

ALASKA LEGISLATURE COMMITTEE FILES 2012

1898 RES SB 36 - SB 84

PRESS RELEASE
SENATOR BETTYE FAHRENKAMP
APRIL 8, 1981

SENATOR BETTYE FAHRENKAMP (D-FAIRBANKS) ANNOUNCED TODAY THAT SHE EXPECTS THE PASSAGE OF SB 36 THIS WEEK BY THE SENATE. SB 36 WOULD ESTABLISH A CITIZENS' ADVISORY COMMISSION ON FEDERAL MANAGEMENT AREAS IN ALASKA.

SB 36 IS INTENDED TO AID THE CITIZENS OF ALASKA WHO ARE IMPACTED BY THE MANAGEMENT OF FEDERAL LAND IN THE STATE. THE DUTIES OF THE COMMISSION WILL INCLUDE THE REVIEW OF ANY REGULATIONS, MANAGEMENT PLANS OR POLICY STATEMENTS WHICH WILL AFFECT THE USE OF FEDERAL LAND IN ALASKA AND MAKE COMMENTS TO THE APPROPRIATE FEDERAL AGENCY. THE COMMISSION MAY ALSO RECOMMEND TO THE STATE ATTORNEY GENERAL THAT A SUIT BE FILED WHEN CONGRESSIONAL INTENT IS IGNORED OR THE BEST INTERESTS OF THE STATE ARE NOT SERVED BY THE FEDERAL AGENCIES INVOLVED IN THE MANAGEMENT OF FEDERAL LAND.

THE NEED FOR THE COMMISSION IS EVIDENT ACCORDING TO SENATOR FAHRENKAMP. IN A MEMORANDUM TO OTHER MEMBERS OF THE SENATE, SHE STATED "ON MANY OCCASIONS, FEDERAL LAND MANAGEMENT AGENCIES HAVE OVERSTEPPED THEIR LEGISLATIVE MANDATE AND BY DOING SO, HAVE IMPOSED GREAT HARDSHIPS ON PERSONS LIVING IN AREAS THEY MANAGE." THE SENATOR BELIEVES THAT THE COMMISSION, COMPRISED OF CITIZENS AND USERS OF THE FEDERAL LAND AREAS, WILL BE ABLE TO PREVENT SOME OF THE PROBLEMS THAT HAVE OCCURRED IN OTHER AREAS WHERE THE FEDERAL GOVERNMENT HOLDS LAND.

IN MINNESOTA, SIMILAR LEGISLATION WAS PASSED IN 1975, FIVE YEARS AFTER VOYAGER'S NATIONAL PARK WAS CREATED. THIS COMMITTEE HAS BEEN ABLE TO DEFUSE SOME OF THE BITTER FEELINGS AND HOSTILE ACTIONS BETWEEN THE CITIZENS OF THE AREA AND THE NATIONAL PARK SERVICE. THE COMMITTEE HAS EARNED THE RESPECT OF BOTH THE USERS AND MANAGERS OF THE PARK.

PRESS RELEASE
DRAFT

Senator Bettye Fahrenkamp, Chairman of the Senate Resources Committee, announced today that the Resources Committee will be holding teleconference hearings on SB 36, on Friday, February 13, starting at 1:30 PM Pacific time.

SB 36 is a bill introduced by Senator Fahrenkamp which will establish a Citizens Advisory Commission on Federal Management Areas in Alaska. The Commission is a temporary and independent body. Its primary duties will be to hold hearings and consider public policy on the management of federal lands within Alaska. The commission will make recommendations to agencies of both the state and federal governments.

A similar commission has been in existence in the State of Minnesota where the National Park Service and other federal agencies have land holdings. ~~Minnesota~~

Senator Fahrenkamp feels that it is vitally important to the people of the state that an independent body such as the commission be established to monitor federal regulations and policies affecting the various classifications of federal land in Alaska. "Since the federal government has responsibility over 100 million acres of land in Alaska," Senator Fahrenkamp stated "it is vital for us to know what they are doing. A body such as this commission will serve this function. It will give the governor, legislature and individual Alaskans the information that is needed to deal with the federal landholder."

~~Senator Fahrenkamp~~

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Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
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Senate

Committee on Resources

April 20, 1981
3:00 p.m.

Beltz Room
211 - Capitol

MEMBERS PRESENT

Senator Fahrenkamp
Senator Mulcahy
Senator Fischer
Senator Sturgulewski
Senator Gilman
Senator Eliason

HEARING:

CSHB 237 An Act amending the Alaska Agricultural Loan Act.

SB 49 An Act relating to limited entry to commercial fisheries.

SB 397 An Act establishing a Fishery Industrial Technology Center as part of the University of Alaska

CSSSSB 111 An Act relating to fishing, hunting and trapping license fees and fishing permits.

Senator Mulcahy, stated that SB 49 is an administration bill that was requested by the Limited Entry Commission. The Commission has asked that the time period in which a permit has to be used prior to the Commission initiating revocation proceedings be increased from 2 to 4 years.

Senator Mulcahy put forth the motion to move SB 49 with individual recommendations.

Senator Mulcahy, stated that SB 397 is the result of the recommendation by the University of Alaska. The University has been examining technological aspects of the fishing industry.

Senator Mulcahy put forth the motion to move SB 397 with individual recommendations.

SENATE RESOURCES COMMITTEE

April 20, 1981

Page: 2

The motion was made to hold CSHB 237 and CSSSSB 111 until the Committee's April 22, 1981 meeting.

The Committee adjourned at 3:30 p.m.



Alaska State Legislature

Senate

RESOURCES SUBCOMMITTEE ON FISHERIES

JUNEAU, ALASKA

April 15, 1981

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 49 "An Act relating to limited entry to commercial fisheries; and providing an effective date."

The subcommittee has taken testimony and reports SB 49 back to the committee as a whole with the following recommendations.

Members	Recommendation
Senator Mulcahy	<i>Do Pass</i>
Senator Eliason	<i>Do Pass</i>
Senator Gilman	<i>No Rec</i>



Alaska State Legislature

Senate

RESOURCES SUBCOMMITTEE ON FISHERIES

JUNEAU, ALASKA

April 15, 1981

Senate Resources Subcommittee on Fisheries meeting

The meeting was called to order by Chairman Mulcahy at 3:03 PM. All members of the committee were present.

First on the agenda was SB 49 "An Act relating to Limited Entry".

Commissioner John Williams, of the Commercial Fisheries Entry Commission, testified on SB 49. Commissioner Williams explained the bill to the committee.

SB 49 was moved with individual recommendations.

Next on the agenda was SB 397 "An Act creating a Fishery Industrial Center".

Don Rosenberg, Director of the Office of Fisheries and Alaska Sea Grant for the University of Alaska, testifies on SB 397. Mr. Rosenberg explained the bill, and the method in which the program would be set up.

SB 397 was moved with individual recommendations.

Next on the agenda was SSSB 111 "An Act relating to fishing hunting, trapping license fees".

Senator Eliason briefly explained SSSB 111.

Louis Bandirola, Deputy Director of the Division of Sport Fish of the Department of Fish and Game, testifies on SSSB 111.

SSSB 111 was moved with individual recommendations.

The meeting was adjourned by Chairman Mulcahy at 4:05 PM.



Alaska State Legislature

Senate

JUNEAU, ALASKA

RESOURCES SUBCOMMITTEE ON FISHERIES

Sectional Analysis of SB 49

Sec. 1: This section changes the period of time before an entry permit is forfeited because of failure to pay renewal fees from two years to four years. It also prohibits renewal of a permit until all fees are paid for previous years. It establishes that an administrative closure of a fishery for an entire year will waive the renewal requirement for that year.

Sec. 2: This section will change the method of allotting permits in the lowest priority classification. Under the present method, if there are too many people in the lowest priority for them all to be issued permits, a lottery must be held to determine who gets the permits. Under this bill, as long as the number of people extra is small-not over 10 people or 5% of the total number of permits-these few extra permits would be issued.

Sec. 3: This section clarifies the law concerning administrative revocation of permits. It applies present law concerning revocation to interim-use permits, and also to renewing permits.

Sec. 4 and 5: These sections will protect the state, under the Commercial Fishing Loan Act, and CFAB from losing if a permit that is being used for collateral is revoked by the commission or by the court. Under these sections, the permit can be reassigned in the same manner as if the loan was defaulted on.

Sec. 6: This section repeals the law that allows a permit to be revoked for an income tax violation involving income received from commercial fishing.

Sec. 7: This section gives an effective date of immediately.

The permit classification for SB 49 will work like this: If 100 permits are to be issued, and there are 80 people in the highest priority, these people will be issued permits. Now there are 20 permits left. If however, there are more than 20 people in the next classification, under present law, there would have to be a lottery. Under the proposed bill, as long as there is not over 5% or 10 people, whichever is greater, these few extra permits would be issued.

Sec. 16.43.140. Permit required. (a) After January 1, 1974, no person may operate gear in the commercial taking of fishery resources without a valid entry permit or a valid interim-use permit issued by the commission.

(b) A permit is not required of a crewman or other person assisting in the operation of a unit of gear engaged in the commercial taking of fishery resources as long as the holder of the entry permit or the interim-use permit for that particular unit of gear is at all times present and actively engaged in the operation of the gear.

(c) A person may hold more than one interim-use or entry permit issued or transferred under this chapter only for the following purposes:

- (1) fishing more than one type of gear;
- (2) fishing in more than one administrative area;
- (3) harvesting particular species for which separate interim-use or entry permits are issued. (§ 1 ch 79 SLA 1973)

Applied in *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Sec. 16.43.150. Terms and conditions of entry permit; annual renewal. (a) Each entry permit authorizes the permittee to operate a unit of gear within a specified administrative area.

(b) The holder of an entry permit shall have the permit in his possession at all times when engaged in the operation of gear for which it was issued.

(c) Each entry permit is issued for a term of one year and is renewable annually.

(d) Failure to renew an entry permit for a period of two years from the date of last renewal results in a forfeiture of the entry permit to the commission, except as waived by the commission for good cause.

(e) An entry permit constitutes a use privilege which may be modified or revoked by the legislature without compensation.

(f) An entry permit survives the death of the holder.

~~(g) An entry permit may not be:~~

- ~~(1) pledged, mortgaged, leased, or encumbered in any way;~~
- ~~(2) transferred with any retained right of repossession or foreclosure;~~
- ~~or~~
- ~~(3) attached, distrained, or sold on execution of judgment or under any other process or order of any court.~~

(h) Upon the death of an entry permit holder, the permanent permit shall be transferred by the commission directly to the surviving spouse by right of survivorship unless a contrary intent is manifested. When no spouse survives, the rights of the decedent pass as part of his estate. (§ 1 ch 79 SLA 1973; am §§ 1, 2 ch 73 SLA 1977)

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Effect of amendments. — The 1977 amendment added paragraph (14) to subsection (a). The 1978 amendment added paragraph (15) to subsection (a).

Article 3. Requirements for Entry Permits.

Section	Section
15. Terms and conditions of entry permit; annual renewal	170. Transfer of entry permits
16. Fees	160. Emergency transfers

Sec. 16.43.140. Permit required.

Quoted in Commercial Fisheries Entry Comm'n v. Apokedak, Sup. Ct. Op. No. 2011 (File No. 4464), 606 P.2d 1255 (1980).

Sec. 16.43.150. Terms and conditions of entry permit; annual renewal.

(g) Except as provided in AS 16.10.333 — 16.10.337 and in AS 44.81.230 — 44.81.250, an entry permit may not be:

- (1) pledged, mortgaged, leased, or encumbered in any way;
 - (2) transferred with any retained right of repossession or foreclosure; or
 - (3) attached, distrained, or sold on execution of judgment or under any other process or order of any court.
- (am § 6 ch 83 SLA 1978; am § 1 ch 51 SLA 1980)

Effect of amendments. — The 1978 amendment, added "Except as provided in AS 16.10.333 — 16.10.337" to the beginning of subsection (g). The 1980 amendment, effective June 1, 1980, inserted "and in AS 44.81.230 — 44.81.250" following "AS 16.10.333 — 16.10.337" in subsection (g). As the rest of the section was not affected by the amendments, it is not set out.

Sec. 16.43.160. Fees. (a) The commission shall establish annual fees for the issuance and annual renewal of entry permits or interim-use permits. The amount paid by a permit holder under the provisions of AS 16.05.480 shall be credited by the commission toward payment of the fee charged under this section. No more than one credit may be obtained annually by a person.

(b) Annual fees established under this section shall be no less than \$10 and no more than \$750 and shall reasonably reflect the different rates of economic return for different fisheries.

(c) The resident holder of an entry permit or interim-use permit who has a net family income falling within the Federal Community Services Administration poverty guidelines, adjusted by the commission to reflect appropriate cost-of-living differentials, is subject to a maximum annual fee of \$15. (§ 1 ch 79 SLA 1973; am § 15 ch 105 SLA 1977; am § 4 ch. 123 SLA 1978)

Alaska Statutes 16.05.340 through 16.05.650 and 16.05.670, referred to above, were repealed by § 19, ch. 25, SLA 1977, effective January 1, 1973.

Effect of amendment. — The 1974 amendment substituted "the qualification date established in (d) or (e) of this section" for "January 1, 1973" at the end of subsection (a).

Subsection (a) is unconstitutional. — Subsection (a), which limits applications for entry permits to persons holding gear licenses prior to January 1, 1973, violates the equal protection rights, guaranteed by the state and federal constitutions, of commercial fishermen who obtained gear licenses after January 1, 1973. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Holding a gear license before January 1, 1973, does not bear a fair and substantial relation to the purpose of the legislation, which is the segregation of hardship and nonhardship cases. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Because persons are automatically excluded from the class eligible to apply for permits, in spite of active participation and economic dependence upon the fishery, the January 1, 1973 classification is under-inclusive with respect to persons allowed to apply for permits. Because persons who have long since retired and have no economic dependence upon the

fishery, as of the cutoff date are allowed to apply for entry permits, the classification is overbroad with respect to those allowed to apply. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Purpose of provision in subsection (a) limiting applications. — In essence, the purpose of the provision in subsection (a) limiting applications for entry permits to those holding gear licenses prior to January 1, 1973, was to segregate hardship and nonhardship cases at the application phase of the permit issuance process. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Subsection (a) was not intended to modify the allocation policy of the legislation, but rather was adopted to further that policy by simplifying the ranking process. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

When the act is viewed as a whole, it becomes apparent that the contested provision in subsection (a) was inserted because it was assumed that those persons who obtained gear licenses after January 1, 1973, would be unable to demonstrate the requisite hardship for an entry permit. Hence, for the sake of administrative convenience, it was decided that they need not even submit applications to the commission. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Sec. 16.43.270. Initial issuance of entry permits. (a) The commission shall issue entry permits, for each fishery, first to all qualified applicants in the priority classifications designated under § 250(b) of this chapter and then to qualified applicants in order of descending priority classification, until the number of entry permits issued equals the maximum number of entry permits established under §§ 230 — 240 of this chapter for each fishery, except that no person within a priority classification specified under § 250(b) of this chapter may be denied an entry permit.

(b) If, within the lowest priority classification of qualified applicants to which some entry permits may be issued, there are more applicants than there are entry permits to be issued, then the allocation of entry permits within that priority classification shall be by lottery.

