

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

2089 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

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State due to injury, destruction, or loss of real property, personal property, or natural resources, or diminished economic activity due to a discharge of oil; and

"(B) the net cost of providing increased or additional public services during or after removal activities due to a discharge of oil, including protection from fire, safety, or health hazards, incurred by a State or political subdivision of a State.

"(14) Paragraphs (1) through (13) shall apply only to claims arising from incidents occurring before the date of enactment of the Trans-Alaska Pipeline System Reform Act of 1990. The Oil Pollution Act of 1990 shall apply to any incident, or any claims arising from an incident, occurring on or after the date of the enactment of that Act."

(d) **PAYMENT OF CLAIMS BY FUND.**—Section 204(c)(3) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(3)) is amended by adding at the end the following: "The Fund shall expeditiously pay claims under this subsection, including such \$14,000,000, if the owner or operator of a vessel has not paid any such claim within 90 days after such claim has been submitted to such owner or operator. Upon payment of any such claim, the Fund shall be subrogated under applicable State and Federal laws to all rights of any person entitled to recover under this subsection. In any action brought by the Fund against an owner or operator or an affiliate thereof to recover amounts under this paragraph, the Fund shall be entitled to recover prejudgment interest, costs, reasonable attorney's fees, and, in the discretion of the court, penalties."

(e) **OFFICERS OR TRUSTEES.**—Section 204(c)(4) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(4)) is amended—

(1) by inserting "(A)" after "(4)"; and

(2) by adding at the end the following:

"(B) No present or former officer or trustee of the Fund shall be subject to any liability incurred by the Fund or by the present or former officers or trustees of the Fund, other than liability for gross negligence or willful misconduct.

"(C)(i) Subject to clause (ii), each officer and each trustee of the Fund—

"(I) shall be indemnified against all claims and liabilities to which he or she has or shall become subject by reason of serving or having served as an officer or trustee, or by reason of any action taken, omitted, or neglected by him or her as an officer or trustee; and

"(II) shall be reimbursed for all attorney's fees reasonably incurred in connection with any claim or liability.

"(ii) No officer or trustee shall be indemnified against, or be reimbursed for, any expenses incurred in connection with, any claim or liability arising out of his or her gross negligence or willful misconduct."

SEC. 8103. PRESIDENTIAL TASK FORCE.

(a) ESTABLISHMENT OF TASK FORCE.—

(1) **ESTABLISHMENT AND MEMBERS.**—(A) There is hereby established a Presidential Task Force on the Trans-Alaska Pipeline System (hereinafter referred to as the "Task Force") composed of the following members appointed by the President:

(i) Three members, one of whom shall be nominated by the Secretary of the Interior, one by the Administrator of

the Environmental Protection Agency, and one by the Secretary of Transportation.

(ii) Three members nominated by the Governor of the State of Alaska, one of whom shall be an employee of the Alaska Department of Natural Resources and one of whom shall be an employee of the Alaska Department of Environmental Conservation.

(iii) One member nominated by the Office of Technology Assessment.

(B) Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his or her term until a successor, if applicable, has taken office.

(2) COCHAIRMEN.—The President shall appoint a Federal cochairman from among the Federal members of the Task Force appointed pursuant to paragraph (1)(A) and the Governor shall designate a State cochairman from among the State members of the Task Force appointed pursuant to paragraph (1)(B).

(3) COMPENSATION.—Members shall, to the extent approved in appropriations Acts, receive the daily equivalent of the minimum annual rate of basic pay in effect for grade GS-15 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Task Force, except that members who are State, Federal, or other governmental employees shall receive no compensation under this paragraph in addition to the salaries they receive as such employees.

(4) STAFF.—The cochairman of the Task Force shall appoint a Director to carry out administrative duties. The Director may hire such staff and incur such expenses on behalf of the Task Force for which funds are available.

(5) RULE.—Employees of the Task Force shall not, by reason of such employment, be considered to be employees of the Federal Government for any purpose.

(b) DUTIES OF THE TASK FORCE.—

(1) AUDIT.—The Task Force shall conduct an audit of the Trans-Alaska Pipeline System (hereinafter referred to as "TAPS") including the terminal at Valdez, Alaska, and other related onshore facilities, make recommendations to the President, the Congress, and the Governor of Alaska.

(2) COMPREHENSIVE REVIEW.—As part of such audit, the Task Force shall conduct a comprehensive review of the TAPS in order to specifically advise the President, the Congress, and the Governor of Alaska concerning whether—

(A) the holder of the Federal and State right-of-way is, and has been, in full compliance with applicable laws, regulations, and agreements;

(B) the laws, regulations, and agreements are sufficient to prevent the release of oil from TAPS and prevent other damage or degradation to the environment and public health;

(C) improvements are necessary to TAPS to prevent release of oil from TAPS and to prevent other damage or degradation to the environment and public health;

(D) improvements are necessary in the onshore oil spill response capabilities for the TAPS; and

(E) improvements are necessary in security for TAPS.

(3) **CONSULTANTS.**—(A) The Task Force shall retain at least one independent consulting firm with technical expertise in engineering, transportation, safety, the environment, and other applicable areas to assist the Task Force in carrying out this subsection.

(B) Contracts with any such firm shall be entered into on a nationally competitive basis, and the Task Force shall not select any firm with respect to which there may be a conflict of interest in assisting the Task Force in carrying out the audit and review. All work performed by such firm shall be under the direct and immediate supervision of a registered engineer.

(4) **PUBLIC COMMENT.**—The Task Force shall provide an opportunity for public comment on its activities including at a minimum the following:

(A) Before it begins its audit and review, the Task Force shall review reports prepared by other Government entities conducting reviews of TAPS and shall consult with those Government entities that are conducting ongoing investigations including the General Accounting Office. It shall also hold at least 2 public hearings, at least 1 of which shall be held in a community affected by the Exxon Valdez oil spill. Members of the public shall be given an opportunity to present both oral and written testimony.

(B) The Task Force shall provide a mechanism for the confidential receipt of information concerning TAPS, which may include a designated telephone hotline.

(5) **TASK FORCE REPORT.**—The Task Force shall publish a draft report which it shall make available to the public. The public will have at least 30 days to provide comments on the draft report. Based on its draft report and the public comments thereon, the Task Force shall prepare a final report which shall include its findings, conclusions, and recommendations made as a result of carrying out such audit. The Task Force shall transmit (and make available to the public), no later than 2 years after the date on which funding is made available under paragraph (7), its final report to the President, the Congress, and the Governor of Alaska.

(6) **PRESIDENTIAL REPORT.**—The President shall, within 90 days after receiving the Task Force's report, transmit a report to the Congress and the Governor of Alaska outlining what measures have been taken or will be taken to implement the Task Force's recommendations. The President's report shall include recommended changes, if any, in Federal and State law to enhance the safety and operation of TAPS.

(7) **EARMARK.**—Of amounts in the Fund, \$5,000,000 shall be available, subject to appropriations, annually without fiscal year limitation to carry out the requirements of this section.

(c) **GENERAL ADMINISTRATION AND POWERS OF THE TASK FORCE.**—

(1) **AUDIT ACCESS.**—The Comptroller General of the United States, and any of his or her duly appointed representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of the Task Force that are pertinent to the funds received and expended by the Task Force.

(2) **TERMINATION.**—The Task Force shall cease to exist on the date on which the final report is provided pursuant to subsection (b)(5).

(3) **FUNCTIONS LIMITATION.**—With respect to safety, operations, and other matters related to the pipeline facilities (as such term is defined in section 202(4) of the Hazardous Liquid Pipeline Safety Act of 1979) of the TAPS, the Task Force shall not perform any functions which are the responsibility of the Secretary of Transportation under the Hazardous Liquid Pipeline Safety Act of 1979, as amended. The Secretary may use the information gathered by and reports issued by the Task Force in carrying out the Secretary's responsibilities under that Act.

(4) **POWERS.**—The Task Force may, to the extent necessary to carry out its responsibilities, conduct investigations, make reports, issue subpoenas, require the production of relevant documents and records, take depositions, and conduct directly or, by contract, or otherwise, research, testing, and demonstration activities.

(5) **EXAMINATION OF RECORDS AND PROPERTIES.**—The Task Force, and the employees and agents it so designates, are authorized, upon presenting appropriate credentials to the person in charge, to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining whether such persons have acted or are acting in compliance with applicable laws and agreements.

(6) **FOIA.**—The information gathered by the Task Force pursuant to subsection (b) shall not be subject to section 552 of title 5, United States Code (commonly referred to as the "Freedom of Information Act"), until its final report is issued pursuant to subsection (b)(6).

Subtitle B—Penalties

SEC. 8201. AUTHORITY OF THE SECRETARY OF THE INTERIOR TO IMPOSE PENALTIES ON OUTER CONTINENTAL SHELF FACILITIES.

Section 24(b) of the Outer Continental Shelf Lands Act (43 U.S.C. 1350(b)) is amended—

(1) by striking out "If any" and inserting in lieu thereof "(1) Except as provided in paragraph (2), if any";

(2) by striking out "\$10,000" and inserting in lieu thereof "\$20,000";

(3) by adding at the end of paragraph (1) the following new sentence: "The Secretary shall, by regulation at least every 3 years, adjust the penalty specified in this paragraph to reflect any increases in the Consumer Price Index (all items, United States city average) as prepared by the Department of Labor."; and

(4) by adding at the end the following new paragraph:

"(2) If a failure described in paragraph (1) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action."

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER

P.O. BOX 0, JUNEAU, ALASKA 99811-1800

Phone: (907) 465-2600

Fax: (907) 586-1391

May 13, 1991

faured
5-13-91
AM

The Honorable Sam Cotten, Chairman
Senate Special Committee on Oil and Gas
Alaska State Legislature
The Capitol
Juneau, AK 99811

Dear Senator Cotten,

When last your committee addressed Senate Joint Resolution 28, relating to oil and gas exploration in Alaska and the Presidential Task Force on the Trans Alaska Pipeline System, you invited us to submit language for possible changes.

We suggest you broaden the title to read "relating to oil and gas exploration in Alaska and the implementation of the Federal Oil Pollution Act of 1990," and

*Insert after line 8 on page 1, the following language:

WHEREAS the economy of Alaska and the United States depend, in large part, on the continued safe production of hydrocarbon reserves already known to exist on Alaska's North Slope; and

*Insert, after line 15 on page 1:

WHEREAS the Oil Pollution Act of 1990 addressed concerns of the American public following the Exxon Valdez oil spill by mandating creation of a Prince William Sound Oil Spill Recovery Institute to study improved oil spill prevention and response technology, as well as long-term effects of the Exxon Valdez spill; and

WHEREAS the Prince William Sound Oil Spill Recovery Institute is mandated to have an 18 member advisory board, including appointees of four Commissioners of relevant departments, and four representatives of affected communities to be recommended by the Governor to the U.S. Secretary of Commerce, and three Alaska Natives; and

*Insert, after the word "Force" on line 15, page 2:

and the Prince William Sound Oil Spill Recovery Institute
Advisory Board

Senator Sam Cotten
May 13, 1991
page two

*Insert, after the word "the" on line 21, page 2:

Prince William Sound Oil Spill Recovery Institute so that its work may be coordinated to complement ongoing federal and state work on the Exxon Valdez spill, and funding for

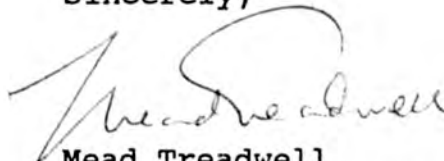
*Insert, after the word "the" on line 24, page 2:

Prince William Sound Oil Spill Recovery Institute, other regional research programs authorized in the Oil Pollution Act of 1990, and the

Mr. Chairman, in my testimony before the Committee I noted that the Governor had already sought names to submit to the President for the Task Force, and that the federal-state pipeline safety office has already taken on many of the studies suggested for the Presidential Task Force. We support this resolution but feel that other aspects of the Oil Pollution Act of 1990 are also being ignored by Congress, especially the creation of a long-term research program that can complement the litigation-driven damage assessment studies in the Sound.

Thank you for considering these amendments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mead Treadwell". The signature is fluid and cursive, with a large initial "M" and "T".

Mead Treadwell
Deputy Commissioner



TELECOPY COVER SHEET
Anchorage Legislative Information Office
Office - (907) 361-7007 Fax - (907) 362-4376

TO: Sen. Cotten / Spe Comm on Oil + Gas

ATTN: _____ FAX: _____ PHONE: _____

FROM: Jerry McCutcheon PHONE: _____

INSTRUCTIONS: _____

SENT: Date 5-14-91 Time 2:26

DISPOSAL OF ORIGINAL: Discard _____ Hold for Pickup _____

NUMBER OF PAGES: 2 (counting cover sheet)

TRANSMITTED BY: Barbara

Amendments to Senate Joint Resolution #28

After line 4, page 2:

Whereas, the maximum competition for resources is in the best interest of Alaska and the United States

Whereas, the State of Alaska has been overcharged \$5 billion as of 1986 by the pipeline owners and the excessive charges will amount \$40 billion by the year 2010

Whereas, the excessive pipeline charges give an unfair advantage to the pipeline owners and constitute a restraint of trade which detrimental to the maximum return to Alaska and the United States and to the maximum utilization of the resource

Whereas, the oil reservoir commonly known as Prudhoe Bay (Salderochit) is capable of producing \$15 billion barrels of oil or 50% more than the oil companies have told the Alaska public and the oil companies have aggressively hidden this fact from the public

Whereas, the Alaska Oil and Gas Commission has been a willing co-conspirator to deceive the public by its unwillingness to use its \$500,000 3-dimensional computer model of the Salderochit to determine the best methods and rates of production that would lead to the highest yield from the Salderochit reservoir, nor retrospectively examine what the highest yield could have been, nor what the highest yield could be today given the condition the reservoir now

Insert after Line 24:

Further resolve that the Presidential Task Force examine the Trans Alaska Pipeline System tariffs and the antitrust aspects of the tariffs or request a Federal Grand Jury to examine the anti-trust nature of the Trans Alaska Pipeline System

Further resolve that the Presidential Task Force request use of the State of Alaska's Oil and Gas Commissions 3-dimensional computer model of Prudhoe Bay (Salderochit Reservoir) and that the task force hire an independent oil reservoir computer programmer to load the model and to determine:

1. What the maximum production of the Salderochit could have been? How it would have been produced?
2. Determine how best to maximize oil recovery from the Salderochit given the condition of the Salderochit today
3. Determine how many trillions of cubic feet of gas must be added to Prudhoe Bay or the Salderochit to maximize recovery

STATE OF ALASKA THE LEGISLATURE

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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen ..

