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STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CSHB 232

Revision Date: \_\_\_\_\_ Department Affected: Natural Resources  
 Title: Shipwrecks Act BRU: Land & Water Management  
 Components: Land & Water Management  
 Sponsor: Representative Jacko  
 Requestor: House Community & Regional Affairs COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: 0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Salli Slaughter Phone: 762-2692  
 Division: Land & Water Date: 19-Apr-91  
 Approved by Commissioner: Jay Gustafson / Harold Helze Date: 19-Apr-91  
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,  
& Impacted Agency(ies).

# HOUSE COMMITTEE REPORT

(7) Date Referred: April 10, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: 4-18-91

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HB 232

HOUSE BILL NO. 232 SUNKEN AND ABANDONED VESSELS

"An Act relating to sunken and abandoned vessels and cargo; and providing for an effective date."

RECOMMENDATIONS:  
 be replaced with CSHB 232 (CRA)  the same title  
 a new title  
 have attached amendments(s)  
 do pass  
 do not pass  
 no recommendations  
 individual recommendations  
 additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal impact \_\_\_\_\_  fiscal note(s) \_\_\_\_\_  
 zero fiscal note DEC, 1991  zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i> Mackie	X				
<i>[Signature]</i> Phillips	X				
<i>[Signature]</i> Betty Darr	X				
<i>[Signature]</i> Cheri Davis	✓				
<i>[Signature]</i> John C. Engler	✓				

*[Signature]* Mackie  
 \_\_\_\_\_  
 CHAIRMAN'S SIGNATURE

CS FOR HOUSE BILL NO. 232 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES JACKO, Navarre

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sunken and abandoned vessels and cargo; and providing for an  
2 effective date."

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

4 \* Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

5 (51) AS 29.35.085 (sunken or abandoned vessels).

6 \* Sec. 2. AS 29.35 is amended by adding a new section to read:

7 Sec. 29.35.085. SUNKEN OR ABANDONED VESSELS. A municipality shall regulate  
8 sunken or abandoned vessels or cargo of a vessel on municipal land in accordance with  
9 AS 30.30.025 - 30.30.099.

10 \* Sec. 3. AS 30.30 is amended by adding a new section to read:

11 Sec. 30.30.011. SINKING OF VESSEL OR CARGO PROHIBITED. (a) Except as  
12 provided in (b) of this section, a person may not intentionally sink, or cause to be sunk, a vessel  
13 or cargo of a vessel.

14 (b) This section does not apply to a vessel that is sunk with the prior approval under

1 AS 30.30.031(b) of the department or municipality having jurisdiction over the land or water  
2 where the vessel is sunk.

3 (c) A person who violates this section is guilty of a class A misdemeanor.

4 \* Sec. 4. AS 30.30 is amended by adding a new section to read:

5 Sec. 30.30.021. ABANDONMENT OF VESSEL OR CARGO PROHIBITED. (a) A  
6 person may not knowingly abandon, or cause to be abandoned, a vessel or cargo of a vessel.

7 (b) A person who violates this section is guilty of a class B misdemeanor.

8 \* Sec. 5. AS 30.30 is amended by adding a new section to read:

9 Sec. 30.30.025. ABANDONED VESSEL. For the purpose of AS 30.30.011 - 30.30.099,  
10 a vessel is abandoned if the vessel

11 (1) is

12 (A) unattended;

13 (B) sunk, aground, or in immediate danger of sinking or grounding; and

14 (C) obstructs navigation or endangers life, personal or real property, or  
15 natural resources of the state; or

16 (2) has been moored or otherwise left unattended in or on water of the state or  
17 on state or municipal land for more than 30 days without permission; and

18 (A) the vessel's certificate of number or marine document, if required, is  
19 expired and the registered owner cannot be contacted at the address listed in the vessel  
20 registration or marine document records of a state department or the United States Coast  
21 Guard;

22 (B) the last registered owner of record disclaims ownership and the name  
23 and address of the current owner cannot be determined;

24 (C) efforts to identify the vessel and determine the name and address of  
25 owner of the vessel are precluded because the vessel identification numbers and other  
26 means of identifying the vessel have been obliterated or removed; or

27 (D) the vessel is not registered or documented with a state or the United  
28 States Coast Guard and the name and address of the owner cannot not be determined.

29 \* Sec. 6. AS 30.30 is amended by adding new sections to read:

30 Sec. 30.30.031. REMOVAL OF SUNKEN OR ABANDONED VESSEL OR CARGO.

31 (a) Unless a person has permission from the department or a municipality to leave a vessel or

1 cargo of a vessel in place, a person who owned, controlled, or had custody of the vessel or the  
2 cargo at the time the vessel or the cargo was sunk or abandoned shall remove the vessel or cargo  
3 from the land or water within 30 days of the sinking or abandonment and restore state or  
4 municipal land or water damaged as a consequence of the sinking or abandonment to the same  
5 condition as the land or water was before the sinking or abandonment.

6 (b) The department or a municipality may grant permission to leave, permanently or  
7 temporarily, a sunken or abandoned vessel or cargo of a vessel in place. Permission to leave  
8 a sunken or abandoned vessel or cargo in place may be granted only in writing. The department  
9 or the municipality may condition temporary permission to leave a sunken or abandoned vessel  
10 or cargo in place upon

11 (1) a commitment to remove the vessel or cargo within a specified date and to  
12 restore state or municipal land or water damaged as a consequence of the sinking or  
13 abandonment; and

14 (2) posting of sufficient bond to ensure the removal of the vessel or cargo and  
15 the restoration of state or municipal land or water damaged as a consequence of the sinking or  
16 abandonment.

17 (c) Notwithstanding (b) of this section, only the Department of Environmental  
18 Conservation may grant permission to leave a hazardous substance on or within land or water  
19 in the state.

20 (d) A person who is granted permission under this section to leave a vessel or cargo of  
21 a vessel in place is not relieved of liability for damages incurred by a person, the state, or a  
22 municipality arising from the presence of the vessel or the cargo of a vessel on or within land  
23 or water in the state.

24 (e) The department or municipality that grants permission to leave a vessel or cargo of  
25 a vessel in place under this section is not liable for damages arising from the presence of the  
26 vessel or the cargo on or within land or water in the state.

27 (f) If a person fails to remove a vessel or cargo of a vessel under (a) of this section or  
28 within the time agreed to under (b) of this section, the department or municipality may remove,  
29 or cause to be removed, the vessel or cargo from the land or water of the state or the  
30 municipality and restore, or cause to be restored, state or municipal land or water damaged as  
31 a consequence of the sinking or abandonment. The department or the municipality may bring

1 an action in the superior court against a person who owned, controlled, or had custody of the  
2 vessel or the cargo at the time of sinking or abandonment to recover the costs of removing the  
3 vessel or cargo from the land or water of the state or municipality and of restoring state or  
4 municipal land or water damaged as a consequence of the sinking or abandonment. The costs  
5 incurred by the department or municipality to remove a vessel or cargo of a vessel and restore  
6 state or municipal land or water under this subsection are a lien against the vessel or cargo until  
7 a judgement of the superior court under this subsection is satisfied or the lien is released by the  
8 department or the municipality.

9 (g) If a vessel, subject to an action in the superior court under (f) of this section, is  
10 longer than 58 feet overall length, then in addition to the costs of removing the vessel and of  
11 restoring state or municipal land or water recovered under (b) of this section, the department or  
12 the municipality that brought the action shall receive twice the costs of removal and restoration  
13 as a civil penalty for the failure to remove the vessel.

14 (h) If the court finds it is proper and just, the insurer of a person who is subject to an  
15 action under this section for recovery of the cost of removing a vessel and of restoring state or  
16 municipal land or water and for a civil penalty, may be joined in the action to the extent that the  
17 contract of insurance between the person and the insurer includes coverage of the costs of  
18 removal, restoration, or civil penalties for the failure to remove a sunken or abandoned vessel or  
19 to restore state or municipal land or water damaged as a consequence of the sinking or  
20 abandonment.

21 (i) The department or municipality may assign its rights to recover costs of removing a  
22 sunken or abandoned vessel or cargo of a vessel and of restoring state or municipal land or water  
23 under this section to a third party that agrees to complete the removal or restoration within a  
24 period fixed by the department or municipality and that does complete the removal or restoration  
25 within the time fixed. The right to recover a civil penalty under this section may not be  
26 assigned.

27 (j) For the purposes of this chapter, the owner of a vessel or cargo of a vessel is the  
28 owner of record as recorded with the appropriate registration or documentation agency on the  
29 date that the vessel or cargo of the vessel was sunk or abandoned.

30 Sec. 30.30.035. CUSTODY OF A SUNKEN OR ABANDONED VESSEL. (a) The  
31 department, a municipality, or a peace officer may take possession and custody of a sunken or

1 abandoned vessel or cargo of a vessel.

2 (b) The department, a municipality, or a peace officer shall take immediate possession  
3 and custody of a vessel or cargo of a vessel that is sunk or may be abandoned, if the vessel or  
4 cargo of a vessel poses, or threatens to pose, a danger to navigation, the environment, public  
5 health, or public safety.

6 (c) Vessels and cargo of a vessel taken into custody under this section, other than timber  
7 property subject to AS 45.50.210 - 45.50.325, are subject to disposal under this chapter.

8 \* Sec. 7. AS 30.30.040 is amended to read:

9 Sec. 30.30.040. NOTICE TO OWNER. The department or municipality [ON] taking  
10 custody of an abandoned or sunken vessel or cargo of a vessel, shall immediately post, if  
11 practical, a written notice [IMMEDIATELY SHALL BE POSTED] on the vessel or cargo and  
12 shall send a duplicate of that notice [SENT] by registered or certified mail, with a return receipt,  
13 to the registered owner of the vessel or cargo at the registered owner's last known address and  
14 to all lienholders shown on the records of a state or federal agency. The notice must [SHALL]  
15 contain a brief description of the vessel or cargo, the location of custody, [AND] the intended  
16 disposition of the vessel or cargo if not repossessed within 30 [20] days after the mailing of the  
17 notice, and a statement of the right to repossession. A notice need not be sent to the purported  
18 owner or any other person whose interest in the vessel is not recorded with a state department  
19 or a federal agency.

20 \* Sec. 8. AS 30.30.050 is amended to read:

21 Sec. 30.30.050. PUBLIC AUCTION. If the vessel or cargo of a vessel is not  
22 repossessed under AS 30.30.060 within 30 [20] days after the mailing of the notice under  
23 AS 30.30.040, the vessel or the cargo shall be disposed of by public auction, through oral  
24 tenders, or by sealed bids, after public advertisement has been made once in a newspaper of  
25 general circulation. However, the public auction may not be held less than five days after the  
26 publication of the advertisement. If no bid is received, the vessel or the cargo may be sold by  
27 negotiation, disposed of as junk, donated to a governmental agency, or destroyed.