(c) If, at the time entry permits are issued, some applicants are still appealing the findings of an administrative adjudication under § 260 of this chapter, a sufficient number of permits shall be reserved out of the permits to be issued to protect the rights of those applicants, assuming all the appeals will be resolved in favor of the applicants. In the event that all appeals are not resolved in favor of the applicants, the remaining

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entry permits shall be allocated to the next most qualified applicants as provided in (a) and (b) of this section. (§ 1 ch 79 SLA 1973)

Article 5. Reduction to Optimum Number of Entry Permits.

Section	Section
290. Optimum number of entry permits	320. Administration of the buy-back program
300. Revisions of optimum number of entry permits	330. Issuance of new entry permits
310. Establishment of buy-back funds	

Sec. 16.43.290. Optimum number of entry permits. Following the issuance of entry permits under § 270 of this chapter, the commission shall establish the optimum number of entry permits for each fishery based upon a reasonable balance of the following general standards:

(1) the number of entry permits sufficient to maintain an economically healthy fishery that will result in a reasonable average rate of economic return to the fishermen participating in that fishery, considering time fished and necessary investments in vessels and gear;

(2) the number of entry permits necessary to harvest the allowable commercial take of the fishery resource during all years in an orderly, efficient manner, and consistent with sound fishery management techniques;

(3) the number of entry permits sufficient to avoid serious economic hardship to those currently engaged in the fishery, considering other economic opportunities reasonably available to them. (§ 1 ch 79 SLA 1973)

Sec. 16.43.300. Revisions of optimum number of entry permits. (a) The commission may increase or decrease the optimum number of entry permits for a fishery when one or more of the following conditions makes a change desirable considering the purposes of this chapter:

(1) an established long-term change in the biological condition of the fishery has occurred which substantially alters the optimum number of entry permits permissible applying the standards set out in § 290 of this chapter;

(2) an established long-term change in market conditions has occurred directly affecting the fishery, which substantially alters the optimum number of entry permits permissible under the standards set out in § 290 of this chapter.

(b) If the commission decreases the optimum number of entry permits for a fishery, the number of entry permits may be reduced only under the voluntary buy-back provisions set out in §§ 310 — 320 of this chapter. (§ 1 ch 79 SLA 1973)

Sec. 16.43.310. Establishment of buy-back funds. (a) When the optimum number of entry permits is less than the number of entry

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(b) A special harvest area entry permit may only be issued for the applicable area designated by the Department of Fish and Game as a special harvest area.

(c) The annual fee for a special harvest area entry permit shall be specified by commission regulation under the authority of AS 16.43.160. (§ 2 ch 64 SLA 1979)

Sec. 16.43.339. Disposition of fish. Fish caught under the authority of a special harvest area entry permit are the property of the permit holder. The permit holder may sell the fish if the proceeds are used in the manner described in AS 16.10.450. (§ 2 ch 64 SLA 1979)

Sec. 16.43.341. Authorized gear. For the purposes of harvesting salmon, a special harvest area entry permit holder may employ any fishing gear designated as legal gear in the applicable special harvest area by the Board of Fisheries. (§ 2 ch 64 SLA 1979)

Sec. 16.43.343. Adoption of regulations. (a) Use privileges granted under AS 16.43.335 — 16.43.341 are subject to the regulations of the Board of Fisheries.

(b) The commission, after consultation with the Department of Fish and Game, shall adopt regulations which are reasonably necessary to implement AS 16.43.335 — 16.43.341. (§ 2 ch 64 SLA 1979)

Article 6. General Provisions.

Section

355. Commission revocation of entry

permits

360. Penalties

see 3 amendments

Sec. 16.43.355. Commission revocation of entry permits. (a) The commission may revoke an entry permit if a person knowingly supplies, assists in supplying, or fails to correct false information provided to the commission for the purpose of

- (1) permit application; or
- (2) permit transfer.

(b) Before revocation, the commission shall serve the permit holder personally or by certified or registered mail with a notice to show cause why the proposed action should not take place. The notice to show cause must

(1) be supported by an affidavit which may be made on information or belief setting out the facts which are the basis of the proposed action;

(2) provide for at least 30 days notice of the place, date, and time of the hearing where the permit holder may present evidence in opposition to the proposed action; unless waived in writing by the permit holder, the hearing place shall be held within the judicial district in which the permit holder resides if the permit holder resides

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in the state; the hearing place shall be at the discretion of the commission for those permit holders residing outside the state;

- (3) specify the statutes or regulations violated;
- (4) state with particularity the action proposed to be taken;
- (5) indicate to the permit holder that his ability to permanently transfer the permit which is the subject of the revocation proceedings has been suspended as of the date of the notice and will continue to be suspended until the exhaustion of all administrative and judicial remedies; and
- (6) provide other information the commission considers proper.

(c) A permit subject to revocation proceedings under this section may not be transferred after the date of the notice in (b) of this section pending exhaustion of all administrative and judicial remedies arising from action taken under this section.

(d) The revocation hearing shall be conducted before a quorum of commissioners and shall be presided over by a hearing officer appointed by the commission who shall rule on the presentation of evidence and other procedural matters. Within a reasonable time after the conclusion of the hearing, the hearing officer shall submit to the attending commissioners a proposed decision based on the record of the hearing and containing findings of fact, conclusions of law, and recommended action. The attending commissioners shall then review the hearing officer's proposed decision and adopt or amend or reject the contents of the proposed decision in the written decision of the commission. A copy of the commission decision shall be mailed to each party or his attorney by certified or registered mail.

(e) The failure of a permit holder properly served under (b) of this section to appear at the hearing is not grounds for setting aside any commission action taken. However, the commission may in its discretion order a continuance or second hearing.

(f) The effective date of the commission decision under this section is the date of the notice to show cause first served upon the permit holder under (b) of this section.

(g) The provisions of this section do not apply to the permit of a person who is a bona fide purchaser.

(h) Judicial review of commission determinations under this section is in accordance with AS 44.62.560 — 44.62.570; however, if a hearing de novo is granted under AS 44.62.570(d), the hearing may, in the discretion of the court, be had with a jury sitting if application for the jury hearing is filed with the court no later than 10 days after service of the notice of appeal. (§ 6 ch 123 SLA 1978).

Sec. 16.43.360. Penalties. (a) A person who violates or assists in the violation of a provision of this chapter or a regulation promulgated under this chapter is, upon conviction, guilty of a misdemeanor and is punishable by a fine of not more than \$5,000 for a first conviction, and

certain type of gear. Holders of interim-use permits or entry permits issued under this chapter are subject to all regulations adopted by the Board of Fisheries. (§ 1 ch 79 SLA 1973; am § 31 ch 206 SLA 1975)

Effect of amendment. -- The 1975 Fisheries" for "Board of Fish and Game" amendment substituted "Board of in the first and second sentences.

Sec. 16.43.360. Penalties. (a) ~~A person who violates a provision of this chapter or a regulation promulgated under this chapter upon conviction, is guilty of a misdemeanor and is punishable by a fine of not more than \$5,000 for a first conviction; a fine of not more than \$10,000 for a second conviction; and, for a third conviction, a fine of not more than \$10,000 as well as forfeiture of all interim-use permits and entry permits held by him and permanent loss of eligibility for interim-use permits or for entry permits.~~ *New section is in Supplements*

(b) ~~A person who makes a false statement of a material fact in the application for an interim-use permit or an entry permit or in the application for a transfer under §§ 170-180 of this chapter, or a person who assists another by making a false statement of a material fact in support of the other person's application for issuance of an interim-use permit or an entry permit or transfer of an entry permit, upon conviction, is guilty of a misdemeanor and shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of five years.~~ *is supplements*

(c) If a permit holder is convicted of a violation of AS 43.20.335 and the violation relates to income derived from commercial fishing under this title, he shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of five years.

(d) If a permit holder is charged by the state with violating a provision of this chapter or a regulation adopted under this chapter, he may not transfer, under § 170 of this chapter, any interim-use or entry permit he may hold, until after the final adjudication or dismissal of the charges. (§ 1 ch 79 SLA 1973; am § 7 ch 73 SLA 1977)

Effect of amendment. -- The 1977 amendment added subsection (d).

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Sec. 16.43.370. Recommendations to the legislature. (a) The commission shall submit an annual report to the legislature. The report shall include but not be limited to the following:

(1) a progress report on the reduction of entry permits to optimum levels;

(2) recommendations for additional legislation relating to the regulation of entry into Alaska commercial fisheries.

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in the state; the hearing place shall be at the discretion of the commission for those permit holders residing outside the state;

(3) specify the statutes or regulations violated;

(4) state with particularity the action proposed to be taken;

(5) indicate to the permit holder that his ability to permanently transfer the permit which is the subject of the revocation proceedings has been suspended as of the date of the notice and will continue to be suspended until the exhaustion of all administrative and judicial remedies; and

(6) provide other information the commission considers proper.

(c) A permit subject to revocation proceedings under this section may not be transferred after the date of the notice in (b) of this section pending exhaustion of all administrative and judicial remedies arising from action taken under this section.

(d) The revocation hearing shall be conducted before a quorum of commissioners and shall be presided over by a hearing officer appointed by the commission who shall rule on the presentation of evidence and other procedural matters. Within a reasonable time after the conclusion of the hearing, the hearing officer shall submit to the attending commissioners a proposed decision based on the record of the hearing and containing findings of fact, conclusions of law, and recommended action. The attending commissioners shall then review the hearing officer's proposed decision and adopt or amend or reject the contents of the proposed decision in the written decision of the commission. A copy of the commission decision shall be mailed to each party or his attorney by certified or registered mail.

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(g) The provisions of this section do not apply to the permit of a person who is a bona fide purchaser.

(h) Judicial review of commission determinations under this section is in accordance with AS 44.62.560 — 44.62.570; however, if a hearing de novo is granted under AS 44.62.570(d), the hearing may, in the discretion of the court, be had with a jury sitting if application for the jury hearing is filed with the court no later than 10 days after service of the notice of appeal. (§ 6 ch 123 SLA 1978).

Sec. 16.43.360. Penalties. (a) A person who violates or assists in the violation of a provision of this chapter or a regulation promulgated under this chapter is, upon conviction, guilty of a misdemeanor and is punishable by a fine of not more than \$5,000 for a first conviction, and

a fine of not more than \$10,000 for a second or third conviction. Upon a third conviction, the person shall forfeit all interim-use and entry permits held by him and loses eligibility for future issuance or transfer of interim-use or entry permits for a period of three years. Upon a first or second conviction under this section, the court may in its discretion order a forfeiture of interim-use or entry permits held by him as well as a loss of eligibility for future issuance or transfer of interim-use or entry permits or order a suspension of fishing rights under interim-use or entry permits held or to be held by him for a period of not more than three years.

(b) A person who knowingly makes a false statement of fact in the application for or renewal of an interim-use permit or an entry permit or vessel license application or renewal or in the application for a transfer under AS 16.43.170 — 16.43.180, or a person who assists another by knowingly making a false statement of fact in support of the other person's application for issuance or renewal of an interim-use permit or an entry permit or vessel license is guilty of a misdemeanor and shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of three years and is punishable by a fine of not more than \$5,000.

(e) Notwithstanding any other provision of this section, no interim-use or entry permit may be transferred while under suspension, without the consent of the commission.
(am §§ 7 — 9 ch 123 SLA 1978)

Effect of amendment.

The 1978 amendment, in the first sentence of subsection (a), inserted "or assists in the violation of," "is" preceding "upon conviction," and "or third," substituted "and" for a semicolon following "for a first conviction" and deleted the language providing a penalty for a third conviction from the end of that sentence. The amendment also added the second and third sentences of subsection (a), and in subsection (b), inserted "knowingly" near the beginning and near the middle, "or renewal of" near the

beginning, "or vessel license application or renewal" near the beginning, and "or renewal" near the middle, deleted "a material" preceding "fact" near the beginning and near the middle, and substituted "vessel license" for "transfer of an entry permit, upon conviction" near the middle and "three years and is punishable by a fine of not more than \$5,000" for "five years" at the end. Moreover, the amendment added subsection (e).

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 16.43.380. Definitions.

Applied in *Yunker v. Alaska Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 1892 (File No. 145), 598 P.2d 917 (1979).

Cited in *State, Com. Fisheries Entry Comm'n v. Templeton*, Sup. Ct. Op. No. 1593 (File No. 40-2), 598 P.2d 77 (1979).

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incurred under (c) of this section. A loan under AS 16.10.370 may use up to 49 per cent of the proceeds of any outstanding loans of the borrower, if the outstanding loans are for the purposes described in AS 16.10.310. A loan is considered to be a loan to the borrower if the borrower is an "associate of the borrower"

organization of which the borrower is an officer or is, directly or indirectly, the beneficial owner of any class of equity securities; or is, directly or indirectly, the beneficial owner of 10 per cent or more of the equity securities of the borrower; or in which the borrower has a substantial interest in which the borrower serves as trustee or in

commercial fishermen who each satisfy the requirements of AS 16.10.310(a)(1)(A) may jointly obtain the construction of a fishing vessel or the purchase of a fishing vessel. Loans granted under this section shall be secured by a first priority lien and appropriate security

amount specified in (a)(1) of this section shall be provided by qualified commercial fishermen applying for a loan

of 15 years;

at a rate not exceeding nine and one-half per cent; and

the amount of the appraised value of the collateral shall not exceed 90 per cent of the appraised value of the collateral used to secure the loan.

AS 16.10.333(a) for the purchase of an entry permit for handtroll fisheries may not exceed 90 per cent of the appraised value of the collateral used to secure the loan.

AS 16.10.310(a)(1)(A), the department may not issue an entry permit for handtroll fisheries until July 1, 1978; am § 3 ch 54 SLA 1973; am § 3 ch 154 SLA 1977; am § 3 ch 83 SLA 1978;

loans granted under this subsection shall bear interest at a rate not to exceed eight per cent if the commissioner determines that an increase in the interest rate is necessary for the security of the loan" from the end of paragraph (4) of subsection (c) of Sections 3, 5, and 7 of ch. 72, retroactive to July 1, 1978, added the language beginning "except that a loan granted

under AS 16.10.333" to the end of paragraph (5) of subsection (a), rewrote the first sentence of subsection (d), added the present second sentence of subsection (d), and added subsections (f) and (g).

Editor's note. — Section 71, ch. 106, SLA 1980, effective June 21, 1980,

provides that after July 1, 1981, "no further loans may be made under AS 16.10.310 and 16.10.320(a) except for loans authorized under AS 16.10.333 pursuant to AS 16.10.310 and 16.10.320(a)."

Sec. 16.10.330. Sale or transfer of mortgages, bonds and notes.

Repealed by § 14 ch 122 SLA 1980, effective July 1, 1980.

Editor's note. — The repealed section was derived from § 1, ch. 134, SLA 1972; § 4, ch. 54, SLA 1973; § 1, ch. 177, SLA 1976; § 8, ch. 72, SLA 1979.

Sec. 16.10.333. Loans for purchase of Alaska limited entry permits. (a) Loans under AS 16.10.320(a) may be made to an individual commercial fisherman for the purchase of a limited entry permit upon certification by the commissioner that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commissioner.

