

HB57

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 15, 1991

FURTHER REFERRALS:

Date of Committee Action: 4/12/91

The FINANCE Committee considered:

HB 57

HOUSE BILL NO. 57

SHORE FISHERIES LAND CLASSIFICATION

"An Act relating to leases of state land for fisheries development; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CSHB 57 (FIN) 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 HFC

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Mike Navaree</i> NAVAREE		<i>Bob Sharp</i> Sharp		<input checked="" type="checkbox"/>	
<i>Tan Brown</i> BROWN		<i>Robert Phillips</i> Phillips		<input checked="" type="checkbox"/>	
<i>Kopona</i> KOPONA		<i>Eileen P. Maclean</i> Maclean		<input checked="" type="checkbox"/>	
<i>George Jackson</i> JACKSON		<i>Kamera Barnes</i> Barnes		<input checked="" type="checkbox"/>	

Mike Navaree *Eileen P. Maclean*
 CHAIRMAN'S SIGNATURE
 NAVAREE Maclean

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 57 (FIN)

Revision Date: _____ Department Affected: Natural Resources
 Title: Lease of State Land for Fisheries Development BRU: Land & Water Management
 Component: Land & Water Management
 Sponsor: Representative Navarre
 Requestor: HOUSE FINANCE COMMITTEE COMPONENT SERIAL NO. 413

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Representative Mike Navarre, Co-Chair *Mike Navarre* 465-3706
Representative Eileen MacLean, Co-Chair *Eileen MacLean* Phone: 465-3722
 Division: _____ Date: April 12, 1991

Approved by Commissioner: _____
 Agency: _____ Date: _____

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

CS FOR HOUSE BILL NO. 57 (FINANCE)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
 Referred:

Sponsor(s): REPRESENTATIVE NAVARRE, Davidson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to leases of state land for fisheries development; and providing for an
 2 effective date."

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

4 * Section 1. PURPOSE. It is the purpose of this Act to provide for the continued classification and
 5 lease of state land for shore fisheries development in an area or region of the state where the
 6 commissioner of natural resources has not adopted a land use plan under AS 38.04.065 and to direct the
 7 commissioner to adopt land use plans for an area or region of the state containing tideland having shore
 8 fisheries development activities that currently does not have a land use plan.

9 * Sec. 2. AS 38.05.082(b) is amended to read:

10 (b) The director may classify land as subject to leases for fisheries development. In an
 11 area or region of the state for which a land use plan has not been adopted under
 12 AS 38.04.065, the director may classify land for lease under this section after notice under
 13 AS 38.05.945. The director shall [, AND] publicly invite applications for lease of the selected
 14 areas. Each application shall be accompanied by an affidavit to the effect that the applicant

1 presently intends to personally utilize the leased area for fishing purposes the following season.
2 If two or more applications are received for the same shore area, the director shall award the
3 lease to the most qualified applicant. In determining the qualifications of applicants, the director
4 shall consider the length of time during which the applicant has been engaged in set netting, the
5 proximity of the past fishing sites of the applicant to the land to be leased, the present ability of
6 the applicant to utilize the location to its maximum potential, and other factors relevant to the
7 equitable assignment of the disputed area. If the director cannot determine a preference between
8 conflicting applicants for the same lease site on the basis of qualifications, the director shall
9 select between the applicants by lot. An aggrieved applicant may appeal to the commissioner
10 within 30 [FIVE] days for a review of the director's determination.

11 * Sec. 3. AS 38.05.082(b) is amended to read:

12 (b) The director may classify land as subject to leases for fisheries development, and [IN
13 AN AREA OR REGION OF THE STATE FOR WHICH A LAND USE PLAN HAS NOT
14 BEEN ADOPTED UNDER AS 38.04.065, THE DIRECTOR MAY CLASSIFY LAND FOR
15 LEASE UNDER THIS SECTION AFTER NOTICE UNDER AS 38.05.945. THE DIRECTOR
16 SHALL] publicly invite applications for lease of the selected areas. Each application shall be
17 accompanied by an affidavit to the effect that the applicant presently intends to personally utilize
18 the leased area for fishing purposes the following season. If two or more applications are
19 received for the same shore area, the director shall award the lease to the most qualified
20 applicant. In determining the qualifications of applicants, the director shall consider the length
21 of time during which the applicant has been engaged in set netting, the proximity of the past
22 fishing sites of the applicant to the land to be leased, the present ability of the applicant to utilize
23 the location to its maximum potential, and other factors relevant to the equitable assignment of
24 the disputed area. If the director cannot determine a preference between conflicting applicants
25 for the same lease site on the basis of qualifications, the director shall select between the
26 applicants by lot. An aggrieved applicant may appeal to the commissioner within 30 days for
27 a review of the director's determination.