4-30-91 *S. Spec. Comm. on Oil & Gas*

11:12 AM

5-14-91 " " "

12:35 PM

SCOMM

78:48

Sum -

① of Zhang isn't here to testify, Carl Dils will

② Comm. Hearings will testify
in favor - I told
DNR I didn't think they
needed to do a written statement
unless there was some thing
confidential.

③ Dillingham & Ang. are on
line, folks need to testify.

Whereas the BB region contains important wildlife habitat, supporting subsistence and commercial fisheries activities

SJR 30

May 8

- Sen:

Final resolve seq continuum
moratorium until repurchase -
Shouldn't moratorium continue
anymore

Heinye

or line to delete ~~the~~ "are", insert
"and implement the repurchase
or credit plan".

Buy back coalition - no future lease sales -
be authorized for N. H. Basin

- also, recognizing wildlife - fisheries,
substance

WHEREAS the Bristol Bay region is considered to be one of the world's richest fisheries as well ~~has~~ home to numerous migratory waterfowl, sea birds and marine mammals that are important to subsistence as well as ^{to} the North Aleutian Basin ecosystem; and



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK / LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Sam Cotten
Chairman
Senate Special Committee on Oil and Gas

FROM: Senator Fred F. Zharoff 

DATE: May 7, 1991

RE: Senate Joint Resolution 30 - "Relating to federal oil leases in the North Aleutian Basin section of Bristol Bay."

SJR 30 places the Alaska Legislature on record in support of the repurchase of the oil and gas leases that have been sold in the North Aleutian Basin section of Bristol Bay. It also requests the governor to represent the state in the negotiations for the repurchase.

Bristol Bay is one of the world's richest fisheries, with abundant and commercially-valuable quantities of salmon, crab, halibut, and groundfish. The North Aleutian Basin oil and gas lease sale has been controversial ever since it was first proposed. Alaska's previous three Governors all strongly opposed the sale. Despite their best administrative and legal efforts, the sale was held and, in October, 1988, the bids were opened.

In the aftermath of the Exxon Valdez disaster, Congress in September, 1989 passed a one year moratorium on exploration and development activities in the North Aleutian Basin. In October, 1990, Congress extended this moratorium.

A campaign is now underway to build support for a repurchase of the OCS Sale 92 oil and gas leases in order to remove the risk to this resource-rich region once and for all. The passage of SJR 30 would support these efforts.

SJR 30 was drafted in consultation with the Department of Natural Resources and with groups advocating a buyback.

The following backup information is attached:

1. Resolution from the Bristol Bay Native Association.
2. Solicitation notice for the Bristol Bay Protection

Fund.

3. Letter from the Bristol Bay Buyback Coalition to Gov. Walter Hickel, dated Dec. 13, 1990.
4. Bristol Buy Buyback Coalition news release regarding Minerals Management Service study on oil spill response capabilities for the North Aleutian Basin, dated April 19, 1991.
5. Minerals Management Service map of the North Aleutian Basin and Bristol Bay.
6. Oct. 28, 1990 news article on Congressional extension of North Aleutian Basin moratorium.
7. Sept. 7, 1990 letter from Gov. Steve Cowper to Rep. Jamie Whitten in support of the moratorium extension.
8. Feb. 9, 1990 letter from Sen. Ted Stevens with a copy of the language from the FY 90 federal appropriations bill that implemented the first moratorium.
9. Sept. 29, 1989 news article on Congressional approval of moratorium.
10. April 26, 1989 news release announcing Gov. Cowper's support for a Bristol Bay buyback.

RESOLUTION 91 - 10
BY
FULL BOARD OF DIRECTORS

A RESOLUTION URGING A REPURCHASE OF
OIL AND GAS LEASES IN OUTER BRISTOL BAY (LEASE SALE 92)

- WHEREAS, The Department of the Interior has sold oil and gas leases in outer Bristol Bay (Lease Sale 92), despite overwhelming objections to this sale by the people of Bristol Bay, the State of Alaska, fishing organizations, and other groups, and
- WHEREAS, Concern for subsistence resources and the environment is a precondition of Bristol Bay Native Association for any development activities within the Bay, and
- WHEREAS, Despite its long history of supporting oil and gas development, the State of Alaska, in recognition of both the environmental sensitivity and unparalleled productivity of the region's marine resources has called for a federal buy-back of the leases from Sale 92.

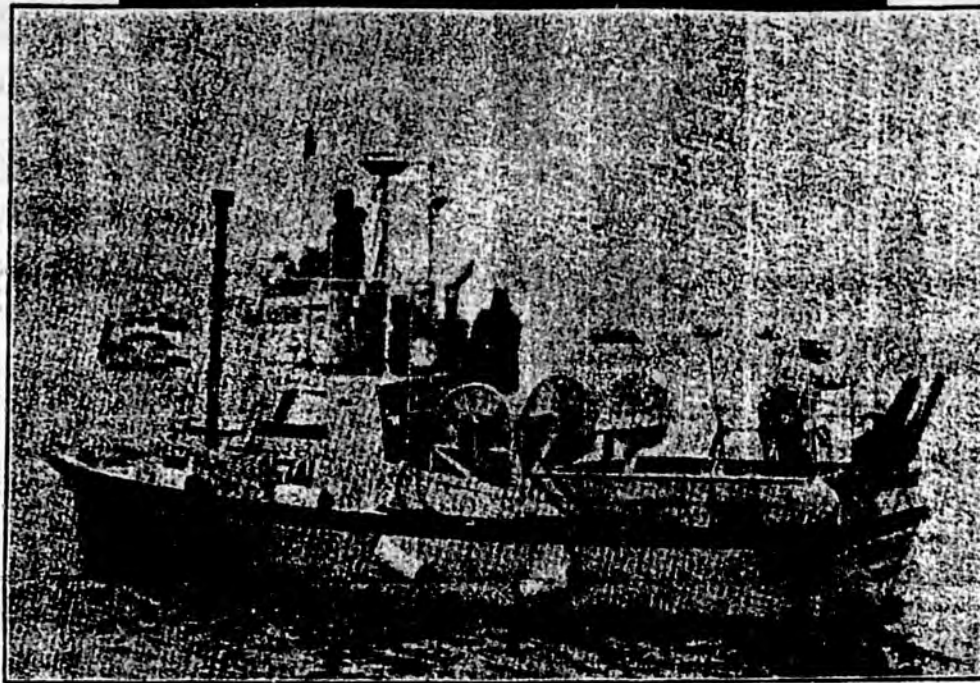
NOW THEREFORE BE IT RESOLVED that the Bristol Bay Native Association Full Board of Directors join with the State of Alaska in calling for a continuation of the moratorium on drilling in Bristol Bay and in support of the State's position that the federal government should repurchase the leases sold in Sale 92.

Dated this 12th day of October, 1990, at Dillingham, Alaska.

Signed: William P. Johnson
President

ATTEST:

Signed: Elizabeth C. Clark
Secretary



Jon Zuck

You can help save Bristol Bay from oil and gas leasing

In cooperation with the Bristol Bay Buyback Coalition and your fishing association, the Alaska Conservation Foundation announces its **Bristol Bay Protection Fund** to support cancellation and repurchase of oil and gas lease sale #92. This effort is endorsed by the United Fishermen of Alaska.

Your contribution is needed immediately to help:

- Educate federal and state politicians about your concerns and the importance of this buyback effort for the economic well being of the Bristol Bay region.
- Build national support for the buyback option by educating Americans in all 50 states about the wildlife and fishery values of Bristol Bay and the Bering Sea.

In the wake of the Exxon Valdez, the U.S. House Interior Appropriations Subcommittee placed a moratorium on development of Bristol Bay pending a federal study to examine buyback options. That study is due out this spring and the moratorium will likely be lifted. With a presidential ban on drilling in coastal waters of the contiguous 48 states, pressure is intense to increase Alaska offshore drilling opportunities. Your help is needed to permanently protect the bay's \$1 billion fishery and other marine resources from the threat of oil and gas development.

Yes, I want to support the Bristol Bay Protection Fund. Please use my contribution to support the efforts of the Bristol Bay Buyback Coalition and others working to permanently protect the bay from oil and gas development.

☐ \$100 ☐ \$50 ☐ \$250 ☐ \$500 ☐ \$1000 ☐ Other _____

Name _____

Address _____

City _____ State _____ Zip _____

Please make your check payable to Alaska Conservation Foundation. Contributions are tax deductible.



Alaska Conservation Foundation

430 W. 7th Ave. #215 • Anchorage, AK, 99501 • (907) 276-1917

3

BRISTOL BAY BUYBACK COALITION

725 Christensen Drive, Suite 6 Anchorage, AK 99501 (907) 279-6519

December 13, 1990

The Honorable Walter Hickel
Governor of Alaska
P.O. Box A
Juneau, AK 99811-0101

Dear Governor Hickel:

Congratulations on your recent inauguration as the new Governor of Alaska. The Bristol Bay Buyback Coalition looks forward to working with you, the Lieutenant Governor Jack Coghill, and your staff on the important issue of securing a buyback of the OCS leases in Bristol Bay.

The Bristol Bay Buyback Coalition was formed in the fall of 1990 to organize groups who are in favor of a buyback of the OCS leases in Bristol Bay (North Aleutian Shelf Sale 92). At present, the Buyback Coalition consists of over thirty member groups representing commercial and subsistence fishermen, Native groups, local governments, and Alaskan environmental groups. Many of these groups have been deeply involved in the issue of Bristol Bay OCS leasing and development, most notably in achieving moratoria on exploratory oil and gas drilling in the North Aleutian Shelf Sale 92 Area.

As you well know, Bristol Bay and its surrounding environs are vital to Alaska's economy and environment. The region supports fisheries valued at over one billion dollars, including Alaska's most lucrative commercial salmon fishery as well as fisheries for pollock, crab, cod, halibut, and herring. The Bay's bountiful marine environment is a critically important feeding and migration habitat for a variety of marine mammals, marine fish, and migratory waterfowl. These resources in turn provide the backbone of the subsistence economy for the coastal villages and towns of western Alaska. Simply put, we feel the proven fisheries and bountiful marine ecosystem of the region are too valuable to risk for the relatively small amount of recoverable oil estimated to be contained in the Sale 92 Area.

Governor, we know that you have long advocated a buyback of those OCS leases in the Bristol Bay region. After all, the Federal Government ignored the wishes of the Alaskan people when it offered the leases for sale. We appreciate and strongly endorse your position, and your willingness to carry on the long tradition of opposition by the State of Alaska to this lease sale. We have been able to stave off unwise development in this region so important to Alaskans and their economy. However, we must seek a permanent solution to this problem.

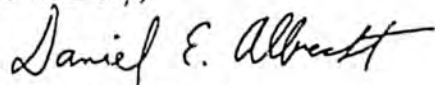
We believe that it is vital to advocate for a Bristol Bay Buyback now. Otherwise, federal bureaucrats will continue to make decisions that affect Alaskans' daily lives. Please do not misunderstand us, Governor. We understand the need for oil development in Alaska, both to provide energy security for our country and to promote Alaska's economy; however, oil development should not threaten already established economies like the Bristol Bay and Bering Sea fisheries which are worth upwards of one to two billion dollars on an annual basis.

Over these past years, we've received strong support on this issue from the Alaska Governor's office in Washington, D.C.. We hope that our groups, now organized into the Buyback Coalition, will continue to receive the support of the Washington office. Alaskans, both individuals and government, must continue to present a united front for a buyback of the Bristol Bay OCS leases.

We would like to meet with you and your staff at your earliest convenience so we can jointly plan a strategy to achieve a federal buyback or cancellation of those leases. By working together in a partnership, we can achieve this goal so vital to Alaskans.

We look forward to hearing from you.

Sincerely,



Daniel E. Albrecht
Coordinator

cc: Coalition members
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Senator Richard Eliason

Representative Ben Grussendorf
Senator Fred Zharoff ✓
Senator Lyman Hoffman
Representative George Jacko
Representative Martin Ivan

RECEIVED APR 22 1991

(4)

BRISTOL BAY BUYBACK COALITION

725 Christensen Drive, Suite 6 Anchorage, Alaska 99501

April 19, 1991

NEWS RELEASE For more information, contact: Dan Albrecht, (907) 279-6519

Buyback Coalition challenges MMS studies on Bristol Bay oil leases

The Bristol Bay Buyback Coalition is contesting the conclusions of a recent government study on the Bristol Bay OCS oil leases. The Coalition says that the study overestimates the industry's ability to cleanup a major oil spill in the subarctic waters of the region. The Coalition's thirty-two member groups are pushing for Congressional action to authorize a cancellation and repurchase of the Bristol Bay or Sale 92 leases.

