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University of Alaska  
Statewide System of Higher Education

OFFICE FOR FISHERIES

ALASKA SEA GRANT COLLEGE PROGRAM

March 23, 1988

Honorable Cliff Davidson  
House of Representatives  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Mr. Davidson:

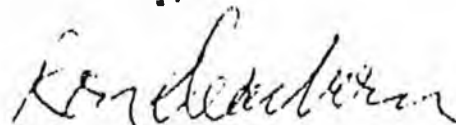
This letter addresses HB 490. As you are aware, the Alaska Sea Grant College Program has had a longstanding interest in the issues of marine safety. Working primarily through its Marine Advisory Program and in partnership with members of the fishing industry, volunteers, safety equipment manufacturers, and state agency personnel, Sea Grant has promoted safe operating practices and the use of survival equipment for over a decade. Through the development of the Alaska Marine Safety Education Association (AMSEA) and the activity of various fishermen's wives associations and other volunteers, considerable progress has been made in marine safety education and the use of state of the art survival gear. Clearly, however, as seen from the loss of lives in the fishing industry this season, our successes and those of our partners in the marine safety arena falls far short of our goals to make fishing a safe industry for Alaska.

HB 490 proposes additional steps for increasing safety in the fishing industry. Sea Grant supports this effort. In addition Sea Grant offers to continue its partnership role with those who strive towards a safer Alaska fishing industry. As University based programs, Sea Grant and the Marine Advisory Program are primarily in the knowledge business, either developing new knowledge through research, or transferring knowledge through teaching in a variety of formal and informal settings. On a short-term basis, however, Sea Grant is willing to expand its role by providing additional support and leadership in helping to initiate and define a productive role for the Fishing Vessel Safety Advisory Council (FVSAC) proposed in HB 490. It is my belief that safe operating practices must be expanded beyond the carrying of minimal survival gear if a responsible industry safety record is to be established in Alaska. Sea Grant is willing to provide support for further exploration and definition of a role for FVSAC. Over the long term, however, it is a more appropriate role for the State and/or the fishing industry than a University based program to provide the continuing support for this important responsibility.

Honorable Cliff Davidson  
March 23, 1988  
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Mr. Davidson, I appreciate the marine safety leadership role you have taken through sponsoring HB 490. The Sea Grant College Program of the University of Alaska Fairbanks looks forward to working with you in this important area. Please give me a call if we can be of assistance to you.

Cordially,



R. K. Dearborn, Director  
Sea Grant College Program  
and  
Acting Associate Dean  
School of Fisheries and  
Ocean Sciences

RRD:lbd

cc: Dr. Vera Alexander, Dean SFOS  
Dr. Donald Kramer, Chair MAP  
Henry Pennington, MAP, Kodiak

Original sponsor: Davidson

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 490 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to safety equipment for commercial  
7 fishing vessels; and providing for an effective  
8 date."

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

10 \* Section 1. AS 30 is amended by adding a new chapter to read:

11 CHAPTER 35. SAFETY STANDARDS FOR COMMERCIAL FISHING VESSELS.

12 Sec. 30.35.010. EXPOSURE SUITS. (a) A vessel subject to this  
13 chapter must be equipped with a United States Coast Guard approved  
14 exposure suit for each person on board the vessel. An exposure suit  
15 that is not Coast Guard approved, but is in use on a vessel before  
16 January 1, 1989, meets the requirements of this subsection if the  
17 exposure suit is similar or identical in design, construction, and  
18 function to an approved suit.

19 (b) An exposure suit required under (a) of this section must

20 (1) include an inflation tube that meets the United States  
21 Coast Guard construction requirements for inflation tubes when used as  
22 an integral part of an exposure suit;

23 (2) have a T-handle zipper pull; and

24 (3) be equipped with a United States Coast Guard approved  
25 personal flotation device strobe light.

26 Sec. 30.35.020. LIFE RAFTS. (a) A vessel subject to this  
27 chapter that is 32 feet or longer in overall length on deck is  
28 required to be equipped with a life raft capable of accommodating  
29 every person on board the vessel.

1 (b) A life raft required under (a) of this section must be

2 (1) equipped with a Class A or Class B EPIRB that is ap-  
3 proved by the United States Coast Guard for use in an inflatable life  
4 raft;

5 (2) provided with the minimum equipment that is required by  
6 the United States Coast Guard for use in all inflatable life rafts;  
7 except as provided in (3) of this subsection, this paragraph does not  
8 require the additional equipment that is required by the Coast Guard  
9 for life rafts that are intended for use on ocean service or limited  
10 service vessels; and

11 (3) equipped with signal devices required under the United  
12 States Coast Guard equipment requirements for inflatable life rafts  
13 intended for use on limited service vessels.

14 (c) In this section "life raft" means an inflatable life raft  
15 that meets the type and size, design, and inspections and tests re-  
16 quirements of the United States Coast Guard. A life raft required  
17 under this section does not need to meet the Coast Guard requirements  
18 for containment, rigid or fabric containers, or launching reinforce-  
19 ment.

20 Sec. 30.35.030. CLASS A EPIRBS. (a) A vessel subject to this  
21 chapter that is 32 feet or longer in overall length on deck is re-  
22 quired to be equipped with a Class A EPIRB.

23 (b) A Class A EPIRB required under (a) of this section must be  
24 stowed in a readily accessible location in a manner that allows it to  
25 float free if the vessel sinks.

26 Sec. 30.35.040. REQUIRED MAINTENANCE. Equipment required under  
27 this chapter shall be operative and maintained in good and serviceable  
28 condition.

29 Sec. 30.35.050. APPLICABILITY. This chapter applies to vessels

1 required to be licensed under AS 16.05.490 except for a vessel used in  
2 charter service for the recreational taking of fish and shellfish.

3 Sec. 30.35.060. ENFORCEMENT. The Department of Fish and Game  
4 may adopt regulations under the Administrative Procedure Act  
5 (AS 44.62) to implement this chapter. The Department of Public Safety  
6 and the Department of Fish and Game shall cooperatively enforce this  
7 chapter and regulations adopted under it. The departments may enter  
8 into agreements with the United States Coast Guard, the National  
9 Marine Fisheries Service, or the United States Fish and Wildlife  
10 Service to assist in the enforcement of this chapter.

11 Sec. 30.35.090. PENALTY. A person who, with criminal negli-  
12 gence, violates this chapter or a regulation adopted under this chap-  
13 ter is guilty of a class B misdemeanor.

14 Sec. 30.35.095. DEFINITION OF EPIRB. In this chapter "EPIRB"  
15 means an emergency position indicating radiobeacon that has been type  
16 accepted or type approved by the Federal Communications Commission and  
17 that is also approved by the United States Coast Guard.

18 \* Sec. 2. ADVISORY COUNCIL ESTABLISHED; REPORT. (a) There is estab-  
19 lished in the Office of the Governor the Fishing Vessel Safety Advisory  
20 Council. The council consists of at least seven members appointed by the  
21 governor. Members must be knowledgeable and experienced in the areas of  
22 commercial fishing vessels or vessel safety and life-saving matters,  
23 methods, and systems. At least one member shall represent each of the  
24 following:

- 25 (1) the commercial fishing industry;  
26 (2) fishermen's associations;  
27 (3) the safety equipment industry, which includes businesses  
28 manufacturing, supplying, or servicing marine safety and life-saving equip-  
29 ment;

- 1 (4) the marine insurance industry;  
2 (5) education; and  
3 (6) the United States Coast Guard.

4 (b) Council members are entitled to per diem and travel expenses  
5 authorized for boards and commissions under AS 39.20.180.

6 (c) The purpose of the council is to suggest, review, and recommend  
7 legislation, regulations, and guidelines that address safety equipment  
8 requirements and educational programs that contribute to the successful  
9 application of safety and life-saving equipment <sup>and 4207005</sup> on commercial fishing  
10 vessels.

11 (d) The council shall consider and review proposals relating to the  
12 development and implementation of educational programs at the high school  
13 and community college level to increase the level of awareness among par-  
14 ticipants and potential participants in the commercial fishing industry  
15 with respect to the necessity, application, and use of safety and life-sav-  
16 ing equipment on commercial fishing vessels. The council shall encourage  
17 the involvement of fishermen's associations, processor associations, or  
18 other trade associations or industry groups in the implementation of pro-  
19 posed educational programs. The council shall also consider guidelines and  
20 requirements relating to the maintenance, servicing, and upgrading of  
21 safety and life-saving equipment and recommend a permanent method for the  
22 state to evaluate current and future needs relating to legislation, regula-  
23 tions, and guidelines for commercial fishing vessel safety.

