 4/28/84, Register 90; am 5/31/85, Register 94, am __/__/86, Register __)

Authority: AS 16.05.251

5 AAC 46.060. SPORT FISHING FROM COMMERCIALLY LICENSED VESSELS. (a) No person may sport fish from a registered salmon hand troll or power troll vessel, as those vessels are identified by the marking requirements of 5 AAC 39.270(c) and (d), except that this prohibition does not apply

(1) to charter vessels;

(2) in derby zones during derbies authorized by the department.

(b) The owner or operator of a charter vessel shall register that vessel annually with the department before the vessel is used for sport fishing. The following information must be provided at the time of registration with the department:

(1) the name of the individual or company owning the charter service;

(2) the permanent residence address, and mailing address, of the owner or company;

(3) the permanent vessel license plate number (ADF&G number) for the vessel;

(4) a photostatic copy of the current Alaska Business License of the company or individual owning the charter service; and

(5) a photostatic copy of the U.S. Coast Guard license to carry passengers for hire issued to the owner or operator of the vessel.

(c) Each person who sport fishes from a vessel licensed for commercial fishing, including a charter vessel, in waters closed to commercial salmon fishing shall, immediately upon boating, mark each salmon by removing its dorsal (large back) fin.

(d) Sport fishing is illegal in waters closed to commercial fishing while commercially caught salmon are in possession. (In effect before 1984; am 4/28/84, Reg. 90; am 5/31/85, Reg. 94)

Authority: AS 16.05.251

CHAPTER 48.
AREA 1–SOUTHEAST ALASKA

Article
1. Freshwater (5 AAC 48.010–5 AAC 48.030)
2. Saltwater (5 AAC 48.040–5 AAC 48.092)
3. Definition of Area (5 AAC 48.100)

ARTICLE 1.
FRESHWATER

Section
10. (Repealed)
20. (Repealed)
30. (Repealed)

5 AAC 48.010. OPEN SEASON. Repealed 5/6/81.

5 AAC 48.020. BAG LIMITS. Repealed 5/6/81.

5 AAC 48.030. EXCEPTIONS. Repealed 5/6/81.

ARTICLE 2.
SALTWATER

Section
40. (Repealed)
50. (Repealed)
60. (Repealed)
70. (Repealed)
80. (Repealed)
90. (Repealed)
92. (Repealed)

5 AAC 48.040. OPEN SEASON. Repealed 5/6/81.

5 AAC 48.050. BAG LIMIT. Repealed 5/6/81.

5 AAC 48.060. EXCEPTIONS. Repealed 5/6/81.

5 AAC 48.070. SPORT FISHING FOR SALMON WITH COMMERCIALLY CAUGHT TROLL SALMON IN POSSESSION. Repealed 5/6/81.

(B) the Klawock River drainage upstream from the Klawock River bridge is closed to red salmon fishing.

(d) In salt water

(10) the area between the Klawock River bridge and a line from the Klawock blinker light to the Klawock oil dock is closed to red salmon fishing, and is closed to snagging; fish hooked elsewhere than in the mouth must be released immediately. (In effect before 1983; am 4/3/83; Register 85; am 4/28/84, Register 90; am 5/31/85, Register 94; am __/__/86, Register __)

Authority: AS 16.05.251

5 AAC 46.060 (a)(3) is added and (b)(4) and (5) are amended to read:

5 AAC 46.060. SPORT FISHING FROM COMMERCIALLY LICENSED VESSELS. (a) No person may sport fish from a registered salmon hand troll or power troll vessel, as those vessels are identified by the marking requirements of 5 AAC 39.119, except that this prohibition does not apply

(3) to sport fishing for bottomfish and halibut; no halibut may be on board the vessel if there are salmon on board.

(b) The operator of a charter vessel shall register that vessel annually with the department before the vessel is used for sport fishing in salt water. The following information must be provided at the time of registration with the department:

(4) the number of the current Alaska Business License of the company or individual owning the charter service; and

(5) the number of the U.S. Coast Guard license to carry passengers for hire issued to the operator of the vessel.

(In effect before 1984; am 4/28/84, Register 90; am 5/31/85, Register 94, am __/__/86, Register __)

Authority: AS 16.05.251

March 3, 1986

Honorable Adelheid Herrmann
Co-Chair
House Resource Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Herrmann:

This letter for you and the members of the House Resources Committee is in regards to HB 492, submitted by Representative Duncan of Juneau. HB 492 is a bill wishing to do away with current regulations concerning vessel registration. HB 492 wants it to be legal to commercial salmon fish and sport salmon fish from the same vessel. This same bill was introduced by Representative Duncan last year and was not adopted. The Elfin Cove Fish and Game Advisory Committee is, as we were last year and in previous years, opposed to HB 492.

Firstly, and perhaps most importantly, HB 492 is a Board of Fisheries matter. Our understanding of the system is that fish and game allocation matters are considered by the respective board, either Fisheries or Game. We, as an Advisory Committee, review proposals submitted to the boards and then make our advisory comments directly, first written then orally at the proper Board meeting. This way with due public notice of Fish and Game issues all concerned individuals, groups, etc., can get together and hammer things out at a meeting. We believe this to be a good regulatory-making process that gives anyone so inclined free direct access to the policymakers at a certain time at a certain place. When Fish and Game issues of an allocative nature surface in the Legislature, it's upsetting to us that lawmakers are not willing to use the proper forum to further their voters' wishes. We believe that HB 492 is this type of allocative fisheries issue.

We suggest that your Committee invite Dave Cantillion from the Juneau ADF&G office to speak to your Committee. The delicate balance of salmon allocation amongst the user groups would become clear once you were briefed to the regulations, allocation policies and fishing patterns and areas that the Troll Fishery operates by. Ask ADF&G the allocative ramifications of more commercial hand troll effort in July and August on the Coho stocks in Lynn Canal, Chatham and Icy Staights.

Of the 2,200 hand troll permits, almost 500 are held by people in the Juneau area and are not being used. Current regulations require a person to register their vessel either sport or commercial fish every year prior to the summer troll season, with no dual registration allowed. Therefore, many hand troll permit holders

in Juneau choose to register their boats (generally of fiberglas, 19 to 26 foot sport/pleasure type craft (the Juneau harbors are full of them)) for sport, in order to fish Kings in April, May and the first of June around Juneau on days off and weekends, and then later on fish in the Derby and also fish for Cohos.

If HB 492 carries, then this sport/hand troll fleet, numbering hundreds in the Juneau area alone, are from Auke Bay within two hours cruising time of fertile Coho fishing in Lynn Canal, Chatham and Icy Straights. So they want to enjoy the best of both worlds, sport fishing spawning sized kings in the Spring, and doing a little commercial hand trolling for Cohos during summer vacations. The hand troll fleet, by regulation, is allocated 20% of the total troll catch of Cohos; right now that is being maintained at about 18% though in 1980 it was 34% when 2,000 hand trollers fished because Limited Entry was coming in soon. So any substantial increase in hand troll effort on the Cohos will put that group over their allocation and they have to quit fishing.

This would really hurt the rural resident hand troller in Hoonah, Angoon, Gustavus, Elfin Cove and similar places who depend on Cohos for the large share of their fishing income. Also, the whole Troll Fishery could be tied up due to the Department's policy of monitoring the strength of the Coho run in Southeast Alaska by using run strength indicators in Northern Southeast, these are the Juneau sports fishery and the inside gill netters. If escapement and inside fishery allocation goals are not above the past ten year average, then the troll fleet, not the gill netters, seiners or sports, is closed totally for ten days.

The Department is very conservative with this policy. In the last three out of four years all criteria had been met but there was still a ten-day August closure. Hoonah had their fishing time reduced in Icy Straights to eight days on, six days off schedule from seven days a week not too long ago. They probably are not too interested in any extra fishing effort in their area. They will once again be asking the Board to repeal the "eight and six" at a meeting in Sitka this March. From my experience of attending board meetings for the last five years, all these issues -- early registration for vessels, 80/20 Coho allocation split, 10-day August Coho closure, "eight and six" in Icy Straights and similar proposals -- have come up for vote. Policy has remained the same because an allocation balance has been reached that provides for the stocks to regenerate and a viable allocation to each user group. Introduction of a new major user would have to be absorbed in respect to the plan the users are already

operating under, this could only fairly be done at a Board of Fisheries meeting.

We trust your Committee can see the value in keeping the job of making regulations in the proper forum and not give HB 492 a favorable recommendation for passage.

Unfortunately, we cannot send a representative to your Committee hearing on HB 492 for further information exchange, though we remain at your service. My number in Elfin Cove is 239-2222.

Sincrely,

Jim Wild, Chairman
Elfin Cove Fish and Game
Advisory Committee
Box 52
Elfin Cove, Alaska 99825

JW:pas

P.S. This letter was not signed; it was dictated by phone due to adverse weather conditions.

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
Miles N. Murphy Jr.	Box 151 Hoonah, Alaska	945-3665	Sport.
Paul Dybdale	Box 277 Hoonah, Alaska	945-3391	Sport
Michael J Lavoliere	P.O. Box 204 Hoonah, AK 99829	945-3296	Sport + Commercial
Gladys Skeek	Box 215 Hoonah, AK 99829	945-3208	Sport
Jamie C Brown	Bx 396 Hoonah AK 99829	945-3639	Sport
Mary Wolcott	Box 303 Hoonah	945-3357	Sport + Commercial
Albert Dick	Box 411 Hoonah	945-3353	Sport & Commercial
Raymond Dick	Box 291 Hoonah		Sport Commercial
Harold Dick Sr	Box 362	945-3240	Sport
Nina M. Dick	Box 362	945-3240	Sport
Jacqueline Y. Dick	Box 411		Sports & Commercial
Jerry White Sr	Box 339	945-3262	Sports & Commercial.
Christina M. White	Box 339	945-3262	Sport
Jessie H Gray	Box 244	945-3326	
[illegible]	Box 136		Commercial
Gertrude Wolfe	Box 319		Sport.
George N. Mills	Box 286, Hoonah, AK	945-3290	Sport + Commercial
Ruth Lindoff	Box 325 Hoonah		
Jerry F. Albert	Box 294 Hoonah		Same
Arlene Sharclane	Box 227 Hoonah		Sport
Diane Carrier	Box 294 Hoonah		Sport
Sarah A Sharclane	Box 152 Hoonah		

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
Marie E. Howard	Box 187	945-3317	Commercial & Seining
Hanna Fred Smith	Box 213		Sport fishing
Colleen Williams	Glen Del		Sport fishing
Bernice E. Easterly	Box 197		Commercial & Sport fishing
Aldine Allan	Box 246		
Calvin St. Clair			
Charlene J. Knudson	Box 142		
Ladonna F. Dybdahl	P.O. Box 247	945-3695	Commercial Sport
Kathryn Marvin	Box 192 - Hoonah, Ak		Sport
Glenn Johnson	P.O. Box 428	Hoonah, Ak.	Sport
Mary Wilson	P.O. Box 282	Hoonah AK	
Dora Sheabley	P.O. Box 369	Hoonah Ak.	
Charlotte McDonnell	P.O. Box 121	HNH, AK	
Genevieve Knudson	Box 142	Hoonah Ak	
Michael Knudson	Box 142	Hoonah Ak	
Carlie Brown	Box 383	Hoonah AK	
Archie Brown	Box 383	Hoonah AK.	
Marlis Mayeda	Box 153	Hoonah, Ak.	
Maxine M. Brown	Box 381	Hoonah, Ak - 99824	
Gary M. Brown Sr.	Box 381	Hoonah, Alaska	
Jacob W. Pratt III	Box 321	Hoonah, Alaska	
Charles Jack Jr	Box 309	Comm " " " "	

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
[illegible]	[illegible] Hoonah	-	
[illegible]	[illegible] Hoonah	-	Sport
[illegible]	[illegible] Hoonah		
[illegible]	Box [illegible] Hoonah		sport
[illegible]	[illegible] Hoonah		Sport-Comm
[illegible]	[illegible]		
Joel Koenig	"	945-3339-Comm.-Sport	
Cornelia L. Koenig	Hoonah	945-3339	sport
[illegible]	Hoonah AK		
[illegible]	[illegible] Hoonah	945-3357	
[illegible]	Funter	Box 547	comm
[illegible]	Hoonah		sport
[illegible]	Hoonah	945-3278	Commercial
[illegible]	Hoonah	Box 259	[illegible]
[illegible]	Hoonah		Commercial
[illegible]	[illegible]		commercial
[illegible]	[illegible]		
[illegible]	Box 177		Hoonah
[illegible]	Box 177	Hoonah	Comm.
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
[illegible]	Box [illegible]	945-[illegible]	Comm/

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
Geraldine A Gray	PO Box 476	945-3630	comm, sport
[illegible]	[illegible]	945-3225	
[illegible]	[illegible]	945-3200	"
Thomas K. James	Box 441	945-3321	Commercial
Darlene H. Weathers		945-3321	Commercial
[illegible]		945-3237	Sport
Ruth James		945-3321	
Lena R. Martin	P.O. Box 363	945-3654	
Felicia A. Stoffelsen	Box 137	945-3295	Comm
[illegible]	Box 449	945-3393	Comm.
[illegible]	Box 243	945-3250	Comm.
Eli Shardine	Box 224	945-3313	Sport
Gerald K. Witt	Box 444	945-3345	Sport.
George Martin	Box 363	945-3654	Comm. + Sport
Ernest Jack	Box 94	945 3253	Comm + Sport
Janice Bennett	Box 255-Hoonah		

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
B.W. Finley	Box 801 Juneau	9-2065	Commercial Troll
Benjamin [illegible]	18216 Pt. [illegible]	789-7851	Fish Buyer
Elizabeth [illegible]	18216 Pt. Stephens Juneau	789-7851	Fish Buyer
R. Parish	9951 Apricot Road Ct	780-0853	Citizen
L. Cotter	10202 Heron	9-2073	Citizen
Ray [illegible]	2581-1 [illegible]	364-2[illegible]	Citizen
Booker Hall	3333 Nowell Ave #303	58[illegible]-4487	Citizen
R B [illegible]	Box 211068 Auke Bay AK 99821		
[illegible]	Box 211068 Auke Bay, AK. 99821		
[illegible]	Box 2477 [illegible]		
[illegible]	2537 David	Juneau	99801
[illegible]	2537 David	Juneau	99801
[illegible]	511 [illegible]	Juneau	99801
Charles [illegible]	5921 Lund St	Juneau	99801
[illegible]	10645 Mistyland	Juneau	99801
[illegible]	9406 [illegible]	Juneau	99801
Robert G [illegible]	8926 Tunis Drive	90905	Juneau, 99801
[illegible]	2880 [illegible] Rd.	789-9655	[illegible]
Elizabeth Lucas	2880 Trinity Cove Rd.	789-9655	Juneau, AK. 99[illegible]
[illegible]	8251 Aspen Ave	789-9727	Juneau, AK. 998[illegible]
[illegible]	Box 210387 [illegible]	789-7417	
[illegible]	Box 210536 Auke Bay AK	789-7594	

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
Delbert F Carney	P.O. Box 2391 Juneau 99803	789-7301	Sport + Charter
Lil Buzzell	PO Box 211107 Duke Bay 780-6004		Comercial Fishermen
Lori Buzzell	P.O Box 211107 Duke Bay 780-6004		Sports
Mark E Smith	Box 210973 Auke Bay 789-9050		Sport
Randy Bean	Box 810 586 2235		Power Hellen
[illegible] Millard	P.O. Box 210114 789 0494		Power Hellen
Carl L Hibbs	PO Box 229 586-9031		Sport
Kathy Boynton	9447 #19 [illegible] #19 789-3430		Sport
[illegible]	9447 #19 [illegible] 789 3430		Sport
John M. [illegible]	Box # 1433		JUNEAU AK
Craig [illegible]	P.O Box 211024 Auke Bay AK		
Tom White	P.O Box 2733 Juneau 99803		
W C Newell	9300 [illegible]		
[illegible]	8391 Garnet St Juneau 789-9024		Sport
[illegible]	POB 211415 Auke Bay, AK 99821		
Gem [illegible]	9160 Jerry Dr, Juneau AK 99801		
[illegible]	P.O. Box 2411 Juneau, AK 99803	465 4648	
Carol [illegible]	Fourhemer 8424 Dexon St. Juneau 9980		
Carl R [illegible]	Box 527, Juneau 586 [illegible]		Sport
Helen [illegible]	3212 [illegible] St. 789-1570		Spor
[illegible]	[illegible] 9-9592		Hand Troll
[illegible]	3320 [illegible]		Hand Troll 99801

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
Jerry Hard	2065 [illegible] Rd	97242	yes
[illegible]	2765 John St	4-3444	no
[illegible]	826 2nd Douglas	364-3444	yes
Christopher [illegible]	Box 146 Petersburg		[illegible] troll
[illegible]	4451 Lake Ave	9-9410	
[illegible]	1800 Northwood [illegible] Juneau AK	586-4139	yes
[illegible]	1350 [illegible] Rd Juneau AK	99801	
[illegible]	P.O. Box 264	780-6703	Manager
[illegible]	P.O. Box 264	780-6703	Reception
[illegible]	9454A La Perouse Juneau AK 49801	789-7092	citizen yes
Eric J Johnson	8769 Trinity Apt 5 Juneau AK	789-2625	yes
Mary Kirtley	3039 Wood Duck Juneau	789-4377	yes brother fish commer
[illegible]	8315 [illegible] Juneau AK		789-9341
[illegible]	PO Box 210386 Auke Bay AK	99821	
[illegible]	9334 [illegible] AK	789-4934	Juneau AK 99801
[illegible]	4300 University Dr Juneau AK	789-0383	
[illegible]	9096 [illegible] Juneau AK 99801	586-8[illegible]	
Toni Ward	Bx 627 Jnu 99802	780-6579	yes
Lonette Ward	Box 1047 Douglas	780-6579	yes
William D Callison	Box 210608 Auke Bay	789-3555	yes
Ronn Buckmann	Box 1367 Petersburg	772-3008	
[illegible]	Box 210 [illegible]	—	

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
[illegible]	Box 6412 Kitchikan	225-1430	Sport
[illegible]	1122 Timberline Ct	7806840	Sport
Sunday Lentz	2865 Mend Lp Rd	9-5256	Sport
Elizabeth McDonough	Box 207	6-2732	Sport
Sheila McDonough	Box 207	586-2732	Sport
William Hogan	Box 211036 Auke Bay	789-9248	Sport
Kathleen E. Boone	Box 2452 Juneau 99803	9-1481	Sport
Jay C. Cat	10635 Glacier Hwy, Juneau 99801	9-0823	Sport
[illegible]	4222 [illegible] Ct Juneau 99801	789-5465	Sport
Michael [illegible]	Box 9031 Juneau, Ak		Sport
F. Pat [illegible]	17001 Towers Rd. Juneau		H.T.
Gerry A Whitbeck	7099 Sheriff Way Juneau Ak 99801	781-[illegible]	Comm. P.T.
Chris [illegible]	P.O. Box 3003 Juneau Ak 99803		Sport
Darryl Parker	2246 Roger St Juneau Ak 99801		Sport
[illegible]	4430 Glacier Hwy Juneau Ak 99801		Sport
[illegible]	5873 Pine St. Juneau Ak	780-6424	Sport
Carol Young	17001 Towers Road Juneau Ak 99801	789-2069	sport
Hans Mercer	Box 210266 Auke Bay	789-9590	Comm/Sport
Jan Mercer	Box 210266 Auke Bay	9-9590	Sport
Dave Thomas	8166 Grant Juneau Ak	9-3779	Sport
Kris Mercer	Box 210266 Auke Bay Ak	9-9590	Sport
Ron Bedard	P.O. Box 381 Juneau Ak 99802	780-490[illegible]	

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
[illegible]	710 5th Douglas, AK 99824	364-3302	SPORT
[illegible]	531 F.B. St Juneau 99801	586-3437	[illegible]
Steve Hole	Box 2344 Juneau	789-0085	
[illegible]	[illegible] St Juneau	789-7640	Sport
Michael [illegible]	316 Coleman St. Juneau 99801	586-1682	Sport
[illegible]	Box 1482 Juneau, AK 99802		Sport
[illegible]	Box 1784 Juneau, AK 99802		Sport
Ray Clark	14275 10th Way Juneau AK 99801		Sport
M. B. Maher	PO Box 1175 Juneau AK 99802		HT
[illegible]	Box 2861 Juneau AK 99803		HT
John O Furuness	1285 Fritz Cove Rd Juneau, AK 99802		Sport
[illegible]	15805 Glacier Hwy Juneau AK 99801		Sport
Harvey J Cromell	5208 Dogwood Lane Juneau AK 99801		Sport
[illegible]	P.O. Box [illegible] 789-0411		Sport
[illegible]	[illegible] Juneau, AK 780-4[illegible]		Sport
F. Clark Jones	P.O. Box 89 Douglas 99824		sport
Henry Martin	Box 524 Douglas 99824		HT
Marcelo Quinto Jr	Box 1583 Juneau Ak. 99802		
[illegible]	[illegible] AK 99802		PT
[illegible]	[illegible]		
[illegible]	[illegible] Juneau AK 99[illegible]		
[illegible]	[illegible] Juneau AK 99801		

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
Paul P. Arnold	4396 C/o. Dale St.	9-3935	SPORT
Michael C. [illegible]	9170 Glacierwood	789-0421	Sport
[illegible]	570 Seater Ave		none
Kulian [illegible]	2565 Meadow Ln. Juneau	789-9826	— SPORT —
[illegible]	[illegible]	[illegible]	SPORT
Tom Marshall	9495 Moraine Way	789-0[illegible]	SPORT
[illegible]	[illegible]	[illegible]	Sport
[illegible]	3066 [illegible]	[illegible] 99801	Sport
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	Box [illegible]	[illegible]	Commercial
Rosemary Hagerty	Box 423	Douglas Ak	Sports
Charles R. Wescott	Box 3634	Juneau AK	SPORT
James L. Hisson	Box 3148	Juneau AK. 9-2300	Sport/Commercial

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
[illegible]	8221 N. [illegible]	[illegible]	Sport
Charles Gambel	1038 Capitol Ave	586-1615	Hand troll
Michael J Stitt	9462 Brady Place	789-0010 - Juneau	Hand Troll
[illegible] Brown		586 6538	
[illegible]			
ED KUNZ JR.			
Art Brown	3420 Fostes Ave	586-6538 Juneau AK	
R. McKinley	City	789-0971	
James Knudson	9322 Gl. Hwy Apt. 55		Com.
David Howard	895 W. 12th St Apt 202	Juneau Ak 99801	
Walter Gabier	1754 Evergreen Ave.	99801 586-3893	Sport
Ken McGrade	2196-D Lawson Creek Rd.	Douglas AK	Sport
Mark W. White	6590 Glacier Hwy #61	-99801 780-6527	Sport
Jeff Davis	1800 Northwood Dr. #58	- 7806785 -	Commercial
[illegible]	6500 Glacier Hwy #61	-99801	780-6527
Amos L Wallace	3670 North Douglas Rd.	99802 - 586-1798	
[illegible]	BX 311, Juneau	789-0971	SPORT FISHING
Fred Morgan	7337 N. Douglas Rd	586-6323	Hand troll
George Mivasato	1995 Imm... Ck. Rd #3	780-4319	
[illegible]	1704 A Willow Dr	Juneau, 586-1453	
William Smith	West 10 St #10	Juneau PH 586-1407	
Andrew W. Evans	8223 N. DOUGLAS	JNU. AK. 99801	

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
[illegible]	One Seabeck Place	6-1512	Commercial Troll
April R. Wanamaker	PO Box 2234 Juneau AK 99803	586 1512	Sport Fisherman
[illegible]	[illegible]	[illegible]	[illegible]
Rev V Sobeleff	3333 Norwell #105	Juneau 586-2767	Commercial-Troll
Mary E. Tang	711 W 12th St.	Juneau 586-2951	Sport Fisherman
[illegible]	Box 1111	Juneau 99802 586-1512	Commercial Fisherman
[illegible]	Box 812	Juneau AK 99802	789-9618
Josephine Armstrong	P.O Box 1826	780 4126	Commercial H.T
Barbara Whitcraft	Box 789	Jnu. 99802	365-2998	Commercial HT
Marietta Hobbin	3171 Norwell Ave	586-2313	Sportsman
Kathie Bovard	P.O. 102 Jnu 99802	6-9213	✓
N. Jordan	P.O Box 2403	780-6351	✓
Donna M. Lang	PO Box 1615 Juneau AK	780-4852	Commercial Seine
[illegible]	PO Box 2608 Jnu 99803	789-2371	Sportsman
[illegible] Brouillette	Box 223 Jnu 99802	586 4807	Sportsman
Ada Patterson	Box 508, Juneau AK 99802	586 1495	Commercial
[illegible]	6590-214 Glacier Hwy Juneau, AK 99801	780-4294	Sport
[illegible]	PO Box 1413 [illegible]	[illegible]	Sport
[illegible]	10645 Misty Lane Juneau Alaska		
Lorenzo Alcorado	Box 726 Douglas AK.		

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
Richard Warren	Haines	766-2890	
Leo A Land	Box 122 Haines	766-2466	Susistence
David E. Oleund	Box 1069 Haines	766-2441	
Jeanette Howard	Box 403 Haines	766-2675	
Charlotte Oleund	Box 1069 Haines	766-2262	
[illegible]	Box 243 Haines, Ak	766-2249	
[illegible]	Box 76 Haines Ak	766-2656	
[illegible]	P.O. Box 450 Haines AK.	99827	
[illegible]	PO Box 204 Haines AK	99827	
[illegible]	[illegible] Haines Alaska		
[illegible]	Box 153 Haines Alaska	99827	
Kathy Dixon	Box 788 Haines Ak.	99827	
[illegible]	Box 1359 766-2757 Haines AK	99827	
Carline Rae	Box 266 766-2601 Haines Ak	99827	
[illegible]	Box 441 766-2236 Haines Alaska		
John L. Benson	P.O. Box 1018 (766-2236) HAINES, AK.	99827	
[illegible]	[illegible] 374 Haines AK	9982[illegible]	
[illegible]	" "		
Rhoda Warren	766-2890	Box 321 Haines	9982[illegible]
David Light	766-2165	BOX 132 Haines	"

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
Nelson D. Franck	623 Degroff St.	747-8341	
Daniel B. Moreno			
DANIEL G MORENO	Box 2482 SITKA	747-3207	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
[illegible]	3200 Douglas Hwy	586-2912	Box 1002 Juneau
[illegible]	800 E ST # A-6 JNU	586-3999	All
[illegible]	P.O. Box 766 Juneau	586-1329	HT
Maxine H Richert	4275 N. Douglas Hwy Juneau	586-2572	Sports
[illegible]	3711 SANDERS ST. Juneau	789-7559	
Judy Franklin	3417 Fal Camino St Juneau		Sports
Ronald D. [illegible]	8131 Dogwood Lane, Juneau 99701		HT

Current regulations do not allow sport rishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
Smith J Katzeck	Haines B 215		
Helen King	Klukwan - P.O. Box 818		
Charles E King Jr	Klukwan Box 818		
Peter Chapman Jr	Box 214 Haines		
Howard K. Phillips	Haines AK P.O. B 25		
Ronald Hammer	Haines AK Box 151		
Dairy Phillips	Haines AK Box 165		
Margaret K. Stevens	Haines AK Box 368		
Kathleen C Willard	PO Box 25 Hns AK 99827		
Beverly A. Hatch	Box 808 Hns AK 99827		
Christine A. Sweet	Box 4 Hns AK 99827		
Walter J. Peters	BOX 1078 Hns AK 99827		
Esther L. Hatch	BX 524 Hns AK 99827		
Charline Katzeck	PO Box 215 Haines AK 99827		

Current regulations do not allow sport fishing from commercially licensed troll vessels. This is discriminatory to this class of fishermen. We, the undersigned, support HB 492 which will allow sports fishing from a commercially licensed troll vessel.

5 AAC46.060(a) refers to Southeast and 5 AAC 49.060(a) refers to Yakutat area.

NAME	ADDRESS	PHONE	FISHING INTEREST
CHRISTINE YARROW	119 SPRUCE	586 4314	NONE
Marjorie C. Heaney	2688 Engineers Ct	789-2458	sport/HT
Dave Weaver	9350 Glacier Hwy	789-9043	Sport
Nancy Weaver	9350 Glacier Hwy	789-9043	Sport
Michael J. Kirk	1718 Evergreen Ave	work 586-3780	Sport

DELIVER TO JPOM

ORIGINAL
SENT: 2/18/86 TIME: 14:32
FROM: JUNE GALLEY
SUBJECT: POM
PRINT DATE: 02/18/86 TIME: 14:32

TO: HOUSE RESOURCE COMMITTEE MEMBERS: REPRESENTATIVES HERRMANN, SHULTZ, WALLIS, CATO, JENKINS, M.W. MILLER, PEARCE, SUND AND THOMPSON.

FROM: JOE R. HASSELL
RT. 1 BOX 360
KETCHIKAN, ALASKA 99901
PHONE: 225-2041

RE: HB 492--SPORT FISHING FROM COMMERCIAL TROLL VESSELS

MESSAGE: HB 492 SHOULD PASS AS THE NATURAL RESOURCE OF THE STATE SHOULD BE SHARED BY EVERYONE. SPORT FISHING FROM COMMERCIALLY REGISTERED VESSELS DURING CLOSED COMMERCIAL SEASONS SPREADS THE FISHING TO EVERYONE BUT WOULD REQUIRE THE NEED FOR TWO BOATS IF NOT PASSED. THE ONLY REQUIREMENT SHOULD BE A VALID SPORT FISHING LICENSE.
EOM/JG

MEMORANDUM State of Alaska

TO: Rodger Painter
Legislative Aide to
The Honorable Peter Goll

DATE: January 31, 1986

FILE NO:

TELEPHONE NO:

FROM: Kurt Schelle KS
Director of Research
Commercial Fisheries Entry
Commission

SUBJECT: Hand Troll Data Request

Enclosed are data on the hand troll fishery which you requested. The following reports have been included:

1. Southeast Salmon Permits Issued and Fished 1975-1985

   This report includes data on all of the gear types harvesting salmon in Southeast Alaska with the exception of Yakutat set net. The number of persons who fished have been reported by resident type. The 1984 and 1985 data from the report should be considered preliminary because of the status of the fish ticket files.

2. Southeast Hand Troll Permits Issued and Fished 1982-1985

   This report concentrates on the hand troll fishery since entry limitation. It includes a breakout by transferable and non-transferable permits. Again, the 1984 and 1985 data should be considered preliminary.

3. Estimated Earnings for Southeast Salmon Permits by Gear Type 1975-1985

   This report includes estimates of total and average gross earnings by gear type. Please note that the averages represent averages per permit. 1984 and 1985 data should be considered as preliminary.

4. Definitions

   This brief report provides an explanation on how the resident types are defined which are used in reports 5 and 6 below.

5. Summary of Net Changes in the Distribution of Permit Ownership, by Resident Type, 1982-1985 - Southeast Alaska Hand Troll

   This report provides detailed information on the distribution of hand troll entry permits since limited entry. Resident type breakouts are provided. Of particular interest is the relatively large number of revokes over this time period. The vast majority of these are due to forfeitures resulting from two year non-renewals.

6. Summary of Yearly Net Changes in Permit Ownership, Southeast Alaska Hand Troll, 1982-1985

   This report provides summary data on net changes in permit ownership by resident type in the hand troll fishery. The net results of transfers and the effects of revocations can be clearly seen.

The Rutter status report which you requested has not yet been completed. The data is being prepared by Karen Wells of our adjudictions section. She will forward the information to you as soon as possible.

Please let me know if you have any questions concerning these reports. If we can be of further assistance, please don't hesitate to ask.

KS/dw

cc: Bruce Twomley
Karen Wells

SOUTHEAST SALMON PERMITS ISSUED AND FISHED 1975-1985

		PERMITS ISSUED			---- PEOPLE WHO FISHED ----			
		PERMANENT PERMIT HOLDERS	IUP PERMIT HOLDERS	TOTAL	RESIDENTS LOCAL TO FISHERY	OTHER ALASKA RESIDENTS	NON-RESIDENTS	TOTAL
1985	PURSE SEINE	416	4	420	162 (44.3)	3 (0.8)	201 (54.9)	366 (100.0)
	DRIFT GILLNET	468	16	484	309 (68.4)	8 (1.8)	135 (29.9)	452 (100.0)
	POWER TROLL	942	20	962	633 (76.0)	14 (1.7)	186 (22.3)	833 (100.0)
	HAND TROLL	1987	44	2031	814 (91.3)	14 (1.6)	64 (7.2)	892 (100.0)
1984	PURSE SEINE	417	5	422	167 (43.3)	2 (0.5)	217 (56.2)	386 (100.0)
	DRIFT GILLNET	467	14	481	309 (69.4)	4 (0.9)	132 (29.7)	445 (100.0)
	POWER TROLL	940	23	963	603 (75.3)	12 (1.5)	186 (23.2)	801 (100.0)
	HAND TROLL	2120	27	2147	799 (93.0)	4 (0.5)	56 (6.5)	859 (100.0)
1983	PURSE SEINE	416	5	421	158 (46.5)	2 (0.6)	180 (52.9)	340 (100.0)
	DRIFT GILLNET	467	13	480	300 (68.5)	4 (0.9)	134 (30.6)	438 (100.0)
	POWER TROLL	939	29	968	620 (75.1)	9 (1.1)	197 (23.8)	826 (100.0)
	HAND TROLL	2121	29	2150	878 (92.3)	16 (1.7)	57 (6.0)	951 (100.0)
1982	PURSE SEINE	414	7	421	154 (41.3)	6 (1.6)	213 (57.1)	373 (100.0)
	DRIFT GILLNET	466	20	485	296 (66.7)	5 (1.1)	143 (32.2)	444 (100.0)
	POWER TROLL	940	28	968	607 (74.6)	15 (1.8)	192 (23.6)	814 (100.0)
	HAND TROLL	696	1212	1908	990 (92.8)	13 (1.2)	64 (6.0)	1067 (100.0)
1981	PURSE SEINE	414	4	418	171 (47.0)	4 (1.1)	189 (51.9)	364 (100.0)
	DRIFT GILLNET	464	23	487	311 (68.5)	5 (1.1)	138 (30.4)	454 (100.0)
	POWER TROLL	939	31	970	593 (74.1)	11 (1.4)	196 (24.5)	800 (100.0)
	HAND TROLL	0	2048	2048	1052 (91.7)	21 (1.8)	74 (6.5)	1147 (100.0)
1980	PURSE SEINE	414	3	417	157 (47.1)	4 (1.2)	172 (51.7)	333 (100.0)
	DRIFT GILLNET	464	25	489	324 (72.0)	4 (0.9)	122 (27.1)	450 (100.0)
	POWER TROLL	939	35	974	616 (72.6)	17 (2.0)	216 (25.4)	849 (100.0)
	HAND TROLL	0	2436	2436	1484 (89.0)	32 (1.9)	151 (9.1)	1667 (100.0)
1979	PURSE SEINE	413	5	418	156 (48.9)	4 (1.3)	159 (49.8)	319 (100.0)
	DRIFT GILLNET	464	27	491	326 (71.0)	4 (0.9)	129 (28.1)	459 (100.0)
	POWER TROLL	939	40	978	617 (74.4)	19 (2.3)	193 (23.3)	829 (100.0)
	HAND TROLL	0	3700	3700	1917 (87.0)	45 (2.0)	242 (11.0)	2204 (100.0)
1978	PURSE SEINE	413	7	420	165 (43.5)	8 (2.1)	206 (54.4)	379 (100.0)
	DRIFT GILLNET	463	28	490	333 (68.7)	11 (2.3)	141 (29.1)	485 (100.0)
	POWER TROLL	934	42	976	629 (76.4)	15 (1.8)	179 (21.7)	823 (100.0)
	HAND TROLL	0	3921	3921	2394 (91.2)	30 (1.1)	200 (7.6)	2624 (100.0)

		PERMITS ISSUED			----PEOPLE WHO FISHED-----			
		PERMANENT PERMIT HOLDERS	IUP PERMIT HOLDERS	TOTAL	RESIDENTS LOCAL TO FISHERY	OTHER ALASKA RESIDENTS	NON-RESIDENTS	TOTAL
1977	PURSE SEINE	411	3	414	160 (49.1)	0 (0.0)	166 (50.9)	326 (100.0)
	DRIFT GILLNET	460	14	474	315 (70.6)	4 (0.9)	127 (28.5)	446 (100.0)
	POWER TROLL	929	41	968	591 (78.0)	5 (0.7)	162 (21.4)	758 (100.0)
	HAND TROLL	0	2951	2951	1753 (95.6)	12 (0.7)	69 (3.8)	1834 (100.0)
1976	PURSE SEINE	409	9	416	146 (51.8)	1 (0.4)	135 (47.9)	282 (100.0)
	DRIFT GILLNET	449	38	483	305 (69.0)	3 (0.7)	134 (30.3)	442 (100.0)
	POWER TROLL	915	83	976	567 (76.0)	6 (0.8)	173 (23.2)	746 (100.0)
	HAND TROLL	0	2082	2082	1187 (96.1)	4 (0.3)	44 (3.6)	1235 (100.0)
1975	PURSE SEINE	398	77	444	163 (55.6)	1 (0.3)	129 (44.0)	293 (100.0)
	DRIFT GILLNET	431	80	497	315 (68.9)	2 (0.4)	140 (30.6)	457 (100.0)
	POWER TROLL	849	230	1044	574 (74.0)	5 (0.6)	197 (25.4)	776 (100.0)
	HAND TROLL	0	2087	2087	1043 (95.5)	5 (0.5)	44 (4.0)	1092 (100.0)

NOTES FOR TABLE:

1) Excludes permits landing fish only from Annette Island waters.

2) 1985 data is preliminary.

3) Because of inseason transfers, the number of people who fished will be greater than the number of permits landing fish reported in other tables.

4) Source programs: All years -- 85301.03

SOUTHEAST HAND TROLL PERMITS ISSUED AND FISHED 1982-1985

		PERMITS ISSUED			----PEOPLE WHO FISHED-----			
		PERMANENT PERMIT HOLDERS	IUP PERMIT HOLDERS	TOTAL	RESIDENTS LOCAL TO FISHERY	OTHER ALASKA RESIDENTS	NON-RESIDENTS	TOTAL
1985	TRANSFERABLE	730	44	774	439 (91.3)	9 (1.9)	33 (6.9)	481 (100.0)
	NON-TRANS.	1257	0	1257	375 (91.2)	5 (1.2)	31 (7.5)	411 (100.0)
1984	TRANSFERABLE	697	27	724	401 (93.3)	2 (0.5)	27 (6.3)	430 (100.0)
	NON-TRANS.	1423	0	1423	398 (92.8)	2 (0.5)	29 (6.8)	429 (100.0)
1983	TRANSFERABLE	698	29	727	430 (93.7)	5 (1.1)	24 (5.2)	459 (100.0)
	NON-TRANS.	1423	0	1423	449 (91.1)	11 (2.2)	33 (6.7)	493 (100.0)
1982	TRANSFERABLE	696	1212	1908	990 (92.8)	13 (1.2)	64 (6.0)	1067 (100.0)

NOTES FOR TABLE:

1) Excludes permits landing fish only from Annette Island waters.

2) 1985 data is preliminary.

3) Because of inseason transfers, the number of people who fished will be greater than the number of permits landing fish reported in other tables.

4) Source programs: All years -- 85301.03

ESTIMATED EARNINGS FOR SOUTHEAST SALMON PERMITS
BY GEAR TYPE 1975-1985

Year	Gear Type	Permits Landing Fish	Total Gross Earnings	Average Gross Earnings
1985	Purse Seine	364	$ 50,105,334	$137,652
	Drift Gillnet	440	15,748,906	35,793
	Power Troll	821	19,014,559	23,160
	Hand Troll	835	3,648,677	4,370
1984	Purse Seine	383	$ 34,372,420	$ 89,745
	Drift Gillnet	435	13,165,030	30,264
	Power Troll	786	21,529,614	27,391
	Hand Troll	837	3,669,225	4,508
1983	Purse Seine	337	$ 32,610,927	$ 96,768
	Drift Gillnet	429	7,458,751	17,386
	Power Troll	808	13,457,290	16,655
	Hand Troll	921	2,483,900	2,697
1982	Purse Seine	369	$ 27,921,202	$ 75,667
	Drift Gillnet	431	10,613,954	24,626
	Power Troll	808	20,333,936	25,166
	Hand Troll	1054	4,037,725	3,831
1981	Purse Seine	365	$ 38,470,492	$105,398
	Drift Gillnet	446	9,379,807	21,030
	Power Troll	790	16,110,489	20,393
	Hand Troll	1129	3,400,658	3,012
1980	Purse Seine	334	$ 30,213,235	$ 90,458
	Drift Gillnet	444	9,441,006	21,263
	Power Troll	834	13,125,024	15,737
	Hand Troll	1615	3,149,520	1,950
1979	Purse Seine	320	$ 20,505,573	$ 64,079
	Drift Gillnet	447	11,428,132	25,566
	Power Troll	807	20,989,328	26,009
	Hand Troll	2151	6,285,056	2,921
1978	Purse Seine	374	$ 29,815,380	$ 79,720
	Drift Gillnet	473	9,553,300	20,197
	Power Troll	803	17,251,547	21,483
	Hand Troll	2549	5,609,528	2,200
1977	Purse Seine	325	$ 24,698,101	$ 75,994
	Drift Gillnet	436	11,785,704	27,031
	Power Troll	740	11,954,524	16,154
	Hand Troll	1781	3,267,463	1,834

Year	Gear Type	Permits Landing Fish	Total Gross Earnings	Average Gross Earnings
1976	Purse Seine	278	$ 11,068,853	$ 39,816
	Drift Gillnet	429	8,581,710	20,003
	Power Troll	736	8,447,[illegible]	11,476
	Hand Troll	1185	1,481,[illegible]	1,250
1975	Purse Seine	282	$ 6,008,403	$ 21,306
	Drift Gillnet	438	4,096,559	9,352
	Power Troll	738	3,996,776	5,415
	Hand Troll	964	554,134	574

Notes for table:

1) Excludes Annette Island catch.

2) Permit holders earning less than a specified amount have not been counted on this table. This is intended to prevent average earnings from being understated.

3) 1985 data is preliminary (updated 1/15/86).

4) Source programs: 1984-85 -- 85301.02-B3
1983 ----- 84270.06-M2
1982 ----- 84004.01
1975-81 -- 83056.01

Definitions

Urban/Rural

1. Urban includes all towns with 1980 U.S. Census populations of 2,000 or more.

2. Communities are designated urban even though their populations are under 2,000 if they lie within an "urbanized area." Urbanized areas are defined as all communities and places connected by highway to urban centers with populations of 6,000 or more and lying within a 20-mile radius of the urban center (for cities from 6,000 to 20,000 population) or a 40-mile radius (for cities of more than 20,000). The radius is measured from the center of the city as denoted by the city location point on maps, rather than from the city limits. An exception to the radius rule is that the Anchorage "urbanized area" does not extend north of Knik Arm nor south of Turnagain Arm.

   The cities of 6,000 to 20,000 population are Juneau, Ketchikan and Sitka. The cities above 20,000 are Anchorage and Fairbanks.

Local/Nonlocal

1. On the coast, area lines are based on Fish and Game salmon regulatory areas. Residences in both Southeast and Yakutat are designated local to the hand and power troll fisheries. In accord with permit and fishery regulations, residences with the Cape Yakataga and Port Heiden overlap areas are "local" for both relevant overlap areas.

2. The Upper and Lower Yukon and Kuskokwim River fishery areas are based on immediate river drainages. The Lower Yukon area extends up the Yukon River to just above Holy Cross. The Upper Yukon "local" area extends up the Koyukuk tributary as far as Huslia, the Chandalar as far as Venetie and the Tanana to Delta Junction, 30 miles beyond the upper limits of commercial fishing on that river. The Kuskokwim local area extends 30 miles upriver beyond the limit of commercial fishing on that river and includes the Stony River tributary as far as Lime Village and the Holitna River as far as Kasheglok.

3. The Bristol Bay area extends inland up the Nushagak River and includes the entire Tikchik Lake system as well as Lake Iliamna and Lake Clark.

4. The Cook Inlet local area includes all but the eastern edge of the Anchorage Borough. The line dividing the Cook Inlet and

Prince William Sound ADF&G regulatory areas are extended inland directly north. That is, the line runs from Cape Fairfield at 148°50'W, north to 61°32'N (just north of Bodenburg Butte and south of Palmer) and thence west to 150°30'W (to the community of Susitna) and thereafter follows, at a little distance inland, the western shore of Cook Inlet, ending at Cape Douglas.

5. The Prince William Sound area extends up the Copper River to the confluence of the Bremner River. Taking in the census subareas of Prince William Sound and Cordova, but not the Copper River subarea, it excludes the interior Copper River as well as the Edgerton, Richardson and Glenn Highway communities.

Summary of Yearly Net Changes in
Permit Ownership, 1982 - 1985

SOUTHEAST ALASKA HAND TROLL

	ALASKA RURAL LOCAL				ALASKA RURAL NONLOCAL				ALASKA URBAN LOCAL				ALASKA URBAN NONLOCAL				NON RESIDENTS				DOC
	TRANS	MIGR	REV	NET	TRANS	MIGR	REV	NET	TRANS	MIGR	REV	NET	TRANS	MIGR	REV	NET	TRANS	MIGR	REV	NET	TRANS
982	-2	0	0	-2	2	0	0	2	-2	0	0	-2	1	0	0	1	1	0	0	1	0
983	-7	1	0	-6	0	0	0	0	1	1	0	2	1	-1	0	0	5	-1	0	4	0
984	-11	12	0	1	1	1	0	2	-1	-20	0	-21	0	3	0	3	11	4	-1	14	0
985	-3	-4	-25	-32	1	2	-1	2	-2	11	-77	-68	-5	0	-5	-10	9	-9	-27	-27	0
	-23	9	-25	-39	4	3	-1	6	-4	-8	-77	-89	-3	2	-5	-6	26	-6	-28	-8	0

Trans = net change in resident type due to permanent transfers.
Migr = net change in resident type due to migrations (permit holder moving from one city to another.
Rev = net change in resident type due to revocation proceedings.
(including deaths of nontransferable permits holders, PERMITS FORFEITED DUE TO NONRENEWAL, AND criminal revokes.

Net = total net change in resident type.

Alaska Rural Local: ALASKA resident of a RURAL community which is LOCAL to the fishery for which the permit applies.

Alaska Rural Nonlocal: ALASKA resident of a RURAL community which is LOCAL to the fishery for which the permit applies.

Alaska Urban Local: ALASKA resident of an URBAN community which is LOCAL to the fishery for which the permit applies.

Alaska Urban Norlocal: ALASKA resident of an URBAN community which is LOCAL to the fishery for which the permit applies.

Nonresident: Nonresident of ALASKA

DOC : Department of Commerce signifies permits which have been forclosed and which are temporarily the property of the state (DOC) or of the Commercial Fishing and Agriculture Bank (CFAB).

Summary of Net Changes in the Distribution of Permit Ownership,
by Resident Type, 1982 - 1985

SOUTHEAST ALASKA HAND TROLL

Fishery	Transaction	ALASKA RURAL LOCAL	ALASKA RURAL NONLOCAL	ALASKA URBAN LOCAL	ALASKA URBAN NONLOCAL	NON-RESIDENT	DEPT OF COMMERCE	TOTAL
HAND TROLL	82 INITIAL ISSUES	286	1	361	11	37	0	696
HAND TROLL	82 TRANSFERS	-2	2	-2	1	1	0	0
	82 TOTAL	284	3	359	12	38	0	696
HAND TROLL	83 INITIAL ISSUES	391	5	873	40	116	0	1,425
HAND TROLL	83 TRANSFERS	-7	0	1	1	5	0	0
HAND TROLL	83 MIGRATIONS	1	0	1	-1	-1	0	0
	83 TOTAL	669	8	1,234	52	158	0	2,121
HAND TROLL	84 TRANSFERS	-11	1	-1	0	11	0	0
HAND TROLL	84 MIGRATIONS	12	1	-20	3	4	0	0
HAND TROLL	84 FORFEITS	0	0	0	0	-1	0	-1
	84 TOTAL	670	10	1,213	55	172	0	2,120
HAND TROLL	85 INITIAL ISSUES	0	0	1	0	0	0	1
HAND TROLL	85 TRANSFERS	-3	1	-2	-5	9	0	0
HAND TROLL	85 MIGRATIONS	-4	2	11	0	-9	0	0
HAND TROLL	85 FORFEITS	-17	0	-66	-3	-26	0	-112
HAND TROLL	85 LAPSED	-7	-1	-11	-2	-1	0	-22
HAND TROLL	85 CRIMINAL REVOKES	-1	0	0	0	0	0	-1
	85 TOTAL	638	12	1,146	45	145	0	1,986

Migrations: changes in resident type resulting from permit holders moving from one city to another.
Forfeits: permits which have been revoked because renewal fees have not been paid for two years.
Lapsed: nontransferable permits no longer fishable due to the death of the permit holder.
Criminal Revokes: permits which have been revoked due to criminal action.

Alaska Rural Local: ALASKA resident of a RURAL community which is LOCAL to the fishery for which the permit applies.
Alaska Rural Nonlocal: ALASKA resident of a RURAL community which is LOCAL to the fishery for which the permit applies.
Alaska Urban Local: ALASKA resident of an URBAN community which is LOCAL to the fishery for which the permit applies.
Alaska Urban Nonlocal: ALASKA resident of an URBAN community which is LOCAL to the fishery for which the permit applies.
Nonresident: Nonresident of ALASKA
Dept of Commerce: permits which have been forclosed and which are temporarily the property of the state (DOC) or of the Commercial Fishing and Agriculture Bank (CFAB).

HB

510

HOUSE
COMMITTEE REPORT

2/19

(9)

Date referred: 2/14/86

FURTHER REFERRALS: FINANCE

DATE: February 19, 1986

The RESOURCES Committee has considered SSHB 510

"An Act relating to [illegible]e farming."

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[XX] zero fiscal note w/analysis - Sup 88

SIGNING DO PASS:

Shultz Dick Shultz

Herrmann Adelheid Herrmann

Cato Bette Cato

Pearce [illegible]

Sund [illegible]

[illegible]

Jenkins Roger L. Jenkins

SIGNING OTHER RECOMMENDATIONS:

Thompson - DO NOT PASS

Co-Chairman Shultz

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SSHB 510

Title: An Act relating to game farming

Sponsor: Larson and Jenkins

Requestor:

Date of Request: February 18, 1986

FISCAL DETAIL

Agency Affected: Department Fish & Game

Program Category Affected:

BRU, Program or Subprogram(s) Affected: Game

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME		NONE				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The Department of Revenue is preparing a separate fiscal note. Game farming license receipts are deposited into the general fund, not into the Fish and Game Fund. Consequently, while there would be no fiscal impact on the department, there would be an impact on the State. The actual extent of that impact may be difficult to estimate, because an unknown number of game bird farmers are operating in the state without a game farming license.

Prepared By: Phil Koehl Phone: 465-4100

Division: Date:

Approved by Commissioner: Date:

Agency: Department of Fish and Game

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Alaska State Legislature

Session Address:
STATE CAPITOL BUILDING

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3727

Home Address:

BOX 53
PALMER, ALASKA 99645
(907) 745-3828

Representative Ron L. Larson
District 16 B

MEMORANDUM

DATE: February 18, 1986

To: Rep. Richard Shultz, Chairman
House Resource Committee

From: Rep. Ronald L. Larson RL.

Re: Background information on HB 510, "An Act relating fish or game farming."

HB 510 was introduced, by request, to bring the license fees for game bird farming more in line with the lower forty-eight states, as the current fees are excessive in that respect.

A suggested change in statute was made because of the very vagueness of the current statute AS 16.05.340 relating to licensing of game bird farming.

The licensing of "game bird farming" currently is restricted to licensing a person who is just raising two or three birds.

A concern was made by the requesters of this bill, Mr. Ken Rivard, and his wife Judi to make a change in license fee by putting in a ,"permit regulation, rather than a license fee for then it would be under Fish and Game exclusively.

After checking with several western and mid-western states (Idaho, Oregon, Washington, Michigan, Minnesota, and Wisconsin) the Rivards found that the average license fee for game bird farming was $10 annually. Therefore it was determined that the Alaskan "game bird farming license fee should be altered.

A request was sent to the Dept. of Fish and Game, November 30, 1985 from Ken and Judi Rivard proposing a change to regulation 5 AAC 92.029. A reply from Dept. of Fish and game was sent to the Rivard's on December 6, 1985 stating the board did not issue a call for public proposals for the January meeting, so we did not publish your proposal for public comment. Because of this delay, the approach to adjust this license fee by amending statute was pursued.

HB

512

Utermohle
3/6/86

Original sponsors: Shultz, M.W.Miller,
Frank and Jenkins

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 512 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to appointments to the boards of fisheries and game."

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

* Section 1. AS 16.05.221 is amended to read:

Sec. 16.05.221. BOARDS OF FISHERIES AND GAME. (a) For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. At least 30 days before making an appointment to the Board of Fisheries, the governor shall publish the names of the proposed appointees in newspapers in all sections of the state and shall accept public comment on the fitness of the proposed appointees to sit on the Board of Fisheries. The appointed members shall be residents of the state who are knowledgeable about the allocation and use of fisheries resources. Members [AND] shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

(b) For purposes of the conservation and development of the game resources of the state, there is created a Board of Game composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. At least 30 days before making an appointment to the Board of Game, the governor shall publish the names of the proposed appointees in newspapers

in all sections of the state and shall accept public comment on the fitness of the proposed appointees to sit on the Board of Game. The appointed members shall be residents of the state who are knowledgeable about the allocation and use of game resources. Members [, AND] shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Game, but shall be ex officio secretary.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill, Resolution No.: HB 512
Title: Appointment to Boards of Fish and Game

Sponsor: Shultz, M. W. Miller et al.
Requestor: Shultz
Date of Request: January 14, 1986

FISCAL DETAIL
Agency Affected: Administration
BRU: All

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

This bill has no effect on the Department of Administration

Prepared By: Michael P. McMullen Phone: 465-2200
Division: Commissioner's Office Date: February 14, 1986
Approved by Commissioner: Eleanor Andrews Date: 2/13/86
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Rev. 11/8/85

Alaska State Legislature

COMMITTEES

Co-Chairman — House Resources Committee
Member — House Transportation Committee

While in Session:

P.O. Box V
State Capital
Juneau, Alaska 9981[illegible]
Phone (907) 465-4951
465-4940

Home - SR 790
Tok, Alaska 99780

House of Representatives

Dick Shultz

M E M O R A N D U M February 14, 1986

TO: HOUSE STATE AFFAIRS COMMITTEE

FROM: Representative Dick Shultz DS

SUBJECT: HB 512 (Appointments to the boards of fisheries and game)

This piece of legislation is very straight forward and deals with the appointments to the Fish and Game Boards by the Governor.

The bill would require the Governor to publish the name of proposed appointees 30 days before the appointments are actually made so that the public may comment on the choices.

This bill was drafted to help members of the public have a better opportunity to affect the appointment process before it becomes a political matter during the confirmation process.

Members of numerous Advisory Committees have expressed their frustration with Board appointments and wondered why the public wasn't allowed to comment before the Governor made his choices final.

As a practical matter there seems to be no reason why this should not be allowed. In light of past controversies such a screening may remove some of the political risk involved when a Governor makes appointment before all the facts are known about the individual being appointed.

Finally, I believe that the Boards of Fish and Game are extremely important bodies that were designed to represent the public's interest. It is fitting indeed that the public be as involved as possible in the formation of those Board.

Introduced: 1/24/86
Referred: State Affairs
and Resources

IN THE HOUSE

BY SHULT ,M.W.MILLER,
FRANK AND JENKINS

HOUSE BILL NO. 512

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to appointments to the boards of fisheries and game."

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

* Section 1. AS 16.05.221 is amended to read:

Sec. 16.05.221. BOARDS OF FISHERIES AND GAME. (a) For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. At least 30 days before making an appointment to the Board of Fisheries, the governor shall publish the name of the proposed appointee in the Alaska Administrative Journal under AS 44.62.175 and shall accept public comment on the fitness of the proposed appointee to sit on the Board of Fisheries. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

(b) For purposes of the conservation and development of the game resources of the state, there is created a Board of Game composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. At least 30 days before making an appointment to the Board of Game, the governor shall publish the name of the proposed appointee in the Alaska Administrative Journal under AS 44.62.175 and shall accept public

comment on the fitness of the proposed appointee to sit on the Board of Game. The appointed members shall be residents of the state, and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Game, but shall be ex officio secretary.

* Sec. 2. AS 44.62.175(a) is amended to read:

(a) The lieutenant governor shall publish or contract for the publication of the Alaska Administrative Journal. The journal shall be published weekly. The journal must include

(1) notices of proposed actions given under AS 44.62.190(a);

(2) notices of state agency meetings required under AS 44.62.310(e), even if the meeting has been held;

(3) notices of solicitations to bid issued under AS 37.05.230;

(4) notices of state agency requests for proposals issued under AS 18.55.255, 18.55.320; AS 19.10.190; AS 19.40.020; AS 35.15.030; AS 36.98.030; AS 37.05.230, 37.05.315(d); AS 38.05.120; and AS 47.40.010;

(5) executive orders and administrative orders issued by the governor;

(6) written delegations of authority made by the governor or the head of a principal department under AS 44.17.010;

(7) the text or a summary of the text of a regulation or order of repeal of a regulation for which notice is given under AS 44.62.190(a), including an emergency regulation or repeal whether or not it has taken effect;

(8) a summary of the text of recently issued formal opinions and memoranda of advice of the attorney general; and

(9) a list of vacancies on boards, commissions, and other bodies whose members are appointed by the governor;

(10) an announcement of the name of a proposed appointee to the Board of Fisheries or Board of Game.

MEMORANDUM

TO: COMMISSIONER COLLINSWORTH / ADF&G

FROM: REP. SHULTZ / CO-CHAIRMAN HOUSE RESOURCES

DATE: FEBRUARY 26, 1986

RE: FISH AND GAME BOARDS

********** ********** ********** ********** *********

Please provide my office answers to the following questions. (Budget related answers should be based on each of the last three years.)

1. Should the Boards Executive office be a part of the Fish and Game Department ?

2. Why is it necessary for the Boards through the Dept. budget to have offices in Dillingham, Bethel and Nome ? What is the cost for these offices and staff ? What specific duties do they perform ?

3. What is the total budget for the Boards ? Are they not fiscally dependent on the Dept. and therefore susceptible to Dept. pressure on policy questions ?

4. What is the amount used out of the Boards budget for ADF&G administrative overhead ?

5. Who pays the costs of printing regulations ?

6. How much staff time is charged to the Board budget for ADF&G staff to attend Board meetings?

7. What is the total Regional Council Budget ? (State/ Fed. shares)?

8. How have these monies been spent ?

9. Why haven't all the annual reports required under Section 805 of ANILCA been submitted to the Dept. of Interior ?

10. Who provides secretarial assistance to the Boards in the Juneau office ? At the Board meetings ?

11. Does the Director of the Division of Boards attend Commissioner staff briefings ? What type of direction is given to the Director at the meetings ?

12. How is the Dept. involved when a legal question comes before the Board that necessitates the use of the Attorney General ?

13. Have there been sufficient funds for Advisory Committee members to attend Board meetings that involve important decisions affecting fish and game stocks in their respective areas ? (Please indicate specific examples.)

HB

527

HOUSE
COMMITTEE REPORT

2/1C

(9)
Date referred: 1/31/86

FURTHER REFERRALS: JUDICIARY

DATE: FEB 10, 1986

The RESOURCES Committee has considered HB 527

"An Act relating to definition of residency for purposes of the fish and gam code."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[✓] replace with CSHB 527 (RES) [✓] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[XX] zero fiscal note

	SIGNING DO PASS:	SIGNING OTHER RECOMMENDATIONS:
Shultz	Dick Shultz	
Herrmann	Adelheid Herrmann	Ward Thompson - NO REC
Cato	Bettye Cato	
Jenkins	Roger Jenkins	
Pearce	Mike Pearce	
Sund	Mark Sund	
Miller (P)	M.W. Miller	
Wallis	F. Kaufmann	

Co-Chairman Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 527 (Res.)
Title : Act ref the definition of residency for purposes of the fish and game code.
Sponsor : Shultz - original
Requestor : H. Judiciary
Date of Request : _____

FISCAL DETAIL

Agency Affected : Public Safety & Dept. of Law
BRU : Fish & Wildlife Protection
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

K Nebe

Prepared by : Captain James R. Hutgrass — Phone : 269-5509
Division : Fish & Wildlife Protection — Date : 2/25/86

Approved by Commissioner : Michael J Cleveland — Date : 2-27-86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSHB 527 (Res)

SUPPORT

CSHB 527 (Res)- "An Act relating to the definition of residency for the purposes of the fish and game code."

The Department of Public Safety is in support of CS House Bill No. 527 (Res).

We support the clarification in defining "resident" as this will facilitate the enforcement responsibility in carrying out the statutory requirement of residency.

The deletions on Page 1, lines 13-15, has no effect on the requirements or enforcement of residency of an individual.

Robert J. Sundberg
Commissioner

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 527
Title : "An Act relating to the definition of residency for purposes of the Fish & Game Code"
Sponsor : Schultz
Requestor : Resources & Judiciary
Date of Request : 1/31/86

FISCAL DETAIL

Agency Affected : Dept. of Fish & Game
BRU : Sport Fish & Game

Components : Sport Fish & Game

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Denny Reamer
Division : Administration
Phone : 465-4120
Date : 2-7-86

Approved by Commissioner : [signature]
Agency : Department of Fish and Game
Date : 2/7/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Dear Representative Herman,

I'm writing this letter to express my concern about a rule that requires non resident hunters to use a registered guide when hunting dall sheep + grizzly bear. I really dont understand the logic behind this. How much money do you think we have? Not every hunter can afford a guide and, neither is it necessary when you have friends in the state who know the areas to be hunted.

We have to shell out $450.00 just for a license which is justifiable, however, the guide is bullshit. Its clearly a political football and money making scheme for the Alaskan Professional Hunters Association.

I have also heard of late that the Caribou season is closed to nonresidents as of the remainder of the year.

Keep it up, I hope your tourist + hunter money dries up like a desert.

I know Alaska is app my list for hunting. Ill exercise FREE CHOICE + hunt in the lower 48

Sincerely Mark Ruesch

P.O. BOX 63
NAKNEK, ALASKA 99633
(907) 246-4495

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4942, 465-4943

House of Representatives

RESOURCES COMMITTEE

MEMBER
TRANSPORTATION
COMMITTEE

DISTRICT 26

ADAK
AKUTAN
ALEKNAGIK
ATKA
BELKOFSKI
CLARK'S POINT
COLD BAY
DILLINGHAM
DUTCH HARBOR
EGEGIK
EKUK
EKWOK
FALSE PASS
IGIUGIG
ILIAMNA
KING COVE
KING SALMON
KOKHANOK
KOLIGANEK
LEVELOCK
MANOKOTAK
NAKNEK
NELSON LAGOON
NEWHALEN
NEW STUYAHOK
NIKOLSKI
NONDALTON
PEDRO BAY
PILOT POINT
PORT ALSWORTH
PORT HEIDEN
PORT MOLLER
PORTAGE CREEK
SAND POINT
SOUTH NAKNEK
SQUAW HARBOR
ST. GEORGE
ST. PAUL
TOGIAK
TWIN HILLS
UGASHIK
UNALASKA

October 14, 1985

Mark Ruesch
1939 Long Lake Road
New Brighton, MN 55112

Dear Mr. Ruesch,

Thank you for sharing your concerns with me about sport hunting in Alaska. I am glad to know that you have decided to exercise free choice and hunt in the Lower 48.

Sincerely,

Adelheid Herrmann

Adelheid Herrmann
Representative
District 26

Hein
2/7/86 /

Original sponsor: Shultz

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 527 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the definition of residency for purposes of the fish and game code."

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

* Section 1. AS 16.05.940(19) is amended to read:

(19) "resident" means a person who for the preceding 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state; [AND IN THE CASE OF A PARTNERSHIP, ASSOCIATION, JOINT STOCK COMPANY, TRUST, OR CORPORATION, "RESIDENT" MEANS ONE THAT HAS ITS MAIN OFFICE OR HEADQUARTERS IN THE STATE;] however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this paragraph, and the dependent of a resident member of the military service, who has been living in the state for the preceding 12 consecutive months [YEAR] is a resident for the purposes of this paragraph, and a person who is an alien but who for the preceding 12 consecutive months [ONE YEAR] has maintained a permanent place of abode in the state is a resident for the purposes of this paragraph;

Introduced: 1/31/86
Referred: Resources and Judiciary

IN THE HOUSE BY SHULTZ

HOUSE BILL NO. 527

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the definition of residency for purposes of the fish and game code."

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

* Section 1. AS 16.05.940(19) is amended to read:

(19) "resident" means a person who for the preceding 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state; [AND IN THE CASE OF A PARTNERSHIP, ASSOCIATION, JOINT STOCK COMPANY, TRUST, OR CORPORATION, "RESIDENT" MEANS ONE THAT HAS ITS MAIN OFFICE OR HEADQUARTERS IN THE STATE;] however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this paragraph, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this paragraph, and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of this paragraph;

February 7, 1986

MEMORANDUM

TO: House Resource Committee

FROM: Dan Beck

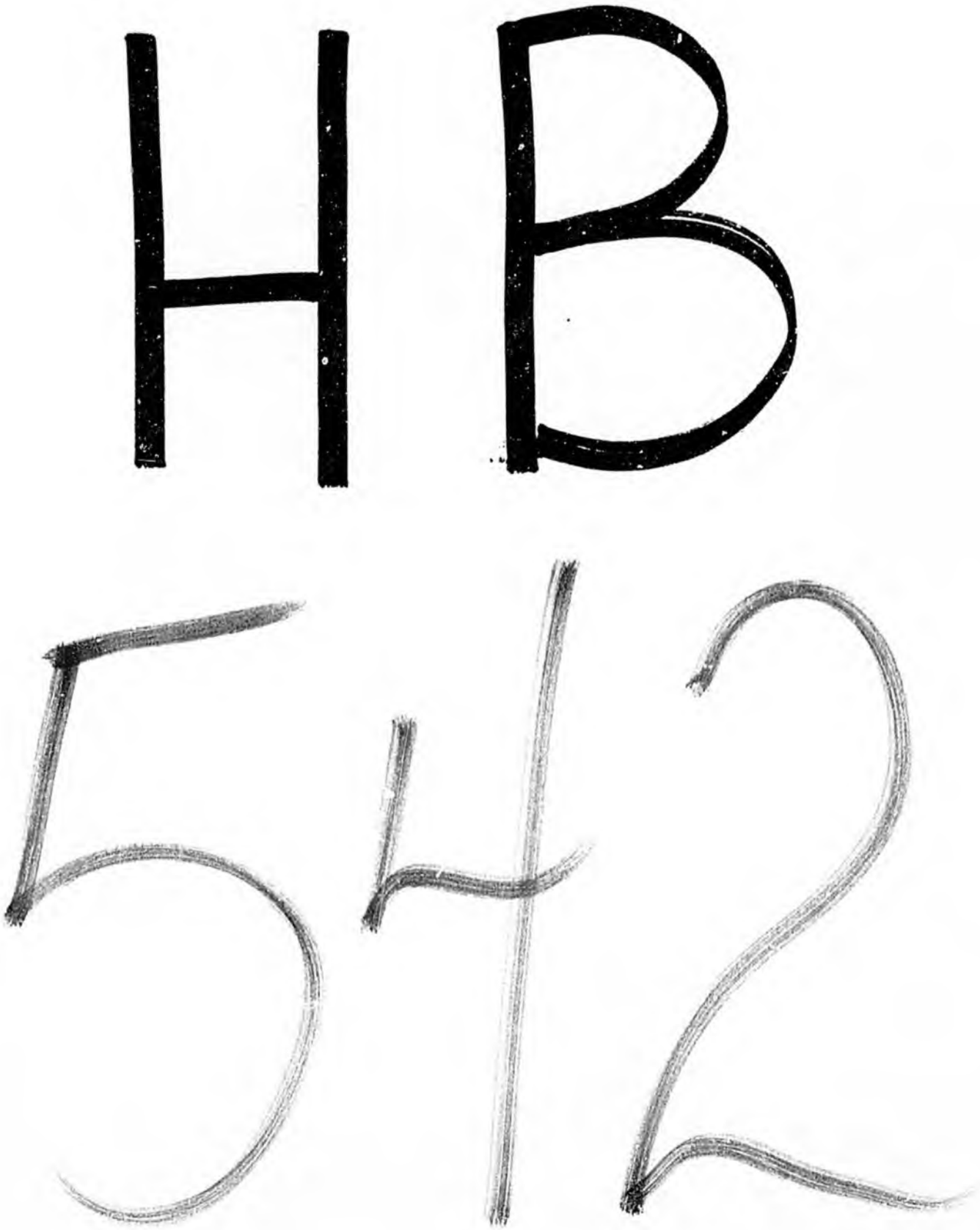
RE: HB 527

During this past interim I worked for the House Resources Committee as an aide working out of the Delta Junction Legislative Information Office.

The Delta Fish and Game Advisory Committee requested that Representative Shultz introduce legislation that would clarify the definition of resident in AS 16.05.940 (19) for the purpose of obtaining fishing and hunting license.

Their motive in requesting this measure was to alleviate problems in enforcement and to remove portions of the statute that were irrelevant.

In researching the need for this measure I found no one who had any idea what purpose the deleted section provided and all parties contacted at Fish and Wildlife Protection agreed that the addition of the words referring to the preceding twelve months would help with enforcement.


HB
542

3/19

HOUSE

COMMITTEE REPORT

(9)

Date referred: 2/5/86

FURTHER REFERRALS: FINANCE

DATE: March 17, 1986

The RESOURCES Committee has considered HB 542

"An Act relating to corrective management of threatened stocks of game."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with CS HB 542 (Resources) [XX] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[XX] zero fiscal note

SIGNING DO PASS: first

Shultz Dick Shultz

Miller N.P.W. Miller

Jenkins Roger Jenkins

SIGNING OTHER RECOMMENDATIONS:

Thompson

Sund do not pass

Co-Chairman Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 542 (Resources)
Title : An Act relating to corrective management of threatened stocks of game.
Sponsor : Shultz
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : ADF&G
BRU : _____
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL		0	0	0	0	0
SUPPLIES		0	0	0	0	0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : House Resources Committee/Rep. Dick Shultz Phone : 465-3715
Division : _____ Date : _____

Approved by Commissioner : Dick Shultz Date : 3-13-85
Agency : _____

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

FISCAL NOTE PREPARATION

CSHB 542 MANAGEMENT OF THREATENED STOCKS OF GAME

THE COMMITTEE SUBSTITUTE RELIEVES THE BOARD FROM HAVING TO ARRANGE FOR EXTRA MEETINGS. ALL ACTION REQUIRED UNDER THIS BILL WILL BE TAKEN UP AT REGULARLY SCHEDULED MEETINGS OF THE BOARD OF GAME.

SINCE THE BILL DOES NOT REQUIRE UNCUSTOMARY ACTION, BUT RATHER A MORE DIRECT ACTION ON THE PART OF THE GAME BOARD, NO NEW POSITIONS WILL BE NECESSARY WITHIN EITHER THE DEPARTMENT OR THE BOARDS TO IMPLEMENT THIS LEGISLATION.

TO ARGUE EXTRA COST FOR THIS LEGISLATION WOULD BE TO ARGUE THAT THE PRESENT BOARD OF GAME IS NOT EQUIPPED TO DEAL WITH THREATENED STOCKS OF GAME. TO THE CONTRARY THIS LEGISLATION IS BASED ON THE PREMISE THAT THE BOARD IS IN FACT WELL EQUIPPED TO DEAL WITH THREATENED STOCKS BUT HAS NOT DONE SO IN AN EXPEDITIOUS MANNER.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M March 3, 1986

SUBJECT: Effect of CSHB 542(Res) relating to management of threatened stocks of game

TO: Representative Richard Shultz

FROM: George Utermohle GU
Legislative Counsel

CSHB 542(Res) relating to management of threatened stocks of game, establishes a process which the Board of Game must follow when continued human utilization of a stock is jeopardized and local fish and game advisory committees request the board to take corrective action. CSHB 542(Res) does not alter the powers or duties of the board. The board already has the duty to manage game stocks on a sustained-yield basis.

If the board receives information from the Department of Fish and Game that a stock is threatened but does not take corrective action, a majority of advisory committees in the area of the threatened stock can compel the board to act. The board must then adopt a plan at its next regularly scheduled meeting to restore the stock to sustained-yield levels.

CSHB 542(Res) gives the fish and game advisory committees a significant role in determining whether a management plan is adopted. Under current procedures an advisory committee can petition the board to consider an issue but cannot compel the board to accept its proposed action. CSHB 542(Res) gives a group of advisory committees the opportunity to compel the Board of Game to take action and to adopt a stock management plan. The board retains discretion as to the content of the stock management plan even though the board has no discretion as to whether a plan is prepared.

In summary, CSHB 542(Res) establishes procedures which the Board of Game must follow where threatened stocks are involved but does not add to or detract from the substantive responsibility of the board to manage game resources according to sustained-yield principles.

GU:mkr
m3/108

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 11, 1986

SUBJECT: Section by section analysis of CSHB 542(Res), relating to management of threatened stocks of game.

TO: Representative Richard Shultz

FROM: George Utermohle
Legislative Counsel

Sec. 16.05.265(a). This subsection places a duty on the Board of Game to adopt a corrective stock management plan when the board receives scientific data prepared by the Department of Fish and Game that the continued human utilization of a game stock is jeopardized and a majority of the local fish and game advisory committees in the area where the stock lives requests the board to adopt a plan. Before taking action an advisory committee must notify the coordinator for the regional council where the advisory committee is located that it is requesting the Board of Game to adopt a corrective stock management plan.

When this situation occurs the board must prepare a corrective stock management plan at the next regularly scheduled meeting. The board has no discretion as to whether it will prepare the plan. However, the content of the plan, with two major exceptions, is left to the board's discretion. The authority and discretion of the board to adopt management plans in other situations are not affected.

Sec. 16.05.265(b). This subsection lists the mandatory and discretionary elements of a stock management plan. At the minimum a plan must address intensive management of the threatened stock and effective and expeditious management of prey species and natural predator species.

Additional issues or factors affecting the survival of the threatened stock may be considered at the board's discretion. Among the discretionary factors which the bill suggests are regulation of human utilization, biological research, protection of habitat, artificial rearing, public education programs, and law enforcement. Though the bill speaks of these factors in discretionary terms, the board must address any factor which is critical to the survival of the stock. If the board does not address a critical factor

which is in its control or influence, the board is not fulfilling its constitutional mandate to manage according to sustained yield principles.

Sec. 16.05.265(c). This subsection requires the board to review annually each corrective stock management plan in effect. After receiving any additional scientific data from the Department and evaluating the success of the plan the board must take appropriate action to maintain, amend, or rescind the plan and the regulations.

This review of the corrective stock management plan will be done according to the Administrative Procedure Act and board policies. Public comment and participation in this review is thus assured.

Sec. 16.05.265(d). This subsection places responsibility on the Commissioner of Fish and Game to implement corrective stock management plans. When the Department lacks the resources to implement all aspects of one or more corrective management plans, the Commissioner shall establish priorities among plans to achieve as much as possible with the resources available.

Sec. 16.05.265(e). This section defines key terms in the bill: "stock", "corrective stock management plan", and "threatened".

A "stock" is an identifiable and manageable game population defined in terms of the location where it lives. "Game" is defined in AS 16.05 to include natural and introduced species of mammals and birds.

"Corrective stock management plan" is the plan and its implementing regulations adopted by the board. The purpose of the plan is to restore a threatened species to sustained yield levels. The plan must include information that is useful in rebuilding the stock; the plan is not restricted to biological or scientific information.

"Threatened" means that the population cannot support continued human utilization because the population is too small, the population is endangered by another overabundant species, the population's habitat has been damaged, or the population is endangered by some other natural or man-made factor.

GU:mkr
m3/109

Utermohle
3/11/86

Original sponsor: Shultz

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 542 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to corrective management of threatened stocks of game."

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.265. MANAGEMENT OF THREATENED STOCKS OF GAME. (a) The Board of Game shall adopt a corrective stock management plan at its next regularly scheduled meeting when the board receives scientific data compiled by the department that a stock is threatened and a majority of the advisory committees in the game management unit where the stock is located, after consultation with the coordinator for the appropriate regional council, pass resolutions requesting the board to adopt a corrective stock management plan.

(b) The Board of Game

(1) shall include in the corrective stock management plan regulations for intensive management of the threatened stock and for effective and expeditious corrective management of prey and natural predator species of the threatened stock; and

(2) may include in the corrective stock management plan guidelines or regulations for human utilization of the threatened stock, for research on the population status and the ecology of the threatened stock, for restoration of habitat, for public education programs, for law enforcement programs, for designation of reserves, ranges, and preserves, and for artificial rearing of the threatened stock.

(c) The Board of Game shall review annually each corrective stock management plan and shall

(1) receive scientific data compiled by the department on the status of the threatened stock;

(2) evaluate the success of the corrective stock management plan;

(3) continue, amend, or rescind the corrective stock management plan; and

(4) adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) necessary to achieve the corrective goals of the corrective stock management plan.

(d) The commissioner shall implement corrective stock management plans subject to priorities among plans and to the availability of resources to the department.

(e) In this section

(1) "corrective stock management plan" means a document that compiles information for the purpose of restoring a stock to sustained-yield population levels, as determined by the department, and the regulations adopted to implement the plan;

(2) "stock" means a population of a game species identified with a specific geographic area;

(3) "threatened" means the prospect for the continued human utilization of the stock is jeopardized due to either

(A) reduction of the stock below sustained-yield levels by disease, pollution, predation, or overutilization;

(B) overabundance of a game species leading to the imminent

(i) depletion of the stock; or

(ii) destruction of habitat of the stock;

(C) destruction, modification, or reduction of habitat; or

(D) other natural or man-made factors seriously affecting the prospect of continued human utilization of the stock.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Boards	HB 542	Shultz

DEPARTMENT POSITION

Neutral

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Beth Stewart			2/25/94

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Board of Game	Hunters
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Unknown	Unknown

FISCAL IMPACT: ☐ NONE ☒ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Introduced by Shultz.

ANALYSIS OF BILL/PROGRAM EFFECTS

The Board of Game normally meets twice yearly. This bill would require special emergency board meetings in addition to the regular board meetings. The proposed requirement that the board develop emergency interim corrective stock management plans (CSMP) when petitioned by advisory committees will require additional board meetings. Staff support as well as travel, per diem and other costs associated with board meetings will be required to implement this program.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL IMPACT

This bill would require that the board develop emergency interim corrective stock management plans (CSMP) when petitioned by an advisory committee. This means there will be additional Game Board meetings.

Based on the number of petitions the board has received in the past two years, we expect at least one additional meeting per year. Preparation of CSMP in addition to the department's normal work load will require additional staff and funding. A game biologist will be hired to prepare the CSMPs in advance of the board meetings and to prepare the annual reports for on-going CSMPs.

The emergency nature of these actions provides no way of predicting in advance the level of funding needed to complete the work generated by the CSMPs. The department will report to the legislature with additional fiscal information based on actual impact as it occurs.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill Resolution No. : HB 542
Title : An Act relating to corrective management of threatened game stocks.
Sponsor : Shultz
Requestor : House Resources Committee
Date of Request : _____

FISCAL DETAIL

Agency Affected : ADF&G
BRU : Division of Boards
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		49.3	50.9	52.6	54.3	56.0
TRAVEL		15.5	17.5	19.5	20.5	22.5
CONTRACTUAL		6.5	7.0	7.5	18.0	18.5
SUPPLIES		1.2	3.0	3.2	3.5	3.7
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		72.5	78.4	82.8	96.3	100.7
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		72.5	78.4	82.8	96.3	100.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached narrative

Prepared by : Beth Stewart Phone : 465-4110
Division : Boards Date : _____

Approved by Commissioner : _____ Date : 2/5/86
Agency : Fish and Game

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10 25 85

Position Title	Game Biologist III			No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Time Status	Staff Months	RP Number		Location	Election District		Leg.		
PFT	12								

Justification

Staff necessary to implement HB 542.
See Bill Analysis and Fiscal Note.

Type of Expenditure		Amount
1	2	3
Salary	37.4	
Benefits	11.9	
Premium Pay		
Other		
Total Personal Services		
Travel		
Contractual		
Commodities		
Equipment	1.5	
Other		
Total Cost		50.8

Receipt Code	Funding Source	
	Federal Receipts 1002	
	G. F. Match 1003	
	General Funds 1004	
	I-A Receipts 1007	
	Program Receipts 1028	
	CIP Receipts 1061	
	Other	

For B&M Use Only
Key Number ___ - ___ - ___ - ___ - ___

Request For New Position

Agency: Fish and Game
BRU: Boards
Component: Admin & Support

Page of
Revised Date

FY 87

Introduced: 2/6/86
Referred: Resources and
Finance

IN THE HOUSE BY SHULTZ

HOUSE BILL NO. 542

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to corrective management of threatened stocks of game."

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.265. MANAGEMENT OF THREATENED STOCKS OF GAME. (a) The Board of Game shall adopt an interim corrective stock management plan by emergency regulation under AS 44.62.250 and 44.62.260 when the board receives scientific data compiled by the department that a stock is threatened and a majority of the advisory committees in or adjacent to the game management unit where the stock is located petitions the board to adopt an interim corrective stock management plan.

(b) An interim corrective stock management plan expires after 120 days or when the Board of Game adopts a corrective stock management plan, whichever occurs first.

(c) Within 120 days after adopting an interim corrective stock management plan the Board of Game shall adopt a corrective stock management plan in accordance with the Administrative Procedure Act (AS 44.62).

(d) The Board of Game

(1) shall include in the corrective stock management plan regulations for intensive management of the threatened stock and for effective and expeditious corrective management of prey and natural predator species of the threatened stock; and

(2) may include in the corrective stock management plan

guidelines or regulations for human utilization of the threatened stock, for research on the population status and the ecology of the threatened stock, for restoration of habitat, for public education programs, for law enforcement programs, for designation of reserves, ranges, and preserves, and for artificial rearing of the threatened stock.

(e) The Board of Game shall review annually each corrective stock management plan and shall

(1) receive scientific data compiled by the department on the status of the threatened stock;

(2) evaluate the success of the corrective stock management plan;

(3) continue, amend, or rescind the corrective stock management plan; and

(4) adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) necessary to achieve the corrective goals of the corrective stock management plan.

(f) The commissioner shall implement interim corrective stock management plans and corrective stock management plans subject to priorities among plans and to the availability of resources to the department.

(g) In this section

(1) "corrective stock management plan" means a document that compiles information for the purpose of restoring a stock to sustained-yield population levels, as determined by the department, and the regulations adopted to implement the plan;

(2) "interim corrective stock management plan" means a corrective stock management plan that provides for management and conservation of a threatened stock while the Board of Game prepares

and adopts a corrective stock management plan;

(3) "stock" means a population of a game species identified with a specific geographic area;

(4) "threatened" means the prospect for the continued human utilization of the stock is jeopardized due to either

(A) reduction of the stock below sustained-yield levels by disease, pollution, predation, or overutilization;

(B) overabundance of a game species leading to the imminent

(i) depletion of the stock; or

(ii) destruction of habitat of the stock;

(C) destruction, modification, or reduction of habitat; or

(D) other natural or man-made factors seriously affecting the prospect of continued human utilization of the stock.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM February 26, 1986

SUBJECT: Effect of HB 542 relating to management of threatened stocks of game

TO: Representative Richard Shultz

FROM: George Utermohle
Legislative Counsel

HB 542 relating to management of threatened stocks of game, establishes a process which the board of game must follow when continued human utilization of a stock is jeopardized and local fish and game advisory committees petition the board to take corrective action. HB 542 does not alter the powers or duties of the board. The board already has the duty to manage game stocks on a sustained yield basis.

If the board receives information from the Department of Fish and Game that a stock is threatened but does not take corrective action, a majority of advisory committees in the area of the threatened stock can compel the board to act. The board must then act quickly to adopt a plan to restore the stock to sustained-yield levels. The board must adopt immediately an interim corrective stock management plan and then within 120 days must adopt a long term plan.

HB 542 gives the fish and game advisory committees a significant role in determining whether a management plan is adopted. Under current procedures an advisory committee can petition the board to consider an issue but cannot compel the board to accept its proposed action. HB 542 gives a group of advisory committees the opportunity to compel the board of game to take action and to adopt a stock management plan. The board retains discretion as to the content of the stock management plan even though the board has no discretion as to whether a plan is prepared.

In summary, HB 542 establishes procedures which the board of game must follow where threatened stocks are involved but does not add to or detract from the substantive responsibility of the board to manage game resources according to sustained-yield principles.

GU:csh
06/015

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M February 26, 1986

SUBJECT: Section by section analysis of HB 542, relating to management of threatened stocks of game.

TO: Representative Richard Shultz

FROM: George Utermohle
Legislative Counsel

Sec. 16.05.265(a). This subsection places a duty on the board of game to adopt an interim corrective stock management plan when the board receives scientific data prepared by the Department of Fish and Game that the continued human utilization of a game stock is jeopardized and a majority of the local fish and game advisory committees in the area where the stock lives petition the board to adopt a plan.

When this situation occurs the board must prepare an interim corrective stock management plan. The board has no discretion as to whether it will prepare the plan. However, the content of the plan, with two major exceptions, is left to the board's discretion. The authority and discretion of the board to adopt management plans in other situations are not affected.

The interim corrective stock management plan is implemented as an emergency regulation in order to avoid delays that may otherwise occur in developing a plan and promulgating regulations. The justification for emergency regulations is that any delay in responding to the management needs of a threatened stock violates Art. VIII, Section 4 of the State Constitution which mandates that renewable resources be managed according to sustained yield principles.

Sec. 16.05.265(b). This subsection terminates an interim corrective stock management plan after 120 days. An interim corrective stock management plan can be terminated before 120 days have elapsed if the board adopts a long term stock management plan

Sec. 16.05.265(c). This section requires the board to prepare the long-term corrective stock management plan within 120 days after adopting the interim plan. This requirement ensures continuous intensive management of the threatened species. The stock management plan is adopted by the board as a regulation.

Sec. 16.05.265(d). This subsection lists the mandatory and discretionary elements of a stock management plan. At the minimum a plan must address intensive management of the threatened stock and effective and expeditious management of prey species and natural predator species.

Additional issues or factors affecting the survival of the threatened stock may be considered at the board's discretion. Among the discretionary factors which the bill suggests are regulation of human utilization, biological research, protection of habitat, artificial rearing, public education programs, and law enforcement. Though the bill speaks of these factors in discretionary terms, the board must address any factor which is critical to the survival of the stock. If the board does not address a critical factor which is in its control or influence, the board is not fulfilling its constitutional mandate to manage according to sustained yield principles.

Sec. 16.05.265(e). This subsection requires the board to review annually each corrective stock management plan in effect. After receiving any additional scientific data from the Department and evaluating the success of the plan the board must take appropriate action to maintain, amend, or rescind the plan and the regulations.

This review of the corrective stock management plan will be done according to the Administrative Procedure Act and board policies. Public comment and participation in this review is thus assured.

Sec. 16.05.265(f). This subsection places responsibility on the Commissioner of Fish and Game to implement interim and long-term corrective stock management plans. When the Department lacks the resources to implement all aspects of one or more corrective management plans, the Commissioner shall establish priorities among plans to achieve as much as possible with the resources available.

Sec. 16.05.265(g). This section defines key terms in the bill: "stock", "corrective stock management plan", and "threatened".

A "stock" is an identifiable and manageable game population defined in terms of the location where it lives. "Game" is defined in AS 16.05 to include natural and introduced species of mammals and birds.

"Corrective stock management plan" is the plan and its implementing regulations adopted by the board. The purpose of the plan is to restore a threatened species to sustained yield levels. The plan must include information that is useful in rebuilding the stock; the plan is not restricted to biological or scientific information.

"Threatened" means that the population cannot support continued human utilization because the population is too small, the population is endangered by another overabundant species, the population's habitat has been damaged, or the population is endangered by some other natural or man-made factor.

GU:csh
c6/014

Alaska State Legislature

COMMITTEES

Co-Chairman — House Resources Committee
Member — House Transportation Committee

While in Session:

P.O. Box V
State Capital
Juneau, Alaska 99811
Phone (907) 465-4951
465-4940

Home - SR 790
Tok, Alaska 99780

House of Representatives

Dick Shultz

OVERVIEW OF HB 542

REP. DICK SHULTZ DS

FEB. 26, 1986

********** ********* ********** ********* ********** ******

Under Section 805 of ANILCA, Local Advisory Committees and Regional Councils were given the responsibility of providing the Boards of Fish and Game guidance in the enactment of regulations.

The purpose for the present system as established under ANILCA was to help protect those resources that Alaskans depend on for sustenance and to file an annual report to the Secretary of The Interior on the health and well being of the subsistence resources management system. After compliance with 805 of ANILCA the State received Federal dollars to help carry out the programs.

Unfortunately game stocks in certain areas of Alaska have been threatened and in some cases reduced well below a level that will allow traditional subsistence harvests to continue. Over the past several years our Local Advisory Committees have petitioned our Game Board for assistance as have Regional Councils and yet little has been done.

At the requests of Local Committees I have introduced House Bill 542 to help insure that the Resources are managed according to the standards laid out in our constitution and in ANILCA.

BILL SUMMARY

House Bill 542 is designed to give Local Advisory Committees the ability to require the Board of Game to take rapid action to protect game stocks that are threatened.

The Board will not be affected by this proposed law unless there is biological data from the Department of Fish and Game supporting the assertion from a majority of Advisory Committees within a given area that a particular game stock is in trouble.

In the case where stocks are deemed to be "threatened" as defined under this bill, the Board will have to take immediate action as provided under existing Title 16 authority. That action will have to include " Intensive " management efforts to reverse declining stocks to once again allow for traditional human utilization. The action will be known as a "Interim corrective management plan".

The Department will have the discretion under HB 542 to prioritize their efforts to manage intensively if funds or manpower are in limited supply.

After short term corrective action is taken the Board will have to design a long term plan to rebuild game stocks back to healthy levels. This plan is called a "Corrective management plan".

In summary this bill is a stop gap measure to make sure that our local communities can not be ignored when the game stocks on which they depend are threatened.

(The enactment of this legislation should not require a positive fiscal note based on the assumption that the Board of Game with the help of the Department should in the normal course of events fulfill their proper responsibilities in addressing threatened game stocks.)

ALASKA CONSTITUTION

Enforcement

SECTION 11. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation. Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.

ARTICLE VII

HEALTH, EDUCATION, AND WELFARE

Public Education

SECTION 1. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

State University

SECTION 2. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

Board of Regents

SECTION 3. The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance

with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

Public Health

SECTION 4. The legislature shall provide for the promotion and protection of public health.

Public Welfare

SECTION 5. The legislature shall provide for public welfare.

ARTICLE VIII

NATURAL RESOURCES

Statement of Policy

SECTION 1. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

General Authority

SECTION 2. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Common Use

SECTION 3. Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use.

Sustained Yield

SECTION 4. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Facilities and Improvements

SECTION 5. The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

State Public Domain

SECTION 6. Lands and interests therein, including submerged and tidal lands, possessed or

16 USC 3115.

SEC. 805. (a) Except as otherwise provided in subsection (d) of this section, one year after the date of enactment of this Act, the Secretary in consultation with the State shall establish—

(1) at least six Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;

(2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and

(3) a regional advisory council in each subsistence resource region.

Regional advisory council, authority

Each regional advisory council shall be composed of residents of the region and shall have the following authority:

(A) the review and evaluation of proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife within the region;

(B) the provision of a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(C) the encouragement of local and regional participation pursuant to the provisions of this title in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

Annual report to Secretary.

(D) the preparation of an annual report to the Secretary which shall contain—

(i) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(ii) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(iii) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(iv) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy. The State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to, and assist, the regional advisory councils in carrying out the functions set forth in this paragraph.

(b) The Secretary shall assign adequate qualified staff to the regional advisory councils and make timely distribution of all available relevant technical and scientific support data to the regional advisory councils and the State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of subsection (a).

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

Implement

(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

Reimbursement to States.

(e)(1) The Secretary shall reimburse the State, from funds appropriated to the Department of the Interior for such purposes, for reasonable costs relating to the establishment and operation of the regional advisory councils established by the State in accordance with subsection (d) and the operation of the State fish and game advisory committees so long as such committees are not superseded by the Secretary pursuant to paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such costs in any fiscal year. Such costs shall be verified in a statement which the Secretary determines to be adequate and accurate. Sums paid under this subsection shall be in addition to any grants, payments, or other sums to which the State is entitled from appropriations to the Department of the Interior.

Report to Congress.

(2) Total payments to the State under this subsection shall not exceed the sum of $5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in every five years as to whether or not the maximum payments specified in this subsection are adequate to ensure the effectiveness of the program established by the State to provide the preference for subsistence uses of fish and wildlife set forth in section 804.

FEDERAL MONITORING

Report to congressional committees.
16 USC 3116.

SEC. 806. The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 804 and shall advise the State and the Committee on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives and the Committees on Energy and Natural Resources and Environment and Public Works of the Senate annually and at such other times as

ANILCA

RUBY ADVISORY COMMITTEE
POB 8
RUBY, ALASKA 99768

February 28, 1985

Board of Game Members
Alaska Department of Fish & Game
Box 3-2000
Juneau, Alaska 99802

Dear Boardmembers:

At our recent Fish and Game Advisory Committee, February 7, 1985, attended not only by concerned Ruby Residents, but also by representatives of Tanana Chiefs, State of Alaska Fish and Game and U. S. Nowitna Refuge representatives, it was agreed by all concerned that a wolf predation problem exists.

Many suggestions were advanced such as increasing the value of the wolf pelt so as to make trapping more attractive. Another suggestion was to allow aerial hunting by local pilots during March, limiting the wolf kill to 25 per unit.

Asking for a State trapper to spend time in the area to trap wolves was another suggestion.

A return to the free enterprise system was advocated so that money would flow back to the village was advanced.

Whatever the suggestions, it was agreed by those present that a serious problem now exists and a subsistence resource is now threatened.

Because of this danger to the moose resource, action must be taken immediately by both the State and Federal entities. It appears that each of these agencies would rather let the other agency take action. Meanwhile, the wolves take 160 moose according to a State of Alaska Game Biologist's records while Ruby residents account for 60 bull moose while the wolves are not so eclectic.

This letter is written in frustration because no concrete response to date has been taken by any agency to "manage" the wolf population.

as time is of the essence, we respectfully request that you act upon our resolution 85-2.

Yours truly,

Richard C Strick

Richard C. Strick, Chairman

RCS:sgs

RUBY FISH & GAME ADVISORY COMMITTEE

RESOLUTION 85-2

Whereas, it has been reported by both users and game people that moose kills by wolves in the Novi area are numerous; and

Whereas, trappers are sightin' more wolves than ever before; and

Whereas, pilots are reporting large packs of wolves and moose kills sighted; and

Whereas, we are concerned abou' our future subsistence food source; and

Wereas, our correspondence telling of our concerns has not been answered; and

Whereas, our fears have been increased because positive wolf control measures are not in effect;

Be it resolved, that the Ruby Advisory Committee requests and petitions the Board of Game not only to direct the proper authorities to provide us with current data of wolf predation and statistics in our Unit 21(B) so as to verify the present crisis but to immediately take corrective action to protect our moose population so that our subsistence needs will be assured; and

Be it further resolved, that said committee requests and petitions said Board to direct the proper agency/authority to conduct studies this year to build data for future actions.

Richard C. Strick

Richard C. Strick, Chrm.

2/28/85

Date

RUBY ADVISORY COMMITTEE
POB 8
RUBY, ALASKA 99768

January 21, 1985

Board of Game Members
Alaska Department of Fish and Game
Box 3-2000
Juneau, Alaska 99802

Dear Boardmembers:

At our recent advisory committee meeting I was directed by the membership to bring to your attention the threat to the moose population caused by an obvious increase of wolf predation this year.

According to many of your trappers, more wolves have heen sighted this year than in years past. Pilots are also reporting large packs of wolves sighted. These reports are disconcerting as we rely on moose for subsistence-use and our food supply.

Emergency assistance is needed immediately so as to protect this very important subsistence resource. Therefore, we ask the following steps be taken by your department to protect the moose population.

1. Tim Osborne, Area Biologist, Galena, to provide us with current data of wolf predation and numbers in our Unit so as to verify the present crisis.
2. Tim Osborne to conduct studies this year to build data for future actions by your department.
3. Reinstate a wolf bounty and provide loaner traps to trappers.
4. Allow Fish and Game to issue permits to fly and shoot wolves.

We fully realize the emotionalism of the campaign by misguided individuals to "save the wolves", however the moose is our "commissary on the hoof" and every effort should be made to protect this resource as is is now under attack. We urge you to make every effort to maintain the balance between human needs and conservation needs. As in the human arena the victim

(moose) needs to be protected as well as the criminal, (wolf).

Thank you for your attention to this matter.

Yours truly,

Richard C Strick

Richard C. Strick, Chairman
Ruby Advisory Committee

RCS:sgs

cc: John C. Sackett, Senator, State of Alaska
Kay Wallis, Representative, State of Alaska
Don W. Collinsworth, Commissioner of Fish & Game
W. Lewis Pamplin, Jr., Director of Game
Sidney Huntington, Boardmember
Terry Haynes, Regional Supervisor, Subsistence Div. U.S. Fish and Wildlife Service
Jim Fisher, Refuse Manager, Nowitna National Wildlife Refuse, U.S. Fish & Wildlife Service
Jim Kowalsky, Director, Wildlife and Parks, TCC
Dana Notti, Yukon-Koyukuk Subregion, TCC, Galena
Karen Thompson, Department of Fish and Game
Beth Stewart, Director, Division of Boards
Jim Marcotte, ADF&G, Division of Subsistence
Mitch Demientieff, Coordinator, Interior Regional Council
Royce Purinton, Chairman, Interior Regional Council
Tim Osborne, Area Game Biologist
Ruby Advisory Committee ~~Members~~ FILE

RUBY ADVISORY COMMITTEE
POB 8
RUBY, ALASKA 99768

February 5, 1985

Jim Marcotte
Alaska Department of Fish and Game
Division of Subsistence
POB 256
Galena, Alaska 99741

Dear Jim:

As discussed in our recent advisory board's meetings, we feel that wolf predation presents a danger to our subsistence life style which relies heavily on healthy moose populations.

Because much of our subsistence hunting occurs in the Nowitna refuse, we request that you conduct a wolf population inventory to determine if there is or isn't a wolf problem. Perhaps you could radio collar the wolves to help you determine the pack sizes.

We are not requesting a study of the Nowitna Refuge in it's entirety but rather along the Yukon River from Ruby to the Nowitna, thence 60 miles upstream on both banks. Please see shaded area of Map. We are not interested in the "hinterland" as such.

If wolf predation or wolf numbers prove to be at a dangerous level then we ask you to take concrete steps to save the valuable moose resource.

Thank you for your immediate attention to this request.

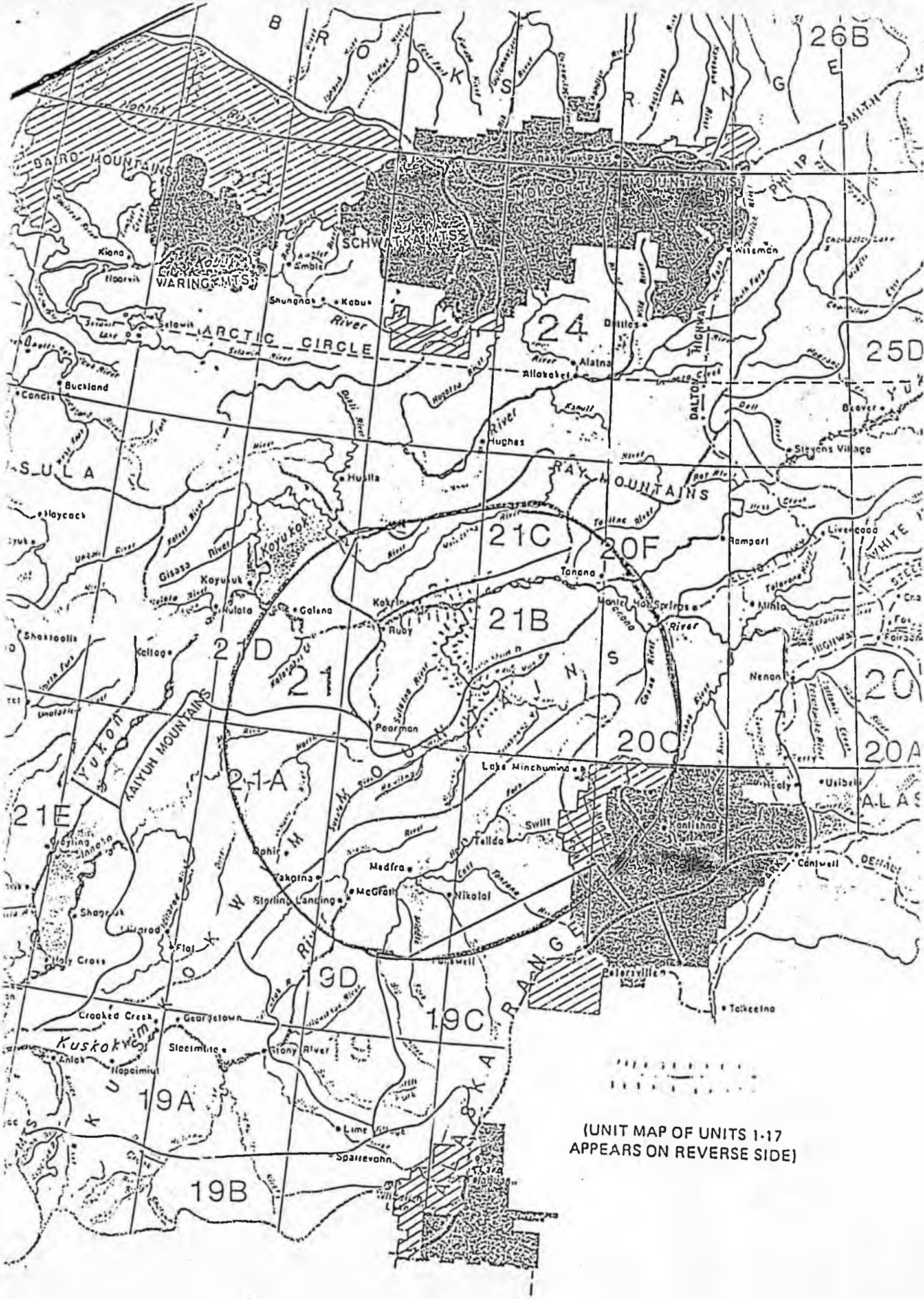
Sincerely,

Richard C. Strick

Richard C. Strick, Chairman
Ruby Advisory Committee

RCS:sgs

cc: Terry Haynes, Regional Supervisor, Div. of Subsistence
James R. Fisher, Refuse Mgr., Nowitna NWR, F & W Service
Mitch Demientieff, Dir. Interior Regional Council
Jim Kowalsky, TCC, Inc.
Tim Osborne, Game Biologist, Galena



(UNIT MAP OF UNITS 1-17
APPEARS ON REVERSE SIDE)

A. Subunit 22(A)—That portion of Unit 22 drain-

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 20, 1986

SUBJECT: Sustained yield of fish and game resources (Work Order 14-1742)

TO: Representative Richard Shultz
Attn: Dave Stancliff

FROM: George Utermohl
Legislative Counsel

As per your request, the following is a review of what the framers of the Alaska Constitution meant when they drafted Article VIII, Section 4 relating to sustained yield of fish and wildlife.

The provisions of Article VIII of the Alaska Constitution were drafted by the Resources Committee of the Constitutional Convention. Committee Proposal 8/a prepared by the Resources Committee was introduced on January 16, 1956.

> Forest, fish, wildlife, grasslands and other replenishable resources belonging to the State shall be administered, utilized and maintained on the sustained yield principle /1

The Committee Commentary on the sustained yield section described the Committee's understanding of the concept that it was proposing:

> Sustained yield is recognized as a principle applicable to the administration of plant and animal life subject to the immediate authority of the State. This provision applies generally to wildlife and fisheries anywhere in the State and to the forests and other replenishable resources including grass which occurs on lands in the State public domain. This principle is qualified in terms of "the highest beneficial public use" in recognition of its not being in the public interest to preserve certain parasitic or predatory

> organisms destructive of more beneficial plant and animal life. . . /2

The Resources Committee assumed that the meaning of sustained yield is understood by everyone and that it was not necessary to further define the term.

Burke Riley, as spokesman for the Resources Committee, summarized the Commentary on the Committee Proposal 8/a and elaborated somewhat as to how the Committee envisioned the sustained yield requirement would be implemented:

> Section 3 states that replenishable resources shall be administered on the sustained yield principle. I won't go into that in detail here, beyond saying that, in our reference to sustained yield, we have in mind no narrow definition of "sustained yield," as is used, for example, in forestry, but the broad premise that insofar as possible a principle of sustained yield shall be used with respect to administration of those resources which are susceptible of sustained yield, and where it is desirable. For example, predators would not be maintained on a sustained yield basis. /3

The Committee's concept of sustained yield generated a question from a member as to how it would apply to fishery resources when exact information necessary for precise sustained yield management is not available.

> PERATROVICH: I asked the question before, but before we took a recess, and I'm a little bit concerned on this sustained yield program as far as fisheries are concerned. Did the Committee go into detail on it as to how that would apply?
>
> PRESIDENT EGAN: Mr. Smith.
>
> SMITH: Mr. President, yes, the Committee discussed that very thoroughly, and as Mr. Riley pointed out, this term "sustained yield principle" was not intended to apply in the strict sense in which it does apply in the management of forestry land. The Committee realized full well that it would be impossible to determine the exact sustained yield in the fisheries; but the Committee felt that there was a definite indication that would be of value that, insofar as

possible, the fisheries shcuild be maintained on the sustained yield principle.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: Mr. Chairman, then it is the opinion of your Committee, sustained yield basic program will be left, as far as fisheries are concerned, to the state legislature? Am I correct in that?

RILEY: I would say yes, Mr. Peratrovich, and probably by the legislature delegated to the fisheries agency. In the course of our work on this article, we felt obliged to assemble a glossary insofar as possible; and, I might read what we have agreed on amongst ourselves as the meaning of the term employed in the article. "As to forests, timber volumes, rate of growth, and acreage of timber type can be determined with some degree of accuracy. For fish, for wildlife, and for some other replenishable resources, such as huckleberries, as an example, it is difficult or even impossible to measure accurately the factors by which a calculated sustained yield will be determined. Yet, the term 'sustained yield principle' is used in connection with the management of such resources. When so used in this article, it denotes conscious application insofar as practicable, of principles of management intended to sustain the yield of the resource being managed."

PERATROVICH: Well, that answers my question. . . . /4

The Resources Committee recognized the difficulty of defining "yield" and then managing the resource so that the yield is sustained. Forest management was used as an example of resource susceptible to exact management, while fish and wildlife were considered resources where exact calculations were almost impossible. The Resources Committee did not intend sustained yield to be a rigid concept requiring rigorous management of resources but only that replenishable resources be consciously managed with the intent that a yield be sustained.

The exchange between Frank Peratrovich and Mr. Riley clearly shows that Article VIII intended that the general concept of sustained yield management of replenishable resources be

included in the Constitution and that sustained yield management be implemented more fully by the legislature.

The concept of sustained yield management is generally applicable to replenishable resources, including fish and wildlife, but exceptions to sustained yield management were foreseen by the Constitutional drafters. Though the sustained yield section of Committee Proposal 8/a did not expressly mention that exceptions to sustained yield management were allowed, the Committee Commentary which accompanied the proposal allowed an implied exception for destruction of "parasitic or predatory organisms destructive of more beneficial plant and animal life" when it was in the public interest. /5

After the Resources Committee had an opportunity to reconsider the language of the sustained yield section, the Committee found that there was a need to expressly allow exceptions to sustained yield management. The Resources Committee requested on the floor of the Constitutional Convention that the sustained yield section be amended by adding at the end of the section, "subject to preferences among beneficial uses". Speaking for the Resources Committee, Mr. Riley explained the purpose of the amendment:

> Originally, in one of our earlier editions of this article, that language, or language substantially resembling it, was included. The Committee itself had stricken the language thinking that it appeared elsewhere in enough places to cover our purpose. However, it has been brought to our attention by more than one specialist in the field that it has particular application to the sustained yield principle, and that without the language we have just suggested, that the sustained yield principle mentioned becomes somewhat meaningless and ineffective. /6

The amendment was adopted.

In summary, the framers of the Constitution intended that all replenishable resources belonging to the state including fish and wildlife be managed according the principles of sustained yield as the term is generally understood. The legislature is responsible for implementing sustained yield management and for further clarifying the term, as necessary. Exceptions to sustained yield management of fish

and wildlife resources are permitted when the exception is in the public interest.

GU:mkr
M3:052

FOOTNOTES

/1 Committee Proposal 8/a, January 16, 1956, p. 2.

/2 Commentary on Article on State Lands and Natural Resources, January 16, 1956, p. 1.

/3 Proceedings of the Constitutional Convention, January 17, 1956, p. 2451.

/4 Proceedings of the Constitutional Convention, January 17, 1956, p. 2456-57.

/5 see footnote 2.

/6 Proceedings of the Constitutional Convention, January 25, 1956, p. 3054.

Honorable Dick Shultz 2/26/86
Dear Representive Shultz

I think I have some qualifications to speak on hunting. last fall was 61 years since I bought my first hunting license.
Most of my 29 years in Alaska were spent where I could observe game while mining,logging,winter freighting and hunting.
I was assistant guide and class A for a few years.

The management of fish and game in Alaska has been very disappointing.
Sustained yield or increased hunting pressure are not considered.

The judgment of the advisory committees are consistently ignored and replaced with political expedience and a brand of environmental ideology that is neither preservation,conservation, or sustained yield.

It is a special discriminatory spite against hunters,against men and women who stand tall as providers, against our hreitage.

Sincerely
Jim Frey Sr.
Jim Frey Sr.
Vic. ch.
Alaska, advisory committe

HB

5559

HOUSE
COMMITTEE REPORT

3/19

(9)

Date referred: 2/28/86

FURTHER REFERRALS: FINANCE

DATE: 3/19/86

The RESOURCES Committee has considered HB 559

'An Act approving the sale of Kuparuk River Unit royalty oil by the State of Alaska to Petro Star, Inc. and Chevron U.S.A., Inc.; and providing for an effective date."

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Wallis J. Kay Wallis

Miller(N.P M.G. Miller

Thompson Mark Thompson

Sund

Pearce

Jenkins Roger Jenkins

SIGNING OTHER RECOMMENDATIONS:

Cato Bette Cato No Rec

Co-Chairman Dick Shultz Shultz

2/28

HOUSE
COMMITTEE REPORT

RESOURCES

(7)

Date referred: 2/10/86

FURTHER REFERRALS: FINANCE

DATE: 2/26/86

The HCUSE SPECIAL COMMITTEE ON OIL AND GAS Committee has considered HB 559

"An Act approving the sale of Kuparuk River Unit royalty oil by the State of Alaska to Petro Star, Inc. and Chevron U.S.A., Inc.; and providing for an effective date."

and recommends:

[✓] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[✓] new fiscal note Supplemental #9.2
[ ] zero fiscal note

SIGNING DO PASS:

Marrou ALM MARROU

Pignalberi M.A. PIGNALBERI

Davis

Sund

Pourchot

Szymanski

SIGNING OTHER RECOMMENDATIONS:

Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 1-31-86

REQUEST

Bill/Resolution No. : 377-094-86
Title : An act approving the sale of royalty oil to Petro Star

Sponsor : Governor
Requestor : Governor
Date of Request : 1/29/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Petroleum Management

Components : Petroleum Management

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The contract will result in routine billing and accounting functions which can be absorbed in the existing operation.

Prepared by : Rod Nourant
Division : Management
Phone : 465-2424
Date : 1-31-86

Approved by Commissioner : Wm D Ammerman, Deputy
Date : 1/31/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : _____

Title : An Act approving the sale of royalty oil to Petro Star and Chevron U.S.A.

Sponsor : Rules Committee at the request

Requestor : of the Governor

Date of Request : 1/28/86

FISCAL DETAIL

Agency Affected : Revenue

BRU : _____

Components : operating

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : _____ Phone : _____

Division : _____ Date : _____

Approved by Commissioner : [signature] Date : 1/28/86

Agency : Dept. of Revenue

Distribution (by Agency preparing fiscal note)

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page ____ of ____

10/25/85

FINAL FINDINGS AND DETERMINATION

TO SELL KUPARUK RIVER UNIT ROYALTY OIL

TO PETRO STAR, INC. AND CHEVRON U.S.A., INC.

December 9, 1985

INTRODUCTION

On September 16, 1985 the Department of Natural Resources issued a document entitled Analysis and Recommendations for Disposition of State Royalty Oil (Analysis). The Analysis reviewed the state's competitive royalty oil sale of December 11, 1984 (1984 Competitive Sale) and evaluated negotiated royalty oil disposal options resulting from the department's Solicitation for Proposals(s) to Purchase Prudhoe Bay and/or Kuparuk River Unit Royalty Oil of April 1, 1985 (Solicitation). After considering comments from the Alaska Royalty Oil and Gas Development Advisory Board (Royalty Board), legislators and many members of the public, the Commissioner of Natural Resources determined that the state's interests would be best served by a negotiated long-term sale to Petro Star, Inc. (Petro Star) and Chevron U.S.A., Inc. (Chevron), and additional short-term competitive sales.

A preliminary finding and public notice for a competitive sale of Prudhoe Bay Unit Royalty Oil was published October 17, 1985. The document entitled Preliminary Findings and Determination to sell Kuparuk River Unit Royalty Oil to Petro Star, Inc. and Chevron U.S.A., Inc. (Preliminary Findings) was published with a preliminary notice on October 23, 1985.

The department proposes to sell approximately 6,500 barrels per day (bpd) of royalty oil from the Kuparuk River Unit. A maximum of 2,500 bpd will be sold to Petro Star and about 4,000 bpd will be sold to Chevron, with both sales occurring under a single long-term, noncompetitive contract. In accordance with AS 38, the Department of Natural Resources must determine whether this disposal serves the state's best interest and make other findings before the sale may take place. This final finding describes the proposed sale and analyzes its potential effects.

BACKGROUND

A long-term royalty oil disposal to Petro Star (an in-state refiner located in North Pole) has been discussed at several public meetings held by the Royalty Board during 1985. At the February 20 meeting, Petro Star representatives testified in support of a royalty oil sale. On March 26, the department reported to the Royalty Board on the status of the state's planned Solicitation. At the April 12 meeting, the department presented a status report on the Solicitation, which was released April 1. A recapitulation of the responses to the Solicitation was presented at the Royalty Board meeting of July 25.

In its response to the department's Solicitation, Petro Star originally requested an 11-year contract for 4.266% of Prudhoe Bay Unit royalty oil production, or about 8,000 bpd. At the time the department's Analysis was released (September 13, 1985), tentative agreement had been reached for a long-term contract with Petro Star on terms similar to Petro Star's original proposal. However, that tentative agreement was subject to Petro Star making a satisfactory disposition of the return oil barrels.

Oil which has been processed through a refinery, but is not retained as refined product, is known as residual oil. Residual oil can be injected into the Trans Alaska Pipeline System (TAPS), where it becomes commingled with TAPS crude stream. Residual oil added to the TAPS crude stream is called "return oil". The department was aware that a substantial volume of return oil would result from a long-term disposal to Petro Star.

At a September 16, 1985 meeting of the House Special Committee on Oil and Gas, several legislators encouraged the department to pursue a "net sale" to Petro Star that would relieve it of the obligations related to the return oil barrels. The department investigated this possibility, and concluded that it would be feasible to make a "net sale" to Petro Star if satisfactory arrangements could be made by the department for the return oil barrels.

It was suggested that Petro Star's return oil could be offered in future short-term competitive sales. The department determined that it was preferable to dispose of the return oil barrels in a long-term contract running in tandem with the Petro Star contract, rather than leaving those barrels uncommitted. There is presently too much uncertainty regarding future competitive sales to ensure satisfactory disposal through that mechanism.

The department then asked Chevron whether it would be willing to purchase Petro Star's return oil barrels under the same terms that Chevron had offered in response to the department's Solicitation. Chevron was selected because it offered the highest premium (50¢/barrel) of any company responding to the Solicitation and was willing to meet the standard financial and security terms requested by the department in the Solicitation. Chevron indicated its tentative agreement with this proposal, and the royalty board was advised of this development at its meeting September 26.

At the Royalty Board meetings of September 26-27 and October 7, the Royalty Board received public testimony on the proposed sale of royalty oil to Petro Star and Chevron. On October 30, the Director of the department's Division of Oil and Gas made a presentation to the Royalty Board on the Petro Star-Chevron contract proposed in the Preliminary Findings; the Royalty Board also received public testimony on the proposed contract.

Under the contract, a maximum of approximately 6,500 bpd of Kuparuk River Unit royalty oil will be sold to Petro Star and Chevron. Chevron will have a maximum quantity of approximately 4,000 bpd, and Petro Star a maximum quantity of approximately 2,500 bpd. These volumes will be expressed and sold as a percentage of unit production. The exact percentages will be determined after approval of the contract next year since production from the Kuparuk River Unit is fluctuating at this time. Petro Star initially will take approximately 2,000 bpd, and will have the option to increase its take by November 1, 1987 to the maximum quantity of approximately 2,500 bpd. Chevron

will sell its royalty oil volume from this contract to Petro Star at Pump Station 1, and Petro Star will sell its return oil to Chevron at Valdez.

The differences between the contract form which accompanies this finding and the proposed contract form presented with the Preliminary Findings reflect a consideration of the comments received and the issues raised both by the department and board members at the Royalty Board meeting of October 30, 1985.

SUMMARY OF PROPOSED CONTRACT TERMS

1. Price: The total price per barrel to be received by the state in this negotiated disposal is the sum of the following components:

   (a) The amount the state would have received for a barrel of Prudhoe Bay royalty oil taken at that time in value (in money);

   (b) a premium of 35¢ per barrel for Petro Star and 50¢ per barrel for Chevron;

   (c) Kuparuk field costs;

   (d) additional sums upon the resolution of State of Alaska, et al v. Amerada Hess Corp., et al (Superior Court for the State of Alaska, First Judicial District at Juneau) (Amerada Hess);

   (e) less, the tariff charge for the Kuparuk Pipeline and the applicable TAPS quality bank adjustment.

2. Term: Delivery of oil will commence the first day of the first month seven (7) months after the contract is approved by the Legislature and the Governor. The contract terminates September 30, 1996.

3. Quantity and Source: The contract allows for a maximum volume of approximately 6,500 barrels per day (bpd), expressed as a percentage of daily royalty oil from the Kuparuk River Unit. Petro Star will purchase a maximum of approximately 2,500 bpd and Chevron will purchase approximately 4,000 bpd.

4. Point of Delivery: Purchasers will take delivery at the Central Production Facility meter into the Kuparuk Pipeline.

5. In-State Processing and Best Efforts: Petro Star will process not less than 85% of the total royalty oil sold under the agreement. Petro Star also agrees to use its "best efforts" to produce and market in Alaska an amount of refined petroleum products from its refinery near North Pole, Alaska not less in volume than 23% of the total royalty oil sold under the agreement.

6. Security: Petro Star will provide a letter of credit worth sixty (60) days of oil, and Chevron will provide a letter of credit worth ninety (90) days of oil. In the event of default by Petro Star, Chevron agrees to purchase Petro Star's volume on five days notice. In addition, Petro Star will execute an escrow agreement to cover future payments of additional amounts that may be owed upon final resolution of the Amerada Hess litigation. Petro Star has agreed to escrow $1.12 per barrel to be credited against future Amerada Hess adjustments.

7. Relationship between Petro Star and Chevron: Petro Star will use as refinery charge Chevron's volume of royalty oil sold under the contract. After Petro Star processes the oil there will remain a portion of oil or oil products which will be shipped through TAPS, and sold by Petro Star to Chevron at Valdez. The quantity will approximate Chevron's purchase volume under the royalty oil contract.

IN-STATE BENEFIT ANALYSIS

Petro Star was incorporated during October of 1984 by a group of private Alaska investors. The company was formed to produce refined petroleum products for marketing within the Interior and on the North Slope of Alaska. Since incorporation, Petro Star has received additional financial backing from the Arctic Slope Regional Corporation in exchange for an ownership interest of 30 percent in the company.

At the time of Petro Star's response to the department's Solicitation, Petro Star had exercised an option to purchase a 6,000 bpd topping plant and two 1,000 bpd topping plants. The 6,000 bpd plant is located adjacent to TAPS at North Pole, and commenced refining heating oils on September 5, 1985 using North Slope crude purchased from Sohio. Eventually, aviation gasoline is also to be refined. Petro Star is its own distributor of refined products, and plans to emphasize rural markets.

On October 20, 1985, a fire at the Petro Star refinery idled the plant. The refinery commenced operations again on November 23, 1985. The department does not anticipate any impact on the proposed disposal as a result of that event.

The primary bases for this long-term negotiated sale are: 1) to receive a market price for royalty oil; and 2) to encourage in-state processing of royalty oil and the attendant benefits (primarily jobs, increased tax base, and competition from refined product suppliers that may lead to lower product prices for consumers). An in-state benefit analysis of the Petro Star proposal (and of the other responses to the Solicitation which proposed to process royalty oil in-state) was provided in the Analysis, and is updated here.

The prospective in-state benefits of the disposal to Petro Star arise from reduced refined product prices and the primary and secondary economic effects of the refinery operation. Since the publication of the Analysis, Petro Star

and others have made the department aware of MAPCO's substantial shipments of jet fuels to Anchorage in recent years, and the department acknowledges that a new Fairbanks refinery need not lead to excess capacity in the region. However, the conclusion of the Analysis with respect to price impacts remains valid. For the reasons discussed in the Analysis, the Department anticipates no more than modest favorable impacts on the price of refined products as a result of a sale to Petro Star.

However, Mr. Steve Lewis of Petro Star indicated at the Royalty Board meeting of October 7, 1985 that significant price competition has occurred since the construction of the Petro Star refinery. Petro Star officials say the company is marketing much of its present refinery production (about 1,000 bpd) at prices lower than those charged by MAPCO. Examples cited include heating oil sales to five rural villages and to construction companies operating on the North Slope. According to Mr. Lewis, Petro Star currently serves the total fuel needs of the Anaktuvuk Pass area at favorable prices. Petro Star officials also believe that recent favorable changes in MAPCO's product prices, which are said to be at a three-year low, were influenced by their company's prospective and present operations. While the price discounts mentioned by Petro Star are only on the order of pennies per gallon, a one cent decrease in the price of a gallon of refined product that could be made from 1,000 bpd translates to an annual consumer savings of about $153,000. However, the extent to which a royalty oil disposal to Petro Star may maintain or extend these price reductions cannot be readily determined.

The second area of prospective in-state benefits resulting from a disposal of royalty oil to Petro Star relates to the spinoff effects of the refinery operation. The direct benefits would stem from payroll, property taxes, state corporate taxes, and profits if held in-state. All Petro Star profits are expected to be held in state. These cash infusions in turn lead to multiplier effects. Actual project-specific multiplier estimates for other projects, such as Beluga coal development or the Dow-Shell petrochemical proposal examined in 1981, vary from 0.6 to 3.0. Actual project-specific multiplier effects can only be ascertained by extensive surveys or actual development.

The Analysis indicates that the in-state benefits presented there are overstated because of the displacement effects of excess capacity. However this statement may not be applicable in light of the earlier mentioned acknowledgement that a new Fairbanks refinery need not lead to excess capacity in the region. The table below provides some in-state benefit measures for the Petro Star refinery. The table reflects clarifications provided by Petro Star since the publication of the Analysis. A 1.5 capital investment multiplier is used for discussion purposes, as it falls within the expected range for this type of project.

CONSTRUCTION BENEFITS

Capital Investment	Capital Investment in Alaska	Capital Investment Multiplier at 1.5	Total Construction Benefits
initially $6.9 million	$5.7 million	$8.5 million	$14.2 million

ANNUAL POST-CONSTRUCTION BENEFITS

Payroll	Property Taxes	Profits	State Corporate Profits Tax	Known Total	1.5 Multiplier	Total Known Benefit
$600,000 (11 persons)	$36,000	Unknown but in-state	undeter-mined	$636,000	$954,000	$ 0,000

The benefits estimated above for the construction of the refinery itself, which cannot be ascribed to a prospective long-term royalty oil contract, are shown for information purposes only. The annual post-construction benefits reflect the effect of the refinery's continued operation. These benefits are not entirely traceable to a long-term royalty oil contract with Petro Star, since continued operation of the refinery does not depend on royalty oil. Nevertheless, this sale to Petro Star would help ensure the continuation of spinoff benefits resulting from operation of the Petro Star refinery. Those benefits would include the 15-member work force of the distribution company

North Pole Fuel, which has been purchased by Petro Star.Further, refinery projects offering more substantial in-state benefits frequently depend on royalty oil for construction as well as operation. All of the spinoff benefits identified above could have been attributable to a long-term disposal had Petro Star been dependent on royalty oil to begin construction and operations. The department's preference for new refinery proposals which are not dependent on royalty oil was made known to Petro Star prior to the construction of the Petro Star refinery. Consequently, the qualifiers to the spinoff benefits shown above are largely a result of that preference. Petro Star is the only proposal for new in-state refining that has proven by actually building and operating a refinery that is not dependent on royalty oil. The department regards this evidence of economic viability more highly than the tentative nature of spinoff benefits arising from speculative projects which are dependent on royalty oil.

COMMENTS RECEIVED

The department received only one written comment in response to the Preliminary Notice and Findings. In a letter dated November 8, 1985, the Tesoro Alaska Petroleum Company (Tesoro) expressed concern to the Commissioner about the effect of this long-term disposal on the future availability of royalty oil to meet the needs of in-state refiners. Tesoro said that in eight years, the state's total volume of royalty oil will be less than its current sales to in-state refiners. Consequently, Tesoro stated that "any additional long term-commitments by the state will mean deeper cutbacks in future crude supply to present Alaska refineries" and that "there is already refining capacity in Alaska which exceeds the state-wide demand for petroleum products." Tesoro also believed that the disposal could set a precedent that would make it difficult for the state to deny similar awards to "anyone who can secure a simple, inexpensive plant, buy a few barrels of crude, and declare himself an in-state refiner." Tesoro concluded that regularly scheduled competitive royalty oil sales would serve the best interests of Alaskans while maximizing state oil revenues. While the department

appreciates and shares Tesoro's concern about the future availability of royalty oil to meet the needs of in-state refiners, and has addressed this topic in the Analysis, the Commissioner has nonetheless concluded that the disposal will best serve the state's interests. That conclusion is based on the need to foster regional competition among in-state refiners and provide additional in-state benefits that result from in-state refining, and to provide equity of access to royalty oil among existing refiners.

DISCUSSION OF SPECIFIC CONTRACT PROVISIONS

Because the contract entails the sale of state royalty oil to two parties it contains several provisions different from other long-term state contracts. Those provisions and other changes are discussed below.

QUANTITY OPTIONS

The quantity of oil to be sold under the long-term contract is expressed as a percentage of daily Kuparuk River Unit royalty oil production. The sales quantity will initially be about 6,000 bpd. Chevron will purchase about 4,000 bpd and Petro Star will purchase about 2,000 bpd.

The royalty oil contract gives Petro Star the option to increase its purchase amount from about 2,000 bpd to 2,500 bpd. The total quantity sold under the contract will be about 6,500 bpd if Petro Star purchases its maximum. Should Petro Star not exercise this option by November 1, 1987, the total quantity could be reduced to either the maximum daily quantity purchased by Petro Star prior to November 1, 1987 or the Petro Star refinery's maximum thruput capacity at that time, provided it does not exceed 6,500 bpd.

Petro Star and Chevron may each accept less than their contractual maximum quantities by giving a nine-month notice to the state. Petro Star and Chevron may also permanently reduce their contractual maximum quantities by giving a similar nine-month notice to the state. If either Petro Star or Chevron give notice that it wishes to accept delivery of less than its maximum quantity without permanently reducing its maximum quantity, a penalty will be assessed against it based on the difference between the maximum quantity and the actual volume it accepts. Also, if either of the purchasers permanently decreases its maximum quantity by 50 percent or more, the department may, subject to certain conditions, terminate the sale of royalty oil to the other purchaser.

Several circumstances, including the standard provisions covering default, could lead to the termination of royalty oil sales to one of the purchasers. The royalty oil agreement, as it relates to the remaining purchaser, may continue under specific conditions. Petro Star could continue its portion of the agreement or increase its take to include all or part of the Chevron volume upon agreement with the Commissioner to meet specified requirements. Continuation of the disposal to Chevron would be in the Commissioner's discretion and would be contingent on Chevron's agreement to process the oil at its Nikiski refinery. The contract provisions for these eventualities are more fully described in a following section entitled "Price Reopener".

PETRO STAR/CHEVRON AGREEMENT

Chevron has agreed to sell the royalty oil it purchases under the contract to Petro Star at TAPS Pump Station #1, and to repurchase the oil at the TAPS terminus in Valdez. This will enable Petro Star to run its refinery at full capacity and retain its purchase volume in the form of refined products. Once processed, the oil not retained by Petro Star (return oil) is expected to equal the approximately 4,000 bpd initially purchased by Chevron. That volume will be reinjected into TAPS at the Petro Star refinery site. Return oil shipped through TAPS becomes intermingled with unprocessed crude oil so that when the return oil emerges at Valdez it is identical to the TAPS common

stream crude oil. Petro Star, as the shipper, will be liable for the payment of the TAPS quality bank differential based on the resulting degradation of the common-stream crude oil.

Chevron and Petro Star have entered into a separate contract between themselves which covers the details of their buy-sell agreement. That contract has been added as an attachment to the state royalty oil contract (Exhibit A).

Return oil, on which the state might otherwise retain an option, would not result from the proposed disposal due to the arrangements contemplated under the contract. Should there be any change in the arrangement between Petro Star and Chevron, all affected parties will negotiate toward agreement upon a market price option for the state on whatever return oil may exist under any new arrangement. The state may terminate the royalty oil agreement if a material change in the terms of the arrangement between Petro Star and Chevron precludes Petro Star from economically using Chevron's volume as refinery charge.

At the Royalty Board meeting of October 30, 1985, the fact that residual oil rather than return oil would result from a termination of Petro Star's portion of the agreement was raised. This would occur since Chevron's Nikiski refinery is not positioned to inject residual oil into TAPS. Consequently, the section of the contract form which addresses the state's market price option over return oil (2.13) has been amended to include residual oil. This alteration includes the insertion of a phrase in section 2.14 which explicitly grants the state a market price option over Chevron's residual oil should Petro Star's portion of the agreement be terminated.

IN-STATE PROCESSING REQUIREMENTS

The contract contains a number of in state processing requirements for Petro Star. Petro Star agrees to process not less than 85 percent of the total

volume of royalty oil sold under the contract. Petro Star also agrees to retain at least 20 percent of that volume in the form of refined products. These percentage requirements are less stringent than those contained in royalty contracts held by other in-state refiners. The lower percentages are necessary to accommodate Petro Star's small refinery and its recent commencement of operations and marketing.

In addition, Petro Star agrees under the contract to use its "best efforts" to produce and market a volume of refined products in Alaska equal to not less than 23 percent of the total volume of royalty oil sold. To monitor that effort, Petro Star will be required to provide the department a quarterly statement showing the quantity of refined products it produced and marketed in Alaska over that period.

These provisions are similar to the in-state processing requirements contained in the long-term royalty oil contracts with Tesoro Alaska Petroleum Company and Chevron.

PRICE

The contract contains a unique price term. Although the contract will sell Kuparuk River Unit royalty oil, the price term will be based on Prudhoe Bay Unit oil as adjusted for the differences between the two fields. This price term is possible since Kuparuk River Unit and Prudhoe Bay Unit oil are intermingled in TAPS, creating a single royalty crude stream available for disposal by the state. The TAPS quality bank adjustment compensates for the difference in quality between Prudhoe Bay and Kuparuk River crude oils. The Kuparuk pipeline tariff compensates for the locational differences between the sources of these crude oils.

The price of the Kuparuk royalty oil to be sold under the contract will be equal to the amount that the state would receive from its Prudhoe Bay lessees for a like volume of Prudhoe Bay royalty oil taken in value at that time, plus

the Kuparuk River Unit field cost allowance which the state is billed when taking Kuparuk royalty oil in kind, plus a per barrel premium of 35¢ from Petro Star and 50¢ from Chevron. To properly compensate the purchasers for the quality and transportation cost differential between Kuparuk royalty oil and the Prudhoe Bay-based price, two deductions will be made to that price. These are the Kuparuk Pipeline tariff and the TAPS quality bank adjustment charge for injecting Kuparuk oil into the TAPS crude oil stream.

In addition, Petro Star and Chevron will be liable to the state for retroactive adjustments to the Prudhoe Bay in value price resulting from resolution of the Amerada Hess litigation. Those retroactive price adjustments will apply to all royalty oil purchased under the agreement. To assure the purchasers a limit to their liability for Amerada Hess retroactive price adjustments, the department has agreed to a ceiling retroactive price adjustment of $2.50 per barrel of royalty oil purchased. This sum represents a negotiated ceiling, and is not any party's estimate of litigation results.

At the Royalty Board meeting of October 30, 1985, the department announced a possible alteration to the interest rates specified in the Amerada Hess provision of the proposed long-term royalty contract with Petro Star and Chevron. This issue arose from Chevron's desire to renegotiate the provision which specifies the interest rate that would be applied to additional amounts that may be owed by the purchaser upon final resolution of the Amerada Hess litigation. Originally this term specified that the applicable interest rate would be the higher of the prime rate plus 3 percent or the rate of return realized on the State general fund. Under the alteration proposed by Chevron and agreed to by the department, the purchaser would pay the interest rate which will be explicitly or implicitly included in the resolution of the Amerada Hess litigation.

This alteration was found acceptable to the department in light of Chevron's concerns, which arose from the fact that the interest rates expected to emerge from a settlement of the Amerada Hess litigation will likely differ from the interest rate originally specified in the proposed long-term contract. Depending on when a resolution to the Amerada Hess litigation occurs, this

situation could lead to settlement amounts which are substantially different than the settlement amount arising from a resolution of that litigation. This amendment appears in section 2.3 (Price of the Royalty Oil) of the contract.

SECURITY

The department ordinarily requires from royalty oil purchasers an irrevocable letter of credit equal to 90 days' worth of oil. This requirement has been a feature of all royalty oil disposals since the competitive sale of December 11, 1984, with the exception of the Prudhoe Bay royalty oil offered at that sale. The exception occurred because the department devised a "put call" option which enabled the letter of credit requirement for that oil to be reduced to 60 days. The Findings and Determination to Conduct a Competitive Sale of Prudhoe Bay and Kuparuk River Unit Royalty Oil, of October 17, 1984 discusses both the put call option and the eventualities which necessitate the requirement for a letter of credit.

The contract requires the standard 90-day letter of credit from Chevron for the quantity to be purchased by the company. Chevron also has agreed to a "backup" arrangement with the state under the contract. Under that provision, Chevron will accept delivery of any volume of royalty oil upon which Petro Star may default, with only a five day notice required from the state. The purchase price for that volume would be the Petro Star purchase price. The backup sale would continue only until the Commissioner returned the oil to in value.

The additional security provided by the backup arrangement with Chevron has allowed for the letter of credit requirement for Petro Star to be reduced to 60 days. The Petro Star letter of credit will provide financial protection for the state beyond the date the department may become aware of any possible performance failure on the part of Petro Star. The backup arrangement with Chevron, which would be activated in that event, replaces the additional 30 days of coverage ordinarily required by the department.

AMERADA HESS ESCROW ACCOUNT

Upon a review of the responses to the department's Solicitation, the department became concerned with the ability of some respondents to pay the state retroactive price adjustments stemming from resolution of the Amerada Hess litigation. The amounts which may be entailed by those retroactive price adjustments (to be determined at an unknown time) over a long-term royalty oil disposal could be substantial. Consequently, the department suggested escrow arrangements with some respondents, including Petro Star, during the first review of the responses to the Solicitation. During the later negotiations with Petro Star, an escrow amount of $1.12 per royalty oil barrel purchased was found acceptable by the department. Under the contract, Petro Star will establish an interest-bearing escrow account in that amount for the purpose of making payments to the state for any retroactive price adjustments resulting from a resolution of the Amerada Hess litigation.

PRICE REOPENER

Any time after two years from the date of first delivery of royalty oil to Petro Star and Chevron, the state or either of the purchasers may exercise the price reopener clause contained in the contract by giving a one month written notice. If a new purchase price is agreed to by the state and the affected purchaser within three months of the notice to reopen, the new purchase price will become effective one month after that agreement. Two years after a new purchase price becomes effective, that price will be subject to renegotiation under the price reopener provision of the contract. If a new purchase price is not agreed to by the state and the affected purchaser within three months of the notice to reopen, that purchasers' portion of the agreement may be terminated by either the state or the purchaser upon nine months written notice.

The requirements to continue the remaining purchaser's portion of the agreement differ for Petro Star or Chevron. Were the agreement to be

terminated with respect to Petro Star, the state may, upon nine months written notice, terminate the agreement with Chevron. Should the department elect to continue the sale of royalty oil to Chevron under the proposed contract, the volume sold, which would not exceed approximately 4,000 bpd, must be processed at the Chevron refinery in Nikiski.

If Chevron's portion of the agreement were terminated, the sale of royalty oil to Petro Star could continue under the contract only under the following conditions. The sales volume could remain the same or could be expanded to include all or part of the quantity formerly purchased by Chevron. The price to Petro Star for any expanded quantity of oil will be Chevron's purchase price, including the per barrel premium of 50¢. Petro Star must also agree to expand its security and in-state processing obligations to correspond to the new total daily volume to be purchased. This would include an increased letter of credit, equal to 90 days' worth of the new daily volume to be purchased, and Amerada Hess escrow account payments corresponding to that volume. Further, Petro Star and the department must successfully complete negotiations for an amendment to the contract which provides the state an option to repurchase Petro Star's return oil at a market-based price.

Should the exercise of any of the options described in this section result in an appreciable reduction of the consideration received by the state for the continued sale of royalty oil, the approval of the Alaska State Legislature will be required.

For more information, see Article VII (Default or Termination) of the proposed contract.

LOCAL HIRE

Like the state's other long-term royalty oil contracts with in-state refiners, the contract contains a provision concerning local hire. The preferential hiring clause states in part, "Purchaser agrees to hire and employ Alaska

residents and Alaska companies to the extent they are available, willing and qualified for all work performed in Alaska under or in connection with this Agreement, including but not limited to construction and operation of facilities to refine or otherwise use the Royalty Oil." "Alaska resident" is defined as an individual who has lived in the state for one year at the time of hiring. It is understood under the arrangements initially comtemplated, that Chevron will not be performing work in Alaska in connection with this contract. If this provision is determined to be unconstitutional, then, by signing the contract Petro Star agrees to hire and employ Alaskan residents and Alaska companies to the extent such preferential hiring is determined to be constitutional.

The issue of local hire with respect to Petro Star was raised at the Royalty Board meeting of September 26, 1985 by Mr. Kevin Dougherty, who represented the Alaska AFL-CIO and the Alaska State District Council of Laborers. Mr. Dougherty remarked that approximately one half of the employees contracted to construct the Petro Star refinery were from out of state. Mr. Dougherty also noted that the annual employee salary indicated in the Analysis for Petro Star was much lower than the corresponding figures shown for the proposed Arctic Energy refinery.

Mr. Steve Lewis of Petro Star did not agree to the payroll figures implied in the Analysis. Mr. Lewis further stated that the issue of local hire should not be confused with union hire and that all Petro Star employees were Alaska residents. Mr. Lewis also disputed the assertion that only one half of the refinery's construction work force was comprised of Alaska residents.

In a letter to the Royalty Board dated September 27, 1985, Mr. Dougherty stated that his comment with respect to Petro Star's construction work force was based on information provided by the workers on that project. Mr. Dougherty also added that his payroll figures were taken directly from the Analysis. The latter discrepancy was traced to the number of employees shown for Petro Star in the Analysis, which has been corrected in this document.

PRELIMINARY FINDINGS AND DETERMINATIONS

1. Competitive bidding is waived.

I have determined in accordance with AS 38.05.183(a) and 11 AAC 03.030 that the best interest of the state does not require competitive bidding for this disposal. Petro Star is the only existing in-state refiner which does not purchase state royalty oil under negotiated, long-term contract(s). In order to realize the objectives implied by many of the considerations listed in AS 38.05.182-183 and AS 38.06.070 and to obtain the benefits for Alaska consumers that accrue from in-state refining, the department has waived competitive bidding for this disposal, which is partially based on factors other than the cash value offered. The contract for a long-term royalty oil sale to Petro Star and Chevron follows a formal "Solicitation for Proposals", to which eleven firms responded, and a six-month public review and comment process.

2. The sale to Petro Star and Chevron is in the best interest of the State.

Under AS 38.05.183(e), a noncompetitive sale, exchange, or other disposal of royalty oil or gas taken in kind by the state may be awarded by the commissioner to the prospective buyer whose proposal offers maximum benefits to the citizens of the state.

In accordance with AS 38.05.183(a),(c) and (e), and 11 AAC 03.010(b) and (d), I find that taking royalty oil in kind and selling that oil to Petro Star and Chevron for use in-state is in the best interests of the state and that it will maximize benefits to state citizens. Applicable statutory criteria are discussed below.

(a) The state is now highly dependent on oil revenues and will continue to depend on oil revenues in the future. The price term of the sale protects the state's interest by ensuring that revenues from this sale will exceed the in value alternative. AS 38.05.183(e)(1) and AS 38.06.070(a)(1).

(b) The projected effects of this sale are brought about by the continued assurance of supply under a long-term existing contract. Petro Star has made an initial investment of more than $6.9 million in its Alaska operations. The company has created 11 new jobs. The benefits related to local payrolls and to the purchase of local goods, services and supplies is more than $1.6 million annually. AS 38.05.183(e)(2)-(3).

(c) The local and regional needs of the Fairbanks area for petroleum products will be satisfied and local competition among refineries will be created. A one cent decrease in the price of each gallon of refined product that could be made from 1,000 bpd translates to an annual consumer saving of about $153,000. On the conservative assumption that Petro Star would reduce its per gallon product price by one penny, the annual savings to the consumer would exceed $380,000 at the refinery's expected capacity. AS 38.05.183(e)(4) and AS 38.06.070(a)(2).

(d) The continued operation of Petro Star, with the attendant payroll and secondary benefits, will have a positive and desired effect on the citizens of the state. While this disposal likely will not result in new capital investment or development, it will enable the efficient use of existing investment and development. AS 38.06.070(a)(3).

(e) The projected social impacts of a disposal to Petro Star are anticipated to be favorable. The benefits presently received from the operation of the Petro Star Refinery plus the supply of products through Petro Star's distribution system would continue. AS 38.06.070(a)(4).

(f) Since most of the essential provisions of the proposed disposal to Petro Star relate to operation of its existing facilities and systems, the additional costs and responsibilities which could be imposed upon the state and affected subdivisions are likely to be minimal. AS 38.06.070(a)(5).

(g) Local and regional consumption of refined petroleum products will be directly and favorably affected by the Petro Star/ Chevron disposal. Local labor markets will continue to benefit through employment opportunities at the Petro Star refinery. AS 38.06.070(a)(6).

(h) Environmental effects resulting from the disposal will be negligible, if any, since the facility is already in existence. AS 38.06.070(a)(7).

(i) The sale will help existing commercial private enterprise and patterns of investments by assisting in the continued operation of Petro Star. Further, Petro Star is the sole in-state refinery owned by Alaskans and Alaska companies. AS 38.06.070(a)(8).

In accordance with 11 AAC 03.060(b), the weight given to the applicable criteria in determining the maximum benefit to Alaska citizens must be addressed. In making this finding the Department first assured itself that the state would not lose money by making a disposal to Petro Star/Chevron. Once so assured, other benefits attendant to the disposal were examined. If the price offered did not assure the state at least what it would have received had it left the

oil in value then the sale would not, in the Department's view, serve the state's best interests. Petro Star matched the highest premium offered by any existing in-state refiner, and Chevron offered the highest premium for export purchase. Therefore great weight in this disposal was placed on AS 38.05.183(e)(1), the cash value offered. In addition to the cash value offered, great weight was given to the projected benefits of Petro Star using the oil in the state to directly benefit Alaska citizens.

3. The contract prices are acceptable.

Under 11 AAC 03.091(b) I find that in establishing the price of this royalty oil contract, the department has obtained a price at least equal to the volume weighted average of the current reported netback prices filed by the lessees for royalty purposes for those filing periods applicable to the term of the disposition, plus field costs incurred by the royalty share.

Petro Star will pay a $.35 premium over the amount the state would receive from its Prudhoe Bay lessees for that amount of Prudhoe Bay royalty oil taken at that time in money (in value), plus Kuparuk field costs, less the Kuparuk Pipeline tariff charge and less the applicable TAPS quality bank adjustment. Chevron will purchase what would otherwise be Petro Star's return oil and will pay the state a $.50 premium over the amount the state will receive from its Prudhoe Bay lessees for that amount of Prudhoe Bay royalty oil taken at that time in money (in value), plus Kuparuk field costs, less the Kuparuk Pipeline tariff charge and less the applicable TAPS quality bank adjustment. The in value component of the in value price bases for both Petro Star and Chevron will be retroactively adjusted upon resolution of the Amerada Hess litigation.

4. The Royalty Oil to be sold to Chevron is available for export.

In view of the department's most recent annual (1985) Historical and Projected Oil and Gas Consumption report, and the department's Findings and Determination documents for recent short-term royalty oil disposals, including the Supplemental Findings for the Competitive Royalty Oil Sale (November 28, 1984), I find under AS 38.05.183(d) and 11 AAC 03.010(e) that the volume of royalty oil to be sold to Chevron is surplus to the present and projected intrastate domestic and industrial needs for oil and is available for disposal and possible export from the state.

CONCLUSION

Under the terms of the proposed contract, the state would receive a market (litigation-adjusted) price for the royalty oil, while fostering in-state processing and attendant benefits. The satisfactory price terms, coupled with associated direct and secondary benefits for Alaska citizens, supports the decision to waive competitive bidding.

The foregoing facts and analysis support my preliminary finding that this disposal is in the best interests of the state and that it maximizes benefits to Alaska citizens.

Kay Brown

Kay Brown, Director
for Esther C. Wunnicke
Commissioner

December 6, 1985
Date

4051s

RECEIVED
DEC 10 1985
DIVISION OF OIL & GAS
ANCHORAGE, ALASKA

AGREEMENT FOR THE SALE AND PURCHASE

OF

STATE ROYALTY OIL

PETRO STAR, INC.

CHEVRON U.S.A.

THE STATE OF ALASKA
Department of Natural Resources

December 9, 1985

TABLE OF CONTENTS

ARTICLE			PAGE
	Preamble		1
I	DEFINITIONS		1
	1.1	Commissioner	1
	1.2	Day	1
	1.3	Leases	1
	1.4	Lessee	1
	1.5	Month	2
	1.6	Oil or Crude Oil	2
	1.7	Point of Delivery	2
	1.8	Purchaser	2
	1.9	Prudhoe Bay Lessees	2
	1.10	Prudhoe Bay Royalty Oil	2
	1.11	Royalty Oil	2
	1.12	Daily Royalty Oil	2
	1.13	Settlement Agreement	2
	1.14	TAPS	2
	1.15	Unit Agreement	3
II	SALE OF ROYALTY OIL		3
	2.1	Quantity	3
	2.2	Quality	4
	2.3	Price of the Royalty Oil	4
	2.4	Purchase Price Reopener	7
	2.5	Point and Time of Delivery	7
	2.6	Passage of Title and Risk of Loss	7
	2.7	Purchaser's Responsibility	8
	2.8	Transportation Arrangements	8
	2.9	Absolute Obligations	8
	2.10	Date of First Delivery	9
	2.11	In-State Processing	9
	2.12	Best Efforts	9
	2.13	Option to Purchase Return Oil	10
	2.14	Arrangements between Purchasers	11
	2.15	Performance Guaranty and Reservation Fee	12
III	REPRESENTATIONS AND OBLIGATIONS OF PURCHASER		13
	3.1	Good Standing and Due Authorization	13
	3.2	Financial Condition	14
	3.3	Financial Statements	14
IV	MEASUREMENTS AND TESTS		14

ARTICLE			PAGE
V	PAYMENTS AND ACCOUNTING		15
	5.1	Billing	15
	5.2	Initial Adjustment	15
	5.3	Payment	15
	5.4	Payment to Lessee(s)	16
	5.5	Subsequent Adjustments	16
	5.6	Interest	17
	5.7	Late Payment Penalty	17
	5.8	Payment to Third Parties	18
VI	TERM		18
VII	DEFAULT OR TERMINATION		18
	7.1	Default	18
	7.2	Failure to Pay Debts	19
	7.3	Seller's Remedies	20
	7.4	Purchaser's Exclusive Remedies	21
VIII	DISPOSITION OF OIL		21
	8.1	Inability to Receive Oil	21
	8.2	No Right to Storage or Underlift	22
IX	WAIVER		22
X	SEVERABILITY		22
XI	FORCE MAJEURE AND CHANGE IN CONDITION		23
	11.1	Effect of Force Majeure	23
	11.2	Responsibility	23
XII	NOTICES		24
	12.1	Method	24
	12.2	Change of Address	25
XIII	RULES AND REGULATIONS		25
XIV	SOVEREIGN POWER OF THE STATE		26
XV	SECURITY		26
	15.1	Purchaser Chevron Letter of Credit	26
	15.2	Purchaser Petro Star Letter of Credit	28
	15.3	Purchaser Petro Star Amerada Hess Escrow	29
	15.4	Chevron Backup	30
XVI	PREFERENTIAL HIRING		31

ARTICLE		PAGE
XVII	APPLICABLE LAW	31
	17.1 Alaska Law	31
	17.2 Submission to Jurisdiction	31
XVIII	NO WARRANTIES	32
XIX	AMENDMENT	32
XX	SUCCESSORS AND ASSIGNS	32
XXI	HEADINGS	33
XXII	RECORDS	33
	22.1 Preservation of Records	33
	22.2 Inspection of Records of Parties	34
XXIII	INTERPRETATION OF TERMS AND CONDITIONS	34
	EXECUTION OF CONTRACT	35

DOG 9-85
(PETRO STAR & CHEVRON/KUPARUK)
(Revised 11-85)
(DNR # 10-4017)

AGREEMENT FOR THE SALE AND PURCHASE OF ROYALTY OIL

THIS AGREEMENT, entered into as of December 9, 1985 by and between THE STATE OF ALASKA ("Seller") PETRO STAR, INC., an Alaska corporation, ("Purchaser Petro Star"), and CHEVRON U.S.A. INC., a Pennsylvania corporation, ("Purchaser Chevron").

ARTICLE I
DEFINITIONS

As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "Commissioner" means the Commissioner of the Alaska Department of Natural Resources or her designee.

1.2 "Day" means a period of twenty-four (24) consecutive hours, beginning at 12:01 a.m., Alaska Standard Time.

1.3 "Leases" means the oil and gas leases which are subject to the terms of the Unit Agreement.

1.4 "Lessee" means any person owning a working interest in any of the Leases.

1.5 "Month" means the period beginning at 12:01 a.m., Alaska Standard Time, on the first day of the calendar month and ending at the same time on the first day of the next succeeding calendar month.

1.6 "Oil" or "crude oil" shall have the same meaning as the word "oil" under the Unit Agreement.

1.7 "Point of Delivery" shall have the meaning set out in Section 2.5.

1.8 "Purchaser" means either Petro Star, Inc., or Chevron U.S.A. Inc., or both, unless one particular Purchaser is designated.

1.9 "Prudhoe Bay Lessees" means the lessees of the oil and gas leases subject to the Prudhoe Bay Unit Agreement effective April 1, 1977, as amended from time to time.

1.10 "Prudhoe Bay Royalty Oil" means Royalty Oil received from the Prudhoe Bay Lessees.

1.11 "Royalty Oil" means the oil which Seller may take in kind (amount) as its royalty under the Leases whether or not Seller has elected to take or is taking that royalty in kind.

1.12 "Daily Royalty Oil" means the quantity of Royalty Oil produced by the Lessees each day.

1.13 "Settlement Agreement" means the Agreement for Settlement of Cleaning, Dehydration and Transporation Charges Applicable to Royalty Oil Taken From the Kuparuk River Unit, effective as of December 13, 1981, and attached to the Unit Agreement as Appendix I.

1.14 "TAPS" means the Trans Alaska Pipeline System.

1.15 "Unit Agreement" means the Kuparuk River Unit Agreement effective as of December 1, 1981, by and between Seller and the Lessees, as amended from time to time.

ARTICLE II
SALE OF ROYALTY OIL

2.1 Quantity. Seller agrees to sell to Purchaser Petro Star, and Purchaser Petro Star agrees to buy from Seller, that amount of oil equal to _____ % of the Daily Royalty Oil ("Maximum Quantity"). Seller agrees to sell to Purchaser Chevron, and Purchaser Chevron agrees to buy from Seller, that amount of oil equal to _____ % of the Daily Royalty Oil ("Maximum Quantity"). Promptly after the effective date of this Agreement, Seller will determine the actual percentages, which will be the percentages that on the date of initial nomination would result in a Maximum Quantity for Purchaser Petro Star that on the Date of First Delivery would approximate 2500 bpd and a Maximum Quantity for Purchaser Chevron that on the Date of First Delivery will approximate 4000 bpd. However, unless Purchaser Petro Star notifies Seller in writing within five (5) days after the effective date of this Agreement, Seller will initially nominate for Purchaser Petro Star the percentage that Seller estimates will on the Date of First Delivery approximate 2000 bpd.

Upon at least nine (9) months' written notice to Seller, Purchaser may increase or decrease the amount of Daily Royalty Oil to be tendered by Seller at the Point of Delivery, provided that the amount tendered by Seller under this Agreement shall not exceed the Maximum Quantity. If by November 1, 1987 Purchaser Petro Star has not begun to take the Maximum Quantity of oil, Seller, at its option and discretion, may permanently decrease the Purchaser Petro Star's Maximum Quantity to either (1) the greatest percentage of Daily Royalty Oil tendered by Seller to it before that time or, (2) the maximum amount of oil that can be processed at Purchaser Petro Star's refinery, located at North Pole, Alaska. Purchaser may permanently decrease its Maximum Quantity under this Agreement upon nine (9) months' written notice to Seller.

It is understood and agreed that the volume of Daily Royalty Oil available to Seller will vary and may be interrupted from time to time, and depends upon a variety of factors, including the rate of production from the Leases. Seller disclaims and Purchaser waives any representation, covenant or warranty, express or implied, as to the specific quantity, or the total or daily, monthly, average, or aggregate volume of Oil to be sold or tendered under this Agreement. Seller shall hold Purchaser harmless from all liens, encumbrances and valid adverse claims that may affect the Oil at the time the Oil is tendered to Purchaser.

If Seller stores Royalty Oil pursuant to the Kuparuk River Unit Emergency Storage Agreement dated December 15, 1981, and attached as Appendix II to the Unit Agreement, (the "Storage Agreement"), or otherwise, or if Seller recovers stored Royalty Oil, the quantity of Oil to be sold and purchased under this Agreement shall be calculated as if no Royalty Oil was stored or recovered.

2.2 Quality. The Oil sold shall be the same quality as the Royalty Oil delivered by the Lessees to Seller at the Point of Delivery. It is understood and agreed that the quality of the Oil sold may vary from time to time. Seller disclaims, and Purchaser waives, any guarantee, representation, or warranty, either express or implied, of the merchantability, fitness for use, or suitability for any particular use or purpose, or otherwise, of any of the Oil delivered under this Agreement or as to any specific, average or overall quality or characteristic of Oil to be sold or tendered under this Agreement.

2.3 Price of the Royalty Oil. The price payable by Purchaser Petro Star for Oil tendered under this Agreement ("Petro Star Purchase Price") shall be equal to the amount that Seller actually would receive from its Prudhoe Bay Lessees for that amount of Prudhoe Bay Royalty Oil taken at that time in money (in value), plus 35¢ per barrel and plus the Kuparuk Field Cost Allowance incurred by the Oil as determined under the Settlement Agreement, less the tariff charge for the Kuparuk Pipeline and less the applicable TAPS quality bank adjustment.

The price payable by Purchaser Chevron for Oil tendered under this Agreement ("Chevron Purchase Price") shall be equal to the amount that Seller actually would receive from its Prudhoe Bay Lessees for that amount of Prudhoe Bay Royalty Oil taken at that time in money (in value), plus 50¢ per barrel and plus the Kuparuk Field Cost Allowance incurred by the oil as determined under the Settlement Agreement, less the tariff charge for the Kuparuk Pipeline and less the applicable TAPS quality bank adjustment.

The in value component of each Purchase Price shall be determined by Seller based upon the reports submitted by the Prudhoe Bay Lessees for royalty purposes or, when those reports are unavailable, incomplete or inaccurate, upon information submitted by the Prudhoe Bay Lessees for production tax or other tax purposes as may be adjusted from time to time as provided in this Agreement. Purchaser shall be entitled only to review or request such material or information which is not confidential under state law or regulation.

The method, basis and amount of royalty due Seller when it takes its Prudhoe Bay Royalty Oil in value from its Prudhoe Bay Lessees is presently the subject of litigation in State of Alaska, et al v. Amerada Hess Corp., et al., (Superior Court for the State of Alaska, First Judicial District at Juneau) ("Amerada Hess"). One of the issues involved is the proper method to be used by the Lessees in calculating the state's royalty when the royalty is payable in money (in value). Until there is a resolution of that dispute through judicial resolution or settlement, the Purchase Price will be based upon the calculation of an amount per barrel equal to the per barrel volume weighted average of the in value prices reported by the Prudhoe Bay Lessees to Seller for royalty purposes or, when the royalty reports are unavailable, incomplete, or inaccurate, upon information submitted by the Prudhoe Bay Lessees for production tax or other tax purposes, plus $0.35 per barrel for Purchaser Petro Star and $0.50 for Purchaser Chevron, and plus the Kuparuk Field Cost Allowance as determined under the Settlement Agreement, less the Kuparuk Pipeline tariff and less the applicable TAPS quality bank adjustment. Upon resolution of each of the various issues that are or will be involved in

Amerada Hess, adjustments will be made to previous payments in accordance with each resolution. However, Seller and Purchaser agree that any Amerada Hess adjustments in excess of $2.50 per barrel will not be made. This sum represents a negotiated ceiling, and is not any party's estimate of litigation results.

If additional amounts are owed by Purchaser to Seller or by Seller to Purchaser under a final judgement or settlement resolving all or part of the issues in Amerada Hess which separately specifies principal and interest, interest will be paid on the principal component of the additional amounts in the manner and at the interest rate or rates specified in the judgement or settlement resolving each issue. If no interest rate is specified in the judgement or settlement or if interest is expressly included within a lump sum amount in the judgement or settlement, an interest component will be presumed to already comprise a portion of the additional amounts, and no separate interest will be paid.

Purchaser Petro Star will not voluntarily intervene or otherwise participate in Amerada Hess unless Seller expressly consents to that participation in writing. A settlement of Amerada Hess will be binding upon Purchaser whether or not Purchaser agrees with or consents to the terms of that settlement.

If any applicable law of the United States of America or any rule or regulation promulgated by a federal agency will, in the judgment of Seller, operate to prohibit or prevent Seller from receiving the full amount due under the above provisions, Purchaser's obligation to pay the amount of the Purchase Price in excess of the amount permitted will be suspended or adjusted to the minimum extent required for Seller to comply with that law, rule or regulation.

2.4 Purchase Price Reopener. Seller and each Purchaser shall have the right to reopen this Agreement with respect to each Purchaser's own volume, as to purchase price only. At any time after Purchaser receives Oil for two (2) years from the Date of First Delivery (as defined in Section 2.10), Seller or Purchaser may exercise the right to reopen by giving to the other party one (1) month prior written notice. Upon issuance and receipt of a notice to reopen, that Purchaser and Seller will promptly commence good faith negotiations in an attempt to establish a new purchase price. In the event that a new purchase price is not agreed to by that Purchaser and Seller within three (3) months after giving the notice to reopen, that Purchaser or Seller may terminate that Purchaser's portion of this Agreement upon nine (9) months written notice to the other. The purchase price for Oil tendered during any period pending termination shall be the price in effect immediately prior to giving the notice of intent to reopen. If a new purchase price is agreed to by that Purchaser and Seller, the new purchase price shall become effective for Oil tendered in the month following the Agreement on the new purchase price. Not less than two (2) years after the conclusion of the purchase price reopener process described above, that Purchaser or Seller may reopen that Purchaser's portion of this Agreement, as to purchase price only, by giving notice of intent to exercise the right to reopen. At that time, the purchase price reopener process described above will again be applicable.

2.5 Point and Time of Delivery. Simultaneously with receipt of its Royalty Oil from its Lessees, Seller shall tender the Oil to Purchaser at the point at which Seller receives the Royalty Oil from its Lessees. That point as presently agreed to by Seller and its Lessees in Section 2.3 of the Settlement Agreement is the Central Production Facility Meter into the Kuparuk Pipeline.

2.6 Passage of Title and Risk of Loss. Title and risk of loss to the Oil sold under this Agreement shall pass from Seller to Purchaser for all purposes when Seller tenders the Oil at the Point of Delivery.

2.7 Purchaser's Responsibility. Purchaser shall be responsible for the Oil after passage of title. Purchaser will indemnify and hold Seller harmless from and against any and all claims, costs, damages (including reasonably foreseeable consequential damages), expenses or causes of action arising from or in connection with any transaction or event which relates to the crude oil after title has passed to Purchaser.

2.8 Transportation Arrangements. Purchaser shall make all necessary arrangements for transporting the Oil sold under this Agreement from the Point of Delivery, including satisfaction of line fill obligations and storage tank bottom requirements of the Kuparuk Pipeline and Trans Alaska Pipeline System, if any. If and as requested by Seller, and at the time or times requested by Seller, Purchaser shall submit specific information concerning the arrangements it has made for transportation of the Oil sold under this Agreement through and away from Kuparuk Pipeline and the Trans Alaska Pipeline System and for the resale or other disposal of the Oil. Such information may include the specific tenders of Oil made to the Kuparuk Pipeline and Trans Alaska Pipeline System and identification of tankers which will transport the Oil. In addition, Purchaser will provide Seller, if and as requested by Seller, with satisfactory evidence or reasonable assurances of the existence and continuing validity of adequate arrangements for the transportation or disposal of the Oil subject to this Agreement. Failure to provide information, evidence or assurances requested will, at Seller's election by notice to Purchaser, be a material default under this Agreement.

2.9 Absolute Obligations. The obligations of Purchaser to accept, pay for, and arrange for the transportation of the Oil tendered or sold under this Agreement are absolute and will not be excused or discharged by the operation of any disability of Purchaser, event of force majeure, impracticability of performance, change in conditions, or any other reason or cause.

2.10 Date of First Delivery. The Date of First Delivery will be on the first day of the first month seven (7) months after the effective date specified in Article VI, unless Seller, in its sole discretion at the request of both Purchasers, sets an earlier date.

2.11 In-State Processing. Purchaser Petro Star agrees that not less than 85% of the Royalty Oil sold under this Agreement, averaged on a quarterly basis, shall be processed through Purchaser Petro Star's refinery near North Pole, Alaska, except as provided below. "Process" means producing refined petroleum products from the crude oil in significant quantities, but which quantities may not be less than 20% of the volume of Royalty Oil run through Purchaser Petro Star's refinery pursuant to this Agreement.

Purchaser Petro Star's obligation to process Royalty Oil in-state may only be suspended or excused under (1) the provisions of Articles VIII and XI, or (2) during refinery maintenance.

Seller may, at its option, waive the in-state processing requirement in whole or in part, if Seller is satisfied that Purchaser Petro Star is using its best efforts to process the Royalty Oil sold under this Agreement at Purchaser Petro Star's refinery and that the waiver would not be contrary to the underlying intent of the other provisions of this Agreement.

2.12 Best Efforts. (1) Purchaser Petro Star agrees to use its "best efforts" to produce and market in Alaska an amount of refined petroleum products from its refinery near North Pole, Alaska not less in volume than 23% of the Royalty Oil sold under this Agreement. Those refined petroleum products shall be comprised of at least LAGO and Kerosene. After each three (3) months of deliveries under this Agreement, Purchaser Petro Star shall promptly provide to the Seller an affidavit certified by Purchaser Petro Star stating the quantity of refined petroleum products produced and marketed in the State of Alaska from in-state processing of the Daily Royalty Oil sold under this Agreement for that period.

A determination of "best efforts" under this Article shall include consideration of Purchaser Petro Star's capabilities and the surrounding business circumstances. Purchaser Petro Star's obligation to use its best efforts includes reasonable, diligent, and good faith efforts, but shall not require Purchaser Petro Star to produce and market refined petroleum products in Alaska at a loss. "Best efforts" would, however, require Purchaser Petro Star to produce and market products in Alaska even though Purchaser Petro Star could make a greater profit by another disposition of the Royalty Oil or the products refined from that oil.

2.13 Option to Purchase Return Oil. After Purchaser Petro Star processes Royalty Oil, there will remain a portion of Oil or Oil products which may be shipped through TAPS ("Return Oil"). Return Oil shipped through TAPS becomes intermingled with unprocessed crude oil so that when the Return Oil is picked up in Valdez it is identical to the common stream crude oil shipped through TAPS. A shipper of Return Oil presently is, and may continue to be, liable for the payment of a quality bank adjustment differential based upon the resulting degradation of TAPS common-stream crude ("quality bank adjustment").

The total daily volume of Royalty Oil sold under this Agreement approximates Purchaser Petro Star's daily refinery throughput. Purchaser Petro Star's daily Maximum Quantity approximates its maximum retained product and Purchaser Chevron's daily Maximum Quantity approximates what would otherwise be Purchaser Petro Star's return oil. Thus, under the arrangements contemplated under this Agreement, no return oil would exist upon which the state could retain an option. Should the arrangements contemplated under this Agreement cease to exist, Purchaser and Seller agree to negotiate in good faith towards agreement upon a market price option for Seller on whatever return oil or residual oil may exist under the new arrangements.

2.14 Arrangements between Purchasers. Purchaser Chevron and Purchaser Petro Star have entered into an arrangement under which Purchaser Petro Star will use as refinery charge Purchaser Chevron's volume of Royalty Oil under this Agreement. The arrangement includes the purchase of Royalty Oil taken by Purchaser Chevron under this Agreement by Purchaser Petro Star at TAPS Pump Station No. 1, and resale of the Royalty Oil to Purchaser Chevron at Valdez. A copy of the document which specifies the terms of the arrangement is attached as Exhibit A. Should the terms of the arrangement change materially so that Purchaser Petro Star is precluded from economically using Purchaser Chevron's volume as refinery charge, Seller shall have the right at the Commissioner's discretion to terminate this Agreement on nine (9) months notice.

Should Purchaser materially reduce its Maximum Quantity under Section 2.1 or terminate its portion of this Agreement under Section 2.4, or should termination occur due to an Event of Default under Article VII, either Seller or the other Purchaser may terminate the remaining portion of this Agreement by giving nine (9) months written notice, except as provided below. In this section a material reduction means a reduction of 50% or more from the original Maximum Quantity.

Upon termination of Purchaser Petro Star's portion of this Agreement for any reason or material reduction of Purchaser Petro Star's Maximum Quantity under Section 2.1, Seller shall exercise its right to terminate Purchaser Chevron's portion of this Agreement. However, if Purchaser Chevron agrees to process in its refinery at Nikiski, Alaska the Royalty Oil to be sold under this Agreement after that time, and if Purchaser Chevron successfully completes negotiations with the commissioner for an amendment to this Agreement which grants Seller a market price option on Purchaser Chevron's residual oil resulting from the processing of that oil, the Commissioner shall have the discretion to not terminate Purchaser Chevron's portion of this Agreement.

Upon termination of Purchaser Chevron's portion of this Agreement for any reason or material reduction of Purchaser Chevron's Maximum Quantity under Section 2.1, Purchaser Petro Star shall have the option to continue purchasing up to its Maximum Quantity, or to increase its Maximum Quantity to include all or part of the volume formerly purchased by Purchaser Chevron under this Agreement. Purchaser Petro Star shall exercise this option in writing within one month of the termination of Purchaser Chevron's portion of this Agreement. Purchaser Petro Star's option shall be conditioned on Purchaser Petro Star (1) agreeing for any increased quantity to pay the Purchase Price that Purchaser Chevron would pay under this Agreement, (2) agreeing to increase its Section 15.2 letter of credit to ninety (90) days for all volumes it would purchase under this Agreement, (3) agreeing to pay its Section 15.3 Amerada Hess escrow amount for all volumes it would purchase under this Agreement, (4) agreeing to increase its Section 2.11 and Section 2.12 in-state processing re best efforts obligations to include all volumes it would purchase under this Agreement, and (5) successfully completing negotiations with the Commissioner for an amendment to this Agreement which grants Seller a market price option on Purchaser Petro Star's return oil from all volumes it would purchase under this Agreement. The Commissioner shall have the discretion to accept other or additional security arrangements as part of Purchaser Petro Star's option as she, in her sole discretion, considers adequate to protect Seller. In accordance with Article XIX of this Agreement, the exercise of any option described in this section that would appreciably reduce the consideration received by Seller requires prior approval of the Alaska Legislature.

2.15. Performance Guaranty and Reservation Fee. If Purchaser does not take the Maximum Quantity on the Date of First Delivery, Purchaser shall pay to Seller, in addition to the Purchaser Price, an amount equal to 1.25% of the Purchase Price per barrel per day on the difference between the Maximum Quantity and the actual quantity tendered to and accepted by Purchaser ("Actual Quantity") for each day Purchaser does not take the Maximum Quantity on and after the Date of First Delivery. The payment of this fee shall end on the day that Purchaser accepts delivery of the Maximum Quantity. When

Purchaser accepts the Maximum Quantity, all of tne amounts paid under this Section 2.15 will be allowed to be credited against future payments for oil tendered under this Agreement except for an amount to be retained by Seller equal to .75% of the Purchase Price per barrel per day on the difference between the Maximum Quantity and the Actual Quantity for each day Purchaser did not take the Maximum Quantity on and after the Date of First Delivery. If Purchaser should thereafter decrease the amount of Royalty Oil to be tendered under this Agreement, Purchaser shall pay to Seller, in addition to the Purchase Price, an amount equal to .75% of the Purchase Price per barrel per day after the date that the decrease in the amount of Royalty Oil to be tendered by Seller takes effect on the difference between the Maximum Quantity and the Actual Quantity.

ARTICLE III
REPRESENTATIONS AND OBLIGATIONS OF PURCHASER

Purchaser warrants, represents, and agrees:

3.1 Good Standing and Due Authorization. Purchaser is, and at all times during the operation of this Agreement shall remain, (a) a natural person who has reached the age of majority and who is a citizen of the United States; or (b) a corporation organized and existing under and by virtue of the laws of the United States or of any state, territory or the District of Columbia and qualified to do business in Alaska; or (c) any association of the foregoing. If a corporation, Purchaser has all necessary corporate power to enter into this Agreement and to perform its covenants and obligations under this Agreement, and all necessary corporate action has been taken to authorize Purchaser's entering into this Agreement and performing its covenants and obligations under this Agreement.

3.2 Financial Condition. The financial information submitted to Seller is complete and correct and fairly presents Purchaser's financial condition at the time the information was submitted to Seller. The financial information was prepared in accordance with generally accepted accounting principles consistently applied. Since the date the information was submitted, the condition, business and properties of Purchaser have not been materially adversely affected in any way. Purchaser agrees to inform Seller immediately if during the term of this Agreement there is any material adverse change in the condition, business, or properties of Purchaser which would have an appreciable adverse effect on Purchaser's ability to perform under this Agreement. Purchaser, in addition, will immediately inform Seller of any significant change in ownership of either Purchaser or any of its affiliates or parent company, and of any change in Purchaser's operations or agreements, which would appreciably affect Purchaser's performance under this Agreement.

3.3 Financial Statements. As soon as possible after the end of each fiscal year of Purchaser, and in any event within one hundred twenty (120) days thereafter, Purchaser will furnish to Seller, at Purchaser's sole cost and expense, a report or a complete copy of a report in a form to be prescribed from time to time by Seller which will include Purchaser's balance sheet as of the close of the fiscal year and the income statement for that year prepared in each case in accordance with generally accepted accounting principles consistently applied by certified public accountants of recognized standing. For purposes of complying with this section, Purchaser Chevron may submit, and Seller will accept, the annual report and supplement of Chevron Corporation.

ARTICLE IV
MEASUREMENTS AND TESTS

The quantity and quality of the oil sold under this Agreement shall be determined at the Point of Delivery. Procedures and methods for measuring and metering the oil sold under this Agreement shall be in accordance with the practices then in effect at the Point of Delivery specified under Section 2.5.

ARTICLE V

PAYMENTS AND ACCOUNTING

5.1 Billing. Seller will send to Purchaser, on or before the 10th (tenth) business day of each Month after the month of delivery of Oil, an invoice statement of account of all Oil estimated to have been measured at the Central Production Facility Meter into the Kuparuk Pipeline and tendered to Purchaser under this Agreement during the immediately preceding Month according to the best information available to Seller, the estimated Purchase Price(s) applicable to those deliveries, and the total amount due ("initial billing"). The estimates will be made by Seller according to the best information reasonably available to Seller. Seller shall thereafter adjust its initial billing under this section as soon as more accurate information concerning the quantity and Purchase Price(s) of Oil delivered each Month is available. Seller, however, shall not be required to adjust the initial billing prior to the sending of the next Month's invoice statement of account.

5.2 Initial Adjustment. After the first monthly invoice under Section 5.1, each subsequent monthly invoice will also state Seller's initial adjustments to be made, if any, to the invoice rendered in the immediately preceding Month, in accordance with any additional or more accurate information which may have become available to Seller. Whether or not initial adjustments are made, however, subsequent adjustments may be made under Section 5.5.

5.3 Payment. Purchaser will make payment of each amount billed under this section within ten (10) Days after receipt of the invoice statement of account. Payment shall be made without any deduction, set off, or withholding by wire transfer of immediately available funds to Seller's account at the following address:

First Pennsylvania Bank Philadelphia
ABA No. 031000024
For Credit to State of Alaska
Account No. 07/089250/00
Attn: Catherine Hess

Payment may be made in such other manner or to such other address as Seller may specify in the invoice statement of account or by other written notice. All other payments to be made under this Agreement shall be paid in the same manner. If payment is due on a Saturday, Sunday, or legal holiday of the place where payment is to be received, payment shall be made on the next following business day. It is recognized that Seller may bill, and that Purchaser will pay, amounts that are based upon confidential information held or received by Seller. If confidential information is used as the basis for a billing, then upon request Seller will furnish Purchaser with the certified statement of the Commissioner that the amounts billed are correct based upon the best information available to Seller. Buyer will only be permitted to review material or information that is not confidential. If a dispute concerning a bill arises, Purchaser agrees to pay the full amount billed by Seller, except for obvious clerical mistakes, pending final resolution of the dispute.

5.4 Payment to Lessee(s). Purchaser, at the request of Seller in the invoice statement of account or otherwise in writing, shall pay all or any portion designated by Seller of the amount due to Seller to one or more of the Lessees at an address or addresses and in the manner designated by Seller. The payment will be made within the time limit specified in Section 5.3. Seller may authorize and designate a third party to make the request and designate the amount, manner and place of payment under this provision. Unless otherwise specified, the balance of the payment due, if any, and payments for subsequent months, shall be made in accordance with Section 5.3.

5.5 Subsequent Adjustments. Purchaser acknowledges that more accurate information concerning the quantity of or Purchase Price for Oil tendered may subsequently become available to Seller. In the event that any such information should subsequently become available to Seller, Seller shall promptly furnish a corrected invoice statement of account to Purchaser and the parties will adjust the amount billed and pay or refund the amount of those adjustments.

In the event that Seller should render a corrected invoice to Purchaser, any amount to be refunded from Seller to Purchaser or paid from Purchaser to Seller will be paid within fifteen (15) Days after the date of the corrected invoice, unless the adjustment concerns an amount last invoiced more than sixty (60) Days before the corrected invoice. In that case, the amount will be paid by Purchaser or refunded by Seller, as the case may be, in equal monthly installments over the same period of time as that over which the adjustment accrued or six (6) Months, whichever is the shorter period. No adjustment will be made more than twelve (12) Months after the date of the last original invoice to which the adjustment relates, except for adjustments resulting from regulatory or court proceedings (including appeals) commenced or pending during that twelve (12) month period, whether or not Seller or Purchaser is a party to the proceeding. Adjustments due to regulatory or court proceedings may be made at any time and shall bear interest at the rate stated in Section 5.6 from the date of payment of the invoice upon which an adjustment is subsequently made pursuant to this section. The provisions of this Section 5.5 will survive any termination of this Agreement.

5.6 Interest. Except for adjustments made upon resolution of Amerada Hess under Section 2.3, all sums which are not paid when due under this Agreement or which are subsequently determined to be due under an adjustment under Section 5.5, shall bear interest from the date accrued until paid in full at a variable rate per annum equal to the prime rate as announced from time to time by the Bank of America, San Francisco, California, plus one and one-quarter percent (1.25%) per annum.

5.7 Late Payment Penalty. Except for unintentional failures to pay, including clerical mistakes or occurrences not within the reasonable control of Purchaser, or insignificant underpayments, if Purchaser fails to make payment within one (1) Day of the date that payment is due, then in addition to the amount due plus interest from the date that payment was due until the date of payment, Purchaser will pay an amount equal to one percent (1%) of the amount owed.

5.8 Payment to Third Parties. Seller may direct that Purchaser pay any amount due to Seller or which may become due directly to a third party in the manner and time as may be directed by Seller in written notice to Purchaser if, in Seller's sole discretion, the payment to the third party will assist Seller in monitoring or enforcing this Agreement.

ARTICLE VI
TERM

This Agreement shall become effective upon execution by the parties and enactment of legislation by the State of Alaska (including approval by the Governor) approving this Agreement. This Agreement shall be null and void if it is not so approved by September 30, 1986. Subject to the other provisions contained in this Agreement, Seller's obligation to sell and Purchaser's obligation to buy Royalty Oil shall begin as specified in Section 2.10, and shall end September 30, 1996. As used in this section, "enactment of legislation" is as defined in AS 01.10.070(f)(4).

ARTICLE VII
DEFAULT OR TERMINATION

7.1 Default. If any one or more of the following events ("Events of Default") occur, then at Seller's option, Seller may terminate or suspend its obligation to tender and sell Oil and proceed to exercise any one or more of the rights and remedies provided in this Agreement:

(i) Except for obvious clerical errors, Purchaser does not pay in full any sum invoiced under this Agreement at the time when payment is due; or

(ii) Purchaser fails to observe or perform any of its other covenants and obligations under Article or

(iii) Purchaser does not perform any act required or contemplated under this Agreement and either: (a) the nonperformance continues for more than thirty (30) days after Seller has notified Purchaser of Purchaser's nonperformance; or (b) Purchaser had failed to perform the same or any other act required or contemplated under this Agreement during the immediately preceding twelve (12) month period; or

(iv) There is a material adverse change in Purchaser's condition, business or property which appreciably affects the ability of Purchaser to perform any of its obligations under this Agreement, and Purchaser is unable to give Seller adequate assurance of continued performance either within fourteen (14) days of a request for such an assurance or within such other shorter time period as Seller may reasonably request under the circumstances; or

(v) Any representation or warranty made by Purchaser in this Agreement proves to have been false or incorrect in any material respect at the time that the representation or warranty was made.

7.2 Failure to Pay Debts. If at any time Purchaser becomes unable to pay any of its debts when those debts are due, or should otherwise become insolvent (without regard to how that insolvency may be evidenced), Purchaser will immediately give notice of that fact to Seller. Whether or not that notice is given, if Purchaser becomes unable to pay any of its debts when those debts are due or should otherwise become insolvent, Seller's obligation to tender and sell Oil under this Agreement will automatically and immediately terminate without any requirement of notice or other action by Seller; however, Purchaser will nevertheless be and remain liable for payment and performance of all of its obligations and covenants under this Agreement with respect to Oil actually tendered by Seller to and after any such termination. Within thirty (30) days after receipt of Purchaser's notice or, if no notice

is given, after Seller otherwise becomes aware (as determined in Seller's sole discretion) of Purchaser's insolvency, Seller will have the right, upon written notice to Purchaser, to reinstate all of Seller's and Purchaser's obligations under this Agreement retroactively to the date of termination.

7.3 Seller's Remedies. Upon the occurrence of any Event of Default or if Seller's obligation to tender and sell Oil under this Agreement is terminated or suspended under Sections 7.1 and 7.2, all obligations of Purchaser accrued but not otherwise due and payable under this Agreement will immediately be due and payable in full. In addition, Purchaser will indemnify and hold Seller harmless from and against all other liability, damages (including reasonably foreseeable consequential damages), costs, losses and expenses (including reasonable attorneys' fees and disbursements) incurred by Seller and arising out of the Event of Default, termination, or suspension. Seller shall have the right cumulatively to exercise any and all other rights and remedies and to obtain all other relief available under applicable law or at equity, including mandatory injunction and specific performance. Seller, upon occurrence of any Event of Default, in its sole discretion, may arrange for any disposition to third parties of Oil to be tendered and sold under this Agreement. Upon the occurrence of any Event of Default, Purchaser is released from the obligations set forth in Sections 2.11 (In-State Processing) and 2.12 (Best Efforts) until the Event of Default no longer exists or the obligation of Purchaser to take Royalty Oil under this Agreement expires. If upon occurrence of any Event of Default Seller makes arrangement for disposition to third parties of Oil whether or not this Agreement is terminated, Purchaser will nevertheless be and remain liable to Seller for the full amount of the Purchase Price for that Oil in excess over any amount or amounts received by Seller on account of that disposition, net of the expenses of that disposition and for all other costs, losses and expenses (including reasonable attorneys fees and disbursements) incurred by Seller and arising out of the Event of Default or disposition.

7.4 Purchaser's Exclusive Remedies. Upon any breach of, or default in, the due and timely observance or performance of any of Seller's covenants or obligations under this Agreement, Purchaser acknowledges and agrees that Purchaser's remedies will not include a temporary restraining order or preliminary injunction preventing Seller from taking any action with regard to the Oil which is the subject of this Agreement.

ARTICLE VIII
DISPOSITION OF OIL

8.1 Inability to Receive Oil. Purchaser acknowledges and agrees that under the Unit Agreement and Leases, Seller's election to take Royalty Oil in kind can be revoked or reversed only upon the satisfaction of various conditions, including the giving of thirty (30) days advance written notice to return up to 2500 barrels of Seller's then current nominations. Purchaser acknowledges and agrees that Seller's election to invoke its rights to return to taking its Royalty Oil in value on less than six (6) months' prior notice, or to attempt to secure a waiver of any condition or requirement, is at Seller's sole and complete discretion. If for any reason Purchaser is unable or refuses to accept or receive any Oil tendered under this Agreement, Purchaser shall nevertheless be and remain responsible for the disposal of that Oil and for paying Seller for the Oil as though it had been received and accepted by Purchaser unless Seller, in its sole discretion elects to waive this requirement. In order to secure the obligations of Purchaser under this Section 8.1 and under Section 2.8, Purchaser shall, if and as Seller may request from time to time, assign to Seller all right, title and interest of Purchaser under any nominations, leases, agreements, contracts, charter parties and other arrangements for the transportation of the Oil sold under this Agreement through and away from the Kuparuk Pipeline and the Trans Alaska Pipeline System; provided, that Seller shall not have any liability or obligations under any such nominations, leases, agreements, contracts, charter parties or other arrangements unless, and to the extent that, Seller shall actually exercise its rights to succeed to Purchaser's interest thereunder and shall obtain the benefits thereof.

8.2 No Right to Storage or Underlift. Purchaser waives and disclaims any interest or right that it may assert to storage of Royalty Oil, including by underlift or other means, to which Seller is or may come to be entitled under the Leases, Storage Agreement, or any other agreement. However, Purchaser shall use due diligence and make its best efforts to act in a manner that enables Seller to adhere to the notice requirements and other obligations provided in the Storage Agreement. Purchaser agrees that when it executes this Agreement, it will also immediately execute the release attached as Exhibit B to this Agreement.

ARTICLE IX
WAIVER

The failure of either party to insist upon strict performance of any provision of this Agreement shall not constitute a waiver of, or estoppel against, asserting the right to require that performance in the future. A waiver or estoppel in any one instance shall not constitute a waiver or estoppel with respect to a later breach of a similar nature or otherwise. A course of performance established by a party shall also not stop the other party from complaining of a later breach similar in nature.

ARTICLE X
SEVERABILITY

If any provision or clause of this Agreement or application of this Agreement to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application. If, however, an invalidity should operate to impair any material right or remedy of a party to this Agreement, that party may terminate this Agreement by notice to the other.

ARTICLE XI

FORCE MAJEURE AND CHANGE IN CONDITION

11.1 Effect of Force Majeure. Except for Purchaser's obligations to make payment of money for Oil tendered under this Agreement and except for Purchaser's obligations to accept and dispose of Royalty Oil, neither party shall be liable for any failure to perform the terms of this Agreement when the failure is due in whole or in substantial part to force majeure. The term "force majeure" as applied to this Agreement shall mean Acts of God, strikes, lockouts and industrial disputes or disturbances, civil disturbances, arrests and restraints from rulers or people, interruptions by government or court orders or by present or future orders of any regulatory body having or asserting jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, inability to secure materials by reasons of allocations promulgated by authorized governmental agencies, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or pipelines, or any other event or condition, whether of the kind herein enumerated or otherwise, not within the reasonable control of the party claiming the benefit of this excuse. If however, any material obligation of Purchaser is excused or suspended because of a claim of force majeure for a period of three hundred sixty five (365) successive days or more, Seller will have the right to terminate this Agreement. Prior to Seller exercising its right to terminate this Agreement Seller and Purchaser shall enter into good faith negotiations to restore, to the fullest extent possible, Seller and Purchaser to the benefits and obligations that existed under this Agreement before the occurrence of the force majeure condition.

11.2 Responsibility. Upon the occurrence and discovery of an event providing the basis for a claim of force majeure, the party making a claim shall notify the other party to this Agreement of its claim of force majeure. Upon the occurrence of an event constituting force majeure that event shall, so far as possible, be remedied with all reasonable diligence and dispatch. Except for Purchaser's obligations to make payment of money for Oil tendered

under this Agreement and except for Purchaser's obligation to dispose of Oil, the obligations of the disabled party to perform under this Agreement, insofar as they are affected by that force majeure, shall be suspended from the time that force majeure occurs and for so long as the disability caused should have continued had the party claiming the existence of the force majeure remedied the event providing the basis of the claim of force majeure with reasonable diligence and dispatch, and for no longer. The settlement of strikes or lockouts or industrial disputes or disturbances will be entirely within the discretion of the party having the difficulty, and the above requirement that any force majeure shall be remedied with diligence and dispatch shall not require the settlement of strikes, lockouts, or industrial disturbances by acceding to the demands of any opposing party therein when such course is inadvisable in the sole discretion of the disabled party.

ARTICLE XII
NOTICES

12.1 Method. All notices, requests, demands or statements shall be in writing, and may be delivered personally to the party to be notified or may be sent to the party by registered or certified United States mail, postage prepaid, with a return receipt requested of the party. Notice deposited in the mail in this manner shall be effective upon the expiration of seven (7) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the addressee. For the purposes of notice, the addresses of the parties to this Agreement shall be as follows:

If to Seller:

State of Alaska
Commissioner of Natural Resources
Pouch "M"
Juneau, Alaska 99811

and

Commissioner of Revenue
Pouch "S"
Juneau, Alaska 99811

and

Director, Division of Oil and Gas
Pouch 7-034
Anchorage, Alaska 99510

Telephone:

Telex:

If to Purchaser Petro Star:

Telephone:

Telex:

If to Purchaser Chevron:

Telephone:

Telex:

12.2 Change of Address. Each party may change its address for notice by giving notice of the change.

ARTICLE XIII
RULES AND REGULATIONS

This Agreement is subject to all present and future valid laws, orders, rules and regulations of the United States, the State of Alaska, and any duly constituted agency thereof.

ARTICLE XIV
SOVEREIGN POWER OF THE STATE

This Agreement and its covenants shall not be interpreted as a limit on the exercise by the State of Alaska of any of its sovereign or regulatory powers, whether conferred on the State by constitution, statute or regulation, including but not limited to, its regulatory power over the Leases. The exercise by the State of Alaska of any sovereign or regulatory power will not operate or be deemed to enlarge any rights of Purchaser or to limit or impair any obligations or liability of Purchaser under this Agreement, except for state statutes enacted after the effective date of this Agreement which have a direct and significant adverse effect on the ability of Purchaser to perform an obligation under this Agreement other than the obligations to accept, dispose of, and pay for Oil tendered under this Agreement.

ARTICLE XV
SECURITY

15.1 Purchaser Chevron Letter of Credit. Sixty (60) days prior to Date of First Delivery, Purchaser Chevron shall cause to be issued and delivered to Seller an irrevocable stand-by letter of credit, with an effective date no later than the Date of First Delivery, issued for the benefit of Seller by a state or national banking institution of the United States ("Issuer"), which is insured by the Federal Deposit Insurance Corporation and has an aggregate capital and surplus of not less than One Hundred Million Dollars ($100,000,000), or other banking institution acceptable to Seller in its sole discretion. The principal face amount of such letter of credit shall be a sum estimated by the Commissioner to be equal to the aggregate Purchase Price for the approximate total amount of Oil to be tendered by Seller to Purchaser Chevron during the first ninety (90) days following the Date of First Delivery, calculated at the Purchase Price. The letter of credit shall be substantially in a form satisfactory to the Commissioner, but in any event shall not require any documents to be submitted

in support of drafts drawn against this letter of credit other than the certified statement of the Commissioner or her designee and the Attorney General of the State of Alaska or his designee that Purchaser Chevron is liable to Seller for a sum equal to the amount of such draft, and that that sum is due and payable in full and has not been timely paid.

In the event that Seller should have reasonable grounds for asserting any claims against Purchaser Chevron under this Agreement and does assert those claims in an aggregate amount in excess of the aggregate principal face amount of the letter of credit then in effect, Purchaser Chevron shall upon Seller's request (whether or not Purchaser Chevron may deny, reject or otherwise resist such claims) cause the principal face amount of the letter of credit to be increased by an amount equal to the excess. The principal face amount of the letter of credit shall also be automatically increased by Purchaser Chevron without request from Seller whenever the face amount is less than the expected Purchase Price of ninety (90) days of Oil tenders to Purchaser Chevron under this Agreement, to an amount equal to the expected Purchase Price of ninety (90) days of Oil tenders to Purchaser Chevron. The principal face amount of the letter of credit may be decreased by Purchaser Chevron upon approval of Seller if the face amount is more than the expected Purchase Price of ninety (90) days of Oil tenders to Purchaser Chevron under this Agreement, to an amount equal to the expected Purchase Price of ninety (90) days of Oil tenders to Purchaser Chevron.

The letter of credit must allow drafts to be drawn and presented to the Issuer up to and including the 90th day after the last delivery of Royalty Oil to Purchaser Chevron under this contract. The Commissioner may accept such other or additional security as she, in her sole discretion, considers adequate to protect Seller.

15.2 Purchaser Petro Star Letter of Credit. Sixty (60) days prior to the Date of First Delivery, Purchaser Petro Star shall cause to be issued and delivered to Seller an irrevocable stand-by letter of credit, with an effective date no later than the Date of First Delivery, issued for the benefit of Seller by a state or national banking institution of the United States ("Issuer"), which is insured by the Federal Deposit Insurance Corporation and has an aggregate capital and surplus of not less than One Hundred Million Dollars ($100,000,000), or other banking institution acceptable to Seller in its sole discretion. The principal face amount of such letter of credit shall be a sum estimated by the Commissioner to be equal to the aggregate Purchase Price for the approximate total amount of Oil to be tendered by Seller to Purchaser Petro Star during the first sixty (60) days following the Date of First Delivery, calculated at the Purchase Price. The letter of credit shall be substantially in a form satisfactory to the Commissioner, but in any event shall not require any documents to be submitted in support of drafts drawn against this letter of credit other than the certified statement of the Commissioner or her designee and the Attorney General of the State of Alaska or his designee that Purchaser Petro Star is liable to Seller for a sum equal to the amount of such draft, and that that sum is due and payable in full and has not been timely paid.

In the event that Seller should have reasonable grounds for asserting any claims against Purchaser Petro Star under this Agreement and does assert those claims in an aggregate amount in excess of the aggregate principal face amount of the letter of credit then in effect, Purchaser Petro Star shall upon Seller's request (whether or not Purchaser Petro Star may deny, reject or otherwise resist such claims) cause the principal face amount of the letter of credit to be increased by an amount equal to the excess. The principal face amount of the letter of credit shall also be automatically increased by Purchaser Petro Star without request from Seller whenever the face amount is less than the expected Purchase Price of sixty (60) days of Oil tenders to Purchaser Petro Star under this Agreement, to an amount equal to the expected Purchase Price of sixty (60) days of Oil tenders to Purchaser Petro Star. The principal face amount of the letter of credit may be decreased by Purchaser

Petro Star upon approval of Seller if the face amount is more than the expected Purchase Price of sixty (60) days of Oil tenders to Purchaser Petro Star under this Agreement, to an amount equal to the expected Purchase Price of sixty (60) days of Oil tenders to Purchaser Petro Star.

The letter of credit must allow drafts to be drawn and presented to the Issuer up to and including the 60th day after the last delivery of Royalty Oil to Purchaser Petro Star under this contract. The Commissioner may accept such other or additional security as she, in her sole discretion, considers adequate to protect Seller;

15.3 Purchaser Petro Star Amerada Hess Escrow. Sixty (60) days prior to the Date of First Delivery, Purchaser Petro Star shall cause to be executed and delivered to Seller an executed escrow agreement with a state or national banking institution of the United States ("Escrow Bank"), which is insured by the Federal Deposit Insurance Corporation, and which has a aggregate capital and surplus of not less than One Hundred Million Dollars ($100,000,000), or other banking institution acceptable to the Seller in its sole discretion. The escrow agreement shall be in a form satisfactory to the Commissioner. The escrow agreement shall provide for payment of escrowed amounts only after final resolution of the Amerada Hess litigation, including any appeals, and upon tender of a certified statement, signed by the Commissioner of Natural Resources and the Attorney General of the State of Alaska. The certified statement shall specify the disposition of the principal and accrued interest of the escrow as calculated under the provisions of Articles II and V of this Agreement, with the full adjusted Purchase Price and interest payable to Seller, and any escrow balance payable to Purchaser Petro Star. Before requesting escrow payment, Seller will give Purchaser Petro Star at least twenty (20) days written notice of its calculations for the escrow disposition.

Purchaser Petro Star agrees to make monthly deposits into the escrow of the sum equal to $1.12 per barrel of Royalty Oil purchased by Purchaser Petro Star from Seller under this Agreement during the previous month. This sum represents a negotiated escrow amount, and is not any party's estimate of litigation results. The amount of this escrow shall be an element of the "Purchase Price" under this Agreement and shall be subject to periodic renegotiation as specified in the purchase price reopener provision of Section 2.4.

Purchaser Petro Star shall make payments to the escrow at the same time as it pays Seller under Article V of this Agreement, including increased payments necessitated by quantity adjustments under that Article. Purchaser Petro Star shall bear all expenses of the escrow, and shall arrange for the Escrow Bank to send to Seller monthly statements showing the escrow balance.

15.4 Chevron Backup. Purchaser Chevron agrees that, after receiving at least five (5) days notice from Seller, it will accept delivery of any volumes of Royalty Oil upon which Purchaser Petro Star has defaulted under this Agreement. The notice referenced above shall be given by telephone and by telex to the telephone number and address provided in Section 12.1. Purchaser Chevron agrees to take those volumes subject to all the terms of this Agreement, except that the price for those volumes shall be the Petro Star Purchase Price. Purchaser Chevron will promptly increase its letter of credit to include the increased volume. The Commissioner will return the defaulted volumes to in value as soon as possible, and will promptly notify Purchaser Chevron of the date on which deliveries to it under this section will cease.

ARTICLE XVI
PREFERENTIAL HIRII

Purchaser agrees to hire and employ Alaska residents and Alaska companies to the extent they are available, willing and qualified for all work performed in Alaska under or in connection with this Agreement, including but not limited to construction and operation of facilities to refine or otherwise use the Royalty Oil. As used in this Agreement "Alaska resident" means an individual who has resided in the State for one year at the time of hiring or employment and "Alaska companies" means those companies who are incorporated in the State of Alaska or whose principal place of business is in Alaska. Seller acknowledges that under the arrangements initially contemplated under this Agreement, Purchaser Chevron will not be performing work in Alaska under or in connection with this Agreement.

If this provision is determined to be unconstitutional by a court of competent jurisdiction, then Purchaser agrees to hire and employ Alaska residents and Alaska companies to the extent such preferential hiring is determined to be constitutional.

ARTICLE XVII
APPLICABLE LAW

17.1 Alaska Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska, excluding any conflict-of-law rule or principle which might refer such construction to the laws of another state or country.

17.2 Submission to Jurisdiction. Any legal action or proceeding arising out of or relating to this Agreement or for the enforcement of the covenants or obligation of either party must be instituted in a State court of general jurisdiction sitting in the State of Alaska, and Purchaser hereby irrevocably submits to the jurisdiction of that court in any such action or proceeding.

ARTICLE XVIII
NO WARRANTIES

The purchase and sale of Royalty Oil under this Agreement is subject only to the warranties of Seller expressly set forth in this Agreement and Seller disclaims and Purchaser waives all other warranties, express or implied in law, whatsoever.

ARTICLE XIX
AMENDMENT

This Agreement may be supplemented, amended or modified at any time, but only by written instrument duly executed by the parties to this Agreement. Any material amendment to this contract that appreciably reduces the consideration received by the state requires prior approval of the legislature.

ARTICLE XX
SUCCESSORS AND ASSIGNS

No assignment, pledge or encumbrance of this Agreement shall be made by either Purchaser without first obtaining the written consent of Seller, or by Seller without obtaining the written consent of both Purchasers. The Commissioner may grant such consent on behalf of Seller. The Commissioner shall have sole and complete discretion in granting or denying a proposed assignment, pledge or encumbrance. Subject to the above requirements in this Article, this Agreement will be binding upon and inure to the benefit of each of the parties and its successors and permitted assigns. In addition, if Purchaser gains or acquires a controlling interest in an entity which has an agreement with Seller for the sale of Oil ("Other Agreement"), then Seller, at its option and on thirty Days' prior notice, may require Purchaser to terminate either this Agreement or the Other Agreement. The choice of which

Agreement to terminate will be Seller's. Purchaser may request that Seller waive this provision in advance of Purchaser gaining a controlling interest in an entity which has an agreement with Seller for the sale of Oil. The Commissioner has sole and complete discretion in granting or denying the requested waiver.

ARTICLE XXI
HEADINGS

Headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

ARTICLE XXII
RECORDS

22.1 Preservation of Records. Purchaser will preserve and maintain all books, accounts, and records directly relating to the performance of this Agreement, including but not limited to the purchase or sale of Oil and its refined products, for a period of six (6) years. Purchaser will also maintain and preserve all similar books, accounts, and records of which it has possession belonging to those third parties with whom it contracts for the performance of various parts of this Agreement. Neither Purchaser nor Seller shall be required to retain any records for more than six (6) years unless retention of such records is specifically required by applicable law or regulation. Purchaser shall either maintain its records within the State of Alaska or make such records available to Seller at Purchaser's principal office in the State of Alaska within thirty (30) days after written request by Seller.

22.2 Inspection of Records of Parties. Purchaser and Seller will accord to each other and to their authorized agents, attorneys, and auditors during reasonable business hours access to any and all property, records, books, documents, and indexes directly relating to Purchaser's or Seller's performance of this Agreement and which are under the control of the party from which access is desired, so that the other party may inspect, photograph and make copies of that property, records, books, documents and indexes. In no event, however, shall Seller be required to disclose any information, data, or records which are required to be held confidential by state law or regulation. If the information obtained by Seller may be held confidential under state or federal law or regulation, Purchaser may request that that information be held confidential by Seller.

ARTICLE XXIII
INTERPRETATION OF TERMS AND CONDITIONS

In the event that there is a disagreement about the meaning or application of a word, term, or condition in this Agreement, Purchaser will present the arguments supporting its view in writing to the Commissioner for her consideration. The Commissioner will subsequently, within a reasonable time, issue a finding on the meaning or application of the disputed word, term, or condition, setting forth the basis for her conclusions. Purchaser agrees to accept findings by the Commissioner under this Article as long as there is substantial evidence supporting the Commissioner's findings.

DATED this 9th day of December, 1985

SELLER: THE STATE OF ALASKA

by Ian Brown, Director
Commissioner
Department of Natural Resources

PURCHASER PETRO STAR, INC.: PETRO STAR, INC.

By _____
President

PURCHASER CHEVRON: CHEVRON U.S.A. INC.

By _____

_____

3928s

EXHIBIT B

RELEASE

For a valuable consideration, the receipt and adequacy of which are acknowledged, the undersigned does hereby release and forever discharge ARCO Alaska, Inc., BP Alaska Exploration Inc., Chevron U.S.A. Inc., Exxon Corporation, Mobil Oil Corporation, Phillips Petroleum Company, Sohio Alaska Petroleum Company, Union Oil Company of California, Amoco Production Company, individually and collectively, and each of their predecessors, successors, assigns, and all persons acting by, through, under or in concert with them, or any of them (the "Releasees"), of and from any and all claims, demands or causes of action of any nature whatsoever, known or unknown, fixed or contingent, hereinafter made against the Releasees, or any of them arising out of, based upon, or relating to the purported storage rights of the State of Alaska with respect to royalty oil produced from the land as to which the Kuparuk River Unit Agreement is now effective on to which it may be extended.

The undersigned represents and warrants that there has been no assignment or other transfer of any interest in any claim which agrees to indemnify and hold Releasees, and each of them, harmless from any liability, claims, demands, damages, costs, expenses and attorney's fees incurred by Releasees, or any of them, as a result of any person asserting assignment or transfer or any rights or claims under that assignment or transfer. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery by the Releasees against the undersigned under this indemnity.

The undersigned agrees that if after execution of this Release the undersigned commences, joins in, or in any manner seeks relief through any suit arising out of, based upon, or relating to any of the claims released under this Release or in any manner asserts against Releasees, or any of them, any of the claims released under this Release, then the undersigned will pay to Releasees, and each of them, in addition to any other damages caused to Releasees by that action or claim all attorney's fees incurred by Releasees in defending or otherwise responding to the action or claim.

The undersigned further understands and agrees that the execution of this Release shall neither constitute nor be construed as an admission by the Releasees, or any of them, that they have any storage obligation with respect to the State's royalty oil.

/s/ Stephen F. Sewell — 5 December 1985

PETRO STAR, INC. — DATE

A M Caccamo — 6 December 1985

CHEVRON U.S.A. — DATE

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that provides for legislative approval of a royalty oil contract between the state, Petro Star, Inc. and Chevron U.S.A., Inc. for the sale of Kuparuk River royalty oil. Also transmitted with this bill is a copy of the resolution of the Alaska Royalty Oil and Gas Development Advisory Board recommending approval of that contract, along with a letter from the Department of Law forwarding the resolution to you. This resolution is being transmitted in accordance with AS 38.06.040(a)(3) and AS 38.06.070(c).

The contract is also described in the findings issued by the Department of Natural Resources on December 9, 1985. Copies of these findings have been made available to the legislature and the public for review.

A bill approving the contract is being introduced for legislative approval for two reasons. First, as a matter of comity, I respect the legislature's desire to have a direct voice in major disposals of royalty oil. Therefore, although this and the previous administration have consistently taken the position that the statutory requirement of legislative approval of royalty oil contracts (AS 38.06.055) is unconstitutional, the contract itself contains provisions requiring approval by the legislature before it takes effect.

Second, this legislation would ratify the royalty oil contract. This ratification would cure any procedural defect

that may have occurred in the process of entering into this contract. Although we believe that all necessary steps have been taken, the statutes and regulations governing the disposal of royalty oil represent often-conflicting desires and goals -- both procedural and substantive. For example, the statutes provide that the legislature is to approve a royalty oil contract only by "enacting legislation" (AS 38.06.055(a)), but also refer to a Royalty Board recommendation to be submitted to the legislature at the time a "resolution approving the proposed sale ... is introduced in the legislature" (AS 38.06.070(c)). Since legislative approval by enactment of legislation is required as a matter of contract, I believe that it is prudent to present this contract for legislative approval and ratification.

Sincerely,

Bill Sheffield
Governor

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☑ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☐ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 14, 1986

The Honorable Ben F. Grussendorf
Speaker of the House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Reference: "An Act Relating to the Sale and Purchase of Royalty Oil from the Kuparuk Unit between the State of Alaska and Petro Star, Inc. and Chevron U.S.A. Inc.

Dear Mr. Speaker:

In accordance with AS 38.06.040(a)(3), I am forwarding for your consideration the resolution of the Alaska Royalty Oil and Gas Development Advisory Board which recommends that the legislature approve the referenced sale of royalty oil to Petro Star and Chevron U.S.A.

If we can be of further service, please do not hesitate to call.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Steve R Porter for
Ann E. Prezyna
Assistant Attorney General

AEP/ma

03-C5LH

RECEIVED
Department of Law
JAN - 3 1986
Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

The Alaska Royalty Oil and Gas Development Advisory Board

Resolution 85-2

On or about October 23, 1985, the director of the division of oil and gas ("director") provided the Alaska Royalty Oil and Gas Development Advisory Board with the preliminary notice of sale, preliminary findings, and proposed contract for a long-term sale of up to about 6500 barrels per day of Kuparuk River Unit royalty oil to Petrostar, Inc. and Chevron U.S.A. Inc.

This proposed sale has been discussed at several public meetings held by the board during 1985. At the February 20 meeting, Petrostar representatives testified in support of a royalty oil sale. On March 26, staff of the Alaska Department of Natural Resources (DNR) reported to the board on the status of a solicitation for purchasers of state royalty oil. At the April 12 meeting, DNR presented a status report on the solicitation, which was released April 1. On July 25, DNR presented to the board a recapitulation of the responses to the solicitation. At the meetings of the board held September 26-27 and October 7, the board received public testimony on a proposed sale of Kuparuk royalty oil to Petrostar and Chevron. On October 30, the director made a presentation to the board on the Petrostar-Chevron contract proposed in DNR's October 23 preliminary findings; the board also received public testimony on the proposed contract. The last two meetings were held by teleconference in Anchorage, Fairbanks, Valdez, and Juneau.

DNR's final findings on the proposed sale and the contract were sent to the board on December 9, 1985. On December 19, the board met to develop and vote on its recommendations to the legislature on the proposed sale.

Based on the board's review of the agreement for the sale and purchase of royalty oil between the State of Alaska and Petrostar and Chevron, DNR's findings and determinations regarding the proposed sale, and the testimony received at public meetings of the board, the board is of the opinion that the proposed disposition of Kuparuk River Unit royalty oil to Petrostar and Chevron meets the requirements of AS 38.06 and 3 AAC 56. The board recommends that the Fifteenth Alaska Legislature approve the agreement for the sale and purchase of royalty oil from the Kuparuk River Unit to Petrostar and Chevron, dated December 9, 1985.

Dated: December 19, 1985

Laurie D. Cunningham

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

January 22, 1986

M E M O R A N D U M

TO: Honorable Bill Sheffield
Governor

FROM: Harold M. Brown
Attorney General

RE: Attached bill on Petro Star/
Chevron royalty oil contract
Our file: 377-094-86

Attached is a bill (prepared for both House and Senate introduction), requested by the Department of Natural Resources (DNR), which provides for legislative approval and ratification of a royalty oil contract between the state and both Petro Star Inc. and Chevron U.S.A. Inc. for the sale of Kuparuk River royalty oil. This contract is the result of negotiations with the companies over the past year. If you prefer not to introduce this bill in both houses, DNR would prefer that it be introduced in the Senate.

Also attached are copies of the resolution of the Alaska Royalty Oil and Gas Development Advisory Board recommending that the legislature approve this sale of royalty oil. These copies are attached to original letters forwarding the Royalty Board's resolution to the Speaker of the House and the President of the Senate. In accordance with AS 38.06.040(a)(3) and AS 38.06.070(c), this resolution and the appropriate letter should be transmitted with each bill at the time of introduction.

If you only introduce the bill in the Senate, it should not be necessary to send the separate Department of Law letter and copy of the board's resolution to the Speaker of the House. However, it might be wise to do so as a courtesy.

A draft transmittal letter, explaining the bill in more detail, is also attached.

HMB:SRP:ma

cc w/enc.: Hon. Esther Wunnicke, Commissioner
Department of Natural Resources

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that provides for legislative approval of a royalty oil contract between the state, Petro Star, Inc. and Chevron U.S.A., Inc. for the sale of Kuparuk River royalty oil. Also transmitted with this bill is a copy of the resolution of the Alaska Royalty Oil and Gas Development Advisory Board recommending approval of that contract, along with a letter from the Department of Law forwarding the resolution to you. This resolution is being transmitted in accordance with AS 38.-06.040(a)(3) and AS 38.06.070(c).

The contract is also described in the findings issued by the Department of Natural Resources on December 9, 1985. Copies of these findings have been made available to the legislature and the public for review.

A bill approving the contract is being introduced for legislative approval for two reasons. First, as a matter of comity, I respect the legislature's desire to have a direct voice in major disposals of royalty oil. Therefore, although this and the previous administration have consistently taken the position that the statutory requirement of legislative approval of royalty oil contracts (AS 38.-06.055) is unconstitutional, the contract itself contains provisions requiring approval by the legislature before it

takes effect.

Second, this legislation would ratify the royalty oil contract. This ratification would cure any procedural defect that may have occurred in the process of entering into this contract. Although we believe that all necessary steps have been taken, the statutes and regulations governing the disposal of royalty oil represent often-conflicting desires and goals -- both procedural and substantive. For example, the statutes provide that the legislature is to approve a royalty oil contract only by "enacting legislation" (AS 38.06.055(a)), but also refer to a Royalty Board recommendation to be submitted to the legislature at the time a "resolution approving the proposed sale ... is introduced in the legislature" (AS 38.06.-070(c)). Since legislative approval by enactment of legislation is required as a matter of contract, I believe that it is prudent to present this contract for legislative approval and ratification.

Sincerely,

Bill Sheffield
Governor

5-Feb-86

Royalty-In-Kind Contract Terms
For Current Contracts
AS OF FEBRUARY 1, 1986

Filename: C:Contract dwj

COMPETITIVE SALE CONTRACTS

Company	Unit	Quantity(1) (% & Bbls)	PURCHASE PRICE (Base Price Plus Bid Premium)	Price Re-opener	Letter of Credit	Length of Contract	Provision for retroactive Amerada Hess adjustment	State option to purchase residual oil or return oil
Chevron	Prudhoe Bay	8.0001% 15,000 BPD	(1)$17.95	No	60 Days	4/1/85-3/31/86	no	no
Texaco	Prudhoe Bay	13.3334% 25,000 BPD	(1)$17.56	No	60 Days	4/1/85-3/31/86	no	no
U.S. Oil	Prudhoe Bay	5.3332% 10,000 BPD	(1)$17.95	No	60 Days	4/1/85-3/31/86	no	no
U.S. Oil	Kuparuk River	8.8888% 2,778 BPD	(1)$17.10865	No	90 Days	10/1/85-3/31/86	no	no
U.S. Oil	Kuparuk River	13.3332% 4,167 BPD	(1)$17.10865	No	90 Days	10/1/85-3/31/86	no	no
U.S. Oil	Kuparuk River	13.3332% 4,167 BPD	(1)$17.10865	No	90 Days	10/1/85-3/31/86	no	no
Union	Kuparuk River	13.3332% 4,167 BPD	(1)$17.10865	No	90 Days	10/1/85-3/31/86	no	no
Chevron	Kuparuk River	17.7776% 5,556 BPD	(1)$17.10865	No	90 Days	10/1/85-3/31/86	no	no

(1) Price per barrel billed in January 1986. Price is adjusted monthly to reflect changes in posted prices of West Texas sour crude, with a floor price of the volume weighted average of the producers' reported netback prices.

Royalty-In-Kind Contract Terms
For Current Contracts
AS OF FEBRUARY 1, 1986

Filename: C:Contract dw

NEGOTIATED CONTRACTS

Company	Unit	Quantity(1) (% & Bbls)	Price Plus Applicable Premium	Price Re-opener	Letter of Credit	Length of Contract	Provision for retroactive Amerada Hess adjustment	State option to purchase residual oil or return oil
MAPCO	Prudhoe Bay	18.6667% 35,000 BPD	(2)Exhibit B + field costs (3)($17.61921)	No	No	11/1979-12/2003	yes(4) (6)	no
Tesoro	Prudhoe Bay	24.533% 46,000 BPD	(2)In-value + field costs (3)($17.41648)	No	Yes 60 days	1/1/1983-1/1/1995	yes (7)	yes
Tesoro	Prudhoe Bay	13.867% 26,000 BPD	(2)In-value + $.35 Bbl + field costs (3)($17.76648)	Yes-six years after date of 1st delivery, every two years thereafter	Yes 60 days	10/1/1985-1/1/1995	yes (7)	yes
Chevron	Prudhoe Bay	9.6% 18,000 BPD	(2)In-value + $.30 Bbl + field costs (3)($17.71648)	Yes-every two years	Yes 60 days	5/30/1984-1/1/1995	yes (7)	yes
GVEA	Prudhoe Bay	2.667% 5,000 BPD	(2)In-value + $.30 Bbl + field costs (3)($17.71648)	no	Yes 60 days	7/1/1985 - 6/30/1995	yes (7)	no
PetroStar/ Chevron (pending Legislative approval)	Kuparuk River	19.198% 6,000 BPD (2,000 P/S, 4,000 Chv) with option for 500/b Petro Star increase to 6,500 BPD total	(2)PBU in value + $.35 premium for P/S; $.50 premium for Chv + Kuparuk field costs - (Kuparuk P/L tariff and TAPS quality bank adjustment)	Yes-every two years	P/S Yes 60 days; Chv 90 days	12/1/1986-9/30/1996	yes(5) (8)	no

(1) Due to field fluctuations and decline, all quantities for the purchase of royalty oil are expressed as a percentage of daily royalty oil production. However, Mapco receives 35,000 bpd regardless of fluctuating production.

(2) Prudhoe producers' prices as initially reported for royalty purposes. These prices will be subsequently adjusted to reflect the outcome of Amerada Hess litigation. In-value was $17.41648 in December 1985, Exhibit B was $17.61921. Prudhoe field costs were $0.70.

(3) Price per barrel billed in January, 1986.

(4) Mapco's Exhibit B is a pre-payment towards the final resolution of Amerada Hess.

(5) Petro Star agrees to escrow $1.12 per barrel of royalty oil purchased, as a pre-payment towards the final resolution of Amerada Hess.

(6) Interest on retroactive payment is prime rate then charged by Chemical Bank of NY + 1 1/4%.

(7) Interest on retroactive payment is higher of: 1) prime rate at Bank of America, SFO + 3%; or (2) rate of return as is realized from time to time in the investment of the State of Alaska's general fund.

(8) Interest as specified in Amerada Hess settlement or judicial resolution.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2-26-86

REQUEST

Bill/Resolution No. : HB 559
Title : Kuparuk Royalty Oil Sale to Petrostar/Chevron

Sponsor : Governor
Requestor : Oil & Gas
Date of Request : 02-25-86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Petroleum Management

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	1,151.1	1,067.4	1,067.4	907.3	771.5

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Note: Revenue computations by calendar year instead of fiscal year.

See attached

Prepared by : Jim Eason
Division : Oil & Gas
Phone : 762-4246
Date : 2-26-86

Approved by Commissioner : Mark D Ashley Deputy
Agency : Natural Resources
Date :

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor.
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

ANALYSIS
Fiscal Note HB 559

Approval of the proposed Petrostar/Chevron will result in the state's receipt of approximately $7.5 million in premium payments over the term of the contract. Approximately 16,756,670 barrels of oil will be delivered under the contract, with Chevron's respective share being 11,171,002 barrels, and Petrostar's share being 5,585,668 barrels. Chevron will pay a premium above the "in value" amount of $.50 per barrel, while Petrostar's premium will be $.35 per barrel for its net barrels. Chevron's share of this premium will total $5,585,501 over the life of the contract (contract ends September 30, 1996), and Petrostar's respective contribution will be $1,954,984. All amounts calculated are expressed in "nominal"dollars, and the analysis assumes contract deliveries commence December 1, 1986 and ends September 30, 1996.

Revenue Projects

Calendar Year	
92	655.5
93	592.0
94	528.8
95	475.4
96	323.0
Total	7,539.4

RESIDENCY STATUS
OF PETRO STAR INC. EMPLOYEES

AS OF JANUARY 1, 1986

Walter Alexander	10 years
Fred Ambuehl	3 years
Alan Armbruster	12 years
Karen Boswood	10 years
Earl Burgess	23 years
Robert Burgess	23 years
Douglas Chapaios	Lifetime Resident
Greg Davis	Lifetime Resident
Sandra Davis	Lifetime Resident
Jo Ann Ford	Lifetime Resident
Walter Gore	2 years
Andy Greenblatt	10 years
Kent Herman	9 years
Stephen Lewis	17 years
Ken Lincoln	28 years
Kristi Linse	5 years
Patricia Marcopulos	5 years
Steve Moeller	15 years
Jim Morris	12 years
Dawn Mullin	2 years
Shawn Mullin	2 years
John Peep	9 years
Lars Peterson	2 years
Loretta Porter	Lifetime Resident
Kathy Rogers	23 years
Dee Roberts	22 years
Mark Stack	Lifetime Resident
Julie Wright	Lifetime Resident

MAJOR CONTRACTORS USED BY PETRO STAR INC.
SINCE FORMATION

AAA Communications	Fairbanks
Acme Electric	Fairbanks
Airtite Insulation	Fairbanks
Aerolaska	Fairbanks
Alaska Aerofuel	Fairbanks
Alaska Contracting	Fairbanks
Alaska Controls	Anchorage
Alaska Freighters	Fairbanks
Alaska West Express	Fairbanks
Aurora Drilling	Fairbanks
Aurora North Fuels	Fairbanks
C&S Mechanical	Fairbanks
CATCO	Anchorage
Chase Arctic Pumping & Thawing	Fairbanks
City Electric	Fairbanks
D-8 Construction	Fairbanks
Daniel Construction Co.	Anchorage
Dycon, Inc.	Fairbanks
Earth Movers	Fairbanks
Fairbanks Machine & Steel	Fairbanks
Fairbanks Pumping & Thawing	Fairbanks
Filco Oil & Gas	Fairbanks
Forward Alaska Joint Venture	Anchorage
Frontier Transportation	Fairbanks
Hector's Welding	Fairbanks
Industrial & Commercial Const.	Fairbanks
Jackovich	Fairbanks
Kittrell Plumbing	Fairbanks
Lynden Transport	Fairbanks
Na-Cor Services	Redmond, Wa.
NC Machinery	Fairbanks
OceanTech	Anchorage
Rampart Floors	Fairbanks
Ray's Electric	Fairbanks
Schuchart & Associates	Seattle
Seattle Boiler Works	Seattle
Sims Mechanical	Fairbanks
Steel Fabricators	Anchorage

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

HB 559

Agreement for the sale and purchase of state royalty oil between the State of Alaska and Petro Star, Inc. and Chevron U.S.A., Inc., dated December 9, 1985

Relationship between Petro Star and Chevron. Chevron will sell the royalty oil it purchases under the contract to Petro Star at TAPS Pump Station #1, and will repurchase the oil at the TAPS terminus at Valdez.

Petro Star will use as refinery charge Chevron's volume of royalty oil sold under the contract. After Petro Star processes the oil there will remain a portion of oil or oil products which will be shipped through TAPS, and sold by Petro Star to Chevron at Valdez. The quantity will approximate Chevron's purchase volume under the royalty oil contract.

Volume. Approximately 6,500 barrels per day (bpd) of Kuparuk River Unit royalty oil, of which a maximum of 2,500 bpd will be sold to Petro Star and about 4,000 bpd will be sold to Chevron. Petro Star initially will take approximately 2,000 bpd, and will have the option to increase its take by Nov. 1, 1987 to the maximum quantity of approximately 2,500 bpd.

Price. The total price to be received by the state consists of the following:

1. The Prudhoe Bay in value price.
2. A 35 cent per barrel premium for Petro Star.
3. A 50 cent per barrel premium for Chevron.

Petro Star matched the highest premium offered by any existing in-state refiner, and Chevron offered the highest premium for export purchase.

Price Adjustments. Petro Star has agreed to escrow $1.12 per barrel in an interest-bearing account to be credited against future Amerada Hess adjustments. The department has agreed to a ceiling retroactive Amerada Hess price adjustment of $2.50 per barrel of royalty oil purchased.

Price Adjustments (Continued). The tariff charge for the Kuparuk Pipeline and the applicable TAPS quality bank adjustment are deducted from the sale price of the oil.

Price Reopener. Any time after two years from the date of first delivery of royalty oil to Petro Star and Chevron, the state or either of the purchasers may exercise the price reopener clause upon giving a one month written notice. Two years after a new purchase price becomes effective, that price will be subject to renegotiation under the price reopener provision of the contract.

Term. Delivery of oil will commence the first day of the first month seven months after the contract is approved by the legislature and the governor. The contract terminates Sept. 30, 1996.

In-State Processing and Best Efforts. Petro Star will process not less than 85% of the total royalty oil sold under the agreement. Petro Star also agrees to use its "best efforts" to produce and market in Alaska an amount of refined petroleum products from its refinery near North Pole, not less in volume than 23% of the total royalty oil sold under the agreement.

Reporting. Petro Star will be required to provide the department a quarterly statement showing the quantity of refined products it produced and marketed in Alaska over that period.

Security. Petro Star will provide a letter of credit worth 60 days of oil, and Chevron will provide a letter of credit worth 90 days of oil. In the event of default by Petro Star, Chevron agrees to purchase Petro Star's volume on five days notice.

Default. Should Chevron default in its share of the agreement, Petro Star could continue to receive its portion of oil under the agreement. Petro Star could also increase its take of oil to include all or part of the Chevron volume upon agreement with the commissioner to meet specified requirements.

Should Petro Star default, continuation of the disposal to Chevron would be at the commissioner's discretion, and would be contingent on Chevron's agreement to process the oil at its Nikiski refinery.

In-State Benefit Analysis. Petro Star is its own distributor of refined products, having purchased North Pole Fuel. Petro Star has also received financial backing from the Arctic Slope Regional Corporation in exchange for an ownership interest of 30 percent in the company.

In-State Benefit Analysis (Continued). Petro Star officials say the company is marketing much of its present refinery production at prices lower than those charged by MAPCO. Refinery production, based on crude oil purchased under contract from Sohio, is about 1,000 bpd. Examples of lower market prices include heating oil sales to five rural villages and to construction companies operating on the North Slope. Petro Star officials also believe that recent favorable changes in MAPCO's product prices, which are said to be at a three-year low, were influenced by their company's prospective and present operations.

While the price discounts mentioned by Petro Star are only on the order of pennies per gallon, a one cent decrease in the price of a gallon of refined product that could be made from 1,000 bpd translates to an annual consumer savings of about $153,000.

However, the extent to which a royalty oil disposal to Petro Star may maintain or extend these price reductions cannot be readily determined. DNR anticipates no more than modest favorable impacts on the price of refined products as a result of the sale to Petro Star.

The department's decision to proceed with this contract is largely based on the need to foster regional competition among in-state refiners and provide additional in-state benefits that result from in-state refining, and to provide equity of access to royalty oil among existing refiners.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

ESTIMATED PRODUCTION AND SALES FOR NORTH SLOPE ROYALTY OIL (9)

	ESTIMATED TOTAL PRODUCTION (BARRELS PER DAY)						ESTIMATED ROYALTY (BARREL PER DAY)						ESTIMATED SALES OF ROYALTY OIL (BARRELS PER DAY)								
YEAR	(1) TOTAL PRUDHOE	(1) TOTAL KUPARUK	(1) TOTAL LISBURNE	(1) TOTAL ENDICOTT	(1) TOTAL MILNE PT.	TOTAL	PRUDHOE ROYALTY	KUPARUK ROYALTY	LISBURNE ROYALTY	ENDICOTT ROYALTY	MILNE PT. ROYALTY	TOTAL ROYALTY	AAPCO	(2) BP/A	(3) TESORO (OLD)	(4) TESORO (NEW)	(5) CHEVRON	(6) COMPETITIVE SALE 12-11-84	(7) PETRO/CHEVRON (PROPOSED)	(8) COMPETITIVE SALE 2-4-86 (PROPOSED)	ROYALTY IN VALUE
1985	1,350,000	180,000			3,000	1,733,000	193,750	22,500			375	216,625	35,000	5,167	47,333	26,867	18,600	65,000			18,658
1986	1,350,000	220,000			30,000	1,800,000	193,750	27,500			3,400	224,650	35,000	5,167	47,333	26,867	18,600	65,000	6,000	18,000	22,833
1987	1,350,000	220,000	50,000		30,000	1,850,000	193,750	27,500	6,250		5,400	232,900	35,000	5,167	47,333	26,867	18,600		8,500		31,233
1988	1,376,000	220,000	60,000	50,000	30,000	1,736,000	172,000	27,500	7,500	7,000	5,100	219,400	35,000	4,587	42,197	23,951	16,517		8,500		30,753
1989	1,183,000	220,000	70,000	100,000	25,000	1,598,000	147,875	27,500	8,750	14,000	4,500	202,625	35,000	3,965	36,278	20,504	14,196		8,500		84,262
1990	1,018,000	187,000	80,000	100,000	20,000	1,405,000	127,250	23,375	10,000	14,000	3,630	178,225	35,000	3,393	31,218	17,646	12,216		5,325		77,227
1991	920,000	159,000	90,000	100,000	15,000	1,292,000	115,000	19,875	11,250	14,000	2,700	163,825	35,000	3,093	28,458	16,086	11,136		4,698		69,354
1992	846,000	135,000	100,000	100,000	13,000	1,194,000	105,750	16,875	12,500	14,000	2,700	151,825	35,000	2,820	25,944	14,644	10,152		3,989		56,724
1993	772,000	122,000	100,000	95,000	10,000	1,099,000	96,500	15,250	12,500	13,300	1,800	139,350	35,000	2,573	23,674	13,382	9,264		3,605		50,452
1994	704,000	109,000	100,000	75,000	10,000	1,008,000	88,250	13,625	12,500	10,500	1,800	126,675	35,000	2,353	21,650	12,238	8,472		3,220		43,741
1995	646,000	98,000	90,000	70,000	10,000	914,000	80,750	12,250	11,250	9,800	1,800	115,850	35,000						2,895		77,103
1996	591,000	89,000	80,000	65,000	0	825,000	73,875	11,125	10,000	9,100	0	104,100	35,000						2,630		64,470
1997	541,000	80,000	72,000	60,000	0	753,000	67,625	10,000	9,000	8,400	0	95,025	35,000								59,025
1998	498,000	72,000	65,000	55,000	0	690,000	62,250	9,000	8,125	7,700	0	87,075	35,000								53,075
1999	458,000	65,000	58,000	50,000	0	631,000	57,250	8,125	7,250	7,000	0	79,625	35,000								48,625
2000	421,000	58,000	52,000	45,000	0	576,000	52,625	7,250	6,500	6,300	0	72,675	35,000								37,675
2001	387,000	52,000	47,000	40,000	0	526,000	48,375	6,500	5,875	5,600	0	66,350	35,000								31,350
2002	357,000	47,000	42,000	20,000	0	466,000	44,625	5,875	5,250	2,800	0	58,550	35,000								23,550
2003	328,000	42,000	38,000	10,000	0	418,000	41,000	5,250	4,750	1,400	0	52,400	35,000								17,400
2004	302,000	38,000	34,000	0	0	374,000	37,750	4,750	4,250	0	0	46,750									46,750
2005	278,000	34,000	31,000	0	0	343,000	34,750	4,250	3,875	0	0	42,875									42,875
2006	255,000	31,000	28,000	0	0	314,000	31,875	3,875	3,500	0	0	39,250									39,250
2007	235,000	28,000	25,000	0	0	288,000	29,375	3,500	3,125	0	0	36,000									36,000
2008	216,000	25,000	20,000	0	0	261,000	27,000	3,125	2,500	0	0	32,625									32,625
2009	199,000	20,000	15,000	0	0	234,000	24,875	2,500	1,875	0	0	29,250									29,250
2010	183,000	15,000	10,000	0	0	208,000	22,875	1,875	1,250	0	0	26,000									26,000
2011	168,000	10,000	0	0	0	178,000	21,000	1,250	0	0	0	22,250									22,250
2012	155,000	0	0	0	0	155,000	19,375	0	0	0	0	19,375									

(1) DOE ESTIMATE OF FIELD PERFORMANCE, DECEMBER 1985.

(2) BP/A'S TEN-YEAR CONTRACT COMMENCED JULY 1, 1985. QUANTITY IS 2.667% OF DAILY PRUDHOE ROYALTY OIL.

(3) TESORO'S CONTRACT IS CURRENTLY AT ITS MAXIMUM QUANTITY OF 24.533% OF DAILY PRUDHOE ROYALTY OIL. THE CONTRACT EXPIRES JANUARY 1995.

(4) ON OCTOBER 1, 1985 TESORO COMMENCED DELIVERIES UNDER 12/9/85 PRUDHOE CONTRACT WHICH HAS A MAXIMUM QUANTITY OF 15.86% OF DAILY PRUDHOE ROYALTY OIL AND EXPIRES JAN. 1, 1995.

(5) CHEVRON'S CONTRACT CALLS FOR A MAXIMUM QUANTITY OF 9.6% OF DAILY PRUDHOE ROYALTY OIL. THE CONTRACT EXPIRES JANUARY 1, 1995.

(6) DELIVERIES COMMENCED APRIL, 1985 FOR 50,000 BPD OF PRUDHOE BAY UNIT ROYALTY OIL AND 15,000 BPD OF KUPARUK RIVER UNIT ROYALTY OIL, AND WILL CONTINUE FOR ONE YEAR AS A RESULT OF THE DEC. 11, 1984 COMPETITIVE SALE AND THE SUBSEQUENT KUPARUK SOLICITATION. PRIOR TO THAT TIME THIS OIL REMAINED "IN VALUE."

(7) A PROPOSED PETRO STAR/CHEVRON CONTRACT WILL BE SUBMITTED TO THE LEGISLATURE FOR APPROVAL FOR SALE OF 8,500 BPD ROYALTY OIL FROM THE KUPARUK RIVER UNIT. PETRO STAR/CHEVRON INITIALLY WOULD PURCHASE 6,000 BPD. THE CONTRACT IS EXPECTED TO COMMENCE IN LATE 1986 AND EXPIRE SEPTEMBER 30, 1996.

(8) ON FEBRUARY 4, 1986 THE STATE WILL SELL BY COMPETITIVE BID APPROXIMATELY 18,000 BPD FOR A SIX-MONTH TERM COMMENCING JUNE 1, 1986.

(9) Includes only fields in, or planned for production in the near future.

HB

5611

HOUSE

COMMITTEE REPORT

(9)

Date referred: 2/11/86

FURTHER REFERRALS: FINANCE

DATE: 3/12/86

The RESOURCES Committee has considered HB 561

"An Act relating to public use cabins; and providing for an effective date.

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with CS HB 561 (Resources) [XX] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [X] letter of intent
[X] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Cato Bettie Cato

Pearce Irene Pearce

Sund

Herrmann Adelheid Herrmann

F. Kay Wallis

SIGNING OTHER RECOMMENDATIONS:

M.W. Miller No Rec

Miller (NP)

Jenkins No Rec.

Thomson NO REC

F. Kay Wallis No Rec

Wallis

Co-Chairman Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 03-13-86

REQUEST

Bill/Resolution No. : HB 561
Title : Establishing an Alaskan Recreation Cabin Program

Sponsor : Rep. Clocksin
Requestor : House Resources
Date of Request : 03-13-86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Parks & Recreation Mgmt

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-	6.6	10.0			
TRAVEL	-	2.5	2.5			
CONTRACTUAL	-	48.3	44.4			
SUPPLIES	-	42.0	43.0			
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		99.4	99.9			
CAPITAL						
REVENUE		72.0	96.0			

FUNDING : (Thousands of Dollars)

GENERAL FUND		99.4	99.9			
FEDERAL FUNDS						
OTHER						
TOTAL		99.4	99.9			

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Personal Services - inspection & maintenance of cabins by field personnel
Contractual - rehabilitation of public cabins using local labor.
Supplies - building materials for cabins.

Revenue - FY 87 based on operation of 24 cabins; FY 88 - 36 cabins.

Prepared by : Fred Vreeman
Phone : 762-4506
Division : Parks & Outdoor Recreation
Date : 03-13-86

Approved by Commissioner : [signature] Deputy
Date : 3/13/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

PUBLIC USE CABINS

Letter of Intent for CSHB 561 (Res)

Resources Committee

It is the intent of the Legislature that citizens of the State and visitors to the State be able to enjoy the natural environment to the greatest extent possible. The establishment of new public cabins may be particularly appropriate in areas of heavy recreational interest or use. In more remote locations public use cabins should be established only after consideration of the weather and physical environment in the surrounding area, and the reasons the area is most often used. Public cabins should be established on a priority basis with more remote cabins being added to the system only after a specific need for a public facility is determined. Such need shall be based on Department findings and public comment from users and residents of the area.

Representative Dick Shultz, Co-Chair



Alaska Environmental Lobby, Inc.

204 N. Franklin Street, Suite 3 Juneau, Alaska 99801 907-586-2345

TESTIMONY ON HB 561 - Public Use Cabins
2/28/86 by Kate Pendleton

Good morning. The Alaska Environmental Lobby would like to express it's support of HB 561. We feel this bill would provide for convenient, remote recreational experiences while minimizing resource conflicts.

Much of the driving force behind the land disposal program is the public's desire for those "fabled" Alaskan experiences. Everyone wants a wilderness cabin. While the remote parcel and homestead programs will fill some of that demand, the number and size of land disposals in the future will eventually eliminate the wilderness character and locally deplete the subsistance resources which draw people to these areas. And as a practical matter, only a relative few will be able to take advantage of these programs.

An alternative way to provide recreational opportunities is to adopt HB 561. This would provide the public with a smorgasboard of superior recreational opportunites presently unavailable. Unlike most remote parcels which will probably remain undeveloped for many years and remote cabins which are frequently used only a fews days each year, public use cabins will likely receive substantial use.

The popular US Forest Service Cabin system which was begun in 1954 now includes over 200 cabins statewide. Many of the cabins are used 12 months of the year and are accessible by a variety of means such as hiking, cross-country skiing, dog mushing, snow machines, boat and plane. In 1985, statistics for cabins in Yakutat, Admiralty Island and the Juneau area report use by 4,321 visitors. There was heavy request for the very popular walk-in cabins that are close to Juneau. The Forest Service has not been building cabins because of the high cost, but does work with volunteer groups such as the Taku Conservation Society to build and maintain cabins within the system. The current charge for overnight use of a cabin is $10.

We envision a system with a wide variety of cabins and locations, something to appeal to all, from hikers looking for a weekend trip near Anchorage to those seeking a week long, remote experience deep in the heart of the Alaska Range. A carefully planned and managed system would be able to provide, for a reasonable fee, use of a cabin and an opportunity to take advantage of Alaska's vast and beautiful public lands.

Actually the environmental and resource impacts at each public cabin site will probably be greater than for less used private lands. However, management problems could be resolved through adequate language addressing issues such as location and resource impacts. We are especially concerned about cabin use in areas of critical habitat. In addition, we would hope that serious consideration would be given to the impact of motorized vehicle access in these areas. We would expect the Commissioner to consider the wishes and concerns of local residents and users, and other state residents by means of a public comment, as the system is developed.

The increasing interest and demand for recreational opportunities demonstrates the desire for a public cabin system around the state for short-term use. We feel that HB 561 would provide for those needs and make good use of the abandoned and unauthorized cabins in the state.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

The Honorable Dick Shultz
Co-Chair, Resources Committee
Alaska State House
P.O. Box V
Juneau, AK 99811

February 28, 1986

Dear Representative Shultz:

I am writing to suggest some amendments to HB 561, on public use cabins. Yesterday my staff presented these amendments to your staff and to Representative Clocksin's, and I am now submitting them for the Committee's consideration.

The department strongly supports the concept of the proposed bill. After adopting regulations for privately owned cabins on state land in 1984, we have made an important new beginning for cabins on state land. The bill before you will allow the people of the state to make beneficial use of abandoned and unauthorized cabins and may help reduce recreational and land disposal pressures statewide. The bill also provides our citizens better access to public lands and resources.

Contrary to a recent newspaper editorial, there is no conflict between HB 561 and SB 269, also under consideration by the committee. The intent of HB 561 is to establish a public cabins system for general public use, a very different goal from that in SB 269. Although the department does not support the passage of SB 269, I believe that both bills could be passed by the Legislature without conflict.

The purpose of each suggested amendment is given on the attached pages. I have also provided a marked-up copy of the original bill incorporating the proposed amendments.

Please contact me or my staff if you have questions or comments.

Sincerely,

Bob Arnold
for Esther C. Wunnicke
Commissioner

cc: Rep. Clocksin

10-J9LH

HB 561
DNR AMENDMENT 1

The following amendments are technical in nature and are not intended to change the intent of the bill. They are suggested to facilitate interpretation of the statute and management of the public cabins system.

1. p. 1, line 11: delete "all"

2. p. 3, line 10: delete "shall", insert "may"

3. p. 3, line 17: after "the cost of" insert "administering reservations and"

4. p. 3, line 24: add a new sentence: "Under state contracting procedures the commissioner may contract for the construction, rehabilitation, operation, and maintenance of cabins within the system."

5. p. 4, line 2: add at the end of the line: "cabins designated by the commissioner"

6. p. 4, line 3: delete "cabins"

7. p. 4, line 5: add after "future": "and meet minimum standards for safety and liability requirements"

8. p. 4, line [illegible] delete "and" and insert "or"

9. p. 4, line 6, delete "cabins"

2/28/86

HB 561
DNR AMENDMENT TWO

The following amendment will allow the department to operate the public cabin system on a program receipts basis.

p. 3, line 13, after "cabins": insert "and may recover program costs through the administration of a program receipts account, subject to legislative approval"

2/28/86

HB 561
DNR AMENDMENT THREE

This amendment would allow the department discretion to select the most appropriate cabins for designation into the public use cabin system with public participation, and to develop a system plan as needed.

p. 3, line 23, after "System.": insert "The commissioner shall evaluate existing and potential cabin sites and conduct resource planning and public review in the process of designating cabins into the system. The commissioner may develop an operational plan for the renovation, construction, or removal of cabins."

2/28/86

HB 561
DNR AMENDMENT FOUR

This amendment allows the Department of Fish and Game to control the designation of public use cabins within refuges, critical habitats, and sanctuaries. This amendment, proposed by the Department of Fish and Game, is acceptable to DNR.

p. 3, line 26: add at the end "The commissioner shall obtain the concurrence of the Department of Fish and Game in establishing and managing a public use cabin system on state game refuges, critical habitat areas, and game sanctuaries established pursuant to AS 16.20."

2/28/86

DNR MARK-UP 2/28

Introduced: 2/11/86
Referred: Resources and Finance

BY CLOCKSIN, SZYMANSKI, SHULTZ, PETTYJOHN, BOUCHER, COTTEN, DAVIS, GOLL, GRUENBERG KOPONEN, M.M.MILLER, NAVARRE, PIGN. BERI AND POURCHOT

IN THE HOUSE

HOUSE BILL NO. 561

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to public use cabins; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE. The legislature determines that it is in the public interest to create the Alaska Public Use Cabin System and place within that system [all] cabins owned or built by the state on the reserved or unreserved public land of the state and that the system be managed for the benefit of the residents of the state and visitors to the state.

* Sec. 2. AS 41.21.020(a) is amended to read:

(a) The Department of Natural Resources shall

(1) develop a continuing plan for the conservation and maximum use in the public interest of the scenic, historic, archaeologic, scientific, biological, and recreational resources of the state;

(2) plan for and develop a system of state parks and recreational facilities, to be established as the legislature authorizes and directs;

(3) acquire by gift, purchase, or transfer from state or federal agencies, or from individuals, corporations, partnerships or associations, land necessary, suitable and proper for roadside, picnic, recreational, or park purposes;

(4) control, develop and maintain state parks and recreational areas;

(5) provide for the acquisition, care, control, supervision, improvement, development, extension, and maintenance of public recreational land, and make necessary arrangements, contracts, or commitments for the improvement and development of land acquired under AS 41.21.010 - 41.21.040;

(6) adopt, in accordance with this section and the Administrative Procedure Act (AS 44.62), regulations governing the use and designating incompatible uses within the boundaries of state park and recreational areas to protect the property and to preserve the peace;

(7) cooperate with the United States and its agencies and local subdivisions of the state to secure the effective supervision, improvement, development, extension, and maintenance of state parks, state monuments, state historical areas, and state recreational areas, and secure agreements or contracts for the purpose of AS 41.21.010 - 41.21.040;

(8) encourage the organization of state public park and recreational activities in the local political subdivisions of the state;

(9) provide for consulting service designed to develop local park and recreation facilities and programs;

(10) provide clearing-house services for other state agencies concerned with park and recreation matters; and

(11) perform other duties as are prescribed by executive order or by law;

(12) maintain memorials to Alaska veterans located in state parks;

(13) adopt, in accordance with the Administrative Procedure Act (AS 44.62), regulations governing the use of the Chena River State Recreation Area and designating incompatible uses within the

boundaries of the Chena River State Recreation Area in accordance with AS 41.21.490;

(14) manage the cabins owned by the state under AS 41.21.880.

* Sec. 3. AS 41.21 is amended by adding a new section to article 7 to read:

Sec. 41.21.880. PUBLIC USE CABINS. (a) There is established a system of public use cabins to be managed by the commissioner and called the Alaska Public Use Cabin System. The commissioner shall publicize the existence of the public use cabins and [may] shall establish a reservation system for the cabins.

(b) The commissioner [may] shall establish a fee schedule for the use of the cabins and may recover program costs through the administration of a program receipts account, subject to legislative approval. In establishing the fees, the commissioner shall consider

(1) the cost to the state of building, renovating, and maintaining the cabins;

(2) the cost of [administering reservations and] collecting the fees charged for use of the cabins; and

(3) the public interest.

(c) Cabins that were constructed on public land without proper authority and that have been or will be acquired by the state may be renovated by the commissioner for inclusion in the Alaska Public Use Cabin System. (insert DNR amendment thus) Within available appropriations, the commissioner may build or acquire cabins for inclusion in the cabin system. Under state contracting procedures the commissioner may contract for the construction, rehabilitation, operation and maintenance of cabins with the system.

(d) The commissioner may cooperate with local groups and with state and federal agencies to maintain and improve the cabin system. (insert DNR amendment four)

(e) The commissioner shall make an annual report to the legislature on the costs, occupancy rates, fees collected, the number and location of cabins in the system, and other information considered

relevant by the commissioner.

(f) As used in this section, "public use cabins" include cabins designated by the commissioner (1) [cabins] that were constructed on state land without proper authority of law and that have been acquired by the state in the past or that are acquired by the state in the future and meet minimum standards for safety and liability requirements, [and] or

(2) [cabins] owned by the state and used for temporary recreational use.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Bradley
3/4/86

Original sponsors: Clocksin, Szymanski, Shultz, et al

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 561 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to public use cabins; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE. The legislature determines that it is in the public interest to create the Alaska Public Use Cabin System and place within that system cabins owned or built by the state on the reserved or unreserved public land of the state and that the system be managed for the benefit of the residents of the state and visitors to the state.

* Sec. 2. AS 41.21.020(a) is amended to read:

(a) The Department of Natural Resources shall

(1) develop a continuing plan for the conservation and maximum use in the public interest of the scenic, historic, archaeologic, scientific, biological, and recreational resources of the state;

(2) plan for and develop a system of state parks and recreational facilities, to be established as the legislature authorizes and directs;

(3) acquire by gift, purchase, or transfer from state or federal agencies, or from individuals, corporations, partnerships or associations, land necessary, suitable and proper for roadside, picnic, recreational, or park purposes;

(4) control, develop and maintain state parks and recreational areas;

(5) provide for the acquisition, care, control, supervision, improvement, development, extension, and maintenance of public recreational land, and make necessary arrangements, contracts, or commitments for the improvement and development of land acquired under AS 41.21.010 - 41.21.040;

(6) adopt, in accordance with this section and the Administrative Procedure Act (AS 44.62), regulations governing the use and designating incompatible uses within the boundaries of state park and recreational areas to protect the property and to preserve the peace;

(7) cooperate with the United States and its agencies and local subdivisions of the state to secure the effective supervision, improvement, development, extension, and maintenance of state parks, state monuments, state historical areas, and state recreational areas, and secure agreements or contracts for the purpose of AS 41.21.010 - 41.21.040;

(8) encourage the organization of state public park and recreational activities in the local political subdivisions of the state;

(9) provide for consulting service designed to develop local park and recreation facilities and programs;

(10) provide clearing-house services for other state agencies concerned with park and recreation matters; and

(11) perform other duties as are prescribed by executive order or by law;

(12) maintain memorials to Alaska veterans located in state parks;

(13) adopt, in accordance with the Administrative Procedure Act (AS 44.62), regulations governing the use of the Chena River State Recreation Area and designating incompatible uses within the

boundaries of the Chena River State Recreation Area in accordance with AS 41.21.490;

(14) manage the cabins owned by the state under AS 41.-21.880.

* Sec. 3. AS 41.21 is amended by adding a new section to article 7 to read:

Sec. 41.21.880. PUBLIC USE CABINS. (a) There is established a system of public use cabins to be managed by the commissioner and called the Alaska Public Use Cabin System. The commissioner shall publicize the existence of the public use cabins and may establish a reservation system for the cabins.

(b) The commissioner shall establish a fee schedule for the use of the cabins. The commissioner may recover program costs through the administration of a program receipts account, subject to legislative approval. In establishing the fees, the commissioner shall consider

(1) the cost to the state of building, renovating, and maintaining the cabins;

(2) the cost of administering reservations and collecting the fees charged for use of the cabins; and

(3) the public interest.

(c) Cabins that were constructed on public land without proper authority and that have been or will be acquired by the state may be renovated by the commissioner for inclusion in the Alaska Public Use Cabin System. Within available appropriations, the commissioner may build or acquire cabins for inclusion in the cabin system. Under state contracting procedures the commissioner may contract for the construction, rehabilitation, operation, and maintenance of cabins within the system.

(d) The commissioner may cooperate with local groups and with

state and federal agencies to maintain and improve the cabin system. The commissioner shall evaluate existing and potential cabin sites and conduct resource planning and public review in the process of designating cabins into the system. The commissioner may develop an operational plan for the renovation, construction, or removal of cabins.

(e) In establishing and managing a public use cabin system on state game refuges, critical habitat areas, and game sanctuaries established under AS 16.20, the commissioner shall obtain the concurrence of the commissioner of fish and game.

(f) The commissioner shall make an annual report to the legislature on the costs, occupancy rates, fees collected, the number and location of cabins in the system, and other information considered relevant by the commissioner.

(g) In this section, "public use cabins" includes cabins designated by the commissioner that

(1) were constructed on state land without proper authority of law and that have been acquired by the state in the past or that are acquired by the state in the future and meet minimum standards for safety and liability requirements; or

(2) are cabins owned by the state and used for temporary recreational use.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

M E M O R A N D U M

TO: Representative Herrmann
Representative Shultz
Co-Chairs
Resources Committee

DATE: February 24, 1986

FROM: Representative Don Clocksin
Majority Leader

SUBJECT: HB 561

Thank you for granting my request that the Resources Committee conduct hearings on House Bill 561, "an act relating to public use cabins."

This legislation would create the Alaska Public Use Cabin System to be managed by the Department of Natural Resources for recreational uses by the residents of Alaska and visitors to the state. Explanatory materials are attached.

Attachments

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM February 18, 1986

SUBJECT: Public use cabins
(HB 561)

TO: Representative Don Clocksin

FROM: Richard A. Bradley
Legislative Counsel

John Ellis has requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill states legislative purpose in the establishment of a public use cabin system.

Section 2 of the bill amends AS 41.21.020(a), a section dealing with the duties of the Department of Natural Resources with regard to AS 41.21, Parks and Recreational Facilities. A new paragraph (14) is added relative to the subject of this bill.

Section 3 of the bill provides the substantive provisions of the bill. It adds a new section, Sec. 41.21.880, to article 7, an article relating to "trails, footpaths, and campsites." The section establishes the "Alaska Public Use Cabin System."

Sec. 880(b) provides that the commissioner may establish a fee schedule for use of cabins within the "system". Considerations to be used in setting the fees are provided.

Sec. 880(c) provides that the commissioner may renovate the cabins "constructed on public land without proper authority". The authority to build or acquire cabins is also granted.

Sec. 880(d) permits the commissioner to "cooperate with local groups" and with other state and federal agencies to maintain and improve the "system."

Sec. 880(e) requires the commissioner to make an annual report to the legislature on stated aspects of the "system."

Sec. 880(f) defines the term "public use cabins".

Section 4 of the bill provides an immediate effective date.

If I may be of further assistance, please advise.

RAB:csh
c5/078

Lawmakers consider state cabin system

By BRUCE SCANDLING
The Associated Press

JUNEAU — Backpackers, fishermen and hunters would be able to hang their hats in about 100 state-owned recreational cabins around Alaska, if a new legislative proposal becomes law.

The state program would be modeled after a cabin system run by the U.S. Forest Service in Alaska, said Sen. Joe Josephson, an Anchorage Democrat who is one of the sponsors of the proposal.

But such a program could face tough opposition from Senate President Don Bennett, a Fairbanks Republican who has fought against the state takeover of once-private cabins.

Josephson said he planned to unveil his proposal Wednesday. An identical measure was introduced Tuesday in the House by Majority Leader Don Clocksin, D-Anchorage, and more than a dozen co-sponsors.

The proposal would create the Alaska Public Use Cabin System and set aside money for the state to refurbish private cabins it has recently taken over.

A 1984 regulation change said people who built so-called "trespass cabins" on state land could register them in exchange for lifetime title to the property.

But unregistered cabins are being taken over by the state, under that rule. The state could eventually take over dozens of unclaimed cabins, said Neil Johannsen, director of the state Division of Parks.

He said the proposal would require about $100,000 annually to set up a reservation system — and pay for remodeling cabins. About 15 to 20 cabins could be added to the system every year, Johannsen said. It would cost between $10 and $15 a night to reserve a cabin.

Johannsen pegged the average remodeling cost at $2,000 to $3,000 per cabin, and said the program could pay for itself within three years.

Many of the newly refurbished cabins would be located in Southcentral Alaska, since that's where dozens of unclaimed cabins are located, Johannsen said.

"The trick is to initially make sure you concentrate on quality cabins in high-demand areas," he said.

Of the 177 forest service cabins in Alaska, 140 are located in the Tongass National Forest of Southeast Alaska. The rest are in the Chugach National Forest of Southcentral Alaska.

Johannsen said the state already operates about 30 cabins in Alaska, several near Nancy Lake north of Anchorage. But the emphasis is turning away from building new cabins, which cost up to $15,000 each.

The state could operate as many as 100 cabins within five years, under the plan, Johannsen said.

Josephson said the proposal should not scare people who already own cabins in Alaska.

"Cabin owners will be unaffected by this bill, and even those with trespass cabins are being granted lifetime permits," he said. "Only unclaimed trespass cabins and those with expiring permits will become part of the system."

Bennett said it's not the state's business to takeover and manage cabins once owned by private citizens.

"I think we're better off to let the people own them and decide if they want to rent them out," Bennett said Tuesday. "That way, it doesn't cost anything to manage."

Burglar strikes home twice, steals gold dust and jewelry

crimestoppers/274-STOP

A house along Rabbit Creek Road was burglarized twice between November 25 and November 30. Both times entry was made through windows. The burglar was apparently familiar with the dog, the alarm system and the contents of the home.

Taken in the first burglary was a small, square, blue safe with wheels, weighing between 100 to 150 pounds. In the latter break-in, a second safe was opened. More than 200 ounces of gold dust, gold nuggets and silver ingots, along with a quantity of coins, watches, jewelry and personal items were stolen with the two safes.

To date, Crimestoppers information has led to the arrest of 22 people in connection with more than 100 burglaries. Should your information lead to an arrest and indictment, you would be eligible for up to $1,000 in cash.

Official works on bid to hold Alaska summit

The Associated Press

JUNEAU — Alaska's still in the running as a site for the next summit meeting between President Ronald Reagan and Soviet Leader Mikhail Gorbachev, but it's too early to count on winning the campaign, says an Alaska official in Washington.

The Senate State Affairs Committee last week passed a resolution encouraging an Alaska summit after hearing a status report on the bid from John Katz, Gov. Bill Sheffield's Washington representative.

Katz told the committee over a telephone hook-up that State Department officials have slowed efforts to find a site because the summit, originally planned for sometime this summer, has been postponed until autumn.

"They cautioned us not to be too optimistic or too raise

Native
New Life Fellowship
presents
NATIVE MUSICALE
FUR RENDEZVOUS 1986
Tuesday, February 18
Wednesday, February 19
Thursday, February 20
Friday, February 21
7:30 P.M.
WEST HIGH SCHOOL AUDITORIUM
1700 Hillcrest Drive
New Program Each Night
SONGS IN NATIVE LANGUAGES
INSTRUMENTAL AND VOCAL GROUPS
NATIVE TESTIMONIES

ALCOHOL AND DRUG AWARENESS HOUR
featuring
CLANCY
director of the Midnight Mission
In Los Angeles, California
Monday, February 24, 1986
8:00 p.m.
Anchorage Hilton Hotel
For more information about this special event, contact:
THE ALASKA COUNCIL, 349-6602
ALASKA COUNCIL ON PREVENTION OF ALCOHOL AND DRUG ABUSE INC
1521 OLD SEWARD HWY SUITE A • ANCHORAGE ALASKA 99518
United Way

Fri 2/14/86 Daily News

opinion

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly
Publisher

Howard Weaver
Managing Editor

Suzan Nightingale
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

Catching the right kind of cabin fever

The "duck shack" controversy never will be resolved to everyone's satisfaction, but here's a program for using some of the so-called trespass cabins built on state land that makes sense. Under terms of identical bills introduced in the House and Senate this week, about 100 of the cabins would be converted into public recreation cabins managed by the state..

A 1984 change in state regulations mandated that people who built the cabins on state land could register them in exchange for lifetime title to them. Cabins that were not registered are being taken over by the state.

The program would be similar to the U.S. Forest Service's highly popular recreation cabin system. The 177 Forest Service cabins are so popular with campers here they're booked solid every summer. There's no reason why the state can't expect a similar response to its recreational cabins — especially since many are located in southcentral Alaska, where demand is greatest.

Division of Parks Director Neil Johannsen says the full 100 cabins could be open to the public within five years. Although Mr. Johannsen estimates it would cost between $2,000 and $3,000 to refurbish each cabin, he predicts the cabins will pay for themselves within three years with $10-$15 nightly fees.

New cabins are so expensive — about $15,000 apiece — that the conversion of duck shacks into modest recreational cabins is a real bargain. The state shouldn't pass up this opportunity to put these abandoned duck shacks to good use.

CHAPTER 65.
PERSONAL USE CABIN PERMITS

Section
10. Applicability
20. Applications
30. Application fee
40. Renewals
50. Permit decision
60. Density within state game refuges and critical habitat areas
70. Conflicting applications
80. Ownership and removal
90. Conditions of permit
100. Appeals
110. Public use cabins
900. Definitions

11 AAC 65.010. APPLICABILITY. This chapter applies to the issuance of personal use cabin permits for unauthorized cabins placed on state land before August 1, 1984. Cabins built on state land after August 1, 1984 will not be authorized. A permit under this chapter does not convey an interest in state land or establish a preference right for the lease or purchase of state land. It is the express intent of this chapter to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use. (Eff. 12/16/84, Reg. 92)
Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.020. APPLICATIONS. (a) An application for a permit to use an existing cabin on state land must

(1) be received by the department during a 60-day application period established by the department and announced by public notice; the application period will be open for one time only by geographic location;

(2) be made on a form provided by the department;

(3) be complete and correct to the best of the applicant's knowledge;

(4) contain a description of the cabin and site;

(5) contain a description of the proposed use of the cabin and site;

(6) be signed and dated by the applicant or, in the case of a group of applicants, by the applicant's authorized agent.

(b) An application made under this section must include the following:

(1) a $25 application fee;

(2) identification of the cabin site on a United States Geological Survey map at 1:63,360 scale (1" to 1 mile); or its equivalent;

(3) a photograph (print) of the cabin taken within the past year;

(4) documentation demonstrating historic use and occupancy;

(5) documentation of any prior investments in the cabin; and

(6) any other information required by the director. (Eff. 12/16/84, Reg. 92)
Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.030. APPLICATION FEE. The application fee required by 11 AAC 65.020 is not refundable. However, if the department determines that an application made under this chapter should have been made under a different chapter, the application fee may be applied to an application made under another chapter. (Eff. 12/16/84, Reg. 92)
Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.040. RENEWALS. (a) Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before the expiration of the permit.

(b) A permit will be renewed if the continued use complies with 11 AAC 65.050 – 11 AAC 65.900.

(c) A permit issued and renewed under this chapter is valid only during the lifetime of the original holder of that permit. (Eff. 12/16/84, Reg. 92)
Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.050. PERMIT DECISION. (a) The department will issue and renew an applicant's cabin permit if the director finds in writing that the application is for a cabin that complies with AS 38.04.035(4) and does not conflict with the public interest criteria as described in (b) of this section.

(b) No permit will be issued for a cabin on state land

(1) where a subdivision or agricultural sale has occurred or is anticipated or scheduled during the term of the permit;

(2) where homesteads are proposed for future disposal, unless the disposal is not anticipated within the term of the permit;

(3) if the land has been selected under the authority of the Municipal Entitlement Act, AS 29.18;

(4) in state park units, land managed under an interagency land management agreement, land classified as reserved use, or where the issuance of a permit would interfere with significant public recreational use;

(5) that is shoreland, submerged land, or tideland;

(6) that serves an important ecological function, or is especially sensitive to human disturbance, as determined by the department;

(7) located close to a center of population;

(8) where material extraction, timber sales, mining, or intensive recreational facility development is scheduled or anticipated during the term of the permit;

(9) overlying a mining location or mineral lease if the department determines that a cabin may interfere with development of the mining location or mineral lease during the term of the permit;

(10) under application or proposed for a public facility or highway right-of-way unless it is clear that the intended use will not occur during the term of the permit;

(11) for which a Native allotment application is on record with the Bureau of Land Management, or on land validly selected under the Alaska Native Claims Settlement Act;

(12) accessible by road within legislatively designated state game refuge or critical habitat area;

(13) in a legislatively designated state game sanctuary;

(14) where the cabin is used as a permanent residence; or

(15) if the department determines that the proposed use may more appropriately be allowed under another chapter of this title. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.060. DENSITY WITHIN STATE GAME REFUGES AND CRITICAL HABITAT AREAS. Densities and configurations of public cabins within state game refuges and critical habitat areas will be determined based upon habitat type, wildlife seasonal use patterns, wildlife sensitivity to disturbance, and the applicant's proposed type and season of use. Permits will be issued if the density and configuration of cabins and associated uses are not found in conflict with (1) the public interest during the term of the permit, (2) the maintenance or enhancement of fish and wildlife populations and their habitats, or (3) general public use. (Eff. 12/16/84, Reg. 92)

Authority: AS 16.20.050 AS 38.04.900
AS 16.20.250 AS 38.05.020
AS 38.04.035 AS 41.21.020

11 AAC 65.070. CONFLICTING APPLICATIONS. If the director determines that two or more applications for the same cabin are equally valid, the department will choose the permittee by lottery from the valid applications received. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.080. OWNERSHIP AND REMOVAL. (a) Except as otherwise provided in (b) or (c) of this section, a cabin subject to this chapter is the personal property of the

permittee, and remains so for the term of the permit.

(b) A cabin not applied for under this chapter becomes the property of the state if not removed within 60 days after notice by the department.

(c) Upon revocation or expiration of a permit, including renewals of it, or if an application was made but no permit issued, the cabin becomes the property of the state if not removed within 60 days after notice by the department. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.090. CONDITIONS OF PERMIT. A permit issued under this chapter

(1) is valid for a period of up to six years;

(2) may include site-specific conditions of use, such as seasonal use restrictions determined appropriate by the department and, on game refuges and critical habitat areas, by the Department of Fish and Game;

(3) is not valid unless signed by an authorized individual within the Department of Fish and Game if the permit is for a cabin located within a state game refuge or critical habitat area;

(4) is not valid unless an annual rental fee of $100 is timely received by the department;

(5) is not valid unless the permit is signed by the applicant or applicant's authorized agent; and

(6) will contain the following general stipulations and conditions:

(A) the permit does not convey an interest in state land or grant any preference right for the lease or purchase of state land;

(B) the permit is revocable immediately upon violation of any of its terms, conditions, or stipulations, upon nonpayment of fees, or upon failure to comply with any other applicable statutes and regulations;

(C) the permit is not transferable or assignable;

(D) the permit must be displayed in general view on the cabin at all times;

(E) no additions to or enlargements of the cabin are allowed, except for routine maintenance and upkeep;

(F) all garbage and foreign debris brought into, or placed on, the cabin site must be removed by the permittee unless otherwise authorized by the director;

(G) the state must be held harmless from all claims, demands, suits, loss, liability, and expense for injury to, or death of, a person arising out of or connected with the uses covered by the permit;

(H) if the cabin is destroyed or damaged beyond repair, rebuilding the structure is not authorized without prior written approval of the director; this approval may not be unreasonably withheld;

(I) the cabin may not be used for a commercial activity or as a permanent residence;

(J) no new road or trail across state land is authorized under the permit, and access must be consistent with the provisions of 11 AAC 96;

(K) no restriction or interference with public access to or across state land is allowed;

(L) the permit does not relieve the permittee of the responsibility of securing other necessary state, federal, or local permits or authorizations; and

(M) the department reserves the right to require measures to mitigate disruptions to public use of the area, and to fish and wildlife populations and their habitats, which may be created by the permittee, or occur as a direct result of the permittee's failure to comply with the terms of the permit or any

applicable law. (Eff. 12/16/84, Reg. 92)
Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.100. APPEALS. (a) The department will publish notice of its intent to issue a permit under this chapter in a newspaper of general circulation in the vicinity of the area covered by the permit.

(b) A person who disagrees with a permit decision by the director, or a permit decision by the Department of Fish and Game in the case of a cabin on a state game refuge or critical habitat area, may appeal to the commissioner of the department or to the commissioner of the Department of Fish and Game, as appropriate. The appeal must be in writing and must be received at the office of the appropriate commissioner within 30 days after the date of the decision. A decision of a commissioner is the final administrative decision, but does not exhaust an appellant's judicial remedies. (Eff. 12/16/84, Reg. 92)
Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.110. PUBLIC USE CABINS. As of December 17, 1984, the department will consider making available for public use, any cabin for which a permit is not issued under this chapter. (Eff. 12/16/84, Reg. 92)
Authority: AS 38.04.035
AS 38.05.020

11 AAC 65.900. DEFINITIONS. As used in this chapter,

(1) "applicant" means an individual or group of individuals at least 18 years old who have resided in Alaska not less than one year immediately preceding the date of application and does not include an organization, association, or corporation;

(2) "authorized agent" means an individual who is the designated agent for a group of individuals who are applicants, and is one of the applicants;

(3) "cabin" means a permanent structure in existence as of August 1, 1984, consisting of at least four walls and a roof, and used for eating and sleeping; the word includes a separate sanitary device or outhouse, and storage area or cache;

(4) "commercial" means an action or operation that generates income from the buying, selling, renting, bartering, or trading of goods or services relating to use of a cabin;

(5) "department" means the Department of Natural Resources;

(6) "director" means the director of the division of land and water management of the Department of Natural Resources;

(7) "shoreland" means land belonging to the state, which is covered by nontidal water that is navigable under the laws of the United States and extends up to the ordinary high water mark as modified by accretion, erosion, or reliction;

(8) "state" means the State of Alaska;

(9) "submerged land" means land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or futher as may be properly claimed by the state; and

(10) "tideland" means land which is periodically covered by tidal water between the elevations of mean high and mean low tides. (Eff. 12/16/84, Reg. 92)
Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

FACT SHEET
CONCERNING PERSONAL USE CABIN PERMITS

1. Q. - Who can apply for a permit?

   A. - Any group or person 18 or older who claims an interest in an existing cabin may apply. Applications from corporations, agencies, or organizations will not be accepted.

2. Q. - What if I own a cabin used for a permanent residence or a commercial purposes such as set netting, guiding or air charter, can I get a permit?

   A. - Not under this program. However the state will accept an application under other available state programs such as a negotiated lease.

3. Q. - Will permits be issued to all persons in a group who apply for one cabin?

   A. - Only one permit will be issued. The group must designate an agent. The group may change the agent at any time provided the new agent was one of the original group applicants.

4. Q. - How many cabins or improvements can I apply for?

   A. - Only one per applicant(s) (Permits will include an outhouse and cache as well as the cabin).

5. Q. - Do I have to be a resident to apply?

   A. - Yes, you must have resided in Alaska at least one year prior to filing an application.

6. Q. - Will permits be issued within a state park unit?

   A. - No.

7. Q. - How much money will a permit cost me?

   A. - Initial application fee - $25.00 (non-refundable)
   Annual rental fee - $100.00/year

8. Q. - If I have a cabin and apply do I automatically get the permit?

   A. - Not necessarily. A permit will be issued if your continued use is found not to conflict with the public interest during the period of the permit.

9. Q. - If I apply and my application is denied, can I appeal the decision?

   A. - You will have the opportunity to appeal any denial.

10. Q. - If I do not appeal the denial, or my appeal is rejected, can I remove the cabin?

A. - Yes. You will be given a sixty-day period to remove the cabin. If the cabin is not removed, the department will pursue abatement action.

11. Q. - When can I apply for this permit?

A. - When specific areas to be opened to permitting have been identified and advertised by the department.

12. Q. - Will there be any future application periods?

A. - Not after the initial sixty-day filing period allowed each geographic area. This is a one-time only opportunity for those that claim an interest in a cabin in each of these areas. Permits for use of other authorized public use cabins will be available later.

13. Q. - If I receive a permit, how long is it good for?

A. - Permits will be issued for a maximum of six years. They may be renewed only if at each renewal they are determined by the state not to conflict with the public interest. This six year renewal procedure is good for the lifetime of the permittee(s) only.

14. Q. - Can permits be transferred to someone else?

A. - No.

15. Q. - Must I convey my cabin to the State of Alaska?

A. - No. The cabin remains the personal property of the permittee for the term of the permit. If the permit is revoked, expires or is not renewed, the cabin becomes the property of the state if not removed within 60 days of notice by the department.

16. Q. - What if several people own an interest in the cabin?

A. - All may apply, however, the group must designate a responsible agent. The group may change its agent at any time, but the agent must be one of those on the original application.

17. Q. - What if two or more conflicting applications are received for the same cabin?

A. - Only one permit will be issued. The state will apply a list of criteria to each application to determine who should receive the permit. If the criteria determination is unsuccessful, there will be a drawing to determine the successful permittee.

18. Q. - Can I build a new cabin, or add on to an existing one once I receive my permit?

A. - No. Only routine maintenance of an existing cabin is allowed.

19. Q. - If my improvement is destroyed after the permit is issued, can I rebuild it?

A. - Yes, but only with the concurrence of the Department of Natural Resources.

20. Q. - Does the permit grant me any rights to the land that the cabin is on?

A. - No, the permit is an authorization to use the cabin but does not convey any interest or preference to the land.

21. Q. - If I do not apply, then what?

A. - Your cabin will be an unauthorized use of state land and will be converted to public use or removed. Prior to that action, you will be given sixty days to remove the cabin.

22. Q. - What happens if I built my cabin after August 1, 1984?

A. - A permit will not be issued and abatement action will be taken by the department.

23. Q. - What happens to cabins not applied for - can I apply for one of them?

A. - Not at this time. However, permits will be issued at a later date for use of public cabins under a separate program.

24. Q. - Does this program apply to all state lands?

A. - Yes, although only specific geographic areas will be opened to applciation at one time. This will reduce the workload at any one time and allow for permits to be issued in a timely manner.

APPLICATIO FOR PERSONAL USE CABIN PERMIT

NAME OF APPLICANT OR AGENT_____ AGE:____ DATE OF APPLN:_____

MAILING ADDRESS: _____ PHONE: (H) _____

_____ (W) _____

other applicants claiming an interest (if any);_____

_____

_____

_____

CABIN LOCATION: _____Section, _____ Township_____ Range, _____Meridian.

NAME OF DESIGNATED AREA (IF ANY) _____.

CABIN: size of primary cabin;_____ _____.

when constructed;_____length of use____ _____.

other structures present and size;_____

_____

primary purpose of cabin;_____.

seasons of use requested_____fall,_____winter,_____spring,_____summer.

DOCUMENTATION REQUIRED OF APPLICANT:

*Photo (print) of improvement taken in the past 12 months.

*1:63,360 USGS map showing cab

*Documentation of use, i.e., receipts of use or transportation, correspondence, affidavits from others attesting to your use, etc.

*Application filing fee $25.00.

If a prior application for this cabin has been made under another state program, please check the program(s); State - _____preference right, _____lease, _____permit;

Federal - ____homestead, ____T&M site, ____Native allotment, ____headquarters site.

I certify that the cabin I am applying for under this permit was constructed prior to August 1, 1984. I also certify that the cabin will not be used for any commercial purposes or as a permanent residence.

I further agree to indemnify the State against and hold it harmless from any and all claims, demands, suits, loss, liability and expense for injury to or death of persons and damage to or loss of property arising out of or connected with the uses covered by this application and permit and I certify that statements made by me in this application are true and correct.

_____
Name of Applicant (Please Print)

_____
Signature of Applicant or Registered Agent Date

SUBMIT APPLICATION BY MAIL OR IN PERSON TO: Any one of the Division of Land and Water Managment offices shown below.

Department of Natural Resources
Southcentral Regional Office
Pouch 7-005
3601 "C" Street, 10th Floor
Anchorage, Alaska 99510
276-2653

Department of Natural Resources
Southeast Regional Office
Pouch MA
400 Willoughby Center, Suite 400
Juneau, Alaska 99811

Department of Natural Resources
Northcentral Regional Office
4420 Airport Way
Fairbanks, Alaska 99701

FOR DNR USE ONLY
APPLICATION REQUIREMENT CHECKLIST

_____ proper form with all required information and signed.
_____ application received _____.
_____ $25.00 application fee.
_____ 1:63,360 U.S.G.S. map or equivalent showing cabin location.
_____ photograph (print) of cabin taken within past the year.
_____ documentation of historic use or occupancy.
_____ documentation of prior investments in cabin.

SPECIAL STIPULATIONS/CONDITIONS

(A) this permit does not convey an interest in state land or grant any preference right for the lease or purchase of state land;

(B) the permit is revocable immediately upon violation of any of its terms, conditions, stipulations, non-payment of fees, or upon failure to comply with any other applicable statutes and regulations;

(C) the permit is not transferable or assignable;

(D) the permit must be displayed in general view on the cabin at all times;

(E) no additions to or enlargements of the cabin are allowed except for routine maintenance and upkeep;

(F) all garbage and foreign debris brought onto, or placed on the cabin site shall be removed by the permittee unless otherwise authorized by the director;

(G) the state shall be held harmless from any and all claims, demands, suits, loss, liability, and expense for injury to, or death of, persons arising out of or connected with the uses covered by this permit;

(H) if the cabin is destroyed or damaged beyond repair, rebuilding the structure is not authorized without prior written approval of the director;

(I) the cabin may not be used for a commercial activity or as a permanent residence;

(J) no new roads or trails across state land are authorized under the permit and access must be consistent with the provisions of 11 AAC 96;

(K) no restrictions or interference with public access to or across state land is allowed;

(L) this permit does not relieve the permittee of the responsibility of securing other necessary state, federal or local permits or authorizations;

(M) the department reserves the right to require measures to mitigate disruptions to public use of the area, fish and wildlife populations and their habitats, which may be created by the project, or occur as a direct result of the permittee's failure to comply with the terms of this permit or any applicable law; and

(N) the permit may include site-specific conditions of use such as seasonal use restrictions determined appropriate by the department and, on game refuges and critical habitat areas by the Department of Fish and Game.

(O) other special stipulations or conditions:

PERSONAL USE CABIN PERMIT

ADL/LAS Number: _____ Cabin Site Number: _____

Issued to: _____

Address: _____

_____

CABIN LOCATION: _____ Section, _____ Township, _____ Range, _____ Meridian.

DESCRIPTION OF CABIN: _____

_____

_____

TERM OF PERMIT: _____

_____ Seasonal use only, from _____ until _____ of each year.

I hereby agree to all stipulations and conditions included in this permit and further agree that upon revocation or expiration of this permit including renewals, the cabin herein permitted shall become the property of the State of Alaska if not removed within 60 days of notice by the department.

_____ _____

DATE PERMITTEE's SIGNATURE

_____

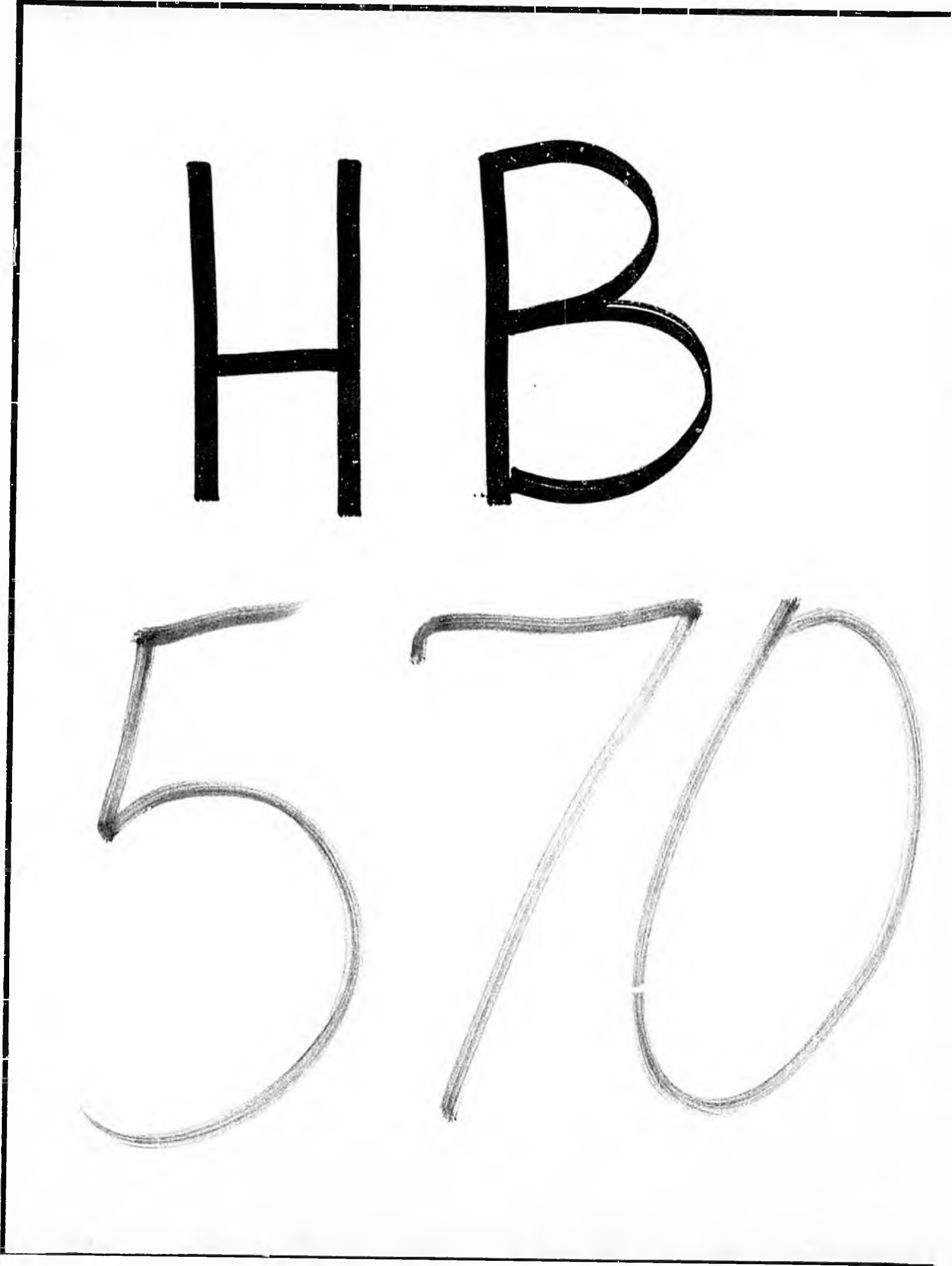
Permission is hereby granted to the above permittee to occupy and use the cabin herein described for the purposes stated, upon the conditions and stipulations identified in this permit.

_____ _____

DATE REGIONAL MANAGER, DIV. OF LAND AND WATER MANAGEMENT
DEPARTMENT OF NATURAL RESOURCES

_____ _____

DATE DEPARTMENT OF FISH AND GAME


HB
570

Original sponsors: Taylor, Ringstad,
Jenkins and Frank

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 570 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to state forest management."

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

* Section 1. AS 38.05 is amended by adding a new section to article 4 to read:

Sec. 38.05.122. FOREST MANAGEMENT AGREEMENT. (a) Notwithstanding AS 38.05.110 - 38.05.120, the commissioner may enter into an agreement with a person for the management on a sustained-yield basis of state forest land and state land commercially valuable for forest development. The commissioner may consult with other state agencies regarding the provisions of the agreement but the concurrence of another agency of the state is not required.

(b) The commissioner shall establish the limitations, conditions, and terms of the sale and each agreement shall set out the silvicultural specifications that govern the harvest, regeneration, and management of state land that is the subject of the agreement.

(c) The commissioner may provide in the agreement for

(1) the harvest of state timber and the prices to be charged for the timber;

(2) the construction and maintenance of roads within the area that is the subject of the agreement;

(3) the preparation of reports determined necessary by the commissioner;

(4) incentives to the person entering into the agreement, including the extension of the term of the agreement;

(5) penalties for a violation of a provision of the agreement including termination of the agreement;

(6) other limitations, conditions, and terms determined in the public interest by the commissioner.

(d) The commissioner shall provide the legislature with

(1) a copy of the agreement within 15 days of the execution of the agreement or within the first 15 days of the next regular session of the legislature;

(2) a report by March 1 on the areas of the state harvested, regenerated, and managed under an agreement during the preceding calendar year.

* Sec. 2. (a) The commissioner of natural resources shall request proposals for the management of not more than 200,000 acres of commercial forest land under AS 38.05.122 as enacted in sec. 1 of this Act. The proposals shall be requested within one year of the effective date of this Act and each agreement shall be in effect within 18 months of the effective date of this Act.

(b) Each agreement must

(1) mandate an annual allowable harvest level compatible with the principles of sustained yield of the timber resources within the agreement area;

(2) be for a period of 20 years subject to amendment by mutual agreement of the commissioner and the contractor regarding an extension or shortening of the term or a decrease in the area of the agreement.

(c) The commissioner shall evaluate a proposal received under this section on the basis of

(1) a potential contractor's ability to process the forest products in the state;

(2) the professional and financial qualifications of the

potential contractor;

(3) the stumpage offered to the state; and

(4) the experience of the potential contractor with silviculture in the state.

HOUSE
COMMITTEE REPORT

3/12

(9)

Date referred: 3/5/86

FURTHER REFERRALS: FINANCE

DATE: March 10, 1986

The RESOURCES Committee has considered SSHB 570

"An Act relating to state forest management."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with CS SSHB 570 (Resources) [XX] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent

[ ] first fiscal note

[ ] new fiscal note

[X] zero fiscal note

FIRST

SIGNING DO PASS:

Cato Bette Cato

Pearce Drue Pearce

Thompson David W. Thompson

Miller (NP) M.W. Miller

Shultz Dick Shultz

SIGNING OTHER RECOMMENDATIONS:

Adelheid Herrmann, No Rec
Herrmann

[illegible] none
Jund

F. Kay Wallis do not pass
Wallis unless amended

Dick Shultz
Co-Chairman Shultz

Mike Nolan

276-0700

FMA legislation

Section 1. The Commissioner of Natural Resources may enter into an agreement with any person for the management of state land on a sustained yield basis and for carrying out all operations necessary for such management and, without restricting the generality of the foregoing, every such agreement shall set out,

a) the silviculture specifications that are to be observed and performed in respect of the harvesting, regeneration and tending of the state lands that are subject to the agreement; and

b) the standards of regeneration to be achieved on the state lands that are subject to the agreement,

and may provide for,

c) the cutting of state timber and prices therefore;

d) the construction, reconstruction and maintenance of any road necessary for such management and operations;

e) the preparation of plans. rules, reports and any other documents necessary for such management and operations;

f) incentives to an operator, including but not limited to, increases in the life of the agreement, for operations consistent with the harvesting, reforestation and other management objectives set out in the initial agreement.

g) penalties, including, but not limited to the termination of the agreement, for such persons conducting operations inconsistent with the harvesting, reforestation and other management objectives set out in the initial agreement.

h) any other terms and conditions which the Commissioner and such person may agree upon that are not inconsistent with the regulations,

The Commissioner of Natural Resources shall,

a) present each agreement to the legislature within 15 days of commencement of the agreement, if the legislature is in session, or at the beginning of the next session if the legislature is not in session,

b) present the legislature, by March 1 of every year, with a report in respect of the areas harvested, regenerated and tended under an agreement for the previous year,

Section 2. The Commissioner of Natural Resources shall offer an agreement for the management of state forest land as designated in AS xx.xx.xxx.

The agreement shall,

a) include at least 200,000 acres of commercial state forest land in the Tanana Valley State Forest,

b) be offered for proposal within one year of the effective date of this act,

c) commence within six months of the selection of a contractor unless the contractor and the state agree that additional time is necessary to negotiate the agreement,

d) mandate an annual allowable harvest level compatible with the sustained yield of forest resources within the agreement area,

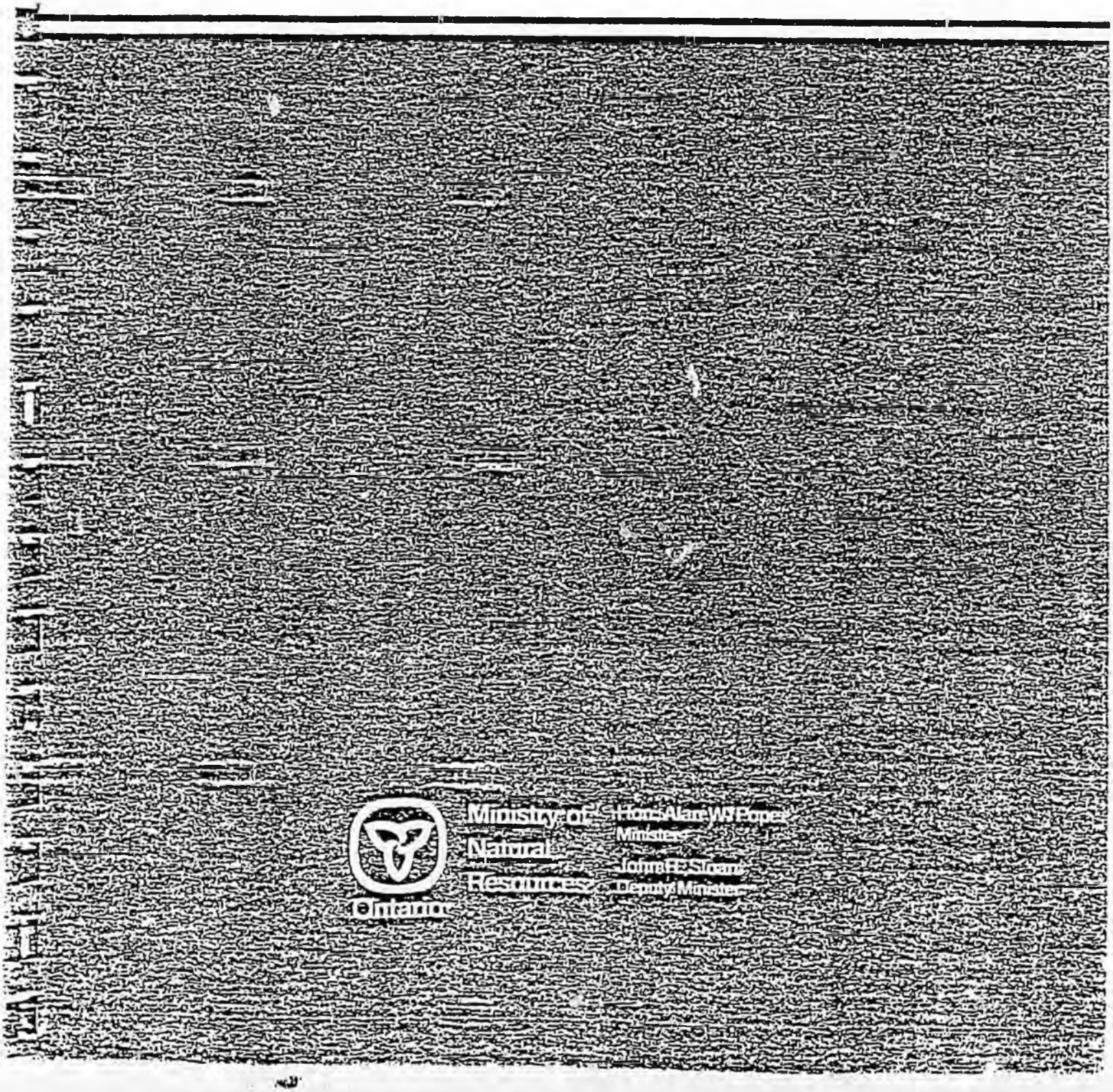
e) be for a period of 20 years with provisions for extension, reduction or termination of the length or area of the agreement.

f) be offered to the public in the form of a request for proposal. Proposals will be considered on the basis of

1) the operator's ability to process the forest products in-state
2) professional and financial qualifications of the operator
3) proposed stumpage

Great Lakes Forest Products Limited
Trout Lake Forest

Forest Management Agreement
#502300



Forest Management Agreement

AGREEMENT made in quintuplicate this 24 day of September, 1984 under The Crown Timber Act, as amended, and The Public Lands Act.

BETWEEN: THE MINISTER OF NATURAL RESOURCES for the Province of Ontario, hereinafter referred to as the "Minister",

- AND -

GREAT LAKES FOREST PRODUCTS LIMITED, a company incorporated under the laws of Canada, having its head office in the City of Thunder Bay in the Province of Ontario, hereinafter referred to as the "Company".

WHEREAS the Minister and Company desire to enter into a forest management agreement under The Crown Timber Act in order to provide for a continuous supply of forest products from the lands designated in Schedule "A" to this agreement for the wood processing plant of the Company at Dryden, Ontario, and to ensure that the forests on such lands are harvested and regenerated to produce successive crops of timber on a sustained yield basis;

NOW THEREFORE in consideration of the mutual promises, convenants and other provisions contained in this agreement, the Minister and the Company agree each with the other as follows:

1. INTERPRETATION

1. In this agreement, the Minister and Company agree that,

1) "AAC" means the annual allowable cut calculated by area in accordance with the provisions of the forest management manual;

2) "agreement area" means the lands designated in Schedule "A" to this agreement, and the said lands are sometimes referred to as the "Trout Lake Forest";

3) "annual plan" means an annual plan that is prepared under this agreement;

4) "costs" means expenditures that are directly related to the work performed and that would not otherwise have been incurred but for the performance of the work;

5) "final felling" means the removal of the last seed or shelter trees after regeneration has been effected under a shelterwood system or the removal of trees under a clear cut system;

6) "forest management manual" means the manual that is approved by the Minister and that specifies the general structure and contents of management documents;

7) "ground rules" means an agreement having a term of five years entered into under paragraph 14;

8) "management documents" means the management plan, operating plan, annual plan, and ground rules;

9) "management plan" means a management plan having a term of twenty years that is prepared under this agreement;

10) "NSR lands" means lands referred to in Schedule "B" to this agreement;

11) "nursery stock" has the same meaning as in section 1(d) of The Forestry Act;

12) "operating plan" means an operating plan having a term of five years that is prepared under this agreement;

13) "parties" means the Minister and Company;

14) "person" includes a corporation and a firm;

15) "production forest lands" means the part of the

agreement area that is used in the calculation of AAC;

16) "sustained yield" means the growth of timber that a forest can produce and that can be cut to achieve a continuous approximate balance between the growth of timber and timber cut;

17) "treatment" means any silvicultural treatment exclusive of a final felling;

18) "working group" means an aggregate of forest stands, including potential forest areas assigned to this category, having the same predominant species, and managed under the same rotation and silvicultural system;

19) "year" means a period commencing with the date of execution of this agreement by both parties and terminating with the 31st day of March next following and there after means a period commencing with the 1st day of April and terminating with the 31st day of March next following; and

20) "yield" means the volume of timber that may be harvested.

2. PERIOD AND AREA

2. Subject to the other provisions of this agreement, the parties agree that this agreement shall have a term of twenty years commencing with the 24th day of Oct., 1984.

3. The parties agree that this agreement applies in respect of the agreement area that is comprised of,

a) a productive area of 7365.8 square kilometres;

b) an unproductive area of 2392.7 square kilometres; and

c) a total area of 9758.5 square kilometres.

3. AUTHORITY TO HARVEST

4. (1) Subject to The Crown Timber Act and the regulations, the provisions of this agreement and the management documents, the Company is authorized to cut the following species of Crown

timber for the period of this agreement on the agreement area:

All Species

(2) The Minister reserves the right herein to cut and remove or to cause to be cut and removed, without compensation therefore to the Company, such Crown timber as may be required from time to time for the uses of Ontario.

5. (1) Subject to subparagraph 2, the Company agrees to pay to the Treasurer of Ontario for Crown timber cut under this agreement, in addition to the other Crown charges, the following prices, namely: NIL

For timber cut on the lands designated in Schedule "A",

(2) The prices mentioned in subparagraph 1 shall be subject to review by the Minister at the end of each five-year term of the period of this agreement, and if at the end of any such term it shall appear necessary or desirable that the prices should be adjusted, then such adjustments may be made by agreement between the parties, or, failing such agreement the matter of adjustment shall be referred to arbitration under The Arbitrations Act.

4. MANAGEMENT PLANS

6. (1) Within twelve months of the execution of this agreement, the Company agrees to prepare a management plan in respect of the agreement area in accordance with the forest management manual and to submit it to the Minister for approval.

(2) Within four months after receipt of the management plan, the Minister agrees to either approve the management plan as submitted and notify the Company of such approval or, after

discussion with the Company, notify the Company of the alterations to the management plan that the Minister requires.

(3) Where the Minister notifies the Company of the alterations to the management plan that the Minister requires, the Company, within two months of the date that the Minister gives notice to the Company of the alterations, agrees to make such alterations and to resubmit the altered management plan to the Minister for approval.

(4) Within two weeks of receiving the management plan as altered by the Company in accordance with the notice given by the Minister, the Minister agrees to approve the altered management plan and to give notice to the Company of such approval, and where the Minister fails to give such notice, the altered management plan shall be deemed to have been approved by the Minister upon the expiry of the said period of two weeks.

7. (1) Not later than six months prior to the expiry of the term of a management plan approved or deemed to have been approved under this agreement, the Company agrees to prepare a new management plan in respect of the agreement area in accordance with the forest management manual for the next following term of twenty years and to submit it to the Minister for approval.

(2) The parties agree that the procedure referred to in subparagraphs 2, 3 and 4 of paragraph 6 apply, with the necessary changes, in respect of the new management plan submitted under subparagraph 1.

8. The parties agree that any management plan approved

or deemed to have been approved under this agreement may be amended from time to time by mutual agreement.

9. During the term of a management plan that is approved or deemed to have been approved under this agreement, the parties agree that the agreement area shall be managed in accordance with such plan.

5. OPERATING PLAN

10. (1) Within six months of the execution of this agreement, the Company agrees to prepare an operating plan in accordance with the forest management manual in respect of all operations to be conducted on the agreement area in the first term of five years of the period of this agreement and to submit it to the Minister for approval.

(2) Within two months after receipt of the operating plan, the Minister agrees to either approve it as submitted and notify the Company of such approval, or, after discussion with the Company, notify the Company of the alterations to the operating plan that the Minister requires.

(3) Where the Minister notifies the Company of the alterations to the operating plan that the Minister requires, the Company, within 30 days of the date that the Minister gives notice to the Company of the alterations, agrees to make such alterations and to resubmit the altered operating plan to the Minister.

(4) Within two weeks of receiving the operating plan as altered by the Company in accordance with the notice given by the Minister, the Minister agrees to approve the operating plan and to give notice to the Company of such approval, and where

the Minister fails to give such notice, the altered operating plan shall be deemed to have been approved by the Minister upon the expiry of the said period of two weeks.

11. (1) Not later than six months prior to the expiry of an operating plan approved or deemed to have been approved under this agreement, the Company agrees to prepare a new operating plan in accordance with the forest management manual in respect of all operations to be conducted on the agreement area in the next following term of five years of the period of this agreement and submit it to the Minister for approval.

(2) The parties agree that the procedure referred to in subparagraphs 2, 3 and 4 of paragraph 10 apply, with the necessary changes, in respect of the new operating plan submitted under subparagraph 1.

12. The parties agree that any operating plan approved or deemed to have been approved under this agreement may be amended from time to time by mutual agreement.

13. During the term of an operating plan approved or deemed to have been approved under this agreement, the Company agrees that all operations on the agreement area referred to in such plan shall be conducted in accordance with such plan.

6. GROUND RULES

14. (1) The Company agrees to perform and observe the provisions of the ground rules set out in Schedule "C" commencing with the 24th day of Sept., 1984, and terminating with the 31st day of March 1989.

(2) Not later than eight months prior to the expiry of the ground rules then existing, the parties agree to commence

the preparation of the new ground rules in accordance with the forest management manual for the term of five years next following such expiry and to enter into an agreement in respect of such new ground rules on or before such expiry.

(3) The parties agree that ground rules may be amended in writing at any time or times by mutual agreement provided that the amendments are consistent with the then existing management plan and operating plan.

7. ANNUAL PLAN

15. (1) Upon the execution of this agreement or as soon thereafter as is reasonably practicable, the Company agrees to prepare an annual plan in accordance with the forest management manual in respect of the operations to be conducted on the agreement area in the first year of the period of this agreement and to submit it to the Minister for approval.

(2) Within 30 days after receipt of the annual plan, the Minister agrees to either approve it as submitted and notify the Company of such approval or, after discussion with the Company, notify the Company of the alterations to the annual plan that the Minister requires.

(3) Where the Minister notifies the Company of the alterations to the annual plan that the Minister requires, the Company, within 30 days of the date that the Minister gives notice to the Company of the alterations, agrees to make such alterations and to resubmit the altered annual plan to the Minister.

(4) Within two weeks of receiving the annual plan as altered by the Company in accordance with the notice given by

the Minister, the Minister agrees to approve the annual plan and to give notice to the Company of such approval, and where the Minister fails to give such notice, the altered annual plan shall be deemed to have been approved by the Minister upon the expiry of the said period of two weeks.

16. (1) Not later than the 31st day of October prior to the expiry of an annual plan approved or deemed to have been approved under the agreement, the Company agrees to prepare a new annual plan in accordance with the forest management manual in respect of the operations to be conducted on the agreement area in the year next following such expiry and to submit it to the Minister for approval.

(2) The parties agree that the procedure referred to in subparagraph 2, 3 and 4 of paragraph 15, apply, with the necessary changes, in respect of a new annual plan submitted under subparagraph 1.

17. The parties agree that an annual plan shall relate to a part of the agreement area that is referred to in the then existing operating plan and shall be consistent with such operating plan, the existing ground rules and management plan.

18. The parties agree that an annual plan approved or deemed to have been approved under this agreement may be amended from time to time by mutual agreement.

19. During the term of an annual plan approved or deemed to have been approved under this agreement the Company agrees to ensure that all operations on the agreement area referred to in such plan are conducted in accordance with such plan.

8. ANNUAL ALLOWABLE CUT

20. (1) The Company agrees that in each five-year term of

the period of this agreement the total area of a working group that is cut on the agreement area shall not exceed 110 per centum of the total of the AAC for the working group for such term and shall not be less than 90 per centum of such last mentioned total.

(2) Upon the written application of the Company, the Minister may in writing authorize variations from subparagraph 1 upon such terms and conditions as the Minister may specify, and the Company agrees to perform and observe such terms and conditions.

(3) Where the total area of a working group that is cut on the agreement area in a five-year term exceeds 110 per centum of the total AAC for the working group for such term, the Company, at its expense, agrees to promptly regenerate forests in accordance with the then existing ground rules on any part of the agreement area that is approved by the Minister and is equal in size to the difference between the aforesaid total area and 110 per centum of the aforesaid total AAC. Failure to regenerate will constitute a default of the agreement.

(4) Subject to subparagraph 5, where the total area of a working group that is cut in a five-year term, save and except the first five-year term of this agreement, is less than 90 per centum of the total AAC for the working group for such term, the Company agrees to then pay to the Minister, as liquidated damages and not as a penalty, an amount of money equal to the amount of the stumpage charges then applicable, on the volume of timber equal to the difference between 90 per centum of the

total AAC for the working group for the five-year term and the total volume of timber that is cut in the same five-year term in the working group.

(5) The parties agree that subparagraph 4 shall not apply in respect of Crown timber that is referred to in an existing management plan as surplus.

9. UTILIZATION

21. Where an existing management plan provides that any Crown timber on the agreement area is surplus, the Company agrees that the Minister, after consultation with Company, may take such action as he considers advisable to have such surplus harvested, and the Company also agrees not to claim any property, lien, charge or encumbrance in or on such surplus that is so harvested.

10. TREATMENTS

22. (1) Subject to subparagraph 2, the Minister agrees to pay to the Company for the performance on the agreement area of a treatment set out in column 1 of Schedule "D" at the rate set out opposite thereto in column 2.

(2) The Minister agrees to revise the rates set out in Schedule "D" as of the commencement of each year of the period of this agreement in accordance with the rate of inflation determined by the Minister of Economics, and also agrees to review and readjust, if necessary, the said rates at the end of each five-year term of the period of this agreement.

(3) The Minister agrees to supply and deliver free of charge, to the Company all nursery stock and seeds reasonably required for the performance of a treatment in accordance with

an approved annual plan, and agrees to so deliver the nursery stock and seeds to the area or areas referred to in such plan.

23. Where any increase in yield or AAC for a working group is the result of a treatment that is applied on behalf of the Company at its sole expense, save and except a treatment applied under paragraph 20(3), and such treatment and increase are certified in detail in writing by a registered professional forester on behalf of the Company, the Minister agrees that,

(a) at the time such increase is harvested, the Company shall pay, and the Company agrees to pay, only 10 per centum of the stumpage charges that are then applicable for the volume of such increase, and

(b) he will not dispose of such increase to any other person unless the Company consents in writing or such disposition is made under a provision of this agreement.

11. PRODUCTIVITY AND NSR LANDS

24. Subject to the provisions of this agreement, the Company agrees with the Minister to keep production forest lands reforested in accordance with the ground rules.

25. Where NSR lands are of a site class III or better, as defined in the ground rules, and are, in the opinion of the parties, economically capable of being reforested, the Company agrees to reforest such NSR lands with such species of trees as are compatible with the nature and quality of such NSR lands and the timber required in the Company's plant or plants, and also agrees to so reforest five per centum of the total quantity of such NSR lands in each year of the period of this agreement or at such other rate as the parties agree upon.

26. Where forest on land forming part of the agreement area that is site class III or better, as defined in the ground rules, is destroyed by natural causes after the commencement of the period of this agreement, the parties agree to determine a plan of remedial action.

27. (1) The Company agrees to assess whether or not the stocking of regeneration within the parts of the agreement area that are site class III or better, as defined in the ground rules, is in accordance with the ground rules, and agrees to make such assessment in the fifth year after the trees on such parts are harvested or in the fifth year after such parts are treated in accordance with the ground rules.

(2) Where an assessment made under subparagraph 1 indicates that the said parts are not stocked in accordance with the ground rules, except where such parts have not been treated with a treatment by the Company invirtue of the lack of an appropriation by the Legislature of Ontario, the Company, at its expense, agrees to then reforest such lands in accordance with the ground rules.

28. Where in the Minister's opinion, brush encroachment or any other natural occurrence may inhibit reforestation of any part of the agreement area, the Ministry may give the Company written notice thereof, and the Company agrees to then reforest such parts of the agreement area in accordance with the ground rules.

29. Where injurious insects or diseases or any other natural causes reduce or may reduce the yield or AAC for any working group, the parties agree to determine and implement a

plan of remedial action.

12. SALVAGE

30. (1) Where Crown timber is killed or damaged on the agreement area, the Minister agrees to give notice to the Company of the location of such timber.

(2) Within 30 days of the giving of notice under subparagraph 1, the Company agrees to notify the Minister whether or not the Company desires to salvage the killed or damaged Crown timber, and,

(a) where the Company desires to salvage such timber, the Company agrees to salvage such timber upon such terms and conditions and prices as the parties agree upon, or

(b) where the Company does not desire to salvage such timber, the Company agrees that the Minister may salvage such timber or have such timber salvaged in such manner as the Minister considers advisable and also agrees not to claim any property, lien, charge or encumbrance in or on the salvage timber.

(3) Where the Company fails to give notice to the Minister under subparagraph 2, the Company agrees that it shall be deemed to have given notice to the Minister that it does not desire to salvage the killed or damaged Crown timber.

(4) The Company agrees that the Minister may, after consultation with the Company, permit the cutting of any other Crown timber that should in the interests of economic forest utilization, be cut with any killed or damaged Crown timber to be salvaged under subparagraph 2.

13. ROADS

31. (1) The Minister agrees to pay to the Company,

(a) subject to a maximum of Forty-three Thousand, One Hundred and twenty-eight (43,128) Dollars for each kilometre, for the costs of construction or reconstruction of primary roads on public land on the agreement area in accordance with the annual plan then existing; and

(b) The lesser of seventy-five (75) percentum of actual cost or Sixteen Thousand, One Hundred and Seventy-three (16,173) Dollars for each kilometre, for the costs of construction or reconstruction of secondary roads on public lands on the agreement area in accordance with the annual plan then existing.

(2) The parties agree that a "primary road" is a road that conforms with the specifications set out in Schedule "E" under the column entitled "Primary Road" and that a "secondary road" is a road that conforms with the specifications set out in Schedule "E" under the column entitled "Secondary Road".

(3) Unless the parties agree otherwise, the Minister agrees to annually pay the Company for road construction or reconstruction in accordance with subparagraph 1 at the end of the year.

(4) For the actual maintenance of primary roads and secondary roads that are constructed or reconstructed under this agreement, the Minister agrees to annually pay to the Company Four Hundred and Thirty-one (431) Dollars for each kilometre for the cost of maintenance of such primary roads and secondary roads at the end of each year unless the parties agree otherwise.

(5) The Minister agrees to revise the maximum rates referred to in subparagraphs 1 and 4 as of the commencement of each year of the period of this agreement in accordance with

the rate of inflation determined by the Minister of Economics, and also agrees to review and readjust, if necessary, the said maximum rates at the end of each five-year term of the period of this agreement.

(6) Where the Minister makes a payment to the Company under subparagraph 1, the Company agrees under The Public Lands Act that,

(a) the use and occupation of the primary road or secondary road, as the case may be, in respect of which such payment is made shall be subject to the provisions of The Public Lands Act;

(b) the primary road or secondary road, as the case may be, in respect of which such payment is made shall be open to travel by the public generally; and

(c) notwithstanding any provision of any agreement, permit, licence, lease or any other document to the contrary, every road under the control of the Company or any subsidiary of the Company that connects in any way with the primary road or secondary road, as the case may be, in respect of which such payment is made, shall also be open to travel by the public generally.

14. FINANCIAL

32. (1) The obligations of the Minister to pay monies under this agreement are each subject to the conditions precedent that monies are appropriated therefore by the Legislature of the Province of Ontario.

(2) The Company agrees to submit to the Minister invoices in triplicate setting out all the details of the payments sought under this agreement and containing the written certification of a responsible employee of the Company that the invoice is accurate, true and complete.

(3) The Crown agrees to pay invoices submitted by the Company under this agreement within 30 days after the invoices are received in the Ministry of Natural Resources.

15. EVERGREEN

33. The Minister agrees to determine at the end of each term of five consecutive years of the period of this agreement whether or not the obligations of the Company under the management documents have been performed or satisfactorily performed in such term, and

(a) where in the Minister's opinion such obligations have been performed and where the parties have agreed to an operating plan and ground rules for the next following term of five consecutive years, the Minister agrees to then extend the remaining period of this agreement a further term of five consecutive years, and

(b) where in the Minister's opinion such obligations have not been performed or have not been satisfactorily performed, the Minister agrees to specify a period of time within which the Company may perform the obligations in default, and the Company agrees to perform such last mentioned obligations within the specified period of time, and

(i) where in the Minister's opinion, such last mentioned obligations have been performed within the specified period of time and where the parties have agreed to an operating plan and ground rules for the next following term of five consecutive years, the Minister agrees to then extend the remaining period of this agreement a further term of five consecutive years, and

(ii) where in the Minister's opinion such last mentioned obligations have not been performed within the specified period of time, the Minister on written notice to the Company may terminate this agreement.

16. WITHDRAWALS

34. (1) In the twenty-year period commencing with the 24K

day of April, 1984, terminating with the 31st day of March 2004 and in each consecutive twenty-year period thereafter, if any, the Minister, subject to subparagraph 2, agrees that the total withdrawal of land from a working group that is made by the Minister shall not exceed the product of 20 times 5 per centum of the AAC determined for the first year of the twenty-year period, provided that the Minister may make withdrawals of land from a working group in excess of the aforesaid product, where the Minister is able to replace such excess with comparable forest lands.

(2) In determining the AAC of a working group under subparagraph 1, the parties agree that any increase in the AAC for the working group that is the result of a treatment that is applied by the Company at its sole expense, save and except a treatment applied under paragraph 20(3), shall not be reckoned.

35. Subject to paragraph 34, where an approved operating plan exists, the Company agrees that the Minister, after consultation with the Company, may from time to time withdraw land that is subject to such plan provided that in the Minister's opinion, such withdrawal is in the public interest and will not materially affect the operations under such plan, and each such withdrawal shall be effective upon the giving of notice thereof to the Company.

36. Subject to paragraph 34, where an approved operating plan exists, the Minister, after consultation with the Company, may from time to time withdraw such lands, that are not subject to that operating plan, as the Minister considers advisable in the public interest, and each such withdrawal shall be

effective upon the giving of notice thereof to the Company.

37. Where a withdrawal of lands is made under paragraph 35 or 36, the Company agrees to remove from such lands within such reasonable period of time as is specified in writing by the Minister, all chattels, all portable buildings and structures and such other non-portable buildings and structures, if any, that the Company desires to remove, and the Minister agrees to compensate the Company for,

(a) the reasonable cost of removing the aforementioned things from the withdrawn lands and re-establishing them elsewhere on the agreement area,

(b) the non-portable buildings and structures that are not removed by the Company from the withdrawn lands on the basis of cost less depreciation as defined in the depreciation schedules under the Income Tax Act of Canada, or on such other basis as is mutually agreeable to the parties, and

(c) the cost of all treatments, except final felling, that have been conducted on the withdrawn lands at the sole expense of the Company, save and except all treatments applied under paragraph 20(3), provided that such treatments are certified in writing in detail by registered professional forester on behalf of the Company.

17. ANNUAL REPORT

38. (1) Subject to subparagraph 2, the Company agrees to submit an annual report to the Minister on or before the 30th day of April of each year of the period of this agreement, in respect of the operations conducted on the agreement area in the preceding year.

(2) The Company agrees that the aforesaid annual report shall be prepared in accordance with the forest management

manual.

18. GENERAL

39. The failure of the Minister to insist in one or more instances upon the performance by the Company of any provision of this agreement or the management documents shall not be construed as a waiver of the future performance of any such provision and the obligation of the Company with respect to such future performance shall continue in full force and effect.

40. Where the Company fails at any time to perform any of its obligations under this agreement or the management documents, the Company agrees that the Minister may give notice to the Company stating in detail the default complained of and if the default complained of is capable of being made good, requiring the Company to make good such default within the period of time specified in the notice, and at the expiration of such period of time, the Minister may, if the default complained of has not been made good by the Company,

(a) terminate this agreement on notice to the Company, or

(b) make good such default, and the Company agrees to pay to the Minister, as liquidated damages and not as penalty, the costs of so doing.

41. (1) Any default or delay on the part of the Minister or Company, as the case may be, in the performance or observance of any provision of this agreement or the management documents occasioned by labour disputes, strikes, lock-outs, fire, insects, wind, ice, disease, unusual delay by common carriers

or, without limitation to any of the foregoing, by any cause of any kind whatsoever beyond the control of the Minister or Company, as the case may be, shall not be or be deemed to be a default or delay on the part of the Minister or Company, as the case may be, under this agreement or the management documents.

(2) Where an event that causes a default or delay within the meaning of subparagraph 1 ceases and such default or delay can be made good, the parties agree that the time for performing and observing their respective obligations under this agreement or the management documents shall be extended for a period of time equal to the duration of such event provided that no such extension of time shall exceed the period of this agreement then remaining.

(3) Where default or delay on the part of the Company in the performance or observance of a provision of this agreement or the management documents is occasioned by any cause whatsoever within the Company's control that the Minister decides justifies such default or delay, the Minister may extend the time for the Company to perform and observe any such provision.

42. The Company agrees not to assign the whole or any part of this agreement or any agreement entered into under this agreement without the written prior consent of the Minister.

43. The parties agree that this agreement and the management documents shall be construed in accordance with the laws of Ontario.

44. (1) In the case of any dispute arising between the parties as to any matter arising under this agreement or the

management documents, either party to this agreement shall be entitled to give the other party notice of such dispute and to demand arbitration under The Arbitrations Act of Ontario, and after the expiry of 30 days from the giving of such notice, such dispute may be referred to the arbitration of a single arbitrator, if the parties agree upon one, otherwise to three arbitrators, one to be appointed by each party and a third to be chosen by the first two named before they enter upon the business of arbitration.

(2) The parties agree that the decision of the arbitrator or arbitrators shall be final and binding upon the parties who agree that their disputes shall be so decided by arbitration alone and not by recourse to any court by way of action.

45. If the Company should be adjudged a bankrupt, or if the Company should make a general assignment for the benefit of the Company's creditors, or if a receiver should be appointed on account of the Company's insolvency, the Minister may, without prejudice to any other right or remedy, terminate this agreement and the management documents on notice to the Company.

46. The Minister may on notice to the Company terminate this agreement,

(a) where the Company fails, under this agreement, after negotiations with the Minister, to enter into an agreement in respect of ground rules,

(b) where a management plan, operating plan or annual plan, or any of them, is not finalized under this agreement in virtue of any default on the part of the Company.

(c) where the Company fails in its obligations

under paragraph 9, 13, 14(1) or 19, or any of them, or

(d) where any event within the meaning of paragraph 41(1) has occurred and is continuing and in the opinion of the Minister is of such a nature that any material obligations contained in this agreement or any of the management documents will likely remain impossible to perform and as a result, will frustrate this agreement.

47. (1) Where any notice is required to be given under this agreement or the management documents, such notice shall be given in writing and shall be personally served or mailed by prepaid registered post addressed,

(a) in the case of notice to the Minister, to the Minister of Natural Resources, Whitney Block, Parliament Buildings, Toronto, Ontario, M7A 1W3, and

(b) in case of notice to the Company to
Vice-President, Woodlands Operations
Great Lakes Forest Products Limited
Box 430, Thunder Bay, Ontario
P7C 4W3

(2) Any notice mailed in accordance with subparagraph 1 shall be deemed to have been received on the fifth day next following the day it is mailed at any post office.

48. The parties agree that the headings in this agreement are inserted for convenience of reference only and shall not be used to construe the agreement.

49. Unless as otherwise expressly provided herein, this agreement shall not be interpreted as in any way limiting the authority conferred upon the Minister by statute or regulation to manage the agreement area and the resources thereon.

50. This agreement shall enure to the benefit of and be binding upon the Crown in right of Ontario, Her heirs and successors and the Company, its successors and assigns.

IN WITNESS WHEREOF the Minister has subscribed his signature and affixed the seal of the Minister of Natural Resources and the Company has affixed its corporate seal at the hands of its officers duly authorized in that behalf.

SIGNED, SEALED and DELIVERED in the presence of

as to execution by the Minister of Natural Resources for the Province of Ontario

MINISTER OF NATURAL RESOURCES

GREAT LAKES FOREST PRODUCTS LIMITED

By:

Position:

And:

Position:

SCHEDULE "A"

to the agreement between the Minister of Natural Resources
and Great Lakes Forest Products Limited
.Trout Lake Forest

All and singular that certain territory in the Territorial District of Kenora, Patricia Portion, containing a total area of 9755.5 square kilometres, be the same more or less, the boundaries of which territory [illegible] be more particularly described as follows:

COMMENCING at a point distant 28.968 kilometres, measured north astronomically from a point in the 7th Base Line distant 108.631 kilometres measured westerly thereon from the boundary between the Territorial Districts of Kenora and Thunder Bay;

THENCE south astronomically 16.093 kilometres;

THENCE west astronomically 8.851 kilometres;

THENCE south astronomically 12.070 kilometres, more or less, to the northwesterly bank of a stream flowing from Broadcast Lake to Broad Lake;

THENCE in a general southwesterly direction following the northwesterly bank of the said stream to its confluence with the water's edge of Broadcast Lake;

THENCE in a general northwesterly direction following the water's edge along the northeasterly shore of Broadcast Lake to the most northerly extremity thereof;

THENCE northwesterly in a straight line 1.609 kilometres, more or less, to the water's edge at the most southerly extremity of Broad Lake;

THENCE in a general northwesterly direction following the last mentioned water's edge to its junction with the southerly bank of a watercourse flowing from Broad Lake to Lac Seul;

THENCE in a general westerly direction following the southerly bank of the said watercourse to its confluence with the water's edge along the northerly shore of Lac Seul;

THENCE in a general northwesterly direction following the water's edge along the northerly shore of Lac Seul to its confluence with the water's edge along the northerly shore of the English River;

THENCE in a general westerly direction along that water's edge to the water's edge along the northerly shore of a river flowing from Pakwash Lake;

THENCE in a general northwesterly direction following that water's edge to the confluence with the water's edge along the easterly shore of Pakwash Lake;

THENCE in a general northeasterly direction along that water's edge to the southerly boundary of Pakwash Provincial Park;

THENCE in an easterly direction along that southerly boundary to the southeasterly corner of Pakwash Provincial Park;

THENCE northerly along the easterly boundary of Pakwash Provincial Park to the northeasterly corner thereof;

THENCE northwesterly along the easterly limit of the right of way of that part of the King's Highway known as No. 105 to the water's edge along the easterly bank of the Chukuni River;

THENCE in a general northerly and northwesterly direction along that water's edge to the intersection with a line drawn south astronomically from the southeast angle of the geographic Township of Willans;

THENCE north astronomically 3.219 kilometres, more or less, to the southeast angle of the said Township of Willans;

THENCE north astronomically along the east boundaries of the geographic townships of Willans, Ranger and Shaver, 28.968 kilometres, more or less, to the northeast angle of the geographic Township of Shaver;

THENCE west astronomically along the north boundaries of the geographic townships of Shaver and Bateman 19.312 kilometres, more or less, to the northwest angle of the geographic Township of Bateman;

THENCE north astronomically 11.265 kilometres;

THENCE east astronomically 0.805 kilometres;

THENCE north astronomically 8.047 kilometres;

THENCE west astronomically 1.287 kilometres, more or less, to the water's edge along the easterly bank of the Nungesser River;

THENCE in a general northeasterly and southeasterly direction along that water's edge to its confluence with Nungesser Lake;

THENCE in a general southeasterly, northeasterly and easterly direction following the water's edge along the southerly shore of Nungesser Lake to its confluence with a watercourse flowing northerly into the said lake at its easterly extremity and at a distance of 27.359 kilometres, more or less, westerly from the Sixth Meridian;

THENCE in a general southerly direction following the westerly bank of the said watercourse 3.219 kilometres, more or less, to a line drawn west astronomically from the intersection of the aforementioned Sixth Meridian with the 10th Base Line;

THENCE east astronomically 26.876 kilometres, more or less, to the intersection of the Sixth Meridian with the 10th Base Line aforesaid;

THENCE east astronomically along the said 10th Base Line 64.357 kilometres, more or less, to the intersection with a line drawn north astronomically from a point distant 34.601 kilometres measured east astronomically from the point of commencement;

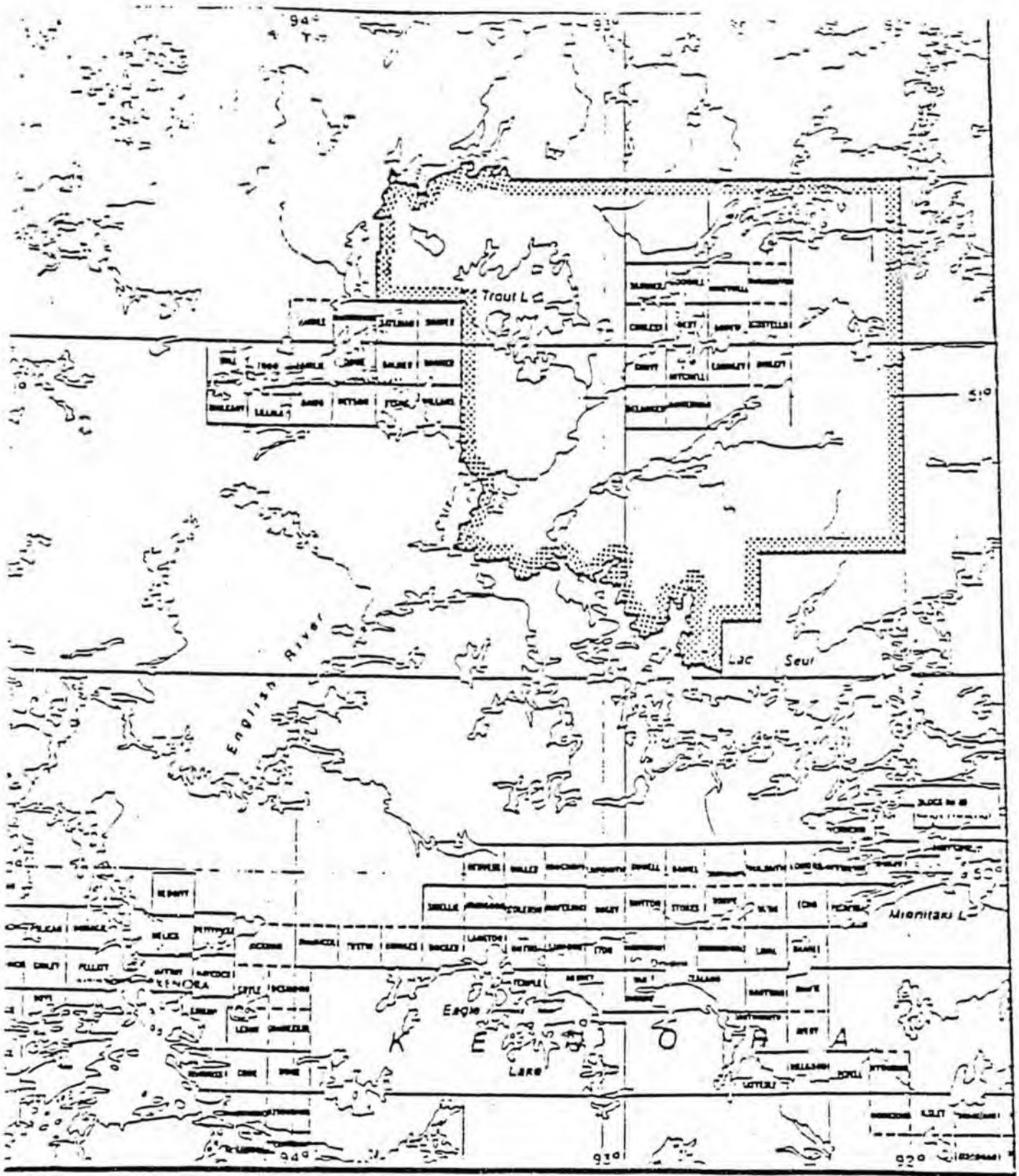
THENCE south astronomically 86.905 kilometres, more or less, to the aforementioned line drawn east astronomically from the point of commencement;

THENCE west astronomically 34.601 kilometres to the said point of commencement.

Save and Excepting therefrom all those lands which have been alienated from the Crown, Ontario, on which the trees are not reserved to the Crown.

The boundaries of the above described lands are shown in stippled form on a plan dated June 25, 1984, prepared by the Ministry of Natural Resources, Ontario, Timber Sales Branch, a print of which said plan is attached to and forms part of this schedule.

Also Saving and Excepting thereout and therefrom all reserve areas stipulated and shown coloured in red on forest stand maps prepared by the Ministry of Natural Resources, Timber Sales Branch, copies of which said maps will be provided to the Company upon execution of this agreement.



LOCATED IN THE TERRITORIAL DISTRICT OF KENORA - PATRICIA PORTION

CROWN MANAGEMENT UNIT
GREAT LAKES FOREST PRODUCTS LTD.

Ministry of Natural Resources
Ontario

TIMBER SALES BRANCH

SCALE
0 20 40 km

MANAGEMENT BOUNDARY

SHEET NO. OF

FRI

DRAWN PECB

FOREST MANAGEMENT AGREEMENT
GREAT LAKES FOREST PRODUCTS LTD.
TROUT LAKE FOREST

COMPILED FROM
ONR MAP 28-72

DATE
JUNE 25 1984

Agreement No. 502300

SCHEDULE 'B'

to the agreement between the Minister of Natural Resources and

Great Lakes Forest Products Limited

This schedule consists of a summary, and the priority of treatment of the NSR lands.

1. Summary

Total area surveyed 189,804 hectares of site class III or better lands.

NSR Class[1] area			Areas in hectares	Percent of Total surveyed
Above Minimum Stocking	1.	Free-to-Grow	178,725	94
	2.	Requires tending	23	
Below Minimum Stocking	3.	Can be regenerated at normal costs	1,255	1
	4.	Can be regenerated at costs 50% to 100% greater than normal	1,438	1
	5.	Cannot be regenerated under present technology	8,363	4
Total			189,804	100

2. Priority of treatment

During the first term of five years of the period of this agreement, the treatments of Class 2 and Class 3 NSR lands shall receive priority, and treatment of Class 4 lands is at the option of the Company.

[1] Detailed definitions of the NSR classes are in the forest management manual

SCHEDULE C - TROUT LAKE FOREST

TO THE AGREEMENT BETWEEN THE MINISTER OF NATURAL RESOURCES AND

GREAT LAKES FOREST PRODUCTS LIMITED

GROUND RULES

1. TERMS OF GROUND RULES

These ground rules provide guidelines and standards for forest management practices and treatments on Forest Management Agreement No. 502300 known as the Trout Lake Forest. The ground rules commence the 24th day of [illegible], 1984 and end on the 31st day of March, 1989.

2. AMENDING THE GROUND RULES

These ground rules may be amended in accordance with paragraph 14(3) of the agreement. Any amendments shall be made in writing and jointly authorized by the Regional Director, Northwestern Region of the Ontario Ministry of Natural Resources, and the Resident Manager, Dryden Woodlands Operations, of Great Lakes Forest Products Limited.

3. APPLICATION

Unless stated otherwise, the definitions, methods and procedures described in the forest management manual, shall apply to the area under the agreement.

4. OPERATIONAL SURVEYS AND STANDARDS

4.1 Purpose

- Correction of the provisional allocation of stands listed for operations during the five year period;
- estimate of volume allocated for cutting;
- revision of calculated annual allowable cut;
- correction of data for the silvicultural prescriptions for each allocated area.

4.2 Type of Surveys

The following survey techniques may be used to obtain information for operational planning based on ground sampling in selected stands:

1. Point sampling method
2. Plot sampling method
3. Strip sampling method

All require that major species be tallied by diameter class at breast height, and that the average height and age of conifer species be verified. Ontario normal yield tables and provincial cull tables are

employed in compiling the sample data. Instructions for carrying out these methods of sampling are available at the Company's Dryden office.

Another technique is based on detailed photo interpretation supported by ground verification of height, age and stand classification for species content. Detail of each stand is submitted to a data processing procedure using FRI base data for volume compilation from Plonski's gross merchantable volume tables. This procedure changes the stand boundaries, usually into smaller units of area, and then creates a new data file.

This system is new and under consideration of the Dryden operations. Data is presented in a computer printout by working group and age class. In all field sampling and verification, site descriptions of topography, slope, soils, and timber quality which may affect operations is stressed. This information is also necessary for the pre-cut planning of subsequent silvicultural treatments.

5. SILVICULTURAL SPECIFICATIONS AND STANDARDS

5.1 Introduction

Silvicultural specifications will be carried out in accordance with Table 1.

The setting of specifications and standards, while providing for a degree of firmness, should not be construed as an attempt to limit innovation and the development of more effective procedures. With this in mind, the Minister will allow on an annual basis, up to 15% deviation by area, for each working group, from the specifications in the ground rules, providing that the desired objectives and standards of accomplishment are the same as those in Table 1.

Silvicultural specifications not prescribed in Table 1, or deviations in excess of 15 percent by area from those in Table 1 will be identified in the annual plan and are subject to approval by the Minister as to terms of the prescription, size of area and location. Compensation, if not set out in Schedule " D " of the forest management agreement, will be negotiated before the annual plan is approved.

5.2 Specifications and Standards

The silvicultural work performed will be in accordance with the specifications in Table 1, or as follows:

5.2.1 Site Preparation

The Company may, by altering logging methods, eliminate the need for site preparation on sites which, according to Table 1 require this treatment. These sites will be identified, where possible, in the operating plan and further detailed in the annual plan and mutually agreed upon. These areas will be compensated at an appropriate site preparation rate set out in Schedule D. In this instance, the Construction Lien Act will not apply.

On areas that the Company is site preparing for subsequent planting by the Minister, the quality of site preparation will be such that approximately 2,100 or more well distributed, plantable microsites will be available per treated hectare, unless otherwise stated in the annual plan. A plantable microsite will be defined as per Forest Management Information System (Appendix II).

Wherever possible, every effort will be made to increase this to 2,600 plantable microsites per hectare.

Sites which may require more than one site preparation treatment (not including 'altering logging methods") are to be identified in the annual plan and mutually agreed upon. On these sites treatments will be compensated for as indicated in Schedule "D".

In some cases, prescribed burning is the most appropriate site preparation technique. If the use of fire is prescribed and agreed to as an acceptable site preparation treatment, either primary or final, the Minister will conduct the treatment and will pay the costs.

The amount of area to be burned by prescription will be identified in the five year operating plan and specifically identified in the annual plan. Areas to be burned must be agreed to by the date of the annual plan submission.

Areas scheduled by agreement for prescribed burn in the spring, summer or fall of which the Minister fails to execute by July 1, September 1st or October 1st respectively, of the same year, may be site prepared using the second best alternative, by the Company, and compensated at the appropriate site preparation rate. Alternative methods of site preparation will be identified in the operating plan and further detailed in the annual plan. If used, this alternate treatment will be compensated for according to Schedule "D".

Ministry of Natural Resources Fire Control staff must be involved in the planning of areas considered for prescribed burning such as:

1) site design
2) size and shape of area
3) natural fire boundaries
4) adjacent values (i.e. timber plantation, private property)
5) road locations
6) shoreline reserves
7) fire prescriptions

5.2.2 Nursery Stock Standards

The Minister shall provide planting stock meeting the specifications outlined in Table 2 or Table 3, or as agreed to in the annual plan. (The Annual Plan shall specify the species, type [nursery or container stock], size class and site region for the required planting stock.)

The Minister will provide a list of the actual stock parameters indicated in Table 2 or 3 for each shipment. Prior to the shipment of stock that the Minister deems marginal, the Company will be asked to assess its acceptability. The Company may perform tests, including pressure bomb readings, to determine the acceptability of the stock.

When the Company has inspected the stock at time of arrival and has signed a receipt, the stock will be deemed to have met the specifications. The Company may refuse to accept stock where more than 15 percent does not meet the agreed specifications on any two of the parameters listed in Table 2 or 3, or exhibits symptoms of physiological damage. (A sampling procedure to assess the acceptability of the shipment may be specified in the annual plan.) In the event the Company refuses to accept a shipment, the Minister will attempt to provide suitable replacement stock as soon as possible.

If a regeneration project is delayed because of the unavailability of acceptable stock or seed, it will not constitute non-performance by the Company under paragraph 40 of the agreement.

The Minister will deliver planting stock to a central area agreed to by the Company and the Minister from which the Company may draw trees. The Minister may also deliver bare root or container stock to pre-determined, mutually agreed to, central field locations within the agreement area. When the Company

accepts receipt of the trees, at the point of delivery, the care and handling of the planting stock becomes the Company's responsibility.

If the Company site prepares an area, and due to the unavailability of suitable stock or seed the area has to be site prepared again, as agreed to in the annual plan, the Minister will pay for the retreatment at the rates set out in Schedule "D".

5.2.3 Tending

As stated in Table 1, tending will be carried out as required before competition interferes with growth and survival of conifers. The tending may involve one or more treatments or types of treatments. Where tending to maintain growth and survival is required after Free-to-Grow status is reached, it will be at the Company's expense.

The parties agree, in the event that appropriate herbicides are not, or cease to be, licensed for forestry use in Ontario, the Company's obligation to tend if necessary will no longer hold. On areas where regeneration has already been initiated, the Company will not be required to retreat failures if such a failure is agreed to be the result of unavailability of suitable herbicides. On areas where regeneration has not been initiated, the Minister reserves the right to refuse to approve any treatment, and shall not require the Company to treat sites where the regeneration may be expected to fail if tending cannot be done because of the lack of suitable herbicides.

Generally, "tending" refers to chemical tending. If the use of chemicals for tending is restricted mechanical tending may be substituted. Compensation for silvicultural treatments that are not set out in Schedule "D" of the Agreement will be negotiated before the annual plan is approved.

5.3 Non-Treatable Productive Forest

Areas at least 3 hectares in size which have been allocated for harvesting in the operating plan, or are depleted for other reasons in the operating plan period, may be classed as non-treatable by mutual agreement between the Company and the Minister. They will be identified in the annual plan and will be included as depletions in the annual report.

An area may be considered as non-treatable where extremes in topography, shallowness of soil, excessive rock, poor drainage, or inaccessibility make it uneconomic or impractical to treat.

These areas will be assessed in the fifth year after harvesting or other disturbances, to determine the working group or whether the areas meet minimum stocking standards as outlined in Table 1.

6. REGENERATION ASSESSMENT

The Minister will do the fifth year stocking assessment for areas treated by the Minister if requested by the Company.

On areas which are obviously above, or are plainly below the minimum stocking standards, a visual inspection may be used. On areas where stocking appears to be marginal, a formal method of assessment will be carried out. The formal method will be in accordance with the Ministry Forest Management Information System.

Areas smaller than 8 hectares in any one silvicultural project, will not be submitted for retreatment or for entry into the inventory.

7. AREA DETERMINATION FOR PAYMENT

The same area figure used to record silvicultural treatment will form the basis for payment. Normally, any untreated areas of more than 2 hectares which are identifiable on a map and within the boundary of the treated area, will not form part of the gross area and will not form part of the area for payment.

8. INVOICING

For each ongoing silvicultural project, the Company may submit an invoice to the Minister no more frequently than every two weeks.

On completion of a silvicultural project, a map (scale 1:15,840) showing the area will be submitted to the Crown representative and within two weeks of receiving this map he will verify that the map is accurate or, in conjunction with the Company, revise the area to a mutually agreeable figure. When agreement has been reached, a final invoice for that project will be forwarded to the Minister.

Upon completion of a road or section of a road, the Crown representative and the Company will conduct a joint inspection of the road or section of road after which a final invoice will be submitted to the Minister.

Roads that have been completed in any year except gravelling, will qualify for eighty percent of that year's subsidy per kilometre. When gravelling has been completed in the following year, a final payment will be made of twenty percent of that year's subsidy per kilometre as stated in the annual plan for that class of road.

9. WASTEFUL PRACTICES

With some silvicultural practices it may be necessary to leave, fell, or to remove from the site but not utilize, or pay stumpage charges on certain trees. Such leaving or felling could be interpreted as wasteful practices under the Crown Timber Act. In such circumstances it should be recognized that the intent is to improve the yield of commercial species and not to contravene the provisions of the Act. Such actions shall be specified, if possible, in the operating plan and no later than in the annual plan.

10. CONE COLLECTION

If the Company elects to undertake a cone collection program to provide some or all of the seed for the Forest in addition to the Minister's own program on the agreement area, the Minister will pay the Company at the district cone rates then currently in effect. The quantity of cones to be collected will be identified in the annual plan. The Minister will be responsible for the cost of transporting (from designated central location), extracting and storing seed collected by the Company and will issue specific Company seed source numbers. The Company will have first rights to seed collected in specific stands identified in the annual plan. In addition, the Company will have first rights to any seed identified under the Company seed source numbers.

11. RESEARCH OR TREE IMPROVEMENT AREAS

It is agreed that certain areas may be set aside for experimental studies of regeneration techniques for the purpose of tree improvement programs such as seed collection areas or seed orchards.

These programs can make valuable contributions towards achieving the objectives of the forest management agreement and should be encouraged. The areas involved may be on the most accessible and more fertile sites and will be agreed to by both parties at the time they are required. Areas designated as 'Research or Tree Improvement Areas' will not be considered withdrawals under paragraph 34 of the agreement.

12. FORESTRY OPERATIONS ON MINING CLAIMS

Throughout the agreement area tracts of productive forest land have been staked or leased for mining potential. Should the Company undertake forestry activities on any mining leases or claims, it is agreed that the Company will assume full responsibility for all damages to mining claims as a result of forestry activities on these areas and will hold the Minister free from any damages from Company activities.

13. EXCLUSIONS

The Company shall have the right of first refusal to any

timber which may be produced from lands which have been excluded from the agreement area and described in Schedule "A" as "all reserve areas stipulated and shown coloured red on forest stand maps prepared by the Ministry of Natural Resources, Timber Sales Branch, copies of which said maps will be provided to the Company upon execution of the agreement."

14. WHITEMUD RIVER A.N.S.I. EXCLUSION

This A.N.S.I. has been identified to provide representation of earth and life science features associated with Landscape Unit 24 - Lac Seul Moraine (Bluffy Lake Portion) and the Central boreal forest region. This area is being designated as an exclusion for the initial five year period of the agreement to further allow for additional park inventory and analysis work in order to better define park values. After this initial five year period, an area to a maximum of approximately 38,900 hectares may be returned to the (Trout Lake Forest) land base.

There will be no cutting within the area during the initial five year term of the agreement.

15. MODIFIED MANAGEMENT AREAS (M.M.A.'s)

(1) The Minister, in consultation with the Company, will identify and delineate on F.R.I. Forest Stand Maps (scale 1:15,840) during the preparation of each Five Year Operating Plan, those areas which are to be managed to meet objectives other than or in addition to wood fibre production.

It is intended that where possible, some form of harvesting and regeneration will be carried out in Modified Management Areas. The harvesting and regeneration techniques will be designed to accommodate both the initial and return cuts wherever possible.

(2)(a) For each of those areas, the Minister will classify and state the management objectives and develop specific prescription in the following manner;

(i) Areas that the Company will be allowed to harvest at the time of the initial cut.

(ii) Areas that the company will be allowed to harvest at a future date, i.e. leave areas. Depending on conditions such areas may be reclassified as no harvest areas at the Company's option.

(iii) Areas that the Company will not be allowed to harvest, i.e. no harvest areas.

(b) All M.M.A.'s that fall into (2)(a)(ii), shall be

accompanied by either; a specific time limitation, or a height requirement for cutover immediately adjacent to the leave area. When the prescription for each specific leave area has been attained, the leave area will automatically become eligible for harvest.

(c) All M.M.A.'s that fall into (2)(a)(iii) will be recorded in the depletion ledgers as "Reserve". These areas will retain their F.R.I. type designation, however, their ownership code will change from 1 (i.e. Crown Land) to 7 (i.e. Recreational Reserve). In this manner these areas will not form part of the calculated allowable cut base on recalculation. The total no harvest area within each operating plan period will not be used in the calculation of liquidated damages as described in paragraph 20 of the Agreement.

(3) Any alteration or reclassification of M.M.A.'s in the Annual Plan, from that shown in the Operating Plan, will require agreement between the Minister and the Company. Furthermore, no M.M.A. can be reclassified into a withdrawal except;

(i) Where it's immediate use puts it under the U.C.L. category.

(ii) Where it is mutually agreed to by the Minister and the Company.

(iii) Where land becomes alienated for other uses.

(4)(a) M.M.A.'s are established on all known significant shorelands and other areas identified on maps at a scale of 1" - 2 miles provided to the Company before the time of signing of the F.M.A. These M.M.A.'s identified comprise approximately 13.4 percent of the total productive land of the Conifer Working Groups and 22.1 percent of the total productive land. c the Hardwood Working Groups.

(b) Additional M.M.A.'s not identified at the time of signing will be delineated as per Section 15(1) during the preparation of the Operating Plan.

(c) If the total area of M.M.A.'s delineated as per Section 4(b) exceeds the product of five times five percent of the A.A.C. of the Conifer Working Group or five times five percent of the A.A.C. of the Hardwood Working Group calculated for the Operating Plan Period, the Minister shall;

(i) Reduce the area of M.M.A.'s designated in the Operating Plan so that it does not exceed five times 5 percent of the A.A.C. of the Conifer Working Group or five times 5 percent of the A.A.C. of the

Hardwood Working Group, or;

(ii) If requested by the Company, withdraw the area in excess of five times 5 percent of the A.A.C. of the Conifer Working Group or five times 5 percent of the A.A.C. of the Hardwood Working Group according to paragraph 34 of the Agreement. Furthermore, the Company shall be offered the right of first refusal on any wood from any lands so withdrawn.

(d) Where in special instances an individual area of 2.0 ha. or less is restricted from harvest by the Minister for uses other than wood production, the Company shall not request that the area be withdrawn.

(e) Notwithstanding the intent of (4)(c), the Company and the Ministry by mutual agreement may allow substitution areas from one Working Group to another.

(5) For a certain Operating Plan Period, the total M.M.A. area may exceed the specified percentages due to agreed special circumstances, but there must then be reductions to this percent in subsequent Operating Plan Periods so that the percentage agreed to herein is not exceeded over the twenty year agreement period.

(6) The calculation of the area to be designated M.M.A.'s Section 4(b) shall include all areas to be left uncut and cut and shall refer only to areas within stands allocated for harvesting in the current Operating Plan Period.

(7) Where any form of modified cutting is proposed by the Minister within an M.M.A., it shall be at the sole option of the Company to carry out such cutting. If the Company elects not to do such cutting, the Company shall be offered first right of refusal to purchase any volumes of wood harvested from the area.

(8) Compensation for silvicultural treatments which may be required for the M.M.A. and are not set out in Schedule "D" of the Agreement will be negotiated before the Annual Plan is approved.

16. GENERAL

As the initial two years of the agreement is a phase-in period, it is appropriate to define the status of the phase-in components. The phase-in period will effect planting of bareroot and container stock and will follow the schedule as outlined below:

Year	Bare Root Stock				Container Stock			
	Ministry		Company		Ministry		Company	
	%	# of Trees	%	# of Trees	%	# of Trees	%	# of Trees
1. 1984	100	156,000	0	0	80	1,320,000	20	250,000
2. 1985	50	800,000	50	650,000	0	0	100	1,100,000
3. 1986	0	0	100	2,200,000	0.	0	100	1,100,000

The location of the areas for both Company and Crown planting during the 2 year Phase-In Period will be mutually decided on and designated in the annual plan.

During this period, the Ministry will be responsible for site preparation of it's planting areas and in turn the Company will be responsible for site preparation on their planting areas.

The phase-in period does not apply to the treatment of NSR areas.

As well, any retreatments or tending of areas planted by the Ministry during the phase-in period will become the responsibility of the Company but the Company will be compensated at the rates set out in Schedule "D".

It is also understood that because there is a phase-in period, there will be a gap between area cut over and area regenerated. Further, it is understood that some sites will be untreated and left for natural regeneration. Consequently, the area of total treatment over the period of these ground rules may not balance with the total area cutover.

Unless stated otherwise, in these ground rules, the definitions, methodologies and procedures described in the forest management manual shall apply to the Trout Lake Forest, subject to this agreement. Silvicultural procedures will be the responsibility of the Company. Certification for payment will conform to the guidelines set forth in the forest management manual.

The Company has entered into this agreement to provide for a continuous supply of forest products from the Trout Lake Forest for the Company's mills at Dryden, and to ensure that the Trout Lake Forest is managed to produce successive crops of timber on a sustained yield basis. In keeping with this responsibility, the Company will regenerate areas agreed to in the operating plan. These ground rules apply to the Trout Lake Forest including those parts which are subject to Third Party Licences.

Payments to the Company under paragraph 31 for the construction, re-construction and maintenance of roads on any part of the agreement area which is subject to the third party operations shall, to the extent that such road construction, re-construction and maintenance is performed by the third party and provided that the third party also performs all the

silvicultural treatments required in the approved annual plan on the area subject to third party operations, be paid over to the party by the Company.

The Company will be given first opportunity to cut any timber which may be proposed for harvesting from the areas that are withdrawn from the agreement area and from areas which were part of the Company license and were excluded from the agreement area. If the Company elects not to carry out the cutting, the Company will retain the right of first refusal on any timber that may subsequently be cut from those areas.

Existing and mutually agreed upon wood directives will be honoured under this agreement.

TABLE 1 - SILVICULTURAL SPECIFICATIONS AND REGENERATION STANDARDS

Present Working Group - Spruce (64,097 of the Production Forest Area - All Site Classes)

SITE DESCRIPTION		SILVICULTURAL PRESCRIPTION		STOCKING STANDARDS		
Soil Texture and Depth I	Proposed Working Group II	Method of Harvest III	Treatment Description IV	Min. Stocking to Proposed Working Group V	Min. Stocking to Acceptable Species VI	Objective Stocking of Working Group Species VII
1. Organic Soil - soils greater than 40 cm of organic material over mineral soil and poorly drained	Spruce	Group seed tree, strip (S) block or clearcut (logging to be confined to seasons or equipment so as to minimize disturbance)	- seed tree groups at 80 to 100 m intervals - site prep. and plant (1) - tend if necessary - natural regeneration with or without site prep.	40%	50% Sp, La	60%
2. Deep Mineral Soil silts, clays or loams	Spruce or Jack Pine	Clearcut	- site prepare as required and plant (1) - tend if necessary	50%	60% Sp,Pj,Bl	70%
			- site prepare and direct seed (2) - tend if necessary	40%	50% Sp, Pj	70%
3. Deep Mineral Soils Sands, gravels	Spruce or Jack Pine	Clearcut	- site prepare and direct seed (2) - tend if necessary	40%	50% Sp, Pj	70%
			- site prepare and plant (1) - tend if necessary	50%	60% Sp,Pj,Bl	70%
4. Shallow Mineral Soil - 10 to 20 cm in depth over bedrock on 30% or more of the area.	Spruce or Jack Pine	Clearcut or Seed tree, block or strip (S) cut system	- site prepare followed by: natural regen. or direct seeding (2) or planting - tend if necessary	40%	50% Sp, Pj	70%

TABLE I - SILVICULTURAL SPECIFICATIONS AND REGENERATION STANDARDS

Present Working Group - JACK PINE (26,617 of the Production Forest Area - All Site Classes

SITE DESCRIPTION		SILVICULTURAL PRESCRIPTION		STOCKING STANDARDS		
Soil feature and Depth I	Proposed Working Group II	Method of Harvest III	Treatment Description IV	Min. Stocking to Proposed Working Group V	Min. Stocking to Acceptable Species VI	Objective Stocking of Working Group Species VII
1. Deep Mineral Soil clays, silts, or loams	Jack Pine or Spruce	Clearcut	- site prep. as required for planting (1) - tend if necessary	50%	60% Pj,Sp,Bf	70%
			- site prep. as required and direct. ed (2) - tend if necessary	40%	50% Sp, Pj	70%
2. Deep Mineral Soil Sand and Gravel	Jack Pine	Clearcut	- site prep. as required for planting (1) - tend if necessary	50%	60% Pj,Sp,Bf	70%
			- site prep. as required and direct seed (2) - tend if necessary - site prep. as required for natural regen. - tend if necessary	40%	50% Sp, Pj	70%
3. Deep Mineral Soil Blow Sand	Jack Pine	Clearcut or Block cut	- site prep. as required for planting (1) - tend if necessary	50%	60% Pj,Sp,Bf	70%
			- site prep. as required for natural regen. or direct seeding (2) - tend if necessary	40%	50% Sp, Pj	70%
4. Shallow Mineral Soils Soil 10 to 20 cm in depth over bedrock on 50% or more of the area.	Jack Pine or Spruce	Clearcut or Block cut	- site prep. as required for planting (1) - tend if necessary - site prep. as required and direct seed (2) - tend if necessary	40%	50% Sp, Pj	70%

TABLE 1 - SILVICULTURAL SPECIFICATIONS AND REGENERATION STANDARDS

Present Working Group - BALSAM FIR (3.152 of the Productive Forest Area - All Site Classes)

Page: 15

SITE DESCRIPTION		SILVICULTURAL PRESCRIPTION		STOCKING STANDARDS		
Soil Texture and Depth	Proposed Working Group	Method of Harvest	Treatment Description	Min. Stocking to Proposed Working Group	Min. Stocking to Acceptable Species	Objective Stocking of Working Group Species
I	II	III	IV	V	VI	VII
All Sites	Spruce or Jack Pine	Clearcut	- site prep. as required on plant (1) - tend if necessary	50%	60% Sp.Pj.Bf	70%
	Jack Pine	Clearcut	- site prep. as required for direct seeding(2) or natural regeneration - tend if necessary	40%	50% Sp. Pj	70%
	Balsam Fir	Clearcut	- site prep. followed by natural regen. - leave for natural regen. and advanced growth	--	60% Sp.Pj.Bf	70%

TABLE 1 - SILVICULTURAL SPECIFICATIONS AND REGENERATION STANDARDS

Present Working Group - POPLAR (5,667 of the Production Forest Area - All Site Classes)

SITE DESCRIPTION		SILVICULTURAL PRESCRIPTION		STOCKING STANDARDS		
Soil Texture and Depth I	Proposed Working Group II	Method of Harvest III	Treatment Description IV	Min. Stocking to Proposed Working Group V	Min. Stocking to Acceptable Species VI	Objective Stocking of Working Group Species VII
1. Mineral Soils - loam, silts or clays, with soils 10 cm or greater in depth over bedrock	Poplar	Partial cut if original stand is greater than or equal to 40% stocked to conifer	- site prepare followed by planting of Sp or Pj (14) - tend if necessary	--	60% Po,Sp,Pj, Bf	70%
	Spruce or Jack Pine	Partial cut if original stand is greater than or equal to 40% stocked to conifer	- site prepare followed by planting of Sp or Pj - tend if necessary	--	40% Sp,Pj,Bf	60%
	Poplar	Clearcut if market available for poplar	- site prepare followed by natural regen or leave for natural regen.	40%	60% Po,Sp,Pj, Bf	70%
	Spruce or Jack Pine	Clearcut if market available for poplar	- site prepare followed by planting (1) tend if necessary	50%	60% Po,Sp,Pj, Bf	60%

TABLE I - SILVICULTURAL SPECIFICATIONS AND REGENERATION STANDARDS

Present Working Group - POPLAR (5.6% of the Production Forest Area - All Site Classes) Page: 17

SITE DESCRIPTION		SILVICULTURAL PRESCRIPTION		STOCKING STANDARDS		
Soil Texture and Depth I	Proposed Working Group II	Method of Harvest III	Treatment Description IV	Min. Stocking to Proposed Working Group V	Min. Stocking to Acceptable Species VI	Objective Stocking of Working Group Species VII
2. Mineral Soils - sands and gravel with soils 10 cm or greater in depth over bedrock	Poplar	Partial cut if original stand is greater than or equal to 40% stocked to conifer	- site prepare followed by planting of Sp or Pj (14) - tend if necessary	--	60% Po,Sp,Pj, Bf	70%
	Spruce or Jack Pine	Partial cut if original stand is greater than or equal to 40% stocked to conifer	- site prepare followed by planting of Sp or Pj - tend if necessary	--	40% Sp,Pj,Bf	60%
	Poplar	Clearcut if market available for poplar	- site prepare followed by natural regen or leave for natural regen.	40%	60% Po,Sp,Pj, Bf	70%
	Spruce or Jack Pine	Clearcut if market available for poplar	- site prepare followed by planting (1) - tend if necessary	50%	60% Po,Sp,Pj, Bf	60%
	Jack Pine	Clearcut if market available for poplar	- site prepare followed by direct seeding (2) - tend if necessary	40%	60% Po,Sp,Pj,	60%

TABLE 1 - SILVICULTURAL SPECIFICATIONS AND REGENERATION STANDARDS

Present Working Group - WHITE BIRCH (8.4% of the Production Forest Area - All Site Classes)

SITE DESCRIPTION		SILVICULTURAL PRESCRIPTION		STOCKING STANDARDS		
Soil texture and depth I	Proposed Working Group II	Method of Harvest III	Treatment Description IV	Min. Stocking to Proposed Working Group V	Min. Stocking to Acceptable Species VI	Objective Stocking of Working Group Species VII
1. Mineral Soils - loam, silts or clays, with soils 10 cm or greater in depth over bedrock	W.Birch	Partial cut if original stand is greater than or equal to 40% stocked to conifer	- site prepare followed by planting of Sp or Pj (14) - tend if necessary	--	60% Bw,Sp,Pj, Bf	70%
	Spruce or Jack Pine	Partial cut if original stand is greater than or equal to 40% stocked to conifer	- site prepare followed by planting of Sp or Pj - tend if necessary	--	40% Sp,Pj,Bf	60%
	W.Birch	Clearcut if market available for W.Birch	- site prepare followed by natural regen or leave for natural regen.	40%	60% Bw,Sp,Pj, Bf	70%
	Spruce or Jack Pine	Clearcut if market available for W.Birch	- site prepare followed by planting (1) tend if necessary	50%	60% Bw,Sp,Pj, Bf	60%

TABLE 1 - SILVICULTURAL SPECIFICATIONS AND REGENERATION STANDARDS

Present Working Group - WHITE BIRCH (6.4% of the Productive Forest Area - All Site Classes)

SITE DESCRIPTION		SILVICULTURAL PRESCRIPTION		STOCKING STANDARDS		
Soil feature and Depth I	Proposed Working Group II	Method of Harvest III	Treatment Description IV	Min. Stocking to Proposed Working Group V	Min. Stocking to Acceptable Species VI	Objective Stocking of Working Group Species VII
2. Mineral Soils - sand and gravels with soils 10 cm or greater in depth over bedrock	W.Birch	Partial cut if original stand is greater than or equal to 40% stocked to conifer	- site prepare followed by planting of Sp or Pj (1&4) - tend if necessary	--	60% Bw,Sp,Pj, Bf	70%
	Spruce or Jack Pine	Partial cut if original stand is greater than or equal to 40% stocked to conifer	- site prepare followed by planting of Sp or Pj - tend if necessary	--	40% Sp,Pj,Bf	60%
	W.Birch	Clearcut if market available for W.Birch	- site prepare followed by natural regen or leave for natural regen.	40%	60% Bw,Sp,Pj, Bf	70%
	Spruce or Jack Pine	Clearcut if market available for W.Birch	- site prepare followed by planting (1) - tend if necessary	50%	60% Bw,Sp,Pj, Bf	60%
	Jack Pine	Clearcut if market available for poplar	- site prepare followed by direct seeding (2) - tend if necessary	40%	60% Bw,Sp,Pj,	60%

TABLE I - SILVICULTURAL SPECIFICATIONS AND RECORDATION STANDARDS

Present Working Group - All Conifer Working Groups

SITE DESCRIPTION		SILVICULTURAL PRESCRIPTION		STOCKING STANDARDS		
Soil Texture and Depth I	Proposed Working Group II	Method of Harvest III	Treatment Description IV	Min. Stocking to Proposed Working Group V	Min. Stocking to Acceptable Species VI	Objective Stocking of Working Group Species VII
1. Mineral soil less than 10 cm in depth over bedrock on 30% or more of the area	Jack Pine or Spruce	Seed tree system or block cut or strip (g) cut.	- natural seeding - site prepare followed by natural seeding or direct seeding	--	40% Pj, Sp	60%
2. Areas with excessive amounts of large boulders (boulder pavement areas with large boulders)			- site prepare followed by planting - tend if necessary	40%	50% Pj,Sp,Bf	60%
3. Areas with slopes 60% or greater						

FOOTNOTES: TO TABLE 1

1. Planting of bareroot or container stock will be to a minimum of 1,700 trees per hectare and a maximum of 2,500 trees per hectare.

2. Aerial seeding using viable jack pine seed at a rate of approximately 50,000 seed per hectare or seed with site preparation, unless otherwise agreed to in the Annual plan.

3. When underplanting in poplar or white birch stands is undertaken, the planting objective will be 750 trees to 2,800 trees per hectare.

4. When planting of red pine on shoreline reserves where the site is suitable the objective will be 1,230 trees per hectare.

5. The Prooosed Working Group will be determined at the time of the Annual Plan. The Actual Working Group will be determined at time of assessment.

6. Satisfactory seed source is defined as a cone-bearing windfirm, well stocked (minimum 50% stocked) healthy block of trees which is a maximum distance of 120 metres from the adjacent cutover.

7. T.P.H. indicates trees per hectare, evenly distributed.

8. Species abbreviations are as follows:

Pj - Jack Pine	Sp - Black or White Spruce	Po - Poplar
Pw - White Pine	Bf - Balsam Fir	Bw - White Birch
Pr - Red Pine	La - Larch	

9. The minimum stocking level will be satisfied by meeting the conditions of Column V, or Column VI.

10. Balsam Fir may contribute not more than 10% of the minimum stocking to acceptable species unless indicated as the proposed working group species.

11. Poplar may contribute not more than 10% of the minimum stocking to acceptable species unless indicated as the proposed working group species.

12. White Birch may contribute not more than 10% of the minimum stocking to acceptable species unless indicated as the proposed working group species.

13. Prescribed burning may be substituted for mechanical site preparation where appropriate and when approved by the Minister.

14. When partial cutting of Poplar and White Birch stands is undertaken the Company agrees to maintain, as a minimum, the conifer component at its original stocking level.

15. Return Cut The time to attain the free-to-grow condition is the maximum period between cuts.

TABLE 2

STANDARDS FOR CONTAINER STOCK

Species: Black Spruce (Spencer Lemaire - Ferdinand Books)

	Minimum	Optimum
Stem Height (cm)	10	15
Oven-Dry Weight (mg)	300	500
Tray Stock %	75	100
Root/Shoot Ratio		2 - 3: 1

Species: Jack Pine

	Minimum	Optimum
Stem Height (cm)	10	15
Oven-Dry Weight (mg)	300	500
Tray Stocking %	75	100
Root/Shoot Ratio		2 - 3: 1

TABLE 3

NURSERY STOCK STANDARDS

SIZE CLASSES	SMALL Mean	SMALL Range	MEDIUM Mean	MEDIUM Range
JACK PINE 2-0				
Height (cm)			18	13 - 20
RCD (mm)			3.4	3.1 - 3.7
Total Oven Dry Weight (g)			4.0	3.0 - 5.0
Shoot/Root Ratio (ODW)			3.0	2.0 - 4.0
BLACK SPRUCE 2-1				
Height (cm)	18	13 - 22		
RCD (mm)	3.0	2.6 - 3.4		
Total Oven Dry Weight (g)	2.0	1.1 - 2.9		
Shoot/Root Ratio (ODW)	3.0	2.0 - 4.0		
WHITE SPRUCE 2-1				
Height (cm)	15	13 - 17		
RCD (mm)	3.3	3.0 - 3.6		
Total Oven Dry Weight (g)	3.0	2.6 - 3.4		
Shoot/Root Ratio (ODW)	3.0	2.0 - 4.0		
RED PINE 3-0				
Height (cm)	15	13 - 17		
RCD (mm)	4.0	3.0 - 5.0		
Total Oven Dry Weight (g)	4.0	4.0 - 5.0		
Shoot/Root Ratio (ODW)	3.0	2.0 - 4.0		

SCHEDULE I

GREAT LAKES FOREST PRODUCTS LIMITED

DRYDEN WOODLANDS OPERATIONS

TROUT LAKE FOREST

PROPOSED FMA ROAD SPECIFICATIONS

SPECIFICATION	PRIMARY ROAD	SECONDARY ROAD
Right of way cleared	30 - 45 metres	25 - 30 metres
Lane width	3.5 - 4.5 metres	2.5 - 3 metres
Shoulder width	0.6 metres	0.6 metres
TOTAL ROAD WIDTH (shoulder to shoulder)	8.5 - 10 metres	6 - 7 metres
CROWN:		
Elevation if smooth	2.1 cm/metre	2.1 cm/metre
Elevation if rough	4.2 cm/metre	4.2 cm/metre
Maximum horizontal degrees curvature	10 - 15 degrees	15 - 20
Minimum passing sight	90 - 150 metres	90 metres
Maximum sustained grade	6 degrees	9 degrees
Gravel depth	15 cms.	10 cms.
BRIDGES, single lane span	68,000 kg.	68,000 kg.
Life Expectancy	10 years	5 years

Resource Development Council
for Alaska, Inc.

807 "G" Street, Suite 200, Anchorage, Alaska 99501-3440
Box 100516, Anchorage, Alaska 99510-0516 - 907/276-0700

EXECUTIVE DIRECTOR
Paula P. Easley

EXECUTIVE COMMITTEE
Charles R. Webber, President
John Forceskie, Vice Pres.
E. Thomas Pargeter, Vice Pres.
Boyd J. Brownfield, Secretary
J. Shelby Stastny, Treasurer
Sharon E. Anderson
Susy Collins
Steve Ellis
Don L. Finney
O. K. "Easy" Gilbreth
Robert Gilliland
Dave Harbour
Phil R. Holdsworth
Jack Hull
Charlie Johnson
John T. Kelsey
Larry Laughman
Ethel H. "Pete" Nelson
John Rense
R. D. Stock
Robert I. Swetnam
Dale P. Tubbs

DIRECTORS/FOUNDERS*
Hameed Ahmad
Lenny Arsenault
Earl H. Beistline
Rex I. Bishopp
Robert A. Breeze
Kelly M. Campbell
Alexander J. Capasso
Sam Demientieff
Larry Dinneen
James V. Drew
James G. "Bud" Dye*
Fred O. Eastaugh*
Lee E. Fisher*
Robert W. Fleming*
Dan R. Fondell
Mano Frey
Ray D. Gardner
Paul Glavinovich
Randy Goodrich
Dick Griffin
John L. Hall
Jon Halliwill
Donald L. Hanson
Hazel Heath
Dave Heatwole
Joseph R. Henri
M. A. Higgins
David Hoffman
William J. Hornung
Joe E. Jackovich
Dorothy A. Jones
John Choon K. Kim
Kay H. Lasley
Phillip L. Locker
Dennis W. Lohso
Paul J. Martin
Donald Marx
Peter McDowell
Len McLean
William F. Meehan, Jr.
Max D. Nalley
Richard A. Peluso
Erik V. Peterson
William R. Purrington
William E. Schneider
Steve Seley
Lin S. Sloane
Dale Stotts
Dale Teel
Joe J. Thomas
Richard W. Tindall
Rudy J. Trosclair
Joseph E. Usibelli, Jr.
Lyle Von Bargen
Beverly A. Ward
Anita L. Williams
Jed Holley, Staff Consultant

EX-OFFICIO MEMBERS
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Govenor Bill Sheffield

February 18, 1986

Representative Dick Shultz
Alaska House of Representatives
Pouch V
Juneau, AK 99811

re: HB 570, Forest Management Agreement legislation

Dear Dick:

The Resource Development Council strongly supports the forest management concepts embodied in HB 570. We feel this approach to forest land mangement is the best opportunity we have to develop a significant and sustained forest products industry in Interior and Southcentral Alaska.

The Alaska Constitution clearly states the direction intended for the utilization of state resources, especially renewable resources such as wood. Article Eight stridently mandates "sustained yield." RDC supports HB 570 because it enables the state to work toward the goals clearly established in the Constitution.

The state is presently allowing only a small fraction of our sustained yield to be harvested. The state owns the majority of the commercial timber land in the Interior and we still can't seem to get enough wood on the market to sustain anything other than small, regional operations.

We perceive three main problems with the state's management of its timber resources. These problems are not rooted in any specific legislative act or administrative agency--they have developed over time. They were not necessarily designed to throttle the timber industry although that is certainly the effect.

The first is the lack of a commercial forest land base dedicated to timber management. The land classification process of the last few years has systematically removed millions of acres of timber land from the timber base. One answer to this problem has been to create state forests, but the forests which have been created to date, especially Haines, are not being managed for timber harvesting at anything close to their potential. The forest products industry has no faith in the ability of this or future administrations to withstand pressure to mandate preservation over timber harvesting and other forest uses on state forests as they presently exist.

The second problem is the system the state has developed

for selling timber. The system we have now, similar to that used by the US Forest Service and other states, is labor intensive and very inefficient. It takes far too many government manhours to sell a reasonable amount of state timber under the present system. Given the necessity to cut state spending, we must find a way to sell timber more efficiently without threatening the state's interests.

The third problem is reforestation. Right now it isn't happening at anything close to reasonable levels. This is an alarming situation that the legislature must address. The key to the management of timber as a renewable resource is making sure that the resource is renewed. This isn't happening and it is basically because we are not paying for it.

There are a number of problems facing the forest products industry throughout Alaska including permitting, stumpage, processing requirements, loans and many others. HB 570 is designed to address the basic problems facing development of a forest products industry on state land in the Interior and Southcentral regions.

To resolve these problems we believe the state should implement a process used with success in the Canadian Province of Ontario. Ontario uses a system of Forest Management Agreements (FMAs) to contract forest management including harvesting, road building and reforestation to private contractors. FMAs replace the policing duties of the government with contractual agreements beneficial to the state and the contractor. The contracts contain stiff penalties for poor performance and incentives to stimulate good performance.

The greatest reported gain from the FMAs is the integration of timber harvesting with regeneration, which is proving successful, and providing larger annual timber harvests for the future. Ontario officials tell us this program has been successful because the private operator now has a vested interest and incentive to regrow the forest.

Ontario FMAs contain what is known as an "evergreen" clause. The basic contracts are for 20 years, but after each five-year period the results of private harvesting and regeneration are evaluated by the government, and if standards are met, the contract is given a five-year extension. The FMAs are beneficial to operators because there is always a 20 year supply of timber ahead if the logging and reforestation are meeting the goals set in the original agreement.

The FMAs save the government of Ontario a lot of money. Government no longer has to preplan and lay out detailed timber sales. The government no longer acts as "policemen" to enforce a myriad of contradictory regulations.

The results in Ontario have been overwhelmingly positive. More timber is cut, more jobs are generated, public use of the forests is increased, more timber is being generated for the future and less money is spent by government to oversee the process.

This process does not lessen the control of the state over its lands. It obligates the operators to meet the forest management goals set in the contracts. The operator manages for habitat, recreation, timber harvesting, roading and reforestation. The standards and requirements are written in the FMA along with penalties and incentives.

Alaska has roughly one-third the forest land base of Ontario and Ontario generates more than 80,000 jobs. If we develop our industry to the extent Ontario has we could have more than 25,000 people employed in the forest products industry in Alaska.

HB 570 gives the Department of Natural Resources the statutory mandate to initiate agreements such as those used with great success in Ontario. It also mandates development of an agreement for 200,000 acres of non-coastal, state commercial forest land. Under HB 570, DNR will have the authority to negotiate an agreement which protects the state's financial and land use interests.

RDC believes that FMAs are the best vehicle available to Alaska as we attempt to utilize our massive timber resources for the development of revenue, jobs and economic activity throughout the state. We encourage you to support HB 570 in the House Resources Committee.

Thank you for your consideration.

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Paula Easley

Paula P. Easley
Executive Director

cc: Members, House Resources Committee
Representative Robin Taylor
Representative John Ringstad
Representative Steve Frank
Representative Roger Jenkins
John Galea, Alaska Loggers Association
Phil Holdsworth, RDC Juneau Representative

Dick - It was wonderful having you at the conference. Am sending you some pertinent speeches when typed.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM March 7, 1986

SUBJECT: State forest management
(SSHB 570)

TO: Representative Richard Shultz
Chair, House Resources Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill adds a new Sec 38.05.122 to AS 38.05 at article 4 (disposal of timber and materials).

Sec. 122(a) provides that, notwithstanding the existing provisions of article 4 (AS 28.05.110 - 38.05.120), the commissioner of natural resources may "enter into an agreement with a person for the management on a sustained-yield basis of state forest land and state land commercially valuable for forest development." The consultation with other state agencies by the commissioner is permitted.

Sec. 122(b) provides that the commissioner shall establish the terms of the agreement that will set out the "silvicultural specifications" that govern the "harvest, regeneration, and management of state land".

Sec. 122(c) outlines matters that may be included in the contract.

Sec. 122(d) requires the commissioner to provide the legislature with copies of agreements entered into as well as a report on the areas of the state that are "harvested, regenerated, and managed" under an agreement during the preceding calendar year.

Section 2(a) of the bill directs the commissioner to request proposals for the management of 200,000 acres of commercial forest land of the state under AS 38.05.122 as enacted in section 1 of the Act. Times within which the commissioner is directed to act are established.

Section 2(b) contains the required provisions of the agreement required under sec. 2(a).

Section 2(c) establishes the standards under which the proposals invited will be considered.

There is no effective date clause; it will, therefore, take effect 90 days after enactment. AS 01.10.070(c).

If I may be of further assistance, please advise.

RAB:mkr
m3/140

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

March 10, 1986

The Honorable Adelheid Herrmann
Co-Chair, House Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Herrmann:

At your request, the Department of Natural Resources has reviewed SSHB 570, a bill relating to agreements with private parties for the management of state-owned commercial forest land. While we find the idea of private management of public land deserving of further consideration, we think clarification of some issues is required.

First, it is not apparent why this new system of forest management would be preferable to our current system of long term timber sales, or how this new system would differ from current practices.

Next, how would this new system accommodate the need for multiple use of forest land?

Also, we have assumed that the Department is not responsible for building or maintaining roads under this new system. If this assumption is incorrect, the zero fiscal not we provided would need to be revised.

We have other questions that need to be addressed, and would be interested in learning about the experiences of other states involved in this type of timber management program. We believe this to be an idea worth exploring and, in fact, have already studied, in a limited fashion, the Canadian timber leasing program. We would be happy to work with the sponsors and the Committee to further develop this idea.

Sincerely,

Bob Arnold, Deputy
for Esther C. Wunnicke
Commissioner

cc: House Resources Committee
Bill Sponsors

10-J9LH

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No SSHB 570
Title : ...State Forest Management.

Sponsor : Rep. Taylor, et al
Requestor : House Resources
Date of Request : 03-06-86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Forest Management

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Jim McAllister
Division : Forestry
Phone : 465-2491
Date : 03-07-86

Approved by Commissioner : Norman D Almond, Deputy
Agency : Natural Resources
Date : 3/10/86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

HB

5788

Original sponsor: Wallis

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 578 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for the establishment of fish and game resource management regions and the establishment and operation of regional fish and game advisory councils."

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.261. REGIONAL ADVISORY COUNCIL REGULATIONS. (a) The Board of Fisheries and the Board of Game, acting jointly, shall adopt regulations under the Administrative Procedure Act (AS 44.62) for the establishment of fish and game resource management regions and the establishment and operation of regional fish and game advisory councils.

(b) Recommendations from the advisory councils shall be forwarded to the appropriate board for consideration, but if the Board of Fisheries or the Board of Game chooses not to follow the recommendations of a council, then the board shall inform the council of this action and state the reasons for not following the recommendations.

(c) Only a local advisory committee member may sit as a member of a regional advisory council.

Hein
3/11/86.

IN THE HOUSE BY WALLIS

~~SPONSOR~~ Committee SUBSTITUTE FOR HOUSE BILL NO. 578

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for the establishment of fish and game resource management regions and the establishment and operation of regional fish and game advisory councils."

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.261. REGIONAL ADVISORY COUNCIL REGULATIONS. The Board of Fisheries and the Board of Game, acting jointly, shall adopt regulations under the Administrative Procedure Act (AS 44.62) for the establishment of fish and game resource management regions and the establishment and operation of regional fish and game advisory councils. Regulations adopted under this section must be consistent with 16 U.S.C. 3115 (Sec. 805, Alaska National Interest Lands Conservation Act).

March 12, 1986

CSHB 578

POSITION PAPER

REPRESENTATIVE F. KAY WALLIS
DISTRICT 24

It is the intent of CSHB 578 to give Fish and Game Resource Management Regions and Regional Fish and Game Advisory Councils (established by ANILCA) official status by putting them into state law.

Even though Federal law (Section 805, ANILCA) requires the State Boards of Fish and Game to consider the opinions of both regional councils and local advisory committees, only advisory committees are set forth in statue (AS 16.05.260). Advisory committees represent local game management units. The chairpersons of each committee in a region are members of the regional council.

This bill is designed to insure that the State Boards of Fish and Game recognize and consider the advice and reccommendations of Regional Fish and Game Councils as required by the Alaska National Interest Lands Conservation Act, particularily the provisions of Section 805 of this act.

HB

5779

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Special Committee on State Loans, 3/3/1986, 3:30pm
" " " " " " / 2/25/86, 3:30 pm

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No: CS HB 579 (Loans)
Title: Financing of Fisn, Agriculture and Timber Processors by CFAB

Sponsor: House Loans
Requestor: House Resources
Date of Request: April 2, 1986

FISCAL DETAIL
Agency Affected: Department of Revenue
BRU: Treasury Management

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB
Division: Treasury
Phone: 465-2350
Date: April 3, 1986

Approved by Commissioner: [signature]
Agency: Department of Revenue
Date: 4/4/86

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

2550 Denali Street, Suite 1201
P.O. Box 4-2070
Anchorage, Alaska 99509-2070
(907) 276-2007

February 18, 1986

Mr. John Hartle
Office of Representative Sund
Alaska State Legislature
Box V (M.S. 3100)
Juneau, Alaska 99811

Dear John,

For you information, I am enclosing copies of a couple of pieces prepared for Senator Zharoff's office in connection with SB 410. They are also pertinent to HB 579.

I will be calling within the next few days to visit with regard to HB 579. Thanks for your interest.

Very truly yours,

Edward E. Crane
President

EEC:1028V
Enclosures

1. Alaska Commercial Fishing and Agriculture Bank (CFAB) was created in 1978 by the Alaska State Legislature. Its purpose is to provide a source of credit to the Alaska fishing and agriculture industries, with emphasis on the development and broadening of those industries.

2. CFAB is structured under its statute as a cooperative. A cooperative is a corporation whose stockholders and customers are the same individuals or entities. A cooperative is subject to the same business and financial considerations as any other corporation.

3. The State of Alaska provided an initial capital base to CFAB through the purchase of stock; the State presently owns $31.8 million of such stock. CFAB's statute requires that the State stock be repurchased within 20 years from the original investment (1980).

4. CFAB has no organic, structural, operational, or financial relationship with the State except for the capital investment and that two of CFAB's seven directors are appointed by the Governor.

5. CFAB's lending ability is not limited to the amount of the State's investment. CFAB borrows additional funds at "market" rates and terms, pledging its loans and other assets as security. It re-lends those funds to its borrower/owners at rates sufficient to cover its own interest costs, its operating expenses, and to generate capital through earnings. CFAB's outstanding loans to Alaska fishermen and farmers reached a year-end peak of nearly $104 million at December 31, 1983, and had other assets of about $19 million; a total nearly $91 million greater than the State's investment.

6. CFAB's borrowers become owners through a purchase of stock at the time of borrowing and through payment of interest at a level high enough to create retained earnings.

7. Under its statute, CFAB may lend money only to those individuals who are bona fide residents of Alaska. There appears to be no sound and reasonable argument against that limitation.

8. A vast majority of CFAB's loans are to individual fishermen (about 80 to 85 percent by number); most of them are to finance a vessel and/or are secured by a lien on a vessel. This appears to be CFAB's most "natural" market and the credit void which CFAB was most intended to fill.

9. Compared to almost any other type of commercial lending, financing fishing vessels is extremely cumbersome and costly. Alaska geography adds considerable costs. Those factors, in addition to the dangerous concentration of risk, make it extremely difficult for CFAB to maintain a focus on that market without charging interest rates which are unusually burdensome to its borrowers.

10. CFAB has attempted to balance its loan portfolio, and to moderate its total circumstances, through loans to corporations which process seafood and timber. Those loans tend to be relatively large, but do not require servicing costs to a comparable degree. They permit basic operating expenses to be spread over a larger volume of loan dollars, moderating the pressure on smaller individual borrowers.

11. CFAB's statute provides that it can only finance corporations of which the majority ownership and control rests with Alaska residents.

12. A recent survey disclosed that of 22 shorebased Alaska processors having annual sales in excess of $10 million, 17 are ineligible to borrow from CFAB by reason of ownership identity. CFAB has, or has had, lending relationships with four of the five others.

13. Statutory denial of eligibility by reason of ownership is inconsistent with the facts that these processing corporations own facilities in Alaska, pay local taxes in Alaska, provide employment to Alaskans, purchase and add value to Alaska seafoods, pay fish taxes to the State of Alaska, provide a competitive marketing environment for Alaska fishermen, and purchase supplies and services in Alaska. Interest paid on funds borrowed from CFAB (or any other Alaska entity) would be an additional and beneficial increment of Alaska seafoods proceeds within the Alaska economy.

14. While it is clear that the 1978 State Legislature intended to create an institution to serve Alaska interests exclusively, the requirement that the state investment be repurchased evidences the intent that CFAB be operated, and grow, on sound business principles. Removal of the statutory limitation with regard to shorebased processing corporations is consistent with the first intent and greatly enhances the opportunity for fulfillment of the second.

1026V

February 10, 1986

BACKGROUND - SPRING, 1985

In late March and throughout the month of April in 1985, CFAB officers and directors made numerous visits to Juneau to discuss the institution's circumstances with legislators and with administration officials. Those visits, and their substance, were precipitated by a number of factors:

1) Although CFAB's year-end audit by an independent accounting firm (Touche Ross & Company) was not yet complete, it was known with certainty that there had been a loss approaching $10.0 million for 1984; that there was an impairment of stockholders' equity; that CFAB had become illiquid, with no cash or other unencumbered liquid assets available; and that a major portion of the loan portfolio - almost 34 percent (in dollars) of a $94.8 million total - was in a serious default, or non-earning, status.

2) The critical imbalance between CFAB's projected 1985 income (based on the large volume of non-earning loans) and its projected 1985 cash interest expense, and basic operating expenses, foretold the likelihood of another significant loss.

3) CFAB and its staff and Board of Directors had been somewhat traumatized by the relative suddenness and severity of the circumstances (or the realization of them); its chief executive officer had resigned in late February; and it was being managed on an interim basis by an individual who, although familiar with the organization and its pressures, essentially was an unknown factor.

4) CFAB's lender, the Spokane Bank for Cooperatives, had taken increasingly aggressive and obtrusive positions with CFAB. SBC's representatives had expressed strong reservations about CFAB's ability to overcome its immediate difficulties and had indicated that SBC would accept no further deterioration in its position. CFAB's loan commitments from SBC had been reduced to 30-day increments, leaving CFAB constantly on the brink of a forced bankruptcy filing.

The basic thrust of CFAB's efforts in Juneau was to seek consideration of an early investment of an additional $10.0 to $12.0 million of State capital. This was essentially a "time-buying" strategy. The funds, if invested, would have been used to reduce CFAB's borrowings from SBC. This would have lowered CFAB's interest payment requirement to a level which could be met by the interest income from its own performing loans and would, it was intended, be accompanied by SBC agreement that the existing borrowing relationship would not be disturbed for at least two or three years. Relief from those pressures would in turn permit CFAB to address the liquidation

or conversion of non-performing loans on rational bases and would also allow the opportunity for internal restructuring and corrections.

CFAB was not successful in obtaining further State investment. This was undoubtedly due in part to the lateness (relative to the legislative session) of the effort and to the somewhat uncoordinated and unprofessional approach, coupled with the "tight money" atmosphere in Juneau. Another factor, at least within the administration, seemed to be that CFAB was an "orphan" with no agency or individual charged with responsibility. In addition, there appeared to be a widespread lack of understanding as to the origin, nature, structure, and constituency of CFAB. Yet another burden was the recollection of some of CFAB's early flamboyance and excesses and attendant unfavorable press exposure. Finally, there seemed to be a perception that the effort was a thinly-disguised attempt to "bail out" the Spokane Bank for Cooperatives; that was an understandable reaction, but it is not supported by the realities of the legal relationships between the State, SBC, and CFAB.

SUBSEQUENT EVENTS

Since the Spring of 1985 CFAB's directors, management, and staff have attempted to address each and all of the negative factors and pressures with all available resources. Although not all objectives have been met, there has been modest success. Some of the efforts have admittedly been augmented by fortuitous events and circumstances external to CFAB. The net effect is that CFAB's condition has today become stabilized to a degree that exceeds the March 1985 expectations of its interim (now permanent) management.

The corrective efforts and measures have fallen into several broad categories, as follows:

Liquidation/Conversion/Prevention of Non-Performing Loans and Other Assets - There has been a major and consistent effort to rationally and realistically deal with non-performing loans and other non-earning assets on an item-by-item, account-by-account, basis. This has required an extensive commitment to developing the analytical and communications skills of loan officers, to the control and direction of legal counsel, and to the education of borrowers. There has been a similar commitment to the creative and efficient marketing or other disposition of acquired assets. Finally, and again through the re-direction of loan officers' attention and energies, there was in 1985 a successful program of early attention to delinquencies on performing loans for the purpose of preventing them from evolving into serious problems.

Reduction of Operating Expenses, and Increases in Effectiveness - Beginning in June 1985, there was a determined effort to identify and eliminate excessive operating expenses and other barriers to maximum efficiency. In the four years ending December 31, 1984, CFAB's operating expenses have averaged $3,227,000 annually. 1984 operating expenses had totaled $3,260,000; there was $3,288,000 budgeted for 1985. As of May 31, 1985, actual operating expenses for the year to date had been slightly greater than those budgeted. Management's objective was to reduce those expenses to the necessary minimum for the remainder of 1985 and to position CFAB to enter 1986 with projected expenses of $1.0 million less than the historical $3.2 million level.

Financial Restructuring - While the cash flow deficit, the capital impairment, the excessive debt load, and the projected net income shortfall all represented immediate threats to CFAB's existence and required urgent attention, they also carried severe negative implications for the long term. CFAB has a statutory obligation to repurchase the State's $31.8 million investment by the year 2000. CFAB has absolutely no sources of cash except (1) borrowings, (2) earnings, and (3) investment by owners. Its borrowing capacity had been virtually exhausted in early 1985; there were no bases on which to credibly project net cash earnings in the foreseeable future; and there had never been significant cash investment by owners (other than the State), nor was there any mechanism in place to provide for such investment. It seem imperative in early 1985 that, assuming CFAB's short-term survival, a foundation be laid that would over the long term enhance CFAB's ability to borrow, to earn, and to attract owner investment.

Business Development - The written record suggests clearly that a primary consideration in the conception and establishment of CFAB was to provide greater access to credit for "small" individual fishermen. While the performance over the ensuing five years tends to be obscured by the large dollar volumes associated with fish and timber processing accounts and by the dramatic impact of misadventures and imprudence, a close scrutiny of the number and sizes of loans results in a clear conclusion that it is the body of individual fishermen who have been best served by CFAB. It is they - existing individual borrowers and their non-borrowing peers - who have benefited most from CFAB's existence and who would suffer most severely were CFAB to be liquidated. Unfortunately, it is a costly market to serve, it is a market which represents unusual concentration of nearly uncontrollable risk, and it is a market of individuals whose ability to respond to financial pressures is limited. It is on that body of borrowers that the effect of CFAB's 1984/1985 circumstances fell most harshly (in the form of interest rates maintained at a burdensome level.) One of the

results of that was the flight of better, i.e., more creditworthy, borrowers to other lenders; this served only to exacerbate the pressure on remaining borrowers and to further threaten CFAB's stability. That trend continued through 1985, and it became critical to attempt to develop loan programs which would make CFAB more attractive to existing and potential borrowers, particularly those who represented stability and good performance.

1985 RESULTS AND YEAR-END CIRCUMSTANCES

At December 31, 1985, CFAB's fundamental financial circumstances were greatly improved over those of a year earlier or of the Spring of 1985. That improvement can be quantifiably expressed in a number and variety of ways:

1) At December 31, 1984, non-earning loans totaled $31,979,000; at December 31, 1985, the total was $15,653,000. While about $3.5 million of the net reduction was due to charge-offs, the greater portion resulted from liquidations and from re-structurings.

2) At December 31, 1984, CFAB had 189 delinquent loans (including non-earning loans). A year later, the number was 115.

3) During 1985, the book value of acquired assets (which are also non-earning assets) was reduced from $2,361,000 to $1,606,000.

4) CFAB began 1985 with $80,574,000 of interest-bearing debt and only $69,110,000 of earning loans. At year-end those balances stood at $48,268,000 and $55,312,000 respectively.

5) In contrast to the 1984 loss of $9,978,000, CFAB in 1985 had net income of $114,000. Most of the $10,092,000 difference can be attributed to the lack of major new credit losses in 1985. However, another major element was the effective reduction of operating expense. Although the reduction effort was not initiated until June, and although certain of the cost-containment actions involved relatively large one-time costs themselves, CFAB concluded 1985 with operating expenses exactly $400,000 below those budgeted. CFAB has prepared and is committed to a 1986 operating expense budget approximately $1.0 million below the historical $3.2 million average.

6) The Spokane Bank for Cooperatives routinely examines and evaluates CFAB's loan portfolio, which is the basic collateral underlying CFAB's borrowings from SBC. At

April 30, 1985, SBC calculated that, by its (SBC's) standards, the collateral was worth $13,400,000 less than the borrowings it secured. At year-end, CFAB had reduced that collateral deficit - measured by the same standards - to $3,100,000, an improvement of over $10.0 million.

7) The borrowing relationship with SBC has improved in other, less quantifiable, ways. After nearly a year of very limited commitments, CFAB was able in September 1985 to negotiate a six-month SBC loan commitment. Indications are that the next commitment, effective April 1, 1986, will also be for six months or possibly twelve months.

* * * * * * * * * * *

As indicated earlier, a critical long-term need for CFAB was to develop a mechanism and structure to attract owner investment. Such investment, over a period of time, would in turn positively influence CFAB's earning prospects and borrowing ability. During the last half of 1985, with the assistance of specialized legal counsel, CFAB developed a new member/borrower equity investment program. That program, which became effective January 1, 1986, requires that each new borrower (including "old" borrowers acquiring new loans) purchase a modest amount - 5 percent of the borrowing - of stock in CFAB. That stock represents a true equity investment, i.e., risk capital. While this new program will have an almost insignificant effect on CFAB's current condition, it does lay the foundation for genuine and long-term capital growth.

Two other significant but unglamorous programs were developed in 1985 and made effective at the beginning of 1986. Each of them is designed to make CFAB financing more attractive and/or more effective, especially to individual fishermen. One program in particular will permit CFAB to be more aggressive and more competitive in seeking and retaining more creditworthy borrowers.

* * * * * * * * * * *

It is not unreasonable to assert that CFAB has effectively moved itself back from the brink of imminent disaster and has diffused the air of crisis which influenced the day-to-day activities during much of 1985. However, its most difficult challenges lie ahead of it. The most obvious and most quantifiable is the statutory requirement that the $31.8 million State investment be repurchased in, or by, the year 2000. Perhaps a good illustration of the magnitude of that requirement is to point out that if CFAB were to make 14 annual cash payments to a fund earning eight percent annually, those payments would need to be slightly more than $1,313,000 in order to reach the $31.8 million objective. CFAB does not have a

current ability to generate $1,313,000 of cash annually, nor can such an ability be credibly projected for the near future. If such a program were necessarily deferred until there were only ten years remaining, the annual payment amount would be slightly over $2,195,000. Obviously, time is of the essence in the effort to build CFAB's ability to generate cash.

The second major challenge, somewhat more difficult to express than the first, lies in the fact that CFAB is clearly caught in a classic spiral, an "adverse selection" process, which has been the downfall of many lending institutions. The process is not necessarily irreversible but, as the "spiral" descriptor implies, does gain momentum with each passing day. Since, beginning back in late 1983 or early 1984, such a large volume of CFAB's loans have been in a non-earning status, CFAB has had to attempt to maximize its gross income on the remaining portion of its loan portfolio in order to meet its own interest and expense obligations. This has meant maintaining interest rates at a level perceived to be "high" by most borrowers and which, in fact, have generally been higher than those offered by other lenders to more attractive borrowers. Over the past 18 months, many of those attractive borrowers have elected to re-finance their CFAB loans with other lenders. It is not possible to ascribe motivation to every such re-financing, but CFAB's management estimates conservatively that $12.0 to $18.0 million of loan volume has been lost in this way through December 31, 1985, and the trend is continuing. This is alarming. CFAB's loan portfolio is gradually being peeled away to a core of "small" individual borrowers, individuals who have few, if any, alternative sources of financing and who are least able to bear the burdens of increased interest rates, insurance premiums, and other expenses. They are the borrowers who are most costly to serve, and each notch of interest rate (or other) pressure creates a certain number of new problem loan accounts, which cause additional servicing or collection costs for CFAB, which in turn cause a need for greater interest income. Despite the recent success at reducing CFAB operating expenses, it must be recognized that a certain large portion of those expenses are "fixed" and cannot be further reduced no matter how much CFAB's loan volume may shrink. In addition, it must be recognized as axiomatic that if and as CFAB's loan portfolio contains a greater percentage of marginal or problem loans, expenses will actually increase.

The foregoing discussion places emphasis on a context of marginal or problem credit situations. In reality, CFAB - <u>if</u> it is limited by circumstances, statute, or otherwise to financing <u>only</u> those who appear to have the greatest need for its services (the "small" individual fishermen) - may prove to be an economically unfeasible enterprise under the best of conditions. A somehwat oversimplified analysis of a few basic facts illustrate the point:

A. The average CFAB loan to an individual fisherman today has a balance of about $45,000.

B. The average interest "spread" on such loans - that is, the difference between the interest rate CFAB charges and the rate it must pay on its own borrowings - is about 3 1/2 percent.

C. CFAB's annual net interest income on an average loan, then, is $1,575 (3 1/2% X $45,000).

D. In order to cover a basic operating expense budget of $2.2 million (again, $1.0 million below historical levels) CFAB needs the net interest income from 1,397 "average" loans ($2,200,000 divided by $1,575).

The above allows nothing to cover non-operating expenses, accumulation of a reserve for loan losses, capital expenditures, funding of the $31.8 million obligation, etc. It assumes no credit losses, no significant delinquencies, no unusual difficulties of any kind. It is not realistic. CFAB has never had more than 700 "average" fisherman loans and could not make and service 1,397 such loans without a significant and costly increase in staff. The financing of a fisherman, particularly within the context of Alaska's geography, is an expensive, cumbersome, and risky venture. The romance of fishing may tend to obscure the financial implications, but it is a capita -intensive business which is also charac erized by nearly uncontrollable major costs (insurance and fuel, for example); it is a business in which its members have no control of the basic resource. Its members at best have only the right to compete with each other for a share of resources controlled by other human, political, natural, and international forces. It is a business in which an unusual - and unpredictable - number of individual failures are inevitable.

The financing of fishermen - which, in most cases, involves vessel security - is cumbersome and therefore costly. The procedures for taking a lien on a vessel are unlike those for any other kind of personal or business asset (at least in the United States). They are the province of a virtually unregulated and unique agency. They are subject to a body of law rooted in centuries past and recognized by the legal profession as a specialty, which again translates into unusual costs. When the inevitable failures occur, the vessel lien foreclosure process represents an additional and inevadable creditor's nightmare. In the best of circumstances, a case in which the vessel owner/borrower is cooperative, the lender will spend about $6,000 in Marshal's fees, court and attorney's costs, insurance, moorage, etc., before it has ownership and possession of the vessel. According to a major Anchorage law firm, a more typical vessel foreclosure cost would be $12,000 to

$16,000 (the annual net interest income on 8 to 10 average loans). When the foreclosure process is complete, the liquidation process becomes one more opportunity for almost certain loss. Again, the scenario is different than for almost any other form of foreclosed collateral. The market for fishing vessels is limited, close-knit, and highly subjective. Because of the unique procedural requirements related to vessel ownership, it is literally impossible to camouflage the nature and circumstances of such a sale. The bottom line is that, except in unusual cases, the proceeds realized from collateral liquidation will be significantly less than the loan balance involved, creating yet another loss which can only be charged against the interests of performing borrowers.

All of the above factors were almost certainly among the primary reasons that the need for "a CFAB" was perceived in the late 1970's; traditional, profit-oriented, and regulated commercial lenders abstained from widescale financing of individual fishermen because it was, and is, a market characterized by limited potential for profit but bearing inordinate risk of loss.

The creation of CFAB was a visionary response to a clear need. Implementation of the unique concept has been characterized by some dramatic errors and misjudgments, the effects of which have been exacerbated by major unforeseeable and uncontrollable external forces. The result, after nearly six years of actual credit operations, is that the institution has significant financial weaknesses which must be, and are being, addressed. The reality of those weaknesses and the appeal of criticizing their existence and causes, however, should not be allowed to overshadow the fact that CFAB <u>has</u> met the financing needs of hundreds of individual fishermen. It has served the interests of countless others simply by its existence in the market; CFAB's presence as an alternative lender has provided the financially stronger and more creditworthy fishermen with additional leverage in their negotiations with other credit sources. In short, that fundamental purpose is being served. While CFAB is in a position, albeit weakened, to continue that service today, a commitment to that purpose without addressing the long-term risks and effects is imprudent to an extreme.

CFAB has the theoretical ability to modify the financial and operational effects discussed in the foregoing through loans to the agriculture and timber industries and to the processing segment of the fishing industry. Ignoring for the moment the realities and other constraints which limit that ability to a theoretical one, and assuming creditworthiness among the processors in general, the potential benefits to CFAB and its individual borrower-members are great. For example, term loans of $2.5 million each to five processors will yield net interest

income of $437,500 ($12.5 million X 3.5%) annually; and the servicing demands on CFAB are not significantly greater than those of an equal number of loans to individual fishermen. Numbers of that magnitude translate into increased net earnings and equity growth, which in turn translate into enhanced financial stability and lending capacity.

Of those additional markets cited, the greatest potential opportunity, in dollars, lies among the seafood processors. Under present circumstances, however, the existence of that opportunity is illusory; it must be referred to an "theoretical." This is due to the nature and origin of the capital investment in the Alaska seafood processing industry, coupled with the strictures of AS 44.81.210.(a)(1). That statute provides in part that CFAB may make loans only to those coporations (most major seafood processors are corporate entities) of which the majority ownership and control is vested in Alaska residents.

The statute effectively makes a large part of the industry ineligible to borrow from CFAB. It is not unrealistic to generalize that larger processors tend to be more financially stable and more creditworthy than smaller processors. In some instances, economies of scale are significant - more general positive characteristics, though, are multiple plants and diversified operations; highly developed levels of management, marketing, planning, and budgeting expertise; and broad product mixes.

During 1985, CFAB carried out a survey and analysis of the ownership of Alaska seafood processors. Complete ownership information is difficult to obtain in many cases; however, a variety of sources was consulted, and the findings are believed to be credible. A total of 78 shorebased processors entities (in addition to 43 "floater" processors) was identified, as follows:

Annual Sales	Number
$10.0 million or more	22
$ 1.0 million to $10.0 million	33
Less than $1.0 Million	23
Total	78

The distribution of ownership, in terms of statutory eligibility for CFAB financing, is interesting. Of the 18 processors, 45 of them - slightly over 57 percent - are eligible. Twenty of those 45, however, are in the group with annual sales of less than $1.0 million. They represent limited financing opportunities and requirements. Many of them are privately financed and/or integrated harvesting/processing operations, or are highly specialized and limited operations financed by their market base.

Of the remaining 25 eligible processors, 20 are in the $1.0 million to $10.0 million sales group. It is difficult to generalize about those 20. CFAB has, or has had, credit relationships with 13 of them. Some of them have been extremely good loans; others are, or have been, among CFAB's most grievous credit problems. At best, the group does not appear to offer a broad base of financing opportunities.

The group of 22 larger (sales of $10.0 million or more) processors clearly holds the greatest promise for major CFAB financing opportunities; however, only <u>five</u> of those processors are statutorily eligible. CFAB has, or has had, credit relationships with four of them; they have included some of CFAB's most reliable and highest quality loans. They are viewed as attractive and profitable borrowers by other lenders.

It is <u>not</u> known, and not asserted, that all of those 22 processors are creditworthy. Neither can it be asserted that if CFAB were given access to that group that competition would be readily or immediately overcome. However, the statutory barrier to that market represents a significant handicap to CFAB (within the context of its original and documented legislative intents and purposes); it magnifies the risks of financing concentrated in a very small market; it places strong upward pressure on the costs which must be borne by individual fishermen-borrowers; and it serves no useful purpose with regard to Alaskan interests. Ownership of a corporation - at least as expressed and implied by the statute - is not a valid credit factor.

That group of processors own extensive facilities in Alaska. They purchase, add value to, and market Alaska fish. They pay local taxes. They deal with Alaska fishermen. They purchase supplies in Alaska. They employ Alaska workers. They pay fish taxes to the State of Alaska. When they borrow money for capital investments or to finance operations, the money does not disappear - it is repaid, dollar for dollar, to the lender whether that lender is a Seattle commercial bank, a New York insurance company, or CFAB; and interest is paid to that lender also. That interest obviously can only be taken from the gross proceeds from the marketing of Alaska seafoods. If the interest is paid to CFAB it is a beneficial increment to CFAB and, therefore, its owners which consist of the State of Alaska and Alaska fishermen, farmers, and timber harvesters.

EEC:1021V

HB

6005

HOUSE
COMMITTEE REPORT

3/7

(9)

Date referred: 2/14/86

FURTHER REFERRALS: FINANCE

DATE: March 5, 1986

The RESOURCES Committee has considered HB 605

"An Act establishing the Shuyak State Game Refuge."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with CS HB 605 (Resources) [XX] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[2] zero fiscal note/5 first

SIGNING DO PASS:

Shultz

Cato

Miller(NP)

Thompson

Sund

Pearce

Jenkins

Herrmann

SIGNING OTHER RECOMMENDATIONS:

F. Kay Wallis no rec
Wallis

Co-Chairman Herrmann

Bradley
3/3/86

Original sponsor: Thompson

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 605 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing the Shuyak State Game Refuge."

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

* Section 1. AS 16.20 is amended by adding a new section to read:

Sec. 16.20.035. SHUYAK STATE GAME REFUGE. (a) The following state-owned uplands and all uplands acquired by the state after the effective date of this Act lying within the area described in this subsection are established as the Shuyak State Game Refuge:

(1) Beginning at the E 1/16th corner common to Sections 23 and 26, T18S, R19W, S.M.; then south-southwesterly approximately 8.86 miles to the section corner common to Sections 31 and 32, T19S, R19W, S.M., and Sections 5 and 6, T20S, R19W, S.M.; then westerly along the township line between Townships 19 and 20S, Ranges 19 and 20W, S.M., approximately 2.5 miles to the 1/4 corner common to Section 35, T19S, R20W, S.M., and Section 2, T20S, R20W, S.M.; then southerly along the north-south centerline of Section 2, T20S, R20W, S.M., approximately 0.3 miles to the intersection of the mean high tide line of Shuyak Strait; then meandering in a counter-clockwise direction easterly, northerly, westerly, and southerly to the intersection of the mean high tide with the section line common to Sections 15 and 16, T18S; R19W, S.M.; then south approximately 1.25 miles to the section corner common to Sections 22, 27, 28 and 21, T18S, R19W, S.M.; then east 1.75 miles between Sections 22 and 27, 23 and 26 to the E 1/16th corner common to Sections 23 and 26, T18S, R19W, S.M.; to the point of beginning; and

(2) Big Fort Island, Little Fort Island, the Perevalnie Islands and all other islands, islets, pinnacles and rocks lying easterly of and within one mile of the easterly shore of the lands described in (1) of this subsection.

(b) The Shuyak State Game Refuge is established to provide the following:

(1) protection and enhancement of habitat;

(2) continued opportunity for recreational uses, including fishing and hunting, and continued trapping and commercial fishing;

(3) opportunity to view, photograph, study, and enjoy the various species of plants and wildlife of the refuge.

(c) If the Kodiak Island Borough relinquishes to the state any state land selected by the borough within the following parcels, that land becomes part of the Shuyak State Game Refuge:

(1) T18S, R19W, S.M.
Sections 26 - 28
Sections 33 - 35

(2) T19S, R19W, S.M.
Section 3
Section 4
Section 6: S1/2
Sections 7 - 10
Sections 16 - 21
Sections 29 - 32

(3) T19S, R20W, S.M.
Section 1: S1/2
Section 2: S1/2
Section 10: SE1/4
Sections 11 - 16

Sections 20 - 29

Sections 32 - 36

(4) T20S, R20W, S.M.

Section 2

Section 3

(d) Egress and ingress to and from private and borough property within or adjacent to land described in (a) of this section shall be provided through the reservation by the Department of Natural Resources of a 200-foot easement traversing Section 26, T18S, R19W, S.M.; Sections 15, 16, 21, and 22 of T19S, R19W, S.M.; and Section 32, T19S, R19W, S.M. The specific locations of the easements shall be agreed to by the Department of Fish and Game, the Department of Natural Resources, and the Kodiak Island Borough. If land is conveyed to the state as provided in (c) of this section, the easements shall be reserved so as to continue through that land.

(e) The Shuyak State Game Refuge shall be managed in accordance with a management plan prepared by the Department of Fish and Game. The management plan shall be adopted in accordance with the Alaska Administrative Procedure Act (AS 44.62).

(f) The Board of Fisheries and the Board of Game shall adopt regulations governing the taking of fish and game within the Shuyak State Game Refuge to implement (b) of this section.

(g) To the extent that funds are available, the commissioner of natural resources shall identify the boundaries of the Shuyak State Game Refuge by surveying and posting each inland boundary described in (a)(1) of this section, or as added under (c) of this section, at its beginning and its end and not less often than each one-eighth of a mile.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 605
Title : Shuyak State Game Refuge

Sponsor : Rep. Thompson
Requestor : House Resources Committee
Date of Request : March 3, 1986

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Land Management

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Carol Wilson
Division : Commissioner's Office
Phone : 465-2400
Date : 3/4/86

Approved by Commissioner : Norm D Arnold, Deputy
Date : 3/4/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Habitat	HB 605	Representative Thompson

DEPARTMENT POSITION

Support

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Habitat Division	2/25/86	Don W Collinsworth	2-28-86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
DNR	
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Administration (see attached letters)	None Known

FISCAL IMPACT: ☐ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The purpose of creating the Shuyak State Game Refuge is to provide (1) protection and enhancement to fish and wildlife habitat, (2) continued opportunity for fishing, hunting, and trapping, and (3) other recreational opportunities.

ANALYSIS OF BILL/PROGRAM EFFECTS

The bill will:

1. Establish the Shuyak State Game Refuge.
2. Provide for the addition of lands relinquished by the borough to the refuge.
3. Ensure access to private and borough holdings.
4. Direct the preparation of a refuge management plan.
5. Require surveying the refuge boundary to the extent that funds are available.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 605
Title : An act establishing Shuvak State Game Refuge

Sponsor : Representative Thompson
Requestor : Dept. of Fish and Game
Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept. of Fish & Game
BRU : Habitat and Game Divisions

Components : Operating and Capital Budgets

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-				
TRAVEL		-0-				
CONTRACTUAL		-0-				
SUPPLIES		-0-				
EQUIPMENT		-0-				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-				
CAPITAL		-0-				
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

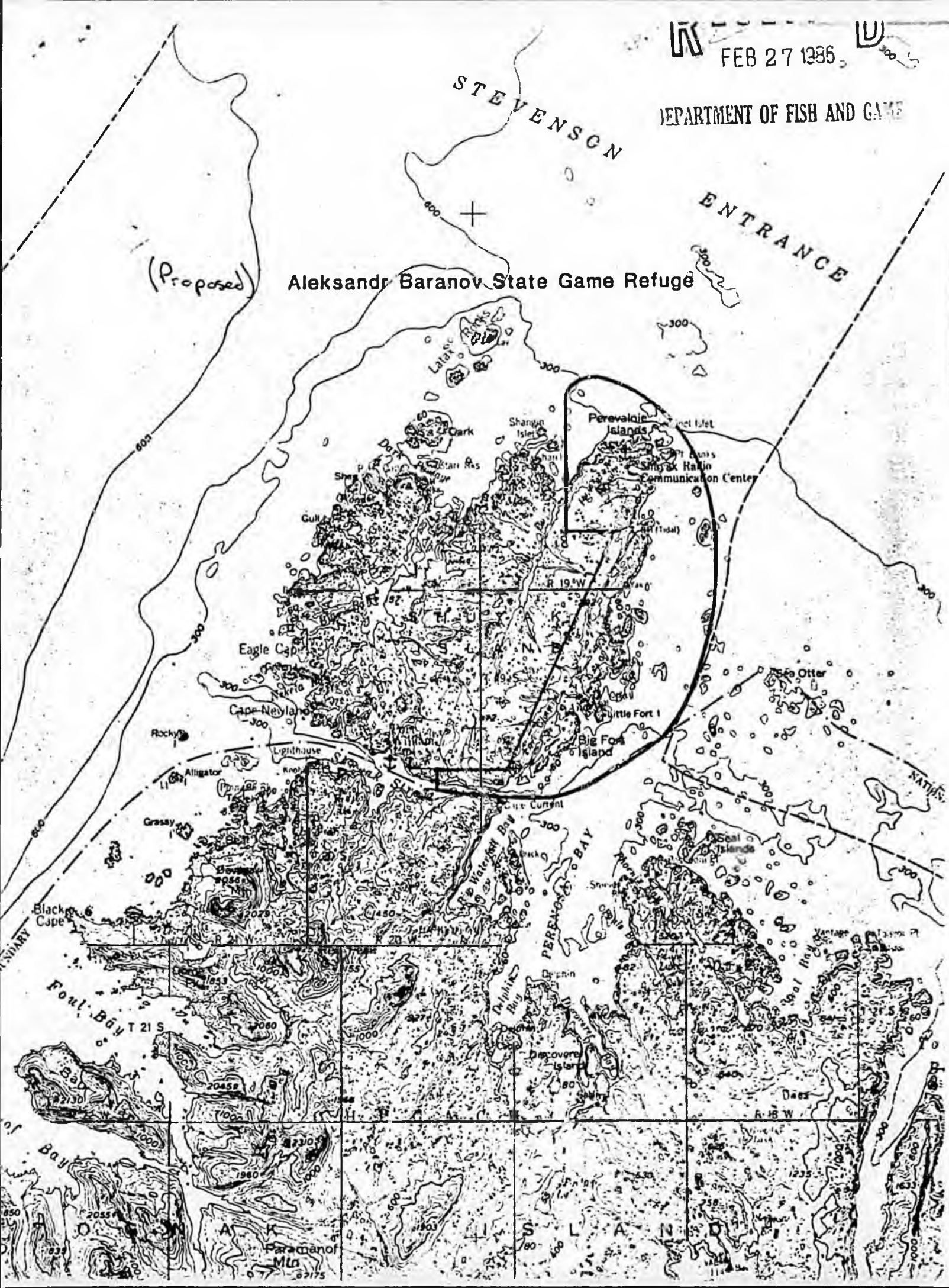
Prepared by : Roland Shanks
Division : Commissioner's Office
Phone : 465-4100
Date : February 28, 1986

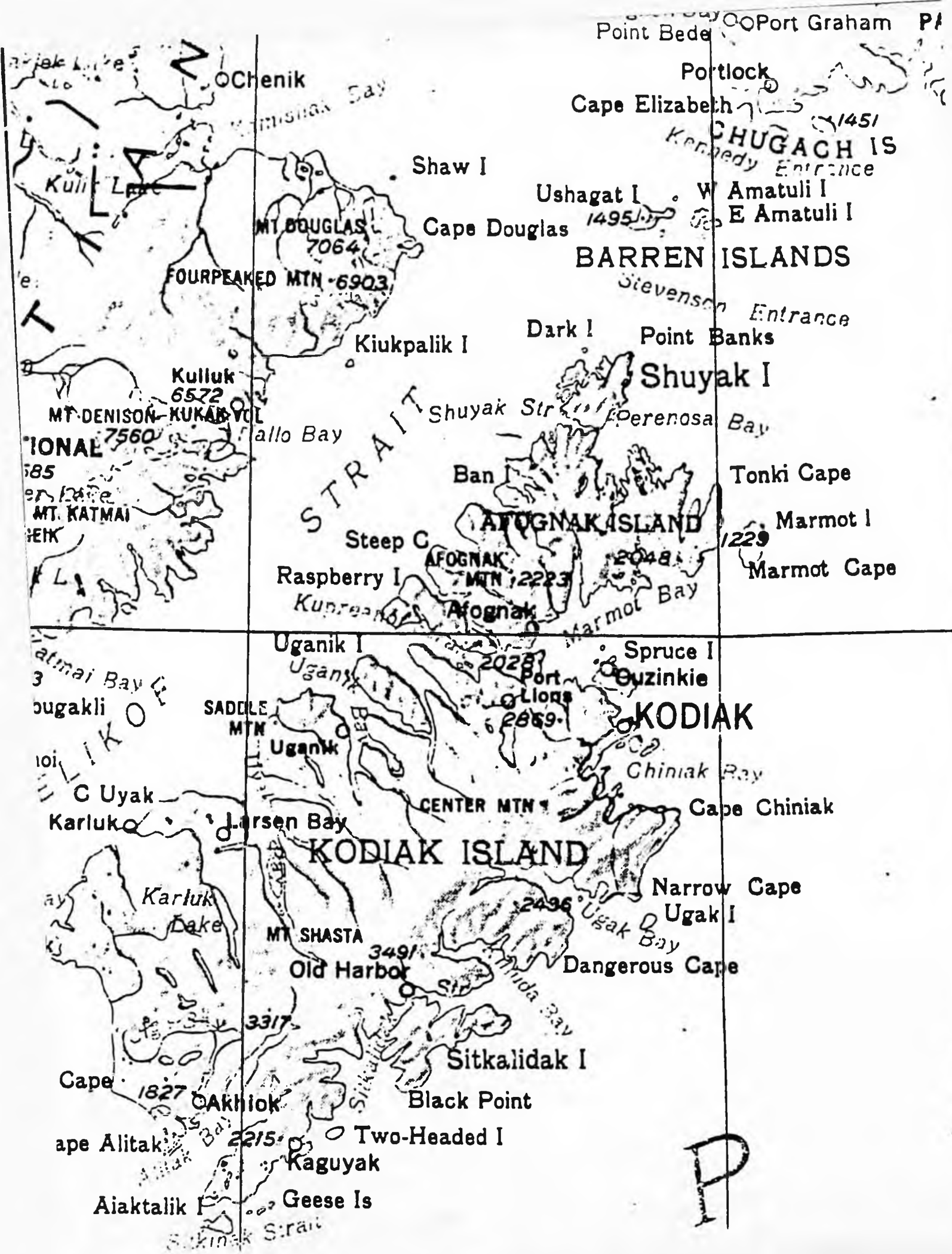
Approved by Commissioner : Don McKennsworth
Agency : Department of Fish and Game
Date : 2-28-86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

RECEIVED
FEB 27 1986
DEPARTMENT OF FISH AND GAME




Point Bede
Port Graham
Portlock
Cape Elizabeth
1451
CHUGACH IS
Kennedy Entrance
Chenik
Shaw I
Ushagat I
W Amatuli I
E Amatuli I
1495
Cape Douglas
MT DOUGLAS
7064
BARREN ISLANDS
FOURPEAKED MTN 6903
Stevenson Entrance
Dark I
Point Banks
Kiukpalik I
Shuyak I
Kuliuk
6572
MT DENISON
7560
Shuyak Strait
Perenosa Bay
Ban I
Tonki Cape
STRAIT
AFOGNAK ISLAND
Marmot I
1229
Steep C
AFOGNAK
MTN 2223
2048
Raspberry I
Marmot Cape
Afognak
Marmot Bay
Uganik I
Spruce I
2028
Port Lions
2869
Ouzinkie
KODIAK
SADDLE MTN
Uganik
Chiniak Bay
C Uyak
CENTER MTN
Cape Chiniak
Karluk
Larsen Bay
KODIAK ISLAND
Narrow Cape
Karluk Lake
2436
Ugak I
Ugak Bay
MT SHASTA
3491
Old Harbor
Dangerous Cape
3317
Sitkalidak I
Cape
1827
Akhiok
Black Point
Two-Headed I
2215
Kaguyak
Geese Is
Aiaktalik I

FEB 0 6 1986



Kodiak Island Borough

710 MILL BAY ROAD
KODIAK, ALASKA 99615-6340
PHONE (907) 486-5736

January 30, 1986

The Honorable David W. Thompson
House of Representatives
Box V
Juneau, Alaska 99811

Dear ~~Mr. Thompson:~~ Dave-

Enclosed please find a copy of Kodiak Island Borough Resolution No. 86-06-R requesting state legislation to create Shuyak State Game Refuge approved at the January regular meeting. Also enclosed is a letter from Neil C. Johannsen, Director, Division of Parks and Outdoor Recreation indicating the State's endorsement of the proposed game refuge.

If I can be of any further assistance, please let me know.

Sincerely,

KODIAK ISLAND BOROUGH

Jerome M. Selby
Borough Mayor

Enclosures

mdd

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION

225A CORDOVA STREET
ANCHORAGE, ALASKA 99501
PHONE: (907) ~~276-2653~~

MAILING ADDRESS:
POUCH 7001
ANCHORAGE, ALASKA 99510

November 27, 1984

Re: Proposed Baranof State
Game Refuge on Shuyak island

Jerome Selby, Manager
Kodiak Island Borough
Box 1246
Kodiak, Alaska 99615

Dear Mr. Selby: Jerome,

I recently learned of the Borough Assembly's resolution to seek legislation establishing the proposed Baranof State Game Refuge on Shuyak Island.

The Division of Parks and Outdoor Recreation supports the proposed state game refuge and believes it will be an important component of Kodiak's long-term outdoor recreation resources.

If there is anything I can do to assist in your efforts, please let me know.

Sincerely,

Neil C. Johannsen
Director

Kodiak Island Borough
Kodiak, Alaska
RECEIVED
NOV
AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

KODIAK ISLAND BOROUGH
RESOLUTION NO. 86-06-R

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY REQUESTING STATE LEGISLATION TO CREATE THE SHUYAK STATE GAME REFUGE

WHEREAS, on August 14, 1981, the Superior Court ordered the Agreement of Consent Decree to effectively dismiss the appeals the Kodiak Island Borough brought against the Alaska Department of Natural Resources with regards to its lands selections; and

WHEREAS, a condition in the Agreement of Settlement and Consent Decree is that the Kodiak Island Borough is to use its best efforts to have legislation introduced to create a state park and state game refuge on Shuyak Island for those portions not to be conveyed to the Kodiak Island Borough; and

WHEREAS, the Shuyak State Game Refuge is to be established to protect fish and wildlife habitats and population of all fish and wildlife species, particularly deer and brown bear, feeding, wintering and migration areas as well as to provide public uses of fish and wildlife in their habitat for hunting, viewing, photography, and general recreation in a high quality environment; and

WHEREAS, the Kodiak Island Borough had caused to be prepared a proposed bill entitled "An Act Creating the Aleksandr Baranov State Game Refuge" for the 1981-82 legislature; and

WHEREAS, Bill HCSSB 51, "An Act Establishing the Shuyak Island State Park; and Providing for an Effective Date" was signed by Governor Sheffield on July 11, 1984; and

WHEREAS, nothing further has been done to establish a State Game Refuge.

NOW, THEREFORE, BE IT RESOLVED by the Kodiak Island Borough Assembly that legislation entitled "An Act Creating the Shuyak State Game Refuge" be introduced and assigned a number providing for the creation of said state game refuge.

BE IT FURTHER RESOLVED by the Kodiak Island Borough Assembly that the Borough administration be directed to send this resolution to the Senator for District N, the Representative for House District 27, Governor Sheffield, the Alaska Department of Natural Resources, and the Alaska Department of Fish and Game and implore their assistance in the successful adoption of this legislation.

PASSED AND APPROVED THIS 2 DAY OF January, 1986.

KODIAK ISLAND BOROUGH

Jerome M. Selby
Borough Mayor

Presiding Officer

ATTEST:

Borough Clerk

February 21, 1986

The Honorable Jerome Selby
Mayor
Kodiak Island Borough
710 Mill Bay Road
Kodiak, AK 99615-6340

Dear Mayor Selby:

Thank you for sending me Kodiak Island Borough Resolution No. 86-06-R supporting introduction of a bill to create Shuyak State Game Refuge. Shuyak is a very scenic island, with outstanding hunting and viewing opportunities. As you are aware, Representative Thompson has introduced a bill to establish such a refuge. I support the creation of Shuyak State Game Refuge in keeping with the out-of-court settlement between the borough and the state. By copy of this letter, I have asked the Commissioners of Fish and Game and Natural Resources to provide any necessary technical assistance to Representative Thompson on this bill.

I look forward to designation of the area as a state game refuge in the near future.

Sincerely,

/s/ Bill Sheffield

Bill Sheffield
Governor

cc: Commissioner Don Collinsworth
Department of Fish and Game

Commissioner Esther Wunnicke
Department of Natural Resources

The Honorable David Thompson
Alaska State Legislature

BS/DWC/DC/tw
CTS#86038HDC0029

FG3

LEG OFF
HB 605


HB
6008

HOUSE

COMMITTEE REPORT

4-22-2

(9)

Date referred: 3/17/86

FURTHER REFERRALS: FINANCE

DATE: April 21, 1986

The RESOURCES Committee has considered SSHB 608

"An Act relating to spraying and application of pesticides and broadcast chemicals."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with CS for SSHB 608 (Resources) [XX] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[XX] zero fiscal note

SIGNING DO PASS: First

Shultz Dick Shultz

Cato Bettie Cato

Miller(NP) M. W. Miller

Herrmann Adelheid Herrmann

SIGNING OTHER RECOMMENDATION:

David W. Thompson RS R:C
Thompson

Roger Jenkins No Rec.
Jenkins

Sunc

Co-Chairman Dick Shultz
Shultz

Original sponsors: Davis, Hurley, Clocksin, et al

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 608 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to spraying and application of pesticides and broadcast chemicals."

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

* Section 1. AS 46.03.320 is amended by adding a new subsection to read:

(c) The department shall adopt regulations prescribing the wind and other weather conditions during which spraying or application of a pesticide or broadcast chemical for other than agricultural purposes may be conducted, in order to protect the health and safety of the public and to limit damage to crops and the environment. Regulations adopted under this subsection do not apply to the spraying or application of a chemical fire retardant by the Department of Natural Resources.

* Sec. 2. AS 46.03.330(b) is repealed and reenacted to read:

(b) The department shall conduct a public hearing on the proposed program if a hearing is requested by the governing body of the affected municipality, or by a petition signed by at least 50 residents. The requirement for public hearing may be waived if the commissioner determines that a public emergency exists.

* Sec. 3. AS 46.03 is amended by adding new sections to article 6 to read:

Sec. 46.03.340. NOTICE OF PESTICIDE APPLICATION. (a) At least 10 days before spraying or applying a pesticide or broadcast chemical on publicly or privately owned land, the state, a municipality, a

utility, a public corporation, or a contractor of any of these, shall publish notice of the proposed spraying or application in a newspaper of general circulation serving the area where the affected land is located. Notice shall also be given in any other manner necessary and reasonably calculated to inform persons who lawfully reside on or use (1) land on or over which the pesticide or broadcast chemical is proposed or likely to be sprayed or applied; and (2) land any portion of the property line of which is within 100 feet of the area on or over which the pesticide or broadcast chemical is proposed to be sprayed or applied. The requirement for public notice may be waived if the commissioner determines that a public emergency exists.

(b) Notice under this section must include

(1) the chemical identity and product name of each pesticide or broadcast chemical to be applied;

(2) the dates and locations of the spraying or application;

(3) the problem or pest sought to be controlled by the spraying or application;

(4) the manner of spraying or application;

(5) the name, address, and telephone number of the state agency, municipality, utility, public corporation, or contractor of any of these, responsible for the spraying or application;

(6) appropriate warnings concerning

(A) the known or suspected acute and chronic health effects of exposure to each pesticide or broadcast chemical to be applied;

(B) evacuation of and reentry to an area affected by the spraying or application; and

(C) the use or consumption of, or contact with, crops or plants affected by the spraying or application.

(c) This section does not apply to the spraying or application of

(1) a chemical fire retardant by the Department of Natural Resources; or

(2) a pesticide or broadcast chemical for agricultural research purposes by the Department of Natural Resources or the University of Alaska.

Sec. 46.03.350. CONTAMINATION OF DOMESTIC WATER SUPPLIES PROHIBITED. A pesticide or broadcast chemical may not be sprayed or applied in a location or manner that contaminates water used for domestic consumption and thereby jeopardizes the health of persons consuming the water.

* Sec. 4. AS 46.03.330(c) is repealed.

Hein
4/7/86

Original sponsors: Davis, Hurley,
Clocksin, et al

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 608 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to spraying and application of pesticides and broadcast chemicals."

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

* Section 1. AS 46.03.320 is amended by adding a new subsection to read:

(c) The department shall adopt regulations prescribing the wind and other weather conditions during which spraying or application of a pesticide or broadcast chemical for other than agricultural purposes may be conducted, in order to protect the health and safety of the public and to limit damage to crops and the environment. Regulations adopted under this subsection do not apply to the spraying or application of a chemical fire retardant by the Department of Natural Resources.

* Sec. 2. AS 46.03.330(b) is repealed and reenacted to read:

(b) The department shall conduct a public hearing on the proposed program if a hearing is requested by the governing body of the affected municipality, or by a petition signed by at least 50 residents. The requirement for public hearing may be waived if the commissioner determines that a public emergency exists.

* Sec. 3. AS 46.03 is amended by adding new sections to article 6 to read:

Sec. 46.03.340. NOTICE OF PESTICIDE APPLICATION. (a) At least 10 days before spraying or applying a pesticide or broadcast chemical on publicly or privately owned land, the state, a municipality, a

utility, a public corporation, or a contractor of any of these, shall publish notice of the proposed spraying or application in a newspaper of general circulation serving the area where the affected land is located. Notice shall also be given in any other manner necessary and reasonably calculated to inform persons who lawfully reside on or use (1) land on or over which the pesticide or broadcast chemical is proposed or likely to be sprayed or applied; and (2) land any portion of the property line of which is within 100 feet of the area on or over which the pesticide or broadcast chemical is proposed to be sprayed or applied. The requirement for public notice may be waived if the commissioner determines that a public emergency exists.

(b) Notice under this section must include

(1) the chemical identity and product name of each pesticide or broadcast chemical to be applied;

(2) the dates and locations of the spraying or application;

(3) the problem or pest sought to be controlled by the spraying or application;

(4) the manner of spraying or application;

(5) the name, address, and telephone number of the state agency, municipality, utility, public corporation, or contractor of any of these, responsible for the spraying or application;

(6) appropriate warnings concerning

(A) the known or suspected acute and chronic health effects of exposure to each pesticide or broadcast chemical to be applied;

(B) evacuation of and reentry to an area affected by the spraying or application; and

(C) the use or consumption of, or contact with, crops or plants affected by the spraying or application.

(c) This section does not apply to the spraying or application of

(1) a chemical fire retardant by the Department of Natural Resources; or

(2) a pesticide or broadcast chemical for agricultural research purposes by the Department of Natural Resources or the University of Alaska.

Sec. 46.03.350. CONTAMINATION OF DOMESTIC WATER SUPPLIES PROHIBITED. A pesticide or broadcast chemical may not be sprayed or applied in a location or manner that is likely to contaminate water used for domestic consumption and thereby jeopardize the health of persons consuming the water.

* Sec. 4. AS 46.03.330(c) is repealed.

Hein
4/1/86

Original sponsors: Davis, Hurley,
Clocksin, et al

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 608 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to spraying and application of pesticides and broadcast chemicals."

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

* Section 1. AS 46.03.320 is amended by adding a new subsection to read:

(c) The department shall adopt regulations prescribing the wind and other weather conditions during which spraying or application of a pesticide or broadcast chemical may be conducted, in order to protect the health and safety of the public and to limit damage to crops and the environment. Regulations adopted under this subsection do not apply to the spraying or application of a chemical fire retardant by the Department of Natural Resources.

* Sec. 2. AS 46.03.330(b) is repealed and reenacted to read:

(b) The department shall conduct a public hearing on the proposed program if a hearing is requested by the governing body of the affected municipality, or by a petition signed by at least 50 residents. The requirement for public hearing may be waived if the commissioner determines that a public emergency exists.

* Sec. 3. AS 46.03 is amended by adding new sections to article 6 to read:

Sec. 46.03.340. NOTICE OF PESTICIDE APPLICATION. (a) At least 10 days before spraying or applying a pesticide or broadcast chemical on publicly or privately owned land, the state, a municipality, a utility, a public corporation, or a contractor of any of these, shall

publish notice of the proposed spraying or application in a newspaper of general circulation serving the area where the affected land is located. Notice shall also be mailed to each person who owns or resides (1) on the land, or (2) on land the property line of which is adjacent to the area, on or over which the spraying or application is proposed or likely to occur. The requirement for public notice by mailing may be waived if the commissioner determines that a public emergency exists.

(b) Notice under this section must include

(1) the chemical identity and product name of each pesticide or broadcast chemical to be applied;

(2) the dates and locations of the spraying or application;

(3) the problem or pest sought to be controlled by the spraying or application;

(4) the manner of spraying or application;

(5) the name, address, and telephone number of the state agency, municipality, utility, public corporation, or contractor of any of these, responsible for the spraying or application;

(6) appropriate warnings concerning

(A) the known or suspected acute and chronic health effects of exposure to each pesticide or broadcast chemical to be applied;

(B) evacuation of and reentry to an area affected by the spraying or application; and

(C) the use or consumption of, or contact with, crops or plants affected by the spraying or application.

(c) This section does not apply to the spraying or application of a chemical fire retardant by the Department of Natural Resources.

Sec. 46.03.350. USE OF PESTICIDES NEAR WATER SUPPLIES

PROHIBITED. A pesticide or broadcast chemical may not be sprayed or applied within 100 feet of a body of water that is a source of water for domestic consumption.

* Sec. 4. AS 46.03.330(c) is repealed.