(b) Upon approval by the commissioner, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the commissioner as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit, and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the department in administering the loan.

(c) The commissioner is not liable for any act or omission resulting from permit ownership nor will that act or omission affect his title to the permit or his rights under it.

(d) Upon satisfaction of the note by the debtor, the commissioner shall certify to the commission that the note has been satisfied.

(e) Upon certification, as provided in (d) of this section, the commissioner shall amend the permit certificate to list the debtor as the legal owner.

(f) In determining whether an individual commercial fisherman is reasonably likely to be able to repay a loan made under this section, the commissioner shall consider the individual commercial fisherman's income from commercial fishing and from all other sources. (§ 4 ch 83 SLA 1978; am § 1 ch 106 SLA 1980)

Effect of amendment. — The 1980 amendment, effective June 21, 1980, added subsection (f).

Sec. 16.10.335. Default and foreclosure. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 16.10.333 or under AS 16.10.338, the commissioner shall provide the debtor, by registered or certified mail sent to his known address on file with the commissioner, with a notice of default which includes

- (1) a description of the security given for the note including the number assigned to the pledged permit by the commission;
- (2) the date upon which the default occurred;
- (3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;
- (4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;
- (5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;
- (6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;
- (7) the place where reinstatement or payment in full may be made; and
- (8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his interest in the permit is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the commissioner. (§ 4 ch 83 SLA 1978; am § 9 ch 72 SLA 1979)

Effect of amendment. — The 1979 amendment, retroactive to July 1, 1978, inserted "or under AS 16.10.336" in the introductory language of subsection (a)

and substituted "his interest in the permit" for "his equitable interest" in the first sentence of subsection (b).

Sec. 16.10.337. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 16.10.335, the commissioner shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS

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16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the department directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the department shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 16.10.333(a). If qualified, he may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who must assume the note subject to all rights and liabilities of the original debtor. The commission shall provide the commissioner with a list of persons chosen by lottery who qualify as transferees of entry permits under AS 16.43 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 16.10.310(a). The commissioner then shall determine, in order of presentation, any remaining qualifications. The commissioner shall allow the first applicant meeting all qualifications to assume the note.

(d) Nothing in this section affects the right of the commissioner to institute legal action for a deficiency resulting from a default on a note given under AS 16.10.333. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 4 ch 83 SLA 1978)

~~Sec. 16.10.338. Entry permits as collateral. Alaska limited entry permits may be used as security for loans under AS 16.10.310(a). The provisions of AS 16.10.335 and 16.10.337 apply to Alaska limited entry permits pledged as security for loans in accordance with this section. (§ 10 ch 72 SLA 1979)~~

~~Sec. 16.10.330. Regulations. The commission, with the approval of the department, shall adopt regulations to implement AS 16.10.333 — 16.10.337. (§ 4 ch 83 SLA 1978)~~

~~Sec. 16.10.342. Special account established. (a) There is established as a special account within the commercial fishing revolving loan fund the foreclosure expense account.~~

~~(b) The commissioner may credit the foreclosure expense account with money earned as a result of an increased interest rate on a commercial fishing loan granted under AS 16.10.320(c).~~

~~(c) The commissioner may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans granted under AS 16.10.300 — 16.10.370 or to~~

before January 1, 1955, under ch. 115 SLA 1949, as amended before March 28, 1955. (§ 4 ch 115 SLA 1949; am § 1 ch 188 SLA 1955)

Sec. 43.20.320. Arrangement and classification. No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of a particular section or provision or portion of this chapter, nor may the descriptive matter or headings relating to part, section, subsection or paragraph be given legal effect. (§ 2 ch 115 SLA 1949)

Sec. 43.20.330. Penalties.

Repealed by § 3 ch 169 SLA 1972.

Editor's note. — The repealed section derived from § 18, ch. 115, SLA 1949; § 1, ch. 110, SLA 1955; § 1, ch. 139, SLA 1962.

Sec. 43.20.335. Penalties. (a) A person who wilfully attempts to evade the tax imposed by this chapter is, in addition to other penalties provided by this chapter, guilty of a felony and, upon conviction, shall be fined not more than \$5,000, or imprisoned for not more than five years, or both.

(b) A person required under this chapter to collect, account for, and pay over the tax imposed by this chapter who wilfully fails to collect or truthfully account for and pay over the tax is, in addition to other penalties provided by this chapter, guilty of a felony and, upon conviction, shall be fined not more than \$10,000, or imprisoned for not more than five years, or both.

(c) A person required under this chapter to pay a tax, make a return, keep records, or supply information, who wilfully fails to pay the tax or estimated tax, make the return, keep the records, or supply the information, is, in addition to other penalties provided by this chapter, guilty of a misdemeanor and, upon conviction, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

(d) A person who wilfully makes and subscribes a return, statement, or other document required under this chapter which contains or is verified by a written declaration that it is made under the penalties of perjury which he does not believe to be true and correct as to every material matter is, in addition to other penalties provided by this chapter, guilty of a felony and, upon conviction, shall be fined not more than \$5,000, or imprisoned for not more than three years, or by both.

(e) A person who wilfully and knowingly aids or assists in, or procures, or counsels the preparation or presentation in connection with any matter arising under this chapter of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter is guilty of a felony whether or not the falsity or fraud is with the knowledge or consent of the person required to present the return,

affidavit, claim, or document, and, upon conviction, shall be fined not more than \$5,000, or imprisoned for not more than three years, or both.

(f) A person who wilfully delivers or discloses to the commissioner or the department under this chapter any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter shall be fined not more than \$1,000, or imprisoned for not more than one year, or both.

(g) A person required to collect or truthfully account for a tax imposed by this chapter who wilfully fails to collect the tax or to truthfully account for and pay over the tax, or wilfully attempts in any manner to evade the tax or the payment of it is, in addition to other penalties provided by law, liable to a civil penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. This penalty is in place of the tax not otherwise paid to the state. The civil penalty shall be paid upon demand by the commissioner or his designee, and shall be assessed and collected in the same manner as taxes are assessed and collected under this chapter. Any reference in (a) — (f) of this section to "tax" imposed refers also to the civil penalty provided under this subsection.

(h) In this section "person" includes, but is not limited to, an officer or employee of a corporation or a member or employee of a partnership, who as officer, employee, or member is under a duty to perform the act in respect to which the violation occurs.

(i) A person required to supply information to his employer under § 170 of this chapter who wilfully supplies false information, or who wilfully fails to supply information under that section which would require an increase in the tax to be withheld under that section, is, in addition to other penalties specified in this chapter, guilty of a misdemeanor and upon conviction, is punishable by a fine of not more than \$5,000, or imprisonment for not more than one year, or by both.

(j) The penalties and liabilities provided in (g) of this section shall be paid upon notice and demand by the commissioner of revenue or his deputy or agent and shall be assessed and collected in the same manner as taxes. A reference to "tax" imposed also refers to the penalties and liabilities provided by this section. (§ 1 ch 169 SLA 1972; am § 48 ch 127 SLA 1974; am §§ 1, 2 ch 41 SLA 1975; am § 11 ch 70 SLA 1975)

Effect of amendments. — The 1974 amendment deleted "together with the costs of prosecution" from the end of subsections (a) — (e).

The first 1975 amendment added the third and fourth sentences of subsection (g) and added subsection (i).

The second 1975 amendment, effective May 20, 1975 added subsection (j).

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 517 am S), see 1974 House Journal, p. 657.

Am. Jur. 2d reference. — 71 Am. Jur. 2d, State and Local Taxation, §§ 696, 697.

Sec. 43.20.340. Definitions. In this chapter

(1) "bank" means a financial institution including a national banking association;

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the terms of its bylaws and subject to the provisions of AS 10.15.005 — 10.15.600. (§ 3 ch 159 SLA 1978)

Sec. 44.81.230. Loans for purchase of Alaska limited entry permits. (a) A loan under AS 44.81.210(20) for the purchase of a limited entry permit may be made only upon certification by the commission that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the bank, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the bank as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the bank in administering the loan.

(c) Upon satisfaction of the note by the debtor, the bank shall certify to the commission that the note has been satisfied.

(d) Upon certification as provided in (c) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner. (§ 5 ch 53 SLA 1979; am §§ 11—13 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment substituted "commission" for "Alaska Commercial Fisheries Entry Commission (AS 16.43.020)" in subsection (a), deleted "the executive director of" following "permit lists" in paragraph (1) of subsection (b), and substituted "bank" for "executive director" in subsection (c).

Sec. 44.81.240. Default and foreclosure of loans for limited entry permits. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 44.81.230, the bank shall provide the debtor, by registered mail or certified mail sent to his last known address on file with the bank, with a notice of default which includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

(6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;

(7) the place where reinstatement or payment in full may be made; and

(8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his equitable interest is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the bank. (§ 5 ch 53 SLA 1979; am § 14 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment deleted "the executive director of" preceding "the bank" near the middle of the introductory paragraph of subsection (a) and near the end of subsection (b), and substituted "commission" for "Alaska Commercial Fisheries Entry Commission" at the end of paragraph (1) in subsection (a).

Sec. 44.81.250. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 44.81.240, the bank shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the bank directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the bank shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 44.81.230(a). If qualified, he may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who shall assume the note subject to all rights and liabilities of the original debtor. The commission shall provide the bank with a list of persons chosen by lottery who qualify as transferees of entry permits under AS

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16.43 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 44.81.210(20). The bank shall then determine, in order of presentation, any remaining qualifications. The bank shall allow the first applicant meeting all qualifications to assume the note.

(d) Nothing in this section affects the right of the bank to institute legal action for a deficiency resulting from a default on a note given under AS 44.81.230. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 5 ch 53 SLA 1979; am §§ 15—17 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment, in subsection (a), deleted "the executive director of" preceding "the bank" near the beginning of the subsection and substituted "commission" for "Alaska Commercial Fisheries Entry Commission" near the beginning of the subsection. The amendment also substituted "commission" for "Alaska Commercial Fisheries Entry

Commission" in the second sentence in subsection (c), deleted "executive director of the" preceding "bank shall" in the third sentence in subsection (c), substituted "bank" for "executive director" in the last sentence in subsection (c), and deleted "the executive director of" preceding "the bank" near the beginning of subsection (d).

Sec. 44.81.350. Definitions. In this chapter

- (1) "bank" means the Alaska Commercial Fishing and Agriculture Bank;
- (2) "commission" means the Alaska Commercial Fisheries Entry Commission (AS 16.43.020);
- (3) "member of the bank" includes a holder of a share of membership stock of the bank or a patron of the bank with retained patronage earnings of \$2,500 or more to his credit;
- (4) "supplier" means a person whose main source of income is from providing goods or services that are directly related to commercial fishing or agriculture to individuals, corporations, partnerships or joint ventures engaged in commercial fishing or agriculture. (§ 18 ch 51 SLA 1980)

Chapter 82. Alaska Gas Pipeline Financing Authority.

Section	Section
10. Creation of authority	110. Legislative approval
20. Membership	115. Nomination of a member of the board
30. Officers and quorum	120. Trust indentures and trust agreements
40. Compensation	130. Nonliability on bonds
50. Staff	140. Pledge of the state
60. Legal counsel	150. Exemption from taxation
70. Purpose of authority	160. Bonds legal investments for fiduciaries
80. General powers	170. Regulations
90. Bonds of the authority	180. Annual audit
100. Submission of financial and Alaska impact plan	

TO: Senator Bob Mulcahy

DATE : February 9, 1981

FROM: Robert J. Simon *Robert J. Simon*
Chairman
Commercial Fisheries Entry
Commission

SUBJECT: SB 49--Relating to Limited
Entry

You have asked that we comment on the above referenced bill which was introduced at the request of the Governor. The bill, if enacted, would provide for six technical changes in the Limited Entry law. The changes are discussed below:

*Sec. 1: The section changes the automatic forfeiture provisions of the Act for failure to pay the renewal fees from two to four years, and adds clarifying language which specifies when fees are not payable or are reimbursable.

Presently, a fisherman unknowingly forfeits his entry permit simply by not paying the renewal fees for two years. Each year the Commission allocates considerable resources to advertising in papers and mailing hundreds of certified letters in an attempt to inform permit holders of the impending loss of their permit. The primary group of fishermen affected by the workings of this section are residents of rural Alaska. The two year forfeiture provision has no overriding policy implications which would be affected by this requested change. Substituting four years for the present language should, we feel, eliminate nearly all of the unintended permit forfeiture. We expect each fisherman (or his estate if he should die) will be in touch with the Commission at least once in each four year period and will thereby become aware of any fee arrearages.

The added language provides statutory clarification of what delinquent fees are due and payable if permits are renewed in years after fees were initially due. It would also specify circumstances (e.g., closure for an entire season) which would waive the renewal requirement.

*Sec. 2: The present law (which this would amend) specifies procedures that the Commission is to use when the number of permits left to issue in a fishery undergoing limitation is smaller than the number of similarly situated applicants who are next in line for issuance. The present procedure is to utilize a lottery. The amendment would continue that practice, except in two instances: (1) if the resultant overissuance from giving everyone at the next point level a permit is less than

five percent of the maximum number established for that fishery; or (2) if the resultant overissuance would not be greater than ten permits. The language specifies that the greater of either of these possible exceptions would be used.

*Sec. 3: The section would amend the portion of the Limited Entry Act that provides for administrative revocation of permits. Present language is unclear as to the scope of this power. The amendment would clearly apply the provisions of the present law to instances involving both entry and interim-use permits and to permit renewals as well as permit applications.

*Secs. 4 and 5: The amendments requested in these two sections would protect the interests of lenders who hold permits as collateral in the event that such a collateralized permit were revoked either by the Commission or a Court. Presently, should a permit be revoked either by the Commission under AS 16.43.355 or by a Court under AS 16.43.360, it is retired forever and not reissued. Present law does not provide any means to reissue a revoked permit without the Commission first formally determining that the number of outstanding permits for that fishery is less than optimum.

Current law provides for the State of Alaska and the Commercial Fishing and Agriculture Bank to use permits as collateral. The amendment would allow the Commission in conjunction with the aforementioned lenders to reassign the interests in a mortgaged permit if one should be revoked.

*Sec. 6: The section would repeal AS 16.43.360(c), which provides for the revocation of an entry permit if the holder is convicted of an income tax law violation involving income derived from commercial fishing. Since the State's personal income tax has now been repealed, that provision is no longer operable.

We hope you find these brief comments to be of assistance. Please do not hesitate to ask if we may be of further assistance.

JAN 29 1981

OF COUNSEL
M. E. MONAGLE

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

A PROFESSIONAL CORPORATION

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MICHAEL T. THOMAS
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PAUL M. HOFFMAN
J. P. TANGEN
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HAROLD E. SNOW, JR.
PAMELA L. FINLEY

January 28, 1981

JUNEAU OFFICE

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TELEX 099-46-376

The Honorable Bettye Fahrenkamp
Chairman, Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 49

Dear Senator Fahrenkamp:

I am writing in regard to Section 3 of the referenced bill which would allow the Limited Entry Commission to revoke an entry permit if a person knowingly supplies, assists in supplying, or fails to correct false information provided to the Commission for the purpose of, among other things, a permit renewal.

