

SJR

17

Senator Hollis French

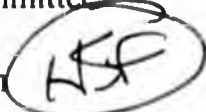
Capitol Room 504
465-3892
465-6595 fax



MEMORANDUM

Date: April 26, 2006

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

From: Senator Hollis French 

RE: Request for Hearing - SJR 17 - "Urging the United States Department of Justice and the Alaska Department of Law to identify all natural resource damages from the Exxon Valdez oil spill that were unanticipated at the time of the 1991 settlement, to develop plans to remedy the damages, and to present the ExxonMobil Corporation with a request for the full \$100,000,000 that is available through the "Reopener for Unknown Injury" clause of the 1991 civil settlement to carry out these plans."

This is a request that you schedule a hearing on SJR 17 - "Urging the United States Department of Justice and the Alaska Department of Law to identify all natural resource damages from the Exxon Valdez oil spill that were unanticipated at the time of the 1991 settlement, to develop plans to remedy the damages, and to present the ExxonMobil Corporation with a request for the full \$100,000,000 that is available through the "Reopener for Unknown Injury" clause of the 1991 civil settlement to carry out these plans."

I have attached a copy of the bill, the fiscal note, the sponsor statement and backup material for your use. Please feel free to contact my office if you have any questions.

ALASKA STATE LEGISLATURE

SENATOR HOLLIS FRENCH

SJR 17 Exxon Valdez Reopener

Sponsor Statement

SJR 17 urges the United States Department of Justice or the Alaska Department of Law to pursue the \$100 million made available for mitigation of unanticipated damages stemming from the 1989 Exxon Valdez oil spill. The 1991 civil settlement contains a "Reopener for Unknown Injury" clause which provides that between September 1, 2002 and September 1, 2006, the governments can request an additional \$100 million from the Exxon Corporation if they determine that the spill had caused substantial, unanticipated harm, and present a cost-effective plan to remedy that harm. This provision is on top of the \$900 million already paid for civil recovery, \$100 million in criminal restitution, and a \$25 million fine. This will not affect the ongoing litigation regarding the over \$5 billion Exxon owes to individual Alaskans in punitive damages. The resolution also requests an update on or before March 24, 2006, the 17th anniversary of the spill, from the Attorneys General of Alaska or the United States regarding the status of this claim.

Since the spill and settlement, scientists funded by the initial payments have determined a number of unanticipated injuries to the spill zone. One major result of the spill that did not become evident until after the settlement was the 1993 crash of the herring population. Scientists since that time have determined that crude oil affected the reproductive processes of the herring, which explains the delayed onset of the population crash. Other significant discoveries regard lingering oil. A number of beaches in Prince William Sound still contain significant amounts of oil that has yet to biodegrade as expected. Since the spill and settlement, scientists have also realized the toxicity of crude oil to wildlife, a danger that was underestimated at the time. These issues, among others, show the necessity of these additional funds to restore these areas to health.

The Kenai Peninsula Borough, Kodiak Island Borough, and City of Cordova have already passed resolutions in support of this action.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSJR 17(RES)
 (S) Publish Date: 4/27/06

Revision Date/Time (Note if correction): _____ Dept. Affected: All
 Title Exxon Valdez Spill Damages RDU _____
 Component _____
 Sponsor Sen. French _____
 Requester Senate Resources Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This resolution would not have a fiscal impact on any state agency.

Prepared by: Jack Kreinheder, Senior Analyst Phone 465-4676
 Division: Office of Management and Budget Date/Time 4/17/06 1:22 PM
 Approved by: Cheryl Frasca, Director Date 4/17/2006
 Agency: Office of Management and Budget

the President: stay out of the struggle.

In September 1989 Hurricane Hugo swept through the Caribbean and struck the mainland in South Carolina, killing 24 Americans and causing immense property damage. A month later a powerful earthquake hit the San Francisco Bay area, killing 59 people. In both disasters Mr. Skinner was called in.