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

April 11, 1986

Representative Richard Schultz, Chairman
House Resources Committee
Pouch V
Juneau, AK 99811

Dear Mr. Chairman:

At the April 2 hearing of the House Resources Committee on HB 608, relating to the spraying and application of pesticide and broadcast chemicals, member utilities of the Alaska Rural Electric Cooperative Association presented testimony opposing the legislation.

The primary concern of the electric cooperatives was the exorbidant cost associated with section three of the bill, relating to notice of pesticide application. Member cooperatives are certain their consumer/owners would incur several hundrerd thousand dollars in costs annually if required to provide notice as specified in the bill (CS for HB 608 dated 4/1/86).

On April 3, Marilyn Heiman, aide to Rep. Mike Davis, organized a meeting with ARECA and various special interest groups to discuss proposed amendments to the bill. Participants in the meeting reached a compromise position on the notification provision which would ensure the public is adequately notified of pesticide use while substantially reducing the cost to cooperative utilities. This compromise is reflected in the most recent version of the bill (CS for HB 608 dated 4/7/86).

Cooperative utilities recognize their responsibility to provide persons living in the affected area with reasonable notice of pesticide application and substantive information on the pesticides being used. Our members believe this can best be accomplished through use of mass media (newspaper, television, and radio), and by posting notice in local public buildings and affected areas. We support amendments to HB 608 requiring these methods of notification be used before a planned program of pesticide application is implemented.

Thank you for the opportunity to present our members concerns to the House Resources Committee.

Respectfully,

Kenneth S. Johnson
Director of Information

DEMOCRACY IN ACTION

MATANUSKA ELECTRIC ASSOCIATION, INC.
P.O. BOX 1148
PALMER, ALASKA 99645
TELEPHONE
(907) 745-3231

April 4, 1986

The Honorable Richard Shultz
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Subject: **NOTICE OF PESTICIDE APPLICATION**

Reference: **HOUSE BILL 608, SECTION 3, ARTICLE 46.03 340**

Dear Representative Shultz:

As requested by the House Resource Committee, this letter is a summary of my testimony given on April 2, 1986 during a teleconference from the State Legislative office in Wasilla. The following testimony, is against the above referenced House Bill. In order to be in compliance with the above Section, Matanuska Electric Association would have to consider one or more of the following options:

OPTION #1

a) Title search for one-third, or 9,000 consumers, in MEA's service area each year. (Total of 27,000 consumers over a 3-year cycle.)

b) Field contact to identify adjacent owners of property to be treated.

Notification could not occur until items a) and b) are completed. The man-hours required to complete these items is estimated at 54,000. This is a conservative estimate, particularly when you consider the size of our service area which encompasses approximately 2,417 miles of powerlines from Eagle River to Cache Creek, located at Mile Post 121 of the Parks Highway, and to Sheep Mountain Lodge at Mile Post 113 on the Glenn Highway. In addition, most contacts take more than one trip to gather the necessary information. The written notification is also taken into account.

OPTION #2 - Hand cut or mechanically cut, no herbicides.

a) This option would require the Utility to hire additional employees to control the re-sprouting, which would occur on broad-leaved species such as Birch, Alder, Aspen, Cottonwood, and Willow. The total estimated additional man-hours to accomplish the reclear are 41,396. This is based upon two to three years of growth on 2929.7 acres, which MEA controls at 28.26 man-hours per acre. This would result in the reclear of an additional 1464.85 acres due to re-sprouting.

In conclusion, we would request that the Resources Committee review this summary and our Right-Of-Way Maintenance Standards. In addition, we would request that Public Utilities be exempt from Section 3, 46.03.340 for the following reasons:

1. The existing work plan for the use of herbicides on utility easements or fee owned land is reviewed by the DEC prior to application.

2. Public notice is given in local newspapers, and other publications such as the Ruralite Magazine, a company newsletter distributed throughout our service area, and local radio stations.

3. All applications are performed by licensed applicators. The law stipulates that the supervisor must be licensed. In addition, the majority of the herbicides applied are non-restrictive, and do not require an applicator to be licensed; however, we feel that all applicators should be licensed when applying any herbicide. Further, we (MEA) have only received two complaints in the last four years on herbicide application, and both were resolved without ramification.

4. The Right-Of-Way Maintenance Standard that MEA currently uses has also been adopted by several Utilities, either in part, or in its entirety. This Standard has been closely reviewed by the DEC prior to being adopted by MEA.

5. The cost of complying with Section 3, 46.03.340 would be prohibitive to our 27,000 consumers.

6. In any case, if this Bill passes as written, we would experience these costs in our base rate.

   *a) The use of herbicides with prior written notice, would result in an estimated additional 54,000 man-hours, minimum.

   *b) Use no herbicides; hand cut and mechanical cut only, which would result in an estimated additional 41,000 man-hours, minimum.

Should you have any questions or require additional information, please feel free to contact me at (907) 745-9281.

Very truly yours,

James F. McIntosh
Manager of Electric Operations

enc. Vegetation Management Standard (MEA)

*9,000 consumers, 6 hours per consumer, including field identification.
*1,465 additional acres to be cut at 28.26 man-hours per acre.

VEGETATION MANAGEMENT STANDARD

MATANUSKA ELECTRIC ASSOCIATION, INC.

I. The Objectives of Vegetation Management are:

1. To assure constant reliability and safety of MEA distribution transmission system;

2. To create safe working conditions for line crew personnel and the safety of the public;

3. To create utility through plant management by conversion to useful low growing native species and grasses;

4. To reduce or, hopefully, eliminate fire hazards;

5. To produce a more pleasing appearance.

6. To establish a record-keeping system which indicates areas due for routine maintenance per the "cycle" system.

II. General

A. Herbicides

As long as distribution/transmission lines are located on or under land, right-of-ways will require maintenance. The conversion of land to right-of-way often alters the plant community and management of this community is a continuing problem and expense.

Herbicides have been an important tool in this program of vegetation management and they will continue to be an important tool. Herbicides are used (1) to control and inhibit hazardous vegetation on power line right-of-ways; and (2) to control all plant growth in substation yards. With selective ground application, the herbicides may be applied to individual species of plants or a small grouping of plants. The objective is to convert the plant family from the tall-growing species, which are hazardous to power lines, to low-growing species. The visual impact of such ground applications of herbicides is reduced to a minimum. Only target plants are treated, thus reducing greatly the amount of herbicides introduced into the environment. A single plant or small groupings may be treated. This type of application also permits greater diversity in the type of chemical used, method of treatment, and time of year when the herbicide can be applied. The use of herbicides for killing or regulating brush growth is not a method to be used indiscriminately, for the very property that makes it desirable also makes it undesirable. It is therefore necessary that the operators and brush control crew supervisors be trained in approved procedures, techniques, and methods before undertaking a chemical spray operation.

In order for the program to be successful, chemicals should be applied to only that specie of brush which is not wanted; extreme care should be exercised to avoid spraying near large subdivisions heavily populated areas, steep hillsides or extreme wetlands. These areas should be skipped and classified as hand-cutting only areas.

B. Other Methods

Once the brush is under control, it will require much less effort and expense to keep it that way. The low-growing vegetation will tend to keep tall brush and tree seeds from finding their way to the ground, as well as robbing those undesirable plants that do take root of necessary sunlight, moisture, and plant food so, at best, growth will be substantially retarded. In addition, the low-growing plant community will offer food and cover to wildlife.

USE OF DAILY BRUSH REPORT

I. Introduction

Information on this daily brush report form is designed to satisfy three requirements; First are those imposed by federal and state laws and, second, is to provide management information. The third is to satisfy completed bid documents.

II. Form usage

The form is divided into sections as follows: location, treatment method, mixture per acre, type of vegetation, wind, temperature, length, width, number of acres, man hours and equipment used.

1. Location. Contractor must list both beginning and ending structure. As long as no spans have been skipped, they may be listed as in the example provided under number 7 below. Skipped spans must be recorded as follows:

Str from	Str to
K29	K31
K33	K40

This indicates that on spans K31 to K33, no activity was performed. The reason for skipping a span or spans must be stated.

2. Treatment method. Contractor must state whether stump treatment, spraying of brush or application of pellets was used as the method of treatment. In cutting, state whether hand-cutting or hydro-axing was used.

3. Mixture per acre. This refers to the gallons or pounds per acre used.

4. Vegetation treated. The following codes are to be used to identify type of vegetation treated.

B = Birch
W = Willow
C = Cottonwood
A = Alder
S = Spruce

5. Wind and temperature. This may be recorded at the beginning and end of each section. This reading does not need to be recorded per span.

6. Length and width. Length and width of controlled area must be listed, as well as total acreage within one-tenth of an acre. (Example: Length x width divided by 43560 = acres.)

7. Man Hours. Man hours must be listed for time spent on specific locations. Example below.

Str from	Str to	MH
K1	K28	30

8. Vehicles. List all vehicles by license number.

9. Chemical Data.

a. List manufacturer name. (Dow, Amchem, Dupont, etc.)
b. List mixture ratios used. (Weedone 170 - 3 gallons per 97 gallons oil) If more space is needed, use the comment section.

10. Total. Number of gallons or pounds used per report.

11. Danger Tree Locations. List nearest structure number, and identify on map with red pencil. Use comment section if more space is needed.

12. Total. This refers to total acres and manhours.

13. General Comments. List names of property owners contacted during clearing operations. In addition, note anything of interest or importance relating to the application or the right-of-way.

III. Top of Form

Starting at the left list circuit and map number. On the right put down the time actually started on the right-of-way, and on the left the time actually finished on the right-of-way. Complete the month, day and year. The crew foreman or supervisor must sign the form. This form will be completed and given to the right-of-way clearing and maintenance officer no later than 10:00 a.m. on the morning on the business day following completion.

RIGHT-OF-WAY MAINTENANCE STANDARD

A. Clearance Criteria

The purpose of this standard is to provide time periods of trouble-free operation in which the minimum clearances listed below are not violated and for which a growth period must be allowed. With the exception of special situations, this growth period will be an estimate of 10 years. Of equal importance to the brush heights is brush density. Brush density will be controlled only to the extent necessary to permit reasonable use of the right-of-way for access to perform routine and anticipated emergency activities.

1. 2.4 kV to 34.5 kV - 10 feet from conductor
2. 34.5 kV to 138 kV - 15 feet from conductor

B. Experimental Areas

Test plots developed by MEA are to be safeguarded and special instructions will be issued prior to contractor clearing.

C. Areas Restricted by Agreement

Certain areas may be restricted by the result of negotiation with a land owner at time of acquisition. Changes do occur, particularly in land use; consequently, the restrictions may change. Restrictions currently in effect will be identified on the maps issued to contractors. Contractors will be notified of changes as they occur.

D. Coordination and Public Awareness

A coordinated effort to inform consumers of right-of-way clearing affecting their property is essential to a successful maintenance program. Every attempt must be made to contact property owners prior to commencement of work. It should also be noted that certain easement agreements require contact with the property owner prior to clearing. This requirement will be specified on maps as necessary.

E. Hand Application of Herbicide

MEA makes use of hand application of herbicides, as it offers the most effective method of selective vegetation control. The only species to be treated will be the target species. The pellets will be broadcast within the drip base of the tree or stump, using the label instructions to ensure the proper pounds per acre application.

F. Cutting

1. Hand cutting.

Hand cutting of, undesirable species is also an effective method for selective vegetation management. Hand cutting does have the decided advantage of meeting certain aesthetic criteria. This method, which can be done in any one or combination of the parts required to fit a particular situation; namely, cutting only, cutting and disposal, cutting and stump treatment or stump treatment only, as on new lines following initial clearing. Stump treatment, if applied properly will eliminate resprouting of most species.

2. Tools for Cutting.

Cutting is normally done by axe and power driven tools. The terrain, density and quantity of vegetation will determine tools to be employed.

3. Height of Cutting.

Cut conifers below the lowest limb. This will eliminate necessity of stump treatment. Cut deciduous trees about 2" to 4" above the ground line. Application of the herbicide should be made as soon as possible after cutting. All stumps of species to be treated to prevent resprouting must be cut FLAT for application of the chemical. Cutting trees at an angle is not acceptable and will be rejected. This is a safety measure, as angular cuts leave a hazardous point.

4. Safety While Cutting

Exercise extreme care in cutting trees which could fall into the power line or structure. Rarely will such a tree on the right-of-way be large enough to use a wedge. In general, tie a line (poly-dacron or equal) to the tree high enough to get good leverage. Tying the line too low can pull the tree off the stump while having little effect on direction of fall. Pull the tree so that it falls away from the conductor keeping it within the limits of the right-of-way if possible. Brush generally has considerable spring in the stems; therefore, be careful of the snap of the stem and possible ricochet of the cutting tool. While working on MEA right-of-way it is highly recommended that the following safety devices be made available and used by contractors:

a. Safety glasses
b. Hard hats or caps
c. Ballistic nylon chaps

G. Disposal

1. Chipping

A chipper is a mechanical brush disposal unit which cuts up brush into chips and either spreads them over the right-of-way or deposits them in piles. Brush too large to be handled by the chipper is limbed and the limbs fed into the chipper; the trunks deposited on the edge of the right-of-way in neat piles.

2. Lopping and Scattering

This is an ideal method of disposal in many areas where chipping is not a requirement. The objective is to get the trunk of the tree flat on the ground with all branches removed by axe or saw. For safety, the limbs will be cut as close to the trunk of the tree as possible.

H. Stump Treatment

Application of herbicides to freshly cut stumps prevents resprouting. Therefore, treat brush stumps immediately after cutting. Spray mixtures for stump treatment will be found in the herbicide chapter.

1. Time of Year

Stumps can be successfully treated at any time of year. If spray is not applied within 24 hours following cutting, it is best to wait until resprouting or apply pellets.

2. Squeeze Bottles

Squeeze bottles are becoming popular. They are easy to use and carry. They are proving to be efficient and economical. Back pack sprayers are another method that has become popular with many contractors.

I. Screens

Screening as a recent development in right-of-way vegetation management has been the leaving of brush and trees on the right-of-way at highway crossings and other critical viewpoints. The purpose of these screening has been to reduce as much as possible the visual effect of a cleared right-of-way. Most screenings have resulted from special clearing specifications for new construction. Every effort should be made to develop vegetation screens on existing lines when the opportunity is available.

Maintenance of screens presents a continuing control problem. All activities directed to the control of the tall growing trees and brush must be performed in such a manner that evidence of maintenance activity is minimal. Most screens do not have the safety factor of 15 years of growth if they are to effectively serve as a screen; therefore, they require more periodic inspection and maintenance.

Topping in screens, when practical, can be performed on the hardwoods and conifers. Use of herbicides should be minimal, preferably limited to individual plants. Depending on the site, size, and shape of the plant, the treated plant may be left in place.

When feasible, consideration should be given to the possibility of converting the screen from fast growing problem species to slow growing species which are native to the areas.

J. Topping and Pruning

In special instances, topping or pruning of trees may be required to attain special management goals. The need to top rather than cut trees generally occurs in areas where special aesthetic effects are desired. On newer lines, such instances were included in the clearing specifications and were part of the right-of-way when the line was energized. On the older lines such instances will be cases where a more acceptable appearance will be created and are initiated by line maintenance personnel or are created for us by the landowner. Some typical situations which require topping are:

1. Scenic area road crossing.
2. Major highway crossings.
3. Recreational areas.
4. Danger tree areas when a part of residential home site or recreational area.
5. Home site or agricultural.
6. Other

Due to the great variety of high growing brush and trees indigenous to the MEA operation area, knowledge of growth habits is quite essential. Observations of each species in its native habitat is the easiest way to make topping judgments. In general, hardwoods can be topped so that a pleasing form is retained in a healthy growing condition while enough growth is removed so that a reasonable maintenance free period is attained. Conifers present a real challenge. Topping can be a severe blow to a tree where it is weakened by the loss of too much crown. Most conifers are readily susceptible to insects and disease under such a condition. It is imperative that at least a good one-third (1/3) of the crown be left to sustain the tree.

Keep in mind that, regardless of which one of the five situations identifies the problem trees or brush, all we are really talking about are Danger Trees or Danger Brush which require special handling. In those situations which are particularly delicate and may require expertise to top prune, do not hesitate to secure the services of an expert.

EPA APPROVED HERBICIDES

The following herbicides are approved by the Environmental Protection Agency.

A. Non-Restrictive. These herbicides do not require applicator's license to apply.

1. Banvel 720 Brush Killer
   Active ingredients, 1 lb/gal Dicamba
   As amine salt and 2 lb/gal 2,4-D AS
   Amine salt. Liquid, water soluble
   EPA Reg. # 876-177A Ref: Velsicol Chemical Co.

2. Banvel 520 Brush Killer
   Active ingredients, 1 lb/gal Dicama
   As acid and 2 lb/gal 2,4-D AS
   Ester. Liquid oil soluble.
   EPA Reg. # 876-168AA Ref: Velsicol Chemical Co.

3. Banvel XP Pellets Brush Killer
   Active ingredient, Dicamba, 10%
   Pellets
   EPA Reg. # 876-178AA Ref: Velsicol Chemical Co.

4. Weedone 170 (BK-170) Brush Killer
   Active Ingredients, 2 lb/gal 2,4-D
   and 2 lb/gal 2,4-DP as low volatile
   Esters, liquid, oil and water soluble
   EPA Reg. # 264-222AA Ref: Amchem Chemical Co.

5. Garlon 3A Brush Killer
   Active ingredients Triclopy
   3 lb/gal acid equivalent
   EPA Reg. # 464-546 Ref: Dow Chemical Co.

6. Roundup. Weed control in substations.
   Active ingredient Isopropylamine salt of Glyphosate
   4 lbs/gal acid equivalent
   EPA Reg. # 524-308 Ref: Monsanto Co.

B. Restrictive. These herbicides require and applicators license to apply.

1. Tordon 101 Brush Killer
   Active ingredients, .5 lb/gal
   Picloram as amine salt and
   2 lbs/gal 2,4-D as amine salt.
   Liquid mixture. Water soluble.
   EPA Reg. # 464-306 Ref: Dow Chemical Co.

2. Tordon 10K Pellets Brush Killer
   Active ingredient, 10% Picloram as
   potassium salt. Pellets.
   EPA Reg. # 464-320 Ref: Dow Chemical Co.

MIX RATES

HERBICIDE	MIXING FORMULA	TREATMENT
Banvel 520	Undiluted with equal parts oil	Stumps
Banvel 720	Undiluted with equal parts water	Stumps
Banvel XP	Pellets as label directs	Brush
Weedone 170	3 gal. per 97 gal. oil	Stumps

Garlon 3A	Undiluted on treated areas	Stumps
Roundup	3 qts. to 30 gal./30 gal. per acre	Weed control
Tordon 101	Equal parts Tordon 101 & water	Stumps
Garlon 3A	2 gal. Garlon, 98 gal. water	Brush control
Tordon 101	1 to 3 gal. per 97 gal. water	Brush control
Tordon 10K	40 to 60 lbs per acre	Brush control

RIGHT OF WAY MANAGEMENT

TIME: START_____/FINISH_____

DAILY BRUSH REPORT

CIRCUIT NO. MAP NO. DATE: _____
month-day-year

SUPERVISOR: _____

STR FROM	STR TO	TREATMENT METHOD			HAND CUT	MECH CUT	MIXTURE PER ACRE	VEGETATION TREATED	WIND MPH	TEMP.	LENGTH	WIDTH	ACRES	MAN HOURS	LICENSE NO. OF EQUIPMENT USED
		STUMP	SPRAY	PELLET											

CHEMICAL DATA	MANUFACTURE	MIXTURE	TOTAL		DANGER TREES LISTED BY STR NUMBER	TOTAL			TOTAL NUMBER OF VEHICLES ON JOB

GENERAL COMMENTS

MEA FORM # 2-12-85

Alaska Center for the Environment
Suite 1A
411 West 4th Ave.
Anchorage, Alaska 99501 274-3621

April 2, 1986

Richard Shultz
Alaska State Legislature
Box V (MS 3100)
Juneau, Alaska 99811

Re: HB 608, Pesticide notification

Dear Representative Shultz:

I am writing on behalf of the Alaska Center for the Environment in support of HB 608, an act relating to spraying and application of pesticides and broadcast chemicals.

So far, EPA has confirmed the safety of only 37 of more than 600 active ingredients used in 450,000 pesticides commercially available. Recently, EPA has ranked pesticides as their number one major issue.

Pesticides are designed to kill and they can endanger the environment and human health. People deserve to be informed about activities which could have such serious consequences.

This bill provides for advance notification which would allow people to attempt to avoid exposing themselves to pesticides, or to express their concerns to the applicator.

It would also encourage better record keeping, which could resolve doubts about exposure, should someone claim to have been injured as a result of pesticide spraying.

Keep in mind that this bill does not ban or in any way restrict pesticide use, but simply allows people to receive information about activities which greatly concern them.

We urge you to support this bill.

Sincerely,
Ursula Barril
Ursula Barril, Executive Director

cc: Adelheid Herrmann
Mike Davis
Scott Highleyman
Mary Core

UNIVERSITY OF ALASKA-FAIRBANKS
Fairbanks, Alaska 99775
School of Agriculture and Land Resources Management
Agricultural and Forestry Experiment Station

April 2, 1986

Alaska State Legislature
Representative Dick Shultz
Pouch V (MS 3100)
Juneau, Alaska 99811

The Honorable Dick Shultz:

Dear Sir:

Sponsor substitute for House Bill No. 608 is a concern to both public and private interests in agricultural production. As the bill is now written, those persons involved in producing food and feed products and those involved in providing research and extension support to the agricultural industry in Alaska would be required to spend valuable time justifying these efforts to gain community support where in most cases this support already exists.

The concerns expressed in CSHB608 are valid concerns. However, they are concerns of which the agricultural industry in Alaska is already cognizant. Therefore I would suggest the changes made on the enclosed copy of CSHB608 be incorporated during hearings of the House Resources Committee.

Thank you for your consideration.

Sincerely,

Carol E. Lewis
Associate Professor
of Resource Management

CEL:me

cc: James V. Drew
Wayne C. Thomas

Introduced: 3/17/86
Referred: Resources and Finance

IN THE HOUSE

BY DAVID, HURLEY, CLOCKSIN, KOPONEN, UEHLING, M.M. MILLER GOLL AND BOUCHER

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 608

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to spraying and application of pesticides and broadcast chemicals."

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

* Section 1. AS 46.03.320 is amended by adding a new subsection to read:

(c) The department shall adopt regulations prescribing the wind and other weather conditions during which spraying or application of a pesticide or broadcast chemical may be conducted, in order to protect the health and safety of the public and to limit damage to crops and the environment. Regulations adopted under this subsection do not apply to the spraying or application of a chemical fire retardant by the Department of Natural Resources. These regulations will also not apply to persons or corporations or public agencies involved in research pertaining to and/or endeavors leading to the production of agricultural products.

* Section 2. AS 46.03.330 (b) is repealed and reenacted to read:

(b) The department shall conduct a public hearing on the proposed program if a hearing is requested by the governing body of the affected municipality, or by a petition signed by at least 50 residents. The requirement for public hearing may be waived if the commissioner determines that a public emergency exists.

* Section 3. AS 46.03. is amended by adding a new section to read:

Section 46.03.340. NOTICE OF PESTICIDE APPLICATION

(a) at least 10 days before spraying or applying a pesticide or broadcast chemical on publicly or privately owned land, the state, a municipality, a utility, or a public corporation, or a contractor of any of these, shall provide written notice to each person who owns or residues on the

land, or land adjoining the land, on or over which the spraying or application is proposed or likely to occur. Notice shall be published in a newspaper of general circulation serving the areas where the affected land is located. Notice also shall be mailed to persons who own or reside on land affected by the spraying or application. The requirement for public notice by mailing may be waived if the commissioner determines that a public emergency exists.

(b) Notice under this section must include

(1) the chemical identity and product name of each pesticide or broadcast chemical to be applied;

(2) the dates and locations of the spraying or application;

(3) the problem or pest sought to be controlled by the spraying or application;

(4) the manner of spraying or application;

(5) the name, address, and telephone number of the state agency, municipality, utility, public corporation, or contractor of any of these, responsible for the spraying or application;

(6) appropriate warnings concerning

(A) the known or suspected acute and chronic health effects of exposure to each pesticide or broadcast chemical to be applied;

[illegible] of and reentry to the area affected by the spraying or application; and

(C) the use or consumption of, or contact with, crops or plants affected by the spraying or application.

(c) This section does not apply to the spraying or application of a chemical fire retardant by the Department of Natural Resources.

* Sec. 4. AS 46.03.330(c) is repealed.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHouse Bill 608
Title : An Act relating to spraying and application of pesticides and broadcast chemicals
Sponsor : Davis/Hurley/Clocksin/Koponen/
Requestor : Uehling/MM Miller/Goll
Date of Request : 3/13/86

FISCAL DETAIL

Agency Affected : Environmental Conservation
BRU : Environmental Health

Components : Director's office (Pesticide Program

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

No fiscal impact is anticipated by passage of HB 608

Prepared by : Doug Donegan
Division : Environmental Health
Phone : 465-2609
Date : 3/13/86

Approved by Commissioner : Bill Ross
Agency : Environmental Conservation
Date : 3/13/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Municipality of Anchorage

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 264-4111

TONY KNOWLES, MAYOR

MUNICIPAL HEALTH & HUMAN SERVICES COMMISSION

March 17, 1986

Representative Richard Shultz
Co-Chair, House Resources Committee
Alaska Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Shultz:

The Anchorage Municipal Health and Human Services Commission is charged with reviewing and making recommendations on "legislation which affects the health and social well-being of the residents" of Anchorage (Anchorage Municipal Code 4.60.060). In accordance with this responsibility, the commission reviewed and supports the passage of HB 608 - An Act Relating to Spraying and Application of Pesticides and Broadcast Chemicals. This legislation is consistent with the recent position the Health and Human Services Commission took on a municipal policy regarding the application of pesticides.

The Health and Human Services Commission is in the process of developing a comprehensive plan for health and human services which will establish priorities among services. The Commission's support for this legislation does not reflect any prioritization of services and needs.

Sincerely,

James K. Barnett, Chair
Health and Human Services Commission

NC25/dPD1

cc: Brad Bradley, Commission Liaison, Anchorage Assembly
Chip Dennerlein, Intergovernmental Affairs, MOA
John F. Franklin, Commissioner of Public Safety, MOA
Jewel Jones, Director, Department of Health and Human Services
Tony Knowles, Mayor
Dave Walsh, Chair, Anchorage Assembly
Kay Walls, House Resources Committee, Alaska Legislature
John Sund, House Resources Committee, Alaska Legislature
David Thompson, House Resources Committee, Alaska Legislature
M.W. Miller, House Resources Committee, Alaska Legislature
Bette Cato, House Resources Committee, Alaska Legislature
Drue Pearce, House Resources Committee, Alaska Legislature
Roger Jenkins, House Resources Committee, Alaska Legislature

REPORT

OF

PESTICIDE COMMITTEE

TO THE

MUNICIPALITY OF ANCHORAGE

DECEMBER 1985

ATTACHMENT E

PESTICIDE COMMITTEE

Minority Report

The undersigned, a minority of the Committee, appointed to advise the Department of Health and Human Services, the Mayor and the Assembly about spraying of pesticides, not agreeing with a majority vote on September 19, 1985, wish to express support for a meaningful solution to the problem as it impacts human health in residential areas of Anchorage. To this end, we support a system of prior notification as a means of allowing commercial enterprises to continue serving community needs for insect control while simultaneously allowing for individual property owners to protect families from direct and indirect pesticide contamination through application methods which release excessive amounts of pesticides into the air.

Through research conducted by members of the Pesticide Committee, differing systems of prior notification were found to be the responses of communities faced with similar dilemmas of pesticide application in residential areas. The list of states, counties and cities from across the United States who have implemented a system of prior notification and for which the Committee has information available, are as follows:

Georgetown Univerity Law Center, Washington, D.C.

Berkley, California

Montgomery County, Maryland

Eugene, Oregon

Santa Monica, California

Milwaukee County, Wisconsin

Wauconda, Illinois

Lakewood, Ohio

Philadelphia, Pennsylvania

Cincinnati, Ohio

San Diego, California

Madison, Wisconsin

Salinas, California

Almeda County, California

New Jersey

New York

Connecticut

The system of prior notification we are supporting was developed by members of the Anchorage Pesticide Committee. Prior notification places responsibility on those who apply pesticides. It is the intent of prior notification that individuals on adjacent property to where pesticides will be applied will receive information which allows them the opportunity of protecting gardens, children and pets. Our recommendation for prior notification is as follows:

(1) Notice of at least 24 hours and not more than 72 hours.

(a) Posting of the property where commercial application will take place.

(b) Placard or other type notice to all contiguous properties -- i.e. parcels within 100 feet of actual application.

(c) Notification includes the following information:

(1) name of pesticide to be applied

(2) name and phone number of applicator

(3) statement of warning concerning garden vegetables or fruits

(4) re-entry time if available

(5) approximate time of application or the atmospheric conditions under which it is to be applied

(2) In the case of parks, Municipality would take responsibility for posting notices of intent to apply pesticide by spray (ground) application.

(3) Windspeed -- Limit applications to windspeeds of 5 knots per hour or less as measured at site of application.

Prior notification responds to needs identified by the Pesticide Committee through discussion and testimony.

(1) Individual Rights Of Property Owners -- Prior notification allows individuals the use of pesticides on their property as well as allowing adjacent property owners protection from unknown contamination of gardens, childrens' play areas, outside equipment, etc.

(2) Basic Right To Know -- Prior notification allows individuals to determine the level of hazard for their families and themselves to which a particular pesticide might pose a danger because of the known chemical sensitivity of a family member.

(3) Home Safety -- While no pesticide is completely safe, EPA has identified allowable levels of use under specific conditions. Prior notification complements, but does not exceed or replace, EPA standards in providing accurate information to property owners.

Glen Ray

Mark Catlin

Kishi Hora Byrd



March 30, 1986

Representative Mike Davis
Capitol, Room 13
Juneau, Alaska 99801

Dear Representative Davis,

The League of Women Voters of Alaska urges the passage of Sponsor Substitute for House Bill 608, An Act relating to spraying and application of pesticides and broadcast chemicals.

The League of Women Voters of the United States supports the position that democratic government depends upon the informed and active participation of its citizens at all levels of government. The League further maintains that governmental bodies must protect the citizens' right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible.

The proposed changes to AS 46.03 will enable the citizens to know ten days in advance of the application of a pesticide or broadcast chemical if the material is being applied by the state, a municipality, a utility or a public corporation or a contractor of any of these.

The League of Women Voters of the United States supports the position that action should be taken to support responsible management of our finite land resources and developed environment to ensure consideration of public interests and private rights.

The proposed ammendments to AS 46 03.320 directs the Department of Environmental Conservation to strengthen regulations prescribing the application of pesticides. The present regulations do not address weather conditions or wind speeds. It is important to protect private property rights and values in accordance with overall consideration of public health, safety and welfare.

The League of Women Voters of the United States supports policies and procedures that promote comprehensive long-range planning for conservation and development of water resources. Nationally ground water and aquifer contamination from pesticide runoff and misapplication is a critical problem. Passage of HB608 will help Alaskans avoid this serious and as yet irreversible problem.

The proposed legislation is timely direction from the Alaska State Legislature as the management of pesticides is a high priority on the Environmental Protection Agency's (EPA) 1986 agenda resulting in funds being made available to ADEC to hire one person as of July 1, 1986 to evaluate the Alaska State pesticide program and to bring the state program into complicance with the federal law. The basis of federal pesticide law is The Federal Insecticide, Fugicide, and Rodenticide Act now undergoing Congressional ammendment.

Thank you for your leadership on this critical issue.

Respectfully submitted,

Mary Whitmore Core

Mary Whitmore Core
Chairperson, Natural Resource Portfolio

Pesticides Finally Top the Problem List at E.P.A.

By PHILIP SHABECOFF
Special to The New York Times

WASHINGTON, March 5 — This year, nearly 25 years after Rachel Carson first warned of danger in her book "Silent Spring," the Environmental Protection Agency has put pollution by pesticides at the top of its list of most urgent problems.

A ranking of major issues distributed to key agency officials by the agency's Administrator, Lee M. Thomas, places in the No. 1 position control of pesticides already in commercial use.

Until recently, agency officials said, efforts to control air and water pollution and deal with toxic waste overshadowed the program for regulating public exposure to pesticides. Now Mr. Thomas and other officials say the agency is finally beginning to take the actions necessary to protect the public and wildlife from the effects of pesticides, the broad term the officials use for insecticides, herbicides, fungicides and other chemicals used to combat pests.

Environmentalists, scientists and other experts interviewed recently said the threat of pesticides to public health and the environment had increased with their use in the last quarter century. They said the Government had so far failed to carry out Congress's mandate of 1972 to protect people and the land, air, water and wildlife from the chemicals.

These critics acknowledged that under Mr. Thomas, under Dr. Jack A. Moore, the Assistant Administrator in charge of pesticides, and particularly under Steven Schatzow, assigned last year to head the pesticide division, the Environmental Protection Agency had begun to act aggressively to regulate pesticides.

But they also said it might be well into the next century before all the dangerous pesticides were banned, restricted or otherwise regulated.

In an interview, Mr. Thomas said increased resources would be brought to bear on pesticide regulation. President Reagan's budget for the fiscal year 1987, while cutting most other Federal programs, contains a modest $1 million increase for the pesticide program, which would bring total spending to $22.4 million. And Mr. Thomas said other agency programs would join in the effort.



United Press International

Lee M. Thomas, head of the Environmental Protection Agency.

Exposed to Pesticides: 'Virtually Everyone'

"Pesticides dwarf the other environmental risks the agency deals with," Mr. Schatzow said. "The risks from pesticides are so much greater because of the exposures involved. Toxic waste dumps may affect a few thousand people who live around them. But virtually everyone is exposed to pesticides."

A number of developments in recent years have added new urgency to the need to regulate pesticides, experts say. Among them are these:

¶The discovery that pesticides are appearing in underground water supplies despite an earlier belief that they would not pass through the soil. To date, 17 pesticides, including aldicarb and ethylene dibromide, either of which might cause cancer in humans, have been found in the ground water of 23 states.

¶The discovery that some poisons registered for use in the 50's, 60's and 70's can cause cancer, mutations and birth defects in humans and the realization that for most of the other chemicals on the market there is insufficient and sometimes fraudulently reported information about their effects on health and the environment.

¶The discovery of pesticide residue in a growing number of food products.

¶A growing awareness that huge volumes of pesticides are used inside homes, factories and hospitals and on lawns and farms, often by people untrained in their use or unaware of their dangers.

¶Complaints that farm workers are still inadequately protected from pesticides and that widespread illness results. A recent study by the World Resources Institute, a research group here, estimated that more than 300,000 farm workers a year in this country were affected by pesticide poisoning.

¶The growing export of pesticides, some of which are banned in this country, to developing countries where they often are uncontrolled.

The pesticide industry disputes the effects on farm workers. But it acknowledges a need for improved regulation of pesticides and is working with environmentalists for significant changes in the Federal Insecticide, Rodenticide and Pesticide Act, last amended in 1972.

'The Pesticide Problem Is Worse Than Ever'

Senator Jesse Helms, Republican of North Carolina, said recently that he was optimistic that a new law could be enacted this year. Efforts to toughen the pesticide statute have been stalled for more than a decade, in part because of opposition from pesticide, food processing and agricultural concerns.

To date, the environmental agency has been able to provide assurances of safety for 37 of the more than 600 active ingredients used in 45,000 pesticides on the market. Even at the more aggressive pace adopted recently, it can review only 25 such ingredients a year.

"I hate to sound like a typical environmental naysayer, but the pesticide problem is worse than it ever has been," said Albert H. Meyerhoff, a lawyer for the Natural Resources Defense Council, an environmental group.



Associated Press

Dr. Jack A. Moore, the E.P.A. official in charge of pesticides.

According to E.P.A. figures, about 1.08 billion pounds of pesticides was used in this country in 1984, nearly double the amount in 1964.

Most of the experts interviewed said there were relatively few reliable studies of pesticides' effect on humans. Evidence that they can cause cancer comes chiefly from tests on animals.

"We have done a very poor job of collecting epidemiological information on people exposed to pesticides," said Charles Benbrook, executive director of the agricultural board of the National Academy of Sciences. "But the weight of evidence is clear: Exposure to pesticides is a cause of cancer."

Dr. Ronald J. Prokopy, a professor of entomology at the University of Massachusetts, said the toll in Bhopal, India, in the 1984 leak of a pesticide ingredient "reflects only a small portion of the number of humans that are poisoned by pesticides every year." More than 2,000 people died in Bhopal and 150,000 were injured.

THE NEW YORK TIMES

Thursday, March 6, 1986

Page B12

He cited estimates by the World Health Organization that 500,000 people a year were affected each year by exposure to pesticides and at least 5,000 die.

Dr. Moore of the E.P.A. said that pesticides were generally safe if used properly but added, "Certain uses and practices may be unsafe." He noted the case of ethylene dibromide, a fumigant used on grain and fruit that is suspected of causing cancer in humans. It was banned by the agency for most uses two years ago after residue was found in a wide range of food products and in underground water supplies in several areas. "I am still astounded at some of the uses of EDB and how we could be so stupid," Dr. Moore said.

A Decade to Figure Out What It Wanted to Do

Dr. Moore said the environmental agency "took 10 or 12 years before it figured out what it wanted to do about pesticides."

"Now the pieces are coming together," he said. "I am proud of where we are going on pesticides compared to two years ago. The problem is, we are 10 years behind where we should be."

Agency officials explained that the pesticide law let the agency set standards for new products before they went on the market but did not allow removal of pesticides already being sold unless the agency could show they caused significant harm that outweighed the benefits.

Further, the agency had little relevant information on what harm the existing chemicals might cause. They had been registered for use before testing techniques were markedly improved over the last two to three decades. Hundreds of pesticides were approved on the basis of tests by Industrial Biotest Laboratories that a court later found were fraudulent.

But Mr. Benbrook of the National Academy of Sciences said the pesticides program "didn't have a spine," adding, "It had an institutional inclination to blink."

Mr. Schatzow of the environmental agency said problems multiplied in the first two years of the Reagan Administration. "A number of generalized thoughts were inappropriately applied to this program, such as, 'Let's get regulation off the back of industry and let's let the states make their own decisions,'" he said.

Mr. Schatzow said, and critics of the agency agreed, that there had since been a major turnaround. The pesticide program requires producers to submit data for determining whether chemicals should stay on the market. Companies that do not submit the information must stop selling the product.

"Special reviews" are being accelerated to determine if products pose an unreasonable risk to health, Mr. Schatzow said. He and other agency officials said the current arm's-length relationship with the regulated industry was not the case earlier in the Reagan Administration. The regulators have also entered into negotiations aimed at reducing farmhands' exposure. And broader environmental concerns, such as pesticide effects on wildlife, are now getting attention.

Even so, the business of making sure pesticides are safe and safely used continues to move at a "glacial pace," in the words of Jay Feldman, coordinator of the National Coalition Against the Misuse of Pesticides, an alliance of grass-roots organizations.

Chemical Whose Review 'Apparently Got Buried'

The agency's actions on the pesticide daminozide, sold under the trade name Alar by Uniroyal Inc., provide a case in point. It is chiefly used to make apples firmer and redder and to make a crop ripen uniformly. Residue has been found in a range of processed apple products, including baby foods.

In the mid-1970's the E.P.A. received several studies suggesting that daminozide could cause cancer in humans. A review began in 1977 to see if it should stay on the market. But the review "apparently got buried under a pile of papers," according to one official, and nothing more happened until 1980. In 1981 the review was abandoned and the chemical was put in a reregistration process, a much slower procedure.

Renee Potosky, spokesman for Uniroyal, said company officials had a number of "normal business meetings" with E.P.A. officials in that period to talk about Alar and other products. If the meetings resulted in a slowing of the regulatory process on Alar, she said, it was because of agreement reached at the meetings on developing new testing methods.

Last year, after Dr. Moore and Mr. Schatzow took over the pesticide program, they proposed that Alar be banned because of the cancer studies. But the E.P.A.'s science advisory panel reviewed the studies and said they were too flawed for use in issuing regulations, including a ban.

In January, the agency announced it was leaving the product on the market, with some restrictions, and ordered more studies. If no further evidence of danger is produced, it will remain on the market. If new research indicates it causes cancer, it would be removed, but the process could take as long as four more years, or 13 years after the agency was first warned of possible problems.

"Alar very succinctly points out the quandary of dealing with old versus new chemicals," Dr. Moore said. "If it were a new chemical it would have to provide information that it is acceptable before being let on the market."

Uniroyal said it had conducted many tests and found the product safe.

E.P.A. officials and other experts, including Mr. Benbrook of the National Academy of Sciences, agree that the pesticides coming into use are generally safer than the chemicals that have been on the market. "I don't think they have registered a really bad new chemical on the market in the past five years," Mr. Benbrook said.

Dr. Jack Early, president of the National Agricultural Chemicals Association, an industry group, called pesticides an irreplaceable part of a modern technological society. "We could not grow food and fiber economically without them," he said.

But Professor Prokopy of the University of Massachusetts said, "I find it truly remarkable and ironic that we at present are experiencing apparently just as great if not a greater level of crop injury from pests as we did before the arrival of DDT." DDT came into wide use after World War II.

He cited estimates by the Department of Agriculture that 32 percent of crops were lost to insect, disease and weed pests in 1945, while in 1980 such crop loss was 37 percent.

Professor Prokopy said some pesticide use was necessary. "But my philosophy is that least is best," he said. "The less you interfere with the biological system, the better off you are in the long run."

Department of Environmental Conservation in consultation with the Department of Health and Social Services."

Sec. 46.03.311. Public records. (a) Permits, permit applications, records, reports, and information and documentation obtained under AS 46.03.302 — 46.03.308 are available to the public for inspection and copying. However, upon a showing satisfactory to the commissioner that a record, report, permit, application, or information would, if made public, divulge methods or processes entitled to protection as trade secrets, the commissioner shall treat the record, report, permit, application, or information as confidential.

(b) Information that is confidential may be transmitted under a continuing restriction of confidentiality to other officers, employees, or authorized representatives of the state or of the United States if

(1) the person responsible for furnishing the record, report, permit, application, or information to which such information pertains is informed at least two weeks before the transmittal; and

(2) the information has been acquired by the department under the provisions of AS 46.03.296 — 46.03.311.

(c) The provisions of this section do not limit the department's authority to release confidential information during emergency situations. (§ 10 ch 93 SLA 1981)

Article 6. Pesticide Control.

Section

320. Authority
330. Public pesticide programs

Collateral references. — 61A Am. Jur. 2d, Pollution Control, §§ 293-295, 299, 300, 305-406.

39A C.J.S., Health and Environment, § 47.

Constitutionality of statutes for protection of vegetation against disease or infection. 70 ALR2d 852.

Liability for injury caused by spraying or dusting of crops. 37 ALR3d 833.

Sec. 46.03.320. Authority. (a) The department is authorized to

(1) regulate the transportation, testing, inspection, packaging, labeling, handling and advertising of pesticides and broadcast chemicals offered for sale, or placed in commerce for use in the state;

(2) regulate and supervise the distribution, application or use of pesticides and broadcast chemicals in any state project or program, or by a public agency under the jurisdiction of the state;

(3) regulate or prohibit the use of pesticides and broadcast chemicals.

(b) The department may provide by regulation for the licensing of private applicators of restricted-use pesticides and for persons engaged

in the custom, commercial or contract spraying or application of pesticides and broadcast chemicals. A person engaged in the custom, commercial, or contract spraying or application of pesticides and broadcast chemicals may, by regulation, be required to secure a surety bond or liability insurance. (§ 3 ch 120 SLA 1971; am § 1 ch 26 SLA 1977)

Effect of amendments. — The 1977 amendment, in subsection (b), inserted "private applicators of restricted-use pesticides and for" in the first sentence, deleted "including the requirement of a surety bond and liability insurance for the licensee" from the end of that sentence, and added the second sentence.

Sec. 46.03.330. Public pesticide programs. (a) No officer, agent or employee of the state, or of a borough or city of any class, may direct, carry out or participate in the spraying or application of a pesticide or broadcast chemical in any program or project involving funds, materials or equipment of the state, borough or city, except in accordance with regulations promulgated by the department under AS 46.03.320.

(b) Before a public project that would affect lands owned separately by two or more persons is initiated, the person directing the program shall give public notice of the program in the manner required by regulations of the department. The department shall conduct a public hearing on the proposed program if a hearing is requested by the governing body of the affected borough or city, or by a petition signed by at least 50 residents. The requirement for public notice or public hearing may be waived if the commissioner determines that a public emergency exists.

(c) The provisions of this section apply to home rule municipalities. (§ 3 ch 120 SLA 1971)

Article 7. Prohibited Acts and Penalties.

Section
710. Pollution prohibited
720. Construction and operation of certain facilities prohibited
730. Pesticides
740. Oil pollution
750. Ballast water discharge
755. Discharge reporting
758. Civil penalties for discharges of oil
760. Civil action for pollution; damages
765. Injunctions
770. Detention of vessel without warrant as security for damages
780. Liability for restoration
790. Criminal penalties
800. Water nuisances
810. Air and land nuisances
820. Emergency powers
822. Strict liability for the discharge of hazardous substances
824. Damages
826. Definitions
828. Other rights of action not affected
830. Proof of financial responsibility required for petrochemical facility or hazardous waste disposal site operation
833. Compliance with financial responsibility requirements
840. [Repealed]
850. Compliance order

ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat from cooling or other operations, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

(13) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or any other entity whatsoever;

(14) "pesticide" means any chemical or biological agent intended for preventing, destroying, repelling, or mitigating plant or animal life and any substance intended for use as a plant regulator, defoliant or desiccant, including but not limited to insecticides, fungicides, rodenticides, herbicides, nematocides and biocides;

(15) "pollution" means the contamination or altering of waters, land or subsurface land of the state in a manner which creates a nuisance or makes waters, land or subsurface land unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life;

(16) Repealed by § 12 ch 172 SLA 1978.

(17) Repealed by § 12 ch 172 SLA 1978.

(18) "sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, or other places, together with ground water infiltration and surface water as may be present; the admixture with sewage of industrial wastes or other wastes is "sewage";

(19) "sewer system" or "sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other appurtenant constructions, devices, and appliances used for conducting sewage, industrial waste, or other wastes to a point of ultimate disposal;

(20) "standard" means the measure of purity or quality for air, water, and land in relation to their reasonable and necessary use as established by the department;

(21) "treatment works" means a plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste, or other wastes;

(22) "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

POISONING MAY BE:

Acute - occurring by ingestion (consumed or inhaled) of concentrated or diluted particles or by major contamination of skin.

Chronic - resulting from exposure of low concentration over a longer period of time and may be due to wearing contaminated clothing.

DANGER: Either acute or chronic can be misdiagnosed as flu, food poisoning, skin rash, eczema, cold, allergy or drunkenness.

Handlers and users should be prepared to:

1. **Recognize signs and symptoms of poisoning for those pesticides commonly used.**
2. **Know where and how to get help.**
3. **Identify type and amount of poisoning involved; whether contacted by skin absorption, inhaled or by mouth (by eating or smoking with contaminated hands.)**
4. **Take proper emergency measures until help arrives or the victim can be transported to the hospital. Follow first aid and medical treatment recommendations stated on the label.**
5. **Locate all information about the pesticide to aid in diagnosis and antidote: the label name, chemical manufacturer and address, precautionary statement, etc.**
6. **Contact POISON CONTROL CENTER for information:**

Fairbanks Memorial Hospital	**456-7182**
Anchorage Providence Hospital	**563-3393**
Seattle Poison Control Center	**206-634-5252**

All are listed under POISON CONTROL CENTER

DO NOT USE ANY HOME REMEDY

Pesticide poisoning affects the body in a variety of ways, depending on its chemical composition. Some are easily absorbed through the skin, hair, eyes or under fingernails.

Fumes, vapors and dust laden with particles cause damage to lungs and other organs. The bloodstream becomes affected. Licking lips or handling cigarettes while handling or spraying pesticides will draw poison into the body. The body will cope with small amounts. Build-up of some chemicals are irreversible and can cause permanent disability or death.

EXAMPLES OF PESTICIDE COMPOUNDS AND POISONING SYMPTOMS

ORGANOPHOSPHATES

EXAMPLES: Co-Ral, Diazinon, Parathion, Malathion, etc.

SYMPTOMS:

MILD:
- Dizziness
- Tearing - shrinking pupil
- Vomiting and diarrhea
- Excessive sweating and salivation
- Drop in heart beat to 50 per minute
- Rippling of surface muscles below the skin
- Loss of appetite
- Nausea and cramps

MODERATE: The above symptoms advance to:
- Pinpoint pupils
- Muscle twitching
- Bronchial discomfort
- Inability to walk due to incoordination or weakness

SEVERE:
- Unconsciousness - near death
- Local or generalized seizures
- Pupils widely dilated
- Profuse secretion from eyes, nose, mouth, lungs and skin

DIPYRIDYL COMPOUNDS

EXAMPLES: Paraquat, Diquat

SYMPTOMS: If ingested, immediate pain in mouth, throat, chest and abdominal area with vomiting, diarrhea and muscle aching.

ALSO:
- Irregular growth of fingernails
- Fingernails turn black
- Throat and nose irritation
- Nosebleeds
- Injury to lung tissue

Note: Symptoms may seem moderate but within days kidney and liver damage will result in jaundice and urinary disorders. Within 3 to 14 days coughing, rapid breathing and heavy fluid build-up in lungs occurs. Possible rapid growth of fibrous connective tissue on lung surface may develop which cannot be reversed or stopped. A small amount will trigger deterioration which continues after poison is gone.

IMMEDIATE TREATMENT IS CRITICAL!

ORGANOCHLORINE COMPOUNDS

EXAMPLES: Toxophene, Chlordane, Heptachlor, etc.

SYMPTOMS: Attacks the nervous system as a powerful stimulant or convulsant. Nausea and vomiting is first symptom, followed by apprehension, hyperactivity and mental confusion, dizziness, muscle twitching.
Later: severe convulsions, affecting large muscle group similar to epileptic seizures.

Note: Neither sweating nor excessive secretions occur. No specific treatment except to empty stomach, if ingested. Follow specific first aid instructions on the pesticide label. CALL POISON CONTROL before inducing vomiting. When skin has been exposed, remove contaminated clothing and wash victim thoroughly with detergent and water.

STRYCHNINE: Vertebrate poison. An alkaloid extracted from the seeds of *Strychnos nux Vomica*

SYMPTOMS: Acts on the central nervous system within 10 - 30 minutes, resulting in violent convulsions. Death results from intense muscle spasms that stop breathing during convulsions. Stimulation of victim intensifies reaction. Isolate victim from confusion, noise, light. Keep victim warm.
Physician should administer anticonvulsants.

ZINC PHOSPHIDE:

EXAMPLES: Phosrin, Zinc-Tox,Gopha-Rid

SYMPTOMS:
- Diarrhea and stomach pain
- Nausea and vomiting
- Tightness in chest
- Excitement and feeling of coldness
- Can produce unconsciousness, coma & death

Stimulates the nervous system to bring on convulsions. Is easily absorbed through skin and breathing fumes. Poisons accumulate in the body and are slow acting.

TREATMENT INCLUDES: Inducing vomiting by mechanical stimulation or Syrup of Ipecac. Follow with a 3 - 5% solution of water and sodium bicarbonate to neutralize the acid and settle the stomach. Two table-spoons baking soda per pint of water equals a 6% solution. Reduce to one tablespoon per pint for a 3% solution.

DO NOT TAKE CHANCES

Time is the key to recovery and survival.

1. Locate pesticide labels or learn the kind of chemicals involved and how they were used. Note if contamination is via skin or ingestion.
2. Check label and follow recommended emergency measures.
3. Contact: Poison Control Center for advice.
4. If advised, transport to doctor and **take labels with you!**
5. Remove chemical soaked clothing. Wash victim's skin with large amounts of detergent and water, as recommended in publications listed below.
6. **Remember to prevent self-contamination!**

IMPORTANT - The LABEL is of utmost importance! It provides information about:

Proper content
Proper handling and storage
Protective clothing
Proper safety techniques for application
Necessary emergency measures.

The label also states that: "It is a violation of Federal Law to use the product in a manner inconsistent with its labeling." If one does not adhere to the label directions, the federal law will have been violated.

FOLLOW ALL LABEL DIRECTIONS

USE PESTICIDES SAFELY

PUBLICATIONS AVAILABLE:

Protect your Family - Tips for Laundering Pesticide Contaminated Clothing - HE 382

Protective Clothing for Handling Pesticides - HE 383

Applying Pesticides Correctly - A guide for Private and Commercial Applicators, published by U.S.D.A. and U.S.E.P.A.

Order from:

Extension Horticulturist
Cooperative Extension Sevice
Building H
Anchorage Community College
Anchorage, Alaska 99508-4670

177/1/85/MB

The information given herein is supplied with the understanding that no discrimination is intended and no endorsement by Cooperative Extension Service is implied.

The University of Alaska's Cooperative Extension Service programs are available to all, without regard to race, color, age, sex, creed, national origin or handicap and in accordance with all applicable state and federal laws.

Issued in furtherance of Cooperative Extension work, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture, James W. Matthews, Director, Cooperative Extension Service, University of Alaska.

The misuse or careless use of rodenticides, insecticides, herbicides, fungicides or other pesticides pose a serious threat to the user. They can be extremely toxic.

SIGNS AND SYMPTOMS OF PESTICIDE POISONING

By Marilyn Backman
Extension Home Economist

COOPERATIVE EXTENSION SERVICE
UNIVERSITY OF ALASKA,
USDA AND SEA GRANT COOPERATING

A-00542
Reprinted August 1985

LABELS are of prime importance to understanding proper use, storage and first aid treatment.

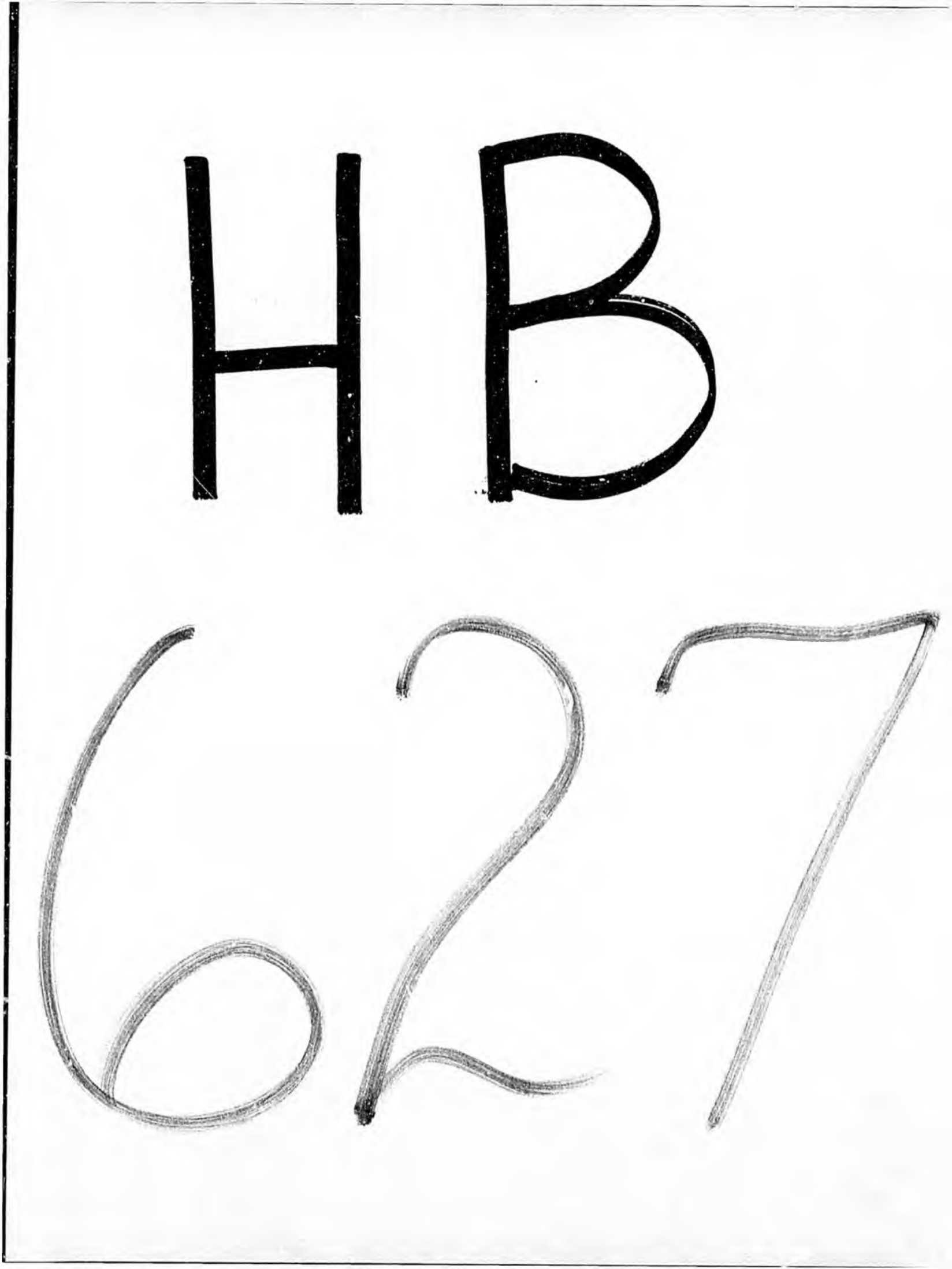
SAVE THE LABEL

Keep it accessible and readable in case of an emergency.

Read the label BEFORE using any pesticide.

It may be a matter of life or death!

Follow all precautionary statements.


HB
627

HOUSE
COMMITTEE REPORT

3/21

(9)

Date referred: 2/17/86

FURTHER REFERRALS: HEALTH, EDUCATION & SOCIAL SERVICES

DATE: 3/19/86

The RESOURCES Committee has considered HB 627 "An Act relating to the use of water."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with CS HB 627 (Resources) [XX] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[XX] zero fiscal note

~~SIGNING~~ DO PASS: First

Shultz Dirk Shultz

Cato Bette Cato

Jenkins Roger Jenkins

Pearce [illegible]

Sund [illegible]

Thompson Harry W. Thompson DON'T THROW COLD WATER ON THIS BILL!

Miller(N/P) M.W. Miller

Wallis F. Kay Wallis

SIGNING OTHER RECOMMENDATIONS:

Dirk Shultz
Co-Chairman Shultz

[redacted] - NEW STATUTORY LANGUAGE

- EXISTING STATUTORY LANGUAGE

[redacted] - TECHNICAL LANGUAGE CHANGE

Bradley
3/18/86

Original sponsor: M.W.Miller by request

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 627 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the use of water."

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

* Section 1. AS 46.15 is amended by adding a new section to read:

Sec. 46.15.045. SMALL SCALE USE OF WATER. A person may use less than a significant amount of water without a permit unless the commissioner determines that the use of less than a significant amount of water is not in the public interest. A person using less than a significant amount of water acquires no water right or priority unless an application is filed and a permit or certificate is issued under AS 46.15.030 - 46.15.185.

* Sec. 2. AS 46.15.133(f) is amended to read:

(f) The commissioner may, by regulation, designate <u>additional</u> types of appropriations <u>that</u> [WHICH] are exempt from this section and provide simplified procedures for ruling on the applications.

* Sec. 3. AS 46.15.133 is amended by adding a new subsection to read:

(g) An application to appropriate not more than 1,000 gallons of water a day is exempt from the notice provisions of this section. Notwithstanding this subsection, the commissioner may require public notice under this section

(1) on a determination that the total amount of water available in an area is limited considering the number of potential users from the source of the water; or

(2) on request of the municipality in which the area is located.

* Sec. 4. AS 46.15.260 is amended to read:

Sec. 46.15.260. DEFINITIONS. In this chapter, unless th context otherwise requires,

(1) "appropriate" means

(A) to divert, impound, or withdraw a quantity o water from a source of water, for a beneficial use; or

(B) to reserve water under [IN ACCORDANCE WITH AS 46.15.145;

(2) "appropriation" means

(A) the diversion, impounding, or withdrawal of a quantity of water from a source of water for a beneficial use; or

(B) the reservation of water under [IN ACCORDANCE WITH] AS 46.15.145;

(3) "beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, that is reasonable and consistent with the public interest, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, fish and shellfish processing, navigation and transportation, mining, power, public, sanitary, fish and wildlife, recreational uses, and maintenance of water quality;

(4) "source of water" means a substantial quantity of water capable of being put to beneficial use;

(5) "water" means all water of the state, surface and subsurface, occurring in a natural state, except mineral and medicinal water;

(6) "commissioner" means the commissioner of natural resources;

(7) "director" means the director of land and water management [THE DIVISION OF LANDS], Department of Natural Resources;

(8) "person" includes an individual, partnership, association, public or private corporation, state agency, municipality [POLITICAL SUBDIVISION] of the state, and the United States[.]

(9) "mineral and medicinal water" means

(A) water of a hot spring or spring with curative properties that [WHICH] has been reserved by the federal government under Publ that and Order No. 399; and

(B) geothermal fluid, as [THE TERM IS] defined in AS 41.06.060;

(10) "significant amount of water" means

(A) a use of more than 5,000 gallons of water in a single day from a single source;

(B) the regular daily or recurring seasonal use of more than 500 gallons of water a day for 10 days or more a year from a single source;

(C) a water use that may adversely affect the water rights of another appropriator or the public interest.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 627
Title : Use of Water Without Appropriation

Sponsor : M.W. Miller
Requestor House Resources
Date of Request : 3-18-86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Minerals Management, Land & Water Mgmt.

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Gary Johnson
Division : Land & Water Management
Phone : 762-4346
Date : 03-18-86

Approved by Commissioner : Ned Famulari
Date : 03-18-86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Alaska State Legislature

MIKE W. MILLER
PO Box 55094
North Pole, Alaska 99705
(907) 488-2687

District 18
North Pole
Badger Road
Eielson
Moose Creek
Salcha

Pouch V
Juneau, Alaska 99811
(907) 465-4976

House of Representatives

MEMORANDUM

TO: Representative Mike W. Miller

FROM: Staff

DATE: 3/18/86

RE: Analysis of House Bill 627

Section 1

amends the Water Use Act (AS 46.15) by stating that a water use permit is not necessary for an individual who wishes to use an insignificant amount of water unless such a use is against the public interest as determined by the Commissioner of DNR. A person using less than a significant amount of water, who decides not to apply for a water use permit for the use, does not acquire a right or priority to the water resource.

Section 2

allows the Commissioner of DNR to promulgate regulations to exempt public notice of applications for water rights in addition to the exemption outlined in Section 3 of this bill.

Section 3

allows the Commissioner of DNR to issue a water use permit for up to 1000 gallons of water per day without providing public notice as outlined in AS 46.15.133. The Commissioner of DNR may disregard this subsection if:

(1) he or she determines the total amount of water available to an area is limited for the total number of possible users; or,

(2) the application being filed is for an area that lies within the boundary of a municipality that has requested notification of all water appropriation within its boundaries.

Section 4

(I) rewrites the current statutory language of AS 46.15.260. definitions (1)-(9) to make technical language modifications as requested by the Division of Legal Services. These changes do not alter the affect of the current statutory language.

(II) adds an additional definition number 10 which defines "significant amount of water" as:

a) a use of more than 5,000 gallons of water in one day from a single source; or,

b) the recurring daily use of more than 500 gallons of water for 10 or more days, in a year, from a single source; or,

c) a use that may adversely affect the water rights of others users or the public interest.

MEMORANDUM

TO: Representative Mike W. Miller

FROM: Staff

DATE: 3/12/86

RE: Current statutory and regulatory references allowing the small scale use of water

The current statutory references pertaining to the use of water are found in Title 46 of the Alaska Statutes and Title 11 of the Alaska Administrative Code.

AS 46.15.040. Right to appropriate. (a) A right to appropriate water can be acquired only as provided in this chapter. No right to use of water either appropriated or unappropriated shall be acquired by adverse use or possession.

(b) A right to appropriate water shall be obtained by first making application to the commissioner for a permit to appropriate. The commissioner shall by regulation prescribe the form and contents of the application and the procedure for filing the application. If a permit is granted and the means of appropriation is constructed, a certificate of appropriation may be obtained.

The Alaska Administrative Codes speak to the appropriation of water in 11 AAC 93.

11 AAC 93.040. APPLICATION FOR A PERMIT TO APPROPRIATE WATER. (a) Unless exempted by sec. 920 of this chapter, no person may lawfully appropriate water of the state without first obtaining a permit under the provisions of secs. 40-120, 210-220, or 260 of this chapter.

11 AAC 93.920. EXEMPTIONS. Any person using less than a significant amount of water as defined in sec. 970 of this chapter is not guilty of a misdemeanor for appropriating water without a permit. However, any person using less than a significant amount of water acquires no water right or priority unless an application is filed and a permit or certificate is issued in accordance with secs. 40-140 of this chapter. Water used without a permit or certificate is subject to appropriation by others and the use of water without a water right is subject to curtailment in order to supply water to lawful appropriators of record.

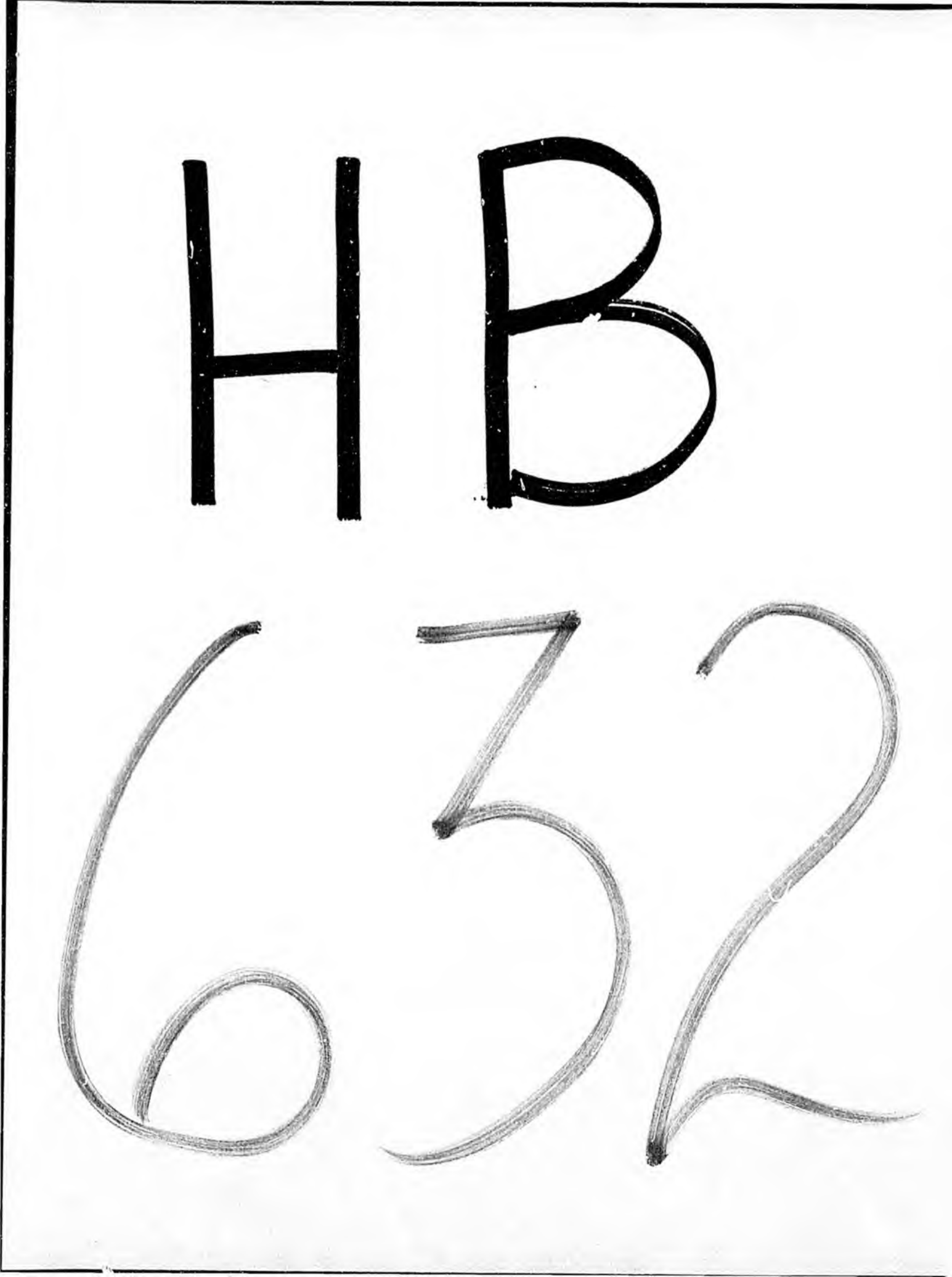
11 AAC 93.970. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(14) "significant amount of water" means any use of 5,000 or more gallons of water in a single day from a single source, or the regular daily or recurring seasonal use of 500 or more gallons of water per day for 10 days or more per year from a single source, or any water

use that may adversely affect the water rights of other appropriators or the public interest.

With regard to the public notice requirements when a person applies for a water use permit, 11 AAC 93.100 allows the following exemption for individuals applying for water rights for domestic use.

11 AAC 93.100 EXEMPTIONS TO NOTICE. An application to appropriate no more than 1000 gallons of water per day for single family domestic purposes is exempt from the notice provisions of sec. 80 of this chapter. However, in areas where the total amount of water available appears to the department to be limited with respect to the number of potential users of the same source, or upon the request of a municipality as defined by AS 29, the commissioner will, in his discretion, require public notice as provided by sec, 80 of this chapter.


HB
632

3/2

HOUSE
COMMITTEE REPORT

(9)
Date referred: 2/17/86

FURTHER REFERRALS: JUDICIARY

DATE: March 26, 1986

The RESOURCES Committee has considered HB 632
"An Act relating to a right to farm."

and recommends:

[ ] do pass
[ ] do not pass
[ ] do pass with attached amendment(s)
[ ] no recommendation
[XX] replace with CS for HB 632 (Resources) [XX] same title
[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[XX] zero fiscal note
first

SIGNING DO PASS:

Shultz Dick Shultz
Herrmann Adelheid Herrmann
Cato Bette Cato
Jenkins Roger Jenkins
Pearce Dave Pearce
Sund [signature]
Wallis F. Kay Wallis

SIGNING OTHER RECOMMENDATIONS:

David W. Thompson - NO REC
Thompson

Dick Shultz
Co- Chairman Shultz

Bradley
3/25/86

Original sponsor: Resources Committee

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 632 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to a right to farm."

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

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that agriculture makes an important contribution to the economy of the state and that the encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the state. The legislature further finds that conflict between agricultural operations and urban and suburban land uses threatens the permanent loss of agricultural land.

* Sec. 2. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.235. AGRICULTURAL OPERATIONS AS PRIVATE NUISANCES. (a) An agricultural operation and an operation appurtenant to an agricultural operation is not and does not become a private nuisance by a changed condition that exists on neighboring land if the agricultural operation has been in operation for more than three years and if the agricultural operation was not a nuisance at the time the agricultural operation began.

(b) The provisions of (a) of this section do not apply to a nuisance resulting from improper or negligent conduct of agricultural operations or operations appurtenant to an agricultural operation.

(c) The provisions of (a) of this section supersede a municipal ordinance or regulation to the contrary.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 632
Title : Right to Farm

Sponsor : House Resources Committee
Requestor : House Resources Committee
Date of Request : 3/24/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Agricultural Management

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Carol Wilson
Division : Commissioner's Office
Phone : 465-2400
Date : 3/24/86

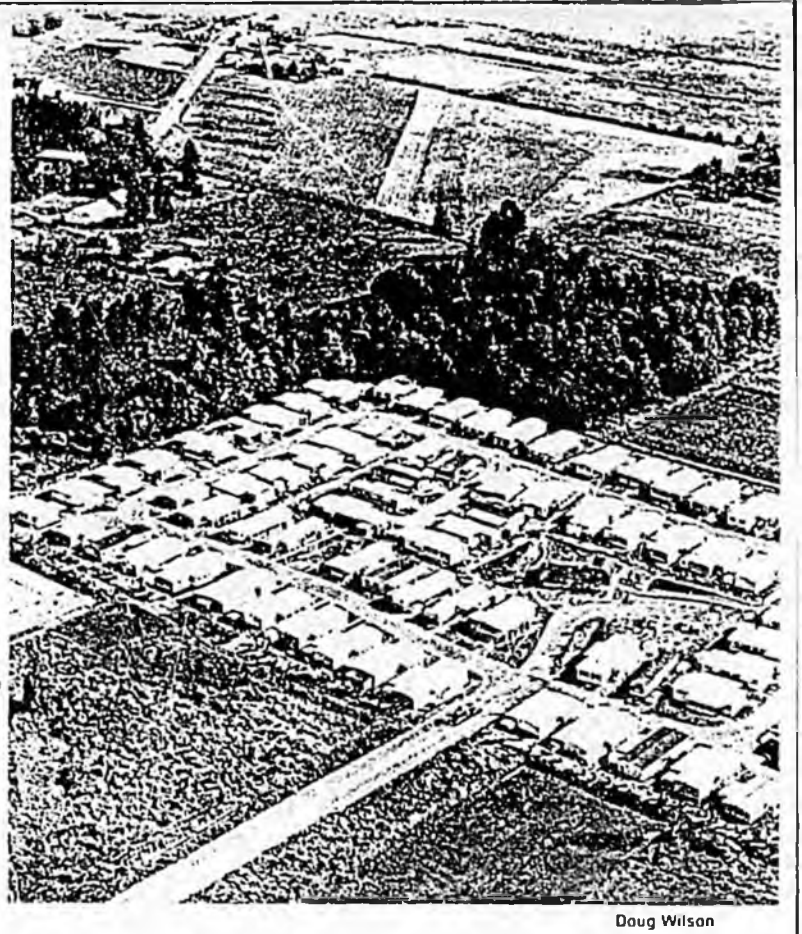
Approved by Commissioner : by Carol Wilson - Special
Date : 3/24/86
Agency : Department of Natural Resources

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Right-to-farm laws: Do they resolve land use conflicts?

By Mark B. Lapping, George E. Penfold, and Susan Macpherson



Doug Wilson

UNDERLYING much of the farmland controversy are local land use conflicts between farmers and rural and suburban residents and industrial users. The irony of the situation is obvious: While farming creates and maintains the atmosphere and bucolic landscape so many wish to be part of, it is the business of agriculture, which mandates certain practices and functions, that many find offensive. The result is conflict that prompts nonfarming neighbors to attempt to restrict or eliminate agricultural practices. This often translates itself into a nonfarming majority that employs land use controls to regulate farming or that resorts to nuisance lawsuits to enjoin or restrict certain practices. What many seek, then, is farmland without farms!

About 30 states have "right-to-farm" laws to address these conflicts. Although they vary considerably, all of the laws attempt to do two things. First, they seek to supersede the common law of nuisance. Second, they favor agricultural uses of land above all others. The statutes thus attempt to establish a "first-in-time, first-in-right" logic whereby pre-existing agricultural uses have a primacy against all others. The presumption is this: If a farm constitutes a nuisance, it does so only as neighboring land uses change, and the owners of the neighboring land are themselves responsible for any liabilities to their property or person.

Mark B. Lapping is professor and director and George E. Penfold is assistant professor, University School of Rural Planning and Development, University of Guelph, Guelph, Ontario, N1G 2W1. Susan Macpherson is a land use analyst, Foodland Preservation Branch, Ontario Ministry of Agriculture and Food, Toronto, Ontario.

New York the forerunner

The genesis of right-to-farm laws can be found in New York State's pioneering agricultural district law (1971). While providing a means for farmers to create a district to preserve critical masses of farmland, the law also deals with the issue of potentially restrictive controls or lawsuits:

"No local government shall exercise any of its powers to enact local laws or ordinances within an agricultural district in a manner which would unreasonably restrict or regulate farm structures or farming practices in contravention of the purposes of the act unless such restrictions or regulations bear a direct relationship to the public health or safety."

Similar statements occur in the agricultural district laws of Virginia (1977) and Illinois (1979). Maryland's statute (1977) is more specific, noting that the "operation at any time of any machinery used in farm production or the primary processing of agricultural products..." is acceptable so long as farm practices do not "cause bodily injury or directly endanger human health...."

The effectiveness of these sections of state agricultural district laws cannot be easily ascertained. Farmers apparently perceive them to be beneficial because conflict between neighbors is a specific, long-term concern of the farming community (*12*). This element of the New York law has seldom been used, but its existence may be enough to deter governments and individuals from pressing claims or promulgating restrictive ordinances (*3*).

North Carolina's statute (1979) has been used as a model for many right-to-farm laws. The purposes of that law are straightforward:

"It is the declared policy of the State to protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many are discouraged from making investments in farm improvements. It is the purpose of this (law) to re-

duce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed a nuisance."

The law maintains that a nuisance does not exist if three conditions can be established: the farm did not constitute a nuisance at the time of initial operation for at least one year prior to the suit; the claim of nuisance is based upon changing local land uses and does not arise from either negligence or improper operation on the part of the farmer; and the alleged nuisance does not contribute either to flooding or water pollution.

A more sophisticated approach was incorporated into Iowa's livestock feedlot nuisance law. The purpose of this law is to provide specific protection for feedlots from nuisance suits brought by neighbors who establish themselves subsequent to the feedlot's establishment. Section 2 of the act reads:

"In any nuisance action or proceeding against a feedlot brought by or on the benefit of a person whose date of ownership of realty is subsequent to the established date of operation of that feedlot, proof of compliance with sections three (3) and four (4) of this Act shall be an absolute defense, provided that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with either section three (3) or four (4) of this Act."

Compliance with the appropriate sections of the act relate to the Iowa Department of Environmental Quality's water pollution abatement program and relevant local zoning ordinances, where they exist (6). In this way Iowa seeks to guarantee that feedlots will be brought into compliance with overall state environmental objectives and appropriate local land use controls

The State of Washington's law contains elements of both the standard North Carolina approach and some of the specificity of the Iowa law. But unlike all the other right-to-farm laws, Washington's law seeks to prevent rural land subdivisions that may trigger nuisance-like disputes and actions. Under the Washington statute any agricultural operator who "sells or has sold a portion of that land contiguous to a farm for residential uses" forfeits the right to qualify for protection under the law. Although the logic of preventing farmers from contributing to the problem through the creation of new lots appears self-evident, no other jurisdiction has enacted such a provision.

Characteristics of right-to-farm laws

State	Type of Agricultural Operation Protected*	Farm Must Predate Other Land Uses	Must Predate by 1 Year Minimum	Supercedes Local Ordinances
Alabama			X	X
Arizona	agricultural operations	X		
Connecticut			X	
Delaware			X	
Florida			X	X
Georgia			X	X
Idaho	agricultural operations		X	X
Illinois	farms		X	
Indiana	agricultural operations		X	
Kentucky	agricultural operations		X	X
Maryland	agricultural operations		X	
Massachusetts				X
Michigan	farms, farm operations	X		
Mississippi	agricultural operations		X	
Missouri	agricultural operations		X	
New Hampshire	agricultural operations		X	
New Jersey	commercial farms			X
New Mexico	agricultural operations		X	
New York	agricultural activities	X		
North Carolina			X	X
North Dakota	agricultural operations		X	X
Oklahoma	agricultural activities			
Oregon	farms			X
Rhode Island	agricultural operations			
South Carolina			X	
Tennessee		X		
Vermont	agricultural activities	X		
Virginia	agricultural operations		X	X
Washington				
Wisconsin	agricultural practices	X		

*Note: Agricultural operations include farming, processing, and all manner of agriculturally related enterprises; agricultural activities appear to be more farm-related and less food industry-oriented.

The matter of scope

A variety of farming and farm-related operations are covered under the right-to-farm statutes. In some cases, "farms" receive protection. In others, "agricultural operations" are covered. Some laws protect food processing and related commercial enterprises. Most of the laws require that protected agricultural operations predate competing land uses, though a majority specify only a minimum of one-year prior operation. Nearly all note that appropriate state and federal laws, such as environmental regulations, cannot be superseded even though local ordinances that are contrary to agriculture are nullified.

While farms and related operations receive protection under these statutes, the laws almost uniformly require that the farms and related operations be managed properly. The most common requirement is that farms maintain "good farming practices," though these are rarely defined. Some laws do not cover farm operations that pollute or "change" water conditions, are run in a negligent or improper manner, or that negatively affect health and safety standards.

Because most right-to-farm laws are relatively new, few have been tested in the courts. An exception is Connecticut's statute, which was held valid in *De Capua v. Cella et al* (7, 11). In this case, the judge noted that the "plaintiff came to the nuisance" and that "the total inconvenience... is relatively small in comparison with the nature and conditioning of defendents' operation as dairy farmers." Moreover, because the farm was operated "in a proper manner," as specified by an inspector for the state's agricultural department, the plaintiff was "not entitled to an injunction" or "an order for monetary damages."

The matter of trespass

Right-to-farm laws are aimed, in the main, to protect farmers against nuisance suits and local ordinances that would make farms nuisances because of changes in neighborhood land uses. Another aspect of the problem, that of trespass, has not been

Conditions not protected under right-to-farm laws.

State	Negligent Management	Improper Management	Water Pollution or Changed Condition	Affects to Health/Safety
Alabama	X	X	X	
Arizona	X			X
Connecticut	X			
Delaware	X	X		
Florida				X
Georgia				
Idaho	X	X		X
Illinois	X	X	X	
Indiana				
Kentucky	X	X	X	
Maryland				
Massachusetts				
Michigan				
Mississippi				
Missouri	X	X	X	
New Hampshire	X	X		X
New Jersey				X
New Mexico	X			
New York				
North Carolina	X	X	X	
North Dakota	X	X	X	
Oklahoma				
Oregon	X			X
Rhode Island	X	X		
South Carolina	X	X	X	
Tennessee				
Vermont				X
Virginia	X	X	X	X
Washington				
Wisconsin				

adequately dealt with in the context of these laws. Historically, trespass requires a physical invasion of property. In recent decades, however, at least 10 jurisdictions have rendered judgments that accord dust, noise, and odors—traditional nuisance externalities—trespass status. As one commentator noted of Oregon's right-to-farm law, "Without protection against trespass, the right-to-farm is virtually ineffective" (*10*).

An evaluation

What, then, are we to make of right-to-farm laws? First, right-to-farm laws are popular with state legislatures and the agricultural community. Even granting the newness of these laws, it is surprising that so few court tests have arisen as a result of their promulgation. This may suggest that such laws are long on rhetoric and short on impact and delivery. Perhaps further court tests are needed (*4*).

Second, whereas most policies in the past were directed toward the solution of certain basic land use issues and problems, right-to-farm laws respond to site-specific concerns and particular agricultural practices.

Third, right-to-farm laws tend to ignore the contemporary practice of nuisance law. Court-inspired remedies are seldom either/or judgments. Instead, they often force the nuisance generator to use technological mitigation techniques to reduce or eliminate externalities so that both parties can carry on their activities with a minimum of economic and spatial disruption. If we follow the practice established by the nonpoint pollution program of the U.S. Department of Agriculture, this is very likely to mean that the costs of mitigation must be absorbed overwhelmingly by farmers. This invariably raises a number of important equity questions, especially given the dubious nature of the types of nuisances involved.

Fourth, an evaluation of right-to-farm laws indicates that many of these legal instruments use vague terminology, are ambiguous, and may be open to due-process challenges. And, as Ed Thompson of the American Farmland Trust has noted, "creative legal draftsmanship by county and township commissions might very easily result in local ordinances which are entirely consistent with 'right-to-farm' laws, but which significantly restrict agricultural operations" (*9*).

For all their weaknesses, however, right-to-farm laws represent an attempt to deal with some of the problems associated with changing land use and community values brought about, in part, by the "counterstream" or return migration to rural areas (*1*). Perhaps not unlike the restoration of some urban neighborhoods, there is more than a trace of class conflict involved in what may be seen as "the gentrification of the countryside." Certainly this phenomena can be observed in a number of local ordinances and plans that erect barriers against the siting of mobile homes and mobile home parks in many rural regions of the country (*5*). If anything else, right-to-farm laws attempt to educate a public long separated from the processes of food production.

Perhaps the best solution to these problems was suggested by Noel Perrin in his essay "The Rural Immigration Law." "The solution" to the problems of newcomers with new values who seek to change rural areas is "a good, thorough immigration law. It wouldn't actually keep Don and Sue out, it would just require them to learn rural values before they were allowed to stay" (*8*). Sometimes that which is said in jest may be more astute and appropriate than the laws of the land. In terms of the right to farm, this may indeed prove to be the case.

REFERENCES CITED

1. Brown, D. L., and J. M. Wardwell. 1980. *New directions in urban-rural migration: The population turnaround in rural America.* Academic Press, New York, N.Y.
2. Fuggitt, G. V., and P. R. Voss. 1979. *Growth and change in rural America.* Urban Land Inst., Washington, D.C.
3. Hexem, Robert, et al. 1980. *Agricultural districts and land use: A pilot study.* Dept. Agr. Econ., Cornell Univ., Ithaca, N.Y.
4. Keene, J. 1981. *Incentives: Right-to-farm legislation.* In R. Coughlin et al. [eds.] *The Protection of Farmland: A Reference Guidebook for State and Local Governments.* National Agricultural Lands Study, Washington, D.C.
5. Lapping, M. 1982. *Changing rural housing policies: Vermont's mobile home zoning law.* Small Town 12: 4.
6. McCarthy, M., and S. Matthews. 1980. *Foreclosing common nuisance for livestock feedlots: The Iowa statute.* Ag. Law J. 2(2): 186-221.
7. National Association of State Departments of Agriculture. 1982. Farmland Notes 1: 11.
8. Perrin, Noel. 1981. *The rural immigration law.* In *Second Person Rural: More Essays of a Sometime Farmer.* Penguin Books, New York, N.Y. pp. 129-132.
9. Thompson, E. 1980. *Right-to-farm laws examined.* Aglands Exchange 2: 2.
10. Todd, Jennifer B. 1982. *The right to farm in Oregon.* Willamette Law Rev. 18: 153-171.
11. U.S. Department of Agriculture. 1982. Land Use Notes 35. Washington, D.C.
12. White, D., and K. Carner. 1981. *New York's agricultural district program: An analysis of farmers' perceptions in 17 counties.* Dept. Agr. Econ., Cornell Univ., Ithaca, N.Y. □

CHAPTER 5

INCENTIVES: RIGHT-TO-FARM LEGISLATION*

I. INTRODUCTION

There is a basic incompatibility between many types of agricultural activity and residential use. As city people begin to move into rural areas, they object to the smells, noises, dust, pesticides, and other by-products of operating a modern farm. These complaints can take several forms. A landowner may sue the farmer, claiming that his farm operations are a nuisance. He may try to persuade the local government to pass an ordinance limiting various farm activities. He may report the farmer to a county or state agency that is responsible for enforcing air or water pollution control laws for the purpose of getting an order to end the offending farm practices.

Farmers find that defending themselves against such actions can be expensive, time-consuming and aggravating, even if they are successful. They have turned with increasing frequency to their state legislators for protection. The laws that have been passed in response have been called "right-to-farm" laws. They recognize that just as new residents in a rapidly urbanizing area should be protected against the unhealthful and offensive odors of a nuisance, such as a large feedlot, that has become "a right thing in the wrong place—like a pig in the parlor, instead of the barn,"[1] so too must farmers in agricultural areas be protected against legal actions by their neighbors and local governments arising from the fact that homes have been built in the wrong places—so that parlors open out on pigpens.

II. PURPOSES AND CHARACTERISTICS OF RIGHT-TO-FARM LEGISLATION

At least seventeen states, listed in Table 5-1, have adopted some form of right-to-farm legislation.[2] They fall into four major groups, each of which is based to a greater or lesser extent on a different prototype.

A. Laws Based on New York's Statute

New York's law was enacted in 1971 and has served as a model for the Illinois, Oregon, Virginia, and the Twin Cities Metropolitan Area legislation. It provides:

> No local government shall exercise any of its powers to enact local laws or ordinances within an agricultural district in a manner which would unreasonably restrict or regulate farm structures or farming practices in contravention of the purposes of the act unless such restrictions or regulations bear a direct relationship to the public health or safety.

As reported in Chapter 4, little explicit use has been made of the law, and there have not been any judicial interpretations of its language. Regulations that restrict farm structures and practices in support of the purposes of the act are permitted, as are regulations of lot size, subdivision, and partitioning that do not restrict farm structures or practices. Regulations that bear a direct relationship to the public health or safety are permitted by the law even though they unreasonably restrict farm structures and practices in contravention to the purposes of the act. (However, it is not clear how a local regulation could be constitutional if it regulates farm structures and practices in an unreasonable way.) Only regulations that protect the public morals or general welfare, such as certain provisions of zoning ordinances, are curtailed by the law, and even then are permissible if the restrictions they impose on farming are reasonable. This is specifically recognized in Virginia's legislation. It is not clear exactly how a farmer would avail himself of the protection provided by the act. Presumably, he could use it in a political way to persuade his local government not to adopt restrictive regulations. If he were unsuccessful in doing so, he might be able either to bring a declaratory judgment action to have the resulting ordinance declared invalid, or to use the law as a legal defense should the local government seek to enforce the ordinance against him. In such an event the judge would have to address the central and most difficult question presented by the act: How will the balance be struck between, on the one hand, the extent to which the ordinance restricts a farming operation in contravention of the purposes of the agricultural districting law

* The principal author of this chapter was John C. Keene.

TABLE 5-1
STATES WITH RIGHT-TO-FARM LAWS**

Laws Protecting Against Local Government Regulations

Alabama (1980)	New York* (1971)
Delaware (1980)	North Carolina (1979)
Illinois* (1979)	Oregon (1973)
Kentucky (1980)	Tennessee (1979)
Louisiana (1978)	Virginia* (1977)
Maryland* (1977)	
Minnesota (Twin Cities)* (1980)	

Laws Protecting Against State Regulations

Tennessee (1979)	Oregon* (1973)

Laws Protecting Against Private Nuisance Lawsuits

Alabama (1980)	Mississippi (1980)
Delaware (1980)	North Carolina (1979)
Florida (1979)	Oklahoma (1980)
Georgia (1980)	Tennessee (1979)
Kentucky (1980)	Washington (1979)
Louisiana (1978)	

* The statute applies only in agricultural districts or, in the case of Oregon, in exclusive farm use zones.
** Some states provide more than one form of protection.

and, on the other, the degree to which the ordinance protects the public's health and safety? The statute gives no guidance to assist in this delicate balancing process.

Oregon's law does not extend its protections to farm practices that generate odor, dust, or other materials that interfere with the use of lands outside the exclusive farm use zone. It also contains a specific disclaimer of any intent to limit the powers of all levels of government to protect the public's health, safety, and welfare.

B. Laws Based on North Carolina's Statute

North Carolina's right-to-farm law takes a different approach in that it seeks to modify traditional principles of the common law of nuisance. Some or all of its provisions have been adopted by Alabama, Delaware, Florida, Georgia, and Kentucky and Louisiana. The law provides as follows:

Section 106-700. It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When non-agricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this Article to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

Section 106-701. (a) No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances. Pro-

vided further, that the provisions shall not apply whenever a nuisance results from an agricultural operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future.

In order to understand the North Carolina approach, it is necessary to know some rudimentary facts about the common law of nuisance.

Nuisance law has been recognized as a confused and confusing area of the law. Still, it is possible to set out some general principles that are widely accepted.[3] First, it is necessary to distinguish between private nuisance and public nuisance. Private nuisance law protects a property owner's right to the use and enjoyment of his land and gives him remedies against someone who interferes improperly with that right. Public nuisance is a crime and involves actions which cause injury to the public on a whole, such as serious air pollution, the storage of explosives in a city, and so forth.[4] Some acts that are private nuisances may affect so many people that they also constitute public nuisances. Even though they have the same name, private and public nuisances rest on distinctly different legal theories.

In determining whether one activity so interferes with another person's activities and enjoyment of his land that it constitutes a private nuisance, a court will determine whether its utility is outweighed by the gravity of the harm it causes. In doing so, the court will consider all the circumstances, including the locality and character of the surroundings, the nature of both activities and the manner in which they are conducted, the value to the community of both activities, the actor's ability to reduce the harm, and the extent to which the actor would be damaged by an injunction and the landowner damaged by the failure to enjoin. The court can also consider priority of use.[5] Whether or not the person causing the alleged nuisance was there first is only one of many considerations that must be weighed. Courts have had to decide whether an activity that was creating significant air pollution or otherwise interfering with the enjoyment of nearby land was to be insulated from liability simply because it was there first or whether, even though at one time it affected few people because of its remoteness, it should now be deemed a nuisance because the growth of an urban area has brought new homes into its vicinity whose owners are being injured by its operations.

The North Carolina right-to-farm law and its progeny attempt to elevate the principle of first-in-time, first-in-right to a position of preeminence in the law of nuisance as it affects agricultural operations.[6] The law provides that a court cannot declare a farming operation a nuisance if it finds the following:

1. The agricultural operation was not a nuisance at the time it began,

2. The only basis for the claim that it is a nuisance is that conditions have changed in or about the locality where the farm is located,

3. The agricultural operation had been in operation for at least one year before the lawsuit was brought,

4. The alleged nuisance did not result from negligent or improper operation of the agricultural activity, and

5. The alleged nuisance does not involve water pollution or flooding.

It should be noted that the law applies both to farmers and to producers of livestock and poultry products, such as slaughterhouses.

This law presents several questions to which there are currently no authoritative answers because of the lack of judicial interpretation. First, we should be clear as to the central objective and effect of this law and its progeny: to make it possible for certain farms and food-processing industries that would otherwise be declared to be nuisances because communities have grown up around them, to continue their nuisance-producing activities without interference.

Second, there are several questions arising out of the first requirement above: who has the burden of proving that the farm operation was not a nuisance at the time it began, the neighbor or the farmer? How will he provide it if the operation started ten, twenty, or more years ago? What legal principles will govern those in effect

at the time of commencement of the farm operation, or those in effect now?

Third, it can be assumed that plaintiffs' lawyers will allege that the agricultural activity is a nuisance for reasons other than changed conditions in the locality. For instance, if they have been unable to show that it was a nuisance when it started, they will attempt to demonstrate that the operation is using different farming techniques, different fertilizers, pesticides, and herbicides, and generally that its technology has evolved over the years so that it is now a nuisance without regard to changed conditions nearby. Thus, much of the protection hoped for will be lost.

Fourth, the statute provides neighbors with a one-year period after the commencement of a farming operation within which to attempt to have it declared a nuisance. The statute does not make it clear, however, whether this same right would be available in the event that a farmer adopts drastically different farming techniques that produce a lot more noise, dust, or other environmental pollution. If this right is not available, then the statute exposes neighbors to serious health risks; if it is available, the law may have the effect of restricting the ability of farmers to improve their farming techniques, and in any case, presents the issue of how much change is necessary before the farmer loses the protection accorded by the law.

Fifth, the North Carolina statute and some of its progeny withhold their protections from agricultural operations that cause injury to others because of "negligent" (Kentucky) or "negligent or improper" (North Carolina, Alabama) conduct. Negligence is a different type of wrong from nuisance and has a completely different legal basis from the one on which nuisance is based, although certain acts may result in liability for both negligence and nuisance. To put it simply, one person can recover damage from another for injuries resulting from negligence if he can prove that the other did not act as a reasonable person would have under all the circumstances. The main part of the statute concerns only nuisance liability and does not attempt to limit liability for damages caused by negligence, so the language concerning negligence is superfluous. Furthermore, it is not clear what the legislators meant by "improper." The word has no established legal meaning and could cover all kinds of morally reprehensible actions. Thus, for example, if pesticides were causing a neighbor's family to be sick, he might be able to recover damages from the farmer even though he could not prove negligence. In fact, maintaining a nuisance is a good example of "improper" activity which is not negligent.

Finally, the law extends its protection to agricultural operations even after the land on which they operate has been annexed by a city, if the annexation takes places after the effective date of the act. The legislature made the judgment that even if the land around an agricultural operation becomes so urbanized that it is politically desirable to incorporate it into a city, the protection against municipal regulations based on change of conditions should continue. Such a long-term, universal protection for nuisance-like activities seems not to take into account the varying conditions which will be found across a state.

C. Tennessee's Statute

Tennessee's right-to-farm law is itself derived from feedlot laws that have been enacted in states such as Wyoming and Iowa. It recognizes that air, water, and noise pollution are now governed by complex sets of federal and state regulations, as a result of the enactment of laws such as the federal Clean Air Act, Clean Water Act, the Resources Conservation and Recovery Act, and their state counterparts. The Tennessee statute applies only to feedlots, dairy farms, and egg production houses — agricultural activities that are important to its economy and can generate serious concentrated air and water pollution. It provides that any such activity that is subject to the regulatory jurisdiction of the state department of health is insulated against liability for private nuisance if the activity is in compliance with state regulations and if the agricultural activity started operations before the complaining neighbor bought or started using his property. If the operations are expanded, the original activity maintains its priority date and the new activity receives a priority date as of the time it was established.

The statute also provides limited exemptions from state environmental regulations and local zoning and farm nuisance regulations. Feedlots, dairy farms, and egg production houses must comply first with regulations and standards applicable under a permit from the National Pollutant Discharge Elimination System created by the federal Clean Water Act, second, with regulations of the state Health Department and local governments that were in effect on April 12, 1979, the effective date of the act, and third, with any such regulations that take effect before the agricultural activity is established. The activities are exempt from rules and regulations that are passed after the effective date of the law and the date they began operation. The protected agricultural activities are also exempted from post-1979 zoning and anti-nuisance regulations that become applicable to them because a city has annexed the land on which they are conducted.

Tennessee's approach recognizes that effective control over certain types of agricultural pollution rests in the hands of the state Department of Health. On the one hand it applies a limited first-in-time, first-in-right principle that protects certain activities from changed state regulations. The only issue that this seems to raise is whether the state can permit certain types of pollution that federal laws prohibit. On the other hand, the statute protects agricultural activities that are complying with state rules from most private nuisance suits and hostile local regulations. The law incorporates by reference the detailed environmental standards established by the Department of Health. Operators of the designated agricultural activities must meet them in order to avoid nuisance liability and local regulation.

D. Laws Based on Washington's Statute

The laws of Washington and Oklahoma provide:

> Agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding non-agricultural activities, are [conclusively, in Washington] presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety.
>
> If that activity is undertaken in conformity with federal, state, and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

This approach incorporates by reference all the relevant federal, state, and local standards and insulates farm activities that are meeting them from nuisance liability to property owners who buy land or begin activity after the start of the agricultural activity. Obviously, an operation that was not would be exposed to administrative action as well. It does not attempt to deal with overly restrictive local ordinances. Even though federal and state environmental protection laws have largely supplanted local regulation and established minimum water and air quality standards, it is still possible that local governments may have the power to set standards that could have a serious impact on agricultural activities without providing commensurate protection of the public health and safety. This possibility should be addressed in right-to-farm legislation.

E. Other Approaches

Some states, such as California, have not attempted to create a right to farm but have simply exempted certain types of agricultural activities, such as burning, aerial spraying, and the use of pesticides, from certain requirements of their air pollution control laws.[8] Mississippi's law provides only that an agricultural operation that has been in existence for a year is immune from liability for public or private nuisance if the conditions alleged to constitute a nuisance have existed substantially unchanged since the date the operation started. Expansions are entitled to their own priority date, as is the case in Tennessee.

In a recent proposal for a program for farmland retention in New Jersey,[9] it was suggested that the state should develop specifications of acceptable farm management practice that would both tell farmers what they could do without exposing themselves to liability for environmental pollution or nuisance, and at the same time protect the health and safety of the state's residents.

The proposal stressed that all of the following activities should be covered by right-to-farm legislation: growing crops and raising poultry and cattle; processing and marketing produce; applying fertilizers, pesticides and herbicides; clearing woodlands; installing water and soil conservation facilities; designing farm structures; using water; burning in the open; disposing of organic wastes on the farm; and providing supplies, processing facilities, and markets near farming areas. The report suggested that a special, non-adversary arbitration process be established that would handle complaints about farm nuisance

III. EFFECTIVENESS

There is, at the time of writing, little evidence bearing on the effectiveness of the various types of right-to-farm legislation. This is at least partly true because much of it has been enacted in the last year and a half. Serious questions of a practical and legal nature arise concerning many of the statutes. Much can be learned from the experience with feedlots, where the environmental problems are severe and the need for protection against local regulation and nuisance suits is great. Tennessee's approach of identifying a small number of particularly onerous or nuisance-like activities and granting them limited protections if they comply with state and federal environmental regulations has much to commend it. It recognizes, as does New Jersey's farmland retention proposal, that to protect farmers against unreasonable environmental regulations and lawsuits, while at the same time protecting the public's health and safety, requires a cooperative public and private effort involving careful data-gathering and analysis, and preparation of a statement establishing balanced state level farm management practices. Conditions will vary from state to state and from one part of a state to another. Clearly it is not an appropriate undertaking for a judge in a private nuisance suit to determine what best management practices are and to balance the needs of farmers against the needs of the non-farm public. Farm organizations and agricultural extension programs must play an important role in developing the kinds of protection that farmers are demanding.

FOOTNOTES-CHAPTER 5

1. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, (1926). See Spur Industries, Inc. v. Del E. Webb Dev. Co., 108 Ariz. 178, 494 P. 2d. 700 (1972).

2. Ala. Code, Section 6-5-127 (Cumm. Supp. 1980); Del. Code tit. 3 Section 1401; Fla. Stat. Ann. Section 823.14 (1980 Supp.); Ga. Laws, 1980 Sess. Act 1297; *Ill. Stat. Ann. ch. 5, Section 1018 (Smith-Hurd Supp. 1980); Ky. Rev. Stat. Ann. ch. 413 (Ky Acts 1980 ch. 214); La. Rev. Stat. Ann. Section 51:1202 (Supp. 1981); *Md. Ann. Code, Agriculture, Section 2-513 (Supp. 1980); *Minn. 1980 Session Laws, ch. 566, Section 473H.12; Miss. Code 95-3-29 (Cumm. Supp. 1980); *N.Y. Agric. & Mkts. Law Section 305(2) (McKinney 1972); N.C. Gen. Stat. Sections 106-700 and 106-701 (Supp. 1979); Okla. Stat. Ann. tit. 50, Section 11 (1980 Session Laws, 2d. Sess., ch. 189); *Ore. Rev. Stat. Section 215.25 (Repl. 1979-80); Tenn. Code Ann. Sections 53-6701, 53-6704 (Supp. 1979); *Va. Code Ann., Section 15.1-1512B (Cumm. Supp. 1980); Wash. Rev. Code, Sections 7.48.300, 7.48.305, and 7.48.310 (Supp. 1980). Several local governments have passed right-to-farm ordinances, and it is possible that other states have too.

* In states marked with an asterisk, the statute applies only to land in agricultural districts or, in the case of Oregon, in exclusive farm-use.

3. See William L. Prosser, *The Law of Torts* (St. Paul, Minn., West Pub. Co., 1971, 4th ed.) p. 571.

4. Spur Industries, Inc. v. Del E. Webb Development Co., 108 Ariz. 178, 494 P. 2d 700 (1972).

5. McQuade v. Tucson Tiller Apts., 25 Ariz. App. 312, 543 P. 2d 150 (1975). See also, *Restatement of Torts, 2d* (St. Paul, Minn., American Law Inst. Publishers, 1979) Sections 821A -840E.

6. See Edward P. Thompson, "Right to Farm Laws Examined," *Aglands Exchange*, Nov.-Dec., 1980 (Washington, D.C.: National Association of Counties Research Foundations) for a thoughtful discussion of these laws.

7. The law is taken from the same model as statutes such as those of Wyoming (Wyo. Stat. Ann. ch. 39, Sections 11-39-101 to 11-39-104), and Iowa (Iowa Code Ann. Sections 172D.1 to 172D.4) that apply only to feedlots. They, in turn, build on older feedlot laws such as that of Kansas (Kan. Stat. Ann. Section 47-1505) which provides that feedlots operated in compliance with the statute are deemed not to be nuisances. Parenthetically, the Attorney General of Iowa gave an opinion that a proposed law placing limitations on maintaining nuisance actions against the operation of feedlots was of questionable constitutionality. Iowa Code Ann., Section 172D.1, annotation (Supp. 1980)

8. Cal. Health and Safety Code, Section 41704(b).

9. "Grassroots: An Agriculture Retention and Development Program for New Jersey," N.J. Departments of Agriculture and Environmental Protection (1980).

CHRONOLOGY OF STATES WITH

RIGHT-TO-FARM LAWS

1979

ALABAMA
FLORIDA
MASSACHUSETTS
NORTH CAROLINA
TENNESSEE
WASHINGTON

1980

DELAWARE
KENTUCKY
MISSISSIPPI
OKLAHOMA
SOUTH CAROLINA
PILESGROVE TOWNSHIP,N.J.

1981

GEORGIA
NEW JERSEY
ARIZONA
ARKANSAS
CONNECTICUT
IDAHO
ILLINOIS
VIRGINIA
INDIANA
MAINE
MARYLAND
COLORADO
MONTANA
NEW HAMPSHIRE
NORTH DAKOTA
TEXAS
UTAH
VERMONT
OREGON
NEW YORK
MICHIGAN

1982

RHODE ISLAND

OTHER STATES LAWS PASSED
DATE UNKNOWN

NEW MEXICO
CALIFORNIA

PENDING IN LEGISLATIVE
POSSIBLE PASSAGE NOW

OHIO
PENNSYLVANIA
NEVADA
MISSOURI
WISCONSIN
MINNESOTA

IOWA--HAS PASSED A LIVESTOCK
FEEDLOT NUISANCE LAW

STATES WITHOUT RIGHT-TO-FARM
OR NUISANCE LAWS

LOUISANA
KANSAS
NEBRASKA
ALASKA
HAWAII
WEST VIRGINIA
SOUTH DAKOTA
WYOMING

HB
635

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 635
Title : An act establishing the Willow Creek State Resreation area
Sponsor : Rep Larson
Requestor : House Resource Committee
Date of Request 2-28-86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Parks Management

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

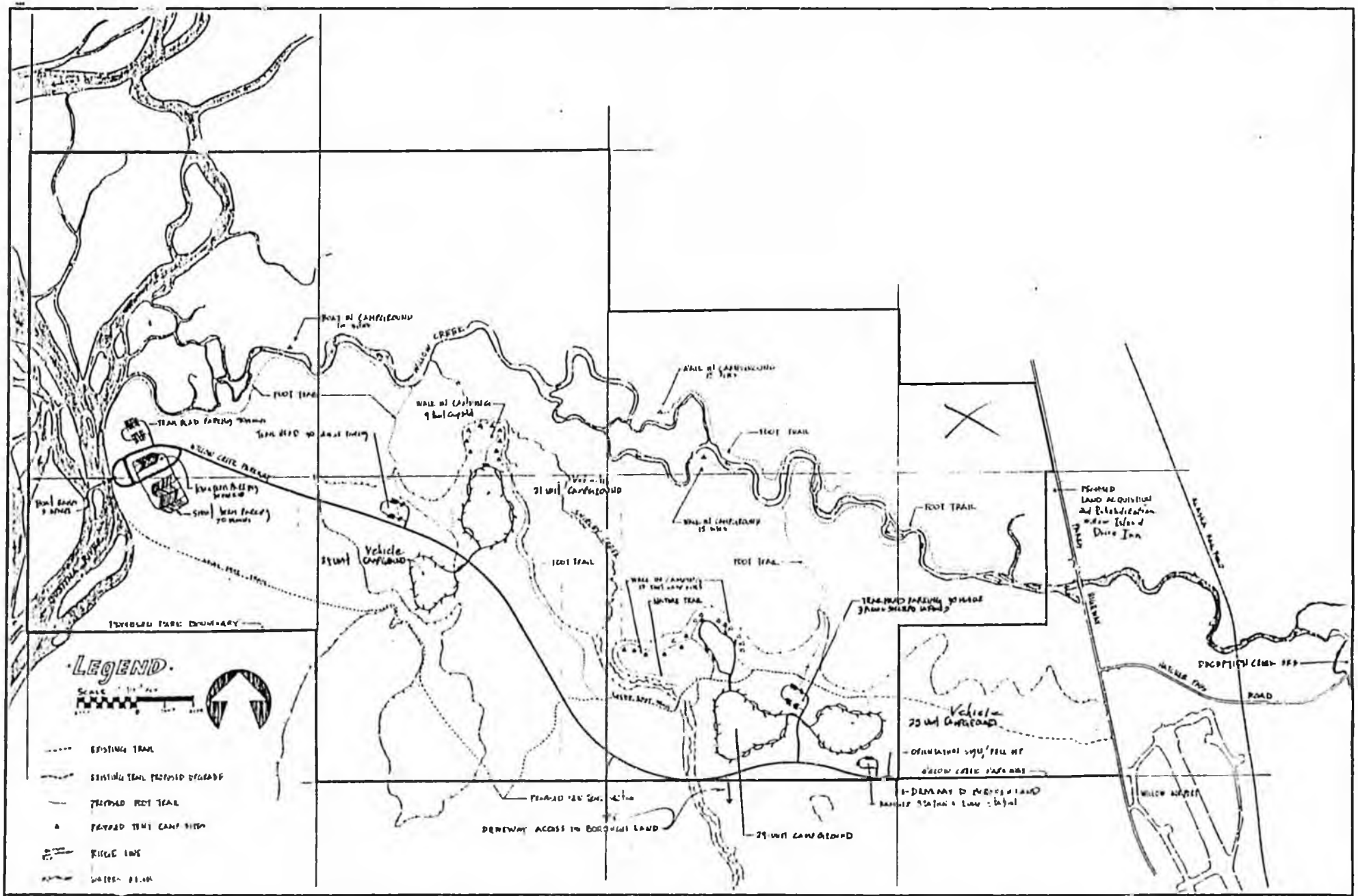
If there is a CIP appropriation for area improvements, there will be associated operating expenses.

Prepared by: Barbara Lee Hope Phone : 762-4565
Division : Parks & Outdoor Recreation Date : 02-28-86

Approved by Commissioner : Norm D Arnold, Deputy Date : 2/28/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85



DEPARTMENT OF NATURAL RESOURCES
DIVISION OF PARKS
STATE OF ALASKA

WILLOW CREEK S.R.A. MASTER-SITE PLAN

SHEET 1 OF 7 SHEETS

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Sport Fish	HB 635	Representative Larson

DEPARTMENT POSITION

Support

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
[illegible]	2/26/86	Don W. Collinsworth	2-28-86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
DNR, DEC, Matanuska-Susitna Borough	Cook Inlet basin residents and visitors
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Unknown	Unknown

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Create approximately a 4,000-acre state recreation area along Willow Creek near the Park Highway.

ANALYSIS OF BILL/PROGRAM EFFECTS

HB 635 is basically identical to HB 86 but cleans up major flaws in the location description of the Willow Creek site.

Creation of the Willow Creek recreation area will not adversely impact the operations of the department. Development of the site with appropriate campgrounds and boat launch facilities will improve access to Susitna River tributaries for hunters and anglers. Fish stocks can presently stand increased utilization.

AMENDMENTS PROPOSED

Page 3, Line 19 (Sec. 41.21.494(3)).

(3) allow sport fishing, fishery rehabilitation or enhancement...

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

HB 635 - WILLOW CREEK STATE REC AREA

This bill would set aside some public lands in the Mat-Su Borough for public recreation around the mouth of Willow Creek. This is a prime destination for many Southcentral residents, especially during the summer sportfishing season. We envision this as one of the steps in developing optimum recreational opportunities in the Mat-Su area.

By setting aside this area in the state recreation system we can preclude it from other land use designations, while we work toward obtaining the necessary funding for such items as an access road and boat launch facility at the mouth of Willow Creek. We believe this would bolster tourism type activities and would be of great financial benefit to the Mat-Su area.

SECTIONAL ANALYSIS

Sec. 1: Describes the purposes for the land and water being set aside in the Willow Creek State Recreation Area.

Sec. 2(a) Establishes the Willow Creek State Recreation Area in AS 41.21.491 and gives the property description.

2(b) Allows for cooperation between the state and the borough.

2(c) Designates land and water in Willow Creek as a special use area under the state constitution.

2(d) Allows for oil and gas leasing within the lands described in AS 41.21.491.

Sec. 41.21.492:

Describes the management responsibilities of the Department of Natural Resources for Willow Creek State Recreation Area in relation to the Mat-Su Boro, the Department of Fish and Game and the Boards of Fish and Game.

Sec. 41.21.493:

Directs the department to develop a management plan with the Mat-Su Boro.

Sec. 41.21.494

This section directs the commissioner to develop regulations necessary to carry out the provisions in the purposes section of the bill.

Sec. 41.21.495:

Allows the commissioner to add on new lan[illegible] which are adjacent to Willow Creek State Recreation A[illegible] and that are needed to sustain the purposes described in AS 41.21.491 - 41.21.497.

S[illegible] 41.21.496:

Allows the commisssioner to enter into cooperative land agreements with other agencies or private parties in order to achieve the purposes described in AS 41.21.491 - 41.21.497.

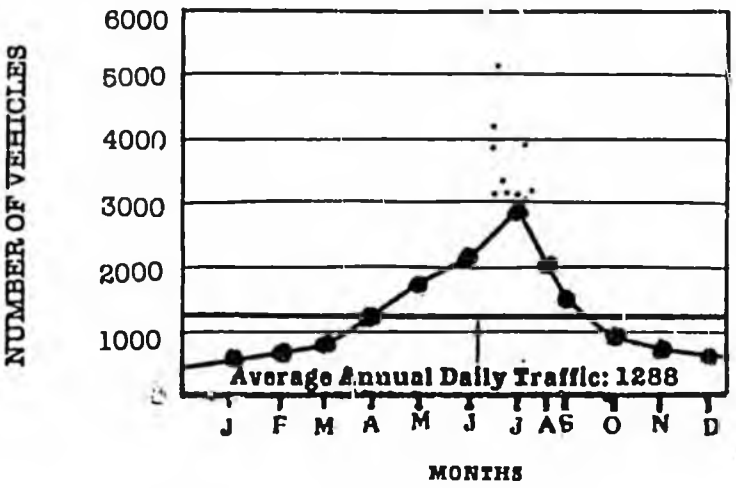
Sec. 41.21.497

Allows for enforcement of the regulations adopted under AS 41.21. 41.21.497.

Sec. 3: Requires the commissioner to adopt the management plan for Willow Creek State Recreation Area within two years after the effective date of this act.

Sec. 4: States when this act will take effect.

Figure 8. PARKS HIGHWAY TRAFFIC VOLUMES AT WILLOW, 1980



Legend

* 10 peak annual days

Average Annual Daily Traffic (AADT)

Average Monthly Daily Traffic (AMDT)

Source: Alaska Department of Transportation and Public Facilities

Land Ownership

Most of the land within the study area is publicly owned. The Matanuska-Susitna Borough and the State of Alaska own large blocks of land west of the Parks Highway. The area around the Parks Highway/Willow Creek junction is privately owned. Upstream of the Parks Highway, the Willow Creek State Recreation Site is a 240 acre parcel surrounded by private lands (see Figure 9, page 22). Ownership of the subsurface has been retained by the State of Alaska.

Background Material

comments from the plan for the Willow Creek State Rec. Area.

toric park is owned by the State of Alaska. It receives year-round recreational use, particularly during the winter season, when skiers and snowmachiners converge. Popular summertime activities include hiking, mountain climbing, and berrypicking.

City of Houston. The City of Houston owns and operates a campground bordering the Little Susitna River and the Parks Highway, located 15 miles south of Willow.

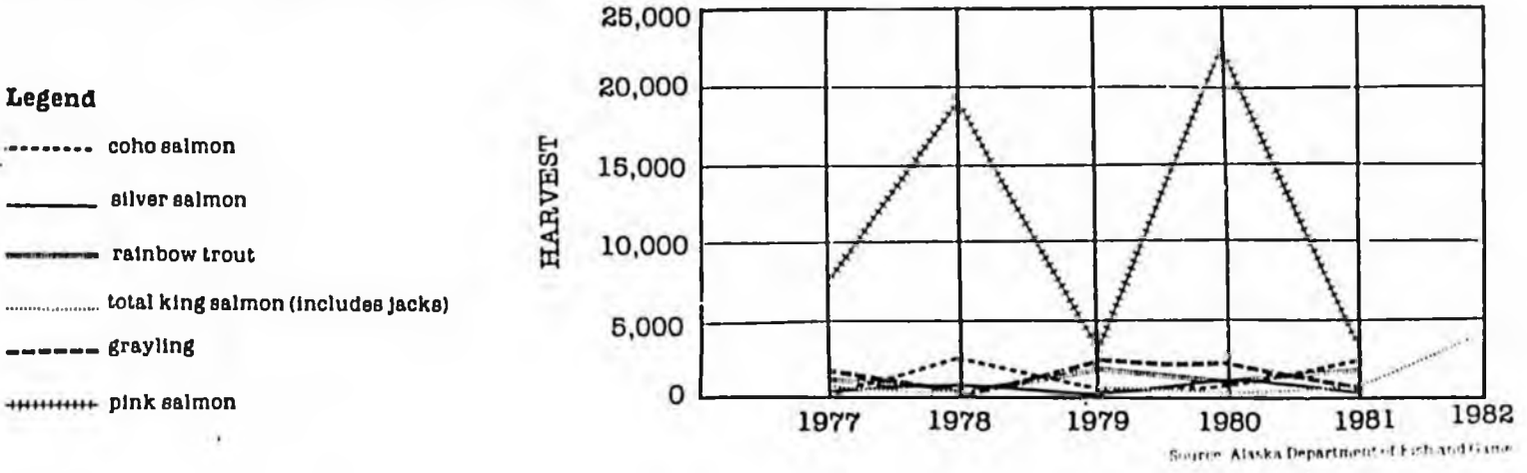
Private Sector. Several privately operated recreational facilities are located within the vicinity. The Willow Island Drive Inn is situated at the northwest corner of the Parks Highway/Willow Creek intersection. Facilities include parking, boat launch, trailer storage area, and camping units. Shore fishing is popular along the area's Willow Creek frontage.

Susitna Landing is a privately owned and operated boat launch located at the Susitna River/Kashwitna River confluence, 11 highway miles north of Willow Creek. From Susitna Landing, boaters travel to points north and south, including the Yentna River, Kroto Creek, and Alexander Creek.

Willow Creek Sport Fishing

Most recreationists visiting Willow Creek are attracted to the stream by its sport fishing opportunities. Willow Creek hosts significant runs of king salmon, chum salmon, and pink salmon. A small run of silver salmon and year-round populations of rainbow trout and arctic grayling are also sport fishing attractions. See Figure 11, page 25 for a historical summary of fishing effort and harvest at Willow Creek.

Figure 11. WILLOW CREEK SPORT FISHERY HARVEST, 1977-1982



Source: Alaska Department of Fish and Game

Willow Creek waters open for king salmon fishing stretch from the mouth to the Parks Highway bridge. Other salmon species may be taken legally from the mouth up to the Deception Creek confluence.

Fishing occurs at two major activity nodes: near the Parks Highway and railroad bridges; and at the mouth where the stream enters the Susitna River. The road-accessible node receives very heavy use beginning in mid-June as the king salmon enter Willow Creek, and tapering off as the pink salmon run ends in late August. During the busy season, this area will often host several hundred shore anglers. These anglers are often fishing from privately owned land, an issue which is receiving increasing attention (see page 28).

The activity node at the Willow Creek mouth is accessible by riverboat only. Most effort is expended during four consecutive weekend openings during the king salmon run. At the peak of the run, shore anglers will line up elbow-to-elbow along a particularly good 300 foot stretch of the Susitna River immediately downstream of the southernmost Willow Creek mouth. At such times, the number of anglers will exceed 100. There are no sanitary facilities in this area, which has raised concerns about the effects of random and untreated human waste and litter. Fishermen will also anchor their riverboats offshore during these weekend openings and cast into fishing holes.

King Salmon. The king salmon has historically been the most sought-after sport fish species at Willow Creek and throughout the Susitna River basin. In 1964, due to dangerous declines in fish stocks, king salmon fishing throughout the Susitna basin was prohibited. As the stocks rebounded, fishing was again opened, but on a much reduced basis. Allowable king salmon catch in Willow Creek has been set at 300 fish (over 20 inches in length), although biologists suspect that this number could be raised without endangering the run.

Pink Salmon. Pink salmon enter Willow Creek in very large numbers in even-numbered years, and in moderate numbers in odd-numbered years. This species provides excellent opportunities for family-oriented outings, with much higher rates of fishing success than for other salmon species.

Chum Salmon. Chum salmon is attracting increasing attention as a sport fish species, due to its relatively large size and its fighting abilities. Harvest at Willow Creek increased from 343 in 1977 to 1,533 in 1981.

Silver Salmon. Despite a small run, an important silver salmon sport fishery does occur at the mouth of Willow Creek. Silvers destined for spawning grounds at other streams temporarily hold in the clear waters of the Willow Creek/Susitna River confluence, where they become available for harvest. Figures from 1980 show 1,207 silver salmon harvested in this manner, with a drop in 1981 to 747 fish.

Rainbow Trout. Rainbow trout attract a significant number of anglers to Willow

Creek. Most effort for rainbows occurs early in the season before salmon species arrive, and again after the salmon have spawned. Use is dispersed over a wider area than for the salmon species, extending from the mouth past the Parks Highway bridge and up into the Talkeetna Mountain foothills.

Willow Creek Riverboating

A major recreational use of Willow Creek is as a riverboating corridor. Most boaters launch at commercial facilities near the Parks Highway bridge.

The great majority of riverboat traffic is downstream, and then towards outlying areas within the Susitna basin. Thus, Willow Creek serves as an important transportation corridor by accessing the roadless areas to the west, where dispersed settlements have developed as a result of government land sales, homesteading, mining, and other attractions. As these areas have become more settled, the volume of riverboat traffic on Willow Creek has risen correspondingly. Important destination points include Kroto Creek (Deshka River), the Yentna River, and Alexander Creek.

Recreational Issues

Angler-Boater Conflicts. The most difficult problem concerning use of Willow Creek is the growing conflict between riverboaters and shore anglers. Riverboaters have traditionally traveled between the Parks Highway and the mouth to gain access to fishing spots and to outlying areas. But as population increases have brought more sport fishermen to Willow Creek, clashes have become more common between the two user groups. Anglers complain that high speed boats create wakes which disturb fishing holes, create safety hazards, and harm spawning grounds. Boaters respond that Willow Creek is the only reasonable access to outlying areas and that high speed operation is required in order to maintain maneuverability. After a State Recreation Area is established at Willow Creek, the Division of Parks will have responsibility for managing the stream's water column and for resolving this conflict.

Fishing Regulations. Because demand for king salmon far exceeds the natural run in Willow Creek, the Department of Fish and Game has regulated sport fishing in order to ensure that escapement goals are met. There are concerns that state park establishment would bring more anglers and place additional pressures on fish stocks, forcing the Department of Fish and Game to shorten the king salmon season.

Winter Recreation Management. Because the Willow area receives abundant snowfall and moderate temperatures, its potential for winter recreation is high. Development of a trail network along Willow Creek will invite skiers, snowmachiners, and dog mushers. These user groups have experienced conflicts at other locations, and the Division of Parks should manage the area to avoid such problems.

Trespass Recreation. "Trespass recreation," the inadvertent or deliberate use of private property by recreationists, is an issue. Trespass situations are increasing, particularly upstream of the Parks Highway bridge. Private owners have posted signs and taken other actions to protect their property interests.

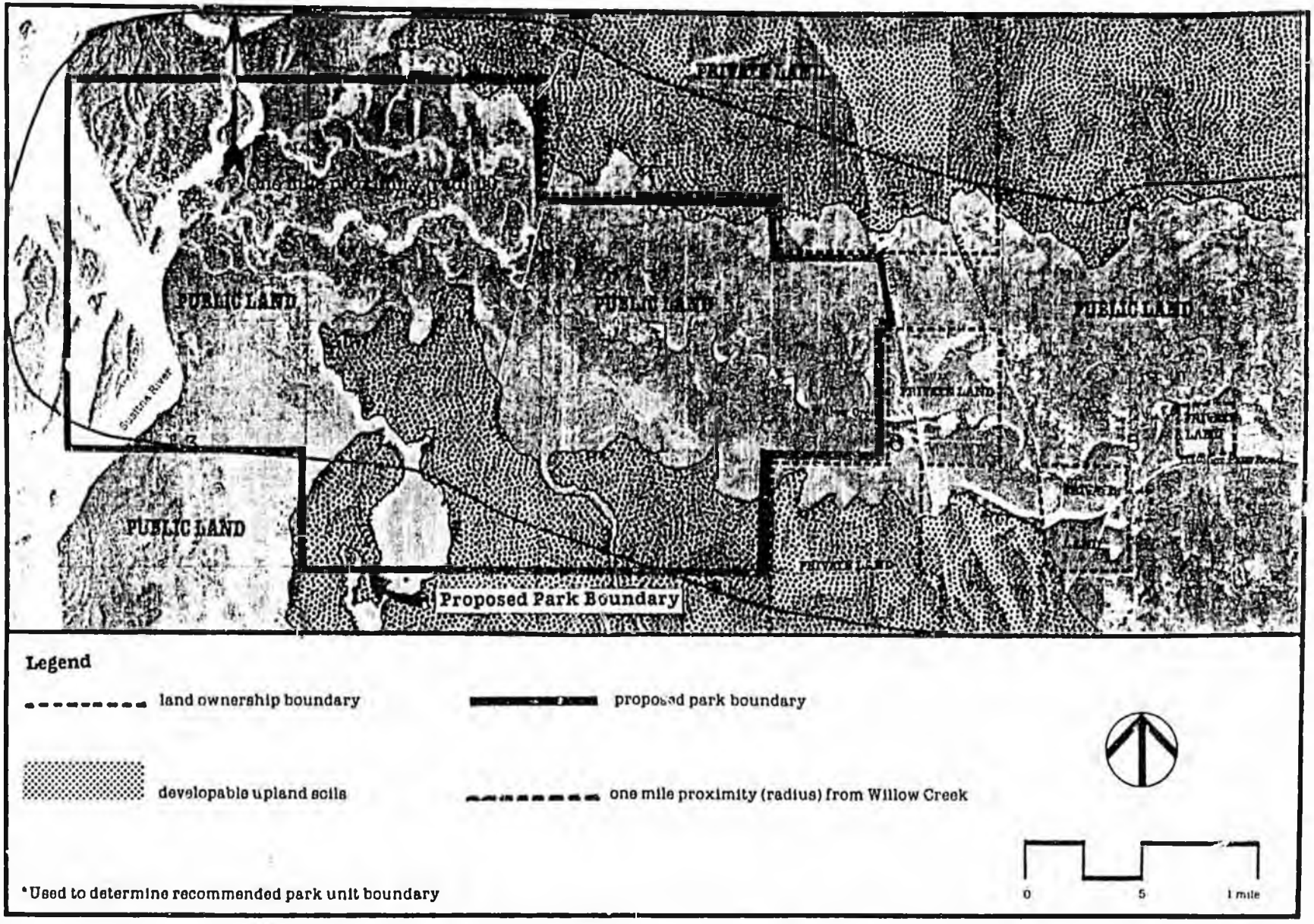
Commercial Activities. At present, commercial riverboat operators have established businesses at the Parks Highway birdge. Clients include those destined only for the mouth and others bound for outlying areas. With establishment of the park unit, state regulations will govern all commercial enterprises within the park boundaries.

Trail Management. Concern has been expressed about difficult foot access to Willow Creek below the Parks Highway bridge. At present, primitive trails extend a short distance downstream before disappearing. This has the effect of concentrating anglers around the highway bridge in spite of excellent fishing areas further downstream.

Other issues include the following:

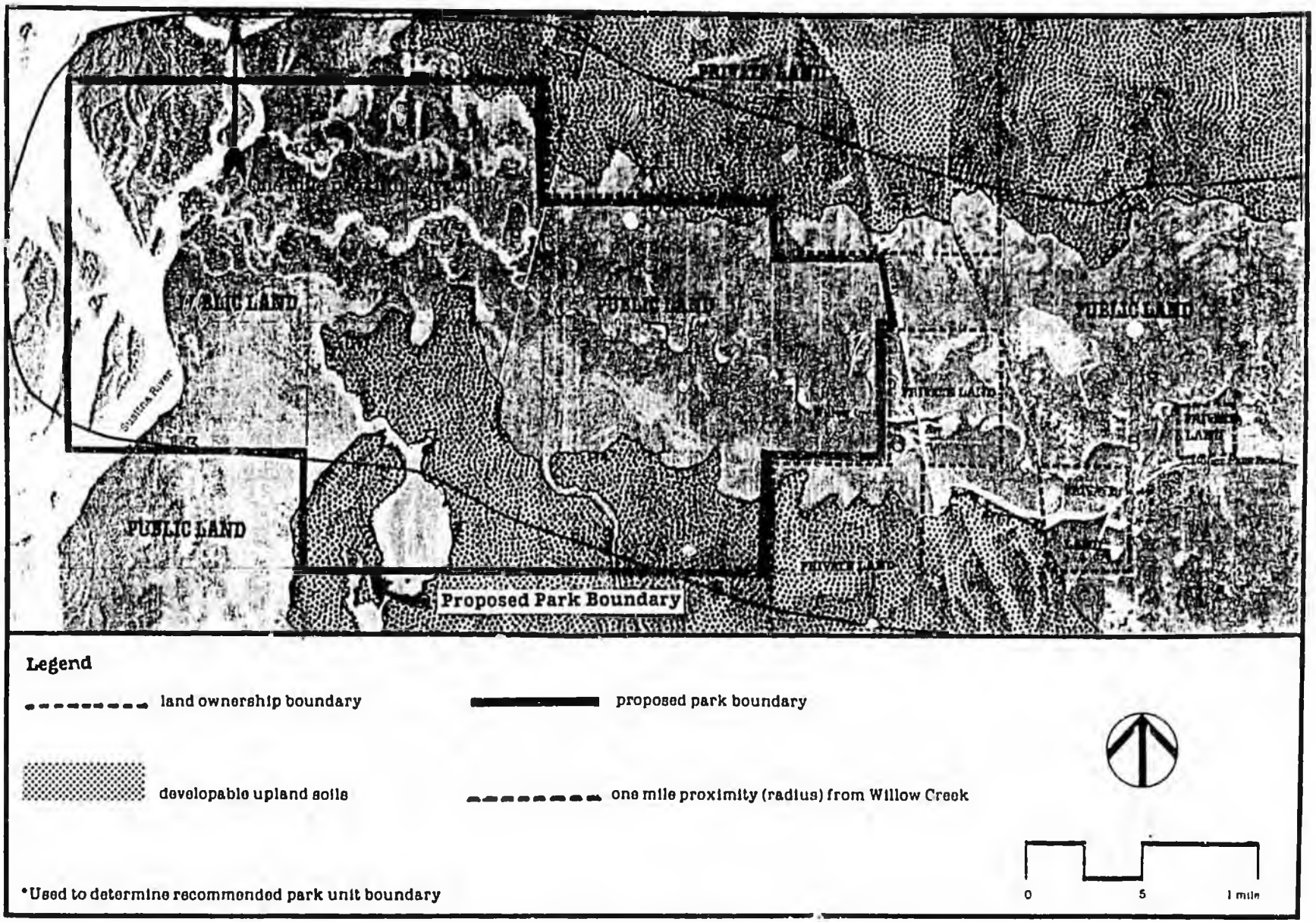
- power transmission lines
- hunting and trapping regulation
- sanitation
- fish habitat protection
- preservation of archaeological resources
- handicapped access to fishing areas
- historic trails
- state competition with private recreation providers
- road development within the park
- floodplain or wetlands construction
- regional road network

Figure 18. BOUNDARY ANALYSIS*



Source Alaska Division of Parks

Figure 18. BOUNDARY ANALYSIS*



Source: Alaska Division of Parks

6 GENERAL RECOMMENDATIONS

Zoning

To further clarify the intent for management of land and resources within state park units, all lands within each park unit are classified into one or more of the following zones:

- natural zone
- cultural zone
- recreational development zone
- wilderness zone

Figure 19a, page 44, is excerpted from the Alaska State Park System: Statewide Framework, published in 1982. The intent and management considerations for each zone are described.

The proposed Willow Creek State Recreation Area is zoned in Figure19b, page 45. Only the recreational development and natural zones are applied within this park unit.

Regulation of Commercial Activities

With legislative establishment of the Willow Creek State Recreation Area, the Division of Parks will become responsible for regulating commercial activities within the park. At the present time, commercial activities are limited to riverboat operators whose charter services are based at the Park Highway bridge. A large portion of the boat traffic on Willow Creek is by commercial operators.

As the facilities recommendations of this plan are implemented, a boat launch will be built at the Willow Creek mouth. At that time, it is recommended that the Division of Parks institute a permit system which will allow commercial riverboat operations to be conducted at the boat launch area. Permits will be issued with appropriate stipulations.

This recommendation is intended to reduce conflicts between boaters and anglers by relocating the commercial operations to a better location. It is consistent with proposed regulations governing the operation of state park units.

Riverboating Regulation

With establishment of a state park unit at Willow Creek, Division of Parks will accept responsibility and authority to resolve conflicts and protect the area's natural environment. One management tool is the authority to regulate the various recreational activities.

A major recreational issue at Willow Creek is the growing conflict between riverboaters and other users and increasing concerns about the environmental impacts of riverboating. In an effort to resolve this issue, a new boat launch at the Willow Creek mouth is recommended (see recommendation, page 55).

By providing an alternative to boat launching at the Parks Highway bridge, the new launch is intended to alleviate the problem. If conflicts continue in spite of the alternative launch, it is recommended that the director exercise the Division of Parks' authority and close Willow Creek to motorized boating. Such a closure would take place after appropriate public notice and review.

Visitor Education, Interpretation

A nature trail is recommended as one component of an interpretive program (see recommendation, page 59). As visitation at Willow Creek increases, another component should be an active, ranger-assisted series of topical programs. A third component, which should be initiated early, is the production of a brochure describing the area's natural features and resources.

A final educational subject should concern boating safety and handling techniques. With construction of the new boat launch at the Willow Creek mouth, boaters will be launching into the difficult and potentially dangerous waters of the Susitna River. It is recommended that the Division of Parks take every opportunity to educate boaters, with such devices as bulletin boards, lectures, and demonstrations.

Archaeological Preservation

The locations of facilities in this plan have been selected without the benefit of a comprehensive cultural resources survey (see recommendation, page 53). It is possible that a survey will discover significant resources in an area slated for development. In such a case, the Division of Parks should make every reasonable effort to reroute or relocate the facilities to avoid the prehistoric resources. If rerouting or relocation is not feasible, other efforts to preserve the cultural materials will be explored, including excavation and removal.

Driveways, Intersections on the Willow Creek Parkway

Although primarily a park road, the Willow Creek Parkway can meet multiple use objectives by providing access to lands south of the park. The Matanuska-Susitna Borough owns land bordering the park. In the future, the borough may choose to dispose of the land. In anticipation, this plan identifies acceptable locations where access roads might intersect the parkway (see Figure 20, page 46). These points have been selected

and spaced so as to preserve the natural experience of the parkway while providing reasonable access to outlying areas. Permits for parkway intersections will be issued by the Division of Parks only for those designated points.

Vegetation Thinning, Revegetation

Most of the facilities recommended in this plan will be located on the forested upland benches south of Willow Creek, where vegetation limits distant views of Mount McKinley and the Alaska Range. Selective hand thinning of trees and brush should be performed in certain areas to enhance scenic qualities. Specific areas will be identified by landscape architects during the site planning phase of development and again during construction.

During construction of new facilities, vegetation will inevitably be impacted by heavy equipment. To the extent practical, impacted areas should be reclaimed and revegetated. Road cut and fill slopes should be dressed with surplus topsoil and seeded or planted with native ground cover and brush species. These revegetation efforts will be detailed by landscape architects during the construction phase of development.

Disposal of Construction Waste Materials

Based upon investigations by the Alaska Department of Transportation and Public Facilities, it has been determined that the silty soils found on-site are not acceptable road construction materials. These organic silts must be excavated, typically to a depth of two feet, and removed before suitable materials can be brought in from off-site.

In order to reduce construction costs, two disposal sites within the park have been identified to receive surplus excavated material (see Figure 20, page 46). In this manner, transportation costs are reduced and these topsoils are available for later use.

The disposal sites will be revegetated according to guidelines set forth by landscape architects during the site planning process. Access will be limited by gates or other barriers.

Signing

Because of the size and magnitude of facilities proposed for the Willow Creek State Recreation Area, a signing plan should be formulated at an early stage to ensure that regulatory and informational signs are both effective and consistent with park values. The sign plan will be particularly valuable during the lengthy period of development, expected to occur in phases over several years.

Trapping

The Willow Creek corridor supports a number of fur-bearing animals, most notably beaver. Trappers have for many years taken fur-bearers in the corridor, in a sustained yield manner which has not substantially dimin-

ished populations. It is recommended that trapping be allowed to continue, with the understanding that the Department of Fish and Game has authority for managing the area's wildlife resources.

Transportation, Utility Corridors

In anticipation of continued growth in the railbelt region, reconnaissance transportation and utility studies are identifying various corridors for roads, electricity transmission lines, etc. For example, the Alaska Power Authority is studying route alignments for transmission lines which will be necessary if the proposed Susitna hydroelectric project is constructed. One possible alignment bissects the park, traveling over the proposed location of a vehicle campground.

In order to preserve park values and protect recreational resources from intrusion, it is recommended by the Division of Parks that new transportation and utility corridors avoid the boundaries proposed for Willow Creek State Recreation Area.

Operations and Maintenance Staffing

To provide quality public recreation, it is not enough for the state to simply establish new parks and construct new facilities. Equally important is funding for staff personnel, maintenance, repairs, and equipment needs. These are the operational items which are so often neglected as budgets are formulated, yet they provide benefits which accrue directly to recreationists in the form of well-managed facilities and ranger assistance.

As the Division of Parks makes capital funding requests to implement the facilities recommendations of this plan, companion fiscal notes will also be prepared. The notes will detail the support functions, additional staff, special equipment, and other ongoing operational needs which the construction of new facilities will bring. Figure 21, page 50, compiles the phased operational requirements at Willow Creek, designed to coincide with the phases of facility construction.

Hunting

The Alaska Board of Game is responsible for developing hunting regulations addressing such factors as opened/closed areas, seasons, species, and bag limits.

The boat launch area will be heavily used during the autumn big game hunting season by hunters destined for outlying areas. Because of this concentrated use, a real danger would be created by other hunters stalking the surrounding area inadvertently shooting in the direction of the launch. For public safety purposes, it is recommended that the Board of Game close the state recreation area to all hunting during the fall big game season. Afterwards, when boat launching activity has declined, the area would be opened for small game hunting, with small caliber rifles and shotguns.

Failing action by the Board of Game, it is recommended that the Division of Parks exercise its authority to protect public safety by closing the area to the discharge of firearms.

- Facilities thought to be inappropriate include overnight cabins, lodges/hotels/motels, convenience stores, and playfields.

- Sport fishing is the primary attraction at Willow Creek. Other attractions include its accessibility, pleasant atmosphere, and riverboat access to downstream areas such as the Deshka River.

- Overcrowding was most often mentioned as a negative feature of the area. Anchorage residents next indicated poor maintenance, while local residents complained of boat traffic on Willow Creek. Another problem cited is a lack of developed camping areas.

- When asked what type of overnight accommodations they used, 58% of Anchorage respondents listed some type of vehicle and 56% used tents. (Note that because some people use both types of accommodations, the percentages total more than 100.) Seventy-one percent of Matanuska-Susitna respondents used a vehicle, while 50% used a tent.

- Most people favored locating camping areas within reasonable walking distance, as opposed to streambank development or areas located several miles away.

- Anglers were satisfied with their fishing success rates for most fish species. King salmon fishing brought a mixed response, with 50% of the fishermen being dissatisfied.

Regional Preferences

The Alaska Outdoor Recreation Plan, published by the Division of Parks in 1981, contains detailed information about the preferences of Southcentral Alaska residents. Figures 12, 13, 14, 15, and 16 are excerpted from the plan and lead to the following conclusions relating to the management and development of a Willow Creek State Recreation Area.

- Fishing and tent camping are the two activities which respondents desired to do more often (Figure 12). The Willow Creek area can provide opportunities for both these activities, consistent with the land and water's ability to absorb adverse impacts.

Figure 12. ACTIVITIES THAT SOUTHCENTRAL PARTICIPANTS WOULD LIKE TO DO MORE OFTEN

	Percent of Respondents
Fishing	26%
Tent camping	12%
Hunting	7%
Motorboating	6%
Hiking/walking*	4%
Alpine skiing	4%
Swimming	3%
Flying	3%
Horseback riding*	3%
Sailing	2%
Canoeing/kayaking	2%
Bicycling*	2%
Beach combing	2%
Traveling/sightseeing	1 %
Cross-country skiing*	1%
Other	21%
None	0%
* Trail related activities subtotal	10%

Source: Alaska Division of Parks

- The four most popular outdoor recreational activities in the region are fishing, tent camping, hiking/walking/running, and hunting (Figure 13). The Willow Creek corridor is capable of supporting all of these activities, with care taken that increased usage does not spoil the area's natural character.

- Acquisition and development of more backpacking campsites are favored by a majority of southcentral residents (Figure 14). In its extensive lowlands with complex drainage patterns, the Willow Creek corridor is especially suited to these low-impact facilities.

- More and better developed roadside campgrounds and picnic areas are favored (Figure 14). The well drained uplands overlooking Willow Creek are capable of meeting some of this demand, due to their suitability for a range of intensive activities and facilities.

- Southcentral residents want more hiking trails (Figure 14). The Willow Creek corridor is suited for a network of streamside and back-country trails. Such a trail network would serve several user groups, including anglers, hikers, skiers, snowmachiners, and dog mushers.

- More and better developed canoeing, kayaking, and rafting trails are favored in the southcentral region (Figure 14). Comments received during public meetings indicate that the curving and

Figure 13. FAVORITE SOUTHCENTRAL OUTDOOR RECREATION ACTIVITIES††

1. Fishing	24%
2. Tent camping	9%
3. Hiking/walking/running*	5%
4. Hunting	6%
5. Motorboating	5%
6. Beachcombing	5%
7. Baseball/softball	4%
8. Bicycling*	3%
9. Cross-country skiing*	4%
10. Alpine skiing	4%
11. Winter off-road vehicle*	3%
12. Swimming	2%
13. Flying for pleasure	2%
14. Summer off-road vehicle*	2%
15. Traveling/sightseeing	2%
16. Horseback riding*	2%
17. Other**	

* Trail related activities
** Twenty five other activities were listed and represent one percent or less each
†† Represents first preference given

Source: Alaska Division of Parks

Figure 14. PREFERENCES FOR SOUTHCENTRAL STATE PARK ACQUISITION, DEVELOPMENT AND MAINTENANCE

	More Areas	Develop Areas	Just Maintain	Less Areas
Hiking trails	63%	31%	15%	1%
Roadside campgrounds/ picnic areas	61%	17%	20%	2%
Backpacking campsites	48%	29%	21%	2%
Canoeing, kayaking, and rafting trails	41%	33%	22%	4%
Developed recreation areas	61%	23%	24%	2%
Well-accessed natural areas	38%	33%	25%	4%
Historic sites	37%	32%	25%	6%
Wilderness areas	23%	25%	35%	17%

Source: Alaska Division of Parks

debris-strewn waters of Willow Creek are dangerous for canoe operation. Rafting and kayaking, however, are judged to be suitable activities in these waters.

- Desired features in out-of-town recreational areas include fishing areas, access to water, facilities such as campsites and picnic tables, and undisturbed natural areas (Figure 15). Willow Creek is capable of meeting some of this demand, in an area within two hours driving time of Anchorage.

- For many Susitna valley residents, a park at Willow Creek will serve as a community recreational area. Desired features in community recreational areas - which are also consistent with the mission of the State Park System - include trails, paved roads, water access, and picnic tables, campsites, drinking water, and restrooms (Figure 16).

Recreational Demand

In keeping with Alaska's explosive population growth, demand for outdoor recreation rose dramatically during the decade of the seventies. The number of sport fishing licenses issued increased from 113,394 in 1970 to 206,804 in 1980, according to the Department of Fish and Game. Division of Parks figures indicate that visitation at the Matanuska-Susitna district parks rose from 92,078 in FY73 to 391,923 in FY81, representing a 426% increase in 8 years.

Figure 15. DESIRED FEATURES IN SOUTHCENTRAL OUT-OF-TOWN RECREATION AREAS

Features	Percentage of Southcentral Population in Favor of Features
1. Fishing areas	95%
2. Access to water for swimming or boating	91%
3. Areas for hunting	87%
4. Picnic tables, campsites drinking water, restrooms	91%
5. Undisturbed natural areas	88%
6. Bicycle, walking, skiing or horseback riding trails	84%
7. Motorcycle, snowmachine and other ORV Trails	76%
8. Paved roads	69%
9. Unpaved roads	66%
10. Overnight lodging	66%
11. Electrical hook-ups, showers general store	66%
12. Playfields	60%
13. Lawns & benches	49%

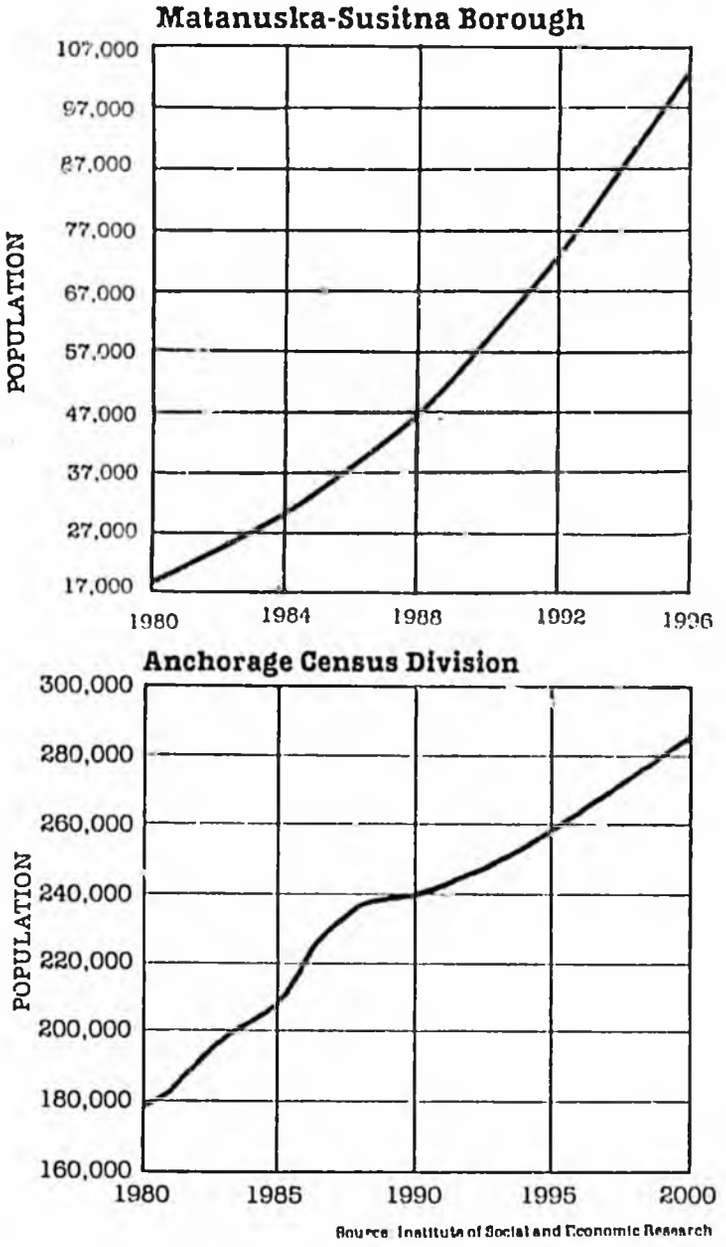
Source: Alaska Division of Parks

Figure 16. DESIRED FEATURES IN SOUTHCENTRAL COMMUNITY RECREATION AREAS

Features	Percentage of Southcentral Population in Favor of Features
1. Playfields	95%
2. Lawns & benches	92%
3. Bicycle, walking, skiing or horseback riding trails	85%
4. Paved roads	85%
5. Access to water for swimming and boating	77%
6. Picnic tables, campsites, drinking water, restrooms	75%
7. Undisturbed natural area	54%
8. Overnight lodging	51%
9. Electrical hookups, showers, general store	51%
10. Fishing areas	55%
11. Motorcycle, snowmachine and other ORV trails	44%
12. Unpaved roads	21%
13. Areas of hunting	9%

Source: Alaska Division of Parks

Figure 17. POPULATION FORECASTS



Source: Institute of Social and Economic Research

Population growth is forecasted to continue into the next century (see Figure 17, page 33), although at slower rates than in the past 10 years. Likewise, demand for recreational opportunities will continue to grow (particularly for such favorite activities as fishing, camping, hiking), but at reduced rates. Consistent with a national trend toward closer-to-home recreational outings, this moderation in demand will be offset somewhat by the Matanuska-Susitna district's proximity to population centers.

For the purposes of this plan, it is assumed by the Division of Parks that recreational demand exceeds the capability of the Willow Creek corridor to provide quality experiences. Therefore, this plan will recommend only those facilities and activities which can be accommodated while maintaining the area's high natural and aesthetic qualities.

Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

February 5,1985

Representative Ron Larson,
Pouch V
Juneau, AK 99811

Dear Ron,

The Alaska Sportfishing Association wishes to share our concerns and objectives for 1985 with you. We hope that it will be possible to assure the continued preservation of the habitat surrounding critical streams and rivers in the Mat-Su Valley area through the establishment of corridors on these streams, and to inititate action to develop access to numerous recreational rivers. We addressed these points in our candidates' night in October 1984.

As background information on these subjects it should be understood that there are several rivers in the Susitna drainage that are fantastic fishing resources for the state of Alaska. These rivers have practically no access, no camping, no boat launching, no parking, and no sanitation, so they are currently not providing an outlet for the sportsfishing public they they should. As a result, the Kenai River and others with good access are bearing an inordinate amount of the pressure. These rivers likewise need to be protected by means of corridors from man's destructive forces to assure future generations of productive waters.

We sincerely hope that you will throw your support by votes and funding to the access measures that have been and will be submitted this session. The expansion of access in the Mat-Su area and Kenai peninsula has a long-term future value, not only in terms of greatly increased tourist dollars, but in recreational outlet expenditures by Alaskans. These are very much a "permanent fund" for this state and of great future importance to all of us.

Protection of these streams can be done now and not repeat mistakes made along other rivers. This can be best accomplished by establishment of corridors along these streams that will permit recreational activities but prohibit habitat destructive activities, such as mining, gravel extraction, or timber cutting. Bills should be analyzed on this basis. Restrictions on recreational activities must be on the basis of what is needed for that river to protect its habitat.

The introduction of HB 86 establishing the Willow Creek State Recreational Facility is a step in that direction. We further identified the Deshka, Alexander, Lake, Talkeetna, Talachulitna,Peters Creek, Little Susitna, and Clear Creek (Chunilna) rivers as those necessary for development and protection. These are tied up in the Susitna Plan at present but must be a part of the recreational outlet system. These have been sifted out from seventeen important streams in that area.

We feel that protection is necessary now, and it should preclude the travesty of permitting mining claims that have been filed on Camp Creek, Lake Creek, Sunflower, and others by one party. We are extremely concerned about our mining laws. It would seem illogical that a law passed in 1847, or whenever, would now exclude the rights of the public to access to and preservation of recreational fishing waters.

Another example is the application for a permit by an outside company to dredge up Cook Inlet in the most highly utilized recreation area of Cook Inlet. Oddly enough these permits now do not conflict with commercial fishing operations but are right in the middle of our key areas, both for our use and shellfish and halibut habitat. A bill is being introduced by Senator Kertulla to authorize expenditure of $400,000 to renovate the 10-year old abandoned mining claim at the headwaters of Lake Creek to prevent it from destroying that productive stream. The abandoned mine is now pouring mud and sediment into that stream. Can we not provide legislation and restriction on mining permits so that in the future we will not continue to destroy our renewable resource habitats?

A surety bond of adequate amount is one possible means of assisting this goal. We ask you for your help on how best to solve these problems. It must be recognized that, although there are a few mining operations near streams that conscientiously apply techniques successfully to preclude downstream contamination, most mining operations are unsupervised, provide their own water samples for analysis, and are destroying the waters below them as a fish habitat for generations to come. It need not be so. Nevertheless, under current law, once the Department of Natural Resources issues a permit, whether testing, exploratory, or operational, it is virtually impossible to stop that operation. We cannot live under such irreversible laws.

We wish to once again express our opposition to SB 37 introduced by Senator Paul Fischer. No capabilities exist for the Board of Fisheries, or any other governmental agency, to obtain such data. Senator Fischer has submitted this solely to protect his commercial fishing constituency in an area highly used as a recreational and tourist facility.

We urge your support of HB 29, 36, 43, 86, and 93 that have been introduced to date. We also urge continued expansion of the Homer small boat harbor facilities as rapidly as possible, as another major recreational and tourist outlet.

The above subjects are near and dear to our hearts, and thankfully, there are actions and bills underway in support of them. Others, such as mining, need your assistance in developing more livable laws. We will appreciate all of the assistance and support you can muster.

Sincerely,

Bob Hunter

Robert L. Hunter
Chairman, Legislative Committee
Alaska Sportfishing Association

Bob,
Thanks for your help.
Hope we can get them through.
We need Fish & Game on our
equal basis with DNR on
Governors bills.
Bob H.

2/5

HOUSE

COMMITTEE REPORT

(9)

Date referred: 2/17/86

FURTHER REFERRALS: FINANCE

DATE: MARCH 3, 1986

The RESOURCES Committee has considered HB 635

"An Act establishing the Willow Creek State Recreation Area; and providing for an effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[X] replace with CS HB 635 (RES) [✓] same title

[ ] new title

and recommends NO RECOMMENDATION

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[✓] zero fiscal note

SIGNING DO PASS:

First

Sund

Shultz

SIGNING OTHER RECOMMENDATIONS:

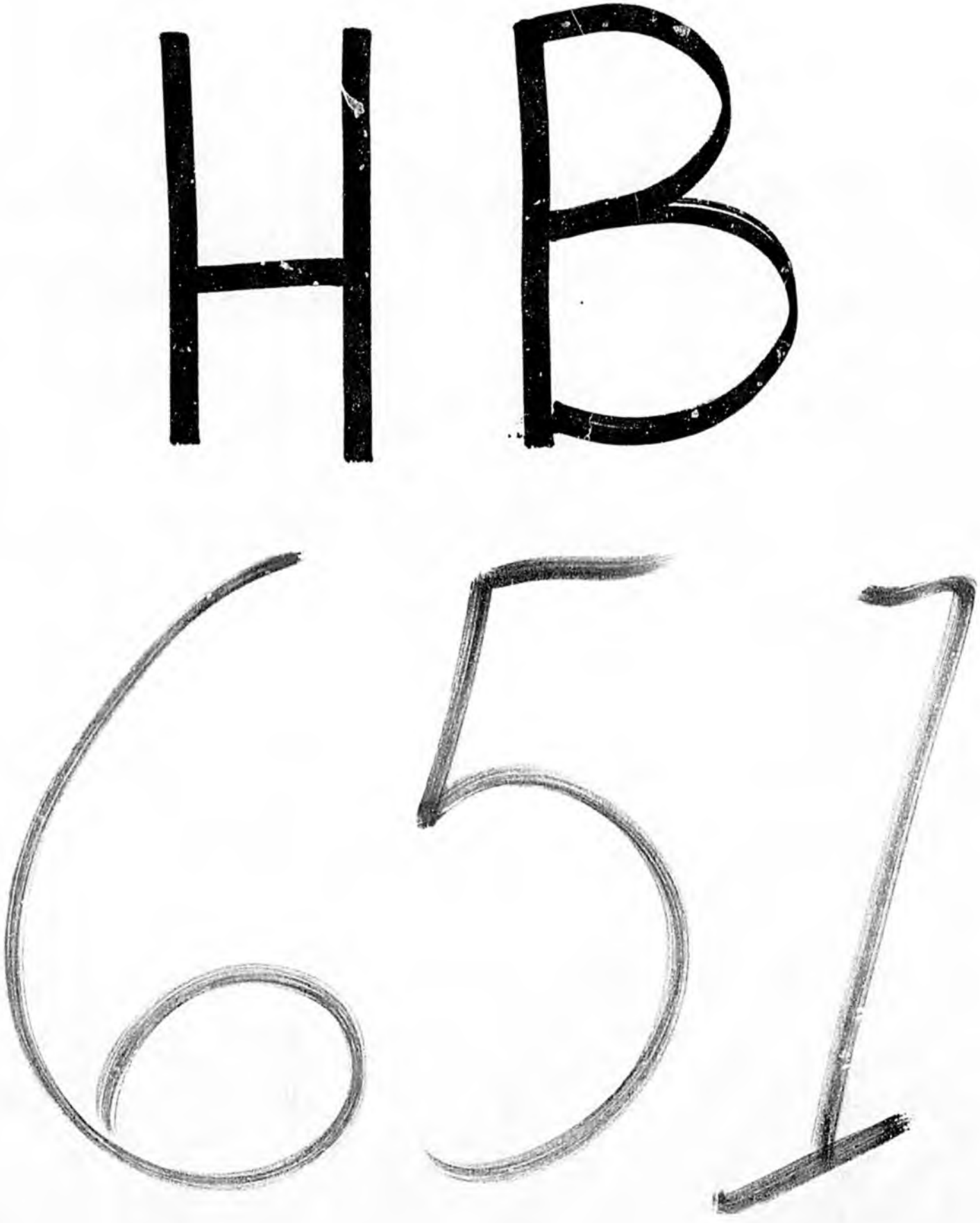
Roger Jenkins No Rec

Richard Pearce No Rec

Arnold Thompson DO NOT PASS WITHOUT HONEST FISCAL NOTE

Bob Cato No Rec

Co-Chairman Richard Shultz


HB
651

HOUSE
COMMITTEE REPORT

4/2

(9)

Date referred: 2/17/86

FURTHER REFERRALS: FINANCE

DATE: April 2ND, 1986

The RESOURCES Committee has considered HB 651

"An Act relating to management of mental health land."

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[XX] first fiscal note Sup 106
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Sund

Cato Bette Cato

Miller(NP) M.W. Miller

Wallis F. Kay Wallis

Jenkins Roger Jenkins

SIGNING OTHER RECOMMENDATIONS:

Pearce NO REC

Thompson NO REC

Co-Chairman Dick Shultz

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

April 1, 1986

The Honorable Richard Shultz
The Honorable Adelheid Herrmann
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representatives Shultz and Herrmann:

I am writing to provide comments and a fiscal note on HB 651, relating to management of mental health land, which will be heard in your committee on Wednesday, April 2, 1986. This bill would establish a mental health land commission in the Department of Natural Resources to oversee and approve all actions on mental health land taken by the commissioner. The intent of HB 651 is similar to CSSSHB 128 which passed your committee a week ago.

Before suggesting several amendments, I wish to note that the enclosed fiscal note reflects two significant differences between the two bills. First, unlike CSSSHB 128, HB 651 does not require the detailed reports which, according to the Department of Law, are additionally required by the Supreme Court decision in Weiss v. Alaska. For instance, HB 651 does not include the $300,000 for required appraisals which is included in our fiscal note for CSSSHB 128. In addition, HB 651 would create a continuing commission with necessary support costs extending through FY 91.

I would like to suggest the following annotated amendments to HB 651 which could improve the effectiveness of th ill. While the department favors creation of an interim legislative committee, as contained in HCR 50, to devise long term public policy for mental health lands, adoption of these suggested amendments would provide for an interim commission to which the department would not object.

Amendment One

Section one of the bill should contain procedural requirements which set out how and when the commission will meet so that applicants have some assurance of timeframe

associated with undertaking a project on mental health land. Our suggestion is that regular monthly meetings be required. This could be accomplished as follows:

AS 38.05.510 is amended by adding a new subsecion (d) as follows and renumbering the existing subsection (d) as (e).

(d) In carrying out its duties, the commission shall convene at least monthly. To effect orderly development of mental health lands the commission may meet more frequently by teleconference.

Amendment Two

To clearly establish that the commission serves an oversight function to the department's management of mental health land we suggest that AS 38.05.515 be amended as follows:

Insert the following language on page 1, line 27, after the word for:

prior approval of actions taken by the commissioner of natural resources in

Amendment Three

Since there is substantial disagreement about the meaning of the Supreme Court's decision, the Attorney General will be seeking clarification of that decision by the Superior Court. One of the questions that will be posed is whether the state has an affirmative obligation to manage mental health lands for maximum revenue generation. In order to avoid prejudging this issue, we suggest the following change to AS 38.05.515:

On lines 1 and 2 of page 2, strike the existing language following the word shall and replace with:

deny or approve actions consistent with the terms of the trust established by the Alaska Mental Health Enabling Act.

Amendment Four

I suggest that, like CSSSHB 128, this bill provide a sunset date. We are hopeful that some other long term solution to

the mental health lands issue can be achieved through continuing negotiations and eventual implementation by the Legislature.

Please let me know if you require further information.

Sincerely,

Robert D. Arnold
Deputy Commissioner

cc: The Honorable M. Mike Miller
The Honorable Marco Pignalberi
The Honorable Max Gruenberg
Tom Koester
Tom Hawkins

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 651
Title : Management of Mental Health Land

Sponsor : M. M. Miller and Pignalberi
Requestor : House Resources
Date of Request : 4-1-86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Land and Water Management

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		160.6	160.6	160.6	160.6	160.6
TRAVEL		24.0	24.0	24.0	24.0	24.0
CONTRACTUAL		17.8	17.8	17.8	17.8	17.8
SUPPLIES		1.4	1.4	1.4	1.4	1.4
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		203.8	203.8	203.8	203.8	203.8
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		203.8	203.8	203.8	203.8	203.8
FEDERAL FUNDS						
OTHER						
TOTAL		203.8	203.8	203.8	203.8	203.8

POSITIONS :

FULL-TIME		4	4	4	4	4
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

see attached

Prepared by : Mike Vediner
Division : Commissioner's Office
Phone : 465-2400
Date : 4-1-86

Approved by Commissioner : Ronald O Arnold, Deputy
Agency : Department of Natural Resources
Date : 4/1/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Department of Natural Resources
4-1-86
HB 651
Fiscal Note Addendum

Analysis

Continuing support for the commission within the department would require both ongoing management oversight for transactions on mental health land and administrative support for the commission.

FY 87

1. Provide management oversight of all transactions and account for funds received from mental health lands. Estimated costs: $142,700.

Statewide trust management oversight can be provided by a Natural Resource Manager II with support from a Natural Resource Officer I. That manager would be expected to review a large number of transactions, with research assistance from a subordinate, to ensure that the trust is not breached. It is expected that the manager will also provide the necessary coordination between the department and the plaintiffs, and will be required to travel.

Accounting functions can be broken into two parts: ongoing accounting services, and an independent audit. An accounting Technician I will be needed to receive and separately process that portion of the approximately $1.5 billion taken in by DNR annually that should be assigned to the mental health accounts.

Line items in this total are: 124.0 personal services; 6.0 travel; 11.3 contractual; and, 1.4 commodities.

2. Provide administrative support to the commission. Estimated costs: $53,600.

The department would need to provide administrative support to the commission which includes arranging meetings, preparing briefing packets, documenting meeting results, and clerical support. The Natural Resource Officer I listed in item 1 above could assist with the details of action review and a Clerk Typist III would be needed to assist with typing and organization of meetings. Contractual monies would cover duplication costs, phone charges, postage, etc. Travel and per diem funding is for meetings of the commission. Commodities money is to cover routine supplies and maps (27.1 personal services; 18.0 travel; 6.0 contractual; 2.5 commodities).

FY 88 - FY 91

The department would continue to provide the oversight function described in item 1 for FY 87 with annual costs of 124.0 personal services, 6.0 travel, 11.3 contractual, and 1.4 commodities.

Annual administrative support for the commission will include 3 months of an NRO I, the clerk typist III, and similar support costs (36.6 personal services; 18.0 travel; 6.5 contractual; 2.7 commodities).

Department of Natural Resources
Current Land Status Estimates
Mental Health Grant Land
March, 1986

The figures in section I are approximate and subject to agreement of federal and state land title records. Although the state and federal audits of these records are essentially complete, some of the mental health acreage figures have yet to be reconciled. State and federal auditors expect to reach agreement sometime this spring.

I. Land Base:

A.	Total grant:	1,000,000 acres
B.	Patented to the State:	829,250 acres
C.	Approved for patent to the State: (subject to survey)	176,634 acres
D.	Remaining entitlement:	0 - 19,116 acres*
E.	Land under Mental Health grant selection:	136,000 acres
F.	Estimated reconveyance liability (e.g. erroneously conveyed Native allotments, meanderable waters)	25,000 acres

The figures in sections II and III are very rough estimates. Please keep in mind that these figures are meant only to be used as working estimates and have not been audited. Accurate figures will not be available until a full audit of current mental health land status is completed several months from now.

II. Conveyed out of state ownership:

A.	Full conveyances (excluding subsurface)		
	1)	Land disposals:	46,000 acres
	2)	Municipal conveyances:	
		Patented: 18,895 acres	
		Approved: 18,932 acres	37,827 acres
	3)	Litigation Settlements: (some of these conveyances include the subsurface)	29,000 acres
		Total conveyed:	112,827 acres
B.	Partial conveyances:**		
	1)	Land leases:	16,900 acres
	2)	Oil and gas leases:	92,900 acres
	3)	Coal leases:	54,570 acres
		Total partially conveyed:	164,370 acres

**NOTE: We do not yet have estimates of such partial conveyances as mining claims, timber sales, and material sales.

III. Retained in state ownership with encumberances:

A.	Interagency Land Management Assignments:	3,700 acres
B.	Park Management Units:	150,576 acres
C.	Fish and Game Management Units:	85,709 acres

The department believes that the above 239,985 acres of land will likely be treated as disposals under the court action.

D.	State Forest:	131,955 acres

IV. Summary:

Total land conveyed to the state:	980,884 - 1,005,884 acres*
Total land conveyed from the state:	-112,327 acres
Total land encumbered:	-239,985 acres
Remaining acreage:	628,072 - 653,072 acres*

* Current records show an overconveyance. However, the estimated reconveyance liability (I.F.) may produce an underconveyance.

Alaska Department of
NATURAL
RESOURCES

DEPARTMENT OF NATURAL RESOURCES

Mental Health Land Within Legislatively Designated Parks, Fish and Game Units and State Parks

This report is part of the Department of Natural Resources' inventory of mental health lands produced following the Supreme Court decision of October 4, 1985 (Weiss v. State) concerning mental health trust lands. It consists of legislatively designated state park units, state forests and state fish and game units. Administrative designations (Interagency Land Management Assignments) for park, forestry or fish and game purposes are addressed in a separate report. The data in this report was compiled from the Alaska Statutes creating the units, agency publications and state status plats. In most cases the designated lands are unsurveyed and the acreages are approximate.

The report in sections by management agency. Each of these sections is further divided by meridians. The columns on each chart show:

1) The name of the unit and the statute creating it;

2) The total acreage of the unit;

3) The total mental health acreage within the unit;

4) The year of the original designation and of each additional designation made to the unit which contained mental health land;

5) The amount of mental health acreage originally designated and added to the unit (by year);

6) The legal description of mental health lands in the original designation and each addition.

For further information contact the department's Mental Health Land Officer.

March, 1986

Park Unit	Total Acreage	Total Mental Health Acreage	Year of Designation	Designated Mental Health Acreage	Seward Meridian Township/Range/Section (Mental Health Land Only)
Chugach State Park AS 41.21.121	495,000.00	14,028.00	1970	14,028.00	T.14N., R.2W., S.M., Sec. 13 T.16N., R.2E., S.M., Secs. 1, 2, 9, 10, 12, 16-17, 19-28 30-31, 33-36,
Kachemak Bay State Park AS 41.21.140	328,290.00	5,622.00	1970	5,622.00	T.7S., R.13W., S.M., Secs. 25-26, 35-36, T.8S., R.13W., S.M., Secs. 1, 2, 11-14, 23, 24,
Nancy Lake State Recreation Area AS 41.21.455	22,685.00	1,709.93	1970	14.93	T 17N R 4W SM Sec 6 Lot 2,3,5.
			1969	1,695.00	T 17N R 4W SM Sec 5-8
Kenai River Special Management Area AS 41.21.502	2,693.45	806.66	1984	806.66	Within: T.5N., R.8W., S.M., Secs. 21, 26, 29 T.5N., R.9W., S.M., Secs. 28, 33, T.5N., R.10W., S.M., Secs. 6, 7, 18, 19, 30-34, (Includes Bings Landing State Recreation Site formerly ILMA 206382, Kenai River Islands State Recreation Site formerly ILMA 206379 and former ILMA 206381)

March, 1986

Park Unit	Total Acreage	Total Mental Health Acreage	Year of Designation	Designated Mental Health Acreage	Fairbanks Meridian Township/Range/Section (Mental Health Land Only)
Chena River State Recreation Area AS 41.21.475	254,080.00	92,083.42	1967	15,057.61	T.2N., R.7E., F.M. Sec 12, 13, 24, 25, 35, 36 T.1N., R.7E., F.M., Sec 1-3, 8-12, 15-17, 19-21 T.2N., R. 8E., F.M. Sec 6, 7, 18 T.2N., R.6E., F.M. Sec 24 T.1N., R.6E., F.M. Tract A excluding Sec 24
			1975	77,025.81	T.2N., R.6E., F.M. E1/2 Township T.1N., R.7E., F.M., Sec 4-7, 13-14, 18, 22-36 T.2N., R.7E., F.M., Tract A, Sec 1-11, 14-23, 26-33 T.2N., R.8E., F.M., Sec 8-17; T.3N., R.7E, F.M. Sec 25-27, 34-36

Park Unit	Total Acreage	Total Mental Health Acreage	Year of Designation	Designated Mental Health Acreage	Copper River Meridian Township/Range/Section (Mental Health Land Only)
Chilkat State Park AS 41.21.111	6,045.45	3,270.18	1970	761.35	T.31S., R.59E., C.R.M., Sec 1 T.31S., R.60E., C.R.M., Sec 6-8, 17-19
			1975	2,508.83	T.31S., R.60E., C.R.M., Sec 31-32 T.32S., R.60E., C.R.M., Sec 5-9, 15-17, 21-22
Alaska Chilkat Bald Eagle Preserve* AS 41.21.611	49,000.00	33,056.16	1982	33,056.16	T.26S., R.55E., C.R.M., Secs. 12-13, 23-26, 33-36 T.26S., R.56E., C.R.M., Secs. 7-8, 17-19, 30 T.27S., R.55E., C.R.M., Secs. 2-4, 8-10, 15-17, 21-22, 27-28, 33-36, T.28S., R.56E., C.R.M., Secs. 7, 17-20, 30, T.28S., R.55E., C.R.M., Secs. 1-4, 10-13, 15, 24-36, 29, 35 T.28S., R.56E., C.R.M., Sec. 31 T.29S., R.57E., C.R.M., Secs. 4-10, 15-18, 20-23, 25-28, 34-36 T.29S., R.56E., C.R.M., Secs. 5-6, 8-17, 22-23 T.29S., R.55E., C.R.M., Sec. 1 T.30S., R.58E., C.R.M., Secs. 6-8, 17 T.30S., R.57E., C.R.M., Secs. 1-3, 12

*The following is a breakdown of the acreage overlap between the Chilkat Bald Eagle Preserve (BEP), Haines Forest and the Chilkat River Critical Habitat Area (CHA): Chilkat BEP/Haines Forest, 23,261.26; Chilkat BEP/Haines Forest/(CHA), 2,480.48; Chilkat BEP/(CHA), 974.64

March, 1986

Name	Total Acreage	Total Mental Health Acreage	Year of Designation	Designated Mental Health Acreage	Township/Range/Section (Mental Health Land Only)
Tanana Valley State Forest	1,786,000	31,955	1983	31,955	Within: T.1S., R.3E., F.M. T.1S., R.4E., F.M. T.1S., R.5W., F.M. T.3S., R.4W., F.M. T.4S., R.7W., F.M. T.5S., R.4E., F.M. T.6S., R.4E., F.M.
Haines State Forest	247,000	100,000	1982	100,000	Within: T.30S., R.56E., C.R.M. T.28S., R.55E., C.R.M. T.27S., R.56E., C.R.M. T.30S., R.57E., C.R.M. T.28S., R.54E., C.R.M. T.28S., R.56E., C.R.M. T.28S., R.53E., C.R.M. T.29S., R.55E., C.R.M. T.29S., R.54E., C.R.M. T.29S., R.56E., C.R.M. T.28S., R.53E., C.R.M. T.29S., R.55E., C.R.M. T.29S., R.54E., C.R.M. T.29S., R.56E., C.R.M. T.26S., R.54E., C.R.M. T.27S., R.55E., C.R.M. T.27S., R.54E., C.R.M. T.26S., R.56E., C.R.M. T.30S., R.58E., C.R.M. T.29S., R.57E., C.R.M.

March, 1986

Fish & Game Unit	Total Acreage	Total Mental Health Acreage	Year of Designation	Designated Mental Health Acreage	Seward Meridian Township/Range/Section (Mental Health Land Only)
Goose Bay State Game Refuge AS 16.20.030	10,880.00	453.05	1975	453.05	T.15N., R.3W., S.M., Secs. 18-19
Potter Point State Game Refuge AS 16.20.030	39,360.00	740.50	1971	740.50	T.11N., R.3W., S.M., Sec. 10 T.12N., R.3W., S.M., Secs. 30-31 T.12N., R.4W., S.M., Sec. 15, 22-23, 25
Susitna Flats State Game Refuge AS 16.20.036	300,800.00	38,846.52	1976	38,846.52	T.14N., R.4W., S.M., Sec. 31 T.14N., R.5W., S.M. T.14N., R.6W., S.M. T.15N., R.4W., S.M. T.15N., R.5W., S.M. T.15N., R.6W., S.M. USS 3942 excl ASLS 80-11
Trading Bay State Game Refuge AS 16.20.038	160,960.00	3,840.00	1976	3,840.00	T.12N., R.13W., S.M., Secs. 19, 29-33
Matanuska Valley Moose Range AS 16.20.340	132,500.00	38,035.00	1984	38,035.00	T19N. R1E T19N, R3E T19N, R5E T18N, R1E T19N, R4E T18N, R2E T20N, R5E T19N, R2E T20N, R6E

Fish & Game Unit	Total Acreage	Total Mental Health Acreage	Year of Designation	Designated Mental Health Acreage	Copper River Meridian Township/Range/Section (MH Land Only)
Chilkat River Critical Habitat Area* AS 16.20.230	4,800.00	3,647.21	1972	3,647.21	T.29S., R.56E., C.R.M., Secs. 1, 12, T.29S., R.57E., C.R.M., Secs. 5-9, 16-17, 20-21,
Mendenhall Wetlands State Game Refuge AS 16.20.034	3,789.00	144.83	1976	144.83	T.41S., R.66E., C.R.M., Secs. 1-2, 10,

*See page 4 for acreage overlaps.

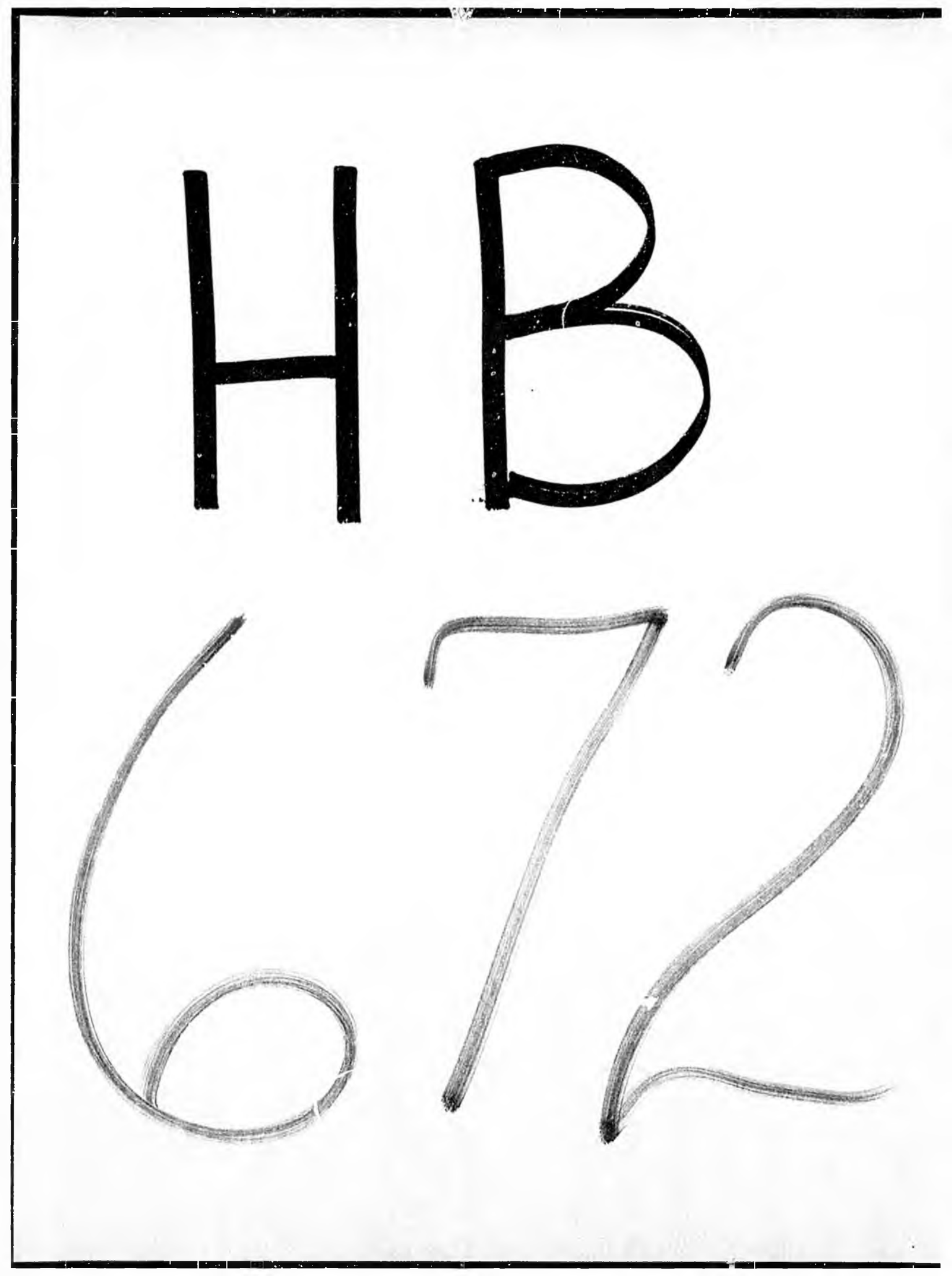
Fish & Game Unit	Total Acreage	Total Mental Health Acreage	Year of Designation	Designated Mental Health Acreage	Fairbanks Meridian Township/Range/Section (Mental Health Land Only)
Creamer's Field State Game Refuge AS 16.20.039	1,520.00	2.5	1979	2.5	T1N., R1W., F.M., Sec. 29

March, 1986

Summary of Mental Health Land
Within Legislatively Designated Parks, Fish & Game Units and State Forests

Management Agency	Total Acres	Mental Health Acres
Department of Natural Resources, Division of Parks and Outdoor Recreation (State Rec. Areas, State Recreational Sites, State Parks, Bald Eagle Preserve)	1,157,193.80	150,576.41
Department of Fish & Game (State Game Refuges, Moose Range, Critical Habitat Areas)	654,609.00	85,709.61
Department of Natural Resources, Divison of Forestry (State Forests)	2,033,000.00	131,955.00
Total	3,844,802.80	368,241.02

March, 1986


HB
672

Original sponsors: Koponen, Davis, Hurley and Goll

IN THE HOUSE

CS FOR HOUSE BILL NO. 672 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for notice of hazardous materials."

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

* Section 1. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.895. NOTICE OF HAZARDOUS MATERIALS. (a) A carrier who transports hazardous materials into the state shall, within 48 hours after the materials arrive in the state, send to the Department of Public Safety, division of fire prevention, a copy of the description of the hazardous materials that is required to be on the shipping paper by the United States Department of Transportation under 49 C.F.R. 172.200 - 172.204.

(b) If a vehicle carrying a shipment of hazardous materials in the state is delayed for one hour or more due to mechanical failure or other circumstance, the operator of the vehicle shall give prompt, oral notice to the Department of Public Safety, or an emergency services provider designated by the Department of Public Safety, of the location of the vehicle and the circumstances of the delay.

(c) A consignee of a shipment of hazardous materials from a carrier from outside of the state shall, within 48 hours after receiving the shipment, send to the emergency services providers for the service area in which the materials are to be used or stored

(1) a copy of the description specified in (a) of this section; and

(2) a notice of the location at which the materials are to be used or stored.

(d) In this section

(1) "emergency services providers" means state and local fire, rescue, and other public safety agencies that respond to hazardous materials emergencies, as defined by the Department of Public Safety;

(2) "hazardous materials" has the meaning given in 49 C.F.R. 171.8;

(3) "service area" means the geographical area served by an emergency services provider.

Alaska State Legislature

Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

542 4th Avenue, Suite C
Fairbanks, Alaska 99701
(907) 456-8161

POSITION PAPER--HB672

This bill has been introduced to address a particular area of public safety that will help emergency responders and others when confronted by events of unknown origin.

Throughout Alaska numerous hazardous materials are transported, processed, and stored. As Alaska grows the number and amount of these materials increases; as does the likelihood for incidents that threaten the public good.

This bill specifically addresses the areas of the state that lie outside organized boroughs. A consignee of a hazardous shipment will be required to send emergency service providers for the service area in which the materials are to be used or stored a description and location of the materials.

In addition to the foregoing, the implementation of this bill will create an inventory of hazardous materials that can be used to track their use, location, and ultimate desposition.

DEPARTMENT OF PUBLIC SAFETY

POSITI(APER - HB 672

Support

March 21, 1986

HB 672 - "An Act providing for notice of hazardous materials."

This Department supports the requirement that receivers of hazardous materials from outside the state shall notify, within 48 hours after receiving the shipment, the emergency service providers in the service district in which the materials are to be used or stored.

The requirement will not impact the emergency services providers of this Department.

Robert J. Sundberg

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 672
Title : "An Act providing for notice of hazardous materials."

Sponsor : Representative Koponen
Requestor : House State Affairs
Date of Request : 3/21/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Fire Prevention
Alaska State Troopers

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

K. Niles

Prepared by : Kathy Niles, Admin Assistant — Phone : 465-4336
Division : Commissioner's Office — Date : 3/21/86

Approved by Commissioner : [signature] — Date : 3/21/86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

HOUSE BILL 672

"An Act providing for notice of hazardous materials."

This bill will require individuals who transport hazardous materials to supply the Department of Environmental Conservation and emergency providers a description of the materials within 48 hours of arrival in the State. The notification will entail a specific description of the materials requiring shipping papers under the U.S. Department of Transportation 49 C.F.R. 172.200 - 172.204 and where the materials are stored.

Position

The Department of Health and Social Services supports the general concepts HB 672 and feels that it will increase the ability of emergency personnel and health care providers to safely respond to life threatening situations. The public safety concepts of this bill are similar to HB 647, and it appears that the specificity of HB 647 will enhance the implementation and assure increased coordination between the responsible agencies.

Recommended by: Elizabeth Ward

Elizabeth Ward, M.N.
Director
Division of Public Health

Date: 3/3/86

Approved by: John R. Pugh

John R. Pugh, Commissioner
Department of Health and
Social Services

Date: 3/6/86

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 672

Title : An Act Providing for Notice of Hazardous Materials

Sponsor : Rep. Koponen

Requestor : State Affairs

Date of Request : _____

FISCAL DETAIL

Agency Affected : Health & Social Services

BRU : State Health Services

Components : P.H. Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Elizabeth Ward

Prepared by : Elizabeth Ward, M.N., Director

Phone : 465-3090

Division : Public Health

Date : 2/27/86

Approved by Commissioner : [signature]

Date : 3/6/86

Agency : Health & Social Services

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page ____ of ____

10/25/85

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

HB 672

An Act Providing for
Notice of Hazardous Materials

This bill requires that any person who transports materials defined by the U.S. Department of Transportation as hazardous when transported, submit a copy of the description of the materials as shown on the shipping papers to the Department of Environmental Conservation (DEC) after the materials arrive in the state. The bill also requires that the recipient of the shipment submit a copy of the description of the materials and identify the location of use or storage in a submittal to local emergency services providers.

DEC would suggest that this bill be combined with HB 647. Both address community right to know issues. A combined bill would best advance the committee's interest in providing an appropriate role for local governments.

Looking at this legislation alone, the Department has no objection to the legislation. The intent is, however, unclear to us. The first subsection would require airlines, shipping lines, barge companies, truckers, and other shippers of hazardous materials to submit a report including shipping documents within 48 hours of entering the state. While the Department has extensive responsibility for hazardous wastes, the Department does not currently have any responsibility for hazardous materials. It would be helpful to clarify what actions DEC would be expected to take with regard to the information received.

The federal government regulates the carriers of interstate shipments of these materials. Their requirements may conflict with this reporting requirement.

The second subsection requires persons who store or use hazardous materials to submit information to local emergency services providers. HB 647 includes provisions that address the same topic by requiring inventories of hazardous materials and notice of shipments. The Department would recommend that the committee reconcile the two bills and establish one approach. Another option would be to delete this subsection, since CSHB 647 (C&RA) would require placarding of all businesses and government agencies that generate, process, treat, store, use, or dispose of hazardous materials or wastes.

The definition of hazardous materials is an appropriate one for transportation; however, there are considerable differences between the definitions of the terms hazardous materials, hazardous substances, hazardous wastes, and the various combinations of these terms, in the several bills under consideration by this Legislature. My staff will work with yours to ensure that the appropriate definition is established.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 672
Title :"An Act providing for notice of hazardous materials."

Sponsor : Niilo Koponen
Requestor : State Affairs & Resources
Date of Request : 3/10/86

FISCAL DETAIL

Agency Affected : Environmental Conservation
BRU : Environmental Quality

Components : Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS : NONE

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : S.W. Hungerford
Division : Environmental Quality
Phone : 465-2666
Date : 3/10/86

Approved by Commissioner : Bill Ross
Agency : Environmental Conservation
Date : 3/20/86

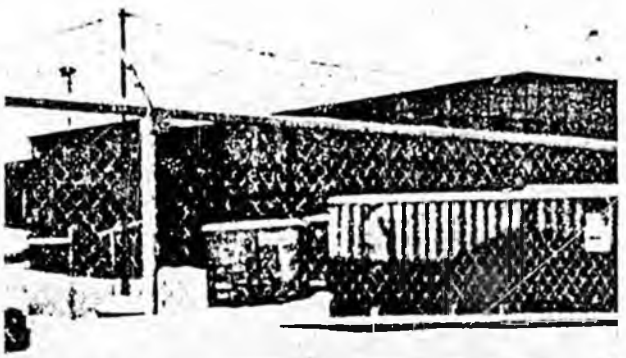
Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

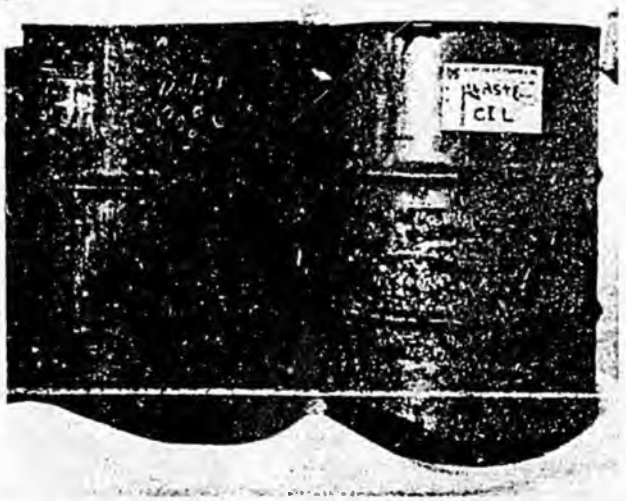
10/25/85

The Right to Know: A Fundamen



Is your community prepared to respond to emergencies involving hazardous materials?





Waste oil is often contaminated with other chemicals. Where do waste oils "go" in your community?

by David Wigglesworth

A fire sweeps through the sewer facility in Emmonak, igniting hazardous materials and spreading smoke throughout the village. Residents inadvertantly inhale the smoke which contains phosgene gas, chlorine gas and mist from hydrochloric acid, all by-products of the sewage treatment process.

The emergency response team is unfamiliar with dealing with such an occurrence. Several people are injured and one hospitalized before the fire is brought under control.

It is a beautiful summer day in Ketchikan with sunny skies and a bit of a breeze blowing. Finally getting the weather they've been waiting for, a local company goes up on a rooftop in a residential part of town and sprays a wood preservative over the roof.

Living in a city which bears the distinction of receiving more rainfall per year than most Alaskan towns, it is important to protect materials from the weather.

Unfortunately, stronger winds pick up, carrying the vapors from the preservative, pentachlorophenol, all over the well-populated neighborhood. Residents exposed to the chemical spend the weekend coughing, vomiting, and complaining of stomach cramps. No one knows what is going on. They are not aware that a poisonous substance has been sprayed in their midst. No one warned them.

A truck carrying pesticides catches fire while passing through the heavily-trafficked downtown district of Anchorage. Emergency responders must combat the chemical fire, despite risk to themselves. One firefighter suffers eye injuries when some of the chemicals splash in his eyes. Two others are hospitalized from over-exposure to the toxic vapors.

Communities should have a right to know about harmful and danger us industrial materials.

These accounts of incidents in Alaska underscore the most fundamental, and often least considered, issues associated with the proliferation of chemicals in our society. Communities should have a right to know about harmful and dangerous industrial materials.

Demonstrated need and broad-based community support moved Mayor Knowles to direct the

tal Community Right

Copy

Hazardous Waste Task Force to develop a Community Right to Know Program for Anchorage. The Task Force is near completion of a final draft which will be subject to public review this fall.

The Need

Thousands of chemical substances, building materials and household products are manufactured annually. The public is in direct daily contact with most of these substances. Yet little information on the location and proper handling of these materials is available to our communities.

Public safety personnel often do not have access to this information. Thus, firefighters and other emergency personnel must respond to community emergencies unaware of the hazards and unsure of proper protection for themselves and the community. Homeowners construct new homes with contemporary materials which have been treated with preservatives and utilize energy saving designs without full knowledge of their potentially harmful health effects.

Fast growing communities often fail to consider management of hazardous materials. Moreover, only recently has society witnessed the health problems of chemical products we once considered safe. Some cancers and many chronic illnesses are linked to chemical exposures in the workplace. These exposures easily cross the arbitrary boundary between "workplace" and "community" in the form of hazardous air emissions, toxic wastes, household products, hazardous materials spills and other such incidents.

The Benefits

Communities are now realizing their lack of resources for hazardous materials emergencies. As a result, cities and towns across the country, including Anchorage, are now developing community right to know programs to allow public access to this information and promote safe community environments.

Typically, such programs require businesses to tell fire or health departments the type, quantity, location, and health hazards of the chemicals used in their business. This information is then kept on hand and made available to residents and community agencies and officials. The benefits of such a program are many. For example:

* Medical providers will be better able to diagnose and treat diseases and illnesses related to chemical exposures.

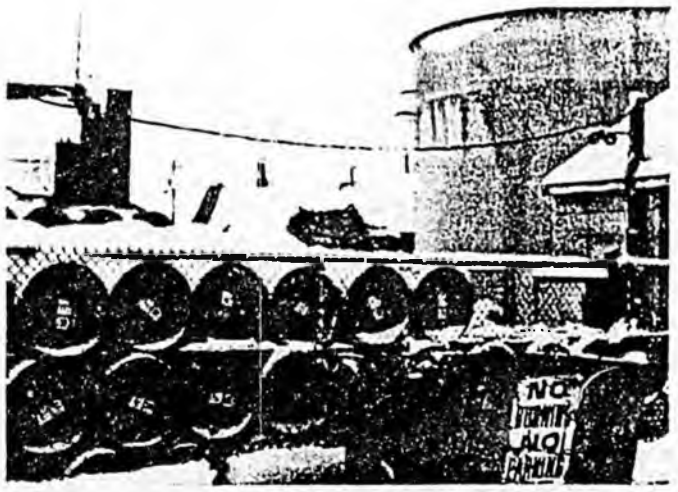
* Such information will enable public safety personnel to develop Community Chemical Profiles to help prevent dangerous situations. In addition, emergency responders, such as firefighters and police officers, will be better able to protect themselves when responding to such emergencies. They will also understand the resources and equipment necessary to respond to an emergency.

* Local officials and city planners can propose appropriate legislation to protect public health and safety.

Thousands of chemical substances...are manufactured annually. The public is in...contact with most of these substances. Yet little information on the location and proper handling of these materials is available to our communities.

* Public access to this information will enable community members to become aware of toxic issues in their communities, and will result in more knowledgeable debate over proposed and existing community hazardous materials management plans.

Community Right To Know programs are not designed to regulate chemicals. Their fundamental purpose is to provide information about hazardous materials to community residents, government officials, public safety personnel, and others charged with protecting public health. Anchorage residents may soon benefit from a Community Right to Know Program.



Alaska's harsh climate easily corrodes hazardous materials containers resulting in leaks and potential environmental contamination.

David Wigglesworth is an occupational health specialist with the Alaska Health Project. He has worked on issues concerning hazardous materials in Alaska for several years.

Hazardous Materials Incidents Documented

by Lawrence Weiss, Executive Director
Alaska Health Project

The image of Alaska as a relatively unblemished, pristine wilderness is rapidly eroding as increasing attention is being paid to the problems of hazardous materials throughout the state. In a recent study done by the Alaska Health Project, 1,330 incidents involving hazardous materials were documented during a one year period beginning July 1, 1983.

Until this study there was no one source listing the variety of incidents involving hazardous materials in Alaska. For example, an oil spill on the North Slope is buried in Department of Environmental Conservation (DEC) statistics, while a truck wreck involving spilled PCB's might be documented only in the newspapers. A worker who is burned by a caustic chemical is typically reported only in workers' compensation records.

Since all these known incidents involving hazardous materials are scattered throughout the state in a few large data bases, and dozens of smaller ones, no one really knows the extent of the problem. The Alaska Health Project decided to collect these case histories of incidents from a variety of sources and put them all together in one unified data base, the Hazardous Materials Incidents Survey.

The survey is **not** comprehensive, but rather a first attempt to begin to realize the magnitude of the problem in Alaska, and to understand what types of incidents are happening and what types of hazardous materials are involved.

Information for the survey was gathered from a variety of sources, including the Anchorage Daily News and Anchorage Times, the Workers' Compensation Division of the Department of Labor, the DEC, the Epidemiology Office of the Department of Health and Social Services, and the Anchorage Fire Department.

Survey Highlights

** The incidents were not spread evenly throughout the state, but were predictably distributed along the major roadways and in the industrialized North, with nearly 80 percent of the incidents occurring in these areas.

** 47 incidents involved amounts of hazardous materials exceeding 1,000 pounds and/or 1,000 gallons.

** A total of 539,358 gallons, and 456,125 pounds of hazardous materials are documented in the incidents.

** The branch of industry with the largest number of gallons of hazardous materials involved in incidents is Water Transportation with 253,248 gallons.

** Southcentral East, principally the Anchorage, Kenai Peninsula, and Kodiak area, logged the highest amounts of hazardous materials involved in incidents: 241,800 gallons, and 456,125 pounds.

** A "key word" search of the incident descriptions found that 56 incidents were recorded as being related to tanks, and 65 were specifically related to vehicles.

** The Oil and Gas Extraction industry had the largest number of recorded incidents by far with 327. Water transportation claimed a distant second with 145.

** The month of August recorded the highest number of incidents, with 137, while December had the lowest number with 82.

An Executive Summary is Yours for the Asking

A six page executive summary of the survey methods and results is available at no cost from the Alaska Health Project. Just send us a self addressed stamped envelope. The complete report including a printed list of all 1,330 incidents, computer-generated analysis, and analysis of all the data bases used in the study is available. The cost is $100. Private non-profit organizations, however, may be eligible for a discount. Please inquire. Call (907) 276-2864, or write AHP, 417 West 8th, Anchorage, AK 99501.

MEMBERSHIP FORM

I am concerned about safety and health in Alaska's workplaces and communities. I want to join Alaska Health Project.

NAME_____ DATE_____

ADDRESS_____

CITY_____STATE_____ZIP_____

PHONE_____OCCUPATION_____

☐ $10 Low Income/Student ☐ $25 Individual ☐ _____Additional Donation

Remember, your membership fee is tax deductible. • Organizational memberships are available. Please inquire.

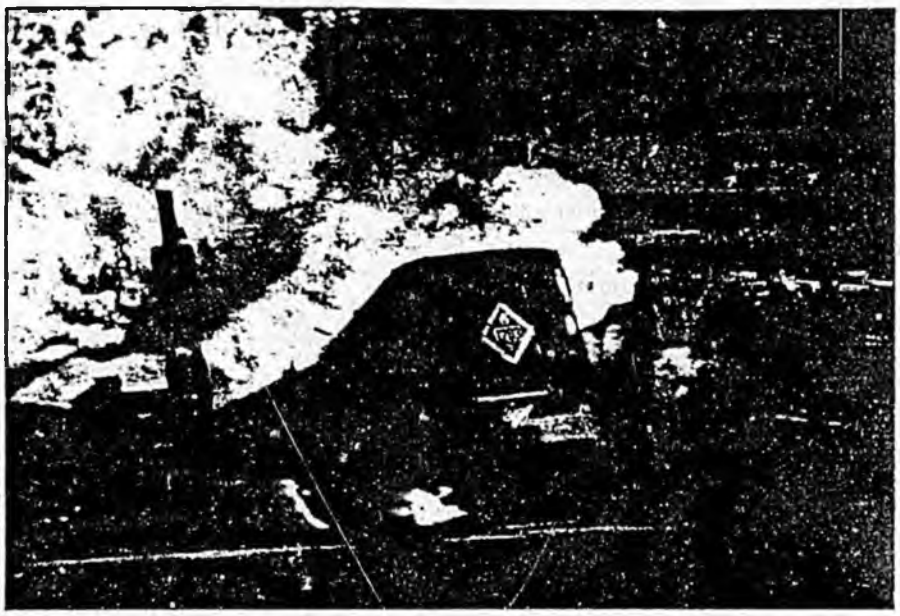
Send this form with your check or money order to:

Alaska Health Project, 417 West 8th Avenue, Anchorage, AK 99501 (907) 276-2864

Hazardous Materials

By MARK MICHAELS

Tanker Crash Ignites Inferno on Frisco Freeway



Photos Dave Chapman

The fire, involving 8000 gallons of gasoline, melted the double-trailer aluminum tanker.

The scenario: In the early-morning darkness, moments before thousands of commuters fill the freeway, a double-trailer tanker truck filled with 8000 gallons of gasoline crashes into the center divider on U.S. Highway 101, just south of the city limits of San Francisco, near a critical junction point with several other freeways. Both tanks are punctured, and the spreading pool of gas is ignited by a passing car. Luckily, the driver is able to crawl away from the wreck with only minor injuries, and no other vehicles are caught up in the inferno. But responding fire units must now contend with a huge blaze extending across the multi-lane freeway, fed by gas leaking out of the tanker at a rate of about 100 gallons per minute.

Fortunately, the incident occurs almost directly in front of the San Francisco International Airport. Crash rigs from the airport, carrying thousands of gallons of foam, respond to the scene in minutes and quickly stop the spread of the flaming fuel. The next step is obvious: apply foam to the tanker, pick up the debris when it cools and go back to business as usual.

Or is it?

Mark Michaels is a Firehouse *correspondent based in Orinda, California.*

San Francisco International Airport Fire Chief Ray Landi was faced with the situation described above on January 7 of this year. The Airport FD is a division of the San Francisco Fire Department, that, although staffed by San Francisco firefighters, is in many ways a separate department, with its own budget, tactics and specialized equipment.

Landi was at home in San Francisco when he was notified of the emergency. Says he: "We first got this as a plane crash behind the Western Airlines maintenance facility. The control tower saw the huge column of black smoke and assumed it was a plane."

Responding to the fire, Landi requested assistance from communities surrounding the airport and freeway, which are part of the city of San Francisco though they are located in San Mateo County. A strike team made up of fire units from San Bruno, South San Francisco, Millbrae, Redwood City and Burlingame was dispatched, along with a full assignment from San Francisco proper, consisting of three engines, two trucks and two chiefs.

Although he had more than enough resources, given the airport crash rigs, to extinguish the blaze within a few minutes, Landi decided to let the truck burn itself out. Explains he: "It's always a tough choice to not put a fire out. But if we'd gone ahead and done that, we would have been faced with a very dangerous situation. We had, in effect, two big bathtubs full of gasoline with holes in the bottoms. The fuel that was flowing out was being consumed at the rate it was leaking. The fire was equalized; it wasn't getting any bigger.

"Take the fire away, and you've still got the stuff leaking out, only now it's expanding into a bigger and bigger pool.

The blaze was confined with AFFF and died down after burning for three-and-a-half hours.



1986

That would have required a diking operation, which would've meant that highway workers with loaders would be in close proximity to the pool. You get a spark in the wrong place and BOOM! There goes everybody—firefighters, highway workers—the whole works.

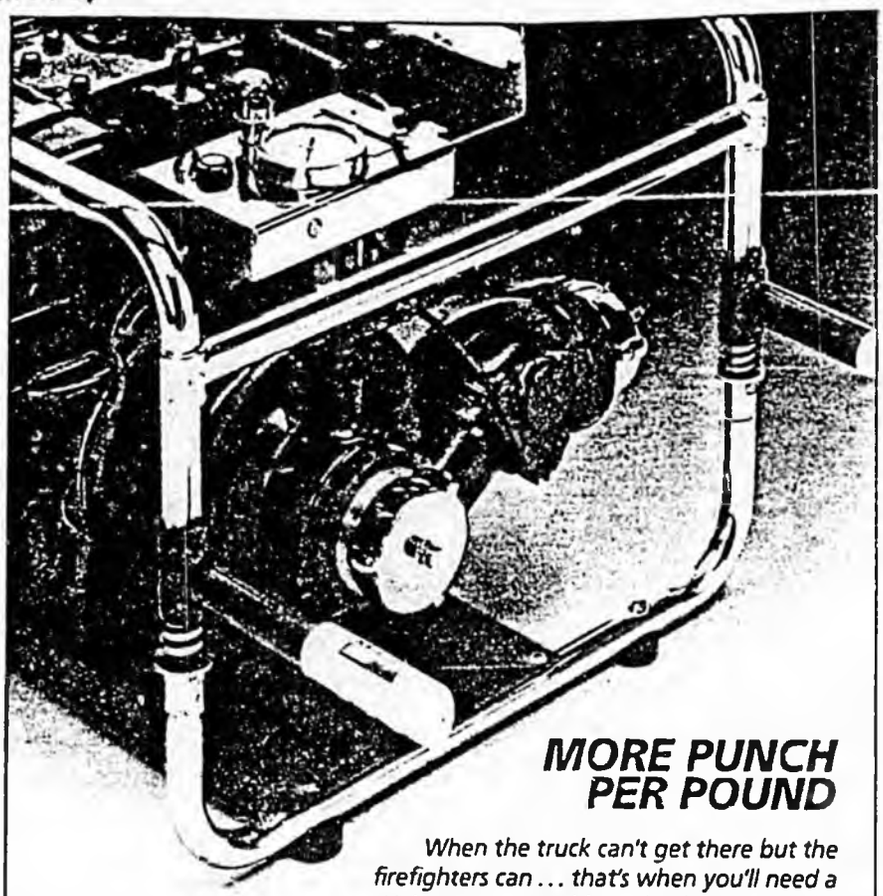
"Obviously, if there had been people trapped in the wreckage, or the possibility of a BLEVE, we would have reacted differently. But that wasn't the case," he notes.

In addition to the life hazard, Landi cites other reasons for letting the fire burn itself out. "From an environmental point of view," he says, "it was better to have the smoke column, which was carried out towards the ocean rather than inland, than to have gasoline get into sewer lines and into San Francisco Bay itself. And if we'd put it out and gotten it diked, there would still have been a four-hour wait for the special truck they use to syphon up the gas. From the financial end," Landi continues, "I was told that a diking and cleanup would have cost somewhere in the neighborhood of $100,000."

Aside from the danger to personnel, one of Landi's primary concerns was the threat to exposures, particularly a section of an on-ramp under construction, which was several hundred feet long and a couple hundred feet from the crash. "The ramp consisted of heavy, unprotected timbers," says Landi. "If those timbers had gotten involved, it would have taken a major effort to put them out."

With the careful use of AFFF, crews were able to confine the flames to an area of about 500 square feet. As the fire progressed, the aluminum trailer tanks melted down into shriveled balls of metal; the only recognizable part of the truck remaining was the cab. After three-and-a-half hours, during which one of the largest traffic tie-ups in recent California history had formed, the fire died out. Firefighters moved in with handlines to cool down the debris, and Caltrans crews removed the wreckage and began making repairs to the roadway. The freeway was open in time for the evening commute. Sadly, one man who got caught in the tremendous traffic jam suffered a heart attack and was transported to a local hospital, where he later died.

"If this had happened only a half hour later," says Landi, "we could have had a major disaster, with many people killed or injured. As it was, it was a very scary situation. There were some people in the local media who couldn't see why we just didn't move in and get the thing cleared up, but, if we were faced with the same situation tomorrow, I'd do exactly what we did."



MORE PUNCH PER POUND

When the truck can't get there but the firefighters can ... that's when you'll need a Hale power portable. Hale gives you all the drafting and discharge power you demand with more punch per pound than any other units in the industry.

Reliable performance is engineered into every Hale portable. Unique features such as semi-automatic priming and spring-loaded, self-adjusting mechanical seals are some of the technological innovations that give you top pump performance.

From rugged, multi-purpose high-pressure pumps to lightweight backpack and floating portables, Hale offers you the right power portable to handle the situation.

Whichever model you choose, you can count on the quality that's been at the heart of every Hale pump for over 70 years.

Send for free information on the line that gives you more punch per pound than any other.

Excellence in fire fighting

HALE IS AT THE HEART OF IT.

Hale Fire Pump Company
700 Spring Mill Avenue Conshohocken, PA 19428
(215) 825-6300 TWX 510-660-8931

HALE PUMPS

©Copyright Hale Fire Pump Company 1985

Training for toxics accidents called lax

WASHINGTON (AP) — Three-fourths of the nation's police and firemen are inadequately trained to respond to accidents involving transportation of hazardous materials, a new congressional study says.

And even if a trained team reaches the scene of a ruptured tank truck, improper labeling of the vehicle's contents can produce a wrong, dangerous response, the Office of Technology Assessment said in a study released today.

OTA quoted state officials as saying that from 25 percent to 50 percent of the identification placards required on hazardous material shipments are incorrect and that shipping documents "are sometimes incomplete or inaccessible."

"Emergency crews must assess the risks of the hazardous material and make decisions on how to respond based on information that may or may not be accurate," said OTA, a nonpartisan congressional agency.

"The wrong response to a hazardous material endangers both emergency personnel and the neighboring communities," said the study, which urged adoption of federal training and response standards to replace a mishmash of state requirements.

Asked why so many placards are incorrect, Edith Page, who directed the study, said: "In some cases it's ignorance. In some cases it's carelessness."

OTA said the most pressing need is to develop better ways of training safety personnel to handle accidents involving the 500,000 daily shipments of hazardous materials on U.S. highways, rail lines and waterways.

"Three-quarters of the first responders are not adequately trained to deal with hazardous substances," Ms. Page told a news briefing.

She said that a joke among response personnel is that you bring tennis shoes and binoculars to a toxic or nuclear material spill — using the shoes to quickly get a safe distance away and the binoculars to read the placard.

"Then you call for expert help," Ms. Page said. "This is often said in jest, but there's a strong element of truth in it."

OTA said that while some states and metropolitan areas have good response programs, "most first responders in smaller urban and rural areas have not been trained to deal with hazardous materials, despite many existing training programs.

"No national standards for training programs are currently in place, leading to the independent development of different training programs, some of which are inadequate," the study said.

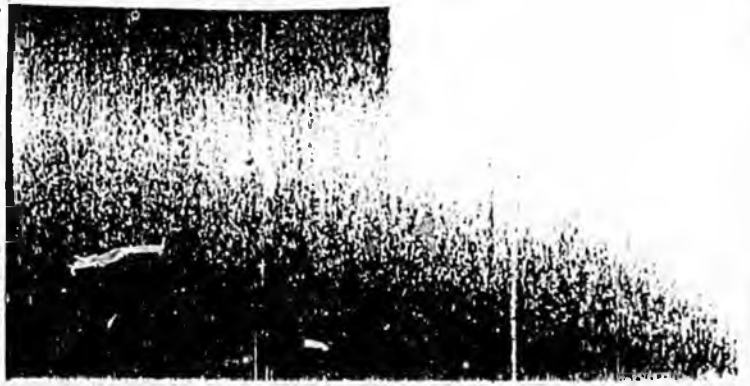
Although it did not specifically urge more federal spending, OTA said continued support for state enforcement programs "is important, since federal inspection forces are shrinking due to budget constraints."

OTA recommended better training and a national license for operators of vehicles carrying hazardous substances in an effort to reduce the average of 11,462 accidens the Transportation Department says occurred yearly between 1973 and 1983.

In most states, Ms. Page said, a truck driver needs no special license for hazardous cargoes. "The nephew or son of the owner can drive a gasoline truck," she said.

Ms. Page said OTA doesn't trust Transportation Department figures indicating that the incidence of accidents involving hazardous materials is decreasing.

"The data collected is so poor we don't know whether things are getting better or worse," said Ms. Page, adding that OTA found "substantial underreporting" in federal accident statistics.



Anchorage Ordinance

POSITION PAPER

TRANSPORTATION PRE-NOTIFICATION REQUIREMENT

ISSUE

Should a pre-notification requirement for movement of hazardous wastes be included in the draft Community Right-to-Know Ordinance?

SUMMARY OF REQUIREMENT

This provision in the draft Community Right-to-Know ordinance would require notification to the Fire Department 24 hours prior to the movement of hazardous wastes in the Municipality. Attached is the section with the revised requirements proposed for pre-notification.

PROS

- A transporter of hazardous wastes cannot move hazardous wastes without first considering the safest route, best time of day, safeguards, and a response plan.
- The public is extremely concerned about hazardous waste and wants to know how they are being moved in the community.
- By knowing that a material is being moved, the Fire Department can better respond if an emergency occurs.
- Since the quantities of hazardous wastes being moved in Anchorage are not large, the number of notifications expected would be manageable.
- If an accident occurs for which no pre-notification was provided, the Municipality has the ability to take enforcement.

CONS

- The movement of hazardous wastes is already regulated by the Department of Transportation and others.
- A local pre-notification requirement may not be legal due to Federal pre-emption.
- Hazardous material movement in Anchorage represents significant higher quantities and greater risks than hazardous waste transportation. Hazardous wastes are generally packaged and contained safer than most hazardous materials.
- The Fire Department only has limited interest in knowing what hazardous wastes are being transported.

ADOPTED RESOLUTIONS OF ASMA

HAINES, ALASKA - 1985

562-2662

Adopted by the Alaska State Medical Association House of Delegates at its Annual Meeting in Haines, Alaska June 7, 1985

Resolution No. 85-1
Subject: Salute to Joseph Rude, M.D.

Whereas, Dr. Joseph Rude has recently celebrated his 90th birthday, and has also marked the milestone of 56 years of the practice of medicine in Alaska; and

Whereas, Joe Rude has enjoyed 64 years of devoted marriage to Amy, and this union has produced 4 children and 11 grandchildren, and 5 greatgrandchildren; and

Whereas, "Doc" Rude has been an extremely active member of a wide variety of community groups, having been on the Board of his Lutheran Church for numerous years, been active in the Boy Scout movement for 50 years, and the Salvation Army Board for 40 years, a charter member of the Juneau Lions Club, and a member of the school boards in both Petersburg and Juneau; and

Whereas, in addition to the practice of medicine in Alaska, Dr. Rude has served the missions of the Lutheran Church; and

Whereas, "Doc" continues to be an active skier at Eaglecrest, continues to bag moose each year up the Taku River, and until recently, captained the "Doughboy" on numerous cruises; therefore be it

Resolved, that the Alaska State Medical Association salutes Dr. Rude on his many milestones; and be it further

Resolved, that the Alaska State Medical Association wishes him well and Godspeed with his continuing activities; and be it yet further

Resolved, that the rest of us will try to do better.

Resolution No. 85-3
Subject: Use of Pesticides

Whereas, some pesticides are highly toxic to humans and other non-target organisms, and

Whereas, the inappropriate use of some pesticides may endanger the public health, and

Whereas, present State regulations
- -have not been revised in ten years,
- -contain no guidelines for application of unrestricted pesticides,
- -are silent regarding qualifications for commercial operators,
- -are not specific regarding authority for search and seizure,
- -provide no authority to ban specific compounds from use in Alaska,
- -do not require registration of pesticides used in Alaska,
- -directions for use on labels, therefore be it

Resolved, that the Alaska State Medical Association urges the Governor to appoint a task force to include representatives from the Alaska State Medical Association, Department of Environmental Conservation, Department of Health and Social Services, Municipal Health Departments, and other appropriate groups and agencies to review and, if necessary, to develop new regulations regarding the application of pesticides in urban and rural settings.

Resolution No. 85-4
Subject: Community Right-To-Know

Whereas, hundreds of thousands of gallons of hazardous substances are released into Alaskan Air, lands and water by hundreds of documented industrial and transportation accidents each year (1); and

Whereas, residents and entire communities may be exposed to these accidentally released hazardous substances and physical agents as a result of industrial and transportation accidental release of hazardous substances or physical agents; and

Whereas, the public health can be best served by a preventative approach whereby members of the general community, emergency responders, and health care providers have adequate information regarding the existence and identity of hazardous substances and physical agents in their communities; and

Whereas, several states and municipalities have adopted or are considering for adoption community right-to-know legislation including New Jersey, Cincinnati, San Diego, New York, Connecticut, and Massachusetts (2); Therefore be it

Resolved, that the Alaska State Medical Association supports the establishment of statewide and local community right-to-know legislation with at least the following elements:

a. Mandatory reporting by employers in the form of a standard material safety data sheet (MSDS) to a public agency such as the health department or fire department of all toxic material physical agents which may be stored, manufactured, utilized, produced as a by product, transported to or from, or otherwise found at any time on the property or right of way of any enterprise or site; and

b. Full access by the general public, health care providers, and emergency responders to this public information; and

c. An associated educational program for employers, the general public health care providers, emergency responders, and public health professionals and officials; and

d. Sufficient funding for the legislation to be fully effective.

(1) Based on data provided the Alaska Health Project by the Alaska Department of Environmental Conservation.
(2) Worobec, MR, et al., Chemical Right-To-Know Requirements: Federal and State Laws and Regulations - A Status Report. Bureau of National Affairs: Washington, D.C., 1984.

Resolution No. 85-6
Subject: Three Wheelers and Similar All Terrain Vehicles

Whereas, the use of three-wheeler, all-terrain vehicles by children and adults has contributed to unnecessary deaths and injuries in the State of Alaska; and

Whereas, the medical cost of 538 injuries over a period of two years exceeded $1.6 million dollars and the cost of institutional care for those 6 brain damaged Alaskans injured in all-terrain vehicle accidents will exceed $11.5 million if they live to age 65; and
Whereas, measures such as educational safety programs and mandatory helmet requirements have reduced injuries associated with bicycles, motorcycles, and snowmobiles; and

Whereas, Alaska has documented some of the most serious problems among all the states on this subject; therefore be it

Resolved, that the Alaska State Medical Association urges the passage of legislation:

(1) To require helmet use by all operators of ATV's and
(2) To require ATV registration, and
(3) To require successful completion of a mandatory safe driving course for all ATV drivers 16 years of age and younger, and be it further

Resolved, that the Alaska State Medical Association urges the Department of Health and Social Services to commit additional funds and professional positions to increase its efforts to investigate and prevent injuries in Alaska.

Resolution No. 85-9
Subject: Consulting Corporation

Reslove, that the Alaska State Medical Association further investigate the formation of a Consulting Corporation for broadly defined services to the business community and the professional community and the public at large, and "with specific recommendations reported to the winter council meeting."

Resolution No. 85-11
Subject: Dues Discount

Resolve, that the Alaska State Medical Association reduce an active member's dues by $50 if dues are received by the office before January 1 of each year; and be it further

Resolved, that Alaska State Medical Association reduce an associate member's dues by $25 if dues are received by the office before January 1 of each year.

Resolution No. 85-13
Subject: Extension of medicare Fee Freeze Regulations

Whereas, the medicare Fee Freeze was instituted in the face of voluntary action already being done by the AMA and physicians, and

Whereas, such federal regulations interfere with the proper patient-physician relationship; therefore be it

Resolved, that the Alaska State Medical Association oppose Health Care Financing Administration regulations which label as fraud physician benevolence to needy medicare patients; and be it further

Resolved that the Alaska State Medical Association opposes the extension to the Medicare Fee Freeze regulations as a threat to the availability of medical

CHENA GOLDSTREAM VOLUNTEER FIRE DEPARTMENT
Box 80487
College, Alaska 99708
479-5672 479-5326
Emergency — 911

BARRY L. JENNINGS
Chief

CHUCK KALTENBACH
President

September 23, 1985

Gov. Bill Sheffield
Pouch A
Juneau, AK 99811

Dear Governor Sheffield,

Attached please find a copy of a resolution passed by the Board of Directors of the Chena-Goldstream Volunteer Fire Department on August 25, 1985.

The resolution addresses a serious deficiency in the Alaska statutes in that they do not require users or transporters of hazardous materials to notify local emergency service providers of their activities. Statutorial deficiencies of this nature in other states have led to serious injury and death among fire and medical service personnel.

Alaska has recognized the worker's right-to-know by enacting appropriate legislation. We feel strongly that the people who will be called on to help if those workers are caught in an emergency also have a right to know exactly what situation they are responding to. This prior knowledge will allow us to arrive with the proper gear and training; hence we will be in a better position to help.

Could you please help us by getting the appropriate legislation on the calendar this legislative session? Please contact me if you need further information on this matter, and thank you for your support.

Sincerely yours,

David M. Moll, Asst. Chief
Director of Fire Operations

cc: Sen. Fahrenkamp
Sen. Eliason
Rep. Koponen
Rep. Navarre

CHENA GOLDSTREAM VOLUNTEER FIRE DEPARTMENT
Box 80467
College, Alaska 99708
479-5672 479-5326
Emergency — 911

DAVID M. MOLL
Acting Chief

CHUCK KALTENBACH
President

RESOLUTION 86-1

HAZARDOUS & TOXIC MATERIALS

WHEREAS HAZARDOUS & TOXIC materials used in industry represent a threat to the life and health of all exposed to them, and

WHEREAS ALASKA STATUTES now require workers exposed to such substances to be informed of the dangers involved and proper procedures for handling these, and

WHEREAS FIRE, RESCUE, AND PUBLIC SAFETY PERSONNEL responding to emergencies are being exposed to hazardous and toxic materials in critical situations with no advance warning and without adequate information as to the type and quantities of substances involved.

THEREFORE BE IT RESOLVED that the CGVFD Board of Directors request that the "Alaska Worker Right to Know" law be amended to require that fire, rescue, ambulance, and public safety agencies be informed prior to the arrival of hazardous and/or toxic materials and substances in their respective service areas, whether such materials are being transported, stored, or used in manufacture or processing within the service area.

BE IT FURTHER RESOLVED that the CGVFD Board of Directors request the support of the Alaska State Fire Chiefs Association and the Alaska State Fire Fighters Association for these changes in statue at their respective state conventions to be held in Sitka, Alaska in October 1986, and

BE IT FURTHER RESOLVED that the Fairbanks North Star Borough Assembly and Borough mayor be asked for their support and asked to urge the Alaska Municipal League to support the proposed amendment. and

THAT IT BE FURTHER RESOLVED that copies of this resolution be sent to: Gov. Bill Sheffield; Sen. Bettye Fahrenkamp, in her capacity as chair of the Senate Committee on Health, Education, & Welfare; Sen. Dick Eliason, in his capacity of the Senate Labor & Commerce Committee; Rep. Niilo Koponen, in his capacity as co-chairman of the House Health, Education, & Social Services Committee; and Rep. Mike Navarre, in his capacity as chair of the House Labor & Commerce Committee.

HOUSE
COMMITTEE REPORT

(7)

Date referred: 2/17/86

FURTHER REFERRALS: RESOURCES

DATE: 4/2/86

The STATE AFFAIRS Committee has considered HB 672

"An Act providing for notice of hazardous materials."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[✓] replace with CS HB672 (SA) [✓] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[✓] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Katie Hurley

[illegible]

Bette Cato

[illegible]

Mike Havans

[illegible]

SIGNING OTHER RECOMMENDATIONS:

Roger Jenkins No Rec

Katie Hurley
Chairman

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. 86-09

A RESOLUTION SUPPORTING STATEWIDE
HAZARDOUS MATERIAL DISCLOSURE LEGISLATION.

WHEREAS, the handling, storage, transportation, use, processing, and disposal of hazardous materials and hazardous waste occurs in all communities in Alaska, and

WHEREAS, the potential impacts of accidents associated with hazardous materials and hazardous wastes can have devastating impacts on the public health and the environment, and

WHEREAS, knowledge of the types of hazardous materials and hazardous wastes are critical and central to a community's ability to recognize potentially dangerous situations, and

WHEREAS, firefighters, police officers and other public safety and medical professionals often lack the information necessary to respond quickly and safely to emergencies involving hazardous materials and hazardous waste, and

WHEREAS, the public has the right to know what hazardous materials and hazardous wastes are in their community;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports the adoption of state enabling legislation to allow local governments to establish a Hazardous Materials Disclosure (Community Right-to-know) Program. Such a Hazardous Materials Disclosure law should address minimum program requirements for a municipality, including:

a. Notification

b. Placarding

c. Transportation Routing

d. Transportation requirements for selected materials

e. Emergency Coordination Procedures

CFR 49

"Freight container" means a reusable container having a volume of 64 cubic feet or more, designed and constructed to permit being lifted with its contents intact and intended primarily for containment of packages (in unit form) during transportation.

"Fuel tank" means a tank other than a cargo tank, used to transport flammable or combustible liquid, or compressed gas for the purpose of supplying fuel for propulsion of the transport vehicle to which it is attached, or for the operation of other equipment on the transport vehicle.

"Gross weight" means the weight of a packaging plus the weight of its contents.

"Hazardous material" means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

"Hazardous substance", for the purposes of this subchapter, means a material, and its mixtures or solutions, that is identified by the letter "E" in Column 1 of the Table to § 172.101 when offered for transportation in one package, or in one transport vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels; or to a mixture or solution containing a material identified by the letter "E" in Column 1 of the Table to § 172.101 if it is in a concentation less than that shown in the following table based on the reportable quantity (RQ) specified for the materials in Column 2 of the Table to § 172.101:

RQ pounds	RQ kilograms	Concentration by weight	
		Percent	PPM
5000	2270	10	100,000
1000	454	2	20,000
100	45.4	0.2	2,000
10	4.54	0.02	200
1	0.45	0.002	20

"Hazardous waste", for the purposes of this subchapter, means any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 CFR Part 262 or would be subject to these requirements absent an interim authorization to a state under 40 CFR Part 123, Subpart F.

"Hermetically sealed" means closed by fusion, gasketing, crimping, or equivalent means so that no gas or vapor can enter or escape.

"IAEA" means International Atomic Energy Agency.

"IATA" means International Air Transport Association.

"ICAO" means International Civil Aviation Organization.

"IM Tank Table" means the table (with preface) listing hazardous materials approved by the Associate Director of HMR for carriage in IM portable tanks under special conditions specified therein.

"IMO" means International Maritime Organization.

"Intermodal container" means a freight container designed and constructed to permit it to be used interchangeably in two or more modes of transport.

"Intermodal portable tank" or "IM portable tank" means a specific class of portable tanks designed primarily for international intermodal use.

"Irritating material" See § 173.381.

"Limited quantity," when specified as such in a section applicable to a particular material, with the exception of Poison B materials, means the maximum amount of a hazardous material for which there is a specific labeling and packaging exception.

"Magnetic materials" See § 173.1020.

"Magazine vessel" means a vessel used for the receiving, storing, or dispensing of explosives.

"Marking" means applying the descriptive name, instructions, cautions, weight, or specification marks or combination thereof required by this subchapter to be placed upon outside containers of hazardous materials.

"Mixture" means a material composed of more than one chemical compound or element.

"Mode" means any of the following transportation methods; rail, highway, air, or water.

"Motor vehicle" includes a vehicle, machine, tractor, trailer, or semi-trailer, or any combination there propelled or drawn by mechan power and used upon the highways the transportation of passengers property. It does not include a vehi locomotive, or car operated exclusi on a rail or rails, or a trolley bus op ated by electric power derived fron fixed overhead wire, furnishing lo passenger transportation similar street-railway service.

"MTB" means the Materials Tra portation Bureau, U.S. Department Transportation, Washington, D 20590.

"Name of contents" means t proper shipping name as specified § 172.101 or § 172.102 (when auth ized).

"Navigable waters" means, for t purposes of this subchapter, waters the United States, including the ter torial seas.

"Net weight" means a measure weight referring only to the conte of a package, and does not include t weight of any packaging material.

"N.O.S." means not otherwise spe fied.

"NPT" means an American Standa taper pipe thread in compliance wi the requirements of Federal Standa H28, Part II, Section VII. S § 171.7(d)(12).

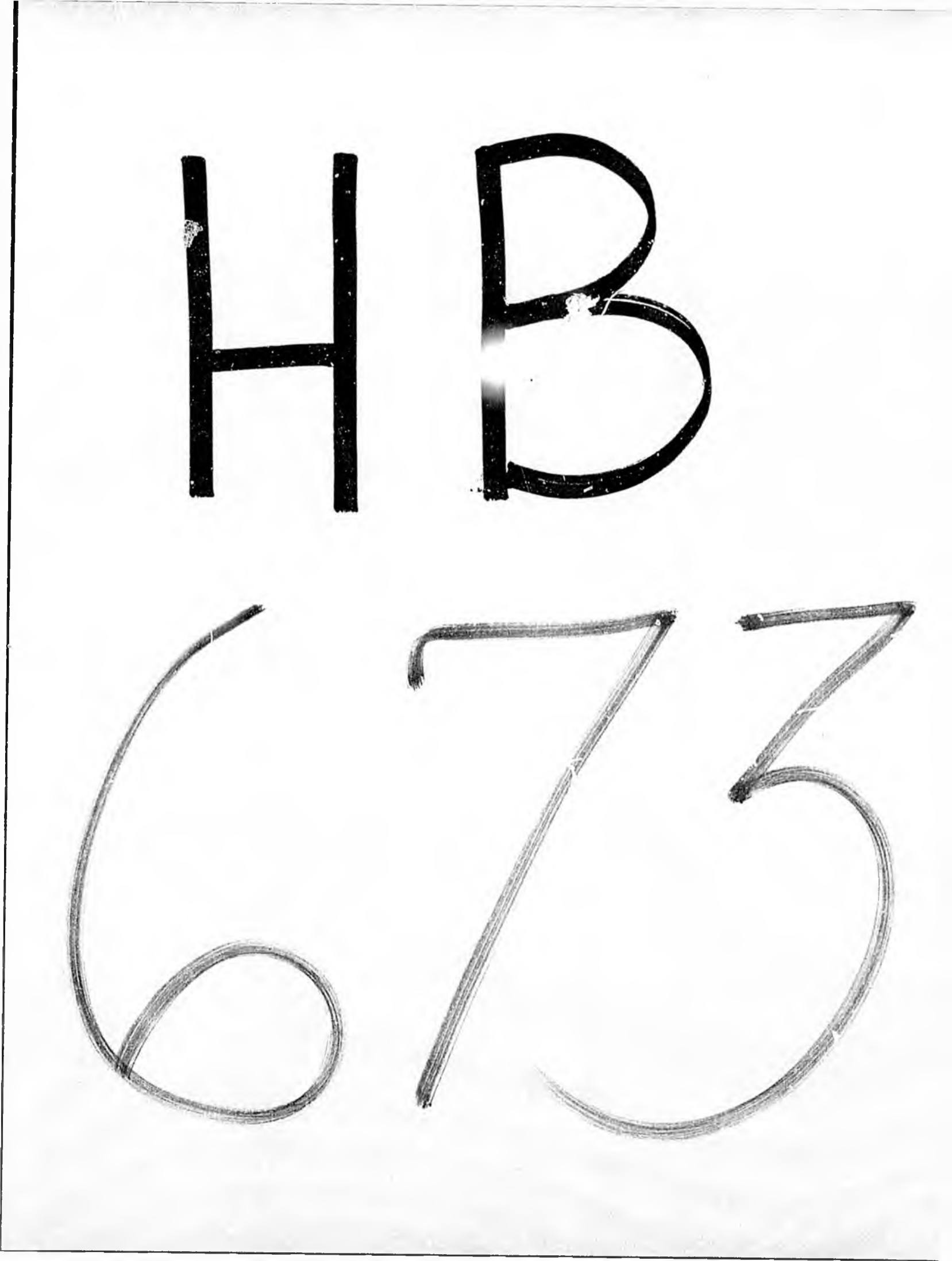
"NRC (non-reusable container means a container whose reuse is r stricted in accordance with the pro sions of § 173.28.

"Occupied caboose" means a rail c being used to transport non-passeng personnel.

"Officer in Charge, Marine Insp tion" means a person from the civili or military branch of the Coast Gua designated as such by the Comma dant and who under the supervisi and direction of the Coast Guard D trict Commander is in charge of a de limited inspection zone for the pe formance of duties with respect to th enforcement and administration Title 52, Revised Statutes, acts amen atory thereof or supplemental theret rules and regulations thereunder, an the inspection required thereby.

"Operator" means a person who co trols the use of an aircraft, vessel, c vehicle.

"Organic peroxide" See § 173.151.


HB
673

HOUSE
COMMITTEE REPORT

(9)

Date referred: 4/7/86

5/5

FURTHER REFERRALS: Rules

DATE: ~~4/25~~ 5/2/86

The RESOURCES Committee has considered HB 673

"An Act relating to transportation of hazardous substances in municipalities."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[✓] replace with CSHB 673 (Resources) [ ] same title

[X] new title

and recommends DO PASS

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Herrmann Adelheid Herrmann

Cato Bette Cato

Pearce [signature]

Sund [signature]

Wallis Kay Wallis

Thompson David W. Thompson

SIGNING OTHER RECOMMENDATIONS:

Dick Shultz No Rec

Shultz

Roger Jenkins No Rec

Jenkins

Dick Shultz

Co-Chairman Shultz

PROPOSED AMENDMENTS
TO CS FOR HOUSE BILL 673
"AN ACT RELATING TO TRANSPORTATION OF HAZARDOUS MATERIALS"

Adopted AMENDMENT 1:

Page 1, line 15, delete [and to and from commercial transportation facilities,]

Page 1, line 21, add new subsection (c):

A process involving substantive consultation with the commercial carriers of hazardous materials to assure that at least one feasible route will be permitted to and from commercial transportation facilities; and

RATIONALE: The purpose of this section is to allow municipalities to select the safest routing of hazardous materials within and through the municipality. At least one route to and from a commercial facility must be allowed, or the facility will in effect be "zoned out" of existence. If it is the municipalities' intent to prevent a carrier from hauling certain commodities, it should do so through condemnation or its planning and zoning powers.

AMENDMENT 2:

Page 2, line 1, delete [a shipment of 500 pounds or more of a hazardous material, or if less than 500 lbs.,]

RATIONALE: The 500 lb. provision would allow for special routing, and require special notification for truck loads of fuel oil, gasoline, asphalt, propane, and other commonly used material which are classified as "hazardous" under federal law. The notification limits established in 49 C.F.R. 172.200-172.558 have been adopted after extensive review, and should be followed.

AMENDMENT 3:

Page 2, lines 11-18, delete Section (a).

RATIONALE: Forwarding copies of hazardous materials manifests to the Department of Public Safety is simply a paper work exercise which will not make any significant contribution to the public safety.

Note (if this amendment is adopted, then on page 3, line 10 delete [[a] and]

AMENDMENT 4:

Page 3, lines 18-21, delete [a shipment of 500 lbs. or more of a hazardous material, if less than 500 lbs.,]

RATIONALE: Same as for amendment 2

AMENDMENT 5:

ADOPTED

Page 3, lines 26-27 delete [or an aircraft traveling intrastate]

RATIONALE: There has been no testimony or reasons cited for inclusion of aircraft in this legislation. Most of the provisions (i.e., routing or delay of shipment) do not make sense in context with air transportation.

Original sponsors: Koponen, Hurley, Davis and Goll

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 673 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to transportation of hazardous materials."

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

* Section 1. AS 29.35 is amended by adding a new section to read:

Sec. 29.35.143. TRANSPORTATION OF HAZARDOUS MATERIALS. (a) Consistent with federal law, a municipality that regulates the transportation of hazardous materials shall

(1) establish reasonable routes for the transportation of bulk shipments of selected hazardous materials in the municipality, after completing

(A) a comparative safety analysis of alternative routes;

(B) a process involving substantive consultation with other jurisdictions, including the state, affected by the routing; and

(C) a process involving substantive consultation with the commercial carriers of hazardous materials to assure that at least one feasible route is permitted to and from commercial transportation facilities; and

(2) provide for the description, marking, labeling, and placarding of containers or vehicles used to transport bulk shipments of hazardous materials in the municipality, in a manner identical to the manner provided in 49 C.F.R. 172.200 - 172.558.

(b) Notwithstanding AS 29.35.200, 29.35.210, and 29.35.220, a

borough may exercise powers under this section on an areawide or nonareaw 'e basis.

(c) In this section

(1) "bulk shipment of a hazardous material" means a shipment of 500 pounds or more of a hazardous material or, if less than 500 pounds, a quantity equal to or greater than the reportable quantity of the material specified in the Hazardous Materials Table in 49 C.F.R. 172.101;

(2) "hazardous material" has the meaning given in 49 C.F.R. 171.8;

(3) "person" has the meaning given in AS 01.10.060 and also includes a political subdivision, government agency, municipality, or other public or private entity.

* Sec. 2. AS 46.03 is amended by adding a new section t' read:

Sec. 46.03.895. NOTICE OF HAZARDOUS MATERIALS. (a) If a vehicle carrying a bulk shipment of hazardous materials in the state is delayed because of an unscheduled interruption, such as mechanical failure of the vehicle, impassable road conditions, weather, or other emergency requiring the operator to leave the vehicle unattended in a location or for a period of time that creates an increased risk of harm to the public safety or health, then the operator of the vehicle or an agent of the carrier shall give prompt, oral notice to the division of state troopers, or to a person or agency designated by the Department of Public Safety, of the location and contents of the vehicle and the circumstances of the delay.

(b) Except as provided in (c) of this section, a consignee of a bulk shipment of a hazardous material that is to be stored by the consignee for more than seven days shall, within 72 hours after receiving the shipment, send to a person or agency designated by the

Department of Public Safety

(1) a copy of the description of the hazardous materials that is required to be on the shipping paper by the United States Department of Transportation under 49 C.F.R. 172.200 - 172.204; and

(2) a notice of the location at which the materials are to be used or stored.

(c) The notice and description required under (b) of this section for regularly scheduled bulk shipments of a hazardous material must be sent by April 15 each year, but are not required more than once a year, except that notice and descriptions are required within 72 hours after a significant change in the schedule, quantity, contents, or routing of a regularly scheduled bulk shipment. The Department of Public Safety shall adopt regulations specifying what constitutes a "significant change" under this subsection.

(d) In this section

(1) "bulk shipment of a hazardous material" means a shipment of 500 pounds or more of a hazardous material or, if less than 500 pounds, a quantity equal to or greater than the reportable quantity of the material specified in the Hazardous Materials Table in 49 C.F.R. 172.101;

(2) "hazardous materials" has the meaning given in 49 C.F.R. 171.8;

(3) "vehicle" includes a motor vehicle and a railroad car.

Hein 4/25/86

Original sponsors: Koponen, Hurley, Davis and Goll

IN THE HOUSE

CS FOR HOUSE BILL NO. 673 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to transportation of hazardous materials."

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

* Section 1. AS 29.35 is amended by adding a new section to read:

Sec. 29.35.143. TRANSPORTATION OF HAZARDOUS MATERIALS. (a) Consistent with federal law, a municipality that regulates the transportation of hazardous materials shall

(1) establish reasonable routes for the transportation of bulk shipments of selected hazardous materials in the municipality, and to and from commercial transportation facilities, after completing

(A) a comparative safety analysis of alternative routes; and

(B) a process involving substantive consultation with other jurisdictions, including the state, affected by the routing; and

(2) provide for the description, marking, labeling, and placarding of containers or vehicles used to transport bulk shipments of hazardous materials in the municipality, in a manner identical to the manner provided in 49 C.F.R. 172.200 - 172.558.

(b) Notwithstanding AS 29.35.200, 29.35.210, and 29.35.220, a borough may exercise powers under this section on an areawide or nonareawide basis.

(c) In this section

(1) "bulk shipment of a hazardous material" means a

shipment of 500 pounds or more of a hazardous material or, if less than 500 pounds, a quantity equal to or greater than the reportable quantity of the material specified in the Hazardous Materials Table in 49 C.F.R. 172.101;

(2) "hazardous material" has the meaning given in 49 C.F.R. 171.8;

(3) "person" has the meaning given in AS 01.10.060 and also includes a political subdivision, government agency, municipality, or other public or private entity.

* Sec. 2. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.895. NOTICE OF HAZARDOUS MATERIALS. (a) Except as provided in (d) of this section, a carrier who transports a bulk shipment of a hazardous material into the state shall, within 72 hours after the shipment arrives in the state, send to the Department of Public Safety, division of fire prevention, a copy of the description of the hazardous materials that is required to be on the shipping paper by the United States Department of Transportation under 49 C.F.R. 172.200 - 172.204.

(b) If a vehicle carrying a bulk shipment of hazardous materials in the state is delayed because of an unscheduled interruption, such as mechanical failure of the vehicle, impassable road conditions, weather, or other emergency requiring the operator to leave the vehicle unattended in a location or for a period of time that creates an increased risk of harm to the public safety or health, then the operator of the vehicle or an agent of the carrier shall give prompt, oral notice to the division of state troopers, or to a person or agency designated by the Department of Public Safety, of the location and contents of the vehicle and the circumstances of the delay.

(c) Except as provided in (d) of this section, a consignee of a

bulk shipment of a hazardous material that is to be stored by the consignee for more than seven days shall, within 72 hours after receiving the shipment, send to a person or agency designated by the Department of Public Safety

(1) a copy of the description specified in (a) of this section; and

(2) a notice of the location at which the materials are to be used or stored.

(d) Notice and descriptions required under (a) and (c) of this section for regularly scheduled bulk shipments of a hazardous material must be sent by April 15 each year, but are not required more than once a year, except that notice and descriptions are required within 72 hours after a significant change in the schedule, quantity, contents, or routing of a regularly scheduled bulk shipment. The Department of Public Safety shall adopt regulations specifying what constitutes a "significant change" under this subsection.

(e) In this section

(1) "bulk shipment of a hazardous material" means a shipment of 500 pounds or more of a hazardous material or, if less than 500 pounds, a quantity equal to or greater than the reportable quantity of the material specified in the Hazardous Materials Table in 49 C.F.R. 172.101;

(2) "hazardous materials" has the meaning given in 49 C.F.R. 171.8;

(3) "vehicle" includes a motor vehicle, a railroad car, or an aircraft traveling intrastate.

POSITION PAPER/Department of Health & Social Services

Position Paper

CS for House Bill No. 673 (C&RA)

For an Act entitled: "An Act relating to transportation to hazardous materials in municipalities."

This bill would enable municipalities to establish a system to monitor transportation of hazardous materials; provide for routing the transportation of selected hazardous materials; provide for the description, marking, labeling, and placarding of bulk containers on vehicles used to transport hazardous materials in the municipality; and require persons transporting a bulk shipment of hazardous material to notify the municipality of the hazardous material as provided in the local ordinance.

POSITION

The Department of Health and Social Services supports the general concepts of CSHB 673 (C&RA) and feels that it will enable municipalities to better plan for potential hazardous materials emergencies, because local officials will be notified of the existence of various hazardous materials substances and can propose transportation routing to ensure optimum protection of the public.

Recommended by: Elizabeth Ward

Elizabeth Ward, M.N.
Director
Division of Public Health

Date: April 9, 86

Recommended by: John R. Pugh

John R. Pugh, Commissioner
Department of Health and
Social Services

Date: 4/16/86

Original sponsors: Koponen, Hurley,
Davis and Goll

IN THE HOUSE

CS FOR HOUSE BILL NO. 673 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to transportation of hazardous materials."

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

* Section 1. AS 29.35 is amended by adding a new section to read:

Sec. 29.35.143. TRANSPORTATION OF HAZARDOUS MATERIALS. (a) Consistent with federal law, a municipality may by ordinance

(1) provide for routing the transportation of selected hazardous materials in the municipality in accordance with U.S. Department of Transportation policies regarding the use of

(A) comparative safety analyses; and

(B) a process involving substantive consultation with other jurisdictions affected by the routing; and

(2) provide for the description, marking, labeling, and placarding of bulk containers or vehicles used to transport hazardous materials in the municipality, as provided in 49 C.F.R. 172.200 - 172.558.

(b) If a vehicle carrying a shipment of hazardous materials in the state is delayed for one hour or more due to mechanical failure or other circumstance, the operator of the vehicle shall give prompt, oral notice to the Department of Public Safety or an emergency services provider designated by the Department of Public Safety, of the location and contents of the vehicle and the circumstances of the delay.

(c) Notwithstanding AS 29.35.200, 29.35.210, and 29.35.220, a

borough may exercise powers under this section on an areawide or nonareawide basis.

(d) In this section

(1) "hazardous material" means a substance regulated as a hazardous material under 49 C.F.R. 100 - 199;

(2) "person" has the meaning given in AS 01.10.060 and also includes a political subdivision, government agency, municipality, or other public or private entity.

Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

542 4th Avenue, Suite C
Fairbanks, Alaska 99701
(907) 456-8161

POSITION PAPER--HB673

The purpose of this bill is to give Alaskan municipalities greater regulatory oversight with regard to the transportation of hazardous materials within their borders.

Concern about the risks involved in the transport of hazardous materials has prompted public demand for improved emergency response capabilities and strong enforcement of safety rules.

This bill gives municipalities two powerful tools with which to regulate hazardous materials. Routing and placarding requirements have been found consistent with U.S. D.O.T. policies and will provide much needed guidelines in the movement of these materials.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

HB 673

An Act Relating to Transportation of
Hazardous Substances in Municipalities

This proposed bill amends AS 29.35.140 by adding two new subsections, the first to provide that municipalities may adopt by ordinance a program to monitor the transportation of hazardous substances, which includes four elements:

(1) a system to monitor transportation in the municipality

(2) transportation routes and advance notification procedures

(3) placarding of vehicles

(4) a requirement that transporters notify the municipalities

Subsection (c) defines hazardous substance.

The Department of Environmental Conservation (DEC) supports the concept of this bill since it would allow municipal public safety agencies to obtain the information on the movement of hazardous substances in their communities. The Department has three specific comments on this bill:

(1) There may be difficulty in requiring placarding of vehicles beyond that required by the U.S. Department of Transportation because federal transportation requirements prevail in a conflict with State or local requirements. DEC is not aware of whether the bill includes any other conflicts with federal transportation requirements.

(2) Several definitions of "hazardous substance" have been included in bills being reviewed by this Legislature. I suggest you consider using the definition which appears at AS 46.08.900(6) in the proposed CSHB 470 (Finance) dated 3/8/85.

(3) The bill does not set any limit on the quantity of material subject to this law. You may wish to indicate that it is intended to apply to the transportation of materials in bulk containers greater than some specific volume.

It might be appropriate, in conjunction with this bill, to repeal AS 46.03.308, which establishes another set of reporting requirements. Passed as part of SB 503 in 1984, AS 46.03.308 requires that generators of hazardous wastes (a subset of materials) notify DEC. DEC is then required to notify local governments of shipments. This bill would be more comprehensive and would achieve the same purpose.

Thank you for the opportunity to comment. My staff is available to work with yours as this proposal moves through the legislative process.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Environmental Conservation	Environmental Quality	HB 673	Niilo Koponen et al.

DEPARTMENT POSITION: Supportive

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
S. W Hungerford	3/11/86	Bill Ross	3/11/86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
None Apparent	Communities Railroad/Trucking Firms
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
	Unknown at this point

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

ANALYSIS OF BILL/PROGRAM EFFECTS

SEE ATTACHED COMMENTS

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

1 008 (Rev. 1283)

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 673
Title : "An Act relating to transportation of hazardous substances in municipalities."
Sponsor : Niilo Koponen
Requestor : C & RA and Resources
Date of Request : 3/10/86

FISCAL DETAIL

Agency Affected : Environmental Conservation
BRU : Environmental Quality
Components : Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS : NONE

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : S.W. Hungerford
Phone : 465-2666
Division : Environmental Quality
Date : 3/10/86

Approved by Commissioner : Bill Ross
Date : 3/12/86
Agency : Environmental Conservation

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 673

Neutral

March 21, 1986

HB 673 - "An Act relating to transportation of hazardous substances in municipalities."

This bill does not materially effect or impact this Department.

Robert J. Sundberg

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 673
Title : "An Act relating to transportation of hazardous substances in municipalities."
Sponsor : Representative Koponen
Requestor : House Community & Regional Affairs
Date of Request : 3/21/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : _____
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Kathy Niles, Admin Assistant
Division : Commissioner's Office
Phone : 465-4336
Date : 3/21/86

Approved by Commissioner : _____
Agency : Public Safety
Date : 3/21/86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

MINNESOTA

WASTE MANAGEMENT BOARD

CHAPTER III, SECTION F

WHAT FACTORS COULD AFFECT THE USE OF OUT-OF-STATE DISPOSAL FACILITIES BY MINNESOTA GENERATORS?

D R A F T

June 5, 1985

rather than a market regulator.

Finally, state subsidies are generally found to be well within the legitimate proprietary capacity of a state government to act solely on behalf of its own citizens. Thus, these subsidies are exempt from traditional Commerce Clause restraints. However, any subsidy could be subject to an Equal Protection challenge on grounds that a subsidy is not reasonably related to a state's legitimate purpose, or that a subsidy is not the least restrictive alternative to achieve a legitimate state goal.

* [redacted]

Localities have enacted laws that attempt to restrict the transportation of certain hazardous wastes through a city. The legal question arises as to whether such local laws violate the Commerce Clause or are pre-empted by the federal Hazardous Materials Transportation Act and related Department of Transportation regulations. In 1982 the Second Circuit Court of Appeals decided National Tank Truck Carriers, Inc. v New York City (677) F2d 270). At issue were New York City Fire Department regulations that prohibited the transportation of hazardous gases by tank truck in New York City, except when the fire commissioner authorizes such transportation because "no practical alternative route to passage through the city exists." The fire commissioner authorized trucks carrying hazardous gases to travel through New York City, but only along a certain route and never between 6 - 10 a.m. and 3 - 7 p.m.

[redacted]

not motivated by economic protectionism, and equally applicable to interstate and [illegible] state shipments. The commerce clause was not violated, as the burden on interstate commerce, if any, was incidental.

Nor were the regulations pre-empted by federal law or regulation. The Court found the local fire department regulations to be entirely consistent with, and in furtherance of, the federal regulations and their underlying purpose which is to promote safety to life and property.

The National Tank Truck Carriers case was followed more recently in a case in the New York Criminal Court in Richmond County, People of the State of New York v Dempsey and Miron (466 N.Y.S. 2d 923) (1983). Two truck drivers were charged with violating sections of the city code and charter that restricted the transportation of flammable liquids within city limits during restricted hours. The Court denied defendants claim that the regulations unconstitutionally restrained interstate commerce. It found the regulations were a reasonable way to achieve their public safety purpose.

In general, the Supreme Court is reluctant to invalidate state regulations in the field of highway public safety, as these regulations have a strong presumption of validity.

In conclusion, courts have upheld local ordinances that restrict the transportation of hazardous waste throughout a locality on grounds that the burden on interstate commerce is incidental and the restrictions are a reasonable way to achieve a legitimate public purpose. However, these local ordinances are not likely to pose a substantial threat to the out-of-state disposal of Minnesota's hazardous waste because they do not ban the transportation of out-of-state wastes, but merely reasonably restrict the transportation of all wastes, whatever their origin.

HOUSE
COMMITTEE REPORT

(7)
Date referred: 2/17/86

FURTHER REFERRALS: RESOURCES

DATE: 4-4-86

The COMMUNITY AND REGIONAL AFFAIRS Committee has considered HB 673

"An Act relating to transportation of hazardous substances in municipalities."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with CS HB 673 [X] same title

[ ] new title

and recommends DO PASS

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Nicholas E. Kossman

Mark Fuhlenberg

Rodd E Grow

Alvin Marrou

Peter Joe

SIGNING OTHER RECOMMENDATIONS:

Peter Joe
Chairman

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM April 1, 1986

SUBJECT: Authority of Municipalities to Regulate the Transportation of Hazardous Materials (CSHB 673 (C&RA))

TO: Representative Peter Goll
Chairman, House Community and Regional Affairs Committee

FROM: Edward H. Hein
Legislative Counsel

Your assistant, Bob Berry, asked whether municipalities already have authority to regulate the transportation of hazardous materials through their jurisdictions. Under AS 29.35.220, a third class borough may acquire such authority on a service-area basis only. Under AS 29.35.200 - 29.35.210, first and second class boroughs have such authority, but not on an areawide basis. Under AS 29.35.250 - 29.35.260, cities have such authority. All this authority, however, is subject to conformity with federal Department of Transportation regulation.

EHH:ml
050/mel

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M April 25, 1986

SUBJECT: Comparative sectional analysis of various versions of CSHB 672 and CSHB 673

TO: Representative Niilo Koponen

FROM: Edward H. Hein EHA
Legislative Counsel

The latest draft of CSHB 673 ( ), dated 4/24/86, combines CSHB 672 ( ), dated 4/14/86 with CSHB 673 ( ), dated 4/15/86, and makes additional changes. I shall refer to the latest draft as "the bill."

Section 1 of the bill incorporates all of the 4/15 version of CSHB 673, except for subsection (b) of that version, which is deleted. The first significant change is that instead of merely allowing municipalities to regulate the routing and placarding, etc., of hazardous materials shipments, the bill now sets mandatory minimum requirements that must be met if a municipality is going to regulate hazardous materials transportation. Although a municipality is not required to regulate, if it does so it must establish reasonable routes after doing a comparative safety analysis of alternative routes and consulting with other jurisdictions affected by the routing, including the state. The municipality also must provide for placarding, labeling, marking, and description of bulk container and vehicles transporting hazardous materials. This must be done in a manner identical to the manner required by federal Department of Transportation regulations.

Hazardous material is now defined as in CSHB 672 ( ), which uses the federal DOT definition. Bulk shipments are defined as 500 pounds or more of a single hazardous material, or the reportable quantity (RQ) of a hazardous material, if the material has an RQ less than 500 pounds.

Sec. 2 of the bill incorporates CSHB 672 ( ), with several changes. Under subsection (a), carriers bringing hazardous

materials into the state will have 72 hours after the shipment arrives in the state, instead of 48 hours, to send a copy of the shipping papers to the state fire marshall. This requirement applies only to bulk shipments that are not regularly scheduled. Bulk shipments are defined as in section 1. Regularly scheduled shipments are covered under subsection (d).

Subsection (b) requires the vehicle operator or an agent of the carrier to orally and promptly notify the state troopers, or a person or agency designated by the Department of Public Safety, if the vehicle is carrying a bulk shipment of hazardous materials and is delayed because of an unscheduled interruption.

Subsection (c) requires a consignee of a bulk shipment of a hazardous material to notify a person or agency designated by the Department of Public Safety within 72 hours after the shipment arrives, but only if the shipment is going to be stored for seven days or more. Notice must include a copy of the shipping papers and the location at which the materials are to be stored or used. In earlier versions of HB 673, notification was not limited to bulk shipments, and notice had to be given within 48 hours.

Subsection (d) provides that notice of regularly scheduled bulk shipments must be sent by April 15 each year, but is not required more than once a year, except that notice of significant changes in shipments must be given within 72 hours.

Subsection (e) adds definitions of "bulk shipment," as described above, and "vehicle," and deletes definitions of "emergency services providers" and "service area. "The definition of "vehicle" includes motor vehicles, railroad cars, and intrastate aircraft.

These bills were combined in CSHB 673 because both deal with the transportation of hazardous materials, and in order to avoid duplication and to assure consistency. Section 1 of the bill appears to comply with federal DOT regulations. Sec. 2 probably is in compliance because, although it affects interstate commerce in subsection (a), the requirement is not unduly burdensome or unreasonable: 72 hours is an adequate reporting period; pre- notification is not required; carriers are required only to supply a copy of shipping papers that they must already carry under federal regulation.

EHH:mkr
m5/025



Alaska Environmental Lobby, Inc.

204 N. Franklin Street, Suite 3 Juneau, Alaska 99801 907-586-2345

Date: March 20, 1986
To: Representative Niilo Koponen
From: Scott Highleyman
RE: HB 673--Hazardous Materials Transportation Bill

Attached is a memo by Margaret Rawitz, attorney for the Municipality of Anchorage, regarding Municipal Transportation Ordinances and preemption by the Department of Transportation.

As Rawitz points out, the D.O.T. can preempt municipal ordinances not consistent with Federal Regulations under Title 49. They have a reputation of jealously guarding their regulatory power, and have had a history of rejecting ordinances for minor differences from Title 49. Prenotification, routing restrictions, curfews, and certain packaging and placarding requirements have been found to be inconsistent.

Title 49, as you know, is a long complex nightmare of regulations. If it is your intent to adopt part of Title 49 to avoid the problem of preemption, perhaps legal services should research the parts of Title 49 that could be adopted to address the four areas outlined in HB 673. And, of course, there remains the problem of which agency would be responsible for the regulations, and what kind of fiscal note would be attached. I have no easy answer for that one!

By the way, T.J. Thrasher of the Alaska Truckers Association told me after last Friday's Community and Regional Affairs hearing that they do not oppose adoption of Title 49. Somehow, I find that hard to believe.

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP, SIERRA CLUB • SITKA GROUP, SIERRA CLUB
KNIK GROUP, SIERRA CLUB • DENALI GROUP, SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY
DENALI CITIZENS' COUNCIL • ALASKA FRIENDS OF THE EARTH • JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY
KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • ALASKA WILDERNESS GUIDES ASSOCIATION
SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL

Municipality of Anchorage

MEMORANDUM

SW 1-16 86

DATE: January 9, 1985

TO: Jim Sweeney, Engineering & Planning, Solid Waste

FROM: MJR Margaret J. Rawitz, Assistant Municipal Attorney

SUBJECT: Transportation of Hazardous Materials and Wastes

QUESTION PRESENTED

The Hazardous Waste Task Force would like to develop and submit to the Assembly an ordinance to regulate the transportation of hazardous materials and hazardous wastes in Anchorage. What provisions should be included in the ordinance? What provisions may not be included in the ordinance?

SHORT ANSWER

The role of local governments in the regulation of the transportation of hazardous materials and hazardous wastes has been largely preempted by the U.S. Department of Transportation pursuant to the Hazardous Materials Transportation Act. However, the Municipality may have a limited ability to regulate routing, walk-around inspections, and certain other operational requirements. In addition, the Municipality may adopt any regulations which are identical to federal law.

DISCUSSION

The Hazardous Waste Task Force has proposed an ordinance to regulate the transportation of hazardous materials and hazardous wastes in Anchorage. The elements of the proposed ordinance include the following:

A. adoption of federal regulations;

B. prenotification of transportation of hazardous materials;

C. a curfew or limitation on hours;

D. specified routing;

E. a requirement of a police or fire department escort in certain cases; and

F. restrictions on the storage of hazardous materials and hazardous wastes being transported through the Port of Anchorage.

Some of these proposals are inconsistent with the Hazardous Materials Transportation Act and might therefore be invalid.

A. Hazardous Materials Transportation Act.

Congress enacted the Hazardous Materials Transportation Act (HMTA) in 1974 and designated the U.S. Department of Transportation (DOT) as the enforcement agency. 49 U.S.C. §§ 1801-1812. The HMTA gives jurisdiction to DOT over all forms of transportation of hazardous materials in order to provide uniform national regulation and to minimize the risks through a comprehensive approach to regulation. Congress delegated authority to the Secretary of Transportation 1) to designate and classify the hazardous materials covered by the HMTA, 2) to issue regulations "for the safe transportation in commerce of hazardous materials" and 3) to establish criteria for handling hazardous materials. In addition, in order to accomplish the goals of uniform regulation and minimization of risk, Congress added a section to the HMTA preempting "any requirement of a state or political subdivision thereof which is inconsistent with any requirement set forth" in the HMTA or in a regulation issued thereunder. "Preemption" means that the right to regulate transportation of hazardous materials is reserved exclusively to the Department of Transportation and any local regulation which is inconsistent with federal regulations is invalid. State and local laws which are not inconsistent with federal law are not preempted.

B. DOT Inconsistency Rulings.

"Inconsistent" means any situation where it is not possible to comply both with federal and state or local law, or where compliance with state or local law is an obstacle to the accomplishment to the goals and purposes of the federal law. National Tank Truck Carriers, Inc., v. Burke, 535 F. Supp. 509, 515 (D. RI. 1982). DOT applies this test in reaching its "Inconsistency Rulings", decisions as to whether a state or local law is inconsistent with the HMTA and therefore preempted.

DOT has issued 16 Inconsistency Rulings through December 1, 1985. In most cases, DOT has found state and local regula-

tions to be inconsistent with federal law, jealously protecting its preemptive powers. The local regulations examined generally fall into two major groupings: operating requirements and equipment requirements. Since the proposed Anchorage ordinance does not contain any equipment requirements, the focus of this memorandum will be on operating requirements.

If a federal regulation is adopted verbatim, it will not be considered inconsistent.

C. Operating Requirements.

Examples of operating requirements include bans, curfews, routing restrictions, special accident notifications, inspections, fees, prenotification, permits, applications, and headlight requirements. Most operating requirements have been determined to be inconsistent by DOT and are therefore preempted. The reasoning adopted by the DOT has focused on delay, the extent of burden on commerce, and the necessity for the regulation. For example, although a requirement for immediate oral notification of an accident to local authorities has been upheld, a requirement for a written follow-up notification has been held to be inconsistent because it is duplicative of federal requirements.

Prenotification has repeatedly been found to be inconsistent because of the likelihood that a shipment will be delayed while the shipper attempts to identify the contents of the shipment in order to notify local authorities. Perhaps a requirement for prenotification which did not require the shipper to specify the type of substance being shipped would be acceptable. However, the usefulness of such a requirement might be questionable.

Curfews have been found to be inconsistent because they ultimately delay the transportation of the hazardous materials. Similarly, bans and exclusions have been found to be inconsistent because they only serve to direct the hazardous materials to another jurisdiction. A requirement for additional placarding is inconsistent because it burdens commerce. Other activities which have been found to be preempted include the routing of high level radioactive shipments, packaging and placarding requirements, and the designation and classification of hazardous materials.

D. Effect on Proposed Ordinance.

The prenotification, curfew, and police escort provisions of the proposed ordinance would most likely be found inconsistent with federal law.

The restrictions on the transportation of materials through the Port may also be partially preempted. The provision that hazardous wastes shipped through the Port shall not be stored for more than five days is arguably consistent because it will speed up rather than delay such shipments. However, the DOT might consider the net effect of this provision to be merely a shifting of the delay to some other link in the transportation chain, perhaps a ship. The effect could be seen as increasing the risks and could be considered inconsistent. The requirement for special security measures while the wastes are stored at the Port may be considered a burden on commerce

E. Routing.

Routing requirements which are reasonable and do not have the effect of an exclusion or ban are generally found to be consistent The federal policy is to employ major transportation routes for the transportation of hazardous goods and to avoid populated areas. The transportation routing proposed by the Hazardous Waste Task Force seems to be consistent with these criteria.

CONCLUSION

The following two documents may prove useful to anyone interested in investigating this issue in greater depth: Regulating the Transportation of Hazardous Materials on City Streets--Are Local Governments Helpless? by Timothy J. Harrison and Donna M. Clark, City of Tucson (1985) and Establishing Routes for Trucks Hauling Hazardous Materials: The Experience in Portland Oregon by Portland Office of Emergency Management (March 1984). These documents have already been provided to you and Jim Sellers.

Before I proceed with preparation of an ordinance regulating the transportation of hazardous substances in Anchorage, I would like further guidance from the Task Force on the direction they would like to take in light of the preemption problems discussed above. The options include the following:

1) adopt federal regulations, 2) adopt regulations which have previously been found to be consistent, 3) a combination of "1" and "2", and 4) elect not to regulate the transportation of hazardous substances because it is already comprehensively regulated by the federal government. The ordinance as originally proposed is not a viable option because of federal preemption.

You have indicated that, although the federal government has adequate regulations in place, the level of enforcement in Anchorage is unsatisfactory. If we adopt the federal regulations so that we may enforce them ourselves, we will have adopted a massive and complex regulatory system. The benefits of enforcing such a system might be outweighed by the costs of implementation. For example, it may necessitate fairly extensive training of enforcement officials. In short, due consideration should be given to the burdens of adopting and enforcing the federal program, to the Municipality's ability to enforce such a program, the cost of enforcement, and the "cost", if any, of having on the books an ordinance which does not get enforced.

MJR:ld

cc: Jim Sellers, Fire Training Center

OTA REPORT BRIEF

March 1986

Transportation of Hazardous Materials: State and Local Activities

Accidents involving hazardous materials occur at least weekly in major metropolitan areas. Although a large urban jurisdiction that has had many such accidents may have a trained hazardous materials response team, about three-quarters of the Nation's first responders are not adequately trained to deal with hazardous materials.

The most pressing national need in emergency response is finding an effective way to train first responders to handle different types of hazardous materials. Despite the existence of many training programs, no national guidelines for them are currently in place, and some of the programs are inadequate. National emergency response guidelines or standards are needed to ensure adequate training. Furthermore, financial assistance for training and for maintaining emergency response capabilities is needed by many localities.

More than 180 million shipments of hazardous materials are made in the United States each year, about 500,000 each day, according to Department of Transportation figures. These shipments contain a wide variety of dangerous and unfamiliar substances: more than 2,400 chemicals, explosives, wastes, and radioactive materials are listed as hazardous materials in the Code of Federal Regulations—and the list is growing.

Gasoline and petroleum products account for more hazardous materials transportation accidents, injuries and damages than other classified commodities, because they are the most frequently transported hazardous cargo. Additional safety measures and training programs for drivers and handlers could reduce the incidence of such accidents.

Although most hazardous materials accidents do not cause deaths, they often cause serious injury and substantial damage in addition to being frightening and spectacular. Concern about the risks involved has motivated public demand for improved emergency response capabilities and strong enforcement of safety rules.

To help prevent accidents and protect public safety, State and local governments have restricted the routes that hazardous materials shippers use or the hours that shipments are permitted. They may also require licensing, registration, or permits; advance notification of shipment or other special procedures; and escorts for hazardous materials movements. These requirements and restrictions vary from State to State, leaving transporters unsure whether they are complying with local regulations.

Many industry representatives as well as State and local governments strongly support establishment of a national truck driver's license and uniform guidelines for registration, permit, and shipment notification requirements. They also feel that penalties for violating regulations should be consistent across governmental and jurisdictional levels and substantial enough to discourage future infractions. Continued Federal support for States' hazardous materials enforcement activities is important, since Federal inspection forces have been reduced annually for several years.

To plan for accident prevention and to improve their emergency response, States and localities need to know what types of hazardous materials accidents might occur in their areas, which locations have the highest risk, and what types of materials are most likely to be involved. Because of the lack of a reliable national hazardous materials transportation database, State and local governments are performing their own studies to determine what is transported near, within, and through their communities. These data collection and planning activities serve to coordinate and improve communication between the numerous separate groups that are concerned with hazardous materials transportation and emergency response.

Information accompanying hazardous materials is often faulty or insufficient, posing additional problems for public safety personnel. State enforcement officials have found that 25 to 50 percent of placards on hazardous materials shipments are incorrect. Shipping papers are sometimes incomplete or inaccessible. Emergency crews must assess the risks of the hazardous material and make decisions on how to respond based on information that may or may not be accurate. The wrong response to a hazardous materials accident endangers both emergency personnel and the neighboring communities.

Copies of the OTA report, "Transportation of Hazardous Materials: State and Local Activities," are available from the U.S. Government Printing Office. The GPO stock number is 052-003-01016-0; the price is $3.75. Copies of the report for congressional use *are available by calling 4-8996. Summaries of reports are available at no charge from the Office of Technology Assessment.*

The Office of Technology Assessment (OTA) is an analytical arm of the U.S. Congress whose basic function is to help legislators anticipate and plan for the positive and negative impacts of technological changes.
Address: OTA, U.S. Congress, Washington, DC 20510. Phone: 202/224-9241. John H. Gibbons, *Director.*

Transportation of Hazardous Materials: **State and Local Activities**

A Special Report

JTY
gy Co.
S
na
CH
sin
ring



CONGRESS OF THE UNITED STATES
Office of Technology Assessment
Washington, D. C. 20510

Contents

Chapter	Page
1. Introduction and Findings	3
Hazardous Materials Transportation	3
Government and Industry Roles	6
Federal	6
State	6
Local	7
Industry	7
Organization and Scope of Report	8
General Findings	8
Prevention and Enforcement	8
Emergency Response	9
Planning and Data Collection	9
2. Prevention and Enforcement	13
Federal Responsibilities	13
State Enforcement and Inspection Capabilities	16
Evolution of State Programs	16
State Hazardous Materials Enforcement Development Program	17
Motor Carrier Safety Assistance Program	17
Commercial Vehicle Safety Alliance	20
Current State Activities	20
Adopting Legislation and Regulations	20
Data and Information Collection	21
Inspection and Enforcement	22
Training Inspectors	23
Case Studies: State Profiles	25
Illinois	25
Washington	26
Maryland	26
State and Local Accident Prevention Activities	27
Preemption	27
Licensing, Registration, and Permits	28
Notification	31
Routing	32
Findings	33
3. Emergency Response and Training	39
Institutional Framework	40
Federal Responsibilities	40
State and Local Authority	41
Industry Response	43
Training	44
Existing Training Programs	44
Training Needs	46
Training Content and Quality	47
Planning and Organizing for Emergency Response	48
Coordination	49
Operational Concerns	49
Public Information	50
Protective Equipment	51
Findings	52
4. Information Gathering for State and Local Hazardous Materials Planning	55
Data Collection Activities	56
Federal Data Collection	56
State and Local Studies	56
Fixed Facilities Inventories	57
Local and Regional Inventories	57
Coordinated Use of Inventories	58
State Inventory Studies	59
Community Support	60
Right-to-Know	60
Transportation Studies	61
Truck Studies—Local/Regional	61
Truck Studies—State	62
Rail Studies—Local/Regional	63
Rail Studies—State	64
Air Transportation Studies	64
Water Transportation Studies	65
Federal Data on Shipment of Radioactive Materials and Wastes	65
Notification Laws as Tools for Data Gathering	66
Hazards Assessment Studies	68
Findings	70
Appendix A—State Authority for Hazardous Materials Transportation	75
Appendix B—Hazardous Materials Training Programs	82
Appendix C—Information Resources	85
Appendix D—Acronyms and Abbreviations	87
Bibliography	91

Tables

Table No.	Page
1-1. Incidents Involving Transport of Hazardous Materials, 1973-83	4
1-2. Hazardous Materials Assistance Commonly Available From State and Local Agencies	7
2-1. Federal Activities in Hazardous Materials Transportation	14
2-2. Hazardous Materials Transportation Inspectors	15
2-3. States With Proposed or Existing Hazardous Wastes Transportation Fee or Registration Requirements, 1985	29
3-1. Jurisdictional Analysis of Agency Responsibility	42
3-2. Frequently Used Training Sources, 1985	46
4-1. State Right-to-Know Laws, 1985	60
4-2. Commodities Covered by Notification Requirements, 1985	67

Figures

Figure No. *Page*

2-1. States Participating in the State Hazardous Materials Enforcement Development Program 18

2-2 States Participating in the Motor Carrier Safety Assistance Program 19

2-3. States With Hazardous Materials Notification Requirements by Type of Material, 1985 32

ation
.... 32

Chapter 1

Introduction and Findings

Chapter 1

Introduction and Findings

Each year, more than 4 billion tons of hazardous products and waste are transported throughout the United States.* The safe handling and carriage of these materials—which include explosives, flammables, corrosive or toxic chemicals, poisons, spent reactor fuel and low-level waste, and disease-causing biological agents—are of major concern to Federal, State, and local agencies charged with public safety and to the industries that produce, ship, and use hazardous materials.**

The safe and efficient transport of hazardous materials depends on three principal activities: accident prevention (including regulation and enforcement), emergency response when accidents occur, and research and planning. While emergency response activities arouse the most intense public interest, all three activities are interdependent and necessary. Maintaining transport safety and efficiency is technologically demanding—a task made complex by the variety and volume of materials transported and by the interlocking responsibilities of Federal, State, and local governments and the multitude of private firms involved.***

Historically, the Federal Government has taken a lead role in regulation of hazardous materials transportation and safety enforcement. State and local governments, however, are assuming greater responsibilities in this area, prompted by a growing awareness of the dangers posed by hazardous materials transportation and recognition that emergency response—at least initially—almost always falls to State and local agencies. The Senate Committee on Commerce, Science, and Transportation, mindful of heightened public concern about chemical spills and accidents involving radioactive materials and toxic substances, requested that the Office of Technology Assessment (OTA) undertake a study of hazardous materials transportation. The study, directed specifically at the issues of container technology, accident data collection and recordkeeping, and training programs for personnel involved in hazardous materials transportation or in emergency response to hazardous materials accidents, will be completed in early 1986. This review of State and local activities provides background information for analysis of the issues to be addressed in the larger study.

*This estimate includes hazardous materials carried in pipelines.

**Hazardous materials are substances or matter transported in commerce that pose risks to human safety, property, and the environment if accidentally released. Hazardous materials transported by pipeline or generated or used in military or other defense-related activities are similar in nature and pose similar risks but are excluded from this discussion.

***This document summarizes Federal programs and identifies State and local concerns. The OTA Final Report will examine in detail Federal regulations and technical programs and assess the extent to which they meet the needs identified in this report.

HAZARDOUS MATERIALS TRANSPORTATION

Statistics gathered by the Office of Hazardous Materials Transportation (OHMT)* of the U.S. Department of Transportation (DOT) indicate that there are more than 180 million shipments of hazardous materials in the United States each year. The variety of these substances is enormous and growing. Currently, more than 2,400 substances are listed in the Federal Code of Regulations as hazardous commodities; many of the more than 70,000 chemical products on the market today have not been reviewed for inclusion.[1]

Chemical products are but one kind of hazardous material. There are also biological products, fuels, petroleum products, explosives, acids, fertilizers, gaseous substances, and various forms of industrial waste. Radioactive substances are another major form of hazardous materials. More than 20,000 medical and academic institutions, laboratories, government agencies, industrial enterprises,

*Until Nov. 1, 1985, OHMT was called the Materials Transportation Bureau (MTB); OHMT is a part of the DOT's Research and Special Programs Administration.

[1]See 49 CFR 172.101.

and utilities operating nuclear powerplants generate low-level radioactive waste, amounting to an annual volume of 77,000 cubic meters and containing 500,000 curies of radioactive material.[2] A recent study by the Department of Energy (DOE) projects that this volume could double by 1990.[3] These figures do not include the high-level radioactive waste now shipped by utilities, the Department of Defense (DOD), and DOE. They also do not include the increased high-level radioactive commercial waste that will be shipped in the late 1990s once Federal storage facilities have been established or the low-level waste that will be generated as present nuclear reactors are decommissioned and dismantled. According to a recent estimate, the remains from decommissioning a single large reactor would fill well over 1,000 trucks, equaling one-quarter of all the low-level nuclear waste now generated yearly in the United States.[4]

All of these hazardous materials move by land, sea, and air modes of transportation at a rate of about 500,000 shipments per day. Truck transport accounts for about half of all hazardous materials shipments. The types of vehicles carrying hazardous materials on the Nation's highways range from tank trucks, bulk cargo carriers, and other specially designed mobile containers to conventional tractor-trailers and flat beds that carry packages, cylinders, drums, and other small containers. Rail shipments (equaling about 80 million tons a year) are commonly bulk commodities, such as liquid or gaseous chemicals and fuels, carried in tank cars. Most hazardous materials transported by barge on inland waterways are also bulk cargo. The Corps of Engineers estimates that the total inland waterborne volume is approximately 60 million tons a year. Coastal and inland waterborne volumes, combined, reach 550 million tons annually. DOT estimates that about 600,000 vehicles and vessels are regularly used to transport hazardous materials in bulk, and 700,000 carry portable containers. The transport of hazardous materials by air (either in all-cargo aircraft or in belly compartments of passenger aircraft) is insignificant in tonnage—an estimated 175,000 tons annually—but constitutes a high number of shipments. A 1980 Federal Aviation Administration study found that roughly 5 percent of air cargo at 39 major airports (amounting to 300,000 packages) contained hazardous materials, typically rather small parcels of high-value or time-critical material.

The safety record of hazardous materials carriers, as reported to the Office of Hazardous Materials Transportation, is summarized in table 1-1. For the period 1973-83, there was an annual average of 11,462 reported incidents—a rate of 1.25 incidents per 10,000 shipments.* Most of these were accidental releases during handling and loading and not vehicle accidents en route. The reported deaths and injuries caused by exposure to hazardous materials are similarly low, equaling about two fatalities per 1,000 incidents, a result both of the regulations governing hazardous materials transportation and the degree of care exercised by shippers, carriers, and others involved in accident prevention and response.** The

[2]Under the present classification system, low-level waste includes dry trash; used equipment; and solidified and absorbed liquids, gases, and sludges. Items range from spent resins from ion-exchange processes, filter materials, lubricating oils, and contaminated tools, clothing, and packaging (all of which have relatively low levels of radioactivity); to sealed sources such as Cobalt 60 for radiation treatments; to irradiated reactor components such as in-core instrumentation and control rods (which typically have higher levels of radioactivity). Taylor Moore, "The Great State of Uncertainty in Low-Level Waste Disposal," The Electric Power Research Institute (EPRI) Journal, March 1985, p. 24.

[3]U.S. Department of Energy, *Spent Fuel and Radioactive Waste: Inventories, Projections and Characteristics*, DOE/RW-0006 (Washington, DC: September 1984).

[4]Steve Olson, "Nuclear Undertakers," *Science 84*, vol. 5, No. 7, September 1984, p. 57.

*These figures are for incidents *reported* to OHMT. Some experts estimate there may be as many as three to four times as many incidents that are unreported.

**In recent years, there has been an annual average of 24 deaths and 663 injuries in hazardous materials accidents reported to DOT. Even taking into account evidence of incomplete data, to be addressed in OTA's Final Report, the death and injury toll in automobile accidents in the same period was 2,000 times greater.

Table 1-1.—Incidents Involving Transport of Hazardous Materials, 1973-83 (as reported to DOT)

Mode	Annual average			
	Incidents	Deaths	Injuries	Damages[a] (millions of dollars)
Highway	10,289	19.3	419.2	$ 8.15
Rail[b]	975	4.0	221.8	4.67
Water	26	0	3.3	0.07
Air	150	0.4	9.0	0.43
Freight forwarder	2	0	1.9	(c)
Other	20	0	7.8	0.01
Total	11,462	23.7	663.0	$13.33

[a]Property damage estimates reported to MTB within 15 days after an accident.
[b]The rail safety record improved during the period because of an increase in the number of Federal rail inspectors and equipment improvements during the early 1980s.
[c]Less than $0.01 million.

SOURCE: U.S. Department of Transportation, Materials Transportation Bureau, *Annual Report on Hazardous Materials Transportation, Calendar Year 1983.*

true costs of hazardous materials accidents are difficult to determine. A large number of incidents are not reported to OHMT, and the costs of those that are appear to be greatly underestimated. Interstate carriers are required to report any spill except those of certain consumer goods and paints and batteries to DOT within 15 days, usually long before full costs are known. Typically, carriers report only their direct costs. The annual damage cost for incidents reported to OHMT from 1973 to 1983 was $13 million. This figure is undoubtedly too low, perhaps by a factor of as much as 10,[5] if all costs associated with hazardous materials accidents are considered, including long-term cleanup costs.

Still, it is the risk of death and injury that causes the deepest concern. Hazardous materials accidents are often spectacular, although loss of life is relatively rare. No State or local official can erase the memory of an overturned load of explosives or tanker of chemicals in an area for which he or she is responsible. These experiences and the almost weekly news reports of a hazardous materials spill somewhere in the Nation, more than the official statistical record, drive the demand for strong enforcement of safety rules and improved emergency response capabilities.

[5]An OTA contractor studying accident report data has found that DOT damage reports are consistently low. For example, the National Transportation Safety Board (NTSB) listed damages of $597,000 for a February 1978 rail accident; the DOT report of the accident listed damages of $11,000. For a May 1983 rail hazardous materials accident, NTSB records showed $570,000 damages; DOT records did not show the accident at all.

Mark Abkowitz and George F. List, "Hazardous Materials Transportation: Commodity Flow and Information Systems," report prepared for U.S. Congress, Office of Technology Assessment, December 1985.

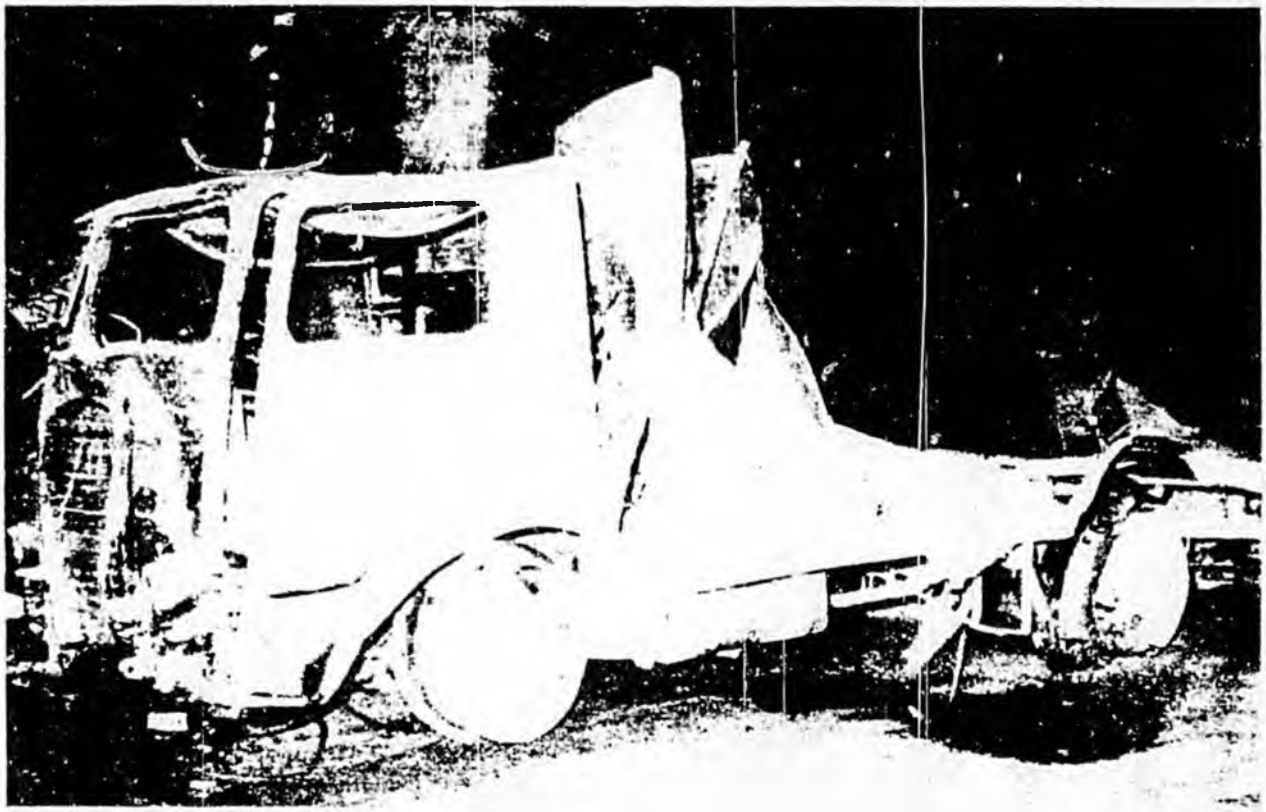


Photo credit: Research and Special Programs Administration, DOT

The remains of a truck that had been carrying chemicals, after an accident.

GOVERNMENT AND INDUSTRY ROLES

Federal

The Federal Government has four roles with regard to hazardous materials transportation: regulation, enforcement, emergency response and planning, and data collection. Responsibility for these functions is distributed among numerous departments and agencies. The departments and agencies operate under a complex set of agreements and coordination procedures, with no single agency having sole responsibility or authority over all aspects of hazardous materials production, shipment preparation, and transportation. In some instances, jurisdictions overlap. In others, responsibility is assigned depending on the type of material involved, the mode of transport, or the nature of Federal regulation.

DOT is the designated lead agency for establishment and enforcement of regulations regarding safe transportation of hazardous materials. The DOT Research and Special Programs Administration (RSPA) has authority to issue regulations on most aspects of hazardous materials transportation containers. It must coordinate with the modal administrations, the Federal Highway Administration, the Federal Railroad Administration, the Federal Aviation Administration, the National Highway Traffic Safety Administration, and the U.S. Coast Guard, which have authority over the vehicles or vessels themselves. This intra-agency fragmentation notwithstanding, DOT as an agency is responsible for identification of hazardous materials, regulation of hazardous materials containers, handling and shipments, development of standards and testing procedures, inspection and enforcement, and data collection.

Another group of agencies—DOE, DOD, the Nuclear Regulatory Commission (NRC), and the Environmental Protection Agency (EPA)—has jurisdiction over other aspects of hazardous materials transportation. DOE is largely concerned with fuels; DOD, with materials used for military purposes. NRC has jurisdiction over high-level radioactive substances in the civil sector, while EPA has responsibilities for chemicals and hazardous nonnuclear wastes. These agencies also undertake training activities and safety awareness programs, and provide technical support for State and local governments.

The Federal Emergency Management Agency is responsible for coordinating Federal assistance, planning, and training activities for emergency response with State and local governments. The Departments of Justice and Labor also have designated responsibilities and areas of interest.

The data collection function similarly is spread among several Federal agencies. The various databases maintained by those agencies record accidents and spills and monitor compliance and sometimes carrier performance. OHMT is the principal agency collecting data on hazardous materials transportation spills, but every other Federal entity keeps records pertaining to its area of interest. There is no central clearinghouse to collect and analyze hazardous materials transportation information.

State

The States mirror Federal functions and responsibilities to a degree, but the structure is by no means uniform or even comparable from State to State. Some States have extensive programs of regulation, enforcement, emergency planning, and training. In others, programs are still in a formative stage. The functions and activities listed in table 1-2 indicate the range and nature of State involvement, not the situation in every State. State programs, like their Federal counterparts, are characterized by a multiplicity and diversity of activities and areas of jurisdiction, complicated in many instances by differences between Federal and State agencies as to definitions of hazardous materials, regulatory requirements, transportation restrictions, and stringency of enforcement.

Regulatory activities are a major feature of many State programs. State regulations may require licensing or registration of hazardous materials transporters, imposition of fees and taxes (often as an extension of the licensing function), prenotification, and routing restrictions. States also maintain inspection and enforcement programs and may require special safety procedures.

Other important State functions are planning and training for emergency preparedness and response. Training is conducted in cooperation with local

Table 1-2.—Hazardous Materials Assistance Commonly Available From State and Local Agencies

State:
Civil Defense: Communications, coordination, evacuation, radiological monitoring.
State Police: Traffic control, communications, evacuation.
Environmental: Chemists, environmental scientist meteorologists, lab services, some equipment, knowledge of contractors.
Public Works: Construction equipment and operators.
Public Health: Health specialists.
Agriculture: Pesticide and/or fertilizer experts.
Fire Marshal or Fire Academy: Fire suppression advice.

Local:
Fire Department: Trained firefighters and specialized equipment for: 1) suppressing fires, 2) rescuing injured or trapped persons and 3) dealing with select hazardous materials.
Public Works: Equipment and personnel to contain spills by digging trenches or constructing dikes. Can usually provide sand—an excellent sorbent for spilled hazardous materials.
Police: Communications equipment and traffic/crime control at scene of spill.
Civil Defense: Equipment for monitoring radioactivity. Will usually coordinate the response of various agencies.
Public Health Agency: Advice on the chemical properties of the materials and human health effects.

SOURCE: U.S. Department of Transportation, Research and Special Programs Administration, *Community Teamwork: Working Together to Promote Hazardous Materials Transportation Safety: A Guide for Local Officials*, May 1983, p. 58

agencies and often with some technical assistance and financial support from the Federal Government and industry. Since States are also responsible for emergency programs, civil defense, police, fire, environmental, and public works agencies may all play roles in State hazardous materials activities, making program coordination difficult. In rural areas and small towns, State agencies may constitute the first response team.* In metropolitan areas, local governments usually assume this function.

Local

Diversity of function and concern also exists at the regional and local levels of government. Some major cities and metropolitan areas exercise regulatory, inspection, enforcement, and licensing functions akin to those of Federal and State agencies. Many have undertaken emergency planning and training activities, either on their own or with assistance from Federal and State hazardous materials offices. The most important and most nearly universal local function, however, is emergency response.

Almost 75 percent of the U.S. population lives in metropolitan areas, where the majority of hazardous materials are produced, transported, and used. Local fire and police departments constitute the first line of response in the event of a hazardous materials accident, and local hospitals and health officials bear the brunt of treating accident victims. Local resources are also the first used to prevent the spread of contamination or to evacuate the area around an accident site.

The diversity of local functions is equaled by a wide range of capabilities. Some locales have well-developed emergency plans, adequately trained and equipped response teams, and sufficient resources for hazardous materials containment and cleanup. Others, particularly small urban and rural jurisdictions, must rely on local fire and police departments that most often have little or no training or experience in dealing with hazardous materials.

Industry

An important adjunct to Federal, State, and local government resources are the safety-related programs and capabilities of the industries that produce and transport hazardous materials. Some of the more than 50 national industry associations are made up of hazardous materials producers and users —e.g., the Chemical Manufacturers Association, the National Agricultural Chemicals Association, and the American Petroleum Institute. Others are transportation associations such as the American Trucking Associations, the American Waterways Operators, the Association of American Railroads, and the Air Transport Association.

Industry programs provide employee, client, and contractor training in the handling and transport of hazardous materials and in emergency response. Some industries maintain special response teams to aid State and local authorities at an accident site; others offer funding for training and equipping State and local first response teams. Industry associations and individual firms also contribute to State and local planning, prevention, and education efforts, either by underwriting part of the cost of such programs or by providing technical support. Voluntary standard setting in support of hazardous materials safety varies widely from company to company.

*First responders are those agencies, such as police or fire, that are called initially when an accident involving hazardous materials occurs. They may be followed by State and local health authorities and environmental cleanup crews.

ORGANIZATION AND SCOPE OF REPORT

This special report, which documents findings pertaining to State and local activities, is the outgrowth of an OTA workshop held on May 30, 1985, and a series of meetings between OTA and government, industry, and academic experts on hazardous materials. The workshop examined the results of OTA's initial research and literature review of State and local capabilities and activities in the areas of accident prevention and emergency response. The comments of workshop participants, supplemented by follow-up interviews and analysis of key points by OTA staff and an extensive review process, form the basis for the material and findings presented here.

Concerns of State and local governments about the transportation of hazardous materials focus on accident prevention and enforcement, emergency response, and collection of information to support planning for emergency preparedness. OTA found that while a hazardous materials accident in any mode of transportation will involve State and local public safety officers, highway and rail hazardous materials accidents tend to concern public officials the most. No other public organization, such as a port authority or the Coast Guard, is likely to be available to provide immediate assistance to State and local public safety personnel for either truck or rail accidents.

This report will emphasize truck transportation because it is of greatest concern to State and local officials. Trucks carry more hazardous materials than any other mode of transportation, and there are many more trucks than other vehicles or vessels carrying hazardous materials. Finally, trucks travel on public rights of way through every jurisdiction, mingling with other traffic and thus increasing spill and accident risks.

Three subjects are addressed in the chapters that follow:

- State prevention and enforcement programs;
- emergency response training, planning, and implementation; and
- information collection for State and local planning.

General findings are presented below. Detailed findings and supporting material are contained in each chapter. It should be noted that the findings presented in this special report will be considered in the context of Federal programs and other resources in a second OTA report to Congress, *Transportation of Hazardous Materials*. The second report will include policy options for consideration by Congress in 1986.

GENERAL FINDINGS

Financial assistance for enforcement and response training and planning activities is needed by many localities. Potential sources of funds include Federal, State, or local assistance, cooperative programs with industry, and registration or user fees.

Movements of gasoline and petroleum products, by far the most frequently transported hazardous materials,* account for more hazardous materials transportation accidents, injuries, and damage than transport of any of the other classified commodities. State and local enforcement, emergency response, and planning personnel should focus on this problem in cooperation with industry representatives. Attention should be given to developing additional safety measures and programs to promote better awareness and training of drivers, handlers, and enforcement personnel. Generally, emergency response personnel are already trained to handle gasoline incidents.

State and local enforcement and emergency response personnel are dissatisfied with the information accompanying hazardous materials shipments. Placarding requirements should more accurately reflect the degree of hazard of the material, and shipping papers should include more information on the nature of the hazard posed and accident mitigation techniques.

Prevention and Enforcement

National standards establishing uniform State hazardous materials requirements and regulations would simplify and improve compliance by shippers, carriers, and State and local enforcement

*According to data provided by the American Petroleum Association and OTA calculations, these products comprise about 50 percent of total hazardous materials movements.

activities. State, regional, and local agency concerns as well as those of industry should be considered in formulating standards. The areas where uniformity is most needed are:

- **Licensing** to ensure that drivers and others handling hazardous materials are qualified and have been properly trained. Some form of a national truck driver's license is favored by many State, local, and industry officials.
- **Permit or registration requirements** to obtain information and collect fees in a coordinated manner that does not unduly burden transporters and ensures that money collected is used to meet related needs.
- **Shipment notification systems** that provide useful information for localities without unduly burdening carriers.

Penalties for regulatory violations, including failure to report hazardous materials incidents, should be consistent across governmental and jurisdictional levels and sufficiently large to discourage future infractions. An effective enforcement program requires that legislatures, enforcement agencies, and courts be aware of the death, injury, property damage, and environmental harm that could result from accidental release of hazardous materials and set penalties accordingly.

State and local enforcement personnel need additional training and current information on hazardous materials regulations for all modes of transportation. Methods used by the Federal Government to deliver this information to State and local officials need to be improved and strengthened. Programs to educate shippers and carriers on safety measures and regulatory compliance need strengthening as well.

Emergency Response

An effective way to deliver hazardous materials training to first responders is the most pressing national need in emergency response. Many different and successful training programs exist, but they are not reaching sufficient numbers of first responders, especially in the smaller urban and rural areas. Moreover, some training programs are simply inadequate.

Maintaining existing response programs through refresher training and training of new personnel to fill vacancies created by turnovers in response teams is financially difficult for most jurisdictions.

National guidelines for different levels of training and national certification standards for responders are needed. Advanced hazardous materials training is appropriate for personnel in large jurisdictions, along major transportation corridors, or in States with heavy concentrations of hazardous materials industries. The numerous existing training programs need to be systematically examined and evaluated.

National equipment guidelines for emergency response are needed to assist response organizations in equipment selection.

When formulating hazardous materials emergency response plans, communities should consider formal, written mutual aid agreements with regional and adjacent local jurisdictions and Good Samaritan laws to protect first responders from liability when they respond to incidents for which they are not responsible.

Planning and Data Collection

Improved data on hazardous materials storage and commodity flow is needed by State and local governments for analyzing accident prevention techniques such as routing and planning for emergency response. Federal databases pertaining to commodity flow are kept by a wide variety of Federal agencies, but the agencies do not use the same commodity identification codes, and the databases are not interactive. The data are not useful to State and local governments, some of which have undertaken data collection on their own. Data collection efforts would be improved by coordinating existing Federal data resources and providing State and local access to them. National guidelines on hazard assessment data collection for local government would also be valuable. In the absence of national legislation, right-to-know laws should be considered by jurisdictions. Such laws are an important aid in gathering information on the identities and associated hazards of the chemicals most likely to be encountered.

A reliable, comprehensive Federal accident record system is essential. Current Federal efforts are too fragmented to be useful to State and local agencies, or to carriers, which could use the findings to develop or modify their own safety programs. Existing Federal databases that record data on accidents, violations, and shippers and carriers that do not comply with regulations would be more useful if they were interactive and were made accessible to State enforcement personnel. The SAFETYNET Program, being developed by the Federal Highway Administration, and the National Driver's License Registry, being developed by the National Highway Traffic Safety Administration, should help, but their full implementation is at least a decade away.

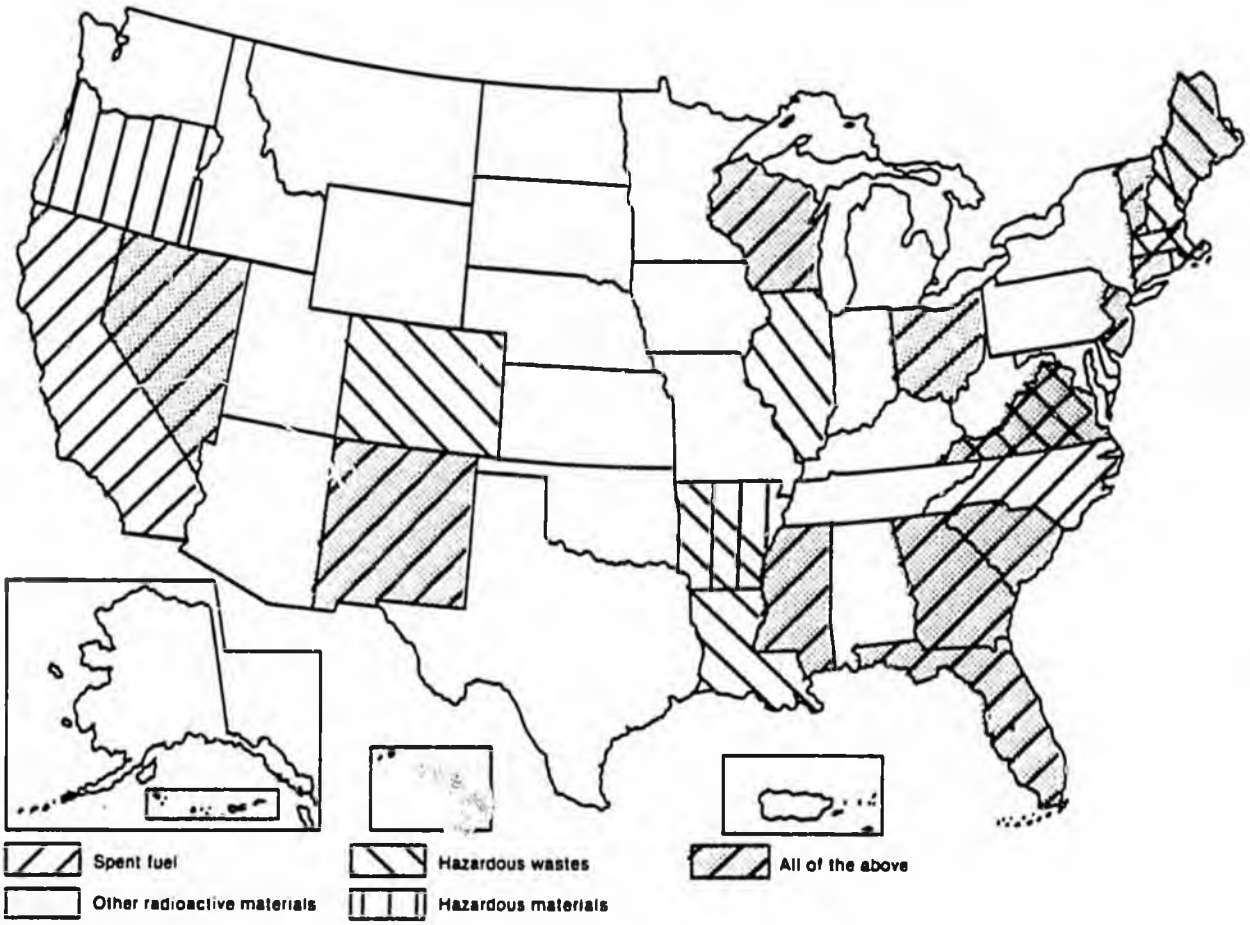
A more clearly defined and smoothly functioning Federal authority for hazardous materials transportation is needed. The current designation of DOT as lead agency and RSPA as lead group within DOT has not resulted in clear lines of authority or intermodal coordination for transporting hazardous and radioactive commodities and wastes. While a number of federally sponsored activities have made important contributions to the development of municipal and State programs, the absence of effective Federal program coordination means that jurisdictions have difficulty gaining access to available information, planning, and financial resources.

The lack of interagency coordination at the Federal level is often replicated at the State level, compounding the difficulties of regional and local jurisdictions.

Up-to-date technical information is needed for planning emergency response. Current toxicological, chemical, and health data should be compiled, updated regularly, and made accessible to planners and responders.

State and local officials are concerned about shipments of chemical weapons and explosives or radioactive materials by DOD and DOE. While these officials understand the need for secrecy about such shipments, they seek guarantees that Federal enforcement will be stronger and when an accident occurs, emergency response efforts will be adequate.

Figure 2-3.—States With Hazardous Materials Notification Requirements by Type of Material, 1985



SOURCE: Office of Technology Assessment.

regulation or had the potential to cause transportation delays or traffic diversions.[39]

Routing

Routing is an important tool for local governments to use in preventing or reducing the consequences of hazardous materials accidents, and increasing numbers of cities, counties, and townships are adopting ordinances requiring hazardous materials carriers to use designated routes. Careful routing decisions mean that hazardous materials shipments are restricted to the safest routes, often interstate highways and beltways, thus reducing the overall risk of an accident as well as risks on local streets and highways. In addition, routing is a low-cost prevention measure that local police can enforce without additional equipment or training. On the other hand, routing requirements may lengthen and complicate trips for truckers, and sometimes bring local governments into conflict with each other or with Federal regulations protecting interstate commerce.

The only Federal requirement pertaining to routing of nonradioactive hazardous materials is general:[40]

> Unless there is no practicable alternative, a motor vehicle which contains hazardous materials must be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys.

[39]See for example IR-16, 50 F.R. . 871, May 20, 1985. DOT has adopted the NRC notification requirements.

[40]49 CFR 397 9(a)

Alaska State Legislature

Representative Niilo Koponen

FAIRBANKS
Box 252
Fairbanks, Alaska 99707
479-6782

JUNEAU
Pouch V
Juneau, Alaska 99811
465-4992

MEMO to Resource Committee Members

From Doug Yates/ staff to Koponen

4/30/86

RE: HB 673

Enclosed please find new additional supporting material on the need for legislation in this area. Sections of specific relevancy are highlighted for your convenience.

Hazardous materials emergencies: response and control

Sandra A. Barker, BSIT
Executive Director
Eastern Connecticut EMS Council, Inc
Norwich, Connecticut

EMERGENCY MEDICAL services (EMS) personnel are often not prepared to adequately and safely respond to an emergency that involves a hazardous material. Much attention has been paid to the risks these materials pose to the community and its residents, by all levels of government and the private sector. However, most EMS providers have done little to protect themselves against the many dangerous materials they may encounter in rendering prehospital care. The *Code of Federal Regulations* (Title 49) defines these hazardous materials as any substance or material capable of posing an unreasonable risk to health, safety, and property.[1-3]

Major disasters involving these materials—such as the toxic release from the Union Carbide plant in India that killed more than 2,000 persons and other disasters of lesser magnitude—have gained the attention of local, state, and federal officials. Pending legislation, lawsuits, and stricter regulations, as well as more effective methods of enforcement are being considered as a result of such tragic events. In addition, industry's loss of credibility will be difficult to overcome.[1-4]

ECQ, 1986, 2(1), 1-14
© 1986 Aspen Publishers, Inc.

Other incidents involving hazardous materials happen every day on railways and highways, in industry and at home. The threat of acute exposure to these materials requires that certain precautions be implemented early in the incident.

Western life style has created a dependency on the tens of thousands of chemicals used every day. While these chemicals bring economic benefits to society they also pose a public safety problem. Swimming pools need chlorine to purify the water; farms and home gardens use various quantities and strengths of pesticides; motorists use gasoline; homes are heated by fuel or natural gas; industry uses various chemicals to manufacture products; and research and medical facilities use nuclear and chemical products to improve overall health conditions.

More than 70,000 chemicals are produced, and the number increases by 1,000 chemicals annually.[1] These materials are manufactured, stored, transported, and used in every community in the United States. The Chemical Manufacturers Association estimates that more than 250 million tons of chemicals are produced every year resulting in more than 90 million shipments of hazardous materials, which clearly demonstrates their importance to the nation's economy.[5-6] Most people would be surprised to know exactly how many dangerous materials are shipped every day by truck, air, ship, and rail through their community.

EMS response personnel and other public safety providers become at risk when they are dispatched to the incident that may result in fire or toxic threats, or trauma, as well as effects that may not be manifested for days or weeks. An incorrect action early in the incident can result in immediate death; dangerous chemicals carried to the emergency department can injure or kill hospital workers; and although the danger may not be immediate, long-term health hazards may result.

John Cashman, author of *Hazardous Materials Emergencies—Response and Control*, cites the following examples of EMS responses, some resulting in further consequences for the emergency department and its staff:[7]

June 13, 1981, Lancaster, Pennsylvania. Two emergency medical technicians (EMTs) and a volunteer fireman died trying to rescue a young boy who had attempted to get a grass catcher he had dropped into an abandoned septic tank. The septic tank had been used for some time to dispose of grass clippings which decompose and produce methane gas. The first medic to enter the tank was overcome. The second medic wore an air pac and was able to secure a rope to the boy, but he removed his air pac to assist his partner and was also overcome. Two volunteer firefighters followed; one was also overcome while the other rescued the boy.

November 4, 1981, Castiac, California. When a degreasing agent leaked from a truck 58 persons were sent to the hospital with nausea and dizziness; 11 were admitted, including 3 hospital emergency department workers who breathed fumes from the patients while assisting in patient care.

January 26, 1982, San Diego, California. Three sailors died and seven were injured from exposure to freon gas. Six were crewmen, but the seventh was a naval hospital corpsman who became ill after administering mouth-to-mouth resuscitation to the injured.

December 17, 1980, San Diego, California. Rescuing three victims from a vehicle accident required a lengthy extrication. During the process, containers of pesticides thrown from the truck were discovered. Paramedics and victims of the accident suffered from delayed effects of pesticide poisoning.

EMS IMPLICATIONS

Hazardous materials properly contained or controlled do not present a problem to EMS responders. However, when an accident occurs, hazardous materials containers may leak, rupture, or be punctured. Once this occurs the leaking substance, combined with the atmosphere or other substances, can become unstable and very dangerous. For example, a derailed train carrying a variety of chemicals can pose a hazard to responders, residents, and essential community services. It may also contaminate the water supply making it unsafe for human consumption for an extended period of time. Decisions must be made ranging from initial response procedures to caring for the injured to evacuating everyone in the surrounding area. These decisions must be based on the identity of the chemical and its potential hazard to the safety of the responders, the injured, and the community residents. To be considered are questions of who should be notified, who is in charge, where patients will go, and certainly who will pay for services and damage.

Accidents of this magnitude attract a variety of agencies. In a report completed for the Federal Emergency Management Agency, 23 serious hazardous materials incidents were investigated. It was determined that at a typical rail accident as many as 260 officials from 17 different agencies may respond. EMS officials make up 14% of this response (Fig 1).[1,5–6] This is a significant planning fact for the EMS system.

The local community relies on its public safety network to manage the incident until responsible agencies arrive and provide the necessary technical expertise. The majority of physical injuries are received in the first few minutes of the incident. However, the first responders are least likely to have the proper training. Although the majority of hazardous materials incidents are managed by the fire chief, technical expertise is available from various agencies. This expertise may arrive in a timely fashion, but the local responders are quite alone for the initial minutes no matter what the magnitude of the event.

It is the response techniques required during the initial stages of an accident that the EMS personnel must address. Although the overall tactical responsibility for such an incident rests with the fire service or with the agency or person who holds jurisdictional authority for hazardous materials response, the fact remains that the first person to respond to the scene in many parts of the country may very well be an EMT. The EMT is relied on not only to provide patient care to the sick and wounded, but also to assist fellow responders should they be overcome or injured.

Without an overall awareness of the potential dangers, EMS personnel find it difficult to overcome the "rush-in" urge to provide patient care. At this point an EMT can quickly become part of the overall problem rather than an integral part of the solution, for the untrained are often the victims. A hazardous materials incident may pose the ultimate in danger for emergency services personnel.[8–9]

In an effort to provide the same standard of care as in "routine" emergencies, the predictable response is to rush in and render lifesaving measures.[9] Without a defined, safe approach to a hazardous materials incident, injury and death may occur as well as unnecessary damage to personal property and the environment.

Informal interviews with over 150 fire and EMS officials throughout the nation revealed three major concerns: EMS personnel have not had educational exposure to the serious nature of some of the chemicals they may encounter; EMS personnel often have no protective clothing and self-contained breathing apparatus to protect themselves against dangerous chemicals, or the training to use them; EMS personnel have not been trained in the

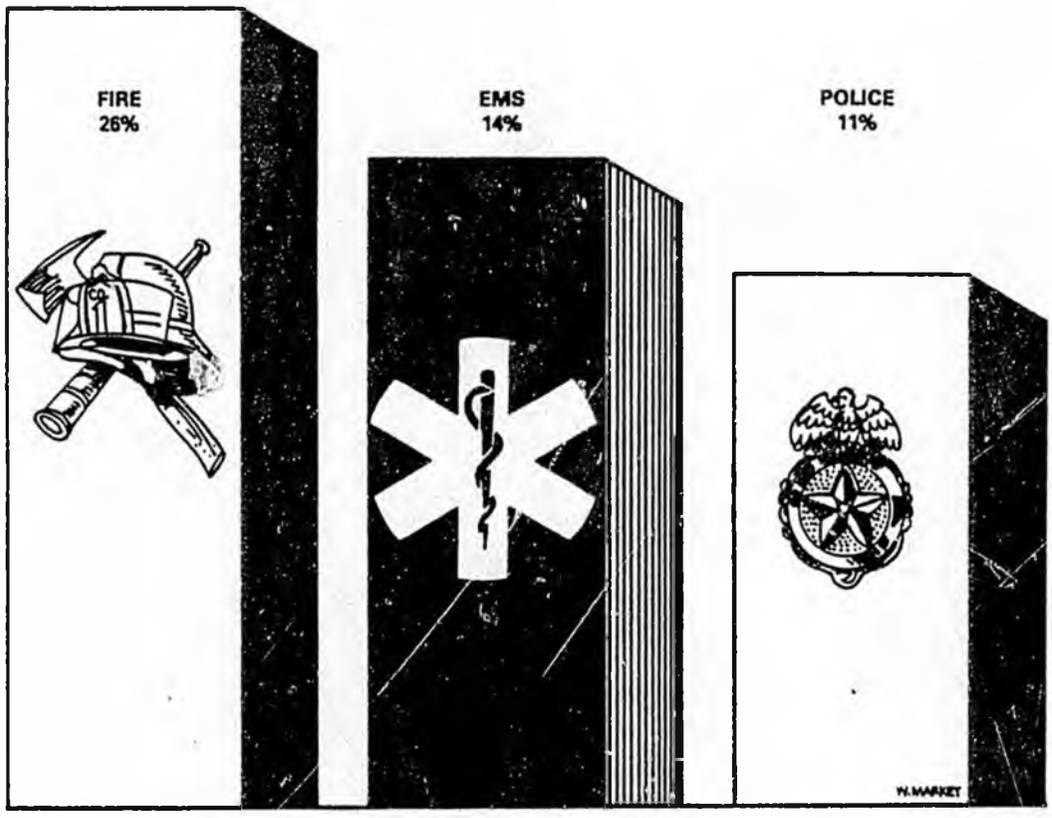


Fig 1. Responders to a hazardous materials incident at a typical rail accident.[1,5,6]

necessity and principles of contamination control and field decontamination. The validity of these concerns is evidenced in part by the previous examples.

UNDERSTANDING THE HAZARDS

The overall seriousness of the hazardous material problem is difficult to assess because of the lack of a uniform reporting system. However, this does not apply to the area dealing with transportation of these products because federal law requires that all accidents, leaks, or spills that occur during transportation of hazardous materials be reported to the Department of Transportation. A data bank has been established at the Department of Energy's Transportation Technology Center at Sandia National Laboratories in New Mexico for incidents involving radiologic materials.[1]

One study revealed that between 1970 and 1985 there were 157,792 transportation accidents involving hazardous materials. These accidents caused 241 deaths, 11,886 injuries, and $250 million in property damage.[1] According to Department of Energy statistics for the 10-year period between 1970 and 1980, 101 radioactive materials accidents were reported. The many different types of radioactive materials shipped by the government were not included in these figures. Furthermore, of the 1,114 individual packages of radioactive material involved in the accidents,

Table 1. Reported hazardous materials incidents, 1971 to 1975[1,5,6,11]

Classification	No of reports	Percentage
Flammable liquid	16,406	51.27
Corrosive materials	10,672	33.33
Poisons, class B	2,026	6.32
Flammable compressed gas	718	2.24
Oxidizing material	644	2.01
Nonflammable compressed gas	535	1.67
Miscellaneous and unknown	472	1.47
Flammable solid	183	0.57
Radioactive material	144	0.45
Explosives	122	0.38
Combustible liquid	69	0.21
Poisons, class A	27	0.08
Total	32,018	100

58 were damaged, releasing radioactive material.[10] However, the records also indicate that although some injuries and deaths resulted from the incidents, all were from causes directly related to the accident itself and not to exposure to radioactive materials. Table 1 outlines the reported accidents by hazard class.[1,5,6,11]

The above figures reflect transportation accidents only. The Oak Ridge Associated Universities Radiation Assistance Center in Oak Ridge, Tennessee, maintains a radiation accident registry that monitors accidents, mostly in free world countries. Data from this registry indicate that between 1948 and 1983, 450 persons received doses of radiation considered to be serious—21 of these exposures were fatal. The registry also includes data on those exposed to fallout resulting from the 1954 atomic weapon testing near the Marshall Islands.[1] Nuclear weapons transported in various ways and the loss or theft of such a weapon also pose a radiologic threat. Response to these accidents, although highly controlled by the U.S. government for security reasons, may also present a radiation danger for a provider of emergency services. The significant factor in these studies is that no incident has been reported in which EMTs or other responders have been injured by radiation.[11–13]

Other peacetime incidents involving radioactive materials can potentially affect emergency responders. There are 95 nuclear reactors in 35 states, either active or under construction.[1,13] Although a large amount of radiation is present, the radiation release possibilities are quite low. Communities and states involved have done considerable planning for such an occurrence and the industry itself is heavily regulated to protect the general population.

Teaching hospitals and universities use research and medical isotopes which have diagnostic and treatment functions. Radiopharmaceutical shipments, most often in packages containing low-level radiation, pose a potential threat of contamination to responders, equipment, and the emergency departments. Radioactive sources used in therapy for cancer treatment contain higher levels of radiation, but the probability of an incident involving them is much lower than that involving radiopharmaceuticals.[1]

Industrial uses of radioactive material involve many different isotopes used for different purposes, the most common being radi-

6

ography. Radiography is an x-ray–like process used for quality assurance in production. The amount of radiation required to achieve this function is high and the accident and health hazard potential becomes more significant if the source is left out of its container and not shielded by dense metal. According to the Nuclear Regulatory Commission, more than 10,000 people work in more than 1,000 companies licensed to do radiography. The emotional issues resulting from a lack of understanding of radiation are key to the concern of emergency responders even though, according to the Federal Emergency Management Agency, accidents involving radioactive materials make up only 1/50 of the documented hazardous materials incidents.[1,12]

Dealing with hazardous materials requires that EMS personnel understand the potential dangers. Health effects are not always immediate and may not occur until hours or even days or weeks after the incident occurs. In adequate response procedures, freeing the patient of dangerous chemicals, or decontamination, carries with it the threat of exposing staff, patient, and visitors in the emergency department to those same dangers. Without knowing the nature of the material and its potential danger, the hazardous chemical effects may result in a fatal outcome for both victim and rescuer.

In dealing with a hazardous materials incident, early coordination is imperative. Carefully laid out plans and procedures must be addressed before the incident occurs.[6,14–16] Each emergency responder must be able to predict the response of other emergency workers. Management of this type of emergency must begin with the safety of the responder. EMTs must be able to detect what the hazard's capability is, and then determine the correct response alternatives. The hazardous material can be identified by its required placards, occupancy and location, container shape, markings and colors, or shipping papers or labels. Placards may not present the hazard potential. In transportation accidents, for example, most dangerous substances must be placarded only if there are 1,000 lb or more.[2] However, less than 1,000 lb or a combination of many chemicals still poses a health hazard. In addition there are "gypsies," or transporters who ignore regulations; if a truck is not placarded it does not mean that a dangerous chemical is not present. The fact is, there is no guarantee; however, the starting point is the shipping paper contained inside the cab if shipped by truck, but it may be difficult to reach without proper clothing. Lives may be endangered while trying to identify the hazardous material. However, all accidents involving trucks should be considered to involve hazardous materials until proven otherwise.

DECISION MAKING

A decision-making process must be taught to EMS personnel to assist them in evaluating and assessing the scene and choosing the appropriate alternatives (Fig 2). The question is: Under what circumstances does the EMT go in? Upon arrival, using binoculars from a safe distance is most important to identify or rule out any possibility of a hazardous substance before entering the scene. Once the substance is identified, the determination can be made whether to enter the scene. The type of material and the need for protective clothing for that particular material must be assessed before entering the scene.

Because of the vast number of chemicals in use, it is impossible for any responder to know specific patient care required. It is therefore most helpful to understand broad management principles, to be able to use appropriate reference books, and to establish medical control early in the incident.

In assessing the hazards when placarding or other identification means of the material are

available, the Department of Transportation Emergency Response Guide is a recommended reference for all responders. It should be carried in every emergency vehicle. This guide allows the EMT to identify the placard on the vehicle and outlines initial emergency actions based on the material involved. At this point the decision is made whether to go in or to wait. To assist the responder in reading the placard information it is helpful to carry binoculars in the vehicle so that the situation can be assessed initially from a safe distance. Once the material is identified, the information should be communicated to the dispatcher, who will have access to additional resources that will provide more complete information. Once the decision is made to enter the scene, normal safety considerations should be adhered to.

RESPONSE TO CHEMICAL EMERGENCIES

As outlined in Fig 2, a well-calculated decision must be made even to enter the scene. Personal protective clothing should be worn as well as self-contained breathing apparatus if indicated for chemical emergencies. EMS personnel who have the training and proper clothing to enter the scene should do so on the "buddy system" with someone, appropriately clothed, ready to enter the scene if he or she needs help.[3,14]

Chemicals may cause additional complications to the patient's condition. However, triage is performed in the same manner as in other emergencies, using mechanical breathing aids as necessary.[14,17] After the primary assessment, life-saving emergency care should be given immediately, establishing medical control as soon as possible. The patient should then be removed from the area of the dangerous substance and decontaminated. After being disrobed, the patient should be washed with the appropriate solution. If water is used, or even passed into the "hot" or contaminated area, it should be contained to prevent further contamination. For example, water used to wash the patients can be con-

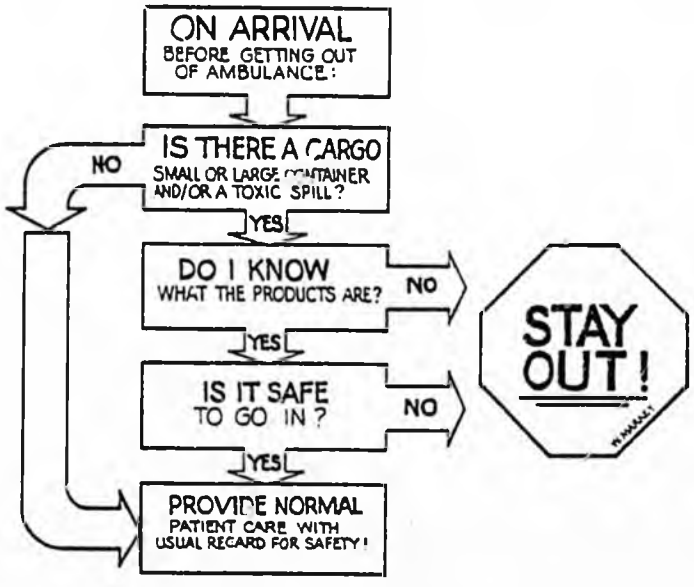


Fig 2. Decision tree for EMS responders.

tained in a child's wading pool or in a tarpaulin supported by a partially charged line in a figure-eight pattern. All equipment and personnel in the "hot" area must undergo decontamination procedures as well.

After the patient is washed or decontaminated, he or she should be wrapped in a clean blanket and transferred into a "clean" area where additional medical care can be given.

If the patient does not require advanced life support, then a basic-level EMS unit should be used to transport the patient. All unnecessary equipment should be removed to facilitate decontamination and a timely return to service. Lining or draping the floor and walls of the ambulance may help clean-up later.

Notification that the patient has been exposed to a chemical must be given early in the incident. This will allow hospitals to gather the necessary information and the physician responsible for medical control can be contacted for treatment decisions. The hospital emergency departments must also consider a separate entrance and treatment area to better control any contamination that may still be present. In addition, personal protective clothing is necessary for emergency department personnel.[12] Special holding tanks are necessary to contain decontamination solutions, and floor drains in this area should not be connected directly to the sewer system. The goal is to contain all contamination at the scene and keep the ambulance and the emergency department as "clean" as possible (Fig 3).

RESPONSE TO A RADIATION ACCIDENT

As a result of the accident at Three Mile Island in 1979, opportunities for training medical responders to respond to an accident at a nuclear power plant have increased, particularly within the 10-mi emergency planning zone of a nuclear power plant. Participation in emergency preparedness exercises conducted by the utilities, as required by the Nuclear Regulatory Commission, has focused on an integrated community response to an unplanned event or release of a radioactive material. However, as with chemical emergencies, little training is brought to medical responders who may be present at an industrial accident, transportation accident, or medical or research facility accident.

The decision process presented earlier also applies to the radiation accident. Because some radioactive materials are combined with chemical substances, it is important that the EMT have this information before entering the scene.[11–13,18]

Once it is determined that the radiation is not combined with other harmful chemicals the primary mission of emergency medical responders is to provide life-saving care to the victims.[12] Once life-threatening injuries are attended to, the victim can be moved a safe distance from the radiation. Life-saving treatment should not be delayed in the attempt to decontaminate the victim.[1,12,13]

A victim may have been exposed to radiation but not contaminated. For example,

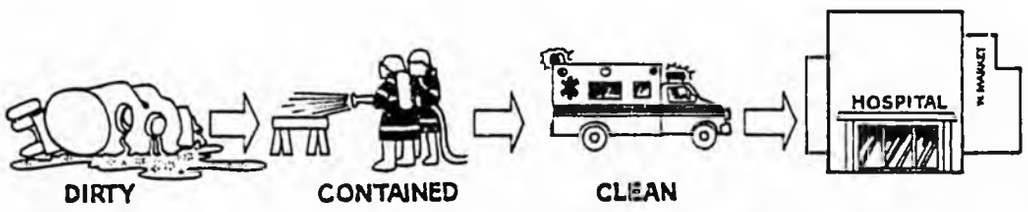


Fig 3. Response to a hazardous materials emergency.

exposure to radiation occurs when someone is near an unshielded gamma source such as is used in radiography. Occasionally at an accident scene, contamination occurs when radioactive particulate matter becomes airborne. If a radioactive material spills, it combines with dust; the dust may become airborne and contaminates anything or anyone it falls on.

As in chemical emergencies, full protective clothing should be worn to protect the rescuer from radioactive contamination. The protective clothing can easily be removed, aiding decontamination. However, it affords no protection against gamma radiation. For this reason, it is important to control the length of time of exposure and the distance from the radiation source, and to use any shielding available. Again, the first priority is the patient. Sound judgment should be used and emergency medical care rendered. If contamination is present or there is a threat of exposure to radiation, a "hot" zone should be established. The boxed information[12] outlines the recommended response for emergency medical personnel to radiation accidents.

Field Operation Protocols for Radiation Accidents[12]

1. Approach site with caution—look for evidence of hazardous materials.
2. If radiation hazard is suspected, position personnel, vehicles, and command post at a safe distance (200–300 feet) upwind of the site.
3. Notify proper authorities and hospital.
4. Put on protective gear and use dosimeters and survey meters if immediately available.
5. Determine the presence of injured victims.
6. Assist and treat life-threatening injuries immediately. Do not delay advanced life support if victims cannot be moved or to assess contamination status. Perform routine emergency care during extrication procedures.
7. Move victims away from the radiation hazard area, using proper patient transfer techniques to prevent further injury. Stay within the controlled zone if contamination is suspected.
8. Expose wounds and cover with sterile dressings.
9. Victims should be monitored at the control line for possible contamination only after they are medically stable. Radiation levels above background indicate the presence of contamination. Remove the contaminated accident victims' clothing.
10. Move the ambulance cot to the clean side of the control line and unfold a clean sheet or blanket over it. Place the victim on the covered cot and package for transport. Do not remove the victim from the backboard if one was used.
11. Package the victim by folding the stretcher sheet or blanket over and securing the victim in the appropriate manner.
12. Before leaving the controlled area, rescuers should remove protective gear at the control line. If possible, the victim should be transported by personnel who have not entered the controlled area. Ambulance personnel attending victims should wear gloves.
13. Transport victims to the hospital emergency department. The hospital should be given additional, appropriate information, and the ambulance crew should ask for any special instructions the hospital may have.
14. Follow the hospital's radiologic protocol upon arrival.
15. The ambulance and crew should not return to regular service until the crew, vehicle and equipment have undergone monitoring and necessary decontamination by the radiation safety officer.
16. Personnel should not eat, drink, smoke, etc, at the accident site, in the ambulance, or at the hospital until they have been released by the radiation safety officer.

10 **AN EMS SYSTEMS PROBLEM**

Local, county, and state EMS officials must address hazardous-materials response as a systems problem. Should EMS have a role and, if so, what measures must be implemented to help ensure a successful, safe response?

The decision tree for EMS personnel is one result of comprehensive planning. This protocol or guideline outlines a community's intended response. It clearly defines the decision process, basing actions—agreed on ahead of time—on the nature of the incident.

When several communities in New England were preparing for a hazardous materials exercise, response organizations held many meetings to determine just what individual agency roles would be. Would EMS units be involved in patient care during initial rescue operations? The decision was no, because of the lack of training and protective clothing. EMS responders would receive the patient after initial decontamination had been performed. Considered were the expense and storage of fully encapsulated suits on the emergency vehicle. This process helped all community leaders to address the issue of the danger faced by EMS personnel when responding to a vehicle accident where gasoline or other substances could cause fire. New procedures were implemented for routine calls as well until protective clothing could be purchased and provided to EMS responders.

The final decision made before the exercise was the definition and assignment of roles. The fire service would perform rescue and initial decontamination. EMS providers would receive the patient, establish medical control, and provide patient care before and during transport. Although this planning was done as an exercise, it clearly outlined the value of identifying roles and responsibilities ahead of time. Decisions were made and agreed on ahead of time, through comprehensive planning that outlined the communities' intended response.

Local communities must plan extensively to cope with a hazardous materials situation. Many community, state and federal agencies will respond to this type of incident and should be coordinated before the incident occurs.[19] Hazardous materials planning requires a comprehensive approach to define the roles of all players.

As seen in Fig 4 a survey based on Department of Transportation[1] data from 1971 to 1983 shows that 54% of deaths and 19% of injuries were caused by flammable liquids. These figures represent all reported injuries. They become very significant for EMS because they are frequently responded to and often without protective clothing. When gasoline has been spilled during a vehicle accident, accepted procedure is for the fire department to wear full protective clothing.[20] Firefighters hold a charged line (water-pressurized hose) on the vehicle in case of fire. However, should a fire occur, analysis of past accidents shows that the recommended protective clothing effectively protects against flammability.

In many communities, EMS personnel participate in rescue operations without protective clothing and therefore stand a greater chance of injury than firefighters. No one suit can protect against all hazardous materials[1,3]; nevertheless, EMS personnel need protective clothing against toxic fires and explosions. Protection from the dangers of routine vehicle accidents must be integrated into the system at a minimum. Without this basic protection, rescue operations should be left to those best equipped and trained to handle them.

As the EMS systems address these problems the question will arise of whose responsibility it is to ensure that personal protective clothing is worn. This responsibility must be shared by everyone in the system. It is the service's responsibility to provide equipment appropriate for its planned response; it is the chief or EMS scene commander's responsibility to see

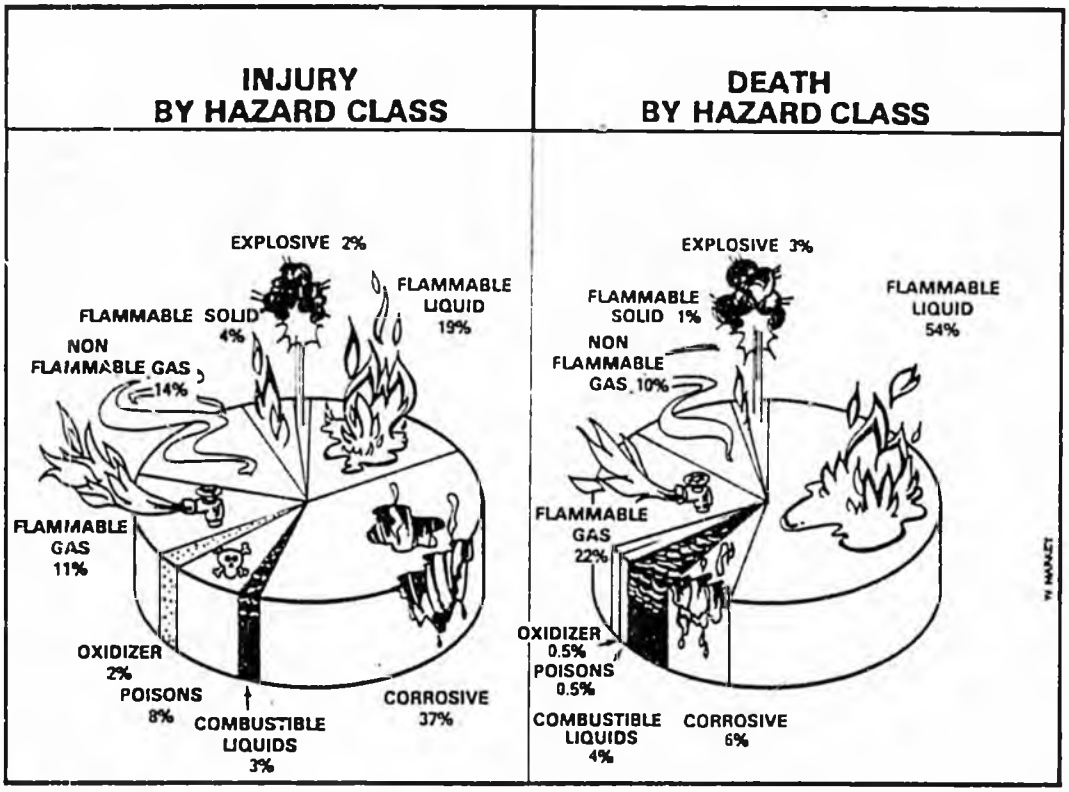


Fig 4. Percentages of deaths and injuries resulting from hazardous materials by classification of the material.

that the equipment is used; and it is the EMT's responsibility to wear it, get the required training, and keep it in good condition and use it as directed.

Training programs can be designed and provided for medical responders. At a minimum, training programs should focus on overall awareness, the necessity and use of personal protective clothing, and the use of the Department of Transportation's *Emergency Response Guide Book*. Overall awareness of the hazard is necessary to make the correct decisions that determine all future actions. A responder must have the necessary information to support the decision of choosing the right response procedures.

Because of the vast number of chemicals in use, it is practical to plan and train for the chemicals that are most likely to exist in the particular community.[1,15,16] Valuable resources should not be committed until the hazard is analyzed. In states that have "right to know" legislation, industry is required to reveal the names of chemicals stored and used on the premises. The hazard is analyzed regularly by emergency program managers. If the local EMT is participated in this activity, he or she should have first-hand knowledge of the hazardous materials likely to pose a threat to the community.

Training programs need not be expensive. Many volunteer providers are using the many resources available to them in the community, such as local industry representatives, spill response contractors, local and state health

departments and environmental agencies, colleges and universities, and fire services instructors.[5,15] The training can be conducted by modules addressing the specific concerns of a particular community. The fire service offers many courses for first responders in hazardous materials awareness. Although much of the information may be directed to the firefighter, EMS personnel can gain an appreciation and overall awareness of the importance of knowing the chemicals they are dealing with.

EMS professionals must also encourage active participation of the community hospitals in training and ensuring effective interactions between prehospital and hospital providers. Clearly defined patient care procedures must be established, trained for, and exercised. A community exercise of its hazardous materials plan is an ideal way to identify not only community deficiencies, but EMS system deficiencies that can hinder safe, effective patient care.

Prehospital care workers must identify what their role will be, and, as important, what is expected of them by the community. Once their role is defined and an analysis of the hazards completed, EMS providers can begin to assess the resources necessary to do the job safely and correctly. Training can then be directed toward this defined role; equipment purchases will be based on the need of the particular service in carrying out its community-assigned role.

• • •

EMS providers stand a greater chance of injury than firefighters because of lack of training and protective clothing. Not only is there a danger from toxicity of a chemical, but a routine auto accident poses a flammability hazard. Because of a lack of awareness of potential dangers and lack of protective clothing, EMS is generally not equipped to handle such an emergency safely.

The radiologic materials accidents that must be responded to require the same level of awareness as chemical accidents. But radiation itself generally does not pose an immediate health hazard to responders or patients if not combined with other forms of hazardous materials.

In either case, careful protective measures should be implemented while rescuing and treating the victim. Contamination should be contained in a designated area. The hospital should be notified in advance and the patient transported to a medical facility. Although EMS personnel have a role in these situations also, they must clearly define that role based on their existing training and resources.

The New England Council for Emergency Medical Services (NECEMS) has found that an incorrect response on the part of a first responder can be the cause of a multicasualty or mass casualty incident. In 1984 the NECEMS implemented a registry of mass casualty incidents; a preliminary view of the first six months of data showed that of the reported mass casualty events that involved hazardous materials, none of the injured were community residents or bystanders; they were responders to the incident who may have been untrained and unprepared.

Present trends indicate increasing interaction between public safety personnel and dangerous hazardous materials. It is the responsibility of the EMS system to respond to these trends by incorporating the necessary training, resulting in an ability to determine what they can and cannot handle.

Community leaders should be made aware of the liability they may face if public safety agencies respond without the proper training or equipment. Communities become inured to the more frequent accidents such as multicasualty injuries on the highways; however, a

bizarre accident, such as deaths of either responders or residents caused by a hazardous material, raises a public outcry.[21,22]

Emergency response officials must have the support of community officials to provide public safety workers with the appropriate equipment and training to protect them from physical injury. These officials must have the same support to protect the community from the liability it may face if these workers are "expected" to provide this level of response without proper training and equipment.

Planning is key—whether the hazardous material is chemical or radiologic. The planning process must include businesses or industries that are the source of the hazard, as well as those that must respond to the hazard.[23–24] Through this partnership and sharing of knowledge and expertise, a community can define for itself how it plans to deal with hazardous materials.

REFERENCES

1. Nuclear-hazardous materials, integrated emergency management course (prototype). Federal Emergency Management Agency. Emmitsburg, Md, National Emergency Training Center, 1984.
2. *Code of Federal Regulations*, 49 C.F.R. §173.500, Parts 100–177. Office of the Federal Register, National Archives and Records Service, General Services Administration, October 1, 1981.
3. Carlson G, Isman W: *Hazardous Materials*. Encino, Calif, Glenco Publishing, 1980.
4. Crampton L: *Hartford Courant*. Hartford, Conn, September 22, 1985.
5. Toward a federal/state/local partnership in hazardous materials transportation safety. US Dept Transportation, (DOT) 1-82-51. Government Printing Office, 1982.
6. *Community Teamwork: Working Together to Promote Hazardous Materials Transportation Safety*. US Dept Transportation (DOT), Research and Special Programs Administration. Government Printing Office, 1983.
7. Cashman J: *Hazardous Materials Emergencies—Response and Control*. Lancaster, Penn, Technomic Publishing, 1983.
8. Mitchell JT: *Disaster Stress Syndromes*. College Park, Emergency Health Services Department, University of Maryland, (unpublished).
9. Mitchell JT: *The Leading Edge*. College Park, Emergency Health Services Department, University of Maryland, (unpublished).
10. Federal Emergency Management Agency: *Fundamentals Course for Radiological Response Teams*. Publication No. SM82. Government Printing Office, 1984.
11. *Transportation of Hazardous Materials*. Urban Consortium for Technology Initiatives, US Dept Transportation. Government Printing Office, 1980.
12. Ricks RC. *Prehospital Management of Radiation Accidents*. Oak Ridge, Tenn, Oak Ridge Associated Universities, 1984.
13. *Hazardous Materials Emergency Response*. Memphis, Tenn, Environmental and Safety Designs, City of Memphis, Division of Fire Services, 1982.
14. Haddad LM, Winchester JF: *Clinical Management of Poisoning and Drug Overdose*. Philadelphia, WB Saunders, 1983.
15. Bunner WR, LeFrancois TD: Spill training at bargain prices. *Fire Service Today* 1983 (June).
16. *A Planning Guide for Hazardous Materials Contingency Plans*. Federal Emergency Management Agency, FEMA-10. Government Printing Office, 1981.
17. Doyle C. *Field Decontamination and Triage in Chemical Emergencies*. Ann Arbor, University of Michigan, 1983.
18. Olsen M, Ricks RC, Stutz DR: *Hazardous Materials Injuries*. Greenbelt, Md, Bradford Communications Corp, 1982.
19. Isman WE: Emergency responders at a hazardous materials incident. *JEMS* 1982 (February): p 26.
20. *Emergency Response Guide Book*. US Dept Transportation (DOT) P5800.3. Government Printing Office, 1983 (Unpublished).
21. Emergency management: A challenge for public administration. *Publ Admin Rev*, 1985, 45 (Special Issue):10–17.
22. DeReamer R: *Modern Safety and Health Technology*. New York, Wiley, 1980.

14

23. *Emergency Response Planning for Transport Accidents Involving Radioactive Materials.* International Atomic Energy Agency. Publication No. IAEA-TECDOC-262, Vienna, Austria, 1982.

24. *Analysis of Hazardous Materials Emergencies for Emergency Program Managers.* Federal Emergency Management Agency. Government Printing Office, 1985.

Fairbanks North Star Borough

Mayor: Juanita Helms

March 11, 1986

The Honorable Niilo Koponen
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative ~~Koponen~~ Niilo:

I am writing in support of House Bills No. 672 and No. 673, relating to the transportation of hazardous materials within and into municipalities. The passage of these bills would enable the Fairbanks North Star Borough to track the arrival and movement of such materials in our community. Such information would be of great benefit to emergency responders in the community, and would ultimately result in a significant improvement in their ability to protect public health and welfare from accidents involving these materials.

Our one recommendation for inclusion in these bills would be a definition under HB 672 for "service district" (referenced in Section 46.03.895(b)) to ensure that all appropriate emergency responders are notified in accordance with the proposed regulations.

The Fairbanks North Star Borough endorses these bills and would like to urge your support of these measures.

Sincerely,

Juanita

Juanita Helms
Borough Mayor

JH/pld

P.O. Box 1267 Fairbanks, Alaska 99707 (907) 452-4761



April 4, 1986

Representative Nilo Koponen
Pouch V
Juneau, Alaska 99811

Dear Representative Koponen,

The League of Women Voters of Alaska supports HB673, An Act relating to transportation of Hazardous Materials in municipalities. The League promotes energy-efficient and environmentally sound transportation systems that improve the well being of cities and other communities. HB673 creates a hazardous materials transportation system.

Hazardous materials are common place. Due to increased volumes being transported the League of Women Voters supports a program which allows emergency response teams to know what hazardous materials are on the scene of an accident, to identify the safest routes for hazardous material transport and to monitor amounts and kinds of hazardous materials withing the governmental enity at any given moment.

If hazardous materials are released into the environment by accident they immediately are classified as a hazardous waste. The League of Women Voters takes strong action to ensure the safe treatment, storage and disposal of all hazardous wastes. Costs of a hazardous waste spill are minimized when appropriate response is taken to contain and minimize exposure to hazardous waste. HB673 enables emergency preparedness.

HB673 allows the Municipalities the latitude to protect the wellbeing of citizens and minimize potential damage to the health and the environment within a community.

Sincerely,

Mary Core

Mary Core
Chairperson, Natural Resource Portfolio

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Representative Peter Goll, Chairman
Members of the House Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director

DATE: March 24. 1986

SUBJECT: HB 673 - Transportation of Hazardous Substances in Municipalities

Attached is Alaska Municipal League Resolution #86-09 in support of the State giving municipalities additional authority to develop and enforce a community right-to-know program for hazardous materials handled, stored, transported, used, processed and disposed of in their communities. Based on this resolution, the League supports HB 673. The legislation authorizes, but does not require, action by municipalities who have a problem and the resources to carry out a community right-to-know program.

This legislation, if passed, along with several other pieces of legislation before the Legislature dealing with other aspects of the hazardous waste issue, will enable the State and the municipalities to better address the threat posed by hazardous substances in our communities and in Alaska.

On a related issue, I have also attached a copy of AML Resolution #86-05.

Again, the League supports HB 673. Thank you.

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. 86-09

A RESOLUTION SUPPORTING STATEWIDE
HAZARDOUS MATERIAL DISCLOSURE LEGISLATION.

WHEREAS, the handling, storage, transportation, use, processing, and disposal of hazardous materials and hazardous waste occurs in all communities in Alaska, and

WHEREAS, the potential impacts of accidents associated with hazardous materials and hazardous wastes can have devastating impacts on the public health and the environment, and

WHEREAS, knowledge of the types of hazardous materials and hazardous wastes are critical and central to a community's ability to recognize potentially dangerous situations, and

WHEREAS, firefighters, police officers and other public safety and medical professionals often lack the information necessary to respond quickly and safely to emergencies involving hazardous materials and hazardous waste, and

WHEREAS, the public has the right to know what hazardous materials and hazardous wastes are in their community;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports the adoption of state enabling legislation to allow local governments to establish a Hazardous Materials Disclosure (Community Right-to-know) Program. Such a Hazardous Materials Disclosure law should address minimum program requirements for a municipality, including:

a. Notification

b. Placarding

c. Transportation Routing

d. Transportation requirements for selected materials

e. Emergency Coordination Procedures

BE IT FURTHER RESOLVED that the Alaska Municipal League requests the Alaska Department of Environmental Conservation to work with the Statewide Task Force on Hazardous Materials to develop an equitable allocation of costs by municipal contributions, user fees, etc., by March 1, 1986.

Adopted this 16th day of November 1985.

LEO B. RASMUSSEN, President

ATTEST:

SCOTT A. BURGESS, Executive Director

CFR 49

"Freight container" means a reusable container having a volume of 64 cubic feet or more, designed and constructed to permit being lifted with its contents intact and intended primarily for containment of packages (in unit form) during transportation.

"Fuel tank" means a tank other than a cargo tank, used to transport flammable or combustible liquid, or compressed gas for the purpose of supplying fuel for propulsion of the transport vehicle to which it is attached, or for the operation of other equipment on the transport vehicle.

"Gross weight" means the weight of a packaging plus the weight of its contents.

"Hazardous material" means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

"Hazardous substance", for the purposes of this subchapter, means a material, and its mixtures or solutions, that is identified by the letter "E" in Column 1 of the Table to § 172.101 when offered for transportation in one package, or in one transport vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels; or to a mixture or solution containing a material identified by the letter "E" in Column 1 of the Table to § 172.101 if it is in a concentation less than that shown in the following table based on the reportable quantity (RQ) specified for the materials in Column 2 of the Table to § 172.101:

RQ pounds	RQ kilograms	Concentration by weight	
		Percent	PPM
5000	2270	10	100,000
1000	454	2	20,000
100	45.4	0.2	2,000
10	4.54	0.02	200
1	0.45	0.002	20

"Hazardous waste", for the purposes of this subchapter, means any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 CFR Part 262 or would be subject to these requirements absent an interim authorization to a state under 40 CFR Part 123, Subpart F.

"Hermetically sealed" means closed by fusion, gasketing, crimping, or equivalent means so that no gas or vapor can enter or escape.

"IAEA" means International Atomic Energy Agency.

"IATA" means International Air Transport Association.

"ICAO" means International Civil Aviation Organization.

"IM Tank Table" means the table (with preface) listing hazardous materials approved by the Associate Director of HMR for carriage in IM portable tanks under special conditions specified therein.

"IMO" means International Maritime Organization.

"Intermodal container" means a freight container designed and constructed to permit it to be used interchangeably in two or more modes of transport.

"Intermodal portable tank" or "IM portable tank" means a specific class of portable tanks designed primarily for international intermodal use.

"Irritating material" See § 173.381.

"Limited quantity," when specified as such in a section applicable to a particular material, with the exception of Poison B materials, means the maximum amount of a hazardous material for which there is a specific labeling and packaging exception.

"Magnetic materials" See § 173.1020.

"Magazine vessel" means a vessel used for the receiving, storing, or dispensing of explosives.

"Marking" means applying the descriptive name, instructions, cautions, weight, or specification marks or combination thereof required by this subchapter to be placed upon outside containers of hazardous materials.

"Mixture" means a material composed of more than one chemical compound or element.

"Mode" means any of the following transportation methods; rail, highway, air, or water.

"Motor vehicle" includes a vehicle, machine, tractor, trailer, or semi-trailer, or any combination thereof, propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property. It does not include a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

"MTB" means the Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590.

"Name of contents" means the proper shipping name as specified in § 172.101 or § 172.102 (when authorized).

"Navigable waters" means, for the purposes of this subchapter, waters of the United States, including the territorial seas.

"Net weight" means a measure of weight referring only to the contents of a package, and does not include the weight of any packaging material.

"N.O.S." means not otherwise specified.

"NPT" means an American Standard taper pipe thread in compliance with the requirements of Federal Standard H28, Part II, Section VII. See § 171.7(d)(12).

"NRC (non-reusable container)" means a container whose reuse is restricted in accordance with the provisions of § 173.28.

"Occupied caboose" means a rail car being used to transport non-passenger personnel.

"Officer in Charge, Marine Inspection" means a person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who under the supervision and direction of the Coast Guard District Commander is in charge of a designated inspection zone for the performance of duties with respect to the enforcement and administration of Title 52, Revised Statutes, acts amendatory thereof or supplemental thereto, rules and regulations thereunder, and the inspection required thereby.

"Operator" means a person who controls the use of an aircraft, vessel, or vehicle.

"Organic peroxide" See § 173.15

HB

7074

HOUSE

COMMITTEE REPORT

4/14

(9)

Date referred: 4/1/86

FURTHER REFERRALS: FINANCE

DATE: 4/14/86

The RESOURCES Committee has considered HB 704

"An Act relating to the disposal of state materials."

and recommends:

[✓] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[✓] zero fiscal note

	SIGNING DO PASS:	SIGNING OTHER RECOMMENDATIONS:
Shultz	Dick Shultz (first)	
Cato	Bette Cato	F. Kay Wallis No Rec
Pearce	Dave Pearce	
Sund		
Thompson	David W. Thompson	
Miller(NP)	M.W. Miller	

Co-Chairman Dick Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 704
Title : Disposal of State Materials

Sponsor : House Resources
Requestor : House Resources
Date of Request : April 14, 1986

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Land and Water Management

Components : Land and Water Public Use

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

No Fiscal Impact

Prepared by : Mike Vediner
Phone : 465-2400
Division : Land and Water Management
Date : April 14, 1986

Approved by Commissioner : Dennis D Arnold, Deputy
Date : April 14, 1986
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Alaska State Legislature
House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: House Resources Committee members DATE: April 11, 1986

FROM: Rep. Sam Cotten RE: HB 704

Background for proposed amendments to AS 38.05.115 and AS 38.35

Sec 1- Amendments to AS 38.05.115

1) There has never been competitive bidding on material sales to AS 38.35 (pipeline right of way) lessees. DNR holds an auction with one bidder present and bidding. In most cases the lessee is the only party in a position to use the materials so located.

2) This amendment will result in some savings, perhaps a few thousand dollars, in notice, publication and staff costs.

3)Sales of materials will be able to be expedited by approximately 60 days, which will result in better service to the lessees.

4) The ability to negotiate sales of material up to 100,000 cubic yards is consistent with the actual needs of pipeline lessees. It will enable such lessees to more adequately plan and prepare for major renovation and rehabilitation.

5) Policy is consistent with other statutes that allow negotiations for lessees providing a public service--public utilities under AS 38.05.810 and AS 38.05.075; those provisions allow for less than fair market value in addition to the ability to negotiate, while this proposal requires fair market value payment.

Sec 2 Amendment to AS 38.35

In an emergency situation, this section allows materials to be used to prevent resource damage in situations where there is not adequate time to comply with sale procedures. If oil were leaking into a stream, any prudent official would authorize the use of state material to prevent damage to state resources, even if it meant violating procedures. Legally the approach is sound as 1) The material would still be state property until the sale was completed and 2) the material, once removed from the ground, is personal property, not real property.

MEMORANDUM State of Alaska

TO: AS 38.35 File

DATE: 3/13/86

FILE NO:

TELEPHONE NO:

FROM: Frank G. Mielke
Division of Land & Water Mgmt.

SUBJECT: Materials, Major 38.35 lessees

Attached are a report on material used by Alyeska Pipeline Service Co., a lessee of state land under AS 38.35. as well as sample maps showing material sites, and a letter outling some problems with the exostomg 25,000 cubic yard limit.

The Operations Material Site Accounting Report, under the column "Total Contract Quantity", indicates numerous sales in excess of 25,000 cubic yards. Such sales occurring on state land must be done through competitive bidding, The requirements of AS38.05.115 which require additional notice, advertising and quction expense and time, even though only one party, Alyeska, has ever bid on the materials sold in these cases.

In February and March of 1985, pipeline subsidence in the vicinity of Milepost 200 required 75,000 cubic yards of material to prevent severe environmental damage and flow disruption. The pipe had subsided to a dangerous point, and the time delays imposed by statute increased the danger.

The federal govenment has no such requirement for the sale of materials on federal land. As more of the land is conveyed to the State, the state requirements become more critical.

Alyeska pipeline SERVICE COMPANY 1835 SOUTH BRAGAW STREET, ANCHORAGE, ALASKA 99512, TELEPHONE (907) 278 1611, TELEX 090 25 127

June 27, 1983 Letter No. 83-2098

State of Alaska
Department of Natural Resources
Division of Land and
Water Management
4420 Airport Way
Fairbanks, Alaska 99701

Attn: Jerry L. Brossia
District Manager

Re: ADL 408894
Operations Material Site 53-2

Gentlemen:

Alyeska Pipeline Service Company, Agent for the Lessees of the Trans Alaska Pipeline System, entered into negotiated Material Sale Contract ADL 403564 for 25,000 cubic yards of gravel on August 31, 1981, 25,000 cubic yards being the maximum quantity allowable under a negotiated sale to a single purchaser in any twelve-month period.

In August 1982 Alyeska's field personnel reported that the 25,000 cubic yards purchased under ADL 403564 would be insufficient to complete the pipeline workpad repair project between the Salcha River and Shaw Creek, and they estimated that an additional 9,000 cubic yards would be required. This amount was requested under a non-advertised negotiated sale, and Material Sale Contract ADL 408894 for 9,000 cubic yards was issued September 15, 1982, leaving 16,000 cubic yards available for negotiated sale to Alyeska during the twelve-month period from September 15, 1982 to September 15, 1983.

As the workpad repair project neared completion in the fall of 1982, it appeared evident that the 9,000 cubic yards would not be sufficient to complete the job. Due to the relatively short construction "window" in this area and the high mobilization costs, it was decided to finish the repair project and then make a final accounting of material used. At that time it was estimated no more than an additional 16,000 cubic yards would be required. This decision was supported by the State Pipeline Coordinator's office.

Final survey cross sections of the material site indicate that 47,391 cubic yards were removed and used in the workpad repair project. An additional 5,940 cubic yards remain stockpiled in the material site, giving a grand total of 53,331 cubic yards mined. When these figures were received and discussed with the State Pipeline Coordinator's representative, it was decided to take the following steps to "balance the books:"

1. Submit a final accounting voucher for ADL 403564 indicating that the entire contract quantity (25,000 c.y.) had been mined, include the necessary payment, and request close-out of the contract.

2. Upon receipt of notification that ADL 403564 had been closed out, file a request to amend ADL 408894 by increasing the contract quantity to 25,000 cubic yards, the maximum allowable under a non-advertised negotiated sale.

3. After approval of the contract amendment was received, submit a final accounting voucher reporting a total of 28,331 cubic yards ultimately removed under ADL 408894. The 3,331 cubic yard overrun would be accepted as a reasonable margin of error in field quantity accounting. Payment for the 28,331 cubic yards would be made at the contract unit price and the contract closed out.

The final accounting voucher for ADL 403564, including the required payment, was submitted to your office in January 1983; however, despite repeated follow-ups by our office and the State Pipeline Coordinator's office, formal notification of close-out of ADL 403564 has not been forthcoming. Because of the requirement to submit an accounting voucher for ADL 408894 by June 30, we have now run out of time for processing an amendment to the contract and are therefore proceeding directly from Step 1 to Step 3 as outlined above.

Accordingly, transmitted herewith is a final accounting voucher for ADL 408894 indicating a total of 28,331 cubic yards mined, along with a check in the amount of $13,265.50 which represents the total amount mined at the contract unit price of $0.50, less the $900.00 initial deposit. Please advise if further will be required from Alyeska in this matter.

Very truly yours,

ALYESKA PIPELINE SERVICE COMPANY

Alfred T. Smith
Associate General Counsel

ATS:RGB:sks

cc: Bruce Stafford

OMS	JURISDICTION	SERIAL NUMBER	CONTRACT EXPIRATION DATE	UNIT PRICE	TOTAL CONTRACT QUANTITY	QUANTITY PAID FOR TO DATE (FED)	QUANTITY MINED TO DATE	REMARKS
3-1.1	State	ADL-202838	08-31-90	$0.50	11,000			
3-2	State	ADL-202839	08-31-90	0.65	22,000			
5-2	S	ADL-202840	08-31-90	0.50	22,000			
7-1M	S	ADL-202841	08-31-90	0.50	22,000		9,000	
7-2M	S	ADL-202842	08-31-90	0.50	5,500			
9-3.1	Federal	AA-37877	01-29-86	0.55	5,500	5,500		
9-3.2	Federal	AA-47886	05-18-84	0.55	10,000	10,000	1,500	Paid - Expired
9-4R	F	AA-37878	01-29-86	0.55	22,000	22,000		
13-3.1	F	AA-37879	01-29-86	0.55	21,000	21,000	16,815	
14-0	F	AA-37880	01-29-86	0.55	22,000	22,000		
14-1.1	F	AA-37881	01-29-85	0.55	22,000	22,000		Paid - Expired
15-1R	F	AA-37882	01-29-85	0.55	11,000	11,000	2,500	Paid - Expired
16-3M	F	AA-37883	01-29-85	0.55	22,000	22,000		Paid - Expired
19-2.1	S	ADL-202843	08-31-85	0.90	11,000			Expired - Applied to U of A for new contract
20-1	private	N/A	09-28-88	0.75	2,000		740	Ahtna, Inc.
22-1	private	N/A	05-18-89	0.80	3,000			Ahtna, Inc.

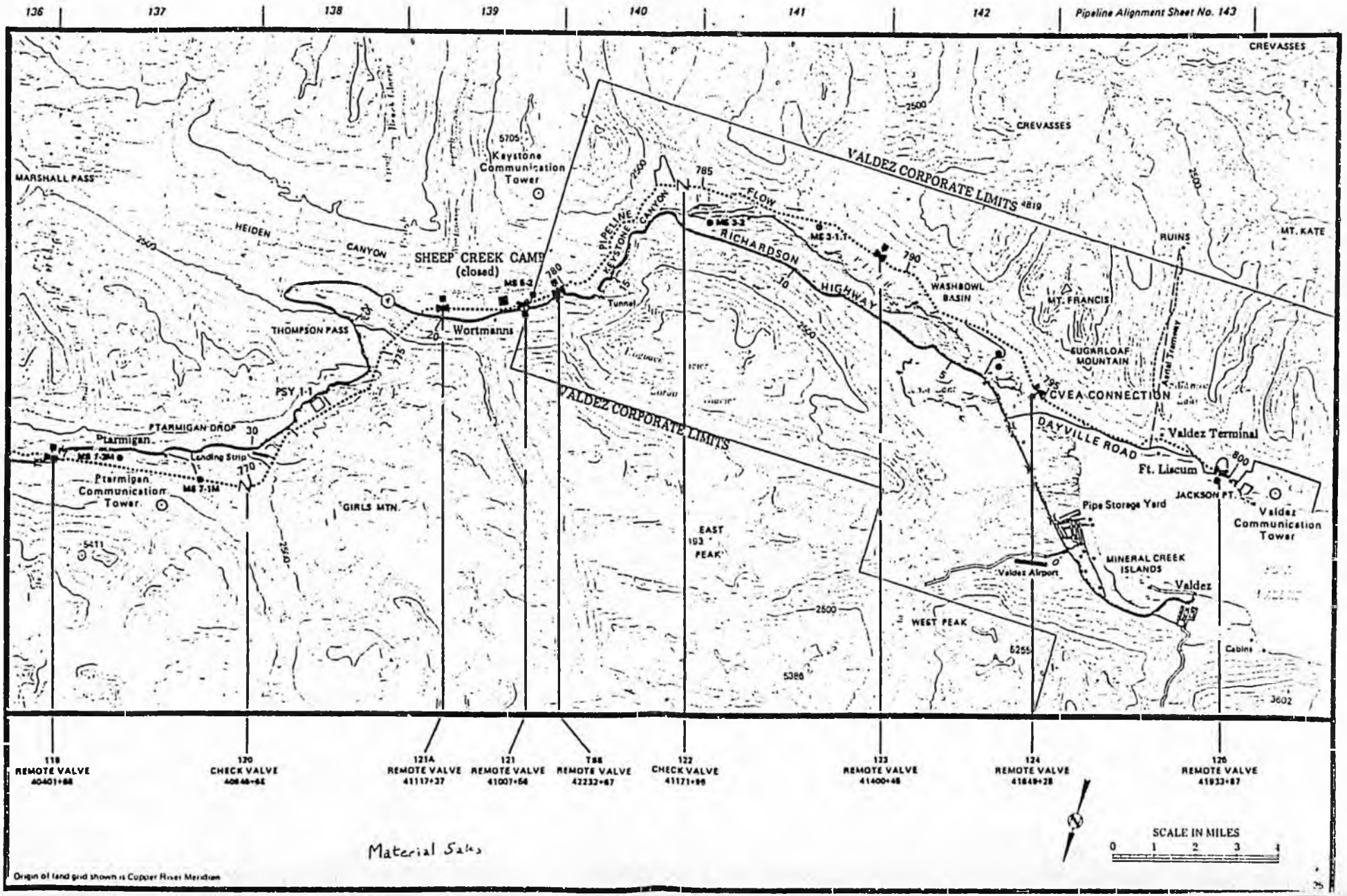
OMS	JURISDICTION	SERIAL NUMBER	CONTRACT EXPIRATION DATE	UNIT PRICE	TOTAL CONTRACT QUANTITY	QUANTITY PAID FOR TO DATE (FED)	QUANTITY MINED TO DATE	REMARKS
24-1	P	N/A	06-10-87	0.55	5,000		4,300	Ahtna, Inc.
27-3N	F	AA-37884	01-29-86	0.55	22,000	22,000		
30-0	F	AA-37885	01-29-86	0.55	30,000	30,000	25,670	
30-3N	F	AA-37886	01-29-85	0.55	11,000	11,000		Paid - Expired
32-0.0	F	AA-37887	01-29-86	0.55	22,000	22,000		
33-1.1	S	ADL-202844	08-31-85	0.50	8,250			Terminated
35-1.2	S	ADL-202845	08-31-90	0.55	11,000			
35-2	F	AA-37888	01-29-85	0.55	22,000	22,000		Paid - Expired
37-0	F	AA-37889	01-29-86	0.55	49,500	49,500	4,950	
38-1R	F	F-60946	01-29-86	0.55	22,000	22,000		
38-2	F	F-60947	01-29-85	0.55	22,000	22,000		Paid - Expired
39-1.1	F	F-60948	01-29-86	0.55	82,000	82,000	12,387	
39-4	F	F-60949	01-29-86	0.55	11,000	11,000		
41-1R	S	ADL-403913	12-31-90	0.35	11,000		770	
42-3N	F	F-60950	01-29-86	0.55	11,000	11,000	3,630	
44-1R	F	F-60951	01-29-86	0.55	41,000	41,000	13,580	
49-3	S	ADL-402446	12-31-90	0.35	50,000		16,890	
53-2	S	ADL-408894	09-15-83	0.50		53,331	53,331	

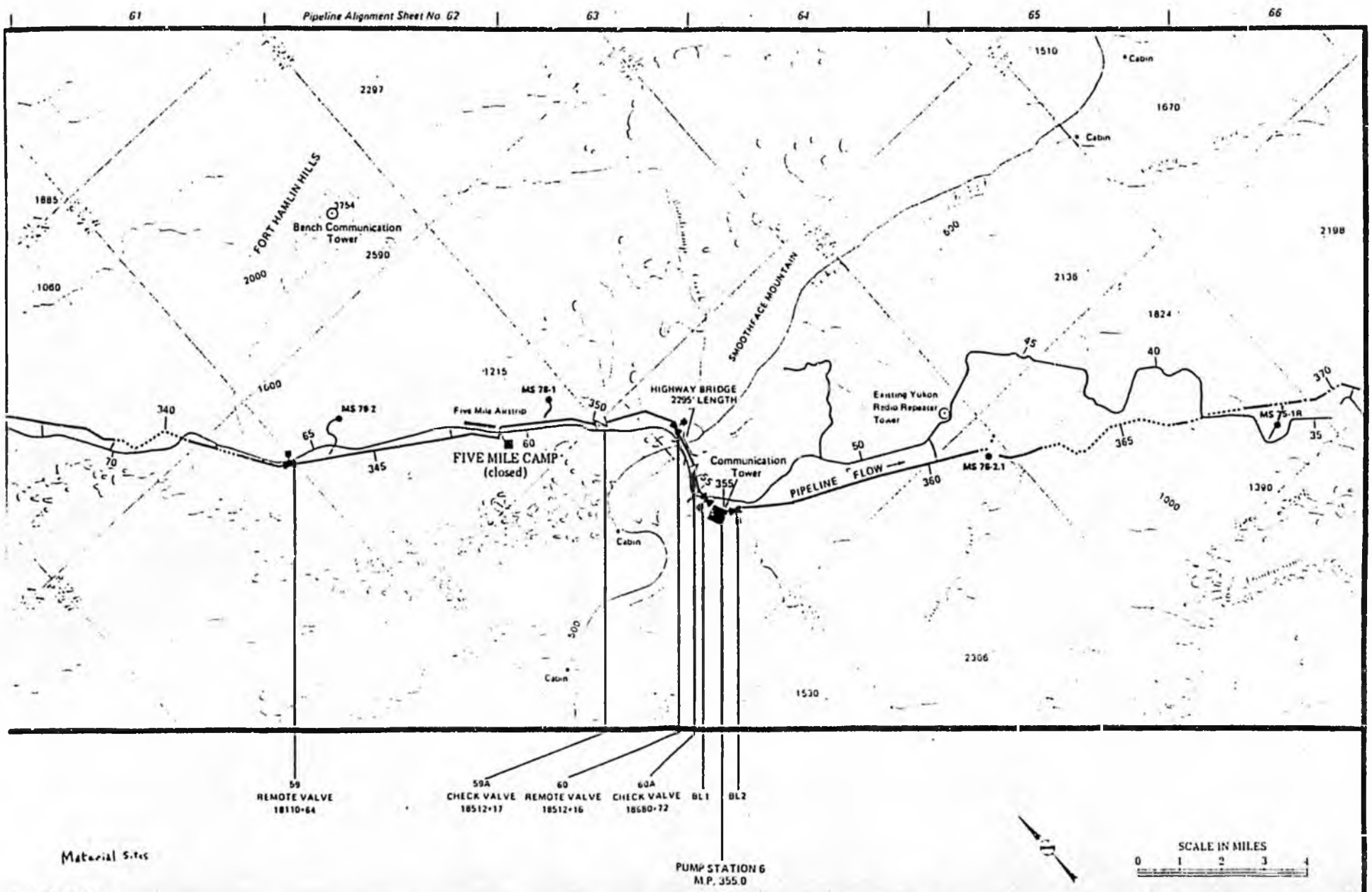
OMS	JURISDICTION	SERIAL NUMBER	CONTRACT EXPIRATION DATE	UNIT PRICE	TOTAL CONTRACT QUANTITY	QUANTITY PAID FOR TO DATE (FED)	QUANTITY MINED TO DATE	REMARKS
55-1	S	ADL-403918	12-31-90	0.35	33,000		16,995	
57-2	P	N/A	01-03-89	0.25	15,000		130	Casperson
63-1	S	ADL-403919	12-31-90	0.35	33,000			
64-2	F	F-60952	01-29-86	0.55	27,500	27,500	2,750	
[illegible]1R	F	F-80459	09-01-84	0.55	7,000	7,000	6,900	
66-1R	F (S)	F-60953	01-29-86	0.55	11,000	11,000		
68-1	F (S)	F-60954	01-29-86	0.55	82,500	82,500	7,393	
68-4	F (S)	F-60955	01-29-86	0.55	11,000	11,000	3,300	
69-1R	F (S)	F-60956	01-29-86	0.55	11,000	11,000	3,200	
70-0.1	F (S)	F-60957	01-29-85	0.55	16,500	16,500		Paid - Expired
71-0	F (S)	F-60958	01-29-86	0.55	11,000	11,000		
71-1HR	F (S)	F-60959	01-29-86	0.55	11,000	11,000	6,190	
72-2	F (S)	F-60960	01-29-85	0.55	27,500	27,500		Paid - Expired
73-1R	F (S)	F-60961	01-29-86	0.55	27,500	27,500	2,870	
74-2HR	F	F-60962	01-29-86	0.55	27,500	27,500		
75-1R	F (S)	F-60963	01-29-86	0.55	22,000	22,000		
76-2.1	F (S)	F-60964	01-29-86	0.55	33,000	33,000		

OMS	JURISDICTION	SERIAL NUMBER	CONTRACT EXPIRATION DATE	UNIT PRICE	TOTAL CONTRACT QUANTITY	QUANTITY PAID FOR TO DATE (FED)	QUANTITY MINED TO DATE	REMARKS
78-1	F	F-60965	01-29-86	0.55	11,000	11,000	9,362	
79-2	F	F-60966	01-29-86	0.55	22,000	22,000	19,307	
82-0	F	F-60967	01-29-86	0.55	16,500	16,500	2,120	
83-1	F	F-60968	01-29-86	0.55	16,500	16,500	2,953	
83-2	F	F-60969	01-29-86	0.55	11,000	11,000	10,270	
86-2	F	F-60970	01-29-86	0.55	22,000	22,000	20,230	
88-3	F	F-60971	01-29-86	0.55	11,000	11,600	11,569	
89-3	F	F-60972	01-29-86	0.55	11,000	11,000	11,000	
91-3.1	F	F-60973	01-29-86	0.55	16,500	16,500	13,290	
92-3.1	F	F-60974	01-29-86	0.55	109,500	109,500	60,763	
95-1.0	F	F-60975	01-29-86	0.55	11,000	11,000	5,754	
96-1	F	F-60976	01-29-86	0.55	11,000	11,000	7,998	
98-0.2	F	F-60977	01-29-85	0.55	16,500	16,500		Paid - Expired
98-3.1	F	F-60978	01-29-86	0.55	22,000	22,000	4,953	
100-1.2	F	F-60979	01-29-86	0.55	11,000	11,000	2,850	
100-2.1	F	F-60980	01-29-86	0.55	33,000	33,000		
102-1	F	F-60981	01-29-86	0.55	88,000	88,000	2,410	

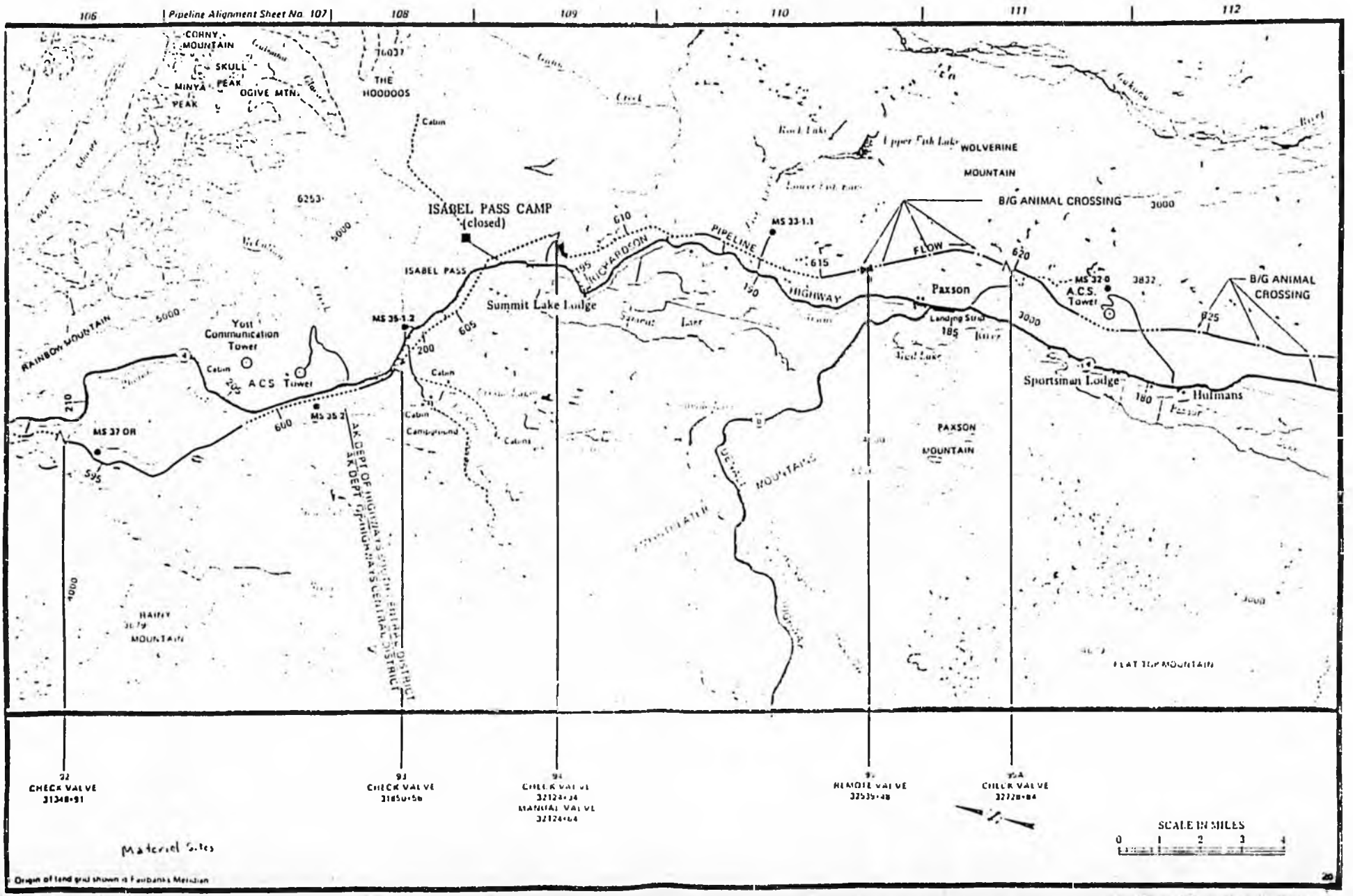
OMS	JURISDICTION	SERIAL NUMBER	CONTRACT EXPIRATION DATE	UNIT PRICE	TOTAL CONTRACT QUANTITY	QUANTITY PAID FOR TO DATE (FED)	QUANTITY MINED TO DATE	REMARKS
105-1	F	F-60982	01-29-86	0.55	11,000	11,000	3,860	
105-1.1	F	F-84579	12-24-86	0.60	60,000	60,000	15,840	
106-1	F	F-84709	03-20-88	0.60	50,000	50,000	50,090	
106-1.1	F	F-60983	01-29-85	0.55	25,000	25,000	21,486	Paid - Expired
2	F	F-60984	01-29-85	0.55	11,000	11,000	600	Paid - Expired
109-4	F	F-60985	01-29-85	0.55	20,000	20,000	10,580	Paid - Expired
111-2	F	F-60986	01-29-86	0.55	16,500	16,500		
112-3.1	F	F-60987	01-29-86	0.55	88,000	88,000		
114-1	F	F-60988	01-29-85	0.55	11,000	11,000		Paid - Expired
115-1	F	F-60989	01-29-85	0.55	11,000	11,000		Paid - Expired
116-2	F	F-60990	01-29-85	0.55	11,000	11,000		Paid - Expired
117-2	F	F-60991	01-29-86	0.55	22,000	22,000	3,280	
119-4	F	F-60992	01-29-86	0.55	50,132	50,132	50,132	
120-1	F	F-60993	01-29-85	0.55	22,000	22,000		Paid - Expired
122-3A	F	F-84977	07-16-88	0.55	30,000	30,000	29,920	
122-4	F	F-60994	01-29-85	0.55	11,000	11,000		Paid - Expired
125-3	F	F-60995	01-29-85	0.55	22,000	22,000	12,075	Paid - Expired

OMS	JURISDICTION	SERIAL NUMBER	CONTRACT EXPIRATION DATE	UNIT PRICE	TOTAL CONTRACT QUANTITY	QUANTITY PAID FOR TO DATE (FED)	QUANTITY MINED TO DATE	REMARKS
125-4	F	F-60996	01-29-85	0.55	22,000	22.000		Paid - Expired
129-1A	S	ADL-407665	06-03-87	~~0.542~~ 0.60	150,000		104,917	
129-2	S	ADL-403920	12-31-85	0.35	11,000			Will Not Mine
133-2A	S	ADL-411902	10-15-90	0.60	50,000			
134-3	S	ADL-403922	12-31-85	0.35	22,000		17,000	Will Not Mine


136
137
138
139
140
141
142
Pipeline Alignment Sheet No. 143
CREVASSES
MARSHALL PASS
Keystone Communication Tower
5705
HEIDEN CANYON
SHEEP CREEK CAMP (closed)
MS 5-3
PIPELINE
KEYSTONE CANYON
Tunnel
Wortmanns
THOMPSON PASS
PSY 1-1
PTARMIGAN DROP
Ptarmigan
Landing Strip
MS 7-3M
MS 7-1M
Ptarmigan Communication Tower
GIRLS MTN.
5411
VALDEZ CORPORATE LIMITS
4819
FLOW
MS 3-2
MS 3-1
RICHARDSON HIGHWAY
WASHBOWL BASIN
RUINS
MT. KATE
MT. FRANCIS
SUGARLOAF MOUNTAIN
Aerial Tramway
CVEA CONNECTION
DAYVILLE ROAD
Valdez Terminal
Ft. Liscum
JACKSON PT.
Valdez Communication Tower
Pipe Storage Yard
EAST PEAK
MINERAL CREEK ISLANDS
Valdez Airport
Valdez
WEST PEAK
5255
5380
Cabins
3602
118 REMOTE VALVE 40401+88
120 CHECK VALVE 40848+66
121A REMOTE VALVE 41117+37
121 REMOTE VALVE 41007+54
T88 REMOTE VALVE 42232+67
122 CHECK VALVE 41171+96
123 REMOTE VALVE 41400+48
124 REMOTE VALVE 41849+28
126 REMOTE VALVE 41933+87
SCALE IN MILES
0 1 2 3 4
Material Sales
Origin of land grid shown is Copper River Meridian

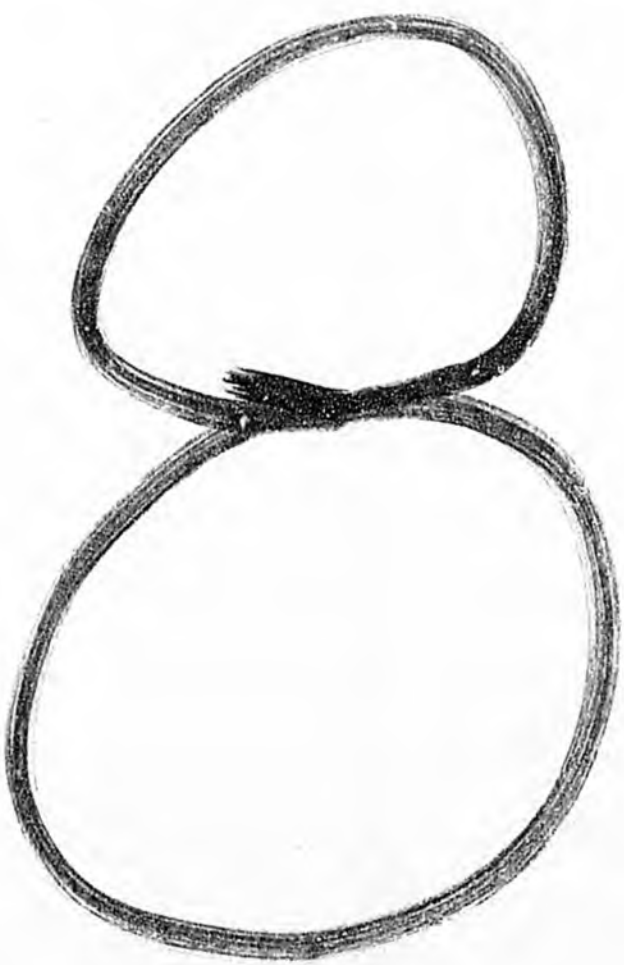


61
Pipeline Alignment Sheet No. 62
63
64
65
66
FORT HAMLIN HILLS
Bench Communication Tower
3754
2297
2590
2000
1885
1060
1600
1215
MS 78-1
MS 79-2
Five Mile Airstrip
FIVE MILE CAMP (closed)
HIGHWAY BRIDGE 2295' LENGTH
SMOOTHFACE MOUNTAIN
Communication Tower
Existing Yukon Radio Repeater Tower
PIPELINE FLOW
MS 76-2.1
MS 75-1R
Cabin
1510
1670
2198
2136
1824
1390
2306
1530
340
345
350
355
360
365
370
70
65
60
50
45
40
35
59
REMOTE VALVE
18110+64
59A
CHECK VALVE
18512+17
60
REMOTE VALVE
18512+16
60A
CHECK VALVE
18680+72
BL1
BL2
PUMP STATION 6
M.P. 355.0
SCALE IN MILES
0 1 2 3 4
Material Sites
Origin of land grid shown is Fairbanks Meridian
12



106
Pipeline Alignment Sheet No. 107
108
109
110
111
112
CORNY MOUNTAIN
SKULL PEAK
MINYA PEAK
OGIVE MTN.
THE HOODOOS
Cabin
ISABEL PASS CAMP (closed)
ISABEL PASS
Summit Lake Lodge
RICHARDSON
PIPELINE
HIGHWAY
FLOW
MS 33-1.1
Paxson
Landing Strip
WOLVERINE MOUNTAIN
B/G ANIMAL CROSSING
MS 32-0
A.C.S. Tower
B/G ANIMAL CROSSING
Sportsman Lodge
Hufmans
PAXSON MOUNTAIN
RAINBOW MOUNTAIN
Yost Communication Tower
A C S Tower
MS 35-1.2
MS 35-2
MS 37 OR
Campground
AK DEPT OF HIGHWAYS SOUTH CENTRAL DISTRICT
AK DEPT OF HIGHWAYS CENTRAL DISTRICT
RAINY MOUNTAIN
FLAT TOP MOUNTAIN
92 CHECK VALVE 31348+91
93 CHECK VALVE 31850+56
94 CHECK VALVE 32124+34 MANUAL VALVE 32124+64
95 REMOTE VALVE 32535+48
95A CHECK VALVE 32728+84
SCALE IN MILES
0 1 2 3 4
Material Sites
Origin of land grid shown is Fairbanks Meridian

HCR



Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

HCR 8 SUMMARY

TO: Members of House Resources Committee

FROM: Rep. Dick Shultz / Co-Chairman

DATE: March 20, 1985

RE: House Concurrent Resolution #8

********** ********** ********** ********** **********

The purpose of this resolution is twofold.

The first and most obvious purpose is to encourage the Governor to pursue a more active course in bringing natural gas to Fairbanks and the Interior with an eye toward eventual completion of a line to tidewater.

The second purpose is to stimulate members of the Legislature and the Governor to consider a new approach in developing our non-renewable resources, and bringing the benefits to Alaskan residents on a more direct basis.

It seems that whenever we, in the legislature, discuss the highest and best use of our gas reserves the idea of getting the highest price possible dominates the conversation. That being the goal, Pacific Rim markets and the various "economic windows of opportunity" are considered to be the key elements in developing our gas reserves. The one "Catch 22" that continues to impede our progress is the time frame and costs involved in building the pipeline, and risks involved in committing the necessary money to start a project that if delayed may miss a "market window" critical to the payback.

I encourage members to take the time to review the Booze, Allen, Hamilton 1983 Summary Report on Gasline Alternatives. Within that document there are possibilities for building a gas line that may have been overlooked. I believe that it will become clear after careful review that it is not absolutely necessary to build a pipeline from the North Slope to tidewater initially.

We need to also consider the multiple benefits of using our gas in state to the greatest degree possible and factor all the socio-economic effects into a complete model before deciding what constitutes highest and best use. I

base that suggestion on the premise that the number of dollars coming into state government on a per capita basis greatly exceeds the returns in benefits received by the average Alaskan resident via the present system of wealth dispersal. Consider for instance that gas to heat ones home may be more beneficial to an interior resident than a new reservoir in devils canyon on which to sail his dinghy.

This new approach may not be a popular with those in government who prefer to exercise control of the distribution of our state's resources wealth. I would ask that we consider the arguement that residents of the state could more efficiently benefit from gas heat in their homes, from low cost long term electrical generation for their communities, and hundreds of permanent jobs than from dollars in the general fund. It may simply be a matter of where we want to stimulate growth as a result of gasline development; in government as it absorbs dollars in an effort to provide benefits or within our Alaskan communities.

Gas to our local communities would provide stimulation to the private sector as low cost energy is distributed from a gas fired electrical generation source in Fairbanks along the Intertie and through other future power networks to outlying areas. The Booze, Allen, Hamilton report also suggests the production of methanol in the Fairbanks area with transportation to tide water being provided via the Alaska Railroad as a source of additional economic stimulation.

As markets develop on the Pacific Rim, demands in the short term could possibly be handled by rail transported gas while the rest of the gas line to tidewater is completed. Another advantage is that the critical problem of construction time vs. the proper Pacific Rim "economic window" is easier to solve with half the gasline already constructed. The economic logic suggested by Susitna proponents to build half of that project can be applied to an intra-state pipeline as well.

There is one critical question, which in light of the economic projections we are receiving should not be ignored. Will we as a state be able to afford the support necessary for a gasline in the future if we continue to commit our revenue to mega-energy projects such as Susitna? The other key question is what will the Susitna project provide that the gasline wouldn't also provide? The fact is that the gasline spin offs in terms of permanent jobs and a stable growing interior economy far exceeds those available as a result of Susitna. Finally we need not be reminded that it appears the Federal Government may be reluctant to provide the necessary FERC licensing to eventually build the Susitna project.

Prioritizing our resource development dollars will be the most difficult task that we and future legislators face over the next few decades. I believe that diversified economic projects may be found to be in many instances cost prohibitive when the plan dictates that resources be converted to dollars which in turn are filtered through the government digestive system. The bottom line is that what goes in rarely resembles what comes out in either quantity or quality.

Lets take the time to look at a wider variety of solutions as we make our resource development decisions on behalf of our constituents. I have faith

in Alaska's economic potential, not because we have a multitude of raw resources to develop, but because we have people with ambition, pride, and skill who could give government a lesson when it comes to making things happen. It may, heaven forbid, be necessary to change state policy on some of these issues to give our people the chance to more directly benefit from our resources, and if thats what it takes, then lets get after it.

I urge your support on this resolution and offer it as a opportunity to explore a new direction as we consider policy decisions affecting development of our resources for the maximum benefit of our citizens.

HCR

15

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

March 14, 1985

Dear Advisory Board Chairman:

The issue of wolf control was the topic of discussion at a recent teleconference I held on March 13.

At that meeting representatives from 11 different advisory boards agreed to come to the March game Board meeting in Anchorage with a unified statement in support of wolf control.

If your board supports wolf control and you would like to join with these other 11 boards I would suggest that a representative meet with these folks in Anchorage prior to the Board taking up wolf control. The people you should look for are Sue Entsminger, or Bill Ellis from Slana, or Mike Pearson from Anderson. They can provide you with more details and tell you where and when the meeting is occurring. Also Ray Collins from McGrath, Freddy Roberts from Fort Yukon, and Dean Cummings from Delta will be there.

I apologize for not having you on line with us during the teleconference. I hope in the future that more participants from rural Alaska can be heard on this issue. The one point that was brought out during the teleconference was that each local board is frustrated at the lack of action by the Game Board when it comes to wolf control. That is why these local boards are joining together and presenting a strong unified position.

Please take the time to fill out the enclosed questionnaire and send it back to me. Also enclosed is a copy of HCR 15 for your review and comments. My address is Rep. Dick Shultz, Pouch V, Juneau, Alaska 99811. If you have questions please feel free to call my office at 465-3715.

Thank you for your time, and I hope you are successful at the Board meeting in Anchorage.

Best Regards,

Dick

Representative Dick Shultz

DAVE

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? yes

Are wolves a problem in your area ? Big problem

Have you asked the Game Board for help with a wolf problem ? yes but not this year

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

(3) fish and game biologists hunting from the air?

( ) public hunting from the air ?

( ) a locally funded bounty program ?

(2) a state funded bounty program ?

(1) a poison program ?

(X) other means (please explain)

We need to encourage more trapping in our area as aerial hunting is not very successful We do support aerial control as a tool for wolf control.

Do you feel that the local fish and game biologist understands the wolf situation in your area ? yes

Do you feel that he or she is in support of the local advisory board position on wolf control? yes

Are you satisfied with the present make-up of the state Game Board ? (explain) yes

Do you feel it will help to unify on this issue ? yes

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionaire.

Thank you for your efforts

Bruce H Eagle
chairperson Wrangell Adv.

1

OK Cutoff - NABESNA Rd HUV Comm
Bill Ellis, Chairman

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

A Does your local advisory board support wolf control ? yes

B Are wolves a problem in your area ? yes

C Have you asked the Game Board for help with a wolf problem ? yes

D What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

( ) fish and game biologists hunting from the air?

( ) public hunting from the air ?

( ) a locally funded bounty program ?

(2) a state funded bounty program ?

( ) a poison program ?

3. (1) other means (please explain)
fish & game dept only as a back up when the public can't accomplish the desired harvest.
trapper education.

E Do you feel that the local fish and game biologist understands the wolf situation in your area ? yes

Do you feel that he or she is in support of the local advisory board position on wolf control? yes

F Are you satisfied with the present make-up of the state Game Board ? (explain)

G Do you feel it will help to unify on this issue ?

yes

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

Frank? Not Juice units 14, 13, & 16

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? YES, WHERE & WH. NECESSARY

Are wolves a problem in your area ? NOT IN THE UNITS 14 & 16 AREAS
POSSIBLE PROBLEM IN UNIT 13

Have you asked the Game Board for help with a wolf problem ?
PAST CONTROL EFFORTS IN 13 HAVE HELPED.

What method of wolf control does your local board support ? BY PRIVATE SECTOR IF POSSIBLE WETHER ~~BY~~ BY AERIAL HUNTING OR TRAPPING
(please number in order of priority 1,2,3, etc.)

(2) fish and game biologists hunting from the air?

(/) public hunting from the air ?

( ) a locally funded bounty program ?

( ) a state funded bounty program ?

( ) a poison program ?

( ) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ? YES

Do you feel that he or she is in support of the local advisory board position on wolf control? YES

Are you satisfied with the present make-up of the state Game Board ? (explain)
YES, I FEEL THE BOARD REPRESENTS A FAIR CROSS SECTION OF STATE INTERESTS.

Do you feel it will help to unify on this issue ? YES

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionaire.

Personal

Ken Chase

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? yes

Are wolves a problem in your area ? only in certain areas of our units - 21 -

Have you asked the Game Board for help with a wolf problem ? NO

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

( ) fish and game biologists hunting from the air? not at all

(3) public hunting from the air ?

( ) a locally funded bounty program ?

1 (X) a state funded bounty program ?

( ) a poison program ? not at all

(2) other means (please explain)
Legalize using snow machines on permit such as were used for M/c hunting.

Do you feel that the local fish and game biologist understands the wolf situation in your area ? yes

Do you feel that he or she is in support of the local advisory board position on wolf control? yes

Are you satisfied with the present make-up of the state Game Board ? (explain) Because the board is reluctant to make concrete decisions because of all the politics they have to put up with.

Do you feel it will help to unify on this issue ? yes - however numbers will ~~can~~ differ, in different areas of the state.

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

1

Michael A Pearson
Clear / Healy

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? Yes

Are wolves a problem in your area ? Yes

Have you asked the Game Board for help with a wolf problem ? Yes

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

(2) fish and game biologists hunting from the air?

(1) public hunting from the air ?

( ) a locally funded bounty program ? - NEVER WORK

( ) a state funded bounty program ?

( ) a poison program ? - NEVER

( ) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ? Yes

Do you feel that he or she is in support of the local advisory board position on wolf control? Yes

Are you satisfied with the present make-up of the state Game Board ? (explain) Yes

Do you feel it will help to unify on this issue ? Yes

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

Michael A Pearson Clear / Healy

1

Fairbanks A/C
Tom Scarborough

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ?

Are wolves a problem in your area ?

Have you asked the Game Board for help with a wolf problem ?

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

(2) fish and game biologists hunting from the air?

(1) public hunting from the air ?

( ) a locally funded bounty program ?

( ) a state funded bounty program ?

( ) a poison program ?

(3) other means (please explain)
Local Trapping when feasible to assist

Do you feel that the local fish and game biologist understands the wolf situation in your area ? yes

Do you feel that he or she is in support of the local advisory board position on wolf control? yes

Are you satisfied with the present make-up of the state Game Board ? (explain) No Current Board make political decisions not biological with the exception of Subsistence Hunting

Do you feel it will help to unify on this issue ?
yes -

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

Tom Scarborough
Fairbanks

Upper Tanana - 40 Mile Committee
Jim Carson

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ?
YES

Are wolves a problem in your area ?
YES

Have you asked the Game Board for help with a wolf problem ?
YES

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

(1) fish and game biologists hunting from the air?

( ) public hunting from the air ?

(2) a locally funded bounty program ?

(3) a state funded bounty program ?

( ) a poison program ?

( ) other means (please explain)
Different people favor different methods depending of area extent of control desired + feasibility of attaining goal

Do you feel that the local fish and game biologist understands the wolf situation in your area ?
YES

Do you feel that he or she is in support of the local advisory board position on wolf control?
YES + NO

Are you satisfied with the present make-up of the state Game Board ? (explain) YES

Do you feel it will help to unify on this issue ?
YES DEFINITLY

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionaire.

Central Plan. Committee

Dear Glenn

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? yes

Are wolves a problem in your area ? yes

Have you asked the Game Board for help with a wolf problem ? yes

What method of wolf control does your local board support ? aerial Hunt

(please number in order of priority 1,2,3, etc.)

(2) fish and game biologists hunting from the air?

(1) public hunting from the air ?

(4) a locally funded bounty program ?

(3) a state funded bounty program ?

(5) a poison program ?

( ) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ? yes

Do you feel that he or she is in support of the local advisory board position on wolf control? yes

Are you satisfied with the present make-up of the state Game Board ? (explain) yes

Do you feel it will help to unify on this issue ? yes

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionaire.

Cop BSW A.C. Mike Lonegan

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? YES

Are wolves a problem in your area ? NO

Have you asked the Game Board for help with a wolf problem ? NO

What method of wolf control does your local board support ? public involvement - TRAPPING hunting etc.

(please number in order of priority 1,2,3, etc.)

( ) fish and game biologists hunting from the air?

(X) public hunting from the air ?

(X) a locally funded bounty program ?

(X) a state funded bounty program ?

~~( ) a poison program ?~~ NO!

( ) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ? YES

Do you feel that he or she is in support of the local advisory board position on wolf control? YES

Are you satisfied with the present make-up of the state Game Board ? (explain) YES - Doing a good job when allowed to do so.

Do you feel it will help to unify on this issue ? ?

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

Kenai Soldotna
TJ Hinkle

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? yes

Are wolves a problem in your area ? yes

Have you asked the Game Board for help with a wolf problem ? yes

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

(2) fish and game biologists hunting from the air?

(1) public hunting from the air ?

( ) a locally funded bounty program ?

( ) a state funded bounty program ?

( ) a poison program ?

( ) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ? yes

Do you feel that he or she is in support of the local advisory board position on wolf control? yes

Are you satisfied with the present make-up of the state Game Board ? (explain) NO, we would like to have A representative from the Kenai, Peninsula

Do you feel it will help to unify on this issue ? yes

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

Petersburg Adv. Comm.

S.E Alaska

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? Yes

Are wolves a problem in your area ? yes

Have you asked the Game Board for help with a wolf problem ? No - Have appealed to F&G, only response received is to do more studies!?

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

( ) fish and game biologists hunting from the air?

( ) public hunting from the air ? Hunting from air Not Practical in S.E AK, Probably a

( ) a locally funded bounty program ? bounty program would

(X) a state funded bounty program ? be the most effective in S.E

( ) a poison program ?

( ) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ? Yes

Do you feel that he or she is in support of the local advisory board position on wolf control? Not Certain – Wants more study

Are you satisfied with the present make-up of the state Game Board ? (explain) We were (are) extremely disturbed that ~~the~~ our Outstanding member, Dr. Sam Harbo, was Not re appointed. Some other members don't seem to, or want to, face this issue as aggressively as they should.

Do you feel it will help to unify on this issue ? Yes.

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

Gretchen Galastein
Sumner Strait F & G Advisory Committee

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? yes

Are wolves a problem in your area ? no

Have you asked the Game Board for help with a wolf problem ? no

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

( ) fish and game biologists hunting from the air?

( ) public hunting from the air ?

( ) a locally funded bounty program ?

(1) (X) a substantial state funded bounty program ?

( ) a poison program ?

( ) other means (please explain)

(2) private hunting from the air, with permits by number + requirements to pick up the wolves + use the skins

Do you feel that the local fish and game biologist understands the wolf situation in your area ? don't have one

Do you feel that he or she is in support of the local advisory board position on wolf control? NA

Are you satisfied with the present make-up of the state Game Board ? (explain) yes

Do you feel it will help to unify on this issue ? It will help those villages with common wolf problems to unify

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

MAT-SU

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? yes

Are wolves a problem in your area ? NO

Have you asked the Game Board for help with a wolf problem ? NO

What method of wolf control does your local board support ? Hunting FROM AIR

(please number in order of priority 1,2,3, etc.)

( ) fish and game biologists hunting from the air?

(X) public hunting from the air ? ALLOWANCE IS ENOUGH INCENTIVE AND FUNDING.

( ) a locally funded bounty program ?

( ) a state funded bounty program ?

( ) a poison program ?

( ) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ? yes

Do you feel that he or she is in support of the local advisory board position on wolf control? yes

Are you satisfied with the present make-up of the state Game Board ? (explain)

Do you feel it will help to unify on this issue ? yes

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

[signature]
MAT-SU-AC

/

MAT-SU

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? YES

Are wolves a problem in your area ? NO

Have you asked the Game Board for help with a wolf problem ? NO

What method of wolf control does your local board support ? Hunting FROM AIR

(please number in order of priority 1,2,3, etc.)

( ) fish and game biologists hunting from the air?

(X) public hunting from the air ? ALLOWANCE IS ENOUGH INCENTIVE AND FUNDING.

( ) a locally funded bounty program ?

( ) a state funded bounty program ?

( ) a poison program ?

( ) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ? YES

Do you feel that he or she is in support of the local advisory board position on wolf control? YES

Are you satisfied with the present make-up of the state Game Board ? (explain)

Do you feel it will help to unify on this issue ? YES

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

Thomas D. Schneider

MAT-SU-AC

1

Senakee A/C Hotel on 15 of march 85
DONALD SEE Chairman

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? yes

Are wolves a problem in your area ? NO

Have you asked the Game Board for help with a wolf problem ? NO

What method of wolf control does your local board support ? public hunt

(please number in order of priority 1,2,3, etc.)

( ) fish and game biologists hunting from the air?

(1) public hunting from the air ?

( ) a locally funded bounty program ?

(2) a state funded bounty program ?

( ) a poison program ?

( ) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ?

Do you feel that he or she is in support of the local advisory board position on wolf control?

Are you satisfied with the present make-up of the state Game Board ? NO
(explain)
Senakee A/C would like to see local public do the Hunting

Do you feel it will help to unify on this issue ? yes

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

Ruby Advisory Comm. P.O. [illegible]
Sharon Gurtler Strick

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? YES

Are wolves a problem in your area ? YES

Have you asked the Game Board for help with a wolf problem ? YES

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

(3) fish and game biologists hunting from the air?

(1) public hunting from the air ? LOCAL PILOTS

( ) a locally funded bounty program ?

(2) a state funded bounty program ?

( ) a poison program ?

(4) other means (please explain)
Increase wolf bounty to make trapping & flying worthwhile, Use initiative route.

Do you feel that the local fish and game biologist understands the wolf situation in your area ? yes, but says no money.

Do you feel that he or she is in support of the local advisory board position on wolf control? Not really

Are you satisfied with the present make-up of the state Game Board ? (explain).
Quality yes - haven't seen in action as yet

Do you feel it will help to unify on this issue ?

Of course

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

Ruby Advisory Council POC ? 99763
Sharon Gutler Struck

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? YES

Are wolves a problem in your area ? YES

Have you asked the Game Board for help with a wolf problem ? YES

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

(3) fish and game biologists hunting from the air?

(1) public hunting from the air ? LOCAL PILOTS

( ) a locally funded bounty program ?

(2) a state funded bounty program ?

( ) a poison program ?

(4) other means (please explain)
Increase wolf bounty to make trapping & flying worthwhile, Use initiative route.

Do you feel that the local fish and game biologist understands the wolf situation in your area ? Yes, but says no money.

Do you feel that he or she is in support of the local advisory board position on wolf control? Not really

Are you satisfied with the present make-up of the state Game Board ? (explain).
Qualify yes - haven't seen in action as yet

Do you feel it will help to unify on this issue ?

Of course

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

Homer Tobuk
Koyukuk River Advisory Committee
Gen. Del.
Allakaket, Alaska - 99720 -

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? yes

Are wolves a problem in your area ? not at present

Have you asked the Game Board for help with a wolf problem ? yes

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

(1) fish and game biologists hunting from the air?

( ) public hunting from the air ?

(3) a locally funded bounty program ?

(2) a state funded bounty program ?

( ) a poison program ?

( ) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ? yes

Do you feel that he or she is in support of the local advisory board position on wolf control? yes

Are you satisfied with the present make-up of the state Game Board ? (explain) no comment

Do you feel it will help to unify . . this issue ?

yes

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

6 RON DILLS — TANANA FISH & GAME ADVISORY COMMITTEE

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ?

Are wolves a problem in your area ?

Have you asked the Game Board for help with a wolf problem ?

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

(/) fish and game biologists hunting from the air?

( ) public hunting from the air ?

( ) a locally funded bounty program ?

( ) a state funded bounty program ?

( ) a poison program ?

(2) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ? YES

Do you feel that he or she is in support of the local advisory board position on wolf control? YES

Are you satisfied with the present make-up of the state Game Board ? (explain) NO COMMENT

Do you feel it will help to unify on this issue ? YES!

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

Tyonek Flats — Don Stevens
A/C

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? yes

Are wolves a problem in your area ? yes [also bears]

Have you asked the Game Board for help with a wolf problem ? yes

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

no — ( ) fish and game biologists hunting from the air?

no — ( ) public hunting from the air ?

(2) a locally funded bounty program ?

(3) a state funded bounty program ?

( ) a poison program ?

(1) other means (please explain)
Local people benefit from a program.

Do you feel that the local fish and game biologist understands the wolf situation in your area ? 80% yes

Do you feel that he or she is in support of the local advisory board position on wolf control? probably yes

Are you satisfied with the present make-up of the state Game Board ? (explain) yes about 75%, 25% No
Some members vote to (the) majority, and pass the minority groups (or For)

Do you feel it will help to unify on this issue ?
If we make a strong stand.

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionnaire.

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? yes

Are wolves a problem in your area ? yes

Have you asked the Game Board for help with a wolf problem ? yes

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

(X) fish and game biologists hunting from the air?

(X) public hunting from the air ?

( ) a locally funded bounty program ?

( ) a state funded bounty program ?

( ) a poison program ?

(X) other means (please explain)
Local Trapping to assist above checked means.

Do you feel that the local fish and game biologist understands the wolf situation in your area ? yes

Do you feel that he or she is in support of the local advisory board position on wolf control? yes

Are you satisfied with the present make-up of the state Game Board ? (explain) "No"
Current board makes political decisions and not biological. I do not believe they are at all interested in the resource with the exception of Sydney Hunt[illegible]

Do you feel it will help to unify on this issue ?
yes. If something is not done soon some areas in eastern interior will have no moose.

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionaire.

[illegible]
Fairbanks

RUBY

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? YES

Are wolves a problem in your area ? YES

Have you asked the Game Board for help with a wolf problem ? YES

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

(3) fish and game biologists hunting from the air?

(1) public hunting from the air ? LOCAL PILOTS

( ) a locally funded bounty program ?

(2) a state funded bounty program ?

( ) a poison program ?

(4) other means (please explain)
INCREASE WOLF BOUNTY TO MAKE TRAPPING + FLYING WORTHWHILE
USE INITIATIVE ROUTE

Do you feel that the local fish and game biologist understands the wolf situation in your area ? YES, BUT SAYS NO MONEY

Do you feel that he or she is in support of the local advisory board position on wolf control? NOT REALLY

Are you satisfied with the present make-up of the state Game Board ? (explain)
QUALIFIED YES - HAVENT SEEN IN ACTION AS YET

Do you feel it will help to unify on this issue ?
OF COURSE

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionaire.

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? Yes

Are wolves a problem in your area ? Yes

Have you asked the Game Board for help with a wolf problem ? Yes

What method of wolf control does your local board support ? What even the Fish + Game Department suggest,
(please number in order of priority 1,2,3, etc.)

(2) fish and game biologists hunting from the air?

(1) public hunting from the air ?

( ) a locally funded bounty program ? Bull shit

( ) a state funded bounty program ? Forget it!

( ) a poison program ? No way !

( ) other means (please explain) I wish I could think of the Answer. Will keep working on it. And thanks Dick for your intrest.

Do you feel that the local fish and game biologist understands the wolf situation in your area ? Yes better then the general public.

Do you feel that he or she is in support of the local advisory board position on wolf control? I hope so.

Are you satisfied with the present make-up of the state Game Board ? (explain) The State Game Board is to political. Got to get rid of ~~shitfeild~~, the governor.

Do you feel it will help to unify on this issue ? Hell yes!

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 0811

** All advisory boards will be mailed the results of the questionaire.
I am the chairman from Clear / Healy

Gastineau Channel H/C
9462 Douglas Hwy
Juneau

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

committee

Does your local advisory board support wolf control ? Yes

Are wolves a problem in your area ? Yes

Have you asked the Game Board for help with a wolf problem ? Yes

What method of wolf control does your local board support ?

(please number in order of priority 1,2,3, etc.)

see comments

(X) fish and game biologists hunting from the air?

( ) public hunting from the air ?

( ) a locally funded bounty program ?

( ) a state funded bounty program ?

(X) a poison program ?

( ) other means (please explain)

Juneau has a medium wolf problem at Berners Bay. Helicopter patrol would be moderately practical during (one) C

Do you feel that the local fish and game biologist understands the wolf situation in your area ? Yes

Do you feel that he or she is in support of the local advisory board position on wolf control? Yes

Are you satisfied with the present make-up of the state Game Board ? (explain) Yes - sorry to lose Sam but have not met the new man. Joe may have leanings toward less agressive controls.

Do you feel it will help to unify on this issue ?

Yes: your points on countering anti wolf (over)

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionaire.

Bill Dean
Chair

inter months. but success ratio could be
w. Brush + Forest cover much of the valleys
provide concealment for predators. I took
t in the 1983 Moose Count + we saw 1 bear,
Wolverine. + 4 wolf tracks. (100 moose)
he forested areas of SE Alaska can only
hunted from the ground + by traps or
anide Guns. Accidental sightings take
occasional wolf.

ropaganda are well taken. If there are
ough Wolves for the casual observer to
ze one, there are too many for the
od of the game animals.
e are not rural - nor subsistence hunters -
t Sport + Personal Use are important to Juneau

PLEASE COMPLETE THE FOLLOWING QUESTIONNAIRE

Does your local advisory board support wolf control ? yes

Are wolves a problem in your area ? yes off & on

Have you asked the Game Board for help with a wolf problem ? yes

What method of wolf control does your local board support ? Aerial

(please number in order of priority 1,2,3, etc.)

(3) fish and game biologists hunting from the air?

(1) public hunting from the air ?

(4) a locally funded bounty program ?

(2) a state funded bounty program ?

( ) a poison program ?

( ) other means (please explain)

Do you feel that the local fish and game biologist understands the wolf situation in your area ? NO

Do you feel that he or she is in support of the local advisory board position on wolf control? yes

Are you satisfied with the present make-up of the state Game Board ? NO
(explain) The Boards have divided the state into 6 Regions and I believe each region should have a member on the Board. There should not be more than 1 Guide or Member from Protectorate groups on Board.

Do you feel it will help to unify on this issue ? yes

SEND TO : REP. DICK SHULTZ / House Resources Committee
POUCH V
JUNEAU, ALASKA 99811

** All advisory boards will be mailed the results of the questionaire.

Enclosed find Resolution that was adopted by Nushegak Advisory Com. and Southwest Regional Council Hope it will help you.

Leon Braswell
Nushegak Advisory

RESOLUTION TO SUPPORT AERIAL WOLF HUNTING in Alaska Northern Bristol Bay.

WHEREAS, caribou are just now coming back in decent numbers ~~in Unit 17~~, and

WHEREAS, moose populations have been greatly damaged on certain rivers in our area by wold predation, and

WHEREAS, moose and caribou are used throughout the Bristol Bay Area for our main source of protein, and

WHEREAS, both Alaska Biologists and Candian studies show that the best control on wolf numbers is through aerial wolf hunting method, and

WHEREAS, geographical and habitat conditions in the Bristol Bay area make trapping for wold control unrealistic, and

WHERAS, poison used here by the Federal Government before statehood killed ravens, magpies, fox, and other untargeted species with little if any effect on wolf numbers, and

WHEREAS, both State and National Parks in Alaska provide more than adequate protection of ever putting wolves in any endangered state, and

WHEREAS, wolves are a valuable, controlable, renewable resource and should be regulated as such.

NOW, THEREFORE, BE IT RESOLVED by the _____ that aerial wolf hunting be allowed through Alaska Dept. of Game management to ensure healthy balance of predators and prey.

BE IT FURTHER RESOLVED that the general public be allowed to participate in aeriel wolf hunting to keep declining department revenues for badly needed management studies.

RUBY ADVISORY COMMITTEE
POB 8
RUBY, ALASKA 99768

February 28, 1985

Board of Game Members
Alaska Department of Fish & Game
Box 3-2000
Juneau, Alaska 99802

Dear Boardmembers:

At our recent Fish and Game Advisory Committee, February 7, 1985, attended not only by concerned Ruby Residents, but also by representatives of Tanana Chiefs, State of Alaska Fish and Game and U. S. Nowitna Refuge representatives, it was agreed by all concerned that a wolf predation problem exists.

Many suggestions were advanced such as increasing the value of the wolf pelt so as to make trapping more attractive. Another suggestion was to allow aerial hunting by local pilots during March, limiting the wolf kill to 25 per unit.

Asking for a State trapper to spend time in the area to trap wolves was another suggestion.

A return to the free enterprise system was advocated so that money would flow back to the village was advanced.

Whatever the suggestions, it was agreed by those present that a serious problem now exists and a subsistence resource is now threatened.

Because of this danger to the moose resource, action must be taken immediately by both the State and Federal entities. It appears that each of these agencies would rather let the other agency take action. Meanwhile, the wolves take 160 moose according to a State of Alaska Game Biologist's records while Ruby residents account for 60 bull moose while the wolves are not so eclectic.

This letter is written in frustration because no concrete response to date has been taken by any agency to "manage" the wolf population.

as time is of the essence, we respectfully request that you act upon our resolution 85-2.

Yours truly,

Richard C Strick

Richard C. Strick, Chairman

RCS:sgs

RUBY FISH & GAME ADVISORY COMMITTEE

RESOLUTION 85-2

Whereas, it has been reported by both users and game people that moose kills by wolves in the Novi area are numerous; and

Whereas, trappers are sighting more wolves than ever before; and

Whereas, pilots are reporting large packs of wolves and moose kills sighted; and

Whereas, we are concerned about our future subsistence food source; and

Wereas, our correspondence telling of our concerns has not been answered; and

Whereas, our fears have been increased because positive wolf control measures are not in effect;

Be it resolved, that the Ruby Advisory Committee requests and petitions the Board of Game not only to direct the proper authorities to provide us with current data of wolf predation and statistics in our Unit 21(B) so as to verify the present crisis but to immediately take corrective action to protect our moose population so that our subsistence needs will be assured; and

Be it further resolved, that said committee requests and petitions said Board to direct the proper agency/authority to conduct studies this year to build data for future actions.

Richard C. Strick

Richard C. Strick, Chrm.

2/28/85

Date

RUBY ADVISORY COMMITTEE
POB 8
RUBY, ALASKA 99768

February 5, 1985

Jim Marcotte
Alaska Department of Fish and Game
Division of Subsistence
POB 256
Galena, Alaska 99741

Dear Jim:

As discussed in our recent advisory board's meetings, we feel that wolf predation presents a danger to our subsistence life style which relies heavily on healthy moose populations.

Because much of our subsistence hunting occurs in the Nowitna refuse, we request that you conduct a wolf population inventory to determine if there is or isn't a wolf problem. Perhaps you could radio collar the wolves to help you determine the pack sizes.

We are not requesting a study of the Nowitna Refuge in it's entirety but rather along the Yukon River from Ruby to the Nowitna, thence 60 miles upstream on both banks. Please see shaded area of Map. We are not interested in the "hinterland" as such.

If wolf predation or wolf numbers prove to be at a dangerous level then we ask you to take concrete steps to save the valuable moose resource.

Thank you for your immediate attention to this request.

Sincerely,

Richard C. Strick

Richard C. Strick, Chairman
Ruby Advisory Committee

RCS:sgs

cc: Terry Haynes, Regional Supervisor, Div. of Subsistance
James R. Fisher, Refuse Mgr., Nowitna NWR, F & W Service
Mitch Demientieff, Dir. Interior Regional Council
Jim Kowalsky, TCC, Inc.
Tim Osborne, Game Biologist, Galena

RUBY ADVISORY COMMITTEE
POB 8
RUBY, ALASKA 99768

February 5, 1985

Jim Marcotte
Alaska Department of Fish and Game
Division of Subsistence
POB 256
Galena, Alaska 99741

Dear Jim:

As discussed in our recent advisory board's meetings, we feel that wolf predation presents a danger to our subsistence life style which relies heavily on healthy moose populations.

Because much of our subsistence hunting occurs in the Nowitna refuse, we request that you conduct a wolf population inventory to determine if there is or isn't a wolf problem. Perhaps you could radio collar the wolves to help you determine the pack sizes.

We are not requesting a study of the Nowitna Refuge in it's entirety but rather along the Yukon River from Ruby to the Nowitna, thence 60 miles upstream on both banks. Please see shaded area of Map. We are not interested in the "hinterland" as such.

If wolf predation or wolf numbers prove to be at a dangerous level then we ask you to take concrete steps to save the valuable moose resource.

Thank you for your immediate attention to this request.

Sincerely,

Richard C. Strick

Richard C. Strick, Chairman
Ruby Advisory Committee

RCS:sgs

cc: Terry Haynes, Regional Supervisor, Div. of Subsistence
James R. Fisher, Refuse Mgr., Nowitna NWR, F & W Service
Mitch Demientieff, Dir. Interior Regional Council
Jim Kowalsky, TCC, Inc.
Tim Osborne, Game Biologist, Galena



(UNIT MAP OF UNITS 1-17
APPEARS ON REVERSE SIDE)

A. Subunit 22(A)—That portion of Unit 22 drain-

RUBY ADVISORY COMMITTEE
POB 8
RUBY, ALASKA 99768

January 21, 1985

Board of Game Members
Alaska Department of Fish and Game
Box 3-2000
Juneau, Alaska 99802

Dear Boardmembers:

At our recent advisory committee meeting I was directed by the membership to bring to your attention the threat to the moose population caused by an obvious increase of wolf predation this year.

According to many of your trappers, more wolves have heen sighted this year than in years past. Pilots are also reporting large packs of wolves sighted. These reports are disconcerting as we rely on moose for subsistence-use and our food supply.

Emergency assistance is needed immediately so as to protect this very important subsistence resource. Therefore, we ask the following steps be taken by your department to protect the moose population.

1. Tim Osborne, Area Biologist, Galena, to provide us with current data of wolf predation and numbers in our Unit so as to verify the present crisis.
2. Tim Osborne to conduct studies this year to build data for future actions by your department.
3. Reinstate a wolf bounty and provide loaner traps to trappers.
4. Allow Fish and Game to issue permits to fly and shoot wolves.

We fully realize the emotionalism of the campaign by misguided individuals to "save the wolves", however the moose is our "commissary on the hoof" and every effort should be made to protect this resource as is is now under attack. We urge you to make every effort to maintain the balance between human needs and conservation needs. As in the human arena the victim

(moose) needs to be protected as well as the criminal, (wolf).

Thank you for your attention to this matter.

Yours truly,

Richard C. Strick

Richard C. Strick, Chairman
Ruby Advisory Committee

RCS:sgs

cc: John C. Sackett, Senator, State of Alaska
Kay Wallis, Representative, State of Alaska
Don W. Collinsworth, Commissioner of Fish & Game
W. Lewis Pamplin, Jr., Director of Game
Sidney Huntington, Boardmember
Terry Haynes, Regional Supervisor, Subsistence Div. U.S. Fish and Wildlife Service
Jim Fisher, Refuse Manager, Nowitna National Wildlife Refuse, U.S. Fish & Wildlife Service
Jim Kowalsky, Director, Wildlife and Parks, TCC
Dana Notti, Yukon-Koyukuk Subregion, TCC, Galena
Karen Thompson, Department of Fish and Game
Beth Stewart, Director, Division of Boards
Jim Marcotte, ADF&G, Division of Subsistence
Mitch Demientieff, Coordinator, Interior Regional Council
Royce Purinton, Chairman, Interior Regional Council
Tim Osborne, Area Game Biologist
Ruby Advisory Committee ~~Members~~ FILE

March 15, 1985
Box 80522
College, Ak.
99708

Rep. Dick Shultz
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Rep. Shultz:

At the March 13 teleconference, I indicated that predator control decisions should be made by the Commissioner, ADfG rather than by the Board of Game. The following comments further explain and justify that assertion.

I believe the proper authority of the Board of Game is to make decisions regarding what the priority wildlife uses should be in an area; the Advisory Committee system is designed to provide the input the public should have in influencing such decisions. Deciding what the priority uses should be is what the public discussion should focus on, not the management activities that should be carried out by ADFG to optimize such uses. Once the priority uses are decided on by the Board, ADFG should simply implement the appropriate management techniques such as habitat enhancement, predator control, etc.

I believe legislative action is now necessary to ensure that ADFG can do what they should be doing, because of the legal difficulties the Board got into in delegating such authority to the Commissioner. A court case essentially indicated that APA procedures necessitated predator control regulations by the Board. Legislative action indicating that ADFG has the authority regarding predator control, and that they could exercise such control without APA requirements, is now necessary. It might be politically advisable to indicate such control should be exercised only in areas where the Board has decreed the human use of species such as moose and caribou is the priority use, or when other situations such as animal transplants or concern for an endangered population are involved. If we can get the public discussion centered on what the priority wildlife uses should be in an area and not on the management activities necessary to achieve those priorities, we might be able to mute somewhat the very vocal wolf control controversy.

I appreciate the opportunity to present these comments.

Sincerely,

Sam

Sam Harbo

Suggested Re Write by Tom Scarborough, Tom Scarborough, 1676 Tanda Drive Fairbanks, Ak 99701

Introduced: 3/1/85
Referred: Resources

IN THE HOUSE BY SHULTZ

HOUSE CONCURRENT RESOLUTION NO. 15

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the control of wolf predation.

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

WHEREAS sound management of fish and game is critical to [redacted] state residents who are most dependent on [redacted] these resources; and

WHEREAS wolf predation has a direct affect on ungulate populations such as moose, caribou, and sheep; and

WHEREAS many of the animals that state residents customarily and traditionally depend on [redacted] are preyed upon by wolves; and

WHEREAS wolf protectionist groups have distributed a great deal of information to the public concerning wolf behavior; and

WHEREAS professional wildlife managers in the Department of Fish and Game are knowledgeable on wolf behavior; and

WHEREAS state residents should be able to rely heavily upon the expertise of state wildlife managers for information; and

WHEREAS state residents need reliable, accurate, unemotional information on which to base a decision concerning wolf control; and

WHEREAS state residents who are incorrectly informed or emotionally sensitized may oppose wolf control to the detriment of the moose, caribou, and sheep populations; and

WHEREAS the destruction of moose, caribou, and sheep resulting from lack of management of wolves may severely jeopardize [redacted] hunting opportunities [redacted]; and

WHEREAS Article VIII, sec. 4, Constitution of the State of Alaska, mandates that our game resources be managed on a "sustained yield basis,

subject to preferences among beneficial uses"; and

[redacted]

WHEREAS state residents depend [redacted] heavily on moose, caribou, and sheep than on wolves [redacted];

BE IT RESOLVED that the Alaska State Legislature urges the Governor to direct the commissioner of fish and game and the Board of Game to manage [redacted] caribou, and sheep stocks so that customary and traditional [redacted] activities are not diminished due to wolf predation; and be it

FURTHER RESOLVED that the legislature urges the Governor to direct the commissioner of fish and game to implement a public education program on wolf behavior, equal in scale to those now being sponsored by wolf protectionist groups; and be it

FURTHER RESOLVED that the legislature, in recognition of the harmful effects that wolves may have on wildlife populations [redacted], encourages members of local rural communities to work together to help solve wolf control problems in their areas.

[redacted]


HCR
18

SOCKEYE SALMON ESCAPEMENT GOALS FOR SELECTED BRISTOL BAY AREA RIVERS[1]

To: House Resources Committee Files
From: Janet Fries, Committee Aide
Date: April 3, 1985

RIVER	1982/1983	1984/1985
Kvichak	2,000,000[2]	10,000,000
Naknek	800,000	1,000,000
Igushik	150,000[3]	200,000
Wood	800,000[3]	1,000,000
Nushagak	40,000[3]	50,000
Egegik	600,000	1,000,000
Ugashik	500,000	700,000

1. Source: ADF&G Annual Bristol Bay Management Reports to the Board of Fisheries 1982 and 1984. Data presented in numbers of fish. This table is intended to present the increases in escapement goals, only. More detailed analyses of escapement goals, total run size, harvest, etc., for selected rivers can be found attached to the ADF&G letter dated March 29, 1985, in your packets.

2. This was later revised to 4,000,000 for 1982.

3. Escapements for 1983 were later revised to 1984 levels.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O.BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4100

March 29, 1985

The Honorable Adelheid Herrmann
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Herrmann:

Shortly after you introduced HCR 18, you asked the department to provide you with some information on Bristol Bay escapement goals. Enclosed are a number of items addressing those goals. The two single pages labeled APPENDIX C and the three-page letter dated May 2, 1984, were public handouts. Additionally, escapement goal revisions were discussed at the last two rounds of advisory committee meetings held throughout the bay and at the last two Board of Fisheries meetings. There was also at least one news release by Karen Lew, our Public Communications Specialist.

I believe most of the public concern relates to escapement levels identified for the Kvichak River. As you know, the Alaska Department of Fish and Game (ADF&G) has, since Statehood, managed the Kvichak as a five-year cyclic system with peak year (1960, 1965, 1970, 1975 and 1980) escapement goals of about 14 million, prepeak escapement goal of 6 million, and the 3 "off" year escapement goals of 2 million. Using this approach, the escapement goals for 1984 would have traditionally been 6 million and for 1985 would have been 14 million, totaling 20 million for the two years. However, monitoring of various biological parameters suggested that 1984 would be a very strong run to the Kvichak and that 1985 may not be of "peak-cycle" magnitude. Therefore, we proposed to the public and Board of Fisheries that we increase escapements in 1984 from 6 to 10 million and reduce escapements from 14 to 10 million in 1985. This would allow harvests on both years and provide substantial benefits to fishermen.

The 1984 run to the Kvichak was extremely strong (22.8 million) as anticipated. Our escapement was 10.5 million, which allowed a 12.3 million harvest from the Kvichak River. The 1985 forecast for the Kvichak River is still being prepared, but will probably

total 12 to 14 million, which should provide for a moderate commercial harvest with an escapement goal of 10 million, but would result in no harvest if we were to go with the more traditional 14 million escapement goal. Obtaining a 10 million escapement last year allows us to drop the 1985 escapement goal from 14 to 10 million with no net decrease in escapements for the two high production years of 1984 and 1985.

My discussion here is a rather simplified version of the many hours of consideration by myself and numerous biologists, as well as members of the public through the advisory committee and Board of Fisheries process. The enclosures should describe this matter in more detail.

Regarding House Resolution No. 18, the Bristol Bay staff would welcome public input on escapement goals for the Kvichak River in 1986 through 1988, the normal "off" cycle years in which we have a traditional escapement goal of only 2 million. Our general feeling is that this level is too low, but we have not yet analyzed the data sufficiently to make specific recommendations for increasing these escapement levels. A series of public meetings prior to this season would probably be premature. Due, however, to your assessment of lack of public understanding of escapement goals for the 1985 season, I would like to support your idea of using the public radio station KDLF to inform those members of the public who were not adequately informed through our handouts at advisory committee meetings.

Should you have any questions regarding the enclosed material or specifics as to what might be included in a radio show, please contact me.

Sincerely,

Don W. Collinsworth
Commissioner

Enclosures

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Commercial Fisheries	HCR 18	Herrmann

DEPARTMENT POSITION

Favor with amendment

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Robert C. Clasby RCClasby	3/22/85	Ron Somerville	3/25

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
None	Bristol Bay Commercial Fishermen
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Unknown	Unknown

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The Division of Commercial Fisheries recently started revising the spawning escapement goals for Bristol Bay salmon, which has generated some interest as to the whys and hows of the changes.

ANALYSIS OF BILL/PROGRAM EFFECTS

The resolution as written asks that we hold additional public information meetings on the revisions. As we have already done this, we feel any additional meetings would be redundant. We have no objection to continuing holding meetings for the 1986 season. For more detailed information, see the Commissioner's letter to Representative Herrman on HCR 18.

AMENDMENTS PROPOSED

Change "1985" to "1986" in line 4, page 2, of the resolution.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME
DIVISION OF COMMERCIAL FISHERIES

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99502
(907) 344-0541

May 2, 1984

Subject: BRISTOL BAY SOCKEYE SALMON SPAWNING ESCAPEMENT GOAL REVISIONS

From: Stephen M. Fried, Project Leader, Bristol Bay Salmon Research

The purpose of this notice is to provide a brief account and explanation of recent changes in desired spawning escapement goals for sockeye salmon stocks of the freshwater systems draining into Bristol Bay commercial fishing districts. Escapement goal changes were based upon information and recommendations from fishery scientists and managers participating in an interagency workshop held in King Salmon, Alaska, during January 1984. In attendance were ADF&G research and management staff for Bristol Bay as well as representatives from the U.S. Fish & Wildlife Service, University of Alaska (School of Fisheries, Juneau), and University of Washington (Fisheries Research Institute). Some recommendations were modified after further discussions among ADF&G Area, Regional, and Headquarters staff, and a short presentation of escapement goal revisions was presented to the Alaska Board of Fisheries during their meeting in Anchorage, February 1984. The following is a summary of findings and recommendations.

During the early 1970's disastrously low returns of sockeye salmon to Bristol Bay caused a commercial fishing industry crisis. However, since 1975, sockeye salmon runs to Bristol Bay have increased enormously. Three factors appear to be responsible for the decline and subsequent recovery: high seas fishery interceptions were substantial during the 1960's and early 1970's, but were sharply curtailed in 1974 and again In 1978; ocean temperatures were below normal during the 1960's and early 1970's, but rose to average and then above average levels begining in the mid-1970's; increased spawning escapements were allowed into systems such as the Wood, Nuyakuk and Ugashik, which had previously been subject to overfishing. To maintain current high levels of sockeye salmon production, it is necessary to continually evaluate available information and revise management practices accordingly. Review and revision of sockeye salmon spawning escapement goals is an integral part of this procedure.

To determine spawning escapement levels which result in maximum sustained sockeye salmon production, historic data (1956-1978 brood years) was used to calculate the spawner-recruitment relationships for major Bristol Bay salmon stocks (i.e. the number of returning adults produced by different numbers of spawners). This allowed optimal goals to be set for seven systems: Ugashik, Egegik, Naknek, Nuyakuk, Wood, Igushik, and Togiak (Table 1).

Insufficient information was available to warrent escapement goal revisions for three systems: Branch, Nushagak-Mulchatna, and Snake. Determination of a suitable long-term escapement goal policy for the Kvichak system, the greatest producer of sockeye salmon within Bristol Bay, awaits completion of contracted studies by investigators at University of Washington (F.R.I.). Past management of the Kvichak system has been based upon a policy of allowing cyclic escapements, rather than a single optimal level each year. Historic run size information available for this system follows a five year abundance cycle with low returns during three consecutive years (off-cycle years), a moderately high return during the fourth year (subdominant year), and the highest return during the fifth year (dominant year). In the past investigators felt that this abundance cycle was natural (i.e. inherent within the system) and set escapement goals to reflect this: a 2.0 million spawner goal for each off-cycle year, a 6.0 million spawner goal for the subdominant year, and the highest goal (8.0 million in 1965, 19.0 million in 1970, and 14.0 million in 1975 and 1980) for the dominant year . However, recent information from preliminary studies suggest that cyclic escapement goals may enhance, or actually cause, cyclic abundance patterns. Therefore, it may be possible to at least smooth out the cycle by allowing relatively high levels of escapement into the system during several consecutive years (5.0 to 10.0 million spawners per year). This would have to be accomplished over a relatively long time period, since returns during off-cycle years would be low at first. Findings of studies by University of Washington investigators will not be available for Department review until sometime this summer. However, a goal of 10.0 million spawners has been adopted for the Kvichak system for 1984 since, even if Kvichak sockeye salmon stocks do cycle naturally, there is evidence that 1984 rather than 1985 may be the dominant year within the cycle.

