ALASKA LEGISLATURE
HOUSE and SENATE FINANCE COMMITTEE FILES, 1993-1994 1214

AFTER 35 YEARS OF OIL & GAS LEASING

- The courts—and not the Legislature or the Executive Branch—are setting the state's leasing policy
- The Supreme Court says the Best Interest Findings under Title 38 are insufficient
- The Superior Court cannot determine whether lease sales are consistent with ACMP unless all potential future development can be described
- The Superior Court is unable to determine that there is a significant public need for the lease sale
- The Ombudsman finds that although we have met or exceeded all legal requirements, the process—as defined in current statute—is not "fair"

WHAT IS THE PROBLEM?

With 85% of State Revenue At Stake

HOW DO WE FIX IT?

First, Understand The Problem

- Under Title 38, the commissioner must take a "hard look" at "the salient factors" in best interest findings that an oil and gas lease sale should be held.

- However, through a series of Supreme Court decisions beginning in 1987 and continuing through this year, the court has systematically rejected the commissioner's authority both to determine what are the salient factors and "how much" analysis is "enough" before proceeding with a lease sale.

- Both the Alaska Supreme Court, and now the Superior Court, have ruled that best interest findings under Title 38 and ACMP consistency determinations for lease sales under title 46 cannot rely upon deferred consistency reviews of post-sale projects until specific exploration or development projects are proposed.

- Since no one can predict the consequences of a lease sale, litigants are encouraged to speculate on the sufficiency of the commissioner's considerations on future events, and the courts have become the arbiter of what is "proper weight" and "adequate analysis." Arguments over "how many angels might someday come to sit on the head of the pin" are disrupting the leasing program, frustrating legislative intent and threatening the state's future economic health.

To Fix It

The Statutes Must Be Changed

- Modify Title 38, the oil and gas leasing statutes, and Title 46, the ACMP statutes, to clarify legislative intent
- Eliminate the opportunity for courts to substitute their judgment by providing clear guidance as to the scope of best interest findings and ACMP findings and consistency determinations for lease sales
- Regulatory "fixes" do not carry the force of law and will NOT solve the problem

If Legislation Is Not Passed

- Continued disruption and delay of lease sales
- Lost reliability of lease sale process
- Loss of industry participation
- Lost state revenue
- Increased litigation costs
- Increased unemployment as service industry contracts

WHAT THIS LEGISLATION DOES

- "Tightens" the scope of the best interest finding and ACMP determination for leasing
- Creates a best interest finding and ACMP procedure
  - that is factual, fair and timely
  - that is more likely to withstand judicial and public scrutiny
- Provides for meaningful public review process and directs the commissioner to determine best interest and find consistency when
  - valid, material and relevant facts are known and considered
  - required permits meet established standards

BOTTOM LINE

This Legislation More Clearly Defines Legislative Intent With Respect To Oil and Gas Lease Sales

Fax Transmittal Memo 7672

To Senator Mike Miller	No. of Pages 2	Today's Date 2/22/94	Time
Company Senate Resources Committee	From J.S. Emple		
Location Juneau, AK	Company Union Texas Petroleum Alaska		
Fax # 907-465-3888	Telephone # 907-465-4976	Location Houston Tx	Dept. Charge
Comments		Fax # 713-968-2455	Telephone # 713-968-2450
		Original Disposition: ☐ Destroy ☐ Return ☐ Call for pickup	

SB 308
testimony
(2/22/94)

Union Texas Petroleum

1330 Post Oak Boulevard
P. O. Box 2120
Houston, Texas 77252-2120
Telephone (713) 968-2440

Joel S. Emple
Vice President
Exploration

February 22, 1994

The Honorable Mike Miller
Chairman
Senate Resources Committee
Capitol Building, Room 423
Juneau, AK 99811

VIA FAX AND FEDERAL EXPRESS

RE: STAY OF STATE OF ALASKA LEASE SALE 78
PROPOSED LEGISLATION SB308 / HB474
LAWSUITS REGARDING STATE OF ALASKA LEASE SALES 50, 55, & 78

Dear Senator Miller:

Union Texas Petroleum Alaska is an indirect wholly owned subsidiary of Union Texas Petroleum Holdings, Inc., one of the largest independent producers located in the United States. Union Texas explores for and produces oil and gas overseas primarily in the U.K. North Sea, Indonesia and other strategic areas.

Union Texas Petroleum Alaska pursues exploration activities in Alaska. At year-end 1993, it held approximately 88,000 net acres in Alaska, primarily in the Colville Delta, Cook Inlet and offshore Beaufort Sea. During the past several years, Union Texas Petroleum Alaska has increased its exploration activity in Alaska. This activity included participation in three additional wells in the Kuukpik State Exploration Unit, four wells in the adjacent Colville River Delta area, one well in the Jones Island State Exploration Unit, three wells in the Kuvlum Federal Unit in the Beaufort Sea, and the Diamond #1 Well in the Chukchi Sea.

The stay of the State of Alaska Lease Sale 78 has significantly affected the view of Union Texas Petroleum Alaska regarding our ability to implement a sound exploration and development plan in Alaska. Current statutes and regulations governing leasing activities as interpreted by the Alaska courts in lawsuits concerning State Lease Sales 50, 55, and 78, discourage bidding as well as exploration and production activities on state lands. In addition, we believe these interpretations are inconsistent with the legislative intent of these statutes and regulations. The delay in arriving at a settlement and the impact of the settlement of the Mental Health Lands further discourages activities on state lands. Because of the long lead time and high exploration costs involved in arctic projects, independent operators such as Union Texas Petroleum can ill afford to continue to expend significant sums of money on exploration activities into areas where the return on the investment is becoming more uncertain due to the of lack of leasing opportunities on state lands.

Alaska is in direct competition with alternative international opportunities for funding. We believe that Alaska compares favorably with other international projects on a technical basis but we are concerned that increasing regulation and the inability to plan and budget programs with reasonable assurance that leases will be available places Alaska at a distinct disadvantage. Union Texas Petroleum would prefer to keep the dollars and jobs at home as much as possible. The passage of SB308/HB474, to be applied retroactively, would be a significant step in accomplishing our common objectives.

Sincerely,

UNION TEXAS PETROLEUM ALASKA CORPORATION

J. S. Empie
Senior Vice President

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 69
Barrow, Alaska 99723

Phone: 907-852-2111

George N. Ahmaogak, Sr., Mayor

POSITION OF THE NORTH SLOPE BOROUGH ON PROPOSED COASTAL ZONE MANAGEMENT PROGRAM LEGISLATION

Two bills are now before the legislature relating to the State's Coastal Zone Management Program (ACMP). The Borough strongly supports SB 238, and strongly opposes SB 308. These positions are more fully explained below:

SB 238

SB 238 was introduced by Senator Drue Pearce, and has been the subject of several teleconferenced public committee hearings. It is the product of several years' work by Senator Pearce's office and a broad-based working group composed of state resource agency, Division of Governmental Coordination (DGC), and Department of Law ACMP coordinators, representatives from industry and the federal Minerals Management Service (MMS), and ACMP coordinators from several state coastal districts. The group worked diligently, with significant input from others involved in implementation of the ACMP on a daily basis, to craft legislation designed to correct due process problems associated with the current procedures for appeal of coastal consistency determinations to the state Coastal Policy Council (CPC), and to strengthen the role of coastal districts in the consistency review process. Acting on a consensus basis, the group has worked with Senator Pearce to produce a bill which the Borough feels accomplishes those tasks. This change in appeal procedures may not yield state consistency determinations which are always more to the liking of coastal districts and their residents, but it should provide for a more open process resulting in better understood and supportable state decisions.

It is also important to understand that SB 238 has been developed in conjunction with other Working Group efforts aimed at improving the coordination and effectiveness of consistency reviews. Proposed changes to 6 AAC 50 would streamline the process of consistency reviews relating to federal offshore oil and gas lease sales. The changes would require greater exchange of information and early meetings of all parties with the expectation that identification of issues of concern and data gaps, and the open discussion of possible solutions can avoid

costly litigation, and leave all parties feeling more satisfied with their role in the process. At the same time, a draft Memorandum of Understanding (MOU) between the state DGC and federal MMS has been developed by the Working Group and submitted for approval by state and federal authorities. The MOU will enhance coordination between MMS, DGC, state agencies, and coastal districts in the consistency review of federal offshore lease sales.

SB 238, the proposed 6 AAC 50 changes, and the MOU all have the support of the people who implement the ACMP within state agencies, MMS, industry, and coastal districts. While they may not prove to be the final steps in creating a coastal management program which best serves all state interests, they will contribute to improving the predictability of the system, and importantly, the atmosphere within which important state decisions are made.

SB 308

SB 308 was introduced by the Administration on the morning of February 14, and scheduled for hearing by the Senate Resources Committee at 3:30 that same day. A copy of the Bill was not available in the Barrow Legislative Information Office until 2:30. It was drafted in response to a court decision on January 24, which temporarily enjoined state offshore oil and gas Lease Sale 78, based in part on ACMP issues. Both the substance of this bill, and its attempted fast tracking through the legislature are very troubling. SB 308 is designed to limit the scope of ACMP consistency reviews conducted by the state, and to weaken coastal districts' and the public's ability to participate in full and open discussions of all concerns related to leasing. Although at its heart the federal-state-district coastal zone management structure is designed to provide the maximum public input and control over local development, the Administration has here quickly moved a bill which would significantly alter the balance of the ACMP without making even a minimum effort to contact each of the coastal districts throughout the state. The request of the Coastal District Coalition, comprised of district coordinators for boroughs, other municipalities, and coastal resource service areas around the state, for representation on the Governor's task force formed to respond to the Sale 78 court decision was denied. No state members of the ACMP Working Group were present, or we believe were allowed to testify, before the Senate Resources Committee on SB 308. With the exception of Division of Oil and Gas Director Jim Eason and a representative of ARCO, all of the dozen or so participants in the committee teleconference on February 14 were strongly opposed to the bill, and alarmed at the brief time available for its review.

SB 308 would restrict consistency reviews to "reasonably foreseeable, nonspeculative, direct effects" of proposed lease sales. If one of the goals of the bill is to avoid costly litigation over proposed lease sales, this language will not get it done. At the same time, while all those involved on a day-to-day basis in implementing the ACMP are moving on a variety of fronts through the Working Group structure to open up the consistency review process, this bill slams the door on the airing of all public concerns. The public frustration which will surely result from enactment of SB 308 will likely stimulate greater, rather than lesser, activity in the courts. The Borough believes that SB 308 is unnecessary legislation which is counterproductive to the more carefully undertaken broad-based efforts now underway to improve the state's Coastal management Program.

George N. Ahmaogak, Sr. 15 February 1994
George N. Ahmaogak, Sr. Date
Mayor

UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

2/22/94

TESTIMONY FOR SENATE RESOURCES ON SB 308

UFA opposes this legislation. We are not anti-development. However, this legislation allows DNR to ignore resource use conflicts, transportation issues and environmental issues during the initial administrative review prior to disposal of lands. This will force the state, during later project stages, into a position of either proceeding with environmentally unsound projects or expensive buy-backs of the sale or lease, including interest and repayment of any expenditures made by the leasee. Neither of these options are in the public's best interest.

This bill does not protect the public interest.

The constitution prohibits the state from disposing or leasing state lands without "safeguards of the public interest": determinations of whether a given resource disposal serves the public interest must be based upon an evaluation of all of the potential costs or risks of the disposal.

This bill increases the risk of environmentally unsound projects.

During its public interest finding, DNR considers the economic benefits of later project development (which are speculative): it is inconsistent to not simultaneously consider the environmental costs of later project developments. Lop-sided cost/benefit analyses which consider economic benefits with no environmental risks clearly bias the initial public interest determination in favor of the project. This allows DNR to make false or skewed "public interest" determinations by avoiding a thorough cost/benefit analysis.

This bill is fiscally irresponsible.

Initial project approvals will create state and industry investments in the project that will bias DNR's analysis of later project stages in favor of project completion. Since buy-back of land once disposed is not a realistic option, this bill will favor development regardless of costs to competing resource users and the environment.

This bill limits DNR's determinations to effects of paper transactions.

By narrowing the scope to "nonspeculative" and "direct" effects, this bill turns land disposals into mere paper transactions. This contradicts U.S. Supreme Court opinions, Congressional intent, previous Alaska Attorney General's opinions and common sense.

In 1984, the U.S. Supreme Court ruled that OCS oil and gas lease sales did not "directly affect" the coastal zone, because they were paper transactions. When Congress passed the 1990 Coastal Zone Management Act Reauthorization, it broadened the scope of effects which must be considered to include "cumulative and secondary effects... direct effects... and indirect effects which may be caused by the activity and are later in time or farther removed in distance..." The Alaska Attorney General stated that "...administrative agencies are mandated...to review the uses for which a particular authorization is issued, the ultimate activities associated with those uses, and the impacts of both the uses and the associated activities on the state's coastal area" (J66-502-81, p. 10).

The reasons for these decisions are obvious: impacts such as from oil spills can affect communities and wildlife thousands of miles away from the lease sale area. The public expects DNR to anticipate risks such as oil spills and to work out resolutions before any leases are issued.

This bill limits local control over local development and increases federal control over federal lands.

This bill concentrates power to determine land disposals in the hands of mid-level state bureaucrats. <u>As written, this will affect all future timber, mining and oil projects.</u> Further, this bill, in conjunction with SB 150, could give unprecedented power to resource division directors to speed exploration and development on large blocks of state lands and waters.

The coastal management plan provides an avenue for public input and control over local development. Usurping this local control violates federal and state agreements under the CZMA. Further, this bill either gives parallel powers to the federal government, which decreases state input on federal land disposals, or it creates two standards of review, one for federal lands and one for state lands. Neither option is desirable, but it is unclear which will occur under this bill.

This legislation will invite litigation.

The bill lacks clarity over how various factors interrelate, but it is clear that it will <u>not</u> immunize DNR's best interest findings from judicial scrutiny. This bill will increase the public's frustration and the likilihood of lawsuits.

The coastal management program is not problem.

The public, industry and the state deserve to discuss and resolve issues up front to ensure that if projects are allowed to proceed, they are done responsibly and with minimal impact on other resource users and the environment.

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

February 22, 1994 SENT BY TELEFAX

Senator Mike Miller
Senate Resource Committee

SUBJECT: SB 308

UCIDA Position: Strongly Oppose

Dear Senator Miller,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA).

SB308 turns "public interest findings" into "industry interest findings".

SB308 represents a radical change in public policy that affects all "land" disposals - oil & gas, timber and mining.

SB308 is fiscally irresponsible.