The Minerals Management Service (MMS) study, entitled "Oil Spill Response Capabilities for North Aleutian Basin Sale 92", examines cleanup response to a hypothetical worst-case oil well blowout during exploration and is based on a preliminary plan prepared by Shell and Chevron. It concludes that although well blowouts are an extremely rare occurrence, a blowout in the Sale 92 area could spew an estimated 495,000 barrels of oil into the Bay, a discharge more than twice the size of the Exxon Valdez spill. Using the Shell/Chevron response Plan, the MMS estimates that 53 percent of the spilled oil would be burned offshore and that evaporation and mechanical cleanup would further limit the effects of the spill leaving 28 percent of the oil to either naturally disperse or contact the shoreline.

The Buyback Coalition points out several weakpoints in the assumptions by MMS. The spill scenario used in the report is assumed to occur during excellent weather conditions of 10 miles visibility and 3-foot seas. However, Jon Zuck of the Bering Sea Fishermen's Association notes that "the waters off the north shore of the Alaska Peninsula are usually much rougher than that; most of the time the seas are higher than three feet, and during the fall, winter and spring ten foot seas are common. They sure picked a rosy scenario to judge their response capabilities."

The MMS's major strategy appears to be in situ burning which the study claims is effective in seas up to 6 to 8 feet. "Burning may work," Zuck said, "but heaven help us if a storm kicks up during a blowout."

The MMS report estimated a 0.5 to 19 percent chance that commercial salmon fisheries habitat would be contacted within 30 days of a hypothetical blowout. It identifies the coastline from Izembek Lagoon to Port Heiden as the most likely area to be contacted by spilled oil. Deming Cowles, Washington D.C. representative for the Buyback Coalition, points out that the MMS study completely ignores the potential impacts to non-salmon fisheries; "as soon as any oil is spilled in the Sale 92 area, it's impacting many other fisheries besides salmon such as the harvest of yellowfin sole, rock sole, flounder, pollock and red king crab. Either the fish are directly contacted by the oil or the fisheries will have to shut down to avoid having their gear oiled." Longliners are also concerned about oil drilling in the region since the lease area (located northeast of Unimak Island) has been identified by the National Marine Fisheries Service as a vital juvenile halibut nursery area.

The study was one of two reports prepared by the MMS at the request of Congress when it imposed the first of two one-year moratoria on exploratory drilling in the Sale 92 leases after the March 1989 Exxon Valdez spill. A second report by the MMS estimated the costs to repurchase the 23 leases that were sold to nine companies in October of 1988 for 95.4 million dollars. That report estimates that in 1994 (after the required 5-year period of lease suspension) a buyback would cost between \$141 million and \$186 million. However, bills recently submitted by Senator Bob Graham and Representative Larry Smith of Florida and Representative Leon Panetta of California would amend the OCS Lands Act to allow a buyback after only one year of lease suspension. Congress also ordered the Fish and Wildlife Service to analyze the likely impacts of a spill in the Bay on the region's wildlife. That report, originally due in March, is now being delayed until sometime between this coming September and January of 1992.

The Bristol Bay Buyback Coalition will be hiring independent scientists and economists to review and analyze the MMS studies. Also, since the Federal government has now released some preliminary data from the Valdez spill studies, the Coalition will also prepare a short study similar to the expected F&WS report. Coalition staff will be visiting Washington D.C. during April and May to urge Congress to support a continued moratorium on drilling and to work for a buyback of the leases.

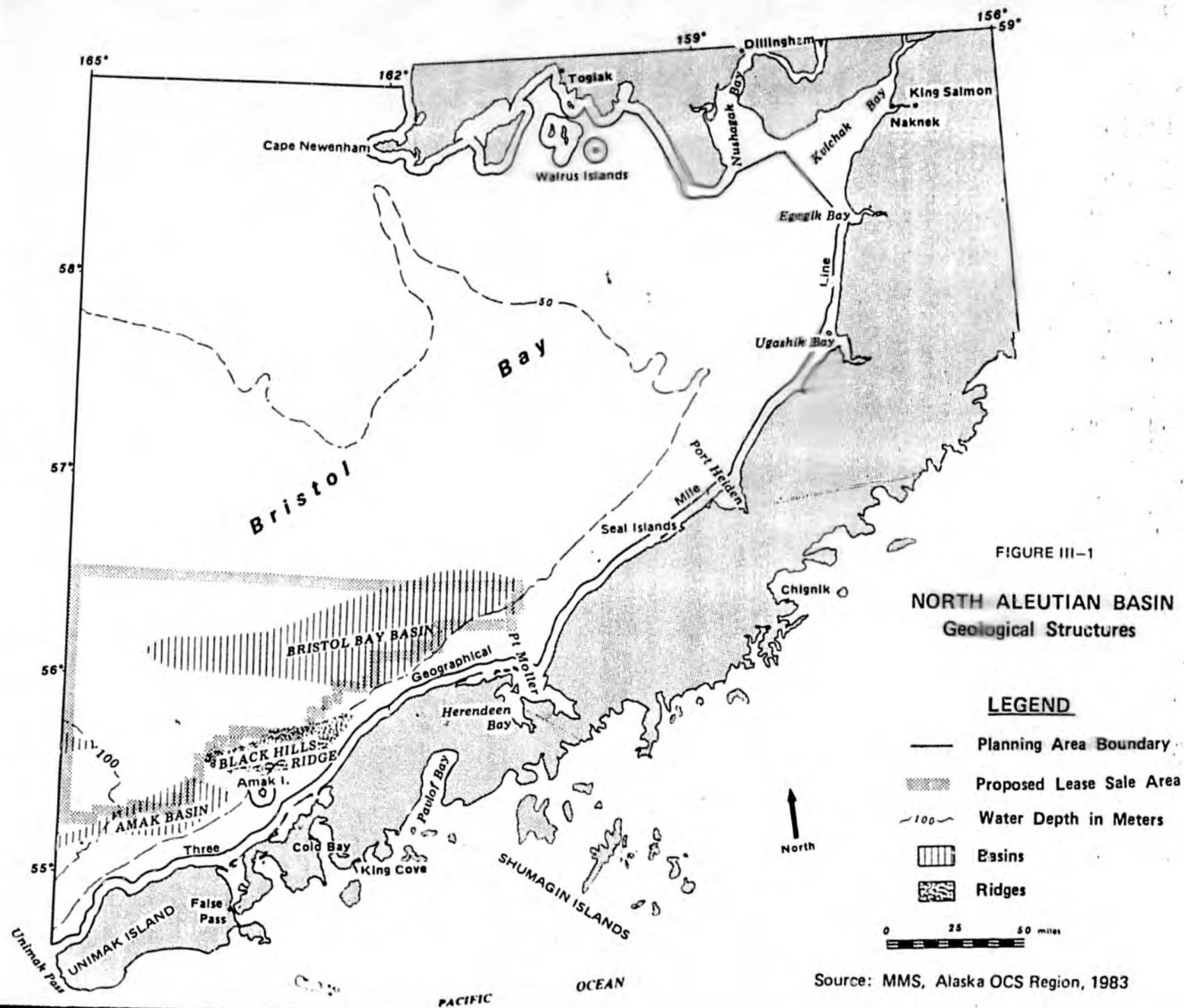
The Coalition recognizes the fiscal constraints on a straight cash buyback of the leases and therefore has been advocating the use of crediting the value of cancelled leases either towards the purchase of leases in upcoming OCS sales or as a credit on royalty or lease rent payments. Another option would be for the Federal government to reimburse the oil companies over several years so as to minimize the impact on the budget process.

The Buyback Coalition is being assisted by the Alaska Conservation Foundation which has set up the Bristol Bay Protection Fund. Contributions to the Fund help support activities of the Coalition and are tax-deductible. Several member groups of the Coalition have already made significant contributions including the Bristol Bay Borough, the Pacific Seafood Processors Association, Concerned Area M Fishermen, the Alaska Crab Coalition and the Egegik Setnetters' Association. The Alaska Fisheries Development Foundation has also made a large contribution to the Fund.

Since its inception in October 1990, the Coalition has grown to include thirty-two member organizations:

Association of Village Council Presidents
Bristol Bay Coastal Resource Service Area
Cenaliulriit Coastal Resource Service Area
Greenpeace Alaska
Northern Alaska Environmental Data Center
Southwest Alaska Municipal Conference

Bristol Bay Borough
Bristol Bay Native Association
Choggiung, Ltd.
Lake & Peninsula Borough
Nunam Kitlutsisti, Inc.
Trustees for Alaska



5

Congress maintains drilling moratorium in Bristol Bay waters

By DAVID WHITNEY

Daily News reporter

10/28/90

WASHINGTON — Prohibitions on offshore oil drilling in Bristol Bay will be maintained for another year under a hard-fought compromise congressional leaders accepted Saturday.

The deal, part of a 1991 spending bill for the Interior Department and related agencies, means that the Bush administration also will be legally barred from selling new leases off the coasts of Oregon, Washington, California and Florida.

In another last-minute action, Congress approved reauthorization of the Magnuson Fishery Management and Conservation Act.

That measure bans the use of long driftnets by U.S. fishermen and directs the Bush administration to negotiate a similar worldwide ban with other fishing nations.

The act also creates a new mechanism for spreading the cost of federal observers on commercial fishing vessels throughout the industry.

Anch. News

Until Saturday's compromise on offshore drilling, it appeared that that issue might turn into a hot battle holding up the adjournment of Congress.

The chief opponent of the ban was Sen. J. Bennett Johnston, a Louisiana Democrat whose hefty campaign contributions from the oil and gas industry helped finance his re-election victory this month over former Ku Klux Klan grand dragon David Duke.

Johnston is chairman of the Senate Energy and Natural Resources Committee. He argued that his committee, and not congressional appropriators, had jurisdiction over issuing drilling bans.

But Johnston was criticized because his committee, despite hearings on offshore development, had failed to produce legislation telling the Bush administration which offshore areas could be developed and which could not.

The impasse was broken

Please see Page B-3,
CONGRESS

CONGRESS: Moratorium maintained for Bristol Bay

Continued from Page B-1

when Rep. Les AuCoin, D-Oregon, offered the Senate a deal allowing another year of drilling bans in exchange for the House agreeing not to raise grazing fees that critics claim are so low that federal lands are being ruined by livestock at taxpayer expense.

The deal was an important political victory for coastal states.

One of the most ardent advocates of the House drilling ban was Rep. Bill Lowery, D-Calif., who argued that Bush's June announcement was based on determinations by the National Academy of Sciences that the federal Minerals Management Service didn't have the necessary scientific analysis to support its offshore drilling program.

Sen. Ted Stevens was caught in the middle of the controversy.

Commercial fishermen and the Gov. Steve Cowper don't want Bristol Bay drilled. The area is among the most productive fishing grounds in the world. The annual wholesale value of the Bristol Bay fishery is about \$1 billion.

Federal studies are now under way to determine whether the the federal gov-



ernment should buy back Bristol Bay oil leases worth \$95 million. Those studies were ordered after the Exxon Valdez tanker dumped nearly 11 million gallons of crude oil into Prince William Sound last year.

Stevens said that while he supported the ban on Bristol Bay development for another year, he was not content with the moratoriums in other areas because of the pressure it placed on offshore development in his state.

"My state has 80 percent of the outer continental shelf," Stevens said, referring to those federally owned areas where oil development could occur.

In the end, however, it was Stevens who moved for the Senate to cave in and accept AuCoin's offer.

"Senator Stevens has saved our bacon," said C. Deming Cowles, a lobbyist for the Alaska commercial fishing industry.

"Six weeks ago he told us he would get us another moratorium," Cowles said. "This morning he did it."

STEVE COWPER
GOVERNOR



7

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

September 7, 1990

The Honorable Jamie L. Whitten
Chairman
House Committee on Appropriations
H-218 Capitol Building
Washington, D.C. 20515

Dear Mr. Chairman:

As you know, the Interior Appropriations Subcommittee has included a moratorium on oil and gas exploration in Bristol Bay in its markup of the House appropriations bill. I am writing to urge you to retain this important protective measure during the full Committee's deliberations.

We anticipate that, given the upheaval in the Persian Gulf, Congress will carefully scrutinize any budget action that has the potential to affect our energy position. For your information, I have included a copy of my recent remarks before a hearing on National Energy Strategy conducted in Fairbanks, Alaska, by Deputy Energy Secretary W. Henson Moore. You will see that Alaska is now, and will continue, doing its share to contribute to the nation's energy security. We now provide 20% of total U.S. domestic production, have more offshore areas under lease than the entire CCS combined, and have taken recent action to enable exploration and development of additional North Slope fields.

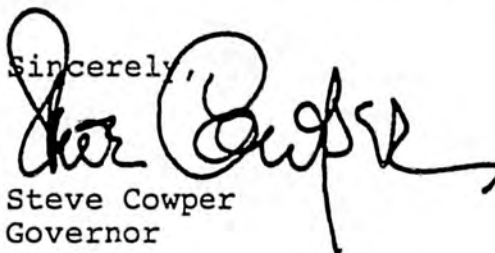
Bristol Bay is the only area where we have ever opposed oil and gas development, and we continue to oppose such development today.