Table 1. Projected 1984 Bristol Bay sockeye salmon harvests based upon the pre-season forecast and revised escapement goals.

River System	Run Forecast (Millions)	Spawning Escapement Goal (Millions)	Projected Catch (Millions)
Kvichak	16.704	10.000	6.704
Branch	0.305	0.185	0.120
Naknek	2.982	1.000	1.982
Total	19.991	11.185	8.806
Egegik	3.541	1.000	2.541
Ugashik	1.916	0.700	1.216
Wood	2.666	1.000	1.666
Igushik	0.837	0.200	0.637
Nuyakuk	1.560	0.500	1.060
Nush./Mulchatna	0.152	0.050	0.102
Snake	0.017	0.040	0.000
Total	5.232	1.790	3.465
Togiak	0.453	0.150	0.303
Grand Total	31.133	14.825	16.331

APPENDIX C

NUSHAGAK DISTRICT SOCKEYE SALMON ESCAPEMENT GOAL
REVISIONS FOR 1983 AND FUTURE YEARS (May, 1983)

Historically, Nushagak district has been the second most productive system in Bristol Bay, averaging a 5.0 million sockeye salmon catch for 20 years from 1899 to 1918, 2.8 million for the following 30 years, and finally dropping to an 882,000 average in the 29 year period from 1949 to 1977 (Appendix C Figure 1). Total run statistics (catch and escapement) exhibited the same drastic decline in production. High sustained exploitation rates (up to 80%) in the early years of the fishery resulted in precipitious declines in production, and although the other districts in Bristol Bay have experienced a decline as well, it has been neither so distinct nor so drastic in nature as in Nushagak district.

In an effort to reverse the downward trend in Nushagak district sockeye production, larger escapements were provided by reduction in fishing time. The downward trend in force from the 1920's through the late 1950's were generally halted, and total run production was stabilized, but at a level well below that seen in the period of fishery development during the early 1900's.

Commencing in 1978 a remarkable transformation was experienced in Nushagak sockeye production, when 6.6 million fish returned, the largest inshore run recorded since the mid-1940's. The remarkable return in 1978 was followed by an equally strong return in 1979 (6.4 million), and in 1980 over 12.8 million sockeye returned to Nushagak district, breaking numerous long-held total run estimates, and establishing a record 8.3 million escapement to the district's river systems. Peak sockeye production continued in 1981 and 1982 when Nushagak district river systems produced total returns of 10.6 and 8.0 million fish, respectively.

Since 1978, Nushagak district's sockeye average catch production has increased to 4.9 million fish, while the total run from 1978-82 has averaged 8.9 million compared with the previous 20 year average (1958-77) of 2.3 million. The recent five year total run average of 8.9 million sockeye is higher than any previous five year average in the long history of this fishery. Although it is apparent that exceptional survival conditions have greatly aided in boosting sockeye production in the last five years, increased and consistent escapements to major contributing Nushagak district river systems appear to be essential to increased and sustained production for this fishery.

In an effort to maintain the recent high production, it will be necessary to increase sockeye escapement goals to the major river systems of Nushagak district. Without escapement goal increases, it's probable that Nushagak's sockeye runs will eventually revert back to the previous recent long-term average of 2 or 3 million fish. Accordingly, in 1983 Nushagak district escapement goals will be increased by 25% to the upper management range already in effect:

Wood River	- from	800,000 to	1.0 million
Igushik River	- from	150,000 to	200,000
Nuyakuk River	- from	250,000 to	300,000
Nushagak River	- from	40,000 to	50,000
Snake River	- from	30,000 to	40,000
Total District:		1,270,000 to	1,590,000

Additionally, sockeye escapement goal evaluations presently in progress will continue for all river systems of Bristol Bay, and the Department will present further updated escapement goal recommendations for public input at Advisory Committee meetings in the fall of 1983.

Through these adjustments to escapement goals, the Department hopes to sustain the recent high levels of salmon production in future years.

APPENDIX C

KVICHAK AND WOOD RIVER ESCAPEMENT GOAL REVISIONS, 1982

Due to excellent sockeye salmon production during the last few years and anticipated record levels of abundance in 1982, and increased biological understanding of the mechanisms influencing salmon production, an opportunity has presented itself to sustain increased runs and harvests in future years, specifically from the Kvichak - Lake Clark and Wood River systems.

The Kvichak - Lake Clark system demonstrates two stable levels of production, one at escapement levels below about 3 million spawners and the other above that number. The Department is attempting to cross this transition boundary from the lower production stability domain to the higher production stability domain by increasing the escapement goal from the typical non-peak goal of 2 million up to 4 million spawners for 1982. Recent analysis of salmon production from escapements of 4 million indicates that juvenile salmon production will increase four-fold and that an additional 5 to 10 million adults could be expected, spread over the years 1986, 1987, and 1988. The Lake Clark component of the system may be playing an important role in the 1982 salmon run. It now appears that this rumored past major salmon contributor has returned to production. A significant portion of the 1982 run is anticipated to be of Lake Clark origin and our desire is to achieve strong escapements to Lake Clark. Much of the escapement to Lake Clark is expected to come from the early portion of the run.

The Wood River system may also see an increase beyond the traditional 800,000 escapement goal, depending on age composition of the run. The larger 3-ocean sockeye tend to spawn in the short rivers connecting the Wood River Lakes while the smaller 2-ocean fish tend to spawn on lake beach areas and smaller streams. The river areas have quite limited spawning areas while the beach and small stream spawning areas are considerably more extensive. Therefore, if the salmon return has a high percentage of 3-ocean river spawners, the escapement goal would remain at 800,000, whereas, if the return had a high percentage of 2-ocean beach and stream spawners, the system could accommodate an increased number of spawners and the escapement goal would be set at 1.2 million fish. The age composition will be determined in season, as will the specific escapement goal.

Through these adjustments to escapement goals the Department hopes to increase and sustain high levels of salmon production in future years.

****
*
* DELIVER TO: JPOM
*
*
* ORIGINAL
* SENT: 04/02/85 TIME: 17:48
* FROM: LIODLG
* SUBJECT: PUBLIC OPINION MESSAGE
* PRINT DATE: 04/02/85 TIME: 17:48
*
****

TO: REPRESENTATIVE ADELHEID HERRMANN, CO-CH RESOURCES COMMITTEE

FROM: STOSH ANDERSON, VICE-CHAIR, NAKNEK\KVICHAK ADV.COMM.,BOX KS, LEVELOCK, ALASKA 99625, PHONE 287-3015

RE: HCR 18- BRISTOL BAY SALMON MANAGEMENT POLICIES

IT IS APPARENT THAT REASONS FOR ADF G CHANGE IN EXCAPEMENT GOALS IS NOT UNDERSTOOD BY MOST FISHERMEN AND RESIDENTS OF BRISTOL BAY. AS IMPORTANT AS THE SALMON RESOURCE IS TO OUR REGION IT IS BENEFICIAL THAT WE HAVE CONFIDENCE IN MANAGEMENT POLICIES. WITHOUT BEING BURDONSOME ON THE DEPT. ANOTHER ATTEMPT TO GET THE PLAN UNDERSTOOD WOULD BE HELPFUL.

EOM

TO: ALL LEGISLATORS

FR: MITCH KINK, A.I.F.M.A. GENERAL MANAGER
700 14TH STREET
BELLINGHAM, WA. 99825

RE: HCR 18 BRISTOL BAY SALMON MANAGEMENT

I AM THE GENERAL MANAGER OF A.I.F.M.A. COOP. WE HAVE A MEMBERSHIP OF APPROXIMATELY 400 WHICH FISH BRISTOL BAY. A.I.F.M.A. FOR YEARS HAS BEEN ADVOCATING SUCH FORUMS AS ARE ENCOMPASSED IN THIS BILL. WE FEEL THAT MEETINGS SUCH AS THIS WOULD BE ADVANTAGEOUS TO ALL FISHERMEN IN BRISTOL BAY. IT WOULD PUT ALL FISHERMEN ON AN EQUAL LEVEL AS TO THE PUBLIC SAFETY ENDORCEMENT POLICIES AND IT WOULD ADD CREDENCE TO THE DEPARTMENT OF FISH AND GAME'S POLICIES ON ESCAPEMENT AND HARVEST GOALS IN BRISTOL BAY. IT'S LONG IN COMING AND VERY MUCH NEEDED.
****

DELIVER TO: JPOM

ORIGINAL
SENT: 04/02/85 TIME: 15:40
FROM: LIODLG
SUBJECT: PUBLIC OPINION MESSAGE
PRINT DATE: 04/02/85 TIME: 15:40

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: KAY LARSON, EXECUTIVE DIRECTOR BRISTOL BAY NATIVE ASSOC.,BOX 189, DILLINGHAM, ALASKA 99576-PHONE 842-5257

RE: HCR18: BRISTOL BAY SALMON MANAGEMENT POLICIES

BRISTOL BAY NATIVE ASSOC. SUPPORTS HCR 18. LOCAL SUBSISTENCE USERS AND COMMERCIAL FISHERMEN ARE NOT ADVISED OF MANAGEMENT STRATEGIES AND THEREFORE DO NOT UNDERSTAND WHEN CHANGES ARE MADE SUCH AS EXCAPEMENT GOALS BEING INCREASED. MANAGERS SHOULD EXPLAIN THEIR STRATEGIES SO THAT PEOPLE WHO ARE IMPACTED BY THEIR MANAGEMENT DECISIONS UNDERSTAND WHAT IS HAPPENING.

EOM

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: MOSES TOYUKAK, MAYOR, GEN.DEL. MANOKOTAK, ALASKA 99628, PHONE 842-5978

RE: HCR 18: BRISTOL BAY SALMON MANAGEMENT POLICIES

MANOKOTAK IS IN FULL SUPPORT OF HCR 18. THE DEPARTMENT HAS NOT FULLY INFORMED US OF THEIR DECISIONS REGARDING EXCAPEMENT GOALS AND MANAGEMENT POLICY IN THE NUSHAGAK DISTRICT.

EOM

****

* DELIVER TO: JPOM

* ORIGINAL
* SENT: 04/02/85 TIME: 17:56
* FROM: LIODLG
* SUBJECT: PUBLIC OPINION MESSAGE
* PRINT DATE: 04/02/85 TIME: 17:56

****

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: GERALD ANELON, ILIAMNA VILLAGE COUNCIL, BOX 159, ILIAMNA, ALASKA 99606

RE: HCR 18: BRISTOL BAY SALMON MANAGEMENT POLICIES

THE ILIAMNA VILLAGE COUNCIL IS IN FULL SUPPORT OF HCR 18. PLEASE DO ALL POSSIBLE TO SEE THAT THIS RESOLUTION PASSES. THANK YOU.

EOM

DELIVER TO: JPON

ORIGINAL
SENT: 04/02/85 TIME: 17:52
FROM: LIODLG
SUBJECT: PUBLIC OPINION MESSAGE
PRINT DATE: 04/02/85 TIME: 17:52

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: BETTY THOMPSON, GEN.DEL. NAKNEK, ALASKA 99633

RE: HCR 18: BRISTOL BAY SALMON MANAGEMENT POLICIES

I AM IN FULL SUPPORT OF HCR 18. IT IS IMPORTANT THAT WE UNDERSTAND WHAT IS HAPPENING.

EOM

DELIVER TO: JPOM

ORIGINAL

SENT: 04/02/85 TIME: 18:00

FROM: LIODLG

SUBJECT: PUBLIC OPINION MESSAGE

PRINT DATE: 04/02/85 TIME: 18:00

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: EDWIN ANDERSON, BOX 473, KING SALMON, ALASKA 99613 PHONE 246-3039

RE: HCR 18: BRISTOL BAY SALMON MANAGEMENT POLICIES

I FULLY SUPPORT HCR 18 ONE HUNDRED PER CENT. KEEP UP THE GOOD WORK.

EOM

DELIVER TO: JPOM

ORIGINAL
SENT: 04/02/85 TIME: 18:16
FROM: LIODLG
SUBJECT: PUBLIC OPINION MESSAGE
PRINT DATE: 04/02/85 TIME: 18:16

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: GUST BARTMAN, VILLAGE ADMINISTRATER, GEN.DEL., MANOKOTAK, ALASKA 99628, PHONE 842-5978

RE: HCR 18: BRISTOL BAY SALMON MANAGEMENT POLICIES

I AM IN SUPPORT OF HCR 18. THIS IS VERY IMPORTANT. WE NEED TO BE INFORMED OF POSSIBLE CHANGES AHEAD OF TIME.

EOM

DELIVER TO: JPOM

ORIGINAL
SENT: 04/02/85 TIME: 18:09
FROM: LIODLG
SUBJECT: PUBLIC OPINION MESSAGE
PRINT DATE: 04/02/85 TIME: 18:09

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: MOSES JOHN, COUNCIL CHAIRMAN, GEN.DEL.,MANOKOTAK, ALASKA 99628 PHONE 842-5978

RE: HCR 18: BRISTOL BAY SALMON MANAGEMENT POLICIES

I SUPPORT HCR 18. THIS RESOLUTION IF VERY IMPORTANT TO THE FISHERMEN AND PEOPLE OF BRISTOL BAY.

EOM

DELIVER TO: JPOM

ORIGINAL
SENT: 04/02/85 TIME: 18:04
FROM: LIODLG
SUBJECT: PUBLIC OPINION MESSAGE
PRINT DATE: 04/02/85 TIME: 18:04

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: HARVEY SAMUELSEN, CHAIRMAN-WESTERN ALASKA MARKETING COOP. ASSOC., BOX 18, DILLINGHAM, ALASKA 99576, PHONE 842-5591

RE: HCR 18: BRISTOL BAY SALMON MANAGEMENT POLICIES

WE ARE IN FULL SUPPORT OF HCR 18. THIS LEGISLATION IS VERY IMPORTANT AND A GREAT NECESSITY.

EOM


HCR
209

Resource policies not always popular

By ESTHER WUNNICKE

No decision is more difficult for a public official than one that may hit people in their pocketbooks. Such is the case with the Cook Inlet royalty gas decision you've been reading about recently.

There's more than money at stake here. There's also a fundamental question of fairness for Alaskans everywhere, including the people of Anchorage and the Southcentral area.

Alaskans living on the shores of Cook Inlet enjoy plentiful, inexpensive natural gas for home heating and power generation. A good share of that gas is produced from fields owned by all of the people of Alaska and leased to private industry for development, just as the giant Prudhoe Bay field is.

For years, the price local public and private utilities paid for this gas has remained very low, under long-term contracts between the utilities and the gas producers. And except for the share due the state as landowner, those prices will continue to stay low until the contracts expire in 1988, 1992 and 1994. We're all thankful for that.

While industry is producing Cook Inlet gas used by thousands of Alaskans in the Southcentral area, a portion of that gas is owned by all Alaskans. That smaller ownership share, called a royalty, equals 12.5 percent of the gas from these fields. The state reserved this 12.5 percent as the public's share when the leases were awarded.

It's this royalty gas — less than 5 percent of all gas used for home heating or power in the Anchorage area — that is at issue in a pricing decision I announced in mid-March. That decision, which took effect April 1, seeks to capture the prevailing market value for this publicly owned gas, a value established by sales contracts for other gas produced in Cook Inlet.

That prevailing market value is $2.05 per thousand cubic feet, compared to the 21 to 61 cents the public has been earning on its gas under the long-term contracts. The result of the March pricing decision could bring an extra $7 million a year to the public treasury.

On the other hand, what does this decision mean to your utility bill?

The increase in monthly rates would be between 2 percent and 4 percent, according to estimates from Enstar and Chugach Electric. For the average home serviced by Chugach using approximately 800 kilowatt-hours a month — a total monthly bill of about $57 that translates into an increase of about $2.30 per month. For an Enstar customer who consumes a monthly average of 16,000 cubic feet of gas, the average monthly bill of $44 would increase by about 90 cents.

No public official, elected or appointed, wants to take money out of people's pockets unless a greater public good is served. That's the case here.

The principle underlying the Cook Inlet gas decision is the same being pursued on the public's behalf on a wide variety of fronts, both in court and out. Last year, for example, the Phillips Petroleum Co. paid the state $36 million in additional royalties for publicly owned gas from five Cook Inlet leases, following an agreement between the company and the state on how to value royalty gas. That agreement did not result in higher Anchorage area utility bills because the gas is not used by local consumers, but the principle is the same.

Likewise, the state is involved in several lawsuits seeking to establish accurate values for oil and gas on the North Slope. Billions of dollars are at stake in this ongoing effort to obtain for the people what is their due — a maximum benefit for their resources.

I fully appreciate the desire to keep consumer gas and electricity prices as low as possible. This cannot be done, however, by hidden subsidies to Southcentral consumers through a disregard of the state's oil and gas leasing laws and contracts.

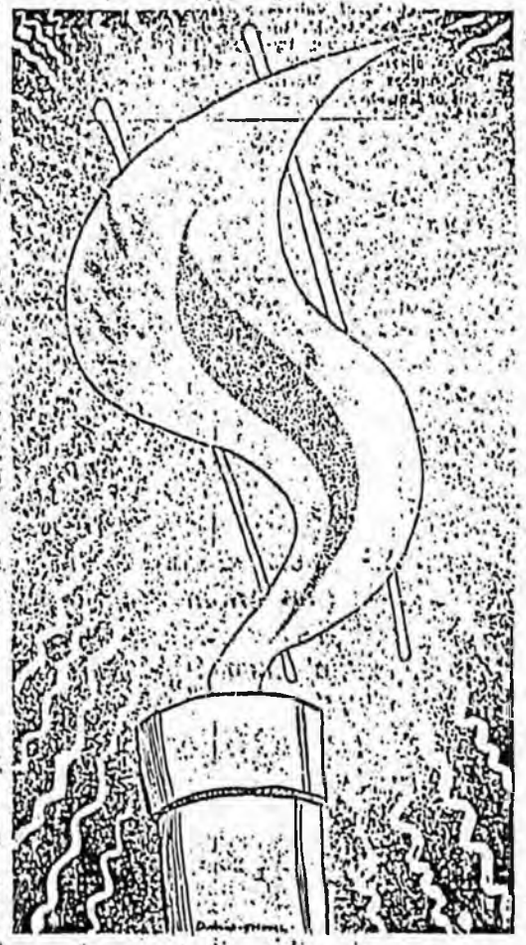
The state currently is investing hundreds of millions of dollars to ensure the energy needs of all Alaskans are met, including those in the Railbelt. Some of that investment has been directed first to the rural areas of Alaska, where residents often pay a quarter of their annual incomes for home heating and electricity. The state also is nearing completion of the $150 million electrical intertie between Anchorage and Fairbanks, plans to begin construction next year to the Bradley Lake hydro project near Homer, and is continuing to pursue the Susitna hydro project. Toward those ends and more, Gov. Sheffield has worked with the legislature to appropriate $250 million during this session to a power development fund.

At the governor told a statewide conference on alternative energy last month, Alaska may or may not build Susitna, depending on the future price of oil, agreement on power sales contracts, and the securing of financing.

"But I believe we're going to have to build something that will fulfill the growing demand for affordable, dependable power in Anchorage, the Kenai Peninsula and the Railbelt," the governor said. "It may be a series of coal-fired plants, the Susitna and Bradley Lake dams, or alternative energy facilities. More likely, it will be some combination of methods, including better conservation."

To help finance that affordable, dependable energy future for Alaska, as well as take care of all our other needs, the department of Natural Resources is required by law to maximize the people's return on natural resource development. That requirement may not always be popular, but it is a wise one for our state and our future.

□ Esther Wunnicke is Alaska Commissioner of Natural Resources.



Energy decisions hurting Anchorage

BY VIRGINIA COLLINS

If there is equity in our statewide energy program, you won't find it in Anchorage.

From 1977 through 1985 the Anchorage area received only one-fifth of the $1.65 billion appropriated for state energy projects and subsidy programs, including Susitna, yet Anchorage metropolitan area residents make up over one-half of the state's population! In other words, for every energy dollar appropriated over the last nine years, 20 cents was earmarked for Anchorage and 80 cents for the remainder of the state.

Now the state has implemented a new policy which will have the effect of a hidden state tax on Anchorage and Southcentral area utility customers. The cumulative impact of this policy will increase electric utility and gas bills by more than $3 million annually or more than $30 million over the next 10 years.

On April 15, 1985, the Department of Natural Resources began assessing higher royalty values on Cook Inlet natural gas it sells to producers. The royalty price increase will be passed on to Chugach Electric and Enstar customers comprising approximately 250,000 residents throughout the Mat-Su Valley, Anchorage and Kenai Peninsula.

In defense of its decision, the department of Natural Resources would have us believe that it is statutorily obligated to implement this new policy on the grounds that this action would "assure full and proper royalty collection for the benefit of all the citizens of Alaska."

In a nutshell, this new state policy implies that the citizens of Anchorage and Southcentral Alaska do not qualify to participate fully in the benefits accorded to other citizens of the state — namely, lower utility rates than would be possible without state assistance.

The state has clearly established its commitment to energy subsidies throughout most other areas of the state in a effort to reduce the escalating costs of power; examples include the $600 million Four-Dam Pool for Southeast, Kodiak, Valdez and Glennallen; a much-needed $21 million annual appropriation for power cost assistance in rural Alaska and a $150 million Railbelt transmission line intertie that will enable the Fairbanks/Interior area to avail itself of low cost, natural gas-generated power from Anchorage.

It is true that Anchorage area residents currently enjoy reasonable power rates relative to rural communities; nonetheless these rates are due to increase dramatically within a few short years. The state's decision to assess higher royalty taxes which will be passed on to Anchorage area utility consumers raises fundamental questions about the fairness of subsidizing energy costs for one-half of the state's population while simultaneously taxing the other half; in effect creating two classes of citizens, the subsidized and the de-subsidized.

This issue is greater in scope than the question of whether or not the state should assess higher royalties on Cook Inlet natural gas.

The Alaska Constitution requires that "The legislature shall provide for the utilization, development and conservation of all natural resources belong to the state ... *for the maximum benefit of its people.*" It is, therefore, the legislature's constitutional responsibility to determine if the state's policy to assess higher royalties for Cook Inlet gas meets the test of providing for the "maximum benefit" of all Alaskan citizens, rural and urban alike.

Clearly, that is not the case for the 250,000 people who live in our state's largest urban area — Anchorage.

The issue of "fairness" in the implementation of our state's energy policy will not fade away. If we fail to address it now, it will come back to haunt us another day and will galvanize public opinion of every utility ratepayer in Alaska.

□ Virginia Collins, a Republican, represents Midtown Anchorage in the Alaska House of Representatives.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

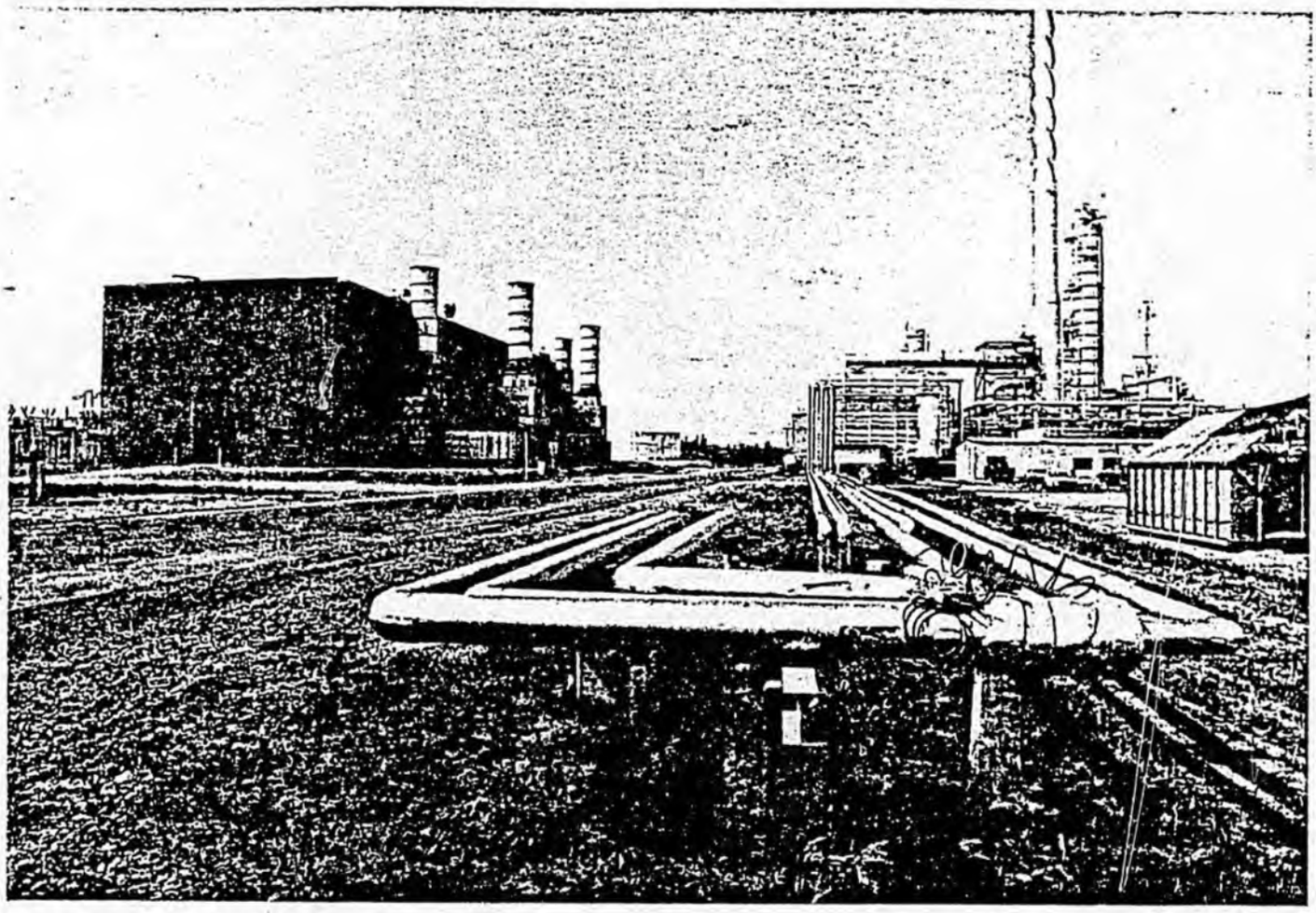
HOUSE SPECIAL COMMITTEE ON OIL AND GAS

HCR 29

Alaska has an extensive array of energy programs, though these programs are often in conflict with one another due to lack of an overriding energy policy. This lack of policy has resulted in regional disputes toward energy costs and the development of energy projects, disincentives toward energy conservation, conflicting direction being given to the administration, and cutbacks in programs providing subsidies on a needs basis.

Recognizing that the implementation of specific energy programs is not a substitute for an energy policy, HCR 29 is designed to provide for the development of a policy that will address energy issues on a broad, statewide basis. Only through such a policy will it be possible for the state to maximize development of its thermal resources, maximize revenues based on these resources, promote lower energy costs to individuals and the state, and allow for the proper planning of major energy projects.

HCR 29 is not directed toward the expansion or curtailment of specific energy programs, but toward development of a policy that will allow all present and proposed programs to be viewed within an overall context. We have been made painfully aware in recent months of the state's dependence on energy-based revenues, and of the pivotal nature of energy prices on Alaska's economy. HCR 29 would lend direction toward utilizing energy resources and energy-program expenditures for the best interests of the people of the state of Alaska.



Refinery at North Pole, Alaska.

Alaska's Energy Policy: Power to the People at Any Cost

by Neil Davis

INTRODUCTION

The State of Alaska is in the energy business in a big way. More than 90 percent of state government's income is from petroleum resources—possessions owned collectively by the people of Alaska. This income is large, especially for a state having a population of only half a million people, and it allows the state government to spend heavily. The fiscal year 1985 state budget plans for an expenditure of $3.89 billion, the equivalent of $18,600 per average Alaskan household.[1]

In 1985 Alaska will spend roughly $600 million for transportation and public facilities and another $550 million for education. The next largest expenditure—ranking above government administration itself and above health and social services—is for providing energy and energy subsidies to Alaskans. Alaska will spend approximately $480 million on energy-related matters in fiscal year 1985. This is because Alaska's state government has established itself as the key provider for the state's energy needs.

An examination of the FY 1985 budget indicates a planned expenditure for the state's energy business as shown in Table 1. Striking features of this table are the high expenditure for hydropower and the low expenditure for research. No for-profit enterprise with operating and capital budgets the size of Alaska's would consider spending such a small portion of its total outlay for research. Exxon, for example, spent 6 percent of its total $11 billion budget in 1981 for research, and a tenth of that was for "basic" research.[2] Yet, in 1985 Alaska will spend only about two-

Neil Davis, *Professor Emeritus of Geophysics at the University of Alaska-Fairbanks, received B.S. and Ph.D. degrees in geophysics from the UAF and an M.S. degree from the California Institute of Technology. His latest book is* Energy/Alaska *(University of Alaska Press, 1984) from which the above photo is taken.*

One important component of the energy policy . . . is the concept that all Alaskans should share equally in the cost of energy and that all should have plenty of energy to use.

tenths of a percent of its energy-related outlay on what might be considered research.

Even if one includes the entire budget allocated to the Alaska Department of Natural Resources for "resource inventory/geological investigations"[1] as if it were intended for research on energy resources—which of course it is not—then the portion for research is still less than 1.5 percent. Alaska's energy policy does not include more than token investment for research directed toward developing the state's vast energy resources[3] or toward analyzing state government's self-chosen role of providing energy to the people of the state.

ALASKA'S ENERGY POLICY

If Alaska's energy policy has little room for the generation of new knowledge and for technical innovation, what is the policy, and what does it include? Does Alaska even have an explicit energy policy? The evidence is that it does have an *evolving* energy policy, although one might not be able to locate a statement of what that policy consists of at any moment in its evolution.

Something that sounds like the makings of a policy is the legislation that requires the Alaska Department of Commerce and Economic Development, with the assistance of the Alaska Power Authority, to prepare annually a new report on the "Long Term Energy Plan for Alaska."[4] The various authors of the reports on the Long Term Energy Plan do not claim that the plan is a statement of policy or that it is even a tool for developing policy.[5] Yet the reports contain statements giving implicit indications of the state's energy policy. Such statements, in addition to the body of enacted law, do suggest what the state's energy policy is.

Table 1. Alaska FY 1985 Budget for Energy

Item	Amount (in millions of dollars)
Hydropower	396.621
Energy Subsidies	25.653
Interties: Anchorage - Fairbanks plus Seward	25.082
Rural Electrification	14.295
Administration	13.766
Energy Conservation	2.434
Alternative Energy	1.195
Research (0.2%)	
Fisheries impacts of hydropower	0.415
Coal resources	0.400
Geothermal resources	0.100
(University of Alaska Coal Lab: 0.180)	
Total	$480 million (12.3% of state budget)

The record of legislative actions over the past six years, as outlined in Table 2, hints at the nature of Alaska's energy policy and its fast evolution. The state's actions over the years do express an evolving policy, even if that policy is not explicitly stated.

The starting point for development of Alaska's energy policy was the major increase in worldwide petroleum costs that occurred during the 1970s. High petroleum prices and Alaska's status as a major petroleum exporter together gave the state money to spend. Those high prices also caused the state's political leaders to have genuine concern over the cost of energy to Alaskans, particularly those in rural areas.

The flurry of energy legislation in 1978 established a policy that said, in essence: Alaska will use its energy resources and the money derived from them to attempt to hold down or even reduce energy costs for urban Alaskans, and also to elevate rural standards of living by providing lower-cost energy there. The policy included components based upon a faith in the concept of increasingly greater petroleum prices in the future, faith in technology (i.e., creation of the Division of Energy and Power Development and the Alaska Council on Science and Technology), and faith in the idea that anything can be accomplished by showering it with money (establishment of the Alaska Gas Pipeline Authority).

Most important, the policy stated that it shall be the role of Alaska's state government to enter the business of providing electrical energy to the state's citizens (establishment of the Alaska Power Authority). Why not? The federal government did the same thing many years ago with its Rural Electrification Administration and Tennessee Valley Authority.

An element of the state leadership rec-

Alaska's energy policy does not include more than token investment for research directed toward developing the state's vast energy resources. . . .

ognized that perhaps the centralization represented by the major role awarded to the Alaska Power Authority might not be a satisfactory answer for everyone. One result was legislation forming the Alaska Energy Center, a public corporation intended to do everything for everyone, but which resulted—because of its quick termination—only in an embarrassing waste of time and money.

The years 1979 through 1983 saw changes that honed Alaska's energy policy into its present form. The recognizable forces affecting the evolution of policy include one that politicians find difficult to resist: the demand for jobs that large energy projects promise.[6]

Another strong force is the persistent faith in rising energy costs, an almost blind trust that inflated costs of fossil fuels will level all apparent fiscal mountains into highly negotiable foothills that future Alaskans can tread across with ease. Best to put out of mind the possibility that petroleum prices may stay constant or even decline further. If that happens, a typical Alaskan fall sets in: the money tree sheds its fruit and leaves quickly; a hard winter follows soon behind.

Another strong, growing force is state government itself. The fiscal year 1985 budget adds 1772 new positions to augment the approximately 17,000 people already employed by the state.[1] Even if they are not employed by the state, most Alaskans expect the state to provide benefits that go beyond the basic services government had provided a few decades ago. Alaskans now expect state government to provide jobs, housing loans, welfare payments, economic assistance to farmers and businessmen, and subsidies of all sorts. That state government should also provide energy only seems natural in an era when the public expects so much of government.

These and other forces influenced the refinements of Alaska's energy policy from 1979 to 1983. If one thinks that state government's actions during this period indicate an evolving policy rather than merely a battling between different political elements of the leadership, then the nature of the evolution is clear.

The elimination of such bodies as the Division of Energy and Power Development and the Alaska Council on Science and Technology indicates a trend toward centralization of authority and decision making and also a move away from the belief that technical innovation and the development of new knowledge should be important components of Alaska's energy policy.

Along with a trend toward centralization, the evolving policy has focussed on the development of large power projects, primarily hydropower. The policy looks away from small, local energy projects that collectively might depend upon a variety of energy sources and that might

Table 2. Energy Legislation Implying an Energy Policy

1978 – *Alaska Power Authority* established.
– *Division of Energy and Power Development* created.
– *Alaska Gas Pipeline Authority* established.
– *Alaska Council on Science and Technology* established.
1980 – *Alaska Energy Center* established.
1981 – *Alaska Energy Center* abolished.
– *Energy Program for Alaska* enacted.
1982 – *Alaska Power Authority* powers broadened.
1983 – *Alaska Council on Science and Technology* abolished.
– *Division of Energy and Power Development* abolished.
– *Susitna blackmail clause (consumer balloon payments)* postponed until July 1991.
1984 – *Susitna blackmail clause* repealed.
Fiscal restraints removed from Alaska Power Authority, *so that its projects no longer need be economical* or return full investment to the state.
Power Development Revolving Fund established in the Department of Commerce and Economic Development to pay differences between actual costs and income from Alaska Power Authority projects.
– *Intertie appropriations* made for $25 million (Seward; Anchorage-Fairbanks).
– *Lake Tyee, Swan Lake, Solomon Gulch, and Terror Lake* hydro projects combined for purpose of rate determinations.
– *Bradley Lake* hydro project authorized for construction at a cost of $300 million in July 1983 dollars.
– *Susitna-Watana* hydro project authorized for construction at a cost of $3.75 billion in January 1983 dollars.
– *Unconstitutional forward appropriations* for
1. *"power cost equalization"* – $21.7 million annually,
2. *Bradley Lake* "rate stabilization," etc. – $50 million annually, and
3. *Susitna-Watana* "rate stabilization," etc. – $200 million annually.

require application of new or improved technologies.

One important component of the energy policy that has not changed is the concept that all Alaskans should share equally in the cost of energy and that all should have plenty of energy to use. The Energy Program for Alaska is accomplishing these goals by means of direct subsidies to consumers outside the Anchorage and Fairbanks areas and by means of the required sharing of power project costs expressed in the "Susitna blackmail clause" —primarily intended to force future legislatures to invest in large power projects. The repeal of this clause in 1984 and its replacement legislation actually did not signal a change in the policy that all Alaskans should share equally in the costs of power projects administered by the Alaska Power Authority. However, the new legislation did remove from the power authority the previous requirement that its projects should pay for themselves.

Prior to 1984, the Alaska Statutes required the Alaska Power Authority to set rate structures that would return the state's investment in total. But now, if the authority builds a project that produces power at a cost higher than an alternative source of energy, the authority is allowed to set rates equal to that dictated by the cheaper alternate source. All Alaskans will share equally in the cost of the resulting shortfalls through the Power Development Revolving Fund—which is to be filled with money owned equally by all citizens.

SUMMARY

In summary, Alaska certainly does have an energy policy. It has some fixed elements and some that are evolving. Based upon the actions that express it, Alaska's energy policy seems to be composed of the following elements:

- Derive all possible income from export of energy. Foster, if necessary, new exports by providing financial assistance using money owned by the state's citizens. Assume an increase in fossil fuel prices of a few percent each year.
- Provide electrical and thermal energy to the state's citizens, since it is assumed that such a task is a proper function of state government. Also, subsidize fossil fuel costs in rural areas.
- Centralize decision making within state government and emphasize large power projects together with an interconnected intertie network. Use power projects to promote employment and regional growth. Assume that all technical problems can be solved during construction phases, using a base of pre-existing knowledge.
- Do not require that power projects in themselves be the cheapest means of power generation in each area of the state.



Use a common pool of money owned by the state's citizens, now and in the future, to make up cost differences.

- Do not emphasize use of the variety of energy resources available in Alaska or of technical innovation and development of new knowledge—to do so has no current fiscal advantage.

I submit that the state's current energy policy is not in the long-term best interests of Alaska. Regardless of whether one approves of rapid growth, the policy probably is quite successful in promoting growth —as long as excess funds are available from energy exports. However, the policy makes too much use of subsidy and minimizes technological development that will be needed in future years. We are, in fact, already wasting money that would be better spent trying to diversify our use of Alaska's copious energy resources.

Our policy places too much emphasis on centralization, both in energy supply and decision-making authority. The issues are complex and difficult to comprehend, at best. Partly for that reason, and partly because of the centralization within government, Alaska's energy policy can be conducted by too few people with too little scrutiny.

Perhaps the most serious defect is the lack of fiscal restraint in the policy that now exists in 1984. Previously, the Alaska statutes required that energy sold from projects be priced to match their costs, year by year. The removal of that stringent requirement decreases the pressure on planners to make energy projects cost-effective—as long as the oil money holds out, we have no immediate sanction to punish poor planning or costly mistakes. We are, in effect, putting our problems off to the future. As rich as Alaska is now, one would think that we ought to be able to solve our problems as we encounter them, instead of foisting them off on our children.

REFERENCES

[1] Fiscal Year 1985 Operating and Capital Budget, Summary of Appropriations, Legislative Finance Division, Pouch WF, Juneau, AK 99811.

[2] David, E. E., Jr. 1981. Overview, Proceedings of the Exxon Energy Research and Development Symposium, held May 19, 1981, in San Francisco, California. Exxon Research and Engineering Company, Florham Park, NJ, p. 5.

[3] Davis, Neil. 1984. Energy/Alaska. University of Alaska Press, Fairbanks, AK, 530 pp.

[4] Alaska Statutes. 1980. Alaska Statute Sec. 20, ch. 156, SLA 1978; am. Sec. 25, ch. 83, SLA 1980.

[5] State of Alaska Long Term Energy Plan, annual reports for 1982, 1983, and 1984. Department of Commerce and Economic Development, Juneau, AK. (See, in particular, the 1982 report.)

[6] Tussing, A.R. 1984. Alaska's energy policy in a global context. *The Northern Engineer* 16(2):27-33. ♦

NAKNEK ELECTRIC ASSOCIATION, INC.

POST OFFICE BOX 118 • NAKNEK, ALASKA 99633 • PHONE (907) 246-4261

April 8, 1985

Rep. Davis
Labor and Commerce
Pouch V
State Capitol
Juneau, AK 99811

RE: ENERGY EQUALIZATION PERPETUATION CONCERNS

Everyone reads, listens, observes and interprets differently. The best of intentions can be construed to make "black white."

This I may be doing by the following comments. However, I should like to set forth and offer comments and suggestions relating to "power cost equalization."

Recognition of high electric energy costs in given areas of Alaska is acknowledged and should be addressed.

Too, it is realized people "by and large" live where they do, because of a willingness and awareness that it may cost more, and accept such as a way of life.

Consequently, considerable disparity exists, but Alaskans do have a good buy in their base electrical requirements with the application of energy equalization. As an example, from the March 25 addition of U.S. News and World Report (copy attached), average residential cost per KWH in New York City was listed as 16.174¢. Here in Naknek, Alaska our average residential consumption is 454 KWH per month at a tariff rate of $120.59, or 26.56¢ per KWH, and a credit for power cost equalization of 15.73¢ per KWH, or net of 10.83¢ per KWH "out-of-pocket expense;" a lesser cost than New York City by 5.34¢ and near the same as Chicago costs per KWH. My chief concern of equalization is threefold; the state of Alaska capital budget, perpetuation of the fund, and placing equalization in the hands of legislative intent.

The seeding of the fund will dwindle, and at some point in time exhaust itself. This will cause considerable unrest among rural people that have become accustomed to the stipend, thereby causing hardship in some cases, questions of the utilities, legislators and Board of Directors. It will be hard to explain the removal and decline of the equalization fund, once established for their benefit.

The following observations might well serve as thought for revision possibilities of PCE legislation and law.

At 1984's year end, the Alaska Power Authority disbursed in excess of 8.5 million dollars for some 77.5 million KWH at an average 11.15c per KWH. After scanning the rural electric borrowers national statistical report of Alaskan systems, a ratio of 50% appears reasonable for distribution of residential against all consumer classifications. It appears assumable that fifty percent of equalization could be eliminated by making only residential consumers eligible for energy equalization.

I do not know the capital budget for PCE, however, it appears that about five million dollars will be required to satisfy only residential consumers while the inclusion of all other classes could possibly bring the figure to ten million dollars. Therefore, let us assume the program would be funded with ten million dollars each year as long as possible; thus leaving a surplus of five million after satisfying the residential requirements to be trusted until such time the trust would generate in earnings that amount needed for PCE payments of the future, and require no further funding.

Taking the position that only residential consumers be eligible for PCE is based upon the nature of business today. Take the commerical account for example. Each are entitled to take from their income the expense of doing business; therefore, in reality, electrical costs are a deduction for the commercial account. Too, the commercial account will add the cost of electrical costs to the retail item or items for sale; or in the case of a service, it will be included in the service fee indirectly. Therefore, no need is truly generated for PCE in the commerical class of consumer. Let us look now upon the governmental usage of electricity. By funding such accounts, it is merely pushing funds from one tax pocket to the other, and providing a budget surplus for the agency, whether it be federal, state or local governmental entities.

Only the residental consumer has no means of regaining excessive energy costs and truly should be the only recipients of PCE funding.

It probably is not politically wise to remove commercial accounts from PCE, however, every justification necessary lies in the fact that expense is a tax deductible item, and therefore, should be eliminated from allocation.

These thoughts have been in mind for sometime, and I hope might light the spark for some revision of PCE.

Thank you for your time and considerations.

Sincerely,

C. E. Franke
General Manager

As an Ex-President Prunes His Perks—

Richard Nixon's plan to give up his Secret Service bodyguard lent impetus to a drive in Congress to trim the costly perks enjoyed by former Presidents.

Senator Lawton Chiles (D-Fla.) announced that he would introduce a bill to rein in what some critics call the "imperial ex-Presidency," curtailing the 28 million dollars spent each year to commemorate, protect and otherwise take care of former Chief Executives.

With that tab exceeding the 24.9 million dollars it costs to run the White House itself, critics protest that something is amiss.

Nixon, who became in mid-March the first ex-President to decide to give up lifetime protection, would save the government more than 2 million dollars a year by hiring his own guards. Others shielded by the Secret Service: Gerald Ford and his wife Betty, Jimmy Carter and his wife Rosalynn and Lyndon Johnson's widow Lady Bird. Jacqueline Kennedy lost her protection when she remarried in 1968.

The agents accompany the former First Families on their travels and camp on their doorsteps when at home, operating out of nearby leased quarters.

The Secret Service last year stopped providing protection for Nixon's wife



Nixon and his Secret Service agents.

Pat at her request. After Nixon announcement, Ford said he would keep his Secret Service men for now but gradually eliminate it later. Carter has elected to continue.

Before Dwight Eisenhower, no former Presidents had to rely on the Secret Service. Then, in 1955, Congress voted [illegible] est 1984 that the agency provide protection and libraries. Persons not entitled to them were added in 1965 and the Secret Service protects them in 1965.

By this year, outlays had exploded to 15.5 million dollars for the pensions, 11.2 million for Secret Service protection, 1.2 million for office allowances and $278,000 for pensions.

Critics not only would limit [illegible] provided for ex-Presidents. They would also require annual reviews of the need for protection. After [illegible] years

Electricity's Surging Cost

Average residential electric bills climbed 7.9 percent in 1984, nearly twice as fast as the 4.0 percent inflation rate.

A national survey by utility regulators found power costs varied widely, with consumers in the Northeast paying the most and those in the Northwest the least. New York City's rate was the highest in the nation.

The 25 most expensive and 25 least expensive cities by kilowatt hour in 1984:

25 Most Expensive

	Average KWH Cost	1-Year Change
New York City	16.17¢	+ 4.5%
[illegible] Hawaii	[illegible]	- 6.8%
Northeast Mass.	[illegible]	- 7.6%
[illegible], Hawaii	12.92¢	- 10.7%
Middletown, N.Y.	10.79¢	- 0.2%
[illegible], N.Y.	13.05¢	- 0.5%
Boston, Mass.	12.77¢	+0.9%
[illegible], Nantucket	12.14¢	+11.6%
[illegible], Vineyard, Mass.	10.91¢	- 5.0%
[illegible] Bay, Calif.	11.79¢	- 6.1%
Provincetown, Mass.	11.66¢	+20.1%
Bergen County, N.J.	11.47¢	+14.6%
Delaware, N.J.	11.31¢	- 1.1%
[illegible]	11.23¢	- 9.4%
Barnstable, Mass.	11.22¢	- 1.5%
[illegible], Vt.	11.20¢	+22.3%
Bridgeport, Conn.	11.14¢	+11.6%
[illegible], N.J.	11.07¢	- 2.0%
Chicago, Ill.	10.80¢	+ 4.6%
Philadelphia, Pa.	10.80¢	+20.9%
Pawtucket, R.I.	10.78¢	+21.8%
Washington, D.C.	10.75¢	- 2.0%
Easton, Md.	10.65¢	+21.0%
Fall River, Mass.	10.60¢	+12.2%
Davenport, Iowa	10.57¢	—

25 Least Expensive

Billings, Mont.	3.66¢	-15.5%
Bonneville, Wash.	3.61¢	-22.0%
Boise, Idaho	3.95¢	- 8.5%
Ontario, Ore.	3.95¢	-11.0%
Richland, Wash.	3.91¢	-10.8%
La Grande, Ore.	4.07¢	-21.1%
Casper, Wyo.	4.42¢	- 7.4%
Bellevue, Neb.	4.45¢	-35.2%
[illegible], Ky.	5.21¢	- 1.8%
[illegible], Wash.	5.45¢	- 1.5%
Pocatello, Idaho	5.46¢	-35.5%
Marietta, Ohio	5.48¢	- 0.7%
Cheyenne, Wyo.	5.55¢	-21.7%
Washington, Pa.	5.56¢	- 3.0%
Las Vegas, Nev.	5.67¢	-27.4%
Portland, Ore.	5.74¢	- 5.7%
Kingsport, Tenn.	5.75¢	- 2.0%
Fort Myer, Fla.	5.76¢	- 2.4%
Jefferson, Mo.	5.85¢	- 3.2%
[illegible], Ky.	5.85¢	0%
[illegible], Va.	5.88¢	- 7.3%
[illegible], Ore.	5.91¢	- 1.5%
[illegible], Ky.	5.97¢	- 3.9%
[illegible]	5.98¢	- 1.5%
Davenport, Iowa	6.04¢	- 1.1%

Current Quotes

"The first thing one has to remember is that you don't get to the head of the Politburo by being a choirboy."

Former Secretary of State Henry Kissinger, stressing the need for caution in sizing up new Soviet leader Mikhail Gorbachev.

"If the United States wants to continue to play a role in the Third World, it must attack terrorism at its source."

Former President Richard Nixon, calling for tough action against terrorists in a newly released book *No More Vietnams*.

The IRS has sunk so low in public opinion that a responsible accountant honestly believes he needs a hood to protect himself from IRS retaliation.'

Ronald Noll of the Pennsylvania Society of Public Accountants, telling a House subcommittee that accountants fear the IRS so much they have discussed hiding their identity for future appearances.

"The fact is we might be handing out psychological thalidomide."

Dr. Edward Zigler of Yale, warning that Americans who put very young infants in day-care centers may traumatize them and do serious psychological harm.

"We should not have let him out of there alive."

Former Israeli Defense Minister Ariel Sharon, saying his government "committed an error" when it allowed PLO leader Yassir Arafat to escape from Lebanon in 1982.

"We have drawn a very fine line in the sand against raising taxes."

Budget Director David Stockman, in describing the Reagan administration's position against [illegible] magazine articles and columnists.

"Go ahead—make my day."

President Reagan, [illegible] from Clint Eastwood movies, [illegible] Congress to send [illegible] so he can have the pleasure [illegible]

Chugach Electric Association
1984 Annual Report

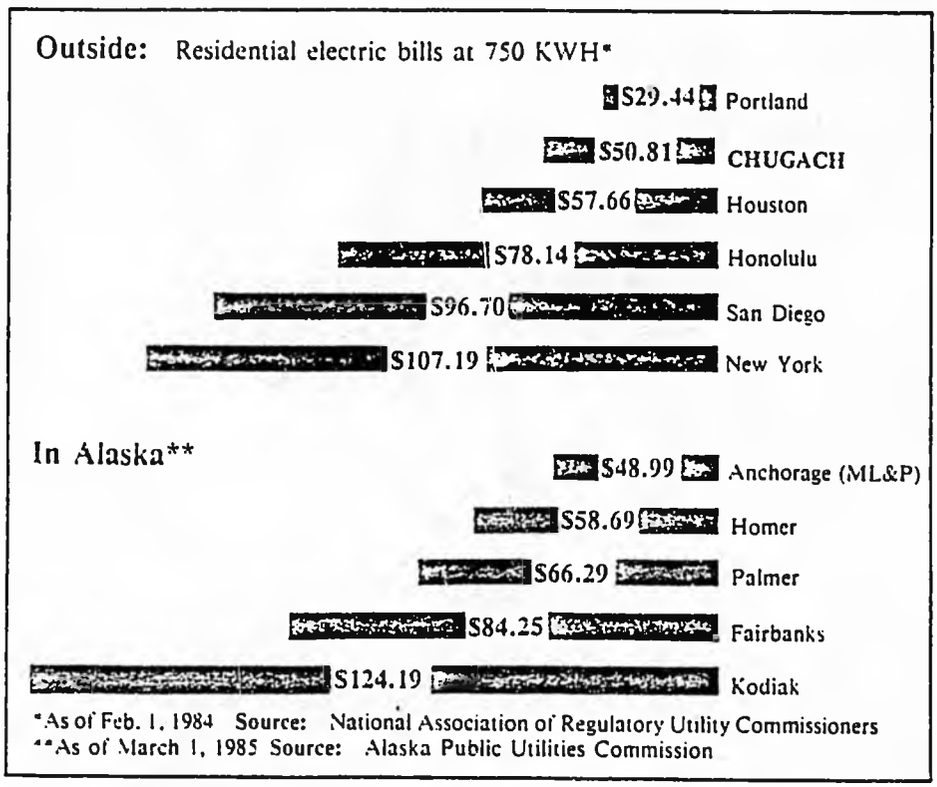
How our rates compare

Chugach consumers enjoy some of the lowest electric rates in the nation, thanks in part to a long-term supply of inexpensive natural gas used to generate power.

Statistics compiled by the National Association of Regulatory Utility Commissioners show that consumers in New York City pay $107.19 for 750 kilowatt hours (kWh) of electricity, more than double the $50.81 charged by Chugach.

Residents of Tampa Fla., pay $60.74 for 750 kilowatt hours while those who live in Philadelphia pay $73.08.

Chugach's rates have remained suprisingly constant over the past 30 years, although electrical usage has soared. The average residential usage in 1984 was 805.4 kWh per month.



Alaska's Energy Policy in a Global Context

An Informal Tour of a Modern Maze



by Arlon Tussing

WORLD ENERGY FUTURES

How one looks at Alaska's energy policy choices depends mainly on one's perceptions c what world energy markets will look like over the next 10 to 20 years. Some of the perceptions that stood behind the State's policies during the late 1970s and the early 1980s now need to be reassessed. Specifically, we should look again at the notion that we face a long-term tightening of energy markets worldwide, and that oil prices (and, hence, the value of Alaska's fossil fuel resources) will continue to increase without letup. It is time to reexamine the belief that Alaska can look forward to brightening prospects for energy-related export ventures which could, in turn, sustain economic growth in the state.

Arlon R. Tussing *is professor of economics at the University of Alaska's Institute of Social and Economic Research, Anchorage, and president of ARTA, Inc., Seattle. Tussing is well known for his impressive record in the past few years for controversial but accurate forecasts in the energy pricing market. He is co-author of* **"The Natural Gas Industry: Evolution, Structure, and Economics."**

This belief rests on a fundamentally flawed picture of the world energy outlook and Alaska's energy-related opportunities. It reflects, at best, a myopic view of the events of the 1970s. The last few years showed that lasting and worsening energy traumas are not inevitable, at least in the short term. And a look at the cycles and trends of energy prices over the preceding hundred years calls into question doomsday rhetoric for the long term, as well.

History shows us that oil prices, in particular, are violently cyclical, at least without an overwhelming regulatory presence like that of the Texas Railroad Commission between 1935 and 1972. Oil is a commodity and, like soybeans or copper, its price fluctuates annually and over longer periods. If we look at 130 years of crude-oil prices in the United States, we find no long-term trend; that is, the overall pattern is pretty flat – with an average somewhere on the order of $14 a barrel in today's prices. But we also find dramatic short-term fluctuations: prices have moved up or down an average of about 20 percent per year.

Perhaps the most important lesson to be gleaned from these historical statistics is that there is no confident basis upon which to forecast oil prices in the year 1990, 1995, or 2000. It is not inconceivable that prices will again reach down to the levels prevailing before 1972 – less than $10 per barrel in today's dollars – or that spot prices could for a nonce reach $50 or more. The important point is that even if, as I suspect, $15 is about the "right" price for the long run, $15 is not a stable "equilibrium" that provides a basis for long-term business or public planning.

In the years before 1973, the energy establishment assumed, perhaps unconsciously, that there was such an equilibrium because the Texas Railroad Commission had been stabilizing domestic (and, with the help of the Seven Sisters, global) oil prices for decades. From 1935 to 1972, the average annual change, up or down, in U.S. constant-dollar crude-oil prices was only about 4 percent. The Commission wielded such power because Texas producers controlled and contained the bulk of the world's discretionary oil-producing capacity. Texas authorities could increase production enough to cover any surge in demand resulting from a world-wide economic boom; they could also slow down production to prevent a petroleum glut and consequent price crashes.

As a result, we were blessed with 35 to 40 years of stable oil prices. In a sense, it was a fool's paradise that gave rise to the conviction that there was indeed a long-term equilibrium price of oil. Stability led to complacency, and the world shifted almost totally to dependence on oil for its industrial, electrical-generation, and transportation fuels. During the 1960s, for example, Japan's oil consumption expanded at a compound rate of 18 percent per year. Even in Europe, a 7 percent compound growth rate prevailed.

Reality obtruded in the early 1970s, however, when Texas (and Louisiana) ran out of the spare producing capacity that allowed state conservation authorities to use their power over production rates to prevent the Middle Eastern crises of 1954, 1957, and 1967 from causing more than a ripple in prices. The disturbances of 1973-74 touched off a consumer panic which produced a run-up of spot-market prices. The oil-producing nations of the Middle East then voluntarily and individually reduced their production (without any urging or direction from OPEC) and reduced their exports to a degree that sustained prices at the spot-market levels reached at the peak of the panic. The initial price run-up had so inflated their revenues that they didn't



These sections of pipe were being moved from storage yards at Fairbanks, Valdez and Prudhoe Bay to intermediate storage sites along the 800-mile trans-Alaska pipeline route. (All pipeline photographs courtesy of Alyeska Pipeline Service Company.)

know what to do with it all. During this period, even Alaska's government leaders suspected that the era of rising oil prices meant that oil left in the ground would yield a higher and more secure return than any conceivable investment founded on today's cash proceeds from oil production.

A similar progression of events unfolded in 1979. This time, however, the market panic that arose from the Iranian Revolution was not even a response to an actual cutoff in supplies. The supply shrinkage happened only *after* prices went up, and the cutback was engineered in Saudi Arabia — not in Iran. This second oil-price shock pushed prices to a level that was self-defeating. The oil states had now largely priced oil out of the world's industrial fuel markets.

At any price above $20 in today's dollars, there is no market for oil as an industrial bulk fuel or for the generation of electricity, wherever coal or natural gas is available. Coal from new mines in North America shipped through new terminals in new ships can be burned in new plants with scrubbers or other technology sufficient to meet the tightest environmental standards, at any tidewater site in the world, and still undercut $20 oil. The nearly unlimited availability of coal in the long run therefore ultimately sets a price cap on oil somewhere below $20 a barrel.

By the same token, as long as oil is priced anywhere above $20 per barrel, industries throughout the world will continue to reduce their consumption of oil in favor of coal (or natural gas, or other energy resources with favorable local economics). The world, after all, has no need for any *specific* energy commodity. All that civilization requires are the calories for light heat, and motive power, and simple hydrocarbon molecules to serve as the building blocks for making more complex organic chemicals. For each of these used, established technology offers several candidates, and liquid petroleum will remain the fuel or feedstock of choice in each one of them only where and for so long as it is the cheapest.

The price run-ups of the 1970s were thus not the product of terminal resource depletion, but only artifacts of a too-long suppressed commodity cycle. Such cycles are inevitable, however, because fuel-use decisions are incorporated in long-lived capital goods, like transportation equipment, buildings, industrial processes, and appliances. Periods of short supply give way to buyers' markets and *vice versa* because neither production nor demand can react instantaneously to changed circumstances, but they do unfailingly react. And, because of the delay and uncertainty of the reaction, they tend to overreact.

The reactions and overreactions to the market conditions of the 1970s still have plenty of momentum. Even today's economic recovery does not bode well for oil producers and other energy purveyors struggling with a glutted market. Revival carries with it some short-term consumption gains, but it means mainly a more rapid replacement of fuel-inefficient vehicles, buildings, industrial machinery, and appliances by durables designed in a high-price, energy-conscious environment.

WPPSS AND OTHER PUBLIC ENERGY PROBLEMS

A number of public power agencies that made long-term investments based on the faulty wisdom of the immediate past now find themselves in deep trouble. The public power agencies of western North America, for example, embarked on a very large construction program because they anticipated higher and higher alternative fuel prices and because they assumed that electricity demand was largely insensitive to price. The Washington Public Power Supply System (WPPSS) invested in a nuclear future. Private utilities and public power agencies in several Western states invested in expensive coal-fired plants, while British Columbia's public power agency pushed forward a massive scheme for hydropower development.

These agencies are now finding, however, that the power simply is not needed in their own districts. Worse yet, nobody else needs it either, at least at prices proportional to the debt service they incurred in construction. High prices have depressed demand, and even higher prices for incomplete and abandoned plants could provoke a dangerous "death spiral," in which utilities attempt to charge higher per-unit prices as demand falls, which exacerbates their sales losses.

A nuclear plant, for example, has an enormous embedded fixed cost. But once it is built, its operating costs are trivial. What this means is that in a supply surplus, the utility and its regular consumers benefit from sales to marginal and off-system customers, so long as they pay anything at all in excess of variable operating costs. The same is true — even more so — with a hydro project like Susitna whose fixed costs per kilowatt of capacity are greater, and its operating costs per kilowatt-hour of sales even less, than is the case for nuclear generating stations.

Consider these events: British Columbia Hydro, facing a huge surplus of power it cannot sell within the province at a price that will recover its costs, has executed a long-term sales contract with the Los Angeles Department of Water and Power. The city will use the imported power to displace oil- or gas-fired generation. Meanwhile, Bonneville Power Administration has been offering its surplus hydropower to California utilities for what it perceives to be their "avoided cost" for fossil-fuel generation — about 4.5 cents per kilowatt-hour — even though fixed-cost amortization for the WPPSS plants may run about 12 cents. BC Hydro offers its hydro surplus for less than 3 cents, however, whereupon the administrator of Bonneville (sounding like one of the villainous private-power magnates of yore) says: "Our transmission lines are not common carriers and we have no obligation to carry power for others to the detriment of our own marketing program."

Now what does BC Hydro do? It goes shopping around the State of Washington, reminding those utilities who are tied to the Bonneville system that Bonneville is going to jack up their rates to cover the costs of the recently completed and soon-to-be abandoned nuclear plants. BC Hydro then offers to sell power to these utilities in the future for a substantial discount off whatever price Bonneville charges. Ironically, BC could sell to some of Bonneville's regular customers in the Northwest without obtaining access to Bonneville's lines. Seattle City Light, for example, has transmission lines extending to the Canadian border; this utility would probably be delighted, moreover, to "wheel" British Columbia Power for the Snohomish PUD, various aluminum companies, and other customers that are now captives of Bonneville. Bonneville's latest attempt to avoid a cutthroat battle over the California market has been to propose itself as leader of a cartel of potential suppliers.

This situation arises because Northwest utilities and public power agencies are all troubled by excess capacity bearing high fixed costs. But at least they do have options for wooing export sales. Susitna wouldn't even have this safety valve.

The parable of today's Northwest power surplus also illustrates the general state of world energy markets. Everywhere we turn, inter- and intra-fuel competition is more intense than at any other time in living memory, and the potential for price-cutting wars exists in many quarters. Oil markets have yet to succumb to panic and disorder on the way down (as they twice did during the 1970s on the way up), but every OPEC country without exception has a growing budget deficit. Some of them are very poor, and their leaders have to cope with tremendous domestic problems and unrest. Once a price war breaks out, they will exhibit little discipline in cleaving to the production and price mandates that OPEC may issue.

OUTLOOK FOR THE YUKON-PACIFIC PLAN

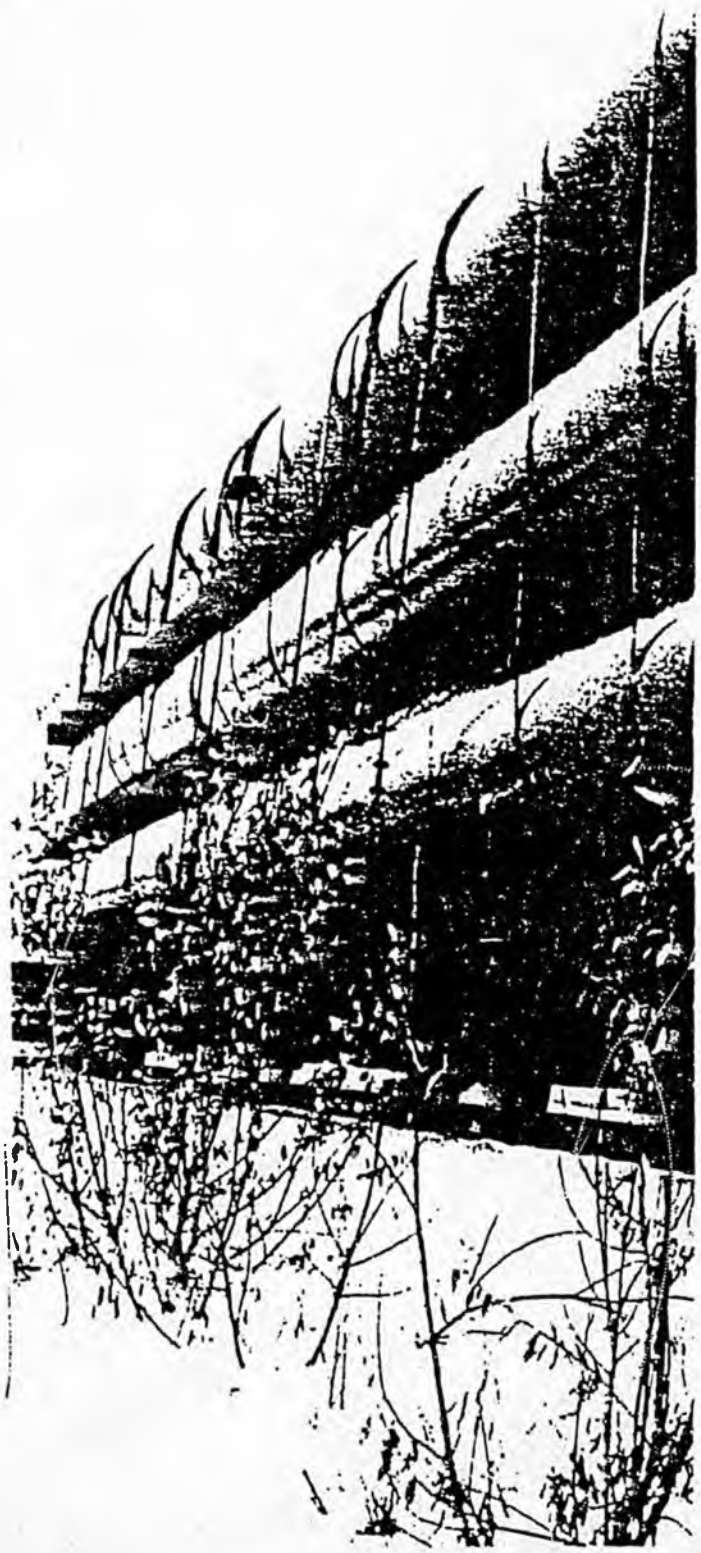
The present and continuing surplus in world oil markets has implications for Alaska's export energy dreams. The Yukon-Pacific plan for exporting North Slope gas is based on the notion that the Japanese and Koreans will surely wish to purchase Alaska's gas (transported through a high-cost pipeline) even though utilities in the Lower 48 do not. Project promoters point to the quest in the Orient for energy diversity and for reduced dependence on Middle Eastern energy sources. Even if this remains a major goal, Japan and Korea are still looking for diversity at the lowest possible price relative to Persian Gulf oil.

And therein lies the glitch. Future oil prices are wholly uncertain and, as I mentioned earlier, a price rout is not inconceivable sometime in the near future. Investors today, whether they be North American or East Asian, will not touch any *new* oil-displacement project that could not survive a continued downward drift in oil prices for maybe another ten years. *No one* is going to risk $20 to $30 billion on an LNG export project whose cost recovery demands stable or even upward-trending oil prices.

Worse yet, Middle Eastern oil is no longer the strategic competitor to international LNG schemes. Huge surpluses of flared or shut-in gas are available to Pacific Rim markets from tidewater locations that do not need an all-Alaska pipeline, or its counterpart in Canada. It is gas-to-gas competition that will henceforward determine the export value of North American LNG. The value to Japan of a new LNG supply may in some sense be worth the price of the crude-oil imports it displaces, but the huge global inventory of undeveloped gas reserves means that a Japanese company would be foolish to promise that much. Is it reasonable, in other words, to expect Japanese or Koreans to offer a price for Alaska gas sufficient to cover a $30 billion pipeline when gas is still being flared in the *coastal* oil fields of Mexico, Saudi Arabia, and Indonesia, and while the USSR, Malaysia, China, and a host of other countries have discovered but unexploited *coastal* reserves of "non-associated" gas?

CHOICES FOR ALASKA

What is going on outside of Alaska does indeed affect energy choices in this state. Anyone who thinks that a very expensive,



capital-intensive hydropower project is justified by the expectation of further increases in the price of fossil fuels, and that Alaska's natural gas and coal are more valuable as exports than as domestic fuels, is taking the risk of replacing the lowest-price thermal energy in North America with about the highest-cost large-scale electrical generation anywhere in the world.

Alaska's economic prospects are already shaky because of the state's utter dependence on its oil exports. There is risk of further crippling the state with huge capital investments, like Susitna, that may not be able to pay for themselves. Repeating on a larger scale the hydro project problems in southeast Alaska is really asking for trouble. If oil prices five years from now are inherently unpredictable, however, and long-lived megaprojects like Susitna unacceptably risky, how can a community plan its own energy future?

Foremost, the choice of energy alternatives must be tied to the life cycle of the equipment in question. Diesel generators and combustion turbines have an advantage over highly capital-intensive projects like most hydro or nuclear power plants because a utility can write off the equipment in a relatively short time. The bulk of the cost of power generation with such initially low-priced installations is fuel. Thus, if demand is less than anticipated, the utility can shut down the generators (thereby saving fuel costs) without suffering high recurring fixed costs for debt service. If oil proves to be an unattractive fuel source in some future year, diesel generators or turbines can be mothballed or even retired with comparatively little financial trauma. Conversely, if power demand grows faster than expected, the utility can buy such oil- or gas-fired equipment practically "off the shelf" and have it installed in a matter of months.

The argument for many high-cost energy-supply ventures rests on the proposition that they will pay for themselves in 20, 30, or 50 years, even if they are uneconomic at the beginning. It should be obvious, however, that projections of energy "needs," fuel costs, and technical options extending more than 20 years are merely convenient fictions, and they should have little credibility as the basis for today's investment decisions. A utility or a public entity considering laying out a lot of money on a big central-station generating plant on the basis of a 20 to 50 year cost-benefit calculus should, at minimum, look at the "downside" risks. It should not, for example, launch big hydro or nuclear programs unless facility construction is justified by the *lowest* reasonable power-demand and oil-price forecasts. One element continually missing from the Power Authority's Susitna assessments is, however, a clear explanation of the consequences for Railbelt ratepayers, the State's fiscal position, and Alaska's economy if the demand and fuel-price projections of its carefully selected forecasters turn out to be wrong.

One effective way around the dangers of backing the wrong horse in power generation is to have a variety of generating technologies. Ideally, utilities should use a different technology for their base-load generation from the ones they use for peaking or reserve capacity. Small communities, obviously, have fewer opportunities for diversification. In the Railbelt, nevertheless, a mix of technologies is certainly attainable -- although the likely price and availability of natural gas in the region may well argue for a concentration in gas power over the planning horizon.



NATURAL GAS AND ALASKA ENERGY DEMAND

Not everybody agrees with the Acres, Battelle, and Kentco reports that rejected natural gas as a fuel for the Railbelt on the theory that its price in Alaska will be tied to a rising oil-import price in Japan. The export market is probably not the decisive element, whether or not that market for gas grows. Right now, the proved reserves of gas in Cook Inlet are equal to something on the order of 70 years of Anchorage-based demand at today's level, and at least 20 years if the gas-consuming industrial plants on the Kenai and the present LNG export facility are included. That's a lot of energy security by anyone's standards. Nevertheless, there is little likelihood that today's proved reserves contain all that will ever become accessible to Southcentral Alaska. As long as reserves represent more than 10 or 15 years of future production, it just doesn't pay the oil companies to search for gas or to drill up known prospects that are not yet considered proved reserves.



Aerial view of Devil Canyon. (Photograph by Eric Yould.)

In any case, enough gas has already been discovered to serve Anchorage basin gas-utility demand and Railbelt electrical demand at lower cost than Susitna power, at least through the rest of the century. In a sense, this outlook enables Railbelt citizens and their utilities to put off the need to choose among high-capital cost options. Cook Inlet gas will be there at an acceptable cost for as long as it's worth thinking about.

Years ahead, when and if Cook Inlet gas is truly nearing depletion, there will be plenty of time to look at alternatives, including coal, medium-size hydro projects like Bradley Lake and perhaps even megaprojects like Susitna, Cook Inlet tidal power or a new, less troublesome generation of nuclear plants. But now is not the time to consider them as realistic planning alternatives or to spend tens of millions of dollars each year in the engineering, promotional, or research and development efforts on options that may not even be in the running when something new is really needed. When the gas begins to run short, the Railbelt will have plenty of warning, and you can bet that technological options are going to be a lot more varied and sophisticated 10 or 15 years in the future than they are today.

COST OVERRUNS

In addition to the danger of long-lasting supply and price commitments attendant to high-cost, capital-intensive energy projects, these ventures pose notorious dangers of cost overruns during the construction period. Cost overruns can triple or quadruple project costs. They are, of course, a management problem and they are subject to the swings of inflation and interest rates. But there is a far more insidious problem; the forces and rationales within the community that press for these megaprojects are indifferent to costs. More precisely, the demand within Southeastern Alaska for state-funded hydro projects was based more on the short-term payroll effects than on future energy needs. And because of this, there is a tendency for the boomer factions in Alaska's public life to act as if the bigger and more expensive the project, the better it will be for the state.

The big thrust for Susitna indeed arises not so much because there is a respectable case for it as an investment in Alaska's distant future, but rather because it involves enormous spending in the near term. The more costly it is, the more jobs it would "create," and the more popular it becomes with everyone who perceives it will be built with somebody else's money. Susitna is the most popular project in the neighborhood precisely because it is the biggest. In this context, the forces that select these projects can be expected to undermine any will on the part of a community's political system to control costs. It would be inconceivable, in light of the principal motivation for building the project, that the Power Authority would be allowed to hold costs down by hiring Korean construction firms to build Susitna with Pakistani (or even non-union American) labor.

Consider the Four-Dam Power Pool in Southeast Alaska. Every stupid disaster connected with that project was warned against by outside consultants, by skeptical legislators, and even by Power Authority staff. The projects were too big, they were goldplated, they were incompetently managed, and they were built without power-sales commitments or long-term financing.

Even those legislators from the affected communities, who understood the problems, nevertheless voted to approve them, because it was clear that the communities to be served by the dams would bear none of the costs of overbuilding. Anyone who looked thoughtfully at those programs (and there were many) knew that they were overbuilt and that the cost of power, if it was marketable, would exceed what a smaller project could have yielded, and would in fact exceed the costs of diesel alternatives. The Power Authority went ahead anyway with the explicit or tacit consent of both branches of state government because the true thrust of the program was to spend construction dollars. The Power Authority thus let itself get into the position of trying to do well what shouldn't have been done in the first place.

Alaskans will naturally regard construction as a "basic" industry as long as it is sustained largely by federal appropriations, big oil companies, or a seemingly bottomless state treasury, and wherever the members of the impacted community are not clearly responsible (through taxes, utility rates, or bonded indebtedness) for the costs of overcapacity, gold plating or pyramid building. In Alaska's present political mood, checks and balances are both weak and unpopular. It would be too bad, however, if the only effective check on construction boondoggles turns out to be a deep economic slump, accompanied by a wave of defaults on state-sponsored ventures.

Let me conclude with a half-upbeat note. No longer are huge costs overruns inevitable or even likely on every big project.

In the 1970s, macroeconomic conditions doomed large construction projects everywhere to cost overruns. General inflation was accelerating, and interest rates were moving in track. During that period, labor rates for construction ran ahead of inflation. Environmental, safety, and other technical regulation was becoming more complex and demanding. Everybody, therefore, chronically underestimated "as-built" costs, construction times, and interim financing costs.

Now, tight money, surplus capacity, and the collapse of unrealistic expectations about future energy prices have given us a global and national construction-services market (outside Alaska anyway), bids are coming in under the owner's engineering estimates and projects are coming in under budget and on time. The era of inevitable massive cost overruns and delays is over, along with the energy crisis and the boom and shortage periods of the 1970s. But this outlook may not carry much hope for unneeded or ill-timed projects. Cost overruns can be expected to continue for public projects in Alaska as long as there is no *will* to control costs, as long as state funds are treated as if they belong to nobody, and as long as those who make the go-ahead decision don't bear the responsibility for ultimate costs. Cost overruns will be the norm as long as state-funded projects, and particularly hydro projects, are advocated largely as public works programs to keep the construction industry in business and growing. ♦



THE VOICE OF THE CONFERENCE:

A REPORT FROM ENERGY OPTIONS 85

from

CONSERVATION AND RENEWABLE ENERGY INC.

P.O. Box 4-1464
Anchorage, AK 99509

prepared by

Energyfocus
18221 Spain Dr.
Anchorage, AK 99516

April 10, 1985

INTRODUCTION

Energy Options 85 was a three day conference held on March 8-11, 1985 at the Egan Convention Center in Anchorage. The conference consisted of a two day general conference for the public, followed by a single professional day. Its energy trade show received 2000 visitors over the three day period to the substantial satisfaction of 40 exhibitors. Over 400 participants attended 94 sessions on the technical, program and policy aspects of conservation and renewable energy. Sixty speakers from Alaska, Canada, and the lower 48 shed light on the major accomplishments in this field that can contribute to Alaska's energy picture.

For example, Jan Hamrin of the Independent Power Producers Association reported that California now has 1,050 MW of independently produced energy on line and generating electricity in the California grid. That's a 525% increase since 1981. A total of 6,000 MW are on contract, with 60% of these in co-generation, waste-to-energy and biomass.

Canada and Scandinavia have demonstrated that climatically appropriate research and development have produced impressive results in arctic energy technologies. The Swedes have produced quality housing that typically consumes 50% of the energy of Alaskan homes. Our neighbors, the Canadians, have researched, demonstrated and commercialized superinsulated homes in a period of 7 years. Confidence in this technology is so high that the Canadian government now offers a $3,000 rebate toward the construction of a superinsulated home. As a result of these research efforts, superinsulation is now being demonstrated in Montana and in an aggressive 500 unit program by Bonneville Power Authority. Denmark, at the same latitude as Ketchikan, has invested profitably in producing the best marine quality wind generator in the world.

By identifying conservation and energy management as a supply option, utilities nationwide have moderated growth, reduced load or stabalized rates as needed. The City of Tacoma has recently adopted a stringent building code for their climate, (R 19 walls, R 38 ceilings and triple pane windows) because its cost at 1.9c per KwH is substantially less than the cost to produce new electrical resources. Pacific Gas and Electric (PGE) has a better buy in its residential audit program at 3.1c per kwh, commercial energy investment rebates at .7c per KwH and appliance efficiency rebates at 2.5c per KwH, than their marginal cost of electricity at 8.7c per KwH. Fully 40% of PGE's 10 year load forcast is projected to be met through conservation and load management. Closer to home, a recent reevaluation of Chugach Electric Association's

residential load forcast found that a 30% shortfall in projected demand could be largely attributed to increases in appliance efficiency.

Energy management has emerged as a important economic development strategy. The California Energy Commission reports that the corporate energy tax credit in that state is responsible for creating 21,000 jobs and $1.1 billion in economic development. The cost to the state was $120 million in reduced taxes. Private sector interest in Alaskan energy production was clearly in evidence at Energy Options 85.

THE ECONOMIC CLIMATE FOR CONSERVATION AND RENEWABLES

Conference participants recognized that the advances in Northern technology achieved by Sweden, Denmark, Canada, and California can be equalled in Alaska. They noted that in spite of high energy costs and abundant energy resources, the positive atmosphere that has made for significant development of those technologies in other countries seems to be absent in Alaska. Three examples illustrate the point:

- It is ironic that the Railbelt, which has the largest load center in the state, has not explored load management, cogeneration, conservation or supply alternatives similar to the California experience. The costs for investing in these technologies is typically less than Southcentral marginal energy costs.

- The longest term benefit to Southcentral Alaska would be in managing Cook Inlet gas reserves to achieve its maximum fuel potential, yet combustion efficiency for Southcentral electric utilities is commonly under 30%.

- Investment tax credits, energy tax credits, and other state incentives could attract investors to take an interest in bush waste heat recovery, yet the state has assumed virtually 100% of the funding of this activity.

Several elements must be present to foster a positive atmosphere for a diversified energy supply based on local resources. They are:

- positive government programs that focus on resource assessment, research and development and financial incentives for investment.

- certainty in the economic climate based on stable, positive regulatory and administrative environment.

- a highly competative and technically competent and diversified energy industry.

- a utility system or grid that has not overbuilt its electrical generation capacity.

The majority of participants at Energy Options 85 support a realignment of state enregy policy that would attempt to balance equity with long term sustainability. This integrated approach to energy programming would be based on restoration of incentives for energy investment, well-planned research and development, and efficient housing. Rural Alaskans still face high energy costs and the larger context of the cash poor rural economy. They can best be served by an effort to move conservation and renewable technologies into the market place or supply system while the state still has money to bridge high costs with subsidies. The following sections outline program elements to achieve this goal.

THE ENERGY PROGRAM FOR ALASKA: A REALIGNMENT

Energy Efficient Housing

Building construction efficiency was a major focus of Energy Options 85. Emphasis continued on presenting to over 2000 builders and homeowners current and available energy efficient technology. In a panel discussion on efficient construction, builders noted that although the heating season in Alaska is two to four times as severe as as the lower 48, the majority of homes built in Alaska are built to lower 48 standards. The consensus among builders was that the general public still is unaware of the cost benefit of energy conservation in comfort and dollar savings. Although most people are familiar with conservation techniques, they do not have the tools to quanitfy the costs of installation and the benefits of reduced fuel bills. Scores of privately built energy efficient Alaskan houses have not been monitored for performance.

Documentation of household energy use reveals that the cost of home heating exceeds electrical cost in rural Alaska by as much as a factor of five. The quality of new construction is largely dependent upon HUD, an agency that has difficulty in responding to local priorities. While funding seriously curtails the possible investment by HUD in energy efficiency, the shortfall is often paid many times over in Low Income Energy Assisstance payments. Furthermore, rural homes are reknown for cold floors and drafts that jeopardize the health of children and elders. Sweden, on the other hand, has defined energy as a housing

problem and initiated a series of incentives that have achieved a comfortable housing stock that is fully 50% more efficient than its Alaskan counterpart. It is in housing that the most significant gains in energy savings and health benefits can be made. Two promising new developments within the housing industry took shape this year.

* The Energy Morgage Valuation Program, gives an energy rating to homes to inform the purchaser of the energy efficiency of the structure. Home buyers are able to qualify at a higher debt to income ratio to purchase energy efficient homes because their higher monthly morgage payment will be offset by lower fuel bills. This program, developed by the Western Resources Institute, has been approved by both Fannie Mae and the Freddie Mac. The Morgage Valuation program can stimulate the market for energy efficient homes by increasing the number of income qualified homebuyers and by covering the higher cost needed for many energy efficient features. An Ad Hoc committee of the building industry, partially funded by DCRA Office of Energy Programs, has gained support from the building and financial communities. The support expressed by Governor Sheffield for Morgage Valuation during Energy Options 85 will strengthen the program and help to secure the capital necessary to implement the program.

* Lighting and Thermal Efficiency Standards: after a four year delay, the DCRA has and made notable progress toward developing Lighting and Thermal Standards for Alaska. A 17 member statewide advisory board has met to review existing standards from other states. It has developed up-to-date costs for the construction of energy measures and fuel for 15 regions of the state. The committee expects to have regional residential standards in place by the end of 1985.. The quality of the Efficiency Standards effort has left the conference participants optimistic about its outcome.

To compliment these two initiatives, additional actions are suggested:

* evaluate existing Alaskan energy efficient housing for thermal performance, air quality, construction techniques, cost of construction, ect.

* set up a committee like the Lighting and Thermal Standards Committee to specifically investigate the real costs and benefits of superinsulation and energy efficient design. Benefits go beyond simple fuel savings to include comfort, daylighting, etc.. One large commercial facility reported a 15% decline in absenteeism upon moving its employees into a structure designed for energy efficiency and daylighting.

The increase in productivity more than compensated for the increased cost for the energy features.

- incorporate the findings of the Superinsulation Committee into a carefully planned research and development program. (see below)

- Disseminate findings to lay and professional communities.

Restoring the Economic Climate for Conservation and Renewal Energy

In session after session conference participants stressed that the continuing energy subsidies in Alaska provide no long range solution to high energy costs;and that our current energy technology is inappropriate to the actic and sub-arctic climate. They noted that state projects and budgets are electricity centered, sidestepping the larger problems and opportunities of space heating and transportation. Energy businessmen and women substantiated that the current subsidies have dramatically depressed the market for conservation and renewable energy technologies. Rural utilities, who have found their most reliable customer in the State of Alaska, have no incentive to reduce operating costs. Rather, there are indications that subsidies are actually encouraging consumption, increasing dependence, and, therefore, the requirement for state subsidies.

Beyond these fundemental problems is the recognition that the system of subsidies probably cannot survive the reality of declining revenues and will have to change. The result of the change is unknown and somewhat secondary to the reality that private investors can not responsibly consider business ventures in a climate of such economic uncertainty.

With these parameters in mind, Alask 's Energy Program could be realigned in the following ways:

- Develop a standard for evaluating the cumulative costs and benefits of energy subsidies. Set up long term strategies to achieve increased efficiency and the lowest cost, unsubsidized energy option. (The 1985 Energy Plan takes a first step in this direction, but even this accomplishment becomes valueless, unless the Plan becomes the basis for state energy budgeting.)

- Give greater funding and planning authority to regions and

communities to achieve a better match for climate and program delivery. Concentrate on communities and regions that are motivated and have demonstrated sufficient planning and administrative support to succeed. Let these first efforts serve as a demonstration for communities and regions currently dealing with non-energy priorities. Build success!

* Require that utilities participating in the power cost equalization program maintain or increase operating efficiency. Assist PCE utilities to accurately record costs and improve plant efficiency.

* Provide incentives for utilities to reduce production costs and for consumers to increase end-use efficiency.

* Encourage utilities to provide information and load management programs for their ratepayers.

* Establish a corporate energy tax credit for private sector investments in wind, geothermal, coal, solar, biomass, waste-heat recovery and building energy management.

Research and Development

Equally important to a positive economic climate is confidence in the technology and resource evaluation. Past State efforts in renewable energy have typically been demonstration projects that had never undergone applied research or modification for Alaska. Siting was sometimes based more on political reasons than than on the quality of the energy resource. Compounded by understaffed project management and a systematic lack of monitoring, many projects have yielded disappointing results. Consequently, the value of renewable energy technologies has come into question.

As a young state, much of the available energy resource data is too tentative for resource development. Alaska needs to assess and perform a production quality inventory on all its energy resources from high efficiency housing to completion of the peat inventory. A production quality inventory would allow communities and private investors to evaluate their energy options with greater confidence.

The resource assessment should be complemented with a planned, systematic research and development program to determine the best energy technologies for Alaska. Projects should build on one another and rigorously promote only successful technologies. In 1985, the State of

Alaska will spend $480 million on energy related matters, ranking above state administation and health and social services in expenditures. This makes Alaska the sixth largest energy corporation in the U.S. Exxon and other energy corporations allocate 6% of their budgets for research and development. Yet Alaska's 1985 energy R and D budget was .2% of the total. Moreover, the state can better utilize research talent on hand. The energy expertise that the university and in private industry is substantial.

Energy costs continue to undermine Alaska's competative position in producing goods and services, thereby effecting the strength and diversity of the Alaska economy. Political leadership and vision is required to develop viable options. By improving its energy and investment efficiency, Alaska stands to benefit from innovations that increase the value of its royalty resources, or diminish the demand for General Fund transfers. Therefore, the State should embark on an incentive research program which addresses real problems directed toward controlling and conserving energy use. Such a program would:

* adequately fund the Division of Geological and Geophysical Survey, and other agencies as appropriate, to assess and inventory energy resources to include wind, geothermal, peat, biomass, and coal.

* plan an integrated and targeted R and D program. Standardize reporting procedures for data from research.

* Track research activities in other Northern countries. Where possible cooperate on research projects to maximize funding and reduce redundancy. Coordinate with the federal Arctic Research program.

* Target a allocation of 2% of energy related funds to research and development.

Information Dissemination

A problem that is voiced year after year at the energy conference is the lack of specific technical information on Alaskan applications of energy technologies. This year builders and designers agreed that the general public is still unaware of what energy conservation can mean to them in terms of comfort and dollar savings. Utilities can provide for the information needs of many of their ratepayers. Professional groups, community leaders, and industry associations need well organized, targeted energy information to perform their jobs. The energy resource

and demand issue is easily as complex as the land issue has been for Alaska. Subatantial progress was made in land issues only after a determined effort was made to coordinate the players and comprehensively record and disseminate information. Therefore:

- Make a primary objective of disseminating information in the most usable and consistant forms possible.

- Coordiate with utilities, professional organizations, and local governments for dissemination.

SOURCEBOOK

The Energy Options 85 Sourcebook and Proceedings chronicals in depth the technical accomplishments and policy perspectives presented at this year's conference. Copies can be ordered from CARE, Inc., P.O. Box 4-1464, Anchorage, AK 99509 for $ 15.

COMPASS NORTH
Five Challenges For Alaska

AN ACTION REPORT
BY
COMMONWEALTH NORTH

Edited by
Judith M. Brady
Executive Director

February, 1985

EXECUTIVE SUMMARY

COMPASS NORTH:
Setting a direction for the future

Alaska is "unique" in so many ways that Alaskans take the word for granted. In this state "unique" is a cliche; unique in size, unique in beauty, unique in resources.

What is only beginning to be understood is that Alaska is also unique in its economic structure. It is this uniqueness that will decide its future.

Alaska is an "owner state". It owns 28% of its land base, which includes the largest discovered oil field in North America. The revenues from this field give the state government control over the largest pool of capital in the economy.

Land and capital are ingredients of ownership. They are the basis of power. The State of Alaska, as the owner of more than 100 million acres of land and billions of dollars in resource wealth, has power.

In a democratic society, all governments have obligations to the people. In Alaska the government has an obligation of ownership that is above and beyond that of a traditional state government. It has an obligation as an owner to help sustain the economy - to use its land and capital to preserve and enhance the private enterprise system.

This is a new frontier in public obligation. Never before has a state government been so wealthy in relation to its citizens. Never before has a state government controlled so much of its land and capital assets.

This new frontier means Alaskans must pioneer a new concept of state government, a government that uses its power in partnership with the private sector to create new opportunity and new wealth.

Alaska's obligation of ownership is more than an interesting hypothesis: the state is on a time line. Every available public and private forecast depicts a rapid decline in Prudhoe Bay oil revenues in the 1990's. The state's economy is almost totally dependent on these revenues.

If Alaska is not a responsible owner, if the state government does not stop dissipating its capital base on current operations, the result may be similar to that of a failed company: unemployment, bankruptcy, and social hardship.

There will be many Alaskans who do not believe the state has any obligations as an owner. They will believe that all state revenues should be treated alike and "spent" on public services. They will believe that all state land should be preserved from further development.

The irony and tragedy for Alaska, should this thinking prevail, is that without a strong, growing economy, the government will not be able to provide public services or protect the environment. The private sector will not be able to generate jobs and income.

What must be done to meet the obligations of ownership?

Alaskans and our leaders must begin to think like owners - to make our ownership work for us.

Alaskans must begin to think about revenue as owners:

Traditional government leaders ask: How much do we have to spend?

Leaders of Alaska as an owner state must ask: What is our income? What are our assets? Can we sustain the current level of spending into the future? Where should we invest to get the greatest return on our money?

- THE STATE'S OWNERSHIP REVENUES ARE CAPITAL ASSETS THAT MUST BE MANAGED TO CREATE NEW WEALTH.

As an owner the state receives revenues that are separate from taxes. These are royalties, rentals, and bonuses from the lease and sale of its resources. This capital should be treated as a powerful renewable resource, a means of creating new wealth.

But right now only 25% of these ownership revenues must be invested in the Permanent Fund. The rest are being spent on the current operation of government. The state must stop dissipating this capital base.

- ALASKA'S OWNERSHIP REVENUES SHOULD BE DIVIDED EQUALLY BETWEEN THE PERMANENT FUND AND A NEW CAPITAL INVESTMENT FUND.

It is likely that the Permanent Fund will be a "safety net", a means of sustaining government service as Prudhoe Bay revenues decline. The Capital Investment Fund would be the means of encouraging new development. It could finance revenue producing, regionally important projects that add to the long term economic health of the state.

- THE FUTURE OF THE PERMANENT FUND IS TOO IMPORTANT AN ASSET TO BE LEFT TO "DECISION BY DEFAULT". THE LEGISLATURE SHOULD ENACT LEGISLATION WHICH ESTABLISHES LONG TERM GOALS FOR THE FUND.

- TO ENSURE A "SOFT LANDING" FROM THE DECLINE OF PRUDHOE BAY REVENUES, CURRENT SPENDING MUST BE REDUCED TO LEVELS THAT CAN BE SUSTAINED IN THE FUTURE.

- MISUSE OF WEALTH IS A GREAT DANGER IN AN OWNER STATE. THE STATE GOVERNMENT MUST REFRAIN FROM USING ITS WEALTH TO USURP LOCAL DECISIONS OR DISPLACE LOCAL RESPONSIBILITY.

The legislature has taken over the role of local government by direct appropriation and other political distribution practices that bypass or dictate to local communities.

Revenue sharing must follow the Constitutional mandate of "maximum local self government".

State revenue sharing should be accomplished through a single formula based on equitable distribution. Except for emergencies, no funds should be allocated outside such formula. The emphasis must be on local decision making and local responsibility.

Alaskans must begin to think about land as owners:

Traditional government leaders ask: Are we doing a balanced job regulating between private land owners?

Leaders of an owner state must ask: What are our resource assets worth? Is there enough development underway to maintain our economy and continue growth? Are we helping the private sector promote responsible development?

- ALASKA'S STATEHOOD LANDS AND RESOURCES SHOULD BE MANAGED AS CAPITAL ASSETS. PUBLIC POLICY MUST BE REFOCUSED, AS A MATTER OF HIGHEST PRIORITY, TO REFLECT THE STATE'S DEPENDENCE ON NATURAL RESOURCE DEVELOPMENT.

Resource development is Alaska's only option for a continued economic base.

The plain fact is, if there is no further natural resource development, the state will be bankrupt.

Public leadership must distinguish between ritualistic environmentalism and areas of true ecological concern. After years of government decisions weighted in favor of "no development" today's leadership must redirect public policy toward action consistent with the mandate of Alaska's Constitution: "to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

- THE LEGISLATURE, AS CUSTODIAN FOR STATE LANDS, SHOULD DEVELOP A COMPREHENSIVE POLICY THAT RECOGNIZES THE STATE'S RELIANCE ON RESOURCE DEVELOPMENT AND DIRECTS MANAGEMENT OF THESE RESOURCES AS CAPITAL ASSETS.

- THE GOVERNOR SHOULD FORGE THE RESOURCE DEVELOPMENT STRATEGY NECESSARY TO ENACT LEGISLATIVE POLICY.

The leadership must work together to meld Alaska's need for development with concern for the environment by formulating an overall state resource development strategy. The

emphasis should be on technically sound, efficient permitting; stable tax policies; and balanced multiple use management by state agencies.

- THE OBLIGATION OF OWNERSHIP INCLUDES ENCOURAGING NEW REVENUE SOURCES. THE STATE SHOULD DETERMINE ITS ROLE AS AN INVESTOR IN THE DEVELOPMENT OF ALASKA'S RESOURCES.

It can be good public policy to invest state funds in resource development projects, but the state must decide the limits and goals of its investment role. At a minimum, project investment should be economically feasible and be able to return to the state a cash flow having a present value greater than the state's investment.

To meet these obligations of ownership Alaska's elected leaders must use the full power of their Constitutional authority and responsibility.

Public policy will decide the future of the owner state, and it is Alaska's elected leaders who decide public policy. Alaska needs decisive leadership now, leadership that understands the obligations of ownership and has the courage to make the politically hard decisions necessary to meet that obligation.

No other state constitution grants more authority to the governor than does Alaska's. No other state constitution implies more public trust in its legislative representatives than does Alaska's.

It is these elected leaders who must meet the obligation of ownership by preserving Alaska's capital assets.

It is these elected leaders who must meet the obligation of ownership by advocating responsible resource development.

If our leadership fails in this pioneering effort we could well end up with socialism - a government that uses its land and capital to feed its own growth.

The challenge for Alaskans is to develop economic and social strategies that use public ownership as a catalyst to develop a strong free enterprise system.

Executive Summary

Alaska's Energy Plan 1985

Governor Bill Sheffield

Prepared by:

State of Alaska

Department of Commerce
& Economic Development

Office of Energy

Loren Lounsbury
Commissioner

Jack Roderick
Director

February 15, 1985

Energy Assessment

Alaska's production of energy far exceeds in-State needs due to the massive crude oil and natural gas resources available in the State. Limited refinery capacity necessitates the import of some refined petroleum products despite the excess production. Alaskans have the nation's largest average energy consumption level and this consumption occurs through a variety of commercially proven and alternative energy technologies. (How consumption and production balance in Alaska is the subject of this section.)

Consumption

Alaskans consumed 411 trillion Btu's of energy in 1982, continuing an increasing consumption trend that has prevailed since statehood in 1959. in 1982, Alaska consumed 1.15 billion gallons of petroleum, 238 billion cubic feet of natural gas, 672 million pounds of coal, 2.3 billion kilowatt hours of electricity. In total, Alaska ranked first in consumption compared to all other states in the nation, and per capita consumption of 926 million Btu's was three times the national per capita average of 305 million Btu's. Alaska's increasing consumption of 5 percent per year since statehood closely parallels the overall economic growth of 3 to 5 percent.

Fossil fuels are the main source of energy in Alaska today. Diesel engines are the principal source of electric generation for most of Alaska's rural villages and many of its smaller cities, having a nameplate capacity of 265.5 MW. Alaskan coal-fired steam plants have a nameplate capacity of 87.0 MW with all of this capacity located in the Fairbanks area. Combustion turbines using natural gas are another source of power in Alaska, with total nameplate capacity of 901.6 MW. Peat, also considered a fossil fuel, has potential as a heat source.

Renewable energy resources are gaining greater usage in Alaska. Both utility sized and smaller privately owned microhydroelectric projects are on line. (Combined with fossil fuel production, a total of 2.4 billion kilowatt hours of electricity was produced for consumption in 1982.) Wind generators are becoming more popular and there are presently more than 150 wind generators statewide. Photovoltaic systems are being used in low wattage, remote uses such as fish-counting equipment, communication equipment and railroad crossings as well as to supplement other sources of intermittent power such as wind generators. Wood consumption and the use of biomass products to supplement heat and power sources are also used. Biomass consumption is unquantified for Alaska, but wood consumption for heating exceeds 50,000 cords annually. Geothermal energy generation is becoming more important, but like biomass, is not clearly documented in Alaska.

Production

Alaskan energy production continued to expand in 1984. On a daily basis, in-State refineries produced approximately 4.4 million gallons of refined liquid petroleum products and over 1.6 million barrels of crude oil flowed from the North Slope to Valdez. On the Kenai Peninsula, 1984 saw 1.0 million tons of ammonia and urea and 1.0 million tons of liquified natural gas produced from Cook Inlet natural gas. Coal production from the railbelt was 800,000 short tons. Renewable energy sources also provided power for Alaska in 1984, as hydroelectric capacity reached 217 MW and alternative energy projects in the form of wind and geothermal began approaching a point of commercialization at select Alaskan sites.

Chart 4

Consumption of Energy by Sector and Fuel Type for Alaska

(Trillions of Btu's)

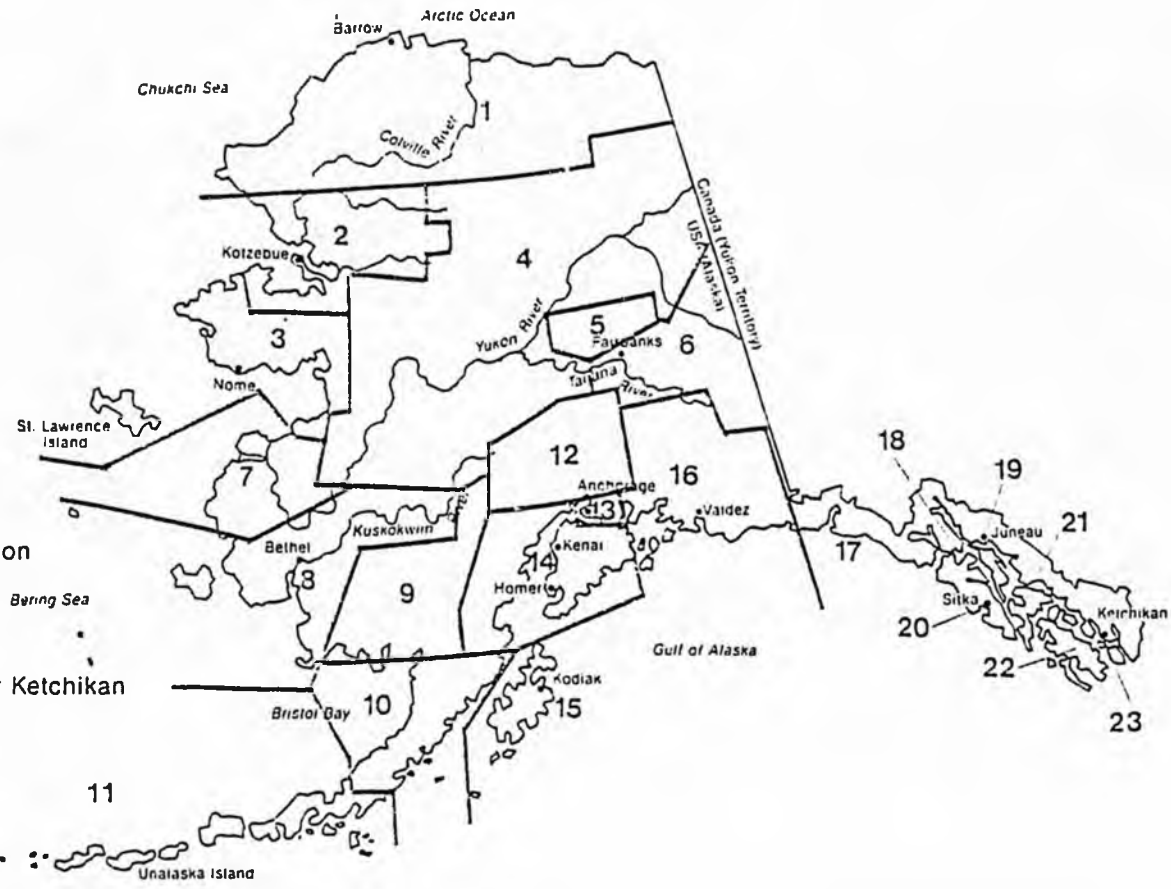
		Statehood 1960	1982	1981	1980
Residential	**Total**	**8.1**	**34.3**	**33.1**	**38.8**
Coal		0.4	0.0	0.0	0.0
Natural Gas		0.2	8.1	8.1	10.8
Petroleum[2]		5.2	7.0	5.4	6.8
Electricity[3]		2.3	19.2	19.6	21.2
Commercial	**Total**	**7.5**	**34.5**	**31.9**	**41.2**
Coal		0.8	0.0	0.0	0.0
Natural Gas		0.0	16.9	16.6	24.9
Petroleum[2]		5.2	4.8	4.4	4.8
Electricity[3]		1.5	12.8	10.9	11.5
Industrial	**Total**	**17.2**	**138.7**	**109.2**	**266.9**
Coal		5.0	0.0	0.0	5.9
Natural Gas		1.9	102.4	70.1	208.4
Petroleum[2]		9.5	22.9	23.2	36.3
Electricity[3]		0.8	13.4	15.9	16.3
Transportation	**Total**	**27.6**	**89.4**	**101.1**	**102.4**
Coal		0.1	0.0	0.0	0.0
Natural Gas		*	0.1	0.3	0.3
Petroleum[2]		27.5	89.3	100.7	102.0
Electricity[3]		*	*	0.1	0.1
All Sectors Combined	**Total**	**60.3**	**297.1**	**275.2**	**411.4**
Coal		6.3	4.7	5.6	5.9
Natural Gas		2.0	157.3	125.1	244.4
Petroleum[2]		47.4	129.4	138.4	155.2
Electricity[3]		4.6	5.7	6.1	5.9

[1] Information from U.S. Department of Energy, State Energy Data Report, Consumption Estimates 1960-1982.
[2] Includes Distillate Fuel, Kerosene, and LPG.
[3] Electric sales and electric energy losses due to transmission generation.
* Less than 0.1

Chart 5

Alaska's 23 Energy Regions

State of Alaska
1. North Star
2. Kobuk
3. Nome
4. Yukon-Koyukuk
5. Fairbanks North Star
6. Southeast Fairbanks
7. Wade Hampton
8. Bethel
9. Dillingham
10. Bristol Bay
11. Aleutian
12. Matanuska-Susitna
13. Anchorage
14. Kenai Peninsula
15. Kodiak
16. Valdez-Cordova
17. Skagway-Yakutat-Angoon
18. Haines
19. Juneau
20. Sitka
21. Wrangell-Petersburg
22. Prince of Wales-Outer Ketchikan
23. Ketchikan



Oil & Gas

Oil and gas are Alaska's primary energy resources. Total petroleum production in Alaska since the turn of the century has been over 4.3 billion barrels of oil (one barrel equals approximately 42 gallons), and over 7.9 trillion cubic feet of natural gas. Estimated reserves of 9 billion barrels c oil and 39.9 trillion cubic feet of natural gas are known.

Competitive leasing is the method used to provide temporary access to below-ground petroleum reserves, with leased tracts spread from the Gulf of Alaska to the Beaufort Sea on federal and State lands. The story of oil exploration and subsequent leasing have formed Alaska's present oil and gas picture.

The State has held 43 competitive lease sales since 1959, leasing 7.7 million acres of State-owned land. A otal of 1,479 leases covering 4.6 million acres are currently active. The State of Alaska plans to hold an additional 16 sales through the year 1989. In addition, the Federal Government will conduct 11 lease sales on the Outer Continental Shelf (OCS) through 1987, including areas in Cook Inlet, the Gulf of Alaska, St. George Basin, the Diapir Field (Beaufort Sea), areas near Kodiak Island and in areas near the Shumagin Islands.

Exploratory activities are occurring in Cook Inlet, the Beaufort Sea, St. George Basin, Navarin Basin and on the North Slope. Marginally economic fields, such as the Kuparuk and Lisburne formations, are beginning to be produced due to their close proximity to the super-giant field,

Prudhoe Bay. Additionally, development plans are being formulated for the Endicott formation located east of Prudhoe Bay, and a at Seal Island in the Beaufort Sea west of Prudhoe Bay.

Alaskan petroleum supplies come largely from oil flowing through the Trans-Alaska pipeline (TAPS) from Prudhoe Bay and from oil and gas production in Cook Inlet. Crude oil and natural gas are refined for in-State consumption and export. TAPS provides 1.6 million barrels of crude oil per day. Alaskan refineries process 124,100 barrels of refined petroleum products and 230 million cublic feet of natural gas per day. Annually, 1.1 million tons of ammonia and 1.0 million tons of urea are also produced from natural gas.

Chart 6

Alaska's Known Oil and Gas Provinces



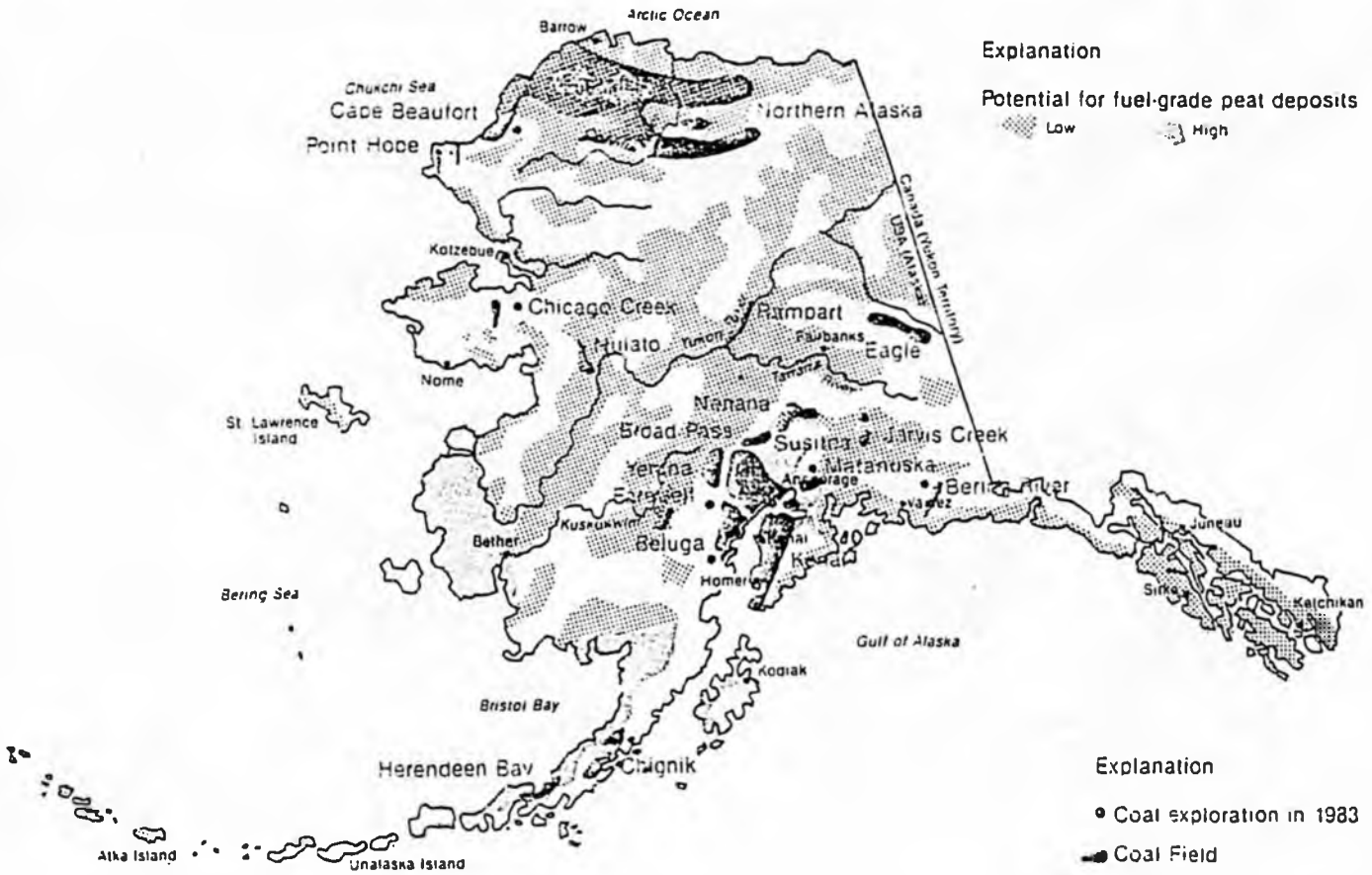
Coal

Alaska's coal resources are plentiful and widespread, providing long-term development potential for export and in-State use. Coal deposits range from Cook Inlet to the North Slope and offer a vast exploitable resource. Alaska produced 336,000 short tons of coal in 1982. Alaska's measured coal reserves are approximately 6.3 billion short tons (one short ton equals 2,000 pounds) with hypothetical reserves of 5.6 billion short tons. (See Chart 7 for location of Alaska's known coal resources.)

Only one coal mine was active in 1983-84 and there was a low level of exploratory drilling. In 1985, this activity will increase. Potentially, Diamond Shamrock will develop a 12-million-ton per year coal production facility in the Beluga area, the Usibelli mine at Healy will increase production, Usibelli coal will be shipped via the Alaska railroad to Seward for export to South Korea. Recently

Chart 7

Alaska's Known Coal and Peat Resources



leased acreage in the Matanuska area will be developed, and a $2 million appropriation by the Alaska State Legislature will fund a feasibility study of a Cape Beaufort coal mining facility.

Peat

Alaska has only a small portion of the known world supplies of usable peat. Peatlands with fuel grade potential cover 4.4 million acres of Alaska. With a minimum deposit thickness of five feet, these peat deposits will yield approximately 880 million tons of moisture-free, fuel grade peat.

Peat assessment is now focused at Dillingham as part of the Bristol Bay Native Association Peat Harvesting Project at Roger's Creek and Houston areas in the Susitna Valley and on the Kenai Peninsula. Horticultural peat is mined from four pits in the Fairbanks area and at two locations in Willow. Production during 1983 is estimated at 15,000 cubic yards (See Chart 7 for location of Alaska's known peat resources.)

Hydroelectric Power

Alaska has more undeveloped hydroelectric potential than any other state in the U.S. In the 1960's, the U.S. Bureau of Reclamation investigated thousands of potential hydroelectric sites throughout Alaska; 252 sites have been identified with a potential for a hydroelectric project of 2,500 KW or more. Alaskan hydroelectric projects on line today have a nameplate capacity of 197.7 MW, with an additional 20.0 MW just coming on line with the completion of the Terror Lake project. These projects will generate 1.04 million MWh of electricity annually (See Chart 8 for Alaska's Major Hydro Installations.)

Wind

Wind power, suitable for generation of energy in the form of electricity, heat or mechanical power, occurs mainly in Alaskan coastal areas and mountain passes. Favorable wind conditions tend to prevail in the winter months when most communities experience their peak electrical demand and, of course, peak heating demand.

There are over 150 wind generators erected in Alaska today. They are distributed across all regions of Alaska, and have peak power capacities ranging in size from less than 0.5 kW to over 10 kW. Several potential sites with expected good wind potential are being monitored today in select Alaskan locations.

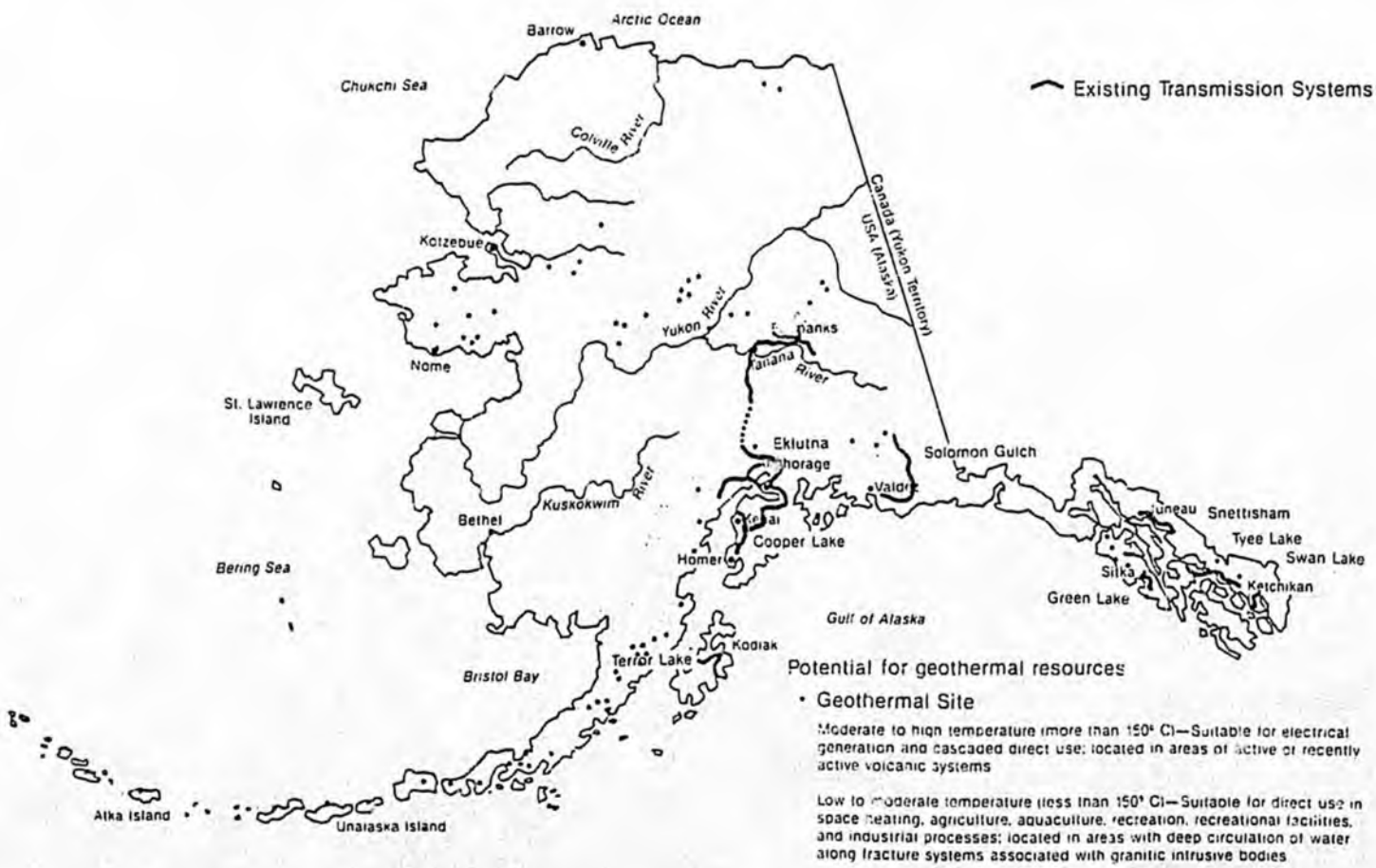
Geothermal

Alaska's geothermal resources occur in over 100 surface manifestations including hot springs, fumaroles, mud pots and wells. Over 11 million acres in the State have significant geologic evidence for geothermal energy development. To date, the quantity of power produced from geothermal has been limited.

The use of hot springs in Alaska for health and recreational purposes is well documented in the historic record. Commercial baths and spas have been developed at numerous sites in southeast and northcentral Alaska. At least six of these establishments have also used low-temperature geothermal fluids for other direct uses such as space heating in lodges, cabins, and greenhouses.

Chart 8

Alaska's Major Hydroelectric Installations and Geothermal Resources



The State of Alaska has conducted three geothermal drilling programs since 1979. These were at Pilgrim Hot Springs on the Seward Peninsula, Summer Bay on Unalaska Island, and Makushin Volcano on Unalaska Island. These each had reservoir temperatures ranging from 122° to 380°F.

In addition to the State projects, the U.S. Department of Navy has been investigating the possibility of developing geothermal resources for electrical generation on Adak Island. The Navy is planning a geothermal exploration program for 1985. (See Chart 8 for Geothermal Resources of Alaska.)

Solar

Solar energy has good potential for use as an additional source of energy in Alaska. Varying levels of daylight experienced in Alaska actually permit 230 hours more sunlight in Alaska than at the equator each year. Solar energy can be used in one of four forms: passive heating, active heating, photovoltaics, and daylighting; and although the actual experience with solar energy in Alaska is limited, solar may be a valuable energy resource. The amount of solar use is not well documented.

Tidal

The ebb and flow of the tide produces kinetic energy which can be harnessed to produce electricity if there is sufficient tidal range. The principal tidal resource in Alaska is Cook Inlet which has the second highest tides in the world. Cook Inlet is a major tidal estuary which is approximately 180 miles long and ranges in width from approximately 80 miles near its mouth to approximately 20 miles at the confluence of the Knik and Turnagain Arms. Some 16 sites have potential for a tidal power plant. However, the density of the kinetic energy in tidal currents is relatively low and harnessing this energy source is capital intensive. To date, no substantial contribution to power generation has come from this resource.

Biomass · Wood

Alaska has tremendous biomass potential, particularly from forestry product waste material. In 1983, 262 million board feet of logs were harvested, resulting in production of 146 million board feet of lumber, 240,000 short tons of pulp, and 7,000 short tons of chips. (Additionally, Native corporations exported 233 million board feet of logs.) This production of lumber and pulp comes from Alaska's 240 sawmills which have a total production capacity of 532 million board feet. This production could provide a sizable amount of biomass for power generation.

Wood is used for space heating in many parts of Alaska. Firewood removal from National Forest Service lands in Alaska from October 1982 to September 1983 totalled 11,226 cords of wood and State lands provided an additional 38,890 cords of wood; for a total energy equivalent of 860 billion Btu's. About 40 percent of that consumption was in Fairbanks, 40 percent in all Southeast, and the balance spread statewide (see Chart 9 for Alaska's Timber Resources).

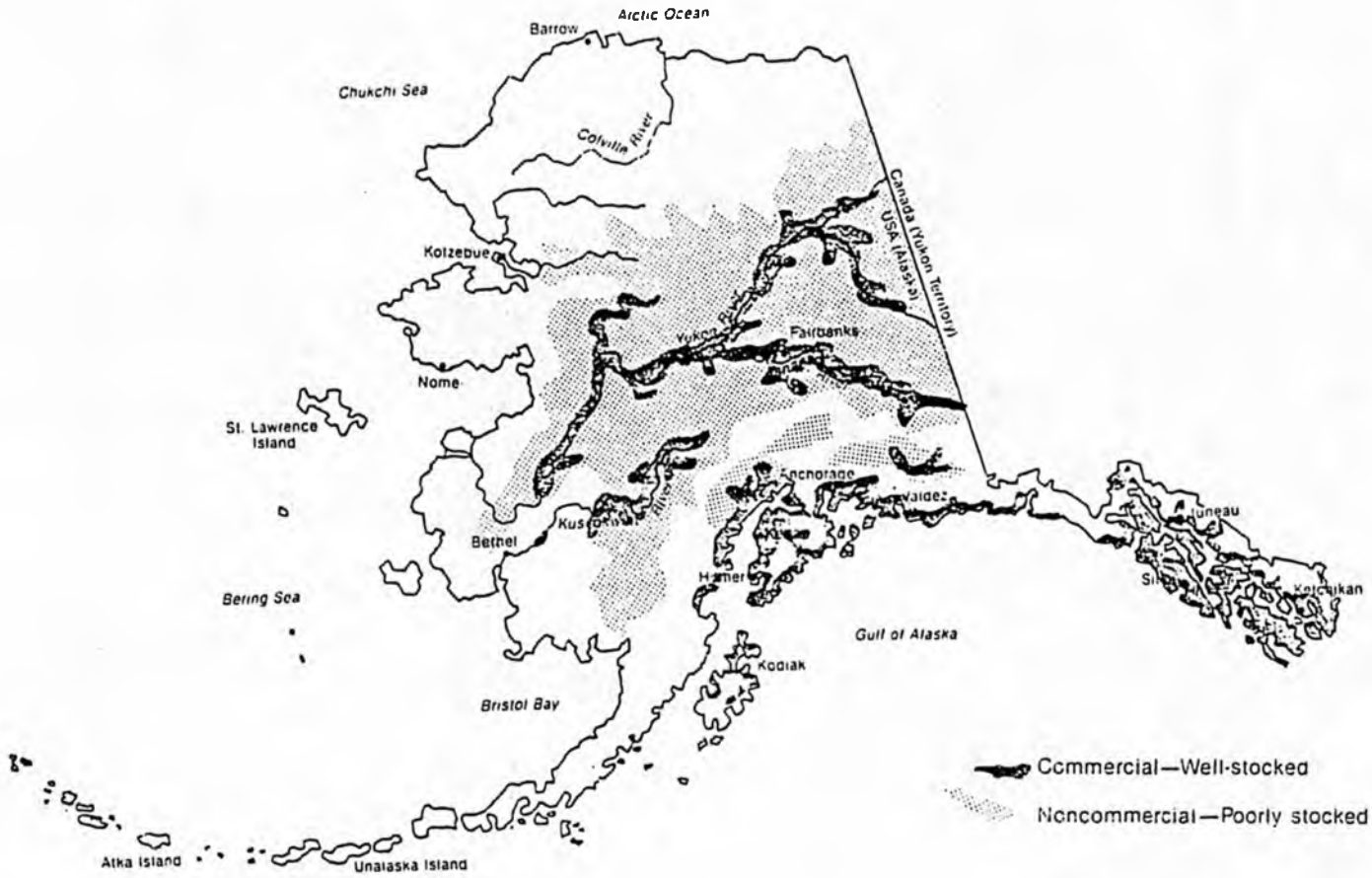
Conservation

Energy saved through conservation is one method to provide more energy service from a given level of power, and represents one of the more accessible energy resources available in Alaska. Conservation includes improvements brought about through increasing thermal efficiencies in buildings, power generation efficiencies for electrical production, increased miles per gallon in transportation, and changes in consumer attitudes on energy use. Thus, conservation offers potential benefits through more comfortable living accommodations with lower life-cycle costs and reduced levels of energy spending. Like many energy resources used in the home or extracted for personal consumption, the exact levels of energy saved are not quantified.

In Alaska, conservation reaches all aspects of the consuming public. Building insulation leads the list in providing maximum energy savings for minimum investment. Other simple forms include insulation of hot water heaters, installation of flow restrictors in hot water faucets, and elimination

Chart 9

Alaska Timber Resources



of dripping faucets. On a larger scale is the use of properly sized, newer and more efficient diesel generators for electricity generation, and the use of waste heat from the generator jacket and flue gas emissions to heat nearby buildings.

Alaskans are separated by great distances, and have worked to improve economies in transportation and communication. Transportation efficiencies have been brought about through widening, paving, and generally upgrading road surfaces and through carpooling and mass transit programs in Anchorage and Fairbanks. Travel by air and sea have realized greater efficiencies through engine modifications, adjusted travel scheduling, and increased design efficiencies. Communication improvements through the electronic media have reduced the need for travel as well.

State Energy Programs

The State of Alaska continues to give high priority to domestic and export energy issues. Virtually every State agency has some direct or indirect involvement in energy. Several departments have direct responsibility for implementing energy projects or programs. The involvement of the State agencies tends to be based on peripheral concerns, such as environmental permitting.

State agencies with direct responsibility for energy programs are:

1. Department of Commerce and Economic Development (DCED)
   - Office of Energy (OE)—Energy planning, alternative energy development, marketing of fossil fuels.
   - Division of Investments—Energy loan programs.
   - Office of Minerals Development—Assists in developing contacts and encouraging mineral development in-State.
   - Alaska Power Authority (APA)—Planning and development of district heating and electrical systems.
   - Alaska Public Utilities Commission (APUC)—Reguiation of electric and gas utilities and pipeline carriers.
   - Oil and Gas Conservation Commission—Regulates oil and gas production.
2. Department of Community and Regional Affairs (DCRA)
   - Division of Community Development (DCD)—Weatherization program, public information efforts, community planning.
   - Municipal and Regional Assistance Division (MARAD)—Community grant and bulk fuel loan administration.
3. Department of Health and Social Services (DHSS)
   - Division of Public Assistance—Low Income Housing Energy Assistance Program.
4. Department of Natural Resources (DNR)
   - Division of Geological and Geophysical Surveys—Investigates oil, gas, coal and geothermal resources.
   - Division of Oil and Gas—Manages oil, gas and geothermal leasing programs, royalty oil sales, and issues permits for exploration and development plans.
   - Division of Mining—Manages coal leasing programs.
5. Department of Transportation and Public Facilities (DOTPF)
   - Research Section—Energy conservation in public facilities.
6. Department of Administration (DOA)
   - Direct grants administration of legislative appropriations to unincorporated communities.

7. University of Alaska (UA)
    - Energy Extension Service—Provide information on energy conservation and conduct alternative technology research.
    - Institute of Water Resources—Energy education and research.
    - Geophysical Institute—Mineral exploration.
8. Department of Revenue (DOR)
    - Research Section—State revenue forecasting.
9. Department of Military and Veterans Affairs (DMVA)
    - Division of Emergency Services— Civil defense and natural disaster emergency planning.
10. Office of the Governor (GOV)
    - Office of Management and Budget (OMB)—State budgeting.

Chart 10

Agency Responsibilities by Energy Functional Areas - 1984

Functional Area	Department of Administration	Department of Community & Regional Affairs	Division of Investments	Office of Energy	Alaska Power Authority	Alaska Public Utilities Commission	Department of Health & Social Services	Department of Transportation & Public Facilities	Department of Natural Resources	University of Alaska
Energy Conservation										
Conservation Education		•								•
Energy Grants	•	•								
Institutional Conservation		•								
Largescale Electrification				•						
Rural Electric Loans				•						
Rural Technical Assistance				•						
Smallscale Electrification				•						
Thermal and Light Standards		•					•			
Utility Loans				•						
Waste Heat				•						
Weatherization		•					•			
Energy Subsidies										
Power Cost Assistance				•	•					
Power Cost Equalization				•	•					
LIHEAP						•				
Audit Grants		•								
Residential Weatherization Loans			•							
Alternative Technology Loans			•							

(Continued)

Functional Area	Department of Administration	Department of Community & Regional Affairs	Division of Investments	Office of Energy	Alaska Power Authority	Alaska Public Utilities Commission	Department of Health & Social Services	Department of Transportation & Public Facilities	Department of Natural Resources	University of Alaska
Electric Systems										
Bulk Fuel Loans			•							
Bulk Storage Grants		•								
Legislative Grants	•	•			•		•			
Alternative Energy										
Demonstration Projects		•		•	•					
Information		•		•						
Alaska Energy Center Projects				•						
Research										•
Grants and Loans	•	•	•							
Utility Regulations						•				
Leasing and Marketing										
Royalty Program								•		
Oil and Gas Leasing								•		
Coal Leasing								•		
Geothermal Leasing								•		
Resource Marketing				•						

Summary and Conclusions

Alaska's Energy Plan — 1985 gives direction to the economic and financial objectives of Governor Sheffield's energy development policy, supporting orderly, prudent resource development which currently or potentially contributes in a substantial way to the economic vitality of the State. By placing emphasis on the short-term strategies of State agencies having direct responsibility for energy programs and using an interagency workgroup to write the plan, State agencies have more effectively coordinated informational needs and decision-making procedures. Alaska's Energy Plan — 1985 provides both a snapshot of State energy programs and energy use today, and a mechanism for developing Administration policy on Alaska energy issues in the future.

In the short term, the State will continue to place a major emphasis on energy through the programs administered by some 20 different State agencies. The bulk of those programs is conducted by the Department of Commerce and Economic Development, the Department of Community and Regional Affairs, and the Department of Natural Resources. State energy programs provide aid to private development of Alaska's natural resources through direct subsidies in the form of loans and grants, and through the pursuit of specific demonstration and power development projects.

State subsidies are the backbone of the rural energy program. The Power Cost Equalization program provides funding to rural utilities to reduce consumer electrical costs. Heating costs will be reduced by the construction of bulk fuel storage facilities, through grants and loans for improvements to electrical generation and transmission facilities, by development of waste heat recycling facilities, and through low-interest loans and grants for conservation improvements. Weatherization continues to be provided to low-income households, and conservation education programs are widely used. The State also administers over $11 million in federal funds to help low-income Alaskans pay for their energy requirements.

Power development projects and demonstration projects for alternative technologies are either contemplated, under construction, or in place. The Rural Electrification Revolving Loan Fund permits rural utilities to extend electrical services, and the Power Project Loan Fund develops new ones. Reconnaissance and feasibility studies precede State participation in these endeavors. Alternative energy projects for wind, solar, peat, bioenergy, woodstoves and geothermal are in place. Future activities are being funded with loan programs and through direct State development efforts. Those efforts also include oil, gas, coal, and geothermal leasing of State lands.

Alaska's long-term energy future has been projected in many economic models. One such model, by A. D. Little in 1983, projects a real growth in the economy of 2-3 percent per year, and a population increase of 3-4 percent through the year 2000. Pacific Rim nations are expected to need increased levels of natural gas and oil by 1995. Given Alaska's ability to provide those fuels, additional employment opportunities attached to increased Alaskan production for these Pacific Rim markets can be expected to begin around 1990.

Certain projects will continue to play a dominant role in determining Alaska's energy future. An FY '85 loan appropriation of $210 million was made to the Four Dam Pool (Ketchikan, Wrangell, Petersburg, Kodiak and Valdez) hydroelectric projects, $100 million to the Susitna hydroelectric program, $50 million to the Bradley Lake Dam, and $21.7 million for rural Power Cost Equalization. 1984 saw the acquisition of the Alaska Railroad by the State which will begin hauling coal from Usibelli Coal Mine, near Fairbanks, to Seward for shipment to Korea and the issuance of coal leases in the Palmer area.

Long-term electrical power source(s) for the Railbelt — where three-quarters of Alaskans live — is a question still waiting to be answered. Alternatives to the Susitna hydroelectric project appear to be mine-mouth coal (Beluga), or gas-fired turbines supplied from either Cook Inlet or North Slope natural gas, or a combination of these. The Governor's Council on Railbelt Electricity (G-CORE), formed in 1984 with representatives of local utilities, is attempting to address the questions of the price of Susitna power to Railbelt consumers and which alternative(s), if any, might be preferable. The State will look to the electrical utilities to indicate which power source(s) should be promoted for the Railbelt.

Either a tidewater (TAGS) or cross-Canada (ANGTS) pipeline may bring North Slope natural gas to foreign and domestic markets within the next decade. It is possible, with 40 trillion cubic feet of gas on the North Slope, that liquefied natural gas (LNG) could be shipped to the Pacific Rim nations and natural gas piped to the South-48, concurrently. At the moment, natural gas prices make either venture appear uneconomic. In 1985, Atlantic Richfield Company is expected to begin a pre-feasibility study of the Japanese market for Alaskan LNG. Companion studies of Korean and Taiwanese markets are anticipated.

Funding for Alaska's energy programs will largely be determined by available revenues. On the positive side, removal of federal prohibitions may provide additional revenue to the State. Presently, federal legislation prohibits the export of Alaska oil. As a result, approximately 800,000 barrels of Alaska crude are now being shipped each day to the Gulf Coast on U.S. flag vessels at a cost of over $5.00 per barrel. By shipping to Japan, even in U.S. flag vessels, a substantial cost per barrel savings, perhaps as great as $3.00 per barrel, would be experienced. On the negative side, declines in petroleum revenues from reduced North Slope production after 1990, decreasing world oil prices in the near future, and changes to the level of oil consumption worldwide may potentially reduce State revenues. Development of Alaska's energy programs and overall economic growth may directly depend on the revenues dictated by these actions.

What energy policy should the State embrace? Expectations for reduced State revenues and Alaska's continual growth must work hand in hand, which means applying today's revenues to assure a quality Alaska tomorrow. To do so requires Alaska's energy policy to be founded on the premise that all Alaskans can be assured an adequate supply of acceptable quality energy at a fair price within the financing limits of the State. Extracted resources must provide optimum benefits without leaving the State with energy shortfalls. Alaska must use today's revenues to protect Alaska from future energy "shocks."

Major energy projects must be weighed against less costly options, and potential in-State and export revenue generating capabilities must be quantified. Large projects that require energy must reflect a balance between Alaska's needs for revenue generation and personal needs of State residents. These same nonenergy projects must be analyzed for potential power generation opportunities, such as incorporating tidal power generation with a road crossing of Cook Inlet, for example. Rural Alaska power should be made more accessible, reliable, and less costly through the use of interties, alternative technologies, and more efficient use of cogeneration capabilities where they exist. Generally, Alaska must plan a stepped approach to assuring quality power, a growing economy, and adequate life-cycle cost of every large project undertaken.

Aggressive pursuit of short-term projects with long-term benefits must start today. Weatherization is a proven method to lower power costs and assure a warm, comfortable home and should be provided in line with developing statewide thermal and lighting standards. Conservation must be a byword. Knowing how and where to conserve is a primary step, and education is the key to successful implementation. In schools, and at the consumer levels, Alaskans must have their energy consciousness raised to a point that efficiency is expected. Reducing consumption through efficiencies without degradating accustomed lifestyles, must be a key objective. Reductions to State energy subsidies would benefit from such savings as well. Generally, active pursuit of programs and projects that are relatively low cost yet widespread over rural and urban areas will net considerable energy savings now and in the long run. Ultimately, Alaskans will determine where the State goes on economic expansion and energy development.

RURAL ENERGY
An Overview of Programs and Policy

House Research Agency
Alaska State Legislature
February 1985

House Research Agency Report 85-C

SUMMARY

History of Rural Energy

- A fuel-based lifestyle in many rural Alaska villages began with the introduction of outboard motors and snowmobiles. Government sponsored housing created a demand for heating oil beginning in the 1960s. Also, the spread of electricity in the 1960s and 1970s established the need for diesel fuel to run power generators (page 9).

- The early government housing was often poorly constructed and creates significant energy burdens for the homeowners even today. The newer housing has improved and is more energy efficient. (page 9).

- The increase in State grants for village electrification in the 1970s coincided with the increase in State oil revenues. By the mid-1970s, many of the larger rural communities were electrified to some degree, but about 85 villages were still without a centralized power utility (pages 10-11).

- As fuel demand increased, villages began to experience fuel shortages in the 1970s because of inadequate bulk storage. Although 81 villages (about 31 percent of the rural villages) have received State grants over the past five years, problems still remain in other villages (pages 11-12).

- The energy outlook in rural Alaska is not particularly promising, as declining oil revenues will likely shrink State assistance through the numerous programs. Furthermore, federal energy funds may decrease under deficit reduction efforts. However, declining world oil prices and increased competition in rural fuel markets (particularly in Western Alaska) should alleviate concerns about the potential for spiraling rural energy costs over at least the next few years (page 13).

Government Energy Programs in the 1970s and 1980s.

- The federal home energy assistance program reaches about 20,000 of the estimated 38,000 eligible households in Alaska. The cash payments covered roughly 17 to 29 percent of the fuel expenses for the typical rural household in some coastal western villages and interior villages. Because Alaska participants in the energy assistance program are increasing six to ten

SUMMARY

History of Rural Energy

- A fuel-based lifestyle in many rural Alaska villages began with the introduction of outboard motors and snowmobiles. Government sponsored housing created a demand for heating oil beginning in the 1960s. Also, the spread of electricity in the 1960s and 1970s established the need for diesel fuel to run power generators (page 9).

- The early government housing was often poorly constructed and creates significant energy burdens for the homeowners even today. The newer housing has improved and is more energy efficient. (page 9).

- The increase in State grants for village electrification in the 1970s coincided with the increase in State oil revenues. By the mid-1970s, many of the larger rural communities were electrified to some degree, but about 85 villages were still without a centralized power utility (pages 10-11).

- As fuel demand increased, villages began to experience fuel shortages in the 1970s because of inadequate bulk storage. Although 81 villages (about 31 percent of the rural villages) have received State grants over the past five years, problems still remain in other villages (pages 11-12).

- The energy outlook in rural Alaska is not particularly promising, as declining oil revenues will likely shrink State assistance through the numerous programs. Furthermore, federal energy funds may decrease under deficit reduction efforts. However, declining world oil prices and increased competition in rural fuel markets (particularly in Western Alaska) should alleviate concerns about the potential for spiraling rural energy costs over at least the next few years (page 13).

Government Energy Programs in the 1970s and 1980s.

- The federal home energy assistance program reaches about 20,000 of the estimated 38,000 eligible households in Alaska. The cash payments covered roughly 17 to 29 percent of the fuel expenses for the typical rural household in some coastal western villages and interior villages. Because Alaska participants in the energy assistance program are increasing six to te..

percent annually, it is likely that the average energy payment will decrease in future years in order to extend benefits to more households (pages 15-16).

- About 5 percent, or 7,900 houses, of all housing statewide has received low-income weatherization assistance under the federal and State programs. However, there are roughly 100 communities, primarily small and isolated, which have received no weatherization assistance during the seven years of government programs. In addition, given the substandard condition of much of the rural housing, it is uncertain whether these programs are weatherizing houses which should actually be replaced (pages 16-17).

- Unlike many other states which were focusing serious attention on conserving energy, Alaska's energy agenda beginning in the mid-1970s was primarily to develop new hydroelectric power sites and to promote and extend electric power statewide. State officials were guided by a policy of redistributing the petroleum resource wealth in energy projects throughout the state (pages 17-18).

- Many of the State rural energy programs have emphasized power production and delivery. State loans and grants to rural utilities for diesel generation systems flourished in the late 1970s and the 1980s. Numerous alternative energy demonstration projects were begun in the late 1970s in hopes that they would eventually provide replacements for rural diesel generation. As oil prices continued to rise, the State established a power rate subsidy (Power Cost Assistance) in 1980 as an interim measure until long-term alternative energy solutions could be found for high rural power costs (pages 18-21).

- Space heating costs have been the most critical energy burden facing rural households. In 1979, Native households spent three times as much on fuel oil for space heating as on electric bills. Even today, households in coastal Western Alaska spend 40 percent of their total energy dollars on heating oil, in comparison with 18 percent on electricity. In order to reduce rural Alaskans' vulnerability to high heating costs, a State Energy Policy Committee recommended in 1979 that the State supplement the federal weatherization program. Belatedly, the State began a modest weatherization program in 1983 as federal funds diminished under the Reagan Administration (pages 22-23).

- Disenchantment with the general lack of success with alternative energy projects and the perception of disorganization lead to the demise of the Division of Energy and Power Development in 1983 (page 24).

- As results from alternative energy projects and village reconnaissance studies became known, many people began to realize that there were not realistic alternatives to diesel power generation in most rural communities (page 24).

- With massive State loans for the "Four Dam Pool" and appropriations for Susitna and Bradley Lake hydro projects under consideration during the 1984 session, some rural legislators raised the question of equity in energy assistance for rural Alaskans. The rural power rate subsidy was significantly increased under a revised program, Power Cost Equalization. Rural utilities can now apply for a State subsidy which reduces power costs to 8.5¢/kwh for 750 kwh monthly usage by each customer (page 25).

- Unlike previous statewide energy plans, which were prepared by consultants and merely catalogued energy resources and uses, the State's 1985 long-term energy report presents energy goals and options for action. Many of the options identified through this interagency effort require additional funds and few appear in the Governor's FY 86 budget request (pages 25-26).

- A recent report from the Advisory Committee on Statewide Power Production Costs recommends that the Alaska Power Authority be restructured into a marketing agency which would purchase power from all utilities and resell the power at an average cost. Under this proposal, the APA would also manage future capital additions to a statewide power system, including the Susitna hydro project. The committee report recommends annual appropriations of $350 million for eight years which would cover the costs of rate equalization and stabilization but not the costs of capital additions statewide (page 27).

Alaska Energy Programs Lack Rational Policy

- The State of Alaska has never formally adopted an energy policy as the basis for energy program expenditures totaling as much as $1.7 billion during the last nine years. The energy programs have been implemented without first: 1) accurately defining the energy problems to be solved; 2) carefully articulating goals to be achieved through program expenditures; and 3) thoughtfully deriving a formula for the distribution of State program benefits based on rational and fair distribution principles. Consequently, rural energy programs in Alaska exhibit a serious inequity in the distribution of program benefits and services. Furthermore, several rural energy programs tend to be self-defeating or counterproductive (pages 29-30).

- In large part, the failure of Alaska's rural energy policy can be attributed to an underlying motive of "sharing the wealth" of State revenues accrued through Prudhoe Bay oil royalties and taxation. The desire to "share the wealth", expressed by both administrations and legislatures during the last nine years, has often been the most potent factor affecting the design of State energy programs. Rational energy policy has fallen victim to concerns over achieving a balance between appropriations to rural versus urban areas of the State. In addition, a number of rural energy programs have been spawned out of the capital budget process instead of carefully following the three-step procedure described above (pages 30-33).

What's Wrong With The State's Energy Programs?

- The focus of State energy programs has been largely restricted to addressing a single energy need--electric power. At least $720 million has been expended in meeting urban electric requirements through State emphasis on major hydroelectric developments and electric interties. For rural Alaskans, an annual appropriation of $21.7 million has recently been earmarked for electric power subsidies via the Power Cost Equalization program. Approximately $93 million has been appropriated as grants and loans to villages for the development of electric generation and distribution systems. Nearly $27 million has been expended in search of alternate sources of energy to be used in the generation of electric power, including hydroelectric, geothermal, coal and natural gas resources. Almost $24 million has been invested in research and pilot projects relating to wind energy, wood gasification, solar energy, single-wire ground return, biomass and waste heat recovery technology in an effort to provide alternate methods of generating and distributing electricity in the Bush (page 35).

- Ironically, electric energy constitutes a small portion of the overall energy requirements of many rural communities. In a number of cases, the energy value of electricity makes up less than 5 percent of the total energy requirements of individual villagers. In contrast, often over half of residential energy requirements relates to space heating fuel, while most of the remaining energy use pertains to transportation fuels. Consequently, even if State energy programs prove successful in providing rural communities with affordable electric power, only a small fraction of rural energy needs will have been addressed (pages 35-36).

- Energy program benefits and services have been distributed among rural communities in an inequitable manner. Generally speaking,

the better organized rural communities have garnered the lion's share of the benefits offered by State programs. Typically, those communities which have received electrification grants have also been relatively successful in obtaining bulk fuel grants and loans, waste heat recovery grants and electric power rate subsidies. In this "survival of the fittest" approach to distributing State energy program services and benefits, as many as 70 rural villages have been largely ignored under existing State energy policy (pages 36-39).

- Conventional energy policy is often based on the goals of energy conservation and energy self-sufficiency (particularly a reduction in oil dependency). The centerpiece of Alaska's rural energy policy -Power Cost Equalization--encourages the consumption of electricity and deepens the dependency of rural Alaska on oil. The goals of energy conservation and independence from oil are being undermined by Power Cost Equalization subsidies which cause rural consumers to react to artificially low electric power prices (8.5 cents/kwh) instead of learning to live with the real cost of electric power (often over 50 cents/kwh). Moreover, since almost all electric power in the Bush is produced by diesel generators and rural electric power consumption is increasing every year, rural Alaska is becoming more (not less) dependent on oil and the goal of energy self-sufficiency is falling farther from reach (pages 39-48).

- Beyond the technical flaws in State rural energy policy, several misconceptions have clouded the true nature of the "rural energy problem." Put simply, the "rural energy problem" is a consequence of the high cost of living in rural Alaska and the low average cash income. Anything purchased with cash in rural Alaska is generally more expensive than the same item bought in urban communities, including energy, grocery items, clothing, boats and motors. Due to the scarcity of jobs which provide income and because the subsistence economy is a cashless economy, rural residents will likely remain cash poor by urban standards. Consequently, the "rural energy problem" will only be solved either when opportunities present themselves for rural Alaskans to secure substantial increases in cash income, or if the State government is prepared to support perpetual energy subsidies (page 48).

- The real energy problem for rural Alaskans is not one of finding subsidized energy sources, but one of generating sources of income with which to: 1) purchase energy at the best price; and 2) enable local governments to implement their own decisions about meeting their energy needs. The corollary to this misconception is the mistaken notion that "oil is the enemy" in rural Alaska. The fact remains that oil has been, and will likely

continue to be, the least costly energy option for many remote communities (pages 48-50).

Alternative Plans of Action

The recent budget trimming activity at the federal level, coupled with forecasts of declining State revenues caused by oil price declines over the short term and Prudhoe Bay production declines over the long term, lends urgency to the matter of addressing the energy problems of rural Alaskans. Consequently, our proposals for action in this area call for a dramatic departure from the status quo. These action plan options include:

- Dismantling existing rural energy programs in favor of a direct "wealth distribution" plan to be implemented through State revenue sharing (pages 51-52).

- Paring back present energy programs to include only those which support conventional energy policy goals while greatly expanding the scope and funding of the remaining programs. The surviving programs would be the federal Low Income Home Energy Assistance Program and the Weatherization Assistance Program (page 52).

- Phasing out current energy programs while subsidizing the development of regional energy resources (such as coal in Western Alaska). The goal of this proposal is to attack the root cause of the "rural energy problem"--the lack of a solid and self-sustaining cash economy in rural Alaska (pages 52-54).


HCR
43

HOUSE
COMMITTEE REPORT

4/4

(9)

Date referred: 3/19/86

FURTHER REFERRALS:

Rules

DATE: April 4, 1986

The RESOURCES Committee has considered HCR 43

Relating to the University of Alaska school of Mineral Industry, Mineral Industry Research Laboratory and Mining Extension Program."

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent

[ ] first fiscal note

[ ] new fiscal note

~~[✓] zero fiscal note~~

same zero w/analysis reported out Hess in Sup # 99 3/19

SIGNING DO PASS:

Herrmann Adelheid Herrmann

Miller(NP) M. W. Miller

Thompson [illegible]

Pearce [illegible]

Jenkins Roger Jenkins

Cato Bette Cato

SIGNING OTHER RECOMMENDATIONS:

Adelheid Herrmann

Co-Chairman Herrmann

Alaska State Legislature

Representative Mike Davis

Pouch V
Juneau, Alaska 99811
(907) 465-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708

TO: House Resources Committee

FROM: Rep. Mike Davis

DATE: April 4, 1986

RE: HCR 43 Relating to the University of Alaska School of Mineral Industry, the Mineral Industry Research Laboratory and Mining Extension Program

****

The placer gold mining industry is a significant contributor to our state's economy. The accompanying charts indicate just how important this role is. The source of this data is the Department of Commerce and Economic Development's Office of Mineral Development.

While the industry in Alaska has existed for nearly one hundred years, it is uncertain if it will be able to continue making this contribution. Currently, almost all placer mining operations are not meeting stringent State and Federal regulations regarding water quality. There is increasing political and legal pressure being brought to bear on the industry to comply with these regulations.

With the exception of research in mining discharge water quality being done by selected miners in an innovative demonstration grant program administered by the DNR and DEC, miners have been left largely to their own devices to find their own solutions.

To date the University of Alaska School of Mineral Industry (SMI) and its research arm, the Mineral Industry Research Laboratory (MIRL) have not played a prominent role in efforts to find a practical solution to this dilemma. This is in no way meant as a criticism. Rather, it is the intention of this resolution to recognize the scientific and engineering contributions the University can make towards a solution. The SMI, MIRL and the Mining Extension program have an eminent faculty which represents a heretofore underutilized resource.

This resolution merely asks that the MIRL initiate a research involvement in the field aimed at achieving advances in placer mining water quality. The resolution further asks that the Mining Extension Program bring forth new information to the miner in the field.

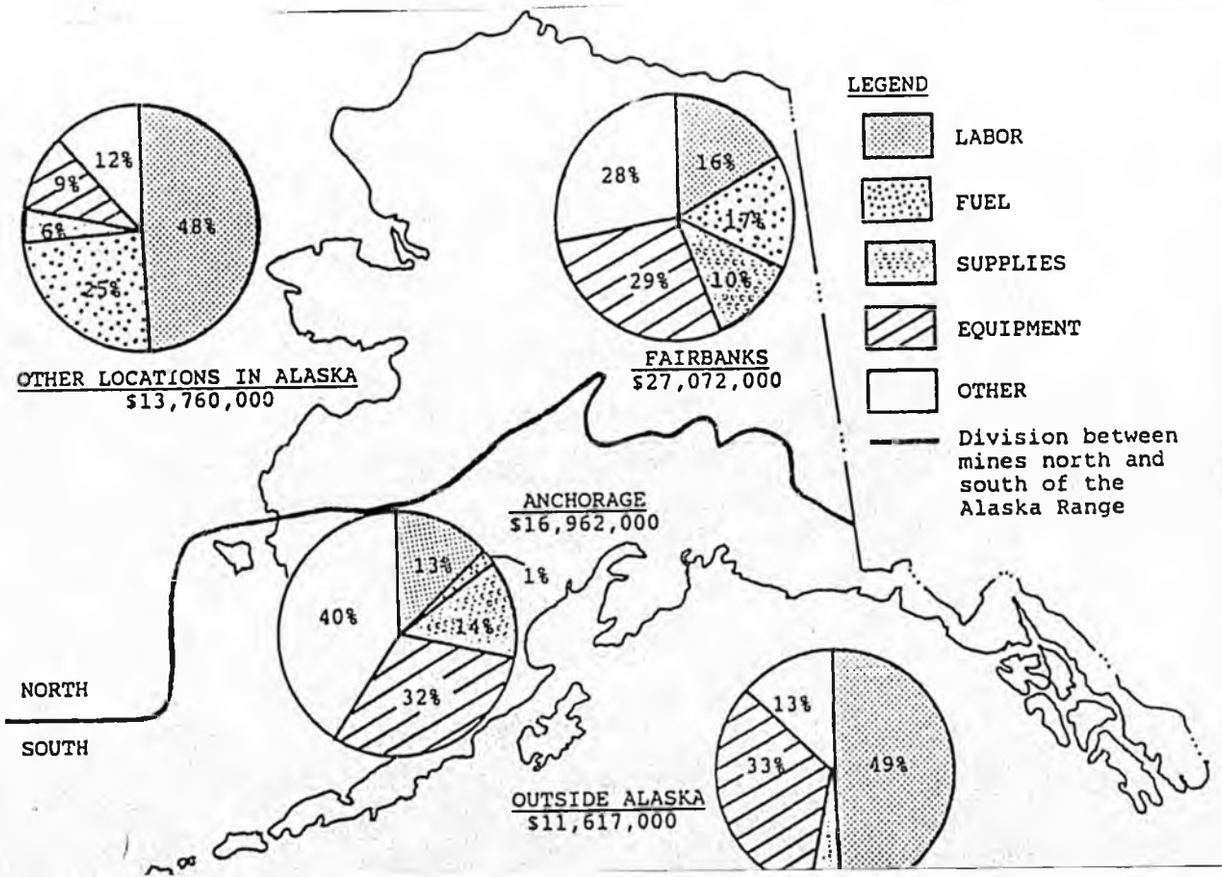
It is intended that the "Zero" fiscal note apply to this legislation.

GROSS SALES AND FULL-TIME EMPLOYMENT RESULTING FROM PLACER MINING

Support Industry	Sales (x million)			Employment		
	State	FBKS	ANCH	State	FBKS	ANCH
Fuel	$ 7.0	$ 2.7	$ 0.8	8	3	1
Equipment	6.4	0.7	1.7	55	6	15
Maintenance	2.7	1.3	0.8	26	12	8
Other Expenses	9.8	3.2	2.2	95	31	21
Communications	1.2	0.4	0.3	23	7	6
Utilities	0.6	0.1	0.2	3	0	1
Trade	12.8	4.8	3.5	448	169	123
Banking	0.9	0.2	0.2	25	7	7
Services	5.2	1.3	0.9	106	27	18
Restaurants & Bars	2.4	0.8	0.6	110	37	29
Health Services	0.7	0.3	0.3	26	10	9
All Other	77.6	30.6	20.3	753	316	201
Total	$ 127.3	$ 46.4	$ 31.8	1,678	625	438

EMPLOYMENT BY PLACE OF RESIDENCE IN 1985
(in person-months and by percentage)

Location	North		South		Total	
Fairbanks	2,890	28.8%	218	2.2%	3,108	31.0%
Anchorage	620	6.2%	1,008	10.0%	1,628	16.2%
Rural Alaska	2,276	22.7%	1,159	11.5%	3,435	34.2%
Outside Alaska	1,517	15.1%	351	3.5%	1,868	18.6%
Total	7,303	72.8%	2,737	27.2%	10,040	100.0%



Sherman Carter
Executive Vice President
474-7448

University of Alaska
Fairbanks, Alaska 99701

March 12, 1986

The Honorable
Representative Mike Davis
Pouch V
Juneau, AK 99811

SUBJECT: Fiscal Note, House Resolution 43

Dear Representative Davis:

Attached are two fiscal notes for House Resolution 43 detailing the projected cost to the University of Alaska.

If House Resolution 43 is passed the university anticipates that the first phase of the Alaska Placer Mining Water Quality Control study will cost $281,872. The publication of brochures, newsletters and bulletins for distribution to the mining community will add an additional $76,000. No analysis has been completed as to the economic impact should placer miners be forced to cease operations due failure to meet water quality regulations in this fiscal note.

A second or corollary fiscal note for House Resolution 43 is also attached. The second fiscal note assumes that the resolution's intent is that the Department of Environmental Conservation or other outside entitites will fund the research and extension activities. Considering declining state revenues and the federal Gramm-Rudman deficit reduction act, the chances of this becoming a reality are very slim.

The appropriate fiscal note forms and backup are attached. If you need any further information, please do not hesitate to call me or Brian Rogers at 474-7593.

Sincerely,

Sherman Carter

Enclosures:

cc: The Honorable Niilo Koponen
The Honorable Steve Frank
The Honorable Richard Shultz
Jay Hogan, Office of Management and Budget
Liz Blecker, Legislative Finance

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : House Resolution 43
Title : Relating to UA School of Mineral Industry, Mineral Ind Res Lab and Mining Extension Program
Sponsor : David, Koponen, Frank and Shultz
Requestor : _____
Date of Request : March 7, 1986

FISCAL DETAIL

Agency Affected : University of Alaska
BRU : University of Alaska - Fairbanks, Organized Research
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		165.3				
TRAVEL		6.0				
CONTRACTUAL		85.0				
SUPPLIES		15.0				
EQUIPMENT		10.0				
LAND & STRUCTURES						
GRANTS, CLAIMS		76.6				
MISCELLANEOUS						
TOTAL OPERATING		357.9				
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		357.9				
FEDERAL FUNDS						
OTHER						
TOTAL		357.9				

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached page.

Prepared by : Brian Rogers, Budget Director Phone : 474-7593
Division : University of Alaska Date : March 10, 1986

Approved by Commissioner : Theresa Carter Date : March 10, 1986
Agency : University of Alaska

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. 43

Assumptions

1. Mining operations will continue to have difficulty in complying with water quality regulations and standards for discharges from mining operations into receiving streams. Solutions utilizing new technology are needed for these problems before serious disruption occurs to the mining industry. This fiscal note does not attempt to calculate the impact to the state if miners are forced to curtail operations due to water quality regulations.

2. A comprehensive study on mining water quality control is needed on the soils contributing to and the causing of turbidity including those of organic muck, clay, decomposed bedrock and combinations of thereof. Emphasis should be placed on the application of available treatment technology as well as the evaluation of new and innovative treatment strategies.

3. The proposed study will be completed in two phases. Only the first phase costs are covered by this fiscal note. A progress report on Phase I will be available on July 1, 1987 with a final report on Phase I submitted on or before December 31, 1987. Advances in wastewater management and other techniques are made available to miners in the field.

Program Summary:

1. Positions. No new permanent positions will be created as a result of House Resolution 43. Personal services costs include 4 staff months of the co-principal mining engineer investigator, 5 staff months of the co-principal environmental engineer investigator, 50 months of graduate student labor and related fringe and staff benefits. Total personal services costs are $165,310.

2. Other major expenditures include:

- Laboratory and field supplies	$ 10,000
- Advisory Resources Services	9,000
- Services (Telephone, copying, report preparation, film, etc.	85,000
- Travel.	6,000
- Overhead on above expenditures.	76,562
- Equipment.	10,000
- Publication of brochures, newsletters and bulletins for distribution to the mining community. Preparation, printing and secretarial costs	76,000
Total Phase I Costs	$357,872

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : House Resolution 43
Title : Relating to UA School of Mineral Industry, Mineral Ind. Res. Lab and Mining Extension Program
Sponsor : Davis, Koponen, Frank, Shultz
Requestor : _____
Date of Request : March 7, 1986

FISCAL DETAIL

Agency Affected : University of Alaska
BRU : University of Alaska - Fairbanks, Organized Research
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-				
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-				

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached page.

Prepared by : Brian Rogers, Budget Director — Phone : 474-7593
Division : University of Alaska — Date : March 10, 1986

Approved by Commissioner : Brian Carlson — Date : March 10, 1986
Agency : University of Alaska

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. 43

Assumptions

1. Mining operations will continue to have difficulty in complying with water quality regulations and standards for discharges from mining operations into receiving streams. Solutions utilizing new technology are needed for these problems before serious disruption occurs to the mining industry. This fiscal note does not attempt to calculate the impact to the state if miners are forced to curtail operations due to water quality regulations.

2. A comprehensive study on mining water quality control is needed on the soils contributing to and the causing of turbidity including those of organic muck, clay, decomposed bedrock and combinations of thereof. Emphasis should be placed on the application of available treatment technology as well as the evaluation of new and innovative treatment strategies.

3. Any studies or publications required will be funded by outside research grants and contracts.

Program Summary:

1. Positions. No new permanent positions will be created as a result of House Resolution 43.

2. Other expenditures needed to complete the water quality control analyses will also be absorbed with existing budgets.

3. No additional funding will be required by the University as the study would be a regular research grant covered within the existing budget authority levels.

HOUSE
COMMITTEE REPORT

3/19

(7)

Date referred: 2/5/86

FURTHER REFERRALS: RESOURCES

DATE: March 4, 1986

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee has considered HCR 43

Relating to the University of Alaska School of Mineral Industry, Mineral Industry Research Laboratory and Mining Extension Program.

and recommends:

[✓] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[✓] first fiscal note
[ ] new fiscal note
[✓] zero fiscal note w/analysis } Supplement #99

First

SIGNING DO PASS:	SIGNING OTHER RECOMMENDATIONS:
GRUENBERG Mark Gruenberg	
KOPONEN Niko Koponen	
TAYLOR Vice Chair Robin Taylor	
HURLEY Katie Hurley	
PETTYJOHN	
THOMPSON David W. Thompson	

Co-Chairman Mark Gruenberg

Co-Chairman Niko Koponen


HCR
52

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
P.O. BOX O, JUNEAU, ALASKA 99811-1800

Telephone:(907)
Address:
(907) 465-2600

April 2, 1986

The Honorable Richard Shultz
The Honorable Adelheid Herrmann
Co-Chairmen
House Resources Committee
P.O. Box V
Juneau, AK 99811-3100

Dear Representatives Shultz and Herrmann:

This letter discusses the costs to the Department of Environmental Conservation (DEC) that would result from passage of House Concurrent Resolution (HCR) 52. I have declined to put in a fiscal note for this resolution, but do want to clarify what I believe to be the fiscal impact on the Department.

As I stated in a hearing before the House Resources Committee, DEC has actively pursued assumption of all federal environmental programs except for the water quality permit program under Section 402 of the Clean Water Act. The major impediment I have seen to assumption of the 402 program has been the cost to the State. It was estimated in 1979 that nearly $1,000,000 per year would be needed to assume the program. A review of past budgets indicates that DEC's budget did not include funds for assumption, nor did the Legislature add funds for assumption.

As I stated to the Committee, I believe that assumption of the 402 program for placer mining could be beneficial in relieving the administrative burden on that industry. Such a partial assumption of the 402 program would be possible only if the Clean Water Act is reauthorized allowing states to assume part of the 402 project. This Act is pending reauthorization in this Congress now, and Congress has until the end of the year to act on it.

If I retain a FY 87 budget with adequate resources, I intend to examine, before the start of the next legislative session, the costs and benefits associated with the assumption of the 402 program, with particular emphasis on the placer mining segment. However, completion of the tasks called for in the second part of the resolution, requesting that DEC take the steps necessary to actually assume the 402 program, would not be possible without considerable additional financial resources.

However, completion of my examination would enable the 15th Legislature the opportunity to assess and debate the costs during development of the FY 88 budget to continue or even complete assumption in FY 88 if possible; and to give DEC further direction. I hope to be able to allocate $25,000 of my proposed FY 87 budget to examining this issue this fall.

If I do not have resources left in my budget for this task, as Representatives Sund and Pearce stated, I would question the wisdom of studying the assumption of additional responsibilities. As previously noted, assumption of the 402 program will require considerable State general funds. If my FY 87 budget must be reduced to the point that I am unable to complete the efforts I have outlined, then the prospects for future funding for the full program would seem remote enough to make these research efforts unnecessary. Hence, I have declined to develop a fiscal note for the resolution at this time.

Please feel free to contact me if I can be of any additional assistance in this matter.

Sincerely,

Bill Ross
Commissioner

cc: Representative Andre Marrou
Jim Ayers, Director of Legislative Relations



ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

March 7, 1986

Representative Fritz Pettyjohn

Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Fritz Pettyjohn,

On behalf of the Alaska Miners Association, I would like to thank you for the opportunity of discussing our problems with your office during the week we spent in Juneau.

As you will recall, we discussed the importance to the economy of the State of Alaska of the recent lawsuit filed against the BLM by the Sierra Club and other environmental and native organizations. We understand that the Governor is considering intervention in this suit. We appreciate your efforts in this matter.

Also, we discussed with you the possibility of the State of Alaska assuming the EPA N.P.D.E.S. permitting as authorized under Section 402 of the Clean Water Act. I believe that House Concurrent Resolution No. 52 would be an excellent vehicle for encouraging the State of Alaska to act in this matter. Therefore, we urge your suport of HCR No. 52.

Again, we thank you for the courtesy you extended to us. We hope that if you desire any information regarding mining, you will contact us.

Sincerely yours,

Rose

Rose Rybachek
President

Appreciate your help.

HOUSE

COMMITTEE REPORT

(9)

Date referred: 2/17/86

FURTHER REFERRALS: FINANCE

DATE: March 26, 1986

The RESOURCES Committee has considered HCR 52

Relating to state assumption of federally mandated programs.

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Herrmann Adelheid Herrmann

Thompson David W. Thompson

Jenkins Roger Jenkins

Wallis F. Kay Wallis

Cato Betty Cato

SIGNING OTHER RECOMMENDATIONS:

Sund

Pearce

Dick Shultz

Co-Chairman Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HCR 52
Title : Relating to state assumption of federally mandated programs.

Sponsor : Marrou
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Environmental Conservation
BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : House Resource Committee
Division : Rep. Dick Shultz
Phone : 465-3715
Date : _____

Approved by Commissioner : Dick Shultz
Agency : Co-Chair, House Resources Committee
Date : March 27, 1986

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Introduced: 2/17/86
Referred: Resources and Finance

IN THE HOUSE BY MARROU

HOUSE CONCURRENT RESOLUTION NO. 52

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Relating to state assumption of federally mandated programs.

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

WHEREAS 33 U.S.C. 1342 of the federal Clean Water Act of 1977 (33 U.S.C. 1251 - 1376) allows a state to take over from the federal government the administration of the Act's permit program for discharges into the navigable waters within the jurisdiction of the state; and

WHEREAS other federal environmental statutes also allow a state to take over from the federal government the administration of the program mandated by the statutes; and

WHEREAS the state has a better understanding than the federal government of the difficult issues that are involved in balancing the protection of the fragile environment and the promotion of the economic and recreational needs and desires of the state;

BE IT RESOLVED by the Alaska State Legislature that the Governor is respectfully requested to

(1) investigate the statutory changes that would be required for the state to take over from the federal government the federal environmental programs that a state may administer, and the possible advantages and disadvantages involved in the assumption by the state of the administration of the programs; and

(2) report the results of the investigation to the First Session of the Fifteenth Legislature; and be it

FURTHER RESOLVED that the Governor is respectfully requested to take the steps necessary for the state to take over from the federal government

under 33 U.S.C. 1342 of the Clean Water Act of 1977 the permit program for discharges into the navigable waters within the jurisdiction of the state.

Alaska State Legislature
House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

COPY

March 3, 1986

To: Rep. Herrmann & Rep. Schultz, Co-Chair House Resources Committee
From: Andre Marrou, Representative

Subject: HCR 52, State Assumption of Federal Environmental Programs

HCR 52 was introduced upon Sen. Murkowski's recomendation.

Here is a copy of the portion of his speech in which he made this suggestion to a joint session of the Legislature earlier this year.

I agree with the Senator that local control of some of these programs is preferable to Federal management.

I hope you will agree and schedule this bill for a hearing.

AT SUCCESSES, INCLUDING THE ALASKA
STITUTE'S SEAFOOD PROMOTION PROGRAM
RIES DEVELOPMENT FOUNDATION'S SURIMI
EXAMPLES OF HOW WE CAN TAKE CONTROL
ND CREATE THE FUTURE WE WANT FOR OUR
SE WHO BENEFIT FROM IT.

OMY FOR ALASKA'S FUTURE WILL ALSO
TOURISM. JUST LOOK AT THE
LL HAVE IF ALASKA SITES ARE SELECTED
CS. EVEN BEFORE 1992, ALASKA CAN BE
988 OLYMPICS IN SEOUL, KOREA.

T POSSIBLE FOR FOREIGN VISITORS TO
R WAY TO AND FROM THE OLYMPICS, I AM
ATE DEPARTMENT TO RELAX CERTAIN VISA
PROMOTING THE APPROVAL OF TEMPORARY
NCOURAGING MORE FOREIGN VISITORS TO
A GRAND OPPORTUNITY TO PUT ALASKA ON
AY AS THE SUPERIOR CHOICE FOR THE

-- AS WE SEIZE NEW ECONOMIC OPPORTUNITIES, LET'S CONSIDER HOW WE MIGHT WANT TO TAKE SOME OF THE ENVIRONMENTAL REGULATION CURRENTLY HANDLED ON THE FEDERAL LEVEL AND SHOULDER THEM OURSELVES. FOR EXAMPLE, UNDER THE CLEAN WATER ACT ALASKA CAN TAKE OVER THE SECTION 402 PERMITTING PROGRAM WHICH DICTATES THE NATURE OF THE PERMITS THAT ARE ISSUED TO PLACER MINERS, LOG TRANSFER FACILITIES, AND OTHER IMPORTANT SEGMENTS OF OUR ECONOMY. WOULDN'T IT BE BETTER IF ALASKANS WERE DEALING WITH ALASKANS ON SOME OF THESE TOUGH REGULATORY ISSUES INSTEAD OF BUREAUCRATS IN WASHINGTON AND SEATTLE?

-- YOU MIGHT WANT TO LOOK INTO THE ADVANTAGES IN THIS SESSION OF TAKING OVER FROM EPA THE CLEAN WATER PERMITTING PROGRAM. 37 OTHER STATES OPERATE THE PROGRAM AND FIND IT IN THEIR OWN BEST INTEREST, INCLUDING TEXAS.

-- AS THE FEDERAL GOVERNMENT TAKES A LESSER ROLE, THE RESPONSIBILITIES FOR PERSONAL, DIRECT ACTION REVEPT TO THE LOCAL COMMUNITY AND FAMILY LEVEL. THE DRUG PROGRAM IS ONE EXAMPLE. WHILE WE MUST CONTINUE OUR VIGOROUS EFFORTS TO STRENGTHEN DRUG LAWS AND PROMOTE TOUGH LAW ENFORCEMENT, THERE IS NO MORE EFFECTIVE WAY THAN PARENTS TAKING THE TIME FOR MEANINGFUL, PERSONAL TALKS WITH CHILDREN TO CONVINCE THEM THAT DRUGS HAVE NO PLACE IN THEIR LIVES. NO GOVERNMENT PROGRAM CAN SUBSTITUTE FOR THAT KIND OF PEPSONAL EFFORT.

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game

Andre Marrou
Representative

District 5

Kenai — Sterling
Soldotna — Anchor Point
Homer — Port Graham
Seldovia — English Bay
Kachemak — Nikolaevsk
Kasilof — Halibut Cove
Ninilchik — Clam Gulch

February 26, 1986

Senator Frank Murkowski
United States Senate
709 Hart Building
Washington, D.C. 20510

Dear Senator Murkowski:

Enclosed is a copy of a news release issued after I introduced four bills last week.

HCR52 (copy enclosed) was inspired by your speech to the Legislature on February 10, 1986.

Your comments on this resolution would be appreciated.

Sincerely,

Andre Marrou
Representative

AVM/lc
enc.

During Session: P. O. Box V, Juneau, Alaska 99811, (907) 465-2719 During Interim: Box 1572, Homer, Alaska 99603, (907) 235-8200

ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

March 7, 1986

MAR 1 1 RECD

File HCR 52

Representative Andre Marrou

Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Andre Marrou,

On behalf of the Alaska Miners Association, I would like to thank you for the opportunity of discussing our problems with your office during the week we spent in Juneau.

As you will recall, we discussed the importance to the economy of the State of Alaska of the recent lawsuit filed against the BLM by the Sierra Club and other environmental and native organizations. We understand that the Governor is considering intervention in this suit. We appreciate your efforts in this matter.

Also, we discussed with you the possibility of the State of Alaska assuming the EPA N.P.D.E.S. permitting as authorized under Section 402 of the Clean Water Act. I believe that House Concurrent Resolution No. 52 would be an excellent vehicle for encouraging the State of Alaska to act in this matter. Therefore, we urge your suport of HCR No. 52.

Again, we thank you for the courtesy you extended to us. We hope that if you desire any information regarding mining, you will contact us.

Sincerely yours,

Rose

Rose Rybachek
President

The Alaska Economic Report

March 15, 1986
No. 5/86

State Water Quality Takeover Possible ? ? ?

State Environmental Commissioner Bill Ross says his department hopes to take over partial or total management of the federal clean water act in Alaska next year, budget permitting. Thus ADEC could replace EPA in regulating placer mine water quality, raising the prospect that more flexible regulations could be developed under state management than might be possible under the federal EPA.

(PAGE 8)

THE ALASKA ECONOMIC REPORT IS PUBLISHED BIWEEKLY BY ALASKA INFORMATION SERVICE
3037 S. Circle, Anchorage, Alaska 99507 (907) 349-7711 / 344-2455

HJR



ANALYSIS OF HJR 8

To: House Resources Committee Files
From: Janet Fries, Committee Aide
Date: 1/23/85

HJR 8 requests the North Pacific Fishery Management Council to take the following action:

1. To rescind its December 1984 action granting joint ventures in the Gulf of Alaska a 10% allocation of sablefish.

2. To grant Alaska longline fishermen exclusive fishing rights in the sablefish fishery in the Gulf of Alaska.

This type of resolution, in which the Alaska Legislature recommends a certain course of action to the Council, is warranted in situations like this one, where the interests of local, shore-based fishermen and processors are potentially adversely affected by the Council's actions.

Hein
1/21/85

Original sponsors: Grussendorf, Duncan,
M.M.Miller, et al

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 8 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the allocation of Gulf of Alaska sablefish harvest by the North Pacific Fishery Management Council.

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

WHEREAS the North Pacific Fishery Management Council on December 8, 1984, voted to allocate 10 percent of the optimum yield of sablefish in the Gulf of Alaska groundfish fishery to incidental catch by joint venture fishermen; and

WHEREAS joint venture operations in the Gulf of Alaska have expanded dramatically in recent years; and

WHEREAS continued expansion of joint venture participation with foreign processors in the Gulf of Alaska should be accommodated by the North Pacific Fishery Management Council in such a manner as to enhance, and not restrict, development of the domestic fishery; and

WHEREAS use of longline gear in catching sablefish is ecologically sound; and

WHEREAS Alaska longline fishermen have the capacity to harvest, and United States processors have the capacity to process, the entire allowable catch of sablefish in the Gulf of Alaska; and

WHEREAS the Magnuson Fishery Conservation and Management Act establishes a priority for United States fishermen delivering to United States processors; and

WHEREAS the North Pacific Fishery Management Council, in allocating fishing privileges among fishermen and among gear types, is directed by management plan guidelines to consider such relevant factors as the

economic and social consequences of the allocation scheme and the dependence on the fishery by present participants and coastal communities;

BE IT RESOLVED by the Alaska State Legislature that the North Pacific Fishery Management Council is respectfully requested to rescind its action allowing joint venture fishermen an incidental catch of sablefish equal to 10 percent of the optimum yield of sablefish in the Gulf of Alaska groundfish fishery, and set aside reserves to allow incidental catch of sablefish based on actual needs rather than optimum yield; and be it

FURTHER RESOLVED that the North Pacific Fishery Management Council is respectfully requested to take action at its February 1985 meeting to grant longline fishermen exclusive fishing rights in the sablefish fishery in the Eastern Regulatory Area of the Gulf of Alaska, from Dixon Entrance to a west longitude determined by the North Pacific Fishery Management Council.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; to the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; to the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; to the Honorable John B. Breaux, chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries; to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; to the Honorable Malcolm Baldrige, Secretary of Commerce; and Mr. James Campbell, chairman, North Pacific Fishery Management Council.

ANALYSIS OF DRAFT HOUSE RESOURCES CS FOR HJR 8

To: House Reources Committee Files
From: Janet Fries, Committee Aide
Date: 1/23/85

This proposed CS includes the recommendations of the House Special Committee on Fisheries, which informally reviewed HJR 8 in order to provide technical assistance to the Resources Committee.

Page 1, Lines 15 through 18:

This changes the tone of the statement concerning joint ventures to one which is more consistent with the State of Alaska's current policy, that carefully regulated, joint ventures can serve an important function in the development of the domestic fishery.

Page 2, Lines 7 and 8:

This gives the Council a specific direction as to how they might consider solving the sablefish by-catch problem.

Page 2, Line 10:

The word Alaska has been deleted because many of the longline fishermen who have traditionally participated in this fishery are not full-time Alaska residents.

Page 2, Lines 11 and 12:

This restricts the effect of the longliners' exclusive rights to the Eastern Gulf of Alaska, the area which has traditionally been granted this exclusion.

Alaska State Legislature

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

To: Reps. Herrmann and Schultz
House Resource Committee

Fr: Rep. Ben Grussendorf
Speaker

Dt: 1/15/85

Re: HJR 8

My intent on this resolution is to have it through both houses in time for the February 8th Meeting of the North Pacific Fisheries Management Council.

Longliners in Sitka, and the rest of state have shown they can harvest the entire OY of sablefish (black cod). They are quite concerned about a 10% allocation to Joint Venture by-catch. A method of allowing by-catch not tied to the OY is highly desirable.

Another area of concern is pot fishing. Pots lost off Cape Edgecumbe are fishing to this day, damaging longline gear and automatically depleting the sablefish stocks.

Both of these areas need to be handled by the N.P.F.M.C. on an emergency basis. This can be done under section 304(e) 16 USC 1855 by requesting the Secretary of Commerce to "promulgate emergency regulatory action." Without quick action it will be six months before the issue will make it through the process. In that time pot fishermen can enter the fishery, making it difficult to later remove them. The term hook-and-line can be substituted for longline fishing, if you feel pot fisherman could claim to be longliners by attaching pots instead of hooks.

The council should also take action to rescind their December vote on the 10% allocation.

Background material is attached: the N.P.F.M.C.'s December newsletter, a very good letter-to-the-editor from a Sitka longliner, and data sheets from the N.P.F.M.C.

Ron Hegge of the Alaska Longline Fishermans Association (ALFA) should be added to your contact list. ALFA will be interested in commenting on HJR 8 and other fishing measures which come before your committee. I will let you know if other Sitkans show an interest as well.

North Pacific Fishery Management Council

James O. Campbell, Chairman
Jim H. Branson, Executive Director

411 West 4th Avenue
Anchorage, Alaska 99510

Mailing Address: P.O. Box 103136
Anchorage, Alaska 99510

Telephone: (907) 274-4563
FTS 271-4064

#7-84

December 18, 1984

N E W S L E T T E R

Council Zeros in on Groundfish at December Meeting

Meeting in Anchorage the week of December 3rd, the North Pacific Council took a major step in reducing the directed foreign fisheries around Alaska. The rapid expansion of the American fishery for sablefish in the Gulf of Alaska and the Aleutians in 1984 has eliminated any possibility of a directed foreign fishery or a joint venture fishery for that species or Pacific ocean perch and Atka mackerel in most areas. Alaska pollock in the Gulf are expected to be entirely utilized by U.S. shoreside processors and joint venture fisheries next year. Only limited amounts of Pacific codfish, sole and flounder would then be available for a foreign directed fishery. The Council determined that because the foreign fisheries for those species take heavy bycatches of sablefish, Pacific ocean perch and other rockfish, that the OY for those species should be set equal to the amounts needed by U.S. fishermen. The final determination was that there were no fish available for a foreign directed fishery in 1985 in the Gulf of Alaska.

The Gulf of Alaska extends from Southeast Alaska westward to 170°W. longitude, just west of Umnak Island in the Aleutian Chain. Foreign fishing vessels have been fishing in that area since 1962 when Japanese and Soviet vessels mounted large scale groundfish fisheries that exploited and rapidly depleted many of the resources in the Gulf. Some species, such as Pacific ocean perch, have not responded to careful Council management since the Magnuson Act was implemented in 1976. They are still badly depleted.

The Council will reevaluate the demands of the U.S. fishery as the season progresses.

The Council also asked the Secretary of Commerce to implement an emergency regulation closing all of the area within 20 miles of the Aleutian Islands to foreign trawling. That emergency regulation will be followed by a regular Council plan amendment during the course of the year. Eliminating foreign trawling in that area provides for expansion of the U.S. fishing effort for sablefish, Pacific ocean perch, rockfish and turbot, all high-value species caught by both U.S. longliners and trawlers.

There will still be considerable tonnages of groundfish available for foreign fishing in other areas of the Bering Sea and Aleutian Islands in 1985, primarily Alaska pollock, yellowfin sole and other flatfish.

In December the Council also approved joint ventures for 1985, adopted comprehensive fishery management goals and restructured its Advisory Panel. These and other items are discussed in this Newsletter.

Salmon and Groundfish Will Highlight February Council Meeting in Sitka

The North Pacific Council will hold its next meeting February 6-8 at the Centennial Hall in Sitka. The Council will meet with the Alaska Board of Fisheries to hear staff reports on the salmon fisheries, a report on the U.S./Canada treaty negotiations, and public testimony before making decisions on proposed regulations for the 1985 fishery. When meeting alone, the Council will review proposed changes to the groundfish fishery management plans for the Gulf of Alaska and Bering Sea/Aleutians and instruct the plan teams on further developing draft decision documents for public and Council review. Final decisions on amendments to the groundfish plans will be made in May.

Management Goals

The Council adopted nine comprehensive management goals that are intended to provide direction for the Council's fishery management decisions over the next few years. The goals are accompanied by a set of findings and explanatory text. Copies of this material may be obtained by contacting the Council offices.

Council Restructures its Advisory Panel

Following the recommendations of a Council-appointed workgroup the Council approved restructuring the Advisory Panel to consist of 20 members (currently 25) each having one-year terms. These 20 members will be chosen to represent a variety of gear types and the major geographic regions of Alaska and the Pacific Northwest having an interest in the fisheries off of Alaska. The Council recognizes that gear conflicts and allocations will be the issues of greatest concern for the next few years and will rely on the Advisory Panel for comprehensive industry advice on how various fishery management alternatives will affect the industry and local economies, on potential conflicts between user groups of a given fishery resource or area, and on the extent to which the United States will utilize resources managed by the Council's fishery management plans. With a smaller 20-member Advisory Panel, funds will be available to include additional individuals with expertise needed to work through problems before the Council at any given meeting.

The Council has asked for nominations to the Advisory Panel with a deadline of December 31. The Council will be looking for people actively involved in the community and business to ensure the best and most pertinent input into the Council. All prospective members will be asked to commit to active participation in each meeting during their terms.

In addition to geographic representation it is hoped that the major gear types from the harvesting sector will be broadly represented though no particular seat will be guaranteed by gear type or fishery. In addition to the above mentioned interests the Council will be looking for representatives of the recreational fishing, environment, and consumer/marketing communities. It is expected that, as the issues and concerns of the Council change and evolve, so too will the profile of the membership of the AP.

All persons interested in serving on the Council's Advisory Panel are requested to send a short resume to the Council office by December 31. The Council expects to review and approve the nominees in January and invite the new AP participants for the February meeting.

Gulf of Alaska Optimum Yields are Revised for 1985

Based on recent comprehensive surveys of groundfish stocks in the Gulf of Alaska indicating declining abundance of certain stocks, several optimum yield (OY) values were reduced for 1985 as follows:

Species	1984	1985
Pollock	416,600 mt	321,600 mt
Pacific ocean perch	11,475	6,083
Atka mackerel	28,700	4,678
Rockfish	7,600	5,000
Other Species	28,780	22,430

The 1985 Gulf of Alaska OYs for all species are shown in Table 1. The Council requested the Regional Director of NMFS to promulgate an emergency regulation implementing the revised OYs by January 1.

Council Ends All Directed Foreign Fishing in Gulf

The Council reviewed an NMFS survey of the amount of groundfish expected to be harvested by U.S. fishermen for U.S. processors (DAP), and sold over-the-side to foreign processors (JVP) in 1985 and approved the apportionments shown in Table 1 for the Gulf of Alaska (Figure 1). DAP and JVP are the amount required by U.S. fishermen. Since optimum yield for most species is lower in 1985 and estimates of U.S. need are higher, and because of concern over bycatches of valuable, fully-utilized species in foreign fisheries, the Council voted to eliminate all directed foreign fishing (TALFF) in the Gulf of Alaska.

U.S. demand for sablefish, Pacific ocean perch and rockfish, equals or exceeds the fish available for harvest (Table 1). Since U.S. fisheries take precedence over both foreign and joint venture fisheries there cannot be any directed joint venture or foreign fishery on these species.

In an attempt to balance the requirements of the burgeoning U.S. longline sablefish fishery with the need for an incidental catch by U.S. joint venture trawlers, the Council recommended setting aside up to 10% of the sablefish harvestable yield, by regulatory area, for joint ventures. These fish must be returned to the American fishermen for discard or domestic processing and are counted against OY. Individual joint venture permits will have bycatch limits, which when reached, will end the operation, regardless of progress toward target species goals. Bycatch rates in various areas will be based on past performance. In general, joint ventures using off-bottom trawls will catch much less than the 10% ceiling, while on-bottom trawl operations may be greatly constrained. Since no joint ventures are expected in the Eastern area it will not be necessary to hold back any sablefish for joint venture trawlers in that area.

TABLE 1

GULF OF ALASKA GROUNDFISH
1985 OYS, DAPS, JVPS, AND TALFF (MT)

Species	Area	1985 OY	1985[1/] DAP	1985[2/] JVP	Reserves[3/]	TALFF
Pollock	Western/Central	305,000	9,371	293,250	61,000	0
	Eastern[4/]	16,600	2	0	3,320	0
Pacific cod[4/]	W	16,560	2,460	7,327	3,312	0
	C	33,540	8,624	10,073	6,708	0
	E	9,900	766	0	1,980	0
Flounders[4/]	W	10,400	400	102	2,080	0
	C	14,700	1,781	498	2,940	0
	E	8,400	627	0	1,680	0
Pacific ocean perch	W	1,302	1,302[5/]	0	260	0
	C	3,906	3,906[5/]	0	781	0
	E	875	875[5/]	0	175	0
Sablefish	W	1,670	1,670[5/]	0	334	0
	C	3,060	3,060[5/]	0	612	0
	W. Yakutat	1,680	1,680[5/]	0	336	0
	E. Yakutat	1,135	1,135	0	0	0
	S.E. Outside	1,435	1,435	0	0	0
Atka Mackerel	W	4,678	0	4,678	936	0
	C	bc	0	0	0	0
	E	bc	0	0	0	0
Rockfish	Gulfwide	5,000	4,600	0	1,000	0
Thornyhead[4/]	GW	3,750	0	10	750	0
Squid[4/]	GW	5,000	0	10	1,000	0
Other Species[4/]	GW	22,430	69	1,400	4,486	0
TOTAL		471,021	43,763	317,348	93,690	0

bc = bycatch amounts only.
1/ Estimates determined by NMFS Industry survey.
2/ Estimates determined by joint venture permit applications.
3/ Reserves = 20% OY.
4/ OY = DAH not to exceed stated OY for each species.
5/ DAP estimates have been reduced to equal OY.

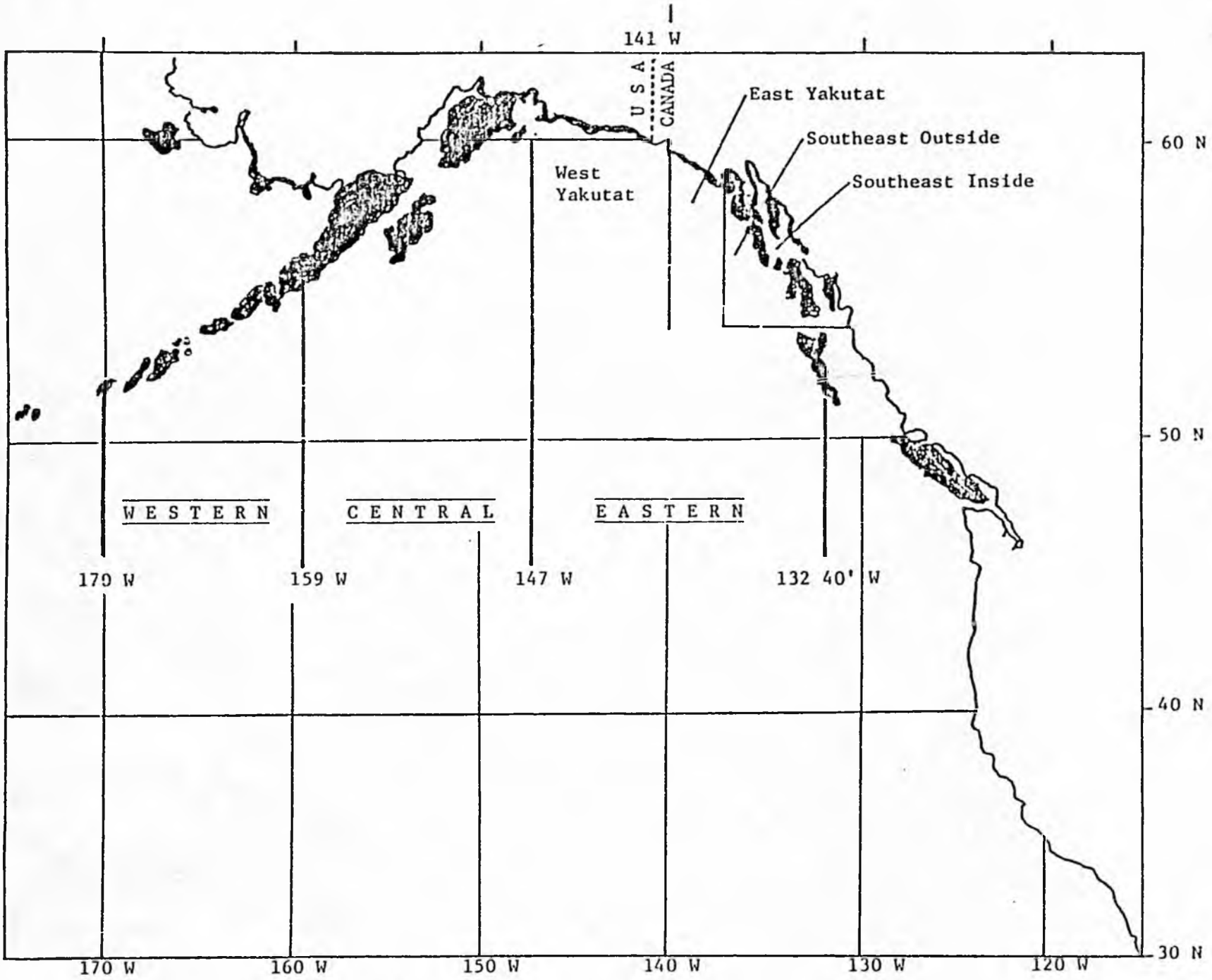


Figure 1. Regulatory Areas of the Gulf of Alaska (FMP)

These procedures for conserving and managing sablefish constitute a short-term fix that will allow a trawl fishery of about 300,000 mt, worth $26 million, in the Gulf in 1985, while minimizing the impacts on the domestic longline fleet. Gear restrictions for sablefish, including pots, will be considered by the Council during its groundfish annual management cycle. Proposals submitted by December 7, 1984 will be reviewed initially by the Council in early February. Final review is scheduled for May. Currently there are no regulations preventing the use of trawls or pots in the domestic sablefish fishery.

The Council also adopted a 10% bycatch ceiling by area for Pacific ocean perch and rockfish, two other species fully utilized by the U.S. in 1985.

The 1984 NMFS Triennial Groundfish Survey indicated that Atka mackerel in the Central and Eastern regulatory areas are depressed and showing no signs of recruitment. Therefore, the Council reduced the OY for Atka mackerel in both areas to bycatch only in an attempt to rebuild the stocks. In the Western regulatory area, JVP for Atka mackerel equals the OY.

The Council set OY equal to the total domestic harvest for the remaining groundfish species in the Gulf to minimize bycatch of sablefish, Pacific ocean perch, and rockfish. A large bycatch was considered unacceptable given the Council's desire to rebuild these stocks and encourage their domestic utilization.

Aleutians Closed to Foreign Trawling Within 20 Miles

The Council unanimously recommended closing foreign trawling within 20 miles of the Aleutian Islands; last year they could fish to within 3 miles. The 1985 U.S. fishermen will harvest the available sablefish, Pacific ocean perch, and Atka mackerel in the Aleutians. The foreign trawl closure will help minimize bycatch of these species. This will still allow the foreign mid-water fishery on pollock north of the Aleutians which annually produces nearly 100,000 mt, and foreign longliners will be able to fish outside 3 miles along the Aleutians.

Council Separates Foreign Pacific Cod Fishery From Traditional U.S. Areas in the Bering Sea

By unanimous vote the Council has restricted directed longline fishing for Pacific cod to areas north of 55°N. latitude in the Bering Sea, and to the extent that ice conditions permit, to the area west of 170°W. longitude. The Council also voted to allow only minimal Pacific cod bycatches in foreign trawl fisheries and to restrict the foreign longline catch to 35,000 mt.

Council Sets 1985 Quotas and Domestic Apportionments for Bering Sea/Aleutian Islands Groundfish

The Council has set the 1985 total allowable catches (TAC) of groundfish species in the Bering Sea/Aleutian Islands region and apportioned up to 85% of each TAC to domestic processors (DAP), joint ventures (JVP), and foreign fisheries. Their decisions were based on the 1984 status of stocks analyses surveys of U.S. industry needs and testimony at the December meeting.

Table 2 shows the TACs, DAPs and JVPs. Four species have separate amounts for the Bering sea and Aleutian Islands areas, pollock, Pacific ocean perch, other rockfish, and sablefish. The rest are managed as a unit for both areas. Table 2 also shows the amount of fish available for foreign harvest (TALFF). TALFF is the remainder, if any, of 85% of the TAC after it has been apportioned to DAP and JVP.

The 300,000 mt of reserves (Table 2) is not designated by species. It is 15% of the sum total of the TACs and can be apportioned during the fishing year by the Regional Director of NMFS.

Table 2 shows zero TALFFs for Pacific ocean perch in the Aleutians and for Atka mackerel and sablefish in the Bering Sea and Aleutians. The Council asked the Regional Director to reapportion only a minimal foreign bycatch from the reserves of those species.

Squid and sablefish have zero JVPs in the Bering Sea. The Council asked the Regional Director to make minimal reserve reapportionments of these species to allow directed joint venture fishing.

Halibut Management

The Council recommended that the International Pacific Halibut Commission implement for the 1985 season in IPHC areas 2C (Southeast Alaska) and 3 (the Gulf of Alaska) concurrent one-, two- or three-day openings spaced approximately 20 to 30 days apart, pre-season hold inspections and pre-season non-exclusive area registration. If pre-season hold inspections are implemented, the Council recommended elimination of the five-day closure for setline gear before a halibut opening. They also recommended that its working relationship with the IPHC be formalized through a joint memorandum of understanding. The IPHC is expected to consider these recommendations at its annual meeting January 28-31, 1985 in Vancouver, B.C.

The Halibut Subcommittee gave a report on management options available to the Council in the halibut fishery. The Subcommittee was directed to rework the report into a format suitable for public workshops in Alaska and Washington beginning, possibly, next spring.

Net-discard Regulation

The Council discussed a regulation to prohibit U.S. fishermen from intentionally discarding fishing gear and other debris. A similar regulation already applies to foreign fishermen in the FCZ. Discarded fishing gear has been identified as a source of mortality, perhaps in significant numbers, of several species of marine mammals and birds in the Alaska area. The Council recommended that the draft regulation be circulated among other Regional Fishery Management Councils to solicit their support for the proposal.

TABLE 2

BERING SEA/ALEUTIAN ISLAND GROUNDFISH
1985 APPORTIONMENTS (MT)

Species	TAC	DAP	JVP	Reserves	TALFF
Pollock (Bering Sea)	1,200,000	211,680	635,776		172,544
Pollock (Aleutian Is.)	100,000	10,540	17,174		57,286
POP (Bering Sea)	1,000	200	500		150
POP (Aleutian Is.)	3,800	3,000	230		-0-
Rockfish (Bering Sea)	1,120	600	2		350
Rockfish (Aleutian Is.)	5,500	800	98		3,777
Sablefish (Bering Sea)	2,625	2,235	-0-		-0-
Sablefish (Aleutian Is.)	1,875	1,485	109		-0-
Pacific cod	220,000	100,000	75,000		12,000
Yellowfin sole	229,900	1,770	86,800		106,845
Turbots	37,100	-0-	5,000		26,535
Other Flatfish	111,400	1,200	55,850		37,640
Atka mackerel	37,700	-0-	32,045		-0-
Squid	10,000	-0-	-0-		8,500
Other Species	37,980	-0-	600		31, 683
TOTALS	2,000,000	333,510	979,184	300,000	457,310

Council Approves Joint Ventures for 1985

The Council reviewed 31 different joint venture operations proposing to harvest over 800,000 mt for 1985. These operations represent partnerships between U.S. fishermen and seven foreign countries including Japan, South Korea, the U.S.S.R., Poland, Iceland, Portugal and West Germany. Permit applications received at the Council meeting indicate the following tonnages of joint venture groundfish to be purchased in 1985:

Japan	345,000 mt	Iceland	15,000 mt
Korea	160,000 mt	Spain	12,000 mt
U.S.S.R.	200,000 mt	Portugal	40,000 mt
Taiwan	9,000 mt	West Germany	6,000 mt
Poland	40,000 mt		

The Council's Permit Review Committee reviewed testimony from representatives of nearly all joint venture companies and foreign nations. Following up on the Committee recommendations the Council approved 7 joint ventures for Japan, 12 for South Korea, 1 for the U.S.S.R., and 1 for Poland. Three other joint ventures were given provisional approval: A joint venture between Arctic Venture Fishery and Korea Wong Yang Fisheries was approved, but Korea Wong Yang must have a letter of credit in place before the joint venture can begin. This action was taken by the Council because of past pay disputes between Korea Wong Yang Fisheries and U.S. trawlermen. In addition, two Taiwanese joint ventures were approved provided the Government of Taiwan satisfactorily explains the steps it is taking to stop the illegal high-seas catch of salmon. The Permit Review Committee has been delegated authority by the Council to review and make recommendations on the Taiwanese permit request when the information becomes available.

The Council recommended denying a joint venture permit for a proposed Spanish joint venture with Alaska Salt Fish Company for cod and pollock, because of the high tariffs and import restrictions that prevent competition by U.S. products in Spain and displacement of U.S.-processed products in world markets by Spanish-processed salt cod.

Several other requests were reviewed but no action could be taken until the associated vessel permit applications were published in the Federal Register.

Finally, the Council approved a request by the Alaska Pacific Seafood Industry Coalition to include the following tonnages in the Council's estimate of U.S. utilization of fish for 1985: 700,000 mt of pollock and 70,000 mt unspecified other groundfish species for Japan-U.S. joint ventures, and 200,000 mt pollock to be harvested by U.S. fishermen, processed by U.S. processors, and purchased by Japan during 1985.

ADF&G Reports on 1985 Domestic Groundfish Harvests

ADF&G estimates that through November 14 U.S. industry harvested and processed nearly 50,000 mt of groundfish off Alaska. As shown below, sablefish accounted for 7,725 mt and Pacific cod for 34,301 mt of this American harvest. an additional 1,072 mt of sablefish were caught in State internal waters.

	Eastern Gulf	Central Gulf	Western Gulf	Bering Sea	Aleutians	Total
Pollock	0	330	0	4788.6	239.1	5357.7
Sablefish	4330.1	2755.5	211.3	425.3	2.6	7724.8
Pacific cod	31.9	2147.8	44.6	31345.4	731	34300.7
Flounder	64.2	239.8	4.8	4	0.3	313.1
P. ocean perch	3.2	0	116	1240.2	2.3	1361.7
Rockfish	576.2	48.1	8.2	45.4	0	677.9
Atka mackerel	0	0	31.3	0	0	31.3
Other	82.9	1.6	0	0	0	84.5
Total	5088.5	5522.8	416.2	37848.9	975.3	49851.7

(All in round weight in metric tons)

These figures do not include joint venture harvests by U.S. trawlers delivering to foreign processing vessels in over-the-side sales off Alaska. This 50,000 mt Domestic Annual Processed (DAP) harvest for 1984 is an increase over past years: 46,651 mt in 1983, 26,491 mt in 1982, 20,672 mt in 1981, 11,023 mt in 1980, and less than 10,000 mt in earlier years.

Joint Venture Update

The total joint venture catch off Alaska through November 10, 1984 was 579,114 mt. In the Gulf of Alaska, joint venture trawlers harvested 201,082 mt pollock, 4,314 mt Pacific cod, 3,095 mt flatfish, 1,657 mt Pacific ocean perch, and 2,540 mt of other species. In the Bering Sea and Aleutians, the joint venture harvest was 242,692 mt pollock, 34,011 mt Pacific cod, 35,595 mt Atka mackerel, 50,507 mt flatfish and 2,621 mt other species.

During 1984 there were 22 different joint venture company arrangements employing about 90 U.S. trawlers off Alaska. This year's joint venture catch is a significant increase over that of previous years: 350,901 mt in 1983, 179,556 mt in 1982, 95,501 mt in 1981, 33,425 mt in 1980, and 1,507 mt in 1979, the first year of significant joint ventures off Alaska. It is anticipated that joint venture harvests may go well over 800,000 mt off Alaska in 1985.

Foreign Fisheries Update

By November 10 the foreign fleets in the Gulf of Alaska harvested 111,360 mt of groundfish, or 52% of the current foreign allocation for that area. The catch included 87,781 mt of pollock, 15,622 mt of Pacific cod, 2,579 mt of Pacific ocean perch, and 1,052 mt of sablefish. The Central Gulf was closed to all foreign fishing on November 16.

In the Bering Sea and Aleutians they harvested 982,466 mt or about 72% of the current foreign allocation. The catch included 785,437 mt of pollock, 96,056 mt of yellowfin sole, 52,092 mt of flounders, 38,472 mt of Pacific cod, and 1,108 mt of Pacific ocean perch.

There were 109 foreign vessels off Alaska on November 28, 1984, 47 from Japan, 24 from South Korea, 9 from the USSR, 26 from Poland, and 1 each from West Germany, Taiwan and Portugal. Last year at this time there were nearly twice as many vessels off Alaska.

U.S. Coast Guard Reports on Enforcement

The Coast Guard reported that enforcement efforts since September 19 have resulted in six reports of violation and forty written warnings issued to foreign fishing vessels. Violations included failure to submit the required activity message 24 hours prior to beginning or ceasing fishing within the Fishery Conservation Zone, failure to respond to visual signals to stop for boarding, failure to sort catch and return prohibited species as soon as possible, failure to respond to visual signals to heave to for boarding, failure to maintain a Daily Cumulative Catch Log, failure to provide a safe boarding ladder, impeding a boarding party, and failure to accurately log incidental catch of prohibited species. In September, the Coast Guard issued a written warning to the Soviet stern trawler MYS GROZNY for fishing within the FCZ without a current permit. On November 13 two more Soviet vessels, the KALAR and TEKHNOLOG, were issued written warnings for the same infraction, and on November 15 the TEKHNOLOG was again issued a written warning for fishing within the FCZ without a permit.

Thus far in 1984, the U.S. Coast Guard enforcement effort has totaled 780 cutter patrol days and 3,039 aircraft patrol hours for a total coverage of 521,372 patrol miles. Combined enforcement efforts have resulted in three seizures, and the issuance of 32 reports of violation and 117 written warnings.

From the Council staff to all of you, HAPPY HOLIDAYS!



Letters to the Editor

Dear Editor: The following letter was sent to Gov. Bill Sheffield.

Dear Governor: Thank you for personally reading this letter. I'm writing in regard to recent action by the North Pacific Fishery Management Council. Serious errors were made by the Council in their December meeting in Anchorage.

I have been a fisherman here in Sitka and gulf-wide for thirteen years. Being born and raised in Sitka and now having four children, I'm naturally very concerned with maintaining the quality lifestyle that exists. Unfortunately, a situation has developed that will definitely, unquestionably result in the destruction of the small and medium boat longline fisheries in the Gulf of Alaska. These developments are upon us now and we have little to no time to act to ensure that we don't allow an irreversible situation to get established and out of control.

The NPFMC is responsible for making tremendously important decisions in the course of maintaining our fisheries. In doing this they are required to adhere to strict guidelines including those set forth in the Magnusson Act and the National Register. They have not done this.

At the December meetings in Anchorage they blatantly ignored these guidelines more than once.

In 1982, the NPFMC agreed to adopt an amendment proposed by Alaska Longline Fisherman's Associaton of Sitka. Formal presentation was made at the meeting by then executive director of ALFA, Greg Baker, and president Orrie Bell. This was accompanied by testimony by numerous fishermen. The purpose of the amendment (Amendment 12) was to ban the use of pot longline and trawl gear for black cod in the eastern Gulf of Alaska, so essentially, the eastern Gulf would be a hook and line sanctuary. Much testimony was given to support the amendment after which Mr. Jim Branson of the Council staff made the public comment that "this was one of the best presentations made by any fishermen's organizations we've seen; everyone's impressed, this thing should fly through." Well, it flew to Juneau and sat on someone's desk for a year and a half. Then, in June of 1985 we got a hold of a letter written by the same Mr. Branson to the Council members recommending throwing it out for lack of substance, not enough evidence of gear conflicts, etc. Then began the process of trying to find out who to believe.

The danger we face with pot gear and trawl gear is that both types have already damaged traditional fishing grounds in their own way.

Pot boats lose gear regularly and render otherwise productive grounds totally useless for our relatively light hook and line gear. The lost pots also continue to fish. It takes a large boat to fish pots. One estimate was that eight to ten large pot boats would, with gear loss and the amount of gear they can lay out, pretty much take over the black cod fishery of southeast Alaska alone. I believe that is not an exaggeration by any means.

The fishable ground for black cod is a strip that runs along the continental shelf. There is not much actual fishable ground to begin with. The same sets would be used by both fisheries. Pot fishing and hook and line fishing don't co-habitate. Gear conflicts are already well-documented in southeast Alaska. I am among the fishermen who have lost valuable hook and line gear to lost pot gear.

The other menace on the horizon is the trawl fleet. Admission of trawl effort to continue in the Gulf of Alaska means the end of small and medium boat hook and line fisheries i.e. black cod, halibut, rockfish, etc. The stocks simply won't support it. Certain trawlers might try to tell you differently, but they don't live here, don't care about our area and communities, and traditionally don't give a damn about the stocks anywhere.

We are currently harvesting the quota of black cod in southeast Alaska and in the central Gulf with hook and line gear. Southeast area longliners have already taken voluntary reductions in their black cod OY. There simply is no room for more effort; especially of the magnitude we would see without this amendment in place. So what did our Council do? The totally disregarded the guidelines of the National Standard concerning gear loss, social and economic ramifications and denied our request. Their next bit of business was to give the trawlers their request of an emergency allocation of 10 percent of the OY for the Gulf of Alaska rather than allowing for a reasonable by-catch. In other words, the allocation granted by our Council is to come out of quotas that are currently being harvested by local hook and line fleets. This appears to be a direct violation of the Magnusson Act.

The NPFMC members who voted against Amendment 12 heard our representative speaking to them, but they weren't listening. It's almost embarrasing to have such an important entity in our industry mishandling its responsibility to such a degree.

We have been told that we'll be on the agenda in February when the Council meets in Sitka. The unanimous feeling in the longline fleet is that if we don't protect this resource now, we're out of business. We are a traditional established fishery producing a superior quality product and supporting shore based processors. We are literally fighting for our existence. We need your help in protecting a livelihood that is vital to the economics of many Alaska communities and to thousands of individual Alaskans.

Thank you.

Sincerely,
Greg Cushing

established fishery producing a superior quality product and supporting shore based processors. We are literally fighting for our existence. We need your help in protecting a livelihood that is vital to the economics of many Alaska communities and to thousands of individual Alaskans.

Conserva Control c

RALEIGH, N.C, (AP) — An distributed letter from Sen. Je Helms proposing that conservati buy CBS stock and end what it ca biased news reporting has "hit nerve," the North Carolina Republic says.

In an interview Thursday on ABC "Nightline," Helms said his office h reported a number of calls on the lett

Helms and supporters told t Securities and Exchange Commissi in documents filed Thursday that th were not seeking proxies from Cl stockholders in an attempt to take ov CBS, but held open the possibility making such an attempt later.

Once the group has persuaded enoug people to buy CBS stock, "they in..end request a meeting with the company t obtain management's views concernin their proposal that the company end its liberal bias in news reporting an editorial policies," the documents said

Edward J. Atorino, a stock analys specializing in media companies fo Smith Barney in New York, said i would be virtually impossible for such a takeover move to succeed.

Kennedy C South Afric

CAPE TOWN, South Africa (AP) — Sen. Edward M. Kennedy issued a sharply worded rebuttal after South Africa's foreign minister said Kennedy should be more concerned with the plight of American blacks than with South Africa's racial policies.

The Massachusetts Democrat, visiting South Africa at the invitation of Nobel Peace Prize winner Bishop Desmond Tutu, released a statement defending the status of blacks in America after Foreign Minister R.F. Botha criticized him Thursday in a statement broadcast on South African television.

The senator accused Botha of making an "untrue attack on the United States" when Botha said the death rate for American black children was twice that of whites, and the black poverty rate was three times higher.

Botha said Kennedy should stay out of South African affairs and be more

To Improv

LOS ANGELES (AP) — Complaints

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

M E M O R A N D U M

January 16, 1985

TO: House Resources Committee
Representative Adelheid Herrmann
Representative Richard Shultz
Co-Chairs

FROM: Representative Peter Goll
Chairman
Special Committee on Fisheries

SUBJECT: HJR 8

After reviewing HJR 8 and discussing the matter with interested members of the Special Committee on Fisheries, it is suggested that the following amendments be made to address the concerns of Kodiak-based fishermen.

(1) Insert the following language on line 7, page 2, after the words "..fish fishery":

", and set aside reserves to allow incidental catch of sablefish based on actual needs rather than Optimum Yield"

DISCUSSION--This amendment is designed to allow the continuation of the joint venture fisheries in the Gulf of Alaska without cutting back on the amount of sablefish available for harvest by Alaska's longline fleet. All parties agree that the 10 percent figure is too high.

(2) Delete the following language on line 10, page 2:

[ALASKA]

DISCUSSION--Under the MFCMA, no distinction may be made between U.S. fishermen on the basis of residency in individual states.

DISTRICT 27:
AKHIOK
CHIGNIK
CHIGNIK LAGOON
CHIGNIK LAKE
CHINIAK
IVANOF BAY
KARLUK
KODIAK
LARSEN BAY
OLD HARBOR
OUZINKIE
PERRYVILLE
PORT LIONS
WOMEN'S BAY

Alaska State Legislature

House of Representatives

REPRESENTATIVE
DAVE THOMPSON
WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-2487
(907) 465-2498
P.O. BOX 75
KODIAK, ALASKA 99615
(H)(907) 486-4899
(LIO)(907) 486-8116

January 19, 1985

To: Representative Ben Grussendorf, Speaker
Alaska House of Representatives

From: Representative Dave Thompson

Re: HJR #8

After much discussion with all interested parties, I would respectfully recommend the following additional change to the above referenced Resolution.

(3) Insert the following language on line 11, Page Two (2),

" in the Eastern regulatory area of the Gulf of Alaska, from Dixon entrance to a West longitude determined by the NPFMC."

I believe this substitution will satisfy the concerns of all parties, including the Kodiak-based fleet.

Thank you for your consideration of my suggestion.

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

M E M O R A N D U M

January 22, 1985

TO: House Resources Committee
Representative Adelheid Herrmann
Representative Richard Shultz
Co-Chairs

FROM: Special Committee on Fisheries
Representative Peter Goll
Chairman

SUBJECT: HJR 8/Effect of Incidental Catch Allocations

Information supplied by federal fisheries agencies should be carefully considered during committee discussions regarding HJR 8. Examination of the enclosed statistics reveals that the amount of sablefish for incidental catches of sablefish in the Gulf of Alaska by joint venture fisheries will vary by as much as 1.3 million pounds, depending upon the mechanism selected for determing the allocations.

The National Marine Fisheries Service staff says that joint venture operations will take place in 1985 only in the Western and Central regulatory areas of the Gulf.

According to an analysis by the NPFMC staff, the "observed bycatch rate" for the types of joint ventures planned in the Gulf during 1985 would result in the need for setting aside 1,057 metric tons of sablefish. If the sablefish incidental catch allocation is set at 10% of the Optimum Yield for the two regulatory areas, joint venture operations would be allowed to catch 473 metric tons of sablefish.

Based upon this information, it is suggested that the following amendment be made to HJR 8:

(1) Insert the following language on line 7, page 2, after the words "...fish fishery":

", and set aside reserves to allow incidental catch of sablefish based on a percentage of the Optimum Yield for the Western and Central regulatory areas"

Official Business

Alaska State Legislature
House Resources Committee
SIGN-IN

JANUARY 23RD, 1985

HJR 8
SABLEFISH

NAME	ADDRESS	PHONE	REPRESENTING
Larry Cotter	307 So. Franklin, Juneau 99801	586-6642	Int'l Longshoremen's & Warehousemen's Union
BEN GRUSSENDORF	SPEAKER		His District
Ron Hegge	Box 362 Sitka AK	747-3400	Alaska Longliner Fishermen Assn

HJR



WILD AND SCENIC ISSUE

BECAUSE THERE ARE RIVERS IN ALASKA THAT HAVE BEEN DETERMINED AS BEING WILD AND SCENIC WITH OUT A DETERMINATION AS TO THEIR BEING CONSIDERED NAVIGABLE, THERE EXISTS THE DISTINCT POSSIBILITY THAT TRADITIONAL USES ON THESE AND OTHER RIVERS MAY NOT CONTINUE AT HISTORIC LEVELS.

IF A GIVEN WATER BODY IS FOUND TO BE NAVIGABLE, THE STATE WILL HAVE TITLE TO THE LAND UNDER SUCH A BODY THUS ALLOWING LOCAL RESIDENTS, AS CITIZENS OF THE STATE, TO BE IN A STRONGER POSITION TO ARGUE FOR CUSTOMARY AND TRADITIONAL USES BOTH ON THE WATER AS WELL AS ALONG EACH ONE OF IT"S SHORES.

IN TERMS OF ESTABLISHING RESOURCE AND RECREATIONAL PRIORITIES ON OUR ALASKAN WATER BODIES IT ESSENTIAL THAT LOCAL, STATE, AND FEDERAL CONCERNS BE ADDRESSED IN AN ORDER THAT ALLOWS THOSE PEOPLE WHO MOST DIRECTLY AFFECTED TO CONTINUE THEIR CUSTOMARY AND TRADITIONAL USES TO THE GREATEST DEGREE POSSIBLE.

TO THAT END IT DOES NOT MAKE SENSE TO ESTABLISH A FEDERAL CLASSIFICATION OF A WATER BODY BEFORE A LOCAL AND STATE PRIORITY SUCH AS NAVIGABILITY IS RESOLVED.

TO THAT END I HAVE SUGGESTED WITH THIS RESOLUTION THAT THE FEDERAL GOVERNMENT RECOGNIZE AND ADHERE TO SUCH A POLICY WITH THE OBVIOUS BENEFIT BEING MORE LOCAL CONTROL IN THE LONG TERM FOR OUR LOCAL ALASKAN RESIDENTS.

Original sponsor: Shultz

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 14 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the navigability of Alaska's rivers and lakes.

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

WHEREAS Alaska's rivers and lakes have always been a primary means of transportation and access for the people of the state; and

WHEREAS a great many of these same waterbodies have traditionally and historically served as routes for commerce and trade; and

WHEREAS the geographic features of the State of Alaska necessitate the continued use of these rivers and lakes for traditional travel purposes; and

WHEREAS the federal government is not considering several traditional means of transportation used in Alaska, such as jet unit and aluminum river boat, inflatable boats, air boats, and winter use, when determining whether bodies of water in Alaska are navigable; and

WHEREAS all other states have had the opportunity to demonstrate navigability of waterbodies within their boundaries on a much less restrictive basis; and

WHEREAS the State of Alaska has several test cases now in litigation that will help establish a basis for claiming navigability of its waterbodies; and

WHEREAS trade, travel, commerce, subsistence, and recreational activities should continue on a traditional basis on Alaska's navigable rivers and lakes; and

WHEREAS the federal government may propose waterbodies in Alaska for classification as wild and scenic rivers without knowing whether or not

they will be determined navigable; and

WHEREAS such classification may prevent the citizens of this state from continuing their historical and traditional uses of Alaskan waterbodies;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the President of the United States and the Congress to direct the Secretary of the Interior to suspend further classification of Alaskan waterbodies as wild and scenic rivers until such time that a final decision is reached on the issue of navigability, thus allowing historical and traditional activities to continue on the Alaskan waterbodies in dispute or in litigation.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States, the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; the Honorable Donald Hodel, Secretary of the Interior; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

COMMITTEE REPORT

HOUSE

3/27

(7)

FURTHER: RESOURCES

1/23/85

Date: 27 March 1985

The Committee on TRANSPORTATION has had HJR 14

Relating to the navigability of Alaska's rivers and lakes.

under consideration and recommends:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HJR 14 (TRSP) [X] same title [ ] new title

and recommends it do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Bette Ota

MEMBERS HAVING OTHER RECOMMENDATIONS:

Bette Ota

CHAIRMAN

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

March 26, 1985

The Honorable Bette Cato
Chair, Transportation Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Cato:

Thank you for inviting this department's views with regard to HJR 14 (relating to navigability and designation of Wild and Scenic Rivers). The department earlier provided several suggested wording changes which are being incorporated into the Committee Substitute. Those changes provide consistency with terms as they are being used to present the state's position in certain litigation on navigation.

With the passage of ANILCA in December, 1980, Congress designated 26 Alaskan rivers to the list of National Wild and Scenic Rivers. At the same time 12 other rivers were withdrawn from the public domain, subject to valid existing rights, to complete studies on their suitability for inclusion in the system. These studies were to be complete and submitted to the Secretary of the Interior last fall.

Only these 12 rivers would be addressed by this resolution, and three have been administratively determined to be navigable. Thus, its impact may be somewhat limited. Inasmuch as wild and scenic river designation may have consequences upon the uses of the river and its bed, it is desirable to settle the issue of ownership ahead of such designation.

One other suggested change to HJR 14 would be to delete the reference to float planes in the fourth whereas. On February 28, 1985, the Ninth Circuit Court of Appeals found in the Slopbucket Lake case that "... float planes and related incidental watercraft is insufficient as a matter of law to render the lake navigable for purposes of title."

Mike Vediner from our Division of Land and Water Management will be available at the committee hearing to answer questions.

Sincerely,

RD Arnold

Robert D. Arnold
Deputy Commissioner

10-J9 LH

Alaska State Legislature

House of Representatives

Committee on Transportation

Rep. Bette Cato, Chairman

Pouch V
State Capitol
Juneau, Alaska 9981
(907) 465-4858

M E M O R A N D U M

Date: 26 March 1985

To: Legal Services

From: Rhonda Cargill, Professional Assistant
House Transportation Committee

Re: HJR 14

Please make the following changes to HJR 14 so that we can submit a committee substitute at tomorrow morning's 7:00 House Transportation Committee meeting:

Page/Line	Change
Page 1, Lines 13-14	Delete: [BOTH COMMERCIAL AND NONCOMMERCIAL] Replace with: traditional travel
Page 1, Line 15	Delete: [BUREAU OF LAND MANAGEMENT] Replace with: federal government
Page 1, Line 17	Delete: [FLAT BOTTOM] Replace with: jet unit and aluminum
Page 1, Line 17	Delete: [DOG SLED, AND SNOW MACHINE] Replace with: inflatable boats, air boats, and winter use

Page 1, Line 25 — Insert between "trade," and "commerce": travel

Page 2, Line 3 — Delete: [LEGALLY]

Please note that the committee meets at 7:00 a.m. We would deeply appreciate your giving us a work draft before day's end.

Introduced: 1/23/85
Referred: Transportation and Resources

IN THE HOUSE BY SHULTZ

HOUSE JOINT RESOLUTION NO. 14

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the navigability of Alaska's rivers and lakes.

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

WHEREAS Alaska's rivers and lakes have always been a primary means of transportation and access for the people of the state; and

WHEREAS a great many of these same waterbodies have traditionally and historically served as routes for commerce and trade; and

WHEREAS the geographic features of the State of Alaska necessitate the continued use of these rivers and lakes for ~~both commercial and noncommercial~~ traditional travel purposes; and

WHEREAS the ~~Bureau of Land Management~~ federal government is not considering several traditional means of transportation used in Alaska, such as float plane, ~~flat-bottom~~ Jet unit and aluminum river boat, inflatable boats, air boats, ~~dog sled, and snow machine~~ and winter use, when determining whether bodies of water in Alaska are navigable; and

WHEREAS all other states have had the opportunity to demonstrate navigability of waterbodies within their boundaries on a much less restrictive basis; and

WHEREAS the State of Alaska has several test cases now in litigation that will help establish a basis for claiming navigability of its waterbodies; and

WHEREAS trade, travel commerce, subsistence, and recreational activities should continue on a traditional basis on Alaska's navigable rivers and lakes; and

WHEREAS the federal government is now studying waterbodies in Alaska for classification as wild and scenic rivers without knowing whether or not

they will be determined navigable; and

WHEREAS such classification may prevent the citizens of this state from legally continuing their historical and traditional uses of Alaskan waterbodies;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the President of the United States and the Congress to direct the Secretary of the Interior to suspend further classification of Alaskan waterbodies as wild and scenic rivers until such time that a final decision is reached on the issue of navigability, thus allowing historical and traditional activities to continue on the Alaskan waterbodies in dispute or in litigation.

BACKGROUND ON HJR 14

The purpose of this resolution is to request the President and Congress to suspend any further classifications of Alaskan waterbodies as wild or scenic until such time as a final decision is reached on the issue of navigability. This would allow traditional activities to continue on any waterbodies in dispute.

Traditional activities would include subsistence, recreation, trade and commercial use.

HJR

24

Sectional Analysis for HJR 24

House Joint Resolution 24 is sponsored by Reps. Thompson, Herrmann, Binkley, Hurley, Martin, Gruenberg, Sund, Grussendorf, Jenkins, Navarre, Taylor, Kopenen, Uehling and Cato.

This resolution expresses the sponsors' concerns for the impact of outer continental shelf development activities defined in terms of dependent fishery resources, the fragile nature of the shoreline, and the social and economic problems of rapid growth and contractions.

HJR 24 evokes the precedence of the Mineral Leasing Act of 1920 to mitigate impact by the federal government on States not only with coastal shorelines, but other States so impacted.

Additionally, the bill requests funding for the conversion of on shore facilities, including docks and harbors developed to support the OCS leasing program, for use by the fishing industry after leasing programs are completed.

This bill was prepared with the knowledge of the bills introduced by Senator Ted Stevens and Representative Don Young, but does not specifically endorse these bills. This is a generic endorsement for the principals involved.

ISER RESEARCH SUMMARY

Institute of Social and Economic Research, University of Alaska January 1985, R.S. No. 26

OCS Revenue Sharing in Alaska

Congress in 1984 proposed to share a maximum of 4 percent of federal petroleum revenues from the Outer Continental Shelf (OCS) with Alaska and the other coastal states—a share that would fall far short of the 25 percent or more of resource revenues that states receive from all other federal lands.

This is one of the findings of a recent report by the University of Alaska's Institute of Social and Economic Research. The report, prepared for the Office of the Governor, compares federal revenue-sharing programs for onshore lands with proposed levels of OCS revenue sharing. OCS lands are currently the only public lands from which the federal government keeps all resource revenues—but Congress came close to enacting an OCS revenue-sharing plan last year and will likely consider such plans again.

Existing Revenue-Sharing Programs for Federal Lands

State and local governments have long argued that they should be compensated for federal ownership of land within or adjacent to their boundaries. They feel they deserve compensation because federal ownership of land costs them control of the land and resources and because federal land is immune from state and local taxation. The federal government has accepted some of these arguments, and over the past 80 years has established a number of programs under which state and local governments collect substantial revenues from federal lands.

In its two largest revenue-sharing plans, the federal government distributes to affected states 25 percent of logging and other revenues from national forests and 50 percent of federal mineral-leasing revenues.[1] In addition to these and other programs that share resource revenues, federal "payment in lieu of taxes" programs attempt to replace actual or potential revenues lost by local governments because they are unable to tax federal lands. These programs provide a steady stream of revenue to local governments affected by activities on adjacent federal lands, even if the lands produce no current revenues.

In 1982, the 12 western states containing most federal lands (including Alaska but not Hawaii) received over 800 million dollars in shared resource revenues and an additional 76 million dollars in payments in lieu of taxes.

OCS Revenue-Sharing Proposals

Over the past decade when the federal government has stepped up its OCS leasing program, coastal states have argued for a share of OCS revenues to help them pay for the increased costs that can accompany this national energy program. These costs include increased costs of services resulting from a sharp increase in population and potential environmental costs of oil spills or other industrial accidents. States have maintained that the federal government should compensate them with a significant share of the development revenues from oil production on the OCS, just as it has historically compensated state and local governments for developments on other federal lands.

In 1984, a conference committee of both houses of Congress agreed on an OCS revenue-sharing bill, although Congress ultimately failed to enact it. Under that bill, 4 percent of OCS revenues would be set aside each year, up to a ceiling of $300 million (the ceiling would increase slightly after 1985). Some of this money would be allocated to various coastal programs, and the remainder would be divided among coastal states under a complicated formula. No state could receive more than 15 percent of available revenues each year and would pass on one-third of what they received directly to local governments.

Potential Alaska Production and Revenues

Alaska may have a lot at stake in the federal government's ultimate decision on OCS revenue sharing. Although there have as yet been no commercial

[1]Under the National Forest Revenue Act of 1908, states receive 25 percent of receipts from national forests located within their borders, and then must pass these revenues on to county governments. The Mineral Leasing Act of 1920 provides states with 50 percent of federal receipts from onshore mineral leases (although Alaska, through a special provision, receives 90 percent of most onshore mineral revenues).

discoveries on the Alaska OCS, most analysts believe the region will yield a number of huge fields, most likely in both the Beaufort and Bering Seas.

Figure 1 shows how hypothetical federal OCS royalties might compare with the state's petroleum revenues derived from state leases on the North Slope (most of projected state petroleum revenues). Both North Slope state and OCS revenues in Figure 1 are based on development scenarios that assume moderate oil prices, with production occurring from both the Beaufort and Bering Seas before the turn of the century. We emphasize that these projected OCS revenues are conditional on discovery and development of reserves of a particular size, and are intended just to show the scale these revenues could reach.[2]

The graph in Figure 1 shows that government OCS royalties could reach $1 billion annually (in 1984 dollars) by the mid-1990s, and that by the late 1990s they could exceed the state's North Slope petroleum revenues—which are expected to decline, after adjusting for inflation. Recent Congressional proposals for dividing up those OCS revenues would put almost all of them into the federal treasury and yield the State of Alaska a small amount—perhaps on the order of $20 to $30 million annually.

On the other hand, if Congress would agree to share OCS revenues in the same proportions as it shares other federal resource revenues, Alaska could stand to collect OCS revenues on a scale 10 times larger—perhaps in the neighborhood of $200 to $500 million annually by the end of the century. Assuming that huge oil reserves are in fact discovered on the Alaska OCS in the coming years, the State of Alaska has an important stake in persuading the federal government to share OCS revenues as generously as it has shared resource revenues from other federal lands.

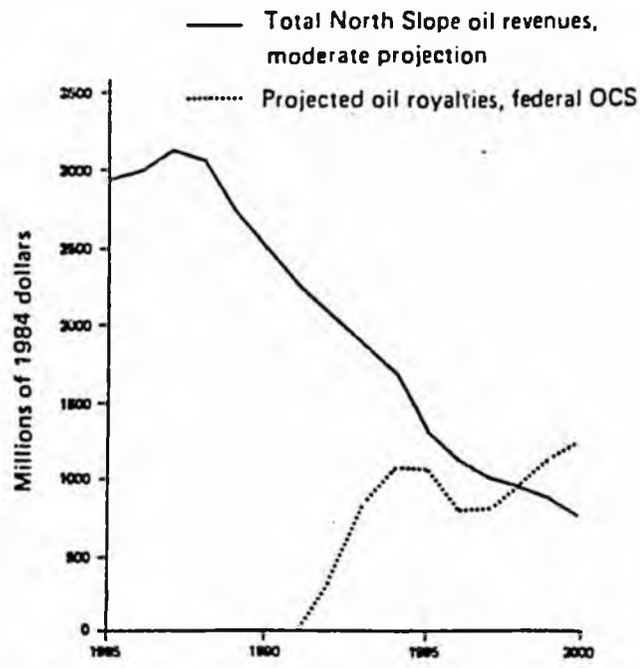


Figure 1. Projected Alaska North Slope Oil Revenues and OCS Royalties

[2]The OCS royalty projections are based on oil development scenarios published by the Minerals Management Service, U.S. Department of the Interior. They assume a constant real wellhead price of $25 per barrel for Bering Sea oil and $15 per barrel for Beaufort Sea oil, with an average royalty share of one-sixth. Figure 1 does not include any potential state or federal revenues from natural gas.

This **Research Summary** *is based on* **Sharing Revenues from the Outer Continental Shelf and Other Federal Lands,** *44 pp., prepared for the Office of the Governor, State of Alaska, by Matthew Berman and Karen White of the Institute of Social and Economic Research. Copies of this report are available for reproduction costs of 10 cents per page from ISER, 707 A St., Suite 206, Anchorage, Alaska 99501, telephone 278-4621.*

99TH CONGRESS
1ST SESSION

H. R. 624

To establish a Coastal Resource and Economic Development Fund in the Treasury of the United States, to provide grants to coastal States, and to units of local coastal government to enhance coastal resources, the coastal environment, and to foster the economic well-being of the coastal area.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1985

Mr. YOUNG of Alaska introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries and Interior and Insular Affairs

---

A BILL

To establish a Coastal Resource and Economic Development Fund in the Treasury of the United States, to provide grants to coastal States, and to units of local coastal government to enhance coastal resources, the coastal environment, and to foster the economic well-being of the coastal area.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act shall be cited as the "Coastal Resource and Economic Development Grant Act of 1985".

SEC. 2. DEFINITIONS.—For the purposes of this Act—

(a) the term "coastal State" means any State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Oceans, the Gulf of Mexico, the Long Island Sound, or one or more of the Great Lakes, and includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and American Samoa;

(b) the term "unit of local coastal government" means—

(1) the government of any county, parish, borough, municipality, town, village, or township, which is a unit of general government below the State (determined on the basis of the same principles as are used by the Bureau of the Census of the Department of Commerce for general statistical purposes) and which governs a geographical area located entirely in a coastal State and located on or adjacent to a coastline, or within an area impacted by operations conducted pursuant to this Act, as determined by the Secretary; and

(2) the Metlakatla Indian Community and the recognized governing body of any Indian tribe in any coastal State except Alaska, which performs substantial governmental functions and which gov-

erns a geographical area located entirely in a coastal State and located on or adjacent to a coastline, or within an area impacted by operations conducted pursuant to this Act, as determined by the Secretary;

(c) the term "coastline" means the line of ordinary low water along the portion of the coast which is in direct contact with the open sea, or with any of the Great Lakes, and the line marking the seaward limit of inland waters;

(d) the term "Governor" means the Governor or chief executive officer of any coastal State, or the individual or entity designated by the Governor to exercise the powers granted to such Governor or chief executive officer under this subsection;

(e) the term "Secretary" means the Secretary of the Treasury; and

(f) the term "coastal related energy facilities" means any equipment or facility which, (A) is or will be used primarily in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource or for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any such energy-resource activity, and (B) is, or is

likely to be, sited, constructed, expanded, or operated in, or in close proximity to, the coastal zone of any coastal State because of technical requirements:

(1) The term includes, but is not limited to: (i) electric generating plants; (ii) facilities associated with the transportation, transfer, or storage of coal; (iii) petroleum refineries and associated facilities; (iv) gasification plants; (v) facilities associated with the transportation, conversion, treatment, transfer, or storage of liquefied natural gas; (vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes; (vii) facilities, including deepwater ports, for the transfer of petroleum; (viii) facilities used for alternative ocean energy activities, including those associated with ocean thermal energy conversion; and (ix) pipelines, transmission facilities, and terminals which are associated with any of the foregoing.

(2) For the purposes of this paragraph, the siting, construction, expansion, or operation of any coastal-related energy facilities shall be "in close proximity to the coastal zone of any coastal State" if such siting, construction, expansion, or

operation has, or is likely to have, a significant effect on such coastal zone.

COASTAL RESOURCE AND ECONOMIC DEVELOPMENT FUND

SEC. 3(a). Upon enactment, the Secretary shall establish a fund in the Treasury of the United States to be known as the Coastal Resource and Economic Development Fund (hereafter referred to as the "Fund").

(b) The amount to be deposited annually in the Fund shall be the greater of $150,000,000 or 3 per centum (not to exceed $350,000,000) of revenues from bonuses and royalties deposited annually in the Treasury of the United Stated pursuant to section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338).

DISPOSITION OF GRANTS FROM FUND

SEC. 4(a)(1). During the fiscal year ending September 30, 1986, and during each fiscal year ending after September 30, 1986, the Secretary shall pay to the Governor of each coastal State and to each unit of local coastal government, from sums deposited in the Fund during that fiscal year pursuant to section 4, an amount certified to the Secretary by the Secretary of the Interior pursuant to subsections (b) and (c), and an amount certified to the Secretary by the Secretary of Commerce pursuant to subsection (d).

(2) For the purposes of this subsection, 85 per centum of the total moneys in the Fund for payments to coastal States

shall be based on calculations in subsection (b), and 15 per centum of the moneys in the Fund shall be paid in accordance with subsection (c).

(b)(1) Pursuant to subsection (a), the Secretary of the Department of the Interior shall certify an amount to be paid to each coastal State based on the ratio of the sum of (A) and (B) in relationship to the total sum available to be disbursed to all other States as follows—

(A) a maximum of 2.8 per centum of the Federal bonus revenues deposited in that fiscal year from each tract leased after the date of enactment of this Act;

(B) a maximum of 4.2 per centum of the Federal royalty revenues deposited in that fiscal year from production under development plans approved after the date of enactment of this Act; and

(2) For a tract within two hundred and fifty miles of only one coastal State, the coastal State may receive the maximum amount of bonus and royalty revenues available for distribution if the tract is immediately adjacent to the outer edge of the coastal State's territorial sea. For tracts between three and two hundred and fifty miles from the coastal State's territorial sea, the maximum amount of revenues certified shall decrease linearly from the full amount available to 50 per centum of the maximum amount available.

(3) For tracts within two hundred and fifty miles of more than one coastal State, the amount of revenues certified shall be calculated as in paragraph (2) but divided among the coastal States in a manner inversely proportional to their relative distances from the tract.

(4) If a straight line could not be drawn from a tract to the outer edge of a coastal State's territorial sea without crossing the land mass of another State, the coastal State shall get no share of the revenues from the tract.

(c) Pursuant to subsection (a), the Secretary of the Department of Commerce shall certify an amount to be paid to each State based upon the ratio of the amount of coastal-related energy facilities (including coal facilities) located within that coastal State, in relationship to the amount of coastal-related energy facilities located in all of the coastal States, during the previous fiscal year.

(d)(1) From the amounts certified by the Secretaries of the Departments of the Interior and Commerce, pursuant to subsections (b) and (c), 50 per centum shall be distributed to each coastal unit of local government as specified in this subsection.

(2) Each amount certified pursuant to paragraph (1) to be paid during a fiscal year to a unit of local coastal government shall be proportional, as much as possible, to the total of all amounts certified pursuant to paragraph (1) to be paid

during such fiscal year to all units of local coastal government located entirely in such coastal State as the amount of the entitlement allocated to such unit of local coastal government for the most recent entitlement period under section 108 of the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1227) is proportional to the total of all amounts of entitlements allocated to units of local coastal government located entirely in such coastal State for the most recent entitlement period under section 108 of the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1227).

(e) For purposes of determining each amount certified pursuant to subsection (a) to be paid to the Governor of a coastal State during a fiscal year, and each amount certified pursuant to subsection (d) to be paid to a unit of local coastal government during a fiscal year, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and American Samoa shall together be considered as one coastal State and any such amount certified pursuant to subsections (b) and (c) shall be equally divided among the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and American Samoa.

(f) Each fiscal year, each coastal State with a coastal zone management plan that has been approved by the Secre-

tary of the Department of Commerce shall receive at least $2,500,000 under this section.

(g) If for any reason at the end of a fiscal year all sums deposited into the Fund during that fiscal year are not fully obligated and paid, the Secretary shall return such funds to the general fund of the Treasury as miscellaneous receipts.

(h)(1) The Secretary shall ensure that an amount equal to not less than 25 per centum of each amount paid to the Governor of a coastal State during a fiscal year pursuant to subsections (b) and (c) is used by such Governor for activities including, but not limited to, activities relating to the management of coastal resources, scientific research, and fisheries development, which the Governor determines are of assistance to local coastal communities impacted by the operations of this Act and, in the case of Alaska, that are located within the boundaries of Coastal Resource Areas established pursuant to the Alaska Coastal Management Act.

(2) The Secretary shall ensure that each amount paid to a unit of local coastal government of a coastal State during a fiscal year pursuant to subsection (d) is not used to replace funds which such coastal State would provide to units of local coastal government if such amount were not paid to the units of local coastal government.

(3) The Secretary of the Treasury shall pay to the Governor of the State of Alaska any amount certified by the Sec-

retary pursuant to subsection (d) to be paid to the unorganized borough by the State of Alaska.

(i) An amount equal to one-fourth of the sums received fiscally by the Governor of a coastal State under the provisions of this Act shall be matched by the State in that same fiscal year for the purposes of carrying out the provisions of this Act.

(j)(1) The Secretary shall ensure that funds expended under the Act are utilized for the purposes of enhancing the environment and economic condition of the coastal area. Such enhancement shall include, but not be limited to, fish and wildlife conservation, port development, water resource management, marine and estuary management, flood control and navigation, erosion control and shore stabilization planning, and resource development planning.

(2) Any Governor of a coastal State, or any unit of local coastal government, which the Secretary determines uses any funds provided by this Act, for any activity inconsistent with the purposes of this Act shall repay such moneys to the Fund. If a Governor of a coastal State, or a unit of local coastal government, does not repay funds required to be repaid under this section, the Secretary may reduce the amount of any future revenues provided under this subsection by the amount of such required repayment.

AUTHORIZATION OF APPROPRIATIONS

SEC. 5. For the fiscal year ending on September 30, 1986, and for each fiscal year ending after September 30, 1986, there is authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary to carry out section 4 of this Act, not to exceed $350,000,000 per fiscal year.

O

99TH CONGRESS
1ST SESSION

S. 55

To establish an Ocean and Coastal Resources Management and Development Fund from which coastal States and territories shall receive block grants, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 1985

Mr. STEVENS (for himself and Mr. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To establish an Ocean and Coastal Resources Management and Development Fund from which coastal States and territories shall receive block grants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 101. This title may be cited as the "Ocean and Coastal Resources Management and Development Block Grant Act".

FINDINGS

SEC. 102. The Congress finds and declares that—

(1) it is in the interest of the United States, for both economic and national security reasons, to provide expeditious and orderly development of Outer Continental Shelf oil and gas resources;

(2) the primary benefits of the Outer Continental Shelf Leasing Program accrue to the entire Nation in the form of direct revenues and increased national energy security;

(3) while State and local governments may benefit from Outer Continental Shelf leasing activity, these benefits are less pronounced and less direct than those accruing to the Nation. Outer Continental Shelf oil and gas activity often requires significant investment on the part of State and local governments in planning for and providing public services and facilities necessitated by such activity;

(4) offshore energy development may cause adverse environmental impacts throughout the coastal areas of the United States and require States and local governments to assume additional responsibilities at a time when they do not possess the necessary financial resources;

(5) because the revenues of the Outer Continental Shelf Program are derived from the development of nonrenewable offshore mineral resources, they should

be invested in management and scientific research efforts to enhance the use, conservation, and understanding of renewable ocean and coastal resources;

(6) the Mineral Leasing Act of 1920 and other Federal lands leasing programs presently provide financial support to States affected by resource development on onshore Federal lands, while no comparable Federal program exists to provide such support to States affected by mineral extraction from the Outer Continental Shelf;

(7) without Federal financial support, the capability of States and localities to manage ocean and coastal resources, as well as to participate as partners in the Outer Continental Shelf Oil and Gas Leasing Program, will be seriously diminished; and

(8) it is in the national interest to maintain support for State management of ocean and coastal resources through activities in fisheries management, coastal zone management, coastal energy impact assistance, long-range scientific research, and other ocean and coastal resource management programs.

DEFINITIONS

SEC. 103. For purposes of this title—

(1) "block grant" means a National Ocean and Coastal Resources Management and Development Block Grant;

(2) "coastal population" means that term as defined in regulations issued on May 17, 1982, at 15 CFR Part 927;

(3) "coastal-related energy facilities" means any equipment or facility that (A) is or will be used primarily in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource or for the manufacture, production, or assembly of equipment, machinery, products, or devices that are involved in any such energy-resource activity, and (B) is, or is likely to be, sited, constructed, expanded, or operated in, or in close proximity to, the coastal zone of any State because of technical requirements;

The term includes, (i) electric generating plants; (ii) facilities associated with the transportation, transfer, or storage of coal; (iii) petroleum refineries and associated facilities; (iv) gasification plants; (v) facilities associated with the transportation, conversion, treatment, transfer, or storage of liquefied natural gas; (vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes; (vii) facilities, including deepwater ports, for the transfer of petroleum; (viii) facilities used for alternative ocean energy activities, in-

cluding those associated with ocean thermal energy conversion; and (ix) pipelines, transmission facilities, and terminals associated with any of the foregoing.

For the purposes of this Act, the siting, construction, expansion, or operation of any coastal-related energy facilities is "in close proximity to the coastal zone of any State" if such siting, construction, expansion, or operation has, or is likely to have, a significant effect on such coastal zone.

(4) "coastal State" means the Commonwealth of Puerto Rico and any State of the United States in, or bordering on, the Atlantic Ocean, the Pacific Ocean, the Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes;

(5) "coastal territory" means the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, American Samoa, or Guam;

(6) "Fund" means the Ocean and Coastal Resources Management and Development Fund;

(7) "Institute" means the National Coastal Resources Research and Development Institute;

(8) "local government" means that term as defined in section 304(11) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(11)) and, with respect to the State of Alaska, the term includes unin-

corporated communities, including Alaska Native villages;

(9) "Outer Continental Shelf planning area" means one of the geophysical regions of the Outer Continental Shelf which is so designated in the Outer Shelf Leasing Program (43 U.S.C. 1344) dated July 21, 1982, or as so designated in subsequent Outer Continental Shelf Leasing Programs;

(10) "proportionately" means in the same ratio as a State's allocation;

(11) "Secretary" means the Secretary of Commerce;

(12) "shoreline mileage" means that term as defined in regulations issued on May 17, 1982, at 15 CFR Part 927; and

(13) "State" means any coastal State or coastal territory.

OCEAN AND COASTAL RESOURCES MANAGEMENT AND DEVELOPMENT FUND

SEC. 104. (a) There is established in the Treasury of the United States a fund to be known as the Ocean and Coastal Resources Management and Development Fund.

(b)(1) Beginning in fiscal year 1986 and in each fiscal year thereafter, the Secretary of the Treasury shall deposit into the Fund, not later than sixty days after the end of the previous fiscal year, an amount equal to 4 per centum of the

average amount of all sums deposited in the Treasury of the United States pursuant to section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338) during the three previous fiscal years.

(2) The amount deposited in the Fund in fiscal year 1985 shall not exceed $300,000,000. Beginning in fiscal year 1986, and in each fiscal year thereafter, the amount deposited in the Fund shall not exceed 105 per centum of the amount deposited in the Fund in the prior fiscal year.

(c) As provided in advance by appropriation Acts, the Secretary shall use the total amount of any amounts deposited in the Fund during each fiscal year to carry out the purposes of, and in accordance with, the provisions of sections 105 and 108 of this title.

NATIONAL OCEAN AND COASTAL RESOURCES MANAGEMENT AND DEVELOPMENT BLOCK GRANTS

SEC. 105. (a) Subject to the provisions of section 104(c) and this section, for fiscal year 1986 and for each subsequent fiscal year, the Secretary shall provide to each State a national ocean and coastal resources management and development block grant from amounts paid into the Fund during such fiscal year under section 104(b).

(b)(1) No State may receive a block grant for a fiscal year unless such State has submitted to the Secretary a report for such fiscal year that—

(A) specifies the proposed allocation by such State of the block grant among coastal zone management activities, coastal energy impact activities, living marine resource activities, and natural resource preservation, enhancement, and management activities under section 106(a); and

(B) describes each proposed activity receiving funds provided by the block grant and the amounts proposed to be expended for each activity.

(2) In order to be eligible to receive a block grant pursuant to this Act and before submitting the report required under paragraph (1), each State shall provide opportunities for the public to review and comment on the report and shall hold at least one public hearing on such report at a site in the State convenient for encouraging maximum public participation.

(c) A block grant shall not be paid from the Fund to a State until the State has established a trust fund for the receipt of such grant.

(d) The amount of each block grant provided under subsection (a) shall be determined by the Secretary under a formula established by the Secretary which gives equal consideration to each of the following criteria:

(1) For each State, the equal combination of—

(A) the amount of actual leasing with respect to oil and gas which is carried out under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) during the previous fiscal year which occurs within the Outer Continental Shelf planning area to which such State is adjacent; and

(B) the volume of oil and gas produced from Outer Continental Shelf acreage leased by the Federal Government which is first landed in such State during the previous fiscal year.

(2) For each State, any proposed oil and gas lease sales specified by the Outer Continental Shelf Leasing Program prepared under section 18(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1344(a)) and scheduled to occur within the Outer Continental Shelf planning area to which such State is adjacent.

(3) The coastal-related energy facilities (including coal facilities) located within each State during the previous fiscal year. For any State for which the Secretary has not approved a Coastal Zone Management Program under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), this criterion shall be reduced by 50 per centum. The amounts resulting from such reduction shall be reallocated proportionately, under this paragraph, among States for

which the Secretary has approved such a management program.

(4) The shoreline mileage of each State for which the Secretary has approved a Coastal Zone Management Program under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455).

(5) The coastal population of each State for which the Secretary has approved a Coastal Zone Management Program under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455).

(e) For purposes of paragraphs (4) and (5) of subsection (d)—

(1) the Secretary shall be presumed to have approved the Coastal Zone Management Program of any State if the Secretary determines that, in any fiscal year, such State is making satisfactory progress toward the development of a Coastal Zone Management Program which will be approvable under section 306 of the Coastal Zone Management Act (16 U.S.C. 1455). Such presumption may be renewed only once and for a period not to exceed one additional fiscal year if the Secretary makes such determination under this subsection for such additional fiscal year; and

(2) a State shall not receive in excess of 30 per centum of the amounts attributable to either criterion.

If any State would receive an allotment greater than 30 per centum, the Secretary shall reduce such allotment to 30 per centum. The amounts resulting from such reduction shall be reallocated proportionately among these States that receive less than 30 per centum of the amounts attributable to such criterion.

(f)(1) For States for which the Secretary has approved a Coastal Zone Management Program under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), a coastal State shall receive not less than 1.62 per centum, and a coastal territory not less than one-half of 1 per centum, of the total amount available for block grants under section 104(c) during any fiscal year.

(2) If, after the calculations required under subsection (d), any coastal State or coastal territory is to receive a block grant that is less than the respective minimum grant levels established under paragraph (1), the Secretary shall increase such State's block grant to the minimum level. Amounts necessary to make such increases shall be derived by reducing proportionately the block grant of each State which, as determined under subsection (d), exceeds the respective minimum level under paragraph (1).

(3) For the purposes of the implementation of section 106(b), block grant levels may fall below the respective minimum levels established under this section.

(g) If, after the calculations required under subsections (d), (e) and (f), any State would receive a block grant which is greater than 15 per centum of the funds appropriated under section 104(c), the Secretary shall reduce such State's block grant to 15 per centum. The amounts resulting from such reduction shall be reallocated proportionately among States receiving less than 15 per centum of such funds and more than the minimum grant levels under subsection (f).

REQUIREMENTS ON THE USE OF BLOCK GRANTS

SEC. 106. Block grants provided to a State under section 105(a) shall be used for the enhancement and management of ocean and coastal resources and for the amelioration of any adverse impacts that result from the siting, construction, expansion, or operation of coastal-related energy facilities.

(a) Such block grants shall be used only for each of the following activities:

(1) activities of such State authorized by the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(2) activities of such State pursuant to the Coastal Energy Impact Program administered under section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1457);

(3) activities of such State for the enhancement, management and development of living marine resources; and

(4) activities of such State for the preservation, enhancement and management of its natural resources including coastal habitats.

(b) Nothing in this Act shall be construed to repeal or modify, by implication or otherwise, section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461). The Secretary shall reduce any block grant, provided under this Act to a State that has an approved program under section 306 of the Coastal Zone Management Act (16 U.S.C. 1455), by no more than 30 per centum of the amount of such State's block grant that is attributable to paragraphs (4) and (5) of section 105(d) of this title, if the Secretary makes the determination provided in section 312(c) of the Coastal Zone Management Act.

LOCAL GOVERNMENTS

SEC. 107. (a) Each State receiving a block grant in any fiscal year under section 105(a) shall—

(1) establish an effective mechanism for consultation and coordination with its local governments with respect to the allocation of such block grant within the State; and

(2) provide to its local governments allocations from such block grant, taking into consideration the responsibilities of the local governments in carrying out activities under section 106(a).

(b) In carrying out its responsibilities under subsection (a)(2), the State shall give particular emphasis to the activities of local governments in—

(1) providing public services and public facilities required as a result of the siting, construction, expansion, or operation of coastal-related energy facilities; and

(2) preventing, reducing, or ameliorating any unavoidable loss of valuable environmental or recreational resources if such loss results from the siting, construction, expansion, or operation of coastal-related energy facilities.

(c) In carrying out its responsibilities under this section, each State shall provide no less than 33⅓ per centum of each block grant received under section 105(a) to its local governments.

NATIONAL COASTAL RESOURCES RESEARCH AND DEVELOPMENT INSTITUTE

SEC. 108. (a) The Secretary shall provide for the establishment of a National Coastal Resources Research and Development Institute to be administered in affiliation with the Oregon State University Marine Science Center.

)) The Institute shall seek to conduct basic and applied
ch and carry out educational and demonstration
ts designed to promote the efficient and responsible de-
nent of ocean and coastal resources, including Arctic
·ces. Such activities shall be based on biological, geo-
l, genetic, economic and other scientific research appli-
to the purposes of this section and shall include studies
: economic development and diversification and environ-
il protection of the Nation's coastal areas.

c) (1) The policies of the Institute shall be established
idministered by a Board of Governors composed of—

(A) two representatives appointed by the Gover-
nor of Oregon;

(B) one representative appointed by the Governor
of Alaska;

(C) one representative appointed by the Governor
of Washington;

(D) one representative appointed by the Governor
of California; and

(E) one representative appointed by the Governor
of Hawaii.

(2) The Board of Governors shall select and fund, on a
nally competitive basis, research proposals, projects, and
es designed to promote the efficient and responsible eco-
c development of ocean, coastal and Arctic resources.

(d)(1) The Board of Governors shall establish an Advisory Council composed primarily of specialists in ocean and coastal resources from the academic community but which shall include appropriate representation from ocean and coastal user groups.

(2) To the maximum extent practicable, the Advisory Council shall be composed of individuals from every coastal region of the Nation.

(3) The Advisory Council shall advise the Board of Governors on its recommendations regarding proposals, projects, and studies which are presented to the Board of Governors.

(e) The Institute shall be administered by a Director who shall be appointed by the chancellor of the Oregon Board of Higher Education in consultation with the Board of Governors. The Director shall report to the Board of Governors.

(f) The Secretary shall conduct an ongoing evaluation of the activities of the Institute to ensure that funds received by the Institute under this section are used in a manner consistent with the provisions of this section.

(g) The Institute shall report to the Secretary on its activities within two years after the date of enactment of this Act.

(h) The Comptroller General of the United States, and any of his duly authorized representatives, shall have access,

for the purpose of audit and examination, to any books, documents, papers, and records of the Institute that are pertinent to the funds received under this section.

(i) Employees of the Institute shall not, by reason of such employment, be considered to be employees of the Federal Government for any purpose.

(j) For the purposes of this section, there are authorized to be appropriated from the Fund in each fiscal year an amount equal to, but not more than, 1.5 per centum of the amount appropriated under section 104(c) in such fiscal year, commencing with fiscal year 1986.

AUDIT

SEC. 109. (a) Under regulations promulgated by the Secretary, any State receiving a block grant under section 105(a) shall, for each fiscal year that it receives such grant, submit to the Secretary a financial audit of the trust fund established pursuant to section 105(c). The income derived from such trust fund for each fiscal year shall be included in the audit required by this section.

(b) Each audit submitted by a State under subsection (a) shall—

(1) contain a statement of all funds provided by the block grant received by such State for the fiscal year;

(2) include a statement of all financial assistance provided to such State's local governments pursuant to section 107;

(3) be conducted by an entity which is independent of any agency or official administering or using funds provided by such block grant; and

(4) be conducted in accordance with the financial and compliance element of the standards for audit of governmental organizations, activities, and functions established by the Comptroller General of the United States.

(c) After receiving a State's financial audit under this section, the Secretary shall—

(1) make a preliminary evaluation of each audit submitted pursuant to this section. If the Secretary determines, in the preliminary evaluation of a State's audit, that all or any part of the block grant has not been used as required by this Act, the Secretary shall publish notice of this finding in the Federal Register. In addition, the Secretary may suspend, and place in escrow, an amount from any future block grant which is equivalent to the amount misused, pending final determination pursuant to paragraph (3);

(2) provide the State with an opportunity for a hearing; and

(3) make a final determination.

(d) If the Secretary makes a final determination under subsection (c)(3) that all or any part of such funds were used as required by this Act, the Secretary shall—

(1) provide in writing to the State the reasons for the determination and the amount of funds misused; and

(2) take appropriate action to recover an amount equal to that determined to have been misused under subsection (c), including the withholding of such amount from a State's future block grant or the amount which may have been suspended under subsection (c)(1).

(e) If no appeal of the final determination is filed within sixty days following notification to the State of the final determination, any funds withheld or recovered by the Secretary under subsection (d)(2) shall be returned to the Fund.

(f) If an appeal of the final determination is filed within the sixty-day period specified in subsection (e), any funds withheld by the Secretary shall be held in escrow until such time as a final determination is made of the appeal.

RULES AND REGULATIONS

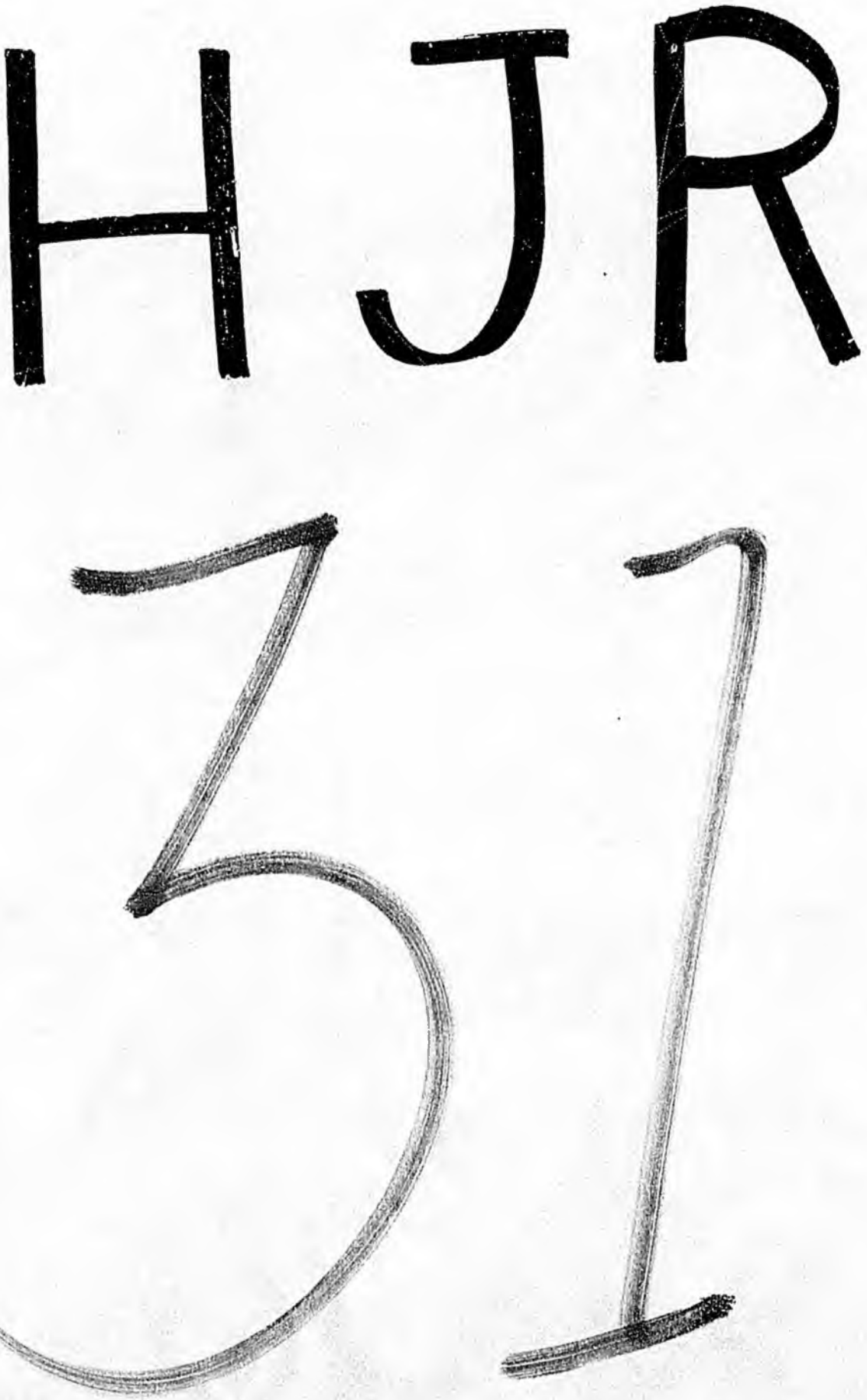
SEC. 110. Within one hundred and eighty days of enactment of this Act, the Secretary shall promulgate, pursuant to section 553 of title 5, United States Code, after notice and opportunity for participation by relevant Federal agencies,

State agencies, local governments, regional organizations, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this Act.

DEFINITION OF BOUNDARY

SEC. 111. Section 2(b) of the Submerged Lands Act (43 U.S.C. 1301(b)) is amended by inserting ", except that any boundary between a State within the conterminous United States and the United States under this Act which has been fixed by coordinates under a final decree of the United States Supreme Court shall, for the purposes of this Act and the Outer Continental Shelf Lands Act, remain immobilized at the coordinates provided under such decree and shall not be ambulatory" before the semicolon.

O


HJR
31

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HR
House Special Committee
on Oil & Gas
4-10-85 4:10 p.m

TESTIMONY OF SHELL WESTERN E&P INC.
TO THE ALASKA HOUSE RESOURCES COMMITTEE
ON HOUSE JOINT RESOLUTION #31

APRIL 25, 1985

MADAM CHAIR AND OTHER MEMBERS OF THIS COMMIITTEE.
MY NAME IS BILLY R. VEHNEKAMP. I AM MANAGER PUBLIC AFFAIRS-ALASKA FOR SHELL WESTERN E&P INC., A SUBSIDIARY OF SHELL OIL COMPANY.

WE APPRECIATE THE OPPORTUNITY TO SPEAK BRIEFLY TO YOU IN SUPPORT OF OCS SALE 92, THE NORTH ALEUTIAN BASIN, AS PRESENTLY SCHEDULED BY THE DEPARTMENT OF INTERIOR FOR DECEMBER 1985. OUR CONCERNS REGARDING SALE 92 FOCUS ON FOUR POINTS: JOBS, PROTECTION OF THE ENVIRONMENT, THE HYDROCARBON POTENTIAL OF THE SALE AREA, AND THE NATION'S CONTINUING NEED FOR PETROLEUM.

PETROLEUM EXPLORATION AND DEVELOPMENT HAS IN THE PAST, AND CONTINUES NOW, TO PROVIDE EXTENSIVE BENEFITS TO ALL ALASKANS. EIGHTY-FIVE TO NINETY PERCENT OF CURRENT STATE REVENUES ARE DERIVED FROM PETROLEUM TAXES AND ROYALTY PAYMENTS. IN ADDITION, IT IS ESTIMATED THAT JOBS ASSOCIATED WITH THE PETROLEUM INDUSTRY, WHEN COMBINED WITH INDIRECT JOBS OR THOSE WHICH PROVIDE SERVICES OR EQUIPMENT TO THE INDUSTRY, ACCOUNT FOR EARNED INCOME OF $1.7 BILLION AND REPRESENT 29.1% OF HOUSEHOLD INCOME EARNED STATEWIDE. FOR THE FAMILIES DEPENDENT ON THOSE JOBS TO CONTINUE TO ENJOY SOME SECURITY, OIL AND GAS EXPLORATION IN THE ALASKA OFFSHORE MUST BE ALLOWED TO PROCEED ON A PREDICTABLE BASIS. HOUSE JOINT RESOLUTION #31 DIRECTLY UNDERMINES THAT PREDICTABILITY AND THREATENS THE JOBS OF MANY DEPENDENT ON ORDERLY OIL AND GAS

EXPLORATION AND DEVELOPMENT IN THIS STATE.

SHOULD OCS SALE 92 BE FURTHER DELAYED FOR 10 YEARS, EXPLORATION AND ANY RESULTING DEVELOPMENT WOULD BE SET BACK AN ADDITIONAL 9 TO 14 YEARS. WE WOULD BE FACED WITH A 19-24 YEAR DELAY AND NOT JUST THE 10 YEARS AS PROPOSED BY HOUSE JOINT RESOLUTION #31. THE ADDITIONAL DELAY WHICH WOULD BE CAUSED BY THE PROPOSED 10 YEAR POSTPONEMENT OF THE SALE IS AN UNACCEPTABLY LONG TIME WHEN YOU CONSIDER THAT THE SALE AREA HAS BEEN UNDER STUDY FOR LEASING SINCE 1974. WE BELIEVE THAT THIS AREA HAS GREATER HYDROCARBON POTENTIAL THAN THE ASSESSMENT MADE BY THE MINERALS MANAGEMENT SERVICE. IT SHOULD BE NOTED THAT, WHEN THE OIL INDUSTRY WAS ASKED TO RANK ALL OCS SALE AREAS IN 1984, THE NORTH ALEUTIAN BASIN WAS RANKED SECOND IN INTEREST TO THE OIL INDUSTRY AND THIRD IN RESOURCE POTENTIAL FOR ALL OF THE ALASKA OFFSHORE.

WE ARE VERY COGNIZANT OF THE TREMENDOUS WILDLIFE, MARINE, AND MARINE MAMMAL RESOURCES IN AND NEAR THE SALE AREA. WE ARE ALSO AWARE, HAVING PARTICIPATED IN THE ONGOING DEVELOPMENT OF OIL PRODUCTION IN THE COOK INLET BEGINNING OVER 20 YEARS AGO, OF THE OIL INDUSTRYS' DEMONSTRATED SAFETY RECORD IN THE PRODUCTION OF PETROLEUM IN THE ALASKA OFFSHORE. THAT SAFETY RECORD AND THE ONGOING DEMONSTRATION OF THE INDUSTRYS' CONCERN FOR THE MARINE ENVIRONMENT OF THE COOK INLET SPEAKS FOR ITSELF AND IS CONVINCING EVIDENCE OF THE INDUSTRYS' ABILITY AND DESIRE TO OPERATE LIKEWISE IN OTHER PARTS OF THE ALASKA OFFSHORE.

TODATE THE OIL INDUSTRY HAS DRILLED SOME 45 EXPLORATION WELLS IN THE ALASKA OFFSHORE WITHOUT ANY DETRIMENTAL EFFECT ON THE MARINE ENVIRONMENT. THIS DOES NOT INCLUDE ANOTHER 14 STATIGRAPHIC TEST WELLS WHICH WERE DRILLED IN THE ALASKA OFFSHORE WITH, AGAIN, NO DETRIMENTAL EFFECT ON THE ENVIRONMENT. WORLDWIDE, OIL EXPLORATION AND PRODUCTION OPERATIONS HAVE DEMONSTRATED OVER AND OVER AGAIN THEIR COMPATIBILITY WITH THE FISHING INDUSTRY AND OTHERS DEPENDENT ON THE MARINE ENVIRONMENT.

PRESENTLY OUR NEED FOR PETROLEUM CONTINUES TO GROW AND OUR OIL IMPORTS, NOW AT ABOUT ONE THIRD OF OUR NEEDS, LOOM LARGER AND LARGER. TO MEET OUR FUTURE NEEDS, WE MUST ACT NOW TO INVENTORY THE NATION'S HYDROCARBON RESOURCES. THAT CAN ONLY BE ACCOMPLISHED BY ORDERLY MINERAL EXPLORATION BASED ON A DEPENDABLE OCS LEASE SCHEDULE

WE SUPPORT THE TESTIMONY GIVEN BY THE ALASKA OIL AND GAS ASSOCIATION EARLIER AND ASK THAT HOUSE JOINT RESOLUTION #31 NOT BE ADOPTED BY THIS COMMITTEE.

# # #

AOGA TESTIMONY TO
HOUSE RESOURCES COMMITTEE
ALASKA STATE LEGISLATURE
ON HOUSE JOINT RESOLUTION NO. 31
APRIL 24, 1985

MY NAME IS PETER HANLEY, I AM SENIOR ENVIRONMENTAL PLANNER IN THE ENVIRONMENTAL AFFAIRS DEPARTMENT OF SOHIO ALASKA PETROLEUM COMPANY. TODAY, HOWEVER, I AM REPRESENTING THE ALASKA OIL AND GAS ASSOCIATION (AOGA).

AOGA IS A TRADE ASSOCIATION WHOSE MEMBER COMPANIES ACCOUNT FOR THE MAJORITY OF OIL AND GAS EXPLORATION, PRODUCTION AND TRANSPORTATION ACTIVITIES IN ALASKA.

AOGA APPRECIATES THE OPPORTUNITY TO PROVIDE COMMENTS ON THE HOUSE JOINT RESOLUTION NO. 31 CONCERNING THE NORTH ALEUTIAN BASIN OUTER CONTINENTAL SHELF OIL AND GAS LEASE SALE NO. 92.

THE NORTH ALEUTIAN BASIN WAS FIRST CONSIDERED FOR LEASING OVER A DECADE AGO. SUBSEQUENTLY, THE SALE HAS BEEN CANCELLED, RESCHEDULED AND POSTPONED ON SEVERAL OCCASIONS. IN 1983 SALE 75 WAS CANCELLED. MOST RECENTLY, THE RESCHEDULED SALE NO. 92 WAS POSTPONED FIVE MONTHS AND THE PLANNING AREA REDUCED FROM 32.5 MILLION ACRES TO 5.6 MILLION ACRES LOCATED MAINLY IN THE SOUTHWEST PORTION OF THE NORTH ALEUTIAN BASIN. AOGA STRONGLY SUPPORTS PROCEEDING WITH THE LEASE SALE AS CURRENTLY SCHEDULED.

THE OIL INDUSTRY BELIEVES THAT THE NORTH ALEUTIAN BASIN HAS SIGNIFICANT OIL AND GAS POTENTIAL. IN 1984, THIS AREA WAS RATED SECOND IN INTEREST OF ALL THE OCS AREAS BY THE OIL INDUSTRY IN RESPONSE FOR COMMENT ON A NEW FEDERAL FIVE YEAR OCS LEASE SALE SCHEDULE. IT WAS RANKED THIRD IN RESOURCE POTENTIAL OF THE 13 PLANNING AREAS OFFSHORE ALASKA. INDUSTRY INTEREST IN THIS LEASE SALE CAN THUS BE CHARACTERIZED AS HIGH. THE RELATIVELY LOW RESOURCE ESTIMATES PRESENTED IN THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS) PRODUCED BY MINERALS MANAGEMENT SERVICE ARE CONSERVATIVE COMPARED WITH THE INDUSTRY'S GENERAL ESTIMATES OF THE AREA'S POTENTIAL.

SINCE IT TAKES 10 TO 15 YEARS TO BRING NEW OIL PRODUCTION FROM FRONTIER AREAS SUCH AS ALASKA, DELAY OF THE SALE FOR TEN YEARS MEANS THAT THE ECONOMIC BENEFITS AND IMPORTANT CONTRIBUTION TO THE NATION'S ENERGY SUPPLIES, SHOULD COMMERCIAL RESOURCES BE DISCOVERED, WOULD NOT OCCUR FOR 20-25 YEARS, WELL INTO THE 21ST CENTURY.

THE PETROLEUM INDUSTRY HAS CONSIDERABLE EXPERIENCE AND KNOWLEDGE IN CONDUCTING OFFSHORE DRILLING AND PRODUCTION OPERATIONS IN ENVIRONMENTAL CONDITIONS COMPARABLE, AND IN SOME CASES MORE SEVERE, THAN THOSE EXISTING IN THE PROPOSED SALE AREA IN THE NORTH ALEUTIAN BASIN. THE COOK INLET OF ALASKA IS AN EXAMPLE. OIL AND GAS DRILLING AND PRODUCTION OPERATIONS HAVE BEEN CONDUCTED IN THE COOK INLET FOR MORE THAN 20 YEARS. THE 14 OFFSHORE PRODUCTION PLATFORMS AND ASSOCIATED PIPELINES WERE INSTALLED IN THE MID-TO-LATE 1960's. THE PLATFORMS ARE DESIGNED

FOR WINDS UP TO 100 MPH. SOLID ICE PANS OF UP TO 1 1/2 FEET THICK, OVERRIDING UP TO 4 FEET THICK, ARE EXPERIENCED IN WINTER MONTHS AND MOVE WITH THE TIDE UP TO VELOCITIES OF 8 KNOTS. THESE ICE CONDITIONS ARE MORE SEVERE THAN THOSE EXPERIENCED BY ANY OTHER STEEL STRUCTURE PLATFORMS IN THE WORLD.

IN ADDITION TO THE COOK INLET EXPERIENCE, THE PETROLEUM INDUSTRY HAS SUCCESSFULLY DRILLED 18 WELLS IN THE BERING SEA AREA, INCLUDING 12 EXPLORATORY WELLS DRILLED IN 1984 AND THE CURRENT 1985 PERIOD. SIX OF THESE WERE OFF-STRUCTURE STRATIGRAPHIC TESTS (TWO IN THE ST. GEORGE BASIN, TWO IN NORTON SOUND, ONE IN NAVARIN BASIN, AND ONE IN THE NORTH ALEUTIAN BASIN). THREE OF THE EXPLORATORY WELLS WERE IN NORTON SOUND AND NINE IN THE ST. GEORGE BASIN. ALSO THIS MONTH, AN EXPLORATORY WELL WAS COMPLETED IN SHELIKOF STRAIT, HAVING OPERATED WITHOUT INCIDENT IN THE MIDST OF THE TANNER CRAB FISHERY. ENVIRONMENTAL CONDITIONS IN THE ST. GEORGE BASIN ARE VERY SIMILAR TO WHAT EXISTS IN THE NORTH ALEUTIAN BASIN.

WITH RESPECT TO THE ENVIRONMENTAL CONCERNS REGARDING THIS LEASE SALE, WE WOULD LIKE TO HIGHLIGHT SEVERAL OF THE IMPORTANT CONCLUSIONS IN THE RECENT DRAFT ENVIRONMENTAL IMPACT STATEMENT PREPARED BY MINERALS MANAGEMENT SERVICE THAT UNEQUIVOCALLY SUPPORT OUR BELIEF THAT OIL AND GAS EXPLORATION AND DEVELOPMENT IN THE NORTH ALEUTIAN BASIN POSES ONLY A MINIMAL RISK TO THE ENVIRONMENT, INCLUDING THE WORLD-CLASS FISHERY RESOURCES. THE EFFECTS OF THE PROPOSAL ON FISHERY RESOURCES INCLUDING SALMON, HERRING, GROUNDFISH, AND CRAB ARE PROJECTED BY THE DEIS TO BE MINOR. EFFECTS ON ENDANGERED WHALES ARE ESTIMATED TO BE NEGLIGIBLE OR MINOR.

THE OIL INDUSTRY HAS DEMONSTRATED ITS ABILITY TO OPERATE SAFELY IN THE OCS. SINCE 1956 OVER 28,000 WELLS HAVE BEEN DRILLED IN THE WATERS ADJACENT TO THE UNITED STATES. ONLY ONE BLOWOUT IN U.S. WATERS, THE ONE THAT OCCURRED FROM A DEVELOPMENT WELL IN SANTA BARBARA CHANNEL IN 1969, RESULTED IN ANY SIGNIFICANT AMOUNT OF OIL REACHING OUR SHORES. HOWEVER, THERE WAS ONLY LIMITED AND SHORT TERM DAMAGE TO THE ENVIRONMENT RESULTING FROM THE SANTA BARBARA SPILL.

OVER FOUR BILLION BARRELS HAVE BEEN PRODUCED SINCE 1970 ON THE U.S. OCS, BUT ONLY 791 BARRELS HAVE BEEN LOST AS A RESULT OF BLOWOUTS. OVER 4 BILLION BARRELS OF CRUDE OIL (THE EQUIVALENT OF THE ENTIRE PRODUCTION OF THE U.S. OCS IN THE PAST 20 YEARS) HAVE BEEN SHIPPED FROM VALDEZ WITH NO SIGNIFICANT SPILLS. INDUSTRY HAS THUS PROVEN THAT IT HAS THE TECHNOLOGY, EQUIPMENT, AND EXPERIENCE TO SAFELY EXPLORE THE NORTH ALEUTIAN BASIN WITHOUT SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS.

HOUSE RESOLUTION NO. 31 NOTES THE ECONOMIC IMPORTANCE OF THE BRISTOL BAY FISHERIES TO THE STATE'S ECONOMY. WE WOULD ALSO LIKE TO NOTE THE CURRENT AND POTENTIAL IMPORTANCE OF OIL REVENUES AND EMPLOYMENT. A UNIVERSITY OF ALASKA, INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH STUDY PROJECTS THAT BY THE YEAR 2000, APPROXIMATELY 10% OF STATE POPULATION AND EMPLOYMENT WILL DEPEND UPON THE ONGOING OCS PETROLEUM EXPLORATION AND DEVELOPMENT PROGRAM. THE NORTH ALEUTIAN BASIN HAS THE POTENTIAL TO BE A MAJOR PART OF THESE DIRECT AND SECONDARY ECONOMIC BENEFITS OF THE ALASKA OCS DEVELOPMENT.

A GREAT AMOUNT OF STUDY APPLICABLE TO OCS OPERATIONS IN THE AREA, AND THEIR POSSIBLE EFFECTS, HAS BEEN CONDUCTED SINCE EVEN BEFORE THE AREA WAS FIRST PROPOSED FOR OIL AND GAS LEASING MORE THAN 10 YEARS AGO. ENVIRONMENTAL RESEARCH ON THE EASTERN BERING SEA ENVIRONMENT SPONSORED BY MMS AND OTHERS HAS BEEN ON-GOING FOR OVER TEN YEARS AND DETAILED FISHERIES RESEARCH HAS BEEN ON-GOING SINCE THE 1930's. THIS BODY OF RESEARCH HAS BEEN DOCUMENTED IN A RECENT STAFF PAPER PREPARED BY MMS, IN HOOD AND CALDER'S REPORT "THE EASTERN BERING SEA SHELF" AND SOHIO'S BOOK "BERING SEA BIOLOGY". IN ADDITION TO THE RESEARCH CONDUCTED TO DATE, SITE SPECIFIC STUDIES WILL UNDOUBTEDLY BE CONDUCTED IN THE EVENT OF COMMERCIAL DISCOVERIES AS PART OF DEVELOPMENT PLAN SUBMITTALS AND OTHER PERMIT REQUIREMENTS.

CONFLICTS BETWEEN THE FISHING AND PETROLEUM OPERATIONS CAN BE MINIMIZED BY MAINTAINING OPEN CHANNELS OF COMMUNICATION TO IDENTIFY POTENTIAL PROBLEM AREAS AND METHODS OF SOLUTION, AND BY KEEPING EACH OTHER ADVISED OF OPERATIONS IN FISHING AREAS. TO THIS END, THE OIL/FISHERIES GROUP OF ALASKA HAS BEEN ESTABLISHED TO ACHIEVE BETTER COMMUNICATION AND TO RESOLVE POTENTIAL CONFLICTS BETWEEN THE TWO INDUSTRIES. THIS GROUP HAS BEEN IN EXISTENCE FOR ONLY TWO YEARS, BUT IT ALREADY HAS AS MEMBERS ALL THE MAJOR FISHING, FISH PROCESSING AND MARKETING ORGANIZATIONS ACTIVE IN ALASKA TOGETHER WITH MOST OF THE ACTIVE OIL COMPANIES AND GEOPHYSICAL CONTRACTORS. TO DATE, THE GROUP HAS PROVEN VERY EFFECTIVE IN PROMOTING A GOOD WORKING RELATIONSHIP BETWEEN THE TWO INDUSTRIES. THERE HAVE BEEN

AND WILL BE POSITIVE BENEFITS TO THE FISHING INDUSTRY FROM OIL AND GAS ACTIVITIES RELATED TO IMPROVEMENTS IN WEATHER OBSERVATIONS, TRANSPORTATION AND PORT INFRASTRUCTURE AND SAFETY AT SEA THROUGH IMPROVED AIR/SEA RESCUE CAPABILITIES. THESE CONCLUSIONS ARE NOT ONLY SUPPORTED BY THE EXTENSIVE DATA BASE AND EXPERIENCE TO DATE IN THE BERING SEA BUT ALSO BY THE RECORD OF THE COEXISTENCE OF THE OIL AND FISHING INDUSTRIES IN OTHER AREAS OF ALASKA SUCH AS COOK INLET AND PRINCE WILLIAM SOUND, THE LOWER 48 -- CALIFORNIA AND GULF OF MEXICO, AND IN OTHER AREAS OF THE WORLD SUCH AS THE NORTH SEA.

THERE HAVE BEEN NO DOCUMENTED SIGNIFICANT IMPACTS FROM OIL DEVELOPMENT TO THE FISHERY RESOURCES IN AREAS OF OFFSHORE PRODUCTION IN THE U.S. PRINCIPALLY THE GULF OF MEXICO, CALIFORNIA, AND COOK INLET. INDEED THE FISHERIES OF THE GULF OF MEXICO AND COOK INLET HAVE THRIVED DURING THIS PERIOD OF OFFSHORE OIL AND GAS DEVELOPMENT. THE BOTTOM LINE, HOWEVER, IS THAT WHILE NO ONE CAN ABSOLUTELY GUARANTEE THAT A SPILL WOULD NOT OCCUR, THE OVER-WHELMING BODY OF ENVIRONMENTAL RESEARCH, SPILL STATISTICS AND FISHING INDUSTRY EXPERIENCE ELSEWHERE INDICATES THAT OIL DEVELOP-MENT AND WORLD-CLASS COMMERCIAL FISHERIES CAN COEXIST WITHOUT SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS.

AOGA THEREFORE RECOMMENDS THAT HJR 31 NOT BE ADOPTED.

lfl:157

Alaska State Legislature

REPRESENTATIVE
ADELHEID HERRMANN

P.O. BOX 63
NAKNEK, ALASKA 99633
(907) 246-4495

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4942, 465-4943

CO-CHAIRMAN
RESOURCES COMMITTEE

MEMBER
TRANSPORTATION
COMMITTEE

House of Representatives

DISTRICT 26

ADAK
AKUTAN
ALEKNAGIK
ATKA
BELKOFSKI
CLARK'S POINT
COLD BAY
DILLINGHAM
DUTCH HARBOR
EGEGIK
EKUK
EKWOK
FALSE PASS
IGIUGIG
ILIAMNA
KING COVE
KING SALMON
KOKHANOK
KOLIGANEK
LEVELOCK
MANOKOTAK
NAKNEK
NELSON LAGOON
NEWHALEN
NEW STUYAHOK
NIKOLSKI
NONDALTON
PEDRO BAY
PILOT POINT
PORT ALSWORTH
PORT HEIDEN
PORT MOLLER
PORTAGE CREEK
SAND POINT
SOUTH NAKNEK
SQUAW HARBOR
ST. GEORGE
ST. PAUL
TOGIAK
TWIN HILLS
UGASHIK
UNALASKA

TO: House Committee on Resources
House Special Committee on Oil and Gas

FROM: Representative Adelheid Herrmann
Co-Chair Resources Committee

DATE: April 23, 1985

SUBJECT: Economic Impact of North Aleutian Shelf Sale 92 Delay (HJR 31)

In the recent hearing before the House Special Committee on Oil and Gas on House Joint Resolution 31, testimony was delivered by the Alaska Support Industry Alliance. The testimony referenced research by the Institute of Social and Economic Research (ISER)concerning the importance of the Five Year OCS leasing schedule to the overall Alaska economy.

When provided with a copy of the testimony, Dr. Matthew Berman, the principal author of the ISER study responded with the observation that the referenced studies had been quoted out of context and inaccurately represented. In fact, the report cited by the Alliance concluded that oil revenues would be likely to decline regardless of the scale of OCS development. Further, it is noted that while some property taxes could be contributed to the Alaska economy, OCS development would place demands on public services which would exceed new revenues. Attached please find a copy of a letter from Dr. Berman.

It is important to emphasize that HJR 31 only addresses a single proposed sale among the many that are scheduled for the Alaska OCS. The North Aleutian Basin sale is generally regarded to have a relatively low hydrocarbon potential. The DEIS estimates a mean recoverable resource at 364 million barrels. To put this in perspective, the U.S. average daily consumption is approximately 16 million barrels per day. The North Aleutian Sale is thus roughly equivalent to less than one month worth of consumption.

While the ISER report only addressed the overall OCS schedule and not the impacts of individual sales, other research suggests that deferral of Sale 92 would not significantly impair the Alaska economy. As indicated by Dr. Berman, the long term direct employment associated with the North Aleutian Basin sale could be about 340 jobs (less than 5% of total OCS employment) assuming oil is found. By contrast, the fishing industry currently employs over 10,000 people annually.

Apart from protecting the existing fishery resources, there may be a substantial economic advantage to the state by seeking a delay in the sale. This is because under current law, the state gets no share of bonus bids, royalty payments, lease rental payments or severance taxes from OCS development. Legislative proposals pending in Congress would give the State a share of the revenues from OCS development. If the sale proceeds on schedule, there will be no revenue sharing. If the sale were to be put off until 1994, there is a significant chance that when the sale eventually takes place, the State would share in the revenues.

UNIVERSITY OF ALASKA
Institute of Social and Economic Research
707 "A" St., Suite 206
Anchorage, Alaska 99501
Phone (907) 278-4621

April 23, 1985

Hon. Adelheid Herrmann
Co-chairman, Resources Committee
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Herrmann:

I would like to clarify for the House Committee on Resources certain statements attributed to a report by the Institute of Social and Economic Research regarding the effects of the federal Outer Continental Shelf (OCS) leasing program on the Alaska economy. The statements appear in the testimony of Chuck Becker, representing the Alaska Support Industry Alliance, before the House Oil and Gas Committee on House Joint Resolution 31. While Mr. Becker has quoted the study correctly, he has taken the quotes out of context and has inaccurately represented the report's conclusions.

Mr. Becker's testimony refers to a report entitled Alaska Statewide and Regional Economic and Demographic Systems: Effects of OCS Exploration and Development. Teresa Hull and I prepared the report in April 1984 for the U.S. Minerals Management Service, which has published it as Technical Report 106 in the Alaska OCS Region's Social and Economic Studies Program series.

Mr. Becker stated that the report contains a "grim forecast of severe economic dislocations, resulting in loss of jobs and a 'massive decline in state expenditures' . . . . It is a scenario of a deteriorating fiscal condition of the state coupled with 'rising taxes, reduced public services' and loss of jobs." According to Mr. Becker, "The authors conclude that only if the the five-year OCS lease sale plan proceeds on schedule will that unhappy portrayal of Alaska's future be mitigated." (emphasis mine)

In the first place, declining real levels of state expenditures mentioned in the report result directly from projected declines in state petroleum revenues. The report concluded that oil revenues would be likely to decline regardless of the scale of Alaska OCS development. OCS development, while contributing property tax revenue from onshore support facilities, would place demands on public services in excess of new revenues, resulting most likely in "an additional reduction in per capita government services" (p. 33).

Secondly, contrary to Mr. Becker's assertion, the report did not project that the Alaska economy would suffer a long-term net loss of jobs if there were no OCS development. In spite of relatively minor fluctuations in employment projected in the late 1980s and early 1990s, the report projected a long-term pattern of growth leading to an approximate 30 percent increase in employment and population by 2010, even with no OCS development (p. 23).

Finally, and most importantly, the report only considers the contribution to the Alaska economy of one hypothetical scenario representating cumulative oil and gas development from all Alaska OCS leases. It does not address the potential effects of a modification to the proposed five-year lease schedule, as requested in HJR 31. Thus one can not directly apply any of the conclusions of the report to the effects of a delay of a single lease sale such as Sale 92 (North Aleutian Shelf).

We have not made any projections of the effects of a delay of Sale 92 on the overall contribution of OCS development to the Alaska economy. However, one would expect, roughly speaking, that the contribution of a given sale to the total direct and indirect effects would be in proportion to the contribution of that sale's direct employment to the total direct employment.

The scenario of cumulative oil and gas development from all OCS areas used in the report was provided to ISER by the Minerals Management Service. It included total direct OCS employment assumptions of 8,100 long-term jobs, with peak employment including construction jobs of nearly 13 thousand in 1997. Adding indirect effects, the report projected that total contribution of this scenario of cumulative OCS development would reach 10 percent of the economy by 2000.

Direct employment estimates for Sale 92, on the other hand, are contained in MMS Social and Economic Studies Technical Report Number 87, St. George Basin and North Aleutian Basin Economic and Demographic Systems Impacts Analysis, prepared by ISER in June 1984. According to this study, Sale 92 may generate long-term direct employment of around 340, provided commercial quantities of oil are discovered in the basin.

This level of long-term direct employment expected from Sale 92 (if oil is found) is approximatly 4 percent of the total for all Alaska OCS areas in the five-year lease schedule. Thus even if oil and gas resources are found and developed, the total direct and indirect contribution of Sale 92 to the Alaska economy would be a small fraction, less than 5 percent, of the total contribution of OCS activity. Sale 92, if held on schedule, will certainly

contribute some new jobs to the Alaska economy. The total contribution of the sale is unlikely to reach 0.5 percent of total state employment, however.

Sincerely,

Matthew D. Berman
Assistant Professor of Economics

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

OFFICE OF
MANAGEMENT & BUDGET
MAR 26 1985
GOVERNMENTAL
COORDINATION

March 20, 1985

The Honorable Donald Hodel
Secretary
Department of the Interior
C Street between 18th & 19th Sts., N.W.
Room 6151
Washington, D.C. 20240

Dear Mr. Secretary:

Based upon the discussion we had in Washington two weeks ago, there still seems to be some confusion over the importance of the North Aleutian Basin area of Bristol Bay to fisheries and wildlife resources. Because the proposed lease sale area is very productive biologically, the resources produced there have great economic and social significance to the State, Nation, and international community, and this information is important to the decision on whether or not to delay Sale 92. While we very much appreciate the deletion of 83% of the sale area as initially proposed, this letter documents our great concerns with the remaining 17% still being considered for leasing. Accordingly, I wish to provide you with the following information which illustrates the biological importance of this specific area.

The fisheries in and adjacent to the North Aleutian Basin are among the most productive in the world. The estimated average annual ex-vessel value of these fisheries between 1977 and 1982 was $200 million, over half of which resulted from salmon harvests. Over 60 million adult salmon and several hundred million juveniles migrate through the proposed sale area or its immediate vicinity annually. The salmon fishery is the economic mainstay of Bristol Bay communities, since almost half of the commercial salmon permit holders are local residents and salmon is a primary source of income and employment. For example, the wholesale value of the Bristol Bay salmon fishery was estimated to be in excess of $250 million and employed over 10,000 people in recent years.

A commercial herring fishery was initiated in 1982 in the Port Moller/Herendeen Bay area immediately south of the sale area. The 1983 commercial herring roe harvest was 637.5 tons, with an ex-vessel value of $414,000. Crab and groundfish are also valuable renewable resources in the vicinity. The peak harvests of king and tanner crab from this area were 130 million pounds ($117 million ex-vessel value) and 54 million pounds ($21.5 million ex-vessel value) in 1980-81 and 1979-80, respectively. Recently, there have been several unexplained reproductive failures, and the State closed the king crab harvest in 1983 to allow stocks to rebuild.

The total annual Bristol Bay groundfish catch is increasing. Since 1973 the harvest averaged 55,000 metric tons, but in 1982 the groundfish catch reached almost 250,000 metric tons ($72 million ex-vessel value), or about 20 percent of the catch in the entire eastern Bering Sea. Due to the expansion of domestic and joint-venture fisheries operations, it is likely that marine waters in the sale area will play an increasingly important role in this fishery. In contrast to the foreign fishery, the joint-venture fishery operates in inner Bristol Bay and along the Alaska Peninsula with approximately half of the groundfish being harvested in and near the North Aleutian Basin proposed sale area.

Diverse and abundant assemblages of marine mammals and birds also regularly breed, migrate through, or overwinter in the basin vicinity. Five noncetacean and 18 cetacean species of marine mammals may occur in or adjacent to the basin. Most notable among these are the estimated 15,000 to 17,000 endangered gray whales which annually migrate along the Alaska Peninsula and the 17,000 to 18,000 sea otters which occur along the northern side of the lower Alaska Peninsula.

At least 85 species of seabirds, waterfowl, and shorebirds breed, migrate, or overwinter in areas in close proximity to the basin lease area. Major segments of the world or North American populations of many of these species are periodically concentrated in this area. Virtually the entire world populations of black brant (131,000 birds) and emperor geese (71,000 birds) stage during the fall at Izembek and adjacent lagoons along the southern edge of the sale area. Additionally, over 60,000 Steller's eiders have been reported in these lagoons during molting periods, and a majority of the world population winters along the Alaska Peninsula. Over one million marine birds have been recorded

along the north shore of the Alaska Peninsula during fall with densities exceeding 1,000 birds per square kilometer. The welfare of many of these species has international implications. For instance, the black brant harvest throughout the entire Pacific Flyway has been significantly curtailed due to the recent population decline. Additional impacts to this species from oil and gas related activities could compromise major conservation efforts to reestablish the black brant population to the predecline level and to maintain some historic harvest in rural Alaska and along the Pacific Coast. Moreover, oil spill trajectory simulations conducted by the Rand Corporation for the Minerals Management Service show that an oil spill would move consistently towards this area of the Alaska Peninsula.

To assist further in illustrating the biological and economic importance of the lease sale area, a resource map depicting documented harvest areas and key use areas for species of primary concern is enclosed. Despite what was claimed at our meeting, not only mature fish inhabit and migrate through the lease sale area, but also fish in all of their life stages. Key use areas depicted on the map are especially sensitive to oil and gas development impacts because they support high fish or wildlife concentrations, sensitive life-stages, or species during critical periods in their annual life cycle. As illustrated on the resource map, the proposed lease area contains key use areas for Pacific cod, yellowfin sole, walleye pollock, halibut, and king and tanner crab. Commercial harvest activities also occur within the lease area for halibut, Pacific cod, and king and tanner crab. Additionally, the map shows that many important fish and wildlife resources and harvest activities occur immediately adjacent to the lease area, which could be affected by oil and gas development activities.

To summarize, marine and coastal habitats in the North Aleutian Basin vicinity support fish and wildlife resources of state, national, and international significance. These resources provide the economic mainstay, as well as important subsistence food resources, for Bristol Bay communities. Consequently, oil and gas exploration and development in this area currently presents too great a risk to the state and national interest in maintaining the extremely productive and valuable fish and wildlife resources which characterize this region.

Thank you for your consideration of this important matter. If you have any questions or comments, please let me know.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

Enclosure

cc: The Honorable Ted Stevens
The Honorable Frank Murkowski
The Honorable Don Young
Ann Dore McLaughlin, Undersecretary of Interior
Bill Horn, Deputy Undersecrtary
Steve Griles, Assistant Secretary
Bill Bettenberg, Director MMS

STATE TESTIMONY ON THE NORTH ALEUTIAN BASIN
DRAFT ENVIRONMENTAL IMPACT STATEMENT

For the record, my name is John Shively and I serve as Governor Sheffield's Chief of Staff. I am here to testify on behalf of the Governor and the State of Alaska. The State continues to strongly oppose Federal oil and gas leasing in the North Aleutian Basin until at least 1994. Given the purpose and time constraints of this public hearing I will only briefly summarize the reasons why offshore leasing in the North Aleutian Basin should not go forward at this time. The State will provide the Minerals Management Service and other interested parties with more specific comments in response to the draft Environmental Impact Statement before the March 13 deadline.

To begin, I wish to emphasize that the State fully supports the prudent development of Alaska's oil and gas resources and recognizes that the oil industry in Alaska has a very good environmental record. Alaska has and will continue to make a major contribution to reducing the nation's dependency on foreign oil. Our ability to work with the Minerals Management Service to allow leasing in the Beaufort Sea, Norton Sound, St. George Basin, Navarin Basin, Gulf of Alaska and Cook Inlet is evidence of Alaska's commitment to the national need for orderly development of our oil and gas resources in an environmentally responsible manner. The Minerals Management Service should recognize that the State's request for delaying the North Aleutian Basin lease offering is not made lightly and is based on the unequalled fish

and wildlife values and environmental risks present in the region.

The State acknowledges that the entire Bristol Bay planning area is not being proposed for leasing at this time. Despite the reduction to the presently configured sale area, each of the State's concerns, which I will discuss later, apply specifically to the tracts now under consideration. The area north and east of Unimak Pass along the Alaska Peninsula contains extremely important habitat for the fish and wildlife resources which reside in or migrate through Bristol Bay. In fact, given the relatively low hydrocarbon potential and the internationally recognized fisheries and wildlife values of the area, we believe Bristol Bay should be the last area of Alaska's Outer Continental Shelf opened to leasing. This is not an unreasonable request given the fact that there are still 11 other planning areas in Alaska on the federal leasing schedule encompassing over 500 million acres

There are five major reasons why oil and gas leasing should not occur at this time. First, unparalleled renewable resources might be at risk from oil and gas development activities. The North Aleutian Basin is located in the midst of one of the richest fishing grounds in the world and the greatest concentration of birds, fish and marine mammals on the North American Continent. Hundreds of millions of salmon migrate through the

sale area each year, including over 60,000,000 adult salmon that return to Bristol Bay. Domestic Bristol Bay fisheries have a first wholesale value of 250,000,000 dollars and employ over 10,000 people annually. Yet, it is not just the fishing families of Bristol Bay which rely upon the salmon which pass through and feed in the North Aleutian Shelf area. Salmon returning to streams throughout western Alaska migrate through the area and form the basis of the economies of the Kuskokwim and Yukon Rivers, Norton Sound and Kotzebue Sound communities. Over a million marine mammals either inhabit or migrate through the proposed sale area. The entire population of the endangered eastern Pacific gray whale migrates through the area twice annually. Very large populations of other marine mammals including Belukha whales, sea otters, walrus, fur seal, sea lions, and harbor seals inhabit the area. The area including Bristol Bay, Unimak Pass, and the Alaska Peninsula coastal zone is one of the world's greatest bird and marine mammal migratory corridors. Izembek Lagoon is used seasonally by millions of ducks and other waterfowl. Virtually the entire world populations of black brant and Emperor Geese stage in the coastal areas during the fall migration. These species are currently experiencing severe population declines and should not be subject to further stress which may delay or prevent their recovery. Unquestionably, the fish and wildlife and associated economic

values that might be at risk from oil and gas development in the North Aleutian Basin are of Statewide, national and international importance.

Second, while the overall fish and wildlife value of the area is relatively well documented, significant gaps still remain with respect to our understanding of the distribution, abundance and population dynamics associated with these renewable resources. Additional critical information on the biological resources of the area, particularly in the nearshore waters of the North Aleutian shelf, must be obtained before a fully objective assessment of the potential impacts from oil and gas activities in the area can be understood and mitigated. An accurate evaluation of potential impacts in the North Aleutian Basin is especially critical given the extremely important biological values of the region.

Third, the areas coastal habitats and fish and wildlife resources are highly vulnerable to oil spill damage and disturbance. Our concerns center on the several million seabirds, over a million northern fur seals, and nearly 20,000 sea otters that inhabit the region, as well as the unique coastal eelgrass marshes on the northern side of the Alaska Peninsula. Oil spills can also significantly impact species such as finfish, shellfish and other invertebrates and their habitats. Larval or juvenile stages are particularly sensitive to petroleum contamination. This is

especially pertinent to the North Aleutian Basin where many species have pelagic egg or larval stages which occupy the surface waters of Bristol Bay.

Fourth, the level of risk posed to the extremely valuable and vulnerable fish and wildlife resources in the area is magnified due to industry's lack of demonstrated ability to contain and clean up oil spills under the extreme meteorological and oceanographic conditions often found in Bristol Bay. As described and acknowledged in the draft Environmental Impact Statement, the very best oil spill containment and cleanup equipment will not work when seas are over 8 feet and windspeeds over 20 knots. Wind and wave conditions in the North Aleutian Basin would prohibit even state of the art equipment from operating 50 percent of the time in winter and 10 percent in the summer. Moreover, a review of past response efforts to clean up major offshore oil spills indicates that it can be very difficult to clean up oil spills even in moderate weather conditions. This lack of cleanup ability and remaining questions about equipment deployment sites and response times places the world class fish and wildlife resources, habitats and commercial, subsistence and recreational uses of these resources in jeopardy from potential blowouts, subsea pipeline breaks, tanker accidents, and rig sinkings.

The State's fifth major reason for seeking a delay in the federal leasing schedule is based on the State's decision to delay oil and gas leasing in adjacent State waters until at least 1994. The State, through its own planning process with the cooperation of other Federal agencies, has recognized that there are significant gaps in resource information on the lease sale area, and that time is needed for industry to demonstrate the capability to adequately respond to an accident in as sensitive and challenging an area as the North Aleutian Basin. By delaying leasing in State waters and Federal waters in Bristol Bay until 1994, additional technology can be developed to provide the necessary protection to fish and wildlife resources during exploration, development, and production phases. Coordinated leasing schedules will also lessen the number of cyclic events that coastal communities must cope with in developing the necessary infrastructure in support of offshore activities. The few months delay from its originally scheduled sale date unfortunately has not alleviated these concerns.

In conclusion I would like to thank the Minerals Management Service for the opportunity to speak at this public hearing and to provide written comments on the draft environmental impact statement for Sale 92. The State requests that the Minerals Management Service concur with the State of Alaska that the risk of leasing in the North Aleutian Basin as scheduled for December 1985 is not in the nation's or State's best interest and should

therefore be delayed until at least 1994. This delay will reduce the risk to fish and wildlife resources, their habitats, and Americans who depend on these resources to sustain their economy and culture by allowing industry to obtain and apply knowledge, experience, and the most up to date drilling and oil spill cleanup technology to the North Aleutian Basin. It will also allow Minerals Management Service time to fill crucial data gaps necessary to prepare an adequate impact assessment and formulate effective mitigating measures.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

HJR 31

House Joint Resolution No. 31 requests a 10-year delay in the North Aleutian Basin federal Outer Continental Shelf lease sale. Postponement of this sale would be consistent with the state's Bristol Bay Area Management Plan, which postponed oil and gas activities on adjacent state-owned offshore lands until at least 1994.

The purpose of this delay is to allow additional environmental impact assessment work to be completed in the area, and to allow time for the development of new technologies that will be better suited for working safely in the extremities of the North Aleutian Basin environment.

This postponement is not intended to delay the development of Alaska's OCS lands as a whole, but to be assured that this development takes place in a manner that does not jeopardize existing resource and revenue bases.

The hydrocarbon potential of this basin is low compared to that of other Alaskan OCS planning areas. For example, the estimated oil reserves of the North Aleutian Basin are about 364 million barrels, whereas the estimated reserves of the St. George Basin, Navarin Basin, and Diapir Field are 660 million, 1.2 billion, and 3 billion barrels of oil, respectively.

In addition to having a relatively limited hydrocarbon potential, Alaska does not presently share in federal OCS revenues. In contrast to this situation, the Bristol Bay fisheries presently employ 10,000 people and produce $250,000,000 in domestic revenues annually.

This resolution addresses the problem the state is presented with, which is that of managing resource development so as to minimize the possiblity that development of one resource base will have a damaging effect upon the other.

ALASKA SUPPORT INDUSTRY ALLIANCE
BOX 100100
Anchorage, AK 99510

April 18, 1985

Representatives Adelheid Herrmann and
Richard Shultz
CoChairmen, House Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Herrmann & Shultz:

We understand that your committee will be hearing testimony on HJR 31, a resolution calling for another ten year delay in the sale of oil and gas leases in the North Aleutian Basin, next Wednesday, April 24.

As you might suspect, the Alaska Support Industry Alliance is in total opposition to the intent of HJR 31. We believe that another ten year delay is not only uncalled for but counter-productive to the best interests of the State of Alaska. Allegations that data gaps exist which must be filled with more studies of the area before a prudent decision can be made, are without merit. Nearly $100,000,000 has been spent by government, industry and academia over the past fifteen years studying the area. Of course, we could go on studying the area for another ten years - must we?

The oil and gas industry has drilled over 250 wells in the waters off Alaska's shores over the past 25 years. How much more experience is needed? The sale area poses substantially less difficulty and challenges to contemporary technology than Cook Inlet and, we trust most Alaskans need not be reminded of the compatability with subsistence fishing and the environment demonstrated by the petroleum industry and its support network in that body of water.

There are many other reasons we can cite for this sale to proceed as scheduled by the U.S. Department of the Interior. Unfortunately the House Oil and Gas Committee chose to not hear them prior to acting on approval of HJR 31 last week. We trust that the characterizations made by Representative Davis, that the House Resources Committee will provide the opportunity for a fair hearing, are accurate.

On behalf of the Alliance, I hereby request that a teleconference throughout the entire network be set on the bill to allow for a comprehensive hearing on the subject.

Thank you.

Sincerely,

Chuck Becker
Vice President for Policy

OFFICE OF
MANAGEMENT & BUDGET
MAR 01 1985
GOVERNMENTAL
COORDINATION

Bristol Bay
Coastal Resource Service Area
P.O. Box 189, Dillingham, Alaska 99576
(907) 842-5257 – 842-5258

February 23, 1985

Kurt Fredriksson
Division of Governmental Coordination
Pouch AW
Juneau, Alaska 99811-0165

RE: Comments of North Aleutian Basin Draft EIS

Dear Mr. Fredriksson:

Following are the Bristol Bay Coastal Resource Service Area (CRSA) Board's comments on the draft environmental impact statement (DEIS) for North Aleutian Basin sale #92. As the legal entity assigned the responsibility of developing and implementing a coastal management program for Bristol Bay, the CRSA Board is very concerned about lease #92; this is both in terms of the specific resource information that is lacking, and also, in regard to the exorbitant weight oil and gas is given in the decision making process versus the region's other physical, biological and cultural resource values.

The DEIS for the North Aleutian Basin sale contains the proposal, as well as three alternatives. The CRSA Board has rejected these four potential courses of action and urges the Secretary of Interior to delay proposed sale #92 for at least ten years. The reasons for this follow:

The CRSA Board has been a participant in the sale #92 lease process from the beginning. In a May 23, 1983 letter responding to the Mineral Management Service's (MMS) Call For Information the CRSA Board stated a number of concerns. This letter emphasized the extreme productivity, and sensitivity, of the nearshore environment of the lease sale area. These areas include: Izenbek and Nelson Lagoons, Herendeen Bay and Port Moller, the Seal Islands barrier islands and lagoon system, Port Heiden, and Ugashik and Egegik Bays. Many of the economically important fisheries resources of the region use these nearshore areas during one or more of their lifestages, particularly the critical juvenile stages. The CRSA Board requested that the MMS extensively research this nearshore zone during the DEIS assessment process.

In this same letter, the CRSA Board also voiced particular concern about the salmon which fuel Bristol Bay's world-renown salmon fishery, which in the last two years has had an average annual ex-vessel value (price paid to the fisherman) of 125 million dollars, with a high of 143 million dollars in 1983. A conservative estimate places the number of jobs involved in this fishery at 10,000 (these figures do not include the value and jobs from the Aleutian Island/Alaska Peninsula Management Area). Due to the paramount importance the salmon fishery holds in the economic lives of the region's residents - as well as the subsistence value of the resource, which is difficult to quantify - the CRSA Board asked for a detailed assessment of the location and timing of the movements of salmon in the nearshore and offshore areas, both for the adult and juvenile life stages.

The MMS did not provide this information in the DEIS. Specific omissions in regard to salmon are as follows:

1) What are the seaward migration patterns of king, silver, pink and chum salmon?

2) To what degree do salmon stocks become mixed or concentrated in the nearshore water of Bristol Bay?

3) How long do juvenile salmon remain in the nearshore waters of outer Bristol Bay?

4) What ability do juvenile salmon have in detecting and avoiding oil-contaminated waters?

5) Will adult salmon migrate through oil contaminated waters?

Although these questions are couched in terms of Bristol Bay, it must be remembered that all western Alaska salmon stocks migrate through the North Aleutian Basin "portal" and thus, they are of statewide concern.

Salmon are obviously the major economic and subsistence resource to the region's residents. The last decade, though, has seen the emergence of a new fishery in the Bristol Bay region - herring. The Togiak herring fishery, the largest in Alaska, has increased dramatically over the last five years and had an ex-vessel value of 10.5 million dollars in 1983. As markets evolve and stabilize, new herring fisheries will undoubtedly emerge; in fact, several herring fisheries are scheduled for 1985 in the nearshore areas adjacent to lease sale #92. Two basic questions in regard to herring, and were not addressed in the DEIS, are:

1) The distribution and abundance of herring in the North Aleutian Basin area;

2) The effects of oil contamination on herring spawning substrates.

The lack of information on salmon and herring are of primary concern to the CRSA Board because of the economic importance of these species to the residents of the region.

Significant gaps in other fisheries resources also exist. Basic information on king crab, particularly given the population fluctuations that have occurred in the recent past, is lacking. Also, the distribution and abundance of capelin, important as a food source for species of economic importance, should be undertaken.

The concerns over the impact of lease sale #92 relate to the potential for an oil spill. The MMS spent a significant amount of time in the DEIS quantifying the potential for a spill and concluded that the risk was very low. This did little to allay the fears of the CRSA Board, or the region's resident. The basic question is "what if. . ."? Oil spill response has not been demonstrated in the Bering Sea, which is appropriately referred to by the industry as a "frontier area". A major spill would require relocation of equipment from as far away as California, possible taking two weeks. A recent transportation spill off of the Louisiana coast resulted in 55,000 barrels being dumped into the Gulf of Mexico. Compared to the conditions industry would confront in the Bering Sea, the clean-up of this spill should have been logistically simple; yet only one-tenth of one percent of the spilled oil was contained!

The final comment the CRSA Board wishes to make, and it goes beyond the adequacy of the DEIS, is regard to the national interest of oil and gas leasing and exploration in view of the internationally-recognized resources of Bristol Bay. Unlike oil and gas (through the Outer Continental Shelf Lands Act, as amended), these unique physical and biological resources do not have a comprehensive mandate that states they are of national interest. The questions the CRSA Board poses are these: Is not the largest red salmon fishery in the world of national interest? Are not the largest congregation of marine mammals, and one of the greatest staging areas for waterfowl, in the world of national interest? Is not one of the greatest groundfish and shellfish havest areas in the world of national interest? The CRSA Board feels that any one of these, and definitely the combination of all of them, warrant national interest consideration. The Board also believes that if this discussion were held outside of the very technical and lengthy OCS lease sale planning process, broad-based public opinion would support this conclusion.

In summary, the CRSA Board recommends at least a ten year delay in awarding leases in the North Aleutian Basin. This is in concurrence with the State of Alaska which, through its own planning process, has determined that the economic importance of the area's resources, and the lack of information on them, warrant a delay in oil and gas leasing in the North Aleutian Basin area.

The CRSA Board appreciates the opportunity to comment.

Sincerely,

Tim Hostetler

Tim Hostetler
Acting Director
Bristol Bay CRSA Board

cc: Al Powers

TH/pr

ALEUTIANS EAST COASTAL RESOURCE SERVICE AREA
1689 "C" STREET, SUITE 201
ANCHORAGE, ALASKA 99501
(907) 276-2700

OFFICE OF
MANAGEMENT & BUDGET
MAR 1985
GOVERNMENTAL
COORDINATION

February 25, 1985

Mr. Robert Grogan
Office of Management and Budget
Division of Governmental Coordination
Pouch AW (MS 0165)
Juneau, Alaska 99811

Subject: Aleutians East CRSA Comments on the North Aleutian Shelf Draft Environmental Impact Statement.

Dear Mr. Grogan:

The Board passed resolution 85-3, on February 22, 1985, in support of Governor Sheffield's position for a delay of the N. Aleutian Shelf lease sale until at least 1994. This will assure that the data gaps identified by the State are adequately addressed; that the industry catch up with oil spill cleanup and containment and transshipment technology; and that the region is afforded the opportunity to complete the Aleutians East CRSA Coastal Management Plan and that the State and federal government approve the plan and incorporate it into State and federal consistency reviews.

The Board's review of the DEIS is still incomplete. The Board has appreciated the State's extension of a week. Unfortunately poor weather conditions, a better than expected tanner crab season, and delay by consultants reviewing the DEIS have prevented the Board from completing the Board review by February 25, 1985. The Review of the oil spill trajectory analysis is the major area the Board needs to address before the Board's comments will be finalized. The Board understands that our comments on the oil spill trajectory analysis may not be incorporated into the State comments because we are so late, however we expect that the comments herein will be included in the State's comments.

The Aleutians East CRSA Board has reviewed the North Aleutian Shelf DEIS and has concluded that the lease sale as proposed in the DEIS is not consistent to the maximum extent practicable with the State Coastal Management Program nor with the Aleutians East CRSA public hearing draft Coastal Management Plan. In Section E of the General Comments herein the Board identifies measures that need to be taken in order for the Board to consider the lease sale to be consistent with the Aleutians East public hearing draft CMP.,

The timing of the lease sale in relation to the Aleutians East CRSA program is unfortunate. The Aleutians East CRSA does not have an approved program. The Board has been rigorous in producing a plan and is pleased that the public hearing draft is out for review. The policies in the draft plan reflect the Board's position regarding 'balanced development' in the Aleutians East region. As you know the North Aleutian Shelf lease sale area is adjacent to the Aleutians East region. The major potential impacts are all directed at the nearshore areas of the north and south side of the Aleutians East CRSA. If a hydrocarbon resource is found the Aleutians East Board will review the permitted activities using the approved Aleutians East Plan as a guide. In light of this the Board has thoroughly reviewed the North Aleutian Shelf DEIS with the Board's knowledge of the region and the public hearing draft policies in mind.

The Board comments are divided into two parts.

1. General Comments on the DEIS including the Aleutians East CRSA policies that need to be incorporated into the DEIS stipulations and ITL's; and

2. Specific Comments on the DEIS.

The Board has been encouraged by your staff's cooperation in working with us. The State and local districts have come a long way in two years by developing a workable process for the State to incorporate local comments into the State position on OCS lease sales.

The Board looks forward to working with you and your staff over the next few months on this issue.

Sincerely,

Stanley Mack (acs)

Stanley Mack
Chairman Aleutians East CRSA Board

cc: CRSA Board
Kurt Fredrickson, OMB
BBCRSA Board
City of Sand Point
City of King Cove
City of Cold Bay
False Pass Village Council
Nelson Lagoon Village Council
Rep. Zharoff
Rep. Hermann

OFFICE OF
MANAGEMENT & BUDGET
FEB 13 1985
GOVERNMENTAL
COORDINATION

CITY OF PORT HEIDEN
PORT HEIDEN, ALASKA 99549

RESOLUTION 85-20

WHEREAS, The U.S. Department of Interior has scheduled an oil and gas lease sale in the North Aleutian Basin OCS area; and

WHEREAS, this sale area supports one of the richest concentrations of fish, waterfowl, marine birds and marine mammals in the world; and

WHEREAS, the world's largest run of salmon migrates through the lease area; and

WHEREAS, the Bristol Bay salmon fishery forms the economic backbone of the region and is a resource of state, national and international significance; and

WHEREAS, the villagers are highly dependent on the Bristol Bay salmon fishery as a major souce of subsistence food; and

WHEREAS, many questions remain unanswered concerning the potential impact of oil and gas development on the fish and wildlife of the area; and

WHEREAS, the oild industry should gain operation experience in other less sensitive areas before being allowed into the North Aleutian Basin;

NOW THEREFORE BE IT RESOLVED that the City Council of Port Heiden strongly urges the U.S. Department of Interior (Minerals Management Service) to cancel North Aleutian Basin OCS Sale #92 and defer any future sales in the area for at least ten (10) years.

Mayor

Attested by Clerk

THIS RESOLUTION HAS BEEN PROPERLY ADOPTED THIS 5 day of FEB 1985 by the authorized membership of the City Council of Port Heiden, in Port Heiden, Alaska.

THE SEAL OF THE CITY OF PORT HEIDEN

DRAFT

WHEREAS, The Bristol Bay region of Alaska is internationally recognized for its fish and wildlife resources;

WHEREAS, these resources, particularly salmon, represent one of the very few opportunities the region's residents have for participating in the cash economy;

WHEREAS, further dependence on the abundant fish and wildlife of Bristol Bay comes from the subsistence lifestyle that the vast majority of the region's residents lead;

WHEREAS, the federal Department of Interior is pursuing an outer continental shelf (OCS) lease sale in the North Aleutian Basin (Bristol Bay), scheduled for December of 1985;

WHEREAS, the State of Alaska has recognized, through its own planning process, that there are significant gaps in resource information on the lease sale area, and that industry must demonstrate, in other frontier areas, its capability to explore and produce in an environmentally safe manner;

WHEREAS, the state's recognition of these information needs has resulted in its delaying all lease sales in state waters until 1994, and has called upon the federal government to do likewise with the North Aleutian Basin sale;

NOW THEREFORE BE IT RESOLVED that the City Council of Portage Creek urges the Secretary of Interior to remove North Aleutian Basin Sale #92 from the current OCS leasing schedule until at least 1994.

DRAFT

OFFICE OF
MANAGEMENT & BUDGET

FEB 08 1985

GOVERNMENTAL
COORDINATION

CITY OF ALEKNAGIK

P.O. Box 33
ALEKNAGIK, ALASKA 99555
(907) 842-5953

OFFICE OF
MANAGEMENT & BUDGET

FEB 20 1985

GOVERNMENTAL
COORDINATION

February 14, 1985

Coastal Resource Service Area
P.O. Box 189
Dillingham, AK 99576

Attn: Tim Hostetler

Dear Tim:

Enclosed is a copy of Resolution 85-5 that the City Council passed on their Regular Council Meeting held February 12th, and the Council supports this resolution and hope that the Federal and State officials involved in delaying the sale of the North Aleutian Basin (Bristol Bay) OCS Lease will consider our support.

Thank you.

Sincerely,

CITY OF ALEKNAGIK

Helen M. Chythlook

Helen M. Chythlook
City Administrator

cc: Rod Swope, Div. of Governmental Coorination
Governor Bill Sheffield
Senator Ted Stevens
Representative Don Young

CITY OF ALEKNAGIK
P.O. Box 33
ALEKNAGIK, ALASKA 99555
(907) 842-5953

RESOLUTION 85-5

A RESOLUTION DELAYING THE NORTH ALEUTIAN BASIN (BRISTOL BAY) OCS LEASE SALE.

WHEREAS, The Bristol Bay region of Alaska is internationally recognized its fish and wildlife resources;

WHEREAS, these resources, particularly salmon, represent one of the very few opportunities the region's residents have for participating in the cash economy;

WHEREAS, further dependence on the abundant fish and wildlife of Bristol Bay comes from the subsistence lifestyle that the vast majority of the region's residents lead;

WHEREAS, the federal Department of Interior is pursuing an outer continental shelf (OCS) lease sale in the North Aleutian Basin (Bristol Bay), scheduled for December of 1985;

WHEREAS, the State of Alaska has recognized, through its own planning process, that there are significant gaps in resource information on the lease sale area, and that industry must demonstrate, in other frontier areas, its capability to explore and produce in an environmentally safe manner;

WHEREAS, the state's recognition of these information needs has resulted in its delaying all lease sales in state waters until 1994, and has called upon the federal government to do likewise with the North Aleutian Basin sale;

NOW THEREFORE BE IT RESOLVED that the City Council of Aleknagik, Alaska urges the Secretary of Interior to remove North Aleutian Basin Sale #92 from the current OCS leasing schedule until at least 1994.

APPROVED AND ADOPTED THIS 13 DAY OF February, 1985.

Mayor

Vice-Mayor

Secretary-Treasurer

Councilmember

Councilmember

Councilmember

ATTEST:
City Clerk

2-13-85
Date

EGEGIK VILLAGE COUNCIL

Box 29
Egegik, Alaska 99579

February 4, 1985

Mr. Rod Swope
Office of Management & Budget
Division of Governmental Coordination
Pouch AW
Juneau, Alaska 99811

Subject: North Aleautian Basin (Bristol Bay) OCS Lease Sale

Dear Mr. Swope:

We as a Commercial Fishing community urge you to do all that you can to get the Lease Sale delayed for ten (10) years in order to allow for more time to study the potential environmental impacts and allow the oil companies time to gain experience in other less sensitive areas.

Sincerely yours,

EGEGIK VILLAGE COUNCIL

Richard E. Deigh
President

RED/sk

Enclosure

copies: Honorable Governor Sheffield
Senator Ted Stevens
Representative Don Young
Coastal Resource Service Area Board

OFFICE OF
MANAGEMENT & BUDGET
FEB 20 1985
GOVERNMENTAL
COORDINATION

EGEGIK VILLAGE COUNCIL

Box 29
Egegik, Alaska 99579

RESOLUTION NO. 85-03

3 NORTH ALEUTIAN BASIN OCS LEASE SALE #92

WHEREAS, the Village of Egegik is an Alaska Native Village traditionally organized and recognized by the United States thru the Secretary of Interior; and

WHEREAS, the Egegik Village Council is the governing body of the village of Egegik;

WHEREAS, the U.S. Department of Interior has scheduled an oil and gas lease sale in the North Aleautian Basin OCS area; and

WHEREAS, this sale area supports one of the richest concentrations of fish, waterfowl, marine birds and marine mammals in the world; and

WHEREAS, the world's largest run of salmon migrates through the lease area; and

WHEREAS, the Bristol Bay salmon fishery forms the economic backbone of the region and is a resource of state, national and international significance; and

WHEREAS, the Villagers are highly dependent on the Bristol Bay salmon fishery as a major source of subsistence food; and

WHEREAS, many questions remain unanswered concerning the potential impact of oil and gas development on the fish and wildlife in the area; and

WHEREAS, the oil industry should gain operating experience in other less sensitive areas before being allowed into the North Aleutian Basin;

NOW THEREFORE BE IT RESOLVED that the Village Council of EGEGIK strongly urges the U.S. Department of Interior (Minerals Management Service) to cancel North Aleutian Basin OCS Sale #92 and defer any future sales in the area for at least ten (10) years.

Quorum Constituted by 4 members

Voting for 5

Voting against 0

Date Feb. 8 1985

Certified by Josephine J. Williams

Date 2-8-85

TOGIAK CITY COUNCIL

Resolution No. 85-02

WHEREAS, The Bristol Bay region of Alaska is internationally recognized for its fish and wildlife resources;

WHEREAS, these resources, particularly salmon, represent one of the very few opportunities the region's residents have for participating in the cash economy;

WHEREAS, further dependence on the abundant fish and wildlife of Bristol Bay comes from the subsistance lifestyle that the vast majority of the region's residents lead;

WHEREAS, the federal Department of Interior is pursuing an outer continental shelf (OCS) lease sale in the North Aleutian Basin (Bristol Bay), scheduled for December of 1985;

WHEREAS, the State of Alaska has recognized, through its own planning process, that there are significant gaps in resource information on the lease sale area, and that industry must demonstrate, in other frontier areas, its capability to explore and produce in an environmentally safe manner;

WHEREAS, the state's recognition of these information needs has resulted in its delaying all lease sales in state waters until 1994, and has called upon the federal government to do likewise with the North Aleutian Basin sales;

NOW THEREFORE BE IT RESOLVED that the Togiak City Council of Togiak urges the Secretary of Interior to remove North Aleutian Basin Sale #92 from the current OCS leasing schedule until at least 1994.

Emma Ayojiak-Carlos

Mayor

ATTEST:

Annabelle T Schaeffer

OFFICE OF
MANAGEMENT & BUDGET
FEB 11 1985
GOVERNMENTAL
COORDINATION

Pedro Bay Village Council Resolution #85-01

WHEREAS, The U.S. Department of Interior has scheduled an oil and gas lease sale in the North Aleutian Basin OCS area; and

WHEREAS, this sale area supports one of the richest concentrations of fish, waterfowl, marine birds and marine mamals in the world; and

WHEREAS, the world's largest run of salmon migrates through the lease area; and

WHEREAS, the Bristol Bay salmon fishery forms the economic backbone of the region and is a resource of state, national and international signaficance; and

WHEREAS, the villagers are highly dependent on the Bristol Bay salmon fishery as a major source of subsistence food; and

WHEREAS, many questions remain unanswered concerning the potential impact of oil and gas development on the fish and wildlife of the area; and

WHEREAS, the oil industry should gain operating excerience in other less sensitive areas before being allowed into the North Aleutian Basin;

NOW THEREFORE BE IT RESOLVED that the Village Council of Pedro Bay strongly urges the U.S. Department of Interior (Minerals Management Service) to cancel North Aleutian Basin OCS Sale #92 and defer any future sales in the area for at least ten (10) years.

PASSED THIS 14th DAY OF FEBRUARY, 1985.

Council President, Carl Jensen _____
Vice-President, Zenia Kolyaha _____
Secretary, Ruth Andree _____
Treasurer, Norman Jacko _____
Members, Elaine Aaberg _____
Keith Jensen _____

ATTEST: _____
Village Administrator, Barbara Jacko

OFFICE OF MANAGEMENT & BUDGET
FEB 26 1985
GOVERNMENTAL COORDINATION

UNITED FISHERMEN OF ALASKA

319 Seward Street Suite #10
Juneau, Alaska 99801-1188
(907) 586-2820

Cass M. Parsons
Executive Director

Mr. Kurt Friedrukson
Senior Analyst
Office of the Governor
Division of Governmental Coordination
Pouch AM
Juneau, Alaska 99811

Dear Mr. Freidrukson:

Enclosed please find a copy of intitial "information needs" identified by the United Fishermen of Alaska on the proposed North Aleutian Shelf lease sale, as well as a resolution passed last week during the UFA's annual board of director's meeting.

While we have not yet completed the information needs assessment, the UFA feels very strongly that a ten-year delay on the lease sale is still warrented, based on the initial survey showing a tremendous amount of vital information missing from the E.I.S. and research in general.

We will be submitting further information needs sometime within the next three weeks.

Thank you.

Sincerely,

Cass M. Parsons
UFA Executive Director

cc: UFA Board of Directors

OFFICE OF
MANAGEMENT & BUDGET
FEB 26 1985
GOVERNMENTAL
COORDINATION

INFORMATION NEEDS
SUMMARY ASSESSMENT

Salmon

Need: Comprehensive seaward migration patterns of juvenile salmon of all species.

Monthly survey of near-shore waters to identify habitat of juvenile salmon in coastal bays and lagoons.

Study of ability of juvenile salmon to detect and avoid oil contaminated waters; also chronic low-level affects on juvenile salmon.

Study of degree of interference oil has on adult salmon migrations and avoidance capabilities.

Herring

Need: Study of distribution and abundance of herring in lease area, both near shore during spawning activities and off-shore migration patterns after spawning.

Distribution and depths of larval herring in surface waters after hatching.

Study of inpacts of oil contaminents on substrates used for spawning.

Caplain

Need: Study of affects of oil contamination on all life stages of caplain.

Study of distribution and abundance of caplain.

Study of impact on spawning areas of caplain once identified.

King Crab

Need: Study of impact of oil contamination on king crab larvae and juveniles.

Study of potential for hydrocarbon uptake by eggs and juveniles.

UNITED FISHERMEN OF ALASKA

Cass M. Parsons
Executive Director

UNITED FISHERMEN OF ALASKA

RESOLUTION 85-3

WHEREAS the United Fishermen of Alaska is an organization representing individual fishermen as well as 17 member fisheries organizations; and

WHEREAS the UFA is vitally concerned with the use, protection and enhancement of Alaska's fisheries resources and their habitat; and

WHEREAS the Federal government has proposed leasing the Outer Continental Shelf in the area known as the North Aleutian Basin; and

WHEREAS the fisheries resources of the Bristol Bay region and North Aleutian Basin are a renewable resource of extraordinary value to the local fishermen, the State of Alaska, and the United States; and

WHEREAS the UFA has had a long standing concern with protecting the fisheries resources in this region, and has expressed particular concern over the effects which oil and gas development will have on these fisheries; and

WHEREAS the economic value of the fishery will, over the long term, greatly exceed the value of the projected oil reserves in the lease area, and therefore must receive maximum protection; and

WHEREAS both the UFA and the State of Alaska have identified several significant information needs relating to fisheries, marine mammals, birds and oilspill trajectory analyses; and

WHEREAS the UFA believes that this information needs to be addressed prior to any consideration of offshore oil and gas leasing in this region in order for all parties to fully and fairly evaluate the impacts of petroleum exploration and development on the important resources of the region.

NOW THEREFORE BE IT RESOLVED that the United Fishermen of Alaska, supports a 10 year delay in any offshore oil and gas leasing in the North Aleutian Basin; and

BE IT FURTHER RESOLVED that the United Fishermen of Alaska believe that this delay should be used to, among other things, provide time to:

1) further develop offshore petroleum drilling and transportation technologies that will ensure safe operations; and

2) ensure that oilspill containment and clean-up technologies are further developed, tested and refined so that oilspill clean-up operations will be effective under the weather and oceanographic conditions found in the region; and

3) allow time for sufficient scientific studies to address the important scientific questions which have been identified by the state and by the UFA; and

BE IT FURTHER RESOLVED that the United Fishermen of Alaska encourages the State of Alaska, and the Alaska Congressional Delegation to work with all parties and to use all of the powers available to them to ensure that the proposed OCS lease sale No. 92 in the North Aleutian Basin is deferred.

Cass M. Parsons
UFA Executive Director

2/19/85
Date

Robert M. Blake
UFA President

2/19/85
Date

Natural Resources Defense Council, Inc.

122 EAST 42ND STREET
NEW YORK, N.Y. 10168
212 949-0049

Western Office
25 KEARNY STREET
SAN FRANCISCO, CALIF. 94108
415 421-6561

Washington Office
1350 NEW YORK AVENUE, N.W.
SUITE 300
WASHINGTON, D.C. 20005
202 783-7800

Mr. Kurt A. Fredriksson
Office of the Governor
Division of Governmental Coordination
Pouch AW
Juneau, AK 99811

18 February 1985

Dear Mr. Frederiksson:

This letter is in response to your request for comments on the Draft Environmental Impact Statement (DEIS) prepared for OCS lease Sale 92 scheduled for December, 1985 in Bristol Bay. Based on our preliminary review of the DEIS and of other documents related to OCS leasing in Bristol Bay, we strongly recommend that the State of Alaska adopt a position opposing federal OCS leasing in Bristol Bay. We base this recommendation on the following considerations.

1. <u>The Value of the Biological Resources of Bristol Bay</u>

According to the U.S. Department of the Interior, the Bristol Bay estuary and the associated continental shelf possess the greatest concentration of birds, fish and marine mammals found anywhere on the North American continent (DOI, 1982). The acreage scheduled to be offered for lease in Sale 92 lies in the heart of this enormously productive region. Indeed, the Sale 92 area contains some of the most important and sensitive habitat

for the biological resources of Bristol Bay. These resources include the following.

Fish: The Sale 92 area contains the major red king crab reproductive site for the Bering Sea (Thorsteinson and Thorsteinson, 1984). The ex-vessel value of the red king crab fishery in 1981 was $169 million (NOAA, 1981).

Bristol Bay also supports the largest sockeye salmon fishery in the world (NMFS, 1980). Approximately 88 percent of all salmon entering streams around the Bering Sea pass through North Aleutian Shelf waters during migration (Thorsteinson and Thorstenison, 1984). The total Bristol Bay salmon fishery, valued in excess of $250 million, is thought to employ 10,000 people. Native villages throughout southwestern Alaska depend heavily on salmon for subsistence.

Finally, the Sale 92 region supports several commercial fisheries for food and bait herring, and there is a potential for capelin to support a future commercial fishery along the north Alaska Peninsula (Barton, et al., 1977).

Birds: The Sale 92 area encompassess one of the world's great bird migration crossroads. Izembek Lagoon, which contains the largest eelgrass beds in the world, is utilized by hundreds of thousands of migrating waterfowl each year. The nutrient-rich lagoons and bays on the north side of the Alaska Peninsula support in various seasons major portions of either the North American or Pacific flyway populations of several species of waterfowl, including black brant, emperor goose, and Stellar's

eider. The coastal areas of the north shore are critical wintering and staging areas for huge numbers of waterfowl and shorebirds. A million birds have been recorded along the north shore of the Alaska Peninsula in fall. (Strauch and Hunt, 1982.)

Marine Mammals: At least 20 species of marine mammals are known to occur in the lease sale area. Approximately 4,000 sea lions, 30,000 harbor seals, 15,000 walrus and 17,000 sea otters utilize Bristol Bay habitats during all or parts of the year (Frost et al., 1983). Virtually the entire eastern Pacific gray whale population, estimated at 15,000 - 17,000 individuals, and approximately 1.2 million northern fur seals (roughly 75% of the world population) migrate through Unimak Pass during their spring and fall migrations (Rugh and Braham, 1979; Leatherwood et al., 1983.)

2. Sensitivity of Affected Biological Resources. The Department of the Interior estimates that one spill of 1,000 barrels or more will occur as a result of Sale 92 (DEIS at IV-B-1). In addition, there is a possibility of a catastrophic (greater than 100,000 barrels) spill (id).

Petroleum hydrocarbons are extremely toxic to a wide variety of organisms at very low concentrations. Oil spills can affect fish by inhibiting growth, disrupting feeding and reproduction, contaminating spawning areas, and blocking or delaying migrations. Direct contact with oil is usually fatal to birds. The pelage of sea otters and fur seals loses its insulative

capacity when oiled, which can lead to death from hypothermia. Grooming oiled fur may result in ingestion of fatal amounts of oil. The effects of oil on whales are poorly understood, but are potentially serious for species of baleen whale, such as the endangered gray whale, that do not feed in wintering grounds and are thus under stress when migrating through Bristol Bay. For fish, marine mammals and birds, elimination or contamination of food sources may result in stress due to reduced food availability or in the ingestion of hydrocarbons, with concomitant effects on behavior and reproductive success.

Prohibiting oil and gas leasing in the area excluded from leasing in Alternative IV in the DEIS will not ensure that oil will not be spilled in sensitive areas or transported to them by winds and storms during critical periods for fish and other wildlife.

In addition to spills, there are other activities associated with offshore oil and gas development that threaten fish and wildlife. Offshore seismic exploratory activity using airguns has been shown to modify the behavior of bowhead whales at distances of 50 km or more (Richardson, 1983). Drilling muds can have acute and chronic effects, particularly for benthic organisms. Formation waters can retain up to 50 ppm of oil as small droplets and up to 35 ppm as dissolved hydrocarbons -- well above lethal concentrations to larval and adult fish and crabs (.01 - 1 ppm) (DEIS at IV-B-2). Blasting, sand and gravel mining, aircraft traffic, cooling water discharge, construction,

and other activities associated with the development of onshore support facilities could result in the abandonment of nesting, breeding or staging areas for birds and other wildlife as well as damage or destroy important salmon habitat.

3. Risks Associated with Development. Within the Bristol Bay uplands adjacent to the sale area, there are 11 active volcanoes; 6 on Unimak Island and 5 on the Alaska Peninsula. The Bristol Bay region is among the most seismically active in the world, with major and minor faults criss-crossing the ocean bottom. Earthquakes are common. Severe weather, frequent fog, winter ice, earthquakes and tsunamis all significantly contribute to a high probability for the occurrence of spills due to platform and tanker accidents. The regional circulation would probably transport oil along the north coast of the Alskan Peninsula to the head of Bristol Bay. Mean wind direction in the area is either onshore or coast-parallel 9-10 months out of the year. In short, virtually all significant environmental factors would work in consort to increase the probability for and the degree of damage resulting from an oil spill or blowout. The Department of Interior has concluded that the effectiveness of oil spill response capability in the Sale 92 area is unpredictable (DEIS at IV-A-13).

4. Lack of significant hydrocarbon resources. DOI's conditional mean resource estimate for the Sale 92 area is 364 million barrels of oil and 2.62 tcf of gas. This represents 2% of the total U.S. OCS hydrocarbon reserve.* If gas is determined to be uneconomic in Bristol Bay, this figure falls to 1% of the total U.S. OCS hydrocarbon reserve. At 1984 U.S. consumption rates,** the amount of oil in Bristol Bay represents a 23 day supply.

In terms of dollar value, it is clear that fish will contribute more than oil to the economy of the State of Alaska and the nation. Last year, the Congressional Budget Office estimated that a one-year delay in leasing in Bristol Bay would cost approximately $150 million in lost bonus bids.*** The Department of the Interior estimated that the total cost of a one year delay (the discounted sum of revenues, less the cost of finding, producing and transporting the resource to market) is $200 million. As noted above, the value of the Bristol Bay salmon fishery alone is estimated at $250 million and is thought to employ 10,000 people. From an economic standpoint, it is clearly to the advantage of the State to preserve Bristol Bay as a revenue generator through fish rather than oil.

---

* Using a conversion factor of 5.62 to convert from tcf of gas to billion barrels of oil equivalent (BOE). 2.62/5.62 = 0.466 billion BOE.0.466 + 0.364 billion barrels of oil = .83 billion BOE. Total US OCS BOE = 36.8 billion BOE (DOI, 1983).

** 15.8 million barrels/day. U.S. Department of Energy, Monthly Energy Review. January, 1985.

*** June 26, 1984 CBO memo "CBO's Estimate of Restriction on OCS Leasing."

5. Data Gaps. Substantial data gaps have been identified by MMS, the State of Alaska and the United Fishermen of Alaska with regards to the impacts of oil development in Bristol Bay on red king crab, salmon, herring, capelin, bottomfish, gray whales, fur seals, Steller's sea lions, overwintering seabirds and waterfowl, staging waterfowl, and sensitive coastal and marine habitats. Information is also lacking regarding the capability of current oil spill containment and cleanup technology to cope with spills in the Bristol Bay environment.

Summary

Due to the importance of the biological resources of Bristol Bay, their sensitivity, the hazards associated with oil development, the relatively small amount oil in relation to the richness of the biological resources present, and the lack of information regarding the potential impacts of hydrocarbon development in Bristol Bay, NRDC strongly recommends that the state adopt a position opposing OCS lease Sale 92.

Thank you for considering these comments.

Sincerely

Lisa Speer

Lisa Speer
Coastal Resource Specialist

References Cited

DOI, 1983. Annual Review of the 5-Year OCS Oil and Gas Leasing Program. July 28, 1983.

DOI, 1982. Final Supplement to the Final Environmental Impact Statement on the Proposed 5 Year Oil and Gas Lease Schedule March, 1982.

Frost, K.J., L.F. Lowry, and J.J. Bunns. 1983. Distribution of marine mammals in the coastal zone of the Bering Sea during the summer and autumn. In: Environmental Assessment of the Alaskan Continental Shelf, Final Reports of Principal Investigators, Vol. 20. OCSEAP, Juneau, pp. 365-561.

Leatherwood, S., A.E. Bowles and R.R. Reeves. 1983. Endangered whales of the eastern Bering Sea and Shelikof Strait, Alaska. Hubbs - Sea World Research Institute Technical Report No. 83-159.

NMFS. 1980. Living Marine Resources and Commercial Fisheries Relative to Potential Oil and Gas Development in the Northern Aleutian Shelf Area (Tentative Sale No. 75). National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Seattle, WA. 92 p.

NOAA. 1981. Office of Marine Pollution Assessment. Environmental Assessment of the Alaskan Continental Shelf. U.S. Department of Commerce, OCS Vol. II, Biological Studies. July 1981.

Richardson, W.J., et al, 1983. Observations of the Behavior of Bowhead Whales in the Canadian Beaufort Sea in the Presence of Marine Industrial Activities. p.7.

Rugh, D.J. and H.W. Braham. 1979. California gray whale (Esrhichtius robustus) fall migration through Unimak Pass, AK, 1977: A preliminary report. Rept. Int. Whal. Comm. 29:315-320.

Strauch, J.G. and G.L. Hunt, Jr. 1982. Marine birds. In: Proceedings of a Synthesis Meeting: The St. George Basin Environment and Possible4 Consequences of Planned Offshore Oil and Gas Development (Hameedi M.J., ed.). OCSEAP Program, Juneau pp. 83-110.

Thorsteinson, F.V. and L.K. Thorsteinson, 1984. Fishery Resources. In: Proceedings of a Synthesis Meeting: The North Aleutian Shelf Environment and Possible Consequences of Offshore Oil and Gas Development (Thorsteinson, L.K.,

THE ALLIANCE
P.O. Box 100100 / Anchorage, Alaska 99510 / (907) 562-0100

TESTIMONY ON

H J R 31

A

RESOLUTION IN OPPOSITION TO THE SALE OF

OIL AND GAS LEASES IN THE NORTH ALEUTIAN BASIN

(SALE #92)

for the

ALASKA SUPPORT INDUSTRY ALLIANCE

by

Chuck Becker
Director Government Affairs
Brown & Root U.S.A., Inc.

before the

Alaska State

House Special Committee on

OIL AND GAS

10 April, 1985

Alaska Support Industry Alliance
... for responsible economic development

Milton Byrd – President
Frontier Companies of Alaska

Ann Curtis – Vice President
Crowley Maritime

Charles F. Becker – Vice President
Brown & Root, Inc.

William D. Bennett – Secretary
Perkins, Cole, Stone,
Olsen & Williams

Val Molyneux – Treasurer
Veco, Inc.

Bill Bettes – Director
Pingo Corporation

Randy Goodrich – Director
Executive Travel Service

Roger Haxby – Director
Waukesha Alaska Corporation

Joe Mathis – Director
Universal Services, Inc.

Walt Ratterman – Director
Pacific Industrial Company

Jack Thompson – Director
Air Van Lines, Inc.

William F. Webb – Director
Arctic Hosts, Inc.

MY NAME IS CHUCK BECKER. I AM THE DIRECTOR OF GOVERNMENT AFFAIRS IN ALASKA FOR BROWN & ROOT, U.S.A. I AM HERE TODAY REPRESENTING THE ALASKA SUPPORT INDUSTRY ALLIANCE FOR WHICH I AM VICE PRESIDENT OF PUBLIC POLICY.

THE ALASKA SUPPORT INDUSTRY ALLIANCE IS A BUSINESS LEAGUE MADE UP OF SOME 200 COMPANIES WHO DO BUSINESS IN ALASKA. OUR MEMBERS PROVIDE EQUIPMENT, SUPPLIES, AND SERVICES TO THE STATE'S OIL, GAS AND MINING INDUSTRIES. WE ARE THE ENGINEERING COMPANIES AND THE CONSTRUCTORS, THE ARCHITECTS AND ATTORNEYS, OIL WELL LOGGERS AND DRILLING FIRMS, CATERERS AND TRANSPORTATION COMPANIES, EQUIPMENT VENDORS AND DIVING FIRMS. WE ARE UNION AND OPEN SHOP - LARGE AND SMALL, JOINED TOGETHER IN AN ALLIANCE TO FOCUS ON PUBLIC POLICY DECISIONS THROUGHOUT THE THREE LEVELS OF GOVERNMENT.

COMPANIES ARE ATTRACTED TO MEMBERSHIP IN THE ALLIANCE BECAUSE EXECUTIVES HAVE COME TO UNDERSTAND HOW PUBLIC POLICY DECISIONS AND ACTIONS EFFECT THE BOTTOM LINE OF PROFIT AND LOSS STATEMENTS. AN AWARENESS IS QUICKLY DEVELOPING AMONG EXECUTIVES AND EMPLOYEES IN THE SUPPORT INDUSTRY AS TO THE IMPORTANCE A HEALTHY AND VIGOROUS PETROLEUM AND MINING INDUSTRY IS TO THEIR OPERATIONS AND SUCCESS. THAT UNDERSTANDING IS SPREADING LESS QUICKLY TO GOVERNMENTAL DECISIONMAKERS, HOWEVER.

IN AN EFFORT TO FOCUS PUBLIC ATTENTION ON THE CRITICAL ROLE THE STATE'S OIL AND GAS INDUSTRY PLAYS IN THE SOCIAL AND ECONOMIC FABRIC OF ALASKA, THE ALASKA OIL AND GAS ASSOCIATION RECENTLY PUBLISHED THE RESULTS OF A SURVEY WHICH DEMONSTRATES THE ENORMOUS BENEFIT THIS INDUSTRY HAS ON ALASKA.

THE SURVEY CONSISTED OF SEPARATE YET INTERRELATED TASKS. FIRST, EACH COMPANY COMPRISING THE STATE'S OIL AND GAS INDUSTRY WAS SENT A FIELD-TESTED SURVEY INSTRUMENT BY DIRECT MAIL; SECONDLY, QUESTIONAIRES WERE SENT TO 2,460 ALASKA BUSINESSES; FINALLY, OVER 1,000 ADULTS THROUGHOUT THE ENTIRE STATE OF ALASKA WERE INTERVIEWED BY TELEPHONE USING RANDOM DIGIT DIALING TECHNIQUES.

SURVEY RESULTS DEMONSTRATED THAT OF THE 147,000 HOUSEHOLDS IN THE STATE OF ALASKA, 42,960 OR 29 PERCENT OF THESE HOUSEHOLDS HAD AT LEAST ONE MEMBER EMPLOYED DIRECTLY BY THE OIL AND GAS INDUSTRY OR BY A COMPANY IN THE SUPPORT INDUSTRY. MOREOVER, NEARLY ONE-THIRD OF ALL HOUSEHOLD INCOME IN ALASKA IS ATTRIBUTABLE EITHER DIRECTLY OR INDIRECTLY TO THE PETROLEUM INDUSTRY. AN ESTIMATED 138,848 MEN, WOMEN AND CHILDREN ARE DEPENDENT ON THE PETROLEUM INDUSTRY AND ITS SUPPORT COMPANY NETWORK. WHEN ASKED ABOUT THE PERCEIVED EFFECT THE OIL AND GAS INDUSTRY HAS HAD ON THEIR HOUSEHOLDS, ALMOST 80% OF ALL ALASKANS SAID THAT THE EFFECT HAS BEEN POSITIVE.

LOOKING AHEAD, THE INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH OF THE UNIVERSITY OF ALASKA FORECASTS CONTINUED GROWTH IN THE STATE'S PETROLEUM INDUSTRY, WITH PROPORTIONAL GROWTH IN ITS SUPPORT SECTOR, IF THE INTEGRITY OF THE FIVE-YEAR OUTER CONTINENTAL SHELF LEASE SALE SCHEDULE IS MAINTAINED. A GRIM FORECAST OF SEVERE ECONOMIC DISLOCATIONS, RESULTING IN LOSS OF JOBS AND A "MASSIVE DECLINE IN STATE EXPENDITURES" IS DEFINED AS A BASE CASE SCENARIO, IN THEIR RECENT STUDY ENTITLED, "ALASKA STATEWIDE AND REGIONAL ECONOMIC AND DEMOGRAPHIC SYSTEMS; EFFECTS OF OCS EXPLORATION AND DEVELOPMENT". IT IS A SCENARIO OF A DETERIORIATING FISCAL CONDITION OF THE STATE COUPLED WITH "RISING TAXES, REDUCED PUBLIC SERVICES" AND A LOSS OF JOBS. YET THE BASE CASE SCENARIO MADE BY THE UNIVERSITY ANALYSTS INCORPORATES OPTIMISTIC ASSUMPTIONS RELATIVE TO OTHER ECONOMIC SECTORS IN THE STATE. THE AUTHORS CONCLUDE THAT ONLY IF THE FIVE YEAR OCS LEASE SALE PLAN PROCEEDS ON SCHEDULE WILL THAT UNHAPPY PORTRAYAL OF ALASKA'S FUTURE BE MITIGATED. INDEED, A HEALTHY SOCIOECONOMIC FUTURE IS PROJECTED, UNDER SUCH CIRCUMSTANCES, CONCLUDING WITH AN ESTIMATE THAT 10 PERCENT OF EMPLOYED ALASKANS WILL DEPEND ON THE EXPLORATION AND PRODUCTION ACTIVITIES OF THE OIL AND GAS INDUSTRY IN ALASKA'S OCS, BY THE YEAR 2000.

THIS POINT-IN-TIME PHOTOGRAPH OF ALASKA'S SOCIAL AND ECONOMIC STRUCTURES AND THESE ECONOMIC PROJECTIONS DEPICT BENEFITS OF ENORMOUS MAGNITUDE STEMMING FROM A SINGLE SOURCE - THE ALASKA PETROLEUM INDUSTRY. INDUSTRY GROWTH TRANSLATES INTO JOBS, IMPROVEMENTS IN THE QUALITY OF LIFE, NEW MARKETS RESULTING FROM A BROADER POPULATION BASE, AGGLOMERATION ECONOMIES RESULTING IN LOWER PRICES TO THE ALASKAN CONSUMER, IMPORT SUBSTITUTION AND ECONOMIC DIVERSIFICATION - THE HISTORIC GOALS OF THE MAJORITY OF ALASKANS AT LAST WITHIN OUR REACH!

BUT ALASKANS MUST HAVE THE COLLECTIVE WILL TO REACH OUT AND SEIZE THE MOMENT.

GROWTH IN THE PETROLEUM INDUSTRY IN ALASKA, WITH ITS ATTENDANT PROMISES, IS CRITICALLY DEPENDENT ON AN OPTIMUM SET OF VARIABLES AMONG WHICH ARE PREDICTABILITY AND STABILITY OF THE BUSINESS CLIMATE WHICH, IN TURN, RELIES ON PUBLIC POLICY MAKERS MAKING PRUDENT DECISIONS BASED ON FACTS AND A WELL-FOUNDED UNDERSTANDING OF THE GLOBAL IMPACTS OF THEIR DECISIONS.

ONCE AGAIN, WE ARE AT AN IMPORTANT MILEPOST IN THE HISTORY OF THE GROWTH AND DEVELOPMENT OF ALASKA. RECOGNIZING THAT THE FLOW OF OIL FROM ALASKA CONSTITUTES 20 PERCENT OF ALL DOMESTIC PRODUCTION, THIS DECISIONMAKING PERIOD ALSO REPRESENTS AN IMPORTANT POINT IN THE DEVELOPMENT AND SECURITY OF OUR NATION.

THE PURPOSE OF THIS HEARING IS TO REACH A DECISION RELATIVE TO THE SALE OF OIL AND GAS LEASES IN THE NORTH ALEUTIAN BASIN. A BRIEF GLANCE AT THE EVENTS LEADING UP TO THIS PROPOSED SALE IS ENLIGHTENING. JUST OVER TEN YEARS AGO, INTERIOR SECRETARY KLEPPE PROPOSED TO SELL LEASES IN THIS AREA IN OCTOBER OF 1977. CONGRESS RATIFIED THAT EXECUTIVE DECISION APPROVING SALE #51 BUT REVISED THE SALE DATE SLIGHTLY TO DECEMBER OF 1977. IN 1976, THEN GOVERNOR JAY HAMMOND APPEALED FOR DELETION OF THE AREA FROM THE SALE SCHEDULE BASED ON INSUFFICIENT INFORMATION AND RESOURCE DATA AND FEARS THAT MULTIPLE USE OF THE AREA MIGHT IN SOME WAY HARM THE INDUSTRIES WHICH RELY ON THE AREA'S FISH AND WILDLIFE RESOURCES FOR A PROFIT. RESPONDING TO THE GOVERNOR'S PETITION, THE DEPARTMENT DELETED THE AREA FROM THE LEASE SALE SCHEDULE. IT WAS NOT UNTIL JUNE OF 1979 THAT THE AREA WAS AGAIN PROPOSED FOR INCLUSION IN THE LEASE SCHEDULE. REINCARNATED AS THE NORTH ALEUTIAN SHELF SALE #75, THE SALE WAS PROPOSED TO BE SET FOR BIDS IN APRIL OF 1983 AND WAS AGAIN APPROVED AND INCORPORATED INTO THE REVISED "FINAL" SCHEDULE. IN MARCH OF 1982, THE AREA WAS COMBINED WITH SALE #92 AND RENAMED THE NORTH ALEUTIAN BASIN AND SCHEDULED FOR BIDS IN APRIL OF 1985. IN JULY OF 1982 THAT DECISION WAS "FINALIZED" ONCE AGAIN, RESPONDING TO A SIMILAR REQUEST FROM THE STATE OF ALASKA, THE DEPARTMENT PUSHED

BACK THE DATE OF THE SALE TO DECEMBER OF 1985 AND IN JUNE OF 1984 SOUGHT TO ALLEVIATE THE APPREHENSIONS OF THE STATE BY DELETING ALL TRACTS EAST OF PORT MOLLER AND CAPE NEWENHAM FROM THE SALE - A REDUCTION IN SIZE OF THE SALE OF A WHOPPING 83 PERCENT!

DESPITE THESE EFFORTS TO ACCOMMODATE CONCERNS, THERE REMAIN THOSE WHO WOULD CONTINUE TO ESPOUSE DELAYS IN THE OFFERING OR AT LEAST ANOTHER TEN YEARS. WHY? FOR ALL THE SAME REASONS GIVEN NEARLY TEN YEARS AGO - FEAR THAT OIL AND GAS EXPLORATION MIGHT IN SOME WAY THREATEN THE WILD-LIFE AND MARINE RESOURCES OF THE AREA AND, AGAIN, TEN YEARS LATER, $100 MILLION LATER _ OVER 130 STUDIES BY THE INTERIOR DEPARTMENT ALONE, LATER - THE SAME REASON - INSUFFICIENT DATA.

WE BELIEVE THAT A MOUNTAIN OF INFORMATION ON RESOURCES IN THE AREA IS AVAILABLE. IT IS OUR UNDERSTANDING THAT SUCH INFORMATION WAS AVAILABLE TEN YEARS AGO AND HAS BEEN AMPLY SUPPLEMENTED IN THE INTERIM PERIOD. COMPILING AND ORDERING THE DATA IS THE TASK AT HAND AND AMPLE TIME REMAINS FOR THAT WORK TO BE COMPLETED. AS TO THE EXPRESSED CONCERN THAT THE RESOURCES OF THE HUNTING, TRAPPING AND FISHING INDUSTRIES MIGHT BE DEPLETED, THAT IS A FEAR NOT FOUNDED ON EXPERIENTIAL EVIDENCE DRAWN FROM ANYWHERE ELSE IN THE WORLD.

AS I MENTIONED EARLIER, PREDICTABILITY IN BUSINESS IS A PREREQUISITE FOR INVESTMENT. SALE #92 IS A CLASSIC EXAMPLE OF THE ANTITHESIS OF CONDITIONS DESIGNED TO FOSTER INVESTMENT WHICH GENERATES JOBS AND ASSURES ECONOMIC VITALITY.

ON BEHALF OF THE MEMBERS OF THE ALASKA SUPPORT INDUSTRY ALLIANCE, I EARNESTLY ASK YOU TO OPPOSE RATIFICATION OF HJR 31.

THANK YOU.

THE ALLIANCE
P.O. Box 100100 / Anchorage, Alaska 99510 / (907) 562-0100

SUPPORTING THE DECEMBER 1985 SALE OF OIL AND GAS LEASES IN THE NORTH ALEUTIAN BASIN AREA - SALE #92

The State of Alaska has asked Interior Secretary Hodel to postpone OCS Lease Sale #92 in the North Aleutian Basin for at least another 10 years. This request is based on concerns that the risk to fish and wildlife resources in the area is too great to permit leasing in the Bristol Bay region. The state suggests that industry needs to obtain additional experience in other areas to ensure that adequate technology exists for safe operations in such waters. The state also claims that biological data gaps remain which must be filled before a responsible impact assessment can be performed.

Others have asked Secretary Hodel to proceed with the sale as scheduled in December, 1985. Citing the fact that the area had originally been set for sale in 1977 and that over 80 percent of the area has been deleted from the proposed offering in an effort to accommodate state objections, many are concerned that added delays will serve no productive purpose. Those who depend on a viable and predictable oil and gas industry in Alaska for their livelihood cite the following facts for their position:

- Over 250 wells have been drilled in the waters off of Alaska's shores over the past 20 years without harm to the environment and without interfering with resources of Alaska's hunting, fishing and trapping industries.

- The Cook Inlet with its exceptional tide, powerful currents, hurricane force winds, and swiftly moving ice floes, poses substantially greater hazards than does the Bristol Bay area.

- Nowhere in the world has the petroleum industry cut into the profits of the fishing industry by compromising their natural resources. If anything, evidence indicates that offshore structures have enhanced fishing in areas where the two industries have developed side by side.

- Biological data gaps will always remain - it comes down to how much is enough? Over $100 million has been spent by government, industry and academia studying Bristol Bay resources and socio-economic characteristics spanning the past 15 years.

- Under the most optimum of circumstances, the delivery of crude oil out of Alaska is set to drastically decline in the early '90's. As that decline develops, Alaskans will be thrown out of work. University studies demonstrate that -IF- exploration and production in the OCS remains on schedule, it is likely that a minimum of 10 percent of all jobs in Alaska will depend on OCS oil and gas production - a dramatic promise for the future.

- Scientific surveys by Alaska's best pollsters indicate that at least 7 out of 10 Alaskans support exploration and development of oil and gas fields in the OCS. 8 out of 10 Alaskans indicate that the effect of the oil and gas industry upon households has been positive.

- 32 billion barrels of domestic crude oil will have to be found over the next 10 years just to replace what we are using up. Government estimates that Alaska's OCS may contain 44 percent of all OCS oil resources.

Alaska is today, one of the most dynamic and exciting places in the United States in which to live, due to firm and reasoned decisions made more than a decade ago by government and industry leaders. If such leadership is again now exercised, Alaska's tomorrow will be equally as bright.

Care for Bristol Bay

Bristol Bay contains some of Alaska's most valuable resources, and Gov. Bill Sheffield was on target recently with his renewed call for delay in offshore oil development affecting the region.

Interior Secretary Don Hodel has proposed leasing tracts just outside Bristol Bay along the north side of the Alaska Peninsula. A lease sale is scheduled for December as part of the Interior Department's five-year Outer Continental Shelf leasing program, which has received praise in Washington for its restraint.

Secretary Hodel's OCS program might seem modest from a Washington perspective. It also might bring dollars into the state treasury if offshore finds match oil industry expectations. But as Gov. Sheffield emphasized in a letter to the secretary, an oil spill accompanying OCS development in the Bristol Bay area could endanger the region's multi-million-dollar fishing industry and a multitude of birds and marine mammals. In fact, an oil spill in the remote, turbulent waters of Bristol Bay could be an environmental disaster and an economic nightmare.

Secretary Hodel is, of course, responsible for the national interest, not just a single state's interest. He faces tough choices in developing an OCS program for the nation's benefit. Yet as Gov. Sheffield said, oil exploration in the Bristol Bay region currently presents a risk to the national interest because of its potential impact on fish and wildlife resources.

And given the vulnerability of those precious resources, the governor's concerns deserve to be taken more seriously in Washington.

ANC Daily News 3/29

3/25/85 Anch Times

Sheffield criticizes Bristol plan

by David Ramseur
Times Washington Bureau

Washington — Oil development near Bristol Bay proposed by the federal government could threaten the area's multimillion dollar fishing industry, 85 species of birds and more than 20 species of marine mammals, according to Gov. Bill Sheffield.

The governor, in a recent letter to Interior Secretary Donald Hodel, reiterated his call for a delay in the North Aleutian Basin outer continental shelf lease sale scheduled for December.

Sheffield said the fishing industry near the sale area is among the productive in the world and suggested that oil development could harm both it and the abundant wildlife that populate the area.

". . . Oil and gas exploration and development in this area currently presents too great a risk to the state and national interest in maintaining the extremely productive and valuable fish and wildlife resources which characterize this region," Sheffield said.

The sale, once scheduled for next month, is part of Interior's current national five-year OCS leasing schedule. At Sheffield's request, 83 percent of the sale area was deleted last year by former Secretary William Clark.

The remaining 17 percent was then rescheduled for December despite Sheffield's call for a 10-year delay.

The remaining sale area lies just outside Bristol Bay along the north side of the Alaska Peninsula.

Interior and state officials continue to negotiate over the proposed sale and discussed it during Sheffield's visit here late last month.

According to the governor, the annual value of the fishery in the area averaged $200 million between 1977 and 1982, about half of which came from salmon. More than 60 million adult salmon and several hundred million juveniles migrate through the proposed sale area annually, he said.

Other fisheries also could be affected, he said, including herring, groundfish, and king and tanner crab.

In addition, scores of species of marine mammals and birds travel through or live in the area. For example, up to 17,000 endangered gray whales annually migrate along the Alaska Peninsula and up to 18,000 sea otter live near the sale area, Sheffield said.

The governor said the world populations of several species of birds live in or migrate through the area. They include 131,000 black brant, 71,000 emperor geese and 60,000 Steller's eiders.

A recent Rand Corporation study for the federal government showed that an oil spill would move toward the wildlife populations along the peninsula.

". . . Marine and coastal habitats in the North Aleutian Basin vicinity support fish and wildlife resources of state, national and international significance," Sheffield told Hodel.

"These resources provide the economic mainstay as well as important subsistence food resources for Bristol Bay communities."

HJR

36

ALASKA POWER AUTHORITY

334 WEST 5th AVENUE - ANCHORAGE, ALASKA 99501

Phone: (907) 277-7641
(907) 276-0001

May 9, 1985

Representative Adelheid Herrmann
Representative Richard Shultz
Co-Chairmen, Resources Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Representatives Herrmann and Shultz:

This letter outlines the position of the Alaska Power Authority relative to House Joint Resolution No. 36. This resolution, which was introduced by Representatives Navarre and Marrou, relates to the licensing of the Bradley Lake Hydroelectric Project. The resolution states that the Alaska Legislature urges the Federal Energy Regulatory Commission (FERC) "to expedite the issuance of a Final Environmental Impact Statement (FEIS) for the Bradley Lake Hydroelectric Project."

The Alaska Power Authority advocates passage of the resolution because it confirms the support of the State of Alaska for Bradley Lake Project. By passing the resolution, the FERC will be assured that the State of Alaska is firmly resolved to develop the project as expeditiously as possible.

Issuance of the FEIS is scheduled for September 1985 and the license issuance is scheduled for December 1985. The Alaska Power Authority is currently working closely with the FERC in matters relating to the issuance of the FEIS and license.

The Power Authority is confident that the FERC is progressing on schedule or ahead of schedule in their activities relative to processing the license and FEIS and is expediting these activities whenever possible. Please feel free to contact Dave Eberle, Bradley Project Manager, or myself if you have any questions pertaining to this matter.

Sincerely yours,

Robert D. Heath by Sw

Robert D. Heath
Executive Director

LP/RDH/nm

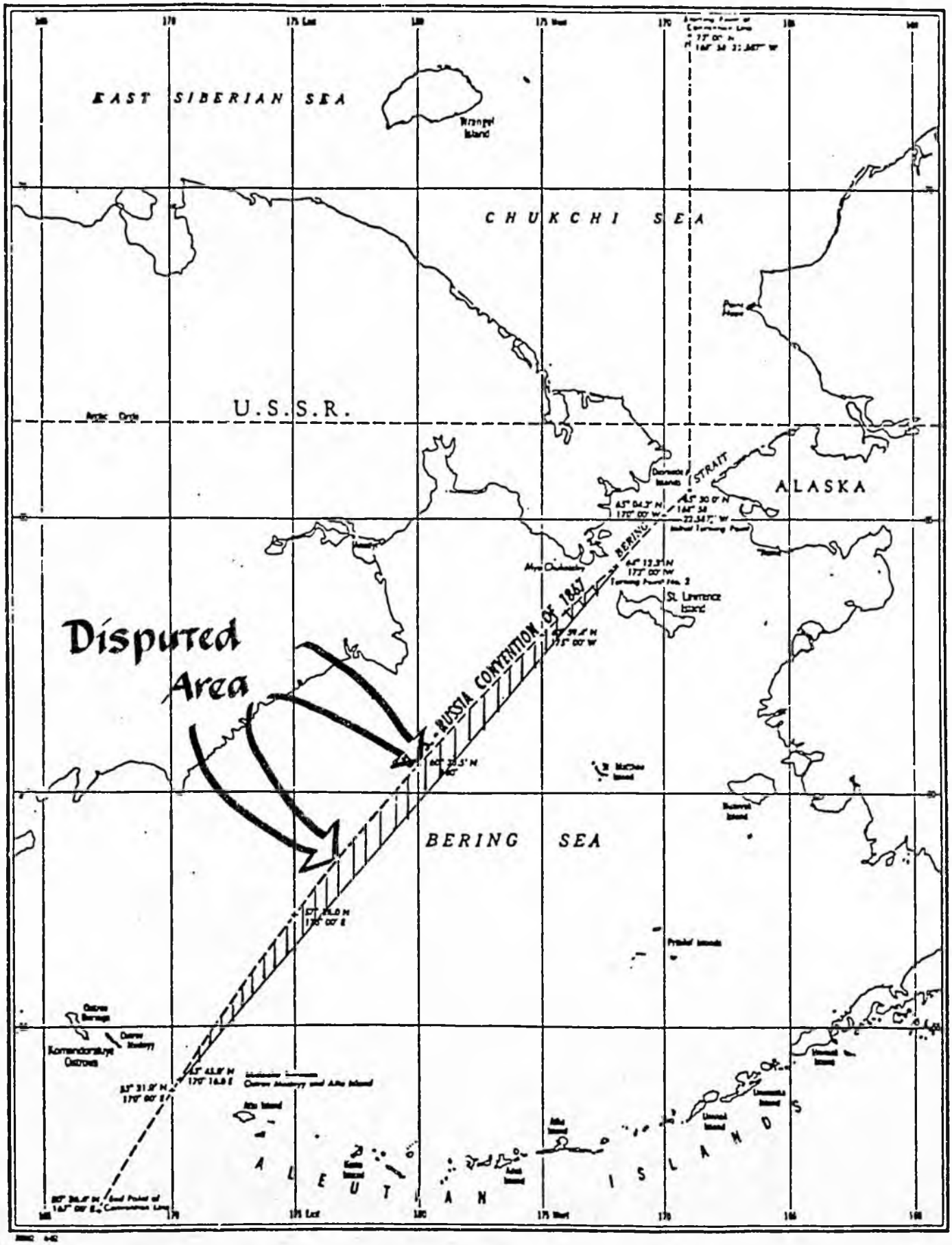
9376/383/D1

HJR

53

HJR 53: U.S.-U.S.S.R. Boundary Dispute

U.S. - RUSSIA CONVENTION OF 1867



Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4453/4530

2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234

MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
HOUSE STATE AFFAIRS COMMITTEE

Representative Roger Jenkins

DISTRICT 11

January 22, 1986

MEMORANDUM

TO: All Co-Sponsors and Resource Committee Members (to Dick)

FROM: Representative Roger Jenkins

SUBJECT: HJR 53 - Relating to the United States and Soviet Union boundary dispute and the resources in the area under dispute.

I have enclosed a copy of HJR 53 and related backup for your review. Resources Committee has scheduled the first hearing on HJR 53 for Monday, January 27, 1986, at 8:30 am.

The specific Bering Sea boundary dispute relates to the difference between the "straight rhumb line" on a flat map the (USSR position) and the "curved great circle route" on a globe (US position) as an interpretation of the 1867 convention line.

Thankyou for your support and co-sponsorship. It is my hope that this resolution will help prevent the giveaway of a valuable resource area.

Enclosures

TABLE OF CONTENTS

1. HJR 53

2. Letter with enclosures from Senator Frank H. Murkowski dated July 10, 1986

3. Fact Sheet with background attachment on the International Boundary Study dated October 1, 1965

4 Research paper prepared by the House Research Agency dated February 4, 1985

5. Magazine article entitled, "Where Superpowers are 55 Miles Apart: A Boundary Dispute Waiting to Happen," from the National Journal dated 8/7/82

6. Magazine article entitled, "U.S., Soviets Share Claims To Bering Sea," from the Offshore dated April, 1983
The Department of Public Safety's January 21, 1986 Fiscal Note and Fiscal Note Analysis

7. Map Navarin Basin disputed area.

8. Report from Stockholders for World Freedom dated October 20, 1984

9. Newspaper Article entitled, "Why should we give the Soviets oil-rich turf?" from The Washington Times dated January 18, 1985

10. Newspaper Article entitled, "Why hand oil over to the Soviets?" The Washington Times dated July 4, 1985

11. Newspaper Article entitled, "Groups Oppose Giving Soviets Wrangel, Four Other Islands," All-Alaska Weekly, dated June 14, 1985

12. The Alaska Economic Report article entitled, "Bering Sea 'OCS REPORT'" dated February 28, 1985

13. Press Release by The Conservative Caucus which provides background on the boundary dispute

14. Newspaper Articles entitled, "Soviets harass oil drillers working in Navarin Basin," and "Oil firms to appeal drilling ban," and "An oil prospect by any other name...," Anchorage Daily News dated October, 1985

15. Report from The Stockowners' News dated October 1985

16. Newspaper article entitled, "Alaska fears U.S. giveaway of oil reserve Soviets covet," The Washington Times

17. Paper from California Academy of Sciences on the Discovery of Wrangel Island by Samuel L. Hooper published 1956

18. Map Oil & Gas Resources of Alaska which includes references to the disputed areas

FRANK H. MURKOWSKI
ALASKA

COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON FOREIGN RELATIONS
COMMITTEE ON VETERANS' AFFAIRS
SELECT COMMITTEE ON INDIAN AFFAIRS
SELECT COMMITTEE ON INTELLIGENCE

2

United States Senate

WASHINGTON, DC 20510

WASHINGTON OFFICE:
(202) 224-6665

ANCHORAGE OFFICE:
701 C STREET, BOX 1
(907) 271-3735

FAIRBANKS OFFICE:
101 12TH AVENUE, BOX 7
(907) 456-0233

JUNEAU OFFICE:
FEDERAL BUILDING, BOX 1647
(907) 586-7400

July 10, 1985

The Honorable Roger Jenkins
P. O. Box 6727
Anchorage, Alaska 99502

Dear Roger:

I was sorry to miss you when you stopped by my Washington office on June 14th. My aide, Tom Roberts, relayed your comments on the issue of the U.S.-U.S.S.R. maritime boundary to me. I want to commend you on the Resolution you introduced in the State Legislature regarding the discussions on our maritime boundary and I appreciate your contacting me about this issue. This letter is to let you know I am also concerned about the issue and to share with you the information I have on the subject.

As you know, since 1981 the United States and the Soviet Union have held four rounds of discussions on the line established by the 1867 U.S.-U.S.S.R. Convention ceding Alaska. U.S. participation in these discussions has involved extensive coordination with all concerned governmental agencies. These talks are largely technical, involving the determination of how the line should be drawn, in arcs of great circles, as the U.S. has been drawing it or in rhumb lines, as the Soviets have been interpreting it.

The question of Soviet sovereignty over the five islands is not connected to the boundary negotiations over the Convention Line and the Navarin Basin. I am in regular contact with officials who are negotiating this maritime boundary matter, and have received a briefing from The Conservative Caucus, the organization that asserts that the U.S. should claim sovereignty over the islands. I have had the Congressional Research Service and the Senate Intelligence Committee research the topic and have found the following to be the facts:

With regard to the islands, Henrietta, Jeannette, Bennett, Wrangel, and Herald, have been considered by both countries to be on the Soviet side of the U.S.-Russia Convention Line of 1867. They are not being claimed by the United States and are not being discussed in the ongoing talks. For your information, I have enclosed a copy of the brief that the State Department prepared for me explaining the history of sovereignty claims of the islands. During a recent State Department briefing, it was pointed out that the U.S. never made an objection when the Soviets formally claimed these islands in the 1920's nor at any time thereafter. Although the U.S. has never officially recognized the Soviet claim, we have never claimed the islands, either.

Regarding the Navarin Basin issue, after carefully studying the issue, the State Department believes that keeping the 1867 Convention line best furthers the full range of U.S. interests, including the maximization of our resource interests in the Basin. As you know, the Department of Interior has proceeded with taking bids for leases in the Navarin Basin and is holding the bids in escrow for five years pending settlement of the discussions on the Convention line. Exploratory drilling is taking place this summer in the Navarian area. The majority of the Navarin Basin is currently on the U.S. side of the Convention line, and the State Department has let me know in briefings that their object in participating in the discussions is to keep it that way. I trust that you will recognize that in the context of current U.S-Soviet relations, it is crucial that this matter be handled carefully. It appears to me, however, that the American officials conducting these talks are fully aware of the historic and strategic interest involved in the boundary area, such as you detail in your resolution.

I will continue to monitor the talks to ensure that any agreement reached reflects U.S. and Alaskan interests. Please be assured that I will not support any agreement which illegally or unjustly cedes U.S. territory.

With warmest personal regards,

Sincerely,

Frank H. Murkowski
United States Senator

cc: Cosponsors of Alaska Legislature H.J.Res. 53

Enclosure

FRANK H. MURKOWSKI
ALASKA

COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON FOREIGN RELATIONS
COMMITTEE ON VETERANS' AFFAIRS
SELECT COMMITTEE ON INDIAN AFFAIRS
SELECT COMMITTEE ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510

WASHINGTON OFFICE:
(202) 224-6665

ANCHORAGE OFFICE:
701 C STREET, BOX 1
(907) 271-3735

FAIRBANKS OFFICE:
101 12TH AVENUE, BOX 7
(907) 456-0233

JUNEAU OFFICE:
FEDERAL BUILDING, BOX 1647
(907) 586-7400

July 10, 1985

The Honorable George P. Shultz
Secretary of State
Department of State
Washington, D.C. 20520

Dear Secretary Shultz:

I am enclosing a resolution (HJR 53) that has recently been introduced in the Alaska House of Representatives regarding the ongoing discussion between the United States and the Soviet Union over the maritime boundary between the two countries. This resolution has been cosponsored by 17 of the 40 members of the State House.

I would appreciate it if you would provide a full, up-to-date situation paper on the issue to the Alaska representatives who have cosponsored this resolution. Additionally, I am requesting the details in the Lomen Brothers' foreign claims case. These were the Alaskan businessmen who lost property in the Soviet invasion of Wrangel Island in 1924. The interests in this claims case were sold to Mr. Mark Seidenberg in 1976.

Thank you for your prompt attention to this matter. I look forward to your reply.

With best wishes,

Sincerely,

Frank H. Murkowski
United States Senator

Enclosure: Alaska Legislature House Joint Resolution 53

cc: Cosponsors of Alaska Legislature House Joint Resolution 53

Ms. Liz Verville
Office of the Legal Adviser

WRANGEL ISLAND

Wrangel Island is an island of approximately 3,700 square miles found in the Chukchi Sea, north of Siberia, approximately 200 nautical miles west of the line established by the 1867 Russia-United States Convention Ceding Alaska. (This island is not to be confused with Wrangell Island in the Alexander Archipelago of southeast Alaska.) Although U.S. citizens were reportedly involved in the early exploration and discovery of Wrangel Island and the island was listed in some early publications such as the U.S. Geological Survey's 1906 Geographic Dictionary of Alaska, extensive research by the Department of State has not produced any evidence that the United States has ever formally asserted a claim to Wrangel Island, protested Russian and Soviet claims dating from 1916 and 1924, respectively, or protested Soviet occupation of the island dating from 1924.

Wrangel Island is named for the Russian explorer Baron von Wrangell (or Wrangel), who unsuccessfully attempted to locate this island in the early 1800's. Dates of discovery of the island are variously listed as 1849 by a British ship, the H.M.S. Herald and 1881 by Captain Hooper of the U.S. Navy vessel Corwin. The British crew of the Herald reportedly saw Wrangel Island but did not land on it. After several attempts to land on the island by other American vessels and whaling ships, Captain Hooper is reported to have landed on the island and raised the American flag in 1881. Later in 1881, the crew of another U.S. vessel, the Rodgers, also reportedly landed on the island and mapped it.

In 1911, a crew from the Russian vessel, the Vaigach, reportedly landed on the island, surveyed it and erected a beacon which served as an astronomical positioning station. This led to a formal claim to the island by the Russian Government in 1916. The United States reportedly acknowledged receipt of the Russian note but made no substantive response.

In the early 1920's the Arctic explorer Vilhjalmur Stefansson reportedly formed a Canadian company and under its auspices organized a private expedition to occupy Wrangel Island, apparently with the intention of establishing British or Canadian sovereignty. Several successive Stefansson expeditions, including some U.S. citizens, occupied Wrangel Island. Stefansson, however, was unable to interest either the Canadian Government or the British Government in asserting a claim.

After having attempted to assert its claim to Wrangel Island by requiring a 1923 relief ship to call at a Soviet port on its way to Wrangel Island, the Soviet Union in 1924 formally asserted a claim to Wrangel Island by diplomatic note transmitted to the United States and other countries. Extensive research has not produced any evidence of a U.S. reply to this note.

In 1924, an American company, Lomen Bros., of Nome, Alaska reportedly purchased whatever rights the Stefansson group had acquired in Wrangel Island. Representative Sutherland of Alaska wrote to Secretary of State Hughes informing him of the purchase and asked what attitude the United States Government was likely to assume in the matter of sovereignty over the island. In July, 1924, the Acting Secretary of State replied that the Department did not desire to express an opinion respecting the question of the international status of Wrangel Island and that the Department also refrained from expressing approval or disapproval of a project which, it understood, was entirely commercial in nature.

In August, 1924, the crew of the Soviet vessel Red October arrived on Wrangel Island, hoisted the Soviet flag and transported the occupants to Siberia. Since that time, the Soviet Union has occupied Wrangel Island. In addition, the Soviet Union reasserted a formal claim to the island in 1926 via a decree transmitted to the United States and other governments. In the early 1940's, the Senate considered resolutions requesting reports from the Secretary of State concerning whether or not the United States had a valid claim to sovereignty over Wrangel Island. In 1940 and 1941, the Secretary of State responded that the United States had not formally claimed sovereignty over Wrangel Island and that it was desirable to avoid raising the question of sovereignty.

Although the United States has never formally recognized Soviet sovereignty over Wrangel Island and has from time to time indicated that it has not formally relinquished any claim, extensive research has not produced evidence of any formal U.S. assertion of a claim to the island, or of any U.S. protest of the Soviet claims to or occupation of the island.

HERALD, BENNETT, HENRIETTA AND JEANNETTE ISLANDS

Herald Island is an island of approximately 10 square miles located in the Chukchi Sea, north of Siberia, near Wrangel Island. Bennett, Henrietta and Jeannette Islands have areas of approximately 64, 5 and 7 square miles, respectively, and are located in the East Siberian Sea north of Siberia. Herald Island was reportedly discovered by a British Captain, Captain Kellett, in 1849. Bennett, Henrietta and Jeannette islands were reportedly discovered by the crew of the U.S. vessel Jeannette in 1881, although the vessel apparently only sighted but did not land on Jeannette Island. Although these islands were apparently listed in the 1906 Geographic Dictionary of Alaska, and some may have been listed in some subsequent publications of a similar nature, extensive research has not produced any evidence that the United States Government has ever formally asserted a claim to any of these islands or protested Russian or Soviet claims (from 1916 and 1924 respectively) or activities with respect to the islands.

A brief description of events with regard to each of these islands follows.

Herald Island

After the British discovery of Herald Island in 1849, the crews of several U.S. vessels reportedly landed on the island, including crews of the Vincennes in 1855 and Corwin and Rodgers in 1881. Perhaps because the crews were aware of the British discovery, none of them are reported to have claimed the island for the United States.

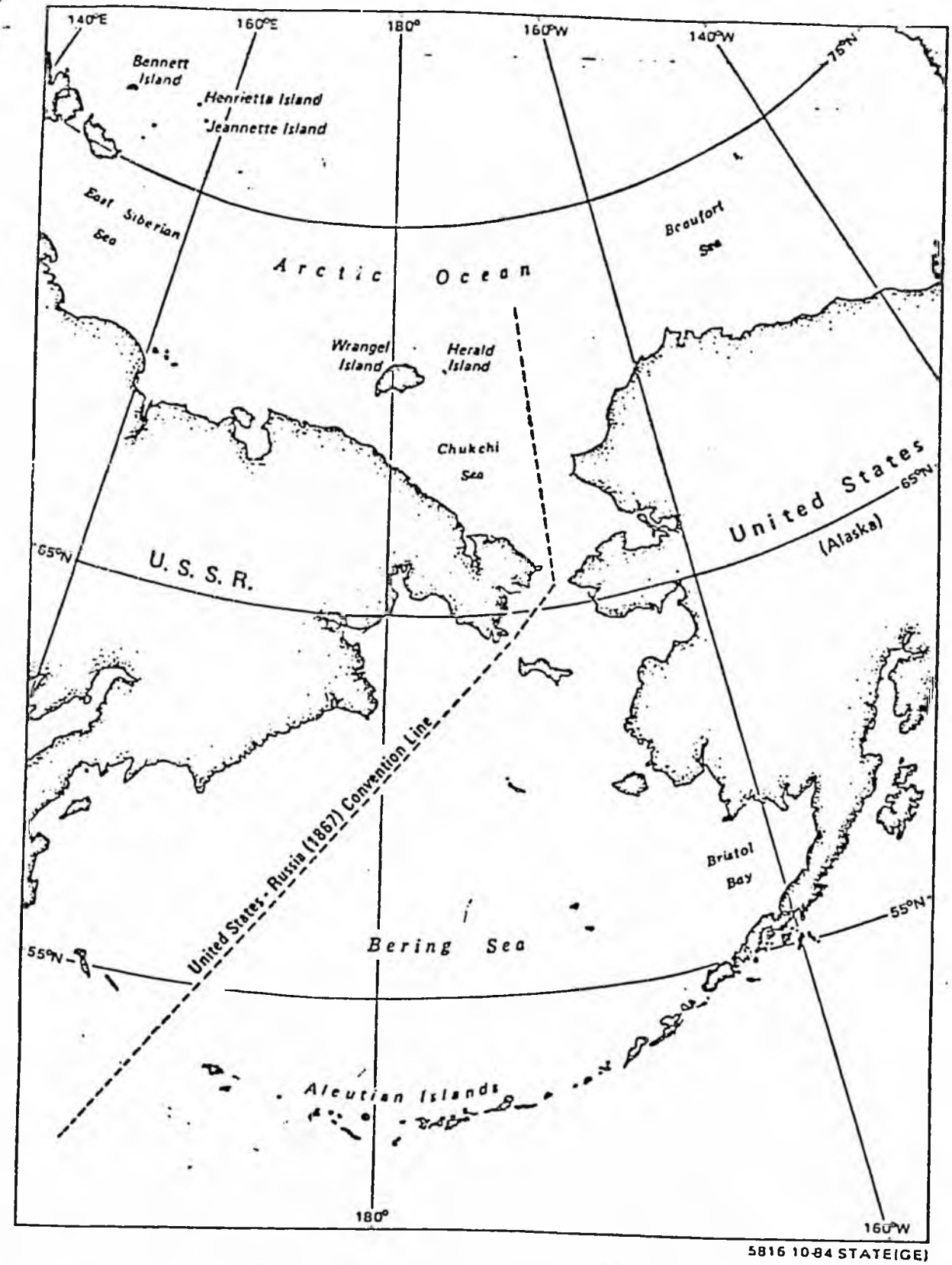
In 1916, the Russian Government formally asserted a claim to Herald Island via diplomatic note. The United States reportedly acknowledged receipt of the note but made no substantive response. In 1924, there were press reports that two U.S. citizens had landed on Herald Island and claimed it for the United States. The State Department responded to a 1926 Congressional inquiry concerning the expedition by stating that the Department was not prepared to make any statement with regard to the international status of the island.

In 1924 and 1926 the Soviet Government asserted claims to Herald Island by diplomatic note and decree, respectively, which were transmitted to the United States and other governments. In 1926 and again in 1934, crews of Soviet vessels are reported to have landed on the island and planted the Soviet flag. Although the United States has never formally recognized Soviet sovereignty over Herald Island, extensive research has produced no evidence of a U.S. claim to the island or of any U.S. protest of Soviet claims or activities.

Bennett, Henrietta and Jeannette Islands

Crews of several Russian ships reportedly landed on Bennett Island in 1902 (when a Russian expedition is reported to have stayed for approximately three and a half months) and 1913. In addition, in 1914, the Russian crew of the vessel Vaigach is reported to have received orders to survey Henrietta and Jeannette islands and to hoist the Russian flag; however, ice apparently prevented the expedition from carrying out these orders. Thereafter, in 1916, the Russian Government asserted a claim to all of these islands by diplomatic note. The United States is reported to have acknowledged receipt of the note but no evidence has been found of a substantive reply.

In 1924 and again in 1926, the Soviet Government also asserted claims to these islands by diplomatic note and decree, respectively. Research has produced no evidence of U.S. response to these claims. In 1937, the Soviet vessel Sadko is reported to have visited all the islands and to have raised the Soviet flag on Henrietta and Jeannette islands. In addition, in 1956, a Soviet expedition reportedly reached Bennett Island by air and remained there for three to five months. Although the United States has never formally recognized Soviet sovereignty over any of these islands, extensive research has produced no evidence that the United States has ever formally asserted a claim to the islands or protested Soviet claims or activities with regard to them.



5816 10-84 STATE(GE)

3

Here Are The *Actual Facts* On The So-called "Boundary Line" With The Soviets Next To Alaska:

In the State Dept.'s own words:

This International Boundary Study is one of a series of specific boundary papers prepared in the Office of the Geographer, Department of State, in accordance with provisions of Bureau of the Budget Circular No. A-16, Exhibit D.

Government agencies may obtain additional information and copies of the study by calling the Office of the Geographer, Room 8744, State Department Building, Department of State, Washington 25, D.C. (telephone: Code 182, Extension 4507).

INTERNATIONAL BOUNDARY STUDY

No. 14 (Revised) October 1, 1965

U.S. - RUSSIA CONVENTION LINE OF 1867

Rather than a boundary per se, this report concerns a convention line which ordinarily appears on official maps in the same manner as a boundary. According to Boggs1/ "Most lines in water areas which are defined in treaties are not boundaries between waters under the jurisdiction of the contracting parties, but a cartographic device to simplify description of the land areas involved ...". He further describes such a line being a "line of allocation" of land. For example, all land areas to the east of the Convention line in question belong to the United States; to the west to the U.S.S.R. without regard to the water areas involved.

Furthermore, in keeping with the policy that the line does not constitute a boundary, the standard symbol for the representation of an international boundary should never be used. Furthermore, labeling of the line as "U.S. - Russia Convention of 1867" is recommended.

1/ Boggs, S.W., "Delimitation of Seaward Areas under National Jurisdiction," American Journal of International Law, Vol. 45, No. 2 April 1951, footnote 2, page 240.

note: Mr. S. Wittemore Boggs was the State Department's own Special Advisor on Geography.

International Straits of the World
Volume I "Northeast Arctic Passage"
Published 1978, Sythoff & Noordhoff
By William E. Butler, M.A., J.D., Ph.D
Professor of Comparative Law, University of London
Dean of Faculty of Law, University College, London

"The Russo-American Convention line of 1867 is not regarded as a state frontier, and the continental shelf boundary in the Chukchi Sea and northward remain to be negotiated."

What could be plainer language about America's rights to her Alaskan oil-rich seabeds?

This International Boundary Study is one of a series of specific boundary papers prepared in the Office of the Geographer, Department of State, in accordance with provisions of Bureau of the Budget Circular No. A-16, Exhibit D.

Government agencies may obtain additional information and copies of the study by calling the Office of the Geographer, Room 8744, State Department Building, Department of State, Washington 25, D.C. (telephone: Code 182, Extension 4507).

INTERNATIONAL BOUNDARY STUDY

No. 14 (Revised)

U.S. - RUSSIA CONVENTION LINE OF 1867

TABLE OF CONTENTS

		Page
Boundary map		ii
I.	U.S. - Russia Convention Line of 1867	1
II.	Treaty	1
III.	Summary	2

The Geographer
Office of Research in Economics and Science
Bureau of Intelligence and Research

I. U.S. - RUSSIA CONVENTION LINE OF 1867

Rather than a boundary per se, this report concerns a convention line which ordinarily appears on official maps in the same manner as a boundary. According to Boggs[1] "Most lines in water areas which are defined in treaties are not boundaries between waters under the jurisdiction of the contracting parties, but a cartographic device to simplify description of the land areas involved ...". He further describes such a line being a "line of allocation" of land. For example, all land areas to the east of the Convention line in question belong to the United States; to the west to the U.S.S.R. without regard to the water areas involved.

Early in 1955, a group of U.S. cartographic experts in the ACC/MAP[2], after a rather long period of consultation and deliberation, issued the "Coordinate Positions for the Plot of U.S. - Russia Convention of 1867." This document, which is reproduced in part below, has been adopted as the standard description for the cartographic representation of the Convention line. Its re-issue in this series results from the large number of questions on the line which have been raised in recent months from offices unfamiliar with the original document.

II. TREATY

The only treaty establishing a so-called "boundary" between the United States and the modern Union of Soviet Socialist Republics is the Convention Ceding Alaska concluded March 30, 1867 with ratification advised by the Senate on April 9, 1867 and proclaimed by the President on June 30, 1867. The Convention line, as given below, marks the limit, to the east of which, the Emperor of Russia ceded all territory or claims to territory in North America. The 1867 Convention's territorial article on the western limits of the Alaskan cession reads as follows:

> The western limit within which the territories and dominion conveyed, are contained, passes through a point in Behring's straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern, or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest, through Behring's straits and Behring's sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a southwesterly

1/ Boggs, S.W., "Delimitation of Seaward Areas under National Jurisdiction," American Journal of International Law, Vol. 45, No. 2 April 1951, footnote 2, page 240.

2/ The Map Sub-Committee of the Air Coordinating Committee.

direction, so as to pass midway between the island of Attbu and the Copper island of the Kormandorski couplet or group, in the North Pacific ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian islands east of that meridian.

In the Convention, 193° West Longitude coincides, of course, with 167° East Longitude. The modern names for selected places mentioned in the Convention are as follows:

Convention Name	Modern Name
Krusenstern or Ignalook	Little Diomede Island
Ratmanoff or Noonarbook	Big Diomede Island or Ostrov Ratmanova
Frozen Ocean	Arctic Sea
Cape Choukotski	Mys Chukotskiy
Attou Island	Attu Island
Copper	Ostrov Mednyy
Kormandorski couplet	Komandorskiye Ostrova

III. SUMMARY

The wording of the Convention is rather precise. The principal question left unsolved is whether the lines between the fixed points should cartographically be expressed as "rhumb lines" or as "great circle lines". It was decided that great circle lines should be understood by the Convention wording of "straight lines" on the earth and the ACC/MAP group resolved:

> "The lines between points herein described are great circles except those lines which connect adjoining points on the same parallel shall follow the parallel."3/

The Coordinate Positions for the Plot were listed as follows:

Coordinate Positions for Plot of U.S.-Russia Convention Line of 1867

POINT	POSITION	
	Latitude	Longitude
Mys (Cape) Chukotski, southeast extremity	64° 14'.2 N	173° 05'.5 W
St. Lawrence Island, northwest extremity	63° 47'.3 N	171° 45'.8 W
Medny (Copper Island) eastern extremity	54° 32'.2 N	168° 00' E
Attu Island, western extremity	52° 55'.3 N	172° 26'.8 E

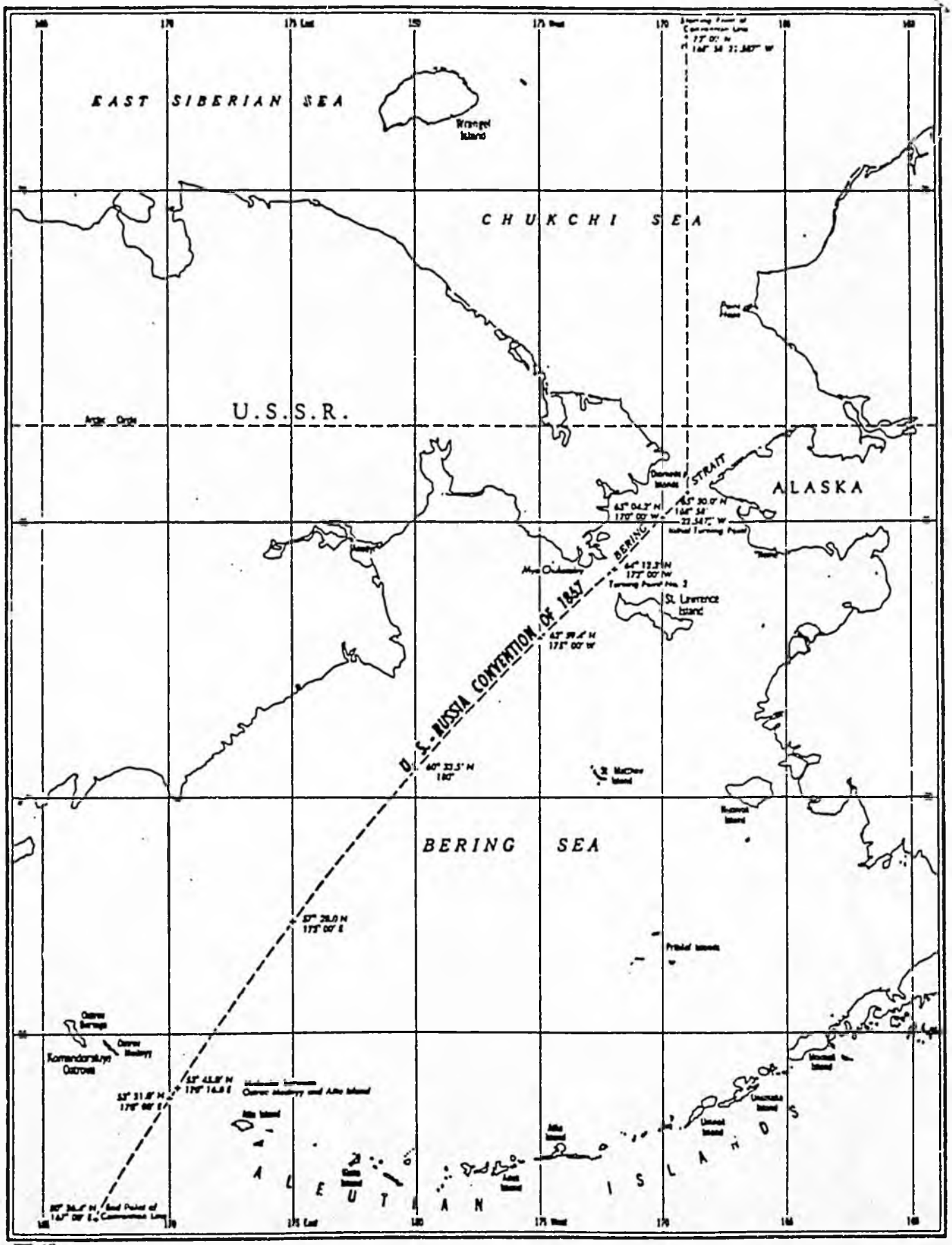
3/ The actual wording applied to ADIZ boundaries in the vicinity of the Convention line. The significant point is made first and applied to the Convention line.

POINT	POSITION	
	Latitude	Longitude
Initial Turning Point	65° 30'.0 N	168° 58' 22".587 W 4/
Turning Point No. 2	64° 12'.3 N	172° 00' W
Mid Point between Medny and Attu Island	53° 45'.0 N	170° 16'.0 E
End Point, southwestern extremity of Convention line	50° 36'.4 N	167° 00' E
5° increments of longitude along great circle arcs	65° 04'.2 N	170° 00' W
	62° 59'.4 N	175° 00' W
	60° 33'.5 N	180°
	57° 28'.0 N	175° 00' E
	53° 31.0 N	170° 00' E
Starting point of Convention Line	72° 00' N	168° 58' 22".587 W

It should be noted that the original Convention language stated that the line "proceeds thence due north, without limitation, into the same Frozen Ocean". Since the United States does not support so-called "sector claims" in the polar regions, the northernmost point for the representation of the Convention line was agreed to be 72° 00' N. Furthermore, in keeping with the policy that the line does not constitute a boundary, the standard symbol for the representation of an international boundary should never be used. Furthermore, labeling of the line as "U.S. - Russia Convention of 1867" is recommended.

The plotted points, it should be remembered, are subject to minor modification resulting from improved surveys, changes in datum, alteration in the sheroid, etc.

4/ This value was given erroneously in the distributed ACMRR minutes as 168° 50' 22".587 W. and copied in the original edition of this study instead of the correct value, 168° 58' 22".587 W.


EAST SIBERIAN SEA
Wrangel Island
CHUKCHI SEA
U.S.S.R.
Arctic Circle
STRAIT
ALASKA
BERING
St. Lawrence Island
U.S. - RUSSIA CONVENTION OF 1867
BERING SEA
Pribilof Islands
Komandorskiye Ostrova
ALEUTIAN ISLANDS

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

4

February 4, 1985

MEMORANDUM

TO: Representative Roger Jenkins

FROM: Gretchen Keiser, Legislative Analyst

RE: U.S. - U.S.S.R. Boundary Dispute in the Bering Sea
Research Request 85-121

David Garrison of your staff requested that we report on the status of the negotiations between the United States and the U.S.S.R. regarding the disputed boundary in the Bering Sea. This memorandum summarizes the information obtained from: 1) the U.S. State Department, which is responsible for the negotiations; and 2) the Minerals Management Service within the U.S. Department of the Interior, which has offered oil leases in the disputed area under its Outer Continental Shelf (OCS) Oil and Gas Leasing Program.

Mr. David Colson, a legal advisor in the State Department, indicated that the last meeting between the two countries to negotiate a settlement of the boundary dispute was held in July 1984. To his knowledge, no future meeting has been scheduled at this time. However, he indicated that future meetings are considered necessary in order to resolve the dispute. Mr. Colson was reluctant to speak about the terms of negotiation, but did indicate that the U.S. had presented a proposal to the Russians which was a modification of our original position. The U.S. position has been that a great circle line delineates the boundary, as described below. He hastened to add, however, that a suggestion that the U.S. was willing at this time to compromise at a geographical middle point in the disputed territory may be assuming too much flexibility in the U.S. position.

Mr. Lee Thormahlen, of the OCS Survey Group in the Minerals Management Service, provided some background information which may be of interest to you. The dispute stems from inexact language incorporated in the Convention of 1867 when the Russians transferred Alaska to the U.S. The U.S. interprets the treaty such that a great circle line should be drawn between two geographical points in the Bering Sea. Conversely, the U.S.S.R. maintains that the treaty should be interpreted as meaning that a rhumb line be drawn between the same two points. If one draws these two lines on a Mercator projection, the great circle line would

be a curved line toward the North Pole whereas the rhumb line would be a straight line. The two lines are roughly 100 miles apart at the widest distance.

Mr. Thormahlen also indicated that the U.S. - U.S.S.R dispute is not an isolated case. All U.S. boundaries with Canada, Mexico and Cuba are currently under some degree of litigation. In these cases, there were no treaties signed between the countries, unlike the Convention of 1867 between the U.S. and U.S.S.R.

We hope this information is useful to you. Please contact us if we can be of further assistance.

GK

MILT COPULOS

Why should we give the Soviets oil-rich turf?

If you were responsible for the disposition of a parcel of U.S. territory roughly four times the size of California and believed to contain upward of 25 billion barrels of untapped oil reserves, what would you do with it?

Well, if you worked for the U.S. Department of State, it apparently would be logical to give it to Moscow. Incredible as it seems, that's what a negotiating team from Foggy Bottom is preparing to do with about half of America's outer continental shelf.

The parcel lies to the east of the "1867 Convention Line." This line was used in the purchase of Alaska from Russia to establish what was being purchased. It was not, however, intended as an official boundary between the two nations. In fact, as recently as 1965 a State Department publication on international boundaries stated unequivocally that the 1867 Convention Line should *never* be designated on maps as the boundary between the United States and the U.S.S.R.

More important, not just the outer continental shelf is involved in the giveaway. Above it lie a number of islands long-recognized as U.S. territory. One, however — Wrangel Island — has been a bone of contention between the two superpowers for more than six decades.

The official U.S. claim is based on the 1881 discovery of the island by a group of Americans. It was the site of an active commercial enterprise through the early 1920s.

There is no doubt about the validity of the U.S. claim to the territory; all the traditional international requirements for establishing sovereignty have been met. In 1924, however, the Soviet Union decided that Wrangel Island belonged to them and sent a force of soldiers, along with the gunboat *Red October*, to occupy it. The Soviets took prisoner the 14 Americans living there, shipped them to Siberia (just 90 miles away), and confiscated the property.

Wrangel Island has been a bone of contention between the two superpowers for more than six decades.

U.S. attempts to resolve the dispute were considerably complicated by the fact that we did not recognize the Communist government at that time. Eventually, 12 survivors were returned to the United States. But the U.S. government never relinquished sovereignty over Wrangel Island, and the family that owned the confiscated property pursued a claim against Moscow through the international courts. While it took until 1959 for their claim to be settled, the Lomen family did receive compensation under the International Claims Settlement Act.

This underscores the illegality of the Soviet actions on Wrangel Island, and the validity of the U.S. claim to that territory. The United States has a similarly strong claim to the area lying between Wrangel and the 1867 Convention Line — the area Foggy Bottom seems so anxious to cede to our adversaries.

What makes the State Department's move more disturbing is the secrecy involved. While negotiations have been under way since 1981, it was not until the Department of the Interior decided to hold an offshore lease sale of the outer continental shelf that the talks came to light.

Four major U.S. oil companies successfully bid on tracts in the Navarin Basin (part of which lies to the east of the boundary the Soviets are pushing). But State notified Interior they might not be able to honor the leases awarded, because the United States might cede title to the territory to Moscow. Interior had to explain to the companies that their $21 million in escrow funds to secure the leases would be in limbo until the talks were concluded or five years had passed, whichever came first.

No one seems to know just how, in less than 20 years, the United States came to relinquish its claim to the outer continental shelf east of the 1867 Convention Line, not to mention the five islands.

More important, no one seems able to explain why we are so anxious to give up the enormously rich oil potential of the territory, or the strategic asset of five islands so close to Soviet shores.

Most of all, no one seems willing to explain why this was going on in secret for so long. Perhaps it's time someone did.

Milt Copulos is director of energy studies at The Heritage Foundation.

Milt Copulos is a Trustee
of The Conservative Caucus
Research, Analysis & Education
Foundation, Inc.

FRIDAY, JANUARY 18, 1985/N The Washington Times

Where Superpowers Are 55 Miles Apart: A Boundary Dispute Waiting to Happen

The boundary line in the Bering Sea leaves some potentially oil-rich areas on the U.S. side, and the Soviet Union could make an issue of it.

BY CAMERON LA FOLLETTE

The Bering Sea, which separates Alaska from Siberia, is a formidable place of roaring winter storms, barren coasts—and oil and gas. The Geological Survey estimates that 15 per cent of undiscovered, recoverable U.S. oil and up to 11 per cent of its gas may lie beneath the chilly Alaskan waters.

These precious energy reserves may, however, be imperiled by sensitive questions over the boundary between the United States and the Soviet Union that runs through the Bering Sea. Neither country is talking publicly about the possibility of a boundary dispute, but U.S. officials recognize that one could erupt, especially if the energy deposits can be verified.

U.S. and Soviet officials have reportedly held informal discussions on the border issue. Oil and gas have already caused a heated boundary dispute between the United States and Mexico and inflamed a dispute between the United States and Canada that centered on fishing rights.

The potential boundary dispute in the Bering Sea is obvious from a stiff note in a recent Geological Survey report on undiscovered, recoverable oil and gas: "With reference to the international boundaries of the offshore regions, the United States has not yet resolved its offshore boundaries with its neighboring states.... The lines used in preparing this report are for purposes of illustration only...."

The current boundary was set in the 1867 treaty by which czarist Russia ceded Alaska to the United States. This was before nations began to extend control over their Outer Continental Shelves, comparatively shallow slopes that are extensions of land masses. The shelves are often rich in oil and gas.

The 1958 Geneva Convention on the Outer Continental Shelf envisioned a scheme for setting boundaries, where needed, between coastal states. The continental shelf claimed by most nations extends 200 miles, and the convention decided that this would do for nations with more than 400 miles of open sea between them. For nations with fewer than 400 miles, the boundary would be equidistant between the countries.

The United States and the Soviet Union are only 55 miles apart at the Bering Strait. This raises the question of whether the 1867 boundary is still the line between the two nations or whether a new one should be fashioned under the 1958 convention.

A State Department official responded: "We consider the 1867 treaty line to be the boundary. We don't consider there to be a dispute over that."

And Los Angeles lawyer Robert Krueger, a participant in the United Nations's Law of the Sea negotiations, said: "I think the equidistant boundary... is a non-issue. I don't think the State Department has a timetable for dealing with this, but you can infer that since oil and gas leases are being proposed right up to the international line, the boundary must be settled."

But Thomas Hovet, a University of Oregon political scientist who specializes in international law, was more cautious. "One could argue under international law that because nobody disputed the boundary, it is a fact," he said. "But the U.S. should prepare arguments on both sides and settle on the one most beneficial. Either side could shift ground later if they don't agree to something now."

As unsettled as the law may seem on this question, both countries appear content to regard the 1867 line as the outer continental shelf boundary. Soviet policy tends to support treaties of long-standing, and any major change would create a diplomatic furor that neither country welcomes.

EXPLORATORY CHILL

The current boundary cuts through Navarin and Barrow Arch, potentially two of the richest oil basins in the Bering Sea. The other two important basins, Norton and Hope, probably do not extend to the international line. Changing the boundary to conform with the convention would probably shift the line east, putting a larger portion of the Navarin Basin in Soviet waters. But until some exploration takes place, actual effects cannot be known.

Doubts over the boundary could cast a chill on exploration. John Garrett, a consultant to Gulf Oil Exploration and Production Co., said: "Gulf would not take a lease, even if offered, if they felt another Administration might give it to the Soviets. Oil companies will take risks on many things, but not international jurisdiction disputes. We would not go into an area until we knew there was a settled regime."

But another oil company official said: "The oil industry's general attitude is that the U.S. government has asserted sovereignty over these continental shelf boundaries. If they put leases up for bid, we'll bid. If there's an ownership problem, that's the government's problem. The focus of industry people in Alaska is operations and technology difficulties."

Jim Jackson, an attorney in the American Petroleum Institute's general counsel's office, said his organization had not studied the issue.

The Interior Department's Bureau of Land Management, which handles oil and gas leasing, plans to offer its first lease in the Bering Sea's Norton Basin in November 1982, with the next in 1985. The first Navarin Basin lease is planned

for March 1984 and the second for 1986. The first Barrow Arch sale is listed for February 1985 and the second for 1987.

This is not the first time the bureau has dreamed of Bering Sea leases. They first showed up in 1973 leasing plans, scheduled for 1978, and the bureau has proposed leases in at least one of the Bering Sea basins almost every year since 1973. But the leases were never sold because of changes in Administrations and, recently, a slack demand for oil.

EXERTING CONTROL

When Russia ceded Alaska to the United States for "seven million two hundred thousand dollars in gold," the treaty included a description of the western limit of the Alaska territory. A map accompanied the description.

The map and boundary sufficed until countries began to proclaim control over their Outer Continental Shelves. The United States in 1945 became the first nation to do so. President Truman claimed the continental shelf "as an extension of the land mass of the coastal nation and thus naturally appurtenant to it. . . ."

The 1958 convention was convened to bring order out of the increasing chaos brought on as other nations followed the U.S. lead. The convention defined the continental shelf as the seabed and subsoil of areas adjacent to the coast but outside the territorial sea, which is usually three miles and is generally considered an extension of a nation. In the Outer Continental Shelf, by contrast, control is limited to exploitation.

The convention tried to smooth the waters on an increasingly controversial issue: how to determine the boundaries between nations when less than 400 miles of sea separates them or they are adjacent to each other. It specified that the boundary shall be determined first by "agreement between the two states," by some other way if another boundary line is justified "by special circumstances" or, if these methods do not suffice, by using the equidistance principle.

There are about 50 continental shelf boundaries around the world. "As a general rule, opposite states generally do use the equidistance method in delimiting their Outer Continental Shelf boundaries," said Robert Petrowski, an attorney in the Washington law office of Northcut Ely, which specializes in Outer Continental Shelf boundary delineations.

The question between the United States and the Soviet Union is whether the 1867 boundary can serve as an "agreement" under the 1958 convention.

ALLOCATING THE SHELF

There are several ways to look at the current boundary in the Bering Sea. Some argue that the 1867 treaty of cession did not establish a boundary at all but merely a "line of allocation." This means that the countries agreed to the line only to divide the lands between them. If this is the case, the two nations should either negotiate a new treaty to set the boundary or settle for an equidistant boundary as the convention urged.

But international law evolves slowly, and practices followed for 115 years carry heavy weight. Thus the 1867 line, even if originally conceived as a line of allocation, may have evolved into a true boundary out of practice. "Lines used for one purpose can crystallize into another purpose," said Petrowski. "If countries use a line to define their spheres of interest, it's easy to see how it would happen."

This is happening to some extent in the Bering Sea. A 1976 agreement between the United States and the Soviet Union on fisheries acknowledged the present boundary as the official one for fisheries allocation. "There's a line there, it's mutually accepted by both countries. There's no shooting over it," said Ray Arnaudo, Pacific fisheries officer for the State Department.

Complicating matters is the 1969 Vienna Convention on the Law of Treaties, which the United States has not ratified. This convention specified that if there are two treaties on a subject, the latter one generally takes precedence. The Soviet Union could thus argue that the 1958 convention overruled the 1867 treaty. But many argue that the two treaties do not cover the same subject; the Alaska treaty allocated land while the convention concerned methods of allocating Outer Continental Shelves.

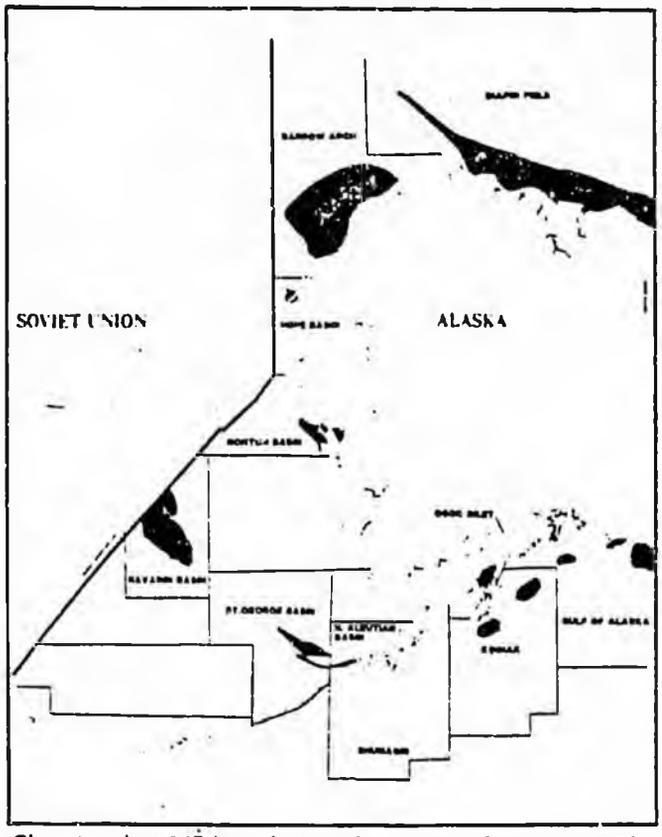
The Vienna convention also stated that treaty provisions cannot conflict with certain fundamental rules of international law. If the Soviet Union favored an equidistant boundary, it could argue that use of the equidistance principle is a peremptory norm of international law.

But that is still in dispute. In its 1969 North Sea Continental Shelf cases, the International Court of Justice ruled that the 1958 Geneva Convention did not crystallize equidistance as a necessary part of continental shelf doctrine. Many states use variations of equidistance to get more equitable settlements, and the court gave its blessing to that approach both for opposite and adjacent countries.

Nobody will know how much is at stake in the Bering Sea until exploration begins. Oil and gas estimates vary greatly. The Bering Sea is considered to be at the technological edge of Outer Continental Shelf drilling because of ice.

"There's no particular problem with water depth," said Hank Rosenthal, Atlantic Richfield Co.'s public relations manager for Anchorage. "There will be problems with sea ice for exploratory drilling several months of the year. We can probably build a permanent structure that can withstand the ice pressure." Rosenthal added that only "a substantial discovery" would justify the cost.

Because the stakes are so high for oil companies wishing to drill in the Bering Sea, the government needs to assure stability. But neither country is willing to change the status quo without good reason. That may happen after someone sinks some wells. □



Changing the 1867 boundaries (above) to conform to a 1958 convention would probably favor the Soviet Union. The shaded areas are likely Outer Continental Shelf oil fields.



6

U.S., SOVIETS SHARE CLAIMS TO BERING SEA

Robert B. Krueger
Nossaman, Krueger & Knox

The Outer Continental Shelf underlying the Bering Sea may contain some of the largest undiscovered petroleum reserves in the world. Recent estimates indicate the region may hold as much as 30 billion bbl out to a depth of only 200 meters.

A prime prospect in the area is the Navarin Basin—one of the lease sale regions extending predictably into both the U.S. and Soviet portions of the Bering Straits, thus raising significant issues of international law. Lease sales will also be affected by the situation, since any sale in the Bering Sea could be complicated by national security issues or overlapping claims by the Soviet Union.

Since the 1958 Geneva Convention which claims those 'submarine areas adjacent to the coast to a depth of 200 meters as Continental Shelf," offshore technology has developed to a point that most of the area is now exploitable. And both the Soviet Union and the U.S. should be presumed to have rights to petroleum in the Bering Sea out to the boundary line.

To determine the extent of the area the U.S. may offer for lease, it will be necessary to establish the boundary line between the nation and the Soviet Union. It will also be necessary to attempt to resolve the potential co plementary problems of the explor tion and development of the Ber Sea area and of the treatment of a petroleum resources which strad the boundary line between the t nations, as they probably will.



Discussion topics

When U.S.-USSR discussions b gan six years ago concerning fishi boundaries, the two groups we drawn to the 1867 treaty. Repor then indicated the Soviets and U. agreed the 1867 line controls t question of delimitation of the con nental shelf.

In general, the boundaries of th zone are measured 200 nautical mil from the baseline. However, for son portions of the waters adjacent to t United States, including the Beri Sea, a 200-nautical-mile zone cou conflict with the rights of other stat such as Mexico, Cuba, Venezuel and the USSR.

Although both countries seem agree the line delimits shelf area they are still unable to agree on ho to actually draw the line. The Sovi Union has taken the position th boundary should be drawn by usir rhumb-lines, a more traditional tec nique at the time of the treaty.

The U.S. contends the more mo ern great circle method of calculatic should be used. Quite a large discre ancy results from the use of these tw different methods of delineation: A area over 15,000 sq miles in th highly promising petroleum region in question.

Many area operators have long held that most promising tracts off the East Coast probably lie in deep and very deep waters.

technology in deeper waters will become proven is for the industry to be given the opportunity to apply it where a real need exists."

Modification work on Sonat Offshore's deepwater vessel, fresh from a record-breaking summer in the French Mediterranean, is now under way to enable the ship to work in 7,500 ft. Shell expects use of the Discoverer Seven Seas will cost about $230,000 a day.

Upcoming sale

Mid Atlantic activity will also be spirited later this month when OCS Sale 76 is held for unleased blocks located 300-350 nautical miles off the coasts of Massachusetts down to North Carolina. The auctioned territory will cover about 50 million acres.

According to the Interior Department's Minerals Management division, the sale area of most interest is located between the 600-6,000 ft water depth contours along the edge of the Continental Shelf and on the Continental Slope from 30 to 140 nautical miles offshore. MMS notes that industry interest is consistent with a pattern that has been developing along the entire Atlantic OCS—that is, a shift in interest to deeper waters that lie over a postulated buried petroliferous reef.

"Nearshore areas hold little to no interest," says MMS.

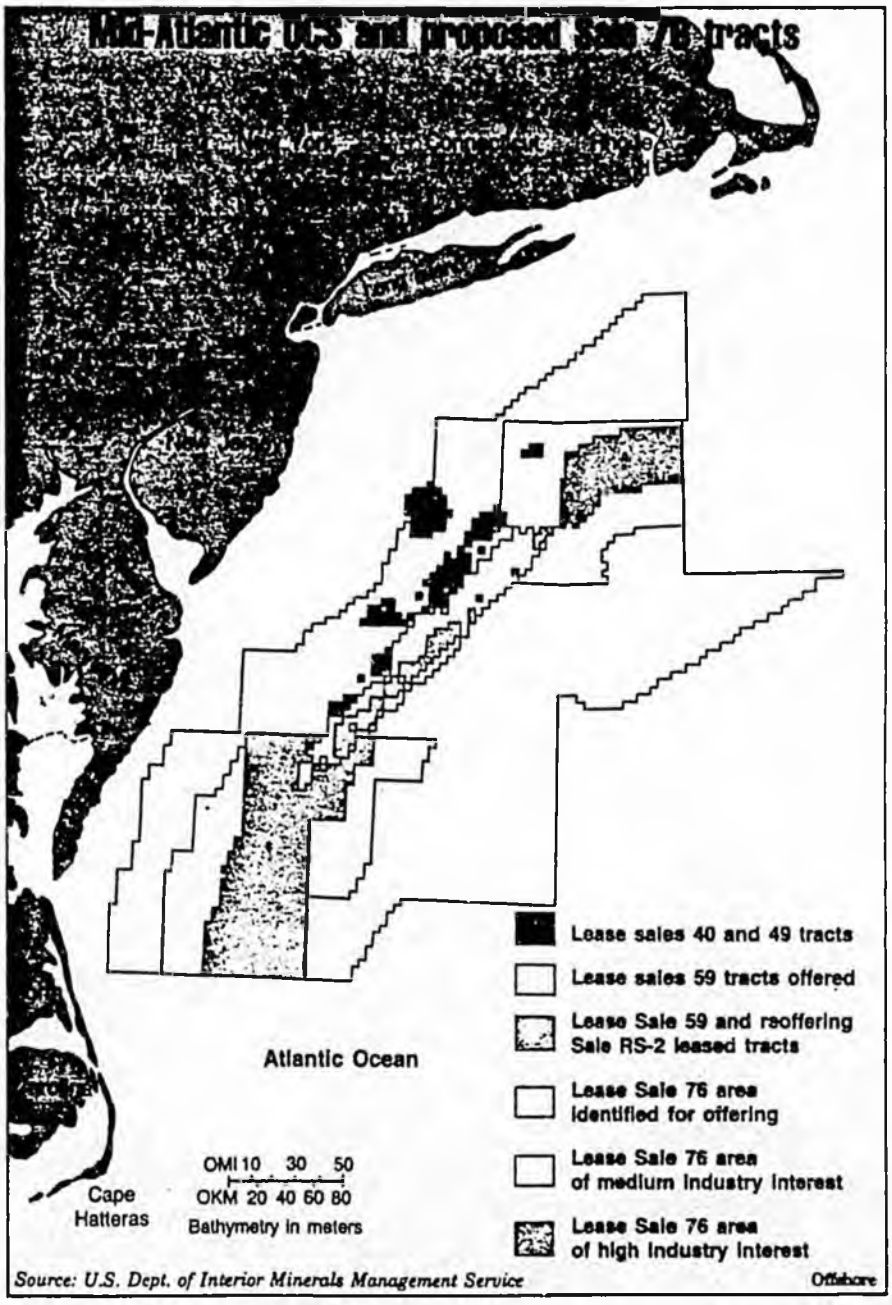
The drilling scorecard in the Baltimore Canyon has collected a lot of dust. From 1978 to 1981, nine operators drilled a total of 27 dry holes. The only shadow of success appeared on the southeast flank of the Baltimore Canyon four years ago, when Texaco tested hydrocarbon signs in Block 598. Further drilling, however, failed to produce more proof.

Chevron will start the East Coast revival ball rolling this spring by spudding an exploration well 40 miles off Cape Hatteras, North Carolina. The company has leased the Sedco 472 drillship to drill the first wildcat in 2,100 ft of water in Block 510. The well has been targeted to 16,000 ft.

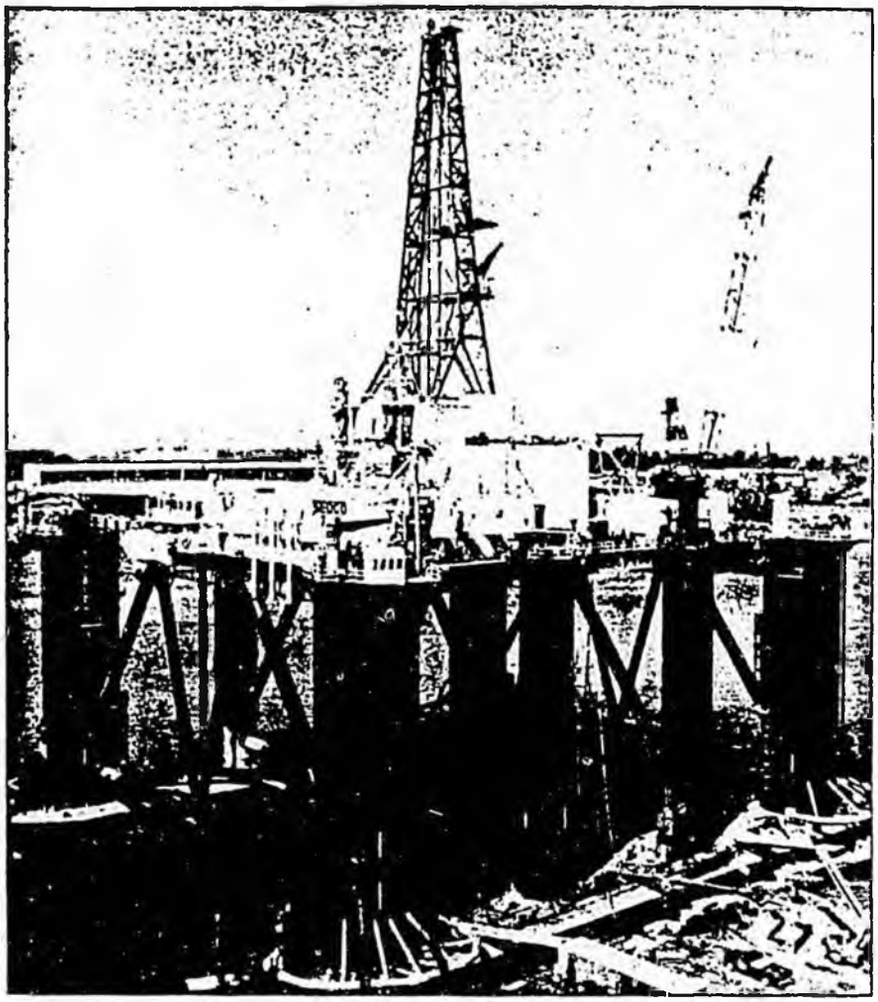
This project will mark the first drilling in the South Atlantic in three years. Operators originally spent about nine months in the area drilling six very expensive and very dry holes.

News from the northern half has been equally quiet since last August, when Shell exited the Georges Bank basin after drilling its second dry hole in the trough. The company was one of five operators who spent almost 14 months and a total of $1 billion for what turned out to be eight duds.

The MMS has since revised reserve estimates for the North Atlantic based on this new geological data. Figures have been pared down to 56 million bbl of oil and 280 billion cu ft of gas. □



To determine the extent of the areas the U.S. may offer for lease, it will be necessary to establish a boundary line between the nation and the USSR.



Sedco's 708 semisubmersible is currently drilling a COST well in the North Aleutian Shelf off Alaska for the Atlantic Richfield Company.

As a large portion of the Navarin Basin may lie in the disputed area, it is vital that this issue be cleared up in the near future. The U.S. and USSR could consider creating a buffer zone, or perhaps an interim regime that will permit exploration and provide the framework for future development and resource sharing.

Security matters

From the standpoint of national security, the Bering Sea is a very sensitive area to both the U.S. and the Soviet Union—a factor which could lead to protracted negotiations over the location of the boundary line for reasons other than control of natural resources.

Until boundary negotiations have been concluded, it would seem logical to permit interested companies and state agencies interested in resource development to conduct geophysical and limited geological operations in the disputed area. The fact that such operations would provide intelligence other than that limited to resource development would complicate this approach.

Bilateral discussions between the Soviet Union and the U.S. on the subject of the shelf are planned for this year. An interesting element is that the agencies conducting the negotiations, the Foreign Ministry in the USSR and the State Department in the U.S., have consistently taken the position that geophysical operations beyond the territorial sea are a freedom of the high seas not requiring the approval of any state, regardless of their internal regulations.

There are reasons to believe the Bering Sea issue will be resolved before OCS Lease Sale No. 83, scheduled for March, 1984. A most interesting aspect of the negotiations will be on the issue of shared structures, especially since informed observers believe some of the Navarin Basin structures are very large, of very high potential, and extend into the Soviet side.

If these problems are dealt with deftly and if political circumstances permit, a joint U.S.-USSR shared resources program could develop with U.S. firms quite active on both sides of the boundary due to the acknowledged lead national firms have in offshore technology. More importantly, it could be a key element in again attempting to establish some common purposes with the Soviet Union.

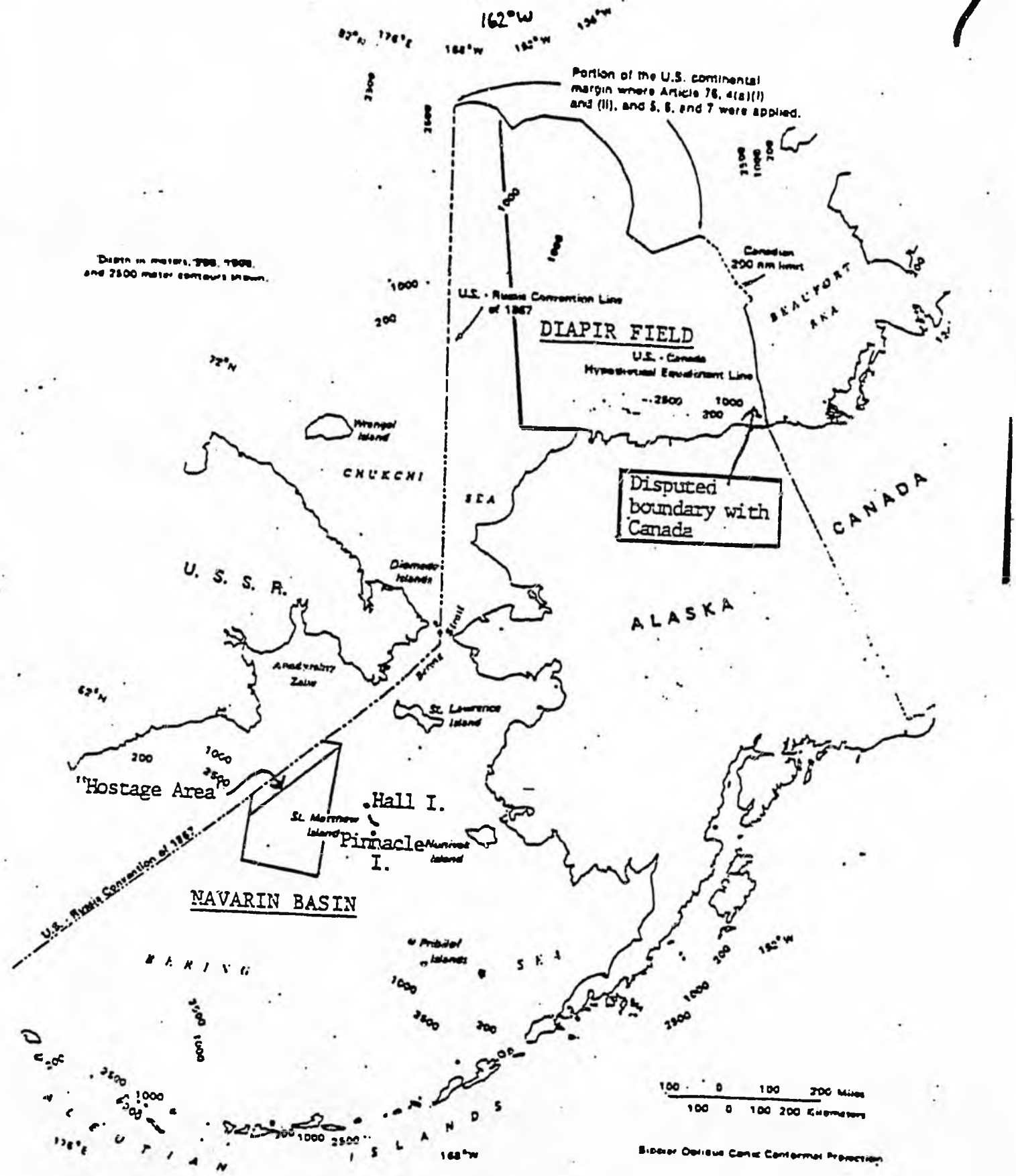
To those companies interested in exploration and development of the Bering Sea, particularly the Navarin Basin, it seems obvious that Soviet interests should be examined with equal care and sensitivity as those of our own government. Although these initially extend to geophysical operations, the central issue to be examined is that of development arrangements.