28 \* Sec. 9. AS 30.30.060 is amended to read:

29 Sec. 30.30.060. POSSESSION BY INTERESTED PARTY. A person having an interest  
30 in an abandoned or sunken vessel or cargo of a vessel may take possession of it before the date  
31 of the public auction upon payment to the department or municipality that has custody of the

1 vessel or cargo of all port or harbor use fees, towing, handling, storage, appraisal, advertising,  
2 and any other expenses incurred by the department or municipality in connection with the vessel  
3 or cargo and upon posting a bond in an amount sufficient to ensure removal of the vessel  
4 or cargo from on or within the land or water of the state or municipality and to ensure  
5 restoration of state or municipal land or water damaged as a consequence of the sinking  
6 or abandonment. The amount of the bond that is posted to ensure removal of the vessel  
7 or cargo and restoration of state or municipal land or water is not limited to the value of  
8 the vessel or cargo. If the person taking possession of the vessel or cargo is not the registered  
9 owner, the person shall, before taking possession of the vessel or cargo, pay the expenses  
10 incurred by the department or municipality and post adequate security which may not exceed  
11 the appraised value of the vessel or cargo. The bond posted to ensure removal of the vessel  
12 or cargo and restoration of state or municipal land or water shall be returned to the person  
13 upon satisfactory completion of the removal and restoration. The security for the value of  
14 the vessel or cargo, if not forfeited, shall be returned to the person one year after receipt.

15 \* Sec. 10. AS 30.30.080 is amended to read:

16 Sec. 30.30.080. EFFECT OF SALE. The transfer of interest by sale under  
17 AS 30.30.050 - 30.30.060 [AS 30.30.050 - 30.30.070] shall be evidenced by a bill of sale from  
18 the department or municipality, considered a transfer by operation of law, and governed by  
19 applicable provisions of law.

20 \* Sec. 11. AS 30.30 is amended by adding new sections to read:

21 Sec. 30.30.091. JURISDICTION OF STATE DEPARTMENTS AND MUNICIPALITIES.

22 (a) The Department of Natural Resources shall enforce AS 30.30.011 - 30.30.099 over all water  
23 and state land that is not subject to the jurisdiction of the Department of Transportation and  
24 Public Facilities under (b) of this section or to the jurisdiction of a municipality under (c) of this  
25 section.

26 (b) The Department of Transportation and Public Facilities shall enforce AS 30.30.011 -  
27 30.30.099 within ports and harbors administered by that department.

28 (c) A municipality shall enforce AS 30.30.011 - 30.30.099

29 (1) within ports and harbors administered by the municipality; and

30 (2) on municipal land that is not within a port or harbor administered by the  
31 Department of Transportation and Public Facilities under (b) of this section.

1           Sec. 30.30.099. APPLICABILITY. (a) AS 30.30.031 - 30.30.099 apply to all vessels  
2 and cargo of vessels, other than a vessel or cargo of a vessel designated as a historic monument,  
3 site, property, location, or remains under AS 41.35.010 - 41.35.240, that have been sunk or  
4 abandoned as of the effective date of this Act. The successor in interest of the person who, at  
5 the time a vessel or cargo of a vessel was sunk or abandoned, owned, controlled, or had custody  
6 of a vessel or cargo of a vessel that is subject to this subsection, is subject to AS 30.30.031 -  
7 30.30.099.

8           (b) AS 30.30.011 - 30.30.099 apply to vessels and cargo of vessels, other than a vessel  
9 or cargo of a vessel designated as a historic monument, site, property, location, or remains under  
10 AS 41.35.010 - 41.35.240, that are sunk or abandoned in the state on or after the effective date  
11 of this Act.

12           (c) AS 30.30.011 - 30.30.099 and AS 45.50.210 - 45.50.325 shall be construed as  
13 consistent. If specific provisions of AS 30.30.011 - 30.30.099 and AS 45.50.210 - 45.50.325  
14 cannot be made consistent, AS 45.50.210 - 45.50.325 shall control in that instance.

15 \* Sec. 12. AS 30.30.160 is amended to read:

16           Sec. 30.30.160. REGULATIONS. The department may [SHALL] adopt regulations  
17 under the Administrative Procedure Act (AS 44.62) to carry out the provisions of this chapter.

18 \* Sec. 13. AS 30.30.170 is amended to read:

19           Sec. 30.30.170. DEFINITIONS. In this chapter

20           (1) "department" means the Department of Transportation and Public Facilities  
21 or the Department of Natural Resources, as the context may require [, DIVISION OF  
22 WATERS AND HARBORS];

23           (2) "hazardous substance" has the meaning given in AS 46.03.826;

24           (3) "land" includes shore, tide, and submerged land;

25           (4) "state land" has the meaning given in AS 38.05.965;

26           (5) [(3)] "vessel" means every description of watercraft or other artificial  
27 contrivance [, OTHER THAN A SEAPLANE ON THE WATER,] used or capable of being used  
28 as a means of transportation on or through the water; "vessel" includes a detached portion of  
29 a vessel that poses a threat to navigation, the public safety, health, and welfare, or the  
30 environment and a barge whether self-propelled or not;

31           (6) "water" means navigable water and all other water of the state, whether

1        inland or coastal, fresh or salt [(4) "WATERS OF THIS STATE" MEANS THE NAVIGABLE  
2        WATERS WITHIN THE TERRITORIAL LIMITS OF THE STATE, AND THE MARGINAL  
3        SEA ADJACENT TO THE STATE, AS DEFINED IN AS 44.03].

4        \* Sec. 14. AS 30.30.010, 30.30.020, 30.30.030, 30.30.070, 30.30.090, and 30.30.100 are repealed.

5        \* Sec. 15. This Act takes effect immediately under AS 01.10.070(c).

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FACSIMILE: (907) 586-2754

April 3, 1991

The Honorable Richard Foster, Chair  
House Transportation Committee  
P.O. Box V  
Juneau, AK 99811

Dear Representative Foster:

Subject: HB 232, which relates to sunken and abandoned vessels and cargo.

Position: The department of natural resources supports this bill, but recommends a clarifying amendment.

Background: Shipwrecks on state tidelands often contain hazardous materials such as oil and ammonia, or methane gas produced from a cargo of rotting fish. Shipwrecks that have no historic value impair other uses of the tidelands and are attractive nuisances that generate liabilities for the state. Shippers often abandon a wrecked ship because it is too expensive to remove. Currently, litigation is the only means for removal of an abandoned shipwreck. During the often lengthy litigation process, the wrecked vessel and its value can continue to deteriorate and the ship can become even more difficult to remove.

This bill would allow the tideland owners (state or municipal governments) to require removal of sunken or abandoned vessels and cargo, unless the agency with jurisdiction decides otherwise. It provides penalties for noncompliance with cleanup requirements, and allows the agency with jurisdiction to take custody of the vessel and cargo, and clean up the wreck site, as necessary. The bill also authorizes lawsuits to recover ship wreck removal and cleanup costs.

Recommendation: Clarify Section 11, by rewriting as follows, to make the law retroactive for cargo as well as vessels, and to ensure that future wrecks are protected by state historic preservation laws:

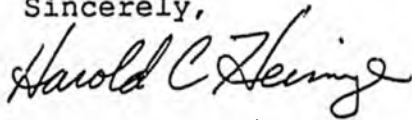
Sec. 30.30.099. APPLICABILITY. (a) Except as provided in (b) of this section, AS 30.30.031 - 30.30.099 apply to all vessels and cargo of vessels sunk or abandoned before, on or after the effective date of this act. The successor in interest of the person who owned, controlled, or had custody of a vessel or cargo of a vessel subject to this subsection at the time the vessel was sunk or abandoned is subject to AS 30.30.031 - 30.30.099.

(b) AS 30.30.031 - 30.30.099 do not apply to sunk or abandoned vessels or cargo designated as historic monuments, sites,

properties, locations, or remains under AS 41.35.010 -  
41.5.240.

Please let me know if you would like additional information related  
to this bill.

Sincerely,

A handwritten signature in cursive script that reads "Harold C. Heinze".

Harold C. Heinze  
Commissioner

enclosures

cc: Committee Members  
Representative Jacko  
Representative Navarre  
Bruce Kendall, Legislative Liaison, Office of the Governor

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 232

Revision Date: 28-Mar-91 Department Affected: Natural Resources  
 Title: Shipwrecks Act BRU: Land & Water Management  
 Components: Land & Water Management  
 Sponsor: Representative Jacko  
 Requestor: House Transportation COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: 0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Salli Slaughter Phone: 762-2692  
 Division: Land & Water Date: 28-Mar-91

Approved by Commissioner: Harold Heinze Date: 28-Mar-91  
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HB 232  
Shipwrecks Act\*

Section Analysis  
March 26, 1991

\* An Act relating to sunken and abandoned vessels and cargo; and providing for an effective date.

Summary: There is currently limited power in ports and harbors to effect the cleanup of wrecked or abandoned vessels. This act expands that authority to other state or municipal land, and includes cargo. It requires the removal of sunken or abandoned vessels and cargo unless the agency having jurisdiction gives permission to do otherwise, and provides penalties for non-compliance. It authorizes the appropriate agency to clean up the land if necessary, and to take custody of the vessel or cargo and sell it. It also authorizes a lawsuit to be filed to recover costs (plus double damages, if the vessel is 58 feet or over). In short, it ensures that state tidelands are cleaned-up, and limits the state's liability without protracted litigation.

Section 1. Broadens the powers of home rule municipalities to include AS 29.35.085 (sunken or abandoned vessels).

Section 2. Provides a cross reference for municipalities to regulate sunken or abandoned vessels under AS 30.30.

Section 3. Requires a person who wants to sink a vessel or cargo to get permission from the department or municipality having jurisdiction. To do so without permission is a class A misdemeanor.

Section 4. Knowing abandonment of a vessel or cargo is a class B misdemeanor.

Section 5. Defines abandonment.

Section 6. Requires a person who owns, controlled or had custody of the vessel or cargo when it was sunk to remove it and restore the state or municipal land within 30 days unless they have permission to do otherwise from the appropriate agency. It limits the agency's liability, even if permission to leave the vessel has been granted.

It also allows the appropriate agency to effect clean up and bring a court action against the appropriate person to recover costs and civil penalties (twice the costs of removal and restoration if the vessel is more than 58 feet overall). This section also allows the agency to assign its rights to recover costs to a third party in order to have the vessel removed (the civil penalty may not be assigned).

Defines owner.

It allows the agency or a peace officer to take custody of the vessel or cargo (immediately, if it threatens life, public safety, property, the environment, etc.). It also states that vessels and cargo taken into custody are subject to disposal, except for timber subject to AS 45.50.210-.325 (log brands and abandoned/ salvage logs).

Section 7. Expands existing section regarding notice to owners that custody has been taken to include all state or municipal tidelands (it currently only covers harbors), and to cover cargo as well.

Section 8. Expands existing section regarding public auction of the vessel to include cargo and expand the allowable time for repossession from 20 days to 30. Adds cross reference to the notice provision above.

Section 9. Amends an existing section that states that a third party having an interest in the vessel or cargo may take possession before the date of auction. The amendment expands the section to apply to all state and municipal tidelands, and adds a bonding requirement for removal and restoration (the section already requires a bond sufficient to cover the value of the vessel or cargo).

Section 10. Amends existing section stating that a bill of sale transfers the agency's interest to apply to municipalities as well.

Section 11. Defines areas of jurisdiction: DOT/PF has jurisdiction in ports and harbors below tides; the state on all other state owned tidelands and waters; and municipalities on municipally owned tidelands.