Now there is the Exxon deal. With his company facing a criminal trial in April and civil litigation afterwards being prepared by the Justice Department, Mr. Rawl had been ready for months to talk. "It's been a burden to us," the Exxon chairman said in a news conference on March 13 in Irving, Tex. Eager for a Settlement

Governor Hickel, an independent, wanted a consistent source of money to continue recovery work in Prince William Sound, the source of a prosperous fishing and tourism industry.

The Federal Government was eager to settle, too. The civil case against Exxon was expected to take at least five years to litigate, and in the criminal case, scheduled to begin April 10, the Justice Department was going to be testing new applications of environmental law. Nobody knew how a jury would respond.

"The cleanup efforts Exxon had made in the sound made a significant difference," Mr. Skinner said. "Nature had also done a tremendous job there. Scientists were telling everybody this was not a multibillion-dollar damage suit."

Mr. Rawl and Lee R. Raymond, Exxon's president, flew to Juneau, Alaska, on Jan. 15 at Governor Hickel's invitation. The state and the Federal Government had agreed three weeks earlier to work together, he told them. Mr. Raymond called Mr. Skinner and told him that the Governor was seeking an agreement.

Mr. Skinner said he believed that a successful negotiation was possible, but only if it was conducted at the Cabinet level. "I said this case will not be settled by lawyers," Mr. Skinner said. "First of all, they don't know how to settle it. Second, they have a built-in conflict of interest. This could go on for years." The Chairman Cools His Heels

On Feb. 5 Mr. Rawl and Mr. Raymond were asked to come to Washington for a meeting at the Commerce Department with the Federal and state negotiators: Mr. Skinner; Manuel Lujan Jr., Secretary of the Interior; William K. Reilly, Administrator of the Environmental Protection Agency; John Knauss, Administrator of the National Oceanic and Atmospheric Administration; Governor Hickel and Charles E. Cole, the Alaska Attorney General.

Mr. Rawl, a combative executive whose four-year tenure as Exxon's chairman had been marred by the oil spill, was in a dour mood, several negotiators recalled. After being asked to wait outside a conference room for 30 minutes while the government officials finished a meeting, Mr. Rawl became furious.

"I went out twice and asked them to please be patient," said Thomas A. Campbell, general counsel of the National Oceanic and Atmospheric Administration, who organized the meeting. "Rawl said: 'Just tell them they don't need to take much time. What I'm going to say is short and sweet.' He was going to tell them he's had it, he'll see them in court."

Exxon and its shipping subsidiary pleaded guilty to four criminal misdemeanor violations of environmental law and agreed to pay a \$100 million fine. It was the largest penalty ever assessed in a pollution case, more than three times higher than the \$29.7 million that the Government collected in 1990 for all environmental crimes. Even more, from the White House point of view, it makes good on Mr. Bush's campaign promise to penalize polluters.

From the state's point of view, the cost of the settlement, \$1.1 billion, will keep Exxon involved in the restoration of Prince William Sound for at least a decade.

Exxon, like any corporation (or person, for that matter), would have preferred not to spend any money. But Mr. Rawl said last week that he thought the settlement was good for the company. Paid out annually over 10 years, the payments reach a maximum of \$190 million this year, and then drop to \$70 million each year from 1994 to 2001.

To a corporation with an annual revenue of \$100 billion, the cost of the settlement each year is roughly the same as drilling two difficult offshore wells. "It will not curtail any of our plans," Mr. Rawl said.

Samuel Knox Skinner Born: June 10, 1938. Hometown: Chicago. Education: B.S., University of Illinois; J.D., DePaul University. Career Highlights: 1961-68, various positions with I.B.M.; 1968-75, served in the Office of the United States Attorney for the Northern District of Illinois; 1975-77, United States Attorney for that District; 1977-89, private practice with law firm of Sidley & Austin; 1984-88, chairman, Regional Transportation Authority of Northeastern Illinois; 1988, named Secretary of Transportation. Hobbies: Flying; golf.