As you know, the report accompanying the FY 1990 appropriation to the Department of the Interior called for studies on contingency planning and response technology for the North Aleutian Basin, an assessment of the applicability of Exxon Valdez oil spill findings to a potential spill in Bristol Bay, and an examination of the possible repurchase of the leases from Sale 92. The conclusion of those studies is not expected until March 1, 1991. It seems logical to us that the moratorium should be extended through the next fiscal year to enable Congress to have the benefit of those studies before deciding whether exploration and development should go forward.

In our view, of course, the known value of the fish and wildlife resources of the North Aleutian Basin clearly outweighs the low potential of the area's hydrocarbon resources, and that view is not changed by the present world situation. For more than a decade, Alaskans have expressed their concern at risking this biologically productive area to the chance of an oil spill. We have consistently opposed oil and gas development in Bristol Bay and continue to believe that the best resolution of the matter is an eventual repurchase of the leases there.

Thank you for your consideration of my views on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", with a long, sweeping horizontal stroke at the end.

Steve Cowper
Governor

Enclosure

Identical letter sent to all members of the House Committee on Appropriations

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young

ROBERT C. BYRD, WEST VIRGINIA, CHAIRMAN

DANIEL K. INOUE, HAWAII
ERNEST F. HOLLINGS, SOUTH CAROLINA
J. BENNETT JOHNSTON, LOUISIANA
QUENTIN N. BURDICK, NORTH DAKOTA
PATRICK J. LEAHY, VERMONT
JIM SASSER, TENNESSEE
DENNIS D'CONCINI, ARIZONA
DALE BUMPERS, ARKANSAS
FRANK R. LAUTENBERG, NEW JERSEY
TOM HARKIN, IOWA
BARBARA A. MIKULSKI, MARYLAND
HARRY REID, NEVADA
BROCK ADAMS, WASHINGTON
WYCHE FOWLER, JR., GEORGIA
J. ROBERT KERREY, NEBRASKA

MARK O. HATFIELD, OREGON
TED STEVENS, ALASKA
JAMES A. MCCLURE, IDAHO
JAKE GARN, UTAH
THAD COCHRAN, MISSISSIPPI
ROBERT W. KASTEN, JR., WISCONSIN
ALFONSE M. D'AMATO, NEW YORK
WARREN RUDMAN, NEW HAMPSHIRE
ARLEN SPECTER, PENNSYLVANIA
PETE V. DOMENICI, NEW MEXICO
CHARLES E. GRASSLEY, IOWA
DON NICKLES, OKLAHOMA
PHIL GRAMM, TEXAS

JAMES H. ENGLISH, STAFF DIRECTOR
J. KEITH KENNEDY, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

8

February 9, 1990

The Honorable Fred Zharoff
Alaska State Senate
Box V
Juneau, Alaska 99811

Dear Fred:

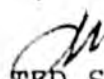
Knowing of your interest in drilling in the North Aleutian Basin, I thought you'd like copies of the Interior Appropriations bill addressing that issue. You'll find the relevant sections on pages 25-26. President Bush signed the measure into law on October 23rd. I know my staff called your office after the Congress passed the bill, but I thought you'd like to see the provisions for yourself.

The budget the President sent to Congress the end of January did not include a North Aleutian Basin moratorium for FY91. The reports required in the FY90 conference report -- the review of contingency plans, the analysis of the impacts of the Prince William Sound spill on fisheries resources, and the buy-back options -- will not be completed until March 1, 1991. Therefore, Don and I will work to impose another one-year moratorium in the FY91 Interior Appropriations bill while we wait for those studies to be completed. A one-year moratorium is the maximum delay possible under this bill since it applies only to the 1991 budget year. We're announcing that decision today at the UFA Convention, but wanted to give you a heads up.

Thanks for sharing your views on this important issue to the people Southwest Alaska. Your comments were helpful as we developed our language. We'll continue to keep you posted as we continue to work on this important issue to Western Alaska.

With best wishes,

Cordially,


TED STEVENS

Original mailed with enclosure

MAKING APPROPRIATIONS FOR THE DEPARTMENT OF THE INTERIOR
AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER
30, 1990, AND FOR OTHER PURPOSES

lower:

In:

OCTOBER 2, 1989.—Ordered to be printed

Mr. YATES, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 2788]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2788) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1990, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 17, 19, 40, 42, 46, 51, 52, 53, 65, 66, 67, 68, 69, 73, 77, 80, 89, 90, 99, 101, 103, 108, 109, 115, 116, 117, 127, 130, 147, 154, 155, 156, 157, 158, 159, 160, 161, 162, and 163.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 4, 5, 6, 7, 20, 29, 30, 36, 56, 74, 75, 78, 82, 119, 125, 126, 141, 148, and 151, and agree to the same.

Amendment numbered 1:

That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert \$442,084,000; and the Senate agree to the same.

Amendment numbered 8:

That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert \$5,961,000; and the Senate agree to the same.

Amendment numbered 9:

That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows:

ONS, AND RESEARCH

s \$484,709,000 for surveys, inves-
\$486,931,000 as proposed by the
ed by the Senate. The decrease
e House consists of \$67,000 for
00 for Louisiana barrier island
00 in offshore geologic surveys,
veys for roadless and RARE II
ion of water data dissemination.

tories are expected to continue

continue to receive priority con-
Aerial Photography Program

the existing site selection procedure for the side-looking airborne radar, if priority considerations in Mississippi, and Alabama and Louisiana could be completed; and 2) for coastal studies should include eastern Texas as part of options.

a feasibility study on alternate marine research facility, including Science Center in Newport,

nts of Tualatin River pollution
it as part of the joint Federal-
n, and should not be undertak-
participation;
the possibility of assisting the
rough the Federal/State Coop-
locate a water supply for use

e \$1.5 million appropriated for of roadless areas on work iden- of the Idaho State Wilderness all coordinate their field oper- of Mines and the Idaho Geolog-

MENT SERVICE

MANAGEMENT

: \$178,525,000 for leasing and
\$5,066,000 as proposed by the
by the Senate.

The net increase over the amount proposed by the House includes increases of \$1,000,000 in outer continental shelf lands for second year funding of a three-year cost-shared oil spill research initiative and \$3,600,000 in royalty management to initiate a project to place audits on a more timely schedule using additional in-house and State and tribal auditors.

The increases are partially offset by decreases of \$1,000,000 in outer continental shelf lands for the environmental studies program and in royalty management of \$100,000 for systems development and \$41,000 for refunds on Indian allottee lease overpayments.

The managers agree that the MMS should coordinate and cooperate in the Northwest OCS Task Force which was established to assist in identifying and resolving OCS issues specific to that region. The managers expect the MMS to work closely with the task force on identifying and conducting needed environmental studies and on scheduling the prelease steps leading to Sale 132. The Federal government and the States are urged to appoint high level management officials, authorized to make commitments on behalf of their respective organizations, to the task force.

The managers agree that the focus of the oil spill research initiative should be on containment, cleanup and mitigation measures including those associated with spills from tanker accidents.

Elsewhere in the bill there are restrictions on OCS oil and natural gas leasing activities. None of these restrictions apply to the non-fuel minerals leasing program on the OCS.

The grounding of the Exxon Valdez on March 24, 1989 in Prince William Sound has led to concern among many people, including the fishermen of Bristol Bay, over the possible impact oil and gas exploration and development in the North Aleutian Basin could have on fisheries resources. The managers recognize that these concerns should be addressed before oil and gas exploration in Bristol Bay goes forward. For that reason, the managers have included a one-year moratorium on exploration and development in the North Aleutian Basin.

The managers agree that the Secretary of the Interior should conduct a three-pronged study to address concerns related to oil and gas exploration in the North Aleutian Basin and report to the Committees by March 1, 1991 as follows:

1. Within available funds, the Fish and Wildlife Service, in cooperation with the National Oceanic and Atmospheric Administration and the State of Alaska, is to conduct a study of the effects of the March 24, 1989 oil spill on the Prince William Sound fisheries. The Service may draw upon the results of the fisheries research projects being conducted as part of the damage assessment process under the Clean Water Act and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). These studies are already funded through the CERCLA process. The study should also address the applicability of its findings to reasonable potential threats to the Bristol Bay fisheries if OCS exploration and production were to occur in the North Aleutian Basin.

2. In order to better assess the risk in the North Aleutian Basin, the Secretary is to determine if:

(i) contingency plans for the North Aleutian Basin are acceptable and based on the best available technology;

(ii) the technology, equipment and personnel will be in place and personnel will be adequately trained to implement the contingency plans; and

(iii) the contingency plans together with the technology, equipment and personnel in place to implement them are capable of containing a maximum volume spill during the exploration phase. A maximum volume spill shall be determined by potential spill volume and without reference to the probability of such a spill occurring.

3. The Secretary is to examine the possible repurchase of leases currently held in the North Aleutian Basin, including alternative options for compensating lease holders in the North Aleutian Basin, assuming the compensation procedures outlined in 43 U.S.C. 1334 and applicable court decisions. These options should include, to the extent practicable, credits in lieu of appropriations, such as credits on Federal royalties on producing OCS leases. Based on the results of the Fish and Wildlife study and the North Aleutian Basin risk assessment study, the Secretary is to recommend whether the repurchase options should be exercised. No such option may be exercised, however, without an Act of Congress addressed to this issue.

In directing the Department to conduct these studies, the managers' action should not be construed as support by the Congress for either continuing or discontinuing the moratorium in the North Aleutian Basin. Nor should it be construed as taking a position on whether the leases should be repurchased.

In other matters, the managers endorse the concept of a more timely audit cycle using in-house and State and tribal auditors. The managers caution the MMS to proceed at a reasonable pace in implementing the contemporaneous audit initiative. Candidates for in-house auditing positions should be carefully screened and interviewed to ensure that a high quality and enduring program is maintained. Hiring through term appointments for the audit program should be minimized and used only to the extent that highly qualified candidates are available for such appointments. Routine attrition in the staffing of permanent positions should permit the MMS to manage an orderly reduction of the additional auditors hired to support the project as the contemporaneous audit objectives are achieved.

Amendment No. 33: Earmarks \$56,060,000 for royalty management instead of \$52,601,000 as proposed by the House and \$56,796,000 as proposed by the Senate.

Amendment No. 34: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows: In lieu of the matter proposed by said amendment, insert: *Provided further, That of the above enacted amounts, up to one-half of the increase over the fiscal year 1989 funding provided for mineral royalty audits may be used to compensate States and Indian tribes for audit activities under the provisions of sections 202 and 205 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732, 1735): Provided further, That for fiscal year*

Bill includes oil lease buy-back

By DAVID WHITNEY

Daily News reporter

WASHINGTON — The Interior Department would study buying back about \$95 million worth of oil leases in Bristol Bay under an agreement reached Thursday by House and Senate negotiators working on a 1990 spending bill.

The provision also prohibits any oil drilling in the bay for a year.

The development was a victory for Alaska fishermen and the state. They had long protested any oil development in the bay, one of the world's richest fishing grounds.

The state lost a federal court suit to block leasing in the bay. Those leases were awarded late last year.

Concern about Bristol Bay oil development was heightened after the March 24 oil spill in Prince William Sound, which closed several commercial fishing districts.

Alaska fishermen, joined by national environmental organizations, lobbied the House for a buy-back provision as part of its one-year moratorium.

During the House debate, Alaska Rep. Don Young was equivocal on a lease buy-back and several House members cit-

ed him as being opposed.

When the spending bill reached the Senate, Alaska Sen. Ted Stevens offered a provision that required the Interior Department only to study the impacts of the March 24 oil spill and to evaluate whether oil-spill contingency plans for Bristol Bay development would be adequate.

Young said Thursday that strong support from the state and fishermen for repurchasing the leases caused him and Stevens to fight for the House-passed provision.

The Interior Department report must be approved by both

houses before President Bush may sign it.

What was finally agreed to was a melding of the House and Senate provisions, with some modifications that give plenty of room for the Interior Department to conclude that repurchasing the leases is not warranted.

Any buy-back decision will be tied directly to the results of the oil-spill impact study. Only Congress could authorize the lease repurchases, which probably would be paid for with credits on royalties owed for other offshore oil developments.

Please see Page D-4, **BRISTOL**

BRISTOL BAY: Bill will include oil lease buy-back

Continued from Page D-1

Besides studying the oil-spill affects, the Interior Department would review oil-spill contingency plans for Bristol Bay, oil-spill technology and equipment that would be in place, and the oil industry's capability of responding to "a maximum volume spill during the exploration phase."

Based on these studies,

the department would have to recommend whether buying back the leases should be authorized.

The reports, and any agency recommendations, are due by March 1991, meaning that no development in Bristol Bay is likely for at least that long.

At the time Stevens' provision was approved by a Senate Appropriations Com-

mittee panel in July, the Republican lawmaker said he would base a decision on whether to support buying back the leases on the oil industry's track record.

"It depends on the credibility of the oil industry at the time," Stevens said. "Today, that credibility is at a low ebb. I would not want Alaska to become again a proving ground for that credibility."

But Stevens said Thursday he will use the Interior Department studies to make up his mind.

"If research shows that the oil spill has caused irrevocable damage to Prince William Sound fisheries and that the impact of a similar incident would be the same in Bristol Bay, I will support buying back the (Bristol Bay) leases," he said.