It is relevant that there are current negotiations between the Soviet Union and the U.S. government related to these issues. Hopefully, the nation's petroleum industry will support and assist these discussions in a cohesive fashion.

The Soviet Union and the United States are, of course, unique in their positions as world powers. The Bering Sea may provide a setting for accommodation and cooperation that will mutually assist in other areas.

It would be interesting to see what the two countries might do as petroleum partners. Similar interests have made other relationships more viable. ⊏

PennWell Publishing, 1421 S. Sheridan Road


162°W
Portion of the U.S. continental margin where Article 76, 4(a)(I) and (II), and 5, 6, and 7 were applied.
Depth in meters, 200, 1000, and 2500 meter contours shown.
U.S. - Russia Convention Line of 1867
Canadian 200 nm limit
DIAPIR FIELD
U.S. - Canada Hypothetical Equidistant Line
BEAUFORT SEA
Wrangel Island
CHUKCHI SEA
Disputed boundary with Canada
CANADA
U. S. S. R.
Diomede Islands
Bering Strait
ALASKA
Anadyrskiy Zaliv
St. Lawrence Island
Hostage Area
Hall I.
St. Matthew Island
Pinnacle I.
Nunivak Island
NAVARIN BASIN
U.S.-Russia Convention of 1867
Pribilof Islands
BERING SEA
ALEUTIAN ISLANDS
100 0 100 200 Miles
100 0 100 200 Kilometers
Bipolar Oblique Conic Conformal Projection

8

STOCKHOLDERS for WORLD FREEDOM

NEWS

Post Office Box 641
Vienna, Virginia 22180
703-281-9050

ISSN 0739-2389
Report No. 17E
20 October 1984
Contact:
Carl Olson
703-281-9050

SEVERAL CANDIDATES PROTEST GIVEAWAY OF 5 ALASKAN ISLANDS TO SOVIET UNION, STATE SEN. BENNETT AND MEMBERS OF ALL PARTIES CALL FOR RESOLUTION AGAINST, DECRY TOTAL INDIFFERENCE BY SEN. STEVENS & MURKOWSKI AND CONGRESSMAN YOUNG

Several Alaskan candidates and political party officials are protesting the U.S. State Department's plan to give away to the Soviet Union five Alaskan islands and tens of thousands of square miles of oil-rich outercontinental shelf, it was reported by Carl Olson, Chairman of Stockholders for World Freedom, headquartered in Alexandria, Virginia.

"This potential surrender is opposed by representatives of all parties--Democrat, Republican, Libertarian, and Populist. Many complain that they cannot get Senators Ted Stevens and Frank Murkowski and Congressman Don Young to take a position in opposition to the giveaway," Olson summarized from questionnaires that candidates and party officers filled out on the giveaway issue.

State Senator Don Bennett (Rep.-Fairbanks) said he would support a resolution in the State Legislature to stop the giveaway of the five Alaskan islands of Wrangell, Herald, Bennett, Henrietta, and Jeannette to the Soviets, along with the vast outercontinental shelf containing billions of barrels of oil reserves.

State Senate candidate Edna Armstrong Devries (Rep.-Palmer) strongly opposes the giveaway and would support such a resolution in the State Senate.

Objecting to the giveaway plan included State House of Representatives candidates Stewart Brandon (Lib.-Nikishka), Virginia Collins (Rep.-Anchorage), John Davis (Lib.-Soldotna), Peter Goll (Dem.-Haines), and Joyce Munson (Rep.-Anchorage).

Joining in the call to keep the Alaskan territory within U.S. jurisdiction are Populist Party leaders Rudy Voigt of Fairbanks and Leon Erickson of Anchorage, and Republican National Convention Alternate Delegate Carolyn Glover of Anchorage.

"The absence of any stated position whatsoever by Alaska's two U.S. Senators and Congressman is especially disturbing, since their offices were contacted on repeated occasions since July with a full account of the State Department's giveaway intentions," Olson complained. "At one point in a seminar for Congressional interns last summer in Washington, it was reported that Senator Stevens became very visibly upset at the entire topic when a young intern posed the topic of the island giveaway, and refused to answer the question or even promise to look into the matter."

State Department officials led a U.S. delegation to Moscow for the week of July 23 to 27 for the purpose of firming up details of the giveaway. Its rationale was a new interpretation of the old 1867 U.S.-Russia Convention Line, which it decided to elevate to the status of an international boundary. The basic trouble with

---more---

The Stockholders for World Freedom promotes the idea that stockholders can help fight anti-capitalist forces and can support human freedoms around the world by discussing and voting on these issues at their annual meetings. Model resolutions and directions for submitting them are available free upon request. For a $25 annual membership, quarterly news reports will be sent.

this position is that it surrenders not only the five Alaskan Arctic islands, but it abandons the valid U.S. claims to tens of thousands of square miles of oil-rich outercontinental shelf.

At stake in a real, practical sense are billions of barrels of probable oil reserves that would go to support the Soviet war machine, losses of hundreds of Alaskan jobs, surrender of militarily strategic areas, and a defeat for American diplomatic prestige.

Already four major petroleum companies (ARCO, Shell, Amoco, and UNOCAL) have been deprived of their ability to exercise the oil and gas leases that they submitted the winning bids on in the Navarin Basin of the Bering Sea, because of the State Department's intent on yielding up these oil-rich seabeds to the Soviet Union. A half million stockholders are being adversely affected by this surrender policy, since their companies bid $108,000,000 for the leases, which would be expected to yield up several times that investment in return.

The State Department's position was revealed in the Federal Register of March 16, 1984 (pp. 10056 and 10068) which declared that the U.S. accepted the old 1867 U.S.-Russia Convention Line as the maritime boundary. This represented a total reversal of the U.S.'s firm foreign policy for decades. As a matter of fact, in its own Boundary Study No. 14, titled "U.S.-Russia Convention Line of 1867", the State Department declared, "Furthermore, in keeping with the policy that the (1867) line does not constitute a boundary, the standard symbol for the representation of an international boundary should never be used."

"Even though Alaska has a small population in comparison with the rest of the United States, it has immense resources and invaluable strategic value to America," Olson declared. "I only hope that Alaskans lead the fight to keep the state from being given away piecemeal to the Communist bosses in the Kremlin."

---30---

9

MILT COPULOS

Why should we give the Soviets oil-rich turf?

If you were responsible for the disposition of a parcel of U.S. territory roughly four times the size of California and believed to contain upward of 25 billion barrels of untapped oil reserves, what would you do with it?

Well, if you worked for the U.S. Department of State, it apparently would be logical to give it to Moscow. Incredible as it seems, that's what a negotiating team from Foggy Bottom is preparing to do with about half of America's outer continental shelf.

The parcel lies to the east of the "1867 Convention Line." This line was used in the purchase of Alaska from Russia to establish what was being purchased. It was not, however, intended as an official boundary between the two nations. In fact, as recently as 1965 a State Department publication on international boundaries stated unequivocally that the 1867 Convention Line should *never* be designated on maps as the boundary between the United States and the U.S.S.R.

More important, not just the outer continental shelf is involved in the giveaway. Above it lie a number of islands long-recognized as U.S. territory. One, however — Wrangel Island — has been a bone of contention between the two superpowers for more than six decades.

The official U.S. claim is based on the 1881 discovery of the island by a group of Americans. It was the site of an active commercial enterprise through the early 1920s.

There is no doubt about the validity of the U.S. claim to the territory; all the traditional international requirements for establishing sovereignty have been met. In 1924, however, the Soviet Union decided that Wrangel Island belonged to them and sent a force of soldiers, along with the gunboat *Red October*, to occupy it. The Soviets took prisoner the 14 Americans living there, shipped them to Siberia (just 90 miles away), and confiscated the property.

Wrangel Island has been a bone of contention between the two superpowers for more than six decades.

U.S. attempts to resolve the dispute were considerably complicated by the fact that we did not recognize the Communist government at that time. Eventually, 12 survivors were returned to the United States. But the U.S. government never relinquished sovereignty over Wrangel Island, and the family that owned the confiscated property pursued a claim against Moscow through the international courts. While it took until 1959 for their claim to be settled, the Lomen family did receive compensation under the International Claims Settlement Act.

This underscores the illegality of the Soviet actions on Wrangel Island, and the validity of the U.S. claim to that territory. The United States has a similarly strong claim to the area lying between Wrangel and the 1867 Convention Line — the area Foggy Bottom seems so anxious to cede to our adversaries.

What makes the State Department's move more disturbing is the secrecy involved. While negotiations have been under way since 1981, it was not until the Department of the Interior decided to hold an offshore lease sale of the outer continental shelf that the talks came to light.

Four major U.S. oil companies successfully bid on tracts in the Navarin Basin (part of which lie the east of the boundary the Sov are pushing). But State notified I rior they might not be able to he the leases awarded, because United States might cede title to territory to Moscow. Interior ha explain to the companies that t $21 million in escrow funds to see the leases would be in limbo until talks were concluded or five ye had passed, whichever came fir

No one seems to know just hov less than 20 years, the United St came to relinquish its claim to outer continental shelf east of 1867 Convention Line, not to men the five islands.

More important, no one see able to explain why we are so a ious to give up the enormously oil potential of the territory, or strategic asset of five islands close to Soviet shores.

Most of all, no one seems wil to explain why this was going o secret for so long. Perhaps it's t someone did.

Milt Copulos is director of energy studies at The Heritage Foundation.

Milt Copulos is a Trustee
of The Conservative Caucus
Research, Analysis & Education
Foundation, Inc.

FRIDAY, JANUARY 18, 1985/N The Washington Times

G. RUSSELL EVANS

The Washington Times THURSDAY, JULY 4, 1985

Why hand oil over to the Soviets?

The State Department persists in negotiations to surrender to the Soviet Union vast areas of oil-rich seabeds in the Bering Sea and Arctic Ocean, territory long considered to be under U.S. sovereignty.

Why? Because "the United States never made formal claims," said a State Department spokesman. An unnamed diplomat called it "another step . . . by the Reagan administration to try to improve relations with the Soviet Union."

Whatever the rationalization, the fact remains that this quiet diplomacy could result in the loss of up to 25 billion barrels of oil reserves very important to national security. Even more damaging would be U.S. surrender to illegal Russian claims.

The argument centers on the interpretation of the U.S.-Russia Convention Line of 1867, established when the United States purchased Alaska. Contrary to historical evidence, the *American Journal of International Law*, and its own geographer, the Reagan State Department would now define this "convention line" as the *international boundary* between the two countries.

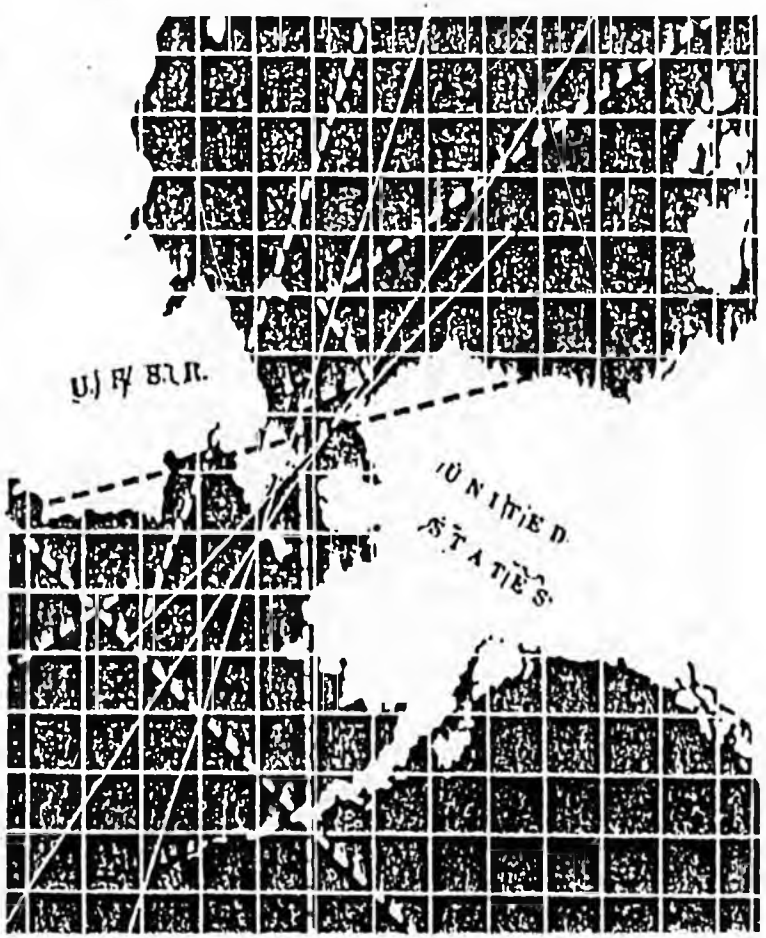
The "convention line," however, is not an international boundary, and in 1951 the State Department's own special adviser in geography, S. Wittemore Boggs, said so in plain language: "Most lines in water areas which are defined in treaties are not boundaries between waters under the jurisdiction of the contracting parties, but a cartographic device to simplify description of the land areas involved. . . ," (*American Journal of International Law*, Vol. 45, April 1951, p. 240).

Mr. Boggs described such a line simply as a "line of allocation" of land. Therefore, the land areas to the east of the convention line of 1867 belong to the United States; and land areas to the west belong to the Soviet Union *without regard to the water areas involved*. Moreover, since this line does not constitute a state boundary, the cartographic symbol for an international boundary should never be used.

This principle was reaffirmed by the State Department Office of the Geographer's *International Boundary Study*, Oct. 1, 1965, and again by William E. Butler, professor of comparative law, University of London, in 1978; "The Russo-American Convention Line of 1867 is not regarded as a state frontier, and the continental shelf boundary in the Chukchi Sea and northward remains to be negotiated."

This quiet diplomacy could result in the loss of up to 25 billion barrels of oil reserves important to national security.

Under quiet negotiations with Moscow in July 1984, Washington would accept the 1967 convention line as the official boundary and evidentally draw it as a rhumb line instead of a great circle, thereby giving the Soviets even more oil reserves on the continental shelf. But more important, the State Department would extend this line into the Arctic Ocean as the boundary line and surrender five strategic islands that lie to the westward: Wrangel, Herald, Jeannette, Henrietta, and Bennett -- all discovered and claimed for the United States long *after* the 1867 purchase of Alaska from the Russians.



The largest islands, Wrangel and Herald, are in the outer continental shelf with vast petroleum potentials. Wrangel was once considered as a prime site for a U.S. air base. U.S. claims to the other three islands, some 900 miles west of Point Barrow, Alaska, resulted from the heroic Jeannette expedition of 1879-81 under Navy Lt. Commander George Washington De Long.

Documents and land records of the state of Alaska, the U.S. Navy, and the Treasury Department (Revenue Cutter Service) trace the American origins of these five islands. An international court ruling in 1959 under the International Claims Settlement Act established U.S. claims to Wrangel Island, and underscored the illegality of Soviet claims.

Thirty-five years earlier, in 1921, Alred J. Lomen had filed his claim against the Soviets for confiscating his property on the island. Mr. Lomen was one of 13 Americans engaged in processing furs in the early 1920s. In 1924 the Soviets sent the gunboat *Red October*, seized the Americans and their property, and sent them to Siberia, 90 miles away. The new Soviet nation claimed the island. However, after a long delay, the court awarded compensation to the Lomen family, thereby providing yet another validation that the island is U.S. territory.

The current State Department negotiations have apparently ignored America's 200-mile economic zone, which would give the United States exclusive maritime resource jurisdiction — meaning maritime oil rights 200 miles offshore from U.S. territory. Further complicating the State Department's surrender plan is the acceptance by the Interior Department of millions of dollars in escrow funds from four U.S. oil firms bidding on tracts in the disputed areas.

This scheme for appeasing the Soviet Union whose empire already spreads over one-fifth of the Earth's land and controls another fifth would cede 2,900 square miles of strategic islands and oil beds four times the size of California, or 6,30,000 square miles of energy sources.

This *cannot* be done constitutionally without the consent of Congress, which alone can dispose of U.S. territory (Art. IV, Sec. 3, of the Constitution). It *must* not be done without full debate and disclosure.

Do the senators and representatives in Congress understand what the State Department is up to? And, have they been asked to intervene?

G. Russell Evans is a retired U.S. Coast Guard captain.

MILT COPULOS

Why should we give the Soviets oil-rich turf?

If you were responsible for the disposition of a parcel of U.S. territory roughly four times the size of California and believed to contain upward of 25 billion barrels of untapped oil reserves, what would you do with it?

Well, if you worked for the U.S. Department of State, it apparently would be logical to give it to Moscow. Incredible as it seems, that's what a negotiating team from Foggy Bottom is preparing to do with about half of America's outer continental shelf.

The parcel lies to the east of the "1867 Convention Line." This line was used in the purchase of Alaska from Russia to establish what was being purchased. It was not, however, intended as an official boundary between the two nations. In fact, as recently as 1965 a State Department publication on international boundaries stated unequivocally that the 1867 Convention Line should *never* be designated on maps as the boundary between the United States and the U.S.S.R.

More important, not just the outer continental shelf is involved in the giveaway. Above it lie a number of islands long-recognized as U.S. territory. One, however — Wrangel Island — has been a bone of contention between the two superpowers for more than six decades.

The official U.S. claim is based on the 1881 discovery of the island by a group of Americans. It was the site of an active commercial enterprise through the early 1920s.

There is no doubt about the validity of the U.S. claim to the territory; all the traditional international requirements for establishing sovereignty have been met. In 1924, however, the Soviet Union decided that Wrangel Island belonged to them and sent a force of soldiers, along with the gunboat *Red October*, to occupy it. The Soviets took prisoner the 14 Americans living there, shipped them to Siberia (just 90 miles away), and confiscated the property.

Wrangel Island has been a bone of contention between the two superpowers for more than six decades.

U.S. attempts to resolve the dispute were considerably complicated by the fact that we did not recognize the Communist government at that time. Eventually, 12 survivors were returned to the United States. But the U.S. government never relinquished sovereignty over Wrangel Island, and the family that owned the confiscated property pursued a claim against Moscow through the international courts. While it took until 1959 for their claim to be settled, the Lomen family did receive compensation under the International Claims Settlement Act.

This underscores the illegality of the Soviet actions on Wrangel Island, and the validity of the U.S. claim to that territory. The United States has a similarly strong claim to the area lying between Wrangel and the 1867 Convention Line — the area Foggy Bottom seems so anxious to cede to our adversaries.

What makes the State Department's move more disturbing is the secrecy involved. While negotiations have been under way since 1981, it was not until the Department of the Interior decided to hold an offshore lease sale of the outer continental shelf that the talks came to light.

Four major U.S. oil companies successfully bid on tracts in the Navarin Basin (part of which lies to the east of the boundary the Soviets are pushing). But State notified Interior they might not be able to honor the leases awarded, because the United States might cede title to the territory to Moscow. Interior had to explain to the companies that their $21 million in escrow funds to secure the leases would be in limbo until the talks were concluded or five years had passed, whichever came first.

No one seems to know just how, in less than 20 years, the United States came to relinquish its claim to the outer continental shelf east of the 1867 Convention Line, not to mention the five islands.

More important, no one seems able to explain why we are so anxious to give up the enormously rich oil potential of the territory, or the strategic asset of five islands so close to Soviet shores.

Most of all, no one seems willing to explain why this was going on in secret for so long. Perhaps it's time someone did.

Milt Copulos is director of energy studies at The Heritage Foundation.

The Pioneer 50¢
ALL-ALASKA WEEKLY

Claiming State Department in Secret Negotiations . . .

Groups Oppose Giving Soviets Wrangel, Four Other Islands

18,000 Square Miles Area Said Rich in Oil and Fishery Resources



Secretary of Interior Donald Hodel, center, talks with Roger Burgraff, of the Alaska Miners Association, left, and Borough Mayor Bill Allen shortly before speaking at a breakfast meeting Monday at Travelers Inn.

$108 Million Placed In Escrow, Lease Fees For Disputed Area

By Tom Snapp
Editor

The national organizations, the Conservative Caucus Foundation, the Daughters of the American Revolution, and the Military Order of the World Wars, along with seventeen members of the Alaska House of Representatives are urging the U.S. State Department to take a strong stand regarding the U.S.-Soviet Union boundary dispute involving an 18,000 square mile area in the Arctic Ocean and Bering Sea considered rich in oil and fishery resources.

The area includes five islands, Wrangel, Bennett, Herald, Henrietta and Jeanette.

The groups claim the U.S. State Department has been in secret negotiations with the Soviet Union for years and has already made concessions to the Soviet Union, including use of the 2,000-square-mile Wrangel Island.

The groups, which claim the U.S. owns the area in question, vehemently opposes giving any of it to the Soviet Union and instead is calling on Congress to hold hearings to investigate the activities of the State Department.

On May 12 this year, seventeen members of the Alaska House of Representatives introduced a resolution, House Joint Resolution 53, on the subject. While the resolution did not pass this session and was left stranded at the end of the legislative session in the House Resources Committee, reportedly it will be revived at the beginning of next year's session.

The resolution explains the background of the dispute this way:

"The Navarin Basin oil and gas lease sale in April 1984 resulted in total accepted bids of $637,200,000, of which $108,174,000 was for an area claimed by the Soviet Union.

"The winning bidders for the 17 tracts in the area claimed by the Soviet Union not only are precluded from exploring for oil and gas in these valuable seabed areas, but their bid deposit money is being held in a suspense account

—Continued on page 3

Man, 19, Girl, 14, Charged With Killing Three Elderly Alaskans

A 14-year-old Anchorage girl and her 19-year-old boyfriend, Colnell Boyd, also of Anchorage, were arrested this week on charges of murdering three elderly Alaskans on April 22.

The pair, who have also been charged with a string of Anchorage burglaries, are charged with killing Plumbing supply businessman Tom Faccio, 63, his wife, Ann Faccio, 70, and Ann's sister Emelia Elliott, 76. They were found in their East Anchorage home the morning of April 24. All three had been shot through the head, executian-style.

The case which baffled police for quite some time was finally broken when Boyd and the girl were identified through the Crimestoppers program which at the time was offering a $50,000 reward.

Court papers describe the young pair as having been living together for two months, crashing in vacant rooms and apartments, and buying food and drugs from the loot of their burglaries.

Both Boyd and the girl have been seen frequently at a state owned housing project near Chester Creek and C Street. Boyd's family still lives there. The girl — listed as a runaway — and her parents have moved away.

On May 30 police nabbed the pair as the process of burglarizing two apartments at 907 W. 27th Avenue. The girl was captured at the scene but Boyd made his escape.

The girl was taken to police headquarters where she was in the midst of giving a taped confession of participating with Boyd in a series of burglaries dating back to February when Boyd called the station to find out what was happening to her.

Police kept Boyd on the line long enough until the call could be traced to the Sears Mall. Police moved in to arrest him but Boyd spotted them and eluded them in a one-hour chase across town. He was arrested the next day on seven burglary charges and two theft of weapon charges.

Assistant District Attorney Stephen Branchflower said more burglary charges — perhaps as many as seven — will be lodged against the pair.

Giving Soviets . . .

–Continued from page 1

by the U.S. Department of the Interior and is yielding only the U.S. Treasury rate of return.

"There are hundreds of American jobs at stake at the drilling sites and at industry support sites.

"The question of territorial jurisdiction also has implications for bottom fishery operations for American fishermen.

"The normal depletion of lines on the globe are by the arc of a great circle, especially when they involve great distances in the open ocean, such as the 1867 Convention Line marking the boundary between the United States and Russia.

"The U.S. Department of State's International Boundary Study No. 14 ("U.S.-Russia Convention Line of 1867"), which was published in 1965, depicted the 1867 Convention Line by arcs of a great circle.

"Discussions have been conducted between the U.S. Department of State and the Soviet Government over this issue since 1981, with the latest round being held in Moscow on July 23 and 24, 1984, when the American delegation led by Davis R. Robinson, the Legal Advisor of the U.S. Department of State.

"Article IV, Sec. 3 of the United States Constitution provides that 'The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.'

"The Western-most limit to the oil and gas leasing program of the U.S. Department of Interior for the Outer Continental Shelf in the Bering Sea has been set by the U.S. Department of State at the U.S.-Russia Convention Line of 1867.

"The leasing program involving the 1867 Convention Line in the Bering Sea includes the Navarin Basin and the Norton Basin; there are highly significant oil and gas deposits estimated by the U.S. Department of Interior in these basins; and these potential hydrocarbon energy deposits are a vital part of the future energy production for the United States and its goal of energy independence.

"The leasing schedule for sales of oil and gas includes the Navarin Basin in April last year and March 1986, the St. George Basin in May, this year, and April 1987, and the Norton Basin in December of this year.

"The area is estimated to contain some 100,000 tons of sustainable yield pollock that is presently being fished exclusively by foreign fishing fleets.

"During the announcement of the Navarin Basin's April 1984 sale, the U.S Department of Interior revealed that the Soviet Union was demanding part of the Outer Continental Shelf in the Navarin Basin and that the U.S. Department of State was requiring that the proposed oil and gas lease sales in the area claimed by the Soviet Government be held in abeyance, that is, the bids received and retained but the leases not awarded until the matter is resolved.

"The Federal Register announcement described the dispute as follows:

"The differing claims relate to differing depictions of the line established by the 1867 Convention Ceding Alaska between the United States and Russia. The United States depicts the 1867 Convention Line as the maritime boundary by arcs of a great circle while the Soviet Union depicts the 1867 Convention Line as 'rhumb lines.'

"The area of the Outer Continental Shelf demanded by the Soviet Union between the arc-of-a-great-circle and the rhumb-line directions in the Bering Sea amounts to about 18,000 square miles."

In their resolutions, legislators urge the U.S. Department of State "not to yield to the demands of the Soviet Union" and urge it to adopt a firm stance and aggressively pursue a resolution of the dispute favorable to the interests of the government and the people of the United States.

In a resolution adopted by the 94th Congress of the Daughters of the American Revolution in April this year, that organization claimed:

"The Soviet Union is now occupying Wrangel Island, without the consent of Congress, and the existence of a special espionage training facility has been discovered on United States Territory.

"The United States is also considering transfer to the Soviet Union of the oil-rich Outer Continental Shelf in the Bering Sea and the Arctic Ocean, which contains some 15,400 square miles of petroleum-rich seabeds with an estimated four to twenty-five billion barrels of oil in addition to vast deposits of heavy metals.

In a resolution passed by the Military Order of the World Wars in January of this year, it is claimed the "Arctic Alaskan Islands of Wrangel, Bennett, Henrietta and Jeannette were discovered and claimed in the name of the United States, under international law during the period of 1879-1881 and the island of Herald was discovered and claimed in the name of Great Britain in 1849 and subsequently ceded to the United States."

The resolution claims the Soviet Union invaded the island of Wrangel, taking all Americans prisoner in 1924 and confiscating all property real and personal in violation of international law.

The U.S. State Department, it says, as late as 1973 made the unequivocal statement "The United States has not relinquished its claims to Wrangel Island." But it says the U.S. State Department has been conducting secret negotiations with the Soviet Union, without participation of the Departments of Interior, Energy, or Defense, since at least 1981 on surrender of this sovereignty. And it adds that the Constitution of the U.S. provides that only the Congress, by treaty, signed by the President and debated and ratified by the Senate, may surrender American real estate and wealth.

The State Department is close-mouthed about Wrangel Island. Scott Hajost, who has been involved in discussions with the Soviets for many years over the dispute, says information about the talks is classified.

The three islands, Bennett, Henrietta, and Jeannette, were discovered and claimed for the United States by Navy Commander George Washington DeLong in an 1879-1881 expedition to which a monument still stands at the U.S. Naval Academy in Annapolis, Md. The three islands are also known as the DeLong Islands.

In 1881 an American flag was raised over Wrangel Island by the U.S. Revenue Marine, but no claim of ownership was made. In 1911, the Russians first visited Wrangel and erected a beacon. In 1921, Canadian explorer Vilhamlour Stefansson tried to colonize the island but that venture ended in disaster, when most of the members died. In 1923, Stefansson tried again but this time the Russians removed the colonists from the island. Neither the U.S. or Canada exerted a claim of ownership, but Stefansson sold whatever interest he had in the island to the Lomen Brothers, of Nome.

Mark Seidenberg, a resident of Alexandria, Va., in 1976 attracted with Ralph Lomen, one of the Lomen Brothers that claimed to be owners of the island, to trade a square foot of Alaskan land he had acquired near Anchorage for 93,000 acres on Wrangel so he could challenge the Soviet presence there.

"The U.S. Claim to Wrangel Island," study done for the State Department in 1976, says the island was first sighted by American captain Thomas DeLong in 1867, the year the United States purchased Alaska. Another American, Calvin Hooper, landed on the island and claimed it for the U.S. in 1881, according to the study.

In the mid-70s, the executor of Mildred Lomen's will filed a claim with the State Department regarding Wrangel Island. The executor was told that U.S.-Soviet scientific studies taking place at the time on Wrangel Island involved musk ox and migratory birds and did not affect ownership.

The studies emanated from an agreement, the Protocol of Anchorage, signed September 19, 1974 by the United States and the Soviets.

On August 27, 1974 the U.S. and U.S.S.R. met in Moscow to write up the proposed protocol, which if approved would grant Russia formal use of Wrangel Island without going to the U.S Congress, with only approval by the Department of State.

At 10:30 p.m. September 19, 1974 at the Westward Hotel in Anchorage, the proposed protocol was approved and signed by V. Dunaev and Vitautas Kazimavicius for the U.S.S.R. and Richard O. Stoog and Harold T. Jorgenson for the U.S. On November 24, 1974 Gerald Ford, president of the United States, at the direction of Secretary of State Henry Kissinger approved it at Vladivostok, U.S.S.R.

On December 12, 1974, in Moscow, Russell Train signed for the U.S. government a memo, "in the field of environmental protection" which included the protocol signed in Anchorage on September 19. The memo was also signed by Y. Izrael for the Russian government.

On April 14, 1975 there was a ceremony held at the Bethel Alaska airport in which Russia was given the formal use of Wrangel Island. In the protocol of Anchorage, signed Sept. 19, 1974, the U.S. made a big concession. For the first time, it referred to the disputed real estate as "Soviet Island Wrangel."

Chena Flood Control . . .

–Continued from page 2

been 14,000 acre-feet, retained in June 1964.

The project had been operated four times previously: once in 1981 and three times in 1984. The Memorial Day weekend operation was the first time the Corps had used the project to prevent snow melt flooding. Rain caused high water in all previous operations.

The Chena's normal volume during the end of May is 2,000 cubic feet per second. The Corps estimates that the river would have reached to 14,000 cfs in downtown Fairbanks if the gates had not been closed on May 25. This compares to 64,000 cfs that flooded Fairbanks in August 1967 causing property damage worth $85 million in 1967 dollars.

Though the 1967 flood was the worst, it was not the only flood in Fairbanks history. Between 1903 and 1967, more than 11 major floods inundated the city, an average of one every four and a half years.

The Chena River Lakes Flood Control Project is the Army Corps of Engineers largest civil works project in Alaska. Its main features are an 7.5 mile-long Tanana River levee and drainage channels.

Except during periods of flooding, there is no pool or reservoir. When the project is activated, the flood gates in the outlet works are lowered, impounding excess Chena River water in the floodway behind the dam. During major floods, water in the floodway would

–Continued on page 4

Lucky Pierre Charters

On the Homer Spit for the best in

Halibut /Salmon fishing

and all other types of charters

Prices are unbeatable

starting at

- '75/single
- Groups of 5 and up '70/ea.
- '65/Senior Citizen, Disabled
- '50/Kids (7 yr. to 12 yr.)
- FREE Kids (under 6) (when available)
- Licensed for 18
- Sleeps 6 to 8



Lucky Pierre Charters

P.O. Box 1884
Homer, Alaska 99603
INFORMATION/RESERVATIONS
24 HOURS
907-235-8063

PHOTOGRAPHY

Nelsons

606 Bentley Dr
Fairbanks, AK 99701

Bud, Ruth and Duane
907-452-3116
Images Today
Memories Forever

Photographing Alaska Since 1952

KENNEDY'S

RESTAURANT & PUB

9:00 A.M.-10:00 P.M.

126 North Turner • 452-9946

Formerly Steak n Pipes

LEGISLATOR COPY 12

MAR 4 1985

The Alaska Economic Report

Twelve Exploration Wells, But "No News"

Feb. 28, 1985
No. 3/1985

BERING SEA "OCS REPORT"

Twelve 'major' exploration wells were drilled by six companies and parnters in two Bering Sea OCS sale areas last year. Reports are that some companies may once again try their luck in St. George Basin and Norton Sound next summer and fall, but the major emphasis will now shift to the Navarin Basin OCS sale area.

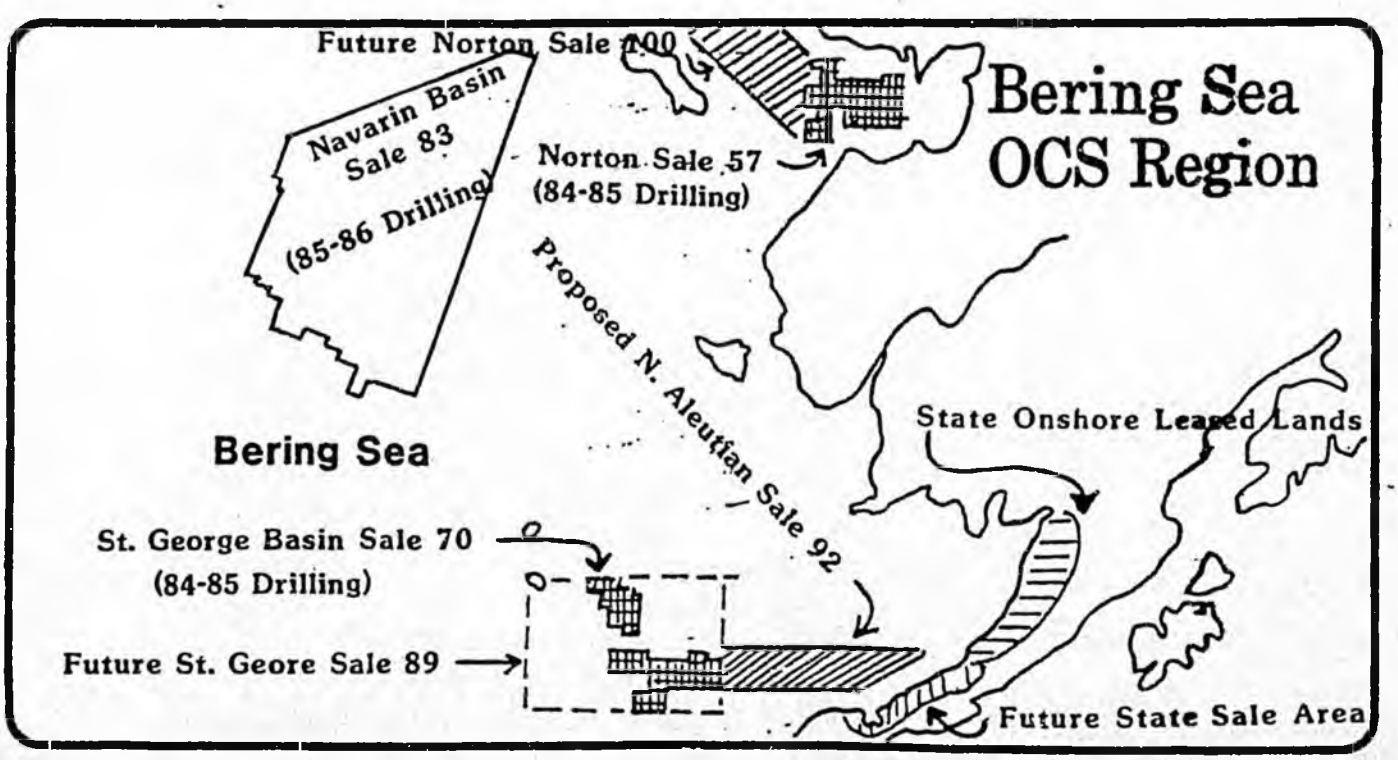
No News Is "No News"

So far companies have declined to release much information concerning results of their Bering Sea OCS efforts, but 'no news' is not necessarily 'bad news.' The releasing sales scheduled in both Norton Sound and St. George mean firms are naturally inclined to keep information tight.

However, 'no news' is also not 'good news,' since it likely means that no firm active in the Bering Sea hit a probable commercial find. Federal SEC rules require such finds to be disclosed if they are likely to have a specified percentage of impact on a firm's assets. Some companies could avoid disclosure due to their large assets.

Norton Sound

Exxon drilled two wells in Norton Sound last summer, disclosed that one of the wells proved 'dry,' but has made no disclosure on the second well. Reports are that Exxon will drill at a third well in Norton Sound this summer. (Cont'd page 8)



THE ALASKA ECONOMIC REPORT IS PUBLISHED BIWEEKLY BY ALASKA INFORMATION SERVICE.
3037 S. Circle, Anchorage, Alaska, 99507. (907) 344-2455 / 349-7711

Alaska News Summary (Continued)

ANCHORAGE SCHOOL BILL HITS $260 MILLION FOR 1985-86 YEAR: The Anchorage school budget approved by the school board and sent to the Anchorage Borough Assembly has cracked a quarter billion dollars. The budget would require a 'slight' school mill increase from 4.27 mills to 4.33 mills, but that assumes that state school support holds together amidst the current revenue cutbacks. If state support is cut then the budget would have to either be cut or taxes increased, or both. Additionally, projections first projected that new taxable property in the borough would be $828 million, but those estimates have now been revised to $563 million in new taxable property.

ALASKA STATE BANK SETS A RECORD: Alaska State bank posted a new record for itself with 1984 net income of $3.2 million, a 33% increase over the previous year (1983). Bank assets increased from $177 million to $184 million over the same period.

UNITED BANK WASILLA UNIT GOES 'FULL SERVICE:" The United Bank of Alaska's Wasilla Branch began offering full service banking March 4th. David Andrews was named vice-president and manager of the Wasilla facility.

UNITED BANK ASSETS UP $418 MILLION: United Bancorporation's assets rose $418 million in 1984, a $109 million or 35% jump over the year before. Net income was $5.02 million.

NEW ALASKA PACIFIC BANK PRESIDENT: Michael J. Burns, formerly director of a Mid-western bank in Illinois, has been named president of Alaska Pacific bank, replacing [illegible] Alaska Pacific Bank had assets of $520 million for 1984.

Bering Sea Exploration (Continued)

(from page 3) Reportedly ARCO has no plans to drill again in Norton Sound this summer.

St. George Basin

Six companies drilled nine wells in St. Basin this last summer and fall, and one well by Shell Oil Company is 'still drilling' in St. George. Exxon and ARCO both drilled two wells in the northeastern area near the Pribilof Islands, while the two Shell wells are in the central area. Gulf, Mobil, and Chevron all drilled one well. The exploration effort in St. George was pretty broadly spread across the six areas that drew leasing interest.

At this time it is unclear whether any of the companies will drill this summer, although some firms might shift to a new area. However, if companies have found an interest from 1984 work, they will likely be reluctant to 'tip off' others to their exceptional interest, since the St. George 'releasing' sale is set for September of this year.

The Navarin

The exploration emphasis this summer will shift to St. George Basin, with an advance supply base now being readied on St. Paul Island in the Pribilofs. Exxon was the first to get its Navarin exploration plan into MMS, and approval of those plans may come soon. Industry sources say Exxon, ARCO, and Shell/Amoco will each drill two wells in the Navarin next in the 1985 season.

Approaching Sales

Companies also face three new oil lease sales in the Bering Sea in the next year. Two are essentially 'releasing' sales. The St. George Sale No. 89 is scheduled to be held in September, and the Norton Sound Sale No. 100 is slated for March, 1986. The final EIS on St. George is due out in April, and the draft EIS for Norton Sound is to be released soon. The big sale this year, is the controversial North Aleutian Sale No. 92, set for December. This sale could draw state and other litigation.

13

PRESS RELEASE



The Conservative Caucus
Research, Analysis & Education
Foundation, Inc.
450 Maple Avenue East, Vienna, Virginia 22180

FOR IMMEDIATE RELEASE
CONTACT: Carl Olson
(703) 281-6782

GIVEAWAY OF FIVE ALASKAN ISLANDS AND EXTENSIVE OIL-RICH SEABEDS TO THE SOVIET UNION PLANNED BY THE U.S. STATE DEPARTMENT; 25 BILLION BARRELS OF OIL INVOLVED; PUBLIC TREATY DEBATE REQUESTED

"The State Department appears ready and willing to surrender five strategic Alaskan islands and hundreds of thousands of square miles of oil-rich Alaskan outer continental shelf to the Soviet Union without full public debate and Senate ratification of a treaty," according to Carl Olson, Executive Vice President of The Conservative Caucus Research, Analysis & Education Foundation, Inc., of Vienna, Virginia.

"This giveaway of literally billions of barrels of America's oil reserves and Alaskan sovereign territory makes the Panama Canal fiasco look insignificant in comparison," Olson declared.

This giveaway was the subject of a high-level State Department delegation which went to Moscow for the week of July 23-27, 1984, headed by the department's Legal Adviser Davis Robinson and supported by his staff members Elizabeth Verville and Scott Hajost, and by Harry Marshall and Richard T. Scully of the department's Bureau of Oceans and International Environmental and Scientific Affairs, and by Robert W. Smith of the Office of the Geographer.

Secret negotiations over this surrender of sovereignty have been conducted since at least 1981. They came to light in March of this year when the Department of the Interior announced the proposed leasing of oil-rich seabeds of the outer continental shelf in the Navarin Basin off the coast of Alaska in the Bering Sea. At the instruction of the State Department, the Department of the Interior was unable to guarantee that the successful bidders for these oil and gas leases would be able to keep their leases, since this area was being actively considered for turnover to the Soviet Union. As it turned out, four energy companies (Shell, ARCO, Amoco, and UNOCAL) were so certain of rich petroleum finds that they bid $108,000,000 for leases in the seabed tracts that are currently being held hostage to the State Department's negotiations. Because of the potential giveaway, these companies have over $21,000,000 tied up in deposits with the Department of the Interior for an indefinite time period, hundreds of potential jobs are imperilled, and hundreds of millions of dollars of revenues and billions of barrels of oil are at stake.

The enormous size of the giveaway of strategic oil reserves is reflected in official Department of the Interior estimates. The oil-rich outer continental shelf off Alaska is equal in area to six Californias--or three-quarters of the entire U.S. outer continental shelf. Seabeds equal

to about twice the size of California lie to the east of the 1867 Convention Line, and seabeds equal to about four Californias lie the west in the vicinity of the Alaskan islands of Wrangell, Herald, Bennett, Henrietta, and Jeannette. The estimated hydrocarbon reserves of the seabeds to the east of the 1867 Convention Line are 12.2 billion barrels of oil equivalent. (The Navarin Basin alone contains 1.9 billion barrels of reserves.) To the west of the 1867 Line, which has twice the area, the reserves have not been officially estimated, but it would not be unreasonable to place them at twice the amount for the area to the east of the line. Or, in other words, the State Department is contemplating giving away about 25 billion barrels of oil equivalent to the Soviets.

The State Department's basis for the giveaway involves its novel (and incorrect) portrayal of the "U.S.-Russia Convention Line of 1867", which was used in the purchase of Alaska from Russia in 1867 for $7,200,000.

This stance by the State Department appeared in the Federal Register notice of the leasing of the Navarin Basin (p. 10065, March 16, 1984). In paragraph 16, under the heading "Jurisdiction", was the following language: "The differing claims relate to differing depictions of the line established by the 1867 Convention Ceding Alaska between the United States and Russia. The United States depicts the 1867 Convention Line as the maritime boundary by arcs of great circles while the Soviet Union depicts the 1867 Convention Line as rhumb lines." There is no question in the State Department's position that the 1867 Convention Line is "the maritime boundary".

Contradicting this characterization is a mass of historical evidence and even the State Department's own words. In the State Department's International Boundary Study No. 14 (revised 1965) on "U.S.-Russia Convention Line of 1867", the language is very clear:

> "Rather than a boundary per se, this report concerns a convention line which ordinarily appears on official maps in the same manner as a boundary. ...
>
> "Furthermore, in keeping with the policy that the line does not constitute a boundary, the standard symbol for the representation of an international boundary should never be used."

So far, the State Department has failed to explain how the United States has relinquished its claim to the islands and seabeds between 1965 and 1984. No treaty, agreement, or other public understanding had been cited for this surrender of American sovereignty.

Even as late as 1978 the noted authority Dr. William E. Butler, Professor of Comparative Law at the University of London, wrote in the book International Straits of the World, Volume 1 "Northeast Arctic Passage" as follows:

> "The Russo-American Convention Line of 1867 is not regarded as a state frontier, and the continental shelf boundary in the Chukchi Sea and northward remain to be negotiated."

The five Arctic Alaskan islands--Wrangell, Herald, Bennett, Henrietta, and Jeannette--were never considered in the purchase of Alaska. Four had not yet been discovered in 1867. Americans discovered and claimed them on Arctic expeditions in following decades. Herald Island was discovered

-more-

and claimed by the British in 1849, and was later acquired by the United States.

Bennett, Henrietta, and Jeannette Islands were discovered and claimed by U.S.N. Commander George Washington DeLong aboard the Jeannette in the 1879-81 expedition. The islands still bear his name (the DeLong Islands), and the U.S. Naval Academy in Annapolis has a monument to that expedition.

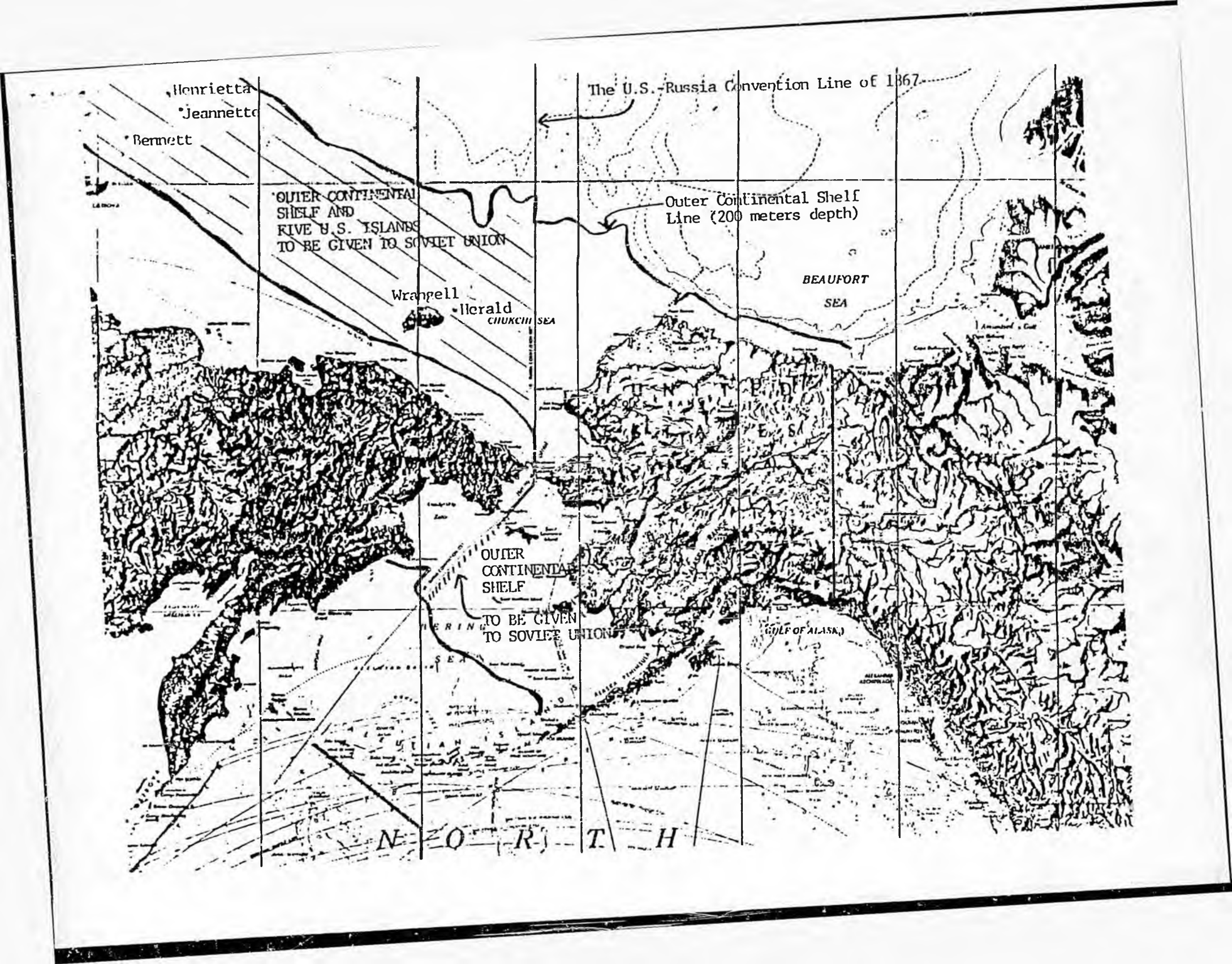
Wrangell Island, the largest of the five with an area of 2,800 square miles (the size of Rhode Island and Delaware combined), was discovered and claimed on August 12, 1881, by Captain Calvin Leighton Hooper aboard the U.S. Revenue Marine (Coast Guard) ship Thomas Corwin. Among the landing party on Wrangell Island was the famed explorer John Muir, who wrote of his trip in the book The Cruise of the Corwin. Various surveys, expeditions, and settlements were made on Wrangell Island in the next four decades by Americans. This ended when the Soviet Union invaded the island with a landing of infantry from the ship Red October on August 20, 1924, and took as prisoners the 14 Americans of the Lomen Brothers Company's fur settlement and confiscated all the gear, pelts, and other property. The 12 surviving Americans were eventually released from their imprisonment in Vladivostok. The Soviets currently maintain slave labor camps on the island.

It is significant to note that in the State Department's reissue of the book Digest of International Law by Green Haywood Hackworth in 1973, the unequivocal settlement is made: "The United States has not relinquished its claim to Wrangell Island."

Numerous efforts by various parties, including the owners of Wrangell Island, have been made over the decades to take back their property and collect damages for the unlawful occupation by the Soviet Union. Unfortunately, the State Department has not seen fit yet to honor those claims or even the decision by the Foreign Claims Settlement Commission in 1959 in favor of the Lomen Brothers.

"This impending giveaway of the five islands and the enormous tracts of oil-rich outer continental shelf to the Soviets demands the most searching public scrutiny and debate. It must be made an issues for a national decision-making," Olson stated. "The State Department is not empowered to surrender American real estate and seabeds. Only the Congress has that power. It must be brought up in the form of a treaty, signed by the President, and debated and ratified by the Senate in order to receive the full force of law. The Constitution cannot be ignored in this potentially massive cession of strategic American interests so close to home."

In an ironic comparison with the apparent lenient attitude that the State Department has exhibited toward the Soviets over the seabed boundaries, the State Department has adopted a hardline position toward our ally Canada over the seabed boundary between Alaska and Canada in the Arctic. This position came to light with the leasing on August 22 of the Diapir Field which borders Canada. The Federal Register announcement of July 23, 1984 (p. 29726) noted a "Jurisdictional Dispute" with Canada over some of the blocks being offered. Although the notice did not say so explicitly, the U.S. position is that the seabed boundary should reflect the "equidistant" theory of boundaries, while the Canadians want a more favorable drawing of the line. While this dispute continues, the three petroleum companies which bid on these leases (Union Oil Co. of Calif., Amoco Production Co., and Shell Western E & P Inc.) will have their bid money deposit lie in escrow. Their total winning bids for the four blocks totalled $5,105,000--a substantial affirmation of the rich nature of the Arctic Alaskan outer continental shelf.


Henrietta
Jeannette
Bennett
The U.S.-Russia Convention Line of 1867
OUTER CONTINENTAL SHELF AND FIVE U.S. ISLANDS TO BE GIVEN TO SOVIET UNION
Outer Continental Shelf Line (200 meters depth)
Wrangell
Herald
CHUKCHI SEA
BEAUFORT SEA
OUTER CONTINENTAL SHELF
TO BE GIVEN TO SOVIET UNION
GULF OF ALASKA
N O R T H

14

Soviets harass oil drillers working in Navarin Basin

By PATTI EPLER
Daily News business reporter

Companies searching for oil and gas off Alaska's coast often have to contend with migrating whales and shifting ice packs.

But this summer, offshore drillers in the Bering Sea were plagued by Russian airplanes and gunboats.

It was an occurrence so frequent and so close to the rigs that U.S. State Department officials twice protested to the Soviet government.

U.S. Sen. Frank Murkowski, R-Alaska, lashed out at the Soviets on the Senate floor in July, urging the State Department to file a formal protest with the Soviet Union. Murkowski said the Soviets "deliberately harassed" U.S. companies involved in energy exploration in the Navarin Basin, about 250 miles off the west coast of Alaska.

Murkowski said Russian aircraft caused "dangerous interference" in the safe operation of American helicopters ferrying crews and supplies to the rigs.

See Back Page, SOVIETS

Soviets harass oil well drillers working in Navarin Basin

Continued from Page A-1

A University of Alaska research vessel — the Alpha Helix — also was approached by a Soviet gunboat that pulled to within a few hundred feet. The Russian ship refused to respond to signals from the university vessel questioning the Soviet's intentions, Murkowski said.

The Navarin Basin lies partly in an area of the Bering Sea claimed by both the United States and the Soviet Union. The basin has been touted as a good prospect for oil and gas discoveries.

Three oil companies — Exxon USA Co., Amoco Production Co. and ARCO Alaska Inc. — drilled exploratory wells in the basin this summer.

The dispute with the Russians centers on an imaginary line that divides waters claimed by the United States from waters claimed by the Soviet Union. The Russians use a "straight rhumb line" as the boundary, while America believes it to be the "curved great circle route" on a globe. Each claims its interpretation of the 1867 convention — under which the United States bought Alaska from Russia — is the correct one.

The difference in the 1867 Convention Line adds up to about 18,000 square miles of icy, black ocean where the federal government already has sold 17 leases to American oil companies. Those companies have been prohibited from drilling in the disputed area until the question is resolved.

But the companies have been drilling close to the disputed zone.

Amoco spudded a well about 10 miles from the boundary this summer. The well the company currently is drilling is about 150 miles from the boundary, according to an Amoco spokesman.

Exxon drilled two wells in the Navarin Basin this season. The closest was about 31 miles from the disputed boundary, Exxon spokesman Milton Alberstadt said.

Exxon and Amoco both reported about 10 "contacts" with Russian aircraft and gunboats — seven airplanes and three gunboats. The incicents occurred between June 21 and Aug. 14, Alberstadt said.

Murkowski told the Senate that 11 contacts had been made with Soviet aircraft and seven with Russian gunboats between June 22 amd July 16. Those contacts included interceptions of Soviet bombers by Alaska-based Air Force jet fighters, he said.

The contacts occurred with enough frequency that Exxon installed aerial surveillanc radar, Alberstadt said, so he icopters flying to the rigs i fog and foul weather woul be aware of the presence o other aircraft in the area.

In July, Murkowski - along with Alaska Sen. Te Stevens and Rep. Don Youn — wrote Secretary of Stat George Shultz to protest th continued overflights of U.S drilling rigs.

William L. Ball III, assist ant secretary of legislativ and governmental affairs fo the State Department, tol the congressional delegatior that the federal governmen had twice protested to th Soviet government because o the "clear danger" to Ameri can personnel.

The overflights and sight ings of ships apparently stopped in August and th State Department expressec no further concerns to the Soviets, Ball said.

Anchorage Daily News Thursday, October 31, 1985

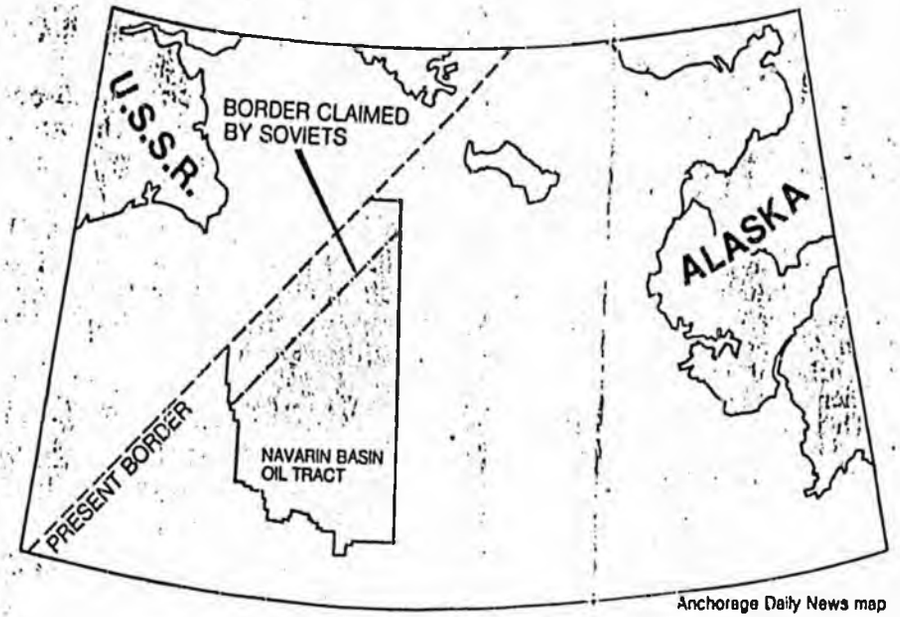
Oil firms to appeal drilling ban

By PATTI EPLER
Daily News business reporter

Oil companies operating in two frontier areas off Alaska's west coast will appeal last week's court decision that banned drilling because the federal government failed to consider the impact on subsistence.

Ted Neptune, a spokesman for Amoco Production Co., said his company and others drilling in the Navarin Basin and Norton Sound expect to convince an appeals court or the U.S. Supreme Court there is no valid reason to prevent continued drilling in the areas.

The Navarin Basin, 250 miles off Alaska's west coast, encompasses about 37 million acres. The Norton Sound lease area, 25 miles off Nome, is about 2.4 million acres.



Anchorage Daily News map

The 9th U.S. Circuit Court of Appeals ruled Friday that Interior Secretary Donald Hodel did not properly consider the effects of oil industry activity on subsistence when the government leased the offshore areas in 1983 and 1984.

The villages of Gambell and Stebbins, and the Native environmental group Nunam Kitlutsisti, had asked the court to invalidate the leases.

A federal judge in Alaska let the drilling proceed, saying the drilling was important in the nation's quest for new oil supplies.

But the appeals court said the national concern for the survival of the Native culture must prevail over possible energy needs.

The appeals court ordered the lower court judge to issue an injunction that would stop the drilling until a trial on the merits of the case can occur.

Neptune said Amoco was continuing to drill its fifth and final well planned for the Navarin Basin this season. The Nancy well is expected to be finished by the first week in December "unless delayed by weather or the injunction," he said.

Amoco has spent more than $100 million on its five wells, he said.

ARCO Alaska Inc. drilled a well in the Navarin Basin this summer and plugged it last week before the court ruling was handed down.

Exxon USA Co. also had finished drilling its two Navarin Basin wells by the time the decision was issued.

Ann Shields of the U.S. Department of Justice in Washington, D.C., said Wednesday the government has not yet decided whether to appeal the ruling. She said the government has a few more days to make that decision.

Jim Bamberger, an Alaska Legal Services attorney who represented the villages, said the appeals court decision affects only the two lease sales that were challenged.

But the ruling does reaffirm Congress' intent in passing the 1980 Alaska lands act that no leases can be issued on public land without a clear determination of the effect on subsistence, he said.

Attorneys did not expect the case to go to trial for several months.

An oil prospect by any other name . . .

BY PATTI EPLER
Daily News business reporter

Somewhere in the middle of the Bering Sea, in an Alabama-sized swath of icy black ocean claimed by both the United States and Russia, is a large blemish in the Earth's crust named Ronnie.

To some, Ronnie may be the president of the United States. But to scientists at a major U.S. oil company, Ronnie is a geologic structure that may contain large amounts of oil and gas.

Ronnie sits smack on the border of the disputed zone. He was discovered by Amoco Production Co. scientists who decided to score one for democracy by naming their activity in the disputed area after the president.

A dozen years ago, Amoco identified another good-looking warp in the Navarin Basin, not too far from Ronnie.

Company officials thought about calling it Nikita, because it was close to the disputed zone. But a company executive balked. He didn't want to name a project that likely would cost several hundred million dollars after an anti-capitalist Soviet premier. The area, now called Danielle, finally was drilled this summer.

Ronnie and Danielle are just two of hundreds of areas in Alaska and off its coast identified by oil companies as potentially containing oil and gas.

An oil prospect, as these areas are called, is any irregularity in the earth, says Roger Harris, a project geophysicist for Amoco.

"If it was just flat, layer-cake sedimentary geology, there would be no traps for oil and gas."

Many turn out to be dry holes. Many more may never be explored because of the high cost of looking for oil in the arctic.

> ***"When you get out of sight of land in the Beaufort and look around, the only thing you can think of naming something is 'Iceberg.'"***
>
> **— Roger Harris, geophysicist**

But each has a name, given to it by geologists or geophysicists who usually spend years studying the prospects and trying to decide if their company should invest millions of dollars for the chance to look for oil.

Naming the oil prospect is perhaps the most unscientific aspect of an otherwise highly technological business.

Scientific and computerized gadgets are used to measure the likelihood of oil and gas. But the names, they often depend on the whims and personalities of the people involved.

For instance, one company decided to name its prospects after beers.

A recent Amoco naming scheme was a bit more involved. The company decided to dub its Beaufort Sea prospects after arctic explorers. The only trouble so far is that names like Pytheas, Thorgisl, Belcher and Raoul aren't quite as easy to remember as Bud, Coors and Miller.

The name is important, especially in the highly competitive and secretive oil business. Names are given to the prospects primarily for security reasons, says Dan Jones, exploration coordinator for Exxon Co. USA in Alaska.

The name becomes a secret code, something that allows companies to talk about their prospects without letting anyone know the location, Jones and other oil officials say.

Naming prospects is considered a perk for geologists and geophysicists. Individual prospects start as a mishmash of lines on a seismic graph but later seem to take on an identity of their own, especially as it comes time to bid on prospects at lease sales.

Because different companies often bid on the same piece of ground, one prospect can have several names. Companies also bid together to spread the risk of investment, so one company's Natasha could be another's Redwood.

A prospect being drilled this season in the Beaufort Sea is called Hammerhead (a shark) by one partner, Wally (an arctic explorer) by another and Tsingtao (a beer) by a third. Hammerhead is the name that will stick, because it is the chosen name of the operator of the well.

Oil prospects in and around Alaska have been named after glaciers and mountain ranges, constellations and cars, planets and satellites.

Some have earned a few lines in Alaska history books, like the ill-fated Mukluk prospect, the most expensive dry hole in the state.

Ronnie has lots of company in his tomb thousands of feet beneath the ocean floor. Scattered throughout his Navarin Basin are Nancy and Nicole, Misha, George, Francis, Earl, Debbie and Don, to name a few.

To the north, in the Beaufort Sea where oil companies have been drilling for several

See Page J-2 NAMING

Naming prospects

Continued from Page J1

years, Venus, Mars and Jupiter are surrounded by Mariner, Voyager and Explorer. The planets were selected in an early Beaufort lease sale, and the satellites used in a subsequent sale.

Cascade and Chugach can be found in Norton Sound; St. George Basin is home to the glaciers of Portage, Mendenhall and Tustemena.

There are birds, cars and species of fish.

But there are no Turkeys and no Edsels, nothing that would hint of bad luck to the multibillion dollar projects.

An oil prospect with a weird name almost always is offshore. On land, companies tend to name the prospects after mountains, rivers, towns or some other physical feature close by.

But offshore, there is nothing but vast acres of water.

"When you get out of sight of land in the Beaufort and look around," says Harris, "the only thing you can think of naming something is 'Iceberg.'"

Mark Shahly is a geophysicist with Amoco. He works on prospects in the Beaufort Sea.

He recently named a prospect Belcher. It didn't take much thought; in fact, he didn't have time to think about it.

"I was on my way to a meeting and realized I didn't have a name for my prospect yet," Shahly says. "So I just picked the next one down on the list."

Shahly says he really didn't know much about arctic explorers until the company decided to name prospects after them. Now, he can run through the whole list: Franklin, whose expedition ended in disaster; Belcher, who was sent to rescue Franklin; Hendrick, an Eskimo guide.

Shahly says there is one significant thing about his prospect: he thinks it will turn out to be better than the Franklin prospect, just as Belcher was more fortunate than the beleagured Franklin so many decades ago.

Most of the scientific work as well as the naming process is done Outside, at company offices in Los Angeles, Houston and Denver. So most of the names are selected by people who have never seen the area they are christening.

Says Amoco's Harris: "Most of the people who adopted Raoul and Hans and Belcher and Eric never got north of maybe a group meeting in Seattle."

Perhaps that's why some Amoco scientists aren't convinced that Prospect Wally really is named after explorer Wally Herbert, who spent 470 days skiing from Point Barrow to Spitsbergen, an island near Norway.

Rumor has it that Wally really was named after one geophysicist's brand-new puppy.

FUND FOR
STOCKOWNERS
RIGHTS

15

THE STOCKOWNERS' NEWS

Issue Number 13
October 1985
Contact: Carl Olson

Post Office Box 956
Vienna, Virginia 22180-0956
United States of America
703-281-9050

Potential State Department Giveaway of Oil-Rich Seabeds in Bering Sea to Soviets Imperils Leases of Four Major Oil Firms; Refund Regulations Asked of Interior Dept.

The State Department has gone to great lengths to conceal its prospective giveaway to the Soviet Union of petroleum-rich seabeds in the Bering Sea, it was charged by Carl Olson, Chairman of the Fund For Stockowners Rights, headquartered in Vienna, Virginia.

"The State Department has defied congressional inquiries for several months, has stalled a Freedom of Information request for over a year, and has refused outright to reveal the names and titles of the negotiators who have been involved in the giveaway negotiations over the past five years," Olson stated. "We know that the State Department has been even more secretive since we revealed their negotiation round with the Soviets in Moscow in July 1984 over this high-stakes matter."

Stockowners of America find their corporations' investments in the Bering Sea imperilled because of the State Department's irresoluteness in face of the Soviets' demands for 15,400 square miles of seabeds in the Bering Sea that are known to be rich in petroleum and fishery resources. Stockowners of Shell, Amoco, ARCO, and Unocal are especially affected because of the 17 suspended oil and gas leases in the Navarin Basin which fall in the area that the State Department has identified as potentially transferable to the Soviet Union.

"We believe that the State Department has already proposed a compromise of American territory to the Soviets, and that the maps and coordinates are among the documents that the State Dept. is now unconscionably withholding in a Freedom of Information case," Olson asserted. "I just hope this giveaway is not part of the upcoming 'Summit' meeting between Reagan and Gorbachev."

The State Department revealed that it had asserted that the "maritime boundary" between the United States and the Soviet Union was the 1867 U.S.-Russia Convention Line, according to a notice published in the 16 March 1984 Federal Register which related to oil and gas leasing in the Navarin Basin of the Bering Sea(p. 10065). (There has never been a public accounting as to how the State Department established a boundary between the United States and the Soviet Union without the signing of a treaty.)

At that time the State Department stated that the 1867 U.S.-Russia Convention Line is depicted as an arc-of-a-great circle (i.e. the shortest distance between two points on a globe), while the Soviet Union wanted the Convention Line to be depicted as a rhumb line (i.e. a straight line on a mercator projection flat map). The Soviets' depiction of the Convention Line, extending from the Bering Straits to the end of the Aleutian Chain, lies several miles to the east--thus resulting in 15,400 square miles more of seabeds.

The four oil companies bid over $108 million for the exploration rights in just the Navarin Basin portion of the Convention Line in April 1984. Their leases have been held up by the State Department's failure to back up its own declaration. In order to encourage the State Department to live up to its own convictions, Alaskan State Representative Roger Jenkins has authored a resolution that is co-sponsored by nearly half of that body.

While the oil and gas leases in this prime territory are allowed to languish, the Fund For Stockowners Rights has proposed that the four oil companies be allowed to get their bid deposit monies out of escrow and be able to use this $21 million on other projects until such time as the Bering Sea seabeds are made safe for Americans by the American State Department. (See text over for the proposed regulation amendment.)

FUND FOR
STOCKOWNERS
RIGHTS

Post Office Box 956
Vienna, Virginia 22180-0956
United States of America
703-281-9050

8 October 1985

Hon. Donald Hodel
Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

RE: Proposed Regulation--
Funds in Escrow for Oil/Gas Leases
Due to U.S./Soviet etc. Depiction
Disputes(Navarin Basin et al)

Dear Secretary Hodel:

This is a request to adopt an amendment to 30 CFR 256.47e to redress a grievous wrong and financial hardship to oil and gas exploration companies which have been forced to have significant funds tied up in escrow accounts of the Department of the Interior for the indefinite future due to the inability of the State Department to prevail in its dispute with the Soviet Union over the depiction of the 1867 U.S.-Russia Convention Line in the Bering Sea.

As you may know, an emergency rule-making was published in the Federal Register on 16 March 1984 (p. 10056) by the Minerals Management Service, which addressed the situation of the impending Navarin Basin oil and gas lease sale 83 in April 1984. Normally such leases are awarded within 90 days of the selection of the winning bids, and the 20% "bonus bid deposits" are applied against the winning total bids (with the losing bid deposits being refunded to the losing bidders). However, in the case of a situation when the Interior's authorized officer does not want to award the lease within the 90 days due to a territorial dispute with a foreign government, the bonus bid deposits must remain in escrow accounts at Treasury rates until either the lease is awarded or five years transpire.

In the case of the Navarin Basin, the winning bids of $108,174,000 on 17 blocks by Shell, Amoco, ARCO, and Unocal have resulted in over $21 million of these companies' funds being tied up in escrow accounts for over a year now. This creates a significant financial hardship for these companies and their stockowners, since the funds are earning only the Treasury rate--which is considerably below the expected return on productively invested funds.

Our proposal would be to amend the regulation to allow all such winning bidders to withdraw their bonus bid accounts after 90 days without losing any rights to the eventual awarding of the leases. In the immediate case of the Navarin Basin (and others along the Convention Line), the State Department has so far failed to announce any timetable for resolving its negotiation with the Soviet Union; and thus its irresoluteness should not become a basis for punishing the energy companies which, thru no fault of their own, find millions of dollars tied up in non-energy producing accounts.

Sincerely,

Carl Olson

Carl Olson
Chairman

Alaska fears U.S. giveaway of oil reserve Soviets covet

By Bill Kling
THE WASHINGTON TIMES

ANCHORAGE, Alaska — Some Alaskan state legislators fear the United States may be about to settle a long-standing boundary dispute with the Soviet Union by ceding to the Russians a potentially petroleum-rich stretch of the Bering Sea.

Because the area is somewhat removed from Alaska's shores, the issue has not yet attracted wide attention from many Alaska public officials, most of whom are focusing right now on oil development and environmental concerns of their state's Bristol Bay.

But Roger Jenkins, a Republican state representative from Anchorage, has the support of 16 of his fellow Alaska House members as co-sponsors of his pending resolution protesting any giveaway of what they contend is U.S. territory.

With underwater oil exploration of the outer continental shelf a hot political item here, the lawmakers are concerned about the possible deal, which could involve five islands they claim really belong to Alaska, as well as hundreds of thousands of miles of surrounding seabeds.

At the annual meeting of the U.S. Conference of Mayors just concluded here, former Alaska Gov. Jay Hammond concurred that the issue could be an important one, "but right now we have no idea what the oil resources are in that area."

Gerry O'Connor, an Anchorage assemblyman, said Bristol Bay oil development is the dominant factor here right now, and Chip Dennerlein, Anchorage's director of intergovernmental affairs, said Mr. Jenkins' efforts are generating the first information many Alaskans have heard on the issue.

At issue in negotiations already under way between the two superpowers is a part of the off-shore Navarin Basin oil and gas lease area, including Wrangell Island, which the Soviets wrested by force from Nome-based merchants in 1924, sending 14 Americans to Siberia. The island is believed to be the site of Soviet slave labor camps as well as military installations targeted on the United States.

The boundary is in dispute because of differences in the way the United States and the U.S.S.R. interpret the 1867 convention under which the United States bought Alaska from Russia. The United States believes the boundary is described in the convention as a great circle while the Soviets contend it should follow a constant compass bearing.

Negotiations over the boundary began in earnest last July when a State Department team journeyed to Moscow for talks the Associated Press said were "seen by diplomatic observers as another in a series of steps taken in recent days by the Reagan administration to try to improve relations with the Soviet Union."

Other islands in the negotiations begun several years ago between the United States and the Soviets are Bennett, Henrietta and Jeanette, which were discovered after the Alaska purchase, and Herald, which was discovered by Great Britain in 1849 and later ceded to the United States.

Wrangell Island was discovered in 1881 by a landing party that included the famed explorer, John Muir.

Four energy companies have deposited more than $21 million with the Interior Department on their bid of $108 million to lease sections of the Navarin Basin for oil and gas exploration.

Mr. Jenkins, in an interview, said he hopes to generate enough interest in the issue "to win approval of our resolution in the next session of the Legislature next year."

Since the issue arose last year, opposition to ceding the territory to the Soviets has been expressed by the Daughters of the American Revolution, the Military Order of the World Wars and the Young Americans for Freedom. The Conservative Caucus has sought to spread information about it.

OCCASIONAL PAPERS

OF THE

CALIFORNIA ACADEMY OF SCIENCES

No. XXIV

The Discovery of Wrangel Island

By SAMUEL L. HOOPER

COMMITTEE ON PUBLICATION

DR. ROBERT C. MILLER, *Chairman*

DR. GEORGE F. PAPENFUSS DR. EDWARD L. KESSEL, *Editor*

SAN FRANCISCO

PUBLISHED BY THE ACADEMY · 1956

the land, I felt relieved to be in clear water, and did not despair of ultimate success."

The movement of the ice due to the set of the currents made it necessary to change positions several times during the night. At 4:30 a.m. the *Corwin* again entered the ice and this time with all preparations made to reach the land by crossing the ice if necessary, using the sledges and taking along the skin boat for crossing any open leads that might be encountered. However, as they fought their way closer to the land ice conditions improved. Inside the ten-fathom curve they found much of the ice aground while the floating portion was drifting past and occasionally shooting up over the top of the grounded pieces. Navigation under these conditions was neither comfortable nor safe, but they all felt that the land was now actually within reach and they pushed on. The captain's notes for that important day (see figure 3) read:

> Friday, August 12, 1881. Lat. 71-04 Long. 177-40 off Wrangle [sic.] Land. Got under way at 4:00 a.m. and steamed in toward the end of the lead and into the ice at 7:00 a.m. After a good deal of humping and squeezing we reached the land and anchored in a small clear space off the mouth of a small river. Went on shore and took possession in the name of the U.S.

This landing unquestionably established a valid claim to the area on the part of the United States. Muir in his text says, "A notable addition was made to the national domain when Captain Calvin L. Hooper landed on Wrangell Land and took formal possession in the name of the United States." Later the great Arctic explorer Vilhjalmur Stefansson in his book, *The Adventure of Wrangel Island*, describing an expedition undertaken in 1921 wrote, ". . . following 1881 . . . the island was United States territory."

Many years later the Soviet claimed that Lieutenant Wrangel had actually discovered the island but unfortunately for their claim, Wrangel himself in his book, *The Narrative of a Voyage to the Polar Seas in the Years 1821, 1822, and 1823*, which was written long enough after his experiences so that he had plenty of time to make any changes or corrections, wrote "with a painful feeling of the impossibility of overcoming the obstacles with which nature had opposed us, our last hope vanished of discovering the land which we yet believe to exist . . . we had done what duty and honor demanded, further attempts would have been absolutely hopeless and I decided to return." Wrangel located on his chart "from native report" the land which "we believe to exist" but he placed it some distance west of where it actually turned out to be located.

17

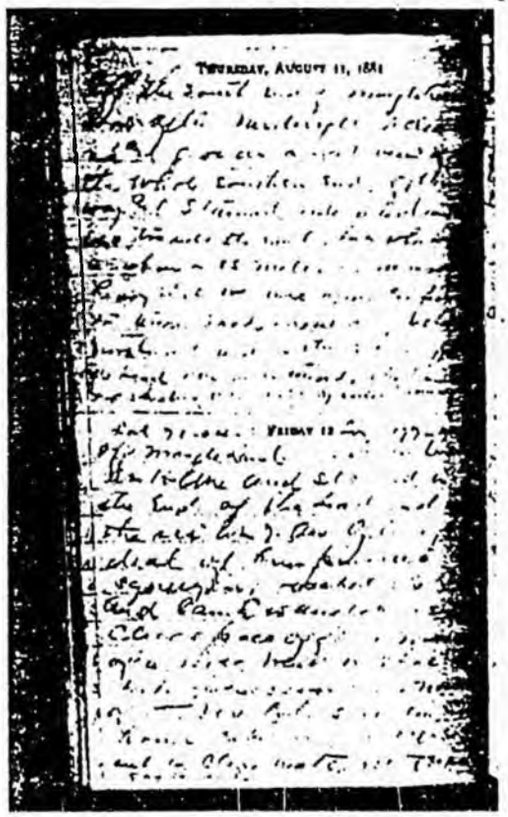


Figure 3. The original account of the discovery of Wrangel Island in the captain's own handwriting. This entry in his diary was written at the scene on the very day of the landing.

As soon as the official shore party had completed the formalities of discovery, a careful search was made along the shore in each direction for evidences of a landing of any kind. After several hours of searching it became impossible to remain at anchor any longer and a gun was fired to recall all shore parties. Leaving an American flag flying and a complete record of their visit the *Corwin* now worked her way out to the lead.

She was soon in open water and making all speed with steam and sail across the Arctic Ocean but this time with the Polar ice on her port beam. Having found no records of the *Jeannette* on either Herald Island or Wrangel Island, for the very good reasons as we now know that the De Long party had never touched on either of them, the *Corwin* was hastening to Point Barrow in hopes of rendering assistance to the *Daniel Webster* in case she was still in the ice. On the way, however, they spoke the whalers *Howland* and *Rainbow* and learned from them that the *Daniel Webster* had been crushed in the ice and that part of her crew had reached Point Barrow. The remainder were supposed to still be on the pack. Upon learning this the *Corwin* skirted the Alaskan coast line closely and kept a careful watch for signs of any who might have reached the land before the ice went offshore. Constant contact was also made with the native villages along the way and many reports of the wreck were received, all of which were in some agreement.

Point Barrow was reached on August 16 and several whalers, which had arrived only a few hours earlier, were found at anchor there, the ice having gone offshore the previous evening. The crew of the *Daniel Webster* were all at Point Barrow and every man accounted for. They were divided up among the whalers except for nine men who had their fill of whaling and "wanted out." These were taken on board the *Corwin* to be returned to civilization and extra supplies were distributed to the other ships to allow for the extra hands taken aboard.

While the *Corwin* was at Barrow the bark *Legal Tender* arrived, bringing the first mail they had received since leaving San Francisco; the *Legal Tender* had sailed from there on June 11. Since she was leaving at once, loaded with surplus bone and oil from the whaling fleet, the crew of the *Corwin* sent mail sacks aboard for their dear ones at home.

On August 19 the *Corwin* sailed for Cape Lisburne hoping to again take coal from the mine, but a strong northeast wind had kicked up such a sea that loading coal was out of the question. The night of the nineteenth was the first night that could be called dark; until then the nights had merely been long twilights. On August 22 they passed close to the Diomedes but never saw any part of them on account of

THE CRUISE OF THE CORWIN

Journal of the Arctic Expedition of 1881 in search of De Long and the Jeannette

BY

John Muir

EDITED BY
WILLIAM FREDERIC BADÉ

BOSTON AND NEW YORK
HOUGHTON MIFFLIN COMPANY
The Riverside Press Cambridge
1917

CHAPTER XV

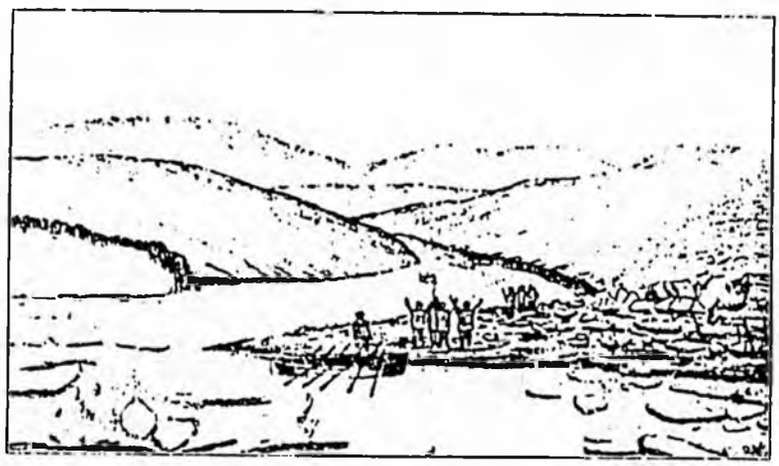
THE LAND OF THE WHITE BEAR

[*Steamer Corwin, Wrangell Land, August 12, 1881.*]

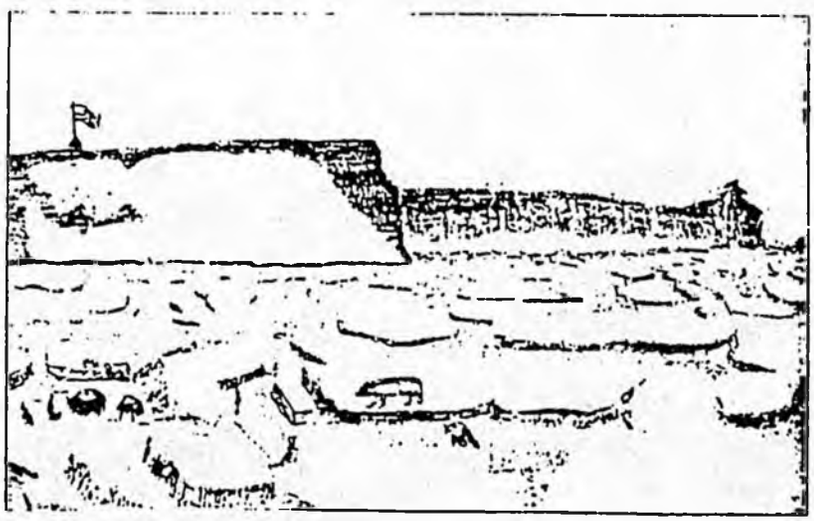
A NOTABLE addition was made to the national domain when Captain Calvin L. Hooper landed on Wrangell Land,[1] and took formal possession of it in the name of the United States. We landed near the southeast cape, at the mouth of a river, in latitude 71° 4′, longitude 177° 40′ 30″ W. The extent of the new territory thus acquired is not definitely known, nor is likely to be for many a century, or until some considerable change has taken place in the polar climate, rendering the new land more attractive and more accessible. For at present even its southmost portion is almost constantly beset with ice of a kind that renders it all but inaccessible during both the winter and summer, while to the northward it extends far into the frozen ocean.

Going inland, along the left bank of the river, we found it much larger than it at first appeared to be. There was no snow left on the lowlands or any of the hills or mountains in sight, excepting the remnants of heavy drifts; nevertheless, it was still

[1] The landing was made August 12, 1881.



FIRST LANDING ON WRANGELL LAND



THE AMERICAN FLAG ON WRANGELL LAND NEAR S.E. CAPE

from THE CRUISE OF THE CORWIN by John Muir.
Copyright © 1917 by Houghton Mifflin Company.
Copyright renewed 1945 by Helen Muir Funk.
Reprinted by permission of Houghton Mifflin Company.

48TH CONGRESS, 1st Session. } SENATE. { Ex. Doc. No. 204.

REPORT

OF THE

CRUISE OF THE U. S. REVENUE STEAMER

THOMAS CORWIN,

IN THE

ARCTIC OCEAN,

1881.

BY

CAPTAIN C. L. HOOPER, U. S. R. M.,
COMMANDING.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1884.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING,

In response to Senate resolution of February 27, 1884, the report and papers of Capt. C. L. Hooper upon the second cruise of the revenue steamer Corwin.

JUNE 30, 1884.—Referred to the Committee on Commerce and ordered to be printed.

TREASURY DEPARTMENT,
June 24, 1884.

SIR: Respectfully referring to the Senate resolution directing that the Secretary of the Treasury furnish to the Senate a copy of the report of Capt. C. L. Hooper, United States Revenue Marine, upon the second cruise of the revenue steamer Corwin in the Arctic Ocean, and its accompanying documents and illustrations, in possession of the Department, I have the honor to transmit herewith the report and papers mentioned.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

HON. GEORGE F. EDMUNDS,
President pro tempore of the United States Senate.

REPORT

OF THE

SECOND CRUISE OF THE STEAMER CORWIN.

The Corwin sailed from San Francisco on May 4, 1881, at 1 p. m., accompanied out of the harbor by the revenue steamers Rush and Hartley, and a number of vessels of the San Francisco yacht fleet, under command of Commodore Harrison.

Moderate weather prevailed until the 15th instant, when, within 50 miles of Ounalaska Island, heavy gales and snow storms were encountered.

On the morning of the 16th the island was seen bearing northwest, distant 40 miles. Soon after it began snowing and the weather became so thick that we were compelled to proceed with great caution, and did not reach the entrance of the pass between Ounalaska and Onalga Islands until noon, when, owing to the rough state of the sea caused by a strong current running against the northwest gale which was blowing, we were glad to turn back and run into Beaver Harbor, barely escaping the loss of our boats.

The Onalga Pass, although very rough at times and subject to strong currents, is in many respects preferable to either the Ounimak or Akoutan Pass, especially to vessels bound to Ounalaska. It contains no hidden dangers, and is safely navigable by all classes of vessels except as mentioned before, when a strong gale is blowing against the current. At such times the sea truly boils and foams, and it is advisable to wait until slack water before attempting to go through.

Beaver Harbor affords ample protection for a vessel under such conditions. Although the water is deep, several good anchorages may be found near the shore, where vessels can lie in safety.

On the 17th of May we arrived at Ounalaska and hauled the vessel on the beach to repair the oak sheathing which had started off in many places. The oak being very dry when put on and closely fitted, had bulged off upon becoming wet and swollen. After repairing it we took on board a supply of coal and water and nine months' extra provisions. The latter were purchased from the Alaska Commercial Company with the understanding that, if not used, they were to be returned without cost to the Government.

The past winter was reported to have been unusually mild, although at this time the weather was quite cold and the island covered with snow to the sea. The natives were suffering from an epidemic of pleuro-pneumonia, which proved fatal in a great many cases.

Ounalaska settlement, or Illuluck, has been so often described that a repetition is unnecessary, but to those who are not familiar with the subject the following reference to it by the late Capt. George W. Bailey, U. S. R. M., will be found of interest:

> Ounalaska is the largest commercial port of the Alentian Islands, and now a port of entry. * * * It is also the principal depot of the two large trading companies, the Alaska Commercial Company and the Western Fur and Trading Company. There is a full priest resident at Ounalaska, and the church building presents a creditable appearance, church matters being conducted at this station on a seemingly more proper basis than in any other part

water to wait for a more favorable chance. The ice was so closely packed around the vessel that the operation of turning around, assisted by steam and sail, poles and small spars to push against the ice, and all means at our command, occupied just one hour. After several hours' more hard work we reached the head of the lead. Although sadly disappointed at the failure of this third attempt this season to reach the land, I felt relieved to be again in clear water, and did not despair of ultimate success.

While in the ice a number of polar bears were seen near the vessel and one or two walrus. They showed no signs of fear of us, but a good deal of curiosity. One of the bears was just making a breakfast of seal, which he seemed to enjoy very much. It was evidently just killed, being still bleeding, and the bear's head, neck, breast, and fore legs being covered with blood. He seemed to be taking his breakfast very leisurely, and after eating awhile would go away a few feet and roll and play like a kitten. Although we were quite near him he paid no attention, not even looking at us. During the day we were fortunate enough to get good observations for latitude and longitude, which, with the bearings already attained, gave us a very close approximation to the position of the land. These were subsequently confirmed by bearings and observations taken near the land off its east coast. They show the land on the American Hydrographic chart to be laid down 18 miles too far south, although the general trend of the coast is very nearly correct. After reaching open water we followed the edge of the eastern ice, which gradually changed the direction of its trend from southeast to east and northeast. The weather, which had been very clear in the evening, had grown misty, so that the land became less distinct and seemed further away during the afternoon. The trend of the ice was observed to be more to the northward, and it was noticed that as the mist cleared away a little from time to time the snow-banks on shore seemed nearer than at any time before. Bearings of one of these snow-banks taken from different points showed its distance to be only 13 miles. Soon after the edge of the pack fell back, so that we were enabled to steer a course almost directly for the land. We had just taken in all sail and changed our course, when the lookout reported ice on the starboard beam making off to the eastward as far as he could see, showing that we had been running into a lead. This we continued to follow until we came to its end, where we found the ice heavy and closely packed. We had 15 fathoms of water, with sticky bottom, and judged ourselves to be about 8 miles from the land. I believed that no great difficulty would be encountered in crossing on the ice to the land. Lieutenant Reynolds, Assistant Engineer Owens, Professor Muir, Mr. Nelson, and Coxswain Gessler, having volunteered, were very anxious to make the attempt, but, owing to the mist and fog, which was rapidly shutting out the land from our view, and the uncertainty of holding our position in the lead, I was compelled to withhold my consent at that time, but determined to try to hold on in the lead until the fog should clear away. We observed the set of the current to be northeast, about one knot per hour. Running back to the eastward a short distance, to where the lead was about 3 miles in width, we came to with the kedge, in 19 fathoms of water.

The constant changes taking place in the position of the lead, owing to the set of the current, necessitated changing our position several times during the night to avoid the ice. We got under way at 4 a. m. (August 12). The mist began to clear away, giving us occasional glimpses of the snow patches that lined the cliffs. We had made all necessary preparations for crossing on the ice; the skin boat had been placed on runners, and arms, ammunition, provisions, &c., served out. At 4.30 we reached the end of the lead, which we judged to be 8 miles from the land, and which we found by bearing of points on shore that we could recognize as those we had observed the night before to have changed their position to the northward 8 miles during the night. The ice appearing to be much less closely packed than on the previous evening, I determined to shorten up the journey over the ice by pushing in with the vessel as far as possible before embarking the party. Accordingly we entered the ice at 5.30 and worked in the direction of a place where the land appeared low, with high, dark-looking cliffs on each side. The ice, which was quite heavy, continued to open as we advanced, until, at 6.30, we could see the shore line distinctly, and, in the direction in which we were steering, what appeared to be a small space of open water adjoining the land. As the ice still remained sufficiently open to admit of forcing a way through it at the expense of a good deal of hard bumping, squeezing, and pushing, hopes were entertained of reaching the open space of water with the vessel. The last 2 or 3 miles were made with a good deal

of difficulty. Inside of the 10 fathom curve we found much of the ice aground, while the floating portion was drifting past and occasionally shooting up over the top of the grounded pieces. Navigation under such circumstances was anything but safe or agreeable. However, we felt that the land was certainly within our reach, and thought of nothing but pushing ahead. At 7.30 we reached the open space and dropped anchor within a cable's length of the land in 5 fathoms of water. We immediately landed and, raising the American flag, took possession in the name of the United States of America. We landed at the mouth of a river, which at this time was about 75 yards in width, although the entire distance between its banks was about 200 yards. The cliffs in the vicinity of our landing place were of a dark slate formation, and from 100 to 300 feet high. On the beach small pieces of sandstone, quartz, and mica schist were found. The surface of the land where the slate has weathered away is composed of sticky clay, and is but sparsely covered with vegetation. As observed from the ship, while cruising in the vicinity and also from the shore, it presents the general appearance of smoothly-rounded hills, which, towards the interior and near the south side, are from 1,000 to 3,000 feet in height. The upper portion of the higher hills appeared more rugged in outline, as if composed of more enduring material, probably granite. These summits resemble those seen on the Siberian coast in the vicinity of Plover Bay, being entirely destitute of vegetation, with occasional red patches probably indicating the presence of iron. Those near the coast are remarkable for the smoothness and beauty of their outlines, and present here and there patches of green or gray, according to the nature of the vegetation. On the beach near the mouth of the river we found a kyack paddle, a cask-stave, a piece of small spar, probably part of a boat's mast, and a piece of board about a foot in length bearing ax-marks. All these things were below the marks of extreme high water, and were undoubtedly brought there by the current. Although the beach showed undoubtedly signs of a rise and fall of tide, no tidal change could be detected, probably owing to the fresh southerly wind which was blowing. The presence of this drift matter on the beach would seem to indicate that the east coast of Wrangel Island was at times entirely free from ice, though it does not necessarily follow, as it could easily have been carried through the pack to the shore by the constant twisting and turning to which it is at all times subject. I believe that it is a very unusual thing for the ice to leave any portion of Wrangel Island entirely. Our stay on shore was necessarily short on account of the strong northerly current, which was sweeping the ice-pack along with irresistible force. Much of the ice inside of 10 fathoms, as stated, was aground, but not sufficiently firm to form any protection from the drifting mass, the largest pieces of which were constantly being pushed and turned in every direction when struck by the drift, and the utmost vigilance was required to avoid getting caught between the drifting and grounded masses. At 9.30 a. m., being unable to maintain our position any longer, a gun was fired to recall the parties sent out to explore the cliffs in search of cairns or other signs of human life, and we began to work out towards the lead, which we reached at 11 a. m. We left the American flag flying and also a record of our visit. We had good observations during the day, and found our landing-place to be in latitude 71° 04′ north and longitude 177° 40′ west. This is undoubtedly the part of the land seen by Captain Kellett, R. N., in 1849, when he discovered and landed on Herald Island, and which since appeared on the British Admiralty charts as Plover Island, although erroneously laid down somewhat further to the eastward. We now know that Plover Island has no separate existence, and that what Kellett saw was the main island. As there is no record of any one else having seen the land previous to that date, or in fact until several years after, when, in 1876, it was seen by nearly the entire whaling fleet, all must accord to Captain Kellett the honor of its discovery.

While steaming through the ice, in our several attempts to reach the land, a number of species of sea-fowl were seen from time to time, and carefully noted by Mr. Nelson. Among these the most numerous were the murres and guillemots (*Uria-arra* and *Uria-grylle*), with numerous kittiwake gulls (*Larus tridactylus* Kotzebue) and the common ice gull (*Larus glaucus*). More rarely single individuals of the Sabine's gull (*Xema Sabinei*) came circling about the ship. Numerous small flocks of black-headed turnstones (*Strepsilas melanocephela*) were seen near shore, and two parties of common eider ducks (*Somateria nigra*). In both instances the latter were females with their young. The second brood of eiders was seen swimming close along the shore and away from the mouth of the river as we made our landing. On shore we found numerous snow-buntings (*Plectrophanes nivalis*) and a snowy owl (*Nyctea nivea*), which, with a shrike picked up dead on the

beach and a solitary golden plover (*Charadrius fulvus*), complete the short list of land birds seen. At a number of places on the hillsides we found the droppings of wild geese so numerous that it was evident this place must have been a common resort for flocks of these birds earlier in the season. Their absence at the time of our landing is easily accounted for by the fact this was the time when the geese shed their large wing feathers and lose the power of flight. As this season comes on they congregate in large flocks in low marshy land and remain until their new growth of feathers enables them to spread over the country again a month or six weeks later.

Saddle-backs and hair-seals were rather common among the ice, and in addition there was a small species of hair seal unknown upon the American coast and perhaps new to science. Walrus were not rare on the outer edge of the pack, and their foe, the polar bear, was seen almost every time we entered the ice; on several occasions it was seen swimming in the water several miles from the pack. Upon the hilltops on shore were found numerous burrows of some animal, probably white fox (*Canis lagopus*), as some tracks of that animal were found mingled with those of the polar bear in the mud along the banks of the river. Stranded on the sand-bar at the mouth of the river lay the skeleton of a whale (*Balæna mysticetus*), which closes the list of mammals observed.

Numerous small fish, from two to four inches long, and having large heads, were brought to the surface by rolling masses of ice as it was turned over by contact with the vessel in her passage through it. These are called by the whalers ice-fish. No specimens were obtained, unfortunately.

The following plants we collected: Grasses, three varieties; dwarf willow, phlox, saxifrage, sibbaldea, draba, potentilla, anemone, papaver, veronica, artemisia, carex, stellaria, three; mosses, three; lichens, five; and four compositæ. In many places where the snow remained in the ravines and in banks against the steep cliffs, it presents the peculiar reddish color caused by the presence of *Protococcus nivalis*, commonly called red snow. This is a minute plant with which the surface of the snow is often covered in high latitudes. It was seen and its appearance described by Sir John Ross in 1818, and by Sir Edward Parry in 1827, but its true character was not understood until many years later, when it became known as a vegetable growth.

Upon taking possession of this land in the name of the United States, the name New Columbia was provisionally given to it. The provision being the approval and concurrence of that portion of the Government having the authority to issue charts, &c., the decision of that body was adverse to my suggestion, and by its action I cheerfully abide not only on account of its undoubted right to decide according to its own judgment in this and all other matters over which it has jurisdiction, but because the size of the island, as now known, does not justify the bestowal of a name of this character, the name of one of the early Arctic navigators being much more appropriate. At the time I suggested the change of name I believed the land to be an island and had so reported it to the Department, but I supposed it to be considerably larger than it has proved. In the report of my first cruise in the Corwin, submitted November 1, 1881, page 50, I say, in reference to this land:

> The part of Wrangel Land which we saw covered an arc of the horizon of about fifty degrees from northwest quarter north to west quarter south (true), and was distant from 25 miles on the former bearing to 35 or 40 on the latter. On the south were three mountains, probably 3,000 feet high, entirely covered with snow, the central one presenting a conical appearance and the others showing slightly rounded tops. Northward of these mountains was a chain of rounded hills, those near the sea being lower and nearly free from snow, while the back hills, which probably reach an elevation of 2,000 feet, were quite white; to the north of the northern bearing given the land ends entirely or becomes very low. The atmosphere was very clear, and we could easily have seen any land above the horizon within a distance of 60 or 70 miles, but none except that described could be seen from the mast-head.

Again, on page 52, I say:

> I am of the opinion that Wrangel Land is a large island, probably one of a chain that passes entirely through the polar regions to Greenland; that there is other land to the north there can be no doubt * * * large numbers of geese and other aquatic birds pass Point Barrow going north in the spring, and returning in August and September with their young. As it is well known that these birds breed only on land, this fact must be regarded as proof of the existence of land in the north. Another reason for supposing that there is either a continent or a chain of islands passing through the polar regions is the fact that, notwithstanding the vast amount of heat diffused by the warm current passing through Bering Straits, the icy barrier is from six to eight degrees farther south on this side than on the Greenland side of the Arctic Ocean, where the temperature is much lower.

OIL-AND-GAS RESOURCES OF ALASKA

U.S. GEOLOGICAL SURVEY RESOURCE-ASSESSMENT AREAS

No.	Area
1	Arctic National Wildlife Refuge
2	National Petroleum Reserve-Alaska
3	Beaufort Sea
4	Chukchi Sea
5	Hope
6	Nevarin
7	Norton
8	St. George-Umnak Plateau
9	North Aleutian
0	Bering Sea (other)
1	Shumagin
2	Kodiak Shelf
3	Gulf of Alaska
4	Cook Inlet-Shelikof Straits
5	Copper River Interior
6	Yukon-Kandik
7	North Slope (other)

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS
Oil and gas lease-sale schedule

No.	Area	Date
2	Kenai Peninsula (general location)	Aug 1981
3	Upper Cook Inlet (general location)	May 1981
4	Prudhoe Bay Uplands	Sept 1982
5	Cook Inlet (general location)	Dec 1981
6	Flaxman Island area	May 1982
7	Middle Tanana basin and Copper River basin	Aug 1982
17A	Chatak River Exempt	Aug 1982
19	Beaufort Sea	May 1983
20	Upper Cook Inlet	Sept 1983
21	Bristol Bay Uplands	Sept 1984
23	Beaufort Sea	May 1984
23A	Colville Delta Prudhoe Bay Uplands Exempt	May 1984
25	Hope Basin	May 1989
25A	North Slope (location not available)	Sept 1985
26	Holitna Basin	Jan 1985
26A	Cook Inlet (location not available)	Feb 1985
27	Kuparuk Uplands	May 1985
28	Kuparuk Uplands	Jan 1986
29	Cook Inlet (general location)	May 1986
30	Camden Bay	May 1987
31	Prudhoe Bay Uplands	Jan 1987
32	Beaufort Sea	Sept 1986
33	Icy Cape	Sept 1987
34	Kuparuk Uplands	Jan 1988
35	Demarcation Point	May 1988
36	Alaska Peninsula	Sept 1988
37	North Slope Foothills	Jan 1989
38	Offshore Icy Cape	Sept 1989

U.S. DEPARTMENT OF INTERIOR
Oil and gas lease sale schedule issued January 1984

BUREAU OF LAND MANAGEMENT

-	Interior George	Sept 1984
-	Goodnews Bay	Sept 1984
-	Kvichak	Sept 1984
24	National Petroleum Reserve Alaska (2 million acres)	July 1984
-	Anvik Bonsila	Sept 1985
-	Stease White Mountain	Sept 1985
-	Central Yukon	Sept 1985
-	Venetie	Sept 1985

MINERALS MANAGEMENT SERVICE
(general location)

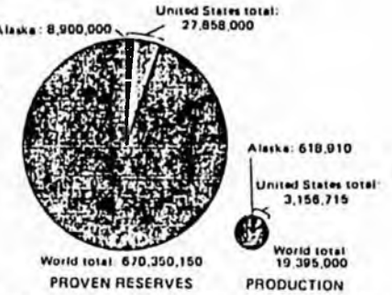
13	Navarin Basin	Mar 1984
15	Barrow Arch	Feb 1985
16	Shumagin	June 1987
17	Diapir Field	June 1984
18	Cook Inlet-Gulf of Alaska	Oct 1984
19	St. George Basin	Dec 1004
2	N. Aleutian Basin	Apr 1985
17	Diapir Field	June 1986
19	Kodiak	Oct 1986
10	Norton Basin	Oct 1985
11	St. George Basin	Dec 1986
17	Navarin Basin	Mar 1986
18	Barrow Arch	Feb 1987

SOURCES OF ESTIMATES:
(modified from Ehm, 1983)
- National Petroleum Council, 1981
- U.S. Geological Survey, 1981

12 U.S. Geological Survey resource-assessment area

* Information not available

Estimates of undiscovered, potentially recoverable hydrocarbons (risked mean values in billions of barrels of oil equivalent).



Crude-oil reserves and annual production (thousands of barrels), 1982 (modified from American Petroleum Institute, 1984).

Milne Point, Gwydyr Bay, Seal Island, Lisburne Pool, Duck Island Sag Delta

Point Thomson

Arctic National Wildlife Refuge

National Petroleum Reserve

COLVILLE

Killik-Chandler Lake

DeLong Mountains

HOPE

YUKON

KANDIK

North Pole Refinery

Steese

Fairbanks

Central Yukon

Anvik Bonsila

Nome

NORTON

Minchumina Basin

Interior George

MINCHUMINA

MIDDLE TANANA

COPPER RIVER

CANADA (Yukon) / USA (Alaska)

St Lawrence Island

Yukon R.

SUSITNA

Palmer

Valdez

Anchorage

Kenai Peninsula

Nunivak Island

Bethel

Holitna Basin

HOLITNA

Goodnews Bay

COOK INLET

Kvichak

Iliamna Lake

KHATYRKA

NAVARIN

BERING SEA

ALEUTIAN

Established by USA-Russia Convention of 1867

USSR

USA

BOWERS

BULDIR

ST GEORGE

UMNAK PLATEAU

AMLIA

AMUKTA

ALEUTIAN ISLANDS

NORTH ALEUTIAN

SANAK

SHUMAGIN

TUXEDNI

SHELIKOF

Kodiak Island

KODIAK SHELF

GULF OF ALASKA

Juneau

Sitka

Kodiak

POPULATION CENTERS - Number of inhabitants, 1980

Anchorage	●	174,431
Fairbanks	●	22,645
Juneau	★	19,528 (state capital)
	•	2,000-8,000

SELECTED TRANSPORTATION-UTILITY CORRIDORS ( )

Scale 1:12,000,000

100 0 100 200 300 400 mi

100 0 100 200 300 400 500 km

Compilation of map data by Division of Geological and Geophysical Surveys

EXPLANATION

OIL-AND-GAS BASINS - Thickness of sediment (modified from Ehm, 1983)
- More than 3.1 miles
- Less than 3.1 miles

MAP SYMBOLS
- Producing oil field
- Producing gas field
- Refinery
- U.S. Geological Survey resource assessment area (see inset map)

OIL-AND-GAS LEASE SALE AREAS (see schedules)

State of Alaska
- Department of Natural Resources

U.S. Department of Interior
- Bureau of Land Management
- Minerals Management Service (general location)

DGGS OIL-AND-GAS INVENTORY PROJECTS
- Current
- Proposed

Figure 2. Status of DGGS inventory of oil-and-gas resources of Alaska, 1984.


HJR
65

HJR 65: Relating to foreign marketing of Alaska pink salmon products.

LIST OF PACKET CONTENTS

Resolution - Support from Bristol Bay Native Convention

Public Opinion Messages - Good ones of SUPPORT

Series of Correspondence regarding Pink Salmon processing capacity and intent.

MEMO - Department of Commerce & Economic Development
Kodiak/Chignik Salmon Processing Capacity, Preliminary Draft

Letter - to Don Nielsen from Fred Zharoff re: Nushagak processing situation for pink salmon
attachment: letter from Don Nielsen

Letter - to Richard Lyon, DCED from Adelheid Herrmann re: pink salmon processing

Letter - to Terry Elder, DCED from Adelheid Herrmann re: pink salmon processing capacity and other misc. fisheries

Letter - to Jay Kerttula from Greg Baker, DCED re: Salmon Total Utilization Project

Alaska Seafood Marketing Institute
Canned Salmon Emergency Appropriation Appeal
ASMI-GRAM: article on salmon problems

BRISTOL BAY NATIVE CONVENTION
Resolution 86-03

Assistance For Foreign Markets For Bristol Bay and Chignik Pinks

WHEREAS: record levels of pink harvests in the State of Alaska for 1985 totaled 89 million fish, and

WHEREAS: Alaska's pink salmon harvest projections for 1986 totals 96 million fish, or 69% of all of Alaska's combined all-species catch, and

WHEREAS: because of the projected record level harvests, and the lack of incentive for most shore based canneries to purchase pinks, and

WHEREAS: the forecasted returns to the Bristol Bay and Chignik Bays are in excess of Four (4) million pinks, of which harvest may be lost, and

WHEREAS: since many Bristol Bay fishermen do not have a pink market which in years past has enhanced their economic efforts in light of high overcapitalization, often times providing for the only profit in the fishing season,

NOW THEREFORE BE IT RESOLVED that the Bristol Bay Native Convention and delegates assembled requests assistance from the Governor of the State of Alaska for fishing groups to secure foreign markets to purchase pinks from the Bristol Bay and Chignik Bays for the 1986 season.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the resolution adoped by the delegates to the 1986 Bristol Bay Native Convention, February 23, 24, 25, & 26, Dillingham, Alaska, at which a quorum was present.

WITNESS My hand and seal this 26th day of February, 1986.

William P. Johnson
Chairman, Bristol Bay Native Convention

WITNESS:

N Daile Smith
Chairperson, Resolutions Committee

DELIVER TO: JPOM

ORIGINAL
SENT: 03/21/86 TIME: 16:28
FROM: LIODLG
SUBJECT: PUBLIC OPINION MESSAGE
PRINT DATE: 03/21/86 TIME: 16:40

10

TO: HOUSE RESOURCES COMMITTEE MEMBERS
REPRESENTATIVES HERRMANN AND SHULTZ, CO-CHAIR
REPRESENTATIVES WALLIS, CATO, JENKINS, M.W. MILLER, PEARCE, SUND AND THOMPSON
SENATOR ZHAROFF

FROM: KENNETH MACK, BOX 276, KING COVE, ALASKA 99612

SUBJ: HJR65, PINK SALMON MARKET

THE KING COVE FISHERIES ADVISORY BOARD IS IN SUPPORT OF HJR65. URGE PASSAGE OF THIS IN SUPPORT OF OPENING UP MARKETS FOR OUR PINK SALMON.

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: JIM TIMMERMAN
BOX 10225
DILLINGHAM, ALASKA 99576
842-5317

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

I SUPPORT HJR65. OUR PRIMARY BUYER FOR PINKS HAS ALREADY TOLD US THAT HE WOULD NOT BUY PINKS DURING THE 1986 SEASON.

DATE: 03/24/86 TIME: 10:04:48 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: GUSTIE KNUTSEN
BOX 10213
DILLINGHAM, ALASKA 99576
842-5598

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

I AM IN SUPPORT OF THIS HJR65 SINCE ONE OF OUR MAJOR SHORE BASE CANNERIES HAS CLOSED IT'S FACILITIES AND IT HAS SWITCHED TO FRESH FROZEN PROCESSING. THE SUPERINTENDENT HAS ALSO STATED THEIR PROCESSOR WILL BE LEAVING JULY 20TH. THIS CANNERY WAS ONE OF OUR MAIN PINK SALMON BUYERS.

DATE: 03/24/86 TIME: 10:15:09 SENT BY: DILLINGHAM LIO

COPIES TO: REPRESENTATIVE: BETTE CATO
REPRESENTATIVE: ROGER JENKINS
REPRESENTATIVE: MIKE W. MILLER
REPRESENTATIVE: DRUE PEARCE
REPRESENTATIVE: RICHARD SCHULTZ
REPRESENTATIVE: JOHN SUND
REPRESENTATIVE: F. KAY WALLIS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: OSCAR FLENSBURG
BOX 174
DILLINGHAM, ALASKA 99576
842-5330

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

I AM A COMMERCIAL FISHERMAN WITH NO OTHER INCOME THAN FISHING. IF IT IMPORTANT TO THE FISHERMEN IN OUR REGION THAT WE HAVE SOLID MARKETS TO SELL OUR FISH. I RESPECTFULLY URGE YOU TO DO WHATEVER YOU CAN TO ESTABLISH VIABLE FOREIGN MARKETS FOR PINK SALMON. THANK YOU.

DATE: 03/24/86 TIME: 10:12:55 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: MARK SMITH
BOX87
ALEKNAGIK, ALASKA 99555
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

I SUPPORT HJR65. I BELIEVE WE WILL NEED NEW AND ADDITIONAL MARKETS FOR OUR PINK SALMON, MANY SHOREBASED PROCESSORS HAVE INDICATED THEY WILL NOT BE BUYING, WE NEED TO MAKE SURE THAT WE HAVE MARKETS AVAILABLE SO THAT WE CAN FISH PINKS AT ALL IN 1986 SEASON.

DATE: 03/24/86 TIME: 15:10:50 SENT BY: DILLINGHAM LIO

COPIES TO: REPRESENTATIVE: RICHARD SCHULTZ
REPRESENTATIVE: F. KAY WALLIS
REPRESENTATIVE: BETTE CATO
REPRESENTATIVE: ROGER JENKINS
REPRESENTATIVE: MIKE W. MILLER
REPRESENTATIVE: DRUE PEARCE
REPRESENTATIVE: JOHN SUND
REPRESENTATIVE: DAVE THOMPSON
SENATOR: FRED F. ZHAROFF

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: LAWRENCE YACHMENEFF
BOX 14
KING COVE, ALASKA 99612
497-2243

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

I'M A SALMON SEINER IN THE FALSE PASS AREA AND WOULD LIKE TO SUPPORT HJR65. IN A SEASON WITH HIGH PREDICTIONS FOR THE PINK SALMON RUN, WE NEED ADDITIONAL MARKETS AND WOULD LIKE TO ENCOURAGE FOREIGN MARKETS AND PROCESSORS AVAILABLE TO INSURE FISHERMEN CAN HARVEST PINKS AT ALL THIS SEASON.

DATE: 03/24/86 TIME: 15:02:23 SENT BY: DILLINGHAM LIO

COPIES TO: REPRESENTATIVE: RICHARD SCHULTZ
REPRESENTATIVE: F. KAY WALLIS
REPRESENTATIVE: BETTE CATO
REPRESENTATIVE: ROGER JENKINS
REPRESENTATIVE: MIKE W. MILLER
REPRESENTATIVE: DRUE PEARCE
REPRESENTATIVE: JOHN SUND
REPRESENTATIVE: DAVE THOMPSON
SENATOR: FRED F. ZHAROFF

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: DONALD NIELSEN
P.O. BOX 100220
ANCHORAGE 99510
278-3602

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

THE BRISTOL BAY NATIVE CORPORATION SUPPORTS HJR 65 IN REFERENCE TO FOREIGN MARKETING OF BRISTOL BAY PINK SALMON PRODUCTS. THERE WILL NOT BE ANY DOMESTIC MARKETS AVAILABLE TO THE FISHERMEN FOR PINK SALMON AS ANNOUNCED EARLIER BY THE DOMESTIC PROCESSORS SINCE THERE WAS SUCH A LARGE HARVEST IN 1985. PINK SALMON HARVEST IN BRISTOL BAY IS VITAL TO THE LOCAL ECONOMY.

DATE: 03/24/86 TIME: 11:58:44 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: FRANCISCO FLORESTO
GEN. DEL.
CLARKS POINT, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

I SUPPORT HJR65 AND HOPE YOU WILL, TOO. PLEASE PASS THIS RESOLUTION OUT OF THE LEGISLATURE THIS YEAR. WE NEED TO HAVE MORE MARKETS FOR OUR PINK SALMON IN 1986 IN BRISTOL BAY. THANK YOU FOR TAKING TIME TO HEAR OUR PLEA FOR HELP WITH GETTING FOREIGN MARKETS INTO THE BAY. THANKS.

DATE: 03/24/86 TIME: 11:48:23 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: MARIANO FLORESTA
GENERAL DELIVERY
CLARKS POINT, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

I SUPPORT HJR 65 AND WOULD HOPE THAT IT WOULD PASS THE HOUSE AND SENATE. WE NEED MARKETS FOR OUR PINK SALMON THIS SUMMER IN BRISTOL BAY. PLEASE DO WHAT YOU CAN TO ASSIST US.

DATE: 03/24/86 TIME: 11:45:57 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: JOHN GARDINER
GENERAL DELIVERY
CLARKS POINT, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

I AM IN SUPPORT OF HJR65. WE NEED MORE MARKETS IN BRISTOL BAY FOR OUR PINK SALMON. MANY OTHER MARKETS ARE NOT GOING TO BE AVAILABLE TO FISHERMEN AND IT WOULD BE ECONOMIC DISASTER NOT TO BE ABLE TO SELL OUR FISH. PLEASE PASS THIS BILL. THANKS.

DATE: 03/24/86 TIME: 11:43:40 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: JIMMY WASSILY
GENERAL DELIVERY
CLARKS POINT, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

PLEASE PASS HJR65 THIS SESSION. WE NEED ALL THE HELP WE CAN GET IN BRISTOL BAY SO THAT WE WILL HAVE A MARKET FOR OUR PINK SALMON. THANK YOU FOR WHAT YOU CAN HELP US WITH.

DATE: 03/24/86 TIME: 11:41:42 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: CARL A. LARSON
BOX 237
DILLINGHAM, ALASKA 99576 99569
842-5667

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

URGE THAT YOU PASS HJR65 OUT OF THE LEGISLATURE SO THAT WE CAN ENCOURAGE AND HAVE OTHER MARKETING OUTLETS FOR OUR PINKS THIS SUMMER. WITH ONLY LIMITED MARKETS FOR A LIMITED TIME THIS YEAR, WE CAN'T AFFORD NOT TO PARTICIPATE IN THE HARVEST OF PINKS. PLEASE HELP THE FISHERMEN OF THIS AREA TO BE ABLE TO TAKE ADVANTAGE OF THE PINK HARVEST THIS YEAR. THANK YOU.

DATE: 03/24/86 TIME: 11:38:10 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: MARY WASSILY
GENERAL DELIVERY
CLARKS POINT, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

WHATEVER YOU CAN DO TO BRING IN FOREIGN MARKETS FOR PINK SALMON THIS 1986 SEASON WILL BE APPRECIATED. WE DEPEND UPON FISHING FOR A LIVING BUT WE NEED TO HAVE A MARKET FOR OUR FISH. MANY OF THE MARKETS ARE NOT AVAILABLE AND WE NEED THEM THIS YEAR SO THAT WE CAN TAKE ADVANTAGE OF THIS YEARS HARVEST.

DATE: 03/24/86 TIME: 11:35:43 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: HARRY WASSILY
GENERAL DELIVERY
CLARKS POINT, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

LOOKS AS IF WE MIGHT NOT HAVE A MARKET FOR OUR PINK SALMON THIS SUMMER. WITH YOUR HELP HOPEFULLY WE CAN GET THE FOREIGN MARKET IN TO TAKE FISH. THIS WOULD HELP LOCAL FISHERMEN AND HELP TO BOOST THE ECONOMY OF THE AREA. DO ALL YOU CAN TO BRING IN BUYERS FOR OUR FISH. THANKS.

DATE: 03/24/86 TIME: 11:31:15 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: ANTHONY CLARK
BOX 16
CLARKS POINTS, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

URGE PASSAGE OF HJR65. IT LOOKS AS IF WE WILL HAVE LITTLE OR NO MARKET FOR OUR PINK SALMON THIS 1986 SEASON. PLEASE HELP US IN GETTING MARKETS FOR OUR FISH. THANK YOU VERY MUCH.

DATE: 03/24/86 TIME: 11:29:32 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: KAY CLARK
BOX 6
CLARKS POINT, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

I AM IN SUPPORT OF HJR65. WE HOPE THAT WITH YOUR SUPPORT AND PASSAGE OF HJR65 THAT WE CAN GET MORE MARKETS IN BRISTOL BAY FOR OUR PINK SALMON. WE'VE HEARD THAT MARKETS ARE GOING TO BE VERY LIMITED AND IN SOME CASES NON-EXISTENT. PLEASE DO WHAT YOU CAN TO ASSIST US IN OBTAINING MARKETS SO THAT WE CAN FISH PINKS THIS SUMMER. THANKS.

DATE: 03/24/86 TIME: 11:27:20 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: ANNIE RAMANDOS
GENERAL DELIVERY
CLARKS POINT, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

WE HOPE THAT YOU WILL HELP US TO GET MARKETS FOR OUR PINK SALMON FOR THE 1986 SEASON. WE DEPEND UPON FISHING FOR OUR MAIN SOURCE OF INCOME. PLEASE DO ALL YOU CAN FOR US IN GETTING MORE MARKETS. THANKS.

DATE: 03/24/86 TIME: 11:25:10 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: MARY FLORESTA
GEN. DEL.
CLARKS POINTS, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

PLEASE PASS THIS BILL OUT OF THE LEGISLATURE THIS SESSION. I AM A SETNETTER AT CLARKS POINT AND WOULD LIKE TO HAVE A MARKET FOR MY PINK SALMON THIS SUMMER. OUR LIVELIHOOD DEPENDS UPON FISHING. THANK YOU.

DATE: 03/24/86 TIME: 11:22:40 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: LOUISE GARDINER
GENERAL DELIVERY
CLARKS POINT, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

I HOPE THAT YOU WILL PASS HJR65. IT DOESN'T LOOK LIKE WE WILL HAVE SUFFICIENT MARKETS FOR OUR PINK SALMON IN 1986, WE NEED ALL THE HELP WE CAN GET TO INSURE A GOOD HARVEST OF SALMON FOR LOCAL PEOPLE TO MAKE A LIVING FOR THE LONG WINTER. IT IS GETTING HARDER AND HARDER TO MAKE A LIVING FISHING AND WHEN THERE IS A GOOD RUN OF PINKS, WE NEED THE MARKETS. THANKS.

DATE: 03/24/86 TIME: 11:18:49 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: HENRY WASSILY
GENERAL DELIVERY
CLARKS POINT, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

THERE ISN'T ANY INDICATION THAT THERE WILL BE A PINK SALMON MARKET FOR BRISTOL BAY THIS SUMMER. PLEASE TRY TO HELP OBTAIN MARKETS FOR OUR PINK SALMON. THANKS.

DATE: 03/24/86 TIME: 11:16:24 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: HARVEY SAMUELSEN, PRESIDENT,
WESTERN ALASKA MARKETING COOPERATIVE
DILLINGHAM, ALASKA 99576
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

PLEASE PASS THIS BILL OUT OF COMMITTEE AND SEE THAT IT MAKES IT TO BOTH THE FLOOR AND TO THE SENATE SIDE FOR PASSAGE, WE NEED A MARKET FOR OUR PINK SALMON IN 1986. THANK YOU.

DATE: 03/24/86 TIME: 11:14:22 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: JOE CLARK
GENERAL DELIVERY
CLARKS POINT, ALASKA 99569
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

URGE YOU DO ALL POSSIBLE TO ENCOURAGE A MARKET FOR PINK SALMON FISH FOR 1986. NO INDICATION HERE THAT THERE WILL BE A PINK SALMON MARKET IN BRISTOL BAY. WE NEED HELP. PLEASE PASS HJR65.

DATE: 03/24/86 TIME: 11:04:37 SENT BY: DILLINGHAM LIO

COPIES TO: HOUSE
SENATE

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE ADELHEID HERRMANN

FROM: ANDREW KOSO
BOX 237
KING COVE, ALASKA 99612
N/A

BILL NO: HJR 65

SUBJECT: FOREIGN MARKETING OF PINK SALMON PRODUCTS

MESSAGE:

I SUPPORT HJR65. WE NEED A MARKET FOR OUR PINKS SINCE WE HAVE LIMITED MARKETS AS WELL AS LIMITED FISHING TIME. WITHOUT FOREIGN MARKETS IF FISH ARE NOT PROCESSED RIGHT AWAY, THE QUALITY WILL BE DIMINISHED. URGE YOUR SUPPORT AND PASSAGE OF HJR65.

DATE: 03/24/86 TIME: 11:01:27 SENT BY: DILLINGHAM LIO

COPIES TO: REPRESENTATIVE: RICHARD SCHULTZ
REPRESENTATIVE: F. KAY WALLIS
REPRESENTATIVE: BETTE CATO
REPRESENTATIVE: ROGER JENKINS
REPRESENTATIVE: MIKE W. MILLER
REPRESENTATIVE: DRUE PEARCE
REPRESENTATIVE: JOHN SUND
REPRESENTATIVE: DAVE THOMPSON
SENATOR: FRED F. ZHAROFF

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

DATE: January 6, 1986

TO: Standing Members
Internal Waters Processing Permit
Ad Hoc Advisory Committee

FROM: F. Gregory Baker, Deputy Commissioner
Department of Commerce and Economic
Development

SUBJECT: 1986 Pink Salmon Processing Capacity and Intent

Please find attached a series of correspondence from Senator Fred Zharoff, Commissioner Loren Lounsbury, Department of Commerce and Economic Development and Jeff Stephan, Manager, United Fishermen's Marketing Association, regarding a potential shortfall in pink salmon processing capacity in Senate District N. Also attached are the preliminary 1986 salmon run forecasts from the Department of Fish and Game.

The Department of Commerce and Economic Development will be conducting a detailed processing capacity and intent analysis for Senate District N and possibly other regions of the State. We will make every attempt to keep you informed of our progress and, at some point will, no doubt, request your active participation as Ad Hoc advisors to the Fisheries Mini-Cabinet.

Please call if you have questions or comments. Thank you in advance for your valuable assistance.

Distribution:

Rick Lauber, Pacific Seafood Processors Assn.
Jack Cadigan, United Fishermen of Alaska
Henry Mitchell, Bering Sea Fishermen's Assn.
Larry Cotter, ILWU

FGB/0295g
010386a
Attachments

cc: Fisheries Mini-Cabinet
Senator Fred Zharoff
Molly McCammon, Office of the Governor
Pete Spivey, Office of the Governor
Jeff Stephan, UFMA

08-H2LH

United Fishermen's Marketing Association, Inc.

P.O. Box 1035 Kodiak, Alaska 99615

Telephone 486-3453

December 23, 1985

Paul Peyton
Director
Office of Commercial Fisheries
Development
Alaska Dept. of Commerce and
Economic Development
Pouch D
Juneau, Alaska 99811

DEC 27 1985

Dear Paul,

I understand from Senator Zharoff that he requested that your office conduct a survey of the salmon processing capacity likely to be available for Kodiak during the 1986 salmon season. I also understand from Greg Baker that you will be in charge of such a survey. I would like to make some observations and requests regarding this capacity survey.

I. As you know, UFMA represents salmon fishermen in the Kodiak area. We have had numerous requests from our fishermen to begin the process whereby foreign processing vessels would be permitted to enter the Kodiak area and process salmon during the 1986 salmon season. We have had discussions regarding the possibility with representatives of various fishing companies from two countries so far. UFMA has made a preliminary proposal to potential foreign processing entities. A numer of observations have been surfaced by these foreign entities, and I'm sure you are aware of them. I want to reiterate them here for your consideration in the conduct of your survey, and for your consideration in any recommendations your office may desire to make regarding the subject.

A. Every foreign entity with whom I have discussed this matter has said that they need a guarantee of a minimum number of fish before they can commit vessels, people and capital to come to Alaska. I can understand their concern and need, and I'm sure you can too. I offer no opinion on this matter at this time however. It is a very important matter central to the issue of foreign processing for salmon in 1986. I am sure that you are aware of its importance. I wanted to bring it to your attention as an issue which UFMA must deal with as we go ahead with discussions with potential partners for the summer of 1986. Please keep us informed of any developments in this area in as timely a manner as is possible for you.

B. Potential foreign processing entities have also made known to UFMA their desire to have access to processing species other than pink salmon. They have told us that they need access to these other species so as to make it economically feasible for them to commit the vessels, people, and capital to come to Alaska.

Regarding this subject, I have been approached by a number of fishermen who feel that they will not have a market for their pink salmon, although they have a market for other species. I also have been approached by a number of fishermen who have no market at all, neither for pink salmon, nor for any other species. Fishermen with no market at all, and those with no pink market, both feel that if foreign processors are permitted to enter the Internal Waters of the state to buy their salmon in the Kodiak area, then they should have the opportunity to sell species other than pink salmon to these foreign processors.

Whether a fisherman has or has not a market for pink salmon, or for any species at all, the question of whether or not to allow the sale of species other than pink salmon to foreign processors becomes more acute when one considers that a seiner or setnetter in Kodiak frequently will harvest a mix of species in many areas during certain time periods. This problem will certainly be serious in Kodiak during the time period when we may most be in need of foreign processing capacity for pink salmon. During this time, one can expect to also harvest large numbers of red and chum salmon even though the fishing effort may be primarily directed at harvesting pink salmon. This is especially true in Kodiak in an even year.

I have briefly discussed this issue with a representative of the U.S. processing industry, and was told that the possibility of U.S. processors agreeing to foreign processing of species other than pink salmon is worse than remote. This is an understandable position from the U.S. processors' point of view. Again, I am sure that you are very aware of this problem; I raise it as a matter which UFMA must deal with, and as a matter which also is central to the issue of foreign processing for salmon in Alaska in 1986. I also request that you address this issue, and that you keep us informed of developments in this area in as timely a manner as is possible for you.

II. In recent meetings with salmon fishermen, the question of the scope of the capacity survey was raised. As a result of discussions with Kodiak salmon fishermen, I would like to strongly encourage that the capacity survey of the Kodiak area incorporate an in-depth investigation of the number of salmon fishermen from the Kodiak area who do not have a pink salmon market, and who do not have a salmon market at all.

III. We are unsure as to all of the areas in Kodiak which are considered Internal Waters. Do you have a clear understanding of what Internal Waters are available in the Kodiak Salmon Management Area?

Thank you for your consideration of the items addressed in this letter. UFMA has many decisions to make in regard to the possibility of foreign processing of salmon in Kodiak in 1986. We are in the process of planning for fishing vessels, setnetters, tenders, contracts, etc. We plan to discuss this issue soon with potential foreign processors. As you know, time is of the essence.

We hope that you recognize our need for a timely and accurate communication of the developments in regard to this issue. Your suggestions for achieving this communication are most welcome. Thank you for your assistance.

Sincerely,

Jeffrey R. Stephan
Manager

cc: Senator Fred Zharoff
Karl Ohls
UFMA Directors

JRS/bb

SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE
P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259
DURING SESSION:
POUCH V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committ

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLAN

December 24, 1985

Mr. Loren Lounsbury
Commissioner
Department of Commerce and Economic Development
Pouch D
Juneau, Alaska 99811

Dear Commissioner Lounsbury:

It has been brought to my attention there are several other areas in Senate District N that may experience the same problems -- abundant pink salmon runs and reduced processing capacity -- as Kodiak Island during the 1986 salmon season.

I respectfully request your department to conduct a processing capacity survey for Sand Point, King Cove, and the Nushagak River in Bristol Bay, with the intention of determining whether foreign processors should be invited in to purchase excess pink salmon.

Thank you for your prompt attention to this matter.

Sincerely,

Fred Thle
for

Fred F. Zharoff
Alaska State Senate

cc: Representative Adelheid Herrmann

RECEIVED
DEC 27 1985
OFFICE OF THE
COMMISSIONER

December 16, 1985

Honorable Fred F. Zharoff
Alaska State Senate
P.O. Box 405
Kodiak, AK 99615

Dear Senator Zharoff:

Thank you for your letter of December 9. I hope your meetings with Mr. Baker and Mr. Peyton in Anchorage answered your questions. We share your concerns about the upcoming salmon season in Kodiak. The Office of Commercial Fisheries Development (OCFD) is already working to evaluate the capacity and intent of U.S. processors. Generally, we are aware of those plants on Kodiak Island which have announced that they will not operate next season and will soon be contacting local processors. The more difficult job is to tie down the capacities and purchasing plans of plants in adjacent areas and the large fleet of U.S. floating processors.

As you know, this is a sensitive political issue and we have legal as well as practical obligations to do a comprehensive and fair analysis of the situation. Last year, the Bristol Bay herring joint venture permit was challenged in court by the processors. We prevailed because we had done a thorough job. We can expect opposition from the domestic processors on virtually any salmon permit, and it would serve no one if we had not done our homework.

The OCFD has requested specific harvest forecasts by district for Kodiak, Chignik, Cook Inlet, and Prince William Sound from the Department of Fish and Game. Expected run timing, past experience with tendering operations, and a contact list of U.S. floating processors with salmon freezing capacity is being developed.

If a serious discrepancy between expected harvest volumes and the intent of U.S. processors to purchase salmon continues to be evident, Governor Sheffield is likely to appoint an advisory committee. That group will review available information, seek further testimony from fishermen, processors and fisheries managers, and recommend a course of action to best remedy the situation. Obviously, the deliberations on foreign processors must be done in a timely manner if they are to be of any benefit.

Conversely, introduction of foreign processors would be a serious step and one which could influence purchase decisions by U.S. processors, price and labor negotiations, and sales of existing inventories. In any case, it will not be a panacea for the severe oversupply situation now facing both fishermen and processors.

This is indeed a priority issue with the department, and I will keep you informed about our progress.

Sincerely,

Loren H. Lounsbury
Commissioner

LHL/ltC281g
121685a

BCC: Fish. Min. Cab w/ earlier correspondence
Staff " "

MEMORANDUM State of Alaska

TO: Don Collinsworth, Commissioner
Department of Fish and Game

DATE: December 12, 1985

FILE NO:

TELEPHONE NO:

FROM: Paul Peyton, Acting Director (PP)
Office of Commercial Fisheries Development
Department of Commerce and Economic Development

SUBJECT: Kodiak Salmon Processing Capacity

There is concern in Kodiak about the existence of adequate processing capacity to handle the large volume of pink salmon expected next season. The attached letter from Senator Zharoff will help explain our situation.

As you are aware, there are any number of implications related to this issue and a good evaluation of capacity and intent to purchase will take considerable time and effort.

This is to enlist the support of Fish and Game and ask that an individual be assigned to the project who can act as a coordinator for the department and participate in any advisory committee meetings that might be held.

The following information would be useful to start with:

* Preliminary forecasts for the Kodiak and Chignik areas that are specific by major districts.

* Estimates of run timing by day for sockeyes and pinks by major district (number of fish available for harvest by day).

* Any data or observations about fish that have in the past been tendered in or out of the Kodiak area for processing. Origin, destination?

* Names and addresses of all floaters that operated on salmon in the Kodiak/Chignik area in the past two years and those that operated anywhere in Alaska on salmon.

* We generally know about Kodiak and Chignik shore-based processors, but, if a list of names and plant capacities have been put together, it would be useful.

* Best guess of average pink salmon weight.

Dick Reynolds will be dealing with this issue for Office of Commercial Fisheries Development.

RER/PP/mel315M
121285a
Attachment

SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE
P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5250
DURING SESSION:
POUCH V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3344 Labor and Commerce Committee

DISTRICT N
ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

December 9, 1985

RECEIVED
DEC 10 1985
OFFICE OF THE COMMISSIONER

Loren H. Lounsbury
Commissioner
Alaska Department of Commerce and Economic Development
Pouch D
Juneau, Alaska 99811

Dear Commissioner Lounsbury:

Thank you for your letter of December 3 regarding the 1986 Kodiak Island salmon processing capacity. I am concerned, from the tone of your letter, that my request for an investigation into the processing capacity is something that is going to drag out through the winter, with no final determination made until the last minute in the spring. If we are to avoid chaos on the Kodiak fishing grounds, I need information compiled now on this subject.

Much information can be readily obtained. Columbia Wards has pulled its processing vessel, the Icy Cape, out of Kodiak city. I understand Columbia Wards also has put its Port Baily facility up for sale. The Uganik cannery, owned by financially-troubled Kodiak Alaskan Seafoods, Inc., is unlikely to operate in 1986. The Larsen Bay plant also will not operate. A preliminary determination can easily be made that Kodiak Island will, in fact, have a reduced processing capacity. A final determination can be made as more information becomes available during the winter.

If this proves to be the case, we need to get moving now on the process for inviting foreign processors to buy excess pink salmon. Domestic processors will complain, but our fishermen must have markets. Delaying the work on this could result in panic and economic disruption. The salmon fishermen already are worried about what will happen to them this summer.

I respectfully request you to urge the Office of Commercial Fisheries Development to make this matter an immediate high priority, and to get started on its survey without delay.

Sincerely,

Fred F. Zharoff
Alaska State Senate

WEATHER

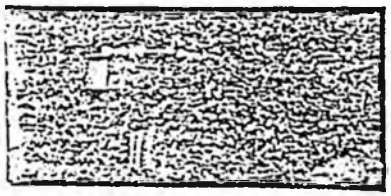
Rain tonight with a low near 35 and southeast winds to 20 mph. Rain showers tomorrow, high in the upper 30s. Record high for this date was set in 1935 at 53. Record low is 7, set in 1975. Sunset tonight at 5:17 p.m. Sunrise tomorrow at 8:32 a.m.

the Kodiak daily mirror

Sen. Fred Zharoff
Pouch V
Juneau, AK 99811



VOL. 45 NO. 216 MONDAY, NOVEMBER 4, 1985 KODIAK, ALASKA 12 PAGES 35 CENTS



15.68 million catch of pinks forecast for '86

By CHRIS BLACKBURN
Special Correspondent

Fish and Game anticipates a near-record Kodiak pink salmon harvest in 1986. According to the preliminary forecast, the 1986 pink salmon catch will be 15.68 million fish, the second highest catch on record, exceeded only by the 17.3 million pink catch in 1980.

The key to the expected 1986 pink salmon return is the mild winter of 1984-85 which allowed record numbers of pink salmon fry to survive. The mild winter, however, was followed by a cold, late spring which is believed to have reduced the number of fry surviving their outmigration.

In 1986 Kitoi Bay hatchery is expected to contribute about a million pink salmon to the fishery — because Kitoi has limited rearing facilities, its production is affected by cold springs as are the wild runs.

In 1986 the Westside District is

(Please turn to Page2)

salmon

(Continued from Page 1)

expected to produce a harvest of 12.3 million pinks.

The Ahlak District is expected to produce a harvest of 800,000 pinks. The eggs laid early in the upper portion of Deadman River appeared to have been scoured out by flooding in August 1984.

The Afognak District harvest is expected to be 494,000 pink salmon. Freezing weather killed salmon fry in Perenosa Creek and prevented Fish and game from sampling Malina and Marka Creeks.

The General District is expected to produce a 990,000 pink salmon harvest. Fry survival was the highest on record, diminished only by the cold spring.

No streams were sampled in the Mainland District due to freezing spring weather. Fish and Game estimates the Mainland pink salmon harvest will be around 158,000 fish.

The 1986 red salmon harvest in the Kodiak area is expected to be around 1.5 million fish, according to the preliminary Fish and Game forecast. The projected harvest would be second or third highest on record.

The chum salmon catch is projected to around a million fish in 1986, similar to recent catches in the Kodiak area.

The coho salmon catch is projected to be about 200,000 fish in 1986, similar to the catches in recent years.

The king salmon catch is expected to be around 4,000 fish, similar to the 1984 and 1985 catches.

Whether 1986 will be a profitable salmon year for Kodiak fishermen depends on price and processing capacity. There is some concern among local fishermen that the recent loss of several salmon canneries in the Kodiak area has reduced processing capacity below that needed for the expected 1986 pink salmon run.

borr

File

December 3, 1985

RECEIVED
OFFICE OF ENTERPRISE
DEC 6 1985
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

Honorable Fred F. Zharoff
Alaska State Senate
P.O. Box 405
Kodiak, AK 99615

Dear Senator Zharoff:

Thank you for your memorandum concerning the apparent lack of processing capacity to handle salmon harvested in the Kodiak area next season.

On the surface, there does appear to be a real problem. The Office of Commercial Fisheries Development will be contacting processors this winter to determine their intent to process. However, experience has shown that many operators do not make final decisions regarding their degree of aggressiveness in purchasing until shortly before the season when more is known about inventory levels and market conditions.

I will certainly keep you informed as this work progresses.

Sincerely,

Loren H. Lounsbury
Commissioner

LHL/mst3002m
12028ba

SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE
P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5250
DURING SESSION:
POUCH V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3344 (Labor and Commerce Committee)
DISTRICT N
ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Loren Lounsbury
Commissioner of Commerce and Economic Development

Don Collinsworth
Commissioner of Fish and Game

FROM: Senator Fred F. Zharoff by Karl Ohls

DATE: November 12, 1985

RE: Kodiak Island processing capacity

RECEIVED
NOV 13 1985
OFFICE OF THE
COMMISSIONER

According to recent news reports (see attachment), Kodiak Island will experience a near record pink salmon harvest next summer. With this forecast, concerns have been raised that Kodiak Island will not have the processing capacity to handle all these salmon. This is particularly true for the west side of Kodiak Island, bordering Shelikof Strait, where all the existing processing plants are expected to be shut down through next season.

I would like to find out from you how many processors actually will operate on Kodiak Island next summer, and how many fish can they handle? If you do not have this information, then please consider this memorandum a formal request for your departments to investigate the 1986 processing capacity situation on Kodiak Island, and to determine if additional processing capacity will be needed.

Thank you for your prompt attention to this matter. Please keep Mr. Karl Ohls in my Juneau office informed of your progress.

GREG

ALASKA DEPARTMENT OF FISH AND GAME
DIVISION OF COMMERCIAL FISHERIES

PRELIMINARY FORECASTS AND PROJECTIONS FOR 1986 ALASKA SALMON FISHERIES

PRELIMINARY TABLES AND FIGURES TO THE
ALASKA BOARD OF FISHERIES

November, 1985
ANCHORAGE, ALASKA

Table 1. Forecasted return, harvest, escapement goal, preliminary return, escapement, harvest, management error (ie difference between realized escapement and escapement goal), and return forecast error for major salmon fisheries where formal forecasts were made, 1970-1985. Projected and realized Alaska commercial salmon harvests with absolute and relative error, 1970-1984. Figures are in thousands of salmon.

	Only Major Fisheries Where Formal Forecasts Are Made										Projected Collective Harvest of all Alaska Salmon Fisheries				(1)-(2)/(7)
	Forecasted			Actual (Note that Figures Based on Preliminary Returns)			(5)	(5)/(2)	(6)	(6)/(1)					
			(2)				(4)-(2)		(1)-(3)		(7)	(8)	(9)	(9)/(7)	Forecasted Harvest Relative to
Year	(1) Return	Harvest	Escapement Goal	(3) Return	(4) Escapement	Harvest	Management Error (Thousands)	Error %	Forecast Error (Thousands)	Error %	Projected Harvest	Actual Harvest	(7)-(8) Error	Relative Error	Projected Statewide Harvest
1970	114347	77080	37267	64653	17271	47382	19996	54%	29694	77%	95500	60500	27000	33%	81%
1971	41140	28110	13930	50700	10643	32137	-5613	-43%	-9640	-19%	41500	47500	-6000	-13%	60%
1972	52790	30470	22320	30935	13616	17379	8704	39%	21795	70%	46700	32000	14700	46%	65%
1973	30650	18820	19030	21650	10536	11014	9194	46%	17000	79%	30000	22300	7700	35%	63%
1974	27830	7500	20330	29150	19334	9816	936	5%	-1320	-5%	15600	21900	-6300	-29%	48%
1975	28740	8435	20305	45937	28496	17441	-8191	-40%	-17197	-37%	19300	26200	-6100	-24%	42%
1976	45202	25702	19500	48340	10860	30000	640	3%	-3738	-8%	37100	44400	-7300	-16%	63%
1977	43650	23740	19910	56495	21695	34000	-1785	-9%	-12845	-23%	34700	50800	-16100	-32%	60%
1978	70323	40737	21586	97340	36020	61320	-14434	-67%	-27617	-28%	62900	82300	-19400	-24%	77%
1979	84960	57210	27750	108323	37305	70338	-10245	-37%	-23363	-22%	72000	88000	-16000	-13%	79%
1980	124930	86360	30570	144096	62490	81606	-23920	-62%	-19166	-13%	102600	110000	-7400	-7%	84%
1981	78500	55420	23080	116095	28095	87200	-5015	-25%	-37595	-32%	74500	113300	-38800	-34%	74%
1982	136060	109340	26120	105503	27983	77520	-1863	-7%	30557	23%	135000	109100	25900	24%	81%
1983	97210	74330	22880	129363	28572	100691	-5792	-25%	-32153	-25%	94000	127200	-33200	-26%	79%
1984	113068	81671	31397	150034	47410	102624	-10013	-27%	-30966	-21%	103560	132505	-28945	-22%	79%
1985	122629	86091	35934	163952	43316	120636	-7902	-22%	-41323	-25%	100241	144610	-36369	-25%	80%
1970-19 Averages	76627	51276	25363	85244	20870	56374	-3507	-14%	-8617	-0.18%	67113	76338	-9226	-8%	71%
Averages without regard to sign							8448	32%	23498	32%			10638	26%	

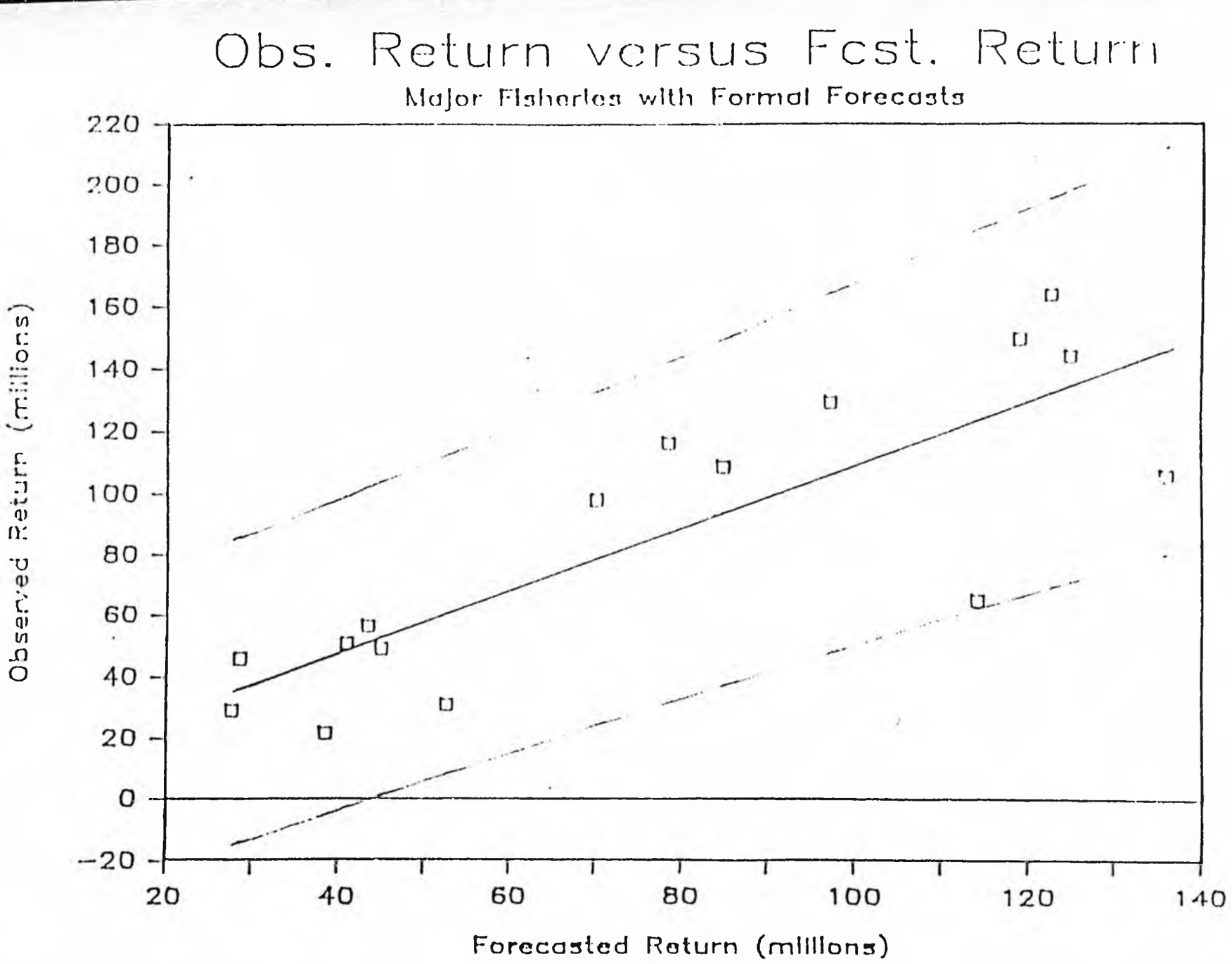


Figure 1. Relationship between observed return (millions) and forecasted return (millions) for major salmon fisheries with formal forecasts, 1970-1985. Also shown are the regression line, $Y = 6.54 + 1.027\ X$, R squared = 0.690, together with 80 percent confidence intervals; where, Y = Observed Return and X = Forecasted Return.

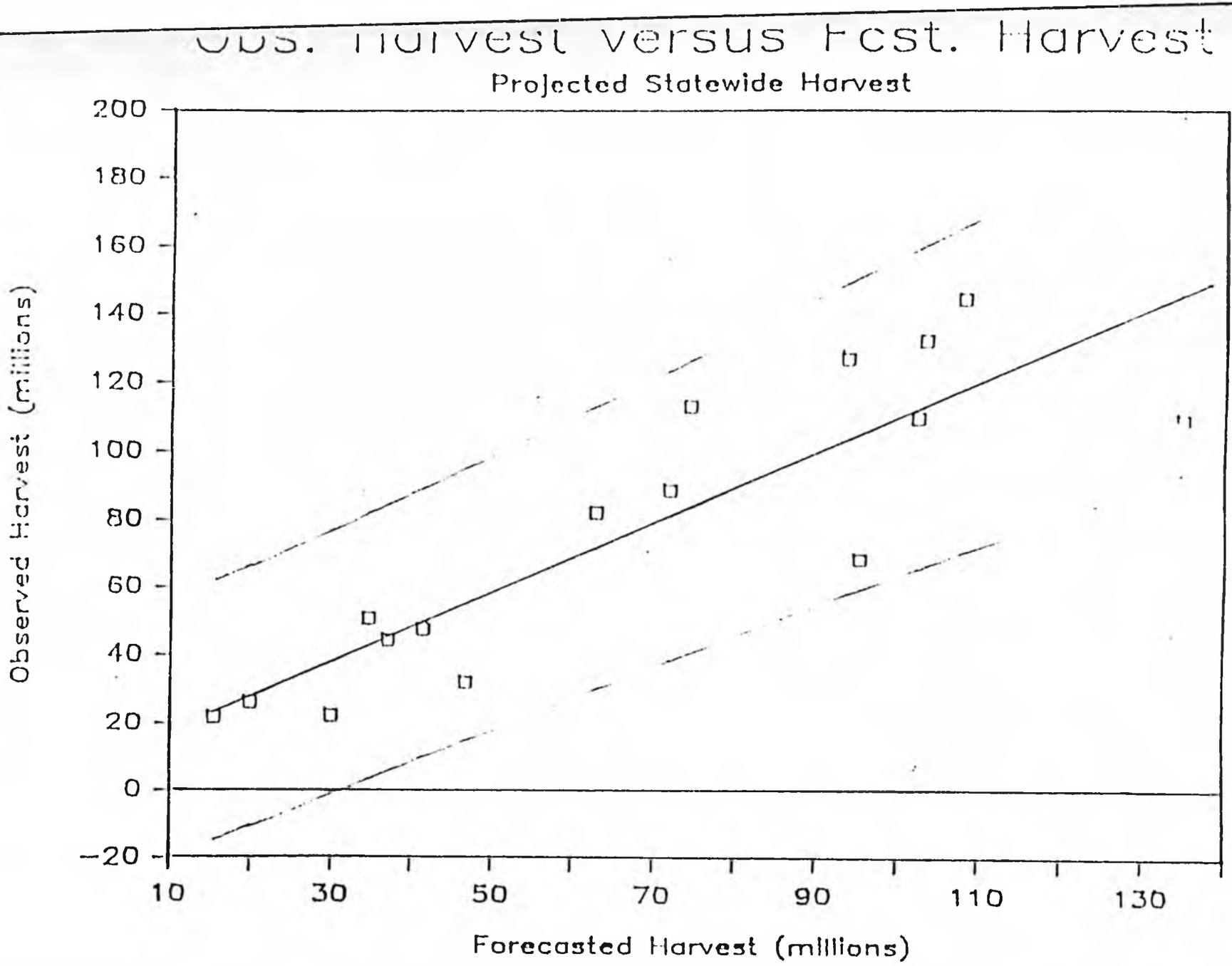


Figure 2. Relationship between observed harvest (millions) and projected harvest (millions) for Alaska commercial salmon fisheries, 1970-1985. Also shown are the fitted regression line, Y = 7.40 + 1.027 X, R squared = 0.771, together with 80 percent confidence intervals; where, Y = Observed Harvevst and X = Forecasted Harvest.

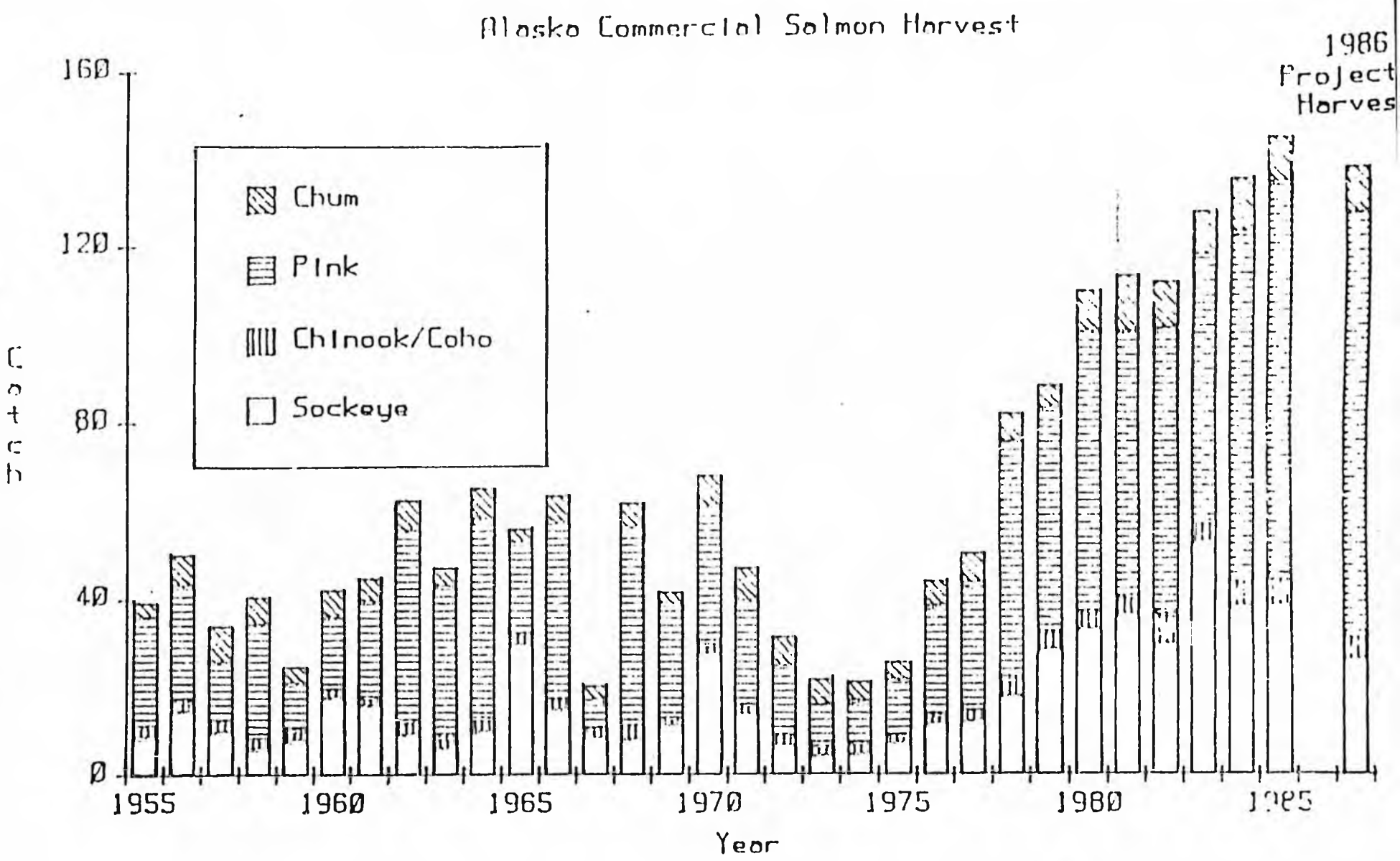


Figure 4. Alaska commercial salmon harvests by species, 1955 - 1985, and the 1986 projected harvest.

Table 2. Comparison of actual and forecast 1985 salmon returns, with errors and relative errors, for some major Alaska salmon fisheries.

Area	Species	(1) Harvest	(2) Escapement	(3) Return (1) + (2)	(4) Forecasted Return	(5) Error (4) - (3)	(6) Relative Error (5)/(3) x 100%
		Thousands of Fish					
Southern Southeastern	pink	30473	12000	42473	30800	-11673	-27%
Northern Southeastern	pink	20516	8000	28516	11900	-16616	-58%
Southeastern total	pink	50988	20000	70988	42700	-28288	-40%
Prince William Sound	pink	25057	2715	27771	21500	-6271	-23%
	chum	1280	191	1471	2109	638	43%
FWS Coghill District	sockeye	350	147	497	220	-277	-56%
Copper River	sockeye	928	631	1559	1780	221	14%
	chinook	46	4	50	45	-6	-11%
Lower Cook Inlet-Southern and Outer Districts	pink	1137	316	1453	1217	-236	-16%
Upper Cook Inlet	sockeye	3689	1362	5051	3400	-1651	-33%
Kodiak	pink	7340	2600	9940	6780	-3160	-32%
Chignik	sockeye	1110	717	1826	2490	664	36%
	pink	175	355	530	500	-30	-6%
South Peninsula	pink	4396	1600	5996	5000	-996	-17%
Bristol Bay	sockeye	23474	13154	36628	34700	-1928	-5%
Bristol Bay, Nushagak District	chinook	67	125	192	188	-4	-2%
TOTAL		120037	43916	163952	122629	-41324	-25%

Table 3. Preliminary 1985 Alaska commercial salmon harvest by species and fishing area.

Fishing Area	SPECIES					
	Chinook	Sockeye	Coho	Pink	Chum	Total
Southern Southeastern	76.7	1111.7	1198.4	30472.7	1300.6	34160.2
Northern Southeastern	178.6	737.4	1341.1	20515.5	1966.2	24738.8
Southeastern Statistical Region Total	255.3	1849.2	2539.4	50988.2	3266.8	58899.0
Cordova Area	43.5	1441.6	1033.5	25074.6	1294.2	28887.4
Cook Inlet Area	24.3	4130.8	629.4	1313.2	744.8	6842.6
Kodiak Area	5.0	1030.0	280.0	7335.0	431.0	9081.0
Chignik	1.9	943.8	203.7	175.0	26.1	1350.6
South Peninsula	6.0	2062.0	161.0	4396.0	1341.0	7966.0
Central Statistical Region Total	80.7	10408.2	2307.6	30293.8	3837.1	54927.5
Aleutian Islands	0.0	1.0	0.0	0.0	14.0	15.0
North Peninsula	22.0	2510.0	170.0	4.0	698.0	3412.0
Bristol Bay Area	122.0	23472.0	161.0	0.0	864.0	24619.0
Kuskokwim Area	74.1	121.2	382.1	0.0	224.7	802.1
Yukon Area	146.2	0.0	57.4	0.0	1030.8	1234.4
Norton Sound	19.5	0.2	22.1	3.6	134.7	180.1
Kotzebue Area	0.0	0.0	0.0	0.0	521.4	521.4
Western Statistical Region Total	383.8	26112.4	792.6	7.6	3487.6	30784.0
ALASKA TOTAL	719.8	38369.8	5639.7	89289.7	10591.5	144610.4

Table 4. Preliminary 1985 Southeastern Alaska commercial salmon harvest by species and management area.

Management Area	SPECIES					
	Chinook	Sockeye	Coho	Pink	Chum	Total
Southern Southeastern						
Portland Canal gill net	2.8	167.0	46.9	649.7	218.2	1084.7
Annette Island gill net	0.3	49.8	14.0	394.3	34.8	493.2
Annette Island trap	0.4	10.9	3.5	497.8	1.5	514.0
Prince of Wales Is. gill net	1.7	265.3	91.1	584.9	69.6	1012.7
Stikine River gill net	.0	1.1	1.9	5.3	1.9	10.2
Southern hatcheries	2.0	0.1	45.8	9.7	288.0	345.6
Southern districts seine	15.0	616.3	326.3	28232.9	680.4	29870.9
Southern districts troll	54.6	1.3	668.9	98.0	6.2	829.0
Southern Southeastern total	76.7	1111.7	1198.4	30472.7	1300.6	34160.2
Nothern Southeastern						
Taku-Snettinham gill net	3.0	87.1	52.3	312.8	107.9	563.0
Lynn Canal gill net	3.4	337.2	109.1	260.3	803.6	1513.5
Yakutat gill net	1.0	233.4	193.5	16.1	12.3	456.3
Northern hatcheries	0.0	.0	6.2	462.1	342.8	811.1
Northern districts seine	7.5	73.3	60.3	18594.0	653.6	19388.7
Northern districts troll	163.7	6.4	919.7	870.2	46.0	2006.1
Northern Southeastern total	178.6	737.4	1341.1	20515.5	1966.2	24738.8
SOUTHEASTERN REGION TOTAL	255.3	1849.2	2539.4	50988.2	3266.8	58899.0

Table 5. Preliminary 1985 Central Region Alaska commercial salmon harvest by species and management area.

Management Area	Chinook	Sockeye	Coho	Pink	Chum	Total
	SPECIES					
Cordova Area						
Bering River	0.2	20.5	415.8	0.1	8.3	444.9
Copper River	42.2	927.8	598.0	17.8	5.8	1591.5
Prince William Sound						
Hatcheries				1274.0	3.8	1277.8
Coghill District	0.5	350.0	1.2	521.0	266.0	1138.7
Unakwik District	.0	26.9	.0	37.4	8.0	72.4
Eshamy District	.0	2.2	0.1	100.9	1.4	104.6
General purse seine	0.6	114.1	18.4	23123.5	1000.9	24257.5
Prince William Sound total	1.1	493.3	19.7	25056.7	1280.1	26851.0
Cordova Area total	43.5	1441.6	1033.5	25074.6	1294.2	28887.4
Cook Inlet Area						
Lower Cook Inlet						
Outer District	.0	92.0	3.2	610.2	11.8	725.3
Southern District	1.0	84.1	4.3	518.9	5.5	613.8
Kamishak District	.0	78.3	2.0	0.2	0.1	80.6
Eastern District	.0	24.3	.0	92.4	5.1	121.9
Lower Cook Inlet total	1.0	278.7	9.5	1229.7	30.6	1549.5
Upper Cook Inlet						
Central District	21.4	3689.1	540.7	57.0	682.9	4991.2
Northern District	1.9	163.0	79.2	26.5	31.2	301.8
Upper Cook Inlet total	23.3	3852.1	619.9	83.5	714.1	5293.0
Cook Inlet Area total	24.3	4130.8	629.4	1313.2	744.8	6842.6
Bristol Bay						
Egegik District	4.0	7457.0	33.0	0.0	110.0	7604.0
Ugashik District	7.0	6346.0	61.0	0.0	119.0	6533.0
Naknek-Kvichak District	6.0	8136.0	8.0	0.0	176.0	8326.0
Nushagak District	68.0	1323.0	20.0	0.0	253.0	1664.0
Togiak District	37.0	210.0	39.0	0.0	206.0	492.0
Bristol Bay total	122.0	23472.0	161.0	0.0	864.0	24619.0
CENTRAL REGION TOTAL	189.8	29044.4	1823.9	26387.8	2903.0	60349.0

Table 6. Preliminary 1985 Westward Region Alaska commercial salmon harvest by species and management area.

Management Area	SPECIES					
	Chinook	Sockeye	Coho	Pink	Chum	Total
Kodiak Area	5.0	1830.0	200.0	7335.0	431.0	9801.0
Chignik Area	1.9	943.8	203.7	175.0	26.1	1350.6
Alaska Peninsula and Aleutians						
South Peninsula	.6.0	2062.0	161.0	4396.0	1341.0	7966.0
North Peninsula	22.0	2518.0	170.0	4.0	698.0	3412.0
Aleutian Islands	0.0	1.0	0.0	0.0	14.0	15.0
Alaska Penin. Aleut. total	28.0	4581.0	331.0	4400.0	2053.0	11393.0
WESTWARD REGION TOTAL	34.9	7354.8	814.7	11910.0	2510.1	22624.5

Table 7. Preliminary 1985 Arctic-Yukon-Kuskokwim Region Alaska commercial salmon harvest by species and management area.

Management Area	SPECIES					
	Chinook	Sockeye	Coho	Pink	Chum	Total
Kuskokwim Area						
Kuskokwim River	37.9	106.6	335.6	0.0	199.5	679.6
Kuskokwim Bay	36.2	14.6	46.5	0.0	25.2	122.5
Kuskokwim Area total	74.1	121.2	382.1	0.0	224.7	802.1
Yukon River						
Lower Yukon River	141.0	0.0	45.0	0.0	613.0	799.0
Upper Yukon River	5.2	0.0	12.4	0.0	417.8	435.4
Yukon River total	146.2	0.0	57.4	0.0	1030.8	1234.4
Norton Sound	19.5	0.2	22.1	3.6	134.7	180.1
Kotzebue Area	0.0	0.0	0.0	0.0	521.4	521.4
ARCTIC-YUKON-KUSKOKWIM REGION TOTAL	239.8	121.4	461.6	3.6	1911.6	2738.0

Table 8. Preliminary forecasts of salmon returns and commercial harvests for some major Alaska fisheries in 1986.

Thousands of Fish

Area	Species	Forecast Return	Escapement Goal	Estimated Harvest	Forecasted Return Range	Estimated Harvest Range
Southern Southeastern	pink	37900	6000	31900	30600 - 45100	24600 - 39100
Northern Southeastern	pink	11100	4600	6500	6900 - 15300	2100 - 10700
Southeastern total	pink	49000	10600	38400	40600 - 57500	30000 - 46900
Prince William Sound	pink	27600	4200	23400	22070 - 33130	17870 - 28930
	chum	1266	383	882	971 - 1562	587 - 1179
EWS Coghill District	sockeye	552	40	512	386 - 718	346 - 678
Copper River	sockeye	1559	704	854	1247 - 1870	685 - 1024
	chinook	45	15	30	36 - 54	25 - 15
Lower Cook Inlet-Southern and Outer Districts	pink	2269	270	1999	1123 - 3414	853 - 3144
Upper Cook Inlet	sockeye	5200	1000	4200	4200 - 6200	3200 - 5200
Kodiak	pink	19730	4050	15680	17640 - 21930	11590 - 17880
Chignik	sockeye	2811	650	2161	2569 - 3053	1919 - 2403
	pink	2600	700	1900	1300 - 3960	600 - 3260
South Peninsula	pink	8400	2000	6400	5000 - 11000	3500 - 9100
Bristol Bay	sockeye	22000	10700	12100	8600 - 35400	2200 - 24700
Bristol Bay, Nushagak District	chinook	183	75	108	77 - 297	2 - 222
	pink	4100	1000	3100	1400 - 7300	400 - 6300
Bristol Bay, Togiak District	chinook	39	15	24	10 - 71	0 - 56
		147352	36403	111750	129797 - 165050	93194 - 128655

Table 9. Preliminary projections of 1986 Alaska commercial salmon harvests by statistical region and species.

STATISTICAL REGION	SPECIES					
	Chinook	Sockeye	Coho	Pink	Chum	Total
Southeastern	261	1500	2300	38400	3000	45461
Central	62	10536	1570	51729	4147	68044
Western	355	14118	795	5420	3455	24143
TOTAL ALASKA	678	26154	4665	95549	10602	137648

Table 10. Preliminary projections of 1986 Alaska commercial salmon harvests by management region and species.

Management Region	SPECIES					
	Chinook	Sockeye	Coho	Pink	Chum	Total
Southeastern	261	1500	2300	38400	3000	45461
Central	156	17834	1520	29849	2897	52256
Arctic-Yukon-Kuskokwim	223	80	145	220	1750	2418
Westward	38	6740	700	27080	2955	37513
TOTAL ALASKA	678	26154	4665	95549	10602	137648

MEMORANDUM State of Alaska

TO: Greg Baker, Deputy Commissioner
Department of Commerce and
Economic Development

DATE: March 24, 1986

FILE NO.:

THRU: Paul Peyton, Acting Director
Office of Commercial Fisheries
Development

TELEPHONE NO.:

SUBJECT: Kodiak/Chignik Salmon
Processing Capacity,
Preliminary Draft

FROM: Richard Reynolds
Development Specialist
Fisheries

This is a preliminary draft report which should not receive very wide circulation. I have not confirmed the projected run data with the Department of Fish and Game, and processor responses have not been verified in any independent way.

Generally, pink salmon sales appear to be exceeding expectations and the mood of processors recently seems to be more positive toward operations this season.

Canned Pink Salmon Inventories (number of cases)

	11/1/85	2/1/86	Shipments
12-4 lb.	80,286	61,388	18,898
48-1 lb.	1,996,085	1,354,917	641,168
48-1/2 lb.	994,101	657,732	336,369
48-1/4 lb.	59,607	50,608	8,999
	3,130,079	2,124,645	1,005,434

	11/1/84	2/1/85	Shipments
12-4 lb.	29,712	21,119	8,653
48-1 lb.	1,797,227	1,362,756	434,471
48-1/2 lb.	820,999	400,248	420,751
48-1/4 lb.	49,043	38,755	10,288
	2,697,041	1,822,878	874,163

	11/1/83	2/1/84	Shipments
12-4 lb.	34,108	27,842	6,266
48-1 lb.	1,384,591	1,013,489	371,102
48-1/2 lb.	714,054	492,202	221,852
48-1/4 lb.	70,694	36,845	633,849
	2,203,447	1,570,378	633,069

Canned Pink Salmon Inventories (number of cases) (cont'd)

	11/1/82	2/1/83	Shipments
12-4 lb.	48,633	36,283	12,350
48-1 lb.	1,506,304	1,102,135	404,169
48-1/2 lb.	1,064,985	545,680	519,305
48-1/4 lb.	81,108	66,607	14,503
	2,701,030	1,750,703	950,327

As of February 1, total unsold inventories are up 16% over the same time last year in terms of running cases. However, there are actually fewer 48-1 lb. cases on hand. Sales, particularly of 1 lb. talls, are up substantially over the past three years. The following analysis was provided by Ocean Beauty Seafoods:

	Pink Salmon 48-1 lb. cases			
	Current	Prior	Increase	
Period	Year	Year	Cases	%
7/1 - 10/31	577,000	543,000	34,000	6.3
November	123,000	74,000	49,000	66.2
December	251,000	209,000	42,000	20.1
January	287,000	185,000	102,000	55.1
	1,238,000	1,011,000	227,000	22.5

Increased sales are attributed to cheaper prices, the ASMI promotion program and greater consumer awareness of the product's nutritional qualities. I have not yet attempted to quantify the degree of actual price reductions allowed or to estimate the possible effect such reductions may have on raw fish prices next season or packers' margins.

U. S. Cold Storage Holdings (Millions of Pounds)

	Current Year			Prior Year
	11/30/85	12/31/85	1/31/86	1/31/85
King	6.5	5.5	4.6	2.9
Coho	14.9	13.2	7.7	10.2
Chum	21.0	20.0	13.1	18.0
Pink	14.9	10.8	6.9	1.5
Red	7.1	6.2	3.2	1.5
Unclassified	4.7	4.5	4.1	2.6
	69.1	60.2	39.6	36.7

The 1986 pack will begin to reach market outlets in volume during August. Including February, that means that there are six months remaining before the new pack becomes available. Sales will not continue at a constant rate, but expected carry-over projections have not yet been made.

CANADIAN SUPPLIES IN 1986

Canadian production does have an effect on the market. Pink salmon production in Canada has a dramatic even/odd year cycle.

British Columbia Canned Salmon Pack in 48-1 lb. lb. Case Equivalents

	1985	1984	1983	1982	1981
Red	590,302	239,949	370,855	551,145	648,401
Pink	1,067,301	366,098	999,739	138,648	1,105,915

In 1985, when 1.1 million cases of pink salmon were produced (including production from U. S. salmon), the British Columbia harvest was 20.3 million fish. The 1986 forecast harvest in B.C. is about 6.9 million.

PREDICTED 1986 DAILY HARVEST OF SALMON IN THE KODIAK/CHIGNIK AREA

Daily harvests as a percentage of the total catches during 1980 and 1984 were calculated for the Kodiak area and applied to the 1986 Department of Fish and Game forecasts. For the Chignik area, 1979 was used as a comparable year for pink salmon, 1983 for red salmon and an average of the two years was used for other species. Again, for Chignik, the daily harvest percentages were applied to the current forecasts to arrive at expected daily production rates for 1986.

1986 Season Point Forecast Harvest (Fish)

	Kodiak	Chignik
Pink	15,679,000	1,940,000
Red	1,500,000	2,160,000
Chum	1,000,000	300,000
Coho	200,000	250,000
King	4,000	5,000

In Kodiak, the north-end and west-side are expected to produce the majority of pink salmon harvested:

Afognak	494,000
Kitoi	979,000
West-side	12,258,000
Alitak	800,000
General	990,000
Mainland	158,000
	15,679,000

In order to compare processing capacities, daily catch projections were converted to pounds using the following factors (pounds/fish).

	Kodiak	Chignik
Pink	3.5	3.8
Red	5.6	6.9
Chum	8.0	7.4
Coho	8.6	7.5
King	21.0	19.2

The final report will describe complete daily catch projections, by species. This paper concentrates on the peak period July 22 - August 14. The attached graphs illustrate the magnitudes involved. Production may be expected to reach 4.7 million pounds on August 4. Of this total, about 3.8 million pounds would be pink salmon. In tabular form:

Daily Predicted Harvest of All Species (millions of pounds)

	Kodiak	Chignik	Total
7/22	1.7	.3	2.0
23	1.3	.1	1.4
24	2.2	.1	2.3
25	3.0	.2	3.2
26	2.8	.3	3.1
27	2.3	.3	2.6
28	2.4	.3	2.7
29	3.5	.2	3.7
30	3.4	.3	3.7
31	2.7	.6	3.3
8/01	2.1	.7	2.8
02	1.6	.1	1.7
03	2.4	.6	3.0
04	4.6	.2	4.8
05	3.6	.1	3.7
06	3.2	.9	4.1
07	2.5	1.1	3.6
08	2.5	.7	3.2
09	1.7	.6	2.3
10	2.5	.3	2.8
11	2.1	.1	2.2
12	2.0	.5	2.5
13	1.6	.3	1.9
14	1.1	.3	1.4

Processors operating in the Kodiak and Chignik areas were contacted by phone to determine the physical capacity of existing plants and individual production plans for the 1986 season. To date, only firms with shorebase facilities in the area have been included in the survey. Some of those firms also operate floating processing facilities which are accounted for if they are also expected to operate in the area.

The following firms indicated that they would process salmon in 1986:

Alaska Fresh Seafoods
All Alaska Seafoods
Alaska Pacific Seafoods
Columbia Ward
East Point Seafood
International Seafoods
King Crab, Inc.
Larsen Bay Cannery
Ursin Seafoods
Western Alaska Fisheries
Smokwa Shell
Aleutian Dragon
Chignik Pride

	Daily Processing Capacity (Pounds)	
	Frozen	Canned
1. Kodiak, shorebased	85,000 - 90,000	
2. Kodiak, shorebased	200,000	
3. Floater owned by #2	(200,000 tentative after 7/25)	
4. Kodiak, shorebased	160,000	240,000-290,000
5. North-West Side, shorebased	120,000	342,000
6. South-End, shorebased	180,000 - 200,000	500,000
7. Kodiak, shorebased	75,000 (plus 65,000 tentative)	
8. Kodiak, shorebased	100,000 (plus 100,000 tentative)	
9. West-Side, shorebased		(240,000-280,000 tentative)
10. Kodiak, shorebased	(125,000 Tentative)	
11. Floater owned by #10	(125,000 Tentative)	
12. Kodiak, shorebased	150,000 - 170,000	
13. Kodiak, shorebased	60,000	
14. Chignik, shorebased	250,000	

15. Floater owned by #14	(75,000 - 100,000 tentative after 7/25)	
16. Kodiak, shorebased	285,000	525,000
17. Chignik, shorebased	200,000 - 300,000	

Those processors that have capacity which is noted as tentative, generally indicated they would utilize that capacity if contracts for sale of fish were obtained, if the price of fish was "right," if fish were available and so on.

Adding the more conservative figures, gives a total daily freezing capacity of 1.9 million pounds and canning capacity of 1.6 million pounds.

Two very large plants account for a production capacity of nearly 1.5 million pounds per day. Obviously, it is critical that these facilities do actually operate as indicated.

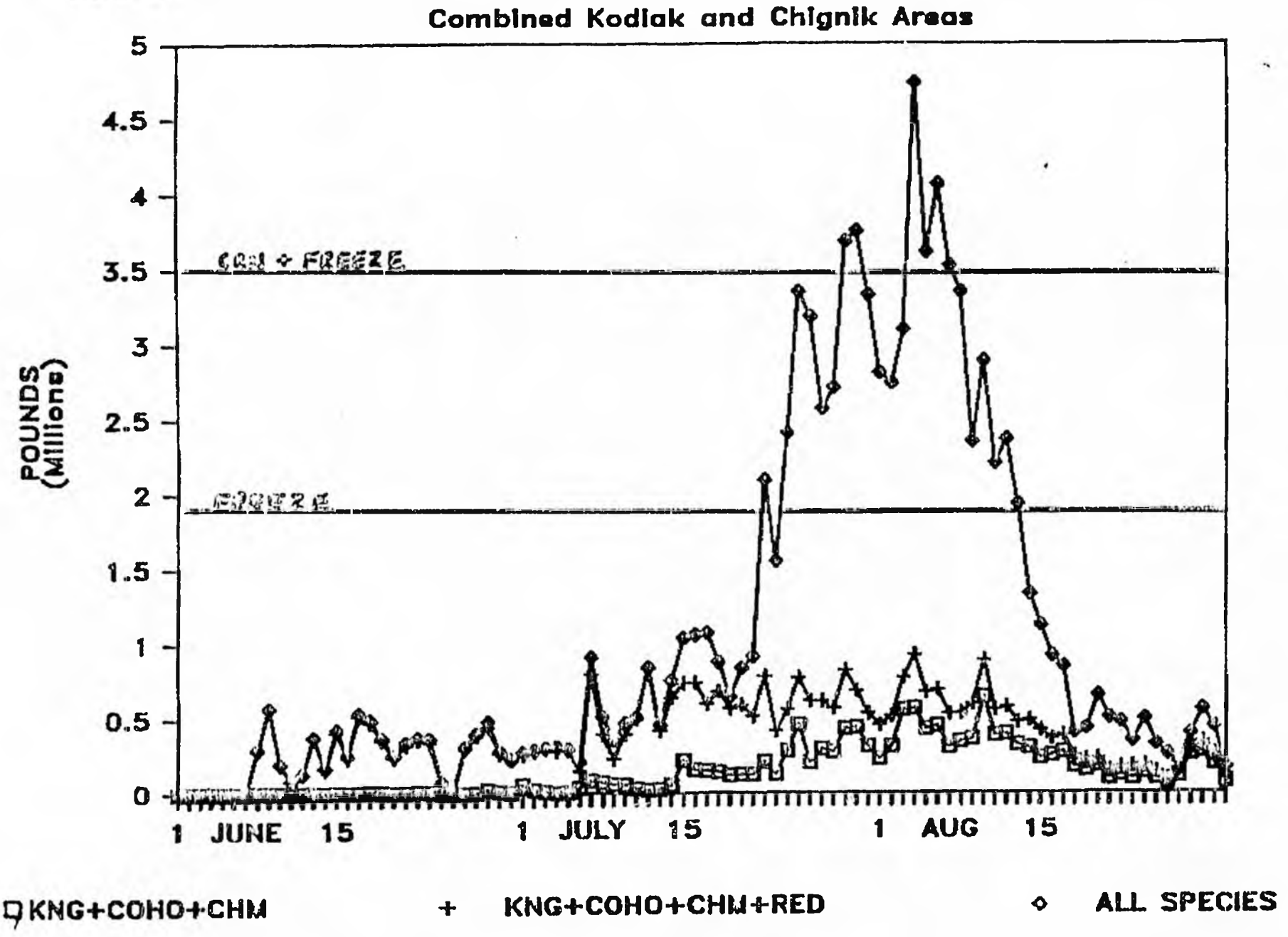
While a large part of the required processing capacity seems to exist, there may well be individual fishermen who are unable to gain access to available processing facilities because of tendering problems, unwillingness of processors to commit to service new vessels, and other factors.

A large part of the question yet to be resolved is the willingness of processors to freeze pink salmon. It is obvious that canning capacity will fall far short of the volume necessary to handle all the pinks.

Processors generally indicated that they would handle Kodiak and Chignik fish before seeking sources of supply outside the area.

RR/sal716s
32686c

KODIAK/CHIGNIK 1986 CATCH PROJECTION



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

POUCH V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

January 6, 1986

Mr. Donald F. Nielsen
Senior Vice President
Bristol Bay Native Corporation
P.O. Box 100220
Anchorage, Alaska 99510

Dear Don:

Thank you for sending me a copy of your December 30 letter to Governor Sheffield regarding the Nushagak processing situation. The letter contained much valuable information.

Concerns about the expected 1986 Nushagak River pink salmon run were brought to my attention earlier in December. On December 24, I wrote Commissioner Loren Lounsbury of the Department of Commerce and Economic Development requesting that a processing capacity study be conducted for the Nushagak and other locations. The survey is the first step in determining if surplus salmon will be available, thereby establishing the justification for the Governor to invite foreign processors into Alaska's internal waters to buy salmon.

Surplus pink stocks appear to be a major problem statewide this year. Kodiak Island, also in Senate District N, looks like it will have a particularly critical problem.

Mr. Karl Ohls in my Juneau office is the aide who will be handling this issue. If you require additional information or assistance, please do not hesitate to call.

Sincerely,

Fred F. Zharoff
Alaska State Senate

cc: Governor Bill Sheffield
Representative Adelheid Herrmann

Bristol Bay
Native Corporation
445 E. 5TH AVENUE / P.O. BOX 100220 / ANCHORAGE, ALASKA 99510 / (907) 278-3602
TELECOPY (907) 278-3924

December 30, 1985

The Honorable Bill Sheffield
Governor of Alaska
State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Sheffield:

The fishermen of Bristol Bay need your help in securing markets for the 1986 pink salmon harvest. In 1984 most fishermen, except for those in the Nushagak, had to throw their pinks overboard. We don't want to see this happen again.

At the present time, most canneries will be shut down and maintain freezing operations only because of the low projected harvest of red salmon. This means that the major processors will not be buying pinks since they are generally canned. If they do buy them, they will offer 10 to 15¢ a pound forcing the fishermen to keep on their red salmon nets to scratch for a few reds, chums and silvers plus a few big pink salmon and letting the major run of pinks go by to the spawning grounds.

In 1982, Governor Hammond allowed the Japanese North Pacific Longline Association into Nushagak to purchase pink salmon. The Japanese bought pinks at 30¢ a pound while the U.S. processors were offering 15 to 17¢ a pound. After the Japanese were forced to leave by the threat of a lawsuit, all fishermen had to go back scratching for reds, chums and silvers with their red gear since it wasn't profitable to catch pinks at 15 to 17¢ a pound with their smaller mesh pink nets.

The past 15 years of the fish processing industry in Alaska has witnessed tremendous change. One change that has gradually occurred is that most labor in the processing industry is performed by out of state workers. Since the state repealed the income tax, wages paid to out of state workers does not benefit the state treasury.

Since the Raw Fish Tax generates money for the state, it is in the best interests of the state to see that all

harvestable salmon are caught and sold at the highest possible price.

Therefore we urge you to investigate the proposed plans of the U.S. processing industry in both operations in 1986 and coming to a settlement on prices paid to fishermen and come up with a plan of action which will be most beneficial to the state, the resource, and the people.

Sincerely,

Donald F. Nielsen

Donald F. Nielsen
Senior Vice President

cc: Rep. Adelheid Herrmann
Sen. Fred Zaroff

Alaska State Legislature

House of Representatives

Special Committee on Fisheries

Pouch V
Juneau, Alaska 99811
(907) 465-4924

CHAIRMAN
ADELHEID HERRMANN
VICE-CHAIRMAN
JACK FULLER
MEMBERS
CHARLIE BUSSELL
BEN GRUSENDORF
PETER GOLL
JACK McBRIDE
FRED ZHAROFF

August 31, 1984

Richard A. Lyon, Commissioner
Dept. of Commerce and Economic Development
Pouch D
Juneau, Alaska 99811

Dear Commissioner Lyon:

It is my understanding that the Office of Commercial Fisheries Development has some funds remaining from recent years that can be used to find ways to more fully utilize our fishery resources. I would like to encourage the Department to proceed with this project.

In recent years our salmon runs have stabilized at historically high levels due to improvements in management, ideal weather conditions, and reductions in foreign interceptions; because of this the conventional markets are flooded with product. This is especially true for the pink salmon fisheries where fishermen have often watched as millions of harvestable fish have migrated to their spawning grounds because of a lack of markets.

Since 1978 the Alaska harvest of pink salmon has not been below fifty million fish and in three instances has topped sixty million. This year the catch is strong again and may even top seventy million. In the next few years the benefits of larger pink salmon hatchery returns will be added on to this production.

Commissioner, we have to find new ways of processing our product which will allow us to expand our markets. This market research and product development will benefit the entire salmon industry in Alaska and therefore the State as a whole, I encourage the Department to move forward with this project.

Sincerely,

Mel Monsen for
Adelheid Herrmann
Representative
District 26

cc: Greg Baker, OCFD
Sandra Borbridge

Alaska State Legislature

REPRESENTATIVE
ADELHEID HERRMANN

P.O. BOX 63
NAKNEK, ALASKA 99633
(907) 246-4435

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4942 465-4943

House of Representatives

CHAIRMAN
SPECIAL COMMITTEE
ON FISHERIES

MEMBER
TRANSPORTATION
COMMITTEE

DISTRICT 26

ADAK
AKUTAN
ALEKNAGIK
ATKA
BELKOFSKI
CLARK'S POINT
COLD BAY
DILLINGHAM
DUTCH HARBOR
EGEGIK
EKUK
EKWOK
FALSE PASS
IGIUGIG
ILIAMNA
KING COVE
KING SALMON
KOKHANOK
KOLIGANEK
LEVELOCK
MANOKOTAK
NAKNEK
NELSON LAGOON
NEWHALEN
NEW STUYAHOK
NIKOLSKI
NONDALTON
PEDRO BAY
PILOT POINT
PORT ALSWORTH
PORT HEIDEN
PORT MOLLER
PORTAGE CREEK
SAND POINT
SOUTH NAKNEK
SQUAW HARBOR
ST. GEORGE
ST. PAUL
TOGIAK
TWIN HILLS
UGASHIK
UNALASKA

January 15, 1984

Terry Elder, Deputy Commissioner
Department of Commerce & Economic Development
Pouch D
Juneau, Alaska 99811

Dear Terry:

I have been meaning to write to you for quite some time with a few concerns I have with fisheries and economic issues in District 26.

The first item of concern is a village in my district, Pilot Point, which is considering putting the purchase of a cannery on their list of Capital Improvement Projects requests to the Legislature. The cannery would be included in a package deal which would also include building a dock. I am wondering if you could travel to Pilot Point and get a first hand understanding of the situation. I am not sure if any other community in Alaska has received state funds to purchase a cannery and I thought if I could get your help the chances would be better. I have mentioned to Pilot Point that I would be asking for someone from the Administration to come out.

Secondly, as you know the Bristol Bay area's economic well-being revolves around the fisheries, and the fishing industry is not always healthy. There are many risks involved in being in the fishing industry and often poor years hit the local people very hard. This is especially true because employment in other jobs is virtually non-existent; basically, the only jobs available depend on the fisheries, and there is a need to have job opportunities in fields that are complimentary with fishing.

It is important that people understand that even though the 1984 salmon run was one of the largest in history, that many facts are left out of the glowing press reports of the big pay day for fishermen. One example of what is left out of the papers is the increased efficiency of the modern drift net boats. In some areas this has limited the catches of set net fishermen. This also impacts many drift net fishermen who have older boats and are not able to fish as efficiently. Another example is that many areas within the Bristol Bay salmon fishery did not have good runs. The Igushik river was closed completely for most of the season and many of the fishermen that fish that area are from one community, Manokotak. Those people will have a very tough winter ahead. Another thing that hurts salmon fishermen is the lack of effective enforcement of laws and regulations. Illegal fishing reduces the amount of fish available for honest fishermen.

I would like you to visit Dillingham and Naknek personally to learn about some of these problems and concerns first hand. Last session I introduced HCR 52 which addressed the poor economic conditions in coastal Alaska. The resolution requested administrative action to identify and assist in resolving some of the problems. I have not seen any action to date, but I believe that Sandra Borbridge is organizing a group to address some of these problems and I think this is a good start. These problems in coastal communities exist through out the state.

It is important to remember that your Department's responsibility is commerce and economic development, yet I feel the Department has minimal presence in my district. There is a loan officer in Dillingham who is servicing the entire Bristol Bay region. I have heard that the Department feels he should cover all of Western Alaska, which is not feasible. In any case, the problems I have brought up are not his job but the job of other Divisions and Offices with the Department.

Another part of my district which has fisheries problems, although they are a bit different, is the Aleutian Chain area. This area brings a lot of dollars into the state but gets very little state assistance in return. I am not sure of how much the state knows about the area. One problem that I saw first hand this year was with the pink salmon fishery. As you may know a portion of the Bristol Bay red salmon fishery is harvested by the fishermen at False Pass. There is much controversy over this intercept fishery and the False Pass fishermen are claiming that they cannot make it in this fishery because of the increase in effort and the low quota. So, I can understand that they need to take advantage of any pink salmon harvest that is available. The problem they had this year was a lack of processing capacity. The processors had the fishermen on a 30,000 pound limit during much of the pink season. The fishermen lost a lot of income because of this and the Department of Fish and Game told me that they had a 2.2 million surplus above their escapement goals for pink salmon.

There are problems with the pink salmon fishery in Bristol Bay also. There is a resource available every two years but there is little interest from processors and so much of it goes unharvested. One of the reasons processors use to explain this is the high transportation costs from rural Alaska which makes it difficult to make a profit on a low value fish like pink salmon. I am aware that the Office of Commercial Fisheries Development has initiated a project to identify new salmon products and I am hopeful that this will help rural pink salmon fisheries.

Another area of concern for the Aleutian area is the crab fisheries. This fishery has crashed in recent years and the benefits to local communities suddenly disappeared. I think the growing domestic ground-

fish fishery may be able to fill the gap, but only if the state is working to ensure that this industry develops in a way that benefits Alaskans.

There are other concerns in the Aleutian area, for example; in Atka the community is getting into harvesting halibut and running into severe transportation problems. This village is trying to create a viable economy for their people and I think it is part of the state's responsibility to be aware of their needs and to assist them in ensuring the long term viability of their village.

Part of all the problems I have discussed result from the lack of docks, harbors, and cold storages in coastal villages. Until the state gets a handle on this, new markets, processing methods, and harvest diversification will not develop. I think your Department in conjunction with DOTPF and CRA should work to study the need for infrastructure and the positive effect it could have for coastal economies.

Terry, the reason I am writing to you with all of this is because when I was working with the Administration on the Pribilof harbors I found you to be helpful, sincere, and to have a knack for quickly understanding everything that was going on. I appreciate the work that the Office of Commercial Fisheries does, but I think many of these problems or concerns have to be raised to someone at your level, and require a commitment from more than one person if these problems are ever going to be adequately addressed. Hopefully, this letter can serve as a starting point for some broader discussion and long-term action in responding to the economic problems in the coastal areas of the state.

I look forward to your response and hope to be talking with you about this information this session. If you are available to travel to the places I mentioned please let me know. Thank you for your time.

Sincerely,

Adelheid Herrmann

Adelheid Herrmann
Representative
District 26

cc: Commissioner Lounsbury
Commissioner Collinsworth
Deputy Commissioner Pennoyer
Deputy Commissioner Kelso
Commissioner Notti
Sandra Borbridge
John Shively
Greg Baker

April 24, 1985

Honorable Jalmar M. Kerttula
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula:

In response to your inquiry of April 11, here is a short report on the Salmon Total Utilization Project and observations concerning a second year of funding. A $250,000 1986 budget as described would allow successful completion of the objectives attached.

PROJECT NEED

The strength of the dollar abroad and the record volumes of wild and hatchery salmon being produced make expansion of domestic markets essential. We are seeing drastic declines in price on the foreign markets and, more recently, even declines in sales volumes despite the low prices. Consumption trends further suggest a transition from canned salmon products to higher quality and value fresh and frozen product forms. New value added convenience foods appear to hold the best promise for expansion in the domestic market and for utilization of surplus or underutilized fish.

The some 60 million pink salmon harvested in Alaska each year may offer a stable, price competitive base for these value added consumer products. Pink salmon have historically been considered a "lesser salmon" and most end up in canned form at the low end of the price range. Between 40 and 50 percent of all salmon harvested in Alaska are pink, and a substantial volume do not get harvested due to low ex-vessel prices. For example, in 1982 in Norton Sound, an estimated three million more pink salmon could have been harvested. In 1983, Prince William Sound fishermen refused to fish due to the low price offered.

PROJECT BENEFITS

If consumer demand can be strengthened, fishermen will ultimately be in a position to receive increased prices for their harvests. A 1¢ increase in ex-vessel price roughly translates to a $2.5 million increase in revenues to fishermen statewide. This project offers Alaskan fish processors an opportunity to explore alternatives to traditional canning and freezing. They will be provided with financial and technical data regarding other product forms and may find opportunities to do more value added processing, which should provide for increased operating margins and expanded markets.

Food development and marketing companies will have an opportunity to work with pink salmon in various forms. This could mean new products, expanded markets and, thus, increased and stabilized demand for salmon. Though this project is based on pink salmon, other salmon species would also benefit from the product development and marketing work.

1985 STATUS REPORT

This project for 1985 is basically a four step process corresponding to the four quarters of the calendar year. In order, the steps are:

1. Evaluate current and past product development efforts; Identify the most promising ideas not currently being pursued;

2. Identify interested processors and contract for production of selected intermediate products;

3. Produce and distribute intermediate products; Identify interested secondary processors and, if necessary, contract for limited product development and test marketing;

4. Test market final products, evaluate the results; and write report including quality specifications, production guidelines, cost of production estimates, and anticipated price range for intermediate products.

The three months available to determine what products others have tried and the success of their efforts was frustratingly short. Companies such as Castle and Cook and New England Fish Co., who were most active in new product development, are no longer in the fish business. Finding key personnel and gaining their cooperation and expertise is a time consuming process.

We are focusing on production of intermediate block form products that can be used for a wide variety of end products. Whether block forms will prove to be the most promising avenue remains to be seen. We will make samples available to secondary processors who are interested in final product market research. They know their markets better than we do and if they like what they see are more likely to pursue it if involved throughout. We have received very encouraging support from several potential end users such as Gortons and Van de Kamps.

OBSERVATIONS ON A SECOND YEAR

We feel we are already making a significant difference by disseminating the information we've gathered so far and by putting various people working on parallel courses together. The cooperation and support of the industry has been most encouraging. Obviously, a second year's funding would allow us to act on information gained during the first year.

If we generate serious interest in intermediate fillet or minced block forms or some other product we discover this year, there are still two major hurdles before actual introduction by the private sector is likely. One is a more accurate assessment of the economic feasibilility of the intermediate products. This will require a larger test run than we can afford this year. Second is a much more thorough test marketing of the final products. We anticipate a relatively minor role for the State in test marketing, primarily with advertising, support of in-store demonstrations, and point of sale materials.

Introduction of a new product line by a major food company is a multimillion dollar process. Witness the entry of Ralston-Purina into the skinless, boneless canned salmon business with a budget of $7 million for advertising alone. For large frozen food companies such as Gortons or Van de Kamps to move will probably require access to millions of pounds of product and some demonstrated commitment to production and price. Some fairly clear understanding of the margins available will be necessary before processors will undertake the necessary retooling given the current investment capital shortages in the industry.

OBJECTIVES FOR 1986

Our major focus with a second year's funding would be to examine the economics much more closely with a larger and more tightly focused production run and test marketing program. We would also explore some other ways to increase utilization as time allows. Our objectives in a second year would be to:

1. Continue with work initiated this year

   -- assist interested end users to obtain the products they desire, and support private product development efforts as required

   -- cooperate with processors who show interest and develop methods to reduce production, storage, and transportation costs.

2. Undertake larger scale production of the most promising reformed and mince block products using the best mix of production equipment and location attainable;

3. See the final products through larger scale test marketing in a carefully selected location, possibly tied in with an ASMI promotion and in-store demonstrations. Use the results to refine pricing information. If State financial support of this step is extensive, investigate whether these product formulations could be made available to Alaska based processors or users of Alaska salmon through licensing agreements.

4. For those reformed or mince block products which seem to offer particularly good potential, describe in detail the methods and equipment necessary for commercial production where this information is not proprietary. Evaluate strategies which may be used to establish a market position, and the potential for siting this processing in Alaska.

5. Facilitate contacts between processors who indicate interest and potential buyers.

6. Describe in detail the production and marketing of reformed or minced salmon items in Japan and Europe and review current import restrictions and tariffs.

7. Investigate other methods of increasing salmon utilization through recovery of mince from canning trimmings (collars and tails), and production of fish meal, fish oil, and fish feed from processing wastes;

8. Write a complete report indicating refined production guidelines and costs, probable price elasticities of various products, and quality control guidelines.

Sincerely,

Greg Baker
Director

GB/wfs0115g
42485b

bcc: Vince O'Reilly, Deputy Commissioner
Representative Sund
Representative Herrmann
Senator Zharoff

Richard Lauber, Alaska Manager
Pacific Seafood Processors
Box 1625
Juneau, Alaska 99801

Cass Parsons, Executive Director
United Fishermen of Alaska
319 Seward Street, Suite 208
Juneau, Alaska 99801

SALMON TOTAL UTILIZATION PROJECT BUDGET PROJECTIONS

Budget Item	Extension	1985 Amounts	1985 Totals	1986 Projection	Increase
PERSONNEL - 100			$48,500	$50,000	3%
salary		$36,000			
benefits	35%	12,500			
TRAVEL - 200			18,000	25,000	38%
Tickets - Alaska	12 x $500	6,000			
- Outside	4 x $1,000	4,000			
Per diem	100 x $80	8,000			
CONTRACTS - 300					
Equipment			2,500	25,000	x 10
overhaul/lease		1,500			
transport		1,000			
Mince			7,300	10,000	37%
raw material trim/frames		0			
process	8,000 x 0.60	4,800			
package	8,000 x 0.10	800			
store	8,000 x 0.10	800			
ship	8,800 x 0.10	900			
Fillet Blocks			20,200	90,000	445%
raw material	24,000 x 0.40	9,600			
process	10,000 x 0.75	7,500			
package	10,000 x 0.10	1,000			
store	10,000 x 0.10	1,000			
ship	11,000 x 0.10	1,100			
Info. Distrib.			14,000	25,000	180%
print report		3,000			
advertising		8,000			
phone	12 x $500	3,000			
Market Testing		18,500	18,500	25,000	35%
SUPPLIES - 400		2,500	2,500	0	
TOTALS		$131,500	$131,500	$250,000	190%

0115g42485b

ALASKA SEAFOOD MARKETING INSTITUTE

Canned Salmon Emergency Appropriation Appeal

MARKETING OBJECTIVE: Significantly increase U.S. consumer demand for Alaska pink canned salmon in order to clear record-breaking inventories between January and June, 1986.

SITUATION OVERVIEW: The Alaska canned salmon industry is facing an unprecedented over-supply of canned pink salmon, further complicated by a projected record-breaking 1986 harvest and continuing sagging export sales. Not since the February 1982 international botulism incident has the canned salmon industry suffered from such burgeoning inventories and decreased domestic and international sales. If emergency funding isn't provided to stimulate U.S. product movement, production will have to be restricted until there is a better balance between supply and demand. Currently, there is a one-and-one-half year supply of pink canned salmon available in the U.S. With a 50% increase in product, and sales declining by almost 50% for comparable time periods on pink halves and up only 6% on talls, special promotional stimulus is required to bring inventories back into proper balance.

Alaska salmon pumps more than $700 million into the economy of the Pacific Northwest and Alaska. The 1985 harvest was the biggest ever and the sixth year in a row that the Alaska salmon harvest has exceeded 100 million fish. The value to fishermen alone exceeds $350 million. When the additional value from processing, distribution, financing, etc. is taken into consideration, the Alaska state government has a heavily vested interest in contributing to the welfare of the industry.

STRATEGY: Build a strong U.S. consumer awareness and preference for Alaska salmonburgers as the healthful alternative to traditional convenience and fast foods. Initial response to this concept has been phenomenal, with national cable television news, wire service stories and radio features and extensive Alaska press coverage. A limited promotional budget is prohibiting the needed momentum to effectively capitalize on what is proving to be a winning idea.

TACTICS: In order to create a major consumer awareness and preference for the Alaska salmonburgers, no less than $1 million is needed by January 31, 1986 to meet the aforementioned marketing objectives. A combination of television, radio and print advertising would be employed to promote the Alaska salmonburger in this concentrated time period.

###

ALASKA SEAFOOD MARKETING/C SALMON AS1 BILLED THRU 1/13

-KEY-	DESCRIPTION	BUDGET	CURRENT MONTH	BILLED TO DATE	BALANCE	Red ed
	RESEARCH					
AS1110	RESEARCH	21000	0	18169	2831	
	** SUBTOTAL **	21000	0	18169	2831	
	PUBLIC RELATIONS					
AS1115	PUBLIC RELATIONS	48000	0	10724	37276	
	** SUBTOTAL **	48000	0	10724	37276	
	CONSUMER PUBLICITY					
AS1121	BLACK/WHITE NEWSPAPER RELEASES	15000	0	6839	8161	
AS1122	COLOR RELEASES	25000	0	5107	19893	3,0
AS1123	SYNDICATED RELEASES	3700	0	3054	646	
AS1124	MAT RELEASES	3500	0	416	3084	1,5
AS1125	SPECIAL MAILINGS	5000	0	2518	2482	
AS1126	MINORITY MEDIA	4300	0	0	4300	5,0
AS1127	MAGAZINE & PROF CONTACTS	11000	0	8142	2858	
AS1128	CLIPPING/EVALUATION	2500	0	408	2092	
AS1129	SPECIAL EVENTS	16500	0	2016	14484	1,0
AS1130	ALASKA EDITOR TOUR	26000	0	14558	11442	
	** SUBTOTAL **	112500	0	43058	69442	
	FOODSERVICE PUBLICITY					
AS1131	FOODSERVICE PUBLICITY	10000	0	8651	1349	
AS1132	RECIPE CARDS	15000	0	3921	11079	
AS1133	HEAD TO HE[illegible] CONTACTS	9000	0	6043	2957	3,0
AS1134	DIRECT MA[illegible]	3000	0	0	3000	12,0
AS1135	HEALTHCARE MAILING	7000	0	671	6329	
AS1136	SPECIAL EVENTS	1500	0	0	1500	
AS1137	ADA CONVENTION	2000	0	1297	703	
AS1138	SALES AIDS AND LITERATURE	2500	0	0	2500	
	** SUBTOTAL **	50000	0	20583	29417	
	RETAIL TRADE ADVERTISING					
AS1140	TRADE ADS/MEDIA	500	0	122	378	1,5
AS1141	SPRING RETAIL MEDIA BLITZ	400000	0	0	400000	
	** SUBTOTAL **	400500	0	122	400378	
	CONSUMER ADVERTISING					
AS1145	CONSUMER ADVERTISING	443000	0	378681	64319	25,0
	** SUBTOTAL **	443000	0	378681	64319	

ALASKA SEAFOOD MARKETING/C SALMON AS1 BILLED THRU 1/13

-KEY-	D E S C R I P T I O N	BUDGET	CURRENT MONTH	BILLED TO DATE	BALANCE	Red ed
	REPRINT COLLATERAL					
AS1150	COLLATERAL MATERIAL REPRINTS	17500	0	17356	144	2,5
	** SUBTOTAL **	17500	0	17356	144	
	CONSUMER RECIPE DISTR.					
AS1155	CONSUMER RECIPE DISTRIBUTION	24500	0	4651	19849	5,5
	** SUBTOTAL **	24500	0	4651	19849	
	SPECIAL PROJECTS					
AS1160	SPECIAL PROJECTS	10000	0	2670	7330	5,0
	** SUBTOTAL **	10000	0	2670	7330	
	MATERIAL DISTRIBUTION					
AS1165	POSTAGE, SHIPPING, ETC	20000	0	5964	14036	
	** SUBTOTAL **	20000	0	5964	14036	
	ACCOUNT SERVICE					
AS1170	ACCOUNT SERVICE	25000	0	7551	17449	
	** SUBTOTAL **	25000	0	7551	17449	
	*** TOTALS ***	1,172,000	0	509,528	662,472	
					(65,00	

ASMI-GRAM

Vol. 2 No. 1 January, 1986

Pink salmon glut threatens prices, profits of industry

Salmon problems...

The current oversupply of Alaska canned pink salmon represents an industry-wide crisis with the potential to be as damaging as the 1982 international recall of Alaska canned salmon, many fishing industry experts believe.

Huge inventories of canned pink salmon, teamed with predictions for an all-time record pink salmon run in Alaska this summer spell serious problems both for processors and for Alaska fishermen. The salmon canning business is such a major component of the Alaska seafood industry that its economic woes tend to "ricochet" throughout the industry.

In recent years very large pink salmon runs have allowed canned pink inventories to outstrip demand. The resulting soft wholesale prices have hurt processors' ability to recover the costs of paying for, processing and storing the fish. Product movement also was slowed over the last two years by the high value of the U.S. dollar and by inroads in Alaska's European markets made by salmon canned in Taiwan and Korea.

"The situation is really very grave. The only parallel you can find is the year of the botulism scare," says Bob Nickinovich, chairman of the Alaska Seafood Marketing Institute's canned seafood promotion committee. "It is difficult to overstate the seriousness of the problem."

What the pink surplus will mean to fishermen in terms of 1986 prices is not yet known. Industry officials speculate the result may include both lower prices and a reduction in the number of companies able to buy and process pink salmon this summer. That would be a significant problem in Alaska, which in 1985 saw over 50,000 people employed in fishery-related jobs, with fishermen alone earning over $700 million from their catches, according to estimates by the Alaska Department of Fish and Game.

What it means to processors is more easily seen.

According to Bill Hudson, ASMI's executive director, United States processors had 2.9 million cases of pink salmon in inventory as of Dec. 1,

(Continued on back page)

Salmon promotion...

Officials of the Alaska Seafood Marketing Institute – after a series of emergency sessions in January – have announced plans to reallocate up to $450,000 of the institute's funding to launch a drive to spur pink salmon sales nationwide.

Bill Hudson, executive director of the Juneau-based marketing entity, says ASMI's board of directors has voted to shift $400,000 into efforts to increase canned pink sales, plus an additional $50,000 into efforts to market fresh/frozen salmon.

Hudson says $350,000 of the canned promotional budget will be spent on radio advertising in the nation's top 12 salmon sales markets.

The radio campaign, which will start after Lent, will run from the last week in April until the last week in May. In the 12 targeted markets, supermarket chains will be given the opportunity to have their names tagged onto the end of 30-second radio spots in return for an agreement to feature Alaska canned salmon prominently in at least two newspaper ads purchased by the store during the promotion.

ASMI is hoping for up to 65 percent participation among retailers in the 12 market cities.

At a cost of an additional $50,000, ASMI will give store managers an opportunity to win a Chrysler luxury automobile as part of a merchandising incentive program with the theme: "Inch Your Way Into A New Car." Store managers will be able to enter the car contest repeatedly – once for each column-inch of newspaper advertising they devote to canned salmon during the marketing period.

Salmon brokers in the same 12 cities will have a chance of winning a "significant" cash incentive for selling the most salmon to local retailers.

"ASMI doesn't have enough money to stimulate consumer sales significantly by itself, but we hope to encourage retailers to do enough advertising to move the needle, to generate some quick canned sales," explains Bill Woolf, deputy director of ASMI.

"The oversupply represents a huge problem, but it also constitutes a great opportunity. We have a tremendous natural resource. We simply

(Continued on page 2)

Salmon problems...
(Continued from page 1)

1985, including nearly 1.9 million 48-pound cases of tall (one-pound) cans, and 950,000, 24-pound cases of one-half pound cans. At the current industry sales levels of 140,000 cases of one-pound cans a month and just 61,000 cases of half-pound tins, the industry has over a year's worth of one-pound cans and over 15 months worth inventory of one-half pound cans – with only five months to go before the 1986 season begins.

"There is no question that it is to everyone's benefit if something is done to move these tremendous inventories. We need to get people to buy more salmon and buy it fast," says Hudson.

According to the National Food Processors Association, American salmon processors had 472,075 cases of pink salmon caught in 1983 left over when the 1984 harvest began to arrive in warehouses. In 1985, processors had 820,943 cases left over. Current estimates are that processors will have 1.15 million cases of pinks remaining from 1985 when the new pack arrives this summer. The oversupply problem was aggravated by the 1985 Canadian pack of 1.1 million (48-pound) cases – Canada's best production in five years.

Lee Patton, chairman of ASMI's marketing committee, says this year's glut has put the industry, and thus Alaskans who depend on fish sales, in real jeopardy.

"If we can't find a way to sell a lot of salmon quickly, a lot of people are going to be hurt. A lot of people will probably have to take less for their fish this summer and fishermen will tell you they can't afford lower prices. It is not a happy situation," Patton says.

Alaska Seafood
MARKETING INSTITUTE

526 Main Street
Juneau, Alaska 99801

Bill Hudson, Executive Director

Quality awareness seminars continue

ASMI is continuing with a series of quality awareness workshops, a series started by the institute last fall.

The workshops, open to seafood retailers, processors and wholesalers interested in practical information on how to evaluate the quality of seafood, also cover how to maintain seafood, market it and how to educate the consumer as to its benefits.

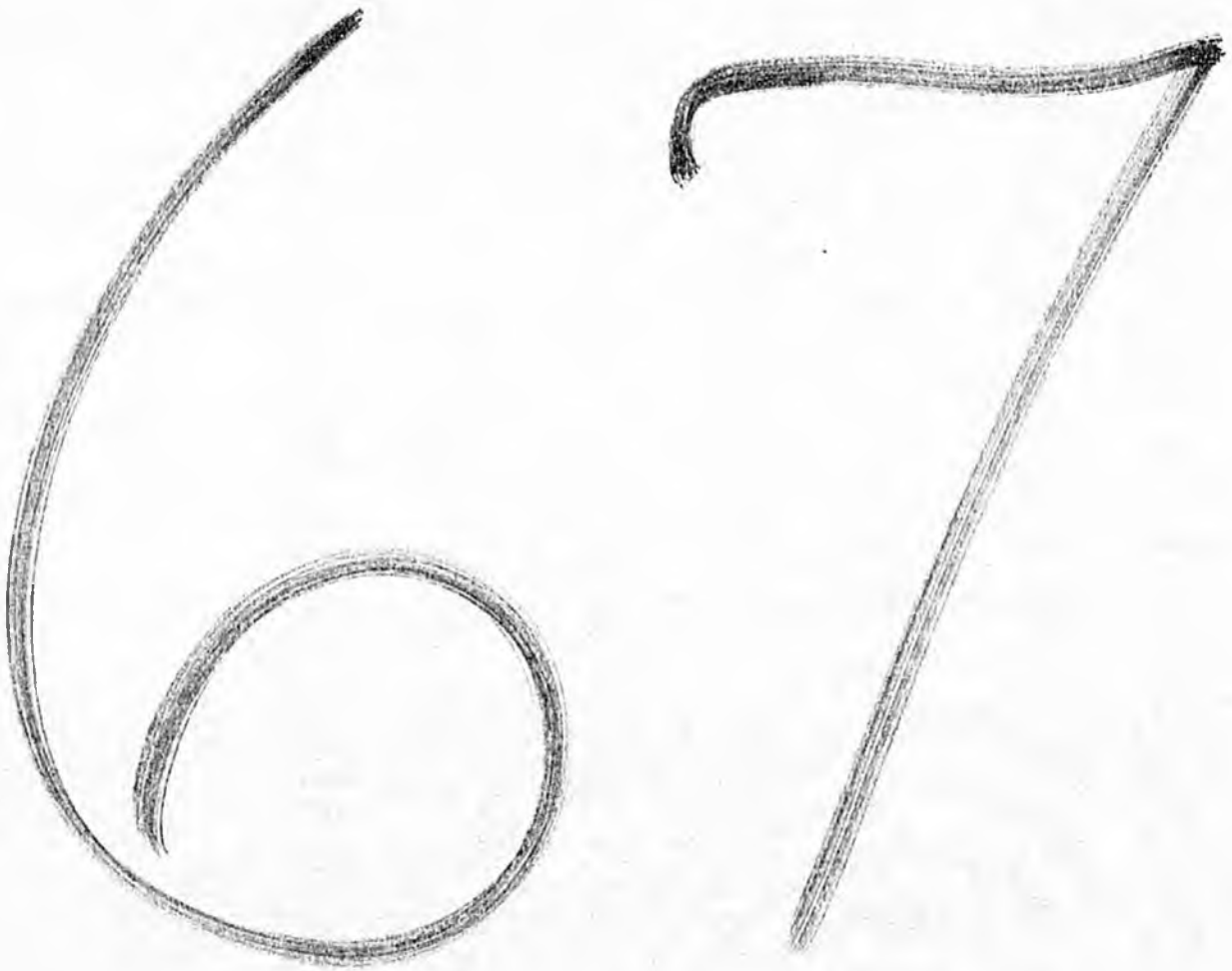
The workshop, "Seafood – Harvest the Profits," is being supervised by Tom Bellamore, ASMI's quality control program coordinator. The day-long sessions are conducted by a series of speakers and include hands-on demonstrations using Alaska seafood products.

The final workshops scheduled will be held March 18 at the Airport Park Hotel in Inglewood, Calif.; March 19 at the Holiday Inn in Ventura, Calif.; March 20 at the Holiday Inn in Ontario, Calif.; March 25 at the Holiday Inn in Tacoma, Wash.; April 1 at the Northern Lights Inn in Anchorage, Alaska; April 2 at the Travelers Inn in Fairbanks, Alaska; and on April 3 at Centennial Hall in Juneau, Alaska. All seminars start at 8 a.m. and run through lunch to 1:30 p.m.

People wishing to attend should pre-register. Information and pre-registration can be made by calling Carol Ovens or Pat Thomas at the Washington Sea Grant Program, University of Washington, 3716 Brooklyn Ave., N.E., Seattle, Wash. 98105 or (206)543-6600.

MEDIA NOTE: For further information on any of the items contained in the monthly ASMI-Gram, contact Bill Woolf, deputy director, at the Alaska Seafood Marketing Institute in Juneau, Alaska at (907) 586-2902.

HJR



HJR 67: Requesting the United States Congress to establish advanced all-weather satellite coverage of North Pacific waters.

LIST OF PACKET CONTENTS

MAP - Color coded to show the data that could be provided

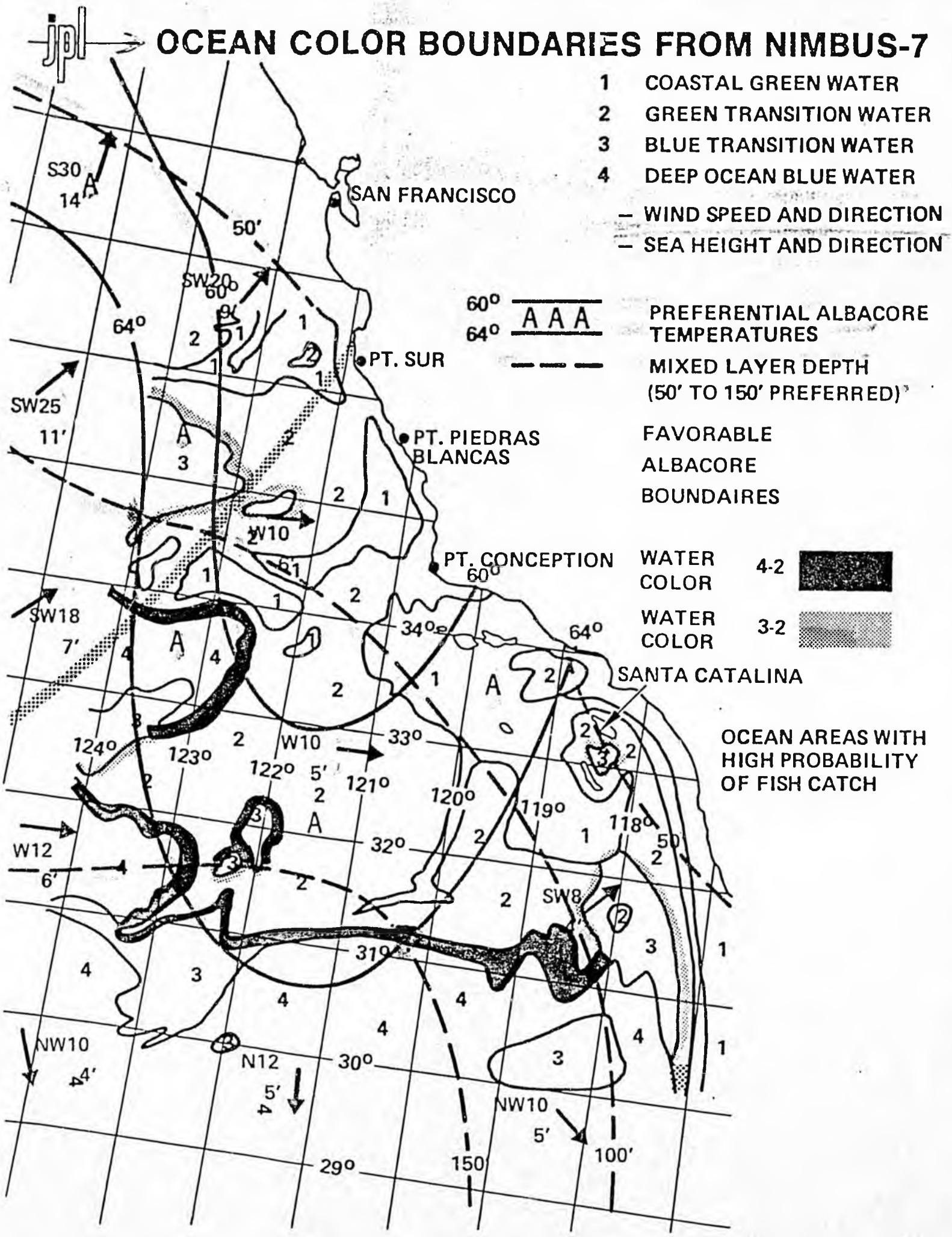
Memo - From Rep, Ben Grussendorf re: bill analysis

Ocean Space Utilization '85 - Proceedings of the International Symposium

Fisheries Application of Satellite Data in the Eastern North Pacific

HJR 67 - the original bill

OCEAN COLOR BOUNDARIES FROM NIMBUS-7



Alaska State Legislature

House of Representatives
SPEAKER OF THE HOUSE

M-E-M-O-R-A-N-D-U-M

To: Rep. Herrmann, Co-Chair
House Resources Committee

Fr: Rep. Ben Grussendorf
Speaker of the House

Dt: 18 March 1986

Re: HJR 67: Requesting the United States Congress to establish advanced all-weather satellite coverage of North Pacific waters

We would like to request that you consider scheduling House Joint Resolution 67 before your committee. Attached you will find a fiscal note and bill analysis prepared by the department of Fish and Game. Other backup material is also included.

Analysis

The resolution requests congress to establish and fund two elements of a weather satellite system:

1) The Gilmore Creek receiving station. This station, located 25 miles northeast of Fairbanks, was abandoned by NASA in October of 1984. Transfer of this facility to National Oceanic and Atmospheric Administration (NOAA) would greatly enhance the National Weather Service's ability to gather weather data.

2) The placement of a color scanner and other all-weather equipment on the next available satellite with a view of the north Pacific Ocean.

The receiving station and satellite equipment will provide a powerful system of interpreting oceanographic data to track salmon patterns in the northern Pacific Ocean. This information is vital to determine the location of salmon, and thus, the location of foreign vessels who may be in violation of international fishing treaties. It will also target the location of salmon for use by Alaskan fishermen.

The Gilmore Creek receiving station can be easily modified by the Weather Service, with little capital outlay. The data link from Gilmore Creek to the weather computer in Anchorage is already in place.

The Hawaii legislature has passed a similar resolution, which is attached. Other back-up information has been provided to your staff.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Commercial Fisheries	HJR 67	Grussendorf

DEPARTMENT POSITION

Support

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Robert C. Clasby	3/5/86		3/7/86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
DEC, DNR, DOT/PF, DPS	Marine Resource Users
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Unknown	Unknown

FISCAL IMPACT: ☐ NONE ☒ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Most likely the intent of the Legislature is to increase knowledge of oceanographic and weather conditions.

ANALYSIS OF BILL/PROGRAM EFFECTS

If the satellite system will indeed provide the information outlined in the resolution, then the system would be very helpful to the department for fisheries and marine mammals' research and management.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

209 (Rev. 12/83)

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HJR 67
Title : Requesting the US Congress to establish advanced all-weather satellite coverage of the North Pacific
Sponsor : Grussendorf
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Fish and Game
BRU : Fisheries Resource Conservation
Components : ~~Commercial Fisheries~~

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

Prepared by : Robert C. Clasby
Division : Commercial Fisheries
Phone : 465-4210
Date : 3/5/86

Approved by Commissioner : _____
Agency : _____
Date : 3/7/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25.85

(To be made one and seven copies)

THE SENATE
THIRTEENTH LEGISLATURE, 1986
STATE OF HAWAII

S.R. NO.

SENATE RESOLUTION

REQUESTING THE UNITED STATES CONGRESS TO ESTABLISH SATELLITE REMOTE SENSING RECEIVING STATIONS IN HAWAII, GUAM AND MIDWAY.

WHEREAS, remote sensing of the ocean is playing an increasingly important role in fishery research and fish harvesting along the Pacific Coast of the United States and Canada; and

WHEREAS, satellite sensors give a unique view of the ocean surface and provide extensive and detailed images of sea surface temperature and color; and

WHEREAS, the oceanic measurements taken by the satellite are used in determining variations in ocean conditions which play key roles in causing fluctuations in stocks of fishes and in their vulnerability to harvesting; and

WHEREAS, this information on the changing ocean, rather than on average ocean conditions, is necessary to understand and eventually predict the effects of the marine environment on fish populations; and

WHEREAS, the use of satellite sensors combined with conventional data collection techniques provide a powerful tool toward ensuring the wise use of living marine resources; and

WHEREAS, the Japan Radio Company Limited has developed an oceanographic color display designed to receive signals from the satellite and to display in color an absolute surface temperature distribution for a large water area; and

WHEREAS, in order to provide this information to fishermen, receiving stations need to be established in Hawaii, Guam and Midway to monitor the entire Pacific region; now, therefore,

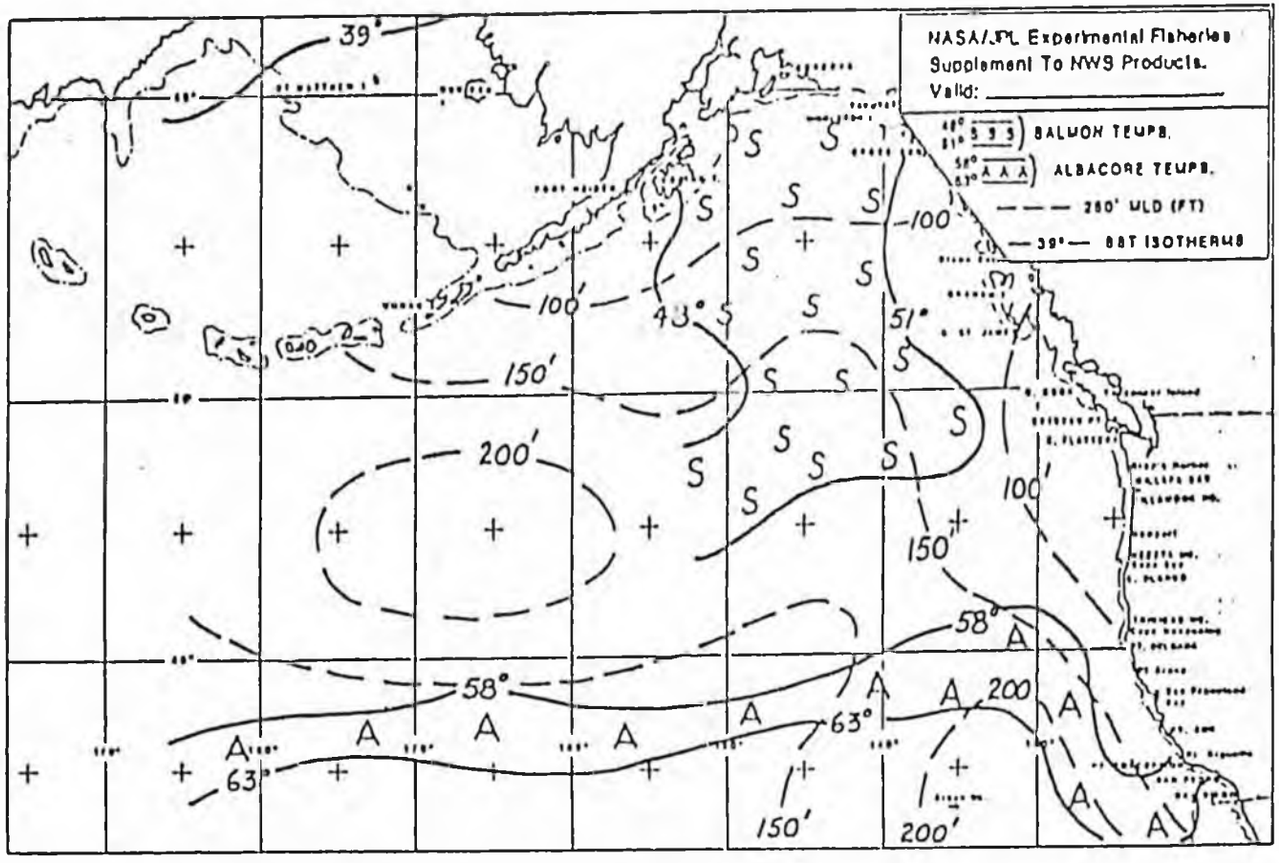
S.R. NO.

BE IT RESOLVED by the Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1986, that the Legislature requests that the United States Congress establish satellite remote sensing receiving stations in Hawaii, Guam and Midway to assist the fisheries industry in locating stocks of fish for harvesting; and

BE IT FURTHER RESOLVED that the Legislature also requests that funds are allocated for the purchase of oceanographic color displays for the receiving stations and for the distribution of ocean temperature information to fishermen; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Speaker of the United States House of Representatives, the President of the United States Senate, to each member of Hawaii's congressional delegation, to Guam's congressional delegate, and to the Secretary of the Navy.

OFFERED BY: _____



SAMPLE 3. PACIFIC BASIN (AREA 5) FISHERIES-AID CHART.

Ocean Space Utilization '85

Proceedings of the International Symposium,
Nihon University, Tokyo, Japan, June 1985



Springer-Verlag
Tokyo Berlin Heidelberg New York

33) 818-0864

Application of Satellite Remote Sensing to U.S. Fisheries

R.M. Laurs

National Marine Fisheries Service, Southwest Fisheries Center, La Jolla, CA 92038, USA

ABSTRACT

Satellite oceanic remote sensing is beginning to play important roles in fishery research and fish harvesting. Spaceborne sensors are being used to make synoptic oceanic measurements for use in determining variations in ocean conditions which play key roles in causing fluctuations in stocks of fishes and in their vulnerability to harvesting.

INTRODUCTION

The use of satellite remote sensing to provide synoptic measurements of the ocean is becoming increasingly important in fisheries applications. Variations in ocean conditions play key roles in natural fluctuations of fish stocks and in their vulnerability to harvesting. Information on the changing ocean, rather than on average ocean conditions, is necessary to understand and to eventually predict the effects of the marine environment on fish populations. The evolving capabilities of satellite sensor and data-processing technology, combined with conventional data collection techniques, provide a powerful tool toward ensuring the wise-use of living marine resources.

Laurs and Brucks (1985) review fisheries applications of satellite oceanic remote sensing in the U. S. Examples of recent and potential uses of satellite imagery in U. S. fisheries in the eastern North Pacific are given in Fiedler et al. (1985). Yamanaka (1982) describes the utilization of satellite imagery in Japanese fisheries. Gower (1982) gives an overview of the different kinds of remote sensing data relevant to fisheries science and oceanography, and Montgomery (1981) discusses the utility of satellite imagery to ocean industries, including fisheries.

SATELLITE DATA USED IN FISHERIES

Satellite remote sensing applications in U. S. fisheries have concentrated on the measurements of ocean temperature and color, and computation of ocean transport based on satellite measured wind stress.

Ocean Temperature

Virtually all fisheries studies employing satellite ocean temperature measurements have utilized imagery from thermal infrared sensors. The advanced infrared sensors, notably the Advanced Very High Resolution

Radiometer (AVHRR) aboard the TIROS orbiting meteorological satellites, are characterized by high sensitivity in narrow wave lengths, fine ground resolution and an extensive data archival (Fiedler et al. 1985). These sensors yield high quality data which, except for some limitations, meet the requirements for most fishery investigations.

There have been a very limited number of attempts to apply ocean temperature measurements made from microwave instruments aboard satellites to fisheries studies. These attempts have been only marginally successful, mostly because of the large footprint of the measurements and the contamination of the data in the vicinity of land. However, an adequate evaluation of the utility of satellite microwave ocean temperature measurements in fisheries problems has yet to be conducted. Efforts to do so have been hampered because of difficulties in obtaining microwave temperature data and lack of high speed data processing capabilities to process it.

Ocean Color

The Coastal Zone Color Scanner (CZCS) on board the NIMBUS-7 satellite, launched in October 1978, is the only sensor in orbit that is specifically designed to study living marine resources (Hovis et al. 1980). The CZCS is capable of measuring very subtle variations in water color resulting primarily from variations in phytoplankton concentrations. Ocean color measurements from the CZCS are being used in fishery resource applications (a) to determine the locations of oceanic fronts, effluents, and water masses, (b) to determine circulation patterns, and (c) to make quantitative measurements of chlorophyll and sestonic concentrations.

Ocean Winds

The scatterometer (SASS) aboard the SEASAT-A satellite provided data which demonstrate the importance to fisheries of high resolution surface wind stress measurements made from space. Winds stress measurements made by satellite can be used to calculate ocean surface layer transport which controls the distribution of larval stages and the subsequent recruitment and harvests of many marine fishes and shrimps (Brucks et al. 1984). Satellite measurements of winds are also important in the detection of wind conditions that affect the safety and performance of fishing vessels at sea (Hawkins and Black 1983). While the data record of satellite measured winds is very limited due to the unfortunate, premature failure of SEASAT, extensive global coverage of oceanic surface winds will be made by satellite systems planned for launch in the late 1980's (Li et al. 1984)

USE OF SATELLITE MEASUREMENTS IN FISHERIES RESEARCH

Variations in environmental conditions affect the recruitment, distribution, abundance, and availability of fishery resources. It is not possible to measure remotely from satellites the entire spectrum of information needed to assess changes in the marine environment. However, knowledge of important oceanographic conditions and processes affecting fish populations may often be deduced using ocean measurements made by satellite e.g., distribution of surface isotherms, locations of oceanic frontal boundaries, information on currents and circulation patterns, regions of upwelling, etc.

Ocean measurements made by satellite remote sensing can be extremely useful in defining the distribution of marine fish habitats. Lasker et al.

(1981) and Fiedler (1983) have demonstrated that the northern boundary of northern anchovy spawning habitat in the Southern California Bight may be delimited using AVHRR imagery from NOAA polar orbiting satellites (Figure 1). In general, the northern extent of spawning in the Bight and the offshore extent of spawning north of Santa Catalina Island are limited by cold, upwelled waters advected south of Point Conception. The cold waters are readily evident in satellite infrared imagery of the region. The southern limit of spawning may be defined using ocean color measurements made by the CZCS aboard the NIMBUS-7 satellite showing low chlorophyll concentrations (Fiedler 1983).

The distribution and availability of albacore tuna off the west coast of the U. S. have been found to be related to oceanic fronts seen in AVHRR infrared and CZCS imagery (Laurs et al. 1984) (Figure 2). Commercially fishable aggregations of albacore are found in warm, blue oceanic waters near temperature and color fronts on the seaward edge of coastal water masses. These oceanic boundary features, which are believed to result primarily from coastal upwelling, are clearly observable in satellite imagery collected along the U. S. Pacific coast. The distribution of albacore during winter time in regions hundreds of miles off the coast has also been related to sea surface temperature fronts, believed to mark the outer boundary of the California Current, observed in AVHRR imagery (Laurs et al. 1981).

Satellite infrared measurements have also been used to trace the development and duration of the various bluefin tuna fisheries along the east coast of the U. S. (Roeffer et al. 1982). These fisheries follow the movement of seasonal warming of near-surface waters which are monitored by observing the northerly progression of the 19-20°C isotherms in satellite infrared imagery. Limited success has been achieved during winter months in relating the distribution of tuna longline fishing in the Gulf of Mexico with the position of the Loop Current deduced from temperature frontal patterns observed in Geostationary Orbiting Earth Satellite (GOES) infrared imagery (Leming, Internal Report, NMFS). In summer months after seasonal warming has occurred, it is not possible to resolve temperature frontal structure in the GOES infrared imagery of the Gulf of Mexico.

Satellite remote sensing has been an especially important tool during the recent El Niño for monitoring anomalous ocean conditions along the U. S. Pacific coast (Fiedler 1984a). The satellite imagery contains invaluable information for use in assessing the effects of the El Niño conditions on U. S. west coast fisheries. Virtually all of the fisheries were affected in varying degrees with some fisheries showing benefits from the El Niño, and others being harmed substantially. Many fish populations experienced changes in their distribution and centers of abundances. For example, there were shifts in the usual distribution of anchovy spawning which Fiedler (1984b) found could be delineated using AVHRR infrared imagery.

USE OF SATELLITE MEASUREMENTS IN FISHERIES-AID PRODUCTS FOR FISHERMEN

Several projects and programs have used or are using satellite derived ocean data in fisheries-aid products which are distributed to U. S. fishermen by a variety of mechanisms, including radio facsimile transmission, voice broadcast, U. S. mail, and telephone telecopier. A prime motivation leading to the expanded use of satellite observations in fisheries-aid products was provided by the SEASAT Commercial Demonstration Program sponsored by the National Aeronautics and Space Administration/Jet

Propulsion Laboratory. This program led to the development of an operational Satellite Data Distribution System used to distribute oceanographic products to ocean users (Montgomery 1981).

Charts showing the locations of oceanic thermal boundaries are derived from AVHRR infrared imagery from polar orbiting satellites and are provided to commercial and recreational fishermen for use in locating potentially productive fishing grounds along the Pacific coast from central Baja California to British Columbia, Canada (Breaker 1981) (Figure 3). Fishermen use these charts to save time in searching for productive fishing areas associated with oceanic frontal features (Short 1979 and Breaker 1981). High resolution infrared images from the GOES satellite and ship reports are used in the preparation of charts for waters off the Atlantic Coast, which are distributed to fishermen and other interested users (Chamberlain 1981). Of particular interest to fishermen these charts show (a) the outer limit of the shelf water mass, in which many fishery resource species reside, and (b) the numbers, sizes and persistence of warmcore Gulf Stream rings, which can markedly alter conditions on the fishing grounds. These charts have been particularly useful to lobster fishermen in reducing loss of fishing pots due to strong currents of the Gulf Stream warmcore eddies. Charts based on GOES infrared imagery are also prepared to show the path of the Loop Current in the Gulf of Mexico and are used mostly by recreational fishermen (Lowry and Leaky 1982).

Experimental ocean color boundary charts based on CZCS imagery are distributed to U. S. west coast fishermen (Montgomery 1981). These charts show four categories of ocean color---green coastal, transition green, transition blue and deep ocean blue (Figure 4). They are produced at almost weekly intervals depending on cloud conditions, and cover coastal areas up to 700,000 km^2 between Guadalupe Island and Vancouver Island. NIMBUS-7 CZCS passes along the Pacific coast are collected and processed in near-real time, and transmitted by radio facsimile the following day to fishing boats at sea. Color photographs of the satellite images are also distributed by express mail to various fishing ports and to Sea Grant marine advisors in daily contact with fishermen. The color boundary charts and photographs are used primarily by commercial albacore and salmon fishermen, and recreational fishermen in southern California.

Sea ice forecast charts derived from NIMBUS-7 Scanning Multichannel Microwave Radiometer (SMMR) and AVHRR infrared imagery are prepared for regions of Alaska and transmitted by radio facsimile to fishermen and other marine users.

References

1. Breaker, L.C.: The application of satellite remote sensing to west coast fisheries. J. Mar. Tech. Soc. 15 (1981) 32-40.

2. Brucks, J.T.; Leming, T.D.; Buckett, S.B.Jr.: A model investigation using high resolution SeaSS wind stress measurements to derive wind surface layer transport properties in the Gulf of Mexico. NOAA Tech. Rpt. (1984) In press.

3. Chamberlain, J.L.: Application of satellite infrared data to analysis of ocean frontal movements and water mass interactions off the northeast coast. N.W. Atlantic Fish. Organ. Doc. 8/1/123, Ser. No. 429 (1981) 15 p.

4. Fiedler, P.C.: Satellite remote sensing of the habitat of spawning anchovy in the Southern California Bight. CALCOFI Rep. 24 (1983) 202-CALCOFI Rep. 25 (1983) 53-58.

5. Fiedler, P.C.: Some effects of El Niño 1983 on the northern anchovy. CalCOFI Rep. 25 (1984a) 53-58.

6. Fiedler, P.C.: Satellite observations of El Niño along theU.S. Pacific Coast. Science 224 (1984b) 1251-1254.

7. Fiedler, P.C.; Smith, G.B.; and Laurs, R.M.: Fisheries applications of satellite data in the eastern North Pacific. Mar. Fish. Rev. 46 (1985) 1-13.

8. Gower, J.F.R.: General overview of the nature and use of satellite remote sensing data for fisheries application. NAFO Sci. Counc. Studies 4 (1982) 7-19.

9. Hawkins, J.D.; Black, P.G.: SEASAT scatterometer detection of gale force winds near tropical storms. J. Geophys. Res. 88 (1983) 1674-1682.

10. Hovis, W.A.; Clark, D.K.; Anderson, F.; Austin, R.W.; Wilson, W.H.; Baker, E.T.; Ball. D.; Gordon, H.R.; Mueller, J.L.; El-Sayed, S.Z.; Sturn, B.; Wrigley, R.C.; Yentsch, C.S.: NIMBUS-7 Coastal Zone Color Scanner: System description and initial imagery. Science 210 (1980) 60-63.

11. Lasker, R.; Pelaez, J.; Laurs, R.M.: The use of satellite infrared imagery for describing ocean processes in relation to spawning of the northern anchovy (Engraulis mordax). Remote Sensing Environ. 11 (1981) 439-453.

12. Laurs, R.M.; Brucks, J.T.: Living Marine Resource Applications. Advances in Geophysics 27 (1985) In press.

13. Laurs, R.M.; Lynn, R.J.; Nishimoto, R.; Dotson, R.: Albacore trolling and longline exploration in eastern North Pacific waters during mid-winter 1981. NOAA-TM-NMFS-SWFC 10 (1981) 40 p. plus appen. 52p.

14. Laurs, R.M.; Fiedler, P.C.; Montgomery, D.R.: Albacore tuna catch distributions relative to environmental features observed from satellites. Deep-Sea Res. 31 (1984) 1085-1099.

15. Leming. T.D.: Ocean pelagics remote sensing applications. Interim Rpt. NMFS Internal Document (1981).

16. Li, R.; Winn, C.; Long, D.; Geuy, C.: NROSS scatterometer - an instrument for global oceanic wind observations. Proc. SPIE 481 Recent Advances in Civil Space Remote Sensing (1984) 193-197.

17. Lowry, B.; Leaky, I.: Cooperation produces a flow of Gulf Stream information. Sea Grant Today 12 (1982) 3-5.

18. Montgomery, D.R.: Commercial applications of satellite oceanography. Oceanus 24 (1981) 56-65.

19. Roeffer, M.; Carl, M.; Williams, F.: Atlantic bluefin tuna-oceanography remote sensing. Proc. 32nd Annual Tuna Conf. IATTC, La Jolla, CA (1982)

20. Short, K.: How satellites can help you catch more fish and cut costs. Nat. Fisherman 60 (1979) 38-39.

21. Yamanaka, I.: Application of satellite remote sensing to fishery studies in Japan. NAFO Sci. Counc. Studies 4 (1982) 41-50.

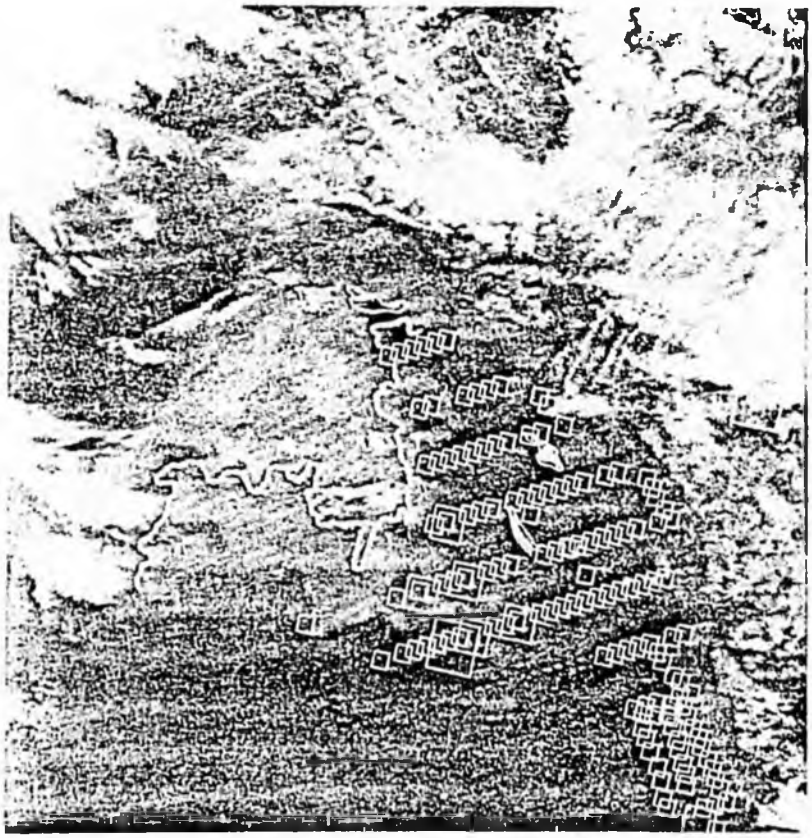


Figure 1. Distribution of anchovy eggs superimposed on the thermal image of the Southern California Bight taken 6 April, 1980. The 14°C isotherm plotted from satellite gray-scale calibration has been drawn in. Feathery white objects are clouds. Squares indicate number of anchovy eggs under one square meter of sea surface (from Lasker et al., 1981).



Figure 2. Central California daily albacore catches, Sept. 27-Oct. 2, 1981 and NOAA-7 AVHRR sea surface temperatures, Sept. 30, 1981 (from Laurs et al., 1984).

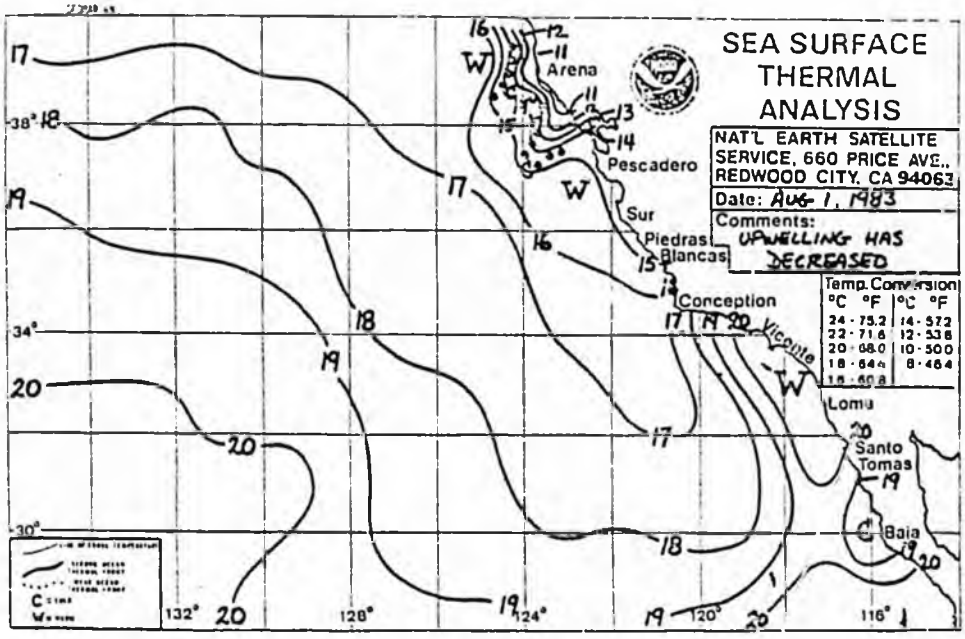


Figure 3. Sea surface temperature charts based on satellite infra-imagery and ship reports issued by U.S. National Weather Service (from Fiedler et al., 1985).

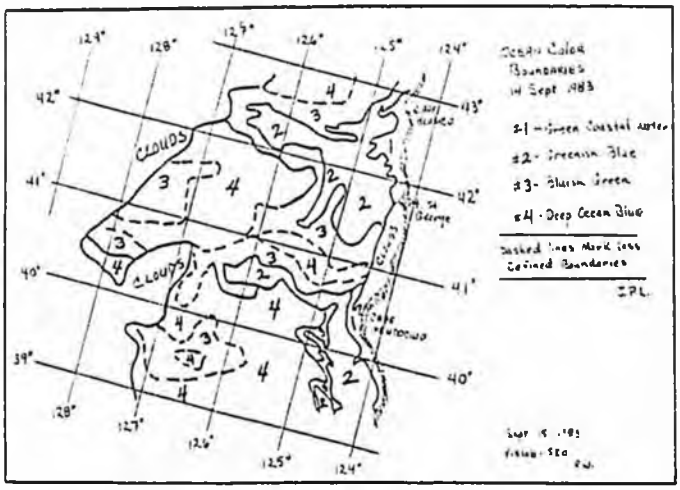


Figure 4. Ocean color boundary chart off northern California and Oregon (R. Wittenberg, Scripps Institution of Oceanography, Visibility Laboratory).

Fisheries Applications of Satellite Data in the Eastern North Pacific

PAUL C. FIEDLER, GARY B. SMITH, and R. MICHAEL LAURS

ABSTRACT—Satellite sensors provide extensive and detailed images of sea surface temperature and color. Synoptic daily sampling by satellites gives a unique view of the ocean surface that can be extremely useful when used in conjunction with conventional shipboard data. Current and potential applications of satellite data off the U.S. Pacific coast and Alaska include interpretation of ship survey data, explanation of pelagic fisheries distributions, prediction of stock recruitment, spatial/temporal monitoring of the coastal zone and sea ice, studies of migration routes and timing, and production of charts to aid commercial fisheries.

Introduction

Remote sensing of the ocean is playing an increasingly important role in fishery research and fish harvesting along the Pacific coast of the United States and Canada. Satellite sensors make synoptic measurements of water temperature and color, winds, ice cover, wave height, and surface currents over large areas of the ocean surface. Variations in these ocean conditions play key roles in natural fluctuations of fish stocks and in their vulnerability to harvesting.

The promise of remote sensing techniques for fisheries research, management, and exploitation has been recognized since the early 1960's when the first visible and infrared images of the earth's surface were obtained from orbit. However, successful applications have only recently been realized with the advent of advanced and sensitive radiometers, high-speed data processing, and the availability of imagery to fishery scientists and fishermen.

Gower (1982) provides a useful overview of the different kinds of remote sensing data relevant to fisheries science and oceanography. Laurs and Brucks (In press) review living marine resources applications in the United States. Yamanaka (1982) gives examples of some uses of satellite data for fisheries applications off Japan. Other potential, ocean-related uses of remote sensing data were discussed by Montgomery (1981). This paper will review the satellite sensors currently measuring sea surface temperature and ocean color, data processing and availability, and several examples of recent and potential applications to eastern North Pacific fisheries.

Satellites provide a unique view of the ocean by covering large areas synoptically. Coverage of historically data-poor areas is particularly useful. However, satellite measurements are usually limited to the surface or near-surface layers in cloud-free areas. Therefore, satellite data complement conventional shipboard observations but cannot replace them. The best research approach often requires close coordination of the two sources of information. In this way, the evolving capabilities of satellite remote sensing are providing a powerful tool to enhance the efficient use of living marine resources.

Satellite Sensors

A variety of instruments measure radiance from the earth's surface in visible, thermal infrared (IR), and microwave wavelength bands (Table 1). The most readily available and useful data come from the Advanced Very High Resolution Radiometer (AVHRR) on meteorological satellites operated by the National Oceanic and Atmospheric Administration (NOAA) and the Coastal Zone Color Scanner (CZCS) on the experimental Nimbus-7 satellite operated by the National Aeronautics and Space Administration (NASA). These advanced sensors are characterized by high sensitivity in narrow wavelength bands, fine ground resolution, and extensive data archival.

Satellites receive electromagnetic radiation emitted from the sea surface (the IR temperature signal) and back scattered from below the surface (the visible ocean color signal). These signals are contaminated by reflection from the sea surface and clouds, and by absorption, emission, and scatter by atmospheric particulates and molecules. Some of these errors can be eliminated or minimized very simply. For example, sunglint and "limb darkening" (by long atmosphere paths at oblique viewing angles) are avoided by constraining the viewing geometry of the sensor. Corrections of some other errors, however, require advanced image processing methods.

Dense clouds may so completely absorb visible and IR radiation from the sea surface that no type of data

Paul C. Fiedler and R. Michael Laurs are with the Southwest Fisheries Center, National Marine Fisheries Service, NOAA, 8604 La Jolla Shores Drive, La Jolla, CA 92038. Gary B. Smith is with the Northwest and Alaska Fisheries Center, NMFS, NOAA, 2725 Montlake Boulevard East, Seattle, WA 98112.

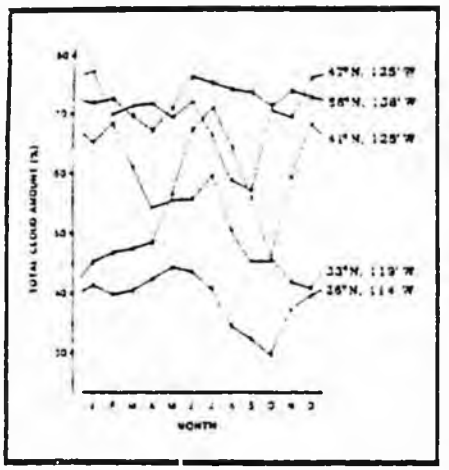


Figure 1.—Mean monthly total cloud amount over coastal waters, from surface marine weather observations, 1921-72 (Nelson and Husby, 1983): Baja California (27°N, 115°W), Southern California Bight (33°N, 119°W), Cape Mendocino (41°N, 125°W), Vancouver Island (48°N, 126°W), Gulf of Alaska data (56°N, 138°W) are from satellite observations, 1967-72 (Sadler et al., 1976), intercalibrated against data from Nelson and Husby (1983).

Table 1.—Some satellite sensors measuring visible, infrared, or microwave radiance for oceanographic measurements. Wavelengths are band midpoints. Ground resolution dimensions are directly beneath the satellite.

Sensor	Satellite	Channel	Spectral band	Wavelength (μm)	Scan width (km)	Ground resolution (km)	Primary measurements
AVHRR	TIROS-N NOAA-6, 7, 8	1	Visible	0.63	3,000	1.1	Sea surface temperature, sea ice
		2	Near-infrared	0.91			
		3	Infrared	3.74			
		4	Infrared	10.8			
		5[1]	Infrared	12.0			
CZCS	Nimbus-7	1	Visible	0.44	1,566	0.825	Phytoplankton pigments, turbidity, sea surface temperature
		2	Visible	0.52			
		3	Visible	0.55			
		4	Visible	0.67			
		5	Near-infrared	0.75			
		6	Infrared	11.5			
MSS	LANDSAT	1	Visible	0.55	185	0.079	Water color, turbidity, sea ice
		2	Visible	0.65			
		3	Near-infrared	0.75			
		4	Near-infrared	0.95			
VISSR	GOES	1	Visible	0.62	Earth disk	7 × 3	Cloud cover, sea surface temperature
		2	Infrared	11.5			
SMMR	Nimbus-7 SEASAT	1	Microwave	4.54×10^9	600	20-100	Sea surface temperature, sea ice near-surface winds
		2	Microwave	2.8×10^9			
		3	Microwave	1.66×10^9			
		4	Microwave	1.38×10^9			
		5	Microwave	0.81×10^9			

Sensors: AVHRR = Advanced Very High Resolution Radiometer; CZCS = Coastal Zone Color Scanner; MSS = Multispectral Scanner; VISSR = Visible and Infrared Spin Scan Radiometer; SMMR = Scanning Multichannel Microwave Radiometer.
[1]Channel 5 on NOAA-7 and NOAA-8 satellites only.

processing can retrieve a useful signal. Clouds severely limit satellite coverage of the sea surface in some regions of the eastern North Pacific, particularly north of lat. 40°N (Fig. 1). South of lat. 27°N, off Baja California, mean monthly cloud cover is consistently less than 50 percent, due to persistent offshore flow of dry continental air. From lat. 30°N to 38°N, coastal waters are covered by a dense layer of low stratus clouds during the summer upwelling season (Nelson and Husby, 1983). The most favorable conditions for remote sensing at these latitudes are found from October through March or April, especially during occasional brief periods when Santa Ana winds blow warm, dry desert air offshore and produce cloud-free conditions up to 1,000 km from the coast.

In contrast, the most cloud-free conditions at lat. 40°–50°N are found in late summer, from August to October. Mean monthly cloud cover increases to the north and is consistently 70 percent or greater in the Gulf of Alaska, although March and April may be relatively clear. As a general rule, percent cloud cover increases by at least 10 percent from the coast to a distance on the order of 200 km offshore in the eastern North Pacific (Nelson and Husby, 1983).

The probability of cloud-free conditions in a region of interest during regular satellite passes is loosely reflected in these monthly cloud cover statistics. Cloud cover restricts the extent to which satellite data can be anticipated, or depended upon, to be available. Whereas it may be possible to obtain regular daily or weekly coverage of sea surface features in the south, such as in the Southern California Bight, in the north there are generally more frequent and longer data gaps. Satellite coverage of ocean features in the Alaska region is characteristically limited to occasional cloud-free scenes that, despite being infrequent, can be rich in information. Microwave radiometers can measure sea surface temperature through clouds, but with a lower sensitivity and much coarser resolution than IR radiometers.

Data Processing

The AVHRR measures thermal infrared radiant energy in three wavelength bands (Table 1). Temperature calibration data are obtained by scanning deep space and internal blackbody targets. Accurate sea surface temperatures are calculated from empirical regressions of ship and buoy temperatures on satellite temperatures in two or three bands. Such multispectral corrections are based on the different response of each band to the cold bias caused by atmospheric water vapor (McClain et al., 1983). Pixels (samples) containing clouds even smaller than the sensor's field of view are screened in daytime passes using the near-infrared albedo data from channel 2 (Bernstein, 1982).

The CZCS measures visible light in five narrow wavelength bands

selected for estimating phytoplankton pigments, suspended sediments, and dissolved organic matter. Up to 90 percent of the visible radiance received at the satellite is skylight reflected and scattered within the atmosphere. Corrections are based on assumptions that the red light emitted by the ocean and measured by channel 4 is either negligible or can be accurately predicted from radiances in other bands. The atmospheric radiance measured by channel 4 can then be related to atmospheric radiances in other channels using known spectral properties of atmospheric scattering (Gordon et al., 1983). Corrected ratios of blue to yellow-green (channel 1/channel 3) or green to yellow-green (channel 2/channel 3) radiance are then used to calculate phytoplankton pigment concentration from empirical regression relationships (Smith and Baker, 1982).

Satellite data, properly corrected for the various errors described above, have been validated by sea truth data from ships to $\pm < 1°C$ (Bernstein, 1982) and ± 0.4 log chlorophyll concentration (Smith and Baker, 1982). While important subsurface features such as chlorophyll maximum layers and some cold-core eddies or oceanic fronts may not be detected by satellites, the measured parameters are, in general, closely related to properties such as mixed-layer temperature and integrated chlorophyll or primary productivity in the euphotic zone (Smith, 1981).

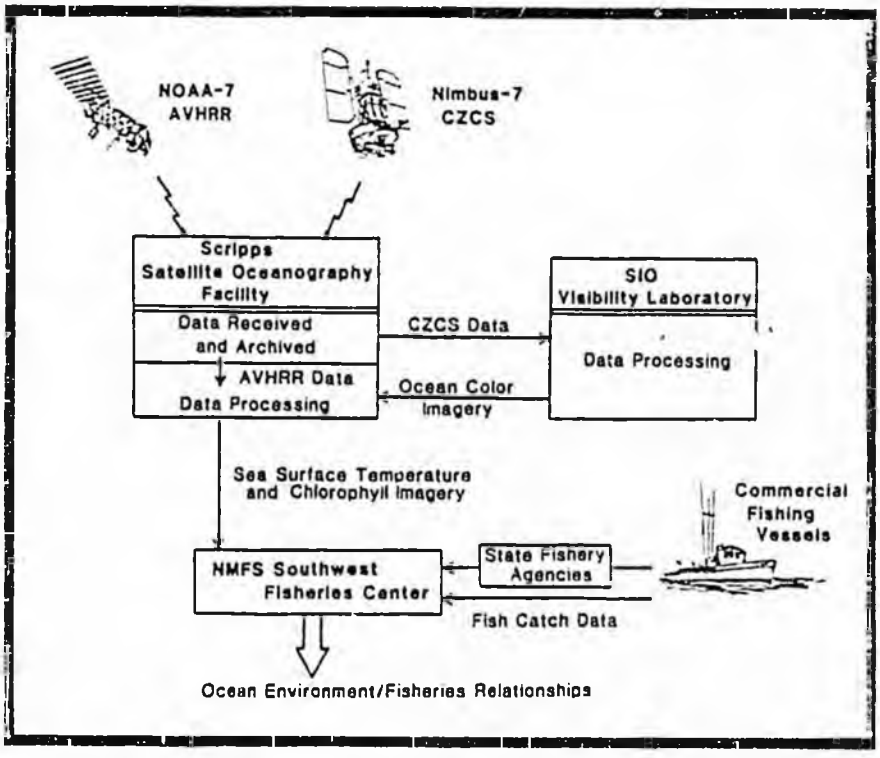


Figure 2.—Satellite data collection and processing network utilized by the National Marine Fisheries Service on the west coast.

Data Availability

Applications of satellite data are ultimately limited by their availability. Ideally, a user would have immediate access to data received directly from satellites and conveniently archived, with data processing facilities at his fingertips. This ideal has been approached by an arrangement at the Satellite Oceanography Facility of Scripps Institution of Oceanography in La Jolla, Calif., for most of the work reported here (Fig. 2). Similar arrangements, lacking direct data reception capabilities, have been established at the University of Miami and by the Northeast Area Remote Sensing System, which is a regional association of university, industry, and government organizations that was recently formed in the northeastern United States.

Global satellite data are archived by the Satellite Data Services Division of NOAA and are available to the public, although acquisition may require several months and a large backlog of CZCS data is unprocessed. AVHRR and CZCS data are available in various forms including photographic prints and negatives, digital data on magnetic tapes, and maps of derived sea surface temperature and ice cover. These products and a catalog of available CZCS data are available from the National Environmental Satellite Data and Information Service, Satellite Data Services Division, NOAA, Room 100, World Weather Building, Washington, DC 20233. Detailed procedures for obtaining environmental satellite data are given in Cornillon[1]. In general, photographic copies of raw data are of limited value and a user must have access to a computer-based, image processing system to extract useful information from satellite data on digital tapes (this situation may change in the future if products derived from satellite data are offered by commercial processing enterprises).

Applications

We briefly review here examples of general applications of satellite data to fisheries research and management problems along the Pacific coast between California and Alaska. Some of these examples have been published elsewhere, but none of the applications has as yet been fully realized.

[1]Cornillon, P. 1982. A guide to environmental satellite data. Univ. R. I. Mar. Tech. Rep. 79, 469 p. Available for $20.00 from the University of Rhode Island, Marine Advisory Service, Publication Unit, Narragansett, RI 02882.

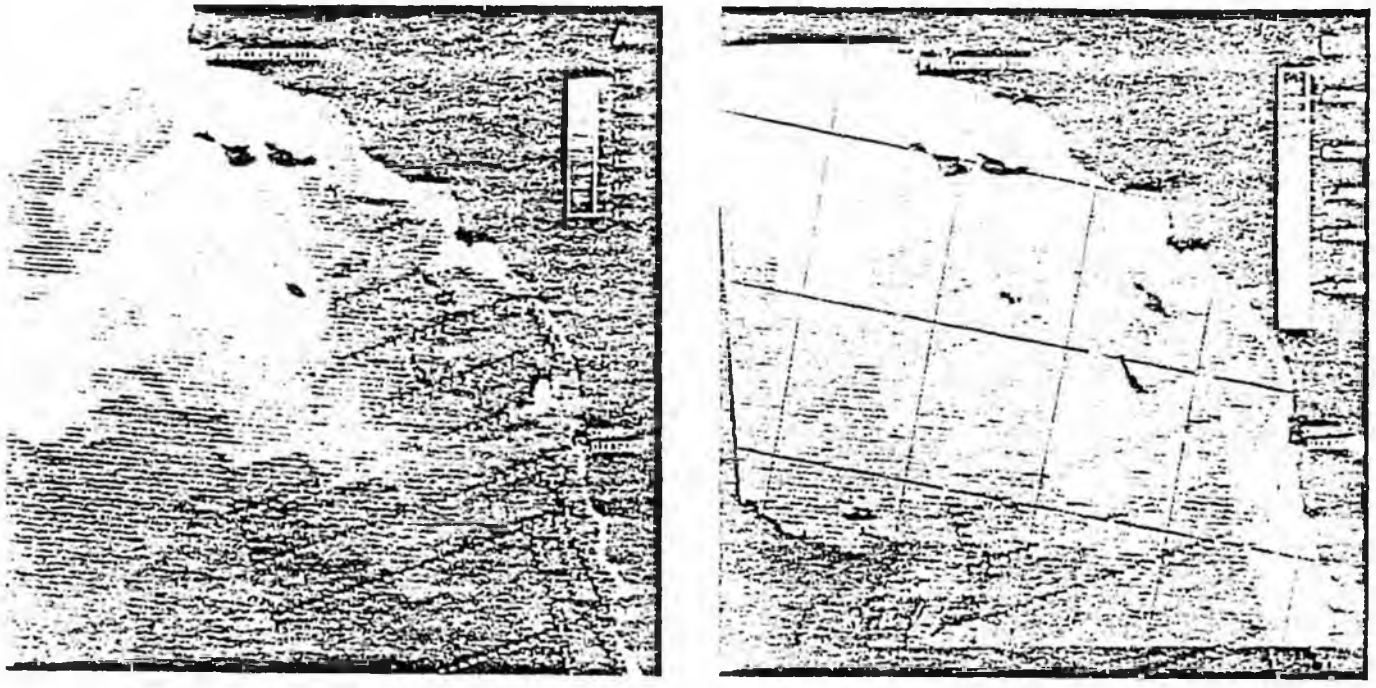


Figure 3.—Northern anchovy egg distribution, 20 March-10 April 1980; • = 0, 1 = 1-4, 2 = 5-17, 3 = 18-245 eggs/0.05 m^2. Top photo (A) is sea surface temperature (°C) from NOAA-6 AVHRR, 7 April 1980; Photo B is of phytoplankton pigments (mg m^{-3}) from Nimbus-7 CZCS, 8 April 1980.

Interpretation of Ship Survey Data

A large stock of northern anchovy, *Engraulis mordax*, is found off southern California, where intensive egg surveys have been conducted since 1980 to estimate spawning biomass. Satellite images of sea surface temperature and phytoplankton pigment concentration, obtained during an egg survey in April 1980, depict environmental limits on the range of spawning anchovy (Fig. 3). North of San Diego, no eggs were found in water colder than 14°C. To the south, spawning northern anchovy were confined along the coast to a narrow band of water with high pigment concentrations. Similar distribution patterns were observed in 1981 and 1982 (Lasker et al., 1981; Fiedler, 1983).

The distribution of spawning adults may reflect the critical need by first-feeding larvae for aggregations of suitable food organisms in a stable water column. The environmental limits revealed by the satellite images would not have been revealed by the egg survey data alone, because phytoplankton pigments were not measured and spatial coverage was limited.

Satellites data may be used to interpret the large-scale patterns and possible causes of spatial/temporal variability in other types of ship survey data. Most measurements of fish eggs and larvae, plankton concentrations, chlorophyll, nutrients, temperature, and salinity are made at point locations at regular intervals along transects or in grid patterns. Remote sensing data collected concurrently, if available, may provide valuable information on factors contributing to patterns in the shipboard data and on conditions beyond the area surveyed. Besides the insight that usually results from a synoptic view, this information is important in evaluating the validity of interpolation and extrapolation of ship survey results.

Pelagic Fisheries Distribution

Albacore, *Thunnus alalunga*, is a migratory oceanic tuna that is an important target species for jigfishing, live bait, and recreational fishing along the U.S. Pacific coast from July to October. Fishermen search for aggregations of these fish in warm, blue oceanic waters near temperature or water color fronts at the offshore edge of productive coastal waters. Daily catch records during peak fishing in late summer 1981 were taken from logbooks submitted to west coast state fisheries agencies. Concentrations of fishing activity and large catches indicate sites of albacore aggregations.

Satellite images of sea surface temperature and phytoplankton pigment concentrations clearly show favorable sites for aggregations in pockets of warm, blue oceanic water intruding into the colder and more turbid coastal water mass (Fig. 4; Laurs et al., In press). Albacore are visual predators and may feed most efficiently in the clear water adjacent to coastal waters where prey densities are higher. Albacore fishermen, running several days out of port in small boats to reach offshore fishing grounds, can benefit from timely maps of sea surface temperature and ocean color gradients derived from satellite data. Potential benefits include decreased search time, lower fuel use, and increased catches.

Satellite data may be applied to

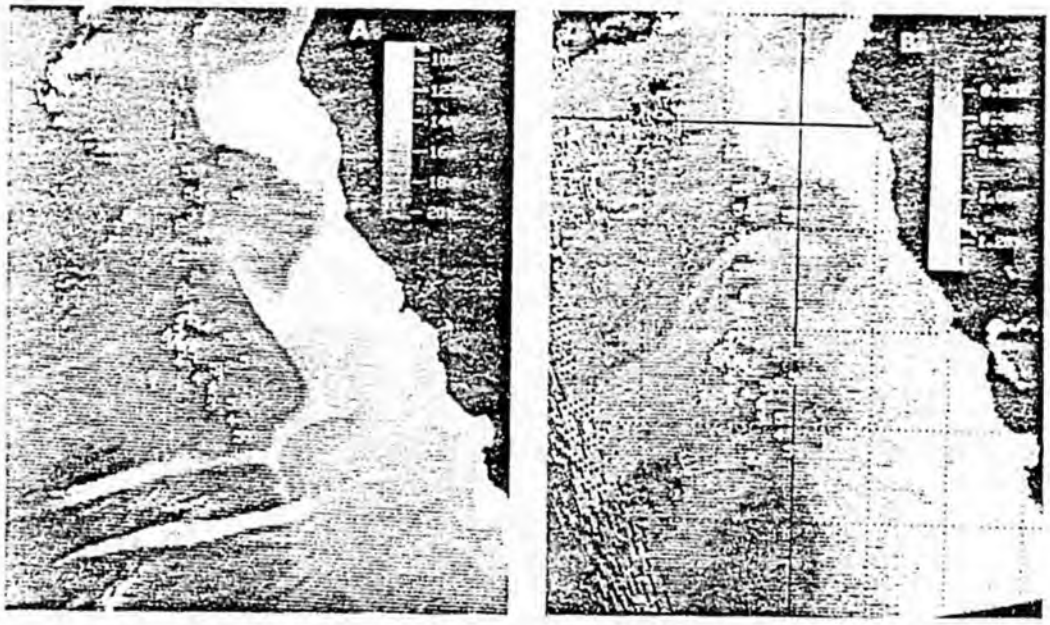


Figure 4.—Daily albacore catches off central California, 19-24 September 1981: 1 = 0-27, 2 = 33-63, 3 = 64-81, 4 = 87-140, 5 = 148-750 fish/boat. A is sea surface temperature (°C) from NOAA-7 AVHRR, 21 September 1981; B is phytoplankton pigments (mg m^{-3}) from Nimbus-7 CZCS, 22 September 1981.

other pelagic fisheries, both to direct fishing effort and for fisheries management. In the Pacific Northwest and off Alaska, five species of Pacific salmon—sockeye salmon, *Oncorhynchus nerka*; chum salmon, *O. keta*; pink salmon, *O. gorbuscha*; chinook salmon, *O. tshawytscha*; and coho salmon, *O. kisutch*—are important resources for a large fishing industry. During their oceanic life history phase, these salmon are caught by power or hand-trolling boats using methods similar to albacore fishing. The study described by Borstad et al. (1982) is an example of a use of remote sensing techniques to study relationships between salmon distributions, fishing, and oceanographic conditions. Other pelagic resources for which there may be analogous applications include Pacific herring, *Clupea harengus pallasi*, off Alaska; jack mackerel, *Trachurus symmetricus*, and Pacific mackerel, *Scomber japonicus*, off California; and bluefin tuna, *Thunnus thynnus orientalis*, off Baja California.

Stock Recruitment Predictions

An application of satellite data that merits investigation is the improved understanding and prediction of variations in recruitment to coastal fish stocks. In the eastern North Pacific, offshore transport and turbulent mixing may have important effects on the larval survival and subsequent recruitment of some species (Bakun and Parrish, 1982). Both processes are driven by surface wind stress. Offshore transport removes eggs and larvae from productive nearshore nursery grounds. This may be most important where strong seasonal upwelling occurs over a narrow continental shelf, as it does along the U.S. coast north of lat. 34°N. Turbulent mixing reduces stratification of the near-surface water column and disrupts aggregations of food organisms required for successful first feeding by newly hatched larvae (Lasker, 1981).

Variations in annual recruitment of Pacific whiting, *Merluccius productus*, have been related to monthly mean Ekman transport estimated from equatorward wind stress off central California (Bailey, 1981). Fiedler (1984) has used AVHRR imagery to document interannual changes in the sea surface temperature field related to variations in coastal upwelling off the U.S. Pacific coast. Satellite imagery has also revealed that offshore transport is a highly irregular process in both time and space, manifested as meandering jets and eddies of cold water (e.g. Fig. 5). Offshore transport could perhaps be quantified by measuring the areal extent of relatively cold water nearshore or the offshore displacement of frontal features between daily satellite passes. This application may be extended to other species for which there is evidence of similar environmental effects (e.g. Hayman and Tyler, 1980; Bakun and Parrish, 1982).

The seasonal timing and spatial location of northern anchovy spawning has been related to turbulent mixing, as indexed by the cube of mean surface wind speed in historical marine weather observations, by Husby and Nelson (1982). They suggested that strong year classes may depend upon the occurrence of "time-space windows" with sufficiently low turbulence to allow development of layers of food organisms.

The magnitude and direction of surface wind stress are directly



Figure 5.—Localized offshore transport of cold upwelled water (whiter shades) off northern California and southern Oregon. The three major coastal landforms, from top to bottom, are Cape Blanco, Cape Mendocino, and Point Arena. White features in the top left corner are clouds. Image from NOAA-7 AVHRR channel 4, 14 June 1982.

measurable by microwave sensors such as the scatterometer which flew on the short-lived SEASAT satellite in 1978. The U.S. government has not yet committed funds to orbit another such sensor, for which there are many potential scientific and commercial applications (NASA Satellite Wind Stress Working Group, 1982). Fisheries applications might include the real-time planning of fishing operations to avoid adverse sea state conditions, as well as the measurement of surface winds driving environmental processes affecting recruitment into coastal fish stocks. These benefits would be particularly significant in northern areas, such as the Pacific Northwest and Alaska regions, where present remote sensing coverage by visible and infrared sensors is usually limited by cloud cover.

Coastal Zone Monitoring

Mesoscale processes, such as upwelling and eddy formation, are very important components of the spatial and temporal variability of eastern North Pacific coastal waters, especially in the complex California Current System. Extensive and high-resolution satellite data are particularly valuable for studies of these processes (Bernstein et al., 1977). Anomalous ocean conditions along the U.S. Pacific coast were monitored during the 1982-83 El Niño event using AVHRR and CZCS data (Fiedler, 1984). Localized sea surface temperature anomalies up to +6°C were observed. Reduced coastal upwelling during the first half of the year was detected in patterns of cold, nearshore surface waters. CZCS images of the Southern California Bight indicated reduced phytoplankton productivity. This event affected many commercial and sport fisheries along the coast (Anonymous, 1984).

Monitoring coastal zone variability within a year or season with satellite data may be useful for developing better release strategies for hatchery-reared juvenile salmonids by enabling management decisions to be more adaptive and based on conditions in nearshore nursery areas. It might be possible to improve the growth and survival of hatchery-reared salmon by scheduling releases during periods of most favorable ocean conditions. AVHRR and CZCS imagery could be used as sources of information on sea surface temperature, river plume trajectory, upwelling intensity, primary production, and the oceanic frontal areas associated with each of these factors. Small improvements in the survival of juveniles released from hatcheries could result in substantial increases in the numbers of returning adults. If successful, this application would be particularly important in the Pacific Northwest and Alaska region, where hatchery operations are extensive and salmon resources have high value.

Salmon enhancement programs on the Columbia River, the largest river on the Pacific Coast of North America, provide an example of the potential. The National Marine Fisheries Service funds 22 salmon hatcheries and 7 rearing ponds on the Columbia River at an annual cost exceeding $4.5 million. Each year, these facilities culture and release 80-100 million salmon smolts in late April and early May. The present release schedule is decided largely on the basis of administrative criteria, tradition, and attempts to emulate nature. However, survival rates for these hatchery-reared salmon are relatively low, only about 3.7 percent (range, 0.23 to 12.35 percent) for coho salmon in their first year (Mathews, 1980).

There is increasing evidence that juvenile salmon survival, and subsequent adult returns, are critically influenced by conditions in the ocean environment within the first 6 months after hatchery release (Hartt, 1980; Wahle and Zaugg, 1982). Important factors may be food availability and the extent that food limitations occur in the nursery habitats as a result of crowding. On the Columbia River, although hatchery-reared salmon pass downstream and through the lower river and estuary relatively rapidly, significant losses occur in each of these migratory stages and areas. After reaching the ocean, juvenile salmon typically migrate along a relatively narrow coastal belt (Hartt, 1980). In purse seine studies off the Columbia River, juvenile salmonids (< 50 cm) have been found to be distributed mainly within 28 km of shore; chinook salmon and steelhead, *Salmo gairdneri*, were distributed almost entirely in the river plume (Miller et al., 1983). Upwelling and its effects on food production have been related to juvenile survival and adult salmon production (Gunsolus[5]). A better understanding of these environmental relationships is a goal of current research.

Figure 6 shows three satellite images of sea surface temperatures along

[5]Gunsolus, R. T. 1978. The status of Oregon coho and recommendations for managing the production, harvest, and escapement of wild and hatchery-reared stocks. Oreg. Dep. Fish Wildl., Columbia Reg. Off., 17330 S.E. Evelyn St., Clackamas, OR 97015. Unpubl. manuscr., 59 p.

the Pacific Northwest coast during summer 1982, illustrating changes in coastal conditions that can occur over relatively short (2-3 week) time intervals. On 5 July, coastal upwelling was very weak, although signs of intensification were developing at Cape Mendocino. By 23 July, upwelling had intensified considerably, especially to the north. By 18 August, however, upwelling was again weaker. Changes in the mesoscale pattern of cold-water jets and meanders can be seen. In the latter two images, the Columbia River plume is indicated by a dark, warm-water break in the band of cold, upwelled water along the coast.

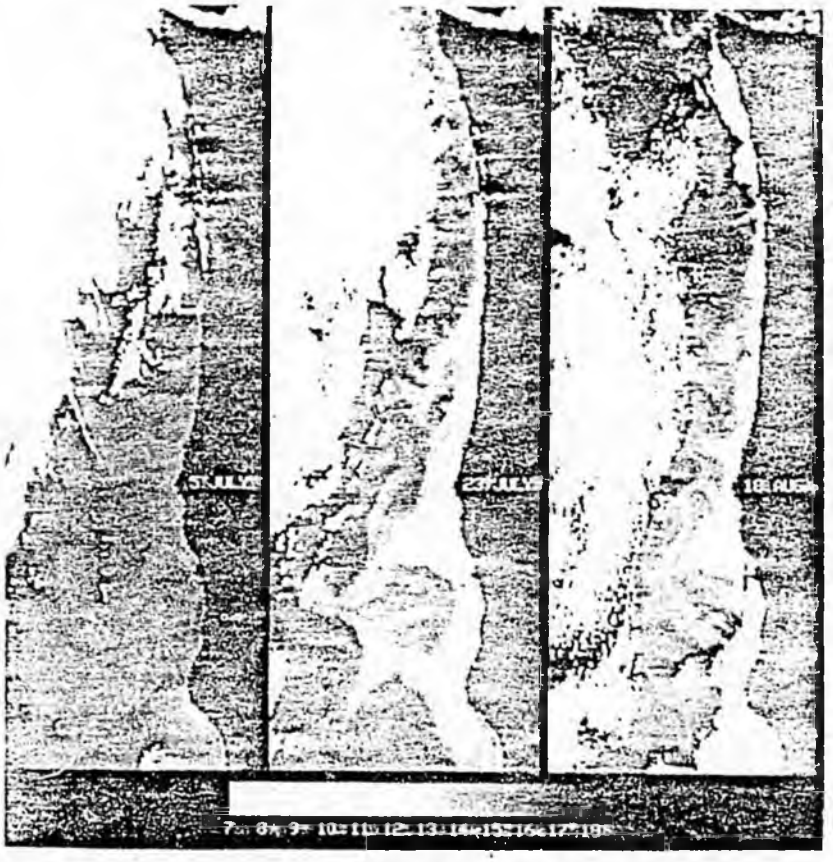


Figure 6.—Variations in the intensity and pattern of coastal upwelling off the Pacific Northwest between lat. 39°00'N and 48°30'N, July-August 1982. Sea surface temperature (°C) from NOAA-7 AVHRR channels 4 and 5. Clouds (white) screened with channel 2 data.

Monitoring Sea Ice

Sea ice is an important seasonal feature of the Alaskan environment that can be monitored by satellite coverage (Weeks, 1981; McNutt, 1981). Ice affects commercial fishing activities by threatening vessel safety, limiting navigation and access, and damaging fishing gear. Yet sometimes waters near the edge of pack ice can offer shelter or rich fishing grounds. Ice is also important because of its significance in the ecology of, and as a habitat for, northern marine mammals.

In the eastern North Pacific, winter ice cover occurs in inlets along the coasts of southeastern Alaska, the Gulf of Alaska, and the Aleutian Islands. Its formation is often associated with freshwater runoff, such as in Cook Inlet (Poole and Hufford, 1982). Freshwater ice forms on stream and river deltas, then sea ice forms in lower parts of the embayments. However, much greater ice cover occurs in the extended area to the north. Ice covers the Chukchi Sea, Bering Strait, and nearly the entire northeast half of the eastern Bering Sea during winter and spring. Movements of pack ice in the Bering Sea are influenced by winds and water currents, and are highly dynamic.

Ice off the North Slope, along the southern coast of Alaska, and in the Bering Sea, is monitored routinely by the National Weather Service. When cloud cover permits, ice and open water can be discriminated with a 1 km resolution using AVHRR visible and infrared data (Fig. 7). Combined with data from the Nimbus-7 Scanning Multichannel Microwave Radiometer, which are not influenced by clouds but have a resolution of 60 km, large-scale maps of ice coverage or concentration are produced. Some information about ice type (age and thickness) can be gleaned from satellite data, but the analysis is supplemented by aerial reconnaissance and reports from ships and shore stations. Ice analysis maps are distributed to users in the fishing and oil industries three times a week by radio facsimile and once a week by mail.

Winter fisheries affected by ice cover in the eastern Bering Sea include: Foreign groundfish fisheries, involving 200-300 vessels per year and an annual catch of about 1.3 million metric tons (Bakkala et al., 1979); highly-valued U.S. fisheries for king crab, *Paralithodes* spp., and snow (Tanner) crab, *Chionoecetes* spp. (Otto, 1981); and U.S. fisheries for Pacific herring that take place along the north shore of Bristol Bay. Vessels operating in these fisheries often need to work around sea ice, can have stability problems, and are sometimes trapped in shifting pack ice and lost.

Ice is an important part of the habitat of 25 species of marine mammals that occur in the Bering Sea (Fay, 1974; Burns et al., 1981). It may serve as a substrate, barrier, or to force migrations. Species that regularly come in contact with ice include the following: Polar bear, *Ursus maritimus;* walrus, *Odobenus rosmarus;* harbor seal, *Phoca vitulina;* ringed seal, *P. hispida;* ribbon seal, *P. fasciata;* bearded seal, *Erignathus barbatus;* narwhal, *Monodon monoceros;* beluga whale, *Delphinapterus leucas;* and bowhead whale, *Balaena mysticetus.* For these and other species, the wide views of ice



Figure 7. – Ice cover in the eastern Bering Sea, 18 February 1983, NOAA-7 AVHRR channel 4. Ice, clouds, and snow-covered land all appear whiter (colder) than open water. Pack ice extends from the Bering Strait, in the top left corner, past St. Matthew and Nunivak Islands, but does not reach the Alaska Peninsula to the southeast. Photograph courtesy of G. L. Hufford, NOAA/NESDIS, Satellite Field Services Station, Anchorage, Alaska.

characteristics that can be obtained from satellite imagery provide unique information for use in conservation and management.

Migration Routes and Timing

Satellite imagery can provide useful information on environmental conditions related to the routes and timing of long-distance migrations by marine mammals and fish. In the eastern North Pacific and in waters off Alaska, many important species occupy large habitat areas and make extensive seasonal migrations. These large activity areas are often in remote and data-poor regions. Satellite coverage, because of its wide areal views and long-term repeated observations, provides data with time and space characteristics that are appropriate for interpreting large-scale migratory phenomena. Applications include planning research, experimental design, and evaluating strategies for population enumeration.

The North Pacific albacore, *Thunnus alalunga*, performs transpacific migrations and supports important commercial fisheries in the western, central, and eastern North Pacific. Seasonal migration into North American coastal waters is associated with the Transition Zone between Pacific central and subarctic water masses (Laurs and Lynn, 1977). The frontal structure of these waters may affect both the timing and location of the arrival of albacore into the summer fishery along the coast. Figure 8 illustrates CZCS color frontal patterns in the central Pacific that could influence the course of the migration.

The potential for using both color and infrared temperature imagery in

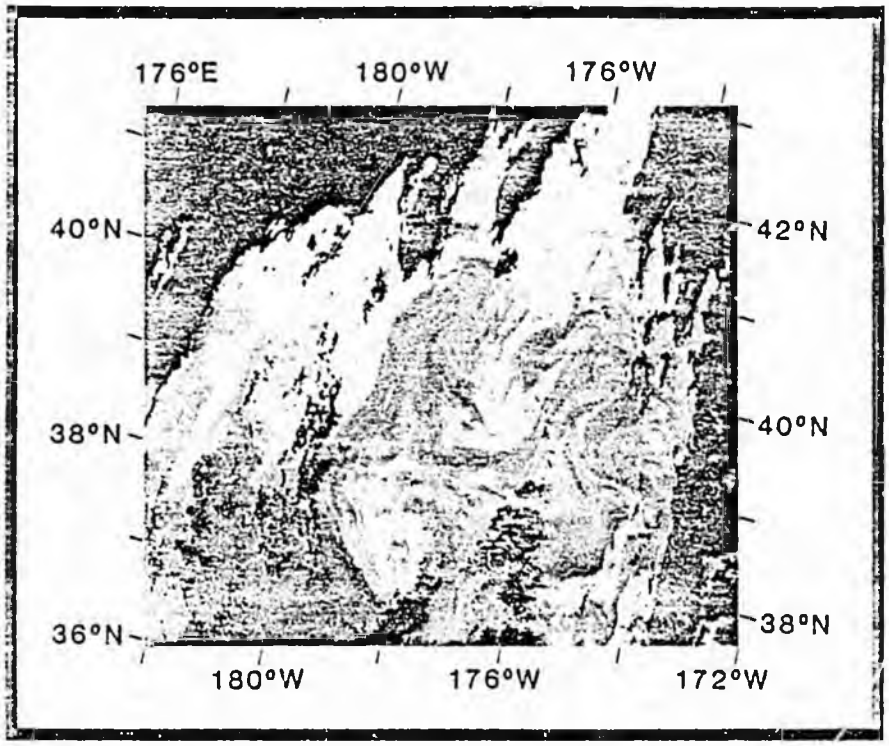


Figure 8.—Phytoplankton pigment concentration in a 600 × 600 km area of the central North Pacific, measured by the Coastal Zone Color Scanner, 30 June 1980. Black = clouds, darkest gray = 0.08 mg m^{-3}, white = 5.7 mg m^{-3}.

fishery operations in these waters has been explored on a limited basis with promising results. Although cloud cover allows only infrequent views of the sea surface, the surface patterns seem to be less dynamic than in coastal waters. Color boundaries are detectable from satellites during all seasons, but pronounced sea surface temperature fronts are not present during summer-autumn due to seasonal warming. However, infrared satellite imagery has been used to locate the subtropical front during winter (Van Woert, 1982) and spring months[3].

In Arctic and subarctic areas, such as the Beaufort Sea and northern Bering Sea, the movements and distribution of sea ice have important influences on the movements of marine mammals. Bowhead and beluga whales make regular seasonal migrations through the shear zones and lead systems that develop in the Arctic pack ice (Braham et al., 1980). In the case of the bowhead whale, the prediction and evaluation of migration paths is important because it is an endangered species and the western Arctic population requires careful annual censusing. Satellite imagery showing ice cover and open-water corridors is used to spot check the sampling design for summer whale counts.

There is potential for similar applications of satellite data in other oceanic and coastal areas, although the relationships between environmental characteristics and marine mammal migrations are not as obvious. For example, the eastern Pacific stock of gray whale, *Eschrichtius robustus*, undergos regular annual migration between summer feeding grounds in the Chukchi Sea and winter breeding grounds in Mexico (Pike, 1962). Satellite coverage of the onset of winter ice cover in the Bering Strait may help explain the environmental signals that initiate the southern migration. Other marine mammals that are important in the region, and that undergo long-distance movements, include: Northern fur seal, *Callorhinus ursinus*, migrating between summer breeding grounds on the Pribilof Islands in the eastern Bering Sea (and on other islands around the Northern Pacific rim) and wintering areas in the Gulf of Alaska and off the U.S. Pacific coast (Fiscus, 1978); humpback whale, *Megaptera novaeanglice*, an endangered species of which the eastern Pacific stock migrates between breeding and calving areas in the Hawaiian Islands and summer feeding grounds in the inland waters of southeastern Alaska (Wolman, 1978); and a number of species of dolphins and porpoise.

Allocation of Sampling Effort

Annual egg and larva surveys of northern anchovy are a regular activity of the California Cooperative Oceanic Fisheries Investigations (CalCOFI). Each survey requires 4-5 weeks of ship time to make vertical net tows at 800-900 stations. The accuracy of the estimate of spawning biomass derived from each survey depends on complete coverage of the geographic range of the spawning stock. Without a priori knowledge of this distribution, many extra stations beyond the range limits must be sampled to ensure adequate coverage. We are now investigating the use of satellite imagery to plan egg surveys based on environmental limits characterizing the spawning habitat and detectable from satellites, as described above.

The 1983 survey plan was modified during the cruise using information from satellites. When the cruise began north of Point Conception in February, eggs were found much farther north and offshore than in recent years. Upon examination of AVHRR temperature imagery, we realize that this extension of the spawning range was due to the 1982-83 El Niño event. The cold-water boundary which normally limits

[3]R. Lynn. 1984. Southwest Fisheries Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, Ca 92038. Pers. commun.



Figure 9.—Northern anchovy egg distribution, 9 February-29 March 1983: • = 0, 1 = 1-3, 2 = 4-12, 3 = 13-229 eggs/0.05 m². Sea surface temperature (°C) from NOAA-7 AVHRR, 10 February 1983.

spawning to the southeast of Point Conception had shifted to the north and offshore (Fig. 9, compare with Fig. 3). As a result, the lines of sampling stations were extended farther offshore than originally planned, to ensure coverage of the entire spawning stock.

In another study conducted in June 1980 on the feeding biology of larval jack mackerel, satellite data were used to locate an intensive sampling grid on a temperature front. The front was observed southwest of San Diego in a NOAA-6 AVHRR image obtained over 1 week prior to the cruise, and it persisted during the sampling period (Fig. 10). The front was subsequently found to be related to an important gradient in food availability[4].

These two examples demonstrate how a single satellite image, from data received and processed in a matter of hours, can save days of ship time by locating significant environmental features and permitting efficient allocation of sampling effort. The potential cost savings are obvious, but the real-time use of satellite data requires facilities for direct reception and processing.

Fisheries Aid Charts

Operational applications of satellite data to commercial fishing activities

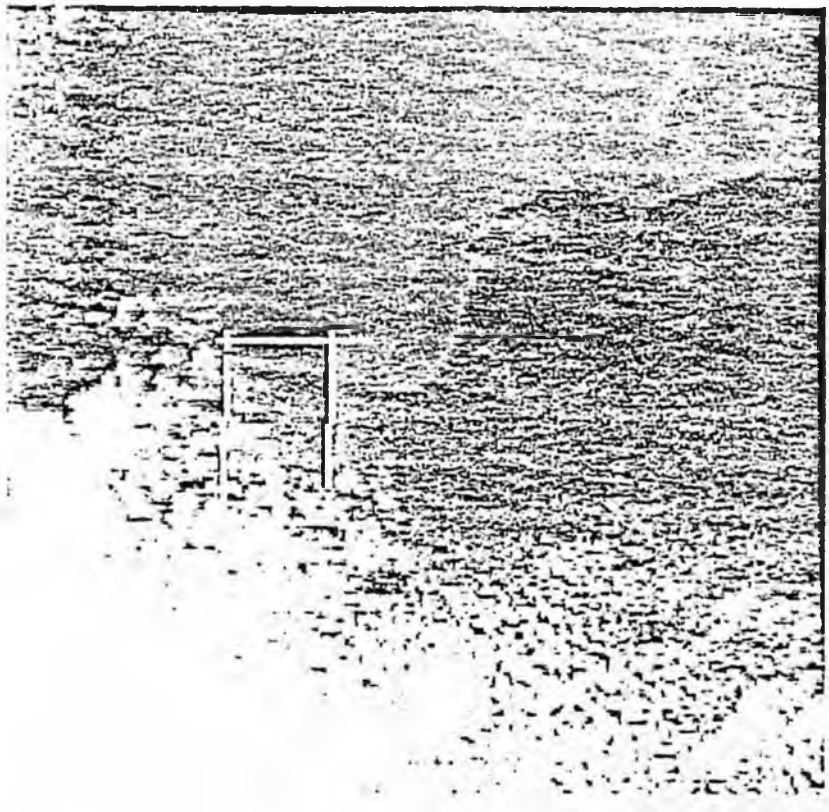


Figure 10.—Uncalibrated NOAA-6 AVHRR channel 4 image off southern California, 5 June 1980. Lighter shades represent cold sea surface temperatures, clouds appear white. Box encloses a 30 × 67 km grid of 41 stations centered at lat. 31° N, long. 120°30′ W.

[4] R. Hewitt, 1983. Southwest Fisheries Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038. Pers. commun.

began along the Pacific coast in 1975 (Breaker, 1981) and have now been extended to Alaska. Charts showing sea surface temperature fronts and sea ice visible in satellite AVHRR images, and surface isotherms mapped from satellite and ship data, are produced routinely by NOAA (Fig. 11). The Northwest Ocean Services Center in Seattle produces a chart covering northern California, Oregon, Washington, and southern British Columbia, from lat. 40°N to lat. 52°N. The Satellite Field Services Station in Redwood City, Calif., produces a chart covering central and southern California and northern Baja California, from lat. 28°N to lat. 40°N. Coverage of both charts extends offshore to long. 135°W. They are produced once or twice weekly year-round and are distributed primarily by radio facsimile from the U.S. Coast Guard

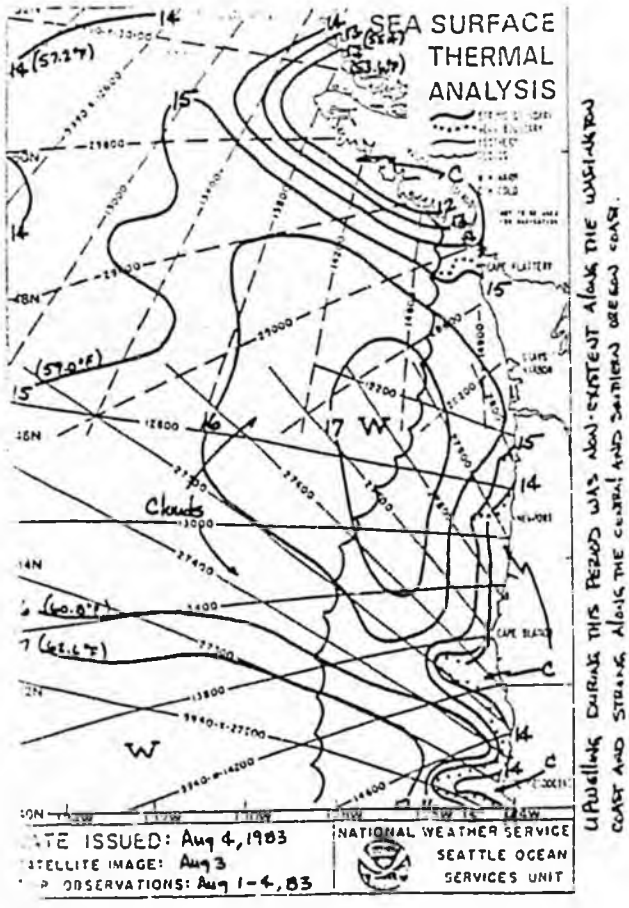
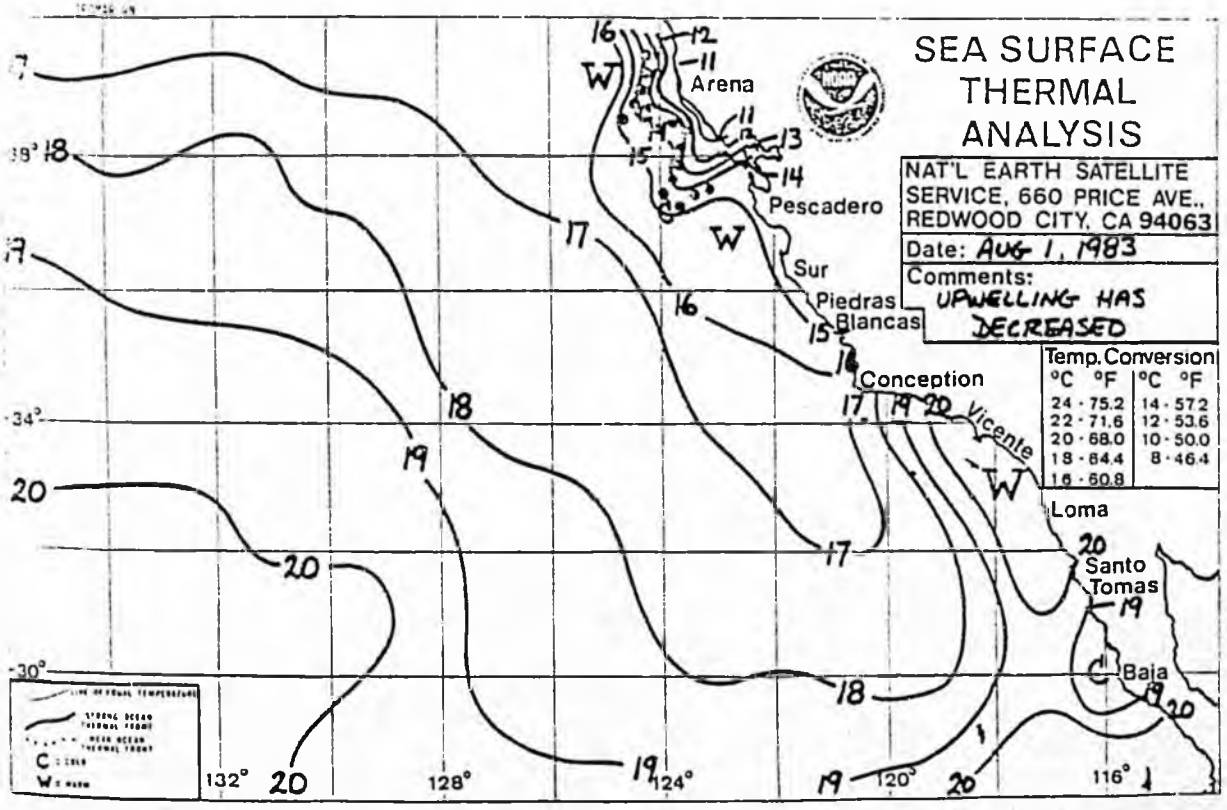


Figure 11.—Sea surface temperature charts produced by the National Weather Service.



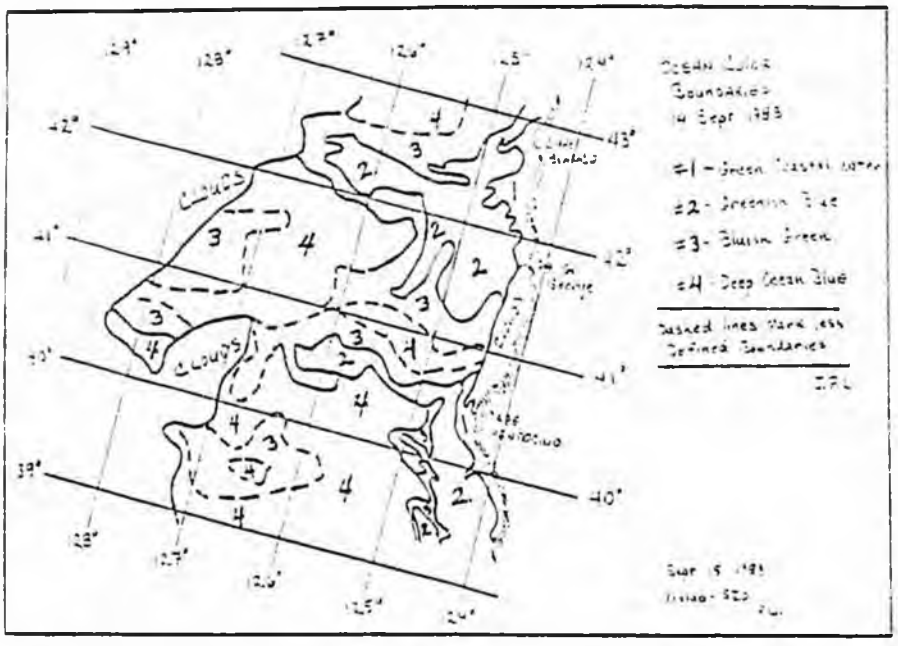


Figure 12.—Ocean color boundary chart off northern California and Oregon (R. Wittenberg, Scripps Visibility Laboratory).

radio station at Point Reyes, Calif. Fishermen use these charts to save time in searching for productive fishing areas associated with frontal features.

The Alaska Ocean Services Unit, located in Anchorage, produces charts covering British Columbia, the Gulf of Alaska, Aleutian Islands, eastern Bering Sea, Chukchi Sea, and Beaufort Sea, from lat. 48°N to lat. 75°N. Charts showing sea surface temperature and sea ice are distributed three times a week; these are intended to aid the safety and efficiency of fishing. Other charts showing 3-and 5-day sea ice forecasts are also distributed daily in winter. Both types of charts are issued by radio facsimile from the U.S. Coast Guard Station at Kodiak, Alaska.

Ocean color boundary charts have been produced experimentally from CZCS data since 1981 in a NASA/Jet Propulsion Laboratory program (Montgomery, 1981). The charts delineate strong gradients in the blue/green color ratio (channel 1/channel 3 radiance). In 1983, charts were produced at almost weekly intervals from May to October (18 charts total), covering coastal areas up to 700,000 km² between Vancouver Island, B.C., and Guadalupe Island, Mex. (Fig. 12). A chart was produced only when a large, cloud-free area was located in a Nimbus-7 pass. The chart was then broadcast on the same or following day to fishing boats by radio facsimile from Point Reyes and La Jolla, Calif. Color photographs of the satellite images were distributed by express mail to various fishing ports and to Sea Grant marine advisors in daily contact with fishermen. The color boundary charts and photographs are used by albacore and salmon fishermen. These fish are sometimes found aggregated along color fronts which do not correspond to temperature fronts.

Conclusions

Satellites have altered our perceptions of the ocean environment through the extensive spatial coverage, temporal continuity, and high resolution of the data they provide. Limited, but useful, applications to several types of problems in fisheries research and operations have been demonstrated. Continued development of these and other applications will depend on inexpensive and convenient access to data and data-processing facilities. Recent trends in the federal budget have not been encouraging. For instance, there are no current prospects for a new ocean color scanner to replace the aging CZCS on Nimbus-7. The commercial utility of satellite data depends largely on near real-time availability to fishermen and other maritime users. In the future, this demand may be met by processed satellite data products tailored more to particular user needs.

Acknowledgments

This work was supported jointly by the Southwest Fisheries Center, La Jolla, Calif., and the Northwest and Alaska Fisheries Center, Seattle, Wash., as a cooperative research project. We thank the many persons who contributed information and ideas for various applications, as well as those who provided technical support at the Scripps Satellite Oceanography Facility and the Scripps Visibility Laboratory. Processing of CZCS data was supported by NASA order W15,334.

Literature Cited

Anonymous. 1984. 1983 in review. Pac. Fish. 1984 Yearb.

Bailey, K. M. 1981. Larval transport and recruitment of Pacific hake, *Merluccius productus*. Mar. Ecol. Prog. Ser. 5:1-9.

Bakkala, R., W. Hirschberger, and K. King. 1979. The groundfish resources of the eastern Bering Sea and Aleutian Island regions. Mar. Fish. Rev. 41(11):1-24.

Bakun, A., and R. H. Parrish. 1982. Turbulence, transport, and pelagic fish in the California and Peru Current systems. CalCOFI Rep. 23:99-112.

Bernstein, R. L. 1982. Sea surface temperature estimation using the NOAA-6 satellite Advanced Very High Resolution Radiometer. J. Geophys. Res. 87:9455-9465.

_____, L. Breaker, and R. Whritner. 1977. California Current eddy formation: Ship, air, and satellite results. Science 195:353-359.

Borstad, G. A., R. M. Brown, D. Trites, T. R. Mulligan, and J. F. R. Gower. 1982. Remote sensing techniques for fisheries oceanography: Examples from British Columbia. NAFO Sci. Counc. Studies 4:69-76.

Braham, H. W., M. A. Fraker, and B. D. Krogman. 1980. Spring migration of the western Arctic population of bowhead whales. Mar. Fish. Rev. 42(9-10):36-46.

Breaker, L.C. 1981. The application of satellite remote sensing to west coast fisheries. J. Mar. Tech. Soc. 15:32–40.

Burns, J. J., L. H. Shapiro, and F. H. Fay. 1981. Ice as marine mammal habitat in the Bering Sea, p. 781-797. *In* D. W. Hood and J. A. Calder (editors), The eastern Bering Sea shelf: Oceanography and resources, Vol. 2. Univ. Wash. Press, Seattle.

Fay, F. H. 1974. The role of ice in the ecology of marine mammals of the Bering Sea, p. 383-399. *In* D. W. Hood and E. J. Kelly (editors), Oceanography of the Bering Sea with emphasis on renewable resources, Univ. Alaska, Fairbanks, Inst. Mar. Sci. Occas. Publ. 2.

Fiedler, P. C. 1983. Satellite remote sensing of the habitat of spawning anchovy in the Southern California Bight. (CalCOFI Rep. 24:202-209.

_____. 1984. Satellite observations of the 1982-83 El Niño along the U.S. Pacific coast. Science 224:1251-1254.

Fiscus, C. H. 1978. Northern fur seal, p. 153-159. *In* D. Haley (editor), Marine mammals of eastern North Pacific and Arctic waters. Pac. Search Press, Seattle.

Gordon, H. R., D. K. Clark, J. W. Brown, O. B. Brown, R. H. Evans, and W. W. Broenkow. 1983. Phytoplankton pigment concentrations in the Middle Atlantic Bight: Comparison of ship determinations and CZCS estimates. Appl. Opt. 22:20-36.

Gower, J. F. R. 1982. General overview of the nature and use of satellite remote sensing data for fisheries application. Northwest Atl. Fish. Organ., Sci. Counc. Studies 4:7-19.

Hartt, A. C. 1980. Juvenile salmonids in the oceanic ecosystem – the critical first summer, p. 25-57. *In* W. J. McNeil and D. C. Himsworth (editors), Salmonid ecosystems of the North Pacific. Oreg. State Univ. Press, Corvallis.

Hayman, R. A., and A. V. Tyler. 1980. Environment and cohort strength of Dover sole and English sole. Trans. Am. Fish. Soc. 109:54-70.

Husby, D. M., and C. S. Nelson. 1982. Turbulence and vertical stability in the California Current. CalCOFI Rep. 23:113-129.

Lasker, R. 1981. Factors contributing to variable recruitment of the northern anchovy (*Engraulis mordax*) in the California Current: Contrasting years, 1975-1978. Rapp. P.-v. Reun. Cons. int. Explor. Mer 178: 375-388.

_____, J. Peláez, and R. M. Laurs. 1981. The use of satellite infrared imagery for describing ocean processes in relation to spawning of the northern anchovy (*Engraulis mordax*). Remote Sensing Environ. 11:439–453.

Laurs, R. M., and R. J. Lynn. 1977. Seasonal migration of North Pacific albacore, *Thunnus alalunga*, into North American coastal waters: Distribution, relative abundance, and association with Transition Zone waters. Fish. Bull., U.S. 75:795-822.

_____, and J. T. Brucks. In Press. Living marine resources applications of satellite imagery. *In* B. Saltzman (editor), Satellite Remote Sensing in Oceanography. Advances in Geophysics, Acad. Press, N.Y.

_____, P. C. Fiedler, and D. R. Montgomery. In Press. Albacore tuna catch distributions relative to environmental features observed from satellites. Deep-Sea Res.

McClain, E. P., W. G. Pichel, C. C. Walton, Z. Ahmad, and J. Sutton. 1983. Multichannel improvements to satellite-derived global sea surface temperatures. Adv. Space Res. 2:43–47.

McNutt, S. L. 1981. Remote sensing analysis of ice growth and distribution in the eastern Bering Sea, p. 141-165. *In* D. W. Hood and J. A. Calder (editors), The eastern Bering Sea shelf: Oceanography and resources, Vol. 1. U.S. Gov. Print. Off., Wash., D.C.

Mathews, S. B. 1980. Trends in Puget Sound and Columbia River salmon, p. 133-145. *In* W. J. McNeil and D. C. Himsworth (editors), Salmonid ecosystems of the North Pacific, Oreg. State Univ. Press, Corvallis.

Miller, D. R., J. G. Williams, and C. W. Sims. 1983. Distribution, abundance and growth of juvenile salmonids off the coast of Oregon and Washington, summer 1980. Fish. Res. 2:1-17.

Montgomery, D. R. 1981. Commercial applications of satellite oceanography. Oceanus 24(3):56-65.

NASA Satellite Wind Stress Working Group. 1982. Scientific opportunities using satellite wind stress measurements over the ocean. Nova Univ./N.Y.I.T. Press, Fort Lauderdale, Fla., 153 p.

Nelson, C. S., and D. M. Husby. 1983. Climatology of surface heat fluxes over the California Current region. NOAA Tech. Rep. NMFS SSRF-763, 155 p.

Otto, R. S. 1981. Eastern Bering Sea crab fisheries, p. 1037-1066. *In* D. W. Hood and J. A. Calder (editors), The eastern Bering Sea shelf: Oceanography and resources, Vol. 2. Univ. Wash. Press, Seattle.

Pike, G. C. 1962. Migration and feeding of the gray whale (*Eschrichtius gibbosus*). J. Fish. Res. Board Can. 19:815-838.

Poole, F. W., and G. L. Hufford. 1982. Meteorological and oceanographic factors affecting sea ice in Cook Inlet. J. Geophys. Res. 87(C3):2061-2070.

Sadler, J. C., L. Oda, and B. J. Kilonsky. 1976. Pacific Ocean cloudiness from satellite observations. Univ. Hawaii, Honolulu, 137 p.

Smith, R. C. 1981. Remote sensing and depth distribution of ocean chlorophyll. Mar. Ecol. Prog. Ser. 5:359-361.

_____, and K. S. Baker. 1982. Oceanic chlorophyll concentrations as determined by satellite (Nimbus-7 Coastal Zone Color Scanner). Mar. Biol. 66:269-279.

Van Woert, M. 1982. The subtropical front: Satellite observations during FRONTS 80. J. Geophys. Res. 87:9523-9536.

Wahle, R. J., and W. S. Zaugg. 1982. Adult coho salmon recoveries and their $Na^+ - K^+$ ATPase activity at release. Mar. Fish. Rev. 44(11):11-13.

Weeks, W. F. 1981. Sea ice: the potential of remote sensing. Oceanus 24(3):39–48.

Wolman, A. A. 1978. Humpback whale, p. 47-53. *In* D. Haley (editor), Marine mammals of eastern North Pacific and Arctic waters. Pac. Search Press, Seattle.

Yamanaka, I. 1982. Application of satellite remote sensing to fishery studies in Japan. NAFO Sci. Counc. Studies 4:41-50.

HJR

68

HJR 68: Requesting additional action by the United States to reduce high seas interception of Alaska-bound salmon.

COMMITTEE PACKET CONTENTS:

March 13, 1986 Agreement - Department of Fish and Game

Press Release - United Fishermen of Alaska

Policy Statement Re: HJR 68 - United Fishermen of Alaska

Letter - To Washington D.C. from Governor Sheffield

Letter - From Senator Murkowski to Adelheid Herrmann

Letter - To Senator Stevens from Mountain Village

Memo - To all Legislators from Peter Goll
attachment letters:
Alaska Sportfishing Association
Kenai River Sportfishing Association
United Fishermen of Alaska

Briefing Paper - High Seas Salmon Interception Issues

Governor's Presentation - Pelagic Gillnetting

Letter - To Secretary of State from House of Representatives

Resolution - Eskimo Walrus Commission

Table - Economic impact to Western Alaska Fishermen

Memo - To Adelheid Herrmann from Janet Fries re: interception

Table & Chart - Japanese Salmon Interception Figures

SJR 27 & HJR 43 - Re: High Seas Interception

U.S./Japanese Bilateral Salmon Talks
Alaska Department of Fish and Game
March 13, 1986

An agreement was concluded between the U.S. State Department and Japanese negotiators in Tokyo on March 8 after nine months of bilateral talks.

The U.S. objective has been to eliminate significant interception of North American salmon and steelhead by these fisheries. The U.S. had proposed elimination of their fishery in the central Bering Sea, reduction of their effort in our fisheries conservation zone (FCZ) and substantial movement to the west of their landbased fishery. The State Department was not able to accomplish all of these objectives in this current round of negotiations. The agreement falls well short of our original objective to eliminate all significant interceptions.

The agreement does <u>not</u>:

1. Reduce interceptions in the U.S. FCZ.

2. Move the landbased fishery ten degrees farther west, which current data indicates would be required to eliminate significant interceptions.

3. Get them out of the Bering Sea immediately.

The agreement only moves us part way to our objective and should not be viewed as an acceptable end point to the interception issue, although it is an improvement over the present situation and gives us some directions to pursue in further reducing the interceptions.

The agreement does:

1. Phase-out their fishery in the central Bering Sea over an eight year period of time. This has long been a U.S. goal since the chinook salmon caught in this area are nearly all from western Alaska and since this area is outside our zone, we have had serious doubts that we can adequately tell what they are catching in this area. Actually, they will have to end their fishery in the eastern part of this area after only two more years and there are provisions to prevent transfer of their effort to other areas as these fisheries close.

2. Limit their fishery in our FCZ. Currently, there is no effort limit in this area. The agreement will keep them from increasing their fishery from current levels. The agreement also specifies an improved monitoring program in this area to better verify the Japanese catch data.

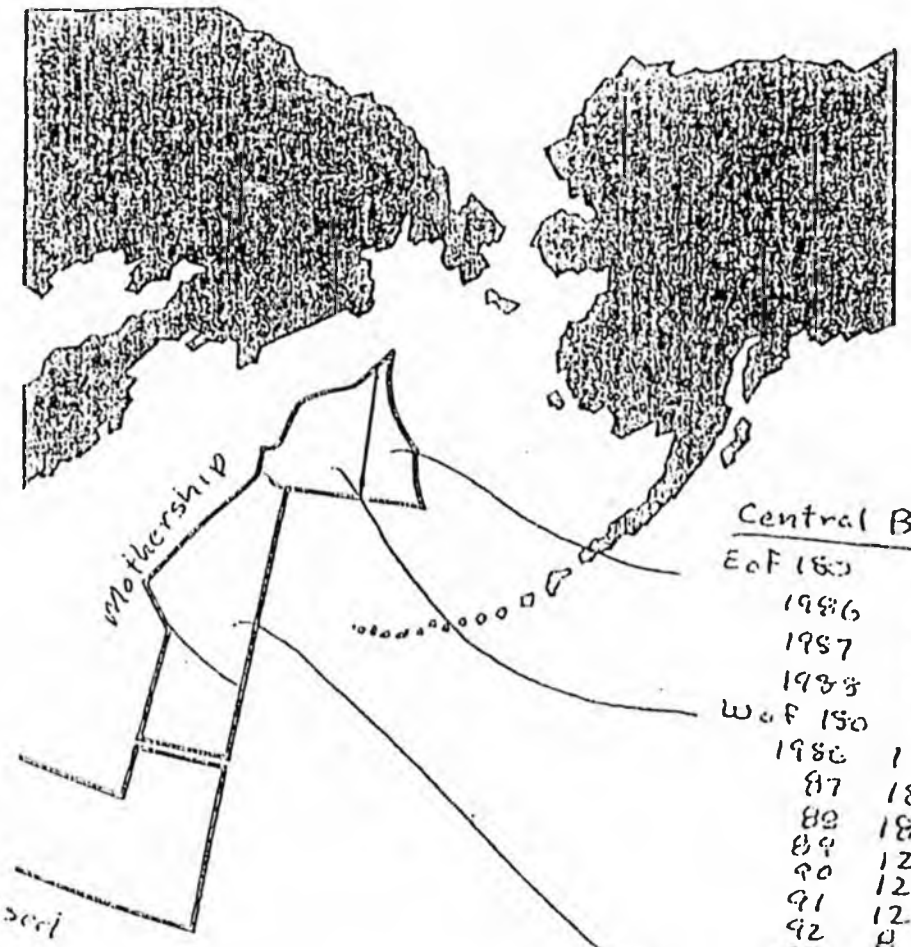
3. Move their landbased fishery one degree of longitude (45 miles) farther west. We had wanted more movement in this fishery, but the Japanese maintained that this movement, plus enforcement would eliminate most interceptions. We know the fleet has chronically violated the current eastern closure line and we do not know how much of the current interceptions are due to these violations as opposed to fishing in legal areas. The agreement for the first time has provisions for specific agreed enforcement and catch monitoring measures with annual review of their adequacy and change if needed.

4. The agreement provides for a three to five year research and monitoring program to determine if these regulations really do the job. By the 1991 season, the closure line in the landbased fishery will be renegotiated if necessary.

Involved parties must see that pressure is maintained to keep moving toward elimination of interceptions. The federal government must provide the funding for research, observers and enforcement. The state is writing to Secretary of State Shultz and our Congressional delegation to request this support.

The state will continue to press for elimination of interceptions. We are dealing with a problem that has existed for more than 30 years. Significant reductions in interceptions occurred in 1978 when the International North Pacific Fisheries Convention was renegotiated to move the Japanese fisheries farther west. Now eight years later, this agreement is another step in this process and provides for further negotiations within the next five years. The state will make every effort to keep the process going.

US/Japan Salmon



MFD - 1 mothership fishing day

Central Bering Sea

E of 180

1986 12 MFD
1987 8 MFD 180-175
1988 0 MFD

Current Limit
31 MFD
Actual Use
2 - 19 MFD
Average
12 MFD

W of 180

1986 18 MFD
87 18
88 18
89 12
90 12
91 12
92 8
93 8
94 8

Current limit
21 MFD
Actual Use
12-23 MFD
Average 16 MFD

US FCZ

1986-93
140 MFD
June 10 - July 31

1994 —
144 MFD
June 10 - July 26

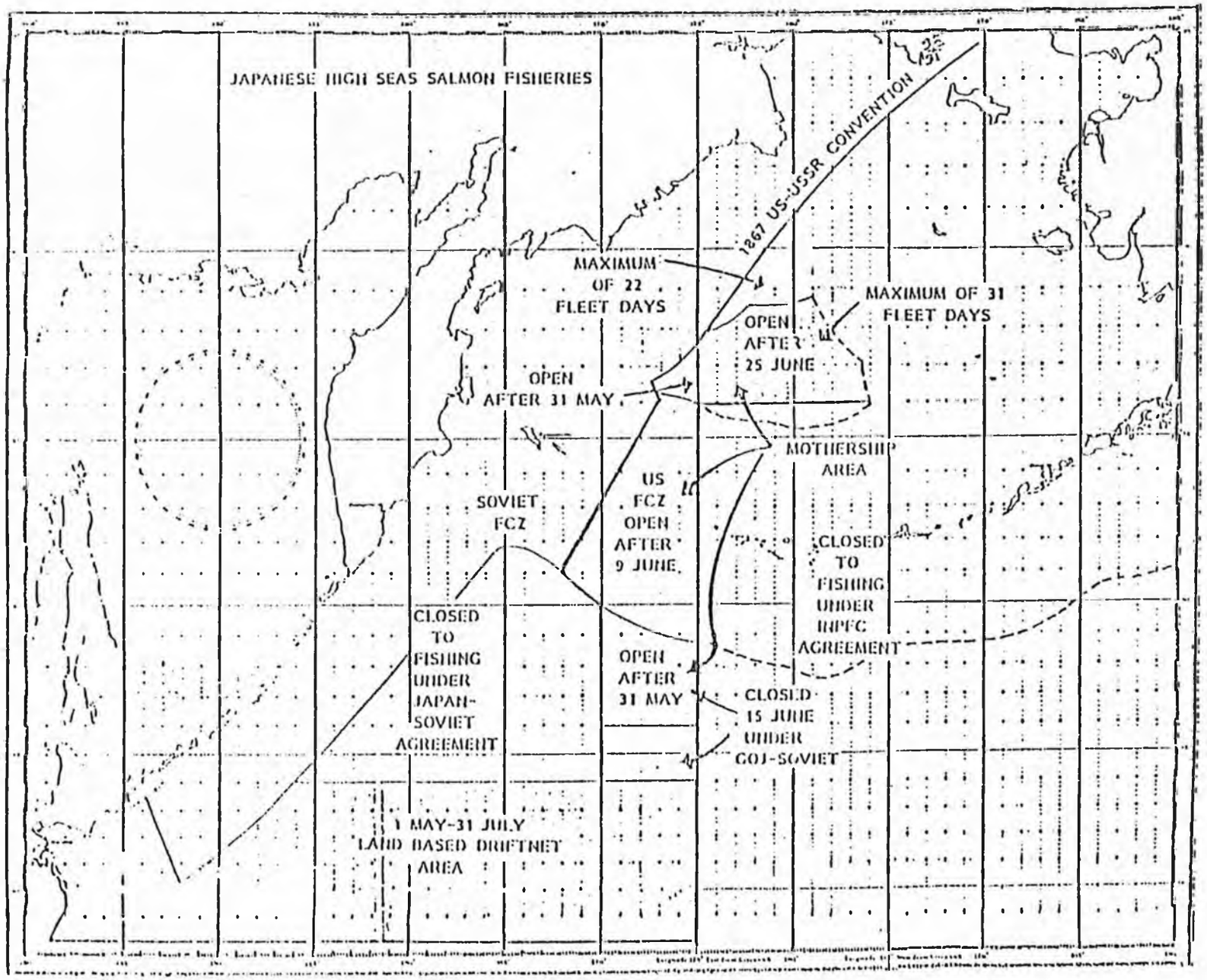
equates to no increased effect in FCZ

Improved catch me[illegible]

Landbased

1986 Move eastern boundary from 175 E to 174 E

Research, enforcement, monitoring provisions.


JAPANESE HIGH SEAS SALMON FISHERIES
1867 US-USSR CONVENTION
MAXIMUM OF 22 FLEET DAYS
MAXIMUM OF 31 FLEET DAYS
OPEN AFTER 25 JUNE
OPEN AFTER 31 MAY
MOTHERSHIP AREA
US FCZ OPEN AFTER 9 JUNE
SOVIET FCZ
CLOSED TO FISHING UNDER INPFC AGREEMENT
CLOSED TO FISHING UNDER JAPAN-SOVIET AGREEMENT
OPEN AFTER 31 MAY
CLOSED 15 JUNE UNDER GOJ-SOVIET
1 MAY-31 JULY LAND BASED DRIFTNET AREA

UNITED FISHERMEN OF ALASKA

Jack Cadigan
Executive Director
907-586-2820
1-800-478-FISH

17 MARCH 1986

FOR IMMEDIATE RELEASE

SALMON INTERCEPTION ON THE HIGH SEAS

The recent developments towards final agreement between the Japanese and United States over the dispute of High-seas salmon interception is both "good news" and "bad news", as described today by Bob Blake, President of United Fishermen of Alaska (UFA), the umbrella organization representing virtually all commercial fishing interests in Alaska. The "good news" is that there has been an agreement reached. The "bad news" is that it only achieves in very small part what the UFA, believed to be both necessary and achievable.

Salmon is a highly valuable, highly renewable, resource. The tentative agreement between the U.S. and Japan concerning the matter of high seas fisheries is one which accomplishes little and accomplishes it too slowly. It is from that level of disappointment that any basis for optimism or rays of encouragement must be sought. "It is from being realistic that the position of UFA is one whereby although we cannot endorse the agreement or sing its praises, we realize that the miniscule gains made overall are nonetheless gains," according to Blake. According to Blake, that is why UFA does do not endorse or support any efforts being made by environmental or other groups who may seek to pressure the U.S. or Canada into refusal to sign the tentative agreement. "One slice of bread off the loaf is better than no bread at all," said Blake.

What does the agreement include which provides any encouragement to UFA? The agreement moves the land based fisheries one degree (a little less than 60 miles) further west. Specifically, no salmon fishing by the land-based fleet will take place east of 174 degrees East longitude. This will help - maybe not much - but it will help. More importantly, the agreement includes provision for U.S. Coast Guard enforcement of that line. This is an important feature which United Fishermen of Alaska consider critical. We now seek to insure that in a climate of shrinking dollars in Washington D.C. we don't find that feature moot by virtue of the Coast Guard not getting the fuel money it needs to do the job. That may seem a remote possibility only to those unaware of how ridiculously restricted the service is in that regard. The Japanese have agreed to assign six of their own enforcement vessels in the area, and to permit a U.S. observer aboard. We think there should be a U.S. observer on each Japanese enforcement vessel, and that observer should be a Coast Guard officer, not a summer employment collegian. However, since the agreement requires the fishing vessels to report by radio if they are within 50 miles of the line, and assuming there will be a high endurance U.S. Coast Guard cutter on scene, plus U. S. air surveillance, as provided for in the agreement, we do not foresee difficulties in the enforcement aspects.

Another very critical part of the agreement is the increase in tagging and biological samplings by Japanese Research ships in critical fishing areas, as well as the presence of U.S. scientists aboard to insure concurrence between the two countries of the scientific data achieved. This feature, as well as the onboard observer aspects, must be fully funded by the federal government for the next three to five years to provide the needed basis for renegotiations called for in 1990 under the terms of the agreement.

Thus the most critical parts of the agreement are those that provide the data base needed by this country for meaningful negotiations to take place in five years. "Without good solid enforcement by the Coast Guard, without the presence of U.S. scientists and observers, we will be right where we were in the talks preceding this agreement - unable even to agree on the data base!" said Blake.

There are other features of the agreement which are both complex and accomplish less than expected by UFA. Specifically, there is an area commonly called "the donut" which is in the central Bering Sea and encircled by U.S. and Soviet 200 mile limits. This fairly circular region is split by the 180th meridian (International Date Line, and essentially lies within the 1867 U.S.-Russia Convention Line. The current agreement would incrementally phase out all Japanese High Seas salmon fishing on this side of 180th meridian by 1988, and all fishing in the entire "donut" by 1994. Blake said "We certainly had hoped for a speedier timetable than that, but again, at least it is a phase out!"

The area of really no movement at all is in the slot which runs near Attu (which is 173 degrees East longitude), at the end of the Aleutian Chain. This is also the area of primary concern to environmentalists. In this area fishing will continue, essentially unabated, indefinitely.

The Japanese salmon fleets are large and efficient. There are four "High Seas" companies, each owning a mothership and servicing 40 to 50 gillnetters or a total of 172 catcherboats. The land-based fleet numbers over 200 medium and nearly 700 small driftnetters. There is also a fleet of 125 driftnetters and 171 longliners which fish salmon in the Sea of Japan. The total crew of these fisheries totals over 17,000 persons. UFA concern centers upon the impact these Japanese Salmon fisheries have on North American salmon, not Asian salmon. In a closing summary, Blake said: "The crux of the dispute has been over the numbers of returning Alaskan salmon caught by these fisheries, and how the treaties can be redefined to reduce that number reasonably close to zero. Since data supported by the U.S. did not even remotely resemble the data provided by the Japanese, there was scant foundation to even begin talks. ~~Our tying in allocations of groundfish in an entirely different fisheries, and one which involves some U.S. joint venture fisheries, was a weak and ill-conceived bargaining chip.~~ The area in which we take heart focuses on the enforcement, research, and on-board observer aspects of the agreement. Even though we also consider the on-board observer arrangement weaker than it should be, we believe that if the U.S. fully uses its ability under the agreement to police the effort and achieve the necessary data for rengotiation in five years, we will have the potential capability at that time to accomplish our most reasonable goals. As the strongest voice of the fishing industry in Alaska, we now can only say "This agreement is better than nothing...but not by much!"

UNITED FISHERMEN OF ALASKA

Jack Cadigan
Executive Director
907-586-2820
1-800-478-FISH

POLICY OF UFA RE: SALMON INTERCEPTION ON THE HIGH SEAS

THE UFA TOTALLY SUPPORTS HJR 68 AND SJR 47, AND HERE'S WHY!

The recent developments towards final agreement between the Japanese and United States over the dispute of High-seas salmon interception is both "good news" and "bad news". The "good news" is that there has been an agreement reached. The "bad news" is that it only achieves in very small part what the UFA, believed to be both necessary and achievable.

Salmon is a highly valuable, highly renewable, resource. The tentative agreement between the U.S. and Japan concerning the matter of high seas fisheries is one which accomplishes little and accomplishes it too slowly. It is from that level of disappointment that any basis for optimism or rays of encouragement must be sought. It is from being realistic that the position of UFA is one whereby although we cannot endorse the agreement or sing its praises, we realize that the miniscule gains made overall are nonetheless gains. That is why UFA does do not endorse or support any efforts being made by environmental or other groups who may seek to pressure the U.S. or Canada into refusal to sign the tentative agreement. One slice of bread off the loaf is better than no bread at all.

What does the agreement include which provides any encouragement to UFA? The agreement moves the land based fisheries one degree (a little less than 60 miles) further west. Specifically, no salmon fishing by the land-based fleet will take place east of 174 degrees East longitude. This will help - maybe not much - but it will help. More importantly, the agreement includes provision for U.S. Coast Guard enforcement of that line. This is an important feature which United Fishermen of Alaska consider critical. We now seek to insure that in a climate of shrinking dollars in Washington D.C. we don't find that feature moot by virtue of the Coast Guard not getting the fuel money it needs to do the job. That may seem a remote possibility only to those unaware of how ridiculously restricted the service is in that regard. The Japanese have agreed to assign six of their own enforcement vessels in the area, and to permit a U.S. observer aboard. We think there should be a U.S. observer on each Japanese enforcement vessel, and that observer should be a Coast Guard officer, not a summer employment collegian. However, since the agreement requires the fishing vessels to report by radio if they are within 50 miles of the line, and assuming there will be a high endurance U.S. Coast Guard cutter on scene, plus U. S. air surveillance, as provided for in the agreement, we do not foresee difficulties in the enforcement aspects.

Another very critical part of the agreement is the increase in tagging and biological samplings by Japanese Research ships in critical fishing areas, as well as the presence of U.S. scientists aboard to insure concurrence between the two countries of the scientific data achieved. This feature, as well as the onboard observer aspects, must be fully funded by the federal government for the next three to five years to provide the needed basis for renegotiations called for in 1990 under the terms of the agreement.

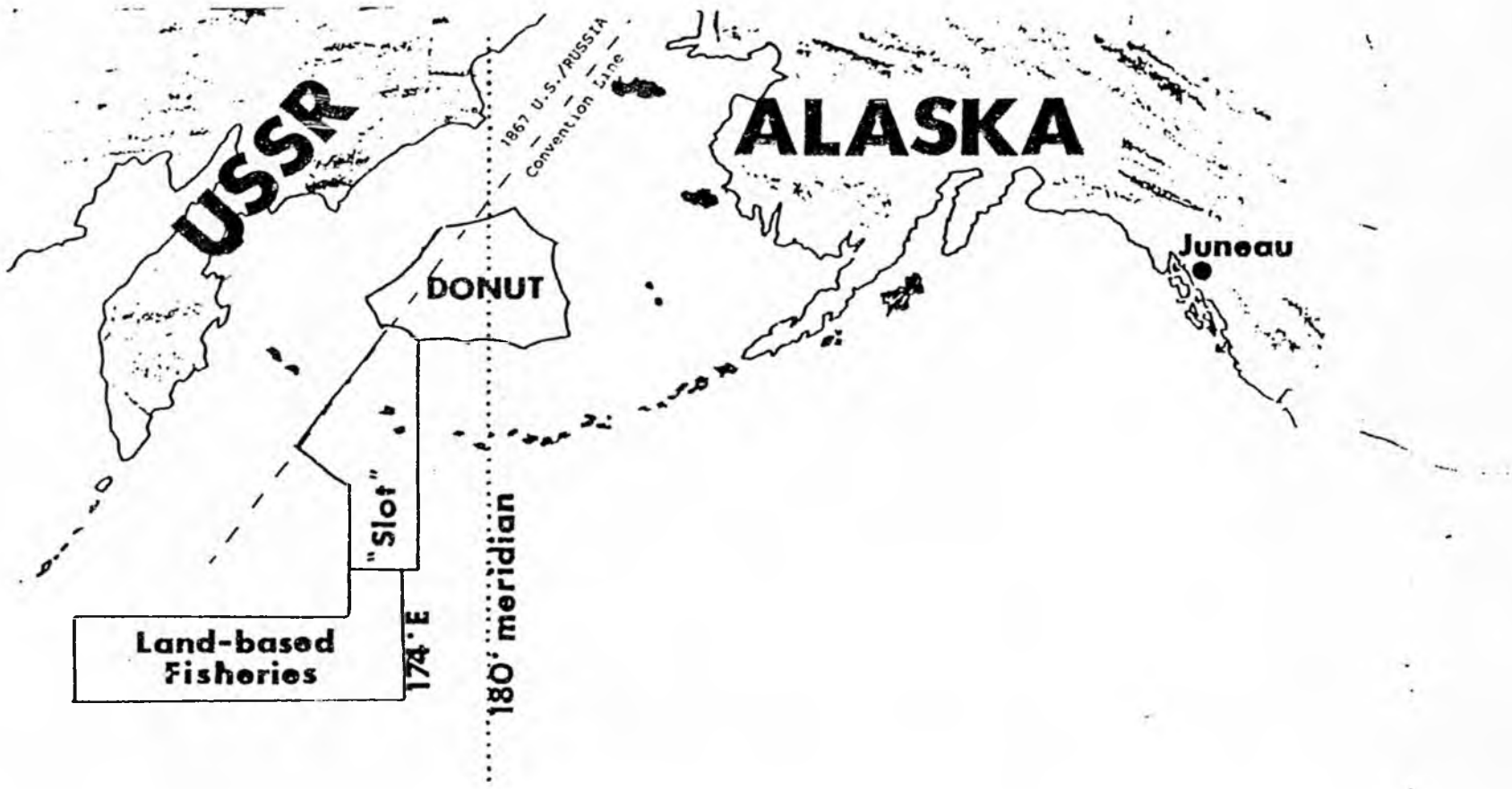
Thus the most critical parts of the agreement are those that provide the data base needed by this country for meaningful negotiations to take place in five years. Without good solid enforcement by the Coast Guard, without the presence of U.S. scientists and observers, we will be right where we were in the talks preceding this agreement - unable even to agree on the data base!

There are other features of the agreement which are both complex and accomplish less than expected by UFA. Specifically, there is an area commonly called "the donut" which is in the central Bering Sea and encircled by U.S. and Soviet 200 mile limits. This fairly circular region is split by the 180th meridian (International Date Line, and essentially lies within the 1867 U.S.-Russia Convention Line. The current agreement would incrementally phase out all Japanese High Seas salmon fishing on this side of 180th meridian by 1988, and all fishing in the entire "donut" by 1994. UFA certainly had hoped for a speedier timetable than that, but again, at least it is a phase out!

The area of really no movement at all is in the "Slot" which runs near Attu (which is 173 degrees East longitude), at the end of the Aleutian Chain. This is also the area of primary concern to environmentalists. In this area fishing will continue, essentially unabated, indefinitely.

The Japanese salmon fleets are large and efficient. There are four "High Seas" companies, each owning a mothership and servicing 40 to 50 gillnetters or a total of 172 catcherboats. The land-based fleet numbers over 200 medium and nearly 700 small driftnetters. There is also a fleet of 125 driftnetters and 171 longliners which fish salmon in the Sea of Japan. The total crew of these fisheries totals over 17,000 persons. UFA concern centers upon the impact these Japanese Salmon fisheries have on North American salmon, not Asian salmon. The crux of the dispute has been over the numbers of returning Alaskan salmon caught by these fisheries, and how the treaties can be redefined to reduce that number reasonably close to zero. Since data supported by the U.S. did not even remotely resemble the data provided by the Japanese, there was scant foundation to even begin talks. The area in which we take heart focuses on the enforcement, research, and on-board observer aspects of the agreement. Even though we also consider the on-board observer arrangement weaker than it should be, we believe that if the U.S. fully uses its ability under the agreement to police the effort and achieve the necessary data for rengotiation in five years, we will have the potential capability at that time to accomplish our most reasonable goals. As the strongest voice of the fishing industry in Alaska, we now can only say: "This agreement is better than nothing...but not by much!"

UFA considers it important that Alaskan legislators fully understand what this issue is about, and why it is **IMPERATIVE** that a united position be established. We must all try to insure that the federal government provide the required law enforcement and scientific support needed, or else the agreement is useless!


USSR
1867 U.S./RUSSIA Convention Line
ALASKA
Juneau
DONUT
"Slot"
Land-based Fisheries
174° E
180° meridian

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 14, 1986

The Honorable Frank Murkowski
United States Senate
709 Hart Building
Washington, DC 20510

Dear Frank,

Enclosed is a copy of a letter I have just sent to Secretary of State George P. Shultz regarding the recently concluded agreement between the United States and Japan on the salmon interception issue. As reflected in the letter, we are very disappointed that the State Department was unable to achieve our objective of eliminating significant interceptions of Alaskan salmon in this current round of negotiations. I believe that we must continue to work on further measures to reduce these interceptions.

The agreement does contain measures which will assist Alaska fishermen if properly implemented. This implementation will require that the provisions of the agreement are adequately enforced and that the research and monitoring provided for in the agreement are carried out as a basis for further negotiations on the reduction of interceptions.

I have requested that the State Department seek funding to support these activities. I have enclosed a copy of a research and monitoring proposal drafted jointly by the University of Washington, the National Marine Fisheries Service, and the Alaska Department of Fish and Game which gives their assessment of the program which would be required to fulfill the U.S. obligations under the agreement and put us in the best position for future negotiations regarding regulation of these fisheries. I do not have a specific proposal related to enforcement funding. However, as indicated in my letter to the Secretary, I believe that the presence of a U.S. Coast Guard vessel in the eastern part of the land-based fishing area for the entire season is essential to both the enforcement of the line and monitoring of the activities of this fleet. Provisions in the agreement call for an exchange of observers only if we have an enforcement presence in the area.

I would like to request that you support State Department funding of these activities. I know that we all want to see

an end to the interceptions of our salmon by Japan on the high seas, and that this agreement takes us only part way toward this objective. However, even this movement will have no value either directly to our fisheries or in terms of supporting future negotiating positions unless we can assess to what degree these measures reduce interception levels. This can be done only if, in fact, the United States can hold up our end of the cooperative research, management, and enforcement provisions called for in the agreement.

I believe that the agreement currently before us must be viewed only as a partial step toward our ultimate objective of eliminating significant interception of North American salmon. We still have a long way to go. While we certainly want the enforcement and other limitations imposed on the Japanese fisheries this summer, we must immediately start to focus on what our direction should be, both within and outside the terms of this agreement, to continue the campaign to end interceptions. To this end, I would like to propose forming a work group to advise us on strategies to follow in this campaign. I believe the Alaska members of our delegation to this last ten months of talks could form the nucleus of such a group since it included congressional staff, Alaska fishermen, state officials, and industry representatives. Interested Alaska legislators may also wish to take part or have staff participate. I would hope such a group could meet within the next month so that we can initiate required action as soon as possible. Programmatic support and planning for the 1986 season, for example, need to be accomplished in the immediate future.

I plan to initiate this type of brainstorming session within the state and hope that you or your staff will be available to participate. I would appreciate any suggestions you might have on timing relative to your ability to participate.

Thank you for your assistance.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

Enclosure

(Identical letter sent to Senator Ted Stevens and Congressman Don Young.)

cc: Senator Arliss Sturgulewski
Senator John C. Sackett
Representative Johne Binkley
Representative Kay Wallis
Representative Adelheid Herrmann
Representative Peter Goll
Representative Richard Shultz
Commissioner Don W. Collinsworth
Mr. Ron Jolin
Mr. James Campbell
Mr. Deming Cowles
Mr. Clement V. Tillion
Mr. Harold Sparck
Mr. Henry Mitchell
Mr. Rick Lauber

Brief Outline of FY 86-87 U.S. High Seas Salmonid Research Program Under Terms of U.S./Japan Agreement Initialed March 8, 1986

Additional funding for U.S. high seas salmonid research is required to intensify continent-of-origin research in response to the new research mandate included in the March 8, 1986 U.S./Japan bilateral agreement on salmon interceptions and scheduled to be included in a new INPFC Annex, Memorandum of Understanding or Agreed Minutes.

Additional funding of $80K for FY 86 will provide the following activities:

1. Hiring of two scientific observers who will travel to Japan and board Japanese salmon research vessels to collect supplementary scale samples and biological data during June cruises of the vessels in the landbased fishery area and vicinity.

2. Purchase of an image analyzer system to facilitate more rapid measurement of scales and simplify statistical analyses. The new, "state-of-the-art" system will also possibly be purchased by Japan's Far Seas Fisheries Research Lab; coordination of scale studies between the two agencies will be greatly enhanced if they both have the same scale measurement equipment.

3. Purchase of IBM-compatible micro-computers for use in data management, statistical analysis, word processing and report preparation, graphics preparation, and project administration.

4. Necessary travel to attend the extraordinary meeting of the INPFC; the present project budget does not provide for the unforeseen travel expense.

5. Collection of whole-fish steelhead from 1986 Japanese commercial and research operations.

6. Intensified efforts to increase high seas tag recovery from Asian and North American coastal fisheries.

In general, the major features permitted by supplementary funding in FY 86 will be limited (due to late timing) observer participation in Japanese salmon research vessel cruises, and gearing-up for intensified scale pattern analyses in 1986-90.

Funding of $400K for FY 87 will provide for the following activities in addition to those routine and ongoing activities covered by existing, base-level funding:

1. Two scientific observers on two cruises of Japanese salmon research vessels in 1987, for the purpose of collecting supplementary scale samples and data, and possibly tissue samples for parasitological and electrophoretic analysis.

2. A trip by a senior staff member to Kamchatka for, in part, collection of high quality scale samples for use in new scale pattern analyses, and communication with Soviet personnel regarding scale sampling requirements. Such a trip would be made under provisions of the 1986 U.S./U.S.S.R. Bilateral Talks on Fisheries Assessments, and would be contingent on cooperation and invitation from the U.S.S.R.

3. New scale pattern analyses (with special emphasis on coho, chinook, and sockeye salmon) to determine continental origins of salmonids migrating in the high seas fishery area. These studies will be largely contingent on the success of obtaining improved scale samples for the U.S.S.R.

4. Full laboratory analysis of 1985-86 whole-fish steelhead samples, including parasitological and food habitat analyses, and initial efforts to obtain gene frequency data for stock groups not sampled previously, and data on infestation rate of origin indicating parasites in Pacific Northwest steelhead.

5. Further intensified efforts to increase high seas tag recovery, including perhaps television advertisements.

6. Continued collection of whole-fish salmonid samples from Japanese commercial and research vessel operations.

Bilateral USG/GOJ Salmon Accord, 1986
Estimated Funding Requirements for Research Annex II

Projected addition to FY 86 budget to begin intensified continent of origin studies on salmonids.

Salary (including benefits)		
1.	Perm. Biol. II	6,630
2.	2 observers to work 1 month at sea on FAJ research vessels	4,000
3.	Student helpers to process 1985 steelhead parasite samples	4,320
		14,950
Travel		
1.	To attend extraordinary INPFC meeting, April 1986	3,000
2.	2 observers to travel to and from Japan for boarding research vessels	3,400
		6,400
Supplies and Services		
1.	Transport of 1986 steelhead whole fish	5,000
2.	PC software	1,000
3.	Fisheries Cost Center	1,200
4.	Misc.	1,286
5.	Extra CDC computer time	2,000
		10,486
Equipment		
1.	Image analyzer for scale processing	25,000
2.	PC and ancillary hardware	11,000
		36,000
Indirect Costs		12,164
	FY 1986 Total =	$80,000

Projected Budget for FY 87

Salaries	
Faculty	7,000
Biologist 5 FT	129,640
Res. Asst. (steelhead parasites and electr.)	10,800
Temp. Biol. I (U.S.S.R.)	2,369
Temp. Biol. I (2 for FAJ RV's for 2½ months)	8,459
Student hourly:	5,000
	163,468
Benefits	33,387
Travel	
U.S.S.R.	3,000
Japan Observers	3,500
INPFC Meetings	3,000
Alaska	4,000
Alaska + local for R.A.	3,000
Misc.	3,500
	20,000
Supplies and Services	41,000
Cost Center	18,000
CDC Computer Time	6,000
Equipment (misc. micro hardware)	4,000
Total Direct Costs	$285,855
Indirect Costs	$114,586
Total Budget	$400,441

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 14, 1986

The Honorable George P. Shultz
Secretary of State
U.S. Department of State
Washington, DC 20520

Dear Mr. Secretary:

The recently concluded agreement between negotiators regarding U.S./Japan high seas salmon relationships falls far short of our ultimate goal of eliminating significant interceptions of North American salmon and steelhead by the high seas fleets of Japan. By our calculation, the agreement in its present form will provide no more than a 20 to 30 percent reduction in the interceptions currently being made by these fleets over an eight year period.

The agreement does not reduce interceptions in the U.S. Exclusive Economic Zone. It does not move the land-based fishery ten degrees farther west as required to eliminate significant interceptions, nor does it remove the Japanese from the central Bering Sea as quickly as we desired.

I am extremely disappointed that you were unable to achieve greater reductions in Japan's time and area of fishing, particularly in the land-based fishery. Although an improvement over the current situation, the agreement is not an acceptable end to the interception problem. We must continue to seek further movement in reducing interceptions.

While the phase-out of Japanese fishing in the central Bering Sea has long been an objective of ours, I believe that the primary value of this agreement is the improved enforcement, research, and catch monitoring programs jointly agreed to by the two countries. These aspects of the agreement serve as the basis for future evaluation of what further measures will be required to eliminate significant interceptions.

The agreement contains the appropriate language regarding research and monitoring, but the governments of both countries

must commit resources to ensure that this program goes forward. Since the U.S. State Department has committed to this process in lieu of immediate regulatory relief from interception, I believe that it is the obligation of the State Department to help secure the funding to support this agreement.

The National Marine Fisheries Service, Fisheries Research Institute at the University of Washington, and the Alaska Department of Fish and Game are cooperating in drafting proposals for research and monitoring, including the presence of U.S. observers on Japanese research and enforcement vessels. These proposals will be provided to Ambassador Ed Wolfe for his information.

I respectfully request that you strongly support Administration funding of these proposals. I also request that you support funding of the presence of a U.S. Coast Guard cutter in the eastern part of the land-based fishery during the entire season that this fishery is open. I believe only by this type of cooperative research, monitoring, and enforcement presence can we ensure that the government of Japan will reciprocate and that any long-range benefits of this agreement can be realized.

Thank you for your consideration of my views.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

FRANK H. MURKOWSKI
ALASKA

COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON FOREIGN RELATIONS
COMMITTEE ON VETERANS AFFAIRS
SELECT COMMITTEE ON INDIAN AFFAIRS
SELECT COMMITTEE ON INTELLIGENCE

United States Senate
WASHINGTON, DC 20510

WASHINGTON OFFICE
(202) 224-6665

ANCHORAGE OFFICE
701 C STREET, BOX 7
(907) 271-3735

FAIRBANKS OFFICE
101 12TH AVENUE, BOX 7
(907) 456-0233

JUNEAU OFFICE
FEDERAL BUILDING, BOX 1847
(907) 586-7400

February 27, 1986

The Honorable Adelheid Herrmann
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Adelheid:

Thanks for sending me a copy of your letter to Secretary Shultz concerning ongoing negotiations between Japan and the United States on the salmon interception issue. Despite recommendations from U.S. Secretary of Commerce Malcolm Baldrige, the Alaska Congressional delegation, and most Alaskan groups, the State Department has thus far not been willing to effectively withhold bottomfish allocations from Japan. After seven rounds of bilateral talks Japan still does not appear willing to sit down and work out a solution.

However, that battle is not over yet. I met this week with Ambassador Negraponte, who is directing the State Department negotiations on this issue and expressed my disappointment over their inability to use allocations to bring about a solution to this problem. I told him that I have not lessened my resolve to solve the problem and that I expected the State Department to be a tough negotiator and come up with a winning solution.

The State Department's reluctance to withhold bottomfish allocations has disturbed me, and it is apparent that they are weighing the salmon interception issue with other foreign policy questions. I am also aware of the extent to which Japan is willing to retaliate if we withhold allocations. I believe that Japan may try to disrupt our salmon industry if the State Department does completely withhold bottomfish allocations. I will continue to resist the State Department's attempts to trade away this issue, and Japan's delaying tactics.

This is a very complicated and difficult issue. It has risen to a high level of visibility within the governments of both Japan and the United States, and we are now closer to a resolution than at any time since 1978. It is important not only

for Alaska's salmon fishermen whose fish are being intercepted, it also addresses very important questions regarding high seas resource management. The resolution of the interception problem will also affect future Japan-U.S. fishery development plans, both directly and indirectly.

Please be assured that I will continue to work to resolve the salmon interception issue.

Sincerely,

Frank H. Murkowski
United States Senator

CITY COUNCIL OF MOUNTAIN VILLAGE

P.O. Box 204 • Mountain Village, Alaska 99632

Honerable Ted Stevens
United States Senate
Washington D.C. 20510

Dear Honerable Stevens,

I am writing you and asking for support for Western Alaskan Fishermen.

Fishing is the only source of income for our village, fishermen within my village, and others. The fish is also the major source of food for our families.

We would like to see all interceptions fisheries on the 200 mile area removed immediately. This includes all gill net fisheries and trowl fleets.

We immediately request that the United States and other foreign trowlers be deceased within the South Unimek Shumgin Islands.

I am requesting this due to the reason that the Western Alaska Fishermen are suffering from hardship this summer season. The majority of the fishermen did not make enough monies this summer to pay for their winter and summer bills.

Majority of the fishermen would not like to depend on welfare to make ends meet with their families.

We need your immediate assistance and support for our Western Alaska Fishermen. Quyana.

Sincerly,

Harry Wilde, Sr.,
Chairman of AVCP

cc: Honorable Governor Sheffield
Honorable Frank Murkowski
Honorable Donald E. Young
Sen. John C. Sacket
Sen. Frank Ferguson
Rep. Kay Wallis
Rep. John Fuller
Rep. Albert Adams
Pep. Adelheid Herrmann
Pres. AVCP Gene Peltola
Calista Fisheries Ray Christiansen

HW/las

REPRESENTATIVE
PETER GOLL



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

May 8, 1985

TO: All Legislators

FROM: Representative Peter Goll

SUBJECT: High Seas Interceptions of Alaska Salmon

Attached are three letters of support for House Joint Resolution 43, which requests the federal government to take quick action to halt the interception of Alaska salmon on the high seas by Japanese gillnet fleets. The widespread support for this effort is reflected in the letters from the state's two largest sportfishing associations and Alaska's largest group representing commercial fishermen.

Renegotiation of the treaty with Japan affecting the high seas fisheries is currently under consideration in Washington, D.C. Quick passage of this resolution will help trigger a decision.

I respectfully request your support of this resolution in the waning days of the session.

Alaska Sportfishing Association

3605 Arctic Blvd., Suite 300 • Anchorage, Alaska 99503

TO: All Alaska Legislators DATE: May 7, 1985

SUBJECT: HJR 43

The Kenai River Sportfishing Association urges your support of HJR 43 which calls for a halt to the High Seas interception of Alaska Salmon by Japanese fishing fleets.

The most recent figures estimate that the Japanese mothership and the landbased salmon gill net fleets intercepted one million, ninety-nine thousand Alaska bound salmon in 1983. These interceptions include 106,000 King Salmon from South Central Alaska spots; more than the combined sport, commercial, and subsistence catches in Cook Inlet that year. An end to these destructive fisheries would greatly enhance recreational sportfishing opportunities in Cook Inlet.

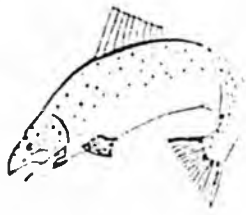
We urge immediate passage of this important resolution.

Hunter Fuchs



KENAI RIVER SPORTFISHING ASSOCIATION

3301 "C" Street Suite 202
Anchorage, Alaska 99503
Phone (907) 276-1451



May 7, 1985

Kenai River Sportfishing Association urges your support of HJR #43 which calls for a halt to the high seas interception of Alaska salmon by Japanese fishing fleet. The most recent figures estimate that the Japanese mother ship and the land based salmon gill net fleet intercepted 1,990,000 Alaska bound salmon in 1983. These interceptions include 106,000 King Salmon from southcentral Alaska spots more than the combined Sport, Commercial and Subsistence catches in Cook Inlet that year.

An end to these destructive fisheries would greatly enhance recreational sportfishing opportunities in Cook Inlet. We urge immediate passage of this important resolution.

by Bob Gerdon, Jr.
acting President of Kenai River Sportfishing Association

UNITED FISHERMEN OF ALASKA

319 Seward Street, Suite #10
Juneau, Alaska 99801-1198
(907) 586-2820

Cass M. Parsons
Executive Director

May 8, 1985

Honorable Peter Goll
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Goll:

The United Fishermen of Alaska (UFA) wish to inform you of our position and recommendations regarding the interception of Alaskan salmon on the high seas. The UFA is the largest association of commercial fishermen in the United States, and represents fishermen throughout Alaska. The UFA are strongly opposed to any foreign interception of Alaskan salmon, since interception decreases the ability of our hardworking members to earn a living.

Of course, it is not just the fishermen who are hurt by the loss of Alaska bound salmon. The over 40,000 people employed in the seafood industry, and the many thousands of other people employed in the transportation and service industries which support the commercial fishing harvest, are all negatively impacted. This needless loss of Alaskan salmon also translates into a loss of revenues to the State and local governments.

Just one example of interception is the 106,000 king salmon which have been denied to commercial, recreational, and subsistence users in Southcentral Alaska. The UFA would like to know what, if any, benefit the State of Alaska enjoys in exchange for this subsidization of the foreign fleet?

The UFA supports HJR 43 because the complete elimination of high seas interception is long overdue. For this reason, we recommend that the State of Alaska request the U.S. State Department to immediately begin negotiations which will bring an end to high seas interception.

Sincerely,

Cass M. Parsons

Cass M. Parsons
UFA Executive Director

Introduced: 5/2/85
Referred: House Special Committee
on Fisheries and Resources

IN THE HOUSE BY GOLL

HOUSE JOINT RESOLUTION NO. 43

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the interception of Alaska salmon on the high seas.

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

WHEREAS Alaska's salmon represents one of the state's most important renewable resources; and

WHEREAS more than 40,000 people are employed in commercial fish processing and harvesting jobs in the state during the salmon season, and thousands of other people in the transportation and service industries in the state benefit from this economic activity; and

WHEREAS the Alaska commercial salmon industry contributes millions of dollars annually to state and local government treasuries through taxes, assessments and fees, and salmon fishing and processing represent the economic backbone of many coastal communities in the state; and

WHEREAS salmon is a mainstay in the diets of state residents who harvest the great fish by rod and reel, net, and fishwheel for personal and family consumption; and

WHEREAS recreational fishing for salmon is an experience enjoyed by most state residents each year; and

WHEREAS an estimated 1,099,000 salmon originating in the state were harvested on the high seas by Japanese fishing fleets during 1983; and

WHEREAS these high seas interceptions deprived state residents of commercial fishing opportunities valued at $16,100,000 to fishermen, and $30,500,000 to seafood processors; and

WHEREAS this lost opportunity cost the state treasury between $482,452 and $804,086 in lost fisheries business tax revenue alone; and

WHEREAS the interception figures include 106,000 chinook salmon from South Central Alaska stocks, more than the combined catches of recreational, commercial and subsistence fishermen in Cook Inlet in 1983; and

WHEREAS Japanese fishermen catch billions of pounds of fish and shellfish in the state's 200-mile fishery conservation zone each year;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the U.S. Department of State to immediately begin negotiations that will lead to complete elimination of high seas interceptions of salmon of Alaska origin; and be it

FURTHER RESOLVED that the Alaska State Legislature respectfully requests U.S. Congress to adopt amendments to the Magnuson Fishery Conservation and Management Act preventing nations that intercept Alaska-bound salmon on the high seas from receiving allocations to harvest groundfish in the United States' 200-mile fishery conservation zone.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; the Honorable George Schultz, Secretary of State; the Honorable Robert Dole, U.S. Senate Majority Leader; the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; to Mr. William Gordon, assistant administrator for fisheries, National Marine Fisheries Service; and to Mr. James Campbell, chairman, North Pacific Fishery Management Council.

2/25/83 Draft

Briefing Paper

High Seas Salmon Interception Issues

The primary issues currently being considered relative to limitation of high seas salmon interceptions are: (1) elimination of high seas salmon interceptions by the directed landbased and mothership salmon fishing fleets of Japan; (2) improvement of the data on incidental catches of salmon by the high seas squid fishery of Japan; (3) better data and regulation of high seas incidental and/or directed salmon catches by the "squid fisheries" of Korea and Taiwan and; (4) assessment of incidental salmon catches in groundfish trawl fisheries and possible means of reducing such interceptions while allowing for full development of U.S. groundfish fisheries.

Brief issue papers with supporting documents for each one of these areas of concern are enclosed.

Japanese High Seas Salmon Fisheries

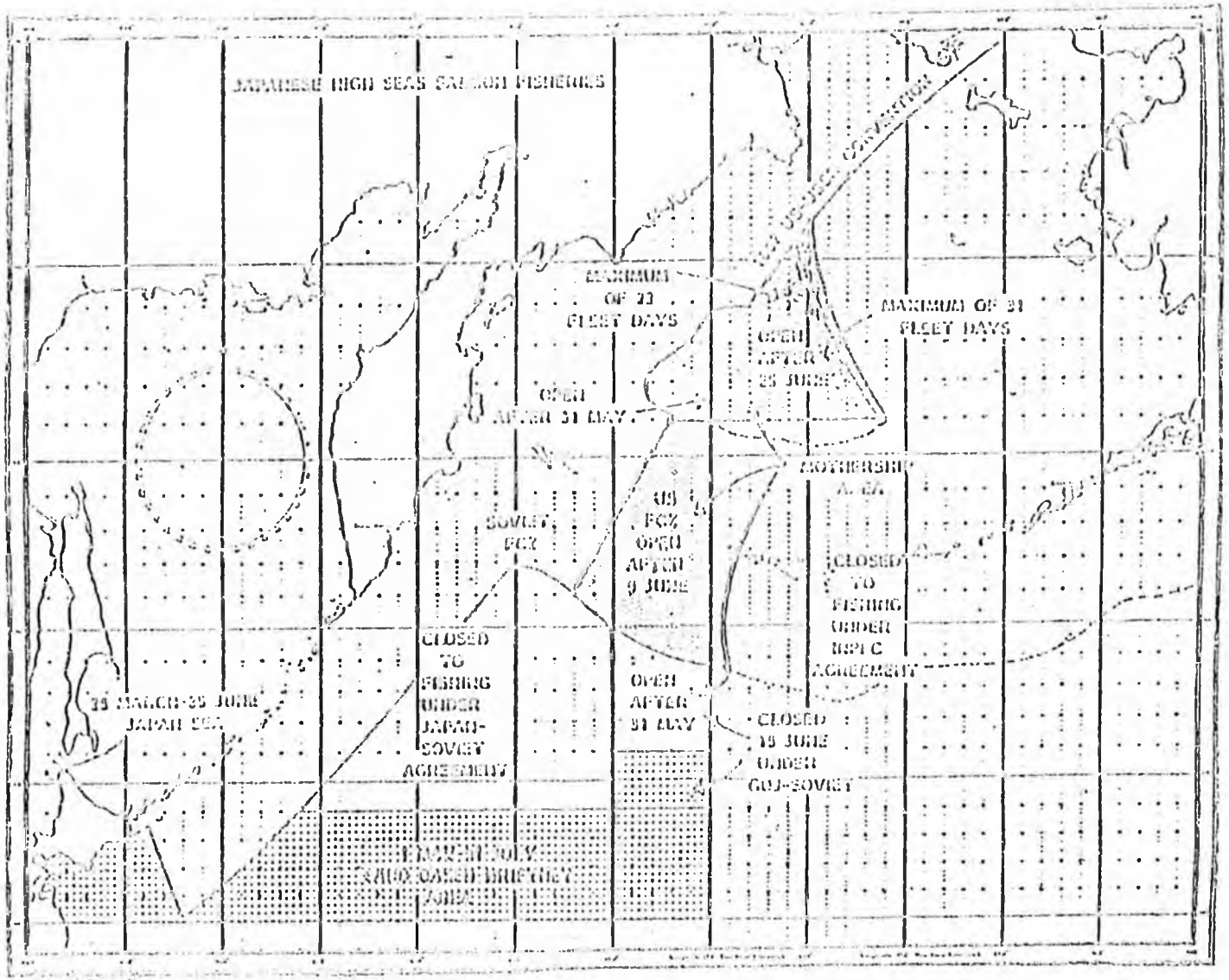
- Two Japanese high seas salmon gillnet fisheries operate in the north Pacific Ocean and the Bering Sea. The Japanese motherships fishery operates primarily in the Bering Sea, both within our fisheries conservation zone and outside it. The Japanese landbased fishery operates in the north Pacific Ocean south of the area of operation of the motherships fleet. (Map 1 enclosed).

- Between them, these two gillnet fisheries catch 20-25 million salmon annually, the preponderance of which are of Asian origin (mostly U.S.S.R.). The Japanese pay a fee to Russia to fish Asian salmon on the high seas, but the Soviets do not allow them to fish within their fisheries conservation zone.

- The combined harvest of these two fleets used to be in the 40-60 million catch range prior to the renegotiation of the International North Pacific Fisheries convention and harvest limit reductions in the Japan/U.S.S.R. salmon agreement.

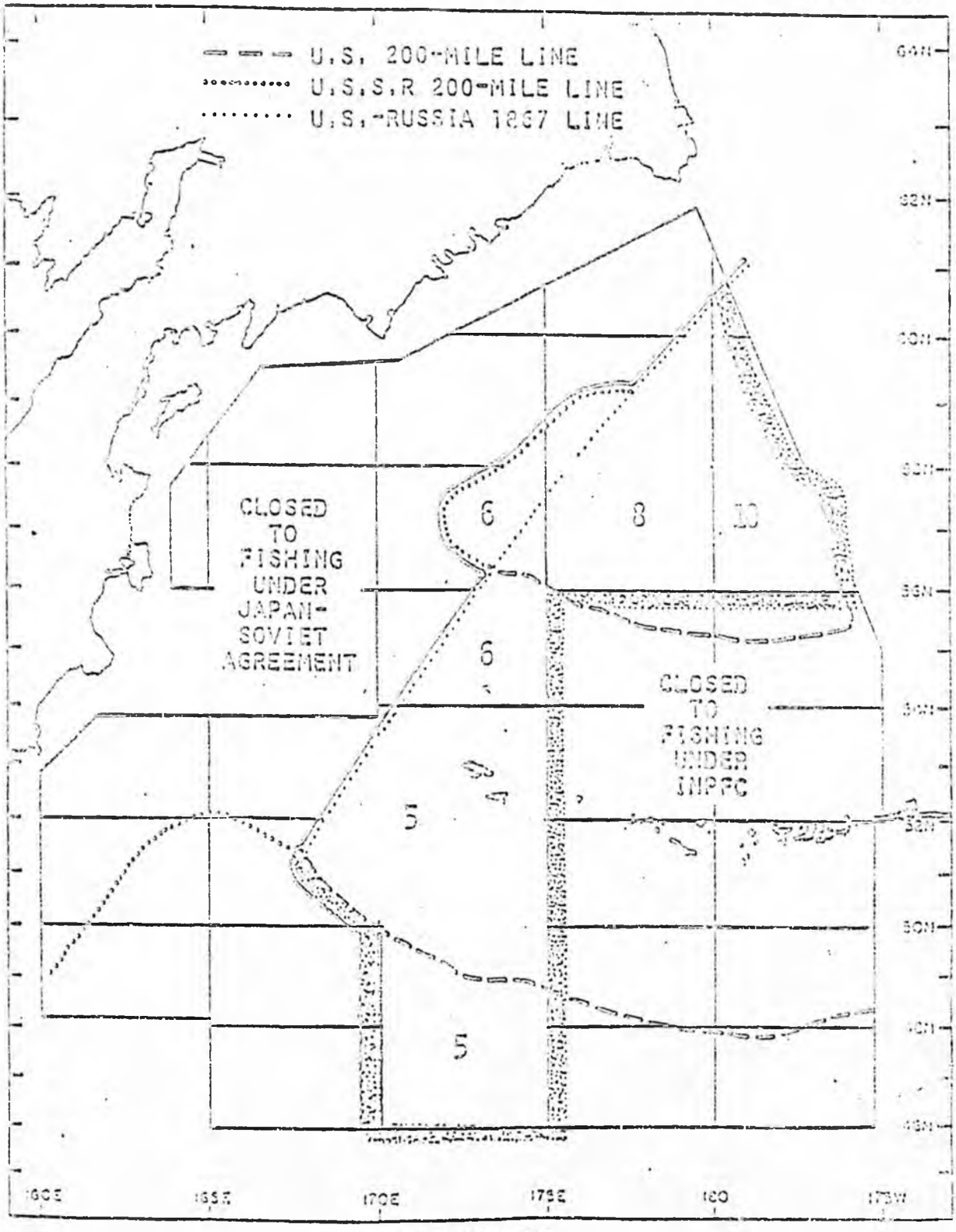
MAP 1

Annex C – Map of the Japanese High-Seas Salmon Fishery



MAP 2

JAPANESE MOTHERSHIP FISHING AREAS



INPFC SUBAREAS

- The recent renegotiation of International North Pacific Fisheries convention between Canada, Japan, and the United States in 1978 resulted in a substantial reduction in the harvest of North American salmon by the Japanese. Japanese mothership fishery had to pull back ten degrees of longitude to the west and incurred further time and area restrictions (Map 1 and 2). Landbased fisheries likewise pulled back ten degrees farther to the west (to 175° east longitude). Interceptions of Bristol Bay sockeye salmon in the mothership fishery alone had been estimated to average at least 2½ million salmon per year. Losses were probably quite a bit higher due to unreported dropout loss from the gillnets. These catches have been reduced to about 200-400 thousand per year. Reductions in catches of coho, chinook and chum salmon of Alaskan origin were also realized by these changes in fishing area.

- Levels of interception in the landbased area were less clearly defined prior to the renegotiation of INPFC, but were known to be significant. The western pullback of ten degrees did move this fleet out of areas of known concentrations of North American sockeye and coho salmon, mostly from western Alaska.

While the renegotiation did reduce interceptions, it was known that North American salmon were still being caught in both the landbased and mothership fleets in the new fishing areas. We knew, for example, that western Alaskan chinook were vulnerable to harvest in the mothership fishery. Four years ago, the Japanese undertook voluntary measures after discussions with fishermen from western Alaska to limit their chinook harvest in the mothership fleet to an average of 110,000 chinook per year to prevent peak catches of the sizes that occurred in 1980 when 704,000 total chinook were taken, of which over half were of western Alaskan origin. This agreement, however, did not reduce the average level of chinook harvest that has been experienced since 1970, with the exception of the 1980 season. There were also problems with ensuring that it was being enforced, particularly in regards to discard of chinook from catcher boats fishing outside our fisheries conservation zone. Discarded fish would still be lost to the U.S. harvest, but it would not count against the Japanese quota. We initially had problems in getting adequate observer coverage on catcher boats within our fisheries conservation zone and the Japanese would not allow observers on catcher boats outside our FCZ (in the central Bering Sea).

Recent information from a study contracted by the department to the Fisheries Research Institute, University of Washington, showed that substantial number of chinook in both the landbased and mothership fleets were of Alaskan origin and, surprisingly, a large proportion were from central Alaska, as well as western Alaska. The catch of central Alaska salmon may average about 100,000 chinook per year, which exceeds the annual catch for recreational, commercial and subsistence fishermen in this area. Again, these figures do not take into account unreported loss due to dropout from the gillnets. Also, these fish are being taken as immatures weighing an average of only five or six pounds compared to an inshore average as adults of 20 pounds or more.

The United States has consistently maintained that high seas salmon fisheries should be eliminated for a variety of reasons, including the fact that stocks are fully utilized in coastal areas, stocks are broadly mixed on the high seas, making management for conservation difficult, and significant wastage occurs in high seas salmon fisheries because of the harvest of immature fish and the dropout from high seas gillnets.

Prior to the INPFC meeting November 1984, the Governor sent letters and issued press releases regarding this

interception with a request that INPFC take action to halt it. Since INPFC is composed of United States, Canada, and Japan, and the action has to have concurrence of all three parties, no specific action was possible at this meeting. The U.S. did, however, informally indicate to the Japanese that it thought that bilateral discussions should be started as soon as possible to reduce these interceptions. The U.S. also made formal strong statements regarding its position on the elimination of high seas salmon interceptions. Resolutions in this regard were also forthcoming from the Board of Fisheries and the North Pacific Fisheries Management Council.

- Subsequently, the State Department has indicated interest in initiating an appropriate bilateral with Japan, but no specific dates have been set. The North Pacific Council, at its February meeting in Sitka, passed a motion that the initiation of such a bilateral should take place as soon as possible and that successful culmination of discussions was a prerequisite to future Japanese allocations of groundfish species.

- While we have not taken an official negotiating position on this issue, an appropriate phased reduction would take care of most of our concerns. Obviously,

timetables and degree of cutback would be areas of negotiation, but the thrust would be to eliminate all areas of known salmon interception on the high seas. We have no problem with the Japanese harvesting Asian salmon if the Russians and their own coastal fishermen want them to do so. They should be able to conduct those harvests adequately within their own and the Russian 200 mile zones.

Japanese High Seas Squid Fishery

- The Japanese initiated in 1978 a high seas gillnet for squid in the north Pacific (map enclosed). A jig fishery for squid has existed for some time to the west of 170° east in the North Pacific. The gillnet fishery consists of over 500 vessels fishing over 10,000 miles of a net which of a size that will retain salmon. As far as we can determine, the jig fishing does not harvest salmon.

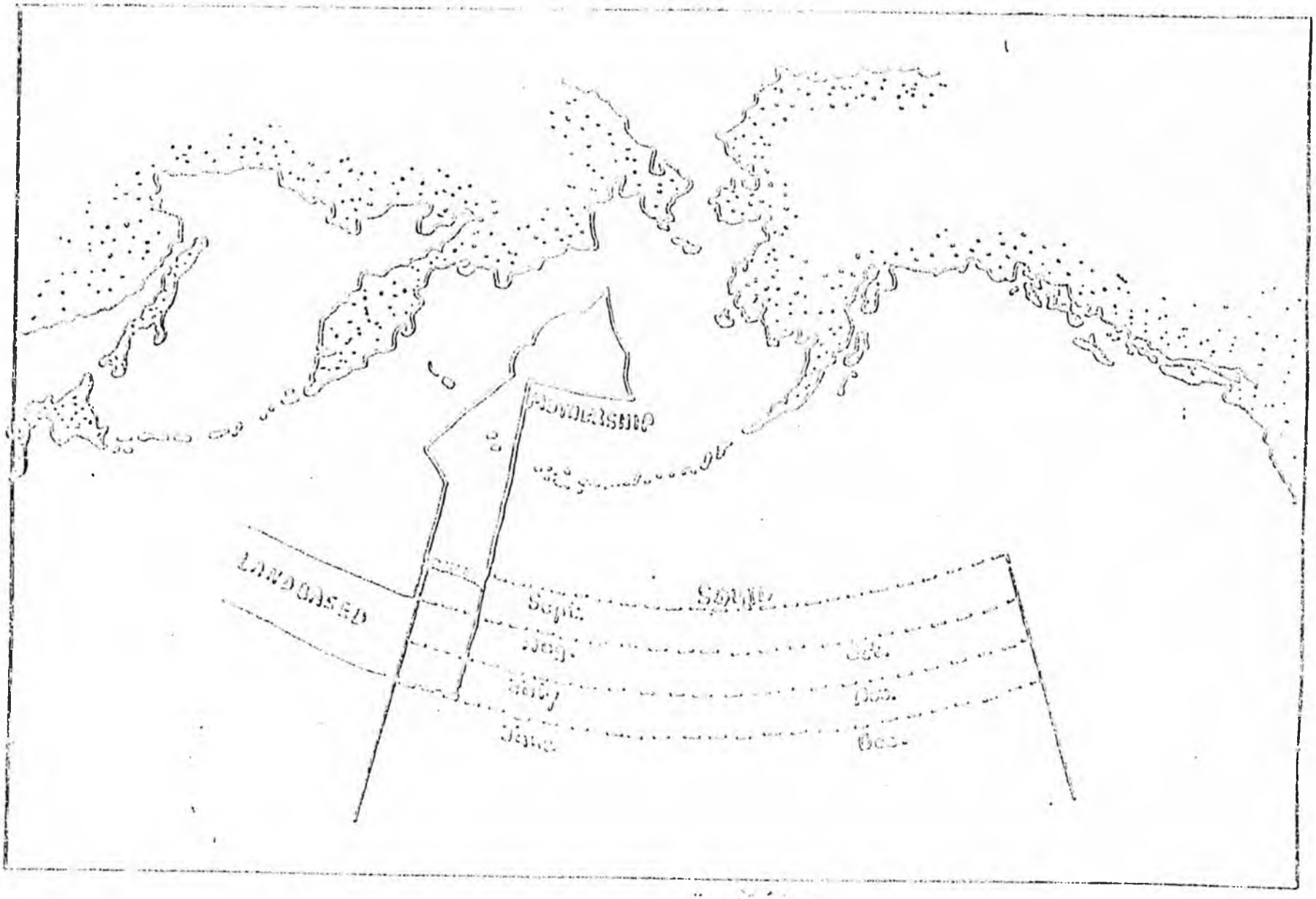
- Japanese regulations for this fishery include that it is limited between 145° west and 170° east longitude, the northern boundary shifts by month to keep the squid fishing effort south of the cooler waters of high salmon abundance, catching or possession of salmon or trout is prohibited and that the vessels and gear must be marked.

- The fishery in 1981 caught 82,000 tons of squid. Salmon incidental catch is unknown, but reported to be low.

- U.S. scientists estimate that if Japanese vessels adhere to their own northern boundary limitations on

MAP 5

Japanese Squid Fishery



their fisheries, salmon catches would be minimal, based on our knowledge of salmon distribution relative to water temperature.

- We know from observation of some squid vessels fishing outside the Japanese prescribed areas, that enforcement is not very good in this fishery.

- Observation of vessels landing squid in Japan have not revealed any retention of salmon except what has appeared to be for crew members personal use, and that in very low volume. These observations, however, have not been very comprehensive.

- Our position on the Japanese high seas squid fishery should be that: (1) they adhere to and enforce their current management scheme; (2) that we continue to press for better data on catch and effort by time and area, and; (3) that where possible, we redirect research efforts to test fish in the area occupied by this fleet to reconfirm the presence or absence of salmon.

- In general, we, at this stage, have no major quarrel with the Japanese squid fishery regulations, simply with their enforcement.

- There is a problem with derelict gear from all gillnet fisheries that has been the subject of recent workshops, but no final solution.

Taiwanese "Squid" Fishery

- Dramatic growth has occurred in this fishery. It has gone from 12 vessels in 1980 to 140 vessels in 1983. Since the Taiwanese are not part of any formal international body (such as INPFC) with the United States and do not have formal diplomatic relations with the United States; there has been no standard mechanism for exchange of data. We have some data on catch effort and area of fishing, but it is not complete or consistant by year.

- This fishery obviously targeted to some degree on salmon in both 1983 and 1984. In 1983, reports received in the United States indicated that some 50-60 Taiwanese vessels switched from squid to target on salmon and in the latter part of the season may have landed as much as 100 tons of salmon per boat. Apparently these salmon were mostly pink and chum salmon, presumably of Asian origin. Steps were taken to encourage Japan to ban imports of salmon to Japan from Taiwan. These efforts supposedly met with a varying amount of success.

In 1984, the Taiwanese announced their intention of prosecuting a directed high seas salmon fishery supposedly in areas similar to the western parts of the Japanese landbased and mothership fisheries. A storm of controversy ensued and the United States was successful in getting Japan and Korea to ban import of salmon from Taiwan. No specific data on catch effort and location of harvest has been provided us for this summers' fishery, either for squid effort or salmon. One industry estimate was that up to 4 million salmon may have been taken. Probably most of these were of Asian origin, but undoubtedly North American salmon were present in the catch.

The Taiwanese have recently presented a proposal to the United States government on the conduct of their squid fisheries in response to the U.S. concerns. They are willing to adopt a series of domestic regulations that they believe will reduce salmon harvest of North American stocks to an acceptable level. We have reviewed this proposal, both in the form discussed at the council meeting in Sitka and in the final document recently presented to the State Department in Washington, D.C. We believe this to be a major step in the right direction, but the measures proposed are not adequate.

- We believe that the Taiwanese should adopt the same restrictions that the Japanese government has in place for their squid fishery. Of particular importance is that the northern boundary of this fishery be kept south of the colder waters normally inhabited by salmon, in the same way the Japanese squid fishery is required to do. We believe that retention of salmon of east or west of 170° east should be prohibited. Our North American salmon occur to the west of 170° east and to allow their retention would be inconsistent with our desire to move directed high seas salmon fisheries completely off the high seas back within each nations 200-mile zone. Moreover, vessel licensing, documentation of gear identification, which are all parts of the Japanese regulations, should also be adopted by the Taiwanese.

  We should also demand better data on catch and effort by time and area in this fishery.

- Further discussions on the Taiwanese proposal are ongoing in Washington, DC with our State Office and congressional delegation. They may suggest modifications of their proposal along the lines suggested above.

Korean Squid Fishery

- This fishery has a minor amount of effort compared to either the Taiwanese or Japanese fisheries and does not receive as much attention as the other two. We have no documentation that this fishery is targeting on or taking significant numbers of salmon incidentally. As a matter of fact, we have very little information on the fishery catch, effort or area of fishing.

- We need to obtain better information on the Korean squid fishery and should request that this information be provided through the appropriate diplomatic channels. If necessary, the request for this type of information should be tied to the allocation process in the North Pacific Fisheries Management Council.

- It seems appropriate that Korea should be requested to adopt the same regulations that govern the Japanese high seas squid fishery, including the non-retention of salmon. Although they are not a party to the International North Pacific Fisheries Commission or other international fisheries conventions, they must come to the United States for joint venture and directed groundfish fisheries within our fisheries

conservation zone. Adoption of the Japanese regulatory scheme for squid fishery should be made part of the total package.

Incidental Salmon Harvests in Joint Venture and Foreign Groundfish Fisheries

The aggregate harvest of salmon, particularly chinooks, in the various groundfish fisheries off Alaska is substantial. Although it varies by year, incidental harvests in the Gulf of Alaska, largely in asscciation with pollock fisheries, probably average 20,000 to 50,000 salmon per year (mostly chinook). Harvests in the Bering Sea are probably the same order of magnitude. In 1984, it is estimated that 76,000 salmon (mostly chum) were taken incidentally in Bering Sea foreign and joint ventures trawl fisheries. Although foreign fisheries salmon harvests have been reduced by agreement with the North Pacific Council, domestic and joint venture salmon harvests are not clearly regulated. The aggregate chinook incidental harvest in the Gulf and Bering Sea may be over 75,000 fish in some years.

The state should continue to pursue with the Federal Government the need to collect better statistics on this salmon by-catch and to explore means to reduce it.

Governor's Presentation at October 9
Senate Hearings on Pelagic Gillnetting

Mr. Chairman, I want to thank you for the opportunity to testify on the issue of high seas pelagic gillnetting. This issue is of vital importance to the conservation and management of our marine resources, but even more importantly, it is vital to the economic and social well-being of Alaskans.

The interception of Alaskan salmon on the high seas by the pelagic gillnets of the landbased and mothership fleets of Japan costs the citizens of our state approximately 20 million dollars per year in lost harvest opportunity. This massive economic loss is made even more severe by the fact that it disproportionately falls on the citizens of western Alaska, and particularly the Arctic-Yukon-Kuskokwim region, which is one of the most economically depressed regions in the United States. The average annual individual income of fishermen in the Arctic-Yukon-Kuskokwim is only about $5,000. Additionally, because of their low cash income, citizens of this area are extremely dependent on these salmon resources for subsistence use.

In addition to the conservation/allocation concerns for our salmon fishery, these high seas fisheries are also destructive to other marine resources such as marine birds and marine mammals. The number of these animals destroyed

by high seas gillnets, both when fishing and when lost at sea, is staggering.

The legal justification for this foreign fishing is found in the International North Pacific Fisheries Convention (INPFC). The treaty, first signed in 1952, by the United States, Canada, and Japan, established a line at 175° W. longitude in the north Pacific Ocean and Bering Sea as the eastern limit of Japanese fishing. The United States, at that time, thought the line would be an effective division point between stocks of Asian origin and stocks of North American origin. Subsequent research, conducted under the auspices of INPFC, conclusively proved that this was not true, and in fact, massive interceptions of North American, primarily Alaskan, salmon were occurring each year. The INPFC required concurrence of all three national sections to implement any change in the so-called abstention line. Consequently, for 26 years, these interceptions continued over the protest of the United States.

Upon the enactment of the Magnuson Act in 1976, the INPFC, which allowed a foreign fishery on our domestic salmon stocks in our fisheries conservation zone, automatically came into conflict with domestic law. Under the terms of the Magnuson Act, the INPFC had to be renegotiated, and this was done in 1978. From the U.S. perspective, the new protocol was negotiated in order to allow the Japanese to

continue its harvest of Asian salmon on the high seas without impacting Alaskan (and Canadian) stocks. The result was the movement of the Japanese fleets westward towards the Asian coast and out of what were known at that time to be the most important interception areas, particularly those areas affecting Bristol Bay sockeye salmon. Future relationships regarding groundfish harvests off our coast and pressure by the Soviets to reduce the Japanese salmon quota probably contributed to the success of this renegotiation.

This 1978 renegotiation of the convention moved the abstention line ten degrees farther to the west (an average of 450 miles). The Japanese mothership fishery was allowed to continue fishing in the far western part of our fisheries conservation zone in exchange for concessions made on the high seas outside of the zone. There is no doubt that this movement substantially reduced interceptions of North American salmon, but it did not eliminate them.

While the renegotiation in 1978 was a step in the right direction, it was not intended by the United States, or the State of Alaska, to be the end of the journey toward rational management of Alaska's salmon stocks. That goal was, and continues to be, an end to interception of North American salmon on the high seas. These fish stocks are fully utilized and intensely managed. The State of Alaska,

alone, spends over $40 million annually on management and enhancement of its salmon resources. The salmon fishery forms the backbone of our largest industry and is the basic sustenance of life in many of our rural communities.

Alaska has had a long and productive relationship with Japan. Our fisheries resources have supplied Japanese markets, and we believe this relationship is beneficial to both our country and theirs.

However, we cannot accept a situation under which resources managed and nurtured by our citizens are harvested for gain by others without our direct involvement or agreement. The magnitude of the impacts is difficult to assess accurately, due to the mixed stock nature of the fishery, dropout deadloss from gillnets and resource damage from derelict gear. Enforcement is extremely difficult, and catch reporting accuracy in some of these fisheries is problematic with regards to both species and area of catch. This makes an annual management regime responsive to regional needs unlikely.

While a great deal of research has been done on the continent of origin of salmon in the high seas fishing areas, every new study reveals interception impacts we previously had not imagined. Research conducted since the renegotiation of INPFC in 1978 shows that the Japanese

landbased and mothership fisheries still intercept a significant number of Alaskan salmon. Last fall, in Alaska, the publication of a study, funded jointly by the State and federal government and conducted by the University of Washington caused considerable furor. That study concluded that not only western Alaska chinook were being intercepted, but also chinook from central Alaska, southeast Alaska, and British Columbia. While Japanese scientists may debate the exact level of these interceptions, every new study simply confirms that the interceptions are worse than previously expected. The only answer is to develop a specific stock management plan that ensures that these salmon of North American origin return to Alaskan waters to benefit Alaskans instead of being intercepted by Japanese fishermen on the high seas.

Historically, the Japanese salmon fisheries were coastal and concentrated on Asian salmon. When Japanese fishery operations were forced to leave Soviet soil, they moved offshore. In addition, Japan's own natural salmon runs were depleted by overfishing and habitat destruction, forcing the Japanese industry to look elsewhere for a new source of fish. The logical solution was to move further offshore where the same salmon, often as immatures, could be harvested.

From our viewpoint, any high seas fishery is wasteful and a poor management alternative. However, if Japan and the U.S.S.R. agree on such management of Asian stocks, that is their concern. The Japan-Soviet agreement has moved Japanese fleets further offshore, out of the Soviet zone and even out of major high seas areas outside their zone, causing the Japanese to expand their effort in areas where North American salmon occur, and resulting in our involvement in the issue.

At the same time its Asian fleets were being moved offshore, Japan was working to become a world leader in aquaculture. Japan's hatchery-bred salmon runs are the envy of many nations, with coastal harvests of hatchery salmon now exceeding the total harvests by the high seas salmon fleets. These hatchery returns did not exist when the high seas fleets first put to sea. If maintenance of Japanese high seas ~~fisheries~~ fishing fleets is a high priority, as has been claimed, why are they not given access to their own resources? Obviously, the answer is that Japanese coastal fishermen and their cooperatives are no more receptive to high seas interceptions of their managed stocks than are Alaskans to theirs.

This is the situation we face: to catch Asian salmon under an Asian salmon agreement, and under a fee schedule quota system for Asian salmon, the Japanese fleets fish in the

U.S. zone, the central Bering Sea, and areas to the east of 160° longitude in the north Pacific. These areas would not be necessary to catch Japan's Asian salmon catch quota, except that Japan has agreed with the U.S.S.R. to stay out of the most logical areas to harvest Asian salmon.

The time has come to phase out this anachronistic approach to salmon management. Japan claims it is not harvesting Alaskan salmon on purpose, but only to claim its share of Asian salmon based on a historical right to these stocks. Since there is a Japanese fishery in the U.S. zone, but not in the Soviet zone, these arguments have apparently not persuaded the Soviet government. All three countries recognize the legitimate right of the state of origin to manage its anadromous resources, even on the high seas. The time has come to match these legal principles with action.

We are sympathetic to the economic dependence of Japanese high seas salmon fishermen in this fishery created by years of Soviet agreements and under the INPFC. We believe a phased approach to eliminating interceptions is acceptable to give Japan time to seek a more Asian-oriented salmon fishery regime from the Soviets, or the movement of Japan's fleets into alternative fisheries. This process must not, however, be allowed to drag on indefinitely. We believe that there <u>are</u> solutions to allow continued harvest of Asian stocks without significant interception of North Amercian

salmon, but they will require considerable change in the present arrangement including movement of Japanese fleets farther to the west.

Towards this end, the United States this year has initiated bilateral discussions with the government of Japan on ways to reduce or eliminate North American interceptions. To date, the Japanese have not responded with any constructive proposals or actions which they are willing to take to eliminate these interceptions. While further talks are scheduled, continued adamant refusals to recognize our concerns and our legal authority to manage these stocks must be taken into account when considering other cooperative programs with Japan on the harvest and development of the non-salmon fisheries off our coast. As Japan is the largest harvester of groundfish resources from the continental shelf off Alaska, further allocations of these other fisheries to Japan should certainly take into account Japanese cooperation, or the lack of it, on the salmon interception issue.

I must emphasize that the high seas interception of Alaskan salmon resources is one of the most aggravating political issues in Alaska. We continue to get communications on almost a daily basis from Alaskan fishermen complaining about high seas interceptions. Progress must be made toward

solution of this issue. The economic well-being of many of our residents is at stake.

Thank you for this opportunity to express our views.

Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

January 24, 1986

The Honorable George Shultz
Secretary of State
Main State Department Building
2201 C Street NW
Washington, D.C. 20520

Dear Mr. Secretary:

The House Special Committee on Fisheries and other members of the Alaska House of Representatives are extremely disappointed at the collapse of bilateral negotiations with Japan on the high-seas interception of Alaska salmon.

Despite the best efforts of the state and federal governments to convince the Japanese that the interceptions represent a serious foreign policy issue, the Japanese government and fishing industry apparently are refusing to negotiate in good faith.

Our concern is compounded by the Japanese threats to impose sanctions against U.S. seafood imports. We find this situation particularly distressing since Japan is a most important trading partner with both the U.S. and Alaska. The possibility of Alaska seafoods being embargoed is of great concern to all Alaskans, but our resolve in the interception issue is not lessened by threats.

The State of Alaska has been extremely careful to manage its commercial fisheries to avoid interceptions of salmon stocks destined to Japan, even though many of these fish pass through our waters. At the same time, the Japanese have been allowed to catch and purchase billions of pounds of groundfish in our 200-mile zone each year.

Last May, members of the Alaska Legislature approved a resolution urging the federal government to withhold allocations of groundfish from the Japanese if they should fail to negotiate in good faith on the interception issue. This position was endorsed by the North Pacific Fishery Management Council in December when it recommended a withholding of all groundfish allocations to the Japanese until progress has been made in the salmon interception talks.

We believe that now is the time for the United States to hold firm on the interception issue. We urge you to withhold the Japanese groundfish allocations until real progress has been accomplished toward a cutback in the high seas take of Alaska salmon by Japan's high-seas gillnet fleets.

Furthermore, we endorse Governor Sheffield's proposal to deduct 10,000 metric tons of groundfish already allocated to the Japanese as an expression of the U.S. dissatisfaction with the breakdown of the negotiations. These 10,000 ton penalties should continue on a monthly basis until the Japanese return to the bargaining table.

In conclusion, Mr. Secretary, we urge you to withhold all further groundfish allocations to the Japanese until the salmon interception issue is resolved.

Sincerely,

Rep. Peter Goll
Chairman
House Fisheries Committee

Rep. Johne Binkley
Member
House Fisheries Committee

Rep. Katie Hurley
Member
House Fisheries Committee

Rep. Roger Jenkins
Member
House Fisheries Committee

Rep. Andre Marrou
Member
House Fisheries Committee

Rep. Mike Navarre
Member
House Fisheries Committee

Rep. Dave Thompson
Member
House Fisheries Committee

Rep. Ben Grussendorf
Speaker of the House

Rep. Adelheid Herrmann
Co-Chairman
House Resources Committee

Rep. Richard Shultz
Co-Chairman
House Resources Committee

F. Kay Wallis

Dick Shultz
His Uncle George

Rep. F. Kay Wallis

Rep. Jack Fuller

Rep. Al Adams

Rep. H.A. Boucher

Rep. Bette Cato

Rep. Don Clocksin

Rep. Virginia Collins

Rep. Sam Cotten

Rep. Mike Davis

Rep. Jim Duncan

Rep. Steve Frank

Rep. Walter Furnace

Rep. Max Gruenberg, Jr.

Rep. Alyce Hanley

Rep. Niilo Koponen

Rep. Ronald Larson

Rep. Terry Martin

Rep. M. Mike Miller

Rep. Mike W. Miller

Rep. Drue Pearce

Rep. Fritz Pettyjohn

Rep. Randy Phillips

Rep. Marco Pignalberi

Rep. Pat Pourchot

Rep. Steve Rieger

Rep. John Ringstad

Rep. John Sund

Rep. Mike Szymanski

Rep. Robin Taylor

Rep. Rich Uehling

RESOLUTION 11-22-85-05
ESKIMO WALRUS COMMISSION

WHEREAS, the Eskimo Walrus Commission is made up of 17 walrus hunting communities from Northern, Northwestern, and Western Alaska; and

WHEREAS, the villages are depending on the renewable resources, like salmon and marine mammals to sustain their needs and to acquire their livelihood; and

WHEREAS, the Bering Sea is used by the marine mammals for breeding, pupping and is a prime habitat; and

WHEREAS, the foreign and American fisheries in the Bering Sea, within the 200 mile limit, has a high salmon fisheries and interception, both with salmon and marine mammals, with no penalties and no rules;

NOW THEREFORE BE IT RESOLVED THAT the State of Alaska and the United States government make restrictions so the foreign incindential catch for salmon fisheries and the take of marine mammals be zeroed out and that domestic fisheries for salmon be reduced to a level that do not affect the coastal residents and that marine mammals are not taken.

Jonah K. Tokeinna, Chairman

ATTEST:

Table 7. Economic impact to the western Alaskan commercial fisheries from Japan's highseas salmon gillnet fisheries, 1983.

Species	Catch estimates: Japanese	Catch estimates: Intercepted	Exvessel Value (1)	First Wholesale Value
Chinook	265,000	100,000	5,886,000	11,183,000
Sockeye	2,483,000	427,000	4,121,000	7,831,000
Coho	1,419,000	355,000	3,041,000	5,778,000
Chum	5,476,000	44,000	229,000	435,000
Total	9,643,000	926,000	13,277,000	25,227,000

(1) Calculated using yield per pound multiples from INPFC Document 2558 and inshore price per pound data
Note 1. Western Alaska interceptions were derived from figures for the United States by applying factors of 0.5 for chinook, and 1.0 for the sockeye, coho and chum data of Table 8.
Note 2. Salmon originating from the drainages of the Arctic, Yukon Yukon and Kuskokwim (A-Y-K) contribute only part of the western Alaska totals which also include salmon from Bristol Bay. Very roughly, 67% of the chinook, 0.05% of the sockeye, 67% of the coho and 80% of the chum of western Alaska come from A-Y-K drainages.

Table 8. Economic impact to the United States commercial fisheries from Japan's highseas salmon gillnet fisheries, 1983.

Species	Catch estimates: Japanese	Catch estimates: Intercepted	Exvessel Value (1)	First Wholesale Value
Chinook	265,000	200,000	11,772,000	22,366,000
Sockeye	2,483,000	427,000	4,121,000	7,831,000
Coho	1,419,000	355,000	3,041,000	5,778,000
Chum	5,476,000	44,000	229,000	435,000
Pink	15,632,000	?	?	?
Total	25,275,000	1,026,000	19,163,000	36,410,000

(1) Calculated using yield per pound multiples from INPFC Document 2558 and inshore price per pound data

MEMORANDUM

TO: Representative Herrmann
FROM: Janet Fries
DATE: May 3, 1985

RE: ADDITIONAL INFORMATION ON SALMON INTERCEPTION BY FOREIGN FLEETS

The April 25 memorandum on salmon interceptions prepared by the House Research Agency presents a somewhat low estimate of the number of Alaska salmon intercepted by foreign fleets in the U.S. Fishery Conservation Zone (FCZ) off the coast of Alaska and on the high seas. The following information should be taken into account, when evaluating this data.

With the growth of the joint venture fleet in the FCZ, in which U.S. trawlers are delivering groundfish to foreign processors, an increasing number of salmon interceptions has been reported in recent years. In 1984, the total number of salmon intercepted in foreign and joint venture trawl operations in the FCZ, all of which are estimated to be of Alaska origin, was 144,200. This is up from an estimated 56,600 reported for 1983 in the House Research Agency (HRA) report; thus, the rate of reported salmon interceptions in the FCZ has more than doubled in one year. This increase may be due, in part, to an increase in reporting by joint ventures over foreign fishing vessels, indicating that the actual number of interceptions is even higher than this. The majority of those fish that were intercepted in the Bering Sea were chums, while the majority of those intercepted in the Gulf of Alaska were king salmon. Table 1 shows the breakdown of these figures.

Table 1.

Estimated Numbers of Salmon Intercepted by Joint Ventures and Foreign Fishing Operations in the Fishery Conservation Zone off Alaska in 1984[1]

	Bering Sea	Gulf of Alaska	Total
Joint Ventures	60,573	58,900	119,473
Foreign Trawlers	12,627	12,100	24,727
TOTALS	73,200 (mainly chums)	71,000 (mainly kings)	144,200

1. Source: Jim Glock, North Pacific Fishery Management Council. Telephone communication, 5/3/85.

In addition, the estimates given in the HRA report for the Japanese high seas fishery may be conservative, due to the potential inaccuracy of reporting by the Japanese. Also, as noted in the report, estimates do not include those salmon intercepted by the Taiwanese and other foreign fishing fleets, which may be considerable.

When evaluating these figures, it is important to look at them in comparison to the Alaska statewide salmon catch. The current interception estimates of Alaska king salmon by the Japanese high seas salmon fisheries[2] and the trawl fisheries[3] in the FCZ, combined, is approximately 350,000. That is about 42% of the statewide king salmon catch of 830,000 king salmon[4] in 1983. This represents a significant loss of a valuable resource to every salmon user group in the state.

2. Using 1983 estimates, since 1984 estimates are not yet available.
3. Using 1984 estimates.
4. Using 1983 figures, since 1984 figures are not yet available.

In addition, the estimates given in the HRA report for the Japanese high seas fishery may be conservative, due to the potential inaccuracy of reporting by the Japanese. Also, as noted in the report, estimates do not include those salmon intercepted by the Taiwanese and other foreign fishing fleets, which may be considerable.

[redacted]n evaluating these figures, it is important to look at the historical [redacted]rspective, as well. In 1980, an estimated 734,000 salmon were caught [redacted] the high seas by the Japanese mothership fleet alone, 50% of which [redacted]re determined to be of western Alaska origin. That figure represents [redacted]re salmon than the entire western Alaska salmon catch for 1980. While [redacted] mothersip interceptions have been reduced somewhat, through interna-[redacted]nal negotiations, they still represent a significant loss of a [redacted]uable resource to every user group in the state.

The current interception estimates of Alaska king salmon by the Japanese high seas salmon fisheries[2] and the trawl fisheries[3] in the FCZ, combined, is approximately 350,000, i.e. 42% of the statewide king salmon catch of 830,000 king salmon in 1983.

2. Using 1983 estimates, since 1984 estimates are not yet available.
3. Using 1984 estimates.

MEMORANDUM

TO: Representative Herrmann
FROM: Janet Fries
DATE: May 3, 1985

RE: ADDITIONAL INFORMATION ON SALMON INTERCEPTION BY FOREIGN FLEETS

The April 25 memorandum on salmon interceptions prepared by the House Research Agency presents a somewhat low estimate of the number of Alaska salmon intercepted by foreign fleets in the U.S. Fishery Conservation Zone (FCZ) off the coast of Alaska and on the high seas. The following information should be taken into account, when evaluating this data.

With the growth of the joint venture fleet in the FCZ, in which U.S. trawlers are delivering groundfish to foreign processors, an increasing number of salmon interceptions has been reported in recent years. In 1984, the total number of salmon intercepted in foreign and joint venture trawl operations in the FCZ, all of which are estimated to be of Alaska origin, was 144,200. This is up from an estimated 56,600 reported for 1983 in the House Research Agency (HRA) report; thus, the rate of reported salmon interceptions in the FCZ has more than doubled in one year. This increase may be due, in part, to an increase in reporting by joint ventures over foreign fishing vessels, indicating that the actual number of interceptions is even higher than this. The majority of those fish that were intercepted in the Bering Sea were chums, while the majority of those intercepted in the Gulf of Alaska were king salmon. Table 1 shows the breakdown of these figures.

Table 1.

Estimated Numbers of Salmon Intercepted by Joint Ventures and Foreign Fishing Operations in the Fishery Conservation Zone off Alaska in 1984[1]

	Bering Sea	Gulf of Alaska	Total
Joint Ventures	60,573	58,900	119,473
Foreign Trawlers	12,627	12,100	24,727
TOTALS	73,200 (mainly chums)	71,000 (mainly kings)	144,200

1. Source: Jim Glock, North Pacific Fishery Management Council. Telephone communication, 5/3/85.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

April 25, 1985

MEMORANDUM

TO: Representative Peter Goll

FROM: Katherine Hazard KH
Legislative Analyst

RE: Salmon Interception by Foreign Fleets
Research Request 85-321

You requested information about the economic value of Alaska-bound salmon intercepted by the foreign fishing fleets. You asked specifically for: 1) the estimated ex-vessel value of the intercepted fish based upon the average weight and price per pound of commercially caught salmon; 2) the estimated wholesale value of the intercepted fish; 3) the estimated revenue which would accrue to the State of Alaska through the Fisheries Business Tax if these fish were processed in Alaska; and 4) the area of origin and number, by species, of salmon intercepted by the foreign fishing fleets.

Steve Pennoyer and Charles Meacham Jr., of the Department of Fish and Game, provided information for these estimates. They are preparing a table of their calculations which will be forthcoming.

SUMMARY

Estimates of the economic loss to Alaska from interception of Alaska-bound salmon by Japanese mothership and landbased driftnet fisheries are:

Ex-vessel value	$ 16.1 million
First wholesale value	$ 30.5 million
Fisheries Business Tax Loss	$643,000

The ex-vessel values for all salmon sold to processors in 1983 was $320.6 million. The first wholesale value for salmon in the state in 1983 was $726.4 million. Thus the estimated loss from interception of salmon is approximately 5 percent of the ex-vessel value, and approximately 4 percent of the first wholesale value.

INTRODUCTION

The calculations of estimated losses are based solely on Japanese mothership and landbased driftnet fisheries interceptions. Estimates of the number of Alaska-originating salmon intercepted by the foreign fishing fleets are incomplete because much of the information is still unknown. The greatest number of salmon are caught by the Japanese mothership (MS) and Japanese landbased driftnet (LB) fisheries. It is for these two fisheries that the most data are available. There are two other fisheries of relevance; the Taiwanese fishery and the foreign and joint-venture trawlers.

Very little is known about the number of salmon caught by the Taiwanese fishery. There is no information on the species composition or origin of these fish. Foreign and joint-venture trawlers caught an estimated 19,700 chinook, 36,400 chum and 400 other salmon during 1983. Mr. Meacham said that although there are no data on the origin of these fish, probably all of them are Alaska-bound.[1] Nothing is known of the size or age composition of these fish, so for several reasons, there is not currently a reliable means of calculating how many of these fish could, if not intercepted, be caught by Alaska fisheries.

According to Mr. Meacham,[2] estimates of salmon catches in 1983 for the North Pacific foreign fleets were:

Japanese mothership	9.4 million
Japanese landbased	15.8 million
Taiwan	3.5 to 4 million
Foreign and Joint-Venture Trawlers	56,500

---

[1]An outline entitled "High Seas Salmon Interception Fisheries", included in the packet of information submitted to us with your research request, had incorrect figures listed for intercepted salmon. The outline had no source listed. Steve Pennoyer, of the Department of Fish and Game, said that 16,000,000 is the number of salmon caught by the Japanese landbased fisheries, and 8-9,000,000 is the number of salmon caught by the Japanese mothership fisheries. These are not the number of intercepted fish. He did not know the origin of the data for the Taiwanese and Other fisheries.

[2]Charles Meachum, Alaska Department of Fish and Game in Anchorage: Telephone number, (907) 267-2112.

JAPANESE MOTHERSHIP AND LANDBASED DRIFTNET FISHERIES

Number Caught

Estimates of the number of salmon caught by Japanese mothership and landbased driftnet fisheries fleets are listed in Table 1. These catch data are reported in the International North Pacific Fisheries Commission documents.

Number Intercepted

Estimates of the number of salmon intercepted are also shown in Table 1. The interception figures for sockeye are based on the mean percentage intercepted of the total catches for the years from 1978 to 1981, in which studies were done. These percentages were applied to the 1983 sockeye catch to derive an interception estimate. Estimates for chinook are based on studies done from 1982-84 by the Fisheries Research Institute on contract to Fish and Game.[3]

Mr. Meacham provided estimates of the number of chums intercepted by the MS fisheries, but there are no estimates of chum intercepted by the LB fisheries. However, Dr. Harris said that essentially none of the chum caught by the LB fisheries are of North American origin.

Although total catch figures are available from the International North Pacific Fisheries Commission documents, there are no estimates of the number of pinks intercepted. Mr. Meacham and Dr. Harris both said that an insignificant amount of the pink salmon caught by the Japanese fleets are of North American origin.

Dr. Colin Harris of the Fisheries Research Institute at the University of Washington, would not make estimates of the number of cohos intercepted.[4] He said that significant numbers are taken by the mothership fishery, but he did not know of a reliable way to estimate the numbers. Mr. Meacham provided rough estimates of cohos intercepted.

---

[3]Rogers, Donald E. et al. 1984, "Origins of Chinook Salmon in the Area of the Japanese Mothership Salmon Fishery", FRI-UW-8408, Final Report to the Alaska Department of Fish and Game, Contract No. 84-0152, Fisheries Research Institute. School of Fisheries, University of Washington, Seattle, Washington.

[4]Dr. Colin Harris, Fisheries Research Institute, University of Washington, (206) 543-7281.

Dr. Harris also stated that most of the cohos intercepted by the LB fleet are of western origin. He said, however, that many of the Bristol Bay cohos are unexploited anyway, so that it would be hard to say that cohos intercepted by the Japanese fleet yield an economic loss to Alaska. For this reason cohos are excluded from the values reported in the summary on page one of this memorandum.

Area of Origin

Studies by the Fisheries Research Institute provide estimates of the area of origin for chinook salmon caught by mothership and landbased driftnet fisheries. In 1983, an estimated 200,000 Alaska-bound chinook salmon were intercepted by the Japanese MS and LB fisheries. Of these an estimated 75,000 (37%) were from western Alaska stocks, 106,000 (53%) from central Alaska and 19,000 (9.5%) were of Southeast Alaska or British Columbian stocks.[5]

According to Dr. Harris, the great majority of the 427,000 sockeye, 44,000 chum and the cohos intercepted by the Japanese fleets are of western or central Alaska origin.

Estimated Loss of Salmon to Alaska Due to Interception

An estimated 1,099,000 salmon of Alaska origin are intercepted by Japanese mothership and landbased fisheries. To calculate the pounds of salmon available inshore if these salmon had not been intercepted, the natural mortality, drop-out rate and growth rate must be applied to the numbers intercepted. Together these factors comprise the yield loss multiplier.[6]

Natural Mortality: Not all of the fish caught on the high seas would have survived to return to Alaska waters, particularly since many of the fish intercepted are immature and would have several years on the high seas before returning to their origin.

---

[5]The Bristol Bay area is in the Central Region, as classified in the Alaska 1983 Catch and Production Commercial Fisheries Statistics, Statistical Leaflet No. 36.

[6]These factors and the formula are described by Richard J. Major in greater detail in the International North Pacific Fisheries Commission Document 2558.

Drop-out Rate: The drop-out rate accounts for fish which are caught in the Japanese fisheries nets, but drop-out as the nets are hauled in. These salmon die as part of the fishery, but are not included in the catch figures. For the drop-out rate, a multiplier of between 1.33 and 2.00 is used by Fish and Game.

Growth Rate: Many salmon caught on the high seas are immature. The growth rate accounts for the estimated increase in size between the time the salmon are caught on the high seas and the time they would have been caught if allowed to progress to inshore waters.

The formula used by Fish and Game is:

> interception number x mean wt. on high seas for each species x yield loss multiplier = total lbs. available inshore.

This formula yields the estimated total pounds of salmon that would be available inshore. These figures are presented in Table 2. Because, as indicated by Dr. Harris, interception of cohos may have no economic effect on the Alaskan fishery, two sets of calculations were made: one without intercepted cohos and one including intercepted cohos.

There is an estimated loss of 10.14 million lbs. of chinook salmon. Assuming that 90 percent of these are of western or central origin, 9.12 million lbs. of the intercepted chinook were from this region. In 1983 the commercial catch of chinook in central and western Alaska was 11.06 million lbs.

There is an estimated loss of 5.85 million lbs. of sockeye; 296.11 million lbs. were landed by the commercial fleet in central and western Alaska in 1983. For chum, an estimated .72 million lbs. were intercepted by the Japanese fleet; 68.49 million lbs. were landed by the commercial fishery in western and central Alaska.

Ex-vessel Value

The ex-vessel value was calculated by multiplying the estimated number of pounds of each species by the statewide average price in 1983.[7]

---

[7]Alaska 1983 Catch and Production Commercial Fisheries Statistics, Statistical Leaflet No. 36, December 1984, Alaska Department of Fish and Game.

Wholesale Value

The wholesale value was calculated by multiplying the ex-vessel value by 1.9. The prices to fishermen and the wholesale values vary from year to year. In 1983, the wholesale value for all salmon was 2.26 times greater than the ex-vessel value. Prices to fishermen were low in 1983, and the ratio was higher than usual. Between 1978 and 1983 the ratio has varied from 1.88 to 2.26.

Fisheries Business Tax

The Fisheries Business Tax on salmon ranges from 3 percent to 5 percent of the ex-vessel value, depending upon how the fish are processed. It is not possible to estimate how fish currently intercepted by foreign fleets would be processed if allowed to progress to Alaska waters. Based on the estimates of ex-vessel values, revenue from the Fisheries Business Tax would range from $482,452 to $804,086.

In 1983, revenue from the Fisheries Business Tax was $20,516,686. In 1984 revenue from the Fisheries Business Tax was $18,979,226. The mean estimated value of lost revenue is 3.3 percent of the mean revenue from 1983 and 1984.

* * * * *

Time constraints for completion of this memorandum precluded more detailed analysis and literature review. Statistics for 1984 are not currently compiled, but could be obtained through further research effort. Please let us know if you have further questions or would like a more detailed analysis.

KH

Attachments

Table 1 Total Catches and Interception of Salmon by Japanese Fleets in Thousands of Fish -- 1983

Species	Japanese Mothership Only		Japanese Landbased Only		Japanese MS and LB		% of Total Catch
	Intercepted	Total	Intercepted	Total	Intercepted	Total	Intercepted
sockeye	336	1,655	91	828	427	2,483	17.2
chinook	67	87	133	178	200	265	75.5
chum	44	3,081	0	2,395	44	5,476	0.8
pink	0	4,324	0	11,308	0	15,632	0.0
coho	74	297	354	1,122	428	1,419	30.2
total	521	9,444	578	15,831	1,099	25,275	4.3

Source: Department of Fish and Game.

Prepared by the House Research Agency, April 1985

Table 2

Estimated Value of Salmon Intercepted by Japanese Mothership and Landbased Driftnet Fisheries

	Salmon Loss in Pounds			Mean Price	Ex-vessel	Wholesale
	MS	LB	Total	Per Pound	Value	Value
Sockeye	4,680,000	1,172,000	5,852,000	.70	$ 4,096,000	$ 7,782,400
Chinook	3,001,000	7,134,000	10,135,000	1.16	11,756,600	22,337,540
Chum	716,000	NA	716,000	.60	229,120	435,328
Coho	1,162,000	3,907,000	5,069,000	.60	3,041,000	5,777,900
Subtotal (w/out cohos)	8,397,000	8,306,000	16,703,000		$16,081,720	$30,555,268
Total (w/ cohos)	9,559,000	12,213,000	21,772,000		$19,122,720	$36,333,168

Source: Department of Fish and Game.

Prepared by the House Research Agency, April 1985

JAPANESE FISHERIES

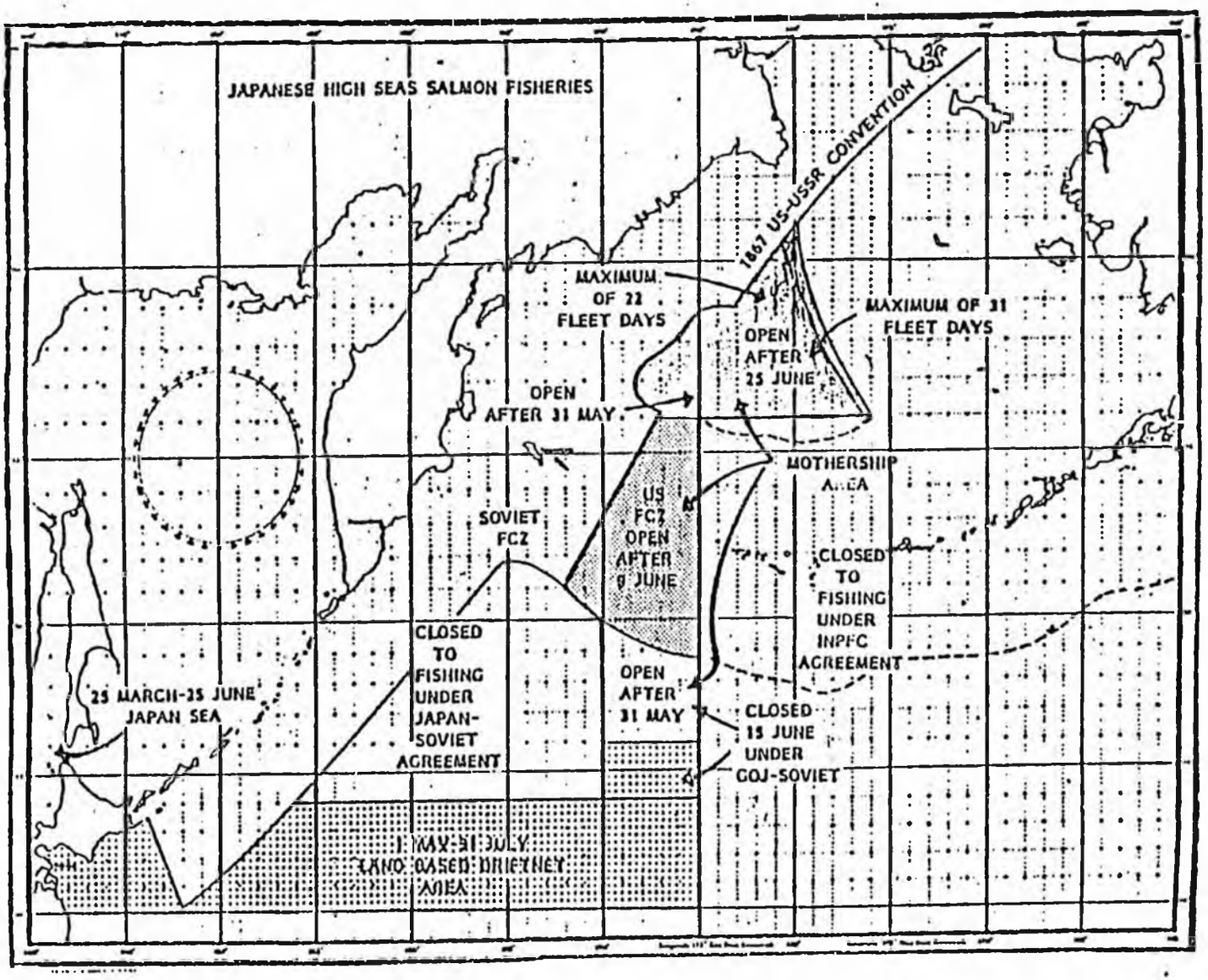
	SQUID GILLNET	SALMON LANDBASED GILLNET	SALMON MOTHERSHIP GILLNET
VESSELS	534	209	172
MESH SIZE	4 1/2 INCH	4 1/2 INCH	4 1/2 INCH
MILES NET (APPROX.)	10,000	3,000	1,500
SEASON	JUNE-DEC.	MAY-JULY	JUNE-JULY
CATCH (1981)	82,000 TONS SQUID	16 MILLION SALMON	10 MILLION SALMON

Table . Salmon catch (in thousands) by the Japanese mothership (MS) and landbased driftnet (LB) fisheries, 1957-1984.

	Sockeye		Chinook		Chum		Pink		Coho		Total	
Year	MS	LB	MS	LB	MS	LB	MS	LB	MS	LB	MS	LB
1957	20,000	494	31	33	11,908	4,081	27,881	35,551	442	526	60,358	40,685
1958	12,026	888	46	45	18,787	9,155	15,546	24,833	3,393	785	49,798	35,706
1959	9,125	832	68	42	12,859	9,045	18,856	35,129	1,423	1,178	42,331	46,226
1960	12,879	1,601	180	113	10,517	8,684	1,885	20,129	962	1,346	26,423	31,873
1961	12,998	1,173	31	79	6,128	6,104	3,263	34,559	284	1,454	22,704	43,369
1962	10,590	154	122	124	6,372	7,577	1,139	14,021	1,532	1,289	19,755	23,165
1963	8,903	18	87	102	5,858	7,538	6,732	31,255	1,895	1,492	23,475	40,405
1964	7,097	108	410	195	8,641	8,956	2,281	17,247	3,535	1,624	21,964	28,130
1965	12,038	159	185	93	6,036	8,330	4,429	29,142	1,177	1,913	23,865	39,637
1966	7,254	703	208	112	8,562	11,848	2,553	16,032	469	1,458	19,046	30,153
1967	8,087	2,566	128	110	6,837	11,078	7,781	23,051	226	1,329	23,059	38,134
1968	6,373	2,769	362	88	8,107	8,457	3,823	15,899	898	1,421	19,563	28,634
1969	5,935	2,495	554	83	7,721	4,908	6,972	23,610	1,306	3,328	22,488	34,424
1970	6,944	2,966	437	101	9,638	6,585	1,726	13,403	180	2,259	18,925	25,314
1971	3,554	3,026	206	134	9,968	6,250	8,202	16,977	454	2,373	22,384	28,760
1972	3,184	3,711	261	103	13,373	8,598	3,795	14,839	614	2,421	21,421	29,672
1973	2,613	3,308	119	162	7,857	7,614	12,018	20,650	989	3,794	23,596	35,528
1974	2,282	3,155	361	186	9,283	12,179	7,756	11,242	1,085	3,559	20,767	30,321
1975	2,171	2,969	162	135	7,367	11,480	14,654	15,347	356	3,550	24,710	33,481
1976	2,266	3,291	283	201	10,436	10,646	7,207	10,879	828	2,751	21,020	26,690
1977	1,508	1,289	93	146	5,996	6,230	9,100	15,041	79	1,722	16,778	24,428
1978	1,882	1,292	105	210	3,802	3,488	1,853	7,846	609	2,512	8,251	15,349
1979	2,186	756	126	161	3,277	2,661	3,405	11,190	281	1,199	9,275	15,349
1980	2,412	787	704	160	3,098	2,697	561	11,612	656	1,205	7,431	16,461
1981	2,224	859	88	190	2,539	2,509	4,094	11,292	615	1,209	9,560	16,059
1982	1,738	723	107	165	3,217	2,930	1,654	11,035	1,183	1,201	7,899	16,054
1983	1,655	828	87	178	3,081	2,395	4,324	11,308	297	1,122	9,445	15,831
1984	1,597	305	82	92	3,276	2,214	1,430	9,727	786	894	7,170	13,233

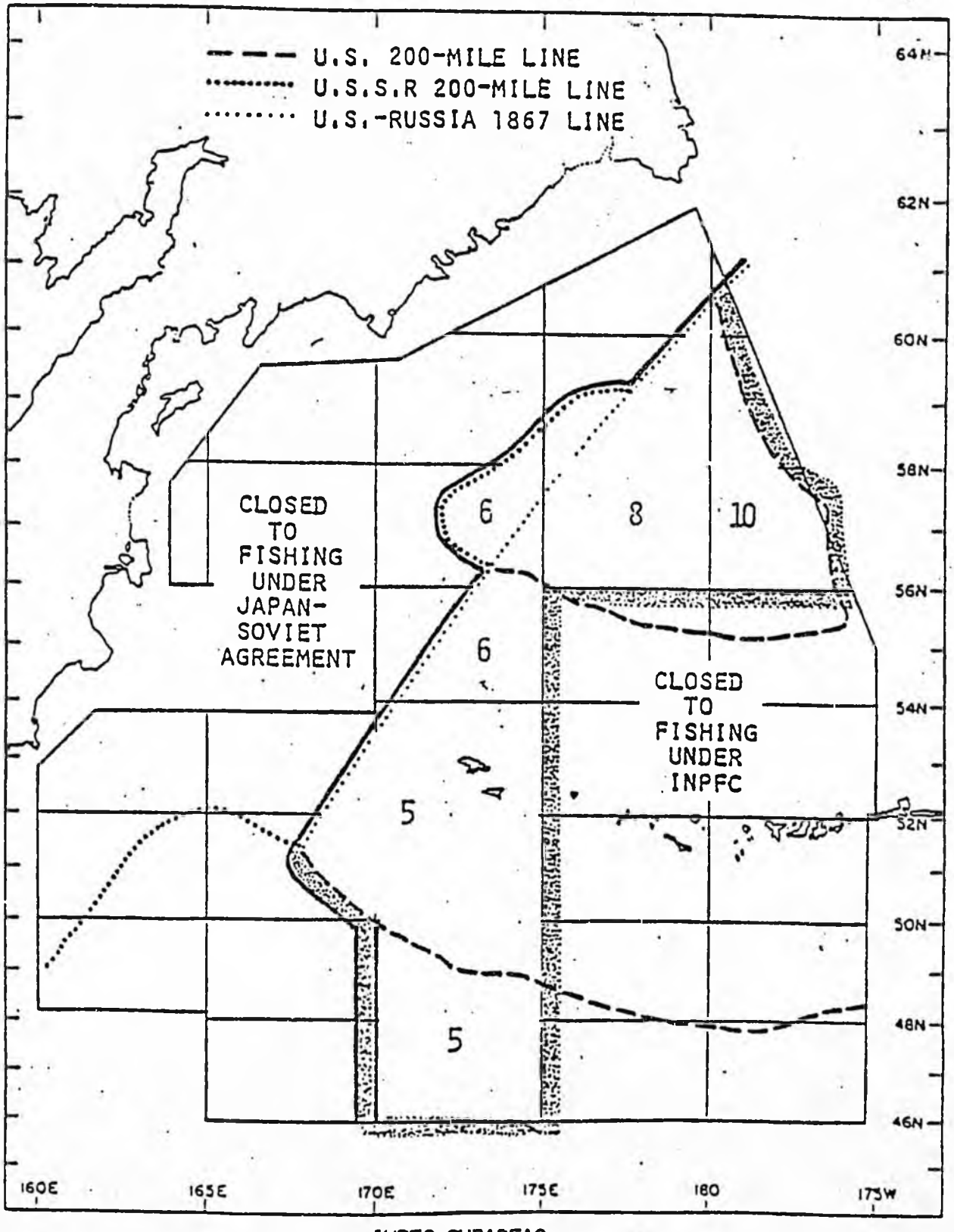
MAP 1

Annex C - Map of the Japanese High-Seas Salmon Fishery



MAP 2

JAPANESE MOTHERSHIP FISHING AREAS



INPFC SUBAREAS

MOTHERSHIP
SONID
Sept.
Aug.
July
June
Nov.
Dec.
Oct.
170E
160E

Introduced: 5/3/85
Referred: Resources

IN THE SENATE BY SACKETT

SENATE JOINT RESOLUTION NO. 27

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the interception of Alaska salmon on the high seas.

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

WHEREAS Alaska's salmon represents one of the state's most important renewable resources; and

WHEREAS more than 40,000 people are employed in commercial fish processing and harvesting jobs in the state during the salmon season, and thousands of other people in the transportation and service industries in the state benefit from this economic activity; and

WHEREAS the Alaska commercial salmon industry contributes millions of dollars annually to state and local government treasuries through taxes, assessments and fees, and salmon fishing and processing represent the economic backbone of many coastal communities in the state; and

WHEREAS salmon is a mainstay in the diets of state residents who harvest the great fish by rod and reel, net, and fishwheel for personal and family consumption; and

WHEREAS recreational fishing for salmon is an experience enjoyed by most state residents each year; and

WHEREAS an estimated 1,099,000 salmon originating in the state were harvested on the high seas by Japanese fishing fleets during 1983; and

WHEREAS these high seas interceptions deprived state residents of commercial fishing opportunities valued at $16,100,000 to fishermen, and $30,500,000 to seafood processors; and

WHEREAS this lost opportunity cost the state treasury between $482,452 and $804,086 in lost fisheries business tax revenue alone; and

WHEREAS the interception figures include 106,000 chinook salmon from South Central Alaska stocks, more than the combined catches of recreational, commercial and subsistence fishermen in Cook Inlet in 1983; and

WHEREAS Japanese fishermen catch billions of pounds of fish and shellfish in the state's 200-mile fishery conservation zone each year;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the U.S. Department of State to immediately begin negotiations that will lead to complete elimination of high seas interceptions of salmon of Alaska origin; and be it

FURTHER RESOLVED that the Alaska State Legislature respectfully requests U.S. Congress to adopt amendments to the Magnuson Fishery Conservation and Management Act preventing nations that intercept Alaska-bound salmon on the high seas from receiving allocations to harvest groundfish in the United States' 200-mile fishery conservation zone.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; the Honorable George Schultz, Secretary of State; the Honorable Robert Dole, U.S. Senate Majority Leader; the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; to Mr. William Gordon, assistant administrator for fisheries, National Marine Fisheries Service; and to Mr. James Campbell, chairman, North Pacific Fishery Management Council.

Introduced: 5/2/85
Referred: House Special Committee
on Fisheries and Resources

IN THE HOUSE BY GOLL

HOUSE JOINT RESOLUTION NO. 43

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the interception of Alaska salmon on the high seas.