From my own practice, it appears that a majority of the revocation proceedings and investigations involve questions of residency. I know of at least one case where the Commission has used a claim of residency on a permit renewal as a basis for issuing a show cause order under AS 16.43.355, even though the statute at that time did not authorize the Commission's doing so. I urge the Legislature to consider the matter carefully before giving the Commission the authority it seeks, especially in light of the legislative history of AS 16.43.355 which indicates that at least one legislator, while generally supporting the Act, indicated that a person should not lose a permit (now valued at up to \$100,000 in some cases) for "checking the wrong box."

The renewal forms before 1980 had no definition of residency except a definition which was made for the purpose of determining whether the applicant was within federal poverty levels. The 1980 renewal forms did contain a definition of resident, which required a person claiming residency not to be registered to vote in another state and

The Honorable Bettye Fahrenkamp

January 28, 1981

Page Two

to have "maintained a permanent place of personal abode within the state" during the previous 12 months. Even this definition, while better than none, may be confusing to a person who has a permanent residence in Alaska but spends substantial time Outside fishing, travelling, outfitting his or her vessel or even taking a temporary job. It may also be confusing to the fisherman who lives on his boat and travels from place to place throughout the year, but also considers Alaska to be his home and is registered to vote here. The real problem in short is that "residency" is a rather slippery legal concept to begin with and becomes even slipperier when applied to people who travel in the off-season and are not, in general, particularly adept at dealing with bureaucracies.

Furthermore, what is at stake here is not simply a person's right to earn his or her livelihood. Even if the Commission does not ultimately revoke a permit, a person issued a show cause order has to hire an attorney, and cannot transfer the permit during the pendency of the hearing, which can be up to one year or more. (It is my understanding that the Commission has recently issued a directive that the hearing officer make a recommended decision within 45 days after the record closes; however, the time between the issuance of the show cause order and the closing of the record can be quite extensive in factually complex cases.) Furthermore, fishermen who are being investigated by the Commission, but who have not been issued show cause orders may be justifiably reluctant to make a contract to transfer their permits for fear that the Commission will issue a show cause order when the transfer is requested and the permit holder will not be able to fulfill his contract.

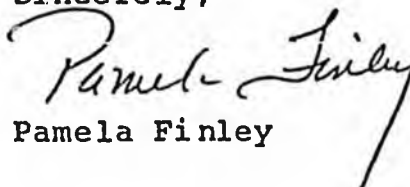
Given the difficulties a fisherman may have in deciding whether or not he or she is a "resident" and the consequences of a revocation, or even a hearing, or even an investigation, I would hope that the Legislature would not make information provided on a permit renewal form grounds for revoking an entry permit. It is certainly reasonable to require a person who doesn't pay a non-resident fee when he or she should, to pay back the amount plus a substantial amount to cover administrative costs. Forfeiture of a permit, however, is a serious penalty.

The Honorable Bettye Fahrenkamp
January 28, 1981
Page Three

If information provided on permit renewal forms is to be used as a basis for revoking a permit, it should be made very clear in the statute that no information given on a renewal form before the effective date of the amendment can be used as a basis for revoking a permit. Such an explicit statement by the Legislature should avoid any litigation concerning this issue, and will protect those people who filled out renewal forms when there was no definition of "residency" provided to them. The amendment should also require "resident" to be defined in such a way that the most unsophisticated person will be able to understand it. It could, for instance, require a person to be a registered voter in no other State at the time of renewal and physical presence within the State or State waters for a definite number of months within the year preceding application for renewal, if such a requirement would be constitutional. If the Commission is to revoke permits based on inaccurate claims of residency, the applicant should at least be given a very clear definition of "resident" and fair warning of the consequences of false information.

Thank you for your time.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Finley". The signature is written in dark ink and is positioned above the typed name.

Pamela Finley

PLF:sd

January 12, 1981

President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making several changes in the Limited Entry Act. The first section of the bill would increase from two to four the number of years that a permit-holder may fail to renew his entry permit before it is revoked by the commission, and makes it clear that all fees for years during which the permit was not renewed must be paid before the permit may be renewed. The two-year forfeiture under existing law works a substantial hardship on residents of the rural areas of the state. The commission has spent considerable time and effort to contact permittees who are in danger of forfeiting their entry permits. The section also would make it clear that a person is not required to renew his entry permit in a year in which there is an administrative closure for an entire season.

The Limited Entry Act provides that if the commission has some permits to issue to a priority classification, but not enough for all applicants in that classification, the entry permits will be issued by lottery. Section 2 of the bill would provide that the commission may issue entry permits to all applicants in the classification if the maximum number of permits established for the fishery would be exceeded by a very few permits. For example, if there were 100 entry permits available to issue, and there are 102 applicants in the classification, 102 permits would be issued. Section 3 of the bill would make it a ground for revocation to supply false information to obtain an interim-use entry permit and to supply false information in a request for renewal of an entry permit. Existing law applies only to entry permits, and applications for entry permits.

Sections 4 and 5 of the bill would protect a lending institution which holds an entry permit as security for a commercial fishing loan if the permit is revoked for any

reason specified in AS 16.43.355 or forfeited under AS
16.43.360.

Sincerely,

S/SSH

Jay S. Hammond
Governor

S

B

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3

SENATE AMENDMENT

By Resources Committee

To: _____ SENATE BILL No. 83

To: _____ HOUSE BILL No. _____

PAGE: 1 LINE: 27-28

Line 27: After the word "area" insert a semi-colon (;)

Line 27-28: Insert a additional sub-section (D)

"(D) the cutting of dead and down or burnt timber."

Amendment 2

SENATE AMENDMENT

By Resources Committee

To: _____ SENATE BILL No. 23

To: _____ HOUSE BILL No. _____

PAGE: 1

LINE: 21-22

Line 21: Delete "or"

Line 22: Delete "restrict"

Amendment 1

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

March 11, 1981
1:30 p.m.

Beltz Room
211 - Capitol

MEMBERS PRESENT

SENATOR FAHRENKAMP
SENATOR FISCHER
SENATOR GILMAN
SENATOR BRADLEY
SENATOR STURGULEWSKI

Teleconferenced Hearing:

SB 83 "An Act restricting the authority of the Department of Natural Resources to regulate certain activities in state recreation areas."

Ivan Resek, Alaska Miners Association, Sitka, stated that he supports SB 83 and liked the provision giving the Commissioner some latitude because each Park is different.

Charles Vogel, Fairbanks, stated that he has trapped in the Chena recreation area for years. He would like to see a permit system for traditional uses and a citizen advisory committee, like in SB 36, for cabin permits.

Byron Haley, Vice-President, Tanana Valley Sportsman Association, stated that the Association supported the original concept of the Chena recreation area but they had no idea of the restrictions that would be placed on the area. He said he wholeheartedly supported SB 83.

Dan Coben, Sr., stated that he has mined in the Chena area for 30 years. His main concern with the recreation area is; he has claims in the area that he can not get to because he can not obtain a permit to cross a certain stream.

Howard Gray, Executive Director, Alaska Miners Association, Anchorage, stated that the increase in state park lands has increased problems of ingress and egress. He said there is a need to recognize traditional overland and water bound access routes if there is going to be the development of the state's

SENATE RESOURCES COMMITTEE

March 11, 1981

Page: 2

resources. He stated that he supports SB 83 because it provides for sound and reasonable development.

Jim Fuksa, Fairbanks, stated that the federal and state governments are now doing everything in their power to discourage mining. He said that it is un-American to require citizens to obtain permits to cross their public lands. He recommended that the Committee pass SB 83.

Donald May, Alaska Miners Association, Fairbanks, stated that he supports SB 83.

Rick Swainback, Fairbanks, stated that he wholeheartedly supports SB 83 and hopes it passes. He said that he supports properly managed park systems. Parks should be managed in such a fashion that people can use the park.

Fred Heflinger, stated that he supports SB 83 because it helps assure that recreation areas can be used by the people.

Ron Davis, Fairbanks Chamber of Commerce, stated that the Board had just passed a resolution encouraging the legislature to adopt SB 83.

Phil Holdsworth, Juneau, stated that he supports SB 83 because it clearly protects the various uses in recreation areas.

Steve Cook, Fairbanks, stated that he has worked seasonally, for one year, for the Division of Parks. He said that the miners have all the necessary permits they need for the stream crossing from the Department of Fish and Game. He said when the Chena Park was created everyone supported it.

Tom Owen, Fairbanks, stated that he supports the provisions of SB 83 because it provides for orderly development without causing irreversible damage.

Senator Gilman put forth the motion to move SB 83 with individual recommendations.

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
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JUNEAU, ALASKA 99811
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Senate

Committee on Resources

March 6, 1981
1:30 p.m.

Beltz Room
211 - Capitol

MEMBERS PRESENT

SENATOR FAHRENKAMP
SENATOR FISCHER
SENATOR BRADLEY
SENATOR STURGULEWSKI
SENATOR MULCAHY
SENATOR ELIASON
SENATOR GILMAN

HEARING:

SB 83 "An Act restricting the authority of the Department of Natural Resources to regulate certain activities in state recreation areas."

John Adams, representing the Fairbanks Environmental Center, said that his organization supports mining access, trapping and motorized vehicle use in State Recreation Areas. He said that his group's greatest concern with SB 83, is the language which states that the Director of Parks may not "prohibit or restrict" certain activities which may be incompatible with public recreation and safety. He suggested that the Committee consider omitting the words "or restrict" on Page 1, Section 2. He also, suggested the addition of the phrase "to protect the property and preserve the peace" in Section 2, line 20. He also suggested the addition of the phrase "on roads or trails" on Page 2, line 2, between the words "regularly in". He stated that his group supports the principle of allowing the harvest of dead timber in recreation areas, particularly in view of the current firewood shortage in Fairbanks. He said he would like to see the use of the phrase "dead and down" in order to prevent people from inadvertently cutting live trees.

Chip Dennerlein, Director, State Parks, Department of Natural Resources, said there have been a few problems in the Chena Recreation Area; it is a park but, is managed as a recreation area because of size. He said the word "restrict" in SB 83 is a difficult word to administer. He said he would like to see the use of the phrase "dead and down" timber because there are three

March 6, 1981

Page: 2

types of trees which look dead in the winter and someone might inadvertently take live trees.

In response to the question, how can you legally grandfather in a traditional use on public land and not allow another person that same use of the public land? Mr. Dennerlein, said that traditional use is a use that was employed up until a certain time, but if that same use is extended to other people after that date it is really expanded use, not true traditional use. But, he said he was not an attorney and would look into the matter and report back to the Committee.

Senator Don Bennett, said he had no problems with striking the word "restrict" and he would like to see the words "dead and down or burnt trees" added to SB 83. He said he would like to see the rights outlined in the bill maintained.

Senator Gilman asked that staff prepare appropriate amendments for the next committee meeting.

The Committee adjourned at 2:30 p.m.



Fairbanks Environmental Center

218 DRIVEWAY
FAIRBANKS, ALASKA 99701
(907) 452-5021

Committee

STATEMENT ON SB 83 and the CHENA RIVER RECREATION AREA

We believe that mining access, trapping and motorized vehicle use can and should occur on State Recreation Areas. In fact, in the Chena River Recreation Area, (the one with which our organization is most directly concerned), these activities are already allowed. However, these and other uses must be managed in a way that insures public safety and maintains the basic value for which these areas were established - public recreation.

We understand the motivation behind SB 83, but in general find it to be unnecessary, since most of the points it addresses are adequately covered under existing law and regulations. Still, we have no major objection to re-stating certain principles, as long as the integrity of State Recreation Areas is not compromised.

Unfortunately, Section 2 of the bill contains features which would fundamentally change the management of Rec Areas. Our greatest concern is with the language which states that the Director of Parks may not "prohibit or restrict" (emphasis added) certain activities which may be incompatible with public recreation and safety. That single word - "restrict" - is probably the most objectionable feature of the entire bill.

This could prevent the director from managing in any way, mining access, trapping, motor vehicle use and cutting of dead timber. As written, SB 83 would elevate these activities above public recreation as the prime uses of Recreation Areas. Ironically, it would mean that there would be less control of vehicle use and mining access on State Recreation Areas than on unreserved public domain lands!

This flaw can be corrected simply by omitting the words "or restrict" from Section 2. If this is not done, then we urge you to reject the entire bill. Another feature which

deserves attention is the omission of the phrase "to protect the property and preserve the peace", from Section 2. We suggest that this phrase be inserted (line 20, after the words "incompatible uses") to re-affirm protection of public safety and resources as a fundamental management objective, on an equal basis with the various uses of State Recreation Areas.

SPECIFIC USES

Our position on the specific uses addressed in SB 83 is outlined below:

Mining access is currently guaranteed by State mining law and the enabling legislation for Recreation Areas. This system guarantees reasonable and feasible access to valid mining claims, while protecting public resources.

The Division of Parks can and does issue permits for mining access, such as that recently granted to a very large operation to move heavy machinery across the Chena River Rec Area.

Trapping is, of course, managed by the Department of Fish and Game. But there are cases where it may be desirable to restrict this use on Rec Areas.

For instance: In the Nancy Lake Recreation Area, the Youth Conservation Corps spent three summers and considerable public funds building a first-rate boardwalk on a nature trail. One of the prime attractions of that trail is a beaver colony. If the Director of Parks cannot restrict trapping, then a single trapper could easily override the money and labor expended and the enjoyment of the general public.

Not allowing any degree of control over trapping would preclude any attempt to find middle ground so that all uses, including trapping, can be reasonably accommodated.

Traditional access should be guaranteed on routes and by means regularly used before establishment of a Rec Area. If that is the intent of Section 2(C), then we support it, in principle.

However, the definition of "traditional use" (in Section 3) is not specific enough and could be interpreted to allow use of means of transportation traditionally used over non-traditional routes. It could also be construed to allow use of non-traditional vehicles over traditional routes.

By the same token, if snowmachines were traditionally used on certain trails, they should continue to be allowed on those trails. But the entire Rec Area through which those trails run should not be automatically opened for snowmachine use everywhere.

If a dogsled or snowmachine trail were regularly used before establishment of a State Recreation Area, those uses should continue in the Rec Area. But that same trail should not automatically be opened to all other means of transportation.

To clarify this provision, we offer the following suggestions:


1. An addition to Section 2(C) (line 27, after the word "area"), reading:
"provided that no use be made of a road or trail other than by those means of transportation traditionally used on that road or trail prior to the effective date."
2. An addition to the definition of "traditional use", (Section 3 after the words "occurred regularly") of the phrase:
"on roads or trails".

We support in principle the proposed amendment to allow harvest of dead timber within Rec Areas. In view of the current firewood shortage in Fairbanks, we recognize the intent of this provision.

However, we propose one minor change to the amendment. We would like to see the phrase "dead or down" changed to "dead and down." This would prevent people from inadvertently cutting live trees, (such as tamarack), which in winter can appear to be dead. It would also reduce the chance of someone cutting a dead and standing tree containing a raptor nest.

All of the above comments are made under the assumption that the word "restrict" will be omitted from Section 2.

If this is not done, then we and many others in Fairbanks and elsewhere will find SB 83 a completely unacceptable piece of legislation.