28 * Sec. 4. COMPLETION OF LAND USE PLANS. The commissioner of natural resources is directed
29 to adopt a land use plan under AS 38.04.065 by January 1, 1997, for an area or region of the state
30 containing tideland having shore fisheries development activities for which a land use plan has not
31 already been adopted.

- 1 * Sec. 5. Section 3 of this Act takes effect January 1, 1997.
- 2 * Sec. 6. Except for sec. 3 of this Act, this Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 57

Revision Date: 3/5/91 Department Affected: Fish and Game
 Title: Shore Fisheries Land BRU: Commercial Fisheries
Classification Component: Commercial Fisheries
 Sponsor: Representative Navarre
 Requestor: Governor COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0					
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Bob Clasby Phone: 465-4210

Division: Commercial Fisheries Date: 3/5/91

Approved by Commissioner: *[Signature]*

Agency: Fish and Game Date: 3/5/91

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 1
Bill Version: CSHB 57(RES)
(H) Publish Date: 3/15/91

Revision Date: 4-Mar-91 Department Affected: Natural Resources
Title: Lease of State Land for Fisheries Development BRU: Land & Water Management
Sponsor: Representative Navarre Components: Land & Water Management
Requestor: House Resources COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES		102.7	102.7			
TRAVEL		15.0	15.0			
CONTRACTUAL		14.0	14.0			
SUPPLIES		1.0	1.0			
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	132.7	132.7	0.0	0.0	0.0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		132.7	132.7			
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	132.7	132.7	0.0	0.0	0.0

POSITIONS:

FULL-TIME		2.0	2.0			
PART-TIME						
TEMPORARY						

Estimate of Current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Ron Swanson Phone: 762-2680
Division: Land and Water Management Date: 4-Mar-91

Approved by Commissioner: Harold Heinze Date: 4-Mar-91
Agency: Department of Natural Resources

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

Fiscal Note for CSHB 57 (Resources), continued

Area plans generally take several years to complete. This plan would not be started until FY 93.

100 <u>Personal Services</u> :	NRM I (18A)	\$ 54.6
	NRO II (16A)	48.1
200 <u>Travel</u> :	Anch. & Kodiak Planning Team Meetings	5.0
	Public Meetings (8-10 locations)	10.0
300 <u>Contractual</u> :	Planning Brochure	2.0
	Copying, Newsletters, Ads.	3.0
	Inventory, Mapping	6.0
	Plan Printing	3.0
400 <u>Supplies</u> :	Miscellaneous Supplies	1.0
	Total	\$132.7

COMMITTEE COPY

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

(Phone) 762-2253

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT
SOUTHCENTRAL REGION

3601 C STREET
BOX 107005
ANCHORAGE, ALASKA 99510-7005

April 8, 1991

APR 10 1991

Mr. Don Bailey
Box 416
Anchor Point, Ak 99556

Re: Shore Fishery Leases
ADL Nos. 201790 & 201791

Dear Mr. Bailey:

You called me last week and were concerned that the referenced leases had expired. You and your wife, Gloria, have been fishing these lease sites since 1980. Your lease renewal applications and 1990 rentals were submitted last May. Adjudication of the applications by this office has yet to be accomplished.

I explained that during this past year, we have had a staff vacancy in the Shore Fishery Unit, which has affected our ability to promptly respond to applications and other requests. Also, I explained that an application vests no interest in state land.

As you know, we recently discovered that we are prevented from issuing new shore fishery leases and approving lease renewal applications where tide and submerged lands have not been classified. Consequently, we are unable to proceed with adjudication of your application.

As you explained, this places you and your wife in a rather difficult situation. Without an issued shore fishery lease, the sites become available to anyone having their nets in the water first (first in time, first in right). This means that you must have your nets in the water at the initial opening of fishing season. If you are not the first ones on your sites, you lose the right to fish those sites until after the first party leaves or until closure of the area to fishing, whichever occurs first.