Subsections are (a) and (b) are unclear however, they appear to have the following meanings. The act is inapplicable to historic properties, etc. sunk or abandoned prior to the effective date of the Act and designated under AS 41.35.010-.240. Otherwise it appears to be applicable to all vessels (but not cargo) sunk or abandoned before the effective date of the act; vessels and cargo sunk or abandoned on or after the effective date of the act.

There appears to be no reason to exempt abandoned cargo from the retroactive application of this law. Likewise, there appears to be no reason to exempt future shipwrecks/cargo from the historic preservation act. We therefore suggest the following:

Sec. 30.30.099. APPLICABILITY. (a) Except as provided in (b) of this section, AS 30.30.031 - 30.30.099 apply to all vessels and cargo of vessels that are sunk or abandoned before, on or after the effective date of this Act. The

successor in interest of the person who owned, controlled, or had custody of a vessel or cargo of a vessel subject to this subsection at the time the vessel was sunk or abandoned is subject to AS 30.30.031 - 30.30.099.

(b) AS 30.30.031 - 30.30.099 do not apply to sunk or abandoned vessels or cargo designated as historic monuments, sites, properties, locations, or remains under AS 41.35.010 - 41.5.240.

Subsection (c) states that this Act shall be construed to be consistent with the Article on log brands and salvage timber (AS 45.50.210 - 45.50.325. If the articles are not consistent, AS 45 controls.

Section 12. Changes the qualifier from "shall" to "may" (adopt regulations).

Section 13. Definitions.

Section 14. Repealer.

Section 15. Provides for an immediate effective date.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

MEMORANDUM

February 19, 1991

**SUBJECT:** Sectional Summary of Work Order 7LS0500; An Act relating to sunken and abandoned vessels and cargo

**TO:** Representative George Jacko

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum is a sectional summary of Work Order 7LS0500.

A sectional summary of a bill is not an authoritative interpretation of a bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends the powers of home rule municipalities in regard to sunken and abandoned vessels.

Section 2 of the bill adds a new section to AS 29.35 relating to the regulation of sunken and abandoned vessels by municipalities.

Section 3 of the bill adds a new section to AS 30.30 that makes it a class A misdemeanor to recklessly sink, or cause to be sunk, a vessel or cargo of a vessel.

Section 4 of the bill adds a new section to AS 30.30 that makes it a class B misdemeanor to knowingly abandon, or cause to be abandoned, a vessel or cargo of a vessel.

Section 5 of the bill adds a new section to AS 30.30 that describes what is an abandoned vessel for the purposes of AS 30.30.011 - 30.30.091.

Section 6 of the bill adds two new sections to AS 30.30 relating to the removal and custody of sunken or abandoned vessels on state or municipal land or water.

Sec. 30.30.031.

Subsection (a) requires a person who owned, controlled, or had custody of a sunken or abandoned vessel or cargo to remove the vessel or cargo from state or

*Sectional analysis*

municipal land or water within 30 days unless the person receives permission from the state or municipality and to restore state or municipal land or water damaged by the sinking or abandonment. Subsection (b) provides that the state or municipality may grant temporary or permanent permission in writing to leave a vessel or cargo in place.

Subsection (c) provides that only the Department of Environmental Conservation may grant permission to leave a hazardous substance on or within land or water in the state.

Subsection (d) provides that a person who receives permission to leave a vessel or cargo in place is still liable for damages that result from the presence of the vessel or cargo.

Subsection (e) provides that the state or municipality is not liable for damages arising from the presence of a vessel or cargo on state or municipal land or water, even though the state or municipality gave permission to leave the vessel or cargo in place.

Subsection (f) sets out the steps that the state or a municipality may take if a vessel or cargo remains on state or municipality land or water without permission, including legal action for damages and costs of removal of the vessel or cargo and restoration of the land or water.

Subsection (g) provides that the state or a municipality may assign its right to recover the cost of removing a vessel or cargo from state or municipal land and restoring the land and water to a person who agrees to, and actually does, remove the vessel or cargo and restore the land and water.

Subsection (h) sets out who is considered to be the owner of a sunken or abandoned vessel or cargo.

Sec. 30.30.035 provides that sunken and abandoned vessels and cargo may be taken into the custody of the state, a municipality, or a peace officer.

Section 7 of the bill amends AS 30.30.040 relating to the notice that must be given to the owner of a sunken or abandoned vessel or cargo that has been taken into custody by the state or a municipality.

Section 8 of the bill amends AS 30.30.050 relating to the sale of a vessel or cargo that is in the custody of the state or a municipality.

Section 9 of the bill amends AS 30.30.060 relating to possession of a sunken or abandoned vessel or cargo by a person who has an interest in the vessel or cargo before the vessel or cargo is disposed of by the state.

Section 10 of the bill amends AS 30.30.080 relating to the effect of a sale of a sunken or abandoned vessel by the state or a municipality.

Representative George Jacko  
February 19, 1991  
Page 3

Section 11 of the bill adds a new section to AS 30.30 setting out the jurisdiction of the Department of Transportation and Public Facilities and the Department of Natural Resources and municipalities in implementing AS 30.30.011 - 30.30.091.

Section 12 of the bill amends AS 30.30.160 by providing that the state departments may adopt regulations to carry out the provisions of AS 30.30.

Section 13 of the bill amends the definitions of terms used in AS 30.30.

Section 14 of the bill sets out provisions prescribing how AS 30.30 as amended by this Act, is to be applied to vessels and cargo currently sunk or abandoned in the state and to those that will be sunk or abandoned in the future.

Section 15 of the bill repeals various section of AS 30.30.

Section 16 of the bill provides that the bill takes effect immediately after becoming law.

GU:lmb:pl  
91-053.lmb

HB 232  
Shipwrecks Act\*

Section Analysis  
March 26, 1991

\* An Act relating to sunken and abandoned vessels and cargo; and providing for an effective date.

Summary: There is currently limited power in ports and harbors to effect the cleanup of wrecked or abandoned vessels. This act expands that authority to other state or municipal land, and includes cargo. It requires the removal of sunken or abandoned vessels and cargo unless the agency having jurisdiction gives permission to do otherwise, and provides penalties for non-compliance. It authorizes the appropriate agency to clean up the land if necessary, and to take custody of the vessel or cargo and sell it. It also authorizes a lawsuit to be filed to recover costs (plus double damages, if the vessel is 55 feet or over). In short, it ensures that state tidelands are cleaned-up, and limits the state's liability without protracted litigation.

Section 1. Broadens the powers of home rule municipalities to include AS 29.35.085 (sunken or abandoned vessels).

Section 2. Provides a cross reference for municipalities to regulate sunken or abandoned vessels under AS 30.30.

Section 3. Requires a person who wants to sink a vessel or cargo to get permission from the department or municipality having jurisdiction. To do so without permission is a class A misdemeanor.

Section 4. Knowing abandonment of a vessel or cargo is a class B misdemeanor.

Section 5. Defines abandonment.

Section 6. Requires a person who owns, controlled or had custody of the vessel or cargo when it was sunk to remove it and restore the state or municipal land within 30 days unless they have permission to do otherwise from the appropriate agency. It limits the agency's liability, even if permission to leave the vessel has been granted.

It also allows the appropriate agency to effect clean up and bring a court action against the appropriate person to recover costs and civil penalties (twice the costs of removal and restoration if the vessel is more than 58 feet overall). This section also allows the agency to assign its rights to recover costs to a third party in order to have the vessel removed (the civil penalty may not be assigned).

Defines owner.

It allows the agency or a peace officer to take custody of the vessel or cargo (immediately, if it threatens life, public safety, property, the environment, etc.). It also states that vessels and cargo taken into custody are subject to disposal, except for timber subject to AS 45.50.210-.325 (log brands and abandoned/ salvage logs).

Section 7. Expands existing section regarding notice to owners that custody has been taken to include all state or municipal tidelands (it currently only covers harbors), and to cover cargo as well.

Section 8. Expands existing section regarding public auction of the vessel to include cargo and expand the allowable time for repossession from 20 days to 30. Adds cross reference to the notice provision above.

Section 9. Amends an existing section that states that a third party having an interest in the vessel or cargo may take possession before the date of auction. The amendment expands the section to apply to all state and municipal tidelands, and adds a bonding requirement for removal and restoration (the section already requires a bond sufficient to cover the value of the vessel or cargo).

Section 10. Amends existing section stating that a bill of sale transfers the agency's interest to apply to municipalities as well.

Section 11. Defines areas of jurisdiction: DOT/PF has jurisdiction in ports and harbors below tides; the state on all other state owned tidelands and waters; and municipalities on municipally owned tidelands.

Subsections are (a) and (b) are unclear however, they appear to have the following meanings. The act is inapplicable to historic properties, etc. sunk or abandoned prior to the effective date of the Act and designated under AS 41.35.010-.240. Otherwise it appears to be applicable to all vessels (but not cargo) sunk or abandoned before the effective date of the act; vessels and cargo sunk or abandoned on or after the effective date of the act.

There appears to be no reason to exempt abandoned cargo from the retroactive application of this law. Likewise, there appears to be no reason to exempt future shipwrecks/cargo from the historic preservation act. We therefore suggest the following:

Sec. 30.30.099. APPLICABILITY. (a) Except as provided in (b) of this section, AS 30.30.031 - 30.30.099 apply to all vessels and cargo of vessels that are sunk or abandoned before, on or after the effective date of this Act. The

successor in interest of the person who owned, controlled, or had custody of a vessel or cargo of a vessel subject to this subsection at the time the vessel was sunk or abandoned is subject to AS 30.30.031 - 30.30.099.

(b) AS 30.30.031 - 30.30.099 do not apply to sunk or abandoned vessels or cargo designated as historic monuments, sites, properties, locations, or remains under AS 41.35.010 - 41.5.240.

Subsection (c) states that this Act shall be construed to be consistent with the Article on log brands and salvage timber (AS 45.50.210 - 45.50.325. If the articles are not consistent, AS 45 controls.

Section 12. Changes the qualifier from "shall" to "may" (adopt regulations).

Section 13. Definitions.

Section 14. Repealer.

Section 15. Provides for an immediate effective date.