NEWS RELEASE

(10)

STATE OF ALASKA

OFFICE OF THE GOVERNOR
P.O. BOX A
JUNEAU, ALASKA 99811

STEVE COWPER,
GOVERNOR



FOR INFORMATION CONTACT:

DAVID RAMSEUR
PRESS SECRETARY

TERENCE O'MALLEY
DEPUTY PRESS SECRETARY

(907) 465-3500

FOR IMMEDIATE RELEASE
April 26, 1989
No. 89-74

COWPER PROPOSES BUY BACK OF BRISTOL BAY LEASES

JUNEAU--Gov. Steve Cowper has called on the federal government to buy back from the oil industry more than \$114 million worth of leases bid for oil development in fisheries-rich Bristol Bay in the aftermath of the Exxon oil spill.

The Governor, in a letter to the chairman of the U.S. House subcommittee with jurisdiction over Alaska off-shore development, said oil development in the bay should be cancelled and the bid money refunded.

"It is no longer assurance enough to delay exploration and development in Bristol Bay for six months or one year or one year at a time for an indefinite period," Cowper told Rep. Sidney Yates, D-Ill., and chairman of the House Subcommittee on Interior and Related Agencies.

"Studies during such a period would confirm what Alaskans have long contended: the relatively low probability of finding commercial deposits of oil in Bristol Bay does not justify the risk to one of the most biologically productive offshore areas in the world. In our opinion, it is time to cancel the sale and refund the bid money. The risks are too high and the potential benefits too low to pursue any other course."

-MORE-

Despite opposition to oil development in Bristol Bay by Cowper and his two predecessors, the federal government has proceeded with collecting \$114.7 million in leases in the area. The state has challenged the sale in federal courts and plans to appeal the issue to the U.S. Supreme Court if necessary.

In the meantime, Cowper said the specter of an oil spill similar to the March 24 Exxon spill in Prince William Sound is "unthinkable."

"Alaskans already have had to face the closure of this year's multi-million dollar Prince William Sound salmon herring fishery and black cod fishery and the attendant loss of jobs and community stability," the Governor said. "We face the potential of losing a portion or all of the Prince William Sound salmon fishery. The loss of seabirds, marine mammals and the coastal environment is not yet measurable, but likely immense."

The salmon fishery in Bristol Bay is worth about \$1 billion annually and the region is home to one of the world's largest collection of marine mammals.

Cowper noted that in 1976 the state bought back leases in Kachemak Bay following an oil spill. The federal buy-back he proposed could include tax credits or credits for future leases.

Cowper's proposal comes on the heels of his request to President Bush that a moratorium be imposed on Bristol Bay pending a federal review.

Chairman Yates has not yet formally responded to the Governor's proposal.

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* DELIVER TO: LIOCBL5
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* ORIGINAL
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* FROM: LTCCBET
* SUBJECT: 91-05-051; PL#2; OIL; 5/9/91
* PRINT DATE: 05/09/91 TIME: 10:47
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SUBJECT LINE TO READ: TC NO.; PL/FS; SHORT SUBJECT; DATE

T/C NO: 91-05-051
 DATE: MAY 9, 1991
 SPONSOR: (S) SPECIAL COMMITTEE ON OIL AND GAS
 SUBJECT: SJR 30: FED OIL LEASES IN BRISTOL BAY
 MODERATOR: JANET
 SITE: BETHEL

PARTICIPANT LIST#2

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. HAROLD SPARCK	BOX 267 BETHEL 99559	543-3409	
2.			
3.			
4.			
5.			

OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. GREG ROCZICKA	BOX 219 BETHEL 99559	543-3521	
2. CAROL DAWSON	BOX 1169 BETHEL 99559	543-2243	

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*****
*
* DELIVER TO: LIOCBLS
*
*
* ORIGINAL
* SENT: 05/09/91 TIME: 10:28
* FROM: LIOCMIL
* SUBJECT: 91-05-051;;PL;(S)OIL;5/9
* PRINT DATE: 05/09/91 TIME: 10:28
*
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SUBJECT LINE TO READ: TC NO.; PL FS;SHORT SUBJECT;DATE

T/C NO: 91-05-051
 DATE: 5/9
 SPONSOR: (S) SPL CMTE ON OIL AND GAS
 SUBJECT: SJR 30 BRISTOL BAY LEASE BUY BACK
 MODERATOR: JUDY
 SITE: ANCHORAGE