There are many revisions or amendments that may be proposed to "fine tune" this legislation - (i.e. remove the proposed changes that would have the scope limited to fish and wildlife species and their habitats within the lease sale area - pg. 4 @ 15-16). However, nothing can "fine tune" the goal of this legislation, i.e. to turn the lease sale process into a mere "paper transaction" and thereby taking away power from local governments and the public and giving it to the state bureaucracy.

DNR directors (oil & gas, timber, mining) will simply state that no one may even buy a given lease, it is SPECULATIVE to assume that development will occur. Therefore, at the lease sale stage, even if there are reasonably foreseeable effects if development occurs (either fiscal effects or environmental effects or conflicts with existing users/uses), DNR will not have to address and resolve those issues in the state's best interest at the finding "stage".

DNR's desire to establish multi-phase development projects is fiscally irresponsible because once a lease is granted the lessee has a property interest. "The State cannot deprive a lessee of the reasonable use of the leasehold interest. See Finding at 126, Appendix D, Sample Lease at para. 9(f), 11 AAC 83.158. The revocation of a lease or the deprivation of the reasonable use of a lessee's property, would result in the State having to pay just compensation to the lessee. Therefore, once it issues the lease, the State is under tremendous pressure to let the lessee go forward with its exploration and extraction." (Superior Court Judge Cranston, Case No. 3KN-93-1174 CI, pages 4-5)

In conclusion, UCIDA opposes SB308 because it does not provide for the resolution of reasonably foreseeable effects at the lease stage, it deprives local governments and the public of meaningful input, and it is fiscally irresponsible. We respectfully request that the Senate Resource Committee not pass out this legislation. Further, should DNR require more staff, we also respectfully suggest that your committee might urge the legislature to provide more funding so that the existing lease process proceed in the public's "best interest".

We would appreciate it if you would provide all committee members a copy of our comments.

Sincerely,

Theo Matthews

Theo Matthews
Administrative Assistant

CC Governor Hickel
House Resource Committee
Senator Little
Senator Salo
Representative Davis
Representative Navarre
Representative Phillips
UFA
ADF&G
ADEC
Attorney General
Cook Inlet RCAC

United Cook Inlet Drift Association

Fax Cover Letter
Office (907) 283-3600 • Fax (907) 283-3306

DATE: 2/22/94 TIME: _____

NUMBER OF PAGES (Including Cover Letter): 4

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (907) 283-3600 AS SOON AS POSSIBLE.

TO: Sen Resources - 465-3883 FROM: Theo Matthews
Gov. Hickel
House Resources
✓ Sen. Little % Sen Ellis
Sen. Sebo
Rep. Davis
Rep Navarre

Rep Phillips
VFA
ADF&G
ADEC
AG.
CIRCA C-

SUBJECT: SB 308

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 2

To Charlie Johnson	From Jenny
Co. EWC	Co. Nome
Dept.	Phone # 5231
Fax # 443 2162	Fax # 3708

Statement of Charles Johnson, Direstor of Eskimo Walrus Commission, Kawerak Inc. on Alaska Senate Bill 308

Mr Chairman and Honorable Senators

I am Charles Johnson, Director of the Eskimo Walrus Commission, which represents the walrus hunting villages from Togiak to Barrow. I am speaking on behalf of that organization and on behalf of Kawerak Inc. which represents the villages of the Bering Straits Region.

First, we are very disturbed at the speed in which Senate Bill 308 was introduced and hearings were called for. It is obvious that DNR tried to slip this bill through without having to hear testimony from those that will be most affected by this legislation. We recommend that legislation having this major impact be given broader exposure to the public and local governments. This legislation cannot stand the light of exposure for the attempts by DNR to bypass public process will be exposed.

We must refer to DNR's sorry record of incompetence and irresponsibility when granting offshore oil leases. The Alaska Supreme Court has found DNR wanting in addressing salient issues in making its best interest finding to allowing lease sale 50 and again for lease sale 55. We feel that this legislation is intended to free DNR from addressing the publics interest when it disposes of State land and waters. OUR lands and waters I must add. This legislation will not serve the best interests of the state for it denies the public and affected local governments the right to review development within their areas.

DNR is attempting to remedy the courts finding of incompetence with this legislation. By making this legislation retroactive to the last five years it is attempting to overturn the courts decision that DNR did not act in the public or the state's best interest in granting lease sales 50 and 55.

The State of Alaska has sued the Federal Government on the basis of local control of lands and resources. With this legislation it is attempting to do to local governments what it is claiming the Federal Government is doing to the State of Alaska.

By allowing the Commissioner of DNR to determine " material facts and applicable law upon which the determination that the sale, lease, or other disposal will serve the interests of the state" a process is set up to bypass local governments and the Coastal Management Program. This is contrary to the interests of the public, local governments and the State of Alaska.

We are very disturbed at the provision that " only reasonably foreseeable, non speculative, direct effects of the uses proposed" will be evaluated. It is often the traceable indirect effects that have the most impact whether good or bad on a community or the environment. This legislation eliminates experience with other projects as a factor in deterring the value of state disposal of property for development purposes.

By liimiting the evaluation of directs effects on fish and game only to the sale area DNR is ignoring the fact that fish and game are migratory animals that do not know where sale areas are. This provision allows DNR to allow development in key migratory paths that might have devestating effects on other areas of the state. The State of Alaska sued the Federal government over the Bristol Bay lease sales on this basis. Now DNR is requesting that it be allowed to do the very same thing.

Section 1 Paragraph C which allows DNR to evaluate impact on incrimental phases of a proposed sale rather than the whole project is intended to bypass present laws that protect the environment as well as the public from irresponsible permitting by government agencies such as DNR. By eliminating the cumulative long range effects of a sale from consideration and only considering "phases" as an entire project by itself DNR places itself in a position of not being able to halt a project that may be doing irreparable damage to the environment and the public.

One can argue that a shovel full of dirt or a gallon of oil spilled does not have significant damage to the environment or the lives of Alaska Citizens. By that standard we can argue that each successive gallon of oil spill did not have significantly more damage that the last gallon spilled by the Exxon Valdez as so consequently the Exxon Valdez was a permissible event. An extreme example but this is essentially what DNR is asking us to do.

Neither the Eskimo Walrus Commission nor Kawerak is against development. We are for responsible and competent evaluation of any development. This legislation allows DNR to continue it irresponsible and incompetent ways. It is not needed. It is bad legislation.

Thank you Mr. Chairman and Senators.

I ADAMANTLY OPPOSE SB 308

OUR PRESENT LAWS WERE DESIGNED TO ALLOW MEANINGFUL PUBLIC PARTICIPATION AND TO PROTECT OTHER RESOURCES AND INTERESTS FROM DETRIMENT AND DESTRUCTION BY OIL AND GAS ACTIVITIES.

IT OCCURS TO ME THAT THE PEOPLE OF THIS STATE HAVE SAID THAT THERE ARE SOME INTERESTS, SOME PEOPLE AND SOME RESOURCESTHAT ARE WORTHY OF PROTECTING AND THAT COMMAND THE SAME OR HIGHER PRIORITY FOR PRESERVATION AS THERE IS A DEMAND FOR OIL DEVELOPMENT AND THAT THIS PRIORITY IS IN THE BEST INTEREST OF THE PEOPLE OF THE STATE OF ALASKA.

WITHOUT THOSE LAWS WE ARE SAYIHNG THAT OIL DEVELOPMENT IS THE PRIORITY ON ANY AND EVERY STATE LAND.

I HAVE TO ASK MYSELF...IF THE MARINE TRACTS OF LEASE SALE 78 ALONG THE EASTERN SHORES OF COOK INLET ARE NOT WORTHY OF PROTECTING ... THEN WHAT IS. GIVE ME AN EXAMPLE OF AN AREA MORE DYNAMIC, AN AREA WITH RICHER RESOURCES, AN AREA MORE HEAVILY USED, AND AREA WITH MORE ADVERSE CLIMATIC AND ENVIRONMENTAL CONDITIONS, IS THERE AN AREA WHERE PHYSICAL CONFLICKTS WITH OTHER RESOURCE ACTIVITIES ARE GREATERII I DON'T THINK THERE ARE ANY.

SB 308 WILL MAKE A SHAM OF THE STATES BEST INTEREST FINDING. THE LAW WILL GIVE THE DNR THE LICENSE FOR OIL DEVELOPMENT ANYWHERE ANYTIME AS IT AND ITS GOVERNOR AND ADMINISTRATION SEE FIT.

THIS BILL IS THE WORK OF A GOVERNOR AND AN ADMINISTRATION WHICH I PERSONALLY FEEL WILL NOT BE AROUND IN 1995. PLEASE DONT REACT CARELESSLY TO THE RECENT COURT DECISIONS REGARDING OIL AND GAS LEASE SALE 78. THE COURT IN LEASE SALE 78 SAID THAT THE STATES REVIEW DID NOT PAY ATTENTION TO CONFLICTING USES IN COOK INLET. THE COURT WAS RIGHT! THEY SHOULD HAVE AND THEY DIDNT. WE TOLD MR. NOAH AND MR HICKEL IN PUBLIC HEARINGS BUT THEY CHOSE NOT TO LISTEN. WE NEED OUR PRESENT LAWS TO PROTECXT THE PEOPLE FROM AN ADMINISTRATION THAT HAS SAID IT MUST DEVELOP ANY AND ALL RESOURCES ASAP REGARDLESS OF THE CONSEQUENCES SHORT TERM OR LANG TERM.

PLEASE DON'T BE FOOLED BY MR. EASONS PAPER TRANSACTION THEORY. ONCE THE LEASES ARE BOUGHT I BELIEVE IT WILL BE NEARLY IMPOSSIBLE TO STOP AN ACTIVITY THAT IS NOT IN THE BEST INTEREST OF THE STATE AND EVEN IF POSSIBLE THE BUY BACK OPTION IS COSTLY AND UNNECESSARY.

Signed: _____
Testifier

SOUTH KENAI PENINSULA resident
Representing (Optional)

PO BOX 39294 NINILCHIK AK. 99639
Address

567-3374
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

committee on SB 308, dated Feb 22, 1994.
bill/subject

I am opposed to SB 308 both for its attempts to gut the coastal management program and for the short notice that the public has had to review and comment on this proposed legislation.

Signed: Anne Wieland
Testifier

self
Representing (Optional)

Box 1395 Homer
Address

235-6919
Phone No.

February 22, 1994

To: Senator Mike Miller, Chair
Senate Resources Committee

Re: SB 308

My name is Judy Mayhew, I am a resident of Unalaska and Vice-Chair of the Aleutians West Coastal Resource Service Area.

The Aleutians West CRSA administers the coastal management program in the western Aleutians. This bill potentially has significant ramifications for our program. We would ask the committee to give the public more time to review the bill in light of the implications of the amendments proposed today. We can not at this time make a well considered comment whether or not to support the amendments, having just heard the amendments at the beginning of this hearing. It is imperative for a workable solution to this problem, that a fair and open public process, with adequate time to inform the public, be followed.

Thank you.

Judy Mayhew
P.O. Box 221
Unalaska, AK 99685

Feb. 22, 1994

To Whom It May Concern:

I am very concerned with the way in which Senate Bill 308 is being railroaded through the legislature currently. DNR does not have a very credible record as far as I can see on much of its public review or risk acknowledgement in regard Resource leases, licenses, or variances.

I would simply echo the sentiments expresses in a recent letter from the mayor of the North Slope mayor. as a resident + wage earner + business operator in the lease 79 area, I bow to his greater experience in what is already working (ie. the Coastal Zone Management System) and what will be lost (public risk assessment) if this bill goes through

I am very concerned with the lease 79, the Copper River Flats, directly downstream + currant of the proposed lease area is the only unoiled fishing resource left in my backyard DNR better ensure that my economic options are safeguarded + assessed before a huge drilling project is put in place and becomes even more cost prohibitive to slow down at that

Feb 22, 1994

point to take into account ~~regarded~~ impacts, environmentally and otherwise.

This bill is not the way to do better business or create any better understanding amongst what are being forced to be more & more competitive and combative ~~to~~ resource user interests in oil, fishing, timber, & minerals.

DNR does not have my support, nor does the Governor, on this bill. You're both creating alot more already outright animosity by trying to sand bag this thing through.

It's a bad bill.

Sincerely
Torie Baker
PO Box 1159
Cordova, Ak 99574

2/22/94 Testimony, SB 308 (HB 474)

MICHAEL S. O'MEARA
P.O. BOX 1125
HOMER, ALASKA 99603

As a long-time resident of coastal Alaska I find this legislation to be offensive. Alchemy doesn't work -- you can't make gold from base metal. Given this, it is a waste of legislative time and effort to try to "fix" SB 308 (HB 474). It should be given a merciful death in committee.

SB 308 (HB 474) is a fine example of what is presently wrong with administrative procedures and agency attitudes. If enacted, I feel confident that it will prove counterproductive by exacerbating the present and growing tension between local people and state government. By seeking to father reduce opportunities for meaningful public participation in resource management decisions, this legislation will represent a declaration of war against already beleaguered, ordinary citizens. Be assured that this can only lead to increasing opposition to, and disruption of proposed resource disposals. In short, expect more lawsuits under this legislation, not fewer.

The increasing frequency of successful judicial challenges of oil and gas lease sales should send a message to us all. Perhaps there is something wrong with the sales as proposed, and with the way in which they have been pursued by the state. In the face of rising public opposition supported by judicial action, perhaps it would be more productive for the state to modify its administrative procedures than to seek immunity from public and legislative oversight. If state policy mandated that agencies work openly and in good faith with concerned citizens we might find that differences could be resolved before litigation was necessary.

A major problem with present administrative procedure relative to use and disposition of state resources is that a very basic and important step is missing. There is no provision for evaluation of actions proposed by agencies such as the Divisions of Oil and Gas or Forestry by unbiased parties. Agencies responsible for such things as public health and safety, environmental quality, and stewardship of a broad spectrum of other state resources potentially at risk by a proposed activity lack a veto.

For example, the Division of Oil and Gas, in consultation with industry, proposes an action and then evaluates its own proposal.

-- more --

The euphemism "Best Interest Finding" is applied to the end product of this exercise. As a "resource salesman" it is impossible for the Division's director to determine what is actually in the interest of all citizens of this vast state. To him, all of his proposals are good ideas or he wouldn't have put them forward in the first place. For him, the Coastal Zone Plan Consistency Review and Best Interest Finding processes are simply forums for self-justification.

While SB 308 (HB 474) is likely to be counterproductive in terms of helping to establish a predictable and consistent leasing program for the oil industry, there is need for legislative reform of a different sort. Administrative procedure should be revised so that promoters of resource projects such as the Divisions of Oil and Gas or Forestry no longer evaluate their own project proposals. Procedure should be modified so that the Divisions' "Best Self-interest Findings" go to a balanced, disinterested evaluation authority which rules on the merit of the proposed action in light of the input and interests of all affected parties. This authority, composed of legitimate representatives from other resource agencies, coastal districts, and resource user groups should be in a position to authorize or block the proposed action.