Photo: "I viewed by job as a facilitator," said Transportation Secretary Samuel K. Skinner of Exxon's Justice Department settlement. "You had a huge amount of egos and interests that had to be blended together." (Marty Katz for The New York Times)

CITY OF CORDOVA



February 2, 2006

Senator Hollis French
State Capitol, Room 504
Juneau, AK 99801-1182

Senator French:

As Mayor of Cordova, I strongly support SJR17 and HJR29 urging the United States Department of Justice and the Alaska Department of Law to request the full \$100,000,000 that is available through the "Reopener for Unknown Injury" clause of the 1991 civil settlement from the ExxonMobil Corporation. As you are aware, the residents of Cordova and the Prince William Sound natural resources were tremendously impacted in 1989 when the *Exxon Valdez* went aground spilling approximately 11 million gallons of North Slope crude oil into our pristine waters. Many lingering effects from that oil spill still remain today.

Independent research has shown without a doubt that several beaches in Prince William Sound still contain *Exxon Valdez* oil and it still remains highly toxic. This toxicity has affected the use of the beaches by locals for recreational and cultural uses. The Prince William Sound herring fishery collapsed in 1993 when juvenile recruitment herring, which were spawned shortly after the oil spill, failed to survive to become viable spawning adult fish. Recruitment failures of Prince William Sound herring remains a chronic problem. The Prince William Sound herring fishery at one time contributed between \$5 million and \$12 million a year to the Cordova economy. That once lucrative herring fishery no longer exists.

These are just two examples of the lingering effects from the Exxon Valdez oil spill that no one could foresee in 1991. At this time, no one has an answer on how to correct these lingering effects. The "Reopener for Unknown Injury" clause needs to be exercised so the issues of lingering effects can be addressed.

I have attached a resolution that passed unanimously by the Cordova City Council supporting the "Reopener for Unknown Injury" clause of the settlement. The city supports your efforts to fulfill the intent of the 1991 civil settlement from the ExxonMobile Corporation.

Sincerely,

Timothy L. Joyce
Mayor City of Cordova

TLJ: sb

Cc: Representative William Thomas
Senator Albert Kookesh

**CITY OF CORDOVA, ALASKA
RESOLUTION 12-05-51**

**A RESOLUTION OF SUPPORT BY THE CITY COUNCIL OF THE CITY OF
CORDOVA, ALASKA, TO REOPEN THE 1991 CIVIL SETTLEMENT FROM THE
EXXON VALDEZ SPILL AND CLAIM THE FULL \$100 MILLION FOR MITIGATION
OF UNANTICIPATED LONG-TERM HARM**

WHEREAS, on October 9, 1991, the U.S. District Court of Alaska in Anchorage approved a settlement among Exxon, the United States, and the state of Alaska for damages to "natural resources" (publicly-owned wildlife and wild lands) from the *Exxon Valdez* oil spill (EVOS); and

WHEREAS, this settlement included a clause that provided a "Reopener for Unknown Injury," which states (essentially) that, between September 1, 2002, and September 1, 2006, Exxon shall pay to the Governments such additional sums as are required (up to \$100 million) to restore oil-damaged populations, habitats, or species in the spill zone *if the injury could not reasonably have been known nor anticipated at the time of the settlement*; and

WHEREAS, unanticipated long-term harm from the *Exxon Valdez* oil spill has been clearly and conclusively demonstrated by scientists funded through the EVOS Trustee Council and, separately, through federal and state agencies, universities, and private foundations; and

WHEREAS, unforeseen damage includes delayed recovery of: 5-6 years for pink salmon; about 8 years for black oystercatchers and river otters; and 15 or more years for mussel beds and beach communities, sea otters, and fish-eating orcas (from slow replacement of losses after spill); and

WHEREAS, unforeseen damage includes species not recovered after 15 or more years such as: harlequin ducks, Pacific herring, pigeon guillemots, harbor seals (from slow replacement of losses after spill), and mammal-eating orcas (from spill losses and impaired reproduction due to high body burdens of PCBs); and

WHEREAS, unforeseen damage includes indirect effects to species like black-legged kittiwakes that were not initially harmed by the spill, but were harmed through spill-related loss of prey species such as Pacific herring; and