I understand your concern. However, we are unable to help because we are without statutory authority to issue leases (including renewals and certain amendments) in unclassified areas. There are approximately 125 expired shore fishery leases in unclassified areas. We are awaiting action by the legislature on House Bill 57, sponsored by Representatives Navarre and Davidson. As discussed in our letter of March 11, 1991, which was sent to all shore fishery

Don Bailey
April 8, 1991
Page 2

lessees and applicants, if passed, the bill would enable the department to move forward with shore fishery lease adjudication in unclassified areas. I am enclosing a copy of the bill for your information (I believe this is the latest version). The legislative information available to me indicates that the bill will undergo review by the Resources Committee on April 12, 1991.

We are preparing to move quickly on all shore fishery lease applications if this bill is enacted. If the bill is not enacted, your application will be denied and your rentals will be refunded.

Please call me if you have questions concerning your pending shore fishery lease renewal request.

Sincerely,



Judy Jett, Acting Chief
Planning and Development

cc: Representative Mike Navarre
Representative Cliff Davidson

Enclosure

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

March 2, 1991

SUBJECT: Leases for Shore Fisheries Development (CSHB 57)
(Work Order No. 7LS-0334(S))

TO: Representative Mike Navarre
Attn: Tom Ackerley

FROM: Jerry Luckhaupt *JEL*
Legislative Counsel

You have requested a sectional for the above-referenced version of a committee substitute for HB 57. Preliminarily, please note that a sectional analysis should not be considered an authoritative interpretation of a bill - the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it relates to a particular set of circumstances, please advise.

Section 1 of the bill provides a purpose clause.

Section 2 of the bill amends AS 38.05.082(b), to provide an exception allowing the director of the division of lands of the department of natural resources, to classify lands for shore fisheries development leases, in areas of the state where an area or regional land use plan under AS 38.04.065 has not been completed. An additional change on p. 2, line 10, requested by DNR, provides for a longer appeal period from the director's decisions.

Section 4 of the bill provides that the department of natural resources shall adopt land use plans for those areas of the state with tidelands and which currently do not have land plans. DNR is to accomplish this by January 1, 1995.

Section 6 of the bill provides an effective date making section 1,2, and 4 of the bill effective immediately under AS 01.10.070(c).

Section 3 of the bill amends AS 38.05.082(b) to remove the exception (other than the extended appeal period requested by DNR) provided by section 2 of the bill.

Representative Mike Navarre
March 2, 1991
Page 2

Section 5 of the bill provides that section 3 of the bill is effective January 1, 1991, the date all the land plans are supposed to be completed under section 4 of the bill, which thereby removes the necessity for the exception.

GPL:mi
91-042.mai

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

March 5, 1991

The Honorable Cliff Davidson, Chair
House Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Davidson:

Subject: CSHB 57 (Resources), which relates to leases of state land for fisheries development.

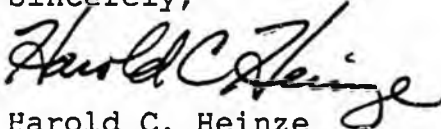
Position: The department supports the ^{proposed} House Resources Committee substitute for HB 57.

Background: Currently, DNR cannot issue set net leases without completing the required state land planning and classification process for the area. Potential set net site lessees are concerned that the department cannot act quickly on applications for sites where the land planning and classification process has not been completed.

This bill grants a temporary exemption to DNR from state land planning and classification requirements for set net lease sites in non-planned areas of the state. Until 1995, the department may classify land for set net lease sites in areas without a land plan after issuing a public notice under AS 38.04.065. By January 1, 1995, however, the department is to have completed plans for all state tidelands proposed for set net leases, which will end the need for the set net site planning/classification exemption.

Please let me know if you need additional information about this matter.

Sincerely,



Harold C. Heinze
Commissioner

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

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

1401 C STREET
BOX 107005
ANCHORAGE, ALASKA 99513-7005

DIVISION OF LAND AND WATER SOUTHCENTRAL REGION

March 11, 1991

Re: Shore Fishery Lease

Dear Shore Fishery Lessee or Applicant:

The purpose of this letter is to inform you about the effect of land classification on your shore fishery lease or application.

Under state law, prior to the disposal of an interest in state land, the land must be "classified". Shore fishery leases are a disposal of interest in state land. On July 30, 1990, the Attorney General's Office informed the division that shore fishery leasing is not exempt from the statutory planning and classification process.

A classification identifies the primary use for which the land will be managed. Classification is based on a regional land use plan, such as the Prince William Sound Area Plan, or by a management plan or land planning report.