John Adams,
Executive Director

Alaska State Legislature



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Senate

Committee on Resources

MEMORANDUM

TO: SENATE RESOURCES COMMITTEE MEMBERS

FROM: SENATE RESOURCE COMMITTEE STAFF

RE: SECTIONAL ANALYSIS OF SB 83

DATE: MARCH 5, 1981

Attached is a sectional analysis of SB 83 which has been prepared by Richard Bradley of the Legislative Affairs Agency.

SB 83 will be before the committee for its consideration on Friday, March 6 and on Wednesday, March 11.

MAR 5 1981

44-7
DeWitt

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 5, 1981

SUBJECT: Recreation areas -- SB 83
(Work Order No. 12-0840)

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee

FROM: Richard A. Bradley *B*
Legislative Counsel

You have requested a sectional analysis of the provisions of SB 83.

The bill establishes amendments to the provisions of AS 41.20, a chapter dealing with state parks and state recreation areas generally.

Except for minimal editorial clarifications in the bill made by the revisors before introduction this year, the bill is identical to SB 536 which was introduced into the Eleventh Legislature.

That bill had been requested to divest the Department of Natural Resources (division of lands) of the power to adopt regulations making the activities designated in AS 41.20.-020(12)(A) - (C) [bill sec. 2] into incompatible uses on lands designated as recreation areas.

The bill achieves this goal.

Certain threshold premises need to be noted.

State parks and state recreation areas are creatures of the legislature, at least to the extent that a park or recreation area may exceed 640 acres in area. Compare the last sentence of AS 38.05.300(a): if it is the wish of the executive to close to multiple use an area in excess of 640 acres, legislative confirmation of that proposal must be obtained. The

Senator Bettye Fahrenkamp

Page 2

March 5, 1981

law establishing the four state recreation areas identified later in the bill had granted to DNR the authority to limit certain activities that would come within the general understood meaning of multiple use. This bill provides that the listed aspects of multiple use may not be limited by DNR by regulation.

Sec. 1 of the bill contains nonsubstantive editing on lines 12 - 13 of page 1. The changes made to lines 14 - 15 of page 1 delete the authority of the Department of Natural Resources to adopt regulations governing the use and designating incompatible uses within state recreational areas.

This loss of responsibility is then dealt with in bill sec. 2 by granting DNR the authority withdrawn under the first section with the qualifications sought by the sponsor.

Sec. 3 of the bill defines the term "traditional use" [of roads and trails] in the context of motorized vehicle use before the date of the establishment of the recreation area.

Secs. 4 - 7 of the bill extend the logic of these revisions of the authority of DNR to four statutorily established recreation areas: the Captain Cook State Recreation Area, the Caines Head State Recreation Area, the Nancy Lake State Recreation Area, and the Chena River Recreation Area.

And sec. 8 establishes an immediate effective date.

RAB:ljb

donating their time to help. So you see that truly this is a united effort, for the betterment of health in our Community.

We have been able to help over three hundred persons in the Fairbanks area in the past year. All free of charge. Our concern is, that there is another group stressing the Five-Days, and this has resulted in some confusion. We have had several calls on this. We wish the other group, which charges for their program, much success. We are all for anyone who can help break the smoking habit, and thus cut down on death and disease. We only want to avoid confusion.

Could you please print this letter, to help keep things straight?

Anyone wanting more information, may call 479-4533.

Thank you!
Sincerely,
Rosalee Beterle
Co-ordinator of the
Five-Day Plan

*2/17
News-Miner*

Wrong bill?

3098 Airport Way
Fairbanks
Feb. 10, 1981

To: Celia Hunter:

I read your "Opinion" about the threat to the Chena Recreation Area in the News-Miner of 2/4/81 with interest. As a less than committed outdoors-person (hiking great distances to find a bit of wilderness is just not my thing!), I always get concerned when local wilderness areas are threatened with development.

Since I will be traveling to Juneau in the next few weeks, and since I am familiar with Senators Bennett, Fahrenkamp, and Parr (the senators who introduced S.B. 83), I thought I might add a bit of my own distress to

that expressed by yourself.

Unfortunately, after securing a copy of S.B. 83, I found nothing in the bill which threatens the already existent uses in the Chena Recreation Area. In fact, it sounds like our three local senators are attempting to get some Department of Natural Resources bureaucrats off their duffs!

Since you only mentioned Senator Bennett in your article, and since the bill I secured does not appear to correspond to the threat you perceived, I am wondering if some other Senate Bill might be the dangerous one?

Sincerely,
Frank J. Gold, EdD



Alaska State Legislature

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Senate

Committee on Resources

MEMORANDUM

TO: SENATE RESOURCE COMMITTEE MEMBERS

FROM: JIM PALMER
SENATE RESOURCES COMMITTEE STAFF

RE: SECTION BY SECTION ANALYSIS OF SB 83

DATE: FEBRUARY 26, 1981

SB 83 "An Act restricting the authority of the Department of Natural Resources to regulate certain activities in state recreation areas; and providing for an effective date."

This measure is sponsored by Senators Bennett, Parr and Fahrenkamp.

SECTION 1

This section changes the wording of AS 41.20.020 (6). The word changes in this section limit the Department of Natural Resources to adopt regulations governing the use and designating the incompatible uses to state parks. The wording denies the Department of Natural Resources the authority to make such regulations for state recreation areas. (see Sec 2)

SECTION 2

This section states that the Department of Natural Resources shall adopt regulations which prohibit incompatible uses within the state recreation areas.

This section also states that these regulations shall not include activities such as (1) work on valid mining leases or claims, (2) taking of fur bearing animals or (3) traditional use of roads and trails in existence before the effective date of the act establishing the area.

SECTION 3

This section defines the word "traditional" to mean the regular use by any means of transportation, including a vehicle propelled by machinery, if the use occurred regularly in the area of a state recreation area before the effective date of the act establishing the state recreation area.

SECTIONS 4, 5, 6, 7

These sections direct the Commissioner of the Department of Natural Resources to designate incompatible uses (with exceptions noted in Section 3) in four recreation areas: Captain Cook State Recreation Area, Caines Head State Recreation Area, Nancy Lake State Recreation Area and the Chena River Recreation Area.

SECTION 8

This section establishes the effective date of this act in accordance with AS 01.10.070. (c).

SENATE AMENDMENT

BY Senator Fahrenkamp

To: _____ SENATE BILL No. SB 83

To: _____ HOUSE BILL No. _____

PAGE: 1

LINE: 25

add line:

"(d) the taking or cutting of down or dead timber."

TRIPOD RAISING—Warm temperatures this weekend gave a brief hint of spring weather to come and the town of Nenana was ready to celebrate with Tripod Days. The annual preparations for the coming of spring

were completed there with the "planting" of the tripod in the middle of the ice-covered Tanana River Sunday. A cable connection from tripod to shore will stop a clock when the tripod is carried downstream 100 feet.

(Photo by Kurt Savikko)

Nenana and has been since 1917 when the first tripod was placed in the ice and became the focal point of the break-up later.

A cable connection from tripod to shore stops a clock when the tripod is carried downstream 100 feet by the crunching, heaving ice. As far as Alaska is concerned, that will be the beginning of spring. It is then that boat crews will man their vessels and the busy summer shipping



WINIFRED
"Never wo
(Photo

Chena mining access permit to be given to new part

By **FRED PRATT**
Staff Writer

A permit was to be granted today for winter trail for miners crossing part of Chena River Recreation Area, but the permittee has been changed after new doubts were felt about the company that used the route last year.

Division of Parks Director Chip Dennerlein said he would not issue a permit to Little David Mining and

Exploration Co., but instead will issue it to Little David's partner in this year's joint venture, S&B Mining Co.

The permit is for crossing the recreation area land to take a train of large bulldozers, backhoes, front-end loaders and skids bearing fuel tanks and trailers from Chena Hot Springs Road to a gold claim on federal land almost 30 miles east at Van Curler's Bar.

Last year Little David ran its equipment into the mine without a permit, building several stream crossings that brought citations from the Department of Fish and Game. The miners were each fined \$700 and each sentenced to 30 days in jail, with the fines reduced by half and the jail sentences waived on the condition that no similar violations occur for one year.

Dennerlein said he also was told last

week that Little David had not paid for a piece of equipment leased last year, and the equipment had been left at the mine.

"I do not feel confident issuing a permit to Little David," Dennerlein told the Daily News-Miner this morning. "S&B was not involved last year, is in the joint venture this year and is quite frankly suffering from some of

the track record of Little David last year."

The principal partners of S&B include many long-time Alaskan miners, Dennerlein said. Some of the critics of Little David said it is largely an Outside company.

"I had to either raise the price of the bond or change the structure of who we granted the permit to," he said. "I think the state will get more surety out

of the way we are

mit."
"S&B is named as the full compliance conditions and service meeting of stipulated associates, employees, tractors," Dennerlein

He said the change not mean Little David

(See CHENA



30 dogs, a 12-foot and Smyth's off to

By **MARVIN ARONSON**
News Editor

"I'm addicted to it, that's why I keep running the Iditarod," Bud Smyth says, "but if I win it this year," he adds with a half-forlorn smile, "it'll be my last."

Smyth (pronounced Smith) is thinking big these days. That's why he plans to run the ninth Iditarod Trail Sled Dog Race to Nome



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where "the butterflies are coming" and
"you say, 'Oh, no, I'm making the same
mistake again—I'll never do it again'—
but afterwards it's a great adventure."

Benjamin Franklin became the first
U.S. postmaster-general in 1775.

Stars have invaded his eyes
Silver bills in his voice
Sing a hymn to the har he dreams of!
Watch him wooing, purring, cooing
He's a dove, he's in love!
Police Guards, Act 1 Scene 6
"KISMET"

\$5⁹⁵ all you can eat.
SUNDAY BRUNCH 10 a.m. - 2 p.m.
\$6⁵⁰ all you can eat.
Pipe organ played Fri. & Sat.
6-8 p.m. and every Sun. Noon-2 p.m.
124 North Turner Street
Across from News Miner, Next to Big I

CHENA . . .

(Continued from page 1)

be out from under the court requirements in last year's convictions. The permit stipulations will require the miners to build temporary bridges across the Chena River and Munson Creek, probably with railroad flatcars or other structures that can be brought in and removed later.

The permit does not become valid, Dennerlein said, until a detailed plan for stream crossings is presented and approved by the Department of Fish and Game's habitat protection section.

The miners also are required to carry absorbant materials so they can immediately treat any fuel spills. They must do any trail widening by hand.

"They are not just going to drive down the trail with the blade down," Dennerlein said.

He added that the operation will take about a week.

Opponents to the permit have maintained a longer alternate route exists across federal land if the miners came south from the Steese Highway at Miller House and approached the area via Harrison Creek, Birch Creek and a pass at the head of Clums Creek. Dennerlein said he reexamined that, but found "it is just not feasible this year."

CHENA The Rest Comes Easy
SPRING The Hot Springs
HOT Hostel
60 miles from Fairbanks, Alaska
Mail: 801 Hamlet St., Fairbanks, AK 99701
Reservations: (907) 452-4440

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**TODAY AT WOMETCO
LATHROP THEATRES**
GOLDSTREAM TWIN 1
PG SHOWS THRU MAR. 4


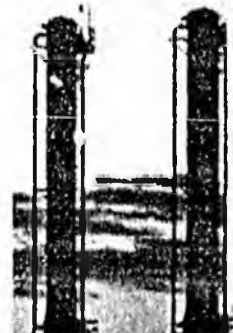
Snow Machine Races!
NORTH POLE WINTER CARNIVAL
Sunday, March 8th
11:00 a.m. to 3:00 p.m.
Gravel Pit Lake
(off Old Rich next to North Pole Chamber of Commerce)
"Join us in all the fun!"
For further information & entry blanks call 488-6186



Let's talk . . .