Boyle Edwards 465-4942

DATE	NAME	WHERE	POLLUTION?	DISPOSITION	UCN #
2 OCT	TUG EASTERN	WHITSTONE narrows	NONE	REFLOATED	UCN 00
	FIELD NO. 88.11/CITY OF SEATTLE	ATKA	UNK	UNK	UCN 8
3 DEC	F/V OPTY	SHEMYA	UNK	UNK	INFO 0
10 DEC	F/V ASTOR MARIN	AKUN	NONE	THERE TO STAY DERMAILED/BURNED	UCN 1
12 DEC	F/V DRYBULAK	CLARENCE STRAIT	NONE	UNK	UCN 1
15 JAN	F/V NO. 6 UNL 87 SAN	UNLAKA ISLAND	YES (SHELTY)	THERE TO STAY DETENTION/DORMING PLANS STILL	UCN 2
25 JAN	F/V TERMINATION	ST PAUL	YES	(Possibility of refloating)	INFO 0
15 JAN	F/V CHRISTINE	WHITSTONE narrows	NONE	REFLOATED	UCN 0
25 JAN	F/V HENRY B	WHITSTONE narrows	NONE	REFLOATED	UCN 0
22 MAR	F/V SULLIVE	USHAGAT ISLAND	NONE	UNK (BELIEVE REFLOATED)	UCN 0
20 MAR	F/V DAILY BIRLING	USHAGAT ISLAND	NONE	UNK (BELIEVE REFLOATED)	UCN 0
25 MAR	F/V SPENCER II	PORT HUGHTONS	UNK	UNK (BELIEVE STILL THERE)	UCN 0
24 MAR	F/V REEGLINE	SNOW PATZ	NONE	REFLOATED	UCN 0
24 MAR	F/V JOHNSON 5012	SUNANON HBR	NONE	REFLOATED	UCN 0
5 APR	F/V MARIANA <del>THORND</del>	CILAK	NONE	REFLOATED	UCN 0
28 FEB	F/V SWALLOW	DUTCH HARBOR	YES	STILL APPROX (PROBABLY TO STAY)	
25 MAR	F/V AXON VDE	BIGHILL, P.W.S	YES	REFLOATED	

1 OCT 88 TO 24 APR 89

17 GROUNDINGS  
 4-5 STRANDED  
 7-9 REFLOATED  
 4 POLLUTION INCIDENTS  
 (OIL IN WATER)

FOR FURTHER INFO:

A MARINE SAFETY ANCHORAGE 271-5137  
 B MARINE SAFETY KETCHIKAN 225-4491  
 C MARINE SAFETY OFFICE <sup>VALDEZ</sup> 835-4791

List of vessels

# HOUSE COMMITTEE REPORT

Date Referred: March 22, 1991

FURTHER REFERRALS: Community & Regional Affairs  
Judiciary

Date of Committee Action: 4/4/91

Re TRANSPORTATION Committee considered:

HB 232

HOUSE BILL NO. 232

SUNKEN AND ABANDONED VESSELS

an Act relating to sunken and abandoned vessels and cargo; and providing for an effective date."

- RECOMMENDATIONS:
- replaced with \_\_\_\_\_  the same title
  - replaced with \_\_\_\_\_  a new title
  - have attached amendments(s)
  - do pass
  - do not pass
  - no recommendations
  - individual recommendations
  - additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

- fiscal impact \_\_\_\_\_
- zero fiscal note A.A.R. H.T.C.

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Arew A. Luman</i>	✓				
<i>Frank Phillips</i>	✓				
<i>Tom M.</i>	✓				
<i>W. Anderson</i>	✓				
<i>Richard (Dorey)</i>	✗				
<i>Gene Phillips</i>	✓				

*Richard (Dorey)*  
CHAIRMAN'S SIGNATURE

STEVE COWPER, GOVERNOR

REPLY TO:

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

1031 W 4th AVENUE SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550  
FAX: (907) 276-3697

1st NATIONAL CENTER  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

April 11, 1990

OFFER OF SETTLEMENT & COMPROMISE  
PROTECTED UNDER EVIDENCE RULE 408

Mr. Doug Fryer, Esq.  
Mikkelboug, Bronz, Wells & Fryer  
1001 Fourth Avenue, Suite 3300  
Seattle, WA 98154

Mr. William Wuestenfeld, Esq.  
Sandberg & Smith  
310 K Street, Suite 500  
Anchorage, AK 99501

Re: State of Alaska v. All Alaskan Seafoods

Gentlemen:

In a past conversation, Mr. Fryer inquired as to the State's position as to possible settlement of this matter. After receiving your recent offer of judgment of only \$25,000, we would like to share with you the state's view of this case.

As you know, the Alaska Department of Natural Resources manages the state tidelands upon which the All Alaskan is grounded. The unauthorized presence of the All Alaskan on state tidelands is a continuing trespass on state property and accordingly the Department of Natural Resources demands the removal of the wreck. How this is accomplished is a matter for All Alaska Seafoods and its insurers. The Department would be willing to review any proposals by your clients or their underwriters as to how to effectively and economically remove the wreck. Such a plan would have to meet the approval of DNR, the Department of Fish and Game the Department of Environmental Conservation and appropriate federal and local agencies. If an acceptable removal operation can be completed, DNR would be willing to drop its trespass and nuisance damage claims resulting from the grounding.

As to the pollution/natural resource claims as a result of the spill, the state would be willing to settle these claims for the base oil spill penalties under AS 46.03.758 and state response costs. State response costs are relatively small in the neighborhood of \$5,000.

According to the figures supplied by All Alaskan Seafoods to the U.S. Coast Guard and ADEC at least 43,250 gallons of diesel fuel were released to the environment. Under the regulations

*Dept of law*

APR 27 1990

implementing the oil spill penalty provisions of AS 46.03.758, the waters near the grounding are designated as a critical marine environment. 18 AAC 75.520(1)(E) & (F). The base penalty for oil spills into a critical marine environment is \$2.50 a gallon. 18 AAC 75.570(1). Applying the toxicity, degradability and dispersability factors for marine diesel in 18 AAC 75.540 et. seq. to the base penalty (\$2.50 x .466) produces a net per gallon spill penalty of \$1.17. Using this figure, the total penalty for a spill of 43,250 gallons is \$50,602.50.

In light of your indisputable liability for oil spill penalties in excess of \$50,000, your offer of judgment is clearly inadequate even ignoring the fact that your client refuses to remove the All Alaskan from state lands. Moreover, the state believes it has a strong case that the spill resulted from gross negligence, thereby subjecting All Alaskan Seafoods to five times the base penalty or \$253,012.50. see AS 46.03.758(b)(2).

In the interests of resolving this matter without further litigation, the state is willing to settle this matter for its costs and the basic oil spill penalties, if All Alaska Seafoods will remove the wreck. The state is willing to negotiate a reasonable time frame for removal but is adamant in its position that this environmental blight be removed from its property.

As to your position that your marine protection and indemnity insurers are only obligated to remove the wreck if compelled to do so by a court injunction, we call your attention to Continental Oil Co. v. Bonanza Corp, 706 F.2d 1365 (4th Cir. 1983). In Continental Oil, the court held that an order by a government official to remove a wreck fell within the "compulsory by law" P & I policy provisions for wreck removal. In case there is any doubt in your mind as to the state's position, we enclose an order from the Division of Land & Water Management directly you to remove the M/V All Alaskan from state lands.<sup>1</sup> See also Seaboard Shipping v. Jocharanne Tugboat Corp., 461 F.2d 500, 504 (2d Cir. 1972) ("compulsory removal" met when pursuant to government order the wreck must be removed). If your P & I insurers insist in their

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<sup>1</sup> Even without an order from a governmental official, the Continental court held that this condition was met "when a reasonable owner, fully informed, would conclude that failure to remove would likely expose him to liability imposed by law sufficiently great in amount and probability of occurrence to justify the expense of removal." Id. at 1372; see Zurich Ins. Co. v. Pateman, 692 F. Supp. 371, 377-80 (D.N.J. 1987). In light of your liabilities for continuing trespass, nuisance and per day penalties for violation of numerous state environmental statutes, failure to remove the vessel clearly exposes you to liability of such magnitude to justify the expense of removal.

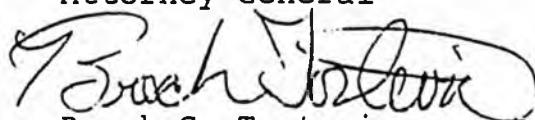
unreasonable refusal to provide coverage, we suggest in light of the rapidly developing law of insurance bad faith in Alaska that your remedy is to remove the vessel and pursue a first party bad faith action against your insurer. See State Farm Fire & Casualty Co. v. Nicholson, 777 P.2d 1152 (Alaska 1989).

In sum, your failure to remove the All Alaskan is simply unjustified. The state is willing to fully litigate this matter, if necessary, to ensure removal. However, in the interests of resolving this dispute without further litigation, the state is willing to settle this matter along the lines discussed above.

If your clients are interested in such a settlement, I would appreciate hearing from you within two weeks of receipt of this letter. If your client's reaction is positive, we can then set up a time frame for your preparing a plan of operations and obtaining approvals from the appropriate state agencies.

Sincerely,

DOUGLAS B. BAILY  
Attorney General



By: Breck C. Tostevin  
Assistant Attorney General

Enclosure

cc: Cary Gustafson, DNR/DLWM  
Bill H. Lamoreaux, ADEC/SCRO  
Bruce Erickson, ADEC/AWDO  
Lance Trasky, ADFG/Habitat

TRESPASS NOTICE AND ORDER TO QUIT

TO:

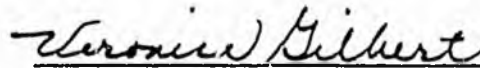
All Alaskan Seafoods Inc.  
An Alaska Corporation  
311 Mill Bay Road  
Kodiak, AK 99615

Lloyd W. Canon, Registered Agent and/or

Other persons owning or having an interest in the vessel M/V All Alaskan.

Under AS 38.05.020 and 38.05.035, the director of the state division of land and water management has the authority and responsibility to manage and control state property and may issue orders to carry out that function. By virtue of the authority delegated to this office by the director, YOU ARE HEREBY NOTIFIED:

1. The M/V All Alaskan is aground on tidelands of the State of Alaska; namely near the northeast point of St. Paul Island, Alaska.
2. Your failure to remove the M/V All Alaskan constitutes an unauthorized remaining unlawfully upon the premises of the State of Alaska, namely the tidelands at the northeast point of St. Paul Island.
3. Your use and occupancy is unauthorized and contrary to law. Accordingly,
4. YOU ARE HEREBY ORDERED to quit your use and occupancy and to vacate the premises immediately and remove the M/V All Alaskan.
5. YOU ARE FURTHER ORDERED to remove all personal property and structures from the premises within thirty (30) days of this notice, including equipment, debris or other items of anything kind whatsoever.



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Veronica Gilbert  
Regional Manager  
Division of Land Water  
Management

CERTIFICATE OF SERVICE

On this date a correct copy of the TRESPASS NOTICE AND ORDER TO QUIT was mailed to the All Alaska Seafoods, Inc., by depositing the same in the U.S. Mail at Anchorage, Alaska, postage prepaid.

April 11, 1990  
Date

Barbara L. Isiah  
Signature

1 IN THE HOUSE

2 HOUSE CONCURRENT RESOLUTION NO.  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Relating to abandoned vessels on the  
6 beaches of Alaska.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS about 40 abandoned vessels, including merchant vessels, fish-  
9 ing vessels, and other vessels, are grounded on the coast of Alaska; and

10 WHEREAS abandoned vessels are an environmental hazard and are aesthet-  
11 ically unpleasing; and

12 WHEREAS the state does not have the resources to salvage or dispose of  
13 abandoned vessels; and

14 WHEREAS the state does not currently have statutory authority to  
15 impose liability on the owners of abandoned vessels for the cost of salvag-  
16 ing or demolishing abandoned vessels; and

17 WHEREAS communities are not compensated for the aesthetic and physical  
18 trespass resulting from abandoned vessels;

19 BE IT RESOLVED by the Alaska State Legislature that the governor is  
20 respectfully requested to <sup>assess</sup> study the problems posed by abandoned vessels and  
21 to make appropriate recommendations to the First Session of the Seventeenth  
22 Alaska State Legislature for legislation necessary to remedy existing  
23 problems and prevent future problems.