PARTICIPANT LIST

```

*****
TO TESTIFY

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NAMES/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. DAN ALBRECHT/BRISTOL BAY BUY BACK COALITION			SJR 30
2.			
3.			

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4.
5.
6.
*****
TO OBSERVE:

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NAME/ REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			

BACK UP NUMBER: 561-1199
 EMAIL ADDRESS: LIOCMIL

* DELIVER TO: L7OCBLS *

* ORIGINAL *

* SENT: 05/09/91 TIME: 10:34 *

* FROM: L10CDLG *

* SUBJECT: 91-05-051; PL#1; SJR30; 5-5-91 *

* PRINT DATE: 05/09/91 TIME: 10:34 *

SUBJECT LINE TO READ: TC NO.; PL/FS; SHORT SUBJECT; DATE

T/C NO: 91-05-051

DATE: MAY 9, 1991 THURSDAY 10:30 - 12:00

SPONSOR: SENATE SPECIAL CMTE ON OIL & GAS

SUBJECT: SJR 30: FEDERAL OIL LEASES IN BRISTOL BAY

MODERATOR: ANNA MAE SORENSEN/KAY GORMAN

SITE: DILLINGHAM

PARTICIPANT LIST

FINAL STATS

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. BRUCE BALTAR,	- TO TESTIFY -		SJR 30
BRISTOL BAY NATIVE ASSOC.			
2. SUE FLENSBURG	- TO TESTIFY -		
COASTAL RESOURCE SERVICE AREA			
3.			
4.			
5.			

OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. BOB KING, KDLG RADIO			
2.			

SCOMM

78:49

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO: CSHB 196(JUD)

Revision Date: _____
Title: "An act limiting civil liability for acts or omissions of an oil spill response action contractor..."
Sponsor: House Special Committee on Oil & Gas
Requestor: House Judiciary

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: Council & Subcommittees

..COMPONENT SERIAL NO: 783

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	32.0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	32.0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	32.0	0	0	0	0	0
TOTAL	32.0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

CSHB 196(JUD) proposes a study be prepared to assess the oil spill response action contractor civil liability and oil spill contingency plan holder status. Funding would be from the Oil and Hazardous Release Response Fund. To perform this study, the Citizens' Oversight Council would need funds for contractual services for legal and other research.

see attached page

Prepared By: Pamela A. Sloops, Director
Division: Administrative Services

Michele Brown
Michele Brown, Exec. Director
Citizens' Oversight Council

465-3850
Phone: 561-2101
Date: 4/23/91

Approved By: Warren W. Endicott, Executive Director
Agency: Legislative Affairs Agency

Date: 4/23/91

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

CONTINUATION OF FISCAL NOTE: CSHB 196(JUD)

CSHB 196(Jud) limits liability for civil damages for oil spill response action contractors who respond to a release or a threatened release of oil, unless the contractor acts with gross negligence or intentional misconduct. The limited liability is intended to encourage aggressive oil spill response.

In analyzing this bill, the legislature found that there were good public reasons to address the issue of oil spill response action contractor liability. However, the legislature also found that the subject is extremely complex because of the varying public interests and the variations in the types of response action contractors currently operating in Alaska. The legislature wants the study to identify the types of contractors responding to different oil spill discharges so that the legislature could finely tune which response action contractors operating in which scenarios ought to have limited liability for civil damages.

The legislature also intended the study to address the relationships between different response action contractors and the holders of contingency plans. In order to have a strengthened and cohesive oil spill response, it is critical that the contingency plan holder and the response action contractor adhere to a single plan with direction and oversight by state and federal agencies. In analyzing current law, the legislature found that confusion in response may still exist. Accordingly, the legislature has requested that the study include an assessment of whether the present state laws that require oil shippers and owners to hold contingency plans, and that enable oil shippers and owners to contract with response action contractors to carry out contingency plans, are adequate to protect the public in the event of an oil spill.

CONTRACTUAL

Estimate approximately 2 months or 320 hours of research and report preparation.

Estimate contracting at approximately \$100 per hour on the assumption that the contractor would assume all expenses for the project, including travel, supplies, postage, copying, computer services, etc.

$$\text{\$100} \times 320 \text{ hours} = \text{\$32,000}$$

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 196

Revision Date: _____ Department Affected: DEC
Title: Limited Liability for oil spill BRU: Environmental Quality
response action contractors Component: SPPM
Sponsor: House Oil & Gas
Requestor: House Oil & Gas COMPONENT SERIAL NO.

1	0	1	6
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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 2600
Division: Commissioner's Office Date: March 11, 1991
Approved by Commissioner: *Janice Adair*
Agency: ADFC Date: 3/11/91

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

Final

SENATE SPECIAL COMMITTEE ON OIL AND GAS

LETTER OF INTENT -- CSHB 196 (Finance)

The Senate Special Committee on Oil and Gas has considered CSHB 196 (Finance), and submits this letter of intent to clarify two issues presented by that bill.

First, under section 8 of the bill, a response action contractor loses its limited immunity if, without approval by the federal or state on-scene coordinator, it "substantially deviated" from an approved oil spill contingency plan that it either authored or agreed by contract to follow. The committee considered defining "substantially deviated" along the lines suggested by Alyeska, set out at the end of this letter. The committee did not have the time to fully explore defining the term. The industry felt that the term "unjustifiable" should be included in the definition because they wanted to have the opportunity, in reviewing a deviation from a plan, to argue to a court that the action resulting in the deviation was the right action in the circumstances. However, others were concerned that "unjustifiable" might mean that any action for which there is any justification (in any person's mind) would not result in a substantial deviation, and thus could be read to render the contingency plan requirements of the bill ineffective. The committee believes that, under the bill, de minimus or technical violations of the contingency would not result in a "substantial deviation" finding, and that a "substantial deviation" will only occur when important, or material, requirements of the plan are violated. The committee determined not to attempt to define "substantially deviated" but rather to ask that the issue be included in the interim study.

The second issue concerns the relationship of HB 196 to the amendments to AS 46.04.030 made by last year's HB 567. AS 46.04.030(k) sets out contingency plan response planning standards. At the same time, AS 46.04.030(l) provides that the benchmarks articulated in subsection (k) "do not constitute cleanup standards that must be met by the holder of a contingency plan." Nothing in HB 196 is intended to amend AS 46.04.030(l) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor. Similarly, since the requirements of subsection (k) do not constitute cleanup standards "substantial deviation" is determined by the terms of an approved

contingency plan and not subsection (k), except to the extent that a provision of subsection (k) has been incorporated into the contingency plan.

Under section 11 of the bill, the Citizens' Oversight Council on Oil and Hazardous Substances will review the issues presented by the legislation. It is this committee's expectation that the Council will review the 15-day time limit for limited immunity provided by this legislation, and assess whether that period ought to be extended. The committee also expects the Council to study the issue of whether the phrase "substantially deviated" should be further defined, and whether the acts of employees of a response action contractor should be excluded from the acts that could lead to a substantial deviation. Among the options presented to the Legislature, but not incorporated in the bill, was the following proposed language suggested by Alyeska:

In this section, "substantially deviated" means significant, unjustifiable and unauthorized departure from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor.

SENATE SPECIAL COMMITTEE ON OIL AND GAS

LETTER OF INTENT -- CSHB 196 (Finance)

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contingency plan and not subsection (k), except to the extent that a provision of subsection (k) has been incorporated into the contingency plan.

Under section 11 of the bill, the Citizens' Oversight Council on Oil and Hazardous Substances will review the issues presented by the legislation. It is this committee's expectation that the Council will review the 15-day time limit for limited immunity provided by this legislation, and assess whether that period ought to be extended. The committee also expects the Council to study the issue of whether the phrase "substantially deviated" should be further defined, and whether the acts of employees of a response action contractor should be excluded from the acts that could lead to a substantial deviation. Among the options presented to the Legislature, but not incorporated in the bill, was the following proposed language suggested by Alyeska:

In this section, "substantially deviated" means significant, unjustifiable and unauthorized departure from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor.

editorial

SENATE SPECIAL COMMITTEE ON OIL AND GAS

LETTER OF INTENT -- CSHB 196 (Finance)

The Senate Special Committee on Oil and Gas has considered CSHB 196 (Finance), and submits this letter of intent to clarify two issues presented by that bill.

First, under section 8 of the bill, a response action contractor loses its limited immunity [LIABILITY] if, without approval by the federal or state on-scene coordinator, it "substantially deviated" from an approved oil spill contingency plan that it either authored or agreed by contract to follow. "Substantially deviated" means a significant departure from a material requirement of an approved contingency plan. [BY THE EXECUTIVES, MANAGERS, INCIDENT COMMANDERS AND (should be OR) EMPLOYEES OF A RESPONSE ACTION CONTRACTOR].

The legislation does not change the general common law rule that a person is ordinarily not responsible for the negligence of its independent contractors. Thus, if a response action contractor sub-contracts a portion of the cleanup work to another party, and that other party "substantially deviates" from the approved plan, the common law regarding vicarious liability for the acts of independent contractors will determine whether that other party's "substantial deviation" will be imputed to the response action contractor.

Finally, under section 8, a "substantial deviation" will not result in a loss of limited immunity [LIABILITY] if the deviation was previously authorized by the federal or state on-scene coordinator, or that coordinator's designee. [If you put the on-scene coordinator language in the second paragraph, you might take it out here.]

The second issue concerns the relationship of HB 196 to the amendments to AS 46.04.030 made by last year's HB 567. AS 46.04.030(k) sets out contingency plan response planning standards. [UNDER AS 46.04.030(k)(3)(C), A CONTINGENCY PLAN HOLDER MUST DEMONSTRATE THAT THE EQUIPMENT, PERSONNEL AND OTHER RESOURCES MAINTAINED OUTSIDE OF THE PLAN HOLDER'S REGION OF OPERATION WILL BE DEPLOYED AND OPERATING AT THE DISCHARGE SITE WITHIN 72 HOURS.] [The planning standards are the whole of (k), not just (k)(3)(C). This language should be more general.] At the same time, AS 46.04.030(1) provides that the

benchmarks articulated in subsection (k) "do not constitute cleanup standards that must be met by the holder of a contingency plan." Nothing in HB 196 is intended to amend AS 46.04.030(1) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor. Similarly, since the requirements of subsection (k) do not constitute cleanup standards [THE DETERMINATION OF] "substantial deviation" is determined by [IS KEYED TO] the terms of an approved contingency plan and not subsection (k), except to the extent that a provision of subsection (k) has been incorporated into the contingency plan.

Under section 11 of the bill, the Citizens' Oversight Council on Oil and Hazardous Substances will review the issues presented by the legislation. It is this committee's expectation that the Council will review the 15-day time limit for limited immunity provided by this legislation, and assess whether that period ought to be extended. The committee also expects the Council to study the issue of whether the phrase "substantially deviated" should be further defined. Among the options presented to the Legislature, but not incorporated in the bill, was the following proposed definition suggested by Alyeska:

In this section, "substantially deviated" means significant, unjustifiable and unauthorized departure from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor.

TESORO DRAFT

SENATE OIL & GAS COMMITTEE LETTER OF INTENT FOR CSHB 196 (Finance) May 14, 1991

The Senate Oil & Gas Committee has considered CSHB 196 (Finance). The purpose of this letter of intent is to clarify two issues presented by that bill.

First, under Section 8 of the bill, a response action contractor loses its limited liability if it "substantially deviated" from an approved oil spill contingency plan that it either authored or agreed by contract to follow. "Substantially deviated" means a significant departure from the requirements of an approved plan by the executives, managers, incident commanders and employees of a response action contractor.

Under Section 8, the "substantial deviation" must be by the response action contractor in order for that response action contractor to lose its immunity. The legislation does not change the general common law rule that a person is ordinarily not responsible for the negligence of its independent contractors. Thus, if a response action contractor sub-contracts a portion of the cleanup work to another party, and that other party "substantially deviates" from the approved plan, the common law regarding vicarious liability for the acts of independent contractors will determine whether that other party's "substantial deviation" will be imputed to the response action contractor.

Not necessarily true

Finally, under Section 8 a "substantial deviation" will not result in a loss of limited liability if the deviation was previously authorized by the federal or state on-scene coordinator, or that coordinator's designee.

The second issue concerns the relationship of HB 196 to the amendments to AS 46.04.030 made by last year's HB 567. Under AS 46.04.030(k)(3)(C), a contingency plan holder must demonstrate that the equipment, personnel and other resources maintained outside of the plan holder's region of operation will be deployed and operating at the discharge site within 72 hours. At the same time, AS 46.04.030(1) provides that the benchmarks articulated in subsection (k) "do not constitute cleanup standards that must be met by the holder of a contingency plan." Nothing in HB 196 is intended to amend AS 46.04.030(1) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor. Similarly, since the requirements of subsection (k) do not constitute cleanup standards, the failure to meet a provision of subsection (k) would not be a "substantial deviation" under HB 196 resulting in a loss of limited immunity.

Under Section 11 of the bill, the Citizens Oversight Council on Oil and Hazardous Substances will review the issues presented by

c-plan response planning standards.

TESORO DRAFT

SENATE OIL & GAS COMMITTEE
LETTER OF INTENT
FOR CSHB 196 (Finance)
May 14, 1991

The Senate Oil & Gas Committee has considered CSHB 196 (Finance). The purpose of this letter of intent is to clarify two issues presented by that bill.

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Under Section 8, the "substantial deviation" must be by the response action contractor in order for that response action contractor to lose its immunity. The legislation does not change the general common law rule that a person is ordinarily not responsible for the negligence of its independent contractors. Thus, if a response action contractor sub-contracts a portion of the cleanup work to another party, and that other party "substantially deviates" from the approved plan, the common law regarding vicarious liability for the acts of independent contractors will determine whether that other party's "substantial deviation" will be imputed to the response action contractor.

Not rules + true

Finally, under Section 8 a "substantial deviation" will not result in a loss of limited liability if the deviation was previously authorized by the federal or state on-scene coordinator, or that coordinator's designee.

The second issue concerns the relationship of HB 196 to the amendments to AS 46.04.030 made by last year's HB 567. Under AS 46.04.030(k)(3)(C), a contingency plan holder must demonstrate that the equipment, personnel and other resources maintained outside of the plan holder's region of operation will be deployed and operating at the discharge site within 72 hours. At the same time, AS 46.04.030(l) provides that the benchmarks articulated in subsection (k) "do not constitute cleanup standards that must be met by the holder of a contingency plan." Nothing in HB 196 is intended to amend AS 46.04.030(l) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor. Similarly, since the requirements of subsection (k) do not constitute cleanup standards, the failure to meet a provision of subsection (k) would not be a "substantial deviation" under HB 196 resulting in a loss of limited immunity.

Under Section 11 of the bill, the Citizens Oversight Council on Oil and Hazardous Substances will review the issues presented by

the legislation. It is this committee's expectation that the Council will review the 15-day time limit for limited immunity provided by this legislation, and assess whether that period ought to be extended to 60 days (as is the case in California), or whether any limit is appropriate. This committee also expects that the Council will assess whether the following definition of "substantially deviated" is a more appropriate definition of the term:

"In this section, "substantially deviated" means significant, unjustifiable and unauthorized departures from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor."

Committee also expects the

study the issue of whether the term
"sub. dev." should be further defined.

Among the def's considered by the
legisl. but not incorporated into HB 196 is the
following defin. suggested by Alyeska:

since the require. of .03D(LK) do not const.

cl-up std, the failure to meet
a require of that subs. wd not
const. a subst. devia. unless a
plan or p's is incorporated into
an approved L-plan

TESORO/LDNDCD DRAFT

SENATE OIL & GAS COMMITTEE
LETTER OF INTENT
FOR CSHB 196 (Finance)
May 14, 1991

The Senate Oil & Gas Committee has considered CSHB 196 (Finance). The purpose of this letter of intent is to clarify two issues presented by that bill.

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Under Section 8, the "substantial deviation" must be by the response action contractor in order for that response action contractor to lose its immunity. The legislation does not change the general common law rule that a person is ordinarily not responsible for the negligence of its independent contractors. Thus, if a response action contractor sub-contracts a portion of the cleanup work to another party, and that other party "substantially deviates" from the approved plan, the common law regarding vicarious liability for the acts of independent contractors will determine whether that other party's "substantial deviation" will be imputed to the response action contractor.