... An investment

Jim Lewis
Accounting Manager,
Exxon USA

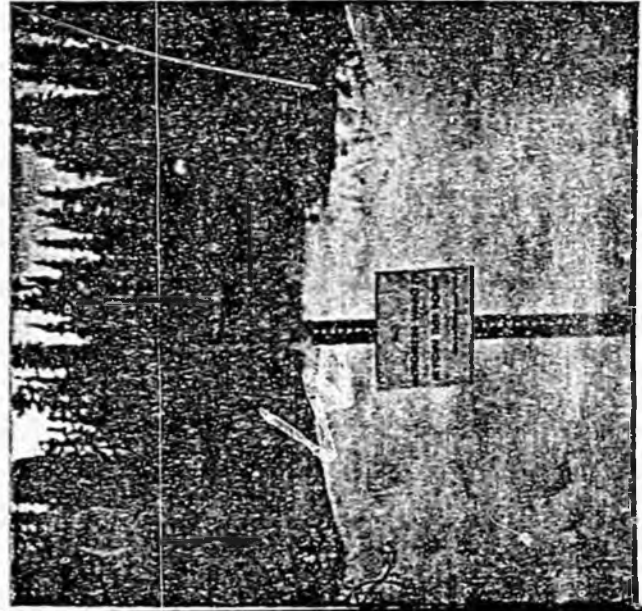
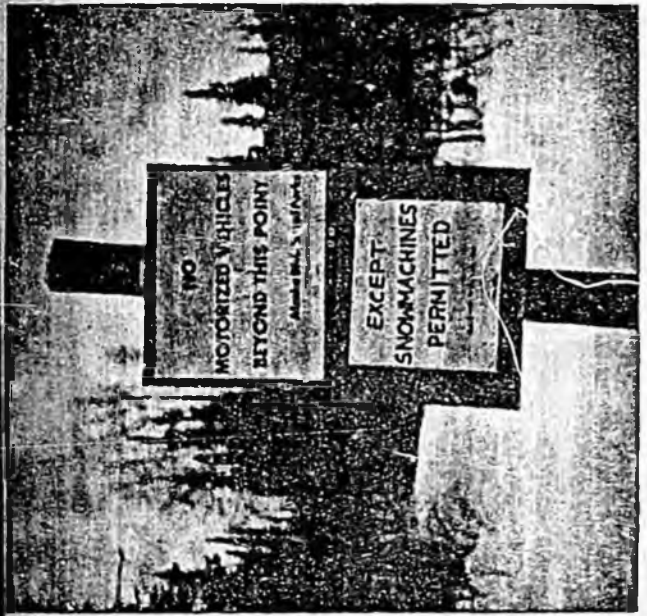
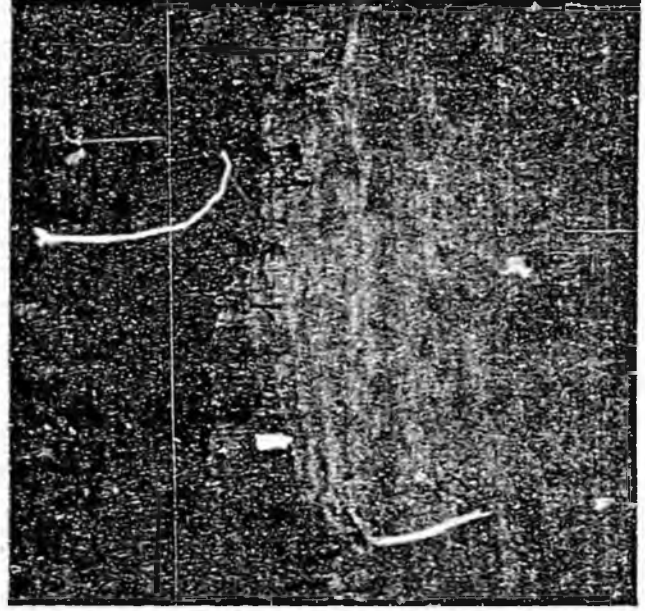
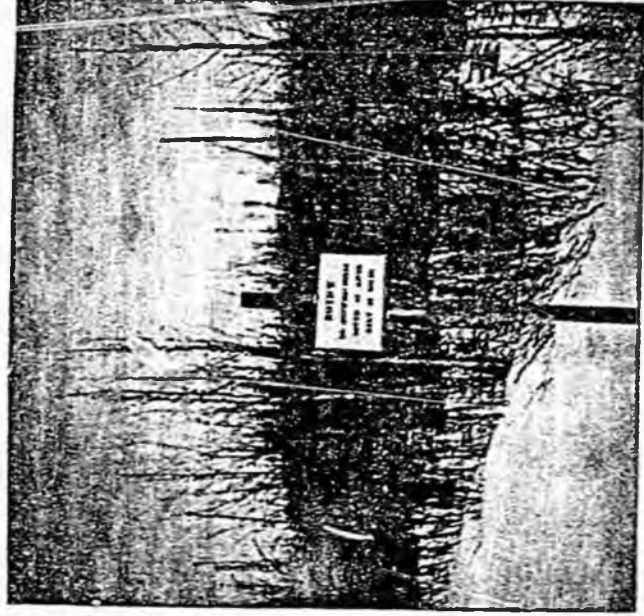
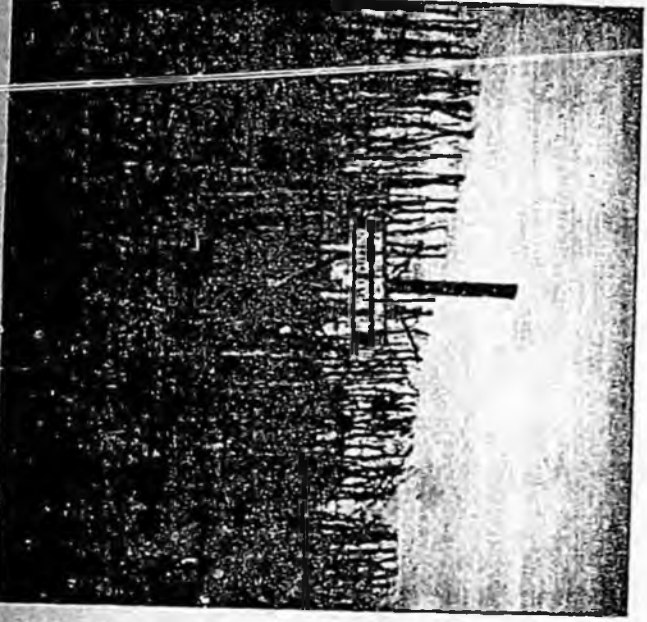
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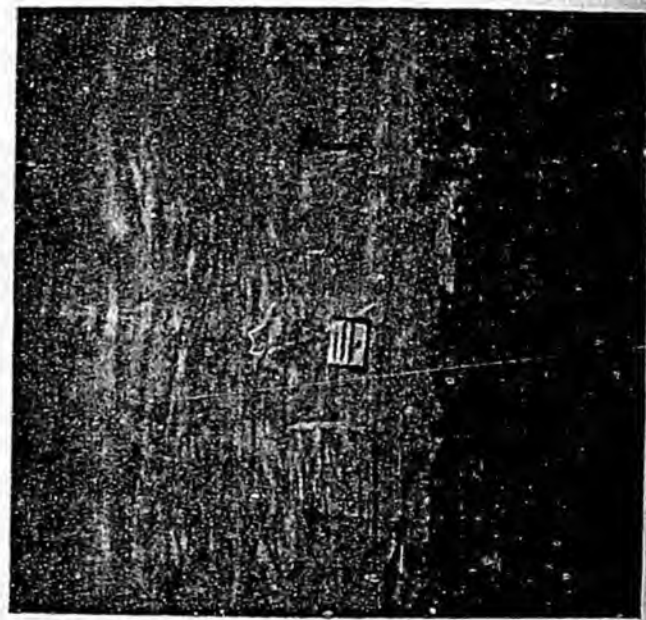
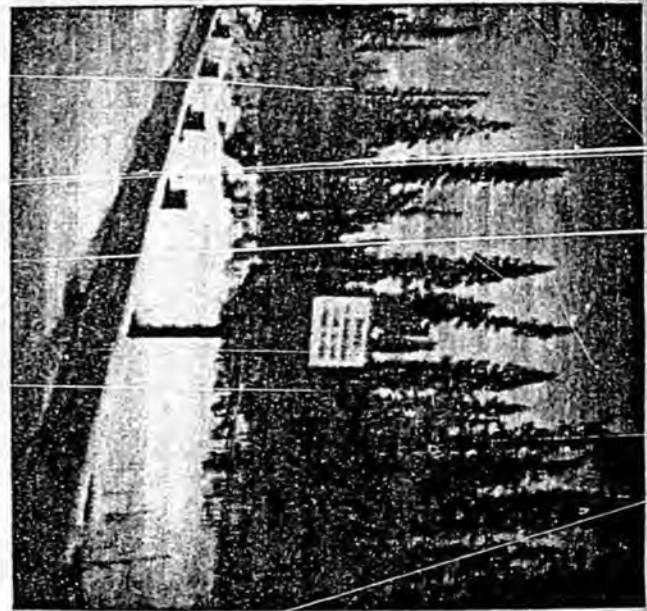
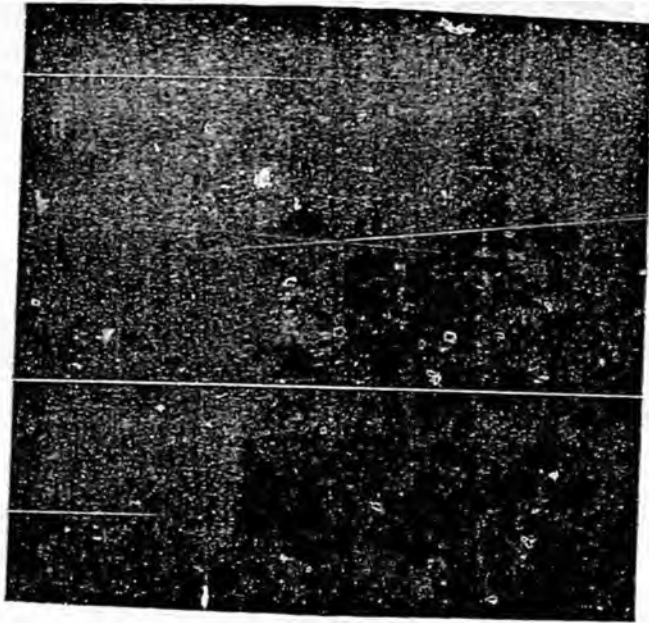
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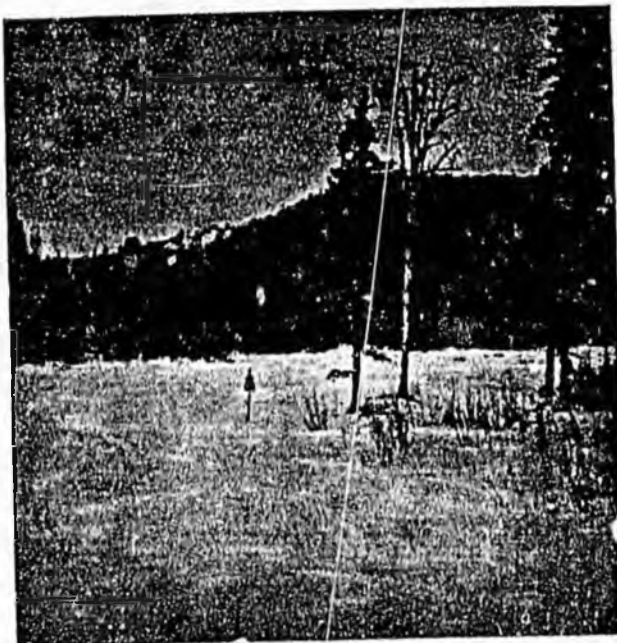
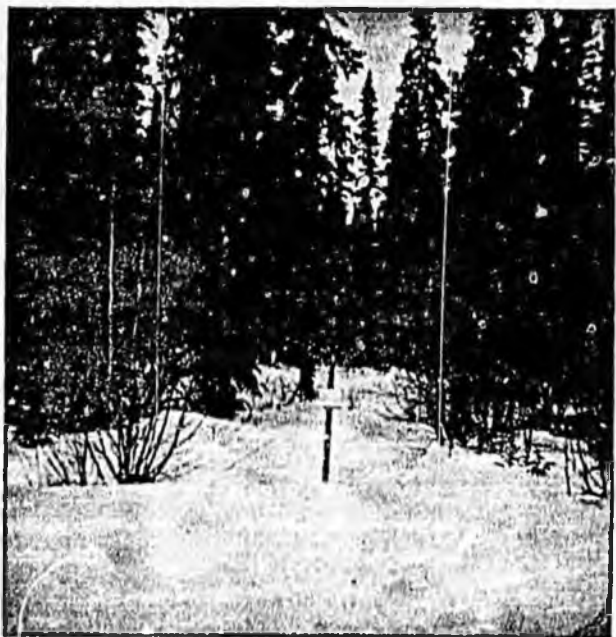
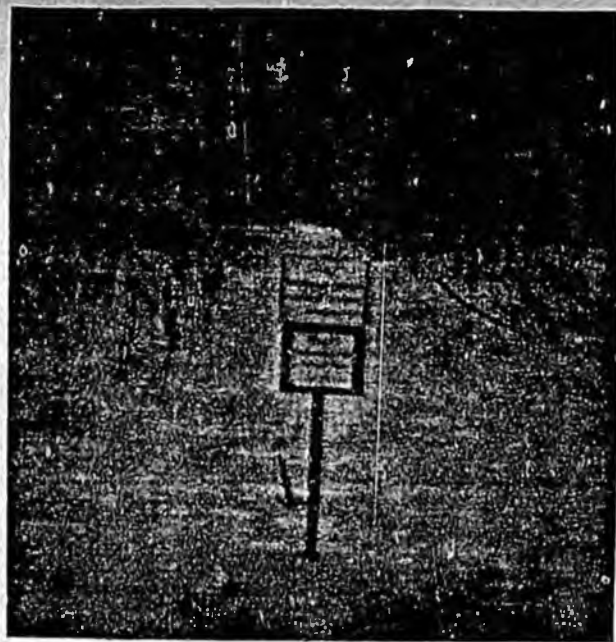
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Alaska State Legislature

Senate

BUREAU ALASKA

PRELIMINARY BILL SUMMARY

BILL NUMBER: SB 83

SPONSOR(S): Bennett, Parr,
Fahrenkamp

OTHER COMMITTEE

REFERRALS: Judiciary

TITLE: "An Act restricting the authority of the Department of Natural Resources to regulate certain activities in state recreation areas

and providing for an effective date"

FISCAL IMPACT (if known): No direct fiscal impact

BRIEF SUMMARY OR HIGHLIGHTS:

The first section of the bill changes language of current statute limiting the authority of powers of the Department of Natural Resources.

The second section of the bill states that the department may not adopt regulations which prohibit 1) work on valid mining leases or claims; 2) taking of fur bearing animals or 3) traditional use of roads or trails

Traditional use is defined as the regular use by any means of transportation if use occurred regularly before effective date establishing the area.

Captain Cook State Recreation Area, Caines Head State Recreation Area, Nancy Lake State Recreation Area and Chena River Recreation Area regulations are changed to take into account the second section of this measure

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COMMITTEE REPORT

SENATE

FURTHER: Finance

1/15/81

Date: _____

Mr. President:

The Committee on RESOURCES has had SB 84

processing of permits by state agencies and approval of Alaska coastal management programs; establishing Permit Reform Commission

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 84 same title
 new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

do not pass

V. T. Fisher

William G. ...

Bob ...

CHAIRMAN

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



Senate

Committee on Resources

March 30, 1981
1:50 p.m.

Beltz Room
211 - Capitol

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Sturgulewski
Senator Bradley
Senator Eliason
Senator Mulcahy
Senator Gilman

Hearing

SB 226 An Act relating to the mining loan fund.

SB 84 An Act relating to the processing of permits by state agencies.

Phil Holdsworth, Alaska Miners Association, testified in favor of SB 226. He suggested an amendment: page 1, line 27, delete "manager of a business" and insert "in the mining industry".

Sharon Traylor, Director Division of Business Loans, Department of Commerce and Economic Development, stated that she would like to see some language added to the Bill in Section 45 regarding refinancing.

Senator Sturgulewski, moved for the adoption of the following amendments:

Page 1, line 14, delete "more than"
Page 1, line 15, delete "more"
Page 1, line 16, delete "than"
Page 2, line 9-10, add a new sentence "No more than 49% of the original loan can be used for refinancing under this section."

Senator Fischer, moved for the adoption of the following amendment:

Page 2, between lines 56 insert: "AS 27.09.040 (d) delete monthly basis" and insert "at least annually."

Senator Mulcahy put forth the motion to move SB 226 as a Committee Substitute with individual recommendations.

Jean Kline, Alaska Chapter, Associated General Contractors, stated that the Association urges passage of SB 84. She stated that sometimes the smallest construction project can be delayed because of permits. SB 84 will help eliminate the unnecessary delays.

The Committee was briefed by staff on the draft CSSB 84.

The Committee was adjourned at 2:35 p.m.



SOHIO ALASKA PETROLEUM COMPANY

3111 "C" STREET
ANCHORAGE, ALASKA

TELEPHONE (907) 265-0000

MAIL: POUCH 6-612
ANCHORAGE, ALASKA 99502

Legal Department

April 16, 1981

Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee
Pouch V
Juneau, AK 99811

Re: Hearings of April 1, 1981 on SB 84

Dear Senator Fahrenkamp:

In the testimony I gave to your Committee on SB 84, on the Governor's new "uniform procedural regulations", and on the subject of regulatory reform in general, I promised to supply you with several things. I apologize for the delay in replying; however, I was out of the State during the last week.

1) I have attached "The Saga of Sag 7 and 8", a working paper developed by our Government Affairs office to set forth the entire record of permitting from beginning to end of a Beaufort Sea exploration well. This paper sets forth with specificity the complex bureaucratic interactions which occurred, and the delays they caused. As I stated at the hearing, no activity which occurs on the North Slope is ever routine. However, the sort of interactions which occurred here, while not exactly duplicated each time with respect to each program either on or offshore, are becoming typical of the sorts of problems Sohio and other oil companies face in developing leases obtained from the State. This is particularly the case with respect to offshore leases, although the sorts of delays faced here also apply to onshore leases. As I mentioned at the hearing, these sorts of delays, on a somewhat smaller scale, often occur in developments within the Prudhoe Bay Field. As I mentioned, they seem to result more from disorder in administrative structure than from any other reason--often an agency of the State evaluates a project three separate times! I apologize again for the delay in supplying these materials to you, but as I stated at the hearing, the times set forth in this document were incorrect in the previous draft. They are correct in this draft.