24 (e) The council shall report its recommendations to the governor and  
25 the legislature by January 15, 1991.

26 The council is terminated January 16, 1991.

27 .) In this section "council" means the Fishing Vessel Safety Advi-  
28 sory Council established under (a) of this section.

29 \* Sec. 3. AS 30.35.010(b)(3), 30.35.020, and 30.35.030, added by sec. 1

1 of this Act, take effect January 1, 1990.

2 \* Sec. 4. Except as provided in sec. 3 of this Act, this Act takes  
3 effect January 1, 1989.

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FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An act relating to safety equipment for commercial fishing.vessel..."  
Sponsor: Davidson  
Requestor: House HESS

Agency Affected: Public Safety  
BRU: Fish & Wildlife Protection  
Components: Marine Enforcement  
Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | 0     | 0     | 0     | 0     | 0     | 0     |
| CAPITAL           | 0     | 0     | 0     | 0     | 0     | 0     |
| REVENUE           |       |       |       |       |       |       |

FUNDING: (Thousands of Dollars)

|               |   |   |   |   |   |   |
|---------------|---|---|---|---|---|---|
| GENERAL FUND  | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS |   |   |   |   |   |   |
| OTHER         |   |   |   |   |   |   |
| TOTAL         | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME |   |   |   |   |   |   |
| TEMPORARY |   |   |   |   |   |   |

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Captain Conrad G. Seibel Phone: 269-5509  
Division: Fish & Wildlife Protection Date: 2/24/88  
Approved by Commissioner: [Signature] Date: 3-14-88  
Agency: Department of Public Safety

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)



# STATE OF ALASKA

## HOUSE OF REPRESENTATIVES

Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON

District 27

Box 746, Kodiak, Alaska 99615

TO: HOUSE RESOURCE MEMBERS  
FROM: REP. DAVIDSON *CD*  
DATE: MARCH 23, 1988  
RE: SECTIONAL ANALYSIS, HB 490

The idea for the original HB 490 was brought forth by a group of fishermen in Kodiak who saw a need for legislation requiring safety equipment on board fishing vessels.

The proposed Committee Substitute refines their idea of requiring safety equipment and adds the establishment of a Fishing Vessel Safety Advisory Council.

### Section 1

Requires an exposure suit for each person on board the vessel. Under this section a life raft capable of accommodating every person on board is required. The life raft must be equipped with a Class A or Class B EPIRB. A vessel that is 32 feet or longer is required to be equipped with a Class A EPIRB.

The required equipment must be maintained in good and serviceable condition.

These requirements would apply to all commercial fishing vessels 32 feet or more. Setnet skiffs and Charter boats would be exempt.

Enforcement would be shared by the Department of Fish and Game and the Department of Public Safety.

### Section 2

The Fishing Vessel Safety Advisory Council would consist of at least 7 members who would be appointed by the Governor. Members would represent the fishing industry, the safety industry, marine insurance and the U.S. Coast Guard.

The purpose of the Council is to suggest, review, and recommend legislation, regulations and guidelines that address safety equipment requirements and educational programs that contribute to the successful application of safety and life-saving equipment and practices on board commercial fishing vessels.

The Council would work with already established educational institutions such as high schools and colleges and potential fishermen and women. The Council would exist for 3 years and report to the Governor.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Office of the Governor  
 Title: An Act relating to safety equipment for commercial fishing... BRU: Executive Operations  
 Sponsor: Labor and Commerce Comm. Components: Executive Office  
 Requestor: Sen. Tim Kelly

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       | 16.8  | 33.7  | 16.8  |       |       |
| CONTRACTUAL       |       | 4.4   | 8.8   | 10.3  |       |       |
| SUPPLIES          |       | .3    | .6    | .6    |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   |       | 21.5  | 43.1  | 27.7  |       |       |
| CAPITAL           |       |       |       |       |       |       |
| REVENUE           |       |       |       |       |       |       |

FUNDING: (Thousands of Dollars)

|               |  |      |      |      |  |  |
|---------------|--|------|------|------|--|--|
| GENERAL FUND  |  | 21.5 | 43.1 | 27.7 |  |  |
| FEDERAL FUNDS |  |      |      |      |  |  |
| OTHER         |  |      |      |      |  |  |
| TOTAL         |  | 21.5 | 43.1 | 27.7 |  |  |

POSITIONS:

|           |  |     |     |     |  |  |
|-----------|--|-----|-----|-----|--|--|
| FULL-TIME |  | -0- | -0- | -0- |  |  |
| PART-TIME |  | -0- | -0- | -0- |  |  |
| TEMPORARY |  | -0- | -0- | -0- |  |  |

ANALYSIS : (Attach a separate page if necessary)

See attached analysis.

Prepared by: Michael A. Nizich, Director Phone: 465-3616  
 Division: Division of Administrative Services Date: 3/14/88

Approved by Commissioner: \_\_\_\_\_ Date: 3/14/88  
 Agency: Office of the Governor

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor ✓
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB455 (L&C)

Section 2 of CSSB455 establishes in the Office of the Governor the Fishing Vessel Safety Advisory Council. The Council consists of "at least seven members" appointed by the Governor. These Council members are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

Sections (c) through (e) outline the work requirements of the Council as follows:

- Suggest, review, and recommend legislation, regulations, and guidelines that address safety equipment requirements and educational programs that contribute to the successful application of safety and life-saving equipment on commercial fishing vessels.
- Consider and review proposals relating to the development and implementation of educational programs at the high school and community college level to increase the level of awareness regarding the application and use of safety and live-saving equipment on commercial fishing vessels.
- Report its recommendations to the Governor and the Legislature by January 15, 1991.

The effective date for creation and start-up of the Council is January 1, 1989, with a termination date of January 16, 1991.

This fiscal analysis estimates travel and per diem for seven Council members from throughout Alaska (air fares based on travel to and from Juneau, Anchorage, Dillingham, and Kodiak for Juneau, Anchorage, Dillingham, Kodiak, Kenai, Sitka and Ketchikan) to four 3-day meetings in FY 89, eight 3-day meetings in FY 90, and four 3-day meetings in FY 91.

|        | <u>FY 89</u> | <u>FY 90</u> | <u>FY 91</u> |
|--------|--------------|--------------|--------------|
| Travel | 16.8         | 33.7         | 16.8         |

Contractual expenses included in the estimate are meeting room rental, advertising, and clerical services for transcription of minutes and production of reports for four meetings in FY 89 and FY 91, and eight meetings in FY 90; long distance telephone charges; printing and binding of the final report to the Governor and Legislature in FY 91; and photocopies. Estimates are based on previous expenditures for similar councils, interim councils, and working groups.

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB455(L&C)

|             | <u>FY 89</u> | <u>FY 90</u> | <u>FY 91</u> |
|-------------|--------------|--------------|--------------|
| Contractual | 4.4          | 8.8          | 10.3         |

Estimates are for normal office supplies (paper, pens, folders, etc.) for use at Council meetings and for Council publications.

|          | <u>FY 89</u> | <u>FY 90</u> | <u>FY 91</u> |
|----------|--------------|--------------|--------------|
| Supplies | .3           | .6           | .6           |

STATE OF ALASKA  
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 8, 1988

SUBJECT: Jurisdiction of the State to Impose Safety  
Equipment Requirements on Foreign Vessels;  
Interaction with Federal Laws (CSHB 490 ( ))

TO: Representative Cliff Davidson  
Attn: Mary Mullen

FROM: David R. Dierdorff   
Revisor of Statutes

You have asked for a legal analysis of certain issues arising under CSHB 490 ( ), relating to safety equipment for commercial fishing vessels. The issues fall into two categories: the state's jurisdiction with respect to vessels documented or registered in another state or country; and the interaction of state law with federal law on the subject of vessel safety.

I. JURISDICTION.

As drafted, the safety requirements would apply only to vessels that are required to obtain a commercial vessel license under AS 16.05.490, with certain exceptions not relevant to this discussion (see sec. 30.35.050 in the draft). Consequently, the safety laws would apply to a commercial vessel that delivers or lands fish in Alaska or engages in commercial fishing in Alaska, unless that vessel is exempt under AS 16.05.495 from licensing or under proposed AS 30.35.050 from the safety requirements.

It is clear that the state has the authority to regulate fishing activities, including vessels and gear, within the three-mile limit. Also, to the extent that there is a sufficient connection between the state and the persons regulated, where the state has a legitimate interest in the matter regulated the state "may regulate fishing beyond the three-mile territorial limit in the absence of conflicting federal law or undue impediment to interstate commerce." See Skiriotes v. Florida, 313 U.S. 69, 61 S.Ct. 924, 85

L.Ed. 1193 (1941), quoted in State v. F/V Baranof, 677 P.2d 1245, 1249-1250 (Alaska 1984).