WHEREAS, much of the documented unforeseen damage stems from unexpectedly high levels of spilled oil, which remains buried in the intertidal zone and which NOAA scientists now estimate will take at least another 20 years to naturally degrade; and

WHEREAS, all of these long-term damages from oil were completely unanticipated at the time of settlement because the understanding of oil toxicity then held that oil only caused short-term harm at water levels of parts per million, while scientists now realize that oil also causes long-term harm at water levels of parts per billion and trillion; and

WHEREAS, because of the scientific finding that oil is more toxic than previously thought, it is critical to educate the public as to this finding and take measures to reduce risk of spills as well as to mitigate lingering harm; and

WHEREAS, none of the three parties to the settlement—Exxon, the federal government, or the State of Alaska—have petitioned to reopen the settlement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cordova, Alaska, hereby requests the United States Department of Justice and the State of Alaska to reopen the 1991 civil settlement and claim the entire \$100 million for mitigation projects; and

BE IT FURTHER RESOLVED THAT the US Justice Department and the State of Alaska consider, at a minimum, the following potential mitigation projects:

Mitigation of lingering harm:

1. Monitor weathering and toxicity of residual oil under beaches
2. Monitor recovery of, and oil contamination in, subsistence foods on oiled beaches
3. Continue to monitor species that have not yet recovered
4. Establish, and compensate for, cost of unforeseen injury to species
5. Conduct a feasibility study and cohort epidemiology study on cleanup workers whose health may have been impaired by the EVOS cleanup
6. Study of treated and untreated beaches to determine if any treatment methods used during the EVOS cleanup actually worked; i.e., improved recovery of beach ecology over the long-term

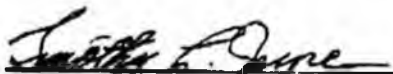
Public education:

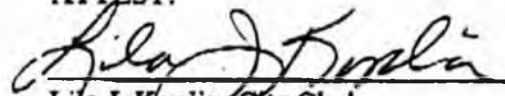
1. Fund an assessment of injured resources through the National Research Council
2. Fund a review and assessment of oil spill cleanup products that are not toxic to humans or the environment through the National Research Council
3. Develop and implement national education programs on new understanding that oil is more toxic than previously thought to humans and the environment (like tobacco industry settlement)

Measures to reduce risk of large spills:

1. Endow citizen oversight council for the Trans-Alaska Pipeline System (estimated cost: \$25 million)

PASSED AND APPROVED THIS 7TH DAY OF DECEMBER, 2005.


Timothy L. Joyce, Mayor

ATTEST:

Lifa J. Koplitz, City Clerk



Kodiak Island Borough

Office of the Borough Mayor

710 Mill Bay Road

Kodiak, Alaska 99615

Phone (907) 486-9310 Fax (907) 486-9391

E-mail: jnielsen@kib.co.kodiak.ak.us

February 8, 2006

Senator Hollis French
State Capitol, Room 504
Juneau, AK 99801

Dear Senator French:

Subject: Letter of Support for SJR 17 and HJR 29

I am writing on behalf of myself and the Kodiak Island Borough Assembly to express support for Senate Joint Resolution No. 17 and House Joint Resolution No. 29.

On November 3, 2005, the Assembly unanimously adopted the attached resolution, Kodiak Island Borough Resolution No. FY2006-17, urging the United States Department of Justice and the State of Alaska to reopen the 1991 Civil Settlement from the Exxon Valdez Oil Spill and to claim the full \$100 million for mitigation of unanticipated long-term harm.

The Assembly and I understand the importance of the need to develop plans to remedy the damages caused by the Exxon Valdez spill to coastal communities such as Kodiak. It is clearly in the interest of the citizens Kodiak and the citizens of Alaska to assert this claim for full payment.

Sincerely,

OFFICE OF THE MAYOR

A handwritten signature in black ink, appearing to read "Jerome M. Selby". The signature is written in a cursive style and is positioned above the printed name.