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HER

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

August 28, 1990

**SUBJECT:** Statutes relating to derelict and abandoned vessels

**TO:** Representative Cliff Davidson  
ATTN: Jay Nelson

**FROM:** George Utermohle *GU*  
Legislative Counsel

You have requested a list of statutes relating to derelict and abandoned vessels.

There is relatively little state statutory law dealing with disposition of derelict and abandoned vessels. The bulk of the law dealing with vessels is a function of federal admiralty law which would not be reflected in state statutes.

Enclosed is a copy of AS 30.30. AS 30.30 contains the only statutes directly relating to procedures for the disposition of derelict and abandoned vessels. Other statutes, such as AS 34.45 (copy enclosed), may be implicated at certain stages of proceedings to dispose of a vessel depending on the facts and nature of the particular case, but in the absence of a specific case it is difficult to determine which statutes may be relevant.

Also enclosed is a bill introduced by Governor Sheffield in 1986 to reform AS 30.30. An important concern of Governor Sheffield's bill was the need to ensure the constitutionality of procedures for disposing of derelict and abandoned vessels by providing adequate protection for the due process rights of vessel owners.

If I can provide further assistance, please contact me.

GU:lmb  
90-0019.lmb

CC: Corky McCorkle  
Harbor Master  
Kodiak

**HB 525**

Introduced: 1/29/86  
Referred: State affairs,  
Transportation and Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 525

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to abandoned vessels; and providing  
7 for an effective date."

8

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

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\* Section 1. AS 30.30.010 is amended to read:

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Sec. 30.30.010. ABANDONMENT OF VESSEL UNLAWFUL. (a) A person

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may not store or leave a vessel in a wrecked, junked, or substantially

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dismantled condition or abandoned upon any public water, or at a port

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or harbor, [OF THE STATE,] without the consent of the agency having

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jurisdiction of the water, port, or harbor, or docked or otherwise

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left at any private property without the consent of the owner or

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occupant of the property.

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(b) A [THE DEPARTMENT OR A] peace officer may remove a [DERE-

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LICT] vessel from public water, or at a port or harbor, in any in-

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stance when the vessel obstructs or threatens to obstruct navigation,

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contributes to air or water pollution, or in any other way constitutes

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a danger or potential danger to the environment, to port or harbor

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facilities, or to other vessels.

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(c) This section may not be construed to contravene any applica-

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ble federal law or regulation.

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(d) A person who violates this section, upon conviction, is

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guilty of a misdemeanor and is punishable by a fine of not more than

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\$500, or by imprisonment for a period of not more than six months, or

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by both.

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\* Sec. 2. AS 30.30.020 is amended to read:

1           Sec. 30.30.020. CUSTODY [DISPOSITION] OF CERTAIN [ABANDONED]  
2 VESSELS. A vessel that has been left unattended for a continuous  
3 period of more than 30 days and is upon public water or at a port or  
4 harbor without the consent of the agency having jurisdiction of the  
5 water, port, or harbor, or is docked or otherwise left at any [IN THE  
6 WATERS OF THE STATE OR ON PUBLIC PROPERTY, OR IS ON] private property  
7 without authorization of the owner or occupant of the property, may be  
8 taken into custody by [THE DEPARTMENT OR] a peace officer and disposed  
9 of [BY THE DEPARTMENT] under this chapter.

10 \* Sec. 3. AS 30.30 is amended by adding new sections to read:

11           Sec. 30.30.051. FORFEITURE OF VESSELS. (a) A vessel that is  
12 removed from public water or a port or harbor, under AS 30.30.010(b),  
13 or an unattended vessel that is taken into custody under AS 30.30.020,  
14 is subject to forfeiture under AS 30.30.051 -- 30.30.057.

15           (b) Within 10 days after a vessel's removal under AS 30.30.-  
16 010(b) or taking into custody under AS 30.30.020, the commissioner of  
17 public safety or a municipal law enforcement agency shall make an  
18 inventory of the vessel and its gear, equipment, cargo, and any other  
19 property aboard, and shall estimate their value.

20           (c) Within 30 days after a vessel's removal under AS 30.30.-  
21 010(b) or taking into custody under AS 30.30.020, the commissioner of  
22 transportation and public facilities, or a municipality, shall give  
23 notice of the seizure. The notice must be sent to the last known  
24 address of any person known to have an interest in the vessel or whose  
25 interest in the vessel is ascertainable from official registration  
26 numbers, licenses, or other federal, state, or municipal numbers on  
27 the vessel.

28           (d) No sooner than 45 days after the removal or taking into  
29 custody, and no sooner than 21 days after notice has been sent under

1 (c) of this section, an action may be filed by the commissioner of  
2 transportation and public facilities, or a municipality, in the supe-  
3 rior court.

4 (e) Within 30 days after filing the action, the commissioner of  
5 transportation and public facilities, or a municipality, shall serve  
6 process in the manner provided in the rules of civil procedure.

7 (f) After service of process under (e) of this section, a person  
8 claiming an interest in the vessel shall file an answer within the  
9 time permitted for answering complaints under the applicable rules of  
10 civil procedure. The answer must include the nature of the claimant's  
11 interest in the vessel, the date that it was acquired, the considera-  
12 tion paid, and the circumstances under which it was acquired. If an  
13 answer is not filed within the required time the vessel is forfeited  
14 by default without further proceedings or showings.

15 (g) A claimant may, at any time before the court hearing, peti-  
16 tion the court for release of a vessel, and its gear, equipment,  
17 cargo, and other property aboard, removed under AS 30.30.010(b) or  
18 taken into custody under AS 30.30.020, if the claimant

19 (1) has filed a timely answer under this section; or

20 (2) before the initiation of a forfeiture action, files a  
21 notice of claim setting out the nature of the claimant's interest in  
22 the vessel, the date that it was acquired, the consideration paid, and  
23 the circumstances under which it was acquired.

24 (h) The court may release the vessel, and its gear, equipment,  
25 cargo, and other property aboard, if a claimant provides a bond or  
26 other valid equivalent security equal to twice the estimated value of  
27 the vessel, gear, equipment, cargo, and other property.

28 Sec. 30.30.054. NATURE OF PROCEEDING AGAINST VESSEL. (a) The  
29 plaintiff in a proceeding filed under AS 30.30.051 may seek (1) the

1 forfeiture of a vessel, and its gear, equipment, cargo, and other  
2 property aboard; (2) the recovery of any unpaid harbor user fees, and  
3 compensation for damage, if any, caused by the vessel to public port  
4 or harbor facilities; (3) the costs of removal under AS 30.30.010(b)  
5 or taking into custody under AS 30.30.070; (4) interest on fees and  
6 compensation; and (5) costs and attorney fees actually and necessarily  
7 incurred in the action.

8 (b) The court, after a hearing, may order forfeiture of the  
9 vessel and other property, and the payment of any amount authorized by  
10 this section. However, a vessel is not forfeited until the owner or  
11 other persons having an interest in the vessel have had an opportunity  
12 to pay the monetary judgment under conditions specified by the court.

13 (c) If a bond or equivalent security has been provided for the  
14 release of the vessel and other property under AS 30.30.051, the  
15 security must be returned upon payment of any monetary judgment under  
16 this section or upon the return of the vessel and other property.

17 Sec. 30.30.057. DISPOSAL OF FORFEITED VESSELS. (a) A vessel  
18 and other property forfeited to the state under AS 30.30.051 --  
19 30.30.057 must be disposed of by the commissioner of administration in  
20 accordance with applicable law. The commissioner of administration  
21 may, consistent with other applicable law,

22 (1) destroy the vessel and other property; or

23 (2) sell the vessel and other property, and use the --  
24 ceeds for payment of all proper expenses of the proceedings for for-  
25 feiture and sale, including expenses of seizure, custody, and court  
26 costs, and for payment for any damage to public port or harbor facil-  
27 ities.

28 (b) A vessel and other property forfeited to a municipality  
29 under AS 30.30.051 -- 30.30.057 must be disposed of in accordance with

1 municipal ordinance and other applicable law. The municipality may,  
2 consistent with other applicable law,

3 (1) destroy the vessel and other property; or

4 (2) sell the vessel and other property, and use the pro-  
5 ceeds for payment of all proper expenses of the proceedings for for-  
6 feiture and sale, including seizure, custody, and court costs, and for  
7 payment for any damage to public port or harbor facilities.

8 \* Sec. 4. AS 30.30.160 is amended to read:

9 Sec. 30.30.160. REGULATIONS. The department may [SHALL] adopt  
10 regulations under the Administrative Procedure Act (AS 44.62) to  
11 implement, interpret, or make more specific its powers and duties  
12 under [CARRY OUT THE PROVISIONS OF] this chapter.

13 \* Sec. 5. AS 30.30.040 -- 30.30.100 are repealed.

14 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.-  
15 10.070(c).

HB 524

The first amendment expands AS 47.17.070(2)'s definition of "child abuse or neglect" to expressly include "mental injury."

The second amendment clarifies AS 47.17.070(10)'s definition of "sexual exploitation." It makes clear that "allowing," i.e., not preventing, a child's participation in acts of prostitution, or engaging in conduct that constitutes criminal exploitation of a minor, is considered sexual exploitation for the purposes of finding child abuse or neglect.

By bringing Alaska's child protection statutes into compliance with the Child Abuse and Prevention Act, 42 U.S.C. sec. 5101 et seq., the amendments make the state eligible to receive federal grants for developing, supporting, and implementing child abuse and neglect programs. Alaska is currently operating under a one-year waiver of the federal eligibility requirements, granted June 26, 1985 by the regional administrator of the U.S. Department of Health and Human Services. Because child abuse and neglect is a pressing problem in our state, and because federal support for our efforts to prevent and treat the problem is highly desirable, I urge your prompt passage of this bill.

Sincerely,

/s/

Bill Sheffield  
Governor"

HB 525

HOUSE BILL NO. 525 by the Rules Committee by request of the Governor, entitled:

"An Act relating to abandoned vessels;  
and providing for an effective date."

was read the first time and referred to the State Affairs, Transportation and Judiciary Committees.

A zero fiscal note with analysis was attached and appears in House Journal Supplement No. 78.

The Governor's transmittal letter dated January 29, 1986, appears below:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the disposition of unauthorized vessels left unattended in boat

HB 525

harbors, and vessels that pose a hazard to navigation or a risk of pollution. The bill will clarify existing procedures in AS 30.30.010 -- 30.30.100.

The current statutory language provides overlapping and conflicting definitions for "abandoned" and "derelict" vessels, and two different procedures for disposing of them. In application, there are serious difficulties with using the statutes. It is nearly impossible to determine which standard to apply with its related disposal procedures. Furthermore, the disposal procedures have serious failings in terms of the notice given owners of seized vessels and other claimants of interest. The notice required is quite perfunctory, and results in the forfeiture of a vessel without any sort of judicial proceeding.

This bill removes the confusion in the statutory scheme, and provides revised procedures for the disposition of vessels removed from harbors. The revised procedures provide appropriate notice of the possible forfeiture of the vessel. They also ensure that there will be no forfeiture of vessels without the filing of a judicial proceeding.

The following sectional analysis of the bill highlights amendments to existing language and explains new language.

Section 1 amends AS 30.30.010(b) by allowing only peace officers to remove a vessel that is creating certain hazards. An existing reference to the Department of Transportation and Public Facilities is deleted. The language "or at a port or harbor" is added to give AS 30.30.010(b) the same coverage as AS 30.30.010(a). The list of situations in which a vessel may be removed has been slightly expanded.