In addition, efforts to open up the public process, such as Senator Little's SB 324 promise to go much farther toward assuring a stable and beneficial program of resource use. I urge you to adopt a similar, more constructive approach to reforming administrative procedures, after discarding SB 308 (HB 474) and other efforts to circumvent public and judicial oversight of our resource agencies.

Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366
Fax: 907-463-3312

SB 308/HB 474: Amendments to Title 38 and the Alaska Coastal Management Program

The Alaska environmental Lobby (AEL) opposes SB 308 and HB 474. This legislation is a direct attack on the Alaska Coastal Management Program. It will also affect state resource disposals of timber, minerals and lands. In all cases, it takes power away from the public and local communities and gives it to the directors of the state's resource agencies.

SB 308 and HB 474 attempt to reduce the state's legal obligations when it disposes of public resources. When a public resource is leased, sold or otherwise disposed of, the state is required to determine whether the disposal will best serve the interests of the state. This legislation would narrow the scope of the factors that the state must consider when preparing a public interest finding.

AEL's specific concerns are:

1. These bills narrow the scope of a best interest finding to: reasonably foreseeable, **nonspeculative, direct effects** of the uses to which the resources will be put. The words, "nonspeculative" and "direct" will only invite additional lawsuits as the public and the courts try to determine their meaning. Was the Exxon Valdez oil spill a speculative or a nonspeculative effect? Was it a direct or indirect effect of oil drilling in the Arctic?

2. These bills give the resource agency directors the authority to decide which facts are material and which issues are relevant to the public's interest. This authority is currently vested in the local communities. Removing it from them will reduce their ability to manage and plan for their own futures. It will also insert a powerful bias into a finding since the director usually operates under a mandate to develop the resource.

3. These bills limit the best interest finding to the consideration of impacts on fish and wildlife only **within** the lease area. Clearly air and water emissions, oil and hazardous substance spills, noise and other impacts can affect fish and wildlife species and their habitats outside the lease area but within the coastal zone.

4. These bills allow best interest findings to be limited to discrete phases of a project. Such a limited focus would diminish consideration of the long term and cumulative impacts of a project. Furthermore once the initial permits are approved, and the project begins to move forward, it would be very difficult for the permitting agency to deny subsequent permits. If it were to do so, the state might be legally liable for project costs, repurchase of the leases, penalty fees and lawsuits.

These bills are not needed. The problem is not in Title 38 or the Alaska Coastal Management Program. The problem lies with DNR's inability to competently prepare a best interest finding. When the Supreme Court rejected DNR's finding for Lease Sale 55 for example, it noted that DNR had copied *"without alteration"* the Lease Sale 50 finding which the Court had previously rejected. It is hard for DNR to defend its competency or its commitment to the public interest when it reuses a rejected finding.

The Alaska Supreme Court has found that "DNR must take a hard look at any salient problems associated with a [lease] sale," and that it must "consider the probable cumulative impact of all anticipated activities which will be a part of [the project]." The public, industry and the state must be provided with all the relevant concerns before a project begins, to ensure that it proceeds responsibly and with minimal impact on local communities, other resources and the environment.

2/21/94

ANADARKO PETROLEUM CORPORATION 17001 NORTHCHASE DRIVE • P.O. BOX 1330 • HOUSTON, TEXAS 77251-1330

DIRECT (713) 874-3253

Anadarko

JAMES D. JOHNSON
MANAGER OF GOVERNMENT AND ENVIRONMENTAL AFFAIRS

February 17, 1994

The Honorable Mike Miller
Chairman
Senate Resources Committee
Capitol Building, Room 423
Juneau, AK 99811

Dear Senator Miller:

Anadarko Petroleum Corporation, one of the largest independent domestic oil and gas exploration and production companies, was disappointed to learn of the recent delay in Cook Inlet Oil and Gas Lease Sale 78.

Although our interests in Alaska to date are non-operating in partnership with others, we have considerable technical staff devoted to developing ventures in Alaska and our management considers Alaska to be an integral part of our future exploration strategy. However, an orderly and predictable leasing program is crucial. Our business is already fraught with considerable geological, technological, financial and political risk. The expectation that leases will be available to implement or continue exploration programs in a routine fashion is a driving force in any exploration strategy.

We are not encouraged by this latest development in Alaska's leasing program and would therefore like to lend a voice of support to any efforts that can be made to get the program back on track -- particularly a legislative solution. Please call on us if we can be of help.

I've enclosed a copy of our last Annual Report in case you would like to become more familiar with Anadarko.

Very truly yours,

James D. Johnson

JDJ:vjb
enclosure

c:\wp\johnson\senator.ltr

Marathon
Oil Company

P.O. Box 3128
Houston, Texas 77253
Telephone 713/629-6600

February 7, 1994

Mr. Howard Weaver
Editor
Anchorage Daily News
1001 Northway Drive
Anchorage, AK 99508

Dear Mr. Weaver,

The court decision staying oil and gas Lease Sale 78 in the Cook Inlet is disappointing for Marathon Oil Company and our Alaska-based employees and contractors. Marathon helped pioneer Alaska's oil industry, and, excluding the North Slope, we have been one of the leading producers of oil and natural gas in Alaska for nearly four decades. Our future in Alaska hinges on our ability to prolong and extend our operations on the Kenai Peninsula and Cook Inlet.

During the past several years, we have completed major capital investments which will enable us to increase sales of natural gas. We have also added personnel in Alaska. The aim is to extend and expand the potential of our existing production operations and evaluate the exploration potential of the Cook Inlet. We believe that increasingly sophisticated technology will allow the industry to compensate for the natural production declines as long as new lands are made available. It is vital then, to have a consistent, predictable leasing schedule.

Without the opportunity to replace existing production with new reserves, our industry will become no more than liquidators of a declining production base. This will obviously influence our thinking related to both staffing and investment levels. With nearly 85 percent of the state's revenues coming from a declining petroleum resource base, the State of Alaska has a significant stake in the future of our industry. To deny industry access to state lands today, is to curtail Alaska's greatest source of potential revenues tomorrow.

I do not question the legitimate concerns of fishing and environmental interests. But I believe that reasonable people and sound regulation can accommodate the interests of the petroleum industry, the fishing industry and the people of Alaska in an environmentally sound way.

Governor Hickel is to be commended for his condemnation of the delay of Sale 78 and for his aggressive actions to seek possible legislative solutions. Every citizen who supports sound, responsible development of Alaska's oil and gas resources, should join the governor in seeking a quick legislative solution by calling or writing Alaska's representatives and senators and giving them your perspective.

Yours truly,

SB 308

34824 Kalifornsky Beach Road • Suite E • Soldotna • Alaska • 99669 • (907) 262-2492

February 23, 1994

Senator Drue Pearce, Chair
Senate Finance Committee
State Capital, Room 508
Juneau, Alaska 99801

Dear Senator Pearce:

The Kenai Peninsula Fishermen's Association (KPFA) is opposed to SB 308. This is bad legislation from a state planning and public policy standpoint. At the very time others (ie Coastal Zone Management Council, Senator Little) are working toward improving public notification and involvement in coastal planning the state administration has now decided to introduce legislation that would limit public and local government input into the process.

State planning for oil lease sales should be conducted up front and should not be a piecemeal operation. At the time of a lease the state must address potential problems and impacts of activities that could result from a lease. Not to do so is inviting more problems in the courts, not less.

SB 308 is fiscally irresponsible. The general public and the oil industry need to know the rules at the lease sale stage. Once a lease is granted the lessee has a legitimate property interest. If the state later decides to revoke a lease or impose mitigation measures that diminish the economic value of the lease, the state may be forced into a costly buy back situation. To protect it's financial interests and in fairness to potential lessees, the state should resolve issues dealing with foreseeable conflicts or environmental concerns at the lease sale stage.

KPFA believes there are substantive legal issues inherent in SB 308 that need full review by the attorney general prior to moving this bill further. We would urge the finance committee to explore these issues prior to moving the bill out of committee. An alternative might be to refer this bill to judiciary prior to taking any action.

Sincerely,

Loren Flagg

Loren Flagg
Executive Director

Hickel overreacted beyond reason to Lease Sale 78 injunction

LOREN FLAGG

On commercial fishing

The Hickel administration has overacted beyond reason to Judge Cranston's stay of Oil and Gas Lease Sale 78. Within one day of Cranston's decision Hickel fired off a two page news release titled "Court Decision on Lease sale is Wrong." The governor blasted the Superior Court's decision stating "it is based on an incorrect reading of the statutes governing the Alaska Coastal Management Program" (ACMP). Hickel added that part of the problem is that many of the state's judges do not fully understand resource development and how important it is to the state's economy.

Having lost a round in court the Hickel administration would now like to change the rules of the game. With the introduction of SB 308 and HB 474 the administration is now trying to circumvent the public process. This legislation would basically gut the ACMP and put all the trump cards into the hands of DNR resource directors. Mid-level bureaucrats would then have the power to limit the range of issues presented and resolved at the lease sale stage. DNR would not be required to look at relevant information at the initial phase of a proposed project under this legislation.

SB308 and HB474 are bad legislation and represent bad public policy. Concerns of local governments and the public will not be resolved at the lease sale stage. The way in which these bills are being fast tracked through the legislature does a disservice to the public.

The laws and regulations that are currently in place are not the problem. DNR's unwillingness to abide by the rules under the ACMP is the problem. DNR has attempted in some lease sales to circumvent the requirements under the ACMP by ignoring certain problem areas, such as water dependent priorities, and by ignoring the advice of other state agencies like the Department of Fish and Game (ADF&G). Attempts to ignore the advice of ADF&G can be traced back to the beginning of the Hickel administration when Hickel attempted to gut the Habitat Division and transfer the remnants to DNR where objective, perhaps dissenting voices could be easily muffled. When that move failed DNR simply began to ignore many of the recommendations of ADF&G.

A prime example of the short shrift that ADF&G received from DNR occurred during the planning stages for Cook Inlet Lease Sale 76 back in 1992. DNR virtually ignored most of ADF&G'S recommended mitigation measures for this sale. ADF&G Regional Supervisor Lance Trasky raised his concern in a September, 1992 memo to DNR'S chief petroleum geophysicist. Addressing the Statement of Issues for Proposed Sale 76 Trasky wrote, "The proposed mitigation measures in the issues statement do not address a majority of the ADF&G'S comments and indicate that DNR intends to pursue elimination of many of the existing Cook Inlet lease sale terms and conditions. The Department continues to oppose this action because it diminishes protection of fish and wildlife resources, and could create conflicts with existing uses of these resources."

DNR'S disregard for ADF&G'S concerns surfaced again during Lease Sale 78 preparation. DNR again rebuffed ADF&G'S recommended mitigation measures that were developed over a period of nearly 15 years and were based on the combined expertise and cooperative efforts of both agencies.

Having ignored ADF&G'S habitat and fishery concerns it was then quite easy for DNR to ignore the concerns of commercial and recreational fishermen. That is exactly what DNR did in preparing their Final Finding on Lease Sale 78 and that is what led to Judge Cranston's injunction. The courts stay was not based on a technicality" as suggested in a recent Alliance article.

The standards that DNR has lost on in this case and two others are based in the Alaska constitution and in Federal law and are designed with the best interest of all Alaskans.

Those who think that the Kenai judge sided with "a very small, albeit vocal, opposition group to lease sale Cook Inlet" had best think again. The groups represen in the appeal of Lease Sale 78 — including commerci fishermen, Native, and environmental organizations — represent thousands of citizens residing within the sta

The commercial fishing industry has not "come du firmly on the side of no exploration in Cook Inlet," as recently stated. Fishermen are not anti-oil as claimed some protagonists. The commercial fishing industry i however, pro-fish and pro-environmental protection. Fishing groups worked hard for many years to assure their industry was given adequate respect and protecti while the oil industry continued to operate and expan Many of our members are employed by the oil industr and many others participate with industry as part of oi spill response teams. We believe in a cooperative rela ship with respect and cooperation between oil interest fish interests and the state. To ignore our concerns, as DNR did in Lease Sale 78, or to limit our participatio during the review process, as DNR is attempting to do with new legislation, is taking a giant step backwards the positive relationships that have been built during 3 years of Cook Inlet oil development.

Finally, we would like to note that SB308 and HB4 are fiscally irresponsible. The general public and the oi industry need to know the "rules" of the game at the le sale stage. Once an oil lease is granted the lessee has a legitimate property interest. If the state later decides to revoke a lease or impose mitigation measures that dimi the economic value of the lease, the state may be force buy back the lease. To protect it's financial interests an fairness to potential lessees, the state should resolve iss dealing with foreseeable conflicts or environmental con cerns at the lease sale stage, not after the fact!

Loren Flagg is executive director of Kenai Peninsul Fishermen's Association. This column is a joint effort United Cook Inlet Drift Association and the Kenai Peninsula Fishermen's Association. The viewpoints pre sented here are not intended to represent the viewpoint the Peninsula Clarion.

City of Pelican

BOX 737 · PELICAN, ALASKA 99832 · PHONE 735-2202 · FAX 735-2258

FEB. 23, 1994

TO: SENATE FINANCE COMMITTEE MEMBERS
FROM: TOM ARMOUR, CITY ADMINISTRATOR, CITY OF PELICAN, AK.

SUBJECT: SB 308

Having just learned late this afternoon that this bill is up for Hearings tomorrow morning (Feb. 24, 1994) I apologize the lateness in getting these concerns expressed to you. I also have been advised that Thursday's hearing will be limited to fiscal impact aspects only.

Nonetheless I would to briefly advise you that at the municipality level, SB 308 does raise some questions. Further that for several reasons, quite a few of us haven't been able to track that bill. Weather forcing delays of well over a week for mail flights has resulted in our just now getting abreast of where the bill is and <u>what in very broad terms</u> it is.

The latter is actually the point of concern at this time. We don't know what SB is doing or going to do to the Coastal Zone Management Districts or where local governments fit into the picture.

At first, very fast reading, I get the impression that there is the authority for such districts to be circumvented by the DNR and maybe other state level agencies. <u>This is cause for concern.</u> We have worked very hard adding the CZ program into municipal government. Is it to no avail?

Secondly, the rapidity with which SB 308 is progressing without giving locals adequate time for consideration and to determine impacts doesn't seem fair. I would urge that this bill be held for additional review. And especially allow local government a time to analyze it.

Thank you for hearing this at such short notice. We just hadn't gotten any info about this.