Finally, under Section 8 a "substantial deviation" will not result in a loss of limited liability if the deviation was previously authorized by the federal or state on-scene coordinator, or that coordinator's designee.

The second issue concerns the relationship of HB 196 to the amendments to AS 46.04.030 made by last year's HB 567. Under AS 46.04.030(k)(3)(C), a contingency plan holder must demonstrate that the equipment, personnel and other resources maintained outside of the plan holder's region of operation will be deployed and operating at the discharge site within 72 hours. At the same time, AS 46.04.030(l) provides that the benchmarks articulated in subsection (k) "do not constitute cleanup standards that must be met by the holder of a contingency plan." Nothing in HB 196 is intended to amend AS 46.04.030(l) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor. Similarly, since the requirements of subsection (k) do not constitute cleanup standards, the failure to meet a provision of subsection (k) would not be a "substantial deviation" under HB 196 resulting in a loss of limited immunity.

Under Section 11 of the bill, the Citizens Oversight Council on Oil and Hazardous Substances will review the issues presented by

Senate Oil & Gas Committee
Letter of Intent for CSHB 196 (Finance)
May 14, 1991

Page 2

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"In this section, "substantially deviated" means significant, unjustifiable and unauthorized departures from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor."

TESORD / R.LAL / CITIZENS

SENATE OIL & GAS COMMITTEE LETTER OF INTENT FOR CSNB 196 (Finance) May 14, 1991

DRAFT

The Senate Oil & Gas Committee has considered CSNB 196 (Finance). The purpose of this letter of intent is to clarify two issues presented by that bill.

First, under Section 8 of the bill, a response action contractor loses its limited liability if it "substantially deviated" from an approved oil spill contingency plan that it either authored or agreed by contract to follow. "Substantially deviated" means a significant departure from a material requirement of an approved contingency plan, by the executives, managers, incident commanders and employees of a response action contractor.

<Sentence deleted here>

The legislation does not change the general common law rule that a person is ordinarily not responsible for the negligence of its independent contractors. Thus, if a response action contractor sub-contracts a portion of the cleanup work to another party, and that other party "substantially deviates" from the approved plan, the common law regarding vicarious liability for the acts of independent contractors will determine whether that other party's "substantial deviation" will be imputed to the response action contractor.

*① think
end
Sentence
at "plan"
... as per
suggested.*

Finally, under Section 8 a "substantial deviation" will not result in a loss of limited liability if the deviation was previously authorized by the federal or state on-scene coordinator, or that coordinator's designee.

The second issue concerns the relationship of HB 196 to the amendments to AS 46.04.030 made by last year's HB 567. Under AS 46.04.030(K)(3)(C), a contingency plan holder must demonstrate that the equipment, personnel and other resources maintained outside of the plan holder's region of operation will be deployed and operating at the discharge site within 72 hours. At the same time, AS 46.04.030(1) provides that the benchmarks articulated in subsection (k) "do not constitute cleanup standards that must be met by the holder of a contingency plan." Nothing in HB 196 is intended to amend AS 46.04.030(1) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor. Similarly, since the requirements of subsection (k) do not constitute cleanup standards, the determination of a "substantial deviation" is keyed to the terms of an approved contingency plan and not subsection (k), except to the extent that a provision in the subsection has been incorporated into the contingency plan.

Under Section 11 of the bill, the Citizens Oversight Council on Oil and Hazardous Substances will review the issues presented by

Senate Oil & Gas Committee
Letter of Intent for CSMB 196 (Finance)
May 14, 1991

Page 2

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deletes "to 60 days (as Calif.) or whether any limit appropriate"

Post-It™ brand fax transmittal memo 7671		# of pages > 2
To Deborah Vogt	From JON TILLINGHAST	
Co. Cotton's Office	Cn. BIRCH HORTON	
Dept. 401, 546.6	Phone # 586-2890	
Fax # 465-4979	Fax #	

SENATE OIL & GAS COMMITTEE
LETTER OF INTENT
FOR CSHB 196 (Finance)
May 14, 1991

The Senate Oil & Gas Committee has considered CSHB 196 (Finance). The purpose of this letter of intent is to clarify two issues presented by that bill. *UNJUSTIFIABLE*

First, under Section 8 of the bill, a response action contractor loses its limited liability if it "substantially deviated" from an approved oil spill contingency plan that it either authored or agreed by contract to follow. "Substantially deviated" means a significant departure from the requirements of an approved plan by the executives, managers, incident commanders and employees of a response action contractor. *FUNDAMENTAL*

Under Section 8, the "substantial deviation" must be by the response action contractor in order for that response action contractor to lose its immunity. The legislation does not change the general common law rule that a person is ordinarily not responsible for the negligence of its independent contractors. Thus, if a response action contractor sub-contracts a portion of the cleanup work to another party, and that other party "substantially deviates" from the approved plan, the common law regarding vicarious liability for the acts of independent contractors will determine whether that other party's "substantial deviation" will be imputed to the response action contractor.

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Under Section 11 of the bill, the Citizens Oversight Council on Oil and Hazardous Substances will review the issues presented by

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Senate Oil & Gas Committee
Letter of Intent for CSMS 196 (Finance)
May 14, 1991

Page 2

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deletes "to 60 days (as Calif.) or whether any limit appropriate"

Post-It™ brand fax transmittal memo 7671		# of pages > 2
To Deborah Vogt	Via JON TILLINGHAST	
Co. Cotton's Office	Ch. BIRCH HORTON	
Dept. 401, 546.6	Phone # 586-2890	
Fax # 465-4979	Fax #	

Sam Otten

P.S. - I'll check
w/ the office at
6:00 - if you need
me to come back
this evening, leave
a message there
(on the recorder if
no body there).

DS

SENATE OIL & GAS COMMITTEE
LETTER OF INTENT
FOR CSHB 196 (Finance)
May 14, 1991

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Under Section 8, the "substantial deviation" must be by the response action contractor in order for that response action contractor to lose its immunity. The legislation does not change the general common law rule that a person is ordinarily not responsible for the negligence of its independent contractors. Thus, if a response action contractor sub-contracts a portion of the cleanup work to another party, and that other party "substantially deviates" from the approved plan, the common law regarding vicarious liability for the acts of independent contractors will determine whether that other party's "substantial deviation" will be imputed to the response action contractor.

Finally, under Section 8 a "substantial deviation" will not result in a loss of limited liability if the deviation was previously authorized by the federal or state on-scene coordinator, or that coordinator's designee.

The second issue concerns the relationship of HB 196 to the amendments to AS 46.04.030 made by last year's HB 567. Under AS 46.04.030(k)(3)(C), a contingency plan holder must demonstrate that the equipment, personnel and other resources maintained outside of the plan holder's region of operation will be deployed and operating at the discharge site within 72 hours. At the same time, AS 46.04.030(l) provides that the benchmarks articulated in subsection (k) "do not constitute cleanup standards that must be met by the holder of a contingency plan." Nothing in HB 196 is intended to amend AS 46.04.030(l) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor. Similarly, since the requirements of subsection (k) do not constitute cleanup standards, the failure to meet a provision of subsection (k) would not be a "substantial deviation" under HB 196 resulting in a loss of limited immunity.

Under Section 11 of the bill, the Citizens Oversight Council on Oil and Hazardous Substances will review the issues presented by

Senate Oil & Gas Committee
Letter of Intent for CSHB 196 (Finance)
May 14, 1991

Page 2

the legislation. It is this committee's expectation that the Council will review the 15-day time limit for limited immunity provided by this legislation, and assess whether that period ought to be extended to 60 days (as is the case in California), or whether any limit is appropriate. This committee also expects that the Council will assess whether the following definition of "substantially deviated" is a more appropriate definition of the term:

"In this section, "substantially deviated" means significant, unjustifiable and unauthorized departures from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor."

SENATE OIL & GAS COMMITTEE
LETTER OF INTENT
FOR CSHB 196 (Finance)
May 14, 1991

The Senate Oil & Gas Committee has considered CSHB 196 (Finance). The purpose of this letter of intent is to clarify two issues presented by that bill.

First, under Section 8 of the bill, a response action contractor loses its limited liability if it "substantially deviated" from an approved oil spill contingency plan that it either authored or agreed by contract to follow. "Substantially deviated" means a significant departure from the requirements of an approved plan by the executives, managers, incident commanders and employees of a response action contractor.

Under Section 8, the "substantial deviation" must be by the response action contractor in order for that response action contractor to lose its immunity. The legislation does not change the general common law rule that a person is ordinarily not responsible for the negligence of its independent contractors. Thus, if a response action contractor sub-contracts a portion of the cleanup work to another party, and that other party "substantially deviates" from the approved plan, the common law regarding vicarious liability for the acts of independent contractors will determine whether that other party's "substantial deviation" will be imputed to the response action contractor.

Finally, under Section 8 a "substantial deviation" will not result in a loss of limited liability if the deviation was previously authorized by the federal or state on-scene coordinator, or that coordinator's designee.

The second issue concerns the relationship of HB 196 to the amendments to AS 46.04.030 made by last year's HB 567. Under AS 46.04.030(k)(3)(C), a contingency plan holder must demonstrate that the equipment, personnel and other resources maintained outside of the plan holder's region of operation will be deployed and operating at the discharge site within 72 hours. At the same time, AS 46.04.030(1) provides that the benchmarks articulated in subsection (k) "do not constitute cleanup standards that must be met by the holder of a contingency plan." Nothing in HB 196 is intended to amend AS 46.04.030(1) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor. Similarly, since the requirements of subsection (k) do not constitute cleanup standards, the failure to meet a provision of subsection (k) would not be a "substantial deviation" under HB 196 resulting in a loss of limited immunity.

Under Section 11 of the bill, the Citizens Oversight Council on Oil and Hazardous Substances will review the issues presented by

the legislation. It is this committee's expectation that the Council will review the 15-day time limit for limited immunity provided by this legislation, and assess whether that period ought to be extended to 60 days (as is the case in California), or whether any limit is appropriate. This committee also expects that the Council will assess whether the following definition of "substantially deviated" is a more appropriate definition of the term:

"In this section, "substantially deviated" means significant, unjustifiable and unauthorized departures from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor."

SENATE SPECIAL COMMITTEE ON OIL AND GAS

LETTER OF INTENT -- CSHB 196 (Finance)

The Senate Special Committee on Oil and Gas has considered CSHB 196 (Finance), and submits this letter of intent to clarify two issues presented by that bill.

First, under section 8 of the bill, a response action contractor loses its limited immunity if, without approval by the federal or state on-scene coordinator, it "substantially deviated" from an approved oil spill contingency plan that it either authored or agreed by contract to follow. The committee considered defining "substantially deviated" along the lines suggested by Alyeska, set out at the end of this letter. The committee did not have the time to fully explore defining the term. The ~~reason that~~ the industry felt that the term "unjustifiable" should be included in the definition ^{because} ~~was that~~ they wanted to have the opportunity, in reviewing a deviation from a plan, to argue to a court that the action resulting in the deviation was the right action in the circumstances. However, others were concerned that "unjustifiable" might mean that any action for which there is any justification (in any person's mind) would not result in a substantial deviation, and thus could be read to render the contingency plan requirements of the bill ineffective. The committee believes that, under the bill, de minimus or ~~technical violations of the contingency~~ ^{would} ~~ought~~ not result in a "substantial deviation" finding, and that a "substantial deviation" will only occur when important, or material, requirements of the plan are violated. The committee determined not to attempt to define "substantially deviated" but rather to ask that the issue be included in the interim study.

The legislation does not change the general common law rule that a person is ordinarily not responsible for the negligence of its independent contractors. Thus, if a response action contractor sub-contracts a portion of the cleanup work to another party, and that other party "substantially deviates" from the approved plan, the common law regarding vicarious liability for the acts of independent contractors will determine whether that other party's "substantial deviation" will be imputed to the response action contractor.

This paragraph is somewhat superfluous since the whole issue of "employees" was taken out. Should it stay or go?

The second issue concerns the relationship of HB 196 to the amendments to AS 46.04.030 made by last year's HB 567. AS 46.04.030(k) sets out contingency plan response planning standards. At the same time, AS 46.04.030(l) provides that the benchmarks articulated in subsection (k) "do not constitute cleanup standards that must be met by the holder of a contingency plan." Nothing in HB 196 is intended to amend AS 46.04.030(l) or to create a cleanup standard that must be met by a holder of a contingency plan or a response action contractor. Similarly, since the requirements of subsection (k) do not constitute cleanup standards "substantial deviation" is determined by the terms of an approved contingency plan and not subsection (k), except to the extent that a provision of subsection (k) has been incorporated into the contingency plan.

Under section 11 of the bill, the Citizens' Oversight Council on Oil and Hazardous Substances will review the issues presented by the legislation. It is this committee's expectation that the Council will review the 15-day time limit for limited immunity provided by this legislation, and assess whether that period ought to be extended. The committee also expects the Council to study the issue of whether the phrase "substantially deviated" should be further defined. Among the options presented to the Legislature, but not incorporated in the bill, was the following proposed definition suggested by Alyeska:

In this section, "substantially deviated" means significant, unjustifiable and unauthorized departure from the fundamental requirements of a plan by the executives, managers and incident commanders of a response action contractor.

We might want to say:

~~"The committee"~~ "This language, if adopted, would have the effect of excluding the acts of employees of a response action contractor from acts that could lead to a substantial deviation. The committee expects that this issue will be addressed in the interim study."

Letter of intent

I. Definition of "substantially deviated"

A. Alyeska's magic language:

"substantially deviated" means a significant and unjustifiable departure from the fundamental requirements of a contingency plan.

B. Citizens' Oversight: Michelle said these words, plus "unauthorized", set a standard as high as or higher than criminal recklessness.

1. Counter offer on intent language by RCAC and Citizens' Oversight:

"substantially deviated" means a significant departure from the material requirements of an approved contingency plan.

C. Obviously, Tesoro would like Alyeska's language if indeed it solves the problem.

D. "Material" versus "fundamental" -- These words mean sort of the same -- but "material" has the advantage of being a word that courts are used to interpreting. A "material" term of a contract is one that the parties bargained for, and was necessary to their meeting of minds. "Fundamental" is probably stronger -- but (1) we don't really know what it means and (2)

E. "Unjustifiable" -- the citizens' groups are very much opposed to this word -- they argue that almost any act can be "justified", at least post-hoc. They tried -- with T'hast -- all kinds of substitutes, like "unwarranted" but were unable to come up with anything satisfactory.

F. My advice ("The advice of your attorney"): I think the RCAC/Citizens/Tesoro language is just fine. The only real "omission" from Alyeska's perspective is "unjustifiable" and I think it is well omitted.

- II. Employees/independent contractors:
- A. Alyeska: Has apparently given up on excluding field operations employees from people who can "substantially deviate". Thus, you should omit any reference to "executives, managers, incident commanders & employees"
 - B. The third paragraph of the draft intent letter -- dealing with the common law re vicarious liability -- is, in my view, expendable, since this is apparently no longer an issue. There is a fair amount of "legislative history" embodied in the testimony at yesterday's hearing.
- III. "Authorization of on-scene coordinator:
- A. The fourth paragraph of the draft simply restates what the bill says: the on-scene coordinator can override the C-plan requirements. I don't think its necessary to put anything in the letter on this subject, but it doesn't hurt anything.
- IV. Planning standards versus clean-up standards:
- A. The paragraph is OK, except for the original last sentence, which said that failure to meet the planning standards of 46.04.030(k) could not constitute "substantial deviation"
 - 1. The issue here is that sometimes the planning standards ARE ACTUALLY INCORPORATED INTO THE C-PLAN AS REQUIREMENTS, so folks didn't want to say that just because it is in (k), it can never result in substantial deviation.
 - 2. Solution: either:
 - a) Leave off entirely the last sentence in paragraph 5 (beginning "Similarly") or
 - b) Say: Similarly, since the requirements of subsection (k) do not constitute cleanup standards, "substantial deviation" is determined by the terms of the approved contingency plan and not subsection (k), except to the extent that the requirements of subsection (k) have been incorporated into the plan."
- V. Interim study:
- A. If you want to ask the Council to also study defining "substantially deviate", the citizens' groups did not want to imply that the definition proposed by Alyeska was a proposal of the committee.