2) You also requested in my opinion, as a lawyer, on the potential impacts on the lawfulness of permits which the procedures set forth in SB 84 provide. In general, in the interests of speedy issuance of permits, they provide for avoiding what is referred to as "administrative exhaustion", and rather going immediately to Court, and in a separate

Senator Fahrenkamp

Page 2

April 16, 1981

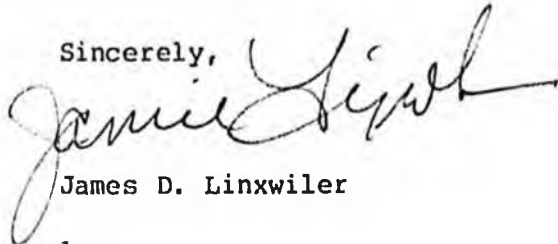
procedure, for automatic issuance of delayed permits.

While no doubt, you have heard and will continue to hear varying opinions on this matter from lawyers representing various interests, my personal feeling is that these issues have been somewhat blown out of proportion. I do not believe that significant disruptions will occur from either facet of the problem. For instance, as to automatic issuance, regulations of any affected department or of an amended provision of the statute could provide for presumption of regularity and validity to the permit by providing that any fact contained in the record as it existed at the time of the automatic issuance of the permit would be determined in favor of the applicant. This provides an adequate record for review. Moreover, as to disruptions that would occur from a failure to exhaust administrative remedies, I do not believe the problem is a severe one. While it is a question of tactics for each individual permit applicant as to whether he wishes to pursue his formal or informal appeal rights in a department, or rush off to Court, certainly the options should be there for him to explore.

One should keep in mind that both automatic issuance and the avoidance of lengthy administrative appeals are key elements of regulatory reform--without an automatic issuance provision, for instance, there is no enforcement of the time limitations--that is to say, they could be ignored in a wholesale fashion without any stricture being placed upon the department that is doing so. And without speedy resort to Court, an agency could provide lengthy appeals procedures to defeat any requirement of timely issuance.

If there is anything further I can do for you, please do not hesitate to call or write.

Sincerely,



James D. Linxwiler

ls

cc: Committee Members

THE SAGA OF SAG 7 AND 8

- A Case History of Regulatory Confusion and Delays -

Sohio Alaska Petroleum Company
Anchorage, Alaska

April 2, 1981

THE SAGA OF SAG 7 AND 8
- A Case History of Regulatory Confusion and Delays -

Sohio Alaska Petroleum Company submitted applications on February 20, 1980 for two exploratory wells, Sag Delta Nos. 7 and 8, to be drilled in the Beaufort Sea during the winter of 1980-81. Prior to that date, Sohio made the first of many presentations to Federal and State agencies and the North Slope Borough on the wells and on the results of a million-dollar study of drilling mud and cuttings which showed that they could be safely disposed of on the ice in the Beaufort. As a possible alternative to putting mud and cuttings on the sea ice, Sohio proposed constructing a mud sump at the East Dock for mud and cuttings disposal.

In the eleven months following the February 20th application date, Sohio was mired in permit hassles and received conflicting permit stipulations from separate agencies leaving the company in an untenable operating position (see, for example, Chart 1). The problems evolved largely from the Governor's CZM consistency review process as implemented by the Division of Policy Development and Planning, from the Corps of Engineers review process, and from their interface. While the permit process was ongoing, significant sums of money had already been committed for equipment and operations, and it was uncertain as to whether Sohio would ever get the required permits and whether the stipulations imposed would even allow operations to proceed from a practical viewpoint. It was not until four days before drilling was to commence in the Sag Delta area that all the required permits were finally in hand (see Chart 2).

The Saga of Sag 7 and 8 is representative of the kinds of problems oil companies face in Alaska, particularly on the North Slope, when trying to drill exploratory wells or develop a field, after having paid billions of dollars to the State and Federal governments for exploration and development rights. The host of problems can be separated into three major areas: (1) the government's failure to clearly define the major purpose of an oil and gas lease; (2) multiple reviews by the same agencies on the same permit and multiple delays being the order of the day; and (3) the imposition of arbitrary stipulations both beyond the agency's scope of authority and with no rationale given. While there are other problem areas, these three combine to create a web of uncertainty and confusion that is not only costly to the companies but also to the consumer and to the Nation. With the mid-1980s decline of the Prudhoe Bay field production, and with the many net profit leases issued by the State in the December 1979 Beaufort Sea Lease Sale, the regulatory web may prove very costly to the State of Alaska as well.

The overall problem facing the companies in the normal permit process -- and especially in the Coastal Zone Management consistency determinations -- relates to the ambiguity surrounding the highest and best use of an oil and gas lease. The Prudhoe Bay field, for example, appears to be thought of by some environmental agency personnel as, primarily, a wildlife habitat which must be kept pristine. Industry seeks to protect the natural environment at Prudhoe Bay but does consider the production of oil from that field as the highest use for the area. Similarly, Beaufort Sea leases seem to be considered by some as inappropriate for exploration and development. While environmental values are high priorities in these areas and are

studied in depth prior to a lease sale, the government needs to clarify in writing to all agencies and to all entities involved in the permitting process that, once oil and gas leases are sold, the primary purpose of those lease areas is oil and gas exploration and production, and that this primary purpose requires expeditious permit application handling and cost-efficient operations as well as environmental protection.

Second, multiple handling of the same permit application by government agencies should be ended as its chief result is confusion and delay after delay (see Chart 3). The Alaska Department of Fish and Game, for example, has the opportunity to make comments on the same project two times -- with two additional optional times possible as well. The Alaska Department of Environmental Conservation handles permits for the same project a minimum of three times. The Division of Policy Development and Planning handles consistency reviews for the same project twice, seeking input from the Department of Fish and Game, the Department of Environmental Conservation and other State agencies, further causing duplication and delay.

In the case of Sag 7 and 8, the process was slowed by a number of factors relating to multiple considerations by agencies of permits for the same project. The duplication basically arises because the State regulates oil and gas operations, the Corps of Engineers duplicates this process, and then obtains comments from the State. Confusion arises because the Department of Natural Resources, the body issuing State permits, does not make comments to the Corps as part of its permit process. This is done, in an entirely separate process, by the Division of Policy Development and Planning. The Department of Environmental Conservation comments to the Corps in a third process.

In the case of Sag 7 and 8, the entire Corps of Engineers process from beginning to end took 330 days, including the time it took to obtain amendments to the original permit which were necessary to allow operations to proceed. This time delay was the result in part of the accumulation of delays in the State comments to the Corps -- 100 days for a State CZM consistency review, 124 days for the Department of Environmental Conservation's water quality certification, etc. These delays are particularly inappropriate because the State agencies involved had already commented on the State permits covering the project, through their responses to the Division of Minerals and Energy Management's request for comments, and thus a separate review for the Corps was unnecessary.

In the case of the East Dock mud sump permit, required in connection with the Sag Delta wells, the Division of Policy Development and Planning requested from the Corps of Engineers -- and was granted -- seven straight 15-day extensions to the comment period with no rationale given, except that "further study" was needed. That amounts to 105 days of delay in a process that eventually took 190 days to complete. The Corps of Engineers required the Division of Policy Development and Planning's review to act on the Corps permit. As a result of State delays, it took the Corps 225 days to process its permit.

The third problem is well illustrated by Chart 1. Even though on-ice disposal applications had been filed in February, 1980, as of late October, Sohio still faced conflicting responses emanating from different

agencies and the North Slope Borough as to whether or not mud and cuttings disposal could be handled as proposed by the company. The reason why it might be acceptable at one well location and not on another was never given and is an example of the kind of arbitrary decision-making that is a fairly routine occurrence on permit application handling by State and Federal agencies. Further, appropriate permits had still not been issued for the East Dock mud sump. Permit applications had been filed April 3, 1980 with the intention of building the sump in the summer so that it could be ready for the winter drilling program. The Coastal Zone Management consistency extensions, described previously, were a major reason for the hold-up. Thus, as of late October, 1980 Sohio still was unsure if it could proceed with exploration in the Beaufort Sea in the winter of 1980-81 or, if drilling could commence, where the mud and cuttings could be disposed of. All this was despite Sohio's efforts in meeting with high level administrators in July to alert them to the problems the company was already experiencing in terms of delay and confusion with the Sag 7 and 8 permit applications. Again, it was not until four days before drilling was to commence in the Sag Delta area that all the required permits were finally in hand (see Chart 2).

Chart 1

STATUS OF MUD & CUTTINGS DISPOSAL - EXPLORATION WELLS

	SAG 5 (East Dock mud sump)	SAG 7	SAG 8	CHALLENGE ISLAND
Corps of Engineers	NO	NO	NO	No Jurisdiction
Department of Environmental Conservation	YES	YES	NO	YES
North Slope Borough	NO*	YES**	YES**	NO
Environmental Protection Agency	No Jurisdiction	NO***	NO***	NO***

* NO: Use North Slope Borough facility -- yet to be built

** YES: but can only dump small quantity -- what about the rest?

*** NO Permit: Agency too busy.

SOHIO ALASKA PETROLEUM COMPANY

Status as of October 28, 1980: On-ice disposal applied for on February 21, 1980. East dock mud sump option applied for on April 3, 1980.

THE SAGA OF SAG #7 AND #8 .

Agency Actions on Sohio Permit Applications for Sag Delta Wells #7 and #8

<u>PERMIT</u>	<u>M&C STIPS*</u>	<u>DATE APPLIED</u>	<u>TIME REQUIRED**</u>	<u>DATE ISSUED</u>
DMEM Lease Operations		2-20-80	141 days	7-10-80
NSB Permit (Plan of Operations)	Allows M&C	2-20-80	197 days	9-4-80
State Permit to Drill - AOGC		10-14-80	9 days	10-23-80
DPDP Consistency Review		2-20-80	100 days	5-30-80
DEC Waste Disposal (Sag #7 Only)		2-20-80	203 days	9-10-80 (Sag 7 only)
Amended for #7 & #8			330 days	1-16-81 (Sag 7 & 8)
Corps Permit	Denies M&C	2-20-80	131 days	6-30-80
Letter to Corps to modify M&C Stips		12-30-80		
Corps permit (amended)	Allows M&C	2-20-80	330 days	1-16-81
NPDES Permit - EPA	Allows M&C	5-6-80	217 days	12-9-80
DEC Water Quality Certification		2-20-80	124 Jays	6-23-80
Water Rights Permit - DNR		2-20-80	55 days	4-15-80

EAST DOCK MUD SUMP

DEC Water Quality Certification		4-3-80	130 days	8-11-80
Three Additional Stipulations Added			190 days	10-10-80
DPDP Consistency Review		4-3-80	195 days	10-15-80
Corps Permit (Allows M&C)		4-3-80	225 days	11-14-80

*Mud and cuttings disposal stipulations.

**Time required numbers are cumulative.

Chart 3

OIL AND GAS DRILLING OPERATIONS

<u>PERMIT TO DRILL</u>	<u>ANADROMOUS FISH PROTECTION</u>	<u>PLAN OF OPERATION</u>	<u>WETLANDS CONSTRUCTION</u>	<u>CONSISTENCY DEPERMINATION</u>	<u>WATER QUALITY</u>	<u>CROSSING NAVIGABLE WATERS</u>
AOGCC	ADF&G	DMEM	COE	DPDP	ADEC	USCG
		ADF&G	USF&WS	ADF&G		USF&WS
		ADEC	NMFS	ADEC		NMFS
		DFLWM	EPA	DNR		EPA
		OPERATIONAL INSPECTIONS	DPDP			ADF&G
		DOSH	NSB			COE
		DHSS	PUBLIC NOTICE			PUBLIC NOTICE

THE SAGA OF SAG 7 AND 8

- A Case History of Regulatory Confusion and Delays -

<u>Date</u>	<u>Day</u>	<u>Event</u>
2-11-80		Sohio makes presentation to all agencies and North Slope Borough (NSB) on million-dollar mud and cuttings study.
2-20-80	1	Sohio submits applications for Sag 7 and 8.
2-22-80	3	DMEM informs agencies that deadline for response to applications is 3-17-80. DNR will assume that no response by 3-17-80 means agency approval is granted.
3-17-80	27	The DMEM deadline passes. No response.
4-3-80	44	<p>ADF&G's Gary Milke writes the Corps to request that <u>all</u> Beaufort lease sale stipulations be placed on the permits. (DMEM is not copied on the letter.)</p> <p>The same day, Milke finally responds to DMEM's 2-22 memo, and the <u>only</u> Beaufort lease sale stipulation requested is the 3-31 drilling deadline. (Milke implies this is acceptable to Sohio.)</p> <p>Submitted applications for East Dock Mud Sump to DEC, DPDP, and the Corps of Engineers. It was deemed necessary to have an alternate method of mud and cuttings disposal available.</p>
4-21-80	62	OCM (Michael Whitehead) informs the Corps that the consistence review period is being extended 15 more days beyond the original OCM deadline of 4-29. The only rationale given is that "interested agencies" need more time to "review" the applications. (DMEM was not copied on this letter.)
5-14-80	85	OCM extends comment period for the second time. (Sohio not informed of this action.) New deadline is 5-28.
5-30-80	100	Letter from OCM to Sohio. Sag 7 and 8 applications are found to be consistent, but it took DPDP 100 days to inform Sohio. (ADF&G had informed the Corps that the applications were consistent in their 4-3-80 letter.)
6-2-80	104	DEC informally tells Sohio's Tim Bradner that DEC wants full hearings before issuing a water quality certification. Sohio makes phone call to DEC. Sohio informs DEC that full hearings at this late date would kill the Sag Delta projects.

<u>Date</u>	<u>Day</u>	<u>Event</u>
		This is the first we knew of a hearing request or that the consistency process didn't cover water quality certification.
6-3-80	105	DEC Commissioner and Deputy Commissioner promise Sohio to issue certification for construction work with hearings later for mud and cuttings disposal. (Sohio had briefed DEC on mud and cuttings study back in February.)
		USF&WS sent letter to Colonel Nunn (Corps) requesting that the permit application to construct the East Dock Mud Sump be held in abeyance. In the letter USF&W suggested that the NSB Put River Disposal Site would be safer for mud and cuttings disposal. The DEC has consistently regulated mud and cuttings as liquid wastes, and USFWS is obviously unaware that the NSB facility is permitted only for solid wastes.
6-23-80	124	DEC finally issues the Water Quality Certifications for Sag Delta #7 and #8; however, DEC continues to withhold any waste disposal permits.
6-30-80	131	A permit from the Corps for the construction of gravel islands #7 and #8 is received, but stipulations deny the disposal of mud and cuttings and set the completion date for clean up as May 15.
7-10-80	141	DMEM issues the lease operations permit for Sag 7 and 8.
7-11-80	142	Michael Whitehead (OCM) requests another 15 day extension for review of the East Dock mud sump permit (DPDP Consistency Review). The original decision date was 6-10-80. Previous extensions were requested by OCM and approved by the Corps for extending the deadline to 7-10-80. This additional 15 day extension changes the decision date to 7-25-80.
7-14-80	145	Drilling and mud and cutting disposal test results were presented in Kaktovik and Nuiqsut at the request of the Corps of Engineers.
7-15-80	146	
8-7-80	169	Letter from USF&WS to Colonel Nunn states that they had not changed their mind regarding the East Dock mud sump permit being held in abeyance.
8-11-80	172	DEC Water Quality Assurance Permit issued for the East Dock Mud Sump, 130 days after it had been requested.