Put in 308
file

Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

Rep. David Finkelstein
Alaska House of Representatives
State Capitol
Juneau, AK

Re: HB474/SB308

Dear Representative Finkelstein,

Thank you for asking for the position of the Alaska Sportfishing Association on HB474 and its companion bill, SB308.

The Association is opposed for the following reasons:

The bills amend AS 38.05.035 (e). The present law requires the Director of the Division of Lands to make findings as to the state's "best interest" whenever the state considers land disposal, timber sales or oil and gas leases. These findings must meet criteria that protect fish and wildlife habitat, such as sport fishing.

Section 1 of the bills would amend the statute to make the best interest determinations subject--not to specific criteria--- but to simply whatever facts and issues the Director of the Division of Lands believes are "material". This defeats public planning, and the requirements that agencies respond to public concerns. It changes agencies into some "divine hand" that knows best, rather than requiring that they respond to the public.

Section 1 of the bills would also defeat considerations of cumulative impacts in multi-phased disposal of lands, leases or timber sales. For twenty years, resource agencies (beginning with the President's Council on Environmental Quality in the early 1970's) have consistently recognized the importance of addressing the cumulative impacts in resource matters. This shoddy draftsmanship of the bills should not be allowed to persist.

Finally, this issue of cumulative impacts also arises in section 3 of the bills by limiting coastal zone consistency determinations to incremental phases of a project rather than the overall project. That's bad news for fish.

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To Dave	From Doug
Co.	Co.
Dept.	Phone #
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This legislation arises because of in three recent court cases, the Department of Natural Resources has lost in challenges to its best interest determinations. While the latest involved oil lease sale No 78 on the east side of Cook Inlet, which is right in the heart of the relatively new and expanding Deep Creek recreational fishery and in the heart of the long established set net and drift gill net fisheries, DNR could have easily made a sustainable decision if, as the public requested, it had simply required directional drilling from ashore in order to protect the fisheries and the aesthetic value of the area.

While the Alaska Sportfishing Association has long objected to management of the mixed stock commercial fisheries that intercept many fish other than Kenai Sockeye, and while ASA did not join in the litigation to stop that sale, we believe that maintaining the existing law regarding best interest determinations transcends such matters. That issue transcends any particular sale, transcends oil and gas matters because other dispositions such as timber sales and land sales are involved, and transcends the allocation and intercept issues. The best interests statutes are at the heart of all state land management, not just oil and gas leases.

The Legislature would be unwise to amend the statutes to legalize what the courts have determined to be illegal. In our opinion, DNR has been correctly told three times that it performs poorly on these matters. Three strikes and you're out ought to be the law on DNR. To have DNR now come to ask that the statutes it violated be amended to excuse its conduct amounts to nothing more that any law violator coming to the Legislature to ask that the law violated be expunged. If this were a criminal statute, with a petty thief making such a request, we would all recognize the absurdity of the request. Because this is a civil statute with DNR as the violator and the oil industry as a protagonist, we too easily think the issues are different. They are not. What DNR needs is a lesson in respecting the law, the public and the enactments of the Legislature.

Please convey our sentiments to others in the House and the Senate, and please keep us informed if the legislation progresses. It should not.

Sincerely,

Phil Cutler 3/1/94

Phil Cutler, President

ALASKA SCHOOL ACTIVITIES ASSOCIATION, INC.

March 22, [illegible]

The Honorable Senator Drue Pearce
Cochair Senate Finance Committee
Alaska Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Pearce:

The Alaska School Activities Association (ASAA), Inc. supports passage of CS for Senate Bill 312 (HES) which includes an amendment repealing AS 14.07.058 and 14.07.059. The repeal is being accompanied by adoption of regulation.

The state Board of Education is proposing to adopt a new regulation which will grant ASAA, Inc. the authority to govern interscholastic activities in the high schools of Alaska. It reads as follows:

> 4 AAC 06.115 is proposed to be adopted to make clear that school districts are allowed to voluntarily join and pay dues to non profit associations that govern interscholastic activities, such as the Alaska School Activities Association, Inc., subject to adherence to educational policy set by the state Board of Education and compliance with state laws.

The effective date of the regulation, July 1, 1994 will coincide with the proposed effective date of the repeal.

Thank you for considering this opinion.

Respectfully,

Gary D. Matthews
Executive Director

SB 308

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To Kyle Parker	From P Rasmussen/OCRM
Co.	Co.
Dept.	Phone #
Fax #	Fax #

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Washington, D.C. 20235

Riki Ott, Ph.D.
United Fishermen of Alaska
211 Fourth Street, Suite 211
Juneau, Alaska 99801

MAR 2 1994

Dear Dr. Ott:

Thank you for your letter of March 1, 1994, regarding Alaska Senate Bill 308 (SB 308). SB 308 would affect the way the Alaska Coastal Management Program (ACMP) reviews decisions by state agencies regarding the disposition of state land, property and resources. Your letter raises several issues regarding SB 308 and asks for clarification on the federal role in this particular legislation. Because we have not had time to conduct an in-depth review or legal analysis of SB 308, the comments that follow must be viewed as a preliminary programmatic response.

The Office of Ocean and Coastal Resource Management (OCRM) is the federal office responsible for overseeing the implementation of state coastal management programs developed pursuant to the Coastal Zone Management Act of 1972, as amended (CZMA). In addition to initially approving state programs, OCRM is charged with reviewing and approving or denying changes to the state's coastal management program. Thus, if SB 308 were enacted, the resultant changes to the ACMP would have to be submitted to OCRM for approval as a program change pursuant to 15 C.F.R. 923 Subpart I.

As mentioned above, we have completed a preliminary review of SB 308, and it would be premature to decide whether OCRM would approve the changes resulting from SB 308. We can, however, point out several aspects of SB 308 for which OCRM has significant concerns. First, as presented, SB 308 would narrow the scope of review for state agency decisions including disposition of state land, property and resources. In essence, this would create a double standard for review under the ACMP: one standard for federal agency actions, and a narrower, less strict standard for state agency actions. In order to apply state coastal management enforceable policies to federal agencies through the CZMA's federal consistency provisions, the standard of review applicable to the federal agency must be the same standard that applies to all public and private entities under the state's jurisdiction.

Second, in narrowing the scope of review, SB 308 would be contrary to the direction set by Congress in the 1990 reauthorization of the CZMA regarding state review of direct federal activities under section 307(c)(1) of the CZMA. Specifically, the changes require that each federal agency activity affecting any land or water use or natural resource of the coastal zone be conducted in a manner which is consistent to the maximum extent practicable with the enforceable policies of an approved state coastal management program. Further, Congress intended that in determining the effects of the activity, the federal agency must consider both direct and indirect effects, including reasonably foreseeable cumulative effects of the proposed activity.[1] It is also important to emphasize that the trigger for review of an activity is whether it affects the land or water uses or natural resources of the coastal zone, not the location of the activity.

Finally, you have raised the question of whether the federal program allows for phasing the review of certain activities. Federal regulations at 15 C.F.R. 930.37(c) allow, under certain circumstances, for the phased review of federal activities. This section is not intended to curtail the scope of the review at any particular phase. In fact, this section provides an opportunity for state review at major decision points for a long-term project and ensures that the project, taken as a whole, is consistant to the maximum extent practicable with the state coastal management program.

I hope that this letter answers your questions. Enclosed are some background materials regarding the reauthorization of the CZMA and federal consistency. If you would like to discuss the matter further, please contact John King of my staff at 301/713-3121.

Sincerely,

Clement Lewsey, Acting Chief
Coastal Programs Division

enclosures

cc: Paul Rusanowski, OGC
Beth Kerttula, DOL

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[1] H.R. Conference Report No. 964, 101st Congress, 2d Session at 970, 971 (1990)

UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

John King
Office of Oceans & Coastal Resource Management
National Oceanic & Atmospheric Administration
Rockville, MD

VIA FAX: (301) 713-4367

March 1, 1994

Dear Mr. King:

Several days ago, we provided you with a copy (via fax) of Senate Bill SB308 and background information. From our perspective, SB308 is a radical shift in public policy regarding the public input process under Alaska's coastal management plan of the Coastal Zone Management Act. We have several key concerns.

#1) This bill gives resource agency directors the power to limit the scope of issues addressed during the initial administrative review. Would similar powers be granted to federal resource agency directors on federal land disposals under the consistency determinations? Or would two standards go into effect: one on federal lands and one on state lands?

#2) This bill institutionalizes multi-phasing on state lands by allowing review of "relevant" public concerns during the appropriate project phase. We are concerned that multi-phasing increases the likelihood of erroneous land disposals because the process lacks a thorough cost/benefit analysis and best interest finding during the initial review phase. This seems counter to the entire concept of the CZMA. Does the federal government allow multi-phasing of projects on federal lands as maintained by state officials?

#3) Limiting the range of effects during the review process to "foreseeable, significant and direct" seems to eliminate most effects. Didn't Congress clarify "direct" to include secondary, cumulative and indirect? If so, how can the federal government approve language that they themselves do not use?

#4) Limiting the range of effects on fish and wildlife to "within the scope of the lease sale area" seems extremely arbitrary and unrealistic. This would exclude effects on migratory wildlife, including fish, marine mammals and birds, and also effects on wildlife immediately adjoining the lease sale area.

In summary, could you clarify the role of the federal Government in this legislation? Would the federal government have to approve the changes proposed in SB308 should this bill become law? What is the likelihood of federal approval given the legal history of the CZMA?

This bill is on an extremely fast track. Your haste in answering these questions--even a preliminary review--would be greatly appreciated.

Sincerely,

Riki Ott

Riki Ott, Ph.D.
Chairman of the Habitat Committee

Info. Pkg.

Coastal Zone Management Act
Federal Consistency Requirements

The Coastal Zone Management Act of 1972 (CZMA) section 307, as amended, requires that federal activities (including activities performed by the federal government, private activities requiring federal permits and licenses, and federal financial assistance to states and local governments) be consistent with the enforceable policies of a state's federally approved coastal program. Generally, federal activities are subject to the federal consistency requirements based on an "effects test."

Direct Federal Activities – CZMA section 307(c)(1), (2)

The federal consistency effects test requires that federal agencies proposing activities (direct federal activities), whether in or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone must provide a state with a federally approved coastal management program (CMP) with a determination that the activity is consistent to the maximum extent practicable with the state CMP's enforceable policies. A "Federal activity" is defined as "any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities." 15 C.F.R. § 930.31(a).

The issue of whether a direct federal activity affects any land or water use or natural resource of a state's coastal zone is a question of fact to be determined, on a case-by-case basis, by the federal agency performing the activity. 15 C.F.R. § 930.33(a). In determining the effects of the activity, the federal agency must consider both direct and indirect effects, including reasonably foreseeable cumulative effects of the proposed activity. H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. at 970, 971 (1990). While the form of the consistency determination may vary, it must include a detailed description of the proposed activity, its effects upon the land or water uses or natural resources of the state's coastal zone, and an evaluation of the proposed activity in light of the applicable enforceable policies in the state's CZM program. See 15 C.F.R. § 930.39.

There is no categorical exemption for any federal activity. If a federal activity affects the coastal zone then consistency applies. However, the President may exempt a specific federal activity (but not a class of federal activities) under certain circumstances. 16 U.S.C. § 1456(c)(1)(B). In addition, as indicated above, a federal activity affecting the coastal zone must be consistent to the maximum extent practicable. This requires federal activities "to be fully consistent with [state coastal] programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations." 15 C.F.R. § 930.32(a). Thus, a federal activity may deviate from full consistency if legally required (as opposed to a general notion or claim of national security). Finally, federal agencies "may deviate from full consistency with an approved

and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

The conference report does not include the statutory language from section 7307 (Federal Agency Consistency) of the House bill. This language provided:

> The consistency requirements of section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) shall apply to federal agency activities or federally permitted activities under title I of the Marine Protection, Research, and Sanctuaries Act of 1972 if the federal activity or permitted activity affects land uses, water uses, or natural resources of the coastal zone.

This amendment provided specific clarification that federal agency activities and federal permits under the Ocean Dumping Act, including ocean dumping site designations, and operation and maintenance dredging, are subject to the requirements of section 307. The conferees agreed that this statutory provision is unnecessary because the amendments to section 307(c)(1) leave no doubt that all federal agency activities and all federal permits are subject to the CZMA's consistency requirements. The conferees support and endorse the intent of the House provision, but agreed that a statutory "listing" of activities should be avoided to prevent any implication that unlisted activities are not covered.

Finally, the conferees are aware of the argument that the application of federal consistency to activities under the Ocean Dumping Act amounts to state regulations of ocean dumping for purposes of section 106(d) of that Act. The conferees reject this argument.

A new section 307(c)(2) is added to the CZMA which authorizes the President to exempt a specific federal agency activity if the President determines that the activity is in the paramount interest of the United States. The provision is based on similar exemption provisions in other environmental statutes, including section 313(a) of the Clean Water Act, section 118(b) of the Clean Air Act, section 4(b) of the Noise Control Act, section 6001 of the Solid Waste Disposal Act, the Medical Waste Tracking Act of 1988, the Safe Drinking Water Act, and section 408 of the Powerplant and Industrial Fuel Use Act of 1978. The exemption authorized in subsection (c)(2) is not applicable to a class of federal agency activities but only to a specific activity.

This exemption provision reinforces the conferees' position that no federal agency activities are categorically excluded from the consistency provisions of section 307. Section 307(c)(2) is the only exemption authorized or intended for section 307(c)(1) activities.

Section 6208(c)(1)(C) clarifies the requirement that each federal agency carrying out an activity which affects the coastal zone must provide a consistency determination to the appropriate state agency. This determination must be provided at the earliest possible time but not later than 90 days prior to final approval of the activity. This new statutory provision codifies an existing CZMA regulation (15 CFR 930.34(b)).

Section 6208(b) makes technical and conforming changes to the other existing federal consistency provisions of sections 307(c)(3) (A)

Conf. Rpt

Section 6205. Management program development grants

Much of the existing law relating to "program development" is transferred to section 306 or repealed. Discretionary program development assistance is authorized for fiscal years 1991, 1992, and 1993. A state may receive up to $200,000 in federal assistance for two successive years.

Section 6206. Administrative grants

This section amends section 306 of the CZMA substantially. Since section 306 governs approval and administration of state management programs, concern has been expressed that enactment of these provisions may create the implication that existing programs must be reapproved pursuant to the amended section 306. The conferees unequivocally reject this view. These amendments neither require nor authorize the reapproval of state management programs, and existing state programs shall remain eligible for grants after enactment. To the extent that new requirements have been added, the conference report contains deadlines, sanctions, or incentives for compliance which are the exclusive mechanisms through which the Secretary is authorized to act.

Section 6207. Resource management improvement grants

This section is amended to specifically authorize grants under this section to restore and enhance shellfish production from publicly owned lands.