The Alaska supreme court in Baranof upheld the validity of the state's regulation of king crab harvesting by a documented Washington vessel. The vessel's owners and the preferred lien holder (both Washington entities), challenged the right of the state to regulate the fishery in the face of the FCMA (the Magnuson Fishery Conservation and Management Act). Because FCMA contains a provision that allows a state to "directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries \* \* \* if the vessel is registered under the laws of such State" (16 U.S.C. 1856(a)), the court was required to decide whether the word "registration" meant registration under the vessel registration or documentation laws, or included the registration required under AS 16.05.475, 16.05.490 et al.

The court held that the plain meaning of the federal law required the conclusion that registration under the provisions of AS 16.05 and regulations adopted under that chapter was "registration under the laws of" Alaska and that the F/V Baranof was subject to state regulation. This interpretation had been reached previously by the California supreme court in People v. Weeren, 607 P.2d at 1286.

Clearly the state has a legitimate interest in the safety of persons working on vessels within its waters, and in contiguous waters beyond the territorial limit. Even if the persons on those vessels are not Alaska domiciliaries, the state's resources are called into play in the event of an accident or personal injury. Of course, the persons on those vessels are frequently Alaska residents, at least on a seasonal basis. I doubt very much that a court would hold that the state lacks either sufficient connection with the persons regulated or a legitimate interest in the subject matter of vessel safety. Consequently, to the extent that the operation of the vessel safety laws are restricted to vessels over which the state's regulatory authority is already being exercised, I can foresee no legal problems with the bill. It should be noted that the state's activity in Baranof which was upheld was much more intrusive of the rights of the vessel's owners, in that it involved a forfeiture proceeding against the vessel for violation of traditional fisheries regulations (time, place, limits, etc.). The fact that such regulation has been upheld suggests that the much less intrusive regulation of minimal

Representative Cliff Davidson  
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crew safety would not be said to impinge upon interstate commerce or exceed legitimate state interests.

Finally, the licensing and registration laws do not distinguish between vessels home-ported or documented in another state or country. Thus, to the extent that those vessels must be licensed under AS 16.05.490, whether they are from Washington, British Columbia, Japan, or any other jurisdiction they could be made subject to proposed AS 30.35.

## II. FEDERAL PREEMPTION.

Assuming that Congress enacts legislation imposing similar safety equipment requirements on vessels subject to the state's regulation under proposed AS 30.35, you have asked whether the state law would be preempted. I note at the outset that there are some current federal safety regulations enforced by the Coast Guard that may overlap the proposed regulations for some vessels. For purposes of this memo, however, the issue of preemption is the same.

Federal preemption was discussed at length in the Baranof decision, because it was a significant issue in the case. The court summarized the subject by saying that preemption "will occur when Congress evidences an intent to occupy an entire field, \* \* \* or when state and federal laws are in actual conflict." 677 P.2d at 1249. It went on to say that preemption "may be either express or implied, and is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose," but that preemption "will be found only when 'the clear and manifest purpose' of Congress was to occupy the field." ibid.

It is obviously impossible to answer a question about federal preemption in the absence of federal legislation. If the state desires to regulate vessel safety, it should not worry about possible future federal preemption. Rather, it should enact the laws it chooses and then, perhaps, monitor Congressional developments to determine whether it is desirable (1) to allow for continued state regulation concurrently with federal regulation or, (2) to encourage federal preemption, and take action as appropriate

Because of its importance to the issues discussed in this memo, I enclose a copy of the Baranof decision. If I can be of further assistance, please advise.

Enclosure

DRD:bb  
b3/086


STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1988

SUBJECT: Federal Preemption (CSSB 455 (L&C))  
TO: Senator Fred Zharoff  
FROM: David R. Dierdorff   
Revisor of Statutes

You have asked whether enactment by Congress of the latest version of H.R. 1841 would preempt the state's safety standards for fishing vessels, assuming that CSHB 455 (L&C) became law.

Because the enactment of CSSB 455 (L&C) is a proper exercise of the state's police power, to the extent that it neither conflicts with or interferes with the enforcement of the federal law, it is not preempted by the federal enactment. The state's power to protect and promote safety on matters properly within its jurisdiction can not be taken away by federal legislation. See generally, 81A C.J.S. States sec. 25. Both federal and state law relating to safety on fishing vessels should be given effect, and only where they conflict would the federal law supersede the state's.

I have reviewed the February 24, 1988, mark-up of H.R. 1841. In the first instance, the federal law would not apply to certain vessels, depending upon their usage, their size, the crew size, the area of operation, and future regulations adopted by the Secretary of the Treasury. To the extent that federal law does not apply to those vessels, state law applicable to the vessels is not preempted. Even assuming that the federal law could preempt a valid exercise of the state's police power, it is my opinion that preemption with respect to those vessels would require an express statement in the federal law that the state may not impose safety requirements on vessels exempted under the federal law. Recall the situation in Baranof, in which the federal law gave authority for federal regulation, but the federal regulatory agency had not exercised that authority. Because the court

Senator Fred Zharoff  
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March 15, 1988

ruled that the FCMA scenario did not amount to preemption, it should be clear that the proposed safety standards would not be preempted with respect to vessels exempt from the federal safety law as currently proposed.

With respect to vessels that would be subject to the federal law, the federal law imposes fewer (and quite different) requirements on certain vessels, and more stringent requirements on others. There is no language expressly declaring that a state may not impose identical (or more stringent) requirements on vessels under its jurisdiction. However, as discussed in my memo to Representative Davidson, it is not necessary for preemption to be express - it may be inferred from the enactment of a comprehensive regulatory scheme that demonstrates an intent to occupy the field. The question then is whether H.R. 1841 is such a comprehensive scheme.

It appears that the minimum requirements set out in sec. 4502(a) merely reenact existing federal law (see 46 U.S.C. 4102) that applies to uninspected vessels, relating to fire extinguishers, p.f.d.'s, distress signals, etc. There are no conflicts between the requirements of CSSB 455 (L&C) and this part of the federal law, although the state law imposes additional requirements. The additional state requirements reflect the state's legitimate interest in safety requirements suited to the state's unique conditions. I believe a court would most likely hold that a fishing vessel covered by sec. 4502(a) and CSSB 455 (L&C) would have to comply with both laws.

The additional federal requirements set out in sec. 4502(b) and (c) for certain vessels are more comprehensive than those under CSSB 455 (L&C). To the extent that federal and state laws require the same equipment, there are some differences in specifics (for example, the federal law requires only EPIRBS, while state law requires Class A's for certain vessels and Class A or B's for life rafts; state law exempts life rafts from certain Coast Guard standards that may well be incorporated under federal law). It is clear that a vessel complying with the federal law would also comply with the state law (with the possible exception of EPIRBS), but a vessel complying with state law would not meet all of the federal requirements. In any event, where both federal and state law address the same subject, federal law prevails. Thus, the state's laws would be preempted by the federal law as to those vessels subject to sec. 4502(b)

Senator Fred Zharoff  
Page 3  
March 15, 1988

and (c) to the extent that they acquire the same equipment, or conflict.

You have also asked for my general comments on the interaction between state and federal law and the potential for problems for the commercial fishing fleet. The only potential problem is one that the preemption doctrine solves. That is, with respect to a category of equipment required by both state and federal law for the same vessel, but for which equipment different specifications are required under the respective laws, the federal law would govern. That may create some confusion for vessel operators. The confusion could be minimized by providing in CSSB 455 (L&C) that compliance with applicable federal law requiring the same equipment on a vessel exempts the vessel from the requirements of state law as to that equipment.

One final comment. I noted when reviewing the federal legislation that we may have overlooked a necessary ingredient in CSSB 455 (L&C). Although we do impose a duty, and provide for a penalty, we don't address the question of responsibility. Perhaps you should consider an amendment that would make the vessel operator and/or owner responsible for compliance. Compare secs. 4504 and 4507(a) of H.R. 1841.

If I can be of further assistance, please advise.

DRD:bb  
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# THE MISSION OF PEGGY BARRY

by Ivy Harper

Letters have always been a lifeline. For Alaskan authorities in the summer of 1985, a soggy but still legible letter in the jeans pocket of a body found floating near Kodiak Island enabled them to identify the fair-haired youth.

For Robert and Peggy Barry, letters that summer from their 20-year-old son Peter provided a glimpse of Alaska through his observing eyes. Throughout his first trip to the John Muir coast, Peter Barry sent home stories about the soaring scenery, the Kodiak bears, camping on the beach, clam digging, hosing the "slime line" at a fish processing plant and finally, tragically, working the deck on a salmon boat. And, despite death, those letters provide his family with a lasting presence and treasured memories of the introspective Yale anthropology student.