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

WHEREAS Alaska's salmon represents one of the state's most important renewable resources; and

WHEREAS more than 40,000 people are employed in commercial fish processing and harvesting jobs in the state during the salmon season, and thousands of other people in the transportation and service industries in the state benefit from this economic activity; and

WHEREAS the Alaska commercial salmon industry contributes millions of dollars annually to state and local government treasuries through taxes, assessments and fees, and salmon fishing and processing represent the economic backbone of many coastal communities in the state; and

WHEREAS salmon is a mainstay in the diets of state residents who harvest the great fish by rod and reel, net, and fishwheel for personal and family consumption; and

WHEREAS recreational fishing for salmon is an experience enjoyed by most state residents each year; and

WHEREAS an estimated 1,099,000 salmon originating in the state were harvested on the high seas by Japanese fishing fleets during 1983; and

WHEREAS these high seas interceptions deprived state residents of commercial fishing opportunities valued at $16,100,000 to fishermen, and $30,500,000 to seafood processors; and

WHEREAS this lost opportunity cost the state treasury between $482,452 and $804,086 in lost fisheries business tax revenue alone; and

WHEREAS the interception figures include 106,000 chinook salmon from South Central Alaska stocks, more than the combined catches of recreational, commercial and subsistence fishermen in Cook Inlet in 1983; and

WHEREAS Japanese fishermen catch billions of pounds of fish and shellfish in the state's 200-mile fishery conservation zone each year;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the U.S. Department of State to immediately begin negotiations that will lead to complete elimination of high seas interceptions of salmon of Alaska origin; and be it

FURTHER RESOLVED that the Alaska State Legislature respectfully requests U.S. Congress to adopt amendments to the Magnuson Fishery Conservation and Management Act preventing nations that intercept Alaska-bound salmon on the high seas from receiving allocations to harvest groundfish in the United States' 200-mile fishery conservation zone.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; the Honorable George Schultz, Secretary of State; the Honorable Robert Dole, U.S. Senate Majority Leader; the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; to Mr. William Gordon, assistant administrator for fisheries, National Marine Fisheries Service; and to Mr. James Campbell, chairman, North Pacific Fishery Management Council.

HJR

70

HOUSE

COMMITTEE REPORT

4/1C

(9)

Date referred: 4/1/86

FURTHER REFERRALS: JUDICIARY

DATE: April 9, 1986

The RESOURCES Committee has considered HJR 70

Relating to placer mining in the state.

and recommends:

[X] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[X] zero fiscal note
First

SIGNING DO PASS:

Shultz Dick Shultz

Cato Better Cato

Miller (NP) M.D. Miller

Pearce Rue Pearce

SIGNING OTHER RECOMMENDATIONS:

Herrmann Adelheid Herrmann Do Not Pass
Needs to be updated

Wallis Kay Wallis needs to be rewritten

Co-Chairman Dick Shultz

ALEX SHADURA

PRESENTATION BEFORE THE
JOINT HOUSE AND SENATE FINANCE SUBCOMMITTEE
FEBRUARY 27, 1986

I AM HERE BEFORE YOU TODAY BECAUSE I AM DISTRESSED AND CONCERNED WITH THE DIRECTION THE STATE IS TAKING WITH REGARD TO ECONOMIC DEVELOPMENT.

ECONOMIC GROWTH REQUIRES INVESTMENT IN THE FUTURE. CONTINUED ECONOMIC GROWTH IS ESSENTIAL FOR THE WELL-BEING OF THE STATE OF ALASKA AND ITS PEOPLE. WE HAVE ALL THE BASIC RESOURCES NECESSARY FOR ECONOMIC GROWTH AND THERE IS NO REASON WHY ALASKA CANNOT SUSTAIN ITS GROWTH HAVING ALL THE INGREDIENTS AND ESSENTIALS. IN ORDER FOR RESOURCES TO BE DEVELOPED TO SUSTAIN ECONOMIC GROWTH, THEY MUST BE NURTURED AND SOMETIMES INJECTED WITH A STIMULANT. THE STIMULUS CAN BE FROM A DISCOVERY THROUGH RESEARCH. RESEARCH AND ENHANCEMENT ARE ESSENTIAL TO RESOURCE DEVELOPMENT.

BEING A CONCERNED AND DEDICATED CITIZEN OF ALASKA, MY INTERESTS ARE WIDE-SCOPED. FISHERIES PRODUCTS PROCESSING, MARKETING, FARMING OF BOTH LAND AND SEA, RURAL DEVELOPMENT, MINING, CONSTRUCTION, URBAN DEVELOPMENT, ALASKA NATIVES' AFFAIRS, HEALTH AND SOCIAL PROBLEMS, INCLUDING DRUG AND ALCOHOL - I HAVE BEEN INVOLVED IN ALL.

MY CONCERN TODAY IS WITH THE REDUCED EFFORT OF THE STATE TO SUSTAIN A CONTINUED RESEARCH AND ENHANCEMENT PROGRAM FOR OUR FISHERIES. I UNDERSTAND THE BUDGET CONSTRAINTS AND CONTINUED PRESSURE TO REDUCE COST OF GOVERNMENT. THE UNCERTAINTY BECAUSE

OF OUR DEPENDENCY ON A RESOURCE IN WHICH THE STATE OF ALASKA HAS LIMITED CONTROL.

I NEED NOT REMIND YOU THAT THE FISHING INDUSTRY FOR MANY YEARS WAS THE PRINCIPAL INDUSTRY IN ALASKA, AND MANY YEARS HENCE IT PROBABLY WILL BE AGAIN IN THE NUMBER ONE POSITION. I HAVE RECENTLY HEARD MANY ACCOLADES ABOUT THIS INDUSTRY THAT IT IS THE SECOND LARGEST INDUSTRY OF THE STATE WITH A VALUE OF 700 MILLION DOLLARS TO THE ECONOMY. THE FISHING INDUSTRY ALSO EMPLOYS MORE PEOPLE THAN ANY OTHER INDUSTRY IN ALASKA AND MANY COMMUNITIES ARE IMPACTED AND DEPENDENT ON THIS INDUSTRY.

WHY THEN, WHEN A SYSTEM IS FUNCTIONING WELL AND PROGRESSIVELY IMPROVING, DOES IT HAVE TO BE INTERFERED OR TAMPERED WITH? ISN'T THERE AN AXIOM: TO LEAVE THINGS THAT ARE GOING WELL - LEAVE WELL ENOUGH ALONE."

THE FISHERIES RESOURCE IS HEALTHY TODAY BECAUSE MANY PEOPLE DURING THE EARLY DAYS OF STATEHOOD MADE GREAT EFFORTS. THEY WORKED HARD TO IMPROVE AND ENHANCE THE RESOURCE BY WHATEVER MEANS NECESSARY.

FIRST, THEY CONCENTRATED ON BRINGING TO OUR STATE GOVERNMENT HIGHLY QUALIFIED FISHERY MANAGERS AND SCIENTISTS TO DEVELOP A RESEARCH AND MANAGEMENT PLAN FOR THE RESOURCE. PARALLEL TO THIS WERE THE CITIZENS WHO SAW WHAT HAD TO BE DONE AND THEN DID IT, EVEN TO THE POINT OF PERSONAL SACRIFICE.

TOGETHER WITH SENATOR FRANK PERATROVICH (SECOND PRESIDENT OF THE STATE SENATE), SENATOR OWENS OF KODIAK, MR. DEGNAN OF UNALAKLEET, I SAT ON THE FISHERIES COMMITTEE OF THE FIRST

DEMOCRATIC STATE CONVENTION HELD IN NOME IN 1960. WE WROTE A NUMBER OF RESOLUTIONS WHICH I WAS PRIVILEGED TO PRESENT TO THE CONVENTION. THE PRIME RESOLUTION WAS TO DEVELOP A RESEARCH AND ENHANCEMENT PROGRAM FOR OUR FISHERIES. SINCE THAT TIME, I HAVE SAT TOGETHER WITH JOHN WIESE OF CORDOVA AND OTHERS ON A NUMBER OF SUCH COMMITTEES AND THERE WAS ALWAYS A RESOLUTION FOR THE RESEARCH AND ENHANCEMENT OF OUR FISHERIES.

WE ALSO RECEIVED HELP THROUGH VARIOUS CONGRESSIONAL LEADERS WHERE A SIMILAR PROGRAM WAS INVOKED IN THE U.S. CONGRESS. ALASKA FISHERIES WERE BLESSED BY THE SUPPORT OF SENATORS SALTONSTALL, JOHN KENNEDY, BOB BARTLETT, ERNEST GRUENING, MIKE GRAVEL, TED STEVENS, "SCOOP" JACKSON, WARREN MAGNUSON AND REPRESENTATIVE RALPH RIVERS. SENATOR MAGNUSON OF THE STATE OF WASHINGTON WAS A REAL FRIEND OF THE ALASKA FISHING INDUSTRY.

IN ORDER TO ACCOMPLISH WHAT WE WERE ADVOCATING REQUIRED FUNDING. SINCE ONLY LIMITED REVENUE WAS AVAILABLE THROUGH OIL REVENUE AND OTHER SOURCES, FUNDING THROUGH BONDING WAS ENACTED. DURING THE EGAN ADMINISTRATION THE ISSUE OF FISHERY RESEARCH AND ENHANCEMENT WAS PLACED ON THE BALLOT AND THE VOTE WAS HEAVILY FOR ENACTMENT. PARALLEL TO THIS WAS A PROGRAM INTRODUCED BY OUR CONGRESSIONAL DELEGATION WITH THE SUPPORT OF THE OREGON AND WASHINGTON SENATORS FOR FISHERIES RESEARCH AND ENHANCEMENT.

THESE WERE THE FUNDING SOURCES THAT HELPED OUR FISHERIES INDUSTRY DEVELOP TO A <u>700 MILLION DOLLAR INDUSTRY</u>.

<u>WE CANNOT UNDO</u> THIS GREAT EFFORT BY SO MANY, IN THE DESIRE TO PROMOTE A SAVINGS ACCOUNT AND DIVIDEND PROGRAM. WE

MUST CONSIDER ALL THE ASPECTS OF OUR PRESENT AND FUTURE WELL-BEING. WHAT IS NECESSARY TO HOLD FOR A RAINY DAY, IF AND WHEN OUR STATE INCOME FALTERS? SHOULD WE SALT IT ALL AWAY SO THAT IT IS UNAVAILABLE NOW, OR SHOULD WE USE SOME OF IT FOR FURTHER DEVELOPMENT OF OUR RESOURCES WHICH WILL ULTIMATELY LEAD TO FUTURE ECONOMIC GROWTH.

I MAINTAIN THAT SUCH A USE OF STATE INCOME MAY BRING EQUAL OR HIGHER RETURN THAN ANY INTEREST FROM STOCKS OR BONDS.

PROGRAMS IN LIMNOLOGY AND LAKE FERTILIZATION SHOULD BE CONTINUED. TO BREAK THE CONTINUITY WOULD LEAVE A VACUUM IN THE ENHANCEMENT PROGRAM. OTHER ENHANCEMENT PROGRAMS SUCH AS THE ONES AT PORT GRAHAM, ENGLISH BAY, DESIRE LAKE AND PAINT RIVER SHOULD BE GIVEN CONSIDERATION AND BE INCLUDED IN THE APPROPRIATIONS OF THIS FOURTEENTH LEGISLATURE. ANY INVESTMENTS INTO THESE PROGRAMS WOULD BE RETURNED MANY FOLD AND IN ADDITION WOULD PROVIDE FISHING OPPORTUNITY FOR COMMERCIAL, SPORTS, AND SUBSISTENCE FISHERIES IN THE LOWER COOK INLET.

I AM ASKING THAT THE REDUCTIONS TO THE F.R.E.D. (FISHERIES RESEARCH AND ENHANCEMENT) DIVISION BE RECONSIDERED BY THE DIRECTOR OF F.R.E.D. AND THE COMMISSIONER OF THE ALASKA DEPARTMENT OF FISH AND GAME. THESE PROGRAMS ARE ESSENTIAL TO THE CONTINUING DEVELOPMENT AND PROGRESS OF THE FISHING INDUSTRY.

I WISH TO THANK THE MEMBERS OF THIS COMMITTEE FOR LISTENING TO MY PLEA.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HJR 70
Title : Relating to placer mining in the state.

Sponsor : House Resources Committee
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : _____
BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : House Resources Committee Staff Phone : 465-3715
Division : _____ Date : _____

Approved by Commissioner : Dick Shultz Date : April 9, 1986
Agency : Representative Dick Shultz

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

DEAN K. DUNSMORE
REGINA R. BELT
Land and Natural Resources Division
Department of Justice
Room F-249, Mail Box 69
701 "C" Street
Anchorage, Alaska 99513-0067
(907) 271-5452

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

SIERRA CLUB, NORTHERN ALASKA ENVIRONMENTAL CENTER, WILDERNESS SOCIETY, BIRCH CREEK VILLAGE COUNCIL, MINTO VILLAGE COUNCIL, GOLOVIN TRADITIONAL COUNCIL, NUNAM KITLUTSISTI, and CENALIULRIIT COASTAL MANAGEMENT DISTRICT, Plaintiffs, v. MICHAEL PENFOLD, Director of the Alaska State Office of the Bureau of Land Management; DONALD P. HODEL, Secretary of the Interior; ROBERT F. BURFORD, Director of the Bureau of Land Management; DONALD E. RUNBERG, Acting District Manager of the Fairbanks District Office of the Alaska State Office of the Bureau of Land Management; WAYNE A. BODEN, District Manager of the Anchorage District of the Alaska State Office of the Bureau of Land Management; DEPARTMENT OF THE INTERIOR and BUREAU OF LAND MANAGEMENT, Defendants.	Case No. A86-083 Civil STIPULATION

WHEREAS, plaintiffs Sierra Club, et al. and defendants Michael Penfold, et al. desire to bring the claims asserted in the plaintiffs' pending motion for a preliminary injunction to a fair interim resolution that provides a framework under which mining can occur in the 1986 mining season, while at the same time providing for expeditious final resolution of the claims asserted by plaintiffs;

WHEREAS, defendants Michael Penfold, et al., hereinafter referred to as BLM, have agreed that they are or will be doing the following for the 1986 mining season commencing immediately:

A. Procedures Governing Plans of Operations

1. Prior to approving a plan of operations, pursuant to 40 C.F.R. § 3809.1-6, BLM will prepare an environmental assessment of the plan of operations, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 and its implementing regulations set forth in 40 C.F.R. Part 1500.

2. Prior to approving a plan of operations, BLM will prepare a subsistence evaluation of the plan of operations pursuant to the requirements of § 810 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3120.

3. Within ten (10) working days after approving a plan of operations in 1986, BLM shall serve, at no cost to plaintiffs, upon plaintiffs' counsel copies of the following

documents except for confidential information as provided in 43 C.F.R. § 3809.5:

(a) The plan of operations;

(b) The environmental assessment of the plan of operations;

(c) The subsistence evaluation of the plan of operations; and

(d) If not previously provided to plaintiffs, all correspondence and documents in BLM's possession that are related to the plan of operations, including the letter of approval.

B. Procedures to Insure Reclamation

1. Between May 1, 1986 and September 30, 1986, BLM shall conduct an on-site inspection of every mining operation operating pursuant to a plan of operations.

2. Between May 1, 1986 and September 30, 1986, BLM shall conduct an on-site inspection of every mining operation operating pursuant to a notice of operations.

3. During the on-site inspections, BLM shall inspect whether the operator is reclaiming disturbed areas in compliance with the reclamation requirements set forth in 43 C.F.R. § 3809.1-3(d).

4. During the on-site inspections, if the operator disturbed, since January 1, 1981, the same or adjacent areas of public lands while conducting mining operations in prior years, BLM will inspect whether the operator reclaimed the previously disturbed areas in compliance with the

reclamation requirements set forth in 43 C.F.R. § 3809.1-3(d).

5. If the inspection shows that the operator either is not fully complying or has not in the past fully complied with the reclamation requirements of 40 C.F.R. § 3809.1-3(d), BLM will issue a notice of noncompliance to the operator pursuant to 43 C.F.R. § 3809.3-2(d). However, no notice of noncompliance need be issued if past noncompliance has been corrected by the time of inspection.

6. Within two (2) weeks after the period for correction of the noncompliance specified in the notice of noncompliance has expired, if BLM has not received photographic proof of corrective action, or has not determined by on-site or aerial inspection that the operator has corrected the noncompliance, or has not been notified by another federal or State agency that the noncompliance has bee corrected, BLM will take the following actions:

(a) If the operator is operating under a plan of operations, BLM will require that the operator correct the noncompliance and post a bond in an amount equal to the cost of completing the unperformed reclamation and the reclamation of the future operations proposed under the plan of operations before recommencing operations; and

(b) If the operator is operating under a notice of operations, BLM will require that the

operator correct the noncompliance, file and obtain approval of a plan of operations, and post a bond in an amount equal to the cost of completing the unperformed reclamation and the reclamation of the future operations proposed under the plan of operations before recommencing operations.

7. BLM will prepare a written report of its inspections, which reports where applicable will report on the items listed in 43 C.F.R. § 3809.1-3(d)(4), and report on compliance with 43 C.F.R. § 3809.1-3(d)(3).

8. BLM will also prepare a written report on any follow-up inspections conducted pursuant to paragraph 6. Each report will describe the steps taken by the operator to correct the noncompliance, and will state whether the steps taken adequately corrected the noncompliance.

9. At each operation subject to an on-site inspection, BLM will test for compliance with the federal and State standards for settleable solids. BLM will not take these tests if these tests are simultaneously being conducted by either the Environmental Protection Agency (EPA) or the Alaska Department of Environmental Conservation (ADEC). The entry by BLM is not intended by the members to this agreement to provide the basis for enforcement action against miners without independent investigation and inspection by EPA, ADEC or any other person.

10. BLM shall record the results of the tests in reports. These reports shall be provided to the EPA and to the ADEC.

11. If EPA or ADEC should issue a notice of violation, notice of noncompliance, other form of administrative order which finds, or if EPA or ADEC should commence a civil action based on a finding, that a mining operator operating under either a notice of operations or an approved plan of operations has violated applicable federal or State water quality standards, and if EPA or ADEC informs BLM of the issuance of such administrative orders or notices, or the commencement of such civil actions, BLM will issue a notice of noncompliance to the same operator pursuant to 43 C.F.R. § 3809.3-2(d).

12. If the operator does not correct the noncompliance within the period provided for correction, BLM shall also take the additional steps set out in paragraph 6.

13. If for any mining operation within a wild and scenic corridor or on a tributary to a wild and scenic river any of the settleable solids' tests taken pursuant to paragraph 9 show suspected noncompliance with water quality standards, BLM will immediately report this to EPA and ADEC and ask that these agencies give priority to and conduct an inspection to determine if such violations are occurring.

14. If within two (2) weeks after the period for correction of noncompliance specified in the notice has

expired the operator has not corrected the noncompliance, BLM will take the additional steps set out in paragraph 6.

C. Procedures Governing Access

1. If existing access is adequate and feasible, BLM will exercise its authority under 43 C.F.R. § 3809.3-3(b) to require all operators under a notice of operations to use the existing access.

2. If existing access is not adequate and feasible, BLM will exercise the authority of 43 C.F.R. § 3809.3-3(b) to require operators under a notice of operations to construct new access, if practicable, within an existing transportation or utility corridor.

3. BLM will send back as incomplete, pursuant to 43 C.F.R. § 3809.1-3(c)(3), any notice which indicates that any operator will construct any new access routes where that notice does not describe the construction including the location of the access routes to be constructed and the equipment to be used and measures to prevent unnecessary or undue degradation. If the construction involves slopes which require cuts on the inside edge in excess of three (3) feet, BLM will pursuant to 43 C.F.R. § 3809.1-3(c)(3) require the operator to consult with BLM over the most appropriate access route location.

D. Long-Term Camping Permits

1. Prior to approving a long-term camping permit for a mining operation within the Fortymile National Wild and Scenic River corridor, BLM shall prepare an

environmental assessment of the camping permit pursuant to NEPA, 42 U.S.C. § 4321 and its implementing regulations set forth in 40 C.F.R. Part 1500.

2. If BLM issued long-term camping permits for mining operations within the Fortymile National Wild and Scenic River corridor for camping in 1986 prior to the signing of this stipulation, BLM shall stay all activities under the permits until it prepares an environmental assessment.

3. Within ten (10) working days after issuing a long-term camping permit for a mining operation within the Fortymile National Wild and Scenic River Corridor in 1986, BLM shall serve, at no cost to plaintiffs, upon plaintiffs' counsel copies of the following documents:

(a) The permit issued;

(b) The environmental assessment prepared on the permit; and

(c) If not previously provided to plaintiffs, all correspondence and documents in BLM's possession that are related to the permit including the application for the permit.

E. Documentation

BLM has agreed to provide, at regular two-week intervals throughout 1986, plaintiffs' counsel with copies of the following documents except for confidential information as provided in 43 C.F.R. § 3809.5:

(1) The notices received by BLM;

(2) All correspondence and documents in BLM's possession that are related to the notices;

(3) The reports produced by BLM pursuant to paragraphs 7, 8 and 10 of section B.

BLM will not charge plaintiffs for any of these documents, nor will BLM charge Sierra Club Legal Defense Fund for any documents previously provided pursuant to Freedom of Information requests relating to BLM's regulation of mining in Alaska.

WHEREAS, upon being informed of the foregoing commitments by BLM, plaintiffs have agreed that their Motion for Preliminary Injunction may be withdrawn,

WHEREAS, the parties are in agreement that this action should be handled as expeditiously as possible,

IT IS HEREBY STIPULATED that:

1. Plaintiffs' Motion for Preliminary Injunction is withdrawn without prejudice;

2. Plaintiffs and defendants shall follow the following briefing schedule:

By April 14, 1986	Plaintiffs shall file and serve their motion for summary judgment or partial summary judgment.
By April 14, 1986	Defendants shall serve their initial written discovery, if any, on plaintiffs.
By May 14, 1986	Defendants shall file and serve

	their response to plaintiffs' motion for summary judgment.
By May 14, 1986	Plaintiffs shall file and serve their response to defendants' Motion to Dismiss filed on March 12, 1986.
By May 30, 1986	Plaintiffs shall file their reply, if any, to defendants' response to plaintiffs' motion for summary judgment.
By May 30, 1986	Defendants shall file and serve their reply, if any, to plaintiffs' response to defendants' Motion to Dismiss.

3. That any party may move to modify or extend any date in the foregoing briefing schedule for good cause, including discovery responses which do not permit adequate briefing of the motion for summary judgment or motion to dismiss.

4. Plaintiffs shall not, in their motion for summary judgment, seek injunctive relief to be effective for the 1986 Alaska mining season.

DATED: April 4, 1986

Respectfully submitted,
Dean K. Dunsmore per telephonic authorization for
PHILIP BARNETT

Attorney for Plaintiffs

DATED: 4 April 1986

Dean K. Dunsmore
DEAN K. DUNSMORE

Attorney for Federal Defendants

IT IS SO ORDERED this _____ day of _____, 1986 at Anchorage, Alaska.

U.S. DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 1986, a copy of the foregoing STIPULATION was served by United States mail, first class, postage paid, to the following counsel of record:

Philip S. Barnett
Sierra Club Legal
Defense Fund, Inc.
Suite 321
419 Sixth Street
Juneau, AK 99801

Ronald A. Zumbrun
Robin L. Rivett
James S. Burling
Fred A. Slimp II
Pacific Legal Foundation
555 Capitol Mall, Suite 350
Sacramento, CA 95814

Ray D. Gardner
HARTIG, RHODES, NORMAN,
MAHONEY & EDWARDS
717 "K" Street
Anchorage, AK 99501

James D. Linxwiler
Joseph J. Perkins, Jr.
GUESS & RUDD
Suite 700
510 L Street
Anchorage, AK 99501

Millard F. Ingraham
Suite 920
601 West Fifth Avenue
Anchorage, AK 99501

Bonita R. Dotter

BONITA R. DOTTER
Secretary
Land & Natural Resources Div.
Department of Justice
Anchorage, Alaska

HJR

71

HOUSE
COMMITTEE REPORT

4/14

(9)

Date referred: 4/1/86

JUDICIARY

FURTHER REFERRALS: FINANCE

DATE: April 15, 1986

The RESOURCES Committee has considered HJR 71

Proposing amendments to the Constitution of the State of Alaska creating the Alaska research development endowment."

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[XX] first fiscal note Supp 1 17
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Jenkins Rogers L Jenkins

Pearce

Sund

Miller(NP) M.W. Miller

SIGNING OTHER RECOMMENDATIONS:

Adelheid Herrmann NO REC
Herrmann

Bette Cato NO REC
Cato

David W. Thompson NO REC
Thompson

Co-Chairman Dick Shultz
Shultz

Introduced: 4/2/86
Referred: Resources, Judiciary
and Finance

IN THE HOUSE BY THE FINANCE COMMITTEE

HOUSE JOINT RESOLUTION NO. HJR 71

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Proposing amendments to the Constitution of the State of Alaska creating the Alaska research development endowment.

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

* Section 1. Article IX, sec. 7, Constitution of the State of Alaska, is amended to read:

SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 and section 17 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. ALASKA RESEARCH DEVELOPMENT ENDOWMENT. At least one-third of all royalties and royalty sale proceeds from North Slope natural gas received by the state shall be deposited in the Alaska research development endowment. All income from investment of the endowment shall be deposited in the Alaska research development endowment. Appropriations may not be made from the Alaska research development endowment except for the conduct of research as provided by law.

* Sec. 3. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity

with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
tion laws of the state.

Alaska State Legislature

STEVE FRANK
DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701
(907) 452-3421

While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

MEMORANDUM

TO: House Resource Committee Members

FROM: Representative Steve Frank

DATE: April 15, 1986

RE: Alaska Research Development Endowment
HCR 71 & HB 705

HCR 11, approved by the legislature last year, set the stage for the introduction of HCR 71 and HB 705 creating the Alaska Research Development Endowment (ARDE).

Under HCR71, ARDE is designed to be a vehicle to determine and fund the necessary research to meet the challenge of Alaska's future. The idea is to constitutionally dedicate to research a small percentage of our total resource revenues, specifically our natural gas resources north of the Brooks Range, most of which are not currently being developed.

The Alaska Research Development Corporation, which would be created by the passage of HB705, would identify those projects which could unlock the knowledge necessary for the development of the state's natural resources, preserve the heritage and culture of Alaska's people and conduct research necessary to protect the health and welfare of the people of our state.

The scope of ARDE's efforts would be directed toward the entire state, not just the Arctic region, as the Federal Arctic Science and Policy Act is. ARDE would dovetail the Federal Act as well as compliment research currently being done through the University of Alaska's Organized Research. As envisioned, ARDE could be a significant future funding source for the University's research projects related specifically to Alaska.

The Corporation's Board of Directors would be composed of eleven members, four each from the business community and academic community, and three with professional recognition in government, in addition to the Governor and the president of the University of Alaska as ex officio members. The board would employ a limited staff to aid in grant determination and administration. The Corporation would be subject to the Executive Budget Act providing the Legislature with an annual review, much in the same way we review the budget of the Alaska Permanent Fund Corporation.

Offered: 3/13/85
Referred: Rules

Original sponsors: Boucher, Ringstad, Gruenberg, et al

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE CONCURRENT RESOLUTION NO. 11 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the University of Alaska Foundation.

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

WHEREAS art. VII, secs. 4 and 5 and art. VIII, secs. 1 and 2 of the Constitution of the State of Alaska call for the promotion and protection of public health, providing for the public welfare, the settlement of lands and the development of resources, and the utilization, development, and conservation of all state natural resources; and

WHEREAS although the Arctic Science and Policy Act of 1984 is commendable and its passage long overdue, the Act focuses on federal interests and priorities solely and it is directed only at part of the state; and

WHEREAS the economic viability of the state, the well-being of its inhabitants, and the promise of a reasonable future for coming generations depends upon the support of applied and fundamental research directed at specific Alaskan problems; and

WHEREAS these physical, biological, medical, and social problems are only partially, or not at all, addressed by conventional sources of support resulting in significant gaps in both scientific and technical research endeavors;

BE IT RESOLVED that the Alaska State Legislature commends and supports the University of Alaska Foundation in its endeavors to forecast research needs and to find and fill the gaps in the current research effort, and be it

FURTHER RESOLVED that the Alaska State Legislature encourages the University of Alaska Foundation to seek support for long-term and stable

1 funding for this research.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HJR 71
Title : Proposing amendments to the Constitution of the State of Alaska creating the Alaska Research Development Endowment.
Sponsor : House Finance
Requestor : House Finance
Date of Request : 4/9/86

FISCAL DETAIL

Agency Affected : Alaska Research Development
BRU : Endowment
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE		(800.0)	(800.0)	(800.0)	(800.0)	(800.0)

FUNDING : (Thousands of Dollars)

GENERAL FUND		800.0	800.0	800.0	800.0	800.0
FEDERAL FUNDS						
OTHER						
TOTAL		800.0	800.0	800.0	800.0	800.0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This bill dedicates 1/3 of all state royalties and royalty sale proceeds from North Slope natural gas to the Alaska Research Development Endowment. Currently, approximately $2.4 million is received by the state from those sources. Consequently, $800.0 would be dedicated. (2.4 million ÷ 3 = $800.0)

Prepared by : Representative Steve Frank — Phone : 465-3706
Division : Resources Committee Chairman — Date : 4/9/86

Approved by Commissioner : Dick Shultz — Date : 4/16/86
Agency : _____

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

HJR

75

Original sponsor: Resources Committee

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 75 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Relating to the Alaska National Interest Lands Conservation Act Sections 705 and 706.

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

WHEREAS the timber industry is an important industry and a major contributor to the economy of the state; and

WHEREAS tourism, commercial fishing, and recreation industries are also vital to Southeast Alaska and are major contributors to the state's and region's economy; and

WHEREAS the passage of the Alaska National Interest Lands Conservation Act (ANILCA) recognized the importance of these industries to the state; and

WHEREAS Sections 705 and 706 of ANILCA were a compromise between those advocating wilderness additions, those supporting a viable timber industry, and those concerned about other values within the Tongass National Forest; and

WHEREAS Section 705 provided for a timber supply fund to

make timber harvest in marginally economic stands economically feasible; and

WHEREAS Section 705 authorized a timber supply harvest goal of 4.5 billion board feet per decade; and

WHEREAS Congress's objective in Sections 705 and 706 was to maintain employment in the timber industry of Southeast Alaska at pre-ANILCA levels, while ensuring that other resource values and public uses would be protected on nonwilderness land in accordance with Federal law and the Tongass Land Management Plan; and

WHEREAS Sections 705 and 706 have not been properly implemented, particularly as a result of the Forest Service's failure to allocate Section 705 funds in accordance with representations it made to Congress at the time of ANILCA's passage; and

WHEREAS Congress is about to begin oversight hearings to consider Sections 705 and 705 of ANILCA;

BE IT RESOLVED by the Alaska State Legislature that Sections 705 and 706 of ANILCA not be amended in a manner which would upset the delicate compromise crafted by Congress balancing values within the Tongass National Forest; and be it

FURTHER RESOLVED that the Forest Service manage the Tongass National Forest and the 4.5 billion board feet per decade timber harvest level in a manner consistant with Federal and State laws guiding the management of the Tongass National Forest that will

maintain the balance between jobs and development, and fish, wildlife, recreation, and wilderness in Southeast Alaska; and be it

FURTHER RESOLVED that the Tongass Timber Supply Fund be adequately funded and spent in accordance with Federal and State laws guiding management of the National Forest and for the items that the Forest Service advised Congress it would spend the funds; and be it

FURTHER RESOLVED that before Congress begins any further consideration of ANILCA that hearings be held within the State of Alaska.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; to the Honorable George Bush, Vice-President of the United States and president of the U.S. Senate; to the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowske, U.S. Senators, and the Honorable Don Young, U.S. Representative, and members of the Alaska delegation in Congress.

Offered: 5/1/86
Referred: Rules

Original sponsor: Resources Committee

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 51 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Relating to the Alaska National Interest Lands Conservation Act Sections 705 and 706.

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

WHEREAS the timber industry is an important industry and a major contributor to the economy of the state; and

WHEREAS tourism, commercial fishing, and recreation industries are also vital to Southeast Alaska and are major contributors to the state's and region's economy; and

WHEREAS the passage of the Alaska National Interest Lands Conservation Act (ANILCA) recognized the importance of these industries to the state; and

WHEREAS Section 705 of ANILCA was a compromise between those advocating wilderness additions, those supporting a viable timber industry, and those concerned about other values within the Tongass National Forest; and

WHEREAS Section 705 provided for a timber supply fund to make timber harvest in marginally economic stands economically feasible; and

WHEREAS Section 705 authorized a timber supply harvest goal of 4.5 billion board feet per decade; and

WHEREAS Congress's objective in Section 705 was to maintain employment in the dependent timber industry of Southeast Alaska at pre-ANILCA levels, while ensuring that other resource values and public uses would be protected on nonwilderness land in accordance with Federal law and the Tongass Land Management Plan; and

WHEREAS Section 705 has not been properly implemented, particularly as

a result of the forest service's failure to allocate Section 705 funds in accordance with representations it made to Congress at the time of ANILCA's passage; and

WHEREAS Congress is about to begin oversight hearings to consider Section 705 of ANILCA;

BE IT RESOLVED by the Alaska State Legislature that Section 705 of ANILCA not be amended so that the delicate compromise crafted by Congress balancing values within the Tongass National Forest be maintained; and be it

FURTHER RESOLVED that the forest service continue to manage the Tongass National Forest in a manner that will maintain the balance between jobs and development, and fish, wildlife, recreation, and wilderness in Southeast Alaska, and that the timber harvest level of 4.5 billion board feet per decade be maintained; and be it

FURTHER RESOLVED that the Tongass Timber Supply Fund be adequately funded and spent in accordance with the manner and for the items that the forest service advised Congress it would spend the funds; and be it

FURTHER RESOLVED that before Congress begins any further consideration of ANILCA that hearings be held within the State of Alaska.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; to the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; to the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Bradley
5/5/86

Original sponsor: Resources Committee

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 75 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Relating to the Alaska National Interest Lands Conservation Act Sections 705 and 706.

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

WHEREAS the timber industry is an important industry and a major contributor to the economy of the state; and

WHEREAS tourism, commercial fishing, and recreation industries are also vital to Southeast Alaska and are major contributors to the state's and region's economy; and

WHEREAS the passage of the Alaska National Interest Lands Conservation Act (ANILCA) recognized the importance of these industries to the state; and

WHEREAS Section 705 of ANILCA was a compromise between those advocating wilderness additions, those supporting a viable timber industry, and those concerned about other values within the Tongass National Forest; and

WHEREAS Section 705 provided for a timber supply fund to make timber harvest in marginally economic stands economically feasible; and

WHEREAS Section 705 authorized a timber supply harvest goal of 4.5 billion board feet per decade; and

WHEREAS Congress's objective in Section 705 was to maintain employment in the timber industry of Southeast Alaska at pre-ANILCA levels, while ensuring that other resource values and public uses would be protected on

a result of the forest service's failure to allocate Section 705 funds in accordance with representations it made to Congress at the time of ANILCA's passage; and

WHEREAS Congress is about to begin oversight hearings to consider Section 705 of ANILCA;

BE IT RESOLVED by the Alaska State Legislature that Section 705 of ANILCA not be amended in a manner that would upset the delicate compromise crafted by Congress balancing values within the Tongass National Forest; and be it

FURTHER RESOLVED that the forest service manage the Tongass National Forest and the 4.5 billion board feet per decade timber harvest supply goal in a manner consistent with federal and state laws guiding the management of the Tongass National Forest that will maintain the balance between jobs and development, and fish, wildlife, recreation, and wilderness in Southeast Alaska; and be it

FURTHER RESOLVED that the Tongass Timber Supply Fund be adequately funded and spent in accordance with the manner and for the items that the forest service advised Congress it would spend the funds; and be it

FURTHER RESOLVED that before Congress begins any further consideration of ANILCA that hearings be held within the State of Alaska.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; to the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; to the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative,

ATA

Conservation Act and create additional wilderness areas, ~~decrease the mandated timber harvest level, or eliminate the authorized timber supply fund~~ could cause ~~substantial~~ damage to the economy of Southeastern Alaska; and

~~WHEREAS Congress is about to begin hearings to consider the revision of the Alaska National~~ Interest Lands Conservation Act and ~~special interest groups~~ are requesting ~~significant changes in the~~ Act that may cause ~~substantial damage to the existing timber industry and,~~ consequently, ~~to many communities in Southeastern Alaska~~;

BE IT RESOLVED by the Alaska State Legislature that ~~the Alaska National Interest Lands Conservation Act not be amended because this action would void the delicate compromise on legislation passed in 1980; and be it~~

~~FURTHER RESOLVED~~ that the timber harvest level of 4,500,000,000 board ~~feet per decade mandated by the Alaska National Interest Lands Conservation Act be maintained; and be it~~

~~FURTHER RESOLVED that~~ the timber supply fund as enacted in the Alaska National Interest Lands Conservation Act be maintained and adequately funded; and be ~~it~~ MADE AVAILABLE FOR ALL RESOURCE MANAGEMENT IN THE TONGASS NATIONAL FOREST.

FURTHER RESOLVED that the land base made available under the Alaska National Interest Lands Conservation Act for renewable timber harvest not be reduced and that no further additions to wilderness areas be enacted; and be it

FURTHER RESOLVED that before Congress begins further consideration of the Alaska National Interest Lands Conservation Act, it hold hearings within the State of Alaska.

COPIES of this resolution shall be sent to and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

ATA

Conservation Act and create additional wilderness areas, ~~decrease the mandated timber harvest level, or eliminate the authorized timber supply fund~~ could cause ~~substantial~~ damage to the economy of Southeastern Alaska; and

~~WHEREAS Congress is about to begin hearings to consider the revision of the Alaska National Interest~~ Lands Conservation Act ~~and special interest groups are requesting significant changes in the Act that may cause substantial damage to the existing timber industry and, consequently, to many communities in Southeastern Alaska;~~

BE IT RESOLVED by the Alaska State Legislature that ~~the Alaska National Interest Lands Conservation Act not be amended because this action would void the delicate compromise on legislation passed in 1980; and be it~~

~~FURTHER RESOLVED that the timber harvest level of 4,500,000,000 board feet per decade mandated by the Alaska National Interest Lands Conservation Act be maintained; and be it~~

~~FURTHER RESOLVED that~~ the timber supply fund as enacted in the Alaska National Interest Lands Conservation Act be maintained and adequately funded; and be ~~it~~ MADE AVAILABLE FOR ALL RESOURCE MANAGEMENT IN THE TONGASS NATIONAL FOREST.

FURTHER RESOLVED that the land base made available under the Alaska National Interest Lands Conservation Act for renewable timber harvest not be reduced and that no further additions to wilderness areas be enacted; and be it

FURTHER RESOLVED that before Congress begins further consideration of the Alaska National Interest Lands Conservation Act, it hold hearings within the State of Alaska.

COPIES of this resolution shall be sent to and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Conservation Act and create additional wilderness areas, ~~decrease the mandated timber harvest level, or eliminate the authorized timber supply~~ fund could cause ~~substantial~~ damage to the economy of Southeastern Alaska; and

~~WHEREAS Congress is about to begin hearings to consider the revision of the Alaska National Interest Lands Conservation Act and special interest groups are requesting significant changes in the Act that may cause substantial damage to the existing timber industry and, consequently, to many communities in Southeastern Alaska;~~

BE IT RESOLVED by the Alaska State Legislature that ~~the Alaska National Interest Lands Conservation Act not be amended because this action would void the delicate compromise on legislation passed in 1980; and be it~~

~~FURTHER RESOLVED that the timber harvest level of 4,500,000,000 board feet per decade mandated by the Alaska National Interest Lands Conservation Act be maintained; and be it~~

~~FURTHER RESOLVED that~~ the timber supply fund as enacted in the Alaska National Interest Lands Conservation Act be maintained and adequately funded; and be ~~it~~ MADE AVAILABLE FOR ALL RESOURCE MANAGEMENT IN THE TONGASS NATIONAL FOREST.

FURTHER RESOLVED that the land base made available under the Alaska National Interest Lands Conservation Act for renewable timber harvest not be reduced and that no further additions to wilderness areas be enacted; and be it

FURTHER RESOLVED that before Congress begins further consideration of the Alaska National Interest Lands Conservation Act, it hold hearings within the State of Alaska.

COPIES of this resolution shall be sent to and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

A Conrad, Dennis A., 10/01/80, Vol 52, pg 2981, 2983

Q - Now, with regard to your summary chart, which you placed in evidence this morning, is it true that the net income figures you have used in your chart for Wrangell Lumber Company for the years ending in March '71, '72, '73 and '74 have been challenged by the Internal Revenue Service?

A - I don't recall the specific years that are subject to audit by the Internal Revenue Service.

...

Q - Do you recall that after about a year of investigation and conferences the IRS issued its official examination report finding that Wrangell Lumber Company's net income had been understated by abut $64,000,000 for the years 1971, 2, 3 and 4?

A - I do not recall the details of the final report issued by the Internal Revenue Service. I recall that there were years subject to examination and deficiencies that had been proposed by the Internal Revenue Service.

A Conrad, Dennis A., 10/01/80, Vol 52, pg 2981, 2983

Q - Do you recall that about $16 million for that period was asserted to be an understatement of income because of artificially low prices on spruce cants sold in nonarm's length transactions?

MR. WHITE: Same objection, Your Honor.

THE COURT: I think, counsel, I'm going to sustain the objection.

A Conrad, Dennis A., 10/01/80, Vol 52, pg 2988

MR. DWYER: We offer to prove through this witness and through Exhibits 1349 and 1350, which I believe should now be lodged for the record, the following facts: That following a period of investigation the Internal Revenue Service issued an official examination report finding that Wrangell Lumber Company's net income had been understated for the years ending in March '71, '72, '73 and '74 by approximately $64 million, and that of that amount, in round figures, about $16 million represented artificially low prices on spruce cants sold in nonarmlength transactions, and that about $11 million represented disallowed interest payments or payments characterized as interest payments which the Revenue Service would disallow on the basis that APC and its owners were, in fact, investing and not lending and, therefore, the payments would not be interest but dividends.

We further offer to prove through the testimony and the documents -- the testimony of this witness and these documents that the examination report also asserts what is called by the IRS a slush fund violation, in which payments were improperly deducted as association dues which, in fact, were nondeductible political payments.

X217

TX 361
Adm 8/13

CONFIDENTIAL

Jan. 14, 1974

D. L. Murdoy

D. L. Finney

At Random

W. Bogalka
G. Woodbury

The Bradfield Timber Sale being high in Spruce volume and containing 80 MMBF with the possibility of additional sales in the area would be a great foothold for KPC. However, there is still the problem of ALP having an uncompleted sale under contract and the fact that we would have to buy the camp from Sykes with no assurance of future timber sales.

When you consider the geographic location you can see the advantage to ALP and their Wrangell mills. Also, from an operational standpoint they would be better able to administer this area out of Wrangell then we could out of Ketchikan.

In exchange for us not being involved or making a deal with Sykes and then passing the camp back to ALP we would need an arrangement that would let us take over the L.O.G. and Port Alice sales. Again, geographically, it does not make sense for ALP to tow logs from the West Coast, past the Klawock mill to Wrangell nor for us to tow logs from the Bradfield past Wrangell mills to Klawock or Ketchikan. ALP would be in much better shape to sort and bundle the Bradfield production in the Wrangell area and KPC the West Coast volume on the West Coast and Ketchikan.

The same thing holds true for the rather large sales coming up on Kupreanof. The Kake area and North end goes better to ALP and the South and Petersburg area better fits KPC.

We need some sales in the Petersburg area to keep people like Nelson and Jones in wood but our best advantage are those sales that will funnel back to the Wrangell Narrows area. So, there is also room for tradeoffs in this area.

These are the sales scheduled for the Petersburg area coming up soon:

Sale	Proposed Date	Volume
Conclusion Is.	?	23
Duncan Pass	7/74	45
Tonka Mt.	7/74	60
Alvin Bay	10/74	50
Portage Bay	7/75	50
Twelve Mile	5/77	40

COPY

Finney #217
EXHIBIT
DEAN
6-22-77

30075548

These are the West Coast sales in ALP area on Kosciusko and Hecata scheduled soon.

Sale	Proposed Date	Volume
Point Hardscrabble	74	30
Sumner	75	30
Timber Knob	75	45
W. Port Alice	76	20

In addition to the other advantages, we have a fair chunk of our allotment on Kosciusko that we could develop more favorably in connection with the other timber sales sold there. I feel that all things considered it would be most beneficial to ALP and ourselves to realign the operations so that KPC had the West Coast.

There is no way of knowing exactly what the Forest Service is going to sell in the future but it is obvious that any increased program must come from other than the South Tongass. This means that future sales will geographically be better positioned for ALP than for KPC. It makes sense for us to work out this fact now, so that we control the S. Tongass and at least those sales that will logically feed into Sumner Straits, Duncan Canal and Wrangell Narrows and let ALP have those feeding into Kake, Frederick Sound and points north. This, of course, must be done in such a way that we balance the volumes by years and by timber quality and stumpage prices.

It's rather a big order, but if we can at least get agreement on some of these principals we can then work out the sale-by-sale details as we gather more information and the F.S. gets closer to selling the individual sales. The big hurdle I see, if you buy my logic for all of this, is to get ALP to consider seriously pulling out of the West Coast. I assume they would need the equipment potential elsewhere, so it would only be taking over the area, roads and dumps as their present sales terminate or as scheduled in the tradeoff.

I reviewed all this in a discussion with Walt and he is going to get as much current information as possible on timber sales that would be in question. I will also brief and discuss my thoughts with George who has done some work on the sales.

I cannot stress too hard, my feeling about the benefits of towing, administration and log transfers and sorting if we can get the best geographical division between ALP and ourselves. It would also strengthen both of us in a competitive position for any outside interest (U.S. Ply or whoever) who tries to compete for sales with us at a later date.

D. L. Finney

DLP:hr

30075547
30075547
30075547

HOUSE

COMMITTEE REPORT

5/5

(9)

Date referred: 4/22/86

FURTHER REFERRALS: Rules

DATE: MAY 6, 1986

The RESOURCES Committee has considered HJR 75

Relating to the amendment by Congress of the Alaska National Interest Lands Conservation Act as it relates to the timber industry.

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[✓] replace with CS HJR 75 (RESOURCES) [ ] same title [✓] new title

and recommends DO PASS

[ ] further referral to the _____ Committee

and attaches:
[ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[✓] zero fiscal note

SIGNING DO PASS: Fair

Shultz Dick Shultz

Jenkins Roger Jenkins

Miller(M) M. Miller

Pearce

SIGNING OTHER RECOMMENDATIONS:

Sund no rec.

Wallis no rec.

Co-Chairman Dick Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHJR 75 (Res)
Title : Relating to the Alaska National Interest Lands Concervation Act Sections 705 and 706.
Sponsor : House Resources Committee
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : _____
BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : House Resources Committee Phone : 465-3715
Division : _____ Date : 5/6/86

Approved by Commissioner : Dick Shultz Date : 5/6/86
Agency : House of Representatives

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

STATEMENT OF JACK W. LENTFER ON HOUSE JOINT RESOLUTION NO. 75

My name is Jack Lentfer. I live in Juneau. I am representing myself and the Territorial Sportsmen, an organization of Juneau area residents with interests in fishing, hunting, and wise use of natural resources.

I have been a wildlife biologist in Alaska for 29 years and from 1977 through 1981 was Alaska Department of Fish and Game Southeast Alaska Game Division supervisor. The most important single issue I dealt with in that job was effects of Tongass Forest logging on wildlife. I have worked throughout much of Alaska, and I consider habitat alteration from clearcut logging one of the most serious problems now facing wildlife managers in Alaska.

The Territorial Sportsmen are a long-time Juneau area fishing and hunting organization. They support sound development which enhances the economy of southeast Alaska. Recently they produced a comprehensive report on the effects of logging on wildlife, fisheries, and economics in southeast Alaska. A copy is included in packets which went to committee members.

With regard to House Joint Resolution 75, I fully support the Alaska legislature examining the southeast Alaska logging issue and then informing the public and recommending to Congress. The legislature should consider views of all who have an interest in the Tongass Forest as well as relevant findings of the Alaska Department of Fish and Game.

I would like to highlight a few points from the Territorial Sportsmen's report.

The Tongass Forest makes up 93 percent of southeast Alaska. Four percent has commercially valuable timber (more than 30,000 board feet per acre). This 4 percent is the most valuable for logging and also has the highest fish and wildlife values. Logging is concentrated in the high volume classes; one-half of the highest volume class (50,000 board feet per acre) had been cut by 1981, and under present cutting plans, half of the remainder will be gone within the next 40 years. Because high-volume, old-growth forest is so limited, comparisons of total forest acres logged and left unlogged have little relevance.

After cutting, an area does not again attain old-growth characteristics for several hundred years. Present harvest schedules call for rotational cutting at about 100-year intervals. Thus, once an area is entered into a cutting schedule, old-growth habitat is permanently eliminated.

Sitka black-tailed deer are the most abundant and widely distributed recreational and subsistence hunting species in southeast Alaska. The main factor limiting populations is availability of food in winter. Logging, with its removal of canopy cover of old-growth trees, allows much more snow to

accumulate on the ground and make food unavailable. About 30 years after logging, densely growing second growth shades out understory with its deer forage plants. The Alaska Department of Fish and Game estimates that deer numbers in many popular hunting areas will be reduced 60-80 percent by the end of the first 100-year rotation period. Forest-wide, deer numbers will be reduced by more than 40 percent under present logging plans.

Other wildlife species affected by logging, road-building, and associated activities include brown bear, black bear, mountain goat, moose, marten, mink, river otter, bald eagle, Vancouver Canada goose, and other birds.

Fish, a highly valued commercial and recreational resouce, can be adversely affected by logging. With proper safeguards, short-term effects can be minimized. Biologists generally agree, however, that long-term effects of logging on stream habitat and fish populations are unknown.

Shellfish (crabs and clams) can be affected by log dumping and rafting in the biologically rich waters of protected bays. Bark accumulates on the bottom and smothers organisms and depletes oxygen.

Logging can affect a number of guided recreational activities, including hunting, fishing, photography, marine cruising, kayaking, and river rafting. Clearcuts are generally not esthetically compatible with these activities, many of which are contributing significantly to the economy of southeast Alaska. The guided hunting industry brings between $75,000 and $1,000,000 into southeast Alaska annually. The largest component is brown bear guiding. Logging has already disturbed enough brown bear areas that guides themselves now believe it necessary to reduce by more than one-half the number eligible to guide on Admiralty, Baranof, and Chicagof islands.

The timber market is presently depressed, and logging on the Tongass Forest is at a reduced level. It should be realized, however, that increased timber harvest on Native lands is compensating economically to some degree. Other activities that will benefit economically and could reduce Tongass timber demands include increased harvest and local processing of timber by small, independent operators, increased tourism, increased mining, maintenance of a viable fishing industry, and maintenance and expansion of various types of guiding.

In conclusion, I would urge the legislature to thoroughly review Tongass Forest management practices and then inform the public of the trade-offs associated with present logging practices and also make appropriate recommendations to Congress.

Thank you.

As of 4/25/86

14

The following Southeast Alaska communities have passed resolutions opposing the 4.5 billion board feet per decade timber supply goal of ANILCA Section 705(a):

Angoon
Craig
Edna Bay
Elfin Cove
Gustavus Community Association
Hoonah
Hydaburg
Kupreanof
Pelican
Point Baker
Port Alexander
Port Protection
Tenakee Springs
Yakutat

CITY OF HYDABURG
P.O. BOX 49
HYDABURG, ALASKA 99922
(907) 285-3761

RESOLUTION NO. 86-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HYDABURG, ALASKA IN SUPPORT WITH OTHER SOUTHEAST ALASKAN COMMUNITIES OPPOSING THE 4.5 BILLION BOARD FEET PER DECADE ("450") REQUIRED TIMBER CUT ON THE TONGASS NATIONAL FOREST.

WHEREAS, as a bush community, our lives are based on the surrounding fish and wildlife resources; and

WHEREAS, our fish and wildlife resources can be detrimentally effected by this amount of timber cutting; and

WHEREAS, this level of timber harvest does not allow adequate flexibility in the management of the forest for all multiple uses; and

WHEREAS, the "450" timber cut does not include ongoing timber harvesting on State and private lands and should be reduced to reflect a balance of timber cutting activities amongst the Forest Service, the State of Alaska, and private landowners.

THEREFORE BE IT RESOLVED, that the Council of the City of Hydaburg, in Hydaburg Alaska hereby stands opposed to the 4.5 billion board feet per decade ("450") required timber cut on the Tongass National Forest.

PASSED AND APPROVED THIS fourth day of March, 1986.

CITY OF HYDABURG, ALASKA

Robert Sanderson

Robert Sanderson, Mayor

ATTEST:

Margaret O'Neil

Margaret O'Neil, City Clerk

CITY OF PORT ALEXANDER

Box 725 • Port Alexander, Alaska 99836

Resolution 84-6

Whereas, as a bush community, our lives are based on the surrounding fish and wildlife resources, and

Whereas, biologists have determined that excessive timbering and/or clearcutting can be detrimental to these resources, and

Whereas, the "450 cut" is a political mandate not based on economic principles, as evidences by the millions of dollars lost annually on the Tongass National Forest, and

Whereas, this level of timber harvest does not allow flexibility in the management of the forest for all multiple uses,

BE IT RESOLVED that the community of Port Alexander stands opposed to the "450" * timber cut on the Tongass National Forest.

This resolution is hereby adopted by a unanimous vote, this 5th day of October, 1984.

~~Linda Hoven~~ Mayor
PAUL YOUNG

Amy Limber
City Clerk

* referring to ANILCA legistation that calls for 4.5 billion board feet of timber to be offered for harvest each decade on the Tongass National Forest, with an annual subsidy of 40 million dollars or as much as is necessary to accomplish this legislation.

CCR-86-01-14-01

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF HOONAH, ALASKA, IN SUPPORT WITH OTHER SOUTHEASTERN COMMUNITIES OPPOSING THE 4.5 BILLION BOARD FEET PER DECADE (450) REQUIRED TIMBER CUT, 50 YEAR APC AND LPK CONTRACTS, AND ABUSE OF THE TONGASS TIMBER FUND ON THE TONGASS NATIONAL FOREST.

WHEREAS, Hoonah is a rural community, our lives are based on the surrounding fish and wildlife resources; and

WHEREAS, our fish and wildlife resources will be detrimentally effected by this amount of timber cutting; and

WHEREAS, this level of timber harvest does not allow adequate flexibility for the long term management of the forest for all multiple uses; and

WHEREAS, the Timber Supply Fund is currently being used to access high yield stands of timber, which are also critical habitat for fish and wildlife instead of preroad marginal stands of timber to increase their economic viability; and

WHEREAS, under the current management the "450" cut and 50 year contracts are allowing the Tongass to be hygraded for it's high yield timber, this management is fueled by the wasteful use of the Timber Supply Fund. The loss of these areas of high yield will result in any long term timber industry sustaining itself with timber that is less economically viable; and

WHEREAS, the "450" cut and 50 year contracts allows for the carry over of timber from one operating period to the next, causing severe boom and bust cycles for the communities within the Tongass National Forest; and

WHEREAS, the "450" cut does not include ongoing timber harvesting on state and private lands and should be reduced to reflect a balance of timber cutting activities amongst the Forest Service, the State of Alaska, and private landowners.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hoonah, Alaska, that it opposes the 4.5 billion board feet per decade cut, the 50 year contracts, and the abuse of the Timber Supply Fund.

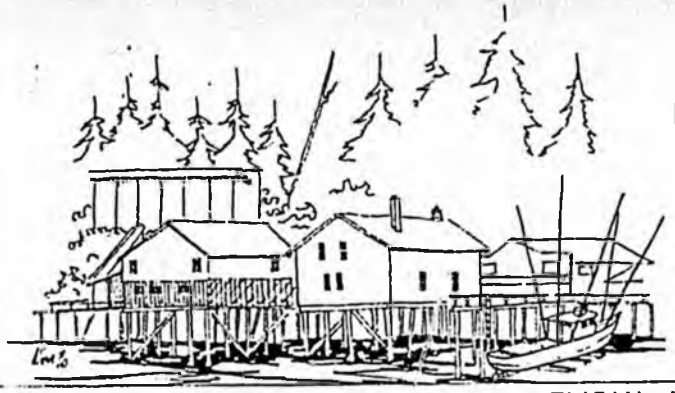
Votes _____ Yea 6 Nay 0

January 14, 1986

Miles N. Murphy, Sr. Mayor

ATTEST: Joyce Mills

Joyce Mills, City Clerk



City of Pelican

BOX 757 – PELICAN, ALASKA 99832 – PHONE 735-2202

RESOLUTION 1985-4

A RESOLUTION OPPOSING THE "450 CUT"
IN THE TONGASS NATIONAL FOREST

WHEREAS, as a bush community, our lives are based on the surrounding fish and wildlife resources; and,

WHEREAS, biologists have determined that excessive timbering and/or clearcutting can be detrimental to these resources; and,

WHEREAS, the "450 cut" is a political mandate not based on economic principles, as evidenced by the millions of dollars lost annually on the Tongass National Forest; and,

WHEREAS, this level of timber harvest does not allow flexibility in the management of the forest for all multiple uses,

THEREFORE BE IT RESOLVED THAT the Pelican City Council is opposed to the "450 cut"* timber policy on the Tongass National Forest.

PASSED, APPROVED AND ADOPTED THIS 11th DAY OF FEBRUARY 1985.

signed: Harry A. Davidson
Harry A. Davidson, Mayor

attest:

Edith M. Carlson
Edith M. Carlson, City Clerk

* referring to ANILCA legislation that calls for 4.5 billion board feet of timber to be offered for harvest each decade on the Tongass National Forest, with an annual subsidy of 40 million dollars or as much as is necessary to accomplish this legislation.

Rec'd 7/9/85

CITY OF YAKUTAT, ALASKA

RESOLUTION NO. 85-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YAKUTAT, ALASKA IN SUPPORT WITH OTHER SOUTHEAST ALASKAN COMMUNITIES OPPOSING THE 4.5 BILLION BOARD FEET PER DECADE ("450") REQUIRED TIMBER CUT ON THE TONGASS NATIONAL FOREST.

WHEREAS, as a bush community, our lives are based on the surrounding fish and wildlife resources; and

WHEREAS, our fish and wildlife resources can be detrimentally effected by this amount of timber cutting; and

WHEREAS, this level of timber harvest does not allow adequate flexibility in the management of the forest for all multiple uses; and

WHEREAS, the "450" timber cut does not include ongoing timber harvesting on State and private lands and should be reduced to reflect a balance of timber cutting activities amongst the Forest Service, the State of Alaska, and private landowners.

THEREFORE BE IT RESOLVED, that the Common Council of the City of Yakutat hereby stands opposed to the 4.5 billion board feet per decade ("450") required timber cut on the Tongass National Forest.

PASSED AND APPROVED THIS 7th DAY OF ~~MAY~~ June, 1985.

CITY OF YAKUTAT, ALASKA

MAYOR

ATTEST:

CITY CLERK

Community of Elfin Cove Non-Profit Corporation
POST OFFICE BOX ONE
ELFIN COVE, ALASKA 99825
(907) 697-8131

RECEIVED
MAR 06 198
CONSERVATION COUNCIL

Whereas, as a bush community, our lives are based on the surrounding fish and wildlife resources, and

Whereas, biologists have determined that excessive timbering and/or clearcutting can be detrimental to these resources, and

Whereas, the "450 cut" is a political mandate not based on economic principles, as evidenced by the millions of dollars lost annually on the Tongass National Forest, and

Whereas, this level of timber harvest does not allow flexibility in the management of the forest for all multiple uses,

BE IT RESOLVED that the Community of Elfin Cove Non-Profit Corporation stands opposed to the "450"* timber cut on the Tongass National Forest.

This resolution is hereby adopted by a unanimous vote, this 15th day of February, 1985. The Board of Directors are as follows:

Greg Howe, Chairperson

Louise Mourant, Vice-Chair

Nora Ann Johnson, Treasurer

Sandy Darnell, Secretary

Paul Johnson, Member

Joe Craig, Member

Mary Jo Lord-Wild, Member

* referring to ANILCA legislation that calls for 4.5 billion board feet of timber to be offered for harvest each decade on the Tongass National Forest, with an annual subsidy of 40 million dollars or as much as is necessary to accomplish this legislation.

COMMUNITY OF PORT PROTECTION

A RESOLUTION OF THE COMMUNITY OF PORT PROTECTION,ALASKA IN SUPPORT WITH OTHER SOUTHEAST ALASKAN COMMUNITIES OPPOSING THE 4.5 BILLION BOARD FEET PER DECADE (450) REQUIRED TIMBER CUT ON THE TONGASS NATIONAL FOREST.

WHEREAS, as a rural "Bush" community our economic and subsistance well being is dependant on surrounding fish and wildlife resources; and

WHEREAS, our collective fish and wildlife habitat will be severly impacted by this excessive harvest; and

WHEREAS, this level of timber harvest does not fairly consider or allocate for true multiple use placing timber concerns over community needs; and

WHEREAS, the 4.5 billion board feet mandate does not include ongoing harvesting on State,Native Corporation, and private holdings and should be reduced to reflect a true balance of harvest clearcutting occuring between Forest Service, The State of Alaska, Native Corporations, and private landowners.

WHEREAS, current logging practices stress "high grading" over fish and wildlife resources and habitat,

Therefore, let it be resolved that the Community Council of the Village of Port Protection hereby stands opposed to the 4.5 billion board feet per decade required timber cut on the Tongass National Forest, and that furthur cutting be brought in line with similar activities in the Lower 48 and a uniform harvestand cleanup reforestation policy apply.

PASSED AND APPROVED THIS 1ST DAY OF NOVEMBER,1985.

Community of Port Protection, Alaska

CHAIRMAN

ATTEST

Community Secretary

Community of Point BAKER, PRINCE of WALES IS.

A RESOLUTION OF THE COMMUNITY OF Point BAKER ALASKA IN SUPPORT WITH OTHER SOUTHEAST ALASKAN COMMUNITIES OPPOSING THE 4.5 BILLION BOARD FEET PER DECADE (450) REQUIRED TIMBER CUT ON THE TONGASS NATIONAL FOREST.

WHEREAS, as a rural "Bush" community our economic and subsistance well being is dependant on surrounding fish and wildlife resources; and

WHEREAS, our collective fish and wildlife habitat will be severly impacted by this excessive harvest; and

WHEREAS, this level of timber harvest does not fairly consider or allocate for true multiple use placing timber concerns over community needs; and

WHEREAS, the 4.5 billion board feet mandate does not include ongoing harvesting on State, Native Corporation, and private holdings and should be reduced to reflect a true balance of harvest clearcutting occuring between Forest Service, The State of Alaska, Native Corporations, and private landowners.

WHEREAS, current logging practices stress "high grading" over fish and wildlife resources and habitat,

Therefore, let it be resolved that the Community Council of the Village of Point Baker hereby stands opposed to the 4.5 billion board feet per decade required timber cut on the Tongass National Forest, and that furthur cutting be brought in line with similar activities in the Lower 48 and a uniform harvestand cleanup reforestation policy apply.

Community of Point BAKER, ALASKA

Mike Mortell DEC 3 1985

CHAIRMAN Mike Mortell
Box 53 Point Baker
99927

Attest

Joseph Sebastian

Community SECRETARY

Acting Joseph SEBASTIAN
129 Pt BAKER AK 99927

JAN 1 5 1986

Gustavus Community Association
Box 62
Gustavus, Alaska 99826

TO: Senator Stevens
Senator Murkowski
Representative Young
Representative Sieberling

FROM: President, Gustavus Community Association

SUBJECT: the "450 Timber Cut" on the Tongass National Forest

DATE: January 13, 1986

At the December 12, 1985 general meeting of the Gustavus Community Association, it was resolved to urge your support in removing the "450 timber cut" provision from the Alaska National Interest Land Classification Act, during the upcoming congressional review of this legislation.

Our reasoning is as follows:

Whereas, the livelihoods of Gustavus residents depend heavily on tourism, fishing and subsistence, and

whereas, biologists and others have determined that excessive timbering can be detrimental to these resources, and

whereas, the "450 timber cut" does not allow enough flexibility in the management of the National Forest for all appropriate uses, and

whereas, this level of harvest is not economically sensible, as shown by the millions of dollars spent to subsidize the forest products industry on the Tongass,

we therefore oppose the "450 timber cut" on the Tongass National forest.

(Information: ANILCA calls for 4.5 billion board feet of timber to be offered for harvest each decade on the Tongass National Forest, with an annual subsidy of up to $40 million.)

SIGNED: _____
President, Gustavus Community Association

CITY OF CRAIG ALASKA

P.O. Box 23, Craig, Alaska 99921 (907) 826-3275

RESOLUTION NO. 86-04

A RESOLUTION SUPPORTING OTHER SOUTHEASTERN COMMUNITIES OPPOSING THE 4.5 BILLION BOARD FEET PER DECADE (450) REQUIRED TIMBER CUT, 50 YEAR APC AND LPK CONTRACTS, AND ABUSE OF THE TONGASS TIMBER ON THE TONGASS NATIONAL FOREST

WHEREAS, Craig is a rural community, our lives are based on the surrounding fish and wildlife resources; and

WHEREAS, our fish and wildlife resources will be detrimentally effected by this amount of timber cutting; and

WHEREAS, this level of timber harvest does not allow adequate flexibility for the long term management of the forest for all multiple uses; and

WHEREAS, the Timber Supply fund is currently being used to access high yield stands of timber, which are also critical habitat for fish and wildlife instead of preroad marginal stands of timber to increase their economic viability; and

WHEREAS, under the current management the "450" cut and 50 year contracts are allowing the Tongass to be hygraded for it's high yield timber, this management is fueled by the wasteful use of the Timber Supply Fund. The loss of these areas of high yield will result in any long term timber industry sustaining itself with timber that is less economically viable, and

WHEREAS, the "450" cut and 50 year contracts allows for the carry over of timber from one operating period to the next, causing severe boom and bust cycles for the communities within the Tongass National Forest; and

WHEREAS, the "450" cut does not include ongoing timber harvesting on state and private lands and should be reduced to reflect a balance of timber cutting activities amongst the Forest Service, the State of Alaska, and private landowners.

APPROVED _____

Votes: Yea 4 Nay 2

_____ Attest _____
Mayor City Clerk

Resolution 86-2

A RESOLUTION BY THE CITY OF KUPREANOF, ALASKA IN SUPPORT WITH OTHER SOUTHEASTERN COMMUNITIES OPPOSING THE 4.5BILLION BOARD FEET PER DECADE (450) REQUIRED TIMBER CUT, 50 YEAR APC AND LPK CONTRACTS, AND ABUSE OF THE TONGASS TIMBER FUND ON THE TONGASS NATIONAL FOREST.

WHEREAS, Kupreanof is a rural community, our lives are based on the surrounding fish and wildlife resources; and

WHEREAS, our fish and wildlife resources will be detrimentally effected by this amount of timber cutting; and

WHEREAS, this level of timber harvest does not allow adequate flexibility for the long term management of the forest for all multiple uses; and

WHEREAS, the Timber Supply Fund is currently being used to access high yield stands of timber, which are also critical habitat for fish and wildlife instead of preroad marginal stands of timber to increase their economic viability; and

WHEREAS, under the current management the "450" cut and 50 year contracts are allowing the Tongass to be hygraded for it's high yield timber, this management is fueled by the wasteful use of the Timber Supply Fund. The loss of these areas of high yield will result in any long term timber industry sustaining itself with timber that is less economically viable; and

WHEREAS, the "450" cut and 50 year contracts allows for the carry over of timber from one operating period to the next, causing severe boom and bust cycles for the communities within the Tongass National Forest; and

WHEREAS, the "450" cut does not include ongoing timber harvesting on state and private lands and should be reduced to reflect a balance of timber cutting activities amongst the Forest Service, the State of Alaska, and private landowners.

NOW, THEREFORE, BE IT RESOLVED BY the City Council of the City of Kupreanof, Alaska, that it opposes the 4.5 Billion board feet per decade cut, the 50 year contracts, and the abuse of the Timber Supply Fund.

Date April 14, 1986

Mayor Robert T Baade City Clerk Emily V. Merriam

Edna Bay Community
Edna Bay, Alaska

Resolution 85-12:3-3

Whereas, as a bush community, our lives are based on the surrounding fish and wildlife resources, and

Whereas, biologists have determined that excessive timbering and/or clearcutting can be detrimental to these resources, and

Whereas, the '450 cut' is a political mandate not based on economic principles, as evidenced by the millions of dollars lost annually on the Tongass National Forest, and

Whereas, this level of timber harvest does not allow flexibility in the management of the forest for all multiple uses,

BE IT RESOLVED that the community of Edna Bay stands opposed to the '450' * timber cut on the Tongass National Forest.

This resolution is hereby adopted by majority vote, this 3rd day of March, 1985.

Bert Bergman
Board President

Valerie E. Brooks
Valerie Brooks
Secretary

* referring to ANILCA legislation that calls for 4.5 billion board feet of timber to be offered for harvest each decade on the Tongass National Forest, with an annual subsidy of 40 million dollars or as much is necessary to accomplish this legislation.

City of Angoon
P. O. Box 189
Angoon, Alaska 99820

Telephone
(907) 788-3653

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANGOON IN OPPOSITION TO THE 4.5 BILLION BOARD FEET PER DECADE ("450") TIMBER CUT ON THE TONGASS NATIONAL FOREST.

RESOLUTION NO. 86-02

WHEREAS, Angoon is a traditionally subsistence-oriented community dependent upon use of area fish and wildlife resources; and

WHEREAS, 450 MMBF per year harvest level has a detrimental effect on existing fish and wildlife levels within the Tongass National Forest; and

WHEREAS, detraction of existing fish and wildlife resources throughout the Tongass National Forest places additional use pressures from other communities on resources available to Angoon; and

WHEREAS, "450" does not reflect ongoing timber harvest on State and private lands; and

WHEREAS, "450" level of harvest over-supplies the market thus producing current low prices for timber while simultaneously depleting limited Native Corporation resources; and

WHEREAS, a need for "450" level of harvest has never been demonstrated by the timber industry.

THEREFORE BE IT RESOLVED; that the City Council of the City of Angoon, Alaska hereby stands opposed to the 4.5 billion board feet per decade ("450") timber cut on the Tongass National Forest.

Passed at City Council Meeting held on January 21, 1986 by a vote of 6 yeas, 0 nays, 0 absent, 0 abstain.

For the City of Angoon

Mayor

ATTEST: Cynthia L. Ford
City Clerk

SEAL

CITY OF TENAKEE SPRINGS

Resolution 85-17

In the Council
July 9, 1985

Introduced by the
Council President

A RESOLUTION OPPOSING THE "450" CUT ON THE TONGASS NATIONAL FOREST.

WHEREAS, living in a balanced environment possessing a wealth of natural resources insures each individual the choice of how to live. Having that choice is important to the residents of Tenakee Springs; and

WHEREAS, the Tongass National Forest lands form an integral part of our lifestyle in Tenakee Springs. The forest lands and the countless resources they produce affect not only how we live, but also where and why we live in this community; and

WHEREAS, we use a number of forest resources for many purposes in our lives: timber for lumber and heat, wildlife and fish for food, sport, and recreation, furbearers for income, and plants for food; and

WHEREAS, the residents of Tenakee Springs are understandably concerned about the present and future management of Tongass National Forest lands.

1. We want a financially healthy and realistic timber industry. An industry prepared to make a meaningful contribution to the local and regional economy year after year. An industry that accepts the responsibility of sharing the natural resources of the Tongass with other industries and interests.

2. We recognized that old growth forests are a non-renewable resource and provide critical fish and wildlife habitat. We appreciate the necessity of fish and wildlife to the maintenance and enrichment of subsistence and rural lifestyles.

3. We believe it is important to protect salmon streams and crab habitat to sustain the fishing industry in Southeast Alaska.

4. We consider maintaining forest land in its natural state critical to the potential future development of a growing tourism and recreation industry.

5. We understand the significance of wilderness as a generator of clean air and water in our environment; and

WHEREAS, timber management on the Tongass National Forest is governed by a congressional and contractual mandate specifying that 450 mmbf/year be designated for harvest. This 450 cut level was arbitrarily established some years ago as a political carrot and economic enticement to encourage development of a timber industry in Southeast Alaska. At the time it was felt that the timber industry was necessary to help settle and stabilize the area. The 450 cut level is not based on an objective scientific assessment of the sustainable timber harvest level on the Tongass. The 450 cut level does not take into consideration natural fluctuation in the timber market or changes in forest management priorities; and

WHEREAS, the obligatory 450 cut level, which also guarantees a minimum of

$40 million per year in federal subsidies, insures that commercial timber harvest dominates the present list of forest management priorities. The 450 cut level was established prior to the multiple-use concept of forest management; and

WHEREAS, since the 1971 Alaska Native Claims Settlement over 500,000 acres of National Forest Lands have been removed from the base and turned over to Native Corporations. The Forest Service estimates that the Native Corporations now control 20-25% of the commercial timber volume left in the Tongass. The Tongass timber base has been substantially reduced and yet the 450 cut level has remained unchanged; and

WHEREAS, Native Corporations are now cutting more timber annually than originally predicted by the Forest Service. While Native Corporation contracts are accounting for additional jobs in the timber industry, there has been no subsequent adjustment to the 450 cut level on the part of the Forest Service. This situation equates to additional federal subsidy and interference with the timber industry; and

WHEREAS, the high levels of Forest Service subsidies for pulpwood to supply the mills in Sitka and Ketchikan inflate the pulp market to such an extent that Native timber operations cannot always recover costs on the sale of pulpwood. Many trees are left on the ground to rot; and

WHEREAS, the Alaska National Interest Lands Conservation Act (ANILCA) specifies that beginning in December 1985 and every two years thereafter the United States Congress will reveiw the status of the Tongass National Forest. This provides an important opportunity for communities such as Tenakee Springs to provide direct and meaningful input to determine the future management of Tongass National Forest Lands; and

WHEREAS, annual timber harvest levels from the Tongass have consistently run below the 450 cut level in spite of large federal subsidies to the timber industry. This fact clearly demonstrates the economic infeasibility of the 450 cut;

THEREFORE BE IT RESOLVED by the City Council of Tenakee Springs that this community stands opposed to the 450 mmbf per year mandated cut on the Tongass National Forest.

ADOPTED 6 yeas 1 Nay THIS 9th DAY OF JULY, 1985

Diane Ziel
Diane Ziel
City Council President
ex officio MAYOR

ATTEST:

Janice J. Eagle
Janice J. Eagle
City Clerk

MY TURN

Reforming Tongass management: Setting the record straight

By BART KOEHLER

The Southeast Alaska Conservation Council's (SEACC) report, "Last Stand for the Tongass National Forest," has attracted a great deal of attention these days. SEACC welcomes this attention, and with congressional oversight hearings just around the corner this is a good time to set the record straight with the most current information available concerning Tongass management:

The real cost of the current Tongass Timber Program is $50 million per year to U.S. taxpayers. Since full implementation of the Tongass Timber Supply Fund in fiscal year 1982, expenditures for the Tongass Timber Program have amounted to $234 million, with stumpage fees returned to the federal government of only $3 million. Including stumpage fees and all other money the forest service could consider as receipts to the Treasury, the return is still only $30 million. This is a gap of $200 million between expenditures and receipts – an average cost to taxpayers of $50 million a year since the passage of the Alaska Lands Act (ANILCA) to primarily benefit only two pulp mills in Southeast Alaska.

Elimination or phase-out of Section 705(a) (the Tongass Timber Supply Fund and the "450" timber supply goal) will not eliminate the Tongass Timber Program. SEACC recommends repeal of these clauses in ANILCA in order to make the timber program accountable and cost-effective. Monies will still flow for timbering operations, but they will be subject to congressional budget review, which is not presently the case. The Timber Supply Fund is a pork barrel subsidy mainly benefitting only two companies, one of which is a wholly owned Japanese corporation. Elimination of Section 705(a) will result in a more responsible timber program over the long run.

Perpetuation of the "450" timber supply goal will only serve to waste billions of taxpayer dollars in future decades. Since ANILCA, the forest service has offered almost 1 billion board feet more timber than was actually sold. The market has simply bottomed out and all the supply in the world won't help if the demand for timber is not there. Building roads for this uneconomic industry, at such a high cost to the taxpayer and fish and wildlife habitat, simply cannot be justified.

Even with the Timber Supply Fund in place, forest service figures show that direct timber related employment is 1,800; indirect and derived employment is not more than 900. Thus, the total level of employment credited to timber in Southeast is 2,700 jobs. The forest service's employment statistics do not support Sen. Ted Stevens' erroneous claim that 6,000 jobs, direct and indirect, might be lost without the supply fund.

SEACC's recommendations do not entail a loss of timber related jobs. Repeal of the Tongass Timber Supply Fund would return funding of the Tongass Timber Program to the annual appropriations process, as is the case for every other national forest. Repeal of the "450" timber supply goal would allow the forest service to set annual allowable sale levels in response to demand rather than an inflexible directive. These recommended actions would not limit any Tongass timber operator's ability to purchase ample volumes of federal timber, to operate wood processing facilities, or to employ Alaskans.

The vast majority of the best timber on the Tongass is outside designated wilderness areas. Congressman Don Young has called the Tongass Timber Supply Fund a "wilderness subsidy," claiming that the "Alaska Lands Act excluded lumbermen from working in much of the best Tongass forests." The facts do not support this claim.

The Tongass encompasses 17 million acres, of which 5.4 million acres are designated wilderness. Only 3 percent of this designated wilderness land contains commercially valuable timber (30+ thousand board feet/acre). Some 84 percent of the wilderness acres is not even considered suitable for timber harvesting, and is mostly rock, ice, muskeg, battered coast, and scrub trees. Admiralty Island is repeatedly cited as an example of "locking up" good timber. The best timber on the island was cut prior to ANILCA, and Admiralty was not in either of the two 50-year contract areas, leaving the pulp mills unscathed.

Only 29 percent of the highest value wildlife habitat is permanently protected under wilderness designation. Only 5 percent of the highest value fish habitat is so protected. This can hardly be termed a balanced approach to multiple use, especially in a region so heavily dependent upon the harvest of fish and wildlife resources. SEACC is seeking more protection for key areas in order to gain a better balance. The Society of American Foresters of Sitka charges that wilderness is "single use management" and has challenged SEACC's proposals for a more balanced multiple use management of the Tongass. Clearly, wilderness offers better protection for multiple uses such as tourism, recreation, watershed, subsistence, hunting, commercial fishing, and fish and wildlife habitat than does the dominant "single use" management for timber with clearcuts and roads.

SEACC believes that the 50-year timber contracts should be terminated because of past anti-trust violations and because they currently conflict with proper forest management. The contract holders "own" the rights to cut our forest lands, and they still monopolize timber operations. They show little or no responsibility for their impacts on other forest resources and other forest users such as the many small non-timber dependent communities throughout Southeast.

SEACC is not alone in urging major reforms of the management of the Tongass National Forest. Currently, our region's major commercial fishing organizations and the Southeast Regional Council of Fish and Game Advisory Committees are also opposed to the "450" timber supply goal. Additionally, to date 13 Southeast communities have gone on record against the "450" and other destructive timber policies on the Tongass. The people dependent upon the fish and wildlife resources of the Tongass, and the special way of life they provide, see their futures threatened by current Tongass timber policies.

This issue will continue to heat up as big timber interests fight to hold on to their monopoly and exploitation of Tongass forest resources. They will continue arguing that the choice is timber jobs or economic ruin. SEACC and its members contend that reform of present Tongass management is essential to prevent the long-term economic ruin of the Southeast Alaska region. The timber industry must be modified and room made for true multiple use of the Tongass in the future. This future includes timber, tourism, subsistence, commercial fishing, sport hunting and fishing, and the protection of important fish and wildlife habitat.

Bart Koehler is the executive director of the Southeast Alaska Conservation Council, the regional coalition of conservation groups in Southeast Alaska.

Juneau Empire 4/24/86

Views of the Southeast Fishing Industry as Represented by the Alaska Trollers Association, United Southeast Alaska Gillnetters, Southeast Seine Boat Owners & Operators Association, and Petersburg Vessel Owners Association

These comments represent the views of the Alaska Trollers Association, the United Southeast Alaska Gillnetters, the Southeast Alaska Seine Boat Owners and Operators, and the Petersburg Vessel Owners Association, the principal fishermen's organizations in Southeast Alaska. Members of these groups form a representative cross section of the salmon fishing industry in Southeast Alaska, and many are active in bottomfish and shellfish sectors of the industry as well. We trust that Congress will carefully consider our positions in its review of those portions of the Alaska National Interest Lands Conservation Act (ANILCA) pertaining to management of the Tongass National Forest.

In passing ANILCA, Congress drastically altered the lands and resources management scheme for the Tongass National Forest, and Southeast Alaska generally. Vast Wilderness areas were created to satisfy national conservation groups. Special enclaves were carved out for multinational mining interests. The huge national and international timber companies got guarantees of timber availability from National Forest lands, with vast subsidies in the form of the Tongass Timber Supply Fund. All of these things were sold as benefits to the people of Southeast Alaska, but are they?

Southeast Alaska conservationists never signed off on the deal, and the region's one long-term, sustained yield natural resource industry—fishing—was not responded to with anything near the attention that it warranted, or that other resources users received. Nonetheless, it is clear that Congress intended that water use in the Tongass be managed with protection of the salmon resource first and foremost in mind. However, this priority has not been reflected in Forest Service cutting plans developed since ANILCA. Had it been, the Forest Service's approach to timber management in areas like the Chuck and Kadashan River drainages, and to U.S. Borax's water extraction plans in the Wilson and Blossom Rivers, would have been greatly revised.

For all intents and purposes, large-scale mining is a thing of the past in Southeast Alaska. Once, the world's largest hard-rock gold mines operated here, but all that remains of them are ruins, tailings piles, and faded memories. Also, the world metal glut, predicted to last into the foreseeable future, mitigates against the ultimate development of the current "hot" mining properties which received so many concessions in ANILCA—Quartz Hill and Green's Creek.

The large-scale timber industry in Southeast is deeply depressed—hanging on only through sale of public timber at scandalously low prices. Even at that, much of the timber being sold is not being cut, but inventoried against hopes of an improved timber market in years ahead. Meanwhile, the Forest Service continues to offer a minimum of 450 million board feet per year for sale, and maintains an ambitious program of preroading and other presale preparation funded through the ANILCA-provided Tongass Timber Supply Fund. Despite this massive expenditure of public monies, which results in losses to taxpayers of as much as $175 for every 1,000 board feet of timber sold in the Tongass; the industry is virtually moribund. It should be remembered that the Tongass Timber Supply Fund was provided by Congress for the purpose of maintaining employment. In fact, it merely subsidizes the practice of private inventory of public timber. Timber employment has fallen sharply.

Many people in Southeast are very upset that our national government is willing to so lavishly support an industry which is largely Japanese owned. We are, in effect, subsidizing a foreign company to despoil our landscape and waters in the course of competing with other American timber interests. We are sure that most Americans would be amazed to hear that the U.S. Treasury is underwriting a Japanese company's efforts to gain control of huge tracts of virgin, publicly owned timber through so called "deficit" timber sales. Moreover, this same company, Alaska Lumber and Pulp, was, with Louisiana Pacific Ketchikan, found guilty of predatory business practices designed to drive small, privately owned American firms out of business in the Tongass (the Reid Brothers' lawsuit), and of bilking the Federal and State governments out of timber revenues mounting into

the tens of millions of dollars. Yet, their 50-year cutting contracts remain in effect, subsidized by American taxpayers, while many vitally needed Government programs are being cut or eliminated in the name of deficit reduction.

It might be asked what all this has to do with fishermen. Why do we object? After all, there is no doubt that Southeast Alaska needs large injections of money to broaden its economic base and provide additional employment. Our concern is simply that the Federal monies spent in management of the Tongass National Forest be spent on constructive rather than destructive activities. The 450 million board foot annual timber supply to dependent industry mandated by ANILCA is unrealistic given the available commercial timber base. In order to achieve that level of cut many areas which are clearly unsuitable for logging will have to be included.

A good example of this is the Chuck River drainage, an area of only moderate (at best) timber values, with steep slopes and unstable soils prone to massive landslides. It happens that the Chuck River is also a major salmon stream. The Chuck River was blocked by a naturally occurring slide during the early 1970's which virtually wiped out its pink salmon runs for the better part of a decade. Yet, the Forest Service proposed timber cuts immediately adjacent to that slide zone on soils of proven instability, knowing full well that removal of vegetation aggravates the risk of landslides. This particularly egregious example of Forest Service disregard for environmental concerns and potential for extremely negative effects on another industry has been blocked only through the great efforts of fishermen and other concerned citizens which resulted in the State of Alaska refusing to grant a favorable "consistency" ruling under Coastal Zone Management Act (CZMA) provisions. Failing that, the Forest Service would certainly have proceeded with the despoliation of the Chuck River, putting its important salmon runs in jeopardy.

Unfortunately, the Chuck River is the only example of an ill-conceived timber sale ever being halted in the Tongass, and it was only stopped because it was so flagrantly bad. Meanwhile, literally hundreds of other streams are in danger from timber sales which are planned or which have already happened, placing timber into cutting inventories. The Forest Service argues that fish runs have increased during the last few years, even implying that improved run strength is due to forestry practices. Such statements are worse than misleading. For the Forest Service to take credit for the State of Alaska's much improved management practices, for a succession of exceptionally good years for salmon ocean survival, for the reduction of foreign fleet salmon interceptions on the high seas, and for the catch reductions endured by Alaska fishermen in the name of conservation is an affront to the public and to the Congress. The fact is that much of the currently inventoried timber, and much of that which is scheduled for sale is in areas of both marginal timber values and marginal environmental viability. Only the extremely depressed condition of the world timber market has kept many areas of high potential for fish habitat destruction from being logged.

It should be borne in mind that the Forest Service's analysis of the Southeast Alaska economy presented in justification of the Tongass Land Use Management Plan (TLUMP) implied that timber would be the backbone of the natural resource economy in Southeast, and that fishing had little probability of regrowth to previous levels. In fact, quite the opposite has been true. The various salmon species are renewable on 2- to 7-year cycles, depending on species, and have proven very responsive to improved management and conservation practices. In contrast, there is real question as to whether logging in Southeast Alaska can truly be considered a sustained yield, renewable industry. With regeneration cycles of 125 or more years between cuts, and as much as 450 years to achieve "old-growth" volumes and quality, calling logging a renewable resource industry is questionable. Indeed, some industry observers have likened logging in Southeast to strip mining. Also, the tourist industry has grown rapidly in Southeast, as literally hundreds of thousands of people each year travel by air and by ship to see our islands, mountains, wildlife and historic towns. Make no mistake, they come to Alaska to see country undefiled by man, not to see clearcut timber tracts! Tourism is an essentially nonconsumptive use of our forests. It brings in foreign revenues rather than subsidizing foreign destruction of our environment. The same is true of fishing.

Southeast Alaska annually produces large amounts of king, coho, sockeye, chum and pink salmon for domestic and export markets. In 1984 the Southeast Alaska salmon industry produced in excess of $72.5 million dollars in ex-vessel value for fishermen. Using a multiplier of 2 to gauge the total contribution to our economy, salmon alone is seen to be worth nearly $150 million per year. Factoring in the value of other commercial fisheries such as crab, shrimp, bottomfish, and the recreational fisheries, a total economic contribution of at least $200 million per annum can be forecast. Moreover, Southeast Alaskans are personally very dependent upon the fisheries resource for home consumption. The economic values of subsistence and personal use fisheries are more difficult to quantify, but even conservative replacement values would place direct fisheries resource utilization by Southeast residents in the tens of millions of dollars.

All value comparisons, criticisms of Forest Service management, and concern over U.S. Government

subsidization of foreign industry ultimately must bring us a recognition of the need for change in the Tongass National Forest. Fortunately, there are positive steps which can be initiated by Congress to ensure that the resources of the forest are truly used for the benefit of the people. The fishermen's organizations of Southeast Alaska urge Congress to take the following actions:

- Clearly state that the Tongass National Forest shall be managed in accordance with the National Forest Management Act (NFMA) so as to ensure true multiple use, sustained yield management, with full consideration of all forest resources and values, not just timber. In particular, protection and enhancement of fish habitat should be recognized as a primary economic component of Tongass National Forest management.
- Amend ANILCA to eliminate the mandated 450 million board feet per year timber supply target which so cripples current management practices in the Tongass.
- Revise the ANILCA provisions on the Tongass Timber Supply Fund to provide that such funds be available for the enhancement of all industries dependent upon National Forest resources, including fisheries, tourism, and other nonforest products industries.
- Investigate the appropriateness of continuing the 50-year ALP and LPK timber contracts in light of the court findings in the Reid Brothers case.
- Provide direction to the Forest Service to manage the Tongass with a view to developing small-scale and specialty logging enterprises in lieu of exclusive concentration on large-scale developments.

We thank you for considering the views of Southeast Alaska fishermen, and hope that you will act to bring about a reasoned, fiscally sound, and environmentally responsible management regime for the Tongass National Forest.

Sincerely,

Earl E. Krygier
Executive Director
Alaska Trollers Association

Geron Bruce
Executive Director
United Southeast Alaska Gillnetters

Bruce Wallace
Executive Director
Southeast Seine Boat Owners &
Operators Association

Sig Mathisen
President
Petersburg Vessel Owners Association

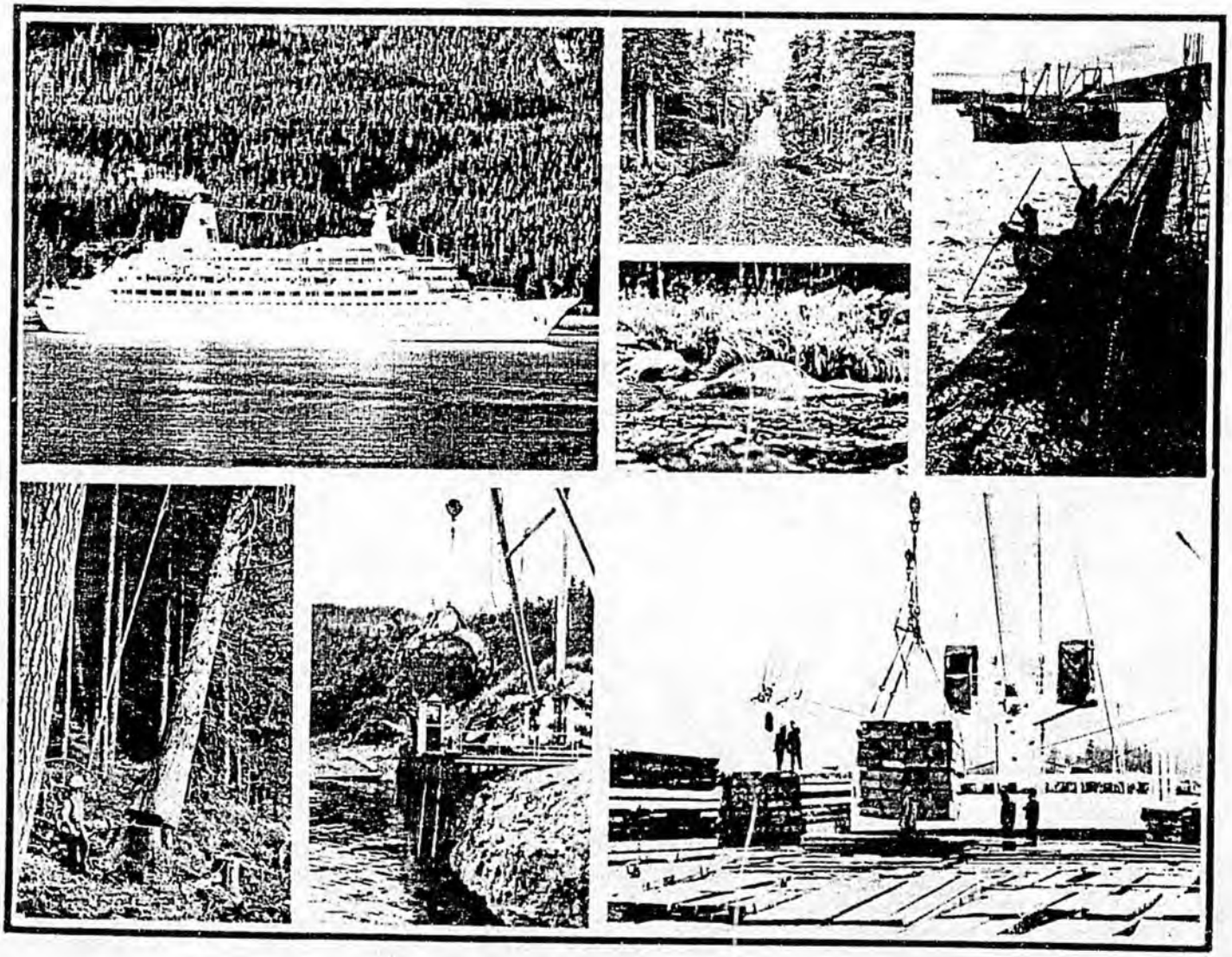
United States
Department of
Agriculture

Forest Service

Alaska Region
Admin. Doc.
Number 153

Status of the Tongass National Forest

1985 Report



SEACC

Southeast Alaska Conservation Council

Box 1692 • Juneau, Alaska • 99802 • (907-586-6942)

May 2, 1986

Representative Richard Shultz
Representative Adelheid Herrmann
Co-Chairs, House Resources Committee
Box V
Juneau, Alaska 99811

Dear Representatives Shultz and Herrmann:

The Southeast Alaska Conservation Council (SEACC) would like to take this opportunity to restate its position on HJR 75/SJR 51. SEACC did not support either of these resolutions in their original language and does not support either of them in their current language. Before your committee today SEACC stated only that the suggested amendment language was an improvement and that we would reserve further comment until SJR 51 was before the committee. References to the 4.5 billion board foot measure continues to make these resolutions totally unexceptable and unsupportable by SEACC and its members.

SEACC has long been on record in opposition to the 4.5 billion board feet timber supply from the Tongass National Forest. It is unsustainable, does not allow flexibility for multiple use, and biological research has shown that it is not compatible with maintaining important fish and wildlife habitat. The 4.5 timber supply has resulted in the waste of millions of taxpayer dollars.

Additionally, you have heard much talk about "a deal is a deal." SEACC was not party to any "deals" or "compromises" during ANILCA negotiations. Timber industry representative, Jim Clark, correctly confirmed that SEACC was not party to any agreement which provided the "450," as it is known, or the timber supply fund when he stated:

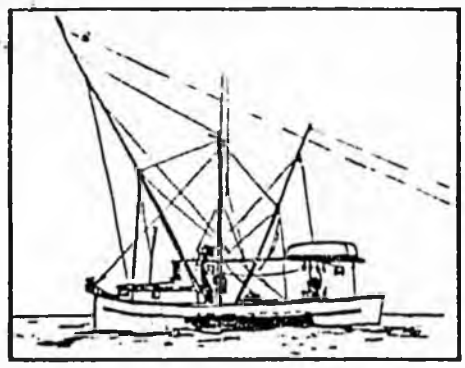
> The House was presented the bill [containing the "450" and timber supply language] on a 'take it or leave it' basis by the Senate. The Sierra Club and the Southeast Alaska Conservation Council (SEACC) argued that the Senate bill should not be adopted by the House: the rest of the Alaska Coalition approved it. Following the defeat of the Carter Administration in the November 1980 national election, Congressman Udall agreed to the Senate bill. The Alaska National Interest Lands Conservation Act (ANILCA) was signed by President Carter on December 2, 1980.

Thank you for your time and consideration on this important issue. If you have any questions on SEACC's position, please give us a call.

Sincerely,

Julie Kelly
for Bart Koehler
Executive Director

cc: All Legislators



Alaska Trollers Association

REPRESENTING ALASKA POWER TROLLERS

130 Seward St., No. 213
Juneau, Alaska 99801
(907) 586-9400

5/5/86

Representatives Adelheid Herrmann and Richard Schultz,
Co-Chairmen
House Resources

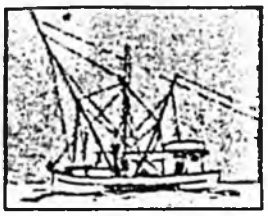
Senator Arliss Sturgulewksi, Chairman
Senate Resources

Dear Mr. Chairman:

This letter is to explain the fishery's stand on the CS Senate Joint Resolution #51, and the House CS Joint Resolution #75, the resolution relating to the Alaska National Interest Lands Conservation Act, Section 705, having to do with timber and fisheries.

You will remember from my early testimony that the original version of this Resolution was unacceptable to the fishing organizations for two reasons; (1) we could not agree with the 450 billion board feet per decade timber supply target, and (2) the fishing organizations felt that the Tongass Timber Supply Fund should have its funds made available to the other users of the resource.

It is important to understand that when the various members of the gear types in Southeast Alaska got together to produce the Fishermen's Review to Congress in the 706B Report, that it was only achieved through a long and arduous process of discussion, review, and final endorsement. Unfortunately, the present Resolutions surfaced too late in the session and moved too rapidly to inform, discuss and achieve agreement within our industry to yield a formal endorsement. This lack of concensus within the fishing organizations has been exacerbated by the fact that the leaders of the majority of the organizations were out on a fishing opening. Because of this, I have been personally working to achieve some headway with these Resolutions; trying to achieve a balance that would be palatable to the fishing industry. Though the changes which we have manufactured in these Resolutions are certainly a vast improvement from the original language, they do not meet the qualifications needed to reach consensus within our industry.



Alaska
Trollers
Association
130 Seward St., No. 213
Juneau, Alaska 99801
(907) 586-9400

Although I felt we may have been close to a final acceptable version of this Resolution last Friday, the other members of the fishing committee returned from the halibut fishery and I was able to discuss the headway made on the Resolution, but found that their full acceptance was not forthcoming.
The concensus that I could achieve was that the Representative Sund's version of CS #75 is acceptable except for one clause. The clause is in the "Further Resolved" section of Page 2, it states "4.5 billion board feet per decade timber harvest supply goal". If this clause could be deleated, we could endorse this Resolution and would encourage its passage. Such a Resolution would be beneficial to the timber industry and would allow safeguards to the fishing industry. We have members of our industry who are presently in Washington, D.C., waiting to present the fishing section's report to Congress, and are awaiting the Resolution which emerges from the Alaska House and Senate.

Thank you for the effort expended on this Resolution - it has been greatly appreciated by all parties concerned.

Sincerely,

Earl E. Krygier
Executive Director

EEK/md

Original sponsor: Resources Committee

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 51 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Relating to the Alaska National Interest Lands Conservation Act Sections 705 and 706.

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

WHEREAS the timber industry is an important industry and a major contributor to the economy of the state; and

WHEREAS tourism, commercial fishing, and recreation industries are also vital to Southeast Alaska and are major contributors to the state's and region's economy; and

WHEREAS the passage of the Alaska National Interest Lands Conservation Act (ANILCA) recognized the importance of these industries to the state; and

WHEREAS Section 705 of ANILCA was a compromise between those advocating wilderness additions, those supporting a viable timber industry, and those concerned about other values within the Tongass National Forest; and

WHEREAS Section 705 provided for a timber supply fund to make timber harvest in marginally economic stands economically feasible; and

WHEREAS Section 705 authorized a timber supply harvest goal of 4.5 billion board feet per decade; and

WHEREAS Congress's objective in Section 705 was to maintain employment in the dependent timber industry of Southeast Alaska at pre-ANILCA levels, while ensuring that other resource values and public uses would be protected on nonwilderness land in accordance with Federal law and the Tongass

a result of the forest service's failure to allocate Section 705 funds in accordance with representations it made to Congress at the time of ANILCA's passage; and

WHEREAS Congress is about to begin oversight hearings to consider Section 705 of ANILCA;

BE IT RESOLVED by the Alaska State Legislature that Section 705 of ANILCA not be amended so that the delicate compromise crafted by Congress balancing values within the Tongass National Forest be maintained; and be it

FURTHER RESOLVED that the forest service continue to manage the Tongass National Forest in a manner that will maintain the balance between jobs and development, and fish, wildlife, recreation, and wilderness in Southeast Alaska, and that the timber harvest level of 4.5 billion board feet per decade be maintained; and be it

FURTHER RESOLVED that the Tongass Timber Supply Fund be adequately funded and spent in accordance with the manner and for the items that the forest service advised Congress it would spend the funds; and be it

FURTHER RESOLVED that before Congress begins any further consideration of ANILCA that hearings be held within the State of Alaska.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; to the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; to the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

TESTIMONY OF JAMES F. CLARK
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE
RE HOUSE JOINT RESOLUTION NO. 75
FOR THE ALASKA LOGGERS ASSOCIATION

We support this resolution because it supports retention of the timber job protection portions of the compromise worked out in the Alaska National Interest Lands Conservation Act (ANILCA). Several environmental groups have called for the repeal or substantial modification of Section 705(a) of ANILCA. These same groups have said nothing about repealing the wilderness designations in the Tongass which was the other half of the compromise.

The legislative history of Section 705(a) shows that it was one-half of a Tongass National Forest compromise between the environmental and industrial proponents. On the one hand, Congress sought to maximize the amount of the Tongass put into wilderness while on the other hand Congress sought to maintain the level of then existing timber related jobs. Senator Tsongas, who worked closely with environmental groups - especially the Alaska Coalition, during the debate on Alaska lands described the compromise as follows:

> "The compromise substitute designates approximately 5.3 million acres of wilderness and deletes the special management areas entirely. Section 705(a) of the committee substitute has been modified to assure the availability of at least $40 million annually <u>for timber management programs in the</u>

Tongass forest. These funds will be available for the regular costs of sale and road layout and restoration and will also provide moneys for stand improvement, the timber road program, and related capital investments. These funds and the increased timber "base" on the forest will insure that adequate timber supplies will be available to the dependent timber industry in southeast Alaska." (Emphasis added)

126 Cong. Rec. S11119 (daily ed. August 18, 1980).

Unfortunately, we have lost between 1,500 and 2,000 industry related jobs, because the Forest SErvice has not fully funded the timber road program referred to by Senator Tsongas. However, to the extent it has been implemented, Section 705(a) has been a big help. Accordingly, to repeal Section 705(a), which was designed to protect jobs, is no more reasonable then repealing the wilderness designations which Congress made. The focus should be, in short, in making the compromise work, not depriving one side or the other of the benefit of the bargain. If, however, one side of the bargain is to be repealed, then the areas of the Tongass which were designated wilderness should be returned to multiple use.

HJR 75 will make it clear to Congress that the Sate of Alaska supports retention of the compromise. We urge its passage.

Bradley
5/1/86

Original sponsor: Resources Committee

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 75 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Relating to the Alaska National Interest Lands Conservation Act Sections 705 and 706.

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

WHEREAS the timber industry is an important industry and a major contributor to the economy of the state; and

WHEREAS tourism, commercial fishing, and recreation industries are also vital to Southeast Alaska and are major contributors to the state's and region's economy; and

WHEREAS the passage of the Alaska National Interest Lands Conservation Act (ANILCA) recognized the importance of these industries to the state; and

WHEREAS Section 705 of ANILCA was a compromise between those advocating wilderness additions, those supporting a viable timber industry, and those concerned about other values within the Tongass National Forest; and

WHEREAS Section 705 provided for a timber supply fund to make timber harvest in marginally economic stands economically feasible; and

WHEREAS Section 705 authorized a timber supply harvest goal of 4.5 billion board feet per decade; and

WHEREAS Congress's objective in Section 705 was to maintain employment in the dependent timber industry of Southeast Alaska at pre-ANILCA levels, while ensuring that other resource values and public uses would be protected on nonwilderness land in accordance with Federal law and the Tongass Land Management Plan; and

WHEREAS Section 705 has not been properly implemented, particularly as

a result of the forest service's failure to allocate Section 705 funds in accordance with representations it made to Congress at the time of ANILCA's passage; and

WHEREAS Congress is about to begin oversight hearings to consider Section 705 of ANILCA;

BE IT RESOLVED by the Alaska State Legislature that Section 705 of ANILCA not be amended so that the delicate compromise crafted by Congress balancing values within the Tongass National Forest be maintained; and be it

FURTHER RESOLVED that the forest service continue to manage the Tongass National Forest in a manner that will maintain the balance between jobs and development, and fish, wildlife, recreation, and wilderness in Southeast Alaska, and that the timber harvest level of 4.5 billion board feet per decade be maintained; and be it

FURTHER RESOLVED that the Tongass Timber Supply Fund be adequately funded and spent in accordance with the manner and for the items that the forest service advised Congress it would spend the funds; and be it

FURTHER RESOLVED that before Congress begins any further consideration of ANILCA that hearings be held within the State of Alaska.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; to the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; to the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

GREATER SITKA
Chamber of Commerce, Inc.

May 1, 1986

TO: ALL MEMBERS OF THE SENATE RESOURCES COMMITTEE
ALL MEMBERS OF THE HOUSE RESOURCES COMMITTEE

SUBJECT: SOUTHEAST ALASKA TIMBER INDUSTRY

FROM: GREATER SITKA CHAMBER OF COMMERCE
PAUL M. HARRIS, PRESIDENT

As you deliberate in regards to the Southeast Alaska Timber Industry, we encourage you to read the attached two information sheets which we have prepared. The Greater Sitka Chamber of Commerce urges your quick passage of the Alaska resolutions, which would tell Congress that any attempt to open ANILCA, create additional wilderness area, decrease the timber harvest or cut the timber supply would substantially damage the area's economy. We believe and support the timber industry to be a very important resource industry to the State of Alaska.

w/attachments (2)

cc: Senator Dick Eliason
Representative Ben Grussendorf

POST OFFICE BOX 638 • SITKA, ALASKA 99835
(907) 747-8604

(1)

EATER S...
: OF COMMERCE, INC.
Box 638
a, Alaska 99835

PLEASE TAKE A MOMENT TO READ THE FOLLOWING

THEN WRITE YOUR LETTER TO THE US FOREST SERVICE. ENCOURAGE YOUR EMPLOYEES TO DO THE SAME. DON'T DELAY -- DEADLINE IS MAY 9...

In 1979, when the Tongass Land Management Plan and ANILCA were being shaped, many Alaskans warned:

IF YOU CARVE FIVE MILLION ACRES OF WILDERNESS FROM THE TONGASS, YOU FORCE A CHOICE:

...EITHER logging must move closer to the communities, the boating routes, & local use areas,

...OR the timber industry in Southeast Alaska is dead.

Many, many Alaskans pointed out this problem. The warning was ignored. The decision to create massive remote wilderness areas was made.

AND HERE WE ARE, FACING THE CHOICE.

It's surprising that so many people seem to have forgotten the terms of the ANILCA agreement. Some of them, of course, weren't here six years ago. But others were here and were among the most enthusiastic in supporting -- demanding, in fact -- that these enormous remote wilderness areas be established.

WHEN THEY WERE FINISHED, OVER 50 PERCENT OF THE TONGASS NATIONAL FOREST WAS IN WILDERNESS OR OTHER PROTECTED STATUS.

We trust that these folks will take comfort in knowing that there are OVER FIVE MILLION ACRES OF OLD GROWTH, EAGLE NEST TREES, DEER WINTER RANGE, FISH STREAMS, AND SOLITUDE SURROUNDING SITKA. Not a single logger will step a foot on these five million acres -- ever.

And while they take comfort in that, the rest of us MUST concern ourselves with what they left for us. There are some important facts:

1. Timber activity & roading are governed by many environmental laws. Their effectiveness is shown by the abundant game, by the increasing fish harvest, and by the swelling numbers of visitors to our scenic countryside. Multiple use management is working well in those portions of the Tongass where ANILCA permits it to function.
2. Market conditions have improved for the timber industry. With reasonable logging/roading costs, our local industry can survive -- supporting local jobs, the local housing market, local school enrollment, and the local tax base.
3. Timber operations near the community have some positive advantages. Suppliers, transportation providers, & other businesses benefit -- and with that come more jobs & related economic benefits. The road systems will remain -- approximately 160 miles under this plan -- for the use & enjoyment of many sportsmen & recreational users. (And those who don't equate roads with recreation have all of Admiralty, West Chichagof, South Baranof, Endicott, Tracy Arm, Petersburg Creek, Stikine-LeConte, Tebenkof, and a host more pristine wildernesses in which to wander!)

ANILCA was created by environmental groups and congressmen from Utah and Ohio. We wish they'd done it differently. LET'S MAKE THIS DECISION OURSELVES!

IT IS VERY IMPORTANT THAT EACH OF US SPEAKS NOW. LET THE FOREST SERVICE KNOW THAT YOUR SUPPORT IS BEHIND OUR LOCAL MILL AND YOUR FRIENDS & NEIGHBORS DEPENDING UPON THESE JOBS.

YOUR LETTER IS NEEDED

YOUR HELP IS URGENTLY NEEDED BY MAY 9.

WRITE TO:

Mike Johnson
US Forest Service
204 Siginaka Way
Sitka, Ak. 99835

The 1986-90 APC environmental statement is very technical & difficult to understand. The Forest Service says they are forced to present the information this way because each & every timber plan is now being challenged in Court!

Following are some straight-forward facts to help you write your letter.

ALTERNATIVE 'H' SHOULD BE ADOPTED, WITH AMENDMENTS TO IMPROVE IT ECONOMICALLY, BECAUSE:

1. In 1984, APC directly contributed $20,415,000 to Sitka's economy. This total included a payroll of $15,896,000 & purchase of over $1.5 million in power from the City & Borough.

   ---SITKA URGENTLY NEEDS APC'S CONTRIBUTION TO OUR ECONOMY.

2. In 1984, APC contributed an additional $13,576,000 to Southeast's economy. This total includes dollars for camp construction, road construction, towing, & purchase of chips.

   ---APC CONTRIBUTES TO A DIVERSE, STRONG SOUTHEASTERN ECONOMY.

3. Profitability of timber operations began dropping with passage of the Alaska Lands Act in 1980. During 1976-80, APC operated at a Net Profit of $100.94/MBF and a Net Stumpage of +$30.33. After wilderness land selections & other prime timber removals, the economics began to drop. The Forest Service proposal for 1986-90 is at a Net LOSS of $55.06/MBF and a Net Stumpage of -$114.00.

   ---ANILCA FUNDS, APPROPRIATED BY CONGRESS, MUST BE USED DURING THIS OPERATING PERIOD FOR ROAD BUILDING, IN ORDER TO MAKE TIMBER OPERATIONS FEASIBLE. THIS WAS THE INTENT OF CONGRESS WITH ANILCA.

4. While asking both Southeast mills to operate at a deficit, the Forest Service proposes to put the Sitka mill at a significant disadvantage. Under LPK's current plan (through February 1989), there is a Net Loss of $6.46. Contrast this with the -$55.06 proposed by the agency for Alaska Pulp. The comparable stumpage rates are -$58.38 for LPK and -$114.00 for APC.

   ---THE DRASTIC DEFICIT PROPOSED BY THE FOREST SERVICE MUST BE CORRECTED. 'ALTERNATIVE H', SUPPLEMENTED BY ROAD FUNDING, IS THE FAIREST ALTERNATIVE.

5. Employment at the Sitka mill is now at 373 persons. A total of 215 jobs have been lost since the Alaska Lands bill in 1980.

   ---THESE JOBS ARE CRITICAL TO SITKA'S CURRENT ECONOMY AND TO SUSTAIN OUR CURRENT POPULATION, UPON WHICH EDUCATIONAL PROGRAMS, HEALTH SERVICES, & OTHER 'QUALITY OF LIFE' FACTORS DEPEND.

6. Both Alaska Pulp and LPK are purchasing pulp wood logs from the Native Corporations as they begin to operate on their private land holdings;

   ---THE SITKA MILL IS ONE VITAL LINK IN THE DEVELOPING PRIVATE INDUSTRIAL ECONOMY OF SOUTHEAST.

7. Over 75 percent of APC's sales are to Pacific Rim and other foreign nations.

   ---APC IS HELPING TO REVERSE THE TRADE/DOLLAR FLOW AWAY FROM THE AMERICAN ECONOMY & CONTRIBUTING TO ALASKA'S EFFORT TO DEVELOP PACIFIC RIM TRADE PARTNERSHIPS.

8. Barely 10 percent of the Tongass National Forest is available for timber harvest. Operations in that 10% are governed by a host of environmental regulations and oversight agencies.

114 Fifth St.
Douglas, AK 99824

April 30, 1986

House Resource Committee
Alaska Legislature
Pouch V
Juneau, AK 99811

Dear Representative:

As a former commercial fisherman and as a businessman who depends on tourism for his income, I'm shocked that someone would submit HJR 75 to this body for consideration. Perhaps, they hope that in the press of legislative business, and desiring to show support for a struggling Alaskan industry, legislators will not take time to examine the language.

It is one thing to assert one's position, it is another to mislead and distort. This resolution does violence to the facts. For example, the figures presented suggest that logging effects an insignificant portion of the Tongass. On the contrary, the 450 MMbf annual cut mandated by ANILCA commits more than 20 square miles of the best timberlands in Southeast Alaska to logging each year. The practice of hygrading, of taking the best stands first, means that each year more acreage must be cut to deliver an equal volume; it also means that the industry will require progressively larger subsidies in coming years. Add another 20 square miles cut on Native lands each year, consider that the best timber makes the best fish and wildlife habitat, and you begin to see the scope of the problem.

The facts are that two companies found guilty of antitrust activities, of driving small timber operators out of business, are trying to maintain their grip on Tongass National Forest. They want your vote of support for their industry. But how many industries do you know of in Alaska that can't survive without a 50 million dollar annual subsidy? One wonders how many millions of these public dollars have been spent lobbying people such as yourselves for more public money?

Logging may be an important industry in Southeast Alaska. But so are tourism and fishing, and each acre cut diminshes the resource base which supports these other industries. If this body wishes to make a show of support for the timber industry at this time, fine. However, the resolution before you is the wrong vehicle.

It misrepresents Alaskan public opinion, it insults your intelligence, and it tramples other interests, such as fishing and tourism.

Anyone familiar with the facts knows that there are significant problems with Alaska's timber industry. Indeed, since World War II it has required large subsidies in one form or another. It is more a huge Potlatch for the few at the expense of the many. The resolution before you is the work of desparate men defending an indefensible position. The timber industry's lobbyists and its champions in Congress want this resolution so they can deflect Congressional criticism and cloud the issues. I urge you to reject this resolution unanimously.

Sincerely,

Mike Macy

Mike Macy

OCTOBER 1985

VIEWS OF THE SOUTHEAST ALASKA FISHING INDUSTRY

as represented by

Alaska Trollers Association

United Southeast Alaska Gillnetters

Southeast Seine Boat Owners & Operators Association

and

Petersburg Vessel Owners Association

These comments represent the views of the Alaska Trollers Association, the United Southeast Alaska Gillnetters, the Southeast Alaska Seine Boat Owners and Operators, and the Petersburg Vessel Owners Association, the principal fishermen's organizations in Southeast Alaska. Members of these groups form a representative cross section of the salmon fishing industry in Southeast Alaska, and many are active in bottomfish and shellfish sectors of the industry as well. We trust that Congress will carefully consider our positions in its review of those portions of the Alaska National Interest Lands Conservation Act (ANILCA) pertaining to management of the Tongass National Forest.

In passing ANILCA, Congress drastically altered the lands and resources management scheme for the Tongass National Forest, and Southeast Alaska generally. Vast wilderness areas were created to satisfy national conservation groups. Special enclaves were carved out for multi-national mining interests. The huge national and international timber companies got guarantees of timber availability from national forests lands, with vast subsidies in the form of the Tongass Timber Supply Fund. All of these things were sold as benefits to the people of Southeast Alaska, but are they?

Southeast Alaska conservationists never signed off on the deal, and the region's one longterm, sustained yield natural resource industry - fishing - was not responded to with anything near the attention that it warranted, or that other resources users received. Nonetheless, it is clear that Congress intended that water use in the Tongass be managed with protection of the salmon resource first and foremost in mind. However, this priority has not been reflected in Forest Service cutting plans developed since ANILCA. Had it been, the Forest Service's approach to timber management in areas like the Chuck and Kadashan River drainages, and to U.S. Borax's water extraction plans in the Wilson and Blossom Rivers would have been greatly revised.

For all intents and purposes, large scale mining is a thing of the past in Southeast Alaska. Once, the world's largest hardrock gold mines operated here, but all that remains of them are ruins, tailings piles and faded memories. Also, the world metal glut, predicted to last into the foreseeable future, mitigates against the ultimate development of the current, "hot" mining properties which received so many concessions in ANILCA - Quartz Hill and Green's Creek.

The large scale timber industry in Southeast is deeply depressed - hanging on only through sale of public timber at scandalously low prices. Even at that, much of the timber being sold is not being cut, but inventoried against hopes of an improved timber market in years ahead. Meanwhile, the Forest Service continues to offer a minimum of 450 million board feet per year for sale, and maintains an ambitious program of pre-roading and other pre-sale preparation funded through the ANILCA provided Tongass Timber Supply Fund. Despite this massive expenditure of public monies, which results in losses to taxpayers of as much as $175 for every 1,000 board

feet of timber sold in the Tongass, the industry is virtually moribund.

Many people in Southeast are very upset that our national government is willing to so lavishly support an industry which is largely Japanese owned. We are, in effect, subsidizing a foreign company to despoil our landscape and waters in the course of competing with other American timber interests. We are sure that most Americans would be amazed to hear that the U.S. Treasury is underwriting a Japanese company's efforts to gain control of huge tracts of virgin, publicly owned timber through so called "deficit" timber sales. Moreover, this same company, Alaska Lumber and Pulp, was, with Louisiana Pacific Ketchikan, found guilty of predatory business practices designed to drive small, privately owned American firms out of business in the Tongass (the Reid brothers' lawsuit), and of bilking the Federal and State governments out of timber revenues mounting into the tens of millions of dollars. Yet, their 50 year cutting contracts remain in effect, subsidized by American taxpayers, while many vitally needed Government programs are being cut or eliminated in the name of deficit reduction.

It might be asked what all this has to do with fishermen? Why do we object? After all, there is no doubt that Southeast Alaska needs large injections of money to broaden its economic base and provide additional employment. Our concern is simply that the Federal monies spent in management of the Tongass National Forest be spent on constructive rather than destructive activities. The 450 million board foot annual timber supply to dependent industry mandated by ANILCA is unrealistic given the available commercial timber base. Inorder to achieve that level of cut many areas which are clearly unsuitable for logging will have to be included.

A good example of this is the Chuck River drainage, an area of only moderate (at best) timber values, with steep slopes and unstable soils prone to massive landslides. It happens that the Chuck River is also a major salmon stream. The Chuck River was blocked by a naturally occuring slide during the early '70's which virtually wiped out its pink salmon runs for the better part of a decade. Yet, the Forest Service proposed timber cuts immediately adjacent to that slide zone on soils of proven instability, knowing full well that removal of vegetation aggravates the risk of landslides. This particularly egregious example of Forest Service disregard for environmental concerns and potential for extremely negative effects on another industry has been blocked only through the great efforts of fishermen and other concerned citizens which resulted in the State of Alaska refusing to grant a favorable "consistency" ruling under Coastal Zone Management Act (CZMA) provisions. Failing that the Forest Service would certainly have proceeded with the despoliation of the Chuck River, putting its important salmon runs in jeopardy.

Unfortunately, The Chuck River is the only example of an ill conceived timber sale every being halted in the Tongass, and it was only stopped because it was so flagrantly bad. Meanwhile, literally hundreds of other streams are in danger from timber sales which are planned or which have already happened, placing timber into cutting inventories. The Forest Service argues that fish runs have increased during the last few years, even implying that improved run strength is due to forestry practices. Such statements are worse than misleading. For the Forest Service to take credit for the State of Alaska's much improved management practices, for a succession of exceptionally good years for salmon ocean survival, for the reduction of foreign fleet salmon interceptions on the highseas, and for the catch reductions endured by Alaska fishermen in the name of conservation is an affront to the public and to the Congress. The fact is that much of the currently inventoried timber, and much of that which is scheduled for sale is in areas of both marginal timber values and marginal environmental viability. Only the extremely depressed condition of the world timber market has kept many areas of high potential for fish habitat destruction from being logged.

It should be borne in mind that the Forest Service's analysis of the Southeast Alaska economy presented in justification of the Tongass Land Use Management Plan (TLUMP) implied that timber would be the backbone of the natural resource economy in Southeast, and that fishing had little probability of regrowth to previous levels. In fact, quite the opposite has been true. The various salmon species are renewable on two to seven year cycles, depending on species, and have proven very responsive to improved management and conservation practices. In contrast, there is real question as to whether logging in Southeast Alaska can truly be considered a sustained yield, renewable industry. With regeneration cycles of 125 or more years between cuts, and as much as 450 years to achieve "old growth" volumes and quality, calling logging a renewable resource industry is questionable. Indeed, some industry observers have likened logging in Southeast to strip mining. Also, the tourist industry has grown rapidly in Southeast, as literally hundreds of thousands of people each year travel by air and by ship to see our islands, mountains, wildlife and historic towns. Make no mistake, they come to Alaska to see country undefiled by man, not to see clearcut timber tracts! Tourism is an essentially non-consumptive use of our forests. It brings in foreign revenues rather than subsidizing foreign destruction of our environment. The same is true of fishing.

Southeast Alaska annually produces large amounts of king, coho, sockeye, chum and pink salmon for domestic and export markets. In 1984 the Southeast Alaska salmon industry produced in excess of $72.5 million dollars in ex-vessel value for fishermen. Using a multiplier of two to gauge the total contribution to our economy, salmon alone is seen to be worth nearly $150 million per year. Factoring in the value of other commercial fisheries such as crab, shrimp, bottomfish and the recreational fisheries a total economic

contribution of at least $200 million per annum can be forecast. Moreover, Southeast Alaskans are personally very dependent upon the fisheries resource for home consumption. The economic values of subsistence and personal use fisheries are more difficult to quantify, but even conservative replacement values would place direct fisheries resource utilization by Southeast residents in the tens of millions of dollars.

All value comparisons, criticisms of Forest Service management, and concern over U.S. governmental subsidization of foreign industry ultimately must bring us a recognition of the need for change in the Tongass National Forest. Fortunately, there are positive steps which can be initiated by Congress to ensure that the resources of the forest are truly used for the benefit of the people. The fishermen's organizations of Southeast Alaska urge Congress to take the following actions:

- Clearly state that the Tongass National Forest shall be managed in accordance with the National Forest Management Act (NFMA) so as to ensure true multiple use, sustained yield management, with full consideration of all forest resources and values, not just timber. In particular, protection and enhancement of fish habitat should be recognized as a primary economic component of Tongass National Forest management.

- Amend ANILCA to eliminate the mandated 450 million board feet per year timber supply target which so cripples current management practices in the Tongass.

- Revise the ANILCA provisions on the Tongass Timber Supply Fund to provide that such funds be available for the enhancement of all industries dependent upon national forest resources, including fisheries, tourism, and other non-forest products industries.

- Investigate the appropriateness of continuing the 50 year ALP and LPK timber contracts in light of the court findings in the Reid Brothers case.

- Provide direction to the Forest Service to manage the Tongass with a view to developing small scale and specialty logging enterprises in lieu of exclusive concentration on large scale developments.

We thank you for considering the views of Southeast Alaska fishermen, and hope that you will act to bring about a reasoned, fiscally sound, and environmentally responsible management regime for the Tongass National Forest.

Sincerely,

Earl E. Krygier
Executive Director
Alaska Trollers Association

Geron Bruce
Executive Director
United Southeast Alaska Gillnetters

Bruce Wallace
Executive Director
Southeast Seine Boat Owners & Operators Association

Sig Mathisen
President
Petersburg Vessel Owners Association

Introduced: 4/24/86
Referred: Resources

IN THE SENATE BY THE RESOURCES COMMITTEE

SENATE JOINT RESOLUTION NO. 51

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Relating to the Alaska National Interest Lands Conservation Act and endorsing support for the timber industry.

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

WHEREAS the timber industry is a vital industry in the state and a major contributor to the economy; and

WHEREAS the passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980 recognized the importance of the timber industry to the state; and

WHEREAS ANILCA provided for a timber supply fund and also authorized a timber supply harvest level in order to ensure economic stability within the timber industry; and

WHEREAS ANILCA was a compromise reached in 1980 between those advocating wilderness additions and those supporting a viable timber industry and a renewable resource; and

WHEREAS ANILCA has already mandated and set aside over 50 percent of Southeastern Alaska land as wilderness and roadless areas; and

WHEREAS the total acreage of the Tongass National Forest is 16,706,895 acres excluding land in other ownership and, of that total, only 1,749,700 acres are scheduled for harvest over the rotation of 100 years which constitutes only one-tenth of one percent a year or 10 percent over the life of the rotation; and

WHEREAS any attempt to change ANILCA to create additional wilderness areas, and decrease the mandated timber harvest level or eliminate the authorized timber supply fund would cause severe detrimental damage to the

economy of Southeastern Alaska; and

WHEREAS the Congress is about to begin hearings to consider ANILCA and special interest groups are requesting significant changes in ANILCA that may cause severe economic damage to the existing timber industry and, consequently, many communities in Southeastern Alaska;

BE IT RESOLVED by the Alaska State Legislature that ANILCA not be reopened or amended as this action would have the effect of voiding the delicate compromise and subsequent legislation passed in 1980; and be it

FURTHER RESOLVED that the timber harvest level of 4.5 billion board feet per decade as mandated by ANILCA be maintained; and be it

FURTHER RESOLVED that the timber supply fund as enacted as part of ANILCA be maintained and adequately funded; and be it

FURTHER RESOLVED that the land base made available under ANILCA for renewable timber harvest not be reduced and no further additions to wilderness areas be enacted; and be it

FURTHER RESOLVED that before the Congress begins any further consideration of ANILCA that hearings be held within the State of Alaska.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; to the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; to the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.



Southeast Alaska Conservation Council

Box 1692 • Juneau, Alaska • 99802 • (907-586-6942)

Statement of Bart Koehler, Executive Director
Southeast Alaska Conservation Council
Before the House Resources Committee
Concerning HJR 75
April 28, 1986

My name is Bart Koehler. I am the Executive Director for the Southeast Alaska Conservation Council (SEACC) and I am representing the Council's position today on HJR 75. SEACC is a coalition of 9 conservation groups located throughout Southeast Alaska, in addition we have 600 individual members. The groups and individuals belonging to SEACC include sport and commercial fishermen, sport hunters, subsistence resource users, small timber workers, teachers, guides & outfitters, businessmen, and others throughout Southeast.

HJR 75 is a resolution "relating to the amendment by Congress of the Alaska National Interest Lands Conservation Act as it relates to the timber industry." Before I comment on the contents of the resolution I would like to present some background information which directly relates to consideration of this resolution.

First, Section 706(b) of the Alaska Lands Act (ANILCA) requires that the U.S. Forest Service "review and report to Congress on the status of the Tongass National Forest" within 5 years from the date of enactment of ANILCA. It directs that "this report shall include, but not be limited to, (1) the timber harvest levels in the forest since the enactment of this Act; (2) the impact of wilderness designation on the timber, fishing, and tourism industry in southeast Alaska; (3) measures instituted by the Forest Service to protect fish and wildlife in the forest; and (4) the status of the small business set aside program in the Tongass Forest."

Thus, ANILCA Section 706(b) specifically recognized the importance of the fishing and tourism industries in addition to the timber industry. Nowhere does it say that one industry is more vital than another. Further, by requiring the Forest Service to report on the protection of fish and wildlife in the forest, Congress also recognized the importance of these resources to the livelihoods and lifestyles of Southeast Alaskans.

Second, ANILCA Section 706(c) further directs that "the study required by this section shall be conducted in cooperation and consultation with the State, affected Native Corporations, the southeast Alaska timber industry, the Southeast Alaska Conservation Council, and the Alaska Land Use Council." These named cooperators participated in the study process by submitting separate chapters for inclusion in the Forest Service's report to Congress. In

addition, the Forest Service invited 4 Southeast commercial fishing groups to also participate in the study report. These groups were the Alaska Trollers Association, the United Southeast Alaska Gillnetters, the Southeast Seine Boat Owners and Operators Association, and the Petersburg Vessel Owners Association.

The Section 706(b) report was due to Congress by December 2, 1985, however its release was delayed until just recently. Congressional Oversight Hearings on the report are now scheduled for May 8 & 9 before the House of Representatives Interior Subcommittee on Public Lands. As directed by Section 706(b), these hearings are only to review the management status of the Tongass as seen by the Forest Service and cooperators. Congress will not be considering any amendments to ANILCA at these hearings.

HJR 75 does not represent all of Southeast Alaska because many of the region's communities are not dependent upon the two pulp mills and the large-scale timber industry. In fact, timber harvest can negatively impact the livelihoods of many Southeast residents.

For example, HJR 75 resolves that the ANILCA timber supply goal of 4.5 billion board feet per decade be maintained. However, 14 Southeast communities have gone on record opposing the "450" (as it is called locally). I have supplied you with copies of these 14 resolutions. As you can see, the 14 communities are Angoon, Craig, Edna Bay, Elfin Cove, Gustavus, Hoonah, Hydaburg, Kupreanof, Pelican, Point Baker, Port Alexander, Port Protection, Tenakee Springs, and Yakutat. The lives of the people in these communities are based on the surrounding fish and wildlife resources. These resources can be detrimentally affected by excessive timber harvest. Without exception the communities state in their resolutions that the "450" does not allow adequate flexibility in the management of the forest for all multiple uses. HJR 75 simply rides rough-shod over these communities in our region.

Additionally, 4 commercial fishing groups have gone on record opposing the "450" as a threat to the livelihoods of their members. You have a copy of their statement in your packet. These groups are the Alaska Trollers Association, the United Southeast Alaska Gillnetters, the Southeast Seine Boat Owners & Operators Association, and the Petersburg Vessel Owners Association.

Only one community, Wrangell, has passed a resolution similar to HJR 75 supporting the "450" harvest goal. Petersburg considered the same resolution, but it was voted down.

HJR 75 claims that eliminating the Tongass Timber Supply Fund and decreasing the "450" harvest goal would cause substantial damage to the economy of Southeast Alaska. In your packets you will find 2 pages of graphs depicting employment and earnings by sector in Southeast. These graphs come from pages 21-24 of the Forest Service's 706(b) study report to Congress. What these graphs clearly show is that timber is not the only vital industry to Southeast Alaska.

As you can see from Figure 2.1, since 1981 fishing and tourism have each supplied more direct jobs than did the timber industry. Figure 2.3 shows that since 1981 the timber industry has supplied more indirect jobs than either fishing or tourism. Federal government is also an important source of jobs.

Not to be overlooked is that, on the average, state and local government supplies thousands more direct and indirect jobs than timber, fishing, and tourism combined. Figures 2.2 and 2.4 show that direct and indirect earnings from the timber industry are higher than for either fishing or tourism. Federal government workers earned about the same as fishery and tourism workers, but less than timber workers. Again, state and local government earnings were higher than timber, fishing, and tourism combined.

I have purposely left out the actual numbers of jobs and amounts of dollars earned because that is not what is important here. Rather, what is important, as I stated before, is that these graphs clearly show fishing and tourism to be just as vital to Southeast Alaska's economy as timber. They also show the overwhelming importance to the region of employment by state, local, and federal government. Keep in mind that these graphs do not consider subsistence and its importance to the livelihood of many Southeast residents.

These graphs show that since 1980, jobs and earnings have increased in the tourism sector, and all predictions are that this growth will continue. Now and in the future, tourism will continue to be important to Southeast Alaska's economy. According to the Forest Service report, "Southeast Alaska played host to 205,000 total visitors in 1983, double the number in 1975." To quote further, "The rise in environmental awareness and interest in protecting remaining wilderness coincided with the continued growth in visitation to Southeast Alaska. The single most consistent trend one can follow in the development of the visitor trade in Southeast, has been the persistent demand for the natural scenic beauty of Southeast Alaska."

Abundant wildlife and a quality environment are important to Southeast Alaskans, too. For example, according to a Forest Service survey, the number of resident sport fishermen increased 55% between 1977 and 1983, even though the region's population grew by only 27% over this same time period. A 1983 survey found that the 3 most important attributes to a quality angling experience were "(1) uncrowded environment, (2) wilderness setting, and (3) catching lots of fish." No doubt, these attributes are also important to nonfishing recreationists and hunters.

If you will look at the employment and earnings graphs once more you will note that jobs and earnings in the timber and fishing industries decreased slightly since 1980. This decrease in the timber sector occurred despite the Tongass Timber Supply Fund providing an average of roughly $46 million annually since 1980 to the timber industry. Also, during this time the Forest Service supplied an average of 490 MMBF of timber per year, 40 MMBF per year more than the Tongass timber supply goal of 450 MMBF. Despite the offering of this much timber, only an average of 243 MMBF per year was harvested.

Something is clearly wrong when an industry claims it cannot operate profitably and loses jobs even though it is so incredibly well subsidized and its product supply is twice what it can use. The fact is that the market has bottomed out since 1980 when the timber industry was at an all-time high. All the timber supply in the world won't help if the demand for timber is not there. Building roads and spending millions in federal subsidy dollars, taxpayer's money, to supply timber that is never sold or harvested simply cannot be justified. Environmentalists and Wilderness designations are not the cause of timber industry woes.

HJR 75 would jeopardize all industries vital to Southeast in an effort to save one which is ailing due to poor market conditions, not lack of federal subsidy or product supply. Advocating excessive timber harvest at the expense of the region's other industries is ridiculous. It is even more ridiculous when you consider that continuing to oversupply the market will make the timber industry even more uneconomical.

The welfare of the fishing and tourism industries, of the subsistence way of life, of sport hunting and fishing, and other forms of recreation are directly dependent upon the preservation Southeast's abundant natural beauty and fish and wildlife populations. Let us remember that timber is not the only industry. A balance in harvest levels must be struck, but this is not the forum for that issue.

HJR 75 advocates maintaining and adequately funding the Tongass Timber Supply Fund. Everyone concerned with the Fund, including the State of Alaska and the timber industry, has complained about its misapplication. While each interest group has complained for various and oftentimes conflicting reasons, no one has been happy with how the Fund has been implemented, except the Forest Service. It will be important for Congress to hear from all viewpoints about the Timber Supply Fund on May 8 & 9.

In closing, HJR 75 is a misrepresentation of the needs and desires of many Southeast Alaskans. For Alaska's Legislature to pass a resolution which represents only one economic sector, but purports to represent an entire region of the state, is grossly unfair. HJR 75 does not reflect the concerns of the 14 small communities in Southeast Alaska who have passed resolutions in opposition to the "450" and who are not ties to the 2 pulp mills.

HJR 75 is not in keeping with the directives of the review process established in ANILCA Section 706(b). The 706(b) review process allows the timber industry the same opportunity as all other interest groups to speak before Congress on the management status of the Tongass. Additionally, the specific language of HJR 75 is inaccurate and misleading. I am prepared to discuss the resolution line by line if you have any questions.

SEACC urges the Committee to kill HJR 75 now before it goes any further. Thank you for the opportunity to speak before you.

March 21, 1986

Representative Robin Taylor
Pouch V,
Juneau, Alaska 99811

Dear Robin;

Enclosed are copies of the "Last Stand of the Tongass" authored by SEACC; the State of Alaska report on ANILCA 706B; and the summary of the Forest Service report. All three documents are being submitted to congress as congress is about to conduct hearings and take possible action regarding the ANILCA act.

As you are well aware, the timber industry plays a very vital role in the economy of Southeast Alaska. It is always important that this fact is continually recognized but now with severly declining oil revenues, it is extremely important that everyone is made aware of the implications of possible alteration of the ANILCA act and the effect this would have on our already "shaky" economies.

I urge you to read the documents in some detail. I do, however, expect to see your blood pressure raise when reading "The Last Stand". It's been quite awhile since I've read a document full of so many untruths. The really tragic thing is that SEACC is right now distributing copies of this document to Representatives and Senators back in Washington, D.C. telling them that this document represents the feelings of Southeast Alaskans. I would have expected that SEACC would have submitted a document such as "The Last Stand" because you are as well aware as I as to where they are "coming from". But I was <u>extremely</u> dissappointed that the State of Alaska would submit such a document as they are about to do. To suggest that a congressional inquiry be conducted is to simply open up the entire legislative act which was a compromise reached in 1980 between those advocating wilderness and those trying to preserve a viable timber industry in the Tongass National Forest. Market conditions for the timber industry have been terrible for the past several years because of the strength of the dollar, depressed markets, etc. These are things that we really do not have control over, but we (meaning the State of Alaska) certainly should be able to represent the timber industry showing absolute support to Congress and our representatives and lobbiests.

The hearings in Congress are scheduled to begin some time in April. I think it would be extremely beneficial for a resolution to be adopted by the Senate and House indicating their support for the timber industry. I intend to try to have similar resolutions passed by local city councils and chamber of commerces. We are also starting a "grass roots" letter writing campaign and petition drive in Southeast Alaska. Please, we need your help. The timber industry is important to all of us. Having served four years on the local city council, I am all too well aware of the problems facing us for the next several years. Decreasing revenue to the communities from the state can only mean increased burden on the tax base. We just can't afford to lose a viable industry such as the timber industry and still afford to operate and maintain our schools, hospitals, etc.

Please call me if you have any questions of comments. I'll be glad to forward on to you any information I have. Thanks for your time and consideration

Sincerely,

David R. Carlson
PO Box 1232
Petersburg, AK 99833
Ph. 772-3765

BACKGROUND

The Alaska Region of the Forest Service has been preparing a Report on the Status of the Tongass National Forest called for by Congress in the Alaska National Interest Lands Conservation Act (ANILCA), Sections 706 (b) and (c). The report is due to be released in mid-April and includes information on important facets of Tongass National Forest management: Tongass timber harvest levels, impacts of Wilderness designation on timber, fishing, and tourism industries, protection measures for fish and wildlife, and the status of the small business set aside program. The Executive Summary from the report is attached.

Information for the report was drawn from many sources, including the timber industry, several Departments of the State of Alaska, and Forest Service records.

The report was prepared along with five "cooperators" named in ANILCA: the State, the affected Native Corporations, the Southeast Alaska timber industry, the Southeast Alaska Conservation Council (SEACC), and the Alaska Land Use Council (ALUC). At the urging of Senator Ted Stevens, a group of commercial fishing organizations were also invited to participate.

During preparation of the report, the Forest Service invited the cooperators to review and comment on study plans and the draft report. As a result, changes were made that strengthened the report. The cooperators were also asked to present their own views in the form of a "Cooperators' Chapter" in the final report to Congress.

The cooperators have made some key points that emphasize their desires for and concerns about the Tongass National Forest, including:

-- The Forest Service should terminate the Alaska Pulp Corporation and Lousiana Pacific-Ketchikan long-term timber sales. (SEACC)

-- The Forest Service has not used the funds provided through Section 705(a) of ANILCA properly. The road program on the Tongass National Forest has not been fully funded. (State and timber industry)

-- The Forest Service has not provided adequate protection for fisheries resources while conducting the timber program. (State, SEACC, and Commercial Fishing Groups)

-- The Forest Service has not provided adequate protection for the habitat of the Sitka Black-tailed Deer while conducting the timber program. Over time, the timber program will lead to dramatic declines in critical deer habitat and, therefore, deer populations. (State and SEACC)

-- Forest Service timber policies have had negative effects on the Native Corporations' timber programs. (State, Sealaska, and SEACC)

In addition to broader topics, the Report on the Status of the Tongass National Forest addresses the cooperators' desires and concerns:

-- The long-term sales were established with the support of local, State, and federal governments and private interests to improve community and economic stability in Southeast Alaska, and given the effects of market changes, they have done so. Grounds to terminate the contracts have never appeared, not even during recent Department of Justice evaluations of anti-trust violations.

-- Congress designated Wilderness areas in ANILCA that contained high-quality timber that had previously been potentially available to the timber industry. Congress provided funds to make the cost of harvesting sales containing poorer-quality timber outside the Wildernesses roughly equal to the cost of harvesting the average timber sale sold prior to 1979 and the Tongass Land Management Plan. The ANILCA funding was designed mainly to adjust for changes in the quality of timber available to the industry, and was not designed to insure profits in times of poor timber markets.

-- Other federal and State agencies and the Forest Service are cooperating and funding research programs to determine the best methods of protecting fisheries. As improved methods are developed and tested, they are put into practice in new timber sales. An example is the use of "large woody debris": root wads, stems and larger tree limbs. Up until recently, timber operators were required to remove such material from streams in timber sale areas. Today, researchers generally agree that some large woody debris is beneficial to the fisheries habitat and timber operators must add some to parts of streams identified by fisheries biologists.

-- Over 4.1 million acres of deer winter habitat were identified on the Tongass in 1979. If present use patterns continue over a century, almost 2.9 million acres will remain in the same condition as identified in 1979. Therefore, in 2079, over 70% of the total deer habitat would remain unchanged. This does not mean that total deer populations would necessarily decline by 30% or, accordingly, that hunter demands would not be met.

-- During the Congressional deliberations on ANILCA, the Senate reduced their proposal for timber supply from the Tongass from 5.2 billion board feet to 4.5 billion board feet per decade. In part, this reduction reflected the potential timber harvest on newly conveyed Native Corporation lands. Since then, market forces such as depressed demand, increased international competition, and currency exhange rates have had far more impact on Native Corporation log sales than the sales of processed logs cut on the National Forests.

Last week, the Executive Summary was shared with Congress and the cooperators.

EXECUTIVE SUMMARY

STATUS OF THE TONGASS NATIONAL FOREST, SOUTHEAST ALASKA

Introduction

The total land area for the Tongass National Forest is approximately 16.7 million acres. Under the current Tongass Land Management Plan, forty one percent of the total land base is available for timber management, 33 percent is designated Wilderness and the remaining 26 percent is managed in an unroaded condition. Table 1 displays the amount of forested land in each of the above categories, the amount classified as commercial forest lands, the amount suitable for timber harvest and the amount programmed for timber harvest. Eleven percent of the total land base is programmed for timber harvest during the first rotation, or 100-120 years.

Table 1 TONGASS NATIOAL FOREST LAND BASE, SOUTHEAST ALASKA

(In Millions of Acres)

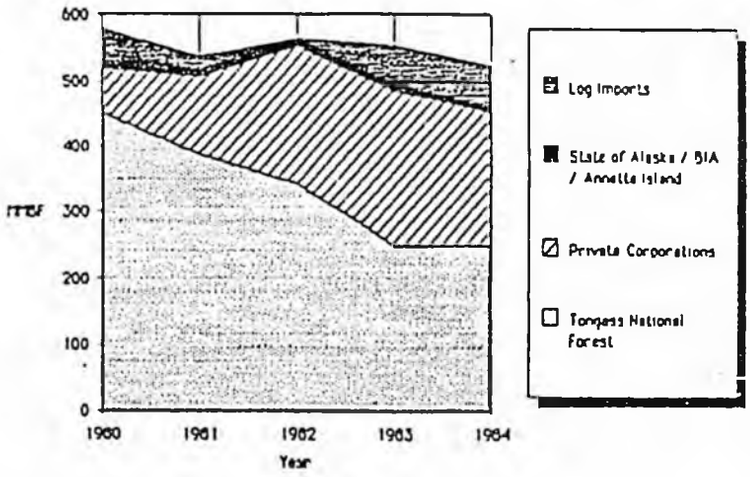
	Total Area	Forested Lands	Commercial Forest Lands	Suitable for Harvest	Programmed for Harvest	Percent of Forest
Available For Timber Management	6.9	80%	52%	29%	25%	41%
Wilderness	5.5	48%	29%	16%	0%	33%
Managed In An Unroaded condition	4.3	25%	15%	8%	0%	26%
FOREST TOTAL	16.7	57%	35%	18%	11%	100%

Timber Harvest Levels

The overall timber harvest from all ownerships in Southeast Alaska has remained relatively constant since the passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. However, new suppliers of timber have appeared during this period. The increase in the amount of timber supplied by private landowners has almost tripled as Southeast Alaska's Native Corporations have received title to the lands selected under the provisions of the Alaska Native Claims Settlement Act of 1971. These private landowners have been able to export unprocessed logs; in contrast to purchasers of Tongass National Forest timber who are required to complete some form of primary manufacture prior to exporting. The lack of primary manufacturing requirements, the presence of more environmental protection on National Forest timber sales, and a preference for round logs by many buyers in the Pacific Rim countries, have contributed to increased timber being purchased from private ownerships in Southeast Alaska. Figure 1 displays timber harvest levels from 1980 to 1984 on Forest Service, State of Alaska, and privately managed lands. Also displayed is the amount of log imports from British Columbia for the same period.

Figure 1

TIMBER HARVESTS IN SOUTHEAST ALASKA, 1980-84.



The amount of timber harvested on the Tongass National Forest has substantially decreased since the enactment of ANILCA. Several factors in addition to the increased private timber harvests are responsible for this decrease. These factors include a poor market for Alaska's lumber products and dissolving pulp; the substitution of low quality logs from British Columbia for Southeast Alaska pulp logs; and the value of products after primary manufacturing compared to round log exports from private lands in Alaska. The dominating factors are the lower overall demand for Alaska's manufactured wood products and the higher costs of manufactured wood products in Alaska.

The economic condition in the Pacific Rim, which some have described as the worst since the 1930's, has severly affected the profitability of National Forest timber sales. Both the timber industry and the Forest Service have instituted cost saving measures which have provided significant savings in the harvesting and manufacture of Alaska's wood product. However, the composite value of wood products made from Tongass National Forest timber in Southeast Alaska has dropped nearly $200 per thousand board feet (MBF) since 1980. The result is that the cost savings being realized are not offsetting the drop in end-product values. For this reason many sales remain unsold.

Another result of the depressed markets is the delayed realization of benefits from added investments envisioned in the Forest Plan and provided by ANILCA. Because Wilderness designations, areas identified to be managed in an unroaded state, and other resource protection measures reduced the amount of available timber, it was expected that harvesting lower volume and more expensive to harvest stands would be required to offer 4.5 billion board feet per decade. Investments in road construction prior to the sale of timber and advanced logging technology were intended to offset the increased cost of harvesting these stands. Precommercial thinning is also needed if the 4.5 billion board feet per decade timber supply is to be made available. While precommercial thinning investments have been carried out as planned, the industry has shown little interest in the marginal timber stands made available. Consequently, with some exceptions, the benefits of the investments in these areas will not be realized until these areas are needed to meet market demands.

Recognizing the impact these economic conditions have had on the programs envisioned in the Forest Plan and ANILCA, the Forest Service has attempted to be flexible in its administration of these investments. For example, the scheduling of public works construction of roads used in the timber program has been modified to decrease the time between pre-roading construction and actual timber harvest. Also the timber sales being offered are being designed to improve the economics of the sale from both the timber purchasers and the American taxpayer's perspective.

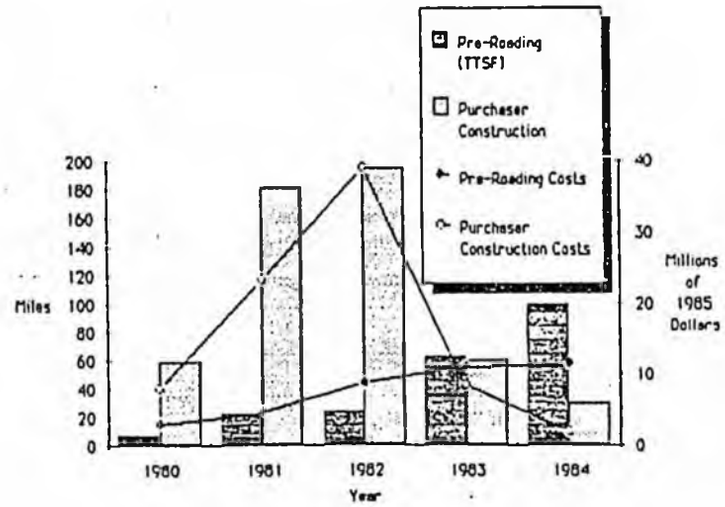
The Forest Service has begun scheduling public works road construction on selected short-term timber sales after the sales are sold rather than prior to sale offerings, in order to insure Federal expenditures are used where timber harvest will actually occur in the near future.

Further, timber purchasers are being reimbursed for part of the costs associated with the construction of certain roads on the National Forest in those stands that are of lower average quality or with more difficult access than those assumed in the Forest Plan.

Figure 2 compares the dollars spent and the miles roads built by the Forest Service (pre-roading) versus that constructed by timber purchasers through credits; that is credit against the amount owed to the federal government for the timber.

Figure 2

TIMBER ROAD FUNDS AND MILES
OF CONSTRUCTION CONTRACTS AWARDED
TONGASS NATIONAL FOREST,
FY 1980-84



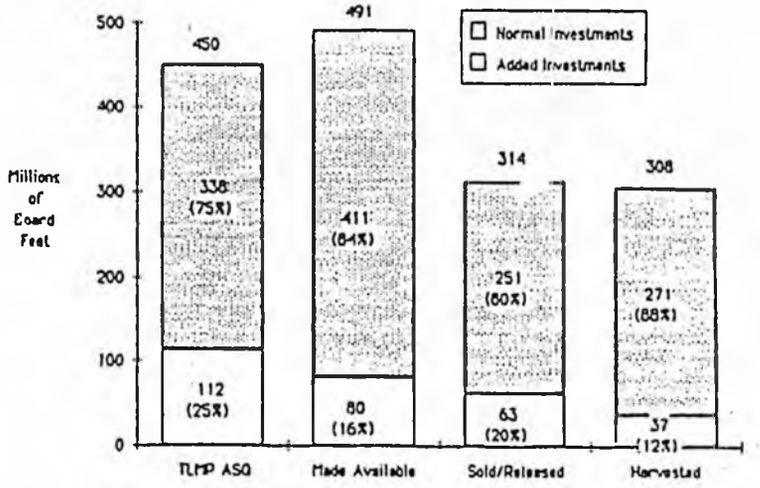
Added investments to encourage advanced logging technology have been reduced until timber demand increases to near pre-ANILCA levels. This was done because timber stands requiring this advanced logging technology are more expensive to harvest and generally have less valuable timber. Until demand for timber increases, thereby making these marginal stands more attractive, it is felt that this type of investment would serve little purpose.

Precommercial thinning investments have met the expectations envisioned in ANILCA. The precommercial thinning program has increased the efficiency of producing timber on the existing land base.

Figure 3 compares the timber volume attributed to normal and added investments in the Forest Plan (1978), with the timber volumes made available, sold and harvested since 1980.

Figure 3

AVERAGE ANNUAL TIMBER VOLUME ATTRIBUTED TO NORMAL AND ADDED INVESTMENTS IN THE FOREST PLAN VERSUS THE VOLUMES MADE AVAILABLE, SOLD AND HARVESTED, 1980-84.



Impact of Wilderness

The Southeast Alaska economy is dependent on natural resources supporting the timber, fisheries and tourism industries, as well as government expenditures. Figures 4 and 5 show the relative importance of these economic sectors in terms of employment and earnings. Note, that employment is expressed in average annual jobs, not full time equivalents (FTE's).

Figure 4

AVERAGE ANNUAL NUMBER OF JOBS, (Not Full Time Equivalents) SOUTHEAST ALASKA, 1977-84

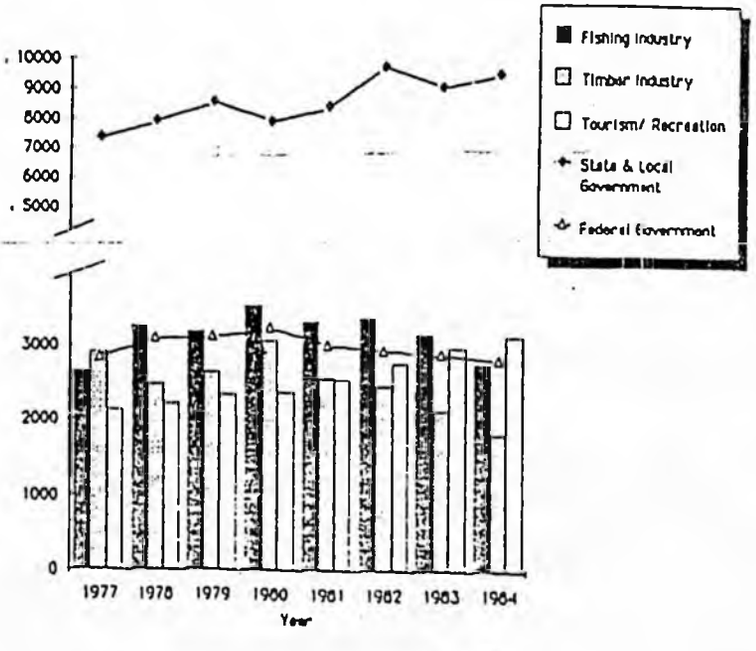
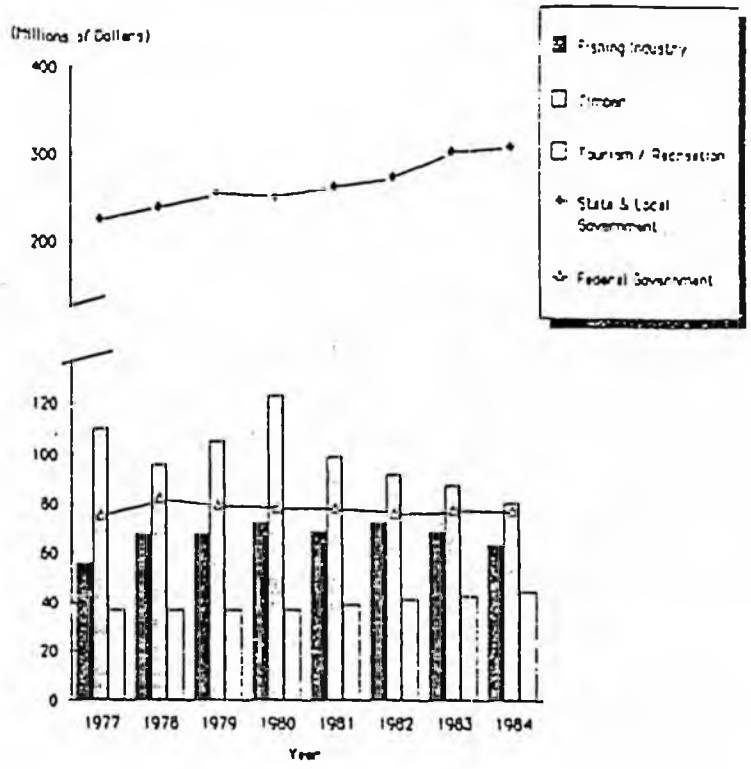


Figure 5

DIRECT EARNINGS,
SOUTHEAST ALASKA,
1977-84



Over the long term, a result of including commercial forest lands in Wilderness (hence unavailable for harvest), will increase the use of lower quality timber and the need to use areas requiring advanced harvest technology. The timber supply goal of 4.5 billion board feet per decade cannot be achieved without using this lower value, more expensive timber. If commercial forest lands were not in Wilderness, there would be less need for low volume timber stands and areas requiring advanced logging technology over the harvest rotation, 100-120 years. Because of reduced market demands since 1980, there has been little need to harvest the marginal areas identified in the Forest Plan which require higher logging and transportation costs.

The impact of Wilderness on the fisheries industry are neutral to positive. ANILCA provided for the management and enhancement of fisheries habitat in Wilderness Areas, including aquaculture projects. This provision is unique to Alaska and provides the opportunity to manage the fisheries resource in both the Wilderness and non-wilderness areas of the Forest. Comprehensive fisheries management in Wilderness Areas will continue under the joint direction of State and Federal agencies. Wilderness will continue to provide opportunities for research and management of existing stocks of fish under natural conditions.

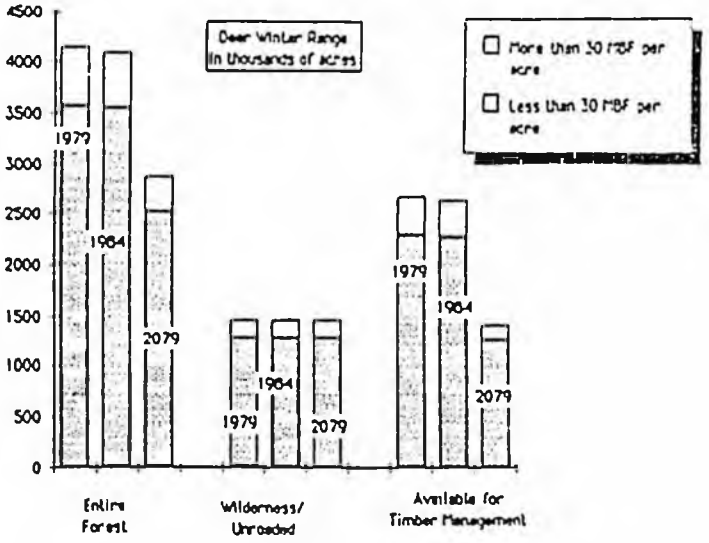
The impact of Wilderness on the tourism industry is mixed, but generally favorable. The non-resident tourism industry is primarily based on Alaska's undeveloped scenic character both within designated Wilderness and in other areas with relatively undeveloped characteristics. The State of Alaska and the tourism industry have used these characteristics successfully in advertising campaigns to bring out-of-state tourists to Alaska. Tourism operators generally feel Wilderness is a positive attribute, but also recognize the restricted land uses required by Wilderness designation for such facilities as lodges and resorts.

Measures Instituted to Protect Fish and Wildlife

Protecting and managing fish and wildlife habitats on the Tongass National Forest remains a high priority and a public issue. Forty percent of the areas having high wildlife value and 50 percent of the areas having high commercial and recreational fish values have been placed in Wilderness. In addition 273,000 acres of commercial forest lands in areas available for timber harvest have been set-aside for wildlife and fisheries purposes. While originally intended to maintain the visual quality of an area, extended timber harvest rotations (120 to 200 years versus 100 years) on an additional 244,000 acres of commercial forest lands, will also benefit fish and wildlife habitat. With these measures, the Forest Service estimates that 69 percent of 4,146,000 acres of deer winter habitat identified in the Forest Plan on the Tongass will remain at the end of the timber harvest rotation. Figure 6 displays the distribution of old-growth, deer winter range on the Tongass now and at the end of the first planned timber harvest rotation, the year 2079.

Figure 6

DISTRIBUTION OF OLD GROWTH
DEER WINTER RANGE,
TONGASS NATIONAL FOREST,
1979, 1984, AND PROJECTED TO 2079

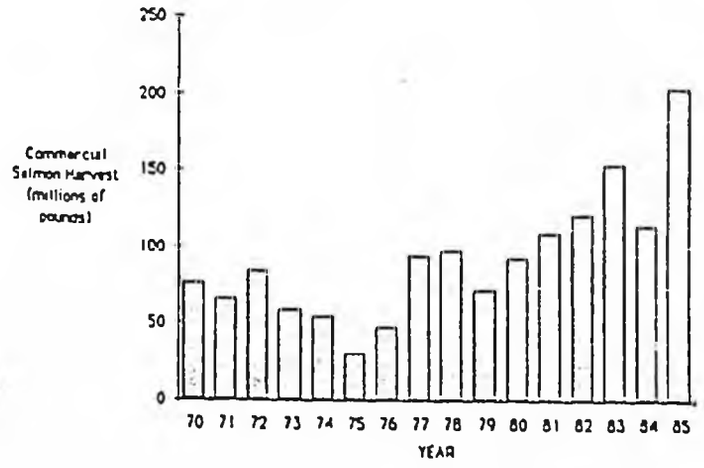


Studies to improve habitat in second growth areas, which have the potential of reducing the impacts of old-growth habitat loss while at the same time increasing wood production, continue. Measurement of public demand for fish and wildlife use, including subsistence, will also be continued.

Fisheries management and enhancement projects on the Forest have contributed to increases in salmon stocks since the late 1970's. Cooperative fisheries management with other Federal and State agencies will continue until the optimum sustained yield for fisheries is reached. Habitat management and enhancement projects will continue to include projects in Wilderness Areas as provided in ANILCA. Figure 7 shows the trend in commercial salmon harvests from 1970 to 1985.

Figure 7

COMMERCIAL SALMON HARVESTS,
SOUTHEAST ALASKA,
1970-85



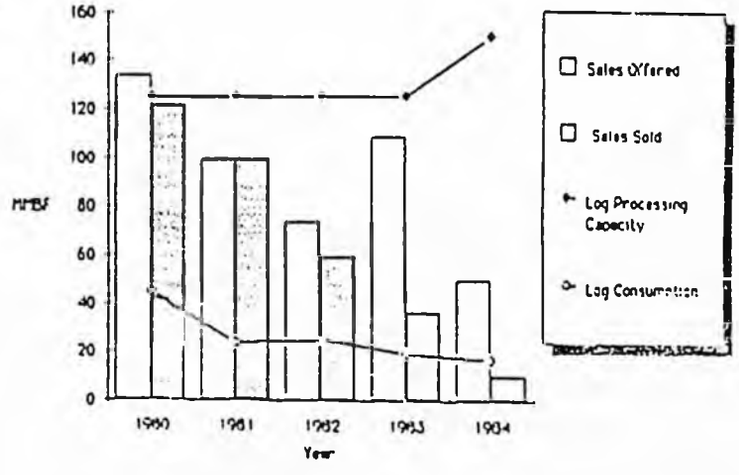
Status of the SBA Timber Program

The SBA Set-Aside timber sale program was started in 1977 and has increased the amount of National Forest timber sold to qualifying small businesses. However, the poor timber markets since 1980 which have resulted in an increased number of timber sale offerings having reduced opportunities for profit; and, the greater competition (specifically from Alaska's private log exporters and lumber suppliers in British Columbia), have all combined to severely depress the harvesting and sawmill operations of small businesses. Two of six small business mills are currently in bankruptcy and the remaining four are operating on an intermittent basis.

The SBA Set-Aside program is important to small businesses in their bid to secure National Forest timber. The Federal Timber Contract Payment Modification Act of 1984 will help small businesses remain competitive with the two pulp companies holding long-term National Forest timber sales. However, improvement of existing markets or development of new markets is important to the maintenance of existing industry. Figure 8 shows the amount of Tongass National Forest timber made available and sold in the SBA program from 1980 to 1984.

Figure 8

SBA TIMBER MADE AVIALABLE AND
SOLD TO SMALL SAWMILL OWNERS,
TONGASS NATIONAL FOREST,
1980-84.



Primary processing of National Forest timber and the establishment of long-term timber sale contracts were two methods used to stabilize the timber industry and diversify the economy of Southeast Alaska. To a large extent, these efforts have been successful. Between 1954 and 1974, timber industry employment grew from 29 to 54 percent of the total employment in natural resource industries in Southeast Alaska (fisheries, timber, minerals). Since 1980, however, depressed timber markets for National Forest timber have altered this trend, and timber now accounts for approximately 40 percent of the region's employment in natural resource industries. Figure 9 shows the significance of the timber industry in the natural resource economic sectors of Southeast Alaska, during the periods 1949-53 and 1979-83. The heavy reliance on export markets for Alaskan wood products means that the industry is heavily influenced by timber market trends within Pacific Rim countries. Figure 10 shows the estimated cumulative costs and returns of the Tongass National Forest timber program over the next 50 years under two market demands, weak (current) and strong. Each of the schedules displayed in Figure 10 achieves a 4.5 billion board foot timber supply per decade and is consistent with the multiple resource direction in the Forest Plan. The calculated returns do not include dollar benefits or costs for non-timber resources such as wildlife, fisheries, and recreation, nor other indirect benefits associated with transportation systems and other infrastructure.

Ways to improve the economics of timber production in Alaska include different product mixes, instituting cost reduction methods and assessing the long term means of providing the most cost effective access to timber stands. For example, a alternative product mix favoring the production of more dimension lumber could increase the net benefits by 11 percent.

The timber industry in Southeast Alaska needs to be aware of the changing demands in the world market and make any needed adjustments in the products delivered to those markets. The type of pulp products that have been the mainstay of the industry, are no longer in demand at the levels of the late 1970's. Large stands of high quality timber for use as dimensional lumber, are becoming more expensive to access. Increased dependence upon lower quality wood can be expected. Higher production costs and lower quality timber work against the industry in remaining cost competitive with other North American timber suppliers. The industry needs to continue to seek out better means of meeting world demands.

Figure 9

VALUE OF TIMBER, FISHERIES AND MINERALS, 1949-53 AND 1979-83

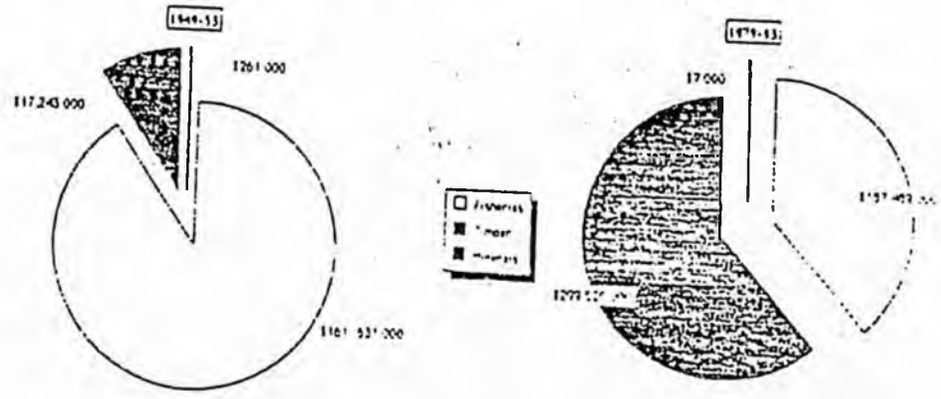
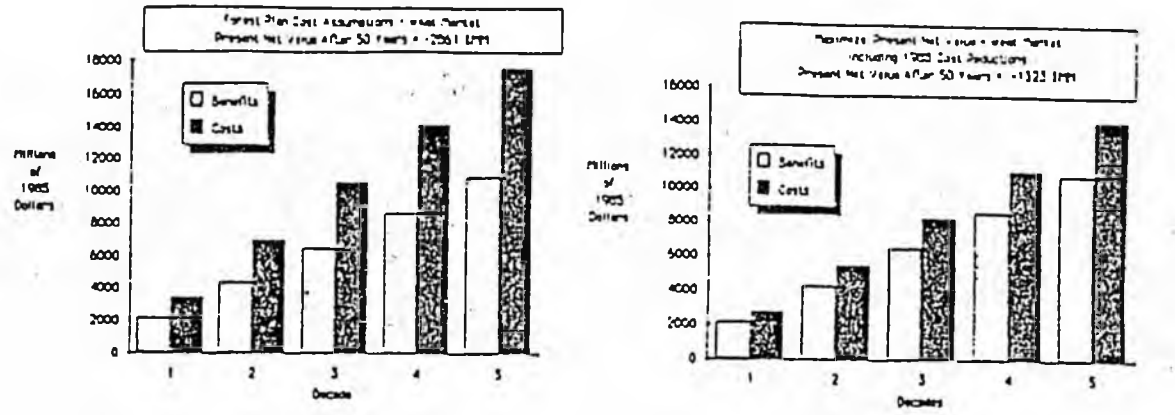


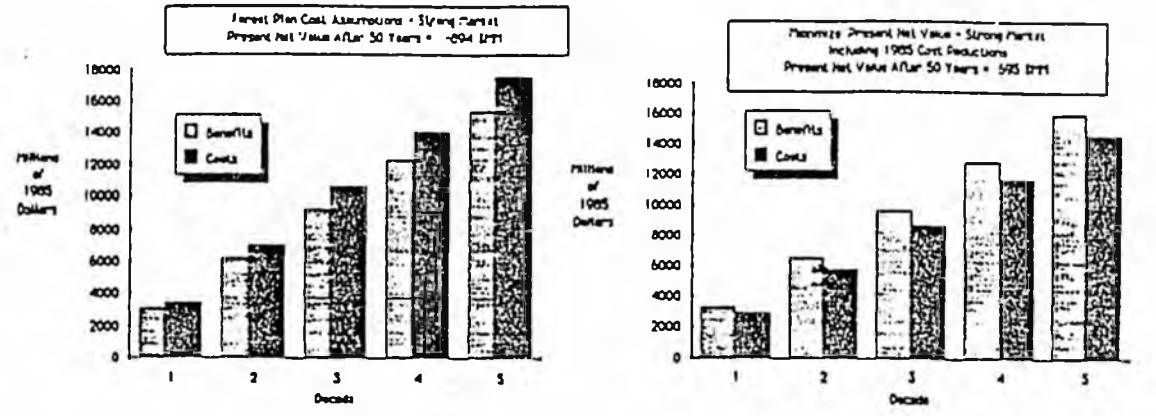
Figure 10

CUMULATIVE COST AND RETURNS OF TWO HARVEST SCHEDULES UNDER WEAK AND STRONG MARKETS

"Weak" or Current Market



"Strong" Market



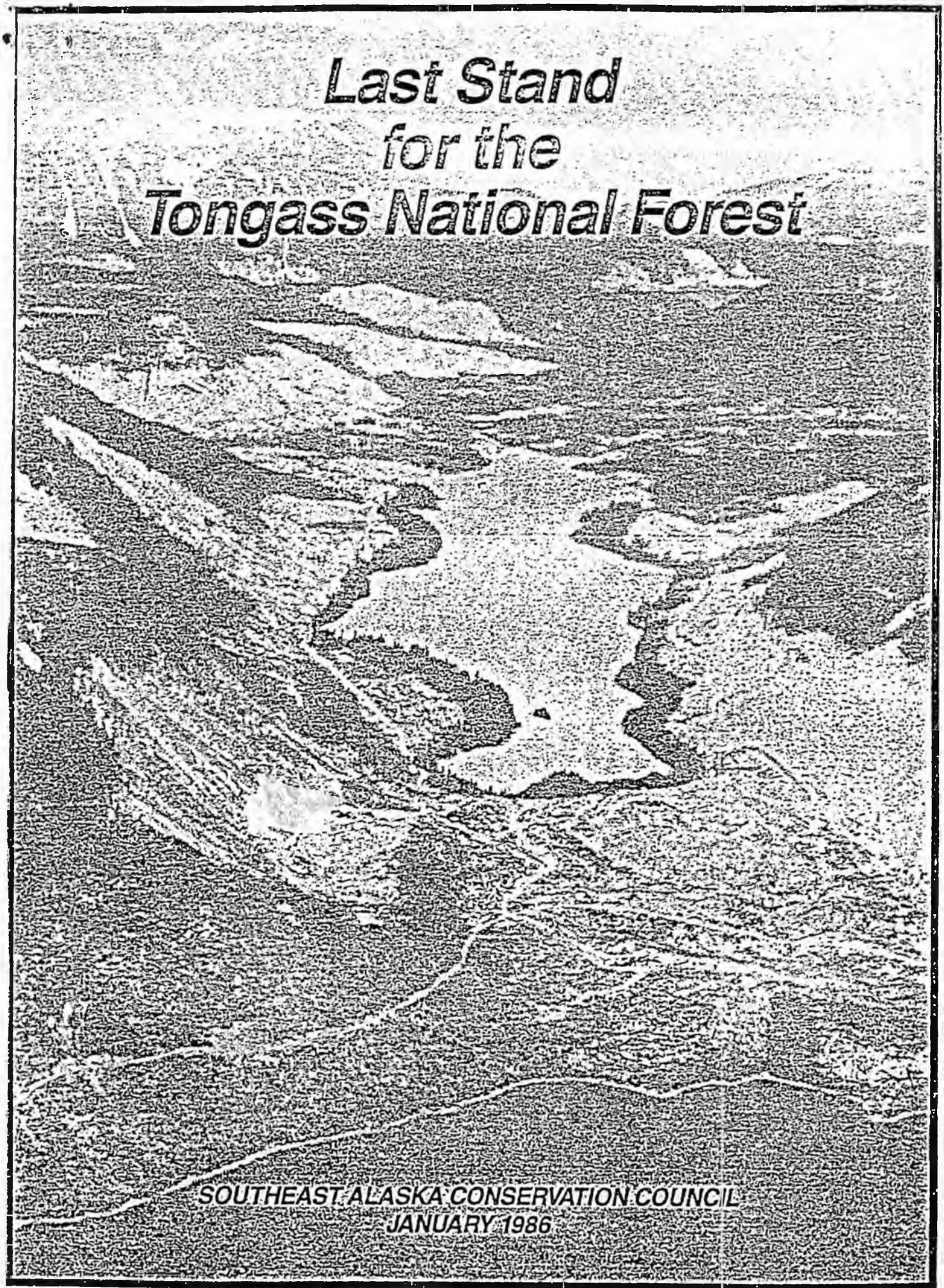
Subsistence Management and Use

Subsistence, as defined by ANILCA, provides a priority status for customary and traditional consumptive uses of fish, wildlife and other renewable resources by rural Alaska residents on Federal public lands. Subsistence management does not preclude the use of other resources but requires the Forest Service to consider subsistence uses in making resources decisions. There have been no findings of significant restrictions on subsistence use from the Section 810 evaluations prepared on Forest Service projects.

Cooperators Views

Section 706(c) of ANILCA calls for the Forest Service to work in cooperation and consultation with groups named in the Section. This chapter provides the unaltered views of the cooperators. The Forest Service received comments on the draft report from the cooperators listed in Section 706(c), as well as other interested groups and individuals, and has responded to or made changes in this final report.

Last Stand for the Tongass National Forest



SOUTHEAST ALASKA CONSERVATION COUNCIL

JANUARY 1986

GLOSSARY OF TERMS

ANILCA: Alaska National Interest Lands Conservation Act of 1980.

APC: Alaska Pulp Company. Located in Sitka, Alaska, APC holds one of the two 50-year timber contracts on the tongass. This corporation, owned by a Japanese conglomerate, was formerly called Alaska Lumber and Pulp.

BBF: One billion board feet. 4.5 billion board feet of timber could be used to build a five foot wide walkway that would extend around the Earth seven times at the equator!

Board Foot: A piece of wood measuring 12" x 12" x 1".

CFL: Commercial Forest Land. Land which contains at least 8000 board feet of timber per acre and is capable of regeneration.

LPK: Louisiana-Pacific/Ketchikan. Owner of the Ketchikan pulp mill and holder of one of the two 50-year timber contracts on the Tongass. A multi-national corporation which purchases more national forest timber than any other company.

MBF: One thousand board feet.

MMBF: One million board feet.

NEPA: The National Environmental Policy Act of 1970. This requires, among other things, that all major federal actions significantly affecting the environment must be assessed by an environmental impact statement before work begins.

NFMA: The National Forest Management Act of 1976. This broad reform measure was designed to re-write the Forest Service's original legal mandate and to reform management of Forest Service lands.

Pre-roading: Construction by the Forest Service of logging roads prior to actual timber sale offering.

Rotation (timber): Length of time Forest Service plans to let timber stands grow between logging stands. In Alaska, this period is normally only 100 years.

TLMP: Tongass Land Management Plan. Released in 1979, it guides Tongass management until 1989.

TTSF: Tongass Timber Supply Fund, created by Section 705(a) of ANILCA. A special subsidy for Tongass logging operations which is not subject to Congressional appropriations review. In 1985 the TTSF was $53 million.

VCU's: Value Comparison Units. The Tongass contains 867 of these planning units. Each VCU generally encompasses one watershed.

Special Edition
January/February 1986
Vol. 9
No. 4

the RAVENCALL

Southeast Alaska Conservation Council
Box 1692 Juneau, Alaska 99802

Dear Friend:

We are happy to send you this special edition of the RAVENCALL entitled Last Stand for the Tongass National Forest. It was originally prepared as a chapter within the Forest Service's report to Congress on the "Status of Management on the Tongass" in fulfillment of Section 706(b) of the Alaska National Interest Lands Conservation Act (ANILCA). Because of the magnitude of the problems facing the Tongass, we are publishing this report for distribution to all our members and other concerned citizens. We all need to be aware of the challenges before us. We urge you to read this report carefully and then speak out in defense of this great public forest.

So important is this review of Tongass management that SEACC will be going to Washington, D.C. in mid-February. We will be establishing a temporary office there to state our case on the Tongass and to educate Congress and the American people. Many Southeast Alaskans whose livelihoods and way of life are threatened by rampant logging and roading of the Tongass will also be travelling to Washington to personally address members of Congress. However, individuals from all over Southeast Alaska and the U.S. who are unable to travel to Washington should let their views be known by writing Congress. Your letter is essential to the fate of this forest.

We are expecting the Forest Service's report to reach Congress in mid-March or early April. (Originally scheduled for Congressional review in December 1985, it is long overdue.) It will take informed citizen action NOW to force the Forest Service to get its report to Congress by April. We urge you to write to the Congressional Committee leaders listed at the end of this letter, to Alaska's Congressional delegation, and if you don't live in Alaska, to write to your own state's Congressional delegation. Urge them to:

1) conduct Oversight Hearings on the "Status of Management on the Tongass National Forest" report to Congress;
2) adopt SEACC's recommendations (see page 62 of the enclosed report).

Other valuable ACTION that you can take to make this abuse and waste of our tax dollars and resources known is to write a letter to the editor of your local newspaper, to influential national newspapers, and to leaders of national conservation groups. Double and triple the effect of your and our efforts by asking friends to do the same.

In 1985, Southeast Alaskans held their own in their fight to protect the Tongass. SEACC and the City of Tenakee Springs closed 1985 with a big legal

victory against the Forest Service. The case, City of Tenakee Springs and SEACC v. Block, or simply "Kadashan," closed a big loophole in the public participation and environmental analysis process, a loophole the Forest Service had been using to cover up the magnitude of destruction resulting from their massive logging and roading plans. The U.S. Ninth Circuit Court of Appeals also called into question a basic Forest Service assumption that areas already allocated to logging must be logged and laced with roads. Beyond halting road construction and logging in Kadashan until further court order, the decision may eventually improve Forest Service planning and public involvement across the entire nation. But no matter what legal fallout Kadashan brings, SEACC and Tenakee have demonstrated to the Forest Service in powerful terms that they can and will do whatever it takes to protect the last stands of the Tongass from bulldozers and chainsaws.

The City of Tenakee Springs is not alone in its opposition to the Forest Service's current management direction of the Tongass. At the time of writing our report, 8 Southeast Alaska communities had passed resolutions opposing this direction. Since going to press, 3 more communities have passed similar resolutions - a total of 11 communities, to date, expressing their opposition.

We are beginning to turn the tide on the Tongass. Together we are making gains toward reforming Forest Service management. We need your letters NOW to help carry on the fight to protect this magnificent old-growth forest. With your help we CAN do it! NOW is the time to urge Congress to act on SEACC's recommendations.

This is the first chance for complete review of Tongass management before the Congress. Let's make the most of it the first time around! Thanks!

Sincerely,

Bart Koehler
Executive Director

Steve Kallick
Associate Director/
Staff Attorney

Julie Kelly
Administration/
Publications

P.S. Please write by March 15 to help get the ball rolling! Many Thanks!

Important Congressional Committee Leaders:

Rep. Morris Udall
Rep. John Seiberling
Rep. Sidney Yates
Rep. Bruce Vento
Rep. Jim Weaver

U.S. House of Representatives
Washington, D.C. 20515
(this address for all U.S. Representatives)

Alaska Congressional Delegation:

Sen. Ted Stevens
Sen. Frank Murkowski
Rep. Don Young

U.S. Senate
Washington, D.C. 20510
(this address for all U.S. Senators)

Last Stand for the Tongass National Forest

Prepared by
SOUTHEAST ALASKA CONSERVATION COUNCIL
January 1986

In Fulfillment of Section 706(b)
Alaska National Interest Lands Conservation Act
Report to Congress on the
STATUS OF MANAGEMENT ON THE TONGASS NATIONAL FOREST

ACKNOWLEDGEMENTS

SEACC would like to thank the ALASKA CONSERVATION FOUNDATION for its generous support which made production of this report possible.

We also wish to thank the many citizens of Southeast Alaska who gave their advice and support to this effort, especially Dixie Baade, Larry Edwards, Mary Ellen Cuthbertson, and K.J. Metcalf. Our work is dependent on the support given us by the people who live and work in this region, and on the support from people throughout the U.S. who care about the Tongass and just want to know that it is there.

Steve Kallick, Bart Koehler, John Sisk, and Ted Whitesell
Authors

Julie Kelly and Bart Koehler
Editors

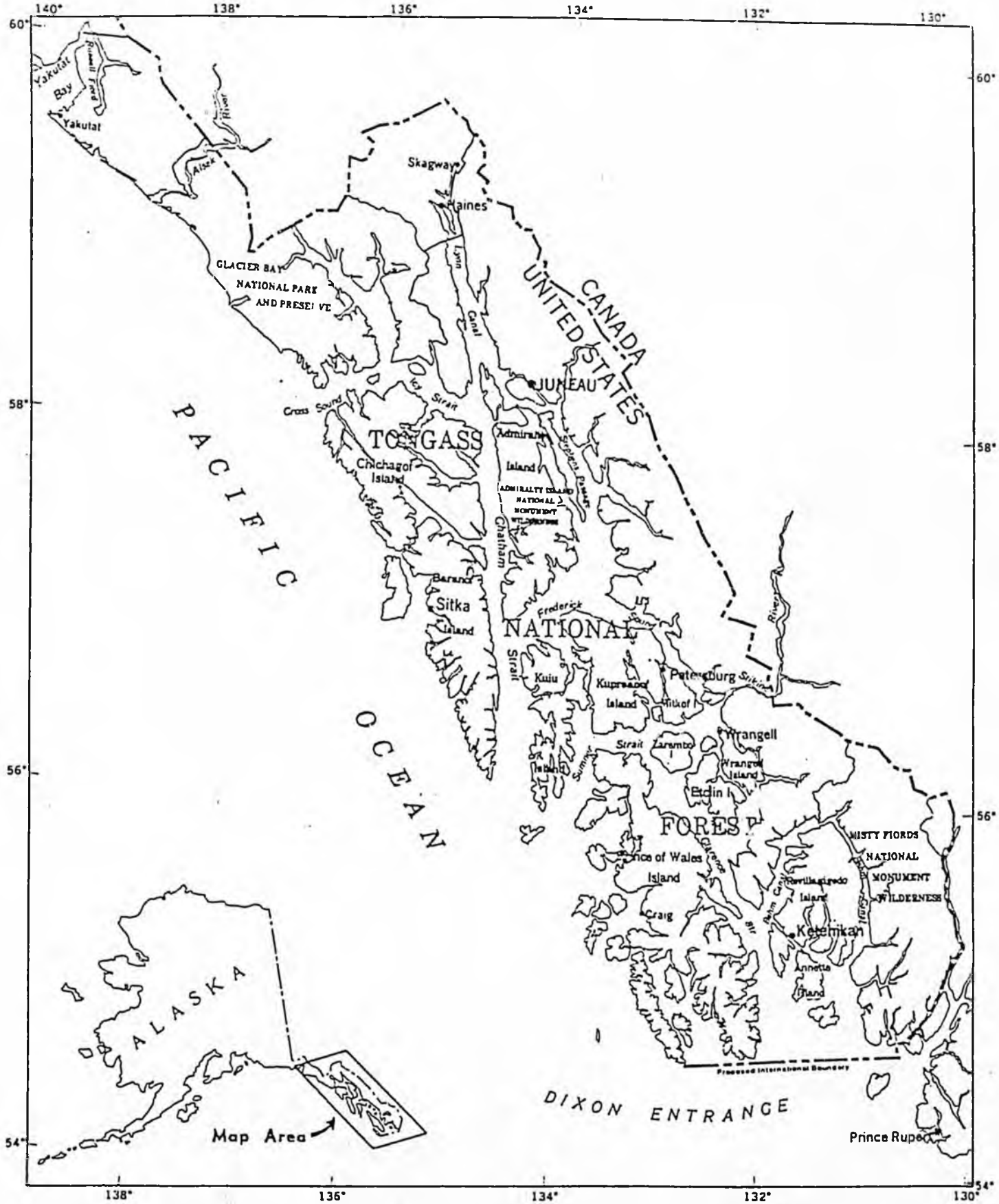
Julie Kelly
Design and Layout

© *SEACC, 1986*

Other SEACC publications are available upon request: A Southeast Alaska Regional Economic Overview 1985 by Ted Whitesell, The Tongass Timber Problem, and The Citizens' Guide to the Tongass National Forest. Copies of any of these publications may be obtained by writing to SEACC at P.O. Box 1692, Juneau, Alaska 99802.

Cover Photo: SITKOH LAKE clearcut on Chichagof Island, Tongass National Forest.

MAP OF SOUTHEAST ALASKA



(This map and all other graphics courtesy of the U.S. Forest Service.)

PREFACE

In 1980, the Ninety-Sixth Congress passed the Alaska National Interest Lands Conservation Act (ANILCA). As part of that settlement of the status of Alaska's federal lands, Congress determined that the Forest Service should implement its newly created Tongass Land Management Plan (TLMP). However, because TLMP was only an interim plan, based on many unproven assumptions, Congress also reserved ultimate review over implementation of this plan. The Status of Management on the Tongass National Forest report to Congress is a part of the review process established by Section 706(b) of ANILCA.

The Southeast Alaska Conservation Council (SEACC) is a region-wide coalition of local organizations and individuals dedicated to the wise use and conservation of Southeast Alaska's precious natural resources. SEACC was recognized in ANILCA as the representative for conservation interests for the ANILCA Section 706(b) review process. To that end, SEACC originally completed this paper as a chapter for the 706(b) "Status" report to Congress which included three recommendations for bringing Tongass management back into a reasonable balance of multiple use.

At this time, we would like to point out that the "status of management on the Tongass National Forest" is a sweeping topic. Because of space constraints, SEACC has deliberately omitted discussion of current problems with mining, Stikine River region transportation access, and wilderness management on the Tongass. Instead, we have kept our focus on timber related issues.

Table of Contents

INTRODUCTION 1

I. *TONGASS TIMBER MANAGEMENT PROBLEMS* 5

A. ANILCA SECTION 705: TONGASS TIMBER SUPPLY FUND
1. Purpose and Intent of ANILCA Section 705
2. Misapplication and Misinterpretation of Section 705
3. Tongass Timber Supply Fund: An Economic Disaster
4. Wasting the Tongass Timber Supply Fund: Building Roads, Building Empires

B. FIFTY-YEAR TIMBER SALE CONTRACTS
1. Background
2. Failed Attempts at Reform
3. Fifty-Year Contracts Dominate the Tongass

C. TONGASS LAND MANAGEMENT PLAN
1. Background
2. Tongass Plan Favors Logging
3. Fish and Wildlife Protection: An Empty Promise
4. Tongass Plan Violates Federal Laws
5. Tongass Plan Direction Ignored by Forest Service

II. *IMPORTANT RENEWABLE TONGASS RESOURCES UNDER SIEGE* 25

A. WILDLIFE HABITAT AND POPULATIONS THREATENED
1. Brown (Grizzly) Bear
2. Sitka Black-tailed Deer
3. Other Wildlife

B. FISH HABITAT AND POPULATIONS THREATENED

C. OLD GROWTH AND WILDLANDS
1. Not Enough Old Growth Protected
2. Protecting Old Growth and Wildlands Makes Economic Sense

III. *TONGASS MANAGEMENT THREATENS SOUTHEAST ALASKA ECONOMY* . . 37

A. SEARCH FOR LONG-TERM ECONOMIC STABILITY

B. TIMBER MINING THE TONGASS
1. Timber Mining: A Short Term Industry
2. Second Growth: An Economic Fallacy

C. COMMERCIAL FISHING INDUSTRY THREATENED

D. TOURISM INDUSTRY THREATENED

E. SUBSISTENCE ECONOMY THREATENED

F. NATIVE TIMBER INDUSTRY STIFLED

IV. *SOUTHEAST ALASKANS OPPOSE TONGASS TIMBER MANAGEMENT* 49

V. *SOLVING TONGASS TIMBER PROBLEMS* 53

CONCLUSION 57

SEACC'S RECOMMENDATIONS 61

Introduction

Previous Page: OLD GROWTH understory, Tongass National Forest.

C A L L T O A C T I O N !!!

TONGASS LAND MANAGEMENT PLAN AMENDMENT:

The Forest Service Is Proposing To Change The Tongass Land Management Plan

YOU CAN HELP DETERMINE THE FUTURE OF THE TONGASS:

Your Comments On The Amendment Are Important and Needed

The Tongass Land Management Plan guides management of the forest for the years 1979-1989. In 1985, the Forest Service evaluated its performance in the task of carrying out the Tongass Plan. The Forest Service admitted in its 1985 evaluation what most of us already know, namely that there are serious problems in Tongass management. But the agency has since backed down from requiring correction of most of these problems before revision of the entire Tongass Plan in 1989, if ever.

Instead of dealing with current serious Tongass problems, the Forest Service has proposed an amended schedule of management activities, many of which are new. The amendment would call for the logging and roading of 302 value comparison units (watersheds), the building of at least 1680 miles of roads, and the establishment of an untold number of log dumps. All of this would be undertaken from 1985-1989, and beyond.

The time to oppose these new threats to key fish, wildlife, recreation, and subsistence resources is NOW. The time to force the Forest Service to come to terms with bigger Tongass troubles is NOW. THE TIME TO WRITE YOUR LETTER IS NOW.

WHAT'S AT STAKE:

Some critical areas slated for logging or roading by the proposed new schedule are:

* Yakutat
* Kadashan
* Berners Bay
* Chuck River
* Lisianski River
* Upper Hoonah Sound
* Mt. Edgecumbe
* Duncan Canal
* Cleveland Peninsula
* Revilla Island
* Port Protection
* Castle River
* Etolin Island
* Woewodski Island
* Kuiu Island
* Crittenden (Wrangell Backchannel)
* Kosciusko Island
* Honker Divide
* Salmon Bay (Salmon Lake)
* Calder Mountain
* Mansfield Peninsula (Admiralty Island)
* And Others

KEY POINTS OF SEACC'S POSITION ON THE TONGASS LAND MANAGEMENT PLAN AMENDMENT:

* Amendment must be preceded by a full environmental impact statement because activities in the proposed new schedule will have major impacts on the Tongass. The Forest Service maintains that the impacts from new logging and roading described in the plan will be "insignificant."

* Amendment must consider deferral of logging, roads, and log dumps in more of the Interim Protection Areas requested by SEACC, the Alaska Department of Fish and Game, or the public at large. The Forest Service claims it is protecting 85% of SEACC's deferral requests and 70% of Fish and Game's deferral requests, but both of these figures include many areas never scheduled for development. In truth, the Forest Service is protecting only about half of the Interim Protection Areas that are actually threatened.

* Amendment must take into account the changing management situation since 1979. New studies show the devasting impacts of logging, roads, and log dumps on fish and wildlife habitat. New studies also show that timber demand is half of what the Forest Service predicted, that tourism and recreation are growing rapidly, and that the public wants more areas left in a primitive roadless state. But the Forest Service ignores these new studies in the proposed amendment.

* Amendment must incorporate changes required by the 1982 National Forest Management Act regulations. The Forest Service promised to bring the Tongass Plan up to legal standards by 1983, but now refuses to uphold that promise.

* Amendment must disclose the Forest Service's overall Forest Transportation Plan. The Forest Service has steadfastly refused to unveil its massive road plans to the public.

CALL TO ACTION -- YOUR LETTER NEEDED -- WISE MANAGEMENT OF THE TONGASS AT STAKE

Southeast Alaska Conservation Council
Box 1692
Juneau, Alaska • 99802

TELL THE FOREST SERVICE HOW YOU WANT THE TONGASS MANAGED!

WHAT YOU CAN DO ABOUT TONGASS MANAGEMENT PROBLEMS:

Write a Letter to the Forest Service:

1) Supporting the key points of SEACC's position on the proposed amendment of the Tongass Land Management Plan; and

2) Opposing logging, construction of logging roads or log dumps, or other destructive actions in key fish, wildlife, recreation, or subsistence areas, including the areas listed here and any other areas you care about.

Send your letter by FEBRUARY 24 to:

Mr. David A. Heerwagen, Director
Planning Programming and Budget
U.S. Forest Service
P.O. Box 1628
Juneau, AK 99802

HOW TO FIND OUT MORE ABOUT FOREST SERVICE PLANS:

Ask for a copy of the Tongass Land Management Plan Amendment by writing to the U.S. Forest Service address above or calling (907) 586-8884.

As always, please feel free to call or write SEACC if you need help in writing your comments or need more information:

Southeast Alaska Conservation Council
P.O. Box 1692
Juneau, AK 99802
(907) 586-6942

HURRY! COMMENT DEADLINE IS FEBRUARY 24th!!

INTRODUCTION

As the raven flies, the Tongass National Forest measures some 500 miles, stretching across the mountainous islands of the Southeast Alaska archipelago. Encompassing nearly 17 million acres, the Tongass is our nation's largest public forest reserve, three times larger than any other national forest.

The Tongass is a magnificent coastal rain forest, comprised primarily of huge Sitka spruce and western hemlock which have taken hundreds of years to attain their maturity. Younger trees flourish under the sheltering canopy of the giants, forming a steady-state mosaic of old-growth forest, unchanged since the retreat of the Ice Age. Ancient and dynamic, the Tongass represents a last refuge of old-growth forest, a living museum of the "forest primeval" that once extended from northern California to Alaska.

Over one hundred years ago, John Muir explored Southeast Alaska in a Tlingit Indian canoe and described the grandeur of the Tongass as an "endless rhythm and beauty." Today that endless rhythm and beauty is threatened with destruction. The Tongass is not only our largest, but also our most mismanaged and most abused national forest. This abuse has reached crisis proportions in the last six years.

The source of this abuse is a U.S. Forest Service timber management program intended to liquidate virtually all the unprotected old-growth forest on the Tongass within the next century. Like the world's other great rain forests, the Tongass is rapidly being consumed by clearcut logging and by construction of logging road networks through one undisturbed valley after another. The agency plans to cut the heart out of this forest. Once it has been logged, old growth is lost forever. It is not a renewable resource.

Furthermore, the economics of the Forest Service's Tongass timber program make no sense. Logging has always been a losing proposition in the Tongass, but with implementation of TLMP and ANILCA Section 705 the situation has attained ludicrous proportions. The Tongass timber program now costs the government well over $60 million per year. The Forest Service is wasting additional millions per year offering unwanted timber sales and building unneeded logging roads. Altogether, the Tongass is the National Forest System's worst timber management investment.

The prime beneficiaries of the massive Tongass logging subsidy are not local loggers, but two multi-national logging companies -- Alaska Pulp Company (APC), a Japanese consortium, and Louisiana-Pacific Ketchikan (LPK), the largest purchaser of federal timber. As holders of unprecedented long-term, 50-year logging contracts, these two companies control virtually all logging on the Tongass, to the exclusion of smaller, independent timber operators. In 1981, after passage of ANILCA, these two companies were found guilty of anti-trust violations that forced local, small logging companies out of business. Now APC and LPK are asking for even more money, for even bigger subsidies.

Current large-scale logging of the Tongass severely threatens the incredible wildlife, fish, and wilderness resources that set the Tongass apart as a special national forest. Brown (grizzly) bears, bald eagles, Sitka black-tailed deer, mountain goat, moose, and other animals depend on undisturbed old-growth forests for their habitat. The countless rivers, lakes, and

estuaries of the Tongass rain forest harbor an abundance of salmon, trout, and char which require clear-flowing, sheltered waters in which to spawn. Finally, the cathedral-like stands of old-growth trees found in the Tongass, nestled in river valleys between mountain peaks on remote islands, represent a unique attraction to people from all walks of life from all over the world. Unless destruction of these areas in the Tongass is halted, all this will be lost.

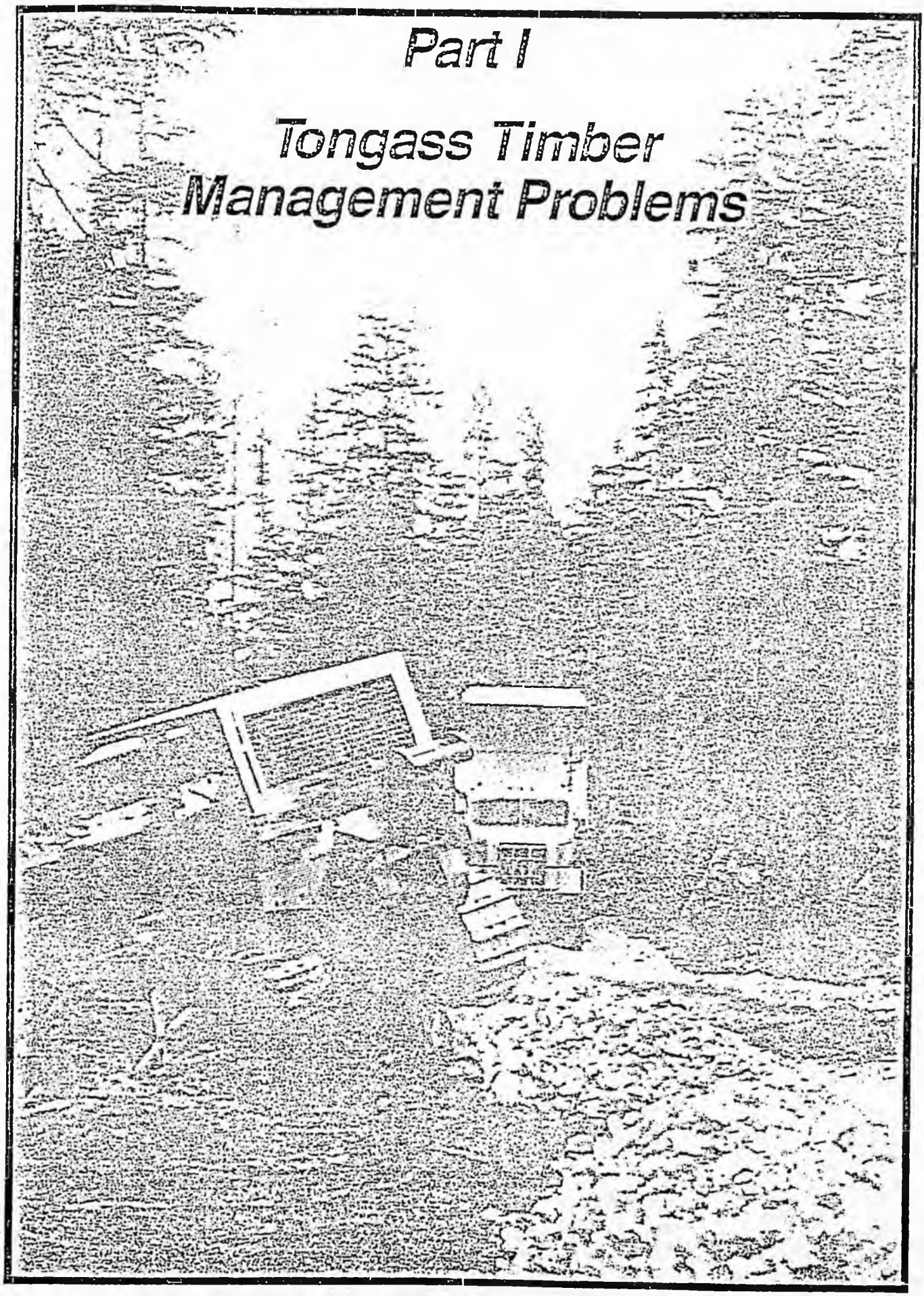
Forest Service plans are to clearcut an average of 20,000 acres and build 300 miles of road annually, for year after year. With the current 100 year rotation plan, this means a clearcut total of 2 million acres of Tongass forest. The Forest Service likes to point out that this is a small percentage of the Tongass, but on a national perspective this equates to an area roughly the size of one Yellowstone National Park, or three Yosemite National Parks, or four Great Smoky Mountain National Parks.

Since ANILCA, there have been great changes in Southeast Alaska. The market for Tongass timber has declined from all time highs reached in the late 1970's, and is now much closer to its long-term average level, which the Forest Service characterizes as depressed. Native corporation logging has become a major element of the region's timber industry. Biological research has confirmed that logging harms the wildlife and fish resources of the Tongass. Native Tlingits and Haidas and other rural Alaskans have been confronted with a rapidly changing way of life as new roads and logging encroach on their traditional hunting and fishing grounds. In addition, the fish and tourism segments of Southeast Alaska's employment base have continued to grow and diversify, adding a new dimension of stability to a frontier economy.

While it would seem natural for the Forest Service to respond to the changing situation in Southeast Alaska, this has not happened. Instead, the agency has continued on its destructive, logging-oriented course, blaming Congress and ANILCA for this policy of senseless inflexibility. The Forest Service is burdened with unprecedented 50-year timber sale contracts, by an outdated and incomplete land management plan, and saddled with the Section 705 Tongass Timber Supply Fund subsidy and timber supply goal. The agency is further hampered by its own misinterpretation of ANILCA, and has shown itself to be incapable of reform on the Tongass. As Southeast citizen, Sylvia Geraghty, has pointed out, "...they [the Forest Service] also have a contract with the American public, and I think they've failed to honor that contract." Now is the time for Congress to take action and change the course of the Tongass.

Part I

Tongass Timber Management Problems



Previous Page: KADASHAN ROAD in Tenakee Inlet, Chichagof Island. Despite overwhelming public opposition to the roading and logging of this prime fish and wildlife habitat area, the Forest Service proceeded with its unpopular "timber management" plans. (Photo by Bart Koehler)

I. *TONGASS TIMBER MANAGEMENT PROBLEMS*

The bulk of the problems which plague the Tongass National Forest can be traced back to three distinct roots, all of which represent different aspects of the forest's timber management program. First among the sources of Tongass timber management problems is the Tongass Timber Supply Fund (TTSF) and the supply goal of 4.5 billion board feet of timber per decade, a product of ANILCA's Section 705. The second underlying cause of the timber management problems is the existence of two, long-term (50-year duration) timber sale contracts which commit vast areas of the Tongass to clearcut logging. The final cause of these timber related troubles is the utter deficiency of the Tongass Land Management Plan (TLMP), which is intended to govern management of the resources of the Tongass until 1989. Combined, these problems fuel the rampant abuse and mismanagement of the Tongass, which has reached crisis proportions today. The TTSF, the 50-year contracts, and TLMP are examined in detail in this section.

A. ANILCA SECTION 705: TONGASS TIMBER SUPPLY FUND

1. Purpose and Intent of ANILCA Section 705

When Congress debated the disposition and management of federal lands in Alaska, one of the most difficult tasks was determining a proper direction for Alaska's national forest lands. For Alaska's Chugach National Forest, Congress essentially declined to make any decision, instead deferring to the forest land management planning process. For the Tongass, however, with its already completed land management plan, Congress adopted Title VII of ANILCA which included the Tongass Timber Supply Fund provision. Because of the uncertainty attached to TLMP's assumptions, Congress also directed the Section 706(b) review process, of which this paper is a part. The inherent wisdom of taking a second look at the Tongass is readily apparent today.

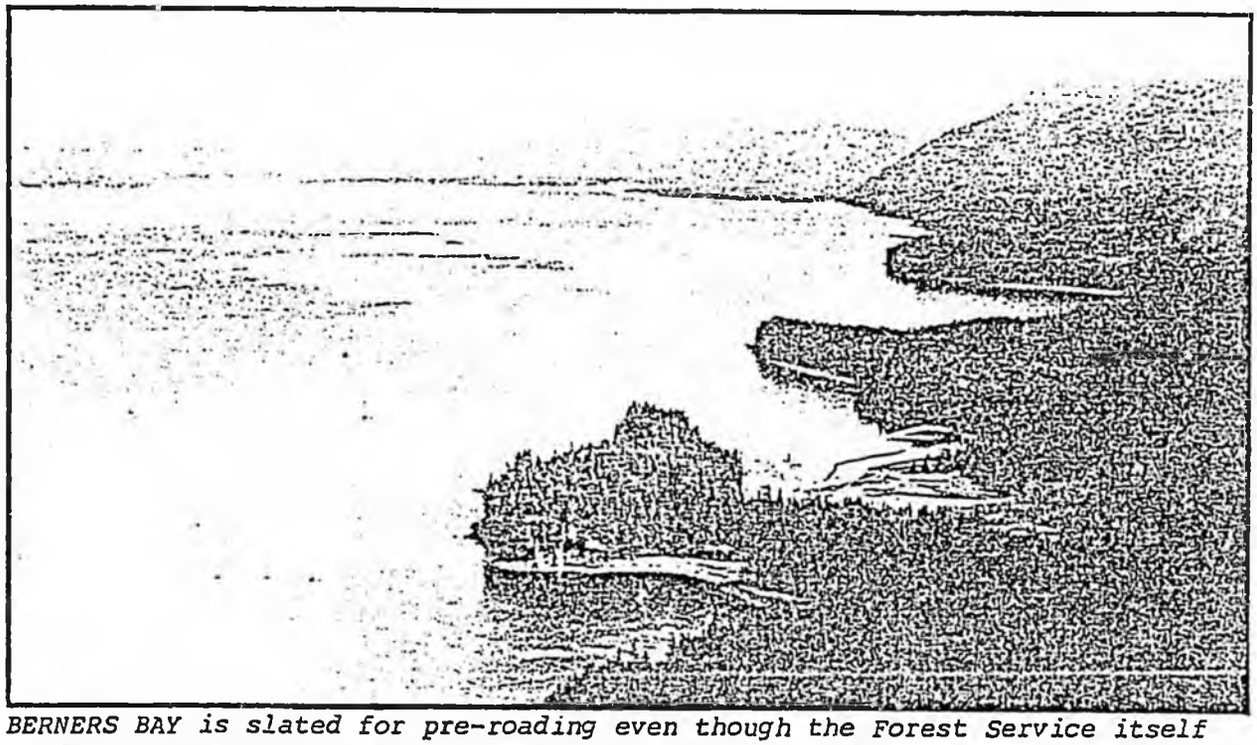
Section 705(a) of ANILCA directs:

> *that the Secretary of the Treasury shall make available to the Secretary of Agriculture the sum of at least $40,000,000 annually or as much as the Secretary of Agriculture finds is necessary to maintain the timber supply from the Tongass National Forest to dependent industry at a rate of 4.5 billion foot board measure per decade....*

This is the Tongass Timber Supply Fund which made available $53 million in 1985. The TTSF is exempt from normal appropriation scrutiny and annual budget cuts. No other national forest budget for road building and timbering is so untouchable.

The TTSF is often touted by the Forest Service and timber industry as part of a "carefully crafted" compromise with conservation advocates. This is not true. In reality, SEACC and Southeast conservationists had little or no input in the TTSF provision. SEACC didn't agree to the provision then, and we don't agree with it now. Because of the last minute nature of the development of Section 705, its true nature and intent has proved in application to be elusive, resulting in serious management conflicts.

The closed door dealing that created the TTSF left few clues as to what Congress had hoped to accomplish with this provision. However, one clear and



BERNERS BAY is slated for pre-roading even though the Forest Service itself predicts there will be no buyers for this timber offering.
(Photo by Skip Gray)

cogent explanation of the provision was provided by Congressman Morris Udall on the floor of the House prior to passage of ANILCA in 1980. Congressman Udall explained that the TTSF was intended merely to fund the intensive forestry provisions described in TLMP -- money that would be invested to end high-grading, to access marginal timber, and to provide extra environmental protection for other more valuable Tongass lands. Congressman Udall specifically pointed out that the Forest Service should use the TTSF "to encourage retention of old-growth forests for multiple use considerations, rather than reduce old-growth retention in order to lower costs....It is our intent to maximize protection of environmentally sensitive areas...."

Congressman Udall also explained the meaning of the 4.5 billion board foot timber harvest figure in the TTSF provision. According to Udall, this figure represented the harvest goal included in TLMP and that the section was "not a mandate to produce a specific cut level." In this statutory scheme envisioned by Congress, he said, "No more timber should be offered for sale than the Forest Service can reasonably expect to sell," and, "No more national forest timber should be supplied than can be sold at fair market value...."

From these statements it can safely be said that Congress set up the TTSF to fund a program of intensive forestry, concentrating on less valuable timber stands of lower timber volume per acre, in order to protect critical old-growth timber for wildlife habitat. Further, the TTSF provision was intended merely to fund the TLMP program, not to bind the Forest Service to a reckless pursuit of an inflexible mandate no matter what market conditions prevailed during subsequent years. Unfortunately the Forest Service has strayed far from the intent of Section 705 of ANILCA. The agency has found this a convenient shield to hide behind to avoid confronting industry on high-grading.

2. Misapplication and Misinterpretation of Section 705

The Forest Service's current management of the Tongass does not represent intensive forestry. Instead, it is an example of extensive forestry which is wasteful and destructive, and based on a biased reading of ANILCA Section 705. The Forest Service's annual plans for Tongass logging since passage of ANILCA have included clearcutting almost 20,000 acres per year (or 200,000 acres over TLMP's life) and building approximately 300 miles of permanent and temporary transporation network roads annually in unprotected forest lands, most of which are prime river bottoms.

Worse yet, the Forest Service has interpreted ANILCA Section 705 as a mandate to cut 4.5 billion board feet per decade, or 450 million board feet every year in perpetuity. Despite Congressman Udall's explicit direction, the Forest Service has continued since ANILCA to inflexibly offer this level of timber, much more timber than it can reasonably expect to sell, and for prices well below fair market value.

3. Tongass Timber Supply Fund: An Economic Disaster

Figure A shows the incredible magnitude of this oversupply of timber by Tongass planners. Since ANILCA the Forest Service has offered twice as much timber than has been harvested.

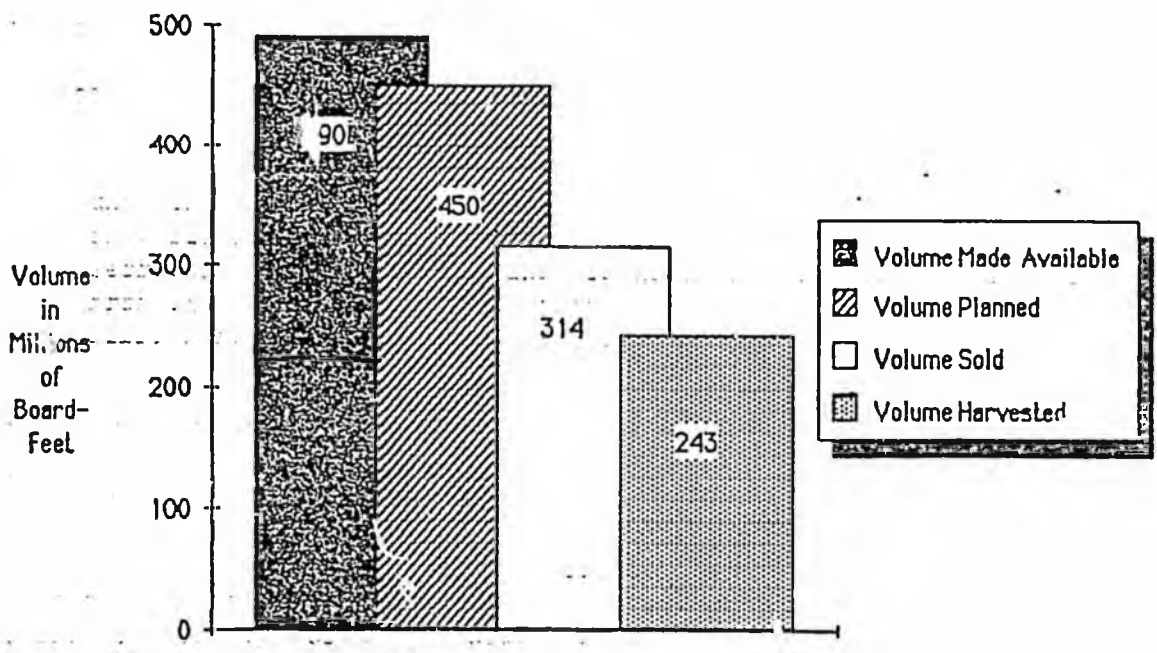


Figure A. Since 1980 the Forest Service offered, on the average, twice as much timber as was harvested.

This trend, far from being a temporary or passing artifact of statistics, grows more outlandish year after year. Figure B shows the annual harvest breakdowns displayed in the Forest Service's Tongass Timber Supply and Demand Report for 1984. It shows the widening gap between Forest Service timber sale offering levels and the reality of actual timber harvest levels. Since Fiscal Year 1980 the Forest Service has offered 1.2 billion more board feet of timber than has been harvested. The cost of preparing these excess timber sales that cannot be sold has averaged over $8 million per year, or $40 million thrown away in the past five years on this wasteful management practice alone.

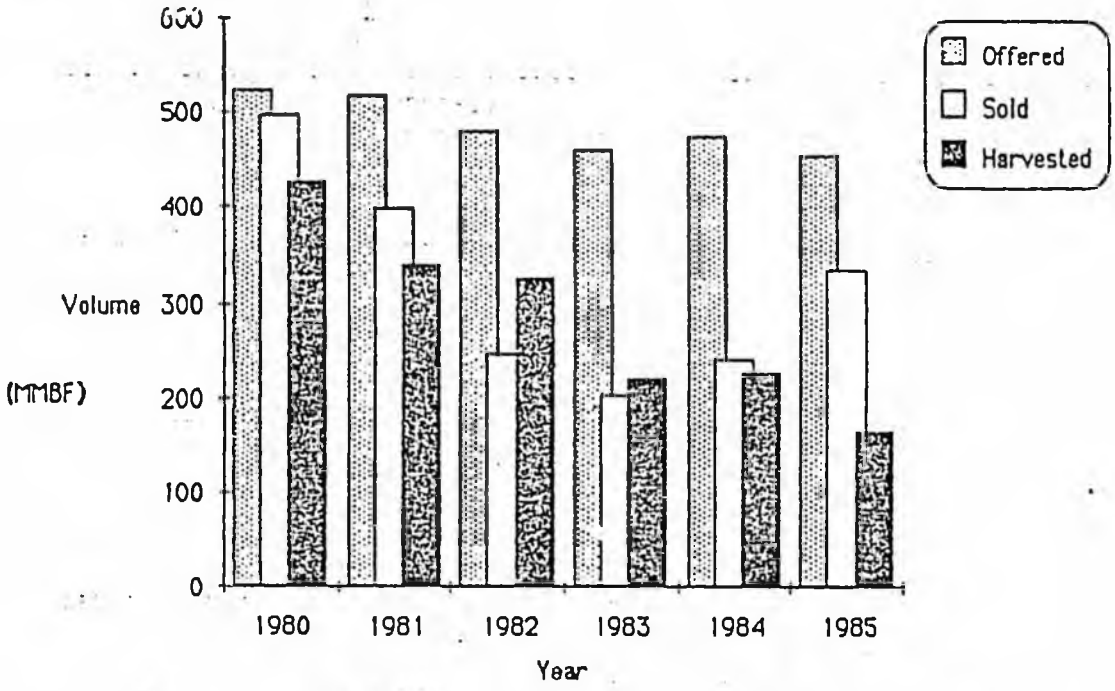


Figure B. Timber offered, sold, and harvested in the Tongass, fiscal years 1980-1985. $40 million was wasted in the preparation of excess timber.

In the last few years, the Forest Service offered more than 450 MMBF/year, sold at least 150 MMBF less per year than planned, and at least 200 MMBF less per year was harvested than planned. In contrast, road building has proceeded at a much higher rate than planned. We have been supporting a road construction industry, not a timber cutting industry. The Forest Service is wasting money building roads to nowhere and offering timber far in excess of the market.

In 1984, the two largest purchasers of Tongass timber paid only an average of $2.50 per thousand board feet of Sitka spruce, a species worth a hundred times more on the open market. For that same thousand board feet of spruce, the federal government spent at least $172 to "manage" that timber. In fact, the Tongass affords one of the most striking examples of sales-below-cost (where the Forest Service spends more on the timber sale than it receives from it in revenues) in the entire National Forest System. The TTSF only compounds this unprecedented subsidy to dependent timber companies.

The Tongass timber program has always been a big loser. While high value spruce and cedar trees can be found in scattered stands, most of the Tongass timber is comprised of low value hemlock. Steep, rugged terrain and other geographical conditions make access to Tongass timber particularly expensive and unrewarding.

According to the Congressional Research Service, between 1970-1984 the Forest Service spent $375 million on Tongass timber sales and has only received $62.6 million in timber sale revenues -- a staggering $312 million loss in just fifteen years. The Alaska Department of Revenue has noted that "there is no firm within the forest products industry that would subsidize the extraction of forest products to the degree that is the current practice of the federal government in Alaska today."

The magnitude of economic loss on Tongass timber programs has been much worse since ANILCA was passed in 1980. For example, between 1982 - 1985 the Forest Service spent $253 million on the Tongass timber program, yet only recovered $2.9 million in receipts. The TTSF, now $53 million in 1985, is a major culprit in this accelerated rate of loss. Figure C depicts how this Congressional funding was spent and what that funding returned in receipts to the Treasury. Funds above and beyond the TTSF, such as purchaser credits, were also expended during this period.

These losses are not a temporary abberation. Remote from markets, high cost, low value Alaska timber is the last to be sold in a good market, and the first not to sell in a bad one. Thus, the future looks dim for a reversal of Tongass losses. Even the Forest Service estimates that its Tongass timber management program will lose over $5 billion over the next five decades.

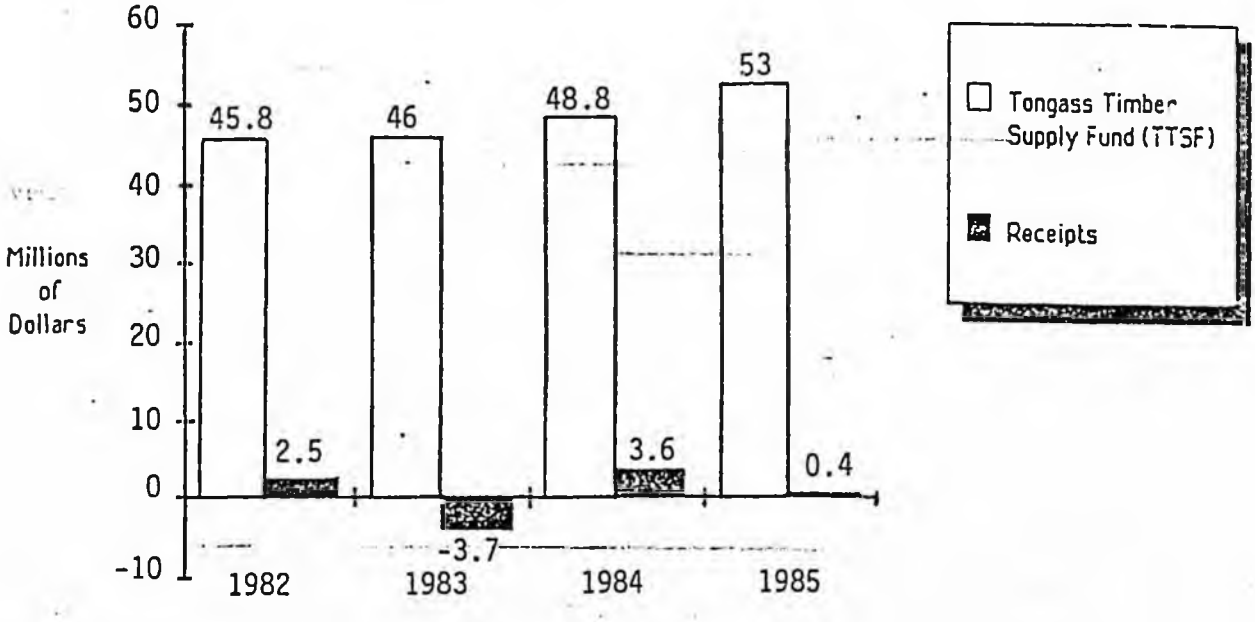


Figure C. Receipts versus TTSF Expenditures, fiscal years 1982-1985. Not shown are millions of other dollars spent on the Tongass timber program above and beyond the TTSF, such as purchaser credits.

Timber program losses in the national forest have become a widespread concern, as evidenced by recent Congressional hearings on the subject. Other national forests have recently been ordered by the Secretary of Agriculture to justify timber program subsidies, but the Forest Service's interpretation of ANILCA prevents similar reform on the Tongass. TTSF funds are beyond Congressional appropriation processes or other basic fiscal controls. This results in no incentive for the Forest Service to save money -- funding of unneeded Tongass timber sales is assured no matter what the supply or market conditions might be. The Tongass' bureaucracy is not accountable.

4. Wasting the Tongass Timber Supply Fund: Building Roads, Building Empires

Besides spending over $8 million a year planning, designing, and offering timber sales that are not purchased, the Forest Service has continued to use the TTSF to support an unprecedentedly large road building effort. While most road building programs in national forests are built in conjunction with timber sales, this is not the case on the TTSF glutted Tongass.

"Pre-roading" is the construction of road systems in advance of timber sales, with the Forest Service paying entirely for the project out of its timber management budget. Instead of requiring timber purchasers to pay for roads to access timber sales, or awarding timber purchasers credit for building such roads, TLMP authorized (but did not require) pre-roading of certain drainages to access marginal timber or to offset the cost of small timber sales in sensitive areas.

Unfortunately, with the TTSF available the Forest Service has undertaken a far greater roading program than TLMP planned. The Forest Service clearly regards the TTSF as a blank check to build roads and develop an extensive land transportation network on the islands and mainland of Southeast Alaska. Roads are built for timber harvesting, not for "multiple use." The following excerpt from an editorial in the "Prince of Wales' ISLAND NEWS illustrates the point: "Often we hear that the money the Forest Service spends on roads isn't to subsidize the timber industry, but to provide roads for multiple use. That sounds like a bunch of bull when you try to drive the roads and find that nothing has been done to maintain them since the last logger hauled out the last load of logs." Many Southeast communities and citizens oppose this road building, but as one Forest Service official admitted, "There's an unwritten Forest Service directive to put roads...in every available [i.e., non-wilderness] roadless drainage" by the time TLMP is to be revised in 1989, eliminating the possi bility of any other new Wilderness designations.

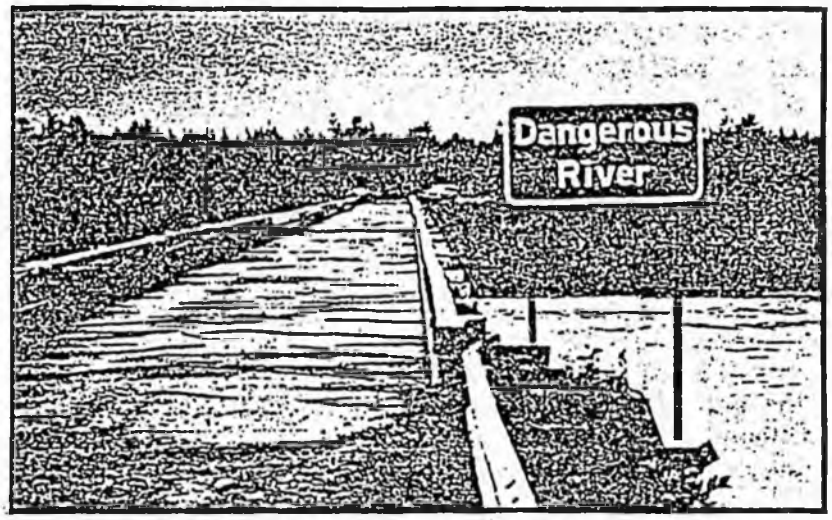
The result of such overblown plans is, of course, more waste. Roads to nowhere are increasingly common on the Tongass, since many timber access road networks are built for unmarketable timber sales. In places like Kadashan, Port Houghton, and Couverdon, miles of unneeded timber roads sit as examples of this waste. Key habitat areas in the Yakutat Forelands, Kuiu Island, and Kupreanof Island are threatened with pre-roading plans.

The TTSF is supporting a road construction program more reminiscent of the New Deal than modern forest management. One Forest Service official recently told the Juneau Chamber of Commerce that the Forest Service would be employing about twenty road workers for three summers to construct a logging road network in Berners Bay. This official neglected to mention the cost of this

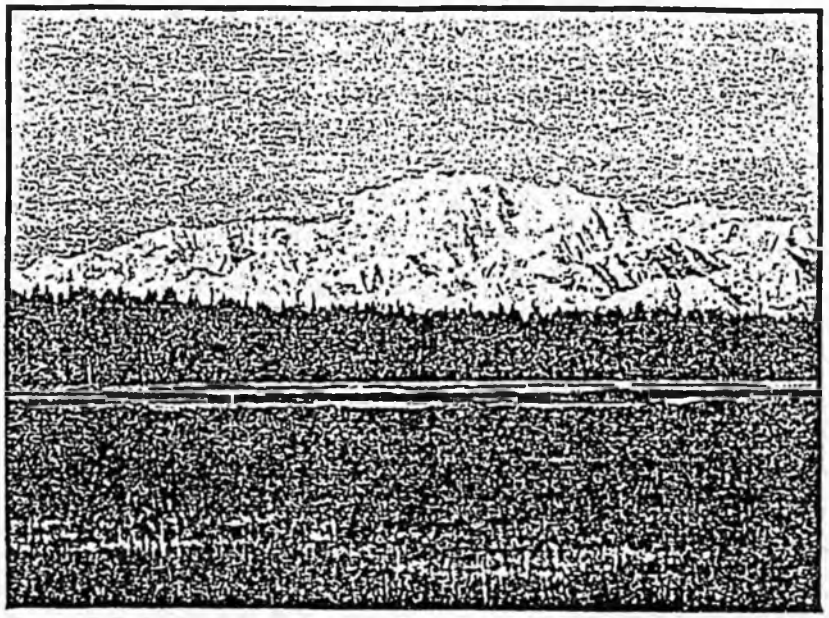
subsidy -- $5 million or about $240,000 per job. Almost incidentally, this official did admit there was no apparent buyer for the Berners Bay timber sale, but he said the road project would provide more firewood and berry picking opportunities for Juneau residents, even if it was never used for timber hauling.

Another Forest Service timber road abusing the intent of the TTSF and TLMP is the Kadashan project. The Kadashan road was begun in 1983, ostensibly to access stands of very high volume, old-growth timber critical for subsistence, commercial fishing and wildlife. Despite Congressman Udall's direction, in Kadashan the Forest Service used TTSF money to gain access to this obviously non-marginal and environmentally critical timber. The Forest Service has followed this pattern in many other key areas.

SEACC has sued and stopped construction of the Kadashan and Berners Bay road projects, but many other similar projects are still underway or planned. The TTSF is funding make-work, de facto welfare programs, not intensive forest management.



Left: The Dangerous River ROAD-TO-NOWHERE, Yakutat Forelands. One example of pre-roading. (Photo by Bart Koehler)



Right: Key habitat areas of the YAKUTAT FORELANDS are targeted for roading and clearcutting.

The Forest Service is obsessed with the language of ANILCA Section 705, language it consistently misinterprets as a mandate to offer 450 mmbf of timber per year, for all time. "Getting out the cut" or "meeting your timber targets" are the goals of many Tongass employees in all three administrative areas of the forest (Chatham Area, Stikine Area, and Ketchikan Area). For example, these quotes from timber planning documents illustrate the inflexibility of current Forest Service interpretations of ANILCA (emphasis supplied):

* *The need for action is the obligation to meet the Forest Service commitment, under Congressional direction...regarding the Act's mandated 450 MMBF annual timber harvest from the Tongass National Forest.*

* *This timber sale is offered by the U.S. Forest Service and contributes to the volume legislatively mandated by the Alaska National Interest Lands Conservation Act (ANILCA).*

* *Congress mandated that 450 million board feet (MMBF) of timber be sold annually from the Tongass National Forest.*

* *The Alaska National Interest Lands Conservation Act (ANILCA) and TLMP direct the Forest Service to sell 450 MMBF of timber per year. This proposal responds to that direction.*

* *The Congressional mandate included in the Alaska Lands Bill of 1980 to cut some 450 million board feet of timber annually....*

The TTSF, obviously intended to provide money to fund TLMP timber programs, is an outgrowth of one of the goals of ANILCA. In the words of Senator Ted Stevens the TTSF was to "preserve the existing timber industry." Other senators echoed the same intent: Senator Paul Tsongas said ANILCA Section 705 assured the timber industry "of a timber supply adequate to protect jobs in Southeast Alaska" and Senator Henry Jackson said that "these funds will insure that adequate timber supplies will be available to dependent industry...."

Today, timber supplies from the Tongass National Forest are far more than adequate. The Forest Service has reported this fact every year since ANILCA. Cutting levels overall are comparable to pre-ANILCA levels, as are employment figures. During the five years before ANILCA the regional timber industry employed an average of 2700 people per year in harvesting and processing, and harvested an average of 440 MMBF. During the post ANILCA period of 1980-1984, employment for the same sector averaged 2400 jobs, yet the average timber harvest for the region increased to 514 MMBF. However, the timber supply sources have changed significantly since the adoption of ANILCA in 1980. From 1959 to 1975 the Tongass National Forest was virtually the sole source of timber in Southeast Alaska. During those years the region's "timber industry" was nearly synonymous with APC and LPK who were the purchasers of 90% of the timber cut in Southeast and the producers of at least 90% of the manufactured products. In contrast today, Native corporations are annually cutting much more timber on private Southeast lands than was predicted in 1980. As a result, APC and LPK now only claim about half of the market for the region's timber. Therefore less timber is needed from the Tongass to sustain timber sector employment. Regardless of this picture, the Forest Service continues to try to sell 450 MMBF of Tongass timber a year.

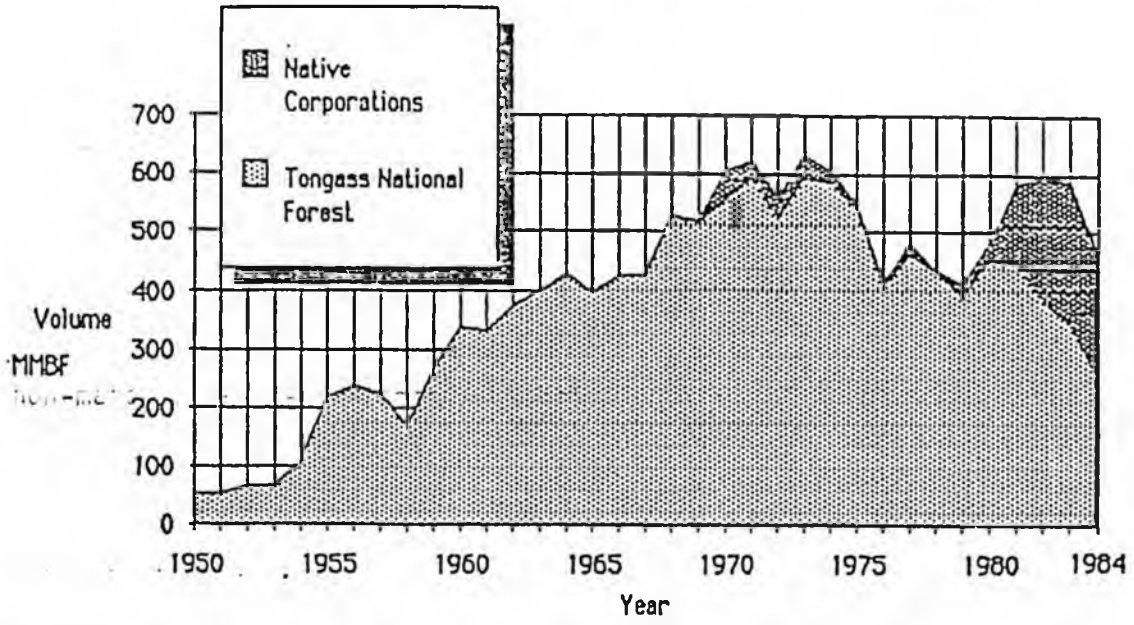


Figure D. Comparison of timber volumes harvested from Native corporation lands and from the Tongass. Timber supply sources have changed since ANILCA.

Use of TTSF funds for unmarketable timber sales and unneeded timber roads does not benefit the dependent timber industry. Except for the road contractors, beneficiaries of the Tongass timber program are difficult to pinpoint. Why then, do Forest Service officials persist in a misinterpretation of ANILCA Section 705?

A Forest Service memo provides a good clue as to why the Forest Service staunchly defends its interpretation of Section 705 and its use of TTSF funds for unneeded timber sales and roads. The memo states simply: "When Congress passed ANILCA they set up [the TTSF]. These dollars are not subject to normal appropriation rules. Most of our salaries come out of this $40 million...." If the Forest Service only received the amount of money it needed to meet actual current timber demand on the Tongass, half of those salaries could conceivably be eliminated. Preservation of Forest Service jobs may be strong enough incentive to find a mandated harvest level in ANILCA Section 705 even where plain language, legislative history and common sense indicate otherwise.

B. FIFTY-YEAR TIMBER SALE CONTRACTS

1. Background

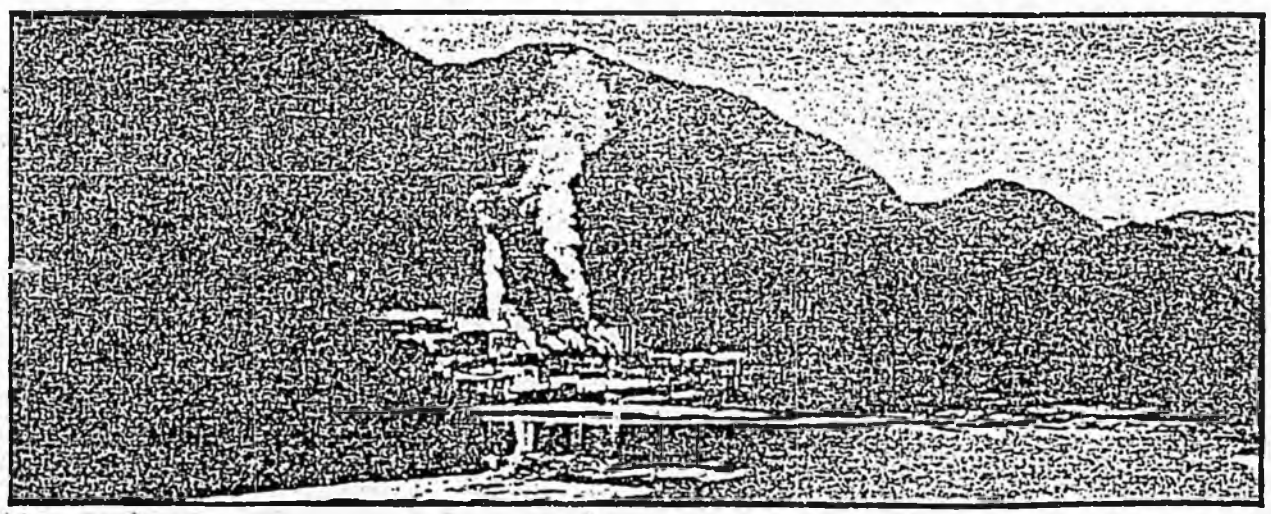
Native Tlingit and Haida people were famous for their skills in woodcraft. With the influx of settlers from Europe, Russia, and the U.S., very small sawmills provided dimension lumber for cannery construction, townsites, and homes. Even today, all Alaskans are allowed a small annual allotment of personal-use timber for firewood, construction, trolling poles, or similar uses. But this type of small scale, selective cutting has been supplanted by two Forest Service subsidized pulp mills who hold contracts for massive clear-cutting operations lasting into the Twenty-First Century. These inappropriate and destructive 50-year contracts are the second source of Tongass timber problems.

A result of aggressive promotion by General Douglas MacArthur, the U.S. State Department, and some elements of the Alaska Region of the Forest Service, the 50-year contracts were designed to promote settlement of Alaska Territory and provide year-round, stable employment. More importantly, the contracts were to promote export of wood and wood pulp to Japan to help rebuild its ravaged, post-war economy. In fact, one of the 50-year contract holders, Alaska Pulp Company, is owned by a Japanese multi-national consortium of businesses. It would seem that the purposes for which the contracts were designed have been achieved, but despite this they continue in effect.

This promotion of Alaska timbering was opposed by the West Coast pulp industry and by prominent politicians such as Washington's Senator Warren G. Magnuson. In 1960, Juneau economist George Rogers viewed the situation this way:

> *If we take the "nation as a whole" as our unit of primary concern and deal only in economic terms, then the [Forest Service's] policy clearly is the most shortsighted kind of silly rot. Forcing construction of new physical plants at a great cost in one part of the nation when existing plants in other areas accessible to the Region's forest resources are operating below capacity, fostering location of the processing of the raw material in a high-cost area remote from the markets, these and a whole list of other consequences could be brought forth to prove the policy guilty of creating a gross misallocation of capital and labor resources with corresponding costs to the economy of the nation as a whole.*

No pulp mills existed in Southeast Alaska in the 1950's. Since such a pioneering operation is inherently risky, the Forest Service wrote the most favorable contracts a timber purchaser could possibly imagine. The terms included such incredible provisions as: total purchaser control over selection of timber in the contract area; guaranteed annual and total volumes; carryover of unharvested timber; and modification of terms only after full agreement by the purchaser. As if this deal was not sweet enough, the Forest Service and the purchasers have agreed that inherent in the contract is a guarantee of profitable logging for the purchaser, even if the government must pay for such profits. Additionally, the contracts were designed for an unprecedented roughly 50-year duration. No other national forest in the nation is burdened with contracts of this duration (the limit elsewhere is ten years).



A 50 YEAR CONTRACT HOLDER is Louisiana Pacific's Ketchikan pulp mill.

In the 1950's, four long-term logging contracts were planned for the Tongass. In those days the Forest Service policy was to liquidate all the old-growth timber as quickly as possible. Today, in part because insufficient timber volume existed to support four contracts and in part because of diligent efforts by Southeastern Alaska conservationists, only the two 50-year contracts remain: one with the Alaska Pulp Company (APC) and the other with Louisiana-Pacific Ketchikan (LPK). Still, these two contracts commit more than one-third of the Tongass (and two-thirds of the commercial forest land) to producing a total of 13.25 billion board feet of timber as far into the future as the year 2011.

2. Failed Attempts at Reform

Despite changing national forest management goals and directions since the 1950's, the anachronistic 50-year contracts have continued to lumber along like dinosaurs. In 1970, the National Environmental Policy Act (NEPA) was passed by Congress in an effort to fully disclose the environmental impacts of government sanctioned projects. The Forest Service took years to apply NEPA to these contracts and then only to 5-year increments. To this date, little or no analysis has ever been undertaken of the entire fifty years of clearcut logging sanctioned by these contracts. Moreover, the attempted Forest Service NEPA analysis of the 5-year incremental logging plans has been poor at best. The cumulative impacts of these 5-year incremental plans must not be overlooked. For example, SEACC estimates that in the case of the APC contract the cumulative effects over the next 25 years will result in the clearcutting of 100,000 new acres and the construction of 1000 miles of new roads.

In 1976, amid mounting criticism of the Forest Service, Congress took a close look at national forest management and the need for reform. The resulting National Forest Management Act (NFMA) outlawed timber sale contracts of more than a few years duration, but it did grandfather the Tongass contracts. To ensure application of NFMA to these contracts, Congress added a special provision to NFMA, Section 15(b), which ordered the Forest Service to bring these contracts into full compliance with NFMA. However, the Forest Service has never accomplished this goal. Even more incredibly, almost ten years after NFMA, the Forest Service has proposed to allow APC to continue to violate many of the terms of NFMA in its 1986-1990 logging operations.

3. Fifty-Year Contracts Dominate the Tongass

Because of these outdated one-sided contracts, bad planning, and failed attempts at reform, the enormous Tongass National Forest is dominated by only two logging companies, APC and LPK. These companies hold unprecedented control over the Forest Service and over Tongass resources. The Forest Service even admits that the existence of certain contract provisions 'severely restricts the Forest Service from properly managing" the Tongass.

The 50-year contracts result in more than just economic waste and resource mismanagement. They give the two companies monopolistic power over timber operations on public land in Southeast Alaska. With this power, they have colluded to drive smaller, less powerful logging operations out of business and to wreak economic havoc on the few survivors. In 1981, the Reid Brothers Logging Company sued APC and LPK for conspiracy in restraint of trade and commerce and for actual monopolization of trade. The federal District Court

for the Western District of Washington found APC and LPK guilty. The Ninth Circuit Court of Appeals and the U.S. Supreme Court refused to exonerate the two companies of guilt. But the damage had already been done and few small loggers survived to see the big companies' guilt confirmed. The Forest Service's own lawyers have concluded that the evidence did show that material breaches of contract had occurred.

Even more appalling in its arrogance, given the generous terms of the 50-year contracts, is the possibility that LPK and APC have cheated the Forest Service out of between $60-82 million by price-fixing, double-invoicing, and other illegal and deceptive practices. Though the Forest Service itself estimated this magnitude of loss, it has only claimed $9.4 million in legal proceedings thus far. Furthermore, of the $60-82 million, one-quarter of these revenues were earmarked for the State of Alaska. This money has never been recovered. As statutes of limitations run out, these badly needed revenues are lost forever.

APC and LPK have been given additional special treatment despite such underhanded activities. In 1981 and 1982 they were granted "emergency rate redeterminations" reducing the stumpage (how much the companies pay for the timber). For LPK, all timber stumpage (except hemlock which sells for an average of $1.50 per thousand board feet) was reduced by 96%, bringing the price down to 1951 base rates. APC's stumpages for spruce and cedar were reduced by 99% to bring them down to 1956 base rates. For instance, APC's spruce sawlogs were appraised at $215 per thousand board feet, but they now pay only $2.26 for that timber! Cedar appraised at over $1000 per thousand board feet is bought by APC for $1.22! The Forest Service is literally giving these trees away.

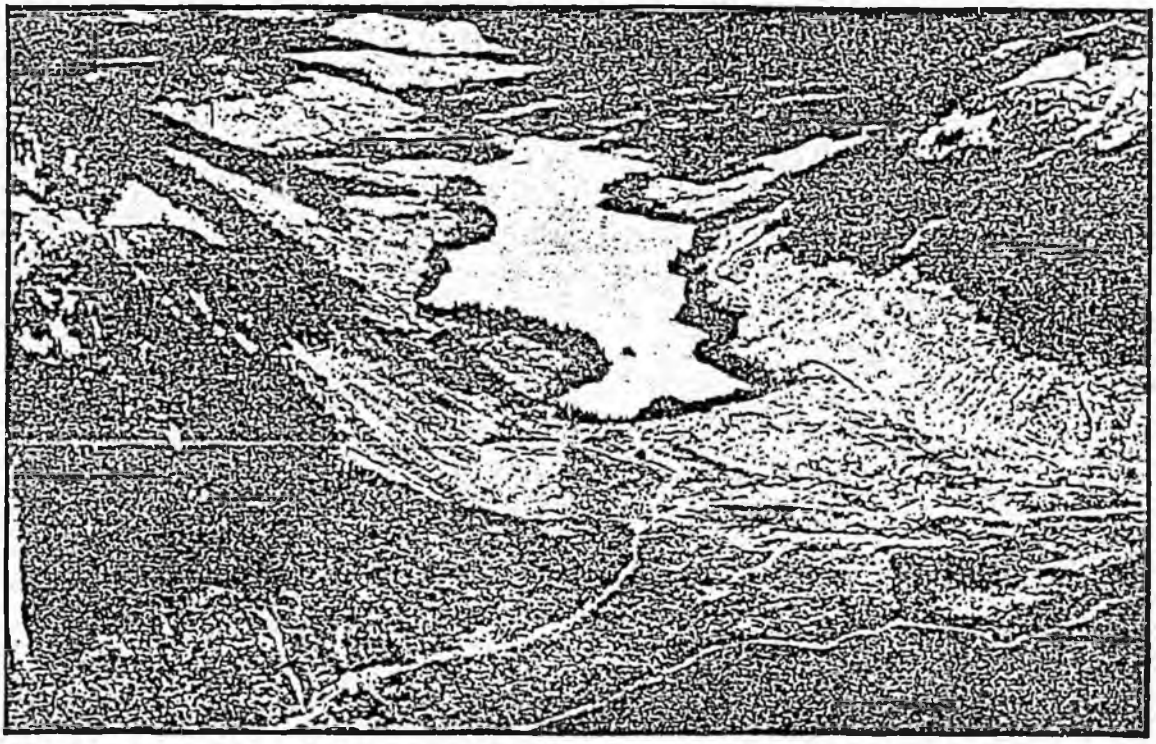
In addition to the emergency rate redeterminations, in 1984 and 1985 the Forest Service revised utilization restrictions and permitted more merchantable wood than normal to be left behind during logging operations, so that the timber brought to the mills is only the most profitable, high-quality wood. The low-value trees are left to rot on the ground. SEACC's appeal of this "bail-out" program was denied by the Chief of the Forest Service. Also in 1984 and 1985, the Forest Service waived its primary processing requirement (i.e., permitted round log export) for timber from some salvage sales.

APC's contract allows the company to selectively harvest only the high-grade stands, leaving the stands of less valuable lower-grade timber. This results in the company having a stockpile of unharvested "carryover" timber amounting to nearly 400 million board feet. The end result is the cutting of only the best and most profitable big trees, which are also the best wildlife habitat.

Some critics believe that it would be more cost effective in the long run to buy out the remaining value of the 50-year contracts and return to short-term sales, than to continue subsidizing the contracts. This would also promote a more balanced management of the forest.

As long as these 50-year contracts remain, there will be continuing waste, fraud, and abuse. The terms of the contracts themselves are the codification of unfair advantage, of monopoly. For the term of the contracts, until 2011, true multiple-use will be impossible and small logging operations will continue to suffer. Though there is ample evidence on the basis of which to

cancel the contracts, and though the government always retains authority to modify or eliminate any agreement, the Forest Service simply refuses to act to protect the resources of the Tongass. The agency is treating the Tongass like a private reserve for the benefit of these two timber companies. This is a second underlying cause of the unfortunate Tongass timber situation that exists today.



Clearcutting within APC's 50 YEAR CONTRACT AREA on Chichagof Island.



Located within APC's 50 year contract area, Chichagof Island's UPPER HOONAH SOUND is slated for roading and logging. (Photo by Larry Edwards)

C. TONGASS LAND MANAGEMENT PLAN

1. Background

Since the 1950's Forest Service has had ambitious plans for turning Southeast Alaska's forest lands into a huge tree farm. Even into the late 1970's, Forest Service timber plans included virtually all of the commercially valuable timber lands on the Tongass. Extensive plans were even designed for clearcutting and roading such critical areas as Admiralty Island, which is now a national monument wilderness. None of these plans gave consideration to the need to manage national forests for a mix of resources and uses, including recreation, fishing, hunting, subsistence, and wilderness, as well as timber production.

As previously mentioned, Congress scrutinized the timber-biased management of public forest resources in 1976 and forged a comprehensive solution, the National Forest Management Act (NFMA). NFMA specifically required balanced management of national forests and also set forth a process by which detailed forest plans would be prepared in order to guarantee implementation of that mandate. Existing forest plans were allowed to continue in effect until expiration, but all forest plans were intended to incorporate provisions of the new NFMA within 10 years. NFMA set a specific deadline of 1985 for complete implementation of its provisions.

After passage of NFMA, the Forest Service began preparing regulations to implement the new law. At the same time, Congress continued the long process to resolve uncertain land holding situations in Alaska that culminated with the Alaska National Interest Lands Conservation Act (ANILCA). Disposition of national forest lands was a central issue in the ANILCA debate, and the Forest Service set out at an accelerated pace to prepare the Tongass Land Management Plan (TLMP) in an effort to guide and inform Congressional debate.

In March of 1979, TLMP was completed and circulated for public review, despite the fact that NFMA regulations were still unfinished and much of the basic information needed in order to fully understand the Tongass had not yet been researched and compiled. Though TLMP was heavily relied upon by Congress, it was based in extraordinary part on extrapolation and assumption. Given the haste with which the plan was prepared, this is unsurprising. Most other NFMA forest plans are only now being completed. Unfortunately, the Tongass is still saddled with an incomplete, inaccurate and outdated forest plan whose failings are increasingly apparent to all observers, even the Forest Service itself.

2. Tongass Plan Favors Logging

When TLMP was formulated, it was promoted by some as a fair compromise at land allocation and supported vigorously as such by the Forest Service. Indeed, land allocations by acreage were roughly equivalent between land to be logged and lands to remain roadless and undeveloped. Now, six years later, the land allocations can be clearly seen as a ruse.

The Forest Service claims that the "forest plan management direction includes provisions for the protection, maintenance, and enhancement of wildlife and fisheries....The designated Wilderness included 85 of 298 high value wildlife habitats and 26 of 490 high value fisheries habitats identified in the forest plan. In addition, 35 high value wildlife habitat areas and 220 high value

fish habitat areas are included in areas designated in the forest plan for roadless area management."

There are 867 watersheds in the vast Tongass National Forest. A responsible fish and wildlife management program would protect all the high value fish and wildlife habitat areas. TLMP did not do this. Instead the resultant designations for the Tongass show an appalling lack of concern for fish and wildlife protection. Of the only 298 high value wildlife areas on the forest, a mere 29% have been designated as Wilderness. Of the 490 high value fishery habitats, only 5% of these watersheds have been designated as Wilderness. The remaining areas are all open to destructive logging and roading over the long term.

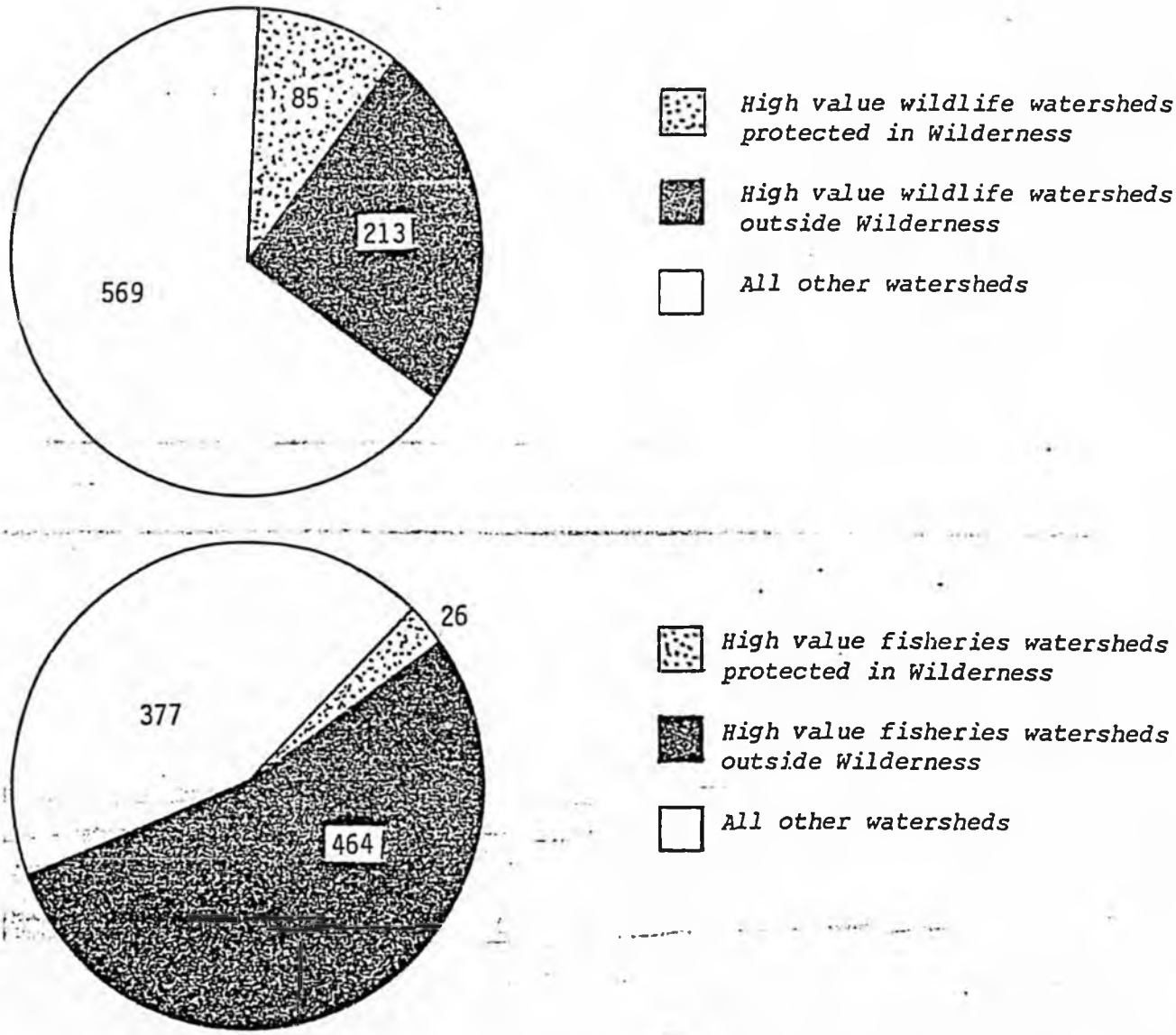
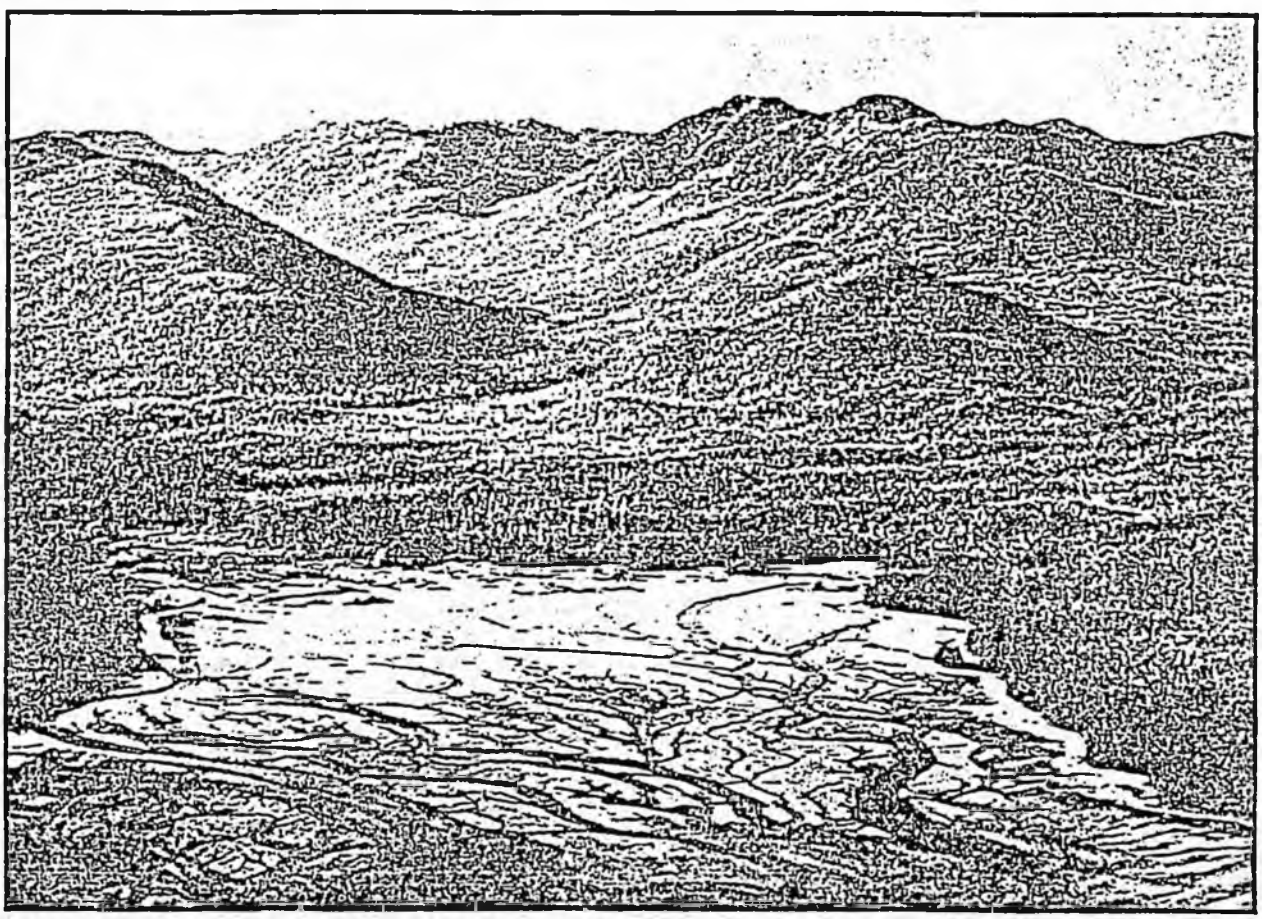


Figure E. High value fish and wildlife watersheds on the Tongass National Forest.

In reality, while National Forest acres in the Tongass are roughly even in their division, the majority of valuable wildlife habitat is included in areas under a land use designation allowing logging. The Tongass lands holding the highest volume of valuable, old growth spruce and hemlock are also the most important lands for fish and wildlife habitat, yet TLMP concentrates logging in high-volume timber stands, rather than harvesting timber stands in proportion to their volume class occurrence across the Forest. This "high-grading" is built into TLMP. Former Chief of the Forest Service, John McGuire, stated that cutting more of the marginal component is consistent with the NFMA, but that the alternative, continued high-grading of the forest, is in conflict with that Act: "An over-harvest of the standard component now would eventually result in only special and marginal stands left in the forest. This type of management would not be compatible with Forest Service policy or the National Forest Management Act."

High volume timber stands, exceedingly rare in the Tongass, are scheduled by TLMP for harvest in a higher proportion than they occur in the forest. But they are being harvested at an even higher rate than scheduled. Fifty percent of the highest volume timber has already been cut and at least 75% will be cut by the year 2000 at present rates. This unsanctioned high-grading compounds the inherent weakness of TLMP.



The KADASHAN WATERSHED, a prime old growth and fish and wildlife habitat area. Already a victim of Forest Service road building, it is one example of high volume timber targeted for clearcutting by the agency's extensive forestry management program.

3. Fish and Wildlife Protection: An Empty Promise

The Forest Service has made a practice of answering fish and wildlife concerns by referring to TLMP's Land Use Designation (LUD) III, a category of Tongass management which allows logging, but theoretically protects other forest resources, including fish and wildlife habitat needs. The TLMP management scheme included other LUDs -- LUD I (wilderness), LUD II (roadless recreation), and LUD IV (intensive logging).

TLMP also set out a harvest layout scheme by which critical wildlife areas would be retained during logging in order to mitigate the impacts on fish and wildlife. This is referred to as "retention". As part of the task of defining retention areas, Tongass planning required identification and protection of Fish or Wildlife Habitat Management Units wherever logging or roading was planned.

Six years later these protective provisions have proven to be empty promises. In reality, there is little management difference between LUD III and the less restrictive LUD IV, which allows intensive logging. Retention has never been fully implemented and often only occurs by accident, when strips of timber are left standing between clearcuts. Rather than true retention areas, preserved because of habitat needs, these strips can be more accurately referred to as "leftovers". In practice, even the leftovers are often logged in subsequent timber operations. Fish and Wildlife Habitat Management Units, which would have accurately defined retention needs, are almost never developed. When they are, they always follow timber sale layouts rather than preceeding placement of roads and clearcut locations. Such units are reduced, at best, to mere attempts to salve a wound already inflicted. None of TLMP's major fish and wildife protection provisions have been implemented and damage from roads and clearcuts continues to mount.

4. Tongass Plan Violates Federal Laws

The authors of TLMP were well aware that draft NFMA regulations were being prepared by the Forest Service, even as they rushed TLMP into print in March of 1979. To allow them to finish TLMP, the Tongass planners promised that new NFMA regulations would be incorporated into TLMP by a major forest plan revision in 1983. Incredibly, now in 1986, ten years after passage of NFMA, seven years after TLMP was finished and after NFMA regulations were implemented, no such TLMP revision has been attempted or completed. TLMP does not comply with NFMA regulations and Congressional forest planning reforms remain unaccomplished on the Tongass.

TLMP was rushed into print before an adequate job could be done. Under the National Environmental Policy Act (NEPA) the environmental impacts of a major federal proposal must be clearly and comprehensively displayed in an EIS. TLMP lacked both the baseline information on what Tongass resources were threatened by the logging it proposed and the information on how such logging would impact other forest resources. NEPA analysis is incomplete in TLMP.

In a recent order, the federal District Court for Alaska concluded that TLMP's environmental analysis was inadequate with regard to the impacts of a road and logging project in Berners Bay, north of Juneau. The Court's order stated that an entirely new site-specific EIS was needed for the project. Despite the

proven inadequacy of TLMP, no attempt has been made by the Forest Service to improve on TLMP's cursory NEPA analysis. Nor has the Forest Service attempted to incorporate into TLMP the wealth of new information on the environmental impacts of logging and roading which has become available since 1979. This new information makes it crystal clear that Tongass timber management programs present serious threats to fish and wildlife.

5. Tongass Plan Direction ignored by Forest Service

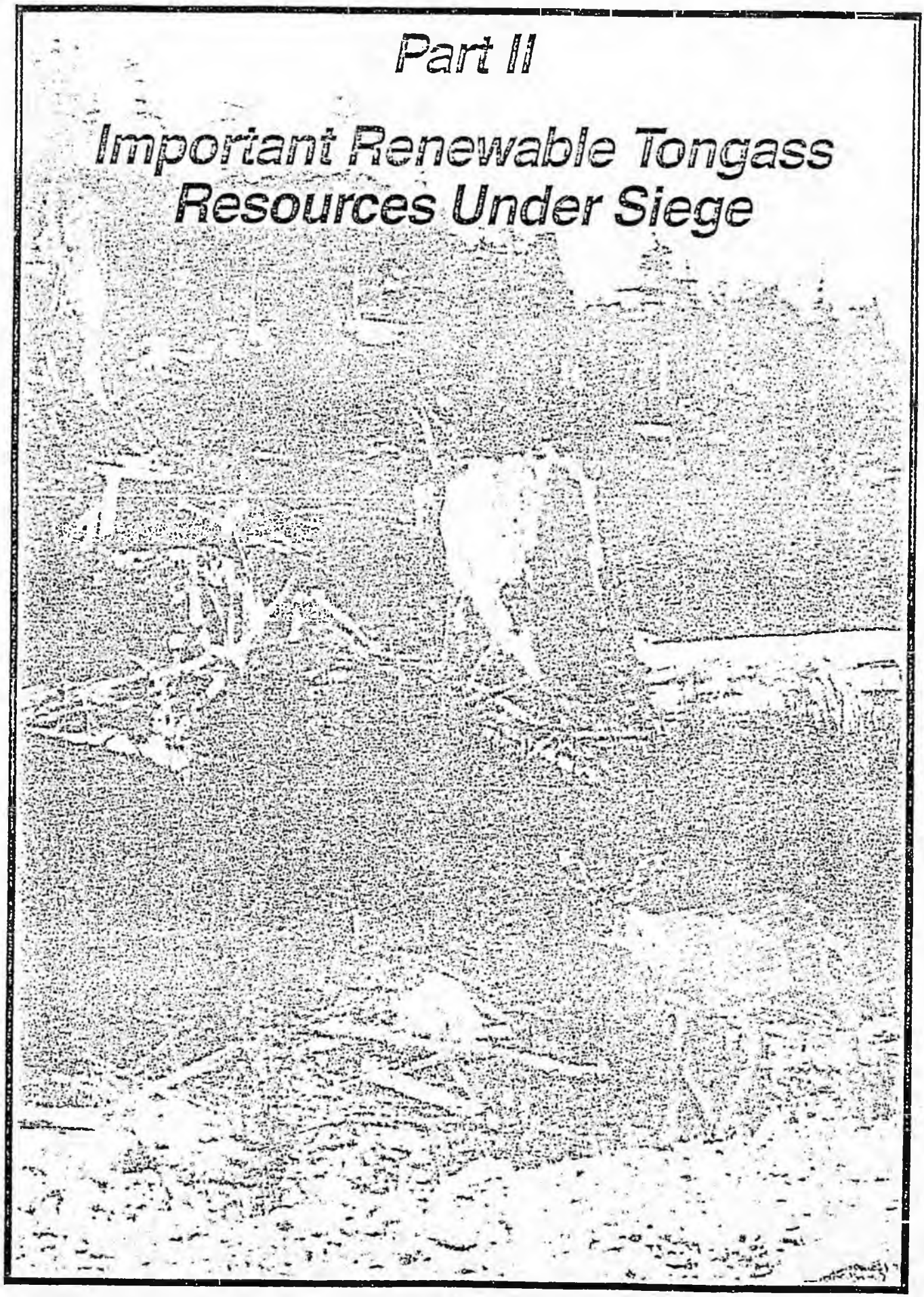
Detailed schedules for development in various management areas of the Tongass, were published in TLMP, Part II. However, road building and timber sales have failed to follow those schedules. Instead, individual forest supervisors have departed repeatedly from TLMP's program. Realizing that such departures were highly improper, Tongass planners decided last year to amend TLMP's schedules to reflect the actual development schedule, rather than bringing Forest Service activities back into harmony with TLMP. This backward approach to planning serves to underscore TLMP's failure to guide development.

Because it was a stop-gap effort at planning, TLMP deferred many integral forest plan steps to subsequent lower levels of the planning process. For example, individual Tongass management areas were supposed to be analyzed after development of TLMP, and specific resource protection standards and guidelines were to be developed concommitant with specific location of timber sales, roads, log dumps, and other such activities. This interim step in planning was also subject to full NEPA analysis, but no such analysis was ever completed for over two-thirds of the Tongass. Further, project level NEPA analysis, also envisioned by TLMP, has never resulted in site-specific environmental impact statements, even for massive projects. In the wake of the Berners Bay court order, the legality of these failures are in great doubt. It is certain, however, that the failures of these subsequent planning steps have frustrated and prevented full implementation of TLMP's intent, as well as public participation in major Tongass decisions.

TLMP is totally inadequate as a forest plan, and NFMA's reform measures have yet to improve Tongass management. Because of Section 705 of ANILCA, the TTSF, the 50-year contracts, and an ineffective and incomplete TLMP, Tongass management is heavily biased in favor of large-scale clearcut logging, to the detriment of wildlife, fishermen, small loggers, tourism industries, and subsistence users of the forest's resources. These are the roots of the tangled, growing thicket of Tongass timber problems.

Part II

Important Renewable Tongass Resources Under Siege

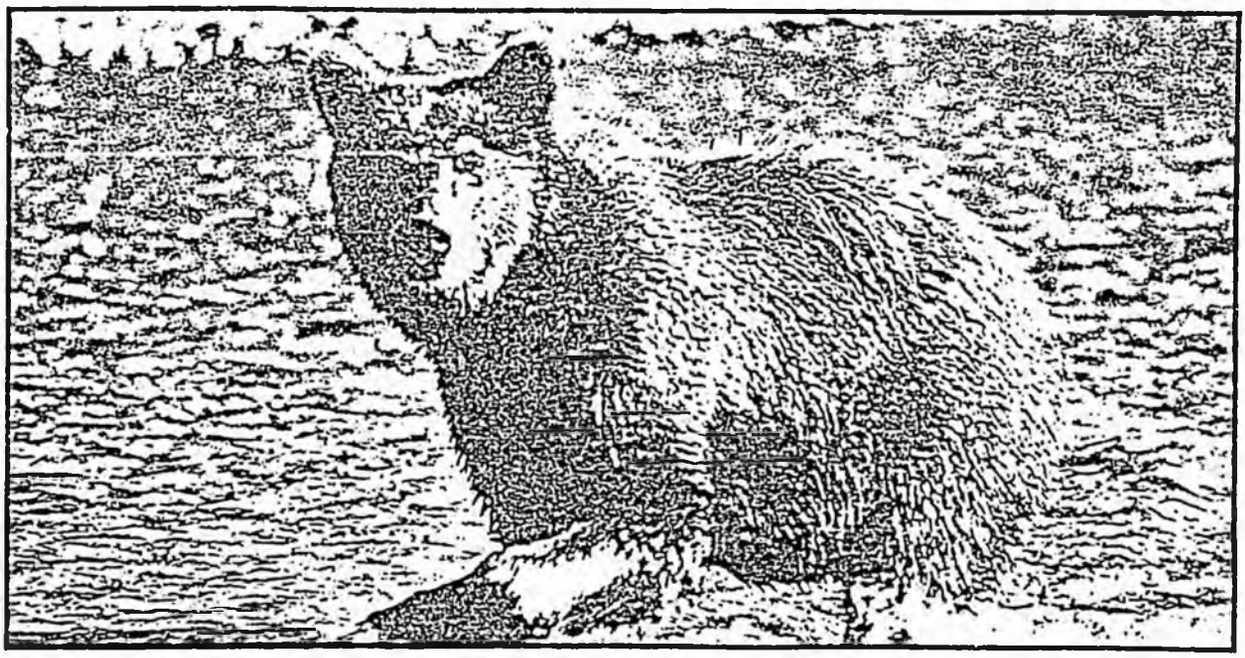


II. *IMPORTANT RENEWABLE TONGASS RESOURCES UNDER SIEGE*

Though the Tongass is a huge forest rich in fish, wildlife, wilderness, timber, and other resources, it is also a unique, complex, and fragile ecosystem. The extensive, large-scale logging programs implemented by the Forest Service on the Tongass are decimating vast areas of this grand old-growth rain forest. Critical fish and wildlife habitat areas that have already been lost include Blind Slough, Kadake Creek, Rodman Creek, Staney Creek, Thorne River, and Sweetwater Lake, to mention only a few.

A. WILDLIFE HABITAT AND POPULATIONS THREATENED

1. Brown (Grizzly) Bear



(Photo by Joel Bennett)

Alaska has the last major population of brown (grizzly) bear left in the entire United States, with the greatest concentration of bears occurring in Southeast. While these magnificent animals once ranged all over North America, they have now been beaten back from their original range to isolated pockets in Alaska, Canada, and a few national parks in the lower 48 states.

Tongass brown bears, larger than the brown bears found in Canada, are well distributed on Admiralty, Chichagof, and Baranof Islands, as well as the coastal mainland of Southeast Alaska. Although Theodore Roosevelt proposed a national bear reserve for Admiralty, Chichagof, and Baranof Islands, the places have been largely left in control of the Forest Service. Today, with the exception of Admiralty National Monument, clearcut logging threatens these bears through habitat destruction. Road building is the major problem causing increased human/bear conflicts and illegal hunting. These activities will continue to reduce or destroy bear populations as long as the Forest Service proceeds to penetrate unroaded, wild country with new logging.

2. Sitka Black-tailed Deer

The same high-volume, old-growth timber stands that attract the two major Tongass logging companies, APC and LPK, are also essential to the survival of the Sitka black-tailed deer. This is the only deer found in the Tongass, and while good populations exist today, they can fluctuate wildly depending on the severity of winter weather. The thick stands of old-growth timber shelter the deer during deep snows, allowing them to continue browsing under the canopy of giant spruce and hemlocks. Without this protective old-growth timber, deep winter snows lead to starvation and drastic deer population losses.

Further, second-growth timber is worthless as deer habitat. The Forest Service itself has stated that once an area has been clearcut, it will not produce significant deer forage, except for the first few years after cutting. In winter, however, when habitat and forage availability are critical, these clearcuts fill up with snow and are impassable and browse is buried. In 15-20 years, an extremely dense stand of small trees grows up to block light from reaching the forest floor and results in virtually no browse growing under these tight thickets for the next hundred years.

Since present Forest Service management calls for these forests to be harvested at 100 year rotations, the result is permanent loss of deer habitat. Second-growth forests will account for 75-80% of the managed forest land in the Tongass at the end of the first 100 year rotation. By then half of the now important available deer winter habitat will be lost forever, and deer populations will be severely reduced and even eliminated from certain places. Subsistence users and sport hunters will lose their most important game animal on the Tongass. Table 1 details some key areas where deer populations and subsistence and sport deer hunting will suffer the greatest losses.

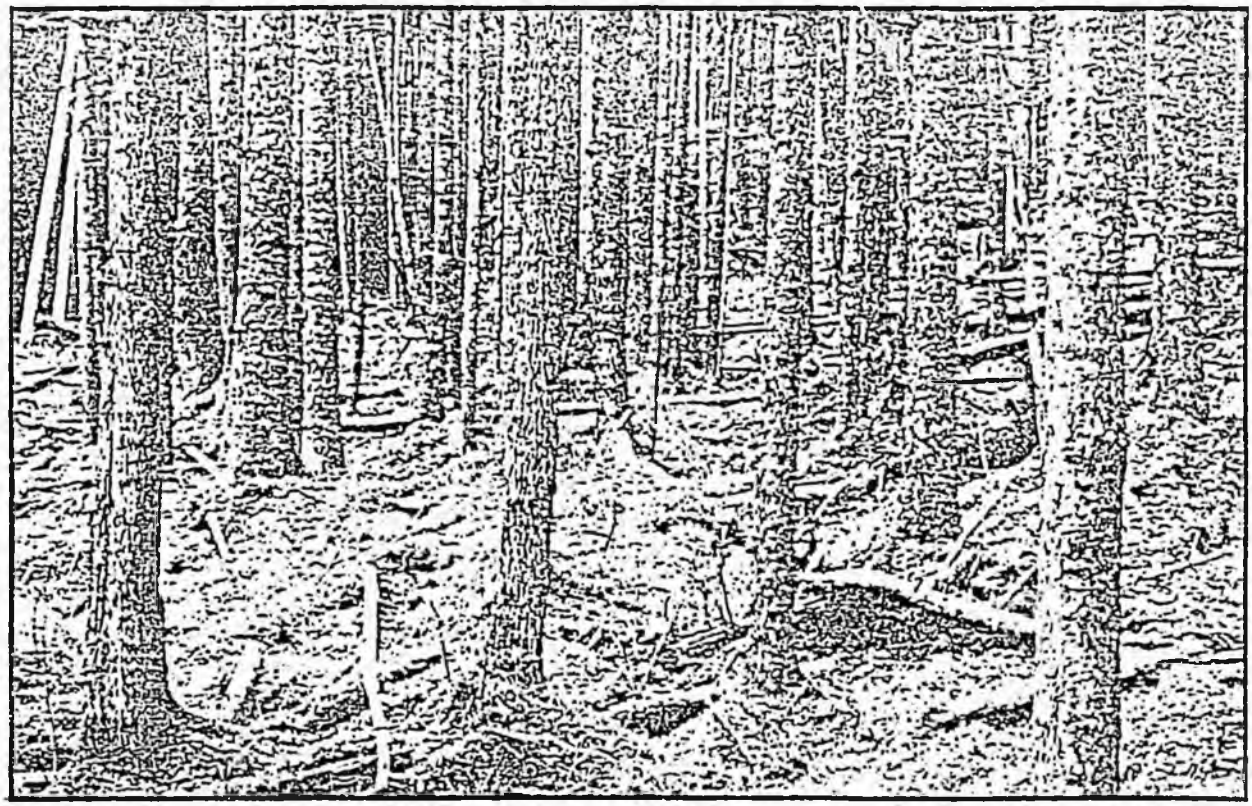


Sitka black-tailed deer.
(Photo by Scott Foster)

Habitat & Deer Loss Table

Name	% Commercial Forest Land Harvested	% Deer Loss After 100 Years
Hawk Inlet	78%	88%
Eagle Peak (Youngs Lake)	60%	77%
Tenakee Springs	67%	83%
Kadashan	64%	77%
Lisianski River	63%	66%
Uhsk Bay	60%	64%
Kelp Bay	75%	86%
Kadake Creek	68%	74%
Castle River	65%	72%
Woewodski	66%	70%
Point Baker (Alder)	79%	92%
Myers Chuck (Cannery Creek)	65%	88%

Table 1. Old growth harvest equals critical deer habitat loss.



Above: 150 year old stand of SECOND GROWTH. Note density of trees and lack of browse.

Below: OLD GROWTH FORESTS provide shelter from deep winter snows and plenty of browse for food.



3. Other Wildlife

Many other mammals and birds are also dependent on old-growth timber or unroaded wild country. Clearcut logging will harm their populations by destroying essential habitat areas, by increased conflict with humans, and by increased hunting pressure for some species.

Moose, for example, while dependent on early successional stages of browse (like that found in river courses or clearcuts), also depend on old-growth timber for shelter and winter cover. Road access increases hunting pressure, often beyond sustainable levels. Forest Service activities in Berners Bay, Thomas Bay, and the Yakutat Forelands threaten moose populations.

Mountain goats are extremely sensitive to human disturbance and also depend to an extent on old-growth forests for winter habitat. Populations are expected to suffer as road access or clearcutting approach their limited home ranges.

Finally, many small mammals integral to the forest ecosystem depend solely on old-growth forest for habitat. These include marten, mink, and land otters. Research has conclusively shown how clearcut logging and roading displaces or destroys populations of these small furbearers.

In Southeast Alaska bald eagles are found in denser concentrations and higher numbers than in all the rest of North America. It is well documented that these raptors need old-growth Sitka spruce trees along beaches for nesting habitat. Existing eagle nest trees are not normally clearcut, but exceptions are sometimes made. The 1986-1990 APC operating plan proposes to cut or impact 37 of these important trees. This type of incremental destruction, combined with serious high-grading of high volume timber stands could pose a problem for eagle populations. In addition, ravens, owls, Canada geese, great blue herons, and many song bird species are also threatened since they nest primarily in old-growth timber.



BLUE GROUSE occur in high densities in old-growth forests throughout much of Southeast Alaska.



BALD EAGLES depend on old growth trees for nesting habitat.

B. FISH HABITAT AND POPULATIONS THREATENED

Southeast Alaska is blessed with an abundance of anadromous fish resources, including salmon, char, and trout. These anadromous fish, so called because they live in the ocean, but spawn in freshwater rivers, lakes, and streams, depend on clean, cool, highly oxygenated fresh water for reproduction. Logging and roading threaten these vital habitat needs.

Alaska's king, coho, pink, sockeye, and chum salmon make up the backbone of America's largest commercial fishing industry. These commercial species plus steelhead, cutthroat, and dolly varden char also constitute a huge subsistence and sport fishery.

Although research is still underway, many of the impacts of logging on fish habitat are well understood. Clearcut logging right up to the banks of salmon streams reduces the temperature buffering effect of streamside vegetation. This results in excessively high or low water temperatures which can be lethal to fish. Despite this well documented impact, Tongass planners still refuse to require buffer or leave strips on such streams, thus ignoring a basic requirement of NFMA and of common sense. Siltation from landslides or erosion associated with logging or logging roads can clog salmon streams and smother salmon eggs.

Tongass logging operations can result not only in the cost of subsidies, but also in the cost of lost fishery resources. The cost of these losses can be measured in both millions of dollars lost as well as the loss of a way of life by subsistence and commercial fishery users.

For example, the Chuck River on the mainland north of Petersburg supports a salmon fishing industry worth $1 million per year to commercial fishermen. But the Forest Service has targeted the Chuck River drainage for logging and roading. The Chuck River area is known for its unstable soils, and timber operations could well trigger a major landslide, destroying this valuable fishery. The Forest Service estimates its cost for preparing the Chuck River sale and road access at $7-10 million and this does not even include the dollars that would be lost from the fishery. Total receipts expected by the Forest Service from the Chuck River sale amount to less than $50,000 -- a pittance of the present value of the Chuck River.

Cutting to the edge of streams disrupts the natural balance of root wads, snags, and other woody debris essential to maintaining cover and habitat for juvenile salmonids. Clearcut areas on Prince of Wales Island have been sampled since timber operations were completed decades ago. These sampled areas show a lack of fish habitat and a resultant lack of fish due to the absence of small stream debris. Clearcutting to stream edges can also disrupt salmon migration and spawning when logs falling into streams create log jams, damage salmon spawning beds, or cause siltation which smothers eggs.

In June 1985, at a Congressional hearing dealing with below-cost timber sales the American Fisheries Society, a professional society of fishery biologists, addressed the problems of timber harvest and fishery damage. Two major points that stood our were:

1. *Virtually every timber sale and subsequent harvest has adverse impact on fisheries resources.*
2. *The value of the public land fisheries resources impacted by timber sales is very great and indeed can be far greater than the value of the timber.*

Unfortunately, plans that will damage important fish habitat areas in the Tongass are widespread. In addition to the Chuck River, other threatened systems include the Naha, Karta, Thorne, Castle, and Lisianski Rivers; the Outside Islands; and the many rivers within the Yakutat Forelands.

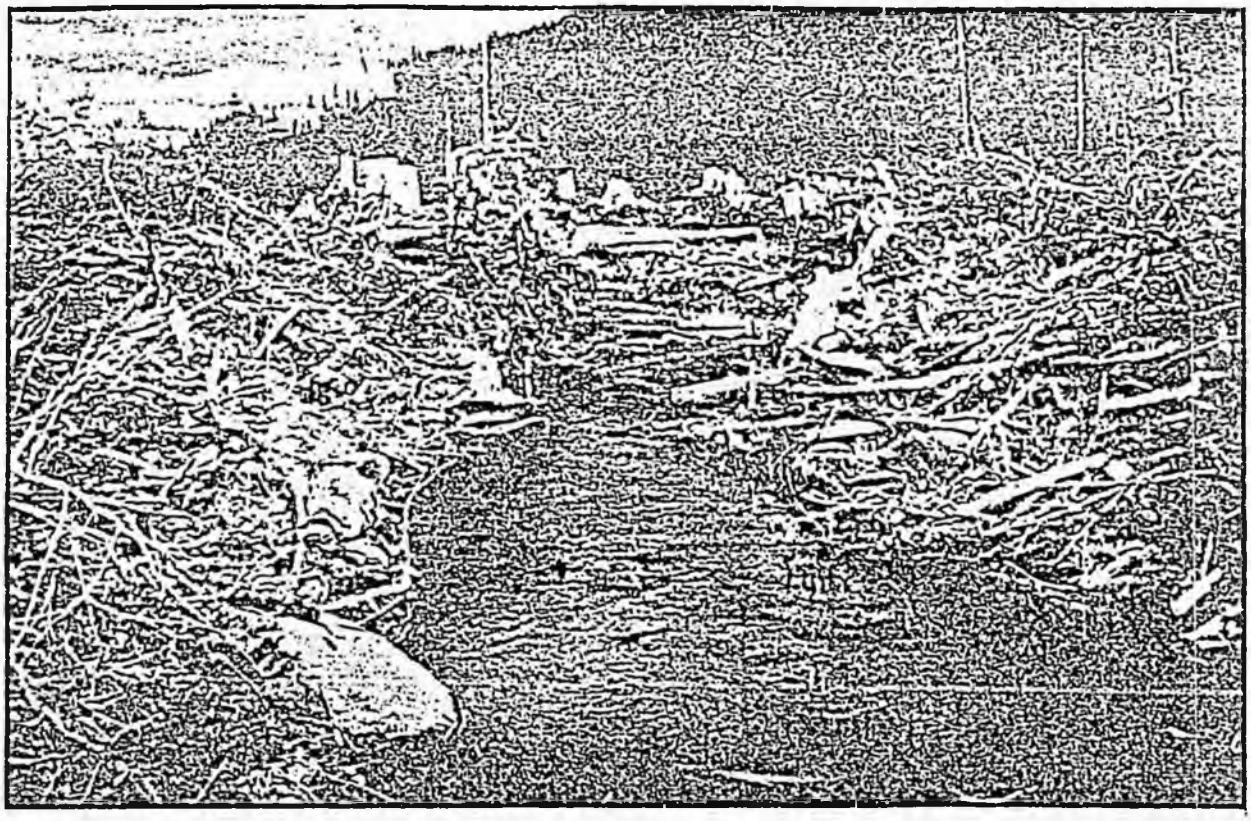
The State of Alaska has recognized the value of streams and has opted for 300 foot buffers on streams on the Haines State Forest. The Forest Service's own cooperative research shows that clearcuts with buffers may be adequate and/or beneficial to salmon production. Yet, the agency refuses to adopt a standard buffer policy or even implement its own Area Guide faithfully. The Forest Service is out of step with its own research and 300' buffers should be the rule.

Naturally functioning river systems, undisturbed by roads or logging, remain the most reliable producers of salmon and other fish. Unimpaired streams, lakes, and estuaries must be left this way if the full potential of Alaska's rebuilding fisheries is ever to be reached and maintained. For such fish as the pink and coho salmon, a myriad of small streams cumulatively produce the bulk of the fishery. Each and every one of these small streams is important, with coho rearing streams being especially vulnerable. Further, every king and sockeye system is also at a premium, since these systems are relatively less common in southeast Alaska. Logging threatens these systems, large and small.

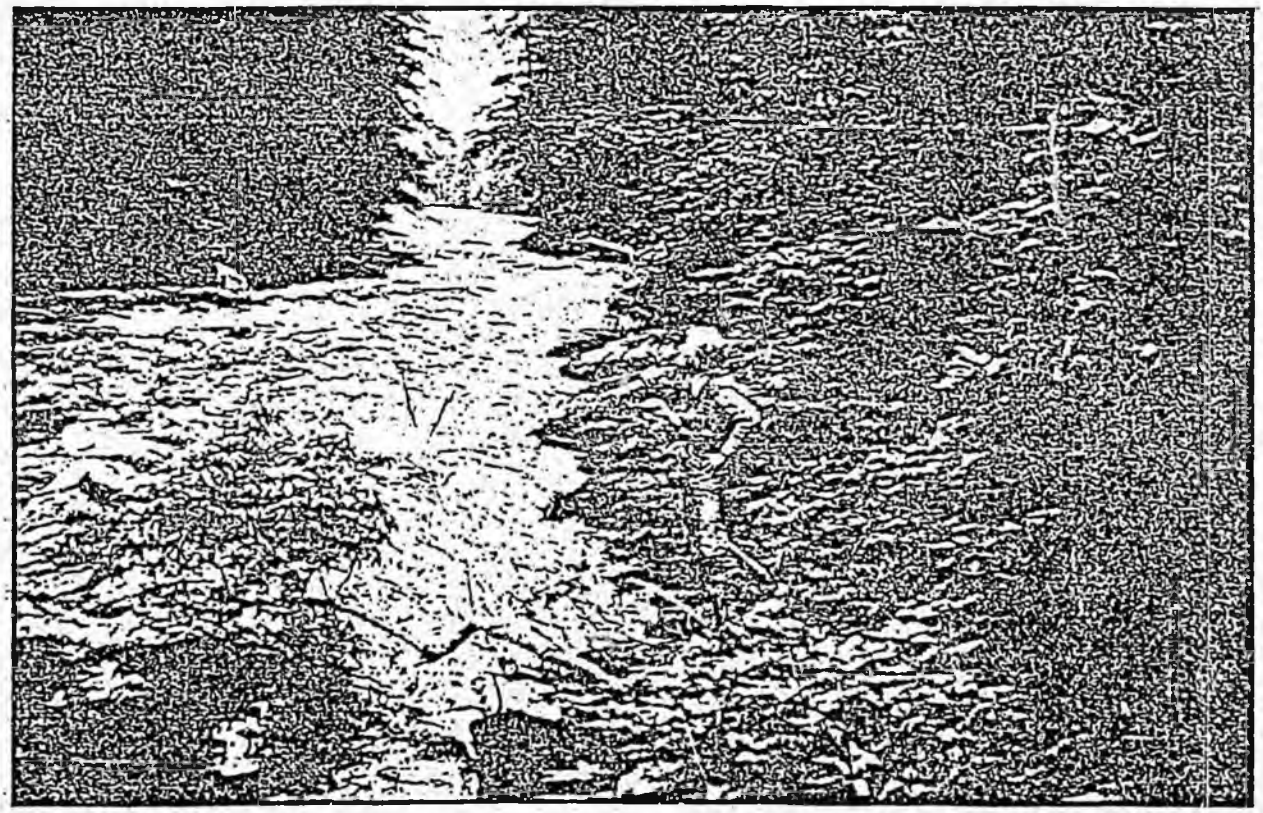
Log dumps and storage facilities have an adverse impact on the ocean or estuarine ecosystems they utilize. Crab, shellfish, herring, and other important fish resources are poisoned by toxic acids leached from accumulations of old barks, smothered by logging debris, or barred from spawning habitat by rock fill for log landings. The Environmental Protection Agency is currently studying this resource damage in an effort to formulate permits to help mitigate the impact of log dumps.



LOG STORAGE FACILITIES can adversely impact marine life such as crabs and shellfish utilizing the same area.

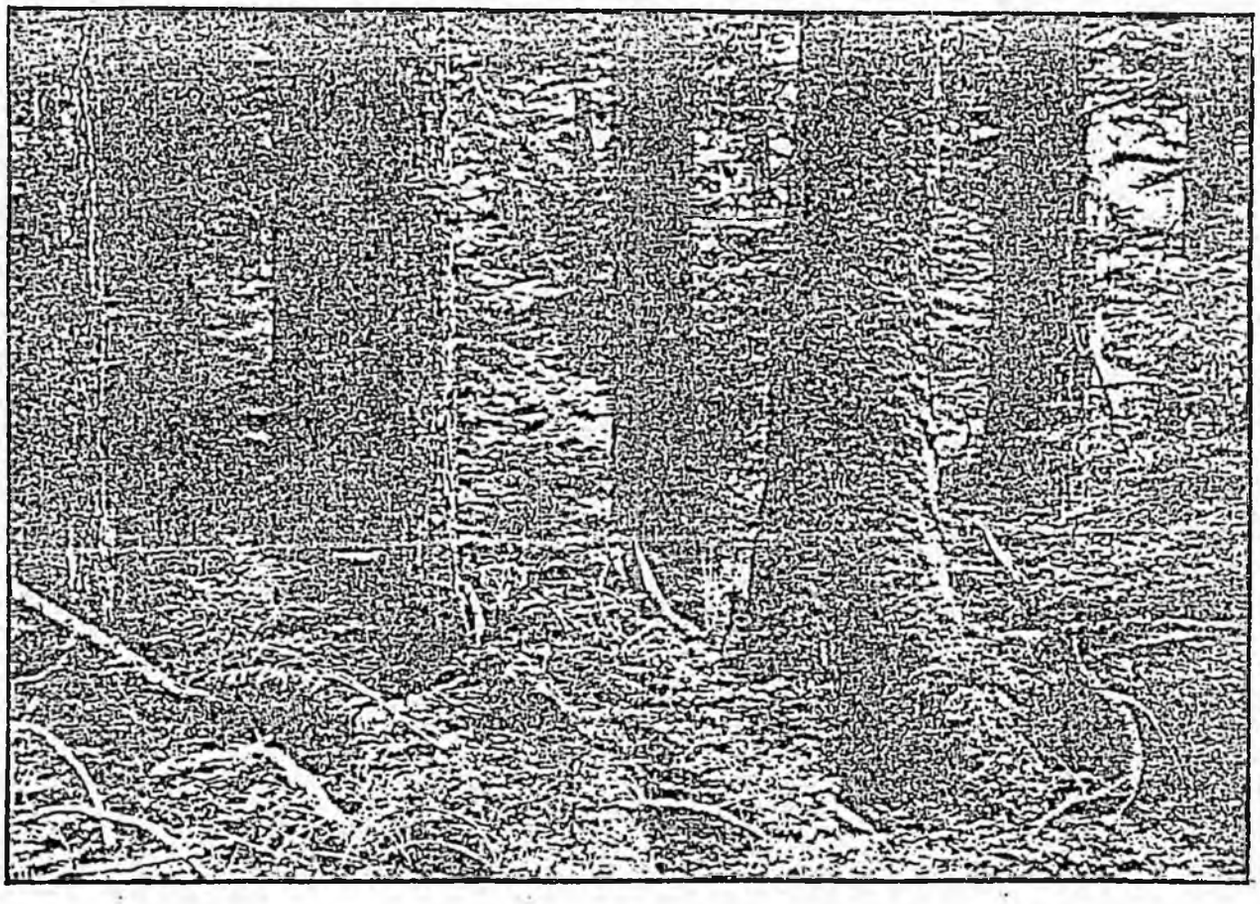


STREAM BUFFERS of at least 300 feet protect fish from lethal temperature extremes, siltation which smothers eggs, and debris which prevents salmon migration upstream.



C. OLD GROWTH AND WILDLANDS

1. Not Enough Old Growth Protected



Opponents to conservation in southeast Alaska, primarily the Forest Service and timber industry, often claim that over one-third of the Tongass National Forest was "locked up" in ANILCA, leaving the impression that vast commercial timber resources were lost forever from development. The facts do not bear this out. The Forest Service has stated that: 1) Wilderness and roadless area management designations provide direct benefit to wildlife, and 2) that Wilderness and roadless area designations will maintain a variety of natural habitat conditions for wildlife and fisheries over approximately 48% (8.2 million acres) of the Tongass. The first statement is accurate, but the second statement is misleading.

There is approximately 5.7 million acres of commercial forest land in the Tongass, and of that, only 1.6 million acres (28%) is in designated Wilderness. Of the 28% of Wilderness acreage that is considered capable commercial forest land, one-half is not considered suitable for timber harvest. Less than 10,000 acres of this Wilderness is prime value, high-volume old-growth timber which is also important wildlife habitat. Only 160,000 acres is over 30,000 board feet per acre and considered commercially valuable. These acres are also critical habitat. Fully three-quarters of the 5.4 million acres of officially designated Tongass Wilderness is non-forest land -- mostly rocky peaks, ice fields, muskeg, and battered coastline.

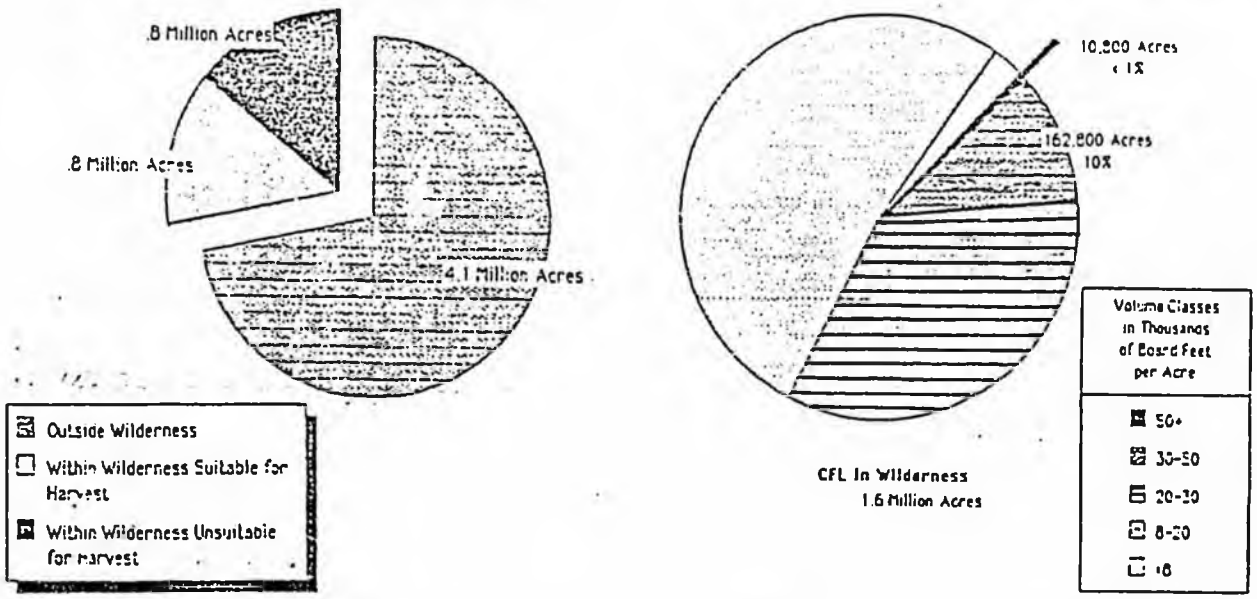


Figure F. Of the 5.7 million acres of Commercial Forest Land (CFL) on the Tongass National Forest, only 1.6 million acres are in Wilderness. CFL must contain at least 30,000 board feet/acre to be commercially important.

Clearly, most all the Wilderness designated in Southeast Alaska (with the exception of Admiralty Island and a few small watersheds) was land that developers did not want. It had little value in forest resources and is largely inaccessible. Even so, Admiralty Island is repeatedly cited as the example of locking up good timber. The best timber areas on Admiralty Island were cut prior to ANILCA and the island was not in either 50-year contract area for the two big mills, so its designation did not affect either mill. In fact, the Wilderness selections left the 2 mills virtually unscathed. In the few instances when they were affected, the acreage was later replaced via contract area acreage replacements and also with subsidies in the form of the TTSF.

The Forest Service, timber industry, and some others like to call the Tongass Timber Supply Fund a "wilderness subsidy." SEACC views the TTSF as a major federal payment to underwrite timber harvest activities on the Tongass, not as a subsidy to support the wilderness system. The 1985 TTSF allocation is for $53 million. There are nine line items for the fund that include timber sales preparation, timber stand improvement, road construction, engineering support, etc. There is no item listed as "payment for wilderness."

The lack of protection for old-growth forests was a major oversight in ANILCA. The Society of American Foresters stated that "the best way to manage for old growth is to conserve an adequate supply of present stands and leave them alone." The Alaska Chapter of the Wildlife Society stated that "old-growth forests are a rare and rapidly diminishing resource...The coastal forests of Alaska represent the last major expanse of old growth remaining in the U.S.... adequate old-growth habitat must be maintained for the present and future...." It is estimated that perhaps 100,000 acres of highest-volume old-growth stands remain in the Tongass, but these stands are being harvested at the highest rate of any volume class on the forest. They will not last long.

Old-growth timber, in high-volume stands, is best protected as wilderness. In this way, such stands are shielded from the pressure of high-grade logging and can continue to produce fish, wildlife, and other renewable resources. Rock and ice cannot serve this function. John Matthews, of the Alaska Department of Fish and Game, summed up the problem with Tongass wilderness areas saying, "If you can't grow timber there, you can't grow wildlife there either."

As described before, Tongass planners continue to road and log every available unprotected roadless drainage at a rate far beyond demand, far beyond economic justification, even far beyond TLMP's original goals. The 20,000 acres of timber offered annually, 300 miles of road built per year, and construction of interlocking segments of an overall transportation network threaten those few remaining roadless Tongass drainages -- most of which continue to provide all wilderness related values despite their lack of formal protection. As one Tongass Forest official freely admitted, "As far as we're concerned, if an area doesn't have a road in it or a [wilderness boundary] drawn around it, it's up for grabs" until TLMP is revised in 1989. Since 1979, 25% of the roadless lands in LUD IIIs and 30% in LUD IVs have been developed. If this rate continues, all the unprotected roadless land will be developed in just 20 years (by 1999). It would be far wiser, and certainly more cost-effective, to halt this onslaught now and preserve the option of adding more wilderness to the Tongass if it is needed in the future.

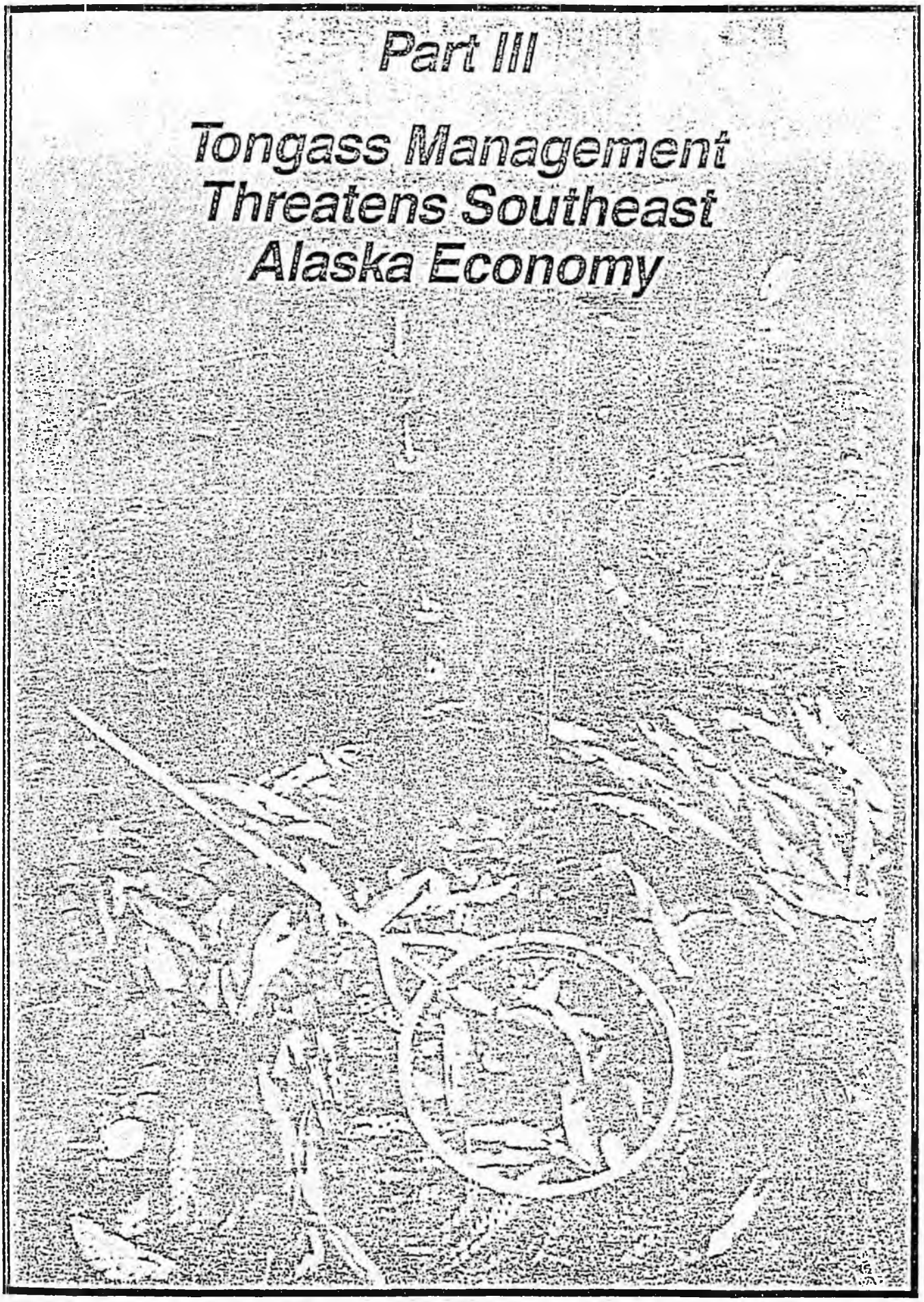
2. Protecting Old Growth and Wildlands Makes Economic Sense

Beyond its value as vitally important fish and wildlife habitat, Tongass Wilderness is also an invaluable asset in other ways to Southeast Alaska and the nation. It is ideal habitat for a variety of thriving populations of fish and game species. It makes possible the subsistence uses of these areas, and allows sport hunting and fishing. Wilderness with its undisturbed watersheds provides the critical spawning and rearing areas for fisheries which maintain the commercial fishing industry year after year. Wilderness provides the resources that support a growing tourism and recreation industry. It preserves clean air and clean water. When you leave the land as it is, in a natural state, the benefits are numerous and perpetual. Management of national forest lands in Wilderness is also extremely cost effective, particularly in Alaska. It should be noted that Alaska Wilderness Areas are managed as directed by the 1964 Wilderness Act, as amended by ANILCA, which specifically authorizes certain activities. This includes provisions for subsistence use; for public recreaton cabins; for certain fish habitat enhancement activities; and for use of airplanes, motorboats, and snow machines.

In development of Alaska's Chugach National Forest Land Management Plan in 1984, Chugach planners discovered that by following NFMA procedures and using Forest Service value comparison figures, their computer programs showed the highest value for the Chugach Forest would be produced by managing every presently roadless area as wilderness. This was no mistake, for Alaska forest lands have negative values for timber production and other intensive developments. In contrast, wilderness management enhances the highest revenue producing aspects of Alaska's forest resources -- fish, wildlife, recreation, and tourism. Of course, Chugach planners rejected their own figures on the basis of pre-conceived notions about the proper role of timber management in Alaska's forests. Not suprisingly, Tongass planners have steadfastly refused to perform similar NFMA required economic analyses.

Part III

Tongass Management Threatens Southeast Alaska Economy



Previous page: 80-85% of the salmon harvested in Southeast Alaska are SPAWNED AND REARED IN TONGASS NATIONAL FOREST WATERSHEDS. The future of Southeast's commercial and subsistence fishing is directly dependent on the wise management of Tongass forest resources.

III. *TONGASS MANAGEMENT THREATENS SOUTHEAST ALASKA ECONOMY*

A. SEARCH FOR LONG-TERM ECONOMIC STABILITY

The economy of Southeast Alaska, like any frontier area, has always suffered from spectacular booms and busts, wild fluctuations in economic activity. Each boom has been a result of discovery and short exploitation of valuable resources with a concurrent lack of incentive for slower, long-term development. First came Russian fur traders, who overharvested this resource and sent the profits back to Russia. Next came gold miners, who made and lost fortunes over periods as short as a few months, then returned to where they had travelled from. Fish canneries from Oregon and Washington over-exploited and nearly destroyed Alaska's salmon stocks in the 1950s.

Alaska's first territorial governor, Alfred P. Swineford, warned in 1888 that if resource exploitation was allowed "Alaska would be...nothing more than a national fat goose left unprotected and to be annually plucked of its valuable plumage by non-resident corporations." Nearly one hundred years later, Swineford's words still ring hauntingly true. Today it is the large-scale logging companies' turn to cut and run, plucking the wealth from Alaska's Tongass National Forest.

This exploitation is especially sad, since this latest round of exploitation and short-term planning endangers other healthy, stable, and growing sectors of the Southeast Alaska economy which have become new economic mainstays. When you exploit a resource, you exploit the people, as well.

Most Southeast Alaska towns and villages are directly dependent upon the Tongass National Forest for community stability. Maintaining this stability is extremely important. Rather than being dependent upon the commercial timber resource, many of these communities are instead directly dependent upon the renewable fish and wildlife and other subsistence resources for the maintenance of community stability. The long-term stability for these many communities is thus undermined by the exploitation of the Tongass' timber resources.

Southeast's sustainable industries must survive and grow if Alaska's economy is ever going to break the boom and bust cycle and move into a post-frontier economic realm. These threatened industries include commercial fishing, hunting and guiding, tourism, wilderness outfitting, and subsistence. While not technically an industry, subsistence use of fish and wildlife resources is a primary economic element in the lives of many Southeast Alaskans and supports people outside of the cash-based economy. In addition, Native timber harvest is being stifled by current Tongass management policies.

B. TIMBER MINING THE TONGASS

1. Timber Mining: A Short Term Industry

The Tongass timber resource is being managed as a non-renewable resource. This is timber mining -- the permanent removal of old-growth trees. Only 4% of the Tongass (635,000 acres) contains high-volume, commercially valuable timber. All of this is old growth. The present Tongass timber program of cutting the highest value timber stands first (high-grading), threatens these commercial timber lands with virtual exhaustion in just a few decades. The present rate of clearcutting is 200,000 acres per decade. At this harvest rate, and with the continuance of high-grading, all that will remain will be low-volume, scattered timber stands known in logger's parlance as "junk." The situation is very critical for highest grade spruce and cedar logs.

When the high-volume, economically valuable timber is gone and only the junk timber is left, no timber harvest will be worthwhile. Even now, with mostly valuable high-volume timber being sold, timber operators continually lose money. Since ANILCA, APC has claimed over $150 million in losses despite the massive federal subsidies it has received as a result of the Act. The Forest Service has already slashed virtually all timber purchaser costs it can legally eliminate, but nothing helps. Even the Chief of the Forest Service pointed out last year that the Forest Service could cut Tongass timber itself, haul the timber out of the woods, barge it to the timber mills for free, and the companies would still lose money. Clearly, something basic is wrong with such a market.

A large part of the problem is that world markets for pulp are slowly shrinking and new mills are able to out-compete Alaska's mills. Long-term economic prospects for Alaskan timber markets are bad. The Forest Service predicts that "unless a major new market can be found for Southeast Alaska's pulp and/or its pulp grade logs, a long-term decline in Alaska's timber industry is anticipated, even with a short-term improvement in its pulp markets."

Another part of the economic problem is a timber management program inappropriate for Southeast Alaska. Small-scale logging occurred on the Tongass for many years before the introduction of the large pulp mills. These small-scale loggers cut selectively, taking only a few large, old-growth spruce trees at a time, basically leaving the lower value hemlock trees in place. There were some scattered small clearcuts around the forest during the 1920's and 1940's.

With the advent of the large pulp mills and large-scale logging, however, extensive clearcutting became the standard Tongass timber harvest technique. Although it is the cheapest way to take large amounts of logs from the woods, clearcutting harvests both the low-value and high-value species of trees. Tongass hemlock, being worth far less than logging costs, lowers the overall value of the clearcut, resulting in increased pressures to harvest the most valuable timber stands now and not later. This is why the Tongass is currently being high-graded.

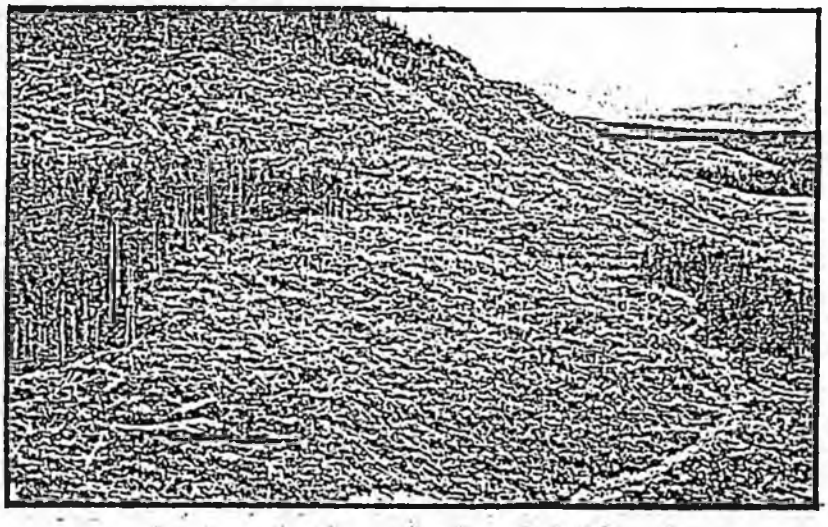
2. Second Growth: An Economic Fallacy

In Alaska, with high harvest costs and slow growing timber, only large, very old trees are worth cutting at all. Within the next hundred years over two million acres of the Tongass will be clearcut, and the smaller, shorter, "second growth" timber growing in these clearcuts will not be commercially valuable. The practice of 100-year timber "rotations" needs a closer look in Alaska since there is no forseeable market for the next generation of 90-110 year old trees.

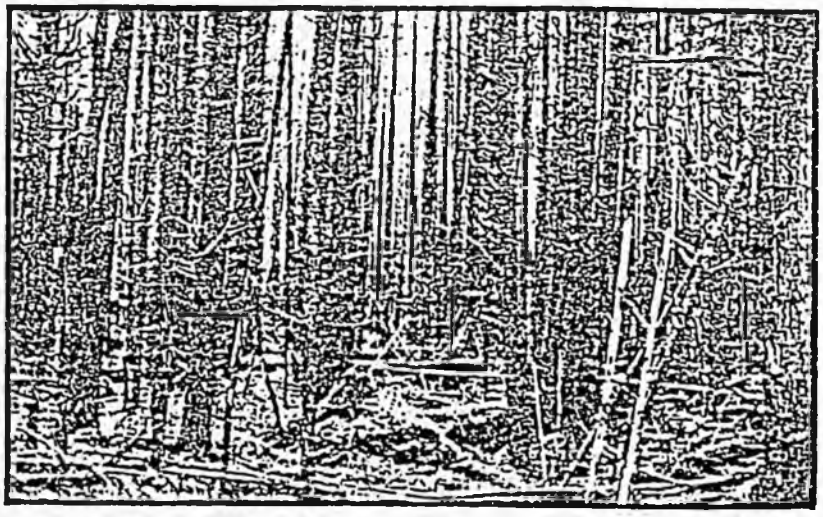
While nobody can say for sure, the future of Alaska logging looks grim if present clearcutting and high-grading continues. The Alaska Department of Revenue studied this problem and stated that:

> *The logging of old growth is a mining operation. Timber in Alaska means coastal old growth. And old growth is not a renewable resource. There is no reasonable possibility of a second growth industry in Alaska.*

Time is quickly running out for creation of any reasonable, stable, sustained yield timber industry in Southeast Alaska. The Forest Service is doing nothing to solve this problem, or hasten the creation of such an industry.



Left: FOREST SERVICE POLICY -- take the best first, when that's gone log the best of the rest.

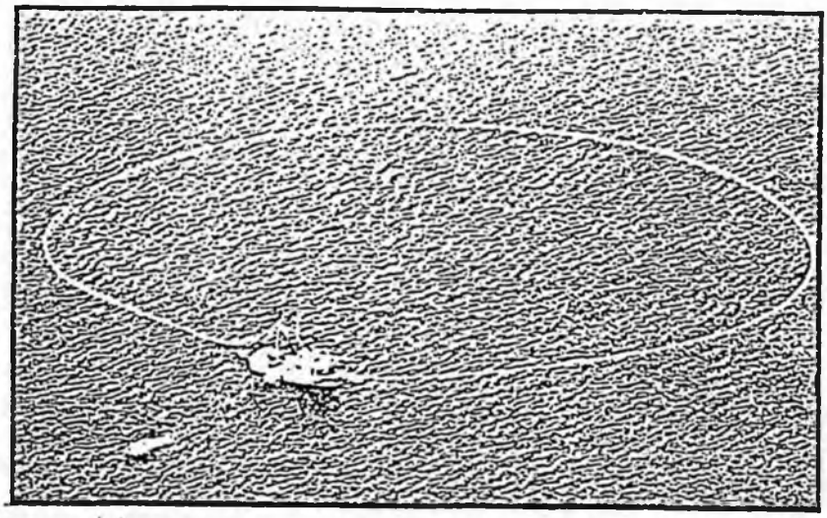


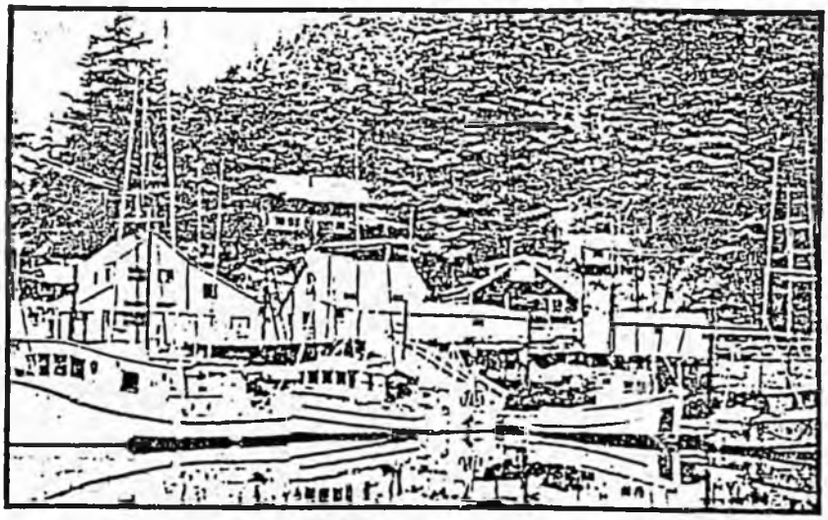
Right: 75 YEAR OLD SECOND GROWTH. The Forest Service claims these small trees will be commercially valuable in 25 more years.



Left: Hauling in nets. A $160 million per year industry, COMMERCIAL FISHING PROVIDES JOBS for thousands of Alaskans.

Right: Purse Seining. COMMERCIAL FISHING has proven to be a truly RENEWABLE and SUSTAINABLE INDUSTRY.





Left: FISHING is the ECONOMIC MAINSTAY for the residents of the community of Elfin Cove. (Photo by Margaret Piggot)

C. COMMERCIAL FISHING INDUSTRY THREATENED

Alaska's commercial fishing industry is on a strong rebound from the 1950's. The incredible wealth of the Alaskan salmon fisheries is not that well-known. A commonly overlooked fact is that the riches derived from Southeast's gold mines, riches that have become part of Alaska's folklore, were dwarfed by the value of salmon catches during that same period -- catches which brought ten times more revenue than gold.

Salmon catches peaked around 1940, with the all-time high catch for any single year of 67.8 million fish in 1941. Catches then began falling steadily to a low of just 7 million fish in 1967. Like so many assumptions on which TLMP was based, the Forest Service wrongly believed in 1979 that salmon stocks would not recover to previous levels. Through diligent fish management and careful control of harvest, the Alaska Department of Fish and Game has quickly proven this assumption to be wrong. In 1983, 40.4 million salmon were caught in Southeast Alaska. In 1985, 44 million pink salmon alone were caught, the fourth best pink salmon year on record and best year since 1949. Experts now agree that a sustainable average annual catch of 46.0 million salmon can serve as a reasonable goal for the rest of this century.

In terms of jobs, this fish harvest directly employed an average of 3,225 people a year between 1979-1983. This is more jobs than provided by the timber industry. Recent fishing employment figures are also undoubtedly higher. Since passage of ANILCA, commercial fishing has proven itself to be an industry that is renewable and sustainable not only in theory, but in practice. The commercial fishing industry in Southeast Alaska is now a $160 million per year industry, with very little investment by the federal government.

The timber industry likes to claim that logging has had no negative effect on fisheries since record catches have occured during recent periods of heavy logging activity. This claim is very misleading. The fact is that the recent upswings in salmon production are the result of years of improved and more precise management practices of fish stocks and the regulation of the fishing fleet by the State of Alaska. Warm winters for the last several years and reductions in high seas interceptions also contributed greatly to increasing salmon production. The State's improved management strategies, initiated at a time of low salmon population, have been effective enough to counteract the negative effects of logging that cause loss of production as a result of stream habitat degradation. Salmon catches would be even higher if key fisheries on Prince of Wales Island, off Peril Strait, and in other areas had not been damaged by logging.

As explained, logging threatens fish habitat, which in turn threatens the commercial fishing industry. The Forest Service itself states that 80-85% of the salmon harvested in Southeast Alaska are spawned and reared in watersheds within the Tongass National Forest. There is no way that the agency's promise of full protection of the biological potential of fisheries habitats in the non-wilderness areas can be fulfilled where clearcut logging occurs. The two are mutually exclusive. The most recent example is the Lisianski River, one of the top five salmon producers in Southeast Alaska. The Forest Service plans to allow APC to devastate this fishery with clearcuts and roads right along the river's banks.

Southeast Economy Threatened

Current logging plans target important fisheries like the Chuck, Lisianski, and Kadashan Rivers; the river systems of the Yakutat Forelands; and others. Many fishermen see the demise of their livelihood at the hands of the Forest Service's nonrenewable and destructive timber program. Timber in a particular area is harvested just once. The value of the fish produced by a particular drainage, probably in all cases, vastly exceeds the value of the timber, especially when considered over a 100 year rotation. We cannot risk the loss of Southeast's valuable fisheries for a questionable short-term timber harvest gain. Given the success story commercial fishing presents in the Southeast Alaska economy, such a loss would be tragic.

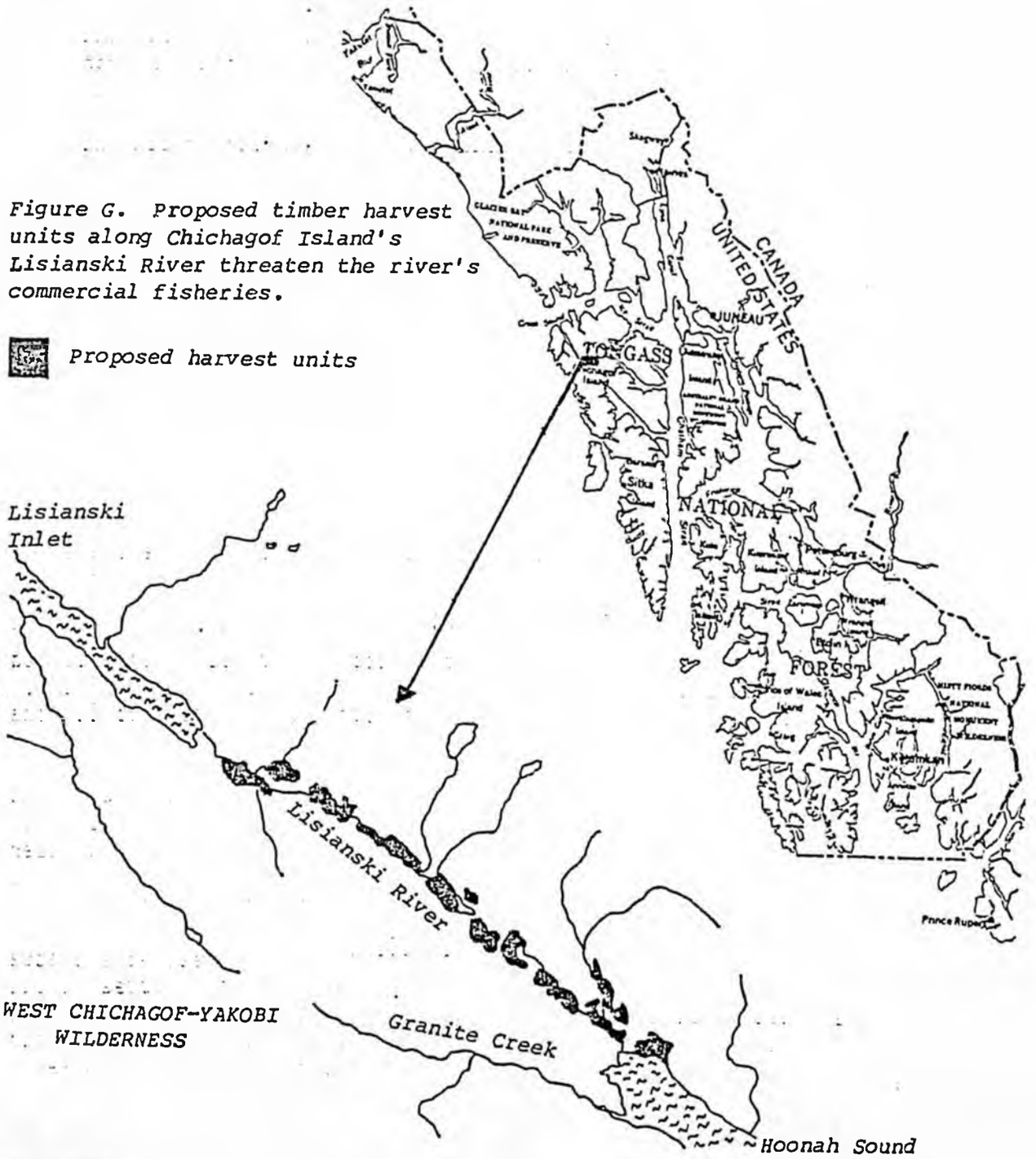
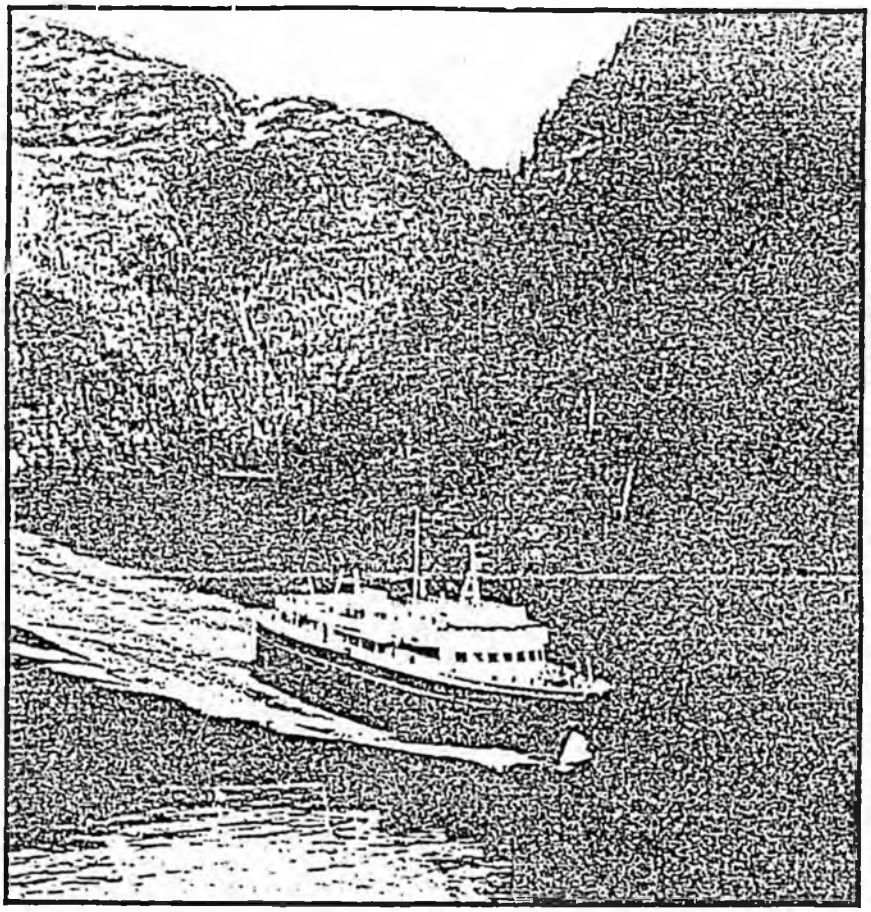


Figure G. Proposed timber harvest units along Chichagof Island's Lisianski River threaten the river's commercial fisheries.

Proposed harvest units

D. TOURISM INDUSTRY THREATENED



(Photo by AK Division of Tourism)

According to economic planners, tourism is the only primary industry in Alaska expected to show major growth in the 1980's. As with commercial fishing, general recognition of the importance of tourism has increased markedly since passage of ANILCA. In 1984, Alaska Governor Bill Sheffield declared that "Alaska's natural beauty is one of our great treasures and tourism is Alaska's most renewable resource." TLMP virtually ignored this aspect of the Southeast Alaska economy.

Since 1959, tourism has averaged an annual growth rate of between 7-10%. This incredible growth rate has carried tourism right to the forefront of Alaska's industries. Southeast Alaska is the beneficiary of much of this tourism. From 1975 to 1983, there was a 47% increase in cruise ships visiting Southeast Alaska and a 61% increase in the visitor capacity of those ships. The number of sightseeing flights over Misty Fjords National Monument was practically insignificant before 1979, but 7000 of these flights were made in 1984.

Employment created by the 185,000 tourists visiting Southeast Alaska in 1983 exceeded 2,600 full-time jobs. Again, this is more jobs than provided by the timber industry. The figures for tourism employment grow significantly each year.

The Forest Service itself has recognized that recreational use of the Tongass increased by 85% between 1980 and 1985, and that "opportunities of the kind Southeast Alaska offers are not available anywhere else in the United States." But the agency is doing little or nothing to protect the unique wilderness landscapes of the Tongass which attract tourists and provide such outstanding recreational opportunities. Tongass logging poses the biggest potential threat to tourism in Southeast Alaska.

Henry Gannett, a director of the U.S. Geological Survey and a member of the Harriman Alaska Expedition in 1899, truly understood the lasting importance of scenery to Alaska's economic future. In 1901, National Geographic magazine printed his essay which said in part:

> *The Alaska coast is to become the show place of the earth and pilgrims, not only form the U.S., but from beyond the seas, will throng in endless procession to see it....The econommic value of Alaska's grandeur... measured by direct returns in money received from tourists, will be enormous....Scenery is more valuable than the gold or the fish or the timber, for it will never be exhausted.*

Tourism is a sustainable, growing major industry and it is non-consumptive. Unless violation and destruction of natural landscapes is controlled, tourism cannot be assured of a resource base on which to depend. As the world becomes more developed, altered and urbanized, pristine places like Tongass roadless and wilderness lands become more exceptional and continue to appreciate in value.

E. SUBSISTENCE ECONOMY THREATENED

What Congress gave Alaska with one hand in the subsistence provision of Title VIII of ANILCA, it may be taking away with the other in Title VII. Title VIII provided for protection of the Native and rural subsistence economy. It was a pioneering provision which recognized the unique relationship between Alaskans and the land and it attempted to ensure the continuation of that relationship. Through Title VIII rural residents were also to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands. But the Tongass logging program, fueled in great part by Title VII's TTSF provision, now threatens destruction of the subsistence economy, and has consistently thwarted participation of rural Southeast residents in land use decisions.

Since human beings first came to Alaska, they lived in small, dispersed communities and depended on hunting, fishing, and gathering not only for their needs and materials, but also for their social identity and well-being. Today, hunting, fishing, and gathering are still a major focus of the rural way of life in Alaska. This applies to Native Alaskans as well as non-Native rural residents. Providing for personal survival and the survival of others enables subsistence users to incorporate cash-based transactions into a traditional social setting, and to thereby slowly integrate modern ways into older cultural values. The sharing of subsistence foods still plays a major role in rural cultural life, as it has always done. Furthermore, subsistence provides a measure of independence and freedom to some users that is uniquely Alaskan.

Primary subsistence foods in rural Southeast Alaska are deer and salmon, which comprise nearly 60% of the local food consumed in the region, according to the U.S. Fish and Wildlife Service. Other important subsistence foods include halibut, shellfish, and other marine life. As explained previously, deer and salmon are directly threatened by the adverse impacts of logging. Further, extensive road building in traditional hunting and fishing areas increases pressure on fish and wildlife resources, often resulting in restriction on seasons or limits. Finally, shellfish and other marine life are adversely impacted by log transfer facilities, which often poison the water of the coves and bays in which they are located.

The Forest Service has blinded itself to the impacts of its logging activities on subsistence, especially the cumulative impacts over the entire Southeast Alaska region. Over and over again, without the benefit of detailed study or even rudimentary research efforts, the agency has maintained that logging does not have significant impact on subsistence. SEACC has appealed the LPK 5-year plan because of impacts on subsistence. Regional subsistence impacts are a major concern with the current APC 5-year plan, as well.

The Forest Service also continually attempts to avoid its duties as manager and responsible agency for subsistence use on Forest Service lands, abdicating this role instead to the Alaska Department of Fish and Game, which manages the fish and game resources, but not the vital fish and game habitat. The Southeast Alaska Regional Council of Fish and Game Advisory Committees has addressed this issue and has found that all of it's 19 Advisory Committees from communities throughout the region unanimously agree that "the 4.5 billion board feet per decade taken through clearcut logging practices...will have devastating results on the fish and game resources that Alaskans depend upon." Protection of Southeast's subsistence dependent rural communities must be undertaken before it is too late. If subsistence is lost, Alaska will be changed forever.



Dip net fishing. SUBSISTENCE HARVEST of fish and wildlife resources is a way of life for many Southeast Alaskans.

F. NATIVE TIMBER INDUSTRY STIFLED

When ANILCA was being finalized in 1980, conveyances of Tongass National Forest lands to Native corporations amounted to less than 4,000 acres of the 572,520 acres to which they were entitled under the terms of the Alaska Native Claims Settlement Act (ANCSA). By 1984, a total of 465,152 acres had been conveyed.

Since 1980 the production of timber from Native corporation lands has grown from non-existence to a full 47% of the total regional harvest. Native timber enterprises in Southeast Alaska produced an average annual harvest of 214 MMBF during the years 1982 through 1984. The Forest Service currently estimates that future private harvests will range from 225 MMBF to 350 MMBF.

The highest quality Native cut logs are exported to Japan. The primary market for Native pulp quality wood is the two local pulp mills. That market has been hindered by a pulp oversupply from federal, state, and private lands, and from British Columbia.

Native corporations claim they could provide a steady supply of pulp logs to the local mills. Native corporations have exported a small amount of pulp logs and have left in the woods as much as 20% of the timber volume in their harvest areas. Native land timber operators cannot recover operating costs on the sale of smaller pulp quality logs, so they often leave this timber. This unmarketable wood is not only a deteriorating or wasted asset, but the overall cost of production is significantly increased when the highest quality timber alone has to pay for an entire logging operation.

While felled Native pulp logs rot on the ground for want of a market, the Forest Service subsidizes high levels of Tongass clearcutting to supply pulp wood for the mills in Sitka and Ketchikan. The Forest Service subsidy is one big reason the Native corporations have trouble selling pulp quality logs.

In today's view, the TTSF definitely favors the APC and LPK mills over Native Corporations. To make matters worse, the 50-year contracts add the burden of unfair competition and limit the Native corporations' options. The biggest losers, though, are fish and wildlife habitat, and all who depend upon it.

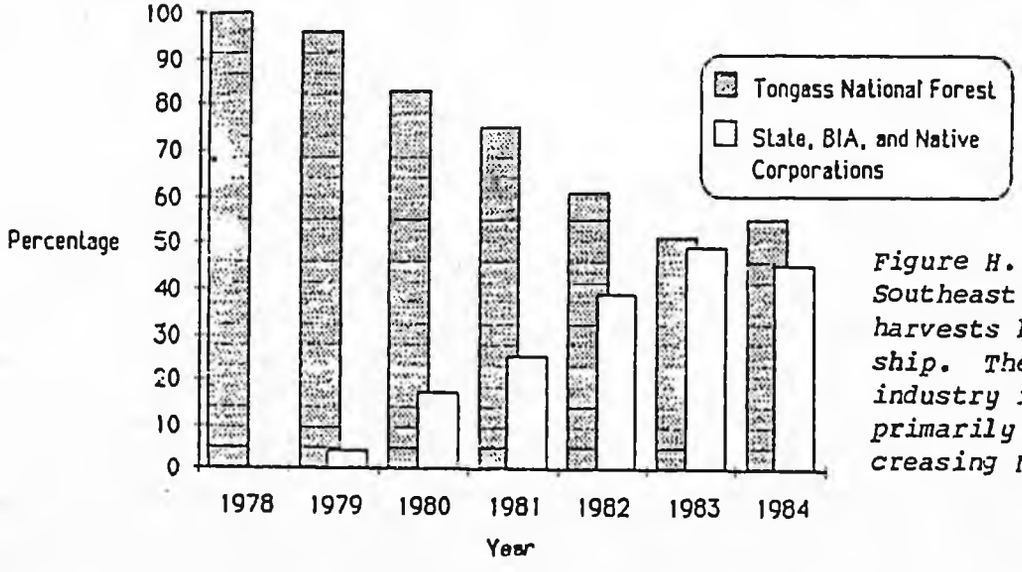


Figure H. Percent of Southeast Alaska timber harvests by land ownership. The timber industry is changing, primarily due to increasing Native harvest.

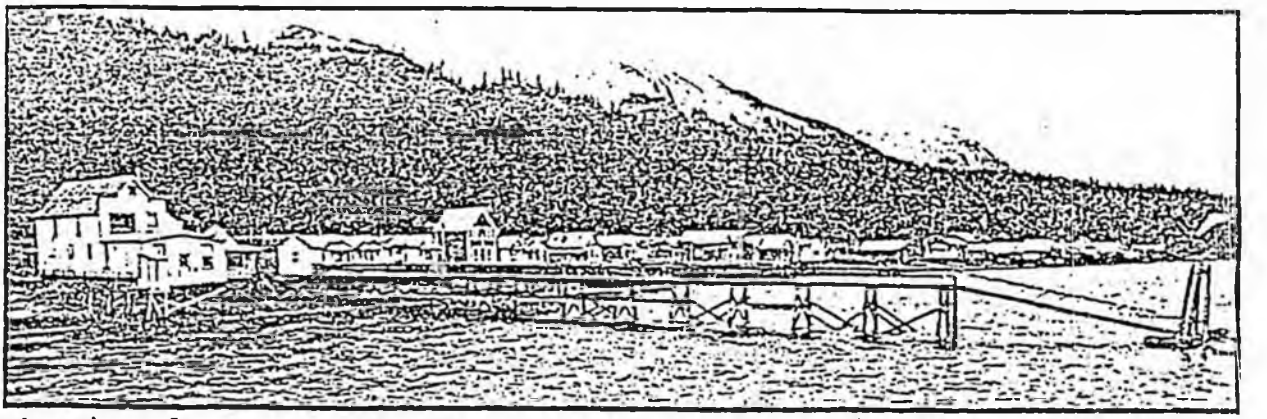
Part IV

Southeast Alaskans Oppose Tongass Timber Management



Previous Page: Current Tongass timber management impacts the livelihood of ALL Southeast residents.

IV. *SOUTHEAST ALASKANS OPPOSE TONGASS TIMBER MANAGEMENT*



The city of TENAKEE SPRINGS OPPOSES current Tongass timber management program.

The Forest Service is running into increasing opposition to its logging programs. While the debate over logging truly split Southeast Alaska during Congressional consideration of ANILCA, times have dramatically changed. Now, it is increasingly difficult to find a segment of the public, other than the two pulp mills (APC and LPK) and their subsidiaries, willing to defend the Tongass timber program.

For example, in response to Forest Service solicitation of public comments on alternatives for APC's 1986-1990 logging operations, the overwhelming majority of public comments supported either the alternative of no further logging or the alternative proposed by SEACC which protected many important areas.

Individual communities have also begun to take matters into their own hands. The towns of Yakutat, Elfin Cove, Pelican, Port Alexander, Tenakee Springs, Point Baker, Port Protection, and Edna Bay have passed resolutions opposing the current Tongass logging program, especially the 4.5 billion board feet per decade language of Section 705. The town of Hoonah has formulated its own, scaled-down plans for nearby APC logging operations. Hoonah's plans are aimed at protecting subsistence and providing a more even flow of timber than either of APC's or the Forest Service's cut and run alternatives. Public meetings in Juneau and Petersburg have presented the Forest Service with very strong public opposition to timber sales in Berners Bay and the Chuck River.

Finally, SEACC has travelled to towns all over Southeast Alaska collecting a list of critical areas which citizens would like to see deferred from logging. Over 100 areas can be found on this list, which was submitted to the Forest Service for the TLMP amendment process. To date, it is unknown if the Forest Service will protect these critical areas.

The State of Alaska has also requested measures to protect critical wildlife habitat in the national forests. In 1983, the Alaska Department of Fish and Game submitted to the Forest Service a list of critical areas integral to the maintenance of fish and wildlife populations on the Tongass. This Forest Habitat Integrity Program proposed to defer from harvest a mere 8% of Tongass lands now open to logging. It is also unknown at this time when, if ever, the Forest Service will address this proposal, but many areas in the State's deferral program have already been slated for logging or roading. Of 68 high value fish and wildlife habitat areas, at least 20 of these key habitats have

been or are planned to be developed by Forest Service plans, including Berners Bay, the Yakutat Forelands, and Kadashan.

Even some Forest Service officials are voicing concern from within the agency. These dedicated professionals have taken a risky stance, since criticism of policy is not rewarded in the Forest Service bureaucracy. But they have come forward in the hope that "maybe this will do some good." One such Forest Service official stated, "The only thing I can say about the 450 million board foot cut is that the timber is not there [to sustain that level of harvest]. Everybody knows it, but the Forest Service won't admit it publicly." Another official explaining the pressure applied to meet this unreasonable harvest schedule said, "We're cutting the best timber and having a harder and harder time meeting the cut....[our district ranger] gets his marching orders to cut trees, and if he doesn't he'll be walking down the road kicking a can." A third official expressed "severe reservations that we can sustain 450 MMBF a year. The trade-offs between timber management and wildlife will be very tough...." But even these officials are just voices in the wilderness, as the Forest Service hierarchy is not listening to its own people, either.

The Forest Service has become so entrenched in its logging mandate mentality that public pleas have fallen on deaf ears. The agency is ignoring dynamically changing times and changing situations. Despite the fact that TLMP's assumptions about the health of APC and LPK, about the magnitude of Native logging operations, and about the environmental impacts of logging have all turned out to be very wrong, the agency steadfastly refuses to re-assess its logging program. The mandate imagined in ANILCA Section 705 is serving as an excuse for this behavior, the TTSF funds this behavior, the big pulp mills encourage this behavior, and TLMP does nothing to correct this behavior.

Recently, concerned citizens have had no choice but to resort to the courts for help. The City of Tenakee Springs, a small community on Chichagof Island, and SEACC sued the Forest Service in 1983 over construction of a logging road through the Kadashan River valley. On December 20, 1985, the Ninth Circuit Court of Appeals enjoined construction of the Kadashan road, finding the Forest Service's assessment of the project's environmental impacts to be "inadequate." For now, the important Kadashan watershed is protected.

In the summer of 1985, the Friends of Berners Bay (a Juneau ad hoc citizens organization), the Sierra Club, a local tour guiding company, and SEACC sued the Forest Service over plans to log and road Berners Bay, an outstanding recreation and wildlife area. The United States District Court for Alaska enjoined the Berners Bay project on August 26, 1985, again because of inadequate environmental analaysis. Together, the Kadashan and Berners Bay cases represent clear disapproval by the Courts of the Forest Service's inadequate environmental analysis process and a warning to the agency that it must reform its procedures. The impact of these rulings on the Forest Service is not yet known, but it appears to date that the agency is still refusing to change.

Given the intransigence of the Forest Service regarding its logging program, many more lawsuits can be expected in the future. Litigation, however, is expensive, time consuming, and ultimately a poor substitute for responsible resource management by the Forest Service. It is clearly time for Congress to step in and correct this rapidly degenerating situation.

Part V

Solving Tongass Timber Problems

Previous page: Winter snow blankets TONGASS OLD GROWTH.

V. SOLVING TONGASS TIMBER PROBLEMS

The Tongass today is in grave trouble. The Forest Service's chapters in the report will not tell you that. Nor will the timber industry chapter. But you have read our view of the situation. Look also at the State of Alaska's view, the fishing industry's view, and at the Native corporations' views. We believe it is time that something be done to correct the course Congress set for Southeast Alaska in 1980 through ANILCA. Today, this course is set for long-term disaster.

Much of the ANILCA debate over land allocation in Southeast Alaska revolved around maintaining employment levels at the 1970-76 historic average. During the formulation of TLMP in 1978-79, SEACC offered a balanced alternative management program that proposed protection of more lands than are currently included in formal Wilderness, yet still maintained timber employment levels at very close to historic levels. This was based upon a 375 MMBF cut by the Forest Service and a 150 MMBF cut on Native lands, for a total annual cut of 525 MMBF. As has been shown, the average Tongass harvest level has been far less, while Native cut has greatly increased and averaged 214 MMBF per year since 1982. The commercial fishing industry has increased steadily and tourism has grown dramatically. The protection of wildlands is proving to be of direct benefit to the region.

Today, the Forest Service's management of the Tongass shows us that more conservative timbering goals are essential to ensuring a positive future for Southeast Alaska. We believe Southeast needs a scaled down timber industry and a long-term management program to protect key fish and wildlife habitat and subsistence resources. This will provide for timber employment on a sustainable basis, but not harm more important industries.

SEACC recognizes that long-term employment in the timber industry should continue. However, far flung road building efforts and extensive cutting in scattered drainages must cease. We cannot support the funding for pre-roading and below-cost sales. These practices must be replaced by the thinning and harvesting of second-growth forests in areas that have already been logged, and by greatly lowering the harvest level of nonrenewable old-growth forests. The timber industry should be allowed to restructure itself in a free market, unfettered by distorting government subsidies.

As forest expert, Tom Barlow, pointed out:

> *Most of the virgin forest, especially high-volume areas, should remain unlogged for wildlife and fisheries protection. For Southeast, these untouched forest zones on federal lands will be even more important for habitat as timber harvesting proceeds on private Native holdings. This better future will not come without firm resolve and much hard work. On the course now so firmly set by Congress, the volume of timber cut in the ancient coastal rain forests will mount steadily and the number of acres being clearcut in Southeast will increase year by year. In a few short years most of the best of the world's rarest rain forest will be gone. And the American taxpayers will have paid handsomely to assure its passage to oblivion.*

The ANILCA language that allows Forest Service mismanagement of the Tongass National Forest can be rewritten by wise Congressional decisions today. The timber industry that utilizes the public's Tongass trees does not need the present level of timber supply. In fact, the two big mills controlling the Tongass timber industry are the ones who also want to continue control of the supply since they benefit directly from timber subsidies.

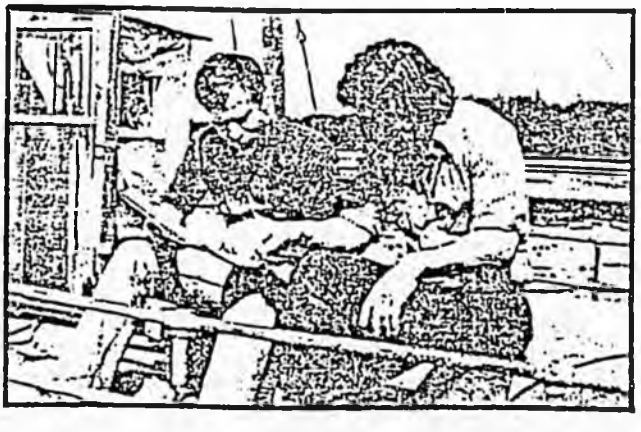
We urge the Forest Service to look back at its long and proud heritage as a conservation agency. The legacy of the Tongass is certainly not a credit to the Forest Service. Even if the agency persists in interpreting ANILCA Section 705 as a mandate, the Chief has the opportunity and ability to petition Congress to grant the Forest Service relief by repealing the Section 705 Tongass Timber Supply Fund language.

It is also time to break the domination of the two large, controlling mills and their outdated 50-year contracts. First Chief Forester Giffort Pinchot's policy for dealing with corporations should be enacted upon. His words ring especially true in the case of these contracts, "In the administration of the forest reserves it must be clearly borne in mind that all land is to be devoted to its most productive use for the permanent good of the whole people and not for the temporary benefit of individuals or companies." The Forest Service has the authority to cancel these contracts, and if the agency will not act, Congress should void the contracts in the public interest.

Finally, we hope that Congress will ensure, to mandate if need be, immediate and full compliance by the Forest Service with NFMA and NEPA in the Tongass Land Management Plan. Only through implementation of planning reforms can the Tongass successfully guide its own path.



Left: STRIVING FOR SOLUTIONS to Tongass timber management problems, Southeast citizens review maps. (Photo by Skip Gray)



Right: STRIVING FOR SOLUTIONS, SEACC's executive director, Bart Koehler (right), meets with Angoon fisherman, Gordy Williams. (Photo by Julie Kelly)


Conclusion

Previous page: The late DR. OLOF C. WALLMO, a Forest Service research scientist, studied Sitka black-tailed deer in the old-growth forests of Southeast Alaska.

CONCLUSION

The Tongass is our last great rain forest. It is our nation's largest, most magnificent public forest reserve. It is also the most threatened. Nothing can ever re-create this old growth forest as we know it today. The sooner resource managers face up to that fact and start looking at the long term impacts on the forest, the better off the public forest resources and the public will be.

In 1982 at a conference in Oregon, biologist Dr. O.C. Wallmo addressed the ecological aspects of managing old growth forests throughout the Pacific Northwest:

> *Over large areas, thousands of acres, the old-growth forest offers a multifarious mosaic of plant and animal habitats. Centuries are required for the fullest expression of that complexity...The forests that were logged when Weyerhaeuser moved in will be entering the old-growth stage when your great-great-great-great-great-grandchildren are looking for a place to hike and camp and listen to bird songs...As a member of society who ponders the question of who and how many benefit from the decimation of natural resources, I think it is in the general interest to preserve the remaining old-growth forests.*

Incredibly, the Forest Service contends that Southeast Alaska has not changed dramatically from the days when John Muir first explored this region in 1879. But, the facts and the record do show dramatic impacts. The Tongass National Forest has experienced profound changes since Muir wrote this passage about a special Tongass island: "Wrangell Island...like all its neighbors, is densely forested down to the water's edge with trees that never seem to have suffered from thirst or fire or the axe of the lumberman in all their long century lives. Beneath soft, shady clouds, with abundance of rain, they flourish in wonderful strength and beauty to a good old age...." This is hardly the Wrangell Island we see today.

Look far across the Tongass. Look from the Alaska mainland to the distant Forelands of Yakutat and to the islands of Zarembo, Kuiu, Baranof, Chichagof, and Prince of Wales that lie in between. As you look across this forest, you will see that the Tongass is in trouble, threatened by a logging industry that does not fit in with the delicate balance and harmony of life in this region.

The forces of the earth that created this great forest are timeless. But it is not too late to stop the destruction of this land. Congress has the power to turn this troubled national forest around; to help build a lasting stable economy for all the people of Southeast Alaska; to end waste, fraud and abuse of public money and resources; to bring balanced multiple-use management to the Tongass; and to ensure maintenance of those uniquely Alaskan qualities that make up life on the last frontier. Now is the time for Congress to act to change the course of the Tongass National Forest for the long-term benefit of the American people.

SEACC's Recommendations

To bring balanced multiple use to the Tongass, SEACC respectfully urges Congress to adopt the following measures:

A. Repeal ANILCA Section 705, thus eliminating the Tongass Timber Supply Fund and references to a 4.5 billion board foot per decade supply goal.

This will force the Forest Service to be cost-effective and accountable. It will allow free markets and other important resource needs to set the harvest level. This will, in turn, stop needless construction of roads and other facilities in roadless areas and stop the subsidy of timber mining. A more responsible timber management program will result.

B. Cancel the 50-year contracts and replace them by competitive bidding and short-term sales, and repeal Sec. 1315(e) of ANILCA.

APC and LPK could still buy timber, but would no longer dominate other timber operators or other resources or the Forest Service. APC and LPK would only buy what they could utilize instead of banking timber. This measure would allow greater flexibility for land allocations, competitive bidding, and the protection of key habitat areas and subsistence resources. It would also ensure the survival and future of independent timber operations. Many independent timber operators believe that abolishing ANILCA Section 705 without cancelling the contracts will not help because the two big mills would then just take the entire allotment.

C. Order immediate full revision of TLMP to comply with NEPA and NFMA and re-establish the applicability of Section 6(K) of NFMA to the Tongass.

This would bring Tongass planning into the 1980's. It would give the public its rightful say over public lands, and it would force the Forest Service to be accountable, justify plans, and explain assumptions. This measure would also require the Forest Service to consider economic feasibility when planning timber sales, thereby reducing Tongass timber program losses.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF GOVERNMENTAL COORDINATION

BILL SHEFFIELD, GOVERNOR

CENTRAL OFFICE
POUCH AW
JUNEAU, ALASKA 99811-0165
PHONE: (907) 465-3562

SOUTHEAST REGIONAL OFFICE
431 NORTH FRANKLIN
POUCH AW, SUITE 101
JUNEAU, ALASKA 99811-0165
PHONE: (907) 465-3562

SOUTHCENTRAL REGIONAL OFFICE
2600 DENALI STREET
SUITE 700
ANCHORAGE, ALASKA 99503-2798
PHONE: (907) 274-1581

NORTHERN REGIONAL OFFICE
675 SEVENTH AVENUE
STATION H
FAIRBANKS, ALASKA 99701-4596
PHONE: (907) 456-3084

October 3, 1985

Mr. Michael A. Barton
Regional Forester, Alaska Region
U.S. Department of Agriculture
Forest Service
P.O. Box 1628
Juneau, AK 99802

Dear Mr. Barton:

Enclosed for insertion in the 1985 report to Congress on the status of the Tongass National Forest are the VIEWS OF THE STATE OF ALASKA: THE EFFECTS OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT AND ITS IMPLEMENTATION ON SOUTHEAST ALASKA. You have already received the State's page-specific comments resulting from its review of your July 19, 1985 draft report.

We appreciate the opportunity which Congress has given the State of Alaska and the others identified in ANILCA Section 706 (c) to participate in this important report. We also appreciate the efforts which you and your staff have made to keep us informed and involved in the process of report preparation. We look forward to reviewing the completed report which will contain the views of the other Section 706 (c) participants, and your summary findings and conclusions. Thank you for giving us this opportunity to review the implementation of ANILCA.

Sincerely,

Robert L. Grogan
Director

Enclosure

cc: Governor Bill Sheffield, Juneau
Senator Ted Stevens, Washington, DC
Senator Frank Murkowski, Washington, DC
Representative Don Young, Washington, DC
Commissioner Wunnicke, DNR, Juneau
Commissioner Collinsworth, DFG, Juneau
Commissioner Ross, DEC, Juneau

01-A35LII

cc continued: Commissioner Lounsbury, DCED, Juneau
Commissioner Nordale, Reveneu, Juneau
Commissioner Notti, DCRA, Juneau
Commissioner Robison, Labor, Juneau
Commissioner Knapp, DOTPF, Juneau
Attorney General Brown, Law, Juneau
John Katz, Special Counsel, Washington DC
Vernon R. Wiggins, Federal Co-Chairman, ALUC, Anchorage
Robert Loescher, Sealaska Corporation, Juneau
James F. Clark, Robertson, Monagle, Eastaugh, and Bradley, Juneau
Bart Koehler, SEAAC, Juneau
Cass Elliott, United Fishermen of Alaska, Juneau
Gordon Williams, Southeast Alaska Regional Fish and Game Council, Angoon

nb85100301cle

VIEWS OF THE STATE OF ALASKA:

THE EFFECTS OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT AND ITS IMPLEMENTATION ON SOUTHEAST ALASKA

Prepared in accordance with Section 706(b)
Alaska National Interest Lands Conservation Act of 1980,
P.L. 96-487

State of Alaska
October 1985

Juneau, Alaska

October 1985

VIEWS OF THE STATE OF ALASKA:

THE EFFECTS OF ANILCA AND ITS IMPLEMENTATION ON SOUTHEAST ALASKA

As a participant named in Section 706(c) of the Alaska National Interest Lands Conservation Act of 1980 (Public Law 96-487), the State of Alaska has cooperated and consulted with the U.S. Forest Service in its preparation of a report to Congress on the status of the Tongass National Forest. In addition to reviewing and commenting on the Forest Service draft report dated July 19, 1985, the State has prepared this document which represents its views. After describing the State's interest in federal management of the Tongass National Forest, and the evolution of a timber industry which arose from early federal decisions, the purpose of the report required by Section 706(b) of the Act is described. A section which summarizes the State's views and recommends certain actions by Congress and the U.S. Forest Service precedes discussions of the four topics specifically identified for study by Congress: timber harvest levels, small businesses in the dependent industry, impacts of wilderness designation, and fish and wildlife protective measures.

1. INTRODUCTION

The State of Alaska was an active participant during the legislative process which culminated in the 1980 enactment of the Alaska National Interest Lands Conservation Act (ANILCA). The State of Alaska remains interested in federal implementation of this landmark legislation in the Tongass National Forest. This interest arises from the fact that the Forest Service, despite Congressionally authorized land grants to Alaska Natives and the State, is still the dominant land manager in southeast Alaska.

Alaskans residing in many communities of southeast Alaska are, to a high degree, directly or indirectly dependent on the natural resources which are managed by the Forest Service or may be affected by management of the Tongass Forest. These include people employed in the timber industry as loggers, road builders, and mill workers, commercial fishermen and fish processors in the major regional fisheries, people engaged in the tourism industry, those who use fish, game, and plant resources for subsistence purposes, and many others who are sport hunters and fishermen. Because of this dependency, the State of Alaska will continue to have a high degree of interest in Forest Service implementation of ANILCA, and the management decisions affecting the resources and residents of this coastal region.

In the Tongass National Forest, Congress had to deal with an extremely complex situation. Despite many years of effort by various national and local conservation and environmental interests no Congressional protection had been given to wilderness values in the Nation's largest national forest by the mid-1970's. Although the Forest Service had administratively set aside some land in its natural state for recreation and other non-consumptive uses, these actions were considered inadequate by many.

Very early in the history of the Tongass Forest, Forest Service officials attempted to create a timber industry in the region which would enhance community stability and provide more year round employment for Alaska residents. Congress has acted several times to affirm this social objective. More than 30 years ago, as a result of Forest Service efforts, long-term timber sale contracts were awarded with a requirement that trees harvested from the Tongass receive primary processing before leaving Alaska. Pulp mills were located in Ketchikan and Sitka, and sawmills were subsequently constructed in several communities to convert higher quality logs into squared cants (which could be further manufactured in Japan). In many of these communities, the arrival of the forest products industry meant the addition of a major new contributor to the local economy.

Thus, faced with an existing mature timber industry established through the early efforts of the federal government, Congress sought to craft a unique compromise solution which would maintain employment in that industry while responding to a national desire for wilderness, and assuring that other resource values, and other public uses, would be protected on nonwilderness land.

In designating over five million acres of the Tongass as Wilderness, Congress also implicitly recognized and confirmed the long-standing social objective of the Forest Service's Tongass timber program by providing for the maintenance of employment in the timber industry which was dependent on national forest timber supplies. This employment objective was to be achieved by ensuring a timber supply of 4.5 billion board feet per decade. Recognizing that some of this timber would need to be harvested from economically and technologically marginal lands, Congress exempted the Tongass Forest from the provisions of Section 6(k), National Forest Management Act (which generally precludes National Forest land not suitable, by reason of physical, economic and other pertinent factors, from timber harvesting and production), and provided an unprecedented funding mechanism (a continuing appropriation of $40 million

or more per year as needed which was not subject to rescission or deferral) to ensure the necessary timber supply.

An expression of Congress' finding at the conclusion of ANILCA deliberations is contained in Section 101(d):

> This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at th same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.

2. PURPOSE OF THE REPORT REQUIRED BY ANILCA SECTION 706(b)

The State described its understanding of the purpose of the report to Congress in a letter to the Forest Service dated August 31, 1984 as follows:

> The 1985 report (and subsequent reports) should inform Congress and the public about the status of the Tongass following passage of ANILCA and its implementation. In considering the establishment of wilderness areas in the Tongass National Forest, Congress gave unprecedented recognition to the other competing demands on the forest. Chief among these was its concern for the maintenance of employment in the timber industry dependent on national forest timber. This concern was expressed by ensuring adequate federal funding to provide a specified timber supply to the dependent industry while providing for other public uses of the Tongass and protection of other resource values consistent with federal law.
>
> We think that the report should describe how well the balance which Congress sought is working. If achievement of that balance

requires further legislative action, the mandated reports to Congress should provide a factual basis for such action. If the balance can be accomplished without Congressional intervention, the public and Congress should be informed of Forest Service measures to attain that balance.

The legislative history of ANILCA is clear in its recognition that some information provided to it by the Forest Service, and several assumptions used in crafting the compromise solution, might be subject to correction or revision as time passed, or as a better understanding was gained of economic, social and biological relationships. As a result of potentially incorrect assumptions, or poorly understood relationships, full implementation might be difficult or produce undesirable consequences. This recognition of uncertainty is part of the basis for the reporting requirement of Section 705(b).

3. SUMMARY AND RECOMMENDATIONS

A complete evaluation of Congress' legislative solution to accommodate competing demands for the Tongass National Forest is not possible at this time because the provisions of Section 705 have not been fully implemented by the U. S. Forest Service. Congress fixed the amount of Tongass Forest which would be preserved for future generations in Wilderness, and by providing a unique funding provision to assure a timber supply, intended to maintain employment in the existing timber industry. Congress' employment objective has not been met.

The timber supply was to come from lands not set aside as Wilderness, and included land which was not suitable for timber harvest for economic and technological reasons. To assure that sufficient timber was provided which would maintain timber industry employment, a continuing appropriation of $40 million (or as much as was necessary to achieve the employment objective) was made available to the Secretary of Agriculture. It is the State's position that the executive branch of the federal government has failed to properly implement this funding provision over most of the past five years since ANILCA's enactment, both in terms of amounts of money, and in the manner utilized. The State also believes that the Forest Service, by its failure to properly implement ANILCA Section 705, and by its failure to fully implement the Tongass National Forest Management Plan adopted in 1979, has jeopardized the economics of future timber harvesting and State wildlife and fisheries resources. The State urges Congress to conduct its own

investigation of the Forest Service's implementation of ANILCA, and the validity of Tongass Land Management Plan assumptions and information which were utilized by Congress during ANILCA deliberations. To assist Congress in its consideration of the status of the Tongass National Forest following enactment of ANILCA, and the U. S. Forest Service in fulfilling its obligations and commitments, the State of Alaska recommends the following:

Recommendations to Congress

1. Congress should conduct its own inquiry into the implementation of ANILCA Section 705 and the issues raised by the State relative to Section 706.

2. A Congressional inquiry into ANILCA implementation should include consideration of the assumptions and information of TLMP which were utilized during its deliberations. These would include the following:

   a. the extent to which employment losses in the timber industry, which is dependent on national forest timber supplies, are caused by Forest Service funding shortfalls, improper utilization of available ANILCA funds, and uneconomic timber supplies;

   b. the extent to which the export of round logs from Native-owned land in Alaska is displacing the export of cants manufactured from national forest timber;

   c. the extent to which Forest Service implementation of ANILCA and TLMP is causing, or is likely to cause, unacceptable adverse impacts to the State's fish and wildlife resources and public uses of the Tongass National Forest.

Recommendations to the Forest Service

1. The Forest Service should provide funds as intended by Congress for the construction of roads for access to economically and technologically marginal stands, advanced logging technology, and precommercial thinning sufficient to maintain employment in the dependent timber industry.

2. The Forest Service should immediately implement the loan program intended by ANILCA Section 705(b).

3. The Forest Service should apply funds for preroading purposes to roads which will most efficiently access economic timber, in areas where timber harvest is imminent, and in a manner which will protect other resource values as provided by law and adopted management plans.

4. The Forest Service should, in reporting to Congress on timber supply from the Tongass Forest, describe what portion of the supply considered to be "made available" is actually economic to harvest.

5. One use of Tongass Timber Supply funding should be to protect high-value fish and wildlife areas by improving the economics of sales in areas of low habitat value.

6. The Forest Service should foster increased employee understanding of the Tongass Land Management Plan to ensure full and consistent implementation.

7. The Forest Service should continue working with the timber industry to reduce logging costs where appropriate, while assuring that cost reductions will not impair, or adversely impact, other resource values and public uses in the Tongass National Forest.

8. The Forest Service should ensure that adequate funding is provided to permit an increased level of implementation and monitoring of measures to protect fish and wildlife resources.

9. The Forest Service should conduct, on a routine basis, the standardized project-level monitoring and reporting on measures implemented to protect water quality, with special emphasis on watersheds which are sources of public drinking water.

10. The Forest Service should report to Congress the effectiveness of its measures to protect fish and wildlife in the Tongass Forest.

11. The Forest Service should identify and schedule additional permanent retention acreage for fish and wildlife habitat to compensate for the acreage of unregulated timber that has been harvested and the acreage that has not been placed under extended rotation scheduling to meet visual quality objectives.

12. The Forest Service should conduct life-of-the-sale and life-of-the-rotation planning to identify retention acreage for fish and wildlife and to analyze the

cumulative effects of options for multiple entries and/or sale lay-outs.

13. Management Area Analysis which is the intermediate level of planning between TLMP and project plans should be fully implemented as a second tier of NEPA review.

14. The Forest Service should analyze the effects of timber harvest deferral beyond 1989 of those areas that DFG has identified as being of high value for fish and wildlife.

15. Mitigating measures which are of a short-term effectiveness or the effectiveness of which has not been demonstrated should be described and treated as such during analyses of impacts.

    Specifically, pre-commercial thinning, commercial thinning, prescribed burning, slash treatment, and management of large woody debris in or adjacent to streams should be considered experimental measures until their effectiveness is demonstrated.

    The usefulness and limitations of various models being used, or proposed for use, in forest planning should be described.

16. Logging system and transportation analyses should be conducted prior to pre-roading and options should be considered to reduce impacts on fish and wildlife and to maintain the types of hunting and fishing opportunities desired by the public.

17. Planning for snag management and retention of residual groups of trees should occur.

18. The Forest Service should carefully evaluate its practice regarding harvesting of unregulated, oversteepened slopes to see if these practices are in conformance with TLMP and the NFMA.

19. The Forest Service should give full consideration to all feasible mitigation measures to protect the esthetic importance of high value sport fishing areas.

20. The Forest Service should ensure complete protection of the biological productivity of all fish streams in conformance with NFMA.

21. The Forest Service should, in delineating areas for retention, consider maintaining undisturbed buffers

around the nest areas of certain other raptor species such as osprey and peregrine falcon, in addition to eagles.

22. The Forest Service should monitor and keep records of:

    a. Retention acreage - to be mapped and permanently removed from the timber base per the TLMP assumption.

    b. Wildlife Habitat Management Units and Fisheries Habitat Management Units and their prescriptive management.

    c. Management of habitat for Management Indicator Species (assuming that selection occurs per NFMA requirements).

    d. Decisions to harvest leave strips retained for fish and wildlife.

    e. Decisions to permit harvesting adjacent to clearcuts in which regrowth has only reached five feet in height.

    f. The status of regrowth habitat on the TNF; the distribution, juxtaposition, and ages of stands.

    g. Fish and wildlife habitat management results in the context of acres harvested, acres to which effective mitigation treatments have been applied, acres to which experimental mitigation treatments have been applied, and expected duration of mitigation.

23. The Forest Service should include Alaska in its Old-Growth Forest Wildlife Habitat Research and Development Program and initiate cooperative research to further describe vertebrate community ecology, species-specific habitat requirements, and the island ecology of the region's old-growth forests.

24. Standardized, comprehensive project-level monitoring and reporting on measures implemented to protect fish and wildlife resources should be conducted.

25. The monitoring requirements in NEPA documentation for individual plans and projects should be fulfilled.

26. The Forest Service should develop a consistent approach to conducting subsistence evaluations of its planned timber harvesting and associated activities as required by Section 810, ANILCA, and should utilize guidance of

the Alaska Land Use Council, and the DFG Subsistence Division.

4. TIMBER HARVEST LEVELS

> This report shall include...the timber harvest levels in the forest since the enactment of this Act... (ANILCA Section 706(b))

The declining harvest of national forest timber in the five years following enactment of ANILCA has been well documented. This dramatic decline has been attributed by the Forest Service to reduced market demand and displacement of cant sales by round log exports from private lands. The Secretary of Agriculture, in each of the annual reports required by Section 706 (a) on timber supply and demand, has reported to Congress that "the available land base in the Tongass National Forest...is adequate to maintain the timber supply...to the dependent industry at a rate of 4.5 billion board feet per decade."

The State of Alaska emphatically does not agree with that conclusion, and urges the Congress to conduct its own investigation of Forest Service performance in maintaining employment in the dependent industry. Although the State agrees that the available land base appears to have the silvicultural potential to sustain a timber harvest of 4.5 billion board feet per decade, the State does not agree that this land base is adequate to provide an economic timber supply, in the absence of adequate ANILCA funding, without severely impacting fish and wildlife habitat. At the level of funding which the Forest Service has obtained in recent years (pursuant to ANILCA Section 705 (a)) public investments in the Tongass Forest have fallen far short of Tongass Land Management Plan (TLMP) assumptions and the intent of Congress. A significant share of the land base identified in TLMP for timber production is not currently available to the dependent industry in an economic sense.

Several consequences arise from this investment shortfall, including a dependent timber industry forced to pay for public roads (to access deficit sales) which rightfully should be funded by the Forest Service, a disproportionate harvest of high volume stands (with implications for the future economic viability of timber harvest and impacts on important wildlife habitat), and attempts by the Forest Service to aid a distressed industry by emphasizing logging cost reductions, rather than offsetting with public investments the increased logging costs associated with marginal operations.

By providing an assured timber supply and funds to offset economic and technological marginality, Congress intended to maintain employment at historic pre-ANILCA levels in the timber industry which is dependent on the Tongass National Forest. Clearly, the Congressional objective has not been achieved. Southeast Alaska's timber industry, which is largely the result of early efforts by the federal government, has been in a severely depressed condition for the past several years.

Congress established the Section 705 funding provision based, in part, upon certain assumptions contained in the Forest Service's 1979 Tongass Land Management Plan. The ANILCA funding provided thus far has neither kept pace with inflation, nor TLMP objectives. If the full ANILCA funding were obtained and utilized as intended by Congress, and historic pre-ANILCA employment levels are still not achieved, then the solution which Congress devised in ANILCA would be demonstrably unworkable. As it stands now, we can only surmise the employment effects which full funding would achieve.

5. SMALL BUSINESSES IN THE DEPENDENT TIMBER INDUSTRY

> This report shall include...the status of the small business set aside program in the Tongass Forest. (ANILCA Section 706(b))

The Forest Service, in cooperation with the Small Business Administration (U. S. Department of Commerce), established a timber sale program well before the passage of ANILCA which was intended to give special recognition to small businesses. Qualifying small businesses were able to bid on national forest timber sales without competition from larger companies. They only had to bid against each other. The Forest Service's assessment of the status of the small business set-aside program occupies five and one-half pages of its draft report, and in the State's view, does not adequately describe this important program which was designed to help maintain the viability of small firms dependent on national forest timber.

As the SBA set-aside program is wholly administered by the federal government, it has the capability and the data to provide a much more informative status report. The State of Alaska believes that such a report should contain a detailed presentation of qualifying firms which existed prior to the passage of ANILCA, and the entry and departure of qualified firms subsequent to ANILCA (including a description of the factors which account for each change). The status of dependent small businesses, and their role in overall

employment in the dependent timber industry, should include a listing of the number of people which each qualifying firm has employed annually each year since 1979, the volumes purchased and actually harvested, and the mileage and value of contract-specified roads built by each firm with effective purchaser credits, and where purchaser credits were not effective.

6. IMPACTS OF WILDERNESS DESIGNATION

> This report shall include...the impact of wilderness designation on the timber, fishing, and tourism industry in southeast Alaska... (ANILCA Section 706(b))

A key component of Congress' interest in receiving Tongass status reports was the effect of its wilderness designations on timber, fishing, and tourism industries.

A. Timber Industry

The principal effect of wilderness designation on the timber industry was an acknowledged necessity to harvest timber on marginal land. The increased cost of providing access to, and operating in, such marginal lands was to be absorbed by the federal government. Expenditures were contemplated in road construction, advanced logging technology, and thinning of young timber stands to increase their future yield.

Harvesting of marginal stands has, however, fallen far short of TLMP objectives in terms of proportional amounts. While depressed market conditions and displacement of national forest products may account for a significant share of this shortfall, the failure of the Forest Service to provide sufficient ANILCA funding is also a significant factor. The Forest Service, in other words, is not willing to pay the price of Wilderness. This unwillingness has contributed to significant employment losses in the dependent timber industry, and an emphasis on logging cost reductions to relieve this economic distress. The State encourages consideration of additional cost cutting measures, but not at the expense of other resource values and public uses in the Tongass Forest.

B. Fisheries Industry

Wilderness designation, with the ANILCA provision which authorizes aquaculture facilities, has given assurance of long-term protection from management-induced hazards

to water quality and anadromous fish streams, as well as permitting enhancement potential.

Timber harvesting and associated activities outside of wilderness areas constitutes the greatest potential for management-induced risks to commercial fisheries. Neither short-term nor long-term cumulative effects of timber harvesting activities on water quality are clearly understood, since water quality monitoring is not carried out on a routine project-specific basis in the TNF. The Forest Service has stated its commitment to fully protect the biological potential of fisheries habitat in non-wilderness areas of the Tongass Forest. Measures instituted by the Forest Service to reduce logging costs have not, thus far, been demonstrated to be detrimental to the fisheries resource. There have, however, been measures proposed recently which concern the State. Enhancement of timber harvesting economics should come primarily from public investments as intended by Congress. The Forest Service noted that most problem areas which were identified in its 1984 evaluation of TLMP could have been resolved had "the full implementation of TLMP been more of an on-going Regional priority." As indicated below, the State believes that such implementation could have ensured a higher degree of fish habitat protection.

c. Tourism Industry

The Forest Service has concluded that Wilderness areas in the Tongass Forest have not yet evidenced any large scale increase in use and identifies several ingredients which are essential to facilitating increased recreation use. Many Alaskans and non-resident tourists utilize non-wilderness portions of the Tongass Forest for recreational purposes. This is, to some extent, a consequence of proximity and accessibility from existing communities, and the nature of the recreational activities. If timber harvesting and associated activities outside of designated wilderness areas proceeds according to TLMP assumptions, certain kinds of public recreational activities, including sport hunting, may be altered. To the extent that timber harvesting and road construction will occur in the Tongass Forest on land not considered prior to ANILCA to be part of the commercial forest base, recreational and tourism activities in these areas will be indirectly impacted by the passage of ANILCA.

7. FISH AND WILDLIFE PROTECTIVE MEASURES

> This report shall include...measures instituted by the Forest Service to protect fish and wildlife in the forest... (ANILCA Section 706(b))

The fish and most wildlife species which inhabit the Tongass National Forest, or utilize waters within or flowing from the forest, belong to the citizens of Alaska, and are managed for them by the Alaska Department of Fish and Game (DFG) in accordance with the State Constitution and statutes. Nonresidents also utilize these species as provided by State law. As a consequence, federal management of the Tongass National Forest as it affects the habitats of these State-managed resources is a matter of direct concern to the State and its residents. The potential for adverse impacts from timber harvesting and associated activities is usually greatest on those portions of the Tongass Forest which possess commercial timber values outside of designated Wilderness areas. The users of State fish and wildlife resources are negatively impacted to the extent that the habitats of these fish and wildlife are adversely affected.

The State considers the report which the Secretary of Agriculture will submit to Congress this December, and every two years thereafter (in accordance with Section 706(b) of ANILCA), as an important opportunity for the Forest Service to clearly indicate to Congress not only what has occurred on the Tongass Forest with regard to fish and game resources since passage of ANILCA, but to make recommendations for the future. Most importantly, the 1985 report should provide a clear and concise evaluation of the effectiveness of current Forest Service programs, and measures taken, to protect fish and wildlife. We find, however, that the Forest Service document which the State has reviewed does not fulfill these objectives.

The State has identified the following fish and wildlife issues as ones which should be considered by Congress: (1) the impacts of logging related alteration of old-growth habitats on wildlife, (2) the degree to which fish habitat protection measures have been implemented, (3) the degree to which those measures which have been implemented have been effective, and (4) the resulting effects of timber harvesting on commercial, sport, and subsistence users of the fish and wildlife resources of the Tongass National Forest (TNF).

Based on a detailed DFG analysis[1] of Forest Service management of the Tongass, the State concludes that the planned timber harvest will have adverse impacts on wildlife habitat in areas designated by TLMP for commercial forest management and will reduce yields from these areas to users in the course of the 100 year harvest rotation. Forest Service efforts to reduce costs and improve the economics of the currently depressed timber industry include measures that may accelerate adverse impacts on wildlife, and may not conform to habitat protection requirements provided for in TLMP and other Forest Service authorities. Reduction of standards designed to protect salmon habitat has been suggested as a means to reduce the costs of logging as well. While the State does support cost reductions, it does not support cost reductions that lead to increased adverse impacts on fish, wildlife, or water quality. Any additional enhancement of timber harvest economics should come from ANILCA funds as intended by Congress.

The potential long-term adverse impacts of clearcut logging on the fish and wildlife species in the region have been particularly well documented for the Sitka black-tailed deer and rearing salmon and trout. Simply stated, old growth stands of timber consist of trees of all ages and contain openings where large trees have fallen and browse plants have temporarily taken advantage of available sunlight. The close juxtaposition of large trees that can intercept snowfall and browse plants that provide food can sustain deer through harsh winter months. This old growth forest condition can, in southeast Alaska's damp maritime climate (where forest fires are neither common nor widespread), perpetuate itself for indefinite periods. Moreover, these two important characteristics of snowfall interception and browse availability have not yet been demonstrated to result from even the most intensively managed second growth timber stands.

Research also indicates that adverse impacts can be exp cted for moose, black bear, brown bear, mountain goat, marten, wolf, land otter, cavity-nesting birds, and other bird and small mammal species requiring aspects of old-growth forest.

---

[1]Status of measures to protect fish and wildlife in the Tongass National Forest: A Report on Section 706(b) of the Alaska National Interest Lands Conservation Act. Preliminary copy prepared by the Alaska Department of Fish and Game, August 30, 1985.

With some limited exceptions, no timber harvest related measures have been developed or implemented, since enactment of ANILCA or adoption of TLMP, that have the demonstrated ability to mitigate long-term wildlife habitat losses. Although measures to protect fish habitat have been more successfully implemented, many are currently proposed for revision to reduce logging costs and may result in reduction of fish habitat protection. Identification of high-value fish and wildlife areas has often occurred during timber sale planning, but protection of the areas through retention[2] as undisturbed habitat has not occurred on the majority of the TNF where timber harvesting is being scheduled. Despite TLMP commitments to long-term retention for fish and wildlife habitat, project planning has usually failed to provide consideration of long-term retention when making available a specific volume of timber for harvest.

Outside of Congressionally designated Wilderness areas, the key decisions that have the most far reaching implications on the extent and rate of adverse impacts are: (1) the annual harvest target, (2) the emphasis on harvest of high-volume timber stands out of proportion to their occurrence on the TNF (both in TLMP and in a recent decision

---

[2]The concept of wildlife habitat retention on the Tongass National Forest was first discussed in the 1977 Southeast Alaska Area Guide which required Wildlife Habitat Management units (WHMU) to be developed by an interdisciplinary team (IDT) for all land use proposals. These WHMU would include the identification of "areas retained in natural conditions" (Forest Service. 1977. Southeast Alaska Area Guide. Alaska Region, Juneau. 280 pp.)

Permanent retention of old-growth habitat was the major wildlife habitat mitigation measure discussed in TLMP and incorporated into the TLMP harvest schedule (Forest Service. 1979. Tongass Land Management Plan Final Environmental Impact Statement, Part 1. Alaska Region, Series No. R10-57, Juneau.) About 273,000 acres of operable commercial forest land (CFL) in LUD III and IV areas were excluded from timber harvest scheduling in the development of TLMP harvest calculations in order to protect visual quality and fish and wildlife habitat (Forest Service, 1979, Forest Service. 1984. Tongass Land Managmenet Plan Evaluation Report. Alaska Region, Admin. Doc. No. 139, Juneau. 166 pp.) The amount equals about 30 percent of the operable CFL in LUDs III and 13 percent in LUDs IV (Forest Service 1979). Specific retention percentiles were developed for bear, eagle, moose, goat, upland bird, furbearer, wolf, and waterbird habitat (Forest Service 1979, 1984).

to exceed the ratios specified in TLMP for the first decade), and (3) accelerated rates of pre-roading of permanent roads in areas where timber harvest is not imminent. TLMP assumptions concerning portions of the commercial forest land base available or reserved from harvest and the implementation of extended rotations usually have not been considered in project or Management Area Analysis (MAA) planning which may alter the ability of the TNF to sustain the TLMP timber harvest without significantly greater logging of high-value fish and wildlife areas. The most significant procedural failings are the (1) lack of long-term (life-of-the-rotation) planning, and (2) lack of cumulative impact analysis on both the long-term and management area basis.

The fish and wildlife resources of both wilderness and nonwilderness portions of the Tongass are vital to commercial fishing and guiding industries and contribute to support industries and the suitability of the region for a growing tourist industry. Many residents of the region depend heavily on the resources for food and recreation, with dependence on fish and deer that is particularly high in the many small communities. Long-term reductions in opportunities to harvest or enjoy fish and wildlife will occur in areas subject to timber harvesting as a result of that timber harvest and associated development. Where habitat losses are significant, yields may likely be reduced in some areas of the Tongass to levels below which harvest of certain species can be sustained. The State is very concerned that it will not be able to manage fish and wildlife on a sustained yield basis, and that these resources may not be available for maximum use consistent with the public interest. Moreover the State is concerned that it will not be able to "manage, protect, maintain, improve, and extend the fish, game, and aquatic resources of the state" as required by statute.

The State of Alaska depends upon the expertise of DFG regarding the relationships between timber harvest and habitat management and believes that the conclusions drawn in the DFG report (see footnote on page 15) must be adequately considered and dealt with as the report becomes finalized.

nb85092702cle

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 18, 1986

The Honorable Richard E. Lyng
Secretary
Department of Agriculture
Room 200-A
Fourteenth Street and
Independence Avenue, SW
Washington, DC 20250

Dear Mr. Secretary:

Congratulations on your recent appointment as Secretary of Agriculture. I am sure that the current farm crisis is demanding much of your attention, as is responding to the new constraints of deficit reduction legislation. In Alaska, we, too, are coping with fiscal constraints which are imposed by a major drop in the state's oil revenues.

I would like to acquaint you with some issues which concern many Alaskans. As you know, your Department recently submitted a report to Congress on the status of the Tongass National Forest in southeast Alaska. The report, which is required by Section 706(b) of the Alaska National Interest Lands Conservation Act (ANILCA), includes a section contributed by the State of Alaska that disagrees substantially with some of the conclusions reached by your agency. Unfortunately, the report's executive summary, which was submitted to Congress in advance of the full report, does not acknowledge the disagreement. A copy of the state's contribution is enclosed for your information. It contains more than two dozen recommendations to Congress and the Forest Service, many of which deal with the use of ANILCA Section 705 funding or inadequate implementation of existing Forest Service directives to protect fish and wildlife habitat. I encourage you to examine these recommendations. Efforts in Alaska to resolve the disagreement have been largely unsuccessful. I am writing to express my interest in making another attempt at resolving these issues administratively before Congress completes its review of your report. Below, I briefly describe the background of this problem and identify the issues upon which I believe we should focus.

BACKGROUND

In the southeast region of our state, the timber industry is in a depressed and weakened condition. Many Alaskans who have been employed for years in harvesting and processing trees from the Tongass National Forest are out of work, and mills have been shut down or are operating at reduced capacity.

Southeast Alaska's timber industry became established largely as a result of Federal government efforts beginning more than 40 years ago. With the passage of ANILCA in 1980, Congress set aside nearly 5.4 million acres of the Tongass Forest as national monuments and wilderness areas. In recognition of the preexisting public uses of the Tongass and the dependency of southeast Alaska residents on many resources of the forest, Congress also authorized a unique funding provision in Section 705 of ANILCA.

The Secretary of the Treasury is authorized and directed by Congress to make available to the Secretary of Agriculture at least $40 million annually, or as much as the Secretary of Agriculture finds is necessary, to maintain the Tongass Forest timber supply at a prescribed rate for the dependent industry. Congress's objectives in Section 705 were to maintain employment in the dependent timber industry of southeast Alaska at pre-ANILCA levels, while ensuring that other resource values and public uses would be protected on nonwilderness land in accordance with Federal law and the Tongass Land Management Plan (TLMP).

CONGRESSIONAL OBJECTIVES UNMET

Timber Industry Employment - It is the State of Alaska's view that the congressionally sanctioned employment objective has not been achieved, even though the Forest Service seems to believe that it has met its obligations under Section 705 by making available an average of 450 million board feet of timber per year. If the employment objective is to be achieved, the timber which the Forest Service supplies to the dependent industry must be economically feasible for the purchaser to harvest. It does little good to make timber available which no one can afford to purchase. Such timber is not available in an economic sense and does not contribute to maintaining employment in the timber industry as Congress intended. Unquestionably, adverse market conditions have had a depressing effect upon the industry which depends on Tongass National Forest timber. However, the framers of ANILCA understood, based in part on the Forest Service's TLMP, that such market fluctuations could be expected and that offsetting public investments in the Tongass Forest would be necessary to counter these cyclic events.

One of the most effective and appropriate means of countering current market conditions would be to use ANILCA funding to pay for necessary timber access roads. When constructed, these roads become the property of the Federal government and are available for future uses. Under prevailing depressed markets, purchasers are not being compensated for their construction of access roads required by the timber sale contracts. The State of Alaska believes that ANILCA funds should pay for needed timber access roads through Forest Service contracted construction or through equitable compensation to timber purchasers for construction costs which they reasonably incur. This will bring much relief to the timber industry.

By not adequately funding those measures which would achieve congressional objectives, the Forest Service and the Department of Agriculture are contributing to the demise of the timber industry as it existed prior to ANILCA and to the detriment of other values and uses of the Tongass Forest.

Protection of Other Resource Values and Public Uses - The fish and wildlife species which inhabit the Tongass National Forest, or utilize waters within or flowing from the forest, are managed by the State of Alaska. As a consequence, federal management of the Tongass National Forest, as it affects the habitats of these state-managed resources, is a matter of direct concern to the state and its residents. The potential for adverse impacts from timber harvesting and associated activities is usually greatest on those portions of the Tongass Forest outside of designated wilderness areas which possess commercial timber values. It is from these areas, by reason of proximity to communities, that the majority of fish and wildlife harvesting occurs. While some habitat impact is unavoidable in pursuing timber harvest objectives, this impact must be consistent with the habitat protection provided for by TLMP, applicable law, and, where appropriate, relevant standards of the Alaska Coastal Management Program. The state believes that the Forest Service, by not properly implementing Section 705 and TLMP, may be jeopardizing the wildlife and fisheries resources in the Tongass Forest which the state manages.

The state's major concerns for the fish and wildlife resources of the Tongass Forest include: (1) the impacts of logging-related alteration of old-growth forest habitats on wildlife, (2) the degree to which habitat protection measures have been implemented by the Forest Service, (3) the effectiveness of those measures which have been implemented, and (4) the resulting effects of timber harvesting on commercial, sport, and subsistence users of the fish and wildlife resources of the forest. The recommendations presented in the enclosure are intended to ensure that these concerns are adequately addressed.

We support Forest Service measures to reduce logging costs as a means of improving the economics of timber harvesting. Cost-saving measures implemented thus far have not accelerated adverse impacts on fish and wildlife, but some recent Forest Service proposals may increase these impacts to an unacceptable level. The economics of timber harvesting should not be further enhanced by risking such adverse impacts but rather should be accomplished through the use of ANILCA funds as intended by Congress.

THE NEED TO FULLY IMPLEMENT SECTION 705 OF ANILCA

If the solution which Congress devised to accommodate competing demands in the Tongass Forest has shortcomings, we can never know the full nature or extent of such shortcomings until you fully utilize the funding provisions of Section 705. Congress enacted these provisions to achieve its multiple objectives in the Tongass National Forest.

The primary national interest in the timber program of the Forest Service in southeast Alaska was, and remains, the establishment and maintenance of year-round employment and community stability. This was to be accomplished within the context of the Forest Service's multiple-use mandate and the continued use and protection of other resource values of the Tongass Forest in accordance with applicable laws and TLMP. Congressional objectives for the Tongass were so important that an unprecedented method was created to ensure their achievement. If it is necessary to reallocate Federal funds to accomplish these objectives, we believe that you have both the authority and the obligation to do so.

I would appreciate your views on these important matters prior to the commencement of congressional oversight hearings which may be scheduled next month. Thank you for your consideration of the state's position.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

Enclosure

cc: Senator Ted Stevens
Senator Frank Murkowski
Senator James McClure
Congressman Don Young
Congressman Morris Udall
Assistant Secretary Peter Myers
Department of Agriculture
Deputy Assistant Secretary Douglas MacCleery
Department of Agriculture
Associate Director Randall Davis
Office of Management and Budget
Regional Forester Michael Barton
Department of Agriculture
Attorney General Hal Brown
Department of Law
Commissioner Don Collinsworth
Department of Fish and Game
Commissioner Richard Knapp
Department of Transportation
and Public Facilities
Commissioner Loren Lounsbury
Department of Commerce and
Economic Development
Commissioner Bill Ross
Department of Environmental
Conservation
Commissioner Esther Wunnicke
Department of Natural Resources
Mr. John Katz
Office of the Governor
Mr. James Clark
Robertson, Monagle and Eastaugh
Mr. Bart Koehler
Southeast Alaska Conservation Council
Mr. Robert Loescher
Sealaska Corporation
Mr. Jack Cadigan
United Fishermen of Alaska
Mr. Gordon Williams
Southeast Alaska Regional Fish
and Game Council

State of Alaska
Cochairmen, Resource Committee
Representatives:
Richard Shultz,
Aldelheid Herrmann
Juneau, AK 99802

April 25, 1986

Re: HRJ 75

Honorable Representatives:

I submit this letter in reference to HRJ 75 which is soon to be considered by the House Resource Committee. I represent myself and fellow residents of Southeast Alaska.

Line 14: I believe the word "mandated" is incorrect and misleading. The chief of the US Forest Service has testified in Congressional Hearings that Section 705 of ANILCA "certainly does not mandate a harvest." US Congressman James Weaver has testified that ANILCA does not say that the Forest Service must provide 450 billion board feet per decade, only that the money will be made available when the the harvest is up to that level on the Tongass. Therefore the word "suggested" would be better suited than "mandated."

Line 16: As an Alaskan resident and US taxpayer, I do not support the expenditure of $40 million (or more) of tax dollars for subsidizing an industry which is controlled by foreign interest and is driving out smaller local competition. This is especially true in times of extreme Federal deficit, supposedly austere government budgets at all levels, and non-interference by the government with the workings of the free enterprise market. I strongly urge our Representatves not to support the Tongass Timber Supply.

Lines 23-25: I support the resolution for hearings on the subject to be held within the State of Alaska but suggest additional language to encourage a hearing to be held in Southeast Alaska which will be most affected.

Thank you for your consideration in this matter.

Respectively yours,

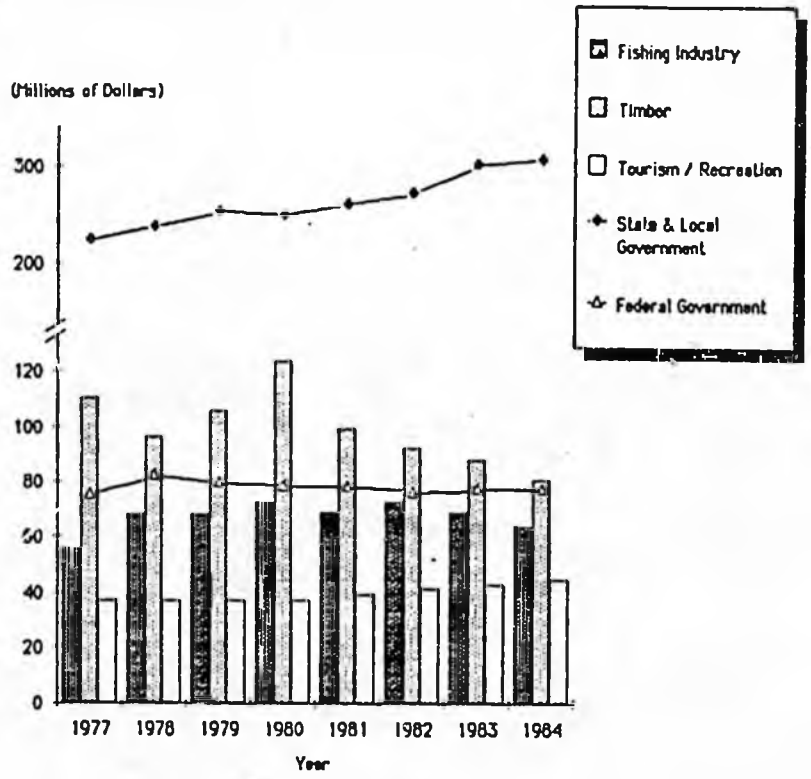
Don Williamson

Don Williamson
PO Box 211328
Auke Bay, AK 99821

cc: House Resource Committee Members

Figure 2.2

Direct Earnings[a] by Sector[b] in Southeast Alaska, 1977–84



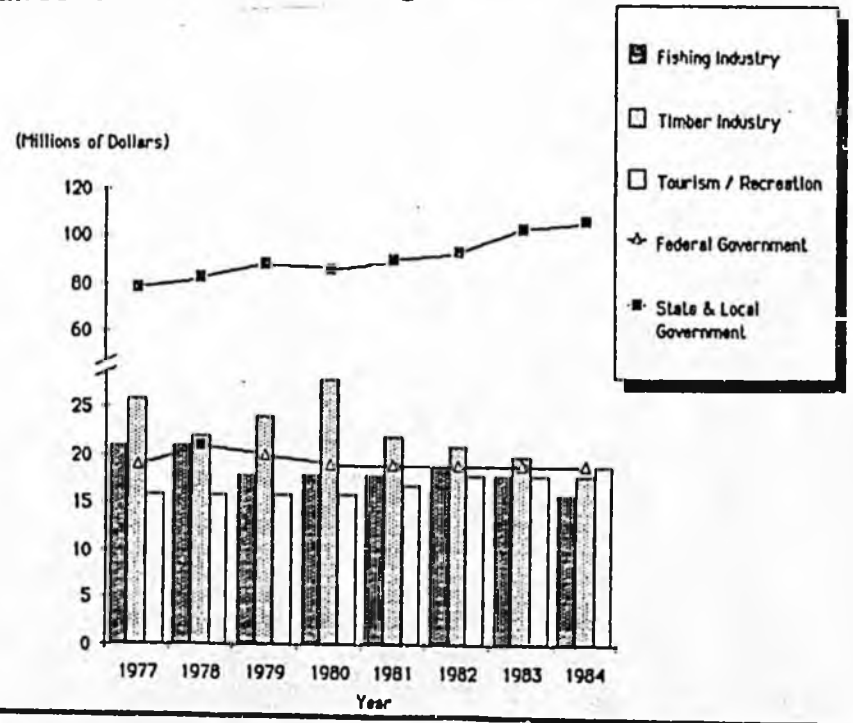
[a]All earnings have been converted to 1985 dollars using the GNP Implicit Price Deflator for first quarter, 1985.

[b]Timber industry includes forestry consulting, logging, sawmills and pulpmills. Fishing industry includes commercial harvesting and seafood processing. Tourism/Recreation includes a composite of visitor-related industries. Government includes State/local and Federal administration and enterprises. Earnings from fish harvesting are estimated at between 40 and 57 percent of the annual gross receipts to fishermen. See: *The Alaska Fishing Industry: An Overview of State Expenditures and Economic Benefits,* Alaska State Legislature: House Research Agency Report No. 81-4, January, 1982, for a discussion of the problems of estimating harvest earnings.

Source: Direct levels are from historical data from the Alaska Department of Labor and simulations using a Forest Service input-output model, IPASS.

Figure 2.4

Associated Indirect and Induced Earnings[a] in Southeast Alaska, 1977–84

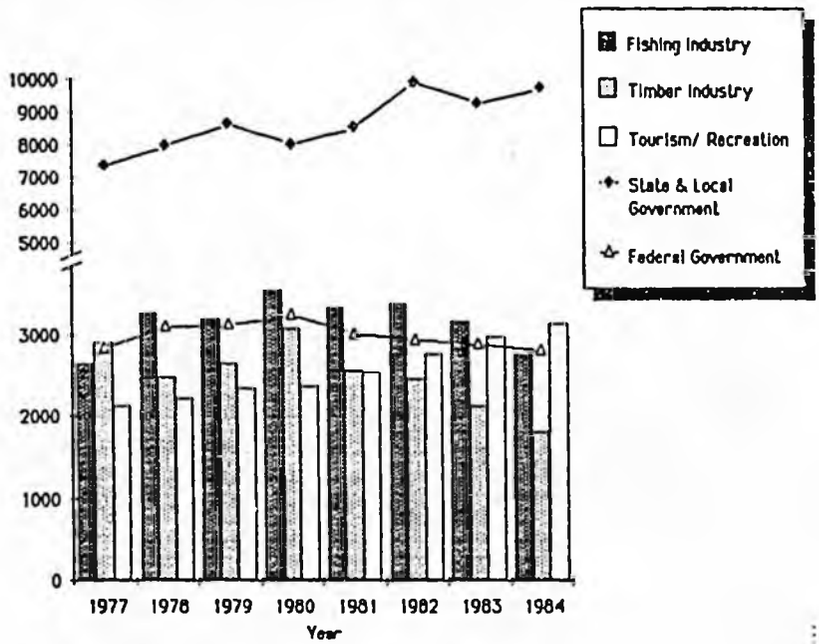


[a]All earnings have been converted to 1985 dollars using the GNP Implicit Price Deflator for first quarter, 1985.

Source: Associated indirect and induced earnings are estimated from IPASS.

Figure 2.1

Direct Job Numbers[a] by Sector[b] in Southeast Alaska, 1977–84



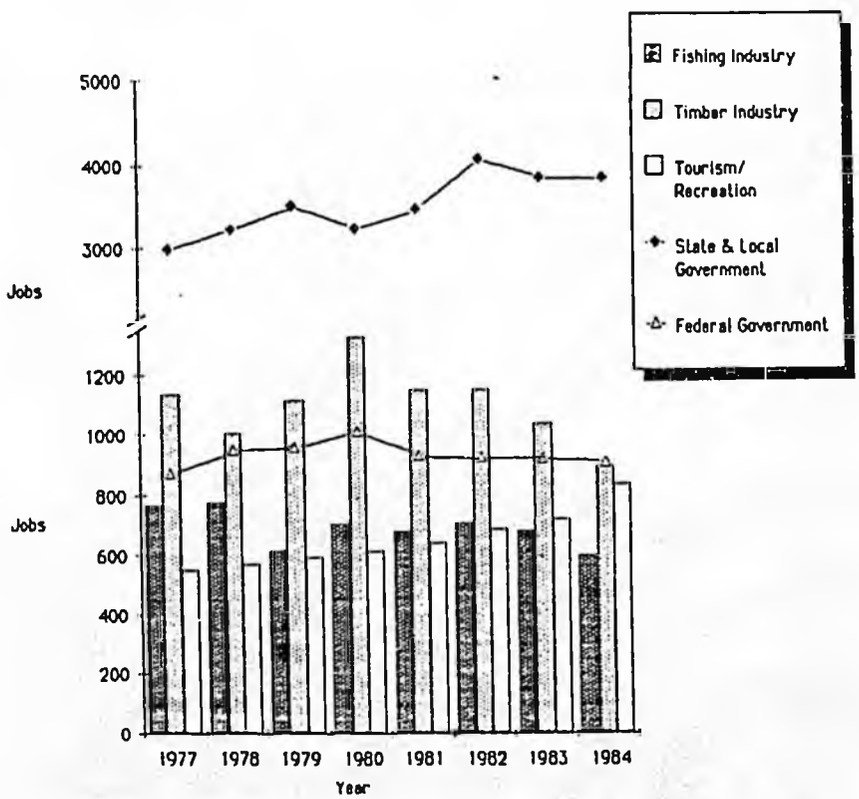
[a]Since job numbers do not reflect differences in full-time and part-time employment, it is important to supplement this information with the earnings data in Figure 2.2 before making sector comparisons.

[b]Timber industry includes forestry consulting, logging, sawmills, and pulpmills. Fishing industry includes commercial harvesting and seafood processing, but not recreational fishing due to lack of information. Tourism/Recreation includes a composite of visitor-related industries. Government includes State/local and Federal administration and enterprises.

Source: Direct levels are from historical data from the Alaska Department of Labor and simulations using a Forest Service input-output model, IPASS.

Figure 2.3

Associated Indirect and Induced Employment[a] in Southeast Alaska, 1977–84



[a]Job number information should be supplemented with the earnings data in Figure 2.4 before making sector comparisons.

Source: All associated indirect and induced job numbers are estimated from IPASS.

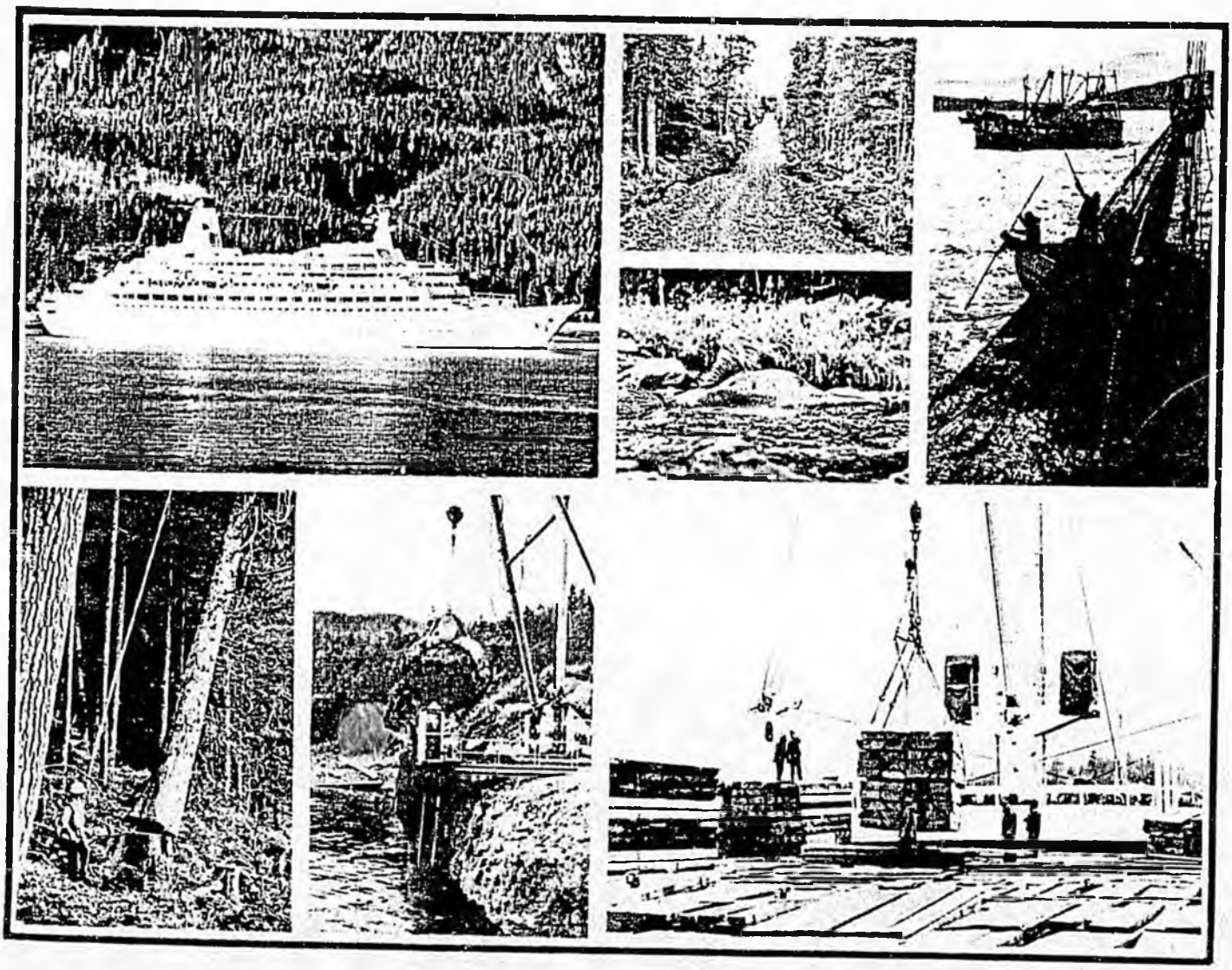
United States
Department of
Agriculture

Forest Service

Alaska Region
Admin. Doc.
Number 153

Status of the Tongass National Forest

1985 Report



LOGGING IN SOUTHEAST ALASKA AND ITS RELATIONSHIP TO WILDLIFE, FISHERIES, AND ECONOMICS

Territorial Sportsmen, Inc.
P. O. Box 761
Juneau, Alaska 99802
February 1985

Prepared by

The Wildlife and Fisheries/Logging Committee
of the Territorial Sportsmen with
contributions from outside specialists

Wildlife and Fisheries/Logging Committee

Jack Lentfer, Chairman
Greg Cook
Ed Gustafson
Christian Knoeller
Max Lewis
Sid Morgan
Don Schmiege

Contributers

Vern Beier
Steve Elliott
Mark Kirchhoff
Matt Kirchhoff
John Schoen
Greg Thomason

Territorial Sportsmen, Inc.

P. O. Box 761

Juneau, Alaska 99801

February 12, 1985

To Whom It May Concern:

This report, Logging in Southeast Alaska and its Relationship to Wildlife, Fisheries, and Economics, by the Territorial Sportsmen, Inc. is the culmination of many man-hours and man-months of intense efforts by members of our organization and cooperating agencies and individuals. The report presents some of the most pertinent information related to the existing controversial fish and wildlife/logging issue in Alaska.

The Territorial Sportsmen, Inc. is one of the oldest, if not the oldest, conservation and sportsmen organization in Alaska. The Territorial Sportsmen is a Juneau based organization which is dedicated to the conservation and wise use of Alaska's resources. Because of its constitutional structure and its purpose, it is primarily concerned with the proper management of Alaska's renewable resources--particularly its fish and wildlife resources. In this arena we feel we have a responsibility to assure our membership and the general public that these resources and the public users are properly represented as public policies and decisions affecting their welfare are developed.

The purpose of this report is to present current information to interested policy makers and the general public. The Territorial Sportsmen have essentially synthesized and summarized pertinent information available from all the agencies and other private sources. We have not provided any new information gathered exclusively by our organization. On the other hand, we have provided independent and collaborated interpretations of the data. Hopefully, this type of presentation can be used to provide a forum for developing positive solutions, for providing support for necessary research, for prompting the resource managing agencies and corporations into affirmative actions, and for assisting the general public in assessing resource trade-off values.



The Board of Directors of the Territorial Sportsmen realize clearly the perceptions that can be associated with the release of a report of this type. This is especially true in light of the growing frictions between the polarized groups forming around the Southeastern logging/environmental issues. Because of these perceptions, we feel it is necessary to clearly state the position of the Territorial Sportsmen. By this

process we hope to keep open channels of positive dialogue with all interested parties and nopefully participate in developing positive solutions. For the record, the Board of Directors wish to emphasize that the Territorial Sportsmen:

1. Support logging in Southeast Alaska which is compatible with the maintenance of fish and wildlife values. The intent of this report is not to shut down the logging industry in Southeast Alaska. The intent is to blend fish and wildlife values with the economic values of the industry. It is fair to expect that there will be differences on exactly when, where and how logging will occur. Most importantly, it is our intent to make sure the other resource values are also adequately considered and the public is fully aware of the value trade-offs.

2. Support fish, wildlife and silvicultural research programs. Most task force reports and other related studies point out the need for more information about certain fish and wildlife and their habitat and about silvicultural practices in the southeastern rain forest.

3. Support research to develop enhancement and mitigation measures for fish and wildlife affected by timber harvesting. With improved technology and an expanded data base it is possible that aggressive enhancement or mitigation programs may significantly alleviate some of the value losses associated with the present logging program. Enhancement and mitigation programs that have been demonstrated to be effective should be implemented.

4. Support continued efforts toward population modeling effects of timber harvesting on fish and wildlife populations. At present, it is extremely difficult for the general public to relate to the value trade-offs associated with specific logging proposals, especially when relating these with past activities. Population modeling can be a valuable tool to aid both managers and the general public in understanding the effects, both positive and negative, of different management practices, and relate them to the economics of logging.

5. Support the U.S. Forest Service planning processes. We recognize and support the planning process being implemented by the U.S. Forest Service. Continued emphasis by the Service on public participation has provided a mechanism for input. Since planning is most effective if the public is fully informed and involved, it is our intent to participate positively in that process.

6. Support general recommendations provided in the Technical Committee Report. In July 1982 a multi-organizational Technical Committee was appointed to review the issues relating to wildlife and timber management in Southeast Alaska. A report from this committee was released in 1983. The conclusions and recommendations, although general in nature, are sound and are supported by the Territorial Sportsmen.

7. Support development of fish and wildlife population goals and objectives. The state of the arts associated with conducting some fish and wildlife population censuses within the forested areas of Southeast Alaska is rudimentary at best. Improved fish and wildlife assessment procedures must be developed and tied to habitat requirements for each species. We recognize that until these procedures are fully developed, other less precise modeling and assessment techniques will have to be utilized to establish and evaluate species population goals. Eventually, these goals and objectives must come from an informed general public.

Since it is the goal of the Territorial Sportsmen to provide the most accurate information possible, it is anticipated that this report will be up-dated. Certainly, any errors will be corrected and new information included when appropriate.

The Territorial Sportsmen are committed to continue working closely with the various task forces, committees and resource managing agencies concerned with the fish-wildlife/logging issues. It is anticipated that specific recommendations will be developed to accompany this report. Others will be prepared and submitted through each stage of the planning and review process now in place for management of the Tongass Forest.

For more information please contact:

Mr. Jack Lentfer, Chairman
Fish-Wildlife/Logging Committee
Territorial Sportsmen, Inc.
P. O. Box 761
Juneau, Alaska 99802

or

Mr. Ron Somerville
President
Territorial Sportsmen, Inc.
P. O. Box 761
Juneau, Alaska 99802

Approved by the Territorial Sportsmen, Inc. Board of Directors on December 11, 1984.

Sincerely,

Ronald Somerville R.S.

Ronald Somerville, President
Territorial Sportsmen, Inc.

LOGGING IN SOUTHEAST ALASKA AND ITS RELATIONSHIP TO WILDLIFE, FISHERIES, AND ECONOMICS

SUMMARY

The present forest management practice throughout Southeast Alaska of clearcut logging on a rotational basis of generally 100-115 years is permanently converting old-growth, uneven-aged forests with high wildlife values to second-growth, even-aged stands of much less value to those wildlife species dependent on old-growth habitat. Logging may also adversely affect fish spawning and rearing habitat and shell fish esturine habitat, although measures can be taken to minimize impacts. More research is needed to determine long-term effects of timber harvest on fisheries.

Despite the large size of Southeast Alaska's Tongass National Forest (16.9 million acres), only a small portion (4 percent) is considered to have commercially important timber (more than 30,000 board feet per acre). Such commercial timber areas, often near tidewater at low elevations, or along valley bottoms of major river drainages, provide critical habitat for fish and wildlife. It is on this small, but important, component of the Tongass Forest that the wildlife and fisheries/logging debate centers.

As of 1978 an estimated 317,000 acres of Tongass Forest timberland had been logged. Between 1956 and 1981, areas which were logged averaged slightly less than 50,000 board feet per acre (net inventory volume). This logging is believed to have reduced the extent of the highest-volume class (more than 50,000 board feet per acre) on the forest by half. Current plans call for logging half of what is left of this highest-volume class forestwide within the next 40 years.

Clearcutting is the method of logging in Southeast Alaska because it is the most cost efficient and for silvicultural reasons. The planned rotation period for most areas is 100-115 years, i.e., areas will be cut again after 100-115 years. The common pattern is three entries into a drainage system, with second and third entries at about one-third and two-thirds of the 100 to 115-year rotation period. The highest-volume timber is normally cut on the first entry. Revegetation after cutting is natural growth unaided by replanting. After cutting, approximately 300 years are required for forestland to regain old-growth characteristics. Cutting on a rotational basis of approximately 100 years therefore permanently eliminates old-growth forest.

Clearcutting old-growth forest in Southeast Alaska will reduce the carrying capacity of winter range for Sitka blacktailed deer. High-volume, old-growth hemlock-spruce stands are preferred deer habitat during winters of heavy snowfall. Past timber harvest

has concentrated in high-volume stands and future harvest is scheduled to do the same, thereby affecting deer more than acreage figures alone would suggest. Present knowledge suggests that deer numbers in many popular hunting areas will be reduced 60-80 percent by the end of the first rotation period. Deer are hunted more than any other animal in Southeast Alaska, and reduction of carrying capacity will have major impacts on recreational and subsistence hunting. Other wildlife species that could be adversely affected by logging, road-building, and associated activities are brown bear, black bear, mountain goat, moose, marten, mink, river otter, bald eagle, Vancouver Canada goose, and a number of other bird species that overwinter or nest primarily in old-growth forest.

Commercial and recreational fishing are extremely important activities in Southeast Alaska that can be affected by logging. All five species of Pacific salmon, rainbow and cutthroat trout, and Dolly Varden char use freshwater streams for spawning and rearing. Logging can affect spawning and rearing by introducing debris, suspended sediment, and deposited sediment and by changing water temperature, amount of dissolved oxygen, and streamflow. It is especially important that uncut buffer strips be left along streams and that roads be laid out and constructed so as to have minimum impact on streams.

In addition to the impact of clearcutting itself, log dumping and rafting can affect shellfish, i.e., crabs and clams. Bark accumulating on the ocean bottom reduces populations of marine benthic organisms. Water storage of logs results in release of leachates which increases oxygen demand and thereby affects marine organisms. Actual and potential dumping and rafting sites comprise a small portion of the waters of Southeast Alaska, but sites generally are important because of high biological productivity.

Guiding, an important commercial activity in Southeast Alaska, occurs for a number of recreational activities including hunting, fishing, marine cruising, kayaking, rafting, photography, aerial sight-seeing, and ice field traveling. Clearcut areas are not esthetically pleasing for such activities. As more areas are cut, guiding will be concentrated in uncut areas, with the potential to create overcrowding and more human interaction, both undesirable from a guiding and recreational standpoint. Brown bear hunting is one of the most important forms of guiding. Logging has already disturbed enough brown bear areas that guides themselves now believe it necessary to reduce by more than one half the number of persons eligible to guide on Admiralty, Baranof, and Chichagof Islands.

The Alaska Department of Fish and Game has identified 70 drainages in the Tongass Forest with high fish and wildlife values and

recommended deferral of logging and road building until the Tongass Land Management Plan is revised in 1989. In spite of this recommendation, road building has been carried out in some of these critical habitat drainages. Forest Service representatives state that the Forest Service will analyze these recommended deferrals during preparation of the Tongass Land Management Plan Update to be completed by April 1, 1985.

Federal legislation generally provides for adequate protection for fish and wildlife on national forests. However, the managing agency, the U.S. Forest Service, has much discretion in determining management emphasis and how different values of the forest will be utilized. In Southeast Alaska the emphasis is on timber management. The Alaska Lands Act makes 4.5 billion board feet of Tongass Forest timber available to industry per decade. Recent findings suggest this level of timber harvest, if sustained, will have severe long-term impacts on wildlife and thereby on recreational and subsistence use. The Alaska Lands Act also states that utilization of public lands is to cause the least adverse impact possible on subsistence users.

Native corporations and the State of Alaska each manage approximately 3 percent of the land in Southeast Alaska. Fish and wildlife managers would like State laws and regulations strengthened to better protect fish and wildlife on these private and state lands.

The timber industry in Southeast Alaska has been dominated since the 1950s by two major companies which have long-term contracts for timber from the Tongass Forest. The timber industry is highly subsidized by the Federal government. Most forest products from the Tongass are sold overseas. The National Forest Management Act calls for revision of long-term contracts to make them consistent with guidelines and standards of the Act. Violations of the Sherman Antitrust Act, providing false information to the government in violation of contracts, and defrauding the government of more than 75 million dollars by the two long-term contract holders are other reasons for considering contract revisions.

TABLE OF CONTENTS

	Page
INTRODUCTION	6
TONGASS NATIONAL FOREST	8
Land Types	8
Logging	9
Management Guidelines	15
STATE OF ALASKA FORESTLAND	22
PRIVATE FORESTLAND	23
WILDLIFE	25
Deer	25
Brown Bear	26
Black Bear	28
Mountain Goat	29
Moose	29
Wolf	30
Furbearers	30
Bald Eagle	31
Canada Goose	31
Marbled Murrelet	32
Other Birds	32
FISHERIES	33
Finfish (salmon, trout, etc.)	33
Shellfish (crabs, clams, etc.)	39
Economic Contribution	40
GUIDING	40
ECONOMICS OF TONGASS FOREST LOGGING	42
The Economic Beneficiaries of Logging in Southeast Alaska	43
Timber Sales and Pricing	43
Further Reductions of Timber Prices	44
Economic Disadvantages Placed on Small Timber Operations	45
Weaknesses of the Current Pricing System	45
Antitrust Violations	46
Forest Service Review Team Recommendations	48

TABLE OF CONTENTS
(Continued)

Page

ECONOMICS OF TONGASS FOREST LOGGING (continued)

Justice Department Actions 50
Timber Supply and Demand Report 50

CONCLUSION 53

LITERATURE CITED 55

LOGGING IN SOUTHEAST ALASKA AND ITS RELATIONSHIP TO WILDLIFE, FISHERIES, AND ECONOMICS

INTRODUCTION

The Territorial Sportsmen of Juneau, Alaska, wish to become involved in programs and decisions affecting management of lands in Southeast Alaska. Of particular interest is the relationship of logging to fish and wildlife populations and habitat. This report has been prepared so that the members of the Territorial Sportsmen can be better informed. The report will also be used to inform others and to provide information and guidelines for the Territorial Sportsmen to evaluate and make recommendations on timber management plans and activities.

A committee composed of Greg Cook, Ed Gustafson, Christian Knoeller, Jack Lentfer, Max Lewis, Sid Morgan, and Don Schmiege was named to prepare the report. The committee asked certain outside specialists to assist with report preparation. Committee members and others and the portions of the report they have been involved with include: Tongass Forest land types--Matt Kirchhoff; Tongass Forest logging--Matt Kirchoff; Tongass Forest management guidelines--Greg Cook and Jack Lentfer; State of Alaska forest-land--Jack Lentfer and Greg Cook; wildlife--John Schoen and Matt Kirchhoff; fisheries--Greg Thomason and Steve Elliott; guiding--Vern Beier; economics of Tongass Forest logging--Jack Lentfer, Mark Kirchhoff, and Christian Knoeller. Jack Lentfer was responsible for the final synthesis and Christian Knoeller for technical editing.

Draft copies of this report with requests for comments were sent to the U.S. Forest Service, the Alaska Department of Fish and Game, the Alaska Department of Natural Resources, and Sealaska Native Regional Corporation. Draft copies were also sent to representatives of the two major Southeast Alaska timber companies, Louisiana Pacific-Ketchikan and Alaska Lumber and Pulp, along with invitations to comment at a meeting of the Board of Directors of the Territorial Sportsmen. Responses were received from the Forest Service and Alaska Departments of Natural Resources and Fish and Game, and the report was modified to reflect comments which would improve accuracy and comprehensiveness.

The Board of Directors of the Territorial Sportsmen adopted the report in December 1984.

Major land managers in Southeast Alaska are the U.S. Forest Service, the National Park Service, Native corporations, and the State of Alaska. National Park Service lands cannot be logged,

and discussion of their management will not be included in this report. The U.S. Forest Service, with 94 percent of the land in Southeast Alaska exclusive of Park Service land, is by far the largest land manager (Table 1).

Table 1. Land management in Southeast Alaska, exclusive of Glacier Bay National Park and Preserve.

	Acres	Percent
U.S. Forest Service	16,900,000	93.8
State of Alaska	482,000	2.7
Native Corporations	630,000[1/]	3.5

[1/] Native corporations are still selecting land, and this figure is the amount which will be owned after final selection.

TONGASS NATIONAL FOREST

Land Types

A diverse array of land forms and forest types comprise the 16.9 million acre Tongass National Forest. The following information is from the Tongass land type inventory in the Tongass Land Management Plan (U.S. Forest Service 1979). Nearly 40 percent of the Tongass Forest is not forested, but is composed of treeless alpine meadows, muskegs, rock, and glacial ice. An additional 29 percent of the Tongass Forest is classified as "noncommercial forestland," defined as forestland having less than 8,000 board feet of lumber per acre (Harris and Farr 1974:14). Noncommercial forestland is also defined as land not capable of producing 20 cubic feet of growth per acre per year (M.A. Barton, Regional Forester, Tongass National Forest, pers. comm. 8/20/84).

Included in noncommercial forestland are poorly drained sites, borders of muskegs, and subalpine areas where tree growth is sparse or stunted. Western and mountain hemlock, red and yellow cedar, and lodgepole pine dominate these relatively unproductive sites. The remainder of the Tongass, roughly one-third, is considered as "commercial quality forestland," capable of producing from 8,000 to over 100,000 board feet of lumber per acre.

As this volume-per-acre range suggests, a great variety of forest types occur within commercial forestland and represent ecologically distinct habitats having different values to different wildlife species at different times of the year. For inventory purposes, commercial forestland is classified into four categories based on the stand timber volume. The first category includes stands having 8,000-20,000 board feet per acre. These "low-volume" areas are relatively open, sometimes brushy, and often found on wet, poorly drained sites. Low-volume stands are common on the Tongass, accounting for half of all commercial forestland.

Medium-volume stands (20,000-30,000 board feet per acre) are characterized by larger, more densely stocked trees, and comprise about 36 percent of the total commercial forestland on the Tongass.

Higher-volume stands, by comparison, are rare. The 30,000-50,000 board-foot-per-acre category accounts for 12 percent of the commercial forestland, and the highest-volume stands, those with more than 50,000 board feet per acre, account for 2 percent of the commercial forestland on the Tongass (Figure 1). These higher-volume stands, referred to as "commercially important forestland" in a report co-authored by the Forest Service (Smith et al. 1983), contain the most valuable trees in the forest.

Such stands are typically found along toe slopes of hillsides, bordering major stream or river systems, or on flat benches along the beach; they are normally associated with deep, well drained, mineral soils. Like all old growth, these stands include trees of all ages and sizes; however, dominant trees may exceed 200 feet in height, 8 feet in diameter, and 800 years in age. A single tree that size yields more board feet than an entire acre of low-volume forestland.

Despite the seemingly boundless expanse of land on the Tongass, most is either non-forested, noncommercial forest, or low-volume forest. Only a little more than 4 percent of the total land base is high-volume important forestland (more than 30,000 board feet per acre), and less than 1 percent of the total land base is in the highest volume class containing more than 50,000 board feet per acre (U.S. Forest Service 1979).

Logging

The Tongass National Forest has a long history of industrial logging, dating back to 1833 when the first Alaskan sawmill was built at Redoubt Bay near Sitka (Harris et al. 1974). Most early logging was selective, with cutting concentrated on large, high quality, individual trees. Use of local timber gradually increased during the early 1900s as canneries and towns were built. Altogether during the decade 1910 to 1920, 420 million board feet of saw timber and piling were cut on national forest lands in Alaska. By 1923, six sawmills were cutting lumber in large quantities for local use and export. Logs for these mills came from trees up to 225 feet tall and 8 feet in diameter, growing in stands of pure spruce (Heintzlman 1923). By 1930, most of the premium stands of timber easily reached from protected shores had been logged, and increasing emphasis was being placed on developing a pulpwood industry to utilize the smaller timber.

With the award of an 8.25 billion board foot timber sale in 1951 to Ketchikan Pulp Company of Ketchikan, a 693 million board foot sale to Alaska Wood Products Company in Wrangell (affiliated with Alaska Pulp Company in Tokyo), and a 5.25 billion board foot sale in 1957 to Alaska Lumber and Pulp Company in Sitka, large scale industrial logging had finally arrived in Southeast Alaska (Harris et al. 1974). In an effort to encourage establishment of a stable, regional economy, the Forest Service granted these companies 50-year cutting rights. (Board feet are commonly used as the measure of timber to be cut under terms of the long-term contracts. Deputy Regional Forester M.A. Barton in a letter dated July 20, 1984, states that cubic feet, not board feet, were used in these contracts.)

For 25 years, prior to final approval of the Tongass Land Management Plan in 1979, loggers operated in a much less regulated

environment than they find themselves in today. Forestland offering the greatest return on investment, usually the lower elevation, high-volume sites, were logged first. Clearcuts were large and wood utilization standards lax. High-volume stands of timber located near protected coastlines or along broad valley bottoms were highly prized and actively sought by the timber industry. From 1956 through 1972 the average volume removed from inventory by cutting was in excess of 50,000 board feet per acre (Scribner inventory volume, Hutchison and LaBau 1975). From 1972 through 1981 the inventory volume removed by cutting averaged over 48,000 board feet per acre (J. Standerwick, Timber Staff Officer, Tongass National Forest, pers. comm. 4/15/83). These statistics take on even greater significance when the rarity of high volume stands is considered (Figure 1).

The Tongass Land Management Plan (TLMP), finalized in 1979, allocated individual drainages of the Tongass Forest to one of four land use designations, or LUDs. LUDs I and II are wilderness and roadless areas where commercial logging may not occur. LUD III lands are for multiple use including logging. LUD IV lands are for intensive resource use and development with emphasis on commodity or market resources; logging is the most concentrated here. Table 2 summarizes the TLMP allocation of commercial forestland among LUDs and by volume classes. It is evident that the drainages with the highest volume classes were generally allocated for commodity resource development. LUDs III and IV, where logging may occur, contain more than twice as many acres of the two highest volume classes (more than 30,000 board feet per acre) as LUDs I and II where logging does not occur. LUDs III and IV contain about six times more of the highest volume class (more than 50,000 board feet per acre) than LUDs I and II.

Today, over 317,000 acres (6.3 percent of commercial forestland) in the Tongass have been cut and are in a regenerative status. (Unpublished data on file, U.S.F.S., Regional Office, Timber Management, Juneau.) From 1980 to 1989, U.S. Forest Service plans call for an average of 17,100 acres to be cut annually on the Tongass (Smith et al. 1983). The number of acres cut will increase to approximately 22,000 acres per year late in the 100-115 year rotation period as increasing emphasis is placed on harvesting in low-volume stands. Although the rotation period for most cutting areas is 100-115 years, 244,000 acres are scheduled for cutting over a 120-200 year extended rotation for visual management and other resource needs.