Section 6208. Coordination and cooperation

This section amends the "federal consistency" provisions of the CZMA. The conferees' principal objective in amending this section is to overturn the decision of the Supreme Court in *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984) and to make clear that outer Continental Shelf oil and gas lease sales are subject to the requirements of section 307(c)(1).

The amended provision establishes a generally applicable rule of law that any federal agency activity (regardless of its location) is subject to the CZMA requirement for consistency if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement.

Whether a specific federal agency activity will be subject to the consistency requirement is a determination of fact based on an assessment of whether the activity affects natural resources, land uses, or water uses in the coastal zone of a state with an approved management program. This must be decided on a case-by-case basis by the federal agency conducting the activity.

The question of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone is determined by the federal agency. The conferees intend this determination to include effects in the coastal zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term "affecting" is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place,

Alaska Wilderness Recreation & Tourism Association
Sustainable recreation and tourism for a quality future

P.O. Box 1353
Valdez, AK 99686
Phone: 907-835-4300
Fax: 907.835.5679

To: Chairman Pearce and Frank, Senate Finance Committee members.
From: Nancy R. Lethcoe, President NRLethcoe
Date: February 25, 1994

I have reviewed the fiscal note and have the following questions:

1) Changes in the state Coastal Zone Management Program will require reapproval from the Federal Coastal Zone program. Where are the administrative costs for this in the fiscal note?

2) Changes in the state Coastal Zone Management program will require all the communities with coastal zone management plans to work with the state to revise their plans. Where is the money budgeted to help the local communities revise their plans? Will the State help the local communities pay for this additional local expense caused by a state action?

3) Will the bill entail retraining costs for state employees? Will there be printing costs for the new statute? Will there be new regulations or guidelines implementing this? Where are these costs indicated on the fiscal note?

4) Mr. Eason indicated that it was unlikely that this bill could be implemented without some law suits. Where is the fiscal note for this?

5) Testimony has indicated that this bill may lead to an increase in State buybacks. Where is the fiscal note for this?

As a business organization, AWRTA can appreciate the wishes of the Department of Natural Resources to have the legislature pass a bill that will decrease litigation costs and avoid increased unemployment. However, AWRTA believes that this bill may increase unemployment and litigation costs by giving priority to Alaska's extractive industries — timber, mining, and oil and gas — at the expense of the tourism industry which is also based on Alaska's natural resources. We have reached this conclusion after listening to Mr. Eason's testimony before the Senate Resources and Finance committees. When questioned about the meaning of the words "direct" and "indirect," Mr. Eason explained that the fact that spills will occur is a direct effect, whereas the resource and economic damages to other industries is an indirect effect. Currently, both direct and indirect effects are considered when making a written finding. SB 308 limits findings to considering only the direct effects.

This change directly affects the tourism industry. As many of you know, the courts have ruled that tourism businesses do not have legal standing to recover economic damages sustained by a spill. Following the 1989 spill, tourism business operating in areas physically oiled, either went out of business completely, significantly reduced their business, or relocated to other areas. The economic effects lasted for several years. Businesses in the spill impacted areas also suffered. For example, in the years following the spill, Valdez, which was 25 miles from the oiled area, had a 40% decline in cruise ship landings. The summer of 1994 will be the first year that cruise ship landings will have equaled or exceeded the 1988-1989 level. The loss of cruise ship traffic cost Valdez tourism businesses such as gift shops and restaurants a minimum of 2 million dollars. According to the State Visitor Statistics Program, the total loss of tourism business to Valdez in 1989 alone was $12 million. It is, of course, true that the spill caused an economic boom in other parts of the Valdez economy, but this was at the expense of tourism businesses. None of these damages are recoverable. Prevention is the tourism industry's only protection.

Alaska needs a diversified economy. AWRTA supports laws and regulations that promote mutually compatible development of all of Alaska's industries, not the exclusive development of a few at the expense of others. We support laws that seek informed public input from all affected businesses and seek to balance the needs of competing industries without jeopardizing either one's existence. SB 308 does not accomplish this. It limits the scope so narrowly that legitimate economic concerns of the tourism industry will not be considered. Actual and potential adverse economic impacts on tourism within the site and adjacent to it should be considered.

AWRTA supports oil development where there are adequate safeguards to protect other industries. Good government provides those protections. The State's current Coastal Zone Management Program is working. The courts have not stopped lease sales. They have only asked the Department of Natural Resources to look at the indirect impacts and to seek ways of minimizing or mitigating adverse effects on the environment and businesses dependent upon the environment.

AWRTA strongly opposes this bill. It is not a fair bill. It seeks to advance the profits of one segment of the state's economy at the expense of other parts of the business community. It is not a bill that is good for Alaska. Alaska needs both a strong, responsible oil industry and strong, locally owned and operated tourism, including guided sport fishing, businesses. We ask that you not support this bill.

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UCIDA

UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

February 23, 1994 SENT BY TELEFAX

Senator Steve Frank
Senator Drue Pearce
Co-chairs, Senate Finance Committee

SUBJECT: CSSB 308 (RES)

UCIDA Position: Strongly Oppose

Dear Senators Frank and Pearce,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA).

CSSB 308 (RES) turns "public interest findings" into "industry interest findings".

CSSB (RES) 308 represents a radical change in public policy - even reasonably foreseeable effects of certain types of developement will not be addressed at the lease stage.

CSSB308 (RES) is fiscally irresponsible. This bill institutionalizes lease "buy backs"

There are many revisions or amendments that may be proposed to "fine tune" this legislation - (i.e. remove the proposed changes that would have the scope limited to fish and wildlife species and their habitats within the lease sale area - pg. 4 @ 15-16). **However, nothing can "fine tune" the goal of this legislation, i.e. to turn the lease sale process into a mere "paper transaction".** This will take away the

ability of local governments and the public to participate in the development of mitagation measures and terms to resolve "reasonably foreseeable effects" at the lease sale stage as is provided for by current law.

Under CSSB 308(RES) the decision to commit the state to initiating exploration and to potential fiscal liability for "buy backs" is vested in the state bureaucracy. DNR directors (oil & gas, timber, mining) will simply state that no one may even buy a given lease and that it is SPECULATIVE to assume that development will occur. Therefore, at the lease sale stage, even if there are reasonably foreseeable effects which would result if certain types of development occur (either fiscal effects, environmental effects or conflicts with existing users/uses), DNR will not have to address and resolve those issues in the state's best interest at the lease "stage". For example, it is reasonably foreseeable that a fixed production platform in the middle of the Kenai River or in the intensively used marine waters of the Central District of Cook Inlet or the Copper River Flats will not be physically compatible with existing sport, personal use and/or commercial uses. With this legislation, these obvious conflicts would not be resolved - even if they could be - in the state's best interest at the lease stage and the state would be subject to future buy backs demands.

DNR's desire to establish multi-phase development projects and to re-write the language for single phase projects is fiscally irresponsible because once a lease is granted the lessee has a property interest:

"The State cannot deprive a lessee of the reasonable use of the leasehold interest. See (Cook Inlet Sale 78) Finding at 126, Appendix D, Sample Lease at para. 9(f), 11 AAC 83.158. **The revocation of a lease or the deprivation of the reasonable use of a lessee's property, would result in the State having to pay just compensation to the lessee.** Therefore, once it issues the lease, the State is under

tremendous pressure to let the lessee go forward with its exploration and extraction."

Superior Court Judge Cranston, Case No. 3KN-93-1174 CI, pages 4-5

It is clear that by not addressing reasonably foreseeable effects at the lease stage and by retaining full authority to disallow activities which cannot be made consistent with the ACMP or which are later found not to be in the state's best interest, **CSSB 308 (RES) will allow the state buracracy to commit the state to making "just compensation" to the lessee- i.e. full or partial buy backs.**

UCIDA opposes CSSB 308 (RES) as written because at the lease stage it does not provide for the **resolution** of reasonably foreseeable effects, it deprives local governments and the public of meaningful input, and it is fiscally irresponsible. We respectfully request that the Senate Finance Committee not pass out this legislation as written.

Further, should DNR require more staff, we also respectfully suggest that your committee might urge the legislature to provide more funding so that the existing lease process can proceed in the state's "best interest".

Finally, we respectfully submit that, at a minimum:

1) The existing statutes and regulations dealing with single phase projects should be left in place. Lease sale receipts could continue to go to the general fund.

2) An amendment should be crafted that places lease sale receipts for multiphase projects into escrow accounts. This would prevent the state from falling into the federal dilemma associated with the Bristol Bay leases - i.e. no money for buy backs that can be accessed without cutting back on other federal programs.

3) An amendment should be crafted that exempts the state from liability for any costs incurred by the leasee for exploration, design, etc. after the lease is granted.

4) It is not clear if the "just compensation" referenced by Judge Cranston above would include compensation for lost income from a project that is commercially viable but that the state decides is not in its best interest to allow to proceed. This very serious issue needs to be researched. If the state could be liable, an amendment needs to be crafted that exempts the state from such liability.

5) Timber and mining disposals should be removed from all versions of SB 308.

6) Since the rules are changing in mid-stream, an amendment should be crafted that:

a) Exempts oil and gas leases that are currently undergoing best interest and/or consistency findings, or

b) have been remanded to the state by the courts for further best interest and/or consistency review.

7) SB 308 as amended and if it passes out of this committee should be referred to the Senate Judiciary Committee. Issues of "just compensation", potential state liability for buy backs, conformity with the Federal Coastal Plan, issues of constitutionality, and confusion concerning how this legislation will mesh with the administration's "large block" leasing legislation have already been raised in the very limited opportunity the public has had to comment.

UCIDA appreciates this opportunity to comment and would appreciate it if you would provide all committee members a copy of our comments.

Sincerely,

Theo Matthews

Theo Matthews
Administrative Assistant

CC Governor Hickel
House Resource Committee
House Oil & Gas Committee
Senate Judiciary Committee
Senator Little
Senator Salo
Representative Davis
Representative Navarre
Representative Phillips
UFA
ADF&G
ADEC
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Cook Inlet RCAC

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

February 22, 1994 SENT BY TELEFAX

Senator Mike Miller
Senate Resource Committee

SUBJECT: SB 308

UCIDA Position: Strongly Oppose

Dear Senator Miller,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA).

SB308 turns "public interest findings" into "industry interest findings".

SB308 represents a radical change in public policy that affects all "land" disposals - oil & gas, timber and mining.

SB308 is fiscally irresponsible.

There are many revisions or amendments that may be proposed to "fine tune" this legislation - (i.e. remove the proposed changes that would have the scope limited to fish and wildlife species and their habitats within the lease sale area - pg. 4 @ 15-16). However, nothing can "fine tune" the goal of this legislation, i.e. to turn the lease sale process into a mere "paper transaction" and thereby taking away power from local governments and the public and giving it to the state bureaucracy.

DNR directors (oil & gas, timber, mining) will simply state that no one may even buy a given lease, it is SPECULATIVE to assume that development will occur. Therefore, at the lease sale stage, even if there are reasonably foreseeable effects if development occurs (either fiscal effects or environmental effects or conflicts with existing users/uses), DNR will not have to address and resolve those issues in the state's best interest at the finding "stage".

DNR's desire to establish multi-phase development projects is fiscally irresponsible because once a lease is granted the lessee has a property interest. "The State cannot deprive a lessee of the reasonable use of the leasehold interest. See Finding at 126, Appendix D, Sample Lease at para. 9(f), 11 AAC 83.158. The revocation of a lease or the deprivation of the reasonable use of a lessee's property, would result in the State having to pay just compensation to the lessee. Therefore, once it issues the lease, the State is under tremendous pressure to let the lessee go forward with its exploration and extraction." (Superior Court Judge Cranston, Case No. 3KN-93-1174 CI, pages 4-5)

In conclusion, UCIDA opposes SB308 because it does not provide for the resolution of reasonably foreseeable effects at the lease stage, it deprives local governments and the public of meaningful input, and it is fiscally irresponsible. We respectfully request that the Senate Resource Committee not pass out this legislation. Further, should DNR require more staff, we also respectfully suggest that your committee might urge the legislature to provide more funding so that the existing lease process proceed in the public's "best interest".

We would appreciate it if you would provide all committee members a copy of our comments.

Sincerely,

Theo Matthews

Theo Matthews
Administrative Assistant

cc Governor Hickel
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UCIDA

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February 23, 1994 SENT BY TELEFAX

Senator Steve Frank
Senator Drue Pearce
Co-chairs, Senate Finance Committee

SUBJECT: CSSB 308 (RES)

UCIDA Position: Strongly Oppose

Dear Senators Frank and Pearce,

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ability of local governments and the public to participate in the development of mitagation measures and terms to resolve "reasonably foreseeable effects" at the lease sale stage as is provided for by current law.

Under CSSB 308(RES) the decision to commit the state to initiating exploration and to potential fiscal liability for "buy backs" is vested in the state bureaucracy. DNR directors (oil & gas, timber, mining) will simply state that no one may even buy a given lease and that it is SPECULATIVE to assume that development will occur. Therefore, at the lease sale stage, even if there are reasonably foreseeable effects which would result if certain types of development occur (either fiscal effects, environmental effects or conflicts with existing users/uses), DNR will not have to address and resolve those issues in the state's best interest at the lease "stage". For example, it is reasonably foreseeable that a fixed production platform in the middle of the Kenai River or in the intensively used marine waters of the Central District of Cook Inlet or the Copper River Flats will not be physically compatible with existing sport, personal use and/or commercial uses. With this legislation, these obvious conflicts would not be resolved - even if they could be - in the state's best interest at the lease stage and the state would be subject to future buy backs demands.

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UCIDA opposes CSSB 308 (RES) as written because at the lease stage it does not provide for the **resolution** of reasonably foreseeable effects, it deprives local governments and the public of meaningful input, and it is fiscally irresponsible. We respectfully request that the Senate Finance Committee not pass out this legislation as written.

Further, should DNR require more staff, we also respectfully suggest that your committee might urge the legislature to provide more funding so that the existing lease process can proceed in the state's "best interest".

Finally, we respectfully submit that, at a minimum:

1) The existing statutes and regulations dealing with single phase projects should be left in place. Lease sale receipts could continue to go to the general fund.

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UCIDA

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P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

February 24, 1994 SENT BY TELEFAX

Senator Jaimar Kerttula
Senate Finance Committee

SUBJECT: CSSB 308 (RES)

Dear Senator Kerttula,

This morning I testified in behalf of United Cook Inlet Drift Association (UCIDA) to the Senate Finance Committee in opposition to CSSB 308 (RES). You asked me why UCIDA oppossed Lease Sale 78 and I replied that in fact UCIDA had never oppossed the lease sale and went on to explain the position we had taken. You then requested that I send you a written version of my comments. Fortunately the testimony was being taped and I have transcribed my comments which follow:

Question by Senator Kerttula: I have a question that is tangential to the testimony which covers the legislation proposed before us. What were the specifics? Why did the drift net association oppose the lease sale? Just ABC.