The discovery of Peter Barry's body on August 20, 1985, was the first indication local fishermen had that all was not well with the Western Sea, the boat Barry had boarded five days earlier with its captain and four other crewmen. Coast Guard employees immediately began search and rescue operations in a fruitless effort to locate the overdue ship and any survivors.

Meanwhile, Robert and Peggy Barry received the telephone call that every parent fervently hopes never to receive—the one that regretfully informs them. But in this case, Alaskan state officials, Coast Guard authorities and resident fishermen were not merely messengers bearing the grievous news of Peter Barry's accident; they were willing, forthright critics of the country's commercial fishing industry. What Robert learned during his two-day stay in Alaska to claim the body of his middle child forever altered the Barrys' lives and plunged them into the maze-like world of fishing vessel safety and insurance.

Robert learned that his son unsuspect-



Pam Glass

**Commercial fishing has by far the poorest safety record of any American industry and many are "disgusted by the lack of regulation."**

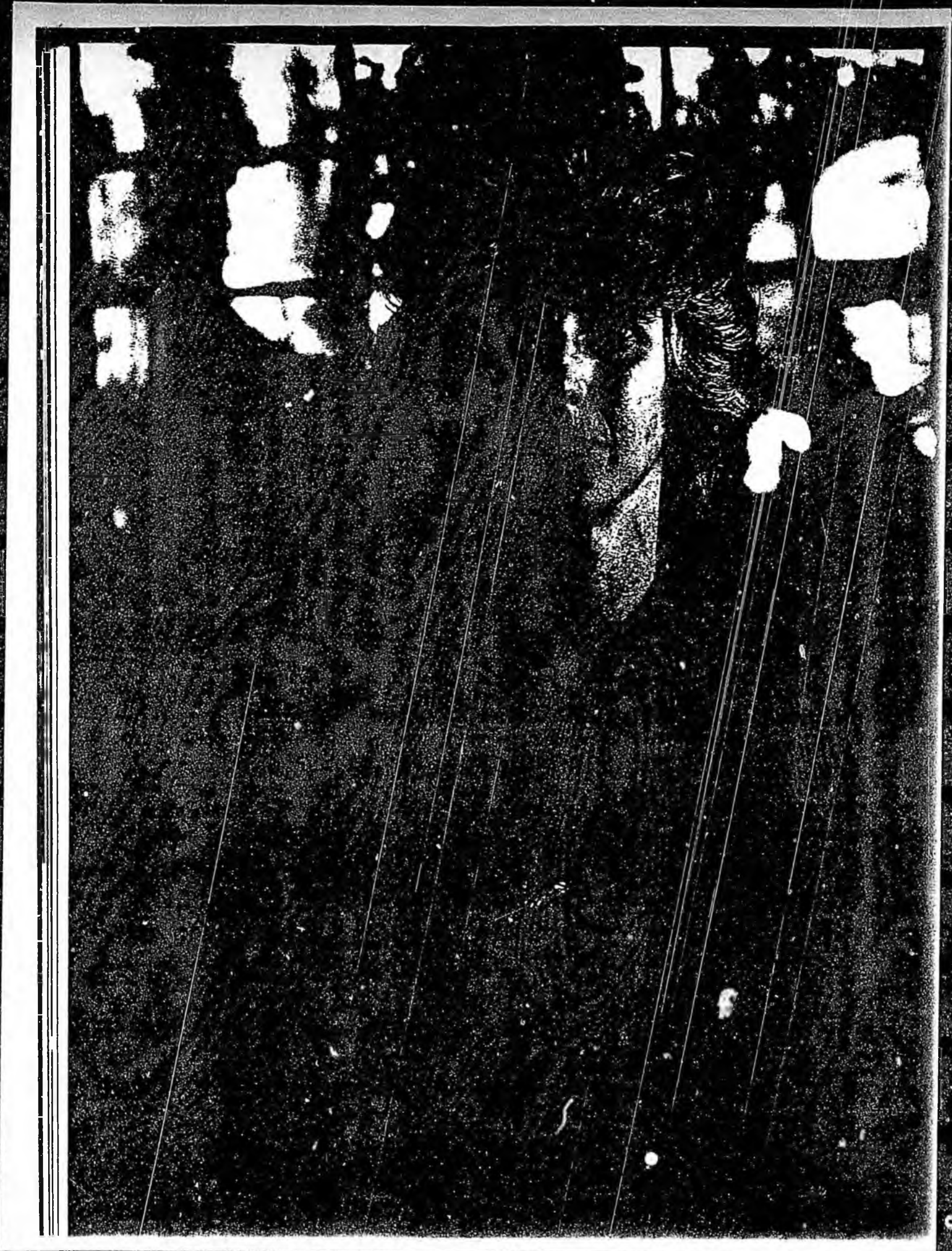
ingly boarded a deathtrap—an unstable vessel with rotten planking that had never been inspected and did not carry lifeboats or rafts, survival suits or an emergency position indicator radio beacon (EPIRB). And he learned that had the owner of the 70-year-old wooden purse seiner lived, he wouldn't have broken a single law.

As implausible as that sounded to them at the time, the Barrys said, they were told that this nation's 33,000 uninspected commercial fishing vessels are virtually regulation-free. Vessel owners are not required to provide basic safety and survival equipment, boats need not be inspected, stability checks are voluntary and neither training for crew nor licensing for skippers is required.

"We were stunned, shocked," Peggy said. "We absolutely couldn't believe what we were hearing."

It got worse. They discovered that commercial fishing has by far the poorest safety record of any American industry and that many locals were also "disgusted by the lack of regulation"—information that especially haunted the Barrys in those first few months after their son died. If art imitated life, Willie would wail "Mama don't let your babies grow up to be fishermen," because the accidental death rate for cowboys of the sea is seven times the industrial average. Some 250 boats and an average of 75 lives are lost every year in vessel flooding, capsizing, fire or explosion disasters. And yet this is an industry that, to this day, puts the final responsibility for safety and survival on individual crew members.

*National Fisherman* magazine once editorialized that crewmen should provide their own immersion suits (they cost about \$300) or "switch to another boat." The editorial drew an angry response from the director of the U.S. Marine Safety Association: "What about a quality life raft (\$3,350) that is properly



installed and serviced or an EPIRB. (\$375) with an up-to-date battery? Should a crewman provide these also? We think not. Crewmen—fishermen—should not have to worry about these items any more than a passenger on a liner or ferry should worry about whether there are adequate life jackets. Those who go to sea to fish should only worry about whether they can do an already difficult job—catching fish."

The issue of voluntary versus mandatory safety regulations was being debated with little urgency or intensity when the Barrys entered the vessel safety picture in the fall of 1985. Overwhelmed by their loss and the feeling that their son was a victim not of the sea but of negligence, the Barrys vowed to push for reform. They joined a passionate, but geographically scattered, group of marine safety advocates whose crusade for change had been building momentum, but whose efforts had been stymied by, among other factors, lack of a persistent voice in Washington, D.C. The Barrys, Washington residents, became that voice. And Peggy, however emotionally unprepared, became spokesman by default when her husband left for Sweden in the fall of 1985 to head the U.S. delegation to the Conference on Disarmament in Europe.

She remained in the United States, immersing herself in marine safety issues, and expanded her role as mother, homemaker and part-time volunteer teacher to include outspoken, well-versed marine safety advocate. As her understanding of the issue deepened, so did her commitment. She collected newspaper clippings, pored over statistics, contacted legislators, met with editorial writers, attended hearings, drafted testimony and dissected opposing testimony. Slowly, Peggy transformed two rooms in her four-story northwest Washington home into a national clearinghouse for other relatives of victims at sea—Pete Zimny, Robert Darling, Leland and June Welsh, Rosemary and Roderick Hofer, Maxine and Don Klingenberg and Mary Finch Hoyt (press secretary to Rosalyn Carter)—parents who shared a common anguish and sense of frustration at the appalling safety record of an industry that had claimed the lives of people they loved.

And now, two and a half years after her involvement began, Peggy is roundly credited as the engine that has propelled safety reform legislation to its present position, which is miles farther than it has ever been before. As this issue of *American Politics* goes to press, unprecedented and historic fishing vessel safety

and insurance legislation is moving swiftly (by Hill standards) through Congress.

## National Fisherman once editorialized that crewmen should provide their own \$300 immersion suits or "switch to another boat."

and some version of several bills under consideration is expected to pass both houses and become law this spring.