VI Study issue of 15/30/60 done?

primary responder RACs or contingency plan holders to supply equipment and personnel.

- A. VECO
- B. VCRA
- C. Martech

Each of these firms are independent contractors with a RAC or a contingency plan holder to provide additional response resources. Frequently, pre-spill contractual arrangements are made for those supplies and services. For instance, Alyeska and CISPRI contract with VECO for resources. Contracts can also be entered into on the spot during a spill response. These firms neither control the response nor direct contingency plan compliance.

IV. Pinch Hitters - "Minor" players performing specific tasks during response activities.

- A. Contractual Services - These are individuals or groups which have a contractual arrangement in advance or on the spot to perform a discrete task as assigned. The contract can be with any of the other types of RACs or with the contingency plan holder or spiller. For example, Alyeska has contractual arrangements with fishing vessels to deploy boom and conduct oil containment activities during a spill response.
- B. Volunteers - These are individuals or groups who assist on their own initiative or on request by some spill response participant.

Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Bettye Fahrenkamp
Senator Lyman F. Hoffman
Senator Dick Shultz



P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

May 13, 1991

To: Members, Senate Oil and Gas Committee

From: Sam Cotten, Chair

Re: Change of Meeting Time

Because of the floor session tomorrow (Tuesday, May 14), the Senate Oil and Gas Committee will be meeting at NOON rather than at 10:30, as previously announced. The meeting will be in the Beltz Room, and we will take up H.B. 196 (Response Action Contractor Liability) and SJR 28 (Presidential Task Force on TAPS).

Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman
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Senator Dick Shultz



P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

April 24, 1991

To: Members of the Senate Oil and Gas Committee

From: Sam Cotten, Chair

NOTICE OF MEETINGS

1. The Oil and Gas Committee will be meeting on Friday at 9:30 in the Beltz Room to consider S.B. 263 (five day notice waived). The legislation would defer for one year compliance with last session's H.B. 567 for non-crude operations.

2. The confirmation of Lonnie Smith, commissioner of the Alaska Oil and Gas Conservation Commission, was referred to both the Senate Oil and Gas Committee and the Senate Resources Committee. As a result, our committee will be meeting jointly with the Senate Resources Committee on Monday, April 29, 1991 at 1:30 to consider that confirmation. The meeting will be in the Butrovich Room.

3. The Oil and Gas Committee will meet Tuesday, April 30 at 11:00 in the Beltz Room to consider S.J.R. 28, relating to the Presidential Task Force on the APS.

cc: Senate Secretary
Senate Records
Commissioner Lonnie Smith
Senator Lyman Hoffman
Senator Jay Kerttula

Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman

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Senator Dick Shultz



P. O. Box V, State Capital

Juneau, AK 99811

(907) 465-3711

April 8, 1991

To: Members, Senate Oil and Gas Committee

From: Sam Cotten, Chair

Attached is a draft bill on the subject of response action contractor liability that the committee will be reviewing on Thursday morning. The draft was put together by the proponents of the legislation (specifically, Tesoro and Conoco) with input from the Regional Citizen's Advisory Council.

The last section of the bill sets up a procedure for interim review of the issue, with a report to the legislature at the beginning of the next session. The structure of this review is left open, for the legislature to set up.

Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Bettye Fahrenkamp
Senator Lyman F. Hoffman
Senator Dick Shultz



P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

April 8, 1991

Paul M. Richards
Alyeska Pipeline Service Company
240 Main Street, Suite 800
Juneau, Alaska 99801

Dear Mr. Richards,

This Thursday, April 11, at 10:30, the Senate Oil and Gas Committee will be resuming its discussion of the issue of response action contractor liability. A new draft bill has been drafted by representatives of Tesoro, working with the Regional Citizens Advisory Council. It is attached for your review.

The committee will be reviewing this draft, and determining whether or not to submit a bill on this subject as a committee bill. Proponents of the legislation (Tesoro and Conoco) raise the issue of Alyeska's requirement of a \$1 billion direct action bond as one of the reasons for enacting legislation in this area. We will appreciate your company's comments in several areas.

First, please be prepared to address the rationale for Alyeska's bonding requirement. What went into the determination to set the bond requirement at its current level? What sorts of damages actions does Alyeska see that it might be liable for without bonding or legislative protection? Why did Alyeska determine that direct action bonding was required?

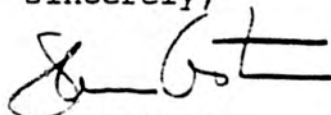
Second, please be prepared to address the draft legislation. Obviously, the committee will be interested in whether, if the bill were passed, Alyeska could reduce its bonding requirements to a level that Tesoro could meet. If the bill in its current form would not allow Alyeska to

substantially reduce its requirements, please comment on what changes in the legislation would, in your view, be necessary.

Finally, I understand that several shippers have dropped out of the TAPS trade in recent months. Please be prepared to address this issue: how the TAPS trade has changed in recent months, and what Alyeska perceives to be the reason or reasons for this change.

I appreciate your willingness to work with the committee on this issue.

Sincerely,

A handwritten signature in dark ink, appearing to be 'S. Cotten', with a stylized flourish at the end.

Sam Cotten
Chair

SC/dv

cc: Mary Nordale

Sam

UPDATE: Proposed letter of intent (no one looking for definition in statute any more)

Alyeska's magic language:

"substantially deviated" means a significant and unjustifiable departure from the fundamental requirements of a contingency plan.

Obviously, Tesoro would like the language if indeed it solves Alyeska's problem.

Counter offer on intent language by RCAC and Citizens' Oversight:

"substantially deviated" means a significant departure from the material requirements of an approved contingency plan.

Attached is a new draft of the intent letter, which is the product of the Tesoro folks working with the Citizens' and RCAC folks. New or changed parts are highlighted.

Alyeska has ~~not~~ responded to these changes
(to me, anyway)

D

Sam -

Status check:

H.B. 196: Rob Shoaf(?) of Alyeska just told Burden (and me) that if we put the words "unjustifiable" and "fundamental" into the definition, "that would go a long ways toward meeting our concerns, and we believe we'd be able to reduce the liability requirements". Those are, however, some of the words that Michelle said set a standard as high as or higher than criminal recklessness.

SJR 28: The DEC amendments: Kathy and I both feel that Mead's first proposed amendment

WHEREAS the economy of Alaska and the United States depend, in large part, on the continued safe production of hydrocarbon reserves already known to exist on Alaska's North Slope; and

broadens the scope of the resolution beyond its intended purpose -- maybe its an ANWR support section? -- and that it probably should not go in the resolution.

The other amendments look fine, but neither Kathy nor I have any idea if they are accurate -- that is, if the representations about the OPA etc. are true.

Kerttula is happy if you decide to do something and do it; or won't be upset if it just dies.

Deb

S B 163

-- We are meeting with BP tomorrow at 9:00.

-- Paul Quesnel thinks we should ask Sandor to be there -- that the story from Treadwell is not the same as the story we would get from Sandor. However, when Paul is pressed, he says Sandor's position is that he doesn't care if crude is included. As of today, that's what I hear from Mead. Anyway, I told Paul I would tell you he thinks Sandor should be there. Paul sez that Lyman is basically willing to follow your lead -- and defer to Cliff Davidson -- on including crude.

-- Environmental groups (RCAC, Citizen's, ACE) have all told me that they DO NO WANT CRUDE INCLUDED. They all seem to say that they could live with a non-crude deferral.

-- I finally found where the statute and regs set standards from non-crude terminal facilities. They are treated exactly the same. (Crude vessels are very different from non-crude)

-- Paul (without authority from his company) is floating out the idea of deferring the date (for all) until January 1. That way, (1) the regs would (maybe) be done; and (2) folks would be assured that this wasn't an attempt to get further legislative changes next session, since compliance would be before session started.

-- Molly is wondering what to do with all the amendments; it has crossed her mind to put all the DEC studies etc. in HB 196. I told her Gene Burden would LOVE that!

-- Several staffers have complained that they feel Drue is inappropriately claiming to state legislative intent on HB 567.

Don't let them keep passing the buck!

A better idea would be to turn this situation around and fix some responsibility. Reducing the complex, fragmented chain of responsibility and liability to something that can be understood by ordinary people might help.

One approach could be to mandate that Aleyska, as a common carrier engaged in the business of transporting an inherently dangerous substance, be charged with responsibility for the safe transport of oil to international waters. The costs of the insurance, equipment, procedures, and planning would become part of the tariff, and ratably charged to all buyers of oil through that mechanism.

Another, and more limited approach, would be to mandate a joint insurance agreement for the liability coverage, with the coverage and the premiums, reserves, and other requirements subject to the approval of the state director of insurance. This would at least provide a way to make sure that the insurance is really in force. It would also allow the director to examine the effect of the rates on the different carriers, to see if they are proportional, or fair, in a useful way.

In addition the recommendations of the Oil Spill Commission should be reviewed, preferably with the help of the chairman or some other active member or the commission.

Heresy as a mechanism for change-

Finally, it would be a break from tradition, and maybe heresy, but getting information on "how they do it outside" might free us from the sameness of always being the dummy in the game. Alaska has less information on how the oil business is conducted elsewhere in the world than any other producing jurisdiction on the globe.

Inviting in some knowledgeable people, say from the San Francisco port authority, or from the the North Sea Brent port of Sullom Voe, would no doubt give us some information and some backbone. Sending Alaska officials to those places is an even better idea, if they are not so timorous as to be afraid of the label "junket". That would change things, for the better!

OIL ON THE WATER AND LIABILITY

Who's in charge? A confusing situation:

The Exxon Valdez spill reminded everyone that there was no organization or agency with clear responsibility for anything, much less the job of prevention, containment, and clean-up. Unfortunately, this is still true today.

There is no government agency that has authority and responsibility to deal with the issues of marine transportation of oil in Prince William Sound, Cook Inlet, or Gastineau Channel. There is the federal government, with incomplete jurisdiction by the Coast Guard, the EPA, and the Department of Transportation. There is the state, with inadequate laws and enforcement mechanisms scattered among diverse agencies. There is the local government option, hardly if ever able to muster the will to exercise local zoning and police powers, and even then, usually cut off from the where-with-all to do so (Valdez's special tax zone was a case in point).

The responsibility for the hauling of oil is fragmented as well in the private sector. One company produces the oil, another moves it to tidewater, another ships it to its next port. At Valdez, Aleyska is almost a corporate fiction, being totally dominated by the major producers who own it, and who use it effectively as a screen for liability; Aleyska represents fragmentation of responsibility within the same "company". The various shippers represent a way to diffuse liability, and this is sometimes even diffused further to the crew, etc.

Financial liability is further fragmented by the bonding and insurance companies and arrangements. Insurance is not regulated at all in the federal level, and is a hodge-podge of conflicting and inadequate laws at the state level. Smaller states, like Alaska, get coerced by the large companies into weakening their laws on liability, and what regulation there is usually dominated by insurance industry groups and councils set up to "help" the insurance consumers (!).

These issues were all addressed in recommendations of the Oil Spill Commission established by the legislature and appointed by Governor Cowper. Unfortunately, these recommendations were either ignored or so diluted that the commission's time was just about wasted.

Give us relief!! ... a common plea...

Now we are faced with the prospect that the state is asked to further weaken their laws on liability because the Aleyska consortium is placing very large insurance requirements on very small companies, which are too costly and burdensome. Did we learn nothing from the industry negligence in the Exxon spill?

April 26, 1991

To: Sam
From: Ginny
RE.: Potential \$1 Billion Financial Liability Pool

This memorandum briefly summarizes my April 24 conversation with Steve Van Dyke, chairman of Maritram, an east coast tug and barge company (he also chairs about a half dozen other committees and corporations). As you know, Jerry Aspland, president of Arco Marine, suggested that we contact Mr. Van Dyke for information regarding a potential \$1 billion oil industry financial liability pool to satisfy the financial responsibility requirements of the federal Oil Pollution Act of 1990 (OPA 90).

Background

The Oil Pollution Act of 1990 requires proof of financial responsibility for the oil transportation industry to cover liability for spills. Specifically, OPA 90 requires \$1,200 per gross-weight tonnage (gwt) for tankers and \$600 per gwt for dry weight cargo. For large tanker vessels in the realm of 70,000 gwt such as the Exxon Valdez, this requirement translates to about \$80 million of liability coverage. The OPA 90 \$1,200 per gwt is considered the "first level" of proof of financial responsibility to directly satisfy the federal legislation.

However, as a result of large oil spill damage claims assessed in recent years against oil and tanker companies, most companies believe they need \$1 billion in insurance coverage to enable them to operate--this is considered the second level of coverage. Van Dyke specifically cites the Glacier Bay spill in Cook Inlet as justification for this belief. The Glacier Bay claims paid to date exceed \$30 million with claims still outstanding--and this is considered a "small" spill, 40,000 gallons. Van Dyke also states that an unrigorous analysis of 20 spills in the four to five years preceding OPA 90 indicates that oil spills cost industry in the realm of \$250-\$300 per gallon spilled in claim payments.

Status of \$1 Billion Pool

According to Van Dyke, the P & I pools that cover about 95 percent of the world's tanker fleet's liability insurance will not provide

coverage for the \$1,200 per gwt OPA 90 requirement let alone the \$1 billion pool. Van Dyke is actively meeting with other industry representatives this week attempting to find a solution to the \$1,200 per gwt problem. He is not at all optimistic about the \$1 billion pool. He is going to give me a status report on this week's meetings early next week.

The primary problem with insurance availability is that the increased level of oil spill liability exceeds the level affordable by the tanker transportation industry. According to Mr. Van Dyke, the annual total revenue of this industry is approximately \$1.3 billion. Van Dyke estimates that the cost of the OPA 90 financial responsibility standards is about \$0.20 per gallon of gasoline at the pump.

Relationship to Response Contractor Liability

After the passage of OPA 90, most states anticipated that the federal financial responsibility requirements would satisfy similar state requirements. The level of difficulty obtaining liability insurance for tanker vessels was not fully anticipated. While it is only indirectly related, response action contractor liability influences the availability of oil spill insurance coverage.

Theoretically, the increased number and competency of oil spill response contractors reduces the potential damage from oil spill--especially the amount of oil to hit beaches. However, if oil spill response contractors, or other good samaritans, are held liable for actions done in good faith, the number of responders will decrease while the cost of responding will increase.

Mr. Van Dyke uses an example from his own company to illustrate. One Maritram's tugs responded to a call of distress from a barge run on the rocks. The tug captain followed exactly the barge skipper's directions for moving the barge--which was not leaking while on the rocks. After moving off the rocks, the barge began to leak oil. Ultimately, the barge company tried to sue Maritram for \$15 million to cover the cost of the spill. As a result, Maritram's vessel in distress response policy is to rescue only endangered crew.

According to Van Dyke, good samaritan laws that reduce response contract liability to reasonable levels will ultimately increase the availability of liability insurance. In the meantime, the lack of insurance coverage as a result of legislated increases in oil spill damage liabilities, is likely to result in most of the large oil and tanker companies becoming self-insured while smaller tanker companies will go out of business.

AGENDA

STAFF WORKSHOP

RESPONSE ACTION CONTRACTOR LIABILITY

- ✓ I. Should we define "substantial deviation?"
- ✓ II. Strict liability if RAC is original spiller.
- ✓ III. Liability for secondary spill.
- ✓ IV. Definition of "response action."

V.

SENATE OIL AND GAS COMMITTEE

MAY 14, 1991

COMPARISON

H.B. 196 -- S.B. 270

HIGHLIGHTS

The differences between H.B. 196 and S.B. 270 are summarized as follows:

	S.B. 270	H.B. 196
1. Interim Report:	Legislative Review	Citizens' Oversight Council Review
2. Length of Immunity	30 days	15 days
3. Sunset	None	1 year

SENATE OIL AND GAS COMMITTEE

MAY 14, 1991

COMPARISON

H.B. 196 -- S.B. 270

Interim study

S.B. 270: Sec. 1

H.B. 196: Sec. 11

The Senate bill includes an intent section, contemplating interim review by the legislature, with a report back to the legislature by January 15, 1992. The study would encompass "the entire subject of response action contractor liability" as well as "an analysis of whether the present state [contingency plan] laws ... are adequate to protect the public in the event of an oil spill."

The House bill directs the Citizens' Oversight Council to conduct the same study, and adds a review of "the status of oil spill contingency plan holders" to the scope.

Strict liability for spillers

S.B. 270: Sec. 2

H.B. 196: Sec. 1

These sections are nearly identical; both delete the "damages" language from the section (in both, it is reenacted more broadly later). The House bill amends paragraphs 4 & 5 of the section to exclude response action contractors from the persons who would be strictly liable for damages resulting from transporting hazardous substances for disposal, or from accepting those substances for disposal.

Strict liability damages

S.B. 270: Sec. 3

H.B. 196: Sec. 3.

These sections are identical, and define damages under the strict liability section to include damage cause by a