A technical amendment to AS 30.30.010(a) deletes an unclear and unnecessary phrase ("of the state") from that subsection. In addition, this subsection contains two amendments to provide conformity with AS 30.30.020, as amended in sec. 2 of the bill.

Section 2 simply clarifies AS 30.30.020 by describing more precisely the places from which a vessel may be taken into custody. It also deletes the Department of Transportation and Public Facilities' authority to take vessels into custody, leaving that to peace officers.

Section 3 of the bill adds three new AS sections. New AS 30.30.051 sets out procedures for the forfeiture of vessels, and property on board the vessels, removed from public water or a boat harbor under AS 30.30.010(b), or taken into custody under AS 30.30.020. Notice to those known to have an interest in the vessel is required. Because the forfeiture is only accomplished by a judicial proceeding, notice to affected parties is given by service of the complaint. The use of this proceeding to accomplish the forfeiture is a major departure from the existing statutory procedure. The new procedure will provide greater protection of private rights because the process is under the supervision of the superior court.

HB 525

AS 30.30.054 provides the relief available in a proceeding filed under the proposed AS 30.30.051. In addition to the forfeiture of the vessel and other property aboard it, the court may order payment of harbor user fees, compensation for damage to public harbor facilities, and payment of the costs of custody and the costs of the litigation.

AS 30.30.057 prescribes the disposition of forfeited vessels. A vessel and other property aboard it, forfeited to the state, may either be destroyed or sold by the commissioner of administration, with any proceeds used to pay the costs of seizure, custody, forfeiture, and sale, and for any damage to public port or harbor facilities. If a vessel is forfeited to a municipality, the municipality has the same options.

Section 4 of the bill amends AS 30.30.160, to clarify that the Department of Transportation and Public Facilities may adopt regulations to carry out its powers and duties under AS 30.30 only; department regulations will not address the powers and duties of municipalities under that chapter.

Section 5 repeals AS 30.30.040, 30.30.050, 30.30.060, 30.30.070, 30.30.080, 30.30.090, and 30.30.100. It is appropriate to repeal AS 30.30.040 -- 30.30.080 because these sections relate to a disposal scheme that only applies to the disposal of "abandoned" vessels. There are difficulties with this existing language because it provides very little notice of the possible forfeiture of the vessel without a judicial proceeding. The repealed statutes are replaced with new provisions in sec. 3 of the bill, which provide a new forfeiture procedure.

AS 30.30.090 currently sets standards for "derelict" vessels which conflict with, and are unnecessary in light of, standards found in AS 30.30.010 for abandoned vessels. The repeal of AS 30.30.090 resolves this conflict.

AS 30.30.100 currently provides a taking and disposal procedure for derelict vessels. However, there are serious failings with this statute in terms of the notice of the possible forfeiture, and the fact that the forfeiture is accomplished without any sort of judicial proceeding. The repeal of AS 30.30.100 in sec. 5 of the bill, and the new language proposed in sec. 3, resolve these procedural difficulties.

This bill will greatly assist in the management of boat harbors in Alaska. It provides clear standards for dealing with unauthorized and hazardous "abandoned" vessels and provides appropriate safeguards for those having an interest in the vessels.

Sincerely,

/s/

Bill Sheffield  
Governor"



*Department of Transportation  
and Public Facilities*

# POSITION PAPER

BILL NO: HB 232

APPROVED: 

TITLE: Sunken and Abandoned Vessels  
and Cargoes

DATE: April 4, 1991

This bill would improve the department's ability to manage and maintain the State's harbors by clarifying Department of Transportation and Public Facilities' rights and responsibilities with regard to sunken and abandoned vessels and/or cargoes. There are no additional fiscal or personnel burdens with this bill; in fact, it would create efficiencies by eliminating current ambiguities about the department's right to directly, or through its lease agreements, seize and dispose of vessels and/or cargoes that pose or threaten to pose a danger to navigation, the environment, public health or public safety. For the protection of the public, the bill provides adequate public notice to owners or other interested parties of both seizure and disposal of vessels and cargoes. The bill also insures that the state is compensated by the responsible party(ies) for expenses incurred in seizure and disposal of vessels and cargoes.

\* The department recommends HB 232, Section 11, p. 6, line 22, AS 30.30.091(a) be amended to read as follows:

*...within ports and harbors administered by the Department of Transportation and Public Facilities, the department shall...*

Many ports and harbors are not within the jurisdiction of the department and this amendment would ensure the department is not responsible for areas outside its jurisdiction.

*For Further Information contact Katy McHugh at 465-3900.*



MAR 19 1991

PORT OF KODIAK - HARBOR DEPARTMENT

POST OFFICE BOX 1397, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8080 / 486-8085

FAX (907) 486-8090

March 15, 1991

Representative George Jacko  
P.O. Box "V"  
Juneau, AK. 99811

RE: PROPOSED LEGISLATION ON ABANDONED VESSELS

Dear Rep. Jacko:

I have been working with Mel Stephens, City Attorney, and concur with his recommendations and ask you to consider his input. Vessels that cause harborbormasters considerable problems are those users who fail to pay moorage fees.

Once it gets to the point where we deny the vessel use of harbor facilities, we are literally handcuffed from that point on. Currently there is no lawful authority to move these vessels from municipal Port and Harbor facilities to another location without assuming full responsibility for the vessel.

Your review and support in this proposed legislation would be gratefully appreciated. This will give us the necessary legislation to enforce this problem.

Should you have any questions concerning this matter please feel free to call me at any time.

Sincerely,

PORT OF KODIAK

G.V. "Corky" McCorkle  
HARBORMASTER/PORT ADMINISTRATOR

GVM/km

CC: Sen. Fred Zharoff  
Rep. Cliff Davidson  
Doug Ensløy  
George Uterachle  
City Manager

MELVIN M. STEPHENS, II  
A PROFESSIONAL CORPORATION  
ATTORNEY AT LAW  
104 CENTER AVENUE, SUITE 208  
P. O. BOX 1129  
KODIAK, ALASKA 99615  
TELEPHONE (907) 486-3143

MEMORANDUM

TO: George V. McCorkle, Harbormaster

FROM: Melvin M. Stephens, II *MMS*

RE: Jacko Proposed Legislation on Abandoned Vessels

Date: March 14, 1991

Representative Jacko's working draft of a proposed house bill relating to sunken and abandoned vessels and cargo is a laudable attempt to address this issue, but there are certain aspects of this draft which give me some concern and in other respects I feel it could be improved by amendments which would broaden its scope somewhat.

I am concerned about sections 1 and 2 of the proposed draft, which would have the effect of requiring the City of Kodiak and all other home rule municipalities to be governed by this legislation. In combination with section 11, which appears to restrict municipal jurisdiction over sunken and abandoned vessels to those vessels which are "on municipal land, including municipal tide and submerged land," I fear these sections may actually make it more difficult for you to address problems associated with derelict, abandoned and sunken vessels within the port of Kodiak. I would prefer to see section 1 deleted entirely and section 11 amended so as to explicitly state that nothing in this bill is intended to restrict a home rule municipality from regulating derelict, abandoned and sunken vessels within ports and harbors operated by that municipality.

I also note that section 5 of the bill establishes a relatively restricted definition of an abandoned vessel. While this is a carry-over from current law, I feel this bill would be improved with the addition of a new subsection (2)(E) to proposed section 30.30.025 to read as follows:

(E) The owner or operator of the vessel is more than 30 days delinquent in moorage charges owed to the state of a municipality.

The point of such an amendment would be to allow you to treat as "abandoned" those vessels which are simply left at city mooring facilities in spite of specific written directives by your office requiring those vessels to be removed due to longstanding arrearages in their moorage accounts.

George V. McCorkle

-2-

March 14, 1991

If you care to pass these comments on to the office or committee within the legislature which is working on this problem, please feel free to do so. I am sure your own observations concerning the nature of the problems which you face would also be of value to those who are working on this legislation.

corky.314

April 2, 1991

Representative George Jacko  
Alaska State House of Representatives  
P. O. Box V  
Juneau, Alaska 99811

APR 9 1991

Dear Representative Jacko,

I applaud you for your introduction of legislation that would assist in the removal of beached vessels along Alaska's coast line.

I have been a resident of St. Paul Island for more than five years. During that time I have watched the increasing fishing industry activity. It is, of course, very helpful to the economy of this small community. But there are discouraging side effects to the environment and the beauty of the Island.

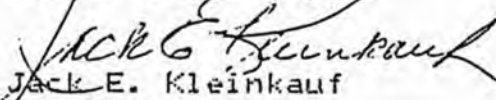
During the past five years, the shores of St. Paul Island have been fouled by rusting hulks of beached fishing industry vessels. Probably the only attraction that these shipwrecks is to the visitors when we try to verify the strength of the Bering Sea and the many storms that occur here.

The All Alaska, a processor, is a good example of another part of the fishing industry - greed. The skipper of this craft had plenty of warning about the impending storm. Yet he chose not to shut down his operation until it was too late. Now we have this dubious monument of that greed resting on the most beautiful beach on the Island. Not only is it an eyesore, but, still filled with rotting crab, it poses a hazard to the health of both the sea and to man.

The Terminator is an example of pure neglect. Its pilot fell asleep on the bridge. The Monarch demonstrated foolhardiness when the skipper tried to sail a sea covered with ice. That one required the Coast Guard to employ a helicopter to remove the crew, two of which nearly lost their lives when the vessel beached and the waves washed them from the deck on to the ice and rocks. And the Ocean Clipper, whose crew demonstrated lack of knowledge of the Island waters when it tried to anchor in a treacherous eddy. The anchor failed and the boat was tossed on the rocks where it remained for a year and then was redeposited directly on one of the fur seal rookeries.

These are a few examples of the problem found on just one island. I am sure many more may be found elsewhere. There are few places where the fishing industry has improved the quality of life in ways other than financial. Your proposed legislation is a huge step toward making the industry more responsible for the actions of uncaring, neglectful and greedy vessel operators and crews.

Yours very truly,

  
Jack E. Kleinkauf  
Box 65  
St. Paul Island, Alaska 99660



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

*Boyer*

April 9, 1991

APR 11 1991

Honorable George Jacko, Jr.  
Alaska House of Representatives  
Box V  
Juneau, Alaska 99811

Dear Mr. Jacko:

Thank you for providing us with a copy of HB 232 which relates to removal of sunken or abandoned vessels.

The National Marine Fisheries Service has been concerned with the number of vessels which have been grounding in or near fur seal rookeries in the Pribilof Islands. As the ports on St Paul and St. George develop, the number of vessels using the nearshore waters will increase. To date there has been no legal mechanism to compel vessel owners to remove vessels which have grounded in the Pribilofs. We have shared our concern with island leaders but to date there has been little either group could do.

We are, therefore, very pleased to see that the State is proposing a statute which will require the removal of sunken or abandoned vessels or cargos from the lands or waters of Alaska. By this letter the Alaska Region, National Marine Fisheries, wishes to indicate its support for this approach.

If you have any questions in the matter please call Dr. Steven Zimmerman or Mr. Bradley Hanson of my staff at 586-7235.