The Commercial Fishing Industry Vessel Safety and Compensation Act, introduced by Rep. Gerry Studds (D-Mass.), establishes requirements for basic safety equipment and provides guidelines for timely compensation for temporary injuries incurred by seamen on fishing industry vessels. Similar legislation has been introduced in the Senate by Sen. John Chafee (R-R.I.). Ardent safety crusaders, while supportive of the Studds-Chafee legislation, prefer HR 1836, a bill introduced by Rep. Mike Lowry (D-Wash.), which addresses safety alone. In addition to mandating safety equipment, it requires crew licensing and Coast Guard inspection of vessels. But Lowry's bill is unlikely to move because it has a price tag and doesn't deal with insurance. (The industry has been plagued for years by unaffordable and unavailable marine insurance. Throughout the last two decades, concern for safety has been systematically eclipsed by industry concern about insurance premiums and caps on compensation.)

Not everyone is optimistic that safety legislation is imminent. Richard Hiscock, an independent marine safety expert and advocate who operates out of his home in North Chatham, Mass., said, "I won't believe legislation until I see President Reagan sign the bill."

Hiscock's skepticism is understandable. Historical fishing vessel owners have virulently opposed Government regulation on the grounds that Government intervention will subject them to rules drafted by bureaucrats "who don't

know the pointy end from the fat end of a boat." A fiercely independent, rugged, often well-off group of entrepreneurs, they dismiss legislators and safety advocates as outsiders unable to comprehend what happens on a fishing boat who will submarine the fishing industry with costly, ignorant legislation. And an unspoken fatalism, a sense that "when your number's up, it's up," pervades the brotherhood—all the more reason to resist legislation.

"The fishing industry has traditionally lobbied that regulation would put them out of business," said John Sabella, director of the North Pacific Fishing Vessel Owners Association's fishing vessel safety program. "I'm not trying to argue the logic of this, I'm simply telling you that the historical record [shows] Congress has always bought the argument that it would be a financial penalty that the industry couldn't bear as well as the idea that these guys are buying into a share of the risk as well as the reward. Fishermen are joint-venture partners going for a share of the catch, not employer-employee. And for a long time, Congress generally regarded them as capable enough seamen, because fishing is a profession that's traditionally been handed down from father to son, that they could cope with the normal hazards they face." normal hazards they face."

Safety advocates generally agree with that overview, but argue that many fisheries (the Bering Sea, for example) have expanded rapidly and that the traditional image of the pop-and-sons operation no longer holds true across the board. "Congress's resistance [to regulating the fishing industry] stems from their collective desire to cling to one last frontier in America," said Hiscock, explaining why Congress has allowed the industry to go unregulated despite its disastrous safety record. "A great romance about fisheries exists, very similar to farming but even more intense. I know coastal representatives have been clinging to that sentiment for years. Unfortunately, vessel owners are businessmen who need to be regulated or they have a tendency to run amok."

And while there is no one voice that speaks for the industry, it is generally agreed that lobbyists for vessel owners and fish processors have been extremely effective at the Congressional committee level in maintaining the status quo. And as fishing methods and processing operations have become increasingly sophisticated, so too have industry representatives. Not only does the commercial fishing industry belong to and operate general trade associations and foundations, it runs species-specific ones that protect salmon, shrimp and tuna fishing

interests. Until recently, these lobbyists battled any kind of mandatory regulation.

That Peggy Barry managed, in just over two years, and on a personal outlay of \$1,000 for postage and photocopying costs, to focus so much attention on the safety issue that even vessel owners are resigned to the inevitability of safety legislation, is nothing short of remarkable.

The Barrys were unaware when they began their quest for mandatory safety legislation that they were going up against a phalanx of industry members wary of an outsider pushing a safety agenda. "We have been referred to as outsiders," said Peggy Barry. "The *Alaska Fishermen's Journal* turned that into an advantage, suggesting that the industry needed 'outsiders' to point out their faults." (Odd as it may sound, considering the number of marine fatalities, Peggy was the first relative of a victim-at-sea ever to agitate and become a household name within the close-knit fishing industry, an industry dominated by men, many of whom are described by one Hill aide as "supremely macho." And so, while Peggy is publicly praised by some in the industry, there is a strong undercurrent of resentment toward her among many who maintain that Robert Barry's credentials and corrections (he is the deputy director of Voice of America and served as U.S. Ambassador to Bulgaria from 1981 to 1984) are the real reason for the Barrys' inroads.

"I never have and never will use my official position in the Government in any capacity on this issue," said Robert Barry. "When I go and meet with anybody, I do it as a private citizen on my own time. Besides, Peggy has, for the most part, met with the congressmen and senators and others, and they certainly don't react to her because of my position. Whatever influence we have is not based on who we are, but on what we have to say."

"Fishermen have been dying for years, then one Yalie dies and the whole world seems to get up in arms," said Sabella. "Fishermen die far away in remote places and they're never seen again and the public basically doesn't pay much attention. Peter Barry happened to be a very publicized case, and his parents happened to be extremely influential people. The sad stories of the Barrys and Peter Zimny and a few other of these people have been touted in the media ad nauseum, and yet there are people that have been dying up here. When the A-boats went down that took 14 people, most of whom were related, from the small community of Anacortes. There are

enormous tragedies in this industry, and all of us regret them greatly and work

## Barry learned during his stay in Alaska to claim the body, that his son had unsuspectingly boarded a deathtrap—an unstable vessel with rotten planking that had never been inspected and did not carry lifeboats.

very hard to insure that they don't happen."

Sabella is widely recognized for his safety program, a voluntary training course funded in part by the National Marine Fisheries Service. He calls his work the most extensive effort to control casualties ever undertaken in the U.S. commercial fishing industry and says the program has essentially become a condition of employment along the Seattle waterfront.

Peggy Barry praises Sabella's program, but she maintains that parts of it are too costly for the average vessel owner. And because it is voluntary, it has no impact on operators who are not conscientious enough to participate if not required to by law. "It's a splendid program, but it serves the elite of the industry. To say that it completely covers all the fishing vessels on the Seattle waterfront simply is not true. The Western Sea was based out of Seattle."

She adds that Sabella once told her, "Your son never would have gotten a job around here." She responded that she wished that sort of exclusivity had prevented her son from being hired in Alaska. The fact remains, she says, that 15,000 college students just like Peter, naive about the dangers and difficulties of commercial fishing, migrate to Alaska

every summer.

"Young people respond to such ads as that which appeared in the February 1986 issue of *Newsweek*, which virtually promised a summer's income of \$5,000 to \$7,000," she said in testimony before Congress. She also cites the cover of a popular outdoors magazine that dazzled readers with the claim that they could earn \$8,000 an hour fishing in Alaska.

Earl Comstock, fisheries aide to Sen. Ted Stevens (R-Alaska), says it is unfair to accuse the fishing industry of luring college students to Alaska through hyped-up advertisements. "I'm from the West Coast and I had to do quite a bit of checking to find out how you go about getting a deck job on a fishing boat," Comstock said.

And Sabella argues that no competent vessel owner will take on a college student as a crew member. Talking about Alaska, Sabella said: "A lot of the college kids work in the processing plants, but getting a deck job on a fishing boat is something guys spend years trying to do. College kids go to Alaska because it's a great romance and they wind up working the slime line on a fish processor and decide once is enough, so most of them don't come back. A salmon seiner can gross a million bucks a year and the crew makes real good money... on a high line boat. Jobs on those boats are hard to come by and few between.

"The reason he (Peter Barry) got a job on a bum boat was because he didn't know what he was doing. College students don't just stroll out here for the summertime and get a high-paying job on a good boat. Fishing is a real career—this is serious business. That guy that drove the Western Sea probably couldn't hire anybody else but a college kid."

Asked if college students offered a deck job should automatically respond, "I wouldn't want to join any crew that would have me for a member," Sabella said. "Probably."

"The root of the problem of fishing vessel safety is human error," Sabella stresses. "Today's fishing vessels are better built and equipped than they ever have been historically. And yet no vessel is ever safe from the threat of human mistake. A lot of the critics of the fishing industry are parlor people who simply do not realize that making a living at sea is dangerous no matter how you cut it."

Sabella was correct in his assessment of the captain of the Western Sea. As the Barrys discovered later, the crewman Peter Barry replaced quit because he was nervous about the ship's seaworthiness. Too inexperienced to be

suspicious. Peter only felt lucky that a deck job had opened up. After earning next to nothing digging for clams and leaving the cannery where he had worked earlier rather than cross a picket line, he was eager to land a job where he might earn good money while experiencing the beauty and excitement of a state he had studied for years. The Western Sea seemed like the fulfillment of a promise.