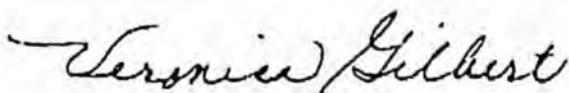
Tide and submerged lands in Cook Inlet, Kodiak and the Alaska Peninsula (outside of those classified by the Bristol Bay Area Plan) have not been classified. Work has recently begun on the Kenai Peninsula Area Plan which will include tide and submerged lands on both sides of Cook Inlet.

However, Representative Navarre has recently introduced legislation that would exempt Shore fishery leases from the land use planning and classification requirement until 1995. If passed, this bill will again enable the department to move forward.

The state considers leases issued in good faith by the department before July 30, 1990, to be valid existing rights. However, until tide and submerged lands have been classified or the law changed, this division will be unable to adjudicate shore fishery leases, applications (including renewals and certain amendments) in Cook Inlet, Kodiak and the unclassified areas of the Alaska Peninsula. We apologize for any inconvenience this causes.

If you have a question on a pending application or adjudication issue please contact the Shore Fishery Unit at 762-2469.

Cordially,

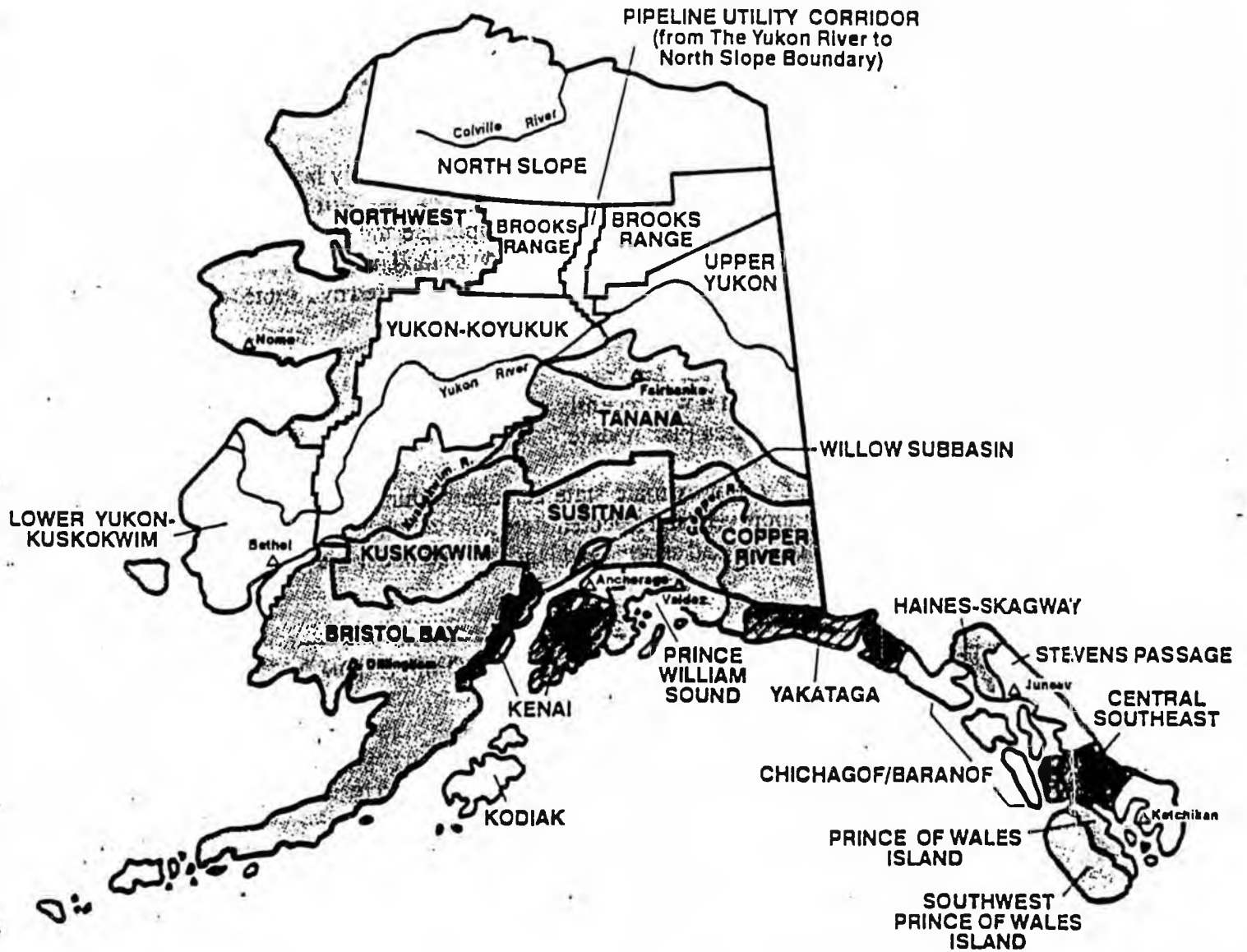


Veronica Gilbert
Regional Manager

ASD nec:clasil

FIGURE 2.