My response: Madam Chairman, Mr. Kerttula. The drift association did not oppose the lease sale. We asked for a mitagation term to be put into the sale document that said permanent production platforms would not be allowed in front of the tanker docks or in the intensively used waters south of Kasilof. We hao no objections to directional drilling (from shore), capping a well and piping it to shore. We did not object to the lease (sale) and we had concerns on some .... about 25% of the tracts in the lease (sale).

We very much appreciate your willingness to take the time to address the serious public policy issues raised by the introduction of SB 308. As

supplemental information I have taken the liberty to include the following:

1) UCIDA request for reconsideration of Final Finding, Nov.8, 1993.

2) Letter to UCIDA from ADF&G apologizing for its "oversight" in not addressing "conflicts with commercial fishing activities In our comments on Lease Sale 78", Nov. 2, 1994.

3) Letter to DO&G from the Capt. of the Port, Western Alaska expressing his concern that with respect to TRACTS 20 & 21 " in addition to our navigational concerns, development of these tracts would increase the potential for significant pollution incidents resulting from vessel/platform allisions "(collisions). Nov. 22,1993.

4) A map of the Lease Sale tracts.

Once again we appreciate your interest. If you feel it is appropriate, please feel free to share our comments and documents with the other members of the Finance Committee.

Sincerely,

Theo Matthews

Theo Matthews
Administrative Assistant

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

COPY

November 8, 1993

SENT BY TELEFAX
HARD COPY TO FOLLOW

Mr. James Eason
Director, Div. Oil & Gas, DNR
P.O. Box 107034
Anchorage, AK 99510-0734

SUBJECT: Request for reconsideration of Final Finding, Oil & Gas Lease Sale 78, Cook Inlet

Dear Mr. Eason,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fishermen of Alaska (UFA). UCIDA would like to request that Div. Oil & Gas (DO&G) reconsider its Final Finding for Oil and Gas Lease Sale 78 and:

Delete the marine portions of Tracts 20 and 21 and the marine portions of all tracts south of the Kasilof River OR insert a stipulation that the marine portions of these tracts must be accessed by directional drilling from shore. UCIDA would like to cite both AS.38.05.035 and 6AAC 80.130(c)(1):

AS.38.05.035(f) stipulates that "if the director determines in a written finding that the purchase of a lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right".

6AAC 80.130 stipulates "offshore areas must be managed as a fisheries conservation zone so as to maintain and enhance the state's sport, commercial and subsistence fishery."

Based on the above statute and regulation, and other considerations, UCIDA feels that the Final Finding is deficient and should be reconsidered because it does not "make available to the public a written finding that sets out the facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based"- as required by AS 38.05.035(e).

UCIDA submits the following new or additional information for your consideration:

1) At its Nov. 2, 1993 regular meeting, the Kenai Peninsula Borough Assembly passed a motion by a supra majority requesting DO&G to reconsider its Final Finding and delete all remaining tracts south of the Kasilof River. Although Mayor Gilman vetoed the action based on his perception of a flawed public process, DO&G should be aware that the request for reconsideration was made by six of the nine Assembly members. (Please see enclosed Peninsula Clarion article, Nov. 5, 1993).

2) The comments submitted by ADF&G failed to cite the intense public use in the tracts south of the Kasilof River. No written analysis of a best interest finding is made to justify a finding of "best interest" in light of this intense public use. (Please see enclosed letter to UCIDA from ADF&G, Nov. 2, 1993).

3) With respect to Tracts 20 and 21, no analysis of use by the commercial drift and setnet fleets is given and no mention of conflicts with oil and gas tanker traffic in the area is made.

4) The Final Finding ignores the additional risks associated with "near shore" leases in Cook Inlet.

While the Final Finding notes many possible adverse impacts to fish (e.g. Final Finding, p.43), DO&G states that "with the Mitigation Measures required herein and with the many controls which are imposed on plans of operations, the likelihood of significant adverse impacts on fish and their habitats is considered to be minimal". (Final Finding,

p.43). DO&G also notes that Stipulation 2 advises the lessees of the requirement of an oil discharge contingency plan.

UCIDA feels that neither of these adequately meet the "best interest" standard for these near shore leases for the following reasons:

A) Much of these tracts lie inside the 10 fathom line and thus fall into a Zone 3 designation where the use of dispersants is generally not recommended. No analysis is found in the Final Finding.

Burning of oil in these near shore areas would present a health risk to the area's population which is generally located along the coastline. No analysis is found in the Final Finding.

Mechanical clean-up would be problematic, if not impossible, for a spill which occurred during the period of time when the set nets were in the water. No analysis is found in the Final Finding.

B) An oil spill inside the east rip during the flood tide or with on-shore wind conditions can be expected to move rapidly on-shore. It is doubtful if any response would be timely.

Our experience with both the Glacier Bay and Exxon Valdez spills has taught us that the rips of Cook Inlet collect and hold oil in much the same manner that they collect and hold debris. The near shore tidal flow is NOT parallel to the beach. Rather, the flow is generally north and east on the flood and south and west on the ebb. Spills originating inside the rip under the conditions noted above, can be expected to move rapidly on-shore. No analysis is found in the Final Finding.

C) The only clean-up organization that could possibly respond in a relatively short time frame to a near shore spill is CISPRI. Membership in CISPRI is not required by any state or federal regulation. Further, liability concerns continue to cause delays in response by CISPRI even after the passage of HB 140 which limited their liability to acts of "gross negligence". (See the results of the

recent USCG spill drill in Anchorage - contact: Capt. Miller, USCG, Anchorage. - where the simulated response was delayed due to a "lack of contract."). UCIDA feels that the concerns expressed in the Final Finding over effective response and clean-up (p. 58) are very valid in general and in the near shore spill scenario in particular. No analysis of delayed response times due to contract disputes is given in the Final Finding.

5) The analysis of the Nikiski and Drift River offshore facilities is superficial and, in the case of Drift River, misleading.

No mention is made of the difficult docking procedures at Nikiski, the lack of escort vessels, and the fact that the Drift River dock is built 15° to the current. (See Report on Safety of Navigation and Oil Spill Contingency Plans, Capt.J.T. Dixon, Feb. 1992)

The Drift River offshore facility's safety record is noted as "generally good" (p. 56) and past small spills are noted. DO&G further cites the Alaska Oil Spill Commission as stating "while contingency plans and oil spill recovery equipment have failed for large oil spills, the vast majority of oil spills are small spills. For these more frequent oil spills, contingency plans and oil spill cleanup equipment have the capacity to perform satisfactorily." (Finding, p. 58)

The Dec. 1990 spill at Drift River is correctly reported at approximately 630 gal. (Finding, p. 56). However, the Final Finding does not report that the oil pumps were not operating when the oil lines broke free. Had the pumps been operational, a large spill would probably have resulted and no cleanup would have been likely.

Finally, the Final Finding has no analysis of the impacts of small spills on the drift fleet. The quantity of oil from with the Glacier Bay or Exxon Valdez oil spills that was found in Cook Inlet would be considered "small" by most standards. However, the drift fleet saw major disruptions to its fishery in the case of the Glacier Bay spill and a total closure as a result of the Exxon Valdez spill.

In conclusion, based on the information above, UCIDA requests the Div. of Oil & Gas reconsider its Final Finding for Lease Sale 78 and delete the marine portions of tracts 20 and 21 and the marine portions of the remaining tracts south of the Kasilof River.

Sincerely,

Theo Matthews
Administrative Assistant

CC. Governor Walter Hickel
Charlie Cole, Attorney General
Commissioner Carl Rosier, ADF&G
Commissioner Harry Noah, DNR
Senator Suzanne Little
Senator Judy Salo
Representative Gary Davis
Representative Mike Navarre
Representative Gail Phillips
Mayor Don Gilman
Mrs. Betty Glick, KPB Assembly Pres.
Kenai Peninsula Fisherman's Assoc.
UFA
Trustees for Alaska
Green Peace
Kachemak Bay Conservation Society

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99518-1599
PHONE (907) 344-0541
FAX (907) 349-1723

November 2, 1993

Mr. Theo Matthews
Administrative Assistant
United Cook Inlet Drift Assn.
Post Office Box 389
Kenai, Alaska 99611-0389

Dear Mr. Matthews:

You asked the Alaska Department of Fish and Game (ADF&G) to explain why we did not address conflicts with commercial fishing activities in our comments on Lease Sale 78. The simple answer is that it was an oversight. The Habitat and Restoration Division was not aware that a large percentage of commercial drift netting has been restricted to a fairly narrow three-mile corridor on the east side of the inlet. This was an internal communication problem and I take full responsibility for it. If we would have been aware of this at the time we were writing our comments, we would have asked the Alaska Department of Natural Resources for surface entry restrictions for oil and gas development within this comparatively restricted area and/or seasonal restrictions on exploration activities to avoid conflicts with commercial fishing activities.

At this point the ADF&G will attempt to deal with potential conflicts during the development and review of plans of operation if there is interest in exploring or developing this area as the result of Lease Sale 78. We will make every effort to assure that any project plans are consistent with 6 AAC 80.130(c)(1), which states that offshore areas must be managed as a fisheries conservation zone.

Sincerely,

Lance L. Trasky
Regional Supervisor
Region II
Habitat and Restoration Division

cc: F. Rue
C. Slater
D. McKay
K. Tarbox
K. Florey

11-K16LH

U.S. Department of Transportation
United States Coast Guard

Captain of the Port
U.S. Coast Guard
Marine Safety Office

510 L Street
Suite 100
Anchorage, AK
99501-1946

16705/DNR
22 November 1993

Director, Division of Oil & Gas
Alaska Department of Natural Resources
P.O. Box 107034
Anchorage, Alaska 99510-0734

Dear Mr. Eason;

I have reviewed the proposed final tract map offerings on Oil and Gas lease sale 78 for Cook Inlet, Alaska. I have concerns with the potential congestion that may develop in tracts 20 and 21 restricting the safe navigation of large vessels. Both areas are transitted by tank vessels and barges approaching the Nikiski Waterfront Facilities. These include oil (Crude and Product), LNG, Anhydrous Ammonia, and Bulk Urea vessels.

As you are well aware, the area is marked with shoals further constraining the manueverability of most large vessels. Any additional obstructions would only add to this already congested area. In addition to our navigational concerns, development of these tracts would increase the potential for significant pollution incidents resulting from vessel/platform allisions.

I would request that you take these issues under careful consideration prior to any lease sales in tracts 20 and 21. If you would like to discuss these concerns further please contact me at 271-6700. I appreciate your review of our concerns.