Jerome M. Selby
Borough Mayor

Nj

Enclosure

Introduced by: Mayor Selby
Requested by: Assembly
Introduced: 11/03/2005
Adopted: 11/03/2005

**KODIAK ISLAND BOROUGH
RESOLUTION NO. FY2006-17**

**A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY URGING
THE UNITED STATES DEPARTMENT OF JUSTICE AND THE STATE OF ALASKA
TO REOPEN THE 1991 CIVIL SETTLEMENT FROM THE EXXON VALDEZ OIL SPILL AND
CLAIM THE FULL \$100 MILLION FOR
MITIGATION OF UNANTICIPATED LONG-TERM HARM**

WHEREAS, on October 9, 1991, the U.S. District Court of Alaska in Anchorage approved a settlement among Exxon, the United States, and the state of Alaska for damages to "natural resources" (publicly-owned wildlife and wild lands) from the Exxon Valdez oil spill (EVOS); and

WHEREAS, this settlement included a clause that provided a "Reopener for Unknown Injury," which states (essentially) that, between September 1, 2002, and September 1, 2006, Exxon shall pay to the Governments such additional sums as are required (up to \$100 million) to restore oil-damaged populations, habitats, or species in the spill zone if the injury could not reasonably have been known nor anticipated at the time of the settlement; and

WHEREAS, unanticipated long-term harm from the Exxon Valdez oil spill has been clearly and conclusively demonstrated by scientists funded through the EVOS Trustee Council and, separately, through federal and state agencies, universities, and private foundations; and

WHEREAS, unforeseen damage includes delayed recovery of: 5-6 years for pink salmon, about 8 years for black oystercatchers and river otters; and 15 or more years for mussel beds and beach communities, sea otters, and fish-eating areas (from slow replacement of losses after spill); and

WHEREAS, unforeseen damage includes species not recovered after 15 or more years such as: harlequin ducks, Pacific herring, pigeon guillemots, harbor seals (from slow replacement of losses after spill), and mammal-eating orcas (from spill losses and impaired reproduction due to high body burdens of PCBs); and

WHEREAS, unforeseen damage includes indirect effects to species like black-legged kittiwakes that were not initially harmed by the spill, but were harmed through spill-related loss of prey species such as Pacific herring; and

WHEREAS, much of the documented unforeseen damage stems from unexpectedly high levels of spilled oil, which remains buried in the intertidal zone and which NOAA scientists now estimate will take at least another 20 years to naturally degrade; and

WHEREAS, all of these long-term damages from oil were completely unanticipated at the time of settlement because the understanding of oil toxicity then held that oil only caused short-term harm at water levels of parts per million, while scientists now realize that oil also causes long-term harm at water levels of parts per billion and trillion; and

WHEREAS, because of the scientific finding that oil is more toxic than previously thought, it is critical to educate the public as to this finding and take measures to reduce risk of spills as well as to mitigate lingering harm; and

WHEREAS, none of the three parties to the settlement-Exxon, the federal government or the State of Alaska-have petitioned to reopen the settlement.

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT the Assembly hereby urges the United States Department of Justice and the State of Alaska to Reopen the 1991 Civil Settlement From the Exxon Valdez Oil Spill and Claim the Full \$100 Million for Mitigation of Unanticipated Long-Term Harm: and

BE IT FURTHER RESOLVED THAT the US Justice Department and the State of Alaska consider, at a minimum, the following potential mitigation projects:

Mitigation of lingering harm:

1. Monitor weathering and toxicity of residual oil under beaches
2. Monitor recovery of, and oil contamination in, subsistence foods on oiled beaches
3. Continue to monitor species that have not yet recovered
4. Establish, and compensate for, cost of unforeseen injury to species
5. Conduct a feasibility study and cohort epidemiology study on cleanup workers whose health may have been impaired by the EVOS cleanup
6. Study of treated and untreated beaches to determine if any treatment methods used during the EVOS cleanup actually worked; i.e., improved recovery of beach ecology over the long-term

Public education:


1. Fund an assessment of injured resources through the National Research Council
2. Fund a review and assessment of oil spill cleanup products that are not toxic to humans or the environment through the National Research Council
3. Develop and implement national education programs on new understanding that oil is more toxic than previously thought to humans and the environment (like tobacco industry settlement)