Alaska Department of Natural Resources AREA PLANS






January 1991



Alaska Department of
**NATURAL
RESOURCES**

AREA PLANNING STATUS

-  Completed area plans
-  Area plans in progress
-  Not scheduled for area plans at this time

I. STATE LAND CLASSIFICATION PLANNING, CLASSIFICATION, AND MANAGEMENT

LAND AND RESOURCE PLANNING

All land classification actions are based on a land use plan prepared by the Department of Natural Resources. The planning process is described in Figure 1, below. Land use plans provide guidance for the use and development of state land and resources. State law requires that these plans be consistent with local governmental land use plans to the maximum extent determined to be consistent with state interests. The department prepares three types of land use plans: area plans, management plans, and site-specific plans.

Area plans, such as the 15.5-million acre Bristol Bay Area Plan, cover relatively large regions of the state. With participation by agencies and the public, resources are identified and land use values are determined. Area plans allocate state land for primary and secondary uses. To ensure multiple use and avoid conflicts, the allocations are accompanied by management intent statements which give direction to land managers and guidelines for applying specific land classifications. About 70 million acres of state land are now covered by adopted area plans in populated as well as rural regions of the state. (See Figures 2 and 3.)

The table below shows ten completed area plans. Two previously completed area plans, Delta-Salcha (1982) was encompassed in the Tanana Basin Plan when it was recently updated. The Willow Sub-basin Area Plan will also be encompassed in the upcoming Susitna Area Plan update.

Completed area plans listed below show approximate state acreage within their planning areas. This acreage includes not only patented, tentatively approved, and selected state land which have come to the state under various federal land entitlements, but also shore, tide and submerged land granted under the federal Submerged Lands Act of 1953.

Table 1A: ADOPTED AREA PLANS	ACRES	COMPLETION DATE
Bristol Bay	15,500,000 acres	1984
Copper River Basin	3,300,000 acres	1986
Haines-Skagway	400,000 acres	1979
Kuskokwim	16,000,000 acres	1988
Northwest	16,000,000 acres	1989
Prince William Sound	5,300,000 acres	1988
Prince of Wales Island	1,035,000 acres	1990
Susitna	9,500,000 acres	1985
Tanana Basin (updated)	14,804,000 acres	1990
Willow Sub-basin	<u>460,000 acres</u>	1982
TOTAL	82,049,000 acres	

Table 1B: AREA PLANS IN PROGRESS	PROJECTED COMPLETION DATE
Kenai Area Plan	December, 1993
Central Southeast Area Plan	December, 1993
Yakataga Area Plan	June, 1993

Fact sheet:



Shore Fishery Leasing

Division of Land & Water Management • May 1990

As manager of most of the state's tidelands out to the three-mile limit, the Department of Natural Resources issues shore fishery (set net) leases. A shore fishery lease gives the leaseholder first priority to use a shore fishery site for commercial salmon set net fishing on state-owned tidelands. This "first priority" applies only when the leaseholder is personally fishing the site.

Is a shore fishery lease required for set net fishing?

No, a shore fishery lease is not required for set net fishing. However, a person holding a valid shore fishery lease may exclude others from set net fishing within his or her lease area.

Who may apply for a shore fishery lease?

An applicant must have a valid limited entry permit or an interim-use salmon set net permit. In addition, the applicant must be a citizen of the United States, and must be at least 18 years of age. A lease for a minor who is at least 10 years old may be issued to a legal trustee until the child reaches age 18. Then the lease is automatically transferred to the child's name.

When may I apply for a shore fishery lease?

New applications may be filed each year between May 1 and September 1.

How do I apply for a shore fishery lease?

First, decide where you want to locate your lease. Then check land status. Generally, if the tidelands are not already leased to another setnetter, you may stake your lease area. After that, you have thirty days to file your application to the Department of Natural Resources at the address shown on the back of this fact sheet. You must also turn in a sketch map with your application and meet the other requirements of 11 AAC 64.260 (part of the Department of Natural Resources shore fishery regulations). Later, you will have to prepare and file a shore fishery diagram.