Max R. Miller Jr.
Captain, U.S. Coast Guard
Captain of the Port
Western Alaska

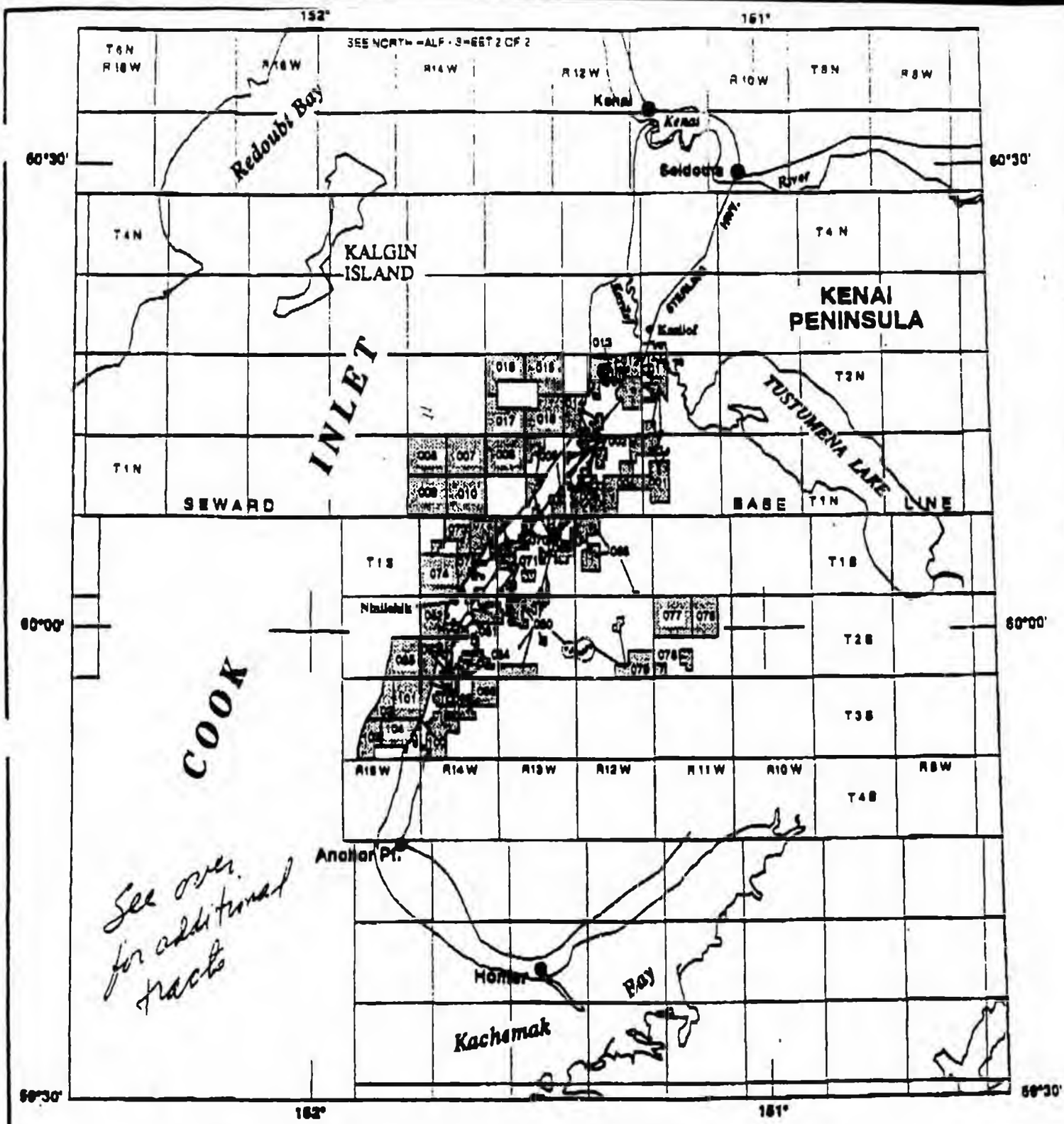
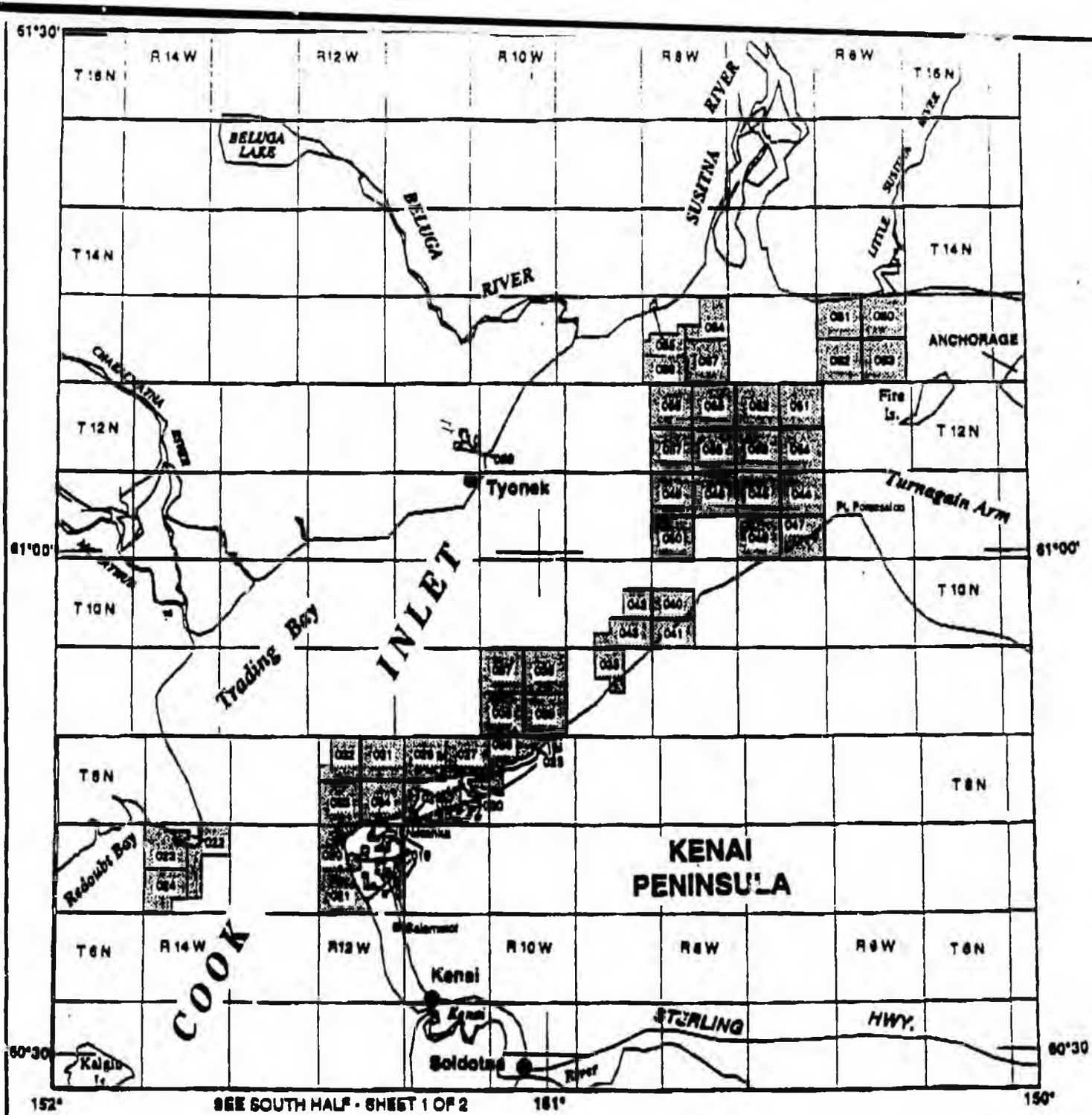

152°
151°
SEE NORTH HALF - SHEET 2 OF 2
T6N
R15W
R14W
R13W
R12W
R11W
R10W
T5N
R9W
Kenai
Redoubt Bay
Kenai River
Soldotna
60°30'
T4N
KALGIN ISLAND
KENAI PENINSULA
Kasilof
T3N
TUSTUMENA LAKE
T2N
T1N
SEWARD
BASE LINE
T1S
T2S
T3S
T4S
Ninilchik
60°00'
COOK INLET
Anchor Pt.
Homer
Kachemak Bay
59°30'
See over for additional tracts
MAP AREA
South Half
SHEET 1 OF 2
STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS
OIL AND GAS LEASE SALE 78
COOK INLET FINAL TRACT MAP
SCALE 1:600,000 ONE INCH = 10 MILES approx.
10 0 10 20 30 Miles
DIRECTOR, DIVISION OIL & GAS
JAMES E. EASON
PETRO. GEOPHYSICIST,
JAMES HANSEN
DRAWN BY: M.P. & C.D.E.
CHECKED BY:
DATE APPROVED 10/12/93
BASE MAP: TRANSPOSED FROM U.T.M. PROJECTIONS BY U.S.G.S. AND DRAWN IN AUTOCAD AND CLARIS CAD.
NOTE : THIS MAP IS NOT THE OFFICIAL TRACT MAP. A SET OF OFFICIAL TRACT MAPS IS AVAILABLE AT THE DEPARTMENT OF NATURAL RESOURCES DIVISION OF OIL AND GAS, 3601 ST., SUITE 1380, P.O. BOX 10700 ANCHORAGE, ALASKA 99510-70 PHONE (907) 762-2560

FIGURE 2A



North Half
SHEET 2 OF 2

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

OIL AND GAS LEASE SALE 78
COOK INLET FINAL TRACT MAP

SCALE 1:500,000 ONE INCH = 10 MILES approx.

10 0 10 20 30 Miles

DIRECTOR, DIVISION OF OIL AND GAS
JAMES E. EASON

PETRO. GEOPHYSICIST,
JAMES HANSEN

DRAWN BY: M.P. & O.D.S.

CHECKED BY:

DATE APPROVED 10/12/93

BASE MAP: TRANSPOSED FROM U.T.M. PROJECTIONS BY U.S.G.S. REDRAWN IN AUTOCAD AND CLARIS CAD.

NOTE : THIS MAP IS NOT T
OFFICIAL TRACT MAP. A SET
OFFICIAL TRACT MAPS
AVAILABLE AT THE DEPARTM
OF NATURAL RESOURC
DIVISION OF OIL AND GAS, 300
ST., SUITE 1396, P.O. BOX 107
ANCHORAGE, ALASKA 99510-7
PHONE (907) 762-2186

FIGURE 2E

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

Theo Matthews Testimony
Senate Finance Committee - SB 308, March 2, 1994

Good morning Mr. Chairman, members of the Committee. My name is Theo Matthews. I am speaking today as Administrative Assistant of the United Cook Inlet Drift Association (UCIDA). We represent the commercial drift fisherman in Cook Inlet. I am also on the UFA Habitat Committee and Executive Committee of UFA.

UCIDA opposes CS for SB 308

We have submitted written comments on this bill, which I hope you have in your packet so I won't go too far into them. But I do want to stress that what is being overlooked is the heart and core of this bill. **What every legislator must consider is when your constituents' comments will be relevant to the decisions that DNR makes .**

As stated by DNR, this bill allows for public comment and it requires a response by DNR to those comments. However, by allowing directors the discretion to limit the scope of best interest and consistency findings - please see Sec.1 (e)(1)(C) and Sec. 3 (a)(1) - to discrete phases of a project, **your constituents comments and concerns will often if not always be irrelevant to to decision to initiate a disposal of the state's resources.**

This initial disposal has been noted by the courts to confer a property right to the lessee. This will commit the state to buy backs if it later decides that the disposal is not in the state's best interest or if the state later imposes restrictions that deprive a lessee of the reasonable use of the leasehold interest (please see Order on Motion to Stay, Lease Sale 78, p.4-5). As noted by Judge Cranston, "once it issues the lease, the State is under tremendous pressure to let the lessee go forward with its exploration and extraction." (id., p.5)

In addition, the public will be required to follow a series of partial

findings in the hope that at some point its concerns will finally be relevant to a particular phase of a project. Finally, it should also be noted that whereas the public can address concerns that are generally applicable to a set of similarily situated tracts at the lease stage, afterwards the public must address the same issues "tract by tract". The additional time commitment and costs to the public only complicates the public process and generally will bias the process against the public's interests.

So the issue is - when are your constituent's comments going to be relevant? Under this legislation they will not be relevant to the issue of whether or not a lease is issued by the state bureaucracy.

I would like to briefly address Mr. Eason's letter that he submitted to the Finance Committee on Feb. 28, 1994 and to which he addressed some comments this morning. On the last page, the letter states that "against the backdrop of 35 years of compatible usage, the Superior Court chose to accept allegations of conflicts, to disregard the facts and to adopt those purely speculative conflicts as a basis for enjoining Sale 78". To support his assertions Mr. Eason cites as "facts" that there are four tracts under lease in the area and that four exploratory wells have been drilled in those offshore tracts. **These facts are not contested, but they simply are not germane to the issue! There have been no conflicts in the past because there are no platforms in these areas.**

We have never opposed leasing , per say, in Cook Inlet even in the infamous corridor areas cited by Mr. Eason. What we have said - and what the Superior Court found in DNR's Finding on Sale 78 - is that a permanent production platform will present conflicts. And we asked for a mitigation measure that made it known to the lessee that they would not be able to put a permanent platform in certain areas.

As I mentioned in our written comments dated Feb. 23, 1994, there are many amendments that could be made but nothing will resolve the issue of your constituents' comments being irrelevant to the initial decision to dispose of the state's resources . But I will offer a few amendments just to show some problems.

On page 2 at line 3, "and subject to the director's discretion", should be deleted. It is astounding to me that the Commissioner has authority but it is at the discretion of the Director.

At line 9, DNR has said consistently that they don't want to have to speculate too far. And we generally agree with that. But the words, "May address only" means that they don't even have to address all reasonable foreseeable affects, just the ones they choose. It should read, "Shall address reasonably foreseeable".

Down in paragraph "C", line 23, we sort of agree that there may be instances where you should phase a project because some facts simply can not be known or foreseen ahead of time. However, you need to look at all known facts prior to making that phasing decision. In other words, take care of what you can reasonably foresee at the lease stage. Then make a finding that, given all known facts and what can be reasonably foreseen, the project is probably in the state's best interest and that it will be necessary to phase parts of the project.

This legislation as written, simply gives the Department the discretion to decide to phase, to lock out even the known and relevant facts like it attempted to do in Sale 78 in Cook Inlet. If the state decides to phase it should make a preliminary best interest finding, a probable best interest finding, discuss all the things and resolve all the things that are known, and then start down the phased road.

On page 3, line 10 it says, "before a public hearing, if held". Well, we would submit that it is best for your constituents to always have a public hearing. We applaud the current practice of DNR to issue preliminary best interest findings. This allows the the public to comment and for DNR to refine those findings. But there is no regulation requiring a preliminary finding. So we would like to see, and as I say, DNR has been doing this and we applaud it, additional language that requires a preliminary finding, that requires a public hearing in the area, and the deletion of the language, "before a public hearing, if held".

On page 4, here again we see a long list of things that look reasonable to consider. But at lines 13 and 14 it talks about things that are within the scope of the administrative review established by the Director. So this long list of things won't necessarily be considered if it is not within the scope of the phase at the discretion of the Director. At line 15, "or" should be changed to "and" or some other wording found to make it clear that the isuues found under B(i)-(xi) will always be considered.

On page 4 at lines 21, "within the lease sale area" should be changed back

to what it is now, "In the area". It just simply is nonsense to think that you only have to look at a specific sale tracts and not the land or water next to them. There is a "reasonable" limit as to how far you should be required to go down the road. However, I think that when you say, "in the area", what that really means is what is reasonably foreseeable. If you put a massive mine at the head waters of the Yukon River, for example, it is certainly reasonably foreseeable that you could have affects hundreds of miles downstream. So that should be considered "in the area".

Section 3 on page 5, we feel should be deleted altogether. The consistency review process, as mentioned by the gentleman from the Mat-Su Borough Development District in opposing this legislation, can cut both ways - i.e. pro- or anti- development. When you give this much discretion to the Department and any number of directors across the state you are going to have more problems than you have under the current language.

I would like to point out how the public's comments, your constituents' comments, are not going to be relevant to consistency determinations under this legislation. Section 3 allows the state agency making the review to conduct a consistency review for a particular phase of a project. As with best interest findings, once again comments, even comments about reasonably foreseeable issues, will not be germane if they do not address the relevant "phase" of a project. You see the same problem at line 15, page 6.

Thank you Mr. Chairman. I would suggest that if DNR really wants to work on "clarification" language, commercial fishermen and it sounds like the coastal communities are willing to help. But this kind of massive stroke to lock out the public at the leasing stage is not acceptable and no amount of clarification can resolve this fundamental flaw with this legislation.. Thank you.

Sincerely,

Theo Matthews

Theo Matthews
Administrative Assistant

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

March 10, 1994

Sent by telefax

Representative Bill Williams,
Chairman House Resources Committee
State Capitol, Room #128
Juneau, AK. 99801-1182

Dear Representative Williams,

On February 28, 1994, I was fortunate enough to have an opportunity to testify orally on HB 474 before the House Special Committee on Oil & Gas. That testimony was transcribed and submitted to your committee on March 4. I have since taken the opportunity to clarify my remarks and add some additional comments.

I would appreciate it if copies of my revised testimony could be distributed to each of the Committee members. Thank you for your consideration.

Sincerely,

Theo Matthews

Theo Matthews
Administrative Assistant

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

Theo Matthews February 28, 1994 Testimony On HB474
To The House Oil & Gas Committee

Thank you Mr. Chairman. My name is Theo Matthews. I am speaking tonight as the Administrative Assistant of United Cook Inlet Drift Association (UCIDA). I am also a member of UFA and serve on the UFA Habitat and Executive Committees.

Both UCIDA and UFA oppose HB474. I was encouraged by the comments from AOGA tonight where it was stated that they simply did not feel that DNR should have to engage in endless speculation. I don't think anyone has argued against the fact that there should be some certainty in the scope of things that need to be considered - this is only fair to the courts and to DNR. One should not have to speculate out to the ends of the earth. However, that is not the driving force behind this legislation which, as written, would allow "directors" the discretion to deem most if not all public comments and concerns "speculative" in best interest and consistency findings at the initial disposal phase of any project.