Sincerely,

*for* *James W. Brooks*  
Steven Penoyer, Director  
Alaska Region



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APR 11 1989

# The Alaska Economic Report

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Political aftershocks will affect all industries:

April 7, 1989

No. 7/89

## Spill Legacy: Litigation, Legislation

Political aftershocks of the big Exxon Valdez oilspill in Prince William Sound are beginning to be felt, as political leaders and agency heads scramble to be on what they see as 'the right side' of public opinion. In Washington, legislation to open the Arctic National Wildlife Refuge to exploration is on the shelf for now. In Juneau, where the state legislature is now meeting, oilspill liability and hazardous substance bills suddenly have new life, as well as various tax measures.

Meanwhile, as cleanup operations continue in Prince William Sound (see Pg. 2), lawsuits from fishermen against Exxon, Alyeska Pipeline service Co. and the State Department of Environmental Conservation are being filed.

In Juneau, Gov. Steve Cowper is threatening to shut down the Alyeska Pipeline if Alyeska doesn't adopt better spill contingency capability. Alyeska's owner companies, the producers (Cowper did not want to meet with Alyeska) aren't sure the governor really has

that authority, but they'd rather not test him; Cowper has plenty of other ways to make the industry 'feel the heat'. *Political effects of the spill will be felt on more industries than petroleum, however. Mining, forest operators and others who work with state and federal environmental agencies will be affected. Agencies will have much more political clout in pushing stipulations to development permits.* (Continued on Pg. 2)

### In This Issue:

- \*\*\* The spill - What happened; Massive cleanup underway in Prince William Sound ..... Pg. 2
- \*\*\* Effect on region's rich fisheries ..... Pg. 7
- \*\*\* Airport Marketing: Hustling new carriers with 'cooperative marketing' incentive ..... Pg. 3
- \*\*\* Airport indicators: Freight, passengers show healthy increases over last year ..... Pg. 3
- \*\*\* Mining: Cyanide contamination scare at Grant Mine near Fairbanks ..... Pg. 7
- \*\*\* Valdez Creek Gold Mine Expansion? ..... Pg. 7

## No Help: Dutch Harbor's Derelict Ship Dilemma

With attention of state agencies focused on Prince William Sound, the City of Unalaska/Dutch Harbor can't get help on a ship problem of its own, and local officials feel caught in a Kafkaesque web of admiralty laws: In late February, a 304-ft. Japanese freighter, *MV Swallow*, ran aground at Dutch Harbor; sources say the captain was drunk. In the days following, the captain and crew left town, a diesel fuel spill was cleaned up by the state and the city paid to dispose of other refuse. *Now the city is stuck with the beached ship with 89,000 gal. of bunker fuel still on board; the Japanese ship owners Hidaka Kain K.K. says it no longer owns the ship, having been paid off by insurers, but the insurance company claims it doesn't have title to the ship*

*either.* City officials want someone to 'do something'; they got sympathy but not much else from state officials in Juneau, including Gov. Steve Cowper (this was before the *Exxon Valdez* grounding).

This is now a common problem in the chain. Three ships, including the *Swallow*, are aground and abandoned within 25 miles of Unalaska; two more are on the Pribilofs. Unalaska has limited resources to deal with the problem, but if foreign ships go aground near smaller villages, there's no one to deal with it. There's a perception, even among insurance companies, that 'no one cares' about a derelict in the Aleutians. "If this was Malibu, we'd get action," city officials complain.

READY

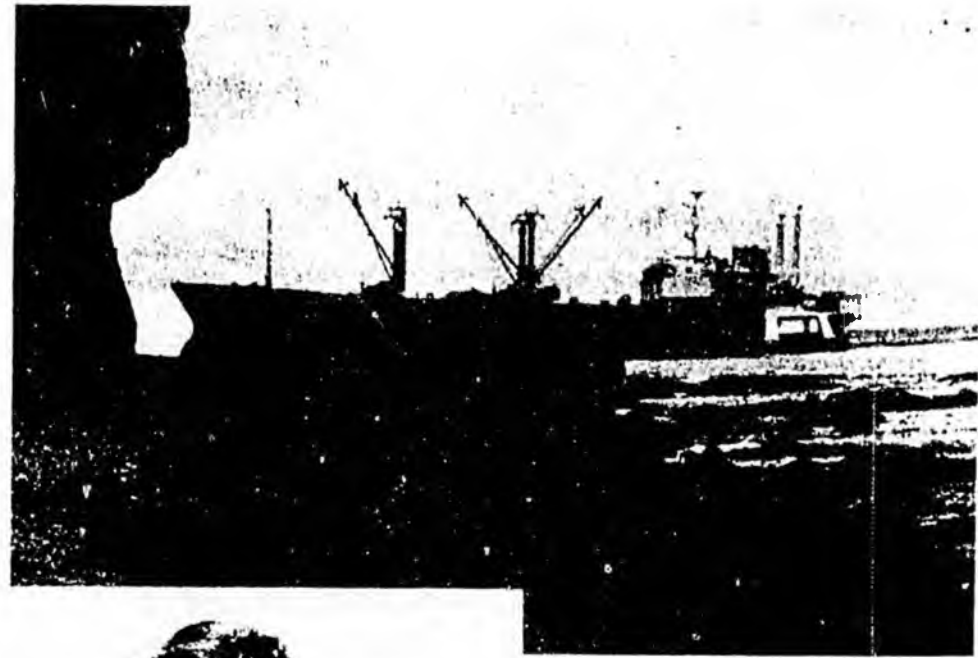
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PA2 Christopher Haley



John van Amerongen photos

*(left): Coast Guard Petty Officers Tim Mooney (left) and Bud Stevenson remove an oil-soaked boom from area of the grounded Swallow; Port Director Gary Daily is anxious for the Japanese owners to pick up their litter.*

# 'Swallow' Sours Dutch Harbor

As for the effects of the spill itself, the beaches inside the harbor remain painted with the black bunker fuel, and dead birds, coated with oil, can still be found in the tide line. Rare emperor geese continue to feed along the shore, and bald eagles have been observed feeding on oil-soaked carcasses.

wouldn't be found ashore would be "wandering on the road," and engaged in "real heavy preening all the time."

What was frustrating was that the birds were oiled enough to die eventually, but healthy enough that they could avoid being caught and cleaned.

# 'Swallow' Sours Dutch Harbor

As Dutch Harbor families were sitting down to Easter dinner, salvage crews were continuing efforts to offload heavy oil from the *Swallow*, a 278-foot Japanese trawler that t-boned into Ulatka Head the morning of February 27, spilling an undetermined amount of #6 diesel into the surrounding water and onto the beach.

Loaded with crab, the vessel was reportedly circling near the mouth of the harbor and awaiting the arrival of a pilot when she plowed nose-on into beach at the base of the rocky bluff.

By April 11, the Coast Guard and Army Corps of Engineers had supervised the offloading of the remaining 22,000 gallons of #6 diesel and 8,000 gallons of contaminated fuel. The cargo of 250 tons of crab was disposed of at sea to avoid a possible explosion from methane gas given off by the decomposing shellfish.

While a final disposition hasn't been made as to the fate of the vessel, Port Director Gary Daily remains concerned that its Japanese owners, Hidaka Kaiun, will leave the vessel abandoned on the beach and the Coast Guard and Army will do nothing further to rid the community of a dangerous landmark. Presently, it's not considered a hazard to navigation.

"Now you have a liability hazard

toward the city," Daily told the JOURNAL. "Kids will be exploring for the next 100 years, and some will not come back. How do you justify that? Anybody who falls down has got to sue somebody."

"We've got a community with the ultimate littering problem dumped on it," said Daily. "It's got this town flat upset."

ker fuel, and dead birds, coated with oil, can still be found in the tide line. Rare emperor geese continue to feed along the shore, and bald eagles have been observed feeding on oil-soaked carcasses.

While he didn't have exact figures, ADF&G biologist Dan Urban said about 300 to 500 birds were reported killed by the oil.

"It's really scary, considering the relatively minor amount spilled here, and how little oil it took to do the birds in," Urban said.

A spot "the size of a silver dollar" would distract the birds from feeding, Urban said. Birds that normally

the time."

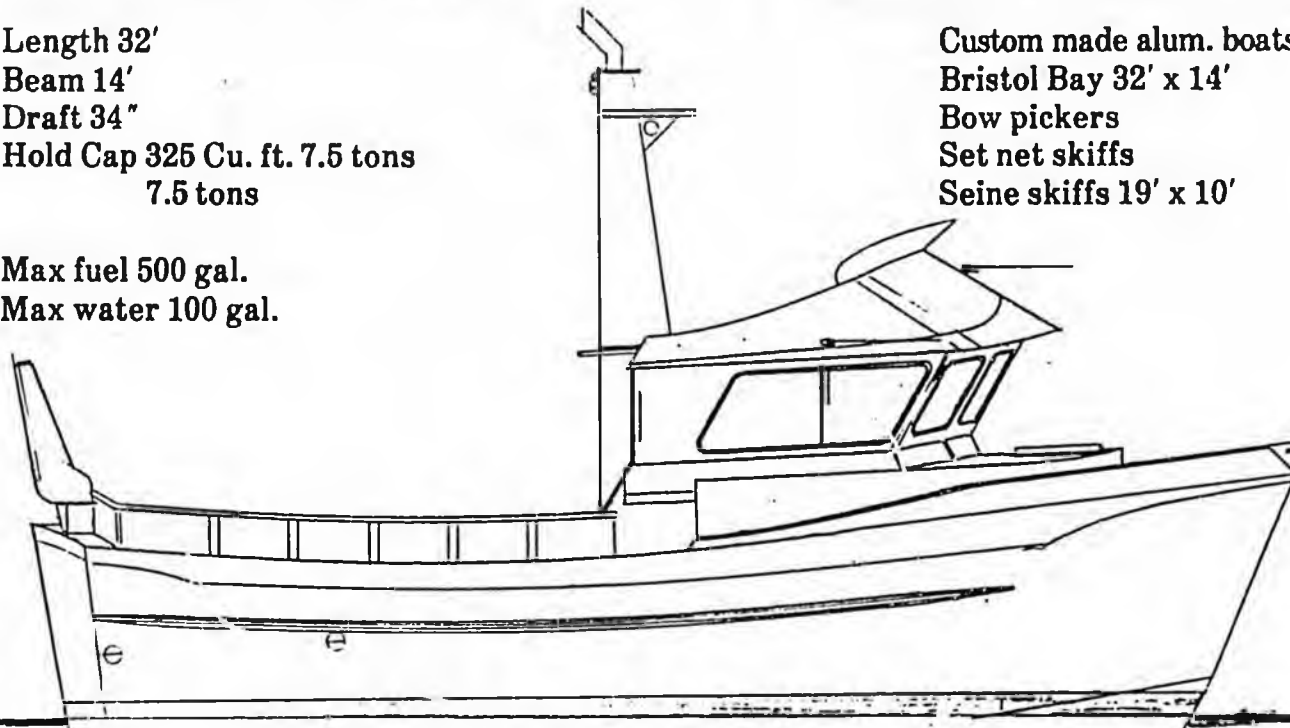
What was frustrating was that the birds were oiled enough to die eventually, but healthy enough that they could avoid being caught and cleaned.