The Forest Service has no record of the number of acres of high-volume timber logged to date. A conservative estimate that one-third of the acres cut to date were in the highest volume class leads to the conclusion that we are left today with less than half of the original high-volume forestland (50,000 board feet per acre and above) that existed prior to the start of large scale industrial logging in Southeast Alaska.

TONGASS NATIONAL FOREST
LAND TYPES

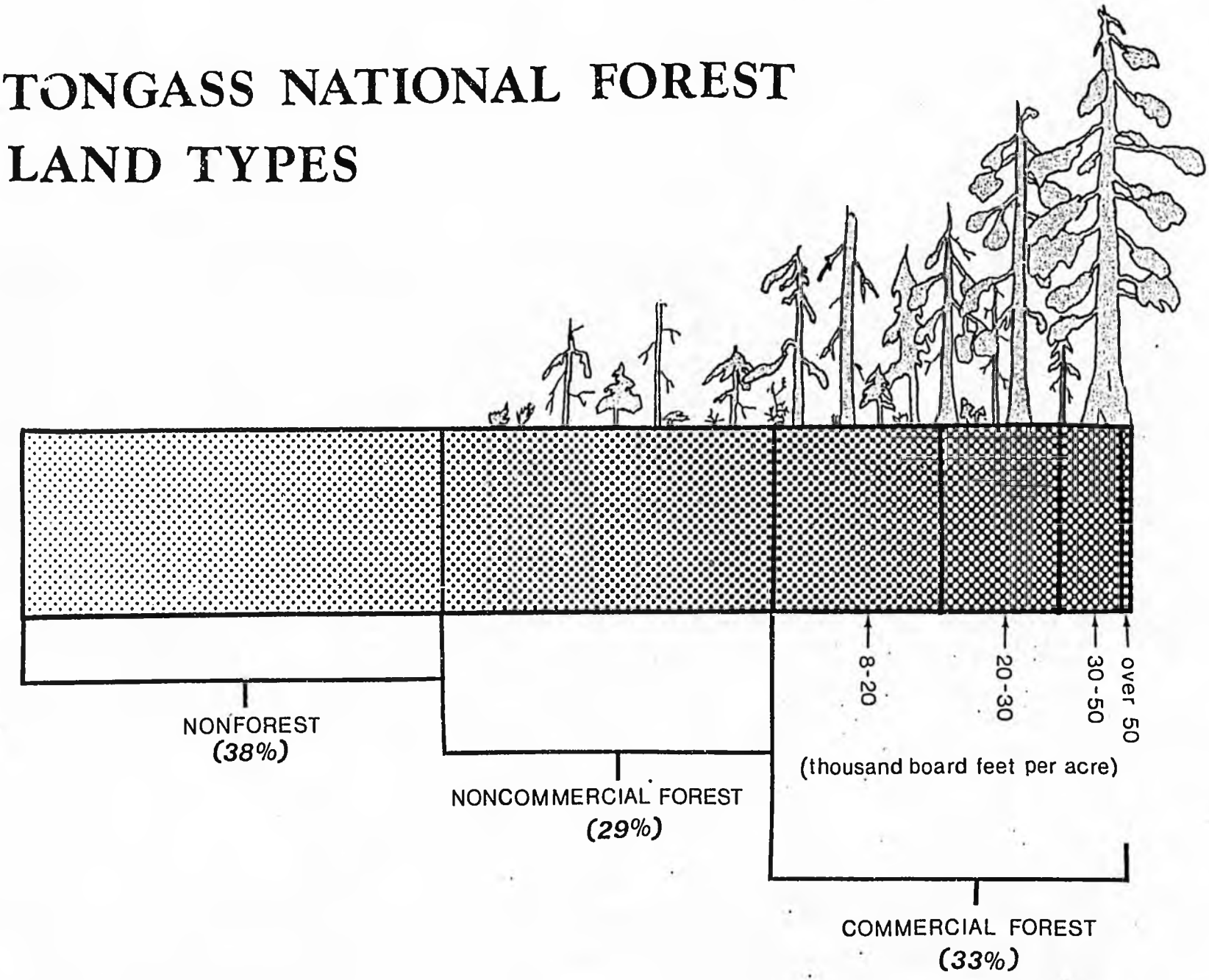


Figure 1.

Table 2. Tongass National Forest commercial forestland acreage by land use designation and volume class.[1]

Volume Class (thousand bd.ft./A)	I		II		III		IV	
	Acres	%	Acres	%	Acres	%	Acres	%
Already logged	37,981	2.6	31,187	7.9	82,253	7.4	166,769	8.4
8-20	719,442	49.3	248,496	52.6	529,124	47.3	862,197	45.2
20-30	528,403	36.2	151,577	32.1	365,375	32.7	673,675	33.7
30-50	162,765	11.2	30,736	6.5	119,902	10.7	233,249	11.7
More than 50	10,842	0.7	3,552	0.8	21,697	1.9	61,836	3.1

[1]From data on file, U.S. Forest Service, Regional Office, Juneau, 1980.

The Tongass Land Management Plan will cause the timber industry to operate increasingly in lower-volume stands. This reflects increased emphasis on resource protection (e.g., retention of valuable high-volume wildlife habitat and wilderness areas) and the present rarity of remaining high-volume stands. In the short term, however, economic realities dictate that high-volume stands will continue to be heavily harvested. Within the next 40 years, less than half of the total high-volume forest (50,000 board feet per acre) standing today in the Tongass will remain. (Unpublished data on file, U.S.F.S. Regional Office, Timber Management, Juneau, and Figure 2.)

In order to plan on sources of timber for cutting throughout the first rotation period, generally 100-115 years, the Forest Service has scheduled the amount of cutting within management units (value comparison units or VCUs) throughout the forest. A number of VCUs on the mainland in the vicinity of Juneau, on northern Admiralty Island, and on western Chichagof Island are listed to give examples of what has been cut and is scheduled for cutting during the first rotation period (Table 3). Deer habitat will be altered significantly, and an estimate of the percentage of deer remaining in each VCU after the first rotation period is also included in Table 3.

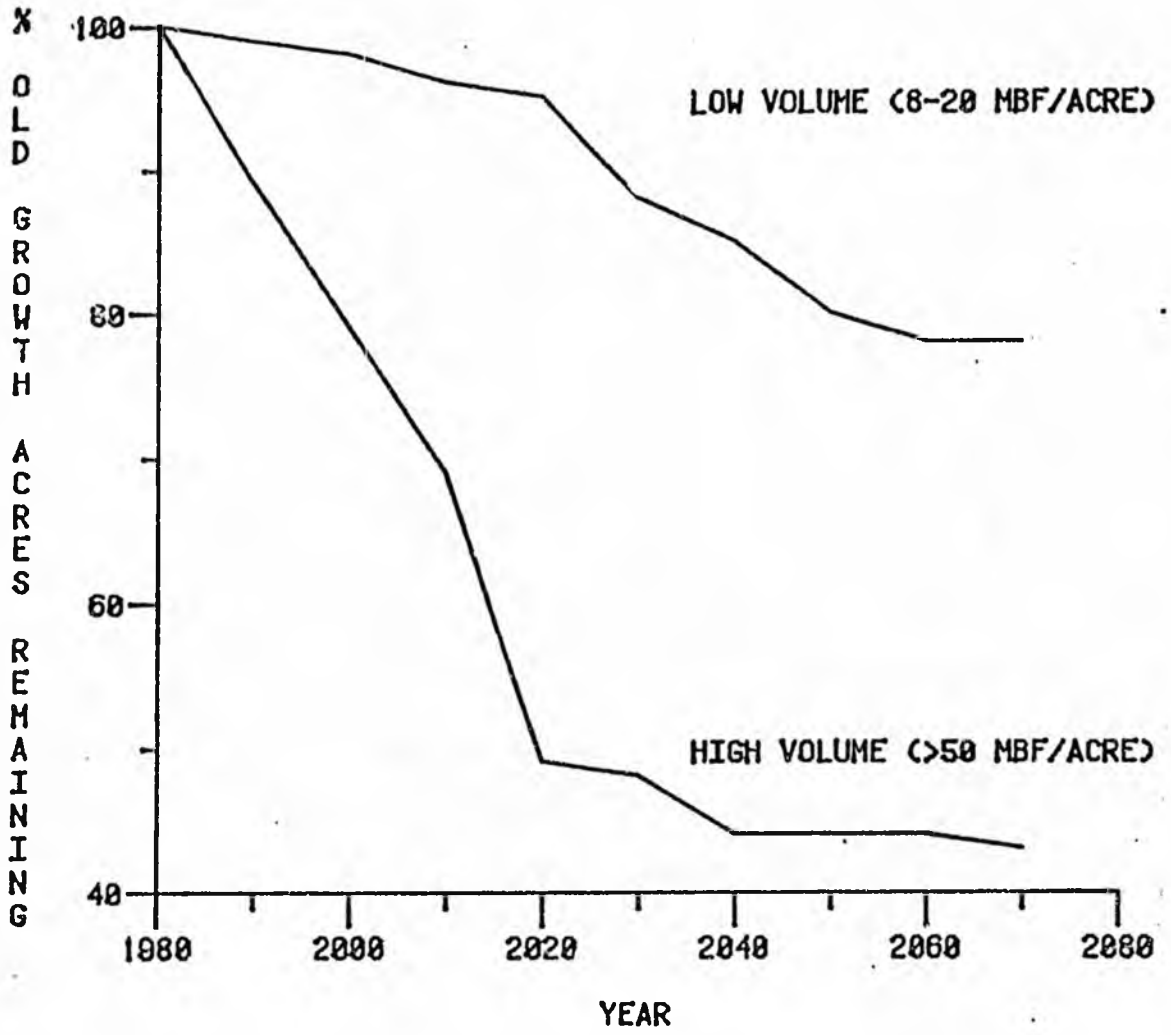


Figure 2. OLD GROWTH DEPLETION SCHEDULED 1980-2080

Table 3. Percentages of total commercial forestland (more than 8,000 board feet per acre) which have been cut and are scheduled for cutting during the first rotation period (generally 100-115 years) and percent deer remaining after first rotation period on selected VCUs in Southeast Alaska.[1]

VCU	Percent CFL Already Harvested	Percent CFL Scheduled For Harvest	Percent Deer Remaining After 100-115 Years
Echo Cove	0.0	43.5	30.7
Taku Harbor	1.1	50.1	35.3
Gilbert Bay	0.0	56.7	41.4
Windham Bay	0.0	68.6	41.9
Hobart Bay	0.0	75.8	28.3
Port Houghton	0.0	93.7	25.6
William Henry Bay	0.0	49.6	77.2
Barlow Cove	2.0	48.3	59.7
Funter Bay	0.0	50.2	38.2
Hawk Inlet	5.1	78.6	12.4
Lone Mountain	0.0	61.9	26.1
Fowler Creek	1.7	76.0	11.9
Young Bay	0.0	48.4	37.3
Eagle Peak	0.0	60.5	23.1
False Bay	0.0	83.3	15.9
Kennel Creek	4.7	63.6	16.1
Pavlof River	4.4	73.4	21.9
Tenakee Springs	2.4	66.7	17.5
Crab Bay	5.9	67.0	31.7
Kadashan	1.1	64.1	23.8
Corner Bay	21.9	66.7	22.0
Sitkoh Bay	11.3	70.0	24.2

[1]From Rideout, et al. 1984 and Schoen et al. 1985.

Aside from the demonstrated value of high-volume timber stands for deer in winter (see discussion elsewhere in this report and literature cited), these rare stands have value as ecological communities in their own right. The esthetic value of a grove of 200-foot spruce trees, centuries in the making, cannot be easily weighed against the value of the trees as lumber or pulp. While a relatively small percentage of the Tongass Forest overall will be changed by logging, under present plans, an already relatively rare forest type, high-volume old growth, will be reduced even further.

Management Guidelines

A number of laws pertain to resource management for federal and state public lands. Those most important for Southeast Alaska are summarized here. Cook (1984) provides a more detailed description of laws and their interpretation.

The Multiple Use-Sustained Yield Act of 1960 requires that National Forests be administered on a sustained-yield basis for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. Several court decisions relating to the Multiple-Use Sustained Yield Act have resulted in the interpretation that the Forest Service has almost unlimited discretion in determining how much emphasis each of these multiple use values will receive (Cook 1984). In actual practice, the emphasis in Southeast Alaska has always been on timber.

The Alaska Native Claims Settlement Act of 1971 authorizes Southeast Alaska Native corporations to select land in the Tongass National Forest for private ownership. When selection is complete the regional corporation, Sealaska, and 12 village corporations will own an estimated 630,000 acres.

The Coastal Zone Management Act of 1972 requires that private landowners as well as state and federal agencies undertaking development projects in the coastal zone of a state ensure that they meet applicable provisions of the state's approved coastal management program.

The National Forest Management Act of 1976 (NFMA) comes closer than any other federal law to providing explicit and enforceable standards relating to fish and wildlife habitat protection on National Forest lands. The Act requires that management activities be done in a manner that provides for diversity of plant and animal communities. NFMA requires that if clearcutting occurs, it must be carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources, and the regeneration of the timber resource. NFMA directs the Secretary of Agriculture to revise the 50-year timber sales contracts in Alaska to make them consistent with the guidelines and standards provided by the Act.

Legislative history of the NFMA provides more insight on the intent of Congress. The Senate Report states that timber production and sale are important, but not the sole objective of management planning, and that the other resources of the forests, including wildlife and fish habitat, water, air, esthetics, and wilderness, must be improved and protected. The Senate Committee also believed widespread cutting of mature trees to be incompatible with management of the national forests, where decisions must be based on the numerous public values of the forest, in

addition to economic returns. The Committee was concerned that significant damage was still occurring to fish and wildlife habitat, particularly in Alaska. They thought the Forest Service should make greater use of the expertise of state fish and wildlife agencies, the Fish and Wildlife Service, and the National Marine Fisheries Service.

The committee report on NFMA stated that clearcutting and other harvest systems resulting in even-aged stands had greater adverse ecological impact than uneven-aged management. The decision to use even-aged management systems should not be based solely on economic benefits, i.e., dollar return. Rather, the committee wrote that the full scope of environmental effects (natural, economic, and social) should be evaluated and even-aged systems used only when they best meet forest management objectives for the individual management plan.

Regulations implementing the NFMA were adopted by the U.S. Forest Service in 1979 and significantly amended in 1982. One summary commented that the regulations abound with phrases and adverbs designed to provide escape hatches from otherwise strict requirements (Coggins and Ward 1981). The definition of multiple use does call for harmonious and coordinated management of the various resources without impairment of the productivity of the land. Sustained yield is defined in the regulations as "the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the National Forest System without impairing land productivity."

The NFMA regulations require a detailed approach to resource management planning. A key aspect is the interdisciplinary team (IDT), which integrates biological, physical, economic, and social science disciplines. After public participation in the process, the IDT drafts management plans which identify and recommend alternatives for achieving management objectives. The Regional Forester has final authority for selection of a management plan.

NFMA regulations state that fish and wildlife shall be managed to maintain viable populations of existing native vertebrate species. For planning purposes, a viable population is defined as one which has the estimated numbers and distribution of reproductive individuals to ensure that it will continue to exist and be well distributed in the planning area. In order to ensure that viable populations will be maintained, habitat must be provided to support at least a minimum number of reproductive individuals, and that habitat must be well distributed so that those individuals can interact with others in the planning area.

Regulations also require selection of management indicator species chosen so that population changes of indicator species will indicate effects of management activities. The management indicator

species categories should contain animals that are commonly hunted, fished, and trapped. The IDT is directed to estimate the effects of changes in vegetation type, timber age classes, community composition, rotation age, and year-long suitability of habitat related to mobility of management indicator species. Where appropriate, the IDT recommends measures to mitigate adverse effects. Population trends of the management indicator species are monitored and relationships to habitat changes determined by the IDT. This monitoring is done to whatever extent possible in cooperation with state fish and wildlife agencies.

Another NFMA regulation requires that planning alternatives be stated and evaluated in terms of the amount and quality of habitat as well as animal population trends of the management indicator species.

NFMA also requires forestland management plans. This resulted in the Tongass Land Management Plan (TLMP) for Southeast Alaska. TLMP is a 10-year allocation plan whereby various portions of the forest are to be managed to achieve a set of goals and objectives. The forest was divided by drainages into value comparison units (VCUs) which were allocated to four major land use designations (LUDs). LUDs I and II, where timber harvesting is not permitted, contain approximately 8.1 million acres, of which 2.1 million acres are classified as commercial forestland. LUDs III and IV, where cutting will occur, contain about 6.9 million acres, of which 3.1 million acres are commercial forestland. In general, except for portions of Admiralty Island, areas with the highest value timber lands are classified as LUDs III and IV. Many of the high value LUD III and IV timber areas also have high wildlife values.

In the preparation of TLMP, fisheries and wildlife task forces were established to rate VCUs for fisheries and wildlife values. A shortcoming of the wildlife rating system recognized by some task force members was that one criterion, the number of species in an area, was weighted too heavily and that importance of individual species was not given enough consideration (Bob Wood, ADF&G, pers. comm.). The Wildlife Task Force also recommended retention figures, or the amount of timber that it considered an absolute minimum to be left uncut for wildlife. As an example, for deer the Wildlife Task Force recommended that 50 percent of existing old-growth commercial forestland be retained as intermediate range and that 90 percent of beach fringe commercial forestland be retained as critical range (U.S. Forest Service 1978). The Wildlife Task Force also stated, ". . .that, if the Task Force's retention factors are reasonably valid, there will be a continuing trend toward lowering wildlife habitat quality in areas where logging and other similar developments take place."

Task force recommendations went to an interdisciplinary team (IDT) which then drafted TLMP. The Alaska Department of Fish and Game wildlife specialist on the IDT was not in agreement with the IDT recommended alternative because too much timber would be removed, thereby impacting wildlife habitat too severely. Even so, the IDT recommended alternative did contain retention factors, or areas to be left uncut for wildlife and related values. These were reduced by the Alaska Regional Forester in the version of TLMP that was finally adopted. TLMP provides for an average annual allowable harvest of not less than 450 million board feet of timber or 17,000-18,000 acres a year. This is based on the industry's scaled volume and is equivalent to approximately 550 million board feet inventory volume.

The Alaska Department of Fish and Game commented on TLMP when it was in draft form (R. O. Skoog, Commissioner, ADF&G, Memorandum, 8/4/78). One concern of the Department was that wildlife habitat ratings on which TLMP is based often did not reflect true values. Ratings were based primarily on the number of species present rather than the importance of individual species or the value of areas to users. This resulted in some islands with relatively few species but with high wildlife values receiving lower wildlife ratings than mainland areas of less wildlife value that were rated high because they had more species.

Another Department of Fish and Game comment on TLMP (R. O. Skoog, Commissioner, ADF&G, Memorandum 8/4/78) was that the economics of timber harvest as it affects guiding, trapping, and viewing of wildlife should be analyzed along with the economics related to timber industry jobs. To attain a balanced resource allocation, the Department of Fish and Game recommended that a certain alternative (D) or another modified alternative (C) be adopted for the final version of TLMP. Alternative (C) was similar to the alternative recommended by the IDT that prepared TLMP. Both alternatives were rejected for the final TLMP, and a more intensive timber harvest plan was adopted.

Since TLMP was adopted, the Alaska Department of Fish and Game has identified 70 Class 1 VCUs, mainly in LUDs III and IV, that have high fish and wildlife values, and requested that road building and cutting be deferred until TLMP is revised in 1989 (Matthews and McKnight 1982). This is based not only on the yet unanswered questions concerning the effects of logging on fish populations and all old-growth-dependent wildlife but also on the already well documented effects of timber harvest on certain old-growth-dependent wildlife species (D. Kelso, Deputy Commissioner, ADF&G, pers. comm. 7/19/84). This State recommendation has not been accepted by the U.S. Forest Service, and roads have been built in Blind Slough and Kadashan, both Class 1 VCUs. A Forest Service representative states that Department of Fish and Game recommendations will be considered for the Tongass Land Management Plan Update scheduled for completion by April 1, 1985.

TLMP was adopted in March 1979 for a 10-year period. After 5 years, the Forest Service has prepared an Evaluation Report (U.S. Forest Service 1984) to provide a basis for updating and improving TLMP, aid in preparing a Tongass Forest status report for Congress as required by the Alaska National Interest Lands Conservation Act, and document how original TLMP management direction has been implemented to date. The report may also provide insight about what should be addressed when TLMP is revised in 1989.

The Alaska Chapter of the Wildlife Society requested revisions in the 1981-86 Timber Sale Operating Plan prepared under TLMP guidelines (Mickelson 1980). One of the reasons for requesting a revision was that the timber sale was not in compliance with plant and animal diversity requirements of NFMA. The Forest Service rejected the Wildlife Society's appeal even though the Forest Service did agree that diversity is not reviewed in TLMP with the specificity required by the NFMA current regulations and requires improvement (Peterson 1980, p. 9).

NFMA regulations were adopted in March 1979, 6 months after TLMP was adopted. Lack of NFMA regulations may be considered by some as justification for TLMP not being consistent with NFMA. Nonetheless, the intent of the NFMA statute is clear, and it would seem reasonable that TLMP conform to this intent. Also, it would seem that NFMA draft regulations could have served as guidelines for TLMP. The TLMP revision scheduled for 1989 is intended to remedy discrepancies between TLMP and NFMA (M.A. Barton, Tongass National Forest Regional Forester, pers. comm. 8/20/84).

The Alaska Regional Guide is a policy document also required by NFMA, and was adopted in December 1983. It encompasses the guidelines previously in the Southeast Area Guide. One of the guidelines addresses desirable levels of wildlife. The Regional Guide states "Desirable levels of wildlife will be determined primarily by the Alaska Department of Fish And Game, and wildlife habitat will be determined primarily by the Forest Service . . ." Hoopes (1982) states that "The Alaska Department of Fish and Game policy on 'desired' levels is clear: maintenance of maximum numbers of fish and wildlife that can be supported by the existing habitat in an ecologically sound manner." Hoopes (1982) further discusses desired levels and states, "Selected levels will reflect public demand for the resource, but which segment of the public is to be considered? As a National resource, levels should reflect the demands of people nationwide, not just local or regional users. Public demand for wildlife is not static and will quite probably increase in the future. Public demand includes both consumptive and nonconsumptive uses of wildlife. While consumptive use can be quantified, how will nonconsumptive uses be evaluated? Wildlife use is not readily translated into demand or desired levels. What levels are desirable to ensure a reasonable opportunity exists to view or harvest wildlife? To most users, not enough wildlife exists even now."

Another statute that affects forest management in Southeast Alaska is the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). This Act makes $40 million available to the Secretary of Agriculture annually, or as much as the Secretary finds is necessary, to maintain the timber supply from the Tongass National Forest to dependent industry at a rate of 4.5 billion board feet per decade. It is important to note that ANILCA does not mandate an actual harvest of this amount of timber, but that the Forest Service must make the timber available to industry. If stands are not economically attractive, and industry chooses not to harvest them, that situation would not violate the law so long as the Forest Service had made reasonable efforts to make the timber available.

Statements of Congressional intent amplify on these points. Representative Udall (Congressional Record 11/12/80, p. 10542) made the following statements. "In keeping with existing National Forest Act provisions, this [Section 705] is not a mandate to produce a specific cut level regardless of the findings of future land use plans, demand for National Forest timber, or the cost to the taxpayer. . . No more national forest timber should be supplied than can be sold at fair market value."

Representative Udall also addressed the purpose of the $40 million appropriation. He stated it is the intent of Congress "to maximize protection to environmentally sensitive areas, particularly those with high fish and wildlife values." He also stated "Our intent is to encourage retention of old-growth forests for multiple use considerations rather than reduce old-growth retention in order to lower costs. The funding provided by Section 705 is to enable the Forest Service to adhere to the land use allocations of the [Tongass Land Management] plan and in the process, to protect the non-economic values embodied in the plan."

Another provision of ANILCA requires that the Secretary of Agriculture report to Congress every 2 years, beginning in 1985, on a variety of issues, including measures instituted by the Forest Service to protect fish and wildlife.

The subsistence provisions of ANILCA also affect management of the Tongass Forest. ANILCA states that utilization of public lands in Alaska is to cause the least adverse impact possible on rural residents who depend on subsistence uses of such lands. Before making resource use decisions, the head of the responsible federal agency must evaluate the effect of the decision on subsistence uses and needs, and consider using other lands and alternatives. He must also determine that reasonable steps will be taken to minimize adverse impacts on subsistence resources and uses caused by such resource use decisions. Judicial enforcement of the subsistence priority is provided for in ANILCA, with an expedited hearing in federal District Court as the forum.

The $40 million annual appropriation authorized by ANILCA may not necessarily have to be spent directly on timber production and possibly could be spent on wildlife and fisheries projects. The Office of General Counsel, Department of Agriculture (C. W. Brizee, 1/30/81), states that a request for such funds for a program not related to timber production is defensible if the Secretary can justify the program to sustain the desired timber harvest level.

The Forest Service's own administrative manual also influences Tongass Forest management. Many day-to-day policies, including those affecting fish and wildlife, are found in the U.S. Forest Service Manual. The manual states that where other resource activities or uses are proposed that affect fish or wildlife habitat objectives, habitat shall be examined, multi-resource prescriptions prepared, and the consequences of alternatives evaluated and displayed. Where opportunity exists to improve the capability for fish and wildlife, it should be included in the multi-resource prescription.

The Forest Service has recently initiated a second-growth management program and states, "Although this program is just being implemented and it will be many years before the effectiveness of some of the wildlife treatments can be completely evaluated, this program constitutes a significant effort by the Forest Service to address concerns associated with second-growth. . ." (M.A. Barton, Regional Forester, Tongass National Forest, pers. comm. 8/20/84).

The major treatment for wildlife in the second-growth management program is thinning of second-growth stands. Alaback and Tappeiner (1984) studied response of understory vegetation to thinning in Southeast Alaska. Looking at a range of stand ages, site classes, and thinning regimes, they found that "(after thinning) herbs and mosses decreased their relative contribution to understory biomass, and in many cases actually decreased productivity. . . Understory shrubs and herbs on precommercially thinned stands (20-30 years old) were the least responsive to thinning. On most plots, tree seedlings increased productivity at the expense of herbs and shrubs . . . Although the understory biomass accumulation of some stands following thinning was highly significant, it was less than that measured in several old-growth stands . . . Several measurements at 5-10 year intervals will be necessary to assess how understory vegetation will change in response to thinning over the course of a complete timber rotation . . . The short-term results of thinning experiments suggests that thinning may have some potential for increasing the overall productivity of understory vegetation in second-growth stands in Southeast Alaska. How significant thinning may be to improving deer winter range will depend on how quickly forest overstory canopies close after thinning, what influence a secondary Tsuga canopy created by heavy thinning will have on the understory, and the nutritional requirements of deer and other wildlife."

STATE OF ALASKA FORESTLAND

The State of Alaska owns approximately 482,000 acres in Southeast Alaska, of which about 400,000 acres are in the Haines-Skagway area. Nearly all state forestlands are in the Haines area and comprise 229,000 acres, of which 94,000 are timbered. Inoperable logging conditions and land classifications which preclude logging reduce the amount of operable forest land to 59,000 acres.

An estimated 12,000 acres have been logged to date in the Haines area, and the current cutting rate is 200-500 acres per year. The total uncut commercial old-growth forest in the Haines area is estimated to be over 67,000 acres; the estimate of old-growth forest remaining at the end of 100 years is 32,000 acres.

The following discussion on management guidelines for state lands is from Cook (1984). Natural resource management, including forest management, has a basis in the Alaska constitution, which states that forests and other replenishable resources shall be utilized, developed, and maintained on the sustained-yield basis, subject to preference among beneficial uses.

Alaska's constitution also states that wherever occurring in the natural state, fish and wildlife and waters are reserved to the people for common use. This and various court decisions argue for a public trust doctrine applying to fisheries and wildlife. On this basis, the State would be obligated to provide protection to fisheries and wildlife relative to logging and other activities with the potential for harming them.

Two statutes can also be interpreted to impose trust responsibilities on the State. The Land Policy Act mandates that resource requirements of future generations shall be considered and requires the Commissioner of the Department of Natural Resources to consider present and potential resource users.

The Alaska Forest Resources and Practices Act requires that renewable forest resources be administered to best provide for present needs and preserve future options of the people of Alaska. Renewable forest resources include, of course, fish and wildlife. The Forest Practices Act gives guidelines for managing forest resources on state lands. These include multiple-use and sustained-yield principles. Activities causing prolonged or substantial damage to renewable resources or the capability of the land or water to produce renewable resources are prohibited. The Act is administered by the Department of Natural Resources. A 14-member Board of Forestry appointed by the governor reviews regulations before they are adopted by the Commissioner of the Department of Natural Resources.

The adequacy of protection of non-timber resources provided by the Forest Practices Act was addressed in a recent survey by the State Division of Forestry (Table 4). This would indicate that the Act is not as protective of fish and wildlife as desirable.

PRIVATE FORESTLAND

Nearly all privately-owned forestland in Southeast Alaska has or will be selected by Native corporations from the Tongass National Forest under provisions of the Alaska Native Claims Settlement Act of 1971 (ANCSA). The Native regional corporation, Sealaska, and the 12 village corporations have thus far selected about 575,000 acres. When selection is complete, they will own an estimated 630,000 acres (330,000 acres by Sealaska and 300,000 acres by village corporations). A primary use of the lands will be timber harvest from an estimated base of 11-14 billion board feet of timber. Through July 1, 1981, Sealaska had selected approximately 195,000 acres, of which 74 percent is commercial forestland, 11 percent is noncommercial forest, and 14 percent is non-forestland (Sealaska 1982). Native corporations have logged about 61,000 acres to date, and intend to log 13,300 acres in 1984 (J. Sturgeon, State Forester, pers. comm. 3/22/84).

While provisions had originally been made legislatively to regulate management of private timberlands, those mandates have not been carried out and have since expired. Section 22-k of ANCSA states that lands selected by Native Corporations from the Tongass Forest shall be managed for 12 years on a sustained-yield and environmentally sound basis no less stringent than similar management provisions for adjacent National Forest lands. This provision, highly desirable from a wildlife and fisheries habitat protection standpoint, was not enforced by the U.S. Bureau of Land Management, the agency that eventually acquired responsibility for enforcement. The end of the 12-year period since passage of ANCSA was reached in December 1983, and landowners and overseeing agencies interpreted this as the end of regulation under Section 22-k. A lawsuit (Angoon v. Marsh), claiming that the date of conveyance of lands rather than enactment date of ANCSA should be the start of the 12-year 22-k regulatory period, is still pending, however.

Table 4. Responses (%) to questionnaire on State Forest Practices Act regarding amount of non-timber resource protection provided and overall effect.[1/]

Amount of Protection to Non-Timber Resources	Respondents		
	Industry	ADF&G[2/] ADEC	DNR[2/] Foresters
Too Much	40	0	22
Right Amount	60	0	55
Not Enough	0	100	23
Overall Effect			
Positive	68	60	75
Negative	0	0	0
Both	24	0	25
Neutral	8	40	0

[1/] Survey by Division of Forestry, Alaska Department of Natural Resources (J. Sturgeon, State Forester, Pers. Comm., 3/22/84).

[2/] ADF&G - Alaska Department of Fish and Game
ADEC - Alaska Department of Environmental Conservation
DNR - Alaska Department of Natural Resources

When regulation of Native lands under Section 22-k expired, regulation of forest practices came under state statute, the Alaska Forest Resources and Practices Act of 1979. This Act regulates forest practices on both state and private lands, but with different criteria. Provisions applying to state and municipal forest lands, but from which private forestlands are exempt are: management based on multiple use and sustained yield (other than for timber) principles which best provide for present needs and preserve future options; any system of allocating predominant uses or values to a unit of land to reflect the resources and values of that unit; timber harvesting limited to areas where natural or artificial reforestation will provide a sustained yield of merchantable timber; productivity of land and water with respect to natural resources not to be impaired; and, where economically practicable, allowance may be made for scenic quality in or adjacent to areas important for tourism and recreation. Regulations to implement the State Forest Practices Act do protect streams and provide for soil stabilization on private as well as on state lands. Nevertheless, the Act and regulations provide much less fish and wildlife habitat protection on private lands than on state and municipal lands (Table 4).

WILDLIFE

Relatively little research has occurred on wildlife-forest relationships in southeast Alaska and for many species, habitat relationships are still largely unknown. Accounts which follow summarize current knowledge for those species which have been studied.

Deer

For more than a decade, research on Sitka black-tailed deer in Southeast Alaska has shown that clearcutting old-growth forest will reduce the carrying capacity of deer winter range (Leopold and Barrett 1972, Bloom 1978, Barrett 1979, Schoen and Wallmo 1979, Wallmo and Schoen 1980, Schoen et al. 1981, 1984, Alaback 1982, Rose 1982, Kessler 1982, Kirchhoff et al. 1983, Hanley et al. 1983). These and other studies document the value of old growth as important winter deer habitat. Although climatic conditions vary in Southeast Alaska, findings of a number of workers (referenced above) in northern Southeast Alaska are corroborated by Rose (1982) who worked in the more moderate climate of southern Southeast Alaska. Still further to the south, other investigators have described the importance of old growth to deer on Vancouver Island, British Columbia (Gates 1968, Jones 1975, Weger 1977, Bunnell 1979, Hebert 1979, Harestad 1979), the Olympic National Forest in coastal Washington (Taber and Raedeke 1980), and northwestern Montana (Mundinger 1984).

In Southeast Alaska, deer populations are generally limited by winter weather and the quality and quantity of the winter range. (An exception may be a few small islands where summer range is limiting.) Old growth provides deer with abundant food and shelter from deep snow. Second-growth forests are poor deer habitat in Alaska throughout the year because of the lack of forage plants. These forests will make up approximately 75 to 80 percent of the managed forests under a 100-year rotation. Clearcuts provide abundant forage for only the first 15 to 20 years of the rotation period. A further complication is that during periods with snow accumulation greater than a few inches, the most valuable forage for deer (herbaceous species such as bunchberry, trailing raspberry, and gold thread) are inaccessible in open clearcuts. Additionally, recent evidence suggests that the quality of the forage plants found in clearcuts is lower than quality of the same plants in old-growth forest (Billings and Wheeler 1979, Schoen and Kirchhoff 1984).

All old growth is not the same, however. High-volume hemlock-spruce stands are preferred by deer during winters with heavy snowfall, while low-volume and noncommercial stands are avoided, as are high-volume spruce riparian stands (Schoen and Kirchhoff 1983). The high-volume stands with larger trees and canopies

intercept more snow than do lower-volume and noncommercial stands, resulting in lower snow depths and more available deer forage. In addition, bunchberry (a highly preferred forage plant) is significantly higher in nutritional quality in high-volume stands compared to low-volume stands (Schoen and Kirchhoff 1984, Flynn ADF&G unpublished data). Past timber harvesting has concentrated in the highest-volume stands, and future plans also project a disproportionate harvest in the higher-volume stands. The result will be a greater impact on deer than acreage figures alone may suggest.

There is an immediate management need for information relating old-growth harvest to deer populations in Southeast Alaska. The Alaska Department of Fish and Game has addressed this need by developing a model which predicts population changes in Sitka black-tailed deer as a result of logging in Southeast Alaska (Schoen et al. 1985). The model is based on habitat preference of radio-collared deer at Hawk Inlet, Admiralty Island, measured under low and high snowfall conditions. The model offers managers a systematic technique for evaluating timber management alternatives and their potential long term effects on deer populations. Alaska Department of Fish and Game and U.S. Forest Service biologists have also been developing a Southeast Alaska Multi Resource Model (SAMM, Fight et al. in prep.) which describes the interactions between timber management, hydrology, fisheries, and deer in selected watersheds on the Tongass. Developed primarily as an aid to research, this conceptual model may be adapted for management application in the future.

Wolves are a predator on deer in some areas and may keep populations depressed in years following severe winters and population die-offs (Olsen 1979). The Alaska Department of Fish and Game started a long-term study of wolf/deer-habitat relationships in southern Southeast Alaska in 1984.

Brown Bear

Historically the brown/grizzly bear was widely distributed in North America from central Mexico to northern Canada and Alaska, and from the Mississippi River to the Pacific Coast (Hall and Kelson 1959). Its distribution today is greatly reduced, with populations restricted to northwestern Canada, Alaska, and a few scattered wilderness enclaves in Montana, Idaho, and Wyoming. Alaska has the last major population of brown/grizzly bears in the United States.

Brown bears are indigenous to Southeast Alaska where they occur on the islands north of Frederick Sound and the mainland. Management concerns include hunting, effects of disturbance from increased human activities associated with development and recreation, and habitat alteration resulting from clearcut logging and

mining activities. An effect of habitat alteration of special concern is the greatly reduced vegetative understory in regrowth stands; brown bears are omniverous, and understory vegetation forms a significant part of their diet. Anadromous fish are another important food, and any reduction in fish runs that might result from mining or logging is also of concern.

The effects of removing old-growth forest on brown bear populations in Southeast Alaska are unknown. Johnson (1980) stated, "Development of an extensive logging industry has perhaps the greatest impact on bear management in Southeast Alaska . . . one known impact which is primarily a management problem but at the same time contributes significantly to the kill, is the rather large number of bears destroyed in logging and support camps. This kill may approach 10 percent of the reported legal kill."

In Montana, Mace (1983) reported grizzly bears avoided or moved out of recently logged areas. Craighead (1977) and Jonkel (1977) suggested that human induced mortality associated with logging may be the major contribution to grizzly bear declines. In British Columbia, Russell (1974) indicated that coastal brown bear populations were incompatible with intensive forestry. Smith (1978) suggested that other factors, in addition to habitat alteration, may be contributing to declines in brown bear populations in this area. Archibald (1981), also in British Columbia, suggested that development in coastal mainland forests appears to result in declining brown bear populations.

Although much research has been conducted on northern and interior brown/grizzly bear populations, comparatively less work has been done in forested, coastal brown bear habitat. As development, including forestry and mining, increases in the coastal forests of British Columbia and Alaska, more information will be necessary to maintain current brown bear population levels.

The Alaska Department of Fish and Game began brown bear research in Southeast Alaska in the fall of 1981. Major objectives are to determine seasonal distribution and habitat preference, home range, den site characteristics, and reproductive rates. Current research is being conducted in Tenakee Inlet on Chichagof Island and Hawk Inlet on Admiralty Island (Schoen 1982, Schoen and Beier 1983). There is an historically demonstrated incompatibility between brown/grizzly bears and man. As Craighead et al. (1982) stated, "Space and solitude are essential for maintaining grizzly bears in perpetuity . . . Research and management efforts throughout North America should focus on the largest wilderness areas of prime bear habitat." Construction of roads with their inevitable increase in human activity and development will substantially increase the number of bear-human conflicts.

Three types of human-related bear mortality occur: legal harvest, illegal take, and take in defense of life and property. Legal harvest can be managed, but as major road systems proliferate in Southeast Alaska as a result of logging, the Alaska Board of Game will need to consider more restrictive harvest regimes. One possibility is a permit system with numbers of permits allocated by drainage. Illegal take and defense of life and property incidents cannot be effectively controlled and will increase as logging brings about development of formerly unroaded wild country.

Black Bear

Black bears occur on the mainland of Southeast Alaska and on the islands south of Frederick Sound. Black bears have generally not been studied or managed intensively in Southeast Alaska. The only major study was by Erickson (1982) who investigated the denning characteristics of black bears on Mitkof Island. He found that bears utilize clearcuts in summer, but den in large trees or hollow logs--available only in old-growth stands. Black bears do occur in high densities in some areas of Southeast Alaska where logging has occurred. Studies are needed to relate bear populations to successional stages following logging. More specifically, are these high bear populations associated with the dense understory and abundant plant food species immediately following clearcutting, and how are populations affected during the next successional stage when the understory is shaded out by even-aged, densely spaced second growth?

Lindzey and Meslow's (1977a) study on the Washington coast found that, "physical disturbance and loss of habitat due to timber harvest between 1952 and 1968 may have caused bears to leave the island or increased mortality and perhaps reduced productivity of those that remained." Additionally, Lindzey and Meslow (1977b) reported that plant species preferred as forage by black bears declined by 85 percent as cuts progressed from 6-11 to 40+ years of age. Bears used 40+ year-old regrowth significantly less than expected, given its availability. In western Washington, Poelker and Hartwell (1973) surmised that black bear damage to conifer regeneration at 20-40 years of age was related to food shortage in those stands.

The potential adverse impacts of logging are not restricted to forage requirements. Johnson and Pelton (1981) analyzed the selection and availability of den sites in the Great Smokey Mountains and concluded that remnant old-growth stands were important denning habitat, particularly for females and young bears. Use of tree cavities for denning was also reported by Polker and Hartwell (1973) and Lindzey and Meslow (1976) in Washington and by Erickson et al. (1982) and Miller and McAllister (1982) in south coastal Alaska.

Although li ·le research has been done on black bear/forest relationships i Southeast Alaska, it is important to look at long term (over _ 100-year rotation) effects of habitat changes for black bears. It seems logical to predict that large scale conversion of productive old-growth forests to relatively sterile second growth over most of the rotational period will result in declines in black bear populations.

Mountain Goat

Mountain goats are indigenous to the Southeast Alaska mainland, have been successfully introduced to Baranof Island, and were introduced to Revillagigedo Island in 1983. Although mountain goats are not considered animals of the forest, in Southeast Alaska, many goats winter in old-growth forest habitat (Schoen and Kirchhoff 1982, Smith 1983, Fox 1983). In some areas goats occur in commercial forestland that may be clearcut. In other areas, it is unlikely that clearcut logging will pose a direct threat to forested goat habitat because such steep areas are currently classified as unharvestable and the timber is of marginal economic value. However, as harvest methods change (e.g., helicopter logging) conflicts in these areas may develop. There is evidence of substantial goat use in small "islands" of steep old-growth forests. Extensive logging between "islands" of preferred goat habitat could create barriers to dispersal. Smith and Raedeke (1982) discuss the problems of timber development in forested goat habitat on the Cleveland Peninsula and the possibility of increased mortality and eventual elimination of the population, as a result of logging and road-building.

Although logging may not result in widespread habitat degredation as is the case for deer, the indirect impacts on goat populations during and following logging may be substantial. Improved access into many drainages has the potential for concentrating legal hunting, poaching, and disturbance. These problems are not restricted to timber activities but could also result from mining, hydroelectric projects, and other development.

Moose

Moose are found in scattered populations in Southeast Alaska primarily in the major mainland river drainages. Moose are considered a successional species which generally benefits from fire and logging. The major moose research in Southeast Alaska has been conducted in Thomas Bay (Doerr 1983), the Chilkat River (Hundertmark et al. 1983), and the Stikine River (Craighead et al. 1984). These studies revealed that moose use old-growth forests extensively during periods of deep snow. During snow-free and mild snow periods, clearcuts were also utilized. Moose are probably less impacted by clearcutting than are deer because they can utlize woody browse and travel through deeper snow better

than deer. However, the closed canopy stands of second growth which replace clearcuts 20-30 years following logging are very poor moose habitat, and populations could be expected to decline if second-growth forests become abundant.

Wolf

Wolves are distributed throughout the mainland and southern islands of Southeast Alaska. They do not occur on Admiralty, Baranof, or Chichagof Islands. Little information is available on wolf biology or their habitat relationships. The Alaska Department of Fish and Game started a long term study of wolf/deer-habitat relationships in southern Southeast Alaska in 1984.

Deer are a major prey species of wolves in the southern archipelago. Following the severe winters of 1968-69 and 1970-71, deer numbers declined sharply. Wolf predation appears to have kept deer at low levels during the succeeding mild years (Olsen 1979). It is suspected that during heavy snow winters, when deer are forced to old-growth timber surrounded by clearcuts, wolf predation may be focused on old-growth retention areas. If deer do prove to be the primary prey, timber cutting which reduces deer populations can be expected to also adversely affect wolves.

Furbearers

The principle furbearers associated with old-growth forest habitats are beaver, marten, mink, and river otter.

Marten, of all furbearers, are probably most closely associated with, and dependent on old-growth forest (Marshall 1951, DeVos 1952). Marten are found naturally in Southeast Alaska along the mainland and on Admiralty, Kuiu, Kupreanof, and Revillagigedo Islands, and were stocked in 1934 on Prince of Wales, Baranof, and Chichagof Islands (Meehan 1974). Small mammals, especially voles, are a mainstay of the marten's diet (Koehler and Hornocker 1977), although they feed opportunistically on other available food (Lensink et al. 1955). In Southeast Alaska, red squirrels may be a particularly important food item. Other foods include grouse, other birds and their eggs, frogs, fish, insects, carrion, and berries (Seton 1929). Although local knowledge of habitat requirements is somewhat lacking, studies in Canada (referenced by Meehan 1974) and in Maine (Soutiere 1979) suggest that clearcut logging will reduce marten numbers.

Beaver are normally associated with "hardwoods" (e.g., alder, aspen, birch, willow, cottonwood) which they feed on, and accordingly are more common on the mainland than on the islands of Southeast Alaska. The animals are usually found in the valleys of slow-moving streams where there is little timber (Meehan 1974).

Since alder is a common component of early successionial vegetation development, beaver forage should be increased temporarily following logging (Meehan 1974).

Mink are perhaps Southeast Alaska's most abundant and commonly seen furbearer, spending summer along streams and in upland muskegs, and wintering in a narrow beach fringe zone. For den sites, mink prefer rocky, fairly steep beaches (but not bluffs), and are scarce along slightly sloping beaches where there is little cover at low tide (Harbo 1958). According to Harbo (1958) invertebrates, including blue mussels, clams, sea urchins, and dungeness crabs, make up the bulk of the mink's diet. Log storage and pulpmill effluents may be potential threats to these foods (Meehan 1974). Habitat loss of beach fringe timber due to clearcutting and associated blowdown is also a potential threat.

River otter are believed to be primarily inhabitants of beach and streamside habitats, although reports are common of otter 1/4 mile or more inland, especially in winter. Otter feed primarily on fish and shellfish, and may occasionally take swimming birds. Log storage and pulpmill effluents may affect these food sources (Meehan 1974). Decreased denning activity in beach fringe areas associated with clearcuts (Larson 1983) suggests logging may have a deleterious local impact on otter populations.

Bald Eagle

The bald eagle, once widely distributed throughout North America, is today considered common only in Alaska. The greatest concentrations of these birds are found in the coastal forests of Southeast Alaska. Aerial surveys indicate a stable population of between 7,000 and 7,500 birds in Southeast Alaska (Hodges et al. 1979). Eagles nest in the most mature trees, usually within several hundred feet of the open shoreline; on Admiralty Island, 85-90 percent of the nests were in old-growth Sitka spruce (Robards and King 1966, unpublished report). Second growth is not used for nesting if there are any remains of virgin stands in the vicinity (Meehan 1974).

Timber harvesting has been identified as a major factor in the elimination of suitable nesting habitat (Braun et al. 1975) and winter perching sites (Stalmaster and Newman 1978) in the Pacific Northwest. Management policies recently set forth (TLMP 1979) in Southeast Alaska call for retention of buffer areas around known nest trees and retention of beach fringe timber to protect nesting habitats.

Canada Goose

The Vancouver Canada goose nests in a generally solitary fashion throughout its range, which extends from Cross Sound and Lynn

Canal south to Dixon Entrance, on both the mainland and the islands of the Alexander Archipelago (Hansen 1962). This subspecies of Canada goose also winters mainly in Southeast Alaska, with estimates of the total population approaching 50,000 birds (Meehan 1974). Intertidal and estuarine areas throughout Southeast Alaska are a very important part of the year-round habitat, with sedge meadows, grass flats, muskegs, beaver ponds, and shallow lakes providing important feeding and brood rearing areas at certain times of the year (Meehan 1974). More recently, Lebeda and Ratti (1983) reported the importance of old-growth timber as vital nesting, feeding, molting, and brood rearing habitat. Lebeda and Ratti (1983) speculate that predation pressure by crows, ravens, bald eagles, mink, and otter has selected against individuals using traditional open habitats and favored birds using dense forest zones away from the beach fringe. Potential threats to Canada geese are log storage sites in estuarine areas and clearcut logging of certain old-growth stands, particularly lower-volume classes in proximity to extensive muskegs or estuarine habitats.

Marbled Murrelet

The marbled murrelet is the most abundant small seabird in many coastal localities, with numbers in Southeast Alaska estimated at 250,000. Its nesting requirements, however, are largely unknown with only nine nests recorded until recently throughout its range (northern California to Prince William Sound). These limited nesting records, along with its general distribution which coincides with remaining old growth, suggests this species may be adversely affected by logging. The Pacific Seabird Group passed a resolution in December 1982 citing the potential conflict between logging and murrelet habitat and urging additional research. The Alaska Department of Fish and Game studied murrelet nesting on Baranof Island in 1983-84.

Other Birds

Birds which commonly overwinter in old-growth forest include the hairy woodpecker, chestnut-backed chickadee, golden crowned kinglet, winter wren, brown creeper, pine siskin, and red crossbill. These, and other less common winter residents use old growth both for feeding and roosting in winter. Roosting birds require cavities, usually in dead, decaying snags, which are relatively abundant in old-growth forest. Some birds are seed eaters and others are insectivores, gleaning their food from the bark of trees. Old-growth forests produce both an abundance of seeds and well developed bark substrates for these foraging activities. Ongoing research on the habitat requirements of wintering birds in Southeast Alaska (Hughes, ADF&G, pers. comm.) suggest that high-volume stands of old growth are ecologically distinct from

other stands, and support a characteristic avifauna. Loss of snags, and disproportionate harvesting on rare high-volume stands are the greatest threats posed to some species of birds wintering in Southeast Alaska.

FISHERIES

Much of what follows has been taken directly from "The Forest Ecosystem of Southeast Alaska - 3. Fish Habitats" (Meehan 1974).

Finfish (salmon, trout, etc.)

Fish and timber are the two most important natural resources in Southeast Alaska at the present time. Salmonids (Pacific salmon, trout, and char) often spend most of their freshwater life in streams that flow through forested watersheds. In the glacier-formed, U-shaped valleys common in Southeast Alaska, much of the best timber is found in the valley bottoms in close association with salmon and trout streams. This makes timber harvesting a more difficult problem, because timber harvesting can affect streams.

Two major freshwater habitat types are important to salmonids, i.e., spawning areas and nursery or rearing areas. In some cases a reach of stream may serve as both spawning and rearing habitat, but more often rearing areas are located some distance away from the major spawning riffles. Pink and chum salmon utilize spawning habitat; but after fry emerge from the gravel beds, they migrate to sea almost immediately, so that freshwater rearing areas are not significant factors in their life cycle. On the other hand, the remaining salmon species (coho, chinook, and sockeye), the trouts (rainbow and cutthroat), and the char (Dolly Varden) spend from a few months to 3 or 4 years in fresh water before migrating to sea; in some cases they spend their entire life in fresh water. To these species the rearing areas are often more important than spawning habitat (although both can be critical), since the amount and quality of "living room" is generally the factor which limits their production.

The primary function of spawning gravels is to provide an environment suitable for the development of the eggs and alevins up to the time of hatching and emergence. The rearing areas must provide conditions suitable for the growth and survival of the young fish. Because of these different requirements, the two habitat types may be quite dissimilar. The spawning environment must (1) contain sufficient quantities of suitable gravel, (2) provide sufficient surface and intragravel water flow to assure adequate flow of oxygen to, and removal, of metabolic wastes from the developing embryos, (3) maintain temperatures which assure proper

rate of development and time of emergence of the eggs and fry, and (4) be free of sediment in quantities which would inhibit development of embryos due to oxygen depletion and would physically inhibit or prevent emergence of fry.

The rearing environment must provide the food, living space, cover, and water quality necessary for good growth and survival of fish populations. The spawning reaches are generally characterized by series of riffles and pools, where the flowing surface water can be oxygenated, and where bottom contours favor the interchange of surface and intragravel waters. The rearing habitat, on the other hand, is often slow-moving water, rich in plant and invertebrate animal life, and ranges from small streams and tributaries, through sloughs, side channels, and shore areas of major streams and rivers, to ponds and lakes of varying size.

Consideration for fish habitat in Southeast Alaska during timber harvesting was, in the past, often directed only toward the larger spawning streams. Today, the great importance of the smaller rearing areas is being more fully recognized, and these areas are now beginning to receive the attention which they warrant. Small streams are generally more dramatically affected by changes than are larger streams and rivers.

Sediment (both suspended and deposited), water temperature, dissolved oxygen, streamflow, and debris are the factors associated with logging practices which can affect the habitat of anadromous and resident fish populations. These factors often are interrelated, and the total cumulative effects may be greater than the sum of their individual effects.

Sedimentation--Sedimentation caused by destruction of streambanks, slope erosion, erosion of roads, or debris avalanches can alter the gravel composition of streams. Road construction is generally recognized as a major cause of logging related sedimentation (Burns 1972, Gibbons and Salo 1973). Increases in sand and silt in spawning gravels can reduce oxygen delivery and metabolic waste removal needed by developing salmon embryos and cause decreased survival, premature emergence, or smaller size of emergent fry (Cooper 1965, Reiser and Bjornn 1979). Sediment in spawning gravels also inhibits emergence by entombing alevins (Koski 1966) and may reduce the average size of emergent fry because only smaller individuals can emerge from sediment impacted gravels (Tappel and Bjornn 1983). Gravel permeability is the best when gravel contains less than 5 percent sand and silt by volume (McNeil and Ahnell 1964).

Sedimentation can also affect rearing species by reducing the stream's capacity to produce food organisms (Phillips 1971) and by reducing habitat for juvenile fish (Bjornn et al. 1977). Sigler et al. (1983) reported that juvenile salmonids grew slower

and had greater rates of emigration from experimental streams when subjected to turbid water conditions and Crouse (1981) demonstrated that coho production declined when large cobble substrates which they used for shelter were covered by sediment.

Sediment can affect adults also. Migrating king salmon will choose clear water tributaries in preference to streams that are turbid (Smith 1940), and adults will often refuse to move when suspended sediment exceeds 4,000 milligrams/liter. Adult trout will cease feeding and move closer to cover when turbidity exceeds 35 milligrams per liter (Bachman 1959). Bachman (1984) showed that adult brown trout decrease rates of feeding during turbid conditions.

Temperature--Removal of the forest canopy increases sunlight penetration and can increase water temperature (Brown 1970) and thereby increase mortality of spawning fish (Reiser and Bjornn 1979). In Alaska, Meehan (1970) found increases in stream temperature resulting from clearcutting but noted that increases did not reach levels lethal to salmonids. However, temperatures greater than about 13-15° C., although not lethal, can cause decreased growth rates and lower rearing densities (Rieser and Bjornn 1979). In British Columbia, Hartman et al. (1982) found that winter water temperatures increased after clearcutting, accelerating the rate of development of incubating alevins and causing fry to emerge from the gravel earlier in the year. Early emergence often occurs at a time of spring floods, and many fry are swept out to sea. Fry that escape floods enjoy a longer growing season and may attain a greater size by the end of their first year (Scrivner and Anderson 1984). Tyler and Gibbons (1973) and Sheridan and Bloom (1975) also reported on effects of forest canopy removal on stream temperature. Within limits, temperature increases in small streams as a result of removing streamside vegetation can be predicted. In some situations a slight warming of stream water might initially enhance fish production, but the cumulative downstream effects of temperature increases in upstream tributaries must be considered.

Logging related increases in temperature have popularly been criticized as a source of mortality in spawning pink salmon. However, Murphy (1983 unpublished) reported that summer die-offs of pink salmon in clearcuts is more related to low stream flows and low tides which trap and concentrate spawners, thereby creating anoxic conditions and rapid mortality.

Streamflow--Streamflow usually increases following logging due to decreased evapotranspiration and interception of water. Chamberlin (1982) lists examples showing annual increases in runoff 20-40 percent greater than pre-logging levels. Additionally, increased peak flows may occur and appear to be related to the amount of roads in the harvested watershed (Moring 1975)

It is not known if timber harvest alone (through evapotranspiration decrease) can increase peak flows significantly (Chamberlin 1982). However, much greater flow increases may be caused by rain-on-snow events or when heavy rainfall coincides with rapid snowmelt. Although Harr (1980) found no direct data linking these events with destructive peak flows, considerable circumstantial evidence suggests that harvesting in coastal British Columbia may have contributed to deteriorating aquatic habitat in a region where rain-on-snow events are common (Chamberlin 1982).

Evidence now shows that flooding, even within normal limits, has a dramatic impact on rearing salmonids and may be the single most important factor in determining annual abundance. Mason (1976) found that winter floods can rapidly reduce summer populations and Tschaplinski and Hartman (1983) found that numbers of juvenile coho salmon were depleted after floods. Also since fish choose foraging sites based upon their size and local velocity conditions (Bachman 1984), both higher minimum flows and higher peak flows may limit the number of usable foraging sites and thus reduce the population density.

Long term changes in streamflow may have greater impact on fisheries by limiting annual recruitment. Murphy (1983) concluded the following about streamflow following logging after studying a 1981 fish kill of pink and chum salmon spawning in Porcupine Creek on Etolin Island, Southeast Alaska: "In the short term, less than 20 years, streams in clearcuts may have increased minimum water flow because water that would have been transpired by the forest becomes runoff. For example, in western Oregon, cutting 80 percent of the trees in one watershed increased minimum streamflow by 85 percent (Rothacher 1970). Thus, fish kills may occur less frequently in recently logged watersheds than in similar forested watersheds if temperatures do not increase too much. However, in rapidly growing, second-growth stands (stands more than 20 years old), transpiration may be greater and streamflow less than in old-growth stands (Berndt and Swank 1970, Myren and Ellis in press). In the long term, logging could reduce minimum summer streamflow and exacerbate salmon kills." In summary, peak water flows in logged drainages may be increased, decreased, or remain unchanged after logging.

Water Quality: Nutrients--When watersheds are clearcut, nutrient cycling is interrupted. Trees are a major source of uptake of minerals, and their harvest can increase the nutrient input into streams, but only for short periods. Streams that are limited in a particular nutrient may experience major increases in algal production if temperature, flow and light conditions permit (Chamberlin 1982).

Large Organic Debris--Excessive log jams and large debris may limit fish production in some streams by blocking spawning fish passage. Moderate amounts of logs and large debris provide rearing and resting pools for juvenile salmon, trout, and char.

Franklin et al. (1981) reported the following about in-stream logs: "Logs are critical to maintenance of physical and biological stability in headwater streams. Debris dams create stepped stream profiles that dissipate energy otherwise used for transporting sediment and lateral-cutting and downcutting of stream channels. Such dams, with their associated plunge pools and beds of trapped gravels and fine sediments, provide a range of habitats needed to maintain a full array of stream and stream margin organisms. Logs are an important source of energy in streams, and the bulk of the nitrogen supply of a stream comes from woody debris."

Stream Habitat--Clearcutting affects stream habitat and limits the abundance of rearing salmonids. Clearcut reaches of stream have fewer undercut banks, fewer pools, more riffle area, and less organic debris than undistrubed sections of stream (Murphy and Koski 1984 unpublished). Habitat reduction is presumably caused by crossstream yarding of logs which can destabilize or remove instream debris, and collapse undercut areas. Overzealous stream cleaning of logging residue after harvest also appears to be a major factor in reducing instream wood debris.

Large organic debris (LOD) such as root boles, logs, and accumulated or matted branches are important components of juvenile salmonid habitat in coastal streams and may regulate annual production and smolt yield. Fallen or windthrown trees are incorporated into stream channels where the hydralic action of water plunging over or moving around LOD scours out pools. Fish use these quiet areas to conserve energy and venture out to capture passing food items. The number of these foraging sites or refuge sites determines the density of juveniles (Bachman 1984).

LOD may be more important during winter. With decreasing water temperature, swimming performance declines, and fish seek shelter from floods by moving to deeper water and to recesses provided by LOD (Bustard 1975). Studies of winter habitat by Heifetz et al. (in press) found that fish used only that habitat during the winter that had LOD. Mason (1976) demonstrated that regardless of the size of the summer population of fish, the annual production in the form of smolt was directly related to the amount of winter habitat available.

Of great concern to fishery managers are the long-term (more than 40 years) effects on habitat. Swanson et al. (1974) suggested that large organic debris gradually disappears when the source of recruitment is removed and does not return to former levels until

100 years after cutting. Sedell and Triska (1976) indicate that 300 or more years may be required for levels of large oraganic debris to recover. Based on work by Murphy and Koski (1984 unpublished) and Elliott (unpublished), long-term loss of LOD could result in a 30-50 percent decrease in the abundance of rearing coho.

The Stream-Forest Interface: Managing the Riparian Zone--The riparian zone and stream ecosystem are closely linked: events that occur in the riparian zone can directly affect the status of the stream. The riparian zone provides nutrients and organic material that is utilized by a wide diversity of stream invertebrates. Large organic debris stabilizes stream channels, forms pools, undercuts banks, and provides concealment for juvenile salmonids. Tree canopies provide shade during the summer that limits high stream temperatures. There is also evidence that the timber canopy provides an insulative layer and can help moderate the effects of low winter temperatures. Riparian zones act as buffer or "filter" against sediment and debris.

Clearcutting to stream banks disturbs the relationship between riparian and stream ecosystems, and changes could be expressed in terms of salmonid production. Tschaplinski and Hartman (1983) found that logging to the streambank and leaving no buffer zone was detrimental to juvenile coho salmon. Culp and Davis (1983) concluded that buffer strips at least 10 meters wide are necessary to maintain normal levels of organic input and benthic detritus in coastal streams. They stated that all logging, including selective logging, must be prohibited in this zone.

In Southeast Alaska, Murphy and Koski (unpublished) reported that streams in clearcuts had more fry than streams in old growth, but streams with buffer strips, where trees were not removed, had more fry than either streams in clearcuts or in old growth. Murphy and Koski (unpublished) stated that clearcuts had the highest levels of algae and invertebrate biomass and greatest density of fry indicating that logging had caused increased productivity. Streams with buffer strips provide optimum habitat for fry and may benefit from increased productivity resulting from clearcutting upstream.

But within clearcut streams increased production of fry is nullified by established levels of winter habitat (Mason 1976), and since clearcuts have less LOD than undisturbed streams, the winter mortality would be expected to be greater. Buffer zones, on the other hand, optimize and in some cases can maximize the winter carrying capacity by providing more LOD and should capitalize on increased production in clearcuts. However, more research is needed on the links between clearcut production and smolt production before sound guidelines for LOD management can be developed.

In the interim, buffer zones are considered to be the most effective and reliable solution to the LOD problem and meet all criteria for maintaining the habitat requirements of salmonids.

Many of the factors which have been discussed in this report are difficult to measure because natural variation can often be greater than the variation caused by man. For example, if severe storms occur during the measurement period, small changes in suspended sediment concentration or streamflow as a result of roadbuilding or logging might go undetected. Natural variations in stream temperature are also a potential problem in identifying temperature changes resulting from man's activities.

In summary, man's activities in a watershed can adversely affect fish habitat. These activities (logging, road construction, etc.) can be compatible with the production of salmonid fishes only if adequate consideration is given to the aquatic environment during both planning and operational stages. Protection of fish-producing waters in conjunction with land use treatments is a responsibility which land managers must never overlook. Fishery biologists must help determine the type of protection necessary for each stream system, and foresters must plan timber harvest in that system to assure that the necessary protection is afforded.

Research Needs--Much is known in a general way about the effects of man's activities on fish habitat in Southeast Alaska. There is still need, however, to more precisely define cause and effect relationships between logging and fish habitat and populations. Continuing research is needed on relationships between logging activities and stream sedimentation, water temperature, and large organic debris in streams. Changes in these aspects of habitat must then be related to survival of eggs and the various age classes of young salmonids, growth rates of salmonids, invertebrate production, and time of smolt migration to sea. Research must also focus on long-term effects. It is the concensus of investigators that increases in stream productivity associated with logging will not be permanent and that a long-term loss of debris-formed habitat will cause a decline in coho abundance. Data are not yet available however. Until these aspects are more thoroughly investigated, the Alaska Department of Fish and Game and others are requesting that logging and road construction in the most productive fish-producing watersheds such as Kadashan in Tenakee Inlet be deferred.

Shellfish (crabs, clams, etc.)

During log dumping and rafting processes, bark is knocked from logs and sinks to the bottom, often in large quantities. This accumulation can greatly increase oxygen demand, resulting in

reduced populations of marine benthic organisms, (such as crabs, and other shellfish), and can also smother the bottom so thoroughly that repopulation by benthic forms is prevented.

Observations at several dump sites in Southeast Alaska showed that significant accumulations of organic debris may persist for long periods of time (Ellis 1970). Marine animals, including crabs and clams, were very scarce in some areas compared with nearby areas without log dump sites. In general, the impact of these log facilities depends on several conditions including the type and age of the facility and the characteristics of the water (depth, influence of tidal currents, etc.).

Water storage of logs also results in a release of soluble organic compounds (leachates) which further increases the oxygen demand in the storage area. Length of storage, species of logs stored, and various estuarine conditions all influence the effects on marine communities. Much remains to be learned about the effects of water-based log handling in Southeast Alaska. The economic as well as biological considerations involved in rafting and towing versus barging, for example, need to be determined. In general, any method which reduces the amount of bark and other log debris accumulating on the bottom is preferred.

Economic Contribution

Fisheries resources contribute substantially to the economic welfare of Southeast Alaska. Data from 1980 for finfish and shellfish show their ex-vessel value to the fishermen to be $66.5 million and their primary wholesale value to be $196.9 million (Table 4). The estimated value for sport fish angling in 1979 utilizing fish produced on the Tongass Forest was $3.7 million (Sullivan and Sheridan undated).

GUIDING

Guiding is a multi-faceted industry directly affected by forest management in Southeast Alaska. Guiding occurs for a number of activities, including hunting, fishing, marine cruising, kayaking, rafting, photography, aerial sight-seeing, and ice field travel. All are enhanced by an esthetically pleasing environment and without crowding and interaction with other people. Forest management affects guiding in that clearcut areas are generally considered to detract esthetically. Consequently, as more areas are clearcut, guiding tends to concentrate in undisturbed areas, with the potential to create overcrowding and increased human interaction.

Since big game guiding has a longer history and is more closely regulated than other types of guiding and since more information is available, it will be considered in more detail in this report. Big game guiding has been conducted in Southeast Alaska since the 1890's. It has continued as a viable industry since then, and guides today believe their long existence in Southeast Alaska entitles them to recognition when land management plans are considered.

Brown bears are the major species guided for in Southeast Alaska. Black bears and mountain goats are also guided for, and a very limited amount of guiding occurs for deer. Twenty-two Master and Registered Guides are licensed and actively guide in Southeast Alaska (Game Management Units 1-5). Most hire two or more Assistant Guides and other seasonal help.

State regulations require that hunters who are not residents of Alaska contract with a licensed guide for brown bear hunting. This, and the fact that many non-residents do not have the knowledge and equipment to hunt alone, results in most guided hunters being non-residents. The income brought into the state by non-residents is "outside" money and may add more to the overall state economy than money that is merely recirculated by resident hunters.

A recent survey (Beier 1984) estimates the revenue generated in the state annually by guided hunters. An average brown bear hunt lasts about 12 days and costs about $600 per day for guide fees. The total number of nonresident guided brown bear hunters averages about 70 per year (56 successful and an additional 20 percent unsuccessful). This totals $504,000 in guiding fees, $6,300 in hunting and sport fishing licenses, and $17,500 in brown bear tag fees for a total annual direct expenditure for guided brown bear hunting of $527,800. Air travel costs, taxidermy fees, and incidental expenditures are in addition. When expenditures for guided black bear and goat hunts are added to brown bear hunt expenditures, it is estimated that the Southeast Alaska guiding industry brings between $750,000 and $1,000,000 into the state each year.

Income from non-resident hunting licenses and big game tag sales is especially important as a source of revenue for the State Division of Game. For 1983, statewide non-resident hunting license and big game tag sales totalled nearly $2 million, in contrast to resident hunting license and big game tag fees which totalled $850,000. Hunting license and big game tag fees directly support Game Division programs and are especially important because they are the main source of matching funds for revenue from the Federal Aid in Wildlife Restoration Program ($1 from license sales can be matched with $3 from the Federal Aid Program).

Guides have consistently been on record that clearcutting is not compatible with guided hunting, especially for brown bears. A survey of guides conducted by Beier (1984), an experienced Assistant Guide for Southeast Alaska, spelled out the impact of logging on the guiding profession. Twenty Master and Registered Guides were sent questionnaires, and ten responded. All but one listed hunt esthetics as an extremely desirable aspect of guiding and said that clearcutting greatly decreased the esthetic appeal of an area. All respondants stated that they did not hunt in areas that had been or were being logged. Reasons given were esthetics and reduced bear populations in logged areas. Most guides listed a number of bays where they no longer guided because the bays had been logged.

At present, 13 guides have joint exclusive guiding use of Game Management Unit 4, Admiralty, Baranof, and Chichagof Islands. This unit follows the Alaska Peninsula and Kodiak Island game management units in number of brown bears produced. Because of logging and roading in Unit 4 and resulting reduction in hunting areas and numbers of bears, guides believe that the 13 guides licensed for Unit 4 should be reduced to six or less. The state Guide Board is presently working on a plan for such a reduction and criteria for new guide eligibility under a six guide limit. In effect, timber cutting activity to date, which is only a fraction of what is planned, has already threatened to severely reduce guiding in Southeast Alaska.

ECONOMICS OF TONGASS FOREST LOGGING

The history and economics of timber industry operations in Southeast Alaska are particularly significant for upcoming policy decisions. The 50-year contracts governing current logging in the Tongass have been questioned, and the prudence and legality of re-negotiating these agreements may, to a large extent, be determined by the history of resource and fiscal management by the timber companies concerned. The economic procedures for timber sale and harvest--vital to understanding the viability of the industry in Southeast Alaska--constitutes the remainder of the report. Timber sales in the Tongass, as in national forests throughout the nation, are conducted by the Federal Department of Agriculture through the auspices of the Forest Service. A complex system of setting timber prices, deducting harvest costs including roadbuilding, and lowering sale prices retroactively through rate "redeterminations," go to preserve industry profits while in effect providing a government subsidy. Forest Service figures for Alaska for 1983 show each dollar spent by the government for timber sales returned 2 cents in timber sales receipts (Emerson et al. 1984). Examining below-cost timber sales and the portion of industry expenses underwritten in this fashion by

public monies aids in interpreting the actual, long-term contribution by the timber industry to the area economy, especially given any uncertainty of continued funding support from the federal government.

The Economic Beneficiaries of Logging in Southeast Alaska

Two pulp producers, Alaska Lumber and Pulp (ALP) and Louisiana Pacific-Ketchikan (LPK), exercise predominant control over logging operations in Southeast Alaska, and presently employ approximately 2,000 workers (Alaska Department of Labor, pers. comm. 1984). Some work is seasonal and results in payment of unemployment benefits by the State of Alaska. In 1983, the State paid unemployment benefits of $4,004,594 to lumber, wood product, and pulp workers. A significant portion of timber industry workers are not Alaska residents; of the $4 million in unemployment benefits paid by the State to forest products workers in 1983, more than one-third was paid out-of-state (Alaska Department of Labor, pers. comm. 1983).

Among the other direct beneficiaries of logging in the Tongass--namely the primary consumers of sawtimber and pulp produced--are the Japanese. Virtually all the sawtimber taken from the Tongass Forest is currently being marketed overseas, while only a scant amount is being used locally. In addition to the sawtimber, Japan purchases ALP's entire production of pulp. Pulp produced by LPK is also marketed internationally through the "spot market," whereby nearly 50 percent is shipped to the Middle East (J. Mehrkens, U.S.F.S. economist, Juneau, pers. comm. 2/1/84).

Timber Sales and Pricing

The regional office of the U.S. Forest Service is charged with conducting Tongass timber sales. An admittedly complex system of setting timber prices, deducting harvest costs including road-building, and lowering sale prices retroactively through rate "redeterminations," ensure industry profits while in effect providing a large government subsidy. Details of the workings and abuses of the pricing system follow.

The purchase price paid by the timber industry for timber harvested from national forest land is calculated as a "stumpage fee." Stumpage fees paid to the U.S. government for Tongass timber are determined by subtracting industry production costs, including an allowance for profit and risk, from anticipated final product prices. Production costs deducted from the purchase price include numerous expenses, including a substantial sum for the construction of roads for transporting timber from cutting sites to the mill.

When production costs are high, as is the case of virtually all Tongass sales, the U.S. Forest Service absorbs a loss so as to ensure the profit of the timber corporations. A 1983 study reported that the Forest Service spent more than $375 million from 1970 to 1982 to make Tongass Forest timber available, while charging loggers less than $63 million (Wolf cited in Barlow 1983). Emerson et al. (1984) reported that for timber sales in Alaska in 1983, the Forest Service received only 2 cents back for every dollar it spent to make timber available for harvest.

Although such "below-cost sales," as they are termed, are currently legal under federal regulations, debate has begun in congressional committee (U.S. Congress 1983) as well as in several national publications as to the economic prudence of the practice. Since loss to the Forest Service on timber sales in Alaska is especially high as compared to other states (Emerson et al. 1984), the timber industry in this state is vulnerable to any redefinition of the Forest Service pricing system which would eliminate currently allowable losses.

Roadbuilding costs, as previously mentioned, are currently deducted by timber corporations from the price paid for the trees purchased in national forests. Yet this deduction alone is not enough to make logging economically feasible in the Tongass. The Alaska Lands Act guaranteed an additional $40 million annually--or as much as needed--to keep the timber industry "stable" in Southeast Alaska. This money can be used for "pre-roading," that is constructing access roads before sales to technologically marginal and low-volume timber stands and to LUD III drainages managed for biological and esthetic considerations as well as timber yield. Pre-road money can be used in both independent or short-term sale areas and in long-term sale areas.

Further Reductions of Timber Prices

Stumpage rates, the price paid to the government for timber cut from public lands, are redetermined for the two 50-year contracts every 5 years. In addition, these long-term contracts qualify for special "emergency rate redetermination" by which the selling price can be dropped retroactively for a period of up to 5 years so as to ensure industry profitability in the face of declining or unfavorable markets for the finished lumber and pulp products.

While rate redeterminations for industry benefit are awarded during a falling market, there is no reciprocal arrangement for rising market conditions. If the selling price of finished lumber and pulp products rise during the period of a contract sale, no adjustment is made. Consequently, only industry benefits from rising market conditions, while the federal treasury loses revenue retroactive from past timber sales when markets decline.

Emergency rate redeterminations, by reducing stumpage fees, substantially reduce receipts by the government for timber sales in the Tongass. Recent redeterminations were granted to the two 50-year contract holders, ALP and LPK, due to depressed market conditions for pulp and timber products. As an example, retroactive to July 1, 1982, ALP had the 1981-86 appraisal rate per thousand board feet reduced for spruce sawlogs from $215.98 to $2.26, and for Alaska cedar sawlogs from $1,058.27 to $1.22. For LPK the 1979-84 appraisal rate for spruce sawlogs was reduced from $114.96 to $2.87 per thousand board feet, retroactive to December 1, 1981.

Economic Disadvantages Placed on Small Timber Operations.

Under existing regulations small, independent logging operators are put at a substantial disadvantage by the system of awarding rate redeterminations. Sales of less than 7 year's duration are not eligible for emergency rate redeterminations, and only the long-term contract holders, LPK and ALP, can receive the retroactive discounts.

Small logging operators are further disadvantaged because they must pay cash stumpage deposits much sooner than ALP. This is because the sale area boundary in the ALP contract encompasses inlets and bays where logs can be stored, and small sale contract areas are restricted to land. Small sale operators must pay cash stumpage deposits after logs have been in the water for 30 days, and ALP can leave logs in the water indefinitely without paying stumpage deposits.

Weaknesses of the Current Pricing System

A major weakness of the current pricing system for timber sales on public lands is that it invites timber companies to devise schemes to show minimal final product returns so that the stumpage fees they pay for cutting will be calculated at the lowest possible value. The system also invites companies to inflate logging and mill costs to force final stumpage prices even lower. Court records in which ALP and LPK were convicted of antitrust violations show that both 50-year contract holders have committed these practices in the Tongass (Reid Brothers Logging Co. vs. Ketchikan Pulp Co. and Alaska Lumber and Pulp Co., 1981).

Since roadbuilding is a leading deduction from the sale price of timber on public lands, it is desirable to minimize roadbuilding. One option available to reduce the number of miles of road being built in the Tongass is simply to better utilize existing roads. There are several important advantages of this approach to management. First, the high cost of roadbuilding would be reduced, an expense which is passed on to the taxpayer when the timber industry deducts it from stumpage fees paid to the Forest Service for trees

cut. The Forest Service estimates that in LUD III areas an additional 60 percent of roads is necessary on the first entry to harvest the same volume of timber as could be harvested in the first entry on an area managed more intensively for timber. Government pre-road funds pay directly for this additional 60 percent of road contruction (USFS, TLMP, p. H-2 1979).

Another advantage of using existing roads rather than constructing new ones is that additional impacts to habitat can be confined to drainages that have already been disturbed, and road construction and logging can be deferred in undisturbed drainages with high fish and wildlife values.

In addition to direct funding for roadbuilding in LUD III and marginal stands, credits are awarded to timber companies for additional roads which they build for cutting and transport. These credits are reductions made in the price paid to the Forest Service for timber. These roadbuilding credits are awarded in lieu of actual receipts to the National Forest and listed as part of a system of collector and arterial roads. Such credits deducted from the purchase price of timber can be quite substantial. In Fiscal Year 1982, for example, the Forest Service reported that roadbuilding credits accounted for 67 percent of Tongass Forest receipts.

Actual payments for the purchase of timber by corporations in the form of stumpage fees proved, by contrast, rather inconsequential. For Tongass Forest timber cut in 1982 and valued at $21.5 million, only $2.5 million or 11.5 percent of the appraised market value was actually paid to the National Forest fund after reductions including deductions for roadbuilding expenses. Roads built by timber companies for which they have received purchaser credits revert to the Forest Service after timber harvest is complete. The Forest Service either maintains them or "puts them to bed" so they cannot be used, but could be put back into use at a future date.

In summary, the current method of calculating stumpage rates by deduction of expenses, as well as the additional federal funds supporting pre-roading, result in high government expense and consistently below-cost timber sales in the Tongass.

Antitrust Violations

In 1981, ALP and KPC (Ketchikan Pulp Company, now LPK) were found guilty in United States District Court of conspiracy in restraint of trade and attempt to monopolize in violation of the Sherman Antitrust Law (Reid Brothers vs. Ketchikan Pulp Co. and Alaska Lumber and Pulp Co. 1981). The Ninth Circuit Court of Appeals upheld this ruling, and the Supreme Court let lower court decisions stand. Evidence presented during the Reid Brothers lawsuit showed

that the two large companies deliberately forced small, independent operators out of business and kept other large companies from competing.

These antitrust violations in the Tongass have been further scrutinized during recent congressional oversight hearings headed by Representative James Weaver examining Tongass Forest timber industry practices (U.S Congress 1983). The hearing record includes testimony by Forest Service, Justice Department, and industry representatives. In addition, documents were introduced which summarized illegal and potentially illegal activities in the Tongass. What follows is a summary of the most telling testimony.

First, the Weaver hearings cited a report by a three-man Forest Service team to the Alaska Regional Forester reviewing the evidence presented during the Reid Brothers lawsuit.

Collusive bidding practices by ALP and KPC in effect eliminated competition between these two major companies. These companies also bid preclusively against other, often smaller companies to prevent them from operating profitably in Southeast Alaska, and thereby retained control of Tongass timber themselves. The review team acknowledged that the Forest Service had been aware of the preclusive bidding practices occurring from 1966-1975, but apparently had done little to discourage this collusion.

Beginning in 1975-78 another form of collusion became apparent, according to the Forest Service review team: ALP and KPC allegedly boycotted Tongass timber sales. This boycotting of sales resulted in lower stumpage prices to be paid by the corporations. The practice stands as evidence that widespread collusion in bidding practices have continued beyond the original citations.

ALP and KPC sold pulp and lumber to parent companies at less than fair market value, while parent companies sold supplies to mills at inflated prices. These practices resulted in the deliberate reporting of false profit figures. By reporting falsely lowered profits, the two corporations were awarded reduced stumpage fees--in effect paying less for the timber they had cut. In this way the federal government lost revenues through the fraudulent accounting of the long-term contract holders. In turn, the State of Alaska lost its 25 percent share of these federal receipts from Tongass timber sales.

Additionally, KPC sold cedar logs to ALP and presented fraudulent invoices to the Forest Service to further depress the price to be paid to the government. The logs were then sold in Japan and the true profits divided between the two companies. The basic appraisal process for determining stumpage rates was also abused when KPC used subterfuge in making payments to loggers, thereby lowering the price to be paid the Forest Service.

Forest Service Review Team Recommendations

Overall, the Forest Service review team has recommended sweeping reforms of timber management practices in the Tongass National Forest.

To remedy the losses incurred by state and federal treasuries as a result of illegal activities by the long-term contract holders, the Forest Service report recommended that the State of Alaska and the Internal Revenue Service should be informed of revenues due to them which were fraudulently withheld by the long-term contract holders in the Tongass. The review team further recommended that the Justice Department of the United States be informed of the extent of revenues fraudulently withheld from the government so that appropriate actions can be taken against the corporations.

The Forest Service review team also recommended that 5-year rate redeterminations be frozen until end product values and charges from parent to subsidiary were verified as acceptable.

The review team further stated that LPK and KPC gained monopoly power and thereby destroyed competition, resulting in damages to the U.S. treasury in the millions of dollars.

Most significantly, the Forest Service team recommended that ALP and KPC and their affiliates and co-conspirators be debarred and suspended from future timber sales on the Tongass Forest to allow re-establishment of competition. Debarment should coincide with remaining contract time on long-term sales, with provision to reevaluate debarment after 3 years and periodically thereafter.

The report goes on to analyze a series of problems with current timber management practices which adversely affect the Tongass. First, cutting is concentrated in high-volume stands, and those most easily accessible. Prices paid by the corporations are not determined on the basis of what is actually cut, however, but instead rely on appraised values for timber based on average figures for vast acreages. These averages assume balanced cutting between low-volume and high-volume timber classes within the sales area.

The practice of cutting disproportionately large amounts of prime timber while passing over lower-volume stands has several adverse consequences for the Tongass National Forest. First, the stumpage fees are actually less than should be paid for the timber cut due to the averaging involved in appraising market value. More importantly, the practice of cutting the prime timber first has an unnecessarily intense impact on that part of the forest most valuable as habitat.

A second timber management practice addressed in the Forest Service review team report is the role the 50-year contract holders are given to "pick and choose" the timber stands to be appraised for harvest in each 5-year period. Apparent abuses of this system include the refusal of low-volume stands as well as valuable salvage timber which has been simply left to rot while logging continues in high-volume stands. The report concluded that the practice of industry selection of sites unduly restricts the Forest Service and hinders proper management of the Tongass.

Finally, practices concerning how environmental consequences of a given timber sale are reported was called into question by the Forest Service review team. Under current management practices, a single Environmental Impact Statement can be filed covering hundreds of thousands of acres to be cut during a 5-year period. The review team concluded that such blanket Environmental Impact Statements and Environmental Assessment Reports do not allow truly sensitive areas the appropriate level of intensive resource management expertise.

Another finding of the Forest Service review team was that the volume of utility logs cut during the 1960-75 period was never properly charged to the ALP contract. Contract provisions required the Forest Service to charge this volume against the guaranteed sale volume but it was never done.

Forest Service Chief R. Max Peterson submitted for the Weaver oversight hearing record a listing of actions the Forest Service had taken on the recommendations of the Reid Brothers lawsuit review team. Some of the more significant actions are summarized in the following paragraphs. Some recommendations, notably those on long-term contract modifications, were not addressed, and it is assumed they have not been acted on.

With regard to the recommendation by the Reid Brothers lawsuit review team to freeze unresolved 5-year stumpage rate redeterminations, the Forest Service eventually decided that ALP and KPC qualified for emergency rate redeterminations, and rates were reduced substantially, as has been discussed elsewhere.

The recommendation that damages due the government be determined resulted in a draft plan to recover damages that was submitted to the Justice Department in late 1982. Potential damages due the government were $33.3 million inflicted before 1975 and $43.2-$48.2 million after 1975, for a total ranging from $76.5 million to $81.5 million.

In response to other recommendations, the Forest Service has taken some actions to tighten timber sale bid procedures.

Debarment action has not been taken against KPC and APC as recommended. The Justice Department's continuing investigation was given as the reason.

Justice Department Actions

A Justice Department representative, H.F. Furth, also testified at the Weaver oversight hearing. The Justice Department, after reviewing the Reid Brothers case, decided not to try to obtain antitrust injunctive relief or recover damages on behalf of the United States. The Department concluded that the economic power of the two companies derives principally from their operation of the only two pulp mills in Southeast Alaska and from their 50-year contracts with the Forest Service. Any antitrust remedy involving cancellation of long-term contracts would require evidence of more substantial, and more recent antitrust violations than Justice Department investigation uncovered. The Department also considered that a court would be reluctant to order any relief that might result in suspending the operations of either company's pulp mill, because that would result in unemployment. The Department concluded that there was no basis for criminal proceedings because the 5-year statute of limitations period had passed. With regard to recovering damages under antitrust laws, the Department concluded there was no basis because the 4-year statute of limitations period had passed.

Mr. Furth noted that the Civil Division of the Justice Department is still reviewing claims of the Forest Service against the companies based on fraud and breach of contract. The time period for filing a fraud lawsuit is longer than for an antitrust suit. Since stating that it had concluded antitrust investigations, the Justice Department in June 1983 said it had reconsidered and was once again investigating the activities of the two major companies and their subsidiaries. In May 1984, the press reported that the Justice Department had decided against filing antitrust lawsuits against ALP and LPK, even though the Department found aspects of the companies' operations "troubling" and was concerned that ALP documents had been destroyed days before investigators sought to review them.

Timber Supply and Demand Report

Section 706(a) of ANILCA states that the Secretary of Agriculture will monitor timber supply and demand in Southeast Alaska and report annually on the ability of the Tongass National Forest to meet the mandate of 4.5 billion board feet per decade being made available to industry. The executive summary of the 1983 timber supply and demand report (Mehrkens 1984) is as follows.

"Based on the findings of this report, the Secretary of Agriculture concludes the available land base on the Tongass National Forest will be sufficient to maintain the 4.5 billion board-foot timber supply per decade specified in Section 705(a) of ANILCA. Market demand continues as the predominant factor governing the timber use levels on the Tongass NF. On the supply side, measures to reduce timber production costs are being implemented. A sufficient backlog of sold and unharvested timber exists to operate mills at capacity. Market conditions and labor strikes, however, have substantially lowered operating rates. The short-term economic wellbeing of the timber industry depends on improved markets in Japan, and markets now opened in South Korea and the Peoples Republic of China. Greater international competition and cost cutting strategies will continue to characterize the timber industry.

The industry structure, existing capacity, and operating rates are nearly the same as last year--well below capacity. The timber market structure in Southeast Alaska largely reflects the timber management policies of the USDA Forest Service and its objectives to maintain community economic stability. It is primarily governed, however, by export market conditions and the degree of competition from other suppliers. Forest Service management alone has virtually no effect on market demands but must be responsive to export market prices because the value of the timber is based on derived demand.

In comparison to the Pacific Northwest and British Columbia, Alaska generally serves as a residual or last-in, first-out, supplier to Japan's construction timber market. Large adjustments in the supply of hemlock cants occurs as international prices rise and fall. Moreover, the degree of this adjustment is affected by the level of log exports from the Pacific Northwest.

Unlike the hemlock trade in construction grade timber, Alaska is an important supplier of Sitka spruce to the Japanese market, accounting for up to 68 percent of the total spruce trade from North America. Alaska spruce logs and cants are of higher quality and command premium prices.

The demand for forest products remains low; Japan continues to be the principal market for all Alaska wood products. China is the other major market, representing 6 percent of Alaska's log exports and 9 percent of the lumber exports in 1983. In 1983, Alaska's wood products

export trade declined 12 percent in value from 1982. This trend is similiar to what occurred in 1982 when lumber exports fell in both volume and value, yet coincided with an increase in volume and total value for log exports.

National Forest timber harvests have declined consistently since 1981. In FY 1983, 250.5 MMBF was harvested (including utiltity volume) down 33 percent from 1982 when 370.7 MMBF of timber was harvested. In 1983, the amount of timber offered for sale fell slightly, 3 percent, to 453.6/MMBF of which 343.5 MMBF was sold or released for harvest. For FY 1984, an estimated 475 MMBF will be offered to industry. An analysis of timber accomplishments shows a slightly higher proportion of high quality, old-growth stands (30-50 MBF/AC.) has been offered and sold than what was scheduled in TLMP. This better timber helped offset lower end-product values caused by market conditions.

In contrast, Southeast Alaska Native corporations and the Bureau of Indian Affairs have steadily increased their harvests from 13 percent of the total Southeast timber harvest in 1980 to 41 percent in 1983. Over the past 3 years (CY 1980-82), the Native timber harvest in Southeast Alaska has risen from an estimated 70.3 MMBF to 216.5 MMBF.

Southeast Alaska has imported logs from British Columbia which were surplus to their domestic manufacturing needs. The future of this trade is uncertain, but imports in 1984 are expected to continue at about the same level as 1983. Because of reduced demand, log imports from British Columbia and National Forest timber supplies, Native corporations have a non-marketable supply of pulp-grade timber. Consequently, the corporations exported as many of their pulp grade logs as possible during 1981 to 1983 or left this lower grade timber in the woods.

In addition to the trade displacement from British Columbia and a severe drop in the market, timber purchasers have bid on National Forest timber sales during favorable markets at rates substantially above appraisal prices. These factors have forced some companies in Alaska to stop operating, triggering contract defaults and potential bankruptcies. The Forest Service has implemented policies to help alleviate this problem, but not all operators have been able to take advantage of contract extensions or stumpage rate redeterminations.

Logging and roading costs have increased steadily over the last decade. The causes have been inflation, stricter environmental controls, a greater proportion of permanant or specified roads (designed and constructed to engineering specifications), and a management objective of dispersed harvests. This rise in costs has led the Forest Service to analyze cost saving measures based on harvest unit size, utilization requirements and road standards. The development of transportation system and timber transfer sites are major costs associated with harvesting Alaska's old growth forests. However, greater average costs are associated with harvesting and yarding systems. The declining costs in 1982 and 1983 reflect the effort to lay out sales along established road systems and reduced road standards.

Nearly half the timber available for harvest from the Tongass National Forest has been used to produce dissolving pulp. If Alaska's traditional world market for dissolving pulp continues to shrink, while remaining uncompetitive in domestic paper pulp markets, there will be additional upward costs pressures on all Southeast Alaska timber based industries. Unless a major new market can be found for Southeast Alaska's pulp grade logs and, to a lesser extent, western hemlock sawtimber, growth prospects for all of Alaska's timber based industries are dampened."

CONCLUSION

Despite the large size of Southeast Alaska's Tongass National Forest (16.9 million acres), only a small portion (4 percent) is considered to have commercially important timber. These timber areas, often near tidewater at low elevations, or along valley bottoms of major river drainages, provide critical habitat for fish and wildlife. It is on this small, but important, component of the Tongass Forest that the wildlife and fisheries/logging debate centers. Clearcutting, the method of timber harvest in Southeast Alaska, is permanently converting high-volume, old-growth forest with high wildlife values to second-growth forest of much less value to wildlife species dependent on old growth. Of special concern are long-term effects of scheduled cutting on Sitka black-tailed deer; present knowledge suggests that deer numbers in many popular hunting areas will be reduced 60-80 percent during the first rotational cutting period of approximately 100 years. Additional research is necessary to determine long-term effects on fish.

A major question to be addressed is whether a highly subsidized timber industry should be maintained in its present form on public lands in Southeast Alaska to provide jobs and support an export trade, considering the adverse impacts to wildlife and other values. It seems especially important to address this now when timber prices are depressed, timber harvest is at a low level, and communities have adjusted to some degree to these conditions. Employment alternatives to consider include increased timber harvest on Native lands, increased timber harvest and processing for use in Alaska by small, independent operators (perhaps subsidized to some degree), increased tourism, increased mining, and maintenance and perhaps expansion of various types of guiding.

LITERATURE CITED

Alaback, P. B. 1982. Dynamics of understory biomass in Sitka spruce-western hemlock forest of Southeast Alaska. Ecology 63:1932-1948.

Alaback, P. B., and J. C. Tappeiner II. 1984. Response of understory vegetation to thinning in the Sitka spruce-western hemlock forests of southeastern Alaska. Cooperative Study, Forestry Sciences Laboratory, Juneau, Alaska and Oregon State University, Corvallis.

Archibald, W. R. 1981. Grizzly bears and coastal development, with particular reference to intensive forestry. Unpublished Problem Analysis. B.C. Fish and Wildlife Branch, Victoria, British Columbia.

Bachman, R. W. 1956. The ecology of four North Idaho trout streams with references to the influence of forest road construction. M.S. thesis, Univ. Idaho, Moscow, Idaho.

Bachman, R. A. 1984. Foraging behavior of free-ranging wild and hatchery brown trout in a stream. Transactions of the American Fisheries Society. 113:1-32.

Barlow, T. J. 1984. Mandate for oblivion. Wilderness. Spring 1984.

Barrett, R. H. 1979. Admiralty Island deer study and the Juneau unit timber sale. Pages 114-132 in O. C. Wallmo and J. W. Schoen, eds. Sitka Black-tailed Deer: Proceedings of a Conference in Juneau, Alaska. U.S.D.A. Forest Service, Alaska Region, Juneau.

Beier, L. 1984. A history of guiding and survey of guides in Southeast Alaska. Unpublished report. 24 pp.

Berndt, H. W., and G. W. Swank. 1970. Forest land use and streamflow in central Oregon. U.S.D.A. Forest Service, Pac. Northwest Forest and Range Exper. Sta. Res. Paper PNW-93. Portland, Oregon.

Bjornn, T. C., M. A. Brusven, M. P. Molnan, J. H. Milligan, R. A. Klamt, E. Chacho, and C. Schaye. 1977. Transport of granitic sediment in streams and its effects on insects and fish. Completion Report Project B-036-IDA, Bulletin 17, Idaho Cooperative Fishery Research Unit, University of Idaho, Moscow, Idaho.

Bloom, A. M. 1978. Sitka black-tailed deer winter range in the Kadashan Bay area, Southeast Alaska. J. Wildl. Manage. 42:108-112.

Bormann, F. H., and G. E. Likens. 1979. Pattern and process in a forested ecosystem. Springer-Verlag, New York. 253 pp.

Braun, C. E., F. Hamerstron, T. Ray, and C. M. White. 1975. Conservation committee report on status of eagles. Wilson Bull. 87: 140-143.

Brown, G. W. 1970. Predicting the effects of clearcutting on stream temperatures. J. Soil and Water Conserv. 25:11-13.

Brown, G. W. 1971. Water temperature in small streams as influenced by environmental factors and logging. Pages 175-181 in Proceedings of a symposium on forest land uses and stream environments. Oregon State University, Corvallis, Oregon.

Bunnell, F. L. 1979. Deer-forest relationships on northern Vancouver Island. Pages 86-101 in O. C. Wallmo and J. W. Schoen, eds. Sitka Black-tailed deer: Proceedings of a conference in Juneau, Alaska. U.S.D.A. Forest Service, Alaska Region, Juneau.

Burns, J. W. 1972. Some effects of logging-associated road construction on northern California streams. Trans. Am. Fish. Soc. 101:1-17.

Chamberlin, T. W. 1982. Influence of forest and rangeland management on anadromous fish habitat in western North America. U.S.D.A. Forest Service Gen. Tech. Rep., PNW-136, Pac. N.W. For. Ran. Exp. Stn., Portland, Oregon.

Christner, Jere. 1981. Changes in peak streamflows from managed areas of the Willamette National Forest. U.S.D.A. Forest Service, Willamette National Forest, Watershed Staff. January 1981. 28 pp.

Coggins, G. C., and M. E. Ward. 1981. The law of wildlife management on the federal public lands. Oregon Law Review

Cook, G. 1984. The legal framework of forest management in Southeast Alaska. Unpublished report. 47 pp.

Cooper, A. C. 1965. The effects of transported stream sediments on the survival of sockeye and pink salmon eggs and alevins. Int. Pac. Salmon Fish. Comm. Bull. 18.

Craighead, F. L., E. L. Young, and R. D. Boertje. 1984. Stikine River moose study, wildlife evaluation of Stikine Iskut Dams. Final Rep. Alaskan Dep. Fish and Game. Juneau. 72 pp.

Craighead, J. J. 1977. A proposed delineation of critical grizzly bear habitat in the Yellowstone region. Bear Biology Association Monograph Series No.1. 20 pp.

Craighead, J. J., J. S. Sumner and G. B. Scaggs. 1982. A definitive system for analysis of grizzly bear habitat and other wilderness resources. Wildlife - Wildlands Institute monograph No.1. University of Montana. 277 pp.

Crouse, M. R., C. A. Callahan, K. W. Malueg, S. E. Dominguez. 1981. Effects of fine sediments on growth of juvenile coho salmon in laboratory streams. Trans. Amer. Fish. Soc. 110: 281-286.

Culp, J. M., and R. W. Davies. 1983. An assessment of the effects of streambank clear-cutting on macroinvertebrate communities in a managed watershed. Can. Tech. Rep. Fish. Aquat. Sci. 1208:xv + 115 p.

DeVos, A. 1952. The ecology and management of fishes and marten in Ontario. Ontario Department Lands Forest Tech. Bull. 90 pp.

Doerr, J. G. 1983. Home range size, movements and habitat use in two moose, Alces alces, populations in Southeastern Alaska. Can. Field Nat. 97(1):79-88.

Elliott, Steven T. 1983. The summer standing crop of juvenile coho salmon in Southeastern Alaska streams logged during the 1960's. The Alaskan Working Group on Cooperative Forestry - Fisheries Research. Sportsfish Division, Alaska Department of Fish and Game, November 1983. 7 pp.

Elliott, S. T. Unpublished. Effects of clearcutting on juvenile coho salmon and Dolly Varden in coastal streams of Southeast Alaska. Alaska Department of Fish and Game, Juneau, Alaska.

Ellis, R. J. 1970. Report on a study of effects of log rafting and dumping on marine fauna in Southeast Alaska, June 6-9, 1970. National Marine Fishery Service Auke Bay Laboratory, Auke Bay, Alaska.

Emerson, P., A. T. Stout, and D. Kloepfer. 1984. The feds can't see their losses in the trees. The Wall Street Journal, Nov. 14, 1984.

Erickson, A. W., B. M. Hansen, and J. J. Brueggiman. 1982. Black bear denning study, Mitkof Island, Alaska. Unpublished final rept. School of Fisheries, University of Washington, Seattle. 86 pp.

Fight, R., P. I. McNamee, L. D. Garrett, and N. C. Sonntagg. SAMM: Southeast Alaska multi-resource model--a conceptional simulation model for estimating impacts of forest management action in Southeast Alaska. U.S.D.A. Forest Service General Technical Report. PNW--in prep. Portland, Oregon.

Fox, J. L. 1983. Constraints on winter habitat selection by the mountain goat (Oreamnos americanus) in Alaska. Ph.D. Dissertation, College of Forest Resources, University of Washington, Seattle. 147 pp.

Franklin, J. F., K. Cromack, Jr., W. Denison, A. McKee, C. Maser, J. Sedall, F. Swanson, and G. Juday. 1981. Ecological characteristics of old-growth Douglas-fir forests. U.S.D.A. Forest Service Gen. Tech. Rep. PNW-118, 48 p. Pac. Northwest Forest and Range Exp. Stn., Portland, Oregon.

Gates, B. 1968. Deer food production in certain seral stages of the coast forest. M. Sc. Thesis, University of British Columbia, Vancouver. 105 pp.

Gibbons, D. R., and E. O. Salo. 1973. An annotated bibliography of the effects of logging on fish of the western United States and Canada. U.S.D.A. Forest Service General Technical Report PNW-10, Portland, Oregon.

Hall, E. R., and K. R. Kelson. 1959. The mammals of North America. Vol. II. Ronald Press Co. New York. 1083 pp.

Hanley, T. A., O. C. Wallmo, J. W. Schoen and M. D. Kirchhoff. 1983. Habitat relationships of Sitka black-tailed deer. Submitted as a chapter for the Wildlife Habitat Relationships Program, Region 10. Forest Service, Juneau.

Hansen, H. A. 1962. Canada geese of coastal Alaska. North American Wildlife Natural Resources Conf. Trans. 27:301-320.

Harbo, S. J. 1958. An investigation of mink in interior and Southeastern Alaska. M.S. Thesis. University of Alaska. 93 pp.

Harestad, A. S. 1979. Influences of forestry practices on dispersal of black-tailed deer. Ph.D. Thesis, University British Columbia, Vancouver. 179 pp.

Harris, A. H., O. K. Hutchison, W. R. Meehan, D. N. Swanston, A. F. Helmers, J. C. Hendee, T. M. Collins. 1974. The forest ecosystem of Southeast Alaska, 1. The setting. U.S.D.A. Forest Service General Technical Report PNW-12. Portland, Oregon. 40 pp.

Hartman, G. F., L.B. Holtby, and J. C. Scrivner. 1984. Seaward movement of coho salmon (Oncorhynchus kisutch) in Carnation Creek, an unstable coastal stream in British Columbia. Can. J. Fish. and Aquat. Sci. 39:588-597.

Hau, R. D. 1980. Effects of timber harvest in streamflow in the rain-dominated portion of the Pacific Northwest. In: Proceedings, workshop on scheduling timber harvest for hydrologic concerns; 1979 November 27-29; Portland, OR. Portland, OR: U.S. Dept. of Agriculture, Forest Service, Pacific Northwest Region; 1980. 45 p.

Hebert, D. M. 1979. Wildlife-forestry planning in the coastal forests of Vancouver Island. Pages 133-158 in O. C. Wallmo and J. W. Schoen, eds. Sitka Black-tailed Deer: Proceedings of a Conference in Juneau, Alaska. U.S.D.A. Forest Service, Alaska Region, Juneau.

Heintzleman, B. F. 1923. The standby timber resources of Alaska. West Coast Lumberman 44 (518): 102-103, 108.

Hodges, J. E., J. G. King, and F. C. Robards. 1979. Resurvey of the Bald eagle breeding population in Southeast Alaska. J. Wildl. Manage. 43 (1): 219-221.

Hoopes, D. T. 1982. Old-growth timber and wildlife management in Southeast Alaska: a question of balance. Trans. North American Wildlife and Natural Resources Conference 47:588-604.

Hundertmark, K. J., W. L. Eberhardt, and R. E. Ball. 1983. Winter habitat utilization by moose and mountain goats in the Chilkat Valley. Final Rep. Alaska Department Fish and Game. Juneau. 44 pp.

Hutchison, O. K., and V. J. LaBau. 1975. The forest ecosystem of Southeast Alaska, 9. Timber inventory, harvesting, marketing, and trends. U.S.D.A. Forest Service General Technical Report PNW-34. Portland, Oregon. 57 pp.

Jones, G. 1975. Aspects of the winter ecology of black-tailed deer (Odocoileus hemionus columbianus Richardson) on northern Vancouver Island. M. Sc. Thesis, University of British Columbia, Vancouver. 79 pp.

Johnson, L. 1980. Brown bear management in Southeastern Alaska. Pages 263-270 in C. J. Martinka and K. L. McArthur, eds. Bears - Their Biology and Management. Bear Biology Association Conference Series No.3.

Jonkel, C. 1977. Clearcut logging, Cabin Creek and the grizzly bear in Southeastern British Columbia, University of Montana BCP Spec. Rep. No. 11. 11 pp.

Kessler, W. B. 1982. Wildlife and second-growth forests of Southeast Alaska: problems and potential for management. U. S. Forest Service, Alaska Region Admin. Doc. No. 110.

Kirchhoff, M. D., J. W. Schoen, and O. C. Wallmo. 1983. Deer use in relation to forest clear-cut edges in Southeastern Alaska. J. Wildl. Manage. 47:497-501.

Koehler, G. M., and M. G. Hornocker. 1977. Fire effects on marten habitat in the Selway-Bitteroot Wilderness. J. Wildl. Manage. 41:500-505.

Koski, K. V. 1966. The survival of coho salmon (Oncorhynchus kisutch) from egg deposition to emergence in three Oregon coastal streams. M.S. thesis, Oregon State Univ., Corvallis, Oregon.

Koski, K. V., T. R. Merrell, and G. R. Snyder. 1983. Effectiveness of buffer strips in protecting fish habitat in small streams during clearcut logging in Southeast Alaska. NOAA, NMFS, Executive Summary. 13 pp.

Lebeda, C. S., and J. T. Ratti. 1983. Reproductive biology of Vancouver Canada geese on Admiralty Island, Alaska. J. Wildl. Manage. 47(2):297-305 pp.

Lensink, C., R. Skoog, and J. Buckley. 1955. Food habits of marten in interior Alaska and their significance. J. Wildl. Manage. 19(3):364-368.

Leopold, A. S., and R. H. Barrett. 1972. Implications for wildlife of the 1968 Juneau unit timber sale. A report to U.S. Plywood-Champion Papers, Inc.

Lindzey, F. G., and E. C. Meslow. 1977a. Population characteristics of black bears on an island in Washington. J. Wildl. Manage. 41(3):404-412.

Lindzey, F. G., and E. C. Meslow. 1977b. Home range and habitat use by black bears in Southwestern Washington. J. Wildl. Manage. 41(3):413-425.

Mace, R. D. 1983. The effects of a logging activity on grizzly bear movements. In E. C. Meslow, ed. Proc. Fifth International Conference on Bear Research and Management.

Marshall, W. H. 1951. Pine marten as a forest product. J. For. 49.

Mason, J. C. 1976. Response of underyearling coho salmon to supplemental feeding in a natural stream. J. Wildlife Management 40:775-788.

Matthews, J. W., and D. E. McKnight. 1982. Renewable resource commitments and conflicts in Southeast Alaska. Trans North American Wildlife and Natural Resources Conference 47:573-582.

McNeil, W. J., and W. H. Ahnell. 1964. Success of pink salmon relative to size of spawning gravel bed materials. U.S. Fish and Wildlife Service Spec. Sci. Rep. No. 469.

Meehan, W. R. 1970. Some effects of shade cover on stream temperature in Southeast Alaska. U.S.D.A. Forest Service Res. Note PNW-113, 9 p., illus. Pac. Northwest For. and Range Exp. Stn., Portland, Oregon.

Meehan, W. R. 1974. The forest ecosystem of Southeast Alaska. Vol. 3. Fish habitats. U.S.D.A. Forest Service Gen. Tech. Rep. PNW-15, 41 p., illus.

Meehan, W. R. 1974. The forest ecosystem of Southeast Alaska. Vol. 4. Wildlife habitats. U.S.D.A. For. Serv. Gen. Tech. Rep. PNN-16. 32 pp.

Mehrkens, J. R. 1983. Timber supply and demand 1982, U.S.D.A. Forest Service report, Alaska Region.

Mehrkens, J. R. 1984. Timber supply and demand 1983, U.S.D.A. Forest Service report, Alaska Region.

Mickelson, P. G. 1980. Statement of reasons for appeal of 1981-1986 Alaska Lumber and Pulp Timber Sale Operating Plan. Alaska Chapter of the Wildlife Society. 13 pp.

Miller, S., and D. McAllister. 1982. Den site characteristics of Prince William Sound black bears. Alaska Dept. Fish and Game. Anchorage. 11 pp. (mimeo).

Moring, J. R. 1975. The Alsea watershed study: Effects of logging in the aquatic resources of three headwater streams of the Alsea River, Oregon. Part II - Changes in environmental conditions. Fishery Research Report No. 9, Oregon Dept. Fish and Wildlife, Corvallis, OR. Dec. 1975. 39 pp.

Mundinger, J. G. 1984. Biology of the white-tailed deer in the coniferous forests of northwestern Montana. In Proceedings of a Symposium on Fish and Wildlife Relationships in Old-growth Forests.

Murphy, M. L. 1983. Fish kills of adult pink salmon and chum salmon in Southeastern Alaska. Unpubl. manuscript, Northwest and Alaska Fisheries Center, Auke Bay Laboratory, National Marine Fisheries Service, NOAA, Auke Bay, Alaska.

Murphy, M. L., and K. V. Koski. 1984. (Submitted to Canadian Journal of Fisheries and Aquatic Sciences.) Links between habitat, juvenile salmonids and effects of logging in Southeast Alaska.

Myren, R. T., and R. J. Ellis. In press. Evapotranspiration in forest succession and long-term effects upon fishery resources: a consideration for management of our old-growth forests. In Proceedings of a symposium an old-growth forest relationships, Juneau, Alaska.

Olson, S. T. 1979. The life and times of the black-tailed deer in Southeast Alaska. Pages 160-168 in O. C. Wallmo and J. W. Schoen, eds. Sitka black-tailed deer: Proceedings of a conference in Juneau, Alaska. USDA Forest Service, Alaska Region, Juneau.

Peterson, R. M. 1980. Responsive statement to statements of reason in support of appeal from approval of Alaska Lumber and Pulp Companies 1981-86 Timber Sale Operating Plan. U.S. Forest Service. 12 pp.

Phillips, R. W. 1971. Effects of sediments on the gravel environment and fish production. Pages 64-74 in Krygier, J. T. and J. D. Hall, editors. Forest land uses and stream environments. Continuing Educ. Publ., Oregon State University, Corvallis, Oregon.

Poelker, R. J., and H. D. Hartwell. 1973. Black bears of Washington. Washington State Game Department Bull. 14. 180 pp.

Reiser, D. W., and T. C. Bjornn. 1979. Habitat requirements of anadromous salmonids. USDA Forest Service Pacific Northwest Forest and Range Exp. Sta. Gen. Tech. Rpt. PNW-96. Portland, Oregon.

Rideout, D., E. S. Miyata, and E. Olson. 1984. A statistical profile of the timber supply base of the Tongass area in Southeast Alaska. Colorado State University, Fort Colins. 131 pp.

Rose, C. L. 1982. Deer response to forest succession on Annette Island, Southeast Alaska. M.S. Thesis University of Alaska.

Rothacher, J. 1970. Increases in water yield following clear-cut logging in the Pacific Northwest. Water Resource Research 6:653-658.

Rothacher, J. 1971. Regimes of streamflow and their modification by logging. In Proc. Symp. Forest Land Uses and Stream Environment. pp. 40-54. Oregon State University, Corvallis.

Russell, D. 1974. Grizzly bear-mountain goat investigations in Knight Inlet, B.C. Project report B.C. Fish and Wildlife Branch, Victoria. 72 pp.

Schoen, J. W., and O. C. Wallmo. 1979. Timber management and deer in Southeast Alaska: current problems and research direction. Pages 69-85 in O. C. Wallmo and J. W. Schoen, eds. Sitka black-tailed deer: Proceedings of a conference in Juneau, Alaska. U.S.D.A. Forest Service, Alaska Region.

Schoen, J. W., and O. C. Wallmo and M. D. Kirchhoff. 1981. Wildlife-forest relationships: is a reevaluation of old-growth necessary? Trans. N. Amer. Wildl. and Nat. Resources Conf. 46:531-545.

Schoen, J. W. 1982. Brown bear habitat preference and brown bear logging and mining relationships in Southeast Alaska. Alaska Department Fish and Game, Federal Aid in Wildlife Rest. Vol. I. Prog. Rep. Proj. W-22-1 Juneau. 44 pp.

Schoen, J. W., and M. D. Kirchhoff. 1982. Habitat use by mountain goats in Southeast Alaska. Alaska Department Fish and Game, Federal Aid in Wildlife Rest. Final Rep. Proj. W-17-10, W-17-11, W-21-1 and W-21-2. Juneau. 67 pp.

Schoen, J. W., and L. R. Beier. 1983. Brown bear habitat preference and brown bear logging and mining relationships in Southeast Alaska. Alaska Department Fish and Game, Federal Aid in Wildlife Rest. Vol. II. Prog. Rep. Proj. W-22-2, Juneau. 37 pp.

Schoen, J. W., and M. D. Kirchhoff. 1983. Seasonal distribution and habitat use by Sitka black-tailed deer in southeastern Alaska. Alaska Department of Fish and Game, Federal Aid in Wildlife Rest. Vol. IV. Prog. Rep. Proj. W-211, Juneau. 50 pp.

Schoen, J. W., M. D. Kirchhoff, and O. C. Wallmo. 1984. Sitka black-tailed deer, old-growth forest relationships in Southeast Alaska: Implications for management. In Proceedings of a symposium on fish and wildlife relationships in old-growth forests.

Schoen, J. W., and M. D. Kirchhoff. 1984. Seasonal distributional habitat use by Sitka black-tailed deer in Southeast Alaska. Alaska Department of Fish and Game, Federal Aid in Wildlife Rest. Vol. V. Prog. Rep. Proj. W-22-2. Juneau. 25 pp.

Schoen, J. W., M. D. Kirchhoff, and M. H. Thomas. 1985. Seasonal distribution and habitat use by Sitka black-tailed deer in Southeastern Alaska. Alaska Federal Aid in Wildlife Restoration Final Report.

Scrivner, J. C., and B. C. Andersen. 1984. Logging impacts and some mechanisms that determine the size and summer population of coho salmon fry (Oncorhynchus kisutch) in Carnation Creek, British Columbia. Can. J. Fish. Aquat. Sci. 41:1097-1105.

Sealaska, 1982. Sealaska Corporation resource atlas, Vols. I and II. Sealaska Natural Resources Department, Juneau.

Sedell, J. R., and F. J. Triska. 1977. Biological consequences of large organic debris in northwest streams. In: Logging debris II, Applications of stream cleanup. Oregon State Univ., Corvallis, Oregon.

Seton, 1929. Lives of game animals. Vol. II, part I. New York: Doubleday Doran and Co. 367 pp.

Sheridan, W. L., and A. M. Bloom. 1975. Effects of canopy removal on temperatures of some small streams in Southeast Alaska. U.S.D.A. Forest Service Adm. Report. R-10.

Sigler, J. W., T. C. Bjornn, and F. H. Everest. 1984. Effects of chronic turbidity on density and growth of steelhead trout and coho salmon. Trans. Amer. Fish. Soc. 113:142-150.

Smith, B. 1978. Investigations into black and grizzly bear responses to coastal logging. Undergraduate thesis. Simon Fraser University. 85 pp.

Smith, C., K. Kohrt, B. Baker, J. Sturgeon, M. Barton, R. Harris. 1983. Deer and timber management in Southeast Alaska-issues and recommendations. Technical Committee Report. Wildlife Society, Society of American Foresters, State of Alaska, U.S.D.A. Forest Service, Sealaska Corporation. 44 pp.

Smith, C. A., and K. J. Raedeke. 1982. Group size and movements of a dispersed, low density goat population with comments on inbreeding and human impacts. Proc. North. Wild Sheep and Goat Counc., Ft. Collins, Colorado.

Smith, C. A. 1983. Habitat use by mountain goats in southeastern Alaska. Alaska Dep. Fish and Game, Fed. Aid in Wildlife Rest. Proj. W-22-1. Juneau. 88 pp.

Smith, O. R. 1940. Placer silt and its relation to salmon and trout on the Pacific coast. Trans. Amer. Fish. Soc. 69: 225-230.

Soutiere, E. C. 1979. Effects of timber harvesting on marten in Maine. J. Wildl. Manage. 43 (4):850-860.

Stalmaster, M. V., and J. R. Newman. 1979. Perch site preferences of wintering bald eagles in Northwest Washington. J. Wildl. Manage. 43(1):221-224.

Sullivan, E., and W. L. Sheridan. Undated. Sport fisheries of the Tongass and Chugach National Forests--An evaluation. U.S.D.A. Forest Service Alaska Region Report No. 128.

Swanson, F. J., G. W. Lienkaemper, and J. R. Sedell. 1976. History, physical effects, and management implications of large organic debris in western Oregon streams. U.S.D.A. for. Serv. Gen. Tech. Rep. PNW-56, Pac. NW. For. Ran. Exp. Stn., Portland, Oregon.

Tappel, P. D. and T. C. Bjornn. 1983. A new method of relating size of spawning gravel to salmonid embryo survival. North American Journal of Fisheries Management. 3:123-135.

Tschaplinski, P. J., and G. F. Hartman. 1983. Winter distribution of juvenile coho salmon (Oncorhynchus kisutch) before and after logging in Carnation Creek, British Columbia, and some implications for overwinter survival. Can. J. Fish. Aquat. Sci. 40:452-461.

Tuber, R., and K. Raedeke. 1980b. Black-tailed deer of the Olympic National Forest. Final Rept. to U.S.D.A. Forest Service, Olympic National Forest. Wildlife Science Group, college of Forest Resources, University Washington Seattle. 90 pp.

Tyler, R. W., and D. R. Gibbons. 1973. Observations of the effects of logging on salmon-producing tributaries of the Staney Creek watershed and the Thorne River watershed and of logging in the Sitka District. Final report, Part I, July 1, 1972-June 30, 1973. Alaska Loggers Association. 58 pp.

U.S. Congress. 1983. Timber industry practices in the Tongass National Forest, Alaska. Oversight Hearing before the Sub-committee on Mining, Forest Management, and Bonneville Power Administration of the Committee on Interior and Insular Affairs, House of Representatives, 98th Congress. Serial No. 98-19, U.S. Government Printing Office. 410 pp.

U.S. Forest Service. 1978. Tongass land management plan: wildlife task force working report. U.S.D.A. Forest Service Alaska Region.

U.S. Forest Service. 1979. Tongass land management plan. Final Environmental Impact Statement. U.S.D.A. Forest Service Alaska Region.

U.S. Forest Service. 1983. Alaska regional guide and final environmental impact statement. U.S.D.A. Forest Service Alaska Region Reports 126(a) and 126(b).

U.S. Forest Service. 1984. Tongass land management plan evaluation report. U.S.D.A. Forest Service Alaska Region Admin. Doc. 139.

Wallmo, O. C., and J. W. Schoen. 1980. Response of deer to secondary forest succession in Southeast Alaska. For. Sci. 26:448-462.

Weger, E. 1977. Evaluation of winter use of second-growth stands. B.S. Thesis, University British Columbia, Vancouver. 42 pp.


SB
30

South-Central Timber Development, Inc.

21 January 1986

Representative Richard Shultz
Box V
Juneau, Alaska 99811

Dear Representative Shultz:

Re: Opposition To Creation of Yakataga State Forest

This company has been under contract with the State of Alaska for timber at Icy Bay since 1969; we have a 20 year sale for 200 million board feet, known as "Icy Cape No. 1." In 1984, Roger Sullivan of Ketchikan was the high bidder for an additional 50 million board feet, which sale was designated as "Icy Cape No. 2." There has been a steady progression of timber cutting along the littoral from Icy Bay towards Cape Yakataga and the Suckling Hills beyond. This well forested state land runs for 75 miles along the beach of the North Pacific; its depth from the water's edge to the coastal mountains varies considerably.

Existing State laws are completely adequate for sustaining and encouraging a timber industry on the state's lands in this area. The device of a long-term contract enables a logger to obtain the necessary financing to conduct business in this remote location.

On the other hand, creation of a state forest will yield no additional timber or revenue, but it will necessitate the complete restudy and fresh classification of all lands currently appropriated to timber and other multiple use activity such as mining. If the Yakataga State Forest is created, it is entirely foreseeable that no timber activity will be allowed for a long period of time while the debate about proper classification is entered from all quarters of our diverse citizenry.

The land from Icy Bay to the Suckling Hills holds billions of board feet. There is no impediment to the state's contracting for the sale of that timber. The creation of the Yakataga State Forest will only impede or forestall the process; one thing it will do immediately is justify the hiring of more bureaucracy to properly plan and supervise this new creation.

255 EAST FIREWEED LANE • ANCHORAGE, ALASKA 99503 • TELEPHONE: 279-1493
SUITE 104
TELEX 090 25-246
CABLE ADDRESS: SCTDANC

The State Forest is not needed. The State Forest will take the timber out of production for a long period and possibly forever.

At Yakataga, nothing is "broke." Let's not fix it!

Sincerely yours,

Joseph R. Henri

JOSEPH R. HENRI
President

JRH/df
cc: Governor Bill Sheffield
Mr. John Galea, ALA
Mr. Roger Sullivan

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate

SENATE LETTER OF INTENT

FOR

CS SB 30 (FIN)

The Yakataga State Forest will comprise most of the habitable state owned land in the area between Cape Suckling and Icy Bay along the north coast of the Gulf of Alaska.

The legislature recognizes that certain future demands for land in the Yakataga area may be beyond the criteria allowed in a state forest designation.

Therefore in this unique situation the legislature intends for portions of township 215 Range 17E to be managed within the Department of Natural Resources general land management program for future use.

ADOPTED IN SENATE 3/18/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSSB 30(Fin)

Title: Yakataga State Forest

Sponsor: Eliason

Requestor: Senate Finance

Date of Request: 3/14/85

FISCAL DETAIL

Agency Affected: Division of Forestry - DNR

Program Category Affected: Resource Management

BRU, Program or Subprogram(s) Affected: Forest Management, Land & Water Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING	0	0				
100 PERSONAL SERVICES	0	0				
200 TRAVEL	0	0				
300 CONTRACTUAL	0	0				
400 SUPPLIES	0	0				
500 EQUIPMENT	0	0				
600 LAND & STRUCTURES	0	0				
700 GRANTS, CLAIMS	0	0				
800 MISCELLANEOUS	0	0				
TOTAL OPERATING	0	0				
CAPITAL	0	0				
REVENUE	0	0				

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0				
FEDERAL FUNDS	0	0				
OTHER	0	0				
TOTAL	0	0				

POSITIONS:

FULL-TIME	0	0				
PART-TIME	0	0				
TEMPORARY	0	0				

ANALYSIS: Attach a separate page if necessary

Prepared By: _____ Phone: 465-4523

Division: Jan Faiks, Co-chairman Senate Finance Committee Date: 3/14/86

Approved by Commissioner: _____ Date: _____

Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

ALASKA STATE LEGISLATURE - SENATE
SENATOR RICHARD I. ELIASON

LABOR & COMMERCE COMMITTEE, VICE-CHAIRMAN
LEGISLATIVE COUNCIL, VICE-CHAIRMAN
FINANCE COMMITTEE
RESOURCES COMMITTEE

PO BOX 143
SITKA, ALASKA 99835

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

MEMORANDUM

TO: Representative Adelheid Herrmann, Co-chairman
Representative Richard Shultz, Co-chairman
House Resource Committee

FROM: Senator Dick Eliason

RE: Senate Bill 30 - An Act establishing the Yakataga State Forest

DATE: April 16, 1985

I would appreciate your consideration in scheduling CSSB 30(Fin) for a hearing before the House Resource Committee at the earliest possible time.

This legislation will establish the Yakataga State Forest along the coast of the Gulf of Alaska, between Cape Suckling and Icy Bay. Designating this land as a state forest will commit the state to managing approximately 460,000 acres of state-owned land for multiple use under a long-term management plan. This plan will provide the long-term stability needed by users of resources that require large capital investments.

Committee Substitute for Senate Bill 30 (Fin) excludes about 960 acres of fairly flat land located near the existing Yakataga airstrip for possible residential development. This land will be managed within the Department of Natural Resources general land management program for future use.

This legislation is very important to the management of our timber resource. I would appreciate it if CSSB 30(Fin) could be schedule for a hearing as soon as possible.

Thank you for your considerate attention.

SENATOR
ARLISS STURGULEWSKI

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99508
SENATE DISTRICT F, SEAT A

Alaska State Legislature

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

M E M O R A N D U M

January 24, 1985

TO: All Members
Senate Resources Committee

FROM: Senate Resources Staff

RE: SB 30 "An Act establishing the Yakataga State Forest; and providing for an effective date."

Senate Bill 30 would establish Yakataga State Forest along the coast of the Gulf of Alaska, between Cape Suckling and Icy Bay. Maps are included in the attached packet.

All land affected by this bill is state owned. Designating this land as a state forest, will commit the state to managing the land for multiple use under a long-term development plan. This development plan will provide the long-term stability needed by users of resources that require large capital investments.

A summary of factual information from the State Forester and letters of support for creation of the forest are in the packet, as well as a position paper and fiscal note from the Department of Natural Resources. The letters of support are from last year; however, John Sturgeon, the State Forester, has told us that all these groups remain in support of the creation of the forest. The recent report by the Alaska Timber Task Force listed the creation of new state forests as a key recommendation and included Yakataga as a priority area.

We have attempted to notify all concerned parties of this hearing and we are not aware of any opposition to the creation of the Yakataga State Forest.

February 8, 1985

Physical and legal description of land excluded from the state forest by proposed committee substitute for SB 30

About 960 gross acres, fairly flat with several minor glacial streams. Small resident moose population present. Vegetation varies from dense old-growth forest to cottonwood to grassy meadows. No mining claims are known. Access via public easement from Yakataga airstrip through about one mile of Chugach native land on an unmaintained roadway. The road ends at foot bridge just to the southwest in this section. Residential development would probably be dispersed throughout the exclusion area with any commercial activity likely to develop near the southwest corner. Based on existing information, this exclusion would probably have the least long-term impact on the resource values/development of the Yakataga State Forest.

Legal Description--in T21S R17E CRM

Sections 1-9; W1/2 Sec. 10; E1/2 Sec. 11; Sec 12-13; E1/2, SW1/4 Sec. 14; W1/2, SE1/4 Sec. 15; Sec. 16-36.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

January 22, 1985

The Honorable Arliss Sturgulewski
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Sturgulewski:

The Department of Natural Resources supports the establishment of the Yakataga State Forest, as described in Senate Bill 30.

Section 1 amends AS 41.17, Forest Resources and Practices, to commit approximately 460,000 acres of state-owned land between Cape Suckling and Icy Bay to long-term retention and management for multiple use and sustained resource yields.

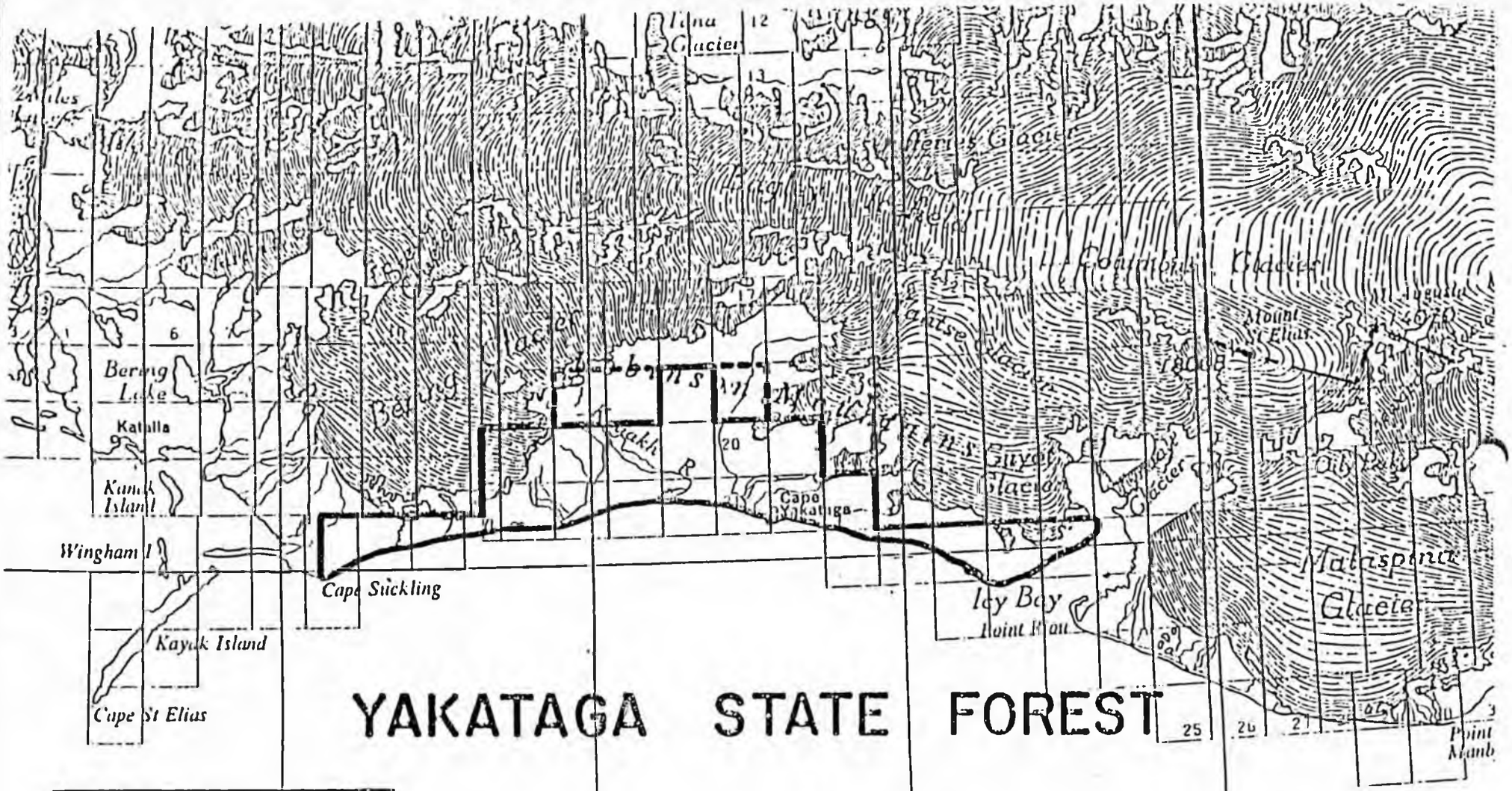
Section 2 requires the Commissioner to prepare a management plan for the forest which permits use of the forest for timber harvest, mining, mineral leasing and material extraction, recreation, wildlife and fisheries management, subsistence and other activities.

Sincerely,

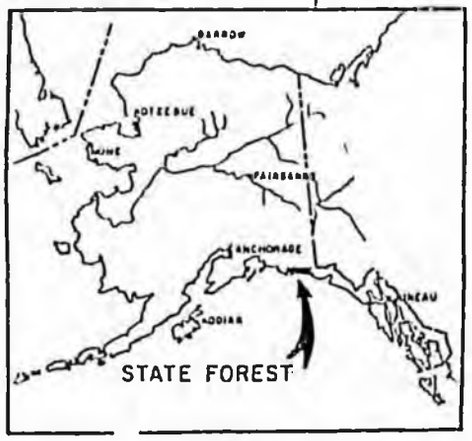
Esther C. Wunnicke
Commissioner

cc: Ray Gillespie, Office of the Governor
Senate Resources Committee

10-J9LH



YAKATAGA STATE FOREST



LOCATION MAP

FOREST BOUNDARY

ADDITIONS IF NATIVE RELINQUISHED

COOK INLET CHAPTER
JUNEAU CHAPTER
KETCHIKAN CHAPTER
YUKON RIVER CHAPTER
SITKA CHAPTER
STIKINE RIVER CHAPTER

SOCIETY OF AMERICAN FORESTERS

ALASKA SECTION



TESTIMONY OF THE ALASKA SECTION OF THE
SOCIETY OF AMERICAN FORESTERS ON
SB30, CREATING THE YAKATAGA STATE FOREST

SENATE FINANCE COMMITTEE, MARCH 14, 1985 HEARING
JUNEAU, ALASKA

The Alaska Section of the Society of American Foresters (SAF) thanks you for the opportunity to present a statement concerning SB30, regarding the Yakataga State Forest. We have previously endorsed the creation of the Yakataga State Forest and now we would like to extend that endorsement to include development of a Yakataga State Forest Management Plan.

The Need for Development of a Yakataga State Forest Management Plan

Management of forest lands under the principles of multiple-use and sustained yield involves complex processes. There are many biological considerations concerning resource productivity and protection that must be addressed. There are aspects dealing with economic values for the forestry and associated resources. These economic aspects either directly or indirectly involve resource benefit/cost ratios and resource trade-offs. Coupled with this are the administrative aspects and legal restraints that must be followed. In essence, we recognize that to manage land for public purposes, thorough and well integrated plans need to be developed. The Alaska Section of the Society of American Foresters supports the use of funds and personnel to accomplish the development of a Yakataga State Forest Management Plan. We urge the adoption of a budget to support this planning effort.

Letters of Support —

Presented by Calvin F. Bey, Chairman of Legislative Affairs Committee, Juneau Chapter, Society of American Foresters.



Alaska Environmental Lobby, Inc.

~~419 6th Street, Suite 326~~ Juneau, Alaska 99801 907-586-2345
204 N. Franklin St. Suite 3

January 24, 1985

Senator Richard I. Eliason
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason,

The Alaska Environmental Lobby would like to congratulate you on your recent introduction of SB-30 "An Act establishing the Yakataga State Forest". Setting aside acreage as forest land benefits all Alaskans by establishing multliple use management principles with a mechanism for public comment. The establishment of the Yakataga State Forest will help to insure the kind of quality environment Alaskans have a right to expect.

Please feel free to contact us at our Juneau office for further information on the Alaska Environmental Lobby's position on this or other pieces of legislation. We look forward to working with you on SB-30.

Jane Anderson
Staff Lobbyist

Sincerely,
Scott Highleyman
Scott Highleyman
Executive Director

cc: Senator Jay Kerttula
Senator Vic Fischer

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB
ALASKA WILDERNESS GUIDES ASSOCIATION • ANCHORAGE AUDUBON SOCIETY
ARCTIC AUDUBON SOCIETY • DENALI CITIZENS' COUNCIL • FRIENDS OF THE EARTH
JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY • KENAI AUDUBON SOCIETY
KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • NORTHERN ALASKA ENVIRONMENTAL CENTER
SITKA CONSERVATION SOCIETY • SOUTHEAST ALASKA CONSERVATION COUNCIL

****
*
* DELIVER TO: JPOM
*
*
* ORIGINAL
* SENT: 02/04/85 TIME: 13:42
* FROM: FLORENCE CARNAHAN
* SUBJECT: POM
* PRINT DATE: 02/04/85 TIME: 13:43
*
****

TO: SENATORS STURGULEWSKI, FAHRENKAMP, COGHILL, ELIASON, V. FISCHER, HALFORD AND ZHAROFF

FROM: FRED M. HARNISCH 201 MEADOW CREEK, EAGLE RIVER, ALASKA 99577 (H) 694-2045 (W) 279-5541

RE: SB30

I WISH TO SUUPORT SB 30 WHICH CREATES THE YAKUTAGA STATE FOREST AND WOULD LIKE TO SEE THIS BILL MOVED THROUGH YOUR COMMITTEE AS SOON AS POSSIBLE. THANK YOU FOR THE OPPORTUNITY TO COMMENT.

****

* DELIVER TO: JPOM

* ORIGINAL
* SENT: 01/29/85 TIME: 13:08
* FROM: PAULA GRAY
* SUBJECT: POM-FAIRBANKS
* PRINT DATE: 01/29/85 TIME: 13:09

****

TO: SENATE RESOURCES COMMITTEE

SENS: STURGULEWSKI, FAHRENKAMP, ELIASON, ZHAROFF, HALFORD, COGHILL, V. FISCHER

INTERIOR DELEGATION
SENS: BENNETT
REPS: FRANK, DAVIS, KOPONEN, M.W. MILLER, RINGSTAD

FROM: JOHN ZASADA
1551 LARUE
FAIRBANKS, AK, 99701

PHONE: 479-4160-H NO WK PH

RE: SB 30, YAKATAGA STATE FOREST

MSG: I SUPPORT THE YAKATAGA STATE FOREST AND URGE YOU TO CREATE THE FOREST THIS SESSION.

DELIVER TO: JPOM

ORIGINAL
SENT: 01/29/85 TIME: 14:16
FROM: PAULA GRAY
SUBJECT: POM-FAIRBANKS
PRINT DATE: 01/29/85 TIME: 14:16 14

TO: SENATE RESOURCES COMMITTEE

SENS: STURGULEWSKI, FAHRENKAMP, ELIASON, ZHAROFF, HALFORD, COGHILL, V. FISCHER

INTERIOR DELEGATION
SENS: BENNETT
REPS: FRANK, DAVIS, KOPONEN, M.W. MILLER, RINGSTAD

FROM: CHRIS POLSON
834 GOLDFINCH ROAD
FAIRBANKS, AK, 99701

PHONE: 479-0170-H 474-7114-W

RE: SB 30, YAKATAGA STATE FOREST

MSG: I WOULD LIKE TO GIVE MY SUPPORT TO THE PASSAGE OF SENATE BILL 30 FOR THE YAKATAGA STATE FOREST, RECOGNIZING ITS VALUE TO THE STATE ALONG THE SAME LINES AS THE TANANA VALLEY STATE FOREST AS INSURANCE THERE WILL BE A TIMBER RESOURCE FOR THE FUTURE.

DELIVER TO: JPOM

ORIGINAL
SENT: 01/29/85 TIME: 10:40
FROM: FLORENCE CARNAHAN
SUBJECT: POM
PRINT DATE: 01/29/85 TIME: 10:40

TO: SENATORS COGHILL, ELIASON, FAHRENKAMP, V. FISCHER, HALFORD, STURGULEWSKI, ZHAROFF

FROM: DAN KETCHUM, 8830 CORDELL CIRCLE, ANCHORAGE, ALASKA 99502 248-4816

RE: SB 30 AND SUSITNA

I URGE YOUR SUPPORT OF ESTABLISHMENT OF YAKUTAGA AND SUSITNA STATE FORESTS. SF SYSTEM PROVIDES BEST OPTION FOR ACTIVE, EFFICIENT FOREST LAND MANAGEMENT WHICH WILL INSURE A FLOW OF GOODS AND SERVICES FROM STATE OWNED FOREST LANDS TO ALASKANS.

YAKATAGA STATE FOREST
FACT SHEET

The establishment of a Yakataga State Forest will commit State-owned lands between Cape Suckling and Icy Bay to long term public retention to be managed for multiple use and sustained yields. There are about 460,000 acres within the area, of which an estimated 87,000 acres have more than 20,000 board feet per acre. These are among the most productive forest lands owned by the State and the timber resources are already being managed on a sustained yield basis. Commitment of the natural resources will have a beneficial effect on the economies of Yakutat and Cordova and will likely stimulate long term industrial and commercial development based on a standing sawtimber volume of 4.3 billion board feet with an estimated potential yield of the area of 20 million board feet (MMBF) per year. The annual revenue to the State at today's prices would be one to two million dollars with a total annual product value of 5 to 10 million dollars.

To date, 190 MMBF has been harvested within the proposed State Forest, all since 1970. An additional 49 MMBF was sold in 1983, to be harvested over the next five years. A jetty, log transfer facility, sort yard, logging camp, airstrip, and about 20 miles of mainline road were constructed by the previous logging operator. A DOF office and cabin were built by the State.

The DOF has arranged for multiple use management of the forested lands within the proposed State Forest. The Division has worked with the Alaska Department of Fish and Game to protect important wildlife habitat. Also, the DOF has worked out a cooperative use agreement with DMEM and North Coast Mining Company for joint operation on mineral claims.

Provided by John Sturgeon, State Forester
Division of Forestry DNR

DEPARTMENT OF NATURAL RESOURCES SOUTHCENTRAL DISTRICT
LAND PLANNING REPORT - YAKATAGA

Existing classification - None
Recommended classification - Forest

Proposed Classification

The proposed classification to Forest was requested by the Southcentral District Forestry Section to facilitate implementation of a sustained yield timber use program in the Yakataga area. The proposed Yakataga Forest area represents a relatively small but significantly rich area of spruce and hemlock forests on the Alaska gulf coast. The current estimate of sustained yield production per year from the Yakataga area is 25 million board feet on an eighty year rotation.

Location

The Yakataga area proposed for classification is located between the Suckling Hills on the west, Icy Bay on the east, the Gulf of Alaska on the south and Bering Glacier and the Robinson Mountains on the north (see attached location map). All lands are tentatively approved for patent to the State of Alaska.

The legal descriptions for the proposed Yakataga Forest area are:

Township 23 South, Range 21 and 22 East, C.R.M.
Township 22 South, Range 24 C.R.M., that portion on the West side of Icy Bay
Township 22 South, Range 19 through 23 East, C.R.M.
Township 21 South, Range 9 East, C.R.M. East of Chugach National Forest Boundry
Township 21 South, Range 10 through 19 East, C.R.M.
Township 20 South, Range 13 through 18 East, C.R.M.
Township 19 South, Range 16 through 17 East, C.R.M.
Total area, 480,530 acres.

Physical Description

The geomophology of the area is glacial in origin. Topography ranges from a series of glacial till benches at the foot of glaciated mountains between Cape Yakataga and Icy Bay to glacial outwash plains formed by Bering Glacier. Elevations range from sea level to 4,500 feet on Mt. Duktok.

The climate of the Yakataga Forest area is maritime. Temperatures are modified by the Gulf of Alaska and provide relatiavely mild winters and cool summers. The climate is similar to that of Southeast Alaska but is influenced by offshore winds in the summer and in the winter from the Interior of Alaska. These offshore winds occur for short periods of time resulting in a wider range of annual temperatures for this area as compared to Southeast Alaska. The annual precipitation averages 103 inches.

Physical Description (continued)

Based upon information provided in the Soil Conservation Service publication, Exploratory Soil Survey of Alaska, three major associated classes of soils are found within the proposed area; typic cryorthents, typic cryaquents, and typic cryofluents.

Typic Cryorthents occupy moraines close to steep mountains and large glaciers. Thick forests occupy well drained hillsides and wet treeless sloping valleys from peat accmulation. Elevations range from slightly above sea-level to about 1,000 feet. There is no permafrost in these soils, which are usually very stony and gravelly till with large boulders near the surface.

Typic Cryaquents occupy broad outwash plains which extend to the steep slopes of the coastal mountains. Elevations are between sea level and 200 feet. The plains are primarily sandy, waterlaid sediment with irregular areas of peat accumulating in shallow basins. The water table is often near the surface and flooding is common. Moraines consisting of gravelly till occur near the mountains. The principle vegetation is aquatic plants with forests of spruce and hemlock occupying the moraines. In general, intensive use of these soils is greatly restricted because of the high water table and frequent flooding. Many of these soils support coastal meadows that are used heavily by migrating birds for stopover areas and nesting sites.

Typic Cryaquents - Typic Cryofluvents are a very gravelly, nearly level association of soils occupying outwash plains and alluvial fans in the northern coast of the Gulf of Alaska. Elevations are low, from sea level to 100 feet and the water table is generally near the surface. These plains consist mainly of outwash deposits covered with waterlaid sediment. Dense stands of spruce and hemlock occur on well drained sites where cool moist summers and mild winters promote high forest productivity. Aquatic vegetation such as sedges, mosses and willows dominate the wetter sites.

Resource Values

Fish and Game

The Yakataga area supports a wide variety of fish and game resources. A memo from the Commissioner of Fish and Game, Ronald Skoogs, to the Commissioner of Natural Resources, Robert LeResche, states that this area contains twenty-five anadromous streams. The drainages east of Cape Yakataga to Icy Cape contain mostly pink and coho salmon. These drainages are predominantly first order short drainages because of their very close proximity to steep glaciated mountains. The only drainage that currently

Fish and Game (continued)

supports a commercial fishery in this area is the Priest River. According to Commissioner Skoogs memo this river produces less than 1,000 fish annually for commercial purposes. The drainages west of Cape Yakataga to Cape Suckling are more important as a commercial fishery. Coho salmon still are present in the major drainages and are the main dollar producer. The two drainages that produce a major setnet fishery are the Kalikh which produce a coho escapement of 12,000 and the Tsiu-Tsiuat which produce up to 50,000 coho salmon. The proposed forest management program in Yakataga area could enhance the commercial shore fisheries by increasing access to fishery sites.

This area supports wildlife species such as black and brown bear, mountain goats, moose and small furbearers, such as muskrat, beaver, and martin. The major habitat of bear occurs within the areas west of Yakataga in the spring and summer and along the salmon streams in the fall. The major range of mountain goats are the steep mountains to the north along the coast between Cape Yakataga and Icy Bay.

Mineral Resources

This area has a potential for minerals, oil and gas. The area has had exploration for oil and gas in the late 50's and early 60's. This exploration and subsequent drilling required road construction and various improvements which are used currently by logging interests. No major producing wells were discovered. Interest in offshore drilling may be renewed under future Federal lease sales.

Based on a review of the mineral status plat, the dominant mineral of this area is gold. A potential for hard rock mineral exists but little or no serious prospecting has taken place. Gold mining in this area is placer with all recorded claims occuring on the beaches and up the White River drainage.

Archeology

The Division of Forest, Land and Water Management has made request for a historical analysis of the proposed area. The archeology data for this area is limited. The area was known as a major migration route for the natives from the interior to the Yakataga area. There are no known native settlements in this area.

Forestry

The principle type of overstory vegetation of the proposed area is a mixture of Sitka Spruce and western hemlock with a small volume of Alaska yellow cedar occuring above the 500 foot contour and cottonwood with red alder occuring within riparian zones.

Forestry (continued)

The Southcentral District through a combination of air photo interpretation, cruise and inventory techniques has estimated the total area of potential commercial timber to be 80,000 acres. The evaluation of commercial forest was based on any timber stand having a volume per acre of 20,000 board feet or greater.

Economic Impact

Fisheries

The fish resource of this area is small compared to other areas of the State, but should not be discoutned due to local dependence on this resource. Using data supplied by Alaska Department of Fish and Game, the 1978 and 1979 fishing season in this area returned between $251,000 and $354,000 annually. Another factor to consider is the potential to support a larger fishery as transportation problems are solved.

Minerals

The only mineral being mined presently in the area is gold. The total dollar values returned to the local communities is difficult to determine due to the type of mining operations.

Wildlife

No data is currently available to determine a figure but it can be assumed, through recorded hunting visits, to be relatively low.

Recreation

Due to the remoteness and the poor climate conditions, this area has shown little recreational usage and the total dollar return is insignificant.

Forestry

The economic impact of sustained yield forestry management in the Yakataga area is significant. In funds returned to the State's general fund based on a 25,000,000 board foot allowable cut would be at least $1,000,000 per year based on an average stumpage of $40.00 per thousand board feet.

The cash flow returned directly to the local economy of the surrounding area based on Southcentral Timber Developments logging expenditures for 1979 is $2,500,000.

Summary of Resource Values

The following resources are ranked according to the dollar return to the State and to the local economics annually.

1.	Forestry	$3,500,000
2.	Fishing	$ 354,000 - with fishing held to current levels
3.	Minerals	undetermined - value considered less than Forestry or fishing
4.	Recreation	undetermined

Resource Conflicts

The following conflicts relate sustained yield forestry to other resource use.

Timber/Wildlife

The conflicts between forestry management will be kept to a minimum due to State and District forestry management practices and policies. A summary of these policies and practices are:

1. Timber will be harvested in a patch cut with staggered entries.

2. Leave strips or buffer zones will be left along all major drainages, which include all anadromous fish streams.

3. Special use area for wildlife will be identified by Alaska Department of Fish and Game before completing a timber sale.

4. All operations will take place according to Alaska Statutes 16.10.010 and 16.05.840.

5. All timber will be harvested and managed according to the Best Management Practices as outlined by the Forest Practices Act.

6. Limited harvesting of timber above the 500 foot contour.

7. All timber harvesting programs will be subject to comment by the Department of Environmental Conservation and Alaska Department of Fish and Game.

Timber/Fisheries

The impact on commercial fisheries in this area will be low and with increased access to fishing sites could increase commercial fishing potential.

Timber/Mining

The impacts on mineral extraction will be low because of the subsurface character of minerals. Placer operations require little timber for operations. Timber operations could improve mining potential by increasing accessability.

Timber/Recreation

Due to the inaccessibility of this area it's use for recreation purposes is limited. Therefore the impact of timber management on recreation resources will be low.

Coastal Zone Consistency

The Alaska Coastal Policy Committee's standard and guidelines and the Department of Natural Resources Forestry Practices Act have set operation standards and policies for coastal timber management programs.

Recommendations

The Southcentral District recommends this area be classified as Forest to facilitate a program of sustained yield management. The District further recognizes the potential forestry value of the area and recommends consideration be given to placing this region in the State forest system. As the designation as a State Forest is legislative and requires a significant portion of time the District supports, as an interim measure, declaration of this area as a Forest Reserve.

DENNIS R. THOMASON
District Classification Officer

August 12, 1980

RATIONALE FOR A STATE FOREST SYSTEM

Historically, the forests of Alaska have provided its inhabitants with building materials, fuel, recreational opportunities, diversity of wildlife and untold other benefits. Recent rapid shifts in ownership patterns and single-use allocations of that land have severely hampered public availability of these resources and stifled the development of a viable forest products industry, especially in the interior of Alaska.

The full impact of these encroachments on the public use of the land, if allowed to continue, will not be fully realized for years and possibly decades. Continued pressures to further reduce the publicly owned forest land available for multiple-use management is eroding this base.

It is in the best interest of the State to legislatively designate large tracts of primarily forested lands for long-term public retention and management for a multiplicity of resources, as envisioned by the framers of the Constitution of the State of Alaska.

Simple classification of the land as "forest" does not assure that this diversity of benefits, so needed by Alaska, will remain available for future generations.

Forest land in private ownership might well produce the forest products necessary for the development of the State, but not allow the use of the land for its other resource values by the general public.

A state forest system is a use-oriented concept. It would not only provide the incentive to develop a stable forest products industry capable of reducing the amount of lumber being imported to meet our needs (some 75% of the sawn lumber used in the Interior), but also provide access for hunting, fishing, camping, berry picking, etc. State forests are not a lockup, but a dependable year-after-year source of all the renewable resources of the State, for all the residents of the State.

Testimony of the Alaska State
Society of American Foresters on
SB 202, creating the Yakataga State Forest

Senate Resources Committee, March 16, 1984 hearing
Juneau, Alaska

The Alaska State Society of American Foresters (SAF) would like to thank Chairman Bettye Fahrenkamp and members of the Senate Resources Committee for the opportunity to testify before you. The Alaska SAF, comprised of 280 professional foresters in Alaska, is appreciative of the opportunity to present a statement in support of Senate Bill 202, creating the Yakataga State Forest.

We commend Senator Eliason for introducing this important bill, and appreciate the work that has been devoted to this measure. We believe that the dedication of carefully chosen state land to long-term multiple use management is essential for the further orderly development of the forest products industry and for a continuing supply of other public benefits that these lands can and do produce.

The Need a Multiple Use State Forest at Yakataga

Timber--Although Alaska is a large state with approximately 375 million acres, much of the state is not biologically capable of growing trees. Statewide, only about 30 million acres (8% of the total) meet the productivity test for commercial forest land; that is land that is capable of producing at least 20 cubic feet of usable wood per acre per year. These statistics are available from forest survey reports (Hutchison, 1967). Because of the relative scarcity of highly productive forest lands in Alaska, such lands need to be given careful consideration for inclusion in multiple use programs.

Forest inventories and timber harvesting were initiated in the 1970s by the State's Division of Forestry in the Icy Bay/Yakataga area. These were the first steps in forest management of the area. The forest survey found over 150,000 acres of commercial forest land, with about 104,000 acres of sawtimber within the proposed State Forest area, producing about 3,700,000,000 net board feet (International 1/4 inch scale) of timber.

The forests included in the area of the proposed Yakataga State Forest are some of the most productive in the state. The Yakataga area sawtimber stands average nearly 35,000 board foot per acre compared to the average of 27,000 for sawtimber stands throughout the rest of southeast Alaska. Many Yakataga area sawtimber stands produce over 60,000 net board feet per acre and some stands produce 80,000 net board feet per acre. Much of the higher volume per acre in the Yakataga area can be attributed to a combination of good timber sites and to the lack of decay in the stands.

Mining--The Yakataga State Forest area also has historic precident established for mining. Gold mining has been an active enterprise in this area for decades and those interests need continued recognition, maintainance, and development.

Wildlife--Resident moose and goat herds in the proposed Yakataga State Forest area have provided excellent opportunities for hunting, photography, and aesthic enjoyment. Management planning needs to be implemented to protect and enhance these natural resource values.

The establishment of the Yakataga State Forest is an excellent opportunity for true multiple use management. Plans of the State's Division of Forestry call for timber, mining, fish and wildlife habitat, and other natural resources all being used or maintained compatibly in a multiple use and sustained yield approach. Furthermore, this approach is consistent with the Alaska Forest Resources and Practices Act.

SAF is encouraged by the stated intent and demonstrated commitment of the State's Division of Forestry to (1) sustained yield management of the timber, (2) cooperation with the Alaska Department of Fish and Game in the protection of wildlife habitat, and (3) active pursuit of a cooperative use agreement with mining interests in the proposed State Forest area.

A balanced land and resources management program, such as is evolving thru these efforts, will lead to sound economic development of the resources and the local communities, as well as provide protection for other natural resources of the area.

The Alaska Society of American Foresters strongly urges passage of Senate Bill 202.

Literature Citation

Hutchison, O. Keith. 1967 Alaska's Forest Resource. U. S. Department of Agriculture, Forest Service, Resource Bulletin PNW-19, 74 p.

Prepared by Vernon J. LaBau, State SAF Chairman

With review and comment from the Alaska Division of Forestry.

Alaska Loggers Association, Inc.

SB 202

111 STEDMAN, SUITE 200
KETCHIKAN, ALASKA 99901
Phone 907-225-6114

February 24, 1984

Support for last yrs bill

Honorable Bettye Fahrenkamp
Alaska State Senate
Pouch V State Capitol Building
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

The Alaska Loggers Association supports the establishment of Yakataga State Forest as proposed in Senate Bill 202. Inclusion of this area into the State Forest system will greatly benefit all the people of Alaska as well as the forest products industry.

The 460,000 acres in the proposed forest are among the most productive forest lands owned by the State of Alaska. These forest lands are already being managed on a sustained yield basis. Since 1970, 190 million board feet have been harvested. An additional 49 million board feet were sold in 1983. This will be harvested over the next five years. A commitment of this forest land to long term timber management will most likely stimulate more development in Yakutat and Cordova. The standing sawtimber volume of 4.3 billion board feet and estimated potential yield of 20 million board feet of timber per year would have a beneficial effect on the economies of both communities.

Establishment of a Yakataga State Forest would greatly benefit the people of Alaska by adding one more source of steady income to the State's income. The annual revenue to the State at today's prices would be one to two million dollars with a total annual product value of 5 to 10 million dollars.

An additional benefit of committing this land to long term public retention to be managed for multiple use and sustained yield is the assurance of a continuous source of timber to the forest products industry. At the present time, it is difficult for the State Division of Forestry to project an annual allowable cut since the timber land base has been so variable. Classifying this laud as a State Forest would insure that this prime State owned timber land will be managed for its best possible uses and would allow the Division of Forestry to do more long range planning.

Again, Alaska Loggers Association fully supports the establishment of Yakataga State Forest and would appreciate your support of Senate Bill 202. Thank you for your consideration of this bill.

Sincerely,

Donald A. Bell

Donald A. Bell
General Manager
ALASKA LOGGERS ASSOCIATION

DAB/mjh
cc: Alaska State Senators

SERVING ALASKA'S TIMBER INDUSTRY

Cordova Lands Coalition
Box 1183
Cordova, Alaska 99574

Feb. 26, 1984

Senator Richard Eliason
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason,

We have recently heard that you have introduced a bill to create a State Forest in the Yakataga area. We would like to express our strong support for this action.

The Cordova Lands Coalition wrote you last year supporting the establishment of a Yakataga State Forest. We appreciate your continued efforts this year as well.

The Yakataga area is the best timber area remaining in State hands. It is also an area of rich wildlife and fisheries resources. So far, the bulk of the area has been little impacted by human use. This area would make a major impact on the State Forest timber base, helping to allow sustained commercial levels of timber harvest. At the same time, State Forest designation would promote multiple use management with protection of key wildlife and fisheries resources.

Thank you for sponsoring this bill to designate a Yakataga State Forest.

Sincerely,

Oliver Osborn

Oliver Osborn
President

GREATER SITKA

Chamber of Commerce, Inc.

May 21, 1984

To: All Members of the House Resources Committee
House of Representatives
Alaska State Legislature

Reference: Committee Substitute for Senate Bill 202 (Finance)
Establishment of the Yakataga State Forest

The Greater Sitka Chamber of Commerce Board of Directors urges your support of the above bill establishing a State forest in the Yakataga area. We heartily support all efforts toward the continuance of the forest products industry in the State of Alaska.

Sincerely,

Dave Knapp
President

DK:kf

cc: Senator Dick Eliason
Representative Ben Grussendorf

POST OFFICE BOX 638 • SITKA, ALASKA 99835

ALASKA SOCIETY OF AMERICAN FORESTERS
1123 Ril Circle
Anchorage, AK 99504

March 12, 1984

Senator Richard Eliason
Pouch V
Juneau, Ak 99811

Dear Senator Eliason,

The Alaska Society of American Foresters (SAF), comprised of 280 professional foresters in Alaska, is appreciative of the opportunity to present a statement in support of Senate Bill 202, creating the Yakataga State Forest.

SAF is a strong proponent of multiple use management, whereby all of the natural resources of a given area are managed in a planned and balanced manner. This is a written policy of SAF both at the State and National level.

Establishment of a State Forest at Yakataga is an excellent opportunity for true multiple use management. Plans of the State's Division of Forestry call for timber, mining, fish and wildlife habitat, and other natural resources all being used or maintained compatibly in a multiple use and sustained yield approach. Furthermore, this approach is consistent with the Alaska Forest Resources and Practices Act.

SAF is encouraged by the stated intent and dem nstrated commitment of the State's Division of Forestry to (1) sustained yield management of the timber, (2) cooperation with the Alaska Department of Fish and Game in the protection of wildlife habitat, and (3) active pursuit of a cooperative use agreement with mining interests in the proposed State Forest area.

A balanced land and resources management program, such as is beginning to evolve thru these efforts, should lead to sound ec nomic development of the resources and the local communities, as well as provide protection for other natural resources of the area.

The Alaska Society of American Foresters strongly urges passage of Senate Bill 202.

Sincerely,

Vernon J. LaBau
State Chairman
Alaska Society of American Foresters

S3202

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O.BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4100

March 2, 1983

The Honorable Richard I. Eliason
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

In a recent letter, State Forester John Sturgeon indicated that you wished to know the Department of Fish and Game's position on the State Forest being proposed for the Yakataga area. I am pleased to inform you, that we are in complete support of such a concept, provided we are offered the opportunity to be an active participant in the management planning process.

The area being proposed for Forest designation contains significant fish and wildlife resources which we believe should be adequately protected during any land use activities which are eventually conducted. We have been working closely with the Department of Natural Resources on this issue, and I feel confident that our concerns will be addressed.

If I can provide you further information, please feel free to contact me.

Sincerely,

Don W. Collinsworth

Don W. Collinsworth
Commissioner

cc: John Sturgeon, State Forester, ADNR
Paddy McQuire

11-K12LH

City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

March 17, 1983

Senator Richard Eliason
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Dick:

Due to the fact that Sitka's economy is dependent on a healthy woods industry, you are encouraged to work with the Department of Natural Resources in order to define boundaries for a state forest in the Yakataga area.

Sincerely,

Fermin Gutierrez
Administrator

cc: Peter M. Huberth, ALP

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
April 23, 1985

Rep. Adelheid Herrmann, Co-Chairman
Rep. Richard Shultz, Co-Chairman
House Resources Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: CS SB 30 (Fin): Yakataga State Forest

Dear Representatives Herrmann and Shultz:

The League of Women Voters of Alaska supports establishment of the Yakataga State Forest.

We have previously supported the development of a system of state owned forests, as a means of good resource management. For example, we lobbied in support of the bill which established the Tanana Valley State Forest; and last year we lobbied in support of the bill which would have established a Yakataga State Forest.

We think it especially important, however, to retain the provision that the management plan developed by DNR be submitted to the Legislature for approval. That provision appeared in an earlier version of the bill (CS SB 30 (Res)), but has disappeared from the version of the bill which is before your Committee. We would like to see your Committee restore the language which appeared in Section 2 of CS SB 30 (Res). Under that provision, following referral of DNR's proposed management plan to the Legislature, the management plan would be approved unless the Legislature adopted legislation disapproving it. Please note that such a provision would be consistent with the adopted language in AS 41.17.400(b), which requires a similar referral to the Legislature for the management plan DNR adopts for the Tanana Valley State Forest.

One of the reasons we are so concerned that this provision be restored to the legislation establishing a Yakataga State Forest is that we fear the management plan may allow the use of chemical herbicides in reforestation projects. We are against the use of chemical herbicides anywhere in Alaska, and especially by the State itself, on State-owned or managed lands.

The potential for this problem has most recently come to our attention in the context of the draft management plan for the Haines State Forest (see attached letter). Probably you are already aware of the controversy (and litigation) surrounding the use of chemical herbicides along the Alaska Railroad right-of-way.

We consider the question of use of chemical herbicides to be a serious public policy issue related to public health and valuable fish and game resources. This alone is reason enough to require that management plans for State forests be referred to the Legislature for review.

Thank you for considering our views on this matter.

Sincerely,

Elizabeth Cuadra

Elizabeth Cuadra, State Board Member
(Natural Resources Portfolio)

Encl.

cc (w/out encl.): Committee Members (Wallace, Sund, Thompson, Miller, Cato, Pearce and Jenkins)

Commissioner Wunnicke (DNR)

Paula Ziegler, LWVAK President

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
February 15, 1985

Mr. Paul Maki
Division of Forestry
Alaska Department of Natural
Resources
400 Willoughby Avenue
Juneau, Alaska 99801

Re: Haines State Forest: Draft Management Plan

Dear Mr. Maki:

We ask that the Department of Natural Resources, Division of Forestry, adopt an affirmative policy against the use of chemical herbicides, and that the final management plan for the Haines State Forest Resource Management Area incorporate an affirmative commitment that chemical herbicides will not be used in the Haines State Forest.

The League of Women Voters of Alaska has supported the development of a system of State owned forests, as a means of good resource management. For example, we lobbied in support of the bill which established the Tanana Valley State Forest; last year we lobbied in support of the bill which would have established a Yakataga State Forest and expect to do so again in this Legislature. However, we are deeply concerned about the use of broadcast chemicals (especially herbicides) anywhere in Alaska, by anyone, for any purpose.

We admire the candor with which the writers of the draft management plan raised the herbicides issue (page 9, right up front). Our answer to your question whether or not the State should ever use herbicides in the Haines State Forest is a resounding "no!" We consider the use of herbicides to be a threat to fisheries values, other wildlife values, and to the public health. Furthermore, this is one type of hazardous chemical problem we can avoid, since there are non-hazardous alternatives available. Those alternatives generally will turn out to be more labor intensive, and therefore appear less "cost effective" even if they provide much-needed temporary jobs for local people.

The (p. 9) discussion of decision structure for arriving at a (later) policy decision on use of herbicides places some emphasis on cost-effectiveness. Placing much emphasis on cost effectiveness would be a very dangerous approach to a policy decision in this context. Cost effectiveness analysis only asks the question (assuming the various alternatives are equally good in all other aspects) what is the least expensive means (in terms of dollars expended) of achieving the desired end? Cost effectiveness analysis is totally blind to the potential and hidden long term impact "costs" of diminished fisheries and other wildlife values, and potential impacts on public health. Even cost-benefit analysis has not progressed to the point where adequate emphasis can be placed on such values as public health.

Cost effectiveness analysis also omits entirely any consideration of social cost represented by the resources spent on litigation but which could be more desirably spent otherwise, if only a public policy decision more protective of public health and environmental values had been adopted in the first place. We refer, for example, to the litigation surrounding the silvicultural use of herbicides in Oregon, and along the Alaska Railroad right-of-way.

Alaska has enough hazardous chemical problems already, without adding one that can be avoided. We already have at least 90 uncontrolled, identified hazardous waste dumps, and we have the problem of removing friable asbestos from schools and other public buildings; the total public costs of remedial measures to abate these problems is going to be a very large dollar figure indeed.

Again, we ask that DNR adopt now, in writing, a binding commitment that it will not use herbicides in State forests, including the Haines State Forest. If this is done, we will be able to continue supporting the formation of additional new State forests, such as the Yakataga State Forest.

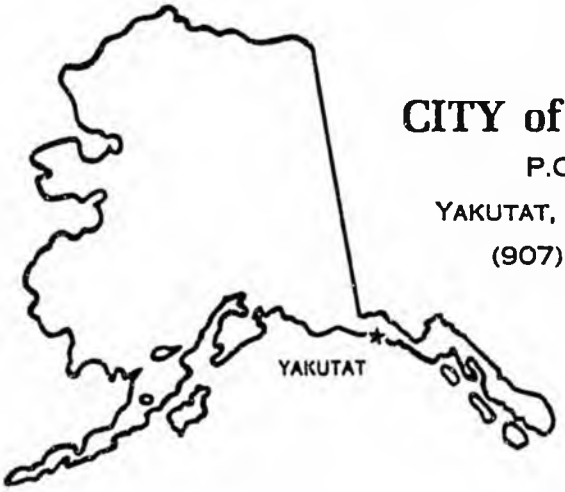
Thank you for considering our views.

Sincerely,

Elizabeth Cuadra

Elizabeth Cuadra
State Board Member
(Natural Resources Portfolio)

DEC:sd
cc: Governor Sheffield
Commissioner Wunnicke
John Sturgeon



CITY of YAKUTAT

P.O. Box 6

YAKUTAT, ALASKA 99689

(907) 784-3323

April 24, 1985

Honorable Adelheid Herrman
Honorable Richard Shultz
Co-Chairs
House Committee on Resources

Alaska State Legislature
Pouch V (Ms 3100)
Juneau, Alaska 99811

RE: SB 30 Creating a Yakataga State Forest

Enclosed is a copy of a resolution passed by the Yakutat City Council at its meeting of April 22, 1985. The resolution marks a change in the position of the City of Yakutat relative to SB 30.

At first the City of Yakutat supported SB 30 as a way of gaining weight for local interests when decisions were being made for the Yakataga foreland area. Recently the City of Yakutat has begun considering annexation, borough formation, and the formation of a Coastal Resource Service area. We have come to realize that SB 30 and the creation of a Yakataga State Forest are a great disincentive to bringing those areas under any sort of incorporated local government. With the formation of a State Forest in the area we can no longer think of any incentives why Yakutat would initiate the formation of a local or regional government in that area, and it seems unlikely that any other group would form a borough if Yakutat did not.

It seems to us that the decision to establish a Yakataga State Forest might be a de facto decision that neither borough nor Coastal Resource Service Area will ever be formed in the Yakutat area. Certainly it will reduce the chances of that happening and will set back the time of its happening for many years.

In light of the State's long time policy encouraging the formation of local governments; and in light of its commitment to the formation of Coastal Resource Service Areas, we would urge the members of the House Committee on Resources to consider the potential impact of SB 30 on the Formation of both local government and Coastal Resource Service Areas. We urge you to consider Yakutat's reasons for changing its position from support of the proposed to opposition. We urge you to consider Yakutat Council Resolution 85-9 and to consider opposing the formation of a Yakataga State Forest.

Sincerely,
Larry Powell
Mayor

Debbie Harris

Debbie Harris
City Clerk

cc: Committee members
DCRA

CITY OF YAKUTAT, ALASKA

RESOLUTION NO. 85-9

A RESOLUTION OPPOSING THE ESTABLISHMENT OF A YAKATAGA STATE FOREST.

WHEREAS, The Alaska Legislature is currently debating passage of SB 30 establishing a Yakataga State Forest; and

WHEREAS, The residents of Yakutat are traditional users of that commercial, sport and subsistence area which has been designated for inclusion in the Yakataga State Forest; and

WHEREAS, The community of Yakutat is currently considering both Coastal Resource Service Area and borough formation in the Yakutat area; and

WHEREAS, The establishment of a state forest at Yakataga would be a clear disincentive to the formation of a borough in the area; and

WHEREAS, The establishment of a state forest at Yakataga would be a clear disincentive to the formation of a Coastal Resource Area; and

WHEREAS, It is the policy of the State of Alaska to encourage the formation of boroughs and Coastal Resource Service Areas; and

WHEREAS, The establishment of a state forest at Yakataga would require the development of a state plan for the area in advance of a Coastal Resource Service Area being established, thus removing area uses from the purview of locally-elected body; and

WHEREAS, It is the policy of the state to support decision making at the local level; and

THEREFORE BE IT RESOLVED, That the Common Council of the city of Yakutat opposes the establishment of a Yakataga State Forest; and

BE IT FURTHER RESOLVED, That the Council urges the legislature of the State of Alaska to consider fully and completely the impact which the formation of a Yakataga State Forest will have on the potential formation of either a borough or a Coastal Resource Service Area.

PASSED AND APPROVED THIS 22nd DAY OF APRIL, 1985.

CITY OF YAKUTAT, ALASKA

MAYOR

ATTEST:

CITY CLERK

COOK INLET CHAPTER
JUNEAU CHAPTER
KETCHIKAN CHAPTER
YUKON RIVER CHAPTER
SITKA CHAPTER
STIKINE RIVER CHAPTER

ALASKA STATE SOCIETY OF AMERICAN FORESTERS



Cook Inlet Chapter

House Committee on Resources
Alaska State Legislature
Pouch V
Juneau, AK 99811

February 22, 1985

Dear Committee Members:

The current legislative session provides another opportunity to assure that responsible, active management of the State's forested land is initiated. By this, I mean land management actions based on recognition of the presence and values of the various land resources and on objectives to preserve, protect, conserve, enhance, and harvest those resources as appropriate. The productive forest lands in State ownership need management if they are to provide the full range of products, services and amenities of which they are capable. A system of State Forests is provided for in the statutes. Appropriate units of forest land need to be added to the system, which now includes only the Haines and Tanana Valley State Forests.

Senate Bill 30 would add a Cape Yakataga Forest to the system. A bill, yet to be introduced, would add a Susitna Forest the the system. Both of those forests are of high priority because one contains the most productive forest lands in State ownership (Yakataga) and the other a portion of the forest land available in the Susitna River Basin where on half of the State's population resides.

Both provide excellent opportunities for wood production and growth, wildlife habitat enhancement and protection, dispersed recreation opportunities, and all of the additional benefits of forested land. The people of Alaska will receive the full benefits of public land ownership when those lands are actively and efficiently managed for multiple resource protection and use.

Your support of the establishment of these units of the State Forest system is needed. The Cook Inlet Chapter of the Society of American Foresters urges you to provide that support to speed passage of these bills.

Sincerely,

Zane J. Cornett
Chapter Chairman

SOCIETY OF AMERICAN FORESTERS 1900


SB
35

Bradley
5/9/85

Original sponsors: Kerttula and V.Fischer

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 35 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating the Nelchina Public Use Area."

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

* Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 23. MULTIPLE USE MANAGEMENT OF PUBLIC RESOURCES.

ARTICLE 1. PUBLIC USE AREAS.

Sec. 41.23.010. PURPOSE. The purpose of AS 41.23.010 - 41.23.-040 is to establish the area described in AS 41.23.040 as the Nelchina Public Use Area. The Nelchina Public Use Area is established to

(1) protect and maintain fish and wildlife habitat, particularly caribou calving areas, trumpeter swan nesting areas, and other important habitats for moose, Dall sheep, and brown bear so that traditional public uses of fish and wildlife populations may continue;

(2) perpetuate and enhance public enjoyment of fish and wildlife and their habitat including fishing, hunting, trapping, viewing, photography;

(3) perpetuate and enhance general public recreation in a quality environment;

(4) perpetuate and enhance additional public uses described in the Susitna Area Plan;

(5) allow additional public uses of the area in a manner compatible with the purposes specified in (1) - (4) of this section.

Sec. 41.23.020. MANAGEMENT. (a) Management of the surface and subsurface estate of the Nelchina Public Use Area is the responsibility of the Department of Natural Resources. After adequate public

hearings the commissioner may designate incompatible uses and shall adopt and may revise a management plan for the Nelchina Public Use Area. With regard to the management of land within the central caribou calving area described in AS 41.23.040(b), the commissioner shall obtain the concurrence of the Department of Fish and Game in the adoption and revision of the management plan. With regard to the management of land within the public use area described in AS 41.23.-040(c), the commissioner shall consult with the Department of Fish and Game in the adoption and revision of the management plan.

(b) The Department of Fish and Game is responsible for the management of fish and game resources and public use of fish and wildlife in the Nelchina Public Use Area consistent with the purposes of AS 41.23.010.

(c) The Nelchina Public Use Area shall be open to mineral entry under AS 38.05.185 - 38.05.275, and the commissioner may adopt regulations to achieve the purposes specified in AS 41.23.010. Each valid existing right or permit shall remain valid and continue in full force and effect according to its terms. Exploration, development, and extraction of subsurface resources shall be allowed in a manner that is compatible with the purposes specified in AS 41.23.010(1) - (4).

(d) The state may not acquire by eminent domain privately owned land within or abutting state-owned land described in AS 41.23.040 but may acquire privately owned land by purchase, exchange, or otherwise for inclusion in the Nelchina Public Use Area.

(e) The commissioner may not manage the Nelchina Public Use Area as a unit of the state park system.

Sec. 41.23.030. COMPATIBILITY OF USES. (a) Except as provided in this section, the commissioner may prohibit or restrict incompatible uses under the management plan adopted under AS 41.23.020 within

the state-owned land and water described in AS 41.23.040.

(b) Nothing in AS 41.23.010 - 41.23.040 prohibits the Department of Fish and Game from engaging in rehabilitation, enhancement, and development of fish and wildlife habitat within an area described in AS 41.23.040.

(c) The commissioner may not restrict lawful sport and subsistence fishing, hunting, or trapping rights allowed under a regulation of the Board of Fisheries or the Board of Game within the Nelchina Public Use Area.

(d) The commissioner shall allow traditional access to the Nelchina Public Use Area by motorized or nonmotorized means of transportation to private land, interests in private land, and for lawful sport and subsistence hunting, fishing, trapping, and recreational purposes in a manner that is compatible with purposes specified in AS 41.23.010(1) - (4).

(e) The Department of Public Safety and the Department of Fish and Game shall have necessary access for fish and game management, research, and enforcement purposes.

(f) If the commissioner determines that a use is incompatible with one or more other uses in a portion of the Nelchina Public Use Area, the commissioner shall state in the management plan adopted or revised under AS 41.23.020

(1) each determination of incompatibility;

(2) the specific area where the incompatibility is determined to exist;

(3) the time within which the incompatibility is determined to exist; and

(4) the reasons for each determination of incompatibility.

Sec. 41.23.040. NELCHINA PUBLIC USE AREA. (a) The vacant and

unappropriated state-owned land and water and the state land and water acquired in the future that lie within the boundaries described in this section are designated as the Nelchina Public Use Area, are reserved for all uses compatible with their primary function as public use land, and are assigned to the Department of Natural Resources for control and management.

(b) The land described in this subsection is the central caribou calving area:

(1) Township 5 North, Range 10 West, Copper River Meridian,
Section 5
Section 8
Section 17;

(2) Township 6 North, Range 10 West, Copper River Meridian,
Sections 4 - 5
Sections 8 - 9
Sections 16 - 17
Sections 20 - 21
Sections 28 - 29
Sections 32 - 33;

(3) Township 7 North, Range 10 West, Copper River Meridian,
Sections 4 - 5
Sections 8 - 9
Sections 16 - 17
Sections 20 - 21
Sections 28 - 29
Sections 32 - 33;

(4) Township 8 North, Range 10 West, Copper River Meridian,
Sections 4 - 5
Sections 8 - 9

Sections 16 - 17

Sections 20 - 21

Sections 28 - 29

Sections 32 - 33;

(5) Township 9 North, Range 10 West, Copper River Meridian,

Sections 20 - 22,

Sections 27 - 29

Sections 32 - 34;

(6) Township 10 North, Range 10 West, Copper River Meridian, those portions of Sections 2 - 4 and 11 lying south of the Tyone River and

Sections 9 - 10

Sections 14 - 16;

(7) Township 23 North, Range 8 East, Seward Meridian,

Sections 1 - 6

Sections 8 - 12;

(8) Township 23 North, Range 9 East, Seward Meridian,

Sections 1 - 14;

(9) Township 23 North, Range 10 East, Seward Meridian,

Sections 3 - 9;

Sections 17 - 20;

(10) Township 23 North, Range 11 East, Seward Meridian,

Sections 1 - 4;

(11) Township 23 North, Range 12 East, Seward Meridian,

Section 6;

(12) Township 24 North, Range 7 East, Seward Meridian,

Section 1

Sections 12 - 13

Sections 24 - 25;

(13) Township 24 North, Range 8 East, Seward Meridian;

(14) Township 24 North, Range 9 East, Seward Meridian;

(15) Township 24 North, Range 10 East, Seward Meridian;

(16) Township 24 North, Range 11 East, Seward Meridian;

(17) Township 24 North, Range 12 East, Seward Meridian,

Sections 1 - 23

Sections 26 - 31

(18) Township 25 North, Range 7 East, Seward Meridian,

Sections 1 - 2

Sections 11 - 13

Sections 24 - 25

Section 36;

(19) Township 25 North, Range 8 East, Seward Meridian;

(20) Township 25 North, Range 9 East, Seward Meridian;

(21) Township 25 North, Range 10 East, Seward Meridian;

(22) Township 25 North, Range 11 East, Seward Meridian;

(23) Township 25 North, Range 12 East, Seward Meridian;

(24) Township 26 North, Range 7 East, Seward Meridian,

Sections 1 - 17

Sections 20 - 28

Sections 35 - 36

(25) Township 26 North, Range 8 East, Seward Meridian;

(26) Township 26 North, Range 9 East, Seward Meridian;

(27) Township 26 North, Range 10 East, Seward Meridian;

(28) Township 26 North, Range 11 East, Seward Meridian;

(29) Township 26 North, Range 12 East, Seward Meridian;

(30) Township 27 North, Range 6 East, Seward Meridian,

Sections 1 - 3

Sections 11 - 13;

(31) Township 27 North, Range 7 East, Seward Meridian,

(32) Township 27 North, Range 8 East, Seward Meridian;

(33) Township 27 North, Range 9 East, Seward Meridian;

(34) Township 27 North, Range 10 East, Seward Meridian;

(35) Township 27 North, Range 11 East, Seward Meridian;

(36) Township 27 North, Range 12 East, Seward Meridian;

(37) Township 28 North, Range 6 East, Seward Meridian,

Sections 1 - 6

Sections 8 - 17

Sections 21 - 28;

Sections 33 - 36;

(38) Township 28 North, Range 7 East, Seward Meridian,

(39) Township 28 North, Range 8 East, Seward Meridian;

(40) Township 28 North, Range 9 East, Seward Meridian;

(41) Township 28 North, Range 10 East, Seward Meridian;

(42) Township 28 North, Range 11 East, Seward Meridian;

(43) Township 28 North, Range 12 East, Seward Meridian;

(44) Township 29 North, Range 5 East, Seward Meridian,

Section 13

Sections 23 - 26

Section 36;

(45) Township 29 North, Range 6 East, Seward Meridian;

(46) Township 29 North, Range 7 East, Seward Meridian,

(47) Township 29 North, Range 8 East, Seward Meridian;

(48) Township 29 North, Range 9 East, Seward Meridian;

(49) Township 29 North, Range 10 East, Seward Meridian;

(50) That portion of Township 29 North, Range 11 East, Seward Meridian, lying south of the Susitna River;

(51) Township 29, North, Range 12 East, Seward Meridian,

Sections 3 - 9

Sections 16 - 21

Sections 28 - 34;

(52) Township 30 North, Range 6 East, Seward Meridian,

Sections 13 - 14

Sections 20 - 29

Sections 32 - 36;

(53) Township 30 North, Range 7 East, Seward Meridian,

Sections 1 - 3

Sections 8 - 36

(54) Township 30 North, Range 8 East, Seward Meridian;

(55) That portion of Township 30 North, Range 9 East, Seward Meridian, lying southeast of the Susitna River;

(56) That portion of Township 30 North, Range 10 East, Seward Meridian, lying south of the Susitna River;

(57) That portion of Township 30 North, Range 11 East, Seward Meridian, lying south of the Susitna River;

(58) That portion of Township 30 North, Range 12 East, Seward Meridian, lying south of the Susitna and Tyone Rivers;

(59) Township 31 North, Range 7 East, Seward Meridian,

Sections 13 - 14,

Sections 22 - 27

Sections 34 - 36;

(60) That portion of Township 31 North, Range 8 East, Seward Meridian, lying south of the Susitna River;

(61) That portion of Township 31 North, Range 9 East, Seward Meridian, lying south of the Susitna River;

(62) Township 31 North, Range 10 East, Seward Meridian, that portion of section 31 lying southeast of the Susitna River.

(c) The land described within this subsection is the area of the Nelchina Public Use Area that is outside of the central caribou calving area:

(1) Township 21 North, Range 6 East, Seward Meridian,

Section 1

Section 3, W1/2

Sections 4 - 9

Section 11, E1/2

Sections 12 - 13

Section 14, E1/2

Sections 16 - 20

Section 23, E1/2

Sections 24 - 27

Section 30;

(2) Township 21 North, Range 7 East, Seward Meridian,

Sections 1 - 26

Sections 29 - 30

Section 33, S1/2

Section 34, S1/2

Sections 35 - 36;

(3) Township 21 North, Range 8 East, Seward Meridian;

(4) Township 21 North, Range 9 East, Seward Meridian;

(5) Township 21 North, Range 10 East, Seward Meridian;

(6) Township 22 North, Range 6 East, Seward Meridian,

Sections 1 - 22

Sections 24 - 25

Sections 27 - 34

Section 36;

(7) Township 22 North, Range 7 East, Seward Meridian;

(8) Township 22 North, Range 8 East, Seward Meridian;

(9) Township 22 North, Range 9 East, Seward Meridian;

(10) Township 22 North, Range 10 East, Seward Meridian;

(11) Township 22 North, Range 11 East, Seward Meridian;

(12) Township 22 North, Range 12 East, Seward Meridian,
Sections 1 - 24
Sections 27 - 34;

(13) Township 23 North, Range 6 East, Seward Meridian;

(14) Township 23 North, Range 7 East, Seward Meridian;

(15) Township 23 North, Range 8 East, Seward Meridian,
Section 7
Sections 13 - 36;

(16) Township 23 North, Range 9 East, Seward Meridian,
Sections 15 - 36;

(17) Township 23 North, Range 10 East, Seward Meridian,
Sections 1 - 2
Sections 10 - 16
Sections 21 - 36;

(18) Township 23 North, Range 11 East, Seward Meridian,
Sections 5 - 36;

(19) Township 23 North, Range 12 East, Seward Meridian,
Sections 1 - 5
Sections 7 - 36;

(20) Township 24 North, Range 6 East, Seward Meridian;

(21) Township 24 North, Range 7 East, Seward Meridian,
Sections 2 - 11
Sections 14 - 23
Sections 26 - 36;

(22) Township 24 North, Range 12 East, Seward Meridian,

Sections 24 - 25

Sections 32 - 36;

(23) Township 25 North, Range 4 East, Seward Meridian;

(24) Township 25 North, Range 5 East, Seward Meridian;

(25) Township 25 North, Range 6 East, Seward Meridian;

(26) Township 25 North, Range 7 East, Seward Meridian,

Sections 3 - 10

Sections 14 - 23

Sections 26 - 35;

(27) Township 26 North, Range 3 East, Seward Meridian;

(28) Township 26 North, Range 4 East, Seward Meridian;

(29) Township 26 North, Range 5 East, Seward Meridian;

(30) Township 26 North, Range 6 East, Seward Meridian;

(31) Township 26 North, Range 7 East, Seward Meridian,

Sections 18 - 19

Sections 29 - 34;

(32) Township 27 North, Range 3 East, Seward Meridian;

(33) Township 27 North, Range 4 East, Seward Meridian;

(34) Township 27 North, Range 5 East, Seward Meridian;

(35) Township 27 North, Range 6 East, Seward Meridian,

Sections 4 - 10

Sections 14 - 36;

(36) Township 28 North, Range 3 East, Seward Meridian;

(37) Township 28 North, Range 4 East, Seward Meridian;

(38) Township 28 North, Range 5 East, Seward Meridian;

(39) Township 28 North, Range 6 East, Seward Meridian,

Section 7

Sections 18 - 20

Sections 29 - 32;

(40) Township 29 North, Range 3 East, Seward Meridian;

(41) Township 29 North, Range 4 East, Seward Meridian;

(42) Township 29 North, Range 5 East, Seward Meridian,

Sections 1 - 12

Sections 14 - 22

Sections 27 - 35;

(43) Township 29 North, Range 12 East, Seward Meridian,

Sections 1 - 2

Sections 10 - 15

Sections 22 - 27

Sections 35 - 36;

(44) Township 30 North, Range 3 East, Seward Meridian;

(45) Township 30 North, Range 4 East, Seward Meridian;

(46) Township 30 North, Range 5 East, Seward Meridian;

(47) Township 30 North, Range 6 East, Seward Meridian,

Sections 1 - 12

Sections 15 - 19

Sections 30 - 31;

(48) Township 30 North, Range 7 East, Seward Meridian,

Sections 4 - 7;

(49) That portion of Township 31 North, Range 3 East, Seward Meridian, lying south of the Susitna River;

(50) That portion of Township 31 North, Range 4 East, Seward Meridian, lying south of the Susitna River;

(51) Township 31 North, Range 5 East, Seward Meridian;

(52) Township 31 North, Range 6 East, Seward Meridian;

(53) Township 31 North, Range 7 East, Seward Meridian, those portions of Sections 2 - 4 and Sections 11 - 12 lying south of the Susitna River, and

Sections 5 - 10

Sections 15 - 21

Sections 28 - 33;

(54) That portion of Township 32 North, Range 4 East, Seward Meridian, lying south of the Susitna River;

(55) That portion of Township 32 North, Range 5 East, Seward Meridian, lying south of the Susitna River;

(56) That portion of Township 32 North, Range 6 East, Seward Meridian, lying south of the Susitna River;

(57) That portion of Township 32 North, Range 7 East, Seward Meridian, lying south of the Susitna River;

(58) Township 3 North, Range 9 West, Copper River Meridian,

Sections 1 - 30

Sections 33 - 34;

(59) Township 3 North, Range 10 West, Copper River Meridian;

(60) Township 3 North, Range 11 West, Copper River Meridian;

(61) Township 4 North, Range 9 West, Copper River Meridian, all sections except for portions of sections 20 and 29 described as John Lake Subdivision (ASLS-82-190);

(62) Township 4 North, Range 10 West, Copper River Meridian;

(63) Township 4 North, Range 11 West, Copper River Meridian;

(64) Township 5 North, Range 9 West, Copper River Meridian;

(65) Township 5 North, Range 10 West, Copper River Meridian,

Sections 1 - 4

Sections 9 - 16

Sections 19 - 36;

(66) Township 6 North, Range 9 West, Copper River Meridian;

(67) Township 6 North, Range 10 West, Copper River Meridian,

Sections 1 - 3

Sections 10 - 15
Sections 22 - 27
Sections 34 - 36;

(68) Township 7 North, Range 9 West, Copper River Meridian;

(69) Township 7 North, Range 10 West, Copper River Meridian,
Sections 1 - 3
Sections 10 - 15
Sections 22 - 27
Sections 34 - 36;

(70) Township 8 North, Range 9 West, Copper River Meridian;

(71) Township 8 North, Range 10 West, Copper River Meridian,
Sections 1 - 3
Sections 10 - 15
Sections 22 - 27
Sections 34 - 36;

(72) That portion of Township 9 North, Range 9 West, Copper River Meridian, lying south west of the Tyone River;

(73) Township 9 North, Range 10 West, Copper River Meridian,
Sections 1 - 4
Sections 9 - 16
Sections 23 - 26
Sections 35 - 36;

(74) That portion of Township 10 North, Range 9 West, Copper River Meridian, lying southwest of the Tyone River;

(75) Township 10 North, Range 10 West, Copper River Meridian, that portion of Sections 12 and 13 south of the Tyone River, and
Sections 21 - 28
Sections 33 - 36

* Sec. 2. Nothing in AS 41.23.010 - 41.23.040 as enacted in sec. 1 of

this Act may be construed to restrict the development and establishment of the Susitna Hydroelectric Project.

(section 3 deleted)

Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

PLANNING DEPARTMENT

LAND MANAGEMENT	PLATTING	PLANNING
745-9652	745-9650	745-9661

April 16, 1985

APR 19 1985

Honorable Jan Faiks
Alaska State Senate
Pouch V
Juneau, AK 99811

RE: SSSB 35 - Nelchina Public Use Area

Dear Senator Faiks:

Attached is a resolution of the Matanuska-Susitna Borough Assembly supporting the establishment of a Nelchina Public Use Area. The area covered by SSSB 35 encompasses the major caribou calving grounds of the Nelchina caribou herd.

The Susitna Area Plan which was recently adopted by the Assembly called for the establishment of a Nelchina Public Use Area. That Plan had over 40 public hearings over a three year period and was a successful joint effort between the Borough and the Department of Natural Resources.

In addition to the Borough's support for this piece of legislation, both the Departments of Fish & Game and Natural Resources have indicated support for the bill. The sponsor substitute for SB 35 is now awaiting a hearing before the Senate Finance Committee, and we urge you to schedule a hearing this session.

If there is anything the Borough can do in the way of testifying or providing other support for this piece of legislation, please feel free to contact us.

Sincerely,

Robert J. Stickles

Robert J. Stickles
Planning Director

mu

Attachment

cc: Senator Kerttula

AMENDED

Planning Director

MATANUSKA-SUSITNA BOROUGH

ASSEMBLY RESOLUTION SERIAL # 85- 21

A RESOLUTION OF THE ASSEMBLY OF THE MATANUSKA-SUSITNA BOROUGH SUPPORTING THE ESTABLISHMENT OF A NELCHINA PUBLIC USE AREA.

WHEREAS, Administration recommends establishment of Nelchina Public Use Area; and

WHEREAS, the Susitna Area Plan has identified these lands for retention in public ownership to protect fish and wildlife resources, to provide recreation opportunities, and to permit exploration and development of mineral resources; and

WHEREAS, it should be the intent to insure the traditional and customary uses including, but not limited to, snow machining, use of swamp buggies, aircraft and power boats; and

WHEREAS, the Nelchina Public Use Area is consistent with the concept of the Talkeetna Mountain Special Use District; and

WHEREAS, legislative protection of these lands will insure long term retention in public ownership; and

WHEREAS, disposal of public lands within the Public Use Area will be prohibited; and

WHEREAS, adverse impact of mining on critical caribou calving areas will be regulated through the application of lease stipulations or State Land Use Permit guidelines proposed in the Susitna Area Plan.

NOW THEREFORE, BE IT RESOLVED that the Assembly of the Matanuska-Susitna Borough does hereby support the establishment of a Nelchina Public Use Area.

ACCEPTED AND APPROVED by the Assembly of the Matanuska-Susitna Borough this 14th day of February, 1985.

Dorothy A. Jones
Borough Mayor

ATTEST:

Chris Seagraves
Borough Clerk

REVIEWED AND APPROVED:

Gary Thurlow
Borough Manager



Alaska Environmental Lobby, Inc.

204 N. Franklin Street, Suite 3 Juneau, Alaska 99801 907-586-2345

THE NELCHINA PUBLIC USE AREA: SB35

The Nelchina Public Use Area encompasses 2.3 million acres of primarily stat owned lands on the northeastern slopes of the Talkeetna Mountains. The area supports a variety of wildlife resources and recreational use. Wildlife includes caribou, moose, sheep, brown bear, black bear, wolf and wolverine a well as many species of furbearers, waterfowl, small game and unclassified game. Recreational use of the area includes hunting, fishing, backpacking, climbing, canoeing, whitewater rafting, ORV use, snowmachining, skiing, and panning for gold amongst others.

The Nelchina caribou herd, numbering 25,000, is the largest in Southcentral and due to its proximity to both Anchorage and Fairbanks, has been the most accessible caribou herd in Alaska since before statehood. Once numbering 70,000, the caribou are being impacted by increasing development pressures north of the Glenn Highway which is altering and removing lands from the habitat base and by the Trans-Alaska pipeline which bisects their traditiona range. The calving grounds are the "center of habitation" for the herd whic covers an area of about 1 million acres and makes up the core of the Nelchin Public Use Area. The herds are most vulnerable when moving to and using these grounds.

The Susitna Area Plan after over 40 public hearings during a 3 year process, has identified the Nelchina Public Use Area and has recommended it for immediate legislative designation. SB35 sponsored by Sen. Jalmar Kerttula would provide for the establishment of the Nelchina Public Use Area, the purpose of which would be to assure that these lands remain in public ownership and that area fish and wildlife populations and habitat as well as associated compatable recreational uses are perpetuated. It would also provide:

** DNR to be land managers and to develop a management plan with the concurrence of ADF&G who would manage fish and game resources.

** Mineral entry under regulations set up by DNR to achieve the area's purpose. Valid existing mining claims and multiple land use permits would remain valid and continue in full force.

** Traditional access for lawful sport and subsistence hunting, fishing and trapping.

The Alaska Environmental Lobby supports the establishment of the Nelchina Public Use Area and SB35 and will be closely monitoring the developments in this legislation.

Prepared by Mark Stasik, staff lobbyist for the AEL, 3/4/85

Dept. of Transportation & Public Facilities

Position Paper

MAR 2 2 1985

BILL NO: SSSB 35

APPROVED: P. D. Knapp
Commissioner

TITLE: An Act Creating the Nelchina Public Use Area

DATE: 3/11/85

The Department of Transportation and Public Facilities has no objection to the creation of the Nelchina Public Use Area based on our understanding of SSSB 35. Our understanding is that SSSB 35 is creating a new category of State managed land use under Title 16 ("Fish and Game") of the Alaska Statutes. Further, it is our understanding that this is a new category of land use, and restrictions will be developed and adopted under a management plan to be done at a later time.

Based on these understandings, it is the Department of Transportation and Public Facilities' position that the Department be a member of any group or body responsible for the development of the management plan for the Nelchina Public Use Area. Such membership will ensure that transportation related issues and concerns, as relate to the Department's responsibilities, are addressed to the fullest extent possible during critical stages of the management plan's development and implementation.

For further information call Susan Fleischhauer at 465-3900.

LEGISLATIVE PROTECTION OF THE NELCHINA CARIBOU CALVING AREA

Need for Designation

The Nelchina caribou herd is one of southcentral Alaska's most important wildlife resources. It is the largest caribou herd in south-central Alaska, currently numbering about 25,000 caribou, and is expected to increase somewhat under continued conservative management, provided a habitat base is maintained. Due to its accessibility from Anchorage and Fairbanks, it has been the most intensively recreationally-hunted caribou herd in Alaska since before statehood. Even though hunting is now limited by permit, tremendous demand is expressed each year. More than 12,000 Alaskans applied for 1,900 Nelchina caribou hunting permits in 1984. The herd is also important in meeting the subsistence needs of Copper River Basin residents. Additionally, annual migrations often bring caribou near Nelchina highways where they provide people with otherwise uncommon wildlife viewing opportunities.

The Nelchina caribou range over an area of 20,000 square miles, annually moving to and from their calving and summer range in the Talkeetna Mountains to winter ranges in the Lake Louise Flats, across the Glenn Highway to Chistochina, and often as far east as the Wrangell Mountains near Nabesna. Although different winter ranges may be occupied from one year to the next, the calving grounds have been used every year since studies of the herd began in the 1950's. This consistent use is indicative of the importance of the calving area to

the herd. The calving grounds are the "center of habitation" for the herd, an area that meets the special needs of caribou after the long winter, where pregnant cows can find suitable habitat to give birth to and nurture their newborn calves. Over the great expanses of range covered annually by caribou, they are most vulnerable when moving to and using their calving grounds.

The Nelchina caribou will be affected by increasing development in their range. The Trans-Alaska oil pipeline has already bisected their range; the long term effects on the herd remains uncertain. The most significant new development on the horizon is the Susitna Hydroelectric project. If built, the impoundments may impede movements to and from the calving area, and disturbance associated with the project may displace caribou from some summer range. In addition, development of Native lands adjacent to the project and great increases in recreational uses in the vicinity of the impoundment are likely. Other actions also have the potential for adverse effects on the caribou: increased settlement, grazing, transportation corridors, and military operations have been proposed in the past. As development and use of the land in the upper Susitna and Copper River Basins increase, the cumulative effects will adversely affect the herd. If the state's goal is to maintain the Nelchina caribou herd, the most effective way to minimize these cumulative impacts with the least constraint on other land uses is to protect the calving ground where caribou are most vulnerable.

Area Proposed

The area proposed for legislative designation is located on the northern and eastern slopes of the Talkeetna Mountains (see enclosed map and legal description, Appendix 3). The area contains approximately one million acres and encompasses the primary calving grounds of the Nelchina caribou herd. The area is largely mountainous with rolling uplands covered by alpine herbaceous and subalpine shrubland vegetation. It is undeveloped except for small placer mining operations and a few cabins used for hunting and trapping. The area has no merchantable timber, no agricultural potential, and little commercial grazing capability, but it has substantial wildlands recreation values. The area supports considerable hunting effort directed at caribou, moose and brown bear, although hunting for moose, bears and sheep is more intense in the peripheral sections (see the Nelchina Public Use Area description, Appendix 1) where populations of these species are larger. In addition to big game hunting, the area receives use by small game hunters, trappers, sport fishermen, backpackers, and winter recreationists.

Options for Designation

The Department of Fish and Game (ADF&G) believes legislative designation of this area is needed to permanently protect its special values. The form of designation is secondary to the considerations of ensuring long-term retention and management provisions protecting the Nelchina caribou population and other fish and wildlife resources and

associated public uses. The Nelchina caribou calving area can be designated separately, or in combination with surrounding lands with significant public use values. Several kinds of designation are possible including a public use area, a critical habitat area, a state game refuge, or some other new form of designation.

1. Calving area only. The central calving area is the most critical and important area requiring designation. The Susitna Area Plan has identified it, as meriting immediate legislative designation as a public use area, while recommending eventual designation for surrounding lands as an addition to the public use area. Preliminary draft legislation (Appendix 4) reflecting tentative agreements reached by the ADF&G and the Department of Natural Resources (ADNR) in the preparation of the Governor's South-central Recreation Action Plan would assign the area to ADNR for control, development and maintenance and would provide for ADF&G concurrence with a management plan to be prepared by ADNR for the area. The ADF&G's statutory/regulatory authority in the area would be limited to its general authorities for management of fish and game resources and public uses of fish and game. The ADF&G would rely on provisions of the management plan and on existing consultation procedures with ADNR to protect habitat and wildlife (especially caribou) from land uses potentially inimical to these resources in the area. If statutory authority for such protection by the ADF&G is desired, critical habitat designation would be appropriate. Other options would be to establish the area as a game refuge or create a new article in Title 16,

Chapter 20 for Fish and Game Public Use Areas containing language similar to that found in AS 16.20.050 and .060 (permitting authority).

2. Calving area plus public use area. The original proposed Nelchina Public Use Area, first considered by the legislature in 1980, contains approximately 2.3 million acres of land with exceptional wildlife and public use values (see enclosed map and description, Appendix 1 and 2). Although the final draft of the Susitna Area Plan recommends immediate legislative designation only for the central calving area of about one million acres (with subsequent designation of the remainder at some future date), the ADNR has indicated that it is not opposed to designation of the entire public use area at this time if that is the legislature's wish. Numerous public comments on the draft Susitna Area Plan have supported immediate designation of the larger area.

The enclosed draft bill can be used for either the central calving area or the larger public use area if the designation is to be as a public use area. If the legislature finds it desirable to accord the entire area special designation but feels it is appropriate to give the ADF&G some statutory authority in determining compatibility of land uses in the central calving area (beyond concurrence in a management plan), critical habitat or refuge designation or a new category of lands as suggested above could be estabished. One option that could be considered

is to have concurrent designation of the calving area as both part of a larger public use area and as critical habitat. Under this option, the entire area would be managed under the provisions of the public use area and the management plan developed jointly by the ADF&G and ADNR. At the same time, the critical caribou calving habitat could be protected when necessary under its critical habitat status.

TALKEETNA MOUNTAINS SUBREGION

The following section describes land use policy within the Talkeetna Mountain Subregion. It is divided into two parts. The first is an overview of resources and their management for the subregion as a whole. The second presents specific statements of management intent, land use designations, prohibited uses, and management guidelines for each of the subregion's three management units. The land use plan's proposals on two issues--the borough's Talkeetna Mountains Special Use District and the proposed Susitna Hydroelectric project --overlap several management units and are therefore presented in the first part of this subregion summary under the section on management summary. Maps showing land ownership in the subregion and boundaries of management units and subunits are presented at the end of the first part.

I. SUBREGION OVERVIEW

A. Background

The boundaries of the Talkeenta Mountains Subregion are the planning area boundaries on the north and east (these coincide with the boundary of the Matanuska-Susitna Borough), a line that approximates the northern edge of the Matanuska River drainage on the south, and on the west, a line that roughly follows the 2,500' contour. These boundaries generally encompass only the upper portions of the mountains. Lower-lying portions of river valleys which extend into the area such as the Talkeenta, Sheep, and Kashwitna are included in the adjacent subregions.

This subregion encompasses roughly 6 million acres, the majority of which is publicly owned. The northern half of the unit is primarily in federal ownership, the southern half is held by the State of Alaska. The state recently received tentative approval for nearly all of the approximately 80 townships (1,840,000 acres) of federal land it had selected in the southern half of the area. There are approximately 206,000 acres of Native selected and interim conveyed lands in the area. Most of these lands are located in the Susitna River - Stephan Lake area and in the East Fork of the Chulitna River drainage. These Native selected lands are very likely to be conveyed. In addition to private land held by Native corporations there are also numerous scattered small parcels held by private individuals. These holdings are generally of two types: state offered open-to-entry sites adjacent to fly-in lakes (primarily used for recreational purposes), and federally patented mining claims located in the Nelchina area, the Clearwater Mountains and other mining areas. See the ownership maps at the end of this section for more information.

Access to the periphery of the subregion is provided by two major highways -- the Glenn on the south, the Parks on the west. The only road access into the subregion is provided by the Denali Highway on the north. This highway traverses mostly alpine country in federal ownership from Paxson to Cantwell. The State Department of Transportation is presently working on improvements to the western end of this highway. A number of trails branch off from these highways and provide a measure of access into the mountains. Other means of access include landing strips, fly-in lakes, and boatable rivers.

Although most of this rugged area does not offer the potential for agriculture, forestry, or settlement found elsewhere in the study area, these limitations are well balanced by the region's rich fish and wildlife, recreational and mineral resources. This area is one of the most heavily used big game hunting areas in the state, offering moose, Dall sheep, bear, and caribou. The majority of the range of the 20,000 animals of the Nelchina caribou herd is located here. The area's many lakes and rivers offer excellent fishing for salmon, lake and rainbow trout, grayling and other species. The subregion offers literally millions of acres of alpine country for hiking, camping, skiing and climbing.

These same alpine areas have a rich and to a large degree unexplored potential for mineral development. Several areas -- Hatcher Pass, Nelchina and Valdez Creek -- are currently active producers of gold and other precious minerals.

The Alaska Power Authority recently applied to the Federal Energy and Regulatory Commission (FERC) for a license to build a major hydroelectric project on the Susitna River. Two dams are proposed for sites at Devil's Canyon and Watana. (More on this proposal below.)

B. Management Summary

The Talkeetna Subregion will be managed as a multiple use area emphasizing the uses that are most important in the area now: recreation, including hunting and fishing, protection of fish and wildlife habitat, and mining. Grazing, private recreational settlement (remote cabins), and personal use timber harvests are also uses appropriate in specific portions of this subregion. The vast majority of this rugged, mountainous area is expected to remain remote and very sparsely developed. Additional road access to the area and concentrated settlement on public lands will be contingent on a demonstrated need for such development in order to facilitate activities such as mining or dam construction.

1. Settlement

State and federal land disposals for private recreational settlement are a very low priority in this subregion. The state will issue permits for remote cabin sites in this subregion under the remote cabin permit program in limited, select sites. Should the proposed Susitna hydropower project be developed, state land will be available for a workcamp or other settlement uses associated with the construction and operation of the dams. Most of these hydro-project related uses, however, are expected to occur on lands presently in Native ownership. If road access into this area is provided as a result of the hydro project native lands are likely to be developed for private recreational purposes. Settlement may be an appropriate use on public lands adjacent to areas developed by the natives although no lands are designated for this purpose at this time. (Demand for private residential and commercial uses that may be associated with the project are discussed further under the section on Susitna hydro.) Residential development of public land also may occur in this unit concurrent with major mineral development. Any settlement in this subregion should be designed to maintain public access and protect fish and wildlife habitat and the area's high scenic quality--particularly where the activities occur within the highway corridors.

2. Agriculture

Grazing is the only agricultural use that is possible in this subregion. Grazing will be limited to an area several hundred thousand acres in size in the southwestern portion of the subregion. This area is relatively close to access and to land that could be used for farm headquarter sites. Management guidelines will be applied to grazing activities to ensure compatibility with wildlife.

3. Forestry

Although most of this unit is above timberline, major drainages (e.g., the Susitna and Talkeetna rivers) have personal use and perhaps commercial timber harvest potential. If major developments such as the Susitna hydro project occur there will undoubtedly be associated demands for structural timbers which could be met from these areas. In general, however, the state will set a higher priority on protecting the scenic, habitat, and recreational values of these forested areas rather than using these areas for commercial uses. Limited personal use harvests will be permitted in some areas.

4. Recreation/Fish and Wildlife

This subregion will be managed to protect its current status as one of the major game harvest areas in the state for moose, caribou and sheep. Streams will be managed to protect their recrea-

tion and commercial fishery values. The area also will be managed to maintain a full range of summer and winter recreation activities, including skiing, mountain climbing, hiking, and snowmobiling. Adequate access for these recreation purposes should be maintained in public ownership. Because the Talkeetnas are a highly scenic but still relatively gentle mountain range, the area is particularly suited for cross country hiking, skiing and snowmobiling. A system of trails running through this subregion should be identified and promoted. The state and borough should also seek funding to build and, if necessary, operate public use cabins along this trail system.

Construction of the Susitna Hydroelectric project also could provide increased opportunities for public recreation, primarily due to improved access. Any plans for recreation improvements in the subregion--for example a trails system--should be coordinated with recreation plans associated with the proposed Hydro project.

The plan recommends that the southeastern portion of the Talkeetna Mountains be legislatively or administratively designated as the "Nelchina Public Use Area" to protect the Nelchina caribou herd. This proposal would allow multiple use of the area, including mining, but would prohibit lands sales except for what might be required for resource development. (See Management Unit 3 for more details.)

5. Minerals

This subregion will remain open to mineral exploration and development and to oil and gas leasing. Mineral development, including necessary roads and workcamps, should be designed to minimize impacts on important wildlife and recreation values in this unit.

6. Access

The road/rail system that would provide access to the Susitna hydroelectric project is the only major access improvement being considered in the area. The Power Authority's proposed access route, described in the FERC license aplication, would provide access to the Watana Dam site from the Denali Highway via Deadman Creek. The Devils Canyon site would be provided with access via a railroad spur from near Gold Creek (on the existing RR line) and via a road on the north side of the Susitna River from the Watana site. A final decision on the planned access route will be made through the environmental impact statement review process.

7. Stream Corridors

The headwaters of many major streams lie in the Talkeetna Mountains. Management of these corridors will be determined on a case-by-case basis consistent with the management objectives for the more heavily used downstream segments of the rivers. In general, the objectives for the rivers originating in this subregion will be to protect water quality, fish and wildlife habitat, and public access.

8. Susitna Hydroelectric Project

As mentioned, the two proposed Susitna hydroelectric dam sites are located within this subregion. The plan does not address any of the basic issues concerning the direct social, fiscal or environmental impacts of this project. This task is being addressed by the FERC licensing process and by the many state and federal agencies already working on the project. Several of the indirect impacts of the hydro project are, however, within the purview of the plan, and will be addressed here. (Note: Because the issues associated with the hydro project affect virtually the entire subregion, these issues will be discussed here for the whole subregion rather than within each of the three management units.)

Four issues addressed by the plan are mitigation lands, land ownership, and recreation and settlement associated with the project. Each are discussed below.

a. Mitigation Lands

Construction of the Susitna Hydroelectric project would have significant effects on terrestrial and aquatic habitats. One proposed method for mitigating the loss of wildlife habitat that would be inundated or disturbed by the hydro project is to designate and manage nearby lands in a way that compensates for this loss. The Alaska Power Authority estimates that roughly 20,000 acres of land would be needed to adequately compensate for the predicted loss of habitat lands.

No compensation lands have been depicted in this agency review draft plan. The Power Authority has prepared a description of the objectives to be met by identifying mitigation lands, criteria for selecting such areas, and lastly, identified a large pool of possible mitigation lands. This information is presented in Appendix 2. The final determination of mitigation strategies and, if appropriate, mitigation lands, will be done after the plan is complete.

b. Land Ownership

Nearly all of the land where the proposed dams, reservoirs, and associated facilities are planned to be located are selected by or interimly conveyed to Cook Inlet Region Inc. and its village corporations. If the hydro project is approved, the state has the option to condemn or buy these lands or trade for lands in other areas. Roughly 40,000 acres of land are at issue, however, the Power Authority estimates as little as 16,000 acres will actually have to be acquired. Final decisions related to land aquisition will be made in light of the plan's designations on land adjacent to the project and on possible trading stock lands.

c. Settlement Associated with the Dam Project

If the project is constructed this would increase development pressures on the portions of the planning area that are already settled and also, due to construction of new access, open new areas to settlement pressures. On the first of these two issues, sufficient private land presently exists to accommodate the predicted level of population growth associated with the project. Regarding possible new settlement areas, no plans can be made until a final decision is made on the location and mode of new access into the area. However, whatever route is ultimately chosen, DNR will follow a settlement policy of "commensurate impact". This means that in locations where the Power Authority is making a special effort (e.g., through road design and siting) to protect some aspect of environmental quality, DNR will not negate this effort through selling land in the particularly sensitive area. On the other hand, portions of the area opened as a result of the project likely will be able to support some land sales (or cabin construction under the remote cabin program) with an acceptable level of environmental impact. Overall, DNR does not intend to sell much land in this area, since it has limited physical capability to support settlement and is generally sensitive to development.

d. Recreation Associated with Dam Project

The area surrounding the project has good potential for various types of new, developed recreation activities. As part of the FERC application the Power Authority and the State Division of Parks and Outdoor Recreation are working together to finalize a plan identifying areas for trails, camping, dis-

9. Modifications to Boundary of the Talkeetna Mountains Special Use District

This subregion roughly corresponds to the boundaries of the Matanuska-Susitna Borough's Talkeetna Mountains Special Use District. Under the terms of this ordinance, land within the district can be used for recreation, protection and use of fish and wildlife, mining and grazing. Settlement required to support resource development is permitted but other types of year-round settlement are not allowed. Recreational/seasonal settlement is allowed on a case-by-case basis and usually is restricted to small "wilderness" cabins (<500 sq. feet, no running water, etc.)

The plan generally supports these land use designations and restrictions on settlement. It is recommended, however, that the boundaries of the special use district be modified to better follow the boundaries of the Talkeetna Mountains (see map of this subregion for details). At present the special use district includes several areas that are appropriate for land sales due to road or rail access (e.g., Lake Louise), adequate physical capability for settlement and very high amenities. This proposed change to the special use district boundaries will be brought before the borough assembly as one part of the land management proposals contained in the plan.

Box 1866
Seward, AK 99664
March 4, 1985

Greetings:

I am writing in regards to SB 35 & HB 98 offering support of both. I support the designation of the Nelchina public use area, and would like all 2.5 million acres protected in order to take in necessary caribou winter range as well as the many other fish & wildlife & recreational values of the area. I support the protection of fish& wildlife habitat & populations, & public uses of those resources, as the primary purposes of the designation, with the Dept. of Fish & Game as the lead management agency. Mining should be carefully regulated so as to minimize adverse impacts on the areas primary values.

To provide necessary access to those who cannot afford to fly in, the boundaries should be brought down to approximately the Glenn Hwy., as they were for the Matanuska Valley Moose Range. This adds very little acreage, while it improves access tremendously, & it will have virtually no effect on private lands, snce they are not included in the area.

I support HB 93 establishing a state recreational rivers system. The upper Little Susitna River, where most whitewater boating use is concentrated, & which is important for the maintenance of water quality, should be included in the system. The 5 rivers recommended by the Susitna Area plan should be designated. Additional rivers that might have other important values besides their fisheries, and that might be more accessible by road, should be included.

The mining exclusion is essential--witness the mud in Birch Creek and the substantial scenic degradation along the Resurrection pass and Crescent Creek trails. Gravel extraction & logging should also be prohibited within these narrow corridors to protect hiking, hunting, & other uses that people will want to enjoy in conjunction with fishing or floating. I support the protection of both natural values & primitive uses in the corridors, as well as more intensive recreational activities.

Sincerely,

Judith Gravec

Judith Gravec
Box 1866
Seward, AK 99664

SB

57

COMMITTEE REPORT

HOUSE

4/12

(9)

FURTHER: FINANCE

3/27/85

Date: April 11, 1985

The Committee on RESOURCES has had CSSB 57(Rules)

"An Act relating to preferential use of Alaska agricultural or fisheries products; and providing for an effective date."

under consideration and recommends:

[XXX] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS		MEMBERS HAVING OTHER RECOMMENDATIONS:	
Shultz	D K Smith	Jenkins	N. Rep
Herrmann		Pearce	N. Rep
Cato			
Thompson			
Sund			
Wallis			
Miller(NP)	M.W. Miller		

Dick Smith

Co-Chair CHAIRMAN

Alaska State Legislature

Advisory Council Members
Senator Kerttula, Chairman
Senator Bennett
Senator Fahrenkamp
Senator Vic Fischer

Pouch V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: Richard Ramsey

FROM: Pete Jeans PJ
Senior Advisor
Senate Advisory Council

DATE: March 9, 1984

RE: In-State Preference Purchasing

In response to your request earlier today, the following is a breakdown of responses we received to our letter sent to all the states September 23, 1983 regarding laws or regulations addressing "In-State Preference Purchasing" of agricultural goods produced within their state.

A total of 31 states responded. Of that total 15 stated that they do not have a law or regulation that mandates a preference for the purchase of in-state goods and services specifically relating to public purchasing of agricultural products. In-state purchasing is encouraged in a majority of these states. Those states responding were:

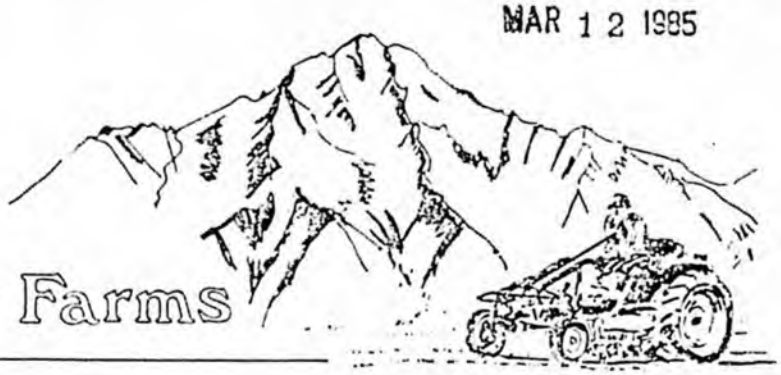
California
Mississippi
Oklahoma
Utah
Nebraska
Maryland
Kentucky
Georgia
Illinois
Connecticut
New Hampshire
Nevada
Virginia
Illinois
Deleware

A total of 16 states responded that they did have statutory provisions that provide for in-state bidders preference for the purchase of goods and services made under state purchasing laws however, these statues do not permit the sacrafice of price or quality in giving this preference. Here again, there is no regulations relating specifically to public purchasing of agricultural products. A number of these states also have regulations stating "preference shall be given to purchasing American made products and purchases from American based businesses whenever possible." Those states responding were:

New Mexico	North Dakota
Maine	New York
Minnesota	Hawaii
Flordia	Arkansas
Missouri	Missouri
Colorado	Iowa
Ohio	Alabama
South Dakota	North Carolina

I have attached copies of these responses along with the regulations which have been cited. I hope this will be of use to you. If I can provide you with any additional information on this, please let me know.

MAR 1 2 1985



Gold Nugget Farms

ALASKA VACUUM COOLING

P.O. BOX 1722 • PALMER, ALASKA 99645
(907) 745-4017

March 11, 1985

Senator Arliss Sturgulewski, Chairwoman
Senate Resources Committee
Pouch V
Juneau, Alaska 99802

Dear Senator Sturgulewski:

We are and have been successful vegetable farmers in the Matanuska Valley for eight years.

We would like your support for SB 57, SB 40, SB 120 and SB 216.

Alaska agriculture needs this legislation very desperately and it would have very little fiscal impact on the state.

Thank you.

Sincerely,

Jerry L. & Paula J. Bisuque
Owner/Operators
GOLD NUGGET FARMS

cc: Senator Jalmar Kerttula
Senator Edna Armstrong DeVries
Representative Ron Larson
Representative Katie Hurley



Matanuska Valley Grown Produce

To: Senators Kerttula and Taylor

From: Alaska Rural Development Council

Re: Agricultural Bills discussed at the Alaska Rural Development Council meeting

The Board of Directors of the Alaska Rural Development Council met as a workshop to review Senate bills 40, 41, 42, 57, 110, 120, 154 and 155, House bill 11, 33, 39, 192 and 193; and Senate Joint Resolution No. 1.

Our comment on this legislation is as follows:

H.B. 11 - support as written

S.B. 40 - This legislation addresses the same topic as SB 154 and was discussed by the board jointly. Carol Lewis, economist with the Agricultural and Forestry Experiment Station was requested to review the two bills, make an economic evaluation regarding their impact on farm operations and comment on potential administrations required. She reviewed the work with us and the boards decision was to support SB 154 as the enabling legislation with regulations to be established providing and administrative formula similar to the one she related. A copy of this is attached.

The board would like to add that they feel this is necessary legislation at present

but over the long term would tend continue the concentration of agricultural financing with the state instead of encouraging farm financing from other sources.

S.B. 41 - Supported with the suggested change that the ending date of the note be extend by the time allowed in the moratorium. Moratoriums ~~have the~~ presently balloon the payments once they start and could be a disadvantage rather than an advantage.

S.B. 42. The council encourages the enactment of SJR No. 1 with a strong administrative approach to improving agricultural rights patent protection. The council feels that SB 42 allows for excessive administrative discretion that could work against the preservation of agricultural land. If the legislature feels a bill is required the council would support H.B. 33 over SB. 42.

The council ~~feels~~ believes that the pursuit of a constitutional change that would enhance the preservation of Alaska's very limited agricultural land resource should be pursued.

S.J.R. #1 - support as discussed ~~reading~~ in the comments regarding SB 42.

H.B. 33 - discussed with SB 42

S.B. 57 - the council supports this proposed legislation as long as discussed.

S.B. 110 - The council believes this is desirable legislation, but, because of the limited availability of funds at the present time, does not encourage it right now.

SB 120 - the council supports this legislation as written

S.B. 154 - the council supports this legislation as described in the discussion of SB. 40.

S.B. 155 - the council feels that splitting or combining agricultural parcels should be permitted under strict guidelines.

H. B. 11 The council supports this legislation as written.

H. B. 33. - the proposed legislation was discussed with S. B. 42 and SJR #1.

H.B. 39. The council does not oppose this legislation if the state believes the cost of acquisition is reasonable.

H.B. 192 - This is a companion bill to SB 44 which the council supports with a change as previously discussed.

H.B. 193 - a companion to SB 40 and was previously discussed.

The Alaska Rural Development Council is an organization that has been active in discussing Alaska's rural needs since 1967 and considers it a privilege to comment on this proposed legislation. If we can be of any further assistance please contact us.

Sincerely,

Sig Restad Chairman

P.S. please excuse the hand writing, no typist was available when these were being produced.

586-2323

Greater Fairbanks Chamber of Commerce

PO Box 74446

[illegible] Cushman Street

FAIRBANKS CHAM Fairbanks, AK. 99707

March 5, 1985

Senator Don Bennett
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Don:

With oil prices continuing to dominate the news, concern is growing about the future stability of the Alaskan economy. It becomes important, then, that we look for ways to diversify our economy, and begin now to develop some reasonable alternatives. I realize this isn't an original idea, but we need to take it seriously, none the less.

Agriculture is an industry that holds much promise for the Interior of Alaska. It is renewable, it gets land into the hands of people who will use it productively, it can help us become less dependent on imports, it's clean, and on and on.

The Greater Fairbanks Chamber of Commerce is very supportive of agricultural development in the Interior and around the state. Our Agriculture Committee has reviewed several pieces of legislation that are in the works in one committee or another in the Senate. We would like to pass on our ideas for your consideration when these bills come before you.

In some cases, we have supported a bill "in concept", as the final form will probably change.

Thank you in advance for your consideration. Let us know if we can be of further assistance.

Best regards,

Buki Wright
President

cc: Governor Bill Sheffield
Esther Wunnicke, Commissioner of Natural Resources
Bill Heim, Director, Division of Agriculture
Adelheid Herrman, Chairman, House Resources Committee

The Agricultural Development Committee and the Board of Directors of the Greater Fairbanks Chamber of Commerce urges your support for the following legislation to encourage agricultural development in Interior and South Central Alaska.

1. Support is urged for SB39 to build the roads and bridges necessary to develop both the agricultural and mineral resources in the Totchaket area of Interior Alaska.

2. Support is urged for the concept of production credits, as outlined in SB40 and SB154, to assist Alaska's agricultural industry in its early stages of development.

3. Support is urged for SB41 to increase from five years to ten years, the moratorium on payments for the sale of state land for agricultural purposes. This bill will assist Alaskan farmers in adjusting to the new worldwide economic conditions in agriculture.

4. Support is urged for the concept of SB42 as it relates to the transfer of land title from state to private ownership. This concept will enhance the ability of Alaskan farmers to obtain financing from private sector sources for agricultural production.

5. Support is urged for SB57, which would require a clause be inserted in all state bids, requiring agricultural products originating in this state be used wherever competitively priced and available and of like quality as compared with agricultural products orginating outside the state.

6. Support is urged for SB110 to increase the amounts of long term loans available from the State of Alaska to any one borrower for agricultural purposes. This legislation will increase the loan limits to be more in line with the economy of scale necessary for economically sound, modern farming and will enhance the ability of borrowers to repay.

7. Support is urged for the concept of SB155, relating to the splitting and combining of agricultural parcels, with the suggestion the bill be amended to allow the minimum parcel size be 320 acres. This legislation will permit increased flexibility in the development of economically sound full-time and part-time farming enterprises in Alaska.

8. Support is urged for SB120 to increase the limits of the Agricultural Revolving Loan Fund, to assist in the establishment of Commodity Marketing Associations, and to increase the number of members on the Agricultural Revolving Loan Fund Board.

DON CHEMICAL CO., INC.

Manufacturers of
SOAP
WAXES
CLEANERS

114 NORTH ORCA
P. O. BOX 1246
ANCHORAGE, ALASKA 99510
TELEPHONE (907) 279-4519

ALASKA MILL & FEED CO., INC.

Manufacturers of
A COMPLETE
LINE OF
FEEDS

Copy Res Chron & Comm

March 4, 1985

MAR 8 1985

Senator Jay Kerttula
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Kerttula:

Please reference your letter of February 25th concerning Senate Bill 57.

We think Senate Bill 57 is a good start, but we would like to see two qualifications added to the Bill.

1. Local Alaskan Businesses should be given a 5% bid preference.

2. An additional 5% preference should be given to items that are produced and processed within the State of Alaska.

The above incentives would give local companies and producers a stronger position in the market place. The local producer of milk, vegetables, meat, etc. would be encouraged to produce a quality product that would be available in sufficient quantities to supply the local population.

Good luck with Senate Bill 57. We appreciate your help.

Sincerely,

D. G. Donatello
President

DGD/dsd


SB
883

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

March 6, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
Committee Substitute for SB 83 (Resources)

The amendment to AS 16.43.250(a) in section 5 of CS for Senate Bill 83 (Resources) is in response to the Alaska Supreme Court decision in Rutter vs. Commercial Fisheries Entry Commission, Opinion Number 2712, August 26, 1983. In that decision, the Supreme Court invalidated a portion of the hand troll point system for failure to comply with the specific terms of the statute. However, the amendment is not intended to circumvent or change in any way the result of the Rutter decision. The Commercial Fisheries Entry Commission is implementing and has adopted, pursuant to the Rutter decision, supplemental point regulations in the hand troll fishery.

It was the intent of the legislature that the Commission should be able to disregard one or more particular hardship standards when ranking applicants if the standards were unreasonable in light of the particular fishery. This amendment clarifies that intent. The legislature recognizes that patterns of participation and extent of economic dependence vary from fishery to fishery and intended that, in developing point systems for limited fisheries, the Commission should exercise some discretion in how to measure past participation and economic dependence.

The effect of enacting this legislation would be to ratify and protect reasonable point systems already in place in the AYK salmon fisheries and the limited herring fisheries which did not include percentage of income derived from the fishery, reliance on alternative occupations and/or consistency of participation during a given year.

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: 1/10/85

REQUEST

Bill/Resolution No.: SB 78

Title: "An Act amending the Limited Entry Act"

Sponsor: Governor

Requestor: Sponsor

Date of Request:

FISCAL DETAIL

Agency Affected: Dept. of Fish & Game

Program Category Affected: Natural Resource Management

BRU, Program or Subprogram(s) Affected: Commercial Fisheries Entry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	17.0	1.7	1.7	1.7	1.7

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The only section of the bill which would have fiscal impact is section 3, allowing the Commission to charge interest on fee arrearages.

(Analysis on attached page)

Prepared By: Christine Kelly, Licensing Admn. Phone: 465-4081

Division: Commercial Fisheries Entry Commission Date: 1/10/85

Approved by Commissioner: Date: 1-10-85

Agency: CFEC

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

SB 78

FISCAL ANALYSIS FOR SEC. ~~3~~ 4 - "An Act Amending the Limited Entry Act"

In 1979, the Commission began screening its permit holder data base for potential cases of residency fraud. These efforts are estimated to have yielded 513 actionable cases of residency fraud as of 1984, for which approximately $189,300 has been assessed. Past experience indicates that the Commission can expect to collect $113,600 of the total amount outstanding, as some of the permit holders will prevail on their claims and have their records cleared and others will drop out of the fisheries making it unlikely their arrearages will ever be collected. On the average, arrearages are collected 20 months after being assessed due to lengthy due process and adjudicatory proceedings.

Calculated at the legal rate of interest (10.5%) for 18 months (the legislation provides a 60-day grace period) interest on outstanding arrearages which will be collected is estimated at $17,900. In each subsequent year, the Commission expects to discover about 50 actionable cases of residency fraud among new entrants to the fisheries, for which $11,100 in arrearages would be collected. Interest on this amount would be $1,700 annually. Although the legislation would allow the Commission to charge interest on other types of arrearages (such as bad checks) this interest is estimated to be less than $100 annually.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: 1/10/85

REQUEST

Bill/Resolution No.: SB 78

Title: "An Act amending the Limited Entry Act"

Sponsor: Governor

Requestor: Sponsor

Date of Request:

FISCAL DETAIL

Agency Affected: Dept. of Fish & Game

Program Category Affected: Natural Resource Management

BRU, Program or Subprogram(s) Affected: Commercial Fisheries Entry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	17.9	1.7	1.7	1.7	1.7

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The only section of the bill which would have fiscal impact is section 3, allowing the Commission to charge interest on fee arrearages.

(Analysis on attached page)

Prepared By: Christine Kelly, Licensing Admn. Phone: 465-4081

Division: Commercial Fisheries Entry Commission Date: 1/10/85

Approved by Commissioner: Date: 1-10-85

Agency: CFEC

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

SB 78

FISCAL ANALYSIS FOR SEC. 4 - "An Act Amending the Limited Entry Act"

In 1979, the Commission began screening its permit holder data base for potential cases of residency fraud. These efforts are estimated to have yielded 513 actionable cases of residency fraud as of 1984, for which approximately $189,300 has been assessed. Past experience indicates that the Commission can expect to collect $113,600 of the total amount outstanding, as some of the permit holders will prevail on their claims and have their records cleared and others will drop out of the fisheries making it unlikely their arrearages will ever be collected. On the average, arrearages are collected 20 months after being assessed due to lengthy due process and adjudicatory proceedings.

Calculated at the legal rate of interest (10.5%) for 18 months (the legislation provides a 60-day grace period) interest on outstanding arrearages which will be collected is estimated at $17,900. In each subsequent year, the Commission expects to discover about 50 actionable cases of residency fraud among new entrants to the fisheries, for which $11,100 in arrearages would be collected. Interest on this amount would be $1,700 annually. Although the legislation would allow the Commission to charge interest on other types of arrearages (such as bad checks) this interest is estimated to be less than $100 annually.

MEMORANDUM

To: House Resources Committee
From: Janet Fries, Committee Aide
Date: May 3, 1985

Re: SB 83 - AMENDING THE LIMITED ENTRY ACT

SB 83 contains a series of technical amendments to the Limited Entry Act. The enclosed memorandum from Bruce Twomley, Chairman, Commercial Fisheries Entry Commission, gives a sectional analysis of the CS for SB 83 (Resources) passed by the Senate, as well as an explanation of changes from the original bill. The original Transmittal Letter from the Governor, also enclosed, has been annotated so that it accurately reflects the CS adopted by the Senate.

The attached Fiscal Note indicates zero cost to the state with a potential increase of $17,900 THE first year and approximiately $1,700 per year after that. This increased revenue would result from interest payments to the state on fees where a permit was issued to an applicant as a resident and the applicant was later determined to be a non-resident (Section 4).

MEMORANDUM State of Alaska

TO: House Resources Committee
M/S 3100

DATE: May 2, 1985

FILE NO:

TELEPHONE NO:

FROM: Bruce Twomley
Chairman
Commercial Fisheries Entry Commission
M/S 0302

SUBJECT: Analysis of CSSB 83 (Res)

Introduction

CSSB 83 (Res) passed the Senate by a vote of 16 to 0 on April 25, 1985. Before its passage, three standing committees of the Senate (Resources, Judiciary, and Finance) examined the bill in detail. The only modifications to the original SB 83 were the removal of original Section 5 and substitution of a new Section 7 (consequently the numbers of former Sections 6 and 7 became 5 and 6, respectively); modification of the language in Section 5 (formerly Section 6 of SB 83); and modification of the language of Section 10.

The Commercial Fisheries Entry Commission (CFEC) supports passage of CSSB 83 (Res). Portions of the Bill are critical to the sound and efficient management of the Limited Entry Program. The following is a brief section by section analysis of the Bill.

Section 1

This amendment to the Limited Entry Act [the Act] would plug a loophole identified by a Superior Court in the State's prohibition against the leasing of entry permits. A person renting a permit to another and requiring at the end of the rental period that the permit be transferred to a third party would be subject to the prohibition.

Section 2

Section 2 would make clear that permits in an estate are exempt from the claims of creditors. Section 2 would complete a statutory scheme which exempts entry permits in all other cases. Previously it was generally understood that permits in an estate were exempt, but a Superior Court held otherwise. A majority of the State's Supreme Court reversed the Superior Court holding that the legislature intended that permits be exempt from the claims of creditors of an estate. Timperly v. Jeffries, Op. No. 2765 (December 16, 1983). However, the Court was required to vacate its decision, when one justice in the majority was asked to withdraw from the case because of a claimed conflict of interest. Supreme Court Order No. 5483 (January 11, 1984). The same majority of justices who decided Timperly remains on the Court and would reasonably be expected to decide the same issue in the same way, when it again reaches the Alaska Supreme Court. The effect of Section 2 would be to save the time and the expense required for a second lawsuit on this issue to reach the Supreme Court at considerable cost to both the private parties and to the State.

Section 3

This is a housekeeping provision which would eliminate a reference to a federal agency which no longer exists and would drop an ambiguous term.

Section 4

Out-of-state residents have made false claims of Alaska residency to the Commission in order to pay reduced permit renewal fees available to residents of Alaska. This section would authorize the Commission to charge the legal rate of interest on fee arrearages more than 60 days overdue from these nonresidents.

Section 5

Section 5 would provide the Commission with some discretion in determining which measures of hardship should reasonably be employed in a given fishery. Absent the adoption of Section 5, some twelve fisheries throughout the State would be subject to very disruptive and expensive technical legal challenges to point schemes which are reasonable as adopted by the Commission. The Senate as a whole addressed Section 5 with the adoption of the detailed statement of legislative intent originally provided by the Senate Resources Committee on March 6, 1985. A copy of the statement is attached. Adoption of Section 5 will save the costs to the State of otherwise unnecessary litigation. It will also be of benefit to several thousand fishermen reliant upon the fisheries in question.

Section 6

Section 6 is a housekeeping provision which would authorize the Commission to issue a single educational entry permit (as opposed to several permits) to an appropriate educational institution.

Section 7

This section was added by the Resources Committee at the request of Senator Zharoff to ensure that, where practicable, a hearing conducted by the Commission with respect to limitation of a fishery be held in proximity to a meeting of the Board of Fisheries.

Section 8

Section 8 involves both housekeeping and substantive changes to the existing statute which authorizes revocation of a permit belonging to one who intentionally provides false information to the Commission to obtain a benefit. Section 8 would amend the statue to make clear that the Commission has authority to do less than complete revocation by way of suspension of a permit for up to three years and the imposition of an administrative fine of not more than $5,000. The Commission would be in a position to more closely tailor the remedy to fit the offense. Section 8 would also authorize the Commission to do more by empowering

the Commission to affect all permits in the hands of an individual who defrauds the Commission and by empowering the Commission to bring administrative proceedings against third parties to a transaction who intentionally supply false information to the Commission (for example, permit brokers).

Consistent with the Superior Court's holding in the Kjarstad case, subsection (f) makes clear that the Commission can bring enforcement proceedings against an individual who obtained a permit upon false information from the beginning of the program.

Section 9

This is a clean-up provision which ties a criminal provision of the Act to the appropriate Class A misdemeanor statute.

Section 10

Section 10 makes clear the Commission's authority to do what it has always done by regulation and in practice: protect certain information provided by fishermen from public disclosure.

BT:dan
Attachment
cc: Margot Knuth

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

March 6, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
Committee Substitute for SB 83 (Resources)

The amendment to AS 16.43.250(a) in section 5 of CS for Senate Bill 83 (Resources) is in response to the Alaska Supreme Court decision in Rutter vs. Commercial Fisheries Entry Commission, Opinion Number 2712, August 26, 1983. In that decision, the Supreme Court invalidated a portion of the hand troll point system for failure to comply with the specific terms of the statute. However, the amendment is not intended to circumvent or change in any way the result of the Rutter decision. The Commercial Fisheries Entry Commission is implementing and has adopted, pursuant to the Rutter decision, supplemental point regulations in the hand troll fishery.

It was the intent of the legislature that the Commission should be able to disregard one or more particular hardship standards when ranking applicants if the standards were unreasonable in light of the particular fishery. This amendment clarifies that intent. The legislature recognizes that patterns of participation and extent of economic dependence vary from fishery to fishery and intended that, in developing point systems for limited fisheries, the Commission should exercise some discretion in how to measure past participation and economic dependence.

The effect of enacting this legislation would be to ratify and protect reasonable point systems already in place in the AYK salmon fisheries and the limited herring fisheries which did not include percentage of income derived from the fishery, reliance on alternative occupations and/or consistency of participation during a given year.

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Limited Entry Act. This bill clarifies some provisions of the Act, updates others, specifies a variety of civil penalties for providing false information in applications for permits, and responds to recent court decisions interpreting the Act. Almost all of the bill's provisions were introduced last session in SB 422, but that bill was still in committee when the legislature adjourned.

Section 1 of the bill, which amends AS 16.43.150(g) to provide that the transfer of an entry permit may not be conditioned on a subsequent transfer of the permit, clarifies that it is the intent of the legislature to prohibit such transfers. The amendment is in response to the superior court decision in Gilliland v. State, No. 1JU-81-838, which held that such a transfer was permissible because it is not expressly prohibited by the statute.

Section 2 of the bill clarifies that the legislature intends entry permits to be exempt from the claims of creditors of the estate of a deceased permit holder. This is in response to the Alaska Supreme Court's decision in Timperly v. Jeffries, wherein an evenly divided court affirmed a superior court holding that the permit is subject to creditors' claims once the permit becomes a part of the decedent's estate.

Section 3 of the bill merely deletes reference to a federal agency that no longer exists, and eliminates the ambiguous term "net" from the phrase "net family income."

Section 4 of the bill authorizes the Commercial Fisheries Entry Commission to collect interest on fee arrearages. An application submitted to the commission is not

considered complete until the appropriate fee is paid. Accordingly, in almost all circumstances there is no need for the commission to be able to charge interest. The only exception occurs when an applicant is issued a permit as a resident and is later determined to be a nonresident. The applicant must then pay the difference between the fee charged residents and nonresidents. The commission believes that it would be appropriate if the applicant were also required to pay interest on this difference.

Section 5 of the bill amends AS 16.43.220(a) to clarify that an interim-use permit expires upon the commission's final determination that an applicant is not entitled to an entry permit. Without this clarification, the statute could be interpreted by the courts as requiring the commission to continue issuing interim-use permits to an applicant until he or she has exhausted all available judicial remedies, including an appeal to the Alaska or even the United States Supreme Court. The commission believes that once it has reached its final determination that an applicant is not entitled to an entry permit, and the applicant chooses to appeal that determination, the issue of whether or not the applicant should receive an interim-use permit should be left to the discretion of the court, rather than being required by the Limited Entry Act. It has consistently interpreted AS 16.43.220 in this fashion.

If the alternative interpretation were adopted, and the commission were required to issue interim-use permits to an applicant until he or she has exhausted all judicial remedies, this could motivate applicants to file even the most frivolous appeals because of the value of the interim-use permit. The issue of the proper interpretation of AS 16.43.220 is presently before the Alaska Supreme Court, but it is not known how soon a decision will be rendered. This amendment could provide the clarification that the court may need, or cure the harm that could be caused if the court misinterprets the statute.

Section 5

~~Section 6~~ of the bill clarifies that the commission has some discretion in what criteria it uses to determine the hardship that an applicant would suffer if excluded from a fishery. This is in direct response to the recent Alaska Supreme Court decision in Rutter v. State, 668 P.2d 1343 (Alaska 1983), in which the court held that the commission lacks such discretion. The commission does not intend to use these amendments to avoid implementing Rutter; the amendment would only ratify and protect point systems used in other limited fisheries that were not challenged in Rutter.

Section 6 ~~Section 7~~ of the bill merely authorizes the commission to issue to an educational institution one entry permit that will be valid for all of the gear types that the institution operates. Currently, it is necessary to issue a separate permit for each of the gear types.

Section 7 - Added in Senate Finance. See Memorandum from Chairman Twomley.
Section 8 ~~Section 8~~ of the bill sets out various amendments to AS 16.43.960, relating to the civil penalties that may be imposed for knowingly providing false information to the commission for the purpose of obtaining a permit. The section clarifies that the commission may suspend or transfer to another person, as well as revoke, permits obtained by fraud. The section also clarifies that the commission may take such action against any or all of the permits held by the person who attempts to defraud the commission, and not just the permit for which false information was knowingly supplied. Next, the section clarifies that knowingly supplying false information for the purpose of obtaining a duplicate permit is also grounds for revocation, suspension, or transfer of the permit. Section 8 also deletes unnecessary procedural detail that duplicates the provisions set out in AS 16.43.110(b). The section further authorizes the commission to impose an administrative fine of not more than $5,000 on a person or entity that knowingly supplies false information. This parallels the criminal fine that may be imposed under AS 16.43.970(b).

Expanding the types of penalties that the commission can impose under AS 16.43.970 is desirable in view of the limited resources of the district attorneys' offices to prosecute violations under AS 16.43.970. The heavy workload of the district attorneys' offices precludes their giving the same priority to relatively minor offenses, for which there are also civil penalties, that they do to the prosecution of more serious crimes. Expanding the types of penalties that the commission may impose will enhance the commission's ability to effectively deter and rectify fraud committed to obtain permits. It does this by enabling the commission to tailor penalties to fit particular offenses.

Finally, sec. 8 of the bill clarifies that the commission can take action against a permit for any fraud occurring after January 1, 1973. This issue was recently addressed by the superior court in Kjarstad v. State, No. 1JU-81-1484 Civ. (Nov. 4, 1983). The superior court held that the revocation of a permit for fraud occurring before the enactment of AS 16.43.960 is permissible because the commission has always had the inherent power

to revoke a permit for fraud. The court indicated that AS 16.43.960 "merely codified this existing authority and provided a standard procedure for its exercise."

Section 9 of the bill amends AS 16.43.970(b) to state that knowingly making a false statement of any kind to the commission to obtain a benefit constitutes the crime of unsworn falsification, as set out in AS 11.56.210. Correspondingly, this section deletes the provision in AS 16.43.970(b) making it a separate crime to provide false information to the commission. Finally, this section clarifies that it is also a violation of AS 11.56.210 to knowingly make a false statement of any kind to the commission for the purpose of obtaining a duplicate permit. The other revisions to AS 16.43.970(b) merely simplify the language used; the deletion of the reference to a $5,000 fine merely has the effect of relying on the relevant provisions of the Criminal Code (AS 11), thus helping to assure consistency.

Section 10 of the bill authorizes the commission to provide that certain information submitted by applicants is not subject to public disclosure. This is a matter of special importance to the commission because it must have honest responses and disclosures from applicants, who need the assurance of limited confidentiality. The commission is presumably authorized to make this information confidential under the right to privacy recognized in art. I, sec. 22, of the Alaska Constitution. Explicit statutory authority, however, would remove any uncertainty as to the matter.

Sincerely,

Bill Sheffield
Governor

SB 51

The Health, Education and Social Services Committee considered SENATE BILL NO. 51 (state aid for school construction; efd) and recommended it be replaced with

CS FOR SENATE BILL NO. 51 (HESS)

and do pass. The report was signed by Senator Fahrenkamp, Chairman and concurred in by Senators Josephson, DeVries, Paul Fischer and Sturgulewski.

SENATE BILL NO. 51 was referred to the Finance Committee.

SB 83

The Finance Committee considered SENATE BILL NO. 83 (amending the Limited Entry Act) and recommended the Resources Committee Substitute and Letter of Intent be adopted with a majority do pass. The report was signed by Senator Faiks, Co-Chairman and concurred in by Senators Kerttula, Paul Fischer, Eliason, Ferguson and Sackett. Senator Halford signed "no recommendation".

"Finance Letter of Intent

CS for SB 83 (RES)

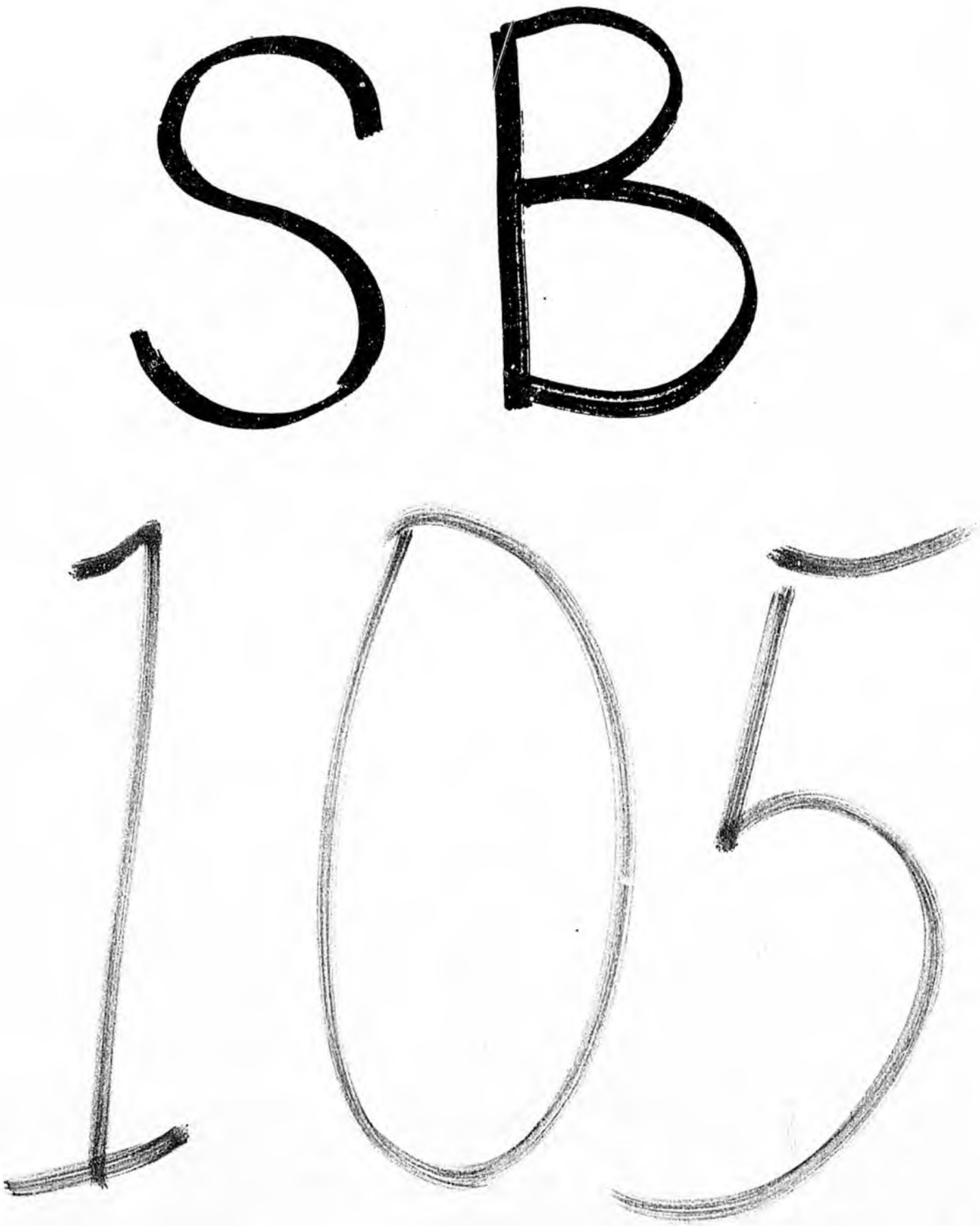
It is the intent of the Legislature that the Commercial Fisheries Entry Commission shall consider applications from fishermen of the A-Y-K Fishery who qualify to receive a limited entry permit but failed to submit an application due to language, culture, poverty, lack of education, or residence in remote locations. The CFEC is requested to work with the 28 people that the Commission identified in a 2-25-80 memorandum on this matter."

SENATE BILL NO. 83 was referred to the Rules Committee.

SB 105

The Finance Committee considered SENATE BILL NO. 105 (Palmer Hay Flats State Game Refuge; efd) and recommended it be replaced with

CS FOR SENATE BILL NO. 105 (FIN)


SB
1065

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: House CS for CSSB105 Resources
Title: Palmer Hay Flats State Game Refuge
Sponsor: Senator Kerttula
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected:
Program Category Affected: Operating Budget
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-				
CAPITAL		-0-				
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No additional costs will be specifically incurred as a result of this bill.

Prepared By: Bruce Baker for KT Phone:
Division: Habitat Division Date: 5/8/85

Approved by Commissioner: [signature] Date: 5-8-85
Agency: Alaska Department of Fish and Game

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

May 8, 1985

Palmer Hay Flats State Game Refuge

Land Acquisition SB105

Private lands within the Palmer Hay Flats State Game Refuge could be exchanged for state lands in the Matanuska-Susitna Borough or purchased with funds provided through various sources, including but not limited to, the state's waterfowl stamp program, Federal Pittman-Robertson wildlife aid program, private donations, and conservation foundations.

Original sponsor: Kerttula

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 105 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Palmer Hay Flats State Game Refuge; and providing for an effective date."

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

* Section 1. The legislature determines that wetlands important to the protection of waterfowl and salmon in the Spring Creek area lie outside of the boundaries of the Palmer Hay Flats State Game Refuge. The Spring Creek area also provides one of the major public access points to the hay flats although the land is privately owned. The legislature therefore determines that it is in the public interest to protect the Spring Creek wetlands through extension of the Palmer Hay Flats State Game Refuge under this Act.

* Sec. 2. AS 16.20.032(a) is amended to read:

(a) The following state-owned land and water is established as the Palmer Hay Flats State Game Refuge:

(1) Township 16 North, Range 1 West, Seward Meridian

Sections 1 - 12 [INCLUSIVE]

Section 13: N1/2

Sections 14 - 18 [INCLUSIVE]

(2) Township 17 North, Range 1 West, Seward Meridian

Section 25 [: ALL]

Section 26: S1/2, S1/2N1/2, N1/2NE1/4, NE1/4NW1/4

Section 27: S1/2, SE1/4NE1/4

Section 31: Lot 4, SE1/4, E1/2SW1/4, SE1/4NE1/4, S1/2SW1/4NE1/4

Section 32: S1/2, S1/2NE1/4, NE1/4NE1/4,

SE1/4NW1/4

Sections 33 - 36

[SECTION 33: ALL

SECTION 34: ALL

SECTION 35: ALL

SECTION 36: ALL]

(3) Township 17 North, Range 1 East, Seward Meridian

Section 19: Lots 3 and 4, E1/2SW1/4, S1/2SE1/4

Section 22:

excluding NW1/4NW1/4

excluding N1/2NE1/4NW1/4

excluding NE1/4NE1/4NE1/4

Section 25: Lots 1 - 6, NW1/4, N1/2NE1/4, N1/2-SW1/4, SW1/4SW1/4

Section 26: SE1/4NE1/4, S1/2

Section 27: Lot 1, N1/2, N1/2S1/2, SE1/4SW1/4, S1/2SE1/4

Section 28: Lots 1 - 2, N1/2SE1/4, SW1/4SE1/4, S1/2SW1/4

Section 30: Lots 1 - 4, E1/2, E1/2W1/2

Section 31: Lots 1 - 10, NE1/4NW1/4, SW1/4NE1/4, N1/2NE1/4 [LOTS 5, 7, 8, 9, 10]

Section 32: Lots 3 - 7, NE1/4, SW1/4SW1/4, NE1/4-SE1/4

Section 33: Lots 5 - 9, S1/2SE1/4, SW1/4NW1/4, including all state tide and submerged land

Section 34: Lots 1 - 3, E1/2NW1/4, SW1/4, E1/2

Section 35: Lots 1 - 5, NW1/4, N1/2SW1/4, SW1/4-SW1/4, N1/2NE1/4, SW1/4NE1/4, NW1/4SE1/4

Section 36: Lots 1 - 10, SE1/4SW1/4, S1/2SE1/4, NE1/4SE1/4

(4) Township 16 North, Range 1 East, Seward Meridian

Sections 4 - 9

[SECTION 4, 5, 6, 7, 8, 9: ALL]

Section 17: N1/2

Section 18: N1/2

All state tide and submerged land

(5) Township 16 North, Range 1 East, Seward Meridian

Section 2: Portion lying west of the Alaska Railroad

Section 3: Lot 1, excluding portions lying east of the Alaska Railroad centerline, Lots, 2, 3, 4, 5, 6, NW1/4, NW1/4, NE1/4

Section 10: Lots 1, 2, 3, 4, 6, and portions lying west of the Alaska Railroad

Section 15: All state land lying north of the south bank of the Knik River and west of the Alaska Railroad

Section 16: All state land lying north of the south bank of the Knik River

* Sec. 3. AS 16.20.032 is amended by adding a new subsection to read:

(e) Notwithstanding the provisions of (a) of this section, the land described in this subsection is excluded from the Palmer Hay Flats State Game Refuge established under (a) of this section for the establishment of a transportation and utility corridor. Land within the transportation and utility corridor that is determined by the commissioner of transportation and public facilities to be unnecessary for future transportation or utility corridors becomes a part of the

Palmer Hay Flats State Game Refuge. The commissioner of transportation and public facilities is directed to provide access to the Palmer Hay Flats State Game Refuge during future development of state highways in the area. The land that is excluded from the Palmer Hay Flats State Game Refuge under this subsection is described as

Township 17 North, Range 1 East, Seward Meridian

Section 22: SE1/4NW1/4, W1/2NE1/4, SE1/4NE1/4, S1/2-NE1/4NE1/4, NW1/4NE1/4NE1/4, NE1/4SW1/4, W1/2SE1/4

Sections 27 and 34: a corridor 300 feet on either side of the existing highway centerline

* Sec. 4. The commissioner of natural resources shall include land acquired from the Matanuska-Susitna Borough in the Palmer Hay Flats State Game Refuge established under AS 16.20.032.

* Sec. 5. (a) The commissioner of natural resources may exchange state land located within the Matanuska-Susitna borough for privately owned land determined desirable for inclusion in the Palmer Hay Flats State Game Refuge. The commissioner of natural resources may also offer to purchase at fair market value from willing sellers privately owned land determined desirable for inclusion in the Palmer Hay Flats State Game Refuge.

(b) An offer made by the commissioner of natural resources under this section for a purchase or exchange that remains unaccepted for two years after tender is withdrawn.

(c) An exchange or purchase authorized under (a) of this section shall be accomplished under AS 38.05 or AS 38.50.

(d) The commissioner of natural resources shall include land acquired under this section in the Palmer Hay Flats State Game Refuge established under AS 16.20.032.

* Sec. 6. The addition of land to the Palmer Hay Flats State Game Refuge under secs. 2 and 4 - 5 of this Act may not be an occasion for the

delay in or prohibition of the expansion or improvement of the Glenn Highway, the Parks Highway, or the Wasilla Bypass, or the construction of the interchange at the Parks and the Glenn Highways, nor may it restrict the present or future use of land retained by an owner of land under sec. 5 of this Act.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Bradley
5/7/85

Original sponsor: Kerttula

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 105 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Palmer Hay Flats State Game Refuge; and providing for an effective date."

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

* Section 1. The legislature determines that wetlands important to the protection of waterfowl and salmon in the Spring Creek area lie outside of the boundaries of the Palmer Hay Flats State Game Refuge. The Spring Creek area also provides one of the major public access points to the hay flats although the land is privately owned. The legislature therefore determines that it is in the public interest to protect the Spring Creek wetlands through extension of the Palmer Hay Flats State Game Refuge under this Act.

* Sec. 2. AS 16.20.032(a) is amended to read:

(a) The following state-owned land and water is established as the Palmer Hay Flats State Game Refuge:

(1) Township 16 North, Range 1 West, Seward Meridian

Sections 1 - 12 inclusive

Section 13: N1/2

Sections 14 - 18 inclusive

(2) Township 17 North, Range 1 West, Seward Meridian

Section 25: All

Section 26: S1/2, S1/2N1/2, N1/2NE1/4, NE1/4NW1/4

Section 27: S1/2, SE1/4NE1/4

Section 31: Lot 4, SE1/4, E1/2SW1/4, SE1/4NE1/4, S1/2SW1/4NE1/4

Section 32: S1/2, S1/2NE1/4, NE1/4NE1/4,

SE1/4NW1/4

Section 33: All

Section 34: All

Section 35: All

Section 36: All

(3) Township 17 North, Range 1 East, Seward Meridian

Section 19: Lots 3 and 4, E1/2SW1/4, S1/2SE1/4

Section 22:

excluding NW1/4NW1/4

excluding N1/2NE1/4NW1/4

excluding NE1/4NE1/4NE1/4

Section 25: Lots 1 - 6, NW1/4, N1/2NE1/4, N1/2-SW1/4, SW1/4SW1/4

Section 26: SE1/4NE1/4, S1/2

Section 27: Lot 1, N1/2, N1/2S1/2, SE1/4SW1/4, S1/2SE1/4

Section 28: Lots 1 - 2, N1/2SE1/4, SW1/4SE1/4, S1/2SW1/4

Section 30: Lots 1 - 4, E1/2, E1/2W1/2

Section 31: Lots 1 - 10, NE1/4NW1/4, SW1/4NE1/4, N1/2NE1/4 [LOTS 5, 7, 8, 9, 10]

Section 32: Lots 3 - 7, NE1/4, SW1/4SW1/4, NE1/4-SE1/4

Section 33: Lots 5 - 9, S1/2SE1/4, SW1/4NW1/4, including all state tide and submerged land

Section 34: Lots 1 - 3, E1/2NW1/4, SW1/4, E1/2

Section 35: Lots 1 - 5, NW1/4, N1/2SW1/4, SW1/4-SW1/4, N1/2NE1/4, SW1/4NE1/4, NW1/4SE1/4

Section 36: Lots 1 - 10, SE1/4SW1/4, S1/2SE1/4,

NE1/4SE1/4

(4) Township 16 North, Range 1 East, Seward Meridian

Section 4, 5, 6, 7, 8, 9: All

Section 17: N1/2

Section 18: N1/2

All state tide and submerged land

(5) Township 16 North, Range 1 East, Seward Meridian

Section 2: Portion lying west of the Alaska Railroad

Section 3: Lot 1, excluding portions lying east of the Alaska Railroad centerline, Lots, 2, 3, 4, 5, 6, NW1/4, NW1/4, NE1/4

Section 10: Lots 1, 2, 3, 4, 6, and portions lying west of the Alaska Railroad

Section 15: All state land lying north of the south bank of the Knik River and west of the Alaska Railroad

Section 16: All state land lying north of the south bank of the Knik River

* Sec. 3. AS 16.20.032 is amended by adding a new subsection to read:

(e) Notwithstanding the provisions of (a) of this section, the land described in this subsection is excluded from the Palmer Hay Flats State Game Refuge established under (a) of this section for the establishment of a transportation and utility corridor. Land within the transportation and utility corridor that is determined by the commissioner of transportation and public facilities to be unnecessary for future transportation or utility corridors becomes a part of the Palmer Hay Flats State Game Refuge. The commissioner of transportation and public facilities is directed to provide access to the Palmer

Hay Flats State Game Refuge during future development of state highways in the area. The land that is excluded from the Palmer Hay Flats State Game Refuge under this subsection is described as

Township 17 North, Range 1 East, Seward Meridian

Section 22: SE1/4NW1/4, W1/2NE1/4, SE1/4NE1/4, S1/2-NE1/4NE1/4, NW1/4NE1/4NE1/4, NE1/4SW1/4, W1/2SE1/4

Sections 27 and 34: a corridor 300 feet on either side of the existing highway centerline

* Sec. 4. The commissioner of natural resources shall include land acquired from the Matanuska-Susitna Borough in the Palmer Hay Flats State Game Refuge established under AS 16.20.032.

* Sec. 5. (a) The commissioner of natural resources ~~may~~ dispose ~~of~~ state land located within the Matanuska-Susitna borough ~~in exchange~~ for privately owned land determined desirable for inclusion in the Palmer Hay Flats State Game Refuge. The commissioner of natural resources may also offer to purchase at fair market value from willing sellers privately owned land determined desirable for inclusion in the Palmer Hay Flats State Game Refuge.

(b) An offer made by the commissioner of natural resources under this section for a purchase or exchange that remains unaccepted for two years after tender is withdrawn.

(c) An exchange or purchase authorized under (a) of this section shall be accomplished under AS 38.05 or AS 38.50.

(d) The commissioner of natural resources shall include land acquired under this section in the Palmer Hay Flats State Game Refuge established under AS 16.20.032.

* Sec. 6. The addition of land to the Palmer Hay Flats State Game Refuge under secs. 2 and 4 - 5 of this Act may not be an occasion for the delay in or prohibition of the expansion or improvement of the Glenn

Highway, the Parks Highway, or the Wasilla Bypass, or the construction of the interchange at the Parks and the Glenn Highways, nor may it restrict the present or future use of land retained by an owner of land under sec. 5 of this Act.

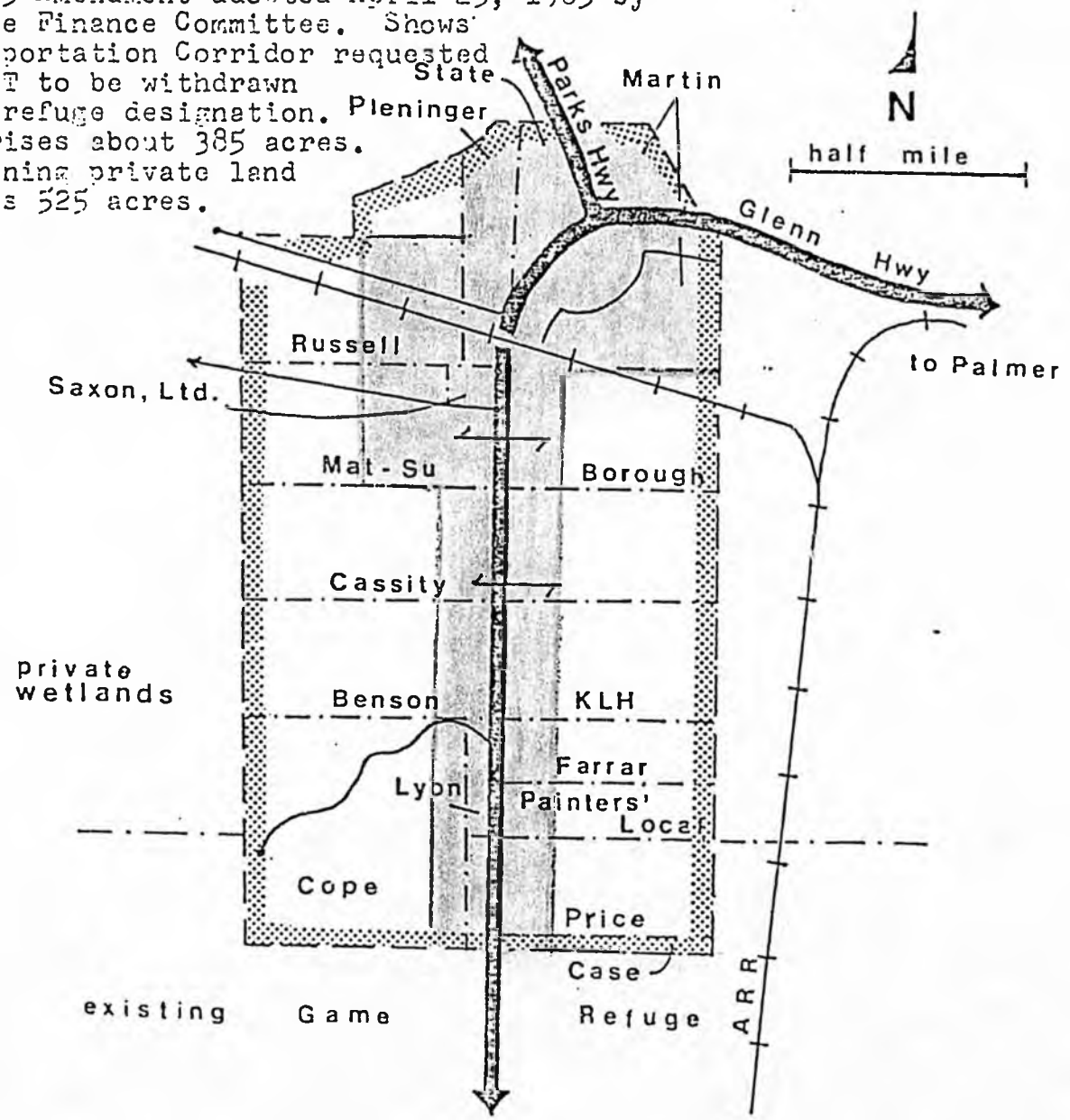
* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Proposed extension of Palmer

Hay Flats State Game Refuge

Fig. 1 Land owners

SB 105 Amendment adopted April 25, 1985 by Senate Finance Committee. Shows Transportation Corridor requested by DOT to be withdrawn from refuge designation. Comprises about 385 acres. Remaining private land totals 525 acres.



to Anchorage
33 miles

PALMER HAY FLATS

A PROPOSAL TO EXTEND THE GAME REFUGE

BY

MICHAEL BRONSON

FOR

SEN. J. KERTTULA

NOVEMBER 30, 1984

PALMER HAY FLATS

CONTENTS

	PAGE
ABSTRACT	1
PROPOSED LEGISLATION	2
BACKGROUND INFORMATION	6
* HISTORY OF PROTECTION	6
* VALUE OF PROPOSED EXTENSION TO PUBLIC	8
* PLANS TO FILL WETLANDS	10
FIGURES	
ADDENDA	

ABSTRACT

THE LEGISLATURE IS REQUESTED TO EXTEND THE PALMER HAY FLATS STATE GAME REFUGE TO TAKE IN 916 ACRES OF WETLANDS ALONG THE GLENN HIGHWAY BY PURCHASE FROM WILLING SELLERS.

PARTS OF THIS OPEN AREA NEAR THE JUNCTION OF THE PARKS AND GLENN HIGHWAY ARE SCHEDULED FOR PRIVATE COMMERCIAL DEVELOPMENT. CURRENTLY, SEVERAL LAND OWNERS ARE CONSIDERING FILLING THE MARSHES FOR A TRUCK CARGO TRANSFER YARD, A RETAIL STORE BUILDING, A GRAVEL AIRSTRIP AND A 30-ACRE CAMPER PARK. SUCH USES, HOWEVER, WOULD REDUCE FISH AND GAME POPULATIONS AND PUBLIC ACCESS IN AS PRODUCTIVE AN AREA AS PARTS OF THE ADJACENT STATE GAME REFUGE.

THE WETLANDS OF THE PROPOSED EXTENSION ARE MOST VALUABLE TO THE PEOPLE OF ANCHORAGE AND THE MAT-SU BOROUGH JUST AS THEY ARE. THE CREEKS THROUGHOUT THE AREA ARE MAJOR FRY REARING GROUNDS FOR SILVER SALMON. RABBIT SLOUGH NEAR WASILLA CREEK GETS UP TO 6,000 FISHERMAN-DAYS OF USE PER YEAR. HUNTERS GAIN ACCESS TO THE REFUGE ACROSS PRIVATE LAND THERE AT THE RATE OF ABOUT 2,000 USER-DAYS PER YEAR. SMALL GAME IS HARVESTED BY HUNTERS AND TRAPPERS. MOOSE WINTER AND CALVE IN THE AREA, AND LARGE BIRDS OF PREY ARE COMMON YEAR ROUND.

VARIOUS GROUPS HAVE EXPRESSED INTEREST IN KEEPING THE HAY FLATS OPEN FOR ESTABLISHED OUTDOOR USES. AMONG THEM ARE THE AD HOC COMMITTEE FOR THE PALMER HAY FLATS, MAT-SU CHAPTER OF DUCKS UNLIMITED, MAT-SU CHAPTER OF ALASKA FUR TRAPPERS ASSOCIATION, ANCHORAGE AUDUBON SOCIETY, AND THE ALASKA CENTER FOR THE ENVIRONMENT. THE MAT-SU BOROUGH, ALASKA STATE DEPARTMENT OF NATURAL RESOURCES, AND DEPARTMENT OF FISH AND GAME HAVE ALSO SHOWN SUPPORT OF STATE ACQUISTION OF THE AREA FROM WILLING SELLERS.

THE MINIMUM COSTS OF THE EXTENSION WOULD EQUAL $535,000 (I.E. 1984 ASSESSED VALUATION) PLUS APPRAISAL FEES AND STAFF TIME. PRIVATE OWNERS IN THE AREA HOLD 786 ACRES ASSESSED AT $470,300. THE MAT-SU BOROUGH OWNS 130 ACRES VALUED AT $65,000. MANY OF THE 13 PRIVATE OWNERS ARE INTERESTED IN SELLING OR TRADING THEIR LAND. CURRENTLY, NO HOMES OR BUSINESSES EXIST IN THE PROPOSED EXTENSION.

PROPOSED LEGISLATION

THIS LEGISLATION WOULD EXTEND THE PALMER HAY FLATS STATE GAME REFUGE ALONG THE GLENN HIGHWAY TO TAKE IN AN ADDITIONAL 916 ACRES OF WETLANDS.

THE LEGISLATION WOULD BE IMPLEMENTED BY THE FOLLOWING MEANS:

- DIRECT THE DEPARTMENT OF NATURAL RESOURCES TO OFFER FAIR MARKET VALUE TO WILLING SELLERS AMONG THIRTEEN OWNERS OF 786 ACRES. OFFERS UNACCEPTED TWO YEARS AFTER THEY ARE TENDERED WILL BE WITHDRAWN. (TABLES 1 AND 2)

- DIRECT THE DEPARTMENT OF NATURAL RESOURCES TO OFFER STATE LAND IN TRADE FOR 130 ACRES OWNED BY THE MAT-SU BOROUGH. TRADES WOULD BE ON A DOLLAR-FOR-DOLLAR BASIS AND INVOLVE STATE LAND WITHIN THE MAT-SU BOROUGH.

- APPROPRIATE AT LEAST $500,000 TO DEPARTMENT OF NATURAL RESOURCES FOR PURCHASES, APPRAISALS, AND SURVEYS. PARCELS SHOWN IN FIG. 1.

- TO PROTECT RESIDENTS ON THE BLUFF OVERLOOKING THE AREA, DISCHARGE OF FIREARMS NORTH OF THE RAILROAD TRACK IN THE PROPOSED EXTENSION WOULD BE DISALLOWED.

- THE ACQUIRED LAND WOULD BE MANAGED BY THE DEPARTMENT OF FISH AND GAME AS PART OF THE PALMER HAY FLATS STATE GAME REFUGE. SEE FIG. 2.

TABLE 1. LAND PARCELS IN PROPOSED GAME REFUGE EXTENSION

R1ET17N PARCEL	OWNER	ACRES ON HAY FLATS	ON BLUFF	ASSESSED
22 A2	Stanley Pleninger	16		$ 8,100
22 A3	Lucille Martin	20	7	90,000
22 A4	c/o Bonnie McGee	38		19,000
22 B1	Jay Russell	100	8	54,000*
22 C1	Saxon Land Invest.	9		37,000
22 D1	Yvonne Cassity	151		75,500
27 A5	Painter's Local	34		17,000
27 A6	Ray Farrar	33.4		16,700
27 A9	Don Lyon	3		1,400
27 A10	KLH, Inc.	65		33,000
27 A11	Don Benson	86		42,000
27 B1	Glen Cope Estate	160		48,000
27 D2	Georgine Case	17.3		8,600
27 D3		0.3		100
27 D4	Tom Price	2		500
27 D5		51		18,400
	Subtotal	786		$470,300
22 C2	Mat-Su Borough	82		
		48		
	Subtotal	130		$65,000
	TOTAL	916 ACRES		$535,300

* Assessed value is land only; does not include SFD improvements on bluff portion of parcel

TABLE 2. PROPERTY OWNERS IN PROPOSED EXTENSION

NAME AND ADDRESS	NOTES ON PROPERTY
DONALD BENSON PO BOX 1330 PALMER AK 99645	HAS PERMIT FOR AIRSTRIP
GEORGINE CASE 2153 MANTZ STREET ASHLAND KENTUCKY 41101	UNDEVELOPED
YVONNE CASSITY 211 WEST COOK ANCHORAGE AK 99501	WAS INTERESTED IN DISCUSSING LAND TRADE WITH BOROUGH; TALKED TO MSB LAND MANAGER
GLEN COPE ESTATE C/O PO BOX 582 PALMER AK 99645	IN PROBATE; PUBLIC ACCESS FOR 8,000 ANNUAL USER-DAYS; ORAL EXPRESSION OF TRADE INTEREST BY HEIRS
RAY FARRAR 2508 STANLEY DRIVE ANCHORAGE AK 99502	ILLEGAL FILL FOR DEFUNCT SUBDIVISION
KLH, INC. PO BOX 858 PALMER AK 99645	UNDEVELOPED
DON LYON PO BOX 1525 EAGLE RIVER AK 99577	NEAR HIGHWAY PULL-OUT; ORAL EXPRESSION OF INTEREST IN BOROUGH TRADE
LUCILLE MARTIN C/O BONNIE MCGEE 4812 SUNDI DRIVE ANCHORAGE AK 99502	SWAMP AND CREEK AT JUNCTION OF PARKS AND GLENN HIGHWAY. PURCHASE WOULD REQUIRE LOT SPLIT
MATANUSKA-SUSITNA BOROUGH BOX B PALMER AK 99645	UNDEVELOPED; ROAD AND RAILROAD FRONTAGE
PAINTER'S LOCAL 1818 W. NORTHERN LIGHTS ANCHORAGE AK 99503	UNDEVELOPED
STANLEY PLENINGER 4159 HOOD STREET ANCHORAGE AK 99503	POSSIBLE TRUCK YARD ON SPRING CREEK AT HIGHWAY

NAME AND ADDRESS	NOTES ON PROPERTY
TOM PRICE SRA 375-C ANCHORAGE AK	APPLIED TO ARMY CORPS ENGINEERS TO FILL FOR 30-ACRE CAMPER PARK; CONTACTED BOROUGH ABOUT INTEREST IN LAND TRADE
JAY RUSSELL BOX 870792 WASILLA AK 99687	NORTHERN CORNER OF PARCEL ON BLUFF CONTAINS RESIDENCE; MOST OF PARCEL IS ON SPRING CR.; PURCHASE WOULD REQUIRE LOT SPLIT
SAXON LAND INVESTMENTS, LTD. 106 SOUTH MENTOR PASADENA CALIF 91106	PLAN TO FILL SEVERAL "NON-WETLANDS" ACRES NEAR HIGHWAY FOR RETAIL BLDGS

BACKGROUND INFORMATION

History of Protection

1967 Borough zones most of Palmer Hay Flats as "recreational."

1974 Borough denies Chugach Electric Association transmission line across Flats following public objections to line.

1975 Palmer Hay Flats State Game Refuge created on 26 square miles of State land (Fig. 2)

1983 Publicity begins over plans to fill in private wetlands.

1984

January	Borough nominates Palmer Hay Flats as "Area Meriting Special Attention" under new Coastal Zone Management Plan.
March	Planning Commission refuses to zone more private land on Palmer Hay Flats to halt commercial uses.
April	Borough offers to trade for land on Hay Flats. Most owners express interest at meeting.
April to Sept.	Eight owners of land on Hay Flats inquire with Borough about trades (Table 3); no trades completed.
July	Rex Turner withdraws application for float plane basin on Hay Flats in face of opposition in Borough.
Sept. 14	Senator Kerttula suggests State acquire "priority" wetlands from willing sellers during meeting with citizens group.
Sept. 17	DNR staff supports public acquisition from willing sellers.
Sept. 18	Borough Assembly withdraws offer to trade.

TABLE 3. OWNERS INQUIRING WITH MAT-SU BOROUGH ABOUT LAND EXCHANGES ON PALMER HAY FLATS

Terry Beal for F. Beal

Jerry Brown

Yvonne Cassity

Don McGee for L. Martin

Tom Price

Karen Rousey

Carol Straun

Janet Stout

VALUE OF PROPOSED EXTENSION TO PUBLIC

THE PRIVATE WETLANDS NEAR SPRING CREEK AND RABBIT SLOUGH ARE PRODUCTIVE IN FISH AND GAME, AND SUSTAIN HIGH LEVELS OF USES INCOMPATIBLE WITH COMMERCIAL DEVELOPMENT.

HUNTING AND FISHING

RABBIT SLOUGH GETS UP TO 6,000 FISHERMAN-DAYS PER YEAR (FIG.3, TABLE 3). MOST OF THIS USE IS ANGLERS FROM ANCHORAGE AND VALLEY FISHING WITH PERMISSION ON PRIVATE LAND FOR SILVER SALMON AND DOLLY VARDEN TROUT (ADF&G ANNUAL REPORT, 1977-1983). IN ADDITION, RABBIT SLOUGH IS AN ACCESS ROUTE TO THE GAME REFUGE FOR DUCK HUNTERS AT THE RATE OF ABOUT 2,000 USER-DAYS PER YEAR (JACK DIDRICKSON, PALMER AREA GAME BIOLOGIST, ADF&G, PERSONAL COMMUNICATION).

THE PROPOSED EXTENSION AND ADJACENT PRIVATE LANDS ALSO CONTAIN PRODUCTIVE SMALL GAME HABITAT. WHEN SNOWSHOE HARES ARE ABUNDANT, AS IN 1983 AND 1984, THE AREA IS INTENSIVELY HUNTED (PERSONAL OBSERVATION). MOREOVER, SOME 50 PEOPLE TRAP FURBEARERS ON THE PALMER HAY FLATS (JIM RIESE, PRES., MAT-SU CHAPTER, ALASKA FUR TRAPPERS ASSOC.). AN UNKNOWN NUMBER OF THESE PERSONS TRAP PARTS OF THE PROPOSED GAME REFUGE EXTENSION. MOST OF THEM ARE TRESPASSING.

SALMON REARING

SPRING CREEK AND RABBIT SLOUGH ARE MAJOR REARING AREAS FOR SILVER SALMON FRY. TRAPPING DATA INDICATE LARGE NUMBERS OF YOUNG SLAMON THROUGHOUT THE PROPOSED EXTENSION (TABLE 4 AND UNPUBLISHED DATA ADF&G, PALMER). SOME EGGS ARE SPAWNED THERE, BUT MOST FRY PROBABLY MIGRATE TO THE AREA FROM WASILLA CREEK AND THE MATANUSKA RIVER (LARRY ENGELS, PALMER AREA FISHERIES BIOLOGIST, PERSONAL COMMUNICATION). FRESHWATER SLOUGHS AND MARSHES ARE CRITICAL TO SILVER SALMON POPULATIONS BECAUSE THE FISH SPEND ABOUT HALF THEIR LIVES IN SUCH HABITAT.

AESTHETICS

NON-CONSUMPTIVE PUBLIC USE IS ALSO SIGNIFICANT ON THESE PRIVATE WETLANDS NORTH OF THE REFUGE. SEVERAL DOZEN BIRD WATCHERS FREQUENT THE SPRING CREEK AREA ANNUALLY (THEDE TOBISH, PRES., ANCHORAGE AUDUBON SOCIETY, PERSONAL COMMUNICATION). LARGE HAWKS AND OWLS ARE COMMON THERE YEAR ROUND, AND WATERBIRDS ARE NUMEROUS DURING MIGRATION.

TRAVELERS APPRECIATE THE AREA'S OPEN SPACE AS WELL. ON AN AVERAGE DAY, 10,000 VEHICLES CROSS THE PALMER HAY FLATS ON THE GLENN HIGHWAY. NO HOMES OR BUSINESSES EXIST ON THE PRIVATE LANDS AND THE AREA IS INDISTINGUISHABLE FROM THE ADJOINING GAME REFUGE. AS TWO MEMBERS OF THE BOROUGH ASSEMBLY NOTED, THE HAY FLATS IS THE "GATEWAY TO THE MATANUSKA VALLEY" AND THE LAST REMAINING BUFFER ZONE BETWEEN THE VALLEY AND ANCHORAGE.

TABLE 4. FISHING ON RABBIT SLOUGH (ADF&G ANNUAL REPORTS)

	1977	1978	1979	1980	1981	1982	1983
FISHING-DAYS	2805	3446	4024	5726	4019	6261	3239
NO. SILVER SALMON	472	2112	1211	3555	814	1624	345
NO. DOLLY VARDEN	328	325	364	189	690	1289	1290

PLANS TO FILL WETLANDS

During the past year, four land owners expressed plans to fill in areas along the Glenn Highway on the Palmer Hay Flats. See Fig. 4.

Thomas Price of Anchorage applied to the U. S. Army Corps of Engineers to fill in 30 acres of wetlands along Rabbit Slough for a camper park.

Donald Benson of Palmer has an Army Corps of Engineers permit to construct a half-mile long gravel airstrip extending westward from the Glenn Highway. The fill would support shop buildings and a parking lot near the highway.

Saxon Land Investments, Ltd., a holding company associated with Turner Construction Co. of Eagle River, has publicized plans to fill parts of a nine-acre parcel adjacent to the highway for retail building. The Army Corps of Engineers earlier denied permission to fill in the wetlands portion of this site.

The Mat-Su Borough planning staff says it was approached regarding the property of Stanley Pleninger on Spring Creek. An agent was investigating the feasibility of a cargo transfer yard there. No applications for wetlands fill have been submitted so far, however.

Proposed extension of Palmer

Hay Flats State Game Refuge

Fig. 1 Land owners

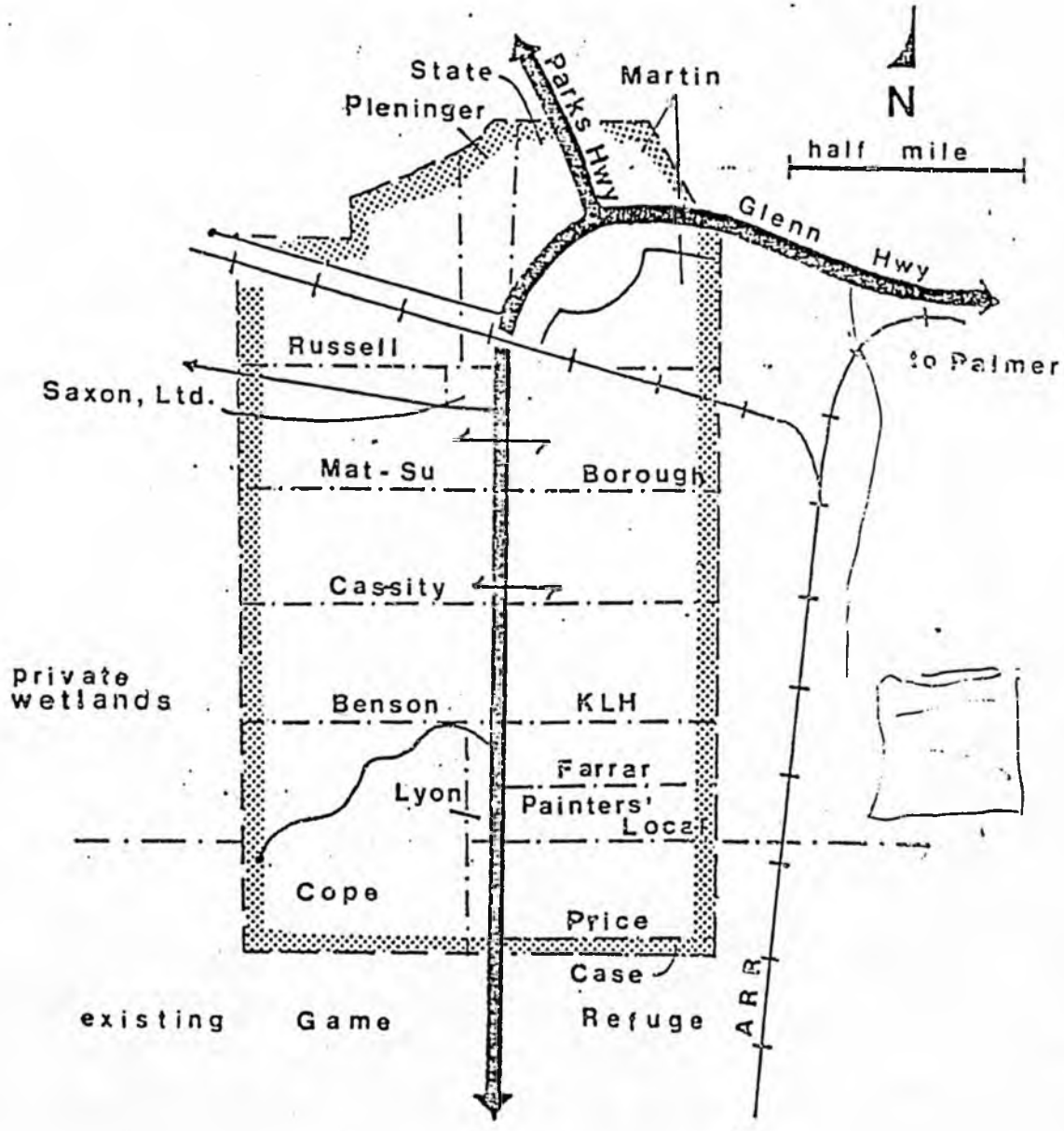
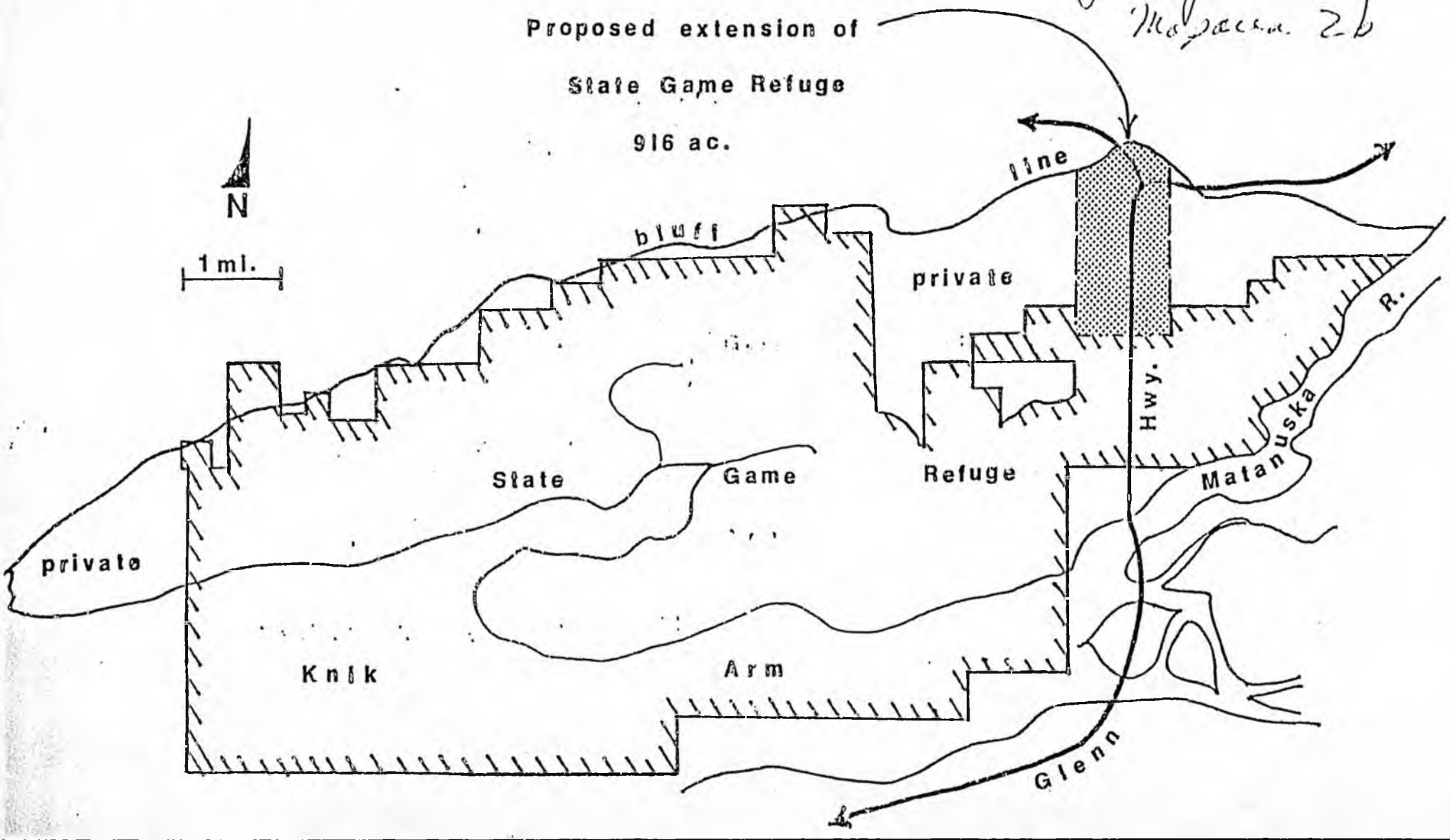


Fig. 2 Palmer Hay Flats



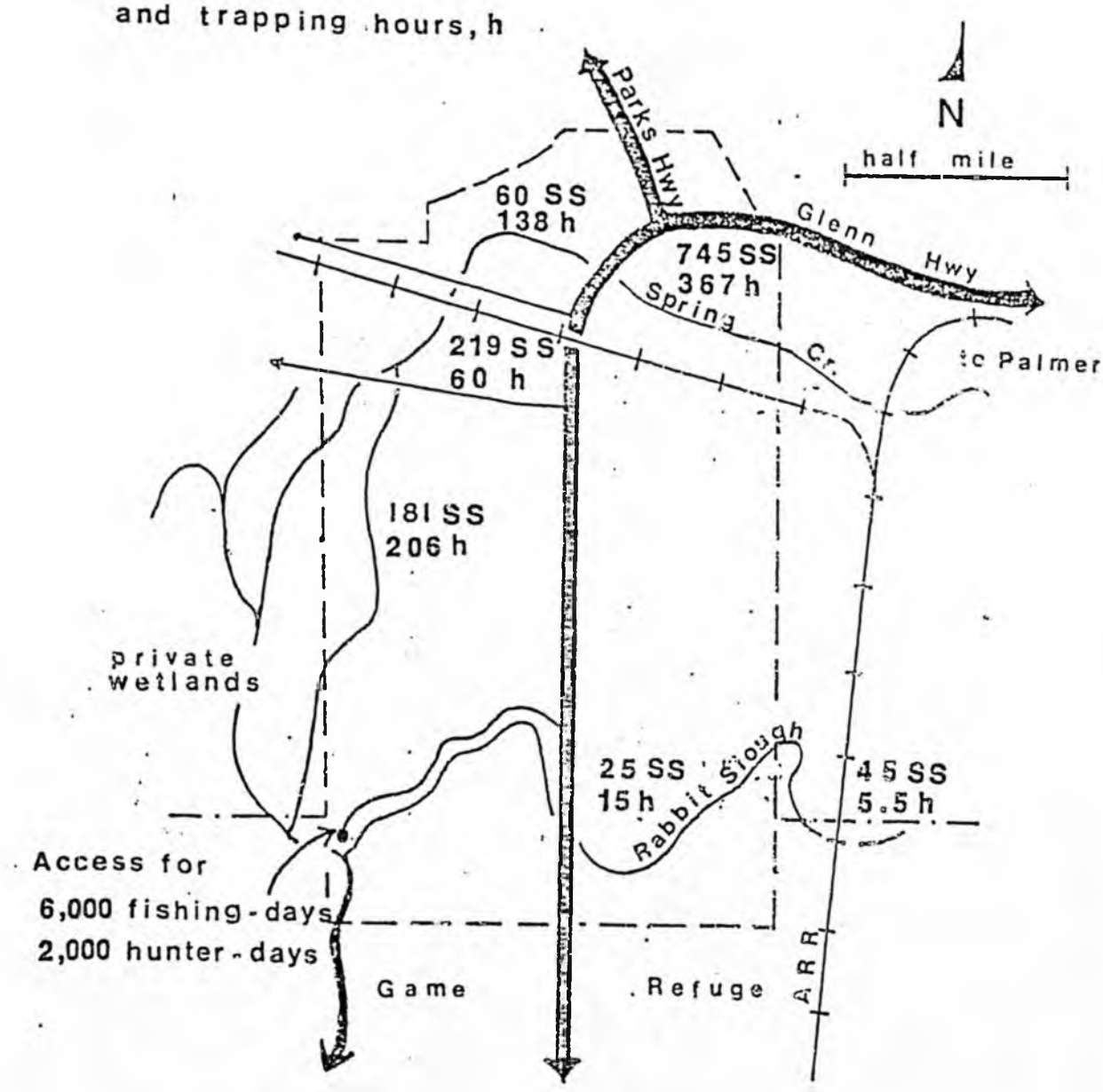
Proposed extension of Palmer

Hay Flats State Game Refuge

LIVE-TRAPPING DATA FROM STREAMS

Fig. 3 Silver salmon fry, SS,

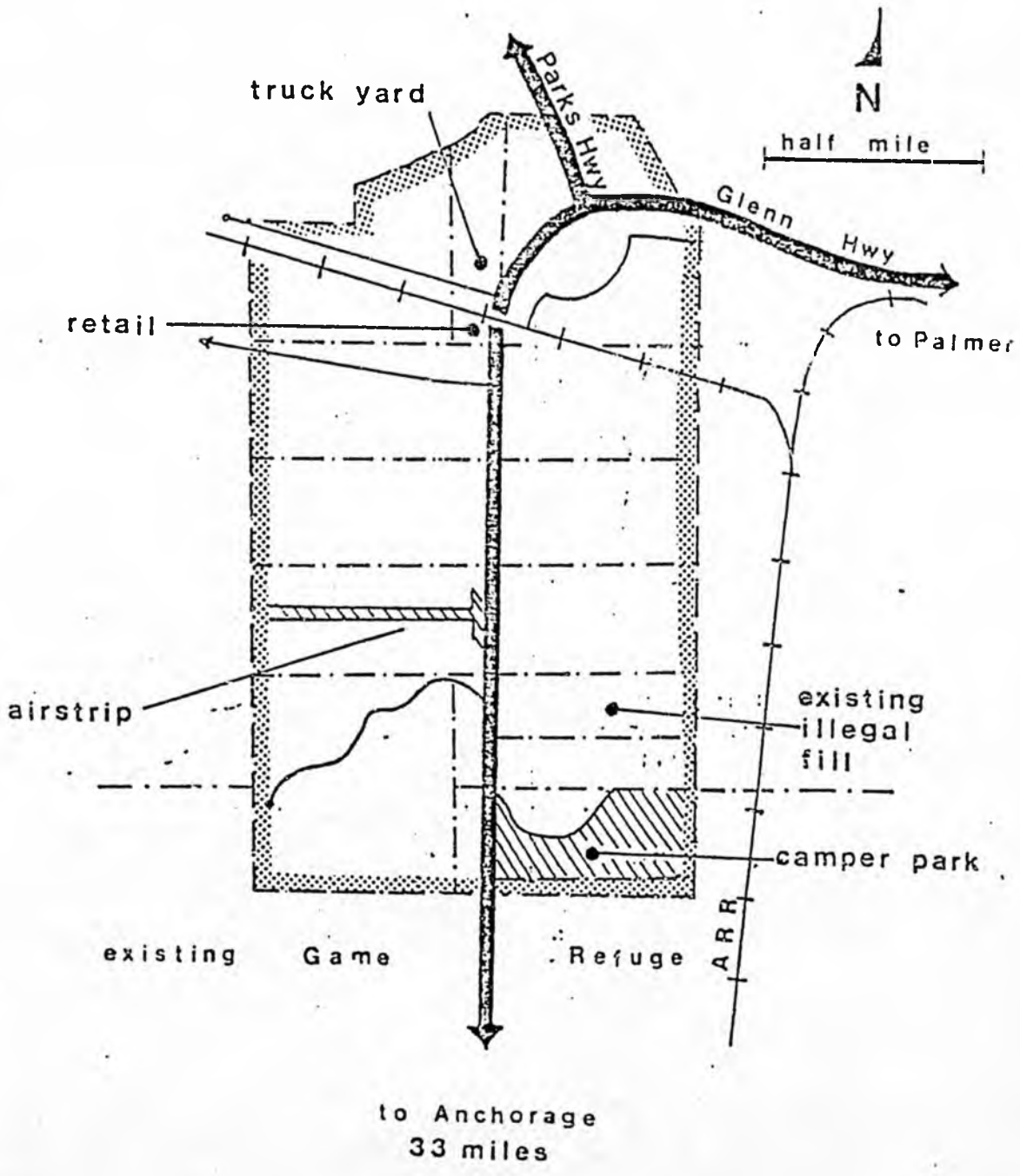
and trapping hours, h



Proposed extension of Palmer

Hay Flats State Game Refuge

Fig.4 Fill proposals



MATANUSKA-SUSITNA BOROUGH

RESOLUTION SERIAL NO. 85- 12

A RESOLUTION OF THE ASSEMBLY OF THE MATANUSKA-SUSITNA BOROUGH SUPPORTING THE EXTENSION OF THE PALMER HAY FLATS STATE GAME REFUGE AND THE INCLUSION WITHIN THE EXTENSION OF APPROXIMATELY 130 ACRES OF BOROUGH LAND

WHEREAS, the Palmer Hay Flats is the gateway to the Matanuska-Susitna Borough; and

WHEREAS, the Hay Flats is currently the home of many species of wildlife and is important to the fishery resources; and

WHEREAS, most of the land proposed for the extension of the Palmer Hay Flats Game Refuge is wet and unsuitable for development; and

WHEREAS, this area receives intense recreational use throughout the year; and

WHEREAS, the State is in the process of trying to obtain funds to buy private property adjacent to the Flats in order to extend the refuge; and

WHEREAS, the Assembly supports the extension of the refuge to ensure the open natural character of the land will remain as the gateway to the Borough.

NOW, THEREFORE, BE IT RESOLVED that if the State can obtain funds to buy private properties to extend the Palmer Hay Flats Game Refuge, the Borough will include, under State management, the 130 acres that

have been selected and conveyed to the Borough lying adjacent to the Palmer Hay Flats Game Refuge.

Dorothy Jones
Deputy Mayor

ATTEST:

Chris Seagraves, Clerk

REVIEWED AND APPROVED:

Gary Thurlow, Manager

1985 1985

MATANUSKA-SUSITNA BOROUGH

FEB 8 1985

BILL ANALYSIS

Bill No. SB 105 Sponsor Kerttula

Borough Position Support Borough Contact Person Rob Stickles

Similar Bills None Conflicting Bills None

Organizational Support ADF&G, Local Groups Organizational Opposition Unknown

Fiscal Impact On Borough ☐ Yes . ☒ No

Operating _____ Capital _____

Proposed Amendments:

NONE

Comments:

The Assembly passed a resolution that will allow for the donation of 135 acres of Borough land to the expanded Palmer Hay Flats State Game Refuge if this legislation passes. Copy of resolution attached.

ORIGINAL LEGISLATION

PALMER HAY FLATS STATE GAME REFUGE

AS 16.20.032 (a) The following state-owned lands and waters are established as the Palmer Hay Flats State Game Refuge:

(1) Township 16 North, Range 1 West, Seward Meridian
Section 1 — 12 inclusive
Section 13: N ½
Section 14 — 18 inclusive

(2) Township 17 North, Range 1 West, Seward Meridian
Section 25: All
Section 26: S ½, S ½ N ½, N ½
NE ¼, NE ¼ NW ¼
Section 27: S ½, SE ¼ NE ¼
Section 31: Lot 4, SE ¼ E ½ SW ¼,
SE ¼, NE ¼, S ½ SW ¼ NE ¼
Section 32: S ½, S ½ NE ¼ NE ¼
NE ¼, SE ¼ NW ¼
Section 33: All
Section 34: All
Section 35: All
Section 36: All state tide and submerged lands

(3) Township 17 North, Range 1 East, Seward Meridian
Section 28: N ½ SE ¼
Section 31: Lots 5, 7, 8, 9, 10
Section 32: NE ¼
Section 33: SW ¼ NW ¼, including all state tide and submerged lands

(4) Township 16 North, Range 1 East, Seward Meridian
Section 4, 5, 6, 7, 8, 9: All
Section 17: N ½
Section 18: N ½
All state tide and submerged lands

(b) Selections under the Alaska Native Claims Settlement Act (PL 92-203, 85 Stat. 688) are recognized as valid prior claims to the land within the area described in (a) of this section. Land specified in (a) of this section may not include land patented to a Native corporation under that Act.

(c) Land selected by the Matanuska-Susitna Borough in Township 17, North Range 1 East S.M. shall be included in the Palmer Hay Flats State Game Refuge, subject to borough approval. If the borough relinquishes the selection of these lands, the selected lands become part of the Palmer Hay Flats State Game Refuge.

(d) The state may not acquire by eminent domain privately-owned land within state-owned lands specified in (c) of this section for inclusion in the Palmer Hay Flats State Game Refuge. The Department of Natural Resources may adopt, in accordance with the Administrative Procedure Act (AS 44.62), zoning regulations governing privately-owned land within the Palmer Hay Flats State Game Refuge.

cc'd to our file
Sen. Jaksenkamp
" Sturgulewski

FEB 1 2 19[illegible]

February 6, 1985

Senator John C. Sackett
Co-chairman Finance Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Sackett:

It is with a deep sense of urgency that I request your full support for passage of Senate Bill No. 105, introduced by Senator Kerttula.

I have lived in the Matanuska Valley for seven years and have grown to deeply appreciate the many values associated with the Palmer Hay Flats area. As a daily commuter to Anchorage, the "flats" provides an oasis of aesthetic quality in what otherwise has become a 45 mile strip development. Coincidentally, it is the safest part of the trip due to the lack of development. Any development along this single lane stretch of the Glenn Highway would create a horrendous safety hazard.

As a consumptive user of the fish and wildlife resources of this great state, I have become intimately familiar with those resources in the "flats" area. I have also seen the number of other users increase tremendously the past few years. Not only hunters, fishermen and trappers, but general recreationists as well. A great number of these users are Anchorage residents and non-residents. As you are well aware, the degree of access is a key factor to recreational use in any area. The location of the "flats" is ideal for serving well over 50% of the recreational users in the state. I, as well as others, especially enjoy the area as a place to share these experiences with our children without making a major expedition. It is also an ideal educational area and is used as such by local educators. Concurrent, with the rapid development in the valley, I have seen fish and wildlife resource habitats dwindle, thereby enhancing the importance of remaining areas, such as the Palmer Hay Flats.

As a business owner in Palmer, I have enjoyed watching the valley grow and have shared in some of the associated benefits. I have also experienced a growing concern that we are destroying many of the qualities which make the valley so attractive. This is due to a large extent by our failure to recognize these qualities and place them in a proper perspective, equal to strictly economic interests.

In view of declining state revenues, the relatively small cost associated with protecting a natural resource of this importance and magnitude is a bargain that should not be ignored.

Your support for this bill will help assure preservation of this beautiful natural area for the enjoyment of untold numbers of future Alaskans.

Sincerely,

Gary Stackhouse

cc: all Finance Committee members

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
February 26, 1985

The Honorable Arliss Sturgulewski, Chairman
Senate Resources Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 105: Palmer Hay Flats State Game Refuge

Dear Senator Sturgulewski:

The League of Women Voters of Alaska supports, in principle, SB 105, which would expand the Palmer Hay Flats State Game Refuge to incorporate certain important wetlands. The League has always considered the protection of important wetland habitats as a high priority matter, and has supported the setting aside for future public use such areas as State forests and marine parks in Alaska. We also supported the bill which established the Kenai River Management Area.

We are in a quandary, however, because of the large fiscal note connected with the need to purchase private lands to implement SB 105. This is of special concern in a time of declining State revenues and competing health related demands such as asbestos removal from schools. If, because of budgetary constraints, we had to choose between the purchase of these wetlands and the removal of any existing asbestos hazards from schools, we would choose the asbestos removal. This is consistent with one of the amplification provisions of the League's new "capital budget process" position, which states that life, health, safety and educational needs should take priority over other less basic needs.

Perhaps another financing mechanism (such as inclusion of the project cost in a State bond issue) should be explored, possibly by your committee jointly with the Finance Committee.

If a way can be found to acquire the wetlands necessary to expand the Palmer Hay Flats State Game Refuge in accordance with SB 105, without adversely impacting high priority health and education related needs, we would like to see it happen.

Thank you for considering our views.

Sincerely,

Elizabeth Cuadra

Elizabeth Cuadra, Board Member
(Natural Resources Portfolio)

DEC:sd
cc: Committee Members (Fahrenkamp, Eliason, Zharoff, Halford, Coghill and V. Fischer)
Sponsor (Kerttula)

CIAA

COOK INLET
AQUACULTURE ASSOCIATION

P.O. BOX 3819
SOLDOTNA, AK 99669-3819
(907) 262-9419

APR 1 0 1985

+K for file

April 5, 1985

Senator Paul Fischer
Pouch V
Juneau, Alaska 99811

Dear Senator Fischer:

Sorry to have missed you during my recent visit in Juneau. I will be sure to meet with you on my next trip so that we can discuss ways to advance the Paint River project. Because the Paint River project will generate two million dollars worth of raw salmon annually plus an additional two million dollars through value added by processing it is important that, somehow, we find the $4.4 million required to implement the project.

Senator Kerttula asked me to be sure to inform you of CIAA's support for his SB 105 which allows for the extension of the Palmer Hay Flats State Game Refuge. Because we operate the nearby Eklutna Salmon Hatchery we have, over the years become very familiar with the existing refuge as well as the area proposed for inclusion.

The State Game Refuge is an area of very low lying marshland set aside for fish and wildlife production and hunting and fishing activities. Access to much of the Refuge is across some of the privately owned lands which, hopefully, will be added to the refuge as a result of SB 105. These lands are currently abandoned but, at any time, could be reoccupied by their owners. It is unlikely that an owner attempting to live or run a business on the site would, for long, tolerate the number of people currently utilizing the premises as a driveway and a parking lot. The extension is essential to "leagalize" public access to much of the Refuge.

The sloughs and marshes throughout the area are excellent rearing or "nursery" areas for coho salmon fry. Large numbers of fry can be found throughout the area. Any development of the area would require dredging, filling, diking and/or draining activities, all of which are expensive and all of which destroy the fitness of the area to produce young salmon.

It seems to me that it is good public policy to preserve for fish production those lowland areas best suited for fish production. It is also good public policy to insure that development activities occur on higher ground; those areas best suited for development activities. The inclusion of additional lowland areas into the Palmer Hay Flats State Game Refuge keeps each type of activity confined to the area which best suits it.

Sincerely,

Thomas E Mears

Thomas E. Mears,
Executive Director

cc: Sen. Kerttula
Bob Hunter, President, Alaska Sportfishing Association
Keith Goltz, Alaska Flyfishers
Steve Braund, Northern District Setnetters

FEB 2 3 198

February 20, 1985

Re: SB 105, Palmer Hay Flats

Dear Senator Sackett:

As a resident of the Mat-Su Valley, I would like to express my support for Senate Bill 105 to extend the Palmer Hayflats State Game Refuge. A number of concerned citizens are troubled about a series of proposed developments in the wetlands and salmon streams on the Hayflats along the Glenn Highway. There is a strong sentiment that it is the responsibility of the State of Alaska to protect these resources for all Alaskans. The most permanent form of protection is to place these lands in the public domain. Incorporation of these lands into the Palmer Hayflats Game Refuge is the most expedient and logical manner in which to accomplish this.

Recently the Mat-Su Assembly passed a unanimous Resolution to add 130 acres of Borough land if the State would purchase 786 acres of private land from willing sellers. I have followed events in the Hayflats over the past several years and have come to realize that Local, State and Federal agencies have consistently recommended that development in this area not be permitted. It appears that private property owners would be more than willing to sell their land to the State, as the land is unsuitable to build on and permits are difficult, if not impossible, to obtain.

I would like to inform you that Spring Creek, a salmon stream which flows through these lands, provides some of the best silver salmon habitat in the Valley. The stream provides "nursery grounds" for large numbers of juvenile silver salmon. The dollar value of this stream to sport and commercial fishermen may very likely exceed the dollar cost of purchasing these lands. The Mat-Su Borough is so intent on protecting this area that it has a program to swap uplands for wetlands. All of this leads me to conclude that the public wants this area maintained in its present natural condition. The passage of SB 105 is obviously in the Public Interest.

I would like to be kept advised of the progress of SB 105 and would like to receive copies of the minutes of the discussions that take place when this bill reaches the Finance Committee.

Sincerely

David L. Ferrell

David L. Ferrell
SRA 6105
Palmer, AK 99645
(745-6575)

cc: Faiks
Halford
Kerttula
Ferguson
P. Fischer
Eliason
DeVries
Larson
Hurley
Bronson

FEB 23 1985

549 E. Caribou
Palmer, AK 99645
17 February 1985

Senator John Sackett
Chairman, Finance Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Sackett:

I understand that SB105 relating to the Palmer Hatflats has been referred to the Finance Committee. Kindly register my voice in favor of that bill.

This Palmer Hayflats issue is one that hardly could have been foreseen in the years before the populatic.. boom in the Matanuska Valley. The boom has resulted in great numbers of Anchorage-Valley commuters traversing the Hayflats daily. This commuter traffic is a powerful incentive to locate businesses along the route, irrespective that the rich area's extensive bottomland is a large--and in some cases last--refuge for many local furred, feathered, and finned creatures. While I believe most local residents wish to keep the area as SB105 would allow us to do, the pressures from the few landowners along the route to have their day at the bank are very great, and compensation is probably the only practical solution.

Much can and is being done locally to protect this rich and popular recreational area, but this is one of those issues whereby State assistance is needed for a problem which transcends local causation, local usuage, and local value. Please consider this Senate bill as a corrective to keep a little of the Alaska that pleases so much of the population, and therefore legislation of greater validity than creature comforts and profitability.

Sincerely yours,

Joe Lawton

Joe Lawton

cc:
Senators:
Faiks
Halford
Kerttula
Ferguson
Fischer
Eliason

Thanks for all your help in this matter. Best wishes
Joe

February 18, 1985
SR-A-6145
Palmer, Alaska, 99645

FEB 2 3 1985

Co-chairperson Faiks
Finance Committee
Alaska State Senate
Pouch V
Juneau, Alaska, 99811

Ms. Faiks,

We are writing this letter in support of Senate Bill 105, proposing procurement of 910 acres to extend the existing Palmer Hay Flats State Game Refuge.

The wetlands of the proposed extention are most valuable to the people of Anchorage and the Matanuska-Susitna Borough just as they are. We feel the highest and best use of this wetlands area is as a refuge and reproductive area for silver salmon, moose, and waterfowl. Hunting and fishing for these species is high in season, as is year-round recreation use, since the area is close and readily accessible to the populations of Anchorage and the Matanuska Valley.

These wetlands provide high scenic value as well. Travelers along the Glenn Highway appreciate this natural buffer between the two population areas.

We urge you to vote in favor of Senate Bill 105 to help insure these values are preserved.

Sincerely,

Beth Estelle

Bob Estelle

Beth and Bob Estelle

cc:

Finance	Resources	DeVries
Sackett	Sturgulewski	
Halford	Fahrenkamp	
Kerttula	Eliason	
Ferguson	Zharoff	
P. Fischer	Halford	
Eliason	Coghill	
	V. Fischer	

FEB 2 5 1985

February 22,1985

Senator Jan Faiks
Co-chair, Senate
Finance Committee
Pouch V
Juneau, AK 99811

RE: SB 105

I suport this bill. I have used the Spring Creek area and Hay Flats for over thirty years for recreation and hope to continue. Up to this time there has been very little pressure to develop this ground, primarily due to the extreme cost of site preparation. With the current boom and subsequent escalation in commercial real estate prices, there is real economic pressure to develop the road frontage.

Currently, zoning/subdivision restrictions such as Army Corps of Engineers, EPA, and Mat-Su borough regulations restrict development. These regulations were implemented under the premise that the long term economic/social interest must be protected, and I feel they are generally well applied. Commercial development in the Spring Creek area would be disruptive not only to the environment of the entire downstream drainage, but would also disrupt the trafic flow. The area is in the flood plain of the Matanuska River. The town of Matanuska (near subject properties) was moved to Palmer because of the extreme cost of fighting high water. Any facilities placed in the area covered by SB 105 are likely to experience this problem, with the burden eventually resting with the State. This irregular flooding also makes it extremely difficult to comply with EPA regulations should any development occur.

Preservation interests must be weighed against vested property interests. Many of the owners have held the property for several years, often predating wetland regulations. Only one owner has a permit to fill in a portion of the wetlands.

Although the proposed enabling legislation has a two year expiration for selling or exchange, hopefully after the offer is specifically tendered, the intent should be perpetual. Perhaps certain provisions could be enacted to allow continuation of the exchange provision beyond this time frame. Finally, all offers to exchange or sell property should be strictly voluntary.

Sincerely,

Ralph Hulbert

Ralph Hulbert
P.O. Box 1846
Palmer, AK 99645

CC: Sen. Sackett
Kerttula -
Ferguson
P. Fischer
DeVries
Rep. Hurley
Larson

FEB 27 1985

P.O. Box 3196
Palmer, Alaska 99645
February 21

Senator Sturgulewski
State Capital
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski,

An issue of interest to me will be coming before the Senate this session. That issue is the Palmer Hay Flats Bill. As you already know, this bill would acquire private land for inclusion into an existing special use area.

I strongly support passage of this bill in this session of the legislature. I believe this action is warranted in view of the long-range state interest to promote economic developments through economic diversification of the private sector. As a local boatbuilder, I feel the area should be protected for wildlife, sport fishing and scenic values. These ends support my personal business interests.

On a larger level, I feel the passage of the Hay Flats Bill will recognize the area as a national and international landmark. The area has already been selected by Ducks Unlimited, an international organization, as a special feeding and breeding ground along the Pacific Flyway for many species of wildfowl. In enacting this bill, the State of Alaska identifies itself among the few forward-looking nations and regions of the world seeking to keep land uses diverse and healthy.

Finally, as an educator, I strongly believe the state must take a leadership role in promoting the continuence of 'as is' landscape for the enjoyment and education of our state's youth. If regional planners are correct, the area surrounding the Hay Flats may soon approach the population density of the Anchorage bowl. By protecting the Hay Flats for young people to hunt, fish and recreate in, we teach good stewardship of Alaska's land resources.

Again, let me strongly state my support of this critical piece of statewide legislation. It appears we have much more to gain than lose in this proposal.

Sincerely,

Rick Turner
Matanuska Boat Company
Palmer, Alaska

CC:Sens. Fahrenkamp
Elias on
Zharoff
Halford
Doghill
V. Fischer

FEB 27 1985

ALASKA FRONTIER TRAPPERS ASSN.
P.O. BOX 2856
PALMER, ALASKA 99645 ☐ (907)745-4660

February 18, 1985

Senator Arliss Sturgulewski
Resources Chairman
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

I am writing in regard to S.B. 105 introduced into the senate by Senator Kerttula. This bill is a very important piece of legislation to our organization and to outdoor-minded people of all pursuits. Senator Kerttula, in introducing this bill, is trying to preserve one of the most highly used and highly valued pieces of wildlife habitat in Alaska. Anyone who has crossed the flats on the Glenn Highway at any time of the year has surely seen the large numbers of ducks, geese, muskrat, beaver and other numerous species that inhabit this area.

The Mat-Su Borough has indicated its desire to see this area preserved by offering to let the Fish and Game Department include its 130 acres in the refuge to be managed as the rest of the area. With the population expanding as rapidly as it is in the Matanuska Valley, it is imperative that we preserve areas for our citizens to use and enjoy.

I would like to thank Senator Kerttula for introducing this legislation, as I believe it shows his desire to protect the outdoor lifestyle of many of his constituents.

Your support of S.B. 105 would be greatly appreciated.

Thank you,

James Reiss

James Reiss, President
ALASKA FRONTIER TRAPPERS ASSOC.

cc: Fahrenkamp
Eliason
Zharoff
Halford
Coghill
V. Fischer

FEB 27 1985

February 22,1985

Senator A. Sturgulewski
Senate Resorces Committee
Pouch V
Juneau, AK 99811

RE: SB 105

I suport this bill. I have used the Spring Creek area and Hay Flats for over thirty years for recreation and hope to continue. Up to this time there has been very little pressure to develop this ground, primarily due to the extreme cost of site preparation. With the current boom and subsequent escalation in commercial real estate prices, there is real economic pressure to develop the road frontage.

Currently, zoning/subdivision restrictions such as Army Corps of Engineers, EPA, and Mat-Su borough regulations restrict development. These regulations were implemented under the premise that the long term economic/social interest must be protected, and I feel they are generally well applied. Commercial development in the Spring Creek area would be disruptive not only to the environment of the entire downstream drainage, but would also disrupt the trafic flow. The area is in the flood plain of the Matanuska River. The town of Matanuska (near subject properties) was moved to Palmer because of the extreme cost of fighting high water. Any facilities placed in the area covered by SB 105 are likely to experience this problem, with the burden eventually resting with the State. This irregular flooding also makes it extremely dificult to comply with EPA regulations should any development occur.

Preservation interests must be weighed against vested property interests. Many of the owners have held the property for several years, often predating wetland regulations. Only one owner has a permit to fill in a portion of the wetlands.

Although the proposed enabling legislation has a two year expiration for selling or exchange, hopefully after the offer is specifically tendered, the intent should be perpetual. Perhaps certain provisions could be enacted to allow continuation of the exchange provision beyond this time frame. Finally, all offers to exchange or sell property should be strictly voluntary.

Sincerely,

Ralph Hulbert

Ralph Hulbert
P.O. Box 1845
Palmer, AK 99645

cc: Sen. Fahrenkamp
Eliason
Zharoff
Halford
Coghill
V. Fischer

MAR 6 1985

7136 Terry Place
Anchorage, Alaska 99502
February 26, 1985

Jan Faiks, Chair
Finance Committee
State Capitol
Pouch V
Juneau, Alaska 99811

File

Dear Ms. Faiks:

I am writing to urge your support of Senate Bill No. 105 for "an Act relating to the Palmer Hay Flats State Game Refuge; and providing for an effective date." The Spring Creek wetlands which are addressed by this bill are an integral component of the Palmer Hay Flats. Because these wetlands are privately owned, there is increasing pressure to develop them. I believe these wetlands are so importnat that they should be given public protection and included in the Palmer Hay Flats State Game Refuge.

I have hunted and fished, hiked and canoed in the Palmer Hay Flats wetlands at the head of Knik Arm, which are traversed by the Glenn Highway. I'm not aware of fish and wildlife population figures specifically for the Spring Creek area. However, the Hay Flats area receives heavy recreational fishing pressure and the Rabbit Slough-Spring Creek-Wasilla Creek complex are open only to single-hook fishing during a weekend-only season. According to the Alaska Department of Fish and Game, every spring some 100,000 ducks, 50,000 geese and 5,000 swans use the Palmer Hay Flats during migration. The Anchorage Audubon Society estimates that some 10,000 people are drawn to view and photograph this migratory spectacle. The Palmer Hay Flats is the most accessible waterfowl hunting area in the Cook Inlet region, and it annually ranks among the top three areas state-wide in number of hunter-days and duck harvest. In winter the Hay Flats provide important moose winter range.

The Palmer Hay Flats State Game Refuge is a valuable public asset; especially so because of its proximity to about half of Alaska's population. I hope to see areas such as the Spring Creek wetlands included in the Refuge and given the protection required to protect the public resources and recreational opportunities they provide.

Good letter.
+K. Jan

Thank you for your support.

Sincerely,

Jon R. Nickles

Jon R. Nickles

cc: Finance Committee members

3/12/85

Senator Jan Faiks
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska
99811

MAR 15 1985

Dear Senator;

I have been advised by our Matanuska Valley legislators that SB-105, an act creating an addition to the Palmer Hay Flats Game Refuge is now scheduled to be heard by the Senate Finance Committee of which you are co-chair.

I would appreciate taking a minute of your time to express my support for this bill that is so important to many of the residents of both the Valley and also the greater Anchorage area. In case you are not aware of the groups and people interested in this legislation, those that I am aware of are: the ad hoc committee for the Palmer Hay Flats, Mat-Su Chapter of Ducks Unlimited, Mat-Su Chapter of Alaska Fur Trappers Association, Anchorage Audubon Society, and the Alaska Center for the Environment. In addition, the Mat-Su Borough, Alaska State Department of Natural Resources, and the Alaska Department of Fish and Game have indicated their support for this legislation. As you can see this is a quite broad cross section of people supporting SB-105.

Just briefly, both consumptive (i.e. hunters, fishermen, trappers) and non-consumtive use (i.e. bird watchers, game animal watching) in this area is high and is incompatible with commercial development. The lands the proposed legislation would add to the refuge are also critical for access to the existing refuge, and it is my understanding that the only reason they are not currently in the refuge is that they were privately held when the refuge was originally formed from state lands.

Senator, looking down the road to the future and being a 10-year valley resident, seeing the tremendous growth experienced in the valley, emphasizes to me the need to preserve this area. Both as a needed buffer between the valley and the Anchorage area, and as a natural gateway to the Matanuska Valley where future generations can still enjoy seeing moose and waterfowl, along with a place to go small game hunting, trapping, and fishing.

Thank you for your time and attention to this legislation.

Sincerely,

David C. Churchill
P. O. Box 871646
Wasilla, Alaska
99687

Senator Kertulla,
For your information,
Thanks!

FEB 27 1985

COOK INLET
AQUACULTURE ASSOCIATION

P.O. BOX 3819
SOLDOTNA, AK 99669-3819
(907) 262-9419

February 25, 1985

Senator Arliss Sturgulewski
Pouch V
Juneau, Alaska 99811

Dear Senator:

The Cook Inlet Aquaculture Association supports SB 105 which allows for the extension of the Palmer Hay Flats State Game Refuge. It is clear that the entire area is valuable for recreational fishing and hunting activities. The extension is essential to "leagalize" public access to much of the Refuge.

It is probably more important to realize that the sloughs and marshes throughout the area are excellent rearing or "nursery" areas for large numbers of coho salmon fry. Dredging, filling, diking and draining, the very expensive things which can be done to marshlands to make them usable for commercial or residential purposes, all destroy the fitness of the area to harbor and nourish young salmon. We encourage the State to preserve these wetland habitats.

Sincerely,

Thomas E Mears

Thomas E. Mears,
Executive Director

cc: Suzanne Haines
Steve Braund

FEB 2 5 1985

20 February 1985

Senator Sturgulewski
Senator Fahrenkamp

Resource Committee
Pouch V
Juneau, Alaska 99811

RE: Senate Bill 105 Palmer Hay Flats State Game Refuse

Dear Senators

As a landowner in the flats area since the 1950's, we support public ownership of these lands.

The public uses our land and the neighboring private lands for hunting, fishing, trapping and wildlife viewing. Located between two major population centers, the numbers grow almost daily.

Yet, major objections and stumbling blocks are placed by State agencies and Mat-Su Borough for owners using or developing our lands.

We know there is strong public support for the Flats to stay as they are now. We are willing to work with the State in a sale or exchange. We and the neighboring land owners have expressed this at other public hearings.

We ask for your valuable support in solving this land conflict.

Sincerely,

Floyd Beal

Floyd Beal

FB/tb

cc: Senator Eliason
Zharoff
Halford
Coghill
V. Fischer

P.O. Box 1241
Palmer, Alaska 99645
2-10-85

Senator Arliss Sturgulewski
State Capitol
Pouch V
Juneau, Ak 99811

FEB 2 5 1985

Dear Senator Sturgulewski:

I urge your support for Senate Bill 105. This bill is a very important first step in allowing for the expansion of the Palmer Hay Flats State Game Refuge. I would appreciate any help in supporting this Bill.

SB 105 would authorize land trades and buyouts of private land within a 910 acre strip running south along the Glenn Highway from the intersection of the Parks Highway. I am a hunter, fisherman and an ornithologist; the Palmer Hay Flats is a tremendous bird rookery, with thousands of migrant birds breeding there; A recent Fish and Game report has shown that the 910 acres under consideration provide vital habitat for Silver Salmon smolt; The Hay Flats are also a calving ground for moose; Finally, the Flats are a beautiful area, with the Chugiak Mountains creating a breath taking back drop. I would appreciate not encumbering this beauty with development in this area. I feel that these resources should be protected, and I am asking for your support.

The Matanuska Borough Assembly has passed a resolution in support of SB 105. The Alaska Department of Fish & Game has shown that over 2000 hunting days, and over 8,000 fishing days occured in the Palmer Hay Flats last year. I feel that this bill is in the publics best interest.

Sincerely Yours

Stephen W. Johnson

Stephen W. Johnson

*****MATR-00105******MARCH 18****************

O: SENATORS DEVRIES AND KERTTULA
REPRESENTATIVES HURLEY AND LARSON

ROM: NORMAN JONES
PO BOX 46
PALMER 99645
745-3491

MAR 1 8 1985

RE: SB 105, PALMER HAYFLATS

PLEASE SUPPORT THIS BILL.

%%%

SB 105

DELIVER TO: JPOM

ORIGINAL
SENT: 02/27/85 TIME: 14:27
FROM: MARTIE ROZKYDAL
SUBJECT: POM - MATR-0059
PRINT DATE: 02/27/85 TIME: 14:27

TO: SENATORS STURGULEWSKI, FAHRENKAMP, COGHILL, ELIASON, V. FISCHER, HALFORD, ZHAROFF AND KERTTULA
REPRESENTATIVE HURLEY A ND LARSON

FROM: TOM SHANKSTER
PO BOX 3225
PALMER 99645
745-5280

RE: SB 105

I AM FOR SB 105 FOR THE MANAGEMENT, USE, AND PROTECTION OF THE WET LA NDS CLOSE TO POPULATED AREAS THAT WE ARE GETTING HERE IN ALASKA.

827 Moore Business Forms, Inc.

TO: SENATORS STURGULEWSKI, FAHRENKAMP, COGHILL, ELIASON, V. FISCHER, HALFORD, ZHAROFF AND KERTTULA
REPRESENTATIVES HURLEY AND LARSON.

FROM: DAVID CHURCHILL
PO BOX 871646
WASILLA 99687
H 376-5758
W 659- 4442

RE: SB 105

THIS REFUGE IS THE GATEWAY TO THE MAT-SU BOROUGH, AN IMPORTANT BOUNDARY BETWEEN ANCHORAGE, IT IS A CRITICAL WILDLIFE HABITAT AREA, WILDLIFE VIEWING AREA, A MAJOR HUNTING/TRAPPING AREA, WINTER AND SPRING. RABBIT CREEKS ARE IMPORTANT SALMON FRY REARING STREAMS. THE AREA COVERED UNDER THE BILL PRESENTLY UNDEVELOPED, URGE YOU TAKE IMMEDIATE A CTION.

FROM: DEWIGHT BATT
PO BOX 874472
WASILLA 99687
H 376-2097
W-265- 6551

RE: SB 105

I AM SUPPORTING SB 105 FOR THE STATED REASONS IN THE BILL. WE SHOULD MAKE EVERY EFFORT TO PROTECT ALL OUR WETLANDS AND TO EN SURE FUTURE ACCESS FOR PUBLIC USE OF THIS TYPE OF AREA. EVENTUALLY PUBL IC USE AREAS COULD BECOME SURROUNDED BY PRIVATE LAND AND WILL ELIMINATE PUBLIC ACCESS.

DELIVER TO: JPOM

ORIGINAL
SENT: 02/04/85 TIME: 13:15
FROM: MICKI HENSON
SUBJECT: POM
PRINT DATE: 02/04/85 TIME: 13:15

15

TO: ALL MEMBERS / SENATE FINANCE
SENATORS FAIKS AND SACKETT (CO-CHAIRS)
SENATOR KERTTULA (VICE-CHAIR)
SENATORS ELIASON, P. FISCHER, HALFORD, FERGUSON

ALL MEMBERS/ SENATE RESOURCES
SENATOR STURGULEWSKI (CHAIR), FAHRENKAMP(VICE-CHAIR)
SENATORS ELIASON, ZHAROFF, HALFORD, COGHILL, V. FISCHER

FROM: CATHY REZABECK
14500 FERNHILL CIRCLE
ANCHORAGE, AK. 99516
PHONE: 345-2363 (HM) 274-8440 (WK)

RE: SB 105

I STRONGLY ENCOURAGE PASSAGE OF SB 105 FOR STATE PURCHASE OF PRIVATE LANDS IN THE POTTER FLATS NEAR THE INTERSECTION OF ROUTES 1 AND 2. THIS LAND MUST NOT EXPERIENCE STRIP DEVELOPMENT WHICH WOULD NOT ALLOW FOR THE STATE GAME REFUGE ON ADJACENT LANDS TO FURTHER ITS PURPOSE OF GAME PRESERVATION AND MANAGEMENT.

FEB 8 1985

DELIVER TO: LIOJ

ORIGINAL
SENT: 02/07/85 TIME: 17:15
FROM: VERNITA VESTAL
SUBJECT: POM
PRINT DATE: 02/07/85 TIME: 17:15

23

TO: SENATE FINANCE COMMITTEE: SEN. FAIKS, SACKETT, KERTTULA, ELIASON, P. FISCHER, HALFORD, FERGUSON

RESOURCES: SEN. STURGULEWSKI, FAHRENKAMP, ELIASON, ZHAROFF, HALFORD, COGHILL, V. FISCHER

SEN. DEVRIES, V. FISCHER, JOSEPHSON, KERTTULA
REP. CLOCKSIN, HURLEY, LARSON, UEHLING

FROM: MARY CORE
503 W 9TH
ANCHORAGE, AK. 99501 (H) 274-3382 (W)274-3621

RE: SB 105

ACQUISITION OF PALMER HAY FLATS NOW WILL AVOID WATER POLLUTION PROBLEMS PRESENTLY OCCURING IN THE ANCHORAGE BOWL. THE FILTERING FUNCTION OF THE WETLANDS, THE ABUNDANT FISH AND WILDLIFE POPULATIONS AND THE FINE AESTHETIC VALUES FOR TOURISM JUSTIFY A TRADE OUT.

FEB 8 1985

DELIVER TO: LIOJ

ORIGINAL
SENT: 02/07/85 TIME: 17:15
FROM: VERNITA VESTAL
SUBJECT: POM
PRINT DATE: 02/07/85 TIME: 17:15

23

TO: SENATE FINANCE COMMITTEE: SEN. FAIKS, SACKETT, KERTTULA, ELIASON, P. FISCHER, HALFORD, FERGUSON

RESOURCES: SEN. STURGULEWSKI, FAHRENKAMP, ELIASON, ZHAROFF, HALFORD, COGHILL, V. FISCHER

SEN. DEVRIES, V. FISCHER, JOSEPHSON, KERTTULA
REP. CLOCKSIN, HURLEY, LARSON, UEHLING

FROM: MARY CORE
503 W 9TH
ANCHORAGE, AK. 99501 (H) 274-3382 (W)274-3621

Lib only

RE: SB 105

ACQUISITION OF PALMER HAY FLATS NOW WILL AVOID WATER POLLUTION PROBLEMS PRESENTLY OCCURING IN THE ANCHORAGE BOWL. THE FILTERING FUNCTION OF THE WETLANDS, THE ABUNDANT FISH AND WILDLIFE POPULATIONS AND THE FINE AESTHETIC VALUES FOR TOURISM JUSTIFY A TRADE OUT.

FEB 1 1985

TO: SENATORS SACKETT, FAIKS, HALFORD, KERTTULA, FERGUSON, P. FISCHER, ELIASON, STURGULEWSKI, FAHRENKAMP, ELIASON, ZHAROFF, HALFORD, COGHILL, V. FISCHER

FR: MIKE BRONSON
P O BOX 2176
PALMER 99645
PHONE: 376-3642

RE: SB 105 - PALMER HAY FLATS LEGISLATION

PLEASE SUPPORT SB 105 SPONSORED BY KERTTULA. THIS IS A GRASSROOTS EFFORT FOR A FAIR SOLUTION TO THE POTENTIAL PROBLEM OF COMMERCIAL DEVELOPMENT OF WETLANDS IMPORTANT TO THE PUBLIC. PURCHASE OF THE HAY FLATS FROM WILLING SELLERS WILL KEEP THE GATEWAY TO THE MATANUSKA-SUSITNA BOROUGH OPEN FOR FISHERMEN AND HUNTERS.

&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&&POMK 104 - 1/31/85

TO: SENATORS SACKETT, FAIKS, HALFORD, KERTTULA, FERGUSON, P. FISHCER, ELIASON, STURGULEWSKI, FAHRENKAMP, ELIASON, ZHAROFF, HALFORD, COGHILL, V. FISCHER

FR: K. ANNELY GERMAINE
SR B 7460
PALMER 99645
PHONE: 745-6511

RE: SB 105 - PALMER HAY FLATS LEGISLATION
PLEASE SUPPORT SB 105 ACTIVELY. MAT-SU IS ALREADY TOO EXPLOITED AND COMMERCIAL. THE HAY FLATS BILL CAN BE AN IMPORTANT FIRST STEP IN SAVING THE VALLEY FROM PERMANENT UGLY DAMAGE. AN INNOVATIVE BILL LIKE THIS DOES MUCH TO SLOW THE PROGRESS OF THE MARCH TO STRIP DEVELOPMENT.
&&&&&&&&&&&&&&&&&&&

MAR 25 1985

March 15, 1985

Senator Kertula
Pouch V
Juneau, Alaska 99811

Dear Senator:

I would like to thank you for all the work and time you have put into SB 105.

Southcentral will enjoy your hard efforts far into the future.

Thanks for being there.

Sincerely,

Terry Beal

Offered: 3/4/85
Referred: Finance

Original sponsor: Kerttula

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 105 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Palmer Hay Flats State Game Refuge; and providing for an effective date."

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

* Section 1. The legislature determines that wetlands important to the protection of waterfowl and salmon in the Spring Creek area lie outside of the boundaries of the Palmer Hay Flats State Game Refuge. The Spring Creek area also provides one of the major public access points to the hay flats although the land is privately owned. The legislature therefore determines that it is in the public interest to protect the Spring Creek wetlands through extension of the Palmer Hay Flats State Game Refuge under this Act.

* Sec. 2. AS 16.20.032(a) is amended to read:

(a) The following state-owned land and water is established as the Palmer Hay Flats State Game Refuge:

(1) Township 16 North, Range 1 West, Seward Meridian

Sections 1 - 12 inclusive

Section 13: N1/2

Sections 14 - 18 inclusive

(2) Township 17 North, Range 1 West, Seward Meridian

Section 25: All

Section 26: S1/2, S1/2N1/2, N1/2NE1/4, NE1/4NW1/4

Section 27: S1/2, SE1/4NE1/4

Section 31: Lot 4, SE1/4, E1/2SW1/4, SE1/4NE1/4, S1/2SW1/4NE1/4

Section 32: S1/2, S1/2NE1/4, NE1/4NE1/4,

SE1/4NW1/4

Section 33: All

Section 34: All

Section 35: All

Section 36: All

(3) Township 17 North, Range 1 East, Seward Meridian

Section 22:

excluding NW1/4NW1/4

excluding NE1/4NE1/4NE1/4

excluding N1/2NE1/4NW1/4

Section 27:

excluding S1/2S1/2

Section 28: N1/2SE1/4

Section 31: Lots 5, 7, 8, 9, 10

Section 32: NE1/4

Section 33: SW1/4NW1/4, including all state tide and submerged land

(4) Township 16 North, Range 1 East, Seward Meridian

Section 4, 5, 6, 7, 8, 9: All

Section 17: N1/2

Section 18: N1/2

All state tide and submerged land

(5) Township 16 North, Range 1 East, Seward Meridian

Section 2: Portion lying west of the Alaska Railroad

Section 3: Lot 1, excluding portions lying east of the Alaska Railroad centerline, Lots, 2, 3, 4, 5, 6, NW1/4, NW1/4, NE1/4

Section 10: Lots 1, 2, 3, 4, 6, and portions

lying west of the Alaska Railroad

Section 15: All state land lying north of the south bank of the Knik River and west of the Alaska Railroad

Section 16: All state land lying north of the south bank of the Knik River

* Sec. 3. The commissioner of natural resources shall include land acquired from the Matanuska-Susitna Borough in the Palmer Hay Flats State Game Refuge established under AS 16.20.032.

* Sec. 4. (a) The commissioner of natural resources may dispose of state land located within the Matanuska-Susitna borough in exchange for privately owned land determined desirable for inclusion in the Palmer Hay Flats State Game Refuge. The commissioner of natural resources may also offer to purchase at fair market value from willing sellers privately owned land determined desirable for inclusion in the Palmer Hay Flats State Game Refuge.

(b) An offer made by the commissioner of natural resources under this section for a purchase or exchange that remains unaccepted for two years after tender is withdrawn.

(c) An exchange or purchase authorized under (a) of this section shall be accomplished under AS 38.50.

(d) The commissioner of natural resources shall include land acquired under this section in the Palmer Hay Flats State Game Refuge established under AS 16.20.032.

* Sec. 5. This Act does not prohibit expansion or improvement to the Glenn Highway or the Parks Highway, the potential Wasilla Bypass, or the construction of the interchange at the Parks and Glenn Highways.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 1/28/85
Referred: Resources and Finance

IN THE SENATE BY KERTTULA

SENATE BILL NO. 105

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Palmer Hay Flats State Game Refuge; and providing for an effective date."

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

* Section 1. The legislature determines that wetlands important to the protection of waterfowl and salmon in the Spring Creek area lie outside of the boundaries of the Palmer Hay Flats State Game Refuge. The Spring Creek area also provides one of the major public access points to the hay flats although the land is privately owned. The legislature therefore determines that it is in the public interest to protect the Spring Creek wetlands through extension of the Palmer Hay Flats State Game Refuge under this Act.

* Sec. 2. AS 16.20.032(a) is amended to read:

(a) The following state-owned land and water is established as the Palmer Hay Flats State Game Refuge:

(1) Township 16 North, Range 1 West, Seward Meridian
Sections 1 - 12 inclusive
Section 13: N1/2
Sections 14 - 18 inclusive

(2) Township 17 North, Range 1 West, Seward Meridian
Section 25: All
Section 26: S1/2, S1/2N1/2, N1/2NE1/4, NE1/4NW1/4
Section 27: S1/2, SE1/4NE1/4
Section 31: Lot 4, SE1/4, E1/2SW1/4, SE1/4NE1/4, S1/2SW1/4NE1/4
Section 32: S1/2, S1/2NE1/4, NE1/4NE1/4,

SE1/4NW1/4

Section 33: All

Section 34: All

Section 35: All

Section 36: All state tide and submerged land

(3) Township 17 North, Range 1 East, Seward Meridian

Section 22:

excluding NW1/4NW1/4

excluding NE1/4NE1/4NE1/4

excluding N1/2NE1/4NW1/4

Section 27:

excluding S1/2S1/2

Section 28: N1/2SE1/4

Section 31: Lots 5, 7, 8, 9, 10

Section 32: NE1/4

Section 33: SW1/4NW1/4, including all state tide and submerged land

(4) Township 16 North, Range 1 East, Seward Meridian

Section 4, 5, 6, 7, 8, 9: All

Section 17: N1/2

Section 18: N1/2

All state tide and submerged land

* Sec. 3. (a) The commissioner of natural resources may dispose of state land located within the Matanuska-Susitna borough in exchange for 135.6 acres now owned by the Matanuska-Susitna Borough in the area of Spring Creek near the Palmer Hay Flats State Game Refuge.

(b) The exchange permitted under this section shall be accomplished under AS 38.50.

(c) The commissioner of natural resources shall include the land

acquired from the Matanuska-Susitna Borough under this section in the Palmer Hay Flats State Game Refuge established under AS 16.20.032.

* Sec. 4. (a) The commissioner of natural resources may dispose of state land located within the Matanuska-Susitna borough in exchange for privately owned land determined desirable for inclusion in the Palmer Hay Flats State Game Refuge. The commissioner of natural resources may also offer to purchase at fair market value privately owned land determined desirable for inclusion in the Palmer Hay Flats State Game Refuge.

(b) An exchange or purchase authorized under (a) of this section shall be accomplished under AS 38.50.

(c) The commissioner of natural resources shall include land acquired under this section in the Palmer Hay Flats State Game Refuge established under AS 16.20.032.

* Sec. 5. An offer made by the commissioner of natural resources under this Act for a purchase or exchange that remains unaccepted for two years after tender is withdrawn.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

SB

120

Offered: 4/15/85
Referred: Rules

Original sponsor: Rules/Governor

IN THE SENATE BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 120 (Finance) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to agriculture; and providing for an effective date."

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

* Section 1. AS 03.05.010 is amended to read:

Sec. 03.05.010. POWERS AND DUTIES OF COMMISSIONER OF NATURAL RESOURCES. (a) The commissioner of natural resources shall

(1) direct, administer, and supervise promotional and experimental work, extension services, and agricultural projects for the purpose of promoting and developing the agricultural industry within the state including such fields as horticulture, dairying, cattle raising, fur farming, grain production, vegetable production, and development of other agricultural products;

(2) procure and preserve all information pertaining to the development of the agricultural industry and disseminate that information to the public;

(3) assist prospective settlers and others desiring to engage in the agricultural industry in the state with information concerning areas suitable for agriculture and other activities and programs essential to the development of the agricultural industry in the state;

(4) review the marketing, financing, and development of agricultural products inside the state including transportation, with special emphasis upon local production, and negotiate for the marketing of agricultural products of the state with federal and state

agencies operating in the state; [AND]

(5) regulate and control the entry into the state and the transportation, sale or use inside the state of plants, seeds, vegetables, fruits and berries, nursery stock, shell eggs, animal feeds, remedies and mineral supplements, fertilizers, and agricultural chemicals in order to prevent the spread of pests, diseases, or toxic substances injurious to the public interest, and to protect the agricultural industry against fraud, deception and misrepresentation; in this connection the commissioner may require registration, inspection, and testing, and establish procedures and fees;

(6) assist in the establishment of commodity marketing associations, and adopt regulations to implement this paragraph.

(b) To carry out the requirements of this title, the commissioner of natural resources may issue orders, regulations, quarantines, and embargoes relating to

(1) examination and inspection of premises containing products, articles, and commodities carrying pests;

(2) establishment of quarantines for eradication of pests;

(3) establishment of standards and labeling requirements pertaining to the sale of agricultural and vegetable seeds and processed feeds;

(4) tests and analyses that [WHICH] may be made and hearings that [WHICH] may be held to determine whether the commissioner will issue a stop order or quarantine;

(5) cooperation with federal and other state agencies;

(6) licensing, bonding, inspection, and auditing of records of public grain, grass, and legume storage or processing facilities.

* Sec. 2. AS 03.10.030(a) is amended to read:

(a) The farm development or [,] chattel [, OR IRRIGATION] loan

made under this chapter

(1) may not exceed a term of 30 years, except that a chattel loan may not exceed a term of seven years unless the agricultural revolving loan board determines that a longer term is in the best interest of the state and would promote the purposes of this chapter in which case, if the borrower is current in any existing agricultural loan, an existing chattel loan may be combined with and amortized over the same period as an existing farm development loan, or a chattel loan may be extended beyond a seven-year term if the loan is secured by additional real property as collateral;

(2) may not, when added to the outstanding balance of other loans made under this chapter, exceed a total outstanding balance of $1,000,000 except that the total outstanding balance may be increased up to 50 percent if the borrower ~~is a dairy farmer~~, has held a loan under this chapter for at least two years, and receives written approval under conditions and standards established by the agricultural revolving loan board;

delete words (~~[illegible]~~ passed)

(3) shall be secured by a real estate or chattel mortgage of any priority, except that the portion of a loan that exceeds $500,000, when added to prior indebtedness that is secured by the same property, must be secured by a first mortgage;

(4) shall bear interest

(A) on that portion of the loan below $1,000,000, at a rate that may not be less than eight percent or more than the commercial rate, unless the commercial rate is eight percent or less; in this paragraph "commercial rate" means the prevailing rate of interest at private lending institutions in the state for loans similar to those referred to in this subsection;

(B) on that portion of the loan above $1,000,000, at a

rate that may not be less than the prime rate prevailing at the time of the loan; in this paragraph, "prime rate" means the prime rate of interest normally charged at private lending institutions in the state on the day the contract or loan commitment was made.

* Sec. 3. AS 03.10.030(c) is amended to read:

(c) A short term loan, to be amortized within one year, not to exceed $350,000 to any one borrower may be made for operating purposes, except that a loan made under this subsection may not exceed $200,000 unless the loan is made to a borrower in a farm disaster area declared under AS 03.10.058. The short-term loan limits may be increased up to 50 percent if the borrower has held a loan under this chapter for at least two years and receives written approval under conditions and standards established by the agricultural revolving loan board. An applicant for a short term loan may be required to purchase insurance through the Federal Crop Insurance Act (7 U.S.C. 1501 - 1520) as a condition of the loan. The term of a loan made under this subsection may be extended for up to three years by the agricultural revolving loan fund board, in the discretion of the board, upon application by the borrower. An existing short-term loan may be combined with and amortized over the same time period as an existing farm development loan if the agricultural revolving loan fund board determines that the combination is in the best interest of the state and promotes the purposes of this chapter.

* Sec. 4. AS 03.10.040 is amended to read:

Sec. 03.10.040. CREATION OF FUND. There is an agricultural revolving loan fund, which may [SHALL] not exceed $100,000,000, [$75,000,000] to carry out the purpose of this chapter.

* Sec. 5. AS 03.10.050(b) is amended to read:

(b) The board is composed of seven [FIVE] members appointed by

the governor and confirmed by the legislature in joint session. Three members must [SHALL] be persons with background and experience in Alaska agriculture and one additional member must be a person with background and experience in Alaska horticulture. Members of the board serve for overlapping three-year terms. Members of the board are not entitled to receive compensation for their services, but are entitled to [SHALL] receive the same travel pay and per diem as provided by law for boards and commissions.

section 5 of original

* Sec. 6. AS 03.57.020 is amended to read:

Sec. 03.57.020. BOND REQUIRED. Each dealer is required to obtain and file with the director of the division of agriculture of the Department of Natural Resources a bond in the amount of $25,000 [$5,000]. The bond shall be conditioned on the faithful performance of the legal duties of the dealer as set out in this chapter and the payment for vegetables purchased by the dealer. The bond is payable to the person injured to the extent of the damages. The aggregate liability of the surety for all breaches of the conditions of the bond may not [SHALL, IN NO EVENT,] exceed the amount of the bond. The surety may cancel the bond upon giving 30 days' notice in writing to the director, and after that is [THEREAFTER SHALL BE] relieved of any liability for a breach of condition occurring after the effective date of cancellation.

* Sec. 7. AS 38.09.050(a) is amended to read:

(a) The commissioner shall issue a patent to homestead entry land if the permit holder

(1) resides and lives on the homestead entry land for not less than 25 months within five years after the issuance of the homestead entry permit;

(2) completes an approved survey of the land within two

years after the issuance of the permit or under AS 38.09.040(b);

(3) erects a habitable, permanent dwelling on the homestead within three years after the issuance of the homestead entry permit;

(4) brushes the boundaries of the land within 90 days after the issuance of the permit;

(5) clears and either puts into production or prepares for cultivation either 25 percent of the land classified for agricultural use or 50 percent of the suitable agricultural land, consisting of [HAVING] class II, or III soils, whichever is more [LESS], within five years after issuance of the permit.

* Sec. 8. Sections 1 - 4 of this Act take effect July 1, 1985.

* Sec. 9. Section 5 of this Act takes effect immediately in accordance with AS 01.10.070(c).

Introduced: 1/14/85
Referred: Resources and
Finance

IN THE HOUSE BY SHULTZ

HOUSE BILL NO. 33

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to agricultural rights to land."

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

* Section 1. AS 38.05.059 is repealed and reenacted to read:

Sec. 38.05.059. LIMITATIONS AND CONDITIONS ON SALE OR LEASE OF AGRICULTURAL LAND. (a) A person may purchase from the state not more than one parcel of land that is part of an agricultural development project under AS 44.33.475 during any eight-year period.

(b) In a sale or other disposal of state land classified as agricultural land the use of the land shall be restricted. The commissioner shall convey a fee simple conditional title to the surface estate subject to a condition subsequent that the land be used only for agricultural purposes. The commissioner shall reserve a right of reentry after notice and an opportunity for a hearing if the land is used for other than agricultural purposes. A reversion of title upon reentry does not affect the validity of a prior lien or security interest on the land.

(c) The lessee of state agricultural land shall receive a leasehold interest in the surface estate subject to the condition subsequent that the land leased be used only for agricultural purposes.

(d) As a condition to the issuance of a lease or a contract of sale of state land classified as agricultural land, the commissioner may require a farm development agreement and the submission of a conservation plan that establish reasonable requirements based on economic feasibility of development and sound agricultural principles.

(e) The commissioner may not convey title under (b) of this section to a person who has not complied with a farm development agreement or conservation plan required by the commissioner.

(f) In this section, "agricultural purposes" includes farming, ranching, grazing, and storage or control of agricultural crops or livestock, and the construction of the farm residence of the grantee or lessee as well as other buildings commonly needed for agricultural purposes on not more than 20 acres of the land transferred under this section.

* Sec. 2. AS 38.05.321(a) is repealed.

Dick Bradley

the Department of Natural Resources a bond in the amount of $25,000 [$5,000]. The bond must [SHALL] be conditioned on the faithful performance of the legal duties of the dealer as set out in this chapter and the payment for vegetables purchased by the dealer. The bond is payable to the person injured to the extent of the damages. The aggregate liability of the surety for all breaches of the conditions of the bond may not [SHALL, IN NO EVENT,] exceed the amount of the bond. The surety may cancel the bond upon giving 30 days' notice in writing to the director, and after that is [THEREAFTER SHALL BE] relieved of any liability for a breach of condition occurring after the effective date of cancellation.

* Sec. 5. AS 36 is amended by adding a new chapter to read:

CHAPTER 16. PREFERENTIAL USE OF ALASKA AGRICULTURAL PRODUCTS.

Sec. 36.16.010. USE OF LOCAL AGRICULTURAL PRODUCTS REQUIRED IN PURCHASES WITH STATE MONEY. In the purchase of agricultural products financed by state money, only agricultural products originating in this state may be used whenever competitively priced, available, and of like quality compared with agricultural products originating outside the state.

Sec. 36.16.020. INSERTION OF CLAUSE IN CALLS FOR BIDS AND IN CONTRACTS. A clause containing the substance of AS 36.16.010 must be inserted in all calls for bids and in all contracts awarded that involve agricultural products.

Sec. 36.16.030. INSPECTION CERTIFICATE. Before purchase by the state, an agricultural product originating in this state must receive an inspection certificate from the commissioner of natural resources under AS 03.05.010 or the commissioner of environmental conservation under AS 03.05.011.

* Sec. 6. AS 38.09.050(a) is amended to read:

Original sponsor: Rules/Governor

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 120 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to agriculture; and providing for an effective date."

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

* Section 1. AS 03.05.010 is amended to read:

Sec. 03.05.010. POWERS AND DUTIES OF COMMISSIONER OF NATURAL RESOURCES. (a) The commissioner of natural resources shall

(1) direct, administer, and supervise promotional and experimental work, extension services, and agricultural projects for the purpose of promoting and developing the agricultural industry within the state including such fields as horticulture, dairying, cattle raising, fur farming, grain production, vegetable production, and development of other agricultural products;

(2) procure and preserve all information pertaining to the development of the agricultural industry and disseminate that information to the public;

(3) assist prospective settlers and others desiring to engage in the agricultural industry in the state with information concerning areas suitable for agriculture and other activities and programs essential to the development of the agricultural industry in the state;

(4) review the marketing, financing, and development of agricultural products inside the state including transportation, with special emphasis upon local production, and negotiate for the marketing of agricultural products of the state with federal and state

agencies operating in the state; [AND]

(5) regulate and control the entry into the state and the transportation, sale or use inside the state of plants, seeds, vegetables, fruits and berries, nursery stock, shell eggs, animal feeds, animal bodies and mineral supplements, fertilizers, and agricultural chemicals in order to prevent the spread of pests, diseases, or toxic substances injurious to the public interest, and to protect the agricultural industry against fraud, deception and misrepresentation; in this connection the commissioner may require registration, inspection, and testing, and establish procedures and fees;

(6) assist in the establishment of commodity marketing associations, and adopt regulations to implement this paragraph.

(b) To carry out the requirements of this title, the commissioner of natural resources may issue orders, regulations, quarantines, and embargoes relating to

(1) examination and inspection of premises containing products, articles, and commodities carrying pests;

(2) establishment of quarantines for eradication of pests;

(3) establishment of standards and labeling requirements pertaining to the sale of agricultural and vegetable seeds and processed feeds;

(4) tests and analyses that [WHICH] may be made and hearings that [WHICH] may be held to determine whether the commissioner will issue a stop order or quarantine;

(5) cooperation with federal and other state agencies;

(6) licensing, bonding, inspection, and auditing of records of public grain, grass, and legume storage or processing facilities.

* Sec. 2. AS 03.10.030(a) is amended to read:

(a) The farm development or [,] chattel [, OR IRRIGATION] loan

made under this chapter

(1) may not exceed a term of 30 years, except that a chattel loan may not exceed a term of seven years unless the agricultural revolving loan board determines that a longer term is in the best interest of the state and would promote the purposes of this chapter in which case, if the borrower is current in any existing agricultural loan, an existing chattel loan may be combined with and amortized over the same period as an existing farm development loan, or a chattel loan may be extended beyond a seven-year term if the loan is secured by additional real property as collateral;

(2) may not, when added to the outstanding balance of other loans made under this chapter, exceed a total outstanding balance of $1,000,000 except that the total outstanding balance may be increased up to 50 percent if the borrower has held a loan under this chapter for at least two years and receives written approval under conditions and standards established by the agricultural revolving loan board;

(3) shall be secured by a real estate or chattel mortgage of any priority, except that the portion of a loan that exceeds $500,000, when added to prior indebtedness that is secured by the same property, must be secured by a first mortgage;

(4) shall bear interest

(A) on that portion of the loan below $1,000,000, at a rate that may not be less than eight percent or more than the commercial rate, unless the commercial rate is eight percent or less; in this paragraph "commercial rate" means the prevailing rate of interest at private lending institutions in the state for loans similar to those referred to in this subsection;

(B) on that portion of the loan above $1,000,000, at a rate that may not be less than the prime rate prevailing at the

time of the loan; in this paragraph, "prime rate" means the prime rate of interest normally charged at private lending institutions in the state on the day the contract or loan commitment was made.

* Sec. 3. AS 03.10.030(c) is amended to read:

(c) A short term loan, to be amortized within one year, not to exceed $350,000 to any one borrower may be made for operating purposes, except that a loan made under this subsection may not exceed $200,000 unless the loan is made to a borrower in a farm disaster area declared under AS 03.10.058. The short-term loan limits may be increased up to 50 percent if the borrower has held a loan under this chapter for at least two years and receives written approval under conditions and standards established by the agricultural revolving loan board. An applicant for a short term loan may be required to purchase insurance through the Federal Crop Insurance Act (7 U.S.C. 1501 - 1520) as a condition of the loan. The term of a loan made under this subsection may be extended for up to three years by the agricultural revolving loan fund board, in the discretion of the board, upon application by the borrower. An existing short-term loan may be combined with and amortized over the same time period as an existing farm development loan if the agricultural revolving loan fund board determines that the combination is in the best interest of the state and promotes the purposes of this chapter.

* Sec. 4. AS 03.10.040 is amended to read:

Sec. 03.10.040. CREATION OF FUND. There is an agricultural revolving loan fund, which may [SHALL] not exceed $100,000,000, [$75,000,000] to carry out the purpose of this chapter.

* Sec. 5. AS 03.10.050(b) is amended to read:

(b) The board is composed of seven [FIVE] members appointed by the governor and confirmed by the legislature in joint session. Three

members must [SHALL] be persons with background and experience in Alaska agriculture and one additional member must be a person with background and experience in Alaska horticulture. Members of the board serve for overlapping three-year terms. Members of the board are not entitled to receive compensation for their services, but are entitled to [SHALL] receive the same travel pay and per diem as provided by law for boards and commissions.

* Sec. 6. AS 03.57.020 is amended to read:

Sec. 03.57.020. BOND REQUIRED. Each dealer is required to obtain and file with the director of the division of agriculture of the Department of Natural Resources a bond in the amount of $25,000 [$5,000]. The bond shall be conditioned on the faithful performance of the legal duties of the dealer as set out in this chapter and the payment for vegetables purchased by the dealer. The bond is payable to the person injured to the extent of the damages. The aggregate liability of the surety for all breaches of the conditions of the bond may not [SHALL, IN NO EVENT,] exceed the amount of the bond. The surety may cancel the bond upon giving 30 days' notice in writing to the director, and after that is [THEREAFTER SHALL BE] relieved of any liability for a breach of condition occurring after the effective date of cancellation.

* Sec. 7. AS 36 is amended by adding a new chapter to read:

CHAPTER 16. PREFERENTIAL USE OF ALASKA AGRICULTURAL PRODUCTS.

Sec. 36.16.010. USE OF LOCAL AGRICULTURAL PRODUCTS REQUIRED IN PURCHASES WITH STATE MONEY. In the purchase of agricultural products financed by state money, only agricultural products originating in this state may be used whenever competitively priced, available, and of like quality compared with agricultural products originating outside the state.

Sec. 36.16.020. INSERTION OF CLAUSE IN CALLS FOR BIDS AND IN CONTRACTS. A clause containing the substance of AS 36.16.010 must be inserted in all calls for bids and in all contracts awarded that involve agricultural products.

Sec. 36.16.030. INSPECTION CERTIFICATE. Before purchase by the state, an agricultural product originating in this state must receive an inspection certificate from the commissioner of natural resources under AS 03.05.010 or the commissioner of environmental conservation under AS 03.05.011.

* Sec. 8. AS 38.09.050(a) is amended to read:

(a) The commissioner shall issue a patent to homestead entry land if the permit holder

(1) resides and lives on the homestead entry land for not less than 25 months within five years after the issuance of the homestead entry permit;

(2) completes an approved survey of the land within two years after the issuance of the permit or under AS 38.09.040(b);

(3) erects a habitable, permanent dwelling on the homestead within three years after the issuance of the homestead entry permit;

(4) brushes the boundaries of the land within 90 days after the issuance of the permit;

(5) clears and either puts into production or prepares for cultivation either 25 percent of the land classified for agricultural use or 50 percent of the <u>suitable agricultural</u> land<u>, consisting of</u> [HAVING] class II<u>,</u> or III soils, whichever is <u>more</u> [LESS], within five years after issuance of the permit.

* Sec. 9. Sections 1 - 4 and 7 of this Act take effect July 1, 1985.

* Sec. 10. Section 5 of this Act takes effect immediately in accordance with AS 01.10.070(c).

Analysis for CSSB 120 (Finance)

The CS for SB 120 allows the Department of Natural Resources to take a number of actions that will help solve some of the current problems related to agriculture in Alaska. Some of the changes are necessary to clarify the functions of the department and the Division of Agriculture, others provide the department with additional flexibility to help farmers help themselves. The following analysis briefly describes the effects of each section.

Section 1(a)

(5) (Page 2, line 4) adds shell eggs to the list of items regulated by the department. The Division of Agriculture currently performs inspections on shell eggs but is not specifically authorized to do so.

(6) (Page 2, line 11) allows the establishment of commodity marketing associations, composed of producers of specific products, that will assist farmers in developing markets for their products.

Section 1(b)

(3) (Page 2, lines 20-21) adds processed feeds to the items for which the department may establish standards and labeling requirements.

(6) (Page 2, lines 26-27) allows the department to develop regulations for bonding or inspecting grain, grass or legume warehouses.

Section 2(a)

(Page 2, line 29) removes irrigation from the list of loans funded by the Agricultural Revolving Loan Fund.

(1) (Page 3, lines 3-10) provides the AGricultural Revolving Loan Fund (ARLF) with the flexibility to rewrite chattel loans if the borrower is current on existing loans.

(2) (Page 3, lines 13-17) allows the loan total for a dairy farm borrower to exceed the one million dollar limit by up to fifty percent if the borrower has held an agricultural loan for at least two years and meets board conditions and standards.

(4) (Page 3, line 23) and (5) (Page 3-4, line 29, lines 1-4) requires interest on loan amounts over one million to be at least equal to the prime rate charged by private lending institutions.

Section 3 (c)

(c) (Page 4, lines 10-14 and lines 19-23) allows short term loan limits to increase by up to fifty percent if the borrower has held an agricultural loan for at least two years and meets conditions set by the loan board, and allows the short term loan to be combined with other farm loans and amortized over a longer time period.

Section 4

(Page 4, line 26) raises the ceiling for the ARLF to $100 million from $75 million. The fund is currently capitalized at $68 million and interest accruals and additional appropriations could cause the ceiling to be exceeded.

Section 5(b)

(b) (Page 4, line 29) increases the membership of the ARLF board to seven from five members. Three of the members must have an agricultural background and one must have an horticultural background.

Section 6

(Page 5, line 12) raises the required bond amount for vegetable dealers to $25,000 from $5,000 to protect the producer from losses.

Section 7(a)

(5) (Page 6, lines 8-9) amends the section on land clearing requirements for agricultural homesteads.

ARLF Summary Sheet

- Current capitalization $67.5 M

- 8% minimum interest

- $1 M maximum total to any farm unit

- Development and irrigation loans
  - up to 30 year term
  - ARLF Board seldom approves over 25 years

- Chattel loans
  - up to 7 year term
  - or life of chattel

- Operating loans
  - one year term - up to 3 years extension
  - $200,000 maximum

- Processing loans
  - up to 30 year term
  - $250,000 maximum

- Clearing loans
  - up to 20 year term
  - $250,000 maximum

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSSB 120(Fin)

Title: Agriculture Omnibus

Sponsor: Senate Finance

Requestor: Senator Finance Committee

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Agriculture

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING	0	0				
100 PERSONAL SERVICES	0	0				
200 TRAVEL	0	0				
300 CONTRACTUAL	0	0				
400 SUPPLIES	0	0				
500 EQUIPMENT	0	0				
600 LAND & STRUCTURES	0	0				
700 GRANTS, CLAIMS	0	0				
800 MISCELLANEOUS	0	0				
TOTAL OPERATING	0	0				
CAPITAL	0	0				
REVENUE	0	0				

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0				
FEDERAL FUNDS	0	0				
OTHER	0	0				
TOTAL	0	0				

POSITIONS:

FULL-TIME	0	0				
PART-TIME	0	0				
TEMPORARY	0	0				

ANALYSIS: Attach a separate page if necessary

Prepared By: Jan Faiks, Co-chairman Senate Finance Committee

Phone: 465-4523

Division:

Date: 4/15/85

Approved by Commissioner:

Date:

Agency:

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Supersedes F.Y. 4 3/20/85

7/1/84

SB

150

5/6

HOUSE

COMMITTEE REPORT

(9)

Date referred: 3/19/86

FURTHER REFERRALS: JUDICIARY

DATE: 5/5/86

The RESOURCES Committee has considered CSSB 150(Jud)am

"An Act making miscellaneous amendments to the Alaska Water Use Act (AS 46.15); establishing procedures for administrative and judicial adjudication of water rights under that Act; and providing for an effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[✓] replace with HCS CSSB 150 (RES) [✓] same title

[ ] new title

and recommends DO PASS

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:	SIGNING OTHER RECOMMENDATIONS:
Shultz	Jenkins No Rec.
Herrmann	Jenkins No Rec
Cato	Pearce
Thompson	Synd M.W. Miller No. Rec.
Wallis	Miller (NP)

Co-Chairman Shultz

Bradley
5/5/86

Original sponsor: Rules/Governor

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 150 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making miscellaneous amendments to the Alaska Water Use Act (AS 46.15); establishing procedures for administrative and judicial adjudication of water rights under that Act; and providing for an effective date."

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

* Section 1. AS 46.15.040 is amended by adding a new subsection to read:

(d) The commissioner's issuance of a permit under AS 46.15.080 or of a certificate under AS 46.15.065 or 46.15.120 does not represent a guarantee by the state to the permittee or certificate holder that water will be available for appropriation at a certain volume, quality, artesian pressure, or cost. This subsection does not, however, alter the right a permittee or certificate holder may have against a later appropriator, including a government agency.

* Sec. 2. AS 46.15.065 is amended by adding a new subsection to read:

(f) The adjudication process for a declaration filed under (a) of this section that is pending before the commissioner on the effective date of this Act continues under the procedures set out in this section until the commissioner finally determines whether the declarant is entitled to a certificate. If a certificate is issued under this section, the certificate holder may be included as a participant in an adjudication under AS 46.15.165 or 46.15.166.

* Sec. 3. AS 46.15.140 is amended to read:

Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF APPROPRIATIONS. (a) The commissioner may declare an appropriation to be wholly or partially abandoned and revoke or amend the certificate of appropriation as to the unused quantity of water if an appropriator, with intention to abandon, does not make beneficial use of all or a part of the [HIS] appropriated water. [AN APPROPRIATION SO FORFEITED AND ABANDONED REVERTS TO THE STATE AND THE WATER BECOMES UNAPPROPRIATED WATER.]

(b) The commissioner may declare that an appropriator has [AN APPROPRIATION TO BE] wholly or partially forfeited an appropriation, and shall revoke the certificate of appropriation in whole or in part if the [AN] appropriator voluntarily fails or neglects, without sufficient cause, to make use of all or a part of the [HIS] appropriated water for a period of five successive years. A person who has a permit to develop a use of water including but not limited to residential, agricultural, industrial, or mining use, but has not developed that property to the point of water use before permit expiration, may file a request for permit extension with the commissioner.

* Sec. 4. AS 46.15.140 is amended by adding new subsections to read:

(c) Failure to use beneficially for five successive years all or part of the water granted in a certificate of appropriation raises a rebuttable presumption that the appropriator has abandoned or forfeited the right to use the unused quantity of water and shifts to the appropriator the burden to prove otherwise to the satisfaction of the commissioner.

(d) If the commissioner revokes a certificate in whole or in part, the portion of the certificate covered by the revocation reverts to the state and the water becomes unappropriated water.

* Sec. 5. AS 46.15.145(f) is amended to read:

(f) At least once each 10 years the commissioner shall review each reservation under this section to determine whether the purpose described in (a) of this section for which the certificate reserving water was issued and the findings described in (c) of this section still apply to the reservation. If the commissioner determines that the purpose, or part or all of the findings, no longer apply to the reservation, the commissioner [HE] may revoke or modify the certificate reserving the water after notice, hearing when appropriate, and a written determination that the revocation or modification is in the best interests of the state [IN ACCORDANCE WITH AS 46.15.140(b)].

* Sec. 6. AS 46.15 is amended by adding new sections to read:

Sec. 46.15.165. ADMINISTRATIVE ADJUDICATIONS. (a) The commissioner may, by order, initiate an administrative adjudication to quantify and determine the priority of all water rights and claims in a drainage basin, river system, ground water aquifer system, or other identifiable and distinct hydrologic regime, including any hydrologically interrelated surface and ground water systems.

(b) In the order initiating an administrative adjudication, the commissioner shall describe the appropriate geographic and hydrologic boundaries of the adjudication area. During the adjudication, the commissioner may adjust the boundaries to ensure the efficient administration of water appropriations among users.

(c) Upon initiation of the adjudication, the commissioner shall

(1) serve the order on each applicant, certificate holder, or permittee listed in the department's records within the adjudication area;

(2) serve the order on any agency of the federal, state, or a local government with management authority over land or water within

the adjudication area;

(3) serve the order on any person who owns or claims land within the adjudication area if the land is held in trust by the United States for the person or if the patent, deed, or certificate to the land from the United States was issued under 25 U.S.C. 334 (Indian General Allotment Act of February 8, 1887, 24 Stat. 389, as amended and supplemented), 25 U.S.C. 372 (the Allotment Act of June 25, 1910, 36 Stat. 855), 43 U.S.C. 270-1, 270-2 (the Allotment Act of May 17, 1906, 34 Stat. 197), any other allotment act, or the Alaska Native Townsite Act of May 25, 1926, 44 Stat. 629, and serve the order on the United States on behalf of the person;

(4) serve the order on the United States and the appropriate governing body of the Annette Island Reserve established by 25 U.S.C. 495 (the Act of March 3, 1891, 26 Stat. 1101) if the land or water, including hydrologically interconnected water, of the Annette Island Reserve is within the adjudication area;

(5) serve the order on any other person claiming a federal reserved water right within the adjudication area;

(6) serve the regional corporation and village corporation established under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act) that has a pending land selection or has acquired ownership to land under that act that is located within the adjudication area; and

(7) serve the order on each mining claimant of record with the United States and the state within the adjudication area as of the date of the order initiating the administrative adjudication.

(d) Service of an order under (c) of this section does not constitute an admission by the state that the person served with the order has a water right.

(e) Service of the order under (c)(1) of this section is suffi-

cient if mailed by certified mail, return receipt requested, to the last known address that the applicant, certificate holder, permittee, or claimant has given to the division of the department responsible for administration of water rights. A person served under (c)(1) - (7) of this section who fails to appear in a timely manner and assert a claim as prescribed by the commissioner is estopped from subsequently asserting an objection to the adjudication of that person's water rights within the adjudication area, unless the person is entitled to a federal reserved water right and has failed to consent under (k) of this section.

(f) In an adjudication under this section, the commissioner may appoint an impartial qualified person as a master to preside over the adjudication, to hold hearings, to take testimony, to collect evidence, to propose to the commissioner an order adjudicating the validity of, quantifying, and determining the priority of all water rights, and to take other action the commissioner decides is necessary.

(g) A state agency may assert a water right on behalf of the state in the adjudication.

(h) A division of the department or another state agency may provide documentary and testimonial evidence, research, and scientific analysis during the adjudication. The commissioner may provide evidence, research, or analysis from sources outside government.

(i) In conducting an adjudication, the commissioner may take action necessary for the efficient and fair administration and use of the state's water including

(1) determining indispensable, necessary, and convenient parties to the adjudication;

(2) classifying applicants, certificate holders, permittees, and claimants in groups that share similar interests, such as by

the amount of water used or the type of use, and restricting their active participation in the adjudication by appointing group representatives for the purposes of receiving notices, examining witnesses, and other adjudicatory functions;

(3) entering interlocutory orders appropriate to a disposal of all or part of the issues in the adjudication, and designating the orders as final for the purposes of an appeal to the superior court under (1) of this section; and

(4) allocating to a participant the extra costs that the state has incurred in conducting the adjudication because the participant has in bad faith asserted a claim to water wholly without merit or has unreasonably delayed the proceeding.

(j) For the purposes of asserting a water right in an adjudication, a certificate issued under this chapter is prima facie evidence of the water right and its priority date.

(k) If the commissioner has initiated the adjudication and the federal government or a private person who has been served under (c)(2) - (4) of this section asserts a federal reserved water right but fails to consent in writing to the adjudication, then the commissioner may exclude the federal government or the person, respectively, as participants in the adjudication. The commissioner may negotiate the terms of the written consent.

(l) A person adversely affected by a final order of the commissioner adjudicating water rights under this section may appeal to the superior court within 30 days after the decision is mailed or delivered to the person.

(m) The commissioner may adopt regulations setting out procedures for administrative adjudications under this section.

Sec. 46.15.166. JUDICIAL ADJUDICATIONS. (a) Instead of initi-

ating an adjudication under AS 46.15.165, the commissioner may, with the concurrence of the attorney general, if a federal reserved water right has been or might be asserted by an agency of the United States on its own behalf or on behalf of a person described in AS 46.15.-165(c)(3) - (6), file on behalf of the state a complaint in superior court to initiate a judicial adjudication consistent with 43 U.S.C. 666 to quantify and determine the priority of all water rights in a drainage basin, river system, ground water aquifer system, or other identifiable and distinct hydrologic regime, including any hydrologically interrelated surface and ground water systems.

(b) The venue for an action filed under (a) of this section shall be established by rule of the supreme court under AS 22.10.030.

(c) In a complaint brought under (a) of this section, the court may appoint an impartial, qualified person as a master to hold hearings, take testimony, collect evidence, and make recommendations to the court regarding the scope and content of a proposed judicial decree that would finally adjudicate the validity of water rights, quantify them, and determine priorities among the water right appropriators in the adjudication area. Employment by a federal, state, or local government agency does not disqualify an individual from appointment as master under this subsection if the court determines that the individual is otherwise impartial and qualified to act as master. The master may, with the court's permission, take action that the commissioner would be authorized to take in an administrative adjudication under AS 46.15.165.

(d) In an adjudication under this section, the court may incorporate in an order or judgment final orders of the commissioner previously issued under AS 46.15.165.

(e) Proceedings under this section shall be conducted without a

jury.

Sec. 46.15.167. EFFECT OF DECISION. The final order of the commissioner under AS 46.15.165 and the final judgment of a court under AS 46.15.166 are binding on each party to the adjudication and on each person who subsequently makes an application for a water right. The court or the commissioner may retain jurisdiction for a period of time necessary to implement an adjudication order or judgment and to provide for subsequent water appropriations.

Sec. 46.15.168. OTHER ACTIONS. (a) The state may timely intervene as a party in a superior court action potentially involving a determination of the validity, quantity, use, reservation, or priority of water rights.

(b) The commissioner may accept a remand from a state or federal court of a water rights dispute and may administratively adjudicate the dispute under AS 46.15.165.

(c) The commissioner may enter into arbitration to resolve a water rights dispute.

(d) The commissioner may incorporate and apply as binding upon the parties to an administrative adjudication under AS 46.15.165 any court decree concerning the state hydrologic regime involved in the adjudication.

Sec. 46.15.169. FEDERAL RESERVED WATER RIGHTS. This chapter does not represent a commitment by the state to a specific federal reserved water right.

* Sec. 7. AS 46.15 is amended by adding new sections to read:

Sec. 46.15.255. ENFORCEMENT. (a) In addition to a penalty imposed under AS 46.15.180 for violation of an order issued under this chapter, the commissioner may

(1) remove or abate unpermitted works of appropriation,

diversion, impoundment, or withdrawal;

(2) install corrective controls or control works; and

(3) seek enforcement of the order by filing an action in the superior court.

(b) A person who violates an order issued under AS 46.15.180 is liable for all costs of removal, abatement or installation and for court costs and attorney fees incurred by the state in seeking enforcement of the order.

Sec. 46.15.256. DATA COLLECTION AUTHORITY. To carry out the provisions of this chapter, the commissioner may

(1) inspect books, records, meters, gauges, well logs, works of appropriation, diversion, impoundment, withdrawal, or control and other relevant information or physical condition;

(2) enter private property at all reasonable times after obtaining a search warrant from a judicial officer if the owner refuses consent to entry; and

(3) compel the production of relevant information by a subpoena or subpoena duces tecum signed by the commissioner if the commissioner reasonably believes the information is necessary to carry out the purposes of this chapter.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Resolution No. 86-8

PARTICIPATION OF MILITARY RESERVATIONS IN WATER RESOURCES PLANNING IN ANCHORAGE BOWL

The Municipality of Anchorage and the Division of Land and Water Management of the Alaska Department of Natural Resources are engaged in comprehensive planning for future public water supplies in the Anchorage Bowl area. The only present and potential sources of water to meet this vital need are Ship Creek, groundwater sources (through public and private wells) and Eklutna Lake (through the Municipality's Eklutna Water Project). Fort Richardson and Elmendorf Air Force Base are significant users of water from both Ship Creek and groundwater sources. The extent of the military's need and actual use is not known, yet this information is vital if a comprehensive water management plan for the Anchorage Bowl is to be achieved.

The Alaska Water Resources Board urges the Governor to:

a. express to the Commanding Officer, Elmendorf Air Force Base and the the Commanding Officer, Fort Richardson, the State's concern that effective water planning and management for the Anchorage Bowl area cannot be achieved without the active participation of the military reservations which also rely on these water sources;

b. encourage the commanding officers to direct their respective staffs to work closely with the Alaska Department of Natural Resources in its analysis of current and projected water demands on Ship Creek and adjacent groundwater sources; and

c. direct copies of the aforementioned correspondence to the Commissioner of Natural Resources and to the Mayor of Anchorage.

Adopted this 27th day of February, 1986
ALASKA WATER RESOURCES BOARD

By: [illegible]

Cyril R. Wanamaker, Chairman

Resolution No. 86-9

ALASKA TO ADMINISTER SECTION 402 (b) NPDES PERMITS

WHEREAS: Alaska has seven classifications of water; however, with the exception of the Chena River and Nolan Creek, the most stringent water quality criterion (drinking water) applies to all waters of the State, and

WHEREAS: EPA, through its Section 402 NPDES Permit process, incorporates the State's water quality standards, and

WHEREAS: The current process of enforcement of water quality standards in the State of Alaska is a duplicative effort between EPA and the Alaska Department of Environmental Conservation, and

WHEREAS: EPA maintains its 402 permitting and enforcement office in Seattle making it difficult and expensive for both EPA and industry in Alaska, and

WHEREAS: Section 402 (b) of the Clean Water Act authorizes states to assume authority for issuing and enforcement of National Pollutant Discharge Elimination (NPDES) Permits, and

WHEREAS: 37 states in the United States have assumed the issuance and enforcement of the NPDES permits, THEREFORE

BE IT RESOLVED that the Alaska Water Resources Board requests the Alaska Department of Environmental Conservation to reinvestigate the feasibility of administering the Section 402 NPDES permits, and

BE IT FURTHER RESOLVED that the Alaska Water Resources Board requests the Alaska Department of Environmental Conservation to report its conclusion which includes staffing and fiscal requirements of this investigation to the Governor of the State, the Legislature and the Water Resources Board no later than July 1, 1986, and

BE IT FURTHER RESOLVED that copies of this resolution be sent to the Governor of the State of Alaska, the Commissioners of the Alaska Department of Natural Resources and Environmental Conservation, the Chairmen of the House and Senate Resources Committees, Senator's Stevens and Murkowski and Congressman Young.

Adopted this 27 day of February, 1986
ALASKA WATER RESOURCES BOARD

Cyril R. Wanamaker

Cyril R. Wanamaker, Chairman

Resolution No. 86-10

PLACER MINING WATER QUALITY REGULATIONS

The placer mining industry in Alaska is presently confronted with a serious and immediate threat to its existence. This industry now furnishes the economic base upon which many small Alaskan communities exist. Other larger communities have a large economic stake in the industry.

The threat to the industry originates in government regulations which, if aggressively addressed by the government, could be ameliorated to the extent that the industry could survive and advance to meet desirable standards.

The threat to the industry comes at a time when industries having sound markets and diversifying the primary economic base of the State are sorely needed.

The Alaska Water Resources Board recommends that the Governor's Office take immediate steps to achieve a level of cooperation between the various agencies of the State, and between the State and the involved Federal agencies, which will result in the continuance of a viable placer mining effort in Alaska.

Adopted this 27th day of February, 1986
ALASKA WATER RESOURCES BOARD

Cyril R. Wanamaker

Cyril R. Wanamaker, Chairman

Resolution No. 86-11

RESOLUTION OF CONFLICT IN EFFLUENT REQUIREMENTS

Federal and State water quality regulations concerning point of measurement for turbidity are inconsistent, setting up a conflict of enforcement for placer mining effluent. Placer miners may be able to comply with one set of regulations but not both.

The Alaska Water Resources Board requests you to direct the Department of Environmental Conservation to recommend a plan to eliminate the conflict. The Board respectfully requests a report on the progress on this matter at its next meeting.

Adopted this 27th day of February, 1986
ALASKA WATER RESOURCES BOARD

Cyril R. Wanamaker

Cyril R. Wanamaker, Chairman

Resolution No. 86-12

MILITARY COOPERATION REGARDING FEDERAL RESERVED WATER RIGHTS AND HAZARDOUS WASTE MANAGEMENT AND DISPOSAL

The State of Alaska has the responsibilities under state and federal law to recognize and adjudicate federal reserved water rights, and to establish procedures for the transportation and disposal of hazardous and toxic wastes. Neither of these functions can be performed in a manner which protects the health and welfare of all of the State's residents, unless the military community within Alaska also actively contributes its information and policy requirements. At the present time, this active involvement has not occurred.

The Alaska Water Resources Board urges that the Governor communicate these concerns to the commanding officers of the following military installations, and invite the active participation of their respective staffs on the joint Federal-State Reserved Rights Task Force and with the Alaska Department of Environmental Conservation, in these vital areas:

Elmendorf Air Force Base, Anchorage
Eielson Air Force Base, Fairbanks
Fort Wainwright, Fairbanks
Fort Richardson, Anchorage
Fort Greeley, Delta Junction

Adopted this 27th day of February, 1986
ALASKA WATER RESOURCES BOARD

Cyril R. Wanamaker

Cyril R. Wanamaker, Chairman

Resolution No. 86-13

PRIORITIZATION OF ALASKA'S WATER RESOURCES PROGRAMS

The Alaska Water Resources Board serves as an advisory group to the Governor on all matters relating to the use and appropriation of water in the State of Alaska. These duties, as enumerated in AS 46.15.210, include evaluating and advising the Governor on the effect and adequacy of all laws and regulations governing water rights, the multi-purpose uses of water, the prevention of pollution and the protection of fish and game, studies of the state's water supplies and plans for future requirements, and development of the state's water resources.

The Board recognizes that declining revenues will impact funding of programs statewide, and that all state agencies face the difficult task of reducing budgets, manpower and programs. The Department of Natural Resources water rights program has already been impacted by a large reduction in staff. The Alaska Water Resources Board is vitally concerned about the long term effects that reductions in programs such as this may have on wise water resources management in Alaska.

The Alaska Water Resources Board requests that the Commissioners of the Departments of Natural Resources, Environmental Conservation, and Fish & Game attend the next bi-annual meeting of the Board, to be held in Anchorage on September 11 & 12, 1986, to present and discuss the water resources programs which they administer, and the process of program and budget prioritization and how this will be reflected in the preparation of these department's fiscal year 1988 water resources budgets.

Adopted this 27th day of February, 1986
ALASKA WATER RESOURCES BOARD

Cyril R. Wanamaker

Cyril R. Wanamaker, Chairman

Resolution No. 86-14

DEPARTMENT OF NATURAL RESOURCES WATER MANAGEMENT STAFFING

The Alaska Water Resources Board recognizes the need for reductions-in-force and increased organizational efficiency throughout state government. The Board further respects the efforts being made to make State government more accessible to the citizens of Alaska by moving personnel and program responsibilities to regional offices.

However, the Board wishes to express its deep concern that a one-person Water Management Section in the Central Office is not only inadequate but impractical.

The Water Resources Board has argued strongly for consistency, cooperation and communication on water related matters in DNR and throughout state government. We have also pressed for improved water management planning to help avoid problems rather than having to address crises.

By nature and direction, Regional offices are reactive, responsive, and limited in scope to day-to-day issues and matters within their specific area. It is the role of the State Water Section to assure consistency, develop pro-active positions, coordination, and long range planning.

In order to accomplish the important and appropriate work of the Central Water Office, the Alaska Water Resources Board, respectfully requests that the State Water Section have, at minimum, two people---including a support position.

Adopted this 27th day of February, 1986
ALASKA WATER RESOURCES BOARD

Cyril R. Wanamaker

Cyril R. Wanamaker, Chairman

Resolution No. 86-15

COORDINATION OF INSTREAM FLOW PROTECTION PROGRAMS

The Alaska Water Resources Board has learned that the Alaska Department of Fish and Game (ADF&G) will be initiating an Instream Flow Program funded by the Dinghall-Johnson Expansion Act, through revenue sharing disbursements. Although the ADF&G program is designed to protect sport fisheries only, there is both an opportunity and a need to coordinate the technical instream flow expertise of the Alaska Department of Natural Resources (ADNR) with the efforts of ADF&G.

It is recommended by the Alaska Water Resources Board that ADF&G and ADNR coordinate their efforts and expertise to establish:

1. criteria for determining a list of priorities of streams requiring instream flow protections; and

2. a realistic ranking of those streams that need instream flow protection based on the criteria established above.

The criteria for determining those priorities should include, as a minimum, the following considerations:

1. Current appropriation threats, and

2. Potential water appropriation conflicts, and

3. Proximity to population centers.

The Alaska Water Resources Board feels that is is not cost effective for ADF&G to duplicate, in its instream flow program, the data collection function and service of DGGS.

Therefore, the Alaska Water Resources Board recommends that ADF&G contract the services of DGGS to perform the technical data collection functions necessary to determine minimum instream flows for the protection of those sport fisheries identified and prioritized in the preceeding recommendation.

Adopted this 27th day of September, 1986
ALASKA WATER RESOURCES BOARD

Cyril R. Wanamaker

Cyril R. Wanamaker, Chairman

BURR, PEASE & KURTZ
A PROFESSIONAL CORPORATION

E. L. ARNELL 1913-1958

D. A. BURR
EDWARD G. BURTON
RONALD H. BUSSEY
RUSSELLYN S. CARRUTH
RALPH E. DUERRE
CHARLES P. FLYNN
RICHARD A. HELM
L. S. KURTZ, JR.
ANN C. LIBURD
THOMAS E. MEACHAM
KRISTI A. NELSON
ARDEN E. PAGE
NELSON G. PAGE
THEODORE M. PEASE, JR.
J. W. SEDWICK
JOHN C. SIEMERS
DAVID M. TRAVERSI

810 N STREET
ANCHORAGE, ALASKA 99501
(907) 276-6100
TELEX: (090) 26-405

March 12, 1985

Dave

Honorable Richard Shultz, Co-Chair
House Resources Committee
Alaska House of Representatives
Pouch V
Juneau, AK 99811

RE: Senate Bill No. 150 (Amendments to
Alaska Water Use Act, AS 46.15)
Our File No. 1515-1

Dear Mr. Shultz:

I am a member of the Alaska Water Resources Board, established under AS 46.15.190. I attended the semi-annual meeting of the Water Resources Board in Juneau on March 5-7, 1985. The Board met with the Senate Resources Committee on water resource matters (including SB 150) on March 8; however, I was unable to participate in that meeting because I had to return to Anchorage early.

In this letter, I would like to offer these observations concerning SB 150, and some proposed amendments. These views are my own, though they were discussed among the Water Resources Board. Some of them are, I believe, contained in a letter to you from the Board. The principal author of that letter is Mike Neimeyer, who is an attorney and a member of the Board.

I believe that the proposed amendments to the Alaska Water Use Act which are contained in SB 150 are necessary for the efficient administration of water rights in Alaska. These include federal reserved water rights which are presently

unquantified and pose the greatest unknown factor in the future allocation of water resources in Alaska. My involvement in water issues, and in the dilemma of unquantified federal reserved water rights, began during my service as an assistant attorney general for the State of Alaska in the late 1970's. I represented the State in litigating the case of Paug-Vik, Inc., Ltd. v. LeResche, 633 P.2d 1015 (Alaska 1981), which was the first Alaska case dealing with aboriginal-title and federal reserved right water claims.

In 1980, based in part upon the realization that the existing Alaska Water Use Act contained no procedures for the effective, binding adjudication of these claims in a manner which complies with the McCarran Amendment, 43 U.S.C. Sec. 666 (which grants the state jurisdiction over federal entities to determine their water rights), I drafted the precursor of Senate Bill 150. That bill has undergone significant refinement since that time, and has been modified to reflect other states' experiences in adjudicating federal reserved rights. At the present time, I believe the bill generally represents a "state of the art" procedural statute to enable the adjudication of federal water rights in state courts. I urge its adoption by the Legislature.

I do have some specific suggestions for amendments which would resolve the concerns raised by Water Board members at our recent meeting. As you know, Sections 1 through 4 of SB 150 are general, "housekeeping" measures which clarify existing portions of the Alaska Water Use Act, while Section 5 of the bill comprises the procedural measures to deal with basin-wide water adjudications, including federal reserved water rights within those basins. My proposed amendments are as follows:

Page 2, Section 46.15.140(d): This proposed amendment should be removed from the "abandonment" provision of the Water Use Act (46.15.140), and placed in AS 46.15.145, which deals with the administration of in-stream flow reservations. The proposed subparagraph (d) states,

> (d) A state agency may not abandon or forfeit a certificate of appropriation in whole or in part except after public notice.

I understand that this provision was originally intended to deal with in-stream flow reservations granted to the State under AS 46.15.145. If so, it should be moved to that section, as AS 46.15.145(g). I would recommend that the provision be

broadened to cover all in-stream flow appropriators, public and private, since their in-stream flow reservations are required to be made in the general public interest. I recommend that the provision, placed in Section 145, read as follows:

> (g) An in stream-flow certificate may not be abandoned or forfeited in whole or in part except after ~~public~~ notice to the certificate holder.

Alternatively, if it is not the intention of SB 150 to confine the abandonment by a state agency of a water certificate to in-stream flow reservations, but instead to include all types of water rights held by the State (as the amendment presently implies), the amendment should remain in its existing Section 140. However, it should be broadened to cover both the state and municipalities. The provision would then read,

> (d) A certificate of appropriation may not be abandoned in whole or in part by a state agency or a municipality except after public notice.

This change would prevent the involuntary loss of a water appropriation held in the name of the general public, as a result of the errors or omissions of individual public officials. In other words, failure to timely use a water allocation, or to file some document with the State indicating an intention to maintain a use, should not result in the loss of water rights held by the State or by a municipality in the name of all of its residents.

Based upon these considerations of the public interest, it might be best to leave the provision in Section 140(d), as broadened to cover municipal governments, and at the same time to add the suggested provision concerning in-stream flow reservations at subsection (g) of Section 145.

Page 3, Section 46.15.165(c): This section should be amended by inclusion of the following additional category of persons entitled to receive service of notice of an administrative adjudication of basin-wide water rights.

> .5) Serve the order on any other person or corporation claiming a federal reserved water right;
>
> (renumber the existing subparagraph (5) as subparagraph (6)).

Page 4, AS 46.15.165(c)(5): I recommend that to prevent the inadvertent omission of notice to Native allotment owners in a basin-wide water rights adjudication, or to prevent the later default of these claimants, that the Native regional and village corporations which own land within the basin be notified of any general water rights adjudication (regardless of whether the corporations are themselves asserting a claim to water rights). The proposed amendment would read,

> (5) serve the order on each Native regional and village corporation organized under the Alaska Native Claims Settlement Act which owns any land within the adjudication area;

The Native regional and village corporations do not have the burden of keeping a Native allottee informed of the progress of a water rights adjudication. However, they have in many cases been helpful in guaranteeing that Native allottees within their area are not overlooked, and that they receive adequate legal and practical advice to protect their interests in such matters. Therefore, it is desirable that in addition to serving the Native allottee with notice, that the Native corporation within the area also receive notice, to better insure that the allottee's interests will be protected.

Page 6, Section 46.15.166: I suggest that the "judicial adjudications" section at AS 46.15.166 be similarly amended to add a category of persons whose federal reserve right claims may be adjudicated judicially in state court, as follows:

> (a)(3) by or on behalf of any person or corporation who claims a federal reserved water right.

These two changes, will permit the adjudication of any federal reserved water right claims which may be asserted by Alaska Native corporations, or by any other entity which is not already included in the proposed legislation (and which, by statutory interpretation, would otherwise be presumed to be excluded). Without this amendment, Alaska Native corporations and others who may claim federal reserve water rights will be forced to bring separate litigation in federal court, which defeats the entire purpose of a basin-wide state-court adjudication of all water rights, including federal reserved rights. The inclusion of this category in the legislation would not be an admission by the State that Native corporations legally possess federal reserved water rights, since the disclaimer in proposed AS 46.15.169 of the bill specifically denies that

adoption of the legislation is an admission by the State that federal reserved water rights exist within the State.

Page 8, AS 46.15.168(b): I recommend that this provision be amended to require that any administrative adjudication on remand from a court be confirmed judicially, if federal reserved water rights are involved. This will complete the judicial adjudication requirements of the McCarran Amendment, 43 U.S.C. Sec. 666. Without this confirmation, a decision after administrative remand may not be binding upon the federal claimants. Therefore, I recommend that this subsection (b) be amended to read as follows:

> (b) The commissioner may accept a remand from a state or federal court of a water rights dispute, and may administratively adjudicate it under AS 46.15.165, subject to judicial confirmation of any federal rights which have been adjudicated.

I hope that my concerns with some details of SB 150 can be eliminated by adoption of the amendments I have listed in this letter. However, with or without these amendments, I believe that SB 150 is a vital piece of procedural legislation which is necessary to allow the State to take full advantage of its jurisdiction over federal water claims. When the need arises, the State will be able to react in a timely manner, without any question concerning the procedures to be applied. I urge that your committee recommend the passage of Senate Bill 150.

Sincerely yours,

Thomas E. Meacham

TEM/lsf

cc: Commissioner Esther C. Wunnicke

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

WATER RESOURCES BOARD

555 Cordova Street
Pouch 7-005
Anchorage, AK 99510
(907) 276-2653

March 14, 1985

The Honorable Arliss Sturgulewski
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: The Alaska Water Resources Board's Comments on SB 150

Dear Senator Sturgulewski:

Attached are comments regarding SB 150 prepared by the Alaska Water Resources Board during its March 4-8 Board meetings.

I would like to emphasize that this Board supports SB 150 provided the enclosed suggested changes are incorporated in the proposed legislation.

The Board as a unanimous body supports the adoption of a systematic water adjudication process. If the bill, as amended herein, is not adopted in this legislation, the Alaska Water Resources Board will do everything within its power to see that legislation addressing this issue is introduced in the next session.

Thank you for your kind consideration of these recommendations.

Sincerely,

For Cyril R. Wanamaker, Chairman
Alaska Water Resources Board

By: L. A. Dutton, Chief
Water Management Section

cc: Governor Sheffield
Senate Resources Committee

Alaska Water Resources Board
Recommendations for changes to
SB 150 "An Act making miscellaneous
amendments to the Alaska Water Use Act."

Although the following proposed changes to SB 150 may not be procedurally correct, the Alaska Water Resources Board requests that the Senate Resources Committee review the substantive changes requested in this document.

The State of Alaska is in need of a workable and systematic water adjudication system. This Board therefore supports the basic principles espoused in SB 150. We do, however, have some reservations about the present draft as it relates to notice requirements and water appropriation abandonment. The Board makes the following recommendations:

I. Delete Section 46.15.140(d) and replace it with Section 46.15.145(g) which would read:

> "A state agency may not abandon or forfeit an instream flow certificate in whole or in part except after public notice."

II. Add a new subsection to AS 46.15.165 to read:

> "AS 46.15.165(c)(c) serve The Alaska Native Village and Regional Corporation whose lands fall within the adjudication area."

III. Add a new sub-section to AS 46.15.166 to read:

> "AS 46.15.166(a)(3) by any person or party asserting a federal reserve water right."

Although these are the only recommended changes of the Board, we would like to point out one section of SB 150 that may have the potential to create future problems. This section is AS 46.15.165(d) as it applies to native allotees served urder AS 46.15.165(c)(3).

This board recognizes that one of the primary purposes of SB 150 is to create an adjudication system which satisfies the requirements of the McCarren Amendment 43 U.S.C. Sec. 666, thereby providing for state adjudication of federal reserve water rights. Federal agencies have the resources and responsibility to assert and defend their reserved water rights. This state should not be responsible for a federal agency's failure to assert its rights.

The Bureau of Indian Affairs (BIA), as trustee, has the primary responsibility of protecting a native allotee's property interests in a native allotment. It has been suggested, however, that because of any number of reasons, such as the vast number of allotments in the state, other BIA priorities, the failure of the BIA representatives to properly judge the significance of a water adjudication to the allotment holder, inadvertent ommissions, etc., federal reserve water rights which may be a legitimate property interest of the allottee may be forfeited due to BIA failure to assert water right as required in this subsection.

If a pattern of forfeitures of federal reserve water rights on native allotments does emerge as a result of this subsection, it is this Board's recommendation that the state's position should be flexible enough to assure that the necessary amendments will be made to protect any legitimate rights of the native allottees.

We wish to make it clear, however, that this Board does not take the position that the state is responsible for asserting a federal reserve water right for a native allottee. Furthermore, we are not suggesting that the state is responsible for affecting any repairs that are necessary to correct an injury created by a federal agency's failure to perform its responsibilities.

The point that we wish to make is that native allottees are state residents. Any federal reserve water rights that they may be entitled to as an appurtanence to their real property, acquired pursuant to the Native Allotment Act, is a valuable and necessary property interest. Forfeiture of real property interests should not be taken lightly. The forfeiture of a legitimate property interest for a failure to respond to service in a timely manner as required by this subsection is a drastic action and should not, therefore, be taken lightly.

Although we are not suggesting any changes to this subsection at this time, we do wish to demonstrate to the Senate Resources Committee that this subsection may have serious consequences to an identifiable group of longtime Alaska residents and not just to the myriad federal agencies which manage numerous and vast federally withdrawn lands.

Meeting Summary
ALASKA WATER RESOURCES BOARD
Juneau, Alaska
March 5-8, 1985

The Alaska Water Resources Board held their spring meeting March 5-8, 1985 in Juneau at Centennial Hall.

Board members in attendance were:
David Vanderbrink, Chairman, Homer
Peg Tileston, Anchorage
Wayne Westberg, Anchorage
Tom Meacham, Anchorage
Alan (Mike) Neimeyer, Anchorage
Stan Rybachek, North Pole
Cyril (Randy) Wanamaker, Juneau

March 5, 1985

David Vanderbrink, Chairman, called the meeting to order.

Esther Wunnicke, Commissioner of the Department of Natural Resources and the Board's Executive Secretary, summarized the status of Resolutions 85-3 through 85-8 which were drafted at the October 1984 Water Board meeting:

°85-3 Village Safe Water Program: The commissioner is requesting DNR's Water Management Section to draft a Memorandum of Understanding to the Department of Environmental Conservation by April 1, 1985 requiring recipients of grants under the village safe water program to apply for water rights in accordance with AS 46.15.

°85-4 Water Board's Budget: The resolution requested that the Governor place the Board's budget in the Governor's budget and include $20,000 for travel and per diem for FY 86. The FY 86 budget request was too far advanced for this change to be considered, but the Governor may want to consider it for FY 87. The DLWM budget for FY 86 includes $12,500 for Water Resources Board and staff travel.

°85-5 Dam Safety Program Funding: The DLWM has requested $134,'00 for 20-25 dam safety inspections in the Department's FY'86 budget proposal.

°85-6 Western States Water Council Representatives: DNR has sent a memo to the governor proposing the designation of DEC and DNR commissioners and the Attorney General as Alaska's official representatives to the Council. The Governor has also been requested to present the welcoming address at the 79th quarterly meeting in Anchorage.

°85-7 Water Resources Planning and Data: The Water Management Section staff is participating in DNR's land and resource planning efforts, and will be meeting with local planning staffs and zoning commissions. Contractual agreements between DNR and USGS have been reviewed for the collection and dissemination of water use data for 24 communities statewide.

° 85-8 Fritz Creek Watershed Proposal: The DLWM's Southcentral Regional Office has rejected the University's application for grazing leases in the Fritz Creek drainage, and will convey the land to the Kenai Peninsula Borough for the purposes of protecting fish and wildlife habitat and future municipal water supplies. Thirty-one appeals have been filed against DLWM's Regional Office's decision requesting habitat and watershed protection. A public hearing is scheduled in April.

Other opening business included scheduling Board member elections for Thursday, March 7.

L. A. Dutton, Chief of the DNR Water Management Section, summarized DNR's recent efforts to address water related issues. The Board expressed concern in the following areas in response to Dutton's presentation:

1) The number of residential and non-residential water rights applications received during 1984;

2) The role the state is taking towards adjudicating federal reserved water rights;

3) The number of valid appropriations which may be affected by federal reserved water rights.

Bruce Landon of the Department of Justice addressed potential conflicts arising from federal reserved water rights, and briefly outlined an approach Alaska may follow for their adjudication. Two major conflicts associated with federal reserved water rights are: 1) uncertainty in evaluating available water resources due to the presence of unquantified federal reserved rights; 2) inconsistency between state law and the purpose of federal reserved water rights. Senate Bill 150 provides the state with a mechanism for adjudicating federal reserved water rights in the state court under the procedures established by the McCarren Amendment. The steps recommended by the Department of Justice for the adjudication of federal reserved water rights are:

° Establish a mechanism where the state court can utilize the McCarren Amendment to adjudicate federal reserved water rights,

° Clarify the lines of jurisdiction,

° Determine and define the primary purpose(s) of the federal withdrawal,

° Gather the information necessary to quantify the federal reserved right.

Michael D. White, water law attorney, Denver, Colorado, opened his discussion regarding federal reserved water rights by defining a reserved right as being the amount of water necessary to meet the "minimal needs" of the reservation so that its primary purpose is not "entirely defeated".

White stated that this definition will be used by the courts as the criterion in determining the magnitude of a federal reserved right. He also stressed the value of developing a model based on water resource data and existing appropriations to evaluate the impact of reserved right claims submitted by the federal government. White made the following recommendations for facilitating the adjudication of federal reserved water rights in state court.

1) Make sure you have an adequate statutory basis with which to utilize the provisions in the McCarren Amendment.

2) Determine both personal and subject jurisdiction; and clearly define all issues.

3) Decide on a state litigation strategy.

4) Hire individual consultants rather than consulting agencies for technical assistance; and appoint a coordinator to manage all consultants.

5) Identify existing reservations, their priority dates, and their boundaries within the affected basin, and their primary purposes.

6) Develop a model that incorporates inflow of the system; all the state water rights; existing water use patterns, including depletions to the system, diversions, and return flow; and administrative assumptions.

7) Serve personal notices to all indviduals who may be affected by the adjudication; and keep private parties involved throughout the litigation.

(Complete transcripts of the presentations on federal reserved rights are available upon request.)

Paula Burgess, Regional Manager of DNR's Southeast Regional Office, briefed the Board on the Indian River basin-wide adjudication.

The original request for basin-wide adjudication was submitted in September of '83, followed by a review of DLWM's procedures and legislation proposed for adjudicating federal reserved water rights by the Attorney General's office. The Assistant Attorney General responded in March of 1984, with these findings:

1) The existing procedures for handling federal reserved water rights were inadequate;

2) The proposed legislation addressing basin-wide adjudication was sound, and should be introduced at the next legislative session;

3) Although existing policies and procedures were inadequate and legislation on basin-wide adjudication had not yet been passed, the DLWM should initiate basin-wide adjudication in state court. The Alaska Declaratory Judgement Act would provide the basis for state court adjudication of federal reserved water rights under the McCarren Amendment.

At the request of the DLWM, the DGGS and the USFWS initiated hydrologic and instream flow studies, respectively, in 1984. The DGGS completed the hydrologic investigation in January, 1985, and the USFWS instream flow study is scheduled for completion Fall, 1985.

All water users and parties to the adjudication will be notified of a public meeting pending the completion of the USFWS instream flow study.

Bill Ross, Commissioner of the Department of Environmental Conservation briefed the Water Board on DEC's role in addressing water quality problems in Anchorage as well as those resulting from placer mining statewide. Ross emphasized DEC's efforts and intentions to work with the municipalities and miners on water quality issues.

Specifically, DEC personnel will be collecting water quality samples in Anchorage and Eagle River, and will work closely with the municipalities in identifying pollution sources and planning for water and sewer needs. DEC is focusing on the water conflicts caused by placer mining, and plans to review EPA's permit effluent guideline process and revise DEC's enforcement policies. These will be presented next month at the Placer Mining Conference.

Jerry Madden of the Fisheries Rehabilitation and Enhancement Division (FRED), DF&G, briefed the Board of the progress and problems encountered in developing fish hatchery sites in Alaska. In response to the low salmon runs that occurred in the early 1970's, the Alaska State Legislature enacted legislation to promote and encourage fishery enhancement. Provisions of this legislation included:

- Private non-profit corporations could obtain permits from the State to run hatcheries.
- Regional aquaculture associations, private non-profit corporatons comprised of representatives of fisheries user groups, were allowed to raise funds for fishery enhancement projects.
- Comprehensive planning teams, comprised of members of aquaculture associations and representatives from state agencies, were established to assess fishery needs and to create fishery enhancement plans.
- A loan fund was established to assist private non-profit corporations in building hatcheries.
- Aquaculture associations were given preference rights to hatchery sites.

Under this program, 22 permits for hatcheries have been issued, 24 applications have been denied, and nine are pending. There are currently 14 hatcheries operating and having return runs.

In developing plans for hatchery sites, one common mistake that has been made by private corporations and state agencies is an inadequate evaluation of the available water resources. This problem has been exacerbated in recent years by the increased economic pressure to produce "money" fish,

such as coho, sockeye and chinook salmon, which require large amounts of water for rearing; and by political pressure to get projects on line as quickly as possible. Conflicts inherent in the state law have also produced difficulties in setting up hatcheries. Three case histories from Southeastern Alaska were discussed to illustrate these points:

- Salmon Creek Hatchery, Juneau (Northern Southeast Aquaculture Association) -- This hatchery project had to be abandoned when deals with prior appropriators to utilize some of their water fell through and adequate water supplies could not be obtained.

- Armstrong-Keta, Incorporated Hatchery, Port Armstrong (private non-profit group) -- This hatchery project developed in an environment of strong political pressure; thus there was an inadequate assessment of available water resources and the instream flow requirements of the native fish population. The native fish may suffer as a result.

- Medvedjie Hatchery, Sitka (Northern Southeast Aquaculture Association) -- A success story. Instream flow requirements were considered early in the planning process; and an extensive hydrologic data collection program was undertaken to define the virgin flow. Negotiated agreements on hatchery requirements vs instream flow needs are being arrived at cooperatively by agencies and the Association.

PUBLIC COMMENT SESSION

David Vanderbrink called the Public Comment Session to order, and invited members of the public to comment on water related issues and on the Board's activities. The following is a summary of the major points presented by the public, and is not a verbatim transcript of the testimonials received.

Ray Renshaw, President, Alaska Miner's Association, Juneau Chapter, requested the Water Board to do everything possible to address and resolve water issues affecting placer mining before the industry is wiped-out.

Del Ackels, placer miner, addressed the Board regarding proposed amendments to 18 AAC 70.020. Generally, Ackels requested review of the "acceptable" dissolved solids standards and "water supply" definitions for consistency between statutes. He also sited inconsistencies between stream classification and management. For instance, Ackels suggested that not all water be arbitrarily implied as drinkable. If water is drinkable, it should be certified and managed as such. Likewise, recreational waters should be identified and managed to accommodate recreational uses. Ackels also requested the Board use its influence to eliminate turbidity as a water quality criteria in EPA's Placer Mining Standards, and suggested that settleable solids criteria be used instead.

Phil Holdsworth, the first Commissioner of the Department of Natural Resources, pointed out that EPA is the agency enforcing water quality standards, and DEC is the agency which establishes those water quality standards. Therefore, if water quality standards are to be changed, it must be done through DEC -- not EPA.

Bob Cacy, placer miner from Circle, stated there are many arsenic and turbidity problems associated with streams in the Interior, and that all streams are set at drinking water standards, implying they are of drinking

water quality. Not only does this jeopardize public safety, but it also precludes any type of industrial use of those streams. Cacy expressed the need to change existing turbidity standards to reflect uses other than drinking water, and to identify streams having drinking water quality.

Rose Rybachek, President of the Livengood-Tolovana Mining District, said that the placer mining industry is in danger of being regulated out of existence. She urged that the State consider a basin management approach, promoting accelerated mining in certain districts and then reclaiming the mined areas and affected streams after the gold resources are extracted.

Christopher Estes, Department of Fish and Game, put in a plug for interagency cooperation on water resource data collection programs. He also stressed the importance of having the Department of Fish and Game actively involved in the Western States Water Council.

March 6, 1985

Chairman Vanderbrink called the meeting to order.

The first scheduled speaker was Bob Martin, Special Assistant to the Commissioner of DEC, who was to give opening remarks. He was unable to attend the meeting, however, due to last minute scheduling conflicts. Instead, L. A. Dutton requested that Gary Prokosch, Water Officer of the Southcentral Regional Office, give the Board an update on Southcentral Region water related operations.

Gary Prokosch briefed the Board on the activities of the Anchorage Waterways Council, a committee composed of Federal, State, local officials, and representatives of private and community organizations. The Council was formed by Mayor Knowles to address the growing water quality problems within the Anchorage Bowl. Mayor Knowles requested the Council to provide recommendations for pollution prevention and mitigation by March 31, 1985. The Council:

- Has identified and prioritized the streams within the Anchorage Bowl by current water use patterns and by susceptibility to water quality problems.
- Has recommended appropriate water quality sampling strategies.
- Is training volunteer "stream walkers" to collect water samples for water quality testing.
- Has recommended strengthening Title 21--the Municipal Planning and Zoning ordinances.
- Is advocating the designation of a Clean Water Day to promote community awareness and involvement.

Gary promised to keep the Board informed as to the final recommendations of the Council.

Randy Bayliss, Department of Environmental Conservation, discussed DEC's efforts in studying the effects of placer mining on water resources. Mr. Bayliss opened by summarizing the following:

- Proposed regulations to address the problem of two drinking water standards;

- DEC is currently involved in a turbidity review study; 3) DEC is working towards establishing an enforcement policy on priority streams;

- DEC is working on updating the Triagency application; and

- DEC will be accepting proposals for the utilization of 205J grant monies for placer mining research projects.

Also discussed were state turbidity standards which were adopted in 1972, and their impact on fish, recreation and industrial development. Bayliss stated the state's standard for placer mining is 25 NTU, which is one of the least stringent standards in the country. Reclassification of the state's waters does not promise much relief from stringent standards and may cost between $5,000-35,000 to reclassify each stream. However, the state is hoping technological improvements, placer mining demonstration grant programs, and site specific management and planning will help minimize negative impacts of mining on water resources. The EPA's proposed new effluent guidelines for placer mining are scheduled to be released in mid- April for public comment and to be finalized by April, 1986.

Don Finney, Project Manager at the Quartz Hill Project, Ketchikan, for U. S. Borax, and **John Paulsen,** Principle Engineer provided the Board with a brief history of the Quartz Hill Project and an overview of environmental studies done to date. When the mine is in full operation, it will produce 80,000 tons of ore per day and be operated 365 days per year, 24 hours a day. A work force of about 800 people will be required. These will be housed in Ketchikan. The expected lifetime of the mine is about 55 years.

There have been three major logistical hurdles in developing the deposit:

1. Power supply: Currently, the favored power option is an intertie to British Columbia hydropower projects. U. S. Borax and APA are exploring the idea of bringing in power to Quartz Hill, Ketchikan, Petersburg, Wrangell, Juneau, and perhaps Whitehorse.

2. Waste Disposal: The mining operation will produce an open pit approximately 1 1/2 mile long, 1 mile wide, and from several hundred to about 3600 feet deep. Waste rock will be disposed of in two nearby drainages. Settling ponds will be utilized to treat runoff from tailing piles and groundwater pumped from the pit. Ore will be conveyed through a four mile tunnel to a concentrator plant. Mine tailings will be disposed of either in Boca de Quadra Fjord or in Wilson Arm. Studies are ongoing to:

   - Determine the volume of tailings
   - Determine the impact of tailings disposal on biological resources
   - Run computer simulations of tailings behavior
   - Complete oceanographic surveys of the proposed disposal sites

   Reclamation of the site folowing closure of the mine will include revegetating the tailings piles and allowing the pit to fill with water forming a lake.

3. Water Supply: The water requirement for the mine when it is in full operation will be 30,000 gpd. Some of this water can be recycled, reducing the demand to 17,000 gpd. Several water supply options are being investigated. Currently the favored options include construction of a water supply reservoir on Tunnel Creek and supplementing this with a well field on Wilson River.

An instream flow study has been conducted by the U.S. Fish and Wildlife service under the auspices of the U.S. Forest Service to determine the impact of the well field (infiltration gallery) on salmon incubation in Wilson River. A report summarizing the results of U.S. Borax's water supply studies will be available in April. The Board requested that copies of the report be provided to them through L. A. Dutton.

Ned Farquhar, Special Assistant to the Commissioner of the Department of Natural Resources, spoke for Neil Johannsen on HB 93, the proposed Recreational Rivers Bill. Passage of the Bill will enable special management of rivers having high recreational values by creating a statewide recreational river system. The intent of the Bill is to retain specified rivers and their corridors in public ownership so they can be managed primarily for the protection and maintenance of fish and wildlife habitat and recreational values. Other compatible consumptive resource uses such as timber harvesting, sand and gravel extraction, and provisional access are also allowed under HB 93 -- providing such consumptive uses are compatible with the intent to protect fish and wildlife, water resources, and recreational values.

HB 93 is currently being revised to accommodate objections from the Matanuska-Susitna Borough regarding the inclusion of priority rivers as part of the state park system. In response, Governor Sheffield has agreed to dedicate the rivers under the management authority of the Division of Land and Water Management. Under the proposed special management system, the following policies will apply.

- No land disposals or future mineral entry will be allowed within the designated river corridors; (Note: Directional drilling may be permitted from outside the river corridors.)

- The state must quantify and apply for minimum instream flow reservations necessary to maintain the management intent of the designated rivers.

The original bill includes specific management proposals identified through the Susitna Area Plan:

- Legislative designation of the following rivers to be managed as part of the Recreation River System:

  Lake Creek
  Little Susitna
  Talachulitna
  Talkeetna
  Moose Creek
  Kroto Creek

- The proposed legislative designation includes a mile wide corridor along the identified streams which encompasses a total of 220,000 acres of state owned land.

- The Matanuska-Susitna Borough has agreed to dedicate Borough owned lands lying within the specified corridors to management similar to that outlined in HB 93.

Liz Baron, Natural Resources Officer, Division of Land and Water Management, presented the Water Management Section's approach to developing a comprehensive water management program which encourages the consideration of water resources in land use planning and decision making processes.

The approach outlined calls for improving inter-agency coordination, and focusing existing water inventories and planning efforts to better assist state and local governments in water resource planning and management decisions.

The proposed comprehensive water management program consists of three parts:

1) Data collection - prioritizing and coordinating federal/state water resource inventories to provide state and local governments with information necessary for wise resource management decisions;

2) Data integration - organizing and managing collected data in a format which is readily available for analysis and integration into the decision making processes;

3) Planning Processes - participating in planning efforts to ensure consideration of water resources in land planning and water management decisions.

Liz summarized how each phase can be implemented through Water Management's participation in existing state, federal, and local government programs. Such an approach directly addresses the Board's Resolution 85-7 which requests the Water Management Section to:

1) Develop a program to establish regular contact with planning staffs and planning and zoning commissions of Alaskan cities.

2) "Sell" its water data system and structure special studies so that they will be most timely and useful to the local decision makers.

Bill Long and Larry Dearborn, Division of Geological and Geophysical Surveys, gave a joint presentation. Bill started by pointing out that a reoccurring theme in the presentation to the Board during this meeting has been the need for data. He then gave the Board an update on the status of the Aware Plan. He attributes the cost effectiveness of DGGS programs to:

- Use of computer modeling,
- Use of state-of-the-art data pod technology,
- Cost sharing with Federal agencies,
- Efficiency and effectiveness of DGGS personnel.

He suggested that the Board should pass a resolution to the Governor emphasizing the importance of water management and data collection and urging that funding for these programs not be cut.

Larry Dearborn then gave the Board an update on the investigation of salt water intrusion at Auke Bay. Cooperative investigations with the U.S.G.S. were started in 1979, and two areas of salt water intrusion were identified. On the basis of these studies, DNR's Southeast Regional Office (SERO) began limiting the number of water rights permits issued in the troubled areas. In 1983, Auke Bay developers challenged SERO's authority to limit permits saying they didn't have sufficient data to support taking that stand. At SERO's request, DGGS started an update of the Auke Bay studies. Their objectives were to:

- Add to the data base,
- Determine well locations accurately,
- Visit key wells and run water quality tests,
- Collect water level data from wells throughout the area,
- Interpret the data to determine how much saltwater intrusion has taken place, where it's taken place, and where to expect future problems.

On the basis of these studies, DGGS has been able to make recommendations to DNR water managers concerning the potential for salt water intrusion with continued water extraction in the area. These studies are ongoing.

Larry then provided the Board with a summary of one specific study in the area--Indian Cove. The water table in the area has experienced approximately 100 feet of decline since settlement. DGGS has concluded that its bedrock aquifer is highly susceptible to salt water intrusion.

March 7, 1985

WORK SESSION

Resolutions: The Board drafted and passed the following resolutions:

- 85-09 - EPA National Placer Mining Standards
- 85-10 - Clean Water Act Field Laboratory
- 85-11 - Administration of Water Appropriation Permits and Instream Flow Application
- 85-12 - Recreational Rivers Bill: HB 93
- 85-13 - Water Management Staffing
- 85-14 - Dam Safety: SB 95
- 85-15 - Alaska Water Resources Board Funding

Letters: The Water Resources Board prepared two letters -- one proposing amendments to SB 150, and one requesting that the Office of the Governor urge the active involvement of the Alaska Departments of Natural Resources, Environmental Conservation, Law, and Fish and Game in the Western States Water Council.

Elections: Dave Vanderbrink's term as Chairman expired, and Randy Wanamaker was unanimously elected as Chairman, and Dave Vanderbrink as Vice Chairman.

Bylaws: The existing bylaws were adopted with an amendment of Paragraph 3 which now stipulates that a reasonable attempt must be made to reach each Board member when a meeting of the Board is to be held by means of telecommunications.

MEETING WITH GOVERNOR SHEFFIELD

Governor Sheffield met with the Board and discussed three issues: 1) Western States Water Council representation; 2) EPA placer mining standards; and 3) stream reclassification. Dave Vanderbrink opened the meeting by stating the importance of Alaska's continued involvement with the Western States Water Council, and requested a permanent representative be appointed to attend meetings. Tom Meacham raised the issue of the inconsistency between the EPA placer mining standards currently being developed and existing state placer mining regulations. The Board expressed the need for all concerned state agencies to review and prepare a unified response to EPA regarding the proposed placer mining regulations. The closing issue discussed was stream reclassification of those streams classified as drinking water quality. Several Board members expressed a concern that natural resource development may be pre-empted due to the minimum quality standards. Sheffield acknowledged the Board's concerns by siting an ongoing study which is evaluating water quality standards; and sited water availability with regard to land disposals and community expansion as a water management issue also needing attention.

March 8, 1985

SENATE RESOURCES COMMITTEE MEETING

Arliss Sturgulewski, Chairwoman of the Senate Resources Committee, called the meeting to order. **Esther Wunnicke,** Commissioner of the Department of Natural Resources, introduced **Randy Wanamaker,** Chairman of the Alaska Water Resources Board, who presented a brief summary of the issues addressed at the March Water Board Meeting. Arliss Sturgulewski requested copies of the resolutions drafted by the Water Resources Board; and asked the Board to respond to SB 95. Wanamaker indicated that DNR will propose regulations intended to minimize the potential impacts of SB 95 on mining operations. **Bettye Fahrenkamp,** Vice Chairwoman of the Senate Resources Committee, expressed concern over state vs federal jurisdiction over dam safety regulations; and if DNR could handle the work load of dam safety inspection under current budget cuts. **Peg Tileston,** Water Resources Board member, explained SB 95 provides legislature authorization of the existing dam safety program which is presently funded. **Larry Dutton,** Section Chief, Water Management Section, DNR, emphasized the cost savings incurred by DNR prioritizing and conducting dam safety inspections as compared to average inspection costs of dams nationwide. (DNR spends approximately $7,000, on the average, for each dam inspection vs $10,000/dam average inspection costs for other states.)

Randy Wanamaker and **Stan Rybachek,** Water Resources Board member, briefly addressed water policy and the effects on placer mining. Mr. Wanamaker suggested stream reclassification may help resolve mining and water quality conflicts by establishing water quality standards which accommodates acceptable levels of mining activity. Mr. Rybachek referenced the upcoming Seventh Annual Conference on Alaskan Placer Mining to be held March 27-30, 1985, in Fairbanks which may address revision of the state's water quality

standards. **Peg Tileston** testified to the Resources Committee that EPA is "rule making" for national placer mining standards which will affect Alaska more than any other state. Ms. Tileston sited a recent Water Board Resolution which calls for a unified, multi-agency response to EPA proposed standards. **Senator Sturgulewski** stated her staff will submit a resolution to the Resources Committee regarding EPA proposed standards. Ms. Tileston indicated the regulations are scheduled to be available for review mid April, and public comment will be solicited April 25th. **Senator Coghill** suggested there be a public hearing prior to April 25th.

Senator Sturgulewski requested comment from the Water Resources Board regarding the proposed Recreational Rivers Bill. **Dave Vanderbrink,** Water Board Vice Chairman, stated the clause addressing control of firearms and public safety is vague and may be subject to abuse; but Resolution 85-12 adopted by the Water Resources Board supports HB 93 which establishes a system of state recreational rivers. Mr. Vanderbrink also testified in support of Alaska's membership and participation in the Western States Water Council. Esther Wunnicke announced that Alaska is hosting the next Western States Water Council in Anchorage, July 18-19; and requested members of the Committee to participate.

Note: For purposes of clarity, the summary discussion below regarding SB 150 amendments to the Alaska Water Use Act (AS 46.15) is organized by issue.

SB 150

Issue 1 - Cost of Implementation:

Sen. Sturgulewski: Although there's a zero fiscal note associated with SB 150, its adoption will require funding for data collection and enforcement. Do we want this?

Ned Farquhar, Special Assistant to the Commissioner of the Department of Natural Resuorces: SB 150 is a mechanism which would not be used much; and when adjudication is necessary, a cost savings from litigation in a state court vs federal will be realized.

Issue 2 - Authority of Determining Water Rights Abandonment - Sec. 3:

Sen. Fahrenkamp: Sec. 3 may grant DNR's Commissioner too much authority in determining abandonment of water rights.

Ned Farquhar: This authority enables reduction of water appropriations when necessary, at the administrative level.

Issue 3 - Revocation of Water Permits

Sen. Fahrenkamp: Need to assure water right holders have time to use (develop) water rights. Need to modify the bill so it can not revoke an individual's water rights as a result of project or permitting delay.

Dutton: The 4th line reads, ". . . with the intention to abandon." This means, if the individual intends to use the water, but economic or permitting circumstances have precluded its use, the water right will not be revoked. But, if the appropriator is not using water, DNR must have a mechanism to revoke.

Farquhar: DNR will work with Fahrenkamp's staff to insure that delays occurring which are out of the appropriator's control will not result in a loss of appropriation.

Issue 4 - DNR's Authority to Remove Unsafe/Unpermitted Works of Apprioriation, Section (b)

Sen. Sturgulewski: Sec. (b) provides DNR with enforcement responsibility. Why was such a broad approach taken re: DNR's authority; does DNR need this much? We need clarification.

Dutton: DNR needs authority to remove unsafe and unpermitted structures to ensure public safety. "We will research."

Issue 5 - Intent of Providing Water Rights - Section 1

Sen. Fahrenkamp: Is Section 1 of SB 150 necessary if the state cannot guarantee water quality or quantity in its appropriation process?

Ned Farquhar: The state isn't knowingly over appropriating water rights in areas of proven water shortge. The state is obligated to issue rights, but ...

Sen. Halford: What protection does the user have if state over appropriates his water source?

Dutton: Issuance of water rights grants the appropriator the right to defend his water right from junior appropriators based on a priority date. The state cannot guarantee the quantity or quality of water due to insufficient data.

Issue 6 - Alaska Water Resources Board Proposed SB 150 Amendments

Mike Neimeyer, Water Resources Board member, testified to the Committee regarding proposed amendments to SB 150. Generally, the Water Board supports the intent of SB 150, but has drafted specific amendments addressing notice requirements and water appropriation abandonment. (Please refer to the enclosed memo written to Arliss Sturgulewski, March 1985, for specific amendments.)

Issue 7 - Placer Mining: Proposed SB 150 Amendments

Rose Rybachek, President of the Livengood-Tolovana Mining District, briefly presented amendments to Sections 2 and 5; and indicated the need for procedure for the court to validate adjudications under Article 8. Details of the proposed amendments will be worked on by Senator Sturgulewski's staff and Ms. Rybachek.

The Senate Resources Committee meeting closed with testimony from **Phil Holdsworth** and **Stan Rybachek** clarifying SB 150 regarding the following points: 1) Section 1 addresses subsurface water, not open flow water; 2) SB 150 calls for establishing a mechanism whereby federal reserved water rights may be adjudicated in state court; and does not deal with resolving non-federal appropriation conflicts between senior and junior appropriators.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

POUCH 7-005
ANCHORAGE, ALASKA 99510-7005
PHONE: (907) 561-2020

December 20, 1985

The Honorable Arliss Sturgulewski
Alaska State Senate
2957 Sheldon Jackson Street
Anchorage, AK 99508

Re: CSSB 95, Dam Safety

Dear Senator Sturgulewski:

? JAN 22

Recently we had the opportunity to discuss CSSB 95 and SB 150 with Senator Halford. Below we have addressed his concerns with the Resource Committee Substitute for SB 95. Due to our desire to completely respond to Senator Halford's concerns with SB 150, we will be sending you a similar letter on SB 150 in the near future when we have all the necessary information.

We propose the following changes in CSSB 95:

Section 46.17.040 - Delete the subsection (b) in its entirety and renumber (c) to (b) and (d) to (c). The concern which prompted subsection (b) will be covered in the revised definition of a "dam," Section 46.17.900(3).

Section 46.17.050 - Delete the second sentence in its entirety and substitute "The commissioner may inspect a dam or reservoir more frequently than every five years to protect public safety."

Section 46.17.060 - Delete the first sentence in its entirety and substitute:

> In taking an action under this chapter, the commissioner, after giving two weeks written notice and being refused the right of entry, may seek a search warrant to allow inspection of the dam or reservoir. The commissioner, after being refused inspection of drawings, operational records, or other information concerning a dam or reservoir may seek an administrative subpoena compelling production of the drawings, operational records or other information.

Leave the last sentence unchanged.

Section 46.17.120 - Senator Halford expressed concern that while this section appeared to provide ample protection for the state, it doesn't leave much recourse for a dam owner to seek remedy in the courts in the event a negligent action or inaction on the part of the state causes the dam owner to suffer unnecessary or unreasonable damages.