But knowing that the Western Sea was not a typical "good" boat is small solace to the Barrys, because regardless of how hard their son had to look to find his deck job and how many warning signs he innocently overlooked, he found a job that killed him. And the Barrys contend that, naive or not, college student or career fisherman, all workers should be protected, to the extent humanly possible, from a hazardous working environment.

A National Transportation Safety Board study issued in September strongly echoed the Barrys' position: "In many casualties, the absence of basic safety equipment drastically narrowed the chances that the captain and the crew members would survive in the harsh sea environment." In a scathing indictment of the commercial fishing industry, the N.T.S.B. called for sweeping regulation of fishing vessels and fishermen, in many cases proposing rules far stricter than those incorporated in pending Congressional legislation. "The use of voluntary training and manuals to improve the poor safety record in the industry was started at least as early as 1968, but has not been successful," the Board concluded.

The Barrys, deeply troubled to hear their son typecast pejoratively as a "Yalie," have let the taunts slide. Early on, as they realized how intense the opposition to their efforts would be, they decided to concentrate strictly on the cause.

But, if they were to be labeled as well-connected outsiders, the Barrys would not allow vessel owners the luxury of being insiders and of representing, as they so often claimed, the "man on the boat." In testimony before the Senate Commerce Committee last December, Peggy wrote: "In three years of hearings on fishing vessel safety and insurance there has been a great deal of testimony, much of it repetitious, from lobbyists and industry groups. What is missing is the testimony of the men on the boats, the crewmen ... who risk their lives and health with every voyage. We have learned that frank testimony of this sort is hard to come by, because the crewman who calls for new mandatory safety requirements is likely to be, at best, unpopular in the industry and, at worst, unemployable. We [the Barrys] have been con-

tacted by a number of professional fishermen who want to tell their story.

## Fishing vessel owners have virulently opposed regulations drafted by bureaucrats "who don't know the pointy end from the fat end of a boat."

but fear being blackballed if they do so."

In her testimony, Peggy's forceful public persona surges to the fore, punctuated by a lancet-like delivery that has moved more than a handful of House and Senate members. But privately, she still trembles when she talks about Peter's death, struggling to finish sentences, occasionally trailing off. And both Peggy and Robert, while aware that they are the point people for the issue, shy away from credit, stressing work done by other victims' relatives and rerouting the conversation back to the issues involved in the safety campaign.

But Capitol Hill aides working on the issue unanimously recognize the Barrys as catalysts for the movement. "There is no question that, with respect to the safety issue, the Barrys have been and continue to be the carriers of the flag," said Jeff Pike, fisheries aide to Studds. Echoing that sentiment, a top Senate commerce aide said, "It is fair to say that the safety issue has moved because of the force and sheer doggedness of Peggy Barry."

Hiscock is more blunt. "I always suspected it would take the death of the right-slash-wrong person before Congress would seriously act on this issue."

The Barrys' work has raised the consciousness of representatives of inland districts, but more important, they have had a profound impact on legislators from fishing districts. Ted Stevens is one of them.

"I think if you look at people like Senator Stevens, it is clear that he is now more interested in the safety aspect than he is in the insurance aspect—a complete turnaround from his position two years

ago," Robert Barry said. "Before 1985, Congressional hearings were held on fishing vessel safety and insurance, but the whole thrust of the thing was vessel insurance. That's what the committee was interested in, and that's what the industry was interested in. Then, the focus began to change, the safety part began to be more important."

So much so, the Barrys believe, that even if an impasse develops among negotiators hammering out the insurance parts of the legislation, a safety-only bill will sail through Congress. But the Barrys, like Hiscock, are not completely confident that their efforts won't be thwarted at the last minute. Last spring, a safety and insurance bill was shelved when the Association of Trial Lawyers of America successfully opposed a cap on liability claims. "I think that there is maybe a 50-50 chance that the part of the bill that deals with compensation will not work out [and] there won't be a compromise that's findable between the trial lawyers and the fishing industry," Robert says of this year's bill.

Although the controversial cap has been removed from the current bill, Peggy said a case could be made that "some of the trial lawyers and some in the fishing industry, their main goal is to see that no safety bill passes. One way of accomplishing that is to link the two and make sure they never get separated."

But even without the insurance provision, the bill may pass strictly as safety legislation. "I've heard from everybody, and people are generally reluctant to say this, but they've all said, Well, if there's no way of finding something that will cover the insurance problem, then something's going to be done about safety without the insurance provisions," said Robert hopefully.

Safety should not be held hostage to insurance, Peggy added, pointing out that the Administration, the Congress and the industry itself are on record in favor of mandatory safety equipment. (The Coast Guard recently reversed its opposition to mandatory safety equipment.) That may make it difficult to kill the safety parts of the legislation simply because separate insurance problems cannot be resolved. And not to pass a bill, insurance notwithstanding, is, the Barrys say, "to condemn people to death."

Listen to Peggy Barry describe the last three years of her life, and the stories of John Walsh and Candy Lightner come to mind. What those parents-turned-activists are to missing children and Mothers Against Drunk Driving, Peggy Barry is to fishing vessel safety.

The bereaved parent as catalyst for ma-

for legislation—a painfully familiar theme throughout the 1980s. And now the decade closes with yet another movement galvanized by the upset of life's natural order—a child predeceasing his parents.

Peggy knows she can never bring her son back. She knows that the light feeling parents have when all their children are alive and healthy will never return. She also knows that more fishermen will return safely to their shores because of her work.

She reads from a letter she received from an American couple now living in Australia whose 29-year-old son drowned when the *Uyak II*, a commercial fishing vessel, capsized in a calm sea in one minute because of a flooded lazaret. "If an experienced fisherman like Greg can get caught by lack of knowledge of a boat's reliability, what possible chance do these young college students who flock by the thousands to work in the summer have? Some have no idea whatsoever what they are doing, what the job description is, what basic safety rules to follow, what survival gear is needed or how to use it, nor any idea of what to do in case of an accident. No other industry in the United States could get away with this type of neglect for their employees' welfare."

Letters are a lifeline, but now the lifeline stretches between parents hoping somehow to make sense of tragedy and to channel their grief into constructive change. "We've asked only for the safest possible workplace and that the man in the boat be adequately prepared," Peggy said. "This is all we ask for, not miracles." ●

*Ivy Harper, a Washington writer, worked for former Rep. John J. Cavanaugh and for the United States Tuna Foundation. This is her second contribution to American Politics.*

continued from page 37

Unfortunately, the Democrats have been able to convince a lot of people over the years that they are the only ones who really give a damn about minorities. They spend a lot of time talking about the problems that affect minorities most acutely. And, most important, they spend a lot of time talking to minorities. If Republicans hope to wean blacks, Hispanics and other traditional Democrats away, we're going to have to begin doing the same thing. It's going to take more than talking, though, to produce some real gains for those minorities. It remains to be seen whether either party is up to that task. ●

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## Does the Deficit Matter?

### BALANCED BUDGETS AND AMERICAN POLITICS

By JAMES D. SAVAGE

"Likely to be considered a classic from the moment it is published."  
—Stanley E. Collender, Touche Ross & Co.

Since the stock market crash in October, reducing the federal government's budget deficit has become a top priority among our nation's leaders. A topical issue but hardly a new one, balancing the federal budget has been a perennial source of conflict in American political life. James D. Savage here explores the causes and development of the nation's preoccupation with this issue, arguing that the American fascination with the idea of balancing the federal budget is deeply rooted and reflects more than a contemporary concern about interest rates, inflation, depression, or even the outcome of the ongoing budget debates. \$27.95

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## Welcome to ComFish Alaska

Putting the finishing touches on Joycraft's booth at ComFish Thursday were, left to right, Bill Moyers, Mary Jane and Ted Rogers. The display is one of more than 80 at the Alaska Transfer and Storage building at 111 Bartel Avenue. ComFish is open until 7 p.m. tonight. It reopens at 10 a.m. Saturday and at noon Sunday. Please see Page 12 for a list of ComFish seminars this weekend. (Pat Branson photo)



## George W missing

A life raft and survival suit found near Karluk during a search for the FV George W. had not been identified at noon today.

The search by Coast Guard and Alaska State Troopers aircraft and an AST patrol vessel was begun this morning.

The 56-foot boat with three people aboard was reported missing yesterday after it failed to return from a fishing trip as scheduled on Wednesday.

According to information the Coast Guard has received the George W. was last seen in Uyak Bay Monday and radio transmissions indicated it was anchored off Malina Point Tuesday evening.

The boat is owned by Jim Miller of Kodiak.