The driving force behind this legislation is found on page 2, lines 24-27. The issue here is phasing and best interest findings, and what that does to the relevancy of public comment and to the public and state coffers. The attempt to limit what is relevant to a DNR decision to grant a property right to a leasee at the leasing stage is not acceptable. This legislation will not even permit DNR to consider the most nonspeculative of issues that can be seen down the road. The same thing is found in the section dealing with consistency findings, section 46 on page 5. Again, at its discretion, DNR may limit consistency review to a particular stage. The problem with this bill is DNR's ability to limit the scope of best interest findings and consistency reviews - this is bad public policy.

There was nothing speculative about the issues we raised in Cook Inlet with respect to Lease Sale 78. We made it very clear that a stationary production platform in certain waters in Cook Inlet would be totally incompatible with existing uses when considering physical and safety conflicts. We made this claim with respect to two areas of Cook Inlet

included in Lease Sale 78:

1) Tracts 20 and 21 which are located in front of the oil tanker docks in North Kenai. It is pretty obvious you don't want a stationary platform there.
2) We also made this claim with respect to the near shore waters south of Kasilof.

There is nothing speculative about the conflict that would be created by locating platforms in either of these areas.

UCIDA requested that DNR include a mitigation measure in the Lease that was fair to the lessee and the public. The suggested mitigation measure would have advised the lessee interested in purchasing leases in these particular marine waters that permanent production platforms would not be allowed. UCIDA also suggested that other kinds of access would have been acceptable. These included directional drilling, tapping a well and piping it to shore. We did not oppose the lease sale itself. There were many other tracts in northern waters, along the west side of Cook Inlet and onshore where no additional mitagation measures were proposed.

DNR's response was that we were asking them to engage in speculation by considering the conflicts that would arise if a permanent production platform were to be put in these areas. We found this comment less than genuine after 35 years of offshore platforms being the only production method used in the marine waters of Cook Inlet!

The public, in every possible forum, let DNR know that there were conflicts. Different elements of the public had different concerns. For example:

- there were many land owners who stated they had not been notified and did not want drilling on their property. DNR stated that, by law, a bond would have to be posted if an agreement could not be reached with a land owner but that drilling could, nevertheless, occur. DNR also stated that the bond would not cover a neighbor's damages.
- Cook Inlet Regional Citizen's Advisory Council opposed the entire sale, all tracts in marine waters and onshore because no environmental monitoring program has been established in Cook Inlet.
- The Kenai Peninsula Borough Assembly opposed all tracts, land and marine, south of Kasilof.
- Commercial fishermen opposed only the marine portions of tracts that were located in front of the tanker docks and south of Kasilof. As you

can see, there were many different elements of the public that had varied concerns. But commercial fishermen did not oppose this sale.

I would like to conclude, Mr. Chairman, by noting that **the court in the Lease Sale 78 case was not arbitrary and did not engage in far flung speculation**. The court noted DNR's own Finding where the fisheries were identified and it was stated that exploration and development of the sale area could adversely affect human uses of the area and its resources if access to hunting, fishing, or trapping were restricted by industry's operations occurring at the same time and place as harvest activities. Those were DNR's own findings. Judge Cranston concluded that DNR's failure to address and resolve specific conflicts as to proposed uss imperilled the consistency findings. That is exactly what we told DNR throughout the public hearings. We expressed our conviction that conflicts would definitely arise if platforms were placed in certain tracts. We need to resolve these issues at the lease stage and in the state's best interest.

Thank you Mr. Chairman.

Sincerely,

Theo Matthews

Theo Matthews
Administrative Assistant

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

March 4, 1994

Representative Bill Williams,
Chairman House Resources Committee
State Capitol, Room #128
Juneau, AK. 99801-1182

Dear Representative Williams,

On February 28, 1994, I was fortunate enough to have an opportunity to testify on HB 474 before the House Special Committee on Oil & Gas. That testimony has been transcribed and I respectfully submit the enclosed written copy.

I would appreciate it if copies of my testimony could be distributed to each of the Committee members as possible. Thank you for your consideration.

Sincerely,

Theo Matthews (by PM)

Theo Matthews
Administrative Assistant

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

Theo Matthews February 28, 1994 Testimony On HB474
To The House Oil & Gas Committee

Thank you Mr. Chairman. My name is Theo Matthews. I am speaking tonight as the Administrative Assistant of United Cook Inlet Drift Association (UCIDA). I am also a member of UFA and serve on the UFA Habitat and Executive Committees.

Both UCIDA and UFA oppose HB474. I was encouraged by the comments from AOGA tonight. I don't think anyone has argued that it is not fair to the courts and to DNR. There should be some certainty in the scope of things that need to be considered. One should not have to speculate out to the ends of the earth. However, that is not the driving force behind this legislation.

The driving force behind this legislation is found on page 2, lines 24-27. The issue here is phasing, and what that does to the public and the state's coffers. The attempt to limit what is relevant to a DNR decision at the leasing stage is just the lease process. This legislation will not even permit DNR to consider the most nonspeculative of issues down the road. The same thing is found in the consistency findings, section 46 on page 5. Again, at its discretion, DNR may limit consistency review to a particular stage. The problem with this bill is DNR's ability to limit the consistency review and that is also why it is bad public policy.

There was nothing nonspeculative about our issues in Cook Inlet. We made it very clear that a stationary production platform in certain waters in Cook Inlet was totally incompatible with existing uses when considering physical and safety conflicts. We made this claim with two Cook Inlet areas included in Lease Sale 78:

1) The tracts in front of the oil tanker docks in North Kenai. It is pretty obvious you don't want a stationary platform there.
2) We also made this claim with respect to the near shore waters south of Kasilof.

There is nothing speculative about the conflict that would be created by locating platforms in either of these areas.

DNR's response to UCIDA's concerns was they didn't even know for sure if a platform would be located in those areas. UCIDA requested DNR include a mitigation measure in the Lease that was fair to the lessee. The suggested mitigation measure would have advised the lessee interested in purchasing the lease that platforms would not be allowed in those particular marine tracts. UCIDA also suggested other kinds of access that would have been acceptable. These included directional drilling, tapping a well, and piping it to shore. We did not oppose the lease sale itself. There are many other tracts in the northern waters and along on the west side of Cook Inlet.

The public, in every possible forum, let DNR know that there were conflicts. And different elements of the public had different conflicts. For example, there were many land owners who stated they had not been notified. They acknowledged that, by law, a bond would have to be posted if an agreement could not be reached on a drilling arrangement, but that the bond would not cover a neighbor's interests. Cook Inlet Regional Citizen's Advisory Council opposed the entire sale, all tracts in marine waters, including the Northern District tracts, because there is no environmental monitoring program. The Kenai Peninsula Borough Assembly opposed all tracts, land and marine, south of Kasilof. Commercial fishermen opposed only those portions of the marine tracts that were located in front of the tanker docks and those south of Kasilof. As you can see, there were many different elements of the public that had varied concerns. But the commercial fishermen did not oppose this sale.

I would like to conclude, Mr. Chairman, by noting that the court in this case was not arbitrary. The court noted DNR's finding where the fisheries were identified and it was stated that exploration and development of the sale area could adversely affect human uses of the area and its resources if access to hunting, fishing, or trapping were restricted by industry's operations occurring at the same time and place as harvest activities. Those were DNR's own findings. Judge Cranston concluded that DNR's failure to address and resolve specific conflicts as to proposed use imperilled the consistency findings. That is exactly what we told DNR throughout the public hearings. We expressed our conviction that conflicts would definitely arise if platforms were placed in certain tracts. We need to resolve these issues at the lease stage and in the state's best interest. Thank you Mr. Chairman.

WALTER J. HICKEL
GOVERNOR

P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 15, 1994

The Honorable Mike Miller
Chairman
Senate Resources Committee
Capitol Building, Room 423
Juneau, AK 99811

Dear Senator Miller:

As a result of several unfavorable court decisions, the Administration simply cannot guarantee the continued efficacy of the state's oil and gas leasing program. Each of the decisions has had the effect of expanding the scope of best interest findings and coastal zone consistency determinations well beyond the letter of the law, and, we believe, beyond the intent of the Legislature. The court has made clear that, in the absence of specific legislative intent to the contrary, it will set oil and gas leasing policy by imposing its own standards on the scope and content of best interest findings and coastal zone consistency determinations related to lease sales.

Following the most recent adverse decision, the Superior Court's injunction of Lease Sale 78, Governor Hickel asked that I coordinate the Administration's review of statutory amendments necessary to address this problem. Participants in that review included the Commissioners of Commerce and Economic Development, Environmental Conservation, Fish and Game, and Natural Resources, as well as the Director of the Division of Governmental Coordination, other representatives of the Governor's Office and me.

We have carefully reviewed the language of S.B. 308 and are convinced that it represents a realistic common-sense approach toward resolving the growing threat to the state's leasing program. We believe that its careful definition of the scope of best interest finding and CZM determinations, coupled with an explicit acceptance of phased determinations when the agency has the authority to further condition subsequent project approvals, will discourage litigation based upon speculation and better serve the public interest.

Your committee's bill will also further several other goals to which the Administration is committed. It will ensure a best interest finding and CZM

consistency procedure that is factual, fair and timely. It will also reduce litigation risks substantially, and, therefore, reduce litigation costs. We believe that S.B. 308 will accomplish these worthwhile goals while providing for meaningful and undiminished public review and participation in the leasing program.

On behalf of the Administration, I appreciate the willingness of you and your committee to promptly address this difficult issue. I pledge our full and undivided support in working to assure passage of S.B. 308.

Sincerely,

J. Shelby Stastny
Director of Management and Budget

Kenai/Soldotna

04/06/94
09:11:30

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:40625 SCHEDULED FOR:04/06/94 08:30 TO 11:00
PUBLIC HEARING SENATE FINANCE

LTN1150
BY:SOL
FOR:SOL

LOCATION:KEN/SOL

SB 300		[redacted]		TESTIFY
SB 308	MR.	THEO	MATTHEWS	UCIDA TESTIFY
SB 308	MR.	[redacted]	KFFA	TESTIFY

Anchorage

04/08/94 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN:1150
09:21:22 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC
TCN:40625 SCHEDULED FOR:04/08/94 08:30 TO 11:00 FOR:ANC
PUBLIC HEARING SENATE FINANCE

LOCATION:ANCHORAGE

~~SB 308~~	~~PETER~~	~~VAN TUTN~~	TRUSTEES FOR AK	TESTIFY
SB 308	~~BRAD~~	PENN	MARATHON OIL	TESTIFY
SB 308	~~JON~~	ISAACS	COAST DIST	TESTIFY
SB 308	~~FRAN~~	BENNIS	AK MARINE CONS	TESTIFY
~~SB 308~~	~~MIKE~~	~~MACY~~		TESTIFY
SB 308	~~NANCY~~	~~WEINWRIGHT~~		TESTIFY
SB 308	~~ALI~~	~~FURNACE~~	THE ALLIANCE	TESTIFY
SB 308	~~STEVEN~~	~~PORTER~~	ARCO	TESTIFY
SB 203	DANIEL	MOORE	MOA	TESTIFY

TCN: 40625 DATE & TIME: 04/08/94 06:30 TO 11:00 STATUS:5 IN PROG.

**** ORDER SUMMARY ****
SPONSOR: SFIN SENATE FINANCE CHAIRS: FRANK
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE PEARCE
CONTACT: BILLY TEL#: (907)465-4923
CHAIRING SITE: JUNEAU CAPITOL CAP518
TOLL FREE: (800)478-7612 DIAL-UP: LIO:(800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 5 MINUTE LIMIT
TESTIMONY WILL BE TAKEN WITH A 5 MINUTE LIMIT.
SB 308 WILL BE HEARD FROM 8:30 - 10 AND SB 203 WILL BE HEARD FROM 10-11

SPONSOR REMARKS(LIO): BACKUP MATERIAL:Y MEETING IN PROGRESS:N MAX. SITES:10
BACK-UP FAXED ON 4/7.
OTHER SITES MAY ADD.
TCN REQUESTED ON 04/08/94 AND HAS 6 UPDATES

**** AGENDA ****
1 SB 308 ADMIN ACTION RE LAND/RESOURCES/PROPERTY
2 SB 203 MUNICIPAL POLICE SERVICES

**** PARTICIPATING LIOS ****

ANC	ANCHORAGE	716 W 4TH, #200		LOCATION STAFF
COR	CORDOVA	705 2ND STREET		LOCATION STAFF
DLG	DILLINGHAM	KANGIIQUTAQ BLDG		LOCATION STAFF
HOM	HOMER LTC	126 W PIONEER #4		LOCATION STAFF
* JNU	JUNEAU	CAPITOL	CAP518	LOCATION STAFF
KOD	KODIAK	112 MILL BAY RD.		LOCATION STAFF
SOL	KEN/SOL	34824 KALIFONSKY		LOCATION STAFF
VAL	VALDEZ	STATE BLDG. #13		LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****

SIT YAK	YAKUTAT	CITY HALL	MONA SWANSON	(907)784-3323
ZZZ OF1	OFFNET 1	UNALAKLEET	C. DEGNAN	(907)624-3062

PARTICIPANTS IN:ANCHORAGE ANC

1	PETER	VAN KUYK	TRUSTEES FOR AK	AK	TSFY. SB 308	(907)000-0000
1	[illegible]	PENN	MARATHON OIL	AK	TSFY. SB 308	(907)000-0000
4	DON	ISAACS	COAST DIST	AK	TSFY. SB 308	(907)000-0000
9	FRAN	BENNETT	AK MARINE [illegible]	AK	TSFY. SB 308	(907)000-0000
5	MIKE	MACY		AK	TSFY. SB 308	(907)000-0000

PARTICIPANTS IN:CORDOVA COR

2	MS.	DORN	[illegible]		TSFY. SB 308	
	PO BOX 939		CORDOVA	AK 99574	(907)424-3447	

PARTICIPANTS IN:DILLINGHAM DLG

3	ALICE	RUBY	BRISTOL BAY CRSA [illegible]	AK	SB 308	(907)000-0000
10	SUE	FLENSBURG	BRISTOL BAY CRSA		OBSV. SB 308	

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PARTICIPANTS IN:DILLINGHAM DLG

			AK	(907)000-0000	

PARTICIPANTS IN:KODIAK KOD

4	MR.	WAYNE	COLEMAN	PCAC	TSFY. SB 308	
				AK	(907)000-0000	

PARTICIPANTS IN:VALDEZ VAL

1	MS.	NANCY	LETHCOE	AWRTA	TSFY. SB 308	

Homer

04/08/94
08:52:13

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)

LTN1150
BY:HOM
FOR:HOM

TCN:40625 SCHEDULED FOR:04/08/94 08:30 TO 11:00
PUBLIC HEARING SENATE FINANCE

LOCATION:HOMER LTC

SB 308	MS.	NANCY	LORD	TESTIFY