In researching Senator Halford's concern regarding the state being held liable for some of its actions in dam safety work, we contacted James Doody, Chief, Division of the Safety of Dams, State of California. The language in this section was essentially taken from the United States Committee on Large Dams Model State Dam Safety Law, which was taken from the California Dam Safety Law. Mr. Doody stated that by virtue of the type of work dam safety is, such language and sovereign immunity is necessary to avoid inviting legal actions against the state. Further, such language is required to protect dam safety employees from personal liability.

One must recognize that the state is acting in the interest of the public placed at risk below a dam. The public may not be deriving any beiefit from the dam, and on the contrary, a hazard exists by virtue of their being placed at risk. The only reason the state would ever take control of a dam or order the owner to breach a dam would be that an imminent danger existed to the public. The imminent danger would be the fault of the owner, either through action or inaction. Suggesting that the burden be shifted to the state in the case of imminent danger relieves the owner of his due responsibility and will cause any agency or state employee to be reluctant to take drastic action for the greater public good. One cannot reasonably expect the state be treated as an individual under law when it is acting in its best judgment to protect the public from a hazard (the presence of a dam) created by a dam owner for the owner's benefit.

We share Senator Halford's concern with this section, and if the section can be worded in some way that provides essential protection to the state and its employees and at the same time provides reasonable protection for dam owners from negligent state actions, the bill would be greatly improved. Possibly you will want to have the Department of Law or Legislature's attorneys review this section to see if other wording is practical.

Section 46.17.120 should remain unchanged, unless acceptable alternative wording can be developed.

Section 46.17.900(3) - Delete the sentence in its entirety and substitute:

> dam means any artificial barrier and appurtenant works which may impound or divert water and (A) that has or will have an impounding capacity at maximum water storage elevation of 50 acre-feet and is at least 10 feet in height measured from the lowest point at either toe of the dam to the crest of the dam or (B) that is at least 20 feet in height measured from the lowest point at either toe of the dam to the crest of the dam or (C) that the commissioner has made a positive determination that the dam poses a threat to lives and property.

Senator Halford's comments were very useful, and with the exception of Section 46.17.120 we have incorporated them in the new language we have suggested. Due to the critical need for this legislation, we urge your continued support of this important public safety measure.

Comments on SB 150 will be forwarded to you when our information is complete.

Sincerely,

Tom Hawkins
Director

cc: Senator Faiks
Senator Sackett
Senator Rodey
Senator Halford
Commissioner Wunnicke

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

March 19, 1985

Honorable Richard Shultz, Co-Chair
House Resources Committee
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Re: SB 150, Thomas E. Meacham's March 12, 1985 letter

Dear Representative Shultz:

The Department of Natural Resources fully endorses all of the suggestions in the subject letter without exception.

Referring to Section 3 of SB 150 and the proposed amendment to AS 46.15.140(d) on Pg. 2, Mr. Meacham offered alternative wording (see Pg. 3 of his letter). This particular subsection was discussed at some length at the recent Water Resources Board meeting. It was felt that the original intent of this section was to prevent state agencies from abandoning instream-flow reservations and thus the Board recommended that the subsection, in its present form, should be deleted from Section 46.15.140(d) and to be reinserted as Section 46.15.145(g). We now realize that, while our original intent with this subsection was to protect the public interest in instream flow reservations, many other forms of agency and municipal appropriations, e.g., public water supply, provide a direct public benefit. Therefore, we now agree that Mr. Meacham's alternative proposal to leave the subsection in 46.15.140(d) and covering municipal governments through use of the wording or similar wording to that in Mr. Meacham's suggestion is the better way to deal with this section and will best serve the public interest.

We believe the other amendments to the bill proposed by Mr. Meacham in his letter are excellent and their incorporation will greatly improve this proposed legislation.

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Commissioner

cc: Tom Meacham
Tom Hawkins
Mike Frank
L. A. Dutton
Water Resources Board

10-J9 LH

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907 465-2400

JAN 13 1986

January 9, 1986

The Honorable Arliss Sturgulewski
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 150, Basin Wide Adjudication of Water Rights

Dear Senator Sturgulewski:

Recently we had the opportunity to discuss Senate Bill 150 with Senator Halford and state and federal agency representatives that participate in the Federal Reserved Water Rights Work Group chaired by DNR. Based on these discussions, we are proposing the following amendments to SB 150 to address concerns of Senator Halford and the resource management agencies:

Section 46.15.140

Amendment: Subsection (a) of proposed AS 46.15.140 should be rewritten as follows: "The commissioner may declare an appropriation to be wholly or partially abandoned and revoke or amend the certificate of appropriation as to the unused quantity of water if an appropriator, with intention to abandon, does not make beneficial use of all or a part of the appropriated water."

Rationale: This change makes it clearer that, if necessary, part of an appropriation may be revoked for non-use, and the certificate amended to allow continued use of the quantity of water that is still being used.

Proposed by: Senator Rick Halford

0-J9 LH

Amendment: Delete "a certificate of," and substitute "an" in subsection (d) of AS 46.15.140.

Rationale: This change will delete the reference to "certificate of appropriation" and refer only to an appropriation, which by definition [AS 46.15.260(2)] includes reservations of water for instream uses among appropriative water rights. Since instream flow and other reservations are issued with a "Certificate of Reservation," this amendment eliminates an ambiguity which could be interpreted to preclude application of this section to a reservation of water for instream use.

Proposed by: Federal Reserved Water Rights (FRWR) Work Group

Amendment: Move proposed subsection (d) of AS 46.15.140 to become a new subsection (g) of AS 46.15.145. Re-letter subsection "e" as "d".

Rationale: It was agreed that subsection (d) would be more appropriately moved to become a new subsection (g) of AS 46.15.145. The point of this new subsection is to insure that a state agency does not walk away from a reservation of water for instream use without public notice. Through the public notice, potential water users are made aware that water is now available for consumptive beneficial uses. In addition, the members of the public interested in preserving a reservation of water for instream use would have an opportunity to comment in advance.

Proposed by: Senator Rick Halford

Section 46.15.165

Amendment: Add a new subsection (d) "Service of an order under subsection (c) is not an admission by the State of Alaska that the person served with the order has a water right." Reletter the following subsections.

Rationale: This will make it clear that the State's notice to any person of an administrative adjudication is not a representation that the person holds a water right.

Proposed by: FRWR Work Group

Amendment: In Section 46.15.165(e), delete the sentence "The master may be an employee of the state" and substitute "Employment by a federal, state, or local governmental agency does not disqualify a person from being appointed a master under this subsection if in the opinion of the commissioner the person is otherwise impartial and qualified to act as a master."

Rationale: This broadens the pool of possible masters, and helps ensure that any master the commissioner appoints is both impartial and qualified.

Proposed by: FRWR Work Group

Amendment: Move the following sentence, "Any state agency may assert a water right on behalf of the state in the adjudication," from Section 46.15.165(f) to a new subsection (e) and reletter the following subsections.

Rationale: This sentence appears to be out of place and is clearer and more logically placed as a new subsection (e).

Proposed by: FRWR Work Group

Amendment: In subsection (i), change the word "shall" to the word "may."

Rationale: Allows the Commissioner discretion to take this action.

Proposed by: FRWR Work Group

Section 46.15.166

Amendment: In Section 46.15.166(c), delete the word "initially." Delete the phrase "a designee of the Commissioner as" and substitute the phrase "an impartial qualified person as."

Rationale: "Initially" is an unnecessary word. Changing the phrase allows the court to appoint a person of its choice as master, rather than being limited by the Commissioner, and requires that the appointed master be impartial.

Proposed by: FRWR Work Group

Amendment: Also in subsection (c), delete the sentence "the master may be an employee of the state" and substitute "Employment by a federal, state, or local governmental agency does not disqualify a person from being appointed a master under this subsection if in the opinion of the court the person is otherwise impartial and qualified to act as master."

Rationale: This broadens the pool of possible masters, and requires that any master is both impartial and qualified.

Proposed by: FRWR Work Group

Section 46.15.168

Amendment: In Section 46.15.168(c), delete the words "with a private person or the federal government."

Rationale: That arbitration is entered into with a person is understood and "person" is already defined in AS 46.15.260(8) and includes private persons and the federal government; therefore, these words are redundent and unncessary.

Proposed by: FRWR Work Group

Amendment: In subsection (d) of Section 46.15.168, delete the word "federal."

Rationale: This will broaden the phrase to include both federal and state court decrees.

Proposed by: FRWR Work Group

Section 46.15.169

Amendment: Rewrite this section as follows: "Nothing in AS 46.15 represents a commitment by the State of Alaska to any specific federal reserved water right."

Rationale: Federal agencies have commented that the wording in proposed Section 46.15.169 suggests that the State of Alaska believes that federal reserved water rights do not exist. The new proposed language clarifies the meaning that the state has made no commitment to any federal reserved water rights for any specific federal land reservations.

Proposed by: FRWR Work Group

Section 46.15.256

Amendment: In Section 46.15.256(3), change "an" to "a", delete "administrative", and after the word "subpoena" add "or subpoena duces tecum."

Rationale: This will make the language concerning subpoenas consistent with other state agencies' statutes.

Proposed by: Assistant Attorney General Mike Frank

Senator Halford's comments along with those of the state and federal resource agencies are very useful and we support these proposed changes. Due to the critical need for this legislation, we urge your continued support for this bill.

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Commissioner

cc: Senator Jan Faiks
Senator Jim Sackett
Senator Pat Rodey
Senator Rick Halford
House Resources Committee
Molly McCammon
Jim Ayers

THE *WINTERS* OF OUR DISCONTENT: FEDERAL RESERVED WATER RIGHTS IN THE WESTERN STATES

INTRODUCTION

Water is the life-blood of the American West. Like other people, westerners need water for basic human sustenance and for a variety of other purposes. But unlike most other Americans, westerners must fill their needs from an extremely limited supply of water.[1] As a result, westerners face a problem that may seem incomprehensible to nonwesterners who live in areas with abundant water supplies: they must decide how to allocate the limited quantity of available water among all the users and uses.

To deal with this problem, the western states[2] developed the doctrine of prior appropriation as a basic scheme for allocating the available surface water among various users.[3] This prior appropriation system, based on continued beneficial use of appropriated water and strict quantification of the rights of users,[4] insists that water may not be wasted or go unused. In the land-rich and water-poor West, any other system would probably be wasteful and inefficient.[5]

Through application of the prior appropriation doctrine, the western states seek to apportion their limited water resources in a fair and

---

[1] The United States Water Resources Council's Second National Water Assessment graphically illustrates the critical water shortage in the western states. For example, in 1975, the Rio Grande water resources region showed 78% present streamflow depletion from all demands, and the Lower Colorado region showed 82% depletion. 2 WATER RESOURCES COUNCIL, THE NATION'S WATER RESOURCES: 1975-2000 (pt. 4), at 48 (1978). The Water Resources Council projects that 91% of the surface water in the Rio Grande region will be in use by 1985. More dramatically, the council predicts that the surface water supply in the Lower Colorado region will be overdrawn by 26% in 1985. The council summarized its concern over western water supply:

> Competing offstream uses of water for energy, agricultural, domestic, and industrial needs coupled with associated environmental and instream flow uses have resulted in basinwide and local problems throughout the United States . . . . The problem of inadequate surface-water supply is or will be severe by the year 2000 in 17 [water resources] subregions located mainly in the Midwest and Southwest.

1 WATER RESOURCES COUNCIL, THE NATION'S WATER RESOURCES: 1975-2000, at 56 (1978). For additional discussion of the water shortage in the western states, see generally NATIONAL WATER COMMISSION, WATER POLICIES FOR THE FUTURE (1973).

[2] The "western" states referred to in this Note are: Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

[3] *See infra* note 11 and accompanying text.

[4] *See infra* notes 11-18 and accompanying text.

[5] *See infra* note 14 and accompanying text.

rational way. The prior appropriation doctrine conflicts, however, with the doctrine of federal reserved water rights, which the United States Supreme Court announced in *Winters v. United States*.[6] The *Winters* doctrine provides that in reserving public land for a federal enclave such as an Indian reservation, national forest, or military reservation, the federal government also implicitly reserves a sufficient quantity of water to carry out the purpose of the reservation of land.[7] Federal reserved rights exist independently of beneficial use or quantification; they are therefore fundamentally different in character from rights established by prior appropriation.

From 1908 through the 1970s, the Supreme Court expanded the scope of the *Winters* doctrine of federal reserved rights, thereby aggravating the inherent conflict between appropriative rights and reserved rights.[8] More recently, however, the Court has attempted to ease the conflict by narrowly defining the *Winters* doctrine's scope.[9] Both reserved rights and prior appropriation serve important purposes, and therefore both doctrines, and their conflict, will persist.[10] By strictly defining federal reserved rights to make them mesh as smoothly as possible with the water law systems of the various states, the Court's well-directed efforts to harmonize the two doctrines can ease the tension between the *Winters* doctrine and the prior appropriation doctrine.

I
BACKGROUND

A. Water Rights in the Western States: The Doctrine of Prior Appropriation

The doctrine of prior appropriation provides the basic framework for the statutory water use schemes of the western states.[11] A complete understanding of the conflict between the federal reserved rights doc-

---

6 207 U.S. 564 (1908).

7 *See infra* notes 23-25 and accompanying text.

8 *See infra* notes 20-57 and accompanying text.

9 *See infra* notes 58-96 and accompanying text.

10 *See infra* note 122 and accompanying text.

11 The western states can be divided into two doctrinal categories: the Colorado doctrine states and the California doctrine states. The nine Colorado doctrine states (Alaska, Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming) recognize only appropriative rights to surface water. 5 R. CLARK, WATERS AND WATER RIGHTS § 405, at 50 (1972). The nine California doctrine states (California, Kansas, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, and Washington) recognize some riparian rights as well as appropriative rights to surface water. *Id.* § 420, at 232.

The statutory water law systems in the West vary considerably from state to state. A detailed examination of these different systems is beyond the scope of this Note. For a thorough comparative discussion, see *id.* §§ 400-33.

For a basic discussion of the riparian system, see 7 R. CLARK, WATERS AND WATER RIGHTS § 610, at 28 (1976).

trine and prior appropriation necessitates some acquaintance with the workings of prior appropriation systems.

The foundation of the prior appropriation doctrine is its requirement of beneficial use.[12] A user acquires an appropriative right by putting the water he claims to some beneficial use. Moreover, he loses his right if he does not continue to use his appropriated water beneficially.[13] In this respect, the appropriative rights system differs strikingly from the English common law riparian system generally employed in the eastern states. Riparian rights accrue to an owner of land adjoining a stream merely by virtue of his property ownership and thus exist independently of any use at all.[14]

Prior appropriation works by strict chronological priority. A senior appropriator, whose priority date[15] is earlier in time, may take his entire entitlement of water before a junior holder may take any water at all. In this priority system, junior holders bear the entire brunt of any shortage.[16]

All appropriative rights are determined by means of an *in rem* proceeding called a water adjudication,[17] which determines the priority

---

12 Mining, irrigation, industrial power production, and sanitary and municipal uses are generally recognized as "beneficial." Ranquist, *The* Winters *Doctrine and How It Grew: Federal Reservation of Rights to the Use of Water,* 1975 B.Y.U. L. REV. 639, 646 n.21.

Because appropriative rights accrue by virtue of beneficial use, they need not be appurtenant to land. *Id.* Ownership of land adjoining a stream is not considered a basis for an appropriative right. *Id.* Water obtained by appropriation may generally be used at any place, regardless of its distance from the stream, so long as the use is beneficial. *Id.*

All of the western states except Montana and Colorado impose the additional statutory requirement that the appropriator must obtain a permit from the proper state administrator before he may acquire an appropriative right. *See, e.g.,* WYO. STAT. §§ 41-4-501 to -516 (1977). For an extended discussion of these permit schemes, see 5 R. CLARK, *supra* note 11, § 409, at 99-107.

13 5 R. CLARK, *supra* note 11, §§ 413.1, 429.2.

14 The riparian system would be inappropriate as the *primary* means of allocating available water resources in the West because riparian rights do not depend on beneficial use of the water, and the West can ill afford the luxury of owned but unused stream flow. Riparian law evolved in England, where water is plentiful. The English (and the Americans living in the water-rich East) had no incentive to develop a more thrifty and efficient water use scheme. *See* McGowen, *The Development of Political Institutions on the Public Domain,* 11 WYO. L.J. 1, 14 (1956).

15 The priority date of a holder's right is usually the date on which the holder initially diverted the water. Although such an appropriation is not technically "complete" until the appropriator actually puts the water to some beneficial use, the relation back doctrine provides that if he completes the appropriation with due diligence, the appropriator's priority date is the date of the initial act of diversion. *See, e.g.,* COLO. REV. STAT. § 37-92-305(1) (1973); *see also* Ellis, *Water Rights: What They Are and How They Are Created,* 13 ROCKY MTN. MIN. L. INST. 451, 458-59 (1967); Comment, *Determining Priority of Federal Reserved Rights,* 48 COLO. L. REV. 547, 551 (1977).

16 Ranquist, *supra* note 12, at 646 n.21.

17 The western states are again split into two groups. The Colorado system, employed only by Colorado and Montana, leaves the entire process of adjudication to the courts. An appropriative claimant files a petition in state court, and all other owners or claimants are served with notice as required by statute. *See, e.g.,* COLO. REV. STAT. § 37-92-302 (1973 &

rights of the appropriators participating in the hearing as against the entire world. A water adjudication strictly quantifies a holder's rights and limits his entitlement to his original appropriation, unless he either claims further amounts of unappropriated water or purchases the rights of another appropriator.[18]

Principles of strict quantification and rigid control underlie the prior appropriation systems employed by the western states. Federal reserved water rights, on the other hand, are usually awarded without quantification and may exist independent of any use. Thus, when federal reserved rights are imposed upon these appropriative water use schemes, fundamental incongruities appear.[19]

B. The Development of the *Winters* Doctrine of Federal Reserved Rights

1. *Expansion of the Reserved Rights Doctrine: From* Winters *to* Cappaert

From 1908 through the 1970s, the United States Supreme Court steadily expanded the scope of the *Winters* doctrine of federal reserved water rights.[20] By nature, federal reserved rights differ fundamentally from appropriative rights established under state law.[21] The Court's expansive application of the reserved rights doctrine during this period aggravated this inherent conflict between the two types of water rights.[22]

The Supreme Court first announced the doctrine of federal reserved water rights in the 1908 case of *Winters v. United States.*[23] In 1888, one year before Congress admitted Montana to the Union, it established by treaty the Fort Belknap Indian Reservation in the Montana Territory. Winters and others sought to dam the Milk River, which flows

---

Supp. 1983). Each participant is responsible for producing his own evidence at trial to protect or establish his water right. Ellis, *supra* note 15, at 462.

The other states, which employ permit systems, *see supra* note 12, use the New Mexico system of adjudication. This system also involves the courts, but the state engineer's office makes an initial determination of fact as to the rights of the parties. *See, e.g.,* ARIZ. REV. STAT. ANN. § 45-257 (Supp. 1983). This determination is then subject to challenge by the parties at the adjudication. Ellis, *supra* note 15, at 462.

18 Only a small amount of unappropriated water remains in the West. Many streams are overappropriated, which means that the aggregate quantity of all the water rights claimed from the stream exceeds the actual stream flow. *See supra* note 1 and accompanying text; Comment, *supra* note 15, at 551 n.26. Junior holders unable to draw water must wait until stream flow increases or until senior holders relinquish their rights. *See id.* at 551-52 & n.26.

19 *See infra* notes 102-15 and accompanying text.

20 *See infra* notes 23-57 and accompanying text.

21 *See infra* notes 102-15 and accompanying text.

22 *See infra* notes 116-20 and accompanying text.

23 207 U.S. 564 (1908).

through the Fort Belknap reservation.[24] The Court recognized the conflicting inferences arising from the treaty's silence as to the Indians' water rights; nonetheless, the Court held that the treaty had *implicitly* reserved a sufficient quantity of water for the Indians to irrigate their land.[25]

In *Federal Power Commission v. Oregon (Pelton Dam),*[26] to the astonishment of western water lawyers,[27] the Court indicated that the *Winters* doctrine might extend to non-Indian federal lands.[28] In *Pelton Dam,* the Federal Power Commission issued a license to the Northwest Power Supply Company, allowing it to build the Pelton Dam on the Deschutes River in Oregon. One terminus of the dam was to be on federal Indian land, and the other terminus was to be on federal non-Indian land.[29] The state of Oregon argued that under the Desert Land Act of 1877,[30] which requires the federal government to obtain water rights for federal lands in accordance with state law,[31] the state must give its consent before the dam could be built.[32] The Court distinguished between *public* lands, which belong to the federal government because no one has yet claimed them, and *reserved* lands, which the federal government has withdrawn from the public realm and which are no longer subject to private appropriation or disposal.[33] The Court then held that the Desert Land Act of 1877 applied only to *public* lands, and not to *reserved* lands.[34] Therefore, the sponsors of the Pelton Dam project did not need the permission of the state of Oregon to build the dam.[35] The Court

---

24 *Id.* at 565.

25 *Id.* at 576-77. The Court declared that "[t]he power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. . . . That the Government did reserve them we have decided, and for a use which would be necessarily continued through years." *Id.* at 577 (citations omitted). The Court also held that Montana's subsequent admission to the Union had no effect on the treaty's implicit reservation of water. *Id.*

26 349 U.S. 435 (1955).

27 *See, e.g.,* Trelease, *Federal Reserved Water Rights Since PLLRC,* 54 DEN. L.J. 473 (1977). Professor Trelease was a practicing water lawyer when the Court decided *Pelton Dam* and his comments indicate the general chaos caused by the decision:

> At no time prior to 1955 did I ever hear a suggestion that the reserved rights doctrine was anything but a special quirk of Indian water law.
>
> . . . .
>
> This case was a real bombshell, and it certainly lit a fire under western water lawyers. . . . [A] number of western state water officials and others raised a chorus of protest at this reversal of what they had always thought to be the law.

Id. at 475-77 (footnotes omitted).

28 *Pelton Dam,* 349 U.S. at 448.

29 *Id.* at 437-38.

30 43 U.S.C. §§ 321-39 (1976).

31 *Pelton Dam,* 349 U.S. at 448.

32 *Id.* at 446-47.

33 *Id.* at 443-44.

34 *Id.* at 446-48.

35 *Id.* at 452.

thus implied that federal reserved lands, both Indian and non-Indian, are not subject to state water law.[36]

The Court explicitly extended the *Winters* doctrine to non-Indian federal reservations in *Arizona v. California* (*Arizona I*).[37] *Arizona I* began as a dispute among several western states over each state's share of the waters of the Colorado River.[38] The United States intervened to protect its claims to water for five Indian reservations and several wildlife refuges, recreational areas, and national forests.[39] Writing for the Court, Justice Black declared that the federal government, through Congress and the executive,[40] had implicitly reserved a sufficient quantity of water to accommodate the purposes of the Indian reservations and the non-Indian federal lands.[41] Thus, the Court not only reaffirmed the viability of the reserved rights doctrine, but also expanded the doctrine's scope by applying it to non-Indian federal lands.

In *Arizona I*, the Court also questioned whether the special master appointed to the case correctly determined the quantity of water that the government intended to reserve for the federal enclaves.[42] In earlier reserved rights cases, the Court had not closely examined what quantity of water was necessary to satisfy the purposes of the reservations, perhaps because those purposes were clearly limited. Furthermore, in examining the purposes of the reservation, the Court seemed to stress the present purposes.[43] In *Arizona I*, however, the Court noted that the water set aside for the Indian reservations "was intended to satisfy the *future* as well as the present needs of the Indian Reservations and . . . that enough water was reserved to irrigate all the practicably irrigable acreage on the reservations."[44] The Court's language could mean that the "purpose" of a federal reservation might be expanded; thus, the

---

36 *Id.* at 448. The Court noted that:

> The lands before us in this case are not "public lands" but "reservations." Even without [the] express restriction of the Desert Land Act to sources of water supply on public lands, these Acts would not apply to reserved lands. . . . [I]t is enough . . . to recognize that these Acts do not apply to this license, which relates only to the use of waters on *reservations* of the United States.

Id. (emphasis added).

37 373 U.S. 546 (1963).

38 *Id.* at 550-51 (the states involved were Arizona, California, Nevada, New Mexico, and Utah).

39 *Id.* at 551 n.3, 595.

40 *Id.* at 598. The Court had not previously had occasion to decide whether the executive could create a *Winters* right.

41 *Id.* at 600-01.

42 *Id.*

43 *See, e.g.*, United States v. Powers, 305 U.S. 527 (1939) (Indians and their successors in interest needed water for irrigation of limited acreage); Winters v. United States, 207 U.S. 564 (1908).

44 *Arizona I*, 373 U.S. at 600 (emphasis added).

quantity of the water guaranteed by the *Winters* right might also be increased.

The Court next addressed the reserved rights doctrine in the case of *United States v. District Court in and for the County of Eagle* (*Eagle County*).[45] In that case, the Court first showed concern with the federal-state tensions generated by judicial recognition of *Winters* rights. At issue was the scope of the McCarran Amendment,[46] which provides for a limited waiver of the United States' sovereign immunity in water rights adjudication.[47] The amendment allows the United States to be joined as a party defendant in state water adjudications, but in *Eagle County,* the government contended that this waiver of sovereign immunity applied only to water rights acquired under state law and not to reserved water rights.[48] Writing for a unanimous Court, Justice Douglas stated that the McCarran Amendment was an "all-inclusive statute" which made no exception for reserved rights and that the waiver of sovereign immunity therefore applied to federal reserved rights as well as nonreserved rights.[49] This case made the United States amenable to suit in *state* water adjudications and thus marked the Court's first step toward allowing the states to determine federal reserved water rights.

The Court again addressed the question of jurisdiction over reserved rights in *Colorado River Water Conservation District v. United States* (*Colorado River*).[50] The United States filed suit in federal district court in Colorado seeking a declaration of all reserved rights held by the federal government, in its own right and as a fiduciary for certain Indian tribes, in the San Juan River Basin.[51] The government named as defendants private irrigators who presumably would claim appropriative rights to the same water.[52] Several Colorado water conservation districts then intervened as defendants. One defendant subsequently filed suit in Colorado state court seeking adjudication of the same rights[53] and joined the United States as a defendant under the McCarran Amendment.[54]

---

45 401 U.S. 520 (1971).

46 43 U.S.C. § 666 (1976) (also known as the McCarran Water Rights Suits Act).

47 The McCarran Amendment, 43 U.S.C. § 666 (1976), provides in part:

> Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit.

See also infra note 96.

48 *Eagle County,* 406 U.S. at 523-24.

49 *Id.* at 524.

50 424 U.S. 800 (1976).

51 *Id.* at 805.

52 *Id.*

53 *Id.* at 806.

54 *Id.*

The water conservation districts then moved to dismiss the federal action, arguing that the McCarran Amendment vested the state courts with exclusive jurisdiction to detemine the reserved rights of the United States.[55]

The Supreme Court held that the McCarran Amendment merely created *concurrent* jurisdiction in the state courts to determine federal water rights and did not divest the federal courts of jurisdiction.[56] Nevertheless, the Court held that dismissal of the federal proceeding was proper. The Court reasoned that if the state has a comprehensive system for water rights adjudication, federal water rights are more appropriately determined in state court for reasons of judicial efficiency and expertise.[57] The *Colorado River* doctrine thus creates a presumption that when both federal and state actions are pending for adjudication of federal reserved water rights, the federal action should be dismissed.[58]

Later in the same Term, the Court decided *Cappaert v. United States*.[59] The dispute in *Cappaert* centered on a pool of water, located fifty feet down inside a huge cavern that the President had reserved in 1952 as the Devil's Hole National Monument.[60] This pool was fed by groundwater and was the only known habitat of a rare species of desert fish known as the Devil's Hole pupfish.[61] In 1968, the Cappaerts, owners of a nearby ranch, began pumping groundwater from the same aquifer that fed the pool.[62] As a result of the Cappaerts' extensive pumping, the water level in the pool dropped, endangering the pupfish.[63] The United States filed suit seeking an injunction to limit the Cappaerts' pumping to an amount that would save the pupfish from extinction.[64] The Supreme Court unanimously decided for the pupfish and affirmed the modified injunction.[65]

Two aspects of Chief Justice Burger's opinion in *Cappaert* are noteworthy. First, although the Court's narrow holding sustained a *Winters* right, the opinion announced a "minimal need" standard for determin-

---

55 *Id.*

56 *Id.* at 807-09.

57 *Id.* The Court noted that "[t]he clear federal policy evinced by [the McCarran Amendment] is the avoidance of piecemeal adjudication of water rights in a river system." *Id.* at 819. The Court further recognized "the availability of comprehensive state systems for adjudication of water rights as the means for achieving these goals." *Id.*

58 *Id.* at 818-20.

59 426 U.S. 128 (1976).

60 *Id.* at 131 & n.1.

61 *Id.* at 132.

62 *Id.* at 133.

63 *Id.* at 133-34.

64 *Id.* at 135.

65 The district court permanently enjoined Cappaert from lowering the water level of the pool below 3.0 feet, but the court of appeals modified the injunction to allow the Cappaerts to pump as long as the water level did not drop below 3.3 feet. *Id.* at 137 n.3, 138.

ing the quantity of water reserved by the federal government.[66] Second, the Court had a clear opportunity to extend the *Winters* doctrine to groundwater but refused to do so.[67] The *Cappaert* case thus marked a turning point in the Court's reserved rights jurisprudence.

2. *Narrowing the Scope of the* Winters *Doctrine: Reserved Rights after* Cappaert

In 1978, the Supreme Court decided *United States v. New Mexico (Mimbres)*.[68] At issue was the Rio Mimbres, which originates in the

---

[66] *Id.* at 141. Chief Justice Burger noted that:

> The implied-reservation-of-water-rights doctrine . . . reserves only that amount of water *necessary* to fulfill the purpose of the reservation, no more . . . . Devil's Hole was reserved "for the preservation of the unusual features of the scenic, scientific, and educational interest." . . . The pool need only be preserved . . . to the extent necessary to preserve its scientific interest . . . . Thus . . . the level of the pool may be permitted to drop to the extent that the drop does not impair the scientific value of the pool. . . . The District Court thus tailored its injunction, very appropriately, to *minimal need* . . . .

Id. (emphasis added) (citation omitted) (quoting the presidential proclamation that established the national monument).

[67] The Ninth Circuit had explicitly held below that the *Winters* doctrine applied to groundwater as well as to surface water. United States v. Cappaert, 508 F.2d 313, 317 (9th Cir. 1974), *aff'd*, 426 U.S. 128 (1976).

The Supreme Court essentially evaded this issue by dealing with it ambiguously:

> No cases of this Court have applied the doctrine of implied reservation of water rights to groundwater . . . . Here, however, the water in the pool is surface water. The federal water rights were being depleted because . . . the "[g]roundwater and surface water are physically interrelated as integral parts of the hydrologic cycle" . . . . [S]ince the implied-reservation-of-water-rights doctrine is based on the necessity of water for the purpose of the federal reservation, we hold that the United States can protect its water from subsequent diversion, whether the *diversion* is of surface or ground water.

426 U.S. at 142-43 (emphasis added) (citations and footnote omitted).

[68] 438 U.S. 696 (1978). On the same day, Justice Rehnquist, the author of the *Mimbres* majority opinion, also announced the opinion of the Court in California v. United States (*New Melones Dam*), 438 U.S. 645 (1978). In *New Melones Dam*, the United States applied to the state of California for permits to appropriate water for the New Melones Dam, a new reclamation project on the Stanislaus River. *Id.* at 651-52. California issued the permits but limited the amount of water that the project could impound. *Id.* at 652-53. The federal government then sought a declaratory judgment in federal district court to allow the United States to impound all of the previously unappropriated water it needed for the project without obtaining state permission. *Id.* at 647. The district court held that, as a matter of comity, the federal government should seek a permit from California, but that California should unconditionally grant the permit if sufficient unappropriated water existed. *Id.* The Ninth Circuit affirmed but held that § 8 of the Reclamation Act of 1902, 43 U.S.C. §§ 372, 383 (1976), compelled the federal government to seek state approval before making the appropriation. *Id.*

Although *New Melones Dam* did not deal directly with the doctrine of federal reserved rights, it did shed some light on the relationship between the western states and the federal government in the area of water law. The Supreme Court held that § 8 of the Reclamation Act of 1902 requires the United States to acquire its appropriative rights to water for projects in accordance with state law, even if the state imposes conditions upon the water's use. *Id.* at 665-75. This holding gave the states great control over federal reclamation projects, illustrating the Court's newfound concern for the states interest in controlling the water within the

Gila National Forest in New Mexico and flows through private land before "disappearing in a desert sink just north of the Mexican border."[69] The state of New Mexico initiated a general adjudication of water rights in the Rio Mimbres.[70] The United States was joined as a party because it claimed *Winters* rights to the Rio Mimbres for use in the Gila National Forest.[71] Justice Rehnquist, writing for a majority of five justices, affirmed the "minimal need" standard set forth in *Cappaert*[72] and scrutinized the government's proposed uses for the water.[73] Contrary to its decision in *Arizona I*,[74] the Court held that national forests exist for only two purposes: to preserve a supply of timber and to protect and maintain adequate water flow.[75] Therefore, the government's reservation of water from the Rio Mimbres could not exceed the amount necessary to accomplish these two purposes. The general tenor of the *Mimbres* opinion is quite unsympathetic to the government's *Winters* rights claims.[76]

---

borders. *See* Winston, *Reborn Federalism in Western Water Law: The* New Melones Dam *Decison*, 30 HASTINGS L.J. 1645, 1672-73 (1979).

69 *Mimbres*, 438 U.S. at 697.

70 *Id.* at 697 & n.1.

71 *Id* at 697-98. The United States was joined pursuant to the McCarran Amendment, 43 U.S.C. § 666 (1976). 438 U.S. at 697 n.1; *see supra* note 47 and accompanying text.

72 438 U.S. at 699-700; *see supra* note 66 and accompanying text.

73 438 U.S. at 698-718.

74 The Court in *Arizona I* expressly adopted the special master's conclusion that the national forests are reserved for five purposes. Arizona v. California, 373 U.S. 546, 595 (1963). The special master found that the national forests exist for: "(1) the protection of watersheds and the maintenance of natural flow in streams below the sheds; (2) production of timber; (3) production of forage for domestic animals; (4) protection and propagation of wildlife; and (5) recreation for the general public." Note, United States v. New Mexico: *The Beginning of a Trend Toward Favoring State Water Rights over Federal Water Rights*, 9 N.M.L. REV. 361, 364 (1979) (quoting Special Master Report at 96, Arizona v. California, 373 U.S. 546 (1963)).

75 *Mimbres*, 438 U.S. at 705-13. The United States Forest Service's enabling act, the Organic Administration Act of 1897, 16 U.S.C. §§ 473-78, 479-82, 551 (1982), provides in part: "No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber . . . ." *Id.* § 475. In *Mimbres* the government argued that the Act established national forests for three purposes: to preserve a supply of timber, to protect water flow, and additionally to improve and protect the forest in general. 438 U.S. at 707 n.14. This third objective would be accomplished by reserving "minimum instream flows for aesthetic, recreational, and fish-preservation purposes." *Id.* at 705. The Court, construing the Act narrowly, however, recognized only the first two purposes: "Forests [will] be created only 'to improve and protect the forest within the boundaries,' or, *in other words*, 'for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber.' " *Id.* at 707 n.14 (emphasis in original) (quoting 16 U.S.C. § 475 (1982)). The Court's restrictive reading of the Act is certainly plausible, but persuasive arguments can be made from the legislative history of the Act in support of the government's reading. *See, e.g.*, Note, *Water Rights and National Forests—Narrowing the Implied Reservation Doctrine:* United States v. New Mexico, 40 OHIO ST. L.J. 729, 743-47 (1979); Note, *Reserved Water Rights on National Forests After* United States v. New Mexico, 1979 UTAH L. REV. 609, 617-24.

76 Professor Trelease's comments on the *Mimbres* case are illustrative:

> [The Court] emphasized that the quantities allowed would be limited to "only that amount of water necessary to fulfill the purpose of the reservation.

In 1983, the Supreme Court had three occasions to address the reserved rights doctrine. In *Arizona v. California (Arizona II),*[77] five Indian tribes represented by the United States petitioned for an increase in the quantity of water guaranteed by their *Winters* rights. The petitioners contended that the quantity of their rights did not conform to the Court's 1963 decree in *Arizona I.*[78] That decree measured the Indians' reserved rights by the amount of water necessary to irrigate all of the "practicably irrigable acreage" on the reservations.[79] In *Arizona II,* the tribes contended that the special master's report in *Arizona I* underestimated this acreage.[80] The Court invoked principles of res judicata to bar the Indians from reopening the 1963 decree, citing a strong public interest in finality.[81]

In *Nevada v. United States (Truckee-Carson),*[82] the Court again held

---

no more"; it held that reserved rights exist not for "secondary" or "supplemental" purposes, but only for those that qualified as "direct." "Necessary" was amplified to "essential"; the test applied was whether, if water were not provided, "the purposes of the reservation would be entirely defeated."

This was a substantial victory for the water users of the West.

Trelease, *Uneasy Federalism—State Water Laws and National Water Uses,* 55 WASH. L. REV. 751, 759 (1980) (footnotes omitted) (quoting from the *Cappaert* and *Mimbres* opinions).

77 103 S. Ct. 1382 (1983). *Arizona II* is a continuation of *Arizona I,* 373 U.S. 546 (1963). *See supra* notes 37-44 and accompanying text.

78 *Arizona II,* 103 S. Ct. at 1385.

79 In the original action, the Court, endorsing the master's conclusion, held that the federal government had implicitly reserved enough water to allow the Indians to irrigate all of the "practicably irrigable acreage" on the reservations. *Arizona I,* 373 U.S. at 600-01.

80 The Indian tribes claimed that certain irrigable lands had been "omitted" from the master's calculations. *Arizona II,* 103 S. Ct. at 1391. The United States contended that these omissions had occurred inadvertently due to "the complexity of the case." *Id.* at 1391 n.6. The states claimed, however, that the omission was a deliberate "tactical decision made to portray the irrigable acreage standard as a reasonable basis for calculating the reservations' water needs." *Id.*

81 Res judicata was technically inapplicable because *Arizona II* was a continuation of the *Arizona I* litigaton, rather than a separate action. *See* C. WRIGHT, THE LAW OF FEDERAL COURTS 680 (4th ed. 1983); *see also* RESTATEMENT (SECOND) OF JUDGMENTS §§ 17(1), 18(1) (1980). The Court found, however, that the principles of finality behind the doctrine of res judicata compelled its holding in *Arizona II.* 103 S. Ct. at 1392-95. The Court said:

> Recalculating the amount of practicably irrigable acreage runs directly counter to the strong interest in finality in this case. . . .
>
> . . . .
>
> . . . The record demonstrates that it was the understanding of the parties and Master Rifkind's intention that the calculation of practicably irrigable acreage be final. That was our understanding as well . . . .
>
> . . . Our long history of resolving disputes over boundaries and water rights reveals a simple fact: This Court does not reopen an adjudication in an original action to reconsider whether initial factual determinations were correctly made. . . .
>
> . . . .
>
> . . . [W]e have determined that the principles of res judicata advise against reopening the calculation of the amount of practicably irrigable acreage. . . .

Id. (citations and footnotes omitted).

82 103 S. Ct. 2906 (1983).

that a *Winters* right, once quantified, cannot be increased. In 1913, the United States instituted an action to adjudicate the reserved rights of the Pyramid Lake Indian Reservation and the planned Newlands Reclamation Project. These rights were finally quantified in a 1944 consent decree.[83] The United States sued again in 1973 to obtain additional rights for both federal enclaves.[84] Justice Rehnquist, speaking for a unanimous Court, invoked res judicata to bar relitigation of the United States' reserved rights.[85]

The Court's most recent decision in the area of federal reserved rights, *Arizona v. San Carlos Apache Tribe of Arizona (San Carlos Apache)*,[86] is essentially a sequel to *Colorado River*.[87] Several water rights claimants initiated general water adjudications in Arizona state courts in the mid-1970s.[88] The United States, on behalf of itself and various Indian tribes, was joined as a defendant.[89] Later, some of the Indian tribes whose rights were implicated in the state proceedings removed the state court actions to federal court and sought declaratory and injunctive relief to block further adjudication of their reserved rights in state court.[90] The federal district court, relying on *Colorado River,* remanded the removed actions back to state court and dismissed the other federal actions without prejudice.[91] The tribes appealed from these dismissals and the Ninth Circuit reversed, holding that the Arizona statehood enabling act[92] deprived Arizona state courts of jurisdiction over the Indians' water claims.[93]

The Supreme Court held that despite the statehood enabling act's provision that the federal government reserved exclusive jurisdiction

---

83 *Id.* at 2909-10.

84 *Id.*

85 *Id.* at 2925. The Ninth Circuit held below that the Tribe and the Project were neither parties nor coparties to the original action: "They were non-parties who were represented simultaneously by the same government attorneys." United States v. Truckee-Carson Irrigation Dist., 649 F.2d 1286, 1309 (9th Cir. 1981). The court of appeals reasoned that the Tribe and the Project were not adverse parties bound by the first action because "[a]s a general matter, a judgment does not conclude parties who were not adversaries under the pleadings." *Id.* The Ninth Circuit further cautioned that "[i]n representative litigation we should be especially careful not to infer adversity between interests represented by a single litigant." *Id.* Therefore, the court reasoned, the earlier litigation did not conclude the dispute in the later action between the Tribe and the Project. *Id.* at 1309-11.

The Supreme Court disagreed: "We hold that . . . the interests of the Tribe and the Project landowners were sufficiently adverse so that both are now bound by the final decree entered in the [first] suit." *Truckee-Carson,* 103 S. Ct. at 2925.

86 103 S. Ct. 3201 (1983).

87 *See supra* notes 50-58 and accompanying text.

88 *San Carlos Apache,* 103 S. Ct. at 3209.

89 *Id.*

90 *Id.*

91 *Id.*

92 Act of June 20, 1910, ch. 310, 36 Stat. 557, 569 (1910).

93 San Carlos Apache Tribe v. Arizona, 668 F.2d 1093 (9th Cir. 1982), *rev'd,* 103 S. Ct. 3201 (1983); *see San Carlos Apache,* 103 S. Ct. at 3209.

over Indian lands in Arizona, the McCarran Amendment[94] gave the state courts jurisdiction in comprehensive water rights adjudications.[95] The Court also reiterated the *Colorado River* doctrine, which established state courts as the preferred fora for water adjudications involving federal reserved rights.[96]

II
ANALYSIS: RECONCILING THE PRIOR APPROPRIATION DOCTRINE AND THE *WINTERS* DOCTRINE

The western states developed the prior appropriation doctrine to apportion their limited surface water supplies fairly and efficiently among competing users.[97] The prior appropriation system depends upon quantification and strict control of the rights of all users.[98] In contrast, the *Winters* doctrine awards water rights of uncertain dimension, thus injecting a large measure of uncertainty into the western states' water use schemes.[99] The courts can minimize the tension between the *Winters* doctrine and prior appropriation by treating federal reserved rights in the same manner as ordinary appropriative rights.[100]

A. The Inherent Conflict Between Prior Appropriation and the *Winters* Doctrine

An ordinary appropriative right, once obtained, occupies a place in the state water system based on its relative seniority.[101] A *Winters* right, however, does not fit so neatly into the state water systems. A federal reserved right differs in three important ways from an ordinary water

---

94 43 U.S.C. § 666 (1976); *see supra* note 47.

95 103 S. Ct. at 3212. The Court stated that "we are convinced that, whatever limitation the Enabling Acts or federal policy may have originally placed on state court jurisdiction over Indian water rights, those limitations were removed by the McCarran Amendment." *Id.* (footnotes omitted).

96 *Id.* at 3212-16. The Court summarized the policy behind the *Colorado River* doctrine and applied it to the instant case:

> The McCarran Amendment, as interpreted in *Colorado River*, allows and encourages state courts to undertake the task of quantifying Indian water rights in the course of comprehensive water adjudications. . . .
>
> . . . [A]ssuming that the state adjudications are adequate to quantify the rights at issue in the federal suits, and taking into account . . . the expertise and administrative machinery available ot the state courts, the infancy of the federal suits, the general judicial bias against piecemeal litigation, and the convenience to the parties, we must conclude that the District Courts were correct in deferring to the state proceedings.

Id. at 3214-15 (footnotes omitted); *see also supra* note 57 and accompanying text.

97 *See supra* notes 11-19 and accompanying text.

98 *See id.*

99 *See infra* notes 101-21 and acompanying text.

100 *See infra* notes 122-35 and accompanying text.

101 *See* Trelease, *supra* note 27, at 474.

right established under the prior appropriation doctrine.[102]

First, the creation and maintenance of a *Winters* right does not depend on any use, beneficial or otherwise.[103] The reserved right may lie dormant for many years, set aside for some future use.[104] The priority of such a reserved right dates from the establishment of the federal reservation.[105] Junior holders of water rights may use this federally reserved water during "dormant" periods, but the federal government may exercise its reserved right and preempt these junior users at any time.[106] In contrast, holders of ordinary appropriative rights must maintain a beneficial use of their water or lose their rights.[107]

Second, a *Winters* right generally is not quantified.[108] To determine the quantity of a reserved right, a court must examine the purposes of the reservation of land set aside by Congress.[109] Until quantified in an adjudication, the size of a *Winters* right remains completely uncertain.[110] Nevertheless, the right exists, with its priority dating from the establishment of the reservation of land.[111] Ordinary appropriative rights, however, are not legally recognized *until* they are quantified and adjudicated.[112]

Third, a federal reserved right need not be recorded.[113] In the reserved rights cases, the Supreme Court has consistently recognized unrecorded federal reserved rights.[114] Claimants of ordinary appropriative rights, by contrast, will lose their rights if they do not fix them in a water adjudication.[115]

Because of the striking differences between federal reserved rights and appropriative rights, the continuing coexistence of the two poses serious questions. The tension between federal reserved rights, which

---

102 *Id.*

103 *Id.*; *see also* Abrams, *Reserved Water Rights, Indian Rights and the Narrowing Scope of Federal Jurisdiction: The* Colorado River *Decision*, 30 STAN. L. REV. 1111, 1113 (1978).

104 *See* Trelease, *supra* note 27, at 474.

105 Trelease, *supra* note 76, at 756; *see* Comment, *supra* note 15, at 560; Comment, *Federal Reserved Rights in Water: The Problem of Quantification*, 9 TEX. TECH L. REV. 89, 93 (1977) ("[M]ost reservations were created around the turn of the century and have that time as a priority date.").

106 Trelease, *supra* note 76, at 756.

107 *See supra* notes 12-13 and accompanying text.

108 Trelease, *supra* note 27, at 474.

109 *See, e.g.*, Cappaert v. United States, 426 U.S. 128, 141 (1976) ("The implied-reservation-of-water-rights doctrine . . . reserves only that amount of water necessary to fulfill the purposes of the reservation, no more.").

110 Comment, *supra* note 105, at 93-94.

111 Trelease, *supra* note 76, at 756; Comment, *supra* note 15, at 560; Comment, *supra* note 105, at 93.

112 *See supra* notes 17-18 and accompanying text.

113 Trelease, *supra* note 27, at 474.

114 *See, e.g.*, Arizona v. California, 373 U.S. 546, 598-600 (1963); United States v. Powers, 305 U.S. 527, 532-33 (1939); Winters v. United States, 207 U.S. 564, 577 (1908).

115 *See supra* notes 17-18 and accompanying text; *see also* Comment, *supra* note 15, at 551.

exist "in a state of uncorrelated mystery,"[116] and appropriative rights, which are strictly quantified and controlled, is all too clear. *Winters* rights threaten the West in two ways: because they are not based on use, *Winters* rights allow water to go unused; because they are uncertain, they interfere with public and private decisions. The resulting uneasiness and frustration that western water users feel has led to melodramatic descriptions of the *Winters* doctrine as " 'a first mortage of undetermined and indeterminable magnitude' "[117] and as a " 'sword of Damocles' hanging over 'every title to water rights to every stream which touches a federal reservation.' "[118] The reserved rights doctrine has not yet caused western appropriative water users any substantial harm.[119] Nevertheless, future assertion of reserved rights may cause serious problems in the West, as more users compete for less available water.[120]

The Supreme Court, demonstrating some sensitivity to the states' concerns over reserved rights, has begun to circumscribe the scope of the *Winters* doctrine. The Court's new decisions make federal reserved rights mesh more smoothly with the states' prior appropriation water law systems.[121] These efforts have eased the tension between *Winters* rights and appropriative rights.

B. Reconciliation of Prior Appropriation and the *Winters* Doctrine in Western Water Law

Both the *Winters* doctrine and the doctrine of prior appropriation serve important functions in the West: federal reservations of land would be useless without sufficient water to fulfill their purposes, and prior appropriation has developed as a matter of necessity to provide for prudent and beneficial use of the West's most vital and scarce resource. Surely neither system is likely simply to vanish, thereby eliminating the conflict. Furthermore, the likelihood that Congress will enact comprehensive legislation to effect a reconciliation is small.[122] Thus, a judicial compromise seems to be the only possible solution. The Court's efforts to make *Winters* rights inoffensive to western states' prior appropriation schemes have been a significant step in the right direction.

---

116 United States v. District Court in and for the County of Eagle, 169 Colo. 555, 580, 458 P.2d 760, 772 (1969), *aff'd*, 401 U.S. 520 (1971).

117 Address by Northcutt Ely to the National Water Commission (Nov. 6, 1969), *quoted in* Trelease, *supra* note 27, at 475.

118 *Id.*

119 *See* Trelease, *supra* note 27, at 474-75, 491-92.

120 *See supra* note 1.

121 *See supra* notes 45-49, 56-96 and accompanying text.

122 Numerous bills have been proposed since 1955, but Congress has passed none of them. *See* Morreale, *Federal-State Conflicts Over Western Waters—A Decade of Attempted "Clarifying Legislation,"* 20 RUTGERS L. REV. 423 (1966); Trelease, *supra* note 27, at 475.

Federal reserved rights and appropriative rights conflict in three major areas: use,[123] quantification,[124] and adjudication and recordation.[125] By molding reserved rights to make them resemble ordinary appropriative rights as closely as possible, the Court can protect both the interests of the United States in supplying its reservations and the states' interest in controlling their water supplies.

The federal reserved rights doctrine and the prior appropriation doctrine clash most strikingly in the area of use.[126] Appropriative rights terminate if the appropriated water is no longer put to a continuous beneficial use. Appropriative rights, therefore, are concrete and ensure that water not go unused. *Winters* rights, however, exist independently of any use, present or future, beneficial or otherwise. In reserving land for a particular purpose, Congress may have contemplated the reservation of the water required to carry out that purpose. Therefore, the courts should limit *Winters* rights to the amounts of water required by the government or the Indians to carry out the *present* purposes of the reservation. Since the *Arizona I* case,[127] in which the Supreme Court last expressly stated that the quantity of a *Winters* reservation may accommodate future as well as present uses, the Court has limited this expansive interpretation of reserved rights by strictly construing the purposes of the federal reservations.[128] The Court's next step may be to limit reserved rights to those needed for immediate beneficial uses in the federal enclaves while eliminating *Winters* rights reserved for future purposes.

The prior appropriation doctrine and the *Winters* doctrine must be reconciled not only on the issue of use, but also on the issue of quantification. At present, the controlling standard for quantifying *Winters* rights is that of "minimal need" put forth in *Cappaert*.[129] This standard requires the examination of the purpose of the reservation whose "minimal need" must be met. Again, a court need determine only the present water needs of the federal enclave. The courts should eliminate such forward-looking standards as the "practicably irrigable acreage" measure employed by the Supreme Court in *Arizona I,* because they generate uncertainty and therefore hinder decisionmaking. In addition to avoiding forward-looking standards, courts should follow the Supreme

123 *See supra* notes 103-07 and accompanying text.

124 *See supra* notes 108-12 and accompanying text.

125 *See supra* notes 113-15 and accompanying text.

126 *See supra* notes 103-07 and accompanying text.

127 Arizona v. California, 373 U.S. 546 (1963).

128 *See* United States v. New Mexico, 438 U.S. 696, 705-13 (1978) (The Court noted that Congress intended to reserve water for "domestic, mining, milling, or irrigation purposes" not for recreational purposes (quoting 16 U.S.C. § 481 (1976))).

129 *See supra* note 66.

Court's lead in *Arizona II*[130] and *Truckee-Carson*,[131] and invoke principles of strict finality to deny reopening the issue of quantification of *Winters* rights.

The final step is to decide how best to subject legitimate reserved rights to the states' systems of adjudication and recordation. Although various administrative[132] and legislative[133] schemes have been suggested, the Court's instincts, in delegating this responsibility to the state courts through the *Colorado River*[134] doctrine and the *Eagle County*[135] interpretation of the McCarran Amendment, are correct. The best way to integrate reserved rights into the states' prior appropriation systems is to determine these reserved rights in the state systems. By means of water adjudications, reserved rights can be recorded and defined in the same manner as ordinary appropriative rights.

CONCLUSION

The doctrine of federal reserved water rights has the potential to greatly disrupt the prior appropriation systems of the western states. The Supreme Court, after allowing a steady expansion of the *Winters* doctrine up through the 1970s, has since shown increased solicitude for the rights of the states to determine how best to allocate their scarce waters. By strictly defining *Winters* rights, the Court has made the federal government's presence as a western water user much less disruptive. By continuing this trend and further circumscribing the scope of the reserved rights doctrine, the Court perhaps can largely eliminate this source of federal-state tension in the western states.

Todd A. Fisher

---

130 103 S. Ct. 1382 (1983).

131 103 S. Ct. 2906 (1983).

132 *See, e.g.*, Ranquist, *supra* note 12, at 710-24.

133 *See, e.g.*, U.S. Dep't of Justice, A Proposed Bill for the Inventorying and Quantification of the Reserved, Appropriative and Other Rights to the Use of Water by the United States (June 20, 1974 draft); *see also* Little, *Administration of Federal Non-Indian Water Rights*, 27B ROCKY MTN. MIN. L. INST. 1709, 1772-79 (1982) (discussing adjudication alternatives).

134 424 U.S. 800 (1976); *see also supra* notes 55, 58 and 96 and accompanying text.

135 401 U.S. 520 (1971); *see also supra* notes 47-49 and accompanying text.

Alaska Department of
NATURAL
RESOURCES

ESTHER WUNNICKE,
COMMISSIONER

Fact Sheet:
WATER RIGHTS IN ALASKA

SEPTEMBER 1985

WHAT ARE WATER RIGHTS?

A water right is a property right for the use of surface and subsurface waters by the public as provided by the Alaska Water Use Act (Alaska Statutes 46.15). This water right allows specified amounts of water from particular water sources to be diverted, impounded and withdrawn for specified uses. When a water right is granted, it becomes attached to the land where the water is being used for as long as you use it. If the land is sold, the water right goes with the land to the new owner, unless it is separated from the land with the approval of the Department of Natural Resources.

HOW DO I OBTAIN WATER RIGHTS?

To obtain water rights in Alaska you submit an Application for Water Rights to the Alaska Division of Land and Water Management. You are issued a permit to develop a water source and construct the means to use the water. Once you prove you are beneficially using the water, a certificate of appropriation is then issued. This is a legal document which conveys water rights once the water is being used. In Alaska, there are no automatic rights to ground water because of ownership of overlying land and there are no rights to surface waters because of ownership of adjoining or surrounding land. Use of water without a permit or certificate does not give the user defensible legal rights to the water, no matter how long the water use continues.

WHAT COSTS ARE INVOLVED?

To insure that the public is notified of the proposed water use, you are required to pay the cost of legal advertisement in at least one issue of a local newspaper in the vicinity of the proposed appropriation. However, if the proposed use will not exceed 1,000 gallons of water per day in a single-family domestic household there is no requirement to publish an advertisement. If there are more potential users than the source of water can supply, the Department may require legal advertisement of all types of water rights applicants.

WHY SHOULD I APPLY FOR WATER RIGHTS?

1. If you have established water rights, you have a legal standing to assert those rights against conflicting uses of water with people who do not have water rights.
2. A person with established water rights has priority to the use of water over persons who later file for water rights from the same water source.
3. Anyone who constructs works for the taking of water (an appropriation), or uses a significant amount of water without a permit or certificate of appropriation is guilty of a misdemeanor. (Alaska Statutes 46.15.180)

A significant amount of water as defined by regulation (Alaska Administrative Code 11 AAC 93.970(14)) is the:

- use of 5,000 or more gallons of water in a day from a single source, or;
- the regular daily or recurring seasonal use of 500 or more gallons of water per day for 10 days or more per year from a single source, or;
- any water use that may affect the water rights of other users or the public interest.

4. By filing for water rights, you provide valuable information about water use and consumption in Alaska. This is essential in estimating the present uses of water, predicting future withdrawals, protecting the rights of prior appropriators, and providing for proper management for this important resource.

WHAT OTHER WATER RESOURCES PERMITS MIGHT BE NEEDED FROM THE DEPARTMENT OF NATURAL RESOURCES?

A certificate of approval is required if you want to construct or modify a dam of 10 feet or more in height, or if the storage capacity exceeds 50 acre-feet. A separate application form along with a sliding filing fee applies for various size dams as set forth in the regulations (11 AAC 93.200).

An application for reservation of water may be filed to maintain a specified flow or level of water in a water body at a specified point for specified times. By statute, an instream flow reservation can be made to ensure sufficient water is maintained for protection of fish and wildlife, recreation and park purposes, navigation or transportation purposes, and sanitary and water quality purposes.

HOW DO I OBTAIN AUTHORIZATION FOR SHORT-TERM WATER USE?

Temporary authorization may be required for significant short-term water uses such as construction projects. This authorization does not establish a water right but may help avoid problems with fisheries or existing water right holders. Applications should be made in the form of a letter request to the Department with an associated map showing the location of the water take point and location and amount of water use.

Further information about water rights and copies of the application forms may be obtained from one of the following offices. Applications for water rights must be submitted to a Division of Land and Water Management regional office.

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT

SOUTHEASTERN REGIONAL OFFICE
400 Willoughby Avenue
Suite 400
Juneau, Alaska 99801
465-3400

NORTHERN REGIONAL OFFICE
4420 Airport Way
Fairbanks, Alaska 99701
479-2243

SOUTHCENTRAL REGIONAL OFFICE
Frontier Building
3601 C Street, 10th Floor
Pouch 7-005
Anchorage, Alaska 99510
762-2277

Mat-Su Area Office
Central Plaza, Suite 202
Pouch 874008
Wasilla, Alaska 99687
376-4595

DIVISION OF FORESTRY

HAINES AREA OFFICE
Room 6, Gateway Building
Main Street
Post Office Box 263
Haines, Alaska 99827
766-2120

KETCHIKAN AREA OFFICE
318 NBA Building
Post Office Box 5220
Ketchikan, Alaska 99901
225-3070

PETERSBURG AREA OFFICE
Petersburg State Office Building
215 Sing Lee Alley
Box 1580
Petersburg, Alaska 99833
722-3236

DELTA AREA OFFICE
Mile 267.5 Richardson Highway
Post Office Box 1149
Delta Junction, Alaska 99737
895-4225

TOK AREA OFFICE
Mile 124.1 Glenn Highway
Post Office Box 10
Tok, Alaska 99780
883-5134

SOUTHWEST (McGRATH) AREA OFFICE
McGrath Airport
Box 130
McGrath, Alaska 99627
524-3010

KENAI PENINSULA AREA OFFICE
Mile 92.5 Sterling Highway
S.R.2, Box 107
Soldotna, Alaska 99669
262-7559

COPPER RIVER AREA OFFICE
Mile 110 Richardson Highway
Post Office Box 185
Glennallen, Alaska 99588
822-5534

Alaska Department of
NATURAL
RESOURCES

ESTHER WUNNICKE,
COMMISSIONER

Fact Sheet: FEDERAL RESERVED WATER RIGHTS

JULY, 1985

WHAT ARE FEDERAL RESERVED WATER RIGHTS?

- Federal reserved water rights are created when federal lands are withdrawn from entry (by Congress or other lawful means) for federal use.
- Federal reserved water rights:
  - apply to both instream and out-of-stream use
  - may be created without actual diversion or beneficial use
  - are not lost by non-use
  - priority dates are established as the date the land is withdrawn for the primary purpose(s)
  - are created for the minimal amount of water reasonably necessary to satisfy both existing and reasonable foreseeable future uses of water for the primary purpose(s) for which the land is withdrawn
- Water rights for secondary purposes must be obtained under state law, AS 46.15.

WHY ARE FEDERAL RESERVED WATER RIGHTS IMPORTANT TO YOU?

- Water users in areas where there are federal land withdrawals should file for water rights with DNR in order to protect their use of water. If a basin wide adjudication is started for your river basin, you can then be assured of being included in the adjudication.
- Holders of water rights with priority dates established before the withdrawal of federal lands within a basin will have water rights senior to the federal government. Water users filing for water rights after the withdrawal of federal lands within a specific basin will have water rights with priority dates later than those of the federal government.

HOW ARE FEDERAL RESERVED WATER RIGHTS ADJUDICATED?

- Federal reserved water rights are a judicial creation. The United States Supreme Court first recognized federal reserved water rights in *Winters v. United States*, 207 U.S. 564 (1908), an Indian reservation case. Since that time, court cases have extended the Winters Doctrine to other types of federal land withdrawals.
- Federal law, the McCarren Amendment (43 U.S.C. 666), allows judicial adjudication of federal reserved water rights in state court.
- The McCarren Amendment requires that state court adjudications include all water rights in a river basin, including all claimed federal reserved water rights and state administered water rights.

WHY ARE WE CONCERNED ABOUT FEDERAL RESERVED WATER RIGHTS?

- Because federal reserved water rights are unquantified, DNR does not know how much water is needed or used for the primary purposes of federal land withdrawals in Alaska. Because the unappropriated water available from a water source and the amount of water reserved by a federal withdrawal is unknown, water resources cannot be effectively managed.
- Alaska's growing population and development pressures have caused water supply and water rights conflicts in several areas of unquantified federal reserved water rights. Examples include Sitka's Indian River and Anchorage's Ship Creek.
- For DNR to effectively manage and allocate the state's water and adjudicate water rights, it is necessary to have the federal reserved water rights in Alaska inventoried and quantified by the appropriate federal land management agencies in cooperation with the State of Alaska. The state can then integrate federal reserved water rights with state administratively adjudicated water rights and manage water sources with greater certainty.

HOW MUCH LAND IN ALASKA HAS FEDERAL RESERVED WATER RIGHTS?

- Of the 367.7 million acres in Alaska, almost 49 percent, or more than 178 million acres are reserved federal lands which may have federal reserved water rights:

These federal lands are made up of:

Military land - 2.5 million acres
National Forests - 23.2 million acres
BLM lands - 26.1 million acres
National Parks - 51 million acres
Fish and Wildlife Refuges - 76 million acres

For more information about federal reserved water rights and application forms for water rights, please call, write, or come to one of the following Offices:

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT

SOUTHEASTERN REGIONAL OFFICE
400 Willoughby Avenue
Suite 400
Juneau, Alaska 99801
465-3400

NORTHERN REGIONAL OFFICE
4420 Airport Way
Fairbanks, Alaska 99701
479-2243

SOUTHCENTRAL REGIONAL OFFICE
Frontier Building
3601 C Street, 10th Floor
Pouch 7-005
Anchorage, Alaska 99510
561-2020

Mat-Su Area Office
Century Plaza, Suite 202
Pouch 874008
Wasilla, Alaska 99510
376-4595

DIVISION OF FORESTRY

HAINES AREA OFFICE
Room 6, Gateway Building
Main Street
Post Office Box 263
Haines, Alaska 99827
766-2120

KETCHIKAN AREA OFFICE
318 NBA Building
Post Office Box 5220
Ketchikan, Alaska 99901
225-3070

PETERSBURG AREA OFFICE
Petersburg State Office Building
215 Sing Lee Alley
Box 1580
Petersburg, Alaska 99833
722-3236

DELTA AREA OFFICE
Mile 267.5 Richardson Highway
Post Office Box 1149
Delta Junction, Alaska 99737
895-4225

TOK AREA OFFICE
Mile 124.1 Glenn Highway
Post Office Box 10
Tok, Alaska 99780
883-5134

SOUTHWEST (McGRATH) AREA OFFICE
McGrath Airport
Box 130
McGrath, Alaska 99627
524-3010

KENAI PENINSULA AREA OFFICE
Mile 92.5 Sterling Highway
S.R. 2, Box 107
Soldotna, Alaska 99669
262-7559

COPPER RIVER AREA OFFICE
Mile 110 Richardson Highway
Post Office Box 185
Glennallen, Alaska 99588
822-5534

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

April 28, 1986

The Honorable Dick Shultz
The Honorable Adelheid Herrmann
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representatives Shultz and Herrmann:

I am writing to urge your committee's consideration of SB 150 which makes amendments to Alaska's Water Use Act, and to provide a proposed amendment. This legislation provides a mechanism for comprehensive adjudication of all water rights in a predefined basin (basinwide adjudication). I supplied background information to committee members in my April 9, 1986 letter.

One point of particular concern in the bill is the floor amendment No.1 adopted in the Senate. I endorsed the amendment in concept as I understood it would protect water rights permittees from losing their permits because a proposed water use was not developed during the permit time period. As adopted, however, the amendment may not achieve that original purpose, but rather cause confusion about the system of perfecting water rights under Alaska's Water use Act.

Alaska is a prior appropriation state, as mandated by the Alaska Constitution, Article VIII, Section 13. The Water Use Act, AS 46.15, sets up a three step system for obtaining water rights, following the procedures of the other western states who also have the prior appropriation system of water rights. The first step occurs when a potential water user files an application for water rights with the department. After public and interagency notice, a permit to appropriate water may be issued. The permit authorizes the applicant to complete step two by constructing the means to use water, such as drilling a well or installing diversion pipes from a stream, and begin beneficial use of the water. The final step occurs when the water use has been developed and beneficial use of water established. At that time a certificate of appropriation is issued to certify the final water right.

10-J9LH

We certainly understand and agree with the Senate's concern to allow water rights permittees adequate time to develop their water use. As amended, however, AS 46.15.140(b) may allow speculators to apply for water rights to put water to beneficial use without any intention to do so, knowing they would have an indefinite period of time by filing a "notice of intention" to either hold water until it becomes more valuable, or to block the development of water by some other user with current intentions to beneficially use the water.

I have enclosed a suggested amendment to Section 3 of the bill for your consideration. The amendment is intended to make certain that a permittee may file for and obtain an extension in time to perfect the beneficial water use, rather than allowing an appropriator to hold rights to water which is not beneficially used.

Your consideration of this amendment is appreciated. Please let me know if there is additional information I might provide.

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Commissioner

Enclosure

cc: Representative Cato
Representative Jenkins
Representative M.W. Miller
Representative Pearce
Representative Sund
Representative Thompson
Representative Wallis

Senator Bennett
Senator Fahrenkamp
Senator Sturgulewski
Senator Kerttula
Senator Coghill

Tom Hawkins
Mike Frank
Alaska Water Board Members

DEPARTMENT OF NATURAL RESOURCES April 28, 1986

Suggested Amendment to SB 150

Amend the last sentense of Sec. 46.15.140(b) to read as follows:

> A person [PROPERTY OWNER] who has a permit to develop a use of water [WATER RIGHT], including but not limited to, [WHETHER FOR] residential, agricultural, industrial, or mining use, but has not developed that property to the point of water use prior to the permit expiration, may file a request for permit extension [NOTICE OF INTENTION TO RETAIN THAT WATER RIGHT] with the commissioner.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

April 9, 1986

The Honorable Adelheid Herrmann
The Honorable Richard Shultz
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representatives:

Senate Bill 150 has just been referred to the House Resources Committee, and we wish to offer the following comments as background information and to explain why we feel this legislation is important to Alaska. The bill contains housekeeping amendments to the Alaska Water Use Act, AS 46.15, and procedures for administrative and judicial basinwide adjudication of water rights. This is crucial water resources legislation for Alaska because it would establish procedures to adjudicate federal reserved water rights.

Currently, the Water Use Act does not have procedures for basinwide adjudication of state administered water rights or claimed federal reserved water rights. The bill establishes an administrative basinwide adjudication procedure for state water rights when a controversy exists between appropriators, such as the scarcity of water within a river basin or ground water aquifer, and for claimed federal reserved water rights when the federal government consents to an administrative adjudication. The bill also provides a state Superior Court procedure for efficiently adjudicating federal reserved water rights in instances where the federal government may not consent to an administrative adjudication.

A federal reserved water right is one created either expressly or by implication when the federal government withdraws land for a specific purpose. The U.S. Supreme Court first recognized federal reserved water rights in Winters v. United States in 1908. Since that time court cases have extended the doctrine to national forests, parks, refuges, and monuments. Since federal reserved water rights are most often created by implication, no specific quantity of water and no priority date for the water right is established until the court does so by decree. Congress passed the McCarran Amendment to allow water adjudication suits to be brought against the federal government in state courts. While allowing state court adjudication of

federal reserved water quantities and priority dates, the McCarran amendment also requires the adjudication of all rights within a hydrologic basin where a federal reserved water right may exist.

Federal land reservations make up almost 49 percent of Alaska's total land mass of 367.7 million acres, and may carry federal reserved water rights. While competition for water resources in the locale of many Alaska federal reservations is limited, we have recently encountered instances where a procedure for adjudication would enhance opportunities for state economic development. Applications for additional hatchery water in Sitka were shelved pending study of federal rights to Indian River water. Of more immediate consequence are National Park Service requests for Nuka River appropriations which could reduce Bradley Lake power production potential. These situations will continue to arise and require a resolution mechanism.

We summarize the bill briefly as follows: Section 1 of SB 150 adds a disclaimer to the Water Use Act that a right to appropriate water which the state grants is not a guarantee of a particular water quality, volume, or pressure, or that water may be withdrawn at a particular cost. This is needed because the state cannot always guarantee the quantity or quality of water due to insufficient hydrologic data in our state.

Sections 2 and 3 of the proposed bill amend AS 46.15.140 to clarify the existing abandonment and forfeiture provisions. It creates a rebuttable presumption so that an appropriator who does not beneficially use water granted by a certificate for five successive years, bears the obligation to prove to the commissioner that the appropriation has not been abandoned. Section 4 of the bill clarifies how the commissioner may terminate an instream flow reservation.

Section 5 contains the body of the proposed basinwide adjudication provisions. It would allow the Commissioner of Natural Resources to initiate an administrative adjudication to quantify and determine the priority of all water rights and claims, including federal reserved water rights when federal government consents, in a particular hydrologic basin. Section 5 provides that when a federal reserved water right may be involved, and the claimant refuses to consent to an administrative adjudication, the commissioner could initiate the adjudication in Superior Court consistent with the McCarran Amendment. In that instance, the proposed bill gives the Superior Court authority to appoint a master to perform the same functions a master would have in an administrative adjudication, but under the court's supervision. While the design of the adjudication bill is to provide a procedure for the adjudication of both state issued water rights and claimed federal reserved water rights, AS 46.15.169 makes clear that nothing in the Alaska Water Use Act is to be construed as an admission against the State of Alaska that a federal reserved water right exists in any particular context.

Section 6 of the bill adds provisions to clarify the Department of Natural Resources' authority to take action to remove unsafe or unpermitted works of appropriation such as dams or diversions where the appropriator refuses to do so, and to inspect records of an appropriator pertinent to water use under the Act.

Legislation for basinwide adjudication was first submitted to the Legislature in 1982. SB 150 was prepared by the Attorney General's Office after extensive review of that original bill and other western states' laws dealing with federal reserved water rights adjudication. This bill is the best of the basinwide adjudication legislation of the western states. We have worked closely with the departments of Fish and Game and Environmental Conservation, members of the Alaska Water Resources Board, federal agencies represented on our state's Federal Reserved Water Rights Work Group, and the Western States Water Council in preparing this legislation.

Enclosed with this letter is background material on the bill and some general information about federal reserved water rights. The following attachments are included:

Attachment 1: SB 150 as passed by the Alaska Senate;

Attachment 2: Copies of testimony given to the Senate Resources Committee;

Attachment 3: Resolutions and letters from the Alaska Water Resources Board concerning the bill;

Attachment 4: "The Winters of Our Discontent: Federal Reserved Water Rights in the Western States", presenting background on the doctrine of prior appropriation (Alaska's system of allocating water) and the development of the Winters Doctrine of federal reserved water rights;

Attachment 5: "Introduction to Reserved Water Rights", discussing the origin of the reservation doctrine and decisions held in some of the major federal reserved water rights cases;

Attachment 6: Fact Sheets on Water Rights and Federal Reserved Water Rights.

In summary, under the state's system of allocating water rights based on prior appropriation, there is no way that dealing with federal reserved water rights can be avoided. Adjudication of water rights in areas where federal reserved water rights exist or are claimed by the federal government becomes difficult and sometimes impossible due to the uncertainty of not knowing how much water will be available for other appropriators once the federal reserved water rights are adjudicated. We will either adjudicate administratively, through state courts, or in federal court - these are the choices as we see them. Adjudication using the procedures provided by enactment of SB 150 is the most efficient and least expensive alternative.

We hope you find this information useful. Please contact me if we can provide you with further information.

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Commissioner

Enclosures

cc: Representative Bette Cato
Representative Roger Jenkins
Representative M. Mike Miller
Representative Mike W. Miller
Representative Drue Pearce
Representative John Sund
Representative Dave Thompson
Representative F. Kay Wallis
Tom Hawkins, Land & Water Mgmt., DNR

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

Senate Bill 150

Testimony/Senate Resource Committee

Department of Natural Resources

Senator Sturgelewski, Members of the Committee:

Senate Bill 150, dealing with federal reserved water rights, was introduced during the past legislative session. This committee held a hearing on the bill in March of last year. We think it is crucial piece of water resources legislation for Alaska because it would establish procedures to adjudicate federal reserved water rights.

Currently, the Water Use Act, AS 46.15, does not have procedures for basin-wide adjudication of state administered water rights or claimed federal reserved water rights. The proposed bill would provide a state superior court procedure for efficiently adjudicating federal reserved water rights through the use of existing state agency expertise. The bill also sets up an administrative basin-wide adjudication procedure for state administered water rights when a controversy exists between appropriators, such as the scarcity of water within a river basin or ground water aquifer.

A federal reserved water right is one created either expressly or by implication when the federal government withdraws land for a specific purpose. The U.S. Supreme Court first recognized federal reserved water rights in Winters v. Unites States, in 1908. Since that time court cases have extended the doctrine to national forests, parks, refuges, and monuments. Since federal reserved water rights are most often created by implication, no specific quantity of water and no priority date for the water right is established until a court does so by decree. Congress passed the McCarren Amendment, to allow water adjudication suits to be brought against the federal government in state court to determine the quantity and priority date of these implied water rights. While allowing state court adjudication of federal reserved water quantities and priority dates, the McCarren amendment also requires a comprehensive adjudication of all rights within a hydrologic basin where a federal reserved water right may exist.

Federal land reservations make up almost 49 percent of Alaska's total land mass, and may have federal reserved water rights. While competition for water resources in the locale of many of Alaska's federal reservations is limited, we have recently encountered instances where a procedure for adjudication would improve opportunities for state economic development. Applications for additional hatchery water in Sitka were shelved pending study of federal rights to Indian River water. Of more immediate consequence are National Park Service requests for Nuka River appropriations which could reduce Bradley Lake power

production potential. These situations will continue to arise and require a resolution mechanism.

Legislation for basin-wide adjudication was first submitted to the Legislature in 1981. SB 150 was prepared by the Attorney General's Office after extensive review of that initial bill and other western states' laws dealing with federal reserved water rights adjudication. This bill is the best of the basin-wide adjudication legislation of the western states. Drafts of this bill were reviewed by the Departments of Fish and Game and Environmental Conservation, members of the Alaska Water Resources Board, the Western States Water Council, and the states of Idaho and Wyoming. During the past legislative session, there was one hearing by the Senate Resources Committee on SB 150 and we received a number of written comments. This fall we have worked with Senator Halford and the state and federal resource management agencies that participate on the Federal Reserved Water Rights Work Group, chaired by DNR. The committee substitute before you incorporates the changes suggested during this review.

A unique feature affecting federal reserve water rights in Alaska is that so much of Alaska's water resources are undeveloped and unappropriated. Thus, unlike the other western states, federal agencies in Alaska may encounter little competition for their water needs. For this reason, we may find that the courts in Alaska may be more lenient in adjudicating federal reserved water rights for the amounts claimed by the federal government. The

.state's challenge will be to persuade the courts to apply the same standards in Alaska that have been applied outside--granting the minimum amount of water needed for the primary purposes of the land reservation. This is important to ensure that developable water resources are available for the continued growth and development of our state.

In summary, under the State's system of allocating water rights based on prior appropriation, there is no way that dealing with federal reserved water rights can be avoided. We will either adjudicate administratively, through the state courts, or in federal court -- these are the choices as we see them. Adjudication using the administrative and state court procedures that would be provided by enactment of SB 150 is the most efficient as well as the least expensive alternative.

Cyril E. Wanamaker
P.O. Box 2234
Juneau, Alaska 99803

Alaska Water Resources Board

January 22, 1986

Honorable Arliss Sturgulewski
Chairman, Senate Resources Committee
Pouch V
Juneau, Alaska 99811

RE: Committee Substitute for SB 150

Dear Senator Sturgulewski:

The Committee Substitute (Bradley/01/20/86) for SB 150 has been proposed as an act to make miscellaneous amendments to the Alaska Water Use Act (AS 46.15), to establish procedures for the administrative and judicial adjudication of water rights under the act and to provide for an effective date. The substitute bill appears to meet the concerns identified by the Alaska Water Resources Board, the administrative needs of the Alaska Department of Natural Resources (as identified to you in a letter from Commissioner Hunnicke dated January 9, 1986) and to provide the means to properly adjudicate any Federal Reserved Water Rights that may be asserted.

The Alaska Water Resources Board has had a long period of involvement with the development of SB 150 the predecessor to the Committee Substitute. Although the Board as a whole has not had an opportunity to review and comment on the Committee Substitute a member has had input into the substitute bill and previous Board suggestions have been incorporated as well. I think it meets the concerns of the Board and the needs of the State in its present form.

The Board will meet in Juneau from February 26th through the 28th and additional comments may come from the Board after that meeting. I am sure that new revisions or amendments to this substitute or SB 150 will prompt additional Board comments or recommendations.

As the Chairman of the Alaska Water Resources Board I support the Committee Substitute. I recommend that it be passed this legislative session in its present form.

Respectfully,

Cyril R. Wanamaker

Cyril R. Wanamaker, Chairman
Alaska Water Resources Board

cc: All Board members

To: Senate Resources Committee
Butrovich Room
205 Capitol Building
Juneau, Alaska

Re: Senate Bill 150

Senator Sturgulewski and Committee Members:

My name is Ann Puffer. I am the Regional Hydrologist for the USDA, Forest Service, Alaska Region. My comments reflect the position of Federal Land Management Agencies in Alaska (USDA - Forest Service; USDI - Bureau of Land Management, Park Service and Fish and Wildlife Service).

Today you have before you a bill which proposes to establish procedures for adjudicating water rights under the Alaska Water Use Act. The current legislation has been thoroughly reviewed and agreed to by the recently formed State/Federal Water Rights Work Group. Of particular interest to the Federal government are the administrative procedures for general basin-wide adjudication. This landmark procedure will be a significant step forward to avoid costly and time consuming court battles currently occurring in other Western states such as Colorado and Wyoming. It provides a format of mutual benefit to all parties concerned to achieve a negotiated settlement of water rights within a defined basin. More significantly, it establishes a setting for conducting adjudications outside the more traditional antagonistic courtroom situation.

The members of the State/Federal Work Group feel this legislation provides an important tool for water resource management in the State. We, therefore, encourage this committee to recommend Senate Bill 150 to the general legislature for passage.

Thank you for your time.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 , 465-4100

January 23, 1986

The Honorable Arliss Sturgulewski
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Senator Sturgulewski:

The Department of Fish and Game supports the January 20 version of Senate Bill 150, which will allow the state to adjudicate Federal Reserved Water Rights.

The adjudication process permits the state to ensure that proper consideration is given to reserving adequate water supplies for fish and wildlife when Federal Reserved Water Rights allocations are determined administratively or through the state court system.

As you may know, we have been working with the State/Federal Federal Reserved Water Rights Work Group to incorporate our input into this legislation.

We believe there is a critical need for this legislation and we urge you to support it.

If you have any questions pertaining to our comments, please do not hesitate to contact me.

Sincerely,

Don W. Collinsworth
Commissioner

cc: Commissioner E. Wunnicke, ADNR
Chairman C. Wanamaker, Alaska Water Board

Resolution No. 84-5

FEDERAL RESERVE WATER RIGHTS —
BASIN-WIDE ADJUDICATION

The federal government is vested with reserved water rights on numerous federal land withdrawals in Alaska. Federal legislation establishing the reserves specifies the purposes of the reserved water rights and the enacting date establishes their priority date. These water rights include both diversionary and instream uses.

Of the 367.7 million acres in Alaska, federal reserve water rights exist on almost 60 percent of the land mass or over 215 million acres. From a miniscule 2.5 million acres of military land, to 50 and 75 million acres of land for national parks and fish and wildlife refuges respectively, federal reserve water rights issues and problems have the potential to be large as well as complex.

In order for DNR to adequately manage the state's water and adjudicate water rights, it will ultimately be desirable to integrate federal reserved water rights with state adjudicated water rights. The federal government has indicated it will await requests from the states before initiating quantification of federal reserved water rights. Adjudication of claimed federal reserved water rights must be undertaken pursuant to the requirements of the McCarran Amendment (43 USC 666(a)) which requires that the adjudication be basin-wide and judicially determined. The Water Use Act, AS 46.15 does not specifically provide for basinwide court adjudication for federal reserved water rights.

THE ALASKA WATER RESOURCES BOARD, therefore, urges that the Commissioner of the Department of Natural Resources propose legislation for basin-wide adjudication. Current statutes and regulations may be adequate to initiate a basinwide adjudication of federal reserved rights using a declaratory judgement suit in Superior Court. However, more explicit statutes are needed to establish the Superior Court's duties and responsibilities and to set the limits of the Court's authority. This type of case has not previously occurred in Alaska. In addition, the Department of Natural Resources should review existing provisions of the Water Use Act and propose any needed amendments to improve and update the Act.

ADOPTED this 14th day of March, 1984

ALASKA WATER RESOURCES BOARD

David Vanderbrink

David Vanderbrink, Chairman

Resolution No. 86-5

Federal Reserved Water Rights Adjudication

The Alaska Water Resources Board fully recognizes the need for an administrative method of adjudicating Federal Reserved Water Rights. In the past, this Board has supported legislation which would implement an administrative procedure.

This support was given in the 1985 legislative session to SB 150. SB 150 would have provided the desired administrative adjudication process. It is this Board's understanding that the bill was not passed as a result of proposed general housekeeping revisions of the Alaska Water Use Act.

The ALASKA WATER RESOURCES BOARD supports legislation in the 1986 legislative session which would give Alaska an administrative process to adjudicate Federal Reserved Water Rights. Because of the problems associated with attaching the general housekeeping revisions to the adjudication bill, it is this Board's recommendation that the general revisions identified in SB 150 be removed from future legislation providing for administratively adjudicated Federal Water Rights.

Adopted this 13th day of September, 1985
ALASKA WATER RESOURCES BOARD

Cyril K. Wanamaker, Chairman

March 14, 1985

The Honorable Arliss Sturgulewski
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: The Alaska Water Resources Board's Comments on SB 150

Dear Senator Sturgulewski:

Attached are comments regarding SB 150 prepared by the Alaska Water Resources Board during its March 4-8 Board meetings.

I would like to emphasize that this Board supports SB 150 provided the enclosed suggested changes are incorporated in the proposed legislation.

The Board as a unanimous body supports the adoption of a systematic water adjudication process. If the bill, as amended herein, is not adopted in this legislation, the Alaska Water Resources Board will do everything within its power to see that legislation addressing this issue is introduced in the next session.

Thank you for your kind consideration of these recommendations.

Sincerely,

Cyril R. Wanamaker, Chairman
Alaska Water Resources Board

By: L. A. Dutton, Chief
Water Management Section

cc: Governor Sheffield
Senate Resources Committee

CRW:CML:ref

Alaska Water Resources Board
Recommendations for changes to
SB 150 "An Act making miscellaneous
amendments to the Alaska Water Use Act."

Although the following proposed changes to SB 150 may not be procedurally correct, the Alaska Water Resources Board requests that the Senate Resources Committee review the substantive changes requested in this document.

The State of Alaska is in need of a workable and systematic water adjudication system. This Board therefore supports the basic principles espoused in SB 150. We do, however, have some reservations about the present draft as it relates to notice requirements and water appropriation abandonment. The Board makes the following recommendations:

I. Delete Section 46.15.140(d) and replace it with Section 46.15.145(g) which would read:

> "A state agency may not abandon or forfeit an instream flow certificate in whole or in part except after public notice."

II. Add a new subsection to AS 46.15.165 to read:

> "AS 46.15.165(c)(c) serve The Alaska Native Village and Regional Corporation whose lands fall within the adjudication area."

III. Add a new sub-section to AS 46.15.166 to read:

> "AS 46.15.166(a)(3) by any person or party asserting a federal reserve water right."

Although these are the only recommended changes of the Board, we would like to point out one section of SB 150 that may have the potential to create future problems. This section is AS 46.15.165(d) as it applies to native allotees served under AS 46.15.165(c)(3).

This board recognizes that one of the primary purposes of SB 150 is to create an adjudication system which satisfies the requirements of the McCarren Amendment 43 U.S.C. Sec. 666, thereby providing for state adjudication of federal reserve water rights. Federal agencies have the resources and responsibility to assert and defend their reserved water rights. This state should not be responsible for a federal agency's failure to assert its rights.

The Bureau of Indian Affairs (BIA), as trustee, has the primary responsibility of protecting a native allotee's property interests in a native allotment. It has been suggested, however, that because of any number of reasons, such as the vast number of allotments in the state, other BIA priorities, the failure of the BIA representatives to properly judge the significance of a water adjudication to the allotment holder, inadvertent omissions, etc., federal reserve water rights which may be a legitimate property interest of the allottee may be forfeited due to BIA failure to assert water right as required in this subsection.

If a pattern of forfeitures of federal reserve water rights on native allotments does emerge as a result of this subsection, it is this Board's recommendation that the state's position should be flexible enough to assure that the necessary amendments will be made to protect any legitimate rights of the native allottees.

We wish to make it clear, however, that this Board does not take the position that the state is responsible for asserting a federal reserve water right for a native allottee. Furthermore, we are not suggesting that the state is responsible for affecting any repairs that are necessary to correct an injury created by a federal agency's failure to perform its responsibilities.

The point that we wish to make is that native allottees are state residents. Any federal reserve water rights that they may be entitled to as an appurtanence to their real property, acquired pursuant to the Native Allotment Act, is a valuable and necessary property interest. Forfeiture of real property interests should not be taken lightly. The forfeiture of a legitimate property interest for a failure to respond to service in a timely manner as required by this subsection is a drastic action and should not, therefore, be taken lightly.

Although we are not suggesting any changes to this subsection at this time, we do wish to demonstrate to the Senate Resources Committee that this subsection may have serious consequences to an identifiable group of longtime Alaska residents and not just to the myriad federal agencies which manage numerous and vast federally withdrawn lands.

INTRODUCTION TO RESERVED WATER RIGHTS

Ralph W. Johnson

Natural Resources Law Center

University of Colorado School of Law

June 11-13, 1984

INTRODUCTION TO RESERVED WATER RIGHTS

Ralph W. Johnson

Natural Resources Law Center
University of Colorado School of Law

June 11-13, 1984

INTRODUCTION.
This paper will discuss the origin and development of the reservation doctrine, describe the various legislative attempts to limit or abolish the doctrine, and discuss its current status and implementation. The paper will concentrate on the NonIndian aspects of the doctrine.

The reservation doctrine inspires anger, fear, disdain, and occasionally eloquence:

Corker.

> It is the product of a fabricated legislative history. It is a perversion and a fabrication." Corker, A REAL LIVE PROBLEM OR TWO FOR THE WANING ENERGIES OF FRANK J. TRELEASE, 54 Den. L. J. 499, 500 (1977).

Trelease.

> "Cyprinodon diabolis, The Devil's Hole pupfish is alive and well and living in a striated marble palace in Nevada, located within a small addition to the Death Valley National Monument created for his benefit in 1952.". The reserved rights doctrine "is very like the Devil's Hole pupfish in many ways. It too is an evolutionary sport. It too lives in Devil's hole. It too has friends in high places within the federal bureaucracy and judicial system." Trelease, FEDERAL RESERVED WATER RIGHTS SINCE PLLRC, 54 Den. L. J. 473 (1977).

Goldberg.

> Described the relationship between western water law, including the reservation doctrine, and federalism as a "concoction of Byzantine politics and legalistic archaeology." Goldberg, INTERPOSITION--WILD WEST WATER STYLE, 17 Stan. L. Rev. 1, 36 (1964).
>
> Commenting on westerner's criticism of the doctrine, and of federal bureaucracy generally, he said: "This sort of fulmination is well within the tradition that permits the

Westerner to "blast at an all-consuming federal encroachment in words more blistering than all the winds that blow from Spokane to San Antonio" in unconcerned disregard of the historical fact "that from start to finish he was [federally subsidized from his brogans to his sombrero. . . ". Goldberg, id. at 1.

Ely.

The reservation doctrine is a "first mortgage of undetermined and indeterminable magnitude," is a "sword of damocles" hanging over private water rights. Ely. Address to National Water Commission, Nov. 6, 1969. Reported in 54 Den. L. J. at 475 (1977).

Hanks.

The impact of the reservation doctrine could be "staggering indeed": "In 16 western states, the BIA administers 52,307,036 acres; a total of 138,595,360 are included in national forests, which are reserved areas, in the reclamation states. Approximately 85% of the entire state of Nevada is owned by the US. Of the 60 million acres of federal land in Nevada, 12 million acres are reserved lands. In Arizona, approximately 73 percent of all land is owned by the federal government." Hanks, PEACE WEST OF THE 98TH MERIDIAN--A SOLUTION TO FEDERAL-STATE CONFLICTS OVER WESTRN WATERS, 23 Rutgers L. Rev. 33,43 (1968).

Johnson.

Commenting on US v. New Mexico: "If you think that you can think about a thing (that thing being the purposes for which water was reserved under the Forest Service Organic Act in 1897) and that thing is inextricably attached to something else (the something else being the Reserved Rights Doctrine) without thinking of the thing to which it is attached to (which, of course, is the Reserved Rights Doctrine, which you can't think about because it didn't exist in 1897) then you have a legal mind. Or at least you may be qualified to sit on the Supreme Court!" Inst. for Nat. Res. Law Teachers, Boulder Colo., May 28, 1981. Adapted from saying by Thomas Reed Powell.

THE ORIGIN OF THE RESERVATION DOCTRINE

Disagreement on the date of origin of the doctrine.

The earliest cited case on the doctrine is United States v. Rio Grande Irrigation Co. 174 US 690 (1899), where the court said, per dicta, "[A] state cannot by its legislation destroy the

right of the United States, as owner of the land bordering on a stream, to the continued flow of its waters, so far at least as may be necessary for the beneficial uses of the government property." Id. at 703.

In Winters v. United States, 207 US 564 (1908) the Court recognized reserved rights in an Indian Tribe even though nothing had been said in the Agreement with the Indians about water. The Court relied on Rio Grande for the proposition that "The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be."

Samuel Weil, in his treatise WATER RIGHTS IN THE WESTERN STATES (Bancroft-Whitney, 1911), says there are "divergent theories regarding the law of waters . . . on military and Indian reservations. . . .

But the general tendency of the Federal courts in dealing with water on or used by military or Indian reservations is to . . . tacitly assume that the creation of the reservation impliedly repealed the act of 1866 as to waters thereon; and to restore the proprietary rights of the Unites States, . . . not limited to the amount of water in actual use at any specific time."

"Military and Indian reservations are in exclusive government occupancy, wherein they may possibly differ from the forest and other reserved areas, which are intended to be open to the people." (Sec. 207).

The state's rights argument. This position argues that three acts, the Act of 1866, 1870, and 1877, constituted waivers of federal reserved rights claims . This argument seemed to be confirmed in California Oregon Power Co. v. Portland Beaver Cement Co., 295 US 142 (1935) where the court said:

> [The Desert Land Act] effected a severance of all water on the public domain, not theretofore appropriated, from the land itself. . . Congress intended to establish the rule that for the future the land should be patented separately; and that all nonnavigable waters thereon should be reserved for the use of the public under the laws of the states and territories. . . " 295 US at 162.

FPC v. Oregon, 349 US 435 (1955), alerted western lawyers to the possibility that the reserved rights doctrine might apply to NonIndian reserves, although no actual allocation of water was made in the case. The Court denied Oregon's claim of ownership of a nonnavigable stream, saying that the three above acts did not constitute a severance of waters as to federally "withdrawn" lands, and then held that a federally licensed project could go forward over state objections.

Arizona v. California, 373 US 546 (1963), firmly held that the reservation doctrine applied to NonIndian, reserved public lands, and the court allocated water to such reserved lands, 41,839 acre-feet per year for the Havasu Lake National Wildlife Refuge, and 28,000 acre-feet per year for the Imperial National Wildlife Refuge, both with 1941 priorities.

EXPECTATIONS DASHED

The western water establishment cried "unfair" after FPC v. Oregon and Arizona v. California, arguing that these cases destroyed legitimate expectations of prior appropriators. Trelease, debunking the claim that the doctrine originated with Rio Grande in 1899, and Winters in 1908, argued:

> "I was there. I took a course in water law in 1938 and got an A in it. I then went to work for L. Ward Bannister, one of the negotiators of the Colorado River Compact and lecturer in water law at Denver University and Harvard University. I helped to bring his notes up to date. I listened in on discourses he had with Ralph Carr, Jean Breitenstein, John Reed, and other "irrigation lawyers" of the old school. I started to teach water law in 1946, and I was General Counsel for the Missouri River Basin Survey Commission in 1952. At no time prior to 1955 did I ever hear a suggestion that the reserved rights doctrine was anything but a special quirk of Indian water law." Trelease, FEDERAL RESERVED WATER RIGHTS SINCE PLLRC, 54 Den. L. J. 473 (1977).

WESTERN WATER RIGHTS SETTLEMENT BILLS

Starting in 1955 and for the next 15 years, over 50 bills were introduced in Congress to reverse the effects of the reservation doctrine.

Four principal objections were raised to the doctrine.

(1) The federal government, rather than the states, decides how the water is to be used.

(2) The federal government does not follow state filing procedures, impairing the completeness of the state's water records. No centralized federal record system exists for reserved water rights.

(3) Reserved rights are unquantified, creating uncertainty and making long range planning impossible.

(4) Prior appropriators under state law can lose their rights to preexisting, unquantified, unrecorded,

undiscoverable federal reserved rights.

THE FIRST BILLS

The first bills were introduced by Senator Barrett. Their central theme was that "All unnappropriated water in the 17 western states is declared to be free for appropriation under state law" (See Corker, WATER RIGHTS AND FEDERALISM, 45 Cal. L. Rev. 604,606 (1957)) and to require the United States to comply with state appropriation laws rather than claiming waters under the reservation doctrine.

LATER BILLS

Most of the bills introduced over the ensuing years dealt not only with the reserved rights issue, but also with the compensation question under the navigation servitude. In general they proposed that compensation be required for the loss of private property rights under the reservation doctrine and the navigation servitude, that the federal government be required to comply with state water law when it buildsprojects under the Reclamation Act of 1902, and that FPC licensees be required to comply with state law when they build projects under the Federal Power Act of 1920.

Various compromises were developed, under Senator Kuchel of California and others. None of these bills ultimately passed. See, Hanks, PEACE WEST OF THE 98TH MERIDIAN--A SOLUTION TO FEDERAL-STATE CONFLICTS OVER WESTERN WATERS" 23 Rutgers L. Rev. 33 (1968).

REPORT OF THE PUBLIC LAND LAW REVIEW COMMISSION. (One Third of the Nation's Land, 1970) 147-149. For commentary, see Trelease, WATER RESOURCES ON THE PUBLIC LANDS: PLLRC's SOLUTION TO THE RESERVATION DOCTRINE, 6 Land and Water Law Review 89 (1970); Muys, COMMENTS ON "FEDERAL RESERVED WATER RIGHTS", 54 Den. L. J. 493 (1977).

The Commission recommended:

(1) Require federal agencies to give notice of their projected water requirements for the next 40 years;

(2) Establish administrative or judicial review of the reasonableness of the quantities claimed by the federal agencies;

(3) For reservations created in the future, require express statement of intent to reserve water, and the quantity reserved;

(4) Require compensation for the taking of water rights vested prior to the 1963 decision in Arizona v. California.

NATIONAL WATER COMMISSION REPORT (Water Policies for the Future, 1973) pp. 467-468.

The Commission took a different approach from the PLLRC. It recommended:

(1) Require federal agencies to give notice of their projected water requirements for the next 40 years.

As to existing uses by federal agencies, the agencies would be entitled to priority as of the date of the original reservation of the federal lands.

Future uses would receive a priority date as of the date of initiation of actual use.

Compensation would be required where existing private water uses were displaced by new federal agency uses.

REASONS FOR THE FAILURE OF PROPOSED SETTLEMENT LEGISLATION

(1) Eastern suspicion of western avarice.

> "The Wild West water version of interposition . . .: not only should the [western] states have the right to do as they please, but they should be able to do it with federal property, and at federal expense." Goldberg, 17 Stan. L. Rev. 1, 3 (1964).

(2) Rising influence of the environmental movement. Reserved rights tend to protect instream flows, forests, wildlife, and environmental interests.

(3) Splits in western water politics in the 1960s, e.g., over the proposed diversion of Columbia River water to the Southwest, and over the continuation of the 160 acre limitation.

(4) Enactment of Sec. 111 Rivers and Harbors Act, 1970, 33 USC Sec. 595a, reversing United States v. Rands, 389 US 121 (1967), and United States v. Twin City Power Co., 350 US 222 (1956) and providing that when condemnation occurs, compensation must be paid to riparians on navigable waters for the "highest and best use" of their uplands, unburdened by the navigation servitude. This excised one of the major problems addressed by proposed settlement legislation.

(5) The Supreme Court's interpretation of the McCarran Amendment, 66 Stat. 560, 43 USC Sec. 666 to constitute waiver of sovereign immunity for suits in federal or state courts to adjudicate, and quantify, federal reserved water rights. Colorado River Water Conservation Dist. v. United States, 424 US 800 (1976), United States v. District Court for Eagle County, 401 US 520 (1971).

(6) The fact that no one could be found whose vested water right had been destroyed by the exercise of a federal reserved right.

The PLLRC reported that "The federal lands are the source of most of the water in the 11 coterminous western states, providing approximately 61% of the total natural runoff occurring in the region. Most of this runoff comes from land withdrawn or reserved for specific purposes. Forest Service and National Park Service reservations contribute about 88 % and 8 %, respectively, of the runoff from public lands and more than 59 % of the total yield from all lands of those states." ONE THIRD OF THE NATION'S LAND, Final Report of the PLLRC, p. 141, 1970.

The PLLRC reported, however, that "Although most of the current concern relates to the doctrine's potential future impact, such potential impacts could be major". Id. at 144.

In 1964 Nicolas B. Katzenbach, Deputy Attorney General for the US said that

"for all the outcry. . . not one state, not one county, not one municipality, not one irrigation district, not one corporation, not one individual has come forward to plead and prove that the United States. . . has destroyed any private right." Hearings on S. 1275 Before the Subcommittee on Irrigation and Reclamation of the Senate Comm. on Interior and Insular Affairs, 88th Cong. 2nd. Sess. (1964). Trelease reported that "Twenty-two years after Pelton Dam this is still true." Trelease, 54 Den. L. J. at p. 492 (1977).

Corker, commenting on the "de minimus" quantity of reserved rights as to NonIndian lands, noted that

"It is the quantity beneath the accuracy of a stream guage. It is what a bird, a butterfly, a deer, or a backpacker drinks from a stream without need of permission. [This statement was made prior to US v. New Mexico; not even these minimal drinkers would now be protected]. The rest of the water flows from the National Forests and the National Parks subject to the law of gravity." Corker, 54 Den. L. J. 499 (1977).

Professor Corker, after extensive research on a report for the

PLLRC, finally found an "injured" person. Mrs. Glenn sued under the Tort Claims Act for loss of a 1930 irrigation appropriation to a recreation area in a National Forest established in 1897. Her suit was dismissed on stipulated facts. Apparently sufficient water was made available for both Mrs. Glenn and the Forest Service. See Glenn v. United States, Civil No. C-153-61 (D. Utah March 16, 1963) discussed in DEVELOPMENT, MANAGEMENT AND USE OF WATER RESOURCES ON THE PUBLIC LANDS, by Wheatley, Corker, Stetson, and Reed. Clearinghouse for Federal Scientific and Technical Information of the Dept. of Com., PB 188 065 & 188 066. See also, Corker, LET THERE NO NAGGING DOUBTS: NOR SHALL PRIVATE PROPERTY, INCLUDING WATER RIGHTS, BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION, 6 Land & Water L. R. 109 (1970)

THE DEVIL'S HOLE PUPFISH

While this case is cited for the implied reservation doctrine, it really belongs in the express reservation category. In Cappaert v. United States, 426 US 128 (1976) the court enjoined an irrigator's groundwater pumping which was lowering the level of water in Devil's Hole, and endangering the spawning grounds of the tiny pupfish. A 1952 Presidential Proclamation had expressly reserved this water for the pupfish. The court adopted a rule of "minimal need" to effectuate the reservation's purposes, saying it applied to both express and implied reservations.

The use of this reserved water did not interfere with an "existing" private appropriation right. The creation of the federal reservation clearly pre-dated the planned private use, and the water-related purpose of the reservation was clearly expressed.

THE GILA NATIONAL FOREST

In United States v. New Mexico, 238 US 696 (1978), the Court upheld federal reserved rights for National Forest lands. The United States claimed reserved rights for minimum instream flows, and for recreational, stockwatering, and fish purposes. But the Court said it would recog ize only "primary" purposes under the National Forest Organic Act of 1897, 16 USC Secs. 473-478, 479-82, 551 (1976). These purposes did not include recreation, aesthetics, wildlife-preservation, or cattle grazing which the court called secondary purposes. They only include securing favorable conditions of water flows, and furnishing a continuous supply of timber for the people.

A second issue in New Mexico was whether the Multiple Use Sustained Yield Act of 1960, P.L. 86-517, 74 Stat. 215,

codified as amended at 16 USC Secs 528-531 (1976), reserved additional waters. The Court held not, saying that although Congress intended the forests to be administered for broader purposes after 1960, Congress did not intend to reserve water for secondary, MUSYA purposes.

Some 16 or 17 Articles and Notes appeared on the New Mexico case. See, e.g. "Water Rights and National Forests--Narrowing the Implied Reservation Doctrine: United States v. New Mexico, 40 Ohio State Law Journal 728 (1979); Boles, Jr. and Elliott, "United States v. New Mexico and the Course of Federal Reserved Water Rights, 51 Colo. L. Rev. 209 (1980); Fairfax & Tarlock, No Water for the Woods: A Critical Analysis Of United States v. New Mexico, 15 Ida. L. Rev. 509 (1979).

UNITED STATES v. CITY AND COUNTY OF DENVER, 656 P. 2d 1 (Colo. 1982). (Not appealed) This case is the most extensive implementation of the reservation doctrine to date and deserves careful attention.

In this complex state-court adjudication the United States submitted claims for reserved water rights covering seven national forests, three national monuments, one national park, over 1500 public waterholes and springs, two mineral hot springs, and the public domain administered by the Bureau of Land Management. The case involved thousands of claims for state law appropriation rights. 169 parties objected to the US claims, represented by at least 70 different attorneys. A Water Court decree was appealed to the Colorado Supreme Court. That court held:

NATIONAL FORESTS

Instream flows for recreational, scenic, and wildlife purposes. The United States claimed instream flow rights for watershed and timber protection, and wanted to use this water for recreational, scenic, and wildlife protection.

HELD: Instream flow claim rejected. The US failed to demonstrate that this water was needed for national forest purposes of watershed protection and timber production.

Does MUSYA expand reservation purposes? The United States claimed that MUSYA (1960) expanded the purposes for which water could be reserved under the 1897 Act.

HELD: MUSYA did not expand these purposes. While conceding the Supreme Court's statement in New Mexico was dicta, the Colorado Court said that the dicta was controlling. Congress was aware of the Reserved Rights Doctrine when it passed MUSYA, but did not choose to reserve additional water explicitly.

DINOSAUR NATIONAL MONUMENT

Reservations for Monuments. The US claimed reserved instream flows in the Yampa River for recreational boating (river rafting) within the Monument. This have seriously impaired junior appropriators upstream on the Yampa. This National Monument was created under 16 USC Sec. 431 (1976) by presidential proclamation to preserve public lands of outstanding historic and scientific interest. President Wilson created it in 1915 to preserve an "extraordinary deposit of Dinosaurian and other gigantic reptilian remains".

HELD: Recreational boating is not one of the purposes for

which water can be reserved under the National Monument Act.

Monument transferred to Park. This Monument was placed under the supervision of the National Park Service in 1938 and the US argued that its "purposes" were thus expanded to include National Park purposes.

HELD: The transfer was done for administrative convenience and did not change the purposes for which water could be reserved. The area is still a Monument, being administered by the National Park Service.

Instream flows for scientifically important species. The US claimed instream flows might be necessary for fish habitats of endangered species of historic and scientific interest.

HELD: Claim upheld. REMANDED for determination of quantity needed for these purposes. The US must quantify its claim within 6 months.

ROCKY MOUNTAIN NATIONAL PARK

National Forest transferred to Park status. This Park was created from a national forest. The land was transferred to the Park in 1915, and again in 1930.

HELD: For reservation purposes that are common to both national forests and national parks (watershed protection and timber production), the priority date is the initial national forest reservation.

National Parks also have broader purposes, inter alia, conserving scenery, historic and scientific objects, and wildlife. See National park Service Act of 1916, 16 USC Sec. 1 (1976). The priority date for the reserved rights for these broader purposes is the date the land was made into a Park. Decrees were awarded for minimum flows and lake levels for conservation of scenic, natural and historic objects and for recreational and aesthetic purposes.

PUBLIC SPRINGS AND WATERHOLES

Reservation by Interior Dept. regulation. The federal government claimed reserved water rights for the entire yield of numerous waterholes and springs, whether tributary or nontributary, located on lands withdrawn by a 1926 executive order titled "Public Water Reserve No. 107".

HELD: The Executive Order was issued under authority of

the Stock Raising Homestead Act of 1916, 43 USC Sec. 300 (1976). While the Exec. Order did not state an intention to reserve water and withdraw it from appropriation under state law, Department of Interior regulations did state such intention, and that is adequate to create a reserved right.

Anti-monopolization purpose for reservation. The Dept. of Interior REGULATIONS reserved water to "prevent the monopolization of vast land areas in the arid states by providing a source of drinking water for animal and human consumption".

HELD: These regulations reserved only sufficient water to carry out this anti-monopolization purpose, and no more. The springs and water holes contain more water than is minimally essential for this purpose. The government has 4 years to quantify its minimal needs to effectuate this purpose.

Tributary springs. The reservation applies to both tributary and nontributary springs; the reservation documents made no distinction between these two types of sources.

MINERAL HOT SPRINGS

Reservation for leasing purposes. The federal government claimed reserved water rights to hot springs for leasing purposes pursuant to the Pickett Act (43 USC Sec. 141 (1976).

HELD: Reserved rights upheld.

Reservation for geothermal power production. The federal government claimed reserved water rights to hot springs for geothermal power production, under the Pickett Act, and under the Geothermal Steam Act of 1970, 30 USC Sec. 1001, et seq. (1976).

HELD: No reserved rights. The Geothermal Act is principally a leasing Act. No express or implied intent can be found in either Act to reserve water for power generation.

Federal licensees and contractors exercising reserved right. The federal government claimed that permittees, licensees, and concessionaires could exercise the federal reserved right, and that it was not necessary for the federal government to itself exercise these rights.

HELD: Licensees etc. can exercise the federal reserved right.

TWO OTHER ISSUES were expressly not decided by the court:

(1) whether reserved rights are limited to waters on, under, or touching the reserved lands;

(2) Whether the reserved right can be transferred to a use not within the original purposes of the reservation. These issues were not properly before the court.

RESERVED WATERS ON BLM LANDS

In Sierra Club v. Watt, 659 F.2d 203 (D.C.Cir.1981) the Court denied the Sierra Club's claim that FLPMA had reserved waters on BLM lands for "scenic, scientific, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values", ruling that FLPMA merely set forth "purposes, goals and authority for uses of the public domain," and did not reserve any water.

THEORETICAL BASIS FOR THE RESERVATION DOCTRINE

This topic is considered last in this outline, or almost so, because it is a peculiar concern of academics, rather than the courts. The Courts have been concerned with results, letting theoretical bases take the hindmost. Nonetheless two theories hold some sway. Supporters of each theory claim judicial support:

(1) The federal government owns waters on lands that have been withdrawn, and therefore can do with those waters as it pleases, without regard to state law. See Hanks, FEDERAL-STATE RIGHTS AND RELATIONS, in 2 WATERS AND WATER RIGHTS Sec. 102.1, at 38-40 (R. Clark ed. Supp 1978).

(2) The reservation doctrine is explained by the supremacy clause, coupled with some incidental constitutional power (e.g. commerce power) exercised on the reserved land. See F. Trelease, FEDERAL-STATE RELATIONS IN WATER LAW 138-47 (National Water Commission Legal Study No. 5, 1971).

FEDERAL NON-RESERVED WATER RIGHTS

The argument about the existence of these oddities, and what they look like, has preoccupied a number of federal lawyers and academics. To date the courts have not been concerned with them.

If one cuts through the extensive verbiage on the subject, one thing seems clear. If Congress wants to claim waters for some federal government use, then it has the power to do so, assuming it acts under the Supremacy clause in conjunction with some other empowering clause, e.g., commerce or property. Of course if the federal use damages or destroys vested private water rights, the the owners of those rights, must be compensated. In view of past congressional history (e.g., the Acts of 1866, 1877), and Supreme Court cases (e.g., US v. New Mexico) the Congressional intention to claim such waters will have to be clearly expressed. But, that the power exists is not really be debatable.

Debate can, of course, occur about whether the Congressional intent is clear enough to pass judicial muster. That debate, especially as it concerns the Federal Land Policy and Management Act of 1976, 43 USC Sec. 1701 et seq. (FLPMA) has waxed extensively in the federal legal establishment since 1979. See:

Krulitz view: Such rights probably exist under FLPMA, and other statutes, and, indeed, are not all that hard to find. FEDERAL WATER RIGHTS OF THE NATIONAL PARK SERVICE, FISH AND WILDLIFE SERVICE, BUREAU OF RECLAMATION, AND BUREAU OF LAND MANAGEMENT, 88 Interior Dec. 553 (1979).

Martz view: Such rights probably don't exist, and certainly not unless clearly mandated by Congress; FLPMA is too fuzzy to be the basis of such rights. MEMORANDUM OF THE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR, 88 Interior Dec. 253 (1981).

Coldiron view: "There is no 'federal non-reserved water right.'" NON-RESERVED WATER RIGHTS--UNITED STATES COMPLIANCE WITH STATE LAW, 88 Interior Dec. 1055 (1981).

Olson view (Office of Legal Counsel): Such rights might well exist, but only where congress explicitly or clearly provides for them! U.S. Dept. of Justice, Office of Leg. Counsel, "Federal Non-Reserved" Water Rights (June 16, 1982).

WHAT IS THE DIFFERENCE BETWEEN RESERVED RIGHTS AND NON-RESERVED RIGHTS?

Coggins and Wilkinson suggest that non-reserved rights arise when Congress delegates to a federal agency authority to administratively claim the waters of a particular stream or lake, for a particular location and purpose, e.g., a campsite. These rights have a priority from the date "the public was given notice, probably through rulemaking." G.C. Coggins, C. F. Wilkinson, FEDERAL PUBLIC LAND AND RESOURCES LAW, 1983 Supp. p. 70.

FINIS

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

Senate Bill 150

Testimony/Senate Resource Committee

Department of Natural Resources

Senator Sturgelewski, Members of the Committee:

Senate Bill 150, dealing with federal reserved water rights, was introduced during the past legislative session. This committee held a hearing on the bill in March of last year. We think it is crucial piece of water resources legislation for Alaska because it would establish procedures to adjudicate federal reserved water rights.

Currently, the Water Use Act, AS 46.15, does not have procedures for basin-wide adjudication of state administered water rights or claimed federal reserved water rights. The proposed bill would provide a state superior court procedure for efficiently adjudicating federal reserved water rights through the use of existing state agency expertise. The bill also sets up an administrative basin-wide adjudication procedure for state administered water rights when a controversy exists between appropriators, such as the scarcity of water within a river basin or ground water aquifer.

A federal reserved water right is one created either expressly or by implication when the federal government withdraws land for a specific purpose. The U.S. Supreme Court first recognized federal reserved water rights in Winters v. Unites States, in 1908. Since that time court cases have extended the doctrine to national forests, parks, refuges, and monuments. Since federal reserved water rights are most often created by implication, no specific quantity of water and no priority date for the water right is established until a court does so by decree. Congress passed the McCarren Amendment, to allow water adjudication suits to be brought against the federal government in state court to determine the quantity and priority date of these implied water rights. While allowing state court adjudication of federal reserved water quantities and priority dates, the McCarren amendment also requires a comprehensive adjudication of all rights within a hydrologic basin where a federal reserved water right may exist.

Federal land reservations make up almost 49 percent of Alaska's total land mass, and may have federal reserved water rights. While competition for water resources in the locale of many of Alaska's federal reservations is limited, we have recently encountered instances where a procedure for adjudication would improve opportunities for state economic development. Applications for additional hatchery water in Sitka were shelved pending study of federal rights to Indian River water. Of more immediate consequence are National Park Service requests for Nuka River appropriations which could reduce Bradley Lake power

production potential. These situations will continue to arise and require a resolution mechanism.

Legislation for basin-wide adjudication was first submitted to the Legislature in 1981. SB 150 was prepared by the Attorney General's Office after extensive review of that initial bill and other western states' laws dealing with federal reserved water rights adjudication. This bill is the best of the basin-wide adjudication legislation of the western states. Drafts of this bill were reviewed by the Departments of Fish and Game and Environmental Conservation, members of the Alaska Water Resources Board, the Western States Water Council, and the states of Idaho and Wyoming. During the past legislative session, there was one hearing by the Senate Resources Committee on SB 150 and we received a number of written comments. This fall we have worked with Senator Halford and the state and federal resource management agencies that participate on the Federal Reserved Water Rights Work Group, chaired by DNR. The committee substitute before you incorporates the changes suggested during this review.

A unique feature affecting federal reserve water rights in Alaska is that so much of Alaska's water resources are undeveloped and unappropriated. Thus, unlike the other western states, federal agencies in Alaska may encounter little competition for their water needs. For this reason, we may find that the courts in Alaska may be more lenient in adjudicating federal reserved water rights for the amounts claimed by the federal government. The

state's challenge will be to persuade the courts to apply the same standards in Alaska that have been applied outside--granting the minimum amount of water needed for the primary purposes of the land reservation. This is important to ensure that developable water resources are available for the continued growth and development of our state.

In summary, under the State's system of allocating water rights based on prior appropriation, there is no way that dealing with federal reserved water rights can be avoided. We will either adjudicate administratively, through the state courts, or in federal court -- these are the choices as we see them. Adjudication using the administrative and state court procedures that would be provided by enactment of SB 150 is the most efficient as well as the least expensive alternative.

Cyril E. Wanamaker
P.O. Box 2234
Juneau, Alaska 99803

Alaska Water Resources Board

January 22, 1986

Honorable Arliss Sturgulewski
Chairman, Senate Resources Committee
Pouch V
Juneau, Alaska 99811

RE: Committee Substitute for SB 150

Dear Senator Sturgulewski:

The Committee Substitute (Bradley/01/20/86) for SB 150 has been proposed as an act to make miscellaneous amendments to the Alaska Water Use Act (AS 46.15), to establish procedures for the administrative and judicial adjudication of water rights under the act and to provide for an effective date. The substitute bill appears to meet the concerns identified by the Alaska Water Resources Board, the administrative needs of the Alaska Department of Natural Resources (as identified to you in a letter from Commissioner Numnicke dated January 9, 1986) and to provide the means to properly adjudicate any Federal Reserved Water Rights that may be asserted.

The Alaska Water Resources Board has had a long period of involvement with the development of SB 150 the predecessor to the Committee Substitute. Although the Board as a whole has not had an opportunity to review and comment on the Committee Substitute a member has had input into the substitute bill and previous Board suggestions have been incorporated as well. I think it meets the concerns of the Board and the needs of the State in its present form.

The Board will meet in Juneau from February 26th through the 28th and additional comments may come from the Board after that meeting. I am sure that new revisions or amendments to this substitute or SB 150 will prompt additional Board comments or recommendations.

As the Chairman of the Alaska Water Resources Board I support the Committee Substitute. I recommend that it be passed this legislative session in its present form.

Respectfully,

Cyril R. Wanamaker

Cyril R. Wanamaker, Chairman
Alaska Water Resources Board

cc: All Board members

To: Senate Resources Committee
Butrovich Room
205 Capitol Building
Juneau, Alaska

Re: Senate Bill 150

Senator Sturgulewski and Committee Members:

My name is Ann Puffer. I am the Regional Hydrologist for the USDA, Forest Service, Alaska Region. My comments reflect the position of Federal Land Management Agencies in Alaska (USDA - Forest Service; USDI - Bureau of Land Management, Park Service, and Fish and Wildlife Service).

Today you have before you a bill which proposes to establish procedures for adjudicating water rights under the Alaska Water Use Act. The current legislation has been thoroughly reviewed and agreed to by the recently formed State/Federal Water Rights Work Group. Of particular interest to the Federal government are the administrative procedures for general basin-wide adjudication. This landmark procedure will be a significant step forward to avoid costly and time consuming court battles currently occurring in other Western states such as Colorado and Wyoming. It provides a format of mutual benefit to all parties concerned to achieve a negotiated settlement of water rights within a defined basin. More significantly, it establishes a setting for conducting adjudications outside the more traditional antagonistic courtroom situation.

The members of the State/Federal Work Group feel this legislation provides an important tool for water resource management in the State. We, therefore, encourage this committee to recommend Senate Bill 150 to the general legislature for passage.

Thank you for your time.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 . 465-4100

January 23, 1986

The Honorable Arliss Sturgulewski
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Senator Sturgulewski:

The Department of Fish and Game supports the January 20 version of Senate Bill 150, which will allow the state to adjudicate Federal Reserved Water Rights.

The adjudication process permits the state to ensure that proper consideration is given to reserving adequate water supplies for fish and wildlife when Federal Reserved Water Rights allocations are determined administratively or through the state court system.

As you may know, we have been working with the State/Federal Federal Reserved Water Rights Work Group to incorporate our input into this legislation.

We believe there is a critical need for this legislation and we urge you to support it.

If you have any questions pertaining to our comments, please do not hesitate to contact me.

Sincerely,

Don W. Collinsworth
Commissioner

cc: Commissioner D. Wunnicke, ADNR
Chairman C. Wanamaker, Alaska Water Board

Alaska Department of
NATURAL RESOURCES

ESTHER WUNNICKE,
COMMISSIONER

Fact Sheet: FEDERAL RESERVED WATER RIGHTS

JULY, 1985

WHAT ARE FEDERAL RESERVED WATER RIGHTS?

- Federal reserved water rights are created when federal lands are withdrawn from entry (by Congress or other lawful means) for federal use.
- Federal reserved water rights:
  - apply to both instream and out-of-stream use
  - may be created without actual diversion or beneficial use
  - are not lost by non-use
  - priority dates are established as the date the land is withdrawn for the primary purpose(s)
  - are created for the minimal amount of water reasonably necessary to satisfy both existing and reasonable foreseeable future uses of water for the primary purpose(s) for which the land is withdrawn
- Water rights for secondary purposes must be obtained under state law, AS 46.15.

WHY ARE FEDERAL RESERVED WATER RIGHTS IMPORTANT TO YOU?

- Water users in areas where there are federal land withdrawals should file for water rights with DNR in order to protect their use of water. If a basin wide adjudication is started for your river basin, you can then be assured of being included in the adjudication.
- Holders of water rights with priority dates established before the withdrawal of federal lands within a basin will have water rights senior to the federal government. Water users filing for water rights after the withdrawal of federal lands within a specific basin will have water rights with priority dates later than those of the federal government.

HOW ARE FEDERAL RESERVED WATER RIGHTS ADJUDICATED?

- Federal reserved water rights are a judicial creation. The United States Supreme Court first recognized federal reserved water rights in *Winters v. United States*, 207 U.S. 564 (1908), an Indian reservation case. Since that time, court cases have extended the Winters Doctrine to other types of federal land withdrawals.
- Federal law, the McCarren Amendment (43 U.S.C. 666), allows judicial adjudication of federal reserved water rights in state court.
- The McCarren Amendment requires that state court adjudications include all water rights in a river basin, including all claimed federal reserved water rights and state administered water rights.

WHY ARE WE CONCERNED ABOUT FEDERAL RESERVED WATER RIGHTS?

- Because federal reserved water rights are unquantified, DNR does not know how much water is needed or used for the primary purposes of federal land withdrawals in Alaska. Because the unappropriated water available from a water source and the amount of water reserved by a federal withdrawal is unknown, water resources cannot be effectively managed.
- Alaska's growing population and development pressures have caused water supply and water rights conflicts in several areas of unquantified federal reserved water rights. Examples include Sitka's Indian River and Anchorage's Ship Creek.
- For DNR to effectively manage and allocate the state's water and adjudicate water rights, it is necessary to have the federal reserved water rights in Alaska inventoried and quantified by the appropriate federal land management agencies in cooperation with the State of Alaska. The state can then integrate federal reserved water rights with state administratively adjudicated water rights and manage water sources with greater certainty.



HOW MUCH LAND IN ALASKA HAS FEDERAL RESERVED WATER RIGHTS?

- Of the 367.7 million acres in Alaska, almost 49 percent, or more than 178 million acres are reserved federal lands which may have federal reserved water rights:

These federal lands are made up of:

Military land - 2.5 million acres
National Forests - 23.2 million acres
BLM lands - 26.1 million acres
National Parks - 51 million acres
Fish and Wildlife Refuges - 76 million acres

For more information about federal reserved water rights and application forms for water rights, please call, write, or come to one of the following Offices:

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT

SOUTHEASTERN REGIONAL OFFICE
400 Willoughby Avenue
Suite 400
Juneau, Alaska 99801
465-3400

NORTHERN REGIONAL OFFICE
4420 Airport Way
Fairbanks, Alaska 99701
479-2243

SOUTHCENTRAL REGIONAL OFFICE
Frontier Building
3601 C Street, 10th Floor
Pouch 7-005
Anchorage, Alaska 99510
561-2020

Mat-Su Area Office
Century Plaza, Suite 202
Pouch 874008
Wasilla, Alaska 99510
376-4595

DIVISION OF FORESTRY

HAINES AREA OFFICE
Room 6, Gateway Building
Main Street
Post Office Box 263
Haines, Alaska 99827
766-2120

KETCHIKAN AREA OFFICE
318 NBA Building
Post Office Box 5220
Ketchikan, Alaska 99901
225-3070

PETERSBURG AREA OFFICE
Petersburg State Office Building
215 Sing Lee Alley
Box 1580
Petersburg, Alaska 99833
722-3236

DELTA AREA OFFICE
Mile 267.5 Richardson Highway
Post Office Box 1149
Delta Junction, Alaska 99737
895-4225

TOK AREA OFFICE
Mile 124.1 Glenn Highway
Post Office Box 10
Tok, Alaska 99780
883-5134

SOUTHWEST (McGRATH) AREA OFFICE
McGrath Airport
Box 130
McGrath, Alaska 99627
524-3010

KENAI PENINSULA AREA OFFICE
Mile 92.5 Sterling Highway
S.R. 2, Box 107
Soldotna, Alaska 99669
262-7559

COPPER RIVER AREA OFFICE
Mile 110 Richardson Highway
Post Office Box 185
Glennallen, Alaska 99588
822-5534

Alaska Department of
NATURAL
RESOURCES

ESTHER WUNNICKE,
COMMISSIONER

Fact Sheet:
WATER RIGHTS IN ALASKA

SEPTEMBER 1985

WHAT ARE WATER RIGHTS?

A water right is a property right for the use of surface and subsurface waters by the public as provided by the Alaska Water Use Act (Alaska Statutes 46.15). This water right allows specified amounts of water from particular water sources to be diverted, impounded and withdrawn for specified uses. When a water right is granted, it becomes attached to the land where the water is being used for as long as you use it. If the land is sold, the water right goes with the land to the new owner, unless it is separated from the land with the approval of the Department of Natural Resources.

HOW DO I OBTAIN WATER RIGHTS?

To obtain water rights in Alaska you submit an Application for Water Rights to the Alaska Division of Land and Water Management. You are issued a permit to develop a water source and construct the means to use the water. Once you prove you are beneficially using the water, a certificate of appropriation is then issued. This is a legal document which conveys water rights once the water is being used. In Alaska, there are no automatic rights to ground water because of ownership of overlying land and there are no rights to surface waters because of ownership of adjoining or surrounding land. Use of water without a permit or certificate does not give the user defensible legal rights to the water, no matter how long the water use continues.

WHAT COSTS ARE INVOLVED?

To insure that the public is notified of the proposed water use, you are required to pay the cost of legal advertisement in at least one issue of a local newspaper in the vicinity of the proposed appropriation. However, if the proposed use will not exceed 1,000 gallons of water per day in a single-family domestic household there is no requirement to publish an advertisement. If there are more potential users than the source of water can supply, the Department may require legal advertisement of all types of water rights applicants.

WHY SHOULD I APPLY FOR WATER RIGHTS?

1. If you have established water rights, you have a legal standing to assert those rights against conflicting uses of water with people who do not have water rights.

2. A person with established water rights has priority to the use of water over persons who later file for water rights from the same water source.

3. Anyone who constructs works for the taking of water (an appropriation), or uses a significant amount of water without a permit or certificate of appropriation is guilty of a misdemeanor. (Alaska Statutes 46.15.180)

A significant amount of water as defined by regulation [Alaska Administrative Code 11 AAC 93.970(14)] is the:

- use of 5,000 or more gallons of water in a day from a single source, or;
- the regular daily or recurring seasonal use of 500 or more gallons of water per day for 10 days or more per year from a single source, or;
- any water use that may affect the water rights of other users or the public interest.

4. By filing for water rights, you provide valuable information about water use and consumption in Alaska. This is essential in estimating the present uses of water, predicting future withdrawals, protecting the rights of prior appropriators, and providing for proper management for this important resource.

WHAT OTHER WATER RESOURCES PERMITS MIGHT BE NEEDED FROM THE DEPARTMENT OF NATURAL RESOURCES?

A certificate of approval is required if you want to construct or modify a dam of 10 feet or more in height, or if the storage capacity exceeds 50 acre-feet. A separate application form along with a sliding filing fee applies for various size dams as set forth in the regulations (11 AAC 93.200).

An application for reservation of water may be filed to maintain a specified flow or level of water in a water body at a specified point for specified times. By statute, an instream flow reservation can be made to ensure sufficient water is maintained for protection of fish and wildlife, recreation and park purposes, navigation or transportation purposes, and sanitary and water quality purposes.

HOW DO I OBTAIN AUTHORIZATION FOR SHORT-TERM WATER USE?

Temporary authorization may be required for significant short-term water uses such as construction projects. This authorization does not establish a water right but may help avoid problems with fisheries or existing water right holders. Applications should be made in the form of a letter request to the Department with an associated map showing the location of the water take point and location and amount of water use.

Further information about water rights and copies of the application forms may be obtained from one of the following offices. Applications for water rights must be submitted to a Division of Land and Water Management regional office.

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT

SOUTHEASTERN REGIONAL OFFICE
400 Willoughby Avenue
Suite 400
Juneau, Alaska 99801
465-3400

NORTHERN REGIONAL OFFICE
4420 Airport Way
Fairbanks, Alaska 99701
479-2243

SOUTHCENTRAL REGIONAL OFFICE
Frontier Building
3601 C Street, 10th Floor
Pouch 7-005
Anchorage, Alaska 99510
762-2277

Mat-Su Area Office
Central Plaza, Suite 202
Pouch 874008
Wasilla, Alaska 99687
376-4595

DIVISION OF FORESTRY

HAINES AREA OFFICE
Room 6, Gateway Building
Main Street
Post Office Box 263
Haines, Alaska 99827
766-2120

KETCHIKAN AREA OFFICE
318 NBA Building
Post Office Box 5220
Ketchikan, Alaska 99901
225-3070

PETERSBURG AREA OFFICE
Petersburg State Office Building
215 Sing Lee Alley
Box 1580
Petersburg, Alaska 99833
722-3236

DELTA AREA OFFICE
Mile 267.5 Richardson Highway
Post Office Box 1149
Delta Junction, Alaska 99737
895-4225

TOK AREA OFFICE
Mile 124.1 Glenn Highway
Post Office Box 10
Tok, Alaska 99780
883-5134

SOUTHWEST (McGRATH) AREA OFFICE
McGrath Airport
Box 130
McGrath, Alaska 99627
524-3010

KENAI PENINSULA AREA OFFICE
Mile 92.5 Sterling Highway
S.R.2, Box 107
Soldotna, Alaska 99669
262-7559

COPPER RIVER AREA OFFICE
Mile 110 Richardson Highway
Post Office Box 185
Glennallen, Alaska 99588
822-5534

THE *WINTERS* OF OUR DISCONTENT: FEDERAL RESERVED WATER RIGHTS IN THE WESTERN STATES

INTRODUCTION

Water is the life-blood of the American West. Like other people, westerners need water for basic human sustenance and for a variety of other purposes. But unlike most other Americans, westerners must fill their needs from an extremely limited supply of water.[1] As a result, westerners face a problem that may seem incomprehensible to nonwesterners who live in areas with abundant water supplies: they must decide how to allocate the limited quantity of available water among all the users and uses.

To deal with this problem, the western states[2] developed the doctrine of prior appropriation as a basic scheme for allocating the available surface water among various users.[3] This prior appropriation system, based on continued beneficial use of appropriated water and strict quantification of the rights of users,[4] insists that water may not be wasted or go unused. In the land-rich and water-poor West, any other system would probably be wasteful and inefficient.[5]

Through application of the prior appropriation doctrine, the western states seek to apportion their limited water resources in a fair and

---

1 The United States Water Resources Council's Second National Water Assessment graphically illustrates the critical water shortage in the western states. For example, in 1975, the Rio Grande water resources region showed 78% present streamflow depletion from all demands, and the Lower Colorado region showed 82% depletion. 2 WATER RESOURCES COUNCIL, THE NATION'S WATER RESOURCES: 1975-2000 (pt. 4), at 48 (1978). The Water Resources Council projects that 91% of the surface water in the Rio Grande region will be in use by 1985. More dramatically, the council predicts that the surface water supply in the Lower Colorado region will be overdrawn by 26% in 1985. The council summarized its concern over western water supply:

> Competing offstream uses of water for energy, agricultural, domestic, and industrial needs coupled with associated environmental and instream flow uses have resulted in basinwide and local problems throughout the United States . . . . The problem of inadequate surface-water supply is or will be severe by the year 2000 in 17 [water resources] subregions located mainly in the Midwest and Southwest.

1 WATER RESOURCES COUNCIL, THE NATION'S WATER RESOURCES: 1975-2000, at 56 (1978). For additional discussion of the water shortage in the western states, see generally NATIONAL WATER COMMISSION, WATER POLICIES FOR THE FUTURE (1973).

2 The "western" states referred to in this Note are: Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

3 *See infra* note 11 and accompanying text.

4 *See infra* notes 11-18 and accompanying text.

5 *See infra* note 14 and accompanying text.

rational way. The prior appropriation doctrine conflicts, however, with the doctrine of federal reserved water rights, which the United States Supreme Court announced in *Winters v. United States.*[6] The *Winters* doctrine provides that in reserving public land for a federal enclave such as an Indian reservation, national forest, or military reservation, the federal government also implicitly reserves a sufficient quantity of water to carry out the purpose of the reservation of land.[7] Federal reserved rights exist independently of beneficial use or quantification; they are therefore fundamentally different in character from rights established by prior appropriation.

From 1908 through the 1970s, the Supreme Court expanded the scope of the *Winters* doctrine of federal reserved rights, thereby aggravating the inherent conflict between appropriative rights and reserved rights.[8] More recently, however, the Court has attempted to ease the conflict by narrowly defining the *Winters* doctrine's scope.[9] Both reserved rights and prior appropriation serve important purposes, and therefore both doctrines, and their conflict, will persist.[10] By strictly defining federal reserved rights to make them mesh as smoothly as possible with the water law systems of the various states, the Court's well-directed efforts to harmonize the two doctrines can ease the tension between the *Winters* doctrine and the prior appropriation doctrine.

I
BACKGROUND

A. Water Rights in the Western States: The Doctrine of Prior Appropriation

The doctrine of prior appropriation provides the basic framework for the statutory water use schemes of the western states.[11] A complete understanding of the conflict between the federal reserved rights doc-

---

6 207 U.S. 564 (1908).

7 *See infra* notes 23-25 and accompanying text.

8 *See infra* notes 20-57 and accompanying text.

9 *See infra* notes 58-96 and accompanying text.

10 *See infra* note 122 and accompanying text.

11 The western states can be divided into two doctrinal categories: the Colorado doctrine states and the California doctrine states. The nine Colorado doctrine states (Alaska, Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming) recognize only appropriative rights to surface water. 5 R. CLARK, WATERS AND WATER RIGHTS § 405, at 50 (1972). The nine California doctrine states (California, Kansas, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, and Washington) recognize some riparian rights as well as appropriative rights to surface water. *Id.* § 420, at 232.

The statutory water law systems in the West vary considerably from state to state. A detailed examination of these different systems is beyond the scope of this Note. For a thorough comparative discussion, see *id.* §§ 400-33.

For a basic discussion of the riparian system, see 7 R. CLARK, WATERS AND WATER RIGHTS § 610, at 28 (1976).

trine and prior appropriation necessitates some acquaintance with the workings of prior appropriation systems.

The foundation of the prior appropriation doctrine is its requirement of beneficial use.[12] A user acquires an appropriative right by putting the water he claims to some beneficial use. Moreover, he loses his right if he does not continue to use his appropriated water beneficially.[13] In this respect, the appropriative rights system differs strikingly from the English common law riparian system generally employed in the eastern states. Riparian rights accrue to an owner of land adjoining a stream merely by virtue of his property ownership and thus exist independently of any use at all.[14]

Prior appropriation works by strict chronological priority. A senior appropriator, whose priority date[15] is earlier in time, may take his entire entitlement of water before a junior holder may take any water at all. In this priority system, junior holders bear the entire brunt of any shortage.[16]

All appropriative rights are determined by means of an *in rem* proceeding called a water adjudication,[17] which determines the priority

---

[12] Mining, irrigation, industrial power production, and sanitary and municipal uses are generally recognized as "beneficial." Ranquist, *The* Winters *Doctrine and How It Grew: Federal Reservation of Rights to the Use of Water*, 1975 B.Y.U. L. REV. 639, 646 n.21.

Because appropriative rights accrue by virtue of beneficial use, they need not be appurtenant to land. *Id.* Ownership of land adjoining a stream is not considered a basis for an appropriative right. *Id.* Water obtained by appropriation may generally be used at any place, regardless of its distance from the stream, so long as the use is beneficial. *Id.*

All of the western states except Montana and Colorado impose the additional statutory requirement that the appropriator must obtain a permit from the proper state administrator before he may acquire an appropriative right. *See, e.g.,* WYO. STAT. §§ 41-4-501 to -516 (1977). For an extended discussion of these permit schemes, see 5 R. CLARK, *supra* note 11, § 409, at 99-107.

[13] 5 R. CLARK, *supra* note 11, §§ 413.1, 429.2.

[14] The riparian system would be inappropriate as the *primary* means of allocating available water resources in the West because riparian rights do not depend on beneficial use of the water, and the West can ill afford the luxury of owned but unused stream flow. Riparian law evolved in England, where water is plentiful. The English (and the Americans living in the water-rich East) had no incentive to develop a more thrifty and efficient water use scheme. *See* McGowen, *The Development of Political Institutions on the Public Domain*, 11 WYO. L.J. 1, 14 (1956).

[15] The priority date of a holder's right is usually the date on which the holder initially diverted the water. Although such an appropriation is not technically "complete" until the appropriator actually puts the water to some beneficial use, the relation back doctrine provides that if he completes the appropriation with due diligence, the appropriator's priority date is the date of the initial act of diversion. *See, e.g.,* COLO. REV. STAT. § 37-92-305(1) (1973); *see also* Ellis, *Water Rights: What They Are and How They Are Created*, 13 ROCKY MTN. MIN. L. INST. 451, 458-59 (1967); Comment, *Determining Priority of Federal Reserved Rights*, 48 COLO. L. REV. 547, 551 (1977).

[16] Ranquist, *supra* note 12, at 646 n.21.

[17] The western states are again split into two groups. The Colorado system, employed only by Colorado and Montana, leaves the entire process of adjudication to the courts. An appropriative claimant files a petition in state court, and all other owners or claimants are served with notice as required by statute. *See, e.g.,* COLO. REV. STAT. § 37-92-302 (1973 &

rights of the appropriators participating in the hearing as against the entire world. A water adjudication strictly quantifies a holder's rights and limits his entitlement to his original appropriation, unless he either claims further amounts of unappropriated water or purchases the rights of another appropriator.[18]

Principles of strict quantification and rigid control underlie the prior appropriation systems employed by the western states. Federal reserved water rights, on the other hand, are usually awarded without quantification and may exist independent of any use. Thus, when federal reserved rights are imposed upon these appropriative water use schemes, fundamental incongruities appear.[19]

B. The Development of the *Winters* Doctrine of Federal Reserved Rights

1. *Expansion of the Reserved Rights Doctrine: From* Winters *to* Cappaert

From 1908 through the 1970s, the United States Supreme Court steadily expanded the scope of the *Winters* doctrine of federal reserved water rights.[20] By nature, federal reserved rights differ fundamentally from appropriative rights established under state law.[21] The Court's expansive application of the reserved rights doctrine during this period aggravated this inherent conflict between the two types of water rights.[22]

The Supreme Court first announced the doctrine of federal reserved water rights in the 1908 case of *Winters v. United States*.[23] In 1888, one year before Congress admitted Montana to the Union, it established by treaty the Fort Belknap Indian Reservation in the Montana Territory. Winters and others sought to dam the Milk River, which flows

---

Supp. 1983). Each participant is responsible for producing his own evidence at trial to protect or establish his water right. Ellis, *supra* note 15, at 462.

The other states, which employ permit systems, *see supra* note 12, use the New Mexico system of adjudication. This system also involves the courts, but the state engineer's office makes an initial determination of fact as to the rights of the parties. *See, e.g.*, ARIZ. REV. STAT. ANN. § 45-257 (Supp. 1983). This determination is then subject to challenge by the parties at the adjudication. Ellis, *supra* note 15, at 462.

18 Only a small amount of unappropriated water remains in the West. Many streams are overappropriated, which means that the aggregate quantity of all the water rights claimed from the stream exceeds the actual stream flow. *See supra* note 1 and accompanying text; Comment, *supra* note 15, at 551 n.26. Junior holders unable to draw water must wait until stream flow increases or until senior holders relinquish their rights. *See id.* at 551-52 & n.26.

19 *See infra* notes 102-15 and accompanying text.

20 *See infra* notes 23-57 and accompanying text.

21 *See infra* notes 102-15 and accompanying text.

22 *See infra* notes 116-20 and accompanying text.

23 207 U.S. 564 (1908).

through the Fort Belknap reservation.[24] The Court recognized the conflicting inferences arising from the treaty's silence as to the Indians' water rights; nonetheless, the Court held that the treaty had *implicitly* reserved a sufficient quantity of water for the Indians to irrigate their land.[25]

In *Federal Power Commission v. Oregon (Pelton Dam),*[26] to the astonishment of western water lawyers,[27] the Court indicated that the *Winters* doctrine might extend to non-Indian federal lands.[28] In *Pelton Dam,* the Federal Power Commission issued a license to the Northwest Power Supply Company, allowing it to build the Pelton Dam on the Deschutes River in Oregon. One terminus of the dam was to be on federal Indian land, and the other terminus was to be on federal non-Indian land.[29] The state of Oregon argued that under the Desert Land Act of 1877,[30] which requires the federal government to obtain water rights for federal lands in accordance with state law,[31] the state must give its consent before the dam could be built.[32] The Court distinguished between *public* lands, which belong to the federal government because no one has yet claimed them, and *reserved* lands, which the federal government has withdrawn from the public realm and which are no longer subject to private appropriation or disposal.[33] The Court then held that the Desert Land Act of 1877 applied only to *public* lands, and not to *reserved* lands.[34] Therefore, the sponsors of the Pelton Dam project did not need the permission of the state of Oregon to build the dam.[35] The Court

---

24 *Id.* at 565.

25 *Id.* at 576-77. The Court declared that "[t]he power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. . . . That the Government did reserve them we have decided, and for a use which would be necessarily continued through years." *Id.* at 577 (citations omitted). The Court also held that Montana's subsequent admission to the Union had no effect on the treaty's implicit reservation of water. *Id.*

26 349 U.S. 435 (1955).

27 *See, e.g.,* Trelease, *Federal Reserved Water Rights Since PLLRC,* 54 DEN. L.J. 473 (1977). Professor Trelease was a practicing water lawyer when the Court decided *Pelton Dam* and his comments indicate the general chaos caused by the decision:

> At no time prior to 1955 did I ever hear a suggestion that the reserved rights doctrine was anything but a special quirk of Indian water law.
>
> . . . .
>
> This case was a real bombshell, and it certainly lit a fire under western water lawyers. . . . [A] number of western state water officials and others raised a chorus of protest at this reversal of what they had always thought to be the law.

Id. at 475-77 (footnotes omitted).

28 *Pelton Dam,* 349 U.S. at 448.

29 *Id.* at 437-38.

30 43 U.S.C. §§ 321-39 (1976).

31 *Pelton Dam,* 349 U.S. at 448.

32 *Id.* at 446-47.

33 *Id.* at 443-44.

34 *Id.* at 446-48.

35 *Id.* at 452.

thus implied that federal reserved lands, both Indian and non-Indian, are not subject to state water law.[36]

The Court explicitly extended the *Winters* doctrine to non-Indian federal reservations in *Arizona v. California* (*Arizona I*).[37] *Arizona I* began as a dispute among several western states over each state's share of the waters of the Colorado River.[38] The United States intervened to protect its claims to water for five Indian reservations and several wildlife refuges, recreational areas, and national forests.[39] Writing for the Court, Justice Black declared that the federal government, through Congress and the executive,[40] had implicitly reserved a sufficient quantity of water to accommodate the purposes of the Indian reservations and the non-Indian federal lands.[41] Thus, the Court not only reaffirmed the viability of the reserved rights doctrine, but also expanded the doctrine's scope by applying it to non-Indian federal lands.

In *Arizona I*, the Court also questioned whether the special master appointed to the case correctly determined the quantity of water that the government intended to reserve for the federal enclaves.[42] In earlier reserved rights cases, the Court had not closely examined what quantity of water was necessary to satisfy the purposes of the reservations, perhaps because those purposes were clearly limited. Furthermore, in examining the purposes of the reservation, the Court seemed to stress the present purposes.[43] In *Arizona I*, however, the Court noted that the water set aside for the Indian reservations "was intended to satisfy the *future* as well as the present needs of the Indian Reservations and . . . that enough water was reserved to irrigate all the practicably irrigable acreage on the reservations."[44] The Court's language could mean that the "purpose" of a federal reservation might be expanded; thus, the

---

36 *Id.* at 448. The Court noted that:

> The lands before us in this case are not "public lands" but "reservations." Even without [the] express restriction of the Desert Land Act to sources of water supply on public lands, these Acts would not apply to reserved lands. . . . [I]t is enough . . . to recognize that these Acts do not apply to this license, which relates only to the use of waters on *reservations* of the United States.

Id. (emphasis added).

37 373 U.S. 546 (1963).

38 *Id.* at 550-51 (the states involved were Arizona, California, Nevada, New Mexico, and Utah).

39 *Id.* at 551 n.3, 595.

40 *Id.* at 598. The Court had not previously had occasion to decide whether the executive could create a *Winters* right.

41 *Id.* at 600-01.

42 *Id.*

43 *See, e.g.*, United States v. Powers, 305 U.S. 527 (1939) (Indians and their successors in interest needed water for irrigation of limited acreage); Winters v. United States, 207 U.S. 564 (1908).

44 *Arizona I*, 373 U.S. at 600 (emphasis added).

quantity of the water guaranteed by the *Winters* right might also be increased.

The Court next addressed the reserved rights doctrine in the case of *United States v. District Court in and for the County of Eagle* (*Eagle County*).[45] In that case, the Court first showed concern with the federal-state tensions generated by judicial recognition of *Winters* rights. At issue was the scope of the McCarran Amendment,[46] which provides for a limited waiver of the United States' sovereign immunity in water rights adjudication.[47] The amendment allows the United States to be joined as a party defendant in state water adjudications, but in *Eagle County,* the government contended that this waiver of sovereign immunity applied only to water rights acquired under state law and not to reserved water rights.[48] Writing for a unanimous Court, Justice Douglas stated that the McCarran Amendment was an "all-inclusive statute" which made no exception for reserved rights and that the waiver of sovereign immunity therefore applied to federal reserved rights as well as nonreserved rights.[49] This case made the United States amenable to suit in *state* water adjudications and thus marked the Court's first step toward allowing the states to determine federal reserved water rights.

The Court again addressed the question of jurisdiction over reserved rights in *Colorado River Water Conservation District v. United States* (*Colorado River*).[50] The United States filed suit in federal district court in Colorado seeking a declaration of all reserved rights held by the federal government, in its own right and as a fiduciary for certain Indian tribes, in the San Juan River Basin.[51] The government named as defendants private irrigators who presumably would claim appropriative rights to the same water.[52] Several Colorado water conservation districts then intervened as defendants. One [illegible] subsequently filed suit in Colorado state court seeking adjudication of the same rights[53] and joined the United States as a defendant under the McCarran Amendment.[54]

---

45 401 U.S. 520 (1971).

46 43 U.S.C. § 666 (1976) (also known as the McCarran Water Rights Suits Act).

47 The McCarran Amendment, 43 U.S.C. § 666 (1976), provides in part:

> Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit.

See also infra note 96.

48 *Eagle County,* 406 U.S. at 523-24.

49 *Id.* at 524.

50 424 U.S. 800 (1976).

51 *Id.* at 805.

52 *Id.*

53 *Id.* at 806.

54 *Id.*

The water conservation districts then moved to dismiss the federal action, arguing that the McCarran Amendment vested the state courts with exclusive jurisdiction to detemine the reserved rights of the United States.[55]

The Supreme Court held that the McCarran Amendment merely created *concurrent* jurisdiction in the state courts to determine federal water rights and did not divest the federal courts of jurisdiction.[56] Nevertheless, the Court held that dismissal of the federal proceeding was proper. The Court reasoned that if the state has a comprehensive system for water rights adjudication, federal water rights are more appropriately determined in state court for reasons of judicial efficiency and expertise.[57] The *Colorado River* doctrine thus creates a presumption that when both federal and state actions are pending for adjudication of federal reserved water rights, the federal action should be dismissed.[58]

Later in the same Term, the Court decided *Cappaert v. United States.*[59] The dispute in *Cappaert* centered on a pool of water, located fifty feet down inside a huge cavern that the President had reserved in 1952 as the Devil's Hole National Monument.[60] This pool was fed by groundwater and was the only known habitat of a rare species of desert fish known as the Devil's Hole pupfish.[61] In 1968, the Cappaerts, owners of a nearby ranch, began pumping groundwater from the same aquifer that fed the pool.[62] As a result of the Cappaerts' extensive pumping, the water level in the pool dropped, endangering the pupfish.[63] The United States filed suit seeking an injunction to limit the Cappaerts' pumping to an amount that would save the pupfish from extinction.[64] The Supreme Court unanimously decided for the pupfish and affirmed the modified injunction.[65]

Two aspects of Chief Justice Burger's opinion in *Cappaert* are noteworthy. First, although the Court's narrow holding sustained a *Winters* right, the opinion announced a "minimal need" standard for determin-

---

55 *Id.*

56 *Id.* at 807-09.

57 *Id.* The Court noted that "[t]he clear federal policy evinced by [the McCarran Amendment] is the avoidance of piecemeal adjudication of water rights in a river system." *Id.* at 819. The Court further recognized "the availability of comprehensive state systems for adjudication of water rights as the means for achieving these goals." *Id.*

58 *Id.* at 818-20.

59 426 U.S. 128 (1976).

60 *Id.* at 131 & n.1.

61 *Id.* at 132.

62 *Id.* at 133.

63 *Id.* at 133-34.

64 *Id.* at 135.

65 The district court permanently enjoined Cappaert from lowering the water level of the pool below 3.0 feet, but the court of appeals modified the injunction to allow the Cappaerts to pump as long as the water level did not drop below 3.3 feet. *Id.* at 137 n.3, 138

ing the quantity of water reserved by the federal government.[66] Second, the Court had a clear opportunity to extend the *Winters* doctrine to groundwater but refused to do so.[67] The *Cappaert* case thus marked a turning point in the Court's reserved rights jurisprudence.

2. *Narrowing the Scope of the* Winters *Doctrine: Reserved Rights after* Cappaert

In 1978, the Supreme Court decided *United States v. New Mexico (Mimbres)*.[68] At issue was the Rio Mimbres, which originates in the

---

[66] *Id.* at 141. Chief Justice Burger noted that:

> The implied-reservation-of-water-rights doctrine . . . reserves only that amount of water *necessary* to fulfill the purpose of the reservation, no more . . . . Devil's Hole was reserved "for the preservation of the unusual features of the scenic, scientific, and educational interest." . . . The pool need only be preserved . . . to the extent necessary to preserve its scientific interest . . . . Thus . . . the level of the pool may be permitted to drop to the extent that the drop does not impair the scientific value of the pool. . . . The District Court thus tailored its injunction, very appropriately, to *minimal need* . . . .

Id. (emphasis added) (citation omitted) (quoting the presidential proclamation that established the national monument).

[67] The Ninth Circuit had explicitly held below that the *Winters* doctrine applied to groundwater as well as to surface water. United States v. Cappaert, 508 F.2d 313, 317 (9th Cir. 1974), *aff'd*, 426 U.S. 128 (1976).

The Supreme Court essentially evaded this issue by dealing with it ambiguously:

> No cases of this Court have applied the doctrine of implied reservation of water rights to groundwater . . . . Here, however, the water in the pool is surface water. The federal water rights were being depleted because . . . the "[g]roundwater and surface water are physically interrelated as integral parts of the hydrologic cycle" . . . . [S]ince the implied-reservation-of-water-rights doctrine is based on the necessity of water for the purpose of the federal reservation, we hold that the United States can protect its water from subsequent diversion, whether the *diversion* is of surface or ground water.

426 U.S. at 142-43 (emphasis added) (citations and footnote omitted).

[68] 438 U.S. 696 (1978). On the same day, Justice Rehnquist, the author of the *Mimbres* majority opinion, also announced the opinion of the Court in California v. United States (*New Melones Dam*), 438 U.S. 645 (1978). In *New Melones Dam*, the United States applied to the state of California for permits to appropriate water for the New Melones Dam, a new reclamation project on the Stanislaus River. *Id.* at 651-52. California issued the permits but limited the amount of water that the project could impound. *Id.* at 652-53. The federal government then sought a declaratory judgment in federal district court to allow the United States to impound all of the previously unappropriated water it needed for the project without obtaining state permission. *Id.* at 647. The district court held that, as a matter of comity, the federal government should seek a permit from California, but that California should unconditionally grant the permit if sufficient unappropriated water existed. *Id.* The Ninth Circuit affirmed but held that § 8 of the Reclamation Act of 1902, 43 U.S.C. §§ 372, 383 (1976), compelled the federal government to seek state approval before making the appropriation. *Id.*

Although *New Melones Dam* did not deal directly with the doctrine of federal reserved rights, it did shed some light on the relationship between the western states and the federal government in the area of water law. The Supreme Court held that § 8 of the Reclamation Act of 1902 requires the United States to acquire its appropriative rights to water for projects in accordance with state law, even if the state imposes conditions upon the water's use. *Id.* at 665-75. This holding gave the states great control over federal reclamation projects, illustrating the Court's newfound concern for the states interest in controlling the water within their

Gila National Forest in New Mexico and flows through private land before "disappearing in a desert sink just north of the Mexican border."[69] The state of New Mexico initiated a general adjudication of water rights in the Rio Mimbres.[70] The United States was joined as a party because it claimed *Winters* rights to the Rio Mimbres for use in the Gila National Forest.[71] Justice Rehnquist, writing for a majority of five justices, affirmed the "minimal need" standard set forth in *Cappaert*[72] and scrutinized the government's proposed uses for the water.[73] Contrary to its decision in *Arizona I*,[74] the Court held that national forests exist for only two purposes: to preserve a supply of timber and to protect and maintain adequate water flow.[75] Therefore, the government's reservation of water from the Rio Mimbres could not exceed the amount necessary to accomplish these two purposes. The general tenor of the *Mimbres* opinion is quite unsympathetic to the government's *Winters* rights claims.[76]

---

borders. *See* Winston, *Reborn Federalism in Western Water Law: The* New Melones Dam *Decison*, 30 HASTINGS L.J. 1645, 1672-73 (1979).

69 *Mimbres*, 438 U.S. at 697.

70 *Id.* at 697 & n.1.

71 *Id.* at 697-98. The United States was joined pursuant to the McCarran Amendment, 43 U.S.C. § 666 (1976). 438 U.S. at 697 n.1; *see supra* note 47 and accompanying text.

72 438 U.S. at 699-700; *see supra* note 66 and accompanying text.

73 438 U.S. at 698-718.

74 The Court in *Arizona I* expressly adopted the special master's conclusion that the national forests are reserved for five purposes. Arizona v. California, 373 U.S. 546, 595 (1963). The special master found that the national forests exist for: "(1) the protection of watersheds and the maintenance of natural flow in streams below the sheds; (2) production of timber; (3) production of forage for domestic animals; (4) protection and propagation of wildlife; and (5) recreation for the general public." Note, United States v. New Mexico: *The Beginning of a Trend Toward Favoring State Water Rights over Federal Water Rights*, 9 N.M.L. REV. 361, 364 (1979) (quoting Special Master Report at 96, Arizona v. California, 373 U.S. 546 (1963)).

75 *Mimbres*, 438 U.S. at 705-13. The United States Forest Service's enabling act, the Organic Administration Act of 1897, 16 U.S.C. §§ 473-78, 479-82, 551 (1982), provides in part: "No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber . . . ." *Id.* § 475. In *Mimbres* the government argued that the Act established national forests for three purposes: to preserve a supply of timber, to protect water flow, and additionally to improve and protect the forest in general. 438 U.S. at 707 n.14. This third objective would be accomplished by reserving "minimum instream flows for aesthetic, recreational, and fish-preservation purposes." *Id.* at 705. The Court, construing the Act narrowly, however, recognized only the first two purposes: "Forests [will] be created only 'to improve and protect the forest within the boundaries,' or, *in other words*, 'for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber.'" *Id.* at 707 n.14 (emphasis in original) (quoting 16 U.S.C. § 475 (1982)). The Court's restrictive reading of the Act is certainly plausible, but persuasive arguments can be made from the legislative history of the Act in support of the government's reading. *See, e.g.*, Note, *Water Rights and National Forests—Narrowing the Implied Reservation Doctrine:* United States v. New Mexico, 40 OHIO ST. L.J. 729, 743-47 (1979); Note, *Reserved Water Rights on National Forests After* United States v. New Mexico, 1979 UTAH L. REV. 609, 617-24.

76 Professor Trelease's comments on the *Mimbres* case are illustrative:

> [The Court] emphasized that the quantities allowed would be limited to "only that amount of water necessary to fulfill the purpose of the reservation,

In 1983, the Supreme Court had three occasions to address the reserved rights doctrine. In *Arizona v. California (Arizona II),*[77] five Indian tribes represented by the United States petitioned for an increase in the quantity of water guaranteed by their *Winters* rights. The petitioners contended that the quantity of their rights did not conform to the Court's 1963 decree in *Arizona I.*[78] That decree measured the Indians' reserved rights by the amount of water necessary to irrigate all of the "practicably irrigable acreage" on the reservations.[79] In *Arizona II,* the tribes contended that the special master's report in *Arizona I* underestimated this acreage.[80] The Court invoked principles of res judicata to bar the Indians from reopening the 1963 decree, citing a strong public interest in finality.[81]

In *Nevada v. United States (Truckee-Carson),*[82] the Court again held

---

no more"; it held that reserved rights exist not for "secondary" or "supplemental" purposes, but only for those that qualified as "direct." "Necessary" was amplified to "essential"; the test applied was whether, if water were not provided, "the purposes of the reservation would be entirely defeated."

This was a substantial victory for the water users of the West.

Trelease, *Uneasy Federalism—State Water Laws and National Water Uses,* 55 WASH. L. REV. 751, 759 (1980) (footnotes omitted) (quoting from the *Cappaert* and *Mimbres* opinions).

77 103 S. Ct. 1382 (1983). *Arizona II* is a continuation of *Arizona I,* 373 U.S. 546 (1963). *See supra* notes 37-44 and accompanying text.

78 *Arizona II,* 103 S. Ct. at 1385.

79 In the original action, the Court, endorsing the master's conclusion, held that the federal government had implicitly reserved enough water to allow the Indians to irrigate all of the "practicably irrigable acreage" on the reservations. *Arizona I,* 373 U.S. at 600-01.

80 The Indian tribes claimed that certain irrigable lands had been "omitted" from the master's calculations. *Arizona II,* 103 S. Ct. at 1391. The United States contended that these omissions had occurred inadvertently due to "the complexity of the case." *Id.* at 1391 n.6. The states claimed, however, that the omission was a deliberate "tactical decision made to portray the irrigable acreage standard as a reasonable basis for calculating the reservations' water needs." *Id.*

81 Res judicata was technically inapplicable because *Arizona II* was a continuation of the *Arizona I* litigaton, rather than a separate action. *See* C. WRIGHT, THE LAW OF FEDERAL COURTS 680 (4th ed. 1983); *see also* RESTATEMENT (SECOND) OF JUDGMENTS §§ 17(1), 18(1) (1980). The Court found, however, that the principles of finality behind the doctrine of res judicata compelled its holding in *Arizona II.* 103 S. Ct. at 1392-95. The Court said:

> Recalculating the amount of practicably irrigable acreage runs directly counter to the strong interest in finality in this case. . . .
>
> . . . .
>
> . . . The record demonstrates that it was the understanding of the parties and Master Rifkind's intention that the calculation of practicably irrigable acreage be final. That was our understanding as well . . . .
>
> . . . Our long history of resolving disputes over boundaries and water rights reveals a simple fact: This Court does not reopen an adjudication in an original action to reconsider whether initial factual determinations were correctly made. . . .
>
> . . . .
>
> . . . [W]e have determined that the principles of res judicata advise against reopening the calculation of the amount of practicably irrigable acreage. . . .

Id. (citations and footnotes omitted).

82 103 S. Ct. 2906 (1983).

that a *Winters* right, once quantified, cannot be increased. In 1913, the United States instituted an action to adjudicate the reserved rights of the Pyramid Lake Indian Reservation and the planned Newlands Reclamation Project. These rights were finally quantified in a 1944 consent decree.[83] The United States sued again in 1973 to obtain additional rights for both federal enclaves.[84] Justice Rehnquist, speaking for a unanimous Court, invoked res judicata to bar relitigation of the United States' reserved rights.[85]

The Court's most recent decision in the area of federal reserved rights, *Arizona v. San Carlos Apache Tribe of Arizona (San Carlos Apache)*,[86] is essentially a sequel to *Colorado River*.[87] Several water rights claimants initiated general water adjudications in Arizona state courts in the mid-1970s.[88] The United States, on behalf of itself and various Indian tribes, was joined as a defendant.[89] Later, some of the Indian tribes whose rights were implicated in the state proceedings removed the state court actions to federal court and sought declaratory and injunctive relief to block further adjudication of their reserved rights in state court.[90] The federal district court, relying on *Colorado River*, remanded the removed actions back to state court and dismissed the other federal actions without prejudice.[91] The tribes appealed from these dismissals and the Ninth Circuit reversed, holding that the Arizona statehood enabling act[92] deprived Arizona state courts of jurisdiction over the Indians' water claims.[93]

The Supreme Court held that despite the statehood enabling act's provision that the federal government reserved exclusive jurisdiction

---

83 *Id.* at 2909-10.

84 *Id.*

85 *Id.* at 2925. The Ninth Circuit held below that the Tribe and the Project were neither parties nor coparties to the original action: "They were non-parties who were represented simultaneously by the same government attorneys." United States v. Truckee-Carson Irrigation Dist., 649 F.2d 1286, 1309 (9th Cir. 1981). The court of appeals reasoned that the Tribe and the Project were not adverse parties bound by the first action because "[a]s a general matter, a judgment does not conclude parties who were not adversaries under the pleadings." *Id.* The Ninth Circuit further cautioned that "[i]n representative litigation we should be especially careful not to infer adversity between interests represented by a single litigant." *Id.* Therefore, the court reasoned, the earlier litigation did not conclude the dispute in the later action between the Tribe and the Project. *Id.* at 1309-11.

The Supreme Court disagreed: "We hold that . . . the interests of the Tribe and the Project landowners were sufficiently adverse so that both are now bound by the final decree entered in the [first] suit." *Truckee-Carson*, 103 S. Ct. at 2925.

86 103 S. Ct. 3201 (1983).

87 *See supra* notes 50-58 and accompanying text.

88 *San Carlos Apache*, 103 S. Ct. at 3209.

89 *Id.*

90 *Id.*

91 *Id.*

92 Act of June 20, 1910, ch. 310, 36 Stat. 557, 569 (1910).

93 San Carlos Apache Tribe v. Arizona, 668 F.2d 1093 (9th Cir. 1982), *rev'd*, 103 S. Ct. 3201 (1983); *see San Carlos Apache*, 103 S. Ct. at 3209.

over Indian lands in Arizona, the McCarran Amendment[94] gave the state courts jurisdiction in comprehensive water rights adjudications.[95] The Court also reiterated the *Colorado River* doctrine, which established state courts as the preferred fora for water adjudications involving federal reserved rights.[96]

II
ANALYSIS: RECONCILING THE PRIOR APPROPRIATION DOCTRINE AND THE *WINTERS* DOCTRINE

The western states developed the prior appropriation doctrine to apportion their limited surface water supplies fairly and efficiently among competing users.[97] The prior appropriation system depends upon quantification and strict control of the rights of all users.[98] In contrast, the *Winters* doctrine awards water rights of uncertain dimension, thus injecting a large measure of uncertainty into the western states' water use schemes.[99] The courts can minimize the tension between the *Winters* doctrine and prior appropriation by treating federal reserved rights in the same manner as ordinary appropriative rights.[100]

A. The Inherent Conflict Between Prior Appropriation and the *Winters* Doctrine

An ordinary appropriative right, once obtained, occupies a place in the state water system based on its relative seniority.[101] A *Winters* right, however, does not fit so neatly into the state water systems. A federal reserved right differs in three important ways from an ordinary water

---

94 43 U.S.C. § 666 (1976); *see supra* note 47.

95 103 S. Ct. at 3212. The Court stated that "we are convinced that, whatever limitation the Enabling Acts or federal policy may have originally placed on state court jurisdiction over Indian water rights, those limitations were removed by the McCarran Amendment." *Id.* (footnotes omitted).

96 *Id.* at 3212-16. The Court summarized the policy behind the *Colorado River* doctrine and applied it to the instant case:

> The McCarran Amendment, as interpreted in *Colorado River*, allows and encourages state courts to undertake the task of quantifying Indian water rights in the course of comprehensive water adjudications. . . .
>
> . . . [A]ssuming that the state adjudications are adequate to quantify the rights at issue in the federal suits, and taking into account . . . the expertise and administrative machinery available ot the state courts, the infancy of the federal suits, the general judicial bias against piecemeal litigation, and the convenience to the parties, we must conclude that the District Courts were correct in deferring to the state proceedings.

Id. at 3214-15 (footnotes omitted); *see also supra* note 57 and accompanying text.

97 *See supra* notes 11-19 and accompanying text.

98 *See id.*

99 *See infra* notes 101-21 and acompanying text.

100 *See infra* notes 122-35 and accompanying text.

101 *See* Trelease, *supra* note 27, at 474.

right established under the prior appropriation doctrine.[102]

First, the creation and maintenance of a *Winters* right does not depend on any use, beneficial or otherwise.[103] The reserved right may lie dormant for many years, set aside for some future use.[104] The priority of such a reserved right dates from the establishment of the federal reservation.[105] Junior holders of water rights may use this federally reserved water during "dormant" periods, but the federal government may exercise its reserved right and preempt these junior users at any time.[106] In contrast, holders of ordinary appropriative rights must maintain a beneficial use of their water or lose their rights.[107]

Second, a *Winters* right generally is not quantified.[108] To determine the quantity of a reserved right, a court must examine the purposes of the reservation of land set aside by Congress.[109] Until quantified in an adjudication, the size of a *Winters* right remains completely uncertain.[110] Nevertheless, the right exists, with its priority dating from the establishment of the reservation of land.[111] Ordinary appropriative rights, however, are not legally recognized *until* they are quantified and adjudicated.[112]

Third, a federal reserved right need not be recorded.[113] In the reserved rights cases, the Supreme Court has consistently recognized unrecorded federal reserved rights.[114] Claimants of ordinary appropriative rights, by contrast, will lose their rights if they do not fix them in a water adjudication.[115]

Because of the striking differences between federal reserved rights and appropriative rights, the continuing coexistence of the two poses serious questions. The tension between federal reserved rights, which

---

102 *Id.*

103 *Id.*; *see also* Abrams, *Reserved Water Rights, Indian Rights and the Narrowing Scope of Federal Jurisdiction: The* Colorado River *Decision*, 30 STAN. L. REV. 1111, 1113 (1978).

104 *See* Trelease, *supra* note 27, at 474.

105 Trelease, *supra* note 76, at 756; *see* Comment, *supra* note 15, at 560; Comment, *Federal Reserved Rights in Water: The Problem of Quantification*, 9 TEX. TECH L. REV. 89, 93 (1977) ("[M]ost reservations were created around the turn of the century and have that time as a priority date.").

106 Trelease, *supra* note 76, at 756.

107 *See supra* notes 12-13 and accompanying text.

108 Trelease, *supra* note 27, at 474.

109 *See, e.g.*, Cappaert v. United States, 426 U.S. 128, 141 (1976) ("The implied-reservation-of-water-rights doctrine . . . reserves only that amount of water necessary to fulfill the purposes of the reservation, no more.").

110 Comment, *supra* note 105, at 93-94.

111 Trelease, *supra* note 76, at 756; Comment, *supra* note 15, at 560; Comment, *supra* note 105, at 93.

112 *See supra* notes 17-18 and accompanying text.

113 Trelease, *supra* note 27, at 474.

114 *See, e.g.*, Arizona v. California, 373 U.S. 546, 598-600 (1963); United States v. Powers, 305 U.S. 527, 532-33 (1939); Winters v. United States, 207 U.S. 564, 577 (1908).

115 *See supra* notes 17-18 and accompanying text; *see also* Comment, *supra* note 15, at 551.

exist "in a state of uncorrelated mystery,"[116] and appropriative rights, which are strictly quantified and controlled, is all too clear. *Winters* rights threaten the West in two ways: because they are not based on use, *Winters* rights allow water to go unused; because they are uncertain, they interfere with public and private decisions. The resulting uneasiness and frustration that western water users feel has led to melodramatic descriptions of the *Winters* doctrine as " 'a first mortage of undetermined and indeterminable magnitude' "[117] and as a " 'sword of Damocles' hanging over 'every title to water rights to every stream which touches a federal reservation.' "[118] The reserved rights doctrine has not yet caused western appropriative water users any substantial harm.[119] Nevertheless, future assertion of reserved rights may cause serious problems in the West, as more users compete for less available water.[120]

The Supreme Court, demonstrating some sensitivity to the states' concerns over reserved rights, has begun to circumscribe the scope of the *Winters* doctrine. The Court's new decisions make federal reserved rights mesh more smoothly with the states' prior appropriation water law systems.[121] These efforts have eased the tension between *Winters* rights and appropriative rights.

B. Reconciliation of Prior Appropriation and the *Winters* Doctrine in Western Water Law

Both the *Winters* doctrine and the doctrine of prior appropriation serve important functions in the West: federal reservations of land would be useless without sufficient water to fulfill their purposes, and prior appropriation has developed as a matter of necessity to provide for prudent and beneficial use of the West's most vital and scarce resource. Surely neither system is likely simply to vanish, thereby eliminating the conflict. Furthermore, the likelihood that Congress will enact comprehensive legislation to effect a reconciliation is small.[122] Thus, a judicial compromise seems to be the only possible solution. The Court's efforts to make *Winters* rights inoffensive to western states' prior appropriation schemes have been a significant step in the right direction.

---

116 United States v. District Court in and for the County of Eagle, 169 Colo. 555, [illegible] 458 P.2d 760, 772 (1969), *aff'd*, 401 U.S. 520 (1971).

117 Address by Northcutt Ely to the National Water Commission (Nov. 6, 1969), *quoted* in Trelease, *supra* note 27, at 475.

118 *Id.*

119 *See* Trelease, *supra* note 27, at 474-75, 491-92.

120 *See supra* note 1.

121 *See supra* notes 45-49, 56-96 and accompanying text.

122 Numerous bills have been proposed since 1955, but Congress has passed none of them. *See* Morreale, *Federal-State Conflicts Over Western Waters—A Decade of Attempted "Clarifying" Legislation,"* 20 RUTGERS L. REV. 423 (1966); Trelease, *supra* note 27, at 475.

Federal reserved rights and appropriative rights conflict in three major areas: use,[123] quantification,[124] and adjudication and recordation.[125] By molding reserved rights to make them resemble ordinary appropriative rights as closely as possible, the Court can protect both the interests of the United States in supplying its reservations and the states' interest in controlling their water supplies.

The federal reserved rights doctrine and the prior appropriation doctrine clash most strikingly in the area of use.[126] Appropriative rights terminate if the appropriated water is no longer put to a continuous beneficial use. Appropriative rights, therefore, are concrete and ensure that water not go unused. *Winters* rights, however, exist independently of any use, present or future, beneficial or otherwise. In reserving land for a particular purpose, Congress may have contemplated the reservation of the water required to carry out that purpose. Therefore, the courts should limit *Winters* rights to the amounts of water required by the government or the Indians to carry out the *present* purposes of the reservation. Since the *Arizona I* case,[127] in which the Supreme Court last expressly stated that the quantity of a *Winters* reservation may accommodate future as well as present uses, the Court has limited this expansive interpretation of reserved rights by strictly construing the purposes of the federal reservations.[128] The Court's next step may be to limit reserved rights to those needed for immediate beneficial uses in the federal enclaves while eliminating *Winters* rights reserved for future purposes.

The prior appropriation doctrine and the *Winters* doctrine must be reconciled not only on the issue of use, but also on the issue of quantification. At present, the controlling standard for quantifying *Winters* rights is that of "minimal need" put forth in *Cappaert*.[129] This standard requires the examination of the purpose of the reservation whose "minimal need" must be met. Again, a court need determine only the present water needs of the federal enclave. The courts should eliminate such forward-looking standards as the "practicably irrigable acreage" measure employed by the Supreme Court in *Arizona I,* because they generate uncertainty and therefore hinder decisionmaking. In addition to avoiding forward-looking standards, courts should follow the Supreme

---

123 *See supra* notes 103-07 and accompanying text.

124 *See supra* notes 108-12 and accompanying text.

125 *See supra* notes 113-15 and accompanying text.

126 *See supra* notes 103-07 and accompanying text.

127 Arizona v. California, 373 U.S. 546 (1963).

128 *See* United States v. New Mexico, 438 U.S. 696, 705-13 (1978) (The Court noted that Congress intended to reserve water for "domestic, mining, milling, or irrigation purposes" but not for recreational purposes (quoting 16 U.S.C. § 481 (1976))).

129 *See supra* note 66.

Court's lead in *Arizona II*[130] and *Truckee-Carson*,[131] and invoke principles of strict finality to deny reopening the issue of quantification of *Winters* rights.

The final step is to decide how best to subject legitimate reserved rights to the states' systems of adjudication and recordation. Although various administrative[132] and legislative[133] schemes have been suggested, the Court's instincts, in delegating this responsibility to the state courts through the *Colorado River*[134] doctrine and the *Eagle County*[135] interpretation of the McCarran Amendment, are correct. The best way to integrate reserved rights into the states' prior appropriation systems is to determine these reserved rights in the state systems. By means of water adjudications, reserved rights can be recorded and defined in the same manner as ordinary appropriative rights.

CONCLUSION

The doctrine of federal reserved water rights has the potential to greatly disrupt the prior appropriation systems of the western states. The Supreme Court, after allowing a steady expansion of the *Winters* doctrine up through the 1970s, has since shown increased solicitude for the rights of the states to determine how best to allocate their scarce waters. By strictly defining *Winters* rights, the Court has made the federal government's presence as a western water user much less disruptive. By continuing this trend and further circumscribing the scope of the reserved rights doctrine, the Court perhaps can largely eliminate this source of federal-state tension in the western states.

Todd A. Fisher

---

130 103 S. Ct. 1382 (1983).

131 103 S. Ct. 2906 (1983).

132 *See, e.g.*, Ranquist, *supra* note 12, at 710-24.

133 *See, e.g.*, U.S. Dep't of Justice, A Proposed Bill for the Inventorying and Quantification of the Reserved, Appropriative and Other Rights to the Use of Water by the United States (June 20, 1974 draft); *see also* Little, *Administration of Federal Non-Indian Water Rights*, 27B ROCKY MTN. MIN. L. INST. 1709, 1772-79 (1982) (discussing adjudication alternatives).

134 424 U.S. 800 (1976); *see also supra* notes 55, 58 and 96 and accompanying text.

135 401 U.S. 520 (1971); *see also supra* notes 47-49 and accompanying text.

BILL SHEFFIELD, GOVERNOR

WATER RESOURCES BOARD

POUCH 7-005
ANCHORAGE ALASKA 99510-7005
PHONE (907) 561-2020

March 28, 1986

Governor Bill Sheffield
Box A
Juneau, Alaska 99811

Dear Governor Sheffield:

The Water Resources Board is pleased to present you with the following eight resolutions, unanimously adopted at its last meeting held February 26-27, 1986, in Juneau. In particular, I want to draw your attention to Resolution 86-13. In light of declining state revenues and necessary budget tightening, the Board would like to discuss prioritization of the State's water resources programs with the Commissioners of the Departments of Natural Resources, Environmental Conservation, and Fish and Game at its next meeting.

Resolution 86-8 Participation of Military Reservations in Water Resources Planning in Anchorage Bowl
Resolution 86-9 Alaska to Administer Section 402(b) NPDES Permits
Resolution 86-10 Placer Mining Water Quality Regulations
Resolution 86-11 Resolution of Conflict in Effluent Requirements
Resolution 86-12 Military Cooperation Regarding Federal Reserved Water Rights and Hazardous Waste Management and Disposal
Resolution 86-13 Prioritization of Alaska's Water Resources Programs
Resolution 86-14 Department of Natural Resources Water Management Staffing
Resolution 86-15 Coordination of Instream Flow Protection Programs

Copies of the resolutions have been distributed as shown on the enclosed distribution list. A summary of the minutes of the meeting is also enclosed.

Our next meeting has been tentatively scheduled for September 11-12, 1986, in Anchorage.

Sincerely,

Cyril R. Wanamaker
Chairman

by: L. A. Dutton
Chief, Water Management Section
Department of Natural Resources

Enclosures

cc: Esther C. Wunnicke
Bill Ross
Donald W. Collinsworth
Senator Arliss Sturgulewski
Representative Adelheid Herrmann
Representative Richard Shultz
The Honorable Ted Stevens
The Honorable Frank Murkowski
The Honorable Donald E. Young

Distribution List
Water Resources Board Resolutions

Resolution 86-8
Esther C. Wunnicke
Mayor Tony Knowles
Lieutenant General David L. Nickols, Elmendorf AFB
Major General Gerald Bethke, Fort Richardson

Resolution 86-9
Esther C. Wunnicke
Bill Ross
Senator Arliss Sturgulewski
Representative Adelheid Herrmanr.
Representative Richard Shultz
The Honorable Ted Stevens
The Honorable Frank Murkowski
The Honorable Donald E. Young

Resolution 86-10
Esther C. Wunnicke
Bill Ross
Donald W. Collinsworth

Resolution 86-11
Bill Ross

Resolution 86-12
Bill Ross
Lieutenant General David L. Nickols, Elmendorf AFB
Major General Gerald Bethke, Fort Richardson
Colonel Wallace Cox, Fort Wainwright
Colonel Philip Nuber, Eielson AFB
Colonel Richard Quinn, Fort Greeley

Resolution 86-13
Esther C. Wunnicke
Bill Ross
Donald W. Collinsworth

Resolution 86-14
Esther C. Wunnicke

Resolution 86-15
Esther C. Wunnicke
Donald W. Collinsworth

Meeting Summary
ALASKA WATER RESOURCES BOARD
Juneau, Alaska
February 26-27, 1986

Board members in attendance:

Cyril (Randy) Wanamaker, Chairman, Juneau
David Vanderbrink, Vice Chairman, Homer
Peg Tileston, Anchorage
Wayne Westburg, Anchorage
Tom Meacham, Anchorage
Alan (Mike) Niemeyer, Anchorage
Stan Rybachek, North Pole

February 26, 1986

Randy Wanamaker, Chairman, called the meeting to order.

Esther C. Wunnicke, Commissioner, Department of Natural Resources and the Board's Executive Secretary, opened her remarks with a brief report on the budgetary impacts that the State's falling oil revenues will have on Division of Land and Water Management (DLWM) programs in FY'87. Under the Governor's proposed budget, funding for water rights adjudication will remain unchanged, the dam safety program will lose one position, and the Water Resources Development Project, which funds most of the Water Management Central Office, will be reduced substantially, with the elimination of five full time and one part time positions. Functions that will remain in the Central Office include staff support for the Water Board and statewide guidance and coordination on federal reserved water rights. Other Central Office functions will be transferred to the Regional Offices or be assumed by a new Policy and Procedures Unit. Funding for the Water Resources Section of the Division of Geological and Geophysical Surveys (DGGS) will remain at nearly the same level as this year's authorized budget. The Commissioner then reported that, by instituting "belt tightening" measures, DLWM has been able to make up a $400,000 personnel services shortfall in the FY'86 budget.

Commissioner Wunnicke next reported on the status of the Board's resolutions, adopted at the September, 1985 meeting:

- **Resolution No. 86-1: EPA National Placer Mining Standards**
  (Discussion deferred to Commissioner Ross, DEC)

- **Resolution No. 86-2: Re-affirmation of Administrative Order No. 67**
  This order directs all state agencies to require compliance with the Water Use Act when awarding funding, letting contracts, or providing assistance on water development projects. Governor Sheffield has re-issued this order as Administrative Order No. 83.

°**Resolution No. 86-3: South Anchorage Groundwater Decline**
DNR has continued to monitor the goundwater situation in the middle and lower levels of Anchorage's Hillside area.

°**Resolution No. 86-4: Department of Natural Resources Fees for Water Rights Applications**
This resolution urged the Governor to waive the $50 filing fee for single family domestic water rights applications. In light of the budgetary situation, the decision was made not to waive these fees.

°**Resolution No. 86-5: Federal Reserved Water Rights Adjudication**
This resolution supported passage of SB 150. The bill has received support from federal and state agencies and from the Water Resources Board. As a result, the bill has been passed out of the Senate Resources Committee.

°**Resolution 86-6: Advisement of Legislative Action**
DNR has made every effort to ensure that the Board is kept abreast of proposed legislation relating to water resources.

°**Resolution 86-7: Filing Fee Advertisement**
DNR ads urging that people file for their water rights, plus ads run by Senator Faiks and Representatives Boucher, Rieger, and Collins were quite effective. The Department received roughly 5,450 new applications in the two months before the new filing fees went into effect, and is now exploring ways of dealing with this backlog in a timely manner.

The Commissioner closed by stressing that she believed that the funding cuts proposed in the Governor's budget will still allow vital public services to continue.

QUESTIONS AND COMMENTS:

Peg Tileston expressed concern that the emphasis on "regionalization" within DNR will encourage reactive departmental responses to parochial issues rather than a consistent statewide policy. **A:** The Central Office will be retaining a position to provide oversight on water issues. Consistent policy direction will also come from the director of DLWM as well as from the commissioner.

Tom Meacham expressed concern that Central Office oversight on instream flow and federal reserve water rights issues will be lost during the budget cuts. **A:** The position that is being retained in the Central Office will perform these functions.

Tom Hawkins, Director, Division of Land and Water Management, opened his remarks with a status report of water resource related bills now pending before the legislature:

- **CSSB 95 - Dam Safety**
  This bill gives the Department a comprehensive dam safety program with clear authority to regulate non-federal dams. The bill was passed out of Senate Resources and is before the Senate Finance Committee.

- **CSSB 150 - Basin-wide Adjudication**
  This bill establishes procedures for conducting basin-wide adjudications of water rights administratively and in state court. A committee substitute acceptable to DNR has been passed out of Senate Resources.

- **HB 627 - Amendment to the Water Use Act**
  This bill was introduced February 17 by Representative Miller of North Pole. DNR is concerned that the bill would limit DNR's ability to require all water users to file for water rights in critical management areas, and that "domestic" water use must be defined so it cannot be expanded to include subdivision water supplies.

- **CSHB 93 - Recreational Rivers**
  This bill establishes a system of recreational rivers. The bill is in the House Finance Committee.

- **SB 334 - Hatcher Pass Public Use Area**
  This bill provides management guidelines for the Hatcher Pass Public Use Area and is in Senate Resources.

- **CS for HJR 14 - Navigability**
  This bill requests that further classification of federal Wild and Scenic Rivers in Alaska be suspended pending the outcome of litigation on navigability issues. The bill is in the House Rules Committee.

Director Hawkins discussed the Bradley Lake Hydroelectric Project and the status of ongoing negotiations between the State and the National Park Service (NPS) concerning the allocation of flows at the Nuka Glacier between the Nuka and Bradley rivers. DLWM is also encountering problems with the National Park Service concerning a NPS regulation (36 C.F.R. Sec. 9.8) which states that plans of operation for placer mining will not be approved unless the applicant has a perfected water right with a priority date prior to establishment of the park. NPS has advised DLWM that they are revising the regulations.

Director Hawkins expanded on Commissioner Wunnicke's discussion concerning the impacts that the Governor's FY'86 budget proposals will have on water management programs within DLWM. The Director assured the Board that the

new backlog of water rights casefiles can be dealt with by the Northern and the Southeastern Regional Offices with existing staff; however, DLWM may have to request funding for several temporary positions at the Southcentral Regional Office to cope with their backlog.

The Western States Water Council held their last meeting in San Antonio, Texas. The focus of the meeting was groundwater issues.

Bill Ross, Commissioner, Department of Environmental Conservation, opened his remarks with a discussion of DEC's FY'86 budget. Federal cuts due to the Gramm-Rudman Act and the possible elimination of 205(J) grants will produce a decrease in federal monies; however, the Governor's FY'86 proposed budget for DEC provides for increases in funding:

- To monitor growing surface water quality problems in Anchorage,
- To step up permitting activities for new construction,
- To implement a regulatory program for hazardous waste disposal problems associated with industrial areas on the Kenai Penninsula, and
- To continue research efforts on placer mining effluent problems.

Commissioner Ross next provided the Board with an update on Water Board resolutions:

- **Resolution No. 86-1: EPA National Placer Mining Standards**
  Governor Sheffield has provided for review of the proposed EPA placer mining standards by a wide variety of state agencies, and has directed the Office of the Governor to prepare a coordinated state response.

- **Resolution No. 86-2: Reaffirmation of Administrative Order No. 67**
  DEC standard procedure is to assist and encourage communities seeking grant monies to apply for water rights. Since the last Board meeting, 6 out of 6 communities have applied for water rights.

The Commissioner reported that the PEO (polyethylene oxide) flocculation study, jointly sponsored by DEC, University of Alaska, EPA, and the Bureau of Mines, is scheduled for this summer. Results of the study should be ready in November, 1986.

The Commissioner informed the Board that comments are due on the proposed EPA placer mining standards in mid-March. EPA will be revising the standards in the fall of 1986 to incorporate comments received and the results of the PEO flocculation study and Placer Mining Grant studies that will be performed this summer. The standards are due to be finalized in October, 1987. DEC's comments expressed concern that the subcategories selected to guide effluent standards fail to fully take into account site specific variables. Also, the draft standards fail to encourage water conservation or classification prior to sluicing.

The Commissioner next discussed DEC's hazardous waste management programs:

- °DEC is currently preparing regulations that will allow it to assume the management of hazardous waste from the federal government through the provisions of the Resource Conservation and Recovery Act (RCRA). The DEC program is scheduled to go into effect in July 1987.

- °The Spring Clean-up and Technical Assistance Program, which provides free disposal of small quantities of hazardous wastes, now limits eligibility to those with 200 pounds or less of waste material.

- °DEC has a waste disposal study underway to determine what types and how much hazardous waste is being generated within the state.

- °DEC, working closely with DNR, is in the process of identifying sites within Alaska suitable for hazardous waste disposal, and has prepared draft regulations to guide the site selection process.

- °Regulations affecting the transportation of hazardous wastes and the notification of communities are being prepared.

- °DEC is investigating existing disposal sites through federal Superfund grants to determine the extent and magnitude of danger from hazardous wastes posed by these sites. The military is also investigating and cleaning up some of their disposal sites and are coordinating their efforts with DEC. Pending legislation, HB 470 and SB 375, would set up a fund to perform remedial work on existing sites and to provide authorization and funding to clean up hazardous waste spills.

The Commissioner next briefly discussed the Underground Injection Program. The Alaska Oil and Gas Conservation Commission (AOGCC) has primacy over Class II wells (i.e., secondary recovery and waste injection wells). They are currently preparing regulations that will enable them to take over permitting for these wells from EPA. DEC handles permitting for annular reinjection of wastewater from drilling muds.

DEC is currently amending its water quality regulations (18 AAC 70) to bring its program into compliance with new federal regulations which require that use attainability studies be performed as a prerequisite for stream reclassification. DEC currently has no funding, however, to perform any use attainability studies.

DEC is reviewing its internal procedures and regulations for on site disposal and water and wastewater system review to streamline its permitting process.

DEC, in cooperation with DNR, has obtained a federal grant to develop a Groundwater Protection Strategy. Program steps include:

- °Inventorying existing water quality data,
- °Inventorying known and potential groundwater pollution,
- °Assessing the adequacy of the existing regulatory framework, and
- °Developing a groundwater protection strategy.

QUESTIONS AND COMMENTS:

Tom Meacham asked if DEC was looking at the economic analysis that EPA used to establish their placer mining effluent guidelines? **A:** DEC has not concentrated on responding to the economic analysis, but feels that EPA has received adequate input from other sources.

Wayne Westburg asked if DEC was going to pursue reclassificaion of streams? **A:** Regardless of reclassification efforts, the placer mining industry will, as a minimum, have to meet the effluent guideline standards.

Stan Rybachek asked if EPA will be adopting the state's water quality standards? **A:** EPA must look at the state's water quality standards when issuing permits.

Wayne Westburg commented that if a miner can't even comply with the effluent guidelines, then reclassification of stream to industrial standards is pointless. **A:** The miner must comply with the effluent guidelines, as a minimum. However, depending on the classification of the stream, stricter controls could be imposed during the permitting process.

Tom Meacham wanted to know the status of the federal study to determine whether drilling muds should be classified as a hazardous waste? **A:** The EPA is currently in litigation for their failure to perform this study. A schedule for the study will be set by the courts.

Dave Vanderbrink expressed concern that places like Homer and Juneau may not be able to comply with the draft hazardous waste siting regulations. **A:** Commissioner Ross said he welcomed all input.

Stan Rybachek asked if settling ponds using the PEO flocculants could be classified as hazardous wastes? **A:** No, PEO is an FDA approved substance.

Stan Rybachek also expressed concern with the adequacy of the EPA lab in Corvallis, Oregon to meet the requirements of section 104(E) of the Clean Water Act. **A:** The location of the lab shouldn't be a problem. Some of the work is subcontracted to University of Alaska-Fairbanks.

Wayne Westberg asked if the placer mining industry is going to have to live with drinking water standards? **A:** DEC's budget does not allow them to do any use attainability studies; however, under federal rules, DEC has to perform these studies prior to any reclassification of streams.

Tom Meacham expressed concern that some Anchorage homeowners are unable to get their septic systems recertified due to changing well-septic spacing requirements. **A:** The Municipality of Anchorage was, for several years, delegated the responsibility to certify septic systems and, on occasion, certified or granted waivers to some inadequate systems. DEC is unwilling to compromise its standards in recertifying these systems.

Wayne Westberg stressed that no relationship has been established between failing septic systems and surface water pollution in Anchorage, nor have any water wells been shown to have been contaminated by failing septic systems.

Peg Tileston asked if DEC had any input on selecting the water and sewer systems included in SB 335? **A:** These decisions are made by the legislature. DEC provides technical analysis of proposed systems on request from the governor or legislators.

Wayne Westburg asked if a water rights permit is now a DEC requirement before a certificate of construction and operation for a new water system will be issued? **A:** The commissioner said he will look into it.

Charles Sloan, Hydrologist, U.S.G.S., addressed the Board on the technical aspects of the joint DEC-DNR Groundwater Protection Strategy. The program is funded through section 106 of the Clean Water Act. Tasks identified to be done by DGGS are:

- °Inventory of groundwater related organizations,
- °Determine the availability, accessibility and useability of groundwater quality data, and
- °Determine the known extent of groundwater pollution in Alaska.

Bill Barnwell, Deputy State Geologist, DNR Division of Geological and Geophysical Surveys (DGGS), provided the Board with a brief update on the AWARE plan and discussed the necessity of technical geological and hydrologic input on decisions concerning hazardous waste disposal. DGGS's new responsibilities concerning water quality issues and the AWUDS Program mean that they will have to reprioritize their existing programs and be "spread a little thinner."

QUESTIONS AND COMMENTS:

Peg Tileston asked how much interaction and cooperation DEC has with the military on hazardous waste issues? **A:** Not very much. The Air Force has been in contact with DEC concerning some of their plans for hazardous waste cleanup. **Bill Leitch,** DEC, commented that historically DEC has had difficulty in getting information from the military on spills occurring within military reservations.

Christy Miller, Department of Community and Regional Affairs (DCRA) addressed the Board on floodplain management in Alaska. The National Flood

Insurance Program is a federal program designed to provide low cost flood insurance, and to encourage flood plain management through zoning restrictions. Communities found to lie within flood prone areas are required to join the program to be eligible for disaster relief, and to join, those communities have to establish mandatory land use planning requirements. There are currently 20 cities and boroughs in Alaska participating in the program. One problem that the program has caused is that if a flood prone community can't or won't participate in the Flood Insurance Program, its citizens cannot get home loans financed.

DCRA provides technical assistance to communities in meeting the minimum federal requirements for elegibility in the Flood Insurance Program, provides advice to lending institutions to determine if Flood Insurance is required prior to closing on loans, and serves as a mediator between the communities and the federal government or lending institutions.

The State of Alaska has no existing floodplain management program per se.

QUESTIONS AND COMMENTS:

Peg Tileston asked if the intent of the program is to help people rebuild in the same floodplain or to discourage construction within the floodplain? **A:** The program has the effect of doing both.

PUBLIC COMMENT SESSION

Bruce Geraghty, Executive Director, Miners Advocacy Council and Vice President of the Livengood/Tolovana Mining District, stressed the importance of reclassifying Alaskan streams and having the state take over the NPDES permitting process from EPA to help relieve placer miners of unreasonable and duplicative bureaucratic water quality requirements. Thirty-seven states so far have taken over this permitting process.

QUESTIONS AND COMMENTS:

Mike Niemeyer asked if streams were reclassified as industrial, could placer miners meet those standards? **A:** Not the 25 NTU standard. They may be able to meet the settleable solids standards. The advantage of reclassification is that an industrial classification will allow more flexibility in water quality management of placer mining on a case by case basis.

Tom Meacham commented that Texas and Massachusetts were probably able to assume the NPDES permitting program easily from EPA because those states have very few federal lands.

Dave Vanderbrink asked if the reason DEC won't look farther at reclassification is because the cost of doing a use attainability study is prohibitive? **A:** Other states have been able to perform several use attainability studies within one year, so why can't DEC?

Rose Rybachek, President of the Alaska Miners Association, provided the Board with some literature about the economic contribution of placer mining to Alaska, and several Placer Miners Association position papers on land planning and classification and coastal zone management. Ms. Rybachek then gave the Board an update on the efforts to have the Tolovana/Livengood mining district reclassified. The petition was denied. The district asked for a judicial review. In 1983, EPA enacted the regulations requiring use attainability studies. In 1985, the judge decided that DEC had not followed the proper procedures, and ordered DEC to do the following before March, 1986:

- °Prepare regulations for performing use attainability studies,
- °Conduct a use attainability study on the Tolovana River, and
- °Hold a public hearing regarding reclassification of the Tolovana River.

DEC is modifying their regulations and will be holding a public hearing in July 1986. The use attainability study has not yet been performed.

Wayne Westberg asked how much money do the placer miners have tied up in lawsuits. **A:** If a placer miner defends himself against a suit brought by EPA or DEC, it could cost up to a quarter of a million dollars. If you settle out of court, fines can range from $14,000 to $40,000. About $120,000 has been paid in the water quality litigation against DEC. The Sierra Club-BLM suit will cost $150,000 to get to the injunction stage.

Roger Burggraf, Chairman of the Fairbanks Branch of the Alaska Miners Association, emphasized that DEC and EPA water quality standards for placer mining discharge cannot be met with existing technology. Enforcement has been concentrated on politically active miners. Millions of dollars have been spent by government to study the effects of placer mining on the environment, but very little has been spent on researching new technology that will enable placer miners to meet water quality standards.

He recommended that:

- °The State should take over processing of the NPDES permits from EPA. Thirty-seven states have already done it.
- °DEC and EPA should "get their act together" and be consistent in their requirements and enforcement.
- °The State should fund studies to help miners develop technology to meet the water quality standards.
- °The State needs to aggressively pursue reclassification of streams.
- °The State should get involved in the BLM lawsuit.

QUESTIONS AND COMMENTS:

Peg Tileston asked what those miners who are able to meet the 0.2 ml/l standard for settleable solids were doing differently from those who couldn't? **A:** Site specific factors made the difference. No one can meet the turbidity standards.

Tom **Meacham** asked for clarification of the scope of the BLM lawsuit to affect miners who are not on BLM lands? **A:** About 10 percent of Alaskan miners would not be affected by this suit in some way.

Stan Rybachek asked if placer miners were going to comment on the EPA effluent guidelines? **A:** The miners are studying the supporting documents and will be responding to EPA.

Bob Aumiller, Miners Advocacy Council, reported that they have approached the Alaska Department of Fish and Game (DF&G) with the proposal that if they are allowed to mine out a stream, they will put aside 2 percent of their profits to be used for mitigation and recovery of that stream. They were refused. DF&G maintains that Title 16 will not allow this sort of approach. Mr. Aumiller also reported that enforcement actions are focused on politically active miners and that EPA has used a SWAT team approach to enforcement.

QUESTIONS AND COMMENTS:

Mike Neimeyer commented that EPA's economic analysis of placer mining in their supporting documentation for the placer mining effluent standards seemed, in his experience, to be completely unrealistic. **A:** Yes, EPA's economic analysis is not realistic for most mines in Alaska.

February 27, 1986

Jean Michou, General Manager, and **Stephanie Koeniger,** both of the Anchorage Water and Wastewater Utility (AWWU), gave the Board a report on AWWU's Water Master Plan Update and a discussion of how the Hillside groundwater situation fits into the larger problem of supplying adequate water for all of Anchorage. The Water Master Plan sets a schedule through the year 2020 for construction of improvements and additions to AWWU's water supply system. Some of the planned improvements include:

- °Completion of the Eklutna Water Project and the construction of mains to serve communities north of Anchorage.
- °Construction of a new 48-inch main from Eklutna to South Anchorage and Muldoon.
- °Construction of a five million gallon reservoir in Russian Jack Park.
- °Improving the delivery system to the Turnagain and Downtown areas.
- °Construction of a 24-inch main along Jewel Lake.
- °Construction of a 24-inch line along Lake Otis to a new reservoir at the proposed Turnagain View School site in South Anchorage.
- °Construction of a 16-inch line with booster pumps to serve the Potter Creek area.
- °Construction of new reservoirs at Hanshew Junior High School and at Kincaid Park.
- °Building new lines along 92nd, West Dimond, Raspberry, and Huffman Roads.

The cost of the improvements scheduled to be constructed between 1986 and 1991 is $40.6 million. An additional $73 million will be required to construct the long-term improvements scheduled for 1991 to 2020.

QUESTIONS AND COMMENTS:

Peg Tileston asked where conservation of water fits into the AWWU Master Plan? **A:** AWWU's policy has always been to encourage water conservation. AWWU is considering a recommendation to change the building code to require water efficient fixtures and meters in new construction.

Tom Meacham asked if some of the wells serving AWWU systems in the Lower Hillside area are physically outside of the service boundaries? **A:** No.

Wayne Westburg stressed that the wells that have failed on the Hillside were probably inadequate in the first place, and that all of those have been improved by deepening. Not enough data exists to substantiate the idea that the Hillside is experiencing a groundwater crisis.

Mike Neimeyer asked how much water is lost out of deteriorated AWWU water lines? **A:** The AWWU water system is fairly new and in good condition. There were leakage problems with some of the community systems that AWWU has taken over, but they have been corrected.

Mike Niemeyer asked what relationship the city has with the military reservation? How much water are they using? **A:** That's a very good question. The military takes their water from Ship Creek and maintains the Ship Creek Dam. There is no military involvement with the Eklutna Project.

Tom Meacham asked if AWWU plans to increase pumping out of its Hillside wells? **A:** AWWU could increase pumping on the Hillside to serve areas with failed private wells and those new developments which ask to be served.

Randy Wanamaker asked if AWWU has a program to study groundwater recharge? **A:** Groundwater recharge was tried on the Hillside in Campbell Tract in the early 1970's and ran into trouble with lawsuits for flooded basements.

Wayne Westburg pointed out that the military has been very uncommunicative and uncooperative in divulging their water use. He also stressed the value of water rights and encouraged AWWU to not abandon wells that have established water rights. **A:** AWWU does not lightly abandon wells with water rights.

Dave Vanderbrink commented that the well density on the Hillside would make putting in a sewer system difficult. **A:** AWWU has encountered situations where they could not service areas because well-sewer separation distances could not be met.

Wayne Westburg pointed out that using a community sewer system in areas with on-site wells results in dewatering the area.

Gary Prokosch, Department of Natural Resources, provided the Board with an update on the Hillside situation from the DNR perspective. With the new influx of water rights applications from the Hillside area, the percentage of Hillside residents with existing or pending water rights has increased from 18 percent to 43 percent in one year. The new applications are a source of new data. The USGS has been monitoring the golf course well for six months, and the Alaska Zoo has started to meter its water use. This new information will also fill data gaps on water use on the Hillside. Currently, however, DNR has insufficient information to create a critical water management area on the Hillside.

Wayne Westburg asked what DNR is going to do about water rights for the golf course well? **A:** DNR is requesting that a pump test be performed so that the influence of the well on prior appropriators can be determined. The golf course is also investigating diverting water from Campbell Creek to use for irrigation.

Stan Rybachek asked about the status of the application for dewatering the Tri-con mine? **Mary Lu Harle**, Department of Natural Resources, reported that the project is on hold for economic reasons. A pump test has been performed by DGGS determine the impact on prior appropriators.

Don Shira, Alaska Power Authority (APA), discussed small scale hydropower development in Alaska. APA is currently studying or has recently completed studies of 11 small scale hydropower sites. Some of the problems in developing small scale hydropower sites are:

- °Lack of hydrologic data,
- °Lack of good hydropower sites near population centers, and
- °Difficulty in obtaining financing.

There is a real lack of transmission grids in Alaska. Several southeastern projects are not working at peak levels because energy demand has been less than anticipated. Also, British Columbia has large amounts of excess hydropower. With the development of a Southeastern power grid, this unused capacity could be put to use. Underwater direct current transmission could be used in Southeastern to avoid environmental problems associated with overhead transmission lines. HJR 55 was introduced this session to encourage development of a Southeast intertie. The advantages to constructing a Southeast intertie are:

- °Power can be transferred from areas of surplus to areas of energy deficit.
- °Allows communities to share facilities, thus reducing total costs.
- °Provides access to low cost Canadian power.
- °Provides power to the Quartz Hill Project.
- °Allows development of most economical hydropower sites regardless of the site's proximity to population centers.
- °Provides energy to small Southeastern communities currently dependent on oil fired generation.

Peg Tileston asked what an intertie between British Columbia and Southeastern would cost? **A:** The cost of an intertie from Whitehorse to Prince Rupert was estimated at $250 million 1982. Present day costs would probably be $400 million.

Tom Meacham asked if federal reserve water rights have caused problems in developing hydropower sites? **A:** Other than Bradley Lake, no.

Dick Logan, Director, Division of Sport Fisheries, Department of Fish and Game (DF&G), briefed the Board on the new DF&G Instream Flow Program. The Instream Flow Program will utilize staff expertise developed during the Susitna studies. The program will be funded by Dingell-Johnson federal funds.

DF&G plans to:

- °Start applying for instream flow reservations on those streams that currently have adequate hydrologic and biologic data.
- °Supply DNR with data they have requested on previously filed instream flow applications (i.e., Terror Lake).
- °Apply knowledge gained in the Susitna studies to a large number of Alaskan streams.
- °Participate in the joint federal-state federal reserve rights work group.
- °If HB 93 (Recreational Rivers Bill) is passed, within two years file instream flow reservations on streams designated as Recreational Rivers.
- °Participate on various management teams, such as the Kenai River Management team.
- °Prioritize stream systems throughout the state for instream flow work.
- °Encourage the installation of USGS gage stations on critical streams to ensure that baseline hydrologic data is available to the instream flow program.
- °Refine hydrologic models to reflect Alaskan conditions.
- °File for an instream flow reservation on Rabbit Creek near Anchorage.

QUESTIONS AND COMMENTS:

Tom Meacham encouraged DF&G to pursue an instream flow reservation in Potter Marsh. He also asked if DF&G had coordinated any of its plans for instream flow work with any of the native associations? **A:** DF&G will make its expertise available to anyone interested in instream flows.

Mike Neimeyer asked if there is a threat to the fisheries in Bristol Bay that necessitates instream flow reservations? **A:** DF&G is looking to the future in Bristol Bay.

Dave Vanderbrink asked for clarification on DF&G's plans for the Kenai River? **A:** DF&G, working cooperatively with the U.S. fish and Wildlife Service, will begin instream flow data collection on Kenai River tributaries. DF&G is also collecting data on key riparian habitats along the Kenai River itself.

Randy Wanamaker asked if any streams in Southeastern Alaska have been targeted for instream flow work? **A:** An ungaged basin flow modelling program has been tentatively scheduled for Southeast.

Mike Neimeyer expressed concern with DF&G's plan to file for instream flow reservations only on those streams which currently have adequate hydrologic data, rather than streams which actually need instream flow reservations. **Peg Tileston** provided clarification on the point that the Dinghall-Johnson monies are not only for instream flow reservations, but also to study the effect of pollution, habitat loss, over-fishing, etc. on sport fish populations. Thus, the studies proposed by DF&G for the Bristol Bay area were appropriate.

Bruce Baker, Department of Fish and Game, informed the Board that DF&G has a list of prioritized streams that need an instream flow study. The list was compiled in 1984 and is currently being revised. Criteria used to identify priority streams include:

- °Areas of current or anticipated conflicts involving water use
- °Availability of information from previous instream flow assessments
- °Availability of flow records,
- °Fisheries resources,
- °Wildlife resources,
- °Stream morphology, and
- °Extent of public recreational use.

Dave Vanderbrink asked if DF&G has plans to study any placer mining areas as part of its instream flow program? **A:** Placer mining has not been singled out as a criteria for study; however, some of the streams selected probably overlap placer mining areas.

Peg Tileston asked what kind of coordination occurs between DNR and DF&G on the various management plans? **A:** Habitat Division provides information on instream flows to DNR through DF&G's departmental comments.

Rick Reed, Department of Fish and Game, brought the Board up to date with the status of permitting the Green's Creek and the Quartz Hill projects. The 1984 DEIS on the Quartz Hill Project proposed a primary water source on Tunnel Creek with a well field on the Wilson River as a secondary source. An instream flow study on the Wilson River was performed by the U.S. Fish and Wildlife Service to determine the impact of a well field. It was found that the water withdrawals during low flow periods could severely impact the fisheries on Wilson River. Since that study, a pool near the mouth of Blossom River was identified as a possible alternate water source, and is being studied. The revised DEIS is coming out in the summer of 1986. Instream flow studies are also being performed by Noranda for the Green's Creek project.

QUESTIONS AND COMMENTS:

Randy Wanamaker asked about the effect of discharging tailing from the Green's Creek project directly into Hawk Inlet rather than into Chatham Straits? **A:** The effects of discharge into Hawk Inlet are being studied by Noranda. If they can demonstrate there will be little or no effect on the marine biota in the Inlet, then this discharge scheme will be permitted.

Fletcher Shives, Environmental Protection Agency (EPA), provided the Board with additional information on the Green's Creek and Quartz Hill projects. Studies on tailings discharge into Hawk Inlet indicate that the tidal surge in the narrow portion of the Inlet is very effective for mixing and dispersing tailings. EPA has issued permits to the Green's Creek project for the housing and construction portions of the project. A tailings monitoring program has been developed with DEC.

The Quartz Hill Project is still being evaluated. EPA concerns include:

- °Maintaining air and water quality,
- °Spill prevention and containment, and
- °Reporting and handling of hazardous wastes.

The revised draft DEIS will be available for public comment in April or May, 1986.

QUESTIONS AND COMMENTS:

Wayne Westburg asked if U.S. Borax still feels that the Wilson River well field is their preferred alternative water source? **A: John Paulsen,** U.S. Borax, informed the Board that the flow characteristics in the Wilson River make it a much more stable water source than some of the alternatives U.S. Borax has considered. The Blossom River pool is an alternative, but has not received adequate study as yet. Salt water intrusion will be a problem with the Blossom River pool.

Randy Wanamaker expressed concern that the tailings piles at the Greens Creek project will leach arsenic into the environment. **A:** An intensive monitoring program for tailings effluent has been devised. If deleterious effects are found, corrections to mine operations will be made.

Randy Wanamaker asked about the permitting status on both projects? **A:** The Greens Creek Project is in final stages of preparing the draft NPDES permit for a public notice and comment period. The Quartz Hill Project will receive its NPDES permit when the EIS is finalized.

Fletcher Shives pointed out that tailings from the Greens Creek Project will be disposed of in tailings dams on Zinc Creek. To compensate for the loss of habitat in Zinc Creek, Noranda will remove natural physical barriers on Greens Creek which currently prevent upstream migration of anadromous fish.

Mike Neimeyer asked about the advantages and disadvantages to the stae in assuming the NPDES permitting process from EPA? **A: Fletcher Shives** said that it would relieve the placer miners of one layer of governmental interference, but DEC is so overburdened now, it would not be able to administer the program well. The federal government currently has a grant program to states taking over this function; however, federal budget cuts may eliminate those funds.

SB

152

Prepared by:
Senator Coghill's
Office 2/19/85

Golden Valley Electric Assn.

Contract Extension

SB 152

Golden Valley and the State of Alaska negotiated an agreement in 1976 to sell 5,000 barrels per day of royalty oil. Golden Valley requested royalty oil so that crude oil might be used as turbine fuel for power generation if market conditions made the cost prohibitive.

Golden Valley did not exercise its option to purchase until 1981. It assigned its contract rights to Mapco in exchange for a price discount on the turbine fuel.

This price discount, over $500,000 a year, is passed on to its 50,000 electric customers. The Department of Natural Resources has indicated that continued royalty oil sales to GVEA is in the best interest of the state because it offers maximum benefits to the citizens of the State.

The new Golden Valley contract with the State is a long-term noncompetitive bid contract for 10 years. It is still awaiting final approval. This contract will require legislative approval and will not be ready for that approval until March. It then must be signed by the governor. It becomes effective four months after signing.

The expiration date of the existing contract is June 30, 1985. As part of the Prudhoe Bay Unit Agreement of April 1, 1971, 90 days notice must be given to the producers to switch from in kind taking to in value for a small volume. This is the nomination/denomination process.

Notice must be given to the producers by March 31, 1985 under the existing contract-- if it expires June 30--in order for the State to return to in value taking.

Essentially with no extension the royalty oil will stop coming to Golden Valley. There will be a gap between the old and new contract. There is a four month waiting period before the new contract takes effect so that the State may notify the producers of its desire to take in kind. In addition to these problems are the procedural requirements found in the bill relating to public notice. Each notice step takes a certain amount of time.

This bill will allow the Golden Valley contract to extend for three months, enough time for the new contract to take effect and keep the prices of turbine fuel down to help lower fuel costs to its customers. The legislation is temporary and expires October 1, a time fixed to coincide with the new contract start-up.

It is not practical at this time to treat the proposed extension as a new disposal due to numerous requirements which would be waived by the proposed CS for SB 152.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

HB 233

Letter of Intent

Passage of this legislation is in no way to be construed as tacit approval or endorsement having been given to the proposed ten-year royalty oil contract with GVEA. The ten-year contract shall be reviewed exclusively on its own merits at such time as this contract is presented to the Legislature.

Dick Shultz, Co-Chairman
House Resources Committee

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

To: Representative Mike Davis, Chairman

From: Jonathan Sperber, Committee Aide

Date: March 17, 1985

Re: CSSB 152

The present and proposed GVEA royalty oil contracts are both predicated on GVEA assigning its crude oil to MAPCO, in exchange for which MAPCO then sells a share of #4 turbine fuel to GVEA at a discounted price. Of the 5,000 b/d of crude oil presently being assigned to MAPCO, 625 b/d of #4 turbine fuel is in return sold to GVEA. This represents approximately one-third of GVEA's turbine fuel needs, and one-sixth of the utility's total energy needs.

The turbine fuel is sold to GVEA at a discount from MAPCO's standard price, and this $550,000 annual discount is passed through to GVEA's members as a 1.57% savings on their electrical costs. This consumer benefit satisfies the best-interest requirements set forth in AS 38, and thus serves as the basis and justification for the state to sell royalty oil to GVEA.

The product breakdown of the 5,000 b/d of crude oil that MAPCO presently receives from GVEA is as follows:

625 b/d	#4 turbine fuel sold to GVEA at discount
1758 b/d	other refined products
2617 b/d	residual oil
5000 b/d	total

The residual oil is returned to the Trans-Alaska Pipeline at Fairbanks, and is then reclaimed by MAPCO as whole crude oil at Valdez. MAPCO may then exchange this oil for crude oil from the North Slope, thereby repeating the process of receiving, refining, returning, and exchanging oil. As a penalty for returning lower-quality oil into the pipeline, MAPCO pays a quality bank differential of 10¢ per API degree loss. At a 7 degree quality loss, MAPCO would pay a penalty of 70¢ per barrel.

Each barrel of crude oil refined by MAPCO produces approximately 5.25 gallons of turbine fuel and 11.18 gallons of jet fuel and diesel/heating oil. The remaining oil is reinjected into the pipeline as resid. MAPCO marks-up turbine fuel at about 9¢/gal. (from assignment agreement with MAPCO) and jet and diesel/heating oil at about 26¢/gal. (from Alaska Petroleum Product Pricing). This implies an annual gross profit of about $2,170,000 based on 1758 b/d at a mark-up of $3.38 per barrel. Operating and depreciation expenses would be deducted from this figure to arrive at MAPCO's annual net profit.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

HB 233/CSSB 152

Passage of either HB 233 or its companion bill, CSSB 152, would provide for an emergency three-month extension of the present GVEA royalty oil contract. The best-interest finding of this bill is based on the royalty oil being assigned to MAPCO, and MAPCO in turn selling turbine fueld to GVEA at a discounted price. This discount results in a 1.57% savings to consumers on their electrical costs.

Because this legislation would bypass several procedures relating to the disposition of royalty oil, it is worthwhile to review the events that led to the introduction of this legislation.

1976 Negotiations take place between the Department of Natural Resources and GVEA

1977 GVEA contract is signed

1978 GVEA is eligible to begin receiving royalty oil; contract expires six years from date of first receipt

1981 GVEA elects to begin receiving royalty oil, at a rate of 5,000 b/d

1982 GVEA request 10-year extension of contract

1983 Negotiations take place between the Department of Natural Resources and GVEA; Royalty Board reviews the proposed contract

1984 The six-year contract expires, and an emergency one-year contract is signed

1985 HB 233 and CSSB 152 would provide for an emergency three-month extension

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

HB 233

Letter of Intent

Passage of this legislation is in no way to be construed as tacit approval or endorsement having been given to the proposed ten-year royalty oil contract with GVEA. The ten-year contract shall be reviewed exclusively on its own merits at such time as this contract is presented to the Legislature.

Effect of amendments. — The 1980 amendment, in subsection (a), substituted "If legislative approval is required by AS 38.06.055, a" for "No" at the beginning of the subsection, inserted "not" preceding "be made by" near the middle of the first sentence, deleted "the" following "AS 38.05.183 without" near the middle of the first sentence, substituted "review of the proposed sale, exchange, encumbrance or other disposition by" for "written approval of" in the first sentence, and added the second sentence; in subsection (b), deleted "not" following "oil or gas may," substituted "if" for "without the" preceding "prior written," and substituted "notice of the proposed disapproval is given to" for "approval of"; in subsection (c), substituted "unless" for "without the" preceding "prior written," and substituted "notice of proposed waiver is given to" for "approval of"; and deleted former subsection (d), which read: "The board may require conditions relating to the sale, delivery, transportation, or refining or processing within the state to be included by the commissioner of natural resources in the offer of and sale by competitive bidding of oil or gas obtained by the state as royalty under AS 38.05.182."

NOTES TO DECISIONS

Stated in McKinnon v. Alpetco Co., Sup. Ct. Op. No. 2413 (File No. 5546), 633 P.2d 281 (1981).

Sec. 38.06.055. Legislative approval. (a) In addition to the recommendation by the board required under AS 38.06.050, the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature. The legislature may approve a sale, exchange, or other disposition of oil or gas or of the rights or of a waiver of the rights to receive future production of royalty oil or gas only by enacting legislation.

(b) The provisions of (a) of this section do not apply to

(1) the sale, exchange, or other disposition of oil or gas for one year or less if the sale, exchange, or other disposition is entered into to relieve storage or market conditions;

(2) contracts for the sale of state-owned royalty gas or oil that specify the sale and delivery of not more than

(A) 400 barrels of crude oil per day;

(B) 460 barrels of natural gas liquids per day; and

(C) 2,400 Mcf of natural gas per day.

(c) A sale, exchange, or other disposition of oil or gas made under (b)(1) of this section may not be continued after the end of one year or renewed with the same party to provide relief for market or storage conditions without the prior approval of the legislature under (a) of this section. (§ 2 ch 9 SSSLA 1974; am § 2 ch 146 SLA 1977; am § 1 ch 131 SLA 1978; am § 6 ch 112 SLA 1980)

Effect of amendments. — The 1980 amendment rewrote the section.

Opinions of attorney general. — The legislature may not conditionally approve a contract since such conditional acceptance is in law a rejection of the offer and the contract would have to be returned for renegotiation. February 23, 1977, Op. Att'y Gen.

(5) when the director determines it is in the best interest of the state and will avoid injustice to a person or the heirs or devisees of a person, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959 or to the heirs or devisees of the person; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(6) dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner for its fair market value a remnant of land that the director considers unmanageable or a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way if

(A) the director determines that it is in the best interests of the state;

(B) the parcel does not exceed the minimum lot size under an applicable zoning code; and

(C) the director and the platting authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal land use plans;

(8) for good cause extend for up to 90 days the time for rental or installment payments by a lessee or purchaser of state land under this chapter if reasonable penalties and interest set by the director are paid;

(9) quitclaim land or an interest in land to the federal government on a determination that the land or the interest in land was wrongfully or erroneously conveyed by the federal government to the state.

(c) A parcel of land may be conveyed under (b) of this section without classification or reclassification under AS 38.05.300.

(d) A parcel of land described in (b) (7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.840. Nothing in this subsection prevents the sale of land under AS 38.05.055 or 38.05.057 to a person not qualifying as an adjoining landowner if the adjoining landowner declines to purchase the land.

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state. A contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the

commissioner approves the contract but if the appraised value is not greater than $50,000 in the case of the sale of land or an interest in land, or $5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner. Before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written finding that sets out the facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based. A written finding is not required before the approval of

(1) a contract for a negotiated sale authorized under AS 38.05.115;
(2) a lease of land for a shore fishery site under AS 38.05.082;
(3) a permit or other authorization revocable by the commissioner;
(4) a mineral claim located under AS 38.05.195;
(5) a mineral lease issued under AS 38.05.205; or
(6) a production license issued under AS 38.05.207.

(f) The director shall grant a preference right to the purchase or lease without competitive bid of up to five acres of state land to an individual who has erected a building on the land and used the land for bona fide business purposes for five or more years under a federal permit or without the need for a permit and, after selection by the state, under a state use permit or lease, if the business produced no less than 25 percent of the total income of the applicant for the five years preceding the application to purchase or lease the land. The director shall sell or lease the land at a price determined by the director to represent the current fair market value of the unimproved land but in no event less than the cost of administration including survey if required. If the director determines in a written finding that the purchase or lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right. A lease granted under this subsection may not be for a period in excess of 50 years. In this subsection, "business purposes" means a purpose permitted under the classification of the land at the time the land was entered. (§ 5 art II ch 169 SLA 1959; am § 1 ch 57 SLA 1960; am §§ 2 — 4 ch 61 SLA 1960; am § 1 ch 55 SLA 1962; am § 1 ch 56 SLA 1964; am § 1 ch 98 SLA 1964; am § 1 ch 5 SLA 1965; am § 1 ch 58 SLA 1965; am § 1 ch 194 SLA 1968; am § 1 ch 164 SLA 1972; am §§ 2, 3 ch 257 SLA 1976; am §§ 1, 2 ch 176 SLA 1978; am § 15 ch 181 SLA 1978; am § 20 ch 182 SLA 1978; am § 1 ch 61 SLA 1980; am §§ 9 — 13 ch 113 SLA 1981; am §§ 19, 20, 88 ch 152 SLA 1984)

Revisor's notes. — In 1981, in subsection (b) (7), the word "convey" was substituted for "dispose" at the beginning of the paragraph and in subsection (d), the words "of land" were added following "parcel" under AS 01.05.031.

Effect of a
amendment ad
AS 38.05.036" a
graph (a)(9)(D)
The 1981
"$50,000" for "
case of the s
"$5,000" for "
case of the ann
tuted semicolo
"the written
"before a public
finding is not re
of" following "
added subpara
subsection (a)(1
amendment ad
date of original
price was not set
"a price determ
subsection (b)(5
tuted "on the d
entered the lan
preceding "as de
The amendment
and (8) of subsec
tions (c) and (d).
The 1984 am
paragraph (14)
subsection (e) to
(14) of subsection
(f). The 1984 a
graph (2) of subs
guage into intr
subparagraph (A
future" followi
introductory lang
end of subparagr
paragraph (B); in

The leasing
governed by re
by the commissio
Natural Resour
38.05.020(b)(1), a
tor of the Divisio
subsection (a)(3) c
Kelly, Sup. Ct.
1416, 1418), 499
Construction c
reserving right
— Provision in a
of Alaska, Divisi
reserving the righ
or right-of-way ac
was construed to
transfer of a righ
ment of Trans
Facilities. Wessel
Hwys., Sup. Ct.
2834), 562 P.2d 1

ıines that taking

plement this sec-
rative Procedure
1; am § 6 ch 104
), 41 ch 127 SLA

ces. — Construction
othermal Steam Act
1001 et seq.), per-
overnment lands for
eothermal steam
d 814.

(a) Any royalty
n in kind rather
e taking in kind
alties on oil and
rmines that the
state.
to take royalty
uring a current
ext regular ses-
ırnment of the
termination by
ı 71 SLA 1971;
§ 1 ch 146 SLA

es the taking in
t interest of the
tion (b), deleted
of this section"
ty in money."

dition regarding
461.
oyalty under gas
has expired as
iting upon expi-

Overriding royalty as affected by surrender, forfeiture, abandonment, or loss of lease, 135 ALR 557.

What constitutes "royalty" on oil or gas production within language of conveyance, exception or reservation, 4 ALR2d 492.

Construction and effect of provision in mineral lease excusing payment of minimum rent or royalty, 28 ALR2d 1013.

Solid mineral royalty as real or personal property, 68 ALR2d 728.

Solid mineral royalty under mining lease as real or personal property for purpose of payment of damages in condemnation proceedings, 68 ALR2d 735.

Expenses and taxes deductible by lessee in computing lessor's oil and gas royalty or other return, 73 ALR2d 1056.

Payment of stipulated minimum royalties or annual rental under solid mineral lease as precluding lessor's claim of forfeiture or abandonment, 87 ALR2d 1076.

"Shut-in royalty" payment provisions in oil and gas leases, 96 ALR2d 345.

Rights of parties to oil and gas lease or royalty deed after expiration of fixed term where production temporarily ceases, 100 ALR2d 885.

Sec. 38.05.183. Sale of royalty. (a) The sale, exchange or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182, or the sale, exchange or other disposal in whole or in part of a right to receive future mineral production under a state lease under this chapter, shall be by competitive bid and the sale, exchange or other disposal made to the highest responsible bidder, except that competitive bidding is not required when the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board under AS 38.06.050, determines that the best interest of the state does not require it or that no competition exists.

(b) When competitive bids are required, the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board, may reject all bids on a determination that because of the amount of the bids, the lack of responsibility on the part of the bidders, or for reasons consistent with the criteria set out in AS 38.06.070, the acceptance of the bids would not be in the best interest of the state.

(c) If the commissioner determines that a sale, exchange or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182 or of a right to receive future mineral production under a state lease under this chapter shall be made otherwise than by competitive bid, and the Alaska Royalty Oil and Gas Development Advisory Board has been notified in writing of that determination, the commissioner shall make public in writing the specific findings and conclusions upon which that determination is based.

(d) Oil or gas taken in kind by the state as its royalty share may not be sold or otherwise disposed of for export from the state until the commissioner determines that the royalty-in-kind oil or gas is surplus to the present and projected intrastate domestic and industrial needs. The commissioner shall make public, in writing, the specific findings and reasons on which the determination is based and shall, within 10 days of the convening of a regular session of the legislature, submit a report showing the immediate and long-range domestic and industrial needs of the state for oil and gas and an analysis of how these needs are to be met.

(e) When a sale, exchange or other disposal of oil or gas taken in kind by the state as its royalty share, or a sale, exchange or other disposal in whole or in part of a right to receive future royalty oil or gas, under a state lease under this chapter is made other than by competitive bid, the sale, exchange or other disposal shall be awarded by the commissioner to the prospective buyer whose proposal offers the maximum benefits to citizens of the state. The commissioner shall consider

(1) the cash value offered;

(2) the projected effects of the sale, exchange or other disposal on the economy of the state;

(3) the projected benefits of refining or processing the oil or gas in the state;

(4) the ability of the prospective buyer to provide refined products or by-products for distribution and sale in the state with price or supply benefits to the citizens of the state; and

(5) the criteria listed in AS 38.06.070(a).

(f) The commissioner may not enter into a contract for the sale of royalty oil unless the contract provides that any material amendment to the contract that appreciably reduces the consideration received by the state requires prior approval of the legislature. (§ 1 ch 56 SLA 1970; am § 3 ch 9 SSSLA 1974; am §§ 9, 10 ch 112 SLA 1980; am § 2 ch 68 SLA 1984; am § 2 ch 105 SLA 1984)

Revisor's notes. — Enacted as AS 38.05.363. Renumbered in 1970.

Effect of amendments. — The 1980 amendment, in subsection (a), substituted "after prior written notice to" for "with the prior written approval of" and "under AS 38.06.050" for "where applicable," near the end of the subsection; in subsection (b), substituted "after prior written notice to" for "with the prior written approval of"; in subsection (c), substituted "has been notified in writing of" for "where applicable has approved"; in subsection (d), deleted "with the approval of the Alaska Royalty Oil and Gas Development Advisory Board" following "until the commissioner"; and added subsection (e).

The 1984 amendments added an identical subsection (f).

NOTES TO DECISIONS

Waiver of competitive bidding. — An initial waiver of competitive bidding and a second waiver at the time of amendment removed any obligation to open the contract to competitive bidding. McKinnon v. Alpetco Co., Sup. Ct. Op. No. 2413 (File No. 5546), 633 P.2d 281 (1981).

Sec. 38.05.184. Limitation on oil and gas leases in certain areas, and reacquisition of leases. (a) The legislature finds that Kachemak Bay is an area of extraordinary abundance and diversity of marine life that has provided, and will continue to provide in the future, a basis for one of the state's most important commercial fisheries; that recent information discloses that even minute quantities of oil released into the marine environment may be harmful to the larval forms of crabs and other marine life and that the existence of

(B) the rights to receive future oil or gas production under state leases; and

(4) recommend to the commissioner of natural resources the conditions relating to the sale, delivery, transportation, refining or processing of oil or gas which the commissioner may include in the offer and sale of oil or gas obtained by the state as royalty under AS 38.05.182.

(b) The board may

(1) direct the commissioner of natural resources to solicit development plans or bids consistent with the criteria set out in AS 38.06.070 for

(A) the sale, exchange or other disposal of oil or gas obtained by the state as royalty under AS 38.05.182; or

(B) the sale, exchange or other disposal of all or a portion of the rights to receive future oil or gas production under a state lease;

(2) employ an executive director, and contract for the services of professionals, persons with knowledge of economics and other disciplines, and persons with technical skills who may be necessary to assist the board in the exercise of its powers and duties; and

(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that are necessary for the exercise of its powers and duties. (§ 2 ch 9 SSSLA 1974; am § 4 ch 112 SLA 1980)

Effect of amendments. — The 1980 amendment rewrote the section.

Sec. 38.06.050. Board review and recommendation required. (a) If legislative approval is required by AS 38.06.055, a sale, exchange, encumbrance, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas may not be made by the commissioner of natural resources under AS 38.05.183 without prior review of the proposed sale, exchange, encumbrance or other disposition by the board. A written recommendation of the board on the proposed sale, exchange, encumbrance or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas shall be submitted to the legislature at the time a resolution approving the proposed sale, exchange, encumbrance or other disposition is introduced in the legislature.

(b) Bids or applications for the purchase of royalty oil or gas may be rejected by the commissioner of natural resources if prior written notice of the proposed disapproval is given to the board.

(c) Competitive bidding in a sale, exchange or other disposition described in (a) of this section may not be waived by the commissioner of natural resources under AS 38.05.183 unless prior written notice of proposed waiver is given to the board.

(d) *[Repealed.]* (§ 2 ch 9 SSSLA 1974; am § 5 ch 112 SLA 1980)

Effect of a
amendment, in
"If legislative
38.06.055, a" fo
the subsection.
"be made by" n
sentence, dele
38.05.183 with
first sentence,
proposed sale,
other disposition
of" in the first s
ond sentence;
"not" following
tuted "if" for

Stated in M
Sup. Ct. Op. No.
P.2d 281 (1981).

Sec. 38.06.
mendation b
sioner of natu
disposition of
future produc
prior approva
exchange, or
of the rights t
enacting legis
(b) The pro
(1) the sale
or less if the
relieve storag
(2) contract
the sale and d
(A) 400 bar
(B) 460 bar
(C) 2,400 M
(c) A sale, e
(b)(1) of this se
renewed with
conditions with
section. (§ 2 ch
SLA 1978; am

Effect of amer
amendment rewro
Opinions of att
legislature may no
a contract since s

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 152

Title: Royalty Oil, GVEA

Sponsor: Coghill

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Minerals and Energy Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400

Division: Commissioner's Office Date: 15 February 1985

Approved by Commissioner: Esther C Wunnicke Date: 18 February 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M March 4, 1985

SUBJECT: Constitutionality of HB 233

TO: House Special Committee on Oil and Gas

FROM: Randall J. Moen
Legislative Counsel

You have asked whether section 1 of HB 233 violates Article II, section 19 of the Alaska Constitution. In my opinion it does not.

Section 1 of HB 233 temporarily waives certain provisions of law relating to a particular type of sales of state royalty oil. It states:

> The following provisions of law do not apply to an extension or renewal of not more than three months of a sale of oil subject to approval by the legislature under AS 38.06.055(c): (1) AS 38.05.035(e); (2) AS 38.05.183(a), (c), and (e); and (3) AS 38.06.050.

Article II, section 19 of the Alaska Constitution reads in part, "The legislature shall pass no local or special act if a general act can be made applicable." Two questions emerge: Is the language of section 1 of HB 233 of a special or local nature, and if so, can a general act be made applicable? I will only address the first question.

The two leading Alaska cases regarding Article II, section 19 of the Alaska Constitution are State v. Abrams, 534 P.2d 91 (1975) and State v. Lewis, 559 P.2d 630 (1977). Abrams, supra, dealt with a law giving Eagle River special incorporation privileges. In Lewis, supra, the court was faced with a law waiving other laws for a particular three way land exchange agreement. Both cases are similar in that they dealt with acts which on their face were applicable to only one entity or party or locale. This can be distinguished from section 1 of HB 233 which may apply to anyone or anywhere in general. It is not limited to any one entity or

party or locale. Therefore, section 1 is not a "special or local" act under Article II, section 19 of the Alaska Constitution.

RJM:ojb
J12/051

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

February 18, 1985

Senator Arliss Sturgulewski, Chairman
Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Ak 99811

Dear Senator Sturgulewski:

The attached Extension Amendment has been drafted to accommodate a proposed extension of the current royalty oil contract between the State and Golden Valley Association, Inc., as contemplated by the proposed Committee Substitute for Senate Bill 152. Upon enactment of the legislation (including approval by the Governor), I am prepared to execute the amendment.

Sincerely yours,

Esther C Wunnicke

Esther C. Wunnicke
Commissioner
Department of Natural Resources

Attachment as stated

cc: Mike Kelly, Golden Valley Electric Assoc., Inc.

1574K

10-J9LH

Extension Amendment

The following language amends the agreement for the sale and purchase of royalty oil dated May 9, 1984 between the State of Alaska and Golden Valley Electric Association, Inc.:

ARTICLE VI

TERM

6.1 Term. This Agreement shall become effective upon execution by the parties. Subject to the other provisions contained in this Agreement, Seller's obligation to sell and Purchaser's obligation to buy Royalty Oil shall begin July 1, 1984 and end June 30, 1985.

6.2 Extension of Term. Upon enactment on or before March 28, 1985 of legislation approving and ratifying a three-month extension of this Agreement, Seller's obligation to sell and Purchaser's obligation to buy Royalty Oil shall not end until September 30, 1985, or until the date of first delivery under the agreement for the sale and purchase of Royalty Oil conditionally entered into by Seller and Purchaser on February 8, 1985, whichever comes first. As used in this article, "enactment of legislation" is as defined in AS 01.10.070(f)(4).

6.3 Security for Extension of Term. Seller shall not be obligated to deliver Royalty Oil to Purchaser under any extension of the term of this Agreement if Purchaser fails by March 28, 1985 to deliver to Seller evidence that Seller may issue drafts against Purchaser's Article XV Security instrument up to and including November 30, 1985.

Date: _____

_____
Commissioner
Department of Natural Resources

Date: _____

_____
Golden Valley Electric
Association, Inc.

From GVEA 2/19/85

GVEA ROYALTY OIL CONTRACT

FACT SHEET

TITLE: Agreement for Sale and Purchase of Royalty Oil

TERM: 3 months

MAJOR FACTS/BENEFITS:

a. This is a renewal or continuation of GVEA's 1977 royalty oil contract which was the first royalty contract. GVEA is presently receiving oil and has been receiving continuously since 1981.

b. The contract has specific "In State Processing Requirement".

c. Guaranteed Benefits:

(1) Directly benefits more than 50,000 Interior residents who are consumers of GVEA by providing GVEA a lower price for turbine generator fuel.

(2) GVEA's fuel derived from the royalty oil agreement costs 9.4% less than next best competitive alternative.

(3) GVEA saves in excess of $550,000 a year which is passed on directly to the consumer via GVEA's "Cost of Power Adjustment (CPAC)" tariff and has been a credit adjustment on the last 33 monthly electric billings.

d. Fairbanks area electric consumers are the only major group in Alaska who do not presently benefit from hydro development, power cost assistance, or availability of economical natural gas fuels.

e. Although approval now seems within our grasp, there have been several delays in the approval of GVEA's contract. We are in a position at this late date where even if the proposed contract is approved immediately, we will lose our oil supply because of the crude oil denomination and re-nomination requirements associated with the lapse of our current contract and implementation of the new contract. When DNR granted our present one year contract, they pledged their best efforts to insure that GVEA would suffer no crude flow interruption. Passage of S.B. 152 will insure that the commitment is kept.

f. The 3 month lapse would result in $125,000 to $135,000 higher electric bills to the GVEA consumer via GVEA's CPAC.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA, 99811
(907) 465-4907

Senate
Committee on Resources

M E M O R A N D U M

February 19, 1985

TO: All Members
Senate Resources Committee

FROM: Staff
Senate Resources Committee

RE: SB 152 "An Act relating to extension and renewal of certain sales of state royalty oil; and providing for an effective date."

SB 152 is designed to cover a time lapse between the expiration of the state's royalty oil contract with GVEA (Golden Valley Electric Association) and the effective date of a new contract. The current contract is due to expire June 30, 1985. This bill would extend that date to September 30, 1985.

A bill approving a new royalty oil contract with GVEA is scheduled to be introduced at the request of the Governor on March 8, 1985. Royalty oil contracts become effective four months after they are signed which means that the new contract could not become effective before the original expiration date.

When the state is taking its royalty oil in kind rather than in value, State regulations require 90 days written notice when the amount of oil taken is going to change. (See attached copy of 11 AAC 82.700[2]) If the contract lapsed, the state would have to give 90 days notice that it was decreasing the amount of oil taken in kind and then, when the contract was signed, would have to give another 90 days notice that the amount was going to go back up. These notice requirements, together with the actual lapse in the contract would cause a substantial interruption in the supply of oil to GVEA.

The Department of Natural Resources has issued findings that the GVEA contract is in the best interest of the state. It appears that the issue of whether the GVEA contracts are a good or bad deal for the state is an issue that would more properly be addressed when the new contract is before this body. Nothing in this bill would commit the state in any way to the new contract.

In this packet is a sectional analysis of the committee substitute proposed by Sen. Coghill's office; a memo from Sen. Coghill's office on this issue; a copy of the relevant regulations; a chart showing the current distribution of the state's royalty oil; and a copy of GVEA's current contract.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 998
907 465 3[illegible]

M E M O R A N D U M February 18, 1985

SUBJECT: Sectional Analysis for CS for HB 152 (Resources)

TO: Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

FROM: Randall J. Moen
Legislative Counsel

Section 1 The following need not occur if a sale of state royalty oil subject to legislative approval is extended or renewed for not more that three months and the extension or renewal relates to a one year or less prior sale of oil with the same party to relieve market or storage conditions:

1. A written finding to the public by the director of the division of lands for the Department of Natural Resources that a sale of oil will serve the best interests of the state. (AS 38.05.035(e))

2. Competitive bidding by the commissioner of natural resources or prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board of reasons for waiver of competitive bidding. (AS 38.05.183(a))

3. Prior written notice to the public and the Alaska Royalty Oil and Gas Development Advisory Board of the reasons why the commissioner of natural resources intends to sell royalty oil other than by competitive bid. (AS 38.05.183(c))

4. A requirement of the commissioner of natural resources to sell royalty oil to a prospective buyer whose proposal offers maximum benefits to the state. (AS 38.05.183(e))

5. Review and written recommendation to the legislature by the Alaska Royalty Oil and Gas Development Advisory Board. (AS 38.06.050(a))

6. Prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board by the Commissioner of natural resources of rejection of a bid or application for the purchase of royalty oil. (AS 38.06.060(b))

7. Prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board by the commissioner of natural resources before the waiver of competitive bidding. (AS 38,06.050(c))

Section 2 The legislature approves and ratifies a three month extension of a royalty oil contract between the State of Alaska and Golden Valley Electric Association, Inc.

Section 3 On October 1, 1985 the provisions of law noted in section 1 will apply to an extension or renewal of not more than three months of sale of oil that is subject to approval by the legislature under AS 38.96.055(c).

Section 4 Immediate effective date.

RJM:csh
c3/004

(2) state location and status of all past and present activities on the lease;

(3) include a detailed report of all production during the six months preceding the filing of the application;

(4) contain a detailed statement covering the entire life of the lease showing all expenses and costs of operating the lease including all royalties and overriding royalties and all income from all produced minerals from the lease; and

(5) include an agreement by the applicant to defray the cost of publishing a notice as provided in (b) of this section.

(b) Upon receipt of an application complying with (a) of this section, the commissioner will cause to be published a notice of public hearing if required on the application. The notice must

(1) state the time and place of hearing;

(2) describe the lands involved; and

(3) state the name of the applicant and the nature of the relief applied for.

(c) The notice must be published at least once a week for at least two consecutive weeks in advance of the hearing date, which must be at least 15 days after the last date of publication, in at least one newspaper of general circulation in the vicinity of the principal office of the department, and must be posted at that office for the same period.

(d) At the time and place specified in the published notice, the commissioner will hear evidence offered by the applicant and any other interested party.

(f) The commissioner must give notice of the findings and determination to the lessee and to any other person who has filed a written request for it. The action taken is effective on the date specified in the notice. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.140
AS 38.05.145(a)

11 AAC 82.670. SUSPENSION OF PRODUCTION OR OPERATIONS. (a) Applications for suspension of production or operations under AS 38.05.140 must comply with 11 AAC 88.105 and must contain complete information showing the necessity or justification for the suspension.

(b) Whenever the commissioner takes an action under AS 38.05.140, he will give notice to the lessee, specifying the action taken, the effective date of it, and the duration of any suspension, and note the action in the status record.

(c) No lease expires because operations or production or both are suspended under any order or with the assent of the commissioner. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.140
AS 38.05.145(a)

11 AAC 82.675. EFFECTIVE DATE OF LEASES AND PERMITS. The effective date of a lease or permit is the first day of the month following the date on which the lease or permit was signed on behalf of the state or upon prior written request on the first day of the month in which it was signed on behalf of Alaska. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 7.
ROYALTY PRODUCTS

Section
700. Taking royalty in kind
705. Bidding method
710. Notice of sale
715. Qualifications

11 AAC 82.700. TAKING ROYALTY IN KIND. Royalty products taken in kind as provided by AS 38.05.182 must be taken pursuant to the provisions of the lease which reserves the royalty to the state. If no provision is made in the lease or in the regulations dealing with the products to be taken, all or any portion of the state's share may, at the option of the commissioner, be taken in kind in accordance with the following:

(1) 90 days' written notice will be given to

each lessee of the state's election to take the royalty products in kind; however, if the proportion of the state's share to be taken in kind exceeds 50 percent of the state's share, 180 days' notice will be given;

(2) after taking has actually commenced, the amount to be taken in kind may be increased or decreased from time to time by not more than 10 percent upon 30 days' written notice to each lessee of record, from 10 percent to 50 percent upon 90 days' written notice, and over 50 percent upon 180 days' written notice;

(3) the products must be delivered to the state or its designated purchaser free of charge at the point provided in the lease for determination of the value of the royalty product if the production to be taken were paid in money rather than taken in kind; the condition of the product must be the same as the non-royalty share at the point of taking; the lessee shall, if necessary, furnish safe storage for the royalty share free of charge for the same duration and in the same manner as storage is provided for the non-royalty share; when all or part of the royalty product to be taken consists of gas, the commissioner will take into consideration the effect this taking may have on the long-term gas supply contracts that the lessee has entered into. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)
AS 38.05.182

11 AAC 82.705. BIDDING METHOD. Royalty products which the commissioner determines are to be sold by competitive bid will be offered for sale by sealed bid or at public auction. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)
AS 38.05.183

11 AAC 82.710. NOTICE OF SALE. If the commissioner determines that royalty products will be offered for competitive sale, notice of the sale will be given as provided by AS 38.05.345. The notice must specify all the terms and conditions of the sale, including the royalty products to be sold, bidding method, bond requirements, sale place and time, minimum bid, if prescribed, and any other term or condition which the commissioner determines necessary to carry out the purposes of AS 38.05.183. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71; am 3/18/83, Reg. 85; am 3/30/83, Reg. 85)

Authority: AS 38.05.020(b) AS 38.05.145
AS 38.05.135(b) AS 38.05.180

11 AAC 82.715. QUALIFICATIONS. A purchaser of the state royalty products must comply with the qualification requirements of 11 AAC 82.200 and must supply the showing of qualification required of mineral permittees and lessees by 11 AAC 82.205. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 8.
RECORDS AND REPORTS

Section
800. Production records
805. Test results
810. Confidentiality of data
815. Cross-referencing

11 AAC 82.800. PRODUCTION RECORDS. (a) Mineral lessees of state land shall keep in their possession accurate books and records showing the production and disposition of all minerals produced from the leased land and shall permit the commissioner or his agents at all reasonable hours to examine them.

(b) The commissioner will, in his discretion, require copies of sales contracts and other agreements with the first bona fide purchaser affecting produced minerals which are subject to royalties. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020(b)(1)
AS 38.05.145(a)

11 AAC 82.805. TEST RESULTS. The lessee of a state-issued mineral lease shall furnish, upon request of the commissioner, a copy of all geological, geophysical, engineering, and other factual data obtained from the lease, including all pertinent tests, records, surveys, and analyses conducted on or pertaining to the leased land or products from it, but not including interpretations of these items or proprietary research data

JAN. 14, 1985

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

ESTIMATED PRODUCTION FOR PRUDHOE BAY AND KUPARUK RIVER UNITS

YEAR	ESTIMATED TOTAL PRODUCTION (BARRELS PER DAY) TOTAL PRUDHOE	(1) TOTAL KUPARUK	TOTAL	ESTIMATED ROYALTY (BARRELS PER DAY) PRUDHOE ROYALTY	KUPARUK ROYALTY	TOTAL ROYALTY	ESTIMATED SALES OF ROYALTY OIL (BARRELS PER DAY) MAPCO	(2) SYRA (OLD)	(3) SYRA (PROPOSED)	(4) TESORO (OLD)	(5) TESORO (NEW)	(6) CHEVRON	(7) COMPETITIVE SALE	ROYALTY IN VALUE
1984	1,500,000	120,000	1,620,000	187,500	15,000	202,500	35,000	5,000		29,765		18,000		184,735
1985	1,500,000	180,000	1,680,000	187,500	22,500	210,000	35,000		5,000	45,999	25,001	16,000	35,000	15,000
1986	1,500,000	180,000	1,680,000	187,500	22,500	210,000	35,000		5,000	45,999	25,001	18,000		80,000
1987	1,475,000	180,000	1,655,000	184,375	22,500	206,875	35,000		4,917	45,233	25,557	17,700		78,453
1988	1,325,000	200,000	1,525,000	165,625	25,000	190,625	35,000		4,417	43,633	22,957	15,900		71,718
1989	1,175,000	200,000	1,375,000	146,875	25,000	171,875	35,000		3,917	38,833	22,367	14,100		52,453
1990	1,050,000	200,000	1,250,000	131,250	25,000	156,250	35,000		3,500	32,200	19,200	12,600		54,750
1991	950,000	200,000	1,150,000	118,750	25,000	143,750	35,000		3,167	29,133	16,467	11,400		48,583
1992	850,000	200,000	1,050,000	106,250	25,000	131,250	35,000		2,833	26,066	14,734	10,200		42,417
1993	750,000	200,000	950,000	93,750	25,000	118,750	35,000		2,500	23,000	13,000	9,000		36,250
1994	650,000	170,000	820,000	81,250	21,250	102,500	35,000		2,167	19,933	11,267	7,800		26,333
1995	575,000	145,000	720,000	71,875	18,125	90,000	35,000							55,000
1996	510,000	120,000	630,000	63,750	15,000	78,750	35,000							43,750
1997	460,000	100,000	560,000	57,500	12,500	70,000	35,000							35,000
1998	420,000	80,000	500,000	52,500	10,000	62,500	35,000							27,500
1999	380,000	75,000	455,000	47,500	9,375	56,875	35,000							21,875
2000	340,000	65,000	405,000	42,500	8,125	50,625	35,000							15,625
2001	320,000	55,000	355,000	37,500	6,875	44,375	35,000							9,375
2002	270,000	50,000	320,000	33,750	6,250	40,000	35,000							5,000
2003	240,000	40,000	280,000	30,000	5,000	35,000	35,000							
2004	210,000	35,000	245,000	26,250	4,375	30,625								30,625
2005	180,000	25,000	205,000	22,500	3,125	25,625								25,625
2006	160,000	25,000	185,000	20,000	3,125	23,125								23,125
2007	140,000	20,000	160,000	17,500	2,500	20,000								20,000
2008	110,000	20,000	130,000	13,750	2,500	16,250								16,250
2009	80,000	10,000	90,000	10,000	1,250	11,250								11,250
2010	50,000	10,000	60,000	6,250	1,250	7,500								7,500

NOTES: (1) DNR ESTIMATE OF FIELD PERFORMANCE, OCTOBER 1984.

(2) [redacted]

(3) [redacted]

(4) TESORO'S CURRENT CONTRACT CALLS FOR A MAXIMUM QUANTITY OF 24.53% OF DAILY PRUDHOE ROYALTY OIL LESS COOK INLET ROYALTY PRODUCTION. THE QUANTITY IS 21.28% IN 1984, AND WILL BE 21.32% STARTING JAN. 1, 1985. THIS CONTRACT WILL BE INCREASED TO ITS' MAXIMUM QUANTITY ON OCTOBER 1, 1985 DUE TO CANCELLATION OF THE COOK INLET CONTRACT ON THAT DATE. THE CONTRACT EXPIRES JANUARY 1995.

(5) MOST OF THIS VOLUME (ABOUT 25,000 BPD), WHICH IS CURRENTLY BEING TAKEN "IN VALUE," WAS SOLD COMPETITIVELY FOR DELIVERY APRIL 1, 1985 THRU SEPT. 30, 1985. ON OCTOBER 1, 1985 IT IS ANTICIPATED THAT TESORO WILL COMMENCE DELIVERIES UNDER ITS 12/9/83 PRUDHOE CONTRACT, WHICH HAS A MAXIMUM QUANTITY OF 13.86% OF DAILY PRUDHOE ROYALTY OIL AND EXPIRES JAN. 1, 1995.

(6) CHEVRON'S CONTRACT CALLS FOR A MAXIMUM QUANTITY OF 9.6% OF DAILY PRUDHOE ROYALTY OIL. THE CONTRACT EXPIRES JANUARY 1, 1995.

(7) DELIVERIES WILL COMMENCE APRIL 1, 1985 FOR 50,000 BPD OF PRUDHOE BAY UNIT ROYALTY OIL AND 15,000 BPD OF KUPARUK RIVER UNIT ROYALTY OIL, AND WILL CONTINUE FOR ONE-YEAR, AND SIX-MONTH PERIODS, RESPECTIVELY, AS A RESULT OF THE DEC. 11, 1984 COMPETITIVE SALE. PRIOR TO THAT TIME THIS OIL REMAINS "IN VALUE."

dmj

MAPCO PETROLEUM INC.
A SUBSIDIARY OF MAPCO INC

480 NORTH BELT
SUITE 111
HOUSTON TEXAS 77060
(713) 931-7860
TELEX 794655

February 15, 1985

Senator John B. (Jack) Coghill
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Coghill:

Mapco would support legislation introduced by yourself and co-sponsored by Senators Bennett and Fahrenkamp, that would extend for three months the term of the royalty oil sale contract between the State of Alaska and Golden Valley Electric Association, Inc. This extension would ensure a steady supply of oil available for processing for Golden Valley's account until the new long term contract is in place.

We appreciate the efforts of the Alaska legislature in this regard.

Very truly yours,

David K. Cooley
Vice President

DKC:jr

jr

Introduced: 2/25/85
Referred: House Special Committee
on Oil & Gas, Resources and Finance

IN THE HOUSE

BY M.W. MILLER, FRANK, KOPONEN, RINGSTAD, SHULTZ AND DAVIS

HOUSE BILL NO. 233

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to extension and renewal of certain sales of state royalty oil; and providing for an effective date."

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

* Section 1. The following provisions of law do not apply to an extension or renewal of not more than three months of a sale of oil that is subject to approval by the legislature under AS 38.06.055(c):

(1) AS 38.05.035(e);

(2) AS 38.05.183(a), (c), and (e); and

(3) AS 38.06.050.

* Sec. 2. A three-month extension of the "Agreement for the Sale and Purchase of Royalty Oil between the State of Alaska and Golden Valley Electric Association, Inc.," dated May 9, 1984, is hereby approved and ratified.

* Sec. 3. Section 1 of this Act is repealed October 1, 1985.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).


SB
1974

HOUSE

COMMITTEE REPORT

2/17

(9)
Date referred: 2/3/86

FURTHER REFERRALS:

Rules

DATE: 1/17/86

The RESOURCES Committee has considered CSSB 194(Res)

"An Act relating to certification of water and wastewater systems and facilities operators; and providing for an effective date."

and recommends:

[X] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title
[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Herrmann Adelheid Herrmann

Cato Bette Cato

Jenkins Roger Jenkins

Wallis Ray Wallis

SIGNING OTHER RECOMMENDATIONS:

Dave W. Thompson - NO REC
Thompson

Dick Shultz No Rec
Shultz

Co-chairman Richard Shultz
Shultz

the requirements for the specified operator classification of the certification program;

(2) "department" means the Department of Environmental Conservation;

(3) "potable water supply system" means the system of pipes, structures, and facilities through which water is obtained, treated and sold, distributed or otherwise offered to the public for household use or any use by humans;

(4) "wastewater system" means the system of pipes, structures, equipment and processes required to collect, carry away and treat domestic and industrial wastewater and dispose of the effluent.

Permitted to become law without signature
Actual effective date: September 24, 1976

LAWS OF ALASKA

1976

Source: CSHB 407 am

Chapter No.: 244

AN ACT

Requiring certification of water and wastewater operators; and providing a program for the training of water and wastewater operators.

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

* Section 1. AS 46 is amended by adding a new chapter to read:

CHAPTER 30. CERTIFICATION OF OPERATORS.

Sec. 46.30.010. CLASSIFICATION. The department shall classify all potable water systems and facilities actually used or intended for use by the public, and all wastewater systems and facilities which discharge into publicly owned wastewater systems, or to receiving bodies of water, or on land used by others. The classification shall take due regard to size and type, character of water or wastewater to be treated, and other physical conditions affecting the systems and facilities, and according to the skill, knowledge and experience required of an operator.

Sec. 46.30.020. WATER AND WASTEWATER WORKS ADVISORY BOARD. There is created the Water and Wastewater Works Advisory Board composed of the commissioner of environmental conservation and eight additional members appointed by the governor. The Water and Wastewater Works Advisory Board shall advise and assist the department in the administration of the training and certification program. Appointments to the board shall be for a period of five years. The initial term of office of two of the members is for one year, the initial term of three of the members is three years, and the initial term of three of the members is five years. Vacancies shall be filled in the same manner as the original appointments.

Sec. 46.30.030. TRAINING. The department shall, with the assistance and advice of the Water and Wastewater Works

Advisory Board, provide a water and wastewater works operator training program. The purpose of this program is to provide mechanisms for water and wastewater works operators to become certified under the provisions of this chapter and for certified operators to maintain and improve their competency in operating water and wastewater systems or facilities. The department shall coordinate and cooperate with educational institutions and other organizations or individuals in the administration of this section.

Sec. 46.30.040. CERTIFICATION REQUIREMENT. Two years following the effective date of this chapter, all potable water supply and wastewater systems and facilities, whether publicly or privately owned, which serve 100 or more service connections or are used or intended for use by 500 or more persons, must at all times be under the supervision of an operator whose competency is certified to by the department in a classification corresponding to the classification of the system or facility to be supervised.

Sec. 46.30.050. EXAMINATIONS. Examinations shall be held at least annually at times and places set by the department. Separate examinations shall be given for each operator classification. Applicants who fail to pass an examination may repeat the examination at subsequent regularly scheduled examinations.

Sec. 46.30.060. CERTIFICATION. The department shall issue certification entitling those persons who successfully complete the required examinations to supervise the operation of potable water supply and wastewater systems and facilities after considering the recommendations of the advisory board. The certificate will designate the class of system for which the operator is qualified in accordance with the classification system of the department. The certificate shall be valid for three years unless revoked for cause, replaced by one of a higher grade, or the operator for a continuous period of one year has not been actively engaged in the duties authorized by the certificate. An operator whose certificate has been invalidated for not having been actively engaged in the duties authorized may be issued a new certificate upon proof of competency as prescribed by regulations.

Sec. 46.30.070. CERTIFICATES WITHOUT EXAMINATION. Certificates may be issued without an examination to persons employed as water or wastewater works operators on the effective date of this chapter who request such a waiver. The examination waiver shall be printed on the certificate. An operator certified under this section may request to have his certificate transferred to another facility of the same general class and type or to another facility of lower class. The request shall be granted if, in the opinion of the department, the transfer would not adversely affect the health and safety of the public or the environment. The department shall consider the recommendations of the Water and Wastewater Works Advisory Board before granting or denying a request under this section.

Sec. 46.30.080. REGULATIONS. The department, with the advice of the advisory board, shall issue regulations for administration of this chapter. The regulations shall include

(1) the basis for classification of potable water supply and wastewater systems and facilities, including the type and size of lesser systems and facilities, if any, to which the provisions of this chapter do not apply, as required by sec. 10 of this chapter;

(2) criteria for the qualification of applicants for operator certification corresponding to each of the classifications referred to in sec. 10 of this chapter;

(3) procedures for examination of candidates and renewal of certificates;

(4) procedures for the revocation of certificates;

(5) determination as to which additional personnel shall be certified when certification is required for more than the operator in direct responsible charge.

Sec. 46.30.090. GUIDELINES. The department, to the extent it determines feasible, shall be guided by the standards recommended by the Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities.

Sec. 46.30.100. RECIPROCITY. Certificates may be issued without examination in the comparable classification to an applicant who holds a certificate in a state, territory, or possession of the United States, if its certification requirements and examinations are comparable to those of this state and if reciprocal privileges are granted to operators certified in this state.

Sec. 46.30.110. TEMPORARY CERTIFICATION. In the event of unusual or emergency circumstances or following the hiring of new employees, temporary certificates may be issued to an operator until such time as he may be examined and certified. Within two weeks after employment of such an operator, the department shall be notified in writing and information shall be provided, including the operator's name, background, experience, training, education, and references. Thereafter, the operator may be issued a temporary certificate which shall remain valid only for that time required for next routine examination and evaluation.

Sec. 46.30.120. PROHIBITED ACTS. On or after two years following the effective date of this chapter, it shall be unlawful

(1) for any potable water supply or wastewater system or facility subject to AS 46.30.040 to be operated unless the operator is certified under the provisions of this chapter;

(2) for any person to perform the duties of an operator without being certified under the provisions of this chapter.

Sec. 46.30.130. DEFINITIONS. In this chapter

(1) "certificate" means certificate of competency issued by the department stating that the operator has met

Chapter 74. Water and Wastewater Operator Certification and Training

Section

10. General provisions
20. Certification requirements
30. Certification without examination
40. Examination requirements
50. Experience and education requirements
60. Display of certificates
70. Certificate term and renewal
80. Lapsed certificates
90. Canceled certificates
100. Revocation of certificate
110. Temporary certification
120. Classification of water supply systems and wastewater systems
130. Training
140. Duties of the water and wastewater works advisory board
150. Composition of the water and wastewater works advisory board
160. Appeals
900. Definitions

18 AAC 74.010. GENERAL PROVISIONS. After September 24, 1978, all water supply systems and wastewater systems, whether publicly or privately owned, which serve 100 or more service connections or are used or intended for use by 500 or more persons per day, must be under the supervision of an operator certified by the department as follows:

(1) An operator in responsible charge of a system must be certified at a level corresponding to the classification of the system under his responsibility.

(2) An operator in responsible charge of an operating shift of a system must be certified at no less than one level below that corresponding to the classification of the system under his responsibility.

(3) An operator in responsible charge of more than one system must be certified at a level corresponding to the highest individual classification of the systems under his responsibility. (Eff. 8/21/78. Reg. 67).

Authority AS 46.30.080(1)
AS 46.30.080(3)
AS 46.30.080(5)
AS 46.30.040

18 AAC 74.020. CERTIFICATION REQUIREMENTS. (a) No person will be certified under this chapter unless an appropriate application has been submitted to the department on forms provided by the department.

(b) The department will certify an applicant if it finds that the applicant has either met the conditions of sec. 30 of this chapter, or has satisfied the examination requirements of sec. 40 of this chapter and the experience and education requirements of sec. 50 of this chapter. (Eff. 8/21/78. Reg. 67).

Authority AS 46.30.080(2)

18 AAC 74.030. CERTIFICATION WITHOUT EXAMINATION. The department, in its discretion, will issue certificates without regard to the requirements of sections 40-50 of this chapter if the applicant:

(1) has been verified by the owner of the system or by the Alaska Water Management Association to have been an operator of a water supply system or wastewater system on September 24, 1978; certificates issued under this subsection will have "examination waiver" printed on the certificate, and will authorize the holder to continue operation of the system for which verification was made under this subsection; an operator certified under this section may request to have the certificate transferred to another system of the same classification or to a system of lower classification; the department, in its discretion, will grant the request if the system for which the transfer is sought is substantially similar to the system from which the transfer is being made; the department will consider the recommendation of the board before making a determination on a request under this subsection;

(2) holds a valid certificate issued under the Alaska Water Management Association voluntary certification program on or before September 24, 1978; or

(3) holds a current certificate issued by any state, territory or possession of the United States, if that jurisdiction's certification requirements and examinations are comparable to those of the State of Alaska and that reciprocal privileges are granted by that jurisdiction to operators certified by the State of Alaska. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.070
AS 46.30.080(3)
AS 46.30.100

18 AAC 74.040. EXAMINATION REQUIREMENTS. (a) Applications for certification must be submitted to the department at least 60 days before the date set for an examination.

(b) An application must be filed for the level of certification requested.

(c) The department will notify the applicant regarding eligibility for examination.

(d) An applicant who fails to appear for a certification examination must file a new application to be eligible for another scheduled examination.

(e) Examinations will be held at least annually at times and locations announced by the department. The department will, in its discretion, designate representatives to act as proctors in administering the examinations.

(f) The department, in its discretion, will conduct oral or practical examinations instead of, or to augment, the written examination. Before conducting oral or practical examinations, the department will notify the board, which must have one or more members present during the oral or practical examination. A certificate issued following an oral or practical examination will apply only to the system which the applicant is operating at the time of examination.

(g) Examinations will be graded by the department and each applicant notified of the results within 60 days. Examinations will not be mailed to the applicant; however, the applicant may review the examination results with the department.

(h) Applicants who fail an examination may reapply and retake the examination at another scheduled examination date. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.050
AS 46.30.080(3)

18 AAC 74.050. EXPERIENCE AND EDUCATION REQUIREMENTS. (a) Criteria used by the department to evaluate experience and education qualifications of operators are contained in Table A.

TABLE A - MINIMUM PERSONNEL EDUCATION AND EXPERIENCE REQUIREMENTS (IN YEARS)

	Operator Level											
	Operator in Training		I		II		III			IV		
System Type	Educ.	Op. Exp	Educ.	Op. Exp.	Educ.	Op. Exp.	Educ.	Op. Exp.	Resp. Charge Exp.	Educ.	Op. Exp.	Resp. Charge Exp.
Wastewater Collection	12	*	12	1	12	4	-	-	-	-	-	-
Wastewater Treatment	12	*	12	1	12	3	14	4	(2)	16	4	(2)
Water Distribution	12	*	12	1	12	4	-	-	-	-	-	-
Water Treatment	12	*	12	1	12	3	14	4	(2)	16	4	(2)

*Three months operating experience or satisfactory completion of a basic training course approved in writing by the department.

Abbreviations

Educ. - Education Op. - Operator Exp. - Experience Resp. - Responsible

(1) For level I certification, the minimum experience requirement is one year of experience in the appropriate type of system, without substitution;

(2) For levels II, III, and IV certification, substitutions under (b) of this section may be made for up to 50 percent of the minimum experience requirements (both operating and responsible charge). The remainder of the experience requirements must be met by actual on-site operating experience in the appropriate type of system;

(3) Experience requirements must be met under the supervision of a certified operator or through an organized on-the-job training program;

(4) The department will issue a conditional level III certificate to allow a level II operator to accumulate responsible charge experience, if an application has been submitted to the department and the applicant has satisfied the level III examination and operating experience requirements. A certificate issued under this paragraph is valid for one year and is renewable for a maximum of one year upon approval by the department. The certificate will be valid only for the system which the applicant is operating at the time of application;

(5) At least half of the operating experience requirement for level III certification must be achieved through operating experience with a level II or higher system;

(6) At least half of the operating experience requirement for level IV certification must be achieved through operating experience with a level III or higher system;

(7) In smaller systems without shift operation, responsible charge experience is active, daily, onsite charge and performance of operation duties in a system in the next lower classification; and

(8) In larger systems with shift operation, responsible charge experience is both daily, onsite technical direction and supervision of operation duties in a system in the next lower classification, and active, daily, onsite charge of an operating shift, or a major segment of a system, in the same or next lower classification.

(b) Substitutions under (a)(2) of this section may be made under following criteria:

(1) High school education may not be substituted for experience

(2) Relevant postsecondary education as approved by the department may be substituted for operating or responsible charge experience. The rate of exchange or education for experience is one year of experience for each year of relevant full time postsecondary education successfully completed by the applicant.

(3) Education used to substitute for an operating experience requirement may not also be applied to the education requirement.

(4) One year of operating or responsible charge experience may be substituted for either two years of elementary school education with no limitation, or one year of high school education with no limitation.

(5) A maximum of one year of responsible charge experience in a class II or higher system may be substituted for one year of the postsecondary educational requirement for level III certification.

(6) A maximum of one year of responsible charge experience in a class III or higher system may be substituted for one year of the postsecondary educational requirement for level IV certification.

(7) Experience substituted for an educational requirement may not also be applied toward meeting the operating or responsible charge experience requirements.

(8) Forty five continuing education units (CEU's) in relevant specialized operator training or education may be used to satisfy one year of the educational requirement or one year of operating or responsible charge experience. Ten hours of department approved course work equals one CEU. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.080(2)

18 AAC 74.060. DISPLAY OF CERTIFICATES. Certificates must be displayed in the plant or utility office of the operator. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.060

18 AAC 74.070. CERTIFICATE TERM AND RENEWAL. (a) The term for certificates and renewals will be from the first of January of the year of issuance until December 31 three years later.

(b) The department will send each holder of a certificate a renewal notice at least 60 days before the expiration date of the certificate. Notice will be mailed to the last address of record. Failure to receive notice does not relieve the holder of his responsibility to renew the certificate.

(c) Upon receipt of a valid and timely request for renewal, the department will issue a renewal certificate. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.060
AS 46.30.080(3)

18 AAC 74.080. LAPSED CERTIFICATES. (a) The department will renew certificates for which timely application for renewal was not made under sec. 70 of this chapter, if an application for renewal is received within 180 days after the expiration of the certificate.

(b) The department will, in its discretion, require reexamination of an operator if a renewal application is received more than 180 days after the expiration of the certificate. The department will consider the recommendations of the board in determining the need for examination of an operator whose certificate has lapsed under this section. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.080(3)

18 AAC 74.090. CANCELED CERTIFICATES. Repealed, (Eff. 2/21/80, Reg. 77).

18 AAC 74.100. REVOCATION OF CERTIFICATES. (a) The department will, in its discretion, revoke the certificate of an operator upon a finding of fraud or deceit in obtaining the certificate; fraud or deceit in plant record keeping; gross negligence in the operation of a system; or violation of the requirements of this chapter. The department will consider the recommendations of the board in determining whether to revoke a certificate.

(b) If a certificate is revoked, the operator may not apply again for certification for 365 days following revocation. An application received under this subsection will be treated as an initial application. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.060
AS 46.30.080(4)

18 AAC 74.110. TEMPORARY CERTIFICATION. The department will, in its discretion, issue a temporary certificate for good cause shown. The temporary certificate will be valid until the earliest opportunity at which the operator may be examined and certified under this chapter. A temporary certificate will apply only to the system which the applicant is operating at the time of application. Temporary certificates are not renewable. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.110

18 AAC 74.120. CLASSIFICATION OF WATER SUPPLY SYSTEMS AND WASTEWATER SYSTEMS. (a) For the purposes of this chapter, water supply systems and wastewater systems are classified as follows:

TABLE B - CLASSIFICATION RATING SYSTEM

Collection and Distribution Systems

System Type	Units	I	II
Wastewater Collection System	Population Served	500 to 15,000	15,001 and greater
Water Distribution System			

TABLE C - CLASSIFICATION RATING SYSTEM

Treatment Systems

System Type	Units	I	II	III	IV
Wastewater Treatment System	Range of Points	30 and less	31-55	56-75	76 and greater
Water Treatment System					

(b) The department will, in its discretion, and after considering the advice of the board, modify the classification rating system in (a) of this section if the department finds that there are unusual factors affecting the complexity of unit processes, quality of raw water sources, users of water downstream of wastewater system discharges or potential health hazards.

(c) In classifying water treatment systems under (a) of this section, the following point system will be used:

Item	Points
Size[a]	
Maximum population served, peak day	1 point per 10,000 or part
Design flow (average day) or peak month's production (average day) whichever is larger	1 point per 1.0 million gallons per day or part
Water Supply Source	
Groundwater	3-5[b]
Surface water	4-7[b]
Adjustment	
pH adjustment, stability, corrosion control	7
Treatment	
Aeration	3
Ion exchange, catalytic adsorption[c]	10
Chemical precipitation,coagulation-flocculation	20
Sedimentation	5
Filtration	10
Reverse osmosis, electrodialysis, etc	20
Activated carbon	10
On-site treatment of system sludge	15
Ozonation	8
Fluoridation	5
Disinfection	5-8[b]
Laboratory Control by Plant Personnel	
Bacteriological (complexity)	3-10[b]
Chemical/physical (complexity)	1-10[b]

(d) In classifying wastewater treatment systems under (a) of this section, the following point system will be used:

a Limit 10 points each, or maximum of 20 points for size
b Range of points determined by raw water quality, disinfection scheme, and complexity of on-site laboratory analysis.
c Includes potassium permanganate greensand.

Item	Points
Size[a]	
Maximum population served, peak day	1 point per 10,000 or part
Design flow (average day) or peak month's flow (average day), whichever is larger	1 point per 1.0 million gallons per day or part
Pretreatment	
Screening, comminution	1-3[b]
Mechanically cleaned grit chamber	3
Plant pumping of main flow	3
Pre-aeration	1
Flow equalization	2
Primary Treatment	
Primary clarifiers	5
Combined sedimentation/digestion	5
Chemical addition	4
Dissolved air flotation	5
Secondary Treatment	
Trickling filter	10
Activated sludge	10-15[b]
Stabilization ponds without aeration	5
Aerated lagoon	8
Rotating Biological Surface	10
Activated Bio-filter with aeration	15
Activated Bio-filter without aeration	10
Pure Oxygen	20
Secondary Clarifiers	5
Advanced Waste Treatment	
Polishing pond	2
Chemical/physical-without secondary	15
Chemical/physical following secondary	10
Ion exchange	10
Reverse osmosis, electrodialysis	15
Chemical recovery, carbon regeneration	4
Adsorption	10
Filtration	10
Solids Handling	
Thickening	5
Anaerobic digestion	10
Aerobic digestion	6
Evaporative sludge drying	2
Mechanical dewatering	8
Solids reduction (incineration, wet oxidation)	12
Residual disposal	1-4[b]

a Limit 10 points each, or maximum of 20 points for size

b Range of points determined by complexity of unit process operation, effluent discharge scheme, and complexity of on-site laboratory analysis.

Disinfection.....5-8[b]
Chemical or mechanical dechlorination.....3

Effluent Discharge
Receiving stream.....2-6[b]
Land application.....2
Subsurface disposal.....4

Laboratory Control by Plant Personnel
Bacteriological (complexity).....3-10[b]
Chemical/Physical (complexity).....1-10[b]

a Limit 10 points each, or maximum of 20 points for size
b Range of points determined by complexity of unit process operation, effluent discharge scheme, and complexity of on-site laboratory analysis. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.010
AS 46.30.030(1)
AS 46.30.090

18 AAC 74.130. TRAINING. The department will, with the assistance of the board, develop a program for the training of water and wastewater operators. To the extent practicable, the training program will use the facilities of higher educational institutions in the state. The plan will include, at a minimum, training through seminars, workshops, classroom instruction, correspondence, and on-the-job programs. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.030

18 AAC 74.140. DUTIES OF THE WATER & WASTEWATER WORKS ADVISORY BOARD. The duties of the board include:

(1) advising and assisting the department in certifying operators and classifying water and wastewater systems;

(2) reviewing qualifications of applicants for examination and/or certification in cooperation with the department or at the request of the applicant;

(3) advising the department in the preparation and administration of examinations;

(4) making recommendations to the department on issuance, cancellation, invalidation, or revocation of certificates;

(5) assisting the department in the determination of the number of certified operators necessary for the successful operation of a system;

(6) making recommendations to the legislature and the governor proposing new or modified legislation concerning operation and maintenance or public water supply and wastewater systems;

(7) assisting and advising the department in the development and administration of a training program; and

(8) other assistance as may be requested from time to time by the department. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.020
AS 46.30.030
AS 46.30.060

18 AAC 74.150. COMPOSITION OF THE WATER AND WASTEWATER WORKS ADVISORY BOARD. A minimum of three members of the board will be operators certified pursuant to this chapter. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.020
AS 46.30.090

18 AAC 74.160 APPEALS. Any person aggrieved by an action of the department taken under this chapter may ask the board to hear the grievance, and to make a recommendation to the department. Use of this procedure does not diminish any right the aggrieved person may have under the Administrative Procedure Act (AS 44.62). (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.080

18 AAC 74.900. DEFINITIONS. (a) Unless the context indicates otherwise in this chapter

(1) "applicant" means any person who desires to obtain a certificate under this regulation;

(2) "board" means the Water and Wastewater Works Advisory Board established by AS 46.30.020;

(3) "certificate" means a certificate of competency issued to an operator by the department stating that the operator has met the requirements for the specified operator level of the certification program;

(4) "department" means the Alaska Department of Environmental Conservation;

(5) "on-site" means present at a system for an amount of time and at intervals considered acceptable by the department based upon the complexity of the treatment process, and available and on-call within two hours of the system at all times, unless there is a back-up operator who is certified at no less than one level below the classification of the system and who is designated to assume the responsibilities of the operator in responsible charge in his absence;

(6) "operating experience" means the time spent at a system in satisfactory performance of operation duties;

(7) "operator" means anyone who is engaged in the onsite operation of a water supply system or wastewater system; "operator" does not ordinarily apply to an official exercising only general administrative supervisions, such as the city engineer or public works superintendent;

(8) "operator-in-training" means any person receiving on-the-job training under the supervision of a certified operator or through an organized training program, who desires to obtain a certificate and who is, or can show probable employment as, an operator of a water or wastewater system;

(9) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, partnership, association, or any other entity whatsoever;

(10) "responsible charge" means the active, daily, on-site supervision of system operations.

(11) "service connection" means a pipe, with its appurtenances, that connects a water or sewer main with building plumbing;

(12) "systems" means water supply system or wastewater system;

(13) "wastewater collection system" means pipelines or conduits, pumping stations and force mains, and all other appurtenant constructions, devices, and appliances used for conducting wastewater to a wastewater treatment system;

(14) "wastewater system" means the system of pipes, structures, equipment and processes required to collect, carry away and treat domestic and industrial wastewater and dispose of the effluent;

(15) "wastewater treatment system" means devices, structures, and appurtenances used for treating, neutralizing, stabilizing, or disposing of wastewater and residuals;

(16) "water distribution system" means post treatment storage facilities, conduits, mains, lines and appurtenances, pumping stations or other devices used to transport water to the consumer;

(17) "water supply system" means any source of water, intake works, collection system, treatment works, storage facility, or distribution system from which water is available for human consumption; and term includes, but is not limited to, systems providing water to more than one residential dwelling unit, or to a factory, office building, restaurant, school, and other similar facilities, but does not include a system serving only a single family residence; and

(18) "water treatment system" means devices, structures and appurtenances, used to condition, purify, or refine water for human consumption. a groundwater supply with only chlorination is considered a water distribution system and not a water treatment system.
(Eff. 8/21/78, Reg. 67, am 2/21/81, Reg. 77).

Authority AS 46.30.130

18 AAC 74 is repealed and readopted to read:

CHAPTER 74. WATER AND WASTEWATER OPERATOR CERTIFICATION

Section
10. General provisions
20. Certification requirements
30. [Repealed]
40. Examination requirements
50. Experience and education requirements
60 Display of certificate
70. Certificate term and renewal
80. Lapsed certificate
90. [Repealed]
100. Revocation of certificate
110. Temporary certification
120. Classification of water supply and wastewater systems
130. [Repealed]
140. Water and Wastewater Works Advisory Board
150. [Repealed]
160. Appeals
170. Fees
900. Definitions

18 AAC 74.010. GENERAL PROVISIONS. Public or private water supply and wastewater systems with 100 or more service connections, or which are used or intended for use by 500 or more persons per day, must be supervised by an operator certified by the department. An operator in responsible charge of

(1) a system must be certified at a level equal to the classification of the system under that operator's control;

(2) an operating shift of a system must be certified at no less than one level below that level equal to the classification of the system under that operator's control;

(3) more than one system must be certified at a level equal to the highest individual classification of the systems under that operator's control. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.040
AS 46.30.080
AS 46.30.120

18 AAC 74.020. CERTIFICATION REQUIREMENTS. (a) A person seeking certification under this chapter shall submit an application to the department on a form approved by the department.

(b) The department will certify an applicant who has met the examination requirements of 18 AAC 74.040 and the experience and education requirements of 18 AAC 74.050 and the fee requirements of 18AAC 74.170. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.080

18 AAC 74.030. CERTIFICATION WITHOUT EXAMINATION. Deleted 8/24/85.

Editor's note: Under AS 44.62.060(b) and 44.62.125(b), 18 AAC 74.030 was deleted by the regulations attorney / / because it lacked statutory authority.

18 AAC 74.040. EXAMINATION REQUIREMENTS. (a) An application for certification must be received by the department at least 45 days before the date set for an examination, and must be filed for the level of certification sought.

(b) The department will notify the applicant of eligibility for an examination, which will be held at least annually at a time and place announced by the department. The department will, in its discretion, designate a person to act as proctor at the examination.

(c) The department will, in its discretion, conduct oral or practical examinations instead of, or to augment, written examinations. Before giving oral or practical examinations, the department will notify the board, which may have one or more members present during the examination. A certificate issued after an examination applies only to the system the applicant is operating when examined.

(d) Examinations will be graded by the department, and each applicant will be notified of the results within 60 days. Examinations will not be mailed to the applicant; however, the applicant may review the examination results with the department.

(e) An applicant who fails an examination or who fails to appear for an examination may submit a written request for rescheduling at least 45 days before a scheduled examination date. A requests received after the deadline will be scheduled for the next examination. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.050
AS 46.30.080

18 AAC 74.050. EXPERIENCE AND EDUCATION REQUIREMENTS. (a) Criteria used by the department to evaluate qualifications of operators are set out in this section in Table A, subject to the following provisions:

(1) for level I certification, a minimum of one year of experience in the appropriate type of system is required, without educational substitution;

(2) for levels II, III, and IV certification, educational substitutions under (b) of this section may be made for up to 50 percent of the minimum experience requirements; the remaining experience requirements must be met by actual on-site operating experience in the appropriate type of system; experience may be substituted for education; there can be no substitution for the responsible charge requirement;

(3) for levels III and IV, transcripts from colleges or trade schools attended are required; certificates of completion for training courses taken are also required; maximum certified education units (CEUs) allowed for one year of trade school is 45; any school time spent as on-the-job training will count toward the experience requirement instead of the education requirement;

(4) a total of 1,950 work hours is counted as one year of experience; however, hours in excess of 1,950 accrued during a 12-month period are not counted as more than one year of experience;

(5) experience requirements must be met under the supervision of a certified operator or through an organized on-the-job training program;

(6) the department will issue a conditional level III certificate to allow a level II operator to accumulate responsible charge experience if the operator meets the level III examination and operating experience requirements and submits an application to the department; a conditional certificate is valid for one year and may be renewed for a maximum of one year with department approval; the certificate is valid only for the system the applicant is operating at the time of application;

(4) for a degree in a nonrelated field, any approved coursework, as described in (3) of this subsection, completed under that degree, will be treated as follows:

(A) the approved coursework will be applied toward certification requirements as calculated under (10) of this subsection; and

(B) 25 percent of the amount arrived at under (10) of this subsection will then be added to that amount, to reach the total amount of coursework that will be applied under this paragraph;

(5) approved coursework, such as that described in (10) of this subsection, completed without receiving a degree will be applied toward certification requirements as calculated under (9) of this subsection;

(6) one year of operating or responsible charge experience may be substituted for either two years of elementary school education or one year of high school education;

(7) a maximum of one year of responsible charge experience in a level II or higher system may be substituted for one year of the postsecondary educational requirement for level III certification;

(8) a maximum of two years of responsible charge experience in a level III or higher system may be substituted for two years of the postsecondary educational requirements for level IV certification;

(9) experience substituted for an educational requirement may not also be applied to the operating or responsible charge experience requirements; and

(10) 45 CEUs in relevant specialized operator training or education may be used to meet one year of the educational requirement or one year of operating experience; 10 hours of approved coursework equals one CEU.

(c) A certificate will be issued only to a person employed in a water/wastewater system in the state. Applicants not yet employed will be issued a letter that states they have passed an exam and that the department will issue a certificate upon employment. Records will be kept on file for one year. If employment is not obtained within the one-year period, the [illegible] will be returned and the person must reapply for certification.

TABLE A - MINIMUM OPERATOR EDUCATION AND EXPERIENCE REQUIREMENTS (IN YEARS)

System Type	Operator Level											
	Operator in Training		I		II		III			IV		
	Educ	Op Exp	Educ	Op Exp	Educ	Op Exp	Educ	Op Exp	Resp Charge Exp	Educ	Op Exp	Resp Charge Exp
Wastewater Collection	12	*	12	1	12	4	12	6	0	12	8	0
Wastewater Treatment	12	*	12	1	12	3	14	4	(2)	16	4	(2)
Water Distribution	12	*	12	1	12	4	12	6	0	12	8	0
Water Treatment	12	*	12	1	12	3	14	4	(2)	16	4	(2)

*Three months operating experience or satisfactory completion of a basic training course approved, in writing, by the department.

Abbreviations

Educ - Education Op - Operator Exp - Experience Resp - Responsible

(E1

Authority: AS 146.30.080

(7) at least half of the operating experience requirement for level III certification must be achieved through operating experience with a level II or higher system;

(8) at least half of the operating experience requirement for level IV certification must be achieved through operating experience with a level III or higher system;

(9) in systems without shift operation, responsible charge experience is active on-site charge and performance of duties in a system in the same or next lower classification;

(10) in systems with shift operation, responsible charge experience is both on-site technical direction and supervision of duties in a system in the same or next lower classification, and active on-site charge of an operating shift, or a major segment of a system, in the same or next lower classification; and

(11) experience is verified only by the current employer's signature on the last page of the application; the department will, in its discretion, contact previous employers if there are questions or if further verification is needed; an applicant with experience in both water and wastewater systems may apply for certification in both areas; in substituting one type of experience for the other, the following applies:

(A) at least 25 percent of the required experience must be in the requested classification; up to 90 percent of the experience in the other classification may be used to complete the requirement;

(B) water treatment and wastewater treatment experience are interchangeable;

(C) water distribution and wastewater collection experience are interchangeable;

(D) lab personnel will not be certified under this chapter; a maximum of one year of lab experience may be applied toward the experience requirement for certification in water treatment or wastewater treatment; and

(E) swimming pool operators will not be certified under this chapter; however, pool experience will be counted as water treatment level I experience toward fulfilling the experience requirement.

(b) Substitutions referred to in (a)(2) of this section may be made as follows:

(1) approved postsecondary education as described in (3) of this subsection may be substituted for up to one-half the required operating experience; the rate of exchange of education for experience is one year of experience for each year of relevant full-time postsecondary education successfully completed;

(2) education substituted for an operating experience requirement may not also be applied to the educational requirement;

(3) an approved technical degree in a related field, such as physical science, biology, chemistry, physics, engineering, mathematics, water treatment, wastewater treatment, electronics, electricity, welding, and hydraulics, will be applied toward certification requirements; for example, a four-year biology degree will substitute for four years of experience toward the certification requirement, but a four-year English degree would not;

18 AAC 74.060. DISPLAY OF CERTIFICATE. The certificate must be displayed in the operator's plant or utility office. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.060

18 AAC 74.070. CERTIFICATE TERM AND RENEWAL. (a) A certificate and renewal is valid for a three-year period beginning on January 1 of the year of issuance.

(b) The department will send each certificate holder a renewal notice at least 60 days before the certificate lapses. Notice will be mailed to the last address of record. Failure to receive notice does not relieve the holder of the responsibility to renew the certificate.

(c) For a certificate issued after January 1, 1987, an operator shall complete approved courses equal to three CEUs as a condition for renewal of the certificate. An operator holding more than one certificate need only complete the courses required to satisfy renewal requirements for one of the certificates, but shall complete the required courses at least every three years.

(d) The department will renew a certificate only if an operator has actively and continuously performed the duties authorized by the certificate for more than two years of the certificate period and has complied with 18 AAC 74.170(d). (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.060

18 AAC 74.080. LAPSED CERTIFICATES. (a) An operator who seeks renewal of a lapsed certificate shall submit a request for renewal within 180 days after the certificate lapses. Upon receipt of a valid request for renewal, including proof of compliance with 18 AAC 74.070 (c) and (d) and 18 AAC 74.170(d), the department will renew a certificate.

(b) The department will, in its discretion, require reexamination of an operator whose renewal application is received more than 180 days after the certificate lapses. The department will consider board recommendations in determining the need for re-examination under this subsection of an operator whose certificate has lapsed. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.080

18 AAC 74.090. CANCELED CERTIFICATE. Repealed 2/21/81.

18 AAC 74.100. REVOCATION OF CERTIFICATE. (a) The department will, in its discretion, revoke a certificate upon a finding of fraud or deceit in obtaining the certificate; fraud or deceit in plant recordkeeping; gross negligence in the operation of a system; or violation of the requirements of this chapter. The department will consider board recommendations in deciding whether to revoke a certificate.

(b) An operator whose certificate is revoked may not apply for certification for 365 days after revocation. An application received under this subsection will be treated as an initial application. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.060
AS 46.30.080

18 AAC 74.110. TEMPORARY CERTIFICATION. The department will, in its discretion, issue a temporary certificate for good cause shown. The temporary certificate is valid until the earliest date when the operator may be examined and certified under this chapter. A temporary certificate applies only to the

system which the applicant is operating at the time of application, and will not be renewed. The certificate will be issued upon compliance with 18 AAC 74.170(e). (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

AUTHORITY: AS 46.30.110

18 AAC 74.120. CLASSIFICATION OF WATER SUPPLY AND WASTEWATER SYSTEMS. (a) In this chapter, water supply and wastewater systems are classified as set out in this subsection in Tables B and C.

TABLE B - CLASSIFICATION RATING SYSTEM
COLLECTION AND DISTRIBUTION SYSTEMS
(By Range of Points)

System Type	I	II	III	IV
Wastewater Collection System	1-34	35-58	59-77	78 and above
Water Distribution System	1-34	35-58	59-77	78 and above

TABLE C - CLASSIFICATION RATING SYSTEM
TREATMENT SYSTEMS
(By Range of Points)

System Type	I	II	III	IV
Wastewater Treatment System	1-30	31-55	56-75	76 and above
Water Treatment System	1-30	31-55	56-75	76 and above

(b) The department will, in its discretion, and after considering advice of the board, modify the rating system in (a) of this section as applied to a particular system if the department finds that there are unusual factors affecting the complexity of unit processes, quality of raw water sources, users of water downstream from wastewater system discharges, or potential health hazards.

(c) To classify water treatment systems under (a) of this section, the department will use the following point system:

Item	Points
Size[a]	
Maximum population served, peak day	1 point per 10,000 or part
Design flow (average day) or peak month's production (average day) whichever is larger	1 point per 1.0 million gallons per day or part
Water Supply Source	
Groundwater	3-5[b]
Surface water	4-7[b]

Adjustment	
pH adjustment, stability, corrosion control	7
Treatment	
Aeration	3
Ion exchange, catalytic adsorption	10[c]
Chemical precipitation, coagulation, flocculation	20
Sedimentation	5
Filtration	10
Reverse osmosis, electrodialysis, etc.	20
Activated carbon	10
On-site treatment of system sludge	15
Ozonation	8
Fluoridation	5
Disinfection	5-8[b]
Laboratory Control by Plant Personnel	
Bacteriological (complexity)	3-10[b]
Chemical/physical (complexity)	1-10[b]

[a]Limit 10 points each, or maximum of 20 points for size.
[b]Range of points determined by complexity of unit process operation, effluent discharge scheme, and complexity of onsite laboratory analysis
[c]Includes potassium permanganate greensand.

(d) To classify wastewater treatment systems under (a) of this section, the department will use the following point system:

Item	Points
Size[a]	
Maximum population served, peak day	1 point per 10,000 or part
Design flow (average day) or peak month's production (average day), whichever is larger	1 point per 1.0 million gallons per day or part
Pretreatment	
Screening, comminution	1-3[b]
Mechanically cleaned grit chamber	3
Plant pumping of main flow	3
Pre-aeration	1
Flow equalization	2
Primary Treatment	
Primary clarifiers	5
Combined sedimentation/digestion	5
Chemical addition	4
Dissolved air flotation	5
Secondary Treatment	
Trickling filter	10
Activated sludge	10-15[b]
Stabilization ponds without aeration	5
Aerated lagoon	8
Rotating biological surface	10
Activated bio-filter with aeration	15
Activated bio-filter without aeration	10
Pure oxygen	20
Secondary clarifiers	5

Item	Points
Advanced Waste Treatment	
Polishing pond	2
Chemical/physical without secondary	15
Chemical/physical following secondary	10
Ion exchange	10
Reverse osmosis, electrodialysis	15
Chemical recovery, carbon regeneration	4
Adsorption	10
Filtration	10
Solids Handling	
Thickening	5
Anaerobic digestion	10
Aerobic digestion	6
Evaporative sludge drying	2
Mechanical dewatering	8
Solids reduction (incineration, wet oxidation)	12
Residual disposal	1-4[b]
Disinfection	5-8[b]
Chemical or mechanical dechlorination	3
Effluent Discharge	
Receiving stream	2-6[b]
Land application	2
Subsurface disposal	4
Laboratory Control by Plant Personnel	
Bacteriological (complexity)	3-10[b]
Chemical/Physical (complexity)	1-10[b]

[a]Limit 10 points each, or maximum of 20 points for size.
[b]Range of points determined by complexity of unit process operation, effluent discharge scheme, and complexity of on-site laboratory analysis.

(e) To classify water distribution systems under (a) of this section, the department will use the following point system:

Item	Points
Size[a]	
Maximum population served, peak day	1 point per 10,000 or part
Finished water storage tank(s)	4
Circulating loops	
1 loop	10
2- 4 loops	15
5-10 loops	20
Fire hydrants	4
Standby generators	6
Miles of water line	
0-2	2
2-10	4
10-100	6
Over 100	10

Item	Points
In-line disinfection	10
Gas chlorination	5
Hypochlorite chlorination	5
Iodine	5
Ultraviolet light	5
Valves	
Remote sensory	10
Automatic	8
Manual	4
Heat exchangers	10
Percentage of customers with meters	
1- 25%	4
25- 50%	6
50- 75%	8
75-100%	10
Pressure zones	
2-3	10
More than 3	15
Utilidor (walk through)	10

[a]Limit 10 points each.

(f) To classify wastewater collection systems under (a) of this section, the department will use the following point system:

Item	Points
Size[a]	
Maximum population served, peak day	1 point per 10,000 or part
Miles of sewer line	
0-2	2
2-10	6
10-100	15
100 and over	25
Utilidor (walk through)	16
Standby generators at lift stations	6
Lift station types (Choose one most used in system)	
Wet well with pump above well	10
Wet well with submersible pumps	14
Wet well/dry well	16
Pneumatic ejectors	16

Number of lift stations	
0-5	3
5-15	5
15-35	8
35 and over	10

[a]Limit 10 points each.

(Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.010
AS 46.30.080
AS 46.30.090

18 AAC 74.130. TRAINING. Repealed 8/24/85.

18 AAC 74.140. WATER AND WASTEWATER WORKS ADVISORY BOARD. (a) The board will

(1) advise and assist the department as the department certifies operators and classifies water and wastewater systems;

(2) review qualifications of applicants for examination and certification in cooperation with tne department or at the applicant's request;

(3) advise the department as the department prepares and gives examinations;

(4) make recommendations to the department as the department issues, cancels, invalidates, or revokes certificates;

(5) assist the department in determining the number of certified operators needed for proper system operation;

(6) make recommendations to the legislature and the governor for legislation concerning operation and maintenance of public water supply and wastewater systems;

(7) assist and advise the department as the department develops and administers a training program; and

(8) give other assistance as requested by the department.
(Eff. 8/21/78, Register 67; am 8/25/85, Register 95)

Authority: AS 46.30.020
AS 46.30.030
AS 46.30.060

18 AAC 74.150. COMPOSITION OF THE WATER AND WASTEWATER WORKS ADVISORY BOARD. Deleted 8/24/85.

Editors Note: Under AS 44.62.060(b) and 44.62.125(b), 18 AAC 74.150 was deleted by the regulations attorney / / because it lacked statutory authority.

18 AAC 74.160. APPEALS. A person aggrieved by a department action taken under this chapter may ask the board to hear the grievance and make a recommendation to the department. Use of this procedure does not affect any right the aggrieved person may have under the Administrative Procedure Act (AS 44.62).
(Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.080

18 AAC 74.170
18 AAC 74.900

Chapter 74 is amended to include:

18 AAC 74.170. FEES. (a) An initial application for examination will be accepted for processing only when accompanied by an application fee of ten dollars.

(b) An application for re-examination will be accepted for processing only when accompanied by an application fee of ten dollars.

(c) A qualified applicant will be sheduled for an examination only upon receipt of a $15 examination fee for each examination to be taken.

(d) A certificate shall be renewed upon receipt of a $30 renewal fee and proof of compliance with 18 AAC 74.070.

(e) A temporary certificate shall be issued upon receipt of a $10 application fee, a $15 certificate fee and compliance with 18 AAC 74.110.

(f) An examination fee will be forfeited for failure to take an examination, unless the department is notifed, in writing, a minimum of two weeks before the examination date. The fee can then be applied to the next examination cycle without reapplication.

(g) For all department sponsored short courses, the following fee schedule shall apply.

1-day course	$ 75
2-day course	100
3-day course	150
4-day course	175
5-day course	200

Short courses shall not be presented with less than 10 students in attendance.

(h) All department sponsored correspondence courses providing CEU credit shall have a fee of $10 per CEU.

(i) A reciprical certificate may be issued upon receipt of a $10 application fee and a $15 certificate fee and compliance with 18 AAC 74.050.

Authority: AS 46.30.030
46.30.080

18 AAC 74.900. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "applicant" means a person seeking a certificate under this chapter;

(2) "approved" means approved by the department;

(3) "board" means the Water and Wastewater Works Advisory Board created by AS 46.30.020;

(4) "certificate" means a certificate of competency, issued to an operator by the department, stating that the operator has met the requirements for the specified level of the certification program;

(5) "department" means the Department of Environmental Conservation;

(6) "on-site" means to be present at a system for an amount of time and at intervals acceptable to the department, based upon the complexity of the treatment process, or means to be on-call within two hours travel time of

the classification of the system and who is designated to assume the operator's duties;

(7) "operating experience" means the time spent at a system in satisfactory performance of operation duties;

(8) "operator" means a person engaged in the on-site operation of a water supply or wastewater system; "operator" does not ordinarily mean an official, such as the city engineer or public works superintendent, exercising only general administrative supervision;

(9) "operator in training" means a person receiving on-the-job training under the supervision of a certified operator or through an organized training program, who desires to obtain a certificate and who is, or can show probable employment as, an operator of a water or wastewater system;

(10) "responsible charge" means the on-site active supervision of system operations;

(11) "service connection" means a pipe, with all its parts, that connects a water or sewer main with building plumbing;

(12) "system" means a water supply system or a wastewater system;

(13) "wastewater collection system" means pipelines or conduits, pumping stations and force mains, and all other related constructions, devices, and appliances used to conduct wastewater to a wastewater treatment system;

(14) "wastewater system" means the system of pipes, structures, equipment, and processes required to collect, carry away, and treat domestic or industrial wastewater and dispose of the effluent;

(15) "wastewater treatment system" means devices, structures, and equipment used to treat, neutralize, stabilize, or dispose of wastewater and residuals;

(16) "water distribution system" means post treatment storage facilities, conduits, mains, lines, pumping stations, or other devices used to carry water to the consumer, and includes a groundwater supply treated only with chlorine;

(17) "water supply system" means any source of water, intake works, collection system, treatment works, storage facility, or distribution system from which water is available for human consumption; "water supply system" includes systems providing water to more than one residence, or to a factory, office building, restaurant, school, or similar facility, but does not include a system serving only a single-family residence; and

(18) "water treatment system" means devices, structures, and equipment used to condition, purify, or refine water for human consumption, and does not include a groundwater supply treated only with chlorine. (Eff. 8/21/78, Register 67; am 2/21/81, Register 77; am 8/24/85, Register 95)

Authority: AS 46.30

Rom Hayden / Trent
copy

BILL SHEFFIELD GOVERNOR

DEPARTMENT OF LAW

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

February 13, 1985

M E M O R A N D U M

RECEIVED
FEB 15 1985
DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

TO: Honorable Bill Sheffield
Governor

FROM: Norman C. Gorsuch
Attorney General

RE: Attached bill on certification of water and wastewater treatment system operators
Our file: 377-174-85

Attached is a bill to rectify an error in 18 AAC 74.030 which has gone undetected since 1978. The bill was requested by the Department of Environmental Conservation, prompted by legal advice from us.

The underlying statute, AS 46.30.070, waived the certification examination requirement for wastewater plant operators who were employed as operators on September 24, 1976. However, when the implementing regulation was adopted in 1978, it mistakenly prescribed the cutoff date as September 24, 1978. As a result, numerous operators who were employed as such on September 24, 1978 were issued certificates and have continued to work on waiver without taking the required examination. In addition, many have worked under operator's certificates issued under the Alaska Water Management Association voluntary certification program, which the regulation mistakenly identified as a valid substitute for a certification examination.

The Department of Environmental Conservation believes that experienced operators who were employed as such on September 24, 1978 and operators who were certified under the Alaska Water Management Association Voluntary Certification Program on or before September 24, 1978 are fully qualified to serve as operators and may continue to do so without the need to take the certification examination that the law, in its current form, requires. For this reason, and because so many of the operators relied on the errors in 18 AAC 74.030, we recommend that those individuals (numbering approximately 60) be grandfathered in and be considered properly certified. The attached bill accomplishes this result and is supported by the Department of Environmental Conservation.

A draft transmittal letter to the legislature is also attached.

NCG:TMJ:rn

cc w/enc.: Hon. Bill Ross, Commissioner
Dept. of Environmental Conservation

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to rectify an old error in the Alaska Administrative Code.

In 1978, the legislature passed AS 46.30.070, which addresses the certification of operators of water and wastewater treatment facilities. The statutory scheme required certification by examination, but sec. 70 exempted from the examination requirement those persons who were employed as operators on September 24, 1976. When implementing regulations were adopted in 1978, what appears to have been a typographical error identified the cutoff date as September 24, 1978. See 18 AAC 74.030(1). The regulation also erroneously provided for an examination waiver for applicants holding certificates issued under the Alaska Water Management Association voluntary certification program. See 18 AAC 74.030(2). In reliance on these errors, many operators did not take the required examination. Today there are approximately 60 operators who are so certified.

The attached bill will grandfather in those individuals who, before January 1, 1985, applied for and received certification without examination, based upon employment as operators on September 24, 1978 or a valid certificate issued under the Alaska Water Management voluntary

certification program. You should note that this corrective legislation will be uncodified and will not change the existing law in AS 46.30.070; it only alleviates the harm that would be done to operators who relied on the errors in the Alaska Administrative Code while continuing to require others who have not been so affected to comply with the standard the legislature set down in 1976 in AS 46.30.070. It is my recommendation that, after enactment, the revisor of statutes arrange for the inclusion of this uncodified law as a note in the published Alaska Statutes, following AS 46.30.070.

The Department of Environmental Conservation fully supports this bill and believes that the grandfather rights may be extended to the affected individuals with confidence that there will be no threat to the safe and efficient operation of water and wastewater treatment facilities, since the affected individuals have competently performed their duties in the past. I urge your prompt action on this remedial legislation.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 1/23/86

REQUEST

Bill/Resolution No. : CSSB 194(Res)
Title : Certification of water and wastewater systems and facilities operators
Sponsor : Senate Rules for Governor
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected : ADEC
BRU : Facilities Construction & Operation
Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS : none

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Billie Trent
Phone : 465-2600
Division : Office of the Commissioner
Date : 1/23/86

Approved by Commissioner : Bill Ross
Date : 1/23/86
Agency : Department of Environmental Conservation

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Department of Environmental Conservation

Position on SB 194

In sections 2 & 3, SB 194 fixes a gap in the certification program.

Our goal in advancing it is to ensure that operators do not lose their certifications as a result of drafting errors made in 1978.

The effect of the bill is to allow 60 operators who received certification through a flawed procedure in 1978 to retain their certifications.

The Department believes that the affected operators have demonstrated that they are competent and that they should be allowed to retain their certification.

The flawed certificates were issued through two means - a grandfather clause and acceptance of voluntary certificates.

The original legislation establishing a mandatory certification program passed as HB 407 in 1976. The bill allowed persons who were already operating plants to be grandfathered into the State Certification program. This provision was at AS 46.30.070. Through a typographical error in regulations adopted under this legislation, this "grandfather" clause was extended longer than was legal under the statute.

The statute intended operators to be grandfathered in until September 1976; the regulations allowed operators to be grandfathered in until September 1978. SB 194 would allow us to treat certifications issued between those dates as valid. This affects five people.

The second issue we want to address is voluntary certification.

Before the State mandatory program was adopted, the Alaska Water Management Association conducted a voluntary program.

When the State program came on line, the regulations allowed certificates issued under the voluntary program to be converted to State certificates. Both programs were based on comparable tests. The regulations were adopted in 1978 as 18 AAC 74.030(2).

This provision proved to have no statutory basis (despite the fact that it probably was a pretty good idea).

We can no longer treat the certificates issued under this procedure as valid.

We would like to be able to do so. This legislation would allow it. This would affect 55 operators.

SB 194 was amended in Senate Resources to incorporate House Bill 450, introduced by Representatives Gruenberg and Jenkins. It addresses another aspect of the statute for the operator certification program.

AS 46.30.060 currently provides that an operator who does not work as an operator for one year loses his or her certification.

Certificates are normally issued for three years.

Many operators object to the one-year requirement.

The Committee substitute for SB 194 would repeal the requirement in the statute.

The Department believes that other requirements of the operator certification program ensure that operators' remain current with developments in their field.

Consequently, we do not believe that the one-year requirement is necessary for successful administration of the program.

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to rectify an old error in the Alaska Administrative Code.

In 1978, the legislature passed AS 46.30.070, which addresses the certification of operators of water and wastewater treatment facilities. The statutory scheme required certification by examination, but sec. 70 exempted from the examination requirement those persons who were employed as operators on September 24, 1976. When implementing regulations were adopted in 1978, what appears to have been a typographical error identified the cutoff date as September 24, 1978. See 18 AAC 74.030(1). The regulation also erroneously provided for an examination waiver for applicants holding certificates issued under the Alaska Water Management Association voluntary certification program. See 18 AAC 74.030(2). In reliance on these errors, many operators did not take the required examination. Today there are approximately 60 operators who are so certified.

The attached bill will grandfather in those individuals who, before January 1, 1985, applied for and received certification without examination, based upon employment as operators on September 24, 1978 or a valid certificate issued under the Alaska Water Management voluntary certification program. You should note that this corrective legislation will be uncodified and will not change the existing law in AS 46.30.070; it only alleviates the harm that would be done to operators who relied on the errors in the Alaska Administrative Code while continuing to require others who have not been so affected to comply with the standard the legislature set down in 1976 in AS 46.30.070. It is my recommendation that, after enactment, the revisor of statutes arrange for the inclusion

of this uncodified law as a note in the published Alaska Statutes, following AS 46.30.070.

The Department of Environmental Conservation fully supports this bill and believes that the grandfather rights may be extended to the affected individuals with confidence that there will be no threat to the safe and efficient operation of water and wastewater treatment facilities, since the affected individuals have competently performed their duties in the past. I urge your prompt action on this remedial legislation.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

SB

201

HOUSE

COMMITTEE REPORT

5/7

(9)

Date referred: 4/30/86

FURTHER REFERRALS: FINANCE

DATE: May 7, 1986

The RESOURCES Committee has considered CSSB 201(Fin)

"An Act creating a public access fund."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with HCS for CSSB 201 (Resources) [XX] same title

[ ] new title

and recommends No recommendation

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Miller (MW) W. Miller

SIGNING OTHER RECOMMENDATIONS:

Pearce Roger Pearce - No Rec

Jenkins Roger Jenkins No Rec

Cato Bill Cato No Rec

Co-Chairman Dick Shultz

Shultz

= new
= old
= combination

Bradley
5/6/86

Original sponsors: Rodey, Bennett, Kerttula, et al

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 201 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act creating a public access fund."

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

* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that access to state waters for fishing, hunting, guiding, boating, lodge operation and other recreational uses is very important to the economy of the state. State waters, and public access to those waters, is critical to the interrelated recreation, tourism, guiding and lodge industries. These industries support a large number of small, resident Alaska businesses. Recreational use of state waters is also extremely important to the people of the state. The legislature further finds that many of the state's popular freshwater and marine fisheries are severely overcrowded and that increasing the ease of access to additional waters suitable for recreational uses would enhance the enjoyment by the people, would be beneficial to the economy, and would reduce the overcrowding on the already popular waters.

(b) It is the intent of the legislature to encourage state programs to develop access to additional waters of the state near the state's major population areas.

* Sec. 2. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.874. PUBLIC ACCESS FUND CREATED. (a) There is created in the general fund a public access fund. The fund consists of money derived under this subsection and contributions from individuals and corporations. The fund shall be invested by the commissioner of revenue. The commissioner of revenue shall prepare the

permanent fund dividend application to allow applicants to designate that $5 of the dividend be subtracted from their check and deposited in the public access fund. The Department of Revenue may use money in the public access fund to pay administrative costs incurred under this subsection.

(b) Except as provided in (a) of this section, the commissioner shall administer the fund. The commissioner, after public hearings and in consultation with the commissioner of fish and game and the commissioner of transportation and public facilities, may use money in the fund to develop boating access, including the purchase and lease of land, easements, and rights of way to enhance public access to recreational areas.

(c) The title to rights of public access to recreational areas obtained by the commissioner vests in the state. The commissioner shall include in the instrument transferring title to the state a clause requiring that the land be used for public access. If the land ceases to be available for public access, the state shall pay the assessed value of the land to the fund.

(d) If the state receives funds under 16 U.S.C. 777-777k (Sport Fish Restoration Act), approximately 20 percent of the funds shall be used to implement the provisions of this section. Expenditure of funds received by the state under this subsection is subject to the approval of the commissioner of fish and game.

(e) The legislature may appropriate to the fund.

(f) The commissioner may adopt regulations under the Administrative Procedure Act (AS 44.62) that are necessary to implement this section.

* Sec. 3. AS 38.50.010 is amended to read:

Sec. 38.50.010. AUTHORIZATION. Subject to the requirements of

this chapter, the director, with the concurrence of the commissioner, is authorized to dispose of state land or interest in land by exchanging it for land, interest in land, or other consideration. Exchanges shall be for the purpose of consolidating state land holdings, creating land ownership and use patterns which will permit more effective administration of the state public domain, using funds from the public access fund to create access to waters of the state with high value for recreational uses, facilitating the objectives of state programs, or other public purposes.

HOUSE

COMMITTEE REPORT

S/7

(9)

Date referred: 4/30/86

FURTHER REFERRALS: FINANCE

DATE: May 7, 1986

The RESOURCES Committee has considered CSSB 201(Fin)

"An Act creating a public access fund."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with HCS for CSSB 201 (Resources) [XX] same title

[ ] new title

and recommends No recommendation

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Miller (MP) W. Miller

SIGNING OTHER RECOMMENDATIONS:

Pearce - No Rec

Jenkins No Rec

Cato No Rec

Co-Chairman Dick Shultz

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

The proposed committee substitute combines the provisions of SB 201 "An Act creating a public access fund" with the provisions of SB 462 "An Act relating to access to recreation areas". The combined committee substitute has the support of the sponsors (Senator Rodey and the Senate Resource Committee) of both bills.

A sectional analysis of the bill follows.

Section 1 of the bill is findings and intent.

Section 2 creates the public access fund. The fund consists of money derived from four sources:

1 - contributions from individuals and corporations
2 - the legislature may appropriate to the fund
3 - individuals may designate that $5. of their permanent fund dividend go to the fund.
4 - approximately 20% of the federal funds available to the state under the Wallop-Breaux amendment to the Sport Fish Restoration Act.

The Commissioner of Revenue invests the fund. The Commissioner of Natural Resources administers the fund. After public hearings and consultation with the Commissioners of Fish and Game and Transportation and Public Facilities, DNR may use money from the fund to develop boating access, including the purchase and lease of land, easements and rights of way to enhance public access to recreational areas.

This section also specifies that title to rights of public access to recreational areas obtained by the commissioner vests in the state and that if the land ceases to be available for public access, the state shall pay the assessed value of the land to the fund. To comply with a federal requirement, expenditure of Wallop-Breaux funds is subject to the approval of the Commissioner of Fish and Game.

Section 3 of the bill adds using public access funds to create access to waters of the state with high value for recreational uses as one of the purposes for which the director of the division of lands and waters may exchange land. DNR has testified that they feel they already have this power, but have been reluctant to use it because it was not explicit in statute.

SB 462 has zero fiscal notes, it has the support of the Departments of Fish and Game and Natural Resources, as well as being a priority of the Alaska Outdoor Council, the Alaska Sportfishing Association. Representatives of the Resource Development Council and the Alaska Miners Association have said that not only do they not object to it, they believe it is a good idea.

SB 201 has a zero fiscal note and also enjoys wide support. The combination of these two bills create a unified package for creating access to additional waters near the state's major population areas.

The CS has no adverse effect on private property and does not lock up state land. Legal Services has reviewed this bill carefully and states it is not a dedicated fund and is fully constitutional.

Included in this packet are fiscal notes on SB 201 and SB 462, a copy of the SFI bulletin which discusses the Wallop-Breaux amendment, and a memo from Fish and Game on access.

Alaska Recreational Fishery Access, Enhancement and Development

Need:

Alaska, with a population of 510,554 people (1983) and land-mass of 586,412 square miles (1/5th the size of the contiguous lower 48 States), has a severe access problem. Although the state has over 3,000,000 lakes and 365,000 miles of rivers, it has only about 2500 miles of state maintained paved, 2960 miles of unpaved roads and 8400 miles of local government and specialty (includes National Park Service and military) roads. Access to the states fish and wildlife resources is severely restricted and inadequate. This limited access results in concentration of fishing effort, habitat degradation, restricted management options and social conflicts.

However, even with limited road access to fishery resources, fishing is still the most popular outdoor passtime in Alaska. Of the 335,608 anglers who fished in 1984, 71% were Alaska residents and 29% were non-residents. This represents a 6% increase in resident anglers and a 15% increase in non-resident anglers over 1983. Since 1977 the average annual increase in anglers has been 8% (7% for resident anglers and 11% non-resident anglers).

Fishing is concentrated along the road system and near the population centers. Of the 1,866,837 angler-days fished in 1984, 1,341,658 (72%) were expended in the Southcentral region of Alaska, 326,138 (17%) were expended in the Southeast region, and 199,041 (11%) were expended in the Arctic-Yukon-Kuskokwim region. The Cook Inlet area, within the Southcentral region, had 1,109,727 days (59%) of the State's total sport fishing and the Kenai Peninsula had 668,161 angler-days or 36% of the State total. The Kenai River alone had 270,422 angler-days of use or 14% of the State total.

For all its lakes, streams and anglers, the state has only 31 boat launching facilities statewide. A few private launch ramps also exist. This limited boat access concentrates fishing to areas near the launching facilities, creates traffic congestion problems, and destroys needed habitat as a result of overcrowding. On busy days boat owners often must wait for extended periods of time to launch their boats and then drive up to 1 mile to park their cars and trailers before going fishing. A lengthy wait also accompanies removal of boats from the water.

Identified Access problems include

1. Insufficient parking at limited access points which results in illegal parking along public roads creating a safety hazard and unauthorized parking on private property;

2. Limited access sites which force walk-in use across private property to popular fishing locations. Repeated use creates unwanted trails, accumulation of garbage and general destruction of the aesthetic value of the private property;

3. High use of inadequate or undeveloped boat launch facilities which destroys habitat through stream and bank degradation, siltation, misuse of private property to access water sites and illegal parking of boat trailers;

4. The degradation of existing sites through excessive use which creates sanitation problems, social conflicts and loss of aesthetic values.

The goal of this project is to increase or improve public access for fishing through the purchase of lands, development of facilities, and enhancement of state lands and waters.

Objectives.

1. To provide angler and boat access to recreational fishing waters;

2. To construct, develop, improve and maintain facilities and lands acquired or used by recreational anglers;

3. To increase and/or improve the quality of habitat for sport fish;

4. To provide necessary support facilities for the administration, or management of recreational fisheries.

Expected Results and Benefits:

A. Acquisition of lands and access opportunities (rights-of-way and easements) will ensure dedicated accessibility to the fishery resources for the public.

B. Acquired sites will be managed and operated to provide primary benefits to the recreational angler and boater and help in distributing angler effort throughout a greater area of a particular fishery or among suitable fisheries.

C. Additional access sites will allow more anglers to participate in a fishery, and will allow those who presently use a fishery to reduce conflict by disbursing effort over a larger area and reducing congestion on existing sites.

Additional sites may allow anglers to reach fisheries not presently accessible from existing locations (e.g. acquiring a suitable site that favors a boat launching facility) thereby increasing management options for harvest regulation.

D. Allow development of new fisheries.

Facility developments will improve the aesthetic qualities of the recreational fishery and lessen impacts on the environment. This will be accomplished by: providing the necessary camping, eating and sanitary facilities for public use; improved access to accommodate vehicle and

foot traffic; increased vehicle and trailer parking and paving of such areas thereby reducing conflict; maintaining streambank integrity; and, reducing siltation and pollution.

Field support facilities, when required, will allow proper supervision of select fisheries in terms of fishery monitoring and data acquisition. Habitat improvements should increase fish production and expand waters available for enhancement.

Approach:

Land Acquisition/Access.

Land will be acquired by fee-title purchase, lease, or right-of-way/easements for the purposes of public access, boat launching ramps, parking lots, and camping facilities. Land will be also acquired by willing seller/buyer negotiations and in accordance with P.L. 91-646 Uniform Relocation and Real Property Acquisition requirements.

Operational Plans will be submitted with the Project Agreements for acquisition of land parcels and will conform to FA Manual requirements, Chap 10 Land Acquisition. Examples of information to be provided:

1. The soil characteristics, topography, and vegetative communities.

2. The surface waters, mineral and water rights.

3. The fish and wildlife species, abundance and distribution on the property.

4. Existing capital developments, use of area by landowners or lessees.

5. Use of area by the public (types of use, man-days expended, harvest of fish and wildlife, etc.).

6. Pertinent planning and administration related to lands in the vicinity.

7. Summary of appropriate hydrologic, engineering, geologic or other technical investigations that support the property's suitability for development.

8. Cooperative Agreements relating to project objectives.

Priorities for acquisition or improvement of access will include, but not be limited to:

1. Economic importance. Importance to the local community;

2. Public importance. The number of people who use the area, the man-days of effort expected, safety factors, trespass problems and distance from metropolitan areas;

3. Biological/Ecological importance. Will site provide access to new fisheries, suitability of site, ability of resource to accommodate existing and potential use, etc;

4. Political significance. Are matching funds being provided by local interests, or have political decisions (funding) prescribed priority to the project.

Development.

Development activities will include the construction, modification or improvement of access sites. Such activities may include, but not be limited to, land clearing, access road construction, boat launching ramp construction, trail development, hard surfacing (e.g., black top) of parking areas and access roads, addition to ramps, and/or construction of floats and piers, navigational aids, mooring buoys, bank stabilization projects, sanitary and camping facilities, and other amenities that provide needed public services for sport fishing purposes.

Field support facilities will be considered on a case-to-case basis for special fisheries. This activity may construct cabins to house seasonal employees conducting creel censuses, or caretakers, and include necessary support items such as water, sewer, electrical and other services.

Procedures for facilities requiring user fees, concessions, caretakers or custodians will be incorporated in Operational Plans and submitted at the time of acquisition with the Project Agreement.

Habitat improvements will incorporate construction of water level stabilization structures, weirs and barriers to control ingress and egress of fish, or for ecological improvements to waterways and standing waters. In many instances, nonproductive or marginal waters may only require structures to provide water level stabilization and/or control of fish movement when associated with stocking to provide an acceptable fishery. Jobs developed under this project will have detailed operational plans, and materials lists as required for the activity.

For all construction items costing more that $100,00, a qualified engineer will approve engineering plans and estimates, approve the feasibility determination, supervise the construction, and furnish a report of final inspection. All other construction activity will apply acceptable engineering standards commensurate with the level of complexity and magnitude involved.

Enhancement.

Enhancement in this project refers to improvements in the properties discussed in this document under the Land Acquisition/Access and Development sections.

Location. Statewide

SB

2332

Moen
5/8/85 ✓

Original sponsor: Rules/Governor

IN THE SENATE BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 232 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to minimum work commitments in oil and gas leases; and providing for an effective date."

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

* Section 1. AS 38.05.180(h) is amended to read:

(h) The commissioner may include terms in any oil and gas lease imposing a minimum work commitment on the lessee. These terms shall be made public before the sale, and may include appropriate penalty provisions to take effect in the event the lessee does not fulfill the minimum work commitment. If [SHOULD] it is [BE] demonstrated that a lease has been proven unproductive by actions of adjacent lease holders, the commissioner may set aside a work commitment. If a minimum work commitment is not fulfilled because conditions preventing drilling or exploration were not reasonably foreseeable by the lessee or were beyond the lessee's control, the commissioner may waive for two years any term of the minimum work commitment.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

AS 38.05.180 IS THE STATE OIL AND GAS LEASING AUTHORITY WHICH PROVIDES THE STIPULATIONS UNDER WHICH THE STATE'S LANDS ARE LEASED FOR OIL AND GAS DEVELOPMENT.

AS 38.05.180 (p) PROVIDES FOR LEASEES ON STATE OIL AND GAS LEASE LANDS TO POOL THEIR PROPERTIES INTO A UNIT . UNDER THE UNIT, THE LEASEES AGREE TO ITS COOPERATIVE MANAGEMENT AND DEVELOPMENT. SUBSECTION (p) ALSO PROVIDES THAT THE COMMISSIONER OF NATURAL RESOURCES MAY CHANGE THE DRILLING, PRODUCING OR ROYALTY REQUIREMENTS TO PROTECT THE PUBLIC INTEREST. THIS SUBSECTION ONLY APPLIES TO PRODUCING LEASES AND IS MEANT TO CONSERVE THE RESOURCE THROUGH THE MANAGEMENT/DEVELOPMENT PLAN.

THE COMMITTEE SUBSTITUTE FOR SB 232 (FINANCE) SEEKS TO PROVIDE THE SAME DISCRETION TO THE COMMISSIONER ON STATE OIL AND GAS LEASE LANDS NOT MANAGED UNDER A UNIT PLAN TO CHANGE OR SPECIFICALLY, WAIVE THE WORK COMMITMENT REQUIREMENTS OF A LEASE AGREEMENT FOR A PERIOD OF TWO YEARS. THIS WAIVER AUTHORITY WOULD APPLY TO EXPLORATORY OR WILDCAT TYPE LEASES AND WOULD PROVIDE FLEXIBILITY TO THE COMMISSIONER IN DEALING WITH INDEPENDENT OPERATORS ON STATE LANDS.

SENATE LETTER OF INTENT

CSSB 232 (FIN)

It is the intent of the Senate that the discretionary authority granted in this legislation not be used to extend the term of the minimum work commitment in any situation where constitutional constraints dictate otherwise.

Adopted by the Senate May 9, 1985.


SB
269



Alaska Environmental Lobby, Inc.

204 N. Franklin Street, Suite 3 Juneau, Alaska 99801 907-586-2345

TESTIMONY ON SB 269 - Cabins on state lands
2/28/86 by Kate Pendleton

The Alaska Environmental Lobby opposes Senate Bill 269. In principle, we do not believe it is wise to promote a system of private in-holdings on public lands. This bill would allow people who built unauthorized cabins on state lands to acquire title to the land which rightfully belongs to the citizens of the state.

We believe the State has been generous in its policies regarding the use of private cabins on state lands, but to create a pattern of land ownership today that would result in future problems for our resource agencies is definintely not responsible planning.

We feel that the Department of Natural Resources has adequately addressed the concerns of those who built cabins on unauthorized lands. The current cabin permit program administered by the DNR allows applicants life-long use of exisiting private cabins before they revert to state ownership. In addition, leasing of state land for the construction of private cabins is allowed.(by AS 38.05.079.). Similar statutes also allow for the purchase of five acre parcels of state land by operators of existing commercial enterprises and the construction of trapping cabins for a $10 application fee.

Under the proposed legislation, once a person owns the cabin and the surrounding acre, they can do anything they want on that piece of land. The ramifications of intensive use of this acre are far reaching. In addition, if there are many located in close proximity, there arises the questions of access, and the states responsibility for providing services for the people using these lands, the same costly issue facing the state land disposal program. In essence, this bill is just another land disposal program.
In a recent Anchorage Daily News article, the state legislative finance division claimed that in the next 10 years, services for land disposals will cost the state more than a half-billion dollars.

Testimony on SB 269

This bill does not meet the needs of the Alaskan public. It merely gives preference rights to a small, select group of people who chose to knowingly build unauthorized cabins on state land and who now feel they should be entitled not only to use of their cabin at that site, but also to title of public lands surrounding their cabins.

We believe that Alaska is doing more than is necessary to promote private use of state lands and that SB 269 goes too far in diminishing the integrity of current and potential resource management in the state.

Remarks to the House Resources Committee on 2/28/86

Mr. Chairman, members of the Committee, my name is Charles Christensen. I am an aide to Senator Don Bennett, the prime sponsor of Senate Bill 269.

SB 269 was drafted in response to an ongoing problem faced by many cabin owners in Alaska. Stated in its simplest terms, the problem is that many Alaskans own cabins, but not the land which the cabins sit upon.

The Department of Natural Resources recognized this problem in 1984, and in an effort to resolve it, drafted regulations which would allow a cabin owner to obtain a non-transferable permit to occupy his or her own cabin. SB 269 was designed to correct what many see as the deficiencies in this permit program.

I have reviewed the Substitute prepared by the Committee. Briefly, this version of the bill would grant DNR the discretion to sell up to one acre of land to the person who possessed a cabin, at the land's fair market value. In order to qualify for this program, the cabin must have been built prior to January 1, 1980. Like most of the 16 other preference statutes which give DNR the authority to dispose of state land in a non-competetive way, the Committee Subtitute would require DNR to consider the state's best interests before making a sale.

There are many reasons why over the years people built cabins on land owned by the state or federal government. Some built on land which was open to entry at the time. Some built on land which they thought was open to entry, but made an honest mistake. Many built on land which they assumed, incorrectly, would eventually be made available to the public. This is a particular problem in Alaska, given the uncertain and constantly changing status of large tracts of land up until the early 1980's. Many residents of the bush built cabins in years past without any consideration given to the land's status, because their economic or physical survival required it.

And of course, many people built cabins on public land simply because the governments which controlled the land have historically been unresponsive to the desires of the people in this state to have a piece of land they can call their own.

Criticisms of this bill's objectives seem to fall into two primary categories. One is that this bill is bad public policy because it rewards people for building a cabin on land which did not belong to them.

Two response to this criticism are in order. First, for some of the reasons I have cited, there are many categories of people who did not build their cabin without regard for the land's status. The land was open to entry.

Second, statutes of this type are the rule rather than the exception in the history of American land disposal. From the earliest days of the frontier, there have been persons who built on public land before the land's status was determined by Congress. In the years from the early 1800's onward, Congress passed dozens of "pre-emption acts." These said in effect that a person who made improvements on public land could buy it from the government, notwithstanding the fact that they were trespassers.

Two types of pre-emption acts were passed. The earliest were acts of special pre-emption, which benefited only certain classes of trespassers. These are analogous to several of the preference acts passed in Alaska since statehood, which give certain categories of persons, such as persons with a cabin in an area which has since been selected for remote parcel designation, the option to purchase the land.

The second type was the general pre-emption act, the first of which was passed in 1830, which benefited anyone who improved public land. SB 269 is analogous to the general pre-emption acts.

It is important to note that the most recent federal pre-emption act passed was the Alaska Native Claims Settlement Act in 1971. In section 14(c), this statute provided that if improvements to land had been made, such as reindeer corrals, for example, the land underneath the improvement would end up in the hands of the owner, not in the hands of the native corporation which would otherwise be entitled to it.

Because we have in excess of 150 years of special and general pre-emption statutes at the federal level, and many years of such statutes at the state level, it is disingenuous to argue that SB 269 sets a bad precedent, or that is is an aberration in our land disposal policy. In fact, granting public land to the persons who expended time and money to build improvements on it is a longstanding policy in the lower 48 and Alaska.

The second category of objection which is heard is that it is not in the state's interest to dispose of this land.

For the record, it should be noted that the DNR estimate of the number of cabins which are effected by this bill is 1500. At most, therefore, 1500 of the state's 80,000,000 acres will be disposed of. And since fair market price will be paid, the state is not giving anything away.

Moreover, this Committee's substitute does require DNR to make a case by case evaluation of the state's best interest before any land can be transferred.

In conclusion, SB 269 is a reasonable way to solve a problem which has existed for years, and which will be with us for years to come if it is ignored. Senator Bennett has reviewed this committee's substitute for his bill. While he prefers the Senate version, because it does not give DNR any discretion in transferring cabin sites, he defers to the judgement of the committee in adopting this substitute.

COMMITTEE REPORT

3/19

HOUSE

(9)

5/11/85

FURTHER: FINANCE

Date: 3/14/86

The Committee on RESOURCES has had CSSB 269(Res)
"An Act relating to cabins on state land; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[XX] replace with CS for HCS SB 269 (Resources) [XX] same title [ ] new title

and recommends individual recommendations

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
Shultz Dirk Shultz	Adelheid Herrmann NO REC Herrmann
CAto Bette Cato	Garce
Jenkins Ken Jenkins	Sand
	Thompson NO REC
Miller(N/D) M.W. Miller	

Dirk Shultz Shultz
CO-CHAIRMAN

2 withdrawn

AMENDMENT TO CSSB 207

ON Line 13

Insert additional langauage after cabin to read:

", on the condition that the cabin is only used for non-commercial purposes."

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 03-18-86

REQUEST

Bill/Resolution No. HCS SB 269 (Res) AF
Title : Cabins on State Land

Sponsor : Bennett
Requestor : House Resources
Date of Request : 03-17-86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Land & Water Management; Information and Records

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	87.5	380.5	438.5	438.5	438.5	438.5
TRAVEL	3.0	40.0	40.0	40.0	40.0	40.0
CONTRACTUAL	6.0	50.0	50.0	50.0	50.0	50.0
SUPPLIES	2.0	6.0	6.0	6.0	6.0	6.0
EQUIPMENT	4.0	12.0	12.0	12.0	12.0	12.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	102.5	488.5	546.5	546.5	546.5	546.5
CAPITAL						
REVENUE			300.0	300.0	300.0	300.0

FUNDING : (Thousands of Dollars)

GENERAL FUND	102.5	488.5	546.5	546.5	546.5	546.5
FEDERAL FUNDS						
OTHER						
TOTAL	102.5	488.5	546.5	546.5	546.5	546.5

POSITIONS :

FULL-TIME	2	9	10	10	10	
PART-TIME		1	2	2	2	2
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached explanation of yearly program goals. Within seven to ten years operating costs would be reduced to about one-third. Estimate based on 2,000 cabins.

Because this would amount to a major new land disposal program, it will require full administration support in regional offices and contract administration. Annual (See atch.)

Prepared by : DTS/DLWM/Commissioner's Office Phone : 465-2400
Division : Date : 03-18-86

Approved by Commissioner : Date : 03-18-86 AF
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Analysis Continued:

costs will include adjudication/survey and appraisal review/planning, etc.

FISCAL NOTE ANALYSIS
SB 269
DEPARTMENT OF NATURAL RESOURCES

With the passage of SB 269, the Department of Natural Resources would encounter a large number and variety of administrative responsibilities that could not be met under existing budgets. These responsibilities would include the implementation of regulations for the cabin program, title and records review, survey instructions and review, public notice/decisions/findings, appraisal instructions and review, issuance of title, and contract administration and enforcement where the purchaser chooses to purchase the land over a period of twenty years.

Because the Department estimates that there are 2,000 cabins on state land, and it would be impossible to accomplish the proposed conveyance in a short term, the fiscal impact is estimated for a five- to ten-year cabin land sale program. Most of the administrative handling of cabin purchase applications would be done in the three regional offices: Anchorage, Fairbanks, and Juneau. Both the Division of Land and Water Management and the Division of Technical Services would be closely involved.

YEAR ONE -

1. Prepare regulations for program. How determine the one-acre parcel? How accommodate owners who are within game refuges or state parks? Convey submerged lands title for waterside cabins? Reserve easements/rights-of-way across adjacent public lands and through the parcel? How determine 1980 appraised value and provide for appeals? Who pays survey/appraisal costs? What are conditions for contracts of sale (AS 38.05.065)? May an owner purchase more than one cabin? How prove ownership and use before 1980? What if more than one owner applies to purchase a cabin? Is program open forever at same appraisal amount? What opportunities are there for public notice/comment on proposed conveyances? May the state conduct its own land disposals, timber sales, leases, R/W conveyances if there is an unauthorized cabin nearby or within the area and an application has been filed? Can commissioner decide that less than an acre will be conveyed? May the commissioner prevent subdivision (for other cabins, trailer lots, etc.) within refuges and parks? How prepare survey/appraisal instructions?

2. Announce program to public and begin preparation for applications. Provide application forms, information sheets, procedural directions to all regional staff.

YEAR TWO -

1. Accept applications. Answer public inquiries.

2. Begin adjudicating applications. Determine which are on state lands, notify applicants who are not on state lands. Review proof of cabin construction prior to 1980.

3. Begin public notice, review of cabin conveyances consistent with AS 38.05.945 and AS 38.05.035(e) and constitutional provisions for equal protection and use/management of the public domain.

5. Begin to field check cabins, surveys, appraisals.

6. Begin planning/platting easements and rights-of-way for public needs.

YEAR THREE -

1. Continue 1-6 above.

2. Close application opportunities in some areas, open in others to distribute regional impact of applications on administrative staff.

3. Begin to issue accurate title/quitclaim deed to some applicants who meet conditions.

4. Issue contracts of sale and prepare twenty-year payment schedule and conditions for successful applicants wishing to pay over time.

5. Note title changes, applications on land title records (must record applications immediately on receipt for awareness during other land disposal/management planning).

6. Begin to accept new title documents in ecorder's Offices.

YEARS FOUR TO TEN -

1. Continue with the program, aiming to complete within four to seven years.

LINE ITEM EXPLANATIONS - SB 269

FY 86

100 - Two positions, 87.5
1. Natural Resource Manager I (47.5)
Supervise start-up of program, including regulations and public information
2. Natural Resource Technician I (40.0)
Assist in program start-up, begin policy/procedures directives for regional staff, coordinate with survey/title/records staff to assure timely notation of applications on status plats and conveyance of accurate title, coordiante with contract administration staff to begin handling sales contracts

200 - 3.0
Travel to regions

300 - 6.0
Special legal research for regulations

400 - 2.0
Supplies and commodities for new staff

500 - 4.0
Office equipment for new staff (chair, desk, typewriter, file)

FY 87

100 - Seven new positions, 293.5 + 87.5 from FY 86
1,2,3. Natural Resource Technician in each regional office (127.5)
Begin adjudication/review of applications, provide local response to inquiries, conduct public notice, negotiate difficulties with applicant and adjacent landowners or citizens; begin review of appeals on appraisals, adjudication
4,5,6. Survey/Title Staff in central/regional offices (127.5)
Begin survey check (some field work required), conduct full title check, note applications and conveyances on state land records.
7. Accounting Technician and part-time clerical (38.0)
Begin issuing contracts of sale for successful applicants

200 - 40.0
Travel to field check cabins/appriasals/surveys, review area resources for possible conflicts

300 - 50.0
Advertising, hearings, legal assitance for adjudicating applications and administering appeals; preparation and issuance of some title documents

400 - 6.0
Supplies and commodities for new staff

500 - 12.0
Office equipment for seven new staff

FY 88-94/5

Continue all costs but add one Accounting Technician and some part-time clerical staff for future contract administration.

Original sponsors: Bennett, Ferguson and Coghill

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 269 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to cabins on state land; and providing for an effective date."

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

* Section 1. Unless prohibited by an area plan adopted under AS 38.04.065, on the application of a person who can demonstrate the historic use and occupancy of a cabin on state land and investments in the cabin before January 1, 1981 and continuing until the effective date of this Act, the commissioner of natural resources may sell not to exceed one acre of state land occupied by the cabin. If the cabin is located on state land that is adjacent to a body of water, the commissioner shall reserve an easement for public access not to exceed 20 feet wide above the mean high water line. The commissioner may not establish restrictions on the use of the cabin or on future transfers of the land sold under this section. The land may be sold notwithstanding the location of the cabin on state land that has been withdrawn under AS 16 or AS 41 subsequent to the erection of the cabin. Land sold under this section shall be sold for the fair market value of the unimproved land on the date of the application and the person is responsible for the costs of surveying the land.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

Bradley
3/10/86

Original sponsors: Bennett, Ferguson and Coghill

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 269 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to cabins on state land; and providing for an effective date."

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

* Section 1. On the application of a person who can demonstrate the historic use and occupancy of a cabin on state land and investments in the cabin before January 1, 1981 and continuing until the effective date of this Act, the commissioner of natural resources may sell not to exceed one acre of state land occupied by the cabin. If the cabin is located on state land that is adjacent to a body of water, the commissioner shall reserve an easement for public access not to exceed 20 feet wide above the mean high water line. The commissioner may not establish restrictions on the use of the cabin or on future transfers of the land sold under this section. The land may be sold notwithstanding the location of the cabin on state land that has been withdrawn under AS 16 or AS 41 subsequent to the erection of the cabin. Land sold under this section shall be sold for the fair market value of the unimproved land and the person is responsible for the costs of surveying the land.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

adopted

AMENDMENT
by Representative Adelheid Herrmann

to Committee Substitute for Senate Bill 269 (dated 3/10/86):

On page one, line nine, begin the sentence with new language to read:

"Unless ~~provided~~ prohibited otherwise by an Area Plan,"

Replace the capital "o" with a lower case "o".

AMENDMENT TO CSSB 269

ON Line 13

Insert additional langauage after cabin to read:

", on the condition that the cabin is only used for non-commercial purposes."

DRAFT
Law

SB 269
LP57
3/11/86

Original sponsors: Bennett, Ferguson and Coghill

IN THE _____ BY THE RESOURCE COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 269 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to cabins on state land; and providing for an effective date."

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

* Section 1. On the application of a person who can demonstrate both historic use and continuous occupancy of a cabin on state land together with an equitable interest in the cabin before January 1, 1968 and continuing until the effective date of this Act, the commissioner of natural resources may sell not to exceed one acre of state land occupied by the cabin. If the cabin is located on state land that is adjacent to a body of water, the commissioner shall reserve an easement for public access not to exceed 20 feet wide above the mean high water line. The commissioner may not establish restrictions on the use of the cabin or on future transfers of land sold under this section. Land sold under this section shall be sold for the current fair market value of the unimproved land plus the costs of surveying the land and such reasonable administrative costs as the department determines are necessary to carry out the transfer of the land.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

* Sec. 3. Unless reauthorized by an Act of the legislature, this Act terminates July 1, 1988.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

Senate Resources Committee Minutes

May 1, 1985
1:35 pm

Senate Resource Members Present

Senator Arliss Sturgulewski, Chairman
Senator Bettye Fahrenkamp, Vice Chair
Senator Fred Zharoff
Senator Vic Fischer
Senator Rick Halford
Senator Jack Coghill
Senator Dick Eliason

Calendar

SB 269 "An Act relating to cabins on state land; and providing for an effective date."

HB 280 "An Act creating the Anchor River and Fritz Creek Critical Habitat Area."

SJR 24 Relating to the Americanization of the fishery off the coast of Alaska.

SB 285 "An Act relating to the recoupment conveyance for land at Illinois Creek; and providing for an effective date."

HB 186 "An Act creating the Anchorage Coastal Wildlife Refuge."

Senator Sturgulewski

Called the meeting to order. Senator Sturgulewski opened the Public Hearing on SJR 24.

Paul Kelly, Bristol Bay Herring Marketing Coop, testified in opposition to lines 7 - 10 on page 2 of the bill regarding the Governor's authority to permit joint ventures in Alaska's internal waters. He also objected to the use of specific phase out dates in the resolution.

Greg Baker, Director, Office of Commercial Fisheries Development, Department of Commerce and Economic Development, testified in favor of the bill and stated the Administration supports the time certain phase out date.

Larry Cotter, USA Coalition Committee President, International Longshoremen's and Warehousemen's Union, Local 200, presented written testimony in support of the resolution to the committee and testified in favor of a time certain phase out date in the SJR 24.

Jeff Stephan, Manager, United Fishermen's Marketing Association, Inc., and member of the North Pacific Fisheries Management Council (NPFMC), testified in support of SJR 24. In response to a question from Senator V. Fischer, Mr. Stephan stated that the NPFMC's position on SJR 24 is unclear. Senator Fischer stated he would like the resolution addressed to the NPFMC also.

John Cleveland, Sea-Land Service, testified that the transportation industry supports the resolution.

Bix Bonney, representing two sportfishing groups from Anchorage, testified in support of SJR 24.

Rick Lauber, Alaska Seafood Processers, testified in support of the resolution and stated he believes there has to be a cut-off date in order to Americanize the industry.

Senator Sturgulewski stated she would continue the Public Hearing on SJR 24 on Friday.

Senator Sturgulewski opened the Public Hearing on SB 269.

Tom Hawkins, Director, Division of Land and Water, Department of Natural Resources, testified that they would like the committee to defer action on SB 269 until the recent permitting process in the Department has a chance to set a track record.

David Caylor, Alaska Environmental Lobby, testified in opposition to SB 269.

Joe Geldhof, Assistant Attorney General, Department of Law, stated that the constitutionality of the bill in its present form could be challenged and provided the committee with a written legal opinion.

Dennis Kelso, Deputy Commissioner, Department of Fish and Game, stated the department does not support SB 269.

Senator Halford moved to change the date on p. 1, line 12 from 1980 to 1968 and add "if the land was open to entry under applicable state or federal laws at the time the cabin was erected" and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Ron Somerville, Alaska Outdoor Council, supports the bill in amended form.

Senator Sturgulewski asked Mr. Geldhof if the amendment changing 1980 to 1968 would cause constitutionality problems. Mr. Geldhof stated he

believed it would. Senator Sturgulewski asked Mr. Geldhof to prepare a legal opinion for the committee.

Senator Halford moved on p. 1, line 9 to change the word "possesses" to "owns" and asked unanimous consent.

Senator Fahrenkamp objected.

Senator Sturgulewski took a roll call vote on the motion:

Senator Coghill	No
Senator Halford	Yes
Senator Fahrenkamp	No
Senator Zharoff	No
Senator V. Fischer	Yes
Senator Sturgulewski	Yes

Senator Sturgulewski stated the amendment had failed.

Senator Sturgulewski closed the Public Hearing on SB 269.

Senator Halford moved on p. 1, lines 14 and 18 to change the date from 1980 to 1968 and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Halford moved to rescind his motion on the date change on line 14 and delete the phrase "on January 1, 1980" on line 14 and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Halford moved to delete the word "higher" on p. 1, line 17 and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Halford moved to rescind the committee action on the failure of his motion to change the word "possesses" to "own" on p. 1, line 9 and asked unanimous consent.

Senator Fahrenkamp objected and so Senator Sturgulewski took a roll call vote:

Senator Coghill	No
Senator Halford	Yes
Senator Fahrenkamp	No
Senator Zharoff	No
Senator Eliason	Yes
Senator V. Fischer	Yes
Senator Sturgulewski	Yes

The motion carried and Senator Sturgulewski took a roll call vote on

Senator Halford's motion to change the word "possesses" to "own" on p. 1, line 9:

Senator Cognill	No
Senator Halford	Yes
Senator Fahrenkamp	No
Senator Zharoff	No
Senator Eliason	Yes
Senator V. Fischer	Yes
Senator Sturgulewski	Yes

Senator Sturgulewski stated that the motion had passed.

Senator Fahrenkamp moved CS SB 269 (Resources) with individual recommendations and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Sturgulewski opened the Public Hearing on SB 285.

Roy Huhndorf, President, Cook Inlet Region, Inc., testified in support of SB 285 and gave the history leading up to the bill. He stated that this bill would bring them up to about 90% of their land entitlement.

Gary Gustufson, Chief, Land Division, DNR, testified in support of the bill.

Senator Sturgulewski closed the Public Hearing on SB 285.

Senator V. Fischer moved SB 285 with individual recommendations and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Sturgulewski stated that CS HB 186 (Resources) was before the committee.

Senator V. Fischer stated that this same bill had already been before the committee in the form of a senate bill and been passed out of the committee. He noted two changes in the house version. Senator Fischer moved CS HB 186 (Resources) and the letter of intent with individual recommendations and asked unanimous consent.

Senator Sturgulewski hearing no objection, so ordered.

Senator Sturgulewski adjourned the meeting.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate
Committee on Resources

Senate Resources Committee Minutes

April 29, 1985
1:35 pm

Senate Resource Members Present

Senator Arliss Sturgulewski, Chairman
Senator Bettye Fahrenkamp, Vice Chair
Senator Fred Zharoff
Senator Dick Eliason
Senator Vic Fischer
Senator Jack Coghill
Senator Rick Halford

Calendar

State Planning Overview

SB 269 "An Act relating to cabins on state land; and providing for an effective date."

HB 280 "An Act creating the Anchor River and Fritz Creek Critical Habitat Area."

Senator Sturgulewski stated that the state planning overview would be the first order of business.

Don Collinsworth, Commissioner, Department of Fish and Game, stated that the ADF&G's planning breaks down into two categories. The first is where they participate in planning processes that are being led by either other state or federal agencies. The second is where ADF&G has the planning lead to develop management plans for critical habitat areas, state game refuge areas, and state game sanctuaries. In the first instance, Commissioner Collinsworth stated they provide much of the fish and wildlife population and life history information that goes into the management plans. He stated they also provide much of the habitat information that becomes part of the habitat inventory information that is part of the plans. He stated they participate in the review of state plans as they reach completion and through a cooperative agreement, they participate as a planning team member for DNR's area plans, provide technical information and expertise as the plans are developed. They review other state plans fully before they are finalized. He stated they are involved in the review of the federal land use plans through the Conservation System Unit (CSU) coordination process

and membership on the Alaska Land Use Council (ALUC). Commissioner Collinsworth stated they are currently involved in completing 3 state area plans and DNR is proposing to start 3 more plans.

Commissioner Collinsworth stated they received funding for a planning position in FY 85 and they have worked to develop a planning process that provides for wide agency and public involvement meeting the mandates of the Administrative Procedures Act to help move those plans through a public participation process. He stated they have also developed a plan schedule.

In answer to questions, Commissioner Collinsworth stated that there are a wide range of activities that are compatible in critical habitat areas.

Vince O'Reilly, Deputy Commissioner, Department of Commerce and Economic Development, stated their plans come from various sources. Federal plans covering wilderness and national parks. He stated that decisions concerning economic development have largely been made for this class of plan before it comes DC&ED. He stated they are involved in federal plans for BLM and other federal lands which have a multi-purpose use. They are also involved in the Coastal Zone Management Plans. He stated they have input into state plans principally from the departments of Natural Resources and Transportation and Public Facilities. They try to bring economic development into the plan. He stated they do not get too involved in local comprehensive plans.

Mr. O'Reilly stated that a plan comes into the department and is routed to the divisions that would be concerned with it. Reviews are then conducted and consolidated. If there are conflicts between divisions, the Deputy Commissioner steps in to resolve them. From there comments on the the plan goes to the Commissioner for his review and signature.

Mr. O' Reilly stated they sit on the following committees: Fisheries Mini-Cabinet, Timber Task Force, Tuesday Club, Tourism Advisory Board, Alaska Power Authority, Alaska Railroad, Coastal Policy Council. He stated formal and informal discussions and conferences are held at the cabinet level.

In summary Mr. O'Reilly noted (1) that plans reviewed come from various sources, some have the capability of being modified by economic development considerations, some don't; (2) assignment of personnel and funding will barely achieve the amount of department input to be effective in reviewing plans from an economic development perspective; (3) the department's organization of planning effort is in place though thin.

In answer to a question, Mr. O'Reilly stated the department does take an advocacy role in development areas. He also stated that they are more involved in commenting on plans than drafting the plans.

Richard Knapp, Commissioner, Department of Transportation and Public Facilities, stated that each regional division has a planning section and are charged with regional planning. The headquarters planning organization looks at an overall statewide plan and ties together system plans and analyzing developmental plans so they can come up with regional system

plans. He stated that development plans look at what may be happening in a region and what will its impact be on transportation needs. This involves other departments and so they are formally involved with them. System plans can deal with a region down to a municipality. This would be a plan like the Anchorage Municipal Area Transportation System. This is to minimize conflicts between municipal and state concerns.

Commissioner Knapp stated they have a seat on the Alaska Land Use Council and on the Coastal Zone Management Committee.

In answer to questions, Commissioner Knapp answered they get involved with the CSU's at the review stage. As far as development of state plans, Commissioner Knapp stated they have not been as involved as they should be. He stated that their involvement with the federal plans has been unsatisfactory but he stated he now has a special assistant who will be his liaison on the Land Use Council and will be involved with the plans from the beginning.

Jeff Smith, Deputy Commissioner, Community and Regional Affairs, stated they are involved in planning in three major categories: (1) special and statewide programs; (2) coastal management and regional strategy programs operating primarily at the regional level; and (3) local planning programs.

He stated that under the special programs category, Commissioner Notti is chairman of the Rural Issues Mini-Cabinet. This cabinet has looked at a number of planning issues such as the Alaska Land Bank Program, Capital Improvement Planning and the Rural Energy Technical Assistance Program. Also under the special programs category are the Oil and Gas Leasing Programs, Fisheries and Mining. He stated the department has also been involved with the Conservation System Unit planning.

Mr. Smith stated that under the Regional Scale Planning Projects, the department has been involved with the Alaska Coastal Management Program and the department's own Regional Strategies Program.

Mr. Smith stated the department has been involved with local planning programs financially, technically, and implementational assistance to communities both urban and rural throughout the state.

Mr. Smith noted that under Section 14(c)(3) of the Alaska Native Claims Settlement Act, the village corporation is required to convey land to the community for existing and foreseeable community needs. He stated that the department's ANCSA Assistance Program is designed to assist the 200 ANCSA communities in preparing community plans to identify current and foreseeable land needs, including rights of way and plans of survey necessary to accomplish the conveyance of 14(c)(3) land.

Terry Hoefferle, Southeast Alaska Community Action Program, spoke to the committee about Native Allotments. He stated that over 9,000 Alaskans have unsatisfied allotment claims on Alaskan lands. He stated that their land holdings compromise inholding in all the CSU's that have been discussed. He stated the land claims are within and around nearly every community in the state. He stated they pose serious problems to development of those

communities as long as their claims remain unresolved. He stated the Alaska Land Use Council can help these people and urged the Legislature to do what they can to help.

Senator Sturgulewski opened the public hearing on CS SS HB 280.

Mike Navarre, prime sponsor of the bill, gave an overview of the critical habitat area discussed in the bill.

Senator Sturgulewski opened the public hearing on SB 269.

Senator Bennett, prime sponsor of the bill, testified in support of the bill and gave an overview of the bill.

Senator Sturgulewski stated the public hearing on SB 269 would be continued.

Senator Sturgulewski stated the committee would return to the public hearing on CS SS HB 280.

Joanna, Paul and Nora Manwiller testified via the Homer teleconference in favor of the bill.

Vicke Pugil, Mayor, Kachemak, via Homer teleconference, testified in support of the bill.

Senator Paul Fischer, testified in support of the bill.

Roberta Highland, Co-chairman, Citizens for Responsible Land Use, testified in support of the bill via Homer teleconference.

Senator Zharoff pointed out the permanency of the designation of a critical habitat area.

David Vanderbrink, Chairman, Critical Habitat Area Task Force, testified via Homer teleconference in support of the bill.

Paul Carlson, 25 year resident of the area, testified via Homer teleconference in support of the bill.

Chuck Parker, Wildlife Alliance of Alaska, Hunting Guide, and the Sierra Club, testified via the Anchorage teleconference in support of the bill.

Cliff Eames, Alaska Center for the Environment, testifies via the Anchorage teleconference in support of the bill.

Ned Farquhar, Special Assistant, DNR, testified the department had worked closely with the sponsor of the bill to provide for multiple-use. He noted that critical Habitat area designation is probably the most restrictive language in statute but believes the language in the bill allows them to continue with other uses in the area but would probably prevent conveyance to the municipality.

Denny Kelso, Deputy Commissioner, ADF&G, testified the department supports the bill because of the moose population. He noted that Fritz Creek could be used as a water source. He stated he has worked with DNR and the sponsor of the bill.

Senator Zharoff stated he would like an amendment to put a repealer on the bill.

Senator Sturgulewski stated the public hearing would be continued and adjourned the meeting at 3:30.

Bradley
2/15/86 ✓

Original sponsors: Bennett, Ferguson and Coghill

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 269 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to cabins on state land; and providing for an effective date."

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

* Section 1. On the application of a person who possesses a cabin on state land on the effective date of this Act, the commissioner of natural resources may sell not to exceed one acre of state land occupied by the cabin if the cabin had been erected on the land before January 1, 1980. The state land shall be sold for the fair market value of the land as determined by the commissioner. The applicant shall pay costs of surveying the land. If the cabin is located on a waterfront, the commissioner shall reserve an easement not to exceed 20 feet wide above the mean higher high water line. If the cabin is located in land that has been withdrawn under AS 16 or AS 41 since January 1, 1980, the land may be sold notwithstanding its withdrawal. The commissioner may not establish restrictions on use of the cabin or on future transfers of the land sold under this section.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

SENATE FINANCE COMMITTEE
May 11, 1985
2:35 p.m.

SFC 85-61, Side 1, #001 - End
SFC 85-61, Side 2, #001 - #325

Excerpt from Minutes:

SB 269 "An Act relating to cabins on state land; and providing for an effective date."

Senate President Don Bennett, prime sponsor, advised this bill was introduced predicated upon what he believes as inequities currently going on within the State. Unfortunately, he said, cabins are so often thought of as the duck shacks from Anchorage. He assured the Committee this is not what prompted this legislation.

Providing historical data, Senate President Bennett stated that, when people came to Alaska in the 1920s-1950s, they were called settlers or pioneers or trappers, and many built liveable abodes, now referred to by modern standards as "cabins". According to the Department of Natural Resources, there are about 2,000 of these cabins scattered from Barrow to Ketchikan that have been in existence for a number of years. The problem, he continued, is with the status of ownership of the land constantly changing. Early on it was territorial land, and no one cared where the cabin was built. A mining claim was filed or the ground was staked out, and the settler would get to the recording office eventually. However, in 1967, Mr. Udall put a freeze on this situation, and the concensus was that after that freeze was lifted, a settler could once again get things straightened out by filing. This has never happened, he said, but what did happened is that the State received its 104 million acres, native corporations received their 44 million acres, and the federal government kept the residual. Although this bill does not pertain to them, there have been various land swaps before those various entities, he continued. It appears that this involves numerous cabins and that, if the State would allow these people to pay the fair market price, pay for the survey, they could get their abode and one acre of land. This is the intent and what he hopes to accomplish if this legislation becomes law, he said.

Co-chairman John Sackett MOVED to report SB 269 out of Committee with individual recommendation. There being no objection, it was so ordered. CS SB 269 (Res) was REPORTED OUT with a $102.5 fiscal note from Department of Natural Resources and a majority of those Committee members present signing a "do pass" recommendation on the Committee Report.

Alaska State Legislature

P. O. BOX 2801
FAIRBANKS, ALASKA 99707

P. O. BOX V — STATE CAPITOL
JUNEAU, ALASKA 99811

Senate
Office of the President

To: House Resources Committee Members

From: Senator Don Bennett

Date: February 24, 1986

Re: Senate Bill 269

Enclosed for your review you will find a copy of the Fairbanks Daily News-Miner editorial for Monday, February 24, 1986, regarding Senate Bill 269. The News-Miner states:

> SB 269 is a one-time solution to a continuing problem. It would create a network of cabins in just the places where Alaskans have found them useful, make it possible to hand them down to future generations, avoid a new layer of bureaucracy, and even bring a little cash to the state. It's a good bill that should be adopted this year.

I hope you will agree.

Fairbanks Daily News-Miner February 24, 1986

Editorial Opinion and Comment of

FAIRBANKS

Daily News - Miner

"Independent in All Things . . . Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Good idea for cabins

Two bills are pending in the Legislature this year relating to "trespass cabins"—one is good and the other is not.

Trespass cabins are those cabins Alaskans built on state (and federal) land during the 1960s and earlier when it was impossible to get title to public lands.

Last year, the state adopted a set of regulations which allowed the owners of such cabins on state land to get permits to use them. But the regulations were so restrictive they did little to help many users—besides creating yet another permit. You can't get a permit, for example, if you want to use your cabin for anything with an economic value, like trapping or guiding or fishing.

A far better solution is outlined in SB269. This bill, sponsored by Interior Sens. Don Bennett and Jack Coghill along with Kotzebue's Frank Ferguson, would allow the owner of a cabin built on state land before 1968 to buy an acre of land surrounding the cabin by paying fair market value plus the cost of the survey. The sale could proceed even if the land had been withdrawn for a state park or forest after 1968.

A different approach is outlined in HB561, a bill that ought not to be passed. It would create a whole new state bureaucracy to administer a system of public use cabins, which would include "cabins that were constructed on public land without proper authority and that have been or will be acquired by the state."

It took a landslide vote in favor of the Beirne Homestead Initiative—a measure thrown out by the courts that would have allowed every Alaskan to obtain some essentially free state land—to convince the state that we needed an aggressive land disposal program. But land disposal programs have not resolved the problem of these trespass cabins.

There are about a thousand statewide, and they are located in places Alaskans have found them to be useful. In more than one case, the presence of a cabin has meant life instead of death for an Alaskan stranded by weather or injuries. In a multitude of other cases, the cabins have provided comfort and shelter to Alaskans engaging in legitimate uses of the land and its resources.

The last thing we need is a bureaucracy to take care of these cabins with permits and expenses, especially when there already is a group of Alaskans willing to take care of them at their own expense if only they can get clear title to the land. If we just set up a permit system, we'll only be hemmed in with more restrictions, at a cost that could be substantial. By selling the land, the state has nothing to lose and will even come out financially ahead.

Legislators need to hear from Alaskans who support passage of SB269 which will permit the sale of an acre of land to a cabin owner. To send a free 50-word public opinion message to legislators, stop by the Legislative Information Office at 315 Barnette St. (in the back of the downtown post office building) or call the LIO at 452-4448.

SB269 is a one-time solution to a continuing problem. It would create a network of cabins in just the places where Alaskans have found them useful, make it possible to hand them down to future generations, avoid a new layer of bureaucracy, and even bring a little cash to the state. It's a good bill that should be adopted this year.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 29, 1985

COMMISSIONER'S OFFICE
RECEIVED
MAY 1 - 1985

DEPARTMENT OF FISH AND GAME

Honorable Arliss Sturgulewski
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SB 269

Dear Senator Sturgulewski:

At the Senate Resources Committee hearing on Friday, April 26, 1985 you requested that the Attorney General's office provide you with a written opinion pertaining to SB 269. In its current form, Senate Bill 269 contains significant constitutional problems. If SB 269 is enacted into law, there is a very high probability that some individual or group would raise a judicial challenge to the measure on equal protection and possibly other constitutional grounds. In its current form, this legislation would be difficult for the State to sustain in a court of law. Our reasoning follows.

The legislation under consideration provides a means for persons who previously trespassed on State land to acquire title to the land which belongs to all the citizens of the state. Previous attempts to carry out similar policy have been viewed with skepticism by the Department of Law. For example, AS 38.05.079, which was enacted in 1979 as part of FCCSHB 66, gave trespassers a "remote cabin permit" for shelters previously built on State land. This provision of Alaska law was not enacted administratively because of potential constitutional problems. Instead, in 1984, the current administration promulgated regulations found at 11 AAC 65, to develop a cabin permit system which would phase out the existing trespass structures on State land over a period of years. This program, embodied in regulation, apparently meets the needs of individuals who used State land without authorization while avoiding the constitutional problems embodied in SB 269.

The basic problem with which SB 269 runs afoul is the constitutional provision requiring that "all persons are equal and entitled to equal rights, opportunities, and protection under the law...". Article 1 Section 1 of the Alaska Constitution. SB 269 does not treat the citizens of Alaska in an equal fashion. The equal protection clause of the Alaska Constitution was "designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that is often characterized in the most praiseworthy legislation." Isakson v. Rickv, 550 P.2d 359, 365 (1976). But, equal protection, "even under Alaska's stricter standard, does not demand perfection in classification." Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (1980). The Supreme Court applies a single test when weighing constitutional questions. That test is:

> "flexible and dependent upon the importance of the rights involved. Based on the nature of the right, a greater or lesser burden is placed on the state to show that the classification has a fair and substantial relation to a legitimate governmental objective".

Commercial Fisheries Entry Commission v. Apokedak 606 P.2d 1255, 1264 (1980).

We think there are important rights that the citizens of Alaska each enjoy in owning State land. Article 8, Section 6 states that the "lands and interests therein... constitute the State public domain." The means used in SB 269 to give trespassers an exclusive right to land in the public domain severly strain the concept of equal protection.

Citizens who abided by the law and did not trespass on State land would not have an opportunity to procure State land, even at fair market value, as is contemplated by SB 269. Under the test articulated by the Alaska Supreme Court, it is our belief that legislation such as SB 269 would place a great burden on the State to show that the classification favoring trespassers is a fair means for effectuating a legitimate government objective. The legitimate governmental objective in ending continued trespass has been accomplished through 11 AAC 65 and has avoided the constitutional problems edemic in the current bill.

It is possible other attorneys may harbor a different opinion with respect to this situation and the applicability of the Alaska Supreme Court standards. We urge you to consult with the attorneys in the Legislative Affairs Agency for an additional opinion on this particular bill and concerning this matter in general.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

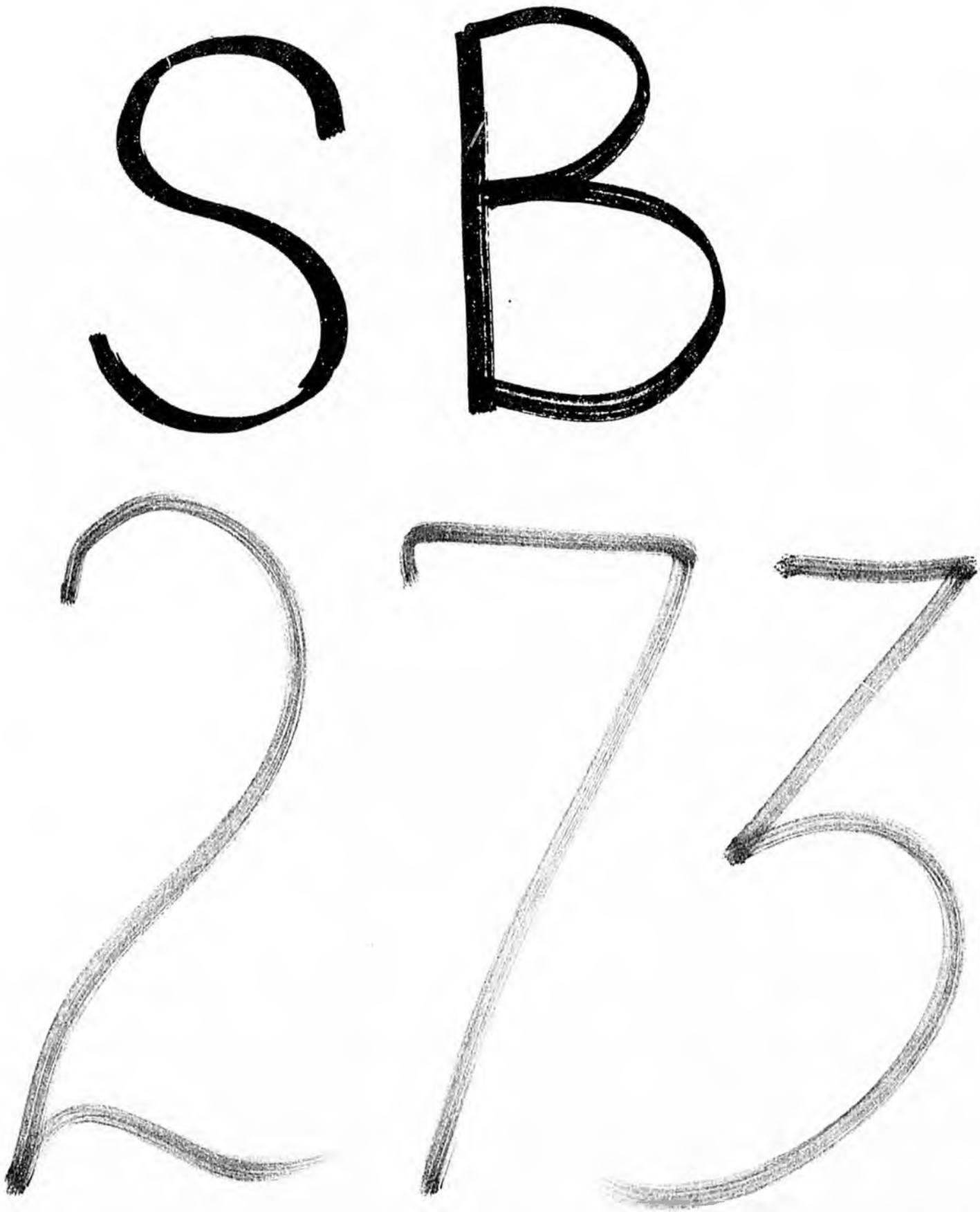
By: Joseph W. Geldhof
Assistant Attorney General

JWG/glg

cc: Members of Senate Resources Committee

Commissioner Esther Wunnicke
Department of Natural Resources

Commissioner Don Collinsworth
Department of Fish and Game


SB
273

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

SUMMARY OF HCSSB 273 (Resources)

The Committee Substitute would allow DNR to dispose for sale up to 20% of the state land base in an area having a radius of five miles from the center of an unorganized community.

The community would determine where the radius point would be, and once determined that point would be a permanent one for the purposes of this section.

Agricultural land is not to be counted as land disposed for sale in a community under this legislation. Leases, material sales, and access for pipelines and utility corridors are not included as sales either.

Additional land can be sold by the state in the area if the community lends its' approval.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 3-21-86

REQUEST

Bill/Resolution No. : SB 273
Title : Classification of State Land for Retention.

Sponsor : Senate Resources
Requestor : House Resources
Date of Request : 3-21-86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Land & Water Management

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Mike Vediner
Division : Land & Water Mgmt
Phone : 465-2400
Date : 3-21-86

Approved by Commissioner : Ned Farquhar
Agency : Natural Resources
Date : 3/22/86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 273

Title: Classification of State Land for Retention

Sponsor: Resources Committee

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact

Prepared By: Mike Vodiner Phone: 465-2400

Division: Land and Water Management Date: April 24, 1985

Approved by Commissioner: Ned Fanyhan Date: April 24, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Original sponsor: Resources Committee

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR SENATE BILL NO. 273 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled. "An Act relating to classification of state land for retention and providing for an effective date."

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

* Section 1. AS 38.04.020(c) is amended to read:

(c) Land to be retained in state ownership may be classified by the commissioner into multiple-use management categories under AS 38.-05.300. Land outside a municipality to be retained in state ownership consists of land classified for retention in state ownership by the commissioner by July 1, 1989 [1985]. Land conveyed to the state by the federal government that is to be retained in state ownership consists of land classified by the commissioner within two years of receipt of tentative approval or patent, whichever occurs first. State land not classified for retention in state ownership or selected by a municipality under this section shall be classified and included in the land disposal bank. The commissioner shall ensure that the bank includes at least 500,000 acres.

* Sec. 2. AS 38.04.020 is amended by adding a new subsection to read:

(l) Unless disposal is approved by the community, the commissioner shall classify for retention and not for disposal state land within a five-mile radius of a point within a community that has been established by the community if the sale of state land would cause the total amount of state land sold within the community to exceed 20 percent of the total state land within the community. This subsection does not prevent the commissioner from entering into leases, timber or

material sale, or a disposal of land for pipeline or utility corridors. This subsection does not apply to state land classified as agricultural. In this subsection, "community" means an unincorporated community eligible for revenue sharing under AS 29 in the unorganized borough.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 4/8/85
Referred: Resources

IN THE SENATE BY THE RESOURCES COMMITTEE

SENATE BILL NO. 273

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to classification of state land for retention; and providing for an effective date."

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

* Section 1. AS 38.04.020(c) is amended to read:

(c) Land to be retained in state ownership may be classified by the commissioner into multiple-use management categories under AS 38.-05.300. Land outside a municipality to be retained in state ownership consists of land classified for retention in state ownership by the commissioner by July 1, 1989 [1985]. Land conveyed to the state by the federal government that is to be retained in state ownership consists of land classified by the commissioner within two years of receipt of tentative approval or patent, whichever occurs first. State land not classified for retention in state ownership or selected by a municipality under this section shall be classified and included in the land disposal bank. The commissioner shall ensure that the bank includes at least 500,000 acres.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Bradley/Cramer
5/7/85

Original sponsor: Resources Committee

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR SENATE BILL NO. 273 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to classification of state land for retention; and providing for an effective date."

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

* Section 1. AS 38.04.020(c) is amended to read:

(c) Land to be retained in state ownership may be classified by the commissioner into multiple-use management categories under AS 38.-05.300. Land outside a municipality to be retained in state ownership consists of land classified for retention in state ownership by the commissioner by July 1, 1989 [1985]. Land conveyed to the state by the federal government that is to be retained in state ownership consists of land classified by the commissioner within two years of receipt of tentative approval or patent, whichever occurs first. State land not classified for retention in state ownership or selected by a municipality under this section shall be classified and included in the land disposal bank. The commissioner shall ensure that the bank includes at least 500,000 acres.

* Sec. 2. AS 38.04.020 is amended by adding a new subsection to read:

(l) Unless disposal is approved by the community, the commissioner shall classify for retention and not for disposal state land within a five-mile radius of a point within a community that has been established by the community if the sale of state land would cause the total amount of state land SOLD within the community to exceed 20 percent of the total state land within the community. This subsection does not prevent the commissioner from entering into leases, timber or

material sale, or a disposal of land for pipeline or utility corridors. This subsection does not apply to state land classified as agricultural. In this subsection, "community" means an unincorporated community eligible for revenue sharing under AS 29 in the unorganized borough.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

M E M O R A N D U M April 23, 1985

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff MKL

RE: SB 273
"An Act relating to classification of state land for retention; and providing for an effective date."

This bill extends the date by which the Commissioner of Natural Resources must classify land for retention in state ownership. The date is changed from July 1, 1985 to July 1, 1989.

The reason for this change is to allow the department to focus on the Federal land use plans which are currently being drafted. These plans will have a tremendous effect on the state in years to come and there is a strong perception that the state is not taking full advantage of the opportunity to influence these plans.

Backup material from the Department is attached. The fiscal note for this bill is zero.

APR 23 1985

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

April 23, 1985

The Honorable Arliss Sturgulewski
Chairman, Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

I am writing to provide you with a our comments on SB 273, relating to classification of state land, which will be heard in your committee on Wednesday, April 24, 1985.

This bill would move the deadline contained in AS 38.04.020(c) for classification of state land outside of municipalities from July 1, 1985 to July 1, 1989. The department has no objection to this proposal, but will comply with the existing statutory deadline, as follows.

As you know, the department is in the process of adopting two major area plans covering the entire Tanana and Susitna basins, within which the plans designate primary and secondary land uses. I am pleased that we now have these documents to guide land classification in these most populated regions. We also have adopted an area plan for state lands in the Bristol Bay region.

Outside of these area plan basins the state has an estimated 32,000,000 acres of patented and tentatively approved land which must be classified under the law. Consequently, over the past six weeks, the department has completed the required agency and public notice to classify these lands for Resource Management, which provides for retention in state ownership under our general multiple use category. These lands may be reclassified under AS 38.05.300 and 11 AAC 55, at such time as the public interest warrants, and Resource Management land is open to mineral entry under 11 AAC 55.040(e). In addition, area plans are scheduled for completion over most of these regions in the next few years and they will provide more detailed land use designations for the purpose of reclassification. A schedule of upcoming area plans is enclosed.

Interagency review of this action included the departments of Fish and Game, Environmental Conservation, Community and Regional Affairs, and Commerce and Economic Development, as

10-J9LH

well as the various divisions within DNR. This review was followed by notices in some 20 newspapers and posting in 25 local post offices, together with legal notice to all municipalities and native corporations proximate to any of the subject lands.

I am enclosing a copy of our Land Planning Report which provides the basis and rationale for this classification action. Please let me know if I may provide any further information.

Sincerely,

Bob Arnold, Deputy

for Esther C. Wunnicke
Commissioner

cc: Tom Hawkins, Director, Division of
Land and Water Management

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT
POUCH 7-005, ANCHORAGE, ALASKA 99510

NOTICE OF CLASSIFICATION

Pursuant to AS 38.05.945(b), Notice is hereby given that the Alaska Division of Land and Water Management proposes to classify all unclassified patented and tentatively approved state land outside municipalities as resource management land. State land also excluded from this classification is in the Bristol Bay, Tanana Basin and Southeast Tideland Plan regions, where plan classifications are completed or nearing completion. There are 236,160 acres to be classified resource management in Southeast Alaska, 3,514,880 million acres in the Copper River Basin and Prince William Sound, 11,461,909 million acres in the Mid-Kuskokwim River area, and 12,069,760 million acres in the remainder of Interior Alaska. Land use plans which will recommend more detailed future classification of this land are scheduled for most of these state lands. The maps and background information for this classification may be seen at the following addresses:

Northern Region
4420 Airport Way
Fairbanks, Alaska

Southcentral Region
3601 "C" Street
Anchorage, Alaska

Southeast Region
400 Willoughby Avenue
Juneau, Alaska

If requested prior to the end of the comment period, an extended period of 5 working days will be allowed at the request of at least (25) Alaskan residents in accordance with 11AAC55.250. Any comments, objections, or expressions of interest regarding these proposed actions must be received by the Division of Land and Water Management on or before 4:30 p.m., April ____, 1985 in order to be considered.

other resource management purposes is estimated at another 2 million acres. Excluding legislative withdrawals of about 4 million acres and the previously mentioned classifications, it is estimated that there are about 32 million acres of unclassified land outside municipalities which are herein proposed for resource management classification. This will not include an estimated 100,000 acres that are now being proposed for settlement and agricultural classification.

Future area plans outside municipalities will cover the Copper River Basin, Prince William Sound, Northwest Alaska, the pipeline corridor and the mid Kuskokwim area.

Land Use Plans

The basis of all land classification actions, as required by AS 38.04.065, are land use plans prepared by the Department of Natural Resources. Land use plans provide guidance for use and development of state land and resources. Statutes provide that land use plans be consistent with local governmental land use plans to the maximum extent determined to be consistent with state interests. Classification is a required part of the formal implementation of plans. The department prepares three levels of land use plans as the basis for classification: area plans, management plans, and land planning reports.

Area plans, such as the 11 million acre Bristol Bay Area Plan, cover relatively large regions of the state. With participation by agencies and the public, resources are identified and land use values are determined. The plans allocate state land for primary and secondary uses. To ensure multiple use and avoid conflict, the allocations are accompanied by management objectives and guidelines which give direction to land managers and provide the criteria for applying specific land classifications. State land and water may not be closed to multiple purpose use if the area involved contains more than 640 acres.

Management plans, such as the 45,000 acre Fish Creek Plan, are more detailed than area plans, usually cover much smaller areas, and are based on and implement area plans. The primary purpose of management plans, however, is to facilitate actual resource development and use. Management plans include functions such as agricultural parcel lot layout, the location of a road system to harvest timber, and determining which lands within an agricultural area will remain as buffers for stream protection. As with area plans, the management objectives and guidelines give direction to land managers and provide criteria for specific land classification.

In this situation, where no plan exists or where a plan will not be completed by July 1, 1985, a land planning report is prepared for land classification actions. In such reports, the land and resource use factors are considered. Public notice is given and comments from agencies and the public are solicited. The process may include public meetings if requested but no resource planning team is formed.

Effect of Classification

AS 38.05.300(a) provides: "This section does not prevent reclassification of land where the public interest warrants reclassification nor does it preclude multiple purpose use of land wherever different uses are compatible." The resource management classification is a strictly multiple use classification where primary uses have not been established. Resource management allows surface leasing, mining claims, sale of materials, oil and gas leasing, and other forms of disposal of interest. Public notice must be given prior to classifying or reclassifying land (AS 38.05.945).

Present classification regulations do not close land to mineral entry and no classification now requires the use of leasehold location for locatable mineral entry, except that all lands previously classified under categories which close or required the use of leasehold location retain that requirement until they are reclassified. Since no existing classification will be changed by this action there will be no effect over mineral claim or use.

Existing Land Use and Ownership Patterns

State land outside municipalities is generally unaccessible and remote. Use of the land, therefore, is generally not intensive. Most existing uses consist of hunting, fishing, trapping, recreation and subsistence. Prospecting takes place and some placer mining not dependent on developed transportation occurs. Use of timber is primarily for house logs and fuel.

The ownership patterns are primarily a mixture of federal, state and Native village and regional corporations. Private land other than Native corporation land consists of scattered Native allotments, entry under the federal land laws and small amounts of state land conveyed under the remote parcel and lottery programs. The attached maps show the location of the public and Native ownership patterns in relationship to the state patented and TA's lands.

Resource Potential

The Statewide Natural Resources Plan summarizes statewide resource policies for each resource use under the department's management authority, as well as, the department's policies for managing fish and wildlife habitat and transportation. Because of the statewide resources plan's broad scale and the general nature of its resource value designations, it is not intended to be used as the sole basis for classifications. It is referred to, however, for guidance in the preparation of other more detailed land use plans. The statewide resource plan is contained in the official file for this classification action for the purpose identifying the general resource values in this land planning report. It may be seen at any regional office of the division, or it may be available upon request from the Resource Allocation Section, Division of Land and Water Management, Pouch 7-005, Anchorage, Alaska 99510.

Resource Goals and Objectives

The Statewide Natural Resources Plan provides goals and objectives for the major resource categories in the state. Land and resource uses conveyed in the plan include agriculture, fish and wildlife habitat, forestry, minerals, coal, geothermal, oil and gas, recreation, settlement, transportation and water. The plan is subject to revision and updating. Copies of the plan also may be viewed at the regional offices of the Division of Land and Water Management.

Land Use Designations

The Statewide Natural Resources Plan, Appendix II, Designation Units identifies primary and secondary land uses. As previously mentioned, however, these designations are not intended to be the sole basis for classification. The resource management classification allows leasing of state land, issuance of remote cabin permits and the sale of more than 10 mbf of timber to an individual purchaser. The resource management classification does not allow the sale of land or an interest in land. These designations in the statewide plan do not apply where they have been replaced by area plans.

Mineral Potential

Mineral potential is generally identified in the Statewide Natural Resources Plan. No state land will be closed to locatable mineral entry or restricted to mining by leasehold location by this classification action. Neither does classification affect mineral leasing under AS 38.05.135 - AS 38.05.184, including coal, oil and gas.

Management Guidelines

The Statewide Natural Resource Plan contains management guidance and management intent in Appendix II by designation unit. These guidelines represent department policies to guide actions of the department when making land use and management decisions. These guidelines help ensure compatability among competing land uses. The resource management classification is fully multiple use and does not emphasize any particular use as being primary. Area plans may define primary or secondary uses in the future or other information may become available which would warrant a more specific classification, but in the meantime, no land or resource use options, except sale of land, are foreclosed.

State Planning Efforts — an Overview

On-going and Future Area Planning Efforts:

- Copper River Area Plan. now underway. scheduled for completion in FY87
- Southeast Tidelands Area Plan. Phase I. now underway. scheduled for completion in FY85
- Southeast Tidelands Area Plan. Phase II. scheduled to begin in FY85 and end in FY87
- Prince William Sound Area Plan. scheduled to begin in FY85 and end in FY87
- Northwest Alaska Area Plan. scheduled to begin in FY86 and end in FY88
- Kuskokwim Basin Area Plan. scheduled to begin in FY86 and end in FY88
- Unscheduled Area Plans
- Tanana Basin Area Plan approved in April 1985
- Susitna Area Plan approved in April 1985
- Willow Subbasin Area Plan approved in October 1982
- Management plans for several areas in the Susitna Valley and state forests in Haines and the Tanana Valley

SB

2094

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

TO: Senate Resource Committee Members March 17, 1986

FROM: Senate Resource Committee Staff MSL

RE: Committee Substitute for Senate Bill No. 294 (Resources) "An Act relating to guiding; and providing for an effective date." and
SCR 18 Relating to the Guide Licensing and Control Board.

The guide board will sunset on June 30th of this year unless its term is extended. SB 294, introduced by this committee, extends the life of the board until 1990. The bill also rewrites many of the guide statutes to try to cleanup the problems that have been associated with industry and the board.

SCR 18 is a resolution by Senator Faiks that urges the guide board to make a number of regulatory changes related to its meetings and to the assigning of exclusive guide areas. A number of these changes are statutorily addressed in SB 294, however, there is no conflict between the bill and the resolution and they work well together as companions.

The Alaska Professional Hunters' Association, representatives of the Air Taxi industry, the Division of Fish and Wildlife Protection, the Governor's special assistant for Boards and Commissions, and the Division of Occupational Licensing are some of the groups or people that have been consulted in the

preparation of this bill. This is not to suggest that everyone consulted agrees with all parts of this bill, and it is hoped there will be testimony from a number of these groups at the public hearing where they can point out any specific concerns.

Since the original bill was prepared, Legislative Audit has done a sunset performance report on the guide board. In the audit, a number of recommendations were made to improve the performance of the board. Many of these areas were already addressed in the bill and in the proposed committee substitute, we have tried to address the remainder of those problems that can be helped by statutory change. In the brief sectional analysis later in this memo, each of the audit's statutory recommendations is discussed.

Committee members have previously been given copies of SCR 18, SB 294 and the proposed CS for SB 294 and copies of the sunset performance report on the Guide Board.

An updated brief sectional analysis of the new CS follows. One of the main differences between this CS and the previous one is additional clarification in the definition of "guiding" to make certain that it does not aversely effect legitimate outfitters. Senator Coghill's office also suggested a number of amendments which have been incorporated.

Sectional Analysis March 17, 1986
Committee Substitute for Senate Bill No. 294 (Resources)
"An Act relating to guiding; and providing for an effective date."

Section 1 - deletes "licensing and control" from the name of the board.

Section 2 - extends the life of the board to June 30, 1990.

Section 3 - adds intent language that increases game management considerations to the section that establishes the guide board. The audit approves of this change (pg 16, item A-1). Additional new language clarifies that for administrative purposes, the board is in the Department of Commerce. In the original bill, the number of guides on the board was changed from no more than three to no less than three. The audit (pg.16, item B-1) said this had the potential of expanding the number of industry members at the expense of public participation. The CS deletes this change.

Section 4 - is a technical revision dealing with terms of office.

Section 5 - is a new section that establishes a quorum requirement of four and requires a majority vote (4) of the full membership of the board for approval of changes to regulations, licenses or restricted guide areas.

Section 6 - amends the powers and duties of the boards. There are three substantive changes. The first amends subsection (a)(1) to allow the board to administer oral examinations to applicants with a limited ability to read or write English. The second adds "consistent" to the requirement in subsection (a)(8) that the procedure for limiting the number of guides operating in a designated game unit be "equitable and reasonable". The audit approves of this change (pg 16, item A-2). The third would require the board to have two meetings per year, one in Anchorage and one in another city.

Section 7 - the special guide license section is repealed and reenacted to to provide more detailed criteria for the license.

Section 8 - amends the qualifications for a registered guide license by allowing a person who has served as a special guide for three years and meets all other criteria to become a registered guide.

Section 9 - Clarifies the limitations of an assistant guide license. It specifies that assistant guides may not contract for hunts and that assistant guides must be employed and supervised at all times while the assistant guide is in the field. The audit approves of this change (pg 16, item A - 4).

Section 10 - sets license fee structure for guide licenses in accordance with AS 08.01.065 under the Department by regulation.

Section 11 - is a new section requiring the registered guide exam to be given at least twice a year. At least once every other year the location of the exam has to be somewhere other than Anchorage.

Section 12 - is a new section that specifies licenses expire biennially on a date specified by the department.

Section 13 - is a new section that requires the board to adopt uniform and consistent criteria to be used in assigning restrictive guide areas and specifies a number of the criteria to be used. The assignment and transfer of restricted areas has been a particular problem for the Guide Board in the past. This section also allows a guide to transfer a guide area if the guide has had the area for over five years. This time requirement is designed to limit speculation in guide areas. It would also allow a person to transfer to a son or daughter who had worked in the business and wanted to continue (pg. 16, item A - 2). The section further disallows the sale of restrictive guide areas.

Section 14 - under existing law the board can only consider complaints of unethical or incompetent guide practices after receipt of three separate complaints. The original bill contained a provision that would have required those complaints to be received in the five years prior to the hearing. The audit said this made a bad situation worse. In the CS, the five year requirement has been dropped and the section modified to allow the board to hold a hearing on any complaint. This five year limit was not related to the five year requirement mentioned above. A new subsection has also been added to require the board to hold a hearing on any complaint filed concerning a life threatening situation. See audit (pg 16, item B-2).

Section 15 - sets out the offenses for which the board may revoke, suspend, or deny renewal of a license.

Section 16 - sets out the offenses for which the board is required to revoke a license. The audit (pg.17, item B-4), expressed concern that amendments to this section might unnecessarily restrict the offenses upon which the board can take disciplinary action. This is wrong. Nothing in this section is a limitation on the board's power, the new language adds offenses for which license revocation is mandatory.

Section 17 - clarifies that a person may not engage in guiding during a period of license revocation or other disciplinary action, nor can the person work for another guide during the period. It also forbids someone knowingly hiring a person as a guide while that person's license is revoked or suspended.

Section 18 - This section establishes that a certified copy of judgement of conviction is conclusive evidence of the commission of that crime and upon receipt of two such judgements of a guide for offenses listed under AS 08.54.200(c)(3) the board shall immediately suspend the guide's license until disciplinary proceedings are concluded.

Section 19 - lists a series of specific acts related to guiding that are unlawful and specifies the penalties for these acts.

Section 20 - is the definition section. The definition of "guide" is expanded to to clarify that persons who provide strictly transportation, property, or equipment in connection with locating or taking game are not guiding. The intent of this section is that a person who is physically present in the field while another person locates or takes game and who receives or expects remuneration for this or any other activity connected with the hunt is guiding. The new CS clarifies that "in the field" does not include being present at a lodge or camp. The definition is designed to allow legitimate transportation services and outfitters to continue to provide services but to prohibit them from actually accompanying hunters into the field where illegal guiding may take place. The definition of unethical conduct is expanded, and a definition of big game is added.

Section 21 - Class A assistant guides are added to the list of master guides, registered guides and assistant guides that nonresidents may be accompanied by.

Section 22 - allows the board to expand this list by regulation.

Section 23 - is cleanup drafting related to the repeal of AS 16.05.407(c) (discussed in Section 28).

Section 24 - adds the Guide Board to the list of boards and commissions in AS 39.50.200(b).

Section 25 - is the repealer section. AS 08.54.040(b) deals with oral exams and is replaced in this bill with AS 08.54.040(a)(1). AS 08.54.142-146 were the transporter sections. AS 16.05.407(c) repeals a section that made it unlawful to import polar bear hides into Alaska unless personally accompanied by a guide. Polar bears are currently managed by the federal government.

Section 26 - is a July 1, 1986 effective date.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSB 294 (Res) am
Title : An Act relating to guiding

Sponsor : Resources Committee
Requestor : House Resources
Date of Request : 4/17/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Fish & Wildlife Protection

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY	0	0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

Prepared by : Captain James R. Nutgrass — Phone : 269-5509
Division : Fish & Wildlife Protection — Date : 4/14/86

Approved by Commissioner : [signature] — Date : 4/16/86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSSB 294 (Res) am

SUPPORT
April 14, 1986

CSSB 294 (Res)am - "An Act relating to guiding."

The Department of Public Safety supports CS for Senate Bill No. 294, an act relating to guiding.

Since the initial inception of the guide statute there has been a substantial increase in the level of professionalism that has been obtained within the guide industry. The state has gained in more recent years an acceptable level of compliance to the hunting and guiding laws. We believe that it is very critical that a guide bill be enacted if we are to maintain a level of professionalism that has been experienced within the guide industry in recent years.

Presently the state is experiencing an increase in the number of outfitters/transporters operating hunting businesses in the state of Alaska.

In addition, there have been individuals who have recently been apprehended for providing guide service without being properly licensed as Alaskan guides. The Division of Fish and Wildlife Protection is closely monitoring and evaluating information and complaints received regarding guiding activities being performed by non-licensed individuals. It is extremely difficult to enforce or apprehend an unlicensed individual who does, in fact, provide all services that a licensed guide can under the provisions of the law. The professional guide is presently highly regulated, and to eliminate the regulatory responsibilities that have been imposed on the guiding industry would more than likely have an adverse affect on the commercial utilization of the state's resource.

Page 1, Line 16-18: We believe the purpose of licensing and regulating the activities of guides should be in the interest of promoting professionalism within the guide industry and to insure that quality, ethical and legal hunts are provided to clients consistent with the management of the state's wildlife resources.

Page 1, Line 24-25: Delete new wording.

Comments: Title 08.01.050(a) 1-18 provides that the Department of Commerce and Economic Development shall provide administrative and budgetary service to the Guide Board.

Page 2, Line 29, Page 3, Line 1 & 2: It is recommended that paragraph (5) collect and maintain records of hunts conducted by guides be deleted.

Comments: This responsibility should be under the authority of the Department of Commerce, as they are already physically maintaining all documentation and records of hunts conducted by guides.

The Guide Board should not have the responsibility or authority by statute or by regulations adopted by the Board to maintain or dictate the use or exclusion of documents relating to guiding to state agencies responsible for the enforcement of the regulations or statutes.

Page 3, Line 20-23: SPECIAL GUIDE LICENSE.

Comments: This bill does not address the responsibility that can be carried out by a special guide. Can a special guide conduct and book guided hunts independent from a registered or master guide, etc.? Is there a listing of specific species of marine mammals that a special guide may guide clients for? AS 16 would not provide for a special guide to conduct guided hunts for polar bear with non-resident clients. It does not appear that the state will in the near future have the management responsibilities for any specified marine mammals.

Page 4, Line 11 (5): We recommend the following wording has not been convicted of a state or federal game or guiding law during the previous five years.

Page 4, Line 17 (2): The residency requirement was repealed, however, in unlawful acts, AS 08.54.210 (5), a registered guide is required to have a resident hunting license.

Page 5, Line 3-4: How does a special guide document or report his guiding activity? Does he submit statements of financial remuneration?

Page 5, Line 14 (10): We recommend that or special guide be inserted after "assistant guide" and before "whose". A special guide should also meet the requirements of being favorably recommended by clients.

Page 8, Line 2-3: AS 08.54.200: Recommend adding the words or federal after "state" and before "hunting".

Page 8, Line 26: (A) Waste of animal.

Comments: There is currently no violation for wanton waste in the guide statute or regulations. A person who kills a wild food animal and fails to salvage the meat per 16.30.010 would be in violation of wanton waste, not the guide.

Page 9, Line 5: (B) An area closed by the board.

Comments: We recommend that the following wording be deleted "The Board". Recommend the following wording: hunting in an area closed to hunting by either state or federal regulations. A professional guide should have to obey and respect closed areas, even if they are federal

regulations. A professional guide should not have immunity from Guide Board action if apprehended in KATMAI NATIONAL PARK, McKINLEY PARK or any federal park closed to hunting.

Page 9, Line 11: Recommend that the word knowingly be deleted.

Comments: A guide has a professional responsibility to know in hiring a person the status of his guide license. We should not have a greater burden of proof.

Page 10, Line 8: Recommend adding the words or federal after "state" and before "fish".

Section 05.54.210 Unlawful Acts.

Page 10, Line 12 (2): We recommend that the words commit or be added after "to" and before "aid".

Page 10, Line 13 (2): We recommend that .05 be deleted. Delete .05 after "AS 16" and before "or".

By having the wording AS 16, it would then include WANTON WASTE under AS 16.30.010 and be consistent with the proposed section of this bill (c)(3)(A) wanton waste.

Page 10, Line 19 (3): Add having the appropriate license that is issued after "without" and before "under".

Comments: We have experienced where a licensed assistant guide did in fact contract for a guided hunt and did independently guide a client on a guided hunt in 1985. This individual was apprehended and prosecuted through the federal court. The Department of Law declined state prosecution. The current wording of Title 8, Unlawful Acts, does not provide for prosecuting an assistant or Class A guide who is licensed, but does act in the capacity as a master or registered guide.

In this case, the licensed assistant guide did assist the client in taking a brown bear the same day as being airborne and in the middle of Katmai National Monument. On completion of the federal prosecution, this case was presented to the Department of Commerce for civil litigation concerning the assistant guide's license. This is a good example of why federal violations should be included in this bill, otherwise flagrant violations such as this can occur and the licensed assistant guide is immune from civil action by the Guide Board. In addition, this type of individual, once he meets the requirements for registered guide, could, infact, be so licensed as the federal violation would not be considered.

Page 10, Line 27 (4): Recommend adding having a current and appropriate license after "without".

Page 10, Line 29 - Page 11, Line 2 (5): This paragraph requires a "resident" hunting license, but the residency requirements have been repealed from the bill.

Comments: We presently do have non-residents who are licensed assistant guides. Once they meet the registered guide requirements and pass the necessary test, they can be legally licensed, even though they are non-residents. This bill provides for a person who is a non-resident, but who has obtained a registered guide license, to be convicted of a felony for not having a valid Alaskan resident hunting license. This section appears to be in conflict with other sections which delete the residency requirement for obtaining a guide license. This could create a legal problem which may not be prosecutable.

Page 11, Line 12 (7)(b): Add WITHOUT APPROPRIATE LICENSE OR after "activity" and before "during".

Page 12, Line 11: Delete..."or being present in the field for the purpose of providing meat packing services for the big game animal only after the animal has been killed."

One of the major problems facing Fish and Wildlife Protection today is the increasing number of unlicensed guiding operations developing in the state under the guise of transporting and/or outfitting. To successfully prosecute we must be able to determine what is occurring in the field between the unlicensed guide and the hunter, i.e., is the hunter being personally accompanied and directed by the unlicensed guide. The only way we have been successful in these cases is by placing undercover hunters in the camp of the suspect operation. This is a very time consuming and expensive operation. Under the current guide definition the unlicensed guide can be "in the field" with the hunter providing he is not personally accompanying and directing the hunter.

Consequently, a guide or guiding definition which would allow only a licensed guide to be present in the field with the hunter would greatly enhance or ability to enforce the guiding statutes and regulations and to better prevent the occurrence of unlicensed guiding activity.

We would therefore request the removal of any part of the definition which would allow a person to be present in the field with a hunter if there was a financial or mutual arrangement for hunting services and if that person is not a licensed guide.

Robert J. Sundberg

* = Changes in CS

Hein 4/29/86 ✓

out: language out
new = new language
change = different language

Original sponsor: Resources Committee

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 294 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to guiding; and providing for an effective date."

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

* Section 1. AS 08.01.010(14) is amended to read:

(14) Guide [LICENSING AND CONTROL] Board (AS 08.54.010);

* Sec. 2. AS 08.03.010(c)(20) is amended to read:

(20) Guide [LICENSING AND CONTROL] Board (AS 08.54.010 - June 30, 1990 [1986].

* Sec. 3. AS 08.54.010 is amended to read:

ARTICLE 1. GUIDE [LICENSING AND CONTROL] BOARD.

Sec. 08.54.010. CREATION AND MEMBERSHIP OF BOARD. For the purposes of licensing and regulating the activities of guides in the interest of the state's wildlife resources there [THERE] is created the Guide [LICENSING AND CONTROL] Board consisting of seven members. No more than three members of the board shall hold or have held a * registered, *master, or *class A assistant guide license. The other members must [SHALL] have a general knowledge of the game resources of the state and may not have a vested interest in the guiding industry. A minimum of 10 years residence in the state is required for all members of the board. For administrative purposes, the board is in the Department of Commerce and Economic Development.

* Sec. 4. AS 08.54.020 is amended to read:

Sec. 08.54.020. APPOINTMENT AND TERM OF OFFICE. The members of the board shall be appointed by the governor and confirmed by the

legislature for staggered terms of three years or until their successors are appointed. [INITIAL TERMS ARE AS FOLLOWS: THREE MEMBERS FOR ONE YEAR, TWO MEMBERS FOR TWO YEARS, AND TWO MEMBERS FOR THREE YEARS.] A member may be removed at the pleasure of the governor.

* Sec. 5. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.035. QUORUM; VOTING REQUIREMENT. Four members of the board constitute a quorum for the transaction of business, for the performance of a duty, and for the exercise of any power under this chapter. The board may not adopt a regulation, revoke, suspend, or deny renewal of a license, or assign, modify, or revoke a restricted guide area unless the action is approved by a vote of a majority of the full membership of the board.

* Sec. 6. AS 08.54.040(a) is amended to read:

(a) Except as provided in AS 08.54.045, the board shall

(1) prepare, grade and administer examinations, which may include oral examinations of applicants who demonstrate limited ability to read or write the English language;

(2) determine [AND PASS ON] qualifications of applicants for licenses and authorize the issuance of licenses to those who qualify;

(3) establish guide performance standards and regulate activity;

(4) compile, maintain and publish an annual [A GUIDE] register of master and registered guides who have not been convicted of a violation of a *[FEDERAL OR] state *[SPORT FISH,] game [,] or guiding statute or regulation; a guide listed in the register whose license is revoked or suspended shall be removed from the register while the guide's license is revoked or suspended;

(5) *[COMPILE, MAINTAIN AND PUBLISH A RECORD OF REGISTERED

OR MASTER GUIDES WHO HAVE COMPLETED A CONTRACT HUNT IN ANY OF THREE YEARS IMMEDIATELY PRECEDING THE PUBLISHING OF THE RECORD;

(6)] prohibit guiding activities which are unsportsmanlike, unethical, unsafe, against principles of conservation, degrading to the guiding profession, or which adversely affect the natural resources;

(6) [(7)] after a hearing, revoke, suspend or deny renewal of a license in accordance with AS 08.54.200;

(7) [(8)] establish a quota of licensed operating guides who may operate within designated geographical game units or subunits of the state and provide for an equitable, [AND] reasonable, and consistent procedure for limiting the number of guides to that quota; preference may *[SHALL] be given to qualified available and willing licensed guides who reside within the designated game unit or subunit;

(8) meet at least twice annually, once in Anchorage and once in another municipality.

* Sec. 7. AS 08.54.045 is repealed and reenacted to read:

Sec. 08.54.045. SPECIAL GUIDE LICENSE. The board may issue a special guide license to a person who applies to conduct a guided hunt for a specific species of marine mammal in a specifically designated area if the applicant

(1) is 21 years of age or older;

(2) has, for at least 10 years, resided and hunted in the area of the state in which the applicant is to guide;

(3) is able to perform the* duties of a special guide;

(4) has demonstrated knowledge of the following areas to an extent and degree satisfactory to the board:

(A) fish and game laws and regulations;

(B) relevant characteristics of the specific species

to be hunted;

(C) field preparation of trophies;

(D) care of game meat;

(E) use of guiding gear;

(F) firearm safety;

(G) practical first aid;

(H) booking and contracting hunts;

(5) has not been convicted of a game or guiding law violation during the previous five years;

new * (6) has not been convicted of a crime involving moral turpitude.

* Sec. 8. AS 08.54.110 is amended to read:

Sec. 08.54.110. QUALIFICATIONS FOR REGISTERED GUIDE LICENSE. A person is entitled to be licensed as a registered guide if the person

(1) is 21 years of age or <u>older</u> [MORE];

(2) [Repealed

(3)] has practical field experience in the handling of firearms, hunting, judging trophies, field preparation of trophies, first aid and photography;

<u>(3)</u> [(4)] is familiar with the terrain and transportation problems in the district for which the license is requested;

<u>(4)</u> [(5)] has passed the qualification examination prepared and administered by the board;

<u>(5)</u> [(6)] has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime involving moral turpitude;

change * <u>(6)</u> [(7)] has legally hunted in the state <u>during any</u> [FOR ALL OR PART OF EACH OF] five years in a manner directly contributing to the person's experience and competency as a guide;

(7) [(8)] has been licensed as and performed the services of an assistant guide in the state for a part of each of three years, or has guided in the state for a part of each of three years under a special guide license issued under AS 08.54.045;

(8) [(9)] submits a written recommendation to the board from a registered guide for whom the applicant has worked * or from two registered guides; however, the requirements of this paragraph do not apply to a person who has guided under a special guide license for three years; new change

(9) [(10)] is capable of performing the * essential [PHYSICAL] duties associated with guiding [ACTIVITIES];

(10) [(11)] has been favorably recommended in writing by two hunters that the person has guided or assisted in guiding during each year of the person's three years as an assistant guide, whose recommendations have been solicited by the board from a list provided by the applicant [;

(12) MEETS ADDITIONAL QUALIFICATIONS WHICH THE BOARD MAY REQUIRE].

* Sec. 9. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.141. PRIVILEGES AND LIMITATIONS OF ASSISTANT GUIDE LICENSE. An assistant guide

(1) may not contract to conduct a guided hunt; and

(2) shall be employed and supervised by a registered or master guide at all times while the assistant guide is in the field on guided hunts.

* Sec. 10. AS 08.54.170 is amended to read:

Sec. 08.54.170. LICENSE FEES. (a) The Department of Commerce and Economic Development shall set license fees under AS 08.01.065 for each of the following:

(1) master guide;

(2) registered guide;

(3) class A assistant guide;

(4) assistant guide;

(5) special guide [TRANSPORTER].

(b) The license fee for a master guide, registered guide, special guide, class-A assistant guide, or assistant guide license is in addition to the fee required for a hunting or fishing license.

* Sec. 11. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.186. REGISTERED GUIDE EXAMINATION. The board shall administer the qualification examination required under AS 08.54.110 at least twice a year. An examination may not be given within 90 days after the previous exam. At least once every other year the board shall give the examination at a location other than Anchorage.

* Sec. 12. AS 08.54.190 is amended by adding a new subsection to read:

(d) A master guide, registered guide, special guide, class-A assistant guide, or assistant guide license expires biennially, on a date set by the Department of Commerce and Economic Development.

* Sec. 13. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.195. RESTRICTED GUIDE AREAS. (a) Under AS 08.54.-040(a)(8), the board may establish and assign restricted guide areas for master guides or registered guides. The board shall adopt regulations under the Administrative Procedure Act (AS 44.62) that establish uniform and consistent criteria, including a point system, to be used by the board when it establishes and assigns a restricted guide area.

(b) The board shall consider the following factors before it assigns a restricted guide area:

(1) the extent to which the guide who has applied for the area has * guided in the game management unit in which the area is

change

located;

(2) the extent to which the guide occupied and invested in the area;

(3) the effects, including the economic effect, on other guides that would result from creation of the area;

(4) big game populations in the area;

(5) the land ownership status of the area; and

(6) other relevant facts or circumstances.

(c) The board may adopt regulations limiting the number of clients with which a guide may contract for hunts in a restricted guide area used by more than one guide.

(d) Unless the board determines after a public hearing that it is not in the public interest to do so, the board may transfer a restricted guide area to a person qualified for assignment who has been recommended by the guide to whom the area was assigned, or by a person authorized to represent the guide, if the recommendation is made

(1) after five years have elapsed from the date of the assignment of the guide area; or

(2) during the first five years after the date of assignment and the guide has died or suffered a major disability, as defined by the board.

(e) A guide may not sell or lease a restricted guide area. A guide may sell or otherwise transfer a lodge, camp, or other lawful improvement to property located in a restricted guide area. Sales price may not exceed fair market value.

* Sec. 14. AS 08.54.200(a) is repealed and reenacted to read:

(a) The board shall hold a hearing to determine whether a licensee should be disciplined within a reasonable time after (1)

complaints concerning a licensee's guiding activities are filed with the board by three or more of the licensee's clients from separate parties; (2) a complaint concerning a guide's conduct during a life-threatening situation is filed with the board; or (3) a licensee has been convicted of a violation of a state hunting or guiding statute or regulation. The board may hold a hearing to determine whether disciplinary action is necessary if a complaint concerning a licensee's guiding activities is filed with the board by a client of the licensee.

* Sec. 15. AS 08.54.200(b) is amended to read:

(b) After a hearing, the board may revoke, suspend, or deny renewal of a license if the board finds that the licensee

(1) engaged in unethical activity, unsafe activity, or activity that [WHICH] adversely affects the natural resources of the state when the [SUCH] activity is related [UNRELATED] to the [LEGAL AND LEGITIMATE] purposes of the contract hunt; or

(2) violated a provision of a *[FEDERAL OR] state *[SPORT FISH,] game or guide statute or regulation.

* Sec. 16. AS 08.54.200(c) is amended to read:

(c) After a hearing, the board shall revoke a license if the board finds that the licensee

(1) does not meet the qualifications specified by statute or regulation for the class of license held;

(2) is incompetent as a master guide, registered guide, special guide, class-A assistant guide, or assistant guide;

(3) during the five years immediately preceding the hearing has been convicted of a violation [TWO VIOLATIONS] of a federal or state statute or regulation prohibiting

(A) waste of a wild food animal;

(B) hunting on the same day airborne; or

(C) hunting during a closed hunting season; or

(4) during the five years immediately preceding the hearing, has been convicted of two violations of a state statute or regulation prohibiting hunting in a restricted area not assigned to the licensee and without proper written permission *[SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS].

* Sec. 17. AS 08.54.200(d) is repealed and reenacted to read:

(d) A person who is disciplined under this section may not engage in a guiding activity during the period of license revocation or disciplinary action. A person licensed under this chapter may not hire as a guide a person whose guide license is suspended or revoked under this section. A guide whose license is suspended or revoked may not guide in the employ of a person licensed under this chapter.

* Sec. 18. AS 08.54.200 is amended by adding new subsections to read:

(f) If a certified copy of a judgment of conviction of a guide for an offense described under (c)(3) of this section, or for each of two offenses under (c)(4) of this section, is filed with the board, the board shall immediately suspend the guide's license. The suspension may be ordered even if the conviction resulted from a plea of nolo contendere or if the conviction is under appeal. The order remains in effect until after the final disposition of the disciplinary proceeding under this section.

(g) A certified copy of a judgment of conviction of a guide for an offense is conclusive evidence of the commission of that offense in a disciplinary proceeding instituted against the guide or outfitter under this section based on that conviction.

(h) Within 30 days after a hearing under this section, the board shall notify the complainant of the results of the hearing, including

written reasons justifying a decision not to take disciplinary action. If the board decides not to hold a discretionary hearing, the board shall give the complainant written notice of its reasons within 30 days after making the decision.

(i) In this section "two violations of a state statute or regulation" means two violations of a single statute or a single regulation, or violations of two statutes or two regulations, or one violation of a statute and one violation of a regulation.

* Sec. 19. AS 08.54.210(a) is repealed and reenacted to read:

Sec. 08.54.210. UNLAWFUL ACTS. (a) It is unlawful for

(1) a master guide, registered guide, special guide, class A assistant guide, or assistant guide to fail to timely report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or guiding statute or regulation that the guide reasonably believes was committed by a client or an employee of the guide;

(2) a guide to aid the commission of a violation of this chapter or of a state game or guiding statute or regulation or to permit the commission of a violation that the guide knows or reasonably believes is being or will be committed without attempting to prevent it, short of using force, and without reporting it;

(3) a person to guide without having a current valid guide license and resident hunting license in actual possession;

(4) a person to advertise as or represent to be a guide without holding a current valid guide license;

(5) a guide to intentionally obstruct or hinder or attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client of the guide;

(6) a person to guide without being validly licensed as a

guide under this chapter and as a resident hunter under AS 16;

* (7) an assistant guide to contract to conduct a guided hunt;

* (8) an assistant guide to be in the field on a guided hunt except while employed and supervised by a registered or master guide.

* Sec. 20. AS 08.54.210(b) is amended to read:

(b) A person who violates *(a)(1) - (5) [(6)] of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both, and the person's license may be revoked for a period up to five years. However, a person who engages in guiding [OR TRANSPORTING] activity during the period for which the person's license is suspended or revoked under this chapter, or who violates *(a)(6) - (8) of this section, is guilty of a felony punishable, upon conviction, by a fine of not more than $5,000 and by imprisonment for not less than one year nor more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding [OR TRANSPORTING] activity engaged in during the period of suspension or revocation shall be seized [CONFISCATED] by persons authorized to enforce this chapter. [A PERSON WHO VIOLATES (a)(7) OF THIS SECTION, UPON CONVICTION, IS SUBJECT TO THE SAME LICENSE REVOCATION PROVISION AS FOR A VIOLATION OF (a)(1) - (6) OF THIS SECTION AND, IN ADDITION, IS PUNISHABLE BY A FINE OF NOT MORE THAN $5,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH.]

* Sec. 21. AS 08.54 is amended by adding a new section to art. 3 to read:

*Sec. 08.54.230. RECORDS OF GUIDED HUNTS. The Department of

Commerce and Economic Development shall collect and maintain records of hunts conducted by guides. The department shall make the records available to state and federal agencies charged with the enforcement of statutes and regulations relating to guiding or game if requested for enforcement purposes. For all other purposes, the records are confidential and are not subject to inspection or copying under AS 09.25.110 - 09.25.121.

* Sec. 22. AS 08.54.240 is amended to read:

Sec. 08.54.240. DEFINITIONS. In this chapter

(1) "big game" means brown bear, grizzly bear, polar bear, caribou, moose, black bear, bison, Sitka blacktail deer, elk, mountain goat, musk-ox, wolf, wolverine, mountain or Dall sheep, and walrus;

(2) "board" means the Guide [LICENSING AND CONTROL] Board;

* Rewrite (3) [(2)] "guide" [, "GUIDES"] or "guiding" means accompanying or directing a hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation, while the hunter or the person accompanying or directing the hunter spots, stalks, pursues, tracks, kills, or attempts to kill big game; in this paragraph, "in the field" does not include being present in a boat with living quarters or at a lodge or base camp [ASSISTING ANOTHER PERSON TO TAKE GAME WITH THE INTENT OF RECEIVING MONETARY OR MATERIAL REMUNERATION FOR THE SERVICES, BY ACCOMPANYING AND DIRECTING THAT PERSON PERSONALLY OR THROUGH A LICENSED ASSISTANT GUIDE FOR THE DURATION OF A HUNT, AND NOT SOLELY FOR THE PURPOSE OF PROVIDING TRANSPORTATION SERVICES];

(4) [(3)] "resident" has the meaning given in AS 16.05.940 [MEANS A PERSON WHO

(A) ..AINTAINS A PLACE OF RESIDENCE WITHIN THE STATE;

(B) REPEALED

(C) SHOWS BY ALL ATTENDING CIRCUMSTANCES THE INTENTION TO PERMANENTLY RESIDE IN THIS STATE];

(5) [(4)] "restricted guide area" is a geographical area of the state the boundaries of which are determined by the board, and in which guided hunts may be conducted only by the guides to whom the area is assigned under AS 08.54.195 ["TRANSPORTING" OR THE "ACTIVITY OF TRANSPORTING" MEANS CONVEYING A PERSON BY ANY LAWFUL MEANS TO AN AREA FOR REMUNERATION OR MATERIAL BENEFIT IN EXCESS OF NORMAL OPERATING COSTS, WHEN THE PRIMARY PURPOSE OF THE PERSON BEING CONVEYED IS THE TAKING OF BIG GAME AND THE ASSOCIATED REMOVING OF BIG GAME MEAT AND PARTS OF BIG GAME AFTER BIG GAME HAS BEEN TAKEN; BIG GAME AS USED IN THIS PARAGRAPH MEANS GAME WHICH, IF TAKEN BY A NONRESIDENT, WOULD REQUIRE A BIG GAME TAG];

(6) [(5)] "unethical activity" means

(A) deception or misrepresentation [IN ANY DEGREE] involving prospective or actual clients either before, during, or following a contract hunt, including misrepresentation through private or public advertising of the type, duration, cost or conditions of the contract hunt [HUNTS];

(B) [MISREPRESENTATION EITHER THROUGH PRIVATE COMMUNICATION OR PUBLIC ADVERTISING OF THE NATURE, TYPE, DURATION, COST, OR OTHER CONDITIONS OF CONTRACT HUNTS;

(C)] making a guaranty that a species or certain number of species of game will be taken on a contract hunt;

(C) engaging in unsafe or unsportsmanlike activities that are detrimental to the game resources of the state, as defined by regulations of the board, including violations of state hunting or guiding statutes or regulations; or

(D) accepting a deposit for guiding services without

providing before the hunt a signed contract to provide the services.

* Sec. 23. AS 16.05.407(a) is amended to read:

(a) It is unlawful for a nonresident to hunt, pursue or take brown bear, grizzly bear, polar bear, or sheep in this state, unless personally accompanied by

(1) a person who is licensed as a master guide, registered guide, class-A assistant guide or assistant guide by the Guide [LICENSING AND CONTROL] Board; or

(2) a resident over 19 years of age who is

(A) the spouse of the nonresident; or

(B) is related to the nonresident, within and including the second degree of kindred, by marriage or blood.

* Sec. 24. AS 16.05.407(d) is amended to read:

(d) A nonresident who violates (a) [OR (c)] of this section, or who fails to furnish an affidavit under (b) of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than $5,000, or by both.

* Sec. 25. AS 39.50.200(b) is amended by adding a new paragraph to read:

(48) the Guide Board.

* Sec. 26. AS 08.54.040(b), 08.54.142 - 08.54.146, 08.54.185; AS 16.05.340(e) and 16.05.407(c) are repealed.

* Sec. 27. This Act takes effect July 1, 1986.

* = Difference in CS

Hein
5/1/86 ✓

Original sponsor: Resources Committee

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 294 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to guiding; and providing for an effective date."

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

* Section 1. AS 08.01.010(14) is amended to read:

(14) Guide [LICENSING AND CONTROL] Board (AS 08.54.010);

* Sec. 2. AS 08.03.010(c)(20) is amended to read:

(20) Guide [LICENSING AND CONTROL] Board (AS 08.54.010 - June 30, 1990 [1986].

* Sec. 3. AS 08.54.010 is amended to read:

ARTICLE 1. GUIDE [LICENSING AND CONTROL] BOARD.

Sec. 08.54.010. CREATION AND MEMBERSHIP OF BOARD. For the purposes of licensing and regulating the activities of guides in the interest of the state's wildlife resources there [THERE] is created the Guide [LICENSING AND CONTROL] Board consisting of seven members. No more than three members of the board shall hold or have held a registered, master, or class A assistant guide license. The other members must [SHALL] have a general knowledge of the game resources of the state and may not have a vested interest in the guiding industry. A minimum of 10 years residence in the state is required for all members of the board. For administrative purposes, the board is in the Department of Commerce and Economic Development.

* Sec. 4. AS 08.54.020 is amended to read:

Sec. 08.54.020. APPOINTMENT AND TERM OF OFFICE. The members of the board shall be appointed by the governor and confirmed by the

legislature for staggered terms of three years or until their successors are appointed. [INITIAL TERMS ARE AS FOLLOWS: THREE MEMBERS FOR ONE YEAR, TWO MEMBERS FOR TWO YEARS, AND TWO MEMBERS FOR THREE YEARS.] A member may be removed at the pleasure of the governor.

* Sec. 5. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.035. QUORUM; VOTING REQUIREMENT. Four members of the board constitute a quorum for the transaction of business, for the performance of a duty, and for the exercise of any power under this chapter. The board may not adopt a regulation, revoke, suspend, or deny renewal of a license, or assign, modify, or revoke a restricted guide area unless the action is approved by a vote of a majority of the full membership of the board.

* Sec. 6. AS 08.54.040(a) is amended to read:

(a) Except as provided in AS 08.54.045, the board shall

(1) prepare, grade and administer examinations, which may include oral examinations of applicants who demonstrate limited ability to read or write the English language;

(2) determine [AND PASS ON] qualifications of applicants for licenses and authorize the issuance of licenses to those who qualify;

(3) establish guide performance standards and regulate activity;

(4) compile, maintain and publish an annual [A GUIDE] register of master and registered guides who have not been convicted of a violation of a [FEDERAL OR] state [SPORT FISH,] game [,] or guiding statute or regulation; a guide listed in the register whose license is revoked or suspended shall be removed from the register while the guide's license is revoked or suspended;

(5) [COMPILE, MAINTAIN AND PUBLISH A RECORD OF REGISTERED

OR MASTER GUIDES WHO HAVE COMPLETED A CONTRACT HUNT IN ANY OF THREE YEARS IMMEDIATELY PRECEDING THE PUBLISHING OF THE RECORD;

(6)] prohibit guiding activities which are unsportsmanlike, unethical, unsafe, against principles of conservation, degrading to the guiding profession, or which adversely affect the natural resources;

(6) [(7)] after a hearing, revoke, suspend or deny renewal of a license in accordance with AS 08.54.200;

(7) [(8)] establish a quota of licensed operating guides who may operate within designated geographical game units or subunits of the state and provide for an equitable, [AND] reasonable, and consistent procedure for limiting the number of guides to that quota; preference may [SHALL] be given to qualified available and willing licensed guides who reside within the designated game unit or subunit;

(8) meet at least twice annually, once in Anchorage and once in another municipality.

* Sec. 7. AS 08.54.045 is repealed and reenacted to read:

Sec. 08.54.045. SPECIAL GUIDE LICENSE. The board may issue a special guide license to a person who applies to conduct a guided hunt for a specific species of marine mammal in a specifically designated area if the applicant

(1) is 21 years of age or older;

(2) has, for at least 10 years, resided and hunted in the area of the state in which the applicant is to guide;

(3) is able to perform the duties of a special guide;

(4) has demonstrated knowledge of the following areas to an extent and degree satisfactory to the board:

(A) fish and game laws and regulations;

(B) relevant characteristics of the specific species

to be hunted;

(C) field preparation of trophies;

(D) care of game meat;

(E) use of guiding gear;

(F) firearm safety;

(G) practical first aid;

(H) booking and contracting hunts;

(5) has not been convicted of a game or guiding law violation during the previous five years;

(6) has not been convicted of a crime involving moral turpitude.

* Sec. 8. AS 08.54.110 is amended to read:

Sec. 08.54.110. QUALIFICATIONS FOR REGISTERED GUIDE LICENSE. A person is entitled to be licensed as a registered guide if the person

(1) is 21 years of age or <u>older</u> [MORE];

(2) [Repealed

(3)] has practical field experience in the handling of firearms, hunting, judging trophies, field preparation of trophies, first aid and photography;

<u>(3)</u> [(4)] is familiar with the terrain and transportation problems in the district for which the license is requested;

<u>(4)</u> [(5)] has passed the qualification examination prepared and administered by the board;

<u>(5)</u> [(6)] has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime involving moral turpitude;

<u>(6)</u> [(7)] has legally hunted in the state <u>during any</u> [FOR ALL OR PART OF EACH OF] five years in a manner directly contributing to the person's experience and competency as a guide;

(7) [(8)] has been licensed as and performed the services of an assistant guide in the state for a part of each of three years, or has guided in the state for a part of each of three years under a special guide license issued under AS 08.54.045;

(8) [(9)] submits a written recommendation to the board from a registered guide for whom the applicant has worked or from two registered guides; however, the requirements of this paragraph do not apply to a person who has guided under a special guide license for three years;

(9) [(10)] is capable of performing the essential [PHYSICAL] duties associated with guiding [ACTIVITIES];

(10) [(11)] has been favorably recommended in writing by two hunters that the person has guided or assisted in guiding during each year of the person's three years as an assistant guide, whose recommendations have been solicited by the board from a list provided by the applicant [;

(12) MEETS ADDITIONAL QUALIFICATIONS WHICH THE BOARD MAY REQUIRE].

* Sec. 9. AS 08.54.110 is amended by adding a new subsection to read:

(b) The commissioner of commerce and economic development may order that an applicant for an initial license under this section be allowed to take the license examination or be issued the license if, after reviewing a petition filed by the applicant, the commissioner finds that

(1) the board denied the applicant an opportunity to take the license examination, or refused to approve issuance of the license;

(2) the board's denial or refusal was based on

(A) an error of fact by the board;

(B) the applicant's failure of the license examination due to faulty or unfair examination questions or procedures; or

(C) an erroneous or false statement in a recommendation submitted under (a)(8) of this section;

(3) the applicant is otherwise qualified to take the examination or to be issued the license; and

(4) sustaining the board's denial or refusal would work a substantial injustice on the applicant.

* Sec. 10. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.141. PRIVILEGES AND LIMITATIONS OF ASSISTANT GUIDE LICENSE. An assistant guide

(1) may not contract to conduct a guided hunt; and

(2) shall be employed and supervised by a registered or master guide at all times while the assistant guide is in the field on guided hunts.

* Sec. 11. AS 08.54.170 is amended to read:

Sec. 08.54.170. LICENSE FEES. (a) The Department of Commerce and Economic Development shall set license fees under AS 08.01.065 for each of the following:

(1) master guide;

(2) registered guide;

(3) class A assistant guide;

(4) assistant guide;

(5) special guide [TRANSPORTER].

(b) The license fee for a master guide, registered guide, special guide, class-A assistant guide, or assistant guide license is in addition to the fee required for a hunting license.

* Sec. 12. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.186. REGISTERED GUIDE EXAMINATION. The board shall

administer the qualification examination required under AS 08.54.110 at least twice a year. An examination may not be given within 90 days after the previous exam. At least once every other year the board shall give the examination at a location other than Anchorage.

* Sec. 13. AS 08.54.190 is amended by adding a new subsection to read:

(d) A master guide, registered guide, special guide, class-A assistant guide, or assistant guide license expires biennially, on a date set by the Department of Commerce and Economic Development.

* Sec. 14. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.195. RESTRICTED GUIDE AREAS. (a) Under AS 08.54.-040(a)(7), the board may establish and assign restricted guide areas for master guides or registered guides. The board shall adopt regulations * that establish uniform and consistent criteria, including a point system, to be used by the board when it establishes and assigns a restricted guide area.

* dept Commerce

(b) The board shall consider the following factors before it assigns a restricted guide area:

(1) the extent to which the guide who has applied for the area has guided in the game management unit in which the area is located;

(2) the extent to which the guide occupied and invested in the area;

(3) the effects, including the economic effect, on other guides that would result from creation of the area;

(4) big game populations in the area;

(5) the land ownership status of the area; and

(6) other relevant facts or circumstances.

(c) The board may adopt regulations limiting the number of clients with which a guide may contract for hunts in a restricted

guide area used by more than one guide.

(d) Unless the board determines after a public hearing that it is not in the public interest to do so, the board may transfer a restricted guide area to a person qualified for assignment who has been recommended by the guide to whom the area is assigned, or by a person authorized to represent the guide, if the recommendation is made

(1) after five years have elapsed from the date of the assignment of the guide area; or

(2) during the first five years after the date of assignment and the guide has died or suffered a major disability, as defined by the board.

(e) A guide may not sell or lease a restricted guide area. A guide may sell or otherwise transfer a lodge, camp, or other lawful improvement to property located in a restricted guide area. Sales price may not exceed fair market value.

* Sec. 15. AS 08.54.200(a) is repealed and reenacted to read:

(a) The board shall hold a hearing to determine whether a licensee should be disciplined within a reasonable time after (1) complaints concerning a licensee's guiding activities are filed with the board by three or more of the licensee's clients from separate parties; (2) a complaint concerning a guide's conduct during a life-threatening situation is filed with the board; or (3) a licensee has been convicted of a violation of a federal or state hunting or guiding statute or regulation. The board may hold a hearing to determine whether disciplinary action is necessary if a complaint concerning a licensee's guiding activities is filed with the board by a client of the licensee.

* Sec. 16. AS 08.54.200(b) is amended to read:

(b) After a hearing, the board may revoke, suspend, or deny renewal of a license, and may withdraw a licensee's restricted guide area assignment, if the board finds that the licensee

(1) engaged in unethical activity, unsafe activity, or activity that [WHICH] adversely affects the natural resources of the state when the [SUCH] activity is related [UNRELATED] to the [LEGAL AND LEGITIMATE] purposes of the contract hunt; or

(2) violated a provision of a federal or state [SPORT FISH,] game or guide statute or regulation.

* Sec. 17. AS 08.54.200(c) is amended to read:

(c) After a hearing, the board shall revoke a license and shall withdraw a licensee's restricted guide area assignment if the board finds that the licensee

(1) does not meet the qualifications specified by statute or regulation for the class of license held;

(2) is incompetent as a master guide, registered guide, special guide, class-A assistant guide, or assistant guide;

(3) during the five years immediately preceding the hearing has been convicted of a violation [TWO VIOLATIONS] of a federal or state statute or regulation prohibiting

(A) waste of a wild food animal;

(B) hunting on the same day airborne;

(C) hunting during a closed hunting season; or

(D) hunting in an area closed by federal regulation; or

(4) during the five years immediately preceding the hearing, has been convicted of two violations of a state statute or regulation prohibiting hunting in a restricted area not assigned to the licensee and without proper written permission [SPORT FISH, GAME OR

GUIDE STATUTES OR REGULATIONS].

* Sec. 18. AS 08.54.200(d) is repealed and reenacted to read:

(d) A person who is disciplined under this section may not engage in a guiding activity during the period of license revocation or disciplinary action. A person licensed under this chapter may not hire as a guide a person whose guide license is suspended or revoked under this section. A guide whose license is suspended or revoked may not guide in the employ of a person licensed under this chapter.

* Sec. 19. AS 08.54.200 is amended by adding new subsections to read:

(f) If a certified copy of a judgment of conviction of a guide for an offense described under (c)(3) of this section, or for each of two offenses under (c)(4) of this section, is filed with the board, the board shall immediately suspend the guide's license. The suspension may be ordered even if the conviction resulted from a plea of nolo contendere or if the conviction is under appeal. The order remains in effect until after the final disposition of the disciplinary proceeding under this section.

* (g) A certified copy of a judgment of conviction of a guide* for an offense is conclusive evidence of the commission of that offense in a disciplinary proceeding instituted against the guide under this section based on that conviction.

out (modifier)

(h) Within 30 days after a hearing under this section, the board shall notify the complainant of the results of the hearing, including written reasons justifying a decision not to take disciplinary action. If the board decides not to hold a discretionary hearing, the board shall give the complainant written notice of its reasons within 30 days after making the decision.

(i) In this section "two violations of a state statute or regulation" means two violations of a single statute or a single

regulation, or violations of two statutes or two regulations, or one violation of a statute and one violation of a regulation.

* Sec. 20. AS 08.54.210(a) is repealed and reenacted to read:

(a) It is unlawful for

(1) a master guide, registered guide, special guide, class A assistant guide, or assistant guide to fail to timely report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or guiding statute or regulation that the guide reasonably believes was committed by a client or an employee of the guide;

* (new public safety)

(2) a guide to commit or aid the commission of a violation of this chapter or of a state game or guiding statute or regulation or to permit the commission of a violation that the guide knows or reasonably believes is being or will be committed without attempting to prevent it, short of using force, and without reporting it;

(3) a person to guide without having a current valid guide license and resident hunting license in actual possession;

(4) a person to advertise as or represent to be a guide without holding a current valid guide license;

(5) a guide to intentionally obstruct or hinder or attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client of the guide;

(6) a person to guide without being validly licensed as a guide under this chapter and as a resident hunter under AS 16;

(7) an assistant guide to contract to conduct a guided hunt;

(8) an assistant guide to be in the field on a guided hunt except while employed and supervised by a registered or master guide.

* Sec. 21. AS 08.54.210(b) is amended to read:

(b) A person who violates (a)(1) - (5) [(6)] of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both, and the person's license may be revoked for a period up to five years. However, a person who engages in guiding [OR TRANSPORTING] activity during the period for which the person's license is suspended or revoked under this chapter, or who violates (a)(6) - (8) of this section, is guilty of a felony punishable, upon conviction, by a fine of not more than $5,000 and by imprisonment for not less than one year nor more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding [OR TRANSPORTING] activity engaged in during the period of suspension or revocation may [SHALL] be seized [CONFISCATED] by persons authorized to enforce this chapter and may be forfeited to the state as provided under AS 16.05.195. [A PERSON WHO VIOLATES (a)(7) OF THIS SECTION, UPON CONVICTION, IS SUBJECT TO THE SAME LICENSE REVOCATION PROVISION AS FOR A VIOLATION OF (a)(1) - (6) OF THIS SECTION AND, IN ADDITION, IS PUNISHABLE BY A FINE OF NOT MORE THAN $5,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH.]

new (public safety)

* Sec. 22. AS 08.54 is amended by adding a new section to art. 3 to read:

Sec. 08.54.230. RECORDS OF GUIDED HUNTS. The Department of Commerce and Economic Development shall collect and maintain records of hunts conducted by guides. The department shall make the records available to state and federal agencies charged with the enforcement of statutes and regulations relating to guiding or game if requested for enforcement purposes. For all other purposes, the records are

confidential and are not subject to inspection or copying under AS 09.25.110 - 09.25.121.