Measures to reduce risk of large spills:

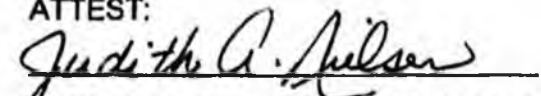
1. Endow citizen oversight council for the Trans-Alaska Pipeline System (estimated cost: \$25 million)

**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS THIRD DAY OF NOVEMBER 2005**

Kodiak Island Borough


Jerome M. Selby, Borough Mayor

ATTEST:


Judith A. Nielsen, CMC, Borough Clerk

Introduced by:

Martin

Date:

12/06/05

Action:

Adopted as Amended

Vote:

7 Yea, 2 No

**KENAI PENINSULA BOROUGH
RESOLUTION 2005-105**

**A RESOLUTION SUPPORTING REOPENING THE 1991 CIVIL SETTLEMENT FROM
THE EXXON VALDEZ OIL SPILL AND CLAIMING THE FULL \$100 MILLION FOR
MITIGATION OF UNANTICIPATED LONG-TERM HARM**

WHEREAS, On October 9, 1991, the U.S. District Court of Alaska in Anchorage approved a settlement among Exxon, the United States, and the State of Alaska for damages to "natural resources" (publicly owned wildlife and wild lands) from the Exxon Valdez oil spill (FVOS); and

WHEREAS, this settlement included a clause that provided a "Reopener for Unknown Injury," which states (essentially) that between September 1, 2002, and September 1, 2006, Exxon shall pay to the governments such additional sums as are required (up to \$100 million) to restore oil-damaged populations, habitats, or species in the spill zone *if the injury could not reasonably have been known nor anticipated at the time of the settlement*; and

WHEREAS, unanticipated long-term harm from the Exxon Valdez oil spill has been clearly and conclusively demonstrated by scientists funded from the EVOS Trustee Council and separately through federal and state agencies, universities, and private foundations; and

WHEREAS, the severity and duration of the impact this oil spill would have on the native villages in Kachemak Bay, as well as the entire coastline of the Kenai Peninsula extending south from Seward to the west side of the Kenai Peninsula was not, and could not have reasonably been known as the above-described effects on species have drastically damaged these areas and the native village lifestyle, economics and populations; and

WHEREAS, all of these long-term damages from oil were completely unanticipated at the time of settlement because the understanding of oil toxicity then held that oil only caused short-term harm at water levels of parts per million, while scientists now realize that oil also causes long-term harm at water levels of part per billion and trillion; and

WHEREAS, none of the three parties to the settlement – Exxon, the federal government, or the State of Alaska – have petitioned to reopen the settlement;

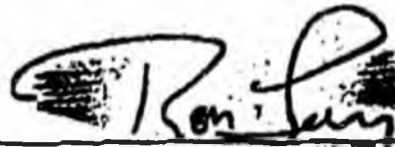
NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Kenai Peninsula Borough Assembly hereby requests the United States Department of Justice and the State of Alaska to reopen the 1991 civil settlement and claim the entire \$100 million for mitigation projects; and

SECTION 2. That copies of this resolution shall be sent to Governor Frank Murkowski, Senator Thomas Wagoner, Senator Gary Stevens, Senator Con Bunde, Senator Albert Kookesh, Representative Woodie Salmon, Representative Mike Hawker, Representative Mike Chenault, Representative Kurt Olson, Representative Paul Seaton, U.S. Attorney Timothy M. Burgess and Department of Natural Resources Commissioner Michael Menge.

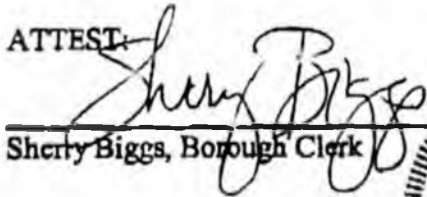
SECTION 3. This resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF DECEMBER, 2005.



Ron Long, Assembly President

ATTEST:


Sherry Biggs, Borough Clerk