What fees are charged for a shore fishery lease?

A non-refundable filing fee of \$50 is required with each application. There is a \$75 diagram review fee and rent is \$150 per year. The first year's rent must be paid before the lease is issued. Applicants must also pay the cost of public notice (newspaper ad).

Do I have to stake my site?

Yes. Each site must be staked on the shore above the high tide line before submitting an application. The stake must carry a sign with your name, mailing address, limited entry permit number and date of staking. An application must be filed within 30 days of staking the site.

Does staking give me exclusive use of a site?

No. Staking is part of the application process for a shore fishery lease. It notifies others that you have applied to lease the site. Only after a lease has been issued do you have first priority to fish your site when you are physically set net fishing there.

What areas are open to set net leasing?

Only certain areas in Southcentral Alaska are open. They are located in the Alaska Peninsula area, Bristol Bay, Kodiak Island waters, Cook Inlet, and the Eshamy Bay district in Prince William Sound. These areas are defined in the Board of Fisheries' commercial finfish regulations.

May I locate my site anywhere I wish within the open areas?

No. You must contact the Department of Fish and Game to find out which tide and submerged lands are open to set net fishing on a permanent basis. Set net leases will not be issued in areas that are opened only on a temporary or irregular basis.

Does the state have a list of set net sites available for leasing?

No. You must locate your own site within the open areas.

How long is a shore fishery lease valid?

A lease is issued for up to 10 years. The leaseholder may apply for a renewal at the end of the lease term.

How many set net sites may I lease?

The number varies depending on the commercial finfish regulations for the area, except for Cook Inlet where the maximum is three sites.

Do I have to apply separately for each set net site?

No. Sites that are within a reasonable distance (approximately two miles) of each other may be included in one application.

continued

What is a shore fishery diagram?

It is a detailed map that shows the exact site and location of your site, and its relationship to neighboring sites. It is more detailed than the sketch map that you attached to your application.

Who is responsible for preparing the shore fishery diagram?

You are. However, most people hire a surveyor or drafts-person to do the drawing. After the Division of Land and Water Management approves your lease application, you will be sent a packet with detailed instructions for preparing a diagram. You must submit two copies of the preliminary diagram within 90 days after you receive the packet.

Do I have to survey my set net site?

You do not usually need to survey the set net site. However, under unusual circumstances, such as where shoreline erosion or accretion causes problems in locating the site, or conflicts appear to exist with neighboring sites, you may be required to survey your site.

May I use my shore fishery lease area for purposes other than salmon fishing?

No. A shore fishery lease is issued only for the purpose of commercial salmon set net fishing.

May I put improvements within my shore fishery lease area?

No, you may not put improvements such as a cabin or storage building within your lease area.

Must I fish my site myself?

Yes. You must personally fish each leased site as depicted on your diagram at least every other year, for at least four legal fishing periods during the commercial fishing season. Failure to do so is grounds for lease termination.

May I move my nets within my lease area?

Yes, you may move the nets. However, the nets must remain within the lease area and can be no closer to the boundaries of the lease area than one half the minimum distance allowed between nets by the Board of Fisheries commercial finfish regulations.

May I change the location of my lease site after the lease has been issued?

Yes. We call these changes amendments. Amendments may be applied for between May 1 and September 1 of any year. Most amendment applications require the same fees and steps as a lease application.

May I sublease my set net site?

No. Subleasing is not allowed under the terms of shore fishery leases.

May I assign my shore fishery lease to another person?

Yes, you may assign your lease (transfer all your lease rights) to a person who is qualified to apply for a lease, if the lease is in good standing. The assignment cannot take effect until it is approved by the director, Division of Land and Water Management. Qualifications and procedures for an assignment are described in shore fishery regulations, 1: AAC 64.430.

If my family and I have been fishing the same section of beach for several generations, do we have "grandfather" rights to fish this beach and exclude all others?

No. No one is given exclusive rights to a set net site because of previous use. The length of time a person has fished a certain site is important only when more than one person applies to lease the same site. It is one of the major factors considered when deciding who is most qualified to lease the site.

If I acquire an unleased site from a family member or another setnetter who has fished it for several years, can I claim this time when I apply to lease the site?

No. You must personally fish a site in order to have the time apply.