Rain likely Friday night with northwest winds at 10 mph, and a low near 36. Saturday, mostly cloudy skies with periods of rain, light northwest winds, and a high around 41. Outlook for Sunday: mostly sunny, with light winds and a high near 40. Record high for Friday's date is 50, set in 1935; record low is 12, set in 1973. Sunset at 7:20 Friday night; sunrise at 7:15 Saturday morning. Daylight Friday: 12 hours, 2 minutes.



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KODIAK, ALASKA

20 PAGES

35 CENTS

## The survival factor

### There are no also-rans in the survival business

By IRVING WARNER  
Special to the Mirror  
Survival is a matter of staying alive. You do, or you don't. There are no also-rans in the deadly serious business of surviving.

Thousands of boats pass through Kodiak waters, and hundreds are permanently homeported here. While sailing in the waters around the island, sometimes things go wrong. What was meant to keep water out, does not, and the captain and crew are suddenly "in the drink". Then it's a matter of survival until they are rescued.

One of the principal pieces of gear used in these situations is aptly called the survival suit.

The survival suit, in the decade and a half since it became popular, has built itself a strong "rep". Made of neoprene rubber, they have come to be thought of as portable islands of invulnerability against even the coldest waters. Often they are marketed as such.

But marine survival is much more than having a survival suit.

"I've picked up so many dead people in survival suits," says Coast Guard Search and Rescue pilot Lt. Commander Tom Walters. "And I'm not saying anything bad about survival suits. But the fact is, survival is a four part situation."

Talking to Walters about survival at sea is an education. "First," says Walters, "there is

good education before even leaving the dock. People - ALL people - must know what to do when there's trouble."

"Secondly," he continues. "Is to have a good survival suit. One that fits well, and you've gotten into before leaving port. Thirdly, a life raft that you know how to deploy and get

into - in a hurry. And lastly, an EPIRB (Emergency Position Indicating Radio Beacon), one that you know how to activate quickly."

Walters nods as he recites each of these four necessary survival ingredients. His last point makes it obvious how important this recipe is. "I have

never picked up anybody dead who had all four of those things going for them."

First, let's examine the subject of survival suits.

Local survival expert Dave Watkins can talk about the subject for hours. Presently the operator of Northstar Survival, Watkins is a retired Coast Guardsman and has been a survival instructor for many years. Survival in coastal Alaska is his specialty. After talking with Dave for two minutes, one realizes it's more a business with him - it's a cause. And a good



**NEVER OFF DUTY.** Tom Walters discusses a search and rescue operation from his home. Marine safety and survival have become a major concern with him after 16 years as a search and rescue helicopter pilot.

Tom Walters:

'Survival is

4-part situation'

one.

"The very basic design of survival suits hasn't changed a heck of a lot in the last ten years," says Watkins. "Basically, if you're going to buy a (survival) suit, you MUST try it on before buying it."

Though basic characteristics have remained constant, there are differences between brands - some of them not so good. A few makes have been approved by the Coast Guard, others have not. What are some bad points to look out for? "Well," explains (See "Watkins," Page 8)

## Kodiak still considered for Navy

By KAREN DURR  
Staff Writer

Although some Coast Guard communities may wait years before the Navy picks them as a homeport, Sen. Ted Stevens said he thinks Kodiak is still in consideration for early selection.

Earlier this month, during a monthly "Capitol Exchange" teleconference with Alaska high school students, Stevens said Sitka would probably be selected in a second round of homeporting.

Stevens told Sitka high school senior Mark Loo, "Your port will be reviewed in the first go-round but, it may well be they will come up and disagree with me, but in my opinion, there are other ports in Alaska that are closer to the areas of patrol than you are and if we're going to make our point that we're going to save money by homeporting these vessels near the area where they're supposed to patrol then I think we're going to have to face up to the fact that your area will probably come in in the second round."

"I doubt seriously that the Navy is going to come into a Coast Guard town until it really starts overflowing other facilities."

But Kodiak continues to be considered, he told *The Kodiak Daily Mirror* yesterday.

He explained, "I said, I don't think they would take out the Coast Guard in order to give the Navy a base that's being cur-

(See "Kodiak," Page 9)

# Dave Watkins: 'Remember, you'll have clothes on under the suit,'

(Continued from Page 1) plains Watkins, "To begin with size. A good sized man, let's say around six foot or over needs a jumbo, and too often they're sold a regular sized suit. A person has to remember, that they'll have clothes on under the suit." Watkins explains further that a smaller person, a woman or child, needs a smaller suit. Too large of a suit allows excessive water leakage, and this can be fatal - fast.

Some suits are simply made of thicker material than others, especially around heat loss areas - suit thickness may range anywhere from 1/4 to 5/16th of an inch. And that is a marked difference when it comes to survival in frigid waters. Of course the thicker stouter suits cost more.

Another important aspect of survival suits is the rigging. "They should have a heavy zipper with a toggle that you can work with a mittened hand," warns Watkins. "If the zipper doesn't have a toggle on it, put one on. A zipper is of no use if you can't work it with a mittened hand."

Yet, a good survival suit must have a "high rider" on it - something that keeps the user's head out of the water. Lacking

survival suits are stitched seams rather than seams that are ONLY glued. Also, the palms of mittens and the soles of the feet must have material that'll make it possible to grip things and walk on slippery decks. In some of the newer models, each mitten can be unzipped for better dexterity.

Lastly, a survival suit should have a whistle and strobe light attached to the outside. At night, the strobe would make it possible for potential rescuers to see the user.

But, the last ingredient is by far the most important.

"My advice is to get into the suit under timed conditions," Watkins advises suit owners that this isn't easy if you have never actually been in a survival suit. In other words, if you have a survival suit and have never gotten into it and jumped in the water, DO IT!

EPIRBs are the next essential ingredient for survival. What is a good EPIRB? Basically, one that will work when you need it, and one that allows the user to activate it easily and quickly. Recent "Wayward Wind" survivors Debra Nielsen and Jay Rasmussen had an EPIRB with them during that horrible night of January 18, 1988. But like

aster. "At that time ships began meeting SOLA (Safety of Life At Sea) regulations."

In the cold water of Alaska, rafts face problem of heat retention and special ballasting for heavy seas. "Of course, early models had no canopy or ballast, and this is a no/no," said Watkins. "The Elliot (inflatable raft) became the first conventional inflatable emergency raft. It had little bags on the bottom for ballast and a drogue chute (sea anchor), plus a canopy."

But since the Elliot, inflatable raft technology has improved, especially the ballast systems - preventing the raft from tumbling in heavy seas. But in any event, all boats should have BOTH emergency rafts and survival suits. "The survival suit just prolongs the inevitable," explains Tom Walters. "Sooner or later, death will result from hypothermia or surface drowning."

Once in the raft, the shipwreck victim increases their chances immensely - especially if they are BOTH in a survival suit and in the raft. Both Watkins and Walters advise that mariners must regularly check out their raft launching systems, both manual and automatic. Take nothing for granted.

Lastly is the matter of education - though it comes last in the overall four-part recipe for survival, it must be THE FIRST.

Both Watkins and Walters urge thorough educational program for survival in marine communities. Explains Walters, "There is a strange psychological trick regarding the way people deal with the possibility of mishaps and disasters. People think, 'Well, it can't happen to me. I'm good. I know what I'm doing.' But the fact is, it does. You've got to be ready for it."

Part of being a professional fisherman and mariner is having good survival equipment and

knowing how to maintain it, then training your crew how to deploy and use it.

In Kodiak, an informal committee has been formed to deal with factors of marine safety and survival. ("We aren't far enough along to be Ad Hoc as yet," says Walters) This committee has come up with four preliminary opinions.

1) Every fishing vessel over a certain tonnage should have a life raft with an EPIRB. 2) Every person to have a survival suit with a strobe, float collar and personal EPIRB. 3) Every vessel equipped with a Class A EPIRB. 4) That the Governor appoint a task force for an education program, and a marine

survival research and development program.

Because of the advocacy of local concerned citizens, bills concerning marine survival have been introduced in the State House and Senate by Senator Zharoff and Representative Davidson. These bills address matters of compulsory equipment on Alaska fishing boats.

Survival must be the responsibility of each person who goes to sea. Survival isn't an accident and it isn't something that must be eventually faced by someone else. Ships and boats are designed well, but mother nature can sometimes change that fast. Sometimes too fast.

Experience has demonstrated that you've got to be ready to survive.



**FOR BETTER GRIP.** The bottoms of this survival suit's feet are equipped with a heavy tread for better traction.

this, there's trouble. Even death.

Rick Laws' experience in April of 1980 is a case in point for a durable and adequate high-rider. "The 27 hours I spent in the sea were a living hell. The tube that blows the flotation pillow (his suit's high-rider) came off in my hand. If I lay back my head would slip under the water."