<u>Date</u>	<u>Day</u>	<u>Event</u>
9-4-80	197	NSB permit is issued allowing mud and cuttings disposal on the ice, but volume is limited to 2,500 barrels for each unit (Sag Delta #7 and #8).
9-10-80	203	Received DEC Waste Disposal Permit for Sag #7 only. We still have no approved disposal site for mud and cuttings from Sag #8.
9-11-80	203	Michael Whitehead (OCM) requests another extension for the East Dock permit to 9-23-80. There have been 6 previous extensions to date.
9-24-80	216	Mahoney of the Corps informs Sohio's Jamie Linxwiler that if we don't get letters from mayors of Kaktovik and Nuiqsut we will get no amendment for our Sag Delta #7 and #8 disposal permits.
9-26-80	218	Jerry Stroebele (USF&WS) contacts Linxwiler and agrees to withdraw his objections to the Corps permits if Sohio will give him the results of Hal Knierman's study (hydrocarbons in Prudhoe Bay Unit reserve pits). This caused concern because the PBU situation is not comparable to an exploration situation. Any misinterpretation of information by USF&WS could be detrimental to our permit situation. However, we invited Stroebele to a meeting where the results of Knierman's study were released and explained.
10-11-80	233	DEC issues the Water Quality Assurance Permit for East Dock mud sump which supercedes the permit of 8-11-80. This permit has three additional stipulations which: 1) limit the use of the site to 3 years, 2) require drill muds to be disposed of in individual cells, and 3) require a minimum of 3 feet of freeboard at the top of the individual cell dikes.
10-15-80	237	Sohio receives DPDP's conclusion of their consistency review: our proposals for the East Dock mud sump disposal of mud and cuttings are found to be consistent with the ACMP. It took DPDP 190 days to make this decision.
10-17-80	239	Letter is sent to Colonel Nunn from USF&WS withdrawing request to hold East Dock mud sump permit in abeyance and adding stipulations.
11-1-80	254	Challenge Island #1 is spudded and all mud and cuttings have to be contained in a bermed area because permitting agencies are still unable to agree on or process any permits for their disposal. This begins to cloud the picture as to whether we will even be able to drill the Sag wells at all. Significant sums have already been committed for drilling equipment and operations.

<u>Date</u>	<u>Day</u>	<u>Event</u>
11-14-80	267	Corps issues permit to dispose of mud and cuttings at East Dock mud sump with seven stipulations. We applied for this permit in April so that construction could proceed during summer months; now we are saddled with constructing the pit in the winter in a more costly, inefficient, and complicated manner.
12-9-80	292	The EPA issues the NPDES Permits for discharges into U.S. waters.
1-16-81	330	The Corps modifies special condition "F" to allow mud and cuttings disposal on sea ice adjacent to the island for both Sag Delta #7 and #8. The Corps does <u>NOT</u> modify special condition "C" (May 15 island clean up deadline is impossible to meet because snow is still covering the area.) DEC amends their waste disposal permit to authorize mud and cuttings disposal at both Sag 7 and 8 for scientific purposes. <u>Only 4 days before drilling is to commence do we finally have all the necessary permits.</u>
1-20-81	334	Sag Delta #7 is Spudded.
1-26-81	340	Sag Delta #8 is Spudded.

K. Daniel Hinkle
Division Attorney
Production, U.S. & Canada

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**Marathon
Oil Company**

P.O. Box 2380
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March 2, 1981.

The Honorable Bettye Fahrenkamp
Alaska State Senate
Chairman, Resources Committee
Pouch "V" State Capitol Building
Juneau AK 99811

Re: Uniform Procedural Regulations

Dear Senator Fahrenkamp:

Enclosed for your review is a copy of a letter from the Natural Resources Section of the Alaska Bar Association to Assistant Attorney General J. K. Tillinghast on the above-captioned matter, which may be of interest to you in your consideration of the proposed regulations.

Very truly yours,

K. Daniel Hinkle
K. Daniel Hinkle

KDH:mr

NATURAL RESOURCES SECTION

OF

THE ALASKA BAR ASSOCIATION

Jonathan K. Tillinghast, Esq.
Special Assistant Attorney General
Alaska Department of Law
Pouch K
Juneau, Alaska 99811

Re: Uniform Procedural Regulations

Dear Mr. Tillinghast:

On behalf of the Natural Resources Section of the Alaska Bar Association, we hereby submit the following comments on the Uniform Procedural Regulations. While there are a broad spectrum of policy issues posed by these new regulations, we believe it is inappropriate for the Natural Resources Section of the Bar Association to comment on such matters. However, there are other aspects of the regulations worthy of comment which do not involve such policy questions, which we believe are appropriate for our attention. These views constitute the views of the Natural Resources Section which does not speak for the entire Bar Association.

1. Establishment of complex procedures. We question the wisdom of establishing such complex administrative procedures in areas in which they did not previously exist. The proposed regulations establish public notice, public participation and hearing, and administrative appeal procedures which have not previously been in existence. These items add a significant layer of complexity to administrative regulation. While in certain instances, public participation is desirable and/or necessary, we question whether all permits issued by the three relevant agencies (DEC, ADF&G and DNR), and any which the legislature may in the future authorize DPDP to issue, should be subject to these procedures. Rather, we would propose establishing that these be matters to be employed in part or whole at the option of the relevant agency, on permits where it is appropriate to do so.

2. Ease of administration and likelihood of litigation. The new regulations create significantly complex and difficult procedures to be followed. Not only will the procedures therefore be difficult to administer, but they virtually invite litigation challenging any administrative action by a hostile party. In other words, these administrative regulations provide many easy targets for hostile litigants that did not exist before. As a result, we believe the regulations

Jonathan K. Tillinghast, Esq.
Special Assistant Attorney General
Alaska Department of Law
February 24, 1981
Page 2

should be substantially rewritten with an idea to simplifying their structure and administration, and thereby lessening the probability of litigation respecting the actions of the various agencies. For instance:

a. The interagency review section, 22 AAC 10.130, and the relevant definitions, found at 22 AAC 10.920 (4), (7) and (9), are unnecessarily complex. While we appreciate the obvious desire of the drafter of these comments to clarify the respective relationships of the various State departments, the complex structure of the section invites litigation to clarify each minor aspect of the relationships established thereby (i.e., what part of a decision involves balancing, what part is to be accorded "great weight", and when is a balancing decision which goes contrary to the recommendation of a "resource agency" that is accorded "great weight" arbitrary and capricious?). We think a much simpler and straightforward approach would simply be to replace the current section 130(c) as follows:

An agency issuing a permit is the lead agency on that permit and may, in its discretion, consider the recommendations on the matter of other agencies, giving due weight to their opinions based upon their relevant expertise.

b. The agency decision section, 22 AAC 10.160 requires there to be , in subsection (1), findings on the activity's compliance with the agency's applicable standards, in subsection (2) conclusions (meaning, presumably, more findings) of the agency supporting the decision, and, in subsection (3):

a statement of the factual or judgmental basis for the rejection of any resource agency recommendation under section 130 (b) of this chapter, or any significant and material recommendation made at a public hearing held under section 50 of this chapter.

This entire section places significant and unreasonable burdens upon agencies issuing decisions. First, the three subsections are repetitive and unduly complex because many routine decisions do not require findings of this magnitude and detail. Given the hundreds of bureaucratic decisions made per year, only a few require or merit such treatment. Second, with reference to the above-quoted subsection (3),

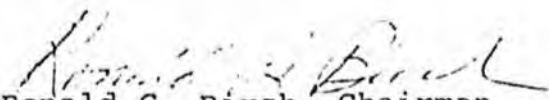
Jonathan K. Tillinghast, Esq.
Special Assistant Attorney General
Alaska Department of Law
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Page 3

on any project of complexity there will be many "resource agency" comments on the matter. Some of these comments will be recommendations, some might be statements of preference, some might be statements of perceived fact. A requirement that there be a statement of the "basis for the rejection of any resource agency recommendation" invites litigation if there is not contained a response to any matter which, in the opinion of any potential plaintiff, constitutes a recommendation. That is unreasonable. Perhaps even more unreasonably, the second part of subsection (3) requires that "any significant and material recommendation made at a public hearing" be replied to. The words "any significant and material recommendation" do little to narrow the scope of this section. On a matter of significance, hearings may last many hours, and cover a very broad spectrum of proposals, recommendations, etc. The failure of an agency to respond to even one of these, if it is, in the opinion of a potential litigant, "significant and material", provides a convenient basis for litigation. We believe this entire section should be rewritten as follows:

22 AAC 10.160 AGENCY DECISION. The agency decision will meet the requirements of section 60 of this chapter and will contain, in the discretion of the deciding officer, findings which support his decision. These findings may include a statement of the basis for the acceptance or rejection of any recommendation or comment received by the deciding agency on the matter.

We hope the above comments are helpful. Thank you in advance for your consideration of this matter.

Sincerely yours,


Ronald G. Birch, Chairman
Natural Resources Section
Alaska Bar Association

K. Daniel Hinkle
Division Attorney
Production, U.S. & Canada

FEB 20 1981

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SB 84

February 17, 1981

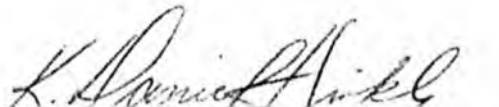
The Honorable Bettye Fahrenkamp
Alaska State Senate
Chairman, Resources Committee
Pouch "V" State Capitol Building
Juneau AK 99811

Dear Senator Fahrenkamp:

Enclosed for your information and consideration is the testimony of the Alaska Oil and Gas Association on Uniform Procedures for Permits, Consistency Determinations and Appeals.

The above testimony was presented in Anchorage on February 6, 1981, at the public hearing on uniform permitting regulations.

Very truly yours,


K. Daniel Hinkle

KDH:mr
Enc.

FINAL

TESTIMONY

OF THE

ALASKA OIL AND GAS ASSOCIATION

ON

UNIFORM PROCEDURES FOR PERMITS,
CONSISTENCY DETERMINATIONS AND APPEALS

FEBRUARY 6, 1981

ANCHORAGE, ALASKA

COMMENTS OF THE
ALASKA OIL AND GAS ASSOCIATION
ON
UNIFORM PROCEDURES FOR PERMITS,
CONTINGENCY DETERMINATIONS AND APPEALS
FEBRUARY 6, 1981

Good evening. My name is Don E. Glass and I am with Shell Oil Company in Anchorage. I am here tonight representing the Alaska Oil and Gas Association.

The Alaska Oil and Gas Association is a trade association whose 30 member companies account for the bulk of oil and gas exploration, production and transportation activities in Alaska. Our membership includes the largest and some of the smallest petroleum firms in the industry. AOGA is the Alaska division of the Western Oil and Gas Association.

AOGA is well into the second year of study on regulatory constraints faced by our industry. AOGA supports necessary measures which expedite and reform regulatory procedures. We are supportive of the four goals listed in the Executive Summary, namely:

1. Establishment of the shortest feasible deadline for the issuance of state permits for natural resource development;
2. Establish uniform permit procedures;
3. Explicitly define the rights of the applicant, and other persons in the permitting process; and
4. Streamlining the state's coastal management decision-making process.

We regretfully conclude that these regulations do not achieve these goals. While many existing problems have been alleviated, some have been made worse and others newly introduced. Therefore we are unable to support their adoption without further changes. We believe these regulations contain the following major problems:

1. Complex new requirements are created by these regulations that did not exist before. New public notice, hearing and administrative appeals procedures are established, which can only serve to complicate and delay the processing

must remain opposed to adoption of these regulations. Our preliminary recommendations on specific sections of the regulations, as currently proposed, are as follows:

Section 10.020 provides for deadline extensions if provided for in a memorandum of understanding or if the Commissioner finds that complex issues require additional time.

Any memorandum of understanding entered into prior to or pursuant to these regulations should not contain conflicting approval schedules, but rather should provide for approvals within the time frame contained in these regulations.

The provision for extension deadlines due to substantial complex issues is open-ended, and should be granted only in extraordinary circumstances.

Section 10.030 calls for agencies to notify applicants of the need for additional information within 15 days for Class I permits and 30 days for Class II permits. Fifteen days is sufficient for both classes of permits.

Section 10.040 requires an individual responsible for the overall management of a project to sign an application. It is not always possible for that individual to sign an application due to locale, etc. Submittal of an application should not be delayed for this reason; any duly authorized employee should be allowed to sign applications. We note that subsection (4) of this section allows for any duly authorized government employee to sign applications.

Under Section 10.050 public hearings may be held under certain circumstances. We believe that hearings on Class I permits should be held only if required by statute.

Notwithstanding the comment in the Executive Summary, the section on Decision of Applications should include a provision for automatic approval of a permit application if no action is taken by the deciding officer within the applicable time period.

Further to our earlier comment on memorandums of understanding, the regulations need to be clarified under Section 10.085 to reflect that any MOU's in existence upon adoption of the regulations must be either revised to reflect the provision of the Chapter, or withdrawn.

Under Subsection (c) of the Public Notice section, notice must be sent to any unit of local government having jurisdiction

Section .587 can require an applicant to submit all applications simultaneously. This would be cumbersome, if not impossible, in some instances. We are recommending in our detailed comments language which would allow consistency determinations to be rendered limited to the scope of the activity and contingent upon an ultimate conclusive consistency determination.

AOGA recommends Articles 6, 7 and 8, and all references to appeals, be deleted from the regulations and instead one article be included stating that an applicant has the right to direct appeal to the Superior Court following the agency's decision on the permit application. The permitting process is vital to our industry and accordingly we believe it is essential that permit issues be resolved through judicial review at an early date.

In the definitions section we would recommend that the definition of "great weight" be changed from meaning "deference" to "serious consideration". Deference provides no latitude to the agency deciding the issue. Further, we would recommend a sentence be added to the definition of "primary area of expertise" calling attention to the fact that any consistency determination includes a "question of balancing factors". Finally, we question why the definition for "feasible and prudent" under the Alaska Coastal Management Act is proposed to be changed. As proposed in these regulations, the definition would not give consideration to economics, which we believe to be an important consideration in determining if an issue is "feasible and prudent".

Finally, we recommend the addition of two new sections, possibly under the deferred Article 4, which we believe would help alleviate the problem of multiple and conflicting state agency comments to federal agencies. The first section calls for the lead agency established under Sections .510-.540 to determine on behalf of the state its comments and recommendations on federal permits and to transmit such policy to the federal agency. The second calls for any state agency commenting upon an activity to address its comments solely to that lead agency.

In summary, we would like to reiterate our support for measures which expedite regulatory process. We are concerned that the regulations, as proposed, create new, complex requirements that do not presently exist. Additionally, while many of the problems over consistency determinations have been resolved, new problems present themselves in the regulations as proposed.