What precautions should I take before buying a set net site?

Before you buy a site from an individual, it is a good idea to check land ownership records at the Division of Land and Water Management.

For information about shore fishery leases, contact:

Department of Natural Resources
Division of Land and Water Management
Southcentral Region—Shore Fishery
3601 C Street, Suite 1034
P. O. Box 107005
Anchorage, AK 99510-7005
(907) 762-2469

Land & Water Management has seasonal summer offices in Dillingham, Homer and Valdez.

For information about commercial fishing contact:

The Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, AK 99802
(907) 465-4100

Fish and Game has regional offices in: Anchorage, Cold Bay, Kodiak, Bethel, Dillingham, Sand Point, Chignik, King Salmon and Unalaska.

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
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Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

February 14, 1991

SUBJECT: Review of Alaska Survival v. State (HB 57)

TO: Representative Mike Navarre

FROM: Jerry Luckhaupt
Legislative Counsel

Pat Malone of your staff requested a short review of the Alaska Supreme Court case, Alaska Survival v. State, 723 P.2d 1281 (Alaska 1986), also known as the Chase decision. Specifically, Pat wanted to know if this decision supported an interpretation that no leasing of state lands may occur absent a regional or area land use plan or if the decision was only applicable to disposals of state land. I hereby respond as follows.

The Alaska Survival case involved the disposal of agricultural lands by the state. Among other issues presented the court considered whether the Department of Natural Resources violated AS 38.04.065 by classifying the lands in question as agricultural lands before the completion of a regional or area land use plan.

AS 38.04.065 provides:

(a) Except as provided in (d) and (h) of this section, the commissioner shall, with local governmental and public involvement under AS 38.05.-945, adopt, maintain, and, when appropriate, revise regional land use plans that provide for the use and management of state-owned land.

...

(c) The commissioner shall adopt regional land use plans for state land. Each regional land use plan must identify and delineate

(1) areas of settlement and settlement impact, where land must be classified for various private uses, renewable and nonrenewable resource development, and for public recreation, open space, and other public uses desirable in and around settlement; and

(2) areas that must be retained in state ownership and planned and classified for various uses and purposes under AS 38.04.015.

(d) The commissioner may adopt as a land use plan a comprehensive plan adopted by a municipality having planning and zoning powers or

Representative Mike Navarre

February 14, 1991

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a land management plan adopted by another governmental entity if the commissioner determines that the plan adequately recognizes and protects state interests. A decision to adopt the plan must be preceded by public hearings in affected and interested communities and by a draft decision, available for public review, that describes the state's interests and how the state will implement the plan.

(e) Land shall be classified as provided in AS 38.05.300.

(h) Before the commissioner adopts a regional land use plan, a land classification may be made on the basis of a site-specific land use plan, except a classification for a land disposal under AS 38.05.057, AS 38.08, AS 38.09, or a new commercial agriculture project under AS 38.05.-020(b)(6). After adoption of a regional land use plan, land classifications shall be made under the plan.

In interpreting this statute as it then appeared the court said:

In our view, both the organization of the statutory scheme and the particular language of AS 38.04.065(c) and (d) express an unambiguous intent that regional planning precede land classifications and disposals. . . . To interpret these provisions to allow classification and disposal before regional planning defies logic. It makes little sense to require comprehensive regional planning after the relevant land use decisions already have been made, especially irrevocable disposal decisions. . . . the statute's meaning is plain: it mandates a comprehensive, broad-scale planning process prior to site-specific planning and classification. . . . For these reasons, we conclude that AS 38.04.065 requires regional planning to precede land classification. . .

Alaska Survival, *supra*, at 1289 - 90.

From this discussion it appears that classification of state lands, for any purpose, may not occur absent a regional or area land use plan adopted under AS 38.04.065, or as provided in subsection (h) of that section. Accordingly, the Attorney General's opinion to you concerning the inability of the state to lease state land for shore fisheries development in any area where the state has not adopted a land use plan, appears to be correct.

And, while the Alaska Survival decision the decision does not limit itself to those situations nor does the language of the statute. Accordingly, I conclude that the decision appears to have a broad application to all classifications of state land.

If you have further questions, please contact me at your convenience.