Though Laws survived because he found a log to keep his head out of the water, two of his shipmates did not. One had a survival suit on, the other did not.

"The inflation valve for the high-rider," continued Watkins, "Absolutely must be manageable with a mittened hand. That's literally a life-saver."

Drowning in a survival suit is common. "The term for drowning in a survival suit is called surface drowning," said Tom Walters. "In heavy seas, mortality results from the person being tossed about inside the wave, much like being in a washing machine." Clearly, the high-rider device will help the user survive this tossing about in heavy seas.

Equally important to the high-rider is the flap that covers the face. "Often this flap is secured poorly, it rips loose and there's water leakage," warns Dave Watkins.

Other points to watch for in

others before them, Debra found that switching on the EPIRB with a hand enclosed in a bulky survival suit an agonizing, time consuming problem. The account of that night should serve as a clear warning.

"Once in the water, Debra grabbed a line. She had water coming into her suit. As Jay held her, she tried desperately to find the switch on the locator device, but her hand would get numb and she would have to pull it back into her suit. After... an hour, she finally was able to find the switch and turn it on."

A recent controversy concerning personal and ship EPIRBs is now being investigated by Watkins and other interested members of the fishing community. Simply put, it's a matter of terminology. Some EPIRBs are being sold as WATERPROOF, but are really SFLASHPROOF. In other words, when submerged they leak and are rendered useless.

So, anyone buying an EPIRB should check it out closely!!

Now for emergency rafts aboard boats and ships.

"Many people are completely unfamiliar with the release system on their emergency rafts," said Watkins. He further explained that raft technology extends back to the "Titanic" dis-



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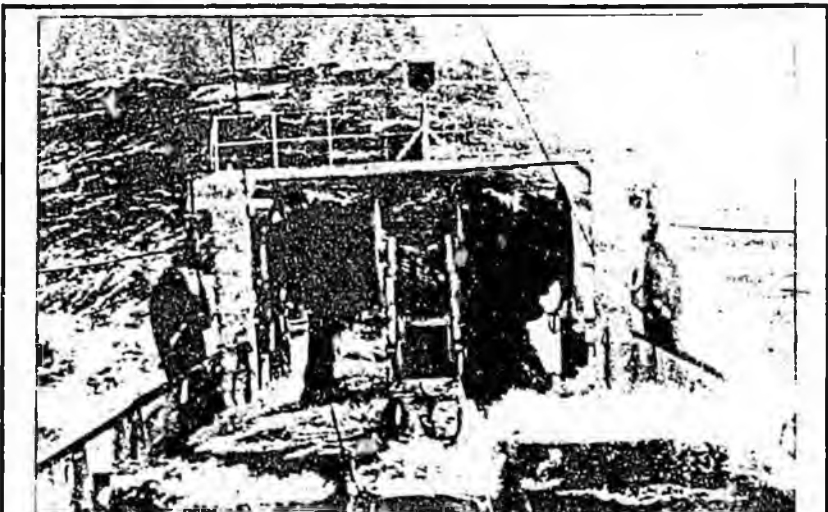
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**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Office of the Governor  
 Title: "An Act relating to safety equipment for commercial fishing vessels..." BRU: Executive Operations  
 Sponsor: Rep. Davidson Components: Executive Office  
 Requestor: Rep. Davidson

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

| OPERATING              | FY 88 | FY 89       | FY 90 | FY 91 | FY 92 | FY 93 |
|------------------------|-------|-------------|-------|-------|-------|-------|
| PERSONAL SERVICES      |       |             |       |       |       |       |
| TRAVEL                 |       | 16.8        |       |       |       |       |
| CONTRACTUAL            |       | 10.3        |       |       |       |       |
| SUPPLIES               |       | .6          |       |       |       |       |
| EQUIPMENT              |       |             |       |       |       |       |
| LAND & STRUCTURES      |       |             |       |       |       |       |
| GRANTS, CLAIMS         |       |             |       |       |       |       |
| MISCELLANEOUS          |       |             |       |       |       |       |
| <b>TOTAL OPERATING</b> |       | <b>27.7</b> |       |       |       |       |
| <b>CAPITAL</b>         |       |             |       |       |       |       |
| <b>REVENUE</b>         |       |             |       |       |       |       |

**FUNDING: (Thousands of Dollars)**

|               |  |             |  |  |  |  |
|---------------|--|-------------|--|--|--|--|
| GENERAL FUND  |  | 27.7        |  |  |  |  |
| FEDERAL FUNDS |  |             |  |  |  |  |
| OTHER         |  |             |  |  |  |  |
| <b>TOTAL</b>  |  | <b>27.7</b> |  |  |  |  |

**POSITIONS:**

|           |  |     |  |  |  |  |
|-----------|--|-----|--|--|--|--|
| FULL-TIME |  | -0- |  |  |  |  |
| PART-TIME |  | -0- |  |  |  |  |
| TEMPORARY |  | -0- |  |  |  |  |

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

Analysis is attached.

Prepared by: Michael A. Nizich, Director Phone: 465-3616  
 Division: Division of Administrative Services Date: 3/22/88  
 Approved by Commissioner: \_\_\_\_\_ Date: 3/22/88  
 Agency: Office of the Governor

**Distribution (by preparer):**

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OFFICE OF THE GOVERNOR

CONTINUATION OF FISCAL NOTE FOR HB 490

The Office of the Governor has been requested to prepare a fiscal note for a proposed amendment to House Bill 490, "An Act relating to safety equipment for commercial fishing vessels; and providing for an effective date."

It is the understanding of this department that the amendment would be identical to that proposed by the Senate for a companion bill, Senate Bill 455 [CSSB455(LC)], except that the Advisory Council established by this legislation would be established as an Interim Board as is described in AS 44.19.028.

The portion of the CSB455(LC) which describes the establishment and duties of the Fishing Vessel Safety Advisory Board reads as follows:

\* Sec. 2. ADVISORY COUNCIL ESTABLISHED; REPORT.

(a) There is established in the Office of the Governor the Fishing Vessel Safety Advisory Council. The council consists of at least seven members appointed by the governor. Members must be knowledgeable and experienced in the areas of commercial fishing vessels or vessel safety and life-saving methods and systems. At least one member shall represent each of the following:

- (1) the commercial fishing industry;
- (2) fishermen's associations;
- (3) the safety equipment industry, which includes businesses manufacturing, supplying, or servicing marine safety and life-saving equipment;
- (4) the marine insurance industry;
- (5) education; and
- (6) the United States Coast Guard.

(b) Council members are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(c) The purpose of the council is to suggest, review, and recommend legislation, regulations, and guidelines that address safety equipment requirements and educational programs that contribute to the successful application of safety and life-saving equipment on commercial fishing vessels.

(d) The council shall consider and review proposals relating to the development and implementation of educational programs at the high school and community college level to increase the level of awareness among participants and potential participants in the commercial fishing industry with

CONTINUATION OF FISCAL NOTE ANALYSIS  
FOR HB 490

respect to the necessity, application, and use of safety and life-saving equipment on commercial fishing vessels. The council shall evaluate the utility of involving fishermen's associations, processor associations, or other trade associations or industry groups in the implementation of proposed educational programs. The council shall also consider guidelines and requirements relating to the maintenance, servicing, and upgrading of safety and life-saving equipment and recommend a permanent method for the state to evaluate current and future needs relating to legislation, regulations, and guidelines for commercial fishing vessel safety.

(e) The council shall report its recommendations to the governor and the legislature by January 15, 1991.

(f) The council is terminated January 16, 1991.

(g) In this section "council" means the Fishing Vessel Safety Advisory Council established under (a) of this section.

If the council were changed to an Interim Council it would remain in existence only until the adjournment of the next regular or reconvened session of the legislature. This analysis assumes a start-up date of no earlier than July 1, 1988, with a termination date of approximately June 1, 1989.

This fiscal analysis estimates travel and per diem for seven council members from throughout Alaska. Air fares are based on current rates for travel from Juneau, Anchorage, Dillingham, Kodiak, Kenai, Sitka and Ketchikan to four 3-day meetings at various locations (Juneau, Anchorage, Dillingham and Kodiak). Total travel: 16.8.

Contractual expenses included in the estimate are meeting room rental, advertising, and clerical services for transcription of minutes and production of reports for four meetings, long distance telephone charges; printing and binding of the final report to the Governor and Legislature, and photocopies. Estimates are based on previous expenditures for similar councils, interim councils, and working groups. Total: 10.3.

Supplies estimates are for normal office supplies (paper, pens, folders, etc.) for use at council meetings and for council publications. Total: .6.