The abandoned ship isn't exactly a monument to good U.S./Japan relations, Daily said. "If you can take millions of dollars out of here, then expect to dump this on us and leave it here, do you expect us to say thank you?"

"It's not the fault of the Japanese government . . .," Daily said, "it's not the owner's fault. But we would like this mess cleaned up." □

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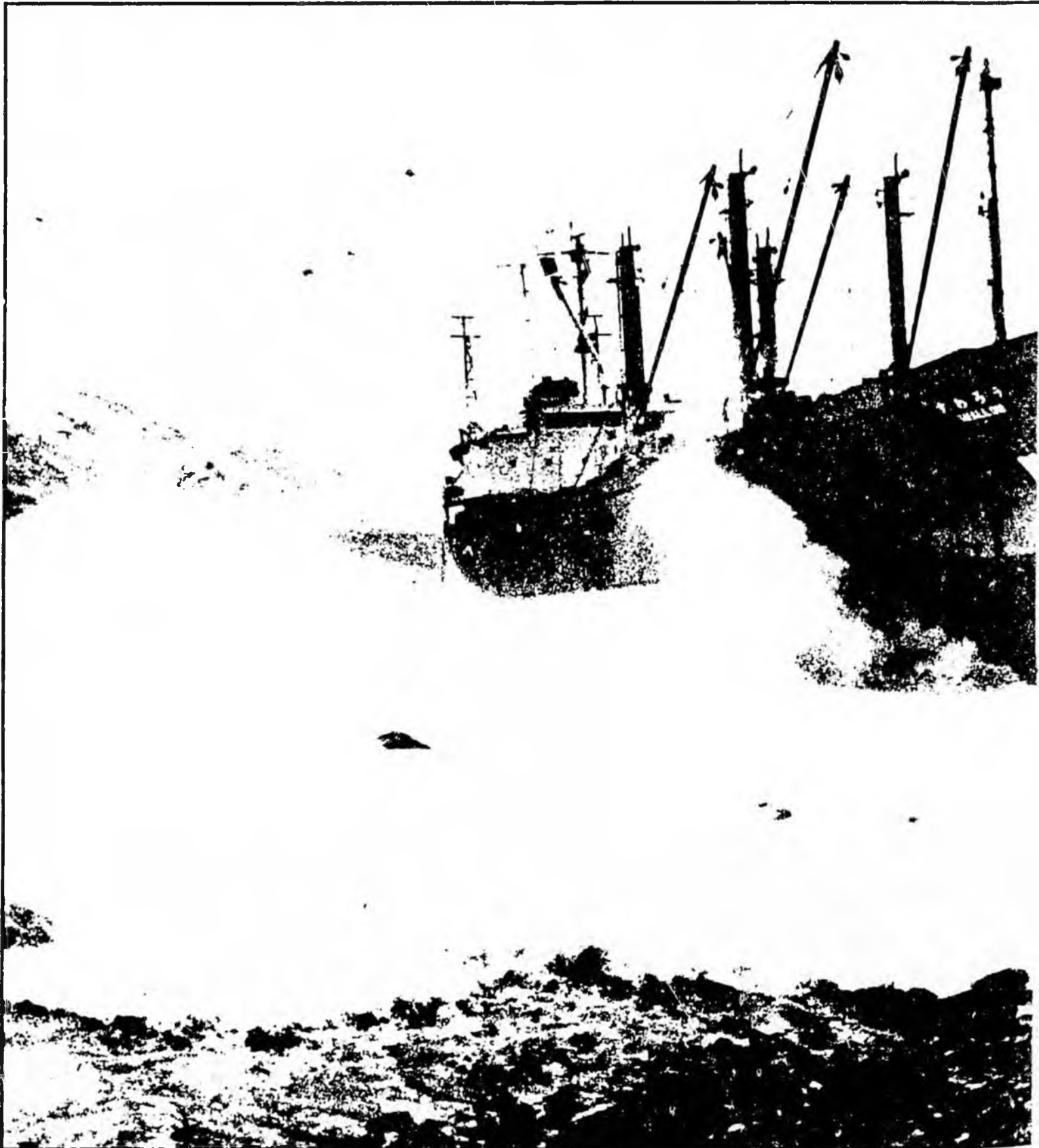
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ALASKA



PA2 Christopher E. Haley

# On the Rocks



PAC Ed Moreth

By PAC Ed Moreth

It was 250 tons of crab perhaps destined to remain in Alaska, joked one Coast Guardsman in Dutch Harbor where a ship laden with frozen crab grounded on a rocky beach Feb. 27.

LT Matt Carr of Marine Safety Office Anchorage called it "the case of the doomed crab cargo." The Alaska snow crab started its journey on the fishing vessel *Yardarm Knot*, a 324-foot crab processing vessel bound for Japan. The American-flagged ship struck a reef on Feb. 20 off St. Paul Island.

In an effort to save the cargo, valued at about \$2.5 million, the Japanese refrigerated cargo ship *Swallow* transported the crab to its cargo holds.

Yet only seven days later, while waiting for a pilot on its approach to Dutch Harbor, the *Swallow* drifted bow first onto a beach at Ulatka Head with nearly two-thirds of its length aground.

Attempts to free the vessel using tugs at high tide were unsuccessful, according to

Carr. The owner, Hidaka Kaiun Company Ltd, of Japan claimed the vessel a total loss.

The 19-man crew was safely taken off the vessel; the crab, however, could not be rescued. The frozen crab was instead becoming a potential danger to the Coast Guard crew and contractors working on board the *Swallow*.

The crab had to be removed before it thawed, said LCDR Bill Hutmacher, the on-scene coordinator's representative from Marine Safety Office Anchorage. He said that once the crab thaws, it releases a toxic gas, which makes working conditions aboard the vessel unsafe.

A C-130 aircraft from Kodiak was sent to Dutch Harbor with 2,000 feet of inflatable containment boom. Coast

Guard crews from the Pacific Area Strike Team, Marine Safety Office Anchorage and Marine Safety Detachment Kodiak were also dispatched to the scene.

Ten of the ship's 11 fuel tanks had been punctured. Nearly 89,000 gallons of number six fuel and 30,000 gallons of diesel on board the grounded *Swallow* presented a potential danger to the city's four \$1-million a day fish and crab processing facilities as well as the wildlife in the area.

Two members of the U.S. Department of Interior were sent to Unalaska to set up a wildlife rehabilitation center.

The Coast Guard contracted Underwater Construction, Inc. of Anchorage, which also had been contracted to dispose of the fuel aboard the cargo ves-



Twelve Hundred feet of containment boom is deployed by Pacific Area Strike Team members and the landing craft *Krystal Sea* with help from a back hoe.

sel Aoyagi Maru, 40 miles east of Dutch Harbor. Underwater Construction's two work boats, Krystal Sea and Bettye K were diverted to offload Swallow's rotting crab and fuel.

Absorbent snares were placed on each side of the 280-foot Swallow. Boom was strategically set in areas to prevent the oil from spreading.

The crab was transferred to the Krystal Sea, separated from its containers, and dumped in 300 feet of water about two miles from the Swallow.

Most of the diesel on board was believed to have escaped from the vessel. It's unknown how much of the number six fuel was lost. Cleanup crews recovered more than 3,000 pounds of oily debris from the water and beaches.

The fuel transfer operations were completed on April 6. Carr said that it took 12 pumps, including two Strike Team pumps, to offload the fuel.

"The oil was as thick as molasses and so hard to pump." Heaters were placed on board the Swallow to help speed the transfer process, but had little affect.

Unalaska Mayor, Paul Fuhs, is working with the Japanese consul in Anchorage and the owner's insurance company in an effort to have the vessel removed from Dutch Harbor, according to Glenn Reed, Unalaska's assistant city manager. 🐾

---

SN Dan Schardt tries to wipe some of the oil from BM1 Dan Derwey's exposure suit.

PA2 Christopher E. Halsey



... blaster surge at ...  
 ... 31-34, ill., map, photograph.

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Fried, Neal

ANCHORAGE DAILY NEWS

DATE: SATURDAY March 18, 1989  
 PAGE: C2  
 SECTION: Metro  
 SOURCE: The Associated Press  
 DATELINE: UNALASKA

EDITION: FINAL  
 LENGTH: Short

JAPANESE SHIP'S FUEL TO BURN

END OF DOCUMENT.

RANK 9 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3695  
 ANCHORAGE DAILY NEWS

DATE: FRIDAY March 17, 1989  
 PAGE: A1  
 SECTION: Nation

EDITION: FINAL  
 LENGTH: Short

GOING NOWHERE

END OF DOCUMENT.

RANK 10 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3435  
 ANCHORAGE DAILY NEWS

DATE: SATURDAY March 11, 1989  
 PAGE: D1  
 SECTION: Metro  
 SOURCE: by HAL BERNTON  
 Daily News reporter

EDITION: FINAL  
 LENGTH: Medium

GOOEY OIL COMPLICATES SPILL CLEANUP

END OF DOCUMENT.

RANK 11 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3383  
 ANCHORAGE DAILY NEWS

DATE: FRIDAY March 10, 1989  
 PAGE: B1  
 SECTION: Metro  
 SOURCE: The Associated Press  
 DATELINE: DUTCH HARBOR

EDITION: FINAL  
 LENGTH: Short

OIL SPILL DAMAGE RAISED

END OF DOCUMENT.

RANK 12 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3292  
 ANCHORAGE DAILY NEWS

DATE: TUESDAY March 7, 1989  
 PAGE: D1  
 SECTION: Metro  
 SOURCE: by HAL BERNTON  
 Daily News reporter

EDITION: FINAL  
 LENGTH: Medium

GUARD CONSIDERS HOW TO UNLOAD OIL, DECAYING CRAB

END OF DOCUMENT.

RANK 13 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3258  
 ANCHORAGE DAILY NEWS

DATE: WEDNESDAY March 8, 1989  
 PAGE: B2  
 SECTION: Metro  
 SOURCE: The Associated Press

EDITION: FINAL  
 LENGTH: Short

COAST GUARD MOPS UP OIL SPILL

END OF DOCUMENT.

RANK 14 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3209  
 ANCHORAGE DAILY NEWS

DATE: SUNDAY March 5, 1989  
 PAGE: B1  
 SECTION: Metro  
 SOURCE: By STEVE RINEHART  
 Daily News reporter

EDITION: FINAL  
 LENGTH: Medium

COAST GUARD FIGHTS WINDS TO HOLD SPILL

END OF DOCUMENT.

RANK 15 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 3155  
 ANCHORAGE DAILY NEWS

DATE: SATURDAY March 4, 1989  
 PAGE: A1  
 SECTION: Nation  
 SOURCE: By HAL BERNTON  
 Daily News reporter

EDITION: FINAL  
 LENGTH: Medium

SPILL THREATENS DUTCH HARBOR JAPANESE CARGO SHIP RUNS AGROUND  
 CARRYING 100,000 GALLONS OF FUEL

END OF DOCUMENT.

RANK 16 OF 17. PAGE 1 OF 1. DB AD9. DOCUMENT 2995  
 ANCHORAGE DAILY NEWS

DATE: THURSDAY March 2, 1989  
 PAGE: E5  
 SECTION: Metro  
 SOURCE: The Associated Press

EDITION: FINAL  
 LENGTH: Short

VESSEL RUNS AGROUND, SPILLS FUEL

END OF DOCUMENT.