* Sec. 23. AS 08.54.240 is amended to read:

Sec. 08.54.240. DEFINITIONS. In this chapter

(1) "big game" means brown bear, grizzly bear, polar bear, caribou, moose, black bear, bison, Sitka blacktail deer, elk, mountain goat, musk-ox, wolf, wolverine, mountain or Dall sheep, and walrus;

(2) "board" means the Guide [LICENSING AND CONTROL] Board;

(3) [(2)] "guide" [, "GUIDES"] or "guiding" means accompanying or directing a hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation, while the hunter or the person accompanying or directing the hunter spots, stalks, pursues, tracks, kills, or attempts to kill big game; in this paragraph, "in the field" does not include being present in a boat with living quarters or at a lodge or base camp [ASSISTING ANOTHER PERSON TO TAKE GAME WITH THE INTENT OF RECEIVING MONETARY OR MATERIAL REMUNERATION FOR THE SERVICES, BY ACCOMPANYING AND DIRECTING THAT PERSON PERSONALLY OR THROUGH A LICENSED ASSISTANT GUIDE FOR THE DURATION OF A HUNT, AND NOT SOLELY FOR THE PURPOSE OF PROVIDING TRANSPORTATION SERVICES];

(4) [(3)] "resident" has the meaning given in AS 16.05.940 [MEANS A PERSON WHO

(A) MAINTAINS A PLACE OF RESIDENCE WITHIN THE STATE;

(B) REPEALED

(C) SHOWS BY ALL ATTENDING CIRCUMSTANCES THE INTENTION TO PERMANENTLY RESIDE IN THIS STATE];

(5) [(4)] "restricted guide area" is a geographical area of the state the boundaries of which are determined by the board, and in which guided hunts may be conducted only by the guides to whom the

area is assigned under AS 08.54.195 ["TRANSPORTING" OR THE "ACTIVITY OF TRANSPORTING" MEANS CONVEYING A PERSON BY ANY LAWFUL MEANS TO AN AREA FOR REMUNERATION OR MATERIAL BENEFIT IN EXCESS OF NORMAL OPERATING COSTS, WHEN THE PRIMARY PURPOSE OF THE PERSON BEING CONVEYED IS THE TAKING OF BIG GAME AND THE ASSOCIATED REMOVING OF BIG GAME MEAT AND PARTS OF BIG GAME AFTER BIG GAME HAS BEEN TAKEN; BIG GAME AS USED IN THIS PARAGRAPH MEANS GAME WHICH, IF TAKEN BY A NONRESIDENT, WOULD REQUIRE A BIG GAME TAG];

(6) [(5)] "unethical activity" means

(A) deception or misrepresentation [IN ANY DEGREE] involving prospective or actual clients either before, during, or following a contract hunt, including misrepresentation through private or public advertising of the type, duration, cost or conditions of the contract hunt [HUNTS];

(B) [MISREPRESENTATION EITHER THROUGH PRIVATE COMMUNICATION OR PUBLIC ADVERTISING OF THE NATURE, TYPE, DURATION, COST, OR OTHER CONDITIONS OF CONTRACT HUNTS;

(C)] making a guaranty that a species or certain number of species of game will be taken on a contract hunt;

(C) engaging in unsafe or unsportsmanlike activities that are detrimental to the game resources of the state, as defined by regulations of the board, including violations of state hunting or guiding statutes or regulations; or

(D) accepting a deposit for guiding services without providing before the hunt a signed contract to provide the services.

* Sec. 24. AS 16.05.407(a) is amended to read:

(a) It is unlawful for a nonresident to hunt, pursue or take brown bear, grizzly bear, polar bear, or sheep in this state, unless

personally accompanied by

(1) a person who is licensed as a master guide, registered guide, class-A assistant guide or assistant guide by the Guide [LICENSING AND CONTROL] Board; or

(2) a resident over 19 years of age who is

(A) the spouse of the nonresident; or

(B) is related to the nonresident, within and including the second degree of kindred, by marriage or blood.

* Sec. 25. AS 16.05.407(d) is amended to read:

(d) A nonresident who violates (a) [OR (c)] of this section, or who fails to furnish an affidavit under (b) of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than $5,000, or by both.

* Sec. 26. AS 39.50.200(b) is amended by adding a new paragraph to read:

(48) the Guide Board.

* Sec. 27. AS 08.54.040(b), 08.54.142 - 08.54.146, 08.54.185; AS 16.-05.340(e) and 16.05.407(c) are repealed.

* Sec. 28. This Act takes effect July 1, 1986.

SECTIONAL ANALYSIS
HCS CSSB 294 (Res)

Section 1: Deletes language in the title of the Board, so that it reads Guide Board. This deletion is contained throughout the bill.

Section 2: Extends the sunset date for the Guide Board to June 30, 1990.

Section 3: States the purpose of the Guide Board, including new language relating to wildlife conservation, and puts it under the Department of Commerce and Economic Development.

Section 4: Gives the length for a term of office for members serving on the Guide Board.

Section 5: Outlines the requirements for the Board to conduct business.

Section 6: Outlines the duties and responsibilities of the Board in conducting its business for the purpose of regulating the guiding industry. This section includes new language intended to bring more consistency to the licensing and regulating of guides. It also provides for guidelines in areas of testing requirements where applicants do not have a good grasp of the English language and insures the meetings of the Board will be more accessible to members of the industry by requiring at least one meeting a year outside of Anchorage.

Section 7: This section puts into statute existing regulatory language allowing for residents of the Arctic Coastal region to acquire a special guide license for the purposes of guiding marine mammals.

Section 8: Outlines the requirements for obtaining a registered guide license. This section includes some new language which makes more specific certain requirements and also provides for a new alternative making the requirements for qualifying to go through the testing procedures more reasonable.

Section 9: Allows for a procedure for qualified applicants wishing to obtain a registered guide license to go through the Commissioner if through administrative procedures it is found the Board erred in disqualifying the applicant.

Section 10: This section outlines the privileges and limitations of an assistant guide.

Section 11: This section relates to the Department's responsibilities in setting fees for the various categories of guide licenses.

Section 12: Outlines the procedures by which qualification examinations will be conducted.

Section 13: Puts the licensing of guides on a biennially basis.

Section 14: This is a new section relating to restricted guide areas. This allows the guide industry to be regulated for purposes of wildlife conservation by restricting guides to certain geographic areas; thereby creating the need for the guide to become involved in wildlife management in order to perpetuate his or her economic future. This section also requires the Board to use consistent and equitable criteria whenever transferring or creating restricted guide areas and also bars a guide from selling his or her guide area.

Section 15: Outlines the requirements under which the Board must follow when disciplinary action is to be taken against a guide.

Section 16: This section states the reasons for which the Board may revoke or suspend a guide's license and also adds new language which allows the Board to withdraw the guide's restricted area at the time of a license revocation.

Section 17: Section 17 is the same as Section 16, except that it provides the guidelines for which a guide's license <u>shall</u> be revoked and his or her restricted guide area withdrawn.

Section 18: This section provides the factors where a person who's license has been revoked or suspended may not act in the capacity of a guide, nor be hired to work for someone who is licensed as a guide.

Section 19: Provides new language which allows the board to suspend a guide's license during disciplinary proceedings if a judgement of conviction is filed with the Board. It further adds that a judgement of conviction is conclusive evidence that an offense was

committed. Section 19 also requires the Board to give notice of the results of a hearing held under AS 08.54.200(a) or a written statement giving reasons for not taking disciplinary action within 30 days after the decision to the complainant.

Section 20: This section outlines those acts which are unlawful under AS 08.54.210(a). Most of this section is similar to existing statutes and regulations governing the guide industry; however, there is also some new language. Under this section, it would now become illegal for a guide to obstruct or hinder other hunters out in the field. It would also become illegal for someone to act as a guide without being licensed both as a registered guide and a resident hunter.

Section 21: Provides for the penalties associated with those acts designated as unlawful under AS 08.54.210(a). New language in this section makes it a felony to guide or act as a guide without holding a registered or master guide license or resident hunting license.

Section 22: Adds a new section requiring the Department to keep a record of all hunts conducted by guides and to keep them confidential except to appropriate state agencies for purposes of enforcement.

Section 23: Contains the definitions for terms used within this section. The major changes are in the definition of guiding. The new definition would disallow persons not licensed to personally accompany another person while hunting and receive compensation for such services. The other significant definition with new language is under unethical activity. The new language here would remedy most of the circumstances of unethical business activities promulgated by a guide over a client.

Section 24: This section adds class-A assistant guides to the list of guides required for nonresidents to hunt dall sheep, polar bear and brown/grizzly bear.

Section 25: Provides for the penalty received by a nonresident who violates the conditions outlined in AS 08.54.407(a).

Section 26: Adds Guide Board to the list of Boards and Commissions under AS 39.50.200(b)

Section 27: This section repeals various statutes related to the guide industry which no longer apply or are no longer necessary.

Section 28: Provides for the effective date.

HOUSE

COMMITTEE REPORT

5/2

(9)

Date referred: 4/18/86

FURTHER REFERRALS: Rules

DATE: May 2, 1986

The RESOURCES Committee has considered CSSB 294(Res)am

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

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with HCS CSSB 294 (Resources) [XX] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz

Herrmann

Jenkins

Pearce

Cato

Thompson

SIGNING OTHER RECOMMENDATIONS:

Sund

Co-Chairman Shultz

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF FISH & WILDLIFE PROTECTION

BILL SHEFFIELD, GOVERNOR

ROBERT J. SUNDBERG
COMMISSIONER

P. O. BOX 5188, ANNEX
ANCHORAGE, ALASKA 99502

February 28, 1983

Clark Engel, Master Guide
4129 Lana Court
Anchorage, Alaska 99504

Dear Clark:

During the past few years the guiding industry through the Guide Board has made substantial improvements in cleaning up the industry and improving the image of guiding in Alaska. The Guide Board distribution of exclusive guide areas and it's thorough investigations of accusations made against members of the guiding industry have gone a long way to improving the guiding business in Alaska.

With over 1,100 licensed guides, ranging from Master Guides to Assistants it takes a well coordinated effort to ensure that the same standards are applied by the guiding industry throughout the state. The industry has an impact upon tourism and upon the image of the state of Alaska through the sportsmen that it caters to. This Board has helped standardize the practices and procedures through which the guides have operated thereby giving the guiding industry in Alaska a good image on the outside. From a law enforcement standpoint, during the past few years we have seen a steady decline in the number of guide related violations. In fact, in FY-82 of the commercial users of the resource, the guiding industry had one of the lowest of violation rates of any in the state. I think this speaks highly on the industry and this trend should be continued. Guiding has a role in Alaska and how big that role will be will depend entirely upon the activities and the image of the industry.

Clark, this isn't much but I hope this will give you and your members some idea of how I felt the industry has progressed and the usefulness of the Board during my few years of association with them.

Sincerely,

Colonel Robert J. Stickles
Director

RJS/rt

12-L12LH

Illegal Commercial Operations Affecting the Alaska Professional Guide

by Robert Boutang
Alaska Department of Public Safety
Fish and Wildlife Protection
Statewide Investigations

In 1973 the Guide Licensing and Control Board was formulated as the regulatory body for the guiding industry. In the mid 1960's to the mid 1970's, drastic regulation changes in seasons, bag limits and methods of taking game had a direct impact on many of the guiding operations.

These ten years of regulation changes had the most direct impact on the guiding industry. During these ten years, the brown bear season on the Alaska Peninsula was cut from nine months per year to four weeks every two years. The use of aircraft was also severely limited by regulation. It was understandable with the numerous statute and regulation changes that did occur in such a short period of time, that some guides found it difficult at best to adapt their guiding operations to meet the changing times. What were legal methods of hunting one day were all of a sudden illegal the next.

In many cases, however, some guides did operate as though there were no restrictions on the methods and means of taking big game. We did, in fact, have guides who operated with little fear of being apprehended in the commission of a crime.

In 1972, one of the enforcement priorities established within the Division of Fish and Wildlife Protection was the illegal guides who persisted in continually taking big game animals unlawfully.

Through the efforts of the Guide Licensing and Control Board in establishing standards, regulations and exclusive and joint use areas, in conjunction with a concerted enforcement effort taken by the Division of Fish and Wildlife Protection in the 1970's, we have seen a dramatic decline of the flagrant illegal guide operations.

The State of Alaska can take pride in the fact that we now have a professional guiding industry that provides an outstanding service to a clientele from all over the world and the revenue that is generated from the guiding industry is one that benefits many people and businesses inside the State of Alaska.

Today, we face a new problem that concerns and affects the professional Alaskan guides, the public and State of Alaska. This concern is the unlicensed individuals who are in fact booking clients and acting as guides. It is now known that there is more illegal unlicensed guiding activity than anyone thought existed.

This is one concept of illegal guiding which virtually has never before been worked by Alaska Fish and Wildlife Protection. The Investigative section of Fish and Wildlife Protection is now developing intelligence regarding this problem. The Division has established unlicensed guiding operations as one of our main enforcement priorities.

We found some of these so-called outfitters (unlicensed guides), who provided drop-off type hunts, were actually going so far as to personally accompany the clients in the field; calling in

PRINTING SPECIALISTS

- Design
- Graphics
- Offset Printing
- Letterpress
- Foil Stamping
- Rubber Stamps

"We print almost everything — except money — the Feds won't let us"

Letterheads • Envelopes • Cards
Newspapers • Magazines
Programs • Brochures
4 Color Process • Typesetting
Color Separations
Continuous Computer Forms

Commercial Printing Co.

P.O. Box 710
Fairbanks, Alaska 99707
907-456-6668

Sheep River
HUNTING CAMPS



- We specialize in Alaska brown bear & Dall sheep
- 24 years guiding in Alaska
- Fair chase for all Alaskan big game

Big & Small...
We got 'em all!

member of SCI & FNAWS

Ed & Deb Stevenson
Box 87-1721
Wasilla, Alaska 99687

DENALI OUTFITTERS

Specializing in
Trophy Moose/Grizzly Hunts
Hunt with Men that Live and Work in the Mountains and make it their Greatest Goal to provide YOU with
THE ULTIMATE HUNTING ADVENTURE



References include
Presidents of Major

Call BILL FITZGERALD
Box 93
Talkeetna, AK 99676
(907) 733-2566
Member: APHA NRA FNAWS SCI NAHC

moose, using aircraft to drive and herd animals and using radio communications to aid and take animals.

Once such unlicensed guide showed a client (undercover hunter) a check which was two times the amount of a regular hunt and he said, "This is what I get for my hunts and I produce more record book animals than anyone in Alaska and I don't even have a guide license."

Another unlicensed guide, who recently pled guilty, took a client (undercover hunter) in Game Management Unit 9, Katmai National Park, during the off season and killed a brown bear the same day he was airborne. He also tried to solicit our hunter into getting him more clients. This is the type of people we are dealing with; they have no respect for the legal guides or the resources.

This year our Investigative section investigated two outfitters (unlicensed guides) who took approximately 40-50 moose each in a two-year period. That is putting a serious dent in someone's exclusive guiding area and in Alaska's moose population. These illegal non-licensed guides are going into honest hard-working professional guides' areas and stealing the resources and giving hunting and the professional guides, through the publicity, a bad name. The licensed guides, hunters, the general




ALASKA

WE HUNT THE BIG ONES

Specializing in:
DALL SHEEP • BROWN BEAR

Bookings for Sheep, Moose and Grizzly 1986

Complete Outfitting with Excellent Equip.



LARRY RIVERS
Box 107
Talkeetna, AK 99576
(907) 733-2471

TIMBERLINE OUTFITTERS

ALASKA GAME HUNTS

TROPHY Dall Sheep, Grizzly and Black Bear, Moose and Caribou from clean, comfortable camps. Offering the finest in service with a guarantee of a top notch hunt with registered professional guides and an outfitter with over 30 years experience in the game fields of Alaska.

Call or write:

RED BEEMAN
P.O. Box 134 • Dept. 49T • Chugiak, Alaska 99567
(907) 688-2722





Trophy Caribou *Mulchatna Area*

BIG RIVER
HUNTING & TRAPPING

Professional Trophy Guide of
WESTERN ALASKA

Big game trophy hunts for
Dall Sheep, Caribou, Moose,
Black, Brown & Grizzly Bear,
summertime fishing
& photography.



Trophy Moose *Mulchatna Area*



Record Class Spring Grizzly, taken by Mike Green of Arlington, Texas 1985

BOB HANNON
(907) 963-3221
General Delivery
Koyuk, Alaska 99753

Specializing in Record Class Spring Grizzly



Record Class Spring Grizzly taken by John Macaluso of Murrysville, Pennsylvania 1985

public and the wildlife are all the victims.

These types of illegal operations have a direct effect on the licensed professional guide whereas the licensed guide must adhere to statutes and regulations which affect his operations.

While we do have the problem of unlicensed guides in Alaska, we first have to identify the people involved. To do this, we need all the help we can get from the Guide Board, professional guides and the concerned citizens.

In addition, it is extremely important that the Guide Board, professional guides, concerned public, and our Division continue to mutually cooperate in identifying individuals who are unlicensed and are acting in the capacity of licensed guides.

The unlicensed guides do not have to follow any laws. They are not bound by restrictions or ethics and in many cases, they have a total disregard for the resources and other guides. They take game anytime and place and use any methods they want to.

Only through the continuing cooperation of all of us working together can we hope to reduce the illegal unlicensed guiding operations that exist in the State of Alaska.

New Life Sustaining Members

Charter Life Sustaining membership's final issuance was December 31, 1984. However, another classification was created which is referred to as Life Sustaining membership offered for $250.00 instead of the $200.00 Charter Life Sustaining offer. The following person has joined as a Life Sustaining member:

Charles Folkman of Oconomowoc, Wisconsin

A.P.H.A.

Hunting & Fishing Licenses
Game Tags • Harvest Tickets
Permit Applications
and Information
Mail-in Applications Welcome
SAME DAY SERVICE
Cashier's Checks & Money Orders only
APHA • P.O. Box 451
Talkeetna, AK 99676 • (907) 733-2688

WESTWIND GUIDE SERVICE

offering quality hunts in Western Alaska





- Remote Camps with Comfortable Accommodations
- High Hunter Success Rate of Over 90%
- 1:1 Client/Guide Ratio Assures Personal Attention
- Offering Unique Float Hunting Trips
- World Class Fishing Available

Please write for more information:

A.B. "TONY" Lee,
Registered Guide
(907) 694-2047
P.O. Box 771224-S AP
Eagle River, Alaska 99577

Member: NRA, APHA, FNAWS







DAVE NEEL

Registered Guide and Outfitter

SPECIALIZING IN BOWHUNTING

Hunt our majestic Brooks Range camp for Trophy Dall Sheep, Grizzly Bear, Caribou, Moose, Wolf and Wolverine.

Now booking single and combination hunts for the 1986 season with special consideration for group hunts.

P.O. Box 6303
Anchorage, Alaska 99502
(907) 376-7955



A PERFORMANCE REPORT ON THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT GUIDE LICENSING AND CONTROL BOARD

November 21, 1985

Audit Control Number

08-1253-86-R

Commissioner, Department of Commerce and Economic Development	Loren H. Lounsbury
Deputy Commissioners, Department of Commerce and Economic Development	Terry Elder Greg Baker

Members of the
Guide Licensing and Control Board

Chairman	Ray McNutt
Member	Edward J. Shavings, Sr.
Member	Douglas Pope
Member	Charles Weir
Member	Poldine Carlo
Member	Ralph G. Fenner
Member	James Harrower

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

November 22, 1985

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
GUIDE LICENSING AND CONTROL BOARD

November 21, 1985

Audit Control Number

08-1253-86-R

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

TABLE OF CONTENTS

	Page
Purpose and Scope of the Report	1
Organization and Function	3
Report Conclusion	5
Findings and Recommendations	7
Analysis of Public Need	15
Appendixes:	
A. Guide Licensing and Control Board Revenues Compared with Expenditures	21
B. Guide Licensing and Control Board Examination Statistics	23
C. Guide Licensing and Control Board Administrative Statistics	24
Agency Response:	
Department of Commerce and Economic Development	25
Guide Licensing and Control Board	27

PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation). we have reviewed the activities of the Guide Licensing anu Control Board for the past four fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Guide Licensing and Control Board should be reestablished. The law now specifies that the Board will terminate June 30, 1986 and will have one year from that date to conclude its affairs.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.

2. Interviews with the license examiners.

3. Tests of files and documents of licensees.

4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.

5. Discussions with Board members.

6. Minutes of Board meetings and Division correspondence files.

7. Attorney General Opinions applicable to professional boards.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Guide Licensing and Control Board was established by the 1973 Legislature and succeeded the Board of Fish and Game, Department of Fish and Game, which previously had regulated the guiding industry. The seven member Board is appointed by the Governor with confirmation by the Legislature and is restricted to having no more than three members as licensed guides. Board members serve staggered terms of three years or until their successors are appointed.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing. The Division assists the Board in the performance of their duties by providing administrative, licensure, and investigative support.

By law, a nonresident may not hunt, pursue, or take brown bear, grizzly bear, polar bear, or sheep in Alaska unless personally accompanied by a licensed master, registered, or assistant guide. Nonresidents hunting with an Alaskan relative are exempt from this requirement. The Guide Licensing and Control Board was appointed in part to protect these nonresident hunters from incompetent individuals holding themselves out to be qualified Alaskan guides.

The function of the Board is primarily regulatory, mandated by AS 08.54.040. Accordingly, the Board has the capacity to administer examinations, determine qualifications of guides, establish performance standards and regulate activities, maintain guide registers, prohibit harmful guiding activities, conduct hearings regarding licensure, and establish quotas of guides for specified geographical areas (exclusive guiding areas). The Board, through the assignment of exclusive guiding areas, limits hunting pressure by guides within a specific geographical area.

In addition, the Board licenses "transporters"; a licensed "transporter" is a person who transports hunters for hire.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Guide Licensing and Control Board should be reestablished. The regulation and licensing of qualified guides is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum qualification and experience requirements that provide reasonable assurance that persons licensed are both capable of safely conducting guided hunts and familiar with their prospective guiding areas. Assurance that those licensed act in a competent manner is also provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

(Intentionally left blank)

2. Demonstration of Experience - When applying for an EGA, applicants must demonstrate that they have had guiding experience in the applicable game unit. Guides demonstrate their experience through the submittal to GLCB of a Statement of Financial Remuneration (SFR) for each guided hunt. SFRs list the names of hunters, guides assisting in the hunt, game units hunted, and the type of game taken.

   Under the Board's regulations, SFRs are the primary evidence of a guide's activity and familiarity with the game unit involved. However, we found instances where the Board awarded EGAs to guides with no SFRs in the appropriate game unit, while denying other EGA applicants because they had no SFRs on file demonstrating their experience or activity.

3. Transfers of guiding areas - GLCB has been essentially approving transfers of guiding areas with little or no consideration of any other criteria such as game management, objections of joint users, or experience of the guide receiving the transferred area (see Recommendation No. 3).

This inconsistency on the part of GLCB in its decision-making, along with the lack of proper documentation of its rationale, ultimately results in a loss of effective control over the activities and policy of the guiding industry.

During the past four years, hearing officers have repeatedly found Board decisions to be arbitrary and capricious with little or no support. In effect, the Board has abdicated much of its control over area assignments through its inconsistent application of criteria. Hearing officer decisions are beginning to effectively replace GLCB in setting quotas for guides. Essentially, GLCB has not fully met its statutory responsibility to adopt an equitable and reasonable procedure for the assignment of guide areas.

We believe GLCB's responsibility would be better met by identifying pertinent criteria to be used in area assignment decisions, assigning some priorities to those criteria, and applying them consistently.

Recommendation No. 2

GLCB should improve methods of obtaining game management information from independent sources, such as the Alaska Department of Fish and Game (ADFG).

One of the primary justifications for the whole concept of EGAs is to enhance overall management of the public's game resources. Guides are awarded exclusive or joint-use areas so that they have a long-term interest in managing the game

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Guide Licensing and Control Board (GLCB) should develop a prioritized set of criteria to use in assigning both exclusive and joint-use guiding areas (EGAs).

Alaska Statute 08.54.040(a)(8) allows GLCB to:

> Establish a quota of licensed operating guides who may operate within designated geographical units or subunits of the state and provide for an equitable and reasonable procedure for limiting the number of guides to that quota; preference shall be given to qualified available guides who reside within the designated game unit or subunit.

GLCB has implemented this provision through the establishment of both exclusive and joint-use guide areas (EGAs), which limit the number of guides who can conduct hunts in various regions of the State. The GLCB's authority to assign EGAs is supported by an April 1977 Attorney General memorandum which determined that GLCB's regulations and activities implementing exclusive guiding areas were within their statutory powers.

This limitation on the practice of guiding ostensibly provides public benefits by providing for better game management; promotion and enforcement of ethical guiding practices; enhancing the "wilderness" aspect of big game hunting experience by separating guided hunting parties; and allows for the separation of non-compatible forms of hunting. The limits are also designed to provide for a greater degree of safety to the guided hunter by allowing guides to become familiar with the terrain and seasonal weather conditions of their assigned area.

GLCB does not act consistently when considering the assignment of exclusive and joint-use guiding areas. The criteria on which any given area assignment decision is made varies from decision to decision. Additionally, GLCB often does not adequately document the basis on which they make their assignments. We found inconsistencies and contradictions in the way that GLCB applied the following criteria when awarding EGAs:

1. Game Management Information - GLCB does not consistently review game management information in their area assignment decisions. What game information they do consider usually is second hand and anecdotal, provided by applicants or current users (see Recommendation No. 2).

in their EGA. GLCB has adopted regulations [12 AAC 38.053(d)(1)] that require it to consider an area's ability "... to sustain an additional guided hunting operation, in terms of game populations, terrain, methods of hunting, and use by other guides and hunters."

As stated in Recommendation No. 1, we found that GLCB rarely considers independent information regarding game populations and management concerns when assigning EGAs. GLCB relies on information provided by applicants and guides operating in the region under consideration. Certainly, the assessment of an active registered guide is important and should be considered. However, whether coming from an applicant or current user, it must be recognized that the guide has a vested interest in how the information is presented and interpreted.

Oftentimes, information presented to the Board is conflicting, depending on the desire of the guide. New applicants for areas claim game is plentiful, and the area is underutilized. Current users, on the other hand, emphasize game scarcity and hunting pressures.

If GLCB established better, more formal communications with ADFG they would better meet their regulatory and statutory obligation to enhance the management of the State's game resources. ADFG information may be no better than that of guides; however, it is more independent and more objectively developed. ADFG is charged with management of the State's game resources, and guided, non-resident hunters take up to an estimated 40% of the game in the State. We believe GLCB should attempt to improve communications and coordination with ADFG while taking steps to include their assessment of game populations and hunting pressures when considering assignment of EGAs.

Recommendation No. 3

GLCB should take more responsibility for area assignments by repealing regulations that allow a guide to designate to whom his EGA be reassigned.

Registered and master guides may each have a maximum of three EGAs. Typically, when a guide wishes to retire or perhaps become eligible for another, different EGA, he is allowed to turn back an existing EGA to the Board and designate the recipient of this reassignment. GLCB regulations currently allow, but do not necessarily require, this practice.

We found that these designated transfers override all other area assignment criteria. Essentially, GLCB has been automatically approving transfers of EGAs regardless of game management considerations, demonstration of experience

in the area by the transferee, and over the objections of affected joint users. Whereas GLCB evaluates, albeit inconsistently, regular area assignments, our review indicated they gave transfers much less scrutiny.

We believe that this lack of scrutiny encourages the practice of guides selling their EGAs to other guides in violation of GLCB regulations. With the Board giving little review to transfers, they greatly increase the potential of EGAs being awarded based solely on economic consideration; i.e., can the designated recipient afford to buy the area from its holder? This potential abuse is contrary to GLCB's statutory responsibility of establishing quotas for guide areas in an equitable and reasonable manner. We feel that all qualified guides for the area should receive equal chance at receiving an EGA, regardless of their ability to "buy" the rights from the previous holder.

By not adequately reviewing transfers of guide areas, the GLCB is missing an opportunity to achieve one of its stated policy goals. In the Board's FY 85 annual report, they state one of their policy objectives is to not allow additional joint use in areas that already have enough guides operating.

We feel that it would be better if the EGAs were surrendered to the Board; the Board review pertinent and prioritized criteria to determine if the region would support one or more additional guide operations; then consider all applications for the area under a equitable and reasonable method of allocation. Such a method could take into consideration unique qualifications such as a son or daughter who had worked as an assistant to their father, or perhaps a registered guide, who had "apprenticed" in the region under the surrendering EGA holder and accordingly, is more knowledgeable of the area than other applicants. By following such a procedure the Board would promote compliance with its own regulation restricting the transfer of guiding area permits.

Recommendation No. 4

GLCB should adopt procedures to improve the administration of the oral portion of the registered guide examination.

The oral portion of the registered guide examination is arbitrary and inconsistent in content and grading. This is because the examination content and grading guidelines are left to the discretion of the individual examiners.

To qualify for licensure as a registered guide, an applicant must successfully pass the registered guide examination. This examination, which is prepared and administered by GLCB, is composed of two parts, a written and an oral section. Passage of the examination requires the applicant to obtain a score of 80% on both sections.

GLCB procedures require the oral portion of the registered guide examination to be administered by three examiners, consisting of a Board member and two master guides. Questions asked by the examiners are based on an oral exam sheet, which does not limit examiners to specific questions nor does it provide predetermined question grading values.

This allows individual examiners to emphasize whatever subject areas they wish in the questioning of applicants. Despite the lack of specific grading criteria on which to base examination scores, instances were noted in which applicants narrowly failed exams by combined examiner scores as high as 79%.

The inconsistency of exam content and grading is demonstrated by the following example. In February 1985, an applicant failed the oral portion of the examination. The reason for failure noted by the examiners was that the applicant needed more hunting experience in the field. Examiners recommended the applicant obtain specific area experience along with spring, late fall, and winter experience. One month later, the applicant took the oral examination again, and was passed by an examination committee made up of three different examiners.

GLCB appears to have demonstrated its own doubts regarding the validity of oral examination results. GLCB's regulation 12 AAC 38.010(c), states the failure to achieve a passing score on either section of the examination constitutes failure of the entire examination. However, on several occasions, after having been petitioned by applicants who passed the written portion of the exam while failing the oral portion, the Board waived the requirement that the written portion of the examination be retaken.

The lack of specific guidelines dictating the objective administration of the oral portion of the registered guide examination has resulted in inconsistent content and grading between individual examinations. The likelihood of exam passage is as much affected by who the examiners are and their individual judgement as it is by the knowledge and competence of the applicant.

Structured guidelines governing the administration of the oral portion of the registered guide examination should be implemented by GLCB. These guidelines need to provide examiners with specific directions as to examination questions to be asked and their assigned grading values. If implemented, structured guidelines will provide a more objective means of administering the examination. This will provide the Board with more of a fair and consistent test of applicant competence.

Recommendation No. 5

GLCB should seek both statutory and regulatory changes in order to improve the protection of the public from unethical guiding practices.

One of the primary purposes of licensing and regulating guides is to protect the public from unethical guiding practices. We identified regulations and statutes that serve to block effective consumer protection action on the part of GLCB and serves to protect guides at the expense of the public. We recommend that GLCB enhance its consumer protection responsibilities by taking the following actions:

A. Pursue amendment of statutes that limit GLCB's authority to discipline guides for unethical activity.

B. Adopt regulations and/or recommend legislation to require guides to post performance bonds.

Statutory Constraints to Effective Disciplinary Action

Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from "... three or more clients [hunters] of separate [hunting] parties."

In the course of our review we found four instances where guides had two allegations of unethical guiding activity, as defined by GLCB's regulations, but still had not been brought before the Board for review. Law enforcement officials told us that the statute requiring three separate complaints was particularly onerous for effective resolution of consumer complaints. Law enforcement officials are put in the position of consumer ombudsman, trying to mediate and negotiate settlements of hunter-and-guide or guide-and-guide disputes.

GLCB's effectiveness and visibility would be enhanced if all allegations regarding unethical guide practices was brought to it for review on a case-by-case basis. It appears that the intent of the statute was to keep down the number of frivolous and unfounded complaints against guides. Other professional licensing boards listen to, and sort through, all cases and complaints, no matter how trivial, as a means of keeping apprised of the conduct of their licensees. We recommend that GLCB begin doing the same.

Bonding of Guides

Almost all hunters who use guiding services are non-residents, a large number from outside of the United States. As a result, when disputes arise between guides and hunters it is often very difficult and expensive for the complaining

hunter to seek legal remedies or implement administrative action. This difficulty is compounded by the three complaint requirement of the statutes discussed previously.

In the course of our review, we noted four cases where a non-resident hunter and guide were disputing the refundability of a deposit. One example, two out-of-state hunters sent in deposits of $2,500 six months in advance of a hunt. Just prior to their departure for Alaska, the guide notified them that he would have to cancel their hunt. He offered to apply their deposits to a hunt the next year, but the hunters decided they wanted a refund. The guide did not respond to requests, and due to the statutory three complaint requirement, law enforcement officials were not able to bring the dispute before GLCB. The two hunters retained a Fairbanks attorney to pursue legal remedies, but soon abandoned the effort due to costs of litigation.

We recommend that GLCB pursue the necessary statutory and regulatory changes that would implement a mandatory requirement that guides post performance bonds. Performance bonds would allow hunters with legitimate grievances and claims against guides an easier, less expensive alternative in obtaining settlement of their claims. Guiding is a large industry in the State. It is important that GLCB do all it can to maintain the integrity of the guiding industry and uphold the reputation of the Alaskan guides with hunters outside of the State. The Board should recognize the unique type of consumer for guide services and take steps to adequately protect the interest of the out-of-state hunter/consumer.

(Intentionally left blank)

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

I. The extent to which the board, commission, or program has operated in the public interest.

A. The Board has adopted regulations defining unethical conduct which clarify and strengthen the professional's responsibility to the public.

B. The Board does not consistently review the Department of Fish and Game game management information prior to assignment or transfer of an exclusive guiding area (EGA) (see Recommendation No. 1).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. Regulation 12 AAC 38.054(b) allows an EGA permit holder to designate the qualified guide to whom he wishes to transfer his guide area. These transfers often take precedence over other guide area assignment criteria such as joint user objections, experience in the game unit, or game management considerations (see Recommendation No. 3).

B. Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more clients of separate parties regardless of the potential magnitude of the unethical act (see Recommendation No. 5).

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

A. Senate Bill No. 294, which was introduced in April 1985 by the Resources Committee, contains the following items which should enhance public protection if ratified:

1. An amendment to AS 08.54.010 would increase game management considerations in regulating guide activities (see Recommendation No. 2).

2. An amendment to AS 08.54.040 and a proposed new section (AS 08.54.195) would require consistency in procedures used in allocating EGAs (see Recommendation No. 1).

3. New sections would require those guides that contract with more than one client at a time (an outfitter) to maintain a surety bond of $5,000 (see Recommendation No. 5).

4. The bill would require closer supervision over assistant guides while in the field.

5. Unethical activities would be amended to include unsafe or unsportsmanlike actions that are detrimental to the game resources of the State.

6. Statutes dictating qualifications for, and restrictions on, transporters would be repealed. Many of the services now being provided by transporters would be subject to the proposed outfitter statutes contained in this bill.

B. Additional portions of SB 294 which do not appear to us to be in the public's best interest are as follows:

1. Current law limits the number of Board members that have guide licenses to no more than three of the seven members. SB 294's amendment of AS 08.54.010 would require that at least three Board members be active guides. This amendment would increase the potential for expanding the number of industry members on the Board at the expense of public participation.

2. Currently, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties. SB 294 contains an amendment of this statute which would require that these complaints be received within five years prior to the hearing date. This would compound those problems outlined in Recommendation No. 5.

3. Currently, AS 08.54.210(a)(6) makes it unlawful for a master or registered guide to employ or supervise more than three assistant guides at the same time.

   SB 294 would repeal this statute and could allow a master or registered guide to employ more assistants than they are capable of effectively supervising. The experience and professional judgement of the master or registered guide may not be available to clients when needed.

   Alaska Statute 08.54.141 of this bill also provides that assistant guides shall be supervised at all times while in the field on guided hunts. The potential problem noted above will depend on enactment of this new section and on the Board's interpretation of the term "supervised."

4. Enactment of amendments to AS 08.54.200(c)(3) may unnecessarily restrict those hunting statutes or regulations upon which the Board can take disciplinary action.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. The public is invited to attend Board meetings and to give their input about the workings of the Board. Notices of meetings are advertised in at least five newspapers throughout the State. In addition, guides are notified by registered mail of meetings that might affect them.

B. Publication of meeting information does not always precede the meeting by a reasonable time period. We found that the public was given less than a one week notice for two of the last eleven Board meetings.

C. Teleconference meetings are not being noticed publicly. This limits public input at those meetings and may legally jeopardize Board decisions and actions.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

A. As stated under IV, the public is invited, by published notices in newspapers, to attend Board meetings to give their input about Board regulations or submit written testimony.

B. Those problems noted in IV B and C above also represent potential problems in this public need area.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

A. Since July 1983, ten complaints have been filed with the Ombudsman's Office concerning Board activity. Only one of these complaints, alleging improper denial of a registered guide license, was found to be justified.

B. Since August 1984, 19 complaints against guides have been submitted to the Department of Commerce and Economic Development, Division of Occupational Licensing for investigation. These cases appear to have been investigated in a reasonable fashion and are pending Board action or court rulings.

C. As mentioned in III above and in Recommendation No. 5, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. As of September 1985, 46 master guides and 361 registered guides were licensed in Alaska. These individuals were required to pass both a written and an oral exam, as well as obtaining practical experience in the field, prior to licensure.

B. The oral portion of the registered guide examination is arbitrary and inconsistent in content and grading. This is because the examination content and grading guidelines are left to the discretion of the individual examiners (see Recommendation No. 4).

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.

A. The Board established 12 AAC 38.010(c) whereby an applicant for licensure who:

> because of a language barrier, is unable to read and competently understand the English language may be excused from taking the written examination, and may be issued a license based on successful completion of the oral portion of the examination and demonstration of his capabilities and experience.

B. Regulations also provide that when assigning guide area permits,

> the board will give preference to qualifying guides whose permanent residence is within the district in which the area is located.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

(Intentionally left blank)

APPENDIX A

GUIDE LICENSING AND CONTROL BOARD
REVENUES COMPARED WITH EXPENDITURES
June 30, 1985
(UNAUDITED)
(Note 1)

	FY 83	FY 84	FY 85
Revenues (Schedule 1, Note 2)	$46,000	$53,735	$88,678
Expenditures (Note 3)	21,663	13,483	11,777
Excess of Revenues over Expenditures	$24,337	$40,252	$76,901

Schedule 1
Types of Revenues
(Note 4)

Revenues	Amount	Collection Time
Master Guide License	$150	Biennially
Registered Guide License	150	Biennially
Class-A Assistant Guide License	30	Biennially
Assistant Guide License	20	Biennially
Transporter License	10	Biennially
Application For A Guide Examination	25	With Application

Note 1

This revenue/expenditure comparison was prepared from available reports prepared by Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

Revenue amounts reported do not include revenue obtained from the sale of game tags or hunting licenses. They only include revenue obtained from fees required to obtain and/or renew guide licenses.

Note 3

Expenditures consist of direct costs resulting from Board activities. These include miscellaneous contractual, travel, and per diem costs incurred by Board members and the Board's licensing examiner. The amounts do not include the administrative expenditures of the Division of Occupational Licensing such as employee salaries or the expenditures made to other departments such as the Department of Law, which assist the boards and the Division.

Note 4

Amounts reflected are those established by statute for FY 85. Chapter 37, SLA 1985 provides that the Department of Commerce and Economic Development shall set license fees effective upon adoption of said regulations.

APPENDIX B

GUIDE LICENSING AND CONTROL BOARD EXAMINATION STATISTICS

Number of Examinations Given in FY 1984-1985 (Note 1)

Fiscal Year	Written Exam		Oral Exam		Total
	Passes	Fails	Passes	Fails	
1984	22	13	26	7	41
1985	19	9	17	4	30

Note 1

Licensure as a registered guide requires a passing score on both a written and oral examination. Licensure as a master guide requires a passing score on an oral examination only. Licensure as assistant guides and transporters does not require examination.

APPENDIX C

GUIDE LICENSING AND CONTROL BOARD
ADMINISTRATIVE STATISTICS
September 30, 1985

Currently Licensed

Master Guides	46
Registered Guides	361
Class-A Assistant Guides	139
Assistant Guides	829
Transporters	141

Board Meetings Between July 1, 1983 and June 30, 1985

July 17-22, 1983

October 25-26, 1983

December 7-13, 1983

March 12-17, 1984

December 13-14, 1984

February 9-17, 1985

March 18-19, 1985

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

December 23, 1985

RECEIVED
DEC 24 1985
LEGISLATIVE AUDIT

Mr. Gerald L. Wilkerson
Legislative Auditor
Legislative Audit Division
Pouch W
Juneau, AK 99811

Dear Mr. Wilkerson:

Re: Preliminary Audit Findings
Guide Licensing and Control Board

Thank you for the opportunity to comment on your preliminary audit report on the Guide Licensing and Control Board.

Our position remains the same from previous correspondence in that, we concur with your findings and recommendations, and also support continuation of the board. We once again offer the following comments regarding your recommendations:

In reference to recommendation #1, it is important to note that many of the actions or decisions made by the Guide Licensing and Control Board were made upon advice and support of counsel from the Department of Law. This is done especially in relation to your finding that hearing officer decisions are replacing that of the Guide Licensing and Control Board where setting quotas for guides are concerned. However, we believe the board has demonstrated an honest effort to act accordingly within the parameters of what they perceived to be correct, based on legal advice.

Regarding recommendation #4, this matter was brought to the attention of the board by staff of the Division of Occupational Licensing during previous board meetings. Although the board did acknowledge the need to address this issue, no time was given to address the oral examination for registered guides.

We strongly support your suggestions in recommendation #5 and feel that, although performance bonds posted by master and registered guides may not be entirely adequate to rectify all complaints, it would certainly allow some means of restitution for injured parties from receiving unethical services.

Thank you once again for the opportunity to comment on your findings and for your cooperation.

Sincerely,

Loren H. Lounsbury
Commissioner

LHL/sal444s
122385b

RECEIVED
DEC 19 1985
LEGISLATIVE
AUDIT

The Legislature
Budget and Audit Committee
Jim Griffin, Auditor

Recommendation #1

The Guide Licensing and Control Board (GLCB) uses the Statements of Financial Remunerations as proof of use and experience in areas when assigning Exclusive Guide Areas (EGA). There have been discrepancies in the paste, the last year the GLCB have been adhereing closely to the critera of using SFRs. The GLCB seeks biological and Fish & Game surveys when they are available. This cannot always be done. Some areas Fish & Game haven't run surveys or recent surveys. Most of the time, the GLCB dosen't know which areas will be before them until the applicant comes before the GLCB with his application. This dosen't allow enough time to obtain the information. In cases that are held over and coming before the GLCB at a later date do allow time for soliciting biological information from the Fish & Game biologist located in the area involved. I have solicited Fish & Game information in several cases that are coming before the GLCB this next meeting in December 1985.
I hope to get a regulation passed that requires an applicant applying for an EGA to obtain this information from the Fish & Game for presentation to the GLCB.
Along these lines there also should be a regulation requiring the same critera for a transfer be the same as a new applicant. That is to show proof of experience in the area as would a new applicant. And going farther, an applicant for a transfer from an EGA holder to himself show proof of working with the EGA holder for a certain time. One or two years. Co-signing SFRS could be used as proof as well as additional proof, either in EGAS or joint use areas.

Recommendation #2

Regulation (12 AAC 38.053 (D) (1) applies mostly to applications for joint use areas and EGAs being applied for by more than one guide. The proposal to pass a regulation requiring the applicant to obtain Fish & Game biological information on the area applied for will help in this area.

Recommendation #3

I do not agree that an EGA holder should have to surrender his EGA to the GLCB and not have the opportunity to transfer the EGA to a guide of his choice with the approval of the GLCB.
There are many cases where an EGA holder has farmed his area, carefully not to over harvest, so has improved both game populations and size of the animals in the area. To enhance game populations and sportsmen enjoyment is one purpose of the GLCB.
Financial investments should also be cinsidered in transfers, land, buildings and equipment related to guiding in the area.
A guide who has spent many years building up an area with improvements to game populations should certainly have something to say about whom's care the area comes under. Son, Daughter, apprentice or aguide who is well qualified to guide in the area.

The GLCB has a policy not to issue a new applicant an area in joint use. In other words filing over an area that is already in joint use, or use by only one EGA holder. The GLCB is working to eliminate as much joint use as possible. This can only be done through natural attrition. The GLCB cannot choose two permit holders out of six joint users and pull their permits without due cause. I do think, and it has been the GLCB;s policy the last two years. A Ega holder is convicted of some violation that merits revoking his area that is in joint use with others, that area will not be reassigned ..
Where the area is extemely large and dosen't have many joint users some leeway should apply to a new applicant. The guide losing the area should not have a say one way or the other.in the matter. However, in cases such as this very careful scrutiny in all critera must be made. One thing along these lines. At one time the intent of GLCB to review and reassess all EGAS. Considering size, utilization and condition of game populations. This was never done, primarily because time and budget restrictions wouldn't allow it.

Recommendation #4

Oral guide examinations;

There are inconsistencies in administering oral tests. The purpose of the oral test is to determine the applicat's practical field experience and knowledge of game habits, size and the area he is being tested for. Most of this is impossible to determine with a tightly held oral tests with set questions and answers. The examiner should have some flexibility but should not be allowed to wonder far afield and asking impertinent questions. There should also be a standard time for the test, say 1 or 1½ hours. One problem that keeps cropping up is first aid. I propose that an applicant be required to have passed a first aid course with in the year prior to taking the guide exam.
The GLCB has been trying to upgrade this portion of the guide test. Here again, the increasing number af applications for testing each meeting is also increasing the work load of the GLCB.

Recommendation #5

There should be some changes in Statute 08.54.200 (A) (1). The change should give the GLCB some flexibility on guide complaints. Taking in consideration of theseverity of the complaint. Endangering life, flagrant game violations,and unethical practices, etc.
The GLCB does have a guiding ethics regulation (12AAC 38.180) The complaint are slowly being corrected since the adminstration was consolidated in the Department of Commerce, Division of Occupational Licensing. The GLCB investigator is investigating all compliants that come in now.

We are trying to get a section in the new guide bill, (Senate Bill #294) to satisfy the change mentioned above. Bonding is already addressed in S294.
The bill also creates an outfitter's license and repeals the transporters license. This should help to alleviate the wide spread unlicensed guiding. These unlicensed guides are a big factor in guiding complaints.

The bill also goes into more detail on what guiding is. Enforcement people say the present bill dosen't explain guiding enough for them to make a case on unlicensed guiding. The new bill should give them the tools they need to enforce that section.

The GLCB would like to conduct more work on all these programs and others as well.

It is very important to the guidin industry that the GLCB not be sun setted. If the guide bill is not extended or a new bill passed, the guiding industry will be plunged into a chaos that it could never recover from. Just about everyone with a super cub or 185 will become instant guides creating an impossible situation for game populations and sportsmen safety.

An addition to recomendation #4.
At this last GLCB meeting we appointed 2 master guides and a registered guide to study the oral test and make up a new one that would standardize the test. These men all have an educational background.

Comments Regarding Interim Letter #1
Sunset reveiw GLCB

Recomendation # 1.

I agree with all of Mr. McNutt's comments. In addition I might add. There have been a number of meetings to establish a point for awarding and transfering guiding areas. The suggested method that had the most merit was to award points for criteria relateing to use of the area, financial investment in the area, residence alternate areas, etc. I would suggest that those who did so much work on this system be contacted and a system be finalized and approved. This will eliminate most of the criticism related to transfers.

Recommendation # 2.

Agree with Mr. McNutt.

Recommendation #3.

I completely agree with Mr. McNutt's comments and would like to add emphasis here. The assigned area concept will do more to elevate the quality of guiding in Alaska than any change in years. It gives the area holders a responsibility toward the area and game. Now through leases from the state and permits from the federal government, it will be possible for guides to build permanent structures in many areas. The guides will continue to increase their investments in areas. As the investment both in time and monatary increases so does the guides financial responsibility increase. After working for years to build a high quality operation it seems only just that upon retirement the permit holder would be able to choose his successor, who in nearly every case would be the most qualfied person for the tranfer no matter what seletion criteria were used. There have been abuses of this in the past as there were some transactions that seemed to be merely real estate sales. The GLCB is aware of this and is taking a firm stance against real estate dealers,. It would seem that guiding like any other business would allow a successful and ambitious business man to build some value into his business so that when it came time for retirement he would have something to sell. Because the guiding business envolves land and resources that belong to the public, the burden of responsibility upon the area permit holder is great. aside from his investment in property and equipment the value lies in his concessionary right to the area and it's wildlife. If he has treated these right with regard and respect and obeyed all covenents both moral and legal it seems only right that he should be able to sell this right to another qualified individual of his Choosing. This would allow him to maximize the return for his investment.

Recommendation #4.
The GLCB commented on this in addition to Mr. McNutt's comments and covered it quite thoroughly.

Recommendation # 5.
Agreed with Mr. McNutt.

These comments were made by James Harrower, member GLCB.

Testimony: Mr Ed Whitecougar
Glennallen, Alaska.

I will began by stating that many of the following ideas are not only my own but those of long established guides, law enforcement officials and state employees.

We believe the only way to have proper control with fair and unbiased decisions would to put the guiding industry back under the control of F&G. These would be full time paid professionals who would be unbiased and objective in their decisions. Since they end up enforcing the laws it would make sense to give them control. The present system is biased, self serving and unfair not only to many guides but to the general public. We can't continue to let the foxes watch the chickens.

I would ask the resources committee and this legislature to delay passage of S.B. 294until a complete,professional, and objective investigation can be made of the complete guiding industry. The present guide statutes, regulations, S.B. 294, and many of the decisions made by the guide bd. are biased, discriminatory, and unfair. Since the present system will continue for a year it will give the state time to develop a new system to clean up the existing mess.

I propose that a panel consting of guides, reg. and assist.F&G , and public sector people review and rewrite acomplete new set of laws to regulate the guiding industry. Then and only then can we have laws that are fair and can be adminstered objectively, The guiding industry has had it's chance to poli ce itself and failed miserabley. Greed and utter disregard for individual fights have caused the guiding industry to cut it's own throat.

The present system is VERY COSTLY to the state and individuals who must resort to adminstrative hearings and court hearings with expensive attorney fees to attempt to obtain justice in a fair and equatible way. The bd. constantly makes mistakes and pleads ignorance of the laws which govern it.

Please review s.b. 294, the existing statutes and regs. and the minutes of previous gd. bd. meetings looking for driscriminatory and unfair laws and decisions. I will cite a couple examples.
08.54.200 Why should a guide be allowed TWO violations before his license is revoked? What citizen is allowed two violations? It also states may revoke n ot shall revoke. You can bet if you are a good ol boy it won't be revoked. Proposed legislation 12 AAC 38.140 Applicant must hold a current first aid certification. Why not ALL guides must hold such certification. In the minu tes you will find more than one reference to guide areas being sold. I b elieve all transfers of guide areas that were sold should be void.

No member of a bd. except for the 3 guides is supposed to have a vested interest in the profession the bd. regulates. Check the occuption of the gd. bd. members.

The laws also establish a double standard within the industry. Many assi st. class a guides are exploited by the good ol boys. Many of these are native guides. Also many guides make no attempt to train the assist. guides to help them move up; in fact many of them attempt to restrict their attempts to obtain a reg. license.

The practices of the guiding industry can and do erode public confidence in state government. Do not let the high pressure lobbying efforts of the guiding industry cause you to overlook the abuses fostered by the present system. S.B. 294 is only a continutition of the present unequatable system. There must be a set of laws that treat all citizens fairly and a bd. that administers those laws objectively.S.B. 294 and the present guide bd. does neither.

If you doubt what I say send a questionef to ALL guides requesting their opinions and comments. Keep it confendital as many of the guides fear repercussi ons

I have not bothered going into extensive and detailed account of either the discrimintory laws or biased decisions I have presnelly seen. I will not waste your time with war stories. I only ask for no gd. bill to pass so as to allow those of us who are intrested to have an input in an objective set of laws that will not only protect guides but be fair to all citizens and protect our wildlife recources. To allow these abuses to continue by passage of the presently introduced gd. bill would be a grave injustice not only to good guides but to all citizens of our state and to the clients who bring a lot of money into the state. The existing laws and decisions are probaly unconstitutional and are definately descriminatory and biased to a select few.

I have presonally been a victum of both a reg. guides illegal o opreation and the discriminatory practices of the bd. There is presently an investigation into my case by the division of occup. licensing. Mine is only one of many such incidents which have occured over the years. Since the gd. bd. has moved from the control of F&G it has had a very poor record and image. This is not to say that there have not been well meaning people who have given their time. I have never seen an occupation such as guiding with the ability to govern itself fairly and objectivly. Our government is filled with checks and balances to avoid the sitution we have with guiding.

The gu iding industry is facing a very uncertin future. The native land claims and their right to manage their own lands plus declining game populations and increased resident pressure will make it much more important to have a system that all citizens have confidence in.

The day of the GOOD OL BOYS and their monopoly of our recources is over and must be repleced with a fair andequatable system.

Integrity has a price and we must have the courage to pay it Now.

More money must be given to the enforcement division also. Each guide must believe each of his clients is an undercover agent. Because of the isolation where the hunts take place it is too easy to violate the law. The are too many illegal guides that serve too many illegal hunters and cheat everyone. The laws must be rewritten to force these outlaws out of business once and for all. Illegal guiding is too lucrative and the penalties must be severe enough to eliminate this practice. Too many guides are unable or rather unwilling to adapt to the new laws. They continue to operate as they did in the good ol days. The existing laws are also left over from the past and must have a through overhaul. Please insure this by not passing S.B. 294. This bill will insure we continue to have the problems that now exist. Please don't force us to put up with this un fair system another four years.

SB

309

May 1, 1986

TESTIMONY OF KAY BROWN, DIRECTOR, DIVISION OF OIL AND GAS
TO HOUSE RESOURCES COMMITTEE
ON PROPOSED HOUSE RESOURCES CS FOR CS SB309

Thank you, Mr. Chairman. For the record, I'm Kay Brown, Director of the Division of Oil and Gas for the Department of Natural Resources. I appreciate this opportunity to testify.

The bill before the committee was intended to benefit Alaska gas and electric consumers. We don't believe it is prudent to try to address other issues -- such as how to value the royalty share of gas production sold for industrial and export uses -- in this consumer bill.

The Department of Natural Resources supports the House Oil and Gas Committee Substitute for SB 309. We object to the proposed Resources Committee Substitute, which addresses industrial and export sales. If the legislature insists on addressing industrial and export sales, we have previously

provided language that would accomplish this in a way that protects the state's interest.

The approach suggested in the proposed Resources Committee Substitute is not acceptable. Let me explain why.

Fundamentally, we believe that the burden must be on the lessee to show that the royalty value is a fair value, and not on the Commissioner to show that it isn't.

The department believes it is appropriate to accept a contract price as the royalty value for arms-length sales to regulated utilities -- as provided in the House Oil and Gas Committee Substitute for SB 309 -- because Alaska consumers would be the direct beneficiaries of any royalties lost to the state as a result of using solely the contract price to establish royalty value. We do not believe that industrial and export gas uses should receive the same exception, since the likely effect would be to increase the profits of industrial and export concerns without a corresponding public benefit.

The proposed Resources Committee Substitute significantly erodes the state's rights under existing oil and gas leases. It would bind the state as landowner to prices established in contracts to which it was not a party, and, contrary to

the provisions of the leases, would forego royalties the state is entitled to receive.

Further, the proposed CS does not include language authorizing "below market" sales of royalty gas for consumer uses, which was included in previous versions of the bill and which is an important element of the department's preliminary settlement agreement with Chugach Electric. We recommend that this language be restored.

The proposed Committee Substitute expands the presumption that a contract price is the correct royalty value to cover virtually all arms-length contracts, whether for consumer or industrial purposes. There is no assurance that a contract would be structured to reflect the true value of the gas.

The department believes that adoption of the proposed Committee Substitute would adversely affect the state's ability to collect royalties in several important instances. For example, Marathon Oil Company has advised the department that it intends to take gas from new fields (not covered by past royalty settlements) to its LNG plant in Cook Inlet. Presumably Marathon will sell the gas as LNG to a Japanese purchaser not related to Marathon in management, ownership or other aspect. Thus, Marathon would be entitled to the presumption of use of the contract price under the proposed

Committee Substitute. However, the state would not be able to effectively challenge a low royalty value claimed by Marathon due to charges associated with liquifying and moving the gas. The contract price alone does not determine royalty value; other aspects of the transaction such as transportation and LNG facilities must be considered if the state's interests are to be protected.

Obviously the potential fiscal impacts of this bill are magnified with regard to the huge gas reserves of the North Slope. With North Slope gas, it is well known that pipeline, liquefaction and shipping charges will be very large. As with Cook Inlet LNG, the state will need to be vigilant to assure that the value of the gas is not attributed to these other segments of the export project. It is illuminating that millions of dollars and almost 10 years have failed to yield a concensus on the proper costs of the TAPS construction project. Yet this bill could require a Commissioner to make even more complex determinations, with no guaranteed access to necessary information, within 90 days.

At a minimum, the state must have the ability to scrutinize all elements affecting a sale for industrial and export purposes, such as pipelines, LNG facilities and LNG tankers. Further, the lessee must have the burden of providing all

information necessary for the commissioner to make an informed decision, as well as the burden of providing clear and convincing evidence that the value of the gas is reflected by the gas sales contract price rather than being attributed to transportation, marketing, manufacturing or other profit or cost centers.

Further, the commissioner should have the ability to approve use of a contract price for a lesser period of time than that covered by the lessee's gas sales contract, and to provide for a periodic review of the royalty value term by the commissioner.

Without these minimum protections for the state, the proposed Committee Substitute is unacceptable.

As drafted, the proposed Committee Substitute would require use of an arms-length contract price as the royalty value unless the commissioner makes a written finding based on clear and convincing evidence that

(A) the contract price is unreasonably low;

(B) the prospective reduction in royalty receipts would not be balanced by increased benefits to in-state consumers; and

(C) the contract price is not in the best interest of the state.

All three conditions would have to be satisfied before the commissioner could reject a contract price, a more difficult standard than finding that any one of the conditions exists. Thus, even if the Commissioner had clear and convincing evidence that using the contract price to establish royalty value would be adverse to the state's best interest, the Commissioner would nonetheless be obligated to bind the state to the disadvantageous royalty value if the other two standards could not be proven by the same high evidentiary standard.

As a practical matter, it would be virtually impossible for the commissioner to obtain clear and convincing evidence to show that a contract price was unreasonably low and not in the state's best interest within the 90-day timeframe provided. The lessee would control access to the necessary information. Lessees have an understandable desire to minimize royalty payments, and no incentive to cooperate by providing proprietary information that the commissioner might request in order to make a decision. The lessees conceivably could spend years devising a complicated pricing formula that the Commissioner would be asked to approve in only 90 days.

In summary, Mr. Chairman, we are disappointed that this bill which we have supported in order to benefit gas and electric consumers may be broadened to cover industrial and export uses without adequate protection for the state's interests. We urge the committee to adopt the House Oil and Gas Committee Substitute, with the addition of the words "based on clear and convincing evidence" after the word "finding" on page 1, line 28 of that bill. If the committee deems it necessary to address industrial and export uses, we recommend use of the language included in Commissioner Wunnicke's April 22 letter to Co-chairman Shultz.

Thank you for your time and consideration.

HOUSE

COMMITTEE REPORT

2/2

(9)

Date referred: 4/21/86

FURTHER REFERRALS: FINANCE

DATE: May 1, 1986

The RESOURCES Committee has considered CSSB 309(Rls)

"An Act relating to royalty gas contracts; and providing for an effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[✓] replace with HCS CSSB 309 (Resources) [X] same title

[ ] new title

and recommends DO PASS

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Miller M. W. Miller

Jenkins Tom Jenkins

Pearce Sue Pearce

Cato Peter Cato II

Thompson David W. Thompson

SIGNING OTHER RECOMMENDATIONS:

Ray Wallis do not pass

Wallis

Edmund Herrmann

Herrmann

Do Not Pass

Not enough time spent in Resources on bill

Co-Chairman Dick Shultz

Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2-11-86

REQUEST

Bill/Resolution No.: HB 425
Title: ...Royalty Value of a Natural Gas Lease

Sponsor: Rep. Pearce
Requestor: Oil & Gas Res Comm
Date of Request: 02-11-85

FISCAL DETAIL

Agency Affected: Natural Resources
BRU: Petroleum Management

Components:

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	(2,300)	(1,900)	(1,900)	(1,900)	(1,900)	(1,900)

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

FY 86 revenue losses include obligations incurred by producers since March 1985 royalty enforcement notice. See attached explanation.

Prepared by: Ned Farquhar NF
Division: Commissioner's Office
Phone: 465-2400
Date: 02-11-86

Approved by Commissioner: Norm D Arnold, Deputy
Date: 2/11/86
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

1st DNR Fiscal Note.

Fiscal Note Background
for HB 425

Passage of HB 425 would prevent enforcement of existing royalty collection provisions in Beluga Field oil and gas leases, and enforcement of royalty gas provisions in other fields. This fiscal note represents the impact of the legislation only on the Beluga Field royalty collections, although there are likely to be impacts in other fields.

The State issued an enforcement order for the Beluga Field in March, 1985, effective April 15, 1985. While the notice is contested by producers, there have been no payments made; if the notice were implemented as written, the State would currently receive $2.8 million/year in increased royalty payments. Because the State has offered to settle the lawsuit at a lower value than embodied in the enforcement notice, however, the fiscal impact has been estimated at the proposed settlement value ($1.50/mcf) that would be lost if SB 309 passes rather than at the value that would be recovered under the original notice.

Some of the revenue loss will be felt by the Alaska Permanent Fund, which receives 25% of the revenues from state oil and gas leasing. The remainder of the impact will be on the General Fund.

There will be other significant but currently incalculable fiscal impacts from passage of the bill. If the bill passes, the State will not collect full royalty value (as stipulated in existing oil and gas lease forms) prospectively on other state leases producing gas. Additionally, producers may seek retroactive compensation for what they may regard as past royalty overpayments, including several recent settlements on royalty gas pricing in Cook Inlet.

If the Legislature's action affects the State's position regarding valuation of other State royalty oil and gas (most notably North Slope oil) there could be revenue losses amounting to tens or hundreds of millions of dollars.

Bannister
4/28/86

Original sponsors: Faiks, Kelly,
and V.Fischer

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 309 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to royalty gas contracts; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that to provide for the utilization, development and conservation of gas resources for the maximum benefit of the people of the state, the value of production of gas for purposes of computing the royalty reserved to the state must be based primarily on the contract price of the gas. This will encourage stable markets, promote investment, assure reasonable energy prices and provide the maximum benefit to the people of the state. The legislature does not intend this Act to apply to the policies of the state regarding the sale of royalty oil.

* Sec. 2. AS 38.05.180 is amended by adding new subsections to read:

(aa) Within 90 days after the written request of a lessee of a lease issued under this section, the commissioner shall enter into an agreement with the lessee to use the price for the gas established in the contract between the lessee and a purchaser as the value of the state's royalty share of gas production sold by the lessee under the contract unless

(1) the lessee and purchaser are related in management, ownership, or other aspect; or

(2) the commissioner makes a written finding based on clear and convincing evidence that

(A) the contract price is unreasonably low;

(B) the prospective reduction in royalty receipts would not be balanced by increased benefits to in-state consumers; and

(C) the contract price is not in the best interest of the state.

(bb) In (aa) of this section

(1) "price for the gas established in the contract" includes tax reimbursement amounts, deliverability and other charges, and other forms of consideration paid by the purchaser under the contract;

(2) "state's royalty share of gas production" does not include the state's royalty share of gas production from land patented to the state under

(A) P.L. 84-830, 70 Stat. 709 (Alaska Mental Health Enabling Act);

(B) 38 Stat. 1214 (Act of March 4, 1915); or

(C) 43 U.S.C. 1635 in settlement of the claims of the state under 38 Stat. 1214.

* Sec. 3. AS 38.05.180(aa), enacted by sec. 2 of this Act, applies to agreements to establish for a lease issued under AS 38.05.180 the in-value royalties on gas production that is sold by the state's lessee under a contract entered into on or after the effective date of this Act.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

April 28, 1986

The Honorable Drue Pearce
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Pearce:

You have asked the Department of Natural Resources to articulate in writing the problems with the original version of Senate Bill 309, relating to royalty gas contracts.

The bill provides that if royalty gas is taken in value, "the value of production sold under a long-term sales contract may not be greater than the price received for the production under the long-term sales contract unless it is shown by clear and convincing evidence that the long-term price was unreasonably low at the time of the contract."

The Department believes the bill would not protect the state's interests for these reasons:

- The bill significantly erodes the state's rights under existing oil and gas leases, which are contracts entered into many years ago between the state and the lessees. The leases provide that the state is entitled to royalty payments determined by the higher of the price received by the lessee under its sales contract, or the value of the gas at the time of production. The price received under a long-term gas sales contract does not control royalty valuation in those instances where inflation and market forces have caused the current value of the gas to be higher than the contract price. Thus, adoption of SB 309 would result in lower royalties for the state.

- The bill does not distinguish between consumer and industrial uses, nor between arms-length and non-arms-length sales. The effect of the bill would be to require use of a contract price in virtually all cases.

The department believes it is appropriate to accept a contract price as the royalty value for arms-length sales to regulated utilities (as provided in the House Oil and Gas Committee Substitute for SB 309) because Alaska consumers would be the direct beneficiaries of any royalties lost to

10-J9LH

the state as a result of using solely the contract price to establish royalty value. The department is not persuaded that industrial gas uses should receive the same exception, since the likely effect would be to increase the profits of industrial concerns without a corresponding public benefit.

The department is particularly concerned about being required to use a long-term contract price as the royalty value for non-arms-length sales. For example, an integrated oil company which produces gas may sell that gas to its subsidiary at any price it chooses. This provision invites manipulations to avoid royalty obligations. Even "prices" set in bad faith with the sole intent of avoiding royalties would have to be accepted by DNR unless DNR proved not only that the "price" was low, but that it was "unreasonably low". Thus, the department does not believe the public interest in maximizing the value of state-owned oil and gas resources is protected by the language in SB 309, particularly in the case of non-arms-length sales.

- The bill provides a limited ability to reject a contract price as the royalty value if it can be shown by clear and convincing evidence that the long-term contract price was unreasonably low at the time of contract.

This exception to the presumption of use of the contract price is far too limited. A contract price that may have been reasonable years earlier but that is not adjusted to keep pace with the market through escalators or reopeners would not be a fair value for the state's royalty. Moreover, the history of the state's oil and gas royalty enforcement has demonstrated that the lessees' natural desire to minimize their royalty payments, when combined with their superior access to and control over information, has necessitated litigation to ensure the proper return to the state for its resources. Although federal law entitles the royalty enforcement agency's determination of royalty value to deference by the courts, in Alaska no such deference is due. The original SB 309 would take the unprecedented step of further handicapping DNR's lease enforcement capability by requiring that deference be given to contract price, even where it is set in bad faith in a non-arm's-length contract.

- The bill would apply retroactively. This provision is not in the state's interest. The lessees who acquired leases through competitive bidding formulated their bids on the basis of the specific lease provisions. To retroactively change material terms of a competitively bid lease contract is legally questionable, and would undermine the state's

ability to enforce other lease terms by encouraging lessees to lobby the legislature whenever DNR takes lease enforcement action.

• Some have asserted during legislative debate on SB 309 and the various committee substitutes that the state's interests are protected due to its ability to take royalty gas in kind. If the state thinks a contract value is too low, the state can take its gas in kind and sell it for a higher value, some have argued.

In kind taking is a safeguard of questionable value. The gas market is limited -- especially on a day-to-day basis. More importantly, the state is in a very disadvantageous marketing position. Royalty contracts must go through administrative and legislative procedures that discourage potential buyers. The state, unlike the producers, cannot control the volume of gas under any in kind sale, since the state simply takes a percentage of the amount produced and sold by the lessees. The state's ability to meet a potential customer's volume needs is obviously seriously handicapped by the fact that the state's royalty volume is a fixed 1/8th of whatever the lessees happen to produce in a given period. Lastly, while the state's royalty share is substantial, it comes from many wells in many fields. This provides a unique extra impediment to the state by augmenting the practical problems of collecting and delivering the gas.

• The original SB 309 may contravene important legal principles, and the policies upon which those principles are founded. Under separation of powers principles, the legislature is charged with passing laws, the executive is charged with implementing those laws, and the judiciary is charged with interpreting those laws. To date that constitutional scheme has been followed in oil and gas leasing. The legislature bestowed broad discretion upon DNR to specify the terms of competitive oil and gas leases. Pursuant to that authority, DNR has issued many oil and gas leases over the last quarter century. Lawsuits have been filed under which the judiciary would interpret those leases. In contrast, the original SB 309 would purport to legislatively establish the royalty due on existing leases, irrespective and in derogation of the terms of the leases and any judicial interpretation of those leases. For the legislature to rewrite the terms of valid lease contracts to which it is not a party violates the principle of separation of powers by invading both the executive and judicial functions. See State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980), Bradner v. Hammond, 553 P.2d 1 (Alaska 1976), Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947 (Alaska 1975), 1981 Inf. Op. Att'y Gen. (Nov. 3; J66-159-82) and 1976 Inf. Op. Att'y Gen. (Feb. 11).

The original SB 309 may also contravene the public purpose requirement of Alaska Constitution art. IX, § 6. To the extent the bill may be construed to override recent settlement agreements and to require a refund to specific oil companies of payments made under those settlements, the bill could be held to be invalid because of the lack of a public purpose. See 1980 Op. Att'y Gen. No. 19 (Sept. 22).

In summary, the original SB 309 does not protect the state's interests because it binds the state as land owner to contracts to which it was not a party, without adequate provision to assure a fair value for the state's royalty. The legislature previously has directed the department to maximize the value of the state's oil and gas resources for the benefit of Alaska citizens. Adoption of the original SB 309 would be a major departure from this goal.

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Commissioner

cc: Members of the House Resources Committee



YUKON PACIFIC CORPORATION

April 24, 1986

Hon. Richard Shultz, Co-Chairman
House Resources Committee
Alaska State Legislature
Juneau., Alaska 99811

Dear Representative Shultz:

Thank you for taking time recently to discuss Senate Bill 309, the bill relating to valuation of royalties collected by the state from oil and gas production.

This bill, as it comes to your committee, is more than a "tax" on Railbelt consumers, raising the price of Beluga royalty gas supplied to Chugach Electric Association from 26 cents to 75 cents per thousand cubic feet. In effect, this bill denies Alaska's oil and gas producers the ability to make promises they can keep when they negotiate terms on long-term contracts.

We believe that is very dangerous. At a time when we are involved with a large group of Japanese and Korean companies in efforts to develop the potential of North Slope gas, it is wrong to send the signal that the State of Alaska wants to establish the right to change prices unilaterally, without regard for any contract which may come about.

Some have argued that the state has had that right to revalue its royalty share all along, that the right to interfere was agreed to up front with producers in the original lease form. And while courts in Texas have backed up that interpretation, later decisions in Oklahoma have agreed that a contract is a contract and that if the price is negotiated in good faith that is the price the royalty owner deserves.

Here, in Alaska, we can afford no other approach. To succeed as an economy, Alaska must sell more and more of our resources in the highly competitive international market. Several gas contracts from production on state

P.O. Box 101700 • Anchorage, Alaska 99510 • 907-279-1598 • Telex 25-340 Capt. Cook AHC
515 South Post Oak Road • Suite 225 • Houston, Texas 77027 • 713-960-1889 • Telex 775202 SUPRA

leases are under discussion or negotiation right now, both in the North Slope and the Cook Inlet. As an owner, the state would be foolish to install a "trap door" in the contracting process.

As you consider this legislation, I hope you will keep the following points in mind:

First, private producers making long-term contracts need the flexibility to act quickly in a competitive situation, and they are hampered in their negotiation if their results must later be approved by the royalty owner.

Second, these people are in business to make a profit. Their interest is the same as the state: to collect as much as they can from production. But first production must start, and financing production and transportation facilities requires the stability of long-term contracts.

Third, in the gas market, not all gas from the same field has the same value. Just as you might pay different prices for a seat on the same airplane, depending on when you committed and where you're ultimately going, gas fetches different prices for different uses. There is no prevailing price.

Fourth, in all cases, the state maintains the ability to take its oil and gas in kind and to sell it at a higher value if it believes it is not getting the best value under the contract.

If legislation is to pass this committee, it is our hope that you will not deny those you've invited to help develop Alaska's potential the right they have to have--to keep their promises to their customers.

With best regards,

Sincerely,

Mead Treadwell

Mead Treadwell
Vice President and Treasurer

Background Paper
U.S. - Japan Prefeasibility Study
Alaska Asian Gas System (AAGS)

Purpose:

To develop a capital cost estimate for and to test the market receptivity to a project to move natural gas off the North Slope of Alaska.

A gas transportation system out of Prudhoe Bay is likely to be one of the largest private projects in world history. Making it happen will require the efforts of several companies and several countries.

The American side, with Atlantic Richfield Company as study operator, will develop a capital costs estimate for an approximately 800 mile pipeline from Prudhoe Bay to the south coast of Alaska, with conditioning facilities at Prudhoe Bay and liquefaction and port facilities at Point Gravina. The choice of Gravina in this study does not preclude other potential pipeline terminuses, such as Nikiski, Valdez, and Drift River, in later determinations.

The Japanese side, with the Institute of Energy Economics as study operator, will develop cost estimates for shipping, regasification, and domestic distribution, as well as devising several scenarios for the post-1990 LNG market in Japan.

Participants:

U.S. Side

Representative/Operator

Atlantic Richfield Co.

Other sponsor

Yukon Pacific Corporation

Observer

State of Alaska

Japanese Side

Representative: The Committee for Energy Policy Promotion

Operator: The Institute of Energy Economics

Other sponsors:

C. Itoh & Co.	The Bank of Tokyo
Marubeni Corporation	The Industrial Bank of Japan
Mitsubishi Corporation	Long-Term Credit Bank of Japan
Mitsui & Co.	Sumitomo Trust and Banking Co.
Nissho Iwai Corporation	Sumitomo Corporation

Timetable:

The study officially began June 1, 1985 and is expected to last approximately 18 months.

Cost of the studies:

Total costs of the studies to be performed by both sides will amount to approximately $3.8 million, with about equal division in responsibility between the buying and selling sides.

Contractors:

The American study operator has contracted with Bechtel Petroleum to undertake the engineering studies required for a capital cost estimate.

Historical Background:

Since discovery of the Prudhoe Bay oil field in 1968, several attempts have been made to design and construct natural gas transportation facilities from Alaska to the Lower 48 states. Since commencement of oil production and shipment through the Trans Alaska pipeline system, in June 1977, gas produced with the oil has been reinjected into the field. The field reserve of about 26 trillion cubic feet could be produced at a rate of two billion cubic feet or more per day over a period of 25 years. As LNG, that production equates to 10-15 million tons per year.

In 1977, President Carter selected the Alaska Natural Gas Transportation System (ANGTS) as the preferred project to bring gas into the Lower 48 states on an overland route through Canada. The project has obtained most of the permits necessary for construction; however, lack of a gas market for the project caused sponsors in 1982 to postpone indefinitely the commencement of construction.

That same year, Governor Jay Hammond asked two of the his predecessors, Walter J. Hickel and the late William A. Egan, to undertake a screening study of alternative methods to market North Slope gas. The report of the Governor's Economic Committee on North Slope Gas proposed an 820 mile Trans Alaska Gas System estimated to cost approximately $14.6 billion. Estimated costs of financing, inflation, and taxes during construction escalated the figure to $26.2 billion. Governor William Sheffield accepted the report. That spring, Alaska's legislature endorsed further pursuit of gas exports.

In January of 1983, President Reagan and Prime Minister Nakasone set up a subcabinet level Joint Energy Working Group to discuss energy cooperation between the U.S. and Japan. Examining the opportunities of joint development of North Slope gas was part of the charge of that group, chaired on the U.S. side by Undersecretary of State for Economic Affairs, Allen Wallis. The working group, and a subsidiary group of experts, met several times and made one visit to Prudhoe Bay. In November 1983, at a summit meeting in Tokyo, President Reagan and Prime Minister Nakasone issued a joint statement endorsing the idea of a private prefeasibility study on joint development of an Alaska gas transportation system.

During late 1983 and 1984, leaders of Atlantic Richfield Company and Yukon Pacific Corporation met with representatives of Japanese companies to make arrangements for the next step -- an international study which would give both sides the information they need to make a decision concerning construction of the project.

The study agreement was signed April 26, 1985. Successful formation of the study group was reported to President Reagan by Prime Minister Nakasone at the Bonn summit in May 1985.

THIS IS FOR INFORMATION PURPOSES ONLY
The information contained herein
may not be complete, and is not to be
construed as a legal opinion.

STATE OF ALASKA

THE LEGISLATURE

[illegible]

Source

[illegible](Fin)

Legislative Resolve No.

[illegible]

Relating to marketing and transporting Alaska's natural gas.

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

WHEREAS the largest gas field in the North American continent was discovered 15 years ago at Prudhoe Bay, on Alaska's North Slope; and

WHEREAS since that time it has been the policy of Alaska's state government to promote an environmentally sound, privately financed transportation system that would allow North Slope natural gas to come to market, while providing a new source of energy for Alaska's interior and raw material for future industry throughout the state; and

WHEREAS efforts by the United States and Canadian governments and private industry to move natural gas from the North Slope to supply the midwestern and pacific states have been supported by the State of Alaska and shall continue to have the state's support; and

WHEREAS in order to explore all possibilities of marketing North Slope gas, it is also in the state's best interest to explore all markets; and

WHEREAS successful marketing of Alaska's North Slope energy reserves can result in increased energy exploration, in a secure source of energy supply, contributing to both the economic and energy security of the United States; and

WHEREAS an Alaskan natural gas transportation system is committed to deliver natural gas to Alaska's interior for energy and raw material for industry in order to support economic diversification; and

WHEREAS the State of Alaska wishes to be on record as supporting any natural gas transportation system that would deliver gas to any market; and

WHEREAS it is in the best interests of the people of Alaska that the state government immediately enter into negotiations for the sale of the state's royalty interest in North Slope natural gas for in-state use as a catalyst for construction of a transportation system for Alaska's natural gas;

BE IT RESOLVED by the Alaska State Legislature that the State of Alaska fully supports the efforts of all owners of the gas and other parties to market the North Slope gas; and be it

FURTHER RESOLVED that the State of Alaska requests the federal government to remove any impediments to freely marketing North Slope gas or oil that would not affect the ongoing efforts of private industry to construct a gas transportation system overland from Alaska; and be it

FURTHER RESOLVED that all trading partners of Alaska are strongly urged to consider and take advantage of the benefits that a secure, long-term trading relationship with Alaska would offer; and be it

FURTHER RESOLVED that the legislature calls upon the owners of the gas, Alaska's delegation in Congress, and all other parties with an interest in the gas to explore every means to privately finance and construct a transportation system for Alaska's natural gas; and be it

FURTHER RESOLVED that the State of Alaska immediately enter into negotiations for the sale of its royalty interest in North Slope gas to in-state users in order that they and the state serve as a catalyst for the construction of a transportation system for Alaska's natural gas.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; the Honorable George Schultz, Secretary of State; the Honorable James Watt, Secretary of the Interior; the Honorable Malcolm Baldrige, Secretary of Commerce; the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

HJR 38 RELATING TO MARKETING AND TRANSPORTING ALASKA'S NATURAL GAS

AMENDED TITLE: SCS CS*(FIN)

PRIME SPONSORS: CRUDERY

CO-SPONSORS:

ABOOD	BARNES	BETTISWORTH	BUSSELL	CATO	FLOOD
FRITZ	FULLER	FURNACE	GRUSSENDORF	HURLBERT	KOPONEN
LACHER	LARSON	LINDAUER	LISKA	MARTIN	MILLER,M.N.
PESTINGER	PHILLIPS	RINGSTAD	SHULTZ	TISCHER	UEHLING
WARD	WENDTE	WAYES			

DATE	SEQ. NO.	JOURNAL PAGE	HOUSE ACTION
03/18/83	01	0538	FIRST READING -- COMMITTEE REPORTS
04/06/83	02	0745	RES -- CS07
04/11/83	03	0811	SECOND READING
04/11/83	04	0812	RES CS ADOPTED BY UNAN CONSENT
04/11/83	05	0812	ADVANCED TO 3RD READING BY UNAN CONSENT
04/11/83	06	0812	THIRD READING
04/11/83	07	0812	PASSED BY DIV 36-00-04
04/11/83	08	0812	NOTICE OF RECONSIDERATION GIVEN
04/12/83	09	0834	RECONSIDERATION NOT TAKEN UP
06/21/83	19	1874	CONCURRED IN SENATE AMS BY DIV 37-02-01
06/22/83	20	1914	TRANSMITTED TO GOVERNOR
06/29/83	21	2127	SIGNED BY GOVERNOR
AM 06/29/83	22	2127	LEGISLATIVE RESOLVE NO. 19

DATE	SEQ. NO.	JOURNAL PAGE	SENATE ACTION
04/13/83	10	0650	FIRST READING -- COMMITTEE REPORTS
04/26/83	11	0810	RES -- CS06
06/01/83	12	1160	FIN -- CS06
06/20/83	13	1387	RLS -- OTHER03
			TAKEN UP IMMEDIATELY
06/20/83	14	1395	SECOND READING
06/20/83	15	1395	FIN CS ADOPTED BY UNAN CONSENT
06/20/83	16	1395	ADVANCED TO 3RD READING BY UNAN CONSENT
06/20/83	17	1395	THIRD READING
06/20/83	18	1396	PASSED BY DIV 18-00-02

SB 309: (Original)	SB 309: (Senate Resources Committee)	SB 309: (Senate Rules Committee)	SB 309: (House Special Committee on Oil & Gas)
For the purpose of determining the value of the state's share of royalty gas, taken in-value and sold pursuant to a long-term contract, the Department of Natural Resources would be required to use the long-term contract price unless it could show, by clear and convincing evidence, that the contract price was unreasonably low at the time the contract was entered into. The bill would apply to all leases issued before and after the effective date of the act and would also apply to all types of gas sale contracts.	Within 90 days of the written request of a lessee, the Commissioner of the Department of Natural Resources would enter into an agreement with the lessee to value the state's share of in-value royalty gas at the contract price, unless the Commissioner made a finding, based on clear and convincing evidence, that the price was unreasonably low and the reduction in royalties would not be offset by benefits to consumers. This version of the bill would only apply to arm's length contracts between lessees and non-profit electric cooperatives or municipal electric utilities. The bill would also allow in-kind gas sales at less than market value and would apply only to contracts entered into after the effective date of the act.	Expanded the operative effect of SB 309 (Resources) to local regulated electric and gas utilities and added a procedure for establishing the royalty value of gas in arm's length contracts for the sale of gas from Prudhoe Bay reservoirs, via pipeline, for export from the state. For Prudhoe Bay gas, the Department of Natural Resources Commissioner could enter into an agreement to use the contract price to value in-value royalty gas provided the Commissioner makes a written finding that the contract price would assure maximum benefit to the people of Alaska.	Deleted the section dealing with Prudhoe Bay gas. The Committee also deleted the requirement that any decision by the DNR Commissioner not to use the contract price (for arm's length contracts between lessees and gas or electric utilities) must be based on clear and convincing evidence. The Committee added a new requirement that a gas utility, if it owned a gas pipeline, must agree to common carrier status under Alaska statutes, in order to obtain the benefits provided in the bill.

042386/457a-ltrs/le

CHRONOLOGY OF

ROYALTY GAS DISPUTE

(As of April 23, 1986)

1960	-	State leases with ARCO, Shell and Chevron (or their predecessors-in-interest) (DL-1)
1962	-	Beluga Unit Agreement
1965	-	Chugach signs contract with ARCO, Shell and Chevron for Beluga gas.
1968	-	Chugach's Beluga generating plant begins operation.
1973	-	Chugach signs new contracts with ARCO, Shell and Chevron for Beluga gas.
Dec. 1982	-	Alaska Pipeline signs gas contracts with Marathon and Shell.
March 18, 1985	-	DNR notice to lessees asserting "market value" for royalty gas.
Late April 1985	-	ARCO, Shell & Chevron file litigation against state over the royalty gas revaluation. (ARCO and Chevron named Chugach as a co-defendant)
May 1985	-	SB 309 and other bills introduced to tie royalty gas valuation to long-term contract price.
Feb. 19, 1986	-	Agreement between Chugach and state on Senate Resource Committee Substitute for SB 309; tentative settlement of litigation based on passage of this bill.
March 1986	-	Amended SB 309 passes out of Senate Rules Committee and Senate.
April 17, 1986	-	Amended SB 309 (Oil & Gas) passes out of House Special Committee on Oil & Gas.

042386/456-ltrs/le

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

April 24, 1986

The Honorable Richard Shultz
Co-Chair, House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Shultz:

Following up on my letter to you earlier this week on HCS CSSB 309 (O & G), I am writing to provide more information about an amendment that the Department supports and recommends to the Committee (see attachment).

The purpose of the bill, which we strongly endorse, is to provide a greater measure of certainty in royalty gas pricing for Alaska consumers. The benefits of the new policy embodied in the bill will be shared by a large number of Alaskans. We recognize that uncertainty in long-term pricing of royalty gas can cause difficulty in planning for Alaska utilities and their customers, both in financing for projects and in rate stability.

The attached amendment will help provide the certainty that we believe Alaska consumers deserve. In the specific situations enumerated (i.e., arms length sales to regulated utilities) we believe the presumption should be that the Commissioner will accept the contract price unless there is a clear and convincing reason not to do so.

Please contact me if you have questions about this language. I hope to be present at your hearing tomorrow morning, and I appreciate your attention to the bill.

Sincerely,

Esther C. Wunnicke
Commissioner

cc: Committee members

Attachments

10-J9LH

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

April 22, 1986

The Honorable Richard Shultz
Co-Chair, House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Shultz:

I am writing with regard to HCS CSSB 309 (Oil and Gas), relating to royalty gas contracts.

The Department strongly supports the bill as it has come to the Committee. After many months of negotiations and discussions about the consumer impact of our statutorily-derived royalty gas policy, we agreed to support a bill providing a preference for gas consumers in Alaska. This benefit will affect up to 270,000 gas and electric customers in Alaska and in future years if gas production occurs elsewhere in the state, we can expect even broader benefits from use of the state's royalty gas.

We remain opposed to the original version of SB 309 for a number of reasons. The original bill would have had broad constitutionally questionable impacts, and would not have protected the interests of the state or consumers.

However, we are aware that some members of the House, including some Committee members, are interested in amending HCS CSSB 309 (Oil and Gas) to affect a broader range of gas producers in Alaska. Even though I continue to believe that this issue should be considered and discussed in another piece of legislation than this "consumer bill," I am attaching possible language that protects the state's interests and could be adopted if the Committee wishes to address the broader issues of royalty gas valuation.

10-J9LH

Attachment 1 is language (similar to the Senate-passed bill) to provide a mechanism for establishing the value of royalty gas that could be transported through a proposed gas pipeline from the North Slope. Proponents of the North Slope gasline have indicated that it would be difficult, if not impossible, to achieve financing for the project without the ability to obtain certainty about the price of the state's royalty gas. We recognize the desirability of a major North Slope gas marketing project, and drafted language for the Senate Rules Committee that would assist in financing a gasline project. While I would prefer to see this issue addressed in another bill, I believe that the attached language drafted by our attorneys would protect the interests of the state and could be added to HCS CSSB 309 (Oil and Gas).

Attachment 2 is broader language to establish a general framework for setting the value of royalty gas for any use other than those specific consumer uses covered by the proposed Sec. (aa) under Sec. 2 of this bill. This provision would apply to a North Slope gasline or any other user. Again, although I would prefer to see this issue addressed in another bill, I believe that the language would protect the interests of the state and could be added to HCS CSSB 309 (Oil and Gas).

Both proposals, in Attachments 1 and 2, also would require an amendment to Sec. 5 of the bill to provide that (bb) of the bill is not retroactive but applies only to gas production sold under a contract entered into on or after the effective date of the act.

An amendment that we recommend is to reinstate language that appeared in the Senate Resources and Senate Rules versions of the bill regarding the standard for the commissioner's decision to reject use of an arms'-length contract price between a lessee and a gas or electric utility. We recommend that you adopt the amendment on Attachment 3.
Please contact me if you have any comments or questions. My staff will be present at your Friday hearing on the bill.

Sincerely,

Esther C. Wunnicke
Commissioner

cc: Committee members
Dr. Joyce Murphy, Chugach Electric

Attachments

Attachment 1

Possible amendment of CS for SB 309 (Oil and Gas) which would add a new version of (bb):

AS 38.05.180 is amended by adding a new subsection to read:

(bb) In the event of a contract for the sale of gas from Alaska North Slope gas leases by means of delivery of the gas through a pipeline for export out of the state, the commissioner may enter into an agreement with the lessee to use the price for the gas established in the gas sales contract as the value of the state's royalty share of gas production sold by the lessee under the gas sales contract if the commissioner makes a written finding that the contract price assures the receipt of maximum benefits to the people of the state in return for the state's gas resources. In order to invoke this subsection, a lessee must make its written request no later than 90 days after the first delivery of gas under the gas sales contract. The commissioner shall then act on the request in writing within 120 days. The agreement between the lessee and the commissioner may be for a lesser period of time than that covered by the lessee's gas sales contract, and may provide for a periodic review of the royalty value term by the commissioner. The lessee shall have the burden of providing all information necessary for the commissioner to make an informed decision, and shall provide clear and convincing evidence that the value of the gas is reflected by the gas sales contract price rather than being attributed to transportation, marketing, manufacturing, or other profit or cost centers. In this subsection

(1) "Alaska North Slope gas leases" includes any gas lease issued by the state under this section that lies in whole or in part north of 68 degrees north latitude;

(2) "gas sales contract" includes, in addition to its ordinary meaning, a written agreement for the intracompany tranfer of gas; and

(3) "price for the gas established in the gas sales contract" includes tax reimbursement amounts, deliverability and other charges, and other forms of consideration received by the lessee under the gas sales contract.

Possible amendment of CS for SB 309 (Oil and Gas) which would add a new version of (bb):

AS 38.05.180 is amended by adding a new subsection to read:

(bb) In the event of a contract for the sale of gas from a gas lease issued under this section that does not qualify under subsection (aa), the commissioner may enter into an agreement with the lessee to use the price for the gas established in the gas sales contract as the value of the state's royalty share of gas production sold by the lessee under the gas sales contract if the commissioner makes a written finding that the contract price assures the receipt of maximum benefits to the people of the state in return for the state's gas resources. In order to invoke this subsection, a lessee must make its written request no later than 90 days after the first delivery of gas under the gas sales contract. The commissioner shall then act on the request in writing within 120 days. The agreement between the lessee and the commissioner may be for a lesser period of time than that covered by the lessee's gas sales contract, and may provide for a periodic review of the royalty value term by the commissioner. The lessee shall have the burden of providing all information necessary for the commissioner to make an informed decision, and shall provide clear and convincing evidence that the value of the gas is reflected by the gas sales contract price rather than being attributed to transportation, marketing, manufacturing, or other profit or cost centers. In this subsection

(1) "gas sales contract" includes, in addition to its ordinary meaning, a written agreement for the intracompany tranfer of gas; and

(2) "price for the gas established in the gas sales contract" includes tax reimbursement amounts, deliverability and other charges, and other forms of consideration received by the lessee under the gas sales contract.

Attachment 3

At p. 1, line 28, after "finding", insert:

based on clear and convincing evidence

COOK INLET ROYALTY GAS VALUATION:
An Overview

A Presentation to the
Senate Resources Committee
by:

Esther C. Wunnicke, Commissioner
Alaska Department of Natural Resources

Kay Brown, Director
Division of Oil and Gas
Alaska Department of Natural Resources

Bill Van Dyke, Petroleum Manager
Division of Oil and Gas
Alaska Department of Natural Resources

Mark Worcester, Assistant Attorney General
Alaska Department of Law

February 10, 1986

ATTACHMENT 1

2/5/86

COOK INLET GAS SUMMARY

Lease interpretation: Under the terms of its oil and gas lease contracts with the oil companies, the state is entitled to royalty payments determined by the higher of the price received by an oil company under its sales contract, or the value of the gas at the time of production. This means that the price received under a long-term gas sales contract does not control royalty valuation in those instances where inflation and market forces have caused the current value of the gas to be higher than the contract price.

DNR policy:

(1) As land manager for the citizens of the entire state, it is DNR's responsibility to obtain fair value for the state's oil and gas resources by collecting the full royalties to which the state is entitled under its oil and gas leases.

(2) DNR should not selectively abdicate its responsibility to enforce the royalty terms of the Cook Inlet gas leases just because utility companies have agreed as part of their gas purchase contracts to reimburse the oil companies for royalty collections made by the state. Any consumer subsidy should be the result of an affirmative, direct subsidy by the legislature as part of a comprehensive energy policy.

(3) DNR should not divert from uniform enforcement of the oil and gas leases, since such action could, in addition to directly reducing revenues from any leases from which royalties are not fully collected, also indirectly cause a much larger reduction in state revenues by impairing the state's ability to enforce the royalty provisions of the North Slope leases.

The potential consumer impact result from actions by Chugach, not the state. The risk that gas values might escalate to values in excess of the long-term gas sales price was a circumstance foreseen by the parties to those sales contracts. This is demonstrated by the fact that the contracts between the oil company lessees and Chugach Electric Association, Inc. (Chugach) specifically assign to Chugach the risk of any rise in royalty obligations. The state was not a party to those sales contracts. The contract price, the absence of an adequate price escalator or price reopener, and the assignment to Chugach of the risk of increased royalty obligations were all conditions established by contract between Chugach and the lessees without state participation.

Existing law provides an adequate mechanism for long-term royalty certainty: DNR is sympathetic to the desirability of long-term certainty in royalty matters. However, new statutory authorities are not necessary in order to provide such certainty. Royalty certainty can be attained by negotiation of long-term in kind gas sales contracts which parallel the contracts between the state's

lessees and their gas purchasers. This would allow an opportunity for DNR, the royalty board, and the legislature to evaluate the adequacy of the royalty over the life of the contract. This is preferable to being locked into a long-term royalty value set by prices established by lessees without any notice to or participation from the state.

Litigation: Last March DNR notified the Cook Inlet lessees of its determination to enforce the leases. The notices asserted that the most recent (December 1982) major contracts from the Kenai and Beluga River fields (the "APL II contracts") established the current value. These contracts had a base contract price of $2.05 per mcf in 1985. The state subsequently indicated its readiness to accept a lower royalty value if presented with evidence that the current value of gas in Cook Inlet is less than the price established under the APL II contracts. Union, Marathon, ARCO, Chevron and Shell responded to the notices by suing the state.

Recent Cook Inlet Gas Sales Contracts:

Date of Contract	Purchaser	Field	Starting Base Price
1982	APL (Enstar)	Beluga	$2.32
1982	APL (Enstar)	Kenai, Beaver Creek or McArthur River	$2.32
1983	Chugach	Cannery Loop	$1.80
1984	APL (Enstar)	Lewis River	$1.80
1985	Tesoro	Kenai, Beaver Creek or McArthur River	$2.01

Settlements achieved: In the last two months of 1985 DNR's royalty enforcement actions achieved significant success. Settlements relating to gas royalties due on production from the Kenai Field, and involving Marathon, Union, Alaska Pipeline Company (Enstar), CIRI, the U.S. Department of the Interior and the state, yielded the state about $4 million in retroactive royalties, and will bring in excess of $6.5 million per year more than the amounts which would have been paid under the lessees' prior reporting practices (including those increases attributable to the state's 90% interest in federal onshore royalties). Under the lessees' theory, the royalties would have been variously between $0.21 and $0.61 per mcf; under the settlement, the lessees will pay $1.95 per mcf during 1986. The $1.95 is squarely within the gas values established by recent Cook Inlet gas sales contracts, as well as the values established by Enstar's pending rates ($2.1854 for Schedule C purchasers - "Large Commercial Service", and from $1.6480 to $2.0158 for sales to power plants). The settlements confirm the soundness of the royalty enforcement action taken last spring.

Remaining disputes: The major remaining dispute relates to the Beluga River field, the primary source of gas for Chugach.

Settlement negotiations during the last six months have failed to produce any resolution. Options explored have included underlifting the state's royalty share, thus delaying the royalty into the future; an in kind sale to Enstar or Chugach; and an in value settlement. The lessees (ARCO, Chevron and Shell) assert that they should not be required to contribute any monies to any settlement, since their sales contract with Chugach requires Chugach to reimburse the lessees for any additional royalty amount the state collects. Chugach, in turn, has been unwilling to agree to an acceptable value, and has indicated that it will seek legislative relief. Recently, the state made a formal offer to its lessees to settle the dispute for $1.50 per mcf. This offer was rejected, but settlement efforts and discussions continue.

Consumer impact. Chugach estimates that a royalty rate of $2.05 per mcf on state leases would increase retail consumer rates only about 2.38%, assuming the lessees were successful in asserting that their contracts with Chugach permitted them to pass the royalty burden on to Chugach, and further assuming that the APUC permitted Chugach to pass the burden on to its consumers. DNR estimates that a $2.05 royalty would increase state revenues by about $2.8 million per year. Under the $1.50 per mcf settlement offer, the increased royalty income would fall to about $2 million per year, and the magnitude of retail consumer impact would be correspondingly reduced to less than 2%. (A two per cent increase on a monthly bill of $30 would be only $0.60).

ATTACHMENT 2

2/5/86

COOK INLET GAS ROYALTY SETTLEMENTS
(State leases and State share of federal royalties)

Lessee	Scope of Settlement	Retro-active Payment (millions)	Current Monthly Value Under Settlement (per Mcf)	Estimated Additional Royalties per year (millions)
Phillips	North Cook Inlet Field gas sold as LNG in Japan	$36.3	$2.32	$12.00
Marathon	Kenai field gas sold as LNG in Japan	$ 4.3	$2.32	$ 0.75
Union and Marathon	All of Union's Kenai field gas disposition (including the following: urea/ammonia plant, rental gas, Enstar), plus Marathon's dispostions to Enstar under Enstar's 1975 contract	$ 4.1	$1.95	6.90
	Total	$44.7		$19.65

2/5/86

COOK INLET GAS ROYALTY CHRONOLOGY

Month	Year	Description of Event
March	1964	Foster v. Atlantic Refining Company, 329 F.2d 485 (5th Cir. 1964) holds that long-term contract price does not control royalty valuation when market value rises, even if this is burdensome on the lessee.
May	1965	Chugach Electric Association, Inc. enters into 20 year contracts with ARCO, Chevron and Shell for Beluga River gas, with an initial price of 15.2 cents per mcf, subject to a volume limit.
January	1973	Chugach renegotiates its 1965 contracts, extending the term to 1998 (unless the new, higher volume limit is reached earlier). The 1986 base price under those contracts is about 21 cents per mcf.
November	1982	Chugach obtains supplemental gas deliveries under the 1973 contract at a base price of $1.48 per Mmbtu (approximately equivalent to $1.48 per mcf).
December	1982	Alaska Pipeline Company (Enstar) signs contracts for gas deliveries from Beluga River (with Shell) and Kenai (with Marathon) at a price of $2.32 per mcf, with annual adjustments based upon fuel price fluctuations (the "APL-II" contracts). This is the first totally new contract for Beluga River gas subsequent to the 1973 Chugach contract under which there were any deliveries.
March	1984	Piney Woods County Life School v. Shell Oil Company, 726 F.2d 225 (5th Cir. 1984), reh. den. 750 F.2d 69, cert. den. 105 S.Ct. 1868 (1985) reaffirms the soundness and continued validity of the rule in Foster, above.
May	1984	The state and Phillips settle their dispute concerning the valuation of Cook Inlet gas from state leases which is sold as LNG in Japan, using a formula which initially yields a royalty of $2.40 per mcf.
May	1984	The federal government informs Union that virtually all gas royalties from the Kenai field, including gas sold under below-current-market, long-term contracts with Enstar, must be valued in accordance with the price under the APL-II contracts.
November	1984	DNR determines, in consultation with the Department of Law, to enforce the Cook Inlet lease terms requiring payment of gas royalty on the basis of current value.

February	1985	U.S. District Judge Fitzgerald rules that Marathon must pay royalties on Kenai Field gas sold as LNG in Japan based upon the Japan sales price, less costs of transportation. Marathon calculates the netback value under the order to be about $3.00 per mcf, while the federal government calculates the value to be about $3.60 per mcf. The accounting remains in dispute in District Court, while the District Court's February 1985 decision is under appeal to the Ninth Circuit.
March	1985	By written notice, DNR informs its Cook Inlet lessees of its determination to enforce the royalty requirements of the leases.
May/June	1985	All Cook Inlet gas producers file separate lawsuits seeking judicial declaration of their royalty obligations under the leases.
July	1985	The state and Marathon settle their dispute concerning the royalty value of Kenai Field gas sold as LNG in Japan in accordance with the terms of the May 1984 Phillips settlement.
November	1985	The state, federal government and CIRI (all royalty owners in the Kenai field) settle most royalty issues for production from the Kenai field. Most significantly, royalty on gas used in Union's urea and ammonia plant and used to promote greater oil production from the Swanson River oil field, is set at $1.85 per mcf for 1985 and $1.95 per mcf for 1986, with annual adjustments thereafter based upon fluctuations in fuel oil prices.
November	1985	The Secretary of the Interior issues a definitive order holding that Cook Inlet gas sold by Union and Marathon to Enstar must be valued for royalty purposes according to current market values.
December	1985	The state, federal government and CIRI enter into a settlement agreement on the value of the royalty on Kenai gas sold to Enstar under long-term contracts. Under this settlement, the royalty owners receive $1.85 per mcf for the part of 1985 at issue, and will receive $1.95 per mcf for 1986 production, with annual adjustment thereafter based upon fluctuations in the oil prices.
January	1986	The state offers to the producers to settle the dispute concerning the royalty value of gas sold to Chugach. This $1.50 per mcf offer is rejected by the producers, but settlement discussions continue.

ALASKA DEPARTMENT OF NATURAL RESOURCES - DIVISION OF OIL AND GAS
SUMMARY STATISTICS
COOK INLET GAS PRICE DISPUTE
AVERAGE MONTHLY SALES VOLUMES - JULY 1984 THROUGH JUNE 1985

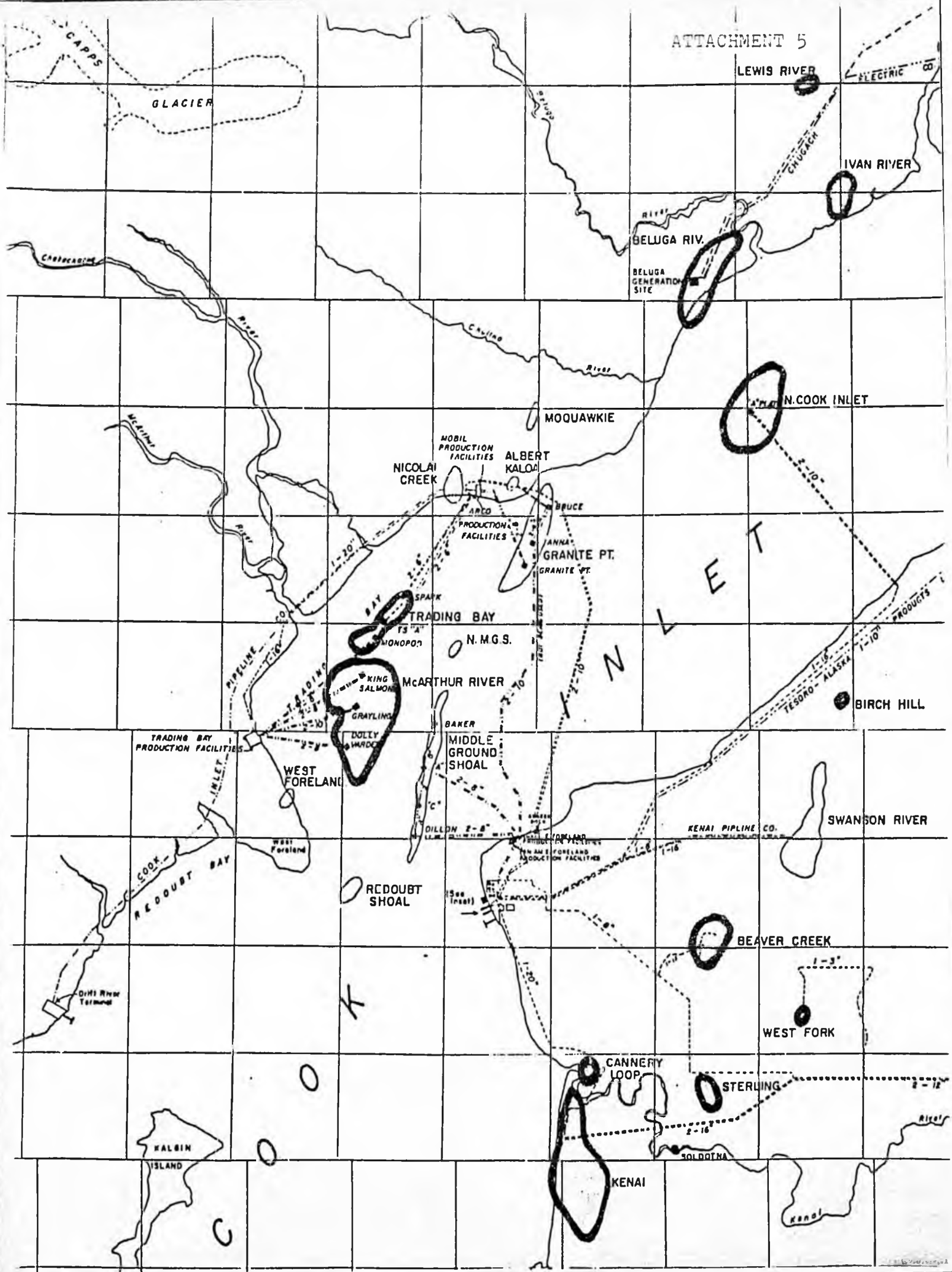
Date:1/14/86

FIELD Producers (% of field owned)	PURCHASER	% of FIELD on sale by sale basis	SALES VOLUMES (MCF) 1/	EFFECTIVE ROYALTY INTEREST	ROYALTY VOLUME (MCF)	VALUE REPORTED FOR ROYALTIES 2/	PRODUCER/ PURCHASER BASE CONTRACT VALUE 2/ 7/	EFFECTIVE DATE	EXPIRATION DATE	
BELUGA RIVER FIELD										
CHEVRON (33.33%)	ENSTAR	2.11%	37,790	0.07555	2,855	$1.8000	$2.0300 9/	12/20/82	10/1999	
ARCO (33.33%)	ENSTAR	2.11%	37,790	0.07555	2,855	$1.8000	$2.0300 9/	12/20/82	10/1999	
SHELL (33.33%)	ENSTAR	2.11%	37,790	0.07555	2,855	$1.8000	$2.0300 9/	12/20/82	10/1999	
AGEA (100.00%)W-214-35	ENSTAR	0.45%	8,122	0.07555	614	$1.8000	$2.0300 9/	12/20/82	10/1999	
SUB TOTAL		6.77%	121,492		9,179					
CHEVRON (33.33%)	CHUGACH	28.70%	515,065	0.07555	38,913	$0.2103	$0.2103	5/14/65	1/1998	3/
ARCO (33.33%)	CHUGACH	28.70%	515,065	0.07555	38,913	$0.2103	$0.2103			
SHELL (33.33%)	CHUGACH	28.70%	515,065	0.07555	38,913	$0.2103	$0.2103			
AGEA (100.00%)W-214-35	CHUGACH	7.13%	127,863	0.07555	9,660	$0.2103	$0.2103			
SUB TOTAL		93.23%	1,673,058		126,400					
TOTAL BELUGA RIVER FIELD		100.00%	1,794,550		135,578					
KENAI FIELD										
UNION (50%)	APL-ANCHORAGE	10.28%	845,622	0.020688	17,494	$1.9500 8/	$0.6220 6/	5/13/60	12/92	3/
UNION (50%)	APL-CHEV NIK	0.19%	15,888	0.020688	329	$1.9500 8/	$0.6220			
UNION (50%)	UNION-CHEV	0.19%	15,518	0.020688	321	$1.9500 8/	$0.6220	2/5/81	INDEFINITE	
UNION (50%)	CITY OF KENAI	0.25%	20,590	0.020688	426	$0.3000	$0.3000	5/17/66	6/1986	
UNION (50%)	RENTAL GAS	4.50%	370,334	0.020688	7,661	$1.9500 8/	$0.0700	1/17/66	1/1995	3/
UNION (50%)	ADDITIONAL RENTAL	2.37%	194,981	0.020688	4,034	$1.9500 8/	$0.3800			
UNION (50%)	UNION CHEMICAL	40.73%	3,352,041	0.020688	69,347	$1.9500 8/	$0.6130	11/1/77	1998	
TOTAL UNION SHARE		58.51%	4,814,973		99,612					
MARATHON (50%)	APL-I	14.38%	1,183,535	0.020688	24,485	$1.9500 8/	$0.6220 6/		12/1992	3/
MARATHON (50%)	APL-II	4.48%	368,603	0.020688	7,626	$2.0550	$2.0800 9/	12/16/82	12/1997	3/
MARATHON (50%)	APL-NIKISKI	0.19%	15,888	0.020688	329	$2.0550 4/	$0.6220			
MARATHON (50%)	CITY OF KENAI	0.25%	20,599	0.020688	426	$2.0550 4/	$0.3000		6/1986	
MARATHON (50%)	RENTAL GAS	4.50%	370,242	0.020688	7,660	$0.2100	$0.2100		1/1995	3/
MARATHON (50%)	ADDITIONAL RENTAL	2.36%	194,450	0.020688	4,023	$0.3800	$0.3800			
MARATHON (50%)	TOKYO UTILITIES	15.32%	1,261,073	0.020688	26,089	$2.2795	$4.7590 5/		6/1/89	
TOTAL MARATHON SHARE		41.49%	3,414,390		70,637					
TOTAL KENAI FIELD		100.00%	8,229,363		170,249					
STERLING FIELD										
UNION (50%)	PENINSULA GREENHOUSE	50.00%	736	0.015546	11	$0.4000	$0.4000	10/27/61		
MARATHON (50%)	PENINSULA GREENHOUSE	50.00%	736	0.015546	11	$2.0550 4/	$0.4000			
TOTAL STERLING FIELD		100.00%	1,472		23					
MCARTHUR RIVER FIELD										
UNION/MARATHON (50% each)		0.47%	1,671	0.125	209	0.000	0.000			
UNION/MARATHON (50% each)	RENTAL GAS	1.40%	5,260	0.125	658	0.000	0.210			
UNION/MARATHON (50% each)	UNION CHEMICAL	87.56%	311,215	0.125	38,902	0.000	0.613			
UNION/MARATHON (50% each)		9.39%	33,375	0.125	4,172	0.000	0.000			
UNION/MARATHON (50% each)		1.10%	3,910	0.125	489	0.000	0.000			
TOTAL MCARTHUR RIVER FIELD		100.00%	355,431		44,429					
TRADING BAY FIELD										
Marathon 48.66%		48.66%	580	0.125	73	0.000	0.000			
Union 48.66%		48.66%	580	0.125	73	0.000	0.000			
Superior 1.34%		1.34%	16	0.125	2	0.000	0.000			
Texaco 1.34%		1.34%	16	0.125	2	0.000	0.000			
TOTAL TRADING BAY FIELD		100.00%	1,192		149					

1/ ANNUAL VOLUME DIVIDED BY 12 MONTHS EQUAL AVERAGE MONTHLY VOLUME.
2/ ROYALTY AND CONTRACT VALUES ARE THE MOST CURRENT IN EFFECT AS OF JANUARY 1986. PRODUCTION AND HAVE NOT BEEN ADJUSTED FOR BTU CONTENT.
3/ QUANTITY TERM COULD OPERATE TO EXTEND OR SHORTEN THE CONTRACT PERIOD.
4/ PRICE REPORTED BY MARATHON IS BEING PAID UNDER PROTEST.
5/ CONTRACT PRICE IS A GROSS PRICE BEFORE TRANSPORTATION COSTS.
6/ CONTRACT PRICE TO GO TO $0.27 MCF DURING 1986.
7/ BASE CONTRACT PRICE DOES NOT INCLUDE LESSEE TAX OBLIGATIONS PAID BY THE PURCHASER.
8/ VALUE AGREED TO BY SETTLEMENT.
9/ SPECIAL DELIVERABILITY CHARGE OF $0.35/MCF MAY ALSO BE EFFECTIVE.

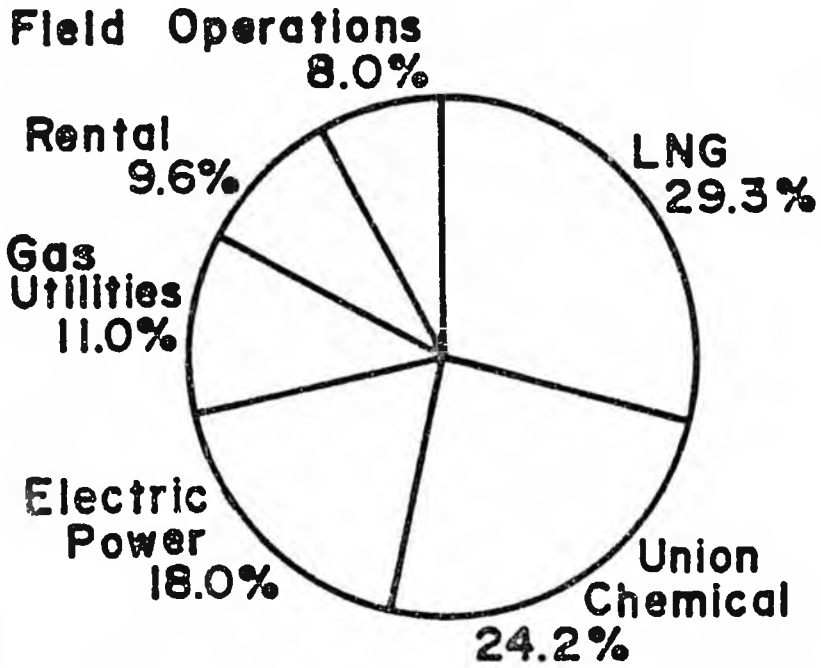
ATTACHMENT 4

ATTACHMENT 5

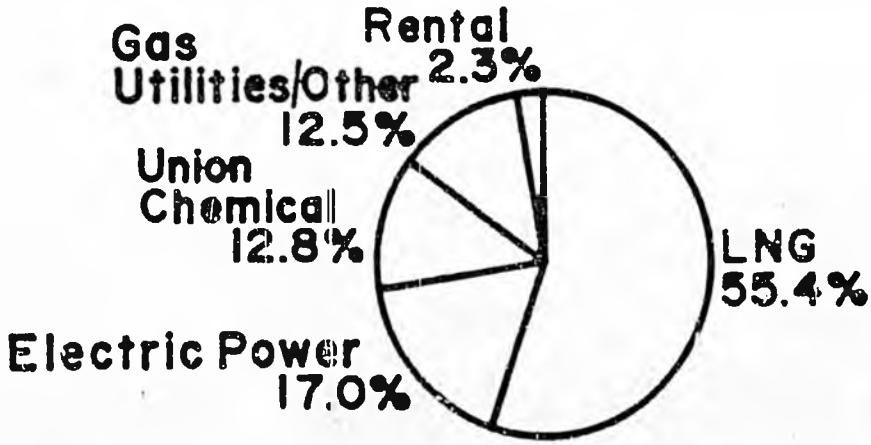


COOK INLET

Total Sales

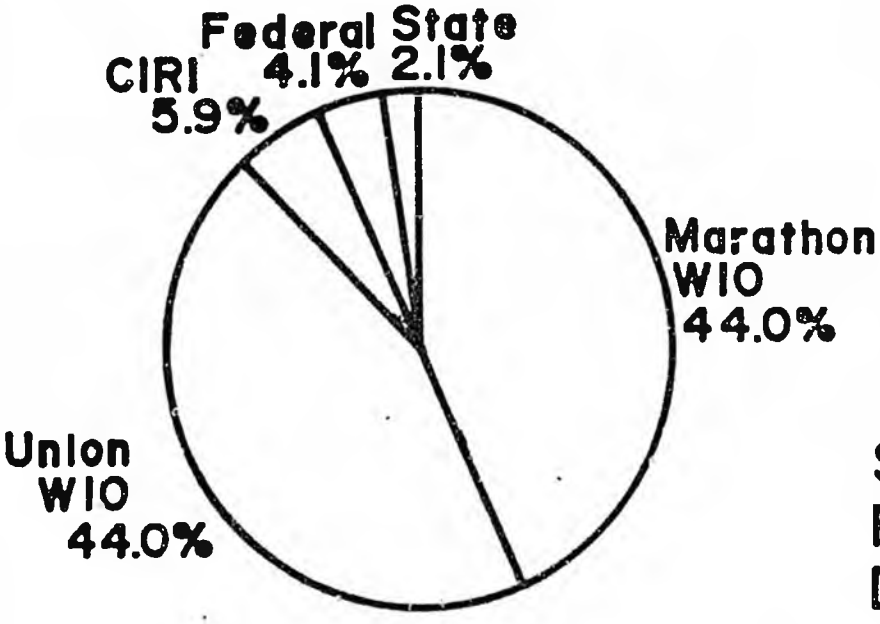


State Royalty Disposition

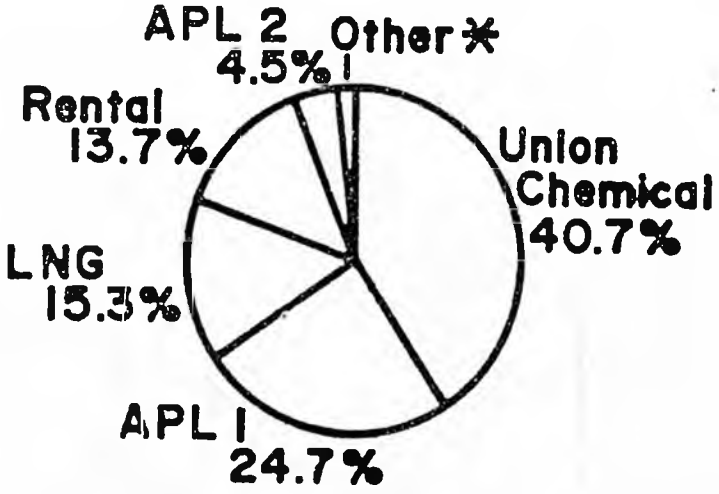


KENAI FIELD

Royalty And Working Interest Ownership



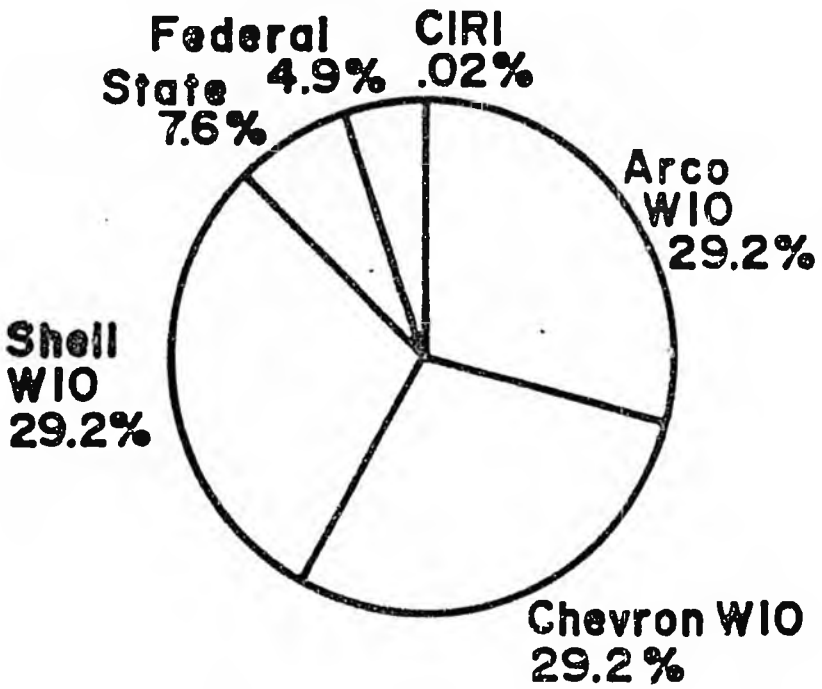
State Royalty Disposition



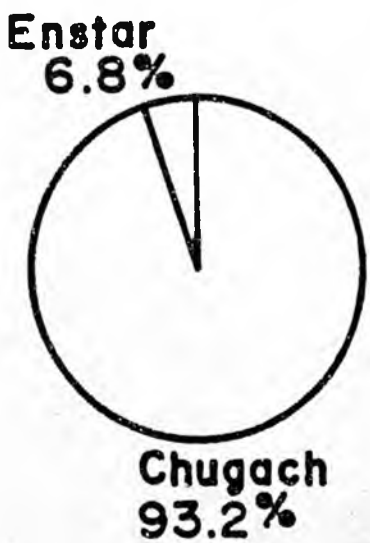
* AFL-Nikiski 0.4%
Union-Chevron Exchange 0.2%
City Of Kenai 0.5%

BELUGA FIELD

Royalty And Working Interest Ownership



State Royalty Disposition



COOK INLET GAS PRODUCTION
(For 1984)

	Total MMCF/Month	State Royalty MMCF/Month
Beluga River Field		
For: Chugach	1673	125
Enstar	121	9
Total	1794	134
Kenai Field		
For: APL 1	2029	42
APL 2	369	8
APL Nikiski	31	1
APL Kenai	41	1
Union Chevron Ex	16	1
Rental gas	741	15
Rental gas extra	389	8
Ammonia-Urea	3352	67
LNG	1261	25
Total	8229	168
McArthur River Field		
For: Rental gas and ammonia-urea	355	44
Beaver Creek Field		
For: APL 2	789	0
Lewis River Field		
For: APL 2	153	19
North Cook Inlet Field		
For: LNG	3932	491
GRAND TOTAL	15,250	856

Excerpts from Lease Form DL-1
Pertaining to the Pricing of Royalty Products

11. ROYALTY ON PRODUCTION. Except for oil and gas used on said land for development and production or unavoidably lost, Lessee shall pay Lessor as royalty the following:

(a) On oil 12-1/2 percent in amount or value of the oil produced and saved and removed or sold from said land.

(b) On gas 12-1/2 percent in amount or value of the gas produced and saved and sold or used off said land or used for the extraction of natural gasoline or other products therefrom.

(c) On associated substances 12-1/2 percent in amount or value of such substances produced and saved and removed or sold from said lands.

15. ROYALTY IN VALUE. At the option of Lessor, which may be exercised from time to time upon not less than six months' notice to Lessee, and in lieu of royalty in kind, Lessee shall pay to Lessor the field market price or value at the well of all royalty oil and/or gas. All royalty that may become payable in money to Lessor shall be paid on or before the last day of the calendar month following the month in which the oil or gas is produced. The payments shall be accompanied by copies of run tickets or other satisfactory evidence of sales, shipments, and amounts or gross production.

16. PRICE. The field market price or value of royalty oil or gas shall not be less than the highest of: (1) The price actually paid or agreed to be paid to Lessee at the well by the purchaser thereof, if any; or (2) The posted price of Lessee in the field for such oil or gas at the well, if any; or, (3) The prevailing price received by other producers in the field at the well for oil of like grade and gravity or gas of like kind and quality at the time such oil or gas is removed from said land or run into storage, or such gas is delivered to an extraction plant.

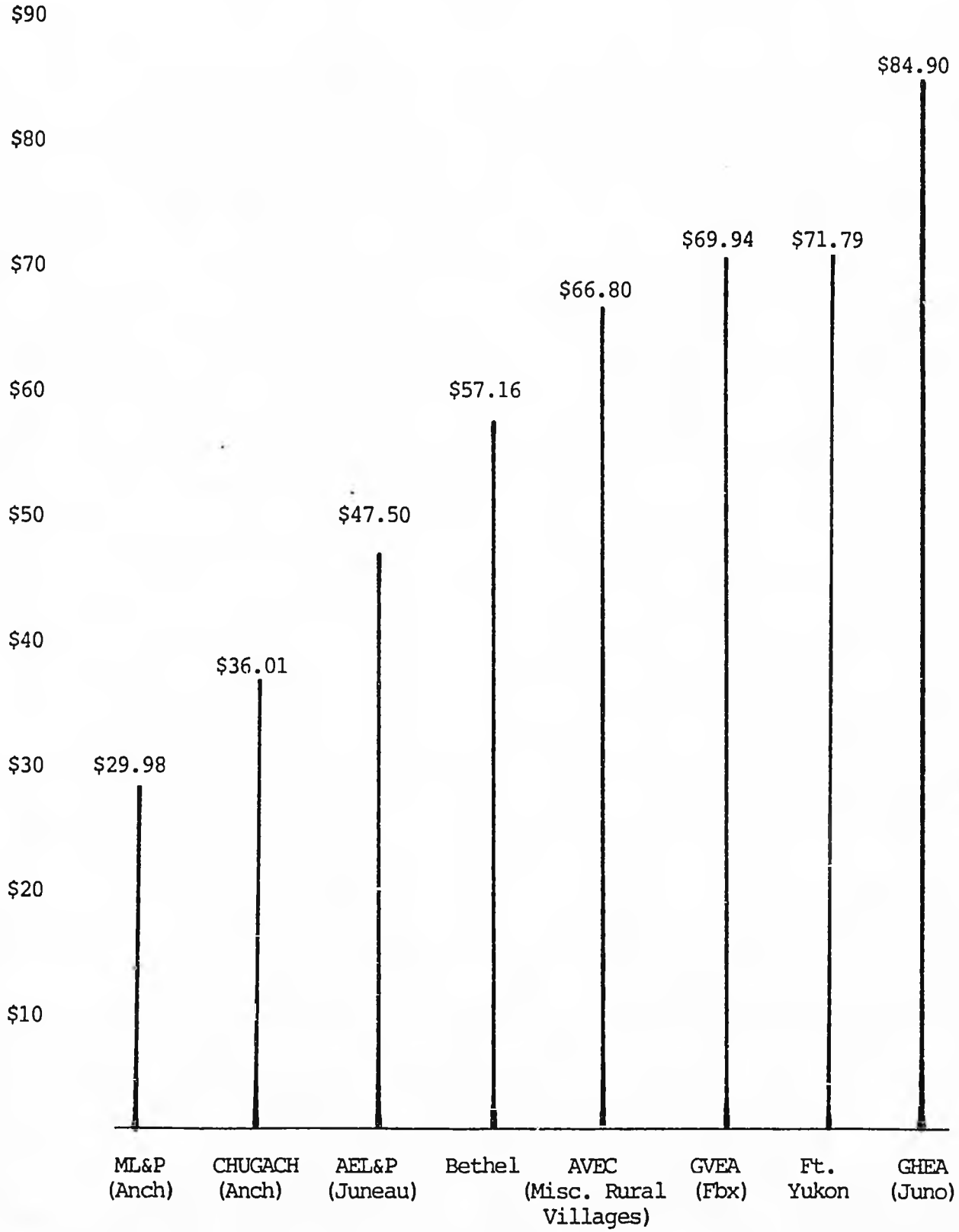
RECENT CONTRACTS AND PURCHASE AGREEMENTS

	Purchaser	Field or Seller	Starting Base Price
1977	Pac Alaska	Cook Inlet	$1.46 per mcf
1982	Enstar	Beluga River	$2.32
1982	Enstar	Beaver Creek Field	$2.32
1982-83	Chugach (Peaking Gas)	Beluga River	$1.40-1.60
1983	Chugach	Cannery Loop	$1.80
1984	Enstar	Lewis River	$1.80
1985	Tesoro	Marathon	$2.01
1985	AEG&T (Homer Electric)	Enstar	$2.04
1985	ML&P (Anchorage)	Enstar	$1.60

February 6, 1986

Representative Residential Electrical Rates for 500 KWH

Assumes: Residential rate, non-demand, hot water heater, winter season.
Power Cost Equalization payments have been subtracted.



Source: Alaska Public Utility Commission, except GHEA rates, which were obtained from GHEA.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/20/86

REQUEST

Bill/Resolution No. : CSSB 309 (Res)
Title : Royalty gas contracts

Sponsor : Faiks
Requestor : Senate Resources
Date of Request : 2/19/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU :

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The valuation provisions of this bill will be applied only for future long-term gas contracts, and there is no way to estimate any fiscal impact on the state. Any revenue losses should be balanced by savings in utility costs for consumers, according to the bill.

Prepared by : Ned Farquhar
Phone : 465-2400
Division : Commissioner's Office
Date : 2/20/86

Approved by Commissioner : Esther C. Wunnicke
Date : 2/20/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Sectional Analysis
Proposed Oil and Gas Committee Substitute for CSSB 309 (Rules)

Sec. 1. Findings. It is in the best interest of the state to authorize the commissioner of DNR to establish the in-value royalty for gas sold to a gas or electric utility by using the contract price between the lessee of the state and the utility. This authorization applies only prospectively, and this Act does not apply to state policies regarding the sale of royalty oil.

Sec. 2. The commissioner shall enter into an agreement with a lessee to use the price established in a contract between the lessee and a gas or electric utility as the value of the state's royalty share of gas production, provided that:

a. the lessee and the utility are not related.
b. the agreement is requested in writing by the lessee.
c. the commissioner does not make a written finding that the contract price is unreasonably low and that a prospective reduction in royalty receipts would not be balanced by increased benefits to in-state gas and electric consumers.

This section states that a "gas or electric utility" includes electric cooperatives (such as Chugach, Matanuska, Homer, rural co-ops, and Golden Valley Electric), municipal utilities (such as Anchorage Municipal Light & Power), and gas utilities regulated under AS 42.05 (such as Enstar).

This section also states that, for purposes of this Act, the state's royalty share of gas production does not include gas production from mental health lands or school lands.

Sec. 3. Adds a new subsection to AS 38.05.183, which provides that the commissioner may sell royalty gas taken in-kind to a gas or electric utility at less than market value if the commissioner makes a written finding that the sale is in the best interest of the state. The same definitions for "gas or electric utility" and "royalty gas taken in kind by the state" found in sec. 2 of this legislation are also found in this section.

Sec. 4. Amends AS 38.05.810(a) to make this subsection consistent with the other provisions of the Act.

Sec. 5. Provides that AS 38.05.180(aa), which would be enacted by sec. 2 of this legislation, applies to agreements to establish the in-value royalties on gas production that are sold under a contract entered into, on or after the effective date of the act between the state's lessee and a gas or electric utility.

Sec. 6. Provides for an immediate effective date.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

FOUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

The Honorable John Sackett
Co-Chair, Finance Committee
Alaska State Senate
Juneau, AK 99811

March 3, 1986

Dear Senator Sackett:

I am responding to your request for more information on the fiscal note and potential fiscal impact of CSSB 309 (Res), now before the Senate as CSSB 309 (Rules).

The fiscal note

The department has submitted a zero fiscal note for the bill, which will not directly affect the state's current royalty gas revenue stream. There are two reasons that it is not possible to identify future costs of the legislation:

- the department is not able to predict how often the new valuation mechanism will be applied in the future, nor can we predict future gas contract prices and quantities; and

- market values for Alaska natural gas (particularly Cook Inlet gas now sold for instate consumer uses and most immediately affected by the proposed statute) are unpredictable, as is the possible disparity (positive or negative) between contract price and market value.

Even though there is no direct fiscal impact that can be assigned to the bill, enactment of the legislation will indirectly affect state royalty income from existing production in Cook Inlet. The state has entered into an agreement with Chugach Electric to value the state's royalty share from Beluga Field production purchased by Chugach under existing contracts at $0.75/mcf if the legislation passes. This value is one-half the state's January offer to settle the pricing dispute at $1.50/mcf, which was rejected by the Beluga producers who sell to Chugach. If the dispute had been settled at $1.50/mcf under existing state law, the

state would have received approximately $1.9 million/year in new royalty income from the Beluga field. Settlement at $0.75/mcf, as will occur if CSSB 309 (Rls) is passed, will increase state royalty revenues from Beluga production by about $810,000/year, according to our calculations, because the state's share of this production is currently valued at $0.21/mcf by the producers. This increase in state royalty revenues is less than would have been expected if 1) the state's $1.50/mcf settlement offer had been accepted, or 2) the state had successfully pursued its legal arguments regarding the value of the state's royalty share under the existing lease terms, based on existing law.

Future costs to the State

As stated above, the department has submitted a zero fiscal note because it is unable to predict future market conditions and contract terms for Alaska natural gas. It is important for the Legislature to consider that market value in the future could either exceed or remain below long-term contract prices for instate consumer gas purchases. The present situation in the Beluga field is an example of how long-term contract prices (Chugach at an adjusted $0.26/mcf and Enstar at an adjusted $2.05/mcf) can be above or below "market value" simultaneously in the same field.

Section 2. The fiscal impacts of Section 2(aa) of CSSB 309 (Rls) will largely depend on future market and contract conditions in Cook Inlet, unless there is a commitment of North Slope natural gas by the producers for instate use. The natural gas market for instate energy use will be affected by the costs of thermal and hydroelectric energy alternatives, including new or expanded coal development; production from new or shut-in gas sources; geothermal development (which has been discussed in connection with Beluga coal development); hydroelectric construction; export projects for coal, gas, or oil; and the price of fuel oil and diesel as alternative fuel sources. There have been some projections of Cook Inlet gas prices by other agencies that this department has disputed on grounds that the Cook Inlet market remains largely controlled by local factors rather than world gas or oil prices or exports. If North Slope natural gas is brought to market its pricing and availability will also become an important factor in the fiscal impact of this bill (Section 2(bb)). Because the eventual marketing arrangements for Prudhoe Bay gas would

probably have to be less diverse and more stable than are marketing arrangements for Cook Inlet gas, it is likely that there would be less disparity between Prudhoe Bay contract price and market value, although the fiscal impact of accepting the contract price as the state's royalty value (given the magnitude of the Prudhoe Bay gas resource) might be larger, either positively or negatively affecting the state's revenues.

Section 3. This section gives the commissioner authority to make below-market-value gas sales for instate energy use. Because the Legislature reviews long-term royalty oil and gas contracts before their implementation by the Department, the fiscal impact of this section will be considered by future Legislatures reviewing such below-market-value gas sales by the state. Without knowledge of how often or at what cost the state will exercise this option, there is no way to estimate the fiscal impact of enacting this statute.

Please contact me if you have any further questions or comments. I am providing copies of this letter to other members of the Senate in anticipation of the floor debate on CSSB 309 (Rls) this morning. Thank you for your interest in this issue.

Sincerely,

Esther C Wunnicke

Esther C. Wunnicke
Commissioner

cc: All Senators
Dr. Joyce Murphy, Chugach Electric

DNR 3-3-86

SUMMARY OF CSSB 309 (RULES)

The Bill will allow the state to provide certainty in royalty gas valuation for Alaska consumer uses and North Slope gas development.

Specifically, the Bill would:

- Authorize the Commissioner of the Department of Natural Resources to accept a contract price between a state lesses (gas producer) and a gas or electric utility as the value of the state's royalty share of production.

- Authorize the Commissioner of the Department of Natural Resources to sell the state's royalty gas to a gas or electric utility at a price below market value. The Legislature reviews long-term sales under existing law.

- Establish a royalty valuation procedure which will facilitate financing for a North Slope gas pipeline.

"Gas or electric utility" includes cooperative electric utilities (such as Chugach, Matanuska, Homer, rural coops, and Golden Valley Electric), municipal utilities (such as Anchorage Municipal Light and Power), and a gas utility regulated under AS 42.05 (such as Enstar).

The Act would apply only to future contracts between a lessee and a purchaser.

A preliminary settlement agreement between the Department of Natural Resources and the Board of Directors of Chugach Electric, which would settle pending litigation over the value of the state's royalty share of Beluga gas now pruchased by Chugach at $0.26/mcf, is contingent on passage of the bill. The preliminary settlement agreement sets the price of Beluga royalty gas under the existing Chugach contract at $0.75/mcf.

Revenue Impact: Section 3 of the Bill, which authorizes the Commissioner to sell royalty gas taken in kind to a gas or electric utility at a price below market value, could result in lower state revenues in the future if this discretionary authority is exercised. The amounts of potential revenue loss cannot be precisely calculated, but would be identified at the time of the sale, when legislative review would occur. The state could also lose or gain revenue by any disparity between contract prices and market values, but this fiscal impact is not predictable.

DNR 3-3-86

Section-by-Section Analysis of CSSB 309 (Rules)

Section 1 of the Bill makes several findings:

- The best interest of the state will be served if the commissioner of Natural Resources is authorized to establish the in value royalty for gas sold to a gas or electric utility by using the contract price between the state lessee and the utility;

- It is in the best interest of the state to give the commissioner explicit discretionary authority to sell in kind royalty gas to a gas or electric utility at a price below market value;

- The proper exercise of discretion conferred by the Act will support and complement the other energy programs of the state;

- The state should adopt a policy for the sale of royalty gas to gas or electric utilities for in-state consumer use and in-state generation of electricity that is fundamentally different from the policies of the state for the sale of royalty oil and for the sale of royalty gas for export from the state or for uses other than in-state consumer use and in-state generation of electricity; and

- It is in the state's best interest to facilitate the financing and construction of a pipeline and increased gas production from the Prudhoe Bay reservoir by establishing a procedure by which the state could commit itself to a royalty valuation methodology for as long as the state takes its royalty share of gas production in value.

Section 2 adds new subsections to AS 38.05.180:

- Subsection (aa) provides that within 90 days after the written request of a lessee, unless the commissioner makes a written finding based on clear and convincing evidence that the contract price is unreasonably low and that a prospective reduction in royalty receipts would not be balanced by increased benefits to in-state gas and electric consumers, the commissioner shall enter into an agreement with the lessee to use the price established in a contract between the lessee and a gas or electric utility as the value of the state's royalty share of gas production, if the lessee and the utility are not related. "Gas or electric utility" includes an electric cooperative organized under AS 10.25, a municipal utility, and a gas or electric utility regulated under AS 42.05.

- Subsection (bb) provides that in the event of a contract between unrelated parties for the sale of gas from the Prudhoe Bay reservoir for delivery through a pipeline for export out of the state, the commissioner shall within 90 days after the written request of a lessee enter into an agreement with the lessee to use the price for gas established in the gas sales contract as the value of the state's royalty share of gas production, unless the

commissioner makes a written finding that the contract price does not assure the maximum benefits to the people of the state in return for the state's gas resources. The lessee shall have the burden of providing all information necessary for the commissioner to make an informed decision, and shall provide clear and convincing evidence that the value of the gas is reflected by the gas sales contract price rather than being attributed to transportation, marketing, or other profit or cost centers.

Section 3 adds a new subsection to AS 38.05.183:

- Subsection (h) provides that the commissioner may sell royalty gas taken in kind to a gas or electric utility at less than the market value of the gas, if the commissioner, after considering the consumer benefits, other benefits, and detriments of the sale, makes a written finding that the sale is in the best interest of the state. "Gas or electric utility" includes an electric cooperative organized under AS 10.25, a municipal utility, and a gas or electric utility regulated under AS 42.05.

Section 4 amends AS 38.05.810(a) to make it consistent with the other provisions of the Act.

Section 5 provides that the proposed AS 38.05.180(aa), which would be enacted by Section 2 of the Act, applies to agreements to establish the in value royalties on gas production that is sold under a contract entered into on or after the effective date of the act between the state's lessee and a gas or electric utility.

Section 6 provides an immediate effective date.



YUKON PACIFIC CORPORATION

March 18, 1986

Rep. Mike Davis
Pouch V - Mail Stop 3100
Juneau, AK 99811

Re: Position Paper/SB 309

Dear Mr. Davis:

1. Yukon Pacific Corporation is an Alaska-based company working to bring about the Trans Alaska Gas System (TAGS) a pipeline to tidewater for shipment of liquefied natural gas (LNG) to Asian markets.

2. Financing and construction of a multibillion dollar system requires the ability to make long-term contracts with certainty that the state will not later come along and change the price of the State's royalty gas. Pass-through provisions are not possible in the international market.

3. SB 309 in its original form would have addressed the problem by requiring the State to accept the price of the gas under long-term contracts when its royalty share is taken in value. SB 309 as passed by the Senate confirms the State's contention, now being challenged in court, that it does have the right to revalue gas under contract. The bill then makes certain "exceptions" to allow the state's utilities to have the certainty in long-term contract prices they believed they had before the Commissioner's decision in 1985 to raise Beluga in-value prices.

4. Yukon Pacific has sought language in SB 309 that would give it a similar "exception" to allow the Commissioner to agree to long-term contract prices if certain findings are made. The language contained in SB 309 would allow the Commissioner to see to it that producers could keep their price commitments to buyers of North Slope gas if the Commissioner was certain the transaction was both arms-length and did not unfairly diminish the value of the gas by attributing greater profits to transportation or marketing.

5. Yukon Pacific would urge the following changes to the legislation, if the issue is not first settled in court:

P.O. Box 101700 • Anchorage, Alaska 99510 • 907 279-1596 • Telex 25-340 Capt. Cook AHC
515 South Post Oak Road • Suite 225 • Houston, Texas 77027 • 713 960-1550

a. The so-called "exception" should be broadened to all new gas contracts so long as the state maintains the ability to prospectively take and sell its gas on an in-kind basis during the life of the contract.

   The state may be protected by agreeing to a formula for transportation and for processing charges up front, before the Commissioner makes the findings to go with the contract.

b. The arms length clause in the North Slope contract could prevent a contract price decision by the State if North Slope producers take any interest in a gas pipeline. In ANGTS this was the case and it is likely the case in TAGS.

   The State is protected by the parallel finding that the market value of the gas is appropriate. Had such a finding been made by the Commissioner before less-than-arms-length transactions were made to construct TAPS, the Phillips-Marathon LNG plant, and the Collier Chemical Plant, it is our belief that expensive and disruptive legal battles on appropriate values of wellhead oil or gas could have been avoided.

6. In conclusion, while Yukon Pacific believes this legislation may not have been necessary if the pending court cases were allowed to come to a conclusion, the company also believes that broadened legislation, removing the proscription on less than arms length transactions, could provide the stability in royalty policy necessary to sign long-term contracts and to finance new projects.

Please pass this information along to the Committee at the hearing on Wednesday, March 19.

With best regards.

Sincerely,

John Horn
Vice Chairman

JH:BH

MEMORANDUM State of Alaska

TO: Kay Brown, Director
Division of Oil and Gas
and Ned Farquhar, Special Assistant/
Legislative Liaison
Department of Natural Resources

DATE: March 19, 1986

FILE NO:

TELEPHONE NO:

FROM: Harold M. Brown
Attorney General

By: Mark P. Worcester
Assistant Attorney General
Oil, Gas and Mining-Anchorage

SUBJECT: Yukon Pacific's 3/18/86 letter on SB 309

I have the following comments on the Yukon Pacific position paper on SB 309, dated March 18, 1986, and addressed to Representative Mike Davis.

* The letter consistently confuses the terms "price" and "value". When the state takes royalty in value, it receives the value of the gas; when it takes royalty in kind, it receives a price. Accordingly, the state does not "change the price" of royalty on gas production taken in value. Rather, it merely enforces lease provisions which provide that value is not exclusively determined by the price established by the producer's sales contract. This is an essential distinction. For instance, Horn's confusion betweeen "price" and "value" is the predicate for his insinuation that "uncertainty" is attributable to the supposed vagaries of state administration, whereas the critical uncertainty is caused instead by the inability to predict the marketplace over time.

* The letter ignores the fact that Yukon Pacific has always had the ability to obtain "certainty" as to royalty contract "price" through a contract for in kind royalty gas paralleling any sale of working interest gas. Indeed, as indicated above, the only way the state can commit itself not to change a royalty "price" (as opposed to a royalty "value") is in the context of a sale of gas taken in kind.

* The insinuation that the state's legal case is weak is entirely false. If the producers and utilities had thought they had long-term contract prices controlled in value royalties, they would not have had "pass-through" clauses in their sales contracts. More explicitly, had Phillips, Marathon, Union, and Enstar really felt their litigation chances to be so favorable, they would not have all entered into settlements so clearly favorable to the state. Even the Chugach settlement will bring the state three times the amount of royalty that Chugach and the producers asserted was due.

* Up front agreement to a formula for apportioning price among the gas, processing costs and transportation costs for all sales contracts in unrealistic. The state still has not reached final resolution on TAPS charges, and the shipping charge issues for North Slope oil are in litigation in the Amerada Hess case. It took years to resolve these issues with Phillips and Marathon. It would be difficult for the department to make sound decisions on such apportionment "up front" - especially within a 90 day time frame.

* The present bill would not require the department to agree to a formula to apportion a North Slope gas contract price among pipeline, liquefication, shipping and the gas. For instance, the sales contract could be between the producers and Yukon Pacific at the North Slope, with Yukon Pacific marketing the gas in Japan. The bill does not require agreement as to an apportionment formula - only a finding that the value of the gas has not been diverted to transportation or other cost or profit centers.

* The apportionment issue will be a significant issue if the first sale of North Slope gas is directly to the Japanese. Mr. Horn worked with Phillips. Phillips argued in the Cook Inlet LNG litigation that under a "proper" (from Phillips' perspective) netback method, the value should be apportioned according to the amount invested in each segment. Since the pipeline, LNG facility and LNG tankers have great up front costs, this would have resulted in a very low netback value for the gas. In fact, the great profits of the Phillips/Marathon LNG plant came from an increase in the value of the gas: it was economic rent from the fortuitous worldwide escalation of energy prices that created the large profits. I am confident that any formula which Phillips would have proposed "up front" would have been designed to deprive the royalty owner from fully sharing in any fortuitous rise in the value of the gas. Any simple formula would inappropriately attribute rises in the value of the gas to liquification, pipeline and shipping, and would not account for the depreciation of the pipeline, liquefication and shippong facilities.

* It may be worth reiterating that the ability of the state to take its gas is kind is a safeguard of questionable value. The gas market is limited - especially on a day-to-day basis. More importantly, the state is in a very disadvantageous

marketing position. Not only must any contract go through administrative and legislative procedures which discourage potential buyers, but the state, unlike producers, cannot control the volume of gas under any in kind sale, since the state simply takes a percentage of what the amount produced under the lessees' sales contracts.

* The suggestion that "expensive" litigation could have been avoided had SB 309 been on the books sooner is incredible. Certainly, it has been expensive to litigate TAPS and the Phillips LNG cases. However, it has primarily been "expensive" to the oil companies, since they have been required to pay huge sums to the state. Moreover, it is disingenuous to suggest that the Phillips/Marathon LNG disputes could have been avoided if SB 309 had been in place when that project was built. Phillips and Marathon both strenuously argued that the Japan sales price could not be used to determine their royalty obligation. Instead, they argued that their royalty was controlled by the local market price (which they acknowledged could change over time). Union's dispute also could not have been resolved by a SB 309, since it does not sell its gas, but rather transfers it from its production to its chemical division. The only reason that John Horn is touting a netback for Yukon Pacific, after he adamantly opposed a netback when working for Phillips, is because the market is now different, and Yukon Pacific believes the royalty will be lower using a netback from the Japan price (especially if they can manipulate the netback "formula") than it would be if the royalty were controlled by local market values. This illustrates that the most consistent "principle" guiding the industry's stance on royalty policy is that royalties should be minimized.

* It now looks like a real push will be made to amend the (bb) subsection in SB 309 - at least to remove the restriction to arm's-length contracts. I have an additional suggestion on possible amendments. I believe that it would be important that the commissioner have the power to <u>conditionally</u> approve the use of contract price. I think that the power exists now, since a commissioner could reject a proposal, and in the decision accompanying the rejection state the changes which would make the proposal satisfactory. However, it may be difficult for a commissioner to take such actions because of political pressures not to "obstruct" significant projects. It may be easier for a commissioner to insist upon changes to protect the state's

royalty interest if the authorizing statute expressly comprehended that the commissioner's role would go beyond merely taking or leaving an oil company proposal. This kind of authority would be especially important where the proposal called upon the commissioner to agree to apportionment of a destination price among the gas, pipeline, shipping and liquefication segments.

RECEIVED APR 29 1985

ENSTAR Natural Gas Company
3000 Spenard Road
P.O. Box 6298
Anchorage, Alaska 99502
(907) 277-5551

April 25, 1985

Dear Senator Faiks:

The State has announced it intends to increase the price paid for royalty gas which we receive pursuant to a contract entered into in 1960 and last renegotiated in 1974, with Marathon and Union, our suppliers at the Kenai gas field. The Administration says it is compelled to take this action in order to get a fair market value for its royalty gas and stop a "subsidy". The Administration's statements are misleading. The State is receiving fair value. There is no subsidy. There is no requirement for the Administration to take such action. Without proposing regulations, holding hearings, or giving those affected an opportunity to be heard, the Administration would use the State's monopoly power to exact an excessive price from the consumers.

The Fair Value of Gas Committed to a Long-Term Contract Is The Arm's Length Negotiated Price

Historically, the value of the royalty share of gas committed to a long-term contract has been considered to be the price established by the contract, if that price was set by unrelated parties in arm's length negotiations. Since gas transmission systems require massive capital investments, long-term contracts for production are a characteristic of the business. Without long-term contracts, pipelines would not have been built. In order to assure the marketability of the pipeline's out put, good business practice requires a pricing mechanism that will deliver the product at a competitive price. The free market system basically has dictated the business practices we have followed.

Royalty owners in a number of states have attacked the long followed principle that fair value is determined by arm's length negotiated prices, with mixed results. Courts in Alaska have not ruled on the issue, but ENSTAR believes that the prevailing and equitable view is that fair values are determined by arm's length negotiations, not by bureaucratic edict.

Our Customers Are Not Being Subsidized by the State

The Administration claims there is a subsidy because the price the State is receiving under ENSTAR's long-term contract is less than the price ENSTAR is paying for gas we more recently negotiated to purchase. That purchase covers fifteen years, cannot be terminated, and has known pricing terms. The State's royalty can be terminated on six months notice (and then taken "in kind"). The State maintains it can unilaterally "reprice" its gas at any time while taken as royalty-in-value. No willing buyer would purchase gas from the State under such conditions.

During the 1960's ENSTAR was subjected to criticism in Juneau because some politicians believed ENSTAR paid too much under the very same contract on which DNR now says ENSTAR is paying too little. We (our customers) paid the price necessary to get the commitment of half a trillion cubic feet of gas for 20

years. We (our customers) took the risk that gas prices would go down, not up. The State received what was then considered to be a high price, guaranteed for the life of the contract.

Our customers paid the market price for the risk they took. Gas prices have gone up, not down. Now the State in effect would confiscate the values the consumers paid for. Now the State maintains that without this confiscation, it is subsidizing the consumers. Baloney.

The State is Using Monopoly Power
to Exact an Excessive Price from the Consumers

Alaska is unique in that the Federal and State governments control substantially all royalty. The governments have a monopoly and it is not possible to negotiate royalty valuation terms of lease agreements. Terms are dictated, not negotiated. This is effectively a monopoly action at work, not a free market. DNR admitted in an internal memorandum that its present pricing proposal would "further its relations with the ANCSA corporations... and lend support to current federal royalty litigation...". If business corporations made pricing decisions in concert with or to accommodate other suppliers, they probably would be subject to prosecution.

When we, as purchasers, enter into a long-term contract with a producer, we are not assured of the royalty share since the State retains the right to take its gas in kind. Yet we must take the royalty share, no matter what price may be exacted. Obviously, if a free market prevailed, we simply would not purchase State royalty on such terms. The concept of the State receiving fair value for its resources does not mean it can use its monopoly power to squeeze the last bit of revenue from the consumer. It does mean receiving the value that would be arrived at in a free market system. That is exactly what arm's length negotiations do.

For 25 years the State has accepted arm's length negotiated pricing as royalty value. We believe it is unfair and probably unlawful for the State to reverse this acceptance in the present situation, with no regulations, no public hearings, and no court decisions.

We are trying to work with the State Administration and others to develop a legislative or administrative solution to this problem, and are preparing to inform the public as to its scope and effect in the event these efforts are not successful.

Cordially,

ENSTAR Natural Gas Company

Bill B. Hickman
Executive Vice President

BBH/dms

ENSTAR

ENSTAR Natural Gas Company
3000 Spenard [illegible]
P.O. Box 6288
Anchorage, Alaska 99502
(907) 277-5541

December 12, 1984

The Honorable Jan Faiks
Alaska State Senator
1024 West 6th Avenue, Suite 202
Anchorage, Alaska 99501

Dear Jan:

I have your September 6 letter and will try to respond in writing, somewhat as to the handout you requested. We have been quite busy through this week, but should have some time after that for the meeting with the Anchorage Caucus if that is still desired. (Jury duty December 16-21).

I will respond in this letter to the "subsidy" allegation, and relate the history of gas in Cook Inlet in a memorandum, attached. The allegation is that our price (and Chugach's) payable to the producers for gas negotiated and contracted many years ago is below the price at which gas would be negotiated at present, and that the price differential, applied to the State's royalty interest in that gas, constitutes a subsidy from State residents who are not users of that gas (or electricity made from it) to those State residents who do use the gas (or electricity made from it).

Those who allege a subsidy appear not to comprehend the character of the natural gas business, and I hope this letter will be of some help in that respect. Natural gas, unlike oil, requires a relatively large investment for delivery to market. The investment is for relatively large pipelines and compressors, (cryogenic processing, storage, and ships in the case of LNG, liquefied natural gas). The investment cannot be made without long term contracts at known pricing, generally well below the then prevailing delivered price of oil in order to assure a market against that competition. Essentially many major users of natural gas can literally switch to oil whenever oil can be obtained for less than gas. The producers run this risk in developing natural gas production, and the pipeline/utility system is exposed to relatively much greater risk because its investment per unit is normally much greater than the producer's. For both, however, long term contracts at known pricing are essential and traditional in the industry. When such contracts are abrogated, as with Canadian production since the early 70's, great distress and severe reaction develops. The experience there is an object lesson for Alaska: Canadian gas was arbitrarily repriced, and lost its market in the Pacific Northwest to OPEC oil. It was followed by depression in both Canada and the Pacific Northwest and by devaluation of Canadian money and in turn the defeat of the decades-old Canadian administration, this year.

Admittedly there has been and will be litigation on the sanctity of contracts and the "rights" of royalty interest owners, as with all controversies both private and public. The State has recently settled with Phillips on North Cook Inlet gas used in its LNG plant, and that in turn has enabled us to gain access to a portion of that gas, for standby purchases in times of high demand.

It is my opinion that a majority of Alaskan legislators and the administration and the courts will acknowledge the sanctity of contracts as to our purchase of Cook Inlet gas. In my opinion, the allegations of subsidy of gas ratepayers are advanced in order to justify admitted State subsidy to non-railbelt electric users, as enacted this year and may be increased next year.

It is worth noting that the State's royalty interest in Cook Inlet gas we buy is really rather small (about 1/6th of 1/8th, or 2% of the 26 million mcf annual production). The spread between the price we currently pay and the State's negotiated settlement with Phillips is not nearly as wide as would be inferred from statements by some political figures and other royalty interest owners. It is in the range of $1 million per year, a far cry from the admitted State subsidy to non-railbelt power users.

Jan, I hope the foregoing and the attached memorandum will be of some interest to the Anchorage Caucus. Frankly, I would prefer not to appear before your group at this time, because we are quite likely to become embroiled in the lawsuit involving CIRI, MMS (old USGS) and Union Oil Company. It would be embarrassing to me personally to respond with no comment or otherwise appear evasive, when I would really like to make announcements to the world.

Cordially,

* ENSTAR Natural Gas Company

Dale Teel
President

DT/dms

* The same Anchorage Gas Corporation, Anchorage Natural Gas, Alaska Gas and Service Company, Alaska Pipeline Company, et . etc.

ENSTAR

ENSTAR Natural Gas Company
COMPANY

Inter-Company Correspondence

To: File

Location:

From: Cale Teel

Date: December 12, 1984

Subject: History of Cook Inlet Natural Gas
Prepared in Response to Request from Senator Jan Faiks of September 6, 1984

File:

The history of Cook Inlet gas begins, I believe, with the 1959 discovery of the Kenai gas field by Union and Marathon. It was this discovery, I believe, which enabled Anchorage Gas Corporation to win the franchise referendum election in the fall of 1959. I didn't participate in the 1959 negotiations or the franchise campaign and didn't make my first visit to Alaska until January of 1960. I was told however, that the owners of Anchorage Gas Corporation had had in mind to bring me to Alaska (from Honolulu) to organize Anchorage Gas Corporation as an operating company in 1959, even prior to the Kenai discovery, when they were planning to distribute propane or manufactured gas in Anchorage in anticipation of a discovery. The Swanson River oil field had been discovered (1957 or 1958), with gas shows but not commercial quantities. My background then was in propane/butane and manufactured gas, in Hawaii, and I am a graduate chemical engineer.

We built the first marine pipeline in Alaska, across Turnagain Arm, in 1960-61, and turned on gas service in Soldotna and Anchorage in August of 1961. Our first wellhead cost was 32 cents per Mcf (thousand cubic feet), well above the nationally regulated price of 16 cents or so. For a time we believed this cost could compete against coal at Chugach's Knik Arm steam plant (now being moth-balled), and the power/heating plants at Elmendorf and Fort Richardson. Coal was then roughly 55 cents per Mcf equivalent. We were in part relying on the better efficiency and labor cost savings from gas to be competitive with coal. The conversion of these plants, all funded by the federal government, became a hot political issue, and it was not until 1968 that we won out against the politics and the government inertia.

In the meantime, Chevron and Texaco vigorously defended their fuel oil business in Anchorage. They cut their price from 24 cents per gallon to 20 cents per gallon soon after gas became available, and did heavy advertising and took other actions against the introduction of gas. One weekend they hired students to deliver a small bag of peanuts to each house in Anchorage with a flyer saying -- "If you're thinking of converting to gas, think again. Peanuts is all you'll save, so we have decided to give you the peanuts and let you save the cost of conversion." This and many other un-funny competitive actions forced me to appeal to Union and Marathon to cut the Kenai wellhead price to 24 cents (25% reduction) to enable us to remain viable without the large users (power plants) or the large commercial who were burning heavy oil from Chevron.

In 1963 or so the Beluga gas field was discovered, and Chevron and the other producers signed a 20-year contract with Chugach at 16 cents. This fact, and the City's installing its first gas turbine, led me once again to appeal to Union and Marathon for a wellhead price reduction. They agreed that any gas I could sell above 1.6 bcfy (billion cubic feet per year) to the City would be priced at 16 cents, while holding the 24 cents on the remainder. In this way we encouraged the City to add more gas turbines and compete with Chugach.

Later in 1967 or so, we amended the Kenai wellhead price again, to put the first 8 bcfy at 24 cents and all above 8 bcfy at 16 cents. By this time we had recovered from the 1964 earthquake and found good acceptance in the community. With various sales tools we were rapidly gaining customers and the coal suppliers (Evan Jones) had shut down so that coal was coming from Healy at a much higher price than gas. Until this time Union and Marathon had owned half of our common stock (non-voting), but in 1967 our owners offered a public sale of stock (Alaska Interstate Company) and bought out the Union and Marathon interest.

Our annual gas volume grew rapidly as we displaced coal at all three power plants and the City continued to install gas turbines. In turn, Union/Marathon wanted to raise the wellhead price and dedicate their gas to other markets -- ammonia (Union) and LNG (Marathon). They had made an agreement with Chevron to "rent" Kenai field gas for 8 cents per mcf, but to pay the State royalty at 16 cents, which had become the "market price" via the Beluga sale as well as our negotiations with them. I believe (but do not know) that 8 cents was the wellhead value necessary to make the ammonia and LNG feasible, so pricing the Kenai royalty at 16 cents was a subsidy to the State from Union/Marathon.

In 1967 we renegotiated Kenai gas to 21 cents and scheduled future escalations, in order to get a firm commitment of 550 bcf over a new 20 year term, to 1992, and in 1974 we again negotiated to add a 19.4 cent charge to get firm deliverability through 1985 of 160 million cubic feet per day and 700 psig delivery pressure. Firm deliverability is the right to obtain gas on any day at the contracted level despite a much lower average daily take -- in our case only 72 million cubic feet, or a "swing" of 222%. The federally regulated price at that time was about 40 cents, for 110% "swing". Thus we felt that adding the deliverability charge gave us long term protection and assurance of supply including peak demands. It was well that we did so, because from 1973 or so OPEC began to bring chaos to the price of oil, followed by the embargo and the Iranian actions which took oil (and gas, nationally) to catastrophic levels.

In 1977, again running short of deliverability, we negotiated with the State to buy the State's royalty interest from the North Cook Inlet gas field operated by Phillips. We were aware that this gas price was variable and escalating, but we considered that we could meet the escalating price on condition that we had no obligation to take that gas and would do so only to enable our customers to avoid using oil at an even much higher price. We continued using State royalty gas until we were able to negotiate the needed deliverability from Marathon (at the Beaver Creek gas field). Beaver Creek gas was initially priced at $2.32 and included assured long term deliverability, but is indexed up or down to the price of turbine fuel (oil) at the Tesoro refinery, so that its present price is $2.19. This year we began buying gas from the Lewis River gas field with negligible take or pay, at $1.80.

Clearly, the wellhead value of gas in Alaska does not have a direct correlation to the world price of oil, or even to inflation. There has been, and is, a surplus supply of gas available in the Cook Inlet area, and its real value is determined by negotiations of a willing buyer and a willing seller. We are entrusted by the Alaska Public Utilities Commission with the responsibility to behave prudently in these negotiations and to make the best deals we can for the interest of our custom-

ers and our owners. There is perhaps an art, but very little science, in deciding when to make a deal and on what terms. We have been complimented by many of our associates in the industry, by our customers, and by the APUC. We have been criticized by experts at various times that we have paid too little or too much. But a deal is a deal in the real world, and I am proud of having the lowest gas rates in the country and among the best long term supply. Where we had no customers in 1960, we now serve nearly 70,000 and the benefits extend to all of railbelt Alaska through interconnects of electric power, from Homer and Seward through the Matanuska Valley and soon to Fairbanks. There is no subsidy to our customers, or to these others, although they, in total, are saving hundreds of millions of dollars per year as compared to what they would be spending for oil if we had not developed natural gas in Alaska.

We are aware of efforts by CIRI and MMS (old USGS) to collect retroactive royalty and to set artificial wellhead values for gas used by Union/Marathon in their ammonia-LNG plants. These conditions do not attach to our purchases, all of which were made at arms-length and establish the real market, the only true value of the gas we buy for our customers.

DT/dms

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

ESTIMATED PRODUCTION AND SALES FOR NORTH SLOPE ROYALTY OIL (9)

YEAR	ESTIMATED TOTAL PRODUCTION (BARRELS PER DAY) (1) TOTAL PRUDHOE	(1) TOTAL KUPARUK	(1) TOTAL LISBURNE	(1) TOTAL ENDICOTT	(1) TOTAL MILNE PT.	TOTAL	ESTIMATED ROYALTY (BARRELS PER DAY) PRUDHOE ROYALTY	KUPARUK ROYALTY	LISBURNE ROYALTY	ENDICOTT ROYALTY	MILNE PT. ROYALTY	TOTAL ROYALTY	ESTIMATED SALES OF ROYALTY OIL (BARRELS PER DAY) AAPCO	(2) GVEA	(3) TESORO (OLD)	(4) TESORO (NEW)	(5) CHEVRON	(6) COMPETITIVE SALE 12-11-84	(7) PETRO/CHEVRON (PROPOSED)	(8) COMPETITIVE SALE 2-4-86 (PROPOSED)	ROYALTY IN VALUE
1985	1,350,000	180,000			3,000	1,733,000	193,750	22,500			375	216,625	35,000	5,167	47,533	26,867	18,600	65,000			18,458
1986	1,550,000	220,000			30,000	1,800,000	193,750	27,500			5,400	226,650	35,000	5,167	47,533	26,867	18,600	65,000	6,000	10,000	27,483
1987	1,550,000	220,000	50,000		30,000	1,850,000	193,750	27,500	6,250		5,400	232,900	35,000	5,167	47,533	26,867	18,600		6,500		93,233
1988	1,376,000	220,000	60,000	50,000	30,000	1,736,000	172,000	27,500	7,500	7,000	5,400	219,400	35,000	4,587	42,197	23,851	16,512		6,500		99,753
1989	1,183,000	220,000	70,000	100,000	25,000	1,598,000	147,875	27,500	8,750	14,000	4,500	202,625	35,000	3,943	34,278	20,504	14,196		6,500		84,202
1990	1,010,000	187,000	80,000	100,000	20,000	1,405,000	127,250	23,375	10,000	14,000	3,600	178,225	35,000	3,393	31,218	17,646	12,216		5,525		73,227
1991	928,000	159,000	90,000	100,000	15,000	1,292,000	117,000	19,875	11,250	14,500	2,700	163,825	35,000	3,093	28,458	16,086	11,136		4,698		65,354
1992	846,000	135,000	100,000	100,000	15,000	1,196,000	105,750	16,875	12,500	14,000	2,700	151,825	35,000	2,820	25,944	14,664	10,152		3,989		59,256
1993	772,000	122,000	100,000	85,000	10,000	1,089,000	96,500	15,250	12,500	11,900	1,800	137,950	35,000	2,573	23,674	13,382	9,264		3,605		50,452
1994	706,000	109,000	100,000	75,000	10,000	1,000,000	88,250	13,625	12,500	10,500	1,800	126,675	35,000	2,353	21,650	12,238	8,472		3,220		43,741
1995	646,000	98,000	90,000	70,000	10,000	914,000	80,750	12,250	11,250	9,800	1,800	115,850	35,000						2,895		77,355
1996	591,000	89,000	80,000	65,000	0	825,000	73,875	11,125	10,000	9,100	0	104,100	35,000						2,630		64,470
1997	541,000	80,000	72,000	60,000	0	753,000	67,625	10,000	9,000	8,400	0	95,025	35,000								60,825
1998	498,000	72,000	65,000	55,000	0	690,000	62,250	9,000	8,125	7,700	0	87,075	35,000								52,875
1999	458,000	65,000	58,000	50,000	0	631,000	57,250	8,125	7,250	7,000	0	79,625	35,000								44,625
2000	421,000	58,000	52,000	45,000	0	576,000	52,625	7,250	6,500	6,300	0	72,675	35,000								37,675
2001	387,000	52,000	47,000	40,000	0	526,000	48,375	6,500	5,875	5,600	0	66,350	35,000								31,350
2002	357,000	47,000	42,000	20,000	0	466,000	44,625	5,875	5,250	2,800	0	58,550	35,000								23,550
2003	328,000	42,000	38,000	10,000	0	418,000	41,000	5,250	4,750	1,400	0	52,400	35,000								17,400
2004	302,000	38,000	34,000	0	0	374,000	37,750	4,750	4,250	0	0	46,750									46,750
2005	278,000	34,000	31,000	0	0	343,000	34,750	4,250	3,875	0	0	42,875									42,875
2006	255,000	31,000	28,000	0	0	314,000	31,875	3,875	3,500	0	0	39,250									39,250
2007	235,000	28,000	25,000	0	0	288,000	29,375	3,500	3,125	0	0	36,000									36,000
2008	216,000	25,000	20,000	0	0	261,000	27,000	3,125	2,500	0	0	32,625									32,625
2009	199,000	20,000	15,000	0	0	234,000	24,875	2,500	1,875	0	0	29,250									29,250
2010	183,000	15,000	10,000	0	0	208,000	22,875	1,875	1,250	0	0	26,000									26,000
2011	168,000	10,000	0	0	0	178,000	21,000	1,250	0	0	0	22,250									22,250
2012	155,000	0	0	0	0	155,000	19,375	0	0	0	0	19,375									

(1) DOE ESTIMATE OF FIELD PERFORMANCE, DECEMBER 1985.

(2) GVEA'S TEN-YEAR CONTRACT COMMENCED JULY 1, 1985. QUANTITY IS 2.667% OF DAILY PRUDHOE ROYALTY OIL.

(3) TESORO'S CONTRACT IS CURRENTLY AT ITS MAXIMUM QUANTITY OF 24.533% OF DAILY PRUDHOE ROYALTY OIL. THE CONTRACT EXPIRES JANUARY 1995.

(4) ON OCTOBER 1, 1985 TESORO COMMENCED DELIVERIES UNDER 12/9/83 PRUDHOE CONTRACT WHICH HAS A MAXIMUM QUANTITY OF 13.86% OF DAILY PRUDHOE ROYALTY OIL AND EXPIRES JAN. 1, 1995.

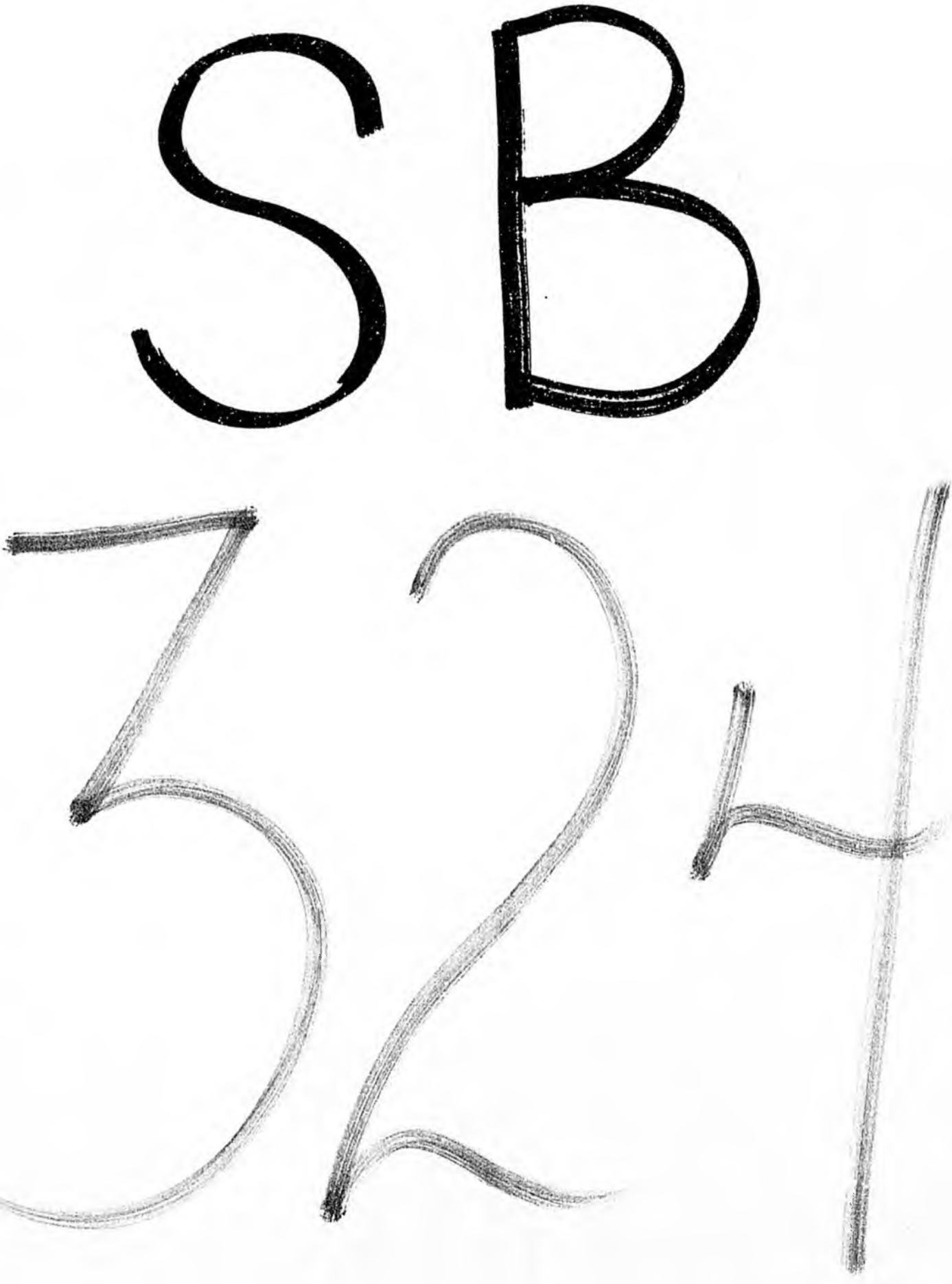
(5) CHEVRON'S CONTRACT CALLS FOR A MAXIMUM QUANTITY OF 9.6% OF DAILY PRUDHOE ROYALTY OIL. THE CONTRACT EXPIRES JANUARY 1, 1995.

(6) DELIVERIES COMMENCED APRIL, 1985 FOR 50,000 BPD OF PRUDHOE BAY UNIT ROYALTY OIL AND 15,000 BPD OF KUPARUK RIVER UNIT ROYALTY OIL, AND WILL CONTINUE FOR ONE YEAR AS A RESULT OF THE DEC. 11, 1984 COMPETITIVE SALE AND THE SUBSEQUENT KUPARUK SOLICITATION. PRIOR TO THAT TIME THIS OIL REMAINED "IN VALUE."

(7) A PROPOSED PETRO STAR/CHEVRON CONTRACT WILL BE SUBMITTED TO THE LEGISLATURE FOR APPROVAL OF A SALE OF 6,500 BPD ROYALTY OIL FROM THE KUPARUK RIVER UNIT. PETRO STAR/CHEVRON INITIALLY WOULD PURCHASE 6,000 BPD. THE CONTRACT IS EXPECTED TO COMMENCE IN LATE 1986 AND EXPIRE SEPTEMBER 30, 1996.

(8) ON FEBRUARY 4, 1986 THE STATE WILL SELL BY COMPETITIVE BID APPROXIMATELY 10,000 BPD FOR A SIX-MONTH TERM COMMENCING JUNE 1, 1986.

(9) Includes only fields in, or planned for production in the near future.


SB
324

* Sec. 2 AS 46.03.030 is amended by adding a new subsection to read:

(f) The department may make a grant to a municipality for the eligible costs of programs and facilities for enhancing or protecting the water quality of streams, lakes, waterways, and other bodies of water if the costs are incurred after July 1, 1986. The grant may not exceed 50 percent of the eligible costs unless the department finds that the program or facility is needed to avert an immediate hazard to health, in which case, the grant may be up to 100 percent of the eligible costs. Eligible costs are those not financed by the federal government and include costs of testing, research, education, enforcement, and clean-up programs for the purpose of discovering and solving existing or potential water pollution problems. A grant may be made under this subsection only for a water enhancement program approved by the department.

HOUSE

COMMITTEE REPORT

5/11

(9)

Date referred: 5/10/86

FURTHER REFERRALS: Rules

DATE: May 11, 1986

The RESOURCES Committee has considered SB 324

"An Act relating to grants for water quality enhancement programs; and providing for an effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with HCS SB 324 (Res) [XX] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches:
[ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Herrmann Edmund Herrmann

Miller M.W. Miller

Sund

Pearce

Thompson David W. Thompson

Jenkins Roger Jenkins

Cato Bill Cato

SIGNING OTHER RECOMMENDATIONS:

Dick Shultz
Co-Chairman Shultz

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR SENATE BILL NO. 324 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to grants for water quality enhancement programs; and providing for an effective date."

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

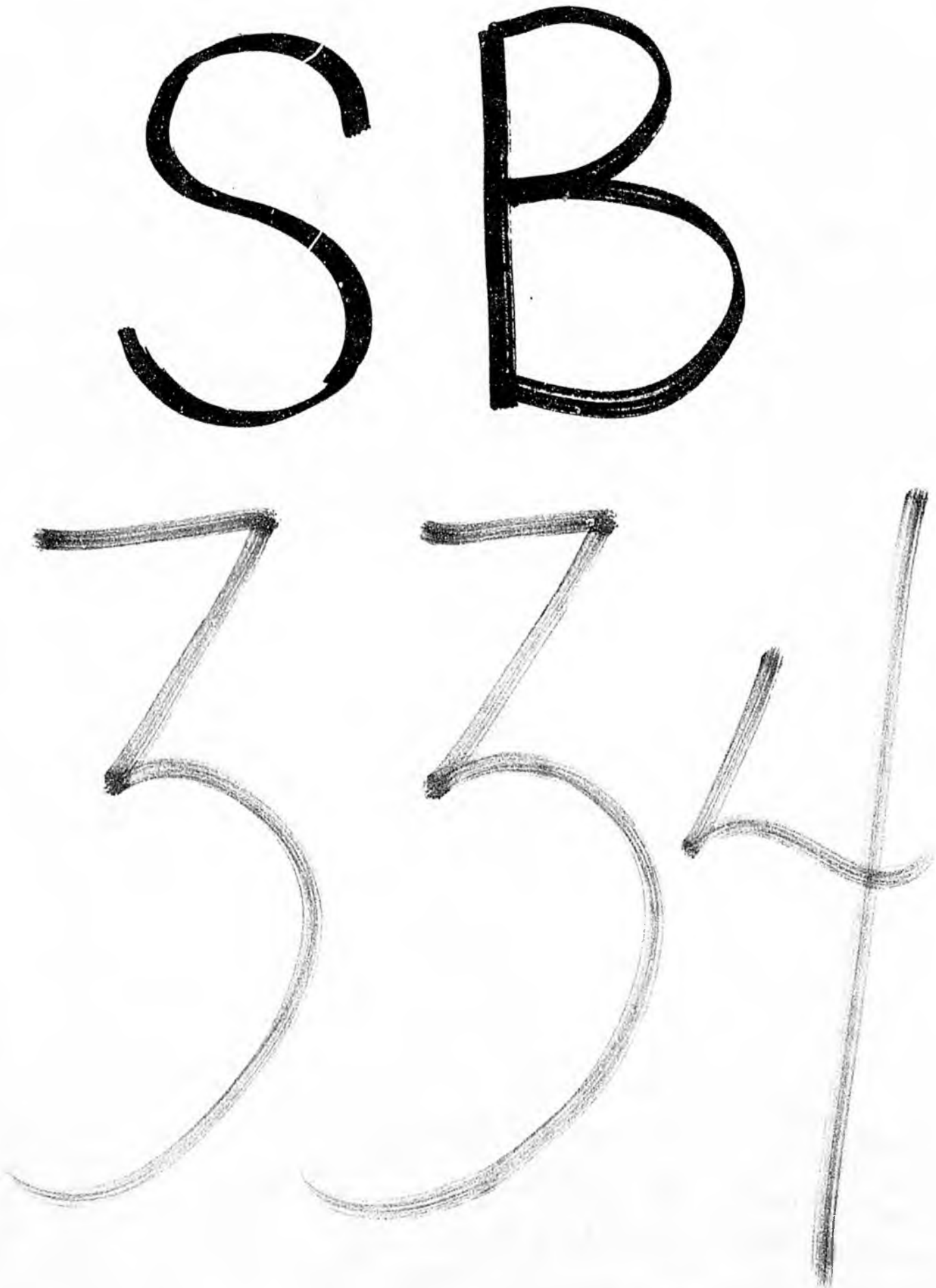
* Section 1. AS 46.03.030(c) is amended to read:

(c) There is a <u>water quality enhancement,</u> water supply, sewerage, and solid waste facilities fund created in the department to carry out the purposes of this section.

* Sec. 2. AS 46.03.030 is amended by adding a new subsection to read:

(f) The department may make a grant to a municipality for the eligible costs of programs and facilities for enhancing or protecting the water quality of streams, lakes, waterways, and other bodies of water if the costs are incurred after July 1, 1986. The grant may not exceed 50 percent of the eligible costs unless the department finds that the program or facility is needed to avert an immediate hazard to health, in which case, the grant may be up to 100 percent of the eligible costs. Eligible costs are those not financed by the federal government and include costs of testing, research, education, enforcement, and clean-up programs for the purpose of discovering and solving existing or potential water pollution problems. A grant may be made under this subsection only for a water enhancement program approved by the department.

* Sec. 3. This Act takes effect July 1, 1986.


SB
334

HOUSE

COMMITTEE REPORT

(9)

Date referred: 5/8/86

5/11 Rules

FURTHER REFERRALS:

DATE: May 11, 1986

The RESOURCES Committee has considered CSSSSB 334(Res)

"An Act relating to Hatcher Pass Public Use Area."

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title
[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

tz

er

psor

SIGNING OTHER RECOMMENDATIONS:

Jenkins

Co-Chairman Shultz


Montana Peak
Idaho Peak
Arkoma Peak
Ridge
Wishbone Hill
Wishbone Lake
T20N
T19N
VALLEY

Hatcher Pass acreage:

Total acres = 5,130

State owned = 5,075

private = 55

Total Length = 12.8 mi.

Distance along stream = 11.8 mi.

Distance along ROAD = le mi.

MEMORANDUM | FROM: LANCE Key | LOCATION SCRO R/L

TRANSMITTING CN/SPEED | DATE 5-1-86 | TIME 1:30+/

PHONE FOR PROBLEMS-NAME/NUMBER 762-2270

COMMENTS

TO: Ned Farquhar
Commissioners Office

FILE NO:

TELEPHONE NO:

FROM: Lance E. Key LEK
Southcentral Region
DLWM

SUBJECT: Hatcher Pass Trespass Action

Here is a quick synopsis of the what has happened in Hatcher Pass.

1. Initial field inspection of the Lou Sackett Slippery Rock claim conducted by Bill Betlach (SCR) on 7-19-82 in conjunction with the Hatcher Pass Mngt Plan. A second report was submitted by Pat Beckley (SCR) on 11-30-82.

2. A field inspection of all the Little Susitna claims was conducted by the SCR on 2-20-85. Photos taken and field report filed.

3. All claims along the Little Su (approx. 10-12) were sent Notices of Confirmed Unauthorized Use. They were told to:

   - remove "No Trespassing" and "Private Property" signs and
   - file Annual Placer Mining Applications to justify surface use improvements and use as residences.

   Notices sent on 8-28-85. Miners given until 10-31-85 to comply with removal or file APMA's.

4. Majority of claims complied with removal of signs. Four claims had improvements, equipment, residences and trash on their sites. Three filed APMA's to justify their surface use. They were:

   - Hungry Dog claim, Dan Lepke (date of filing not available)
   - Slippery Rock claim, Lou Sackett (filed 10-22-85)
   - Adeline claim, Mike McDannel (filed 9-27-85)

5. Between 12-17-85 and 12-24-85 these three APMA's were reviewed by DOM and denied (copies attached).

6. DLWM in conjunction with DOM then notified these three claim owners that their improvements, residences, garbage and equipment were in violation of the regulations governing the surface use of mining claims. They were to remove the signs and cease residence immediately and remove the equipment, improvements and garbage by 5-15-86. These notices went out between 3-7-86 and 4-4-86.

7. Miners are still living on the claims, and some signs are still up on several of these claims. If compliance does not occur by 5-15-86, DLWM will ask the AG's office to begin civil action to ensure compliance.

End of current situation.

Lance E. Key
762-2277

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING

TO: Lance Key
DLWM

DATE: December 17, 1985

FILE NO:

TELEPHONE NO: 561-2020

FROM: Jerry Gallagher
Geologist V

SUBJECT: Lepke, APMA #852605

I have reviewed the request by Mr. Daniel Lepke (Annual Placer Mining Application #852605) to live on the Hungry Dog Camp #1 and Hungry Dog Camp #2 mining claims (ADL's 355538 and 502829), store equipment and post no trespassing signs on these claims. Comment specific to the application was made by the Alaska Department of Fish and Game, DNR-DLWM (Matsu Office) and the Alaska Center for the Environment. Mr. Lepke's requests have been judged against the standards found in 11 AAC 86.145.

According the APMA #852605, Mr. Lepke's mining operation consists of a 2" suction dredge and portable sluice box. A "truck/camper" is used for processing and black sand storage. Three people work the claims all year according to Mr. Lepke. Living quarters include a 16'x26' canvas quonset hut, an outhouse, a propane storage shed, an equipment storage shed, and a guard shack.

A review of annual labor affidavits filed by Mr. Lepke for 1983 and 1984 for the Hungry Dog Claim #1 indicate work was conducted between the first day of May and the last day of September each year. No 1985 affidavit has been received by this office to date. A field inspection of the site conducted Oct. 9, 1985 by Lance Key and review of the photo's from that inspection show little surface evidence of a mining operation (tailings, disturbed ground, etc.) and only a small suction dredge that appears inoperative.

A review of APMA 852605, affidavits of annual labor, agency and public comment and field inspection photographs support the following conclusion:

1) The Hungry Dog claims are located within 12 to 15 miles of either Wasilla or Palmer where adequate living facilties are available.

2) Access to the Hungry Dog claims is provided 12 months per year by a state maintained road.

3) The past, present and proposed mining activity requires only portable equipment.

4) The trash, miscellaneous equipment, tents, sheds, etc. are not related to any mining activity.

5) Equipment on site, ground disturbed, and affidavits of annual all indicate only a small, part time mining operation is conducte on the Hungry Dog claims.

Based upon the above information, conclusion, and 11 AAC 85.145, the Division of Mining approves the following actions:

1) The applicaton by Mr. Lepke to live on the Hungry Dog claim is denied. The close proximity to town, year round access, level of mining activity, and portable mining equipment do not necessitate living on the claim. Mr. Lepke does not meet the requirements of 11 AAC 86.145(2).

2) All "no trespassing" signs, "keep out" signs, and other signs which restrict public access must be taken down. The signs are in violation of 11 AAC 86.145(1)A and B.

3) A small storage shed not to exceed 6' x 4' will be allowed on the claim to store mining equipment during the summer mining season. The shed may be locked and posted with a "keep out" sign during the period May 1 to September 30. No equipment may be stored during the periods October 1 to April 30. To minimize vandalism and prevent unauthorized use, the storage shed must be sited so it is not visible from the Hatcher Pass road, have no windows and no heat source.

4) All existing tents, sheds, trash, garbage, and equipment must be removed from the area immediately. The area must be left in a clean and safe condition.

JG/jd/1492v

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING

TO: Lance Key
DLWM

DATE: December 17, 1985

FILE NO:

TELEPHONE NO: 561-2020

FROM: Jerry Gallagher
Geologist V

SUBJECT: McDannel, APMA #31056

I have reviewed the request by Mr. Michael McDannel (Annual Placer Mining application #31056) to live on the Adaline No. 1 and 2 mining claims (ADL's 505708 - 505709). Mr. McDannel states in his application for permanent living quarters that "the claim is under 24 hour security due to vandalism". Comments specific to this application for permanent living quarters have been received by the Alaska Department of Fish and Game, Department of Natural Resources (DLWM-Mat Su office), and the Alaska Center for the Environment. Mr. McDannel's request has been judged against the standards found in 11 AAC 86.145.

According to APMA #31056, Mr. McDannel's mining operation consists of a 2" suction dredge and hand tools. Two people are used to work the claim from April through November. Although not specified on the APMA, a house, outhouse, camper and other equipment is now on the claim.

The Adaline claims were staked on May 3, 1984 and annual labor has not yet been entered into the mining casefile. No previous Annual Placer Mining Application has been submitted by Mr. McDannel. A field inspection of the site conducted October 9, 1985 by Lance Key and review of the photos from that inspection show the presence of a 2" suction dredge and a small settling pond.

Reveiw of APMA #31056, agency and public comment, and field inspection photographs support the following conclusions:

1) The Adaline claims are located within 10 to 15 miles of either Wasilla or Palmer where adequate livng facflities are available.

2) Access to the Adaline claims is provided 12 months per year by a state maintained road.

3) The past, present and proposed mining operation require only portable equipment.

4) The house and miscellaneous equipment, except for the suction dredge, are not related to any mining activity.

5) The equipment on site and ground disturbed suggest only a small, part time mining operation is conducted on the Adaline claims.

Based upon the above information, conclusions and 11 AAC 86.145, the Division of Mining approves the following actions:

1) The application by Mr. McDannel to live on the Adaline claims is denied. The proximity to town, year round access, level of mining activity, and portable mining equipment do not necessitate living on the claim. Mr. McDannel does not meet the requirements of 11 AAC 86.145(2).

2) All "No Trespassing" signs, "Keep Out" signs, and other signs which restrict public access must be removed. These signs are in violation of 11 AAC 86.145 (1)A and B.

3) A small storage shed, not to exceed 6'x4', will be allowed on the claim to store mining equipment during the summer mining season. The shed may be locked and posted with a "Keep Out" sign during the period May 1 to September 30. No equipment may be stored on the claim during the period October 1 to April 30. To minimize vandalism and prevent unauthorized use, the shed should have no windows and have no heat source.

4) The existing house, camper, outhouse and all assorted equipment, garbage and trash must be removed from the area immediately. The area must be left in a clean and safe condition.

JG/jd/1494v

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING

TO: Lance Key
DLWM

DATE: December 24, 1985

FILE NO:

TELEPHONE NO: 561-2020

FROM: Jerry Gallagher
Geologist V

SUBJECT: Sackett, APMA 852932

I have reviewed the request by Mr. Lloyd Sackett to live on the #8, #9 and #10 Below Discover mining claims, commonly known as the Slippery Rock Mine (ADL 80055 - 80057), store equipment and restrict public access. Comments specific to this application were made by the Alaska Department of Fish and Game, Department of Natural Resources (DLWM-Mat Su Office) and the Alaska Center for the Environment. Mr. Sackett's requests have been judged against the standards of 11 AAC 86.145.

According to APMA #852932 and a letter dated Oct. 9, 1985 attached to the APMA, Mr. Sackett's mining operation includes 3 suction dredges (2 1/2" to 4"), a D-6 cat, backhoe, a 10x55' trailer work shop, a 10x40' trailer for living, an 8x16 trailer for food storage, and a series of 2 vans, 2 campers and 2 pick-up trucks for equipment storage. Mr. Sackett state "I'm not living on my claims, I'm safeguarding the equipment I've taken years to accumulate".

The Slippery Rock claims were staked in 1973 and a partial list of annual labor affidavits provided the following data:

Year	Total Days Worked	Period Worked
1976	30	6/23 - 9/6
1977	15	8/5 - 8/25
1978	12	4/26 - 5/25
1979	--	--
1980	90	6/1 - 8/30
1981	30	2/9 - 5/30
1982	60	5/10 - 7/30
1983	60	5/15 - 7/15
1984	45	5/1 - 8/15
1985	180	5/1 - 10/1

Records indicate that Mr. Sackett filed placer mining applications in 1980 and 1984, in addition to the current application under consideration. There is little evidence in our records to suggest Mr. Sackett actually does very much mining. Field inspections by ADF&G (see memo dated Nov. 15, 1985), DNR-DLWM (See memo dated Nov. 14, 1985) and field inspection by Lance Key (Oct. 9, 1985) failed to note evidence of surface disturbance (tailings, disturbed ground, etc.) which substantiates significant and continued mining. In addition, the suction dredges claimed as mining equipment are very small in relation to the D-6 cat, backhoe and extensive camp facilities. Suction dredges in this size range generally do not require such heavy support equipment.

Mr. Sackett has advertised and conducted a "yard sale" on his mining claim during at least the summer of 1985. Miscellaneous trailers and equipment are for sale and DNR photographs taken October 9, 1985 clearly show prices affixed to such items.

Review of APMA 852932, agency and public comment, and field inspection photographs support the following conclusions:

1) The Slippery Rock claims are located within 10 to 15 miles of either Wasilla or Palmer where adequate living facilities are available.

2) Access to the Slippery Rock claims is provided 12 months per year by a state maintained road.

3) The mining plan states the use of a 4" suction dredge, but the exact use of the heavy equipment, specifically the D-6 cat and the back hoe remain unclear. The dredge is portable on a daily basis and the heavy equipment can be moved seasonally.

4) The numerous trailers and miscellaneous equipment are not directly related to the mning operation. The D-6 cat and backhoe may be used for mining on a limited basis but the few past APMA submittals and various field reports suggest only a very limited amount of actual mining is conducted at Slippery Rock.

Based upon the above information, conclusions and 11 AAC 85.145, the Division of Mining approves the following actions:

1) The application by Mr. Sackett to live on the Slippery Rock claims is denied. The proximity to town, year round access, level of mining activity, and portable mining equipment do not necessitate living on the claim. Mr. Sackett does not meet the requirements of 11 AAC 86.145(2).

2) All "No Trespassing" signs, "Keep Out" signs, and other signs which restrict public access must be removed. These signs are in violation of 11 AAC 86.145 (1)A and B.

3) A small storage shed, not to exceed 6'x4', will be allowed on the claim to store mining equipment during the summer mining season. The shed may be locked and posted with a "Keep Out" sign during the period May 1 to September 30. No equipment may be stored on the claim during the period October 1 to April 30. To minimize vandalism and prevent unauthorized use, the shed should have no windows and have no heat source.

4) As required for mining purposes, non-portable heavy mining equipment may be parked on the mining claim during the summer mining season from May 1 to September 30 if it is used in the mining operation. This equipment is limited to a D-6 Cat and a backhoe. During the period from October 1 to April 30, storage of this heavy equipment on the claim is not approved. Any use of this equipment must be approved prior to use through the Annual Placer Mining Application process.

5) The existing trailers, step vans, campers, storage sheds, smoke house, outhouse, living quarters, garbage and trash must be removed from the area. The area must be lift in a clean and safe manner.

JG/jd/1499v

Similar notice sent to Lepke & McDannel.

March 7, 1986

CERTIFIED MAIL 140 343 623
RETURN RECEIPT REQUESTED

Lloyd Sackett
6820 A-1
Palmer, Alaska 99645

Re: Surface Use of the "Slippery Rock" Mining Claim
ADL 80055-57

Dear Mr. Sackett:

The Division of Land and Water Management has recently reviewed the decision of the Division of Mining concerning your Annual Placer Mining Application (APMA #852932) requesting approval of certain surface uses of your mining claims. As noted in a copy of the decision, which is attached, your requests have been judged as not in accordance with the standards of 11 AAC 86.145.

Based on this decision, the Division of Land and Water Management hereby issues this NOTICE AND ORDER OF CONFIRMED UNAUTHORIZED USE.

YOU ARE HEREBY NOTIFIED that the Division of Land and Water Management and the Division of Mining have determined the surface use of your mining claim (Slippery Rock 1-3) are in violation of Alaska Statute 38.05.255 (Surface Use of Land and Water) and 11 AAC 86.145.

YOU ARE HEREBY ORDERED to take the following corrective action.

1. Due to the proximity to town, year round access, level of mining activity and equipment utilized, no further residential use of the claim will be allowed. All residential use of your claim shall cease immediately upon receipt of this notice.

2. All "No Trespassing", "Keep Out", and other signs which restrict public access shall be removed immediately upon receipt of this notice.

XEROX TELE

3. All miscellaneous equipment excluding a 6' x 4' or smaller storage shed shall be removed from the claims no later than May 15, 1986. The shed may be locked and posted with a "Keep Out" sign during the period May 1 to September 30 each year and may be kept on the claim year-round. No equipment shall be stored on the claim during the period October 1 to April 30 each year.

4. Non-portable heavy mining equipment may be parked on the mining claims during the summer mining season from May 1 to September 30 if required for use in the mining operation. This equipment is limited to a D-6 sized or smaller bulldozer and a backhoe. No heavy mining equipment shall be stored or parked on the claims from October 1 to April 30 each year. Use of this equipment on the claim must be approved prior to use through the Annual Placer Mining Application process.

5. All existing trailers, step vans, campers, storage sheds, smokehouses, outhouses, living quarters, garbage, trash and other personal effects must be removed from the claim no later than May 15, 1986. The area must be left in a clean and safe condition.

These corrective steps must be completed within the time-frames listed above. Failure to comply with these requirements will result in the Department of Natural Resources taking appropriate action to bring the surface activities on your claims into compliance with the law. Any costs incurred by such enforcement action will be charged against the claim owner to the extent permitted by law.

Attached find the Department of Natural Resources regulations setting out your right to request reconsideration of this decision or to appeal this decision. Please note that you have 30 days from your receipt of this decision to take such action; otherwise this decision is final and you will have no right to request reconsidaration or to appeal.

Tom Hawkins

Tom Hawkins, Director
Division of Land and Water Management

5 March 86
Date

Pedro Denton

Pedro Denton, Director
Division of Mining

3/6/86
Date

Matanuska-Susitna Borough

BOX B. PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH ASSEMBLY

APR 10 1986

April 7, 1986

Honorable Bill Sheffield, Governor
State of Alaska
Pouch A
Juneau, AK 99811

RE: Hatcher Pass Recreation Area

Dear Governor Sheffield:

The Matanuska-Susitna Borough Assembly has gone on record in the past and continues to strongly support the concept of development of the Hatcher Pass Recreation Area. A copy of Resolution No. 86-10 adopted on February 4. 1986 and Resolution No. 86-21 adopted February 18, 1986 are enclosed for your information.

The Matanuska-Susitna Borough Assembly feels a recreation area such as Hatcher Pass would definitely aid towards a more stable economic future for the Valley. They feel this is a viable project and have further funded $15,000 for a feasibility study for a ski area at Hatcher Pass by adoption of Ordinance No. 86-20 (enclosed). The public participation and interest generated with this issue has been overwhelmingly in support of this development and the Borough's position remains unchanged, except perhaps for a stronger support of the concept.

If you should have any questions or need additional information, please feel free to contact my office.

Sincerely,

Dorothy Jones as

Dorothy A. Jones, Mayor
Matanuska-Susitna Borough

DJ/cls
Enclosures

cc: Commissioner, Department of Natural Resources
Representative Ron Larson
Representative Katie Hurley
Senator Jalmer Kerttula
Senator Edna DeVries

Presented by: Mayor Jones
Introduced: 02/18/86
Drafted by: G.L.S.

MATANUSKA-SUSITNA BOROUGH

Resolution Serial No. 86-21

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY SUPPORTING THE MULTIPLE USE CONCEPT FOR THE AREA WITHIN THE PROPOSED HATCHER PASS MANAGEMENT PLAN.

WHEREAS, the Department of Natural Resources made a presentation on a proposed Hatcher Pass Management Plan to a joint meeting of the Matanuska-Susitna Borough Assembly and Planning Commission on February 10, 1986, and

WHEREAS, said plan was represented as an attempt to provide for the sound development of the several natural resources and potentials of the area, including, but not limited to, recreation, tourism, mining, hunting, fishing and wildlife management, and

WHEREAS, the public comments regarding use of the Hatcher Pass area indicated the area is susceptible to multiple use development including preservation of scenic quality, enhancement of recreational and historical uses, hunting, fishing, trapping, camping, skiing, hiking, grazing, and mineral development, and

WHEREAS, the Hatcher Pass Management Plan, Subunit Description of Resource Values dated December 1985 indicates many of the subunits contain moderate to high mineral potentials, and

WHEREAS, the area should be developed in such a manner as to maximize its recreational and economic benefits to the people of the state of Alaska and the Matanuska-Susitna Borough, and

WHEREAS, the multiple use approach to the management of the Hatcher Pass area should be clearly set out in the Plan;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE MATANUSKA-SUSITNA BOROUGH:

1. That it supports the multiple use concept presented to it by the Department of Natural Resources for the management of the Hatcher Pass area.

2. That it strongly recommends the Department of Natural Resources clearly incorporate in the Hatcher Pass Management Plan the multiple use approach to the management

of the various Hatcher Pass potentials and resources such as recreation, tourism, mining, timber, agriculture, hunting, fishing and wildlife management.

PASSED AND APPROVED this 18th day of February, 1986.

Dorothy A. Jones, Mayor

ATTEST:

Chris Seagraves
Borough Clerk

(SEAL)

READ AND APPROVED:

Gary Thurlow
Borough Manager

NON-CODE

INTRODUCED BY: ASSEMBLYMAN CYPR

MATANUSKA-SUSITNA BOROUGH

ORDINANCE SERIAL NO. 86-20

AN ORDINANCE OF THE ASSEMBLY OF THE MATANUSKA-SUSITNA BOROUGH APPROPRIATING $15,000 FROM THE LAND MANAGEMENT FUND BALANCE TO FUND 820 FOR A FEASIBILITY STUDY OF A SKIING FACILITY AT GOVERNMENT PEAK IN THE HATCHER PASS AREA.

BE IT ENACTED:

Section 1. Classification. This is a non-code ordinance.

Section 2. Appropriation Source. There is hereby appropriated $15,000 from the Land Management Fund Balance to Fund 820 Feasibility Study.

Section 3. Effective Date. This ordinance shall take effect upon adoption by the Borough Assembly.

Introduction: March 18, 1986

First Reading: 3-18-86

Public Hearing: 4-1-86

ADOPTED by the Assembly of the Matanuska-Susitna Borough this 1st day of April, 1986.

Dorothy A. Jones, Mayor

ATTEST:

Chris Seagraves, Borough Clerk

(SEAL)

Presented by: Assemblyperson Cypra
Introduced: 01/21/86
Drafted by: S.C.

MATANUSKA-SUSITNA BOROUGH

RESOLUTION SERIAL NO. 86-10 (Substitute)

A RESOLUTION ENDORSING THE HATCHER PASS, WILLOW AND TALKEETNA MOUNTAIN AREAS AS POTENTIAL WINTER OLYMPIC SITES.

WHEREAS, the Hatcher Pass, Willow and the Talkeetna Mountain areas are recognized for their high recreational value, and

WHEREAS, Hatcher Pass, the Willow and Talkeetna Mountain areas are located in the vicinity of the Municipality of Anchorage, and

WHEREAS, the Municipality of Anchorage has sought and received nominations as the Winter Olympic site in 1992, and

WHEREAS, the U.S. Cross Country Ski Team has recognized Hatcher Pass as having high potential and uses this area for training, and

WHEREAS, the Hatcher Pass, Willow area and Talkeetna Mountains receive considerable use by the Anchorage skiing community, and

WHEREAS, there is high unemployment in the Matanuska-Susitna Borough, and

WHEREAS, the current snowfall in the state of Alaska indicates the Hatcher Pass, Willow and Talkeetna Mountains can be relied upon as good sites for Winter Olympic sports,

NOW THEREFORE BE IT RESOLVED BY THE ASSEMBLY OF THE MATANUSKA-SUSITNA BOROUGH:

That the Assembly of the Matanuska-Susitna Borough endorses the Hatcher Pass, Willow and Talkeetna Mountain areas as potential Olympic sites for cross country skiing and any other appropriate activities.

PASSED AND APPROVED this 4th day of February, 1986.

Dorothy A. Jones, Mayor

ATTEST:

Chris Seagraves
Clerk

SEAL

REVIEWED AND APPROVED:

Gary Thurlow
Borough Manager

Matanuska-Susitna Borough

SUMMARY OF MINERAL RESOURCES

By

Daniel E. Renshaw, P.E.
Renshaw Consulting Engineers

July, 1983

A summary of notable past production and probable future development of metallic and industrial mineral resources within the Matanuska-Susitna Borough.

Produced by The Mapmakers, Palmer, Alaska

years, no great production was ever recorded. With the discovery of the lode gold occurrences beginning in 1909, interest in the placer waned. It was not until the late 30's that any substantial additional placer production occurred.

Several attempts at placer mining are recorded on Willow Creek extending several miles downstream from Grubstake Gulch and on the Little Susitna River below the mouth of Fishhook Creek. These activities were uniformly unsuccessful because of the distributive nature of the gold in the gravels, the small gold particle size, and, particularly in the case of the Little Susitna River, the tremendous amount and size of boulders involved. In the early 1960's several churn-drill holes were drilled into the bottom of Willow Creek in the vicinity of the mouth of Grubstake Gulch. It is reported that these determined that the placer gravels extended to a depth of nearly 100 feet; indicating the existence of a buried canyon filled with probably pre- and inter-glacial gold bearing gravels.

Mining operations have continued over the past 20 years near the confluence of Grubstake Gulch. In recent years, with the addition of modern mining equipment, these operations have apparently been successful. With the dramatic increase in the price of gold in the late 1970's considerable renewed interest was also shown in both the placers on Willow Creek and on the Little Susitna River. Many claims were staked and several mining attempts have been made, but the only apparent viable operation remains that of William Mrak and the Herman Brothers at the confluence of Willow Creek and Grubstake Gulch.

Placer occurrences are also known to be present on Wet Gulch, the next tributary stream to the west, and on Willow Creek upstream from Grubstake Gulch. In the late 1930's and early 40's there was an active placer mining pit on the hillside below the road where Upper Willow Creek is crossed. Coarse gold can still be panned from the hillside gravels in that vicinity. Other operations had previously been attempted on Willow Creek within the five miles reach below Grubstake Gulch.

Much of the Little Susitna River and Reed Creek have been staked for placer mining purposes. Although flour gold can be consistently panned along these two streams, the extremely bouldérous character of the gravels render it doubtful that any viable placer mining operation will be possible on those streams. Several previous attempts have also been made to mine near the mouth of Fishhook Creek.

The first lode discovery is credited to Robert Hatcher on September 16, 1906. This discovery, and others which followed the next year, was high on the ridge separating Upper Willow Creek and Fishhook Creek. These claims were later acquired by the Alaska Free Gold Mining Company and much later became a portion of the consolidation known as the Independence Mine. Most of the other important mining properties, in addition to many prospects, were discovered during the period of 1908 through 1918. Rapid development followed close upon the initial discoveries and by 1914 there were three producing mines equipped with seasonally operated water powered stamp mills, and in at least one instance, a Chilean or Lane-type mill. These early mills were inefficient at separating the gold from the ore below about 40 mesh screen size. As a consequence the finer sands were retained in ponds and their gold values later recovered by chemical leaching.

Many of the early mining discoveries are credited to the Bartholf brothers. However, some sources indicate that certain of these properties may have actually been discovered as a result of Russian explorations. This is doubtful. Though undocumented, there is some likelihood that the Gold Bullion, and perhaps other discoveries, had initially been made by a group of alien Japanese, who had then been encouraged to go search elsewhere.

In the early years the difficulty of access, short seasons and insufficient water for power limited the milling of ores to the summer months. Later, as access was improved and more substantial equipment acquired, underground development work was pursued during the winter months as well as the summer, and the ore stockpiled for summer milling. When substantial improvements had been made to the access roads, more modern machinery was installed, improved facilities for year-round living quarters were built, and diesel-electric engines acquired for the production of power, year-round mining and milling was practical.

Many of the discoveries within the district were founded on the second or largely non-productive sets of veins. Consequently, relatively few of the properties, and only those on the productive sets of veins, ever became viable. Among those of particular importance (progressing from west to east) are the following:

P.O. Box 45 • Palmer, Alaska 99645

Greater Palmer Chamber of Commerce

May 2, 1986

Senator Jan Faiks
PO Box V
Juneau, AK 99811

MAY 8 1986

CSSSSB 334 - HATCHER PASS PUBLIC USE AREA

This is to let you know that the board of directors of the Greater Palmer Chamber of Commerce supports you in your effort to establish the Hatcher Pass Public Use Area.

Sincerely,

GREATER PALMER CHAMBER OF COMMERCE

Brigitte Lively
President, Board of Directors

cc: Senator Jay Kerttula

COOK INLET
AQUACULTURE ASSOCIATION

RT. 2, BOX 849
SOLDOTNA, AK 99669
(907) 283-5761

Copy of letter to all Sen Res Comm also Betty

April 9, 1986

Senator Jalmar M. Kerttula
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

APR 14 1986

Dear Senator Kerttula:

The Cook Inlet Aquaculture Association supports the passage of SB No. 334. Establishment of the Hatcher Pass Public Use Area would increase the degree of water quality and habitat protection afforded to the headwater streams of the Little Susitna River. Protection of water quality and habitat will ensure the continued productivity of the River's fish populations.

The Little Susitna River produces significant quantities of all five species of Pacific Salmon which are found in Alaska. Some of these fish are harvested commercially as they pass northward through Cook Inlet. The Little Susitna River salmon are also important to Matanuska-Susitna and Anchorage area recreational fishermen because the stream flows largely through public lands, is close to population centers, is accessible via the road system and is, in itself, picturesque.

The COOK INLET REGIONAL SALMON ENHANCEMENT PLAN lists the Little Susitna River as a site for fish stocking projects which will increase annual recreational fishing harvests by 10,000 coho salmon and 6,000 king salmon. In the future I would expect the Little Susitna River to become even more important to regional salmon harvesters and the creation of the Hatcher Pass Public Use Area through the passage of SB No. 334 would be a wise preparatory step toward that future.

Sincerely,

Thomas E Mears

Thomas E. Mears,
Executive Director

cc: All Senate Resources and Finance Committee Members

MAR 1986

March 3, 1986

Senator Arliss Sturgulewski, Chairperson
Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

As a frequent user of the Hatcher Pass area, I am writing you as a supporter of Senator Jay Kerttula's "Hatcher Pass Public Use Area" Bill. It is my understanding that this bill will close the Little Susitna River Corridor to new mining and will additionally prohibit state land disposal within the use area.

I believe this bill is a needed piece of legislation. It is a balanced bill in that it won't affect existing valid mining claims, but it will stem the trend regarding squatters on the land in this area. It is clear that the Hatcher Pass area is one of those areas which has both a high tourist value, and yet attracts residents year-round because of its diverse recreational uses. But because squatters and persons on illegal mining claims are posting certain areas so as to prohibit access to the lands, the public in general is suffering. One can find "no trespassing" signs placed by miners in areas on state lands to which the public has a right of use. This should not be tolerated, especially in this area.

I urge you to give this bill your fullest support during the legislative session. I, along with many others, will be following the progress of this legislation.

Very truly yours,

John B. Salemi

4204 Cope St.
Anchorage, Ak. 99503
27 March 1986

Senator Arliss Sturgulewski
Senate Resource Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator,

I am writing urging you to support SB-334 which sets aside a corridor in the Little Susitna Valley which is withdrawn from mining claims. I am an active recreationalist, skier / kayaker and believe that some of the unique and charming values of this area should be preserved in the public interest. I am not opposed to mining per se, but am opposed to the State's lax stance (or non stance) in ~~reacting~~ not evaluating claim validity. Further, the State has shown little initiative in evaluating whether housing is necessary on the claim. In the case of the Little Susitna, which has good road access, housing is most definitely NOT necessary and is farther an eyesore and a nuisance to other valley users.

Please approve SB-334 as a start to resolving some of these problems. Thank you for your time.

Sincerely,

David Blanchet

Jan. 13, 1986
PO Box 2176
Palmer, Alaska 99645

Senator Arliss Sturgulewski
Senate Resources Committee
Box V
Juneau, Alaska 99811

Dear Senator Sturgulewski,

I urge you to support Senate Bill 334, establishing the Hatcher Pass Public Use Area, introduced by Senator Kerttula.

His bill protects public use of a popular area in two ways. First, the legislation disallows new mining on the Little Susitna River. As you know, the river is a tremendously valuable scenic resource to people in my community and visitors from out-of-state. On the other hand, it contains such small quantities of gold that all placer mining attempts have been failures. From the view of state resources management, there is no economic advantage to additional mining on the Little Su. Some of the current claim holders have created substantial eyesores on the stream, in violation of several state regulations. The proposed legislation will see to it that no additional squatters pre-empt the public from using the stream. As Chuck Hawley told me, "There is no gold there. That river should be for tourists."

Secondly, S.B. 334 prohibits state land disposals in the Hatcher Pass area. Private control of state land there fulfills no public needs, but in fact puts resources off-limits to the public now utilizing them there. Plenty of unsold private land lies near the proposed Public Use Area for people requiring a cabin site. At the recent public hearings, participants overwhelmingly objected to land disposals in the Hatcher Pass area.

Although S.B. 334 is valuable legislation, it has some room for improvement. The legislatively designated area should include the high mountains and meadows just to the northeast. This small area is a popular destination for skiers and mountaineers, and it therefore deserves the same legal consideration as the rest of the Public Use area.

I would like to come down to Juneau and talk to the Resources Committee about the bill when it comes up on your agenda.

Sincerely,

Mike Bronson

Mike Bronson

cc: Senate Resource
Committee members
Dorothy Jones
Esther Wunnicke

'86

Senator Arliss Sturgulewski
Senate Resource Committee
Box V
Juneau, Alaska 99811

Feb. 12, 1986

Dear Senator Sturgulewski,

I am writing you to ask for your support for SB 334, an Act creating a Hatcher Pass Use Area.

While I am currently on the Matanuska Susitna Borough Assembly and represent the area that the Use Area addresses, I am writing this as a private citizen.

There are numerous questions revolving around this bill, but I would like to share several of the things I have come to see as important.

Probably the two major concerns have been regarding mining in the area and whether SB 334 will conflict with the Hatcher Pass Management Plan. On the first concern, I do not believe this bill will establish a precedent miners should feel threatened with. On the contrary, most miners I know feel this area has little mining value and those who're using claims near the Little Susitna River are giving others a bad name. Of the second concern, that of the Hatcher Pass Plan, I have watched the planning process closely and from my perspective feel SB 334 will only strengthen both the public's desire and the Plan's goals.

One of the strongest personal concerns I have is building a diverse and healthly local economy. I believe SB 334 will protect the Little Susitna area for the things we desperately need the most: excellent recreational and tourist destinations.

Sincerely yours,

S.R. Cyora

Steven R. Cyora

cc: Senate Resource
Committee

Black Sands Mining Co.

Phillip D. Strange
P.O. Box 871478
Wasilla, Alaska 99687
(Placer - Gold)

FEB 1 1 1986

February 14, 1986

Dear Legislators:

I urge you to oppose S.B.334, creating the Hatchers Pass Public Use Area. This bill will force a mineral closure one half mile wide on each side of the Little Susitna River. This will be the beginning of another lock up of a very important mining didtrict. Should S.B.334 pass into law it will cause the loss of private investment for mineral exploration and development on state lands in the Hatchers Pass Area.

This area is of great economic importance for the vast mineral wealth that is there. The surface has barely been scratched on the mineral deposits of the Willow Creek Mining District. We need to develop this mineral wealth to bring new jobs and start an economically viable industry in the Mat-Su Valley.

The mining industry opened the Hatchers Pass Area and established the first roads into it, now that access is relatively easy, compared to 50 years ago. The people of Anchorage want to make it into their exclusive playground, but we do not need to close an area to mining because of the recreational wants and needs of urban Alaskans who know nothing about mining or the mining industry. With all the advances in mining and milling equipment we can mine lower grade ores at a higher profit with no detrimental effect on the environment.

I am presently working to develop the 200 foot level on a group of hard-rock claims not far from the Little Sustina River. Last year I invested fifty thousand dollars into rehabilitating the old crosscut and this year I plan to invest close to one hundred thousand dollars on development and exploration work. When I get it developed to the point where I can go into production, the cost of bringing in equipment will be very low because of the excellent road access into this mining area.

I believe that hte needs of both miners and those who wish to use the area strictly for recreational purposes can be met but feel that S.B.334 will discriminate against the mining interests of the area. Thank you for your time and consideration of this matter.

Sincerely,

Philip D. Strange

PDS/baf

FEB 10 1986

Knik Kanoers and Kayakers
3903 Arkansas Drive
Anchorage, Alaska 99503

February 5, 1986

Senator Sturgulewski
Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Senator,

I am writing on behalf of the Knik Kanoers and Kayakers to urge you to support Senator Kertulla's Bill No. 334. The intent of the legislation is to protect the water quality and public use of the upper Little Susitna River. Kayakers use the Little Susitna on a regular basis. The proposed legislation creates the Hatcher Pass Public Use Area and protects our access to the river and surrounding lands.

The Little Su is an exceptional kayaking river. It is a clear warm water stream of unusual beauty and challenge. S.B. 334 is an important bill for Knik Kanoers and Kayakers. The bill would stop new mining on the stream and thereby the number of residents engaged in illegal placer mining there. A few of these miners have settled along the Hatcher Pass Road and accumulated junk in their yards and erected threatening signs along the road and river. Although they find little gold in the river they have significantly impacted the experience of kayakers paddling the river. Not only kayakers but also hikers, picnickers, fishermen, and motorists must be wary of these mining claims.

Sincerely Yours,

Alex Swiderski
President

JAN 2 2 1986

Jan. 18, 1986

Senator Arliss Sturgulewski
Resources Committee
State Senate
Juneau, Alaska

File

Dear Senator,

Please support Senate Bill 334, introduced by Senator Kerttula last week. This legislation seeks to put a stop to further unlawful squatting along the Little Susitna River near Hatcher Pass, and to clean up the area for the tourists.

It is important to me and other people in the area that the Hatcher Pass region be kept attractive. I and my family and our guests like to drive along the Little Susitna River to the old Independence Mine. At any season the area is a real attraction. One of the few detractions from the experience, however, is the trashy "mining" sites along the road. Squatters have erected threatening signs warning the public off their placer claims, and have created a series of small junkyards.

I have nothing against legitimate mining on state lands, however these people are taking unfair advantage of the rules. These "miners" take a couple of ounces of dust from the river each year, certainly an amount insufficient to justify such use of state land. I realize that the Division of Mining in DNR is starting to enforce the regulations on the river, and I encourage them to do so. Unfortunately, we have no assurance that they will persist. Where were they in the past? What enforcement are they pursuing in other areas occupied by squatters now? Can we trust the Department to enforce its regulations in the future under other state administrations?

Senate Bill 334 solves these uncertainties. Although the bill does not directly affect the current squatters, it does prevent the problem from growing. I would like to be assurred that the river corridor will be cleaned up and stay cleaned up by statute, rather than to depend on the whim of the bureaucrats in DNR. The bill is just good, basic resource management.

Sincerely,

John Koutsky

Box 871306
Wasilla, AK 99687

P.S. I personally hope you run for governor!

JAN 21 1986

549 E. Caribou
Palmer, AK 99645
15 January 1986

File in Hatcher Pass SB11

Senator Arliss Sturgulewski, Chairman
Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

While a great many of us have benefitted from the State's and Federal Government's largess in dispensing land and privileges in Alaska--and these traditions must continue to provide opportunities to individual Alaskans--we need to insure public benefits, too.

Senator Kerttula has introduced a bill regarding land disposals and new mining claims in the Hatcher Pass Public Use Area. In a world where each citizen exercised a measure of respect for his neighbor's pursuit of happiness such a bill would be superfluous. But this is not the case in Hatcher Pass, and abominable abuses exist there already, coupled with an agonizing inability of some State agencies to enforce their own regulations and protect the public weal.

All summer long one finds a steady stream of Southcentral Alaskans and visitors driving over Hatcher Pass. Almost the sole reason for this exercise is the enjoyment and awe of the scenery. Serious excresences disfigure this scenery already, and Senator Kerttula is correct in wanting to save our most accessible alpine region while there is still hope of doing so.

Hatcher Pass is a State treasure that benefits most the less we do to it. Please support Senator Kerttula's efforts towards its continued existence.

Sincerely yours,

Joe Dawton

cc: Senate Resources Committee Members

A nonprofit association
dedicated to education and awareness
about rivers and river running
throughout the United States
Contributions are tax-deductible

NORS

1986

communication bi-monthly, with
over 10,000 kayakers, rafters,
and river canoeists through
CURRENTS magazine

National Organization for River Sports

Box 6847 314 North Twentieth Street Colorado Springs, Colorado 80904 (303) 473-2466

Senator Arliss Sturgulewski
Resources Committee Chairman
Alaska State Senate, Box V
Juneau AK 99811

NORS BATTLES FOR BOATERS!
CURRENTS COVERS RIVER RUNNING!

Date: March 4, 1986

Dear Senator Sturgulewski:

It has come to my attention that the upper portion of the Little Susitna River, and its surroundings known as the Hatcher Pass Area, are the subject of a bill now before you, S.B. 334, which would make this a public recreational use area.

On behalf of our members in Alaska and elsewhere, I strongly urge you to help reserve this area for public recreational use. In recent years I have been amazed at the advances in technique and equipment for running rivers, and I can assure you that this river will carry increasing recreational use in coming years. Already there are not enough rivers to go around, resulting in waits of as long as ten years to get a permit for a trip on certain major rivers in the West. For the future of your state's tourism economy and the benefit of its citizens in general, I urge you to preserve this recreational area.

Sincerely,

Eric Leaper
Executive Director

EL/fa

cc: Senator Jan Faiks, Finance Committee


SB
379

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4921

Box 55028
North Pole, Alaska 99705
(907) 488-7332

M E M O R A N D U M

TO: Representative Dick Shultz

FROM: Senator Coghill

RE: Background information SB 349

DATE: April 22, 1986

Attached you will find a set of figures that show what typical farmers debt load consists of. These figures are representative of Delta I and Delta II farms. I am also including a packet of pertinent information.

Senate Bill 349 will give the State an opportunity to start divesting itself from the Delta project. One thing that all parties will agree with is that the project should stand or fall on its own merits. There are two alternatives to a solution for the woes of the Delta project: one is to restructure the debt load in realistic terms of what can be produced considering the present in State market; the other is to divise a plan to dismantle the project. The years of toll that the farmers have put into the project cannot be disregarded by our lack of action.

When we talk about dismantling the Delta project, the amount of investment that has been made in infrastructures (about 26 million dollars) would be lost. The loss would be magnified because we are not likely to ever see the time again when the State can make those kinds of investments. Re-growth will mean that the time and money put into clearing vast amounts of land will all go to waste. This bill will put into motion a plan to salvage investment and minimize loss.

Rather than arguing about who is responsible for the problems of the past, this is a way for the State to recover investments made into the agriculture industry. This bill doesn't forgive debt but it does restructure the debt to reflect a manageable debt load that a "good" farmer could service.

Dealing with this dilemma in realistic terms will mean that as the market increases the farmers will be able to expand on their own. The State market presently is between 13,000 and 17,000 tons per year. As this grows, grain production can expand spurred on by the law of supply and demand in the private sector, not by State involvement or direction. The whole picture of the Delta project can be brought into perspective in an analogy with any other business. You don't start out big and hope to create market with a minimal cash flow; you start out small and expand as you are able to.

The concept of how the reorganizational bill will work is that a farmer who has an unmanageable debt load will relinquish a percentage of his land back to the State and the State would then credit the land clearing loans the same percentage. Using an example of what a typical farmer can expect to gross between $125,000 and $150,000. After paying back operating loans at $110,000, the farmer has $15,000 to $40,000 to service debt with. At the present time a farmer would need roughly $96,000. By turning back 50% of his land and re-negotiating the chattel and farm development loans, the farmer would need $49,000. This is close to what he could expect to service. The figures that I just mentioned don't reflect that the farmer and his family still have to eat. With a lower operating cost, a per acre production increase and production credits, the farmer could make it.

The Committee Substitute to SB 349 is intended to spell out how this restructuring process will work. A zero fiscal note would accompany this bill since there are no survey costs and no appraisals of land to be made.

Section 3 of SB 349 prohibits farmers from participating in federal programs that would provide monetary incentives for keeping agricultural land out of production. This just doesn't make sense. As I mentioned before the intent of this bill should be to get farmers out on their own. Being able to participate in a federal program that farmers across the country are taking advantage of puts these farmers closer to becoming self sufficient instead of being just components of a state agricultural project. The additional money that could be generated from participation in these programs could also help insure the return on the states investment in the project.

Also attached is a description of federal programs that farmers in the state could participate in. The Commodity Price Support Program addresses the problems in a depressed market that have caused the price of grain to go down. The average number of acres that would be taken out of production would be 66. Because of the short planting window most farmers now can't plant their whole farm so this won't take land out of production but it will help to stabilize the situation. The Conservation Acreage Reserve Program only removes land that is highly erodible or poses an off-farm environmental hazard. This program at the most will only effect <u>two</u> farms in the Delta area and by the very nature of the program only takes land out of production for sound reasons.

I urge you to remove this section from the bill in the best interest of farming and the state.

Offered: 3/4/86
Referred: Rules

Original sponsors: Coghill and
Kerttula

IN THE SENATE BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 349 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the reorganization of private debt at a Delta Project."

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

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that the large grain farms that were developed on state agricultural land in the Delta Projects are subject to a personal debt load that is unmanageable because of a coincidence of unique and unforeseen circumstances:

(1) the unforeseen difficulties with the limited growing seasons including the extremely short period in which the crops may be planted;

(2) conflicts with the herds of bison located in the area;

(3) the inadequate agricultural infrastructure in the area of the Delta Projects and in the state;

(4) the depressed grain prices nationwide;

(5) the unexpected problems with economic farm size.

* Sec. 2. (a) The commissioner of natural resources shall, at the request of an individual who holds agricultural rights to land purchased from the state in a Delta Project,

(1) accept the relinquishment of agricultural land purchased from the state in a Delta Project and credit the percentage of the debt owed to the state on land purchased and land clearing loans that equals the percentage of land relinquished under this section, either by acreage or by value, as determined by the commissioner;

(2) enter into an agreement with the individual for the lease for agricultural purposes only of a portion of or all of the land

relinquished for a term of 20 years at the full fair market value of the land; a survey under this paragraph, if required, shall be at the expense of the individual.

(b) If an individual who has relinquished land under this section applies before July 1, 1987 for a lease on all or part of the land relinquished, the lease shall provide the lessee an option to purchase the land leased under sec. 2(a)(2) of this Act at full fair market value at the time of purchase without reduction to reflect the remaining lease term.

(c) The commissioner of natural resources in consultation with the Agricultural Revolving Loan Board may renegotiate with the individual loans for chattels or farm improvements located on the agricultural land in a Delta Project if the commissioner determines that renegotiation is necessary to minimize financial losses to the state and that it is in the best interest of the state.

* Sec. 3. The provisions of this Act are not available to an individual participating in a federal farm program that provides monetary or other incentives for keeping agricultural land in a Delta Project out of production.

* Sec. 4. This Act is repealed July 1, 1988.

ACTUAL DELTA I FARMER

Loan Type	Total Loan	Annual Loan Payment	Principal Payment	Interest Payment
Land Purchase	$ 0	$ 0	$ 0	$ 0
Land Clearing	370,600	24,590	3,018	21,572
Chattel	300,000	57,621	45,741	11,879
Farm Development	154,000	15,685	4,578	11,106
Operating	101,000	109,080	101,000	8,080
TOTAL	$925,600	$206,976	$154,337	$52,637

ACTUAL DELTA II FARMER

Land Purchase	$324,000	$ 43,376	$ 4,496	$38,880
Land Clearing	307,000	25,745	1,612	24,132
Chattel	181,000	34,765	27,597	7,167
Farm Development	95,000	9,675	2,824	6,851
Operating	117,000	126,360	117,000	9,360
TOTAL	$1,024,000	$239,921	$153,529	$86,390

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2-4-86

REQUEST

Bill/Resolution No. : CSSB 349
Title : Reorganization of Delta Debt

Sponsor : Sen. Cognill, Sen. Kerttula
Requestor : Senate Resources Committee
Date of Request : February 4, 1986

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Land and Water Management
Agricultural Management

Components : Public Use
ARLF

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE	**					

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

**See attached explanation.

Prepared by : Carol Wilson
Division : Commissioner's Office
Phone : 465-2400
Date : 2-4-86

Approved by Commissioner : Norman D. Arnold, Deputy
Date : 2/4/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget

10/25/85

Analysis for Fiscal Note, Senate Bill 349
Reorganization of Delta Agricultural Project Debt

Revenue

A paper loss of as much as $14,800,000 could be realized if 37 parcels of 2000 acres each are relinquished to the State.

37 parcels x 2,000 acres per parcel x $200 per acre = $14,800,000.

However, since the clearing loans and land contract payments may not be collectable under current Delta financial conditions, and because the State would receive cleared land in lieu of land and loan payments under this bill, it could also be argued that no revenue loss would occur.

In addition, renegotiating ARLF chattel and farm improvement loans could result in reductions in loan principal and interest due the State. However, since foreclosure and resale of farm chattel and improvements could generate less income than could be realized from loan renegotiations, it could be argued that no revenue loss would occur.

FEDERAL AGRICULTURAL PROGRAMS IN ALASKA

1. Commodity Price Support Programs

Administration of farm commodity programs is the responsibility of the Agricultural Stabilization and Conservation Service (ASCS), a part of the USDA. These farm commodity programs are generally price support programs that allow farmers to receive payments equal to the difference between current commodity prices and federally established target prices. These payments are called deficiency payments. In order to participate in deficiency payment programs, a farmer must have a history of farm production. Farmers do not receive payments for land that is not planted, although this is often the public's perception of deficiency payment programs. Participation in a particular program may, however, require the farmer to limit the total number of acres planted in order to reduce the amount of the commodity that is marketed.

Alaska farmers could participate in barley, oat, and wheat deficiency payment programs. In 1985, the only Alaska participation was in the barley program and twelve Delta farmers received approximately $180,000 in deficiency payments. On a per bushel basis, the deficiency payment equaled 52¢ per bushel. The 12 farmers planted a total of 7,179 acres of barley in 1985, an average of 598 acres per

farm. In order to participate, these farmers had to reduce production from their previous two-year average by an average of 66 acres per farm.

The new federal farm bill has made some changes in the deficiency payment program for the period 1986-90. The acreage base for eligible farmers, (the maximum acres for which deficiency payments could be made), now equals the average of planted acres during the preceding five years. Previously, the base acreage average was determined by the preceding two years. The number of farmers from Delta participating in the program will now be reduced because most have not produced crops for the required five years. The yield for which a farmer can now receive deficiency payments is the average of the 1981-85 program yield minus the high and low years.

2. Conservation Acreage Reserve Program

The Conservation Acreage Reserve (CAS) program is new and was created by the 1985 farm bill. Its purpose is to remove from production land that is highly erodible, land that poses an off-farm environmental hazard, or land that should not be continually used because of soil salinity.

The CAS program allows the Secretary of Agriculture to contract with farmers to place highly erodible land in the

reserve for ten years. To be eligible for the reserve, the land must meet certain criteria. Farmers must submit bids for land eligible for the reserve and the Secretary accepts or rejects the bid. Generally, the lowest bids will be accepted first.

Land in the CAS must be planted with a vegetative cover, which can consist of permanent grasses, legumes, shrubs, trees, windbreaks, or shelterbelts. Land in the CAS cannot be used for grazing or harvested without approval of the Secretary, and approval will be granted only if a a drought or similar emergency exists. There is a $50,000 limit per year per person on CAS rental payments.

Only 25% of the cropland in a county may be in the CAS. The State of Alaska has been divided into two counties. Delta Junction is considered one county and the remainder of the state the other. Eleven farmers from Delta Junction have recently submitted bids for approximately 5,000 acres to be included in the CAS. However, only one bid has been accepted by the Secretary. One additional bid, that was rejected because it failed to meet land qualification criteria, has been appealed. If the appeal is successful, the land may be accepted into the CAS. At most, land from two Delta farms will be included in the CAS in 1986.

3. Marketing and Inspection Programs

A. Animal and Plant Health Inspection Services (APHIS) - This agency is primarily concerned with animal and plant disease, pest control, and animal welfare issues. APHIS is also responsible for plant and animal quarantines. In Alaska, APHIS has cooperated in the development of a plant quarantine station in southcentral Alaska. A federal APHIS veterinarian is stationed in Alaska to prevent importation of diseased animals.

B. Food Safety and Inspection Services (FSIS) - Under the 1967 U.S. Wholesome Meat Act, the federal government establishes minimum standards for meat that is processed for interstate and intrastate trade and also inspects the meat. State governments are permitted to maintain a state inspection service for meat that remains in the state, and the federal government pays part of the cost of the program. Alaska maintains a state meat inspection service.

C. Agricultural Marketing Service (AMS) - The AMS provides crop and livestock market news service to all states. The Alaska Division of Agriculture obtains information from this service. The AMS also has a state marketing grant program and the Division of Agriculture has been a recipient of its grants. The AMS provides terminal market inspections for fruits and vegetables. The Division of Agriculture has a

federally licensed inspector to provide this service in Alaska. Farms requesting an inspection are charged a fee for the service. The Division of Agriculture also conducts shell egg surveillance. This is a federal program for which the state is reimbursed.

4. Small Community and Rural Development Program

A. Farmers Home Administration (FmHA) - Farmers who cannot obtain credit from other organizations can be successful loan applicants with FmHA. Unfortunately, the FmHA has been reluctant to accept land as collateral if the land title is limited to only the agricultural interest. FmHA loans in Alaska currently total $1,000,000. About 15 farmers have loans from the FmHA.

B. Federal Crop Insurance Corporation (FCIC) - Farmers may purchase crop insurance from the FCIC for their barley crops. Although the state pays a portion of the insurance premium, the insurance is expensive in Alaska and few, if any, farmers were covered in 1985.

5. Natural Resources, Research, and Education Programs

A. Agricultural Research Service (ARS) - This is the chief research agency of the USDA. In Alaska, it conducts research

on conservation tillage. There are two ARS staff in Alaska. Both are researchers and are stationed in Fairbanks.

B. Statistical Reporting Service (SRS) - SRS is responsible for providing data on U.S. agriculture. The SRS provides information on Alaska agriculture through the Alaska Crop and Livestock Reporting Service.

C. Cooperative State Research Service (CSRS) - Formula research funds are provided to state agricultural experiment stations from the CSRS. The Agricultural and Forestry Experiment Station, University of Alaska, administers these funds in Alaska.

D. Extension Service (ES) - This is the federal arm of the Cooperative Extension Service, University of Alaska (CES). The ES provides formula funding and technical support to CES.

E. Soil Conservation Service (SCS) - Nationwide, SCS conducts soil surveys and provides technical help for soil erosion problems. The SCS is the major source for technical services and soils information.


SB
368

HOUSE
COMMITTEE REPORT

4/14

(9)

Date referred: 3/10/86

FURTHER REFERRALS: JUDICIARY

DATE: 4/14/86

The RESOURCES Committee has considered SSSB 368

"An Act relating to the sale of inherited remote parcels."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[XX] replace with 1st CS for SSSB 368 (Resources) [XX] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Cato

Sund

Thompson Edward W. Thompson

Miller(NP) M. W. Miller

Wallis F. Kay Wallis

Pearce

SIGNING OTHER RECOMMENDATIONS:

Dick Shultz
Co- Chairman Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/20/86

REQUEST

Bill/Resolution No. SS SB 368
Title : Sale of Inherited Remote Parcels

Sponsor : Senator Bennett
Requestor : Senate Resources
Date of Request : 2/20/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Land & Water Management

Components : Land Disposals/Fee

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

No Fiscal Impact

Prepared by : Michael E. Vediner
Phone : 465-2400
Division : Division of Land & Water Management
Date : 2/20/86

Approved by Commissioner : Norman D Arnold, Deputy
Date : 2/21/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

DORIS LOENNIG
A PROFESSIONAL CORPORATION
ATTORNEY AT LAW

SUITE 120, 515 SEVENTH AVENUE - FAIRBANKS, ALASKA 99701
907 452-2005

December 16, 1985
(Dictated 12-9-85)

Sen. Don Bennett
P.O. Box 2801
Fairbanks, Alaska 99707

Recently I have been probating estates for persons in Manley Hot Springs, Alaska. The man and wife had each applied under the remote parcel provisions for land and had been awarded leases by the State. Tragically they both died in a more or less simultaneous accident leaving the husband's interest to his parents and the wife's interest to her parents. The parents do not reside in the State of Alaska, and have no means of actually proving up on the property. However, each is a valuable asset of the estates since there have been improvements placed on the property by the parties before their death and the remote parcel provisions have been withdrawn by the State so those parcels are no longer available to the public.

I make reference to A.S. 38.05.077(e):

> "A remote parcel lease may not be assigned, conveyed, or otherwise transferred, but rights under the lease may devolve by testate or intestate succession. An attempt to assign, convey, or otherwise transfer the lease is void and terminates the lease."

Likewise, under A.S. 38.05.078(d):

> "In addition to the terms specified in A.S. 38.05.065(b) a contract of sale for land in a remote parcel shall contain the following conditions: 1) the land may not be sold, leased, or otherwise conveyed before ten years after the date that the contract of sale is signed by the purchaser, but title to the land may devolve by testate or intestate succession."

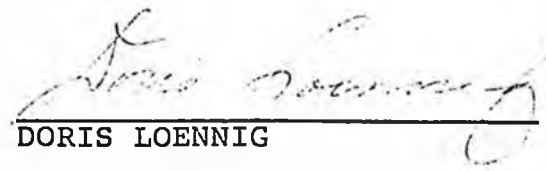
My problem is, and one that I have discussed with the Department of Natural Resources, is whether once the property becomes vested in heirs or has devolved by testate or intestate succession, can those heirs then proceed to dispose of their interest? It appears to me that if the answer is otherwise, the State is running into a constitutional problem of depriving persons of property without due process of law; secondly, it is my understanding that this provision was placed in there by those who were afraid that the original bidders would obtain a speculative profit by immediately re-selling the parcel.

My purpose in writing you is since DNR does not agree with me that possibly once property has devolved to an heir that the restriction against sale no longer pertains; would the legislature would consider amending the acts to make it clear that once property has devolved the properties can then be sold since to do otherwise in many cases, and particularly in these cases, would result in the heirs losing the property. In this case the parents are older, they do not reside in the State and they have no way, nor desire really, of trying prove up on the property. On the other hand their children did place improvements on the property which are of some value.

Please review my letter, if you have any questions, do not hesitate to contact me.

Very truly yours,

DORIS LOENNIG, P.C.

By: 
DORIS LOENNIG

DL:dcm

SB

418

ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

RESOLUTION

ESTABLISHMENT OF THE ALASKA MINERALS COMMISSION
AND CONCERNING MAJOR CONSTRAINTS TO DEVELOPMENT IN ALASKA - 1986

WHEREAS: The minerals industries, which include metalic minerals, industrial minerals, and hydrocarbons, have traditionally and continue to be the major source of wealth and income in Alaska, and

WHEREAS: There are major constraints to continued development of a diverse mineral industry in Alaska, including: EPA effluent guidelines; state water quality standards and improperly classified streams and rivers; restrictions to surface access; complex and numerous permitting requirements; limited access to mineral rights through mineral closing orders and restrictions to multiple use through state and federal land use plans, therefore,

BE IT RESOLVED that the State of Alaska establish an omnibus Commission entitled the Alaska Minerals Commission to make recommendations to the Governor and to the Legislature on ways to mitigate the constraints to mineral development in Alaska, and be it further

RESOLVED that the 11 members of the Commission be nominated from the Alaska mineral industry, appointed by the Governor and confirmed by the Senate for a period of three years, and be it further

RESOLVED that the Commission be directed to define the major constraints (including government impact) to mineral development in Alaska and to make preliminary recommendations to the legislature and the Governor by the beginning of the 1987 legislative session, with a final report due by the beginning of the 1989 legislative session.

Dated this 24th day of January, 1986.

Rose Rybachek

Rose Rybachek, President

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 4/7/86

REQUEST

Bill/Resolution No. : CSSB 418
Title : An Act relating to the Alaska Minerals Commission

Sponsor : Bennett, et al.
Requestor : Sturgulewski
Date of Request : 3/14/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU :

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Ned Farquhar
Division : Commissioner's Office
Phone : 465-2400
Date : 4/7/86

Approved by Commissioner : Norman D Approved, Regnthy
Date : 4/7/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

SB

430

HOUSE

COMMITTEE REPORT

4/22

(9)

Date referred: 4/18/86

FURTHER REFERRALS: FINANCE

DATE: April 21, 1986

The RESOURCES Committee has considered CSSSSB 430(Rls)

"An Act relating to the reduction or revocation by the commissioner of the Department of Natural Resources of oil or gas royalty obligation increases made in connection with the institution or operation of a cooperative or unit plan; and providing for an effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[X] replace with HCS CSSSB 430 (Rls) [X] same title

[ ] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Duke Shultz

Miller M.W. Miller

Thompson David M. Thompson

Jenkins Roger Jenkins

Cato Bette Cato

SIGNING OTHER RECOMMENDATIONS:

Sund

co-Chairman Duke Shultz
Shultz

Bannister
4/18/86

Original sponsor: Fahrenkamp

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 430 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the reduction or revocation by the commissioner of the Department of Natural Resources of oil or gas royalty obligation increases made in connection with the institution or operation of a cooperative or unit plan; and providing for an effective date."

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

* Section 1. AS 38.05.180(p) is amended to read:

(p) To conserve the natural resources of all or a part of an oil or gas pool, field, or like area, the lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, change, or revoke drilling, producing, and royalty requirements of the leases and adopt regulations with reference to the leases, with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as the commissioner determines necessary or proper to secure the proper protection of the public interest. The commissioner may require oil and gas leases issued under this section to contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and may prescribe

a plan under which the lessee must operate. The plan must adequately protect all parties in interest, including the state. Notwithstanding (j) of this section, if the commissioner determines that the public interest warrants the reduction or revocation, the commissioner may reduce or revoke a royalty obligation increase that was made by the commissioner in connection with the institution or operation of a cooperative or unit plan; however, the reduction or revocation must contain a mechanism to provide that if a lessee's market conditions improve or if the profitability of a lessee's operation increases to a specified level after the commissioner makes the reduction or revocation, the commissioner shall increase the royalty obligation of the lessee to a level not exceeding the amount of the royalty obligation increase that the commissioner reduced or revoked. As a condition of the reduction or revocation of a royalty obligation, the commissioner shall require the lessee to comply with all valid and applicable laws and regulations of the state

(1) that concern the hiring of state residents; and

(2) that are in effect or take effect during the term of the lease.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

TESTIMONY OF AL HASTINGS

BEFORE THE HOUSE RESOURCES COMMITTEE

REGARDING CSSSSB 430 (APRIL 21, 1986)

CONOCO IS THE OPERATOR OF THE MILNE POINT UNIT, WHICH IS THE THIRD PRODUCING UNIT ON THE NORTH SLOPE. IT BEGAN PRODUCTION LAST FALL, AND IS CURRENTLY PRODUCING ONLY 18,000 BARRELS PER DAY--THIS IN COMPARISON TO PRUDHOE BAY'S 1.5 MILLION BARRELS PER DAY, AND 260,000 BARRELS PER DAY FROM THE KUPARUK UNIT. BY ANY DEFINITION, MILNE POINT IS A MARGINAL UNIT.

DESPITE ITS MARGINAL NATURE, MILNE POINT, AND MILNE POINT ALONE, IS REQUIRED TO PAY A SPECIAL ROYALTY SURCHARGE. AT THE STATE'S 1969 COMPETITIVE SALE, THE SUCCESSFUL BIDDERS STRUCK AN AGREEMENT UNDER WHICH THEY AGREED TO PAY A 12.5% ROYALTY. HOWEVER, IN 1979, WHEN THE MILNE POINT COMPANIES SOUGHT APPROVAL OF THEIR UNIT, THE STATE REFUSED UNLESS THE COMPANIES AGREED TO PAY A ROYALTY SURCHARGE OF 7½%, THUS INCREASING THE ROYALTY TO 20%. SINCE REJECTION OF THE UNIT WOULD CAUSE THE COMPANIES TO LOSE THEIR LEASES, WE HAD LITTLE CHOICE BUT TO ACCEPT.

IN 1979, THE STATE BELIEVED THAT THIS ROYALTY SURCHARGE WAS IN THE PUBLIC INTEREST, BECAUSE IT ALSO BELIEVED THAT WELLHEAD OIL PRICES IN 1985 WOULD BE NEARLY $35 PER BARREL. AS EVENTS HAVE TRANSPIRED, ANS CRUDE IS SELLING ON THE WEST COAST SPOT MARKET AT $12-$14/BBL., AND TRANSPORTATION COSTS FROM MILNE POINT TO MARKET ARE $11-$12/BBL. AS A

RESULT, INSTEAD OF INCREASING STATE REVENUES, THE ROYALTY SURCHARGE THREATENS TO FORCE PREMATURE ABANDONMENT OF THE UNIT.

LAST NOVEMBER, CONOCO SUBMITTED A FORMAL REQUEST TO THE DEPARTMENT OF NATURAL RESOURCES TO RECONSIDER THE ROYALTY SURCHARGE IN THE MILNE POINT UNIT AGREEMENT. ON FEBRUARY 5th OF THIS YEAR, WE RECEIVED A LETTER FROM COMMISSIONER WUNNICKE, WHICH INDICATED THAT EXISTING LAW COULD PRECLUDE HER FROM REDUCING OR REVOKING THE ROYALTY SURCHARGE.

AT THAT POINT, AND IN LIGHT OF DNR'S CONCERNS OVER THE STATUTE, IT BECAME OBVIOUS THAT LEGISLATION WAS NECESSARY IF DNR WAS TO CONSIDER REVOKING OR REDUCING THE SURCHARGE, AS OPPOSED TO SIMPLY CHANGING ITS FORM. THIS BILL WOULD ACCOMPLISH PRECISELY THAT.

THERE ARE A FEW POINTS THAT I WOULD LIKE TO BRIEFLY MAKE WITH RESPECT TO THE BILL AND THE URGENCY BEHIND IT. FIRST, THE BILL IS VERY NARROWLY DRAFTED. IT WOULD ONLY AUTHORIZE THE COMMISSIONER TO REDUCE OR REVOKE ROYALTY SURCHARGES IMPOSED AT THE TIME OF UNIT FORMATION. THIS BILL DOES NOT GIVE THE COMMISSIONER ANY AUTHORITY WHATSOEVER TO REDUCE ROYALTIES BID UPON OR AGREED TO AT A COMPETITIVE SALE. IT ALSO REQUIRES THE COMMISSIONER TO PROVIDE A MECHANISM TO INCREASE THE ROYALTY IF THE COMPANIES' SHOULD EVER MAKE WINDFALL PROFIT. THE MILNE POINT UNIT IS CURRENTLY OPERATING AT A SUBSTANTIAL CASH LOSS. THE PROBABILITY OF MAKING ANY PROFIT IN THE NEXT 2-3 YEARS IS VERY UNLIKELY EVEN WITH MODEST CRUDE PRICE INCREASES.

NEXT, THE BILL DOES NOT GRANT CONOCO, OR ANYONE ELSE, ROYALTY RELIEF. IT MERELY AUTHORIZES THE COMMISSIONER TO RECONSIDER ROYALTY SURCHARGES IN UNIT AGREEMENTS WHEN THE PUBLIC INTEREST WARRANTS. CONOCO WILL STILL HAVE TO PROVE ITS CASE BEFORE THE DEPARTMENT. THE ISSUE BEFORE THIS COMMITTEE IS NOT WHAT CONOCO'S ROYALTY SHOULD BE; THAT ISSUE WILL HAVE TO BE RESOLVED BY DNR, BASED ON THE CONSIDERATION OF FINANCIAL DATA, SOME OF IT CONFIDENTIAL. THE ONLY RELIEF CONOCO IS ASKING HERE IS TO REMOVE A PERCEIVED, DISCRIMINATORY, AND VERY UNINTENTIONAL IMPEDIMENT TO DNR'S ABILITY TO RECONSIDER THE SURCHARGE.

THERE IS URGENCY TO THIS LEGISLATION. AS YOU KNOW, THE UNIT HAS ALREADY HAD TO SUSPEND NEW DRILLING AT MILNE POINT, AND IN LIGHT OF THE RECENT DRAMATIC DECLINE IN OIL PRICES THE SURCHARGE IS JEOPARDIZING NOT ONLY FUTURE DEVELOPMENT, BUT EXISTING PRODUCTION AS WELL. IN A LETTER TO SENATOR STURGULEWSKI, COMMISSIONER WUNNICKE STATED (AND I QUOTE) "IT IS ALSO VERY LIKELY THAT IF CURRENT CONDITIONS PERSIST (OR GET WORSE), THE FIELD WILL BE SHUT IN IF THE ROYALTY REMAINS AT 20%."

CONOCO'S INTENT IS A LONG-TERM COMMITMENT TO REMAIN AN OPERATOR IN ALASKA. WE HAVE CONTINUED TO BE ACTIVE IN BOTH STATE AND FEDERAL LEASE SALES, AND MILNE POINT IS AN IMPORTANT KEY TO THIS COMMITMENT. WITH THE CURRENT CRUDE PRICES, WE ARE NOT MEETING OUR OPERATING COSTS. PASSAGE OF THIS BILL WILL PROVIDE SUBSTANTIAL ENCOURAGEMENT FOR CONOCO AND ITS PARTNERS TO STAY IN OPERATION DURING THESE DIFFICULT ECONOMIC TIMES.

THANK YOU FOR THE OPPORTUNITY TO TALK WITH YOU TODAY REGARDING SB 430, AND I WOULD BE DELIGHTED TO TRY TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

referring hereto and shall be binding upon all those parties who have executed such a counterpart, ratification or consent hereto with the same force and effect as if all such parties had signed the same document and regardless of whether or not it is executed by all other parties owning or claiming an interest in the lands within the above described unit area.



30. ALASKA RESIDENT HIRE. All State of Alaska leases committed to said agreement are hereby altered to require that the lessee and unit operator shall comply with all valid and applicable laws and regulations with regard to hire of Alaska residents. Qualified Alaska residents shall be hired as required in AS 38.40; lessee shall not discriminate against Alaska residents, as prohibited by AS 38.40 and other applicable laws and regulations of the State of Alaska.

CONOCO INC.

By _____

J. R. Sanders
Attorney-in-Fact
Unit Operator

_____
Attest

Offered: 4/18/86
Referred: Resources and Finance

Original sponsor: Fahrenkamp

IN THE SENATE

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 430 (Oil & Gas)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the reduction or revocation by the commissioner of the Department of Natural Resources of oil or gas royalty obligation increases made in connection with the institution or operation of a cooperative or unit plan; and providing for an effective date."

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

* Section 1. AS 38.05.180(p) is amended to read:

(p) To conserve the natural resources of all or a part of an oil or gas pool, field, or like area, the lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, change, or revoke drilling, producing, and royalty requirements of the leases and adopt regulations with reference to the leases, with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as the commissioner determines necessary or proper to secure the proper protection of the public interest. The commissioner may require oil and gas leases issued under this section to contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and may prescribe

a plan under which the lessee must operate. The plan must adequately protect all parties in interest, including the state. Notwithstanding (j) of this section, if the commissioner determines that the public interest warrants the reduction or revocation, the commissioner may reduce or revoke a royalty obligation increase that was made by the commissioner in connection with the institution or operation of a co-operative or unit plan; however, the reduction or revocation must contain a mechanism to provide that if a lessee's market conditions improve or if the profitability of a lessee's operation increases to a specified level after the commissioner makes the reduction or revocation, the commissioner shall increase the royalty obligation of the lessee to a level not exceeding the amount of the royalty obligation increase that the commissioner reduced or revoked. The commissioner may reduce or revoke a royalty obligation only after the commissioner of labor finds that the level of resident hire on a subject lease is consistent with the lessee's stated objectives and applicable laws and regulations in effect at the time the reduction or revocation is requested. The lessee shall agree that the percentage of state residents employed on the lease is not less than the average percentage employed by other North Slope operators as reported to the Department of Labor.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

TESTIMONY OF AL HASTINGS

BEFORE THE HOUSE OIL & GAS COMMITTEE

REGARDING CS SS SB 430 (APRIL 16, 1986)

CONOCO IS THE OPERATOR OF THE MILNE POINT UNIT. BY ANY DEFINITION, MILNE POINT IS A MARGINAL UNIT. IT BEGAN PRODUCTION LAST FALL, AND IS CURRENTLY PRODUCING ONLY 18,000 BARRELS PER DAY--THIS IN COMPARISON TO PRUDHOE BAY'S 1.5 MILLION BARRELS PER DAY, AND 260,000 BARRELS PER DAY FROM THE KUPARUK UNIT.

DESPITE ITS MARGINAL NATURE, MILNE POINT, AND MILNE POINT ALONE, IS REQUIRED TO PAY A SPECIAL ROYALTY SURCHARGE. AT THE STATE'S 1969 COMPETITIVE SALE, THE SUCCESSFUL BIDDERS STRUCK AN AGREEMENT UNDER WHICH THEY AGREED TO PAY A 12.5% ROYALTY. IN 1979, HOWEVER, WHEN THE MILNE POINT COMPANIES SOUGHT APPROVAL OF THEIR UNIT, THE STATE REFUSED UNLESS THE COMPANIES AGREED TO PAY A ROYALTY SURCHARGE OF 7½%, THUS INCREASING THE ROYALTY TO 20%.

SINCE REJECTION OF THE UNIT WOULD CAUSE THE COMPANIES TO LOSE THEIR LEASES, WE HAD LITTLE CHOICE BUT TO ACCEPT.

IN 1979, THE STATE BELIEVED THAT THIS ROYALTY SURCHARGE WAS IN THE PUBLIC INTEREST, BECAUSE IT ALSO BELIEVED THAT WELLHEAD OIL PRICES IN 1985 WOULD BE NEARLY $35 PER BARREL. AS EVENTS HAVE TRANSPIRED, ANS CRUDE IS SELLING ON THE WEST COAST SPOT MARKET AT $12-$14/BBL, AND TRANSPORTATION COSTS FROM MILNE POINT TO MARKET ARE $11-$12/BBL. AS A RESULT, INSTEAD OF INCREASING STATE REVENUES, THE ROYALTY SURCHARGE THREATENS TO FORCE PREMATURE ABANDONMENT OF THE UNIT.

LAST NOVEMBER, CONOCO SUBMITTED A FORMAL REQUEST TO RECONSIDER THE ROYALTY SURCHARGE IN THE MILNE POINT UNIT AGREEMENT. ON FEBRUARY 5th OF THIS YEAR, WE RECEIVED A LETTER FROM COMMISSIONER WUNNICKE, WHICH INDICATED THAT EXISTING LAW COULD PRECLUDE HER FROM REDUCING OR REVOKING THE ROYALTY SURCHARGE.

AT THAT POINT, AND IN LIGHT OF DNR'S CONCERNS OVER THE

STATUTE, IT BECAME OBVIOUS THAT LEGISLATION WAS NECESSARY IF DNR WAS ABLE TO CONSIDER REVOKING REDUCING THE SURCHARGE, AS OPPOSED TO SIMPLY CHANGING ITS FORM. THIS BILL WOULD ACCOMPLISH PRECISELY THAT.

THERE ARE A FEW POINTS THAT I WOULD LIKE TO BRIEFLY MAKE WITH RESPECT TO THE BILL, THE URGENCY BEHIND IT, AND THE ONGOING EFFORTS TO NEGOTIATE A SOLUTION TO THIS CONTROVERSY WITH DNR. FIRST, THE BILL IS VERY NARROWLY DRAFTED. IT WOULD AUTHORIZE, AND ONLY AUTHORIZE, THE COMMISSIONER TO REDUCE OR REVOKE ROYALTY SURCHARGES IMPOSED AT THE TIME OF UNIT FORMATION. IT ALSO REQUIRES THE COMMISSIONER TO PROVIDE A MECHANISM TO INCREASE THE ROYALTY IF THE COMPANIES' PROFITABILITY IMPROVES. FINALLY, THIS BILL GIVES THE COMMISSIONER NO AUTHORITY WHATSOEVER TO REDUCE ROYALTIES BID UPON OR AGREED TO AT A COMPETITIVE SALE.

NEXT, THE BILL DOES NOT GRANT CONOCO, OR ANYONE ELSE, ROYALTY RELIEF. IT MERELY AUTHORIZES THE COMMISSIONER TO RECONSIDER ROYALTY SURCHARGES IN UNIT AGREEMENTS WHEN THE PUBLIC

INTEREST WARRANTS. CONOCO WILL STILL HAVE TO PROVE ITS CASE BEFORE THE DEPARTMENT. THE ISSUE BEFORE THIS COMMITTEE IS NOT WHAT CONOCO'S ROYALTY SHOULD BE; THAT ISSUE WILL HAVE TO BE RESOLVED BY DNR, BASED ON THE CONSIDERATION OF FINANCIAL DATA, SOME OF IT CONFIDENTIAL. THE ONLY RELIEF CONOCO IS ASKING HERE IS TO REMOVE A PERCEIVED AND VERY UNINTENTIONAL IMPEDIMENT TO DNR'S ABILITY TO RECONSIDER THE SURCHARGE.

THERE IS URGENCY TO THIS LEGISLATION. AS YOU KNOW, THE UNIT HAS ALREADY HAD TO SUSPEND NEW DRILLING AT MILNE POINT, AND IN LIGHT OF THE RECENT DRAMATIC DECLINE IN OIL PRICES THE SURCHARGE IS JEOPARDIZING NOT ONLY FUTURE DEVELOPMENT, BUT EXISTING PRODUCTION AS WELL. IN A LETTER TO SENATOR STURGULEWSKI, COMMISSIONER WUNNICKE STATED (AND I QUOTE) "IT IS ALSO VERY LIKELY THAT IF CURRENT CONDITIONS PERSIST (OR GET WORSE), THE FIELD WILL BE SHUT IN IF THE ROYALTY REMAINS AT 20%."

CONOCO AND DNR HAVE ATTEMPTED TO RESOLVE THIS MATTER THROUGH NEGOTIATIONS. IN THOSE NEGOTIATIONS, COMMISSIONER WUNNICKE AND

HER STAFF HAVE USED THEIR BEST EFFORTS TO WORK WITHIN THE PERCEIVED CONSTRAINTS. SPECIFICALLY, DNR HAS DONE AS WELL AS ANYONE COULD TO CHANGE THE NATURE OF THE SURCHARGE WITHOUT REDUCING IT, AND AT THE SAME TIME AFFORD SOME MEANINGFUL RELIEF TO CONOCO. WE COMMEND DNR FOR THE EFFORTS THEY HAVE MADE IN THIS REGARD; HOWEVER, THEIR JOB MAY BE AN IMPOSSIBLE ONE UNDER THEIR VIEW OF THE STATUTE, FOR IT IS VERY HARD TO REDUCE A ROYALTY WITHOUT IN FACT REDUCING IT.

CONOCO'S INTENT IS A LONG-TERM COMMITMENT TO REMAIN AN OPERATOR IN ALASKA. WE HAVE CONTINUED TO BE ACTIVE IN BOTH STATE AND FEDERAL LEASE SALES, AND MILNE POINT IS AN IMPORTANT KEY TO THIS COMMITMENT. WITH THE CURRENT CRUDE PRICES, WE ARE NOT MEETING OUR OPERATING COSTS. PASSAGE OF THIS BILL WILL PROVIDE SUBSTANTIAL ENCOURAGEMENT FOR THE CONOCO AND ITS PARTNERS TO STAY IN OPERATION DURING THESE DIFFICULT ECONOMIC TIMES.

THANK YOU FOR THE OPPORTUNITY TO TALK WITH YOU TODAY REGARDING SB 430, AND I WOULD BE DELIGHTED TO TRY TO ANSWER ANY

QUESTIONS YOU MIGHT HAVE.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 03-21-86

REQUEST

Bill/Resolution No. CSSSSB 430 (~~Sen~~)
Title : Revoke/Reduce Royalty Increase

Sponsor : Fahrenkamp
Requestor : Senate Finance
Date of Reques: : 03-21-86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Petroleum Management

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE	(2260.0)	(2150.0)	(1900.0)	(1660.0)	(1460.0)	

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attached Explanation

Revenue reduction figures are based on a calendar year, not a fiscal year.

Prepared by : Kay Brown
Division : Oil and Gas
Phone : 762-4241
Date : 03-21-86

Approved by Commissioner : Norm D Gorsuch, Deputy
Agency : Natural Resources
Date : 03-21-86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Attachment Fiscal Note for SSSB 430

This amended fiscal note is necessarv because CONOCO last week revised downward their projected rate of production. This fiscal impact (Revenue) is estimated on the basis of several assumptions:

... The bill would affect only Milne Point unit production;

... Milne Point Unit production at:

1986	18,500 bpd
1987	17,600 bpd
1988	15,500 bpd
1989	13,600 bpd
1990	11,900 bpd

... Royalty reduction from 20§5 to 12.5% under SSSB 430;

... Wellhead price is assumed to be $5.45/barrel

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

CSSSSB 430 (Rules)

CSSSSB 430 (Rules) would allow the commissioner of the Department of Natural Resources to reduce or revoke a royalty increase that was made in connection with the institution or operation of a cooperative or unit plan. Such a reduction or revocation would also have to contain a mechanism to provide that if the profitability of a lessee's operation increases to a specified level after the reduction or revocation is made, the commissioner shall increase the royalty obligation to a level not exceeding the amount of the royalty increase that the commissioner reduced or revoked.

This legislation is directed specifically toward Conoco's Milne Point Unit. The renegotiation of lease terms in 1979 between Conoco and DNR occurred as a result of the unitization of the Milne Point field. One condition of unitization was a royalty increase from 12.5 to 20 percent. Milne Point is the only producing unit that has been subjected to a royalty increase. Non-producing units that have been subjected to similar royalty increases are Gwydyr Bay and Duck Island.

It is the view of DNR that present law prevents the commissioner from making the royalty reduction or revocation sought by the operator of the Milne Point Unit. DNR believes that the specific royalty reduction limitations stated in AS 38.05.180(j) control the general royalty reduction powers granted in AS 38.05.180(p).

AS 38.05.180(j) states that "To prolong the economic life of an oil and gas field, the commissioner shall adopt regulations for all bidding methods to allow reduction of royalty on leases within the field to compensate for increasing costs in the later stages of production decline. The commissioner may not grant a reduction of royalty until two years' initial production from the field has occurred and each lessee requesting the reduction has made a clear showing that the revenue from all hydrocarbons produced from the field is insufficient to produce a reasonable rate of return with respect to that lessee's total investment in the field."

SSSB 430 started to move actively through the Senate after Conoco and DNR failed to negotiate an agreement to alter the royalty obligation at Milne Point. The most hopeful attempt at resolving this issue was DNR's offer of a royalty reduction to 12.5 percent, in combination with a 12.5 percent royalty and a 35 percent net profit share from the Shallow Sands reservoirs at Milne Point. This would have provided the state with revenues equivalent to a 20 percent royalty, while allowing Conoco to defer payment of 7.5 percent of its royalty obligation. Negotiations broke down, however, when Conoco stated that the company must have a real reduction in its royalty obligation rather than simply the deferring of a share of this obligation.

Conoco's request for a royalty reduction derives from the company's unfortunate economic timing. The Milne Point Unit and the consequent royalty increase were established at a time when the price for crude oil was near its record high. Profitability projections at the time were sufficient to warrant the commencement of production activities, notwithstanding the 20 percent royalty.

Because of the lower current price for crude oil, however, Conoco claims that the life of the Milne Point field will be terminated prematurely unless the company is provided with some measure of royalty relief. Conoco further states that the reduction or revocation of its Milne Point royalty obligation will enhance the company's opportunity to develop the nearby Shallow Sands reservoir. However, the costs of field development are expected to far exceed the revenues retained by Conoco through a reduction in its royalty obligation.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

March 17, 1986

The Honorable Arliss Sturgulewski
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Sturgulewski:

The Department of Natural Resources supports SS SB 430, which is scheduled for a hearing today in the Senate Resources Committee. The bill would authorize the commissioner of the Department of Natural Resources under certain circumstances to reduce or revoke oil or gas royalty obligation increases made in connection with the institution or operation of a cooperative or unit plan.

The bill primarily would affect the Milne Point Unit, a small North Slope oil field which began production last fall.

Conoco, Inc., the Milne Point Unit operator, has been seeking for several years to roll back a 20% royalty on certain Milne Point leases. The royalty obligation on those leases was increased from 12.5% to 20% under an agreement required by the department in 1979 as a condition of approval of the Milne Point Unit.

As a result of an application for royalty relief filed last fall by Conoco and Milne Point Unit working interest owners Reading and Bates Petroleum Company, Champlin Petroleum Company and Cities Oil and Gas Corporation, the department has examined confidential economic, geological, geophysical and engineering data supplied by the companies. Based upon that review, the department believes that rescinding the royalty increase would encourage continued production and further development of oil reservoirs within the Milne Point Unit.

Under existing and forecasted economic conditions, there is a high likelihood that both the economic and physical recovery of oil and gas at Milne Point will not be maximized for either the companies or the state at a royalty rate of 20%. Production of oil and gas from the developed reservoir (i.e., the Kuparuk River formation) will not be maximized, and development and production of oil and gas from yet to be

developed reservoirs (i.e., the Shallow Sands - heavy oil and gas reservoirs, geologically equivalent to ARCO's West Sak-Ugnu reservoirs at Kuparuk Unit) likely will not occur at all. The companies have made a persuasive case that they cannot be reasonably assured an adequate rate of return on any future or incremental investment under the existing 20% royalty. Given the further erosion of crude oil prices since the application was filed with the state last October, it is possible that current production will be halted if the royalty rate on the leases remains at 20 percent.

A careful review by staff of the data and analyses supplied by the companies confirms that, under current and expected market conditions, the companies likely will not receive an adequate rate of return on their current investments, and that future investments in the Milne Point Unit also would yield a less than satisfactory return. It is also very likely that if current conditions persist (or get worse), the field will be shut-in if the royalty remains at 20%. In addition, future development of the Milne Point Unit Shallow Sands is almost certain not to occur at a 20% royalty.

A reduction in the royalty rate from 20% to 12.5% would result in a revenue decrease to the State of approximately $4.5 million a year from the Milne Point Unit. (See attached fiscal note.)

The department has tried to address the need for royalty relief within the current statutory framework, and earlier this year proposed that the royalty obligation be changed (not reduced) to a 12.5% royalty and a 35% Net Profit Share in lieu of the current 20% royalty. The companies have not accepted this proposal, even though it would have the effect of an immediate reduction in the royalty obligation, and would leave open the opportunity for the companies to apply for further relief after two years of field production based on the facts and circumstances at that time.

The department has been constrained from considering an outright royalty reduction by AS 38.05.180(j), which precludes the commissioner from granting a reduction of a lease royalty "until two years' initial production from the field has occurred and each lessee requesting the reduction has made a clear showing that the revenue from all hydrocarbons produced from the field is insufficient to produce a reasonable rate of return with respect to that lessee's total investment in that field."

The department's proposal to change the existing royalty rate was based on the authority of AS 38.05.180(p), which authorizes the commissioner to change royalty requirements of unitized leases "as the commissioner determines necessary

or proper to secure the proper protection of the public interest." Under the department's proposal, the state likely would have been compensated for the near-term revenue losses resulting from a reduction to a 12.5% royalty rate by the further receipt of revenues from the development of the Shallow Sands reservoirs at Milne Point and the application of the 35% Net Profit Share and the 12.5% royalty to that production. Revenues to the state over time likely would have been equivalent or greater under the department's proposal, but the income would have been delayed.

The department believes that it is not authorized to reduce the royalty obligation under AS 38.05.180(p), because of the limitation AS 38.05.180(j) appears to place on the commissioner's powers. If AS 38.05.180(j) applied only to leases that had not yet been unitized, AS 38.05.180(j) would be a nullity because, as a practical matter, unitization always precedes production. Related statutes should not be construed to make one statute a nullity.

Further, the general rule of statutory construction is that specific provisions control general provisions. Under this rule, the specific royalty reduction provisions of AS 38.05.180(j) would control the general provisions of AS 38.05.180(p).

Further, the legislative history of AS 38.05.180(j) argues against using AS 38.05.180(p) to circumvent the royalty reduction limitations stated in AS 38.05.180(j).

Testimony before the Legislature in 1978 focused on royalty reductions in conjunction with the increased flexibility given to the commissioner to select bidding methods. A prime concern was to prevent royalty bid manipulation, where a bidder obtains a tract by bidding an unreasonably high royalty counting on a subsequent royalty reduction to make the lease profitable. Although the companies obtained their leases at a fixed royalty sale, the policy against royalty bidding is arguably still applicable. The companies' leases were about to expire, causing the companies to agree to increase royalties in order to keep from losing the leases which were about to expire.

The bill that created AS 38.05.180(j) went through several committee substitutes. One committee, the House Resources Committee, voted to place an express limit on the commissioner's powers under AS 38.05.180(p) by adding the language: "however, the commissioner may not reduce the state's royalty within any unit except as provided in [j] of this section." A subsequent committee reviewing the bill, the Senate Resources Committee, deleted that language, but its sole motive was that the language was unnecessary since that committee had already decided to delete AS 38.05.180(j) altogether.

Later in the Senate Resources hearing, DNR pointed out that AS 38.05.180(j) granted the commissioner less power to reduce royalties than existed at that time under AS 38.05.140. The committee then voted to amend AS 38.05.140 to delete the commissioner's royalty reduction powers for oil and gas, and voted to reinstate AS 38.05.180(j). The committee immediately adjourned, without taking up the question of whether the previous committee's limitation of AS 38.05.180(p) should be retained.

In view of this legislative history, the department concluded that the specific royalty reduction limitations stated in AS 38.05.180(j) control the general royalty reduction powers granted in AS 38.05.180(p).

Thank you for the opportunity to comment on SS SB 430.

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Commissioner

Attachment

cc: Senator Bettye Fahrenkamp

Conoco Inc.
3201 C Street
Suite 200
Anchorage, AK
(907) 564-7600

December 23, 1985

The Honorable Mike Davis
Representative, Alaska
315 Barnette Street
Suite 101
Fairbanks, Alaska 99701

Re: Enclosed Request for Unit
Agreement Amendment

Dear Representative Davis:

Enclosed is a copy of a request by Conoco Inc. and other Milne Point Unit working interest owners to amend the Milne Point Unit Agreement. The companies submitted the request to DNR on November 4, 1985. The amendment would remove a 7½% royalty surcharge that was imposed upon these companies by DNR Commissioner Robert LeResche in September, 1979.

Granting the companies' request for removal of the surcharge will have a negligible effect on current state revenues. Indeed, the surcharge will net the state only some $8 million in additional royalties in 1986. However, if the surcharge results in premature field abandonment, the state will suffer a forseeable $1.1 billion net loss in taxes and royalties. Moreover, the subsequent production at Milne Point which is jeopardized by the surcharge is critical to the state. For example, if the surcharge is removed, and the unit is fully developed, the state's projected FY 1996 oil production decline will be reduced by 31%.

Either inaction by DNR, or DNR's refusal to acknowledge its authority to grant the companies' request, may necessitate a legislative response in order to prevent premature abandonment of the only currently-active marginal field on the North Slope, and the resultant loss in state revenue. As a result, we hope that you, and your staff, will have the opportunity to review the companies' papers.

This matter arose in 1979, when the Milne Point companies applied to Commissioner LeResche for approval of the Milne Point Unit. The commissioner refused to approve the unit unless the companies consented to pay a 20% royalty, rather than the 12½% that had been agreed to at the 1969 competitive sale. The companies, of course, had little choice but to accept the commissioner's demands, since a rejection of the unit

application would mean that the companies would lose their leases, and no production would occur at Milne Point at all.

Commissioner LeResche was motivated, at the time, by his assumption that wellhead prices in the mid-1980's would be about $34 per barrel, and that the market could therefore bear this royalty surcharge. In fact, wellhead prices are now about $14 per barrel. As a result, the effect of the surcharge will, in all probability, not be to increase state revenues, but rather to substantially reduce overall state taxes and royalties because of a premature field abandonment. Indeed, as the enclosed papers indicate, with the surcharge the Milne Point Unit may have as little as an 8-year field life.

Conoco recognizes that, in 1978, the legislature limited the commissioner's ability to reduce royalties on individual leases in order to prevent irresponsible royalty bidding at competitive sales. The limitation was intended to guard against abuses when the royalty was a bid variable -- a situation not present here. As our brief demonstrates, that limitation does not prevent the commissioner from amending her own unit agreements. And, an amendment to the unit agreement is all that is needed, and all that is asked for here. The 12½% royalty in the companies' leases will remain intact.

The companies are hoping that DNR will recognize its authority, and act upon the companies' request quickly. If the agency decides that it does not have authority to amend its own unit agreements, the companies will have two options The first, of course, is to litigate. And, while the companies are confident that they would ultimately prevail in that litigation, that option will be costly and time consuming. As our brief indicates, it is very important that a final decision on the royalty surcharge be made shortly. Therefore, delaying resolution of this issue for 2-3 years of litigation may bring about the early abandonment of Milne Point irrespective of the ultimate outcome.

The other option is legislation that would even more clearly direct the commissioner to act in the very limited and compelling circumstances present here. We had hoped that DNR would process our request in a way that would allow the legislature to consider this matter, if it needs to consider it at all, responsibly and in due course. We therefore asked DNR to decide the companies' request well prior to the convening of the upcoming legislative session; and, to that end, we submitted our request more than two months before the session was to commence. If the agency delays our request, the legislature may find itself facing a new oil and gas issue in mid-session. We are therefore deeply concerned that DNR has yet to act on our request even at the staff level -- particularly in light of the fact that DNR has known of this issue, and the need to resolve it, since October, 1983.

At this point, then, we would appreciate whatever efforts you feel appropriate toward encouraging Commissioner Wunnicke to make her <u>final</u>

decision before your next session commences. And, we will certainly keep you advised of the progress of our request.

Thank you in advance for the attention which I know that you, and your staff, will give to this matter.

Sincerely,

John R. Kemp
Division Manager
Anchorage Division

vv

SB

467

HOUSE

COMMITTEE REPORT

5/8

(9)

Date referred: 5/7/86

FURTHER REFERRALS: FINANCE

DATE: May 8, 1986

The RESOURCES Committee has considered CSSB 467(C&RA)

"An Act relating to the operation of campgrounds."

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Wallis Kay Wallis

Miller(NP) M.J. Miller

Herrmann Adelheid Herrmann

John Sundl

SIGNING OTHER RECOMMENDATIONS:

Lance Pearce - No Rec

Roger Jenkins No Rec

Co-Chairman Dick Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 4/17/86

REQUEST

Bill/Resolution No. : CSSB 467 (C&RA)
Title : Operation of Campgrounds

Sponsor : Senate C&RA Committee
Requestor : Senate C&RA Committee
Date of Request : 4/17/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Parks and Recreation Management

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		33.6	33.6	22.4	22.4	22.4
TRAVEL		2.0	2.0	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	35.6	35.6	22.4	22.4	22.4
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND		35.6	35.6	22.4	22.4	22.4
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	35.6	35.6	22.4	22.4	22.4

POSITIONS :

FULL-TIME	-0-	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The department would need a Natural Resources Technician to help prepare and administer requests for proposals, contracts, and processing of revenues related to private operation of selected state campgrounds. The position would be full time for the first two years, and become seasonal thereafter. The department will realize an overall savings in contractual and commodities expenditures.

Prepared by : Rod Nourant
Division : Division of Management
Phone : 465-2424
Date : 4/17/86

Approved by Commissioner : Norman D Arnold, Deputy
Date : 4/17/86
Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Continuation of Analysis CSSB 467 (C&RA)

Position Information:

	Annual Gross	Annual Benefits	Annual Total
NRT II (Perm. Full-time)	24.8	8.8	33.6
NRT II (Seasonal)	16.5	5.9	22.4

Additional Information:

Concessionaires would be required to reinvest a percentage of profit into the campground. This program will succeed only with close supervision by staff of tightly written contracts for campground operation. Supervision can be relaxed as concessionaires become established and routinely adhere to contract performance standards and stipulations. The savings realized by this program will grow each year, as additional campgrounds are contracted to the private sector for management. The department could forego the modest revenues available from the concessionaire during the first few years of operations if the money were used to enhance visitor services and the capital value of the campground.

Operational Savings Under This Program:

	FY 87	FY 88	FY 89	FY 90	FY 91
Contractual	30.0	35.0	40.0	45.0	50.0
Commodities	10.0	15.0	15.0	20.0	20.0
Total	40.0	50.0	55.0	65.0	70.0

SCR

18

HOUSE

COMMITTEE REPORT

4/23 Rules

(9)

Date referred: 4/8/86

FURTHER REFERRALS:

DATE: April 23, 1986

The RESOURCES Committee has considered SCR 18

Relating to the Guide Licensing and Control Board.

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Miller Mac Miller

Jenkins Roger Jenkins

Pearce

Thompson David W. Thompson

Cato Bette Cato

SIGNING OTHER RECOMMENDATIONS:

Adelheid Herrmann No Rec.
Herrmann

co-Chairman Dick Shultz
Shultz

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE
907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

February 3, 1986

MEMORANDUM

TO: Senator Arliss Sturgulewski, Chairman
Senate Resources Committee

FROM: Senator Jan Faiks

SUBJECT: Background on Senate Concurrent Resolution No. 18

The Guide Licensing and Control Board governs a system that controls entry into the big game guiding industry in Alaska. The Board assigns exclusive and joint-use guide areas in the state, and thereby confers upon a few persons a substantial benefit that is derived from a public resource.

For these reasons, and because the Board is composed of former guides and other persons having direct interest in the guiding industry, it is important that the actions of this Board be governed by objective standards. In order to avoid an appearance of conflict of interest, it is also important that these standards be strictly comply with.

From complaints of my constituents and an investigation by my staff, however, I believe that the Board is not operating by such standards. I have identified the following problem areas, and they are the focus of this resolution.

After SCR 18 was introduced, the Division of Legislative Audit published a performance report on this Board which confirms many of my observations.

1. The Board has failed to timely publish notice of its meetings and has failed to strictly follow accepted rules of order for conducting these meetings.

OUT OF SESSION
1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

The audit report observes that, "Publication of meeting information does not always precede the meeting by a reasonable time period." and "Teleconference meetings are not being noticed publicly". (Please see Section IV, page 17.)

2. Concerning exclusive and joint-use guiding areas, the Board lacks objective criteria for determining the maximum number of guides who can be licensed for an area and lacks criteria for issuing, reassigning, and placing conditions on guide area permits.

According to the auditors, "(the Guide Board) does not act consistently when considering the assignment of exclusive and joint-use guiding areas. The criteria on which any given area assignment decision is made varies from decision to decision." (page 7) They conclude, "Essentially, the (Guide Board) has not fully met its statutory responsibility to adopt an equitable and reasonable procedure for the assignment of guide areas." (page 8)

Senate Concurrent Resolution 18 urges the Guide Board to adopt regulations that address these problems. I believe that these actions are needed to restore and maintain public confidence in the integrity of this Board.

Thank you.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SCR 18
Title : Relating to Guide Licensing and Control Board
Sponsor : Sen. Faiks
Requestor : ~~Senate Resources~~
Date of Request : 4/2/86

FISCAL DETAIL

Agency Affected : Commerce
BRU : _____
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0	- 0 -

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

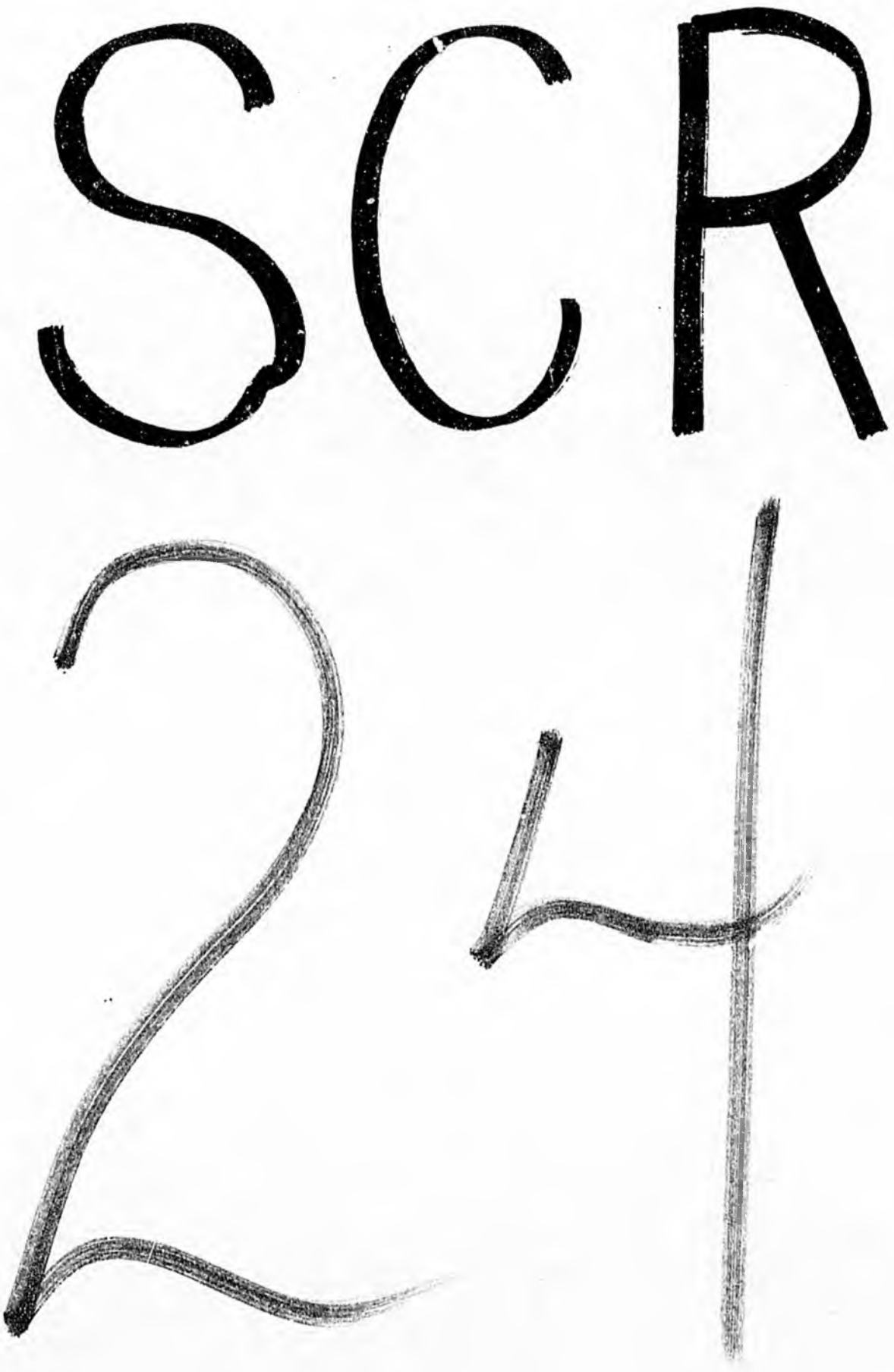
ANALYSIS : Attach a separate page if necessary

Prepared by : Senate Resources Committee
Division : _____
Phone : 465-4907
Date : 4/2/86

Approved by ~~Commissioner~~ : Senator Arliss Sturgulewski
Agency : Chairman, Senate Resources Committee
Date : 4/2/86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85


SCR
24

Alaska State Legislature

REPRESENTATIVE
ADELHEID HERRMANN

P.O. BOX 63
NAKNEK, ALASKA 99633
(907) 246-4495

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4942, 465-4943

CO-CHAIRMAN
RESOURCES COMMITTEE

MEMBER
TRANSPORTATION
COMMITTEE

House of Representatives

DISTRICT 26

ADAK
AKUTAN
ALEKNAGIK
ATKA
BELKOFSKI
CLARK'S POINT
COLD BAY
DILLINGHAM
DUTCH HARBOR
EGEGIK
EKUK
EKWOK
FALSE PASS
IGIUGIG
ILIAMNA
KING COVE
KING SALMON
KOKHANOK
KOLIGANEK
LEVELOCK
MANOKOTAK
NAKNEK
NELSON LAGOON
NEWHALEN
NEW STUYAHOK
NIKOLSKI
NONDALTON
PEDRO BAY
PILOT POINT
PORT ALSWORTH
PORT HEIDEN
PORT MOLLER
PORTAGE CREEK
SAND POINT
SOUTH NAKNEK
SQUAW HARBOR
ST. GEORGE
ST. PAUL
TOGIAK
TWIN HILLS
UGASHIK
UNALASKA

MEMORANDUM

TO: Members, House Resources Committee

FROM: Representative Adelheid Herrmann, Co-Chair

DATE: January 22, 1986

SUBJECT: SCR 24/Pacific Fisheries Legislative Task Force

Purpose of the Resolution

The purpose of the resolution is to allow the Speaker of the House and the President of the Senate to appoint two members respectively from each body to serve on the newly forming Pacific Fisheries Legislative Task Force.

What is the Purpose of Task Force?

The purpose of the task force is to encourage communication between the legislators of fisheries states in the west that have common concerns for a shared resource. The task force will serve as an additional mechanism for western state legislators to inform Congress, and other federal, regional and international bodies of their position on fisheries issues and legislation.

Who is Involved in the Task Force?

The states of Oregon and California have passed resolutions to establish their participation in the Pacific Fisheries Legislative Task Force. A similar resolution has passed the first committee of referral in the state of Washington. Also, attending the two meetings of the Task Force with the expectation of passing similar resolutions were legislators from the states of Idaho and Hawaii. Senators Zharoff and Eliason attended from Alaska.

What are Some of the Issues the Task Force Might Address?

The issues addressed and positions taken by the Task Force have included: endorsement of the Dungeness Crab quality control program in Oregon, endorsement of the House version of the Magnuson Reauthorization Act, cosponsorship of a Seafood Quality Workshop in Oregon, endorsement of the

request for the weather station in Hawaii, endorsement of a salmon allocation agreement on the Klamath River, endorsement of a request to the North Pacific Fisheries Management Council to continue traditional fisheries on the Klamath, endorsement of a request that someone from the fishing industry sit on any technical committees addressing seabed mining, and, endorsement of a resolution on marine insurance.

How Does the Task Force Work?

The members elect a chairman, and this position is currently held by Senator Bill Bradbury of California. The group's bylaws have established that the Task Force is limited to meeting four times a year. The state of California has volunteered staff to help with the Task Force, and the Alaska Department of Fish and Game has indicated that they will be available to brief the Alaska members on issues addressed at the meetings. The next meeting will be held in Juneau on April 5-6, and the public is welcome to attend.

How Might Alaska Benefit from Participation in the Task Force?

Alaska stands to gain from the exchange of information and could benefit from the Task Force as a vehicle to make certain positions on fisheries heard in Washington, D.C. and abroad. However, the state might risk being out-voted on a small number of issues where Alaska does not agree with the other states. On the other hand, the Task Force might serve as a forum for coming to some kind of understanding on the issues where all the Pacific states do not see eye to eye. One way to make sure the state would not be at any risk, might be to urge the Task Force to adopt a policy of coming to a concensus before adopting any formal positions.

One example of issues about which the states have not always agreed is the terms of the US/Canada Salmon Treaty. However, Alaska has common interests with the other states on issues including OCS revenue sharing, fisheries development programs, and seafood marketing. The Task Force could serve as a useful forum for the legislators of one state to understand the problems faced by fishermen of other western states.

The Alaska Department of Fish and Game

The Alaska Department of Fish and Game recognizes the potential for this group and has indicated their willingess to help brief the Alaska membership on any resolutions awaiting action by the Task Force. The department did however point out the need for the Task Force to communicate with the agencies charged with fisheries management and allocation in order to ensure that their positions and those of the Task Force's are coordinated as much as possible.

C A L I F O R N I A L E G I S L A T U R E

SENATE OFFICE OF RESEARCH

Elisabeth K. Kersten, Director

October 11, 1985

Honorable Richard Matsuura
Senator
131 Halai Street
Hilo, Hawaii 96720

Dear Dick:

I hope the Council of State Governments staff person got the information you needed on Sam Farr's Midway resolution, and that the council will have more success than we've had up to now with convincing the Navy to be reasonable.

I'm writing on behalf of the new Pacific Fisheries Legislative Task Force to invite you and any of your colleagues with an interest in fisheries to participate in the second meeting of the task force on Saturday and Sunday, January 18-19, 1986, in Monterey, California, in Sam's district.

The Alaska, California, Idaho, Oregon and Washington legislators who attended the first full meeting of the task force last month in Portland asked me to see that items of interest to Hawaii are included on the January agenda and that the Hawaii Legislature receives a special, early invitation to participate.

The task force is intended to be a mechanism for coordinating state legislative and administrative action, arriving at common positions, making the Pacific states' views known to federal, regional and even international bodies, and sharing information and ideas on matters of mutual concern. A copy of the agenda of the first meeting, and the interim bylaws adopted there, are enclosed. As you can see, the task force views its charge as broad enough to encompass commercial, sport and native fishing, seafood, and aquaculture.

Meetings will rotate among the participating states. The members also appear eager to meet in Washington, D.C., from time to time, perhaps beginning as early as the summer of 1986, to take Pacific fisheries concerns directly to Congress and federal executive-branch officials.

1100 J STREET • SUITE 650 • SACRAMENTO, CALIFORNIA 95814 (916) 445-1727

Among the items of possible interest to Hawaii on the Monterey agenda are marine insurance, ocean habitat issues, and the outlook for fishery legislation in Congress in 1986. On the last of those points, I expect we'll have reports from A.D. Chandler of the Naitonal Fisheries Institute, Lucy Sloan of the National Federation of Fishermen, and Lawrence Six of the Pacific Marine Fisheries Commission, to my knowledge the only Pacific fishery lobbyists in D.C.

The agenda is far from final, and other items or potential witnesses that you might suggest certainly could be added.

Please contact the task force chairman, Oregon Senator Bill Bradbury, P.O. Box 1499, Bandon, Oregon 97411, (503) 347-9614, or me, for any further information you need.

I hope to see you in Monterey.

Sincerely,

GREGORY deGIERE

GD:bg
Enclosures

cc: Honorable Bill Bradbury
Honorable Fred Zharoff
Honorable Sam Farr

C A L I F O R N I A L E G I S L A T U R E

SENATE OFFICE OF RESEARCH

Elisabeth K. Kersten, Director

October 11, 1985

Honorable Peter J. Apo
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Representative Apo:

Alaska Senator Fred Zharoff asked me to write you to invite the Hawaii House of Representatives, and you personally, to participate in the second meeting of the Pacific Fisheries Legislative Task Force on January 18-19, 1986, in Monterey, California.

The Alaska, California, Idaho, Oregon and Washington legislators who attended the first full meeting of the task force last month in Portland asked me to see that items of interest to Hawaii are included on the January agenda and that the Hawaii Legislature receives a special, early invitation to participate.

The task force is intended to be a mechanism for coordinating state legislative and administrative action, arriving at common positions, making the Pacific states' views known to federal, regional and even international bodies, and sharing information and ideas on matters of mutual concern. A copy of the agenda of the first meeting, and the interim bylaws adopted there, are enclosed. As you can see, the task force views its charge as broad enough to encompass commercial, sport and native fishing, seafood, and aquaculture.

Meetings will rotate among the participating states. The members also appear eager to meet in Washington, D.C., from time to time, perhaps beginning as early as the summer of 1986, to take Pacific fisheries concerns directly to Congress and federal executive-branch officials.

Among the items of possible interest to Hawaii on the Monterey agenda are marine insurance, ocean habitat issues, and the outlook for fishery legislation in Congress in 1986. On the last of those points, I expect we'll have reports from A.D. Chandler

1100 J STREET • SUITE 650 • SACRAMENTO, CALIFORNIA 95814 (916) 445-1727

of the Naitonal Fisheries Institute, Lucy Sloan of the National Federation of Fishermen, and Lawrence Six of the Pacific Marine Fisheries Commission, to my knowledge the only Pacific fishery lobbyists in D.C.

The agenda is far from final, and other items or potential witnesses that you might suggest certainly could be added.

Please contact the task force chairman, Oregon Senator Bill Bradbury, P.O. Box 1499, Bandon, Oregon 97411, (503) 347-9614, or me, for any further information you need.

I hope to see you in Monterey.

Sincerely,

GREGORY deGIERE

GD:bg
Enclosures

cc: Honorable Bill Bradbury
Honorable Fred Zharoff

C A L I F O R N I A L E G I S L A T U R E

SENATE OFFICE OF RESEARCH

Elisabeth K. Kersten, Director

October 11, 1985

Honorable Henry H. Peters
Speaker
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Representative Peters:

Alaska Senator Fred Zharoff asked me to write you to invite the Hawaii House of Representatives, and you personally, to participate in the second meeting of the Pacific Fisheries Legislative Task Force on January 18-19, 1986, in Monterey, California.

The Alaska, California, Idaho, Oregon and Washington legislators who attended the first full meeting of the task force last month in Portland asked me to see that items of interest to Hawaii are included on the January agenda and that the Hawaii Legislature receives a special, early invitation to participate.

The task force is intended to be a mechanism for coordinating state legislative and administrative action, arriving at common positions, making the Pacific states' views known to federal, regional and even international bodies, and sharing information and ideas on matters of mutual concern. A copy of the agenda of the first meeting, and the interim bylaws adopted there, are enclosed. As you can see, the task force views its charge as broad enough to encompass commercial, sport and native fishing, seafood, and aquaculture.

Meetings will rotate among the participating states. The members also appear eager to meet in Washington, D.C., from time to time, perhaps beginning as early as the summer of 1986, to take Pacific fisheries concerns directly to Congress and federal executive-branch officials.

Among the items of possible interest to Hawaii on the Monterey agenda are marine insurance, ocean habitat issues, and the outlook for fishery legislation in Congress in 1986. On the last

1100 J STREET • SUITE 650 • SACRAMENTO, CALIFORNIA 95814 (916) 445-1727

of those points, I expect we'll have reports from A.D. Chandler of the Naitonal Fisheries Institute, Lucy Sloan of the National Federation of Fishermen, and Lawrence Six of the Pacific Marine Fisheries Commission, to my knowledge the only Pacific fishery lobbyists in D.C.

The agenda is far from final, and other items or potential witnesses that you might suggest certainly could be added.

Please contact the task force chairman, Oregon Senator Bill Bradbury, P.O. Box 1499, Bandon, Oregon 97411, (503) 347-9614, or me, for any further information you need.

I hope to see you in Monterey.

Sincerely,

GREGORY deGIERE

GD:bg
Enclosures

cc: Honorable Bill Bradbury
Honorable Fred Zharoff

BILL BRADBURY
COOS, CURRY, DOUGLAS COUNTIES
DISTRICT 24

Post Office Box 1499
Bandon, Oregon 97411

OREGON STATE SENATE
SALEM, OREGON
97310-1347

October 7, 1985

Senator Fred Zharoff
Mail Pouch V
Juneau, Alaska

Dear Senator Zharoff:

I want to thank you for taking the time to attend our first Pacific Fishery Legislative Task Force meeting in Portland on September 17th and 18th. Your presence was valuable and I hope to see the Senate and House in Alaska become regular members of this Fishery Task Force.

Because of concerns expressed by you and members of the Idaho delegation, the Task Force did not take any action on the resolution that was before us and instead deferred action until we had more states as members to try to make sure that the Task Force represented a well balanced viewpoint.

It will probably be necessary for the Task Force's next meeting to be held on January 18th and 19th in Monterey, California because of prior scheduling commitments by California legislators and the desire to have our conference at the same time the West Coast Fish Wives meeting in Monterey. We will then probably have a third meeting sometime in the Spring and would hope to hold that meeting in Alaska to welcome our new members.

None of this is fixed and concrete and I would welcome any feedback you could provide about this arrangement. I hope it is acceptable to you, but I would certainly like to hear from you if it wasn't.

Again, thanks for attending our first meeting.

My best,

Bill Bradbury

Bill Bradbury, Chairman
Pacific Fishery Legislative Task Force

PACIFIC FISHERIES LEGISLATIVE TASK FORCE
c/o Senate Office of Research
1100 J Street, Suite 650
Sacramento, California 95814
(916) 445-1727

December 13, 1985

TO: Members and potential members, Pacific Fisheries Legislative Task Force;
Interested persons

FROM: Gregory deGiere, Consultant

RE: Second meeting: January 18-19, 1986, Monterey, California

The second full meeting of the task force is scheduled 9 to 5 Saturday, January 18, and 9 to 12 Sunday, January 19, in the Colton Room, 3rd floor, Monterey Conference Center, One Portola Plaza (corner of Del Monte and Alvarado), Monterey, California. The first day of the meeting will be in conjunction with the Pacific Coast Fishermen's Wives Coalition.

The task force's tentative agenda calls for it to gather information and hear user-group and public concerns on the first day, then discuss and act on task force business (including any resolutions) on the second day. All sessions both days are scheduled to be open to the public.

The tentative agenda topics for Saturday include:

- Federal fishery-related legislation: review of 1985 and outlook for 1986.
- Fishery and seafood marketing and development.
- California salmon restoration report.
- 1986 salmon season.
- Marine insurance: possible federal and state legislation.
- Use of U.S. satellite technology by U.S. tuna fleet.
- Ocean habitat issues, including: oil and gas drilling; seabed mining; radioactive waste dumping; and toxic waste burning.

As with the task force's first meeting in August in Portland, some subjects may be added or postponed in the final agenda,

which the task force itself will adopt at the beginning of the meeting in Monterey. Those with subjects to suggest may contact the chair, Senator Bill Bradbury, P.O. Box 1499, Bandon, Oregon 97411, (503) 347-9614, or me.

User-group representatives and anyone else who wishes to speak on subjects on the tentative agenda should complete the enclosed registration form and return it to me; we'll try to arrange time on the final agenda. We'll also try to accommodate those not on the agenda, if time permits.

Those with resolutions for task force consideration should submit them to me by Friday, January 3, if possible, for distribution to task force members along with the draft final agenda before the meeting. Resolutions generally should be limited to subjects the task force discussed in Portland or will discuss in Monterey, and each resolution should cover a single subject.

The Doubletree Inn, next door to the conference center, will give us a rate of $93.50 plus tax per room per night (compared with the usual rates of $130 single and $140 double) if and only if we give them a deposit in advance for the exact number of rooms. Anyone who wishes to take advatange of this rate needs to get a check to me for $102.85 (including tax) for the first night by Friday, January 3.

Note for calendars: The third meeting of the task force is scheduled tentatively for Saturday and Sunday, April 5-6, 1986, in Juneau, Alaska.

I look forward to seeing you in Monterey.

SECOND MEETING

PACIFIC FISHERIES LEGISLATIVE TASK FORCE

REGISTRATION FORM

Saturday and Sunday, January 18-19, 1986
Colton Room
Monterey Conference Center
Monterey, California

NAME _____

Title (if any) _____

Representing (if anyone) _____

Address _____

_____

_____

Telephone _____

If time permits, I wish to present testimony on the following tentative agenda item or items:

_____

_____

My state legislators are:

Senator _____

Representative (or Assemblyman) _____

The task force meeting will be open to the public, with no registration requirement. Those who wish to speak to the task force during the meeting should register; if time does not allow the task force to hear all who wish to testify, those who register in advance will be given preference.

Return as soon as possible to:

Pacific Fisheries Legislative Task Force
c/o Office of Senate Research
1100 J Street, Suite 650
Sacramento, California 95814

A-Engrossed

House Joint Resolution 2

Ordered by the Senate March 5
Including House Amendments dated February 1 and Senate Amendments dated March 5

Ordered printed by the Speaker pursuant to House Rule 12.00A(5). Presession filed (at the request of House Task Force on Fishery Resources)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Directs President of the Senate and Speaker of the House of Representatives to appoint, respectively, two Senators and two Representatives to serve on Pacific Fisheries Legislative Task Force.

Prescribes operative date.

JOINT RESOLUTION

Whereas fishing on the Pacific Coast plays a vital role in economic development; and

Whereas there is an obvious need for developing means for protecting and fostering Pacific fishing so as to maximize yield while protecting the resource for future generations; and

Whereas the subjects that require interstate cooperation are many and know no state boundaries; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) The President of the Senate and the Speaker of the House of Representatives, joining with the presiding officers of other jurisdictions, shall appoint, respectively, two Senators and two Representatives to represent Oregon on the Pacific Fisheries Legislative Task Force, which shall operate as a clearinghouse for opinion from all the various interests involved in Pacific fishing and which shall include among its duties the duty to report to the legislatures of the participating jurisdictions and to the state delegations in the United States Congress concerning means of protecting and fostering Pacific fishing in the participating jurisdictions.

(2) Participation in the activities of the task force by individuals appointed to represent the State of Oregon is subject to the following conditions:

(a) Members may not attend more than four meetings in each calendar year.

(b) Members must use existing staff personnel for administrative support work.

(c) Members shall receive no compensation or per diem for service as a member, but may receive actual and necessary travel and other expenses incurred in the performance of their official duties.

(3) This resolution does not become operative until appropriate action is taken by two of the states to create a Pacific Fisheries Legislative Task Force.

(4) Copies of this resolution shall be sent to the presiding officers of the legislatures of Washington, California and Alaska.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

03 JUN 1985

Introduced: 5/3/85
Referred: Resources

IN THE SENATE BY ELIASON

SENATE CONCURRENT RESOLUTION NO. 24

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to appointment of representatives to the Pacific Fisheries Legislative Task Force.

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

WHEREAS fishing on the Pacific Coast plays a vital role in economic development; and

WHEREAS there is an obvious need for developing means for protecting and fostering Pacific fishing so as to maximize yield while protecting the resource for future generations; and

WHEREAS the subjects that require interstate cooperation are many and know no state boundaries;

BE IT RESOLVED by the Alaska State Legislature that the President of the Senate and the Speaker of the House of Representatives, joining with the presiding officers of the other jurisdictions shall appoint, respectively, two senators and two representatives to represent Alaska on the Pacific Fisheries Legislative Task Force, which shall operate as a clearinghouse for opinion from all the various interests involved in Pacific fishing, and which shall include among its duties the duty to report to the legislatures of the participating jurisdictions and to the state delegations in the United States Congress concerning means of protecting and fostering Pacific fishing in the participating jurisdictions.

COPIES of this resolution shall be sent to the presiding officers of the legislatures of Washington, California, and Oregon.

RESOLUTION CHAPTER 67

Senate Concurrent Resolution No. 22—Relative to the Pacific Fisheries Legislative Task Force.

[Filed with Secretary of State July 19, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

SCR 22, Mello. Pacific Fisheries Legislative Task Force.

This measure would require the Senate Committee on Rules and the Speaker of the Assembly to appoint 2 Senators and 2 Assembly Members, respectively, to represent the California Legislature on the Pacific Fisheries Legislative Task Force and, subject to the approval of the Senate Committee on Rules and the Assembly Committee on Rules, would make funds available, in equal amounts, from the Senate Contingent Fund and the Assembly Contingent Fund, respectively, for the California share of the task force expenses.

The measure would request that each state share in the cost of the task force based on the formula contained in specified provisions of the Pacific Marine Fisheries Compact. The measure would request that the task force and other specified agencies meet in conjunction with one another. The measure would also invite the task force to locate its headquarters in Sacramento and, if it does so, would require the Senate Office of Research to offer staff support to the task force, as specified.

WHEREAS, The fishing, seafood, and aquaculture industries of the Pacific states and provinces of North America play a vital role in the economy of the region; and

WHEREAS, There is an obvious need to develop means for protecting and fostering these industries to maximize yield while protecting the resources for future generations; and

WHEREAS, The establishment of a task force composed of legislators of Pacific states and provinces would serve as a clearinghouse for opinions from all the interests involved in the Pacific fishing, seafood, and aguaculture industries, including reporting to the legislatures of the participating states and provinces and to their delegations to the United States Congress and the Parliament of Canada concerning means of fostering and protecting those industries in the region; now, therefore, be it

Resolved by the Senate of the State of Califonia, the Assembly thereof concurring, That the Senate Committee on Rules and the Speaker of the Assembly shall appoint two Senators and two Assembly Members, respectively, to represent the California Legislature on the Pacific Fisheries Legislative Task Force; and be

it further

Resolved, That the Senate Committee on Rules and the Assembly Committee on Rules shall, subject to their respective approvals, make funds available, in equal amounts, from the Senate Contingent Fund and the Assembly Contingent Fund, respectively, for the payment of the California share of expenses for the task force; and be it further

Resolved, That each state share the cost of the task force based on the formula contained in Article X of the Pacific Marine Fisheries Compact as set forth in Section 14001 of the California Fish and Game Code; and be it further

Resolved, That the California Legislature requests the task force, the Pacific Marine Fisheries Commission, the Pacific Fishery Management Council, and the West Coast Fisheries Development Foundation to meet in conjunction with one another when practicable in order to bring state executive and legislative fisheries leaders and industry and public representatives together to cooperate in common actions and strategies, to resolve interstate disputes, to share information, to allow legislators from each state to oversee those agencies, and to reduce travel and meeting expenses; and be it further

Resovled, That the California Legislature invites the task force to locate its headquarters in Sacramento; and be it further

Resolved, That, if the task force locates its headquarters in Sacramento, the Senate Office of Research shall offer to provide the task force with minimal staff support to the extent funds are available and it is consistent with the office's other functions; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the presiding officers of the legislative bodies of British Columbia, Hawaii, Idaho, Oregon, and Washington, to the executive directors of the Pacific Marine Fisheries Commission, the Pacific Fishery Management Council, and the West Coast Fisheries Development Foundation, and to the California Director of Fish and Game.

O

COMMITTEE REPORT

HOUSE

1/29

Rules

(9)

5/11/35

FURTHER:

Date: January 24, 1986

The Committee on RESOURCES has had SCR 24

Relating to appointment of representatives to the Pacific Fisheries Legislative Task Force.

under consideration and recommends:

[X] do pass with individual recs. [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Cato

Jenkins

Sund

M.W. Miller M. Miller

Shultz

Thompson

Herrmann

Wallis

MEMBERS HAVING OTHER RECOMMENDATIONS:

Dick Schultz

CHAIRMAN

CO-

PACIFIC FISHERIES LEGISLATIVE TASK FORCE
c/o Senate Office of Research
1100 J Street, Suite 650
Sacramento, California 95814
(916) 445-1727

INTERIM BYLAWS

Adopted September 17, 1985, Portland, Oregon

PREAMBLE

The Pacific Fisheries Legislative Task Force is a group of designated state legislators, whose decisions do not necessarily bind either the legislatures or state governments of their respective states. Each participating state, by appropriate leadership, shall dispatch appointed members to this Task Force, two from its Senate and two from its House of Representatives or Assembly.

The life and work of this Task Force are considered infinite; that is, there neither can nor should be a termination of its deliberations as long as the assurance of an abundant Pacific fishery resource remains an issue in this nation. Individual members may come and go, as their terms of office or legislative considerations dictate, but the Task Force job of working for abundant fisheries must continue.

Any state or territory of the United States bordering or with streams tributary to the Pacific Ocean may become a participating state. Any province or territory of Canada bordering or with streams tributary to the Pacific Ocean may participate as an observer.

"Fisheries," as used in these interim bylaws, includes aquaculture consistent with the health of commercial, sport and Native American fisheries.

ARTICLE 1: Tasks

The tasks of the Task Force include:

1. Advocating actions needed for healthy fisheries in the Pacific states, for both present and future generations.

2. Overseeing federal, interstate and international fishery agencies with jurisdiction affecting participating states, including regional fishery management councils, fishery and seafood development foundations, and the Pacific Marine Fisheries Commission.

3. Monitoring congressional actions of importance to the Pacific states' fisheries.

4. Fostering cooperation among the Pacific states and their fisheries on legislation and other matters affecting common fishery concerns.

5. Serving as a clearinghouse for information and opinions from all the interests involved in Pacific states' fisheries.

6. Reporting to the legislatures of participating states, and their congressional delegations, on means of protecting and fostering Pacific fisheries.

ARTICLE 2: Interim Officers

1. The members from each participating state shall elect from among themselves an Executive Committee member. Each state delegation shall elect its Executive Committee member annually prior to or during the first task force meeting following the November election date. Each state's member of the Executive Committee shall serve until the delegation elects a successor, unless the member ceases to be a member of the Task Force or is removed by the delegation as the state's Executive Committee member. A state delegation may reelect its Executive Committee member for an unlimited number of terms.

2. The Task Force shall elect from among its members a Chair and Vice Chair, who shall not be from the same state. The Task Force shall elect the Chair and Vice Chair annually, during the first meeting following the November election date. The Chair and Vice Chair shall serve until their successors are elected, unless they cease to be members of the Task Force or are removed by the Task Force as Chair and Vice Chair. The Task Force may re-elect the Chair, Vice Chair, or both, once. In the event of a vacancy in the office of Chair, the Vice Chair shall become Chair and shall serve the remainder of the Chair's unexpired term, and the Task Force at its next meeting shall elect a new Vice Chair who shall serve the remainder of the Vice Chair's unexpired term. In the event of vacancies in the offices of both Chair and Vice Chair, the Executive Committee shall select a member to fulfill the functions of the Chair until the next meeting, when the Task Force shall elect a new Chair and Vice Chair to fill the remainder of the unexpired terms.

3. The Executive Committee shall consist of the Chair, the Vice Chair, and the members elected by the state delegations. The Chair and Vice Chair of the Task Force shall serve as Chair and Vice Chair of the Executive Committee.

4. The Executive Committee shall implement policy adopted by the Task Force, and shall perform other functions delegated to it by the Task Force.

5. The Executive Committee member elected by each state delegation shall keep in contact with that state's task force members, and with the Chair, concerning all task force policy and business.

6. The Chair shall call meetings of the Task Force and of the Executive Committee, after consulting the other members of the Executive Committee; shall cause the required meeting notices to be sent; and shall perform other functions as directed by the Task Force or the Executive Committee.

Article 3: Interim Headquarters and Staff

1. The interim headquarters of the Task Force is in Sacramento, California.

2. The Task Force accepts the California Legislature's offer of minimal staff support from the Senate Office of Research pursuant to Resolution Chapter 67, California Statutes of 1985 (SCR 22, Mello).

3. The consultant assigned to the Task Force by the California Senate Office of Research shall act at the direction of the Task Force, Executive Committee and Chair, and shall perform the functions they direct to the extent they are consistent with the consultant's other duties.

4. The consultant shall maintain a calendar of Pacific fishery-related events for the benefit of the Task Force members, Pacific fishery interests and the public, and to assist the Chair in selecting meeting times and places. Task Force members shall inform the consultant of events in their states for the calendar.

Article 4: Quorum and Voting

1. A quorum of the Task Force, the Executive Committee, or any other formal committee of the Task Force consists of a majority of its members, or 50 percent of its members if each of two thirds of the participating states is represented by at least one member.

2. For purposes of establishing a quorum and voting, "member" includes a legislator or legislative staff member from the member's state exercising a proxy delegated to him or her in writing by the member or appointing authority. A legislator may

exercise the proxies of any number of other members from the same state. A staff member may exercise the proxy of one member. A person exercising the proxy of a member shall vote in accordance with any instructions given him or her by that member.

3. The determination of a quorum may be challenged by any member within ten(10) days of the determination by filing a challenge in writing with the Chair. Upon the filing, the Executive Committee shall review and decide the challenge. If the Executive Committee does not uphold the challenge within ten (10) working days of the filing, the determination of the quorum shall stand.

4. Voting shall be by roll call of the individual members. No action shall be taken unless the Chair determines a quorum to be present, and unless a majority of the members present vote affirmatively. No action shall be taken to remove the Chair or Vice Chair except by a majority of all the members, with at least two-thirds of the participating states being represented at the meeting by at least one member.

5. No action shall be taken by the Task Force, Executive Committee, or other formal committee of the Task Force by mail or telephone unless a majority of all the members vote affirmatively, all members having been notified as required by Article 5.

6. Any policy resolution shall be reduced to writing before the Chair puts it to a vote, unless no member requests it.

Article 5: Meetings and Notice

1. Regular meetings of the Task Force shall be four times per year, rotating among the participating states or in other places as the Chair determines to be necessary.

2. The Chair shall convene a special meeting of the Task Force or of the Executive Committee within 21 days of receiving a demand for a special meeting signed by a majority of the members of that body.

3. All meetings of the Task Force, the Executive Committee, and all other formal committees of the Task Force shall be open and public and the proceedings shall be conducted openly, except as otherwise provided in this section. The Task Force, the Executive Committee, or another committee may meet in closed session to consider the election, removal, appointment, employment, or dismissal of the Task Force officers, committee members or staff, or to hear complaints or charges brought against them; to consider matters affecting the safety and security of members of

the Task Force or its staff; or to discuss pending litigation (including any adjudicatory proceeding) when discussion in open session would prejudice the position of the Task Force in the litigation.

4. Special meetings of the Task Force, Executive Committee, or any other formal committee of the Task Force may be conducted by mail or telephone when considered necessary by the Chair.

5. A notice of a regular or special meeting of the Task Force, the Executive Committee, or any formal committee of the Task Force shall be sent at least 14 days before the meeting to each member of that body and to each newspaper or broadcast station in a participating state which has made written request to the Chair for notice, except as provided in Section 6 of this article. The notice shall include a list of the subjects proposed to be discussed at the meeting.

6. The Chair may call an emergency meeting of the Task Force or Executive Committee, and the chair of another formal committee of the Task Force may call a meeting of that committee, with less than the 14-day notice required by Section 5 of this article if he or she determines that urgent circumstances exist which require a meeting. In that case, each member of the body, and each newspaper or broadcast station in a participating state which has made written request to the Chair pursuant to Section 5 of this article, shall be notified by phone as many days as possible before the meeting, or sent a written notice as many days as possible before the meeting and in any case in time to receive it before the meeting.

Article 6: Fiscal

1. Eighty percent of the budget of the Task Force shall be shared equally by participating states having a boundary on the Pacific Ocean. Not less than five percent shall be contributed by each other participating state. The balance of the budget shall be shared by the participating states in proportion to the primary market value of the products of their commercial fisheries on the basis of the latest five-year records. The annual contribution of each participating state shall be figured to the nearest one hundred dollars ($100), except that no state shall contribute less than $100 in any year.

2. Contributions from participating states shall be deposited in a bank account in Sacramento, California, in the name of the Task Force. The consultant, with the concurrence of the Chair, shall disburse funds from the account in accordance with a budget adopted by the Task Force. All disbursements shall be by check, signed by the consultant and by the Chair or other member of the Executive Committee designated by the Chair.

3. All fiscal records of the Task Force shall be reviewed annually by a certified public accountant selected by the Executive Committee. Copies of the fiscal records shall be made available to each member and to the appropriate legislative committees and fiscal control agencies of each participating state, as determined by that state's delegation.

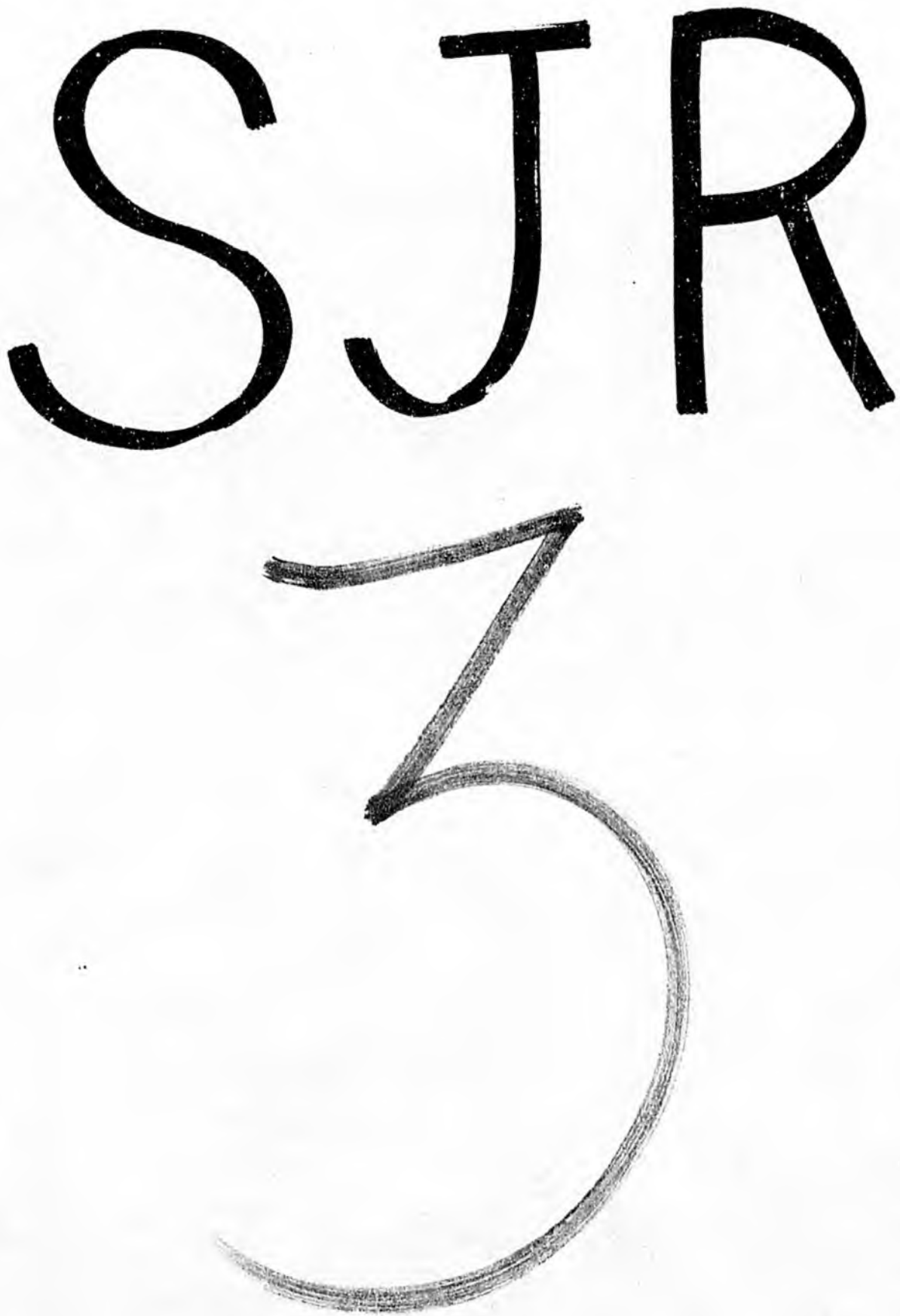
Article 7: Members Attendance

1. If a member misses three consecutive meetings and is not excused by the Chair, the Chair shall write the appointing authority in the member's state and ask the appointing authority to excuse the member officially or to appoint another legislator to exercise the member's proxy.

Article 8: Interim Bylaw Duration and Amendments

1. These interim bylaws shall remain in effect until the legislatures of at least three states act formally to become participating states and appoint members, and until the Task Force adopts permanent bylaws.

2. The Task Force may amend these interim bylaws by a two-thirds vote of all the members, or by a majority vote of all the members if a draft of the proposed amendment is included in the 14-day written notice of the meeting at which it is to be adopted.


SJR
3

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
1117 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
907-456-2899



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE (907) 465-3763
HESS COMMITTEE
(907) 465-3834
HOME 907-780-6027

Senate

January 31, 1985

Representative Dick Shultz
Chair, House Resources Committee
Pouch V
Juneau, AK 99811

Dear Dick:

SJR 3, requesting that the State of Alaska pursue a land exchange with the U.S. Department of Interior to exclude the Dunkle Mine Township from the Denali National Park and Preserve has been referred to the House Resources Committee.

The Alaska National Interest Lands Conservation Act (ANILCA) of 1980 adjusted the boundaries of Denali National Park to include the Dunkle Mine Township, and, in recognition of the township's mineral potential, mandated that the Alaska Land Use Council (ALUC) conduct a study of the relationship of mineral resources to the other resources of the area. The study team presented management options for the Dunkle area to the Council in May of 1984; one of the options was a land exchange which would remove the Dunkle township from the park.

Although the exchange option was not selected by the Council as the preferred management alternative, the benefits of conducting a land exchange continue to be discussed by both the State Department of Natural Resources and the U.S. Department of Interior, and the ALUC is scheduled to reconsider its position on the exchange at its February 14, 1985 meeting. Action by the Legislature on SJR 3 before this time would be a strong indication of Legislative support for the exchange option to not only the Council but to State and Federal land managers as well.

I urge you to schedule SJR 3 for consideration by the Committee as soon as possible, and would be happy to discuss this with you further at your convenience.

Best regards.

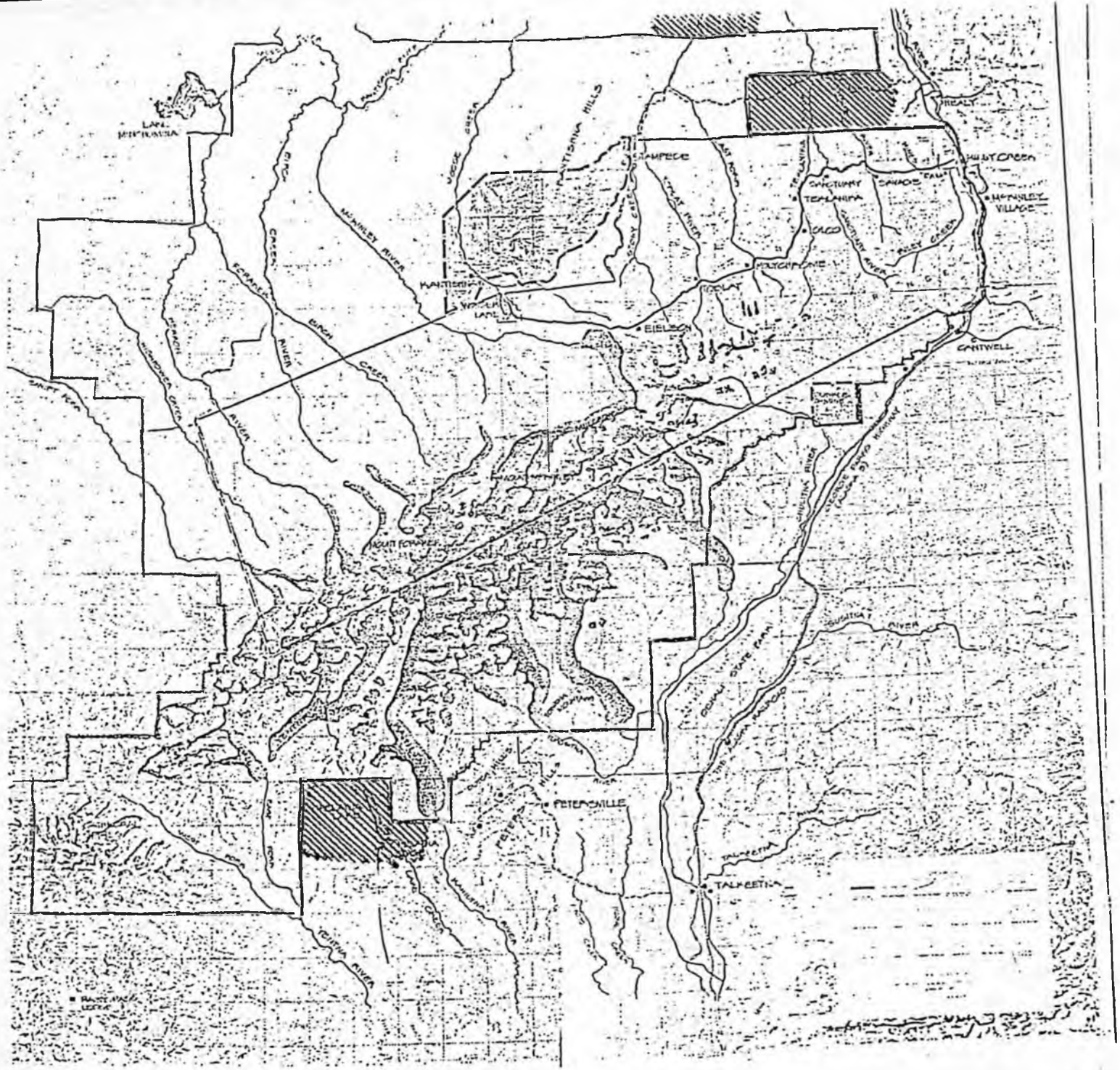
Sincerely,

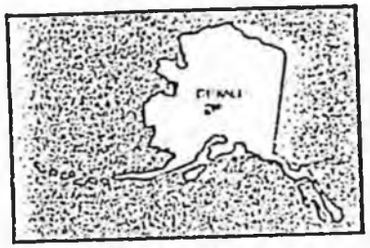
Bettye Fahrenkamp
Alaska State Senate

BF/ss

cc: House Resources Committee members

Backup





DENALI NATIONAL PARK AND PRESERVE BOUNDARY

DENALI WILDERNESS BOUNDARY

AIRSTRIP

GLACIER

STUDY AREA

AREAS FOR POSSIBLE EXCHANGE

Exchange Areas

Kantishna Hills and Dunkle Mine Study Areas

Denali National Park and Preserve

Backup

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

May 19, 1984

Governor Bill Sheffield, State Co-chairman
Vernon R. Wiggins, Federal Co-chairman
Alaska Land Use Council
P.O. Box 100120
Anchorage, AK 99510

Dear Governor Sheffield and Mr. Wiggins:

A major item on the agenda for the May 23rd meeting of the Alaska Land Use Council will be the consideration of the recommended options for the Kantishna Hills and Dunkle Mine study areas in Denali National Park. The Interior delegation of the Alaska State Legislature is very concerned about the recommendations which have been made by the study group.

The study group's recommendations for a minerals leasing system in the Kantishna Hills area and the maintenance of the "status quo" for the Dunkle township are not realistic alternatives and we do not consider them an acceptable response to the mandate of Sections 202(3)(b) and (c) of ANILCA. The following alternative recommendations are presented for consideration by the Council:

1) Kantishna Hills: Because the National Park Service does not currently have a mechanism in place designed to accommodate a mineral leasing program within the national park system, the delegation would recommend that management of mining claims and mining activity continue under the current system. Federal regulations under 36 CFR, Part 9, as well as existing State regulations and standards, are more than adequate to manage mineral activity in this area. Institution of a minerals leasing system would simply add another, unnecessary, layer of regulation and constraint. In addition, acquisition of any claims should be only on a willing seller/willing buyer basis and not through condemnation.

2) Dunkle Mines area: the best alternative for the Dunkle Township would be a land exchange which would remove it from the park. There has been no conclusive evidence presented during the study process that the Dunkle Township contains critical habitat for the Denali caribou herd. While realizing that the herd is a major attraction within the park, it is felt that, if necessary, any adverse effects from mining activity can be mitigated under the direction of State agencies. The Alaska Department of Natural Resources has indicated that it would consider exchanging the Dunkle area for the "Wolf Townships" located to the north of the park entrance. This would add an area of proven critical wolf habitat to the park.

We strongly urge the Alaska Land Use Council to consider these proposed alternatives for the Kantishna Hills/Dunkle Mine Study areas. These alternatives can provide for both the protection of park resources and the continuation of mineral activity in these two valuable areas. Thank you for your consideration of these proposals.

Sincerely,

Senator Fahrenkamp

Representative Bettisworth

Senator Davis

Representative Shultz

Representative Ringstad

Representative Miller

Representative Davis

Senator Bennett

Representative Koponen

cc Davidge

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

December 26, 1984

G. Ray Arnett
Assistant Secretary for Fish, Wildlife and Parks
Office of the Secretary
U.S. Department of the Interior
Washington, D.C. 20240

Dear Assistant Secretary Arnett:

Your correspondence of November 13, 1984 indicated the National Park Service (NPS) will soon initiate formal discussions with the State of Alaska regarding possible NPS acquisition/exchange of the so-called "Wolf Townships, " adjacent to Denali National Park and Preserve. You further note that the Secretary of Interior has the authority to acquire land contiguous to National Park Service units under Section 1302(i)(1-2) of ANILCA through donation or exchange.

I wish to emphasize that the state has absolutely no intention at this time of donating land to NPS. However, the state is willing to entertain exchange negotiations pursuant to Section 1302(h) of ANILCA that may result in NPS acquisition of this state land. I expect, of course, that the NPS will correspondingly nominate land of commensurate interest to the state as a prerequisite to any exchange negotiations.

As you suggested, I now look forward to hearing from Roger Contor on this matter.

Sincerely,

Esther C. Wunnicke
Commissioner

DEPARTMENT OF NATURAL RESOURCES
JAN 7 1984
COMMISSIONER'S OFFICE
JUNEAU

cc: Ric Davidge, DOI
Roger Contor, NPS
Vern Wiggins, ALUC
Bob Grogan, OMB
Bill Horn, DOI
Tom Hawkins, DLWM

Backup

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

July 12, 1984

Mr. Dick Swainbank
Geoprize Ltd.
P.O. Box 81315
Fairbanks, Alaska 99708

Dear Dick:

Thank you for your letter of June 23 regarding the Dunkle Mine study area and the Governor's correspondence. The Department is persuaded that the law clearly authorizes exchanges that can transfer the Dunkle Mine township (in whole or in part) out of the National Park status. Indeed, this is one of the Alternatives specifically outlined in the Draft Environmental Impact Statement issued in conjunction with the section 202(3)(b) study of the area. As a consequence, I must take exception to any conclusion that the law requires that the area remain within the park. Furthermore, the Act authorizes boundary adjustments up to 23,000 acres; such an adjustment could be made to excise the area from the park.

Regarding the status of the November 12, 1980 remarks in the Congressional Record, such comments have limited value under the rules of statutory construction. The actual language of the statute is the primary controlling factor. Only if the language is not clear is the legislative history reviewed. In that case, the reports issued by the authorizing committees are examined first in an effort to discern Congressional intent. Should the report language prove insufficient, debate among Representatives or Senators at the time of passage is then scrutinized. Generally, the unilateral remarks of a Member of Congress carry relatively little weight in determining the legislative intent of a specific provision of law.

Be assured that the Department continues to regard a land exchange involving the Dunkle Mine township as one of the better solutions for the problems identified in the Kantishna Hills/Dunkle Mine study. The Secretary will shortly be reviewing the final EIS, the Alaska Land Use Council study and recommendations, and the Park Service's caribou study. When that review is completed, the Department will be making its recommendations to Congress as well as commencing appropriate administrative action which might include an invitation to the State to negotiate a land exchange, with a possible boundary adjustment.

Thanks again for your letter and please stay in contact with us on this important matter.

Sincerely,

Bill Horn

DEPUTY UNDER SECRETARY

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Senator Don Bennett
John Katz, Alaska Governor's office

backup

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING

TO: Esther Wunnicke
Commissioner

DATE: April 16, 1984

FILE NO:

TELEPHONE NO: 276-2653

FROM: Pedro Denton
Director

SUBJECT: Dunkle Township

I am concerned that the state's position on the Dunkle Mine area in the Denali National Park may be based on a misunderstanding of the impact that continued park status will have on development of the well known mineral potential of the area. It is clear from information in the study group report and draft FEIS that the Dunkle area has significant mineral potential. It has potential for small high-grade gold-silver deposits, large low grade copper/precious metal porphyry type deposits, coal deposits and placer gold deposits. The potential is well summarized on page 13 of the study prepared by Salisbury & Dietz, Inc., (copy attached).

It is also clear that the potential for development will probably be lost if the area stays in the park. The reason is simple. Park status will not allow any new mining claims. Most of the present claims would be invalidated by an Interior Department validity determination. The FEIS states on page 18 that the claims would be adjudicated on the basis of the date of withdrawal and any claims found invalid would revert to Park status. Consequently, there is simply not enough of the area under secure land status to justify further exploration or development of any except perhaps the small high grade deposits.

The FEIS assumes only 9 unpatented placer mining claims in the area to be valid. All of the unpatented lode claim area is assumed invalid (page 18 4/9/84 draft). Of course this assumption is for purposes of the FEIS only and the claimant, Dick Swainbank, assumes a much larger number to be valid, but knowing the strictness of the application of the discovery rule, which, according to the analysis in the FEIS must be applied at the time the lands were placed in the park, and from discussions with Mr. Swainbank, it is highly probable that the mineral deposit would not be viable without the claims that can be invalidated by NPS. Certainly the question of validity would make it almost impossible to obtain financing for either exploration or development.

Thus, the only real hope for development of the mineral potential of this area is some of the other alternatives. The most logical alternative seems to be the land trade for one of the "wolf" townships. It is difficult to understand why this was not an acceptable alternative to all the voting agencies, especially the State agencies (DEC, DF&G, DNR).

From the Park Service perspective, they would acquire in the exchange a township presently surrounded on three sides by the park for a township presently nearly surrounded on three sides by state lands. Apparently they have not thought about the potential impacts on the park from development of the Wolf township area over which they presently have no control. It's interesting that the FEIS did not address this point except to mention that

some of the exchange lands would have value for wildlife and wilderness. If the primary concern is over the potential for disturbance of the caribou, we can address it by conditions in the trade agreement. For example, we could agree to:

1. Close the key sections used for caribou calving in the NW corner of the township to surface mining operations.

2. Close certain areas to surface prospecting activities during periods when such activities would interfere with caribou.

3. Require the area be mined only under a state lease through agreement with the present claimholder and through classification for future locations. These leases could contain provisions, spelled out in the exchange agreement, which would add further protection to the caribou.

4. The state could agree to consult, or seek the approval of the Park Service on caribou management plans for the area.

The Park Service position is understandable, but it is difficult to understand the position of DEC and DF&G. It would seem that the state's position should be that it can manage its fish, wildlife and water resources without regard to land ownership. Certainly this is the position with regard to water quality. However, the language regarding control of water quality in the study team report and the FEIS seems to say that we can't manage it so let's lock it up in the park. I can understand the frustration with placer mining water use during the past few years, but the state must and will find solutions to these problems long before there is significant development in this area. Even if we don't, placer mining water quality problems in the Dunkle area will have little effect on the caribou (i.e., most of the effects will be down stream). Thus, we should be able to secure DEC agreement to go along with us on this point.

Similarly it would seem F&G would have no basic objection to the state controlling the land and that seems to be the case from discussions I have had with Al Ott in Fairbanks.

In conclusion I believe the land exchange option is still the best approach, especially if we can unite the involved state agencies. Without our help I believe the Dunkle potential will never be realized. I recommend we:

1. Develop an exchange proposal along the following lines:

   a. Dunkle township for equal value in the Wolf townships.
   b. Provide for (1) mining by lease only in Dunkle township,
      (2) no surface entry during caribou calving in critical areas,
      (3) no surface mining in critical calving areas
      (4) other mining lease provisions necessary to protect caribou.

c. Agreement between State and Park Service on caribou management plan.

d. Provisions for public access to the Kantishna Mining District through the Wolf township.

2. Develop an absolute bottom line DNR position that the "status quo" is only acceptable for two years to allow Congress to appropriate funds for study of the caribou and mineral potential of the area.

3. Unite DEC, DF&G and DNR on these points.

If you would like, I can develop these ideas further or could pursue agreement with DEC and F&G on an exhange proposal.

cc: J.K. Barnett, Deputy Commissioner
Dee Frankfourth
Bill Beaty

PD/lkb/1110M

backup

DUNKLE AREA

At least four high-grade gold-silver vein deposits occur in the study area along the Chulitna structural zone (figure 6). Others as yet undiscovered probably exist along the zone or on associated structures. The vein deposits are narrow and strike lengths are unknown. This type of target is probably not attractive to major companies, but mining may be profitable on a small-scale for small companies or individuals.

The shear zones in which the high-grade veins are located may contain lower-grade precious metal mineralization across sufficient width to permit bulk-mining. Such deposits would be of considerably more interest to larger companies.

The Golden Zone Mine is a gold deposit associated with a breccia pipe located several miles west of the study area. The mine has produced in the past, and is currently being further evaluated. The deposit has a potential for several million tons of low to moderate grade gold ore. Geology, structure, and mineralogy associated with the igneous complex in the Dunkle Mine study area present an environment favorable for the occurrence of similar deposits. This interpretation is supported by geochemical and geophysical evidence (figures 7 and 8).

Associated with this igneous complex, several potential targets have been identified for copper/molybdenum or copper/precious metal porphyry-type deposits. These targets have not been adequately tested. Should an economic deposit be developed a mine scenario of plus or minus 100 million tons of low grade ore may be expected.

Good quality coal has been mined from the Dunkle Mine. Minable reserves in the range of 100,000 to 350,000 tons are drill indicated. Additional reserves may be identified with further drilling in the Costello-Colorado-Camp Creek basin in the magnitude of several million tons. Small scale mining by open cut development may be feasible.

The presence of auriferous gravels in several streams was confirmed. Small-scale mining may be feasible in some locations but physical conditions would probably prohibit any major placer mining development.

Some evidence exists for antimony and tin mineralization. The potential for these minerals has not been adequately determined.

The Dunkle Mine study area is a highly metalliferous, geologically complex environment (figure 9). If the land status were not restrictive, mining companies would consider the area an attractive exploration target. The proximity of the Dunkle area to the railroad and the Parks Highway further enhances the favorability of the areas mining potential.

ALASKA LAND USE COUNCIL

P.O. Box 100120
Anchorage, Alaska 99510
(907) 272-3422

MAY 10 1984

State Co-Chairman
Bill Sheffield
Governor

Federal Co Chairman
Vernon R. Wiggins

MEMORANDUM

May 10, 1984

To: Members
Alaska Land Use Council

COPY

From: Vernon R. Wiggins
Federal Cochairman

Subject: Kantishna Hills/Dunkle Mine Study, Section 202(3)(b) and (c) ANILCA

The Council, at its scheduled May, 1984 meeting, will consider the study group's recommended options for the Kantishna Hills and Dunkle Mine areas in Denali National Park. The purpose of this memorandum is to advise the Council that the Federal Cochairman disagrees with the recommended options offered by the study group and will submit an independent recommendation to the Secretary of the Interior with respect to the two areas.

I have noted that in the course of the recent Staff Committee meeting, the Special Assistant to the Commissioner of Natural Resources indicated that the State may offer "minor substantive amendments" to the report before the Council considers action at its scheduled May 23 meeting. Being unaware of what these amendments may be, the Federal Cochairman reserves the right to change the conclusions stated in this memorandum based on what may be offered by the State of Alaska.

The Council's study group has issued its recommendations in a report transmitted by memorandum to the Council dated May 3, 1984. Essentially, the study group's recommendation to the Council is in two parts:

a. Kantishna Hills area: those portions of the Kantishna Hills study area (presumably, then, not the entire area) identified as having known or suspected significant mineral resources be opened for disposition under a "mineral leasing program" administered by the National Park Service. An act of the Congress would be required before such a recommendation could be implemented.

b. Dunkle Mine area: maintenance of the so called "status quo" for the Dunkle Mine area; i.e., the area would remain within the Denali National Park and Preserve, under the management of the National Park Service as it is currently; and inholdings and existing mining claims would be managed according to existing and applicable laws and rules governing mining claims within National Park areas.

(2)

The Federal Cochairman does not agree with either of these two recommendations, for different reasons in each case, and will submit a recommendation to the Secretary of the Interior substantially different from those offered by the study group, but within the range of alternatives considered by the study group and evaluated by the National Park Service during the course of its preparation of the environmental impact statement for the report. The Federal Cochairman is advising the members of the Council of this intention in part as a matter of comity, and in part to afford the individual members the opportunity to evaluate for yourselves the contrasting points of view represented by the differing recommendations.

The Federal Cochairman is not soliciting the Council's support for his position nor urging your voting with his recommendations to the Secretary of the Interior. You are welcome to do so if you wish. The Federal Cochairman will, however, vote "no" to concur with the study group's preferred alternative, or, to adopt it as the Council's position, or, to forward it as the Council's recommendation to Congress. Certainly, however, the study group's report and associated work should be transmitted as part of the total body of information submitted to both the Secretary of the Interior and to the Congress.

In both cases, Kantishna and Dunkle, the study group seems to have been, and unfortunately so, driven by the need to select a "preferred alternative;" i.e., the NEPA process has "driven" and directed the decision making process of the study itself. Instead, the "need" to select a preferred alternative has forced the agencies to adopt the posture of protecting their institutional philosophies with the result that sound land management and resource protection have fallen to a second position.

Kantishna Hills area:

With respect to the Kantishna Hills area, the Federal Cochairman does not believe that the study group's recommended alternative i.e., "establishment of a mineral leasing program under the management of the National Park Service," is a workable or feasible solution to the problem. Indeed, I question, whether it is even possible short of a massive rewrite of the entire body of laws governing Denali National Park and Preserve, mining claims procedures under the 1872 mining law and the Mining in the Parks Act, and a Congressional restatement of the purpose for Congress' creating Denali National Park and Preserve (ANILCA 202(3)(a) and 206). I note from reading correspondence from the several study participants and the report itself that the study group's recommendation reflects a significantly compromised position in that, all members of the study group, excepting Alaska D.N.R., had a first choice (among the considered options) different from the one jointly and finally agreed to by the study group. This represents, in my judgement, a classic case where the bureaucracy has failed to adequately fulfill the charge given to it. Congress did not ask, and the Council did not ask, for a compromised and watered-down solution to the troublesome problem of what to do about mining claims in the Kantishna area. A well reasoned recommendation based on careful study and analysis as to how best to protect park resources and at the same time deal fairly with the rights of the several mining claim holders was requested. Certainly, the study group's preferred alternative is not based on that kind of reasoned consideration. Instead, it is based on interagency compromise designed to achieve protection of each agency's "turf."

The National Park Service is neither equipped, from the standpoint of staffing and funding nor expertise and experience, to establish and manage a mineral leasing program at this park. There are other agencies within the Department of the Interior programmatically charged with this responsibility. The Park Service's duty, as outlined by law, is to manage and protect park resources and encourage park use by people--not to develop, implement, and manage a "National Park mineral leasing program." Such would, in my judgement, be contrary to the mandate of the Park Service and the specific management requirements of ANILCA. The study group's recommendation will require significant legislative action by the Congress to permit its implementation. I can not conceive of the present or for that matter future Congress' acting favorably to grant such an authority. While of itself, a recommendation requiring an act of Congress to implement is not objectionable, offering up a recommendation which is so clearly unacceptable to the many forces at work on this issue seems to me to be counter productive and folly.

The Federal Cochairman will recommend to the Secretary of the Interior that he recommend to Congress the implementation of Alternative # 4 "term operating rights." This alternative seems to provide sufficient protection of park resources, while at the same time, respecting the rights of mining claim holders within the Kantishna area. This will require an act of the Congress to implement. I feel, however, that this alternative is far more realistic in its political assumptions and is realistic from a sound park management point of view. Such a direction will enable the NPS to exercise sound management judgement within existing regulations and programs over the mining operations in order to insure maximum protection for the park resources in the Kantishna area. It will afford the unpatented mining claim holders an opportunity to operate their claims for a specified period of time, at the end of which, it is agreed that the claims will be nullified and the area revert to "park status" as it were. An election by an unpatented claim holder to proceed either to patent his claim through the regular process or to select the term rights to operate is an equitable solution to the NPS and the claim holders both.

Dunkle Mine area:

The Federal Cochairman disagrees with the study group's preferred alternative ("Status Quo") for the Dunkle Mine area for several reasons. There continues to be, in the Federal Cochairman's opinion, a lack of evidence that the Dunkle township habitat is as critical to the McKinley caribou herd as is often alleged. The arguments that this one area of the herd's total range is essential to the herd's survival does not seem to have been substantiated. Indeed, the Alaska Department of Natural Resources believes that only the northwest corner of the Dunkle Township is important to the calving activities of the caribou herd. No source has said to date with certainty that the entire Dunkle Township is in fact critical caribou habitat.

Mining has occurred in the Dunkle area historically with no apparent negative impact on the McKinley herd. There is no reason to conclude, given enforcement of applicable laws regarding water quality, etc., etc., that mining could not continue in the future without significant impact on the caribou population.

A viable mining operation is economically feasible in the Dunkle area given the reports of the mineral assessments on the claims and the proximity of the

mine site(s) to existing transportation services. The claim holders established their rights to the minerals in the area prior to the time the Park was expanded to take in the claims. Fairness dictates, in my opinion, that these claim holders be afforded their legal right to the benefits of their claims or compensated for denial of that right. Continued "status quo" is tantamount to denial of ability to proceed as financing is unavailable (reportedly by the claim holders) pending Congressional resolution of this issue.

Other than the question of the caribou habitat, there seems to be no overwhelming resource reason for the Dunkle township's inclusion in Denali National Park and Preserve. The area has no unique esthetic qualities to distinguish it.

The Federal Cochairman will recommend that the Secretary of the Interior recommend to Congress implementation of either Alternative # 7 ("Remove mineralized areas from the park") or as a second priority, Alternative # 3 ("Acquire all mining claims"). Specifically, the exchange of park lands, involving at least a portion of the Dunkle Mine Township, for State of Alaska owned land known as the "Wolf Township" north of the park entrance should, in my opinion, be given more consideration. The addition of the "Wolf Township" lands to the park through an exchange for the Dunkle lands, seems to offer a truly workable solution to the question of what to do with the Dunkle area while significantly contributing to the value of Denali National Park and Preserve. Habitat critical to the wolf population inhabiting the park would be added to the park and lands of marginal natural or recreational resource value could be put to a more productive use. I believe this is in the overall public interest. The State of Alaska has stated its willingness to consider such an exchange. If, however, this alternative proves unworkable then the only equitable course of action is for the Federal government to acquire all the Dunkle area mining claims. Unfortunately, this solution will not add the critical wolf habitat that, from a wildlife management perspective, would seem to be important to park values. Such an exchange involving at least a portion of the Dunkle Township would not seem to in anyway impair the integrity of the Cantwell calving area, of which only a portion of the Dunkle Township is part thereof.

The argument that maintenance of the "status quo" will preserve options for some later time ignores the fact that Congress mandated a solution to this issue in recognition of the need for fairness and equity with the valid existing rights existed within the Dunkle Township in the form of the claims. Status quo is not an equitable, and thus not a viable, alternative in the opinion of the Federal Cochairman.

cc: LUAC
R. Davidge

(5)

Backup

TO SANDRA / Dunkle file RECEIVED

NOV 1 . 1984

Alaska Land Use Council
Council Advisors Committee
P.O. Box 100120
Anchorage, Alaska 99510-0120

Citizens Advisory Commission
on Federal Areas
515 Seventh Avenue, Suite 31
Fairbanks, Alaska 99701

Alaska Land Use Counc
Anchorage, AK

November 12, 1984

Governor Bill Sheffield
State Cochairman
Alaska Land Use Council
Pouch A
Juneau, Alaska 99811

Mr. Vernon Wiggins
Federal Cochairman
Alaska Land Use Council
P.O. Box 100120
Anchorage, Alaska 99510-0120

Gentlemen:

The following Motion concerning the Dunkle Mine area in Denali National Park, Alaska, was PASSED UNANIMOUSLY at the joint meeting of the Alaska Land Use Council Advisors Committee and the Citizens Advisory Commission on Federal Areas on October 30, 1984:

MOTION: THE LAND USE ADVISORS COMMITTEE AND THE CITIZENS ADVISORY COMMISSION ON FEDERAL AREAS, JOINTLY ASSEMBLED THIS 30TH DAY OF OCTOBER, 1984, RECOMMEND TO THE ALASKA LAND USE COUNCIL THAT IT RESCIND ITS PRIOR ACTION REGARDING THE DUNKLE MINE AREA AND, THAT UPON THIS RESCISSION, THAT IT URGE THE STATE OF ALASKA AND THE DEPARTMENT OF INTERIOR TO IMMEDIATELY TAKE SUCH ACTION AS IS NECESSARY TO EXCLUDE THE DUNKLE MINE AREA FROM THE DENALI NATIONAL PARK THROUGH A LAND EXCHANGE, AND THAT COPIES OF THIS RESOLUTION BE CIRCULATED TO THE FOLLOWING:

The Honorable Ted Stevens, Senator
The Honorable Frank Murkowski, Senator
The Honorable Don Young, Congressman
The Honorable William Clark, Secretary of Interior
Mr. William Horn, Deputy Undersecretary, DOI
Mr. Ray Arnett, Assistant Secretary, FWP
Mr. Russ Dickenson, Director, NPS
Mr. Roger Contor, Regional Director, NPS

Sincerely,

James V. Drew

James V. Drew, Chairman
Alaska Land Use Council
Advisors Committee

Phil R. Holdsworth

Phil Holdsworth, Chairman
Citizens Advisory Commission
on Federal Areas

BILL SHEFFIELD
GOVERNOR

Back up

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 31, 1984

The Honorable Bettye Fahrenkamp
Alaska State Senate
Pouch V
Juneau, AK 99801

Dear Senator Bettye Fahrenkamp:

Thank you for your letter dated May 19, endorsed by you and the other members of the Interior delegation, regarding the Kantishna Hills/Dunkle Mine Study.

The preferred alternatives adopted by the Alaska Land Use Council for the Kantishna Hills/Dunkle Mine areas represent options which allow the continuation of existing operations and look toward expanded mineral development in the future. The preferred alternative in the Kantishna area, implementation of a mineral leasing program, not only maintains the status quo on existing claims but proposes to open up new, unclaimed areas to a mineral leasing program. The existing patented and unpatented claims retain all rights vested in them at the time of staking through federal mining law. Under the recommendation being transmitted to Congress, areas of high mineral potential that are not available for mining would be opened in 1989 through a leasing program, if by that time operators on existing placer claims are able to meet applicable water quality standards. We think that the adoption of this alternative which supports increased development emphasizes the State's intention to see mining continue on existing claims as well as on unclaimed areas.

The decision to adopt the status quo alternative in the Dunkle mine area was a difficult one. The status quo allows rights of the existing mining claims to be maintained, although we understand the difficulty of developing some of these deposits under the present circumstances. This recommendation represents a compromise between the diverse objectives of the Federal and State agencies involved in the Kantishna Hills/Dunkle Mine Study.

While the State of Alaska is concerned with the development and operation of the area's lode claims, it cannot choose to

JUN 4 1984

ignore the constraints imposed by Congress. Congress placed the Dunkle township in the Denali National Park, and legislative history says that these lands (including the Kantishna) are to remain within the park.

By placing the Dunkle within the park, it has become part of the focus for investigation of the decline of the Denali caribou herd. Accordingly, the National Park Service is conducting a three-year caribou study, and until its completion, is not amenable to trading this area out of the park.

However, during the course of the Alaska Land Use Council negotiations, agreement was reached with the Park Service that it will not adjudicate the mining claims in this area while the studies are in progress. Should the studies show that the area is not critical to survival of the Denali herd, the National Park Service is willing to reconsider a future exchange of this area. Given the congressional constraints, this seems to be the most viable option and strategy available to the State.

Please let me know if you have any further questions regarding the actions taken by the Alaska Land Use Council on this matter.

Sincerely,

Bill

Bill Sheffield
Governor

BACKUP

Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

July 25, 1983

Ms. Linda Nebel, Chief
Division of Planning and Design
National Park Service
2525 Gambell St. Room 107
Anchorage, AK 99503

Dear Ms. Nebel:

Enclosed are the Commission's comments on the Draft Environmental Impact Statement for the Kantishna Hills/ Dunkle Mine Study. The Commission is primarily concerned with the deficiencies of the document, particularly in relation to a complete description and analysis of each resource being studied.

Hopefully, the data generated by this year's field work will provide additional information which will be useful in the final study report. Identification of a preferred alternative for recommendation to Congress will be a difficult task with the limited time remaining. The Commission will continue its involvement in the study process until the December, 1983 deadline.

If there are any questions concerning the comments or if there is any additional information which we may be able to provide, please contact the staff offices.

Sincerely,

Bettye Fahrenkamp by P.C.

Bettye Fahrenkamp, Chairman
Alaska State Senator

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT
KANTISHNA HILLS/DUNKLE MINE STUDY

Section 202(3)(b) of the Alaska National Interest Lands Conservation Act mandated a study to evaluate the various resources in the Kantishna Hills and Dunkle Mine areas of Denali National Park and Preserve. The study was the result of the controversy which surrounded the inclusion of these two historic mining areas in the expanded boundaries of the park.

As early as 1965, there was an effort on the part of the National Park Service to annex most of the Kantishna Mining District into Mt. McKinley National Park. At the time, there was little popular support for the annexation of this area. The withdrawal of the Kantishna area was not made final until Public Land Order 5179 was issued in March, 1972. In the interim, the result was a de facto land withdrawal which complicated the status of mining claims in the area and has left a number of unresolved lawsuits.

The Dunkle Mine area was withdrawn by Public Land Order 5653 in November, 1978 and subsequently, both areas were included in Presidential Proclamation 4616 which created Denali National Monument in December, 1978. Finally, in December, 1980, ANILCA placed these areas into Denali National Park and Preserve. In recognition of the fact that these areas have known mineral production and potential, Congress mandated the study to further evaluate the significance of the resources within the two areas.

Since the beginning of the Kantishna Hills/Dunkle Mine Study, the integrity of the study has been questioned by many people throughout the State of Alaska. Concern was expressed that there was not enough time nor money allocated to conduct a realistic study on the effects of continued mineral development on the other resources within the areas and make a fair report to Congress by the December, 1983 deadline.

One of the initial concerns was eliminated when Congress appropriated additional funds for the study, even though there was only one field season left before the deadline and it was unclear how much useful data could be gathered.

This DEIS again raises serious doubts about the integrity of the entire study. The decision that an Environmental Impact Statement would be necessary in order to meet NEPA requirements was made very late in the study process. As a result, the DEIS appears to have been hastily compiled merely to satisfy these requirements. There are sentence fragments, typographical errors and unclear statements which are difficult to follow. In its present form, its usefulness to the study is questionable.

The DEIS contains entirely too many conclusions based upon assumptions which may or may not be accurate. If these assumptions prove to be incorrect, it will be necessary to make extensive changes in the proposed alternatives for the study areas. This may be difficult to do and still allow time for public review and comment prior to December.

One serious deficiency is immediately obvious when the list of preparers of the DEIS is read: No geologist or mining engineer helped prepare the doucument. There should have been one of each. Several geologists in the study group are listed as consultants, but in a study whose main purposes include those of, (1) focusing on mineral activity, (2) interpreting mineral data, and (3) evaluating mineral deposits, it was a serious oversight not to have included a geologist with mineral experience and training, and a mining engineer in the actual preparation of the DEIS.

One of the major errors in this DEIS is the assumption that many of the claims within the study areas are invalid. Even though these validity assumptions are for the "purposes of this document only", they are a prejudgment which has a significant deleterious effect on the development of the alternatives presented in the document. One result is that these "invalid" claims are wrongly excluded from several of the alternatives.

In December, 1982, the Department of Interior Regional Solicitor's Office issued a memo to the regional director of the National Park Service. One of the areas covered dealt with the question of claim validity. The memo states that a mining claim cannot be presumed to be invalid, but rather, must be treated as a valid claim until its validity has been adjudicated. It then goes on to advise that each claim should be treated as valid, even though any estimated acquisition cost determined by the overall study may be zero.

Because the assumptions of invalidity are incorrect, the figures cited for the cost of validity determinations, employment opportunities, annual gross mineral values and costs for claims acquisition must be adjusted before the final report is submitted to Congress.

As a general rule, the DEIS presents what can only be called a "worst possible case" view of the effects of continued mineral activity within the study areas. A "worst case" assumption is made that all placer mining operations will fail to meet the water quality standards. The assumption is also made that any additional mining activity in the Dunkle Area will necessarily have a significant adverse effect on the Denali caribou herd, even though the study data is still incomplete. In short, only the possibly negative effects of mining are emphasized.

The assumption is made in the DEIS that the only type of recreational resource available in the study areas is of the wilderness experience type. This assumption fails to recognize the many other recreational activities, some more land use intensive, that ANILCA demands. Based upon this assumption, it is easy to conclude that increases in mining activities will automatically decrease the recreational potential. However, this would be a gross error.

There are several types of recreational activities which could be made available to park visitors. An interpretive program dealing with the historic and cultural resources associated with past and present mining activity in the areas could be developed. NPS could engage in a cooperative effort with the mine operators to provide a first hand look at a modern mining operation and provide for recreational gold panning in a bona fide mining area. Not every visitor to Denali National Park is solely interested in a wilderness experience.

Along the same lines, the very limited treatment of the cultural and historical resources of the areas is not adequate for the purposes of this study. There is no mention of any preservation or restoration planned for any of the historic buildings. Is there any plan to have any of the buildings or facilities formally designated as a National Historical Site? These resources need to be more completely addressed in the final report.

The description of the subsistence use of resources within the study areas is totally inadequate. No mention is made of the types of subsistence activities qualified users enjoy. Without a complete inventory of subsistence activities, it is extremely difficult to assess the impacts of increased mineral development on subsistence uses.

Considering the focus of the study, economic impacts must be analyzed with as much detail as environmental impacts. The assessments of the potential secondary impacts on local communities which supply goods or provide support services for mining activity in the study areas are insufficient. In a study which can quantify how much fuel will be used under the development scenarios in a given alternative, it should be possible to determine how much revenue this would generate locally. If the total value of mineral production can be estimated, tax revenues which would be generated can also be estimated.

The sections on employment and mineral production for the study areas should be expanded upon and discussed in considerably more detail in the final report.

Alternative 1 - Maintain Status Quo

This alternative would allow mining operations and mining-related activities to continue only on existing patented and assumed valid unpatented claims.

A mining claim cannot be presumed to be invalid. The actual staus quo would be to allow mining and mining-related activity on any properly located claim within the study areas, subject to approval of a plan of operations. A plan of operations could not be denied on the basis of presumed invalidity. Each claim would have to undergo a validity determination.

Alternative 2 - Acquire All Mining Claims

This alternative would not be acceptable to the Commission. Any acquisition of claims by NPS should be initiated by the claim owner, and not under threat of condemnation.

Alternative 3 - Offer Term Operating Rights

Under this alternative, why would only those claims with proven production on or before December 2, 1980 be offered term operating rights? The two study areas were withdrawn from mineral entry prior to the enactmen of ANILCA. Some explanation of this apparently arbitrary date should be given.

If this alternative is chosen, any claim owner who has a properly located claim and has complied with the annual requirements should be offered the same terms, provided the claim proves valid.

The conditions of the term operating rights are unclear. Page ix of the summary states that term operating rights would be terminated if there was no proven production within 5 years following election of this right or if there was a lapse in production for two consecutive seasons thereafter. On page 26, it states that term operating rights would be terminated if there was no proven production within 3 years following election of this right or following a lapse in production for five consecutive seasons thereafter. This discrepancy needs to be corrected.

Alternative 4 - Allow Additional Time For Perfecting Claims

Allowing additional time for perfecting claims would be an acceptable alternative, but it is unclear why Congressional action would be required. There would be no new mineral entry, location or leasing, only an opportunity to perfect already existing claims. Pending a validity determination or a decision by the Secretary of the Interior to terminate

all mining activity in the study areas, any person holding a properly located claim would continue to be allowed to conduct exploration or assessment work.

Alternative 5 - Expand Mineral Development Possibilities

This alternative is not even a remotely viable option. It is highly unlikely that Congress would agree to opening additional areas to either mineral leasing or mineral entry and location, as long as the areas lie entirely within a National Park System Unit.

Alternative 6 - Remove Mineralized Areas From the Park

Alternative 6 would be the most acceptable option. It would remove mineralized areas and mining activity from the park boundaries and place them under the jurisdiction of the State of Alaska. These areas were outside the park boundaries until 1980, so their removal from the present boundaries would in no way affect the "old" part of the park.

On page 49 is the statement: "Congress has identified certain state lands adjacent to Denali National Park and Preserve and has directed that these lands be considered for addition to the park." Section 1302(i)(1-2) authorizes the Secretary of the Interior, not Congress to enter into a land exchange.

Section 101(d) of ANILCA further states:

> "This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas has been obviated thereby."

Clearly, ANILCA does not make any provisions for the addition of State lands to Denali National Park and Preserve by Congress.

Another oddity in this alternative is the proposed area to be removed in the Dunkle Study Area. In sections 9 and 10 of the Dunkle township, a small segment of Camp Creek is excluded from the area to be removed from the park. There

is no explanation for this choice of boundary in either the explanation for Alternative 6 or the section on environmental consequences.

Section 103(b) of ANILCA states that wherever possible boundaries will be drawn to follow hydrographic divides or embrace other topographic or natural features. This proposed boundary does not follow any of the criteria above. The only apparent reason for retaining this small segment of the creek in the park is to maintain control of the drainage from the entire claim block to the east. Is there another reason for the exclusion of this small segment of Camp Creek?

ENVIRONMENTAL CONSEQUENCES

As mentioned earlier in these comments, this DEIS presents mining activity in the worst possible light. A good example of this is the narrative accompanying the section on the impacts on soils under alternative 1. There are several paragraphs which explicitly describe the damage which will be done to the soils in the study areas due to mining activity, access road construction and other associated activities. The conclusion then places everything in perspective by stating that slightly more than 1 percent of the Kantishna Hills area and slightly less than 1 percent of the Dunkle Mine area will be disturbed under alternative 1. In the same section under alternative 4 for the Dunkle Mine area, rather than simply state that this alternative would result in disturbance of 2 percent of the study area, the statement is made that a 200 percent increase in the amount of soil disturbed would occur. The choice of terms is clearly an attempt to raise a red flag over this alternative. Similar comments are made for alternatives 5 and 6.

For most of the remaining resources such as water quality, fisheries and aquatic habitat, wildlife, and vegetation, the conclusions for each resource are basically the same, that is, that there is insufficient data to make an accurate determination on the effects mining activity will have on each of these resources.

What has become the most important question is the effect of increased mining activity in the Dunkle Mine area on the Denali caribou herd. The information in this DEIS shows that there is insufficient data to make a reasonable determination on this question.

The Denali caribou herd has been observed and studied more than any other herd in the State of Alaska. Its rapid decline in the last 15 years is unexplained, although it has been the subject of extensive speculation. It would be useful for the purposes of this study to provide some

background information on the original purposes for the caribou studies. The methods used to gather data on the caribou should also be outlined.

While the Dunkle township lies almost entirely within the Cantwell calving grounds, the caribou distribution map on page 111 of the DEIS shows the majority of the township is one of the most lightly used areas. The map shows that the portion of the township containing almost all of the mining claims was used by from 1 to 100 caribou during the periods of observation from 1976 to 1982. The 1982 paper prepared by Duff and Singer contains maps which indicate the number of caribou found on or near the mining claims was toward the extreme low end of the 1 to 100 animal range.

The DEIS makes frequent reference to the Cantwell calving grounds as an area which is of critical importance to the survival of the Denali caribou herd. This is probably an accurate statement for a large part of the area adjacent to the Dunkle township, but Duff and Singer state that in recent years caribou have used the areas near the mining claims for only a "very brief period." (Duff & Singer, pg 15).

Other statements indicate that the mineralized portions of the Dunkle Mine area which contain the mining claims are not the critical portions of the calving or post-calving grounds, but the DEIS has basically ignored these and concentrated upon the most negative impacts of increased mining activity.

Data does exist which shows that increased activity by man can have some adverse effects on a herd which is at a very low point in terms of population and reproductive rate. This would include such things as overflights by aircraft and biological surveys; as well as mining activity. (Duff & Singer, 1982) Certainly there is no suggestion to halt the caribou studies.

On page 162 of the DEIS, it states that the Dunkle Mine study area has the potential for an NPS visitor and staging center. This has never been mentioned in any previous planning document for Denali National Park. Large numbers of visitors and support facilities would have a more adverse effect on the caribou herd than would mining.

backup

ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

May 14, 1984

The Honorable Esther Wunnicke
Commissioner of Natural Resources
STATE OF ALASKA
Pouch M
Juneau, Alaska 99811

Dear Commissioner Wunnicke:

As you know, the members of the minerals industry have maintained a strong interest in the decisions to be made concerning the future of the Dunkle Mines Township.

The township contains good quality coal, at least four high grade gold-silver deposits and several potential targets for copper-molydenum or copper-precious metal deposits of the porphyry type. Should an economic deposit be developed, a mine scenario of about 100 million tons may be expected. So far, the potential mineral targets have not been adequately tested.

A minerals study of the township shows it to be an highly metalliferous, geologically complex environment. Further evaluation of the mineralization will require expensive diamond drilling which is unlikely to cause any significant environmental impact. Unfortunately, private-sector funding of the necessary tests is not likely so long as the National Park Service retains control of the area.

The Park service has repeatedly expressed strong concern with the potential for impact of mining operations on the caribou population in the area. Their own studies, however, have shown that the caribou are more or less restricted to the extreme northwest corner and to the north and west of the township. The study also concluded that mining operations in the area had little impact on the caribou population and that more problems were caused by predators.

MAY 17 1984

ALASKA MINERS ASSOCIATION, INC.

Unlike many mineralized areas of Alaska, the Dunkle Township is very close to transportation access. It lies only five miles west of the Alaska railroad and the Parks Highway midway between Anchorage and Fairbanks and has existing right-of-way to the coal mine. Development of deposits in the area could be accomplished with relative speed and would provide badly needed economic diversity for our state.

There are many townships contiguous to Denali National Park with scenic and wildlife values equal to or greater than the Dunkle Township. ANILCA makes specific provisions for land exchanges in conservation units. Recent public comment concerning this issue was overwhelmingly in favor of such an exchange. It is our belief that it is to the state's advantage to obtain ownership of the Dunkle Township.

We understand that the National Park Service has indicated there is an opportunity for the state to negotiate a land exchange that would transfer the township to state ownership. The Wolf township has been cited as one of those areas that would possibly be of interest to them.

The Alaska Miners Association urges the state to pursue a land exchange with the National Park Service allowing them to acquire a non-mineralized area with better scenic and wildlife habitat values. The state, concurrently, would acquire a highly mineralized area which could quickly benefit Alaskans and the nation.

Sincerely,

ALASKA MINERS ASSOCIATION

James R. Jinks
Executive Director

cc: Governor Sheffield
Senate Resources Committee
House Resources Committee

UNITED STATES
DEPARTMENT OF THE INTERIOR
WASHINGTON

OFFICE OF THE
ASSISTANT SECRETARY

DEPARTMENT OF
NATURAL RESOURCES

JAN 15 1984

COMMISSIONER'S OFFICE
JUNEAU

Ms. Esther C. Wunnicke
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99801

Dear Ms. Wunnicke:

Your letter of December 26, 1984, regarding our acquisition of State lands adjacent to Denali National Park is appreciated. We are most interested in acquiring this important wildlife habitat for the park. We accept your offer to negotiate an exchange and would appreciate your letting us know what lands the State may be interested in acquiring in the area.

If you have any further concerns, please contact my office in Alaska or the Regional Director of the Park Service in Anchorage.

Sincerely,

G. Ray Arnett
Assistant Secretary for
Fish and Wildlife and Parks

January 10, 1985

The NPS recommendations have been incorporated in the Resources C.S.

TESTIMONY

BY THE NATIONAL PARK SERVICE ALASKA REGIONAL OFFICE

TO THE SENATE RESOURCES COMMITTEE

ALASKA STATE SENATE

REGARDING SENATE JOINT RESOLUTION NO. 3

January 17, 1985

We are pleased to hear of the Senate Resource Committee's interest in support for an equal value land exchange that would substitute lands of high wildlife and scenic value for mineralized lands in the Dunkle Township area. We believe an exchange of this nature could be feasible and mutually beneficial and we are committed to working with the Department of Natural Resources to develop the terms of such an agreement.

The National Park Service has long been interested in acquiring state lands at the northeast boundary of the old park, commonly known as the Wolf Townships. Wildlife which inhabit and travel through this region are a major source of the attraction of Denali National Park and Preserve for Alaskan visitors and residents. The proposed park addition would, in the long run, benefit the state and its economy by enhancing one of the state's prime visitor attractions.

For similar reasons, in negotiating this exchange, we will seek an agreement with the State of Alaska which will assure that the caribou herds which use the Dunkle Township are protected from further decline. The National Park Service is in the process of completing a study of the caribou herds in this part of Alaska and by the first of February we will be able to release the results. There is ample documentation that the Denali caribou herd has used

the Dunkle area since at least 1939. In many years, the Dunkle Township is used as a calving and post- calving habitat. I believe we are in agreement with the state Department of Fish and Game, as well as the Department of Natural Resources, that protection of the herd is an important goal that must be addressed in the exchange.

We are also appreciative of the mineral values of the Dunkle Township. We are fortunate to be able to start our negotiations on a sound basis of research and documentation for both mineral and wildlife values in the region and we look forward to developing an exchange which improves the overall pattern of land ownership in Alaska.

Though we find that the proposed resolution is generally well written, there are several changes we would recommend. These are as follows:

Roger J. Contor

Regional Director
Alaska Region

Noted to indicate changes recommended by the National Park Service, January 17, 1985

Introduced: 1/14/85
Referred: Resources and Finance

BY FAHRENKAMP, FAIKS AND COGHILL

IN THE SENATE

SENATE JOINT RESOLUTION NO. 3

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Requesting that the State of Alaska pursue a land exchange with the U.S. Department of the Interior to exclude the Dunkle Mine Township from Denali National Park and Preserve.

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

WHEREAS the boundaries of Denali National Park and Preserve were expanded by the passage of the Alaska National Interest Lands Conservation Act in 1980 to include the historic Dunkle Mine Township; and

WHEREAS the Dunkle Mine Township contains good quality coal deposits, at least four high-grade gold/silver vein deposits, placer gold deposits, and large low grade copper/precious metal deposits; and

WHEREAS the proximity of the Dunkle Township to the Alaska Railroad and the Parks Highway enhances the favorability of the area's mining potential; and

WHEREAS claimholders had established rights to the minerals in the area before the time the park was expanded to include the claims; and

WHEREAS in recognition of the fact that the Dunkle Township has known mineral potential, Section 202(3)(b) of ANILCA mandated that a study of the relationship of mineral resources and mining activity to the other resources of the area be done by the Alaska Land Use Council in cooperation with the Secretary of Interior; and

Delete. Study will be completed Feb. 1

~~WHEREAS a primary reason for including the Dunkle Township in the park was protection of habitat for the Denali caribou herd and there has been no conclusive evidence presented during the study process that the area~~

~~contains critical habitat for the herd or that increased mining activity will necessarily have a significant adverse effect on the herd; and~~

WHEREAS ~~the~~ some potential for mineral development of the Dunkle Township will be lost if the area stays within the park, as park status will not allow new mining claims and may invalidate many of the present claims; and

WHEREAS one of the alternatives offered in the 1983 Draft Environmental Impact Statement of the Dunkle Mine Study was to remove mineralized areas and mining activity from the park boundaries and place them under the jurisdiction of the State of Alaska; and

WHEREAS there is no conclusive evidence that deletion of the Dunkle Township from the park would result in a lack of protection for the caribou herd, as any adverse effects that may occur from increased mining activity could be mitigated under the direction of the state; and

WHEREAS there is state owned land contiguous to Denali National Park and Preserve with scenic and wildlife values equal to the Dunkle Township; and

WHEREAS Section 1302(h) of ANILCA clearly authorizes exchanges in conservation units; and

WHEREAS public testimony solicited during the study process was in strong support of an exchange; and

WHEREAS the Department of Interior has indicated that it regards a land exchange as one of the better solutions for the problems identified in the Dunkle Mine Study, and initial discussions have occurred between the State Department of Natural Resources, the National Park Service, and the Office of the Assistant Secretary for Fish, Wildlife and Parks indicating a willingness by all parties to negotiate and exchange;

BE IT RESOLVED by the Alaska State Legislature that the State of Alaska and the Department of Interior take whatever action is necessary to exclude/the Dunkle Township mineralized lands in area /from the Denali National Park and Preserve

through a land exchange that would allow the National Park Service to acquire lands ~~a nonmineralized township~~ with high scenic and wildlife habitat values and allow the state the opportunity to develop the mineralized lands in the Dunkle Township; and be it

FURTHER RESOLVED that the land exchange be as simple and uncomplicated as possible, preferably for lands of equal value to the Dunkle Township and adjacent to the Denali National Park and Preserve.

COPIES of this resolution shall be sent to the Honorable William Clark, Secretary of the U.S. Department of Interior; the Honorable Bill Sheffield, Governor; the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Alaska Department of
NATURAL
RESOURCES

LAND EXCHANGE FACT SHEET

The disposal of state land or interests in state land by exchange is governed by Alaska Statutes - Title 38.50 and Alaska Administrative Code - 11 AAC 67.200 to 11 AAC 67.280. These statutes and regulations ensure that the commissioner may exchange state land or interests only to achieve public purposes, after proper consideration of alternatives, agency coordination, public notice and public hearing(s). Unless the land or interests which the state receives in an exchange equals, or exceeds, the appraised fair market value of the land or interests exchanged by the state, the Alaska legislature must approve the exchange. Legislative review is also necessary if a exchange involves state land having an appraised or estimated fair market value of more than $5,000,000.

The land exchange process is usually detailed and time consuming. The department must adhere to the following chronological regulatory steps in order to complete a land exchange:

1. Initial pre-application discussions.
2. Application filed with department.
3. Department reviews application and responds within 60 days.
4. Land status checked.
5. Preliminary exchange agreement signed.
6. Notation of state title records to segregate land from third-party interests.
7. Fair market value appraisal report initiated.
8. Mineral closing order.
9. Land classification action.
10. Land survey completed, if necessary.
11. State agency coordination.
12. Appraisal report completed, reviewed and approved.
13. Preparation of alternative findings and exchange report.
14. Public notice.
15. Public hearing(s) and comment period.
16. Final exchange agreement signed.
17. Deed preparation and review.
18. Execution of exchange.

In addition, if the exchange requires legislative approval, the governor must transmit the proposal to the legislature within ten days of the convening of a regular legislative session. The department is authorized to conclude the exchange upon approval by the legislature of the proposed exchange agreement.

The commissioner may also revise a proposed land exchange to reflect comments or other information provided through the agency and public comment period [AS 38.50.130(b)].

Land exchange application forms may be obtained and submitted at any of the Division of Land and Water's Regional Offices located in Anchorage, Fairbanks or Juneau. If the exchange proposal involves a small tract of state land it will usually be negotiated directly by the applicable regional office. If, however, the exchange proposal involves either a large tract of state land, a federal government agency or Native corporation, or is considered by the department to be unusually complex or sensitive, the exchange will be negotiated by the division's Central Office Land Management Section.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSSJR 3 (Res)
Title: Dunkle Mine Land Exchange

Sponsor: Fahrenkamp
Requestor:
Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:
Land and Water

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No direct fiscal impact

Prepared By: Ned Farquhar
Phone: 465-2400
Division: Commissioner's Office
Date: January 23, 1985

Approved by Commissioner: Wm D Ahmaog
Date: January 23, 1985
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

STATEMENT OF ESTHER C. WUNNICKE
COMMISSIONER
ALASKA DEPARTMENT OF NATURAL RESOURCES
on
SJR 3 (Dunkle Land Exchange)
January 17, 1985

MADAME CHAIR, MEMBERS OF THE SENATE RESOURCES COMMITTEE, I AM PLEASED TO APPEAR BEFORE YOU TODAY IN SUPPORT OF SENATE JOINT RESOLUTION 3, REQUESTING THAT THE STATE OF ALASKA PURSUE A LAND EXCHANGE THAT WILL EXCLUDE THE DUNKLE MINE TOWNSHIP FROM DENALI NATIONAL PARK AND PRESERVE.

IN YOUR PACKETS, YOU WILL SEE RECENT CORRESPONDENCE BETWEEN ME AND THE ASSISTANT SECRETARY OF THE INTERIOR INDICATING THAT THE U.S. INTERIOR DEPARTMENT IS INTERESTED IN ACQUIRING STATE LANDS ADJACENT TO THE NATIONAL PARK AND PRESERVE, AND THAT THE STATE WOULD BE INTERESTED IN PURSUING AN EXCHANGE FOR THESE LANDS.

TODAY THE NATIONAL PARK SERVICE IS ALSO TESTIFYING BEFORE YOU THAT IT FAVORS THE EXCHANGE OF THE DUNKLE LANDS TO THE STATE. I WOULD LIKE TO COMMEND THE PARK SERVICE'S STAFF AND LEADERSHIP FOR RECOGNIZING OUR INTEREST IN THIS MATTER AND EXPEDITING THE CARIBOU STUDIES RECOMMENDED LAST SPRING BY THE ALASKA LAND USE COUNCIL.

AT PRELIMINARY LAND EXCHANGE MEETINGS BETWEEN OUR STAFFS NEXT WEEK, THE STATE AND THE INTERIOR DEPARTMENT WILL BEGIN TO DISCUSS THE POSSIBILITY OF A STATE-PARK SERVICE LAND EXCHANGE THAT MAY INCLUDE THE DUNKLE MINE TOWNSHIP. THE DEPARTMENT OF NATURAL RESOURCES MAINTAINS THAT THE DUNKLE TOWNSHIP'S RESOURCE VALUES WARRANT A LAND EXCHANGE PLACING THE TOWNSHIP IN STATE OWNERSHIP AND REMOVING IT FROM THE NATIONAL PARK AND PRESERVE.

YOU WILL ALSO SEE IN YOUR INFORMATION PACKETS A BRIEFING PAPER ENTITLED "LAND EXCHANGE FACT SHEET". THIS PAPER SHOWS THE COMPLICATED AND TIME-CONSUMING STEPS OF A LAND EXCHANGE UNDER OUR STATUTES. I HAVE PROVIDED YOU WITH THIS SUMMARY OF THE LAND EXCHANGE PROCESS SO THAT YOU WILL BE AWARE OF THE POTENTIAL PITFALLS IN ANY PROPOSED LAND EXCHANGE, INCLUDING THE DUNKLE PROPOSAL. LAND EXCHANGES ARE OFTEN MENTIONED AS A POSSIBLE SOLUTION TO LAND MANAGEMENT CONTROVERSIES, BUT THEY ARE DIFFICULT TO ACCOMPLISH.

I WOULD CALL TO YOUR ATTENTION SEVERAL IMPORTANT POINTS ABOUT THE PROPOSED DUNKLE EXCHANGE AND THE WORDING OF THE PROPOSED RESOLUTION.

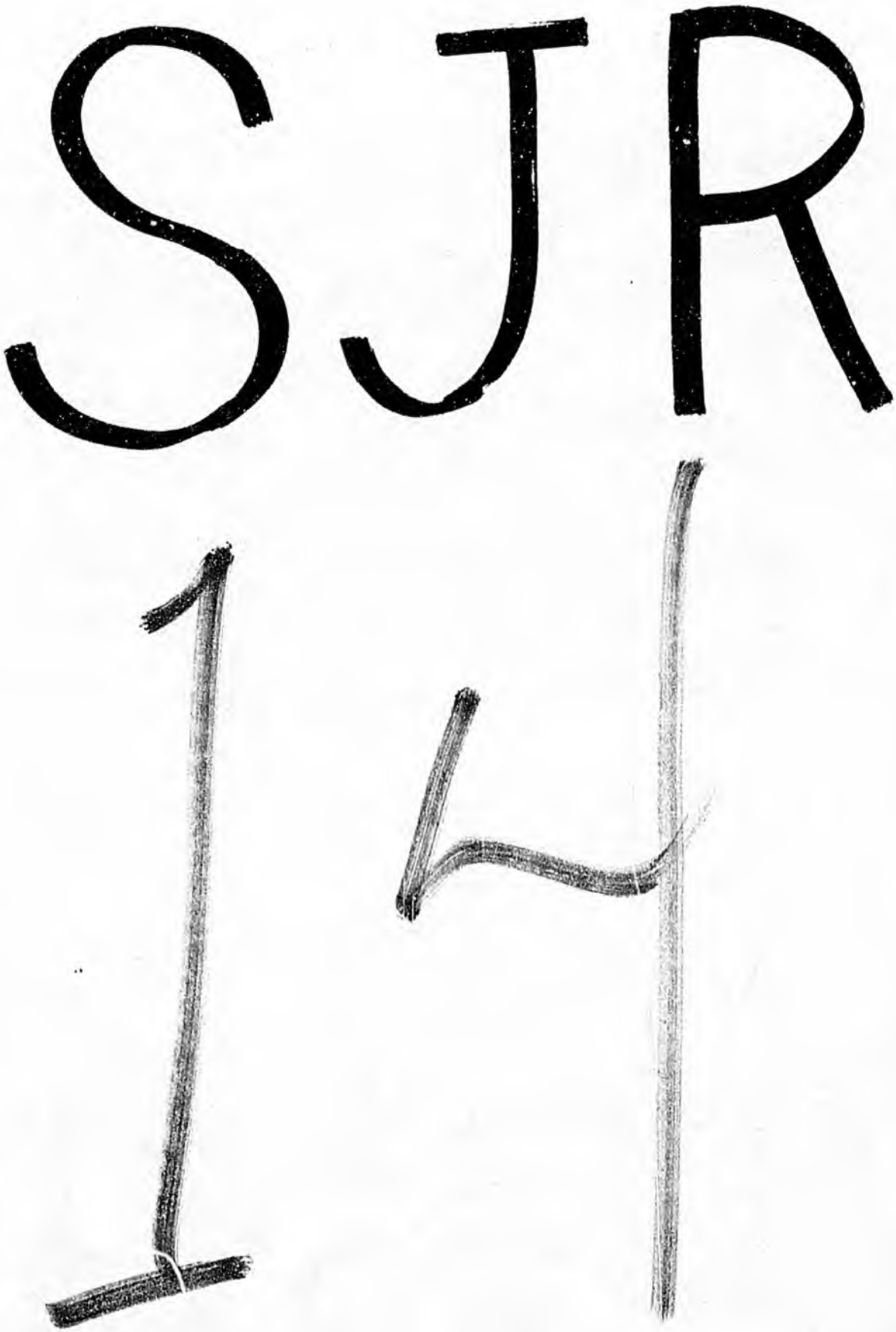
FIRST, ALTHOUGH MOST OF THE MINERALIZED LANDS OF CONCERN IN THE DUNKLE AREA ARE WITHIN THE DUNKLE TOWNSHIP, THERE ARE MINERALIZED LANDS JUST OUTSIDE THE TOWNSHIP THAT SHOULD BE CONSIDERED FOR EXCHANGE AND A POSSIBLE AMENDMENT OF THE DENALI PARK/PRESERVE BOUNDARY. YOU HAVE A MAP OF DUNKLE AREA CLAIMS IN YOUR PACKET AND YOU CAN SEE THAT THERE ARE A NUMBER OF CLAIMS WEST OF THE TOWNSHIP ITSELF.

SECOND, WE ARE CLEARLY INTERESTED IN <u>EXCHANGING</u> LANDS WITH THE INTERIOR DEPARTMENT <u>ON AN EQUAL VALUE BASIS</u>. IT IS NOT OUR INTENTION TO DONATE LAND TO THE NATIONAL PARK AND PRESERVE. WE UNDERSTAND THAT THE FEDERAL GOVERNMENT IS INTERESTED IN ADDING CERTAIN HIGH-VALUE WILDLIFE HABITAT, NOW OWNED BY THE STATE, TO THE PARK AND PRESERVE, AND WE HOPE THAT THE PARK BOUNDARIES WILL ALSO EVENTUALLY BE AMENDED TO EXCLUDE THE DUNKLE TOWNSHIP.

THIRD, WE EXPECT OUR LANDS -- IF THE EXCHANGE IS SUCCESSFULLY ACCOMPLISHED -- TO BE LARGELY FREE OF MANAGEMENT RESTRAINTS BY THE FEDERAL GOVERNMENT. SECTION 906(o)(2) OF THE ALASKA NATIONAL INTEREST LANDS ACT PROVIDES THAT FEDERAL LANDS WITHIN CONSERVATION UNITS SHALL BE MANAGED FOR CONSERVATION PURPOSES ONLY UNTIL THEY ARE CONVEYED TO THE STATE.

LAST, WE RECOMMEND THAT YOU RECONSIDER THE WORDING OF THE PROPOSED RESOLUTION WHERE IT SUGGESTS THAT THE NATIONAL PARK SERVICE MAY ACQUIRE A NONMINERALIZED TOWNSHIP FROM THE STATE (p.3, line 2). THIS MAY BE INTERPRETED AS A RECOMMENDATION THAT THE STATE PURSUE AN EQUAL ACREAGE EXCHANGE, RATHER THAN THE EQUAL VALUE EXCHANGE THAT WE BELIEVE IS INTENDED. EQUAL ACREAGE EXCHANGES ARE SOMETIMES UNEQUAL IN VALUE AND REQUIRE SEVERAL MORE STEPS TO COMPLETE.

IN SUM, I WOULD LIKE TO THANK YOU FOR CONSIDERING THIS JOINT RESOLUTION. IT IS A GOOD IDEA AND WE SUPPORT IT.


SJR
114

Original sponsor: Zharoff

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR SENATE JOINT RESOLUTION NO. 14 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Urging the United States Fish and Wildlife Service to postpone the proposed cattle slaughter on Simeonof Island.

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

WHEREAS cattle have been on Simeonof Island since 1894; and

WHEREAS the United States Fish and Wildlife Service has indicated that it plans to kill the cattle on this island; and

WHEREAS the people in the communities near Simeonof Island are suffering difficult economic times due to the decline of the fishery stocks; and

WHEREAS the people in the communities near Simeonof Island have used the cattle on Simeonof Island as a supplemental food source in the past, and would like to continue to do so in the future; and

WHEREAS there are cattle holding pens and loading chutes on Simeonof Island to facilitate removal of the cattle; and

WHEREAS the Shumagin Village Corporation desires to transplant the cattle from Simeonof Island to Unga Island, but the Shumagin Village Corporation may require until September 1985 in order to do so; and

WHEREAS the slaughter of the cattle would constitute a waste of thousands of pounds of beef that could be used by needy Alaskans in the immediate area; and

WHEREAS the elimination of the cattle will be very expensive; and

WHEREAS the cost of the destruction of the cattle could be used to better advantage to help the Shumagin Village Corporation transplant the cattle to Unga Island;

BE IT RESOLVED by the Alaska State Legislature that it respectfully

urges the United States Fish and Wildlife Service to postpone its ultimate termination action related to the cattle until at least October 1985; and be it

FURTHER RESOLVED that the legislature respectfully urges the United States Fish and Wildlife Service to assist the Shumagin Village Corporation in its effort to transplant the Simeonof Island cattle to Unga Island; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the Alaska delegation in Congress to ensure that the United States Fish and Wildlife Service postpones the cattle slaughter on Simeonof Island until at least October 1985.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; the Honorable Donald Hodel, Secretary of the Interior; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Alaska State Legislature

REPRESENTATIVE
ADELHEID HERRMANN

P O BOX 63
NAKNEK, ALASKA 99633
(907) 246-4495

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4942, 465-4943

CHAIRMAN
SPECIAL COMMITTEE
ON FISHERIES

MEMBER
TRANSPORTATION
COMMITTEE

House of Representatives

DISTRICT 26

ADAK
AKUTAN
ALEKNAGIK
ATKA
BELKOFSKI
CLARK'S POINT
COLD BAY
DILLINGHAM
DUTCH HARBOR
EGEGIK
EKUK
EKWOK
FALSE PASS
IGIUGIG
ILIAMNA
KING COVE
KING SALMON
KOKHANOK
KOLIGANEK
LEVELOCK
MANOKOTAK
NAKNEK
NELSON LAGOON
NEWHALEN
NEW STUYAHOK
NIKOLSKI
NONDALTON
PEDRO BAY
PILOT POINT
PORT ALSWORTH
PORT HEIDEN
PORT MOLLER
PORTAGE CREEK
SAND POINT
SOUTH NAKNEK
SQUAW HARBOR
ST GEORGE
ST PAUL
TOGIAK
TWIN HILLS
UGASHIK
UNALASKA

MEMORANDUM

TO: House Resources Committee Members

FROM: Representative Adelheid Herrmann

DATE: February 25, 1985

SUBJECT: Background on Shumagin Island Cattle Issue

This memorandum provides back-up information regarding Senate Joint Resolution 14 (am) and similar resolutions which I have sponsored on the House side.

Background

Three islands within the Alaska National Maritime Wildlife Refuge currently support populations of wild cattle: Caton, Chernabura and Simeonof. The cattle of Caton and Chernabura were put there as a result of grazing permits issues by the Bureau of Land Management (BLM) in the early 1960's; cattle have been on Simeonof Island since 1984.

The United States Fish and Wildlife Service (USFWS), which has inherited management of the islands, plans to eliminate all cattle from the three islands. The grazing permits originally issued by the BLM have expired and the cattle are now the responsibility of the USFWS. The USFWS wants to eliminate the cattle because the cattle, in the opinion of the USFWS, have overgrazed the islands and are otherwise damaging the habitat values of the islands. The original grazing permits issued by the BLM allowed for 275 head. During the late 1970's, the unmanaged population grew to over 700. More recently, the cattle population is estimated at 240. (The USFWS estimates the grazing capacity of the island as 300 head. Talbot, et al, 1984.)

In an effort to get rid of the cattle, the USFWS has offered to give away the cattle. In July of 1984, the USFWS began allowing unrestricted taking on the islands. During the late summer of 1984, local residents of the area, represented by the Shumagin Village Corporation approached

tne USFWS with a plan to relocate cattle from Simeonof to near-by Unga Island. In contrast to many of the earlier proposals, the Shumagin Corporation proposal was a locally developed proposal based on the experience and expertise of people who live in the region.

Although the open taking period was to have ended officially in October, that deadline was extended until March 4th. On that date, the USFWS planned to shoot any cattle remaining on the island.

This prompted the resolution now before the Committee.

Current Situation

Local residents of the region remain interested in removing a large number of cattle from Simeonof where there are estimated to be 240 head. However, the Shumagin Corporation, which has been coordinating the relocation effort, requires additional time to finalize the transplant proposal.

Part of the difficulty involves getting consent for the use of Unga Island from all of the affected land owners with an interest in Unga Island. A substantial number of the landowners have provided letters of non-objection and it is anticipated that the rest will be forthcoming. Also, lining up a barge to transport the animals has proven difficult because of the there are only a few such vessels which are avialable in the region.

Local residents of the region want the USFWS to defer the cattle slaughter until the relocation plan can be implemented. As a practical matter, this means putting off the slaughter until the end of the September. This would allow local residents sufficient time to finalize arragements and execute their plan.

Senate Joint Rsolution 14 (am)

Senate Joint Resolution 14 (am) addresses the need for a brief delay in the USFWS cattle kill. The resolution calls upon the USFWS to hold off untill October 1985 so that the cattle can be moved. In light of the fact that cattle have been on Simeonf since 1894, it is apparent that another six months will not make a material difference. Also, it should be noted that the USFWS estimates the Simeonof Island grazing capacity at about 300 head which is greater than the number of cattle currently on the island.

Although the resolution would not, of course, be binding on the federal government it would be an expression of support from the Legislature for a delay in order to accomodate the local interest in the wild cattle as a supplemental food resource.

Anyone who has had the opportunity to visit the lower Alaska Peninsula and knows how expensive freight and travel expenses are in this part of the state can readily appreciate the value of this locally available wild food resource.

During the Resources Committee meeting I will update the Committee on recent developments concerning this issue.

SJR

20

TO: Members of House Committee on Resources

FROM: Senator Coghill

RE: Soil conservation budget cuts

Soil and Water Conservation Programs will be cut drastically in fiscal year 1986 and 1987. Alaska will bear the brunt of many of these cuts as we are still a developing state. Much of our soils have not been surveyed, our resources uninventoried. The rationale behind much of the cuts is that the the work has been accomplished. That may be well and good for California or the Midwestern farm states, but Alaska is not in the same situation.

The programs which most effect Alaska include soil surveys, snow surveys and watershed planning and construction.

Anticipated cuts will result in the loss of about nine local conservationists. The state does not have the staff to make up for these positions.

The following is an excerpt from the FY1986 Budget Summary for the United States Department of Agriculture:

> "Snow Surveys and water forecasting provide a valuable service to water management groups responsible for over 10 million acres in the Western States and Alaska for

irrigation, flood control, recreation, fish and wildlife power generation, municipal and industrial water supply and water quality. It is not an essential activity to support the Federal-State-local conservation technical assistance program. Snow survey work can be continued by private or public organizations serving the areas primarily benefitting from this activity."

Snow surveys are important to our river areas. They give an indication of the potential run-off and flooding. The Interior received 200 to 300 percent more snow than usual this winter. The assistance of the soil and water conservationists can not be overestimated for the upcoming years.

Watershed planning and construction, including river basin surveys and flood prevention will be terminated during 1986. The U.S.D.A. claims these programs have a lower priority for Federal funding in the conservation areas. It believes that states should take over these functions if the services are beneficial. Presently we do not have the staff to take over these functions and probably will not be able to by the 1986 termination date.

Resource inventories and analysis will be updated in 1985, but further analysis will be scheduled for some time in the 1990's. As a developing, changing state our resource areas must be inventoried so we make prudent decisions based on as much data as possible. Timely resource inventories will assist our public officials toward this goal.

Soil surveys basic services will be continued, but will be provided as needed. Project mapping will be done on a priority basis where the soils information is urgently needed. The mapping of Federal Service and

Bureau of Land Management will be discontinued. All the agricultural land in Alaska has been mapped by this service. Our soils are extremely fragile. We can not afford to lose these vital services.

(The following material is an excerpt from the FY 1986 Budget Summary for the United States Department of Agriculture.)

SOIL AND WATER CONSERVATION PROGRAMS
(Program Level in Millions)

Agency/Program	1984 Actual	1985 Current Estimate	1986 Budget	1987 Budget
Soil Conservation Service:				
Conservation technical assistance	$275	$272	$285	$160
Soil surveys	54	54	51	36
Plant material centers	4	4	4	4
Resource inventories and analysis	18	18	11	- -
Snow surveys	4	4	3	- -
Great plains conservation program	21	21	7	- -
Watershed planning, construction	245	230	93	- -
Total	621	603	454	200
Agricultural Stabilization and Conservation Service:				
Agricultural conservation program	190	190	- -	- -
Other cost-sharing programs	40	21	- -	- -
Total	230	211	- -	- -
Total, SCS & ASCS Conservation	$851	$814	$454	$200

SOIL AND WATER CONSERVATION PROGRAMS

The budget provides $200 million and 5,000 staff-years for the Soil Conservation Service (SCS) for 1987. This level is about one-third the funding and staffing level appropriated for 1985. The transition year of 1986 will reduce employment by approximately 9,300 employees at a one time cost of $254 million. ASCS Conservation cost-sharing programs are discontinued also. Over the five year period 1986-1990, the budget proposal would yield savings of $2.8 billion compared to a continuation of SCS and ASCS program at the current level.

While the 1986 program and budget proposal is heavily influenced by fiscal policy constraints, it also reflects 1) the outlook that the economic incentives to devote marginal, erosion-prone land to row crops will be lessened once the Administration's commodity program legislation is enacted, 2) the general policy that Federal programs of financial assistance to individuals and state and local units of government should be cut back, especially in those cases where economic incentives of existing non-federal institutions might come more significantly into play in the absence of current levels of Federal assistance, and 3) the general recommendation from the Grace Commission that major economies could be achieved by limiting federal staffing in conservation district offices.

April Snow Survey Report

By Roger Boyer
U.S. Soil Conservation Service

Snow survey has shown some interesting facts this month. Many people felt that the high winds and warm temperatures which we experienced in March were probably reducing the overall snow pack and moisture levels. Observations made at the end of the month do not verify this.

Snow packs and moisture levels throughout the area have increased either slightly or, in some cases, dramatically. Tok and Fielding Lake are the only areas with snow pack moisture levels near average. The heaviest snow pack, relative to long term averages, is at Shaw Creek Flats, where moisture levels at over 250 per cent of normal. There are nearly seven inches of water laying on the ground. This breaks the snow pack moisture level record. The Delta-Clearwater area increased slightly in snow depth and moisture, going from 23 inches to 25 inches of snow, and from 4.8 inches to 5.2 inches of water in the snow pack.

What all these numbers mean is that there is a great deal of water laying on the ground in the form of snow. If break-up is delayed by continued cool temperatures in April, it should probably be a very wet and muddy spring.

Homes and other buildings in or near low areas or intermittent water courses will probably experience flooding for longer periods of time than is normal.

If, however, temperatures are warm in the daytime and drop below freezing at night, break-up should be gradual with little more flooding and muddy conditions than is normally expected.

Area snow packs are approaching those that were present in the springs of 1968 and 1971, which are the highest for which we have records. If you lived here during those years and have a good memory of what happened in the spring, you may have an insight of what could happen this year. In both of those years, the snow pack lasted late into the spring.

I flew over the area where the Jarvis Creek Overflow channel begins and saw a sizable collection of aufeis, which blocks the main channel of Jarvis Creek and causes the overflow flooding. With the significantly above-average snow pack of moisture in the area, there is a strong possibility for substantial flooding along the overflow channel this year. Residents who live along or near the normal flood route should be thinking of what they intend to to do protect their property and to maintain access during the flooding period.



The key point to remember is that if break-up is rapid the chances for severe flooding are greatly increased. But if break-up is slow and occurs over a long period of time, excessive flooding will probably be avoided. A final note -- we would be interested in hearing from anyone in the community who has good records or a good memory of the years of 1968 and 1971, as far as snow conditions and spring flooding are concerned. Give us a call at 895-4241, or stop in at the SCS office in the Jarvis Office Center.

April 1 Snow Survey Data

	Depth (inches)	Water Content (inches)	Record Water Content (inches)	Years of Record	Percent of Average
Granite Creek (Mile 1410)	25 (16)	5.2(3.2)	7.0 1971	18	162
Fort Greely	24 (19)	5.4(3.3)	7.2 1967	19	150
Shaw Creek Flats	28 (14)	6.8(2.7)	6.0 1971	26	252
Gerstle River	23 *	4.9 *	* *	3	*
French Creek (Salcha)	40 (27)	11.5(6.0)	12.1 1971	24	192
Little Salcha (Salcha)	35 (24)	10.1(5.1)	10.5 1971	24	204
Tok	16 (18)	3.3(3.4)	6.0 1967	26	97
Meniasta Pass	39 (29)	10.7(6.0)	11.4 1979	24	178
Chistochina River	28 *	6.3 *	* *	1	*
Haggard Creek (Sourdough)	33 (27)	7.5(5.7)	13.3 1979	22	132

SJR

48

HOUSE

COMMITTEE REPORT

-5/8

(9)

Date referred: 4/16/86

FURTHER REFERRALS: FINANCE

DATE: May 8, 1986

The RESOURCES Committee has considered SJR 48

Relating to the continued operation of the Institute of Northern Forestry at Fairbanks and the Forestry Survey Group in Anchorage.

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz

Miller(NP)

Herrmann

Wallis

Jenkins

SIGNING OTHER RECOMMENDATIONS:

Pearce NoRec

Co-Chairman Shultz

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

M E M O R A N D U M April 8, 1986

TO: All Members
Senate Resources Committee

FROM: Staff, Senate Resources Committee

RE: SJR 48 Relating to the continued operation of the Institute of Northern Forestry at Fairbanks and the Forestry Survey Group in Anchorage

SJR 48 requests the U.S. Congress to appropriate funds and direct the U.S. Forest Service to reverse its decision to close the Institute of Northern Forestry at Fairbanks and to restore the capacity of the Anchorage Forestry Survey Group.

As part of the federal government budget cuts, the U.S. Forest Service Institute of Northern Forestry at Fairbanks is proposed to be closed. The budget for this operation is $735,000. In addition, a $150,000 reduction is proposed for the Forest Inventory Research group at Anchorage.

There is a zero fiscal note.

Enclosures:
- U.S. Forest Service fact sheet on Fairbanks
- U.S. Forest Service fact sheet on Anchorage
- Memo from DNR
- Institute of Northern Forestry work plan

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SJR 48
Title : Continued operation of the Institute of Northern Forestry

Sponsor : Senate Resources
Requestor : Senate Resources
Date of Request : April 7, 1986

FISCAL DETAIL

Agency Affected : _____
BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senate Resources Committee
Division : _____
Phone : 465-3818
Date : April 7, 1986

Approved by Chairman Commissioner : _____
Agency : Senate Resources Committee
Date : April 8, 1986

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Official Plan. Statement

February 5, 1986

Pacific Northwest Forest Experiment Station Comments on Proposed Closure of Institute of Northern Forestry, Fairbanks

As part of the fiscal 1987 budget submitted to Congress February 5, the Chief of the Forest Service has proposed closure of the Institute of Northern Forestry at Fairbanks. As the Institute of Northern Forestry, the Forest Service has carried on research at Fairbanks, since the mid-1950's, and the current facility was constructed in 1962-1963. Current programs include research on management strategies for interior Alaska forests, effects of fire and methods of control, classification of Alaska vegetation, dealing with forest insects, managing forest habitat for wildlife, and managing for quality water from forests. The laboratory has seventeen employees, in a 13,000 square foot facility, located on the University of Alaska campus.

The closure is proposed as part of a continuing effort to reduce the costs of government. The sharp downturn in the 1987 budget, coupled with the impact of inflation on budgets of the last few years, necessitates significant management actions.

Past research has focused on providing a basic understanding of the characteristics and ecology of Interior Alaska forests. With current need to reduce expenditures, it is inappropriate to embark on the next generation of studies, which should emphasize development of the land and its resources. All research on managing forests and fire will be eliminated, and wildlife habitat research will be reduced, for an annual cost reduction of $735,000. Those programs that remain will be moved to Anchorage, to avoid the fixed costs of maintaining a facility in Fairbanks. To the greatest extent possible, employees will be reassigned to funded jobs at Anchorage or at other locations.

FACT SHEET

Reagan Administration Proposed Budget Reductions and Resulting Change in Forest Service Research Programs in Alaska in Fiscal Year 1987 (Begins October 1, 1986)

1. Reduce funding at Fairbanks Forestry Sciences Laboratory (Institute of Northern Forestry) by $735,000.

2. This would close the Laboratory and terminate the services of 10 permanent employees.

3. All research on silviculture, ecology of Interior Alaska forests, vegetation classification, genetics, and fire effects and control, is scheduled to be terminated. Wildlife habitat research would be reduced but not closed out.

4. The remaining research and employees at Fairbanks in soil, water, forest insects, and wildlife habitat will be consolidated with the Forestry Inventory Research at the Anchorage Forestry Sciences Laboratory.

5. Reason given for closing the INF laboratory is that research to date has focused largely on basic forest and related ecology. Now there is need to shift to a new generation of studies, mostly applied, emphasizing development and utilization of forest resources. Funding is inadequate to do this.

6. Funding for the Forest Inventory Research at Anchorage will be reduced by $150,000. This will substantially slow, but not stop multiresource inventory in Alaska. Major river drainages, now scheduled for inventory that would be postponed for several years include the Kuskokwim-Bristol Bay, Copper River, Kenai Peninsula, South Central Alaska, Upper and Lower Yukon River Basins, and the Kobuk River Basin, all areas of high public interest.

Anchorage

SUMMARY OF BUDGET CUT IMPACTS ON PNW 4103, FY87

February, 1986

THE SITUATION

Given the President's budget for FY 1987, the Forest Inventory and Analysis Unit in Anchorage can expect to take a $148,000 (Washington Office appropriation level, $130,000 PNW Station level) cut in its budget. Over the past 5 years, Anchorage FSL (FIA) has received an operating budget between $160,000 and $270,000 after removing salaries and Portland/WO overhead. In FY 1985, PNW 4103 received operating funds totaling $269,000. This was reduced in FY 1986 to $226,000, and is targeted to be cut to $96,000 in FY 1987.

No new permanent positions have been added to FIA staff since June, 1984. One position (a Research Biologist) which vacated, has not been refilled, in order to compensate for normal salary increments (In-step increases, etc.). Numerous other cost savings measures have been implemented to reduce overhead costs, such as space reduction, computer reconfiguration, etc.

The basic "housekeeping" budget need for PNW 4103 (FIA) is about $40,000. With $56,000 left, there will be no funds to continue field work. The $56,000 will barely keep data analysis running on data that have been collected during FY85 and FY86.

IMPACTS

Work to continue--The work to be continued for FY 1987 will involve only data analysis associated with the legislatively mandated 1990 RPA Timber Assesment, as well as data analysis of field data previously collected in the Tanana River Basin and southeast Alaska in FY 1983-85.

Work to be discontinued--With the budget cut, it will be necessary to discontinue collection of field data on the Chugach National Forest and Copper River Basin; classification of Landsat scenes for the Copper River and Kuskokwim River Basins; and collection of aerial photography resource materials for these same areas. Additionally, because of the Research Biologist position vacancy, there will be decreased emphasis on wildlife habitat research and associated efforts.

The consequence of these efforts being discontinued will result in difficulty meeting national legislative mandates to respond to the Resources Planning Act's requirement for nationwide timber and vegetation assessment information on a periodic (10 year) basis, especially looking ahead to the period between 1990 and 2000.

There is an added consequence in that Federal budget cuts promise to close out the SCS's River Basin Mapping and Inventory and Monitoring programs. Additionally, the State of Alaska is cutting back in its timber and vegetation inventory efforts in both the Division of Geological and Geophysical Services and in the Division of Forestry. These agencies, along with FIA, are the only Natural Resource agencies currently collecting vegetation inventory and mapping information on a state-wide basis. With no vegetation inventory data input, management decisions will suffer for all Alaska agencies, state and federal.

The current research objectives and areas of research for PNW 4103 (Anchorage FSL) are as follows:

RESEARCH OBJECTIVES

The research objectives of the Alaska Forest Inventory and Analysis (FIA) unit at Anchorage, as stated in the Research Work Unit Description, are to:

1). Evaluate the renewable resource inventory needs for the State of Alaska and summarize these in terms of data elements to be measured;

2). Inventory the renewable resources for Alaska in accordance with the Forest and Rangeland Renewable Resources Research Act of 1978, and;

3). Analyze and report the results of these inventories in an integrated context.

CURRENT AREAS OF RESEARCH

Research has previously proceeded on a regular basis, providing timber inventory and other vegetation inventory information on a sub-region by sub-region basis (often on a river basin basis). Several areas are currently going through a resource analysis stage, including:

-Porcupine River Unit
-Upper Yukon River Unit
-Susitna River Basin Unit
-Chugach National Forest Unit
-Tanana River Basin Multi-resource Inventory Unit
-Southeast Alaska Multi-resource Inventory Unit

Research is also proceeding in the analysis stage involving some very important subject areas relating to Natural Resource Management decisions. These include:

-Estimating changes in areas and volumes of timber on lands transitioning from federal ownership to Native and State ownership due to various selection legislation. This work is partially completed for the Tanana River Basin, for southeast Alaska, and for the Chugach National Forest.
-Preparation of Landsat vegetation classification maps for the Tanana River Basin and the Southeast Alaska Units.
-Development of vegetation profiles for use in evaluating wildlife habitat for the Tanana River Basin and Southeast Alaska Units.
-Developing biomass estimates for all vegetation in the Tanana River Basin and the Southeast Alaska Units.
-Developing new sampling and data collection techniques for use in multi-resource inventories.

The planned Federal and Alaska State budget cuts will mean discontinuation of these kinds of multi-resource/vegetation inventory analyses for the uninventoried River Basin Units of Alaska, which include the Yukon, Kuskokwim, Copper River, Bristol Bay, and Kobuk basins.

5-2
F-5

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES COMMISSIONER'S OFFICE

TO: John Katz
Special Council

DATE: February 25, 1986

FILE NO:

TELEPHONE NO: 465-2491

FROM: Esther C. Wunnicke
Commissioner

SUBJECT: Federal Budget
Cut Impacts

John Sturgeon has brought to my attention that the President's budget for 1987 calls for some cuts to the U.S. Forest Service and the Bureau of Land Management that if not restored could have grave negative impacts to Alaska. I am requesting your assistance in bringing to the attention of our Congressional Delegation some of the following proposed cuts and their impact specifically on Alaska. I have listed them in descending priority order.

Research

When you look at proposed station cuts in other states and the tremendous forest research void, we feel that the complete closure of the Institute of Northern Forestry (INF) at Fairbanks is not justified. Other states have the research base on which they can continue to develop, but Alaska is still in the growing stage and is lacking even the most basic research. The research program helps fund work in the key areas of forest genetics, insects and disease, watersheds, wildlife habitat and fire ecology and behavior, all of which are important to Alaska as we try to strengthen our overall economy as our revenues from oil decline. The State of Alaska has over 60% of its lands in a "let-burn" protection category. The impact on the environment, wildlife habitat is not completely understood. We were depending on the INF to find the answers.

The recently established 2 million acre Tanana Valley State Forest is at a point in its development that Forest research information unique to our interior northern latitudes is vital. In addition, forest lands now being considered for management by Doyon and other Interior native regional corporations, have in the past and will in the future, rely on INF research information concerning timber harvest, regeneration, wildlife habitat, and other resource concerns. Good sound decisions can only be made when one has the necessary information. Without the proper facts any resource development effort will be plagued with controversy because of unknowns.

The Forest Inventory and Analysis Unit in Anchorage will be cut $150,000, which will call for the discontinuation of collecting field data on the Chugach National Forest and

Copper River Basin. This, along with the Federal budget cuts that will close out the SCS's River Basin Mapping and Inventory and Monitoring programs, will mean that no new vegetation inventory data will be available. No new data means that management decisions will suffer for all Alaska agencies, State and Federal, at a time when we need to make the right decisions. The planned Federal budget cuts will mean the discontinuance of these kinds of multi-resource/vegetation inventory analyses for the uninventoried River Basin Units of Alaska, which include the Yukon, Kuskokwim, Copper River, Bristol Bay, and Kobuk Basins. I understand the House has scheduled a hearing on this proposal for February 27 in Washington, D.C.

Fire Management

Reductions in the BLM fire program in Alaska will be felt by our protection organization as we are dependent on them for support. Our two organizations are extremely dependent on each other to meet the protection job for just the priority resource base. There is a direct savings in operating costs of over $3 million to the State and nearly $4 million to the BLM by the existing coop-agreement for protection. The use of in State forces are a critical component for both Federal and State agencies and any reduction in either organization will simply equate to over twice the cost for actual suppression.

Recent studies show that Alaska is now at the minimum level for organization requirements for fire suppression. Additional reductions will not only cost more dollars in suppression, but lives and property will be lost.

State and Private Forestry

Loss of the ability of the U.S. Forest Service to provide forest management and utilization funding will impact the State technical assistance to Alaska's forest industry. New developing industries need help which may not be forthcoming.

State and Private Forestry grants are also cut, which will effect our fire suppression program. The State's fire protection responsibilities have now increased to 134 million acres. Although State appropriations cover most of the cost of program, Federal funding is a necessary component of our State's fire protection activities.

The rapid increase of insect and disease in our forests affects both the commercial productivity and scenic beauty. Elimination of the Pest Scout Program will no doubt put a heavy burden on the State to get into a program where we have no funding or expertise.

We would appreciate any direction you can provide to our Delegation so they may become aware of what these reductions will do to our State as we strive to build up the revenue base.

Fairbanks

Institute of Northern Forestry
Pacific Northwest Research Station
USDA Forest Service

Multidisciplinary Research Work Unit 1651

a. Title: Ecology and management of taiga ecosystems in interior Alaska

b. Mission: Develop an understanding of the ecology of forest ecosystems in interior Alaska for use in land-use planning and management.

c. Six Problem Areas with integrated research studies between problem areas.

Problem 1. Development of a vegetation classification system which is correlated with soil and site characteristics. A standard hierarchical classification system that includes all major plant groups is essential for use by all agencies statewide.

Problem 2. Obtain understanding of the behavior and effects of fire in taiga communities in order to provide information for the development of fire management plans in interior Alaska. Majority of fires in interior are lightning caused. Eighty percent of the taiga has burned once in the last 200 years. Plant succession is strongly influenced by wildfires. Costs of fire suppression in Alaska are very costly; therefore, the capability to accurately forecast behavior of fires in various fuel types would result in substantial savings. Effects of wildfire on vegetation growth and succession and soil are being studied. Research is underway on the use of controlled burns in site preparation for regeneration and wildlife habitat management.

Problem 3. There is a need for methods for the regeneration of white spruce and harvesting impacts on the white spruce ecosystem. Methods for regenerating white spruce in upland forests have been developed with soil scarification required; however, regeneration methods and white spruce growth information is lacking for floodplain or river bottom forest. An interdisciplinary study is underway on an island in the Tanana River in order to determine forest management alternatives for white spruce on floodplan sites.

Problem 4. The relation of host and site characteristics to damage by the spruce beetle and major tree defoliators is needed. Spruce beetle outbreaks have infested 240,000 areas of white spruce annually during the last 10 years. The lack of forest management in the Chugach NF has lead to extensive stands of slow-growing over mature white spruce. Research is underway to develop silvicultural methods for the management of white spruce in south-central Alaska. Host resistance in relation to site is one of the

Problem 4—continued.
alternatives that is under study. The role of carbon/nutrient levels in stands of aspen and birch have been found to affect the phytotoxins (defensive chemicals) which either kill feeding insect larva or inhibit feeding.

Problem 5. The effects of timber harvest and placer mining on stream sedimentation and water quality in relation to land management planning is being researched. Stream quality and site productivity in relation to landscape stability and sedimentation production are emphasized in present studies. Both areas of watershed management research include concern with the natural undisturbed state and with consequences of resource management and landscape alteration.

Problem 6. Moose habitat and forage relationships is needed to develop habitat management guidelines for mountainous areas of Alaska. A study is underway in Denali National Park utilizing the behavior of radiocollared moose. Forage use by plant species and intake on a daily and seasonal basis will aid in the description of habitat preference by moose.

Research Work Unit 3102

a. Title: Improving utilization of woody biomass for fiber and energy.

b. Mission: To provide land managers with more effective tools for determining economically acceptable strategies for harvesting, utilizing, and distributing forest biomass.

c. Three Problem Areas with Problems 1, 2 and part of Problem 3 located in Portland, Oregon.

Problem 3. Develop information for making economic and technical evaluations of converting woody biomass to energy. Biomass from clearing land for farming has not been utilized and presents a disposal problem. Utilization of biomass for energy would make land clearing for farming or forest type conversion more economical. Access to existing softwood sawtimber is needed. Markets for products potentially available from hardwood timber are also needed. Studies on lumber recovery, long term storage of wood chips, and burning wood chip with coal for electricity generation are underway.

Research Program Statistics for INF

		Payroll
A. Staff		
11	Scientists	
3	Technical support	
5	Non-technical support	
19	Total	$792,000
5	Temporary summer employment	35,000
3	Extramural funded Cooperative Research Agreements (UAF)	25,000
	Total payroll allotment	$852,000
B. Total FY-86 Budget		$1,170,000
C. Total FY-87 Budget		435,000
FY-87 Reduction		$-735,000

D. FY'87 Research

1. Eliminate:

a. Timber Management Research

Development of guidelines for managing interior forests following a multiple use concept and sustained yield basis. Guidelines for (1) natural and artificial regeneration, (2) silvicultural and timber harvesting methods, (3) productivity of fiber and forage, and (4) development of a standard Alaskan Vegetation Classification System to be used by all Natural Resource-related agencies.

b. Forest Fire Research

Development of guidelines for determining the effects of control/no-control fire supression strategies.

Development of guidelines for using prescribed fire for wildlife habitat restoration, site preparation for natural and artificial regeneration, vegetation management, and conversion of non-productive forests to fiber and forage producing stands.

2. Research Programs Proposed for Move to Anchorage

a. Wildlife Habitat Research

Development of initial management guidelines for moose habitats in mountainous areas of interior Alaska. This includes management practices that create, protect, or enhance the mix of habitats for moose.

b. Watershed Management Research

Development of guidelines to prevent stream sedimentation and impacts on water quality from timber harvest, wildfire and prescribed fire, and general site disturbance.

c. Forest Insect Research

Development of forest management guidelines for reducing tree susceptibility to bark beetles and hardwood defoliators.

Development of non-insecticidal methods for protecting high-value trees in campgrounds, recreational and urban areas.

1. History of lab
   - 1958 Research on tree physiology started
   - 1962 Fire research and plant ecology (succession)
   - 1962 New lab built
   - 1966-1970 Research expanded to include impact of forest insects, timber management, watershed management
   - 1974-1980 Wildlife management, forest genetics

2. a. Staffing - 11 professional scientists
   - 3 professional support
   - 5 research support services

   b. Scientists include:
   Silviculture, forest gentics, forest ecology, forest entomology, fire science, forest hydrology and water quality, soil science, and wildlife ecology

3. Clientele
   a. Users of research results
   - Alaska Department of Natural Resources (Division of Forestry and Division of Lands)
   - Alaska Department of Environmental Conservation
   - Alaska Department of Fish and Game
   - U.S. Fish and Wildlife Service
   - Soil Conservation Service
   - Forest Service
   - Alaska Native Corporations
   - University of Alaska

4. Cooperators
   -All above agencies

5. Multidisciplinary Research Work Unit
   a. Title: Ecology and management of taiga ecosystems in interior Alaska
   b. Mission: Develop an understanding of the ecology of forest ecosystems in interior Alaska for use in land-use planning and management.
   c. Six Problem Areas with integrated research studies between problem areas.

   Problem 1. Development of a vegetation classification system which is correlated with soil and site characteristics. A standard hierarchical classification system than includes all major plant groups is essential for use by all agencies statewide.

   Problem 2. Obtain an understanding of the behavior and effects of fire in taiga communities in order to provide information for the development of fire management plans in interior Alaska. Majority of fires in interior are lightning caused. Eighty percent of the taiga has burned once in the last 200 years. Plant succession is strongly influenced by wildfires. Costs of fire suppression in Alaska are very costly; therefore, the capability to accurately forecast behavior of fires in various fuel types would result in substantial savings. Effects of wildfire on vegetation growth and succession and soil are being studied. Research is underway on the use of controlled burns in site preparation for regeneration and wildlife habitat management.

Problem 3. There is a need for methods for the regeneration of white spruce and harvesting impacts on the white spruce ecosystem. Methods for regenerating white spruce in upland forests have been developed with soil scarification required; however, regeneration methods and white spruce growth information is lacking for floodplain or river bottom forests. An interdisciplinary study is underway on an island in the Tanana River in order to determine forest management alternatives for white spruce on floodplain sites.

Problem 4. The relation of host and site characteristics to damage by the spruce beetle and major tree defoliators is needed. Spruce beetle outbreaks have infested 240,000 areas of white spruce annually during the last 10 years. The lack of forest management in the Chugach NF has led to extensive stands of slow-growing over mature white spruce. Research is underway to develop silvicultural methods for the management of white spruce in south central Alaska. Host resistance in relation to site is one of the alternatives that is under study. The role of carbon/nutrient levels in stands of aspen and birch have been found to affect the phytotoxins (defensive chemicals) which either kill feeding insect larva or inhibit feeding.

Problem 5. The effects of timber harvest and placer mining on stream sedimentation and water quality in relation to land managmement planning is being researched. Stream quality and site productivity in relation to landscape stability and sedimentation production are emphasized in present studies. Both areas of watershed management research include concern with the natural undisturbed state and with consequences of resource management and landscape alteration. A research watershed (Caribou-Poker Creek) is located 30 miles north of Fairbanks.

Problem 6. Moose habitat and forage relationships is needed to develop habitat management guidelines for mountainous areas of Alaska. A study is underway in Denali National Park utilizing the behavior of radiocollared moose. Forage use by plant species and intake on a daily and seasonal basis will aid in the description of habitat preference by moose.

SJR

50

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

M E M O R A N D U M April 25, 1986

TO: All Members
Senate Resources Committee

FROM: Staff, Senate Resources Committee

RE: SJR 50 Relating to the incidental catch of high-value fish stocks within the United States exclusive economic zone

SJR 50 calls for the Secretary of Commerce and the North Pacific Fishery Management Council to enforce the provisions of the Magnuson Fishery Conservation and Management Act and reduce the level of incidental catch of salmon, halibut, crab, and other high-value species by groundfish trawlers in the U.S. exclusive economic zone. The resolution further calls for the Governor to aggressively pursue every possible means to persuade the Secretary of Commerce and the NPFMC to enforce the provisions of the Act. In addition, the Governor is asked to pursue a reduction in incidental catch by Alaska fishermen participating in the groundfish industry.

There is a zero fiscal note.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revisior Date : _____

REQUEST

Bill/Resolution No. : SJR 50
Title : Relating to the incidental catch of high-value fish stock within the United States exclusive zone
Sponsor : Sen. Resource Comm.
Requestor : Sen. Resource Comm.
Date of Request : April 25, 1986

FISCAL DETAIL

Agency Affected : ADF&G
BRU : _____
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Roland Shanks Phone : 465-4100
Division : Commissioner's Office Date : 4-28-86

Approved by Commissioner : Don Collinsworth Date : 4-28-86
Agency : _____

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

HOUSE

COMMITTEE REPORT

(9)

Date referred: 5/7/86

FURTHER REFERRALS:

DATE: May 8, 1986

The RESOURCES Committee has considered CSSJR 50(Res)

Relating to the incidental catch of high-value fish stocks within the United State exclusive economic zone.

and recommends:

[XX] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title
[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Shultz Dick Shultz

Herrmann Adelheid Herrmann

Wallis Kay Wallis

Miller(NP) M.K. Miller

Sund

SIGNING OTHER RECOMMENDATIONS:

Pearce

Roge Jenkins No Rec

Co-Chairman Dick Shultz

Introduced: 4/23/86
Referred: Resources

IN THE SENATE BY THE RESOURCES COMMITTEE

SENATE JOINT RESOLUTION NO. 50

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Relating to the incidental catch of high-value fish stocks within the United States exclusive economic zone.

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

WHEREAS art. VIII, sec. 2, Constitution of the State of Alaska, requires the Alaska State Legislature to provide for the utilization, development, and conservation of all natural resources belonging to the state for the maximum benefit of the people of the state; and

WHEREAS fisheries are Alaska's most important renewable natural resource; and

WHEREAS the salmon, halibut, and crab fisheries have traditionally provided a major source of employment and income for Alaska fishermen; and

WHEREAS the harvestable surplus of every salmon stock of Alaska origin, and of halibut and crab, are fully used by United States fishermen; and

WHEREAS trawlers incidentally harvest a significant number of salmon of Alaska origin, and of halibut, crab, and other high-value species worth millions of dollars while targeting groundfish in the United States exclusive economic zone; and

WHEREAS the incidental harvest of salmon of Alaska origin, and of halibut and crab, by groundfish trawlers in the United States exclusive economic zone is adversely affecting the resource; and

WHEREAS at times the incidental catch of high-value species by groundfish trawlers in the United States exclusive economic zone has exceeded the catch of these species allocated for Alaska fishermen; and

WHEREAS the incidental catch of salmon of Alaska origin and of halibut, crab, and other high-value species significantly and adversely affect Alaska residents who depend upon them for their livelihood, particularly residents of villages in western Alaska, many of whom have annual incomes that average below federal poverty guidelines; and

WHEREAS United States fishermen are becoming increasingly involved in the harvest of groundfish in the United States exclusive economic zone; and

WHEREAS it is in the best interest of the state to support the involvement of United States trawlers in the bottom-fishing industry and to assure that the fishery is developed in a manner consistent with maintaining and protecting traditional fisheries; and

WHEREAS the development of a new fishery for United States trawlers involved in the harvest of groundfish should not be at the expense of the traditional fisheries of salmon, crab, halibut, and other high-value species; and

WHEREAS the experience with the foreign fishing fleet has demonstrated the ability to reduce significantly the incidental catch of salmon of Alaska origin, halibut, crab, and other high-value species without adversely affecting the fishery; and

WHEREAS the Magnuson Fishery Conservation and Management Act is designed to maximize economic benefits to United States citizens from the use of United States fisheries resources; and

WHEREAS the Magnuson Fishery Conservation and Management Act assigns the Secretary of Commerce a nondiscretionary duty to enforce the provisions of that Act to significantly reduce the incidental catch of salmon of Alaska origin, halibut, crab, and other high-value species by trawlers involved in the harvest of groundfish; and

WHEREAS the North Pacific Fishery Management Council has the responsibility of implementing the Magnuson Fishery Conservation and Management

Act and has the authority to implement measures to significantly reduce the incidental catch of salmon of Alaska origin, halibut, crab, and other high-value species by trawlers involved in the harvest of groundfish;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the Secretary of Commerce and the North Pacific Fishery Management Council to enforce the provisions of the Magnuson Fishery Conservation and Management Act and to take quick and decisive action to significantly reduce the level of incidental catch of salmon of Alaska origin, halibut, crab, and other high-value species by groundfish trawlers in the United States exclusive economic zone; and be it

FURTHER RESOLVED that the United States Department of Commerce and the North Pacific Fishery Management Council are respectfully requested to develop and enforce specific measures that significantly reduce the incidental catch of high-value species by trawlers and other vessels engaged in ground-fishing that have the least adverse affect on the ability of domestic trawlers to engage in the ground-fishing industry; and be it

FURTHER RESOLVED that the Alaska State Legislature respectfully requests the Governor of Alaska to aggressively pursue every possible means, including judicial action, of persuading the Secretary of Commerce and the North Pacific Fishery Management Council to enforce the provisions of the Magnuson Fishery Conservation and Management Act to significantly reduce the incidental catch of Alaska salmon, crab, halibut, and other high-value species by the groundfish fleets operating in the United States exclusive economic zone, with the least adverse impact on the ability of United States trawlers to participate in the ground-fishing industry; and be it

FURTHER RESOLVED that the Alaska State Legislature requests the Governor of Alaska to aggressively pursue every possible means of assisting Alaska fishermen who are participating in the ground-fishing industry to significantly reduce the incidental harvest of salmon, crab, halibut, and

other high-value species, without adversely affecting their ability to participate in the ground-fishing industry.

COPIES of this resolution shall be sent to the Honorable Malcolm Baldrige, Secretary of Commerce; Jim Campbell, Chairman, North Pacific Fishery Management Council; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.