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91-080.plm

MEMORANDUM

State of Alaska
Department of Law

TO: Gary Gustafson, Director
Division of Land & Water Management
Dept. of Natural Resources

DATE: July 30, 1990

FILE NO: 993-88-0101

TEL NO: 465-3600

SUBJECT: Shore fisheries leasing
amendments

RECEIVED
AUG 2 1990
State of Alaska
Department of Law
Division of Natural Resources

LIS

FROM: Larri Irene Spengler
Assistant Attorney General
Natural Resources-Juneau

In two memoranda, dated November 27 and December 1, 1989, you asked nine questions about the November 22, 1989, draft of proposed amendments to the Department of Natural Resources shore fisheries leasing regulations, as well as asking me to simply review the regulations to identify any obvious problems. I appreciate your patience in awaiting a response; shortly after receiving your memorandum, the Alaska Supreme Court ruled the state's subsistence law unconstitutional, and that set off a rather busy period. In this memorandum, I will address each of the nine questions you raised, and then will give some overall comments on the draft regulations.

Please bear in mind that this memorandum is solely an attempt at answering the questions you need addressed in developing these regulations, and is not an informal attorney general's opinion. Thus, it has gone through the Department of Law's internal review, and will not be indexed. Should you believe that any of the questions you posed require a more weighty answer, by way of an informal opinion, a request for such an analysis must be routed from your commissioner's office, through the governor's office, and to the attorney general for assignment. Should you believe that desirable, please note in your inquiry that whatever questions you ask have been at least partially addressed on a less formal basis in this memorandum, in the context of assisting your department in preparing a draft set of regulations.

It may be useful for you to send one more draft of the regulations, which I can review for more detailed, technical, compliance with the rules of "shall" versus "will," and "a" versus "the," etc. I have not done that to any extent in this draft, in part because the draft will probably change somewhat in light of some of my comments.

1. Classification

You have asked whether to remove shore fisheries leasing from the formal land use planning and classification process under

AS 38.04.065, AS 38.05.300 and 11 AAC 55, you can simply amend 11 AAC 64.050 to remove the reference to 11 AAC 55, or whether you must also amend 11 AAC 55.040(i), which lists exceptions to that process. That question is really moot, because we do not believe that you have the authority to remove the shore fisheries leases from the formal classification process. AS 38.05.822(b) states that "the director may classify land as subject to leases for fisheries development." (Emphasis added.) There is nothing in AS 38.05.082 which indicates that the legislature meant something other by the use of the word "classify" than it did in the other statutes cited by you which describe how the classification process is to proceed. Further, there is nothing in the Alaska Supreme Court case interpreting those statutory requirements which would indicate that shore fisheries leases are exempt from the order described in the statutes: planning, classification, and then disposition--especially in light of the use of the word "classify" in the statute. Alaska Survival vs. State, 723 P.2d 1121 (Alaska 1986). Thus, the amendment you propose does not appear consistent with the wording of the statute governing shore fisheries leases, and should not be included in these draft regulations.

2. Assignment procedures

AS 38.05.082(d) provides that subleasing (assignment) of shore fisheries leases are governed by AS 38.05.095. That section gives your division the discretion to issue a permit allowing sublease or assignment, if the division finds that "it is in the best interests of the state to do so." You have asked whether you are correct in assuming that the "finding" mentioned in AS 38.05.095(a) is not the same as the comprehensive "finding" of best interests required by AS 38.05.035(e). That is correct. Shore fisheries leases are specifically excluded from the requirements of AS 38.05.035(e) in paragraph (2) of that subsection. Since that comprehensive finding is not required for the initial disposal--the issuance of a shore fisheries lease--the requirement in AS 38.05.095 for a finding would not logically include the more comprehensive finding.

3. Procedures for issuing a renewal lease

AS 38.05.082(d) states that renewals of shore fishery leases will be governed by AS 38.05.102. That section allows your division to grant a preference right for a new lease at a site to the prior lessee, "upon a finding that it is in the best interest of the state." You point out that a new lease would normally be a disposal of land requiring an AS 38.05.035(e) comprehensive best interest finding. However, you note that since AS 38.05.035(e)(2) exempts shore fisheries leasing from the comprehensive finding, and

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DOCUMENTS WHICH HAVE NOT BEEN
FILMED BUT ARE AVAILABLE IN THE
ORIGINAL FILE INCLUDE:

- letters of support -

Soldotna, Ak. 99669
Feb. 20, 1991

Dear Rep. Navarre,

We support your efforts on
HB57.

It is important that renewal
of leases in place go on while
the lands use policy is
being developed

Sincerely
Robert and Lutz Knorr
Box 1163
Soldotna, Ak 99669